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Vol. 57 No. 143

federal register

Friday
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7-24-92
Vol. 57 No. 143
Pages 32879-33096

federal register

Friday
July 24, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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Presidential Documents

Title 3—

The President

Executive Order 12812 of July 22, 1992

Declassification and Release of Materials Pertaining to Prisoners of War and Missing in Action

WHEREAS, the Senate, by S. Res. 324 of July 2, 1992, has asked that I "expeditiously issue an Executive order requiring all executive branch departments and agencies to declassify and publicly release without compromising United States national security all documents, files, and other materials pertaining to POWs and MIAs;" and

WHEREAS, indiscriminate release of classified material could jeopardize continuing United States Government efforts to achieve the fullest possible accounting of Vietnam-era POWs and MIAs; and

WHEREAS, I have concluded that the public interest would be served by the declassification and public release of materials pertaining to Vietnam-era POWs and MIAs as provided below;

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. All executive departments and agencies shall expeditiously review all documents, files, and other materials pertaining to American POWs and MIAs lost in Southeast Asia for the purposes of declassification in accordance with the standards and procedures of Executive Order No. 12356.

Sec. 2. All executive departments and agencies shall make publicly available documents, files, and other materials declassified pursuant to section 1, except for those the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of returnees, family members of POWs and MIAs, or other persons, or would impair the deliberative processes of the executive branch.

Sec. 3. This order is not intended to create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

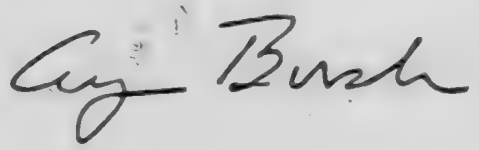

THE WHITE HOUSE,
July 22, 1992.

[FR Doc. 92-17708
Filed 7-22-92; 4:18 pm]
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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure; Correction

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations; correction.

SUMMARY: The Administrative Conference of the United States is correcting an error in a recommendation regarding streamlining attorney's fee litigation adopted at its Forty-Fifth Plenary Session, previously published in the **Federal Register** on July 8, 1992 (57 FR 30101).

DATES: This correction is effective June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Renee Barnow, Information Officer, or Jeffrey S. Lubbers, Research Director (202–254–7020).

SUPPLEMENTARY INFORMATION: This notice corrects an error in Administrative Conference Recommendation 92–5, Streamlining Attorney's Fee Litigation Under the Equal Access to Justice Act (1 CFR 305.92–5). The word "administrative" was omitted from footnote one to that recommendation, which should refer to "the resulting administrative order," rather than "the resulting order."

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

The following correction is made in Recommendation 92–5, Streamlining Attorney's Fee Litigation Under the Equal Access to Justice Act, published in the **Federal Register** on July 8, 1992 (57 FR 30101). Footnote 1 to paragraph 1(c) of the recommendation, which appears at the bottom of the third column of page 30109, is corrected to read as follows:

[1] "Final disposition" occurs when a party has prevailed in a proceeding and the disposition of the proceeding is final and unappealable; in proceedings involving a remand from a court to an agency, final disposition does not occur until the remanded proceeding is concluded and the resulting administrative order is final and unappealable.

Dated: July 16, 1992.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 92–17465 Filed 7–23–92; 8:45 am]
BILLING CODE 6110–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: To reflect the move of the St. Louis Regional Office (SLRO), the Merit Systems Protection Board is amending its rules of practices and procedures by changing SLRO's address as listed in 5 CFR part 1201, appendix II.

EFFECTIVE DATE: August 8, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas Lanphear, Director, Office of Regional Operations, (202) 653–7980.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701.

2. Appendix II to part 1201 is amended by revising the address in item number 8 to read as follows:

Appendix II to Part 1201—Appropriate Regions Office for Filing Appeals

* * * * *

8. St. Louis Regional Office, 911 Washington Avenue, Suite 410, St. Louis, Missouri 63101–1203 * * *

* * * * *

Shannon McCarthy,
Acting Clerk of the Board.

[FR Doc. 92–17419 Filed 7–23–92; 8:45 am]
BILLING CODE 4910–22–M

RESOLUTION TRUST CORPORATION

12 CFR Part 1615

RIN 3205–AA07

Disclosure of Information

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC) is adopting an interim rule for the processing of requests for access to RTC records, other than the records of the RTC Inspector General, pursuant to the Freedom of Information Act (FOIA). Since its creation, the RTC has conducted its FOIA program under the auspices of the Federal Deposit Insurance Corporation (FDIC) disclosure regulations. Because the organizational and operational structure of the RTC has come to differ so greatly from that of the FDIC, this interim rule is necessary to assist the public with respect to requests for disclosure of RTC records.

DATES: This interim rule is effective July 24, 1992, except for §§ 1615.2(c) and 1615.9 which are effective October 22, 1992. Comments must be received by September 22, 1992.

ADDRESSES: Comments must be sent to: John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001. Comments may be hand delivered to room 321 on business days between 8 a.m. and 5 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street NW., between 9 a.m. and 5 p.m. on business days. Phone number 202–416–6940; FAX 202–416–4753.

FOR FURTHER INFORMATION CONTACT: Philip Lindermuth, Acting Chief, FOIA/PA Branch, Office of the Secretary, or call (703) 908–6132. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Scope

This rule governs release of all Corporate records, with the exception of those records created by the RTC Office of the Inspector General, pursuant to the FOIA, as amended, and by the RTC public reference facilities. This rule sets forth the procedures to be used by members of the public in requesting records from the RTC, the procedures to be used when appealing a decision to deny access to records, in whole or in part, and the fee schedule applicable to responding to requests for access to records either pursuant to the FOIA or from the RTC public reference facilities.

B. Requests for Information

The rule provides that all written requests for records pursuant to the FOIA, with the exception of records created by the RTC Office of Inspector General, should be sent to the Office of the Secretary in Washington, DC. Requests for such records must reasonably describe the records sought. The rule also provides general guidance pertaining to records made available for public inspection and copying by the RTC public reference facilities.

C. Initial and Final Decisions

The rule delegates to the Secretary of the RTC, or designee, authority to make determinations concerning requests for access to records pursuant to the FOIA. Final decisions on an appeal of an initial denial of access to records will be made by the General Counsel of the RTC or designee.

The rule also explains that it is the position of the RTC that in its receivership and conservatorship capacities, the RTC is not an agency for purposes of the FOIA. However, if a requested record is held by the RTC in its non-agency capacity, access to such record under the FOIA shall first be subject to a determination of whether such record is an agency record of the RTC in its corporate capacity. Moreover, such determination shall not preclude the RTC from disclosing certain non-agency records in response to a request as a matter of public policy.

D. Fees and Fee Waivers

The rule provides that agency records will be provided in response to FOIA requests at no charge if the total fee is $25.00 or less. The duplication charge for records requested either pursuant to the FOIA or from RTC public reference facilities is $.20 per page. The rule also provides for reasonable search and review fees applicable to certain types of requesters. It further provides that fees applicable to FOIA requests may be waived if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. The rule provides extensive guidance pertaining to how the RTC will evaluate requests for waivers of fees.

Request for Public Comment

The RTC is seeking comments on all aspects of this interim rule. Comments will be carefully reviewed for the purpose of developing final regulations.

Administrative Procedure Act

The RTC is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the notice and comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause."

The RTC was created in August 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (12 U.S.C. 1441a.) Since that time, the RTC has used regulations promulgated by the Federal Deposit Insurance Corporation to process requests it receives pursuant to the FOIA. With the passage of time and establishment of separate RTC offices and files, there is a need for the RTC to have its own regulations implementing the FOIA.

The substance of much of the rule is largely mandated by the FOIA, and the rule is substantially similar to other agencies' FOIA regulations which have already been subject to public comment. In the case of those portions of the rule the need for public comment is reduced since the RTC has little discretion in adopting those provisions.

Therefore, the benefits to the public in adopting the interim regulations outweigh any harm from the delay in seeking public comment.

Regulatory Flexibility Act

The undersigned hereby certifies that the interim regulations, and any final regulations that may be adopted following comment on the interim regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*)

List of Subjects in 12 CFR Part 1615

Confidential business information, Freedom of information.

For the reasons set forth in the preamble, the Resolution Trust Corporation adds part 1615 to title 12, Chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1615—DISCLOSURE OF INFORMATION

Sec.
1615.1 General provisions.
1615.2 RTC public reference facilities.
1615.3 Requirements pertaining to requests.
1615.4 Responses to requests.
1615.5 Form and content of responses.
1615.6 Confidential commercial information.
1615.7 Appeals.
1615.8 Preservation of records.
1615.9 Fees.
1615.10 Other rights and services.

Appendix A to part 1615—Public Information Centers Address List

Authority: 5 U.S.C. 552; 12 U.S.C. 1441a; 31 U.S.C. 483a.

§ 1615.1 General provisions.

(a) *In general.* This part contains the regulations of the Resolution Trust Corporation (RTC), with the exception of the Office of the Inspector General of the RTC, implementing the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552. Information authorized for customary disclosure to the public by RTC staff in the regular course of the performance of official duties, including information made available by the RTC public reference facilities described in § 1615.2, may be sought directly from those sources rather than by a request pursuant to the FOIA under this part.

(b) *Access to records of the RTC Office of the Inspector General.* Regulations governing the disclosure of information by the Office of the Inspector General of the RTC are published in part 1680 of this chapter.

(c) *Definitions*—(1) *Agency* has the meaning given in 5 U.S.C. 551(1), 5 U.S.C. 552(e) and 12 U.S.C. 1441a(b)(1)(B).

(2) *Agency record* means a record created or obtained by the RTC and under the RTC's control at the time a request is received.

(3) *Appeal* means the letter by a requester seeking review of an adverse determination of his/her request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(4) *Clerical personnel* means RTC personnel at grade level 9 or below.

(5) *Commercial use* is a request from, or on behalf of, one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or person or entity on whose behalf the request is made, which can include furthering those interests through litigation.

(6) *Confidential Commercial Information* means records provided to

the government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm to the submitter.

(7) *Depository institution* means a thrift savings institution as described in 12 U.S.C. 1441a(b)(3)(A).

(8) *Direct costs* means those expenditures which the RTC actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(9) *Duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual material, or machine-readable information (e.g., magnetic tape or disk), among others.

(10) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research and requests records in furtherance of scholarly research.

(11) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial"basis as that term is referenced in paragraph (c)(5) of this section, and which is operated, and requests records, solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(12) *Offeror* means any person or entity that submits a contract proposal to the RTC in response to a solicitation of services.

(13) *Professional personnel* means RTC personnel at grade levels 10 through and including 14.

(14) *Record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof, whether maintained in paper, electronic or other format.

(15) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use. A freelance journalist who demonstrates a solid basis for expecting publication by a news organization and requests records solely for that purpose will be considered a representative of the news media.

(16) *Request* means any FOIA request for records made pursuant to 5 U.S.C. 552(a)(3).

(17) *Requester* means any person who submits a request to the RTC.

(18) *Review* refers to the process of examining a record located in response to a request to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, i.e., doing all that is necessary to excise it and otherwise prepare it for release, including compliance with the pre-disclosure notification procedures outlined in § 1615.6. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(19) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(20) *Senior professional personnel* means RTC personnel at grade level 15 or above.

(21) *Solicitation of Services* means a written request for proposals distributed to an offeror by the RTC.

(22) *Submitter* means any person or entity that provides confidential commercial information, directly or indirectly, to the RTC. The term submitter includes, but is not limited to, corporations, state governments and foreign governments.

(d) *Responsibilities.* The Secretary of the RTC shall be responsible for all matters pertaining to the administration of this part with the RTC. The Secretary may take or direct such actions through the Freedom of Information Act/Privacy Act (FOIA/PA) Branch of the Office of the Secretary and the field Vice Presidents of their designees as he/she deems necessary to carry out this responsibility.

(e) *Compliance with administrative time limits.* The RTC shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). The RTC shall notify a requester whenever it is unable to respond to or process the request or appeal within the time limits established by the FOIA. The RTC shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 1615.2 RTC public reference facilities.

(a) *In general.* To disseminate certain documents, the RTC has a specially staffed and equipped public reading room located in Washington, D.C., and public reference facilities in the Public Service Centers in four field offices. Any member of the public may seek copies of documents maintained at the public reference facilities either by telephone or in person. The addresses and telephone numbers of the Public Reading Room in Washington, DC, and Public Service Center are listed in appendix A of this part. Each Public Service Centers maintains certain documents on general agency matters and documents pertaining only to activities by that particular geographic region. The Public Reading Room in Washington has available for inspection all of the publicly available documents and information available from each of the four Public Service Centers. The Public Reading Room will send any documents from its document collection to RTC's Public Service Centers for inspection in the public reference facilities at those offices as desired by a member of the public. Fees for services provided by these public reference facilities are set out in paragraph (c) of this section.

(b) *Index of public reference facility information.* Each public reference facility shall maintain and make available for public inspection and copying, and publish monthly or more frequently, a current index of the materials there available, including such materials which are required to be indexed under 5 U.S.C. 552(a)(2).

(c) *Public reference facility fees.* Pursuant to § 1615.9(i)(1), fees for services at each public reference facility are as follows:

(1) *Inspection.* Members of the public are not charged for their inspection of documents which are maintained at a public reference facility.

(2) *Duplication.* For a paper photocopy of a document, the fee shall be $0.20 per page. For copies produced by computer, such as printouts or diskettes, the actual direct costs shall be charged, including operator time. For other methods of duplication, the actual direct costs of duplicating the document shall be charged.

(3) *Research.* (i) Research fees may be assessed for time spent by public reference facility personnel determining the existence of, and/or locating, documents or information sought by members of the public if the existence of such records or information is not readily ascertainable by reference to the index required by paragraph (b) of this section. Such activity includes, but is not limited to, searches of databases by public reference facility personnel.

(ii) Fees for research conducted by public reference facility personnel will be assessed at the rates stated in § 1615.9(b)(1) (ii) and (iii).

(4) *Payment.* Requesters for information under this section shall pay fees by cash, check or money order made payable to the "Resolution Trust Corporation."

§ 1615.3 Requirements pertaining to requests.

(a) *In general.* Any person seeking copies of agency records that are not already available among the document collections of the RTC public reference facilities described in § 1615.2, or that are not included among documents authorized for customary disclosure by RTC staff to the public in the regular course of the performance of their duties, may request such records by submitting a FOIA request in accordance with this part.

(b) *How made and addressed.* A requester may make a request under this part for any agency record of the RTC by writing to the Resolution Trust Corporation, Office of the Secretary, FOIA/PA Branch, International Place, 1735 North Lynn Street, Rosslyn, Virginia 22209. Both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request." A request will not be deemed to have been received by the RTC and the administrative time limits of the FOIA will not begin to run until such request, made in accordance with the requirements of this section, is received by the Office of the Secretary. To facilitate the RTC's response to requests in accordance with § 1615.4, to the extent practicable separate requests should be made for records located in separate field locations.

(c) *Request must reasonably describe the records sought.* (1) A request must describe the records sought in sufficient detail to enable RTC personnel to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of RTC operations. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. If the request relates to a pending litigation matter, the request should indicate the title of the case, the court in which the case was filed and the nature of the case. If the records are known or believed to be in a particular headquarters, field location or operational division, the request should identify such office or operational division. Organization charts and functions of each RTC operational division can be obtained from any of the public reference facilities listed at appendix A of this part.

(2) If it is determined that a request does not reasonably describe the records sought, the requester shall be advised what additional information is needed or why the request is otherwise insufficient. The requester also shall be extended the opportunity to confer with RTC personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(3) Personnel of the FOIA/PA Branch, and field FOIA Specialists where a request covers only records of one field location as noted in § 1615.4(b)(2), are available to confer with requesters in all instances in order to assist them in conforming their requests to the requirements of this section. A telephone number for the appropriate FOIA Specialist is provided in the acknowledgment letter sent to a requester upon receipt of the request by the FOIA/PA Branch.

(d) *Fee requirements.* A request must also conform to the requirements pertaining to fees as stated in § 1615.9.

§ 1615.4 Responses to requests.

(a) *Authority to grant or deny requests.* The Secretary of the RTC, or designee, is authorized to grant or deny any request for a record of the RTC, excluding records of the Office of Inspector General which are governed by Part 1680 of this chapter.

(b) *RTC procedures.* (1) Initial requests for records will be forwarded by the FOIA/PA Branch to the head of the RTC division or office which is believed to have custody of such records.

(2) Except as otherwise provided in this section, where it is determined that all responsive agency records are located within the area of responsibility of a single RTC Field Office, the response to the request will be provided by the Office Vice President, or designee.

(3) Except as otherwise provided in this section, the headquarters FOIA/PA Branch shall ordinarily be responsible for responding to all other requests.

(c) *Records of another agency*—(1) *In general.* When it is determined that a requested record originated at or was created by another Federal agency or department, the RTC will either:

(i) Respond to the request, after consulting with the other agency or department; or

(ii) Refer the responsibility for responding to the request to the other agency or department, but only if that other agency or department is subject to the provisions of the FOIA. Ordinarily, the agency or department that originated a requested record or information contained in a responsive record shall be presumed to be the agency or department best able to determine whether or not to disclose the information in response to the request. However, nothing in this section shall prohibit an agency or department that originated a requested record, or the RTC, from referring the responsibility for responding to the request to any other agency or department, if the RTC or the agency or department that originated the requested record determines that the other agency or department has a greater interest in the requested record or the information contained therein.

(2) *Notice of referral.* Whenever the RTC refers all or any part of the responsibility for responding to a request to another agency or department, it ordinarily will inform the requester of the referral and inform the requester of the name and address of each agency or department to which the request has been referred and the portions of the request so referred.

(3) *Agreements regarding consultations and referrals.* No provision of this section shall preclude formal or informal agreements between the RTC and another agency or department to eliminate the need for consultations or referrals of requests or classes of requests.

(d) *Exemptions.* The RTC may deny access to requested records or reasonably segregable portions thereof when they contain information which

falls into one or more of the following categories:

(1) Matters which are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Matters related solely to the personnel rules and practices of the RTC;

(3) Matters specifically exempted from disclosure by statute (other than the Privacy Act of 1974, 5 U.S.C. 552a), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the RTC;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of an individual;

(8) Matters contained in or related to examination, operating or condition reports by or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological and geophysical information and data, including maps, concerning wells.

(e) *Exclusion.* The RTC may treat requested records as not subject to FOIA requirements whenever a request involves access to records described in paragraph (d)(7) of this section and—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that:

(i) The subject of the investigation or proceeding is not aware of it pendency; and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(f) *Records of receiver or conservator.* The RTC is not an agency for purposes of the FOIA when acting in its capacity as receiver or conservator. Records of the receivership or conservatorship may have been, under certain circumstances, incorporated into RTC corporate files. If a requested record is held by the RTC in its non-agency capacity, access to the record under the FOIA is therefore subject to a determination as to whether it has been incorporated into the records of the RTC in its corporate capacity. Such a determination shall not preclude the RTC from disclosing certain non-agency records in response to a request as a matter of public policy.

(g) *Date for determining responsive records.* In determining records responsive to a request, the RTC ordinarily will include only those records within the RTC's possession and control as of the date of its receipt of the request.

§ 1615.5 Form and content of responses.

(a) *Form and content of notice granting request.* After a determination to grant a request in whole or in part, the requester shall be so notified in writing. The notice shall describe the manner in which the requested records will be disclosed, whether by providing a copy of each record to the requester, including copies available at an RTC public reference facility, or, at the RTC's discretion, by making a copy of each record available to the requester for inspection at a reasonable time and place. The information provided shall be in a form specified by the RTC that is reasonably useable by the requester. The requester shall also be informed in the notice of any fees to be charged in accordance with the provisions of § 1615.9.

(b) *Form of notice denying a request.* A requester shall be informed in writing if a requested record is denied in whole or in part. The notice will be signed by the Secretary, or designee, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which were relied upon in denying the requested records in whole or in part and a brief explanation of the manner in which the exemption or exemptions apply to each record denied; and

(3) A statement that the denial may be appealed under § 1615.7 and a description of the requirement of § 1615.7.

(c) *Nonexistent records.* (1) The FOIA neither requires the compilation or creation of a record for the purposes of responding to a request for records nor does it require agencies to fulfill requests for records not yet in existence, even where such record may be expected to come into existence at a later time.

(2) If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist or can be located after a reasonable search, the requester will be so notified in writing.

§ 1615.6 Confidential commercial information.

(a) *In general.* Confidential commercial information submitted to the RTC shall not be reviewed for disclosure pursuant to a request except in accordance with this section.

(b) *Notice to submitters.* Whenever the RTC receives a request for confidential commercial information and, pursuant to paragraph (c) of this section, the submitter is entitled to receive notice of that request, the RTC shall promptly notify the submitter that it has received the request, unless such notice is excused under paragraph (h) of this section. Such written notice shall either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions thereof containing the confidential commercial information and be sent to the submitter by first class mail (or, in the discretion of the RTC, by certified or registered mail or other means reasonably calculated to ensure actual notice to the submitter). Where notice is required to be given to a

voluminous number of submitters, in lieu of mailing, the notice may be posted or published in a manner reasonably calculated to provide notice to the submitters. Whenever the RTC tenders notice to a submitter, it also shall notify the requester that the submitter has been provided with notice and an opportunity to object to the disclosure of all or any portion of the requested information.

(c) *When notice of receipt of request is required.* To the extent permitted by law, notice of receipt of a request shall be given to a submitter whenever:

(1) The submitter has designated the information as confidential commercial information pursuant to the requirements of this section; or

(2) The RTC has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter.

(d) *Designation of confidential commercial information—(1) In general.* Submitters of any confidential commercial information shall use good-faith efforts to designate either at the time of submission, by appropriate markings on their submissions, those portions of their submissions which they deem to contain confidential commercial information or, within a reasonable time after submission, provide to the initial submission recipient or current holder written notice clearly identifying the submission and subject confidential commercial information. Such designations shall be deemed to have expired upon the statutory expiration of the RTC or five years after the date of the submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(2) *Compliance with solicitation of services and other guidance.* A solicitation of services distributed by the RTC to potential offerors may specify the kinds of information which may, may not, and must be designated as confidential commercial information in any contract proposal submitted to the RTC in response to the solicitation of services. Contract proposals submitted to the RTC in response to such solicitations of services must designate confidential commercial information in accordance with the solicitation of services and other applicable guidance. The RTC may be excused from the notice requirements of this section in the case of designations not made in accordance with the solicitation of services and other applicable guidance.

(e) *Opportunity to object to disclosure.* To the extent permitted by law, the RTC shall afford a submitter or its designee a reasonable period of time within which to provide the RTC with a detailed written statement of its objection to any portion of the disclosure of the information it submitted to the RTC and the grounds upon which such disclosure is opposed. Such statement shall specify all grounds for withholding any of the information and demonstrate why the submitter believes that the requested information is confidential commercial information. The submitter's claim of confidentiality should be supported by a statement by the submitter or the submitter's designee that the confidential commercial information has not previously been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* The RTC shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial information. Whenever the RTC decides to disclose confidential commercial information over the objection of a submitter, a written notice shall be forwarded to the submitter which shall include: A statement of the reason(s) for which the submitter's disclosure objections were not sustained; a description of the confidential commercial information to be disclosed; and a specified disclosure date. To the extent permitted by law, such notice of intent to disclose shall be forwarded to the submitter within a reasonable number of days prior to the specified disclosure date. Whenever the RTC provides notice to the submitter of a final decision made with respect to any objection to disclosure, it also shall notify the requester.

(g) *Notice of FOIA lawsuit.* Whenever a requester brings a lawsuit seeking to compel disclosure of confidential commercial information, the RTC shall promptly notify the submitter.

(h) *Exceptions to the notice requirement.* The notice requirements of paragraph (b) of this section shall not apply if:

(1) The RTC determines that the information should not be disclosed;

(2) The information lawfully has been published or has officially been made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) Disclosure of the information is required by an RTC rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the RTC that are to be released under the FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information requested was not designated by the submitter as exempt from disclosure in accordance with paragraph (d) of this section when the submitter had an opportunity to do so at the time of the submission of the information or a reasonable time thereafter, unless the RTC has substantial reason to believe that the disclosure of the information would cause competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (d) of this section appears obviously frivolous; except that, in such case, the submitter shall be provided with written notice of any final administrative decision to disclose confidential commercial information within a reasonable number of days prior to a specified disclosure date.

§ 1615.7 Appeals.

(a) *Appeals to the RTC General Counsel.* When a request for access to records or for a waiver of fees has been denied in whole or in part or when the RTC asserts that records do not exist or could not be located or when the RTC fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal to the RTC General Counsel within 30 days of receipt of RTC's response to the request or lack thereof. An appeal to the RTC General Counsel shall be made in writing and addressed to the Office of the Secretary, FOIA/PA Branch, International Place, 1735 North Lynn Street, Rosslyn, Virginia 22209. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal." To expedite the appellate process, the appeal should be accompanied by copies of the original request and the initial denial. The appeal should contain a brief statement of the reasons why the requester believes the initial denial is in error. Appeals will be forwarded by the Secretary to the RTC General Counsel for action. An appeal not properly addressed and marked in accordance with this section will be forwarded to the RTC General Counsel as soon as it is identified. An appeal that is improperly addressed will be deemed to not have

been received by the RTC until the FOIA/PA Branch receives the appeal, or would have done so with the exercise of reasonable diligence by RTC personnel.

(b) *Action on appeals by the RTC General Counsel or designee.* The RTC General Counsel, or designee, shall notify the appellant within 20 working days after receipt of the appeal meeting the requirements of § 1615.7(a).

(c) *Extension of time.* Under certain circumstances, the RTC may require additional time, to the extent reasonably necessary, to properly process the appeal. The circumstances would arise in cases where the RTC has determined it necessary for a review or additional review of records which are in facilities, such as field offices or storage centers, that are not part of the RTC's Washington office, or which are voluminous and are not in close proximity to one another; or there is a need to consult with another agency or among two or three components of the RTC having a substantial interest in the determination. The RTC will promptly give written notification to the appellant of the estimated date it will make its determination and the reasons why additional time is required.

(d) *Form of action on appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including the FOIA exemption or exemptions relied upon and the relation to each record withheld, and a statement that judicial review of the denial is available in the U.S. District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or in the U.S. District Court for the District of Columbia. If the denial of the request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 1615.8 Preservation of records.

The RTC shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized by the General Records Schedules issued by National Archives and Records Administration. Records known to be the subject of a pending request, appeal or lawsuit under the FOIA shall not be intentionally destroyed.

§ 1615.9 Fees.

(a) *In general.* The RTC will assess fees for search, duplication and review pursuant to 5 U.S.C. 552 according to the schedule contained in paragraph (b) of this section for services rendered in responding to and processing requests for records under this part. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requesters shall pay fees by check or money order made payable to the "Resolution Trust Corporation."

(b) *Charges.* Subject to the limitations on charging fees pursuant to paragraph (c) of this section, and unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section, RTC will assess the fees applicable to the request under one of the four request categories: commercial use; educational and noncommercial scientific institutions; representatives of the news media; and all other requests. The definitions in § 1615.1(c) (5), (10), (11), and (15) will be considered in determining which fee category is appropriate for assessing fees.

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in § 1615.1 (c)(10), (11), and (15), respectively). Search fees shall be assessed in quarter-hour increments with respect to all other requests, subject to the limitations of paragraph (c) of this section. Search fees may be assessed for time spent searching even if responsive records cannot be located or where records located are subsequently determined to be entirely exempt from disclosure. The RTC shall insure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the RTC shall not engage in a line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(ii) For each hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be at the rate of $12.50 per hour. Where a search cannot be performed entirely by clerical personnel (for example where the identification of records within the scope of a request requires the use of professional personnel) the fee shall be at the rate of $30.00 per hour of search time spent by such professional personnel. Where the time of senior professional personnel is required, the fee shall be at the rate of $40.00 per hour spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search. The RTC is not required to alter or develop programming to conduct a search.

(iv) For searches that must be performed by a contractor rather than RTC staff, direct costs for the searches shall be assessed.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.20 per page. For copies produced by computer, such as tapes or printouts, the actual direct costs of producing the copy, including computer operator time, shall be charged. For other methods of duplication, actual direct costs of duplicating the record shall be charged.

(3) *Review.* (i) Review fees shall be assessed in quarter-hour increments with respect to only those requesters who seek records for a commercial use, as defined in § 1615.1(c)(5). For each hour spent by RTC professional personnel in reviewing a requested record for possible disclosure, the fee shall be at the rate of $30.00 per hour, except that where the time of senior professional personnel is required, the hourly fee shall be at the rate of $40.00 per hour. Review costs shall be recoverable even where there is ultimately no disclosure of a record.

(ii) Review fees shall be assessed only for the initial record review, i.e., all of the review undertaken when analyzing the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that

review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in § 1615.1 (c)(5)), there shall be no charge for:

(i) The first 100 pages of duplication (or its cost equivalent); and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $25.00 or less, no fee shall be charged.

(d) *Waiver or reduction of fees.* (1) Requests for a waiver or reduction of fees should be included in the initial request for records and must provide information that addresses each of the factors listed in paragraphs (d)(3) and (4) of this section. In providing information addressing each of the factors, the requester should include a full description of the intended use of the records; the specific activity, research, and analysis to be undertaken with the requested records; the manner in which the requested information will be disseminated and the nature and extent of the public to whom it will be disseminated; and any commercial interest the requester has in the requested records. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(2) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the RTC determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the RTC, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(3) In order to determine whether the first fee waiver requirement (i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government) the following four factors shall be considered in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(4) In order to determine whether the second fee waiver requirement (i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester) the following two factors shall be considered in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(5) In determining whether wavier or reduction of fees is appropriate, the RTC shall also consider whether the requested records are already available to the public, or will add appreciably to the substance of information already available to the public, from RTC public reference facilities listed in Appendix A of this part, are documents authorized for customary disclosure by other RTC staff in the regular course of the performance of their duties, or are records available to the public from other sources as described in paragraph (i) of this section.

(6) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of $25.00.* Where it is determined or estimated that the fees to be assessed under this section may amount equal to or more than $25.00 or an amount higher than any fee agreement stated in the request, the requester shall be notified as soon as practicable of the actual or estimated amount of the fees. (If only a portion of the fee can be estimated readily, the requester shall be advised that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount equal to or more than $25.00 or an amount higher than any fee agreement stated in the request, processing of the request will be held in abeyance until the requester has agreed in writing to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him/her the opportunity to confer with RTC personnel to reformulate his/her request to meet his/her needs at a lower cost.

(f) *Aggregating requests.* Multiple requests by or on behalf of the same person for the same type of records or information may, in the discretion of the RTC, be aggregated for purposes of assessing search, duplication and review fees.

(g) *Advance payments.* (1) Where it is estimated that a total fee to be assessed under this section is likely to exceed $250.00, the requester may be required to make an advance payment of an amount up to the entire estimated fee, but not less than 20% of the estimated fees, before beginning to process the request, except, in the RTC's discretion, where the RTC receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the requester may be required to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the RTC begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (2) of this section, the RTC shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) Where the RTC acts under paragraphs (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA, 5 U.S.C. 552(a)(6), for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the RTC has received a written agreement to pay estimated fees, payment of the estimated fees or payment of the assessed fee, whichever is applicable.

(h) *Charging interest.* The RTC may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the

requester. Once a fee payment has been received by the RTC, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. The RTC shall follow the provisions of 31 U.S.C. 3716, 3718, and 3719 pertaining to the use of administrative offset, collection agencies, and consumer reporting agencies.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types or records, (i.e., any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records) to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the RTC shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Charges for other services and materials.* Apart from the other provisions of this section, where the RTC elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them by other than ordinary mail, the actual direct costs of providing the service or materials shall be charged.

§ 1615.10 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which the person is not entitled under 5 U.S.C. 552.

Appendix A to Part 1615—Public Information Centers Address List

The addresses of the Washington, D.C. Public Reading Room and field Public Service Centers are:

RTC Public Reading Room, 801 17th Street, NW., First Floor, Washington, DC (202–416–6940)

Public Service Center, 245 Peachtree Center Avenue, NE., Suite 1400, Atlanta, GA 30303, (404) 225–5069;

Public Service Center, 7400 W. 110th Street, Overland Park, KS 66210, (913) 344–8500;

Public Service Center, 3500 Maple Avenue, Dallas, TX 75219–3935, (214) 443–4860;

Public Service Center, 1225 17th Street, Suite 3085, Denver, CO 80202, (303) 291–5829.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 8th day of July, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92–16544 Filed 7–23–92; 8:45 am]

BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulation; Date of Filing Size Determination Appeals

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On June 29, 1992, the Small Business Administration (SBA) published a final rule setting forth several amendments to its regulations governing procedure for service of process of appeals brought before SBA's Office of Hearings and Appeals (OHA) by Program Participants in or applicants to SBA's section 8(a) program (57 FR 28779). That rule erroneously stated that, with respect to appeals of size determinations, the date of filing of service is the date the pleading is received by OHA. SBA's size regulation has consistently stated that the date of filing in such cases is the date of postmark. This rule corrects the misstatement of the June 29, 1992 rule.

DATE: This rule shall be effective July 24, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Kohler, Associate General Counsel for General Law, Office of the General Counsel, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205–6645.

SUPPLEMENTARY INFORMATION: On June 29, 1992, the Small Business Administration (SBA) published a final rule setting forth several amendments to its regulations governing procedure for service of process of appeals brought before SBA's Office of Hearings and Appeals (OHA) by Program Participants in or applicants to SBA's section 8(a) program. Among the regulations contained in the rule was an amendment to 13 CFR 121.1704 stating the address of OHA for purposes of filing an appeal. This amendment also incorrectly stated that, with respect to appeals of size determinations, the date of filing of the appeal is the date the pleading is received by OHA. This statement was inadvertently included in the amendent to § 121.1704 and is in direct conflict with 13 CFR 121.1702 which correctly states that the filing date of pleadings, for size determination appeal purposes, is determined by reference to the postmark date. This rule corrects this contradiction by removing the misstatement from 13 CFR 121.1704. To avoid confusion, SBA will consider the date of filing for all appeals of size determinations, including those filed while the June 29, 1992 rule was in effect, to be the date of postmark.

Due to the fact that this final rule governs matters of Agency organization, practice, and procedure and makes no substantive change to the current regulation, SBA is not required to determine if this rule constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, or to do a Federalism Assessment pursuant to Executive Order 12612. For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA certifies that this rule will not impose any new reporting or recordkeeping requirements. Finally, for purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

SBA is publishing this rule governing Agency organization, procedure, and practice without prior notice and opportunity for public comment pursuant to authority contained in the Administrative Procedure Act, 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Grant programs—business, Loan programs—business, Small Business.

For the reasons set forth above, subpart A of part 121 of title 13, Code of Federal Regulations, is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

§ 121.1704 [Amended]

2. Section 121.1704 is amended by removing the second sentence thereof.

Dated: July 20, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-17502 Filed 7-23-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANM-12]

Revocation of Transition Areas; Hanksville, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the 700-foot and 1200-foot transition areas at Hanksville Airport, Hanksville, Utah. The transition areas were previously utilized to encompass an instrument approach procedure at Hanksville Airport. The approach procedure has since been canceled.

EFFECTIVE DATE: 0901 u.t.c. August 20, 1992.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM-537, Federal Aviation Administration, Docket No. 92-ANM-12, 1601 Lind Avenue, SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

History

The Hanksville, Utah, 700-foot and 1200-foot transition areas were designed to encompass an instrument approach procedure at Hanksville Airport. The approach procedure has since been canceled. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) is unnecessary because this action is a minor amendment in which the public is not particularly interested.

Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition areas listed in this document will be removed subsequently from the handbook.

The Rule

This action amends part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Hanksville, Utah, 700-foot and 1200-foot transition areas, which were designed to provide controlled airspace to encompass an instrument approach procedure at Hanksville Airport. The instrument approach procedure has been canceled.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition area.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

ANM UT TA Hanksville, UT [Removed]

* * * * *

Issued in Seattle, Washington, on July 9, 1992.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 92-17350 Filed 7-23-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 152

[Docket No. RM92-2-000 Order No. 543]

Regulations Governing Vehicular Natural Gas

July 16, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The final rule issues blanket sales certificates to all persons who engage in the sale for resale in interstate commerce of Vehicular Natural Gas (VNG). The blanket VNG sales certificates will be deemed issued automatically prior to engagement in VNG sales, thus obviating the need for filing applications requesting such authorization. The final rule also provides pre-granted abandonment authority. Finally, the final rule defines VNG as "natural gas that will be used, in either a gaseous or liquefied state, as fuel in any self-propelled vehicle."

EFFECTIVE DATE: August 24, 1992.

ADDRESSES: All requests for rehearing should refer to Docket No. RM92-2-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey Gollomp, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission's issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a person computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 dats from the

date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 3106, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule governing the sale of Vehicular Natural Gas (VNG) for resale in interstate commerce. On March 12, 1992, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[1] The NOPR was met with great support by those who commented on the proposed rule. Upon our further evaluation of the NOPR's provisions and the comments submitted thereto, we are adopting, in principal part, the provisions set forth in the NOPR. Certain commenters made suggestions that are reflected in the final rule and other issues are clarified as well.

The purpose of the VNG rule is to promote the availability of VNG to end users by simplifying the process by which any person may obtain certificate authority to engage in VNG sales that are subject to the Commission's jurisdiction under the Natural Gas Act (NGA). The rule also provides pre-granted abandonment authority for VNG sales for resale. By removing unnecessary regulatory impediments to the sale for resale of VNG, the Commission hopes to encourage its use as a fuel.

II. Background

In *Northern Illinois Gas Company*, 20 FERC ¶ 61,267 (1982), the Commission first addressed the issue of whether a Hinshaw pipeline's exemption from Commission jurisdiction under section 1(c) of the NGA would be lost were it to sell natural gas to customers who compressed such gas and used it as fuel in their motor vehicle fleets or resold it to others for similar use. This question arose because vehicles utilizing compressed natural gas (CNG) as fuel might leave the state, even though gas sold by a Hinshaw pipeline must, under section 1(c), be "ultimately consumed" in the state in which the Hinshaw pipeline receives the gas.[2] The Commission resolved this issue by finding that "the subject gas is 'ultimately consumed' within the meaning of Section 1(c) of the Natural Gas Act when the fuel is sold and delivered into the fuel tanks of the vehicles." [3] The Commission reached this finding even though some of the CNG fuel might actually be consumed outside the state of the Hinshaw pipeline.[4]

Shortly after the Commission's decision in *Northern Illinois*, Kansas-Nebraska Natural Gas Company filed a petition for a declaratory order that its sales of compressed natural gas (CNG) [5] were not subject to the Commission's jurisdiction under the NGA.[6] In its order, the Commission found that CNG is natural gas as defined in the NGA and that a sale of CNG for resale in interstate commerce invoked the Commission's jurisdiction under section 1(b) of the NGA. In addition, the Commission affirmed its determination in *Northern Illinois* of what constitutes "ultimate consumption" for purposes of section 1(c) of the NGA.[7]

III. Discussion

The Commission's jurisdiction under section 1(b) of the NGA extends to (1) the transportation of natural gas in interstate commerce; (2) sales of natural gas in interstate commerce for resale for ultimate public consumption; and (3) natural-gas companies engaged in such transportation or sales. The advent of technology facilitating the production and distribution of VNG on a widespread level [8] coupled with an apparent uncertainty on the part of the natural gas industry as to the scope of the Commission's jurisdiction in this area, is the impetus for this VNG rule.

One commenter, Amoco Production Company and Amoco Oil Company, although supportive of the rule, questioned the Commission's decision to exercise jurisdiction over the VNG sales regulated by this rule. Amoco asks the Commission to revisit the *Kansas-Nebraska* decision which, as described above, addressed the Commission's jurisdiction over interstate sales for resale of VNG. According to Amoco, the Commission's exercise of jurisdiction as proposed in the NOPR is too expansive and unjustified due to the fact that the consuming public in this instance will not be purchasing a public utility service but, rather, a vehicle fuel; Amoco asserts that the competitive motor vehicle fuel industry will protect the public from monopoly prices for VNG.

In response to Amoco's comments, we emphasize that the Commission is exercising jurisdiction over VNG sales only to the extent necessary to satisfy the Commission's mandate under the NGA with respect to sales for resale of natural gas (including VNG) in interstate commerce. To decline jurisdiction over such sales, as Amoco suggests, would contravene the Supreme Court's declaration that "[t]he Commission cannot 'disclaim' or waive jurisdiction conferred upon it by the Act." [9] In the alternative, Amoco requests that the Commission clarify that Amoco's sales for resale to its dealers are nonjurisdictional transactions. In response, we note that these sales would be nonjurisdictional to the extent that they are "first sales" as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978 (NGPA).[10]

A. What is Vehicular Natural Gas?

For purposes of the VNG rule, the NOPR proposed to define "vehicular natural gas" or "VNG" as "natural gas that is ultimately used as a fuel in a motor vehicle."

Five commenting parties [11] suggest that this definition be broadened to specifically state that "VNG" includes liquefied natural gas (LNG), or derivatives thereof, as well as CNG to the extent such gas is used as a vehicle fuel. The concern that an ambiguity may arise as to whether the definition of "VNG" encompasses LNG is well-taken. Therefore, we will modify the definition

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[1] 57 FR 9515 (Mar. 19, 1992).

[2] Section 1(c) of the Natural Gas Act provides that "[t]he provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities may be subject to regulation by a State Commission.

[3] Northern Illinois Gas Co., 20 FERC ¶ 61,267, at p. 61,504.

[4] *Id* at 61,505.

[5] For purposes of this rule, CNG is synonymous with VNG.

[6] Kansas-Nebraska Natural Gas Company, Inc., 22 FERC ¶ 61,176 (1983), *reh'g denied*, 24 FERC ¶ 61,200 (1983).

[7] 22 FERC ¶ 61,176, at p. 61,307.

[8] The U.S. Department of Energy estimates that there are 30,000 natural gas vehicles in use today in the United States.

[9] Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942).

[10] Certain categories of wholesale gas were not removed from the Commission's jurisdiction by section 601 of the NGPA. However, pursuant to the Natural Gas Wellhead Decontrol Act of 1989, all remaining "first sales" of gas will be removed from Commission jurisdiction by January 1, 1993.

[11] See comments by Cincinnati Gas & Electric Company; Union Pacific Fuels, Inc.; Consolidated Natural Gas Company; Washington Gas Light Company, Frederick Gas Company, Inc., and Shenandoah Gas Company; and the American Gas Association and the Natural Gas Vehicle Coalition

specifically to incorporate liquefied natural gas.[12]

The U.S. Department of Energy commented that the term "motor vehicle" may be too restrictive a term because "motor vehicle" is commonly defined to include only vehicles with rubber tires. We agree. Accordingly, because there are other types of vehicles that may utilize "VNG," (*e.g.*, boats [13] and locomotives), we shall modify the proposed definition. Specifically, the revised definition of "VNG" is as follows: "VNG is natural gas that will be used, in either a gaseous or liquefied state, as fuel in any self-propelled vehicle." This definition shall be broadly construed to include, among other things, automobiles, trucks, buses, trains, aircraft, boats, non-road farm vehicles, and construction vehicles, or any other self-propelled vehicle.

B. What Persons Are Subject to the Commission's Regulation Under the VNG Rule?

The NOPR provided that the VNG rule would issue a generic blanket certificate to (1) any local distribution company (LDC) that does not qualify for exemption under section 1(c) of the Natural Gas Act, (2) any holder of a service area determination under section 7(f)(1) of the NGA, and (3) any other person, including all interstate pipelines, all natural gas marketers, as well as other persons not otherwise natural-gas companies for purposes of the NGA.

This enumeration in the NOPR of the persons who require, and are eligible for, the authorization granted in the VNG rule was an effort to highlight those persons who might fall within the Commission's jurisdiction should they decide to engage in the sale for resale in interstate commerce of VNG. In the final VNG rule we shall consolidate this group of eligible VNG certificate holders as: "all persons who engage in sales for resale of VNG that are subject to the Commission's jurisdiction under section 1(b) of the NGA."

[12] See Distrigas Corporation, 47 FPC 752, 759 (1972) (where the Federal Power Commission found that "LNG is natural gas as defined by section 2(5) of the [Natural Gas] Act."). See also Air Products and Chemical, Inc., 58 FERC ¶ 61,190 (1992) (where the Commission found that refrigerated liquid methane is tantamount to LNG and, therefore, is natural gas).

[13] See Washington Gas Light Company, 29 FERC ¶ 61,170 (1984) (where the Commission exempted from the section 7(c) certificate requirement the sale of compressed natural gas for experimental use as boat fuel).

1. VNG Rule Impact on NGA Exemptions

We shall adopt the NOPR's proposed codification of the Commission's finding in *Northern Illinois Gas Company* that VNG "is 'ultimately consumed' within the meaning of the Natural Gas Act when the fuel is sold and delivered into the fuel tanks of the vehicles." [14] The Commission has determined, and a number of commenters have concurred, that this provision of the VNG rule will foster the sale of VNG, particularly by Hinshaw pipelines that might otherwise have been deterred from making such sales for fear of losing their exemption from Commission jurisdiction under section 1(c) of the NGA.[15] Regarding the comment by Associated Gas Distributors that there are circumstances in which VNG can be delivered into tanks that are then transferred to vehicular use, we will clarify that VNG is "ultimately consumed" under section 1(c) of the NGA when it is delivered into a vehicle fuel tank, even if the fuel tank is not attached to the vehicle at the time it is filled.

Certain commenters raised concerns regarding possible state deregulation of VNG sales.[16] That is, some states have, or may in the future, deregulate VNG sales that are within the ambit of state jurisdiction. Such sales include direct sales by LDCs and Hinshaws and sales for resale by Hinshaws. With respect to direct sales by Hinshaws or LDCs, the Commission has no jurisdiction over such transactions since they constitute local distribution.[17] However, if a state deregulates sales for resale of VNG that prior to deregulation had been covered by a Hinshaw exemption, the Commission would have jurisdiction with respect to these sales of VNG because the NGA section 1(c) proviso that such activities be subject to state regulation would not be satisfied.[18] In situations where a state has deregulated VNG sales by a Hinshaw pipeline, the pipeline will require the certificate authorized herein. As indicated in the NOPR, this rule issues limited-jurisdiction blanket certificates, which would not subject the holders to any recordkeeping or reporting requirements or any other regulation under the Natural Gas Act jurisdiction of the Commission. Hence, should a Hinshaw pipeline engage in VNG sales that require the certificate authorization issued by this VNG rule, that pipeline's exemption from jurisdiction would not be impaired as to the non-VNG activities that remain exempt under section 1(c) of the NGA.

Similarly, an LDC (not otherwise a Hinshaw pipeline) that engages in sales for resale of VNG will require the VNG certificate issued by this rule; however, an LDC's exemption from NGA jurisdiction pursuant to section 1(b) of the Act would also remain intact with respect to its non-VNG activities.

2. Rates Issues Concerning VNG Sales For Resale

The Commission recognizes that VNG is a relatively new form of vehicle fuel and that due to VNG's status as an "alternative fuel," most VNG powered vehicles have a dual capability to run on either gasoline or natural gas. This built-in competition leads the Commission to find that negotiated rates are appropriate for VNG sales for resale in interstate commerce. Rate determinations for direct VNG sales and other sales outside the Commission's NGA jurisdiction will be subject to the state agencies' determinations. The Commission is not preempting state regulation of VNG sales rates and services that are properly within the jurisdiction of the state agencies; rather, the VNG rule encompasses only those sales of VNG for resale in interstate commerce within the Commission's jurisdiction.[19]

The American Gas Association and the Natural Gas Vehicle Coalition submit that section 1(b) companies (presumably LDCs) should have the option of selling VNG at market rates or at a rate approved by the state public utility commission that was arrived at by rate basing the applicable VNG facilities. The latter scenario exceeds the authorization granted by this rule. As emphasized above, the VNG rule only authorizes negotiated rates—rates

[14] See footnote 3, *supra*.

[15] See comments of Public Service Electric and Gas Company and Battle Creek Gas Company, Michigan Gas Company and Southeastern Michigan Gas Company.

[16] See comments by Kansas Power and Light Company; National Association of Regulatory Utility Commissioners; and New Mexico Dept. of Energy, Minerals and Natural Resources and the Commissioner of Public Lands for the State of New Mexico.

[17] Section 1(b) of the NGA provides in relevant part that the provisions of the act "shall not apply to * * * the local distribution of natural gas or to the facilities used for such distribution."

[18] A state statute providing for regulation of VNG sales on the basis of market based rates or any other light-handed state regulatory approach to VNG sales would not vitiate a Hinshaw exemption.

[19] See comments by Delmarva Power & Light Company; Consolidated Natural Gas Company; and Washington Gas Light Company, Frederick Gas Company, Inc., and Shenandoah Gas Company.

arrived at through negotiation between the buyer and seller of VNG. The rate basing alternative suggested by these commenters would amount to a state commission authorized rate for a VNG sale subject to the Commission's NGA jurisdiction.

Tenneco Gas urges the Commission to include in the final VNG rule a provision that would allow pipelines to recover their investment in their VNG infrastructure from their traditional pipeline customers. Any such allowances would have to be based on evidence that the customers of a particular pipeline would benefit from the activity. Therefore, we will not further address this issue in this generic rulemaking proceeding. The Ohio Consumers' Counsel is concerned that the final rule "would create an unnecessary incentive or subsidization of VNG development, marketing, and use by LDC's at the expense of the captive residential customers." In addition, the Ohio Consumers' Counsel believes that the rule may have the effect of altering the demand for natural gas in such a way as to increase the cost of gas to existing users, including captive residential customers.

The Commission notes that although this rule will have the effect of removing regulatory barriers to VNG sales for resale, *supra*, such use will account for a small percentage of the total United States natural gas consumption.[20] We also recognize the possibility, as suggested by Enron Interstate Pipeline, that increased VNG use could decrease the per unit cost of gas service by increasing utilization of gas systems. In view of these considerations, the concerns of increased prices are too speculative to alter our public convenience and necessity finding underlying this rule. Moreover, state commissions may ensure that any increased costs incurred due to an LDC's decision to develop and market VNG are not shifted inappropriately to non-VNG users. Although, as noted by Ohio Consumers' Counsel, a state commission cannot find that a natural gas company's Commission approved sales rate is unjust and unreasonable, the state commission can determine if the LDC's purchase of VNG was prudent and the state can dictate how the LDC's costs are flowed through to its customers and can prevent an LDC from recovering its VNG related costs from the LDC's traditional utility customers.

Tacoma, Washington Public Schools asks the Commission to incorporate in the rule prohibitions regarding minimum take term contracts. In response, we note that the production and distribution of VNG is a developing industry with few established suppliers. Hence, we believe, and no evidence has been submitted to provide otherwise, that there are no competitive goals advanced by prohibiting such contracts.

C. What Is Required to Obtain a VNG Blanket Certificate?

In order to avoid unnecessary regulatory impediments to the use of VNG, the Commission has determined that the most expedient means of accomplishing our regulatory oversight of VNG is by providing the authorization granted in the VNG rule on a generic basis. This regulatory scheme will remove the additional costs and delays associated with filing for case specific authorization. Simply stated, a person will not need to file any type of application or any other filing prior to engaging in jurisdictional VNG sales when a person engages in a jurisdictional sale of VNG. The blanket VNG sales certificate will be deemed issued automatically prior to engagement in such activity. This rule will not require notice of acceptance or reporting of information concerning VNG sales. Consistent with General Instruction No. 2 of the Commission's Uniform System of Accounts,[21] pipelines must maintain sufficient accounting records so that they can identify and segregate VNG related costs. The Commission puts interstate natural gas pipelines on notice that they must separate and identify their VNG sales within their Purchased Gas Adjustment (PGA) mechanism.

AGD requests clarification that the VNG certificate holders will not be subject to any other NGA requirements, including abandonment and the obligation to serve in conjunction with the generic sales for resale authorization, the rule provides pregranted abandonment authority, under § 152.1(b)(2)(iii), such that upon expiration of any contractual term or upon termination of each individual sales arrangement the VNG sales authorization is deemed to be abandoned pursuant to section 7(b) of the NGA. Thus, the certificate holder's "obligation to serve" a VNG sales customer is determined by the terms of the sales contract.

IV. Environmental Analysis

Commission regulations require that an Environmental Assessment or an Environmental Impact Statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[22] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[23] The subject action here will not have a significant adverse impact on the human environment and falls within the categorical exemption provided in the Commission's regulations for sales of natural gas that require no construction of facilities. Therefore, an environmental assessment is unnecessary and was not prepared in this rulemaking.

V. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[24] However, this rule contains no new information collection requirements nor does it make any change to existing information collection requirements in part 152 (1902–0016) and therefore is not subject to OMB approval.

VI. Regulatory Flexibility Act Certification

The Commission certifies, pursuant to the Regulatory Flexibility Act (RFA),[25] that the VNG rule would not have a "significant economic impact on a substantial number of small entities."[26] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens to small entities.

The Commission finds that this rule would not have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities. This rule issues blanket certificates to all persons that make VNG sales for resale under the Commission's jurisdiction, thereby eliminating the necessity of such companies having to apply for case-specific authority for each sale of VNG for resale. In addition, this rule codifies

[20] For example, 5 to 8.4 million CNG-fueled vehicles would consume only 500 bcf, or less than three percent of the total U.S. natural gas consumption. Automakers, Fuel Suppliers Enter Era of Fuel Diversity, Fuel Reformulation, January/February 1992 (Information Resources, Inc.).

[21] 18 CFR Part 201, General Instruction No. 2.

[22] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783, *codified at* 18 CFR part 380.

[23] 18 CFR 380.4.

[24] 5 CFR part 1320.

[25] 5 U.S.C. 601–612.

[26] 5 U.S.C. 605(b).

the Commission's prior determination that a Hinshaw pipeline does not lose its NGA section 1(c) exemption from the Commission's jurisdiction by reason of selling VNG that may eventually move across state lines in a VNG-powered vehicle.

VII. Effective Date

This final rule is effective on August 24, 1992.

List of Subjects in 18 CFR Part 152

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 152, chapter I, title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

1. The authority citation for part 152 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. The title of part 152 is revised to read as follows:

PART 152—APPLICATION FOR EXEMPTION FROM THE PROVISIONS OF THE NATURAL GAS ACT PURSUANT TO SECTION 1(C) THEREOF AND ISSUANCE OF BLANKET CERTIFICATES AUTHORIZING CERTAIN SALES FOR RESALE

3. In § 152.1, the heading is revised, the existing text is redesignated paragraph (a), and a new paragraph (b) is added to read as follows:

§ 152.1 Exemption applications and blanket certificates.

(a) * * *

(b)(1)(i) For purposes of the Commission's regulations implementing the Natural Gas Act, "vehicular natural gas" or "VNG" means natural gas that will be used, in either a gaseous or liquefied state, as fuel in any self-propelled vehicle.

(ii) For purposes of the Commission's regulations implementing the Natural Gas Act, vehicular natural gas, or VNG, is deemed to be ultimately consumed in the state in which the gas is physically delivered into the vehicle's fuel tank regardless of whether the tank is attached to the vehicle at the time it is filled.

(2)(i) Blanket certificates of public convenience and necessity are issued pursuant to section 7(c) of the Natural Gas Act to all persons that engage in sales for resale of VNG that are subject to the Commission's authority under section 1(b) of the NGA, such authorization to be effective upon that person's engagement in the jurisdictional sale. A blanket certificate issued under this paragraph (b)(2)(i) is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of transactions under the certificate. Such certificate will not impair the continued validity of any Natural Gas Act exemption from Commission jurisdiction.

(ii) A blanket certificate issued under paragraph (b)(2)(i) of this section authorizes the holder to make sales of VNG for resale in interstate commerce at market rates.

(iii) Abandonment of the sales service authorized in paragraph (b)(2)(i) of this section is authorized pursuant to section 7(b) of the Natural Gas Act upon the expiration of the contractual term or upon termination of each individual sales arrangement.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix—Commenters

Docket No. RM92–2–000

American Gas Association and Natural Gas Vehicle Coalition
Amoco Production Company and Amoco Oil Company
Associated Gas Distributors
Atmos Energy Corporation
Battle Creek Gas Company, Michigan Gas Company and Southeastern Michigan Gas Company
California Natural Gas Vehicle Coalition
Cincinnati Gas & Electric Company
Colorado Interstate Gas Company
Consolidated Natural Gas Company
Consumers Power Company
Delmarva Power & Light Company
Enron Interstate Pipelines
Equitable Gas Company
Indiana Gas Company, Inc.
Interstate Natural Gas Association of America
K N Energy, Inc.
Kansas Power and Light Company
Louisiana, State of
National Association of Regulatory Utility Commissioners
Natural Gas Supply Association
New Mexico Department of Energy, Minerals and Natural Resources and the Commissioner of Public Lands for the State of New Mexico
Northern Illinois Gas Company
Ohio Consumers' Counsel
Peoples Gas Light and Coke Company and North Shore Gas Company
Public Service Company, Western Gas Supply Company, and Cheyenne Light, Fuel and Power Company of Colorado
Public Service Electric and Gas Company
San Diego Gas & Electric Company
Southern California Gas Company
Southern Union Econofuel Company
Tacoma, Washington Public Schools
Tenneco Gas
Texas Gas Transmission Corporation
Union Pacific Fuels, Inc.
United States Department of Energy
Washington Gas Light Company, Frederick Gas Company, Inc., and Shenandoah Gas Company

[FR Doc. 92–17493 Filed 7–23–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AA90

Wage and Hour Division

29 CFR Part 506

RIN 1215–AA70

Attestations by Employers Using Alien Crewmembers for Longshore Activity in U.S. Ports; Correction

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Correction to extension of effective dates.

SUMMARY: This document contains corrections to three documents which extended the effective dates of an interim final rule. The interim final rule concerned the filing and enforcement of attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports. This document corrects the three extension documents which were published on Wednesday, April 1, 1992 (57 FR 10989), Wednesday, July 1, 1992 (57 FR 29203) and Friday, July 10, 1992 (57 FR 30640).

EFFECTIVE DATE: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact Flora Richardson, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration, Department of Labor, room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0169 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1991, the Department of Labor (DOL) published an interim final rule adding, at 20 CFR part 655, subparts F and G, and at 29 CFR part 506, subparts F and G, regulations for filing and enforcement of attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports, pursuant to section 258 of the Immigration and Nationality Act. 56 FR 24648 (May 30, 1991); see 8 U.S.C. 1288. Public comments were invited through July 29, 1991, and the interim final rule was effective from May 28, 1991 through December 31, 1991. The expiration date later was extended through March 31, 1992, 57 FR 182 (January 3, 1992). It was further extended through June 30, 1992, 57 FR 10989 (April 1, 1992), and later extended through July 10, 1992, 57 FR 29203 (July 1, 1992). It was thereafter extended through September 8, 1992, 57 FR 30640 (July 10, 1992).

Need for Correction

Due to inadvertence, the three extension documents, which were published on April 1, 1992, July 1, 1992, and July 10, 1992, contained partial errors in that the words "29 CFR part 507" were used in certain places. The correct words are "29 CFR part 506". This document corrects that error.

Correction of Publications

A. Accordingly, the publication on April 1, 1992, of FR Doc. 92–7616, extending the expiration date of the interim final rule through June 30, 1992, is corrected as follows:

Paragraph 1. On page 10989, in the second column, in the heading of the document, the words "29 CFR part 507" are corrected to read "29 CFR part 506".

Paragraph 2. On page 10989, in the third column, in the first sentence of the category for "**SUPPLEMENTARY INFORMATION,**" which is on line 5 of that category, the words "29 CFR part 507" are corrected to read "29 CFR part 506".

B. Accordingly, the publication on July 1, 1992, of FR Doc. 92–15522, extending the expiration date of the interim final rule through July 10, 1992, is corrected to read as follows:

Paragraph 1. On page 29203, in the third column, in the heading of the document, the words "29 CFR part 507" are corrected to read "29 CFR part 506".

Paragraph 2. On page 29204, in the first column, in the first sentence of the category for "**SUPPLEMENTARY INFORMATION,**" which is on line 5 of that category, the words "29 CFR part 507" are corrected to read "29 CFR part 506".

C. Accordingly, the publication on July 10, 1992, of FR Doc. 92–16317, extending the expiration date of the interim final rule through September 8, 1992, is corrected as follows:

Paragraph 1. On page 30640, in the third column, in the heading of the document, the words "29 CFR part 507" are corrected to read "29 CFR part 506".

Paragraph 2. On page 30640, in the third column, in the first sentence of the category for "**SUPPLEMENTARY INFORMATION,**" which is on line 5 of that category, the words "29 CFR part 507" are corrected to read "29 CFR part 506".

Signed at Washington, D.C. this 16th day of July, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–17543 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–30–M 4510–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Sterile Penicillin G Procaine Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Norbrook Laboratories, Ltd. The NADA provides for the use of sterile penicillin G procaine suspension in cattle, sheep, swine, and horses for the treatment of bacterial infections due to penicillin susceptible microorganisms. The supplement provides for reduction of the milk withholding period from 72 hours to 48 hours.

EFFECTIVE DATE: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8659.

SUPPLEMENTARY INFORMATION:

Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, has filed a supplement to NADA 65–010. The NADA provides for the use of penicillin G procaine suspension in cattle, sheep, swine, and horses for the treatment of bacterial infections due to penicillin susceptible microorganisms, specifically for intramuscular use for cattle and sheep for the treatment of bacterial pneumonia caused by *Pasteurella multocida*, swine for erysipelas caused by *Erysipelothrix insidiosa*, and horses for strangles caused by *Streptococcus equi*. The supplement provides for reduction of the milk withholding period from 72 hours (6 milkings) to 48 hours. The supplemental NADA is approved as of July 16, 1992, and the regulations are amended in 21 CFR 540.274b to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because no new clinical or field investigations (other than bioequivalence or residue studies) and no new human food safety studies (other than bioequivalence or residue studies) were essential to the approval and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of human food safety data and information submitted to support approval of this supplement may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

§ 540.274b [Amended]

2. Section 540.274b *Procaine penicillin G aqueous suspension* is amended in paragraph (c)(3)(iv)(*c*) by removing the phrase "72 hours (six milkings)" and adding in its place the phrase "48 hours".

Dated: July 16, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-17499 Filed 7-23-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF STATE

Office of the Legal Adviser

22 CFR Part 172

[Public Notice 1658]

Litigation: Service of Process; Production of Official Information and Testimony of Department of State Employees as Witnesses

AGENCY: Office of the Legal Adviser, State.

ACTION: Final rule.

SUMMARY: This final rule establishes and clarifies policies, practices, responsibilities, and procedures for the service of legal process upon the Department of State (DOS), its officers, and employees and the production of official DOS information and the appearance of and testimony by DOS employees as witnesses in connection with litigation. This rule is procedural in nature.

EFFECTIVE DATE: This rule is effective July 24, 1992.

ADDRESSES: Office of the Legal Adviser, U.S. Department of State, Washington, DC 20520-6310.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Hergen, Assistant Legal Adviser for East Asian and Pacific Affairs, Office of the Legal Adviser, U.S. Department of State, telephone (202) 647-3044.

SUPPLEMENTARY INFORMATION: This final rule was published as a proposed rule for public comment in 57 FR 20656 (May 14, 1992). No public comments were made with respect to the proposed rule.

List of Subjects in 22 CFR Part 172

Administrative practice and procedure, Courts, Government employees, Investigations.

Accordingly, 22 CFR chapter I is amended by adding a new part 172 to read as follows:

PART 172—SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR STATE LITIGATION; EXPERT TESTIMONY

Sec.

172.1 Purpose and scope; definitions.
172.2 Service of summonses and complaints.
172.3 Service of subpoenas, court orders, and other demands or requests for official information or action.
172.4 Testimony and production of documents prohibited unless approved by appropriate Department officials.
172.5 Procedure when testimony or production of documents is sought; general.
172.6 Procedure when response to demand is required prior to receiving instructions.
172.7 Procedure in the event of an adverse ruling.
172.8 Considerations in determining whether the Department will comply with a demand or request.
172.9 Prohibition on providing expert or opinion testimony.

Authority: 5 U.S.C. 301; 8 U.S.C. 1202(f); 22 U.S.C. 2658, 2664, 3926.

§ 172.1 Purpose and scope; definitions.

(a) This part sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Department of State (Department) or to any Department employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of the Department; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial authority (collectively, "demands"), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired while the subject of the demand or request is or was an employee of the Department as part of the performance of that person's duties or by virtue of that person's official status.

(b) For purposes of this part, and except as the Department may otherwise determine in a particular case, the term "employee" includes the Secretary and former Secretaries of State, and all employees and former employees of the Department of State or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of State or his Chiefs of Mission, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors.

(c) For purposes of this part, the term "litigation" encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards (including the Board of Appellate Review), or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This part governs, *inter alia*, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this part shall not apply to any claims by Department of State employees (present or former), or applicants for Department employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between the Department and a labor organization representing Department employees; or their successor agencies or entities.

(d) For purposes of this part, "official information" means all information of any kind, however stored, that is in the custody and control of the Department, relates to information in the custody and control of the Department, or was acquired by Department employees as part of their official duties or because of their official status within the Department while such individuals were employed by or served on behalf of the Department.

(e) Nothing in this Part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12356 on national security information (3 CFR, 1982 Comp., p. 166), the Government in the Sunshine Act, 5 U.S.C. 552b, the Department's implementing regulations in 22 CFR part 171 or pursuant to congressional subpoena. Nothing in this part otherwise permits disclosure of information by the Department or its employees except as provided by statute or other applicable law.

(f) This part is intended only to inform the public about Department procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department or the United States.

(g) Nothing in this part affects:

(1) The disclosure of information during the course of legal proceedings in non-United States courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals; or

(2) The rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(h) Nothing in this part affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, or other proceedings, *e.g.*, extradition, deportation.

§ 172.2 Service of summonses and complaints.

(a) Only the Executive Office of the Office of the Legal Adviser (L/EX) is authorized to receive and accept summonses or complaints sought to be served upon the Department or Department employees. All such documents should be delivered or addressed to The Executive Office, Office of the Legal Adviser, room 5519, United States Department of State, 2201 C Street, NW., Washington, DC 20520–6310.

(b) In the event any summons or complaint described in § 172.1(a) is delivered to an employee of the Department other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication which directs the person attempting to make service to the procedures set forth herein.

(c) Except as otherwise provided §§ 172.2(d) and 173.3(c), the Department is not an authorized agent for service of process with respect to civil litigation against Department employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Department employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon L/EX.

(d) Although the Department is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, the Department recognizes that its employees stationed overseas should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage Department employees to accept service of process in appropriate cases, and will waive applicable diplomatic or consular privileges and immunities when the Department determines that it is in the interest of the United States to do so.

(e) Documents for which L/EX accepts service in official capacity only shall be stamped "Service Accepted in Official Capacity Only". Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws of rules applicable for the service of process.

§ 172.3 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which the Department is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only L/EX is authorized to receive and accept subpoenas, or other demands or requests directed to the Department, or any component thereof, or its employees, or former employees, whether civil or criminal nature, for

(1) Material, including documents, contained in the files of the Department;

(2) Information, including testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the Department or which any Department employee acquired in the course and scope of the performance of his official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official Department duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Department employee (including former employees) other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the Office of the Legal Adviser, decline to accept the subpoena, demand or request or shall return them to the server under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, the Department is not an agent for service, or otherwise authorized to accept on behalf of its employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual Department employee to whom such demand or request is directed.

(d) Acceptance of such documents by L/EX does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

§ 172.4 Testimony and production of documents prohibited unless approved by appropriate Department officials.

(a) No employee of the Department shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of the Department as part of the performance of that person's official duties or by virtue of that persons's official status, unless authorized to do so by the Director General of the Foreign Service and Director of Personnel (M/DGP) or the Legal Adviser (L), or delegates of either, following consultation between the two bureaus, or as authorized in § 172.4(b).

(b) With respect to the official functions of the Passport Office, the Visa Office, and the Office of Citizens Services, the Assistant Secretary of State for Consular Affairs or delegate thereof may, subject to concurrence by the Office of the Legal Adviser,

authorize employees to provide oral or written testimony.

(c) No employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by the Director General of the Foreign Service and Director of Personnel, the Legal Adviser, or the Assistant Secretary of State for Consular Affairs, or the delegates thereof, as appropriate, following consultations between the concerned bureaus.

§ 172.5 Procedure when testimony or production of documents is sought; general.

(a) If official Department information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the Legal Adviser) set forth in writing, and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should provide a description using the types of identifying information suggested in 22 CFR 171.10(a) and 171.31. Subject to § 172.7, Department employees may only produce, disclose, release, comment upon, or testify concerning those matters which were specified in writing and properly approved by the appropriate Department official designated in § 172.4. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). The Office of the Legal Adviser may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, the Department may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) The appropriate Department official designated in § 172.2 will notify the Department employee and such other persons as circumstances may warrant of its decision regarding compliance with the request or demand.

(d) The Office of the Legal Adviser will consult with the Department of Justice regarding legal representation for Department employees in appropriate cases.

§ 172.6 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the appropriate Department official designated in section 172.4 renders a decision, the Department will request that either a Department of Justice attorney or a Department attorney designated for the purpose:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this Part;

(3) Inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Department official; and

(4) Respectively request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a Department of Justice or Department attorney on the employee's behalf, the employee shall respectfully request the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from the Department.

§ 172.7 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 172.6, or if the court or other authority rules that the demand must be complied with irrespective of the Department's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing this part and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

§ 172.8 Considerations in determining whether the Department will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, Department officials and attorneys shall consider, among others:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of Department employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Department of its mission and duties; and

(8) The need to avoid involving the Department in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which, *inter alia*, any of the following factors exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 172.9 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, Department employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official Department duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the appropriate Department official designated in § 172.4 may, consistent with 5 CFR 2635.805, in their discretion and with the concurrence of the Office of the Legal Adviser, grant special, written authorization for Department

employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of the appropriate Department official designated in § 172.4, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a Department employee, such employee shall immediately inform the Office of the Legal Adviser of such order. If the Office of the Legal Adviser determines that no further legal review of or challenge to the court's order will be made, the Department employee shall comply with the order. If so directed by the Office of the Legal Adviser, however, the employee shall respectfully decline to testify. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Dated: June 15, 1992.

Edwin D. Williamson,

Legal Adviser.

[FR Doc. 92-16941 Filed 7-23-92; 8:45 am]

BILLING CODE 4710-08-M

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to extend the waiting period from 45 days to 60 before a claim for loss of a COD article may be filed. In addition, regulations are changed to allow a claim for loss of an insured article to be filed only by the mailer. This change is consistent with filing procedures for insured, registered, COD, and Express Mail, and the provision of the Domestic Mail Classification Schedule. Since loss claims will be filed only by the mailer, the procedures for addressee filing in 149.333 are eliminated.

EFFECTIVE DATE: The final rule is effective with Domestic Mail Manual (DMM) Issue 44 (September 20, 1992).

FOR FURTHER INFORMATION CONTACT: Mary Bronson, (202) 268-5181.

SUPPLEMENTARY INFORMATION: A recent Postal Inspection Service audit found that the 45-day waiting period before a claim for loss of a COD article may be filed is insufficient. Claims are filed for COD articles that are in the process of being returned to the sender because they are unclaimed by the addressee during the 30-day holding period at the delivery post office. The increased waiting period to 60 days will allow time to transport the article to its destination, return it to the sender if unclaimed, and accommodate the required holding period if the post office is unable to deliver the article after the first attempt.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Amend 149.21, 149.222, 149.312, 149.333, and 914.18 of the Domestic Mail Manual to read as follows:

149 INDEMNITY CLAIMS

* * * * *

149.2 General Instructions for Filing Claims on Insured, COD, and Registered Mail

149.21 Who May File

A claim for complete loss (wrapper and contents) of an insured, COD, or registered article may be filed only by the mailer. All claims for loss of contents, partial loss, or damage may be filed by the mailer or addressee.

* * * * *

149.22 When to File

* * * * *

149.222 Loss Claims

* * * * *

b. COD. For COD articles, a claim may not be filed until 60 days after the date of mailing, except as specified in 149.222c.

c. Exceptions. Claims for insured and COD articles originating at or addressed to post offices outside the contiguous United States (including insured articles to APO and FPO addresses) may not be filed: (1) until 60 days after the date of mailing for articles sent by First-Class, SAM or PAL mail; and (2) until 75 days after the date of mailing for parcels sent by surface ocean transportation.

* * * * *

149.3 Insured and COD Claims

149.31 How to File

* * * * *

149.312 Evidence of Loss or Damage

[Delete 149.312b and renumber 149.312c and 149.312d as 149.312b and 149.312c, respectively.]

* * * * *

149.33 Processing Form 3812

* * * * *

149.333 Forwarding Claims

[Delete 149.333b and renumber 149.333c, 149.333d, and 149.333e as 149.333b, 149.333c, and 149.333d, respectively.]

* * * * *

914 COLLECT ON DELIVERY (COD) MAIL

914.1 Description

* * * * *

914.18 Delays in Remittance

[Revise the first two sentences as follows:]

"Mailers are encouraged to report instances in which there has been undue delay in receiving money orders or recipient's checks in payment for COD articles. The mailer should normally receive payment within 60 days of the date of mailing (75 days for parcels sent by surface ocean transportation)."

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel Legislative Division.

[FR Doc. 92-17568 Filed 7-23-92; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community No.
Arizona: Pima	Unincorporated Areas (Docket No. 7043).	Mar. 6, 1992 and Mar. 13, 1992, *Arizona Daily Star.*	The Honorable Reg Morrison, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	Feb. 10, 1992	040073
California:					
Monterey	Unincorporated Areas (Docket No. 7043).	Mar. 5, 1992 and Mar. 12, 1992, *Salinas Californian.*	The Honorable Sam Karas, Chairman, Monterey County Board of Supervisors, 1200 Aguagito Road, Monterey, California 93940.	Feb. 21, 1992	060195
Napa	City of Calistoga (Docket No. 7043).	Mar. 19, 1992 and Mar. 26, 1992, *Weekly Calistogan.*	The Honorable Jim Hughes, Mayor, City of Calistoga, 1232 Washington Street, Calistoga, California 94515.	Feb. 26, 1992	060206
Riverside	City of Palm Springs (Docket No. 7043).	Feb. 27, 1992 and Mar. 5, 1992, *The Desert Sun.*	The Honorable Lloyd Maryanov, Mayor, City of Palm Springs, City Hall, P.O. Box 2743, Palm Springs, California 92263.	Feb. 14, 1992	060257
Sacramento	Unincorporated Areas (Docket No. 7043).	Mar. 31, 1992 and Apr. 7, 1992, *Sacramento Bee.*	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, Room 301, Sacramento, California 95814.	Mar. 19, 1992	060262
Santa Clara	City of Milpitas (Docket No. 7043).	Mar. 18, 1992 and Mar. 25, 1992, *Milpitas Post.*	The Honorable Peter McHugh, Mayor, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035.	Mar. 9, 1992	060344
New York: Cattaraugus (FEMA Docket No. 7041).	Town of Allegany	Dec. 5, 1991 and Dec. 12, 1991, *Olean Times Herald.*	Mr. Daniel F. Eaton, Sr., Supervisor of the Town of Allegany, Town Hall, 52 West Main Street, Allegany, New York 14706.	Nov. 25, 1991	360061B
Ohio: Montgomery (Docket No. FEMA–7041).	City of Kettering	Feb. 14, 1992 and Feb. 21, 1992, *Daily News.*	The Honorable Richard Hartmann, Mayor, City of Kettering, 3600 Shroyer Road, Kettering, Ohio 45429.	Jan. 31, 1992	390412

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 15, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-17379 Filed 7-23-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-7046]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This interim rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and Name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California, San Diego	City of San Diego	June 19, 1992, June 26, 1992, *San Diego Daily Transcript.*	The Honorable Maureen O'Conner, Mayor, City of San Diego, 202 "C" Street, 11th Floor, San Diego, California 92101.	June 23, 1992	060295
California, San Diego	Unincorporated areas	June 19, 1992, June 26, 1992, *San Diego Union Tribune.*	The Honorable George F. Bailey, Chairman, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	June 12, 1992	060284

State and county	Location	Dates and Name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois, Cook	Village of Orland Park	June 24, 1992, July 1, 1992, *Orland Park Star.*	The Honorable Frederick T. Owens, Mayor of the Village of Orland Park, Cook County, 14700 South Ravinnia Avenue, Orland Park, Illinois 60462.	June 17, 1992	170140 D
Illinois, Cook and Will	Village of Tinley Park	June 24, 1992, July 1, 1992, *Tinley Park Star.*	The Honorable Edward J. Zabrocki, Mayor of the Village of Tinley Park, Cook and Will Counties, 16250 Oak Park Avenue, Tinley Park, Illinois 60477.	June 17, 1992	170169 E
Nevada, Washoe	Unincorporated areas	June 19, 1992, June 26, 1992, *Reno Gazette-Journal.*	The Honorable Gene McDowell, Chairman, Washoe County, Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.	June 10, 1992	320019
Tennessee, Shelby	City of Germantown	June 18, 1992, June 25, 1992, *Germantown News.*	The Honorable Charles Salvaggio, Mayor of the City of Germantown, 1930 Germantown Road, P.O. Box 38809, Germantown, Tennessee 38183-0809.	June 5, 1992	470353 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 13, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-17396 Filed 7-23-92; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-02; Notice 6; 90-26; Notice 3]

RIN 2127-AD43; 2127-AD44

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; delay of effective date and response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration, this final rule amends Standard No. 210 to clarify the location for measuring compliance with the anchorage location requirements, and to allow for other means of attaching the anchorage to the vehicle structure. In addition, this final rule extends the effective date for a number of recent amendments to Standard No. 210 one year. These amendments imposed significant new requirements which are still not clear to the vehicle and equipment manufacturers. This delay will allow sufficient time for the manufacturers to make any necessary changes in their vehicle designs to accommodate these new requirements.

DATES: The amendments made in this rule are effective September 1, 1993.

Any petitions for reconsideration must be received by NHTSA no later than August 24, 1992.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.).

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, Frontal Crash Protection Division, NRM-12, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4916.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1990, the agency published a final rule amending several requirements of Federal motor vehicle safety standard No. 210, *Seat belt assembly anchorages*, (55 FR 17970). On December 4, 1991, the agency further amended Standard No. 210 in response to seven petitions for reconsideration of the April 1990 final rule (56 FR 63676). On the same day, the agency also published a final rule clarifying the definition of "anchorage" in Standard No. 210 (56 FR 63682).

As a result of these three final rules, the following amendments were made to Standard No. 210:

1. The definition of "seat belt anchorage" was amended to explicitly state that any vehicle part or component that transfers the load from a safety belt to the vehicle structure is part of the anchorage (effective 9/1/92).

2. The amendment to the definition of "seat belt anchorage" had the effect of requiring the attachment hardware to withstand the 3,000 pound forces during the strength test. While attachment hardware for manual safety belts is still affected, the attachment hardware for dynamically-tested and automatic safety belts was excluded (effective 9/1/92).

3. The minimum lap belt angle for front seats was increased from 20° to 30° (effective 9/1/92).

4. The minimum lap belt angle for rear seats was increased from 20° to 30° (effective 9/1/93).

5. Simultaneous testing of all anchorages common to a single occupant seat and of anchorages not common to the same occupant seat but within 12 inches of each other was required (effective 9/1/92).

6. The use of a narrower body block during strength testing was allowed as an option (effective 9/1/92).

7. Use of wire cable or strong webbing to restrain the body block during strength tests was allowed (effective 9/1/92).

8. The term "hip point" was substituted for the term "seating reference point" in the definition of "outboard designated seating position"

and for the location of the upper anchorage zone (effective 9/1/92).

9. All redundant anchorage requirements were removed (already in effect, as of 4/30/90).

The agency received four petitions for reconsideration of the two December 5, 1991 final rules. This notice responds to those petitions.

Issues

1. Definition

The December 5, 1991 final rule amending the definition of "seat belt anchorage" in Standard No. 210 was intended to make it clear that any vehicle part or component that transfers the load from a safety belt to the vehicle structure is part of the anchorage. The amended definition is:

> "Seat belt anchorage" means any component, other than the webbing or straps, involved in transferring seat belt loads to the vehicle structure, including, but not limited to, the attachment hardware, seat frames, seat pedestals, the vehicle structure itself, and any part of the vehicle whose failure causes separation of the belt from the vehicle structure.

In the preamble to the final rule, the agency stated that "(t)he new definition gives examples of some of the components whose failure would result in non-compliance with Standard No. 210, without limiting the scope of the definition to those enumerated components."

Both Ford and Toyota petitioned that the definition of "seat belt anchorage" be amended by adding various components to either the list of inclusions or the list of exclusions in the definition. The agency already considered the option of listing many specific components and decided not to take that course of action. The agency believed that being too specific would undesirably restrict the definition. The agency continues to be hesitant to list specific components in the definition of anchorage, or conversely, to list components that are excluded from this definition, as the definition would then deal inadequately with designs not contemplated by the agency at the time of drafting the list. For this reason, the agency is not amending the definition of "seat belt anchorage" as requested.

In its petition, Ford has asked the whether the D-ring is part of the anchorage "(i)n seat belt assemblies where the D-ring is attached to the structure by a webbing strap." The webbing discussed in the final rule as being excluded from the definition of "seat belt anchorage" was the webbing that encompasses the occupant, not webbing used as attachment hardware. NHTSA believes that the attachment hardware should include all the equipment that attaches the safety belt to the vehicle structure. The safety belt system is tested in Standard No. 209, *Seat belt assemblies*. However, the D-ring and its attachment are not tested as part of the Standard No. 209 test. Therefore, the agency considers the D-ring to be part of the safety belt anchorage.

In another question regarding the definition, Toyota provided a sketch of a safety belt system which has a strap hooked directly to the anchorage bolt. For this design, the agency would consider it a failure of the Standard No. 210 test if the strap pulled away from the bolt. However, if the strap failed at the buckle, the agency would not consider the failure a non-compliance with the strength requirements of Standard No. 210.

2. Location Requirements

The only amendment to Standard No. 210 that was intended to affect the location requirements was the one increasing the minimum lap belt angle to 30 degrees.

Ford and Volkswagen stated that the upper anchorage location requirement in S4.3.2 was not clear. This section states that the upper anchorage must be within a specified zone. With the addition of attachment hardware to the definition of anchorage, Ford and Volkswagen stated that it is not clear what must remain within this zone.

NHTSA agrees with these petitioners. In amending Standard No. 210, the agency did not intend to change the stringency of the requirement for locating upper restraint anchorages. Before the addition of attachment hardware to the definition of anchorage, the determination of the upper anchorage's compliance with the location requirements was made with reference to the upper anchorage bolt hole. The agency believes that this reference is still appropriate for non-adjustable anchorages. Accordingly, NHTSA is amending S4.3.2 to state that the center of the anchorage bolt hole must be within the upper anchorage location zone.

Several additional location issues were raised by Ford and Volkswagen. First, Volkswagen requested that the location requirements not reference a bolt hole in case the vehicle manufacturer wishes to weld the safety belt attachment hardware to the vehicle, instead of using a bolt. NHTSA agrees with Volkswagen that reference to a bolt hole could be design restrictive. Therefore, the agency is amending S4.3.2 to require that either "the vertical centerline of the bolt holes, or, for designs using other means of attachment to the vehicle structure, at the centroid of such means" must be in the zone. This amendment will accommodate welding or other attachment techniques.

In accommodating welded anchorages, the agency wants to note that it and most of the automotive industry encourage replacement of the safety belt system after a moderate crash. Welding the safety belt attachment hardware may increase the difficulty of replacing safety belt systems. Therefore, despite its adoption of the amendment to permit other means of attaching the safety belt to the vehicle, the agency encourages manufacturers to design belt systems so as to facilitate replacement of those systems.

Second, Ford raised concerns about the location requirements for adjustable upper anchorages (AUA). The agency recognizes adjustable anchorages may be attached to the vehicle in multiple locations, a possibility which is not accommodated by the language of S4.3.2. To date, the agency has interpreted the location provisions as requiring that the bolts holding the adjustable anchorage must be in the upper anchorage zone. However, as stated earlier, the agency did not intend all of the attachment hardware for an AUA to remain in the zone. Accordingly, the agency is amending this final rule, as suggested by Ford in its petition for reconsideration, to require that the midpoint of the range of all adjustment positions remain within the required zone. This amendment will only affect rear outboard anchorages in vehicles equipped with automatic restraints and the front and rear outboard anchorages in the small number of vehicles with gross vehicle weight rating between 8,500 and 10,000 pounds. It will not affect the front outboard anchorages on all vehicles equipped with automatic restraints since those anchorages are excluded from the anchorage location requirements.

3. Dynamically Tested Safety Belts

The April 30, 1990 final rule extended the applicability of Standard No. 210 to the attachment hardware of a safety belt system. Responding to the petitions for reconsideration, the December 5, 1991 final rule excluded the attachment hardware for seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208. The preamble noted that the agency does not consider a manual belt installed at a seating position that is also equipped with an air bag to be a

dynamically tested belt. It stated that the attachment hardware for these belts is therefore still subject to the Standard No. 210 strength tests.

Volkswagen petitioned the agency to reconsider its position that manual belts installed at a seating position equipped with an air bag are not dynamically tested. In the alternative, Volkswagen asked that manufacturers be given the option of dynamically testing these manual belt systems in lieu of Standard No. 209 and Standard No. 210 testing.

The agency believes that this issue has already received adequate review, and that the automotive industry has had sufficient opportunity to voice objection in previous rulemaking actions regarding this issue. No other petitions have been received on this issue. Further, no other petitioners asked to eliminate the existing static strength and attachment hardware tests. In addition, Volkswagen has provided no new data or information that would support its petition. Therefore, the agency has decided that this aspect of Volkswagen's petition for reconsideration should be denied.

Concerning Volkswagen's request that manufacturers be allowed to dynamically test safety belts in vehicles with airbags in lieu of required compliance with Standards No. 209 and 210, this is already an option. Manufacturers may select any reasonable basis for determining compliance with safety standard requirements. Therefore, if the manufacturer believes that a dynamic test would provide a sufficient basis for certifying compliance with aspects of Standards No. 209 and 210, a manufacturer may choose to determine compliance using a series of dynamic tests. However, the agency would determine compliance by means of the static tests specified by Standard No. 210.

4. Leadtime

The Ford petition stated that if the attachment hardware had to be located entirely within the anchorage zones, the location of some anchorages would have to be changed. This would require more time than the time remaining between now and September 1, 1992. As explained previously, it was not the intent of the agency to include all attachment hardware within the location requirements.

The agency has reviewed the changes in Standard No. 210 since the April 1990 final rule and the December 1991 final rules (effective September 1992 and September 1993). The agency imposed significant requirements in these amendments, such as the inclusion of attachment hardware in the strength test and the addition of testing more than one set of anchorages at the same time.

It is apparent that many significant issues are still not clear to the vehicle and equipment manufacturers. Not only has the agency received these four petitions for reconsideration within nine months of the effective date, but it also continues to receive informal inquiries concerning the definitions and the test requirements of these changes. Based on this experience, NHTSA believes it desirable to extend the effective date of these amendments until September 1, 1993. This delay applies to the following final rules: 55 FR 17970, April 30, 1990 (except for the amendment to S4.1.3 which was effective April 30, 1990); 55 FR 24240, June 15, 1990; 56 FR 63676, December 5, 1991; and, 56 FR 63682, December 5, 1991.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this final rule and determined that it is not major within the meaning of E.O. 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required. The agency estimates the cost savings that would result from delaying the effective date to September 1, 1993 would be between $403,000 and $1,824,000. The actual value depends on which type of design would have been incorporated in school buses due to the requirements for simultaneous testing. This cost savings estimate reflects the range of annual costs originally estimated for simultaneous testing ($255,000–$1,676,000), plus a small ($148,000) savings estimated for those few vehicles that do not meet the 30 degree minimum lap belt angle requirement in the front seat. In most of the vehicles that would not meet the 30 degree requirement, the problem was in the rear seat. Since the effective date for the rear seat lap belt angle change is already September 1, 1993, and is not being extended further, there are no savings for these vehicles. These costs were discussed in greater detail in the April 30 final rule.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. As stated above, the agency does not expect any significant cost impact associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

§ 571.210 [Amended]

2. S4.3.1.4 of Standard No. 210 is revised to read as follows:

S4.3.1.4 Anchorages for an individual seat belt assembly shall be located at least 6.50 inches apart laterally, measured between the vertical

centerline of the bolt holes or, for designs using another means of attachment to the vehicle structure, between the centroid of such means.

3. S4.3.2 of Standard No. 210 is revised to read as follows:

S4.3.2 *Seat belt anchorages for the upper torso portion of Type 2 seat belt assemblies.* Adjust the seat to its full rearward and downward position and adjust the seat back to its most upright position. With the seat and seat back so positioned, as specified by subsection (a) or (b) of this section, the upper end of the upper torso restraint shall be located within the acceptable range shown in Figure 1, with reference to a two-dimensional drafting template described in SAE Recommended Practice J826 (May 1987). The template's "H" point shall be at the design "H" point of the seat for its full rearward and full downward position, as defined in SAE Recommended Practice J1100 (June 1984), and the template's torso line shall be at the same angle from the vertical as the seat back.

(a) For fixed anchorages, compliance with this section shall be determined at the vertical centerline of the bolt holes or, for designs using another means of attachment to the vehicle structure, at the centroid of such means.

(b) For adjustable anchorages, compliance with this section shall be determined at the midpoint of the range of all adjustment positions.

Issued on July 20, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92-17437 Filed 7-23-92; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-203]

Petition To Amend Lease and Interchange of Vehicle Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its written lease requirements by adding additional language to the Lease and Interchange of Vehicles regulations. The purpose of the amendment is to give notice to the courts and workers' compensation or other administrative tribunals who have ruled otherwise that, in requiring that a lease provide for the lessee's "exclusive possession, control, and use" of the equipment provided by the lessor, it is not the intention of the Commission's regulations to define or affect the relationship between a motor carrier lessee and an independent owner-operator lessor. A notice of proposed rulemaking was published in the Federal Register on January 22, 1992 at 57 FR 2512.

EFFECTIVE DATE: August 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jessie Hodge, (202) 927-5302, or Richard Felder, (202) 927-5610. (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: The Commission has amended the regulations dealing with written lease requirements at 49 CFR 1057.12(c), Exclusive possession and responsibilities, by inserting a new paragraph (4) confirming the Commission's view that the type of control required by the regulation does not affect "employment" status and that it is not the intention of the regulations to affect the relationship between a motor carrier lessee and the independent owner-operator lessor. Inclusion of a specific statement in the regulations was found to be necessary because certain State courts and administrative tribunals have determined that the regulations affect the relationship between the lessee and lessor.

Additional information is continued in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This action will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 49 CFR Part 1057

Motor carriers, Reporting and recordkeeping requirements.

Decided: June 29, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1057 of the Code of Federal Regulations is amended as follows:

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

1. The authority citation for part 1057 continues to read as follows:

Authority: 49 U.S.C. 11107 and 10321; 5 U.S.C. 553.

2. In § 1057.12 a new paragraph (c)(4) is added to read as follows:

§ 1057.12 **Written lease requirements.**

* * * * *

(c) * * *

(4) Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. 11107 and attendant administrative requirements.

* * * * *

[FR Doc. 92-17519 Filed 7-23-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407-2519]

RIN 0648-AD01

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this final rule governing the Atlantic bluefin tuna (bluefin) fishery under authority of the Atlantic Tunas Convention Act (ATCA) to: (1) Reduce the total U.S. quota allocation by 10 percent for the 2-year period 1992 through 1993; (2) spread the reduction equally over the years 1992 and 1993, except for subcategories of fisheries that already have begun fishing in 1992; (3) apply the annual harvest amount among the categories, based on the average landings of each category during the period 1983 through 1991, adjusted for past catches (smaller than giants) sold by General category permit holders but attributed to the Angling category, and on improving scientific monitoring; (4) reduce the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the annual U.S. allocation; (5) prohibit sale of bluefin less than 178 cm (70 inches);

(6) implement area subquotas and differential bag limits in the Angling category for bluefin less than 115 cm (45 inches); (7) prohibit retention of young school bluefin (less than 66 cm (26 inches)); (8) implement a mechanism to subtract quota overages from, or add underages to, the appropriate category or subcategory if appropriate in following years; and (9) make other technical changes to enhance administration, management, and enforcement.

This action is necessary to implement the recently adopted recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and to improve management of the bluefin tuna resource.

EFFECTIVE DATE: July 20, 1992.

ADDRESSES: Copies of the Environmental Assessment (EA) and the Final Regulatory Impact Review (FRIR) are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION:

Expanded Summary

The final rule bases the allocations among categories on a 10-percent reduction from the 1983–1991 average landings in the respective categories, with two adjustments, in order to minimize the economic impact on businesses dependent upon the bluefin tuna fishery. The final rule provides an opportunity for commercial fishing (the sale of fish) to exceed slightly a 10 percent reduction in the amount of fish sold historically. The average catch of bluefin sold by permitted fishermen between 1983 and 1991 was 1,128 metric tons (mt), a 10 percent reduction would provide 1,015 mt. Under the proposed rule, the potential catch available for sale would have been 979 mt (including the 85 mt reserve). Under the final rule, by allocating 54 mt of the reserve to the General category and releasing the 31 mt reserve, the potential catch for sale by permitted fishermen is 1,029 mt. This is shown in the following table:

Average catch sold [1] (1983–1991)	Catch available for sale [2]	
	Proposed rule	Final rule
1128	[3] 894–979	[4] 998–1029

(1) Average catch (mt) of bluefin sold by permitted fishermen.
(2) Catch available for sale by permitted fishermen.
(3) Potential catch available for sale (without reserve—with reserve for sale).
(4) Potential catch available for sale (with 54 mt of reserve in the General category—with remaining 31 mt reserve for sale).

The opportunity to catch small fish, i.e., less than 115 cm, is reduced by 75 percent by this final rule. The Angling category is affected more than the other categories by this rule and by the ICCAT recommendation that limits the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the total annual U.S. allocation. The Angling category is the only category that traditionally harvests and retains fish that small. The Angling category is also affected by the measure that prohibits sale of any fish less than 178 cm (70 inches), which will prevent unpermitted fishermen from selling bluefin tuna.

Background

On April 28, 1992, NMFS published a proposed rule at 57 FR 17872 to amend the regulations governing the Atlantic bluefin tuna fishery. Public comment on the proposed rule was invited through May 26, 1992. Comments received at a Congressional hearing on May 27, 1992, were also accepted.

The Atlantic bluefin tuna fishery is managed under the implementing regulations at 50 CFR part 285 under the authority of the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary to promulgate regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to NMFS. The Fishery Conservation Amendments of 1990 (FCA), Public Law 101–627, also authorize management of tunas under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Secretary is issuing regulations governing this fishery under the authority of the ATCA until such time as a fishery management plan is developed.

Background

ICCAT adopted several recommendations for additional measures to enhance recovery of the bluefin stock beginning with the 1992 fishing year. These measures include:

(1) That the Contracting Parties institute effective measures to limit the quota for the 2-year period 1992–1993 to 4,788 mt, but not to exceed 2,660 mt in the first year;

(2) That the 2-year quota be taken by the Contracting Parties in the same proportions as previously agreed to for 1990;

(3) That beginning with the 1992 catch, if a Contracting Party exceeds its annual or 2-year quota, then in the 2-year period or the year following reporting of that catch to ICCAT, the Contracting Party will compensate in total by reducing the quota of the domestic catch category responsible for the overage;

(4) That the three Contracting Parties will prohibit the taking and landing of bluefin weighing less than 30 kg, or in the alternative, having a fork length less than 115 cm, with discretion to grant tolerances of no more than 8 percent by weight of the total bluefin catch on a national basis; and

(5) that the Contracting Parties institute measures to preclude economic gain to fishermen from landing bluefin less than 30 kg, or in the alternative, 115 cm.

As a member of ICCAT, the United States is obligated to adopt domestic regulations to comply with these recommendations. During December 1991 and January 1992, NMFS held four scoping meetings to inform the public and initiate discussion of possible options to implement the ICCAT recommendations. A proposed rule was prepared, taking into account the comments received, and eight hearings and one informal meeting were held on this rule during April and May, 1992. All sectors of the fishery were represented at these meetings.

Management Measures

Spreading the Quota Reduction

In the proposed rule, NMFS selected a preferred option to reduce the total U.S. quota allocation by 10 percent for the 2-year period 1992 to 1993 to conform with the ICCAT recommendation and to spread the reduction equally over the years 1992 and 1993 (except for subcategories of fisheries that have already taken a substantial portion of their allocations in 1992). After review of comments received, NMFS has determined that this alternative, with some modifications, is the least disruptive to the participants in the U.S. fishery, in terms of shifts in jobs and economic impacts on coastal communities.

In § 285.22(h), NMFS had proposed an adjustment to quotas in 1993 if the total 1992 quota for U.S. fisheries is exceeded. In that event, overages in any category would have been deducted from the 1993 quota for that category. In the final rule, adjustments will be made in 1993 for any overage or underage in any category or subcategory, whether or not

the total U.S. quota is exceeded. The only proviso is that the total 1992 harvest plus the 1993 adjusted quotas and reserve cannot exceed the ICCAT recommended quota of 2,497 mt for the 1992–1993 period.

Allocation of Quota Reduction

The proposed rule based the allocations among categories on a 10-percent reduction from the 1983–1990 average landings in the respective categories. After the close of the comment period, NMFS reassessed this scheme and reconsidered the option favored by numerous commenters, which was to reduce the current quotas by 10 percent. NMFS has determined that its proposed scheme, with several modifications, is the most fair and equitable approach.

First, NMFS agrees with numerous commenters that the 1991 data should be included when calculating the average landings. Accordingly, NMFS has recalculated the quota based on the average landings from 1983 through 1991.

Second, NMFS recalculated the amount of bluefin smaller than giants landed and sold by vessels permitted in the General category, which had been previously counted against the Angling category because they were smaller than giants. NMFS has determined that it is more appropriate to count those fish against the General category quota, since they were harvested by vessels with General category permits. NMFS also intends to continue counting the landings in this manner.

Finally, the proposed rule contained a reserve amount of 85 mt, which may be allocated, in part or entirely, during the season to any category based on specified considerations, and to provide a buffer to help prevent the U.S. quota from being exceeded. This final rule provides for a reserve amount of only 31 mt, because NMFS believes it can manage the 2-year quota and thus does not need the full 85 mt reserve. NMFS will retain the flexibility to use the rest of the reserve as conditions in the fisheries warrant.

NMFS has selected a combination of measures, in conjunction with the harvest-based allocation scheme, intended to minimize disruptions in the fishery and to provide the best combination of catch and effort data for ICCAT assessment purposes. These actions are consistent with two of the stated objectives of the bluefin management regime.

NMFS believes allocation of the reduced quota cannot ignore the current state of the fishery and the economic reliance that has built up since 1983 in the angling sector. It is true that this sector of the fishery and its support industries would not have developed so substantially had NMFS been able to keep the Angling category within its quota over the last decade. The fishermen in this category and support industries violated no law—their economic dependence on the fishery must be considered.

A straight 10-percent reduction from current quotas would provide only 103 mt to the Angling category, which is affected more than the other categories by the ICCAT recommendation that limits the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the total annual U.S. allocation. The Angling category is the only category that traditionally harvests and retains fish that small. This rule will reduce the Angling category catch of small bluefin and could reduce the fishing mortality rate on these fish by over 50 percent from recent year averages. The Angling category is also affected by the measure that prohibits sale of any fish less than 178 cm (70 inches), the only fish that category may catch and retain. The combination of these measures would effectively prevent traditional Angling category fishermen from deriving income from the fishery, which could result in an economic loss to coastal communities. A quota of 219 mt, along with other brakes on fishing mortality, may allow the Angling category to stretch out its season through most of the summer, compensating anglers to some extent for the ICCAT mandated small-fish and no-sale measures and the more restrictive bag limits.

The purpose of the ICCAT quota is scientific monitoring. Since the large fish index is one of the most important indices used to tune the ICCAT bluefin tuna stock assessments, it is essential that these data be gathered over as long a season as possible. The General category catch and effort statistics (from rod and reel and handline gear) are the sole source of the large fish index. For this reason, 54 mt of the proposed reserve is added to the General category quota, where it will help keep the season open, thereby providing more catch, effort, and biological data over a longer period of time. Incidentally, the added tonnage will help mitigate the economic impacts of the reduced quota and no-sale provision.

The following table shows proposed quotas (in mt) and the steps (A 1, A 2, and A 3) taken to arrive at final quotas (A 3).

	Historical quota	Proposed quota	A 1	A 2	A 3
General	590	410	414	477	531
Harpoon	54	54	53	53	53
Purse seine	386	319	301	301	301
Angling	126	271	282	219	219
<115 cm	81	100		100	100
>115 cm	45	171		119	119
Incidental	137	111	113	113	113
Reserve	94	85	85	85	31

A 1 Proposed quota plus 1991 data.
A 2 Proposed quota plus 1991 data; adds to the General category the fish sold by General category permit holders and counted against the Angling category.
A 3 Final quotas. Modifies A 2 by adding part of the reserve to the General category to guard against early closure and assure as much data as possible for the important large fish index.

The following table gives a complete breakdown of the quotas, comparing the proposed and final rules:

Category	Proposed (mt)	Final (mt)	Category	Proposed (mt)	Final (mt)
General	410	531	Incidental:		
Area set-aside*	45	40	1992	137	137
Harpoon	54	53	South of 36°	104	104
Purse Seine	319	301	North of 36°	28	28
Angling	271	219	Other	5	5

Category	Proposed (mt)	Final (mt)
Years after 1992	83	89
South of 36°	61	67
North of 36°	17	18
Other	5	4
Reserve	85	31

*Historically used, if necessary, for late season General category catches of giants in the New York Bight.

Bluefin Less Than 115 cm

As ICCAT recommended, the rule reduces the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the annual U.S. allocation, or about 100 mt, which will be used in the Angling category only. Vessels in the Purse Seine category fishing for other tunas are allowed 1 percent per trip (by weight) incidental catch of bluefin less than 178 cm. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota.

Limitations on Sale

NMFS had proposed a ban on the sale of bluefin smaller than 196 cm (140 kg). We received many comments on mortality of bluefin slightly less than 196 cm that would occur in directed fisheries for giants. NMFS chooses 178 cm (about 235 pounds (107 kg)) as the lower limit for the sale of bluefin. This will allow landing and sale of an unavoidable bycatch of fish that could be mistaken at sea for giants. A limit of 235 pounds (107 kg) should protect all of the immature 6-year-old, and some of the immature 7-year-old, bluefin. This ban on sale of "small medium" bluefin will help further reduce the fishing mortality rate on pre-spawners and also reduce the incidental mortality associated with the directed giant bluefin fisheries.

Areas and Bag Limits

The proposed implementation of area subquotas and differential bag limits in the Angling category for bluefin less than 115 cm (45 inches) was retained, but modified. All vessels fishing in the Angling category are limited to one small medium bluefin per day. Private boats are allowed two school bluefin per trip. The bag limit for anglers remains the same (two per angler per day). Captains, mates, and crew of charter and party vessels may not harvest the angler limits. The prohibition on young school bluefin remains the same as in the proposed rule.

Vessels in the Harpoon Boat category are restricted to one large medium per day. These vessels may land an unlimited number of giants, so long as the allowable quota for the category is not exceeded. Vessels in the General category may take only one large medium or one giant per day. Purse seine vessels may land large mediums up to 10 percent of the total weight of giants on board.

Vessels permitted for the General and Incidental (rod and reel) categories may fish in the Angling category. If a large medium or giant tuna is caught by a vessel in the General category, it may be sold.

Other Changes from the Proposed Rule

The term "Regional Director" was proposed to be defined as the Director of the Office of Fisheries Conservation and Management (F/CM). In the final rule, the current definition of Regional Director is retained (Northeast Regional Director of NMFS, for Atlantic bluefin tuna) for all permitting and monitoring functions, while "Director" is used for the Office Director of F/CM.

In § 285.3, the prohibition in paragraph (f) against landing tuna with the head removed is revised to reinstate the requirement to land tuna in the round with fins intact, but to allow the fish to be gutted and the head removed. The prohibition proposed at § 285.31(a)(37) has been moved to § 285.3(h) and made applicable to all Atlantic tuna fisheries.

In the final rule, terms for new size classes of medium fish are added. The new size classes are defined and presented in the table at § 285.26. The "large medium" class defines fish smaller than giants that may be sold (178 to <196 cm).

In § 285.23(c)(1), the world "fishing" is added before "trip" because "fishing trip" is a defined term (at § 285.2). The word "caught" is substituted for "landed" to ensure that tuna landed from a longline vessel are actually an incidental catch.

Authority for the Assistant Administrator to adjust the daily catch limit in the General category from one to three giant bluefin is reinstated in § 285.24(a). Authority for adjustment of the bag limit for anglers on party and charter boats (from one to two school bluefin and back to one) is added at § 285.24(c)(2).

The prohibition at § 285.31(a)(10) is revised by adding the phrases "(fins intact)" and "eviscerated".

Comments and Responses

NMFS received numerous comments at the hearings and written comments submitted during the comment period on the proposed rule, many of which were adopted in the final rule and others that will be considered in future rulemakings. NMFS considered all comments received during the comment period while formulating this final rule. Specific comments are discussed and responded to below.

Almost 300 oral and slightly over 200 written comments (not counting petitions) were received. Comments presented orally during the public hearings and written comments received during the comment period are summarized below. To assist the reader, where appropriate, the specific measures of the proposed rule are repeated verbatim in the same order as they appeared in the proposed rule. Some are not implemented by this final rule.

1. Reduce the Total U.S. Quota Allocation by 10 Percent for the 2-Year Period 1992 Through 1993

Comment: Many commenters supported the 10-percent reduction in the U.S. allocation for the 2-year period because it is a step in the right direction and because it supports ICCAT's efforts. Other commenters, opposing the reduction, alleged the scientific data and, therefore, projections of stock decline, are inaccurate. Others opposed the measure because it does not reduce fishing mortality sufficiently to rebuild the stock or reduce the probability of stock failure. Many of these commenters suggested a 50-percent reduction, an additional 10-percent reduction, or restrictions on trade under the Convention on International Trade in Endangered Species (CITES).

Response: Under the ATCA, the United States is obligated to implement recommendations adopted by ICCAT and is prevented from implementing regulations that have the effect of increasing or decreasing a recommended quota. This measure was adopted by ICCAT during the November, 1991, meeting, based on the advice of the Standing Committee on Research and Statistics (SCRS) and the views expressed by member countries. Failure to implement this measure would be inconsistent with U.S. law. Therefore, no change has been made in the final rule.

2. Spread the Reduction Equally Over the Years 1992 and 1993, Except for Subcategories of Fisheries That Have Begun Fishing Already in 1992

Comment: Several commenters objected to the proposal to spread the reduction equally over the 2-year period because they believed it contrary to recent amendments to the Magnuson Act and the ATCA. They contended that no reduction should be made in 1992, and the entire reduction applied in 1993.

This, they believed, would preserve the chance that reductions in fishing mortality would be achieved due to natural environmental causes, making mandatory reductions unnecessary. Others suggested the United States should implement the 2-year reduction in the same manner as Canada and Japan. Some commenters supported the spreading of the reduction as proposed.

Response: NMFS believes that dividing the reduction equally over the 2-year period, with some exception for categories well into their fishing season before this rule is implemented, is the least disruptive and most equitable to the resource users. Although "natural reductions" may occur, they are unlikely to occur in proportion to the subquota allocations or in sufficient amounts to effect the 2-year reduction that is required by the ICCAT recommendation. Instead, this rule credits quota overages or underages to the next year's allocation on a category-by-category basis. This will ensure the integrity of each category's allocation over the 2-year period. NMFS disagrees that this approach is contrary to the Magnuson Act or the ATCA. Further, it is not possible to implement the reduction in the same manner as both Canada and Japan; Canada has indicated it will implement the entire reduction in 1993 and Japan has indicated it is implementing two annual reductions in the same manner as the U.S.

3. Apply the Annual Harvest Amount Among the Categories Based on the Average Landings of Each Category During the Period 1983 to 1990

Comment: As discussed above, most commenters opposed the allocation among the permit categories based on average historical catch, although many seemed to object more to the results than to the calculation method. Many commenters believed the allocation would encourage fishing on mediums and generally result in shifting effort onto small fish, contrary to sound management principles. Other commenters expressed the view that spawning fish should be protected because they are essential to producing good recruitment. Some commenters contended that using historical averages to determine quotas is unfair to those who did not exceed the quota and rewards past overages at the expense of the categories that operate under more restrictions and enforcement coverage. They considered the effect on the General category to be overly restrictive and likely to shorten the season and that a disproportionate share of the burden of conservation is being imposed on this category. They cited the 31-percent, rather than 10-percent, reduction to support their point. They believed cuts should be across-the-board, based on quotas; the same percentage applied to each subquota category. Other comments in support of this view were:

(1) The Northeast needs a large allocation of giants; mediums and small fish are less available there.

(2) Harvesting giant bluefin, versus smaller fish, increases the value.

(3) Commercial effort should be directed immediately away from smaller mediums. Only restricted commercial access should be provided to valuable "large medium" bluefin.

(4) NMFS should reduce fishing mortality of medium bluefin by precluding smaller mediums from being landed by General and Harpoon Boat category permit holders.

(5) NMFS should use scientific modelling to determine the effectiveness of this proposal.

(6) One giant equals many school fish in weight—therefore there is less total mortality associated with catching giants.

(7) The General category provided the best data; NMFS should increase the General category quota to provide better scientific monitoring.

(8) NMFS should emphasize harpoon and handline gear since they target only large fish.

(9) Increasing the Angling category is based solely on economics and not on (biological) science.

(10) Conversation should be based on the numbers of fish killed, not the weight.

(11) NMFS should not increase overall mortality.

(12) The allocation system in the proposed rule rewards past gross discards of small fish.

(13) Illegal landings are included in the historical averages.

(14) NMFS should not implement the reduction in a manner that reduces the ability of U.S. fishermen to achieve the available quota.

Many did not object to the basis for the reallocation, provided that adjustments were made, such as crediting the General category with catches of medium fish sold and including the most recent year's (1991) catch. Some stated that all medium bluefin should be allocated to the General category. One mistakenly believed that medium bluefin have historically counted against the General category and thought this should continue.

Response: NMFS believes it is reasonable, appropriate, and consistent with the four objectives stated in the proposed rule and Environmental Assessment (EA) to distribute allocations based on recent performance in the fishery rather than the on quotas set almost a decade ago, which have proven inappropriate in some cases, and which no longer represent the present-day economic and social situations. NMFS has agreed with and accommodated many of the points raised during the comment period. For instance, preliminary 1991 catch data have been incorporated; an allowance has been made for sale of large medium fish, which are more valuable commercially, while smaller medium fish remain protected by the no-sale provision. NMFS has responded to commenters' concerns that historical landings by vessels permitted in the General category were incorrectly attributed to the Angling category. Accordingly, these landings have now been credited to the General category. NMFS has also responded to the concern that the General category fishery, which provides important scientific information and supports a great number of users, is being unduly restricted. NMFS has addressed this concern by allocating some of the historical reserve up-front to the General category. This also is consistent with past practice to use the reserve in fisheries that provide useful scientific information. Nothing in the final rule would preclude fishermen from taking the available quota.

Comment: Many commenters provided alternative allocation methods such as:

(1) Eliminating the Purse Seine category;

(2) Allocating to each category based on the number of jobs;

(3) Giving the Inseason adjustment amount (reserve) to the Angling category and nothing else;

(4) Placing charter boats in a separate category; and

(5) Combining the Angling and General categories.

Response: NMFS has not allocated according to these suggestions for several reasons. First, the impacts of some of these alternatives, which could be substantial to a particular category, were not explored prior to or during the proposed rule, and, as such, did not receive sufficient public review. Elimination of one or more of the categories would be inconsistent with the objective to minimize displacement and preserve traditional fisheries. NMFS believes the reasons why the charter boat category was eliminated in the early 1980s are still valid.

Comment: Some commenters questioned whether NMFS has the authority to change the allocations under the ATCA and claimed that NMFS should have followed the Magnuson Act process.

Response: The ICCAT requirement for 10 percent reduction meant that NMFS had to change allocations from what they had been in the past. The authority to promulgate regulations appropriate and necessary to carry out the recommendations of ICCAT is granted by the ATCA and NMFS followed the full process required. This broad authority enables the Assistant Administrator, who has been delegated the responsibility within the Department of Commerce, to determine what is necessary to implement the recommendations. This authority has been recognized by the courts (see *Tri-Coastal Seafood Coop.* v. *Richardson*, No. 76–2316–G, CD. Mass. Hearing transcript June 23, 1976).

Comment: One commenter questioned whether the purse seine and Gulf of Mexico incidental fisheries are contrary to NMFS' own objective to "maximize use and spread the resource to as many users as possible."

Response: Elimination of any of the domestic categories was not an option in the proposed rule and is not implemented in this final rule.

Comment: Some commenters focused on the Incidental category by pointing out that reducing incidental quotas only results in increasing discards, that the longline quota should be adjusted to reflect current participation, and that the Incidental category is being hurt economically by this rule. One commenter requested a detailed explanation of how incidental reductions were calculated and believed that the "Incidental category for miscellaneous 'Other' gears should receive its historical catch of less than 1 mt."

Response: NMFS recognizes the constraints on the Incidental categories but does not believe these allocations require further adjustments beyond the scheme based on historical catch, with one exception for miscellaneous gear. This rule should not impose more than minimal economic hardship to this category and may actually improve conditions in the northern area of the Incidental longline category by correcting the practice of subtracting southern area overages from the total longline quota. Instead, overages will be subtracted in the following year from the category, or subcategory if appropriate, responsible for the overharvest. NMFS does not agree that the Incidental category for miscellaneous catches should be reduced to less than 1 mt, because that amount would roughly equate to four fish. NMFS has set this allocation at 4 mt, which should prove sufficient.

Comment: A great many commenters indicated that NMFS was showing bias for or against a particular category or sector of the fishery. Comments to that effect were:

(1) NMFS should send an unbiased representative to the public hearings.

(2) The proposal was a ploy to eliminate commercial fishermen.

(3) The current quota system was working—do not change it.

(4) NMFS is trying to put the different categories against each other and favors recreational over commercial interests.

(5) NMFS "portrayed" the reduction as a 10-percent across-the-board cut.

(6) The proposed allocations are to make up for NMFS's inability to control other categories.

(7) The proposal allocated arbitrarily from New England to the Mid-Atlantic region.

(8) NMFS is being deceptive, and is "turning" on people that make the fishery work.

Response: NMFS believes the final rule has been responsive to a wide range of views and comments; more detailed explanations for actions taken in this rule are explained in responses to other comments.

4. Reduce the Allowable Catch of Bluefin Less Than 115 cm to no More Than 8 Percent of the Annual U.S. Quota

Comment: While many commenters supported the proposed rule, there were also numerous commenters who opposed it. In general, the primary opposition came from mid-Atlantic commenters who claimed that fish of this size are just about all that are found in the area, and that such a drastic measure would cause undue economic hardship because of a loss of fishing trips/charters that sportsmen made. Many commenters claimed that this economic hardship would have a "ripple effect" throughout the region as businesses associated with this industry (marinas, hotels, tackle shops, etc.) felt the effect of the decline in recreational fishing. The primary support for this rule came from north Atlantic commenters who claimed this measure was necessary to protect future spawning stock. Following are specific comments received in opposition:

(1) The measure is insupportable when there is such a high fishing rate on giants.

(2) The proposal would put people out of business.

(3) NMFS should allow retention of these fish in the Angling category.

(4) The 8-percent limit for fish less than 115 cm should be on the total harvest, not by country.

Response: Each of these comments is beyond the scope of this rulemaking. ICCAT has mandated that there be no landings of bluefin less than 115 cm. ICCAT also provided discretion that a country may allow a tolerance of no more than 8 percent of its national quota. Under the ATCA, the United States is obligated to implement recommendations adopted by ICCAT. This measure was adopted during the November, 1991, meeting, based on the advice of the Standing Committee on Research and Statistics (SCRS) and the views expressed by ICCAT member countries. Failure to implement the limitation would be inconsistent with U.S. law; NMFS has minimized the impacts to the extent possible by providing the 8-percent tolerance and establishing two subquotas for school bluefin.

Comment: One commenter stated that purse seiners need some incidental allowance for the take of bluefin less than 115 cm while fishing for skipjack; fishermen cannot guarantee that some small bluefin will not mix with skipjack.

Response: NMFS agrees with this comment and has added a provision to the Incidental catch section to accommodate this. Vessels in the Purse Seine category fishing for other tuna species will be allowed a 1 percent-per-trip (by weight) incidental take of bluefin less than 178 cm. Any landings of these incidental catches may not be sold, but will be counted against the Purse Seine category quota.

5. Prohibit Sale of Bluefin Less Than 196 cm (77 Inches)

Comment: As with most of the major provisions of the proposed rule, NMFS received many comments on this proposal. Many commenters were concerned with the potential waste of medium fish that would be caught and so exhausted by the struggle (or wounded by a harpoon) that many would die. Other comments pointed out the difficulty of distinguishing the size of a fish while it is in the water. Most General category fishermen and some charter boat fishermen opposed the ban on sale of medium and smaller fish. Some comments addressed the age at which spawning first occurs, where spawning occurs, and using the spawning size as the no-sale cut off. Summaries of specific comments received in opposition follow:

(1) NMFS should allow two mediums per General category boat.

(2) The proposed regulations ignore the working class; there is profit in catching and selling mediums.

(3) There is a large mortality on released mediums; it is hard to tell the difference between large mediums and small giants, resulting in a waste of fish.

(4) The provision against sale of mediums and large school fish goes beyond the ICCAT recommendations, is unique to U.S. fishermen, and may be illegal.

(5) Some fishermen questioned the rationale behind the proposal—many fish would be sold illegally, especially if enforcement is lacking.

(6) Sport fishermen probably cannot boat and tag a medium without high mortality because they lack the technique to quickly boat a medium.

(7) The ban on sale of mediums would wipe out the Cape Cod fishery.

(8) Mediums are often sold.

(9) The size categories should be redefined.

(10) If sport anglers cannot sell, then they will kill just for sport.

(11) People could be injured trying to measure a bluefin while the fish is in the water.

(12) NMFS should reduce the size limit to 60 inches and fishermen can tell the difference.

(13) NMFS should set the no-sale limit at 65 inches and allow one medium to be caught by commercial fishermen.

(14) NMFS should set the no-sale limit at 66 inches—this would protect some 6-year old fish. Age 6 is the earliest age at which 50 percent of the female cohort could reach sexual maturity.

(15) NMFS should set the no-sale limit at 68 inches (220 pounds).

(16) NMFS should set a 70-inch cut-off to prevent waste.

(17) NMFS should prohibit retention of fish less than 68 inches in the General and Harpoon Boat categories.

(18) The sale of fish is important to charter boats.

(19) Recreational fisherman sell large school and medium fish; recreational fishermen should be allowed to sell fish.

(20) Fishermen need to sell medium fish to offset fuel costs.

(21) Purse seiners should not be allowed an incidental take of mediums.

A few commenters supported the proposed ban on sale as a good conservation measure. Specific comments were:

(1) The proposal is absolutely necessary—it makes sense to reduce the kill of fish nearing breeding age.

(2) No sale below 77 inches would be acceptable with a one medium fish allowance.

Response: NMFS agrees, in part, with those who opposed the ban on sale of tuna less than 77 inches (196 cm) and is revising the final regulations to prohibit sale of tuna less than 70 inches (178 cm). NMFS is concerned with the potential waste of tuna. On the other hand, NMFS is very concerned about the high level of fishing mortality on medium bluefin tuna and continues to believe that giant tuna of 77 inches (196 cm) or more should remain the target for directed fisheries and commercial sale. Eliminating tuna below 70 inches (178 cm) from the commercial fishery—even though ICCAT recommendations allow commercial harvest to 45 inches (115 cm)—will reduce the incentive to harvest these fish and also help reduce the fishing mortality rate on these immature bluefin tuna that are about to enter the very low spawning stock biomass. There has not been a good year class since the early 1970's; rebuilding the spawning stock biomass may be crucial to enhance spawning potential. Also, from an economic and biological standpoint, the smaller the fish, the less the fish is worth per pound and the greater the probability that the fish can be released alive. Thus, future commercial value may be enhanced.

The problem of judging the size of the fish while in the water is almost impossible to solve. NMFS looked at catch data and data on fish sold to determine if there are any natural breaks in size distribution of fish landed that would be an appropriate cut off to help reduce incidental take of medium bluefin. The size distribution for fish sold in 1990 and 1991 showed that there were some size ranges in which substantially fewer fish were landed (between 211 and 250 pounds (96 and 113 kg)). Any cut-off means fish just below the minimum size will be caught and released, with some mortality. This allowance for sale of bluefin tuna between 178 cm and 196 cm is to provide a margin of error for commercial fishermen who pursue giants. The scientific rationale for no-sale, to reduce the fishing mortality rate on immature bluefin and rebuild the spawning stock biomass, has not changed. Information from scientists (see comments below on a paper by Baglin) support the break between immature bluefin and spawners at about 196 cm, with the smallest size for possible first spawning at 190 cm.

The short-term economic impact of reducing the size limit pertaining to the ban of sale is difficult to predict. The general effect is to increase the probability of reaching the quota—thus shortening the season. To the extent that the quota is filled with fish worth less per pound, revenues will decrease. But, to the extent that fishermen can keep a fish that otherwise would be released, the costs of fishing also decrease. On balance, NMFS judges that the change from the proposed rule will be positive, especially because of the allowance for large mediums in the giant fisheries and the potential reduction in the fishing mortality rate on immature bluefin tuna because of the no-sale provision of fish less than 178 cm. Large medium bluefin tuna caught incidentally that otherwise would be "dumped" will now count against the quota. Bluefin less than 178 cm will not be targets of commercial fishermen, thus there will exist a potential for reduction in fishing mortality relative to the average commercial catch of these fish sizes in previous years.

One commenter suggested applying a biological criterion for establishing an acceptable minimum size for sale of bluefin. Specifically, the commenter suggested using the median size (age) at first reproduction as an acceptable minimum size. Applying a minimum size that effectively restricts harvest of fish smaller than the median size of first reproduction has the desirable effect of providing enhanced probability of a fish reaching spawning size, and thus can contribute to conservation of the resource. Although this criterion might be supported from a resource conservation perspective, it is not apparent that the specific minimum size recommended by the commenter is supported by available data.

The comment referenced Baglin (1980) in support of the statement, "Age six is the earliest age at which 50 percent of the female cohort could reach sexual maturity." Although a complete citation was not given, the appropriate reference is more likely Baglin (1982, Reproductive biology of western Atlantic bluefin tuna. Fish. Bull., U.S. 80:121–133), in which Baglin states, "My analysis of western Atlantic bluefin tuna ovaries indicates that age 6 would probably be the earliest age at which a majority of females could *possibly* reach maturity" (emphasis added). Although the cited author acknowledges this possibility, he also states that the available observations suggest that it is unlikely that fish of a size corresponding to age 6 contribute to the spawning success of western Atlantic bluefin.

The size frequency observations from fisheries operating in the region suggest that medium-sized fish are generally not available in the Gulf of Mexico. Given the available data, the apparent minimum size of first reproduction (which may be smaller than the median

size at first reproduction) may be better approximated by the smallest female from the known spawning grounds histologically examined by Baglin. Baglin's table 3 suggests that this minimum might be as small as 190 cm (74.8 inches) snout to fork length (SFL).

6. Angling Category Subquotas, Differential Bag Limits, Captain and Mate Exclusion, Further Protection of Small Fish

A variety of comments were received on these issues. Individual or similar comments are responded to as follows.

Comment: NMFS should increase the angler bag limit to 3 to counteract the new size restriction.

Response: NMFS disagrees. The purpose of the bag limit is to slow the fishery so that many anglers have an opportunity to catch bluefin. Lengthening the season will provide some assistance to the charter and party boats and other support industries involved in the bluefin fishery.

Comment: The bag limit should be 2 school bluefin per person per day or one large school bluefin per day.

Response: NMFS disagrees. The ICCAT-mandated quota for school bluefin is the most restrictive aspect of the regulations. Raising the school fish quota would shorten the season even further. The option suggested of "or one large school" would result in waste if the first fish landed was a school fish.

Comment: NMFS should stop the commercial charter boat fishery by limiting the number of fish per boat.

Response: NMFS disagrees. The regulations attempt to distribute a limited number of fish equitably. NMFS has no desire to exclude any sector of the existing fishery.

Comment: The limit of one school bluefin per person is not realistic; revisit the young school limit.

Response: NMFS disagrees. Given the limited total national quota of school fish (100 mt), one school bluefin per person per day is not unreasonable. As discussed above, NMFS is trying to spread a small quota as much as possible.

Comment: NMFS should reduce medium limits to one per boat per day. NMFS should establish bag limits of two mediums per boat per day. Two mediums for anglers is excessive; the limit should be one per day.

Response: NMFS agrees with a daily limit of one medium. One medium bluefin, when dressed, could easily weigh 120 pounds (54 kg). Six anglers sharing one medium bluefin will have several meals for average sized families and some left over to give to friends. Tag and release fishing is available to provide the fishing experience, would contribute to bluefin scientific studies, and make the angler tagging or recapturing a bluefin eligible for a reward as well as contributing to conservation of the resource.

Comment: Private boats have expenses similar to charter boats and need more than one school fish per day. Private boats have to travel distances off shore similar to charter boats and would be allowed to keep only one fish.

Response: NMFS recognizes that one school fish per day in some areas is restrictive. The final regulations allow two school fish per private boat per day.

Comment: How will captains and mates be treated in the Angling category? Are they counted in the bag limits? Captains, mates, and crew should not be counted as anglers.

Response: NMFS did not intend in its proposed regulations to leave a loophole whereby captains, mates, and crew would be considered anglers. Although most captains and mates would not fish, "extra" fish removed from the charter boat by the captain, mate, and crew and given later to the passenger, would, in effect, allow an angler more fish per day than intended. The final regulations clarify that captains, mates, and crew are not anglers for purposes of determining the total number of bluefin that a charter or party boat can land.

Comment: Fish in the 100–300 lb (45–136 kg) range need the most protection and catches in that range should be cut by 50 percent.

Response: NMFS agrees that this range does need more protection. The ban on sale of small mediums plus the lower bag limits are intended to lower mortality in this range, although the reduction will probably not be 50 percent.

Comment: NMFS should protect the recruits because they are the future spawners. Fishing should be allowed only on large fish.

Response: NMFS realizes that recruits represent future spawners and that large medium and giant fish are spawners. Measures in this rule, however, are intended to reduce fishing mortality on all age classes of bluefin.

Comment: There is a need to clarify and reword the daily limits for charter and party boats.

Response: NMFS agrees. Wording of the proposed regulations was difficult to understand. The text has been clarified and, as an aid to the reader, the following table explaining the bag limits has been prepared.

BAG AND BOAT LIMITS

Size	Party—charter boats	Private boats
Young School	None	None.
School	1/Angler/Day	2/boat/day
Large School	2/angler/day *	2/angler/day *
Small Medium	1/boat/day	1/boat/day
Large Medium and Giant	1/boat/day **	1/boat/day **

* The basic catch limit of two fish per angler per day cannot be exceeded, i.e. two large school bluefin only if no school or no small medium bluefin are caught.

** Vessels must have a permit.

In the Angling category, captains, mates, and crew of charter and party boats are not allowed to fish under the bag limits. There is no sale of school, large school, and small medium bluefin.

Comment: There is no need for differential limits—the proposed rule contains no statistical data to support differential bag limits. This proposal should not become a precedent-setting distribution basis.

Response: NMFS disagrees. Private boats and charter boats both provide anglers with a fishing experience. In addition, charter boats represent employment for the captain and the mate. To protect jobs, NMFS judges that the differential is warranted. Given available information, it is apparent that even with restrictive bag limits to control the landed catch of these fish to allowable levels, closure of the fishery may still be required. Although there is some chance that the fishery will not reflect the bag-limit analysis (based on prior year information) and landed catch might not exceed the allowable levels under the final catch limits, NMFS has no analysis available that indicates the likelihood of these outcomes. The likelihood of closure cannot be ruled out under more restrictive bag limits; however, the expected season length under more restrictive bag-limit scenarios would likely be longer than under the limits chosen.

Comment: Some fishermen would not pay a $200 charter fee for only two tuna.

Response: NMFS realizes that some anglers may choose alternatives to fishing from a charter boat under the new restrictions. The extent of the shift, if any, is unknown. The basic angler bag limit is unchanged in the final regulations. Charter boat owners, we anticipate, should benefit from a longer season.

Comment: NMFS should allow the charter and party boat group to sell up to three giant fish per week.

Response: The change in the final regulations that allows fishing in both the General category and the Angling category will allow charter and party boats to land one giant per day

provided the vessel has a General category permit.

Comment: All party and charter boats should be allowed to sell medium fish if the General category is allowed to sell medium fish.

Response: Anyone with a General permit, including charter and party boat captains, may sell the newly-defined "large medium" fish. No one may sell bluefin smaller than a large medium.

7. Prohibit Retention of Young School Bluefin (Less Than 66 cm, 26 Inches)

Comment: Almost all commenters agreed in principle with the measure precluding the retention of bluefin less than 26 inches (66 cm). Some believed the retention limit should be raised, e.g., to 45 inches (115 cm) or 66 inches (168 cm) to increase conservation benefits.

Response: The 26 inch (66 cm) size limit is based on a size limit imposed by ICCAT for the eastern and western Atlantic bluefin tuna fisheries. NMFS does not believe that the minimum size for retention should be raised further in consideration of the other restrictions imposed by this rule.

8. Preclude Vessels Permitted for Other Categories From Fishing in the Angling Category and Angling Category Vessels From Fishing in Other Categories

Comment: Most commenters opposed the proposed regulation. Those most in opposition were charter boat owners who fish commercially when they do not have passengers. The proposed measure would have forced this group to choose between two alternative occupations. Other comments included:

(1) Mediums should not be sold out of commercial categories (i.e., in the Angling category).

(2) The proposal is unenforceable.

(3) The proposal will result in a high release mortality.

(4) General category vessels will be precluded from landing mediums. This is another form of reallocation to the mid-Atlantic.

(5) NMFS should count mediums against the General category.

(6) Fishermen will need to turn in their permits. The $20 fee should be refunded to everyone.

(7) With the proposed rule changes, some fishermen will not know which category to choose.

(8) What is meant by "no economic gain?"

(9) Will traditionally recreational boats be required to outfit as commercial boats with safety gear if they retain a General category permit under these proposed regulations?

Some supported the proposal, advocating a greater separation between the commercial and the recreational categories.

Response: NMFS is convinced by the arguments of those who opposed the proposed measure and has not included a "one category" provision in the final regulations. The economic consequences to that unknown number of individuals who are involved full time in the fishery—partially as a charter boat captain and partially as a commercial fisherman—could be severe. The proposed measure would have been unfair to those who recently renewed permits but had a low expectation of catching a large medium or giant bluefin and would have had to turn in the permit to fish recreationally for smaller fish. The regulation would not have been unenforceable, but would have been difficult to enforce. Individuals might have been motivated to claim they had never received their permit if they landed smaller fish. However, allowing individuals to fish in both the General and Angling categories will have the effect that the quotas in those two categories will be reached sooner. There will not be a separation between the two categories, but there will be no sales by General category fishermen recorded against the Angling category. "No economic gain" in the ICCAT recommendation has been interpreted by NMFS to mean no sale of school fish. Questions concerning safety gear on vessels should be directed to the U.S. Coast Guard.

9. Implement a Mechanism to Subtract Quota Overages From the Appropriate Category in Following Years if the United States Exceeds its Allocation

Comment: Many commenters supported the concept of subtracting overages from the category responsible for the overage. Some commenters objected to the mechanism and suggested that this occur only in the case of the United States exceeding its national allocation. Many commenters stated also that underharvested amounts should be credited in the following year to the categories that were under quota. One commenter stated that a category that blatantly overfishes its quota should be closed permanently.

Response: NMFS generally agrees with the commenters, excepting the comment regarding permanent category closure, and has implemented a mechanism to credit suballocation overages and underages by category or sub-category during the 2-year period. As explained above, the proposed measure has been modified to provide that adjustments will be made in 1993 for any overage or underage in any category or sub-category, whether or not the national quota is exceeded. NMFS maintains that this is consistent with the intent of ICCAT to provide that the full 2-year amount be available for harvest.

10. Eliminate the Adjustment to Multiple Catches Per Day in the General Category

Comment: Most commenters favored restoring the Office Director's flexibility to raise the daily catch limit in the General category to as many as three fish. Some comments were:

(1) NMFS should retain the option—it is needed to get close to the quota.

(2) There is no reason to use it if fishermen are nearing the quota but NMFS should retain the option.

(3) The proposal impacts the ability to achieve the quota.

(4) NMFS should start the General category season at two fish per day.

(5) The multiple catch adjustment has never done any harm.

Those favoring the proposed regulations argued that NMFS should eliminate the flexibility because the scientific monitoring allocation under a moratorium does not require that the last fish in the allocation be landed. It serves no scientific monitoring purpose and should be eliminated.

Response: NMFS concludes that the Office Director's flexibility should remain. Although NMFS agrees that scientific indexing does not require that the "last fish in the allocation" be caught, NMFS wants to provide fishermen a reasonable opportunity to achieve the quota. Flexibility in the daily limit will contribute to that. Starting at two fish per day, as suggested, however, might work to the fishermen's disadvantage if the season has to be closed early in the fishing year. Starting at one giant bluefin tuna per day should provide the greatest opportunity for a longer season. At the start of the season, fish are small and worth less per pound. Raising the daily limit at the end of the season, if warranted, may increase fishermen's gross revenues.

The following comments also were received and although they do not specifically apply to the ten measures of the proposed rule, are generally relevant. They also are titled for clarification.

11. Inseason Adjustment or Reserve

Comment: Some commenters stated that the criteria for distributing the reserve should be based on the scientific usefulness of data collected from a category and the estimated amounts by which other categories may exceed their

quotas. Others stated that the reserve should be shared among all categories. Several noted that the General category has never received any reserve; in the past it was used for the Angling category. Some pointed out that the reserve should be used in the Incidental longline category also.

Response: NMFS agrees that the first priority for the use of the reserve is for scientific purposes and for this reason has allocated 54 mt to the General category, where it should provide the best use for monitoring the spawning stock biomass. NMFS will retain the flexibility to use the rest of the reserve as conditions in the fisheries warrant.

In reference to where the reserve has been used in the past, NMFS has used it to extend the seasons for the General and Harpoon Boat categories.

12. Enforcement and Observers

Comment: While enforcement and observer coverage are not precisely within the scope of this rulemaking, they are issues that many commenters believe are important factors in understanding the problems that are associated with the fishery. There was agreement by many commenters that overall enforcement of bluefin tuna regulations was not effective, and that NMFS and other entities responsible for enforcement should increase their strength and presence in the field. A vast number of commenters believe that, in particular, the recreational fishing segment needs far more coverage than is being attempted. Many commenters believe that proper enforcement for the Angling category was, in fact, nearly impossible due to its diffuse nature. Some commenters stated that there should be more observer coverage in the fishery, especially in certain categories, particularly the purse seiners. Some specific comments received on enforcement and observer coverage follow:

(1) NMFS should put observers on all vessels, especially the purse seiners.

(2) NMFS should monitor for black market sales to restaurants.

(3) NMFS cannot police the small fish catch and should do a better job.

(4) Historically, there has been differential enforcement in the categories.

(5) The Angling category is not controlled compared to the other directed categories.

(6) Enforcement is a problem.

Response: NMFS now has a new division for highly migratory species (HMS) management and a Special Agent in Charge for HMS is being created. With this new focus on HMS, NMFS anticipates better monitoring and enforcement in all categories. Any problems observed in these areas by fishermen should be reported to NMFS immediately.

Other comments received on enforcement and observer coverage were:

(1) NMFS should license every boat and fisherman and charge fees of $25–50/boat or $10/person.

(2) Fines should equal $25,000.

(3) There is a need to resolve the liability issue with observers.

(4) One commenter states that he had nothing against observers on his purse seiner but felt it would be a waste of taxpayer dollars.

(5) NMFS agents should be required to dress so that people can readily identify them.

Response: None of these comments is within the scope of this rulemaking.

13. Comments on Data Collection and Monitoring

Comment: Many comments were received regarding the adequacy of data collection used to monitor and enforce the fishery. Several commenters believed an accounting of the small bluefin catch cannot be accomplished. Some questioned the validity of the scientific assessments or the biological reference points used by managers.

An associated concern is the lack of a permit requirement in the Angling category—both commercial and recreational fishermen agree there is no need for permits in all categories. Some suggested improvements were to: require weekly reports; work closer with the recreational fishermen to collect data; tag all bluefin, including those caught recreationally; allow logbook reports to be faxed; require a 50-percent income eligibility for General category permits; charge $100 for permits and use the fees collected for management; use aerial surveys; and have a call-in number (fax) for landings.

Other specific comments were:

(1) Estimates of the small fish catch are low.

(2) Estimates of the small fish catch are high.

(3) NMFS has been unwilling to use aerial surveys or anecdotal evidence provided by fishermen and pilots.

Response: The data and assessments that NMFS uses to derive decisions for bluefin tuna and other large pelagic species governed under the ATCA are considered the best available. Every effort is made to assure their accuracy through the process of review by the national and international scientific community via the ICCAT assessment process (SCRS). Although NMFS scientists take lead roles in both data base development and assessment analyses, these tasks are conducted in an international forum and are subjected to the rigors of international scientific debate before they are accepted as the best available information. That is not to say that there is no uncertainty in the basic data and assumptions used in the assessments. Indeed, by using risk assessment methods, which incorporate the identified uncertainties and possible biases into assessment analyses, NMFS and ICCAT have strived to assure that assessment results and management advice consider these uncertainties so that decisionmakers can weigh the risks of their decisions.

NMFS agrees with the concepts of having permits for all vessels fishing for bluefin and tagging all bluefin landed. These suggestions will be addressed in a future rulemaking.

To the degree that fishermen's observations can be quantified, they are incorporated into the assessment analyses. In fact, scientific surveys of the angling fleet provide a basis for both indexing abundance of bluefin tuna and for estimating the harvest levels for some age classes in the stock. These surveys have indicated that catch rates of medium bluefin increased over the period 1987–1990, a feature consistent with observations reported by various fishermen. Although catch rates from these surveys increased over the time span indicated, the hypothesis that the increase was due to increased abundance was not supported by the analysis; it is not clear whether the observed increase was due mainly to increased availability, increased abundance, or some combination of these factors. Although these data were not considered appropriate for a base-case assessment, these observations, and several other sets of observations from other fisheries, were incorporated into analyses at the most recent bluefin assessment. They were used to examine the sensitivity of the assessment results and support the conclusion that the trends in estimated bluefin abundance were relatively insensitive to these observations.

Some fishermen believe that the assessments are inaccurate, since they have been seeing in recent years more bluefin, especially "mediums" and "small giants," an observation they believe is at odds with the most recent assessments. The assessments conducted over the last several years have, in fact indicated increases in the abundance of age groups of bluefin that are categorized as mediums (ages 6–7) and small giants (ages 8–9) relative to

the lowest abundance levels estimated for these age groups in 1982, the first year of ICCAT's restrictive harvest recommendations. However, taking into account current levels of harvest from these age groups and the relatively poor recruitment to the stock since 1987, it appears unlikely that the increased abundance levels for these ages will be sustained.

NMFS has promoted the application of fishery-independent methods for indexing abundance of bluefin and other fishery resources. Aerial and shipboard sampling surveys have been applied for estimating the abundance of numerous marine species, and NMFS has been a leader in the scientific development and application of these techniques for resource assessments. A NMFS-conducted fishery-independent shipboard survey of bluefin spawning success in the Gulf of Mexico was utilized by ICCAT for assessments of stock status. Fishery-independent aerial surveys for western Atlantic bluefin have not yet been implemented, due to the limited available resources for conducting such a survey for wide-ranging species like bluefin. However, NMFS has been working with commercial fishing industry representatives, including spotter pilots, to collect data that would allow evaluation of fishery-dependent spotter pilot data for developing a consistent time series for indexing bluefin abundance.

14. Procedural/General Comments

Comment: There was a widely accepted belief that the process for this rulemaking was being expedited, and that the associated comment period was too short. Associated with this opinion were the ideas of many commenters that the proposed rule constituted a major rulemaking, and should therefore require a full public process under the Magnuson Act, as amended. Also, many commenters believed that not enough notice or lead time was given to the interested parties so that they could get properly prepared and organized. One commenter felt that the EA was inadequate and that there should have been a longer comment period on the proposed regulations. Another believed an Environmental Impact Statement (EIS) should have been prepared and requested a longer comment period.

Response: NMFS disagrees with these comments. During December, 1991, and January, 1992, NMFS held four scoping meetings to inform the public and initiate discussion of options to implement the November 1991 ICCAT recommendations. A proposed rule was prepared based on comments received. Subsequently, eight formal hearings and one informal hearing were held on this draft rule during April and May, 1992. On April 28, 1992, NMFS published a proposed rule at 57 FR 17872 to amend the regulations governing the Atlantic bluefin tuna fishery. Public comment on the proposed rule was invited through May 26, 1992; comments received at a Congressional hearing on May 27, 1992, also were considered. All sectors of the fishery were represented at these meetings. Hundreds of oral and written comments with very thoughtful and constructive suggestions were received during the comment period, demonstrating that fishery interests did have adequate time to respond to the proposed rule.

NMFS believes that the EA and the finding of no significant impact are appropriate for this action. NMFS intends to prepare an EIS (which will assess the impacts of the bluefin tuna fishery on the environment) during development of a fishery management plan for tuna, under the Magnuson Fishery Conservation and Management Act.

Comment: A widespread belief exists that NMFS should have a process document in place for management of HMS before it attempts a rulemaking of this magnitude. Complaints were made that unlike the Fishery Management Council process, it was not known who the policymakers are.

Response: NMFS disagrees with this comment. This action is required to implement the recently adopted recommendations of ICCAT and to improve management of the bluefin tuna resource. NMFS has complied with the procedural requirements of the ATCA and the Administrative Procedure Act (APA), 5 U.S.C. section 553, and has augmented those procedures by holding scoping meetings. The process document referenced in the comments has been published in proposed form at 57 FR 22718, May 29, 1992. It establishes proposed procedures mainly for the development of fishery management plans and amendments under the Magnuson Act but consistent with the ATCA, not the solely ATCA rulemaking that is at issue here.

Comment: There was disapproval of the way in which the public meetings were scheduled and run. Many people voiced dissatisfaction with the size of the room at the Portsmouth, New Hampshire, meeting. Several commenters felt that representation of NMFS at the meetings was inadequate, and that NMFS should have had more, different, and/or higher-ranking officials present. Some individuals felt that simply taking notes and having tape recordings of the proceedings were evidence that NMFS was not interested in what they had to say, and that there should have been a stenographer present. Numerous comments were also made as to the time of day at which the hearings were held, with many people saying that people were being denied the right to speak because of the late hour. Others complained that fishermen from outside the hearing area dominated time that should have been given to local residents and local issues.

Response: Scheduling of the meetings was done in close consultation with representatives of the various fishing interests involved. Every effort was made to ensure that adequate room and time existed to guarantee that everyone who wanted to speak had a chance. Because of the interest in the matter being discussed, the meetings often lasted several hours in length. However, while it was necessary to limit some people in the amount of time they were allotted to speak, and other people chose not to stay until they were given a chance to speak, no one who wanted to speak was denied the opportunity.

At the first public meeting in Portsmouth, New Hampshire, the same room was chosen for the meeting that is used for New England Fishery Management Council groundfish hearings. The size of this room was deemed adequate when the public hearings were scheduled. However, as NMFS became aware of the fact that more room was going to be needed, efforts were made (also in conjunction with representatives of fishery interest groups) to find a larger place. None could be located in the short time left before the meeting. Fortunately, at all the rest of the meetings, NMFS was able to provide for larger rooms.

The ATCA does not specify what level of agency representation must be present at the public meetings. The person who was in charge of the public meeting process, Mr. Richard Stone, and who attended every meeting, is the person primarily responsible for coordinating management activities for HMS within NMFS. Accompanying Mr. Stone to most meetings were one or, in some cases, both of the people who work with Mr. Stone in the Highly Migratory Species Management Division of the NMFS Office of Fisheries Conservation and Management.

The use of note taking and tape recordings was well within the requirements of ATCA and the APA. The meetings were scheduled for evening hours to assure that people who wanted to come, but who had to work

during the day, would have the opportunity.

The problem with commenters from outside the hearing area first occurred at the Long Island, N.Y. hearing. Following that hearing, every effort was made to accommodate local residents and those that had to leave early. These comments also will be addressed in the final HMS process document.

Comment: This rulemaking conflicts with President Bush's announcement of a moratorium on regulations that affect businesses. The President will choose jobs when faced with a choice between jobs and the environment.

Response: President Bush's announcement of a moratorium on new regulations that are restrictive on businesses cannot, and does not, apply to regulations that are required by law to be implemented during the period of the moratorium. The ACTA provides a de facto deadline. Under the ATCA, the United States is obligated to implement recommendations adopted by ICCAT. Failure to implement enacting regulations would be inconsistent with U.S. law.

Comment: NMFS should have had a public meeting in Maine; Portland was suggested as a possible site.

Response: After receiving requests from fishermen at our hearing in Portsmouth, New Hampshire, for a hearing to be held in Maine, NMFS immediately scheduled and held a hearing, on the advice of several commenters, in Portland, Maine, on May 21, 1992. NMFS agreed that a hearing there would be important to ensure that all views were presented.

Comment: There is a need to know the final rules as soon as possible.

Response: NMFS agrees with this comment, and has worked to publish this rule as quickly as possible while thoroughly considering all comments and making the final rule as equitable as possible for fishermen while protecting the resource.

Comment: The proposed rule was changed from that presented at the scoping meetings; only having "three" scoping meetings was inadequate.

Response: Scoping meetings are for the purpose of receiving public comments and suggestions on possible solutions to a problem that is to be addressed in a proposed rulemaking. It is not the intent, nor is it usually possible, to describe the exact language of a proposed rule at scoping meetings. The public has the opportunity to respond to the exact language of the proposed rule during the public comment period.

NMFS believes four scoping meetings were adequate. They were held in locations calculated to enable fishermen from all categories to participate and provide input.

Comment: There was not enough notice given that the proposed rule had been changed from what was anticipated at the scoping meetings, and what the schedule of the public meetings would be.

Response: NMFS is required to publish the proposed regulations in the **Federal Register** in advance of the public meeting and the final rule. However, in order to ensure that as many people were informed of this proposed rule as possible, NMFS also sent out a press release and conducted a mailing to permitted Atlantic bluefin tuna fishermen on or about April 25, 1992. Because the Angling category is a non-permitted fishing category, and marine recreational fishermen are generally unlicensed along the Atlantic coast, there was no way to include in the mailing people who fish only in that category, but Angling category representatives were notified.

Comment: NMFS does not devote enough time, resources, and personnel to the HMS issue.

Response: As was mentioned earlier, NMFS now has a new division for HMS management and a Special-Agent-in-Charge for HMS is being created. With this new focus on HMS, NMFS anticipates better monitoring, response to fishery interests, and enforcement in all catgories.

Comment: NMFS should not hold public meetings for bluefin during the new and full moons.

Response: NMFS will make every effort to accommodate every fishery interest. However, sometimes, as in this case when fishermen from different fisheries with opposite needs are involved, that is not possible.

Comment: NMFS plotted to lose the *Montauk Boatman's and Captains Ass'n* v. *NMFS* lawsuit.

Response: This comment is beyond the scope of this rulemaking; however, NMFS notes that the Government won the lawsuit.

Some specific comments received on procedural and general issues follow:

(1) NMFS should pay attention to information from bona fide fishermen;

(2) The proposed rule is inconsistent with the ICCAT recommendations because the quota is specifically a scientific monitoring quota and the purse seine allocation does not provide any useful scientific information;

(3) The Gulf of Mexico should be closed and catches should be sampled across the spectrum of all age classes;

(4) Because fishermen don't know how to stand up for themselves legally, NMFS thinks it can push them around;

(5) NMFS should come up with a different plan;

(6) NMFS needs to get more people in the field to see what is going on;

(7) NMFS uses the General category as a buffer for the Angling category;

(8) NMFS has allowed excessive catches of small bluefin and should assess the number of spawners lost because of fishing over quota in the Angling category;

(9) NMFS should support fishermen and request an increase in quotas;

(10) In the future, NMFS should take reallocation proposals out to the public;

(11) Proposal 11 in the proposed rule was not clear;

(12) NMFS should explain what it considers a traditional fishery; and

(13) Fishermen are being hit with regulations that are too complicated.

Response: NMFS does listen to fishermen. Now that there is an HMS Management Division, personnel from this Division will try to get out and experience, first hand, the fisheries for every category.

NMFS agrees that the quota is a scientific monitoring quota, but does not believe that a Purse seine category is inconsistent with the ICCAT recommendations.

Comments on closing the Gulf of Mexico are beyond the scope of this rule. In the Angling category and the General category, catches are sampled across a wide spectrum of age-classes.

NMFS does not try to "push fishermen around." NMFS respects the views of fishermen and believes they do know how to get them considered.

NMFS does not use the General category as a buffer for the Angling category. The "buffer" for overages in any category has been the Inseason Adjustment amount (reserve).

ICCAT placed a restriction on the take of small bluefin to ensure that adequate numbers of immature bluefin reached spawning age. NMFS has assessed, and continues to assess, the performance of the fishery. This ICCAT restriction on small fish (less than 120 cm) of 15 percent of the western Atlantic quota of 2660 mt has never been exceeded. A specific NMFS assessment on the effect of staying within the Angling category quota showed minimal benefits to the spawning stock compared to staying with 1,160 mt as adopted by ICCAT for the 1982 fishing year.

NMFS tries to support fishermen by managing fishery resources for optimum yield or maximum sustainable yield,

which is an ICCAT objective. As stated previously, to raise the U.S. quota for bluefin tuna would violate the ICCAT recommendation and U.S. law, and could mean long-term losses for fishermen.

The reference to proposal 11 being unclear addressed item 11 of the measures in the proposed rule. This category of "other measures" was clearly defined on page 17876 of the proposed rule.

A traditional fishery is one that has been operating for a significant portion of the history of the entire fishery. The actual time can vary, depending on the length of time the entire fishery has been prosecuted.

NMFS attempts to make regulations as simple as possible.

Other procedural and/or general comments received:

(1) NMFS should make sure other countries are complying;

(2) NMFS should urge ICCAT to adopt trade resolutions;

(3) One speaker did not believe other countries are abiding by the rules;

(4) The United States should abandon ICCAT;

(5) The United States should encourage other countries to join ICCAT;

(6) The Administration should move NMFS out of the Department of Commerce;

(7) NMFS should impose an export tax on bluefin and use the money to improve enforcement;

Response: None of these comments is within the scope of this particular rulemaking.

15. Incidental Fishery

Comment: Aside from the quota, there were no changes proposed in the incidental catch regulations. Nevertheless, NMFS received many oral and written comments on the existing incidental catch provisions. Specific comments were:

(1) NMFS should avoid hurting the northern Incidental category, the northern and southern areas should be treated consistently;

(2) Southern area overages should not come out of the northern quota;

(3) Gear with a bycatch of bluefin should be prohibited in the spawning area during the spawning season;

(4) Circle hooks allow bluefin to be retrieved alive (longline), while "j" hooks more often kill the bluefin;

(5) NMFS should consider trip time limits, e.g., five to seven days;

(6) NMFS should allow two fish/trip;

(7) The northern incidental limit should state "or one fish;" and

(8) Close the Gulf of Mexico to all categories during spawning.

Response: Many of these comments have merit and deserve further consideration. However, because incidental catch provisions were not under consideration in the proposed regulation, and because changes in incidental catch regulations would be complex and require further analysis, NMFS concludes that it is appropriate to address changes in the incidental catch regulations, and other issues, in a future rulemaking.

16. Heads on Requirement

Comment: Although the proposed rule did not propose to change the current requirement that all tuna landed, except giant bluefin tuna, be landed with heads on and gills and tail intact, NMFS specifically invited comments on this issue. Almost everyone who commented on the current requirement opposed the regulation as unnecessary. However, Blue Water Fishermen's Association prepared a comprehensive statement on the issue. Blue Water stated: "It is unnecessary to have heads and gills intact in order to identify accurately the various tuna species; it disrupts the traditional and customary practice of removing heads, gills, and tails to facilitate marketing; it seriously compromises the quality of U.S. landed tuna by requiring that the gills and head remain attached; it could have serious effects on export markets for tunas; it places unnecessary burdens on commercial vessels with limited space in the hold; the requirement makes at-sea cleaning more hazardous; and the requirement creates problems for docks, fish dealers, and vessels who are required to remove and dispose of heads in port."

Response: NMFS agrees with these comments. The final regulations remove the "heads-on" requirement. After further investigation, NMFS believes that headed tuna can be identified from existing keys and available information. NMFS is working to develop user-friendly keys as additional help to identify tunas with the heads removed.

17. Tag and Release

Comment: NMFS received a number of comments that supported or suggested ways to improve a tag and release program. One comment suggested that tag and release stresses fish and that individuals would have to be knowledgeable on tag and release techniques to release fish alive. Other comments suggested tag and release only for small bluefin. Additional specific comments included:

(1) If NMFS believes the sale value of small fish is not important, it should establish a catch and release industry;

(2) NMFS should push tag and release;

(3) Even harpooners should get involved in tagging;

(4) Tag and release stresses fish;

(4) NMFS needs an awards program for tagging fish; and

(5) NMFS should reward the tagger, as well as the person who recaptures the tagged fish.

Response: NMFS agrees with the importance of a tag and release program and is working on ways to accommodate most of the comments on this issue. Additional money has been allocated for tags to ensure a supply for those that wish to participate. A toll-free number (800–437–3936) is available for information on tags and tagging. Personnel at the NMFS Southeast Fisheries Science Center are working on additional incentives for tagging and recapturing bluefin and other pelagic species. Information will be available and presented to fishermen on proper techniques of tagging to reduce stress or mortality of fish. NMFS does not agree that the small fish catch should be catch and release only. This has been an historical fishery, provides scientific data, and is allowed by ICCAT.

18. General Category Set-Aside

Comments: There were several comments on how to adjust and use the General category set-aside. They are as follows:

(1) Designate the set-aside for the New York Bight as in the past.

(2) NMFS should reduce the set-aside by ⅓ to 34 tons (United Boatmen).

(3) There is no justification for the "mudhole" set-aside.

(4) Change the line to the 43800 Loran C reading.

Response: NMFS has reduced this set-aside by 10 percent and left the flexibility to use it as in the past for the late New York Bight giant fishery if needed. NMFS will evaluate the impact of using the 43800 Loran C line for the cut-off.

19. Comments on the Economic Impact Analysis

Comment: Many miscellaneous comments concerned the economic impact of the proposed regulations and the analysis in the Regulatory Impact Review. This section responds individually to those comments.

Comment: The RIR was a good addition to the economic information on the fishery.

Response: Comment noted.

Comment: NMFS should determine the costs of the harvesting sector over the period of the reductions in order to calculate the number of small entities that might remain viable to experience any future benefits.

Response: NMFS does not disagree, but unfortunately, as explained in the RIR, there is not sufficient information to do such an analysis.

Comment: Two fish/person/day for school bluefin assumes the availability of fish in excess of 66 pounds (30 kg). This is not true in Virginia.

Response: NMFS agrees that large school fish are not caught generally off Virginia. However, increasing the bag limit so that more school fish could be retained per angler would result in an even shorter season than will be available under the final regulations. A longer season should be less disruptive to charter boat operators, their customers, and their supporting industries. For some anglers who otherwise would have caught more than one school fish, the experience may be less satisfying.

Comment: The private boat limit of one school fish/day will completely end this fishery.

Response: NMFS realizes that a limit of one school fish per day per boat is significant. As discussed above, this provision has been changed in the final rule.

Comment: There will be a major recession in the fishing communities if this regulation passes. The allocation scheme would result in a devastating loss in the Northeast.

Response: NMFS disagrees. There may be an adverse effect on some communities, but NMFS does not conclude that a "major recession" or a "devastating loss" would occur. The final regulations have been designed to lessen adverse effects, but a 10-percent decrease in the overall quota cannot be implemented without some adverse effects.

Comment: This proposal is not a minor rule and would have a significant effect on small businesses. The overall impact would be greater than $100 million.

Response: NMFS disagrees. The FRIR demonstrates that the effect of the final regulations is well below the threshold of a "major" regulation.

Comment: The combination of no sale of mediums and the cut in quota will devastate Cape Cod.

Response: The effect of the final regulations might be felt more in the Cape Cod area then in some other areas. The ban on sale of tuna less than 310 pounds (141 kg) has been modified so that fish in the newly defined "large medium" class may be sold.

Comment: The Angling category is a $300 million industry.

Response: NMFS has no knowledge of studies that provide or support this estimate and suspects it may be a reference to the charter boat industry for all species.

Comment: A Massachusetts fisherman cited 25,000 recreational fishermen in the State and 212 members in his club, of which 75 percent buy vessels for tuna fishing, but most do not catch a fish. There will be a large economic impact from the proposed regulations.

Response: The bluefin tuna fishery is important in Massachusetts and elsewhere. NMFS does not have a complete estimate of the number of fishermen in Massachusetts who fish for bluefin tuna. NMFS realizes that many fishermen attempt to catch tuna, but not all are successful.

Comment: The charter boat industry in Montauk will be down 50 percent due to the bag limit.

Response: NMFS does not know the relationship between bag limits and the desires of anglers to purchase charter boat services. Given that very few anglers have caught the higher bag limits, NMFS doubts that the decrease in business will be 50 percent.

Comment: The export value for bluefin is very small; the generated recreational value is greater. Bluefin are worth more as a recreational species than as a commercial species.

Response: NMFS has insufficient data at this time to determine what sector of the fishery has a greater value. As discussed in the FRIR there is no clear distinction between the "commercial" and "recreational" components of the fishery. Many of the bluefin exported were undoubtedly caught by fishermen who were fishing more for the experience than the income, but also welcomed the income.

Comment: Boats from Virginia cannot go all the way to the Gulf Stream to fish for yellowfin tuna—bluefin are closer to shore.

Response: NMFS realizes that bluefin are often closer to shore than yellowfin tuna and, therefore, are the more desirable fish for some anglers. The increase in the boat limit from one bluefin per private boat to two should provide more satisfaction to anglers pursuing bluefin, but may shorten the season.

Comment: The economic effects of the one fish/day for private boats has greater economic impact than it would on charter boats. There are only about 40 charter boats and 1,000–1,500 private boats.

Response: The differential for charter and party boats supports the employment (captains and mates) in that sector. As mentioned earlier, NMFS has modified the final rule to allow two school bluefin per private boat. Also NMFS is enhancing its tag and release program which, hopefully, will motivate more fishermen to participate in this program. NMFS believes these two changes should encourage fishermen to continue to fish for bluefin and reduce economic impacts that might be otherwise caused by fishermen choosing other activities rather than fishing.

Comment: The American Fisheries Society stated that the long-term gains from rebuilding the stock to more productive levels far outweigh short term losses.

Response: NMFS recognizes that the long-term potential yields from western Atlantic bluefin could be substantially higher than those currently available, provided the stock is allowed to recover to the level that will sustain such yields. Although there are limited data to quantify that the gains "far outweigh" the losses, NMFS scientists have estimated that the MSY for western Atlantic bluefin tuna could be in excess of 10,000 mt versus a quota of 2660 mt or less. NMFS took the position in favor of a 50 percent reduction in catch at the 1991 ICCAT meeting, which would have expedited the rebuilding process, but this was not adopted by ICCAT. Regardless, the ATCA limits the options that NMFS has to implement the ICCAT quota. The final regulations try for a reasonable balance between the competing short and long-term objectives.

Comment: NMFS is showing a lack of sensitivity to economic and social needs and has no plan to deal with these dislocations.

Response: NMFS has considered the potential adverse affects of the final regulations and has tried to mitigate, to the extent possible, adverse impacts on fishermen while also providing for stock rebuilding.

Comment: No-sale of mediums will benefit other countries that sell to Japan.

Response: As explained earlier, NMFS has adjusted the no-sale provision.

Comment: The rule will eliminate many fishermen from the industry.

Response: NMFS has tried to minimize the adverse economic impact of these regulations, but realizes that there will be some who may elect to leave the industry.

Comment: Giants are economically important to pay the bills.

Response: NMFS agrees.

Comment: Some data in the RIR are flawed. The commenter cited employment associated with packing, provision of dry ice, and airline business impacts equating to 52,800 man-hours.

Response: NMFS realizes that the data relating to transportation and shipping costs are limited and could well be low. However, the estimates provided by the commenter seem high. Regardless of which estimate is closer to reality, this estimate was only one of many pieces of information used in reaching our conclusion.

20. Miscellaneous Comments

(1) NMFS should correct the 2 percent limit in the northern longline fishery.

(2) NMFS should restrict the harvest based on tonnage and number of fish.

(3) NMFS should separate the categories for giants and mediums.

(4) There should be a rule that fishermen must predesignate and use only one port each year.

(5) NMFS should make boats fish in one area to prevent them from following the fish.

(6) The United States should replace the ICCAT commissioners.

(7) Most charter boat catches get filleted and put into coolers.

(8) What is NMFS 's position on pair-trawling?

(9) Many "bluefin" landed are actually longtail tuna.

Response: Several of these comments are beyond the scope of this rulemaking. Tuna are required to be landed in the round with fins intact. They can be headed and gutted but cannot legally be cut into fillets aboard a vessel.

Pair trawls (see section 285.31(a)(7)) are not an allowable gear for harvesting bluefin tuna.

According to Collette and Nauen (1983. Scombrids of the World. FAO Fisheries Synopsis No. 125, Vol. 2, Rome, 137pp), the longtail tuna, *Thunnus tonggol*, is a small tuna species with a maximum fork length of somewhat less than 140 cm. Although juveniles of this species and northern bluefin (*Thunnus thynnus*) are similar in appearance, it is unlikely that northern bluefin tuna from the west Atlantic would be confused with this species since *Thunnus Tonggol* is not scientifically documented to occur in the western Atlantic ocean and is mainly known from the Indo-West Pacific, Indian Ocean, and Red Sea regions.

Comment: One commenter suggested that the start of the season be delayed until August and one requested that the season not be delayed.

Response: NMFS does not believe that the start of the season should be delayed. Although there is some evidence that the value of the commercial harvest could be increased due to the higher prices per pound paid for bluefin near the end of the season, NMFS recognizes that many people pursue large medium and giant bluefin as a summer pastime, beginning in June.

Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq*. The Assistant Administrator has determined that this final rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic bluefin tuna fishery.

An EA, prepared by NMFS, concluded that there will be no significant impact on the human environment as a result of this action. A copy of the EA is available (see ADDRESSES).

The Assistant Administrator has determined, based on the FRIR prepared for this rule, that this is not a "major" rule requiring a Regulatory Impact Analysis under E.O. 12291. The action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, Government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared. According to the FRIR, the reduction in overall bluefin catch necessary to comply with the ICCAT recommendations is expected to result in aggregate annual net revenue losses for the fleet amounting to an estimated $1.3 million (see FRIR, section VII). You may obtain a copy of the FRIR from NMFS (see ADDRESSES).

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the Atlantic, Gulf of Mexico, and Caribbean States that have approved coastal zone management programs. These determinations were submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. South Carolina, Rhode Island, Delaware, and Louisiana agreed with the determination. The other State agencies did not comment within the statutory time period; therefore, consistency is presumed.

This rule does not contain any new collection-of-information requirements subject to the Paperwork Reduction Act. It repeats requirements that were approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0202 and 0648–0239. They are repeated because changes in the definitions for size classes and the change in size for sale required changing or deleting several words in existing text. The public reporting burden for these collections of information is estimated to average 15 minutes per response for a vessel permit application and 2 minutes per response for dealer reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and the Office of the Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator also finds for good cause that it is impracticable and contrary to the public interest to delay for 30 days the effective date of these regulations, under section 553(d) of the Administrative Procedure Act. This rule must be implemented as soon as possible under the ATCA to meet the legally binding recommendations from the 1991 ICCAT meeting (explained above). Also, the 1992 fishing season has started and if restrictions on catch contained in this rule are not in place immediately, quotas could be reached or exceeded early in the fishing season, causing early closures and severe economic impacts on certain geographical areas with traditionally late season fisheries.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 16, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, new definitions for *charter boat, Director, party boat,* and *private boat* are added in alphabetical order to read as follows:

§ 285.2 Definitions.

* * * * *

Charter boat means a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passengers fish for a fee.

* * * * *

Director means the Director of the Office of Fisheries Conservation and Management, 1335 East-West Highway, Silver Spring, MD 20910.

* * * * *

Party boat means a vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee.

* * * * *

Private boat means any vessel fishing in the Angling category other than charter or party boats.

* * * * *

3. In § 285.3, paragraph (f) is revised, and a new paragraph (h) is added, to read as follows:

§ 285.3 Prohibitions

* * * * *

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round (fins intact), or other than with the head removed and eviscerated.

* * * * *

(h) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS relating to the scientific monitoring or management of tuna.

4. In § 285.20, paragraph (a)(1)(i) is removed, paragraphs (a)(1)(ii) through (a)(1)(iv) are redesignated paragraphs (a)(1)(i) through (a)(1)(iii), respectively; and newly redesignated paragraphs (a)(1)(i) and (a)(1)(ii) and paragraphs (b)(1) and (b)(3) are revised to read as follows:

§ 285.20 Fishing seasons.

(a) * * *

(1) * * *

(i) For anglers fishing for school, large school, and small medium Atlantic bluefin tuna under the quota specified in § 285.22(d);

(ii) For vessels permitted in the Incidental Catch category fishing under the quota specified in 285.22(e); and

* * * * *

(b) * * *

(1) The Assistant Administrator will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22, and will publish a notice in the **Federal Register** stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

* * * * *

(3) A vessel permitted in the Purse Seine category may fish under the quota specified in § 285.22(c) only until the allocation assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation of Atlantic bluefin tuna, a vessel will be deemed to have been given notice that the fishery for such tuna is closed to that vessel.

* * * * *

5. Section 285.21 is amended by revising paragraphs (a) and (b) to read as follows:

§ 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel that fishes for or takes Atlantic bluefin tuna, except vessels fishing in the Angling category under § 285.24(d), must have an appropriate permit issued under this section.

(b) *Categories of permits.* The Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. Anglers also may fish for school, large school, and small medium Atlantic bluefin tuna from a vessel that has a permit for the General category, or for the Incidental Catch category (rod and reel) as specified in § 285.23(d). Anglers will remain subject to provisions of this subpart applicable to angling. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel that was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

* * * * *

6. Section 285.22 is revised to read as follows:

§ 285.22 Quotas.

The total annual amount of Atlantic bluefin tuna that may be caught and retained by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(a) *General.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in the General category under § 285.21(b) is 531 mt. If the Assistant Administrator determines (based on dealer reports, availability of large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information), that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 40 mt or the maximum reported landings in the identified area in any of the preceding 3 years. The Assistant Administrator will publish a notice of any allocation and its basis in the **Federal Register**. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon Boat.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in Harpoon Boat category under § 285.21(b) is 53 mt.

(c) *Purse Seine.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 301 mt.

(d) *Angling.* The total amount of school, large school, and small medium Atlantic bluefin tuna that may be caught and retained in the regulatory area by anglers is 219 mt. No more than 100 mt of this quota may be school Atlantic

bluefin tuna. This quota is further subdivided as follows:

(1) 47 mt of school Atlantic bluefin tuna may be landed in Delaware and states south;

(2) 53 mt of school Atlantic bluefin tuna may be landed in New Jersey and states north.

(e) *Incidental.* The total amount of Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 226 mt for the 2-year period 1992–1993. This quota is further subdivided as follows:

(1) In 1992, 132 mt for longline vessels. No more than 104 mt may be taken in the area south of 36°00′ N. latitude.

(2) In years after 1992, 85 mt for longline vessels. No more than 67 mt may be taken in the area south of 36°00′ N. latitude.

(3) For vessels fishing for species of fish other than tuna, 5 mt in 1992 and 4 mt in years after 1992.

(f) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments is 31 mt. The Assistant Administrator may allocate any portion (from zero to 100 percent) of this amount to any category or categories of the fishery, including research activities authorized under § 285.1(c). The Assistant Administrator will publish a notice of allocation of any inseason adjustment amount in the **Federal Register** before such allocation is to become effective. Before making any such allocation, the Assistant Administrator will consider the following factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(g) The catching or retention of school, large school or small medium Atlantic bluefin tuna is prohibited except as allowed by paragraph (d) of this section.

(h) In 1993, if the Assistant Administrator determines, based on landing statistics and other available information, that a 1992 quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator will subtract the overage from or add the underage to that quota for 1993; provided that the total of the 1992 harvest plus the 1993 adjusted quotas and the reserve does not exceed 2,497 mt. The Assistant Administrator will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the **Federal Register**.

7. Section 285.23 is revised to read as follows:

§ 285.23 Incidental catch.

(a) *Herring, mackerel, and menhaden purse seine vessels and vessels using fixed gear other than longlines or traps (pounds, weirs, and gill-nets).* Subject to the quotas in § 285.22, any person operating a vessel fishing with these types of gear principally for species of fish other than tuna and possessing an Incidental Catch permit issued under § 285.21 may retain, during any fishing trip, large medium and giant Atlantic bluefin tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish aboard the vessel at the end of each fishing trip.

(b) *Traps.* Subject to the quotas in § 285.22, any person operating a vessel possessing an Incidental Catch permit issued under § 285.21 that catches Atlantic bluefin tuna incidentally while fishing with traps, may retain large medium and giant Atlantic bluefin tuna, provided that such tuna do not exceed 2 percent, by weight, of the total amount of all other species caught within the preceding 30-day period.

(c) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental Catch permit issued under § 285.21 may retain or land large medium and giant Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna retained or landed may not exceed:

(1) One fish per vessel per fishing trip landed south of 36°00′ N. latitude, provided that at least 2,500 pounds (1,134 kg) of species other than Atlantic bluefin tuna are caught and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight of all other fish landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 36°00′ N. latitude.

(d) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear and possessing an Incidental Catch permit issued under § 285.21 may catch and retain annually one large medium or giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes.

(e) *Purse Seine.* Vessels in the Purse Seine category fishing for other tunas are allowed a 1-percent per trip (by weight) incidental take of bluefin less than 178 cm. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota.

(f) *Other gear.* Incidental harvest of Atlantic bluefin tuna by gear other than specified in § 285.22 or in this section is prohibited.

8. Section 285.24 is revised to read as follows:

§ 285.24 Catch limits.

(a) *General category.* From June 1, vessels permitted in the General category under § 285.21 may catch only one large medium or giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Operators of vessels permitted in the General category may possess large medium and giant Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect at that time.

(b) *Harpoon Boat category.* Vessels permitted in the Harpoon Boat category may catch multiple giant bluefin tuna but only one large medium bluefin tuna per day per vessel may be caught.

(c) *Purse Seine category.* Vessels permitted in the Purse Seine category may catch large mediums, provided that the total amount of such taken does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna aboard the vessel at the end of each fishing trip.

(d) *Angling category.*—(1) *Anglers.* Anglers may catch and retain each day no more than two Atlantic bluefin tuna,

only one of which may be a small medium and only one of which may be a school bluefin tuna. Anglers may not retain young school, large medium, or giant Atlantic bluefin tuna.

(2) *Party and charter boats*—(i) Party and charter boats may catch and retain each day the bag limit for anglers specified in paragraph (d)(1) of this section for each angler on board; provided, however, that no more than one small medium bluefin tuna may be retained each day, regardless of the number of anglers on board. The captain, mate, or crew member of a party or charter boat is not an "angler" for purposes of this section.

(ii) The Assistant Administrator may increase the bag limit for school tuna for anglers on party and charter boats from one to two, and may reduce it from two to one, based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the bag limit made under this paragraph.

(3) *Private boats.* Private boats may catch and retain each day the bag limit for anglers specified in paragraph (d)(1) of this section for the number of anglers on board; provided, however, that no more than one small medium and two school bluefin tuna may be retained each day, regardless of the number of anglers on board.

9. Section 285.26 is amended by revising the table to read as follows:

§ 285.26 Size Classes.

* * * * *

Size class	Total fork length	Pectoral fin fork length	Approx. round weight
Young school	<26 in (<66 cm)	<19 in (<49 cm)	14 lbs (<6.4 kg).
School	26 to <45 in (66 to <115 cm)	19 to <33 in (49 to <85 cm)	14 to <66 lbs. (6.4 to <30 kg).
Large school	45 to <57 in (115 to <145 cm)	33 to <42 in (85 to <108 cm)	66 to <135 lbs. (30 to <62 kg).
Small Medium	57 to <70 in (145 to <178 cm)	42 to <52 in (108 to <132 cm)	135 to <235 lbs. (61 to <107 kg).
Large Medium	70 to <77 in (178 to <196 cm)	52 to <57 in (132 to <145 cm)	235 to <310 lbs. (107 to <141 kg)
Giant	77 in or greater (196 cm or greater)	57 in or greater (145 cm)	310 lbs or greater. (141 kg or greater).

10. Section 285.29 is amended by revising paragraph (a) to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna that was purchased or received from the person or vessel that harvested the fish. Said card must be postmarked within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where caught.

* * * * *

11. Section 285.30 is amended by revising paragraphs (c)(1) and (d) to read as follows:

§ 285.30 Metal tags.

* * * * *

(c) * * *

(1) A dealer or agent must affix a metal tag to each Atlantic bluefin tuna purchased or received immediately upon its offloading from a vessel. The metal tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

* * * * *

(d) *Removal of tags.* A metal tag affixed to any Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

12. Section 285.31 is amended by revising paragraphs (a)(10), (a)(17), (a)(18), (a)(26), and (a)(28) and adding paragraphs (a)(34) through (a)(38) to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(10) Land any Atlantic bluefin tuna in forms other than round (fins intact), or other than with the head removed and eviscerated;

* * * * *

(17) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna that will not be retained;

(18) Fail to affix immediately to any Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered metal tag when the tuna has been received for a commercial purpose or purchased by that person from any person or vessel having caught such tuna;

* * * * *

(26) Fish for or catch Atlantic bluefin tuna with longline gear except as provided in § 285.23(e);

* * * * *

(28) Fish for or catch school, large school or small medium Atlantic bluefin tuna with gear other than hook and line, which is held by hand or rod and reel made for this purpose;

* * * * *

(34) Retain young school Atlantic bluefin tuna for any purpose;

(35) Sell, offer for sale, purchase, receive for a commercial purpose, trade or barter any Atlantic bluefin tuna other than a large medium or giant;

(36) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, Atlantic bluefin tuna;

(37) Retain or land any Atlantic bluefin tuna by gear other than specified in § 285.22 or § 285.23; or

(38) Retain or land any bluefin tuna less than 178 cm from a permitted vessel other than one issued a General category permit and having anglers on

board, or an Incidental category (rod and reel) permit under § 285.21, or a Purse Seine category permit and operating under § 285.23(e).

§§ 285.1, 285.5, 285.25 [Amended]

13. In addition to the amendments set forth above, in 50 CFR part 285 remove the words "Regional Director" and add, in their place, the word "Director" in the following places:

(a) Section 285.1(c);
(b) Section 285.5(c); and
(c) Section 285.25(b).

[FR Doc. 92-17346 Filed 7-20-92; 5:00 pm]
BILLING CODE 3510-22-M

50 CFR Part 655

[Docket No. 920246-2168]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final initial specifications for the 1992 squid and butterfish fisheries.

SUMMARY: NMFS issues this final notice of initial specifications for the 1992 fishing year for squid and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish specifications for the current fishing year. This action is intended to fulfill this requirement and to promote the development of the U.S. squid and butterfish fisheries.

DATES: Effective July 23, 1992, through December 31, 1992.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's "*quota paper*" and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Copies of the environmental assessment prepared by the Northeast Regional Office for this action are available from Richard B. Roe, Regional Director, Northeast Region, NMFS, 1 Blackburn Circle, Gloucester, MA 01930.

FOR FURTHER INFORMATION: Myles Raizin, 508-281-9104 or Richard Seamans, 508-281-9244.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 655. These regulations stipulate that the Secretary will publish a notice specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the initial annual amounts are found at § 655.21. Proposed initial specifications for the 1992 Atlantic mackerel, squid, and Butterfish fisheries were published on February 27, 1992 (57 FR 6695).

The following table contains the final initial specifications for *Loligo* squid, *Illex* squid, and butterfish. These specifications are based on the recommendations of the Council, the environmental assessment prepared for this action, and public comment.

INITIAL ANNUAL SPECIFICATIONS FOR SQUID AND BUTTERFISH FOR THE 1992 FISHING YEAR

Specifications			Butterfish
Loligo	Squid	Illex	
Max OY [1]	44,000	30,000	16,000
ABC [2]	37,000	30,000	16,000
IOY	34,000	27,000	10,000
DAH	34,000	27,000	10,000
DAP	34,000	27,000	10,000
JVP	0	0	0
TALFF	0	0	0

[1] Max OY stated in the FMP.
[2] IOY can rise to this amount.

Comments and Responses

Five sets of comments on the proposed initial specifications were received. All commenters addressed the proposed zero TALFF specification for Atlantic mackerel; four of the commenters opposed this proposed specification, while one commenter supported it. The comments concerning the proposed zero TALFF for Atlantic mackerel and responses to those comments will be summarized in a separate final notice of initial specifications for that species. One commenter opposed the 3,000 mt specification for JVP in the *Illex* squid fishery.

Comment: There should be no joint venture allocation for *Illex* because such product would compete with DAP product, thereby resulting in market disruption and lost revenues.

Response: NMFS views this comment with supporting documents as a reasonable argument for the elimination of the 3,000 mt proposed JVP for *Illex*. The "processor preference" amendment to the Magnuson Fishery Conservation and Management Act allows the Secretary to protect developing U.S. fisheries by not supplying product to foreign nations that may directly compete with U.S.-processed products and, thus, restrict the development of markets for these products.

Comment: Prior to 1991, total annual *Illex* landings did not exceed 12,000 mt since 1983. What is the scientific basis for determining that a doubling of the allowable harvest would not adversely impact spawning recruitment in light of the agency's acknowledgement of the unstable population dynamics for a species with a short life span?

Response: NMFS recognizes that uncertainty is pervasive in this fishery with regard to stock abundance and availability. However, the maximum sustainable yield for this fishery has been estimated to be 40,000 mt. Therefore, the specification of 27,000 mt is conservative in regard to abundance considerations.

Comment: How does NMFS reconcile a doubling of the proposed quota with the possibility that a downward cyclic trend may be on the horizon with regard to stock abundance?

Response: The cycle referred to by the commentor is derived from an all-sizes research survey index. The 1990 index, as a measure of relative stock abundance, was 74 percent above the mean index for the years 1967 to 1990. Since the specifications for this fishery are annual, NMFS believes that raising the ABC in periods of high abundance is rational.

Changes From the Proposed Specifications

The Director, Northeast Region, NMFS (Regional Director) has chosen to eliminate the proposed JVP allocation (3,000 mt) for the *Illex* squid fishery, thereby reducing the recommended JVP for *Illex* to zero. This action results in the lowering of the IOY, DAH, and DAP to 27,000 mt. However, the ABC will remain at 30,000 mt equal to the Maximum OY for the *Illex* squid fishery. NMFS concurs with public comment that suggested that JVP for *Illex* in 1992 would directly compete with the domestic processed product and hinder growth of the domestic freezer trawler fishery.

Final specifications for Atlantic mackerel for the 1992 fishing year are not included in this action. The Council, in its analysis for specifications for Atlantic mackerel, recommended zero TALFF. The Council used testimony from industry and analysis of nine economic factors found at § 655.21(b)(2)(ii) of the regulations and concluded that if directed foreign fishing

were allowed, it would inhibit the growth and development of the U.S. mackerel processing industry. Further attempts by NMFS to analyze the need and justification for zero TALFF for Atlantic mackerel have not yet provided a convincing argument for that specification presented by the Council. Therefore, the Regional Director recently requested the Council to give the specification for TALFF for Atlantic mackerel additional consideration and provide further analysis.

Classification

This action is authorized by 50 CFR part 655 and complies with E.O. 12291 and the National Environmental Policy Act.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: July 20, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-17545 Filed 7-23-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces the modification of the chinook salmon catch quota for the commercial fishery from Point Arena to Point San Pedro, California, which opens as regularly scheduled on August 1, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined that the quota underage from the May commercial fishery from Point Reyes to Point San Pedro, California, should be added to the August fishery from Point Arena to Point San Pedro, and that the August quota should be adjusted to account for the lower impacts on Klamath fall chinook salmon in August compared to May. Therefore, the revised August quota is 21,500 chinook salmon. This action is intended to maximize the harvest of salmon without exceeding the ocean share allocated to the commercial fishery in this area.

DATES: Effective at 0001 hours local time, August 1, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 7, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg., Seattle, WA 98115-0070; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140, or Rodney R. McInnis at (310) 980-4030.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fisheries between Point Arena and Point San Pedro, California, subject to chinook salmon quotas, are as follows: (1) An all-except-coho fishery open from Point Reyes to Point San Pedro, May 1 through the earlier of May 10 or the attainment of a subarea catch quota of 10,000 chinook salmon, and (2) from Point Arena to Point San Pedro, an all-species fishery open from August 1 through the earliest of August 31 or the attainment of either a subarea catch quota of 8,000 chinook salmon or an impact quota of coho salmon south of Cape Falcon, Oregon. Furthermore, any chinook salmon quota overage or underage from the May fishery will be subtracted from or added to the quota for the August fishery.

Based on the best available information on July 10, the commercial catch during the May fishery totaled about 1,800 chinook salmon, leaving 8,200 fish unharvested from the May quota of 10,000 chinook salmon. Therefore, these fish are transferred to the regularly scheduled August fishery described above (57 FR 19388, May 6, 1992). These quotas were set preseason, based on fishery impacts on Klamath River fall chinook salmon. The ocean chinook salmon fishery south of Point Arena has lower impacts on the Klamath River fall chinook in August than it does in May. Therefore, the chinook salmon catch quota for the August commercial fishery from Point Arena to Point San Pedro, California, is further adjusted to 21,500 fish. Modification of quotas is authorized by regulations at § 661.21(b)(1)(i).

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 1, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding this adjustment of the commercial chinook salmon quota between Point Arena and Point San Pedro, California. The State of California will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 7, 1992.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17483 Filed 7-23-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 920403-2103]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule is in effect through July 21, 1992, which implemented management restrictions in the Pacific whiting fishery that are intended to minimize the impact of the

whiting fishery on Pacific salmon stocks. Because conditions warranting the emergency still exist, the Secretary of Commerce (Secretary) extends the emergency interim rule.

EFFECTIVE DATES: The effective date of the emergency interim rule published at 57 FR 14663 is extended from 0001 hours July 22, 1992, through 2400 hours October 19, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), an emergency rule was implemented on April 16, 1992 (57 FR 14663) effective through July 21, 1992, containing management restrictions intended to minimize the impact of the whiting fishery on Pacific salmon. The restrictions prohibited: (1) At-sea processing of whiting south of 42° N. latitude; (2) directed fishing for whiting shoreward of the 100-fathom contour in the Eureka subarea (40°30'–43°00' N. latitude); (3) fishing for whiting between midnight and one-half hour after official sunrise; and (4) fishing for whiting in the Klamath and Columbia River Salmon Conservation Zones. These actions were taken because many Pacific salmon stocks appear to be at record low levels, and some stocks may not meet 1992 escapement goals.

The bycatch of salmon in the 1992 Pacific whiting fishery is at a very low level—about 0.01 salmon per metric ton in the at-sea processing fishery and 0.02 salmon per metric ton for shoreside deliveries of whiting. Bycatch levels are so low probably as a result of the bycatch restrictions imposed by the emergency rule, the low abundance of salmon, El Nino conditions, and voluntary efforts to avoid salmon. At this time, the emergency rule restrictions appear not to have posed an unreasonable burden on the whiting industry. Both at-sea and shoreside processing have occurred at record rates under these restrictions. Consequently, to continue to minimize the bycatch of salmon in the whiting fishery, the Secretary, under section 305(c)(3)(B) of the Magnuson Act, extends this emergency rule for an additional 90 days through October 19, 1992.

This emergency rule was recommended by the Pacific Fishery Management Council (Council) at its March 1992 meeting, and was intended to be extended for a second 90-day period in order to encompass the time period of the majority of the 1992 Pacific whiting fishery. The Council concurred with the extension of this emergency rule at its July 8–10 meeting.

The emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order and was reported to the Director of the Office of Management and Budget with an explanation of why following procedures of that order is not possible.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 92–17515 Filed 7–21–92; 2:16 pm]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS announces that amounts of the operational reserve are needed in the fishery for pollock in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow harvest of the total allowable catch (TAC) of pollock allocated to the inshore and offshore components in the BS.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), July 23, 1992, through 12 midnight, A.l.t., December 31, 1992. *Comments* are invited through August 7, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(b)(1)(i), that the initial TAC specified for pollock needs to be supplemented from the non-specific reserve in order to continue operations. Therefore, NMFS apportions 97,500 metric tons (mt) from the reserve to the pollock TAC in the BS, resulting in a revised BS pollock TAC of 1,202,500 mt. The revised amounts available in the second pollock season by the inshore and offshore components are 234,518 mt and 435,534 mt respectively, in accordance with § 675.20(a)(3)(i) and (ii).

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impractical and contrary to the public interest. Without this apportionment, U.S. groundfish fishermen would have to discard bycatches of pollock in the BS, resulting in needless economic waste of valuable fishery resources. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until August 7, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–17546 Filed 7–23–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 143
Friday, July 24, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for printing paper.

SUMMARY: The Small Business Administration (SBA) is considering a waiver of the Nonmanufacturer Rule for printing paper. The basis for a waiver is that no small business manufacturers are supplying this class of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and source information from interested parties.

DATES: Comments and sources must be submitted on or before August 10, 1992.

ADDRESSES: Comments to: Robert J. Moffitt, Chairperson, Size Policy Board, U.S. Small Business Administration, 409 3rd Street SW., Washington DC, 20416, Tel: (202) 205–6460.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, phone (703) 695–2435.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the office of Management and Budget Standard Industrial Classification Manual which establishes "SIC" codes. The second is the Product and Service Code ("PSC" code) established by the Federal Procurement Data System.

This notice proposes to waive the Nonmanufacturer Rule for printing paper (SIC code 2621, PSC code 7510). This class of products consists of, but is not restricted to, index, mimeograph, duplicating, and manifold paper.

In an effort to identify potential small business sources for this class of products, the Small Business Administration has searched its Procurement Automated Source System (PASS) and contacted the General Services Administration. No small business sources were identified as a result of these efforts. The public is, therefore, invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for printing paper products within SIC 2621 and PSC 7510.

Dated: July 17, 1992.

Robert J. Moffitt,

Chairman, Size Policy Board.

[FR Doc. 92–17501 Filed 7–23–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind and Disabled; Payments for Vocational Rehabilitation Services

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We propose to amend our regulations which govern our vocational rehabilitation (VR) payment programs under titles II and XVI of the Social Security Act (the Act). Our proposed rules would expand the use of private and public non-State VR providers in situations in which a State, through its VR agency, is unwilling to participate in our VR programs with respect to an individual whom we have referred to the State VR agency; ensure in appropriate cases that payment for VR services may be made only for those services which have a causal relationship to an individual's performance of substantial gainful activity (SGA) for a continuous period of 9 months; and prescribe the specific kinds of VR services for which payment would be made. The proposed amendments to our regulations are intended to make VR services more readily available to individuals under our VR payment programs and to improve the administration and cost effectiveness of these programs.

DATES: To be sure that your comments are considered, we must receive them no later than September 22, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

SUPPLEMENTARY INFORMATION: These proposed rules would amend our regulations at § 404.2101 *et seq.* and § 416.2201 *et seq.* which prescribe the rules for the title II and title XVI VR payment programs under sections 222(d) and 1615(d) of the Act. In general, sections 222(d) and 1615(d) of the Act authorize the Secretary of Health and Human Services (the Secretary) to use

the title II trust funds and the title XVI general fund to reimburse a State for the reasonable and necessary costs of VR services provided to a title II disability beneficiary or title XVI disability or blindness recipient, respectively, in three categories of cases. Specifically, these sections permit payment for VR services furnished to such beneficiaries or recipients in cases where: (1) The furnishing of such services results in the individual's performance of SGA for a continuous period of nine months; (2) the individual is continuing to receive benefits, despite his or her medical recovery, under section 225(b) or 1631(a)(6) of the Act because of his or her participation in a VR program; or (3) the individual, without good cause, refused to continue to accept VR services or failed to cooperate in such a manner as to preclude his or her successful rehabilitation. Payment may be made for the reasonable and necessary costs of VR services provided in these cases as determined in accordance with criteria established by the Commissioner of Social Security (the Commissioner).

Sections 222(d) and 1615(d) of the Act permit payment to a State for VR services if the services are provided by a State VR agency, i.e., an agency administering a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended. However, in the case of a State which is unwilling to participate or does not have such a plan for VR services, section 222(d)(2) of the Act authorizes the Commissioner to enter into agreements or contracts with alternative VR service providers (alternate participants) for the purpose of providing VR services to disability beneficiaries under the title II VR payment program under the same conditions that would apply to a State VR agency. While section 1615(d) of the Act is silent with regard to alternate participants, section 1633(a) of the Act provides authority for using alternate participants under the title XVI VR payment program inasmuch as the latter section gives the Secretary the authority to make administrative and other arrangements under title XVI in the same manner as they are made under title II. Moreover, the legislative history of section 1615(d) indicates that Congress intended the title XVI VR payment program to parallel the title II program. Our existing title II and title XVI regulations, therefore, contain virtually identical provisions for the title II and title XVI VR payment programs.

When we first published final regulations to implement sections 222(d) and 1615(d) of the Act on February 10, 1983, at 48 FR 6286, we indicated that we would reexamine the provisions of the regulations and consider possible changes after we had gained experience administering the title II and title XVI VR payment programs. Certain recommendations contained in the March 1988 Report of the Disability Advisory Council also suggested a need to consider new approaches to these programs to increase the availability of VR services for disabled or blind beneficiaries and recipients and to ensure that such beneficiaries and recipients are provided with those services that are necessary to achieve and maintain employment.

The basic purpose of the title II and title XVI VR payment programs is twofold: (1) To make VR services more readily available to disabled or blind beneficiaries and recipients; and (2) to achieve savings for the title II trust funds and the title XVI general fund. To promote these objectives more effectively, we propose to amend our existing regulations to provide for greater use of alternate participants under the VR payment programs and to improve the administration and cost effectiveness of the programs so as to ensure that savings will accrue to the trust funds and the general fund.

None of the provisions in this amendment to the Vocational Rehabilitation regulations is a major departure from the current program. The changes are meant to address the most significant criticisms of the SSA VR program. By expanding the opportunity for private VR providers to participate in the program, we are responding to the recommendations of the 1988 Disability Advisory Counsel, and the dictates of Congress. By permitting reimbursement of providers only for services which have a causal connection to the individual's completion of nine months of SGA, we are responding to criticisms by GAO and the HHS Inspector General. The IG stated in his most recent and thorough report on SSA's VR program, "SSA should strengthen the linkage between the SSA vocational rehabilitation payment program and actions to . . . rehabilitate SSA clients."

Use of Alternate Participants

The proposed regulations revise §§ 404.2104 and 416.2204 to provide for the use of alternate participants in cases where a State VR agency declines to provide VR services to a disabled or blind beneficiary or recipient whom we referred to the State VR agency. The proposed regulations provide that in such cases, the State will be considered unwilling to participate through its VR agency with respect to such individual.

When we first published regulations for the VR payment programs, we provided in §§ 404.2104 and 416.2204 that the option of participating through their VR agencies would be offered first to the States and that a State had to notify us within 60 days after publication of the regulations whether it intended to participate through its VR agency(ies). All of the States chose to participate.

Current §§ 404.2104 and 416.2204 also give a State the option of not participating, including termination of participation, or of limiting the scope of its participation. If a State decides not to participate or to limit participation, the existing regulations provide that we may arrange for VR series through an alternate participant for disabled or blind beneficiaries or recipients in the State or, where the State has limited its participation, for those beneficiaries and recipients not included within the scope of the State's participation. While we propose to make certain technical changes to the rules concerning a State's option not to participate or to limit participation, the current provisions relating to these options would remain substantially the same under the proposed regulations. However, while current §§ 404.2104 and 416.2204 provide each State the option of declaring its intent to participate with respect to the title II or title XVI VR payment program as a whole, proposed §§ 404.2104 and 416.2204 would afford each State the opportunity to participate through its VR agency(ies) with respect to disabled title II beneficiaries in that State, or disabled or blind title XVI recipients in that State, on a case-by-case basis, unless the State has notified us in advance of its decision not to participate or to limit participation.

Under proposed §§ 404.2104 and 416.2204, unless the State has exercised its option not to participate or to limit participation through its VR agency(ies), we will provide the State the opportunity to participate with respect to disabled or blind beneficiaries or recipients in the State by referring such individuals first to the State VR agency(ies) for necessary VR services. The proposed regulations would require the State to declare, through the State VR agency, whether it is willing to participate with respect to a beneficiary or recipient whom we referred to that VR agency. Under the proposed regulations, the State may participate with respect to such an individual only if the State VR agency decides to accept the individual as a client for VR services and notifies us in writing within a prescribed time period of such decision.

Proposed §§ 404.2104 and 416.2204 provide that the notice must be received by the appropriate Social Security Administration (SSA) Regional Commissioner no later than the close of the third month following the month in which we referred the individual to the State VR agency. If we do not receive such notice with respect to such individual within the prescribed time period, we will consider the State unwilling to participate with respect to such individual and may arrange for VR services for the individual through an alternate participant. These provisions also would apply with respect to the class(es) of disabled or blind beneficiaries or recipients whom we refer to a State VR agency in a case in which a State has decided to limit participation of its VR agency(ies) to such class(es) of beneficiaries or recipients.

Minimum Qualifications for Alternate Participants

Because the proposed changes to §§ 404.2104 and 416.2204 would provide for greater use of alternate participants under the title II and title XVI VR payment programs, we propose to add new §§ 404.2106 and 416.2206 to our regulations to specify certain minimum qualifications for alternate participants (that is, any for-profit or not-for-profit agency, organization, institution, or individual, other than a State VR agency). Current §§ 404.2104(a) and 416.2204(a) provide that an alternate participant must have a plan for VR services that is similar to a State plan approved under title I of the Rehabilitation Act of 1973, as amended. The proposed regulations would not change this basic requirement. However, proposed §§ 404.2106 and 416.2206 would clarify that the plans or alternate participants must provide, among other things, that the provision of VR services to disabled or blind beneficiaries or recipients will meet certain minimum standards. Proposed §§ 404.2106 and 416.2206 also explain that we will use as alternate participants only those VR service providers that are licensed, certified, accredited or registered, as appropriate, in the State in which they provide VR services.

Payments to Alternate Participants

Our existing regulations provide that payments to alternate participants for VR services furnished to beneficiaries or recipients will be made under the same terms and conditions that apply to State VR agencies. The proposed regulations would not change this requirement.

Requirements for Payment

We propose to amend §§ 404.2108 and 416.2208 to specify the information that the State VR agency or alternate participant must provide in order to claim and receive payment under our VR payment programs. The proposed regulations would provide that each claim for payment be submitted on a form prescribed by us and contain the following information: a description of each service provided; a statement of when the service was provided; the cost of the service; and, as appropriate, an explanation of how the service contributed to an individual's performance of a continuous 9-month period of SGA or if payment is being requested for services provided to an individual described in § 404.2101 (b) or (c) or § 416.2201 (b) or (c), an explanation of how the service was reasonably expected to assist or motivate an individual to return to, or continue in, SGA.

We realize that the requirements to provide this specific information on each claim for payment may result in an additional administrative burden for some State VR agencies, and we request your consideration of and comments on possible solutions.

The proposed rules also would amend §§ 404.2108 and 416.2208 to provide that the State VR agency or alternate participant must maintain, and provide as we may require, adequate documentation of all services and costs for all disabled or blind beneficiaries or recipients with respect to whom a State VR agency or alternate participant could potentially request payment for services and costs under our VR payment programs.

VR Services Contributing to a Continuous Period of SGA

The proposed regulations would also amend §§ 404.2111 and 416.2211 which provide the criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months of SGA. We propose to amend §§ 404.2111(a)(1) and 416.2211(a)(1) to provide that any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous 9-month period of SGA in the situation where the individual does not recover medically and the continuous 9-month period of SGA begins 1 year or less after VR services end. We are proposing to delete the words "might have" before the phrase "significantly motivated or assisted" in these current regulatory sections to strengthen the causal relationship between the VR services and the continuous period of SGA.

We propose to make certain other changes to §§ 404.2111 and 416.2211 to clarify that these sections permit payment only for those VR services that contribute to an individual's performance of a continuous period of SGA.

Refusal of VR Services

We propose to amend §§ 404.2113 and 416.2213 to include a timeframe within which State VR agencies and alternate participants are to report cases of VR refusal. These are cases in which an individual refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude his or her successful rehabilitation.

Services for Which Payment May Be Made

Under section 222(d)(5) of the Act, the Secretary may limit the type, scope, or amount of VR services that are subject to payment in accordance with regulations designed to achieve the purpose of section 222(d). In general, current §§ 404.2114 and 416.2214 permit payment for evaluation services and all services provided by a State VR agency under an individualized written rehabilitation program (IWRP) or by an alternate participant under a similar document. Consistent with section 222(d)(5) of the Act, we propose to revise §§ 404.2114 and 416.2214 to describe the specific kinds of VR services for which payment may be made in all three categories of cases under the VR payment programs. Under the proposed rules, VR services for which payment may be made would include only those services described in proposed §§ 404.2114(b) and 416.2214(b). In addition, these services would be subject to payment only if: (1) The services are necessary to determine an individual's eligibility for VR services; or (2) the services are provided under an IWRP, or under a similar document in the case of an alternate participant, and could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

Cost Containment

We propose to amend §§ 404.2117 and 416.2217 to require, rather than to expect, State VR agencies and alternate participants to seek payment or services from other sources in accordance with the "similar benefit" provisions under 34 CFR part 361. The proposed rules also would provide that the cost incurred for VR services must comply with the cost-containment policies of the State VR

agency established under 34 CFR part 361 or, in the case of an alternate participant, with similar written policies established under a negotiated plan in accordance with a written agreement or contract between us and the alternate participant. These cost-containment policies must provide guidelines to ensure the lowest reasonable cost for VR services while allowing flexibility to provide for an individual's needs. Under the proposed rules, a State VR agency or alternate participant would be required to maintain and use these cost-containment policies to govern the costs incurred for all VR services for which payment would be requested under the VR payment programs. The proposed rules also would require that, before the end of the first calendar quarter of each year, the State VR agency or alternate participant send to us a written summary of the written cost-containment policies and, when requested, copies of specific written policies and procedures (e.g., any guidelines and fee schedules for a given year).

Validation Reviews

We propose to revise and expand §§ 404.2121 and 416.2221 which currently provide for postpayment reviews of claims submitted by State VR agencies or alternate participants for payment under our regulations. Under the proposed rules, we would institute a validation review of a sample of claims filed by each State VR agency or alternate participant. Validation reviews may be conducted prior to or after payment is made.

The purpose of these validation reviews is to ensure that the VR services and costs meet the requirements for payment under our regulations, to assess the validity of our documentation requirements, and to assess the need for additional validation reviews or additional documentation requirements for any State VR agency or alternate participant to ensure compliance with the requirements under this subpart.

In any validation review, we would determine the amount of payment and would notify the State VR agency or alternate participant of our determination. In any postpayment validation review, if we find that we have paid more or less than the correct amount, we will determine that there is an overpayment or underpayment and will notify the State VR agency or alternate participant that we will make the appropriate adjustment. In any case, if a State agency or alternate participant disagrees with our determination, it may appeal our determination. The proposed regulations would not change the current rules set out in §§ 404.2127 and 416.2227 for appealing determinations or resolving disputes under the VR payment programs.

Other Changes

We also propose to make certain changes to §§ 404.2102 and 416.2202, 404.2108 and 416.2208, and 404.2109 and 416.2209 to conform to the proposed changes to the other sections of the regulations, discussed above.

Fee-Schedule Mechanism—Request for Comments

In addition, we are interested in exploring ways to simplify and speed the payment process under our VR payment programs. Therefore, we request comments on the desirability and the feasibility of SSA establishing an experience-based fee schedule mechanism as a means for achieving a simplified payment process, while fairly representing costs incurred.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291.

We expect that these regulations would be at least cost-neutral over time. While it is not yet possible to present realistic estimates, the expectation is that the program savings from the additional successful rehabilitations and resultant benefit terminations would exceed any additional administrative costs, including the cost of providing VR evaluations and services.

Nevertheless, it is clear that the potential exists for VR reimbursement costs to increase, even if they are later offset by benefit savings. If the current workload of claims for successful rehabilitations were to increase, the annual cost in VR reimbursements would be an additional $4.7 million for each 1000 claims submitted. In its 1988 report, the Disability Advisory Council estimated that the trust funds save at least $4 for each $1 spent. Using that as a basis, savings to the trust funds could increase by $18.8 million for each additional 1000 claims.

Because these regulations do not meet any of the threshold criteria for a major rule, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed rules contain information collection requirements. The requirements in proposed § 404.2108 (b) and (f) and in proposed § 416.2208 (b) and (f), which deal with claims for reimbursement for vocational rehabilitation (VR) services, already have partial clearance by the Office of Management and Budget (OMB) under OMB No. 0960-0310 (form SSA-199: State Vocational Rehabilitation Agency Claim). However, these sections expand the requirements of the current regulations to provide for the collection of additional information. Also, the proposed changes to §§ 404.2104, 404.2117, 416.2204 and 416.2217 contain new reporting requirements.

As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy of these proposed rules to OMB for its review of these new information collection requirements. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, ATTENTION: Desk Officer of HHS.

Public reporting burden for these proposed collections of information is estimated as follows according to the section of the proposed rule:

§§ 404.2104 and 416.2204—60 minutes per response times 960 responses yearly = 960 hours;

§§ 404.2108 and 416.2208—22 minutes per response times 12,000 responses yearly = 4,400 hours (NOTE: The burden shown here is in addition to that already approved by OMB);

§§ 404.2113 and 416.2213—No additional burden;

§§ 404.2217 and 416.2217—24 hours per response for the first year times 80 responses = 1,920 hours; thereafter, responses are estimated to take 12 hours, so the annual burden is estimated to be 960 hours in subsequent years.

These burden estimates include the time it will take to read the instructions, gather the necessary facts, and fill out the forms, if any. If you have any comments or suggestions on these estimates, write to the Social Security Administration, Attn: Reports Clearance Officer, 1-A-21 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960-NEW), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as

provided in Public Law 96-354, the Regulatory Flexibility Act of 1980, is not required.

The proposed regulations would apply to States and certain alternate providers of VR services which are willing to provide services to disabled or blind beneficiaries or recipients under our VR payment programs under the conditions specified in the regulations. While the proposed changes to the regulations would permit us to make greater use of alternate participants under these programs, the proposed rules would not impose any significant economic burdens on these alternate VR service providers which may be small entities. Under the Act, we may arrange for VR services for beneficiaries or recipients by agreement or contract with alternate VR service providers where the State is unwilling to participate or does not have an appropriate plan for VR services. The Act requires that the provision of VR services by alternate participants, and the payment to alternate participants for such services, shall be subject to the same conditions that would apply to the States. Our current regulations provide that an alternate participant must have a plan for VR services that is similar to an appropriate State plan. The proposed regulations would not change this requirement but would clarify that the plans of alternate participants, like a State plan for VR services, must ensure, among other things, that the provision of VR services will meet certain minimum standards. The proposed rules also clarify that we would not enter into a written agreement or contract with a private or other non-State VR provider to serve as an alternate participant unless such provider meets certain basic qualifications. The proposed regulations would not require private or other non-State VR providers to participate in the VR payment programs. Rather, the proposed rules would increase the opportunity for these providers to participate in these programs if they wish to do so.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802, Disability Insurance; 93.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements.

20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, and Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: December 9, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 6, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, parts 404 and 416 of chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

20 CFR part 404, subpart V, is amended as follows:

1. The authority citation for subpart V of part 404 continues to read as follows:

Authority: Secs. 205(a), 222, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 422, and 1302.

2. Section 404.2102 is amended by revising paragraph (b), by redesignating paragraphs (c) through (n) as paragraphs (d) through (o), by adding a new paragraph (c), and by revising redesignated paragraphs (e) and (l) to read as follows:

§ 404.2102 Purpose and scope.

* * * * * * *

(b) Section 404.2104 explains how State VR agencies or alternate participants may participate in the payment program under this subpart.

(c) Section 404.2106 describes the basic qualifications for alternate participants.

* * * * * *

(e) Sections 404.2110 through 404.2111 describe when an individual has completed a continuous period of SGA and when VR services will be considered to have contributed to that period.

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(l) Sections 404.2120 and 404.2121 describe the audits and the prepayment and postpayment validation reviews we will conduct.

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3. Section 404.2104 is revised to read as follows:

§ 404.2104 Participation by State VR agencies or alternate participants.

(a) *General.* In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended. An alternate participant must have a similar plan and otherwise qualify under § 404.2106.

(b) *Participation by States.* (1) The opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State will be offered first to the State in accordance with paragraph (c) of this section, unless the State has notified us in advance under paragraph (e)(1) of this section of its decision not to participate or to limit such participation.

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a certain class(es) of disability beneficiaries. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind disability beneficiaries in the State in accordance with paragraph (d) of this section. We would arrange for VR services for non-blind disability beneficiaries in the State through an alternate participant(s). A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

(3) If a State chooses to participate by using a State agency other than a VR agency with a plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, that State agency may participate only as an alternate participant.

(c) *Opportunity for participation through State VR agencies.* (1) Unless a State has decided not to participate or to limit participation, we will give the State the opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State VR agency(ies) for necessary VR services. A State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services and notifying us under paragraph (c)(2) of this section of such acceptance.

(2) In order for the State to participate with respect to a disability beneficiary whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing of its decision to accept the beneficiary as a client for VR services. The notice must be received by the appropriate Regional Commissioner (SSA) no later than the close of the third month following the month in which we referred the beneficiary to the State VR agency. If we do not receive such notice

with respect to a beneficiary whom we referred to the State VR agency, we may arrange for VR services for that beneficiary through an alternate participant.

(d) *Opportunity for limited participation through State VR agencies.* If a State has decided under paragraph (e)(1) of this section to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State, we will give the State the opportunity to participate with respect to such class(es) of disability beneficiaries by referring such beneficiaries first to the State VR agency(ies) for necessary VR services. The State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services and notifying us under paragraph (c)(2) of this section of such acceptance.

(e) *Decision of a State not to participate or to limit participation.* (1) A State may choose not to participate through its VR agency(ies) with respect to any disability beneficiaries in the State, or it may choose to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State. A State which decides not to participate or to limit participation must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a State specifies a later month, a decision not to participate or to limit participation will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA). The notice of the State decision must be submitted by an official authorized to act for the State for this purpose. A State must provide to the appropriate Regional Commissioner (SSA) an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State. This opinion will not be necessary if the notice is signed by the Governor of the State.

(2) (i) If a State has decided not to participate through its VR agency(ies), we may arrange for VR services through an alternate participant(s) for disability beneficiaries in the State.

(ii) If a State has decided to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries, we may arrange for VR services through an alternate participant(s) for the class(es) of disability beneficiaries in the State excluded from the scope of the State's participation.

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section, provided that such participation will not conflict with any previous commitment which we may have made to an alternate participant(s) under paragraph (e)(2) of this section. A State which decides to resume participation under paragraph (c) of this section must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a commitment to an alternate participant(s) requires otherwise, a decision of a State to resume participation under paragraph (c) of this section will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

(f) *Use of alternate participants.* The Commissioner, by written agreement or contract, may arrange for VR services through an alternate participant(s) for any disability beneficiary in the State with respect to whom the State is unwilling to participate through its VR agency(ies.). In such a case, we may refer the beneficiary to such alternate participant for necessary VR services. The Commissioner will find that a State is unwilling to participate with respect to any of the following disability beneficiaries in that State:

(1) A disability beneficiary whom we referred to a State VR agency under paragraph (c) or (d) of this section if we do not receive a notice within the stated time period under paragraph (c)(2) of this section of a decision by the VR agency to accept the beneficiary as a client for VR services;

(2) The class(es) of disability beneficiaries excluded from the scope of the State's participation if the State has decided to limit participation of its VR agency(ies); and

(3) All disability beneficiaries in the State if the State has decided not to participate through its VR agency(ies).

4. A new § 404.2106 is added to read as follows:

§ 404.2106 Basic qualifications for alternate participants.

(a) *General.* We may arrange for VR services through an alternate participant by written agreement or contract as explained in § 404.2104(f). An alternate participant may be a public or private agency, organization, institution or individual (that is, any entity whether for-profit or not-for-profit), other than a State agency.

(1) An alternate participant must—

(i) Be licensed, certified, accredited, or registered, as appropriate, to provide VR services in the State in which it provides services; and

(ii) Under the terms of the written contract or agreement, have a plan similar to the State plan described in § 404.2104(a) which shall govern the provision of VR services to individuals.

(2) We will not use as an alternate participant any agency, organization, institution, or individual—

(i) Whose license, accreditation, certification, or registration is suspended or revoked for reasons concerning professional competence or conduct or financial integrity;

(ii) Who has surrendered such license, accreditation, certification, or registration pending a final determination of a formal disciplinary proceeding; or

(iii) Who is precluded from Federal procurement or nonprocurement programs.

(b) *Standards for the provision of VR services.* An alternate participant's plan must provide, among other things, that the provision of VR services to individuals will meet certain minimum standards, including, but not limited to, the following:

(1) All medical and related health services furnished will be prescribed by, or provided under the formal supervision of, persons licensed to prescribed or supervise the provision of these services in the State;

(2) Only qualified personnel and rehabilitation facilities will be used to furnish VR services; and

(3) No personnel or rehabilitation facility described in paragraph (a)(2) (1), (ii), or (iii) of this section will be used to provide VR services.

5. Section 404.2108 is amended by redesignating paragraphs (b) through (f) as (c) through (g), by adding a new paragraph (b), and by revising redesignated paragraphs (d) and (f) to read as follows:

§ 404.2108 Requirements for payment.

* * * * *

(b) The claim for payment must be in a form prescribed by us and contain the following information:

(1) a description of each service provided;

(2) when the service was provided;

(3) the cost of the service; and

(4)(i) for claims for cases which are described in § 404.2101(a), a clear

explanation of how the service contributed to the individual's performance of a continuous 9-month period of SGA; or

(ii) for claims for cases described in § 404.2101(b) or (c), a clear explanation of how the service was reasonably expected to motivate or assist the individual to perform SGA;

* * * * *

(d) The VR services for which payment is being requested must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, or, in the case of an alternate participant, under a negotiated plan, and must be services that are described in § 404.2114;

* * * * *

(f) The State VR agency or alternate participant must maintain, and provide as we may require, adequate documentation of all services and costs for all disability beneficiaries with respect to whom a State VR agency or alternate participant could potentially request payment for services and costs under this subpart; and

* * * * *

6. Section 404.2109 is amended by revising paragraph (c), by removing the word "and" at the end of paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding a new paragraph (g) to read as follows:

§ 404.2109 Responsibility for making payment decisions.

* * * * *

(c) Whether an individual, without good cause, refused to continue to accept VR services or failed to cooperate in a VR program for a month(s) after October 1984, and whether deductions should be imposed against the individual's disability benefits;

* * * * *

(g) Whether a VR service is a service described in § 404.2114; and

* * * * *

7. Section 404.2111 is amended by revising the introductory text of the section, by revising paragraphs (a)(1) and (a)(2), and by revising the introductory text of paragraph (b)(1) to read as follows:

§ 404.2111 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency or alternate participant may be reimbursed for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency or alternate participant claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider services described in § 404.2114 that were initiated, coordinated or provided, including services before October 1, 1981.

(a) * * *

(1) *One year or less.* Any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(2) *More than one year.* (i) If the continuous period was preceded by transitional work activity (employment or self-employment which gradually evolved, with or without periodic interruption, into SGA), and that work activity began less than a year after VR services ended, any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(ii) If the continuous period was not preceded by transitional work activity that began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period only if it is reasonable to conclude that the work activity which constitutes a continuous period could not have occurred without the VR services (e.g., training).

(b) *Continuous period with medical recovery occurring before completion.* (1) If an individual medically recovers before a continuous period has been completed, VR services under paragraph (a) of this section will not be payable unless some VR services contributed to the medical recovery. VR services will be considered to have contributed to the medical recovery if—

* * * * *

8. Section 404.2113 is revised to read as follows:

§ 404.2113 Payment for VR services in a case of VR refusal.

(a) For purposes of this section, VR refusal means an individual's refusal to continue to accept VR services or failure to cooperate in such a manner as to preclude the individual's successful rehabilitation.

(b) No later than the 60th day after the State VR agency or alternate participant makes a preliminary finding that an individual refuses to continue to accept VR services or fails to cooperate in a VR program, the State VR agency or alternate participant shall report to the appropriate Regional Commissioner (SSA) in writing such individual's VR refusal so that we may make the determination described in § 404.2109(c).

(c) Payment can be made to a State VR agency or alternate participant for the costs of VR services provided to an individual who, after filing an application with the State VR agency or alternate participant for rehabilitation services, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude the individual's successful rehabilitation. A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual if deductions have been imposed against the individual's monthly disability benefits for a month or months after October 1984 because of VR refusal.

9. Section 404.2114 is revised to read as follows:

§ 404.2114 Services for which payment may be made.

(a) *General.* Payment may be made for VR services provided by a State VR agency in accordance with title I of the Rehabilitation Act of 1973, as amended, or by an alternate participant under a negotiated plan, subject to the limitations and conditions in this subpart. VR services for which payment may be made under this subpart include only those services described in paragraph (b) of this section which are—

(1) Necessary to determine an individual's eligibility for VR services; or

(2) Provided by a State VR agency under an IWRP, or by an alternate participant under a similar document, but only if the services could reasonably be expected to motivate or assist the individual in returning to, continuing in, SGA.

(b) *Specific services.* Payment may be made under this subpart only for the following VR services:

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to determine—

(i) The nature and extent of the physical or mental impairment(s) and the resultant impact on the individual's employability;

(ii) The likelihood that an individual will benefit from vocational rehabilitation services in terms of employability; and

(iii) An employment goal consistent with the capacities of the individual and employment opportunities;

(2) Counseling and guidance, including personal adjustment counseling, and those referrals necessary to help a disabled individual secure needed services from other agencies;

(3) Physical and mental restoration services necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and which constitutes a barrier to suitable employment at the SGA level;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, except that training or training services in institutions of higher education will be covered under this section only if maximum efforts have been made by the State VR agency or alternate participant to secure grant assistance in whole or in part from other sources;

(5) Maintenance expenses that are extra living expenses over and above the individual's normal living expenses and that are incurred solely because of the individual's participation in the VR program and that are necessary in order for the individual to benefit from other necessary VR services;

(6) Travel and related expenses necessary to transport an individual for purpose of enabling the individual's participation in other necessary VR services;

(7) Services to family members of a disabled individual only if necessary to the successful vocational rehabilitation of that individual;

(8) Interpreter services and note-taking services for a deaf individual and tactile interpreting for a deaf-blind individual;

(9) Reader services, rehabilitation teaching services, not-taking services, and orientation and mobility services for a blind individual;

(10) Telecommunications, sensory, and other technological aids and devices;

(11) Placement in suitable employment;

(12) Post-employment services necessary to maintain or regain other suitable employment at the SGA level;

(13) Occupational licenses, tools, equipment, initial stocks, and supplies;

(14) Rehabilitation engineering services; and

(15) Other goods and services that can reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

10. Section 404.2117 is amended by revising the introductory text of the section and by revising paragraphs (b) and (c) to read as follows:

§ 404.2117 What costs will be paid.

In accordance with section 22(d) of the Social Security Act, the Secretary will pay the State VR agency or alternate participant for the VR services described in § 404.2114 which were provided during the period described in § 404.2115 and which meet the criteria in § 404.2111, § 404.2112, or § 404.2113, but subject to the following limitations:

* * * * *

(b) The cost must not have been paid or be payable from some other source. For this purpose, State VR agencies or alternate participants will be required to seek payment or services from other sources in accordance with the "similar benefit" provisions under 34 CFR Part 361, including making maximum efforts to secure grant assistance in whole or part from other sources for training or training services in institutions of higher education. Alternate participants will not be required to consider State VR services a similar benefit.

(c) (1) The cost must be reasonable and necessary, in that it complies with the written cost-containment policies of the State VR agency established under 34 CFR Part 361 or, in the case of an alternate participant, it complies with similar written policies established under a negotiated plan. A cost which complies with these policies will be considered necessary only if the cost is for a VR service described in § 404.2114. The State VR agency or alternate participant must maintain and use these cost-containment policies, including any reasonable and appropriate fee schedules, to govern the costs incurred for all VR services, including the rates of payment for all purchased services, for which payment will be requested under this subpart. For the purpose of this subpart, the written cost-containment policies must provide guidelines designed to ensure—

(i) The lowest reasonable cost for such services; and

(ii) Sufficient flexibility so as to allow for an individual's needs.

(2) The State VR agency or alternate participant shall submit to us before the end of the 1st calendar quarter of each year a written summary of its cost-containment policies and, when requested by us, shall submit a copy(ies) of its specific written policies and procedures (e.g., any guidelines and fee schedules for a given year).

* * * * *

11. Section 404.2121 is revised to read as follows:

§ 404.2121 Validation reviews.

(a) *General.* We will conduct a validation review of a sample of the claims for payment filed by each state VR agency or alternate participant. We may conduct these reviews either on a prepayment or postpayment basis. We may review a specific claim, a larger sample of the claims, or all of the claims filed by any State VR agency or alternate participant, if we determine that such review is necessary to ensure compliance with the requirements of this subpart. For each claim selected for review, the State VR agency or alternate participant must submit such records of the VR services and costs for which payment has been requested or made under this subpart, or copies of such records, as we may require to ensure that the services and costs meet the requirements or payment. The State VR agency or alternate participant shall permit us (including duly authorized representatives) access to, and the right to examine, any records relating to such services and costs. Any review performed under this section will not be considered an audit for purposes of this subpart.

(b) *Purpose.* The primary purpose of these reviews is—

(1) To ensure that the VR services and costs meet the requirements for payment under this subpart;

(2) To assess the validity of our documentation requirements; and

(3) To assess the need for additional validation reviews or additional documentation requirements for any State VR agency or alternate participant to ensure compliance with the requirements under this subpart.

(c) *Determinations.* In any validation review, we will determine whether the VR services and costs meet the requirements for payment and determine the amount of payment. We will notify in writing the State VR agency or alternate participant of our determination. If we find in any postpayment validation review that more or less than the correct amount of payment was made for a claim, we will determine that an overpayment or underpayment has occurred and will notify the State VR agency or alternate participant that we will make the appropriate adjustment.

(d) *Appeals.* If the State VR agency or alternate participant disagrees with our determination under this section, it may appeal that determination in accordance with § 404.2127. For purposes of this section, an appeal must be filed within

60 days after receiving the notice of our determination.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart V, is amended as follows:

1. The authority citation for subpart V of part 416 continues to read as follows:

Authority: Secs. 1102, 1615, and 1631(d)(1) and (e) of the Social Security Act; 42 U.S.C. 1302; 1382d, and 1383(d)(1) and (e); sec. 2344 of Pub. L. 97-35, 96 Stat. 867.

2. Section 416.2202 is amended by revising paragraph (b), by redesignating paragraphs (c) through (n) as paragraphs (d) through (o), by adding a new paragraph (c), and by revising redesignated paragraphs (e) and (l) to read as follows:

§ 416.2202 Purpose and scope.

* * * * *

(b) Section 416.2204 explains how State VR agencies or alternate participants may participate in the payment program under this subpart.

(c) Section 416.2206 describes the basic qualifications for alternate participants.

* * * * *

(e) Sections 416.2210 through 416.2211 describe when an individual has completed a continuous period of SGA and when VR services will be considered to have contributed to that period.

* * * * *

(l) Section 416.2220 and 416.2221 describe the audits and the prepayment and postpayment validation reviews we will conduct.

* * * * *

3. Section 416.2204 is revised to read as follows:

§ 416.2204 Participation by State VR agencies or alternate participants.

(a) *General.* In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended. An alternate participant must have a similar plan and otherwise qualify under § 416.2206.

(b) *Participation by States.* (1) The opportunity to participate through its VR agency(ies) with respect to disabled or blind recipients in the State will be offered first to the State in accordance with paragraph (c) of this section, unless the State has notified us in advance under paragraph (e)(1) of this section of its decision not to participate or to limit such participation.

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a certain class(es) of disabled or blind recipients. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind recipients in the State in accordance with paragraph (d) of this section. We would arrange for VR services for disabled recipients in the State through an alternate participant(s). A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

(3) If a State chooses to participate by using a State agency other than a VR agency with a plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, that State agency may participate only as an alternate participant.

(c) *Opportunity for participation through State VR agencies.* (1) Unless a State has decided not to participate or to limit participation, we will give the State the opportunity to participate through its VR agency(ies) with respect to disabled or blind recipients in the State by referring such recipients first to the State VR agency(ies) for necessary VR services. A State, through its VR agency(ies), may participate with respect to any recipient so referred by accepting the recipient as a client for VR services and notifying us under paragraph (c)(2) of this section of such acceptance.

(2) In order for the State to participate with respect to a disabled or blind recipient whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing of its decision to accept the recipient as a client for VR services. The notice must be received by the appropriate Regional Commissioner (SSA) no later than the close of the third month following the month in which we referred the recipient to the State VR agency. If we do not receive such notice with respect to a recipient whom we referred to the State VR agency, we may arrange for VR services for that recipient through an alternate participant.

(d) *Opportunity for limited participation through State VR agencies.* If a State has decided under paragraph (e)(1) of this section to limit participation of its VR agency(ies) to a certain class(es) of disabled or blind recipients in the State, we will give the State the opportunity to participate with respect to such class(es) of disabled or blind recipients by referring such recipients first to the State VR agency(ies) for necessary VR services. The State, through its VR agency(ies), may participate with respect to any recipient so referred by accepting the recipient as a client for VR services and notifying us under paragraph (c)(2) of this section of such acceptance.

(e) *Decision of a State not to participate or to limit participation.* (1) A State may choose not to participate through its VR agency(ies) with respect to any disabled or blind recipients in the State, or it may choose to limit participation of its VR agency(ies) to a certain class(es) of disabled or blind recipients in the State. A State which decides not to participate or to limit participation must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a State specifies a later month, a decision not to participate or to limit participation will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA). The notice of the State decision must be submitted by an official authorized to act for the State for this purpose. A State must provide to the appropriate Regional Commissioner (SSA) an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State. This opinion will not be necessary if the notice is signed by the Governor of the State.

(2) (i) If a State has decided not to participate through its VR agency(ies), we may arrange for VR services through an alternate participant(s) for disabled or blind recipients in the State.

(ii) If a State has decided to limit participation of its VR agency(ies) to a certain class(es) of disabled or blind recipients, we may arrange for VR services through an alternate participant(s) for the class(es) of disabled or blind recipients in the State excluded from the scope of the State's participation.

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section, provided that such participation will not conflict with any previous commitment which we may have made to an alternate participant(s) under paragraph (e)(2) of this section. A State which decides to resume participation under paragraph (c) of this section must provide advance

written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a commitment to an alternate participant(s) requires otherwise, a decision of a State to resume participation under paragraph (c) of this section will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

(f) *Use of alternate participants.* The Commissioner, by written agreement or contract, may arrange for VR services through an alternate participant(s) for any disabled or blind recipient in the State with respect to whom the State is unwilling to participate through its VR agency(ies). In such a case, we may refer the recipient to such alternate participant for necessary VR services. The Commissioner will find that a State is unwilling to participate with respect to any of the following disabled or blind recipients in that State:

(1) A disabled or blind recipient whom we referred to a State VR agency under paragraph (c) or (d) of this section if we do not receive a notice within the stated time period under paragraph (c)(2) of this section of a decision by the VR agency to accept the recipient as a client for VR services;

(2) The class(es) of disabled or blind recipients excluded from the scope of the State's participation if the State has decided to limit participation of its VR agency(ies); and

(3) All disabled or blind recipients in the State if the State has decided not to participate through its VR agency(ies).

4. A new § 416.2206 is added to read as follows:

§ 416.2206 Basic qualifications for alternate participants.

(a) *General.* We may arrange for VR services through an alternate participant by written agreement or contract as explained in § 416.2204(f). An alternate participant may be a public or private agency, organization, institution or individual (that is, any entity whether for-profit or not-for-profit), other than a State agency.

(1) An alternate participant must—

(i) Be licensed, certified, accredited, or registered, as appropriate, to provide VR services in the State in which it provides services; and

(ii) Under the terms of the written contract or agreement, have a plan similar to the State plan described in § 416.2204(a) which shall govern the provision of VR services to individuals.

(2) We will not use as an alternate participant any agency, organization, institution, or individual—

(i) Whose license, accreditation, certification, or registration is suspended or revoked for reasons concerning professional competence or conduct or financial integrity;

(ii) Who has surrendered such license, accreditation, certification, or registration pending a final determination of a formal disciplinary proceeding; or

(iii) Who is precluded from Federal procurement or nonprocurement programs.

(b) *Standards for the provision of VR services.* An alternate participant's plan must provide among other things, that the provision of VR services to individuals will meet certain minimum standards, including, but not limited to, the following:

(1) All medical and related health services furnished will be prescribed by, or provided under the formal supervision of, persons licensed to prescribe or supervise the provision of these services in the State;

(2) Only qualified personnel and rehabilitation facilities will be used to furnish VR services; and

(3) No personnel or rehabilitation facility described in paragraph (a)(2)(i), (ii), or (iii) of this section will be used to provide VR services.

5. Section 416.2208 is amended by redesignating paragraphs (b) through (f) as (c) through (g), by adding a new paragraph (b), and by revising redesignated paragraphs (d) and (f) to read as follows:

§ 416.2208 Requirements for payment.

* * * * *

(b) The claim for payment must be in a form prescribed by us and contain the following information:

(1) A description of each service provided;

(2) When the service was provided;

(3) The cost of the service; and

(4)(i) For claims for cases which are described in § 416.2201(a), a clear explanation of how the service contributed to the individual's performance of a continuous 9-month period of SGA; or

(ii) For claims for cases described in § 416.2201(b) or (c), a clear explanation of how the service was reasonably expected to motivate or assist the individual to perform SGA;

* * * * *

(d) The VR services for which payment is being requested must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, or, in the case of an alternate participant, under a negotiated plan, and must be services that are described in § 416.2214;

* * * * *

(f) The State VR agency or alternate participant must maintain, and provide as we may require, adequate documentation of all services and costs for all disabled or blind recipients with respect to whom a State VR agency or alternate participant could potentially request payment for services and costs under this subpart; and

* * * * *

6. Section 416.2209 is amended by revising paragraph (c), by removing the word "and" at the end of paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding a new paragraph (g) to read as follows:

§ 416.2209 Responsibility for making payment decisions.

* * * * *

(c) Whether an individual, without good cause, refused to continue to accept VR services or failed to cooperate in a VR program for a month(s) after October 1984, and whether an individual's disability or blindness payment should be suspended;

* * * * *

(g) Whether a VR service is a service described in § 416.2214; and

* * * * *

7. Section 416.2211 is amended by revising the introductory text of the section, by revising paragraphs (a)(1) and (a)(2), and by revising the introductory text of paragraph (b)(1) to read as follows:

§ 416.2211 Criteria for determining when VR services will be considered to have contributed to a continuous period of 9 months.

The State VR agency or alternate participant may be reimbursed for VR services if such services contribute to the individual's performance of a continuous 9-month period of SGA. The following criteria apply to individuals who received more than just evaluation services. If a State VR agency or alternate participant claims payment for services to an individual who received only evaluation services, it must establish that the individual's continuous period or medical recovery (if medical recovery occurred before completion of a continuous period) would not have occurred without the services provided. In applying the criteria below, we will consider services

described in § 416.2214 that were initiated, coordinated or provided, including services before October 1, 1981.

(a) • • •

(1) *One year or less.* Any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(2) *More than one year.* (i) If the continuous period was preceded by transitional work activity (employment or self-employment which gradually evolved, with or without periodic interruption, into SGA), and that work activity began less than a year after VR services ended, any VR services which significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have contributed to the continuous period.

(ii) If the continuous period was not preceded by transitional work activity that began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period only if it is reasonable to conclude that the work activity which constitutes a continuous period could not have occurred without the VR services (e.g., training).

(b) *Continuous period with medical recovery occurring before completion.* (1) If an individual medically recovers before a continuous period has been completed, VR services under paragraph (a) of this section will not be payable unless some VR services contributed to the medical recovery. VR services will be considered to have contributed to the medical recovery if—

• • • • •

8. Section 416.2213 is revised to read as follows:

§ 416.2213 Payment for VR services in a case of VR refusal.

(a) For purposes of this section, VR refusal means an individual's refusal to continue to accept VR services or failure to cooperate in such a manner as to preclude the individual's successful rehabilitation.

(b) No later than the 60th day after the State VR agency or alternate participant makes a preliminary finding that an individual refuses to continue to accept VR services or fails to cooperate in a VR program, the State VR agency or alternate participant shall report to the appropriate Regional Commissioner (SSA) in writing such individual's VR refusal so that we may make the determination described in § 416.2209(c).

(c) Payment can be made to a State VR agency or alternate participant for the costs of VR services provided to an individual who, after filing an application with the State VR agency or alternate participant for rehabilitation services, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude the individual's successful rehabilitation. A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual if the individual's monthly disability or blindness payment has been suspended or terminated for a month or months after October 1984 because of VR refusal.

9. Section 416.2214 is revised to read as follows:

§ 416.2214 Services for which payment may be made.

(a) *General.* Payment may be made for VR services provided by a State VR agency in accordance with title I of the Rehabilitation Act of 1973, as amended, or by an alternate participant under a negotiated plan, subject to the limitations and conditions in this subpart. VR services for which payment may be made under this subpart include only those services described in paragraph (b) of this section which are—

(1) Necessary to determine an individual's eligibility for VR services; or

(2) Provided by a State VR agency under an IWRP, or by an alternate participant under a similar document, but only if the services could reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

(b) *Specific services.* Payment may be made under this subpart only for the following VR services:

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to determine—

(i) The nature and extent of the physical or mental impairment(s) and the resultant impact on the individual's employability;

(ii) The likelihood that an individual will benefit from vocational rehabilitation services in terms of employability; and

(iii) An employment goal consistent with the capacities of the individual and employment opportunities;

(2) Counseling and guidance, including personal adjustment counseling, and those referrals necessary to help a disabled or blind individual secure needed services from other agencies;

(3) Physical and mental restoration services necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and which constitutes a barrier to suitable employment at the SGA level;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, except that training or training services in institutions of higher education will be covered under this section only if maximum efforts have been made by the State VR agency or alternate participant to secure grant assistance in whole or in part from other sources;

(5) Maintenance expenses that are extra living expenses over and above the individual's normal living expenses and that are incurred solely because of the individual's participation in the VR program and that are necessary in order for the individual to benefit from other necessary VR services;

(6) Travel and related expenses necessary to transport an individual for purpose of enabling the individual's participation in other necessary VR services;

(7) Services to family members of a disabled or blind individual only if necessary to the successful vocational rehabilitation of that individual;

(8) Interpreter services and note-taking services for a deaf individual and tactile interpreting for a deaf-blind individual;

(9) Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for a blind individual;

(10) Telecommunications, sensory, and other technological aids and devices;

(11) Placement in suitable employment;

(12) Post-employment services necessary to maintain or regain other suitable employment at the SGA level;

(13) Occupational licenses, tools, equipment, initial stocks, and supplies;

(14) Rehabilitation engineering services; and

(15) Other goods and services that can reasonably be expected to motivate or assist the individual in returning to, or continuing in, SGA.

10. Section 416.2217 is amended by revising the introductory text of the section and by revising paragraphs (b) and (c) to read as follows:

§ 416.2217 What costs will be paid.

In accordance with section 1615(d) of

the Social Security Act, the Secretary will pay the State VR agency or alternate participant for the VR services described in § 416.2214 which were provided during the period described in § 416.2215 and which meet the criteria in § 416.2211, § 416.2212, or § 416.2213, but subject to the following limitations:

* * * * *

(b) The cost must not have been paid or be payable from some other source. For this purpose, State VR agencies or alternate participants will be required to seek payment or services from other sources in accordance with the "similar benefit" provisions under 34 CFR part 361, including making maximum efforts to secure grant assistance in whole or part from other sources for training or training services in institutions of higher education. Alternate participants will not be required to consider State VR services a similar benefit.

(c) (1) The cost must be reasonable and necessary, in that it complies with the written cost-containment policies of the State VR agency established under 34 CFR part 361 or, in the case of an alternate participant, it complies with similar written policies established under a negotiated plan. A cost which complies with these policies will be considered necessary only if the cost is for a VR service described in § 416.2214. The State VR agency or alternate participant must maintain and use these cost-containment policies, including any reasonable and appropriate fee schedules, to govern the costs incurred for all VR services, including the rates of payment for all purchased services, for which payment will be requested under this subpart. For the purpose of this subpart, the written cost-containment policies must provide guidelines designed to ensure—

(i) The lowest reasonable cost for such services; and

(ii) Sufficient flexibility so as to allow for an individual's needs.

(2) The State VR agency or alternate participant shall submit to us before the end of the 1st calendar quarter of each year a written summary of its cost-containment policies and, when requested by us, shall submit to us a copy(ies) of its specific written policies and procedures (e.g., any guidelines and fee schedules for a given year).

* * * * *

11. Section 416.2221 is revised to read as follows:

§ 416.2221 Validation reviews.

(a) *General.* We will conduct a validation review of a sample of the claims for payment filed by each State VR agency or alternate participant. We may conduct these reviews either on a prepayment or postpayment basis. We may review a specific claim, a larger sample of the claims, or all of the claims filed by any State VR agency or alternate participant, if we determine that such review is necessary to ensure compliance with the requirements of this subpart. For each claim selected for review, the State VR agency or alternate participant must submit such records of the VR services and costs for which payment has been requested or made under this subpart, or copies of such records, as we may require to ensure that the services and costs meet the requirements for payment. The State VR agency or alternate participant shall permit us (including duly authorized representatives) access to, and the right to examine, any records relating to such services and costs. Any review performed under this section will not be considered an audit for purposes of this subpart.

(b) *Purpose.* The primary purpose of these reviews is—

(1) To ensure that the VR services and costs meet the requirements for payment under this subpart;

(2) To assess the validity of our documentation requirements; and

(3) To assess the need for additional validation reviews or additional documentation requirements for any State VR agency or alternate participant to ensure compliance with the requirements under this subpart.

(c) *Determinations.* In any validation review, we will determine whether the VR services and costs meet the requirements for payment and determine the amount of payment. We will notify in writing the State VR agency or alternate participant of our determination. If we find in any postpayment validation review that more or less than the correct amount of payment was made for a claim, we will determine that an overpayment or underpayment has occurred and will notify the State VR agency or alternate participant that we will make the appropriate adjustment.

(d) *Appeals.* If the State VR agency or alternate participant disagrees with our determination under this section, it may appeal that determination in accordance with § 416.2227. For purposes of this section, an appeal must be filed within 60 days after receiving the notice of our determination.

[FR Doc. 92-17331 Filed 7-23-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of Aminorex into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place aminorex into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA (21 U.S.C. 811(h)). This intended action is based on a finding by the Administrator that the placement of aminorex into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacture, distribution and possession of aminorex.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be temporarily scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). In making a finding that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) History and current pattern of abuse; (5) The scope, duration and

significance of abuse; and (6) What, if any, risk there is to the public health.

House Report 98–835 which accompanied Public Law 98–473 states that "This new procedure (emergency scheduling) is intended by the committee to apply to what have been called 'designer drugs', new chemical analogs or variations of existing controlled substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." Aminorex is a central nervous system stimulant and is an analogue of *cis*-4-methylaminorex, which is a Schedule I stimulant with a high potential for abuse. As such, aminorex is the type of substance which Congress intended to be considered for temporary scheduling.

Aminorex, also called aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine is a phenylethylamine in which the side-chain has been cyclized into a substituted oxazoline. Its chemical structure is substantially similar to that of *cis*-4-methylaminorex. Available pharmacological data indicate that aminorex produces amphetamine-like, psychomotor stimulant effects in laboratory animals.

Illicit trafficking with aminorex was first reported in 1990 by law enforcement personnel in Missouri. Subsequently it has bee sold as methamphetamine in Minnesota, Michigan, Wisconsin, Florida, South Carolina and Pennsylvania. In 1991 a clandestine laboratory engaged in the production of aminorex was encountered in the state of Florida. Its operators were successfully prosecuted for the manufacture of a controlled substance analogue pursuant to 21 U.S.C. 813.

There has been one report of a death in 1990 linked to the abuse of aminorex in the United States. However, the scientific literature contains reports of deaths in Europe attributed to pulmonary hypertension in patients who were taking aminorex as an anorectic. Aminorex was sold in Europe as an approved anorectic for a short period in the mid-sixties. The similarity of aminorex to amphetamine and 4-mehthylaminorex, especially its central nervous system stimulant activity, strongly suggests that abuse of this substance will lead to health and safety risks similar to those produced by amphetamine, methamphetamine, and 4-methylaminorex. Since aminorex is prepared only in clandestine laboratories, there are additional risks inherently associated with clandestine manufacture.

The above data show that the continued, uncontrolled clandestine production, distribution and abuse of aminorex poses an imminent hazard to the public safety. DEA is not aware of any commercial manufacturer or supplier of aminorex in the United States. DEA is also not aware of any recognized therapeutic use of this substance in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator has considered the three factors required for a determination of whether temporarily scheduling aminorex under the CSA is necessary to avoid an imminent hazard to the public safety. Based on a consideration of these factors and other relevant information, the Administrator finds that placement of aminorex into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services, of his intention to temporarily place aminorex into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification, including whether there is an exemption or approval in effect for aminorex under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published. Because the Administrator finds that it is necessary to temporarily place aminorex into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication in the **Federal Register**. Further, it is the intention of the Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

The Administrator of the Drug Enforcement Administration hereby certifies that this notice of intent to temporarily place aminorex into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 801 *et seq.*

The temporary scheduling of aminorex is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this proposed emergency scheduling action is not subject to the provisions of E.O. 12778 which are contingent upon review by OMB. This regulation both responds to an emergency situation posing an imminent danger to the public health and safety, and is essential to a criminal law enforcement function of the United States. Accordingly, it is not subject to the moratorium on regulations ordered by the President of the United States in his memorandum of January 28, 1992, as amended.

This action has been analyzed in accordance with the principles and criteria in E.O. 12291, and it has been determined that the temporary placement of aminorex into Schedule I of the CSA does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by Section 201(h)) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Paragraph (g)(4) is added to § 1308.11 to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(4) Aminorex (Some other names: 2-amino-5-phenyl-2-oxazoline; aminoxaphen; 4,5-dihydro-5-phenyl-2-oxazolamine), its salts, optical isomers, and salts of optical isomers—1585

Dated: July 17, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–17523 Filed 7–23–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 42

RIN 2190-AA11

Coordinated Enforcement

AGENCY: Office of the Secretary, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Labor is proposing to revise its regulations for coordinated enforcement of farm labor protective statutes. The rule will clarify existing regulatory language and update the regulations by making nomenclature and other technical amendments necessitated by subsequent legislation, Departmental administrative reorganizations, and interdepartmental coordination. The regulations' sections also are reorganized for clarification. In addition, the rule will modify some of the regional quarterly and annual reporting requirements of the existing regulations, and will add a new outreach initiative to the migrant and seasonal farmworker progam.

DATES: Comments are invited on the advance proposed rule. Comments shall be submitted no later than August 24, 1992.

ADDRESSES: Comments shall be submitted, in writing, by mail to the Deputy Secretary of Labor, 200 Constitution Avenue NW., room S–2114, Washington, DC 20210, Attention: Office of Program Economics, Office of the Assistant Secretary for Policy.

FOR FURTHER INFORMATION CONTACT: Gordon Claucherty, Director, National Farm Labor Coordinated Enforcement Committee staff-level working group. Telephone: (202) 523–6026 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) proposes to revise its regulations for coordinated enforcement of farm labor protective statutes. The rule will clarify existing regulatory language, update the regulations by making nomenclature and other technical amendments necessitated by superseding legislation and Departmental administrative reorganizations, revise guidelines for submitting regional plans and quarterly reports, reorganize the regulations' sections for clarification, and add a new outreach initiative to the migrant and seasonal farmworker programs. Also, the Department is seeking further information on how to best coordinate the administration of the DOL enforcement programs that impact farmworkers.

Part 42 was originally promulgated by the Department in 1980 to coordinate the farm labor enforcement activities of the Employment and Training Administration (ETA), the Employment Standards Administration (ESA), the Occupational Safety and Health Administration (OSHA), and the Office of the Solicitor of Labor (SOL). See 45 FR 39489 (June 10, 1980). Since part 42 was published in 1980, a number of changes have occurred in the Department's farm labor programs, such as: The Farm Labor Contractor Registration Act has been replaced by the Migrant and Seasonal Agricultural Worker Protection Act; the Immigration Reform and Control Act of 1986 has amended the Immigration and Nationality Act (INA) to give the Department a statutory enforcement role under that Act; ESA has reorganized its regional offices and responsibility for directing the regional coordinating committees established in the regulations has been delegated to the Wage and Hour Division's Regional Administrators; and the Assistant Secretary for Policy has assumed a role in farm labor programs at the national level (*e.g.*, in the Special Agricultural Worker and Replenishment Agricultural Worker programs). These and other changes necessitate updating the coordinated enforcement regulations.

In addition, the rule will revise the present guidelines with respect to requirements for the annual plans and quarterly reports submitted by the Regional Farm Labor Coordinated Enforcement Committees (Regional Committees). Since the mission and function statements of the Department's farm labor coordinating agencies are on file in the National office, it is not necessary to duplicate them in the regional plans and reports. Further, since each of the Department's program offices has instituted statistical reporting systems that were not in place when the regulations were originally promulgated, it is not necessary to duplicate these data in the regional plans and reports; instead, the data will be maintained by the program agencies at the regional and national levels in such a way that it can be made available to the National Committee upon request.

Finally, a new emphasis on farm labor outreach activities has been added to the coordinated farm labor enforcement program. The rule will incorporate this initiative into the regulations.

Other than the clarifying and technical changes described above, the rule will not alter the present provisions of Part 42 for overseeing the coordination of the Department's farm labor enforcement activities. The rule will maintain a National Committee, consisting of the heads of the above-named agencies and chaired by the Deputy Secretary of Labor. The rule will maintain the Regional Committees, chaired by the Regional Administrators of the Wage and Hour Division and consisting of the Regional Administrator of OSHA, ETA, and Wage and Hour, as well as the Regional Solicitor. Each Regional Committee will continue to hold at least one annual public meeting to discuss farm labor issues. The National Committee and the Regional Committees will continue to be assisted in their functions by saff-level working groups, with members from each of the above-named agencies.

The clarification and technical amendments of the regulations do not indicate any lessening of commitment to migrant and seasonal farmworker programs on the part of the Department. Instead, the amendments reflect statutory and administrative changes that have occurred since the rule was first promulgated. The streamlining of the regional reporting requirements, for example, reflects the Department's effort to be more effective and efficient in the coordinated enforcement of the various farm labor statutes. Further, the addition of the Assistant Secretary for Policy to the membership of the National Committee adds strength to that committee. Through the proposed rule updating the part 42 regulations, the Department will demonstrate its firm commitment to migrant and seasonal farmworker programs.

Signed at Washington, DC, this 17th day of July 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–17554 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–23–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7047]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood

elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. Section 67.4 is proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Fannin County (unincorporated areas)	
Mineral Springs Creek:	
At the confluence with Weaver Creek	*1,580
Approximately 1.5 miles upstream of Aska Road	*1,671
Weaver Creek:	
Approximately 650 feet upstream of the confluence with Toccoa River	*1,563
Approximately 280 feet upstream of the confluence of Mineral Springs Creek	*1,585
Maps available for inspection at the Fannin County Courthouse, Land Development Office, Blue Ridge, Georgia.	
Send comments to Mr. Richard Stanley, Chairman of the Board of Fannin County Commissioners, P.O. Box 487, Blue Ridge, Georgia 30513.	
NEW YORK	
Philadelphia (village), Jefferson County	
Indian River:	
At downstream corporate limits	*424
At upstream corporate limits	*438
Black Creek:	
At confluence with Indian River	*488
At a point approximately 1,500 feet upstream of CONRAIL	*489
Maps available for inspection at the Philadelphia Village Hall, 56 Main Street, Philadelphia, New York.	
Send comments to the Honorable Wayne L. Huntress, Mayor of Village of Philadelphia, Jefferson County, P.O. Box 70, Philadelphia, New York 13673.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/country	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	City of Harrison, Boone County.	Dry Jordan Creek	At the confluence with Crooked Creek	*1,051	*1,054
			Just downstream of East Ridge Avenue	*1,054	*1,054
		Dry Jordan Tributary	At the confluence with Dry Jordan Creek	*1,120	*1,120
			Approximately 1,800 feet upstream of U.S. Highway 65.	None	*1,235
		Crooked Creek	Just downstream of U.S. Highway 65	*1,045	*1,046
			Approximately 1,700 feet upstream of Old Stone Road.	*1,068	*1,070
Maps are available for review at the Public Works Building, 303 Third Avenue, Harrison, Arkansas. Send comments to The Honorable William Gregg, Mayor, City of Harrison, P.O. Box 1715, Harrison, Arkansas 72601.					
California	Fontana San Bernardino County.	West Fontana Channel	Just east of the intersection of Orange Way and Oleander Avenue.	None	*1,242

State	City/town/country	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 200 feet northeast of the intersection of Citrus Avenue and the Atchison Topeka and Santa Fe Railroad.	None	*1,232
			At the intersection of Citrus and Merrill Avenue	None	#1
			At the intersection of Randall Avenue and Date Street.	None	#2
			At the intersection of Ceres Avenue and Oleander Avenue.	None	#3

Maps are available for review at the City of Fontana Engineering Services, City Hall, 8353 Sierra Avenue, Fontana, California.
Send comments to the Honorable William Kragness, Mayor, City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

Colorado	City and County of Denver.	Westerly Creek	At Montview Boulevard	*5,314	*5,314
			At Beeler Street	*5,321	*5,319
			At 6th Avenue	*5,325	*5,324
			At 14th Avenue	*5,335	*5,331
			At 11th Avenue	None	*5,339

Maps are available for review at Public Works Department, City and County of Denver, 2460 West 26th Avenue, Suite 300C, Denver, Colorado.
Send comments to The Honorable Wellington E. Webb, Mayor, City of Denver, 1437 Bannock Street, Denver, Colorado 80201.

Illinois	Village of New Lenox, Will County.	Jackson Branch Creek	About 850 feet downstream of Jackson Branch Drive.	None	*659
			About 8,400 feet upstream of Nelson Street	None	*691

Maps are available for inspection at the Building Inspector's Office, Village Hall, 701 W. Haven Avenue, New Lenox, Illinois.
Send comments to The Honorable John Nowakowski, Mayor, Village of New Lenox, Village Hall, 701 W. Haven Avenue, New Lenox, Illinois 60451.

Michigan	Township of Standish, Arenac County.	Saginaw Bay	Along shoreline from 4300 feet north of Knickerbocker Road to Sagatoo Road.	*585	*586
			Along shoreline from Knickerbocker Road for 4300 feet north.	*585	*585

Maps are available for inspection at the Township Clerk's Office, Standish, Michigan.
Send comments to The Honorable Paul LaClair, Township Supervisor, Township of Standish, 2140 Palmer Road, Standish, Michigan 40658.

Missouri	Lincoln County Unincorporated Areas.	Cuivre River	At Burlington Northern Railroad	None	*458
			Approximately 2.14 miles upstream of State Route 47.	None	*478
		Buchanan Creek	At confluence with Cuivre River	*469	*471
			Approximately 1.05 miles upstream of confluence with Cuivre River.	*471	*472
		Big Creek	Approximately 3,950 feet downstream of County Route 729.	None	*480
			Approximately 1.13 mile upstream of County Route J.	None	*515
		Town Branch	Approximately 897 feet upstream of confluence with Buchanan Creek.	*473	*472
			Approximately 1.01 miles upstream of State Route 47.	*476	*477
		Brushy Fork Creek	At confluence with Bobs Creek	None	*454
			At County Route 691	None	*498
		Bobs Creek	At Burlington Northern Railroad	None	*447
			At State Route 47	None	*535
		Lost Creek	At Burlington Northern Railroad	None	*454
			Approximately 3.8 miles upstream of Burlington Northern Railroad.	None	*518
		Sandy Creek	Approximately 50 feet downstream of Burlington Northern Railroad.	None	*447
			Approximately 3.3 miles upstream of the confluence with Little Sandy Creek.	None	*582

Maps are available for inspection at the Lincoln County Surveyor's Office, 201 Main Street, Troy, Missouri.
Send comments to Mr. Russell Cox, Presiding Commissioner, Lincoln County Commission, 201 Main Street, Troy, Missouri 63379.

New Mexico	Santa Fe, City Santa Fe County.	Santa Fe River	Approximately 200 feet downstream of confluence of Arroyo Mascaras.	*6,883	*6,884
			At downstream side of Delgado Street	*7,033	*7,032
		Rob Flowpath	At confluence with Santa Fe River	*6,940	*6,938
			At divergence from Santa Fe River	*7,014	*7,017
		Arroyo Saiz	Approximately 60 feet upstream of confluence with Santa Fe River.	*7,035	*7,034
			Approximately 360 feet upstream of the most upstream crossing of Avenida Primavera.	None	*7,185
		Arroyo Mascaras	At confluence with Santa Fe River	*6,883	*6,884
			Approximately 80 feet upstream of West Alameda.	*6,887	*6,886

State	City/town/country	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the Santa Fe City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico. Send comments to The Honorable Sam Pick, Mayor of the City of Santa Fe, Santa Fe County, P.O. Box 909, Santa Fe, New Mexico 87504.					
North Carolina	Town of Boone, Watauga County.	Winkler Creek	At mouth	°3,102	°3,102
			Just upstream of Flannery Fork Road	None	°3,157
		Boone Creek	At mouth	°3,118	°3,120
			Just downstream of Highland Avenue	°3,145	°3,148
			Just downstream of Unnamed Road, about 1,435 feet upstream of Clement Street.	°3,164	°3,164
		Hodges Creek	At mouth	°3,124	°3,126
			About 30 feet upstream of State Road 105 crossing, about 3,170 feet upstream of mouth.	None	°3,150
			About 85 feet upstream of State Road 105 crossing, about 3,170 feet upstream of mouth.	None	°3,156
			About 1.16 miles upstream of mouth	None	°3,199
Maps are available for inspection at the Planning Department, City Hall, Boone, North Carolina. Send comments to The Honorable Velma Barnley, Mayor, Town of Boone, City Hall, P.O. Box 192, Boone, North Carolina 28607.					
Ohio	City of Westerville, Franklin and Delaware Counties.	Spring Run	About 600 feet downstream of Dempsey Road	None	°826
			Just downstream of Maxtown Road	None	°893
		Big Walnut Creek	About 1.22 miles downstream of Central College Road.	°829	°828
			Just downstream of Central College Road	None	°833
		Alum Creek	About 2,200 feet downstream of West Schrock Road.	°798	°796
			About 1.48 miles upstream of West Main Street.	None	°814
Maps are available for inspection at 21 South State Street, Westerville, Ohio. Send comments to The Honorable John Parimuha, Mayor, City of Westerville, 21 South State Street, Westerville, Ohio 43081.					
Vermone	Fair Haven, Town Rutland County.	Castleton River	Upstream side of Adams Street	°317	°318
			At upstream corporate limits	°371	°370
Maps are available for inspection at the Fair Haven Town Hall, 3 North Park Place, Fair Haven, Vermont. Send comments to Ms. Patricia J. Paolillo, Town Manager of Fair Haven, Ruthland County, 3 North Park Place, Fair Haven, Vermont 05743.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 15, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-17395 Filed 7-23-92; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-35; Notice 1]

RIN 2127-AE37

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice grants a petition for rulemaking submitted by the G.T.B.-Brussels Working Party, and proposes an additional type of standardized replaceable light source to be used in replaceable bulb headlamp systems on motor vehicles. The light source, which incorporates a single filament, would be known as Type HB6. Known in Europe as Type H7, the bulb has already been approved by Working Party (WP) 29 and will soon be incorporated into ECE Regulation No. 37. The bulb is said to show more filament luminance and luminous flux, while consuming less electricity. It has been introduced for new headlamp designs with free shape reflectors.

DATES: The comment closing date for this proposal is September 8, 1992. Any request for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 553.19). The effective date of the amendment would be 30 days after publication of the final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket number and notice number of the notice, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA, 202-366-6987.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration has received a petition from the G.T.B.-Brussels Working Party for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108 to permit the use of a new single filament halogen headlamp bulb in replaceable bulb headlamp systems. According to the petitioner, the new bulb, known in Europe as H7, provides improved headlighting performance. Type H7 has already been approved by WP 29, will soon be incorporated into ECE Regulation No. 37, and, if allowed in the United States, would contribute to the

international harmonization of standards.

According to the petitioner, the bulb shows more filament luminance and more luminous flux while consuming less electricity. It is intended for use in low profile lamps, and the tighter tolerances for filament location will ensure performance equivalent to light sources with looser tolerances used in higher profile lamps. The bulb has a black cap and a glass tubing which is free of distortion. The filament supports are designed and placed to minimize inadvertent reflection on the tube and leadwires which may otherwise result in glare.

The petitioner also states that the new bulb has been introduced particularly for new headlamps with free shape reflectors. These headlamps have special computer designed reflectors with which the required beam pattern can be produced nearly without the support of a lens. This requires tighter position tolerances of the bulb filament. Type H7 was designed in response to the need for smaller, shaped headlamps. It has a base designed entirely of metal which withstands heat build-up without outgassing of agents of the lamp base, or from silicon oils of the O-ring.

NHTSA has reviewed the petition and has concluded that there is a reasonable possibility that the amendment requested would be issued at the conclusion of a rulemaking proceeding. Accordingly, it has granted the petition, and is implementing the grant through this notice of proposed rulemaking. This rulemaking action is consistent with the agency's relaxation of design restrictions on light sources for headlamps in an effort to make Standard No. 108 more performance-oriented.

NHTSA notes that there is a pending rulemaking action which, if carried forward to a final rule, would obviate the need for the amendment requested by the petitioner. Under proposed part 564, *Replaceable Light Source Dimensional Information*, the information presented in the G.T.B. petition would be placed in an informational docket, and that act would be sufficient to permit use of the H7 in a headlamp with no amendment of Standard No. 108 required. Thus, if part 564 should be adopted before the issuance of a final rule permitting use of the H7 light source, the final action taken by the agency with respect to its proposal to allow Type H7 may be a simple announcement in the **Federal Register** that the relevant information has been placed in the part 565 Docket.

However, it is unclear from the petition whether the light source is a Type H7 designed for use in the United States, or the Type H7 approved in Europe by WP29 to the incorporated, with U.S. voltage, in ECE Regulation No. 37. NHTSA has asked the petitioner for a clarification, because if the WP29-approved light source differs from the one set forth in the petition, the differences must be understood before a final rule is adopted.

With respect to Type H7, the light source would be known as Type HB6 in the nomenclature of Standard No. 108, indicating that it is the sixth type of replaceable light source permitted by the standard. S7.6 would be amended by adding language appropriate for the HB6 specifications, which would be set forth in a revised Figure 26. In addition to containing specifications for HB6, the proposed revised Figure 26 deletes data that NHTSA regards as redundant and that might have contributed to some confusion regarding the interpretation of the Figure. At least one manufacturer, Valeo Eclairage Signalization of France, has found the present Figure confusing.

Effective Date

The effective date of the final rule would be 30 days after its publication in the **Federal Register**. There is good cause for this early effective date since as the amendment is permissive in nature, and relieves a restriction.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", or significant under Department of Transportation regulatory policies and procedures. Because the H7 is currently in the approval process in Europe, NHTSA does not know the probable cost of the HB6. However, it should be comparable to the HB2 light source, which is based upon another European type, the H4. The proposed rule is permissive in nature. Thus, the effects of the proposed rule are so minimal that preparation of full regulatory evaluation is not necessary.

Regulatory Flexibility Act

The agency has also considered the effects of this proposed rule in relation to the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant effect upon a substantial number of small entities. Lamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new vehicles, if equipped with headlamps containing HB6 light sources, should not be more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

National Environmental Policy Act

NHTSA has analyzed this proposed rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment as there should be no increase in materials required by the manufacture of a lamp containing an HB6 light source.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism". It has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407 delegations of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended as follows:

(a) Paragraphs S7.7(f), (g), (h), (i), (j), and (k), would be redesignated S7.7(g), (h), (I), (j), (k), and 1 respectively.

(b) New paragraph S7.7(f) would be added to read:

S7.6(f) A Type HB6 light source shall be designed to conform to the dimensions specified in Figure 27. Its maximum power shall be 55.6 watts and its luminous flux shall be 1350 +/−12% lumen.

(c) Figure 8, Bulb Deflection Test, would be amended by adding "HB6" under the column headed "Standardized Replaceable Light Source Type", and by adding " "27.05 +/−0.20 mm (1.06 +/−0.008 in)" under the column headed "dimension 'A' ".

(d) Figure 26, Table of Photometric Requirements, would be revised as follows:

FIGURE 26.—TABLE OF PHOTOMETRIC REQUIREMENTS

[1. Four-Headlamp Systems (4); 2. Two-Headlamp Systems (2)]

Light source type	HB1	HB2	HB3	HB4	HB5	HB6
HB1	Table 1 SAE J579 DEC84 (4, 2).	Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2)	Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2)	Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2)	Table 1 SAE J579 DEC84 (4,2). Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Table 1 SAE J579 DEC84 (4, 2).	Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2) Fig. 15 (4) Fig. 17 (2)
HB2						
HB3						
HB4						
HB5						
HB6						

(e) Figure 27, Specification for the HB6 Replaceable Bulb, would be added as follows:

BILLING CODE 4910-59-M

FIGURES 27-1 TO 27-6
TYPE HB6 REPLACEABLE LIGHT SOURCE
DIMENSIONAL SPECIFICATIONS

The drawings are intended only to indicate the essential dimensions of the light source
Dimensions in millimeters

Figure 27-1
Main drawing

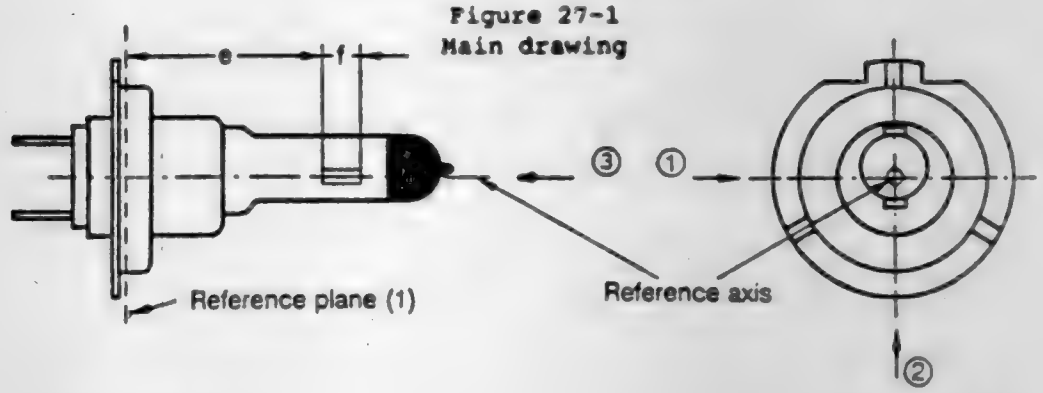

Figure 27-2
Maximum bulb envelope 3/

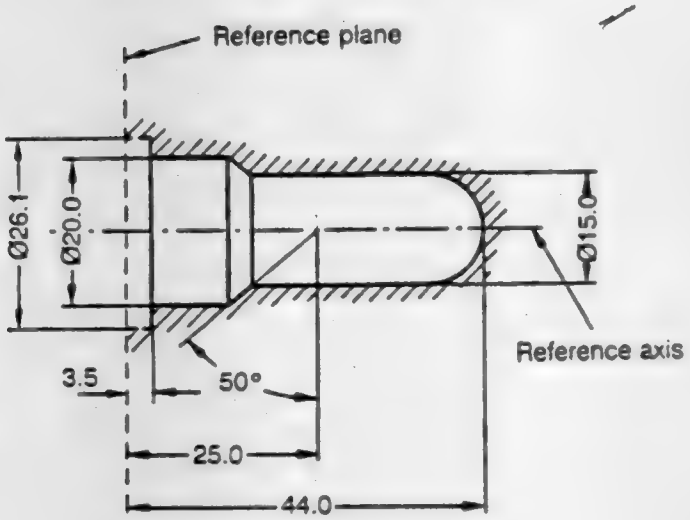

Figure 27-3
Definition of reference axis 2/

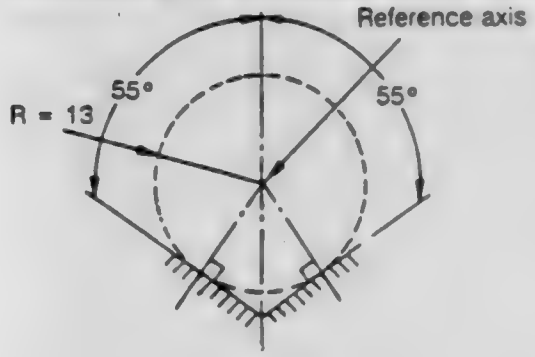

Figure 27-4
Distortion free area 4/ and black top 5/

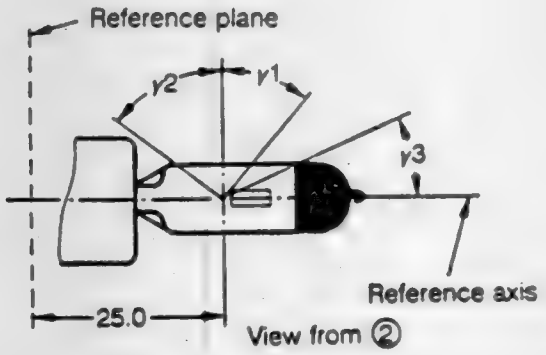

Figure 27-5
Metal free zone 6/

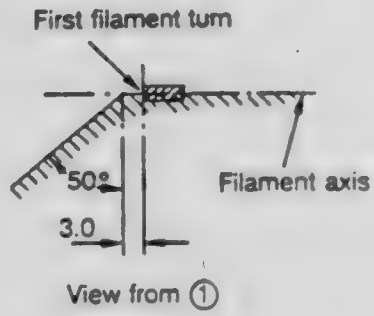

Figure 27-6
Bulb eccentricity 9/

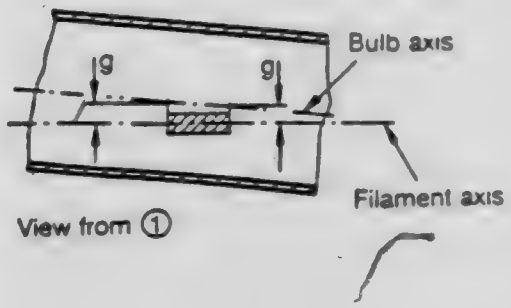

FIGURE 27-7
TYPE HB6 REPLACEABLE LIGHT SOURCE
DIMENSIONAL SPECIFICATIONS AND NOTES

Figure 27-7
Dimensional specifications

Dimensions in mm			
e	7/	25.0	8/
f	7/	4.1	8/
g	9/	0.5	min
γ_1	4/	40 °	min
γ_2	4/	50 °	min
γ_3	4/	30 °	min

Base PX26d in accordance with Figures 27-9 and 27-10

1/ The reference plane is defined by the points on the surfaces of the holder on which the three supporting bosses of the base ring will rest.

2/ The reference axis is perpendicular to the reference plane and crosses the intersection of the two perpendiculars as indicated in Figure 27-3.

3/ Glass capsule and supports shall not exceed the envelope as indicated in Figure 27-2. The envelope is concentric to the reference axis.

4/ Glass bulb shall be optically distortion free within the angles γ_1 and γ_2. This requirement applies to the whole bulb circumference within the angles γ_1 and γ_2.

5/ The obscuration shall extend at least to angle γ_3 and shall extend at least to the cylindrical part of the bulb on the whole bulb top circumference.

6/ The internal design of the light source shall be such that stray light images and reflections are only located above the filament itself seen from the horizontal direction. (View ① as indicated in Figure 27-1). No metal parts other than filament turns shall be located in the shaded area as seen in Figure 27-5.

7/ The end of the filaments are defined as the points where, when the viewing direction is direction ① as shown in Figure 27-1, the projection of the outside of the end turns crosses the filament axis.

8/ The filament position shall be checked by means of a "Box System". Figure 27-8.

9/ Offset of filament in relation to bulb axis measured in two planes parallel to the reference plane where the projection of the outside of the end turns nearest to or furthest from the reference plane crosses the filament axis.

10/ Note concerning the filament diameter.
- No actual diameter restrictions apply but the objective for future developments is to have d max. = 1.3 mm.

FIGURE 27-8
TYPE HB6 REPLACEABLE LIGHT SOURCE
SCREEN PROJECTION REQUIREMENTS

This test is used to determine, by checking whether the filament is correctly positioned relative to the reference plane and the reference axis, whether a light source complies with the requirements.

Dimensions in millimetres

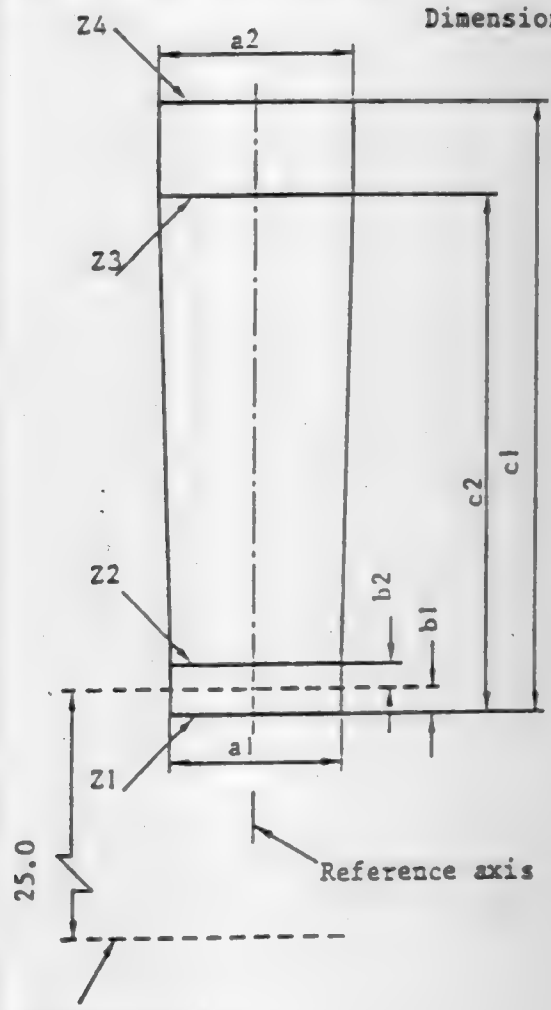

	a1	a2	b1	b2	c1	c2
12V	d + 0.30	d + 0.50	0.2		4.6	4.0

d = diameter of filament

The ends of the filament as defined in Figure 27-7, foot-note 7/, must lie between the lines Z1 and Z2 and between lines Z3 and Z4.

The filament position is checked solely in directions ① and ② as shown in Figure 27-1.

The filament must lie entirely within the limits shown.

FIGURE 27-9
TYPE HB6 REPLACEABLE LIGHT SOURCE
BASE PX26d - DRAWINGS

These drawings are not mandatory. Their sole purpose is to show which dimensions must be verified.

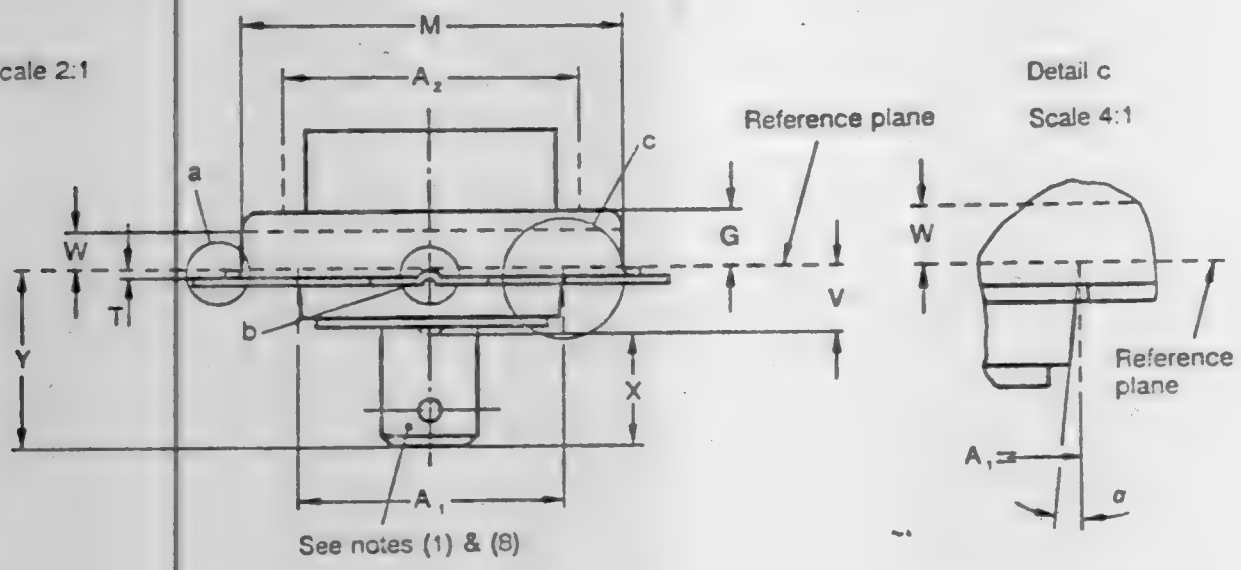

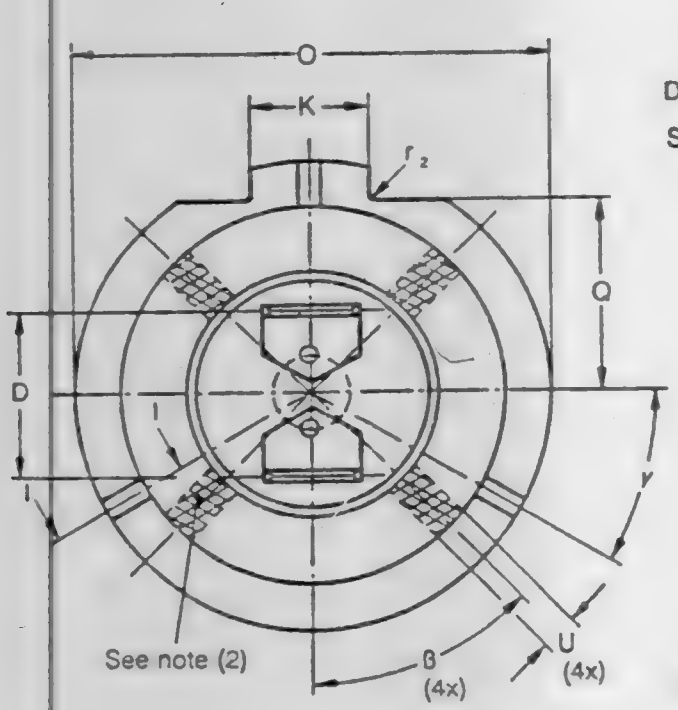

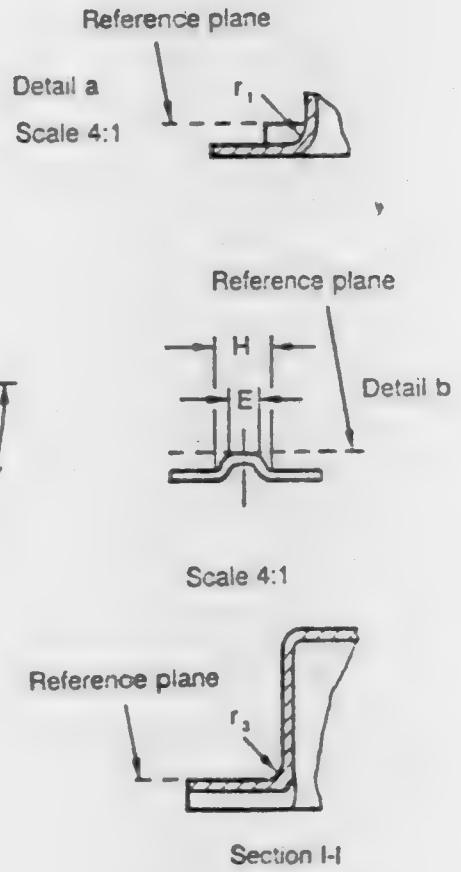

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FIGURE 27-10—TYPE HB6 REPLACEABLE LIGHT SOURCE BASE PX26d—DIMENSIONS

[Dimensions in millimeters]

Dimension	Min.	Max.
A_1 (3)	17.8	18
A_2 (4)	20	
D (5)	Nom. 11.5	
E°	1	—
G	—	3.5
H°	—	2
K	7.9	8.0
M	25.9	26.0
O	33.8	34.0
Q	13.2	13.7
T	0.6	0.8
U (2)	2.4	

FIGURE 27-10—TYPE HB6 REPLACEABLE LIGHT SOURCE BASE PX26d—DIMENSIONS—Continued

[Dimensions in millimeters]

Dimension	Min.	Max.
V	6	—
W (6)	2	
X	8	—
Y	—	16
r_1	(7)	
r_2	—	0.3
r_3 (6)	—	0.4
α	—	3°
β (2)	45°	
γ°	29°	31°

*These dimensions are solely for base design and are not to be gauged on finished light source.

(1) For connector tab, see Figure 27-11.

(2) In these areas breaking-throughs or recesses are allowed.

(3) The means of securing the light source in the holder shall be such that no forces in the direction of the reference axis are exerted within this zone.

(4) This dimension delineates the demarcation between the space which may be occupied by parts of the light source and the space which may be occupied by parts of the holder/reflector.

(5) To be checked by means of the gauge shown on sheet . . . (u.c.)

(6) This dimension indicates the minimum height over which the ring shall be cylindrical, with the exception of the areas of transition from the three supporting lugs to cylinder M, where radius r3 applies.

(7) The radius r1 shall be equal to or smaller than dimension T.

(8) The positions of the contact tabs shall not deviate from the position shown by more than ±20°.

BILLING CODE 4910-59-M

FIGURE 27-11
TYPE HB6 REPLACEABLE LIGHT SOURCE
BASE PX26d - CONTACT TAB

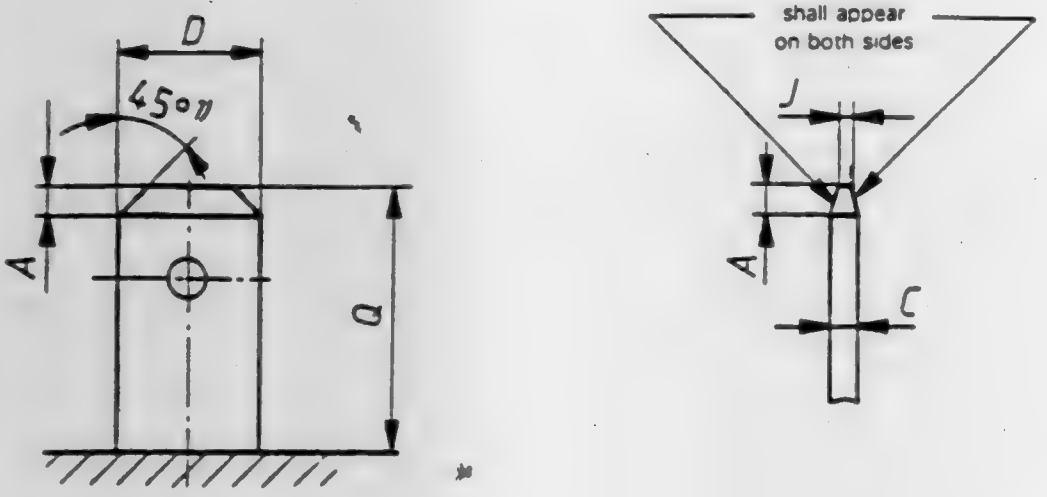

Tab dimensions in mm		
	min.	max.
A	0.5	1.0
C	0.77	0.84
D	6.2	6.4
E	4.0	4.7
F	1.6	2.0
J	0.3	0.5
Q 2)	-	-

1) Bevel A x 45° need not be a straight line but shall not be a concave curve if it is within the confines shown; it may be a radius of A.
2) This dimension is controlled by base dimensions X and Y. (Figure 27-9).

FIGURE 27-12
TYPE HB6 REPLACEABLE LIGHT SOURCE
HOLDER PX26 - DRAWINGS

The drawing is intended only to indicate the dimensions essential for interchangeability.

Scale 2:1

HOLDER A

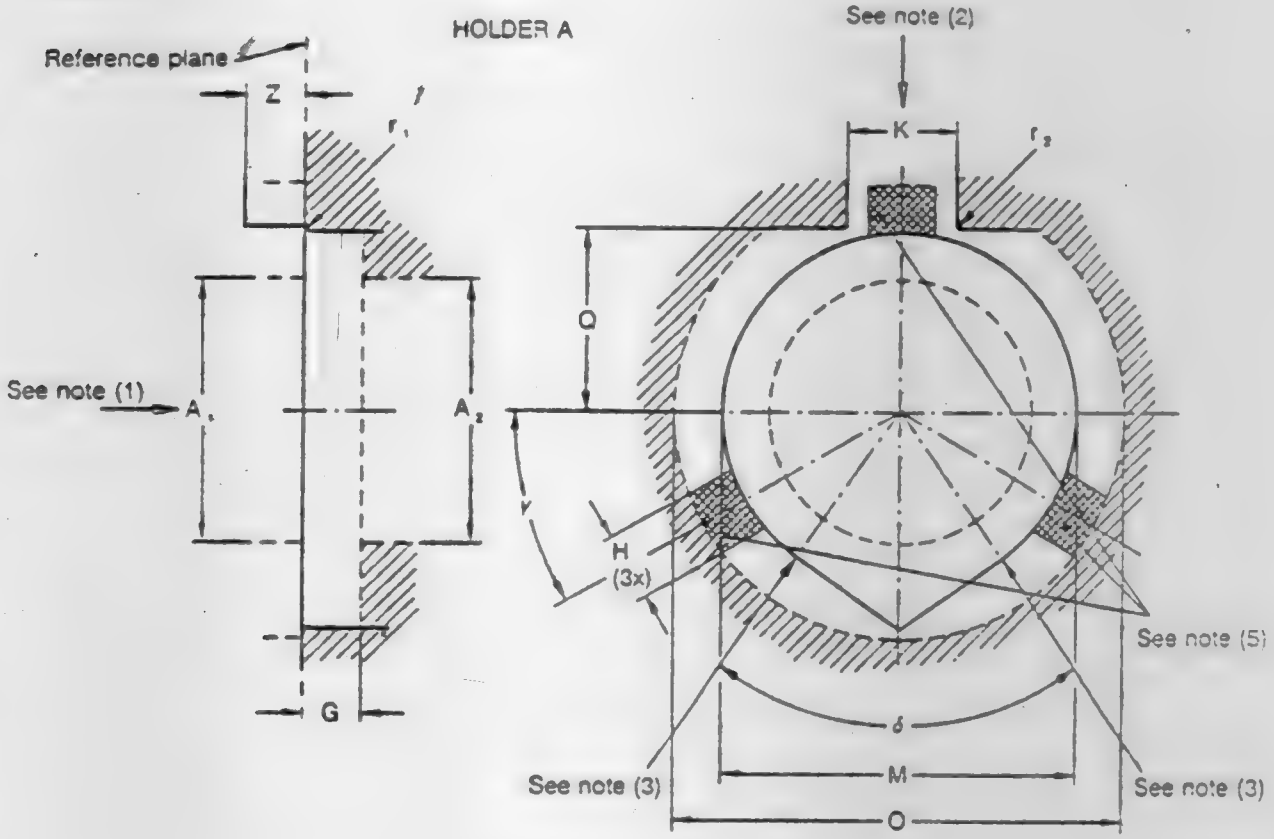

HOLDER B

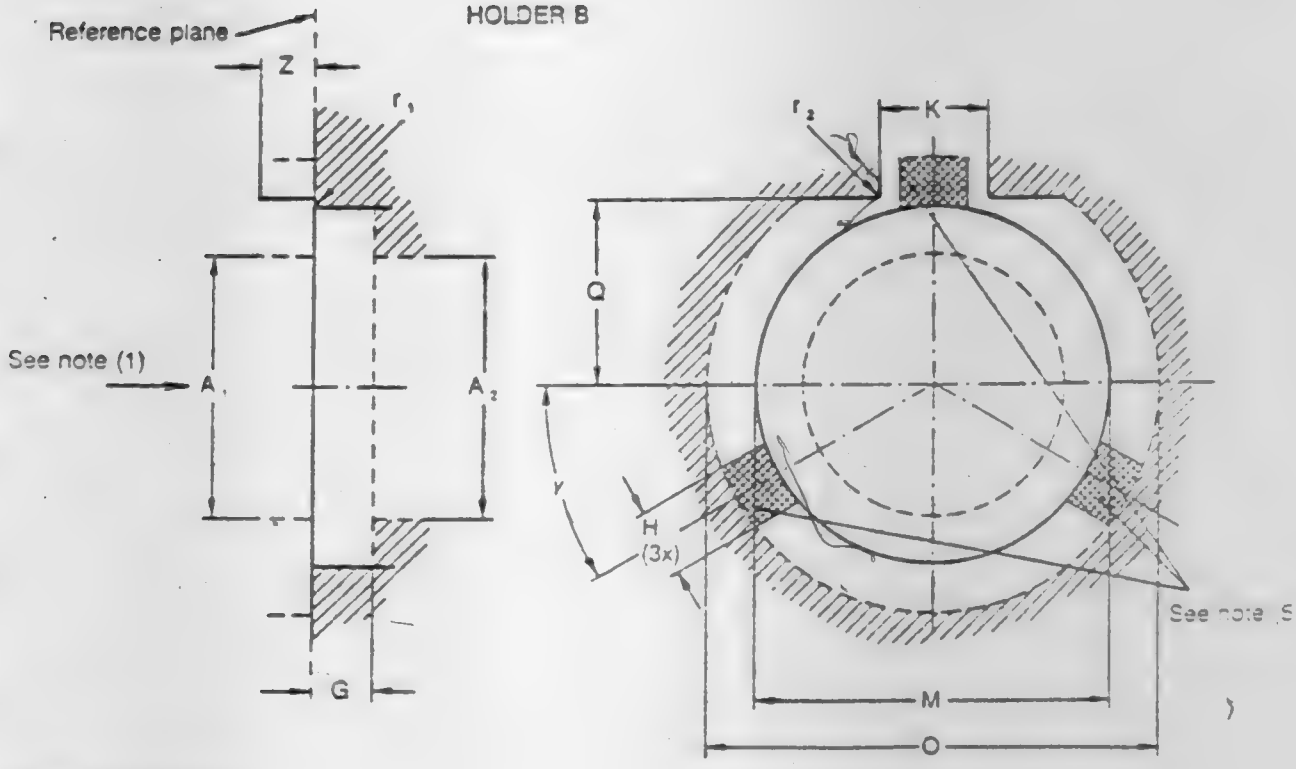

BILLING CODE 4910-59-C

FIGURE 27-13—TYPE HB6 REPLACEABLE LIGHT SOURCE HOLDER PX26—DIMENSIONS AND NOTES

[Dimensions in millimetres]

Dimension	Min.	Max.
A1 (6)		18.5
A2 (4)		20
Holder A:		
G	3.6	
H (5)	5	
K	8.1	8.2
M (3)	26.4	26.6
O	35	
Q	13.8	14.0
Z	4.0	
r1	0.45	1.0
r2	0.4	0.6
δ (3)	69.30°	70.30°
	Approx. 30°	
Holder B:		
G	3.6	
H (5)	5	
K	8.1	8.2
M	26.02	26.12
O	35	
Q	13.8	14.0
Z	4.0	
r1	0.45	1.0
r2	0.4	0.6
	Approx. 30°	

(1) The light source shall be inserted in the direction of the arrow (axial direction), bulb first. The force exerted when the light source is in position shall be not less than 15 N and not be greater than 30 N (under consideration). Note for holder A only: This force shall preferably be applied later than the force mentioned in note 2, in order to be sure that the light source is pushed against the resting area for the ring of the base. (See note 3).

(2) Holder A only. The light source shall be pushed in the direction of the arrow (radial direction). The force exerted when the light source is in position shall be not less than 2 N and not be greater than 10 N (under consideration).

(3) Holder A only. Supporting area for the base ring, defined by angle δ and radius M/2.

(4) This dimension delineates the demarcation between the space which may be occupied by parts of the light source and the space which may be occupied by parts of the holder/reflector.

(5) Supporting areas for the supporting bosses of the base, situated at the reference plane.

(6) The means of securing the light source in the holder shall be such that the force in the direction of the reference axis of the light source are exerted within this zone. The holder shall be so designed that the means of retention can only be so designed that the means of retention can only be applied when the light source is in the correct position. The means of retention shall make contact with the base ring.

Issued on: July 17, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92-17329 Filed 7-23-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 920776-2176]

RIN 0648-AE36

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The actions proposed by this rule are intended to make the FMP and its implementing regulations consistent with amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act). The 1990 amendments to the Magnuson Act established exclusive U.S. jurisdiction over fisheries for tuna within the exclusive economic zone (EEZ). Amendment 6 provides that tunas and related species will be included in the fishery management unit for the FMP. Amendment 6 also closes, to foreign vessels fishing for pelagic species, areas of the EEZ that are now closed to domestic longline vessels to prevent gear conflicts and incidental take of protected species. The amendment also applies some of the general foreign fishing regulations, which now apply to foreign longline vessels, to foreign baitboat and purse seine vessels.

DATES: Written comments must be received by September 4, 1992.

ADDRESSES: Copies of Amendment 6, which incorporates an environmental assessment and regulatory impact review, may be obtained from, and comments should be addressed to: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., suite 1405, Honolulu, HI 96813; or Gary Matlock, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Western Pacific Fishery Management Council, at (808) 523-1368; Svein Fougner, NMFS, at (310) 980-4034; or Alvin Z. Katekaru, NMFS, at (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Western Pacific Fishery Management Council (Council) functions under authority of the Magnuson Act. Until recently, section 102 of the Magnuson Act excluded tuna from the exclusive management authority of the United States. The 1990 amendments to the Magnuson Act provided for the inclusion of tunas, beginning January 1, 1992. In the Pacific, tuna fisheries are to be managed under fishery management plans of the Regional Fishery Management Councils. The Council prepared the FMP for fisheries that take pelagic species other than tunas (i.e., swordfish, marlins, other billfishes, mahimahi, wahoo, and oceanic sharks) in 1986, and regulations were implemented in 1987 (52 FR 5987, February 17, 1987).

Amendment 6 proposes to redefine the Pacific pelagic species management unit by listing genera of tunas, billfishes and associated species, and families of oceanic sharks in the management unit, rather than listing each individual species. In the Western Pacific region, many tunas and related species are taken in the pelagic fisheries. Listing every species to be included in the management unit of the FMP invites potential enforcement problems because of the large number of species caught throughout the Council's area of authority, and the possibility that species not commonly caught at this time will be caught in the future. The Council proposes to include all species in several genera, and would exercise management as authorized by the Magnuson Act. The tunas and related species to be added to the FMP management unit include the genera that contain these species: *Allothunnus fallai, Auxis rochei, A. thazard, Euthynnus affinis, E. lineatus, Gymnosarda unicolor, Katsuwonus pelamis, Scomber japonicus, Thunnus albacares, T. alalunga, T. obesus,* and *T. thynnus.* Each genus contains species that are caught by operators of vessels that fish in or otherwise use waters within the Council's area of authority. Similarly, the management unit will include genera of other species in the management unit (e.g., marlins, swordfish, mahimahi). The use of genus names will obviate the need for changes in the FMP if changes occur in the mix of species taken in the areas covered by the FMP, or as taxonomic changes arise.

The FMP currently prohibits foreign longline vessels from fishing within 12 nautical miles (nm) of Guam and the Hawaiian Islands. Areas up to 150 nm for Guam and the main Hawaiian Islands and up to 100 nm from the Northwestern Hawaiian Islands (NWHI) may be closed to foreign longline vessels if the Director, Southwest

Region, NMFS (Regional Director) determines that fishing by foreign vessels is causing: (1) Adverse impacts on domestic fishery performance, (2) excessive waste of catch, (3) excessive enforcement costs, or (4) adverse effects on stocks.

The FMP currently requires operators of foreign longline vessels to obtain permits before they can fish in the EEZ. These vessels are required to submit vessel activity reports, maintain timely and accurate records, and have a U.S. observer on board when fishing in the EEZ. These requirements are set out in §§ 611.4, 611.8, and 611.9, respectively. Amendment 6 would apply these same requirements to operators of foreign pole-and-line (baitboat) and purse seine vessels. These gear types were not in the fishery management unit under the FMP because they caught almost exclusively tuna, which were excluded from U.S. management authority. The incidental catch of non-tuna species was negligible, so the United States could not assert jurisdiction over vessels using this gear in the EEZ. With the amendments to the Magnuson Act, that exclusion no longer applies, and all foreign tuna fishing vessels are subject to regulation if they fish in the EEZ.

Domestic longline vessels currently are prohibited from fishing in certain areas of the EEZ around Guam and Hawaii to prevent conflicts between operators of longline vessels, troll and handline vessels, and to prevent the incidental take of protected species (e.g., Hawaiian monk seals). To ensure that these objectives are achieved under this proposed rule, the areas closed to U.S. longline fishing vessels would be closed to foreign fishing vessels as well. This closure also may reduce the possibility of localized overfishing and the potential loss of harvesting ability for domestic recreational and commercial fisheries. However, no permits would be issued for foreign longline vessels to fish in the EEZ around Hawaii until at least April 1994 (see below).

Domestic longliners currently are required to notify NMFS when transiting the NWHI protected species zone. The proposed regulations would also require operators of foreign longline vessels to notify NMFS when they intend to transit the NWHI protected species zone. The transit notification burden is expected to be minor.

The FMP contains a moratorium, until April 1994, on the issuance of new permits for domestic longliners authorized to fish around Hawaii. The moratorium requires a domestic longline vessel to hold a limited entry permit to fish for management unit species, or to possess management unit species caught by that vessel, in the EEZ and State waters around Hawaii. Under the Magnuson Act, domestic interests are given priority over foreign interests, and it would be inconsistent to issue permits allowing foreign longline vessels to fish in the EEZ when new domestic fishing effort is being prevented. Therefore, Amendment 6 would prohibit foreign longline fishing in the EEZ around Hawaii while the moratorium is in effect.

The proposed rule would continue to prohibit foreign longliners operating in the "non-retention zone" around the main Hawaiian Islands from (1) retaining billfish, oceanic sharks, wahoo, or mahimahi; and (2) removing billfish or oceanic sharks from the water. The non-retention zone would continue to extend seaward to 100 nm from the islands, but because the shoreward boundaries of the zone are contiguous with the closed areas, the zone would be narrowed to the extent that the closed areas are expanded. The non-retention zone around Guam, which extends to 50 nm from the island, would be abolished because it would be subsumed by the proposed expansion of the closed area. The regulations governing fishing in the non-retention zone would not restrict longlining for the newly included genera of tuna and related species. Amendment 6 does not propose to subject foreign purse seiners and baitboats to the existing non-retention zone for foreign longliners because the incidental catch of associated species by these gear types is small.

No new management measures would be imposed on domestic longliners or other domestic gears (e.g., purse seine, baitboat, troll, handline), so there would be no impacts on domestic fishermen.

The FMP currently contains specifications of domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) in non-numeric terms. They are specified to be the amounts of pelagic non-tuna that can be harvested and retained in accordance with the conservation and management measures in the FMP. Amendment 6 proposes that DAH and TALFF for tuna and related species be specified in the same non-numeric manner. There is no basis for setting numerical limits on effort or catch in the EEZ at this time for either domestic or foreign vessels.

In summary, under Amendment 6, tunas and related species would be included in the FMP, providing clear authority for the Council and NMFS to manage all pelagic fishing activities in the region. The definition of overfishing for tunas would guide the selection of conservation and management measures to promote the long-term viability of the management unit stocks. Because of the large (perhaps Pacific-wide) population boundaries of most of the Pacific pelagic management unit species (including the main tuna species), preventing the overfishing of entire stocks, including those within the EEZ, may require regional or international management. There is little information on the status of minor species, but including them in the management unit would allow the Council and NMFS to collect data and analyze the impacts of fishing on their populations.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that Amendment 6 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. In making that determination, the Secretary will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for this amendment that discusses the impact on the environment as a result of this rule. A copy of the EA is available from the Council (see **"ADDRESSES"**).

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The rule would have no impacts on domestic fishing vessels, as no new regulations are proposed to limit their activities. The regulations affecting foreign vessels would have slight or no impacts, depending on the amount of foreign fishing that results. There has been little legal foreign fishing for tuna or other pelagics in the EEZ since enactment of the Magnuson Act, and little or no foreign fishing is expected as a result of this amendment. The Council incorporated a regulatory impact review in Amendment 6, which may be obtained from the Council (see **"ADDRESSES"**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. No new regulations would apply to domestic interests. Little or no foreign fishing is expected as a result of these regulations, thus, there will be little

impact on foreign firms. Therefore, a regulatory flexibility analysis was not prepared.

This proposed rule is exempt from the procedures of Executive Order 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

This rule contains a collection-of-information requirement (transit notification in the protected species zone for foreign longline vessels) subject to the Paperwork Reduction Act. A request for approval of this collection-of-information has been submitted to OMB. Operators of foreign vessels would be required to notify the NMFS Enforcement Office immediately upon entering the exiting the NWHI closed area (protected species zone). The public reporting burden for individual operators is estimated to be less than 5 minutes for the pre-transit notification and 5 minutes for the post-transit notification. The total burden is expected to be minor because most foreign vessels do not presently pass through the protected species zone. In addition, all operators of foreign vessels that fish for tuna and related species in the EEZ would be required to record and submit data on their catch and effort in the EEZ. This total burden is also expected to be light because few, if any, vessels are expected to fish in the EEZ. The estimated burden per vessel is 5 minutes per day for the operator to copy this information onto the U.S. log. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (see **ADDRESSES**") and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attn. NOAA Desk Officer].

The Council has determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of American Samoa, Guam, and Hawaii. This determination was submitted to the respective island government agencies with coastal zone management responsibilities for review. All of the agencies have concurred with this determination.

The Council assessed the potential impacts of the proposed rule on endangered and threatened species and their habitat and concluded that the proposed rule is not likely to adversely affect any endangered or threatened species, nor will it adversely affect any critical habitat of any listed species. On May 22, 1992, NMFS concurred with this conclusion and has determined that no further consultations are necessary under the Endangered Species Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: July 17, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, chapter VI of title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.2, the definition of "highly migratory species" is removed and the definition of "fish (when used as a noun)" is revised to read as follows:

§ 611.2 Definitions.

* * * * *

Fish (when used as a noun) means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

* * * * *

Appendix A to Subpart A—[Amended]

3. In Table 1 to appendix A of subpart A of part 611, the entry in the first column for "Director, Southwest Region, National Marine Fisheries Service" is revised to read "Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213; Telephone (310) 980–4001".

3a. In Table 2 to appendix A of subpart A of part 611, the entry in the second column for "Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery" is revised to read "Pacific Pelagic Species Fishery".

3b. In Table 4 to appendix A of subpart A of part 611, the entry in the first column for "Pacific Billfish, Oceanic Sharks, Wahoo, and Mahimahi Fishery" is revised to read "Pacific Pelagic Species Fishery".

4. In the table to appendix D to subpart A of part 611, the following species codes and associated genera are added in numerical order to section B. of the table to read as follows:

Appendix D to Subpart A—Species Codes

Code	Common name [1]	Scientific name
	B. Pacific Ocean Fishes	
	Finfish	
257	Chub (Pacific) mackerel.	*Scomber japonicus.*
272	Albacore	Thunnus alalunga.
278	Bigeye tuna	*Thunnus obesus.*
280	Bluefin tuna	*Thunnus thynnus.*
282	Skipjack tuna	*Katsuwonus pelamis.*
284	Yellowfin tuna	*Thunnus albacares.*
269	Other tunas and related species.	*Allothunnus fallai, Auxis rochei, Auxis thazard, Euthynnus affinis, Euthynnus lineatus, Gymnosarda unicolor.*

[1] (NS) means non-specific as to species. This code must be used for all species of this species group unless a more specific code exists.

5. In § 611.81, the section heading, paragraphs (a), (b), (c), (j)(2) including Table 1, (j)(3), and (j)(4) text preceding Table 2 are revised; paragraph (h)(4) is removed; and new paragraphs (j)(9) and (j)(10) are added to read as follows:

§ 611.81 Pacific pelagic species fishery.

(a) *Purpose and scope.* This section regulates all foreign fishing for Pacific pelagic management unit species conducted under a GIFA within the EEZ in the Pacific Ocean except that part of the EEZ off Alaska. Regulations governing domestic vessels fishing for Pacific pelagic management unit species in these waters appear in part 685 of this chapter.

(b) *Definitions.* For the purposes of this section, these terms have the following meanings:

Billfish means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira mazara*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Closed area means that area of the EEZ in which foreign fishing vessels

fishing for Pacific Pelagic management unit species are prohibited from fishing.

Drift gill net means a floating rectangular net with one or more layers of mesh that is set vertically in the water.

Longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Mahimahi means "dolphin fish" (Coryphaena hippurus and *Coryphaena Equisetis*).

Non-retention zone means that area of the EEZ in which all billfish, oceanic sharks, wahoo, and mahimahi caught by longline gear from an FFV must be returned to the sea in accordance with the requirements of paragraph (j)(4) of this section.

Northwestern Hawaiian Islands (NWHI) means the portion of the EEZ around Hawaii west of 161° W. longitude.

Oceanic sharks means sharks of the families *Carcharhinidae, Alopiidae, Sphyrnidae,* and *Lamnidae.*

Pacific pelagic management unit species has the identical meaning to the term as defined in part 685 of this chapter.

Protected species zone has the identical meaning to the term as defined in part 685 of this chapter.

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213, telephone (310) 980–4001, or a designee.

Retention zone means that area of the EEZ in which an FFV may be used to retain Pacific pelagic management unit species to the extent that retention is authorized by this section.

Wahoo means fish of the species *Acanthocybium solandri.*

(c) *Permits.* Each FFV that fishes for Pacific Pelagic management unit species in the EEZ must have a permit issued under § 611.3.

* * * * *

(j) * * *

(2) *Zones.* The FMP Management Area Group comprises the following closed areas, non-retention zones, and retention zones (unless otherwise noted, the boundaries are measured from the baseline used to measure the territorial sea) described in Table 1 of this paragraph.

TABLE 1

Management area	Closed area	Non-retention zone	Retention zone
Hawaiian Islands	(1) Within the longline fishing prohibited area around Hawaii (see 50 CFR part 685); and (2) Within the NWHI protected species zone (see 50 CFR part 685).	(1) Between the seaward boundary of the longline fishing prohibited area around Hawaii and 100 nautical miles from the islands of Hawaii, Maui, Lanai, Kahoolawe, Molokai, Oahu, Kauai, Niihau, and Kaula.	(1) Beyond 100 nautical miles from the islands of Hawaii, Maui, Lanai, Kahoolawe, Molokai, Oahu, Kauai, Niihau, and Kaula, and (2) Beyond the NWHI protected species zone
Guam	Within the longline fishing prohibited area around Guam (see 50 CFR part 685).	None	Seaward of the longline fishing prohibited area around Guam.
American Samoa.	(1) Within a rectangle around the Tutuila and Manua Islands of American Samoa bounded by 14° and 15° S. latitude and 168° and 171° W. longitude; and (2) Within a 1-degree square surrounding Swain's Island bounded by 10° 33' and 11° 33' S. latitude and 170° 34' and 171° 34' W longitude.	None	Areas of the EEZ outside the rectangle bounded by 14° and 15° S. latitude and 168° and 171° W. longitude, and (2) Areas of the EEZ outside the 1-degree square surrounding Swain's Island
U.S. Possessions.	Within 12 nautical mile from shore.	None	Beyond 12 nautical miles from shore.

(3) *Effort plans.* Operators of foreign fishing vessels subject to this subpart who desire to fish in the FMP Management Area Group are required to file effort plans 2 months prior to entering the retention zones of the EEZ for fishing purposes. Effort plans must indicate the dates when fishing is expected to begin and cease and must specify the areas of the EEZ where the vessels intend to operate. Effort plans must be submitted to the Regional Director.

(4) *Catch restrictions.* (i) There is no limit on the amount of Pacific pelagic management unit species that may be caught by an FFV in the retention zones described in Table 1 of paragraph (j)(2) of this section.

(ii) No FFV may be used with longline gear to catch and retain Pacific billfish, oceanic sharks, mahimahi, or wahoo within the non-retention zone set out in Table 1 of paragraph (j)(2) of this section.

(iii) Unless otherwise specifically instructed by a U.S. observer or authorized officer, all billfish and oceanic sharks harvested by an FFV using longline gear in the non-retention zone must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(iv) No FFV may fish for Pacific pelagic management unit species in the closed areas set out in Table 1 of paragraph (j)(2) of this section.

* * * * *

(9) *Moratorium on new longline permits for Hawaii EEZ.* No permit to fish in the EEZ around Hawaii will be issued to an FFV using longline gear during the moratorium on domestic longline permits set forth at § 685.15 of this chapter.

(10) *Transit notification.* The operator of an FFV with longline gear transiting the protected species zone, as defined in part 685 of this chapter, must notify the NMFS Southwest Enforcement Office at (808) 541–2727, or as otherwise advised by NMFS Enforcement, immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of entry or exit from the zone, and location by latitude and longitude to the nearest minute.

* * * * *

§ 611.81 [Amended]

6. In § 611.81, in paragraphs (j)(5)(i), (j)(5)(ii), (j)(5)(iv), (j)(6)(ii), and (j)(6)(iv), the words "management unit species" are removed and the words "Pacific pelagic management unit species" are added in their place.

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.1, paragraphs (a) and (b) are revised to read as follows:

§ 685.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of Pacific pelagic management unit species in the exclusive economic zone (EEZ) in the Pacific Ocean, excluding the portions of the EEZ seaward of Alaska, Washington, Oregon, and California.

(b) Regulations governing fishing for Pacific pelagic management unit species by fishing vessels other than vessels of the United States appear in 50 CFR part 611, subpart F.

* * * * *

3. In § 685.2, the definitions of "Associated species", "Billfish", and "Management unit species" are removed, and a new definition of "Pacific pelagic management unit species" is added in alphabetical order to read as follows:

§ 685.2 Definitions.

* * * * *

Pacific pelagic management unit species means the following fish:

Common Name	Scientific Name
Mahimahi (dolphin fish)	*Coryphaena* spp.
Marlin and Spearfish	*Makaira* spp.
	Tetrapturus spp.
Oceanic Sharks	Family Alopiidae
	Family Carcharhinidae
	Family Lamnidae
	Family Sphyrnidae
Sailfish	*Istiophorus* sp.
Swordfish	*Xiphias* sp.
Tuna and related species.	*Allothunnus* sp.
	Auxis spp.
	Euthynnus spp.
	Gymnosarda spp.
	Katsuwonus spp.
	Scomber spp.
	Thunnus spp.
Wahoo	*Acanthocybium* sp.

* * * * *

§ 685.4 [Amended]

4. In § 685.4, in paragraphs (b)(7), (b)(8), and (c)(9), the words "billfish, tuna, oceanic sharks, and associated fish" are removed and the words "Pacific pelagic management unit species" are added in their place.

§§ 685.5 and 685.8 [Amended]

5. In addition to the amendments set forth above, in 50 CFR part 685 remove the words "billfish or associated species" and add, in their place, the words "Pacific pelagic management unit species" in the following places:

a. § 685.5 (a) and (b); and

b. § 685.8(a).

§§ 685.2, 685.4, 685.5, 685.9, 685.13, 685.15, and 685.25 [Amended]

6. In addition to the amendments set forth above, in 50 CFR part 685, remove the words "management unit species" and add, in their place, the words "Pacific pelagic management unit species" in the following places:

a. § 685.2, in the definition of "fish dealer";

b. § 685.4(a);

c. § 685.5(d), (e), (f), (g), (n), (o), and (r);

d. § 685.9(a);

e. § 685.13;

f. § 685.15(a), (c)(1), and (c)(2); and

g. § 685.25(a)(2), (a)(3), and (a)(4).

7. Section 685.22 is revised to read as follows:

§ 685.22 Annual report.

By June 30 of each year, a plan team appointed by the Council will prepare an annual report on the domestic and foreign fisheries for Pacific pelagic management unit species in the management area.

§ 685.23 [Amended]

8. In § 685.23, remove the words "billfish and associated species" and add, in their place, the words "Pacific pelagic management unit species".

[FR Doc. 92-17376 Filed 7-21-92; 11:13 am]
BILLING CODE 3510-22-M

50 CFR Part 640

[Docket No. 920661-2161]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to amend the regulations that implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would: (1) Adopt in the exclusive economic zone (EEZ) off Florida, Florida's spiny lobster trap certificate, trap reduction, and trap identification programs; (2) require that divers measure spiny lobsters harvested in the EEZ while in the water; (3) require in the EEZ the same number size for marking spiny lobster trap buoys as in required in Florida's waters; (4) restrict divers who harvest spiny lobsters in the EEZ at night to the bag limit; (5) specify diving and use of a bully net, hoop net, and trap as the only authorized method/gears in the EEZ in a directed fishery for spiny lobster; (6) establish a catch limit of 5 percent, by weight, of all fish aboard for the incidental harvest of spiny lobsters by trawls in the EEZ; (7) standardize the Florida and Federal size limit for spiny lobster traps used in the EEZ off Florida; (8) reduce the number of undersized spiny lobsters that may be retained in the EEZ for use as attractants in traps to 50 per vessel, or one per trap on board, whichever is greater; and (9) otherwise simplify and clarify the regulations and conform them to current usage. The intended effects of this rule are to enhance cooperative Florida/Federal management of the spiny lobster fishery, reduce management costs, improve effectiveness of necessary regulations, and protect the valuable spiny lobster resource.

DATES: Written comments must be received on or before August 13, 1992.

ADDRESSES: Copies of documents supporting this action may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa FL 33609.

Comments on the proposed rule should be sent to Michael E. Justen, NMFS, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP, as amended, contains a regulatory amendment procedure for implementing specified gear and harvest restrictions applicable to the spiny lobster fishery in the EEZ. The intended effects of that procedure include: (1) Providing a more flexible and timely system for implementing regulations on the spiny lobster fishery; (2) enhancing cooperative Florida/Federal management of the fishery; (3) reducing Federal management costs; and (4) improving the effectiveness of necessary rules. In accordance with that regulatory amendment procedure, the Florida Marine Fisheries Commission (FMFC) has requested the Director, Southeast Region, NMFS (Regional Director), to implement in the EEZ, with the Councils' oversight, modifications to certain gear and harvest limitations that were proposed by the FMFC and approved by

the Governor and Cabinet of Florida for implementation in Florida's waters.

Specifically, the FMFC requests adoption in the EEZ off Florida of (1) Florida's spiny lobster trap certificate, trap reduction, and trap identification programs; (2) the requirement that divers measure spiny lobsters in the water; (3) the same required number size for marking spiny lobster trap buoys as is required in Florida's waters; (4) the application of the bag limit to all harvests of spiny lobsters by diving at night; (5) the specification of diving, bully net, hoop net, and traps as the only authorized fishing method/gears in a directed fishery for spiny lobster; (6) a catch limit for incidental harvest of spiny lobsters by trawls of 5 percent, by weight, of all fish aboard; (7) Florida's spiny lobster trap construction requirements; and (8) a reduction in the number of undersized spiny lobsters that may be retained for use as attractants in traps to 50 per vessel, or one per trap on board, whichever is greater. It is the desire of the FMFC that these changes be implemented before the start of the fishing season on August 6, 1992.

The objectives of Florida's trap certificate and reduction program are to (1) reduce the number of traps used in the fishery to the lowest amount that will maintain or increase total catch levels; (2) promote economic efficiency in the fishery; and (3) conserve natural resources. Based on historic catch and effort statistics, the number of traps that will achieve optimum yield ranges from 172,000 to 375,000.

Under the trap reduction program, the Florida Department of Natural Resources (FDNR) will issue spiny lobster trap certificates and tags. Commencing with the 1993–94 season, FDNR will set the maximum number of traps allowed in the commercial spiny lobster fishery and will issue trap certificates and tags accordingly. The number of certificates and tags that will be issued is estimated at 750,000. Florida law mandates 700,000 tags with up to 50,000 additional available from the FDNR Appeals Board. The FMFC has established a trap reduction program for the Commercial fishery whereby the number of commercial traps allowed in the fishery may be reduced by up to 10 percent each year. Catch and effort will be monitored to assess the progress of the effort reduction.

In addition to the traps allowed in the commercial spiny lobster fishery, commencing with the 1993–94 season, Florida will allow up to three traps per recreational fisherman, provided such fisherman holds a recreational saltwater fishing license with a crawfish (spiny lobster) stamp. As with the commercial traps, recreational traps must have affixed a trap tag issued by the FDNR and must otherwise be properly identified.

To achieve the objectives of Florida's trap reduction program, this rule proposes that all traps used in the EEZ off Florida must have spiny lobster traps, tags issued by Florida and that spiny lobster trap, vessels, and buoys in the EEZ off Florida must otherwise be identified as required by Florida's regulations. NMFS would rely on Florida permitting system for identifying spiny lobster traps, vessels, and buoys used in the EEZ off Florida.

Adoption of Florida's trap reduction program in the EEZ off Florida meets the FMP's management objectives of protecting long-run yields from the fishery and preventing depletion of spiny lobster stocks, while increasing yield by weight from the fishery.

Florida's regulations require that lobsters harvested by divers in its waters be measured while in the water. The FMFC believes that this practice lessens stress and reduces mortality on spiny lobsters that are not of legal size. This rule would require divers in the EEZ to possess and use a measuring device in the water and to release undersized spiny lobster without removal from the water. This action would increase yield by weight from the fishery and meet the FMP's management objective of protecting longrun yields from the fishery.

Current Federal regulations require that all spiny lobster trap buoys in the EEZ be identified by the owner's Florida or Federal number with numbers at least 3 inches (7.62 cm) high. Florida requires numbers at least 2 inches (5.08 cm) high. As requested by the FMFC, this rule proposes to change the EEZ requirement to a 2-inch (5.08-cm) minimum. In addition, NMFS proposes to adopt in the EEZ off Florida, Florida's requirements applicable to the marking of commercial vessels that harvest spiny lobsters by diving. Uniform identification requirements would simplify enforcement, enhance cooperative management, and improve the effectiveness of necessary rules.

Florida's regulations prohibit the harvest of spiny lobsters in excess of the bag limit by diving at night. The FMFC believes that this discourages the practice of diving to rob commercial traps. This rule proposes to adopt Florida's prohibition in the EEZ. This action would meet the FMP's management objectives of reducing user group and gear conflicts in the fishery, enhancing cooperative management, and improving the effectiveness of necessary rules.

Florida's regulations establish diving, bully net, hoop net, and traps as the only allowable method/gears for commercial harvest of spiny lobster in its waters. Under Florida's regulations, a directed fishery for spiny lobster by trawls is prohibited; however, incidental catch in trawls is allowed if the whole weight of retained lobster does not exceed 5 percent of the total weight of all fish lawfully in possession on board the vessel. Harvesting by trawl has the potential of injury to the lobster by crushing and breaking antennae and appendages, which can contribute to mortality or retard growth. This rule would standardize Florida and Federal regulations regarding allowable method/gears and incidental catch limits. However, because Federal regulations allow the possession, in certain cases, of separated spiny lobster tails, an alternative weight precenage must be provided for such cases. NMFS proposes that, on board a vessel that harvests spiny lobster by net or trawl, and lawfully possesses a separated spiny lobster tail, the weight of spiny lobster, or parts thereof, may not exceed 1.6 percent of the total weight of all fish lawfully in possession on board such vessel. The alternate percentage of 1.6 is based on the ratio of legal-sized spiny lobster whole weight to tail weight of 3.125 to 1 (5% ÷ 3.125 = 1.6%). The proposed standardization of allowable method/gears in the directed fishery for spiny lobster would meet the management objectives of reducing user group and gear conflicts in the fishery, protecting long-run yields, preventing depletion of lobster stocks, and increasing weight from the fishery.

The FMFC originally requested that all of Florida's trap construction requirements be adopted in the EEZ. However, the South Atlantic Fishery Management Council objected to inclusion of that portion of Florida's trap construction requirements that would ban use in the EEZ of the standard wire mesh trap measuring no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 centimeters by 61.0 centimeters by 61.0 centimeters). The FMFC and the Gulf of Mexico Fishery Management Council have agreed to revise the original request so that standard wire mesh traps may continue to be used in the EEZ. Accordingly, this rule would revise the trap construction requirements applicable in the EEZ only to the extent of adding the maximum trap size limitation contained in Florida's regulations.

Florida's regulations allow for the possession of no more than 50 undersized spiny lobsters (shorts) per vessel, or one short per trap aboard the vessel, whichever is greater, for use as attractants in traps. The FMFC believes that this allowable number of shorts has helped to alleviate excessive mortality of undersized lobster, thus reducing pressure on the population and increasing yield. This rule would reduce the number of shorts allowed to be possessed in the EEZ from 100 to 50, or one per trap, whichever is greater. This action would decrease mortality; simplify enforcement; and meet the FMP's management objectives of protecting long-run yields, preventing depletion of lobster stocks, and increasing yield by weight from the fishery.

As required by the regulatory amendment procedure of the FMP, the Regional Director has preliminarily concluded that the modifications to the gear and harvest limitations requested by the FMFC are consistent with the scope and procedures of the management measures that may be implemented under that procedure and with the objectives of the FMP. Further, the Regional Director has preliminarily concluded that application of the spiny lobster trap reduction program and the trap and diving identification requirements are appropriately limited to the EEZ off Florida.

In addition to the changes requested by the FMFC or related to those changes, NMFS proposes to (1) remove from the regulations definitions no longer needed; (2) revise and add definitions as appropriate to conform them to those contained in Florida's statutes and regulations; (3) revise the permitting requirements to conform them, to the extent possible, to the Federal permitting requirements in other fisheries; and (4) otherwise simplify and clarify the regulations.

Specifically, this rule would clarify that a fee is charged for each application for a permit, rather than for each permit issued. Most of NMFS's costs in administering the permit system are incurred in processing applications, rather than in issuing permits. The Magnuson Act authorizes a level of fees not exceeding the administrative costs of processing applications and issuing permits. At least annually, NMFS computes its costs in accordance with the NOAA Finance Handbook. Costs vary based on such things as increases in Federal salaries/overhead and reductions due to improved efficiency in the permitting system. This rule would remove specification of the fees from the regulations. The amounts of the fees that must be remitted with each application would be specified by NMFS with the application forms. Based on current administrative costs, the fee for each application for a permit is $34 and for a replacement permit is $7. The current fees specified in the regulations are $28 and $0, respectively.

Also, to enforce effectively the existing prohibition on use of explosives to take spiny lobsters, NMFS proposes to prohibit the possession in the EEZ of dynamite or a similar explosive substance aboard a vessel in the spiny lobster or slipper lobster fishery. NMFS is not aware of any legitimate use of dynamite or a similar explosive substance aboard a vessel in the fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Council prepared a regulatory impact review (RIR) for this proposed rule. Based on the RIR, the Assistant Administrator determined that the rule is not major under E.O 12291 because it would not have an annual effect on the economy of $100 million or more; would not result in an increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which concludes that this proposed rule, if adopted, would have significant effects on small entities. The proposed measures would conform state and Federal regulations. The most important measure is the adoption of Florida's trap certificate, trap reduction, and trap identification programs. Although the trap certificate program adversely affects some of the estimated 2,500 state permit holders during the 10-year trap reduction period, industry should benefit in the long term. Estimated gains in the ex-vessel revenue ranged from $15.2 million to $25.3 million due to the increases in the landings of lobsters during the trap reduction period. Limiting the 193 commercial divers to the bag limit at night and requiring them to measure all lobsters in the water will have a minor negative effect. As these individuals adjust to the new regulations, increases in catches of lobsters should offset any adverse effects. Adopting Florida's regulations regarding acceptable, gear, vessel, trap and buoy identification, and use of undersized lobsters as attractants in traps is expected to reduce confusion among fishermen by eliminating conflicting Federal regulations. Finally, eliminating duplicative Federal permits should reduce costs to the fishermen. A copy of the RIR/IRFA is available and comments on it are requested (see **ADDRESSES**).

The Council prepared an environmental assessment (EA) for this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA is available and comments on it are requested (see **ADDRESSES**).

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the coastal zone management program. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule restates the collection-of-information requirement for applications for commercial vessel permits, and clarifies the requirement for reporting the sale or transfer of traps. These collection-of-information requirements, which are subject to the Paperwork Reduction Act, were previously approved under OMB Control No. 0648–0205. These requirements have a public burden estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O 12612.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 17, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 640 is proposed to be amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 640.1 is revised to read as follows:

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters, or separated tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this part, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

3. In § 640.2, figure 1 is redesignated as figure 1 of this part 640 and is placed at the end of this part; the definitions for "Degradable panel" and "Management area" are removed; the definitions for "Carapace length" and "Tail length" are revised; and new definitions for "Bully net," "Hoop net," and "Off Florida" are added in alphabetical order to read as follows:

§ 640.2 Definitions.

* * * * *

Bully net means a circular frame attached at right angles to the end of a pole and supporting a conical bag of webbing. The webbing is usually held up by means of a cord which is released when the net is dropped over a lobster.

Carapace length means the measurement of the carapace (head body, or front section) of a spiny lobster from the anteriormost edge (front) of the groove between the horns directly above the eyes, along the middorsal line (middle of the back), to the rear edge of the top part of the carapace, excluding any translucent membrane.

* * * * *

Hoop net means a frame, circular or otherwise, supporting a shallow bag of webbing and suspended by a line and bridles. The net is baited and lowered to the ocean bottom, to be raised rapidly at a later time to prevent the escape of lobster.

* * * * *

Off Florida means the area from the Florida coast to the outer limit of the EEZ between the Georgia/Florida boundary (30°42'45.6" N. latitude) and the Alabama/Florida boundary (87°31'06" W. longitude).

* * * * *

Tail length means the lengthwise measurement of the entire tail (segmented portion), not including any protruding muscle tissue, of a spiny lobster along the top middorsal line (middle of the back) to the rearmost extremity. The measurement is made with the tail in a flat, straight position with the tip of the tail closed.

* * * * *

4. Section 640.4 is revised to read as follows:

§ 640.4 Permits and fees.

(a) *Applicability.* (1) During the commercial and recreational fishing season specified in § 640.20(a), for a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ or for a person to be exempt from the daily bag and possession limit for spiny lobster in or from the EEZ specified in § 640.23(a), a Federal vessel permit must be issued to the harvesting vessel and be on board.

(2) During the commercial and recreational fishing season specified in § 640.20(a), for a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ, a tail-separation endorsement must be included on the vessel's Federal vessel permit, which must be on board.

(3) For a vessel owned by a corporation or partnership to be eligible for a Federal vessel permit specified in paragraph (a)(1) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for a permit.* (1) An application for a Federal vessel permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been assigned by the Internal Revenue Service, and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) If the owner does not meet the earned income qualification specified in paragraph (b)(2)(vi) of this section and the operator does meet that qualification, the name, mailing address including zip code, telephone number, social security number, and date of birth of the operator.

(v) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(vi) A sworn statement by the applicant certifying that at lest 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, during the calendar year preceding the application.

(vii) Documentation supporting the statement of income, if required under paragraph (b)(3) of this section.

(viii) If a tail-separation endorsement is desired, a sworn statement by the applicant certifying that his fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(ix) Any other information that may be necessary for the issuance or administration of the permit.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (h) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such cost and is specified with each application form. The appropriate fee must accompany each application. An application for a Federal vessel permit with tail-separation endorsement, combined, is considered one application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the applicant meets the earned income requirement specified in paragraph (b)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued pursuant to this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale.

(h) *Display.* A permit issued pursuant to this section must be carried on board the vessel, and such vessel must be identified as required by § 640.6. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials.* A permit issued pursuant to this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

5. Section 640.6 is revised to read as follows:

§ 640.6 Vessel and gear identification.

(a) *Traps and diving in the EEZ off Florida.*

(1) An owner or operator of a vessel that harvests spiny lobsters by traps in the EEZ off Florida must comply with the vessel and gear identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's water, as specified in sections 370.4 and 370.142, Florida Statutes, and in Rule 46–24.006 (2), (3), and (4), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters, as specified in Rule 46-24.006(5), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code. If the owner or operator of such vessel does not have a current Florida crawfish license or trap number, in the place of the Florida number, as specified in Rule 46–24.006(5), the Federal vessel permit number must be shown.

(b) *Other gears and areas.*

(1) The owner or operator of a vessel for which a Federal vessel permit has been issued under § 640.4 that is used to harvest spiny lobsters in the EEZ off Florida by other than spiny lobster traps or diving, or that is used to harvest spiny lobsters in the EEZ other than off Florida, must meet the following vessel and gear identification requirements:

(i) The vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number must be permanently and conspicuously displayed horizontally on the uppermost structural portion of the vessel in numbers at least 10 inches (25.4 cm) high so as to be readily identifiable from the air and water;

(ii) If the vessel uses spiny lobster traps in the EEZ, other than off Florida,

(A) The vessel's color code, as assigned by Florida or, if a color code has not been assigned by Florida, as assigned by the Regional Director, must be permanently and conspicuously displayed above the number specified in paragraph (b)(1)(i) of this section so as to be readily identifiable from the air and water, such color code being in the form of a circle at least 20 inches (50.8 cm) in diameter on a background of colors contrasting to those contained in the assigned color code;

(B) A buoy or timed-release buoy of such strength and buoyancy to float must be attached to each spiny lobster trap or at each end of a string of traps;

(C) A buoy used to mark spiny lobster traps must bear the vessel's assigned color code and be of such color, hue, and brilliancy as to be easily distinguished, seen, and located;

(D) A buoy used to mark spiny lobster traps must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number in numbers at least 2 inches (5.08 cm) high; and

(E) A spiny lobster trap must bear the vessel's Florida crawfish license or trap number or, if not licensed by Florida, the vessel's Federal vessel permit number permanently and legibly affixed.

(2) A spiny lobster trap in the EEZ, other than off Florida, will be presumed to be the property of the most recently documented owner. Upon the sale or transfer of a spiny lobster trap used in the EEZ, other than off Florida, within 5 days of acquiring ownership, the person acquiring ownership must notify the Florida Division of Law Enforcement of the Department of Natural Resources, for a trap that bears a Florida crawfish license or trap number, or the Regional Director, for a trap that bears a Federal vessel permit number, as to the number of traps purchased, the vendor, and the crawfish license or trap number, or Federal vessel permit number, currently displayed on the traps, and must request

issuance of a crawfish license or trap number, or Federal vessel permit, if the acquiring owner does not possess such license or trap number or permit.

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

6. Section 640.7 is revised to read as follows:

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster in or from the EEZ without a Federal vessel permit, as specified in § 640.4(a)(1).

(b) Falsify information specified in § 640.4(b)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 640.4(h).

(d) Falsify or fail to display and maintain vessel and gear identification, as required by § 640.6 (a) and (b).

(e) Possess a spiny lobster trap in the EEZ at a time not authorized, as specified in § 640.20 (c)(1) and (c)(2).

(f) Possess a spiny lobster in or from the EEZ at a time not authorized, as specified in § 640.20(d).

(g) Fail to return immediately to the water a berried spiny lobster or slipper lobster; strip eggs from or otherwise molest a berried spiny lobster or slipper lobster; strip eggs from or otherwise molest a berried spiny lobster or slipper lobster; or possess a spiny lobster or slipper lobster or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped, as specified in § 640.21(a).

(h) Possess or fail to return immediately to the water unharmed a spiny lobster smaller than the minimum size limits specified in § 640.21 (b)(1) and (b)(3), except as provided in § 640.21(c).

(i) Harvest or attempt to harvest a spiny lobster by diving without having and using the water a measuring device, or fail to release an undersized spiny lobster in the water, as specified in § 640.21(b)(2).

(j) Possess an undersized spiny lobster for use as an attractant in a trap in quantities or under conditions not authorized in § 640.21(c).

(k) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 640.22(a) (1) and (a) (3).

(m) Use or possess in the EEZ a spiny lobster trap that does not meet the requirements specified in § 640.22(b)(1).

(n) Pull or tend a spiny lobster trap other than during daylight hours, as specified in § 640.21(b)(2).

(o) Pull or tend another person's spiny lobster trap, except as authorized in § 640.22(b)(3).

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23(a), except as authorized in § 640.23 (b) and (c).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(c).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag and possession limit, as specified in § 640.23(f).

(s) Transfer or receive a sea-spiny lobster in or from the EEZ caught under the bag and possession limits, a specified in § 640.23(g).

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. Subpart B is revised to read as follows:

Subpart B—Management Measures

Sec.

640.20 Seasons.
640.21 Harvest limitations.
640.22 Gear and diving restrictions.
640.23 Bag and possession limits.
640.24 Authorized activities.

Subpart B—Management Measures

§ 640.20 Seasons.

(a) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ begins on August 6 and ends on March 31.

(b) *Special non-trap recreational fishing season.* There is a 2-day special non-trap recreational fishing season in the EEZ on Saturday and Sunday on the first full weekend preceding August 1.

(c) *Possession of traps.* (1) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters, as contained in Rule 46–24.005(3), (4), and (5), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or in succeeding Florida statutes or regulations, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida.

(2) In the EEZ, other than off Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season specified in paragraph (a) of this section beginning on August 1 and must be removed from the water after such season not later than April 5.

(3) A spiny lobster trap, buoy, or rope in the EEZ during periods not authorized in paragraphs (c)(1) and (c)(2) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(d) *Possession of spiny lobsters.* A spiny lobster or part thereof in or from the EEZ may be possessed only during the periods specified in paragraphs (a) and (b) of this section, unless accompanied by proof indicating lawful harvest outside the EEZ. A spiny lobster in a trap in the water during a time such trap is authorized to be in the EEZ paragraph (c)(1) or (c)(2) of this section will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed when a trap is removed from the water during such time.

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster or slipper lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster or slipper lobster may not be retained in the trap. A berried spiny lobster or slipper lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster or slipper lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

(b) *Minimum size limits.* (1) Except as provided in paragraph (c) of this section,

(i) No person may possess a spiny lobster in or from the EEZ with a carapace length of 3.0 inches (7.62 cm) or less; and

(ii) A spiny lobster, harvested in the EEZ by means other than diving, with a carapace length of 3.0 inches (7.62 cm) or less must be returned immediately to the water unharmed.

(2) No person may harvest or attempt to harvest a spiny lobster by diving in the EEZ unless he or she possesses, while in the water, a measuring device capable of measuring the carapace length. A spiny lobster captured by a diver must be measured in the water using such measuring device and, if the spiny lobster has a carapace length of 3.0 inches (7.62 cm) or less, it must be released unharmed immediately without removal from the water.

(3) Aboard a vessel authorized under paragraph (d) of this section to possess a separated spiny lobster tail, no person may possess in or from the EEZ a separated spiny lobster tail with a tail length less than 5.5 inches (13.97 cm).

(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (b)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. No more than 50 undersized spiny lobsters, or one per trap aboard the vessel, whichever is greater, may be retained aboard for use as attractants. The live well must provide a minimum of ¾ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to 1 hour after official sunset each day.

(d) *Tail separation.* The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a Federal vessel permit specified in § 640.4(a)(1) that contains a tail-separation endorsement has been issued to and is on board the vessel.

§ 640.22 Gear and diving restrictions.

(a) *Prohibited gear and methods.* (1) A spiny lobster may not be taken in the EEZ with a spear, hook, or similar device, or gear containing such devices. In the EEZ, the possession of a speared, pierced, or punctured spiny lobster is *prima facie* evidence that prohibited gear was used to take such lobster.

(2) A spiny lobster may not be taken in a directed fishery by the use of a net or trawl. See § 640.23(c) for the bycatch limits applicable to a vessel that uses or has on board a net or trawl.

(3) Poisons and explosives may not be used to take a spiny lobster or slipper lobster in the EEZ. For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster or slipper lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

(b) *Traps.* (1) In the EEZ, a spiny lobster trap may be no larger in dimension than 3 feet by 2 feet by 2 feet (91.4 cm by 61.0 cm by 61.0 cm), or the volume equivalent. A trap constructed of material other than wood must have a panel constructed of wood, cotton, or other material that will degrade at the same rate as a wooden trap. Such panel must be located in the upper half of the sides or on top of the trap, so that, when removed, there will be an opening in the trap no smaller than the diameter found at the throat or entrance of the trap.

(2) A spiny lobster trap in the EEZ may be pulled or tended during daylight hours only, that is, from 1 hour before official sunrise to 1 hour after official sunset.

(3) A spiny lobster trap in the EEZ may be pulled or tended only by the owner's vessel, except that permission to pull or work traps belonging to another person may be granted,

(i) For traps in the EEZ off Florida, by the Florida Division of Law Enforcement, as specified in Rule 46-24.006(6), Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, or in succeeding Florida statutes or regulations; or

(ii) For traps in the EEZ, other than off Florida, by the Regional Director, as may be arranged upon written request.

§ 640.23 Bag and possession limits.

(a) The daily bag and possession limit of spiny lobster in or from the EEZ is six per person and applies—

(1) During the commercial and recreational fishing season specified in § 640.20(a), except as provided in paragraphs (b) and (c) of this section; and

(2) During the special non-trap recreational fishing season specified in § 640.20(b).

(b) During the commercial and recreational fishing season specified in § 640.20(a), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(1) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(2) The person is aboard a vessel that has on board a Federal vessel permit specified in § 640.4(a)(1).

(c) During the commercial and recreational fishing season specified in § 640.20(a), aboard a vessel with a vessel permit specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (c), the term "net or trawl" does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(d) The provisions of paragraph (b) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset until 1 hour before official sunrise, is limited to the bag limit specified in paragraph (a) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(e) A person who fishes for or possesses spiny lobster in or from the EEZ under the bag and possession limits specified in paragraphs (a) or (c) of this section may not combine such bag and possession limits with any bag or possession limits applicable to state waters.

(f) The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag and possession limit specified in paragraph (a) of this section applicable to that vessel, based on the number of persons aboard.

(g) A person who fishes for or possesses spiny lobster in or from the EEZ under the bag and possession limits specified in paragraphs (a) or (c) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

§ 640.24 Authorized activities

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[FR Doc. 92-17401 Filed 7-23-92; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 143
Friday, July 24, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 17, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- *Agricultural Stabilization and Conservation Service*

7 CFR 1446—Peanut Warehouse Contracts, Applications for Approval, Examination Reports, Bond, Warehouse Receipts, and Drafts. CCC–1005, 1006, 1023, 1025, 1027, 1028, 1028–A, 1029, 1032, 1032–1, 1033, 1036, 1041–SE, 1041–VC, 1041–SW, 1057, ASCS–1013.

On occasion; Monthly; Annually.

Farms; Small businesses or organizations; 259,998 responses; 54,124 hours.

David Kincannon (202) 720–0152.

- *Agricultural Stabilization and Conservation Service*

7 CFR 723—Tobacco Marketing Quota Regulations

MQ–25, 32, 38, 38 Burley, 53, 71, 72–2, 76, 77(All), 76–1, 78, 79(All), 79 Supplemental, 79–2A, 80(All), 82, 92, 99, 108, 108–1, 117, ASCS–364, ASCS–375(All), ASCS–378, ASCS–807.

Recordkeeping; On occasion; Weekly; Annually.

Individuals or households; Farms; Small businesses or organizations; 1,403,227 responses; 227,904 hours.

Mike Thompson (202) 720–7227.

- *Food and Nutrition Service*

7 CFR Part 210—National School Lunch Program.

Monthly; Semi-annually; Biennially.

State or local governments; Federal agencies or employees; Non-profit institutions; 2,177,307 responses; 22,241,205 hours.

Winnie McQueen (703) 305–2607.

Extension

- *Food and Nutrition Service*

Food Stamp Redemption Certificate.

FNS–278B and FNS–278–4.

Businesses or other for-profit; 28,800,000 responses; 576,000 hours.

Jordan Benderly (703) 305–2419.

- *Food and Nutrition Service*

7 CFR Part 220—School Breakfast Program.

Recordkeeping; Monthly; Quarterly; Semi-annually; Annually.

State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 826,523 responses; 5,512,166 hours.

Winnie McQueen (703) 305–2607.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 92–17482 Filed 7–23–92; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 92–115–1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: A copy of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to

below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-073-01	American Cyanamid Company	06-30-92	Tobacco plants genetically engineered to express an acetohydroxyl acid synthase gene from *Arabi-dopsis thaliana* for tolerance to the herbicides sulfony-lurea and imidazxolinone.	Cumberland County, New Jersey.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 21st day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–17537 Filed 7–23–92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-116-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, Except holidays. You may obtain copies of the document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT**".

FOR FURTHER INFORMATION CONTACT:

Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-183-01	Samuel Roberts Noble Foundation	07-01-92	Alfalfa plants genetically engineered to express the B chain (CTB) of the enterotoxin from *Vibrio cholerae*.	Carter County, Oklahoma.

Done in Washington, DC, this 21st day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17536 Filed 7-23-92; 8:45 am]

BILLING CODE 3410-34-M

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain condensed milk from Denmark.

SUMMARY: This notice adjusts the country of origin for the quota quantity of condensed milk in airtight containers assigned to Denmark.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Trade Analysis Division, Foreign Agricultural Service, Room 5531 South Building, Department of Agriculture, Washington, DC 20250-1000 or telephone at (202)720-2916.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12291 an Departmental Regulation 1512-1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota article specified herein may be entered does not restrict the ability of importers to import this quota article, but only permits the unused quota quantity of the article allocated to Denmark to be imported from other countries. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

Notice

Subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Note 3(a)(iii) of subchapter IV of chapter 99 of the HTS permits the reallocation of the quota quantity of a dairy article listed in chapter 99 among the countries of origin specified for a given article if it is determined that the quota quantity assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the quantity of condensed milk in airtight containers specified in HTS subheading 9904.10.06 for Denmark will be entered from that country during calendar year 1992.

Notice is hereby given that the 1992 unused quota quantity for condensed milk in airtight containers specified in HTS subheading 9904.10.06 for Denmark may be imported from Australia, Canada, Denmark and the Netherlands for the remainder of the 1992 quota year.

This quota quantity for HTS subheading 9904.10.06 will revert to the original supplying country on January 1, 1993.

Issued at Washington, DC this 8th day of July 1992.

Stephen L. Censky,

Acting Administrator.

[FR Doc. 92-17542d 7-23-92; 8:45 am]

BILLING CODE 3410-10-M

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1993 quota year.

SUMMARY: This notice announces that the fee to be charged for the 1993 quota year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to quotas proclaimed under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, will be $88.00 per license.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policy and Trade Analysis Division, room 5531-South Building, U.S. Department of Agriculture, Washington, DC 20250-1000 or telephone at (202) 720-2916.

SUPPLEMENTARY INFORMATION: Regulations promulgated by the Department of Agriculture and codified at 7 CFR 6.20-6.34 provide for the issuance of licenses to importers of certain dairy articles which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy articles may only be entered into the United States by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of such licenses and the regulations.

The licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Licensing Group, Import Policy and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture (the "Licensing Authority") and the U.S. Customs Service.

Regulations at 7 CFR 6.33(a) provide that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation. The fee is to be based upon the total cost to the Department of Agriculture of administering the licensing system during the calendar year preceding the year for which the fee is to be charged, divided by the average number of licenses issued per year for the three years preceding the year for which the fee is to be assessed.

Regulations at 7 CFR 6.33(b) provide that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be filed with the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 1993 calendar year.

Notice

The total cost to the Department of Agriculture of administering the licensing system during 1992 has been determined to be $310,286. Of this amount, $176,036 represents the costs of the staff and supervisory hours devoted directly to administering the licensing system during 1992 (total personnel costs for the Import Licensing Group of the Foreign Agricultural Service equaled $143,811; a proportionate share of the supervisory costs devoted directly administering the licensing system equaled $32,225); $70,000 represents the total computer costs to monitor and issue import licenses during 1992; and $64,250 represents other miscellaneous costs, including travel, postage, publications, forms, and a ADP system contractor.

The average number of licenses issued per year for the three years

immediately preceding 1993 has been determined to be 3,548. Accordingly, notice is hereby given that the fee for each license issued a person or firm for the 1993 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $88.00 per license.

Issued at Washington, DC, the 8th day of July, 1992.

Richard P. Warsack,

Licensing Authority.

[FR Doc. 92–17544 Filed 7–23–92; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Hobo/Cornwall Project Area Timber Sales; Idaho Panhandle National Forests, Shoshone County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the Marble Creek drainage. Portions of the proposed project lie within the Grandmother Mountain Roadless Area (No. 01148). The project area is located approximately ten miles northeast of Clarkia, Idaho.

The proposed action is to harvest approximately ten million board feet of timber in the Hobo/Cornwall Timber Sales. This action would require an estimated ten miles of new road construction and five miles of road reconstruction.

DATES: Written comments concerning the scope of the analysis must be received on or before September 8, 1992. A Public meeting will be held in St. Maries, Idaho, to review existing information and facilitate public scoping.

ADDRESSES: Send written comments to District Ranger, St. Maries Ranger District, P.O. Box 407, St. Maries, ID 83861.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Tracy J. Gravelle, St. Maries Ranger District, Phone 208–245–2531.

SUPPLEMENTARY INFORMATION: These management activities administered by the St. Maries Ranger District of the Idaho Panhandle National Forests in Shoshone County, Idaho would be in Township 42/43N, Range 3E, Boise Meridian. Implementation of the proposed activities would begin in Fiscal Year 95.

A number of issues have been identified to date. The major issues focus on health and growth of forest stands, management of the roadless area, effects on fisheries and water quantity and quality, and effects on the visible area along the Marble Creek Road (Forest Road 321) and various hiking trails. Detailed alternatives will be developed and analyzed including a no action alternative. Other possible alternatives to be analyzed include a leave it green alternative, a minimum new road alternative and various levels of development alternatives.

This EIS will tier to the Final EIS for the Forest Plan (Forest Plan, Idaho Panhandle National Forests, August 1987). The Forest Plan provides overall guidance for the Idaho Panhandle National Forests in terms of goals, objectives, direction in achieving desired future conditions and management area prescriptions for management practices that will be utilized during the implementation of the Forest Plan. The purpose and needs for the proposed action are to (1) improve net yield and desired species for this project areas; (2) provide amount of timber that this area can supply for area's lumber mills; and (3) foster forest regulation for this area. The process used in preparing the draft EIS will include:

1. Continue scoping for potential issues.

2. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis.

3. Identify any additional issues to be analyzed in depth as brought out in EAs prepared for nearby project areas.

4. Identify alternatives to the proposed action. The range of alternatives will include the No Action alternative.

5. Identify potential environmental effects of the alternatives.

Management direction for the Hobo/Cornwall project area has been established by the Forest Plan for Idaho Panhandle National Forests. The area of consideration for this proposal includes Management Areas (MAs) 1, 4, 6, 9, 13, 16, and 17. A brief description of the management areas follows.

MA1: Manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products.

MA4: Manage big game winter range to provide sufficient forage to support projected big game populations through scheduled timber harvest and permanent forage areas.

MA6: Manage those lands suitable for timber production within important elk summer range habitat.

MA9: Manage non-forested lands, lands not capable of producing industrial products, and lands physically unsuited for a timber production to maintain and protect existing improvements and resource productive potential.

MA13: Manage the Hobo Botanical Area to maintain and protect its special biological attributes and the Hobo Creek Splash Dam area for its historical features.

MA16: Manage riparian area to feature riparian-dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs. The primary riparian area within the Hobo/Cornwall Resource area is located in the Upper Marble Creek watershed.

MA17: Manage lands for developing recreation opportunities in a roaded natural and rural recreation setting providing protection and enhancement to a natural appearing environment.

The Forest Service is continuing to seek information and comments from all parties who may be interested in or affected by the proposed action. A mailing will be sent to all persons, organizations and public agencies listed on the District's mailing list to seek further comments. A Public meeting will also be held in St. Maries, Idaho, to review existing information and facilitate public scoping. For most effective use, comments should be sent to the agency with 45 days from the date of this publication in the **Federal Register.** Any interested person may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods of time, however, are identified for the receipt of comments on the analysis. These two public comment periods are during the scoping process and in the review of the draft EIS.

The draft environmental impact statement should be available for public review in August 1993. The comment period on the draft EIS will be 45 days from the date the U.S. Environmental Protection Agency publishes the notice of availability in the **Federal Register.** After this public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed in January 1994. The District Ranger, who is the

responsible official for this EIS, will make a decision regarding this proposal after considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. This decision and reasons for the decision will be documented in a Record of Decision.

The Forest Service believes it is important to give reviewers notice at this early stage because of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: July 13, 1992.

Gary W. Sieren,

District Ranger, St. Maries Ranger District, Idaho Panhandle National Forests.

[FR Doc. 92-17450 Filed 7-23-92; 8:45 am]

BILLING CODE 3410-11-M

Mount St. Helens National Volcanic Monument; Scientific Advisory Board Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., on September 9, 1992, in the Forest Supervisor's Office of the Gifford Pinchot National Forest at 6926 East Fourth Plain Blvd., Vancouver, Washington 98668 to receive information on and discuss the following:

1. Mt. Margaret Backcountry Plan.
2. Castle Lake update.
3. Open discussion on relevant topics.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 6926 East Fourth Plain Blvd., Vancouver, Washington 98668, 206-750-5000. Written statements may be filed with the Board before or after the meeting.

Dated: July 17, 1992.

Michael S. Edrington,

Acting Regional Forester.

[FR Doc. 92-17449 Filed 7-23-92; 8:45 am]

BILLING CODE 3410-11-M

Newberry National Volcanic Monument Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council Meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on August 18 at 1 p.m. at the Fort Rock Ranger District Office in Bend, Oregon. An agenda for the two day meeting will consist of establishment of Council operating procedures, orientation to the attributes and natural resources of the Monument, discussion of a desired future condition for the Monument, and identification of issues related to the development of a Comprehensive Management Plan for the Monument.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Greg McClarren, Staff Officer, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 99701, (503) 383-5561.

Dated: July 20, 1992.

Jose Cruz,

Forest Supervisor.

[FR Doc. 92-17492 Filed 7-23-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Electric Program Regulations

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice: Rescission of certain obsolete REA electric program bulletins.

SUMMARY: As part of an ongoing project to simplify, clarify, and update Agency regulations and in response to the President's regulatory review initiative, the Rural Electrification Administration (REA) announces the rescission of three REA bulletins. Recent publication of a new REA regulation has made these bulletins obsolete.

EFFECTIVE DATE: These bulletins are rescinded effective April 14, 1992.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Management Analyst, Program Support Staff, Rural Electrification Administration, room 2230-S, 14th Street and Independence Avenue, SW., Washington, DC 20250-1500. Telephone: 202-720-0736.

SUPPLEMENTARY INFORMATION: In the State of the Union Address on January 28, 1992, President Bush announced a 90 day moratorium on new regulations and a concurrent review of existing regulations. In a January 28, 1992, memorandum to certain Department and Agency heads, the President directed that agencies set aside a 90-day period "to evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise promote economic growth."

In 1990 REA began its own independent project to simplify, clarify and update Agency regulations. One component of this project was the publication of 7 CFR part 1710, General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. This regulation, published January 9, 1992, at 57 FR 1044, lists a number of REA bulletins that the Agency plans to rescind as part of its regulations project.

Consistent with the spirit of both regulatory review projects, REA announces the rescission of the bulletins listed below. The publication of 7 CFR part 1710 has rendered these bulletins obsolete. REA is continuing to review its publications in order to eliminate any that are no longer necessary.

List of REA Bulletins Rescinded

Number	Title	Issue Date
20–2	Electric Loan Policies and Application Procedures	6/77
20–6	Loans for Generation and Transmission	6/69
20–14	Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act	2/70

Authority: 7 U.S.C. 901 *et seq.*

Dated: July 17, 1992.

James B. Huff, Sr.,

Administrator.

[FR Doc 92–17481 Filed 7–23–92; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration

Title: North Atlantic Treaty Organization (NATO) International Competitive Bidders (ICB) List Application

Form Numbers: Agency—ITA–4023P OMB—0625–0055

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 60 respondents; 60 reporting hours

Average Hours Per Response: 1 hour

Needs And Uses: NATO ICB opportunities for infrastructure project contracts are open only to companies within NATO countries which have had their eligibility to bid certified by their respective governments. The U.S. Department of Commerce (USDOC) is the executive agency which certifies U.S. companies' eligibility. Companies are required to submit an application to the USDOC/International Trade Administration (ITA). ITA reviews the application for completeness and accuracy and determines a company's eligibility based on its financial viability, technical capability and security clearances of the U.S. Department of Defense (USDOD)

Affected Public: Businesses or other for-profit; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Gary Waxman, (202) 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, U.S. Department of Commerce, room 5327, 14th and Constitution Ave., NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be send to Gary Waxman, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 20, 1992.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 92–17432 Filed 7–23–92; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collections Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Foreign Fishing Vessel Application/Permitting Process.

Form Number: Agency—NOAA 88–120; OMB—0648—0089.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 4 respondents; 14 reporting hours; average hours per respondent—3.5 hours.

Needs and Uses: Section 204 of the Magnuson Fishery Conservation Act (MFCMA) provides that each foreign nation with which the United States has entered into a Governing International Fishing Agreement may submit annual applications to fish in the U.S. Exclusive Economic Zone. This information enables the permitting provisions of section 204 of the MFCMA to be accomplished.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Agency: National Oceanic and Atmospheric Administration.

Title: Small-Craft Facility Questionnaire.

OMB Number: Agency—NOAA 77–1; OMB—0648–0021.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,800 respondents; 240 reporting hours; average hours per response .133.

Needs and Uses: Information requested is used to revise/update nautical charting products as to the availability of services provided by individual smallcraft facility operations. This information serves the commercial boaters, boating public, and promotes the business operations of the smallcraft facility respondent.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Agency: National Oceanic and Atmospheric Administration.

Title: U.S. Fishermen Fishing in Russian Waters.

Form Number: Agency—None; OMB—0648–0226.

Type of Request: Revision of a currently approved collection.

Burden: 80 respondents; 560 reporting hours; average hours per respondent—7 hours

Needs and Uses: U.S. fishermen who wish to fish in the Russian economic zone must apply for a Russian permit. The application must be submitted to NMFS for transmittal to Russian authorities. The Russian authorities will consider the information when making a decision on issuing a permit. U.S. vessels departing and re-entering the U.S. EEZ from the Russian zone must report fish production aboard.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Ron Minsk, OMB Desk Officer, Room 3019, New Executive Office Building, Washington, DC 20503.

Dated: July 20, 1992.

Edward Michals,

Departmental Clearance Officer, Office Of Management and Organization.

[FR Doc. 92-17431 Filed 7-23-92: 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-427-801, A-428-801, A-475-801, A-588-804, A-559-801, A-401-801, A-549-801, A-412-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative reviews.

SUMMARY: On June 24, 1992, the Department of Commerce published the final results of its 1990–91 administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews covered 63 manufacturers/exporters and the period May 1, 1990 through April 30, 1991. Based on the correction of clerical errors, we have changed the margins for ball bearings for two companies, cylindrical roller bearings for ten companies, and spherical plain bearings for two companies.

EFFECTIVE DATE: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger or Bernard Carreau, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 28360) the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 63 manufacturers/exporters and the period May 1, 1990 through April 30, 1991.

After publication of our final results, we received in a timely fashion allegations of clerical errors from the petitioner, the Torrington Company, and from several respondents: Barden, FAG, FiatAvio, IJK, INA, Koyo, MBB, NSK, Pratt & Whitney, SKF, and SNR. In most instances, we agree with the allegations and have made corrections where appropriate.

However, we are not issuing clerical error corrections with respect to BBs from France, Germany, Italy, Japan, Sweden and the United Kingdom, as well as CRBs from Japan. On June 25, 1992, NTN Corporation, a Japanese exporter, filed a summons at the Court of International Trade (CIT) concerning its exports of BBs, CRBs and SPBs from Japan. On June 26, 1992, Federal-Mogul Corporation, a domestic interested party, filed a summons at the CIT on exports of BBs from France, Germany, Italy, Japan, Sweden and the United Kingdom. In accordance with *Zenith Elec. Corp.* v. *United States*, 699 F. Supp. 296 (CIT 1988), *aff'd*, 884 F.2d 556 (Fed. Cir. 1989), the Department cannot automatically correct ministerial errors made in an administrative review once the court's exclusive jurisdiction has been invoked. The Department must seek the court's authorization before it can correct clerical errors with respect to bearings affected by these court actions.

Amended Final Results of Review

As a result of our corrections of clerical errors, we have determined the following weighted-average margins to exist for the period May 1, 1990 through April 30, 1991:

Country	Company	Class or kind	Rate
France	Pratt & Whitney	CRBs	4.88
Germany	FAG	CRBs	7.04
		SPBs	1.10
	FiatAvio	CRBs	23.52
	INA	CRBs	0.45
	Pratt & Whitney	CRBs	3.34
	SKF	CRBs	9.76
		SPBs	1.74
	All others	SPBs	1.74
Italy	FiatAvio	CRBs	13.26
	All others	CRBs	13.26
Singapore	NMB/Pelmec	BBs	4.51
	All others	BBs	4.51
Sweden	SKF	CRBs	5.21
	All others	CRBs	5.21
Thailand	NMB/Pelmec	BBs	0.57
	All others	BBs	0.57
United Kingdom	Pratt & Whitney	CRBs	4.24

Based upon these rates, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties and to assess antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews (57 FR 28361).

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or

after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: July 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-17430 Filed 7-23-92; 8:45 am]
BILLING CODE 3510-DS-M

[C-433-804, et al.]

Initiation of Countervailing Duty Investigations and Postponement of Preliminary Determinations: Certain Steel Products From Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, Taiwan, and the United Kingdom

In the matter of C-433-804, C-423-806, C-351-818, C-427-810, C-428-817, C-475-808, C-580-818, C-201-810, C-614-802, C-469-804, C-401-804, C-583-819, C-412-815.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: The following officials of the Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230, may be contacted for additional information: Ross L. Cotjanle (202) 377-3584 for Austria, Italy, Mexico, and New Zealand; Stephanie Hager (202) 377-5055 for Brazil, Sweden, and the United Kingdom; Rick Herring (202) 377-3530 for Germany, Spain, and Taiwan; and, Vince Kane (202) 377-2815 for Belgium, France, and Korea.

The Petition

On June 30, 1992, we received petitions in proper form filed by Armco Steel Company, L.P.; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a Unit of USX Corporation, on behalf of the United States industries producing the following classes or kinds of merchandise: certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. We were separately notified on June 30, 1992, that the following companies were also petitioners in certain of these investigations: Geneva Steel, Gulf States Steel Inc. of Alabama, Laclede Steel Company, Lukens Steel Company, Sharon Steel Corporation, and WCI Steel, Inc. See appendix I for a listing of the petitioners on a country- and class or kind-basis. In accordance with 19 CFR 355.12, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, Taiwan, and the United Kingdom receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Injury Test

Because each of the countries under consideration is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to these investigations. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, Taiwan, and/or the United Kingdom materially injure, or threaten material injury to, U.S. industries.

Standing

Petitioners have stated that they are interested parties, as defined in section 771(9)(C) of the Act, and that they have filed the petitions on behalf of the U.S. industries producing the products subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

Exclusion Requests

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of Investigations

The Department has examined the petitions on certain steel products from Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, Taiwan, and the United Kingdom and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate receive countervailable subsidies. The total number of programs which we are investigating exceeds 250. For Austria, Mexico, New Zealand, Sweden and the United Kingdom, we are investigating all programs alleged in the petitions to confer subsidies. For the remaining countries, we are not investigating certain programs, listed below by country, alleged in the petitions to be benefitting manufacturers, producers, or exporters of the subject merchandise. (The European Community program upon which we are not initiating is separately listed below. This program, alleged in various petitions, may apply to one or more of its constituent countries for which petitions were filed.) For a complete discussion of all programs and the bases for our decisions, see the "Concurrence Memorandum" for each country which are located in the public files in the Central Records Unit.

A. Belgium

1. 1959 Law
2. Research and Development Contract Assistance—Fabfer
3. 1984 Conversions of Sidmar Debt to Equity

4. Conversion of Cockerill Sambre Debt to Equity Under the Gandois Plan
5. Clabecq Preferred Stock Devaluation
6. "Other" Loans to Fabfer
7. Export Insurance

B. Brazil

1. Government of Brazil Guarantees of Foreign Currency Loans

C. European Community

1. ECSC Conversion Loans Under Article 56

D. France

1. Electricity Alleged to be Provided on Preferential Terms.
2. Other Loan Guarantees

E. Germany

1. Steel Research Program Grants from the Ministry of Research and Development
2. Articles 4, 4a, and 4b of the Investment Premium Act
3. Export Guarantees
4. Equity Infusions from Treuhandanstalt
5. Ad Hoc Loans from the Governments of Bremen and Bavaria to Klockner
6. Ad Hoc Loan Guarantees from North Rhine-Westphalia to Krupp
7. North Rhine-Westphalia's Technical Program Steel

F. Italy

1. Finsider Sales to IRI
2. Decree No. 332 of September 30, 1989
3. Export Credit Insurance Under Law No. 227
4. Ilva/Falck Accord
5. Grants for Electricity Price Increases for Electric Steelmakers Pursuant to Law 495/81
6. Debt Outstanding in 1991
a. Ilva Debt
b. Falck IMI Loan
c. Falck Mediobanca Loan

G. Korea

1. Certain Equity Infusions into POSCO in 1981 and from 1986 to 1988
2. Government Land Transfers to POSCO for the Pohang Facility

H. Spain

1. Aid for Scrap Purchases
2. Disaster Assistance Loans
3. Grants from the Basque Government for Labor, Energy and Environmental Purposes
4. Participative Credits Provided by Private Banks

I. Taiwan

1. Certain Equity Infusions into China Steel Corporation from 1981 to 1988
2. Articles 10, 22, 34, 34–1, 43, and 84 of the Statute for Encouragement of Investments (SEI)
3. Short-term Financing "Channeled to Priority Industries"
4. Long-term Loans Provided by the Strategic Fund

Postponement of Preliminary Determinations

Pursuant to section 703(c) of the Act, the Department determines that these investigations are extraordinarily complicated by reason of one or more of the following: (1) The large number and complex nature of the alleged subsidies, (2) the novelty of the issues presented by reason of the large number of simultaneous investigations involving four different classes or kinds of steel products, and (3) the large number of producers and exporters. We also determine that additional time is necessary for making our preliminary determinations. Accordingly, on the assumption that the parties concerned will cooperate in these investigations, we are postponing our preliminary determinations until not later than 150 days after the filing of the petitions, *i.e.*, November 27, 1992. If the parties concerned with a particular investigation are found not to be cooperative, we may issue our preliminary determinations not later than 85 days after the filing of the petitions.

Scope of Investigations

Listed below by country are the classes or kinds of merchandise covered by each of these investigations. For a complete description of these products, see appendix II.

A. Austria

1. Certain cold-rolled carbon steel flat products

B. Belgium

1. Certain hot-rolled carbon steel flat products
2. Certain cold-rolled carbon steel flat products
3. Certain cut-to-length carbon steel plate

C. Brazil

1. Certain hot-rolled carbon steel flat products
2. Certain cold-rolled carbon steel flat products
3. Certain corrosion-resistant carbon steel flat products
4. Certain cut-to-length carbon steel plate

D. France

1. Certain hot-rolled carbon steel flat products
2. Certain cold-rolled carbon steel flat products
3. Certain corrosion-resistant carbon steel flat products
4. Certain cut-to-length carbon steel plate

E. Germany

1. Certain hot-rolled carbon steel flat products
2. Certain cold-rolled carbon steel flat products
3. Certain corrosion-resistant carbon steel flat products
4. Certain cut-to-length carbon steel plate

F. Italy

1. Certain hot-rolled carbon steel flat products
2. Certain cold-rolled carbon steel flat products
3. Certain cut-to-length carbon steel plate

G. Korea

1. Certain hot-rolled carbon steel flat products
2. Certain cold-rolled carbon steel flat products
3. Certain corrosion-resistant carbon steel flat products
4. Certain cut-to-length carbon steel plate

H. Mexico

1. Certain corrosion-resistant carbon steel flat products
2. Certain cut-to-length carbon steel plate

I. New Zealand

1. Certain hot-rolled carbon steel flat products
2. Certain cold-rolled carbon steel flat products
3. Certain corrosion-resistant carbon steel flat products

J. Spain

1. Certain cold-rolled carbon steel flat products
2. Certain cut-to-length carbon steel plate

K. Sweden

1. Certain corrosion-resistant carbon steel flat products
2. Certain cut-to-length carbon steel plate

L. Taiwan

1. Certain cold-rolled carbon steel flat products
2. Certain corrosion-resistant carbon steel flat products

M. United Kingdom

1. Certain cold-rolled carbon steel flat products

2. Certain cut-to-length carbon steel plate

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determinations By the ITC

The ITC will determine by August 14, 1992, whether there is a reasonable indication that industries in the United States are being materially injured, or are threatened with material injury, by reason of imports from Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, Taiwan, and the United Kingdom of certain steel products. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: July 20, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

APPENDIX I

Country	Product	Case No.	Petitioners
Austria	CR	C-433-804	A, B, Gu, I, L, N, S, U, W
Belgium	HR	C-423-806	A, B, Ge, Gu, I, L, N, S, U, W
Belgium	CR	C-423-806	A, B, Gu, I, L, N, S, U, W
Belgium	PLATE	C-423-806	B, Ge, Gu, I, Lu, U
Brazil	HR	C-351-818	A, B, Ge, Gu, I, L, N, S, U, W
Brazil	CR	C-351-818	A, B, Gu, I, L, N, S, U, W
Brazil	CRCS	C-351-818	A, B, Gu, I, N, S, U, W
Brazil	PLATE	C-351-818	B, Ge, Gu, I, Lu, U
France	HR	C-427-810	A, B, Ge, Gu, I, L, N, S, U, W
France	CR	C-427-810	A, B, Gu, I, L, N, S, U, W
France	CRCS	C-427-810	A, B, Gu, I, L, N, S, U, W
France	PLATE	C-427-810	B, Ge, Gu, I, Lu, U
Germany	HR	C-428-817	A, B, Ge, Gu, I, L, N, S, U, W
Germany	CR	C-428-817	A, B, Gu, I, L, N, S, U, W
Germany	CRCS	C-428-817	A, B, Gu, I, L, N, S, U, W
Germany	PLATE	C-428-817	B, Ge, Gu, I, Lu, U
Italy	HR	C-475-808	A, B, Ge, Gu, I, L, N, S, U, W
Italy	CR	C-475-808	A, B, Gu, I, L, N, S, U, W
Italy	PLATE	C-475-808	B, Ge, Gu, I, Lu, U
Korea	HR	C-580-818	A, B, Ge, Gu, I, L, N, S, W
Korea	CR	C-580-818	A, B, Gu, I, L, N, S, U, W
Korea	CRCS	C-580-818	A, B, Gu, I, L, N, S, U, W
Korea	PLATE	C-580-818	B, Ge, Gu, I, Lu, U
Mexico	CRCS	C-201-810	A, B, Gu, I, L, N, S, U, W
Mexico	PLATE	C-201-810	B, Ge, Gu, I, Lu, U
New Zealand	HR	C-614-802	A, B, Ge, Gu, I, L, N, S, U, W
New Zealand	CR	C-614-801	A, B, Gu, I, L, N, S, U, W
New Zealand	CRCS	C-614-802	A, B, Gu, I, N, S, U, W
Spain	CR	C-469-804	A, B, Gu, I, L, N, S, U, W
Spain	PLATE	C-469-804	B, Ge, Gu, I, Lu, U
Sweden	CRCS	C-401-804	A, B, Gu, I, L, N, S, U, W
Sweden	PLATE	C-401-804	B, Ge, Gu, I, Lu, U
Taiwan	CR	C-583-819	A, B, Gu, I, L, N, S, U, W
Taiwan	CRCS	C-583-819	A, B, Gu, I, L, N, S, U, W
United Kingdom	CR	C-412-815	A, B, Gu, I, L, N, S, U, W
United Kingdom	PLATE	C-412-815	B, Ge, Gu, I, Lu, U

KEY:
Products:
HR = Hot-rolled Carbon Steel.
CR = Cold-rolled Carbon Steel.
CRCS = Corrosion-Resistant Carbon Steel.
PLATE = Cut-to-Length Carbon Steel Plate.
Petitioners:
A = Armco Steel Company, L.P.
B = Bethlehem Steel Corporation.
Ge = Geneva Steel*.
Gu = Gulf States Steel Inc. of Alabama.
I = Inland Steel Industries, Inc.
L = LTV Steel Co., Inc.
La = Laclede Steel Company.**
Lu = Lukens Steel Company
N = National Steel Corporation.
S = Sharon Steel Corporation.
U = U.S. Steel Group—a Unit of USX Corporation.
W = WCI Steel, Inc.

*Note: Geneva Steel filed as a petitioner in the countervailing duty investigation involving Taiwan. However, it has not been included in the above chart for Taiwan because no information was provided in the petition to indicate that it produced the merchandise subject to investigation from Taiwan. The Department will seek clarification on this matter during the proceedings.

**Note: Laclede Steel Company filed as a petitioner in the countervailing duty investigations involving Belgium, Brazil, France, Germany, Italy, Korea, and New Zealand. However, it has not been included in the above chart because no information was provided to indicate the class(es) or kind(s) of merchandise it produces. The Department will seek clarification on this matter during the proceedings.

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below.

Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Hot-Rolled Carbon Steel Flat Products

These products include hot-rolled carbon steel flat products, of solid rectangular (other than square) cross section, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils, or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat products, of solid rectangular (other than square) cross section, of rectangular shape, neither clad, plated nor coated with metal whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.5000, and 7212.50.0000.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of solid rectangular (other than square) cross section, of rectangular shape, either clad, plated or coated with corrosion-resistant metals such as zinc, aluminum or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances, in addition to the metallic coating, in coils, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.7C.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel").

Certain Cut-To-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief) of solid rectangular (other than square) cross section, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat products in straight lengths, of solid rectangular (other than square) cross section, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

[FR Doc. 92-17567 Filed 7-23-92; 8:45 am]

BILLING CODE 3510-10-DS-M

Scope Rulings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of scope rulings.

SUMMARY: The International Trade Administration (ITA) hereby publishes a list of scope rulings completed between April 1, 1992, and June 30, 1993. In conjunction with this list, the ITA is also publishing a list of pending requests for scope clarifications. The ITA intends to publish future lists within thirty days of the end of each quarter.

EFFECTIVE DATE: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-4851.

Background

Sections 353.29(d)(8) and 355.29(d)(8) of the Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months. The lists are to include the case name, reference number, and brief description of the ruling.

This notice lists scope rulings completed between April 1, 1992, and June 30, 1992, and pending scope clarification requests. The ITA intends to publish in October 1992 a notice of scope rulings completed between July 1, 1992, and September 31, 1992.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between April 1, 1992, and June 30, 1992

Country: Federal Republic of Germany.

A-428-801: Antifriction Bearings:

Allergan Medical Optics—stainless steel balls for non-bearing use (in an optical polishing process) are not antifriction bearings, or parts thereof, and are not within the scope of the order—06/19/92.

Country: Italy.

A-475-801: Antifriction Bearings:

IBC Bearing Co.—stainless steel balls that are finished, semiground balls, are not within the scope of the order—05/18/92.

Country: People's Republic of China.

A–570–502: Certain Iron Construction Castings:
Customs/CNI Manufacturing—certain light-weight iron rings, not suitable for use with manhole covers are not within the scope of the order—advice to Customs—06/15/92.

Country: Korea.
A–580–008: Color Television Receivers:
Goldstar Co., Ltd., Goldstar Electronics International, Inc., and Goldstar of America, Inc.—printed circuit boards combined after importation with U.S.-made color picture tubes are not within the scope of the order—06/29/92.

Country: Japan.
A–588–405: Cellular Mobile Telephones and Subassemblies:
NEC—the base band IC is a subassembly not dedicated exclusively for use in CMTs and, therefore, is not within the scope of the order—04/21/92.
NEC Corporation and NEC America, Inc.—hand-held portable cellular telephones model numbers MP5A1A3–1A, MP5A1A4–1A, MP5A1A1–1A, and MP5A1A2–1A are portable cellular telephones and, therefore, are not within the scope of the order—04/21/92.
Sony Corporation and Sony Corporation of America, Inc.—pocket-sized portable cellular telephones modes CM–H1 and CM–H20 are portable cellular telephones and, therefore, are not within the scope of order and the subassemblies of the CM–H1 and CM–H20 are not "dedicated exclusively for use in CMTs" and, therefore, are not within the scope of the order—04/21/92.
Mitsubishi Electric Corporation, Mitsubishi Electronics America, Inc., and Mitsubishi Consumer Electronics America, Inc.—cellular telephone models MT–996FOR6A and MT–992FOR6A are portable cellular telephones and, therefore, are not within the scope of the order—04/21/92.
A–588–809: Certain Small Business Telephone Systems and Subassemblies Thereof:
Iwatsu Electric Company Ltd. and Iwatsu America Inc.—Iwatsu circuit cards IX–ROMP32S, IX–2ICOTB, IX–ICOTH, IX–SREP, IX–CMSG–1, IX–4ETRAN, IX–RATK, IX–HCIF, IX–BUFM, IX–8BSUB/IX–BTERM, and IX–ROMP32, and the power supply unit IX–SRPWS (Star Repeater Power Supply) are "dual use" subassemblies and, therefore, are not within the scope of the order—05/29/92.
A–588–810: Mechanical Transfer Presses:
Customs—a destack sheet feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order—04/16/92.
A–588–814: Polyethylene Terephthalate Film, Sheet, and Strip:
Fuji Photo Film U.S.A., Inc.—Fuji's roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex is not within the scope of the order—05/22/92.
A–588–817: High Information Content Flat Panel Displays:
Honeywell Incorporated—full color active matrix liquid flat panel display with a total of 50,957 pixels for incorporation into Honeywell's Traffic Alert and Collision Avoidance System is not within the scope of the order—04/14/92.
Kontron Instruments Inc. and Kontron Instruments K.K.—the KAAT II Monitor Control Module, incorporating an active-matrix liquid crystal high information content display panel with over 120,000 pixels, is an end-use product and, therefore, is not within the scope of the order—06/19/92.

Scope Inquiries Terminated Between March 1, 1992, and June 30, 1992

A–588–807: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured:
Yamaha Motor Corporation—V-belts for use on Yamaha scooters, snow mobiles, generators, lawn tractors, and other recreation vehicles—terminated based on insufficient information.
QMS, Inc.—belts for use in laser printers—terminated based on insufficient information.
A–588–814: Polyethylene Terephthalate Film, Sheet, and Strip:
Diafoil America Inc.—Diafoil AC–250—terminated based on insufficient information.

Country: People's Republic of China.
A–570–504: Petroleum Wax Candles:
Candles by Miss Montanna USA—"Mozart," "Chopin," and "Strauss" candles—terminated based on lack of interest by requester.

Pending Scope Clarification Requests as of March 31, 1992

Country: Canada.
A–122–601: Brass Sheet and Strip:
Hussey Copper Ltd., The Miller Company, Olin Corp. (Brass Group), Outokumpu American Brass, Revere Copper Products, the International Association of Machinists & Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC)—anti-circumvention inquiry to determine whether a producer of brass in Canada and a U.S. importer of brass are circumventing the antidumping order by importing Canadian brass plate, a product not included within the antidumping duty order, into the United States where it is rolled down slightly into brass sheet and strip.

Country: Argentina.
C–357–404: Certain Apparel:
FBM S.R.L., Proteo S.A., Desatex S.A., and Four Seasons Wear Inc.—men's knit cotton T-shirts, men's knit cotton tank tops, boys' knit cotton tank tops, women's knit cotton tank tops, men's knit cotton pants, boys' knit cotton pants, men's knit cotton shorts, boys' knit cotton shorts, women's knit cotton pants, girls' knit cotton pants, women's knit cotton shorts, and girl's knit cotton shorts.

Country: Federal Republic of Germany.
A–428–801: Antifriction Bearings:
SKF—certain "textile machinery components".
TIMCO Inc.—flexible roller bearings manufactured by the EICH Company.

Country: Italy.
A–475–703: Granular Polytetrafluroethylene (PTFE) Resin:
E.I. DuPont de Nemours & Company, Inc.—anti-circumvention inquiry to determine whether imports of granular PTFE raw polymer are circumventing the order.
A–570–806: Silicon Metal:
Petitioners (American Alloys, Inc.; Elkem Metals Company; Globe Metallurgical, Inc.; Silicon Metaltech Inc.; SiMETCO Inc.; and SKW Alloys, Inc.)—silicon metal with a silicon content of at least 89.00 percent but less than 99.99 percent.

Country: Korea.
A–580–601: Stainless Steel Cooking Ware:
Polar Ware Company—certain stainless steel stock pots and covers.
William H. Campbell Company—stainless steel 8 cup coffee

percolator.
C–580–602: Stainless Steel Cooking Ware:
William H. Campbell Company—stainless steel 8 cup coffee percolator.
Country: Taiwan
A–583–508: Porcelain-on-Steel Cookware:
Mr. Stove Ltd.— stove top grills.
A–583–603: Stainless Steel Cooking Ware:
William H. Campbell Company—"universal pan lid".
C–583–604: Stainless Steel Cooking Ware:
William H. Campbell Company—"universal pan lid".
Country: Japan.
A–588–055: Acrylic Sheet:
Sekisui America Corp.— ESLON DC PLATE manufactured by Sekisui Chemical Co., Ltd.
A–588–087: Portable Electric Typewriters:
Silver Seiko—"office typewriters" models EZ–40 and EZ–43.
A–588–405: Cellular Mobile Telephones and Subassemblies:
Matsushita Communication Industrial Co., Ltd. and its related entities (Matsushita)—Panasonic models EB–3530 and EB–3531 portable cellular telephones, including their accessories and their subassemblies and/or components.
A–588–707: Granular Polytetrafluroethylene (PTFE) Resin;
LNP Engineering Plastics, Inc., and ICI Americas Inc.—reprocessed PTFE powder.
A–588–804: Antifriction Bearing:
Brand Technologies—certain cartridge assemblies comprised of a machined shaft, a machined housing, and two standard bearings.
A–588–807: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured:
Nitta Industries Corp. and Nitta International Inc.—"conveyor belts".
BRECOflex Corp.—anti-circumvention inquiry to determine whether the order is being circumvented by the processing of belting into belts in Mexico before importation into the United States.
Matsushita Electra Corporation—certain belts used in consumer products that are round or flat, composed of rubber or plastics, but are not reinforced with a tensile member.
Q–588–810: Mechanical Transfer Presses:
Aida Engineering, Ltd.—FMX series cold forging press.
A–588–817: High Information Content Flat Panel Displays:
Sharp Corporation and Sharp Electronics Corporation—Sharp QA–1050 computer projection panel.
Micronics Computer Inc.—Mpression Color Overhead Projection Presentation System.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: July 8, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–17429 Filed 7–23–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Workshops

AGENCY: National Marine Fisheries Service, NOAA, Commerce. The Gulf of Mexico Fishery Management Council (Council) will hold public workshops during the month of August 1992 as indicated below. All workshops will begin at 7 p.m. and adjourn at 11 p.m. with the exception of the workshop on August 14 which is to begin at 6:30 p.m. and adjourn at 10:30 p.m. The Council will seek an industry consensus on solving problems in the red snapper fishery.

August 3—7 p.m. to 11 p.m.—Port Isabel Community College, corner of Yturria and Maxan, Port Isabel, TX;
August 4—7 p.m. to 11 p.m.—University of Texas, Visitor's Center Auditorium, Marine Science Institute, 750 Channel View Drive, Port Aransas, TX;
August 5—7 p.m. to 11 p.m.—Best Western Beachfront Inn, 5914 Seawall Boulevard, Galveston, TX;
August 6—7 p.m. to 11 p.m.—Cameron Elementary School Auditorium, Main Street (Highway 182), Cameron, LA;
August 7—7 p.m. to 11 p.m.—Larose Regional Park, 2001 East 5th Street, Larose, LA;
August 10—7 p.m. to 11 p.m.—Belle Chasse Auditorium, Plaquemines Parish Government, 106 Avenue G, Belle Chasse, LA;
August 11—7 p.m. to 11 p.m.—Mississippi Bureau of Marine Resources, 2620 Beach Boulevard, Conference Room, Biloxi, MS;
August 12—7 p.m. to 11 p.m.—Adult Activity Center, 260 Clubhouse Drive, Gulf Shores, AL;
August 13—7 p.m. to 11 p.m.—Gulf Coast Community College, Student Union Building East— "Lecture Hall", 5230 West Highway 96, Panama City, FL; and
August 14—6:30 p.m. to 10:30 p.m.—City Hall Auditorium, 300 Municipal Drive, Madeira Beach, FL.

For more information contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: July 20, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–17469 Filed 7–23–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies enploying persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 24, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Pallet Cover, Polyethylene
3990–00–930–1481
Nonprofit Agency: Northwest Center for the Retarded, Seattle, Washington
Clamp, Loop
5340–01–143–9255
5340–01–106–2735
Nonprofit Agency: United Cerebral Palsy of King-Snohomish Counties, Seattle, Washington
Towel, Machinery Wiping
7920–01–177–3633
(All Government's requirements except Palmetto, GA)
Nonprofit Agency: East Texas Lighthouse for the Blind, Tyler, Texas

Services

Grounds Maintenance
Naval Station
Mobile, Alabama
Nonprofit Agency: Mobile Association for the Blind, Mobile, Alabama
Janitorial/Custodial
Federal Building
Basement and Floors 7 & 8
230 North First Avenue
Phoenix, Arizona
Nonprofit Agency: Tempe Center for Habilitation, Inc., Tempe, Arizona
Janitorial/Custodial
USDA Forest Service
Humboldt Nursery
4886 Cottage Grove Avenue
McKinleyville, California
Nonprofit Agency: Redwoods United Workshop, Inc., Arcata, California
Janitorial/Custodial
Mifflin County USARC
Lewistown, Pennsylvania
Nonprofit Agency: Juniata Branch, Pennsylvania Association for the Blind, Lewistown, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–17563 Filed 7–23–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 24, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 42 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodities to the Government.

2. The action will result in authorizing a small entity to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities to the Procurement List:

Splint, Arm, Pneumatic
6515–00–935–6592
Nonprofit Agency: York Industries for the Blind, York, Pennsylvania
Splint, Leg, Pneumatic
6515–00–935–6593
Nonprofit Agency: York Industries for the Blind, York, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–17564 Filed 7–23–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: August 24, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 28, May 8, 15, 22, 29 and June 5, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 6814, 19888, 20812, 21768, 22727 and 24025) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services at a fair

market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Kit, Wee-Deliver Starter
P.S. Item T012M

Services

Grounds Maintenance
Naval Station
Treasure Island and Yerba Buena Island
San Francisco, California

Grounds maintenance for the following locations:

Marine Corps Base, Camp LeJeune, North Carolina
Marine Corps Air Station, Jacksonville, North Carolina
Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Council Bluffs, Iowa
Janitorial/custodial, National Archives and Records Center, 3150 Springboro Road, Dayton, Ohio
Recycling of Cassette Mailing Containers, Library of Congress, National Library Service for the Blind and Physically Handicapped, Washington, DC

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Pallet, Wood
3990–00–366–6806.

Beverly L. Milkman,
Executive Director.

[FR Doc. 92–17565 Filed 7–23–92; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Milwaukee Metropolitan Area, Wisconsin, Flood Control Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: Flood control measures are proposed for a 1.9 mile reach of Lincoln Creek in Milwaukee, Wisconsin. Along this reach, four major floods over the past 30 years have affected up to 1,600 homes, some of which are also affected by many smaller floods. Alternatives under consideration to reduce flooding and flood damages include channel improvements with a concrete channel lining, and channel improvements with a natural channel lining in combination with stormwater detention.

FOR FURTHER INFORMATION CONTACT: Questions about the DEIS can be directed to: Mr. Paul H. Allerding; U.S. Army Engineer District, Detroit; Environmental Analysis Branch; P.O. Box 1027; Detroit, Michigan 48231–1027; Telephone: 313–226–7590.

SUPPLEMENTARY INFORMATION: The Milwaukee Metropolitan Area, Wisconsin, Flood Control Study is authorized by a resolution of the Committee on Public Works and Transportation of the U.S. House of Representatives, adopted September 8, 1988.

The Milwaukee Metropolitan Area Study focuses on Lincoln Creek, a small stream about 10 miles in length, which is a tributary of the Milwaukee River. The study reach extends 1.9 miles along Lincoln Creek from West Hampton Avenue in Milwaukee, downstream to North 35th Street. Along this reach, four major floods over the past 30 years have affected up to 1,600 homes, some of which are also affected by many smaller floods.

Preliminary alternatives that were considered for reduction of flooding and flood damages along the study reach included levees and floodwalls; a diversion channel; a retention basin; channel improvements; structure floodproofing, elevation, and removal; and combinations of these measures. Screening of alternatives for engineering, environmental, economic, and institutional feasibility eliminated all preliminary alternatives, except some form of channel improvements, from further study.

Alternatives currently under consideration include channel improvements with a concrete channel lining, channel improvements with a natural channel lining in combination with stormwater detention, and no Federal action. Both channel improvements alternatives would require enlarging the existing creek channel to provide increased flood carrying capacity. In addition, several bridges that constrict the channel would require modification or replacement.

The natural channel alternative could include combinations of earth, gravel, and bedrock channel lining with turf sideslopes. The natural channel may also require a limited amount of dikes and floodwalls in areas where the banks are low and some riprap in areas of high erosion potential. Possible stormwater detention basin sites include various parts and other open spaces in the study area.

Significant issues that will be analyzed during preparation of the DEIS include potential impacts on wetlands, water quality, fish and wildlife habitat, cultural resources, recreation, and aesthetics.

The proposed actions will be reviewed for compliance with the Fish and Wildlife Act of 1956; the Fish and Wildlife Coordination Act of 1958; the National Historic Preservation Act of 1966; the National Environmental Policy Act (NEPA) of 1969; the Clean Air Act of 1970; the Coastal Zone Management Act of 1972; the Endangered Species Act of 1973; the Water Resources Development Act of 1976; the Clean Water Act of 1977; Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 1971; Executive Order 11988, Flood Plain Management, May 1977; Executive Order 11990, Wetland Protection, May 1977; and

Corps of Engineers, Dept. of the Army, 33 CFR part 230, Environmental Quality, Policy and Procedure for Implementing NEPA.

All affected Federal, State, and local agencies, Indian tribes, and other private organizations and parties are invited to participate in the proposed project review. Questions, concerns, and comments may be directed to the address given above. A public workshop is being planned for the fall of 1992. It is anticipated that the DEIS would be available for public review in September 1994.

Dated: July 10, 1992.

Richard Kanda,

Colonel, U.S. Army, District Engineer.

[FR Doc. 92-17803 Filed 7-23-92; 8:45 am]

BILLING CODE 3710-GA-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0027]

OMB Clearance Request for Value Engineering Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0027), Value Engineering requirements.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Value Engineering Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Value engineering is the technique by which contractors (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) are required to establish a program to identify and submit to the Government methods for performing more economically. These recommendations are submitted to the Government as value engineering change proposals (VECP's) and they must include specific information. This information is needed to enable the Government to evaluate the VECP and, if accepted, to arrange for an equitable sharing plan.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *400*; responses per respondent, *4*; total annual responses, *1,600*; preparation hours per response, *30*; and total response burden hours, *48,000*.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0027, Value Engineering Requirements, in all correspondence.

Dated: July 15, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-17451 Filed 7-23-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 24, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 20, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: New.

Title: Performance Report for the Strengthening Historically Black Colleges and Universities Program.

Frequency: One time.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 98. *Burden Hours:* 2,352. *Recordkeeping Burden: Recordkeepers:* 0. *Burden Hours:* 0.

Abstract: This information is required of grantees under the Strengthening Historically Black Colleges and Universities Program. The Department will use the information to monitor the effectiveness of activities in achieving growth and self-sufficiency.

Office of Bilingual Education and Minority Language Affairs

Type of Review: New.

Title: Study of Content for English as a Second Language.

Frequency: On Occasion.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 2,000. *Burden Hours:* 333. *Recordkeeping Burden: Recordkeepers:* 0. *Burden Hours:* 0.

Abstract: This study will be used to gather information about programs in the United States public schools that provide instructions in English as a second language. The Department will use the information to monitor program effectiveness and improvement.

[FR Doc. 92-17473 Filed 7-23-92; 8:45 am]
BILLING CODE 4000-01-M

[CFDA Nos.: 84.019, 84.022]

Fulbright-Hays Training Grant Programs: Faculty Research Abroad and Doctoral Dissertation Research Abroad; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Programs: Applications are invited for new awards under the Fulbright-Hays Training Grant Programs for Fiscal Year 1993. The Fulbright-Hays Training Grant Programs include the Faculty Research Abroad Fellowship Program and the Doctoral Dissertation Research Abroad Fellowship Program. Authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2452(b)(6)).

The Faculty Research Abroad Fellowship Program offers opportunities to faculty members of institutions of higher education for research and study abroad in modern foreign languages and area studies.

The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Eligible Applicants: For Faculty Research Abroad Fellowship and Doctoral Dissertation Research Abroad Fellowship Programs, eligible applicants are institutions of higher education.

Deadline for Transmittal of Applications: October 30, 1992.

Applications Available: August 31, 1992.

FULBRIGHT-HAYS TRAINING GRANT PROGRAMS

Title and CFDA Number	Available Funds	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards	Project Period in Months
Faculty Research Abroad (84.019)	$910,000 [1] Rs. 1,131,390	$6,000 to 60,000	$31,590	30	3 to 12
Doctoral Dissertation Research Abroad, (84.022)	$1,600,000 [1] Rs. 2,359,450	$3,000 to 60,000	$25,050	75	6 to 12

[1] Rupee allocation from the U.S.-India Fund.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82, 85 and 86; and

(b) Regulations governing the Doctoral Dissertation Research Abroad Fellowship program in 34 CFR part 662 and the Faculty Research Abroad Fellowship program in 34 CFR part 663.

Priorities: The Regulations governing the Faculty Research Abroad Fellowship Program (34 CFR 663.32(c)) and the Doctoral Dissertation Research Abroad Fellowship Program (34 CFR 662.32(c)) authorize the Secretary to establish priorities for the selection of applications.

Pursuant to 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to Faculty Research Abroad Fellowship and Doctoral Dissertation Research Abroad Fellowship applications that meet the following priority: Research projects that focus on Africa, East Asia, Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe (i.e., Poland, Czechoslovakia, Hungary, Bulgaria, Albania, Rumania and the new republics which were formerly part of Yugoslavia), the Baltic States and other new republics of the former Union of Soviet Socialist Republics, and the Western Hemisphere. Applications that propose projects focused on Western Europe will not be funded.

Under 34 CFR 75.105(c)(3), in this competition the Secretary funds only applications that meet this absolute priority.

In accordance with 34 CFR 75.105(c)(2), the Secretary also gives a competitive preference to Faculty Research Abroad Fellowship and Doctoral Dissertation Research Abroad Fellowship applications that meet the following competitive priority: projects that emphasize economics, geography, or sociology.

As authorized under 34 CFR 75.105(c)(2)(i), the Secretary may award five selection points to an application that meets this competitive priority in a particularly effective way, in addition to any points awarded to the application under the selection criteria of the Faculty Research Abroad Fellowship and Doctoral Dissertation Research Abroad Fellowship Programs.

For Applications or Information Contact: Mr. Robert Dennis (Faculty Research Abroad Fellowship Program), Telephone (202) 708-7279; Ms. Vida Moattar (Doctoral Dissertation Research Abroad Fellowship Program), Telephone (202) 708-9291, Department of Education, Center for International Education, 400 Maryland Avenue SW., Washington, DC 20202-5331. Deaf and hearing impaired individuals may call the Federal Dual Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300, between 8 a.m. and 7 p.m., eastern time).

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: July 20, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-17474 Filed 7-23-92; 8:45 am]
BILLING CODE 4000-01-M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming teleconference meeting of Subject Area Committee #1 of the

National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: July 28, 1992.

Time: 12 noon, (e.d.t.), to adjournment, approximately 2 p.m.

Location: National Assessment Governing Board, 800 North Capitol Street NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Subject Area Committee #1 of the National Assessment Governing Board (the Board) will meet in an open session via telephone conference on July 28, 1992 (e.d.t.) to take final action on the 1994 U.S. History Specifications and to formulate recommendations to the Executive Committee. Facilities will be provided so the public will have access to the Committees' deliberations.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: July 20, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–17438 Filed 7–23–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b) it intends to renew on a noncompetitive basis a grant to Jackson State University (JSU) as the lead institution on behalf of a consortium involving JSU, Ana G. Mendez Educational Foundation (AFMEF), and Lawrence Berkeley Laboratory (LBL) of the University of California to improve the research and instructional programs in mathematics, natural science, and computer science at JSU and the three institutions of higher education which comprise the AFMEF—the University of Turabo, Metropolitan University, and the Puerto Rico Junior College. The grant renewal will continue the project through May 31, 1993. The estimated amount is $1,666,665.

PROCUREMENT REQUEST NUMBER: 05–92ER75274.001.

PROJECT SCOPE: The grant renewal is to continue a collaborative research and manpower development effort between JSU and AFMEF in response to Congressional direction included in the conference report on the Energy and Water Development Appropriation Act of 1991. Eligibility for this award is, therefore, restricted JSU.

FOR FURTHER INFORMATION CONTACT: Gregory A. Mills, Energy Programs Division, ER–113, U.S. Department of Energy, Oak Ridge, Tennessee 37831–8614, (615) 576–0951.

Issued in Oak Ridge, Tennessee, on July 16, 1992.

Don R. Sloan,

Deputy Director, Procurement and Contracts Division, Oak Ridge Field Office.

[FR Doc. 92–17556 Filed 7–23–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to this Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number or respondents per report period;

(10) An estimate of the number or responses per respondent annually;

(11) AN estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before August 24, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–550.
3. 1902–0089.
4. Oil Pipeline Rates: Tariff Filings.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 140 respondents.
10. 2.3 responses.
11. 20 hours per response.
12. 6,500 hours.
13. The purpose of this tariff filing requirement is to provide data to be used by the Commission to establish just and reasonable rates that may be charged by jurisdictional oil companies.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–521.
3. 1902–0087.
4. Payments for Benefits from Headwater Improvements.
5. Extension.
6. On occasion.
7. Mandatory.
8. State or local governments, Businesses or other for-profit, and Federal agencies or employees.
9. 14 respondents.
10. 1 response.
11. 33.60 hours per response.
12. 470 hours.
13. To carry out the legislative requirements of section 10(f) of the Federal Power Act, which directs the Commission to determine the benefits that have been received by downstream parties from the operation of storage reservoir or other headwater improvements, and to assess the downstream beneficiaries for a part of the annual charges for interest, maintenance and depreciation.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 15, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) an estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before August 24, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Fossil Energy.
2. FE–329R.
3. 1901–0297.
4. Powerplant and Industrial Fuel Use Act (FUA) of 1978; Final Rule.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other profit.
9. 30 respondents.
10. 1 response.
11. 20 hours per response.
12. 600 hours.
13. FE-329R provides the procedures for filing a petition requesting a temporary or permanent exemption under sections 211 and 311 of the Powerplant and Industrial Fuel Use Act of 1978. Petitioners are owners or operators of new or existing powerplants.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 17, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–17558 Filed 7–23–92; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed; Office of Hearing and Appeals, Week of July 3 Through July 10, 1992

During the week of July 3 through July 10, 1992, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 17, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 3 through July 10, 1992]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jul. 1, 1992	Gulf/Rosamilia Brothers Gulf, Woodbridge, VA	RR300-185	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 Dismissal Letter (Case No. RF300-13295) issued to Rosamilia Brothers Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Jul. 6, 1992	Gulf/Rosboro Gulf, Atlantic Beach, FL	RR300-184	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The July 1, 1992 Dismissal Letter (Case No. RF300-14856) issued to Roseboro Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Jul. 9, 1992	Gulf/Hammond County Store, White City, FL	RR300-186	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The July 1, 1992 Dismissal Letter (Case No. RF300-14783) issued to Hammond County Store would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Jul. 9, 1992	Swiss Valley Farms, Co., Davenport, IA	RR272-97	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The June 19, 1992 Decision and Order (Case No. RF272-78231) issued to Swiss Valley Farms Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Refund Proceeding/Name of Refund Application	Case Number
6/30/92	Norton Co.	RA272-52
7/2/92	James Karasis Super 100	RF342-243
7/2/92	Sinclair Marketing, Inc.	RF342-244
7/3/92 THRU 7/10/92	Crude Oil Applications Received	RF272-93562 THRU RF272-93738
7/3/92 THRU 7/10/92	Texaco Refund Applications Received	RF321-18833 THRU RF321-18909
7/3/92 THRU 7/10/92	Gulf Oil Refund Applications Received	RF300-20337 THRU RF300-20358
7/3/92 THRU 7/10/92	Atlantic Richfield Applications Received	RF304-13192 THRU RF304-13207
7/6/92	Amos Frank Super 100-Station	RF342-245
7/6/92	Dan's Super 100	RF342-246
7/6/92	Mel's Clark 100	RF342-247
7/6/92	Jim's Super 100	RF342-248
7/6/92	Stewart's Clark Super 100	RF342-249
7/7/92	Darrell's Clark Oil	RF342-250
7/7/92	Jim's Super 100 Clark	RF342-251
7/9/92	West Side Plaza Car Wash	RF315-10216
7/9/92	Consumers Power Co.	RF345-2
7/9/92	Terry Piazza's	RF342-252
7/9/92	Welsh Oil, Inc.	RF342-253
7/10/92	Wallace Oil Reclaiming Co.	RF340-173

[FR Doc. 92-17559 Filed 7-23-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $288,327, plus accrued interest, obtained by the DOE pursuant to a Consent Judgment In Action for Restitution and Civil Penalties between the United States and Crescent Refining & Oil Company and Petroleum Fuel Company. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate by August 24, 1992 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number LEF-0044.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR

205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $288,327 that has been remitted by Crescent Refining & Oil Company and Petroleum Fuel Company to the DOE to settle possible pricing violations with respect to their sales of No. 2–D diesel fuel, PS 200 fuel oil, PS 300 fuel oil, PS 400 fuel oil and bunker fuel during the period September 1, 1973 through October 31, 1975. The DOE is currently holding the funds in an interest bearing account pending distribution.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 20, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order

Implementation of Special Refund Procedures

July 20, 1992,

Name of Firm: Crescent Refining & Oil Company; Petroleum Fuel Company

Date of Filing: April 17, 1992

Case Number: LEF–0044

On April 17, 1992, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Crescent Refining & Oil Company (Crescent) and Petroleum Fuel Company (PFC) pursuant to 10 CFR part 205, subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Since the procedures set forth in this Decision are in proposed form, no refund application should be filed at this time. A final determination will be issued at a later date announcing that the filing of Crescent and PFC refund applications is authorized.

I. Background

Crescent and PFC were reseller-retailers as defined by 10 CFR 212.31 and were subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firms' pricing practices, the ERA determined that during the period September 1, 1973, through October 31, 1975 (the Consent Order period), Crescent and PFC overcharged specific customers in certain sales of No. 2–D diesel fuel, PS 200 fuel oil, PS 300 fuel oil, PS 400 fuel oil and bunker fuel. On September 28, 1979, the ERA issued a Proposed Remedial Order (PRO) to Crescent and PFC. Crescent and PFC were owned by the same individuals and were treated as a single firm for purposes of the PRO. Therefore, we will hereinafter refer to the firms collectively as Crescent. On February 21, 1980, Crescent filed its Statement of Objections to the PRO. The OHA issued a Remedial Order (RO) on April 27, 1981 which found that Crescent had overcharged those customers as alleged in the PRO during the period from September 1, 1973, through October 31, 1975. Crescent Refining & Oil Co., 8 DOE ¶ 83,003 (1981). Crescent appealed the RO to the Federal Energy Regulatory Commission (FERC). On December 21, 1983, the FERC's Presiding Officer, Richard Howe, Jr., issued a Proposed Order (PO) that affirmed the RO in all respects. Crescent Refining and Oil Co., 25 FERC ¶ 62,404 (1983). On March 23, 1984, FERC issued an Order adopting the PO. Crescent Refining and Oil Co., 26 FERC ¶ 61,377 (1984). On November 5, 1990, the United States of America filed for damages and summary enforcement of the RO in the United States District Court for the Central District of California. In order to settle the matter, the United States and Crescent entered into a Consent Judgement In Action for Restitution and Civil Penalties (Consent Judgement) which was approved by the Court on September 18, 1991. The Consent Judgement stipulated that Crescent remit a total of $350,000 over a period of seven years to the United States. However, pursuant to a settlement between the DOE and Crescent approved by the Court on December 27, 1991, the DOE received $288,327 from Crescent as a Receipt and Full Satisfaction of Judgement.

This Proposed Decision and Order concerns the distribution of the $288,327, plus interest accrued on this amount in escrow, that Crescent remitted to the DOE for direct restitution to the identified customers found by the RO to have been overcharged. The RO found that Crescent overcharged a number of its customers on certain sales of No. 2–D diesel fuel, PS 200 fuel oil, PS 300 fuel oil, PS 400 fuel oil, and bunker fuel. We will hereinafter refer to those products as covered products. The Appendix attached to this Proposed Decision is based on information contained in the PRO. The Appendix sets forth the covered products, the names of the Crescent customers who were overcharged on each particular product, and the amount that each customer was allegedly overcharged by Crescent. Accordingly, the potential refund claimants in this proceeding are the customers listed in the Appendix of this Proposed Decision.

II. Proposed Refund Procedures

As indicated above, the Crescent customers listed in the Appendix of this Proposed Decision constitute the set of potential refund claimants. Therefore, we propose to consider refund applications only from these customers, including the successor in interest of any customer. Because the Consent Judgement funds are substantially less than the amount of the violations found by the RO, it is necessary to recalculate each purchaser's potential refund amount. We therefore have calculated the fraction of the alleged overcharge represented by the Consent Judgement funds. We have then multiplied that fraction (.562400959) by the amount of alleged overcharge specified in the RO for each customer to yield the maximum amount that each customer is entitled to receive.[1] These amounts are listed as the Pro-Rata Share next to each potential claimant's name in the Appendix to this Proposed Decision. We recognize that any eligible firm could have been overcharged in amounts greater than the alleged RO overcharges listed in the appendix of this Proposed Decision. However, unless an applicant is able to demonstrate, with respect to specific transactions covered by the RO, that the amount listed is not reflective of the overcharges that it sustained, we will conclude that an applicant should not be eligible to receive a refund in an amount greater than its pro-rata share of the Consent Judgement funds as calculated from the violation amounts found by the RO.

A. Requirements for Refund Claimants

We propose that in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. See, *e.g.*, Office of Enforcement, 8 DOE ¶ 82,597 at 85,396–97 (1981). However, as we have done in many prior refund cases, we propose to adopt specific injury presumptions that will simplify and streamline the refund process for some categories of customers: small

[1] The PRO and RO found that Crescent committee violations in the amount of $514,454.03. However, our review of the individual violations listed in the exhibits to the PRO reveals that two errors were made in the calculation of the violation amount for the PS 200 customers. As an initial matter, we have determined that the individual overcharges listed in the PRO for PS 200 Class 4 customers total only $20,339.13 rather than the $22,126.56 listed. The difference between the actual and listed total violation for the PS 200 Class 4 customers is therefore $1,787.43. In addition, a separate error was made in calculating the total violation amount for all cases of PS 200 customers, which resulted in the PRO's total violation amount for all classes of purchasers of PS 200 ($151,100.20) being understated by $5.00. The actual violation amount, using the erroneous figure for class 4 customers, should have been $151,105.20 and the total erroneous violation amount for all products and classes of customers should have been $514,459.03 rather than $154,454.03. Accordingly, the actual violation amount, as derived by a tally of all the individual violations listed in the exhibits to the PRO, equals $512,671.60[($514,454.03 + $5.00) − $1,787.43 = $512,671.60]. Accordingly, we will calculate the customers' pro-rata shares based upon a total violation amount of $512,671.60.

claims, end-users, and regulated firms and cooperatives. These presumptions will excuse members of certain applicant categories from proving that they were injured by Crescent's alleged overcharges, and are discussed below.

1. Reseller Applicants Seeking Refunds of $5,000 or Less

We proposed to adopt a presumption, as we have in many previous cases, that reseller seeking small refunds were injured by Crescent's pricing practices. *See, e.g., E.D.G., Inc.*, 17 DOE ¶85,679 (1988).[2] We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant who claims a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing that it is one of the eligible customers that purchased the covered products listed in the Appendix. We propose that a reseller applicant must follow the procedures that are outlined below if the applicant is seeking a refund in excess of $5,000, plus interest accrued on that amount while in escrow.

2. Reseller Applicants Seeking larger Refunds

We propose that if a reseller claims an amount in excess of $5,000, it will be required to provide a detailed demonstration of its injury. We propose that it will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, we propose that a claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Quintana Energy Corp.*, 21 DOE ¶85,032 at 88,117 (1991). If a reseller that is eligible for a refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $5,000 plus accrued interest from the escrow fund.

3. End-users

We propose to adopt a presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by Crescent's alleged overcharges, and are entitled to their full share of the settlement monies obtained from Crescent. Unlike regulated firms in the petroleum industry end-users were not subject to price control during the Consent Judgement period. Moreover, these unregulated firms were not required to keep records that justified selling price increases by reference to cost increases. Therefore, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., American Pacific International, Inc.*, 14 DOE ¶85,158 at 88,294 (1986). We propose, therefore, that any applicant claiming to be an end-user, must establish that it is one of the Crescent customers listed in the Appendix or a successor thereto and that the nature of its business made it an ultimate consumer of the Crescent covered products listed for it in the Appendix. If an applicant establishes those two facts, it will receive its full pro-rata share as its refund without making a detailed demonstration of injury.

4. Regulated Firms and Cooperatives

We propose that regulated firms (such as public utilities) and agricultural cooperatives, which are required to pass on to their customers the benefit of any refund received, will be exempted from the requirement that they make a detailed showing of injury. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); see also *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We will require a regulated firm or cooperative to establish that it is one of the Crescent customers listed in the Appendix or a successor, thereto. In addition, we will require each such claimant to certify that it will pass any refund received through to its customers, to provide us with a full explanation of the manner in which it plans to accomplish this restitution to its customers and to notify the appropriate regulatory or membership body of the receipt of the refund money. If a regulated firm or cooperative meets these requirements, it will receive a refund equal to its full pro-rata share. However, any public utility claiming a refund of $5,000 or less will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered product to non-members will be treated in the same manner as sales by other resellers under Section A (2) above.

B. Distribution of the Remainder of the Crescent Consent Judgement Funds

In the event that money remains after all refund claims from the Crescent fund have been analyzed, those funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–4507 (1988). Pursuant to the PODRA, the funds will be distributed to state governments for use in energy conservation programs.

III. Conclusion

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the Consent Judgment fund, we will publicize the distribution process, and provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Order in the **Federal Register.**

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Crescent Refining & Oil Company and Petroleum Fuel Company, pursuant to the Consent Judgment approved on September 18, 1990, will be distributed in accordance with the foregoing decision.

[2] Exhibit L of the PRO indicates that the customers classified as resellers wee overcharged a total of $17,503.91 on purchases of No. 2–D diesel fuel. The remainder of the overcharges went to purchasers classified as end-users by the PRO. By the process of elimination, the OHA has determined that the reseller customers were Verne's Truck Center, LODS Furniture Freight, and Bandini Truck Terminal.

APPENDIX

	Product/customer type	Name	Alleged overcharge	Pro-rata share
PS 300		American Cement	$245.24	$137.92
PS 300		American Pipe	73.38	41.27
PS 300		Holly Sugar	38,056.92	21,403.25
PS 300		Riverside Cement	717.51	403.53
PS 300		City of Pasadena	111,812.21	62,883.29
PS 300		City of Burbank	52,351.25	29,442.39
Diesel fuel		Active Trucking	5,554.15	3,123.66
Diesel fuel		American Pacific	51.48	28.95
Diesel fuel		Bandini Truck Service	940.95	529.19
Diesel fuel		Fitzgerald Bros. Truck Service	4,330.30	2,435.36
Diesel fuel		U.S. Army Fort MacArthur	1,128.60	634.73
Diesel fuel		Keeney Truck Tires	780.80	439.12
Diesel fuel		Lods Furniture Freight	322.00	181.09
Diesel fuel		NAS	40.00	22.50
Diesel fuel		Verne's Truck Center	16,240.96	9,133.93
Bunker		Refining Associates, Inc.	30,383.13	17,087.5C

APPENDIX—Continued

Product/customer type	Name	Alleged overcharge	Pro-rata share
PS 400	American Cement	40,630.15	22,850.44
PS 400	Imperial Irrigation	59,694.80	33,572.41
PS 200 Class 1	City of Los Angeles	19,044.45	10,710.62
PS 200 Class 1	Naval Air Station Los Alamitos	2,237.05	1,258.12
PS 200 Class 2	Alhambra City Schools	4,567.77	2,568.92
PS 200 Class 2	City of Glendale	783.49	440.64
PS 200 Class 2	Los Angeles City Schools	24,035.41	13,517.54
PS 200 Class 2	Pacific Telephone, Orange	236.54	133.03
PS 200 Class 2	Pasadena City School	18,096.98	10,177.76
PS 200 Class 13	Gaylord Hotel	91.38	51.39
PS 200 Class 13	Kleen Towel	67.34	37.87
PS 200 Class 13	Little Sister of the Poor	81.00	45.55
PS 200 Class 13	Reliable Grease	353.80	198.98
PS 200 Class 13	Soft Water Laundry	128.00	71.99
PS 200 Class 13	Southern Serv. Pamona	276.04	155.25
PS 200 Class 14	Ansco Steel Co.	180.00	101.23
PS 200 Class 14	Bank of America	63.67	35.81
PS 200 Class 14	California Piece D. Works	70.00	39.37
PS 200 Class 14	California Hosp. Medical Center	238.63	134.21
PS 200 Class 14	CBS TV	108.80	61.19
PS 200 Class 14	F.C. Braun & Co.	202.50	113.89
PS 200 Class 14	Charles Dunn Co.	59.40	33.41
PS 200 Class 14	Compton Forge	886.50	498.57
PS 200 Class 14	Dart Industries	47.00	26.43
PS 200 Class 14	Earle Jorgensen	599.20	336.99
PS 200 Class 14	Furo Corp.	46.35	26.07
PS 200 Class 14	U.S. Army Fort MacArthur	686.00	385.81
PS 200 Class 14	Geltman Industries	104.70	58.88
PS 200 Class 14	Inmont Corp.	19.43	10.93
PS 200 Class 14	Los Angeles Paper Box	247.00	138.91
PS 200 Class 14	Los Angeles Times	87.00	48.93
PS 200 Class 14	M&H Investment	23.06	12.97
PS 200 Class 14	National Tank	9.00	5.06
PS 200 Class 14	Naval Supply Center Long Beach	2,968.83	1,669.67
PS 200 Class 14	Peterson Mfg. Co.	63.00	35.43
PS 200 Class 14	Renta Uniform	45.90	25.81
PS 200 Class 4	Signal Insurance	483.00	271.64
PS 200 Class 4	Standard Mat Co.	212.53	119.53
PS 200 Class 4	University of Southern Cal	2,844.69	1,599.86
PS 200 Class 4	Western Brass Works	3,117.15	1,753.09
PS 200 Class 4	Western Wire & Cable	155.47	87.44
PS 200 Class 5	Mt. St. Mary's College	14,456.52	8,130.36
PS 200 Class 6	Cargill, Inc.	585.23	329.13
PS 200 Class 6	Chapman Bldg.	1,141.27	641.85
PS 200 Class 6	Charles Chapman	556.33	312.88
PS 200 Class 6	Hollywood Bldg.	1.50	0.84
PS 200 Class 6	Hollywood Cemetery	173.32	97.48
PS 200 Class 6	Hollywood Penehouse	34.28	19.28
PS 200 Class 6	9th & Broadway	1,078.81	606.72
PS 200 Class 6	Saint Monica School	328.51	184.75
PS 200 Class 6	Stanley Apartments	642.95	361.60
PS 200 Class 6	U.S. Borax	117.72	66.21
PS 200 Class 6	Veterans Hospital, Westwood	115.11	64.74
PS 200 Class 7	Guy Webster	55.10	30.99
PS 200 Class 7	Pacific Mutual Life Ins. Co.	138.00	77.61
PS 200 Class 7	Rockwell International	698.06	392.59
PS 200 Class 7	Tompkin-Towel	47.63	26.79
PS 200 Class 8	Southern California Edison	4,098.53	2,305.02
PS 200 Class 9	Arthur C. Withson	1,694.30	952.88
PS 200 Class 10	California Non-Metallics	16.67	9.38
PS 200 Class 11	Huntington Beach H.S.	423.50	238.18
PS 200 Class 12	Movie Lab Hollywood	225.60	126.88
PS 200 Class 12	St. Vincent's Hospital	160.24	90.12
PS 200 Class 3	Consolidated Hotel of Cal.	362.25	203.73
PS 200 Class 3	Falcon Foam Plastics	229.23	128.92
PS 200 Class 3	Occidental College	540.12	303.76
PS 200 Class 3	Southern Service, Ontario	16.20	9.11
PS 200 Class 3	Vincent Creco	82.80	46.57
PS 200 Class 4	Alexandria Hotel	258.81	145.55
PS 200 Class 4	Alex Foods	395.00	222.15
PS 200 Class 4	Allied Properties	193.71	108.94
PS 200 Class 4	Andrew Jergens	1,209.40	680.17
PS 200 Class 4	California Hospital	259.24	145.80
PS 200 Class 4	Chapel Brass Co.	22.22	12.50
PS 200 Class 4	Chapel of the Pines	1,175.52	661.11
PS 200 Class 4	Chef's Linen	194.63	109.57
PS 200 Class 4	First Western Bank Bldg.	66.00	37.12
PS 200 Class 4	General Felt	58.80	33.07
PS 200 Class 4	Good Samaritan Hospital	894.35	502.98

APPENDIX—Continued

	Product/customer type	Name	Alleged overcharge	Pro-rata share
PS 200 Class 4		Great Western Malt	2,332.72	1,311.92
PS 200 Class 4		Intra-Cal Properties	708.06	398.21
PS 200 Class 4		Los Angeles Community Coll.	170.78	96.05
PS 200 Class 4		National Sponge	233.21	131.16
PS 200 Class 4		N.L. Industries	579.25	325.77
PS 200 Class 4		Pasadena City College	1,986.11	1,116.99
PS 200 Class 4		Prudential Insurance, LA	611.23	343.76
PS 200 Class 4		Queen of the Angels Hospital	657.80	369.95
PS 200 Class 4		Santa Monica Hospital	1,119.48	629.60
PS 200 Class 4		Saint Francis Hospital	345.98	194.58
PS 200 Class 4		Sheraton West	53.79	30.25
PS 200 Class 14		State Farm	132.00	74.24
PS 200 Class 14		Steel Casting Co.	203.00	114.17
PS 200 Class 14		Thompson Industries	162.00	91.11
PS 200 Class 15		Los Angeles Asphalt	1,709.86	961.63
PS 200 Class 15		Los Angeles Griffith Park	597.21	335.87
PS 200 Class 16		Southern Service, Glendale	80.50	45.27
PS 200 Class 16		Southern Service, Long Beach	84.00	47.24
PS 200 Class 17		Ball Corp.	2,998.51	1,680.74
PS 200 Class 17		Braun Towel & Linen	316.93	178.24
PS 200 Class 17		Cal Tech	933.76	525.15
PS 200 Class 17		Crown City Plating	628.00	353.19
PS 200 Class 17		Fibreboard Corp.	380.00	213.71
PS 200 Class 17		Filtrol Corp.	2,079.00	1,169.23
PS 200 Class 17		Owens-Illinois	997.87	561.20
PS 200 Class 17		National Linen	1,584.72	891.25
PS 200 Class 17		Northrup	1,092.39	614.36
PS 200 Class 17		Soule Steel Co.	1,836.50	1,032.85
PS 200 Class 17		Stauffer Chemical	8,397.39	4,772.70
			$512,671.60	$288,327.00

[FR Doc. 92-17560 Filed 7-23-92; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4158-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 6, 1992 through July 10, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-BPA-L08048-00 Rating LO, Resource Programs to Acquire Sufficient New Resources to meet Potential Electric Power Requirements, Implementation, WA, ID, OR, MT, CA, WY, NV, UT, NM, AZ, and British Columbia.

Summary: EPA had no objections to the draft EIS.

ERP No. D-FAA-J51011-UT Rating EC2, Salt Lake City International Airport Expansion, Construction and Operation, Air Carrier Runway 16R/34L, Plan Approval, Funding and section 404 Permit Issuance, Salt Lake City, Salt Lake County, UT.

Summary: EPA Expressed concerns regarding the uncertainty of success of the proposed wetland mitigation plan and seeks additional information in the final EIS.

ERP No. D-FHW-F40223-MN Rating EC2, I-494 Reconstruction Corridor Study, I-394 on the west to the Minnesota River, Funding and Section 404 Permit, Hennepin County, MN.

Summary: EPA requested additional information regarding light rail transit as an alternative, wetland mitigation sites and acreage and maintenance of detention ponds.

ERP No. D-FHW-F40321-MI Rating EU2, US 23 Improvements, MI-13 to MI-65 and segments of Standish and Omer Cities, Funding, section 404 Permit and NPDES Permit, Arenac County, MI.

Summary: EPA found that the Southern Bypass Alternative results in impacts to high quality wetlands which are environmentally unsatisfactory. EPA requested additional information to assess the impacts of the Standish Bypass modification using City Limits Road.

ERP No. D-IBR-K50009-CA Rating EC2, American River Bridge Crossing Project, Construction and Roadway Improvement, Funding, Right-of-Way Approval, Coast Guard Bridge Permit and section 404 Permit, City of Folsom, Sacramento County, CA.

Summary: EPA recommended that the final EIS discuss the use of automobile demand reduction measures to help avoid impacts.

ERP No. DS-AFS-J65167-MT Rating LO, Lost Silver Timber Harvest Project, Timber Sale and Road Construction, Additional Information, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead County, MT.

Summary: EPA expressed and requested the use of best management practices to reduce impacts.

ERP No. DS-FAA-F51039-MN Rating EC2, Minneapolis-St. Paul International Airport, Runway 4-22 Extension, Additional Information, Funding, Wold-Chamberlain Field, Hennepin County, MN.

Summary: EPA expressed concern for proposed alternative 1A, since alternative 1B would result in reduced noise impacts. EPA requested additional noise analysis and a commitment to specific noise mitigation.

ERP No. D1–AFS–J65143–00 Rating EO2, Manti-La Sal National Forest Oil and Gas Leasing, Implementation, Sanpete, Utah, Sevier, Juab, Emery, Carbon, Grand and San Juan Counties, UT and Mesa and Montrose Counties, CO.

Summary: EPA believed that the EIS did not contain adequate baseline data to assess the nature of resources being impacted, fully assess environmental impacts or provide necessary mitigation measures to minimize impacts. EPA has requested a meeting to help resolve the issues.

Final EISs

ERP No. F–AFS–J02020–CO, HD Mountains Coalbed Methane Gas Field Development Project, Construction and Operation, Approval, Federal Antiquities Permit, Drill Deepen or Plug Back Permit and section 404 Permit, San Juan National, Forest Pine District, Archuleta and LaPlata Counties, Co.

Summary: EPA expressed concerns regarding long term cumulative air quality impacts. EPA believes that a multiple agency inventory and increment consumption tracking in the Four Corners Region may help resolve this issue.

ERP No. F–COE–E50006–NC, Hobucken Bridge Replacement, Atlantic Intracoastal Waterway Bridge (AIWW), Implementation, Pamlico County, NC.

Summary: EPA's comments/concerns raised in the draft EIS were satisfactorily addressed.

ERP No. F–FAA–F51040–IN, Indianapolis International Airport Master Plan Development, Construction and Operation, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan Approval, Funding and section 404 Permit, Marion County, IN.

Summary: EPA's previously expressed concerns for surface water quality, air quality and ambient noise level impacts have been satisfactorily addressed. We continue to be concerned that the matter relating to provision of satisfactory wetlands compensation has still not been fully resolved.

ERP No. F–FHW–F40306–WI, Wisconsin Trunk Highway 29 Improvement, Shawano Bypass Construction, section 404 Permit and Funding Shawano County, WI.

Summary: EPA's previously expressed concerns for the project's potential adverse impact on surface water quality have been satisfactorily addressed. EPA continues to have environmental concerns for avoidance, minimization and compensation of wetlands impact. EPA continues to have environmental concerns that the project's noise sensitive receptors will not be mitigated.

ERP No. F–FHW–J40123–MT, I–15/North Helena Valley Interchange Improvements, I–15 to Montana Avenue, Construction, Funding, Lewis and Clark County, MT.

Summary: EPA had no objection to the preferred alternative which will have the least impact on local air quality.

ERP No. F–NPS–F61011–MN, Voyageurs National Park, Wilderness Recommendations, Designation and Nondesignation, St. Louis and Koochiching Counties, MN.

Summary: EPA expressed objection to the proposed action due to likely impacts to the gray wolf and vegetation loss.

ERP No. FS–FHW–A41880–NY, Elmira North-South Arterial Construction, South Section, NY–14/328 to Clements Center Parkway at Pennsylvania Avenue, Updated Information, Funding, City of Elmira and Town of Southport, Chemung County, NY.

Summary: EPA does not believe that this project will cause significant adverse environmental impacts.

Dated: July 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–17562 Filed 7–23–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4157–9]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

ACTION: Availability of Environmental Impact Statements Filed July 13, 1992 Through July 17, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920277, Final EIS, COE, FL, Central and Southern Florida Project, Flood Control and Canal 51-West End Control Structures 155A, 360, Pump station 319 and Levee Construction, Implementation, Palm Beach County, FL, Due: August 24, 1992, Contact: A.J. Salem (904) 791–1690.

EIS No. 920278, Draft EIS, GSA, MN, Minneapolis Federal Building and U.S. Courthouse Improvement and Expansion or New Construction, Implementation, Hennepin County, MN, Due: August 31, 1992, Contact: Maureen Pudlowski (312) 353–0765.

EIS No. 920279, Draft EIS, FHW, NC, US 23/I–26 Corridor Transportation Improvements, NC–197/Barnardville Road to North Carolina-Tennessee State Line, Funding, COE section 404 Permit and EPA National Pollutant Discharge Elimination System Permit, Buncombe and Madison Counties, NC, Due: September 08, 1992, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 920280, Draft Supplement, COE, FL, Palm Beach County Beach Erosion Control Project, Protective Beach Construction along the Mid-Town Segment, Implementation, Palm Beach County, FL, Due: September 08, 1992, Contact: A.J. Salem (904) 791–1690.

EIS No. 920281, Draft EIS, AFS, CA, Running Springs Water District Wastewater Treatment Facilities Upgrading and Reclamation for Irrigation and Snow-Making at the Snow Valley Ski Resort, Approval, San Bernardino National Forest, San Bernardino County, CA, Due: September 08, 1992, Contact: Tracy Kremer (714) 337–2444.

EIS No. 920282, Draft EIS, GSA, IL, Hammond Federal Building and U.S. Courthouse Construction and Site Selection, Implementation, Lake County, IL, Due: September 14, 1992, Contact: Barbara Reed (312) 353–5610.

EIS No. 920283, Draft EIS, AFS, OR, Buzzard Project Area Timber Sale and Road Construction, Implementation, Umatilla National Forest, Walla Walla Ranger District, Union and Wallowa Counties, OR, Due: September 08, 1992, Contact: Tom Reilly (509) 522–6290.

EIS No. 920284, Draft EIS, FHW, OK, OK–82 Highway Construction, Red Oak to Lequire, Funding and Possible National Pollutant Discharge Elimination System Permit, Latimore and Haskell Counties, OK, Due: September 08, 1992, Contact: Gary E. Larsen (405) 231–4724.

EIS No. 920285, Final Supplement, COE, IA, Perry Creek Flood Control Project, Construction of Channelization and Conduit Systems, Implementation, Sioux City, Woodbury County, IA, Due: August 24, 1992, Contact: Richard Gorton (402) 221–4598.

EIS No. 920286, final EIS, BLM, WA, Spokane District Resource Management Plan Amendment (RMP), Fluid Mineral Leasing, Approval, Yakima River Canyon and Upper Crab Creek Management Areas, several Counties, WA, Due: September 08, 1992, Contact: Joseph Buesing (509) 353–2570.

EIS No. 920287, Draft EIS, UAF, AR, Eaker Air Force Base Disposal and Reuse, Implementation, Mississippi

County, AR, Due: September 08, 1992, Contact: Lt. Col. Gary Baumgartel (512) 536–3869.

EIS No. 920288, Draft EIS, FHW, CA, CA–180 Freeway and Expressway Construction, Chestnut Avenue to Highland Avenue, Funding and Possible COE Section 404 Permit, Fresno County, CA, Due: September 11, 1992, Contact: Leonard E. Brown (916) 551–1307.

EIS No. 920289, Final Supplement, AFS, MT, Lost Silver Timber Harvest Project, Timber Sale and Road Construction, Additional Information, Flathead National Forest, Hungry Horse Ranger District, Flathead County, MT, Due: August 24, 1992, Contact: Allen Christophersen (506) 387–5243.

EIS No. 920290, Draft EIS, USA, LA, England Air Force Base Disposal and Reuse, Implementation, Rapides Parish, LA, Due: September 08, 1992, contact: Lt. Col. Gary Baumgartel (512) 536–3869.

EIS No. 920291, Final EIS, EPA, MA, Massachusetts Bay Ocean Dredged Material Disposal Site, Designation, MA, Due: August 24, 1992, Contact: Kymberlee Keckler (617) 565–4432.

EIS No. 920292, Draft EIS, ICC, MT, Tongue River Railroad Additional Rail Line Construction and Operation, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT, Due: September 21, 1992, Contact: Elaine K. Kaiser (202) 927–6248.

Dated: July 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–17561 Filed 7–23–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4156–4]

Privacy Act of 1974; System of Records

AGENCY: Environmental Protection Agency.

ACTION: Amendment to notice of Privacy Act system of records.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend an existing Privacy Act system of records, the "Freedom of Information Act Request File," which was last published on January 25, 1978 (43 FR 3502).

DATES: The proposed action will be effective without further notice August 24, 1992, unless comments are received which would require a contrary determination.

ADDRESSES: Send written comments to the Agency Freedom of Information Officer (A–101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Jeralene B. Green, Freedom of Information Office (A–101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460, Telephone (202) 260–4048.

SUPPLEMENTARY INFORMATION: The proposed amendment deletes from the Routine Use section of the notice the current general statement of the primary uses of records in the system and adds 4 specific routine uses which are compatible with the purpose for which the records were collected. This amendment is being published to more accurately describe and reflect current and proposed uses of records in the system. The proposed amendment does not require a report on new or altered systems of records pursuant to 5 U.S.C. 552a(r). The amended system of records will read as follows:

EPA–9

SYSTEM NAME:

Freedom of Information Act Request File.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records may be disclosed:

1. To EPA contractors and grantees and to volunteers who have been engaged to perform work or services for EPA under a contract, grant, cooperative agreement or other arrangement and who need to have access to the records in order to perform their tasks. Recipients of records under this routine use will be required to maintain the records in accordance with the provisions of the Privacy Act.

2. To the Department of Justice and to Congress in connection with reports required to be submitted under 5 U.S.C. 552a(e).

3. To another Federal Agency with an interest in the record in connection with a referral of a Freedom of Information Act (FOIA) request to that agency for its views or decision on whether the record should be disclosed pursuant to the FOIA.

4. To a Federal Agency in order to obtain advice and recommendations concerning matters on which that agency has specialized experience or particular competence that may be useful to EPA in making required determinations under the FOIA.

* * * * *

Dated: July 15, 1992.

Christian R. Holmes,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 92–17142 Filed 7–23–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–59946; FRL 4081–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 2 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–162, August 2, 1992.

Y 92–163, August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–162

Manufacturer. P.D. George Company.

Chemical. (S) C_{16}–C_{18} and C_{18} unsaturated fatty acids; theic; trimethylolethane; isophthalic acid.

Use/Production. (S) Insulating varnish for coating electrical equipment. Prod. range: 7,000 kg/yr.

Y 92-163

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coating. Prod. range: Confidential.

Dated: July 21, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-17551 Filed 7-23-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51802; FRL 4081-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 17 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-1142, September 27, 1992.

P 92-1196, October 7, 1992.

P 92-1197, October 13, 1992.

P 92-1198, 92-1199, September 10, 1992.

P 92-1200, 92-1201, 92-1202, 92-1203, 92-1204, 92-1205, 92-1206, 92-1207, 92-1208, 92-1209, October 11, 1992.

P 92-1210, 92-1211, October 12, 1992.

Written comments by:

P 92-1142, August 28, 1992.

P 92-1196, September 7, 1992.

P 92-1197, September 13, 1992.

P 92-1198, 92-1199, August 11, 1992.

P 92-1200, 92-1201, 92-1202, 92-1203, 92-1204, 92-1205, 92-1206, 92-1207, 92-1208, 92-1209, September 11, 1992.

P 92-1210, 92-1211, September 12, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51802)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-1142

Importer. Confidential.

Chemical. (G) Unsaturated polyesterimide resin.

Use/Import. (G) Heat resistent polyester resin. Import range: Confidential.

P 92-1196

Manufacturer. Valence Technology, Inc.

Chemical. (S) Vanadium oxide.

Use/Production. (S) Cathode active material in a battery. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 549 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: strong species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit).

P 92-1197

Manufacturer. The BF Goodrich Company.

Chemical. (S) 2-Propenenitrile, polymer with 1,3-butadiene, 2,2'-azobis(2-methylbutanenitrile)-initiated.

Use/Production. (G) Elastomer modifier for thermoset resins. Prod. range: Confidential.

P 92-1198

Manufacturer. Confidential.

Chemical. (G) Polyurethane prepolymer.

Use/Production. (G) Industrial sealant and adhesion promoter. Prod. range: Confidential.

P 92-1199

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Monoazo dye.

Use/Production. (G) Textile dye. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Static acute toxicity: > 1,000 mg/L 96h species (zebra fish). Eye irritation: none species (rabbit). Mutagenicity: negative. Skin irritation: none species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-1200

Manufacturer. Confidential.

Chemical. (G) Hybrid polyurethane.

Use/Production. (G) Reactive component of molded composites. Prod. range: Confidential.

P 92-1201

Manufacturer. Confidential.

Chemical. (G) Hybrid polyurethane.

Use/Production. (G) Reactive component of molded composites. Prod. range: Confidential.

P 92-1202

Manufacturer. Dow Corning Company.

Chemical. (G) Amino-functional alkoxysilane.

Use/Production. (S) Adhesion additive for silicone sealants. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: severe species (rabbit). Mutagenicity: negative. Skin irritation: none species (rabbit).

P 92-1203

Manufacturer. Dow Corning Corporation.

Chemical. (G) Amino-functional alkoxysilane.

Use/Production. (S) Adhesion additive for silicone sealants. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: severe species (rabbit). Mutagenicity: negative. Skin irritation: none species (rabbit).

P 92-1204

Manufacturer. Dow Corning Corporation.

Chemical. (G) Amino-functional alkoxysilane.

Use/Production. (S) Crosslinker/adhesion promoter. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: severe species (rabbit). Mutagenicity: negative. Skin irritation: none species (rabbit).

P 92-1206

Manufacturer. Dow Corning Corporation.

Chemical. (G) Amino-functional alkoxysilane.

Use/Production. (S) Crosslinker/adhesion promoter. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: severe species (rabbit). Mutagenicity: negative. Skin irritation: none species (rabbit).

P 92-1208

Manufacturer. Dow Corning Corporation.

Chemical. (G) Siloxanes and silicones, 2-methylpropyl methox-terminated.

Use/Production. (S) Masonary water repellant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: LC50 > 213 ppm species (rainbow trout). Mutagenicity: negative.

P 92-1207

Manufacturer. Dow Corning Corporation.

Chemical. (S) Silsequioxanes,(3-(2-aminoethyl)amino)propyl Me, methoxy-terminated.

Use/Production. (S) Silicone water repellant. Prod. range: Confidential.

P 92-1208

Importer. Huls America Inc.

Chemical. (G) Alkyl polyglycolether, phosphoric acid partial ester sodium salt.

Use/Import. (S) Cleaning compound concentrate. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: minimal species (rabbit). Skin irritation: none species (rabbit).

P 92-1209

Importer. Confidential.

Chemical. (S) 2-(hydroxy-ethoxy-ethyl)2-azabicyclo(2.2.1)hetane.

Use/Import. (S) Catalyst for polyurethane foam production. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 .430 ml/kg species (rat). Static acute toxicity: time LC50 96h203.1 mg/l species (carp). Skin irritation: slight species (rabbit). Mutagenicity: negative.

P 92-1210

Importer. Himont USA Inc.

Chemical. (G) 2-Methyl-3-azabicyclo(2.2.1)heptane.

Use/Import. (S) Catalyst for polyurethane foam production. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 280 mg/kg species (rat). Acute dermal toxicity: LD50 1510 mg/kg species (rabbit). Skin irritation: strong species (rabbit). Mutagenicity: negative. Static acute toxicity: time LC50 96h1.38 mg/l species (zebra fish). Skin sensitization: negative species (guinea pig).

P 92-1211

Importer. Himont USA Inc.

Chemical. (G) Disubstituted diether propane.

Use/Import. (G) Catalyst system component. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: slight species (rabbit). Mutagenicity: negative. Static acute toxicity: time EC50 24h34 mg/l species (daphnia magna). Skin irritation: moderate species (rabbit). Skin sensitization: negative species (guinea pig).

Dated: July 21, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-17550 Filed 7-23-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

Mildred M. Benner, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 13, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mildred M. Benner, to acquire 73 percent of the voting shares of Bradford Bancorp, Inc., Bradford, Illinois, and thereby indirectly acquire Bradford Banking Company, Bradford, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. G. Robert Garner and the G. Robert Garner Family Trust, Clinton, Arkansas; to acquire an additional 9.64 percent of the voting shares of Clin-Ark Bankshares, Inc., Clinton, Arkansas, for a total of 16.74 percent and thereby indirectly acquire First National Bank, Clinton, Arkansas.

Board of Governors of the Federal Reserve System, July 20, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17495 Filed 7-23-92; 8:45 am]

BILLING CODE 6210-01-F

Firstar Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin; to engage through a joint venture in operating Elan Life Insurance Company, Milwaukee, Wisconsin, and thereby engage in credit life insurance activities pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Wisconsin, Minnesota, Iowa, Illinois, Arizona and Florida.

Board of Governors of the Federal Reserve System, July 20, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17497 Filed 7-23-92; 8:45 am]

BILLING CODE 6210-01-F

Meridian Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Meridian Bancorp, Inc., Reading, Pennsylvania; to engage *de novo* through its subsidiary, Meridian Securities, Inc., Reading, Pennsylvania, in underwriting and dealing in government obligations and other securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Investment Securities, Inc., Minneapolis, Minnesota, in acting as investment or financial advisor to the extent of providing portfolio investment advice to insured depository institutions pursuant to § 225.25(b)(4); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17494 Filed 7-23-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Low Back Problems Guideline

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held to receive comments and information pertaining to development of the clinical practice guideline on Low Back Problems. The focus of this guideline is the assessment and treatment of acute low back problems (i.e. within the first three months of symptoms) in adults. The guideline is being developed by a private-sector panel of health care experts and consumers. The panel is supported by AHCPR.

A notice announcing that AHCPR was arranging for the development of this clinical guideline was published in the **Federal Register** on March 18, 1991 (56 FR 11452). That notice invited nominations for experts and consumers to serve on the panel that is developing the guideline.

A public meeting to provide an opportunity for other interested parties to contribute relevant information and comments will be held as follows: Meeting: Low Back Problems Guideline, Wednesday, September 16, 1992, From 8:30 a.m. to 11:30 a.m., Sheraton Washington Hotel, Annapolis/Rockville Room, 2660 Woodley Rd. NW., Washington, DC 20008, Phone: (202) 328-2000.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299-299c-6 and 1320b-12.)

As part of its legislative mandate, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed.

Section 912 of the Act (42 U.S.C. 299b-1(b)) requires that the guidelines be:

1. Based on the best available research and professional judgment;

2. Presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers; and

3. Presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

Section 914 of the Act (42 U.S.C. 299-3(a)) identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods of prevention, diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;

2. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

3. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Arrangements for the September 16, 1992 Public Meeting on Low Back Problems

Representatives of organizations and other individuals are invited to provide relevant written comments and information, and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with Mikalix and Company (M & C), the contractor providing administrative support to this panel, at the address set out below by September 7, 1992, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to M & C by September 7, 1992. If more requests to make oral statements are received than can be accommodated between 8:30 a.m. and 11:30 a.m. on September 16, 1992, the chairperson will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in developing the guideline.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact M & C by September 7, 1992, at the address below.

Registration should be made with, and written materials submitted to: Mikalix and Co. (M & C), Attn: Ms. Demie Lyons, 404 Wyman Street, suite 375, Waltham, MA 02154–1210, Phone: (617) 290–0090, Fax: (617) 290–0180.

Dated: July 16, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–17434 Filed 07–23–92; 8:45 am]

BILLING CODE 4160–90–M

Public Meeting on Methods for Deriving and Assessing Medical Review Criteria, Standards of Quality, and Performance Measures

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held to receive comments and information pertaining to methods for deriving medical review criteria, standards of quality, and performance measures from clinical practice guidelines being developed by panels of experts and contractors supported by AHCPR and by other groups. These methods are being developed by a private-sector workgroup of health care experts representing academia, third-party payors, health care practitioners, peer reviewers, medical record specialists, and hospitals. The workgroup is supported by AHCPR.

A notice announcing that AHCPR was arranging for the establishment of this workgroup was published in the **Federal Register** on January 23, 1992 (57 FR 2750). That notice invited nominations for individuals to serve on the workgroup.

A public meeting to provide an opportunity for other interested parties to contribute relevant information and comments will be held as follows: Meeting: Tuesday, September 1, 1992, 9:00 a.m. to 12:00 noon, Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202, (703) 413–5550.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.)

As part of its legislative mandate, AHCPR is arranging for the development and periodic review and updating of clinical practice guidelines, and medical review criteria, standards of quality, and performance measures through which health care providers and other appropriate entities may assess or review the provision of health care and assure the quality of such care.

Section 912 of the Act (42 U.S.C. 299b–1(b)) requires that the guidelines, medical review criteria, standards of quality, and performance measures be:

1. Based on the best available research and professional judgment;

2. Presented in formats appropriate for use by physicians, health care practitioners, medical educators, medical review organizations, and consumers; and

3. Presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

In accordance with section 914 of the Act (42 U.S.C. 299b–3(b)), the workgroup is developing methods for use by contractors and expert panels, as well as other groups, in developing, reviewing, and updating medical review criteria, standards of quality, and performance measures.

Arrangements for the September 1, 1992 Public Meeting on Methods for Deriving and Assessing Medical Review Criteria, Standards of Quality, and Performance Measures

Representatives of organizations and other individuals are invited to provide relevant written comments and information, and make a brief (5 minutes or less) oral statement to the workgroup. Individuals and representatives who would like to attend must register with Mikalix and Company, the contractor providing administrative support to this workgroup, at the address set out below by August 18, 1992, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to Mikalix and Company by August 18, 1992. If more requests to make oral statements are received than can be accommodated between 9 a.m. and 12 noon on September 1, 1992, the chairperson will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, health service researchers, and individuals with experience in quality assurance, quality improvement, and utilization review is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered by the workgroup.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mikalix and Company by August 18, 1992 at the address below.

Registration should be made with, and written materials submitted to: Mikalix and Company, Attn: Carol Delaney, RN, 404 Wyman Street—suite 375, Waltham, MA 02154–1210, Phone: (617) 290–0090, Fax: (617) 290–0180.

Dated: July 16, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-17435 Filed 7-23-92; 8:45 am]

BILLING CODE 4160-90-M

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 234]

State-Based Surveillance to Determine the Relationship Between Environmental Exposures and Adverse Health Outcomes

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a grant program to continue Louisiana Department of Health and Hospitals ongoing surveillance project on determining the relationship between human exposure to hazardous substances in the environment and adverse health outcomes (e.g., birth defects and reproductive disorders, cancer (selected sites), immune function disorders, kidney dysfunction, liver dysfunction, lung and respiratory diseases and neurotoic disorders).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

Authority

This program is authorized under Section 104(i)(1)(E) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(1)(E) and (15)].

Eligible Applicant

Assistance will only be provided to the Louisiana Department of Health and Hospitals (LDHH). No other application will be solicited. In 1990, ATSDR entered into a grant with LDHH to establish a statewide surveillance system to identify correlations between exposure to hazardous waste and specific health outcomes. This project involves linking health outcome databases with appropriate environmental databases through a Geographical Information System (GIS). During the first two years of the project, LDHH evaluated and upgraded existing health outcome databases (vital statistics, the tumor registry and the patient data system) for suitability for use in this surveillance system and purchased a GIS work station. LDHH has begun the immense task of entering the state's geographical, census, environmental and health data into the GIS. Initially, data from a single parish is being entered as a model for the remainder of the state.

LDHH has developed unique expertise in the use of GIS and database management while assembling the structure of this system. Continuation of this preliminary work by the LDHH will enable it to place the health and environmental data for the remainder of the state on the GIS system and make this an exceptional surveillance system for the correlation of both health and environmental data.

Availability of Funds

Approximately $277,600 is available in FY 1992 to fund this grant project. It is expected that the award will begin on or about September 28, 1992, and will be made for 12-month budget periods within a project period of up to 2 years. Funding estimates may vary and are subject to change.

Continuation award within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested. However, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party.

Purpose

The purpose of this grant program is to adapt existing databases of health outcomes and environmental exposures in Louisiana so they can be linked to form an effective surveillance system. This system will be used to explore the relationship between environmental exposure and adverse health outcomes by monitoring the trends for health outcomes and environmental parameters. It will be used to recommend further studies to determine the nature of these associations.

Program Requirements

ATSDR will provide financial assistance to the applicant in conducting surveillance activities to explore the relationship between exposure to hazardous substances and the occurrence and risk factors for disease.

The program requirements include, but are not limited to, surveillance activities designed to evaluate the occurrence of adverse health effects over time in a population. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease or exposure. Efforts should be made to link information on adverse health effects with environmental data.

In the application for financial assistance, the applicant should understand that under a grant award, the grantee is expected to conduct surveillance of exposed individuals without substantial programmatic involvement.

Evaluation Criteria

A. The application will be reviewed and evaluated based on the following criteria:

1. The applicant's understanding of the purpose of the surveillance.
2. The extent to which background information and other data demonstrate that the applicant has the administrative support and accessibility to an adequate number of participants in the target groups to accomplish study goals.
3. The extent to which the applicant's objectives are realistic, measurable, time-phased, and related to program requirements.
4. The quality and potential effectiveness of the applicant's proposed activities and methods for meeting the stated objectives.
5. The adequacy of plans to evaluate progress in implementing methods and achieving objectives.
6. The extent to which qualified and experienced personnel are available to carry out the proposed activities.
7. The quality of the applicant's proposed method to disseminate the surveillance results to state and local public health officials, policy- and decision-makers, community residents, and to other concerned individuals and organizations.
8. The budget request is clearly justified and consistent with the intended use of grant funds.

B. Continuation Awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;
2. Objectives for the new budget period are realistic, specific, and measurable;
3. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead achievement of project objectives; and
4. The budget request is clearly justified and consistent with the intended use of grant funds.

Executive Order 12372 Review

This application is subject Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contracts (SpOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SpOCs is included in the application kit. If SpOCs have any state process recommendations on applications submitted to CRDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Technical Review

All protocols, studies, and results of research that ATSDR carries out of funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13).

B. Confidentiality

This study does not involve the use of human subjects. It is a database study. Some of the data will be collected from databases that have personal identifiers: vital statistics and tumor registry records for example. These databases adhere to strict standards to maintain the confidentiality of the records. There were numerous studies done in the past using these databses. To avoid breaks of confidentiality the Office of Public Health follows strict criteria before allowing researchers to have access to data containing personal identifiers. In this study, rates, ratios, proportions and other statistics will be derived from these confidential records. No duplication of the original databases will be made and confidentiality rules already in application will be strictly followed.

Application Submission and Deadline Dates

The Louisiana Department of Health and Hospitals must submit an original and two copies of application PHS Form 5161–1 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, on or before July 28, 1992. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 234 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305 or by calling (404) 842–6797. Programmatic technical assistance may be obtained from Dr. Wendy E. Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mail Stop E–31, Atlanta, Georgia 30333 or by calling (404) 639–6203.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: July 20, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–17525 Filed 7–23–92; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control

[Announcement Number 236]

Cooperative Agreement for Studies to Evaluate the Behavioral, Donation History, and Laboratory Characteristics of United States Blood Donors Infected With Human Immunodeficiency Virus (HIV)

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for cooperative agreements with blood centers and other eligible applicants, to provide assistance for epidemiological surveillance studies of human immunodeficiency virus (HIV). These studies will be conducted to determine the epidemiology of human immunodeficiency virus (HIV), related retroviruses, and related conditions in blood donors whose blood tests positive for HIV antibody and does not become part of the Nation's blood supply.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and Section 317(k)(3) of the Public Health Service Act (42 U.S.C. 247b(k)(3)).

Eligible Applicants

Eligible applicants include nonprofit and for-profit blood centers and organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments of their bona fide agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

Availability of Funds

Approximately $1,000,000 is available in FY 1992 to fund between 5–10 cooperative agreement awards. It is expected that the average award will be $80,000, ranging from $25,000 to $500,000. It is expected that the awards will begin on or about September 29, 1992, and are usually made for a 12-month budget

period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The blood donor population is useful for detecting and quantifying uncommon or unrecognized modes of HIV transmission in the general population because persons at known risk for HIV infection are excluded from donating blood. Trends in HIV prevalence and incidence within specific demographic subgroups can be determined for first-time and repeat donors whose blood tests positive for HIV antibody and does not become part of the Nation's blood supply. Combining these trends with HIV-risk profile data of seropositive donors provides a rate for HIV seropositive donors with no identical risk. Epidemiologic and behavioral data from these seropositive donors will help in the development and evaluation of future donor deferral strategies. Data from these surveys and from studies of other sentinel populations will be used in the evaluation of the levels and trends of HIV infection in the United States.

The purpose of these cooperative agreement awards is to provide assistance for:

A. Determining and monitoring the extent of HIV infection in blood donors at selected centers.

B. Analyzing the characteristics of infected donors and controls in order to strengthen the effectiveness of the donor screening and deferral processes.

C. Analyzing the risk behavior characteristics of infected donors to assess distribution and trends of HIV.

D. Monitoring for emergency of additional human immunodeficiency (HIV) viruses as well as other viruses relevant to the epidemiology of HIV in U.S. blood donors.

E. Estimating the risk of HIV transmission from screened blood.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC shall be responsible for conducting activities under B., below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Participate in the development of a study design to evaluate the levels and trends of HIV infection in U.S. blood donors.

2. Participate in the development of study protocols, consent forms, questionnaires, and data collection methods for the research studies.

3. Conduct epidemiologic studies at specified sites using approved study protocols. These studies will follow protocols and methods established through the recipient's participation with CDC and other collaborating institutions. Study activities will include, but may not be limited to: Obtaining institutional approvals for the conduct of research studies, (institutional reviews, human subjects review committee approvals, etc.), obtaining the consent of donors and controls to participate in the study, conducting interviews of controls and donors seropositive for HIV, completing study questionnaires, performing analyses of data for quality assurance, and transmitting data to CDC.

4. Perform selected laboratory tests according to established research protocols. Collaborate with CDC on the interpretation and analysis of laboratory test results. Store and/or submit to CDC all HIV seropositive sera and additional sera or cells as may be required by the research study design.

5. Participate in the development and maintenance of a data management system for the study. Share study data with CDC on a timely basis.

6. Conduct the analysis of the study data and the presentation of study findings in scientific presentations and publications. Obtain pre-publication and pre-presentation clearances from the CDC prior to any release of study data or analysis.

B. CDC Activities

1. Provide technical assistance in the design and conduct of the research.

2. Provide technical assistance in the development of study protocols, consent forms, and questionnaires, including training and pretesting as necessary.

3. Assist in designing a data management system.

4. Perform selected laboratory tests.

5. Coordinate research activities among the different sites, including laboratories and consultants.

6. Collaborate in the analysis of research information and the presentation of research findings with the recipient.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The applicant must demonstrate an understanding of HIV, HIV epidemiologic studies, and the principles of scientific study. The applicant must also demonstrate knowledge, ability and resources to conduct epidemiologic studies of HIV and related viruses in U.S. blood donors. (30 points)

2. The applicant must demonstrate the ability to enroll and evaluate fifty percent of eligible study participants and/or at least fifteen seropositive donors annually in order to obtain a study sample size to allow statistical analysis of results. (30 points)

3. The extent to which the applicant's proposed objectives are measurable, specific, time-phased, and related to required recipient activities and program purpose. (10 points)

4. The quality of the applicant's plan for conducting and evaluating program activities and the potential effectiveness of the proposed methods in meeting its objectives, including the plan for notifying seropositive donors. (10 points)

5. The applicant's willingness to cooperate in a study with CDC and other collaborating institutions. (10 points)

6. The size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the study. (10 points)

7. The extent to which the budget request and proposed use of project funds are appropriate and reasonable. (not weighted)

Other Requirements

Paperwork Reduction Act

Data collection initiated under this cooperative agreement has been approved by the Office of Management and Budget under number 0920–0232, "Family of HIV Seroprevalence Surveys," Expiration date October 1992.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate

guidelines and form provided in the application kit.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.118.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before August 21, 1992.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) received on or before the deadline date; or

(b) sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean Austin Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305 or by calling (404) 842–6508.

Programmatic technical assistance may be obtained from Lyle Petersen, M.D., Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639–2082.

Please refer to Announcement Number 236 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone (202) 783–3238).

Dated: July 20, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–17524 Filed 7–23–92; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: NCVHS Executive Subcommittee.

Time and Date: 8:30 a.m.–5 p.m., August 11, 1992.

Place: 2021 K Street, NW., suite 800, Washington, DC 20006.

Status: Open.

Purpose: The purpose of this meeting is for the Executive Subcommittee to review the work plans of NCVHS and other subcommittees. The Executive Submittee will plan the November 4–6, 1992, NCVHS meeting.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: July 20, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–17526 Filed 7–23–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. August 31, 1992, and September 1, 1992, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, August 31, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 5:30 p.m.; open public hearing, September 1, 1992 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 4 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in

writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 15, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 31, 1992, the committee will discuss new drug application (NDA) 20–118, Suprane® (desflurane), Anaquest, Division of BOC, Inc. On September 1, 1992, the committee will discuss adverse experience reports on NDA 19–627, Diprivan® (propofol), ICI Pharmaceuticals-Stuart Pharmaceutical.

Closed committee deliberations. On August 31, 1992, and September 1, 1992, the committee will review trade secret and/or confidential commercial information relevant to NDA 20–118, Suprane® (desflurane), Anaquest, Division of BOC, Inc. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 17, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–17500 Filed 7–23–92; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neuroscience Special Emphasis Panel.

These meetings will be open to the public to discuss administrative details relating to Special Emphasis Panel business for approximately one half hour at the beginning of each meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the areas of the behavioral and neurosciences. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to announce meetings well in advance of the actual meeting, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Meetings to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences:

Scientific Review Administrator: Dr. Leonard Jakubczak, (301) 496–7251.
Date of Meeting: August 3, 1992.
Place of Meeting: Marriott Hotel, Bethesda, MD.
Time of Meeting: 8:30 a.m.

Scientific Review Administrator: Dr. Leonard Jakubczak, (301) 496–7251.
Date of Meeting: August 4, 1992
Place of Meeting: Westwood Bldg., Room 325C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 2 p.m.

Scientific Review Administrator: Dr. Leonard Jackubczak, (301) 496–7251.
Date of Meeting: August 5, 1992.
Place of Meeting: Westwood Bldg., Room 325C, NIH, Bethesda, MD (Telephone Conference).
Time of Meeting: 2 p.m.

Scientific Review Administrator: Dr. Leonard Jakubczak, (301) 496–7251.
Date of Meeting: August 6, 1992.
Place of Meeting: Westwood Bldg., Room 325C, NIH, Bethesda, MD (Telephone Conference).
Time of Meeting: 2 p.m.

Scientific Review Administrator: Ms. Carol Campbell, (301) 496–7109
Date of Meeting: August 11, 1992.
Place of Meeting: Westwood Bldg., Room 306B, NIH, Bethesda, MD. (Telephone Conference)
Time of Meeting: 8:00 a.m.

Scientific Review Administrator: Dr. Robert Weller, (301) 496–7906.
Date of Meeting: August 17, 1992.
Time of Meeting: 9:00 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–17588 Filed 7–23–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 10, 1992.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests)

1. Low-Dose Oral Contraceptives and Cardiovascular Disease—New—An accurate assessment of the risk of cardiovascular diseases for users of low-dose oral contraceptives is not available. The generation of this information will help women and their physicians to make sound decisions about contraceptive use and safety. Information will be obtained from surrogate respondents for cases and controls in a case-control study. *Respondents:* Individuals and households; *Number of Respondents:* 147; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* 1.09 hours; *Estimated Annual Burden:* 160 hours.

2. Medical Device Conformance Assessment to Voluntary Standards—0910–0253—The conformance assessment program will evaluate the extent to which certain high-priority medical devices adhere to voluntary standards, and will assess the impact of these on the safety and effectiveness of these devices. Conformance will be accomplished by review and analysis of information obtained from manufacturers. *Respondents:* Businesses or other for-profit; Small businesses or organizations; *Number of Respondents:* 100; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* 4 hours; *Estimated Annual Burden:* 400 hours.

3. Good Laboratory Practice (GLP) Regulations for Nonclinical Studies—21 CFR part 58—0910–0119—The GLP Regulations are intended to assure the quality and integrity of the safety data submitted to FDA in support of the approval of regulated products. The required information will help assure that only safe products are approved for marketing. *Respondents:* Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per respondent
Personnel—Recordkeeping (Training, experience, etc.) 21 CFR 58.29(b)	400	20	0.21
Quality Assurance—Reporting 21 CFR 58.35 (b)(7)	400	1	60.25
Quality Assurance Recordkeeping (Maintenance of testing facility 21 (CFR 58.35 (b)(1) & (2) & (c) records)	400	271	3.36
Equipment Maintenance—Recordkeeping (maintenance/calibration of equipment) 21 CFR 58.63 (b)(c)	400	250	5.5
SOP's Recordkeeping Written sops to insure integrity of study data—21 CFR 58.81	400	300	.14
Animal Care—Recordkeeping Treatment/documentation of feed/water analyses 21 CFR 58.90 (c)(d)	400	57	.14
Test/Control Characterization—Reporting Test/Control article stability. 21 CFR 58.105 (a) & (b)	400	5	11.8
Test/Control Article Handling Recordkeeping Receipt/distribution of records on batches—21 CFR 58.107(d)	400	1	4.25
Mix of Articles—Reporting Testing of mixtures. 21 CFR 58.113(a)	400	15.4	6.8
Protocol—Reporting Description of objectives/methods for study. 21 CFR 58.120	400	15.4	32.7
Study Results—Reporting 21 CFR 58.185—Final Report	400	60.2	27.6

Title	Number of respondents	Number of responses per respondent	Average burden per respondent
Retention of Records—Recordkeeping 21 CFR 58.195	400	250	3.9

Estimated Total Annual Burden: $1,739,000

4. National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—Regulations and Forms (45 CFR part 60)—0915–0216—Data identifying incompetent, unprofessional, and unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health care providers. These data will be used to maintain and improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals and other providers.

Respondents: Individuals or households, State or local governments; Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Title	Number of Respondents	Number of Responses Per Respondent	Average burden Per Response
60.6(a)-Reporting Corrections of Errors and Omissions	250	12.46	.5
60.6(b)-Revisions of Original Reports	350	1	.5
60.7(b)-Reporting Medical Malpractice Payments	1800	9.72	1
60.8(b)-Reporting Licensure Action of Boards	125	18.8	1
60.9(a)(3)-Reporting Clinical Privilege and Professional Society Membership Actions.	920	1	1
60.9(a)(3) Submission of Reports from 60.9(a)(3) Through the Boards.	125	7.36	.08
60.9(c)-Request for Hearings by Entities Found in Non-compliance.	10	1	8
60.10(a)(1)-Disclosure to Hospitals' Request Information on Applicants.	7200	13.33	.08/name
60.10(a)(2)-Biannual Disclosure to Hospitals	6000	97.48	.08/name
60.11(a)(1)-Other Disclosure to Hospitals	Subsumed under section 60.10(a)(1)		
60.11(a)(2)-Disclosure to Practitioners	5050	1	.25
60.11(a)(3)-Disclosure to Licensure Boards	45	145	.08
60.11(a)(4)-Disclosure to Nonhospital Entities which Grant Privileges.	2220	22.11	.08
60.11(a)(5)-Disclosure to Attorneys	10	1	.25
60.11(a)(6)-Disclosure to Practitioners	Subsumed under Sections 60.10(a)(1) and 60.11(a)(4)		
60.11(a)(7)-Disclosure of Aggregate Information	100	1	1
60.14(b)-Filing Disputes with the Data Bank	1360	1	1
60.14(b)-Filing Disputes with the Secretary	90	1	8

Estimated Total Annual Burden: 87,475 *Desk Officer:* Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resource and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: July 17, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health, Planning and Evaluation.

[FR Doc. 92–17334 Filed 7–23–92; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS) Chapter HP (Agency for Health Care Policy and Research), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (55 FR 12286–89, April 2, 1990, as amended at 56 FR 55677–8, October 29, 1991) is amended to revise the functional statement of the Division of Information and Publications and retitle it as the Division of Communications, in the Center for Research Dissemination and Liaison.

Agency for Health Care Policy and Research

Under Section HP–20, Functions, following the statement of the *Division of Education, Evaluation, and Demonstration (HPG2), delete the title and statement of the Division of Information and Publications (HPG3)* and *add the following:*

Division of Communications (HPG3). Ensures that findings and information from research conducted or funded by AHCPR are made promptly available to the public and private sectors, in forms useful to the recipients. Responsible for disseminating AHCPR's many and varied information products. Specifically:

(1) Prepares documents that are scientifically sound and appropriately targeted to various audiences;

(2) Edits and controls the review and publication of all AHCPR documents;

(3) Maintains AHCPR's Information Resources Center;

(4) Ensures proper clearance procedures consistent with Departmental rules;

(5) Provides interface with the Government Printing Office and National Technical Information Service;

(6) Organizes and conducts AHCPR's exhibits program and provides conference support services to the program staff;

(7) Prepares and controls graphics, printing and visual aids production for AHCPR;

(8) Analyzes AHCPR audiences and information needs, and recommends new outreach programs and information products that meet AHCPR's scientific information and dissemination goals;

(9) Works with and assists the National Library of Medicine in efforts to improve the availability of health services information to the public;

(10) Carries out the public affairs and liaison activities for AHCPR;

(11) Develops and implements marketing plans for the clinical practice guidelines being developed under the auspices of AHCPR and disseminates information emanating from the Patient Outcomes Research Team projects;

(12) Markets the extramural and intramural research of AHCPR;

(13) Implements AHCPR's Freedom of Information Act activities;

(14) Handles AHCPR's media relations;

(15) Manages ANCPR's publications clearinghouse and 800 number; and

(16) Develops and implements new methods of dissemination to meet on-going needs of AHCPR's target audiences including computer-based modes of distribution.

Dated: July 15, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-17493 Filed 7-23-92; 8:45 am]

BILLING CODE 4160-90-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 2, 1992.

(Call Reports Clearance Officer on (410) 965-4149 for copies of package)

1. *Representative Payee Evaluation Report*—0960-0069. The information on form SSA-624 is used by the Social Security Administration to determine the continuing suitability of an individual or institution to serve as a representative payee for a beneficiary. The respondents are representative payees who failed to return form SSA-623 or who did not complete that form properly.

Number of Respondents: 422,533.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 211,627 hours.

2. *Statement of Care and Responsibility for Beneficiary*—0960-0119. The information on form SSA-788 is used by the Social Security Administration to evaluate the concern that a potential payee shows toward the beneficiary. The respondents are individuals or institutions who have custody of a beneficiary for whom someone else has filed to be representative payee.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 22,667 hours.

3. *Notice of Proposed Rulemaking-Payments for Vocational Rehabilitation (VR) Serivces*—0960-NEW. The informational collected by these proposed regulations will be used by the Social Security Administration to more effectively administer our VR programs. The respondents are State VR agencies and alternate providers who offer services to SSA beneficiaries.

Number of Respondents: 80.

Frequency of Response: On occasion.

Average Burden Per Response: From 30 minutes to 12 hours, depending on proposed rule.

Estimated Annual Burden: 15,030 hours for first year, 14,070 hours annually after that.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 17, 1992.

Judy Hasche,

Acting Reports Clearance Officer Social Security Administration.

[FR Doc. 92-17436 Filed 7-23-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-88]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its

inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503 (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Transportation: Ronald D. Keefer, Director, Administration Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; HHS: Judy Breitman, Chief, Real Property Branch, Dept. of HHS, Div. of Health Facilities Planning, Rm. 17A10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE–MM, room 4224, 20 Massachusetts Avenue NW., Washington, DC 20314–1000; (202) 272–1750; (These are not toll-free numbers).

Dated: July 17, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 07/24/92

Suitable/Available Properties

Land (by State)

Kansas

Portion of VA Hospital Reserv.
2111 Southwest Randolph Street
Topeka Co: Shawnee KS 66603–
Landholding agency: GSA
Property number: 549220006
Status: Excess
Comment: 0.806 acre, utility easements, most recent use—recreation.
GSA number: 7–GR–KS–419–I

Montana

0.01 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp. 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding agency: COE
Property number: 319220002
Status: Excess
Comment: 0.01 acre, small triangular parcel, rough/steep terrain.

0.05 acre, Fort Peck Lake Proj Co: Valley MT
Location: Twp 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding agency: COE
Property number: 319220003
Status: Excess
Comment: 0.05 acre, narrow strip next to highway, steep/rough terrain

122.60 acres
Fort Peck Lake Project Co: McCone MT
Location: Twp 26 north, RNG 42 east, Section 4, Lot 3, SW/4NE/4SE/4NW/4
Landholding agency: COE
Property number: 319220004
Status: Excess
Comment: 122.60 acres, rough & rugged terrain, grazing allotment administered by Bureau of Land Management

120 acres, Fort Peck Lake Proj Co: McCone MT
Location: Twp 21 north, RNG 43 east, Section 34, N/2NE/4, Section 35, NW/4NW/4
Landholding agency: COE
Property number: 319220005
Status: Unutilized
Comment: 120.00 acres, rough & rugged terrain

Suitable/Unavailable Properties

Buildings (by State)

Guam

Bldg. 99, Loran Station—C
Barrigada GU 96913–
Landholding agency: DOT
Property number: 879220002
Status: Excess
Comment: 3,960 sq. ft. concrete block transmitting station with tower

Suitable/To Be Excessed

Buildings (by State)

New Mexico

Bldg. 234, LPN Service Bldg.
1015 Indian School Road
Albuquerque Co: Bernalillo NM 87102–
Landholding number: HHS
Property number: 579220001
Status: Unutilized
Comment: 3,500 sq. ft., 1 story, limited utilities, most recent use—maintenance shop; and .405 acre parking lot (unpaved), secured area with alternate access.

[FR Doc. 92–17330 Filed 7–23–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fort Hall Irrigation Project, ID

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Fort Hall Irrigation Project for 1992 and subsequent years. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is

defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6750.

SUPPLEMENTARY INFORMATION: On December 12, 1991 in the **Federal Register**, Volume 56, No. 239, Page 64797, there was published a notice of proposed assessment rates and related provisions on the Fort Hall Irrigation Project for Calendar year 1992 and subsequent years until further notice.

Interested persons were given 30 days in which to submit written comments, views or arguments regarding the proposed rates and related provisions. During this period no comments, suggestions, or objections were submitted. Therefore, the assessment rates and related provisions as set forth below are adopted effective 30 days after date of publication in the **Federal Register**. Operation and maintenance rates and related information are published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Fort Hall Irrigation Project for Calendar Year 1992 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026).

The purpose of this notice is to announce an increase in the Fort Hall Project assessment rates proportionate with actual operation and maintenance costs. The proposed assessment rates for 1992 will amount to an increase of 3% for the Fort Hall unit and a 2% increase for the Michaud Unit.

Fort Hall Irrigation Project

Regulations and Charges

Administration

The Fort Hall Irrigation Project, which consists of the Fort Hall Unit including the ceded area south of the Fort Hall Reservation, the Michaud Unit and the Minor Units on the Fort Hall Indian reservation, Idaho, is administered by the Bureau of Indian Affairs. The Superintendent of the Fort Hall Agency is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employee designated by him. The general regulations are contained in part 171, Operation and Maintenance, title 25—Indians, Code of Federal Regulations.

Irrigation Season

Water will be available for irrigation purposes from May 1 to September 30 of each year. These dates may be varied by 15 days depending on weather conditions and the necessity for doing maintenance work.

Methods of Irrigation

Where soil, topography, and other physical conditions are unfavorable for surface irrigation, and the project facilities are designed to deliver water to farm units for sprinkler irrigation, the Officer-In-Charge may limit deliveries to this type of irrigation.

Distribution and Apportionment of Water

(a) *Delivery:* Water for irrigation purposes will be delivered throughout the irrigation season by either the continuous flow or rotation method at the discretion of the Officer-in-Charge. If during a time when delivery is by the rotation method, a water user desires to loan his turn to another eligible water user, he shall notify either the watermaster or the ditch rider who may permit such exchange, if feasible.

(b) *Preparation and Submission of Water Schedule:* If the decision of the Officer-in-Charge is to deliver water by the rotation method, the watermaster will assist the water users on each lateral in preparing a rotation schedule should they choose to get together and prepare the schedule. In cases where the water users fail to exercise this right before March 1, the watermaster will prepare the schedule which shall be final for the season. Owners of 120 acres or more in one farm unit may elect between the continuous flow and rotation method of delivery, provided such choice does not interfere with delivery to other lands served by the lateral.

(c) *Application for Deliveries of Irrigation Water:* Request for water changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditch rider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Duty of Water

Depending upon available supplies of water for each unit of the Project, the duty of water is based on the delivery to the farm unit of 3.5 acre-feet of water per acre per irrigation season. This duty of water may be varied at the discretion of the Officer-in-Charge depending on supplies available, but each irrigable acre shall be entitled to its pro-rate share of the total water supply.

Charges

Bills covering irrigation charges will be issued to the owner of record taken from the Bannock, Bingham or Power County records as of December 31, preceding the due date. In the case of Indian-owned land leased to a non-Indian, when an approved lease contract is on file with the superintendent of the Fort Hall Agency, operation and maintenance charges will be billed to the lessee of record.

Basic and Other Water Charges

(a) The annual basic water charges for the operation and maintenance of the Fort Hall Irrigation Project lands in non-Indian ownership, and assessable Indian-owned lands leased to a non-Indian or a non-member of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, are fixed for the Calendar Year 1992 and subsequent years until further notice as follows:

(1) Fort Hall Unit basic rate.....$20.00 per acre
(2) Michaud Unit basic rate.....$25.50 per acre
Additional rate for sprinkler when pressure is supplied by project...$12.00 per acre
(3) Minor Units basic rates.....$14.00 per acre

(b) The minimum bill issued for any tract will be $25.00.

Payments

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership which do not qualify for free water, remaining unpaid on or after July 1 following the due date shall be considered delinquent. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Assessments on Indian Owned Land

When land owned by members of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is first leased to non-Indians or non-members of the tribe, and an approved lease is on file at the Fort Hall Agency, the leased land is not subject to operation and maintenance assessments for three years. The three years the land is not subject to assessment need not run consecutively. When land has been leased for a total of three years, the land, when under lease to non-Indians or non-members of the tribe, is subject to operation and maintenance assessments the same as lands in non-Indian ownership and lands owned by non-members of the tribe within the project. (See Solicitor's Opinion M 28701, approved September 24, 1936, and the instructions of September 19, 1938, and instructions of December 1, 1938.)

Stanley Speaks,

Portland Area Director.

[FR Doc. 92-17461 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[MT-060-92-4990-15]

Environmental Impact Statement; Liberty County, MT

AGENCY: Notice of intent to prepare an environmental impact statement (EIS).

ACTION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Lewistown District, will prepare an EIS on the impacts of a proposal by Manhattan Minerals to perform hardrock mineral exploration work on East Butte, in the Sweet Grass Hills, Liberty County, Montana. The project is located in the Tootsie Creek drainage of East Butte, in portions of Sections 10, 20 and 30, T. 36 N., R. 5 E. The draft EIS is scheduled for completion by November, 1992.

DATES: Written comments on the scope of alternatives and impacts will be accepted until September 1, 1992.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160.

FOR FURTHER INFORMATION CONTACT: Scott Haight, EIS Team Lead, Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457-1160, (406) 538-7461.

SUPPLEMENTARY INFORMATION: Manhattan Minerals has submitted to the Lewistown District Office, Bureau of Land Management (BLM) and the Montana Department of State Lands, a proposal to perform hardrock mineral exploration work on East Butte in the Sweet Grass Hills. The BLM considered this proposed Plan of Operations in accordance with federal regulations 43 CFR Part 3809 and prepared an Environmental Assessment (EA) to: (1) Analyze the impacts of the proposed action and alternatives on the environment; (2) determine whether the impacts are unnecessary or undue; (3) develop measures to mitigate impacts; and (4) provide a basis for determining whether impacts after mitigation are significant and require an EIS. In reviewing the EA, the authorized officer determined that the proposed action could have a significant impact on the quality of the human environment with respect to Native American traditional cultural and religious resources, and cannot be approved until it is analyzed in an EIS. The EA process will become part of the scoping for the EIS.

Dated: July 13, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-17452 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-DN-M

(NV-050-91-4320-02)

Las Vegas District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior Notice is hereby given in accordance with Public Law 920463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held August 7, 1992, at 9 a.m. to 3 p.m. in the Las Vegas BLM District Office, Las Vegas, Nevada.

The meeting agenda will include:

1. Briefing on Draft of Resource Management Plan.

2. Wild Horse and Burro Program: Economic impacts to Las Vegas District Office and other districts.

3. Status Report: Viceroy Gold Corporation and California BLM State Office.

4. Multiple Use Public Land: How is an area designated as wilderness or recreational, and how are activities restricted on multiple use public land?

Advisory Council meetings are open to the public. Persons wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126, prior to August 3, 1992.

Minutes of the meeting will be available, upon request, at the Las Vegas District Office on August 21, 1992.

Dated: July 7, 1992.

Colin P. Christensen,

Acting District Manager, Las Vegas, Nevada.

[FR Doc. 92-17443 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-HC-M

[UT-050-02-4320-14]

Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board Meeting.

SUMMARY: The Richfield District Grazing Board will hold a meeting on August 27, 1992. The meeting will start at 10 a.m. in the District Office, 150 East 900 North, Richfield, Utah. The agenda will be:

1. RMP planning status—Henry Mountain Resource Area.

2. Project 2015.

3. AMP status—House Range and Henry Mountain Resource Areas.

4. Forage conditions—Shrub die-off.

5. Land exchange BLM/USFS—Sevier River Resource Area.

6. Status of FY 1992 projects.

7. Buffalo count—Henry Mountain Resource Area.

8. Proposed FY 1994 projects.

Interested persons may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Sheril Slack, District Range Conservationist at the above address.

Dated: July 17, 1992.

Neil Thomas,

Assistant District Manager, Administration.

[FR Doc. 92-17439 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-060-4320-10 ADVB; 611]

Roswell District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATES: Thursday, August 27, 1992, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

LOCATION: BLM Roswell District Office, 1717 West Second St., Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, P.O. Box 1397, Rosewell, NM 88202-1397.

SUPPLEMENTARY INFORMATION: The agenda will consist of review and discussion of FY 93 Range Improvement Projects, DPC/RMP update, Monitoring Studies-status report, and Temporary Nonrenewable Policy. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the District Manager by August 24, 1992. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours, within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: July 14, 1992.

Leslie M. Cone,

District Manager.

[FR Doc. 92-17456 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-FB-M

[MT-030-4212-14]

Realty Action, Sale of Public Land, North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action, Sale of Public Land in North Dakota.

SUMMARY: The following lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C., 1713), at not less than the estimated fair market value (FMV). These tracts are unimproved grazing lands. The McLean County tract is normally submerged.

DATES: September 22, 1992.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dickinson District Office, 701-225-9148.

SUPPLEMENTARY INFORMATION:

Parcel and Legal Description

Fifth Principal Meridian

NDM79623—T. 134 N., R. 78 W.,
Sec. 5: Lot 6, 12.83 acres, Emmons County, FMV $700.
NDM79624—T. 134 N., R. 78 W.,
Sec. 7: Lot 10, 17.80 acres, Emmons County, FMV $1300.
NDM79625—T. 149 N., R. 77 W.,
Sec. 2: Lot 7, 13.40 acres, Sheridan County, FMV $600.
NDM79626—T. 150 N., R. 77 W.,
Sec. 13: Lot 1, 17.70 acres, Sheridan County, FMV $1,050.
NDM79627—T. 150 N., R. 77 W.,
Sec. 20: Lot 1, 11.40 acres, and Lot 2, 9.50 acres, Sheridan County, FMV $1,050.
NDM79628—T. 150 N., R. 77 W.,
Sec. 35: Lot 2, 13.70 acres, Sheridan County, FMV $750.
NDM79629—T. 150 N., R. 86 W.,
Sec. 21: NESE, 40.0 acres, McLean County, FMV $50.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

The lands will be offered for sale at public auction beginning at 10 a.m. MDT, on September 22, 1992, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be by modified competitive procedures. Tract lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dickinson District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 p.m., MDT, on September 21, 1992. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must be for not less than the appraised FMV specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the United States Department of the Interior, BLM, for not less than 10 percent of the amount of the bid. Bids on unsold parcels will be opened each Tuesday after the date of the sale at 10 a.m., MDT, until the parcels are sold.

The term and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the mineral. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights including rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder, lessees and adjoining land owners will be notified. Lessees and adjoining land owners will be given the right to meet the highest bid. Lessees and adjoining land owners will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Once the qualified high bidder is determined, the balance of the purchase price shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for conditions of sale, and planning and environmental documents, is available at the Dickinson District Office, Bureau of land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Comments:

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Dickinson District, at the above address. In the absence of objections, this proposal will become the final determination of the Department of the Interior.

Dated: July 15, 1992.

Grace C. Tanaka,

Acting District Manager.

[FR Doc. 92-17448 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-DN-M

[UT-060-02-4333-13]

Travel, Camping, Fire and Woodcutting Restrictions; Slickrock Emergency Planning Area

July 15, 1992.

AGENCY: Bureau of Land Management, Moab District, Grand Resource Area, Utah.

ACTION: Notice of travel, camping, fire and woodcutting restrictions on public land for the protection of natural and scenic resources.

SUMMARY: Pursuant to the regulations contained in 43 CFR 8364.1, the Bureau of Land Management is limiting motorized vehicle and mountain bike travel to designated roads and trails, and camping to designated campsites. Campfires will be restricted to fire grills and designated campfire rings. No woodcutting permits will be issued in the Slickrock Area and firewood collection in the Riverway will be limited to driftwood only. The restrictions will be in affect on approximately 5396 acres of Public Land in the Slickrock Emergency Action Area and 22,158 acres of Public Land within Utah's Colorado Riverway SRMA. The Slickrock Emergency Action Area includes those lands north and east of Moab, bordering the Sand Flats Road, that are situated south of the Negro Bill WSA and north of Mill Creek WSA. The western boundary of the area includes the Slickrock Trail and extends eastward to Little Spring. The Colorado Riverway extends 45.5 miles along Highway 128 from the bridge at Dewey, southwest along the Colorado River, to the potash plant at the western end of Highway 279; it also includes the lower section of Kane Creek Canyon. Travel and camping limitations include all lands and roads not marked with an open sign. A map of the area described above may be viewed in the Resource Area office. The limitation is necessary to prevent further deterioration of the areas' natural and scenic resources.

Personnel that are exempt from the area limitation include any Federal, State, or local officer, or member of any organized rescue or fire-fighting force in the performance of an official duty, or any person authorized by the Bureau.

DATES: This limitation is effective September 1, 1992 and shall remain in effect until rescinded by the authorized officer.

PENALTIES: Violators are subject to fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: July 15, 1992.

Kenneth V. Rhea,

District Manager.

[FR Doc. 92-17441 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-943-4214-10; GP2-324; OR-16757)]

Termination of Proposed Withdrawal and Reservation of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service has canceled its application to withdraw 1,318 acres of National Forest System land in the Deschutes National Forest for the Metolius Research Natural Area. This action will terminate the proposed withdrawal.

DATES: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7162.

SUPPLEMENTARY INFORMATION: The notice of the United States Department of Agriculture, Forest Service application OR-16757 for the withdrawal was published as FR Doc. 76-31679 of the issue of October 29, 1976, and republished as FR Doc. 79-29220 of the issue of September 20, 1979. The purpose on the proposed withdrawal was to protect the Metolius Research Natural Area. The applicant agency has determined that the proposed withdrawal is no longer needed and has canceled the application in its entirety as to the following described land:.

Willamette Meridian

Deschutes National Forest

T. 12 S., R. 9 E.,

A tract of land within Secs. 25, 26, 34, 35, and 36, more particularly described as follows:

Beginning at a point 396 feet west of the quarter corner between Secs. 34 and 35, T. 12 S., R. 9 E.; Thence in a northerly direction parallel to and 100 feet east of the centerline of Road No. 113 to a point on the east-west line between Secs. 23 and 26, T. 12 S., R. 9 E.; Thence easterly along the line between Secs. 23 and 26 and between Secs. 24 and 25, T. 12 S., R. 9 E., to a point on the summit of Green Ridge approximately 1,000 feet west of the quarter corner between Secs. 24 and 25, T. 12 S., R. 9 E.; Thence in a southerly direction along the summit of Green Ridge to a point on the east-west line between Sec. 36, T. 12 S., R. 9 E., and Sec. 1, T. 13 S., R. 9 E., approximately 300 feet west of the quarter corner between said Sections; Thence in a westerly direction along said section line to the section corner common to Secs. 35 and 36, T. 12 S., R. 9 E., and Secs. 1 and 2, T. 13 S., R. 9 E; Thence in a northerly direction along the section line between Secs. 35 and 36, T. 12 S., R. 9 E., to the quarter corner common to said Sections; Thence in a westerly direction approximately 5,670 feet to point of beginning.

The area described contains approximately 1,318 acres in Jefferson County, Oregon.

The proposed withdrawal is hereby terminated in its entirety. The land involved has been previously relieved of the segregative effect of the above-referenced application.

Dated: July 14, 1992.

Champ C. Vaughn,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-17449 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-11; GP2-328; OR-1070(WASH), et al.]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Interior, Bureau of Reclamation, proposes that all or portions of seven separate land withdrawals for the Yakima Project located within the Wenatchee National Forest be continued and requests that the lands involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

The Bureau of Reclamation proposes that the following identified land withdrawals be continued pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. The following described lands are involved:

1. OR-1070(WASH), Public Land Order No. 4323 dated November 20, 1967, continue for 25 years. Yakima Project, 20 acres located in Sec. 14, T. 22 N., R. 11 E., W.M., in Kittitas County, approximately 10 miles northwest of Easton, Washington.

2. OR-22214(WASH), Secretarial Order dated November 27, 1946, continue for 35 years. Yakima Project, 160 acres located in Sec. 6, T. 13 N., R. 13 E., W.M., in Yakima County, approximately 40 miles northwest of Yakima, Washington.

3. OR-22220(WASH), Secretarial Order dated September 8, 1904, continue for 40 years. Yakima Project, 2,575.89 acres located

in Secs. 2 and 12, T. 21 N., R. 11 E., Secs. 14, 22, 26, and 34 T. 22 N., R. 11 E., Sec. 10, T. 21 N., R. 12 E., Secs. 8, 16, 18, 20, 28, and 32, T. 21 N., R. 14 E., and Sec. 32, T. 22 N., R. 14 E., W.M., in Kittitas County, approximately 36 to 50 miles northwest of Ellensburg, Washington.

4. OR-22240(WASH), Secretarial Order dated April 29, 1907, continue for 35 years. Yakima Project, 3,480.79 acres located in Secs. 1, 2, 3, 11, and 12, T. 13 N., R. 13 E., Sec. 36, T. 14 N., R. 13 E., Sec. 6, T. 13 N., R. 14 E., and Sec. 31, T. 14 N., R. 14 E., W.M., in Yakima County, approximately 40 miles northwest of Yakima, Washington.

5. OR-22241(WASH), Secretarial Order dated July 20, 1908, continue for 35 years. Yakima Project, 3,397.88 acres located in Secs. 1, 2, 11, 12, and 14, T. 13 N., R. 12 E., Sec. 4 to 11, inclusive, T. 13 N., R. 13 E., and Secs. 7 and 18, T. 13 N., R. 14 E., W.M., in Yakima County, approximately 40 to 50 miles northwest of Yakima, Washington.

6. OR-22431(WASH), Secretarial Order dated September 8, 1904, continue for 20 years. Yakima Project, 2,073.47 acres located in Secs. 6, 8, 16, 20, 22, 26, 28, and 34, T. 21 N., R. 13 E., and secs. 8, 20, and 32, T. 22 N., R. 13 E., W.M., in Kittitas County, approximately 2 miles northwest of Easton, Washington.

7. OR-22483(WASH), Secretarial Order dated December 22, 1905, continue for 25 years. Yakima Project, 40 acres located in Sec. 10, T. 21 N., R. 12 E., W.M., in Kittitas County, approximately 10 miles northwest of Easton, Washington.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 15, 1992.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-17444 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-326; OR-8761 (WASH)]

Termination of Proposed Withdrawal and Reservation of Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service has canceled its application to withdraw 1,120 acres of National Forest System lands in the Gifford Pinchot and Snoqualmie National Forests for the extension of the White Pass Recreation Area. This action will terminate the proposed withdrawal.

DATES: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7162.

SUPPLEMENTARY INFORMATION: The notice of the United States Department of Agriculture, Forest Service application OR-8761(WASH) for the withdrawal was published as FR Doc. 71-19108 of the issue of December 30, 1971, as amended by FR Doc. 80-29765 of the issue of September 26, 1980. The purpose of the proposed withdrawal was to protect the extension of the White Pass Recreation Area. The applicant agency has determined that the proposed withdrawal is no longer needed and has canceled the application in its entirety as to the following described lands:

Willamette Meridian

Snoqualmie and Gifford Pinchot National Forests

T. 13 N., R. 11 E., unsurveyed,
Sec. 1, S½NW¼;
Sec. 2, S½NE¼;
Sec. 10;
Sec. 11, S½S½;
Sec. 12, S½S½.

The areas described aggregate approximately 1,120 acres in Lewis and Yakima Counties, Washington.

The proposed withdrawal is hereby terminated in its entirety. The lands involved have been previously relieved of the segregative effect of the above-referenced application.

Dated: July 14, 1992.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-17445 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-327; OR-48510 (Wash))]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 1,750 acres of National Forest System lands to protect the recreational and visual resources of the White Pass ski area in the Snoqualmie and Gifford Pinchot National Forests. This notice closes the lands for up to two years from mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 22, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503-280-7162.

SUPPLEMENTARY INFORMATION: On June 9, 1992, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2) subject to valid existing rights:

Willamette Meridian

Snoqualmie and Gifford Pinchot National Forests

T. 13 N., R. 11 E., unsurveyed,
Sec. 1, that portion of the N½ lying northerly of the withdrawal for State Highway 14 (PLO 2434);
Sec. 2, that portion of the N½ lying outside the William O. Douglas Wilderness Area;
Sec. 10, that portion of the E½ lying southerly of the withdrawal for State Highway 14 (PLO 2434);
Sec. 11, S½S½;
Sec. 12, that portion of the S½SW¼ lying outside the Goat Rocks Wilderness Area;
Sec. 14, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 15, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 22, that portion lying outside the Goat Rocks Wilderness Area;

Sec. 23, that portion lying outside the Goat Rocks Wilderness Area.
T. 14 N., R. 11 E., unsurveyed,
Sec. 35, that portion lying outside the William O. Douglas Wilderness Area;
Sec. 36, those portions of the S½SW¼ and SW¼SE¼ lying outside the William O. Douglas Wilderness Area;

The areas described aggregate approximately 1,750 acres in Lewis and Yakima Counties, Washington.

The purpose of the proposed withdrawal is to protect the recreational and visual resources of the White Pass ski area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The sites will be fenced to prevent other uses being of this area.

Dated: July 14, 1992.

Champ C. Vaughan

Acting Chief, Branch of Lands and Minerals Operations

[FR Doc. 92-17446 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A Request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0090), Washington, DC 20503, telephone 202-395-7340.

Title: Production Estimate
OMB approval number: 1032-0090
Abstract: The collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, industry, education programs, and the general public. The respondents are producers of metals and industrial minerals.
Bureau form number: 6-1209-A and 6-1209-A-A
Frequency: Quarterly and annually
Description of respondents: Producers of industrial minerals and metals
Estimated completion time: 15 minutes
Annual responses: 6,830
Annual burden hours: 1,708
Bureau clearance officer: Alice J. Wissman, 202-501-9569

Dated: June 12, 1992.

TS Ary,

Director, Bureau of Mines.

[FR Doc. 92-17459 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the bureau clearance officer and to the Officer of Management and Budget, Paper Reduction Project (1006-002), Washington, DC, 20503, telephone 202-395-7340.

Title: Recreation and Wildlife Summary.
OMB approval number: 1006-0002.
Abstract: Recreation and Wildlife summary data are needed to plan, develop, administer, and monitor recreation areas on Bureau of Reclamation projects. These data are used in making land management decisions and in responding to Congressional and public inquiries. Respondents are State and county government agencies and water user organizations that have recreation management agreements with the Bureau of Reclamation.
Bureau Form Number: None.
Frequency: Annual.
Description of Respondents: Non-Federal Public Bodies.
Annual Responses: 160.
Annual Burden Hours: 560.
Bureau Clearance Officer: Robert A. Lopez—303-236-6769.

Dated: June 30, 1992.

Joe D. Hall,

Deputy Commissioner.

Fish and Wildlife Service

Record of Decision for the Establishment of the Stone Lakes National Wildlife Refuge, Sacramento County, CA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of decision and notice of availability of the record of decision document.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) for the establishment of Stone Lakes National Wildlife Refuge (Refuge) and Cooperative Wildlife Management Area. The ROD was prepared in accordance with Council on Environmental Quality regulations, 40 CFR 1505.2. The ROD documents the decision of the U.S. Fish and Wildlife Service (Service) based on the information contained in the Final Environmental Impact Statement (EIS) for the Refuge, which was filed with the Environmental Protection Agency on May 15, 1992. The Service has selected the Mitigated Preferred Alternatives as described in the Final EIS as the best alternative for implementing the decision to establish the Refuge. Additional clarifications regarding land protection strategies for the area around South Stone Lake have been added. Responses to individual comment letters received by the Service on the Final EIS are included in an appendix to the ROD.

ADDRESSES: To obtain a copy of the Record of Decision and appendix or for

further information, contact Peter Jerome, Sacramento Realty Field Office, 2233 Watt Avenue, suite 375, Sacramento, California 95825, telephone (916) 978-4420.

SUPPLEMENTARY INFORMATION:

A. Purpose and Need for the Project

The Service proposes to acquire and/or otherwise protect lands in southwestern Sacramento County, California, for establishment of the Stone Lakes National Wildlife Refuge (Refuge) and a Cooperative Wildlife Management Area. The purpose of the project is to protect and restore native Central Valley, California, habitats and provide educational and recreational opportunities for the public. The Stone Lakes Refuge would constitute an addition to the National Wildlife Refuge System (System) and would be operated in accordance with the overall mission of the System.

Loss of wetland and riparian forest habitats in the Central Valley has contributed to steady decreases in waterfowl and other wildlife populations over the past 30 years. Substantial environmental changes over the last 50 years have also contributed to the deterioration of fisheries production, floodwater storage, groundwater recharge, sediment control, recreational opportunities and aesthetic values in the region.

Public and agency awareness of the significance of the Stone Lakes area as an important wildlife area has been growing for over 20 years. At the same time, various Federal and State agencies and private organizations have been addressing the problem of dwindling habitat for migratory waterfowl and other wildlife in the Central Valley. The Stone Lakes area could play a major role in meeting the goal of these entities to protect, enhance, and restore associated habitats for fish and wildlife and plant communities.

B. Legislative Authorities and Funding Sources for Refuge Acquisition

The Service has specific responsibility for the welfare of migratory birds, anadromous fish, and Federally listed endangered animals and plants. The following acts of Congress grant the Service the general authority to acquire land for refuge purposes: the Fish and Wildlife Act of 1956, the Endangered Species Act of 1973, the Emergency Wetlands Resources Act of 1986, the Migratory Bird Conservation Act, and the Migratory Bird Treaty Act. The primary sources of funding for refuge acquisition projects are the Migratory Bird Conservation Fund, Land and Water Conservation Fund, and North American Wetlands Conservation Fund.

C. Public Involvement and Environmental Review

A draft EIS was circulated for public review from May 20 to October 15, 1991. The Service conducted seven public workshops and meetings to answer questions, disseminate information, and accept testimony on the proposed project and draft EIS. The Service received input from over 6,000 commenters. Comments were received from individuals, organizations, and public agencies. The Final EIS was filed with the Environmental Protection Agency and the Notice of Availability appeared in the Federal Register on May 15, 1992. Responses to individual comment letters received by the Service on the Final EIS are included in an appendix to this ROD.

D. Goals of Stone Lakes National Wildlife Refuge

The overall goals for the Stone Lakes National Wildlife Refuge are to:

1. Preserve, enhance, and restore a diverse assemblage of native Central Valley plant communities and their associated fish, wildlife, and plant species;

2. Preserve, enhance, and restore habitat to maintain and assist in the recovery of rare, endangered, and threatened plants and animals;

3. Preserve, enhance, and restore wetlands and adjacent agricultural lands to provide foraging and sanctuary habitat needed to achieve the distribution and population levels of migratory waterfowl and other water birds consistent with the goals and objectives of the North American Waterfowl Management Plan and Central Valley Habitat Joint Venture;

4. Create linkages between Refuge habitats and habitats on adjacent lands to reverse past impacts of habitat fragmentation on wildlife and plant species;

5. Coordinate Refuge land acquisition and management activities with other agencies and organizations and to maximize the effectiveness of Refuge contributions to regional habitat needs;

6. Provide for environmental education, interpretation, and fish and wildlife-oriented recreation in an urban setting accessible to large populations; and

7. Manage riverine wetlands and adjacent floodplain lands in a manner consistent with local, State, and Federal flood management; sediment and erosion control; and water quality objectives.

E. U.S. Fish and Wildlife Service Land Acquisition and Protection Programs

The Service will employ land protection methods such as cooperative agreements, conservation easements, and fee title acquisition to secure the minimum interest in lands necessary to accomplish Refuge goals. Negotiations leading to potential cooperative agreements will commence immediately. The Service also proposes to initiate negotiations with potential willing sellers of fee and easement interests. The time from project approval to acquisition from any given landowner would vary depending on the willingness of the landowner in negotiating, availability of funding, and closing requirements.

Consistent with Service policy commitments contained in the Mitigated Preferred Alternative, the Service has imposed administrative constraints on the use of eminent domain. For example, the Service will not use the power of Eminent Domain, i.e., condemnation, so long as existing or proposed agricultural land uses are consistent with the Sacramento County General Plan (1980) and its current proposed revisions (November 1990). In addition, the Service will implement eminent domain proceedings as a policy of last resort and only on a case-by-case basis which takes into account the relative compatibility of the specific land use at issue with Refuge goals.

F. Cooperative Partnerships

1. Commitments Contained in the Mitigated Preferred Alternative

During the comment period on the Final EIS, the American Farmland Trust encouraged the Service to give additional consideration to developing an innovative, cost-effective public/private alternative that would accomplish the goals of the Service and local landowners in the area of South Stone Lake. Support for the concept of a partnership between nonprofit land trust organizations and the Service is affirmed in the Mitigated Preferred Alternative contained in the Final EIS.

The Service encourages local efforts to develop land-use activities consistent with the purposes of the proposed Refuge. Within the proposed Refuge project area, the Service would seek to protect and manage sufficient acreage to accomplish Refuge goals. Lands in the project areas that are permanently protected in private ownership consistent with Refuge goals would satisfy this requirement (i.e., Federal acquisition would not be necessary). Important factors in determining the

adequacy of protection would include commitment to and enforcement of perpetual covenants, commitment to habitat restoration and enhancement objectives, and commitment to migratory bird foraging and sanctuary requirements as described in the Final EIS.

Perpetual easements acquired through third-party interests are supported by the Services if they accomplish Service protection and management goals. Any property enrolled in such a program would not be considered part of the Refuge but, more appropriately, would be a component of a "Cooperative Wildlife Management Area" that would seek to preserve and enhance both agricultural and wildlife values.

2. Additional Commitments

In addition to commitments made by the Service in the Mitigated Preferred Alternative, the Service will work with The American Farmland Trust, the North Delta Conservancy, and other nonprofit land trust organizations to foster a cooperative public/private partnership whose primary objectives are to preserve both agricultural and wildlife values.

A method for achieving a successful partnership would be to develop and implement the terms of a voluntary Memorandum of Understanding (MOU). An MOU could address mutually agreeable land protection measures in the South Stone Lake area and elsewhere. The Service will pursue this MOU based on the following principles:

(a) A common interest in protecting, enhancing, restoring, and managing wildlife uses in perpetuity;

(b) A common interest in protecting prime and important agricultural land for food production in perpetuity;

(c) A common interest in protecting existing open space in perpetuity;

(d) A recognized role of private landowners to accomplish both habitat preservation and enhancement goals as well as agricultural production goals;

(e) A need for ongoing cooperation, communication, and coordination among all parties;

(f) A commitment to act as good neighbors, recognizing the economic and wildlife objectives of both individual and public agency ownerships;

(g) A process to ensure that when fee title and conservation easement acquisition is desirable or necessary, a process is in place to ensure full coordination and cooperation with all potentially affected parties.

The Service agrees to work cooperatively with the California Department of Water Resources to develop a voluntary MOU. Consistent with Refuge goals, this MOU will address appropriate elements of the Governor of California's Comprehensive Water Plan (April 1992) and associated environmental benefits.

G. Mosquito Abatement

The Service recognizes that an integrated mosquito suppression program can be developed that is consistent with the goals of the Stone Lakes Refuge. Management of water and vegetation along with appropriate biological and chemical control can effectively manage the mosquito population, while protecting Refuge resources, and ensuring the health, safety and welfare of the public.

The Service will continue to work with the Sacramento-Yolo Mosquito and Vector Control District to develop an MOU that effectively addresses the potentially adverse impacts on mosquito abatement as described in the Final EIS. The MOU will ensure that mitigation measures described in the Final EIS will reduce these impacts to acceptable levels.

H. Basis for the Decision

The Mitigated Preferred Alternative represents a revision of the Service's Preferred Alternative (Alternative C1) identified in the draft EIS. Under the Mitigated Preferred Alternative, the Stone Lakes Refuge would consist of an approximate 9,150-acre core area encompassing Upper and Lower Beach Lakes and North and South Stone Lakes. The Service would also support and participate in the establishment of Cooperative Wildlife Management Area approximately 9,100 acres in size.

The Mitigated Preferred Alternative incorporates Service policy commitments designed to minimize the adverse effects of Refuge protection, acquisition, and management programs on recreational use on navigable waters, prime agricultural land conversion, farming practices, land values, and landowners' access to loans, and to ensure cooperation with the Sacramento-Yolo Mosquito and Vector Control District. Given the environmental and economic impacts and technical feasibility of the project, the Mitigated Preferred Alternative would best meet the identified goals of the proposed Refuge and the agency's statutory mission and responsibilities.

I. Alternatives Considered

Six alternatives, in addition to the Mitigated Preferred Alternative, were considered in detail in the Final EIS. These alternatives represent various programs and boundary configurations ranging from approximately 7,500 acres to 74,000 acres. The No Action Alternative represents areas that would remain in public ownership without a national wildlife refuge. Alternative B reflects the minimum land acquisition alternative. The original proposed action is defined by Alternative C and the Preferred Alternative contained in the Draft EIS is defined by Alternative C1. Alternatives D and E represent Refuge configurations that reflect expanded land protection areas to include the Cosumnes River floodplain.

Of the seven alternatives considered in detail, all are environmentally preferable to the No Action Alternative. Alternatives C, C1, D, E, and the Mitigated Preferred Alternative would meet all project goals by providing moderate to very substantial environmental benefits. Alternative A would result in little or no change from existing conditions.

Several off-site alternatives were considered but rejected from detailed analysis because they did not satisfy major goals established for the Refuge. The Stone Lakes study area is characterized by threats and conflicts from urbanization and agricultural conversions that make land protection a priority in order to secure existing habitat values.

J. Mitigation and Monitoring

Mitigation measures that would avoid or reduce adverse impacts of habitat protection, land acquisition and Refuge management are identified in the Final EIS. These measures would reduce significant and potentially significant impacts to less than significant impacts. The Service will implement these mitigation measures as Refuge lands are acquired and specific habitat restoration and Refuge development plans are prepared. Site specific environmental reviews will be completed for projects requiring additional National Environmental Policy Act compliance.

K. Conclusion

Based on review and consideration of the Final Environmental Impact Statement for Stone Lakes National Wildlife Refuge (May 1992), public comments on the EIS, and other relevant factors, I am selecting the Mitigated Preferred Alternative and the clarifications contained in this Record of Decision as the best alternative for implementing the decision to establish the Refuge. Environmental harm will be avoided or minimized through implementation of this action.

Dated: July 17, 1992

Marvin L. Plenert,

Regional Director, Region 1 U.S. Fish and Wildlife Service.

[FR Doc. 92-17491 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. ch. 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0059), Washington, DC 20503, telephone 202-395-7340.

Title: State Reclamation Grants, 30 CFR part 886

OMB Approval Number: 1029-0059

Abstract: States and Indian tribes participating in the Abandoned Mine Land Reclamation Program are required to assist in the development of the annual submission of projects by providing information required by section 405(f) of the Surface Mining Control and Reclamation Act of 1977. This information is used in the preparation of requests for appropriation of monies for reclamation grants

Bureau form number: None

Frequency: Annually

Description of respondents: States and Indian tribes

Estimated Completion Time: 40 hours

Annual Responses: 28

Annual Burden Hours: 1,120

Bureau Clearance Officer: Andrew F. DeVito, 202-343-5150

Dated: July 8, 1992.

Sarah Donnelly,

Acting Chief, Division of Technical Services.

[FR Doc. 92-17458 Filed 7-23-92; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30186 (Sub No. 2)]

Tongue River Railroad Co.—Construction and Operation of Additional Rail Line From Ashland to Decker, IN, Rosebud and Big Horn Counties, MT

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: The Tongue River Railroad Company has applied to the Interstate Commerce Commission for authority to construct and operate a 42-mile rail line from a point south of Ashland to a connection with operating coal mines near Decker, MT. In addition to analyzing the environmental impacts from the railroad's preferred alignment (which generally parallels the Tongue River), this draft EIS also analyzes the Four Mile Creek Alternative which would avoid the Tongue River Dam and a 10-mile section of the river just north of the Tongue River Dam, and the no-build alternative. At this stage in the environmental analysis, the Commission's Section of Energy and Environment considers the Four Mile Creek Alternative to be the environmentally preferable route should the Commission approve the proposed construction and operation. Comments are specifically requested regarding this preliminary determination and recommended mitigation. The Commission will consider all comments to this draft EIS before issuing a final EIS and rendering a final decision in this proceeding.

DATES: Written comments must be filed by September 21, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket 30186 (Sub No. 2) to: Dana White, Section of Energy and Environment, room 3214, Interstate Commerce Commission, Washington, DC 20423.

Send one copy to the railroad's representative: Mr. Thomas Ebzery, Village Center I, suite 165, 1500 Poly Drive, Billings, MT 59102.

FOR FURTHER INFORMATION CONTACT: Dana White (202) 927-6214 or Elaine Kaiser, Chief, Section of Energy and Environment (202) 927-6248. TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: The Ashland to Decker rail line is an extension of the planned but not yet constructed 89-mile rail line between Miles City and Ashland, MT for which the Tongue River Railroad Company obtained ICC authorization (ICC decision granting construction and operation authority in F.D. 30186, served September 4, 1985) and for which an EIS has been completed (served August 23, 1985).

Copies of this draft EIS have been served on the parties of record and to appropriate Federal, state, local and private agencies and individuals for review and comment. Requests for additional copies of the draft EIS should be directed to Dana White, Section of Energy and Environment, Interstate Commerce Commission, Washington, DC 20423, or by telephoning (202) 927-6214.

Dated: July 17, 1992.

By the Commission, Howard K. Face, Director, Office of Economics.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-17511 Filed 7-23-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32098]

Soo Line Railroad Co. and Chicago and Northwestern Transportation Co.—Joint Relocation Projection Exemption

On June 25, 1992, Soo Line Railroad Company (Soo) and Chicago and Northwestern Transportation Company (C&NW) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad at Janesville, WI.[1] Soo and C&NW currently own trackage in the area of Janesville that are rougly parallel. Soo's line suffered a severe washout in 1989 which required the detouring of both Soo and Wisconsin and Calumet Railroad Company, Inc. (WICT) onto C&NW and the embargoing of Soo's line between milepost 46.75 and milepost 48.8. The State of Wisconsin has requested Soo to sever its line at Black Bridge Road in Janesville, near milepost 47.75, in favor of a highway project.

WICT, until recently, held trackage rights over the involved portion of Soo's line. However, due to the washout and subsequent embargo, WICT and Soo agreed to cancel the trackage rights. WICT now holds trackage rights over the same portion of C&NW's line as Soo will hold.

The joint project involves: (1) Acquisition of overhead trackage rights by Soo over C&NW's rail line between C&NW milepost 91.57 and C&NW

[1] After being contacted by Commission staff, Soo amended its notice on July 14, 1992.

milepost 94.5, a distance of approximately 2.93 miles; (2) the incidental abandonment of Soo's line between Soo milepost 46.75 and Soo milepost 48.8 , a distance of approximately 2.15 miles; and (3) the discontinuance of WICT's trackage rights over Soo's to be abandoned line.[2] The transaction was to have been consummated on or about July 2, 1992.

The joint relocation project will: (1) Assist the City of Janesville in a highway improvement project by eliminating troublesome street crossings; (2) allow Soo to avoid heavy expenses associated with restoring the line; and (3) improve the operations of Soo, C&NW, and WICT at Janesville by combining their operations. The shippers of Soo will continue to be served without any disruption of services. There will be no expansion into new territory; nor will there be a change in the existing competitive situation.

The Commission will exercise jurisdiction over the abandonment and/or discontinuance component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the abandonment and discontinuance under consideration here is not subject to the Commission's jurisdiction. The Commission has determined that line relocations embrace trackage rights transactions such as the ones proposed here. See D.T. & I.R—Trackage Rights, 363 I.C.C. 878(1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1989), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term. R.R., Inc.—Pur. & Lease— CSX Transp. Inc., 6 I.C.C.2d 799 (1990), aff'd sub nom. Railway Labor Executives Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402; and Stuart F. Gassner, One North Western Center, 165 North Canal Street, Chicago, IL 60606.

Dated: July 17, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-17518 Filed 7-23-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 381X)]

Exemption; CSX Transportation, Inc.; Abandonment Exemption; in Somerset County, PA

Applicant CSX Transportation, Inc., has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonment to abandon its 1.28-mile rail line between milepost 0.03, near PW&S Junction, to milepost 1.31, at Summit.

Applicant has certified that: (1) No local traffic has moved over the line for a least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.12 (newspaper publications) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on August 24, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by August 3, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 13, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by July 29, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17517 Filed 7-23-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on June 10, 1992 filed a written notification on behalf of Bellcore and Apple Computer, Inc. ("Apple") simultaneously with the Attorney General and the Federal Trade

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[2] It is not clear whether Soo and C&NW have requested that WICT's trackage rights over C&NW be included in the transaction that is subject to the notice of exemption. It appears that WICT's trackage rights do fall within the joint relocation project exemption.

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities are given below.

Bellcore is a Delaware corporation with its principal place of business in Livingston, New Jersey.

Apple is a California corporation with its principal place of business in Cupertino, California.

Effective on March 10, 1992, Bellcore and Apple entered into an agreement to engage in cooperative research collaboration directed to exploring the technology for broadband communications utilizing asynchronous transfer mode and ATM transport mechanisms, to better understand the applications of this technology for exchange and exchange access services, including prototype fabrication for the experimental demonstration of such technology.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-17462 Filed 7-23-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Brass and Bronze Environmental Research Corporation

Notice is hereby given that, on June 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Brass and Bronze Environmental Research Corporation ("BBERC") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a joint research venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint research venture and its general area of planned activities are given below.

The parties to the joint research venture are: The G. A. Avril Company, Cincinnati, OH; W.J. Bullock, Inc., Fairfield, AL; Colonial Metals Co., Columbus, OH; Federal Metal Company, Bedford, OH; N. Kamenske & Company, Inc., Nashua, NH; R. Lavin & Sons, Inc., Chicago, IL; National Metals, Inc., Leeds, AL; River Smelting & Refining Co., Cleveland, OH; I. Schumann & Company, Bedford, OH; Brass and Bronze Ingot Manufacturers, Chicago, IL; and Brass and Bronze Environment Research Corporation, Chicago, IL.

The nature and objective of the joint research is the development of technology for removing lead from copper-based scrap.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17453 Filed 7-23-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") on May 18, 1992, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plantiffs to actual damages under specified circumstances.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) on September 7, 1988 (53 FR 34593). On November 7, 1988, February 3, 1989, October 12, 1989, February 20, 1991, and February 18, 1992, CableLabs filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on December 16, 1988 (53 FR 50590), March 1, 1989 (54 FR 8608), December 15, 1989 (54 FR 51510), April 10, 1991 (56 FR 14543), and April 15, 1992 (57 FR 13121), respectively.

The following parties have become members of CableLabs: Barden Communications, Inc., Detroit, MI—effective 1/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17463 Filed 7-23-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./Nexus Engineering Corp./General Instrument Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), Nexus Engineering Corp. ("NEXUS") and General Instrument Corporation ("GI") on May 18, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 27, 1991, CableLabs, Nexus and GI filed their original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1991 (56 FR 34075). On February 18, 1992, CableLabs filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 15, 1992 (57 FR 13122).

Pursuant to section 6(b) of the Act, the identities of the additional members are: Barden Communications, Inc., Detroit, MI—effective 2/18/92; Duhamel Cable, Rapid City, SD—effective 4/10/92; Prestige Cable TV of Maryland, Inc., Cavlersville, GA—effective 2/26/92; and Princetown Cable Company, Schenectady, NY—effective 3/13/92.

The area of activity remains the cooperation in the development of interface concepts between personal communications networks and cable system networks, including the exchange of information related to the functions and architecture of personal communications networks and cooperation in the conduct of radio frequency tests in connection with

experimental personal communications networks licenses issued by the FCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17454 Filed 7-23-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—"Ultral Low Emission Engine Program"

Notice is hereby given that, on June 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a new participant to its group research project regarding "Ultra Low Emission Engine Program." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Hyundai Motor Company, Seoul, Republic of Korea, represented by Hyundai America Technical Center, Inc., Ann Arbor, Michigan (effective June 5, 1992) has become party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 9, 1991, 56 FR 64276. On January 9, 1992, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on January 29, 1992, 57 FR 3441. On March 9, 1992, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 30, 1992, 57 FR 18529. Additionally, a correction notice to the December 9, 1991, notice was published on January 29, 1992, 57 FR 3441.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17464 Filed 7-23-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202-523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Annual Survey of Occupational Injuries and Illnesses.

1220-0045; BLS 9300.

Annually.

State and local government (as per State law); farms; businesses or other for-profit; non-profit institutions; small businesses or organizations.

280,000 respondents; 54 minutes per response; 250,000 total burden hours; 1 form.

The Annual Survey of Occupational Injuries and Illnesses is the primary indicator of the nation's progress in providing every working person safe and healthful working conditions. Survey data are used to evaluate the effectiveness of Federal and State programs and to prioritize scarce resources.

Extension

Mine Sofety and Health Administration

Record of Mine Closure.

1219-0073.

On occasion.

Businesses or other for profit; small businesses or organizations 1,000 respondents; 2 hours per response; 2,000 total burden hours Requires that, whenever coal mine operators permanently close or abandon a coal mine or temporarily close a coal mine for a period of 90 days, they file with MSHA a copy of the mine map which is revised and supplemented to the date of closure. Maps are retained in a repository and are made available to mine operators of adjacent properties.

Extension

Employment Standards Administration

Request for State Federal Workers' Compensation Information.

1215-0060.

CM-905.

On occasion.

State and local governments; Federal agencies or employees.

4,400 respondents; 11,000 total hours; .25 hours per response; 1 form.

30 U.S.C. 922 and 20 CFR 725.535 specify that beneficiaries of DCMWC have their benefits reduced by those amounts which they receive from State or other Federal workers' compensation programs attributable to a black lung-related disability.

Extension

Mine Safety and Health Administration

Qualifications and Certification Program (30 CFR 75.100, 75.155, 77.100 and 77.105).

1219–0069.

On occasion.

Businesses or other for-profit; small businesses or organizations 1,552 respondents; 225 total burden hours; 0.164 average hours per response; 2 forms MSHA 5000–4 and 5000–7.

The Qualifications and Certification Program provides provisions whereby persons may be qualified or certified to perform tests or examinations at coal mines which are related to miner safety and health and which require specialized expertise.

Reinstatement

Mine Safety and Health Administration

Training Plan Regulations (30 CFR 48.3 and 48.23).

1219–0009.

On occasion for revisions and one-time for new mines.

Businesses and other for profit; small businesses or organizations.

1,300 respondents; 8 hours per response; 10,400 total burden hours.

Requires mine operators to have an MSHA approved plan containing programs for training new miners, training newly employed experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Extension

Mine Safety and Health Administration

Applications for Approval of Sanitary Toilet Facilities (30 CFR 71.500 and 75.1717–6).

1219–0101.

On occasion.

Businesses and other for profit; small businesses or organizations.

2 respondents; 8 hours per response; 16 total burden hours.

Contains procedures by which manufacturers of sanitary toilet facilities may apply for, and have their product approved as permissible for use in coal mines. To gain approval, the manufacturer must submit sufficient information needed to make an effective evaluation of the sanitary features of the facilities.

Signed at Washington, DC, this 15th day of July, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–17541 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

[TA–W–27,229]

Cheyenne Petroleum Co., Oklahoma City, OK; Revised Determination on Reconsideration

On July 10, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Cheyenne Petroleum Company in Oklahoma City, Oklahoma. This notice will soon be published in the **Federal Register**.

New findings on reconsideration show that the Cheyenne Petroleum Company is not a service company but is an integrated producer. Cheyenne Petroleum owns wells and sells crude oil and natural gas to customers.

Other findings on reconsideration show revenues declining in 1991 compared to 1990 and in the first four months of 1992 compared to the same period in 1991. Average employment levels declined in 1991 compared to 1990 and in the first four month of 1992 compared to the same period in 1991.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in the period April 1991 through March 1992 as compared to the year earlier.

Other findings on reconsideration show major crude oil customers decreasing their purchases from Cheyenne and increasing their import purchases in 1991 compared to 1990 and in the first quarter of 1992 compared to the same period in 1991.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Cheyenne Petroleum Company workers in Oklahoma City, Oklahoma were adversely affected by increased imports of articles like or directly competitive with crude oil and natural gas produced at Cheyenne Petroleum, Oklahoma City, Oklahoma. In accordance with the provisions of the Act, I make the following revised certification for the Cheyenne Petroleum workers in Oklahoma City, Oklahoma.

All workers of Cheyenne Petroleum Company in Oklahoma City, Oklahoma who became totally or partially separated from employment on or after April 27, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 16th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 92–17531 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27, 240]

Intelligraphis, Inc., Waukesha, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Intelligraphis, Incorporated, Waukesha, Wisconsin. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27, 240; Intelligraphis, Incorporated Waukesha, Wisconsin (July 16, 1992)

Signed at Washington, DC this 17th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–17530 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,304]

Kerr-McGee Corp., Morgan City, LA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 26, 1992 in response to a worker petition which was filed on behalf of workers at the Morgan City, Louisiana facility of Kerr-McGee Corporation.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–27, 286). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–17534 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-26,979, et al]

Mobil Exploration and Producing U.S., Inc., et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the Matter of TA-W-26,979, Mobil Exploration and Producing U.S., Incorporated (MEPUS) headquartered in Dallas, TX; TA-W-26,979A, MEPUS Liberal Division, headquartered in Liberal, KS and operating at other sites in the following states: TA-W-26,979B Kansas, TA-W-26,979C Oklahoma, TA-W-26,979D Texas; TA-W-26,979E, MEPUS Oklahoma City Division, headquartered in Oklahoma City, OK and operating at other sites in the following states: TA-W-26,979F California, TA-W-26,979G Colorado, TA-W-26,979H Oklahoma, TA-W-26,979I Texas; TA-W-26,979J, MEPUS Bakersfield Division, headquartered in Bakersfield, CA; TA-W-26,965, MEPUS Dallas Affiliate, headquartered in Dallas, TX and operating at other sites in the following states: TA-W-26,965A Louisiana, TA-W-26,965B Oklahoma; TA-W-26,966, MEPUS Denver Division, headquartered in Denver, CO and operating at other sites in the following states: TA-W-26,966A California, TA-W-26,966B Colorado, TA-W-26,966C New Mexico, TA-W-26,966D Oklahoma, TA-W-26,966E Texas, TA-W-26,966F Wyoming; TA-W-26,976, MEPUS Houston Division, headquartered in Houston, TX and operating at other sites in the following states: TA-W-26,976A Louisiana, TA-W-26,976B Texas; TA-W-26,977, MEPUS Midland Division, headquartered in Midland, TX and operating at other sites in the following states: TA-W-26,977A Colorado, TA-W-26,977B New Mexico, TA-W-26,977C Texas, TA-W-26,977D, Utah; TA-W-26,983, MEPUS New Orleans/Offshore Division, headquartered in New Orleans, LA and operating at other sites in the following states: TA-W-26,983A Alabama, TA-W-26,983B Louisiana, TA-W-26,983C Texas; TA-W-26,978, Mobil Exploration and Producing Services, Incorporated (MEPSI), headquartered in Dallas, TX and operating at other sites in the following states: TA-W-26,978A California, TA-W-26,978B Colorado, TA-W-26,978C Kansas, TA-W-26,978D Louisiana, TA-W-26,978E New Mexico, TA-W-26,978F Oklahoma, TA-W-26,978G Texas.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 1992 applicable to all workers of the subject firm at the locations indicated except for the Bakersfield Division. The notice was published in the **Federal Register** on May 19, 1992 (57 FR 21304).

Based on new information from the company, workers of the Bakersfield Division of MEPUS headquartered in Bakersfield, California were omitted from the certification. Therefore, the certification is amended by including the Bakersfield Division of MEPUS in Bakersfield, California.

The amended notice applicable to TA-W-26,979 is hereby issued as follows:

All workers of Mobil Exploration and Producing U.S., Incorporated (MEPSI), headquartered in Dallas, Texas (TA-W-26,979) and operating at various locations in the below cited divisions (and States) and Mobil Exploration and Producing Services, Incorporated (MEPUS), headquartered in Dallas, Texas (TA-W-26,978) and operating at various locations in the below cited States who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA-W-26,979A, MEPUS Liberal Division, headquartered in Liberal, KS and operating at other sites in the following states: TA-W-26,979B Kansas, TA-W-26,979C Oklahoma, TA-W-26,979D Texas; TA-W-26,979E, MEPUS Oklahoma City Division, headquartered in Oklahoma City, OK and operating at other sites in the following states: TA-W-26,979F California, TA-W-26,979G Colorado, TA-W-26,979H Oklahoma, TA-W-26,979I Texas; TA-W-26,979J, MEPUS Bakersfield Division, headquartered in Bakersfield, CA; TA-W-26,965, MEPUS Dallas Affiliate, headquartered in Dallas, TX and operating at other sites in the following states: TA-W-26,965A Louisiana, TA-W-26,965B Oklahoma; TA-W-26,966, MEPUS Denver Division, headquartered in Denver, CO and operating at other sites in the following states: TA-W-26,966A California, TA-W-26,966B Colorado, TA-W-26,966C New Mexico, TA-W-26,966D Oklahoma, TA-W-26,966E Texas, TA-W-26,966F Wyoming; TA-W-26,976, MEPUS Houston Division, headquartered in Houston, TX and operating at other sites in the following states: TA-W-26,976A Louisiana, TA-W-26,976B Texas; TA-W-26,977, MEPUS Midland Division, headquartered in Midland, TX and operating at other sites in the following states: TA-W-26,977A Colorado, TA-W-26,977B New Mexico, TA-W-26,977C Texas, TA-W-26,977D Utah; TA-W-26,983, MEPUS New Orleans/Offshore Division, headquartered in New Orleans, LA and operating at other sites in the following states: TA-W-26,983A Alabama, TA-W-26,983B Louisiana, TA-W-26,983C Texas; TA-W-26,978, MEPSI operating at other sites in the following states: TA-W-26,978A California, TA-W-26,978B Colorado, TA-W-26,978C Kansas, TA-W-26,978D Louisiana, TA-W-26,978E New Mexico, TA-W-26,978F Oklahoma, TA-W-26,978G Texas.

Signed in Washington, DC this 16th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-17527 Filed 7-23-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,872]

National-Oilwell, Garland, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at National-Oilwell, Garland, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-26, 872; National-Oilwell, Garland, Texas (July 16, 1992).

Signed at Washington, DC this 17th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-17528 Filed 7-23-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,968]

Signetics Co., Orem, UT; Affirmative Determination Regarding Application for Reconsideration

On June 24, 1992, the company's counsel requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's decision was issued on May 15, 1992 and published in the **Federal Register** on May 28, 1992, (57 FR 22492).

Counsel for the company stated that the Department's survey was faulty since it did not consider the effect of bipolar integrated circuit displacement with MOS-ASIC articles.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services Unemployment Insurance Service.

[FR Doc. 92-17533 Filed 7-23-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,075]

Fiber Materials, Inc. Columbus, OH; Negative Determination Regarding Application for Reconsideration

By an application dated July 9, 1992, counsel for the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 3, 1992 and was published in the **Federal Register** on June 26, 1992 (57 FR 28706).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade was not met. U.S. imports of yarn declined absolutely and relative to domestic shipments in 1991 compared to 1990. FMI's high purity quartz yarn (HPQY) was not qualified for U.S. government aerospace and military programs. The findings show that FMI never developed a customer base.

Counsel states that a foreign owned domestic plant, QPC, is importing raw material for the domestic production of HPQY. He states that since government customers could purchase qualified HPQY from QPC, there was no need to fund required qualification testing for a domestic second source.

Neither foreign ownership of a domestic firm or the raw material imports for a finished article would meet the increased import criterion needed for certification. Lastly, the lack of funding by the U.S. government for qualification testing would not form a basis for certification.

The investigation findings show that purpose of Title III of the Defense Production Act (DPA) is to establish a domestic manufacturing capability for Department of Defense (DOD) critical materials. Accordingly, in 1988 the administrators of the DPA determined that a second source for HPQY was needed. The findings show that a contract to produce 60,000 pounds of HPQY at FMI was funded by the Federal Government. During the performance of this contract, FMI was unable to qualify the HPQY material on any government programs. The contract was completed in 1992 and workers were separated at FMI. By 1992, the demand for HPQY had declined drastically from the cancellation of many weapons systems. DPA's purpose was never to establish a customer base for domestic firms producing critical materials. Worker separations occurred because of the completion of the contract.

With regard to the metal matrix composites produced at FMI, the decreased sales and production requirement was not met. Sales and production of metal matrix composites increased in 1991 compared to 1990 and did not decline in the first quarter of 1992 compared to the same quarter in 1991.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 15th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 92-17532 Filed 7-23-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Sunshine Shake & Shingle Co. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 3, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address show below, not later than August 3, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of July 1992.

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles Produced
Sunshine Shake & Shingle Co. (Wkrs)	Forks, WA	07/13/92	07/06/92	27,476	Cedar Shakes and Shingles.
Laser Magnetic Storage Int'l Co. (Wkrs)	Norristown, PA	07/13/92	06/25/92	27,477	Information Storage Devices.
Breed Automotive Mfg., Inc. (Co)	Boonton Township, NJ	07/13/92	06/24/92	27,478	Airbag Sensors.
Kneat Knits (Wkrs)	Allentown, PA	07/13/92	06/30/92	27,479	Ladies Knit Sportswear and Dresses.
Conoco, Inc. (Wkrs)	New Orleans, LA	07/13/92	06/30/92	27,480	Exploration & Production of Gas & Oil.
Drexel Oilfield Services (Co)	Conroe, TX	07/13/92	07/03/92	27,481	Oilfield Equipment.
Elk Brand Manufacturing (Wkrs)	Hopkinsville, KY	07/13/92	06/30/92	27,482	Men's, Womens' Jeans, Shorts, Slacks.
Ricke Knitting Mills, Inc. (Wkrs)	Maspeth, NY	07/13/92	06/08/92	27,483	Knitwear—Men's and Women's

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles Produced
Estoril Producing Corp. (Co)	Midland, TX	07/13/92	06/30/92	27,484	Oil and Gas.
Sunstrand Advanced Technology Group (Wkrs)	Denver, CO	07/13/92	07/01/92	27,485	Aircraft Parts.
Milroy Wood Products (Wkrs)	Milroy, PA	07/13/92	06/29/92	27,486	Cabinets and Closet Organizers.
American Tree Co. (Co)	Lexington, KY	07/13/92	07/02/92	27,487	Artificial Christmas Trees, Wreaths.
Unocal Corp., Mid Continent Reg. (Co)	Oklahoma City, OK	07/13/92	07/01/92	27,488	Oil and Gas.
Unocal Corp., Rocky Mtn. District (Co)	Casper, WY	07/13/92	07/01/92	27,489	Oil and Gas.
Unocal Corp., Southern Mid-Cont. (Co)	Woodward, OK	07/13/92	07/01/92	27,490	Oil and Gas.
Unocal Corp., Northern Mid-Cont. (Co)	East Lansing, MI	07/13/92	07/01/92	27,491	Oil and Gas.

[FR Doc. 92-17529 Filed 7-23-92; 8:45 am]
BILLING CODE 4510-30-M

Emergency Unemployment Compensation Program; Changes in Emergency Unemployment Compensation Periods

This notice announces the recent extension of the Emergency Unemployment Compensation Program and changes in benefit period durations.

Background

The Emergency Unemployment Compensation (EUC) Amendments of 1992 (P.L. 102-318) enacted on July 3, 1992 which extended the EUC Act of 1991 (P.L. 102-164), increases the maximum number of EUC weeks payable to either 20 or 26 weeks, from 13 or 20 weeks, depending on the level of unemployment in a State for claimants filing initial claims after June 13, 1992. Under the EUC Act of 1991 as amended by the Unemployment Compensation Amendments of 1992, the benefit durations will drop to 10 and 15 weeks, depending on the level of unemployment in the State when the seasonally adjusted national rate of total unemployment is at least 6.8 percent, but less than 7.0 percent for two consecutive months. When the seasonally adjusted national rate of total unemployment is less than 6.8 percent for two consecutive months, benefit durations will drop to 7 and 12 weeks depending on the State unemployment level.

The number of weeks of benefits available in a State is determined by certain trigger values. The higher number of weeks is available when a State's adjusted insured unemployment rate (AIUR) equals or exceeds 5 percent or the average total unemployment rate (ATUR) equals or exceeds 9 percent. New claims for EUC may not be filed after March 6, 1993 and no EUC is payable for any weeks beginning after June 19, 1993.

The EUC amendments of 1992 increased the duration of benefits from 20 weeks to 26 weeks for the week beginning June 14, 1992, in Alaska, California, Connecticut, Idaho, Maine, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Washington, and West Virginia; and increased from 13 weeks to 20 weeks in Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virgin Islands, Virginia, Wisconsin, and Wyoming. Washington dropped from 26 weeks to 20 weeks for the week beginning July 5, 1992 and New York dropped from 26 weeks to 20 weeks for the week beginning July 12, 1992.

Information for Claimants

The duration of benefits payable in the EUC period, and the terms and conditions on which they are payable, are governed by the Act and the operating instructions issued to the States by the U.S. Department of Labor. The State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EUC benefits (20 CFR 615.13(c)).

Persons who believe they may be entitled to EUC benefits, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on July 17, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-17512 Filed 7-23-92; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Wyoming State Standards; Notice of Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4 will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of subpart BB to part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

(1) Advisory Committee coordination;

(2) Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings;

(3) Adoption by the Wyoming Health and Safety Commission;

(4) Review and approval by the Governor;

(5) Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR part 1953, 22 and 23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review

and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

By letter dated June 3, 1992 from Stephan R. Foster, OSHA Program Manager, Wyoming Department of Employment, Division of Employment Affairs-OSHA, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to the following Federal OSHA Construction Standards (29 CFR 1926.450, .452 Scaffolding; Final rule, 55 FR 47687, 11/14/90; 29 CFR 1926.500, .501 Floor and Wall Openings; Final Rule, 55 FR 47687, 11/14/90; 29 CFR 1926.1050–1054, .1060 Stairways and Ladders, 55 FR 47687, 11/14/90; 29 CFR 1926.700–706 Concrete and Masonry Construction; Final Rule, FR 55 42328, 10/18/90). By letter dated April 7, 1992, from Stephan R. Foster, OSHA Program Manager, the State submitted rules and regulations in response to the following Federal OSHA General Industry Standards (29 CFR 1910.120; Hazardous Waste Operations and Emergency Response; Final Rule; Corrections, 55 FR 14073, 4/13/90; 29 CFR 1928.110: Field Sanitation; 52 FR 16095, 5/1/87; 29 CFR 1910.147 Control of Hazardous Energy Sources (Lockout/Tagout); Final Rule; corrections and technical amendments, 55 FR 38677, 9/20/90; 29 CFR 1910.251–257 Safety and Health Standards: Welding, Cutting and Brazing; Final Rule, 55 FR 13696, 4/11/90; 29 CFR 1910.26, .67, .68, .94, .103, .106, .110, .178, .179, .180, .181, .252, .261, .265, .266, .304, .331–335, .399 Electrical Safety-Related Work Practices; Final Rule, 55 FR 32014, 9/6/90; 29 CFR 1910.1450 Occupational Exposures to Hazardous Chemicals in Laboratories; Final Rule, 55 FR 3327, 1/31/90).

The above adoptions of Federal Standards have been incorporated in the State Plan and are contained in the Wyoming Occupational Health and Safety Rules and Regulations as required by Wyoming Statute 1977, Section 27–11–105(a)(viii).

State Standards for 29 CFR 1926.450, .452 Scaffolding; Final Rule were adopted by the Health and Safety Commission of Wyoming on February 22, 1991 (effective April 4, 1991); State Standards for 29 CFR 1926.500, .501 Floor and Wall Openings; Final Rule were adopted by the Health and Safety Commission of Wyoming on February 22, 1991 (effective April 4, 1991); State Standards for 29 CFR 1926.1050–1054, .1060 Stairways and Ladders were adopted by the Health and Safety Commission of Wyoming on February 22, 1991 (effective April 4, 1991); State Standards for 29 CFR 1926.700, .705 Concrete and Masonry Construction Safety Standards; Lift-Slab Construction Operation; Final Rule were adopted on February 22, 1991 (effective April 4, 1991); State Standards for 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response; Final Rule; Corrections were adopted on August 2, 1991 (effective 9/27/91); State Standards for 29 CFR 1928.110 Field Sanitation were adopted on February 22, 1991 (effective 4/4/91); State Standards for 29 CFR 1910.147 Control of Hazardous Energy Sources (Lockout/Tagout); Final Rule, corrections and technical amendments were adopted by the Health and Safety Commission of Wyoming on February 22, 1991 (effective 4/4/91); 29 CFR 1910.251–257 Safety and Health Standards: Welding, Cutting and Brazing; Final Rule were adopted by the Health and Safety Commission of Wyoming on February 22, 1991 (effective 4/4/91; State Standards for 29 CFR 1910.26, .67, .68, .94, .103, .106, .110, .178, .179, .180, .181, .252, .261, .265, .266, .304, .331–335, .399 Electrical Safety-Related Work Practices were adopted by the Health and Safety Commission of Wyoming on October 12, 1990 (effective 11/26/90); State Standards for 29 CFR 1910.1450 Occupational Exposures to Hazardous Chemicals in Laboratories were adopted by the Health and Safety Commission of Wyoming on June 15, 1990 (effective 7/5/90). Adoption of all these Standards was pursuant to Wyoming Statute 1977, Section 27–11–105.

Decision

The above State Standards have been reviewed and compared with the relevant Federal Standards, and OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are thus substantially identical. OSHA therefore approves these standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

Location of Supplement for Inspection and Copying

A copy of the Standards Supplements, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, room 1576 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Department of Employment, Division of Employment Affairs—OSHA, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective July 24, 1992.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Denver, Colorado this 1st day of July, 1992.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 92–17555 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–26–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1,

appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume II

Indiana, IN91-19 (July 24, 1992). p. 352a.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maryland:
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 17th day of July 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-17325 Filed 7-23-92; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

Assessment of Civil Penalties for Failure to File Timely Annual Return/Reports—Top Hat Plans and Pre-Grace Period Late Filers

The purpose of this notice is to provide further guidance on the Department of Labor's (PWBA) expanded program for assessing civil penalties, under section 502(c)(2) of the

Employee Retirement Income Security Act (ERISA), for failing to file timely annual return/reports (Form 5500 Series). The guidance provided in this notice describes the circumstance under which administrators of "top hat" pension plans and administrators who filed late annual return/reports prior to March 23, 1992, may take advantage of the Department's previously announced grace period for filing annual reports.

Background

On April 20, 1992, the Department published a notice in the **Federal Register** (57 FR 14436) announcing an expanded program for assessing civil penalties under ERISA section 502(c)(2), which may be up to $1,000 a day, against plan administrators who fail to file timely annual return/reports. In the same notice, the Department also announced that for a limited time period (March 23, 1992 until September 30, 1992) plan administrators who voluntarily file overdue annual reports in accordance with the conditions set forth in the notice will be assessed only $50 per day up to a maximum of $1,000 per filing.

Top Hat Pension Plans

Since the issuance of the April 20, 1992 notice, the Department has received a number of inquiries as to whether administrators of unfunded or insured pension plans maintained by an employer for a "select group of management or highly compensated employees" (commonly referred to as "top hat" plans) may file the statement described in 29 CFR 2520.104–23(b) rather than annual return/reports for 1988 and subsequent plan years for purposes of taking advantage of the reduced penalties for voluntary compliance during the Department's announced grace period.

Section 2520.104–23 relieves administrators of unfunded or insured top hat pension plans (described in paragraph (d) of that regulation) from the reporting and disclosure requirements of part 1 of title I of ERISA, including the requirement to file annual return/reports, if, among other things, the administrator of the plan files a statement with the Secretary of Labor that includes: the name and address of the employer; the employer identification number (EIN) assigned by the Internal Revenue Service; a declaration that the employer maintains a plan or plans primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and a statement of the number of such plans and the number of employees in each. This statement is required to be filed within 120 days after the plan becomes subject to part 1 of title I of ERISA. To the extent that a plan administrator fails to comply with any of the conditions for the prescribed alternative method of compliance, such as failing to file a timely statement, the administrator may not avail himself of the relief afforded by the alternative and, therefore, must comply with all applicable reporting and disclosure requirements under part 1 of title I of ERISA.

The Department has determined that it will not seek to enforce the compliance with annual reporting provisions of title I of ERISA by requiring administrators of top hat pension plans to file Form 5500 Series Annual Return/Reports for plan years 1988 and later, provided that:

1. The plan is an unfunded or insured top hat pension eligible for the alternative method of compliance described in § 2520.104–23;

2. The statement described in paragraph (b)(1) of § 2520.104–23 is filed with the Department on or before September 30, 1992; and

3. The statement is accompanied by the payment of a civil penalty in the amount of the lesser of: $50 per day for each day following the date on which an annual report was due (including any extensions) for such plan, or $1,000 per plan.

Administrators of top hat plans who have not filed timely statements in accordance with § 2520.104–23, but file such statements in accordance with the conditions set forth above shall be deemed to have elected compliance with the alternative method of compliance prescribed in § 2520.104–23 for the 1988 and all subsequent plan years with respect to such plans. Administrators of top hat plans who have not previously satisfied the conditions for the alternative method of compliance prescribed in § 2520.104–23 and who do not file statements in accordance with the conditions set forth above, are required to comply with all applicable reporting and disclosure requirements and may be assessed civil penalties under title I of ERISA for any failures or refusals to do so.

The Department notes that acceptance of the above described statements and penalty amounts is not a determination by the Department with respect to the status of the arrangement as a plan or particular type of plan (e.g., multiple employer welfare arrangement, "top hat" plan etc.) under title I of ERISA.

Pre-March 23, 1992 Late Filers

The Department also has received a number of inquiries concerning whether administrators who filed late annual return/reports prior to the March 23, 1992 commencement of the Department's announced grace period may avail themselves of the reduced penalties applicable to filings made during the grace period, rather than the higher penalties applicable to such filings.

The Department has decided to afford administrators who, prior to March 23, 1992, filed late annual return/reports for the 1988 and later plan years (i.e., reports filed after the due date of the return/report, including any extensions) the opportunity to take advantage of the reduced penalties applicable to late filings. In this regard, any administrator who filed a late 1988 or later plan year annual return/report prior to March 23, 1992 may avoid assessment of otherwise applicable civil penalties under ERISA section 502(c)(2) for such late filings if:

1. On or before September 30, 1992, a copy of each late filed annual return/report is sent to the Department; and

2. Each late annual/return report is accompanied by the payment of a civil penalty in the amount of the lesser of: $50 per day per annual return/report for each day the return/report was filed after the due date of the return/report, including any extensions, or $1,000 per annual return/report.

Copies of any annual return/reports sent to the Department must be a complete copy of the actual return/report filed with the Internal Revenue Service and must have an original signature.

The Department notes that the payment of the foregoing civil penalties only serves to avoid the assessment of otherwise applicable higher civil penalties for filing late annual return/reports. Payment of such penalties does not serve to reduce, abate, or otherwise mitigate civil penalties which may be or have been assessed for annual reports which are determined to be deficient.

Where to File

Copies of statements, annual return/reports and checks for the penalty amount, made payable to the U.S. Department of Labor, must be sent to: Pension and Welfare Benefits Administration P.O. Box 75212 Washington, DC 20013–5212

Waivers and Penalties

Payment of penalties in accordance with the foregoing will constitute a waiver of the right both to receive notice of assessment from the Department and

to contest the Department's assessment of the above described penalty amounts. Payment of the penalties described herein does not foreclose the imposition of penalties by the Internal Revenue Service for non-filed and late-filed annual return/reports.

Annual return/reports filed in accordance with the foregoing are subject to edit checks and reviews. Plan administrators will be given an opportunity to correct identified deficiencies in accordance with the procedures described at 29 CFR 2560.502c–2 and 2570.60 *et seq.* Uncorrected deficiencies may result in the assessment of additional penalties.

FOR FURTHER INFORMATION CONTACT: Janet Powell, Division of Reporting Compliance, Office of the Chief Accountant, (202) 523–8867 (not a toll-free number).

Signed at Washington, DC, this 20th day of July, 1992.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension, and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–17516 Filed 7–23–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Notice of Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will hold a meeting and hearing in New York City the evening of Wednesday, August 5 and Thursday August 6, 1992. For exact time and location of the meeting and hearing please contact the Commission two days prior to the event at 202–690–6462.

The purpose of the hearing is to enable invited participants to express their views on the conditions of America's urban families and inform the Commission about programs and approaches that work to strengthen families.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305–F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92–17496 Filed 7–23–92; 8:45 am]

BILLING CODE 4150–04–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: July 13, 1992.

The National Credit Union Administration has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133–0098
Form Number: None
Type of Review: Reinstatement of a previously approved collection for which approval has expired
Title: Accuracy of Advertising/Notice of Termination of Excess Share Insurance
Description: Federally insured credit union which offer or provide excess share insurance coverage must advertise the fact and if the nonfederal excess share insurance is terminated, members must be notified
Respondents: Federally credit unions
Estimated Number of Respondents: 1,515
Estimated Burden Hours per Response: .51 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 780

OMB Number: 3133–0099
Form Number: None
Type of Review: Reinstatement of a previously approved collection for which approval has expired
Title: Notice of Voluntary Termination or Conversion of Insured Status
Description: This information is needed to notify credit union members that their accounts are no longer federally insured and to provide information to the members of the replacement share insurer
Respondents: Federally insured credit unions
Estimated Number of Respondents: 15
Estimated Burden Hours per Response: .25 hours
Frequency of Response: One time
Estimated Total Reporting Burden: 3,750

OMB Number: 3133–0116
Form Number: NCUA 9600, NCUA 4401, NCUA 4221, NCUA 4505, and NCUA 4506
Type of Review: Reinstatement of a previously approved collection for which approval has expired
Title: Conversion from Federal to State Credit Union and from State to Federal Credit Union/Insurance of Member Accounts—Eligibility
Description: Application for approval of credit union conversion from federal to state charter and from state to federal charter. In addition, forms in this package contain application and approval for federal insurance of member accounts in credit unions
Respondents: Federally insured credit unions
Estimated Number of Respondents: 50
Estimated Burden Hours per Response: 4 hours
Frequency of Response: One time
Estimated Total Reporting Burden: 200

OMB Number: None
Form Number: None
Type of Review: New Collection
Title: Corporate Credit Union Regulation, parts 704 and 741
Description: There are 44 corporate credit unions. This regulation requires additional information and a maintenance of documentation for federally insured corporate credit unions.
Respondents: Federally insured corporate credit unions
Estimated Number of Respondents: 44
Estimated Burden Hours per Response: 96 hours
Frequency of Response: Record keeping
Estimated Total Reporting Burden: 4,224

OMB Number: None
Form Number: None
Type of Review: New Collection
Title: Written Reimbursement Policy, Board of Directors' Vote, Annual Meeting Disclosure
Description: These sections are necessary to ensure reimbursements are made within the bounds of safety and soundness after careful consideration by the board of directors acting within self-imposed guidelines. The written requirements will aid efficient examinations and NCUA monitoring
Respondents: Federal credit union boards
Estimated Number of Respondents: 8,229
Estimated Burden Hours per Response: 4.5 hours
Frequency of Response: Annual record keeping
Estimated Total Reporting Burden: 37,030

Clearance Officer: Wilmer A. Theard, (202) 682–9700, National Credit Union Administration, Room 7344, 1776 G Street, NW., Washington, DC 20456.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker

Secretary of the NCUA Board.

[FR Doc. 92–17456 Filed 7–23–92; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 24, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 94 Locals Program Application Guidelines.

Frequency of Collection: One-time.

Respondents: State or local governments, non-profit organizations.

Use: Guideline instructions and applications elicit relevant information from local and state arts agencies, statewide assemblies of local arts agencies, national service organizations, and educational institutions that apply for funding under specific Locals Program categories. Information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 325.

Average Burden Hours per Response: 14.

Total Estimated Burden: 4,600.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92–17470 Filed 7–23–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collections that will affect the public. Interested persons are invited to submit comments by August 7, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Antarctic Questionnaire.

Affected Public: Individuals.

Respondents/Reporting Burden: 1000 respondents; 6 minutes per response.

Abstract: The National Science Foundation has funded a research project for which the investigator needs to interview individuals who have been to the Antarctic regarding their experiences there. This questionnaire will allow volunteers to be identified for an interview, while protecting the privacy of those who do not wish to participate.

Dated: July 21, 1992.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 92–17535 Filed 7–23–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Control and Electrical Power Systems; Meeting

The ACRS Subcommittee on Control and Electrical Power Systems will hold a meeting on August 4, 1992, in room P–110, 7929 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 4, 1992—1 p.m. until 4 p.m.

The Subcommittee will review the proposed Supplement 1 to Generic Letter 83–28, "Required Actions Based on Generic Implications of Salem ATWS Events," and an associated Differing Professional Opinion filed by Charles Morris, NRC Office of Nuclear Reactor Regulation (NRR).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted

therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised for any changes in schedule, etc., that may have occurred.

Dated: July 17, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–17521 Filed 7–23–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Decay Heat Removal Systems and Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittees on Decay Heat Removal Systems and Advanced Boiling Water Reactors will hold a joint meeting on August 5, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The meeting will be open to public attendance, with the exception of a portion that may be closed as necessary to discuss material deemed proprietary by General Electric Nuclear Energy.

The agenda for the subject meeting shall be as follows:

Wednesday, August 5, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittees will discuss Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) for selected systems related to General Electric Advanced Boiling Water Reactor (ABWR).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, General Electric Nuclear Energy, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepared telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (E.S.T.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 17, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–17522 Filed 7–23–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published June 22, 1992 (57 FR 27802). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1992 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., eastern time.

ACRS Subcommittee Meetings

Improved Light Water Reactors, July 27, 1992, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report related to the Electric Power Research Institute's (EPRI's) requirements document for the evolutionary light water reactors.

Control and Electrical Power Systems, August 4, 1992 (1 p.m.—4 p.m.), Bethesda, MD. The Subcommittee will review the proposed Supplement 1 to Generic Letter 83–28, "Required Actions Based on Generic Implications of Salem ATWS Events," and an associated Differing Professional Opinion filed by Charles Morris, NRC Office of Nuclear Reactor Regulation (NRR).

Joint Decay Heat Removal Systems/ Advanced Boiling Water Reactors, August 5, 1992, Bethesda, MD. The Subcommittees will discuss Inspections, Tests, Analysis, and Acceptance Criteria (ITAAC) for selected systems related to General Electric Company (GE) Advanced Boiling Water Reactor (ABWR) plant.

Planning and Procedures, August 5, 1992, Bethesda, MD (3 p.m.—5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Joint Plant Licensing Renewal/ Reliability and Quality, August 18, 1992 (1 p.m.—5 p.m.), Bethesda, MD. The Subcommittees will review the proposed Branch Technical Position on Equipment Qualification for Plant License Renewal.

Thermal Hydraulic Phenomena, August 18, 1992, Bethesda, MD. The Subcommittee will review the GE Nuclear Energy's generic program supporting power uprates for boiling water reactor plants and the NRC staff's Safety Evaluation Report that supports the power uprate for the Fermi Nuclear Power Plant, Unit 2.

Ad Hoc Subcommittee on Separate and Independent Requirements, August 19, 1992, Bethesda, MD—Cancelled.

Advanced Boiling Water Reactors, August 19, 1992, Bethesda, MD. The Subcommittee will discuss GE's and the NRC staff's responses to the issues included in the April 13, 1992 letter to the NRC Executive Director for Operations (EDO) regarding the Draft Safety Evaluation Reports for the GE Advanced Boiling Water Reactor design.

Computers in Nuclear Power Plant Operations, August 20–21, 1992, Bethesda, MD. The Subcommittee will continue its review of hardware and software issues for digital Instrumentation and Control (I&C) systems. National experts will discuss software design concepts including safety, reliability, fault-tolerance, formal methods, and verification and validation.

Joint Thermal Hydraulic Phenomena/ Core Performance, September 9, 1992, Bethesda, MD. The Subcommittees will continue the review of the issues pertaining to BWR core power stability.

Planning and Procedures, September 9, 1992, Bethesda, MD (1 p.m.— 4 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Computers in Nuclear Power Plant Operations, September 22, 1992, Bethesda, MD. The Subcommittee will host a special international meeting to hear directly from manufacturers in Germany, France, Japan, U.K., Sweden, and Canada about advanced developments in digital I&C systems.

Advanced Boiling Water Reactors, September 23–24, 1992, Bethesda, MD. The Subcommittee will begin its review of the Final Safety Evaluation Report (FSER) for the GE ABWR design, certain other GE and staff licensing documents, and the remainder of the Standard Safety Analysis Report (SSAR) submittals.

Advanced Pressurized Water Reactors, October 7, 1992, Bethesda, MD. The Subcommittee will continue its review of the ABB CE System 80+ Design Certification. Topics being proposed for discussion include: Engineered Safety Feature Systems; and incorporation of the requirements resulting from the resolution of USIs and GSIs into the System 80+ design.

Advanced Boiling Water Reactors, October 21–22, 1992, Bethesda, MD. The Subcommittee will continue its review of the Final Safety Evaluation Report (FSER) for the GE ABWR design and the remainder of the SSAR submittals.

Advanced Boiling Water Reactors, November 18, 1992, Bethesda, MD. The Subcommittee will review Supplement 1 to the Final Safety Evaluation Report (FSER) for the ABWR design and any residual issues.

ACRS Full Committee Meetings

388th ACRS Meeting, August 6–8, 1992, Bethesda, MD. Items are tentatively scheduled.

A *Supplement to Generic Letter 83–28, Required Actions Based on Generic Applications of Salem ATWS Events*—Briefing by and discussion with representatives of the NRC staff regarding this proposed supplement to Generic Letter 83–28 and a differing professional opinion regarding this matter.

B. *Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)*—Review and report on selected ITAACs submitted for design certification of the GE Advanced Boiling Water Reactor. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

C. *Elimination of Requirements Marginal to Safety*—Review and report on NRC plans to eliminate or modify regulatory requirements that have marginal importance to safety including matters related to items such as the main steam isolation valve leakage control system, combustible gas control systems, containment leak rate testing, and ECCS analytical models. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

D. *Environmental Qualification of Safety-Grade Digital Computer Protection and Control Systems*—Breifing by and discussion with representatives of the NRC staff on the NRC-sponsored research effort regarding environmental qualification of safety-grade digital computer protection and control systems. Representatives of the nuclear industry will participate, as appropriate.

E. *Primary System Integrity*—Briefing by and discussion with representatives of the NRC staff regarding reactor pressure vessel upper head cracks observed in various European nuclear plants. Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

F. *Pilot Simulator Examination Program*—Briefing by and discussion with representatives of the NRC staff regarding results of a pilot program to evaluation of simulators at nuclear plants used for operator training and/or qualification.

G. *Pilgrim Nuclear Plant, Demonstration of Emergency Plan*—Briefing by and discussion with representatives of the NRC staff regarding the results of the emergency plan demonstration at this plant. Representatives of the applicant and other government agencies will participate, as appropriate.

H. *Meeting with Director, NRC Office of Nuclear Reactor Regulation*—Meeting with Director, NRR, to discuss items of mutual interest, including the status of the GE ABWR design certification review, status of the Regulatory Impact Survey (RIS) implementation and related regulatory matters.

I. *Common-Mode Failures*—Briefing regarding insights gained from analysis of selected common-mode failure events that have occurred at nuclear power plants.

J. *NRC Participation in World Use of the International Nuclear Event Scale*—Briefing by the NRC staff on its proposed use of the International Nuclear Event Scale.

K. *Revision 3 to Regulatory Guide 1.101*—Briefing by and discussion with representatives of the NRC staff regarding Revision 3 to Regulatory Guide 1.101, "Emergency Planning and Preparedness for Nuclear Reactors."

L. *EPRI Requirements for Evolutionary Plants*—Review and report on proposed EPRI requirements for evolutionary light-water reactors and the associated NRC staff's Safety Evaluation Report. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

M. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee.

N. *Resolution of ACRS Comments/ Recommendations*—Discuss NRC Executive Director for Operation's (EDO's) proposed resolution of ACRS comments and recommendations.

*O. *Appointment of ACRS Members*—Discuss qualifications of candidates nominated for appointment to the ACRS and the current status of appointment/ reappointment. Portions will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

P. *Subcommittee Activities*—Reports on and discussion of assigned subcommittee activities including those related to conduct of ACRS activities and use of computers in nuclear power plants.

Q. *Miscellaneous*—Complete discussion matters which were not completed at previous meetings include topics such as, the NRC Severe Accident

Research Program Plan; Generic Safety Issue 106, Piping and the Use of Highly Combustible Gases in Vital Areas; Issues Pertaining to Evolutionary and Passive Light Water Reactors and their Relationship to Current Regulatory Requirements; and proposed ACRS plan for reviewing the application for certification of the GE ABWR Design.

389th ACRS Meeting, September 10–12, 1992, Bethesda, MD. Agenda to be announced.

390th ACRS Meeting, October 8–10, 1992, Bethesda, MD. Agenda to be announced.

391st ACRS Meeting, November 5–7, 1992, Bethesda, MD. Agenda to be announced.

392nd ACRS Meeting, December 10–12, 1992, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

45th ACNW Meeting, July 29–30, 1992, Bethesda, MD—Agenda to be announced.

A. Meet with representatives of the U.K. Radioactive Waste Management Advisory Committee to discuss items of mutual interest. This session will be closed to protect information provided in confidence by a foreign source.

B. Review and comment on an NRC staff technical position on repository design for thermal loads.

C. Discuss a supplemental request for additional information on a systems analysis approach to reviewing the overall high-level waste program.

D. Discuss with a representative of the Institute of Scrap Recycling Industries regarding radioactive contamination found in metal scrap, recent actions, and recommendations.

E. Continue preparation of a report on the pace of progress in site characterization activities associated with the proposed high-level waste repository.

F. Hear a briefing by the NRC staff on the recent Supreme Court decision regarding the Low-Level Washie Policy Amendments Act.

G. Hear a report on the activities of the NRC's Federal Liaison.

H. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

46th ACNW Meeting, August 13–14, 1992, Bethesda, MD—Deferred until September 23–25, 1992.

ACNW Working Group on Performance Assessment, September 23, 1992, Bethesda, MD—Deferred until December 16, 1992.

46th ACNW Meeting, September 23–25, 1992, Bethesda, MD—Agenda to be announced.

ACNW Working Group on Inadvertent Human Intrusion Related to the Presence of Natural Resources at a High-Level Waste Repository Site, October 20, 1992, Las Vegas, NV. The Working Group will discuss methodologies for the assessment of the potential for natural resources at the proposed high-level waste repository site at Yucca Mountain. The relationship between such resources and the potential for human intrusion will be emphasized.

47th ACNW Meeting, October 21, 1992, Las Vegas, NV—Agenda to be announced.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range, November 18, 1992, Bethesda, MD. The Working Group will discuss the historical evidence and the potential for climate changes in the Southern Basin and Range and the impact of climate change on natural processes affecting the performance of the proposed high-level waste repository at Yucca Mountain.

48th ACNW Meeting, November 19–20, 1992, Bethesda, MD—Agenda to be announced.

ACNW Working Group on Performance Assessment, December 16, 1992, Bethesda, MD. The Working Group will discuss the status of the DOE's Total System Performance Assessment. Also, this Group will discuss the progress of Phase 2 of the HLW Iterative Performance Assessment effort by NRC.

49th ACNW Meeting, December 17–18, 1992, Bethesda, MD—Agenda to be announced.

Dated: July 20, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–17520 Filed 7–23–92; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–530]

Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Unit No. 3); Exemption

I

Arizona Public Service Company (APS), *et al.* (the licensee) is the holder of Facility Operating License No. NPF–74, which authorizes operation of Palo Verde Nuclear Generating Station (PVNGS), Unit 3. The facility consists of a pressurized water reactor (PWR) at the licensees' site located in Maricopa County, Arizona. This license provides, among other things, that the licensee is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II

Section 50.46 of title 10 of the Code of Federal Regulations (10 CFR 50.46) contains acceptance criteria for emergency core cooling systems (ECCS) for light water nuclear power reactors fueled with uranium oxide pellets within cylindrical zircaloy cladding. Further, 10 CFR 50.46 states that ECCS cooling performance following postulated loss-of-coolant accidents must be calculated in accordance with an acceptable evaluation model. Appendix K to 10 CFR part 50 contains the required and acceptable features for ECCS evaluation models. Finally, 10 CFR 50.44 contains requirements for the control of hydrogen gas that may be generated after a postulated loss-of-coolant accident in light water power reactors fueled with uranium oxide pellets within cylindrical zircaloy cladding.

III

By letter dated December 20, 1991, APS submitted an amendment request for PVNGS Unit 3 to allow the substitution of up to a total of 80 fuel rods clad with advanced zirconium-based alloys, other than the conventional Zircaloy-4, in two fuel assemblies. These assemblies would be used for evaluation of in-reactor performance during fuel cycles 4, 5, and 6.

By letter dated December 20, 1991, APS also submitted an exemption request to 10 CFR 50.46, 10 CFR part 50, appendix K, and 10 CFR 50.44. These regulations refer to the use of zircaloy, but do not clearly specify what is considered zircaloy. Therefore, the use of advanced zirconium-based alloys, rather than conventional Zircaloy-4, may not be within the regulatory basis.

Pursuant to 10 CFR 50.12(a), "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—* * * (ii) Application of the

regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *".

The Code of Federal Regulations at 10 CFR 50.46 states: "Each boiling and pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical Zircaloy cladding must be provided with an emergency core cooling system (ECCS) that must be designed such that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated." The Code of Federal Regulations at 10 CFR 50.46 then goes on to give specifications for peak cladding temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry, and long term cooling. Since 10 CFR 50.46 specifically refers to fuel with Zircaloy cladding, the use of fuel clad with advanced zirconium-based alloys would, in effect, place the licensee outside the applicability of this section of the Code.

The underlying purpose of the rule is to ensure that facilities have adequate acceptance criteria for ECCS. The fuel rods clad with the advanced zirconium-based alloys will be identical in design and dimension to the fuel rods clad with conventional Zircaloy-4. The advanced cladding materials used in the demonstration fuel assemblies were chosen based on the improved corrosion resistance exhibited in ex-reactor autoclave corrosion tests in both high-temperature water and steam environments. Fuel rods clad with similar types of advanced zirconium-based alloys have been successfully irradiated in high-temperature PWRs in Europe.

The mechanical properties of the clad made from the advances zirconium-based alloys meet all the mechanical requirements of the conventional Zircaloy-4 procurement specifications. Thus, the cladding and structural integrity of the fuel rods and fuel assemblies that have the advanced zirconium-based alloys will be maintained.

Therefore, due to these similarities between advanced zirconium-based alloys and Zircaloy-4, the advanced alloys are expected to result in clad and fuel performance similar to Zircaloy-4, such that 10 CFR 50.46 LOCA acceptance criteria will be satisfied for the advanced zirconium-based cladding. Thus, the underlying purpose of the rule has been met.

Strict interpretation of the regulation would render the criteria of 10 CFR 50.46 inapplicable to the advanced zirconium-based alloys, even through analysis shows that applying the Zircaloy criteria to the advanced zirconium-based alloys yields acceptable results.

A strict application of the regulation in this instance is not necessary to achieve the underlying purpose of the rule. Therefore, special circumstances exist to grant an exemption from 10 CFR 50.46(a)(1)(i) that would allow the licensee to apply the acceptance criteria of 10 CFR 50.46 to a reactor with 80 fuel rods clad with advanced zirconium-based alloys.

The Code of Federal Regulations at 10 CFR 50.44 provides requirements for control of hydrogen gas generated in part by Zircaloy clad fuel after a postulated loss-of-coolant-accident (LOCA). The intent of this rule is to ensure that an adequate means is provided for the control of hydrogen gas that may be generated following a LOCA.

The hydrogen produced in a post-LOCA scenario comes from cladding oxidation from a metal-water reaction. Most of the high temperature oxidation occurs in the β-phase since the diffusion coefficient for oxygen in β-phase of zirconium is significantly greater than that in α-phase zirconium.

The β-phase oxidation resistance of the alloys is expected to be as good as or better than that of Zircaloy-4. It is expected that the alloying element levels adjusted to improve the corrosion resistance of the α-phase of these alloys with respect to the α-phase of Zircaloy-4 will result in an improvement of the corrosion resistance of the β-phase of these alloys as well. It is therefore concluded that the β-phase oxidation rate of the alloys will be comparable to or lower than that of Zircaloy-4 and that the Baker-Just correlation will overpredict the β-phase oxidation of the alloys. A strict interpretation of the rule in this instance would result in the criteria of 10 CFR 50.44 being inapplicable to advanced zirconium-based alloys. Since application of the regulation is not necessary to achieve the underlying purpose of the rule, special circumstances exist to grant an exemption from 10 CFR 50.44 to a reactor containing 80 fuel rods clad with advanced zirconium-based alloys.

Paragraph I.A.5 of appendix K to 10 CFR part 50 states that the rates of energy release, hydrogen generation, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. However, since the Baker-Just equation presumes the use of Zircaloy clad fuel, strict application of the rule would not permit use of the equation. The intent of this part of the appendix, however, is to apply an equation that conservatively bounds all post-LOCA scenarios. Due to the similarities in the composition of the advanced zirconium-based alloys and Zircaloy, the application of the Baker-Just equation in the analysis of advanced zirconium-based clad fuel will conservatively bound all post-LOCA scenarios. Since the use of Baker-Just equation presupposes Zircaloy cladding and post-LOCA scenarios are conservatively bounded, the underlying purpose of the rule will be met. Thus, special circumstances exist to grant an exemption from Paragraph I.A.5 of appendix K to 10 CFR part 50 that would allow the licensee to apply the Baker-Just equation to advanced zirconium-based alloys.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a)(1), that an exemption as described in section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has determined, pursuant to 10 CFR 50.12(a)(2)(ii) that special circumstances exist, as noted in section III above. Therefore, the Commission hereby grants Arizona Public Service Company, *et al.* an exemption from 10 CFR 50.46, 10 CFR part 50, appendix K, and 10 CFR 50.44.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (57 FR 24511).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 17th day of July, 1992.

For The Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-17503 Filed 7-23-92; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability, Lakewood Village, TX

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Lakewood Village, located in the City of Lakewood Village, Denton County, Texas, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 22, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Steven W. Reid, Resolution Trust Corporation, Dallas Field Office, 3500 Maple Avenue, Reverchon Plaza, suite 210, Dallas, TX 75219–3935, (214) 443–4738, Fax (214) 443–4825.

SUPPLEMENTARY INFORMATION: The Lakewood Village property is located at the southwest corner of Highdridge Drive and Green Meadows Drive, in the City of Lakewood Village, Denton County, Texas. The east side of the property fronts Old Highway 24. The property has recreational value and consists of approximately 226 acres of undeveloped land. The site is contiguous with Lake Lewisville which is managed by the U.S. Army Corps of Engineers for recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of two tracts caused by the intervention of a cove from Lake Lewisville with approximately 3.1 miles of lake frontage. The topography is gently rolling. Some areas of the site are heavily treed and a portion of the site has been cleared but is overgrown.

Property size: Approximately 226 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 22, 1992, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 22, 1992 to Mr. Steven W. Reid at the above **ADDRESSES** and in the following form.

Notice of Serious Interest
RE: Lakewood Village
Federal Register Publication Date:

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, P.L. 101–591, Section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 20, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–17507 Filed 7–23–92; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Horse Hollow Cave, KY

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Horse Hollow Cave, located in Parmleysville, Wayne County, Kentucky, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 22, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Steven W. Reid, Resolution Trust Corporation, Dallas Field Office, 3500 Maple Avenue, Reverchon Plaza, suite 210, Dallas, TX 75219–3935, (214) 443–4738, FAX (214) 443–4825.

SUPPLEMENTARY INFORMATION: The Horse Hollow Cave property is located northwest of Mt. Pisgah-Parmleysville Road, Wayne County, Kentucky. The property consists of approximately 1,562.42 acres and contains several streams draining into the Little South Fork Cumberland River through Horse Hollow Creek. The federally endangered Cumberland bean pearly mussel is known to occur in the nearly Little South Fork Cumberland River. The property is adjacent to the Daniel Boone National Forest which is on the other side of Mt. Pisgah-Parmleysville Road. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property is irregular in shape with mountainous terrain and heavily forested. Horse Hollow Cave lies within the boundaries of the property and the cave is known to harbor Rafinesque's Big-eared bat, a threatened species in the State of Kentucky. The property contains several streams draining into the Little South Fork Cumberland River where the federally endangered Cumberland bean pearly mussel can be found along with several other aquatic species considered threatened in Kentucky by the Kentucky State Nature Preserves Commission.

Property size: Approximately 1,562.42 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 22, 1992, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 22, 1992 to Mr. Steven W. Reid at the above ADDRESSES and in the following form:

Notice of Serious Interest
RE: Horse Hollow Cave
Federal Register Publication Date:

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, P.L. 101–591, Section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 20, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-17508 Filed 7-23-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-18854; International Series Release No. 424; (812-7797)]

Barclays Bank PLC; Notice of Application

July 17, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Barclays Bank PLC ("Barclays").

RELEVANT 1940 ACT SECTION: Exemption requested under Section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: Barclays seeks an order to permit the maintenance of foreign securities and other assets of registered investment companies other than investment companies registered under section 7(d) (an "Investment Company") with Merck Finck & Co. ("Merck Finck"), a general partnership, of which Barclays is a general partner.

FILING DATE: The application was filed on September 27, 1991 and amended on March 10, 1992, May 20, 1992, and June 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 11, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o James E. Odell, Esq., Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, (202) 504-2259, or Barry D. Miller, Senior Special Counsel, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations and Legal Analysis

1. Barclays seeks an order to exempt it, any Investment Company, and Merck Finck from section 17(f) of the 1940 Act so as to permit Barclays, as the custodian or subcustodian of an Investment Company's foreign securities (as defined in rule 17f-5 under the 1940 Act), cash and cash equivalents in amounts reasonably necessary to effect such company's foreign securities transactions (collectively, "Assets"), to maintain an Investment Company's Assets in the custody of Merck Finck as a foreign subcustodian.

2. Rule 17f-5 under the 1940 Act provides that any registered management investment company may place and maintain in the care of an eligible foreign custodian the company's foreign securities, cash, and cash equivalents in amounts reasonably necessary to affect the company's foreign securities transactions. Rule 17f-5(c)(2)(i) defines the term "eligible foreign custodian" to include a banking institution or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of U.S. $200,000,000.

3. Merck Finck is a general partnership and is a bank organized and regulated under the laws of Germany. Barclays is a general partner of Merck Finck and has contributed all of Merck Finck's capital. As of December 31, 1990, Merck Finck had assets in excess of U.S. $1.85 billion and partners' equity of approximately U.S. $111 million. Merck Finck satisfies the requirements of rule 17f-5(c)(2)(i) insofar as it is a banking institution organized under the laws of a country other than the United States and is regulated as such by such country's government or an agency thereof. Merck Finck, however, does not satisfy the rule's $200 million shareholders' equity requirement because its partners' equity is only equal to approximately U.S. $111 million. In addition, applicant is concerned that Merck Finck, as a partnership, has no "shareholders" and thus may not be able to meet the shareholders' equity requirement of the rule.

4. Barclays is a company organized and existing under the laws of the United Kingdom. In the United Kingdom, Barclays is authorized and regulated by the Bank of England, and in the United States, Barclays is regulated as a bank holding company and is subject to the United States International Banking Act of 1978. Barclays' New York branch is licensed by the Superintendent of Banks of the State of New York and is qualified to do business in accordance with the provisions of Article V of the Banking Law of the State of New York. At December 31, 1990, Barclays had shareholders' equity of approximately six billion pounds sterling.

5. Merck Finck is experienced, capable, and well-qualified to provide custody services to investment companies, and under the foreign custody arrangements proposed, the protection of investors would not be diminished.

Applicant's Conditions

Barclays agrees that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed with respect to Merck Finck will satisfy the requirements of rule 17f-5 in all respects other than with regard to the minimum shareholders' equity requirement for an eligible foreign custodian.

2. Barclays currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f-5(c)(2)(i).

3. Barclays will deposit securities in Germany with Merck Finck only in accord with a three-party contractual agreement, which will remain in effect at all times during which Merck Finck fails to meet the requirement of rule 17f-5 relating to minimum shareholders' equity, among (a) the Investment Company or a custodian of the securities of the Investment Company for which Barclays acts as subcustodian, (b) Barclays and (c) Merck Finck. Pursuant to the terms of this agreement, Barclays will provide specified custodial or sub-custodial services for the Investment Company or the custodian, as the case may be, and will delegate to Merck Finck such of its duties and

obligations as will be necessary to permit Merck Finck to hold the securities in custody in Germany. The agreement will further provide that Barclays will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Merck Finck of its responsibilities under the agreement to the same extent as if Barclays had been required to provide custody services under such agreement.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17488 Filed 7-23-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18850; 811-4544]

Merrill Lynch Retirement/Income Fund, Inc.; Notice of Application

July 15, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Merrill Lynch Retirement/Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seek an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 29, 1992 and amended on July 7, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, NJ 08536.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Maryland corporation. Applicant registered under the Act on January 2, 1986, and filed a registration statement under the Securities Act of 1933 on January 3, 1986. The registration statement became effective and applicant commenced its initial public offering on February 18, 1986.

2. On July 12, 1991, applicant's board of directors approved a reorganization plan (the "Plan") between applicant and Merrill Lynch Federal Securities Trust ("FST") whereby FST would acquire substantially all of applicant's assets and assume all of applicant's liabilities in exchange for shares of FST. Proxy materials soliciting shareholder approval of the Plan were filed with the SEC on August 6, 1991, and mailed on September 17, 1991 to all shareholders of record as of September 6, 1991. The Plan was approved, in accordance with Maryland law, by applicant's shareholders at a meeting held on December 20, 1991.

3. As described in the proxy statement and prospectus incorporated into the application by reference, prior to the reorganization, applicant's shares were sold subject to a contingent deferred sales charge, and shares of FST were sold subject to a front-end sales charge. As part of the reorganization, FST implemented a dual distribution scheme and created a second class of shares ("Class B" shares) with a sales charge and fee structure identical to that of applicant.[1] Existing FST shares were designated Class A.

4. On December 20, 1991, applicant transferred assets having an aggregate value of $1,798,396,597.32 to FST and received in exchange 181,334,377.622 Class B shares of FST. The exchange was made at net asset value. The shares of FST received in exchange for applicant's assets were then distributed to applicant's shareholders *pro rata* in accordance with their respective interests in applicant.

5. Prior to the reorganization date, applicant incurred $252,779 in reorganization expenses for preparation of materials for applicant's board of directors, preparation of proxy materials, and legal and audit fees. Applicant paid $55,559, and FST paid $68,837, of expenses arising from the reorganization transaction. Applicant also retained $15,000 for expenses to be incurred in connection with its deregistration and dissolution.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17486 Filed 7-23-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The dual distribution system was implemented pursuant to an exemptive order of the Commission. Investment Company Act Release Nos. 16503 (July 28, 1988) (notice), and 16534 (Aug. 23, 1988) (order).

[Release No. 35-25585]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 17, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 10, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/

or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–7950)

New England Electric System ("NEES") a registered holding company, and its service company subsidiary, New England Power Service Company ("NEPSCO"), both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration, as amended, under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 87, 90 and 91 thereunder.

NEES proposes to provide financing for a new nonutility subsidiary company, New England Electric Resources, Inc. ("NEERI"). NEES proposes to provide initial financing by: (i) the purchase of 1,000 shares of NEERI's common stock, par value $1 per share, for a total purchase price of $1,000; (ii) making capital contributions up to an additional $999,000 ("Capital Contributions"); and/or (iii) making loans to NEERI in the amounts not to exceed $999,000 ("Loans"), which Loans to be evidenced by subordinated notes payable in twenty years or less from the date of issue without interest (Capital Contributions and Loans, Collectively, "Other Financing"). The aggregate amount of all investments, including the purchase of common stock, by NEES in NEERI shall not exceed $1 million.

NEERI proposes to engage in the business of providing consulting services to nonaffiliates for profit. The consulting services will include:

(1) Providing studies and reports on electrical issues;

(2) Meeting with technical staff on electrical issues and assessing strengths, weaknesses, and potential solutions;

(3) Conducting seminars;

(4) Developing and proposing programs for implementation by the customer;

(5) Making regulatory assessments; and

(6) Other similar consulting services.,

Initially NEERI will be staffed with a small group of NEES system employees and recently retired executives. Retirees would be hired as independent contractors by NEERI as needed. As significant business is developed, additional employees will be staffed, the first preference being other current employees of NEPSCO. While these employees are assigned to NEERI on a limited term, they would continue to be employees of that system company and their pay (including benefits) would be reimbursed by NEERI. The applicants state that the consulting business is functionally related to the electric utility business because:

(1) Employees who temporarily do not have a full workload can be efficiently and beneficially utilized;

(2) The consulting business is a natural outgrowth of current activities; and

(3) Utility personnel would broaden and sharpen their skills for the benefit of the electric companies.

The application-declaration states that NEES, acting through NEPSCO, has pursued two international consulting opportunities for the benefit of NEERI, and that, promptly after receipt of the authorization requested herein, NEPSCO will make a general assignment of such agreements to NEERI. NEPSCO states that it will not enter into any additional contracts or letters of intent on behalf of itself or NEERI with respect to consulting services without obtaining the Commission approval. In addition, NEPSCO will provide accounting, office space and financial services to NEERI at its cost.

The applicants therefore request authority through December 31, 1997:

(1) For NEERI to issue and sell, and for NEES to acquire, 1,000 shares of common stock of NEERI;

(2) For NEES to provide Other Financing for NEERI;

(3) For NEERI to engage in the business of providing consulting services on electric utility matters to non-affiliates; and

(4) For NEPSCO to provide certain services to NEERI at cost.

Ohio Power Company (70–7965)

Ohio Power Company ("OPC"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, a public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed an application under section 9(c)(3) of the Act.

OPC proposes to make an interest free loan ("Loan") to The Seneca Industrial and Economic Development Corp., a non-profit corporation organized under the laws of the State of Ohio ("SIEDC") for the purpose of promoting industrial and commercial retention and growth within Seneca County, Ohio.

SIEDC plans to construct a 30,000 square foot speculative industrial building at a cost estimated to be less than $200,000. The site of the construction is within OPC's service territory. Construction is estimated to take two to three months and will be financed through a construction loan of up to $200,000 ("Construction Loan"). Upon completion of the construction, the Construction Loan will be converted to a permanent loan, which will be a three year term loan amortized over fifteen years with a balloon payment at the end of the third year.

Interest on the permanent loan will be at a variable rate based on the base rate as issued by National City Corporation of Cleveland, Ohio (currently 6.5%) for the first eighteen month period of the loan. During the remaining eighteen months of the loan, the interest rate will be a variable rate based on National City Bank's base rate plus two percent (currently 8.5%).

The Loan amount will equal the amount of the interest payments on the permanent term loan for up to three years or until the building is leased or sold, whichever is sooner. The estimated cost of the Loan by OPC is less than $50,000. OPC will have no obligation to pay any part of the Construction Loan or any principal on the permanent term loan. In return for the Interest Loan, OPC will receive from SIEDC an unsecured promissory note.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 92–17487 Filed 7–23–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 17, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48249

Date filed: July 15 1992.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1257 Dated July 7, 1992.
Expedited Within Europe Resos—R–1 To R–4
TC2 Reso/P 1258 dated July 7, 1992, Expedited within Europe Resos—R–5 To R–14
TC2 Reso/P 1259 dated July 7, 1992, Expedited within Europe Resos—R–15 To R–16
TC2 Reso/P 1260 dated July 7, 1992, Expedited Within Europe Resos—R–17 To R–20
TC2 Reso/P 1261 dated July 7, 1992, Expedited Within Europe Resos—R–21 To R–25
Proposed Effective Date: August 15/ September 1, 1992.

Docket Number: 48250
Date filed: July 15, 1992
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1428 dated June 12, 1992, North Atlantic-Africa Resolutions—R-1 To R-19
Proposed Effective Date: October 1, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 92-17504 Filed 7-23-92; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 17, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48245.
Date filed: July 13, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 10, 1992.
Description: Application of Baltia Air Lines, Inc. (Baltia), pursuant to section 401 of the Act and subpart Q of the regulations requests an extension of its Backup Route Authority as granted in Certificate 614, or, in the alternative, applies for a new or amended certificate of public convenience and necessity (Beyond Riga to Moscow). Baltia applies for an extension to Certificate 614 to March 17, 1993, one year from the date upon which TWA reportedly initiated service to Moscow.

Docket Number: 48247.
Date filed: July 14, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 11, 1992.
Description: Application of Tower Air, Inc., pursuant to section 401 of the Act, and subpart Q of the regulations, applies for a Certificate of Public Convenience and Necessity for authority to operate scheduled property and mail air service between points in the United States, on the one hand, and Taipei, Taiwan, R.O.C., on the other.

Docket Number: 48252.
Date filed: July 16, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 13, 1992.
Description: Application of Estrellas Del Air, S.A. De C.V., pursuant to section 402 of the Act and subpart Q of the regulations, request a foreign air carrier permit for authority to engage in charter foreign air transportation of property and mail between a point or points in Mexico and a point or points in the U.S.

Docket Number: 48254.
Date filed: July 17, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 14, 1992.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the regulations applies for renewal of segments 2, 3, and 4 of its certificate for Route 560, as issued by Order 92-5-20, May 8, 1992, authorizing scheduled foreign air transportation of persons, property, and mail between Dallas/Ft. Worth, on the one hand, and Cancun, Puerto Vallarta, and Guadalajara, Mexico, on the other.

Docket Number: 45723.
Date filed: July 13, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 10, 1992.
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V. pursuant to section 402 of the Act and subpart Q of the Regulations, applies for amendment of its foreign air carrier permit issued to it in Order 89-8-29, to the extent necessary to permit TAESA to engage in the scheduled air transportation of persons, property and mail between Ciudad Juarez, Mexico, on the one hand, and Chicago, Illinois, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 92-17505 Filed 7-23-92; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CCGD8-92-18]

Public Hearing Concerning Lower Mississippi River Waterways Analysis and Management Study (WAMS)

AGENCY: Coast Guard, DOT.
ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given of a public hearing to be held by the Commander, Eighth Coast Guard District, at New Orleans, Louisiana. The purpose of the hearing is to provide an opportunity to all interested persons to present data, views and comments orally or in writing concerning the Waterway Analysis and Management Study (WAMS) for the Lower Mississippi River.

DATE: The hearing will be held on August 11, 1992, commencing at 1 p.m., until all speakers in attendance have had the opportunity to comment.

ADDRESS: The hearing will be held at the U.S. Coast Guard Marine Safety Office, room 911, 1440 Canal St., New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: LTJG Rowlett, Contact Officer, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, Tel. (504) 589-6235.

SUPPLEMENTARY INFORMATION: The Coast Guard's Waterways Analysis and Management System (WAMS) is a framework for individually examining our navigable waterways. The goal of the program is to insure that the waterways are marked by an efficient aids to navigation system that promotes safe navigation and the efficient flow of commerce for all users.

A notice announcing the study and requesting comments was published in the Second, Fifth, Seventh and Eighth Coast Guard District Notice to Mariners, beginning last April. Comments were also solicited through articles in Work Boat Magazine and the Waterways Journal. Interested parties were originally given until May 22, 1992 to comment. The period was later extended to June 19, 1992 to insure that all concerned were permitted ample time to respond.

Any person who wishes may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, Tel. (504) 589-6235, any time prior to the hearing indicating the amount of time required. Depending on the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitation of time will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in lieu of or in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits

may be delivered at the hearing or mailed in advance to the Commander, Eighth Coast Guard District, at the above address.

Dated: July 6, 1992.

J. C. Card,

Rear Admiral, USCG, Commander, Eighth Coast Guard District.

[FR Doc. 92-17509 Filed 7-23-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement, Wood, Portage and Waupaca Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wood, Portage and Waupaca Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, District Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705, 608-264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve USH 10 in Wood, Portage and Waupaca Counties, Wisconsin. The proposed action would involve the reconstruction of existing USH 10. The project begins at STH 13 in Wood County and continues southeasterly through Portage County and ends at the intersection of STH 54/49 in Waupaca County. The project length is approximately 60 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) take no action; (2) widening the existing two-lane highway to four lanes; (3) construction of a two-lane highway on new location with provisions for future expansion to 4-lanes; (4) constructing a four-lane, limited access highway on new location including a new crossing of the Wisconsin River; and (5) combinations of alternatives 2, 3, and 4. Design variations of the grade and alignment will be incorporated and studied with the various build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held between July and October, 1992. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: July 14, 1992.

James R. Zavoral,

Acting District Engineer, Madison, Wisconsin.

[FR Doc. 92-17457 Filed 7-23-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 17, 1992.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0236
Form Number: IRS Form 11-C
Type of Review: Resubmission
Title: Stamp Tax and Registration Return for Wagering

Description: Form 11-C is used to register persons accepting wagers (IRC section 4412) IRS uses this form to register the respondent, collect the annual stamp tax (IRC section 4412) and to verify that the tax on wagers is reported on Form 730
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents/Recordkeepers: 11,500

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping	7 hrs., 10 min.
Learning about the law or the form.	28 min.
Preparing the form	1 hr., 32 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 108,560 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-17471 Filed 7-23-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 17, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0096
Form Number: IRS Forms 1042 and 1042S

Type of Review: Revision
Title: Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, Foreign Person's U.S. Source Income Subject to Withholding
Description: Used by withholding agents to report tax withheld at source on payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The Service uses this information to verify that the correct amount of tax has been withheld and paid to the U.S.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 22,000

Estimated Burden Hours Per Respondent/Recordkeeper

Forms	1042	1042S
Recordkeeping.	8 hours, 22 minutes.	4 hours, 47 minutes.
Learning about the law or the form.	4 hours, 31 minutes.	1 hour, 40 minutes.
Preparing the form.	6 hours, 40 minutes.	2 hours, 44 minutes.
Copying, assembling, and sending the form to the IRS.	32 minutes.....	16 minutes.

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 15,514,680 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-17472 Filed 7-23-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 17, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0046.
Form Number: ATF F 27-G (5520.3).
Type of Review: Extension.
Title: Applications—Volatile Fruit-Flavor Concentrate Plants.
Description: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 30 hours.

OMB Number: 1512-098.
Form Number: ATF F 5520.2 and ATF REC 5520/1.
Type of Review: Extension.
Title: Annual Report of Concentrate Manufacturers (ATF F 5520.2) Usual and Customary Business Records—Volatile Fruit Flavor Concentrate Plants (ATF REC 5520/1).
Description: Volatile Fruit Flavor Concentrate (VFFC) manufacturers are regulated because the products they produce contain ethyl alcohol which can be diverted to untaxpaid beverage use. Records required are usual and customary business records of receipt and transfer. The required annual report provides a basis for statistics concerning this industry. Records and the report are audited to protect the revenue.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 90.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 30 hours.

OMB Number: 1512-0292.
Form Number: ATF REC 5120/2.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Wine.
Description: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,650.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 825 hours.

OMB Number: 1512-0384.
Form Number: ATF REC 5020/2.
Type of Review: Extension.
Title: Airlines Withdrawing Stock From Customs Custody.
Description: Airlines may withdraw tax-exempt distilled spirits, wine and beer from Customs custody for foreign flights. Required record shows amount of spirits and wines withdrawn and flight identification; also has Customs certification. Enables ATF to verify that tax is not due; allows distilled spirits and wines to be traced and maintains accountability. Protects tax revenues.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 25.
Estimated Burden Hours Per Recordkeeper: 100 hours.
Frequency of Response: Other.
Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512-0392.
Form Number: ATF REC 5190/1.
Type of Review: Extension.
Title: Records of Things of Value to Retailers, and Occasional Letter Reports From Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.
Description: These records (bills of sale, invoices) and occasional letter reports are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers, and prohibits industry members from conducting certain types of sponsorships, advertisements, promotions, etc.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 12,665.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 51 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–17466 Filed 7–23–92; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0047.
Form Number: IRS Form 990 and Schedule A (Form 990).
Type of Review: Revision.
Title: Return of Organization Exempt From Income Tax Under section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or section 4947(a)(1) Charitable Trust (Form 990). Organization Exempt Under section 501(c)(3) (except private foundation), 501(e), 501(f), 501(k), or section 4947(a)(1) Charitable Trust, Supplementary Information (Schedule A (Form 990)).
Description: Form 990 is needed to determine that Internal Revenue Code (IRC) section 501(a) tax-exempt organizations fulfill the operating conditions of their exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.
Respondents: Non-profit institutions.
Estimated Number of Respondents/ Recordkeepers: 327,953.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 990	Schedule A
Recordkeeping	84 hrs., 54 min.	43 hrs., 32 min.
Learning about the law, or the form.	15 hrs., 30 min.	8 hrs., 56 min.
Preparing the form	20 hrs., 22 min.	10 hrs., 2 min.
Copying, assembling, and sending the form to the IRS.	48 min	0

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 47,795,514 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–17468 Filed 7–23–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 17, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0971.
Form Number: IRS Form 1041–ES.
Type of Review: Extension.
Title: Estimated Income Tax for Fiduciaries.
Description: Form 1041–ES is used by fiduciaries of estates and trusts to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimates tax has been properly computed and timely paid.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 300,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—20 minutes.
Learning about the law or the form—10 minutes.
Preparing the form—1 hour, 23 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 2,664,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92–17478 Filed 7–23–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirement Submitted to OMB for Review

Dated July 20, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0050.
Form Number: CF 3347 and CF 3347A.
Type of Review: Reinstatement.

Title: Declaration of Owner of Merchandise Obtained (Other than) in Pursuance of a Purchase or Agreement to Purchase (CF 3347) and Declaration of Importer of Record When Entry is Made by an Agent (CF 3347A).
Description: CF 3347 and CF 3347A allow an agent to submit, subsequent to making entry, the declaration of the importer of record which is required by statute. Also, CF 3347 and CF 3347A permit a nominal importer of record to file the declaration of the actual owner and be relieved of statutory liability for the payment of increased duties.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 950.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 435 hours.
OMB Number: 1515–0148.
Form Number: CF 331.
Type of Review: Extension.
Title: Manufacturing Drawback Entry and/or Certificates.
Description: The CF 331 serves as an entry, a certificate of manufacture and delivery (or combination), or a certificate of imported merchandise, necessary in the filing of a claim for a refund of duty and/or Internal Revenue tax paid.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 3,500.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 124,998 hours.
Clearance Officer: Ralph Meyer (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–17479 Filed 7–23–92; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 17, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0702.
Form Number: IRS Form 8023.
Type of Review: Extension.
Title: Corporate Qualified Stock Purchase Elections.
Description: Form 8023 is used by corporations that acquire the stock of another corporation to elect to treat the acquisition of stock as an acquisition of the corporation's assets. IRS uses Form 8023 to determine if the selling corporation reports the sale of its assets on its income tax return and to determine if the deduction for depreciation is correctly computed.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 201.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hours, 22 minutes.
Learning about the law or the form—1 hour, 12 minutes.
Preparing and sending the form to the IRS—1 hour, 23 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 2,199 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–17476 Filed 7–23–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 17, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0930.
Form Number: IRS Form 8396.
Type of Review: Extension.
Title: Mortgage Interest Credit.
Description: Used by individual taxpayers to claim a credit against their tax for a portion of the interest paid on a home mortgage in connection with a qualified mortgage credit certificate. IRC section 25 allows the credit and IRC section 163(g) provides that the interest deduction on Schedule A will be reduced by the credit.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 30,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—46 minutes.
Learning about the law or the form—5 minutes.
Preparing the form—39 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 52,200 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–17477 Filed 7–23–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 20, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0042
Form Number: IRS Form 970
Type of Review: Extension
Title: Application to Use LIFO Inventory Method
Description: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the LIFO inventory method or to extend to LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 3,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hours, 37 minutes
Learning about the law or the form—1 hour, 35 minutes
Preparing and sending the form to the IRS—1 hour, 48 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 36,000 hours
OMB Number: 1545–0240
Form Number: IRS Form 6118
Type of Review: Extension
Title: Claim of Income Tax Return Preparers
Description: Form 6118 is used by preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 10,000
Estimated Burden Hours Per Respondent/Recordkeepers:
Recordkeeping—13 minutes
Learning about the law of the form—11 minutes
Preparing the form—8 minutes
Copying, assembling, and sending the form to the IRS—20 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 8,900 hours
OMB Number: 1545–1014.
Form Number: IRS Form 1066 and Schedule Q (Form 1066).
Type of Review: Revision.
Title: U.S. Real Estate Mortgage Investment Conduit Tax Return (Form 1066). Quarterly Notice of Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation (Schedule Q).
Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 3,910.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1066	Schedule O
Recordkeeping	28 hr., 28 min.	6 hr., 13 min.
Learning about the law or the form.	6 hr., 29 min.	1 hr., 16 min.
Preparing the form	9 hr., 7 min.	2 hr., 21 min.
Copying, assembling, and sending the form to the IRS.	32 min.	16 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 569,296 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–17480 Filed 7–23–92; 8:45 am]
BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 143
Friday, July 24, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF AGRICULTURE

AGENCY: Rural Telephone Bank.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 9 a.m., Wednesday, August 5, 1992.

PLACE: Salon I, Ballroom Level, The Ritz-Carlton, 401 Ward Parkway, Kansas City, Missouri 64112.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Board of Directors meeting:

1. Call to Order.
2. Approval of Minutes of the May 19, 1992, Board Meeting.
3. Report on Loans Approved in the Third Quarter of FY 1992.
4. Review of Financial Statements for the Third Quarter of FY 1992.
5. Report on Requests for Waiver of Prepayment Premium.
6. Privatization Committee Report.
7. Prepayment Committee Report.
8. Effect of Federal Credit Reform Act on Interest Rates for Borrowers.
9. Consideration of Resolution to Replace Lost Stock Certificate.
10. Consideration of Resolution to Declare C Stock Dividend.
11. Consideration of Resolution to Adopt Date, Time, and Place for 10th Biennial Stockholders' Meeting.
12. Consideration of Resolution to Adopt Dates for Future Board Meetings.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: July 20, 1992.

James B. Huff, Sr.,

Governor.

[FR Doc. 92–17670 Filed 7–22–92; 2:00 pm]

BILLING CODE 3410–15–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the October 8, 1992 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, October 1, 1992. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: July 21, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–17596 Filed 7–22–92; 11:39 am]

BILLING CODE 6705–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 29, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulations Z (Truth in Lending) relating to home equity lines of credit. (Proposed earlier for public comment; Docket No. R–0743)

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation C (Home Mortgage Disclosure) to implement section 224 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) regarding setting an exemption standard for nondepository lenders.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17623 Filed 7–22–92; 11:40 am]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, July 29, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17623 Filed 7–22–92; 11:40 am]

BILLING CODE 6210–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act
(Public Law 94–409) [5 U.S.C. Section 552b]

TIME AND DATE: 1:00 p.m., Tuesday, July 28, 1992.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.

2. Reports from the Chairman, Commissioners, Legal, Case Operations, Program Coordinator, and Administrative Sections.
3. Discussion on Enhanced Supervision.
4. Discussion on Voting On Original Jurisdiction Cases.
5. Discussion on Omitted Special Conditions.
6. Discussion of Procedures to be followed when a Release Date is Advanced under 28 C.F.R. Sec. 2.28(e) for Electronic Monitoring or CCC Placement.
7. Discussion on unique issues regarding Military Prisoners.
8. Discussion of Prehearing Disclosure of Codefendant Material.
9. Discussion on Redrafted Procedures for 28 C.F.R. 2.30 Reopenings.
10. Overview of the Policy and Practices of the Community Confinement Program.
11. Discussion on warrants held in abeyance.
12. Modification of Definition of "Value of the Property for Theft and Fraud Offenses."
13. Proposal of a "Limited Contract Parole Program."
14. Discussion on the Commission s AIDS Policy and Special Conditions.
15. Defining the Effect of a Conspiracy Conviction on a Prisoner's Accountability for Crimes Committed By his Co-conspirators.
16. Amendment of 28 C.F.R. Sec. 2.66, Paroling Policy For Prisoners Serving Aggregate U.S. and D.C. Code Sentences.
17. Approval of the Commission s budget for Fiscal Year 1994 prior to submission to the Office of Management and Budget.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 20, 1992.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 92–17690 Filed 7–22–92; 3:20 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act
(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Tuesday, July 28, 1992, 9:30 a.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTER CONSIDERED: Appeals to the Commission involving approximately sixteen cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: July 20, 1992.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 92–17691 Filed 7–22–92; 3:20 pm]

BILLING CODE 4410–1–M

Friday
July 24, 1992

Part II

Environmental Protection Agency

40 CFR Parts 122, 123, and 130

Surface Water Toxics Control Program, Water Quality Planning and Management Program, and National Pollutant Discharge Elimination System; Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, and 130

[FRL-3979-8]

Surface Water Toxics Control Program and Water Quality Planning and Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is amending its regulations to respond directly to a court remand of a final rule interpreting section 304(1) of the Clean Water Act (CWA) issued on June 2, 1989 (54 FR 23868). Other amendments finalize regulations proposed on January 12, 1989 (54 FR 1300) to clarify requirements and consolidate reporting required by sections 303(d), 314(a), and 305(b) of the CWA. Another amendment corrects a citation to the CWA.

Section 308(a) of the Water Quality Act of 1987 added section 304(1) to the CWA to accelerate the control of toxic pollutants discharged into surface waters. Section 304(1) required States to identify those waters that are adversely affected by toxic, conventional, and nonconventional pollutants; to identify where additional controls are needed; and to prepare individual control strategies. These actions were to be accomplished according to an ambitious series of deadlines which have now passed (54 FR 23868, June 2, 1989). In today's action EPA is requiring that States identify additional point sources and toxic pollutants being discharged to impaired waters previously identified under section 304(1). However, no new ICSs are required by today's final rule.

As part of EPA's approach to identifying waters in need of additional controls, today's rule also modifies existing EPA regulations that implement section 303(d) of the CWA. Section 303(d) requires the States to identify, establish a priority ranking, and develop total maximum daily loads (TMDLs) for their waters that do not achieve or are not expected to achieve water quality standards. Section 303(d) requires that this list of waters be submitted to EPA "from time to time" for review and approval. In today's action EPA defines "from time to time" for purposes of this listing requirement to mean every two years coincident with submission of the section 305(b) report. Today's actions also clarify the information that is required to be submitted by the States with the section 303(d) list. In addition, EPA is promulgating amendments concerning requirements to report information on the quality of lakes pursuant to section 314(a) of the CWA.

EFFECTIVE DATE: This regulation shall be effective at 1 p.m. eastern standard time August 24, 1992. The requirements contained in § 130.7(d)(2) shall apply to State submittals made after the effective date of this regulation.

ADDRESSES: The record for this rulemaking is available at: U.S. Environmental Protection Agency, Library M2904 (PM-211-A), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bruce Newton, Chief, Watershed Branch, (202) 382-7076.

SUPPLEMENTARY INFORMATION:

I. Authority
II. Background
A. Overview of EPA's Water Quality Management Program
B. Section 304(1) of the CWA
C. Section 303(d) of the CWA
III. Scope of This Rule
A. New Section 304(1) Listing Requirements
1. Summary of Court Order
2. Response to Court Order
a. Changes to 40 CFR 130.10(d)
b. Changes to 40 CFR 123.46(a)
B. Sections 303(d) of the CWA and Amendments to 40 CFR Part 130
1. Introduction: Relationship of Section 303(d) of the CWA to EPA's Water Quality Planning and Management Program
2. Today's Final Action and Response to Comments Received on the Proposed Rule
a. Amendments to §§ 130.7 and 130.10
i. Identification of Waters and Listing Format
ii. Priority Ranking and Identifying Waters
iii. Identification of Pollutants
iv. Biennial Listing
v. Applicable Standard Definition
vi. Thermal Waters
vii. Documentation Factors
viii. Submission of Lists and EPA Approval
b. Amendments to 40 CFR 130.8
3. Summary of Public Notice
C. Technical Corrections
IV. Regulatory Analysis
A. Executive Order 12291
B. Paperwork Reduction Act
C. Regulatory Flexibility Act

I. Authority

This regulation is issued under the authority of the CWA, 33 U.S.C. 1251 et seq.

II. Background

A. Overview of EPA's Water Quality Management Program

Today's amendments deal with the identification of waterbodies that require the attention of regulatory agencies to ensure that water quality standards are attained and maintained. This is a necessary step of the water quality management process established by the Clean Water Act (CWA). Recently, EPA and the States have undertaken a number of activities to improve the water quality management process to address emerging pollution concerns. These activities include, among other things, adopting new water quality criteria for toxic chemicals and ecological measures (biocriteria), developing nonpoint source management programs, protecting wetlands and other critical habitats, and engaging the public through volunteer monitoring and greater participation in decision making. Sections 304(l) and 303(d) of the Clean Water Act are key elements of the water quality management process. Section 304(l) established a one-time requirement for States to identify waterbodies according to various categories of water quality impairment and to develop individual control strategies. Section 303(d) establishes a continuous process to identify water quality-limited waters, establish priorities, and develop water quality protection plans termed Total Maximum Daily Loads (TMDLs).

Many of the problems affecting the Nation's waters are best addressed through a comprehensive watershed protection process in which all sources and problems are considered cooperatively by multiple agencies with active participation by the affected public and local governments. EPA is encouraging more comprehensive watershed protection. One key initiative is improving the implementation of TMDL requirements contained in section 303(d). EPA has recently issued a guidance document on State and EPA implementation of section 303(d), Guidance for Water Quality-based Decisions: The TMDL Process, April, 1991 (EPA 440/4-91-001). The amendments today are part of this effort to improve the water quality management process.

Although today's actions concern separate statutory requirements, we are addressing them together for the following reasons. Certain of the activities involved in both provisions are similar in that they both require the States to identify and report impaired and threatened waterbodies. Second, to make the reporting less burdensome, many of the State commenters have requested that the various statutory listing requirements under sections 304(l), 303(d), 314(a), and 305(b) be coordinated and eventually consolidated. Finally, EPA wishes to emphasize that the process for TMDL development established under section 303(d) provides an effective means by

which the problems identified under the listing provisions of section 304(l) can be addressed. In particular, focused attention of specific waterbodies under section 303(d) will significantly improve the protection and restoration of water quality by encouraging cooperation between agencies, promoting greater public participation, and encouraging all problems in a watershed to be addressed comprehensively instead of in a piecemeal manner.

B. Section 304(l) of the Clean Water Act (CWA)

Seciton 308(a) of the Water Quality Act of 1987 (WQA) added section 304(l) to the CWA (hereafter referred to as section 304(l)). EPA adopted rules implementing section 304(l) on January 4, 1989 (54 FR 258) and June 2, 1989 (54 23868).

Section 304(l) of the CWA reinforced the State and EPA activities to identify and control point source discharges of toxic pollutants. Under section 304(l), the States were required to submit to EPA four lists and individual control strategies (ICSs) for review and approval by February 4, 1989. EPA was required to make approval or disapproval decisions on the lists and ICSs by June 4, 1989. EPA's approval or disapproval decisions were then published for public review. The public had 120 days to submit to EPA petitions and comments on the proposed decisions. EPA had until June 4, 1990 to respond to petitions or comments.

Section 304(l) required the States to submit to EPA four lists described as follows:

1. A(i) —A list of those waters in the State that, after the application of technology-based effluent limits, cannot reasonably be anticipated to attain or maintain water quality standards for priority pollutants adopted under section 303(c)(2)(B) of the CWA. This list is referred to as the "mini-list" or "A(i)" list;

2. A(ii) —A list of all waters that after application of technology-based effluent limits, cannot reasonably be anticipated to attain or maintain that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water. This list is referred to as the "long list" or "A(ii)" list;

3. B—A list of those waters that after application of technology-based effluent limits are not expected to achieve applicable water quality standards, due entirely or substantially to point source discharges of priority pollutants. In today's action this list is referred to as the "short list" or "B" list;

4. C—A list of the point sources of the priority pollutants which are believed to be preventing or impairing water quality for waters on the lists and the amount of each priority pollutant discharged by each point source. This list is referred to as the "facility list" or "C" list.

In addition, section 304(l)(1)(D) required that the State prepare and submit to EPA an individual control strategy (ICS) that would achieve water quality standards through the reduction of the discharge of toxic pollutants from point sources to each identified water segment. In the June 2, 1989 final rule, EPA required that ICSs be prepared for each point source identified on the facility list.

The statutory language of section 304(l)(1)(B) required the States to list waters for which water quality standards will not be achieved due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). The toxic pollutants identified under section 307(a) of the CWA are 65 categories and classes of pollutants that include thousands of compounds. EPA has designated 126 of these pollutants as "priority pollutants" because they are common, widely present chemicals for which toxicological data are available. The regulatory requirements controlling toxic pollutants under section 304(1) of the CWA focus on the 126 priority pollutants.

In the January 4, 1989 rule, EPA interpreted the statute to require that the facilities list ("C" list) identify those facilities that discharge only to waters that do not meet water quality standards due entirely or substantially to point source discharges of priority pollutants (the "short list" of waters). In the June 2, 1989 rule, EPA required that an ICS in the form of an NPDES permit be prepared for each facility identified. Thus, the facilities list was to consist only of facilities discharging toxic pollutants to waters on the short list, or "B" list, and ICSs were required for all facilities on the facilities list.

The Natural Resources Defense Council (NRDC) petitioned for review of EPA's January 4, 1989 regulation interpreting the facility list to include only facilities discharging to waters on the "B" list and interpreting the ICS requirement to apply only to waters on the "B" list. The Ninth Circuit Court of Appeals remanded that portion of the challenged section 304(1) regulation concerning the listing requirements. In *NRDC* v. *EPA*, 915 F.2d 1314 (9th Cir. 1990), the Ninth Circuit held that EPA erroneously interpreted paragraph C as requiring only the listing of point sources discharging toxic pollutants into the waters on the "B" list. The court reasoned that paragraph C unambiguously requires listing of point sources for waters "included on such lists" and the use of the plural "lists" must refer to all three lists. The Court's decision requires EPA to amend its regulations to require the States to identify all point sources discharging any toxic pollutant that is believed to be preventing or impairing the water quality of any stream segment listed to the "A(i)," "A(ii)," and "B" lists, and to indicate the amount of the toxic pollutant discharged by each source. The remand also requires EPA to reconsider its interpretation of ICS requirements under section 304(l)(1)(D). Today's action amends section 304(1) regulations in response to the Ninth Circuit Court's remand. In a proposed rule published elsewhere in this issue, EPA is soliciting comments on which facilities listed pursuant to this final rule will need ICSs.

C. Section 303(d) of the CWA

Section 303(d) (established by the 1972 Federal Water Pollution Control Act) requires that each State identify those waters for which existing required pollution controls are not stringent enough to implement State water quality standards. For these waters, States are required to establish total maximum daily loads (TMDLs) according to a priority ranking. The identified waters and loads are required to be submitted to EPA for approval from "time to time".

On January 11, 1985, EPA published a final rule (50 FR 1775) that established 40 CFR part 130 (Water Quality Planning and Management). This rule established certain requirements for State and local government water quality programs, including requirements related to implementation of section 303(d) of the CWA. The regulation did not specify dates for State compliance with the section 303(d) requirements, but reiterated the statutory provision calling for submissions from time to time.

At the same time that regulations implementing the requirements of section 304(l) were proposed on January 12, 1989 (54 FR 1300), new regulatory amendments pertaining to section 303(d) were also proposed. In order to build upon the significant amount of effort expended by the States and EPA to develop the section 304(l) lists, EPA proposed, under the authority of section 303(d), that the States continue identifying, listing, and reporting waters every two years.

Although the intent of the biennial listing proposal was to more effectively implement section 303(d) listing provisions by building on the section 304(l) listing efforts, many commenters were confused about the legal basis for the proposal and objected to it, stating that EPA lacked the authority under section 304(l) to establish the biennial listing requirements. EPA did not finalize the section 303(d) biennial listing proposal with the final section 304(l) rule and instead reopened the public comment period for the section 303(d) proposal on July 24, 1989 (54 FR 30765). The public comment period closed on September 22, 1989.

EPA is today promulgating a simplified version of the proposed section 303(d) listing requirements. The final rule provides States with the option of consolidating section 303(d) listing with the section 305(b) water quality reporting process, thus allowing use of the automated data system for section 305(b) to avoid duplicative reporting.

III. Scope of This Rule

This section discusses the actions being taken today in two parts. Part A describes EPA's amendments to parts 123 and 130 that respond to the Ninth Circuit's partial remand of EPA's regulation interpreting section 304(l)(1)(C). Part B describes the amendments made to part 130 that relate to the requirements of sections 303(d) and 314(a) and discusses the public comments received in response to the January 12, 1989 proposed rule and the July 24, 1989 reopening of the public comment period.

A. New Section 304(l) Listing Requirements

In the January 1989 final rule, EPA interpreted section 304(l)(1)(C) to require States to identify point sources discharging toxic pollutants only to waters on the short or "B" list. See 40 CFR 130.10(d)(3). States submitted their 304(l)(1)(C) facility lists in accordance with this interpretation.

1. Summary of Court Order

By opinion, on September 28, 1990, the U.S. Court of Appeals for the Ninth Circuit required EPA to amend its regulations at § 130.10(d)(3) to "require the states to identify all point sources discharging any toxic pollutant which is believed to be preventing or impairing the water quality of any stream segment listed under CWA §§ 304(l)(1) (A) and (B) and to indicate the amount of the toxic pollutant discharged by each source." *NRDC v. EPA*, 915 F.2d 1314, 1324 (9th Cir. 1990). Today's amendments fulfill this requirement.

2. Response to the Court Order on Section 304(l)

a. *Changes to 40 CFR 130.10(d).* In response to the court order, EPA is amending § 130.10(d)(3), which refers to the "C" list or facility list, by changing the wording from "such list" to "such lists." This amendment means that some point sources and amounts of priority pollutants discharged need to be identified for waters on the "A(i)" (mini) and "A(ii)" (long) lists. Pursuant to the regulations promulgated in 1989, States have already identified facilities discharging to waters on the "B" (short) list. In order to respond to today's action, States should use existing, readily available information to identify waters on their "A(i)" and "A(ii)" lists that are listed because the waters were impaired by priority pollutants. The States should then list any point sources believed to be discharging these priority pollutants to the listed waters. States must also identify the quantity of section 307(a) pollutant(s) being discharged to the listed water bodies from the newly identified point sources.

The requirements of the court order indicate that a point source must be listed if, as stated in § 130.10(d)(3), it is discharging a toxic pollutant "believed to be preventing or impairing" water quality for each segment of water on all lists (not just the "B" list). To comply with this requirement States must use, at a minimum, existing and readily available data to add any facilities to their existing "C" list (facility list) and otherwise follow procedures established in part 130 for the original section 304(l) lists. EPA will follow the procedures for approval or disapproval of the expanded list and ensure an opportunity for public review and comment (at the State or federal level). Because the lists of waters have already been established within the process required by the statute and regulations, the lists of waters need not be altered.

The court order leaves open the question of whether these additional submissions should list facilities discharging as of February 4, 1989; September 28, 1990 when the remand was issued; or the present. Similarly, it is unclear whether only existing and readily available water quality-related data as of February 4, 1989 should be used. Since the intent of section 304(l) is to be protective of water quality, the Agency would prefer identifying all facilities and pollutants contributing to the problem. However, in view of the short timeframe involved, EPA encourages the States to use discretion in the use of existing and available information. It may not be feasible to recreate the State data base to a given time period, especially if States have already revised their lists or water quality data. Therefore, the EPA is recommending that States use data and information that is readily available.

States are expected, as soon as possible, to compile and submit to the Regional Administrator for review and approval or disapproval the additions to the "C" list of point sources and amounts of toxic pollutants discharged. The new "C" lists must be submitted to EPA as soon as possible because the deadline for submission passed while the original regulations were being reviewed by the court. As a matter of policy guidance, EPA is requesting that States submit their lists within sixty days from the date of publication of these amendments. EPA notes that this would normally provide an unreasonably short amount of time for States to respond to these regulatory amendments. However, EPA has already notified the States of the listing requirements resulting from the Court remand and the requested schedule for submission.

A state's new "C" list does not need further documentation unless a State has changed its methodology from the initial listing, because EPA has already reviewed the documentation required in § 130.10(d)(6). However, EPA may request additional documentation of the decisions, under the procedures promulgated June 2, 1989. EPA shall review the new submissions according to the procedures set forth in 40 CFR 130.10(d)(8)–(10), except that the Regional Administrator shall approve or disapprove of the new lists by 60 days after publication of the rule plus 120 days (§ 130.10(d)(8)), January 20, 1993, and, when appropriate, shall implement the listing requirements and respond to public comments and petitions by 180 days after publication of the rule, plus one year § 130.10(d) (9) and (11)), January 20, 1994.

b. *Changes to 40 CFR 123.46(a).* EPA regulations at 40 CFR 123.46(a), which implement section 304(l)(1)(D) of the Clean Water Act, require ICSs for all facilities appearing on State "C" lists. This requirement at § 123.46(a) was based on EPA's interpretation of section 304(l)(1)(C), under which facilities would be listed on State "C" lists only if they were found to be discharging toxic pollutants to waters on State "B" lists. However, as discussed above in *NRDC v. EPA*, the Ninth Circuit invalidated EPA's interpretation of section 304(l)(1)(C) and required EPA to amend

its regulations at § 130.10(d)(3) to reflect the Court's interpretation that facilities discharging toxic pollutants to waters on State "A" lists should also appear on State "C" lists. In today's rule, EPA is changing the wording of § 123.46(a) in order to maintain the original meaning of those regulations pending reconsideration of the scope of the ICS requirement.

Section 123.46(a) previously required States to submit individual control strategies to EPA for each point source identified by the State pursuant to section 304(l)(1)(C). If that language were to remain as it is, today's change in § 130.10(d)(3) could be read to require, immediately, ICSs for each point source discharging toxic pollutants to waters listed on the "A" or "B" lists. Because the statute is ambiguous, if EPA were to implement such a requirement, it would normally do so only after an opportunity for public comment. Therefore, EPA is amending § 123.46(a) to require States to submit individual control strategies to EPA for each point source identified by the State pursuant to section 304(l)(1)(C) which discharges the toxic pollutant(s) of concern to a water identified by the State pursuant to section 304(l)(1)(B). This change is necessary to maintain the original meaning of the language at § 123.46(a) in light of today's amendment to § 130.10(d)(3). Most of the ICSs required under old and new § 123.46(a) have already been established. Under today's rule no additional ICSs are required.

The Ninth Circuit required EPA to reconsider its interpretation of section 304(l)(1)(D) of CWA. EPA is reconsidering its interpretation of section 304(l)(1)(D) to decide whether additional ICSs will be required, given the court's interpretation of section 304(l)(1)(C), and may find it necessary to amend its regulations at § 123.46(a). EPA intends to solicit public comment on its interpretation of the ICS requirement pursuant to section 304(l)(1)(D) of the CWA. Elsewhere in today's **Federal Register**, EPA is proposing options for interpreting section 304(l)(1)(D) in light of the decision of the U.S. Court of Appeals for the Ninth Circuit. This proposal will directly address the question of whether to amend § 123.46(a) to reflect a requirement to submit additional ICSs.

The purpose of today's amendment to the section 304(l) regulations is to correct EPA's interpretation of the CWA as required by the court. Therefore, the rulemaking is properly classified as an interpretive rule, see *United Technologies Corporation* v. *EPA*, 821 F. 2d 714, 718 (D.C. Cir. 1987), in that it corrects an erroneous interpretation of the statute and does not "create new law, rights or duties," *Citizens to Save Spencer County* v. *EPA*, 600 F. 2d, 844, 876 n. 153 (D.C. Cir. 1979). The Administrative Procedure Act (APA) specifically excludes "interpretive" rules from its notice and comment procedures. 5 U.S.C. 553(b)(A).

B. Section 303(d) of the CWA and Amendments to §§ 130.7, 130.8, and 130.10

1. Introduction: Relationship of Section 303(d) of the CWA and EPA's Water Quality Planning and Management Program

EPA's water quality planning and management regulations are established under the authority of several sections of the CWA, including sections 106, 205(g), 205(j), 208, 303, 304(l), 305 and 501. Part 130 sets out the planning and management activities to be undertaken by States including establishment of water quality standards, water quality monitoring, the development of lists of impaired waters, the development of individual control strategies for certain pollution sources, the establishment of TMDLs and the development of State-level continuing planning processes, water quality management plans, and biennial water quality reports.

Section 303(d) of the CWA requires that each State identify waters for which existing required pollution controls are not stringent enough to achieve State water quality standards. These waters are referred to as "water quality limited." The States are required to rank their water quality-limited segments by priority, and establish TMDLs for them. The list of identified waters, rankings and TMDLs are required to be submitted to EPA for approval.

Section 130.7(d) currently provides that the lists and TMDLs be submitted to EPA by the States "from time to time" for approval. No specific schedule is defined in the current regulation. Once the lists and TMDLs are approved, they are automatically incorporated into the State's current water quality management plans.

2. Today's Final Actions and Response to Comments Received on Section 303(d) Proposed Rule

This section discusses today's actions to amend EPA's Water Quality Planning and Management Regulations at 40 CFR 130.7, 130.8, and 130.10. The first part of this section describes the new requirements for identifying water quality-limited waters and reporting these waters to EPA. These requirements are established today by amending §§ 130.7 and 130.10. The second part of this section describes the amendments to § 130.8 which requires that the assessment of publicly owned lakes be reported by States to EPA in their water quality assessment (section 305(b)) reports.

This section is arranged according to major topics covered by today's actions. Each topic contains a summary of today's actions on that topic, presents the major issues raised by the comments during public notice and discusses substantive changes from proposed regulation.

a. *Amendments to §§ 130.7 and 130.10—*i. *Identification of waters and listing format.* Under the existing regulations, States are required to identify water quality-limited segments, establish a priority ranking for these waters, and develop Total Maximum Daily Loads (TMDLs). Today's amendments do not change these requirements. Today's actions specify that States submit their list of waters, including those waters targeted for TMDL development, to EPA every two years coincident with the section 305(b) report and provide documentation to support the States' determinations.

The amendments proposed on January 12, 1989 differed from today's final actions. The proposed amendments, would have required the States to develop three lists based on the following three separate subcategories of water quality-limited waters, similar in some respects to the format required for lists developed under section 304(l) of the CWA:

(i) List of waters where numeric water quality standards for priority pollutants are not achieved due to either point or nonpoint sources of pollution;

(ii) List of all waters which cannot achieve either numeric or narrative water quality standards for a priority pollutant due entirely or substantially to discharges from point sources; and

(iii) A list of waters still requiring TMDLs that do not fit under category (i) or (ii).

Together, the combination of lists in the three-list format would have included waters listed in the section 304(l) "long list," except for waters meeting the State standards but not meeting the fishable/swimmable goals of the Act. In the preamble to the proposed rule, EPA asked for comments on an alternate two-list format. The two-list format would have included one list of water quality-limited segments due to any discharges of the 307(a) toxic pollutants, ammonia, and chlorine from point or nonpoint sources (called the

"Toxics List"), and the second list would have included waters not achieving water quality standards due to all pollutants from either point or nonpoint sources.

Many commenters stated that the proposed listing requirements were very confusing. They contended that even if the two-list format was adopted, this would not facilitate the identification process. Many commenters indicated that the listing format that grouped together toxics with ammonia and chlorine would be inconsistent with the listing requirements for 304(l). Several commenters indicated that the proposed listing format continued to focus on point source discharges of section 307(a) pollutants whereas, under section 303(d), all water quality-limited waters are required to be identified and should include point and nonpoint source impacted waters.

Given these comments, it was apparent that there continued to be confusion about the relationship between the section 304(l) listing exercise and the identification requirements under section 303(d). The section 303(d) identification process existed prior to the implementation of the section 304(l) requirements. Today's actions clarify the existing requirements under section 303(d). However, the link to section 304(l) remains, in that a basic requirement of the listing processes under both sections 303(d) and 304(l) is to identify water quality-limited waters. While it is not EPA's intent for States to duplicate the section 304(l) listing exercise every two years, EPA recommends that the States use the information developed for the section 304(l) lists to develop the section 303(d) list of waters. Also the section 303(d) listing process will not be used to track the implementation of individual control strategies (ICS) that were required for point sources of toxic discharges under section 304(l). This will be tracked through other EPA mechanisms under the NPDES program.

One commenter suggested that EPA take time to review the results of the section 304(l) listing requirements prior to adopting the new listing format for section 303(d) waters. One commenter suggested a one-list format to identify those waters not meeting water quality standards, with each entry on the list accompanied by an explanation that identifies the cause of the problem for each entry, such as section 307(a) pollutant, point source, nonpoint source, etc.

EPA has reviewed the results of the section 304(l) listing requirements and has considered the objectives for the TMDL program, that is for States to identify water quality-limited waters and establish a priority ranking for TMDL development. With this in mind, today's amendments require the States to identify water quality-limited waters still requiring TMDLs in a single list format.

On January 12, 1989 EPA proposed that States identify waters for which applicable standards will not be achieved due to discharges from point sources of section 307(a) toxic pollutants. Parallel with this requirement was the identification of the point sources responsible for impairment of these waters. These proposed requirements are being dropped today. States and numerous other commenters objected to the use of the section 303(d) listing authority to identify point sources of pollutants. Many states indicted that the inclusion of a point source list in the section 305(b) report, as the proposal would have required, was not appropriate and would be a major departure from past section 305(b) reports which focused on waterbodies. Also, many commenters indicated that these requirements would, in effect, repeat the section 304(l) process every two years. EPA agrees with these comments. While actual sources contributing to water quality standards exceedances must be identified prior to TMDL development or NPDES permitting, EPA does not believe that the identification of individual sources necessarily must take place as part of the biennial listings of problem waterbodies under sections 303(d) and section 305(b). Therefore, EPA is removing the proposed point source listing requirement (paragraphs (b)(2)(ii) and (b)(9) of the January 12, 1989 proposed rule).

While States are not required to list specific point sources, EPA is suggesting that States use the section 305(b) automated data system source categories to characterize waterbodies that need TMDLs. Examples of these source categories are municipal discharges, industrial discharges, agriculture, silviculture, urban runoff, and construction. This information will be cross referenced using the section 305(b) Waterbody Identification Number.

ii. *Priority ranking, including identifying waters targeted for TMDL development.* Section 303(d) of the CWA currently requires that each State rank by priority their water quality-limited waters. Today's actions reaffirm the importance of priority ranking by the States and also adds specificity regarding how a State will meet this existing requirement.

The final amendments require that each State prioritize waters on its 303(d) list and, as part of this prioritization, identify the water quality-limited waters that are targeted through priority ranking for TMDL development over the next two years. The State's water quality planning and management activities should include the development and implementation of TMDLs for their water quality-limited waters, and the State's annual work program should reflect those TMDLs targeted for development and TMDL activities on an ongoing basis. The two-year time frame was selected to be consistent with the section 305(b) biennial reporting process. States should include in their identification of waters targeted for TMDL development both "complex" TMDLs that may cover a large watershed or address particularly challenging pollution problems and routine or "simple" TMDLs that may be developed as part of an NPDES permit reissuance.

Section 303(d) of the CWA currently requires that when setting priorities, States must consider the uses of identified waters and the severity of the pollution. These are the minimum, but not necessarily the only factors a State should consider in developing a priority ranking. EPA did not propose new amendments to describe other factors to consider, but in the July 24, 1989 notice to reopen the proposed amendments for comments, EPA did specifically request input on the issue of priority ranking and factors to consider. The comments received were used in the development of the EPA guidance document entitled "Guidance for Water Quality-based Decisions: The TMDL Process" (EPA 440/4-91-001). This document contains guidance on priority ranking of water quality-limited waters and describes how the ranking process should result in the targeting of waterbodies for TMDL development. Identification and scheduling of targeted waterbodies for the development of TMDLs are critical steps in the implementation of section 303(d) of the CWA.

As stated in the guidance document, targeting of high priority waters for TMDL development should reflect an evaluation of the relative value and benefit of waterbodies within the State and take into consideration the following: Risk to human health and aquatic life; degree of public interest and support; recreational, economic, and aesthetic importance of a particular waterbody; vulnerability or fragility of a particular waterbody as an aquatic habitat; immediate programmatic needs such as wasteload allocations for

permits or load allocations for best management practices (BMPs); water pollution problems identified during the development of the section 304(l) "long list;" and national policies and priorities such as those identified in EPA's Annual Operating Guidance.

The proposed amendments would have established a new paragraph (b)(7) requiring that a priority ranking be established for water quality-limited waters. However, as one commenter noted, this requirement also appeared in existing § 130.7(b)(1) which was not proposed to be changed. EPA feels that it would be redundant to include this requirement twice in its regulations, as proposed. Today's action moves the existing reference to priority ranking in paragraph 130.7(b)(1) to new 130.7(b)(4) where the identification of waters targeted for TMDL development in the next two years is discussed.

Although this priority ranking requirement is not new, many commenters indicated that the requirements for it were not clear. One commenter specifically requested a clarification of the existing requirement for submission to EPA of the priority ranking. Therefore, to satisfy the priority ranking requirement of section 303(d), to clarify the submission requirement, and to ensure that States proceed with the development of TMDLs for their water quality-limited waters, EPA, in paragraph (b)(4) of today's action, is requiring a priority ranking of all water quality-limited waters still requiring TMDLs and the identification of those water quality-limited waters that have been targeted through priority ranking to have TMDLs developed in the next two years. The waters targeted for TMDL development should be highlighted within the list of water quality-limited waters to be submitted every two years coincident with the section 305(b) report.

iii. *Identification of pollutants.* The existing regulations at § 130.7(b)(1)(iii) require that States "shall identify the pollutants causing or expected to cause violations of the water quality standards" for water quality-limited segments still requiring TMDLs. Today's amendments do not change this requirement. To identify water quality-limited waters that still require TMDLs, the particular pollutant causing the problem will usually be known. However, pollutants include both individual chemicals and characteristics such as nutrients, BOD, or toxicity. Moreover, many waters do not meet standards due to non-chemical problems, such as siltation. Therefore, EPA recommends the use of the existing cause classification system used in the section 305(b) water quality reporting process to identify pollutants causing water quality standards' exceedances in segments still requiring TMDLs.

EPA recommends that the States use the "cause categories" described in the "Guidelines for the Preparation of the 1992 State Water Quality Assessment (section 305(b)) Report" or the most recent guidelines issued by EPA for the section 305(b) report. The WBS provides for both the identification of specific water bodies as well as fields for identifying causes. While the cause categories in the WBS include both general and specific pollutants such as pesticides, priority organics, metals, ammonia, chlorine, and thermal modification, there is a mechanism for States to develop additional categories for such parameters as chromium, lead, trichloroethylene, specific habitat alterations, contaminated sediments, etc., as desired.

In the January 12, 1989 proposed amendments, a separate paragraph (b)(8) was proposed that duplicated the existing requirement at paragraph (b)(1) of section 130.7 to identify pollutants (which in today's actions has been moved to paragraph (b)(4)). One commenter indicated that this was redundant. EPA agrees. Therefore, in today's actions the proposed paragraph (b)(8) has been deleted.

iv. *Biennial listing.* EPA proposed a requirement for the submission of the section 303(d) list to EPA biennially within the water quality report required by section 305(b) of the CWA. The proposal also would have required the biennial identification of point sources discharging toxic pollutants to those waters where water quality problems are due entirely or substantially to point source discharges of toxic pollutants. Under today's final action the States have a choice to submit the section 303(d) list to EPA as a part of the section 305(b) report or separately with the section 305(b) report. In addition, there is no requirement for the identification and listing of point sources discharging toxic pollutants to those waters where such discharges are entirely or substantially causing the water quality problem.

Many States supported the proposed amendments that would have required States to submit their section 303(d) lists of waters in their biennial section 305(b) reports. Some commenters, however, disagreed with the biennial reporting for the following reasons:

(1) The level of effort would be similar to the level required for the section 304(l) list and therefore would be an excessive amount of work to be done every two years;

(2) Since the section 305(b) report is a vehicle some States use to generate support for and greater awareness of water quality programs, it is an inappropriate vehicle to specifically list point sources; and

(3) The inclusion of point sources would be a major departure from previous section 305(b) reports which focused on overall state water quality.

In response to these comments, EPA has lightened the reporting burden somewhat by eliminating from the final section 303(d) rule the requirement for multiple lists and the listing of point sources of toxic pollutants. In addition, EPA has decided to provide flexibility to those States that may wish to separate their section 303(d) lists from the section 305(d) reports. Under today's rule, States may include the section 303(d) lists in the section 305(b) reports or may submit them at the same time as the section 305(b) reports but under separate cover.

v. *Applicable standard definition.* In the January 1989 proposed rule EPA defined the term "applicable standard" for listing waters impacted by point source discharges of toxic pollutant as a numeric criterion for a toxic pollutant within State water quality standards or, where a State numeric criterion for a toxic pollutant is not established in State water quality standards, the State's narrative water quality standards interpreted by applying the EPA national water quality criteria on a chemical-by-chemical basis. This definition was also proposed for the section 304(l) listing requirement, and a modified version of it was ultimately promulgated under § 130.10(d) for the development of section 304(l) lists.

Forty-seven comments addressed this issue. Several commenters pointed out that this definition of applicable standard is not valid for listing under section 303(d) of the CWA. Section 303(d) requires the States to identify all impaired waters regardless of whether the impairment is due to toxic pollutants, other chemicals, heat, habitat, or other problems. The proposed definition for applicable standards deals only with the toxic pollutants. Generally, the commenters disagreed with the proposed requirement for interpreting narrative criteria, especially by "applying EPA national water quality criteria on a chemical-by-chemical basis." One commenter argued that narrative water quality criteria interpreted on a chemical-by-chemical basis would exclude those waters that are biologically impaired and that this

approach would not be consistent with proposed 40 CFR part 122 which provided for derivation of effluent limits to control whole effluent toxicity.

EPA agrees that the proposed definition is too narrowly focused on toxic pollutants to be applicable for identifying all waters pursuant to section 303(d). Therefore in today's final action the term "applicable standard" for the purposes of listing waters under section 303(d) is defined in § 130.7(b)(3) as those water quality standards established under section 303 of the Act, including numeric criteria, narrative criteria, waterbody uses and antidegradation requirements. In the case of a pollutant for which a numeric criterion has not been developed, a State should interpret its narrative criteria by applying a proposed state numeric criterion, an explicit State policy or regulation (such as applying a translator procedure developed pursuant to section 303(c)(2)(B) to derive numeric criteria for priority toxic pollutants), EPA national water quality criteria guidance developed under section 304(a) of the Act and supplemented with other relevant information, or by otherwise calculating on a case-by-case basis the ambient concentration of the pollutant that corresponds to attainment of the narrative criterion. Today's definition is consistent with EPA's Water Quality Standards regulation at 40 CFR part 131. EPA may disapprove a list that is based on a State interpretation of a narrative criterion that EPA finds unacceptable.

vi. *Thermal waters.* The existing regulations under § 130.7(b)(2) require States to identify waters impacted by thermal discharges to the extent that controls on thermal discharges are not sufficient to protect and allow propagation of a balanced indigenous population of shellfish, fish and wildlife. These waters are also subject to the TMDL process and are required to be identified with the list of water quality-limited waters described under § 130.7(b)(1). The regulations suggest that a second list covering only thermally-impacted waters may be required.

EPA received several comments requesting that the reporting requirements by the States be consolidated. To achieve this, today's final action requires the States to submit to EPA one list of water quality-limited waters requiring TMDLs. This list will include waters impacted by toxic, conventional, non-conventional pollutants and thermally impacted waters. In order to identify waters impacted by thermal discharges, States may use the "cause" categories in the section 305(b) automated data system which contains a field "thermal modification." A discussion of pollutant identification can be found elsewhere in this preamble.

vii. *Documentation factors.* Today's actions specify in § 130.7(b)(5) that the States must use, at a minimum, existing and readily available water quality related data and information to prepare the section 303(d) list of waters. EPA proposed sixteen categories of waters for which all existing and readily available information needed to be considered in preparation of sections 304(l) and 303(d) lists (54 FR 1300). These categories were finalized as documentation factors for the section 304(l) listing requirement (54 FR 23868).

In response to comments discussed below, EPA removed the proposed category, "waters on the section 303(d) list," and revised the remaining categories into four more generalized categories for section 303(d) lists. These four categories are the minimum data and information that a State must "assemble and evaluate" when developing its section 303(d) list. The four broad categories promulgated today are intended to include fifteen of the categories developed for listing under section 304(l) as follows:

(1) Waters identified in a State's most recent section 305(b) report as having impaired or threatened designated uses (130.10(d)(6)(i)–(iv), (viii), (xii), (xiv));

(2) Waters for which dilution calculations or predictive models indicate nonattainment of State water quality standards, either numeric or narrative (130.10(d)(6)(ix–xi));

(3) Waters with water quality problems reported by State, local or Federal agencies, members of the public, or academic institutions (130.10(d)(6)(vi)–(vii), (xiii), (xvi)); and

(4) Waters impaired or threatened by nonpoint sources and identified by States in submissions to EPA under section 319 of the CWA (130.10(d)(6)(xv));

Several commenters indicated that many of the sixteen categories were not appropriate for the section 303(d) list development, including the "fishable/swimmable" category, the category of waters on the section 303(d) list, categories concerning designated use impairment (e.g., closed shellfish waters), and the categories concerning dilution analyses for only point source discharges of toxic pollutants. Commenters requested addition of other categories, some site specific. In addition, many States expressed concern that redoing many of the specific, narrow dilution analyses and effluent toxicity tests every two years would be unnecessarily burdensome.

EPA agrees with commenters who felt that the category of waters that will not support the "fishable/swimmable" goals of the CWA could include waters that meet State water quality standards. Water quality standards consist of designated uses for waters, criteria sufficient to protect such uses, and an antidegradation policy to maintain existing uses and protect high quality waters. Therefore, some waters that are not designated fishable/swimmable can, nonetheless, meet State water quality standards. However, waters that are designated fishable/swimmable, but are not meeting that use, do not meet water quality standards. Waters that are not designated fishable/swimmable and that meet designated uses and applicable criteria should not be listed under section 303(d).

Several commenters expressed concern over the burden of listing and documentation to support the listing decisions. EPA agrees that the States should retain a certain amount of flexibility in developing their section 303(d) list, but at the same time States should be prepared to demonstrate to EPA that all existing and readily available data and information relevant to identifying water quality-limited waters are used to develop section 303(d) lists. Today's final action consolidates 15 of the 16 categories used to list section 304(l) waters into four broad categories to reflect EPA's position on use of existing and readily available information to develop section 303(d) lists.

There are additional reasons for consolidating the categories. Today's rule provides an option for the States to consolidate the section 303(d) listing requirement with the section 305(b) reporting process, since much of the analysis and data evaluation a State performs to develop the section 305(b) report is relevant to identifying water quality-limited waters under section 303(d). A number of categories among the sixteen proposed in January 1989, describe water quality problems that a State considers in developing its section 305(b) report. These categories are consolidated in today's rule under § 130.7(b)(5)(i). A number of the sixteen categories proposed were narrowly focussed on point sources of toxic pollutants as required for the section 304(l) lists. These categories have been broadened to include dilution calculations and predictive modeling that indicate nonpoint source impacts and impacts from pollutants other than

the priority pollutants and can be found in today's rule under § 130.7(b)(5)(ii). It is not expected that States will prepare dilution calculations on every point source discharger every two years, but they will need to consider the most recent analyses, often done during permit issuance.

The four categories included in today's regulation are not intended to exclude any information that is relevant to developing section 303(d) lists. States are required to use all existing and readily available data and information. For example, States should consider their section 304(1) lists and also available Toxic Chemical Release Inventory (TRI) data reported under the Emergency Planning and Community Right-to-Know Act.

Today's action specifies the minimum documentation the States must provide when submitting their section 303(d) list of waters. The requirements (described in paragraph (b)(6) under § 130.7) to submit documentation to EPA describing the data, information, and methodology used to develop the list, the rationale to exclude any particular category of information from consideration, and other reasonable information requested by EPA have not changed from the proposed language. Some commenters interpreted this requirement to mean that each water segment listed would have to be accompanied by a specific rationale for listing that particular water segment or water body and that the use of the words "demonstrate good cause" for not listing a waterbody puts the burden of proof on the States to justify exclusion of any waterbody. EPA is not necessarily requiring that listing decisions for each waterbody in the State be specifically documented as an initial matter; rather, today's rule requires documentation for the list as a whole. EPA may request documentation of specific waters during review, to justify how States addressed known water quality concerns in the list.

viii. *Submission of lists and EPA approval.* Section 303(d) and existing § 130.7 currently require each State to submit its list of water quality-limited waters "from time to time." Today's action establishes that, for the purposes of identifying water quality-limited waters still requiring TMDLs, "from time to time" means once every two years. The list of waters still needing TMDLs must also include a priority ranking and must identify the waters targeted for TMDL development during the next two years. Today's regulation makes no changes regarding the timing for TMDL submission. Such submissions should be made from time to time, when they are ready for EPA review.

Today's regulation specifies that the date for submission of the section 303(d) list of waters is the same as for submission of the section 305(b) report. The list may be submitted as part of the section 305(b) report or under separate cover. EPA is taking this action to consolidate the States' reporting requirements and allow the use of the section 305(b) automated data system to lessen the burden to the States.

The April 1991 program guidance suggested a submittal date of April 1, 1992, and most States have made their submissions. Today's rule provides that for the 1992 biennial submission, these lists are due no later than October 22, 1992. EPA believes that it is important for States developing TMDLs within the next two years and thereafter to have a reasonably up-to-date list of waters needing TMDLs. Today's requirement therefore ensures both that all States will have reasonably up-to-date lists within 90 days of publication of this rule and that the lists will be updated every two years thereafter. When a State makes their 1992 submission prior to the effective date of today's rule, or thereafter revises the list at EPA's request after the effective date of today's rule, the State list is not subject to the new requirements contained in these amendments.

Although most States supported consolidating reporting with the section 305(b) process, a few States and commenters argued that EPA does not have the authority to require biennial submissions of section 303(d) lists of waters. Section 303(d) requires States to identify and list the waters within its jurisdiction that do not or are not expected to achieve water quality standards, and to develop TMDLs for these waters. The States must also identify the pollutants preventing the attainment of water quality standards. Section 303(d) also gives EPA the authority to review and approve or disapprove the lists of waters prepared by a State.

Section 305(b) of the CWA requires each State to submit to EPA, biennially, "a description of the water quality of all navigable waters in such State." As part of section 305(b), States already list specific waterbodies that do not meet State water quality standards and the causes and sources of impairment. EPA and most of the State commenters agree that it makes sense to consolidate the sections 305(b) and 303(d) reporting processes. Moreover, EPA has authority under section 501(a) to interpret the statutory phrase "from time to time" to require biennial submission of section 303(d) lists.

In response to several commenters that argued that the section 305(b) report was not an appropriate vehicle for reporting section 303(d) waters and pollutants and that the proposed documentation requirements were also inappropriate as applied to the section 305(b) report, today's amendments allow States to submit the list required under section 303(d) separately from the section 305(b) report. EPA encourages the States to use the section 305(b) format and especially the Waterbody System in order to consolidate their reporting requirements.

Today's action drops the proposed amendment to § 130.8 which would have required the section 303(d) list to be submitted in the section 305(b) report. Today's amendments to § 130.10(b)(2) require submission of the list of section 303(d) waters, pollutants, priority ranking, and targeted waterbodies once every two years.

In addition, today's action specifies that EPA's approval of the list is dependent on whether a State has met the requirements specified in the regulation under § 130.7(b). This section describes how a State identifies and targets by priority ranking its water quality-limited waters that still require TMDLs, the requirements that States use, at a minimum, all existing and readily available water quality-related data and information and that States provide documentation to support their determinations. EPA may, of course, approve any component of a State submission that is deemed adequate, even if some components are lacking or are deemed inadequate.

b. *Amendments to § 130.8.* Today's amendments add paragraph (b)(5) to § 130.8 to require that lake water quality assessments be submitted biennially as part of each State's section 305(b) report. No changes have been made to the proposal. Section 314(a)(2) of the CWA requires that each State submit biennially to EPA an assessment of the water quality of all publicly owned lakes.

The specific elements of the required assessment are outlined in section 314(a)(2) and include a list and description of those publicly owned lakes for which uses are know to be impaired, a description of the status and trends of the water quality of each publicly owned lake, the nature and extent of pollution loadings from point and nonpoint sources and the extent to which the use of each lake is impaired as a result of such pollution. The assessment must also include a

description of the methods and procedures needed to control sources of pollution, restore the lake water quality, mitigate the harmful effects of high acidity, and remove toxic metals and other toxic substances mobilized by high acidity.

In order to receive grant assistance from EPA's Clean Lakes Program, States have been reporting their lake water quality assessments for publicly owned lakes in their water quality (section 305(b)) reports since 1988.

3. Summary of Public Notice

EPA opened two public comment periods for the proposed amendments to 40 CFR Part 130 that are related to section 303(d). The first comment period was offered in conjunction with the proposed section 304(l) regulation on January 12, 1989 (54 FR 1300). Comments received during this period indicated that there was confusion between the section 304(l) lists and section 303(d) lists. EPA reopened the comment period on July 24, 1989 in order to provide an opportunity to clarify EPA's intentions and receive additional comments on the section 303(d) requirements. When the comment period closed in September 1989, EPA had received a total of 185 comments related to section 303(d) from 58 commenters.

In the July 24, 1989 (54 FR 30765) notice to reopen the comment period on the proposed amendments implementing section 303(d), EPA specifically solicited comments on the implications of adding new emphasis to the section 303(d) program. Several questions were posed by EPA to make a more complete evaluation of how the new section 303(d) requirements might affect State and EPA programs.

Some of the issues raised by these questions related to the specific requirements that are promulgated with today's actions; the interpretation of narrative criteria, the adequacy and specificity of the documentation requirements, the timing for new requirements, and the reporting format. The major comments relating to these questions and EPA's response can be found within this preamble and in a response to comments document in the administrative record to this rulemaking.

Several questions posed did not relate specifically to today's action but were valuable in assisting EPA in developing a document entitled "Guidance for Water Quality-based Decisions: The TMDL Process" (EPA 440/4–91–001). The questions posed that relate to the development of the "Guidance for Water Quality-based Decisions: The TMDL Process" include: how should States develop a priority ranking for TMDL action; how would improved identification and reporting of water quality-limited segments affect the permitting process and existing nonpoint source control programs; should States consider nonpoint source contributions in the development of TMDLs; should EPA require public participation in the development of lists of water quality-limited segments. These topics are covered in detail in the guidance document and will assist States in meeting the requirements of today's regulations.

Many commenters expressed that the identification and prioritization of problem waters are necessary parts of shifting to a more integrated approach for addressing water quality problems on a watershed basis. Some of these commenters, however, added that administrative burdens detract from the States' ability to address problems and, therefore, should be kept to a minimum. EPA agrees, and these final amendments minimize administrative workloads by consolidating several reporting processes and allowing use of automated data systems.

States that consolidate reporting under sections 305(b), 303(d), and 314(a) will be able to focus on harmonizing the targeting and priority-setting aspects of various pollution control programs. This will promote integration between programs (e.g., point source and nonpoint source programs), agencies (e.g., pollution control and agricultural agencies), and eventually different levels of government to address problems on a comprehensive watershed basis.

The section 303(d) process allows EPA and the States to focus on problem watersheds in priority order. It also provides a process to find the most cost-effective solution to water quality problems in a watershed by allowing trade-offs among sources. Since TMDLs are the sum of allowable loadings of a pollutant from all point and nonpoint sources in a watershed (plus a margin of safety), States have the flexibility to consider the relative costs of point and nonpoint source controls when preparing TMDLs, along with such other factors as reliability, relative effectiveness, and degree of assurance that nonpoint source controls will actually be implemented and maintained. EPA also encourages point/nonpoint source trading and other market-based approaches to water quality improvement. Through trading, regulated point sources may be allowed to avoid upgrades of treatment systems to meet water quality objectives if they arrange for and finance equivalent (or greater) reductions in nonpoint source discharges within their watershed or waterbody. EPA and the States will increasingly use the section 303(d) process to establish priorities, promote integration, and develop necessary loadings reductions that are cost effective and watershed based.

G. Technical Corrections

EPA is today making non-substantive clarifying corrections to its regulations in part 130 to amend repeated references to "WLAs/LAs and TMDLs" to read "TMDLs." EPA had clearly stated in its definition of WLAs, LAs and TMDLs, and in the preamble to the 1985 final rule establishing part 130, that WLAs and LAs are part of a TMDL. See 50 FR 1775. Accordingly, the references to WLAs and LAs in these passages are not necessary. Since these changes are not substantive, and serve only to clarify existing requirements, EPA finds that notice and comment proceedings regarding these changes are unnecessary. Furthermore, the changes are in the nature of interpretive amendments to EPA rules, which are exempt from notice and comment requirements.

As part of the rules promulgated on June 2, 1989, EPA provided alternatives that the permitting authority may use to establish effluent limitations to meet narrative water quality criteria in 40 CFR 122.44(d)(1)(vi). Two of the options, §§122.44(d)(1)(vi)(A) and 122.44(d)(1)(vi)(B), involve use of EPA's water quality criteria guidance documents which summarize the scientific knowledge on the effects of pollutants and which contain recommendations regarding levels of pollutants consistent with protection of water quality. These criteria documents are developed as guidance pursuant to section 304(a) of the CWA. However, § 122.44(d)(1)(vi)(B) incorrectly indicates that the criteria are published pursuant to section 307(a) of the CWA. EPA is correcting that error in this rule.

IV. Regulatory Analysis

A. Executive Order 12291

Under section 3(b) of Executive Order 12291 the agency must judge whether a regulation is major and thus subject to the requirements of a Regulatory Impact Analysis. The regulation published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, nor will it significantly disrupt domestic or export

markets. Therefore, a Regulatory Impact Analysis has not been developed for this rule.

B. Paperwork Reduction Act

The information collection requirements related to section 303(d) of the CWA contained in this rule were previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and assigned OMB Control Number 2040–0071. An addendum to the Information Collection Request to clarify the portion of burden related to 303(d) was made available for public review on February 7, 1992 and approved by OMB on May 14, 1992. OMB has reviewed and approved the information collection requirements related to section 304(l) of the CWA contained in this rule and assigned it OMB control number 2040–0152. The information collection requirements related to section 314 of the CWA contained in this rule were previously approved by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and assigned OMB Control Number 2030–0020.

Public reporting burden for the collection of information pursuant to section 303(d) of the CWA is estimated to average 395 hours per State, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden hours associated with the collection of information pursuant to section 303(d) is part of the burden for collection of information pursuant to section 305(b) of the CWA (which is estimated to average 4,639 hours per State). Public reporting burden for the collection of information pursuant to section 304(l) of the CWA is estimated to average 489 hours per State, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), Federal agencies must analyze the impact of regulations on small entities (small businesses, small government jurisdictions and small organizations). However, this analysis is not required if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities. EPA has concluded that this rule will not have a significant economic effect on small entities because today's rulemaking imposes no new requirements for the regulated community. Today's regulations merely clarify procedures for implementing section 303(d) of the CWA and respond to the court decision on section 304(l) regulations.

List of Subjects

40 CFR Part 122

State program requirements, Water pollution control.

40 CFR Part 123

State program requirements, Water pollution control.

40 CFR Part 130

Water pollution control.

Dated: July 10, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble title 40 of the Code of Federal Regulations is amended as follows.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.44 is amended by revising paragraph (d)(1)(vi)(B) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) * * *

(1) * * *

(vi) * * *

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.46 is amended by revising paragraph (a) to read as follows:

§ 123.46 Individual control strategies.

(a) Not later than February 4, 1989, each State shall submit to the Regional Administrator for review, approval, and implementation an individual control strategy for each point source identified by the State pursuant to section 304(l)(1)(C) of the Act which discharges to a water identified by the State pursuant to section 304(l)(1)(B) which will produce a reduction in the discharge of toxic pollutants from the point sources identified under section 304(l)(1)(C) through the establishment of effluent limitations under section 402 of the CWA and water quality standards under section 303(c)(2)(B) of the CWA, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of establishment of such strategy.

* * * * *

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 130.7 is amended by revising paragraph (b); removing the words "WLAs/LAs and" in paragraphs (c)(1) (three places), (c)(1)(ii), (c)(2), (d) (three places), and (e); revising the first sentence of (d)(1) and adding three sentences immediately following the revised sentence; designating the second paragraph under (d)(1) as (d)(2); and adding a new sentence immediately following the first sentence of the newly designated (d)(2) to read as follows:

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

* * * * *

(b) Identification and priority setting for water quality-limited segments still requiring TMDLs.

(1) Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries for which:

(i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (law, regulation, or treaty); and

(iii) Other pollution control requirements (e.g., best management practices) required by local, State, or

Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters.

(2) Each State shall also identify on the same list developed under paragraph (b)(1) of this section those water quality-limited segments still requiring TMDLs or parts thereof within its boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(3) For the purposes of listing waters under § 130.7(b), the term "water quality standard applicable to such waters" and "applicable water quality standards" refer to those water quality standards established under section 303 of the Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements.

(4) The list required under §§ 130.7(b)(1) and 130.7(b)(2) of this section shall include a priority ranking for all listed water quality-limited segments still requiring TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the applicable water quality standards. The priority ranking shall specifically include the identification of waters targeted for TMDL development in the next two years.

(5) Each State shall assemble and evaluate all existing and readily available water quality-related data and information to develop the list required by §§ 130.7(b)(1) and 130.7(b)(2). At a minimum "all existing and readily available water quality-related data and information" includes but is not limited to all of the existing and readily available data and information about the following categories of waters:

(i) Waters identified by the State in its most recent section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened";

(ii) Waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards;

(iii) Waters for which water quality problems have been reported by local, state, or federal agencies; members of the public; or academic institutions. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the United States Department of Agriculture, the National Oceanic and Atmospheric Administration, the United States Geological Survey, and the United States Fish and Wildlife Service are good sources of field data; and

(iv) Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under section 319 of the CWA or in any updates of the assessment.

(6) Each State shall provide documentation to the Regional Administrator to support the State's determination to list or not to list its waters as required by §§ 130.7(b)(1) and 130.7(b)(2). This documentation shall be submitted to the Regional Administrator together with the list required by §§ 130.7(b)(1) and 130.7(b)(2) and shall include at a minimum:

(i) A description of the methodology used to develop the list; and

(ii) A description of the data and information used to identify waters, including a description of the data and information used by the State as required by § 130.7(b)(5); and

(iii) A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in § 130.7(b)(5); and

(iv) Any other reasonable information requested by the Regional Administrator. Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on the list. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in § 130.7(b)(5); or changes in conditions, e.g., new control equipment, or elimination of discharges.

* * * * *

(d) Submission and EPA approval.

(1) Each State shall submit biennially to the Regional Administrator beginning in 1992 the list of waters, pollutants causing impairment, and the priority ranking including waters targeted for TMDL development within the next two years as required under paragraph (b) of this section. For the 1992 biennial submission, these lists are due no later than October 22, 1992. Thereafter, each State shall submit to EPA lists required under paragraph (b) of this section on April 1 of every even-numbered year. The list of waters may be submitted as part of the State's biennial water quality report required by § 130.8 of this part and section 305(b) of the CWA or submitted under separate cover. * * *

(2) * * * The Regional Administrator shall approve a list developed under § 130.7(b) that is submitted after the effective date of this rule only if it meets the requirements of § 130.7(b). * * *

* * * * *

3. Section 130.8 is amended by adding paragraph (b)(5) to read as follows:

§ 130.8 Water quality report.

* * * * *

(b) * * *

(5) An assessment of the water quality of all publicly owned lakes, including the status and trends of such water quality as specified in section 314(a)(1) of the Clean Water Act.

* * * * *

4. Section 130.10 is amended by revising paragraphs (b)(2) and (d)(3) to read as follows:

§ 130.10 State submittals to EPA.

* * * * *

(b) * * *

(2) Identification of water quality-limited waters still requiring TMDLs (section 303(d)), pollutants, and the priority ranking including waters targeted for TMDL development within the next two years as required under § 130.7(b) in accordance with the schedule set for in § 130.7(d)(1). (Approved by the Office of Management and Budget under control number 2040–0071.)

* * * * *

(d) * * *

(3) For each segment of navigable waters included on such lists, a determination of the specific point source discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source.

(Approved by the Office of Management and Budget under control number 2040–0152)

* * * * *

[FR Doc. 92–17017 Filed 7–23–92; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL-3979-7]

National Pollutant Discharge Elimination System; Surface Water Toxics Control Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's action proposes a response to a recent decision of the U.S. Court of Appeals Ninth Circuit in *NRDC v. EPA*, 915 F.2d 1314 (9th Cir. 1990) interpreting section 304(l) of the Clean Water Act (CWA). The Court's decision requires states to identify all facilities discharging toxic pollutants believed to be preventing or impairing water quality of waters on any of the State lists of impaired waters previously identified under section 304(1) and to identify the pollutants discharged. The Ninth Circuit decision also requires EPA to reconsider whether all facilities newly identified under 304(l) are required to have individual control strategies (ICS). The first action is completed elsewhere in the **Federal Register** today as part of final amendments to EPA regulations. The second action is initiated today through this proposal.

Today's action proposes two options. The first option is to continue to require ICSs only for point sources originally subject to such a requirement under EPA's earlier interpretation of section 304(l). The second option is to provide the State the discretion to determine whether, on a case-by-case basis, newly listed facilities will be required to have ICSs. In proposing these options, EPA also considered a third option—a requirement for ICSs for all newly listed point sources. Today's proposal discusses and solicits public comment on all three options. Section III below discusses the three options: no additional ICSs; some new ICSs at the discretion of the Director; and, ICSs for all newly listed point sources. After evaluating public comments and the revised State C lists, EPA may finalize the option requiring no new ICSs or the option authorizing some additional ICSs without seeking further public comment. Due to the lack of information to support the third option described under section III below—ICSs for all newly listed point sources, EPA does not expect to finalize that option without seeking further public comments.

DATES: EPA will accept comments from the public on this proposal until September 8, 1992.

ADDRESSES: Submit comments to Robert K. Wood, Water Quality and Industrial Permits Branch, Office of Wastewater Enforcement and Compliance, (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public record for this proposal is available at the EPA library, M2904, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert K. Wood, Water Quality and Industrial Permits Branch, Office of Wastewater Enforcement and Compliance, (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-1955.

SUPPLEMENTARY INFORMATION:

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I. Authority
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I. Authority

These regulations are issued under the authority of the Clean Water Act, 33 U.S.C. 1251 *et seq.*

II. Background

A. Clean Water Act Section 304(l)

In enacting the Water Quality Act of 1987 (WQA) which amended the CWA, Public Law No. 100-4, 101 Stat. 7, Congress placed greater emphasis on attaining State water quality standards. In particular, section 308 of the WQA amendments added several provisions to focus attention on attaining water quality standards for toxic pollutants. The first component was the establishment of the section 304(l) program. The purpose of section 304(l) is to identify and to control "toxic hot spots." 133 Cong. Rec. 1287 (Jan. 14, 1987) (stmt. of Sen. Moynihan).

In order to identify these "toxic hot spots," section 304(l) required each State, within two years after February 4, 1987, to submit to EPA three lists of waters. The first list required an inventory of those waters which are not reasonably expected to attain or maintain the new water quality standards developed under section 303(c)(2)(B) for toxic pollutants. (See section 304(l)(1)(A)(i).) The second list encompasses all waters that are not reasonably anticipated to attain the goals of the Act, *i.e.*, to "assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water." Waters on the second list, while meeting State water quality standards, might not be fully achieving the goals of the Act. (See section 304(l)(1)(A)(ii).) These first two lists are known as the "A lists."

The third list includes those waters that the State "does not expect" to achieve applicable water quality standards, after application of technology-based controls, due to discharges from point sources of section 307(a) toxic pollutants. (See section 304(l)(1)(B).) For a water to be listed on the B list the failure to attain water quality standards had to be entirely or substantially due to the point source discharge of toxic pollutants. This list is commonly referred to as the "B list."

The statute also required the States to submit a list of point sources discharging toxic pollutants "believed to be preventing or impairing" the attainment of applicable water quality. 33 U.S.C. 1314(l)(1)(C). This list is commonly referred to as the "C list."

On January 4, 1989, EPA promulgated a rule interpreting the C list to include only point sources discharging toxic pollutants into waters on the B list. 40 CFR 130.10 (54 FR 258). Under this rule, once the State identified such point sources, they were to prepare ICSs for them. On June 2, 1989, EPA promulgated final regulations implementing section 304(1) of the CWA (54 FR 23868). Under EPA's June 2, 1989 regulations, the linkage between the C list sources and the B list waters which was to result in ICSs for point sources discharging to B list waters, was unique to the B list. EPA's rules did not require identification of point sources discharging to waters listed on the A lists, nor did these rules

require development of ICSs for point sources discharging to A list waters.

Upon the State's submittal of the lists and ICSs, EPA was to approve or disapprove the State's submissions of the lists and ICSs by June 4, 1989. In the event of a State's failure to submit the lists or ICSs, or if EPA disapproved a list or ICS, EPA was to work in cooperation with the State in order to develop the lists and ICSs by June 1990.

B. Definition of Individual Control Strategy (ICS)

EPA's June 2, 1989, final regulations implementing section 304(1) of the CWA (54 FR 23868) established the criteria and procedures for State listing of waters and facilities under section 304(1) as well as the requirements for ICSs. In these regulations EPA defined the term "individual control strategy" as "* * * a final NPDES permit with supporting documentation showing that the effluent limits are consistent with an approved wasteload allocation, or other documentation which shows that applicable water quality standards will be met not later than three years after the individual control strategy is established. Where a State is unable to issue a final permit on or before February 4, 1989, an individual control strategy may be a draft permit with an attached schedule * * * indicating that the permit will be issued on or before February 4, 1990. * * *." 40 CFR 123.46(c).

C. The Ninth Circuit Decision and Today's Final Amendments

A portion of EPA's regulations implementing section 304(l) of the CWA was remanded in *NRDC v. EPA*, 915 F.2d 1314 (9th Cir. 1990). The Ninth Circuit invalidated EPA's interpretation of section 304(l)(1)(C) and required EPA to amend its regulations at 40 CFR 130.10(d)(3) to reflect the Court's interpretation that facilities discharging toxic pollutants into waters on the A lists (not just the B lists) should be included on the C lists. In response to the Ninth Circuit decision, elsewhere in today's Federal Register, EPA is amending § 130.10(d)(3) to require States to supplement their C lists to include point sources discharging toxic pollutants to waters on the A lists.

The Ninth Circuit also required EPA to reconsider its interpretation of section 304(l)(1)(D) found at 40 CFR 123.46(a) of EPA regulations. EPA's original interpretation of section 304(1)(1)(D) requires only facilities discharging to waters on the B lists (every facility on the original C list) must have ICSs. When the Ninth Circuit invalidated EPA's interpretation of section 304(1)(1)(C) and thereby required States to expand their C lists to include point sources discharging toxic pollutants to waters on the A lists, the Court also required EPA to reconsider whether all point sources on the expanded C lists shall be required to have ICSs.

In its decision, the Ninth Circuit explicitly left for EPA to consider whether to increase the number of facilities required to have ICSs. The Ninth Circuit's requirement that EPA reconsider its interpretation of which facilities must have ICSs is not a directive to interpret the statute in a certain way. On the contrary, the Court asked EPA to determine the best course of action, i.e., to determine whether all, some, or none of the facilities which will be added to States' C lists should be required to have ICSs. Therefore, today's preamble discusses in some detail three options that EPA has considered for reinterpreting the requirements at § 123.46(a). EPA's principal proposal is to leave the regulations at § 123.46(a) unchanged and thereby not require ICSs for any newly listed facilities. EPA is also proposing, and soliciting public comment on, two other options.

D. Implementation of Water Quality-based Permits and ICSs

1. Water Quality-based Permit Requirements—Background

This section provides background regarding some of the water quality requirements that apply to NPDES permits, and explains what distinguishes permits that contain ICSs for other permits. All NPDES permits must include water quality-based effluent limitations where necessary to protect State water quality standards. CWA section 301(b)(1)(C). EPA regulations at 40 CFR 122.44(d) define this requirement and clarify how the permitting authority shall determine when water quality-based effluent limitations are necessary. All NPDES permits being issued should now reflect the requirements of § 122.44(d). In general, § 122.44(d) requires effluent limitations for pollutants and pollutant parameters that "are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." 40 CFR 122.44(d)(1)(i). The fundamental purpose of an ICS is to "achieve the applicable water quality standard" for toxic pollutants "as soon as possible" through limitations imposed in permits. 40 CFR 123.46(a). The end point of attainment of water quality standards is the same for ICSs as for other NPDES permits. Therefore, all NPDES permits that meet the water quality-based permitting requirements at § 122.44(d) will also ultimately meet the requirements of an ICS. Thus, EPA may approve the existing permit as the ICS if the effluent limitations for the pollutant(s) of concern in the existing permit already meet the requirements of section 304(l).

There are some distinct differences between NPDES permits that contain ICSs and NPDES permits that do not. First, the requirements for an approvable ICS are narrowly focused on achieving water quality standards for toxic pollutants. To be approved by EPA, an ICS is required only to contain limitations for CWA section 307(a) toxic pollutants where necessary to protect State water quality standards. In contrast, all NPDES permits are also required to contain necessary limitations for individual section 307(a) toxic pollutants, as well as on all other pollutants or pollutant parameters, including whole effluent toxicity, where necessary to protect State water quality standards. Limitations for non-307(a) pollutants, such as chlorine and ammonia, and limitations for whole effluent toxicity are additional controls designed to protect State numeric and narrative water quality criteria; these are not required before EPA may approve an ICS. Thus, the requirements for water quality-based NPDES permits are broader than the requirements that apply to the ICS portion of an NPDES permit. All permits that are issued in compliance with the CWA will ultimately be at least as protective of water quality standards as, and in some cases more protective of water quality standards than, ICSs issued pursuant to section 304(l).

Another difference pertains to the timing of issuance of and compliance with NPDES permits, as compared to ICS requirements in permits. NPDES permits expire and are reissued every five years. With a few, limited exceptions, NPDES permits are not modified within this five-year cycle. Conversely, ICSs are intended to be implemented on an accelerated basis, i.e., within the five-year permitting cycle. Furthermore, in some circumstances NPDES permits may allow a reasonable time, which can never exceed the five year permit term for compliance with water quality-based limitations, while ICSs must require compliance within three years from establishment of the ICS.[1]

[1] ICSs were established beginning in approximately February 1989 and should have been

Continued

Whether and to what extent there would be an actual difference in the ultimate compliance dates between the normal NPDES permitting process and a new round of ICSs is unclear. EPA does not have precise data regarding either how many additional permits need water quality-based permit limits or when such permits expire. EPA has made increasing efforts over the last few years to ensure that permits contain appropriate water quality-based limitations. On March 9, 1984 EPA published a national "Policy for the Development of Water Quality-based Permit Limitations for Toxic Pollutants" (49 FR 9016). This notice confirmed EPA's policy of requiring that NPDES permit limitations assure compliance with all State water quality criteria for toxics. In 1985, EPA Published the "Technical Support Document for Water Quality-based Toxics Control." EPA–440/4–85–032, September 1985. This guidance document provided specific technical procedures to translate State numeric and narrative water quality criteria for toxics into NPDES permit numerical effluent limitations. Following this policy and guidance, EPA and States began to issue more permits which included effluent limitations for toxics designed to meet State water quality criteria. EPA has continued to expand and emphasize the water quality-based permit program to assure that permits include all necessary limitations. In February 1987, EPA began implementing the far-reaching programs of the Water Quality Act of 1987. In response to one of the new programs created by the 1987 Amendments, EPA promulgated final regulations on June 2, 1989 which strengthened EPA's Surface Water Toxics Control Program under NPDES (54 FR 23868). In March of 1991, after over five years of experience in implementing the surface water toxics control program, EPA published the revised "Technical Support Document for Water Quality-based Toxics Control." EPA/505/2–90–001, PB91–127415, March 1991.

All NPDES permits should have been renewed since EPA issued the 1984 National Policy, and, by 1994, all permits issued before the 1989 regulations should have been renewed. Because most permits contain compliance schedules of three years or fewer, compliance would likely be required no later than 1997 for permits issued as late as 1994. If EPA requires new ICSs, the ICSs will be developed as soon as 1992, depending on when today's proposed regulations become final. ICSs issued in 1992 or 1993 would require compliance as soon as possible, but no later than 1995 or 1996. EPA does not have information regarding how many additional ICSs might be developed under the various options described in this proposal—thus EPA cannot make a dependable estimate of how long development and establishment of the additional ICSs would take. Given the above analysis, there may not be a significant time difference between requiring new ICSs on the one hand and relying on the normal permitting process on the other.

A third difference between NPDES permits and ICS relates to EPA's ability to take over a State's authority to issue a permit. Under current regulations, EPA cannot assume a State's authority to issue the permit on the basis of the State's failure to issue the permit. However, where an ICS is required, EPA may take over a State's authority to issue the permit based on the State's failure to implement the ICS requirements consistent with the requirements of section 304(l). 40 CFR 123.46(f).

2. The Listing Process Conducted From 1988–1990

EPA considers the listing process that States and EPA have already completed under section 304(l) to be credible. Under section 304(l), the States were required to submit to EPA, three lists of waters and a list of facilities for EPA review and approval. EPA was required to make approval or disapproval decisions on the lists. The listing process was based on all available information. EPA and the States spent considerable time and effort to cast a broad net in the listing process to ensure that all waters for which there was sufficient supporting information were listed. In addition there was an opportunity for the public to comment on every State list (the comment process was held either by the State or by EPA, or in some cases by both). Because of the extensive process the States and EPA went through to develop the lists of waters and facilities, EPA has confidence in the quality of the lists.

In preparation for developing the 304(l) lists required by February 4, 1989, EPA advised the States that where a State had information showing that the fishable swimmable goals of the CWA were not being met in a water, but lacked information showing that such impairment was entirely or substantially due to the point source discharge of toxic pollutants, the State should list that water on the A list. The identity of point sources discharging to the water was not required for such waters in 1989. Similarly, EPA reviewed each State's lists to ensure that, where a State had information showing that a water was not meeting water quality standards entirely or substantially due to point source discharges of toxic pollutants, the water was listed on the B list, the responsible point sources were identified, and ICSs were prepared for them.

EPA and the States evaluated all available data, including both water quality related data and discharge data in determining whether an ICS would be required. The public had an opportunity to participate in the listing decisions in each State. EPA and States made every effort to list all point sources preventing or impairing the attainment of applicable water quality standards for toxic pollutants. If a particular point source was not included on a State's final C list, EPA has implicitly found through approval of the lists that an ICS was not needed. The bases for this finding were that the data do not show that the water quality standard is not expected to be attained for toxic pollutants, or that the data do not show that attainment (or substantial progress toward attainment) can be achieved from further controlling point sources of toxic pollutants. Requiring ICSs for such point sources will require permitting authorities to divert fixed resources to immediately evaluate the need for such point source controls. If the extensive listing process already conducted is credible, then this use of resources would be unwise and unnecessary in meeting the statutory goals and requirements.

3. Information About Supplemented State C Lists

The Ninth Circuit decision requires that, in addition to the facilities that the States have already identified pursuant to section 304(l)(1)(C), a point source must be listed if, as stated in 40 CFR 130.10(d)(3), it is discharging a toxic pollutant "believed to be preventing or impairing" water quality for each segment of water on all lists (not just the B list). Under EPA's original interpretation of section 304(l), State facilities lists were tied directly to waters not meeting applicable water quality standards, due entirely or substantially to the point source discharge of toxic pollutants (the B list). The Ninth Circuit has broadened this link between listed waters and facilities. States must now list facilities discharging section 307(a) toxic pollutants to waters where some uses

established by June, 1990 (although there were ICSs that were not established by then).

are impaired due to any type of source (including nonpoint sources) of such toxic pollutants whether the water quality standard will or will not be achieved.

EPA does not at this time have information from the States about the number of point sources that will be added to State C lists as a result of the Ninth Circuit decision and EPA's amendment to § 130.10(d)(3) implementing that decision. Nor does EPA have information regarding whether those discharges will be to waters where the water quality standards are being achieved or where the point source contribution is minimal.[2] EPA does not anticipate obtaining such information until the States submit it to EPA in 1992. Thus, EPA does not know what the quantity or importance of the newly added point sources will be.

This uncertainty raises the question of whether there will be sufficient environmental benefit from requiring ICSs for newly listed point sources given that the next permits issued to such point sources are required to be as protective as ICSs, and that ICS development can be significantly more resource intensive than, and thereby delay, other permit issuance under the normal five-year cycle. EPA's experience from the first round of ICS issuance was that a large permit workload was created. There were two principal reasons. First, the normal five-year cycle was interrupted and unexpired permits were reopened that would have otherwise not been reopened until the permit expired. Second, a larger number of permits had to be issued in a short period of time. This caused available resources to be directed toward addressing the peak workload and disrupted other State and regional permitting activities. Further, ICSs and their compliance requirements have been challenged in evidentiary hearings much more frequently than other NPDES permits. EPA believes that dischargers have challenged their permits containing ICS conditions more frequently than the norm in part because, as a result of ICS requirements, they are seeing water quality-based limits in their permits for the first time. EPA believes that many of the same dischargers are likely to again challenge their permits when they come up for reissuance to include additional water quality-based limits (e.g., limits for whole effluent toxicity or WET). Thus, a likely result of requiring additional ICSs is an increase in evidentiary hearing requests. This too is a significant drain on limited State and EPA resources.

This diversion of resources has resulted in an increased number of expired permits that have not been reissued ("permit backlog"). EPA annually tracks the number of expired permits which EPA Regions and authorized States have been unable to reissue. The number of backlogged permits in the States has increased from 12% in 1988 to 22% in 1990. This period of time corresponds to the period during which the States were developing ICSs. The result of this increased backlog is that some permits needing new effluent limitations to protect water quality are not being issued. EPA's information, based on a sample of two regions, shows that approximately 35% of facilities that discharge wastewater exhibit WET at levels which have the reasonable potential to cause an excursion above a water quality criterion. EPA does not believe that 307(a) toxic pollutants are the sole cause of WET. In addition, section 304(l) of the CWA does not require ICSs to specifically limit WET. Therefore, diversion of resources away from normal permit reissuance, during which a limit for other than a 307(a) pollutant could be imposed, will allow some facilities to continue to impair water quality.

By adhering to the five-year permitting cycle instead of requiring new ICSs, EPA believes that point source controls protective of water quality standards will be established where necessary in the near-term, and that EPA will at the same time avoid unnecessarily diverting fixed EPA and State resources away from activities that may provide needed environmental protection. Based on these factors, EPA believes that it may be more environmentally beneficial to adhere to the normal five-year permitting cycle when establishing water quality-based effluent limitations to protect applicable water quality standards.

III. Options

The Ninth Circuit required EPA to reconsider its interpretation of CWA section 304(l)(1)(D). EPA has considered three principal options in deciding whether to require additional ICSs.

A. Statutory Background

EPA's starting point for today's proposal is the language and purpose of the statute. If the statute provides an unambiguous requirement regarding which waters need ICSs, EPA is bound to implement that requirement. If, on the other hand, the statute is ambiguous, EPA may choose a rational interpretation of the statute in view of its purpose. Section 304(l)(1)(D) provides for "each such segment," an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 402 of this Act and water quality standards under section 303(c)(2)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy. When this provision is read as a whole it is ambiguous. The reference to "each such segment" could mean one of several things. First, "each such segment" could refer broadly to all segments identified in section 304(l), meaning that each and every segment identified on any of the lists must have an ICS. Second, "each such segment" could refer specifically to the segments affected by paragraph C, implying that each segment identified as receiving discharges of section 307(a) pollutants from point sources must have an ICS. Third, the provision could require ICSs for water segments for which an ICS will produce a reduction in the discharge of toxic pollutants sufficient to achieve the applicable water quality standard. Last it could mean that the States and/or EPA are to examine the listed segments of water to determine whether an ICS is needed to improve water quality. This last approach could be accomplished on a case-by-case basis, or if data are available, groups of water segments could be included in or excluded from the ICS requirement.

The legislative history does not illuminate the precise meaning of this provision. Clearly, Congress intended the section 304(l) program to be narrowly focused on the "toxic hot spots" rather than to be broadly applied to all waters. See, for example, 133 Cong. Rec. S17-76, 24 (daily ed. Jan. 6, 1987), statement of Senator Moynihan. The only discussion in the Conference Report indicates that the C list would consist of dischargers to the B list

[2] The relative contribution of the point source is only relevant to the question of whether the development of new limitations should be a high priority, not whether there should be limitations at all. EPA regulations at 40 CFR 122.44(d) require NPDES limitations for all dischargers where necessary to protect applicable water quality standards. These regulations to not distinguish "minimal" contributions from contributions of a greater magnitude.

waters and ICSs would be prepared for each discharger on the C list. Because the essence of that discussion (*i.e.*, that the C list would consist of the dischargers to the B list) has already been rejected by the Ninth Circuit, EPA does not believe that the Conference Report alone is determinative. Similarly, section 304(l) did not codify either the House of Representatives or the Senate version of the provision. The House provision would have required ICSs for the B list waters, while the Senate provision would have required an ICS-type control mechanism for at least some of the waters on the A(i) list. Neither the House nor the Senate provision would have required special limitations for waters on a list equivalent to the A(ii) list.

As shown above, the language of the statute and the legislative history do not provide clear guidance for one distinct interpretation. Therefore, EPA will take into account the purposes of section 304(l) and the Clean Water Act generally to determine the scope of the ICS requirements.

B. No Additional ICSs

EPA is proposing under this option that new ICSs not be developed for the facilities added to the C list. EPA's reasoning is based on the conclusions that (1) the statute does not require new ICSs; and (2) the purposes of the statute, in particular the requirement that water quality standards be met, will be served without new ICSs.

By proposing this option EPA is adhering to its original view that ICSs should be required for those waters where the solution meshes with the problem. In particular the ICS solution of point source controls for toxic pollutants fits the problem of the waters on the B list. Those waters include all waters that are entirely or substantially contaminated by point source discharges of toxic pollutants. The B list includes a wide spectrum of waters, including some waters with significant nonpoint source pollution and some waters with significant degradation from other pollutants. What is common to all the B list waters is that point sources of toxic pollutants are a significant problem. Thus EPA is proposing that ICSs be required for all point sources on the C list which discharge to waters on the B list.

Even though no ICSs would be required for the point sources added to State C lists as a result of the Ninth Circuit decision, the next permit issued to the facility pursuant to EPA and State NPDES regulations, and specifically 40 CFR 122.44(d), must contain effluent limitations for each of the toxic pollutants for which the facility was identified pursuant to section 304(l)(1)(C), where necessary to meet applicable water quality standards. Therefore, the next permit issued to the facility must, by regulation, be at least as protective as an ICS would.

As described above, there are certain characteristics of an ICS that are lost under this option. First, the timing of issuance of a permit containing an ICS may be different than for a permit not containing an ICS. EPA does not believe that this time difference is substantial. As discussed later in section III.C. of today's proposal, new ICSs would likely not be incorporated into final NPDES permits until 1994 following promulgation of a final rule in 1992. State submittals of new draft ICSs in 1993, and completion of the EPA or State review and public comment period. In contrast, most NPDES permits effective on or before 1994 should already include effluent limitations necessary to achieve water quality standards in order to comply with the June 2, 1989, regulations at 40 CFR 122.44(d)(1). Most authorized States should have been issuing permits to comply with the requirements of 40 CFR 122.44(d)(1) by June 1990 because under 40 CFR 123.62(e) authorized States have up to one year to adopt regulations to reflect promulgation of new federal regulations. States may have up to two years if State law must be amended; however, EPA believes that most States did not need changes to State law to implement the requirements of 40 CFR 122.44(d)(1). Because NPDES permits cannot extend for more than five years, most of the NPDES permits needing water quality-based effluent limits for toxics will have been reissued by 1994. Furthermore, in most States, water quality standards or implementing regulations that expressly authorize compliance schedules allow up to three years as a reasonable compliance schedule; three years is also the maximum time allowed by section 304(l)(1)(D) for compliance with the requirements of an ICS. Therefore, the timeframe for compliance with the requirements of any new ICSs would not be significantly different from the compliance timeframe for final permits that would normally be issued under the five-year cycle of expiration and reissuance.

A second characteristic of an ICS that is lost under this option relates to EPA's authority to take over and issue State permits. Currently, EPA's authority to take over ICS issuance from the State (40 CFR 123.46(f)) does not apply to all NPDES permits—only ICSs. Therefore, under this option where no new ICSs would be required, EPA would forgo the opportunity to take over permit issuance from the State for new C list facilities where the State fails to act on those permits. EPA's authority to object to a State permit and assume authority to issue such a permit would be unchanged under this option.

There is a significant advantage to this option. It would take advantage of the significant work already completed separating out the waters that urgently need point source controls for toxic pollutants, instead of requiring the States and EPA to start over in that evaluation. Because EPA believes that most of the impaired waters for which facilities will be identified on the expanded C lists are dominated by nonpoint sources of toxics, or are already meeting water quality standards for toxics, this option is likely to provide a level of environmental protection similar to what would be achieved under other options. Thus, this option would allow permitting authorities to continue planned reissuance of expired permits that achieve State water quality standards—in many cases for higher priority waters where, for example, nonconventional pollutants are the problem.

This option would require no change to 40 CFR 123.46(a) as amended today by the final action described above. The regulations at § 123.46(a) would maintain their original meaning: ICSs are required for each point source identified pursuant to section 304(l)(1)(C) which discharges to a water identified pursuant to section 304(l)(1)(B).

EPA solicits comment on this proposed option, including under which circumstances this option would be more appropriate than other options described below, on whether this option should be adopted, and on the assumptions upon which this option is based. These assumptions include: that the section 304(l) listing process was credible; that section 304(l) implementation has identified the majority of waters and facilities in need of ICSs to address point source-related "toxic hot spots;" that water quality-based permits issued in the normal permitting cycle will be at least as protective of water quality as ICSs; that some permits most in need of new water quality-based limitations for non-307(a) toxic pollutants will not be timely reissued as a result of an expanded 304(l) process; and that ICS development is highly resource intentive.

C. Some New ICSs at the Discretion of the State

EPA is proposing an alternative to the option described in III.B., above. Under this second option, each State would have the discretion to determine, on a case-by-case basis, whether ICSs should be established for newly listed facilities. The resulting State determinations would be reviewable by EPA and would be made available for public comment. An ICS would not be required for a listed facility where in the judgment of the State, after EPA review and opportunity for public notice and comment, an ICS is not warranted.

EPA realizes that the listing process under section 304(1)(1) (B) and (C) may not have identified all waters and facilities where additional ICSs would be warranted. EPA will rely, in part, on the information submitted by the States in their new C lists to make the final determination of whether to require more ICSs. If the new State C lists identify a significant number of sources on waters exceeding water quality standards for toxic pollutants, EPA will be more likely to select this second option and thereby require at least some new ICSs.

At present, EPA's preferred way of structuring such a requirement would be to require the State to evaluate all newly listed point sources and their receiving waters to determine if developing an ICS would be warranted. EPA is proposing at § 123.46(a)(i), under this option, a set of criteria that the States would use to decide whether to submit an ICS for a particular facility and on which the Regional Administrators would base their reviews of those decisions. The proposed criteria are fundamentally based on the section 304(l) requirement to establish ICSs that will reduce the point source discharge of toxic pollutants, and EPA's regulations at 40 CFR 122.44(d) which require that permits contain water quality-based effluent limitations wherever necessary to protect water quality standards. The basis for these determinations would include the following: whether applicable water quality standards for toxic pollutants for the listed receiving water are currently being met; whether the newly listed point source causes, has the reasonable potential to cause, or contributes to an exceedance of applicable water quality standards for toxic pollutants; and, whether a decrease in discharge from all listed point sources of the toxic pollutants of concern to the listed water would significantly improve water quality.

Under this option, EPA is proposing a process and deadlines for the following actions: State determinations of which facilities need ICSs; State submittal of new ICSs to EPA; EPA review of State ICSs; public review of draft permits containing new ICSs; and EPA public notice of its final approval/disapproval decisions. In proposing an administrative process, EPA is attempting to consolidate actions wherever possible and make the process of implementing this option clear and straightforward. Thus, where possible, EPA proposes relying on the normal permit issuance process for public review of ICSs. In proposing this administrative process, EPA's two main objectives are to establish ICSs quickly where they are necessary, and to ensure that ICS determinations are made accurately. EPA solicits public comment on whether the proposed administrative process will be efficient and accurate. In particular, EPA solicits comment on whether public review of ICS determinations is necessary.

The proposed process is as follows:

—Each State shall determine, based on the following criteria, which facilities on the section 304(l)(1)(C) list that discharge to waters not on the list required by section 304(l)(1)(B), should be required to have ICSs:

(a) Whether applicable water quality standards for toxic pollutants for the listed receiving water are currently being met;

(b) Whether the newly listed point source causes, has the reasonable potential to cause, or contributes to an exceedance of applicable water quality standards for toxic pollutants; and

(c) Whether a decrease in discharge from all listed point sources of the toxic pollutants of concern to the listed water would significantly improve water quality.

—Each State shall submit to EPA, by September 22, 1993, the ICSs for each facility the State has determined should be required to have an ICS. Where a State is authorized to administer the NPDES Program, that State should make draft permits that are ICSs available for public comment prior to submitting the ICSs to EPA.

September 22, 1993, is one year from the date EPA is recommending that States submit their revised lists of facilities under section 304(l)(1)(C). EPA believes that one year is necessary to allow the States sufficient time to develop well-documented ICSs. For the first set of ICSs submitted on or before February 4, 1989, the States had two years to identify which waters needed listing, to identify which facilities needed ICSs and then to develop the ICSs. In the action proposed under this option, the States will already have the waters identified but will need to decide which additional facilities need ICSs and then to develop ICSs. EPA believes that one year provides a reasonable time to complete these activities given that the number of new ICSs is presently undeterminable.

—Within four months of the State submittal of each ICS, the Regional Administrator shall: (a) Approve any ICS EPA believes is adequate if the State has provided public participation and if the Regional Administrator determines that additional public comment is not desirable, (b) propose to approve any ICS EPA believes is adequate and either the State has not provided adequate public participation or the Regional Administrator determines that additional public comment is desirable, (c) propose to disapprove any ICS EPA believes is inadequate, and (d) propose to disapprove any implicit determination not to submit an ICS for a facility if EPA believes, based on the criteria in paragraph (i), an ICS is needed. An ICS is adequate if it conforms to the definition of ICS at 40 CFR 123.46(c); contains limitations for the relevant toxic pollutant(s) as required in § 122.44(d) and it contains a date for compliance that is as soon as possible, but not later than three years from the date of establishment of the ICS. EPA shall make its proposed decisions regarding approval/disapproval of State ICSs available for public comment for a period of 60 days.

EPA believes that four months is a reasonable time for EPA to review the submitted ICSs and decide whether to approve or disapprove them. The four months is the same amount of time that Congress allowed for review of the ICSs which were submitted on or before February 4, 1989. EPA believes that the same amount of time is needed because EPA may be reviewing a large number if ICSs during any four months period, making it impractical to expect that review could be completed in a shorter time.

EPA also believes that a 60-day comment period is sufficient to provide for full public participation in the review of ICSs and EPA's proposed decisions regarding ICSs. In the first round of ICSs, the statute allowed for a 120-day public comment period for review of listing decisions on waters as well as review of ICSs. In the action proposed under this option, the public will already know which waters were listed based on the February 4, 1989, submittals and

will only need to review the ICSs and any proposed decisions regarding approval or disapproval of ICSs. ICSs are in content equal to NPDES permits. EPA normally allows for a 30-day comment period for public review of NPDES permits. Therefore, EPA believes that 60 days is sufficient for full public review of the new ICSs and proposed decisions regarding ICSs.

The proposed regulations under this option would not require EPA to take public comment on those ICSs that the Regional Administrator approves and determines that the State provided adequate public participation. EPA Regional Offices may choose to publicly notice such final decisions at the same time they request public comment on proposed approval/disapproval decisions.

Within four months after the close of the 60-day public comment period on EPA's proposed approval/disapproval of State ICSs, EPA shall consider all public comments received, make final approval/disapproval decisions including decisions on whether additional ICSs should be required. EPA shall publicly notice these final decisions. At any point where EPA publicly notices a disapproval of a State ICS, the Administrator in cooperation with such State, and after notice and opportunity for public comment, shall implement the requirements of section 304(l) in such State within one year following the date of the disapproval.

EPA believes that four months is a reasonable time for EPA to review any comments submitted by the public and make final approval/disapproval decisions. The four months is the same time EPA allowed for this activity for the first set of ICSs which were submitted on or before February 4, 1989. EPA believes that the same amount of time is needed because many of these decisions could be complex and of significant interest to the public. EPA believes that four months is the shortest feasible time to adequately evaluate comments on such decisions.

The Chief benefit of this option is that it would support the development of ICSs where they are necessary, i.e., where the State and EPA make the judgment that water quality improvement will result. At the same time this option would enable the States and EPA to forgo developing an ICS where the ICS would not require new controls or where the environmental benefit would, on balance, be insignificant.

This option would not require that ICSs be developed for all facilities added to State C lists; instead, ICSs would be limited to where water quality-based limitations for toxic pollutants are required under 40 CFR 122.44(d) and where the ICS is expected to result in improved water quality. Limiting the ICS requirement to only some dischargers is appropriate because ICSs are limited to controlling point sources of toxic pollutants and some of the waters concerned may not be impaired by either. This option contemplates that there may be some newly listed facilities whose discharges have the reasonable potential to cause or contribute to excursions of the applicable water quality standards even though the waters are not exceeding the water quality standards due entirely or substantially to the point source discharge of toxic pollutants.

Under this option, the State would have to judge whether the contribution of toxic pollutants from such a discharger is either significant or minimal. The question of whether the receiving water is impaired entirely or substantially due to the point source discharge of toxic pollutants, however, has already been answered. If the State and EPA did not list the water on the B list, then they have found that the principal cause of impairment of the water, based on available information, is not the point source discharge of toxic pollutants.

A significant drawback of this option is that States would have to undertake large numbers of evaluations that could be essentially redundant. In deciding whether ICSs are warranted, the States and EPA (in reviewing State decisions) might be essentially revisiting the determinations that were already made when the B lists were developed. This could be true even though the terminology controlling the decisions would be somewhat different—in reality available water quality information is not usually precise enough to make fine distinctions, and the State and EPA must rely in part on their accumulated expertise to make reasonable decisions. Thus, this option could impose a repetitive decision making burden without a corresponding environmental benefit.

EPA is also proposing an additional regulatory amendment under this option to amend the definition of Individual Control Strategy at 40 CFR 123.46(c). The existing regulatory definition of ICS is not clear on the conditions under which a draft permit can be an ICS. EPA intends to continue to approve draft permits as ICSs under this option and is, therefore, proposing to amend the definition of ICS to clarify that ICSs can be draft permits where the final permit will be issued within one year after the State submits the draft permit to EPA. This proposed amendment is needed to ensure that ICSs will be established as soon as possible while taking account of the length of time needed to develop complex permits.

EPA solicits comments on this option, including whether it should be finalized, what different criteria might be appropriate for determining when ICSs are required, what procedures are appropriate for implementing this option, and what deadlines should apply.

D. ICSs for All Newly Listed Point Sources

This option would require ICSs for all newly listed facilities. The obvious result of this option would be that accelerated review of the need for new water quality-based controls, in the form of ICSs, would be required for all point sources on the C list. In the discussions above, EPA has already identified at least two categories of waters for which ICSs would not accomplish the statutory goal of attaining water quality standards: waters that are already expected to achieve applicable standards and waters with minimal point source contributions. Yet, under this option, fixed EPA and State resources would be expended on establishing ICSs even in cases where the information shows that there will be little or no environmental benefit from an ICS. One result of this expenditure of resources, EPA has learned, may be that the permit backlog (permits that have expired and not yet been reissued) would increase. Furthermore, as noted above, EPA has very little information at this time about the number of facilities that States will add to their C lists as a result of the Ninth Circuit decision. If a small number of facilities is added, the resource implications in other parts of the water quality program of this option would be minimal. However, if a large number of facilities is added and if those facilities include a large proportion of facilities that are discharging minimal amounts of toxic pollutants, a significant expenditure could be required to develop ICSs without a concomitant environmental benefit. The essential point is that the listing process itself (listing of point sources discharging toxic pollutants to the A list waters) may not in many cases provide the information necessary to show that ICSs would result in improved water quality for a given facility; yet, under this option, an ICS would always be required for a listed facility, regardless of whether available information shows that an ICS would be environmentally beneficial. It is

questionable whether ICSs should automatically be required for newly listed facilities, particularly in light of the virtual absence of information concerning the likely contents of the new C lists.

This option would require an amendment to 40 CFR 123.46(a), as amended elsewhere in this **Federal Register**, to establish the requirement for new ICSs and the administrative process and schedule for developing, reviewing, and implementing the new ICSs. The administrative process under this option would be similar to the process proposed under the second option above except that ICSs would be submitted to EPA and approved or disapproved by EPA for each newly listed point source. Again, the Agency solicits comment on all aspects of this option and, specifically, on the advisability of finalizing this option and on what changes to existing procedural regulations would be necessary to implement this option.

IV. Today's Proposal

Today, EPA is proposing two options. First, EPA is proposing to not amend § 123.46(a). This proposal is described in detail as the first option in III.B., above. Under this option, the regulations at § 123.46(a) would maintain their original meaning as established on June 2, 1989: ICSs are required for each point source on the C list that discharges to a water on the B list. Even though no ICSs would be required for the point sources added to State C lists as a result of the Ninth Circuit decision, the next permit issued to the facility pursuant to EPA and State NPDES regulations and, specifically 40 CFR 122.44(d), must contain effluent limitations protective of applicable standards for all pollutants where necessary, including each of the toxic pollutants for which the facility was listed. Such permits would also need to meet all other requirements of 40 CFR 122.44(d). Therefore, the next permit issued to the facility would, by regulation, be at least as protective as an ICS would. Under this first option, no regulatory change to § 123.46(a) beyond that made by final rule, elsewhere in today's **Federal Register**, would be necessary. EPA is, therefore, not proposing any additional regulatory language under this option.

EPA is also proposing today an alternative option. This second option is described in detail under section III.C., above. Under this option the regulations at § 123.46(a) would be amended to provide the State the discretion to determine, on a case-by-case basis, whether ICSs are required for newly listed facilities. The State determinations would be subject to EPA and public review. An ICS would not be required for a listed facility where in the judgment of the State, and after EPA and public review, an ICS is not warranted. EPA is, today, proposing under the second option, a set of criteria on which the States would base their ICS determinations and on which EPA would base its reviews of State ICS determinations. The proposed regulation would be an addition to 40 CFR 123.46(a), as set out in the proposed regulations below. Today's proposed regulatory language at § 123.46(a) is for this second option only. No regulatory language is either necessary or proposed under the first option.

EPA believes at this time, that the first proposed option may be the best course of action. In proposing this option EPA is postulating that the original B lists identified the vast majority of waters for which ICSs would provide significant environmental benefit. The first option would avoid the resource-intensive and inherently redundant process of developing limits on toxic pollutants separate from other permit limits. EPA also believes that the benefits of the first option outweigh the possibility that some newly listed point sources that are in need of high-priority attention will not receive new water quality-based controls immediately, but rather will receive water quality-based effluent limitations at the time of the next permit issuance.

If after reviewing the revised State C lists and the public comments on today's proposal, EPA determines that the original B lists did not identify a substantial portion of waters for which ICSs would provide significant environmental benefit, EPA will be more likely to consider finalizing the second, or alternative option, described in III.C., above.

EPA is today soliciting comments from the public on all aspects of this proposal. EPA will carefully consider all public comments on this proposal before making a final decision. EPA also intends to evaluate the revised C lists in making its final determination of the best course of action. After evaluating public comments and the revised State C lists, EPA may finalize either of its proposed options without seeking further public input. Due to the lack of information to support the third option described under III.D. above, and EPA's belief that there will be some newly listed facilities for which an ICS will not improve water quality and therefore should not be required, EPA does not anticipate finalizing that option without seeking further public input. EPA is, therefore, not today proposing any regulatory language that would implement this third option.

V. Regulatory Analysis

A. Executive Order 12291

Under section 3(b) of Executive Order 12291 the Agency must judge whether a regulation is major and thus subject to the requirements of a Regulatory Impact Analysis. Today's proposal will not result in any additional regulatory requirements. Today's proposal, therefore, is not major; it will not result in an effect on the economy of $100 million or more; it will not result in increased costs or prices; it will not have significant adverse effects on competition, employment, investment, productivity, and innovation; and it will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order. EPA submitted this proposal to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2040–0057 2040–0068, and 2040–0086.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5U.S.C. 601 *et seq.*), Federal agencies must, when developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). This analysis is unnecessary, however, where the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities. The Agency has concluded that today's proposal will not have a significant economic effect on a substantial number of small entities because today's action proposes no new requirements for the regulated community. Today's proposal merely affirms a final regulatory amendment also made today and described above and solicits public comment on this proposal as well as possible alternative courses of action.

List of Subjects in 40 CFR Part 123

State Program Requirements, water pollution control.

Dated: July 10, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble 40 CFR part 123 is proposed to be amended as follows.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.46(a) is amended by adding paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) (and by revising paragraph (c) to read as follows:

§ 123.46 Individual control strategies.

(a) * * *

(1) Each State shall determine, based on the following criteria, which facilities on the section 304(l)(1)(C) list that discharge to waters not on the list required by section 304(1)(1)(B), should be required to have ICSs;

(i) Whether applicable water quality standards for toxic pollutants for the listed receiving water are currently being met;

(ii) Whether the newly listed point source causes, has the reasonable potential to cause, or contributes to an exceedance of applicable water quality standards for toxic pollutants; and

(iii) Whether a decrease in discharge from all listed point sources of the toxic pollutants of concern to the listed water would significantly improve water quality.

(2) Each State shall submit to EPA, by September 22, 1993, the ICS for each facility the State has determined should be required to have an ICS. Where a State is authorized to administer the NPDEs Program, that State should make draft permits that are ICSs available for public comment prior to submitting the ICSs to EPA.

(3) Within four months of the State submittal of each ICS, the Regional Administrator shall: (i) Approve any ICS EPA believes is adequate if the State has provided adequate public participation and if the Regional Administrator determines that additional public comment is not desirable, (ii) propose to approve any ICS EPA believes is adequate, and either the State has not provided adequate public participation or the Regional Administrator determines that additional public comment is desirable, (iii) propose to disapprove any ICS EPA believes is inadequate, and (iv) propose to disapprove any implicit determination not to submit an ICS for a facility if EPA believes, based on the criteria in paragraph (a)(1) of this section an ICS is needed. An ICS is adequate if it conforms to the definition of ICS at 40 CFR 123.46(c); contains limitations for the relevant toxic pollutant(s) as required in § 122.44(d) and it contains a date for compliance that is as soon as possible, but not later than three years from the date of establishment of the ICS. EPA shall make its proposed decisions regarding approval/disapproval of State ICSs available for public comment for a period of 60 days.

(4) Within four months after the close of the 60-day public comment period on EPA's proposed approval/disapproval of State ICSs, EPA shall consider all public comments received, make final approval/disapproval decisions including decisions on whether additional ICSs should be required. EPA shall publicly notice these final decisions. At any point where EPA publicly notices a disapproval of a State ICS, the Administrator in cooperation with such State, and after notice and opportunity for public comment, shall implement the requirements of section 304(l) in such State within one year following the date of the disapproval.

* * * * *

(c) For the purposes of this section the term individual control strategy as set forth in section 304(1) of the CWA, means a final NPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation, or other documentation which shows that the applicable water quality standards will be met not later than three years after the individual control strategy is established. Where a State is unable to issue a final permit within one year after submitting to EPA its revised list of facilities pursuant to section 304(a)(1)(1)(C), an individual control strategy may be a draft permit with an attached schedule indicating that the permit will be issued within one year after the State submitted to EPA the draft permit as the ICS.

* * * * *

[FR Doc. 92-17020 Filed 7-23-92; 8:45 am]

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Part III

Department of Education

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Hearing Research Center; Notices

DEPARTMENT OF EDUCATION

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Hearing Research Center

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year 1993.

SUMMARY: The Secretary announces a priority for fiscal year (FY) 1993 under the program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps. The priority is for a hearing research center that will conduct basic and applied research activities to assist in the rehabilitation of individuals with significant hearing loss.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: George N. Kosovich, U.S. Department of Education, 400 Maryland Avenue, SW., room 3221, Switzer Building, Washington, DC 20202–2736. Telephone: (202) 205–9698. Deaf and hearing impaired individuals may call (202) 205–8919 for TDD services.

SUPPLEMENTARY INFORMATION: Grants under the program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps are authorized by title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. The purpose of this program is to authorize grants for special projects and demonstrations that hold promise of expanding or otherwise improving rehabilitation services to individuals with the most severe handicaps. The Department's 1993 appropriation for this program includes funds for the support of a hearing research center.

This program, as well as the final priority, supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by supporting research activities to assist in the education and rehabilitation of persons severely handicapped by hearing loss. National Education Goal three calls for American students to learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment, and National Education Goal five calls for adults to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On April 23, 1992 the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 14956).

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, six parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Four commenters questioned the two areas of research listed as examples of other research that could be proposed in addition to the required areas of research and commented that they may dilute the focus of the projects. However, two commenters supported the suggested examples. One expressed strong support for research that would lead to the development of competency in English language skills for children with hearing impairments, pointing out that the research could possibly be applied to other client populations. Another commenter pointed out the need for emphasis on research relating to the dual sensory disability of hearing and vision loss, especially among older persons.

Discussion: The Secretary believes that the inclusion of specific examples of other areas of research may be misguided and may detract from the required research activities. The Secretary believes it is preferable to allow the applicant to determine any other areas of research to be proposed beyond those required by the absolute priority.

Changes: The specific areas of research listed as examples of other research that could be proposed and the corresponding background information have been deleted.

Comments: One commenter pointed out that a hearing research center should examine and develop methods of preventing hearing loss and promoting hearing health.

Discussion: The Secretary agrees that the prevention of hearing loss and the promotion of hearing health are important research areas. However, since this priority involves basic and applied research related to the rehabilitation of individuals with significant hearing loss, its focus is on those individuals who currently experience hearing loss. The Secretary notes that the investigations of adventitious hearing loss required under this priority could result in findings that have implications for the prevention of hearing loss and promotion of hearing health.

Changes: None.

Comments: One commenter noted that, under the selection criteria, the applicant's capacity to utilize new technology should be reviewed; specifically, that the applicant "should have the equipment or the ability to contract for services to conduct neuro-psychological testing, e.g., an EEG, MRI and CAT." In addition, the center "should have the ability to conduct neuro-psychological testing to evaluate individuals with hearing loss, e.g., using the Holstead, Reilan and Laurina-Nebraska tests."

Discussion: The Secretary believes that the selection criteria currently address this concern under (d)(1), (d)(2), (f)(2), and (g)(2). It is the responsibility of the application review panel to determine the applicants' qualifications and capabilities as they relate to the purpose and requirements of this priority. Each applicant may propose the specific technology, testing, and key staff qualifications that will be applicable to its particular research activities.

Changes: None.

Comments: One commenter specifically urged that the absolute priority put particular emphasis in the areas of age-related hearing loss, tinnitus, ototoxic action of therapeutic drugs, noise-induced hearing loss, bone conduction hearing aids, and a tinnitus data registry.

Discussion: The Secretary agrees that these areas are of concern, among others, and need attention. The Secretary points out that under the three areas of hearing research that must be addressed by the project all of the areas of concern mentioned by the commenter could be addressed.

Changes: None.

Comments: One commenter recommended that the phrase "such associated impairments as" be deleted in the second required area of research listed in the priority to elevate tinnitus to the same level as hearing loss.

Discussion: The Secretary believes that to make tinnitus a mandatory research activity, as recommended, would narrow the priority to exclude all other hearing-related conditions that

may warrant equal consideration. As drafted, the priority allows for research on tinnitus and other impairments associated with adventitious hearing loss.

Changes: None.

Comments: One commenter recommended that, in the third required area of research listed in the priority, the word "demographic" be replaced by the word "epidemiologic."

Discussion: The Secretary agrees that epidemiologic data is equally important in conducting research, treatment, and rehabilitation of individuals with significant hearing loss.

Changes: Rather than replace the word "demographic" with the word "epidemiologic," the latter has been added to the priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives absolute preference to applications that meet the following priority. The Secretary funds under this competition only an application that meets this absolute priority:

Absolute Priority—Hearing Research Center

Background

More than 28 million Americans are believed to have some degree of hearing impairment. Within that population, it is further estimated that about two million people have no usable hearing and are considered to be profoundly deaf (A Report of the Task Force on the National Strategic Research Plan—National Institute on Deafness and Other Communication Disorders, 1989). It is further estimated that approximately 25 percent of the 2 million deaf people in this country were born deaf or lost their hearing prior to age 18. The remaining 26 million people with impaired hearing are considered to be hard of hearing with variations from mild to severe in the degree of hearing loss. The large majority of people who are deaf or hard of hearing lost their hearing as adults and experience sensori-neural hearing impairment.

Sensori-neural hearing loss is an irreversible condition that affects over 90 percent of the hearing impaired population. Treatment approaches attain limited success for most persons with significant hearing loss. Amplification alone cannot restore normal auditory functioning in many listening situations since sensori-neural loss greatly affects the ability to discriminate speech and certain sounds. Other approaches exist to alleviate the functional limitations that attend this type of hearing loss, but considerable gaps remain in meeting the overall functional needs for many within this population.

There are approximately 97,000 new cases of Meniere's Disease each year, presenting episodes of vertigo, tinnitus, and fluctuating hearing loss (The Ear Foundation, 1991). Ongoing attacks of this disease result in increased hearing loss along with the debilitating effect of being immobilized for days at a time due to decreased hearing ability, dizziness, or tinnitus.

Tinnitus is described as an incessant ringing in the ears or other head noise that is heard when there is no external cause for that noise. According to a 1983 National Institutes of Health study, as many as 5.4 million persons in the Nation suffer so intensely from tinnitus that treatment is necessary.

Sensori-neural hearing loss, Meniere's Disease, and tinnitus are conditions that affect the functional capabilities of millions of Americans. Further research is needed to develop more and better strategies to effectively deal with these conditions.

According to rehabilitation specialists and hearing health care professionals, the degree of audiological hearing loss is not the only or primary determining factor in how well a person is going to function at school, work, home, and in the community. ("Adjustment to Post-Lingual Hearing Loss," Howard E. Stone, in "Adjustment to Acquired Hearing Loss," Edited by J.G. Kyle, 1987). Like many disabling conditions, there are numerous factors that in combination determine the kind of impact a hearing loss will have on an individual. It is important that persons providing services to this diverse population be aware of the functional ramifications of hearing loss, whether the loss is partial or total, or is characterized by early or late onset.

Other considerations that should be taken into account include the following:

(1) Personal capabilities and resources of the individual with the hearing loss;

(2) Family and community response to the disability and the resources they provide to deal with it; and

(3) Availability of resources to members of linguistic, racial, or ethnic minorities and those from non-English-speaking backgrounds.

Priority

The purpose of this priority is to support a hearing research center that will conduct applied and basic hearing research activities to further the rehabilitation of individuals with significant hearing loss. For the purpose of this priority, definitions of the following terms are proposed: Basic research is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility. Applied research is research in which the investigator is primarily interested in developing new knowledge, information, or understanding that can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research. (34 CFR 350.4). Significant hearing loss means a hearing loss of such magnitude that it is likely to result in a loss of functional capacity in educational, vocational, or social settings, or in the performance of activities of daily living.

Areas of research must include, but are not limited to—(1) Basic and applied research activities that explore diagnosing, understanding, and treating hearing disorders, including the development of applicable technology and assessment of interventions that increase communicative, vocational, social, and family functioning of individuals with significant hearing loss; (2) comprehensive investigations of adventitious hearing loss and such associated impairments as tinnitus; and (3) collection and analysis of demographic and epidemiologic data on individuals with hearing impairments that would assist in the research, treatment, and rehabilitation of individuals with significant hearing loss.

Evaluation of Applications and Selection Criteria

For this competition only, the Secretary will use the following selection criteria to evaluate applications. The maximum total score for an application is 100 points:

(a) *Potential Impact of Outcomes: Importance of Program* (15 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined; and

(4) The outcomes are likely to benefit the defined target population.

(b) *Potential Impact of Outcomes: Dissemination and Utilization* (15 points). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field; and

(2) The means to disseminate and promote use by others are defined.

(c) *Probability of Achieving Proposed Outcomes: Program and Project Design* (20 points). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project are clearly stated;

(2) The hypothesis is sound and based on evidence;

(3) The project design and methodology are likely to achieve the objectives;

(4) The measurement methodology and analysis are sound;

(5) The conceptual model, if used, is sound;

(6) The sampling, if proposed, meets statistical standards; and

(7) The human subjects are sufficiently protected.

(d) *Probability of Achieving Proposed Outcomes: Key Personnel* (20 points). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience and demonstrate appropriate potential to conduct the proposed research activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with handicaps; and

(iv) Elderly persons.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress, and results;

(2) The evaluation methods and objectives are likely to produce data that are statistically valid and quantifiable; and

(3) The evaluation results are likely to have clear implications for further research or methods of service.

(f) *Program and Project Management: Plan of Operation* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with handicaps; and

(iv) Elderly persons.

(g) *Program and Project Management: Adequacy of Resources* (5 points). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program and Project Management: Budget and Cost Effectiveness* (5 points). The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts, if required, is detailed and appropriate.

(Approved by the Office of Management and Budget under control number 1820–0598)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

34 CFR parts 369 and 373, except §§ 369.30 through 369.32 and § 373.30.

Program Authority: 29 U.S.C. 777a.

(Catalog of Federal Domestic Assistance Number 84.235, Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps)

Dated: July 7, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–17484 Filed 07–23–92; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No. 84.235K]

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps; Hearing Research Center, Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: This program provides support to a hearing research center that will conduct basic and applied hearing research activities to further the rehabilitation of individuals with significant hearing loss.

Eligible Applicants: States and other public and nonprofit agencies and organizations are eligible to apply for an award under this program.

Deadline for Transmittal of Applications: September 8, 1992.

Deadline for Intergovernmental Review: November 7, 1992.

Applications Available: July 27, 1992.

Available Funds: $6 million in total funds is available over a project period of up to 60 months. Annual amounts provided will be based on the needs of the project and satisfactory performance.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 369 and 373, except §§ 369.30 through 369.32 and § 373.30.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

This program, as well as the final priority, supports AMERICA 2000, the President's strategy for moving the Nation toward achievement of the National Education Goals, by supporting research activities related to the education and rehabilitation of persons severely handicapped by hearing loss. National Education Goal three calls for American students to learn to use their minds well, so they may be prepared for responsible citizenship, further learning,

and productive employment, and National Educational Goal five calls for adults to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

For Applications or Information Contact: George N. Kosovich, U.S. Department of Education, 400 Maryland Avenue, SW., room 3221 Switzer Building, Washington, DC 20202–2736. Telephone: (202) 205–9698 (Voice) or (202) 205–8919 (TDD).

Program Authority: 29 U.S.C. 777a.

Dated: July 20, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–17485 Filed 7–23–92; 8:45 am]

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Part IV

Department of Education

Training Personnel for the Education of Individuals with Disabilities; Inviting Applications for Fiscal year 1993; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.029]

Training Personnel for the Education of Individuals With Disabilities; Inviting Applications for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under these competitions.

The Training Personnel for the Education of Individuals with Disabilities programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals. National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

The regulations that apply to the competitions announced in this package are 34 CFR parts 316 and 318, as amended on October 22, 1991 (See **Federal Register** 54693–54694). The Department advises that a Notice of Proposed Rulemaking (NPRM) is about to be published that would amend these regulations, which implement the Training Personnel programs authorized under section 631 of the Individuals with Disabilities Education Act (IDEA).

The current regulations are being amended to reflect changes made to IDEA by amendments enacted in 1991 (Pub. L. 102–119), and to otherwise update and clarify the regulations. The Department does not anticipate that the new regulations for parts 316 and 318 will be effective prior to awards being made under the priorities announced in this package. However, to the extent that the new regulations are effective prior to awards being made, and substantially differ from the current regulations, applicants will be given an opportunity to amend their applications.

TRAINING PERSONNEL FOR EDUCATION OF INDIVIDUALS WITH DISABILITIES PARENT TRAINING AND INFORMATION CENTERS

[Application notice for fiscal year 1993]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards (per year)	Estimated size of awards (per year)	Estimated number of awards	Project period in months
Parent Training and Information Centers (84.029M)	9–15–92	11–16–92	$500,000	$80,000–120,000	$100,000	5	Up to 60.

Training Personnel for the Education of Individuals With Disabilities—Parent Training and Information Centers

Purpose of Program: This program authorized under section 631(d) of IDEA, supports grants to parent organizations for the purpose of providing training and information to parents of infants, toddlers, children, and youth with disabilities, and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of their children with disabilities.

Eligible Applicants: Parent organizations are eligible applicants under this priority.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, and 85; (b) The regulations for this program in 34 CFR part 316, as amended on October 22, 1991. See 56 **Federal Register** 54693–54694.

Priorities: Under 34 CFR 75.105(c)(3) and section 631(d)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Parent Training and Information Centers program.

Description of Program: As required by section 631(d)(4)(c) of IDEA, applicants must identify with specificity the special efforts that will be undertaken to involve parents of minority children with disabilities (including parents of children with disabilities birth through age 5), representative to the proportion of minority population in the area being served, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available, and by specifying budgetary items earmarked for those purposes.

In expending amounts provided to a grantee for fiscal years 1993 and 1994 that are in excess of the amount provided under this program for 1992, the grantee shall give priority to providing services to parents of children with disabilities aged 0–5.

Absolute Priority

This priority supports parent training and information projects that must be designed to assist parents to—

(a) Understand the nature and needs of the disabling conditions of their children with disabilities.

(b) Provide follow-up support for their children with disabilities educational programs;

(c) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(d) Participate in educational decision-making processes, including the development of their child or youth's individualized education program;

(e) Obtain appropriate information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities, and their families; and

(f) Understand the provisions for educating children with disabilities under the Act.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Extent of present and projected needs.* (15 points) The Secretary reviews each applicant to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(i) The present and projected needs in the applicant's geographic area for trained parents; and

(ii) The present and projected training and information needs for personnel to work with parents of children with disabilities.

(2) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(i) Understand the nature and needs of the disabling conditions of their children;

(ii) Provide follow-up support for their children's educational program;

(iii) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(iv) Participate fully in educational decision-making processes, including the development of their child or youth's individualized educational program;

(v) Obtain information about the programs, services, and resources available to their children and youth and the degree to which the programs, services, and resources are appropriate to the needs of their children; and

(vi) Understand the provisions for educating children with disabilities under the Act.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective management plan that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each of the key personnel plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) Evidence of the applicant's past experience and training in the fields relating to the objectives of the project.

(6) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

[Application notice for fiscal year 1993]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards (per year)	Estimated size of awards (per year)	Estimated number of awards	Project period in months
Special Projects (84.029K)	11-30-92	2-01-93	$2,000,000	$75,000-125,000	$100,000	20	Up to 60.

Training Personnel for the Education of Individuals With Disabilities—Special Projects

Purpose of Program: This program, authorized under section 631(b) of IDEA, serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities through support of special projects.

Eligible Applicants: Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible applicants.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations for this program in 34 CFR Part 318.

Priorities: Under 34 CFR 75.105(c)(3); 34 CFR 318.1(c), and 34 CFR 318.11(e) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority

Special projects. (1) This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(2) Appropriate areas of interest include—

(i) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(ii) Training teachers to work in community and school settings with children and youth with disabilities and their families;

(iii) Inservice and preservice training of teachers to work with infants, toddlers, children, and youth with disabilities and their families;

(iv) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(v) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(vi) Recruitment and retention of special education, related services, and early intervention personnel.

(3) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators.

Invitational Priorities

Within the absolute priority specified in this notice, the Secretary is

particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive a competitive or absolute preference over other applications that do not meet this invitational priority.

Preparing personnel to meet the National Education Goals. Projects that develop or expand innovative preservice and inservice training programs that are designed to provide personnel serving children with disabilities with skills that are needed to help children and schools meet the National Education Goals.

These projects are encouraged to promote:

(1) Increased collaboration among special education, regular education, bilingual education, migrant education, vocational education, and public and private agencies and institutions.

(2) Improved coordination of services among health and social services agencies and within communities regarding services for children with disabilities and their families.

(3) Increased systematic parental involvement in the education of their children with disabilities.

(4) Inclusion of children with disabilities in all aspects of education and society.

(5) Training that is designed to enable special education teachers to teach, as appropriate, to world class standards as they are developed, such as those developed by the National Council on Teachers of Mathematics.

Selection Criteria: (a) (1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under parts B and H of the Act in special education, related services, or early intervention services personnel development.

(2) *Program content.* (20 points) The Secretary reviews each application to determine—

(i) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(iii) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each of the key personnel plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the objectives of the project.

TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

[Application notice for fiscal year 1993]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards (per year)	Estimated size of awards (per year)	Estimated number of awards	Project period in months
Preparation of leadership personnel (84.029D)	10/19/92	12/21/92	$2,500,000	$75,000–125,000	$100,000	25	Up to 60.
Preparation of personnel for careers in special education (84.029B).	10/19/92	12/21/92	7,000,000	75,000–125,000	100,000	70	Up to 48.
Preparation of related services personnel (84.029F)	09/18/92	11/18/92	2,500,000	75,000–125,000	100,000	25	Up to 48.
Training early intervention and preschool personnel (84.029Q).	09/18/92	11/18/92	2,000,000	75,000–125,000	100,000	20	Up to 60.

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Preparation

Purpose of Program: This program, authorized under section 631(a) of IDEA, serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children and youth with disabilities through support of training programs for—(a) Special education, related services, and early intervention; and (b) Leadership.

Eligible Applicants: Institutions of higher education and other appropriate nonprofit agencies are eligible applicants.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 318, the Secretary gives an absolute preference to applications which meet the following priorities. The Secretary funds under this program only those applications that meet one or more these absolute priorities.

Under competitive priorities the Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority. Absolute priorities numbers 2–4 have competitive priorities within them.

Absolute Priority 1—Preparation of Leadership Personnel, CFDA No. 84.029D

This priority supports projects that are designed to provide preservice advanced graduate, doctoral, and post-doctoral preparation in administration and supervision; or doctoral and post-doctoral level training in research or personnel preparation.

Invitational Priority. Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive a competitive or absolute preference over other applications:

Training minority leadership personnel. The Individuals with Disabilities Education Act (IDEA) in section 610(j)(2) (A) and (B) recommends implementing policies for preparing minorities in special education and related services. The Department believes that one aspect of this policy is to support leadership level training for minority individuals. For this reason, the Secretary particularly invites applications that include activities to recruit minority individuals and individuals from under-represented populations for doctoral and post-doctoral level training to increase their participation in leadership positions in the field of special education and related services.

Absolute Priority 2—Preparation of Personnel for Careers in Special Education, CFDA No. 84.029B

This priority supports preservice preparation of personnel for careers in special education. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. Under this priority "personnel" includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists.

Competitive Priorities. Within this competition, under 34 CFR 75.105(c)(2), the Secretary gives preference to the applications that meet one or more of the following competitive priorities. An application that meets one or more of these competitive priorities is selected over applications of comparable merit that do not meet these priorities. These competitive priorities are described more fully in a later section of this announcement.

Utilizing innovative recruitment and retention strategies.

Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.

Training personnel to work in rural areas.

Training personnel to provide transition assistance from school to adult roles.

Improving services for minorities.

Training minority personnel.

Absolute Priority 3—Preparation of Related Services Personnel, CFDA No. 84.029F

This priority supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists (PT), occupational therapists (OT), school psychologists, counselors including rehabilitation counselors, interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel. Projects to train personnel identified as special education personnel in the regulations in this part are not appropriate, even if those personnel may be considered related services personnel in other settings.

This program is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy might support a special component on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings.

Competitive Priorities. Within this competition, under 34 CFR 75.105(c)(2), the Secretary gives preference to the applications that meet one or more of the following competitive priorities. An application that meets one or more of these competitive priorities is selected over applications of comparable merit that do not meet these priorities. These competitive priorities are described more fully in a later section of this announcement.

Utilizing innovative recruitment and retention strategies.

Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.

Training personnel to work in rural areas.

Preparation of paraprofessionals.

Improving services for minorities.

Training minority personnel.

Absolute Priority 4—Training Early Intervention and Preschool Personnel. CFDA 84.029Q

This priority supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth to five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

Competitive Priorities. Within this competition, under 34 CFR 75.105(c)(2), the Secretary gives preference to the applications that meet one or more of the following competitive priorities. An application that meets one or more of these competitive priorities is selected over applications of comparable merit that do not meet these priorities. These competitive priorities are described more fully in a later section of this announcement.

Utilizing innovative recruitment and retention strategies.

Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.

Training personnel to work in rural areas.

Preparation of paraprofessionals.

Improving services for minorities.

Training minority personnel.

Competitive Priorities: As noted in connection with each absolute priority, the Secretary gives preference to applications that meet one or more of the following competitive priorities. Under each absolute priority the Secretary may select an application that meets a competitive priority over an application of comparable merit that does not meet the competitive priority.

Competitive Preference Priority 1—Utilizing Innovative Recruitment and Retention Strategies

This priority supports projects to develop emerging and creative sources of supply of personnel with degrees and certification in appropriate disciplines, and innovative strategies related to recruitment and retention of personnel.

Competitive Preference Priority 2—Promoting Full Qualifications for Personnel Serving Infants, Toddlers, Children, and Youth With Disabilities

This priority supports projects designed specifically to train personnel who are working with less than full certification or outside their field of specialization, to assist them in becoming fully qualified. Student incentives; extension, summer and evening programs; internships; alternative certification plans; and other innovative practices are appropriate under this priority.

Competitive Preference Priority 3—Training Personnel To Work in Rural Areas

This priority supports projects to train personnel to serve infants, toddlers, children, and youth with disabilities in rural areas. Projects, including curricula, procedures, practica, and innovative use of technology, must be designed to provide training to assist personnel to work with parents, teachers, and administrators in these special environments. Special strategies must be designed to recruit personnel from rural areas who will most likely return to those areas.

Competitive Preference Priority 4—Training Personnel to Provide Transition Assistance From School to Adult Roles

This priority supports projects for preparation of personnel who assist youth with disabilities in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students. It is especially important that preparation of transition personnel include training in instructional and assistive technology.

Competitive Preference Priority 5—Preparation of Paraprofessionals

This priority supports projects for the preparation of paraprofessionals. This includes programs to train teacher aids, job coaches, interpreters, therapy assistants, and other personnel who provide support to professional staff in delivery of services to infants, toddlers, children, and youth with disabilities.

Competitive Preference Priority 6—Improving Services for Minorities

This priority supports projects to prepare personnel to serve infants, toddlers, children, and youth with disabilities who, because of minority status, require that personnel obtain professional competencies in addition to those needed to teach other children with similar disabilities. Projects funded under this priority must focus on specific minority populations, determine the additional competencies that are needed by professionals serving those populations, and develop those competencies.

Competitive Preference Priority 7—Training Minority Personnel

This priority supports projects to recruit and prepare minority individuals and individuals with disabilities for careers in special education, related services, and early intervention, including leadership personnel.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(i) The significance of the personnel needs to be addressed to the provision of special education, related services, and early intervention. Significance of need identified by the applicant may be shown by—

(A) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted specialty or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(B) Evidence showing significant need for improvement in the quality of personnel providing special education, related services and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(ii) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(A) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(B) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(C) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(2) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(i) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(ii) The amount of time each key person plans to commit to the project;

(iii) How the applicant, as a part of its nondiscriminatory employment

practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability;

(iv) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(v) The quality of the practicum training settings, including evidence that they are sufficiently available; apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(vi) The capacity of the applicant to recruit well-qualified students;

(vii) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practica sites; and

(viii) The extent to which the applicant cooperates with the State educational agency, the State designated lead agency under Part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(vi) The extent to which substantive content and organization of the program—

(A) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(B) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(vii) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(4) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project;

(ii) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and

(iii) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

Intergovernmental Review

These programs are subject to the requirements Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990 (55 FR 38210 and 38211).

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the dates indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA#84.029____, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address. *Instructions for transmittal of applications:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.029____), Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #84.029____), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary

does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a section on common questions and answers, a statement regarding estimated public reporting burden, and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted applications should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9554. Deaf and hard of hearing individuals may call (202) 205–9999 for TDD services.

Authority: 20 U.S.C. 1431.

Dated: July 20, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section.

Common Questions and Answers

While we have always made every effort to make our application materials as clear and complete as possible, a major task of Division of Personnel Preparation staff from the date of the program announcement to the closing date is answering phone and mail requests with further questions. The next several pages list some of the most common issues raised by potential applicants in interpreting our regulations and application instructions.

The following issues are not hypothetical. They represent concerns repeatedly raised, even though in many cases they are answered in the regulations or application instructions. The problem seems to be that the issues are not sufficiently highlighted, or that they are disguised by the formal language of legislative documents. These issues and general responses are listed in approximately the frequency of occurrence.

• Extension of deadlines.

Waivers for individual applications are not granted, regardless of the circumstances. Under very extraordinary circumstances a closing date may be changed. Such changes are announced in the **Federal Register** and apply to all applications.

• Copies of the application.

Current Government-wide policy is that only an original and two copies need to be submitted. Division staff duplicate the two additional copies necessary to complete the review process by staff and peer readers. It is not required that applications be bound, though they may be if you wish. However, to facilitate our reproduction, please leave one copy unbound. Also, please do not use colored paper, foldouts, photographs, or other hard to duplicate materials. Some applicants prefer to make their own additional copies. If you do so, there is no need to submit more than two additional copies, as that is all that will be required for the review process.

• Help preparing applications.

We are happy to provide general program information. Clearly it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about our application requirements and evaluation criteria, or about the announced priority. Applicants should understand that such previous contact is not required, nor does it guarantee the success of an application.

• Notification of funding.

The time required to complete the evaluation of applications is extremely variable. Once applications have been received staff must determine the areas of expertise needed to appropriately evaluate the applications, identify and contact potential reviewers, convene peer review panels, and summarize and review the recommendations of the review panels. You can expect to receive notification within 4 to 6 months of the application closing date. The requested start date should therefore be a minimum of 6 months after the closing date.

• Possibility of learning the outcome of review panels prior to official notification.

Every year we are called by a number of applicants who have really legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, etc. Regardless of the reason, we cannot share information about the review with anyone prior to officially completing the review process for a competition, nor can we tell you when you will be notified. Please do not call us and ask us for this information. You will be notified as quickly as possible either by a grant negotiator (if your application is recommended for funding) or through a letter to the certifying representative (if your application is not successful).

• Length of application.

The Department of Education is making a concerted effort to reduce the volume of paper work in applications to discretionary programs. The following suggestions should assist applicants to prepare applications which will convey

the information necessary for the review and selection process, and also save America's forests, professional time and energy. The scope and complexity of projects are too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the importance and impact of the project as well as to make knowledgeable judgments about the methods you propose to use (design, subjects, sampling procedures, measures, instruments, data analysis strategies, etc.).

Many applications include voluminous appended material. In most cases this material is not useful in the evaluation process. Very few projects require much supporting material. However, it is often helpful to have:

(1) *Staff Vitae*—when these include each person's title and role in the proposed project and contain only information that is relevant to this proposed project's activities and/or publications. Vitae for consultants and Advisory Council members should be similarly brief.

(2) *Instruments*—except in the case of generally available and well known instruments.

(3) *Agreements*—when the participation of an agency other than the applicant is critical when an intervention will be implemented within an agency, or when subjects will be drawn from particular agencies. Letters of cooperation should be specific, indicating agreement to implement a particular intervention or to provide access to a particular group. General letters of support are not useful. Except for the three items noted above, most appendix material is rarely useful. Typical extraneous materials include:

(1) Related project descriptions completed by applicant.

(2) Maps.

(3) State plans.

(4) Brochures.

(5) Copies of publications.

• Use of Person Loading Charts.

Program officials and applicants often find person loading charts useful formats for showing project personnel and their time commitments to individual activities. A person loading chart is a tabular representation of major activities by number of days spent by each person involved in each activity, as shown in the following example.

Table # Person Loading Chart

Activity	Time in day(s) by person*			
	Person A	Person B	Person C	Person D
Program Development	15	20	0	0
Mentoring	0	0	0	5
Research	5	25	0	0
Information Services	0	2	0	0
Dissemination (manuscripts, etc.)	0	1	20	10

*Note: All figures represent FTE for the academic year.

• Return of non-funded applications.

Because of budget restrictions, we are no longer able to return original copies of applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to all applicants.

• Delivering/sending applications to the competition manager.

Applications can be mailed or hand delivered, but in either case must go to the Application Control Center at the address listed in the Mailing Instructions in this packet. Delivering/sending the application to the competition manager in the program office may prevent it from being logged in on time to the appropriate competition.

• Format for applications.

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to be sure that reviewers are able to find all relevant information.

• Allowed travel under these projects.

Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Travel to conferences is the travel item that is most likely to be questioned during negotiations. Such travel is sometimes allowed when it is for purposes of dissemination, when there will be results to be disseminated, and when it is clear that a conference presentation or workshop is an effective way of reaching a particular target group.

• Funding of Approved Applications.

It is often the case that the number of applications recommended for approval by the reviewers exceeds the dollars available for funding projects under a particular competition. When the panel reviews are completed for a particular competition, the individual reviewer scores and applications are ranked. The higher ranked, approved applications are funded first, and there are often lower ranked, approved applications that do not receive funding. Sometimes the one or two applications that are approved and fall next in rank order (after the projects selected for funding) are placed on hold. If dollars are freed up during negotiations or if a higher ranked applicant declines the award, the projects on hold may receive funding. If you receive a letter stating that you will not receive funding then your project has neither been selected for funding nor placed on hold.

• Issues raised during negotiations.

During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review. Generally, technical issues are minor issues that require clarification. Alternative approaches may be presented for your consideration, or you may be asked to provide additional information or rationale for something you have proposed to do. Sometimes issues are stated as "conditions". These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions are also raised about the proposed budget during the negotiation phase. Generally, budget issues are raised because there is inadequate justification or explanation of the particular budget item, or because the budget item does not seem important to the successful completion of the project. The grants negotiator will present the negotiation questions or issues to you and ask you to respond. If you do not understand the question, you should ask for clarification. In responding to negotiation items you should provide any additional information or clarification requested. You may feel that an issue was addressed in the application. It may not, however, have been explained in enough detail to make it understood by reviewers, and more information should be provided. If you are asked to make changes that you feel could seriously affect the project's success you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the activities you may want to explain why and provide additional justification for the proposed expenses. Your changes, explanations, and alternate suggestions will be carefully evaluated by staff. In some instances additional negotiations or follow-up information may be needed. In such instances you will again be contacted by the grants negotiator. An

award cannot be made until all negotiation issues have been resolved.

• Successful applications and estimated/projected budget amounts in subsequent years.

In this era of budget deficits and need for cost containment, a conservative policy toward current and out-year budget expenditures is necessary. Projects will not be funded in excess of the amount listed in the **Federal Register** announcement. Any project approved by the reviewers that exceeds the estimated size of award will be required to be performed within the announced amount. The budget estimates that you provide in your application for out-year costs are critical for planning purposes, but they in no way represent a commitment by the Department to a particular level of funding in subsequent years. Budget modifications during the negotiation process, the findings from the initial year, or needed changes in the research design can affect your budget requirements in subsequent years. However, keep in mind that multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level. Grantees having multi-year projects will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

• Difference between a cooperative agreement and a grant. A cooperative agreement is similar to a grant in that its principal purpose is to accomplish a public purpose of support or stimulation as authorized by a Federal statute. It differs from a grant in the sense that in a cooperative agreement substantial involvement is anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

• Obtaining copies of the **Federal Register**, program regulations and federal statutes. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

Application Narrative and Instructions

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria found elsewhere in this packet. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to ensure that reviewers are able to find all relevant information.

The following is a suggested format you may wish to use in preparing your application. This suggested format is advisory only, since the scope and complexity of projects is too variable to establish firm limits on length and format. In your application you may wish to include the following features in the order listed below:

(a) An abstract of the project;

(b) The extent the project meets the purposes of the authorizing statute;

(c) The extent the project meets specific needs recognized in the statute that authorizes the program;

(d) The plan of operation which the applicant proposes to use to administer the project;

(d) The quality of key personnel to be used to achieve each objective;

(f) Budget and cost effectiveness to achieve the proposed activity;

(g) The evaluation plan to evaluate the project; and

(h) The adequacy of resources available and needed to achieve each objective.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e) When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invited comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 36 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of the information, including suggestions for reducing burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0028, Washington, DC 20503.

(Information collection approved under OMB Control number 1820–0028. Expiration date: 1/95)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988, (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U S C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilRation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind, specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

[FR Doc.
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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 92-17475 Filed 7-23-92; 8:45 am]
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July 24, 1992

Part V

Federal Emergency Management Agency

Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents (FEMA-REP-5, Revision 1); Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents (FEMA–REP–5, Revision 1)

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Availability of the final edition of a radiological emergency planning and preparedness document for transportation accidents.

SUMMARY: The transportation guidance document, Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents, FEMA–REP–5, Revision 1, is available for distribution and use. Copies will be distributed to State and local governments by the Federal Emergency Management Agency. This document provides information for Federal, State, Tribal and local governments to use in developing and enhancing their emergency capabilities for responding to transportation accidents involving radioactive materials. This document also provides background information to support the application of the guidance to specific types of jurisdictions and to explain the unique characteristics of transportation accidents. The guidance contained in this document does not represent a Federal regulatory requirement. Its use by State, Tribal and local governments is voluntary. Since this guidance has relevance to both hazardous materials and radiological emergencies, other than those related to transportation of radioactive materials, it is recommended that emergency response planning undertaken with this guidance be closely integrated into comprehensive emergency planning and preparedness.

This document has been developed by the Federal Radiological Preparedness Coordinating Committee's Subcommittee on Transportation Accidents which is co-chaired by the U.S. Department of Transportation and FEMA, with support from the following organizations: Department of Transportation, Environmental Protection Agency, Department of Energy, Western Interstate Energy Board, Southern States Energy Board, Sandia National Laboratories, U.S. Department of Agriculture, Nuclear Regulatory Commission, and Department of Health and Human Services. Although this document is published as a final edition, comments from users of FEMA–REP–5, Revision 1, are welcome.

A copy of this document may be obtained from the Federal Emergency Management Agency, P.O. Box 8181, Washington, DC 20024. Please reference publication number, FEMA–REP–5, Rev. 1, in your request.

EFFECTIVE DATE: This FEMA–REP–5, Revision 1, is effective July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Vern Wingert, Office of Technological Hazards, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Dated: July 17, 1992.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–17513 Filed 7–23–92; 8:45 am]

BILLING CODE 6718–01–M

federal register

Friday
July 24, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Amendment to Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Approved Amendment to Tribal-State Compact

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the First Amendment to the September Tribal/State Compact for Class III Gaming Between the Tulalip Tribes of Washington and the State of Washington, which was approved on September 25, 1991.

DATES: This action is effective July 24, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS 4603 MIB 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Division Chief, Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

SUPPLEMENTARY INFORMATION: This is to give notice of a change to the Tribal-State Compact for Class III Gaming Between the Tulalip Tribes of Washington and the State of Washington, which was published as a notice in the **Federal Register** in 56 FR 50220 on October 3, 1991. Section 9(c) of the Compact is being changed to read 18 U.S.C. instead of 25 U.S.C.

Dated: July 20, 1992.

William D. Bettenberg,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–17569 Filed 7–23–92; 8:45 am]

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H.R. 5412/P.L. 102-322

To authorize the transfer of certain naval vessels to Greece and Taiwan. (July 19, 1992; 106 Stat. 443; 2 pages) Price: $1.00

S.J. Res. 324/P.L. 102-323

To commend the NASA Langley Research Center on the celebration of its 75th anniversary on July 17, 1992. (July 20, 1992; 106 Stat. 445; 2 pages) Price: $1.00

Last List July 8, 1992

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102d Congress, 2nd Session, 1992

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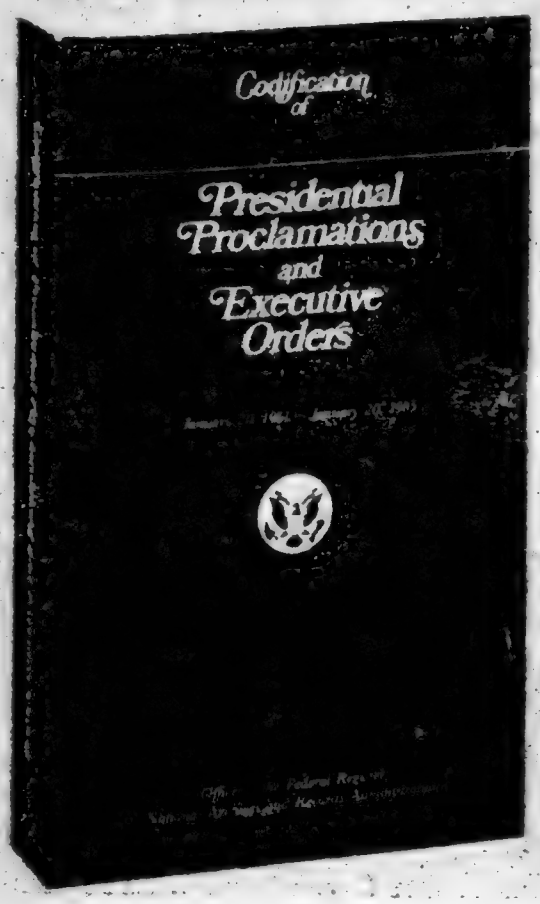

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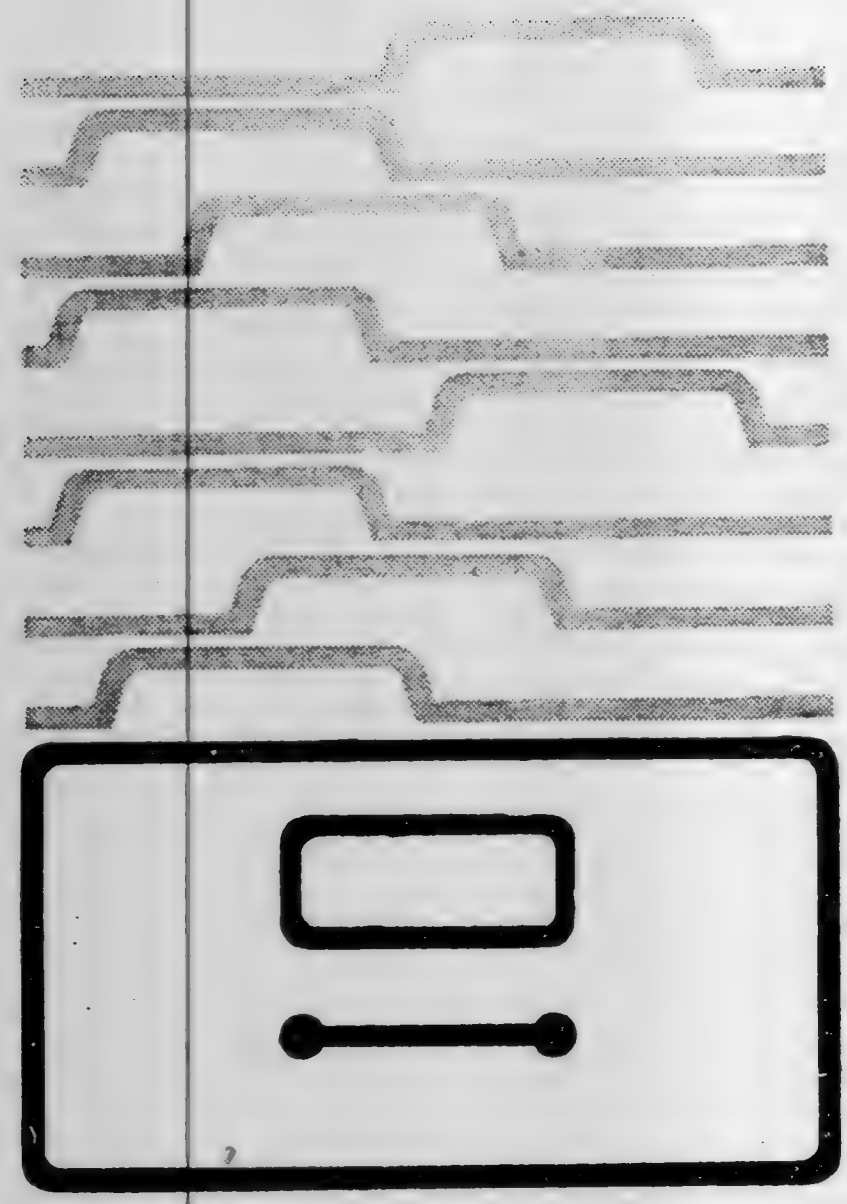

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Vol. 57 No. 144
Pages 33097-33266

federal register

Monday
July 27, 1992

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Rules and Regulations

Federal Register
Vol. 57, No. 144
Monday, July 27, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1940, 1942, 1951, and 2003

RIN 0575-AB28

Rural Business Enterprise Grants and Television Demonstration Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing the administration of Industrial Development Grants. This action is necessary to implement legislation that establishes a program of grants for broadcasting systems and legislation requiring rural business enterprise projects not be subject to a dollar limitation. This action will result in two separate programs being implemented under the same regulation. This action is necessary to remove passthrough grants to businesses as eligible under rural business enterprise grants, revises the grant selection priorities, and adds training as an eligible use of grant funds when used for technical assistance purposes. This action is necessary to change the name of the program to more accurately reflect the purpose of the programs and make other clarifications to administrative procedures.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: C. Barth Miller, Program Management Branch, Community Facilities Division, FmHA, USDA, room 6314-S, Washington, DC 20250, Telephone: (202) 720-1502.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR, part 1900, subpart B, must be exhausted prior to filing suit.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Background

This action amends FmHA's regulations to implement a provision of Public Law 101-624, which establishes a program of grants for broadcasting systems, and Public Law 102-142, which requires rural business enterprise grant projects not be subject to a dollar limitation. This action also changes the name of the program to more accurately reflect the purpose of the programs and removes passthrough grants to businesses as eligible under the rural business enterprise grants. The action adds training as an eligible use of grant funds when used for technical assistance purposes, revises the grant selection priorities to allow a more equitable distribution of grant funds, and makes other clarifications to administrative procedures.

On December 24, 1991, a proposed rule was published in the **Federal Register** (56 FR 66606) for a 30-day review and comment period. Four comments were received.

All respondents recommended changes to the rule or addressed issues related to the scope of the rule. The comments that requested changes to the rule or made other recommendations are discussed below.

One respondent supported the name change of the program to Rural Business Enterprise (RBE) grants. The new name suggests support specifically for small businesses characteristic to rural communities.

One respondent supported removing the grant purpose for passthrough grants to businesses. This respondent felt that revolving loan funds and technical assistance for businesses establish a long-term, ongoing program, which passthrough grants did not accomplish.

Three respondents recommended amending and/or omitting the provision for discretionary points to initial grant requests of $500,000 or less. The alternate suggestions included:

Eliminate discretionary points and establish a set-aside of funds for new applicants; permit discretionary points when the project will serve areas with high level economic stress; permit discretionary points when an organization receiving a grant previously will serve a different community. In the provision to consider discretionary points, the written justification must include geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress through creation or saving of jobs or emergency situations. FmHA has determined the provision adequately allows for continued participation of existing grantees by removing the dollar limit. This provision is specifically designed to equitably distribute the limited program funds to as many eligible organizations and rural communities as possible.

Two respondents expressed concern that the proposed rule removes any targeting of funds or credit/points for economic distress, distressed communities, and low-income people. The proposed rule maintained the selection priorities related to population and economic conditions, and also added priority for smaller communities.

The provision for discretionary points also specifically includes justification and documentation for "mitigation of economic distress-through saving jobs or emergency situations." These provisions adequately address the concerns raised and give weight to economic distress situations.

Two respondents recommended allowing grant funds to be used for: "initial loan management purposes," "revolving loan fund management," and "administrative and support costs of loan programs." Loan administration costs incurred in revolving loan programs may be recouped through loan closing fees charged to the ultimate recipient. In technical assistance projects, administrative costs are allowed. This provision is intended to encourage the grantee organization to seek other non-government funds, establish ongoing or revolving programs, and provide maximum in-kind services. The ultimate objective is to provide the maximum grant dollars to the end recipient, the rural communities.

One respondent believed that lifting the dollar limitation to a single grantee was related to making broadcast systems an eligible grant purpose. These amendments to the rule were necessary to address two separate situations. One statute added section 310B(j) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) by establishing a program of grants for broadcasting systems. One act directed the removal of the dollar limitation on RBE projects funded under section 310B(c). These two legislative requirements are not interrelated.

One respondent recommended eliminating grants to businesses. Public bodies and private nonprofit organizations are eligible for grants. Eligible grantees may use grant funds to facilitate the development of small and emerging private businesses, but grants are not made to a business. This provision further limits grants to projects only when there is a reasonable prospect that a small and emerging private business will be developed.

One respondent states that not all areas are covered by community or economic development plans and that the Intergovernmental Review Process adequately addresses the requirement for consistency with a local plan, and asks that this additional requirement be eliminated. The granting of priority points for evidence that the proposed project is consistent with local government plans is broad enough to allow for whatever plan or local government approval may be appropriate to the project area. The provision is desirable to ensure that the proposal is acceptable and meets a priority need of the local rural community.

One respondent interpreted the definition of "small and emerging private business enterprise" to exclude social services, such as a nonprofit day care facility. The definition does not exclude a day care facility as an eligible business enterprise.

After publication of the proposed rule, and as a result of a respondent believing lifting the dollar limitation to a grantee was related to making broadcast systems an eligible purpose, changes are made to the regulation to further clarify that the regulation implements and contains requirements for two separate programs. One program implements section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)) which provides for grants to finance and facilitate the development of small and emerging private business enterprises. One program implements section 310B(j) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(j)) by providing for a program of grants to statewide, private, nonprofit, public, television systems whose coverage is predominantly rural to demonstrate the effectiveness of providing information on agriculture and other issues of importance to farmers and other rural residents.

Therefore, the final rule is changed from the prior rule published in the **Federal Register** on December 24, 1991, as follows: (1) The name of the program is changed from "Rural Business Enterprise Grants" to "Rural Business Enterprise Grants and Television Demonstration Grants"; (2) The definitions of Rural Business Enterprise Grants and Television Demonstration Grants are changed to reflect the appropriate sections of the Consolidated Farm and Rural Development Act which authorize these programs; (3) The definition of project and television demonstration program are changed to clarify the requirements for television demonstration grants; (4) The eligibility criteria has been clarified to distinguish eligible applicants for each program; (5) The application rating factors will be used for rural business enterprise grants and the factor for providing points for grants for television demonstration programs set forth in the proposed rule has been removed. Because the regulation implements two separate programs, applicants for rural business enterprise grants will not compete for priority points against applicants for television demonstration grants. Due to the Agency's experience in providing grants to television systems meeting the definition set forth in the statute, there appear to be only a small number of applicants eligible for the television demonstration program grants, therefore, application selection priorities will not be established for these grants; (6) A section is added to grant purposes to clarify the use of grant funds for television demonstration projects; (7) Changes are made throughout to change rural business enterprise grants to also reflect television demonstration grants where appropriate; and (8) a change is made to add the requirement of compliance with title III of American with Disabilities Act, Public Law 101-336, which prohibits discrimination on the basis of disability by private entities in places of public accommodation.

Program Affected

This program, Rural Business Enterprise Grants and Television Demonstration Grants, is listed in the Catalog of Federal Domestic Assistance as Industrial Development Grants under Number 10.424. The FmHA program and projects which are affected by this instruction and the instruction itself are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J.

List of Subjects

7 CFR Part 1940

Agriculture, Environmental protection, Flood plains, Grant programs—Housing and community development, Loan programs—Agriculture, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1942

Business and industry, Community facilities, Fire prevention, Grant programs—Business, Grant programs—Housing and community development, Indians, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1951

Accounting, Agriculture, Claims, Community facilities, Government employees, Grant programs—Housing, Reporting and recordkeeping requirements, Rural areas, Wages.

7 CFR Part 2003

Organization and functions (government agencies).

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; and 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. The heading of § 1940.589 is revised to read: "Rural Business Enterprise Grants."

3. Section 1940.590 is amended by adding paragraph (h) to read as follows:

§ 1940.590 Community and Business programs appropriations not allocated by State.

* * * * *

(h) Television Demonstration Grants. Since this is a demonstration program, all funds are being retained in the National Office. Funds may be requested by sending in attachment 1, Section C of FmHA Instruction 1942–G.

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

2. The heading of subpart G of part 1942 is revised to read: "Rural Business Enterprise Grants and Television Demonstration Grants."

3. Section 1942.304 is revised to read as follows:

§ 1942.304 Definitions.

Project. For rural business enterprise grants, the result of the use of program funds, i.e., a facility whether constructed by the applicant or a third party from a loan made with grant funds, technical assistance, startup operating costs, or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of Intergovernmental and Environmental Review under § 1942.310 (b) and (c), of this subpart as well as the specific uses of the revolving funds. For television demonstration grants, television programming developed on issues of importance to farmers and rural residents.

Regional Commission grants. Grants made from funds made available to FmHA by the Appalachian Regional Commission (ARC) or other Federal Regional Commissions designated under Title V of the Public Works and Economic Development Act of 1965.

Rural and Rural Area. Includes all territory of a State, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, or the Commonwealth of the Mariana Islands that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

Rural Business Enterprise (RBE) grants. Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA funds under authority of the Consolidated Farm and Rural Development Act, as amended, Sec. 310B(c) (7 U.S.C. 1932).

Small and emerging private business enterprise. Generally any private business which will employ 50 or fewer new employees; has less than $1 million in projected gross revenues; has, or will utilize, technological innovations and commercialization of new products that can be produced/manufactured in rural areas; and new processes that can be used in such production.

Technical Assistance. A function performed for the benefit of a private business enterprise and which is a problem solving activity, such as market research, product and/or service improvement, feasibility study, etc.

Television demonstration program. Grants made for television programming developed to demonstrate the effectiveness of providing information on agriculture and other issues of importance to farmers and other rural residents. Grants are made from FmHA funds under authority of the Consolidated Farm and Rural Development Act, as amended, Sec. 310B(j) (7 U.S.C. 1932).

Urbanized Area. An area immediately adjacent to a city having a population of 50,000 or more, which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated and extend from the contiguous boundary(ies) to recognizable open country, less densely settled areas, or natural boundaries, such as forests or water. Minor open spaces, such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city but are located across a river from such city, are recognized as a separate community, and are not otherwise considered a part of an urbanized or urbanizing area, as defined in this section, are not in a nonrural area.

Urbanizing Area. A community which is not now, or within the foreseeable future not likely to be, clearly separate from, and independent of, a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. A community is considered "independent of" when its social and economic structure (e.g., government, education, health, and recreational facilities; and business, industry, tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized area.

4. Section 1942.305(a)(1) is amended in the first sentence by changing the word "ID" to read "RBE".

5. Section 1942.305 is amended by adding a new paragraph (a)(3) and revising paragraphs (b) and (b)(3)(i), (iii), (iv), and (v) to read as follows:

§ 1942.305 Eligibility and priority.

(a) * * *

(3) Television demonstration grants may be made to statewide, private, nonprofit, and public television systems whose coverage is predominantly rural. An eligible applicant must be organized as a private nonprofit public television system, licensed by the Federal Communications Commission, and operated statewide and within a coverage area that is predominantly rural.

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting RBE applications for further development. When ranking eligible RBE applications for consideration for limited funds, FmHA officials must consider the priority items met by each RBE application and the degree to which those priorities are met, and apply good judgment. Due to the small number of applicants eligible for television demonstration grants, such applicants will not compete for priority points against RBE applicants.

(3) * * *

(i) *Population.* Proposed project(s) will primarily be located in a community of (1) between 15,000 and 25,000 population—5 points, (2) between 5,000 and 15,000 population—10 points, (3) under 5,000 population—15 points.

* * * * *

(iii) *Experience.* Applicant has evidence of at least 5 years of successful experience in the type of activity proposed in the application for funds under this subpart. Evidence of successful experience may be (1) a description of experience supplied and certified by the applicant, or (2) a letter of support from appropriate local elected officials explaining the applicant's experience. Experience—10 points

(iv) *Other.*

(A) Applicant has evidence that small business development will occur by startup or expansion as a result of the activities to be carried out under the grant. Written evidence of commitment by small business must be provided to FmHA—25 points.

(B) Applicant has evidence of substantial commitment of funds from nonfederal sources for proposed project. An authorized representative of the source organization of the nonfederal funds must provide evidence that the funds are available and will be used for the proposed project. More than 50 percent of the project costs from nonfederal sources—15 points; more than 25 percent, but less than 50 percent of project costs from nonfederal sources—10 points; between 5 percent and 25 percent of project costs from nonfederal sources—5 points.

(C) For a grant to establish a revolving fund, the applicant provides evidence to FmHA through loan applications or letters from businesses that the loans are needed by small emerging businesses in the proposed project area—25 points.

(D) The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed project will create and/or save jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted. One job per each $10,000 or less in grant funds expended—10 points. One job per each $25,000 to $10,000 in grant funds expended—5 points.

(E) The proposed grant project is consistent with, and does not duplicate, economic development activities for the project area under an existing community or economic development plan covering the project area. If no local plan is in existence for the project area, an areawide plan may be used. The plan used must be adopted by the appropriate governmental officials/entities as the area's community or economic development plan. Appropriate plan references and copies of appropriate sections of the plan, as well as evidence of plan adoption by appropriate governmental officials, should be provided to FmHA. Project is reflected in a plan—5 points.

(F) Grant projects utilizing funds available under this subpart of less than $100,000—25 points, $100,000 to $200,000—15 points, more than $200,000 but not more than $500,000—10 points.

(v) *Discretionary.* In certain cases, when a grant is an initial grant for funding under this subpart and is not more than $500,000, FmHA may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification, such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or saving of jobs, or emergency situations. For grants of less than $100,000—50 points; $100,000 to $200,000—30 points; more than $200,000, but not more than $500,000—20 points.

6. Section 1942.306(a) is amended in the introductory text by revising the phrase "and develop" to read "and/or develop".

7. Section 1942.306 is amended by revising paragraphs (a)(3), (a)(4), (a)(7), and (b), and by adding (a)(8) and (a)(9) to read as follows:

§ 1942.306 Purposes of grants.

(a) * * *

(3) Loans for startup operating cost and working capital.

(4) Technical assistance for private business enterprises.

* * * * *

(7) Providing financial assistance to third parties through a loan.

(8) Training, when necessary, in connection with technical assistance.

(9) Production of television programs to provide information on issues of importance to farmers and rural residents.

(b) Grants, except grants for television demonstration programs, may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

* * * * *

8. Section 1942.307 is amended by removing paragraph (b), redesignating paragraph (c) as (b), and adding new paragraph (a)(4) and (a)(5) to read as follows:

§ 1942.307 Limitations on use of grant funds.

(a) * * *

(4) For programs operated by cable television systems

(5) To fund a part of a project which is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the project.

* * * * *

9. Section 1942.310 is amended by revising paragraph (a), by adding two sentences to the end of paragraph (b)(4), and by revising the introductory text of paragraph (c)(1) to read as follows:

§ 1942.310 Other considerations.

(a) Civil rights compliance requirements. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the bases of race, color, and national origin as outlined in subpart E of part 1901 of this chapter. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap, the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age and title III of the Americans with Disabilities Act, Public Law 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. When FmHA is administering a Federal Regional Commission grant and no FmHA RBE/television demonstration grant funds are involved, the Federal Regional Commission may make its own determination of compliance with the above Acts, unless FmHA is designated compliance review responsibilities. FmHA shall in all cases be made aware of any findings of discrimination or noncompliance with the requirements of the above Acts.

(b) * * *

(4) * * * If the preapplication reflects only one specific project which is specifically identified as the third party recipient for financial assistance, FmHA may perform the appropriate environmental assessment in accordance with the requirements of subpart G of part 1940 of this chapter, and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes

after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this chapter.

* * * * *

(c) * * *

(1) If a proposed grant is for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide a written indication to FmHA which will enable FmHA to determine that the proposal will not result in a project which is calculated to, or likely to, result in:

* * * * *

§ 1942.310 [Amended]

10. Section 1942.310(c)(4) is amended in the first sentence by removing the word "ID".

11. Section 1942.311 is amended by revising the last sentence in paragraph (a)(1) to read as follows:

§ 1942.311 Application processing.

(a) * * *

(1) * * * The applicant shall use SF 424.1, "Application for Federal Assistance (For Non-Construction)," or SF 424.2, "Application for Federal Assistance (For Construction)," as applicable, when requesting financial assistance under this program.

* * * * *

§ 1942.313 [Amended]

12. Section 1942.313(a)(2) is amended by revising the word "ID" to "RBE"; and paragraph (a)(4) is amended by removing the word "/grants".

13. Section 1942.314 is amended by revising the section heading and by adding a new paragraph (g) to read as follows:

§ 1942.314 Grants to provide financial assistance to third parties, television demonstration projects, and technical assistance programs.

* * * * *

(g) For technical assistance and television demonstration program projects, the scope of work should include a budget based on the budget contained in the application, modified or revised as appropriate, which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the project.

14. Section 1942.314(e) is amended by revising the word "ID" to "RBE/television demonstration".

§ 1942.315 [Amended]

15. Section 1942.315(b) is amended by revising in the seventh sentence the words "FmHA 442–46" to read "FmHA 1942–46" and by removing the words "interim financing" from the last sentence.

§ 1942.349 [Amended]

16. Section 1942.349 is amended by revising the word "ID" to read "RBE/television demonstration".

17. Section 1942.350 is revised to read as follows:

§ 1942.350 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0132. Public reporting burden for this collection of information is estimated to vary from one-half to 40 hours per response, with an average of 1.8 hours per response including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 1951—SERVICING AND COLLECTIONS

18. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23; and 7 CFR 2.70.

Subpart E—Servicing of Community and Business Programs Loans and Grants

§ 1951.201 [Amended]

19. Section 1951.201 is amended by revising in the first sentence the words "Industrial Development" to read "Rural Business Enterprise/Television Demonstration".

PART 2003—ORGANIZATION

20. The authority citation for part 2003 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Public Law 100–82, 7 CFR 2.23; and 7 CFR 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

21. Exhibit A to subpart A is amended in paragraph 2, under the heading "07 02 03 Assistant Administrator—Community and Business Programs" by revising the words "industrial development" to read "rural business enterprise/television demonstration".

Dated: July 13, 1992.

Mary Ann Baron,

Acting Administrator, Rural Development Administration.

Dated: July 13, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–17597 Filed 7–24–92; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List. There are no additions to or deletions from the previous Foreign List. Both Lists were last published on April 27, 1992 and effective on May 11, 1992.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective May 11,

1992. Additions and deletions to the OTC List were last published on April 27, 1992 (57 FR 15220). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

There are no new additions, deletions or changes to the Board's Foreign List, which was last published April 27, 1992 (57 FR 15220) and effective May 11, 1992. This notice serves as republication of that List with a new effective date of August 10, 1992. The Foreign List includes those securities that meet the criteria in Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

American Nursey Products, Inc.
$.10 par common
Branford Savings Bank
$1.00 par common
College Bound, Inc.
$.001 par common
Cornucopia Resources Ltd.
No par common
Covington Development Group, Inc.
$.01 par common
D.O.C. Optics Corporation
$.10 par common
DVI Health Services Corporation
Warrants (expire 02-07-96)
Equitable of Iowa Companies
Class A, no par common
Fairfield First Bank & Trust (Connecticut)
$5.00 par common
Giant Bay Resources, Ltd.
No par common
Golden Cycle God Corporation
No par common
Grubb & Ellis Realty Income Trust
No par common
Hall Financial Group, Inc.
$.05 par common
Imnet, Inc.
$.05 par common
Inrad, Inc.
$.01 par common
MPSI Systems Inc.
$.05 par common
Paul Harris Stores, Inc.
No par common
Photon Technology International
No par common
Polifly Financial Corporation
$.10 par common
Programming and Systems, Inc.
$.04 par common
Simetco, Inc.
$1.00 par common
Super Rite Corporation
$.01 par exchangeable preferred
Tele-Communications, Inc.
7% convertible subordinated debentures
Telemundo Group, Inc.
$.01 par common
USA Bancorp Inc.
$1.00 par common
Ventura Entertainment Group, Ltd
$.001 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Air Methods Corporation
$.01 par common
Ameribanc, Inc.
$5.00 par common
American Television and Communications Corp.
Class A, $.01 par common
Biomedical Dynamics Corporation
No par common
DVI Health Services Corporation
$.005 par common
ECC Group PLC
American Depositary Receipts
F&M Financial Services Corporation
$.25 par common
FB & T Corporation
$1.00 par common
Health Management Associates, Inc.
Class A, $.01 par common
Hilb, Rogal and Hamilton Company
No par common
Hospital Staffing Services, Inc.
$.001 par common
International Mobile Machines Corporation
$.01 par common
Interstate Bakeries Corporation
$.01 par common
Manufacturers National Corporation
$10.00 par common

Medical Care International
$.01 par common
Mediplex Group Inc.
$.10 par common
Merchants National Corporation
No par common
Mips Computer Systems, Inc.
No par common
Mor Flo Industries, Inc.
No par common, $.50 stated value
Nymagic, Inc.
$1.00 par common
Omni Capital Group, Inc.
$1.00 par common
Oriental Federal Savings Bank (Puerto Rico)
$1.00 par common
OW Office Warehouse, Inc.
$.01 par common
Pic 'N' Save Corporation
$.04–1/6 par common
Prime Bancshares, Inc.
$.01 par common
Royal Appliance Manufacturing Corp.
No par common
Salem Carpet Mills, Inc.
$1.00 par common
Security Bancorp Inc.
$.01 par common
Solectron Corporation
No par common
Stuart Hall Company, Inc.
$.25 par common
Sulcus Computer Corporation
No par common
Summcorp
No par common
Westmoreland Coal Company
$2.50 par common

Additions to the OTC List

Advanta Corporation
Class B, non-voting, $.01 par common
All American Semiconductor, Inc.
Class A, warrants (expire 06–18–97)
Class B, warrants (expire 06–18–97)
All for a Dollar, Inc.
$.01 par common
Allied Bank Capital, Inc. (Pennsylvania)
$1.00 par common
Allied Capital Commercial Corporation
$.0001 par common
Allied Waste Industries, Inc.
$.01 par common
American Funeral Services Corporation
$.05 par common
Argus Pharmaceuticals, Inc.
$.001 par common
Arkansas Best Corporation
$.01 par common
Arrow International, Inc.
No par common
Atlantic Gulf Communities Corporation
$.10 par common
Automotive Industries Holding, Inc.
Class A, $.01 par common
AW Computer Systems, Inc.
$.01 par common
Basin Exploration, Inc.
$.01 par common
Bed Bath & Beyond, Inc.
$.01 par common
Ben Franklin Retail Stores, Inc.
$.01 par common
Bio-Technology General Corporation
Warrants (expire 12–19–95)
Warrants (expire 05–07–96)
Bio-Vascular, Inc.
$.01 par common
Biocircuits Corporation
$.001 par common
Bioject Medical Systems, Ltd.
No par common
Bok Financial Corporation
$.00006 par common
BPI Environmental, Inc.
$.01 par common
British Bio-Technology Group PLC
American Depository Receipts
Broadway & Seymour, Inc.
$.01 par common
Buckle, Inc., The
$.05 par common
Canandaiga Wine Company, Inc.
Class A, $.01 par common
Class B, $.01 par common
Candela Laser Corporation
Warrants (expire 11–08–2000)
Cantab Pharmaceuticals PLC
American Depository Receipts
Capital Bancorporation, Inc. (Missouri)
Depository Shares
Cardiovascular Imaging Systems, Inc.
No par common
Ccair, Inc.
$.01 par common
CF Bancorp, Inc.
$.01 par common
Cholestech Corporation
No par common
Command Security Corporation
$.0001 par common
Cooperative Bank for Savings, Inc.
$1.00 par common
Cott Corporation
No par common
Credit Acceptance Corporation
No par common
Crosscomm Corporation
$.01 par common
Data Research Associates, Inc.
$.01 par common
Datawatch Corporation
$.01 par common, warrants (expire 05–28–96)
Dateq Information Network, Inc.
$.01 par common
Destron/IDI, Inc.
No par common
Diceon Electronics, Inc.
5½% convertible subordinated debentures due 2012
Electronic Information Systems, Inc.
$.01 par common
Enzymatics, Inc.
$.01 par common
Equitrac Corporation
$.01 par common
Excel Technology, Inc.
$.001 par common
Express Scripts, Inc.
Class A, $.01 par common
Financial Federal Corporation (New York)
$.50 par common
Finish Line, Inc., The
Class A, $.01 par common
First Cash, Inc.
$.01 par common
First Colonial Bancshares, Inc. (Illinois)
Depository shares
First Savings Bank, SLA
$.01 par common
Firstfed Bancshares, Inc.
$.01 par common
FM Properties, Inc.
$.01 par common
Galey & Lord, Inc.
$.01 par common
General Cable Corporation
$1.00 par common
Great American Recreation, Inc.
$1.00 par convertible preferred
GTE California, Inc.
5% cumulative preferred
GTI Corporation
$.04 par common
Hall-Mark Electronics Corporation
$.01 par common
Hallwood Consolidated Resources Corporation
$.01 par common
Hampshire Group, Limited
$.10 par common
Healthcare Imaging Services, Inc.
$.01 par common, warrants (expire 11–19–96)
Hemacare Corporation
No par common
Hinsdale Financial Corporation
$.01 par common
Holson Burnes Group, Inc., The
$.01 par common
Homecare Management, Inc.
$.03 par common
Horton, D.R., Inc.
$.01 par common
Imperial Credit Industries, Inc.
No par common
Intermedia Communications of Florida, Inc.
$.01 par common
Jennifer Convertibles, Inc.
$.02 par common
Kronos Incorporated
$.01 par common
Krystal Company, The
No par common
Lasersight, Incorporated
$.01 par common
Learning Company, The
No par common
LGF Bancorp, Inc. (Illinois)
$.01 par common
Liberty National Bank (California)
$3.33⅓ par common

Lida Inc.
Class A, $.01 par common
Life USA Holding, Inc.
$.01 par common
Medi-Mail, Inc.
$.001 par common
Medquist, Inc.
No par common
Methanex Corporation
No par common
Metricom, Inc.
$.001 par common
Michigan Financial Corportion
$1.00 par common
Micro Focus Group Public Limited Company
American Depository Receipts
Microtouch Systems, Inc.
$.01 par common
Mid-Am, Inc.
No par convertible preferred
Morningstar Group Inc., The
$.02 par common
National Community Banks, Inc.
Series B, $1.9375 par cumulative convertible preferred
National Vision Associates, Ltd.
$.01 par common
Natural Wonders, Inc.
$.01 par common
Neozyme II Corporation
Units (expire 12-31-96)
Netframe Systems Incorported
$.001 par common
Network Computing Devices, Inc.
No par common
Omega Health Systems, Inc.
$.06 par common
On The Border Cafes, Inc.
$.02 par common
Onbancorp, Inc. (New York)
6.75% Series B, $1.00 par cumulative convertable preferred
Optical Data Systems, Inc.
No par common
Orthofix International N.V.
$.10 par common
OSB Financial Corporation
$.01 par common
OTR Express, Inc.
$.01 par common
Pacificare Health Systems, Inc.
Class B, $.01 par common
Perseptive Biosystems, Inc.
$.01 par common
Phoenix RE Corporation
Depository shares
Phoenix Resource Companies, Inc., The
$.001 par common
Premiere Radio Networks, Inc.
No par common
Princeton National Bancorp, Inc. (Illinois)
$5.00 par common
Pure Tech International, Inc.
$.05 par common
Puroflow Incorporated
$.06⅔ par common
Quantum Restaurant Group, Inc.
$.01 par common
Quidel Corporation
Warrants (expire 03-20-2000)
Regal Communications Corporation
$.001 par common
Rehabclinics, Inc.
$.01 par common
Rival Company, The
$.01 par common
Salem Sportswear Corporation
$.01 par common
Sanborn, Inc.
Series A, convertible preferred stock
Class A, redeemable warrants (expire 07-01-97)
Sapiens International Corporation N.V.
DG 1.00 par common
Second Bancorp, Incorporated (Ohio)
7½% no par cumulative convertible preferred
Small's Oilfield Services Corporation
$.001 par common, warrants (expire 07-06-97)
Software Etc. Stores, Inc.
$.01 par common
Solo Serve Corporation
$.01 par common
Southwest Bancshares, Inc. (Illinois)
$.01 par common
Spacelabs Medical, Inc.
$.01 par common
Spectrum Information Technologies, Inc.
$.001 par common
Class A, warrants (expire 06-11-93)
Sports Heroes, Inc.
$.001 par common
Sportstown, Inc.
$.01 par common
Stac Electronics
No par common
Starbucks Corporation
No par common
Stein Mart, Inc.
No par common
Steris Corporation
No par common
Sterling West Bancorp
No par common
Sunrise Leasing Corporation
$.01 par common
Supermac Technology, Inc.
$.001 par common
Tapistron International, Inc.
$.0004 par common, warrants (expire 06-23-97)
Tecumseh Products Company
Class A, $1.00 par common
Theratech, Inc.
$.01 par common
Today's Man, Inc.
No par common
Transmedia Network Inc.
$.02 par common
TSI Corporation
Warrants (expire 01-31-96)
United States Paging Corporation
$.01 par common
Universal Hospital Services, Inc.
$.01 par common
Universal Seismic Associates, Inc.
$.001 par common
Valence Technology, Inc.
$.001 par common
Vmark Software, Inc.
$.01 par common
Wedco Technology, Inc.
$.10 par common
Westco Bancorp, Inc.
$.01 par common
Winthrop Resources Corporation
$.01 par common
Younkers, Inc.
$.01 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), July 21, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-17622 Filed 7-24-92; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB14

Organization; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under part 611 on June 17, 1992 (57 FR 26991). The final regulations amend 12 CFR part 611 to address the organization of service corporations under section 4.25 to exercise authority granted under title VIII of the Farm Credit Act of 1971, as amended, to act as certified agricultural mortgage marketing facilities. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 27, 1992.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, FCA Examiner, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498,

or

Christine C. Dion, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-

5090, (703) 884–4020, TDD (703) 883–4444.

12 U.S.C. 2252(a) (9) and (10).

Dated: July 22, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–17678 Filed 7–24–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–77–AD; Amendment 39–8328; AD 92–16–18]

Airworthiness Directives; Cessna 401, 402, 404, F406, 421, and 441 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 78–06–03, which is applicable to certain Cessna 402 and 421 series airplanes, and AD 88–19–02, which is applicable to certain Cessna 402, 404, F406, 421, and 441 series airplanes. Both of these ADs currently require the installation of a structural reinforcement on Enviroform type commuter-style passenger seats. Service information shows that certain airplanes manufactured without these reinforced seats could be later modified by the installation of seats that have not been reinforced. The Federal Aviation Administration (FAA) has determined that Cessna 401, 402, 404, F406, 421, and 441 series airplanes should require the installation of a structural reinforcement on any Enviroform seat whether installed at the time of the airplane's manufacture or in the field. The actions specified by this AD are intended to prevent failure of Enviroform type commuter-style seats.

DATES: Effective September 10, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Abbott, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; Telephone (316) 946–4120; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Cessna 401, 402, 404, F406, 421, and 441 series airplanes that are equipped with Enviroform type commuter-style passenger seats was published in the **Federal Register** on April 21, 1992 (57 FR 14518). The action proposed the installation of a structural reinforcement on each Enviroform type commuter-style passenger seat installed either at the time of the airplane's manufacture or by field modification. The proposed actions would be accomplished in accordance with the Modification Instructions section of either Cessna Service Kit SK421–135A, revised August 5, 1988; or Cessna Service Kit SK421–78A, dated October 11, 1977. The proposed AD would supersede AD 78–06–03, Amendment 39–3162, and AD 88–19–02, Amendment 39–6004.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is known that 4,989 of the affected model airplanes have been manufactured. AD 88–19–02 required modification on 2,456 of the affected airplanes and AD 78–06–03 required the same action on 89 of these airplanes. This AD could affect up to 2,444 airplanes (4,989 minus 2,456 minus 89). Because the FAA does not have any readily available records of how many Enviroform commuter seats have been installed during field modification, the following cost analysis presumes that all 2,444 airplanes have unmodified Enviroform commuter seats installed. The FAA anticipates that a much smaller number of airplanes have the seats installed.

Accordingly, the FAA estimates that 2,444 airplanes in the U.S. registry could have unmodified Enviroform commuter seats installed, that it will take approximately 9 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $519 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,478,216.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39.

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 78–06–03, Amendment 39–3162 (43 FR 11969, March 23, 1978), and AD 88–19–02, Amendment 39–6004 (53 FR 32031, August 23, 1988), and adding the following new AD:

92–16–18 Cessna: Amendment 39–8328. Docket No. 91–CE–77–AD. Supersedes AD 78–06–03, Amendment 39–3162, and AD 88–19–02, Amendment 39–6004

Applicability: Models 401, 402, 402A, 402B, 402C, 404, F406, 421, 421A, 421B, 421C, and 441 airplanes (all serial numbers), certificated in any category, that:

1. Have Enviroform type commuter-style passenger seats installed at either manufacture or by field modification; and

2. Have not installed a structural reinforcement in accordance with the instructions in either Cessna Service Kit SK421-135A, revised August 5, 1988; or Cessna Service Kit SK421-78A, dated October 11, 1977, whichever is applicable.

Note 1: Enviroform seats are molded fiberglass/Kevlar seats instead of the usual padded passenger seats. The seat cushion is held in place with velcro strips and may be removed to check for the installation of the reinforcement kit. The attach bolts and doubler for the reinforcement kit are prominently visible with the cushion removed.

Note 2: None of the Model 401 airplanes were equipped with Enviroform type commuter-style passenger seats at manufacture, but could have had them installed at some point in service.

Compliance: Upon the installation of any Enviroform commuter seat or within the next 100 hours time-in-service after the effective date of this AD, whichever occurs later, unless already accomplished.

Note 3: The requirements of this AD may have already been accomplished in accordance with AD 78-06-03, Amendment 39-3162, or AD 88-19-02, Amendment 39-6004, which are both superseded by this AD.

To prevent passenger injury caused by commuter seat failure, accomplish the following:

(a) Remove, modify, and reinstall the Enviroform type commuter-style passenger seat in accordance with the applicable service information as specified in either paragraph (a)(1) or (a)(2) below:

(1) In accordance with section A. of the Modification Instructions section of Cessna Service Kit SK421-135A, revised August 5, 1988, for the following model and serial number airplanes:

Models	Serial Nos.
402B and 402C	402B1047 through 402C1020.
404	404-001 through 404-0859.
421C	421C0055 through 421C1807.
F406	F406-0001 through F406-0021.
441	441-0001 through 441-0362.

(2) In accordance with the Modification Instructions section of Cessna Service Kit SK421-78A, dated October 11, 1977, for the following model and serial number airplanes:

Models	Serial Nos.
401 and 402	401/402-0001 through 401/402-0322.
402A	402A0001 through 402A0132.
402B	402B0001 through 402B1046.
421	421-001 through 421-0200.
421A	421A0001 through 421A0158.
421B	421B0001 through 421B0943.
421C	421C0001 through 421C0054.

(b) For Models 404, F406, and 441 airplanes, accomplish the seat tracking modification in accordance with section B. of the Modification Instructions section of Cessna Service Kit SK421-135A, revised August 5, 1988.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) The modification required by this AD shall be done in accordance with Cessna Service Kit SK421-135A, revised August 5, 1988; or Cessna Service Kit SK421-78A, dated October 11, 1977. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-8328) supersedes AD 78-06-03, Amendment 39-3162, and AD 88-19-02, Amendment 39-6004.

(g) This amendment (39-8328) becomes effective on September 10, 1992.

Issued in Kansas City, Missouri, on July 15, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 92-17655 Filed 7-24-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-11-AD; Amendment 39-8331; AD 92-17-02]

Airworthiness Directives; EMBRAER EMB-110 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to EMBRAER (Empresa Brasileira de Aeronautica S.A.) EMB-110 series airplanes. This action requires modification of the rudder trim tab actuating system, reinforcement of the vertical stabilizer rear spar, repetitive inspections of the rudder trim tab actuating system for excessive free play, and modification if the free play exceeds established limits. The Federal Aviation Administration (FAA) has received numerous reports of vibration of the rudder trim tab actuating system on the affected airplanes. The actions specified by this AD are intended to prevent severe vibration or loss of control of the airplane caused by excessive free play and lack of rigidity of the rudder trim tab actuating system.

DATES: Effective September 11, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from EMBRAER, P.O. Box 343-CEP, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or EMBRAER Aircraft Corporation, 276 SW 34th Street, Fort Lauderdale, Florida 33315. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Jackson, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (404) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain EMBRAER EMB-110 series airplanes was published in the Federal Register on April 1, 1992 (57 FR 11023). The action proposed (1) modification of the rudder trim tab actuating system; (2) reinforcement of the vertical stabilizer rear spar; and (3) repetitive inspections of the rudder trim tab actuating system for excessive free play with modification if free play exceeds 1.0 mm. The trim tab actuating system modification and the installations proposed by this AD would be accomplished in accordance with the instructions in EMBRAER SB 110-027-0089, dated July 19, 1991. The free play

inspection and possible free play modification would be accomplished in accordance with the applicable maintenance manual.

The proposed modification would change the free play limit from 3.3 mm to 1.0 mm. The proposed AD would also allow repetitive inspections of the trim tab actuating system for excessive free play with subsequent modification if free play exceeds 3.3 mm provided that (1) parts are unavailable and the operator has ordered the parts from the manufacturer; and (2) the operator terminates the repetitive inspections and accomplishes the modification when parts become available. The modification procedures in the maintenance manual for the rudder trim tab actuating system if excessive free play exists would be the same whether the criteria is 1.0 mm or 3.3 mm. The only difference would be the criteria for the magnitude of the free play.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment has been received in favor of the proposed rule. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burde.. upon the public than was already proposed.

The FAA estimates that 84 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 32 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $231,840.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-17-02 EMBRAER: Amendment 39-8331; Docket No. 92-CE-11-AD.

Applicability: EMB-110 Series airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent severe vibration or loss of control of the airplane caused by excessive free play and lack of rigidity of the rudder trim tab actuating system, accomplish the following:

Note 1: The compliance times referenced in this AD take precedence over those cited in the referenced service information.

(a) Within the next 500 hours time-in-service (TIS), modify the rudder trim tab actuating system and install reinforcements to the vertical stabilizer rear spar in accordance with the instructions in Figures 1, 2, and 3 of EMBRAER Service Bulletin (SB) 110-027-0089, dated July 19, 1991.

Note 2: EMBRAER SB 110-27-0089 specifies that the airplane should be modified in accordance with EMBRAER SB 110-27-0060—"Replacement of Spherical Bearings of Aileron and Rudder Trim Tab Control Systems Rod Ends". This action is required for the affected airplanes by AD 87-01-05, Amendment 39-5490.

(b) Within 300 hours TIS after accomplishing the modifications required by paragraph (a) of this AD, and thereafter at intervals not to exceed 300 hours TIS, inspect the rudder trim tab actuating system for excessive free play in accordance with the applicable maintenance manual. If free play exceeds 1.0 mm., prior to further flight, modify the rudder trim tab actuating system in accordance with the applicable maintenance manual.

(c) If the parts required by paragraph (a) of this AD have been ordered, but are not available, within the initial 500 hours TIS required by paragraph (a) of this AD, accomplish the following:

(1) Inspect the rudder trim tab actuating system for excessive free play in accordance with the applicable maintenance manual.

(2) If free play exceeds 3.3 mm., prior to further flight, modify the rudder trim tab actuating system in accordance with the applicable maintenance manual.

Note 3: The modification procedures in the maintenance manual for the rudder trim tab actuating system if excessive free play exists are the same whether the criteria is 1.0 mm or 3.3 mm. The only difference is the criteria for the magnitude of the free play.

(3) Reinspect in accordance with paragraphs (c)(1) and (c)(2) of this AD at intervals not to exceed 100 hours TIS until the modifications required by paragraph (a) of this AD are accomplished, but not to exceed three 100-hour TIS repetitive inspection intervals.

(4) When parts become available or 100 hours TIS after the third repetitive inspection required by paragraph (c)(3) of this AD, whichever occurs first, prior to further flight, accomplish the modification required by paragraph (a) of this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) The inspections, reinforcement, and modifications required by this AD shall be done in accordance with EMBRAER Service Bulletin 110-027-0089, dated July 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EMBRAER, P.O. Box 343-CEP, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or EMBRAER Aircraft Corporation, 276 SW 34th Street, Fort Lauderdale, Florida 33315. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39-8331) becomes effective on September 11, 1992.

Issued in Kansas City, Missouri, on July 17, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-17653 Filed 7-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-119-AD; Amendment 39-8311; AD 92-16-02]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing Model 767 series airplanes equipped with General Electric CF6-80C2 engines, that currently requires revising the wiring in certain panels, the wing-body disconnects, and the wing-strut disconnects. That amendment was prompted by an on-going review of the design of thrust reverser systems; the design review was initiated after an accident occurred in which an airplane apparently experienced an uncommanded deployment of a thrust reverser during flight. This amendment revises specific wiring procedures for certain airplanes due to differences identified in the wiring configurations on those planes. The actions specified in this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing the possible discrepancies in the system that can result in the inadvertent deployment of a thrust reverser during flight. Deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

DATES: Effective July 27, 1992.

The incorporation by reference of Boeing Service Bulletin 767-78A0052, Revision 1, dated February 14, 1992, was approved previously by the Director of the Federal Register as of March 18, 1992 (57 FR 9381, March 18, 1992).

The incorporation by reference of Boeing Service Bulletin 767-78A0052, Revision 2, dated May 28, 1992, as listed in the regulations, is approved by the Director of the Federal Register as of July 27, 1992.

Comments for inclusion in the Rules Docket must be received on or before September 25, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-119-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Lanny Pinkstaff, Aerospace Engineer, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2684; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On February 27, 1992, the FAA issued AD 92-06-13, Amendment 39-8193 (57 FR 9381, March 18, 1992), to require the revision of the wiring in certain panels, the wing-body disconnects, and the wing-strut disconnects. This wiring is associated with the thrust reverser control system. That action was prompted by an on-going review of the design of thrust reverser systems on transport category airplanes, which was initiated after an accident occurred in which an airplane apparently experienced an uncommanded deployment of a thrust reverser during flight.

The design review noted that the wiring configuration of the General Electric CF6-80C2 engine thrust reverser, as installed on Boeing Model 767 series airplanes, has the Pressure Regulating Shutoff Valve (PRSOV) and the Directional Pilot Valve (DPV) control wires located in adjacent pins of several wire bundle disconnects. These wires should have pin separation so that the DPV will not have power on adjacent pins. A bent pin in a wire bundle disconnect could contribute to an inadvertent in-flight deployment of the thrust reverser during an "auto-restow" event. Deployment of a thrust reverser during flight could result in reduced controllability of the airplane. The actions required by AD 92-06-13 are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing the possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

Since the issuance of that AD, the FAA has reviewed and approved Revision 2 of Boeing Service Bulletin 767-78A0052, dated May 28, 1992. This revision of the service bulletin includes revised wiring diagrams for certain groups of airplanes. These revised wiring diagrams are necessary since, subsequent to the release of Revision 1 of the service bulletin, differences were identified in the configuration of the wiring schemata on certain airplanes. Operators of those airplanes having the different wiring configurations had difficulty in attempting to revise the wiring in accordance with the diagrams in Revision 1 of the service bulletin (or in accordance with AD 92-06-13, since it referenced Revision 1 as the only appropriate source of service information).

The revised Boeing service bulletin also changes the procedures of the related functional test to include a step to verify that a 6 (plus or minus 4) second 18 to 32 volt direct current (VDC) pulse is registered on the voltmeter.

Additionally, the effectivity listing of the revised Boeing service bulletin includes one additional airplane, and delineates five groups of airplanes that differ due to wiring configuration differences.

The FAA has determined that accomplishing the revised procedures in accordance with the latest revision of the service bulletin is necessary in order to positively address the identified unsafe condition on all affected airplanes. The wiring revisions and corrected functional test procedure will eliminate possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 92-06-13 to require revising the wiring in certain panels, the wing-body disconnects, and the wing-strut disconnects in accordance with Revision 2 of the Boeing service bulletin, described previously.

This AD requires that operators accomplish only those procedures that have changed in accordance with Revision 2 of the Boeing service bulletin. Operators who have already accomplished the procedures required by AD 92-06-13 and in accordance with Revision 1 of the service bulletin, need not accomplish any procedure that is identical to one that was specified in Revision 1 of the service bulletin.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment

hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-119-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8193 (57 FR 9381, March 18, 1992), and by adding a new airworthiness directive (AD), amendment 39-8311, to read as follows:

92-16-02. Boeing: Amendment 39-8311. Docket 92-NM-119-AD. Supersedes AD 92-06-13, Amendment 39-8193.

Applicability: Model 767 series airplanes equipped with General Electric CF6-80C2 engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight, accomplish the following:

(a) For airplanes listed in Boeing Alert Service Bulletin 767-78A0052, Revision 1, dated February 14, 1992: Within 60 days after March 18, 1992 (the effective date of AD 92-06-13, Amendment 39-8193), revise the wiring in certain panels, the wing-body disconnects, and the wing-strut disconnects, in accordance with Boeing Alert Service Bulletin 767-78A0052, Revision 1, dated February 14, 1992.

(b) For airplanes listed in Boeing Alert Service Bulletin 767-78A0052, Revision 2, dated May 28, 1992: Within 60 days after the effective date of this AD, revise the wiring in certain panels, the wing-body disconnects, and the wing-strut disconnects, in accordance with Boeing Alert Service Bulletin 767-78A0052, Revision 2, dated May 28, 1992. Procedures that were accomplished previously in accordance with Revision 1 of the service bulletin, and that have not changed in Revision 2 of the service bulletin, need not be repeated.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Boeing Service Bulletin 767-78A0052, Revision 2, dated May 28, 1992, which includes the following list of effective pages:

Page No.	Revision level	Date
1, 3-4, 7-8, 12-14.	2	May 28, 1992.
2, 5, 10	1	February 14, 1992.
6, 9, 11	Original	December 10, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Boeing Service Bulletin 767-78A0052, Revision 1, dated February 14, 1992, was approved previously by the Director of the Federal Register as of March 18, 1992 (57 FR 9381, March 18, 1992). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 27, 1992.

Issued in Renton, Washington, on July 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-17654 Filed 7-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AGL-14]

Control Zone Modification; DuPage Airport, St. Charles, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the control zone airspace near DuPage Airport, Chicago (West Chicago), IL, to accommodate two (2) new Standard Instrument Approach Procedures (SIAPs): VOR runway 01L and ILS runway 01L. This modification also reflects the associated city name of the DuPage Airport as "Chicago (West Chicago)" instead of "St. Charles." The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 21, 1992, the Federal Aviation Administration proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone airspace near DuPage Airport, Chicago (West Chicago), IL (57 FR 14523).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Control Zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the control zone airspace near DuPage Airport, Chicago (West Chicago), IL, to accommodate two (2) new SIAPs: VOR runway 01L and ILS runway 01L. This airspace change increases the control zone radius from three miles to five miles and eliminates its present extension. This modification also reflects the associated city name of the DuPage Airport as "Chicago (West Chicago)" instead of "St. Charles."

The development of new SIAPs requires that the FAA alter the designated airspace to ensure that the procedures will be contained within controlled airspace. The minimum descent altitude for these procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Control zones.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

AGL IL CZ Chicago (West Chicago), IL [Revised]

Chicago (West Chicago), DuPage Airport, IL (lat. 41°54'24" N, long. 88°14'54" W.)

Within a 5-mile radius of DuPage Airport, Chicago (West Chicago), IL.

* * * * *

Issued in Des Plaines, Illinois, on July 14, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-17663 Filed 7-24-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-328; Re: Notice Nos. 731 and 594]

Winemaking Terminology (91F-015P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: On November 18, 1991, ATF published in the **Federal Register** a notice of proposed rulemaking, Notice No. 731 (56 FR 58199), to amend regulations defining various winemaking terms used on wine labels. The proposed changes had been previously published on May 29, 1986, as Notice No. 594 (51 FR 19361). AFT decided to republish the proposed changes in Notice 594 because there may have been changes in how winemaking terms are used. The proposal to amend winemaking terms is a result of the decision in *Wawszkiewicz* v. *Department of the Treasury*, 480 F. Supp. 739 (D.D.C. 1979), *aff'd in part, rev'd in part*, 670 F.2d 296 (D.C. Cir. 1981). The Court of Appeals remanded the case to the lower court with instructions that these regulations (among others) be remanded to ATF for reconsideration and review. ATF has reconsidered these regulations and concludes that they should be amended to specifically define terms used on wine labels to denote winemaking operations performed by the person identified by name and address on the label. The use of geographic terms on wine labels, another issue involved in the litigation, was the subject of TD ATF-229 (51 FR 20480).

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and

Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF issued a final rule, Treasury Decision ATF–53 (43 FR 37672, 54624), which extensively revised various regulations governing the labeling of wine. In T.D. ATF–53, ATF also decided not to amend regulations on winemaking terms which denote processes performed by the persons identified by name and address on the label. The plaintiffs in *Wawszkiewicz* challenged the regulations governing the use of winemaking terms on wine labels, among other regulations. They argued that the lack of regulatory definitions for these terms sanctioned misleading labeling.

District Court

The District Court held that the challenged regulations were inconsistent with 27 U.S.C. 205(e). For example, in the court's view the use of a grape variety name implied that 100 percent of the wine was derived from grapes known by that name. The court held that "[b]y assigning inaccurate and undisclosed meanings to words which are otherwise clear and unequivocal, the challenged regulation sanctions the transmittal of false and misleading information." 480 F. Supp. at 744. The District Court decision dwelt primarily on the varietal labeling rule but held that similar shortcomings applied to the other contested rules. *Id.* at 745. The court concluded that wine labels should carry concise explanations of any terminology used where the identity of the producer or maker is represented to the consumer. *Id.* at 745. The District Court ordered that the regulations be remanded to ATF for revision consistent with the conclusion described above.

Court of Appeals

The Court of Appeals disagreed with the District Court's rationale in that a court reviewing agency action is not empowered to substitute its judgment for that of the agency. The Court of Appeals held that an agency's decision should be upheld where there is a rational basis for the decision in the facts of the record. 670 F.2d at 301. Pursuant to this test, the court upheld the regulations governing varietal labeling but found that the regulations concerning winemaking terminology had not been adequately explained, "either by reference to the records or by a reasoned statement." *Id.* at 304. The Court of Appeals remanded the case to the District Court with instructions that the regulations governing winemaking terminology be remanded to ATF for review and reconsideration in light of the appellate court's decision. The court thus afforded ATF an opportunity either to show that the regulations "meaningfully control misleading labeling and advertising," or to rewrite the regulations "in such fashion that the agency can demonstrate compliance with the statutory mandates." *Id.* at 304. No specific instructions were provided by either court nor were any dates set in connection with the review or reconsideration.

Related Rulemaking

Definitions of various winemaking terms which are indicative of specific processes used in the production of wine are set forth in this Treasury decision. ATF has previously issued a general statement of policy, Notice No. 576 (50 FR 51849), explaining its decision on appellation of origin percentages and geographic, corporate and trade names, by reference to the records and by a reasoned statement. In T.D. ATF–229 (51 FR 20480), ATF revised 27 CFR 4.39(i), geographic brand names, to permit a brand name of viticultural significance to be used on a label only if the wine meets the appellation of origin requirements of the geographic area named.

Current Rules on Winemaking Terminology

Under 27 CFR 4.35, the name and address of the bottler or packer must be shown on the label. The word "produced" is defined, and the undefined words "blended," "rectified," "prepared," and "made" are given as examples of words which may appear in conjunction with the required name and address of the bottler or packer. In addition, the undefined word "manufactured" may appear on the label of imitation wine only, in conjunction with the required name and address of the bottler or packer.

In ATF Ruling 79–2, A.T.F.Q.B. 1979–1, 21, ATF defined these and other words contemplated for use in the same context. This ruling defined "made," "prepared," "blended," "rectified," and "cellared" for use in conjunction with the words "bottled by" preceding the required name and address of the bottler. In *Wawszkiewicz*, the court focused on the definitions of "produced" and "made," finding that "[i]t is by no means intuitively clear why it is not misleading for a winery to represent that it produced a wine when another was heavily involved in its production, or that it made a wine that it in fact purchased." 670 F. 2d at 304.

Therefore, ATF is eliminating the disparity between the definitions of "produced" and "made," and defining other words currently being used on wine labels to denote specific winemaking operations performed by the persons identified by name and address on the label. These definitions are derived, in part, from ATF Ruling 79–2, and they reflect long-standing ATF policy and industry usage.

Notice Nos. 594 and 731

Notice No. 594, published on May 29, 1986, proposed that certain words denoting specific winemaking operations, when used in conjunction with the required name and address legend on a wine label, shall have defined meanings. Because there may have been changes in how winemaking terms are used since Notice No. 594, ATF republished the proposed changes in the **Federal Register** on November 18, 1991, Notice No. 731. In the notices ATF proposed to (1) eliminate the disparity between the words "produced" and "made," as suggested by the Court of Appeals in the *Wawszkiewicz* litigation, (2) incorporate definitions of "prepared," "blended," and "cellared," previously issued in ATF Ruling 79–2, (3) remove, as obsolete, references to the words "rectified" and "manufactured," and (4) define the undefined words "vinted" and "vinified" which are currently used on labels. These proposals are described more completely below.

(1) "Produced" or "made" means that the named winery: (a) fermented not less than 75 percent of such wine at the stated address, or (b) changed the class or type of the wine by addition of alcohol, brandy, flavors, colors, artificial carbonation at the stated address, or (c) produced sparkling wine by secondary fermentation at the stated address.

(2) "Vinified" means that the named winery: (a) fermented not less than 75 percent of such wine at the stated address, or (b) produced sparkling wine by secondary fermentation at the stated address.

(3) "Blended" means that the named winery mixed the wine with other wines of the same class and type at the stated address.

(4) "Cellared," "vinted," or "prepared" means that the named winery, at the stated address, subjected the wine to cellar treatment in accordance with § 4.22(c), which did not result in a change of class or type.

The word "rectified," as defined in ATF Ruling 79–2, refers to the production of a wine product at a distilled spirits plant, an activity which

was subsequently addressed by the passage of the Distilled Spirits Tax Revision Act of 1979, P.L. 96–39, 93 Stat. 144. Under present law, a wine or wine product may not be removed from the bonded premises of a distilled spirits plant (26 U.S.C. 5362(b)). Therefore, this word was not included in the defined terms.

The word "manufactured," given as an example of a word which may appear on the label of imitation wine only was eliminated. ATF believes that this word has not been used in many years. In addition, the word "artificial" or "imitation" on labels of imitation wines adequately informs the consumer of the presence of synthetic ingredients, and the word "manufactured" serves no purpose in this context. Also, conforming changes were proposed in Notice No. 594 relating to words used on imported wines to denote winemaking operations. The words used, or their English-language equivalents, must meet the requirements of the country of origin for wines sold within the country of origin. In addition, the mandatory name and address statements on imported wine were rewritten using more concise wording for clarity.

The requirement to obtain a certificate of label approval would preclude the introduction of new, undefined words denoting winemaking operations. Additionally, ATF could define new words for use on wine labels coined in the future as needed.

Comments on Notice No. 594

ATF received six public comments on Notice No. 594 raising the following four issues: Length of implementation period, labeling of the principal place of business, use of the words "grown by," and Dr. Edward Wawszkiewicz's 1983 consumer survey.

Length of Implementation Date

In Notice No. 594, ATF specifically asked for public comments on the duration of the implementation period. Two commenters recommended a one year period. The implementation period will be 2 years for reasons stated later in the discussion of the proposals.

Principal Place of Business

Two commenters stated that only one address should be required on the label even if fermentation and bottling occurred at two different wineries operated by the same company. In essence, this was considered a request to allow the labeling of the principal place of business for wines, previously approved for malt beverages in T.D. ATF–225, effective May 1, 1986, and for distilled spirits in T.D. ATF–260, effective December 3, 1987. The existing wine labeling regulations require more than one address to appear if the named operation occurred at more than one location. This rule is unchanged since it was first issued in 1935. It is based on the fact that wine consumers, unlike other consumers, take more interest in geographic names on labels. Therefore, ATF believes that a more restrictive rule is necessary for wines in comparison to malt beverages or distilled spirits. The Wine Institute submitted a petition for rulemaking to allow one address to be shown on a label if the same company produced and bottled the wine within the same viticultural area. ATF published the Wine Institute's petition as an advance notice of proposed rulemaking in the **Federal Register** on July 1, 1991, Notice No. 720 (56 FR 29913). After receiving comments that allowing one address to be shown on a label, even if the same company produced and bottled the wine within the same viticultural area, would be misleading to the consumer, ATF decided to deny the Wine Institute's petition. However, the issue of allowing one address to be shown on a label if the same winery proprietor produced and bottled the wine continues to be under study and may be the subject of future rulemaking.

Use of the Words "Grown by"

Two commenters favored adding a definition of the word "grown." ATF did not propose to define the word "grown" in Notice No. 594 since the term is related to viticulture rather than winemaking. ATF's current policy on the use of this term in the address statement or as additional, truthful information on labels, requires that 100% of the grapes be grown by the named person at the stated address. If the label states "grown, produced, and bottled by," all three operations must occur at the same address. If growing occurred at a different address, more than one address statement is required. In addition, the grapes must be grown on land owned or controlled by the same person. At the present time ATF does not believe that it is appropriate to issue a regulation on use of the word "grown" on wine labels since to do so would require a set blending tolerance. ATF believes that using a label approval policy, in lieu of a codified regulation, is more effective in this particular case. Therefore, ATF will continue to approve the use of the word "grown" on a case-by-case basis.

Dr. Edward Wawszkiewicz's 1983 Consumer Survey

Dr. Wawszkiewicz commissioned a consumer survey in 1983, conducted by the University of Illinois Survey Research Laboratory. Mr. Robert W. Benson, co-plaintiff in the *Wawszkiewicz* litigation, submitted this survey as part of a public comment on Notice No. 594. ATF believes that the bias of the survey is made clear in the discussion of the existing regulations under the heading "Survey Results." The survey showed consumers nine sample labels and asked questions about information conveyed in the labels. The wording of the questions showed that the surveyor attempted to demonstrate flaws in the existing regulatory framework rather than test the knowledge of consumers. A copy of this survey is available as part of the comment file for anyone interested in reviewing the questions and responses.

Comments on Notice No. 731

ATF received 11 public comments on Notice No. 731. The implementation date issue and a definition of the term "grown" were not addressed by any of these commenters. Two of the commenters again proposed allowing one address to be shown on a label if the same company produced and bottled the wine within the same viticultural area.

Dr. Wawszkiewicz also referred to his commissioned consumer survey in 1983 conducted by the University of Illinois Survey Research Laboratory.

The main theme of the commenters was that too many winemaking terms were proposed which mean the same thing.

Produced and Made

One commenter wanted the present definition to stay as it is because many winery proprietors blend wines produced by other winery proprietors and are used to using this term. ATF has concluded that the use of the terms "produced by" or "made by" connote that the proprietor of the named winery controlled all phases of the winemaking process including a high percentage of the fermentation. ATF is adopting the 75 percent standard suggested in the notice because this figure is believed to be high enough for the winery proprietor to legitimately claim full credit for the wine despite the use of another proprietors' wine for blending. ATF further believes that allowing up to 25 percent blending wine fermented by another winery proprietor allows the maximum blending flexibility without allowing the wine to be so "watered down" with other

peoples wine so as to make the producer's claim specious. One commenter, Dr. Wawszkiewicz, argued that the percentage should be 100 percent fermented by the proprietor of the named winery. Another commenter basically agreed with Dr. Wawszkiewicz, except that he would allow 75 percent produced if such were stated on the label. We are not convinced, after considering all of the various operations involved with producing wine, that 100 percent is reasonable or necessarily even implied by a simple claim that the winery proprietor produced the wine.

Vinified

Several commenters stated that the terms "vinified" and "vinted" were too closely related to allow for different definitions for each and as such would mislead the consumer. Except for one comment, the commenters favored eliminating vinified and keeping vinted as proposed. ATF agrees with the commenters and therefore, vinified is not included as a defined term in the final regulations.

Vinted, Cellared, and Prepared

While the commenters would have preferred to have one of these terms instead of three for the same definition, ATF has determined that all three terms are widely used. Therefore, the winemaking terms "vinted," "cellared" and "prepared" will be as proposed with one modification. The wine need only have been subjected to cellar treatment in accordance with § 4.22(c) and not also require a change in class or type for the three winemaking terms to be used. Since the winemaking terms "produced" or "made" are more restrictive by definition, ATF believes the terms "vinted," "cellared," or "prepared" can be used in place of "produced" or "made." Also, a small winery proprietor may want to use the less restrictive term to reduce the cost of having different labels when both wines are being sold.

Blended

There was no objection to the winemaking term "blended" so this term will appear in the final regulations as proposed.

Rectified and Manufactured

The terms "rectified" or "manufactured" are not defined in the final regulations and there was no objection to the proposed elimination of these terms.

Conclusion

As one can see from the preceding discussion, ATF's efforts to sum up winemaking practices by using one word descriptors has been very difficult. Winemaking is a complex process that involves a variety of operations any one of which can significantly affect the character and quality of the finished wine. One thing that is abundantly clear at the end of this rulemaking is that the terms addressed have no clear and unequivocal meaning generally understood by consumers. The average consumer probably has only a general understanding of what is involved in winemaking. Consumers who have not made a study of wines and winemaking may recognize fermentation as the key process but would not likely appreciate the importance of some of the other winemaking techniques, such as blending, aging and finishing, even though these operations are just as important in determining the final character of the wine. Any generalizations of the American wine industry and standard winemaking practices are also very difficult because operations vary widely from winery to winery and from product to product. On one extreme are small winery proprietors who ferment, blend, age, finish and bottle wines using only grapes from their own vineyards. On the other extreme are the winery proprietors who only purchase finished wine for bottling under private brand labels. The operations of most winery proprietors fall somewhere in between. Moreover, the different products of any particular winery proprietor may well involve different combinations of operations for different wines. A vintage dated varietal wine might be produced primarily from grapes grown by the winery proprietor, or from grapes purchased from other growers. Depending on the desired finished wine, some wine produced by another winery proprietor may also be used for blending, but the finished wine is still going to be predominantly composed of wine that the winery proprietor controlled from fermentation through finishing. The art of producing these wines is found in capturing the unique characteristics of the grapes from a particular year through careful selection of the grapes, and skillful control over the fermentation, blending, aging and finishing processes. The goal of the winemaker is to produce a distinctive, complex wine that captures the unique qualities of the grape.

The production of popular semi-generic wines also require a skilled application of winemaking processes. The origin of this type of wine may be traced to unfinished wine purchased and finished by the winery proprietor. The art of producing these popular products, however, requires equal skill in order to achieve the distinctive but consistent product with the same taste, color, and other characteristics that consumers expect from this wine year after year.

These are only examples of how wine is made. The variations on these possibilities are as numerous as the number of wines being made. ATF's goal has been to identify those words that can best capture these operations in such a way as to both give consumers information they want to know about the origin of the wine, and give winemakers an ability to claim credit for the efforts they have put into the wine.

In giving definition to those terms that have traditionally been used on wine labels, ATF has attempted to set standards that fairly reflect the winery proprietors contribution to the wine. At the same time, ATF has sought to avoid a situation where a winery proprietor would deviate from good commercial practice and change a practice just to meet an arbitrary restrictive standard.

Implementation Date

The effective date of the regulations is July 27, 1994. ATF believes this will allow sufficient time for proprietors using the winemaking term "vinified" to change to a defined term and for proprietors to otherwise make any necessary changes in their labels to comply with a terminology change.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because this final rule is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205

Par. 2. Section 4.35 is amended by adding a new paragraph (e) to read as follows:

§ 4.35 Name and address.

* * * * *

(e) This section does not apply after July 27, 1994.

Par. 3. Section 4.35a is added to read as follows:

§ 4.35a Name and address.

(a) *American wine.*—(1) *Mandatory statement.* A label on each container of American wine shall state either "bottled by" or "packed by" followed by the name of the bottler or packer and the address (in accordance with paragraph (c)) of the place where the wine was bottled or packed. Other words may also be stated in addition to the required words "bottled by" or "packed by" and the required name and address if the use of such words is in accordance with paragraph (a)(2) of this section.

(2) *Optional statements.* (i) In addition to the statement required by paragraph (a)(1), the label may also state the name and address of any other person for whom the wine was bottled or packed, immediately preceded by the words "bottled for" or "packed for" or "distributed by."

(ii) The words defined in paragraphs (a)(2)(iii)–(a)(2)(vi) may be used, in accordance with the definitions given, in addition to the name and address statement required by paragraph (a)(1). Use of these words may be conjoined, using the word "and", and with the words "bottled by" or "packed by" only if the same person performed the defined operation at the same address. More than one name is necessary if the defined operation was performed by a person other than the bottler or packer and more than one address statement is necessary if the defined operation was performed at a different address.

(iii) *Produced* or *Made* means that the named winery:

(A) Fermented not less than 75% of such wine at the stated address, or

(B) Changed the class or type of the wine by addition of alcohol, brandy, flavors, colors, or artificial carbonation at the stated address, or

(C) Produced sparkling wine by secondary fermentation at the stated address.

(iv) *Blended* means that the named winery mixed the wine with other wines of the same class and type at the stated address.

(v) *Cellared, Vinted* or *Prepared* means that the named winery, at the stated address, subjected the wine to cellar treatment in accordance with § 4.22(c).

(b) *Imported wine.*—(1) *Mandatory statements.* (i) A label on each container of imported wine shall state "imported by" or a similar appropriate phrase, followed immediately by the name of the importer, agent, sole distributor, or other person responsible for the importation, followed immediately by the address of the principal place of business in the United States of the named person.

(ii) If the wine was bottled or packed in the United States, the label shall also state one of the following:

(A) "Bottled by" or "packed by" followed by the name of the bottler or packer and the address (in accordance with paragraph (c)) of the place where the wine was bottled or packed; or

(B) If the wine was bottled or packed for the person responsible for the importation, the words "imported by and bottled (packed) in the United States for" (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation; or

(C) If the wine was bottled or packed by the person responsible for the importation, the words "imported and bottled (packed) by" followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(iii) If the wine was blended, bottled or packed in a foreign country other than the country of origin, and the label identifies the country of origin, the label shall state "blended by," "bottled by," or "packed by," or other appropriate statement, followed by the name of the blender, bottler or packer and the place where the wine was blended, bottled or packed.

(2) *Optional statements.*—In addition to the statements required by paragraph (b) (1), the label may also state the name and address of the principal place of business of the foreign producer. Other words, or their English-language equivalents, denoting winemaking operations may be used in accordance with the requirements of the country of origin, for wines sold within the country of origin.

(c) *Form of address.* The "place" stated shall be the post office address shown on the basic permit or other qualifying document of the premises at which the operations took place; and there shall be shown the address for each operation which is designated on the label. An example of such use would be "Produced at Gilroy, California, and bottled at San Mateo, California, by XYZ Winery," except that the street address may be omitted. No additional places or addresses shall be stated for the same person unless:

(1) Such person is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and

(2) The label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(d) *Trade or operating names.* The trade or operating name of any person appearing upon any label shall be identical with a name appearing on the basic permit or other qualifying document.

(e) The provisions of this section are optional until they become mandatory July 27, 1992.

Signed: June 12, 1992.

Stephen E. Higgins,

Director.

Approved: July 6, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement)

[FR Doc. 92–17510 Filed 7–24–92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the North Dakota Abandoned Mine Land Reclamation (AMLR) Plan (North Dakota Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.* The amendment was submitted to OSM on October 31, 1991, and proposed to create a State abandoned mine reclamation fund set-aside trust account.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Plan

The Secretary of the Interior approved the North Dakota AMLR Plan on December 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and disposition of comments can be found in the December 23, 1981 **Federal Register** (46 FR 62256). Subsequent actions concerning the North Dakota Plan and amendments to the Plan can be found at 30 CFR 934.20 and 934.25.

II. Discussion of Proposed Amendment

By letter dated October 31, 1991, North Dakota submitted a reclamation plan amendment to OSM (Administrative Record No. ND–N–02). The proposed amendment consists of new language to establish a special fund that would set-aside ten percent of the funds granted to the State by the Secretary for reclamation of abandoned coal mine sites. The funds and accrued interest (the Fund) would be expended for purposes enumerated in Section 403 of SMCRA (as amended by the Omnibus Budget Reconciliation Act of 1990). North Dakota submitted the proposed amendment on its own initiative.

OSM announced receipt of the proposed amendment in the December 13, 1991, **Federal Register** (56 FR 65033) (Administrative Record No. ND–N–02) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on January 13, 1992. A public hearing was not held because no one requested an opportunity to testify.

By letter dated March 6, 1992, OSM notified the State that a review of the proposed amendment identified two provisions that did not appear to be in accordance with the title IV requirements of SMCRA. They include: (1) The proposed provision at NDCC 38–14.2–04(3) that, as submitted, would allow monies from the Fund to be used for both coal and non-coal reclamation projects; and (2) at NDCC 38–14.2–06, the State would require that all land and water eligible for reclamation or drainage abatement must have been abandoned, unreclaimed, or inadequately reclaimed prior to July 1, 1979. Under SMCRA, Fund monies are intended to be used for coal reclamation projects only. The Federal program requires that lands and water that are eligible for reclamation are those that were abandoned, unreclaimed, or inadequately reclaimed prior to the August 3, 1977, enactment of SMCRA.

The State responded to these issues in letters of March 23, 1992, (Administrative Record No. ND–N–16), and June 15, 1992, (Administrative Record No. ND–N–19).

Regarding non-coal reclamation projects being funded out of the Fund, the State responded that the Commission plans to propose an amendment to the North Dakota Century Code during the Fifty-Fourth Legislative Session that will exclude any reference to non-coal reclamation.

Concerning the date that lands and waters are considered eligible for reclamation (those prior to the August 3, 1977, enactment of SMCRA), the State initially responded that it would prefer to retain the 1979 project eligibility date. Subsequently, the State agreed that the statute referencing the 1979 date is confusing, and responded that the project eligibility date and accompanying language would be changed to reflect the date SMCRA was enacted, during the State's upcoming Fifty-Fourth Legislative Session.

III. Director's Findings

The Director finds, in accordance with section 405 of SMCRA, that the proposed amendment to the North Dakota Program submitted on October 31, 1991, with two exceptions, is not inconsistent with SMCRA and the North Dakota Plan.

North Dakota will be required to amend its Plan in a manner to ensure that funds from the Fund cannot be used to reclaim non-coal reclamation projects. In its letter of March 23, 1992 (Administrative Record No. ND–N–16), North Dakota agreed to change its Plan to resolve the issue.

North Dakota will be required to amend its Plan in a manner to ensure that the date that lands and water become eligible for funding is set at August 3, 1977. In its letter of June 15, 1992, North Dakota agreed to change the date to reflect the date of the enactment of SMCRA, during the next session of the State legislature.

The Director has determined, pursuant to 30 CFR 884.14, that:

1. The public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the Plan Amendment.

4. The Plan Amendment meets all requirements of OSM's AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The Plan Amendment, with the exceptions identified in the notice, is in compliance with all applicable State and Federal laws and regulations.

IV. Summary and Disposition of Comments

1. Public Comments

In accordance with 30 CFR 884.15(a), the Director solicited public comments and provided an opportunity for a public hearing on the Plan Amendment in the December 13, 1991, **Federal Register** (56 FR 65033). As of January 13, 1992, the close of the public comment period, no public comments had been received. Since no one requested an opportunity to testify at a public hearing, none was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal and State agencies with an actual or potential interest in the North Dakota Plan.

By letter dated December 13, 1991, the U.S. Fish and Wildlife Service stated that it did not anticipate any significant impacts to fish and wildlife resources as a result of the proposed rule (Administrative Record No. ND–N–10).

By letter dated January 2, 1992, the Department of the Army, U.S. Corps of Engineers indicated that it had no interest or comment (Administrative Record No. ND–N–08).

By letter dated January 2, 1992, the Bureau of Indian Affairs expressed no objections to the proposed Plan amendment because Indian lands are not affected (Administrative Record No. ND–N–09).

By letter dated January 6, 1992, the Bureau of Reclamation stated that it had no comments on the proposed amendment (Administrative Record No. ND–N–11).

By letter dated January 8, 1992, the State Historical Society of North Dakota acknowledged receipt of the Plan Amendment and has no objections to it (Administrative Record No. ND–N–12).

By letter dated February 4, 1992, the U.S. Department of Labor, Mine Safety and Health Administration noted that the proposed amendment does not appear to conflict with any current MSHA regulations which pertain to refuse piles and impoundments (Administrative Record No. ND–N–14).

By letter dated May 28, 1992, the U.S. Environmental Protection Agency noted that the revisions do not change the objectives, scope, or major policies followed by the State in the conduct of its reclamation program, and provided concurrence (Administrative Record No. ND–N–18).

V. Director's Decision

The Director finds that the North Dakota proposed amendment is in accordance with section 405 of SMCRA and the Secretary's regulations at 30 CFR Part 884.15, with exceptions concerning use of the Fund for the funding of non-coal reclamation projects; and the date that lands and water become eligible for reclamation funding, and is approving it. The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota Plan are amended to implement this decision.

VI. Procedural Matters

National Environmental Policy Act

Approval of State or Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, appendix 8, paragraph 8.4B(29).

Executive Order 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for decisions to approve or disapprove State or Tribe abandoned mine land plans and amendments. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require any regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State or Tribe.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that this rule meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Abandoned Mine Land Reclamation, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

30 CFR Part 934 is amended as follows:

PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.20 is revised to read as follows:

§ 934.20 Approval of North Dakota abandoned mine plan.

The North Dakota Abandoned Mine Plan as submitted on July 28, 1981, is approved. Copies of the approved program are available at:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918; Telephone: (307) 261–5776.

North Dakota Public Service Commission, Abandoned Mine Land Division, State Capitol, Bismarck, ND 58505; Telephone: (701) 224–4096.

3. Section 934.25 is revised to read as follows:

§ 934.25 Approval of abandoned mine land reclamation plan amendments.

(a) The North Dakota Abandoned Mine Plan amendment submitted on March 4, 1983, is approved.

(b) The North Dakota Mine Plan amendment submitted September 15, 1987, is approved effective July 18, 1988.

(c) The North Dakota Mine Plan amendment as submitted on October 31, 1991, is approved effective July 27, 1992, with the provision that North Dakota amend its Plan to ensure that monies from the Fund cannot be used to reclaim non-coal reclamation projects as the State agreed to do in its March 23, 1992, letter (administrative Record No. ND–N–16); and that the date lands and water become eligible for funding for reclamation projects is prior to the August 3, 1977, enactment of SMCRA, as the State agreed to do in its June 15, 1992, letter (Administrative Record No. ND–N–19).

[FR Doc. 92–17574 Filed 7–24–92; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 925

Ohio Regulatory Program; Revision of Administrative Rules and Statute

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Revised Program Amendment Number 43) is intended to revise nine administrative rules and one statutory section of the Ohio program to be consistent with the

corresponding Federal regulations. The proposed amendment concerns regulations governing termination of jurisdiction; the definition of "road;" permit requirements, performance standards, and reclamation requirements for roads; permit and design requirements for impoundments and coal mine waste structures; spillway requirements for impoundments; vegetation stocking and success standards; husbandry practices for revegetation; and general requirements for description, plans, and drawings for support facilities.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated November 17, 1989 (Administrative Record No. OH-1240), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) of a number of Federal regulations promulgated between September 7, 1988, and November 8, 1988, for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. In response to the OSM notification, Ohio submitted proposed Program Amendment Number 43 by letter dated January 16, 1990 (Administrative Record No. OH-1265). This amendment proposed revisions to eight sections of the Ohio Administrative Code (OAC).

OSM announced receipt of proposed Program Amendment Number 43 in the February 2, 1990, **Federal Register** (55 FR 3604), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on March 5, 1990. The public hearing scheduled for February 27, 1990, was not held as no one requested an opportunity to testify.

By letter dated August 17, 1990 (Ohio Administrative Record No. OH-1354), Ohio submitted Revised Program Amendment Number 43 containing two further proposed revisions to OAC Section 1501:13-9-04. These two revisions were intended to make the proposed rule as effective as the corresponding Federal regulations concerning sediment pond and impoundment spillways.

OSM announced receipt of Revised Program Amendment Number 43 in the September 6, 1990, **Federal Register** (55 FR 36661), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on October 9, 1990. The public hearing scheduled for October 1, 1990, was not held as no one requested an opportunity to testify.

On January 7, 1991, OSM sent its comments to Ohio on both Program Amendment Number 43 and Revised Program Amendment Number 43 (Ohio Administrative Record No. OH-1430). In response to OSM's letter, Ohio submitted additional proposed changes to Revised Program Amendment Number 43 on February 12, 1991 (Ohio Administrative Record No. OH-1454). In that submission, Ohio proposed further revisions to three rules and deleted previously proposed changes to one other rule. These revisions concerned termination of jurisdiction, public roadways, sedimentation pond and impoundment spillways, and certification of primary roads. Ohio withdrew proposed paragraphs OAC 1501:12-1-01(D) (1) and (2) concerning termination of jurisdiction because the corresponding Federal regulations were remanded by the U.S. District Court as contrary to SMCRA (*National Wildlife Federation, et al.*, v. *Lujan*, No. 88-3345 (D.D.C. August 30, 1990). Also in that submission, Ohio requested a 30-day extension of time to submit design standards which will be proposed for use in lieu of engineering tests to ensure compliance with the minimum static safety factor for certain impoundments and primary road embankments.

OSM announced receipt of Ohio's additional proposed changes to Revised Program Amendment Number 43 in the March 6, 1991, **Federal Register** (56 FR 9312), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 5, 1991. The public hearing scheduled for April 1, 1991, was not held as one requested an opportunity to testify.

By letter dated March 14, 1991 (Ohio Administrative Record No. OH-1481), Ohio requested a 30-day extension for submittal of the design standards described above. OSM approved this extension on March 18, 1991 (Ohio Administrative Record No. OH-1483). By letter dated April 22, 1991 (Ohio Administrative Record No. OH-1511), Ohio requested a 60-day extension for submittal of the design standards. OSM approved this extension on May 1, 1991 (Administrative Record No. OH-1514).

By letter dated June 24, 1991 (Ohio Administrative Record No. OH-1536), Ohio submitted further revisions to and administrative record documents in support of Revised Program Amendment Number 43. These revisions concerned design criteria for certain road and impoundment embankments, the definition of "road," and the inclusion of public roadways within the definition of "coal mining operation" or "operation."

OSM announced receipt of Ohio's additional proposed changes to Revised Program Amendment Number 43 in the July 12, 1991, **Federal Register** (56 FR 31896), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 12, 1991. The public hearing scheduled for August 6, 1991, was not held as no one requested an opportunity to testify.

By letter dated September 16, 1991 (Administrative Record No. OH-1583), OSM sent its comments to Ohio on the June 24, 1991, resubmission of Revised Program Amendment Number 43. By letter dated October 15, 1991 (Ohio Administrative Record No. OH-1603), Ohio requested a 90-day extension for submittal of requested design standards. OSM approved this extension on October 18, 1991 (Ohio Administrative Record No. OH-1604).

In response to OSM's September 16, 1991, letter, Ohio submitted additional proposed changes to Revised Program Amendment Number 43 on January 21, 1992 (Ohio Administrative Record No. OH-1635). In that submission, Ohio proposed further revisions to four rules and provided additional supporting documentation for its calculation of embankment design standards.

OSM announced receipt of Ohio's additional proposed changes to Revised Program Amendment Number 43 in the April 13, 1992, **Federal Register** (57 FR 12777), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 13, 1992. The public hearing scheduled for May 8, 1992, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below concern nonsubstantive wording changes or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. OAC 1501:13–1–02, ORC 1513.01-Definitions

(a) *Affected area.* Ohio proposes to amend the definition of "affected area" at paragraph 1501:13–1–02(E)(1)(d) to include criteria to be used in determining whether mining will affect a public roadway. A public road need not be included in the definition of "affected area" if it meets the following criteria.

(i) The public roadway was in existence prior to the application for permit;

(ii) The effect on the public roadway from mining use will be minor; and

(iii) The public roadway is incidentally rather than directly, part of the mining operation.

Ohio's existing definition of "affected area" excludes public roadways. OSM informed Ohio that this exclusion conflicted with the Court's ruling in In re: Permanent Surface Mining Regulation Litigation II, 620 F. Supp. 1519 (D.D.C 1985), *modified sub nom. National Wildlife Federation* v. *Hodel* 839 F2d 694 (D.C. Cir. 1988), in that roadways cannot be excluded from regulation on the basis of public status or extent of public use. The court remanded the rule and stated that in determining whether a public road should be permitted, the extent of mining-related use rather than the public use should be considered, and that if the effect of the mining-related use is only *de minimis*, or relatively minor, then the public road is not part of the surface coal mining operation and does not have to be permitted. See 620 F. Supp. 1519, 1582. In response to the Court's ruling, on November 20, 1986, OSM suspended its definition of "affected area" at 30 CFR 701.5 to the extent that it excludes public roads which are included in the definition of "surface coal mining operations." OSM has since stated that the determination of whether a particular public road is included in the definition of "surface coal mining operations" must be made on a case-by-case basis (53 FR 45190, 45192, November 8, 1988). Ohio is only excluding public roads that have a minimal effect on mining, which is consistent with the Court's opinion. The Director finds that the revised State definition is no less effective than the Federal definition of "affected area" at 30 CFR 701.5.

(b) *Road.* Ohio is rewriting the definition of "road" at paragraph 1501:13–1–02(YYYY) to state that the term "road" does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

Ohio's existing definition of "road" is similar to the Federal definition of "road" at 30 CFR 701.5. However, unlike the Federal regulation, Ohio's definition included an explicit exemption for pioneer roads. OSM informed Ohio that to be no less effective than the Federal definition, Ohio needed to clarify that pioneer roads are subject to those performance standards applicable to the road construction process. In this amendment, Ohio proposes to delete the exclusion for "pioneer or construction roadway used for part of the road construction procedure." This amendment clarifies that pioneer roads are subject to those performance standards applicable to the road construction process.

Ohio is proposing to add a statement which specifically excludes ramps and routes of travel within the immediate mining area and within excess spoil or coal mine waste disposal areas. This statement is identical to the Federal terminology concerning the exemption.

Ohio is also proposing to include criteria for determining whether mining will affect a public roadway. The criteria are the same as those discussed earlier under the definition of "affected area." This revision is proposed as a result of the decision in In re: Permanent Surface Mining Regulation Litigation II, where the Court ruled that roadways could not be excluded from regulation on the basis of public status or extent of public use, but that such a determination instead should be based on the impact of mining use on the roadway. Jurisdiction under SMCRA and applicability of the performance standards are best determined on a case-by-case basis by the regulatory authority (53 FR 45193, November 8, 1988). The proposed change, therefore, allows the Chief to determine on a case-by-case basis whether jurisdiction should be extended to a road outside the permit area by virtue of whether or not a road's use by a mining operation will be minor. The proposed changes satisfy the Court's decision.

The Director finds that the revised State definition is no less effective than the counterpart Federal definition of "road" at 30 CFR 701.5.

(c) *Coal mining operation or operation.* Ohio is proposing to amend the definition of "coal mining operation" or "operation" at Ohio Revised Code 1513.01(G)(2) to eliminate language exempting public roadways. Ohio's existing definition included the exemption for public roads. The Federal definition of "surface coal mining operations" at section 701(28) of SMCRA does not have this exemption. Therefore, consistent with the District Court decision discussed above, Ohio is proposing to delete from its definition the words "but do not include public roadways." The Director finds that the deletion to the State definition does not render the rule less stringent than the Federal definition.

2. Permitting and Design Requirements for Roads

(a) *OAC 1501:13–4–05(M)(1) (d) and (e), and OAC–13–4–14(L)(1) (d) and (e).* These paragraphs are added to require that each permit application include drawings and specifications as necessary for approval by the Chief of each ford of a perennial or intermittent stream outside the mined-out area by a road that is being used as a temporary route. OAC 1501:13–4–05(M)(1)(e) and OAC 13–4–14(L)(1)(e) are also added to require that each permit application shall include a description of plans to remove and reclaim each road that would not be retained under an approved post-mining land use and shall include the schedule for this removal and reclamation.

The Federal regulations at 30 CFR 780.37(a) (3) and (6) and 784.24(a) (3) and (6) require that permit applications include: (1) drawings and specifications for fords of streams proposed as temporary construction routes, and (2) plans and schedules for the removal and reclamation of each road that is not proposed for retention as part of the approved post-mining land use. The proposed Ohio provisions at OAC 1501:13–4–05(M)(1) (d) and (e) and OAC 1501:13–4–14(L)(1) (d) and (e) are

intended to satisfy these requirements and are no less effective than the counterpart Federal regulations at 30 CFR 780.37(a) (3) and (6) and 784.24(a) (3) and (6).

Ohio has included language in the proposed rules at OAC 1501:13–4–05(M)(1)(d) and OAC 1501:13–4–14(L)(1)(d) that specifically limit the applicability of these provisions to streams "outside the mined-out area." The Federal rules at 30 CFR 780.37(a) and 784.24(a) do not contain this phrase. However, the Federal definition of "road" found at 30 CFR 701.5 includes the phrase "immediate mining area" and OSM's interpretation of this phrase places certain limitations on the scope of Ohio's definition of the phrase "mined-out area."

In the final rule notice approving the Federal definition of "road" (53 FR 45190, 45192–3, November 8, 1988) OSM stated that the term "immediate mining area" refers to the area where coal is being removed from the seam and to other areas that should not be subject to the performance standards for roads because they are subject to frequent surface changes. Many areas in a mining operation contain routes of travel that are moved every few days as the mining advances. These routes have a short life and are not included in the definition of "road" or subject to the road performance standards, but would be subject to the other performance standards applicable to all surface coal mining and reclamation operations. A commenter of the Federal rule was concerned that "immediate mining area" may mean any road within the permit area and, as such, the definition would be self-defeating. OSM responded by stating that the term "immediate mining area" is not intended to encompass the entire permit area.

In administrative record information submitted with these proposed amendments, Ohio asserted that it is not appropriate that plans and specifications be required for stream crossings in the mined-out area, where all drainage is directed to sedimentation ponds and transportation routes are specifically exempted from the requirements for primary and ancillary routes (Administrative Record Number OH–1265). Thus, Ohio's phrase of "mined-out area" also allows in areas of frequent change that the road performance standards would not apply, but that other performance standards would apply.

The Director, therefore, is approving the proposed provisions at OAC 1501:13–4–05(M)(1) (d) and (e) and 1501:13–4–14(L)(1) (d) and (e) so long as the term "mined-out area" is consistent with OSM's interpretation of "immediate mining area" as discussed above and in the final rule notice cited above.

(b) *OAC 1501:13–4–05(M)(2) and OAC 13–4–14(L)(2).* Ohio is revising these paragraphs to add design standards in new paragraphs OAC 1501:13–4–05 (M)(2)(a) through (M)(2)(i) and OAC 1501:13–4–14 (L)(2)(a) through (L)(2)(i) for primary road embankments. Permit applicants could use these standards to design primary road embankments in lieu of performing engineering tests to demonstrate compliance with the 1.3 minimum static safety factor required in OAC 1501:13–10–01(G)(3). In addition and consistent with these changes, OAC 1501:13–10–01(B)(9), which required a minimum static safety factor of 1.3 for all embankments, is being deleted. The new design standards cover preparation of the embankment foundation area, benching of existing steep slopes, characteristics of embankment fill material, horizontal layering of fill to facilitate compaction, steepness of embankment side slopes, minimum embankment top width, and placement of culverts. As part of its administrative record dated January 17, 1992, Ohio provided information with stability analyses intended to justify the proposed primary road embankment design standards.

The proposed provisions are consistent with the Federal regulations at 30 CFR 780.37(c) and 784.24(c) in that the Federal regulations authorize regulatory authorities to establish engineering design standards for primary roads, and that applicants may use those standards in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in 30 CFR 816/817.151(b). The Director is, therefore, approving the standards in paragraphs OAC 1501:13–4–05 (M)(2), (M)(2)(a) through (M)(2)(i) and OAC 1501:13–4–14 (L)(2), (L)(2)(a) through (L)(2)(i) to be used in the design of primary road embankments in lieu of engineering tests since they establish compliance with the 1.3 minimum static safety factor required in paragraph (G)(3) of OAC 1501:13–10–01.

3. Performance Standards for Roads

(a) *OAC 1501:13–10–01(B)(1).* This paragraph is being rewritten to require that primary and secondary roads shall be located, designed, constructed, used, maintained, and reclaimed so as to control and prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating or otherwise stabilizing all exposed surfaces. The corresponding Federal rule at 30 CFR 816/817.150(b)(1) is similar. The Federal rule adds three specific methods (watering and using chemicals or other dust suppressants) for controlling the occurrence of such dust to the list of suggested preventative or controlling measures contained in the rule. Ohio has not included in its itemized list of preventative or controlling measures any of these three suggested methods that may be employed directly on roads for control of dust. However, these measures are just examples of the methods that a regulatory authority could use to control erosion, dust, etc., on roads. Therefore, the Director finds that this proposed amendment is no less effective then the Federal regulations at 30 CFR 816/817/150(b)(1).

(b) *OAC 1501:13–10–01(D)(1).* This paragraph is being rewritten to specify that the Chief's approval of roads located in stream channels shall be in accordance with OAC 1501:13–9–04 paragraphs (A), (B), (E), (F), (J), (K), and (M) concerning protection of the hydrologic system. The current Ohio rule at OAC 1501:13–10–01(D)(1) prohibits the placements of roads in stream channels unless specifically approved by the Chief. OSM informed Ohio that to be no less effective than the Federal regulations at 30 CFR 816.150(d)(1) and 817.150(d)(1), Ohio needs to clarify that the Chief may approve exemptions only if they are in accordance with the Ohio counterparts to the Federally referenced hydrologic balance protection rules. The Director finds that the proposed amendments do make such a clarification and are, therefore, no less effective than the Federal regulations at CFR 816/817.150(d)(1)

(c) *OAC 1501:13–10–01(F) (5) and (6).* Ohio is rewriting paragraph (F)(5) and adding paragraph (F)(6) to require that reclamation of roads which are not to be retained as part of the post-mining land use shall include scarifying or ripping the road bed and removing or otherwise disposing of road-surfacing materials that interfere with the post-mining land use.

The Federal rules at 30 CFR 816/817.150(f) require that a road which is not to be retained as part of the post-mining land use be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. Ohio's program included most of the specific provisions of these Federal rules; however, OSM informed Ohio that to be

no less effective than the Federal rules in their entirety, Ohio needs to require that the road reclamation process include (1) the removal or disposal of road-surfacing materials that are incompatible with the post-mining land use and revegetation requirements, and (2) the scarifying or ripping of the roadbed prior to topsoiling and planting.

While the proposed provisions are nearly identical to their Federal counterparts, the language at OAC 1501:13–10–01(F)(6) differs from the Federal langauge in two ways. The proposed rule requires the removal of road surfacing materials that "interfere" with the post-mining land use, whereas the Federal rule uses the word "incompatible." The proposed Ohio wording is acceptable because the concept of interference does not render the Ohio program to be less effective than the Federal counterpart. Also, the proposed rule does not specifically require, as does the Federal regulation, that roadsurfacing materials that interfere with the post-mining land use and "revegetation requirements" be removed. The lack of the words "revegtation requirements" in the proposed provision does not render the Ohio rule to be less effective than the Federal regulation because Ohio's reference to post-mining land use includes Ohio's revegetation requirements. That is Ohio's revegetation requirements at OAC 1501:13–9–15 are, as are those of the Federal regulations, directly related to specify post-mining land uses. Therefore, if road-surfacing materials in Ohio permits interfere with revegetation requirements, they would also be interfering with the post-mining land use and must be removed or otherwise disposed. The Director finds, therefore, that the proposed rules are no less effective than the Federal rules.

(d) *OAC 1501:13–10–01(G)(1).* This paragraph is being rewritten to require that the plans and drawings of primary roads be prepared by, or under the direction of an engineer, and then shall be certified by an engineer or by an engineer and surveyor that they meet the requirements of Chapters 1501:13–1 to 1501:13–4 and current, prudent engineering practices and any design standards the Chief may establish. This amendment is substantively identical to and no less effective than the Federal rule at 30 CFR 780.37(b) and 784.24(b). The Director is approving this amendment.

The proposed rule requires that the construction or reconstruction of primary roads be certified in a report of the Chief by a qualified registered professional engineer or surveyor or both. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

The Federal rule at 30 CFR 816/817.151(a) also requires the same certification.

The Director finds, therefore, that the proposed rule is substantively identical to and no less effective than the Federal requirements at 30 CFR 816/817.151(a).

(e) *OAC 1501:13–10–01(G)(3).* This paragraph is being added to require that each primary road embankment shall have a minimum static safety factor of 1.3 or be designed in accordance with OAC 1501:13–4–05(M)(2) or 13–4–14(L)(2). The Director, therefore, finds the proposed amendment to be substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 816/817.151(b).

(f) *OAC 1501:13–10–01(G)(4).* This paragraph is being rewritten to delete the Chief's discretionary authority to waive the requirement that primary road drainage control systems shall be designed to pass peak runoff safely from a ten-year, six-hour precipitation event. The rule continues to state that the Chief may require that the drainage control system be designed for a larger precipitation event. The corresponding Federal regulations at 30 CFR 816.151(d)(1) and 817.151(d)(1) do not authorize the regulatory authority to waive the design precipitation event standards. With this change, the proposed rule is substantively identical to and no less effective than the Federal standards at 30 CFR 816/817.151(d)(1).

4. Permitting and Design Requirements for Impoundments

(a) *OAC 1501:13–4–05(H)(2)(c) and 13–4–14(H)(2)(c).* Ohio is revising paragraph (H)(2)(c) in both rules to add design standards in new paragraphs (H)(2)(c)(i) through (H)(2)(c)(vii). Permit applicants could use these standards to design non-MSHA impoundments in lieu of performing engineering tests to demonstrate compliance with the 1.3 minimum static safety factor. The new design standards cover preparation of the embankment foundation area, benching of existing steep slopes, characteristics of embankment fill material, horizontal layering of fill to facilitate compaction, moisture content of fill, maximum steepness of embankment side slopes, and minimum embankment to width. In the administrative record information of its January 17, 1992, submission, Ohio provided information on the design standards which the Chief will apply to non-MSHA impoundments in lieu of stability analysis to ensure compliance with the minimum static safety factor.

The proposed provisions are consistent with the Federal regulations at 30 CFR 780.25(c)(3) and 784.16(c)(3) in that the Federal regulations authorize regulatory authorities to establish engineering design standards for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), and that applicants may use those standards in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 30 CFR 816/817.49(a)(3)(ii). The Director is, therefore, approving the standards in paragraphs OAC 1501:13–4–05(H)(2)(c) through (H)(2)(c)(vii) and OAC 1501:13–4–14(H)(2)(c) through (H)(2)(c)(vii) to be used in the design of non-MSHA impoundments in lieu of engineering tests since they establish compliance with the 1.3 minimum static safety factor.

(b) *OAC 1501:13–9–04(H)(1)(c).* This paragraph is being rewritten to require that impoundments meeting the criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. Impoundments which do not meet the criteria of 30 CFR 77.216(a), except for coal mine waste impounding structures, and which are located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 or be designed in accordance with OAC 1501:13–4–05(H)(2)(c) or 13–4–14(H)(2)(c). The Ohio regulation is substantively identical to and no less effective than 30 CFR 816/817.49(a)(3).

5. Spillways

(a) *OAC 1501:13–9–04(G)(3)(b) (i) through (iii) and (H)(1)(h) (i) through (iii).* These paragraphs are being rewritten or added to require that sedimentation ponds and impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall include either a combination of principal and emergency spillways or a single spillway designed and constructed to safely pass a 100-year, 6-hour storm event or a greater event as specified by the Chief. Sedimentation ponds and impoundments not meeting the size or other criteria of 30 CFR 77.216(a) shall include either a combination of principal and emergency spillways or a single spillway designed and constructed to safely pass a 25-year, 6-hour storm event or a greater event as specified by the

Chief. Single spillways must be open channels of nonerodible construction which are designed to carry sustained flows, or may be earth or grass-lined and designed to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected.

The counterpart Federal rules at 30 CFR 816/817.46(c)(2)(i) and 816/817.49(a)(8) concerning spillway designs for sediment control structures authorize the use of spillway designs which use either a combination of principal and emergency spillways, or a single open-channel spillway configured as specified. The proposed Ohio rule has been rewritten to also authorize the use of single spillway designs. The Federal rules at 30 CFR 816/817.46(c)(2)(i) and 816/817.49(a)(8) concerning single open-channel spillways authorize the use of grass-lined designs for spillways designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

The Director finds, therefore, that the proposed rules are substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 816/817.46(c)(2)(i) and 816/817.49(a)(8).

(b) *OAC 1501:13-9-04(H)(2)(h) and (H)(3)(b).* These rules which present design precipitation event standards for permanent and temporary impoundments, are proposed to be deleted. As discussed above at Finding 5(a), the design precipitation event standards for impoundments meeting and not meeting the size or other criteria of 30 CFR 77.216(a) are incorporated in the Ohio rules at OAC 1501:13-9-04(H)(1)(h). The Director finds that the proposed deletion of these rules does not render the Ohio program to be less effective than the Federal regulations.

6. Impounding Structures of or for Coal Mine Waste

OAC 1501:13-9-09(C)(2)(b) and (C)(5). Paragraph (C)(2)(b) is being rewritten to require that impounding structures constructed of or intended to impound coal mine waste and meeting the criteria of 30 CFR 77.216(a) shall be able to pass safely the probable maximum precipitation of a 6-hour precipitation event or a greater event as specified by the Chief. The change at paragraph (c)(5) adds that 90 percent of the water shall be removed from the impounding structure within the 10 days following the occurrence of the design precipitation event. Prior to these changes, the Ohio rule at (C)(2)(b) specified a smaller 100-year, 6-hour precipitation event, and the rule at (C)(5) contained no actual drawdown requirements. The Director finds that the addition to (C)(2)(b) is no less effective than 30 CFR 816/817.84(b)(2) and the change to (C)(5) is substantively identical to and no less effective than the counterpart Federal rules at 30 CFR 816/817.84(f).

7. Planting Arrangements

OAC 1501:13-9-15 (F), (G), and (H). These paragraphs are being rewritten to add a requirement that the Chief shall determine the appropriate planting arrangements to be used for revegetation of areas with post-mining land uses as specified in these paragraphs after consultation with the appropriate agencies. Paragraphs (F), (G), and (H) currently require consultation with and approval by the appropriate specified agency concerning stocking levels and species selection for revegetation. The Director finds, therefore, that with these amendments, paragraphs OAC 1501:13-9-15 (F), (G), and (H) are no less effective than the counterpart Federal regulations at 30 CFR 816/817.116(b)(3)(i).

8. Husbandry Practices for Revegetation

(a) *OAC 1501:13-9-15(I)(2)(c)(i).* This paragraph is being rewritten to include mowing, harvesting of crops, and crop rotation as agronomic practices on cropland or pasture land which will not be considered augmentative when the practice is an accepted local practice for comparable unmined lands that can be expected to continue as a post-mining practice. In addition, the phrase "and other locally accepted practices" is being deleted from this paragraph consistent with a requirement identified in OSM's approval of Ohio Program Amendment Number 28 on February 21, 1989 (54 FR 7406).

The Federal regulations at 30 CFR 816/817.116(c)(4) authorize the regulatory authority to approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, provided it obtains prior approval from the Director that the practices are normal husbandry practices. Such practices must be expected to continue as part of the post-mining land use or must not reduce the probability of permanent revegetation success if the practice is discontinued after the liability period expires.

The Director has approved Ohio Program Amendments Number 28 (54 FR 7406-7409, February 21, 1989) and Number 29R (55 FR 3219-3223; January 31, 1990) concerning non-augmentative practices. As a consequence of OSM's review of Program Amendment Number 28, the Director made a finding that the portion of the rule concerning non-augmentative seeding, fertilizing and irrigation which would allow the use of "other locally accepted practices" is inconsistent with the Federal rules at 30 CFR 816/817.116(c)(4) which require that each specific practice be approved through the State program amendment process. In addition, the Director required that Ohio submit a proposed amendment to the rule concerning non-augmentative practices (OAC 1501:13-9-15(F)(12)(a) at the time) to remove the phrase "and other locally accepted practices" or otherwise propose to amend its program to clarify that all normal husbandry practices must be approved by OSM pursuant to 30 CFR 732.17. Since Ohio's proposed language in Program Amendment Number 29R concerning non-augmentative practices still contained the phrase "other locally accepted practices," the Director's findings published on February 21, 1989, still applied.

In the currently proposed amendment Ohio has deleted the words "other locally accepted practices" from the Ohio rules at OAC 1501:13-9-15(I)(2)(c)(i), thereby satisfying the Director's requirement at 30 CFR 935.16(c) to delete those words. In addition, Ohio's proposal to add the practices of mowing, harvesting of crops, and crop rotation as agronomic practices on cropland or pasture land which will not be considered augmentative is approved. These practices would by their very nature have no influence on reclamation success and would not impact the validity of evaluations of revegetation success. The Director finds, therefore, that the proposed rule at OAC 1501:13-9-15(I)(2)(c)(i) is no less effective than the counterpart Federal regulations. Consequently, the required amendment identified at 30 CFR 935.16(c) is satisfied and can be removed, and the related provision at 30 CFR 935.12(c) can be removed.

(b) *OAC 1501:13-15(I)(2)(c)(ii).* This paragraph is being rewritten to add pasture land to the approved areas for which repair of rills and gullies will not be considered an augmentative practice. The Director finds that the proposed rule to add the provision at OAC 1501:13-9-15(I)(2)(c)(ii) is no less effective than the counterpart Federal regulations at 30 CFR 816/817.116(c)(4) and can be approved.

9. Evaluation Revegetation Success

OAC 1501:13-9-15(I)(3)(c). This paragraph is being rewritten to add the requirement that planted species must meet the minimum production and

ground-cover standards for any two years of the period of extended responsibility, except for the first year, in order for revegetation to be determined to be successful for Phase III bond release.

The Federal regulations at 30 CFR 816/817.116(c)(2) require that, in areas of more than 26.0 inches of average annual precipitation, revegetation success standards for cropland and grazing or pasture land be met during at least two years of the responsibility period. The Federal regulations allow these measurements to be taken any two years of the responsibility period except the first year. Prior to the proposed amendment, the Ohio rule did not require two measurement years nor did it prohibit the use of measurements taken during the first year of the responsibility period. OSM had informed Ohio that to be no less effective than the Federal regulations, Ohio needs to revise its program to include these provisions. The Director finds, therefore, that the proposed rule is substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 816/817.116(c)(2).

10. Support Facilities

OAC 1501:13–11–02(A). This paragraph is being added to require each applicant for a surface coal mining and reclamation permit to submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The rule also requires that the plans and drawings include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with paragraph (B) of this rule. The Director finds the proposed rule to be substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 780.38 and 784.40.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the February 2, 1990, **Federal Register** (55 FR 3604) closed on March 5, 1990. No public comments were received. The scheduled public hearing was not held as no one requested an opportunity to provide testimony. The public comment period was subsequently reopened and announced in the September 6, 1990, **Federal Register** (55 FR 36661), March 6, 1991, **Federal Register** (56 FR 9312), July 12, 1991, **Federal Register** (56 FR 31896), and April 13, 1992, **Federal Register** (57 FR 12777). The comment periods closed on October 9, 1990, April 5, 1991, August 12, 1991, and May 13, 1992, respectively. No public comments were received and the scheduled public hearings were not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) commented (Administrative Record Number OH–1282) that the design storm that MSHA would require for an impounding structure constructed of coal mine waste can be less than a six-hour probable maximum event for a structure that is small in size and has a low hazard potential. The MSHA comment is directed at the proposed change at OAC 1501:13–9–09(C)(2)(b) which states the design event standard for coal mine waste impoundment meeting the criteria of 30 CFR 77.216(a), but does not state the design event standard for impoundments not meeting the criteria of 30 CFR 77.216(a). In response, the Director notes that the approved Ohio rule at OAC 1501:13–9–09(C)(2)(a) requires coal mine waste impounding structures to be designed and constructed in accordance with paragraph (H) of rule OAC 1501:13–9–04. Paragraph (H)(1)(h)(ii) specifies that impoundments not meeting the criteria of 30 CFR 77.216(a) shall be designed and constructed to safely pass a 25-year, 6-hour precipitation event. This standard is in accordance with those of the commenters. As noted in Finding 6 above, the Director has determined that the proposed rule at OAC 1501:13–9–09(c)(2)(b) is no less effective than the Federal regulations.

The U.S. Department of Agriculture, Soil Conservation Service (SCS) (Administrative Record No. OH–1372) commented that single spillways constructed as earth-or grass-lined can be a maintenance problem because the spillway tends to stay wet for long periods and is difficult to maintain. The SCS comment is directed at the proposed changes at OAC 1501:13–9–04(G)(3)(b)(iii)(b) and (H)(1)(h)(iii)(b) which state that single spillways may be earth-or grass-lined and designed to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected. As noted in Finding 5 above, the Director has determined that Ohio's authorization of the use of earth- or grass-lined designs for emergency spillways at OAC 1501:13–9–04(G)(3)(b)(iii) and (H)(1)(h)(iii) is substantively identical to and no less effective than the Federal limitations placed on the use of earth- or grass-lined designs.

The U.S. Army Corps of Engineers (Corps) (Administrative Record Number OH–1375) commented that the nonerodible construction of spillways was satisfactory. However, the Corps was concerned with the design and construction of single spillways to safely pass a 100-year 6-hour precipitation. As noted in Finding 5 above, the Director has determined that the precipitation event at OAC 1501:13–9–04(G)(3)(b)(i) is substantively identical to and no less effective than the Federal regulations.

The comments submitted by the Environmental Protection Agency (EPA) are discussed below under "EPA Concurrence."

V. Director's Decision

Based on the findings discussed above, the Director is approving Ohio Program Amendment No. 43 as submitted on January 16, 1990, and revised on August 17, 1990, February 12, 1991, June 24, 1991 and January 21, 1992. As explained in Finding 8 above, this amendment satisfies the requirement at 30 CFR 935.16(c) and the prior finding at 30 CFR 935.12(c) should be deleted (54 FR 7409, February 21, 1989).

The Director is taking this opportunity to correct provisions at 30 CFR 935.12(b) and 935.16(g) which should have been revised in the final rule notice published on December 15, 1989 (54 FR 51397). As explained in Finding 1 of that notice, Ohio satisfied the requirements at 30 CFR 935.16(g), and the corresponding provision at 30 CFR 935.12(b) should be deleted.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

In accordance with 30 CFR 732.17(h)(11)(ii), OSM solicited EPA's concurrence in the approval of Ohio's program. EPA concurred (Administrative Record No. OH–1331) in the State's proposed amendments based on the understanding that Ohio's surface mining regulations will be implemented consistent with applicable Clean Water Act (CWA) requirements. However,

EPA expressed concern that certain situations related to instream treatment could result in conditions that would not assure compliance with applicable State water quality standards as required by the CWA. However, other portions of the Ohio program that were cited by EPA appear to alleviate these concerns.

The Director acknowledges EPA's concerns but notes that neither the cited Ohio regulations nor their Federal counterparts can be construed as superseding, amending or repealing the CWA because it is prohibited by section 702 of SMCRA. Furthermore, the Director is approving Ohio's proposed amendments to the extent that they do not supersede applicable CWA requirements.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of EO 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 1992.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 935.12 [Removed]

2. Section 935.12 is removed and reserved.

3. In § 935.15, a new paragraph (ddd) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ddd) The following amendment, as submitted to OSM on January 16, 1990, and revised on August 17, 1990, February 12, 1991, June 24, 1991, and January 21, 1992, is approved effective July 27, 1992: Revised Program Amendment Number 43 consists of the following modifications to the Ohio Program.

(1) Revisions to the following rules of Chapter 1501 of the Ohio Administrative Code:

13-1-02(E)(1)(d), (YYYY);
13-4-05(H)(2)(c), (M)(1) (d) and (e) and (M)(2);
13-4-14(H)(2)(c), (L)(1) (d) and (e) and (L)(2);
13-9-04(G)(3)(b)(i) through (G)(3)(b)(iii), (H)(1)(c), (H)(1)(h)(i) through (H)(1)(h)(iii), (H)(2)(h) and (H)(3)(b);
13-9-09(C)(2)(b) and (C)(5);
13-9-15(F), (G), (H), (I)(2)(c) (i) and (ii), (I)(3)(c);
13-10-01(B)(1), (D)(1), (F) (5) and (6), (G)(1), (G)(3), (G)(4);
13-11-02(A).

(2) Revision of paragraph (G)(2) of Section 1513.01 of the Ohio Revised Code.

§ 935.16 [Removed]

4. In § 935.16 paragraph (c) is removed and reserved.

[FR Doc. 92-17575 Filed 7-24-92; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Defense Investigative Service

32 CFR Part 321

[DIS Regulation 28-4]

Access to and Maintenance of DIS Personal Records

AGENCY: Defense Investigative Service, DOD.

ACTION: Final rule.

SUMMARY: On April 27, 1992 (58 FR 15275) the Defense Investigative Service published a proposed rule to 32 CFR part 321 on procedural and exemption. During the thirty day public comment period, no comments were received, therefore, the Defense Investigative Service is adopting the rules governing personal records, which are specific to the agency's activities under the Privacy Act of 1974.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hartig at (202) 475-1062.

SUPPLEMENTARY INFORMATION:

Executive Order 12291. The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR part 321

Privacy.

Accordingly, the Defense Investigative Service is amending 32 CFR part 321 as follows.

PART 321–DEFENSE INVESTIGATIVE SERVICE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 321 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a)

2. Section 321.2(c) is revised as follows:

§ 321.2 References.

* * * * *

(c) DIS Regulation 28–4, "Access to and Maintenance of DIS Personal Records".

* * * * *

3. Section 321.4(b) is revised to read as follows:

§ 321.4 Information and procedures for requesting notification.

* * *

(b) DIS Records Systems. A list of DIS records systems is available by contacting Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700.

* * * * *

4. Section 321.14 is amended by revising paragraphs (b), (d), (e), (f) and adding paragraphs (c) and (g) as follows:

§ 321.14 Exemptions.

* * * * *

(b) All systems of records maintained by DIS shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12356 and which is required by the Executive Order to be withheld in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(c) System identifier. V1–01

(1) *System name.* Privacy and Freedom of Information Request Records.

(2) *Exemption.* Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H) and (I); and (f).

(3) *Authority.* 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5)

(4) *Reasons.* From subsection (c)(3) because it will enable DIS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(i) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(ii) From subsections (d) and (f) because requiring DIS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DIS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(d) System identifier. V5–01

(1) *System name.* Investigative Files System

(2) *Exemption.* Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) *Authority.* 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5).

(4) *Reasons.* From subsection (c)(3) because it will enable DIS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(i) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (d) and (f) because requiring DIS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DIS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(e) System identifier. V5–02

(1) *System name.* Defense Clearance and Investigations Index (DCII).

(2) *Exemption.* Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I), and (f).

(3) *Authority.* 5 U.S.C. 552a(k)(2).

(4) *Reasons.* From subsection (c)(3) because it will enable DIS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(i) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of

investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (d) and (f) because requiring DIS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DIS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(f) System identifier. V5–03

(1) *System name.* Defense Integrated Management System (DIMS).

(2) *Exemption.* Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I), and (f).

(3) *Authority.* 5 U.S.C. 552a(k)(2).

(4) *Reasons.* From subsection (c)(3) because it will enable DIS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(i) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (d) and (f) because requiring DIS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DIS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(g) System identifier. V8–01

(1) *System name.* Industrial Personnel Security Clearance Files

(2) *Exemption.* Any portion of this system that falls under the provisions of 5 U.S.C. 552a (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) *Authority.* 5 U.S.C. 552a(k)(5).

(4) *Reasons.* From subsection (c)(3) because it will enable DIS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(i) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (d) and (f) because requiring DIS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DIS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

Dated: July 17, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–17584 Filed 7–24–92; 8:45 am]

BILLING CODE 3810-01-F

Department of the Army

32 CFR Part 505

[Department of the Army Pamphlet 25–51]

Army Privacy Program

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: On May 20, 1992 (57 FR 21365) the Department of the Army published a proposed rule to amended its system identification numbers in accordance with the Modern Army Recordkeeping System (MARKS). No comments were received, therefore, the Department of the Army is adopting the changes.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. William Walker at (703) 697–1276.

SUPPLEMENTARY INFORMATION:

Executive Order 12291. The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of subjects in 32 CFR part 505

Privacy.

Accordingly, the Department of the Army amends 32 CFR part 505 as follows:

1. The authority citation for 32 CFR part 505 is revised to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 505.5 is amended by revising paragraph (d); and paragraphs (e)a.(l); b.(1); c.(1); d.(1); e.(1); f.(1); g.(l); h.(1); i.(l); removing and reserving j.; revising k.(1); l.(1); m.(l); n.(l); o.(l); p.(l); q.(l); r.(1); removing and reserving s.; revising t.(1); u.(l); removing and reserving v.; revising w.(l); x.(l); y.(l); z.(l); aa.(l); redesignating "ab.3.(1)" as "ab.(1)" and revising redesignated ab.(1); redesignating "ac.4.(l)"; as "ac.(1)" and revising redesignated ac.(l); revising ad.(l); ae.(l); af.(l); ag.(l); ah.(l); ai.(l); aj.(l); and ak.(l) as follows:

§ 505.5 Exemptions.

* * * * *

(d) *Procedures.* When a system manager seeks an exemption for a system of records, the following information will be furnished to the Director of Information Systems for Command, Control, Communications and Computers (SAIS-PDD), Washington, DC 20310–0107: applicable system notice, exemptions sought, and justification. After appropriate staffing and approval by the Secretary of the Army, a proposed rule will be published in the **Federal Register**, followed, by a final rule 30 days later. No exemption may be invoked until these steps have been completed.

* * * * *

(e) *Exempt Army records.* The following records are exempt from certain parts of the Privacy Act:

a. System identification: A0020–1aSAIG.

(1) System name: Inspector General Investigative Files.

* * * * *

b. System identification: A0020–1bSAIG.

(1) System name: Inspector General Action Request/Complaint Files.

* * * * *

c. System identification: A0025–55SAIS.

(1) System name: Request for Information Files.

* * * * *

d. System identification: A0027–1DAJA.

(1) System name: General Legal Files.

* * * * *

e. System identification: A0027–10aDAJA.

(1) System name: Prosecutorial Files.

* * * * *

f. System identification: A0027–10bDAJA.

(1) System name: Courts-Martial Files.

* * * * *

g. System identification: A0190–5DAMO.

(1) System name: Vehicle Registration System (VRS).

* * * * *

h. System identification: A0190–9DAMO.

(1) System name: Absentee Case Files.

* * * * *

i. System identification: A0190–14DAMO.

(1) System name: Registration and Permit Files.

* * * * *

j. [Reserved]

k. System identification: A0190–30DAMO.

(1) System name: Military Police Investigator Certification Files.

* * * * *

l. System identification: A0190–40DAMO.

(1) System name: Serious Incident Reporting Files.

* * * * *

m. System identification: A0190–45DAMO.

(1) System name: Offense Reporting System (ORS).

* * * * *

n. System identification: A0190–47DAMO.

(1) System name: Correctional Reporting System (CRS).

* * * * *

o. System identification: A0195–2USACIDC.

(1) System name: Criminal Investigation and Crime Laboratory Files.

* * * * *

p. System identification: A0195–2aUSACIDC.

(1) System name: Source Register.

* * * * *

q. System identification: A0195b6USACIDC.

(1) System name: Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

* * * * *

r. System identification: A0210–7DAMO.

(1) System name: Expelled or Barred Person Files.

* * * * *

s. [Reserved]

t. System identification: A0340JDMSS.

(1) System name: HQDA Correspondence and Control/Central File System.

* * * * *

u. System identification: A0340–21SAIS.

(1) System name: Privacy Case Files.

* * * * *

v. [Reserved]

w. System identification: A0350–37TRADOC.

(1) System name: Skill Qualification Test (SQT).

* * * * *

x. System identification: A0351–12DAPE.

(1) System name: Applicants/Students, USMA Prep School.

* * * * *

y. System identification: A0351–17aTAPC–USMA.

(1) System name: U.S. Military Academy Candidate Files.

* * * * *

z. System identification: A0351–17bTAPC–USMA.

(1) System name: U.S. Military Academy Personnel Cadet Records.

* * * * *

aa. System identification: A0380–13DAMO.

(1) System name: Local Criminal Intelligence Files.

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ab. System identification: A0380–67DAMI.

(1) System name: Personnel Security Clearance Information Files.

* * * * *

ac. System identification: A0381–45aDAMI.

(1) System name: USAINSCOM Investigative Files System.

* * * * *

ad. System identification: A0381–45bDAMI.

(1) System name: Department of the Army Operational Support Activities File.

* * * * *

ae. System identification: A0381–45cDAMI.

(1) System name: Counterintelligence Operations Files.

* * * * *

af. System identification: A0381–100aDAMI.

(1) System name: Intelligence Collection Files.

* * * * *

ag. System identification: A0381–100bDAMI.

(1) System name: Technical Surveillance Index.

* * * * *

ah. System identification: A0601–141DASG.

(1) System name: Army Medical Procurement Applicant Files.

* * * * *

ai. System identification: A0601–210aUSAREC.

(1) System name: Enlisted Eligibility Files.

* * * * *

aj. System identification: A0601–222USMEPCOM.

(1) System name: ASVAB Student Test Scoring and Reporting System.

* * * * *

ak. System identification: A0608–18DASG.

(1) System name: Family Advocacy Case Management.

* * * * *

Dated: July 10, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–16876 Filed 7–24–92; 8:45 am]

BILLING CODE 3810–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 920446–2156]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS changes the quota for wreckfish in the snapper-grouper fishery off the South Atlantic states in accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), as amended, and makes additional changes to the regulations that implement the FMP. This final rule (1) sets an annual quota for wreckfish of two million pounds (907,194 kg), whole weight; (2) removes the quarterly apportionment of the wreckfish quota; (3) removes the procedures for closing the wreckfish sector of the snapper-grouper fishery when the quota is reached; and (4) clarifies the possession limitations on wreckfish, greater amberjack, and mutton snapper during their spawning seasons. The intended effect is to protect the wreckfish resource and simplify and clarify the regulations.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species, including wreckfish, are managed under the FMP prepared by the South Atlantic Fishery Management Council (Council) and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with the FMP and its implementing regulations, the Council recommended, and NMFS published, a proposed rule to (1) change the annual wreckfish quota to 2 million pounds (907,194 kg), whole weight, commencing with the fishing year beginning April 16, 1992; (2) remove the quarterly apportionment of the wreckfish quota; and (3) remove the procedures for closing the wreckfish sector of the fishery when the quota is reached, or is projected to be reached. NMFS also proposed a change to clarify that the harvest or possession limitation on wreckfish during the spawning-season closure applies aboard a fishing vessel. The background and rationales for these changes were included in the proposed rule (57 FR 19874, May 8, 1992) and are not repeated here.

No comments were received on the proposed rule. Accordingly, the proposed rule is adopted as final.

NMFS has determined that clarification is needed regarding the possession limits for greater amberjack and mutton snapper during their respective spawning seasons. The current regulations at 50 CFR 646.21 (h) and (i) limit the possession of these species during their spawning seasons to the bag limits, whether or not the vessel from which they are taken has a vessel permit. In these paragraphs, making the bag limits applicable when a vessel does not have a permit is redundant, since the bag limits apply to a vessel without a permit throughout the year; and the limit that applies when a vessel does have a permit is not clearly stated. Accordingly, this rule revises 50 CFR 646.21 (h) and (i) and the corresponding prohibition at 50 CFR 646.7(x).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable Federal law.

The Assistant Administrator determined that this final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This final rule does not change any of the factors considered in the environmental impact statement prepared for the FMP or in the environmental assessments prepared for its amendments; accordingly, this action is categorically excluded from the requirement to prepare an environmental assessment, as specified in NOAA Administrative Order 216–6.

In the final rules implementing the FMP and its amendments, NMFS concluded that, to the maximum extent practicable, the FMP and amendments are consistent with the approved coastal zone management programs of all the affected states. Since this final rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and amendments and their consistency determinations, a new consistency determination under the Coastal Zone Management Act is not required.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Because the substantive changes in this final rule regarding management of the wreckfish resource are established for the fishing year that commenced April 16, 1992, the Assistant Administrator, under the provisions of section 553(d)(3) of the APA, finds, for good cause, namely, to provide effective conservation and management of the wreckfish resource, that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 21, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.7, paragraphs (w) and (x) are revised to read as follows:

§ 646.7 Prohibitions.

* * * * *

(w) During the wreckfish spawning-season closure, harvest, possess, off-load, sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing, as specified in § 646.21(g).

(x) During the greater amberjack and mutton snapper spawning seasons, exceed the possession limits for those species, as specified in § 646.21 (h) and (i).

* * * * *

3. In § 646.21, the first sentence of paragraph (g) and paragraphs (h) and (i) are revised to read as follows:

§ 646.21 Harvest limitations.

* * * * *

(g) *Wreckfish spawning-season closure.* During the period January 15 through April 15, each year, no person may harvest or possess on board a fishing vessel wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. * * *

(h) *Greater amberjack spawning-season limit.* During April, each year, south of Cape Canaveral, Florida (28°35.1′ N. latitude—due east of the NASA Vehicle Assembly Building), the possession of greater amberjack in or from the EEZ on board a vessel that has an annual vessel permit specified in § 646.4(a)(1) is limited to three per person during a single day, regardless of the number of trips or the duration of a trip.

(i) *Mutton snapper spawning-season limit.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has an annual vessel permit specified in § 646.4(a)(1) is limited to ten per person during a single day, regardless of the number of trips or the duration of a trip.

4. Section 646.24 is revised to read as follows:

§ 646.24 Wreckfish quota.

Persons fishing for wreckfish are subject to a quota of 2 million pounds (907,194 kg), whole weight, each fishing year.

[FR Doc. 92-17673 Filed 7-24-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure and inseason adjustment.

SUMMARY: NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Humbug Mountain, Oregon, to Horse Mountain, California, at midnight, July 20, 1992, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 3,500 chinook salmon for the subarea will be reached by midnight, July 20, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of chinook salmon.

NMFS also announces that when the recreational fishery in the EEZ from Humbug Mountain, Oregon, to Horse Mountain, California, opens as scheduled for the period September 1–7, 1992, fishing will be allowed every day of the week instead of Monday through Wednesday only as initially planned. This action is intended to provide consistency between Federal and state regulations and increase fishing opportunity for sport fishermen without substantially or adversely affecting the implementation of the annual management measures.

DATES: Effective at 2400 hours local time, July 20, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 10, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140, or Rodney R. McInnis at (310) 980–4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries specify at 50 CFR 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and preseason notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery for all salmon species in the subarea from Humbug Mountain, Oregon, to Horse Mountain, California, would open July 6 and continue through the earlier of September 7 or the attainment of a subarea impact quota of 3,500 chinook salmon, and that the fishery would continue or reopen without the chinook quota beginning September 1.

Based on the best available information on July 16, the recreational fishery in the subarea from Humbug Mountain to Horse Mountain is projected to reach the 3,500 chinook salmon subarea impact quota by midnight, July 20, 1992. Therefore, the fishery in this subarea is closed to recreational fishing for all salmon species effective 2400 hours local time, July 20, 1992, through 2400 hours local time, August 31, 1992.

The recreational fishery in the subarea from Humbug Mountain to Horse Mountain will reopen as announced in the emergency interim rule and notice of 1992 fishery management measures (57 FR 19388, May 6, 1992) at 0001 hours local time, September 1 through 2400 hours local time, September 7, 1992. The emergency interim rule and notice of 1992 management measures announced that this fishery will be open Monday through Wednesday only. The State of California has implemented State regulations which will open this fishery for the entire 7-day period. To provide

consistency between Federal and State regulations, the restriction limiting fishing to Monday through Wednesday only is rescinded, and this fishery will be open for 7 days from September 1 through September 7. The State of Oregon will be implementing regulations consistent with the State of California and this Federal action. This action will increase fishing opportunity for sport fishermen with no impact on this year's escapement of Klamath River fall chinook salmon, the primary salmon stock of management concern in this area. This is because the 1992 spawners, which the quotas are designed to protect, will have left the ocean by September 1 and the remaining harvest is on the following year's spawners. Modification of the recreational fishing days per calendar week is authorized by regulations at § 661.21(b)(1)(iii).

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 2400 hours local time, July 20, 1992, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding the recreational fishery between Humbug Mountain, Oregon, and Horse Mountain, California. The States of Oregon and California will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 10, 1992.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1992.

David S. Crestin,

Acting Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–17674 Filed 7–24–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 144
Monday, July 27, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE84

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to add Wayne County, West Virginia, as an area of application to the Franklin, Ohio, Nonappropriated Fund (NAF) wage area. The Department of Veterans Affairs Medical Center in Huntington, West Virginia, previously had been misidentified as being located in Cabell County, West Virginia, for wage setting purposes; although its actual location is within adjacent Wayne County, West Virginia. The intent of this action is to correct the discrepancy in our regulations.

DATES: Comments must be received on or before August 26, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, (202) 606-2848.

SUPPLEMENTARY INFORMATION: For many years, the Department of Veterans Affairs Medical Center in Huntington, West Virginia, has been misidentified as being located in Cabell County, West Virginia. It came to the attention of the Department of Defense, the lead agency, that the Medical Center is really in Wayne County, West Virginia, about 1 mile across the Cabell County line. While Cabell County is an area of application to the Franklin, Ohio, wage area, Wayne County is not yet defined to a wage area. The seven NAF employees at the Medical Center are being paid from the Franklin, Ohio, wage schedule.

Because of the relative isolation of Wayne and Cabell Counties, proximity and transportation facilities appear to be the most relevant criteria in determining the appropriate NAF wage area to which Wayne County, West Virginia, should be applied. Geographically, Franklin, Ohio, is the closest wage area to the Medical Center (167 miles to Newark Air Force Base). State Highway 23 is a major road that connects Franklin, Ohio, and Wayne/Cabell Counties, West Virginia. In addition, Wayne County is contiguous to Cabell County, part of the Franklin, Ohio, wage area, and there are no other counties in the vicinity of Wayne County that are defined to a wage area. The closest alternate wage area is the Greene/Montgomery, Ohio, wage area (Dayton, Ohio—Wright-Patterson Air Force Base), which is several miles farther to the west (176 miles to Wright-Patterson). There do not appear to be any direct major roads from Wayne County to the Greene/Montgomery wage area.

The Federal Prevailing Rate Advisory Committee reviewed this issue and recommended, by consensus, the addition of Wayne County to the Franklin, Ohio, area of application.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. Appendix D to subpart B is amended by revising the West Virginia wage area listing under Franklin, Ohio, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Ohio

Franklin

Survey Area

* * *

Area of Application. Survey area plus:

* * *

West Virginia:
Cabell
Raleigh
Wayne

* * * * *

[FR Doc. 92-17570 Filed 7-24-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-91-017-B]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (General Specifications) by incorporating provisions to specify the sampling, testing, and record keeping requirements relating to an expanded drug residue monitoring program in USDA-approved dairy plants. The proposal was initiated at the request of the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA.

the Food and Drug Administration (FDA), dairy trade associations and producer groups.

DATES: Comments should be filed by August 26, 1992.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be made available for public inspection at the Dairy Division in room 2750–S during regular business hours.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attn: Desk officer for the Agricultural Marketing Service.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/ Dairy Division, room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major" rule under the criteria contained therein.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because participation in the USDA-approved plant program is voluntary and the amendments would not increase the costs to those utilizing the program.

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). The information collection requirements that currently appear in the sections to be amended have been previously approved by OMB under OMB Control No. 0581–0110. This proposed amendment would increase the frequency that USDA-approved dairy plants conduct tests for drug residue in loads of producer milk. There are approximately 800 approved dairy plants. The current frequency level of four tests in six months will be increased to provide that each load of producer milk delivered to a USDA-approved facility be tested for beta lactams. Records of drug residue tests and records of notifications to State regulatory agencies concerning positive test results and disposition of positive-testing milk are to be retained for a period of twelve months. In addition, current requirements do not stipulate the minimum retention time for somatic cell test results. The proposal specifies that somatic cell count records be retained for a period of 12 months.

Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attn. Desk Officer for the Agricultural Marketing Service.

An occurrence of drug residue in milk or milk products may be a health concern to consumers. USDA and FDA have therefore developed a model drug residue monitoring program for manufacturing grade and for Grade A milk.

In order to establish an expanded drug residue monitoring program concerning milk and milk products originating in USDA-approved dairy plants, USDA is proposing the following changes to the general specifications for dairy plants in part 58, subpart B, of the grading and inspection standards concerning dairy products.

1. Provide That All Milk Received in USDA-Approved Plants be Sampled and Tested for the Presence of Beta Lactam Drugs

Currently, the General Specifications provide for the testing of milk for antibiotics at a minimum frequency of four times in six months. The proposed amendment specifies that all milk which is received for processing in USDA-approved plants be sampled and tested for beta lactam drugs.

2. Provide That the Testing of Milk Be Completed Prior to Processing

Currently, the General Specifications do not contain requirements for the timely completion and reporting of the antibiotic tests. The proposed amendment specifies that testing be completed prior to processing the load of milk.

3. Specify Plant Responsibilities in the Expanded Drug Residue Monitoring Program

The proposal requires USDA-approved plants to notify the appropriate State regulatory agency of (a) each occurrence of a load sample testing positive for drug residue; (b) the identity of any producer whose milk causes a load sample to test positive for drug residue; and (c) the intended and final disposition of the load of milk represented in a sample testing positive for drug residue. Milk testing positive for beta lactams is to be disposed of in a manner that removes it from the human and animal food chain, unless reconditioned under FDA guidelines.

4. Make Other Revisions and Editorial Changes in the General Specifications to Reflect the Expansion of the Drug Residue Monitoring Program

The proposal would require dairy plants to: (a) Test the milk of new and transfer producers for the presence of drug residues prior to acceptance of the milk at the plant; (b) retain drug residue test results for a minimum of 12 months; (c) include in a producer's records the results of drug residue tests for the preceding 12 months; and (d) instruct plants to provide fieldman assistance to farmers regarding drug residue issues.

5. Provide Revisions to Update and Clarify Somatic Cell Testing Requirements

Proposed changes include correcting the action level at which the Wisconsin Mastitis Test must be confirmed.

USDA grade standards are voluntary standards that are developed to facilitate the orderly marketing process. Dairy plants are free to choose whether or not to use the standards. When manufactured or processed dairy products are graded, the USDA regulations governing the grading of dairy products are used. Included in these regulations are the requirements that all graded dairy products be produced in a USDA-approved plant and that charges be assessed for grading and inspection services provided by USDA.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58, subpart B, be amended as follows:

Subpart B—[Amended]

1. The authority citation for 7 CFR part 58, subpart B, continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.132 is revised to read as follows:

§ 58.132 Basis for classification.

The quality classification of raw milk for manufacturing purposes from each producer shall be based on an organoleptic examination for appearance and odor, a drug residue test, and quality control tests for sediment content, bacterial estimate and somatic cell count. All milk received from producers shall not exceed the Food and Drug Administration's established limits for pesticide, herbicide and drug residues. Producers shall be promptly notified of any shipment or portion thereof of their milk that fails to meet any of these quality specifications.

3. In § 58.133 paragraphs (b)(1), (b)(2), (b)(6), and (c) are revised to read as follows:

§ 58.133 Methods for quality and wholesomeness determination.

* * * * *

(b) *Somatic cell count.* (1) A laboratory examination to determine the level of somatic cells shall be made at least four times in each six-month period at irregular intervals on milk received from each patron.

(2) A confirmatory test for somatic cells shall be done when a herd sample exceeds either of the following screening test results:

(i) California Mastitis Test—Weak Positive (CMT 1).

(ii) Wisconsin Mastitis Test—WMT value of 18 mm.

* * * * *

(6) An additional sample shall be taken after a lapse of three days but within 21 days of the notice required in paragraph (b)(5)(ii) of this section. If this sample also exceeds 1,000,000 per m1., subsequent milkings shall not be accepted for market unit satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 1,000,000 per m1. The samples shall be taken at a rate of not more than two per week on separate days within a three-week period.

(c) *Drug residue level.* (1) USDA-approved plants shall not accept for processing any milk testing positive for drug residue. All milk received at USDA-approved plants shall be sampled and tested, prior to processing, for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods evaluated by the Association of Official Analytical Chemists (AOAC) and accepted by the Food and Drug Administration (FDA) as effective in determining compliance with "safe levels" or established tolerances. "Safe levels" and tolerances for particular drugs are established by the FDA. Other test methods evaluated by the Virginia Polytechnic Institute and State University, or by other institutions using equivalent evaluation procedures, and determined to demonstrate accurate compliance results, may be employed on a temporary basis until they are evaluated by the AOAC and accepted or rejected by the FDA.

(2) Individual producer milk samples for beta lactam drug residue testing shall be obtained from each milk shipment as follows:

(i) *Milk in farm bulk tanks.* A sample shall be taken at each farm and shall include milk from each farm bulk tank.

(ii) *Milk in cans.* A sample shall be formed separately at the receiving plant for each can milk producer included in a delivery, and shall be representative of all milk received from the producer.

(3) Load milk samples for beta lactam drug residue testing shall be obtained from each milk shipment as follows:

(i) *Milk in bulk milk pickup tankers.* A sample shall be taken from the bulk milk pickup after its arrival at the plant and prior to further commingling.

(ii) *Milk in cans.* A sample representing all of the milk received on a shipment shall be formed at the plant, using a sampling procedure that includes milk from every can on the vehicle.

(4) *Follow-up to positive-testing samples.*

(i) When a load sample tests positive for drug residue, the appropriate State regulatory agency shall be notified immediately of the positive test result and of the intended disposition of the shipment of milk containing the drug residue.

(ii) Each individual producer sample represented in the positive-testing load sample shall be singly tested to determine the producer of the milk sample testing positive for drug residue. Identification of the producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the appropriate agency.

(iii) Milk shipment from the producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue.

4. Sections 58.136 through 56.140 are revised to read as follows:

§ 58.136 Rejected milk.

A plant shall reject specific milk from a producer if the milk fails to meet the requirements for appearance and odor (§ 58.133(a)), if it is classified No. 4 for sediment content (§ 58.134), or if it tests positive for drug residue (§ 58.133(c)).

§ 58.137 Excluded milk.

A plant shall not accept milk from a producer if:

(a) The milk has been in a probational (No. 3) sediment content classification for more than ten calendar days (§ 58.134);

(b) The milk has been classified "Undergrade" for bacterial estimate for more than four successive weeks (§ 58.135);

(c) Three of the last five milk samples have exceeded the maximum somatic cell count level of 1,000,000 per ml. (§ 58.133(b)(6)); or

(d) The producer's milk shipments to either the Grade A or the manufacturing grade milk market currently are not permitted due to a positive drug residue test (§ 58.133(c)(4)).

§ 58.138 Quality testing of milk from new producers.

A quality examination and tests shall be made on the first shipment of milk from a producer shipping milk to a plant for the first time or resuming shipment to a plant after a period of non-shipment. The milk shall meet the requirements for acceptable milk, somatic cell count and drug residue level (§§ 58.133, 58.134 and 58.135). The buyer shall also confirm that the producer's milk is currently not excluded from the market (§ 58.137). Thereafter, the milk shall be tested in accordance with the provisions in §§ 58.133, 58.134 and 58.135.

§ 58.139 Record of tests.

Accurate records listing the results of quality and drug residue tests for each producer shall be kept on file at the plant. Additionally, the plant shall

obtain the quality and drug residue test records (§ 58.148(a), (e) and (g)) for any producer transferring milk shipment from another plant. These records shall be available for examination by the inspector.

§ 58.140 Field service.

A representative of the plant shall arrange to promptly visit the farm of each producer whose milk tests positive for drug residue, exceeds the maximum somatic cell count level, or does not meet the requirements for acceptable milk. The purpose of the visit shall be to inspect the milking equipment and facilities and to offer assistance to improve the quality of the producer's milk and eliminate any potential causes of drug residues. A representative of the plant should routinely visit each producer as often as necessary to assist and encourage the production of high quality milk.

5. In § 58.148, paragraphs (e), (f) and (g) are added to read as follows:

§ 58.148 Plant records.

* * * * *

(e) Load and individual drug residue test results. Retain for 12 months.

(f) Notifications to appropriate State regulatory agencies of positive drug residue tests and intended and final dispositions of milk testing positive for drug residue. Retain for 12 months.

(g) Somatic cell count test results on raw milk from each producer. Retain for 12 months.

* * * * *

Dated: July 20, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-17539 Filed 7-24-92; 8:45 am]

BILLING CODE 3410-02-M

RESOLUTION TRUST CORPORATION

12 CFR Part 1625

Procedures Applicable to RTC Investigations

AGENCY: Resolution Trust Corporation.

ACTION: Proposed rule and request for comments.

SUMMARY: The Resolution Trust Corporation (RTC) hereby seeks comments on proposed regulations setting forth procedures applicable to the conduct of RTC investigations which involve the exercise of powers, including the power to issue subpoenas and subpoena duces tecum, contained in section 8(n) of the Federal Deposit Insurance Act, as amended. The RTC is authorized to exercise such investigatory powers in carrying out its statutory obligations to resolve failed savings associations.

In the absence of its own investigative regulations, the RTC has been relying on the investigative regulations of the Federal Deposit Insurance Corporation. The proposed regulations will provide the RTC with its own set of investigative regulations and will thus provide the public with specific guidance regarding applicable procedures with respect to the RTC's conduct of investigations in which it exercises the investigative powers, including subpoena powers, contained in section 8(n).

DATES: Comments must be submitted on or before August 26, 1992.

ADDRESSES: Written comments regarding the proposed rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434-0001.

Comments may be hand delivered to Room 314 on business days between 9 a.m. and 5 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., between 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Professional Liability Section, telephone 202/736-0314; Gregg H.S. Golden, Litigation Section, telephone 202/736-3042.

SUPPLEMENTARY INFORMATION:

I. Background

Section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) added a new section 21A to the Federal Home Loan Bank Act (FHLBA) (12 U.S.C. 1441a), authorizing the RTC to exercise various powers with respect to failed savings associations. Among other things, the RTC is required to minimize the losses resulting from the resolution of failed savings associations, to maximize the recoveries realized from the disposition of such institutions or their assets, and to make efficient use of funds obtained by the RTC. In carrying out that mandate, the RTC must determine whether the RTC has valid claims against former directors, officers, or others who rendered services to or otherwise dealt with the institution, whether there are assets that would justify the RTC's pursuing such claims, whether the RTC should seek to avoid transfers of assets or the incurrence of obligations or seek an attachment of assets, and whether the pursuit of such claims would otherwise be consistent with the RTC's statutory obligations and sound public policy.

In section 21A(b)(4) of the FHLBA (12 U.S.C. 1441a(b)(4)), Congress granted certain powers to the RTC by reference to the powers of the Federal Deposit Insurance Corporation (FDIC) under sections 11, 12, and 13 of the Federal Deposit Insurance Act, as amended (FDIA) (12 U.S.C. 1821, 1822, and 1823). Section 11(d)(2)(I) of the FDIA provides that the FDIC may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority or duty with respect to an insured depository institution, exercise any power established under section 8(n) of the FDIA (12 U.S.C. 1818(n)). Section 8(n), in turn, enumerates various investigatory powers, including the power to issue subpoenas and subpoenas duces tecum. Section 13(d)(3)(A) of the FDIA (12 U.S.C. 1823(d)(3)(A)) gives the FDIC (and, by virtue of 12 U.S.C. 1441a(b)(4), the RTC) the same powers in its corporate capacity as it has as receiver under section 11, which includes the exercise of the investigatory powers of section 8(n).

The proposed rule spells out the procedures by which the RTC will conduct investigations in which the section 8(n) powers are used. Although the RTC begins its inquiries into the affairs of a failed savings association as soon as the institution is closed and the RTC is appointed receiver or conservator, the use of the section 8(n) investigatory powers commences with the issuance of the Order of Investigation. To date, in the absence of its own regulations governing investigations in which the section 8(n) powers are used, the RTC, as authorized by section 21A(a)(7) of the FHLBA (12 U.S.C. 1441a(a)(7)), has been following the FDIC's procedures set forth in 12 CFR part 308, subpart K, as amended.

II. The Proposed Regulations

Section 1625.1 ("Purpose and Scope") specifies the RTC's investigative authority pursuant to sections 8(n), 11(d)(2)(I), and 13(d)(3)(A) of the FDIA (12 U.S.C. 1818(n), 1821(d)(2)(I), and 1823(d)(3)(A)), as made applicable to the RTC pursuant to section 21A(b)(4) of the FHLBA (12 U.S.C. 1441a(b)(4)). These provisions govern the RTC's investigative authority in its capacity as conservator or receiver for failed savings associations, as well as in its corporate capacity as acquirer of the assets of such associations.

Section 1625.2 ("Definitions") makes clear that the term "Chief Executive Officer," as used in the proposed regulations, includes the Chief Executive Officer's delegates. The section also

makes clear that the designated representative shall be an attorney within the RTC.

Section 1625.3 ("Orders of Investigation") indicates that the Order of Investigation shall indicate generally the principal purpose of the investigation.

Section 1625.4 ("Powers of Chief Executive Officer") specifies that the Chief Executive Officer may exercise any authority or fulfill any duty of the RTC under these rules.

Section 1625.5 ("Powers of designated representative") spells out the various powers of the designated representative, including the power to issue subpoenas and subpoenas duces tecum and to apply, upon approval by the RTC, to an appropriate court for the enforcement of any such subpoena. This subsection also makes clear that the designated representative may rely on persons outside the RTC to assist in the conduct of any investigation, but that such persons shall not have the power to issue subpoenas.

Section 1625.6 ("Investigations nonpublic") provides that investigations shall be nonpublic and that the disclosure of documents or other information obtained in an investigation shall be governed by the confidentiality provisions generally accord with RTC practice to date in instances in which subpoena recipients have requested confidential treatment of documents produced pursuant to a subpoena.

Section 1625.7 ("Rights of witnesses") provides that any person compelled to appear and testify in an investigation may be represented by counsel and further specifies the requirements and role of counsel in any such investigation.

Section 1625.8 ("Obstruction of proceedings") discusses the RTC's authority to exclude an attorney or other person from any investigation where the RTC finds that such person has engaged in contemptuous, contumacious or similarly objectionable conduct.

Section 1625.9 ("Subpoenas") specifies the manner of service of an investigative subpoena and the procedures applicable to motions to quash or limit such subpoenas. The procedures essentially codify existing RTC practice.

Section 1625.10 ("Transcripts") provides that a person may inspect a transcript, if any, of his or her testimony and obtain a copy thereof, on written request, subject to the RTC's denying such request for good cause.

Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the RTC hereby certifies that this proposal is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 12 CFR Part 1625

Administrative practice and procedure, Investigations, Savings associations.

For the reasons set forth in the preamble, the Resolution Trust Corporation proposes to add part 1625 to title 12, chapter XVI, of the Code of Federal Regulations, to read as follows:

PART 1625—PROCEDURES APPLICABLE TO RTC INVESTIGATIONS

Sec.

1625.1 Purpose and scope.
1625.2 Definitions.
1625.3 Orders of investigation.
1625.4 Powers of Chief Executive Officer.
1625.5 Powers of designated representative.
1625.6 Investigations nonpublic.
1625.7 Rights of witnesses.
1625.8 Obstruction of proceedings.
1625.9 Subpoenas.
1625.10 Transcripts.

Authority: 12 U.S.C. 1441a (b)(3), (b)(4), (b)(11), 1818(n), 1821(d)(2)(I), 1823(d)(3)(A).

§ 1625.1 Purpose and scope.

This part prescribes procedures applicable to the conduct of investigations by the Resolution Trust Corporation (RTC) under section 21A(b)(4) of the Federal Home Loan Bank Act, as amended (FHLBA) (12 U.S.C. 1441a(b)(4)), and sections 8(n), 11(d)(2)(I), and 13(d)(3)(A) of the Federal Deposit Insurance Act, as amended (FDIA) (12 U.S.C. 1818(n), 1821(d)(2)(I), and 1823(d)(3)(A)).

§ 1625.2 Definitions.

As used in this part: (a) *Chief Executive Officer* means the Chief Executive Officer of the RTC or delegates.

(b) *Designated representative* means the attorney or attorneys within the RTC Division of Legal Services named in an Order of Investigation to exercise the powers granted by section 8(n) of the FDIA.

(c) *Investigation* means, for purposes of this part only, the exercise of the powers granted by section 8(n) of the FDIA to the RTC, through sections 11(d)(2)(I) and 13(d)(3)(A) of the FDIA and section 21A(b)(4) of the FHLBA, including among other things administering oaths and affirmations, taking and preserving testimony, requiring and production of books, papers, correspondence, memoranda, financial records, and all other records and documents in whatever form, the issuance of subpoenas and subpoenas duces tecum, and all other activities related to the exercise of such powers.

(d) *Order of Investigation* means the document issued by the RTC, authorizing an investigation as defined herein.

(e) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, or other entity or organization.

§ 1625.3 Orders of investigation.

An Order of Investigation shall indicate generally the principal purpose or purposes of the investigation and shall identify the designated representatives, as defined in § 1625.2. Such purposes may include, but are not limited to, determining whether the RTC has valid claims against former directors, officers, or others who rendered services to or otherwise dealt with the institution, whether there are assets that would justify the RTC's pursuit of such claims consistent with its statutory obligation to minimize losses, whether the RTC should seek to avoid transfers of assets or the incurrence of obligations or seek an attachment of assets, and whether the pursuit of such claims would otherwise be consistent with the RTC's statutory obligations and sound public policy.

§ 1625.4 Powers of Chief Executive Officer.

The Chief Executive Officer may exercise any authority or fulfill any duty of the RTC under this part.

§ 1625.5 Powers of designated representative.

(a) The designated representative shall have all of the powers granted to a designated representative under section 8(n) of the FDIA or any successor provision, including among other things the powers to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum, and to apply, upon approval by the RTC, for their enforcement to any of the courts specified in that section for such purposes.

(b) The designated representative may, in his or her discretion, appoint or revoke the appointment of counsel or other persons from within or without the RTC to assist in the conduct of the investigation, *provided*, however, that such appointee shall not have the power to issue subpoenas or subpoenas duces tecum.

§ 1625.6 Investigations nonpublic.

(a) Unless otherwise ordered by the RTC, investigations shall be nonpublic. Information and documents obtained by

the RTC in the course of such investigations and for which a claim of confidentiality has been asserted shall be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), where applicable, and paragraphs (b) through (f) of this section.

(b) The respondent may designate as confidential any document provided in response to an RTC subpoena that discloses trade secrets or other confidential commercial or financial information. The respondent shall plainly stamp each page of any such document "CONFIDENTIAL" in a manner that does not interfere with the document's legibility. On each page stamped in accordance with this paragraph, the respondent shall mark with brackets information designated as confidential, unless the entire page is designated as confidential.

(c) Except as provided in paragraph (d) of this section, documents designated as confidential by the respondent shall not be disclosed outside the RTC without ten days' advance notice to the respondent.

(d) Paragraph (c) of this section shall not apply to:

(1) Disclosure to any outside counsel or other contractor of the RTC solely for purposes of performing RTC assignments, and subject to the recipient's obligation pursuant to 12 CFR 1606.11(b) and (c), and as otherwise required by law, to maintain information received from the RTC in confidence;

(2) Disclosure in response to any request from the chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business, or from any agency of the United States, but the respondent will be given ten days' advance notice of such disclosure or such other prior notice as can reasonably be given in the circumstances;

(3) Disclosure of any document, or any portion of a document, marked "CONFIDENTIAL" if, at any time, the RTC determines such document or portion of a document does not contain trade secrets or other confidential commercial or financial information. The RTC shall provide the respondent ten days' notice of such determination and may thereafter disclose such document or portion thereof;

(4) Disclosure of information which:

(i) Is in the public domain;

(ii) Was in the possession of the RTC prior to having been provided by the respondent or which is also given to the RTC by another person lawfully in possession of the information; or

(iii) Is information over which the RTC may exercise proprietary rights under applicable law;

(5) Disclosure in the course of interviewing or examining any witness in an RTC investigation, but the witness will be advised that the document has been designated confidential and will not be allowed to retain any copy of the document;

(6) Disclosure in response to a judicial or administrative subpoena. If documents designated confidential are subpoenaed, the respondent will be given ten days' notice, or as much notice as can reasonably be given under the circumstances, before the documents are provided, except that no notice will be given in the case of grand jury subpoenas; and

(7)(i) Disclosure to: (A) The Office of Thrift Supervision (OTS) pursuant to the Agreement Regarding Confidential Information dated April 29, 1991, among the FDIC, RTC, and OTS; or

(B) The FDIC pursuant to the Statement Of Policy And Procedures Concerning The Sharing Of Confidential Information Between The FDIC And The RTC, dated January 1, 1992; or

(C) Any other federal or state agency pursuant to a written confidentiality agreement between the RTC and such agency.

(ii) Copies of documents referred to in § 1625.6(d)(7)(i)(A) and (B) are available at the RTC Reading Room, 801 17th Street, NW., Washington, DC 20434–0001.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, disclosure by the RTC in the course of any judicial or administrative proceeding shall be governed by the rules and procedures of the court or administrative body conducting the proceeding.

(f) Nothing contained in this section shall be construed to limit the RTC's internal use of information or documents obtained in the course of an investigation, such use to be determined solely by the RTC.

(g) Nothing contained in this section shall be construed as authority to withhold information or documents if disclosure by the RTC is otherwise required by law, or to permit disclosure if disclosure is otherwise prohibited by law.

(h) Nothing contained in this section shall be construed to make the provisions of 12 U.S.C. 3401–3422 applicable to the RTC.

§ 1625.7 Rights of witnesses.

(a) Any person compelled or requested to furnish testimony, documents, or other information in the course of an investigation shall, on request, be shown the Order of Investigation. Copies of such Order may be furnished to such persons for their retention in the discretion of the RTC.

(b) Any person compelled or requested to appear and testify in the course of an investigation may be represented by an attorney.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or disbarred from practice by the bar of any such political entity or before the RTC or any other federal agency or instrumentality, and has not been excluded from the same investigation as provided in this part. The designated representative may require counsel to state on the record that he or she is qualified to represent the witness in accordance with this paragraph.

(i) Such attorney may be present and may advise the witness before, during, and after such testimony, may briefly question the witness on the record at the conclusion of such testimony solely for the purpose of clarifying the witness's testimony, and may make summary notes during such testimony solely for the use and benefit of the witness.

(ii) If the witness refuses to answer a question, then counsel may briefly state on the record whether counsel has advised the witness not to answer the question and the legal grounds for such refusal. Where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or that the witness is privileged to refuse to answer a question or to produce other evidence, the witness or counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the ground therefore. The witness and his counsel shall not otherwise object to or refuse to answer any question, and they shall not otherwise interrupt the oral examination.

(iii) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (b)(1)(i) and (ii) of this section, interrupt the examination of the witness by making any objections or statements on the record.

(2)(i) In any case where an attorney or law firm represents more than one witness in an investigation, and in any case where there is a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of a witness and another person, the designated representative may require counsel to state, in writing

under penalty of perjury or on the record of the witness's testimony, that:

(A) Counsel has personally and fully discussed the possibility of conflicts of interest with each such witness or other person;

(B) Each such witness or other person has advised the counsel that there is no existing or anticipated material conflict between its interests and those of others represented by the same attorney or law firm; and

(C) Each such witness or other person waives any right to assert any known conflicts of interest or to assert any nonmaterial conflicts during the course of the proceeding.

(ii) The RTC may take corrective measures at any stage of an investigation to cure a conflict of interest in representation, including disqualification of the attorney or law firm for the duration of the investigation.

(c) All witnesses shall be sequestered. Unless otherwise permitted in the discretion of the designated representative, all persons shall be excluded from the room in which a witness's testimony is given, except for the witness, the witness's counsel, the persons by whom the testimony is to be taken, and the stenographer recording such testimony.

§ 1625.8 Obstruction of proceedings.

(a) The RTC may, for good cause, exclude an attorney from any investigation in which the RTC finds that the attorney has engaged in dilatory, obstructionist, egregious, contemptuous, or contumacious conduct, or has otherwise violated any provision of this part. After due notice to the attorney, the RTC may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the RTC may permit or require.

(b) The designated representative shall report to the RTC any instances where any person other than an attorney has engaged in dilatory, obstructionist, egregious, contemptuous, or contumacious conduct, or has otherwise violated any provision of this part, and the RTC may take such action as the circumstances warrant.

§ 1625.9 Subpoenas.

(a) *Service.* Service of a subpoena in connection with an investigation shall be made in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be made by handing it to such person; by leaving it at such person's office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein, by leaving it at such person's residence with some person of suitable age and discretion, by sending it by registered or certified mail or by delivery service to the person's last known address, or by any other method reasonably calculated to give actual notice.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be made by handing the subpoena to a registered agent for service, or to any director, officer, or agent in charge of any office of such person, by sending it to any such representative by registered or certified mail or by a delivery service to the person's last known address, or by any other method reasonably calculated to give actual notice.

(b) *Testimony of entity.* When the witness is not a natural person, the subpoena may describe with reasonable particularity the matters on which the witness is to testify. In that event, the entity so named shall designate one or more directors, officers, managing agents, or other persons with knowledge of such matters, and may for each such person designate the matters on which the person will testify. The subpoena shall advise the entity of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the entity. This paragraph does not preclude the issuance of subpoenas for individuals by any other procedure authorized in this part.

(c) *Motions to quash.* (1) Any application to limit or quash a subpoena shall be filed within ten days after service of the subpoena or, if the return date is less than ten days after service, prior to the return date. Such application shall be filed with the designated representative, who shall refer the application to the RTC for decision. The application shall be filed only by the person to whom the subpoena is directed or such person's counsel and shall set forth all factual and legal objections to the subpoena, including all assertions of privilege. The RTC may deny the application, quash or limit the subpoena, or condition the granting of the application on such terms as the RTC determines to be just, reasonable, and proper.

(2) Each application shall be accompanied by a signed statement representing that counsel for the applicant has conferred with counsel for the RTC in a good faith effort to resolve by agreement the issues raised by the application and has been unable to reach such agreement. If some of the issues in controversy have been resolved by agreement, the statement shall specify the issues resolved and those remaining unresolved.

(3) The timely filing of an application to quash or limit a subpoena shall stay the time permitted for compliance with the portion challenged. If the application is denied in whole or in part, the ruling will specify a new return date.

(d) *Attendance of witnesses.* Subpoenas issued in connection with an investigation may require the attendance and/or testimony of witnesses from an state, territory, or other place subject to the jurisdiction of the United States, and the production of documentary or other tangible evidence at any designated place where the investigation is being or is to be conducted. Foreign nationals are subject to such subpoenas if service is made upon an agent located within a place subject to the jurisdiction of the United States.

(e) *Within fees and mileage.* Witnesses shall be paid the same fees for attendance and mileage that are paid to witnesses in the United States district courts. Failure to tender such fees shall not render any subpoena invalid or constitute any grounds for refusal to comply with any such subpoena. Fees need not be tendered at the time a subpoena is served.

§ 1625.10 Transcripts.

(a) Transcripts of testimony, if any, or other records in an investigation shall be prepared solely by an official reporter or by any other person or means authorized by the designated representative.

(b) A person who has given testimony in an investigation is entitled to inspect the transcript, if any, of such person's own testimony, upon request.

(c) A person who has submitted documents or given testimony in an investigation may procure a copy of his or her own documents or the transcript, if any, of his or her own testimony upon payment of the cost thereof; provided, that a person seeking a transcript of his or her own testimony must file a written request with the RTC stating the reason for such request, and the RTC may for good cause deny such request.

By Order of the Chief Executive Officer of the Resolution Trust Corporation.

Dated at Washington, DC, this 9th day of July, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92-16545 Filed 17-24-92; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AB86

Supplemental Security Income for the Aged, Blind, and Disabled; Indian Judgment Funds and Per Capita Distributions

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations reflect the provisions of Public Law 97–458, enacted January 12, 1983, Public Law 98–64, enacted August 2, 1983, and Public Law 100–241, enacted February 3, 1988. Public Law 97–458 provides that Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress are excluded from income and resources under the supplemental security income (SSI) program. Public Law 98–64 provides that all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe are excluded from income and resources under the SSI program. Pursuant to Public Law 100–241, none of the following, received from a Native Corporation, is counted as income or resources in determining SSI eligibility or payment amount of an individual Alaska Native or a descendant of an Alaska Native: Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and interest in a settlement trust. The effects of these proposed regulations are, in certain cases, to provide additional exclusions from income and resources permitting payment of SSI benefits.

DATES: Your comments will be considered if we receive them no later than September 25, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION: Public Law 97–458 was enacted January 12, 1983. Section 4 of this legislation provides that certain Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress are excluded from income and resources under the SSI program. Indian judgment funds include interest and investment income accrued while the funds are held in trust. The exclusion extends to initial purchases made with Indian judgment funds. The exclusion does not apply to the proceeds from sales or conversions of initial purchases or to subsequent purchases made with funds derived from sales or conversions of originally excluded purchases, because Congress sought to protect only the distributions made by the Secretary of the Interior.

Section 4 of Public Law 97–458 also excludes from resources any interests of Indians in trust or restricted Indian lands. Our current regulations address only those lands that such individuals may possess. These proposed regulations now also exclude from resources nonpossessory interests in such lands.

Public Law 98–64 was enacted August 2, 1983. This legislation excludes all funds held in trust by the Secretary of the Interior for an Indian tribe and distributed on a per capita basis from income and resources for SSI purposes.

The Social Security Administration (SSA) sought advice from the Department of the Interior on the issue of whether Alaska Native Regional and Village Corporation (ANRVC) dividends not excluded under the Alaska Native Claims Settlement Act (ANCSA) could be excluded under Public Law 98–64. SSA issued interim instructions directing that ANRVC dividend distributions paid on or after August 2, 1983, whether or not excluded under ANCSA, would be excluded for SSI purposes pending resolution of the issue.

The Department of the Interior has since advised SSA that funds held by ANRVCs are not "funds held in trust by the Secretary of the Interior" within the purview of Public Law 98–64. We therefore concluded that these ANRVC dividend distributions could not qualify for exclusion for SSI purposes under that law. However, a new law, Public Law 100–241, was enacted on February 3, 1988. Under this law, none of the following, received from a Native Corporation, is considered income or resources of an individual Alaska Native or a descendant of an Alaska Native: cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year (the exclusions are applied each year to the amount received in such year); stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust.

Public Law 100–241 specifically provides that cash received from a Native Corporation (including cash dividends on stock received from a Native Corporation), to the extent that it does not, in the aggregate, exceed $2,000 per individual per year, shall not be considered or taken into account as an asset or resource. Although this statutory provision does not explicitly mention "income," the legislative history clearly shows that such cash should not be considered a resource or "otherwise utilized in determining eligibility." H.R. Rep. No. 31, 100th Cong., exclusion of the distributions from income as well as resources, to the extent that they do not, in the aggregate, exceed $2,000 per individual per year in determining eligibility and payment amount. To exclude a portion of the distributions only from resources would result in benefit reductions or ineligibility in months in which the distributions are received and would be contrary to congressional intent. Therefore, we have changed the income provisions of the appendix to Subpart K to reflect the exclusion.

In accordance with Public Law 100–241, we exclude ANRVC cash (including cash dividends on stock received from a Native Corporation) to the extent that this ANRVC cash does not, in the aggregate, exceed $2,000 per individual per year. With respect to resources, we apply the exclusion to each calendar year without regard to the prior year, so

that retained cash not exceeding $2,000 which an individual received from a Native Corporation in a prior year will not be counted in a subsequent year. This interpretation is consistent with the policy of the Aid to Families with Dependent Children program. (Any retained cash exceeding $2,000 per year will be counted toward the SSI resource limit.)

The appendix to subpart K lists the types of income that are excluded under the SSI program by Federal laws other than the Social Security Act and explains how exclusions provided by other Federal statutes apply to income deemed from a sponsor to an alien. We propose to amend the appendix to subpart K, IV. Native Americans, on the basis of the legislation discussed above by revising paragraph (a), deleting paragraph (b)(4), redesignating paragraphs (b)(5) through (b)(13) as (b)(4) through (b)(12), and adding new paragraphs (g) and (h). In addition, paragraphs (g) and (h) will provide that the exclusion applies to the sponsor's income only if the alien lives with the sponsor, because the statute authorizing the exclusions applies only to benefits to which the household or member of the household would be eligible.

Similarly, we propose to amend Subpart L of the regulations, which deals with resources and exclusion of resources under the SSI program, to reflect the above legislation. Specifically, we propose to amend § 416.1234 regarding exclusion of Indian lands and § 416.1236, which encompasses resource exclusions provided by other statutes.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, because the program and administrative impact is negligible, i.e., less than $1 million and/or 30 workyears. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

These regulations impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance: Program No. 93.807—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Alcoholism, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income, Travel and transportation expenses, Vocational rehabilitation.

Dated: December 30, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 3, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154; sec. 2639 of Pub. L. 98-369, 98 Stat. 1144.

2. In the appendix following subpart K of part 416, under the heading IV. Native Americans, paragraph (a) is revised; paragraph (b)(4) and the Note following it are removed; paragraph (b)(5) through (b)(13) are redesignated (b)(4) through (b)(12) respectively; and new paragraphs (g) and (h) are added to read as follows:

Appendix to Subpart K of Part 416—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

* * * * *

IV. Native Americans

(a) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, to the extent that it does not, in the aggregate, exceed $2,000 per individual each year; stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100-241, 43 U.S.C. 1626(c), effective February 3, 1988.

* * * * *

(g) Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93-134 as amended by Public Law 97-458, 25 U.S.C. 1407. Indian judgment funds include interest and investment income accrued while such funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion does not apply to sales or conversions of initial purchases or to subsequent purchases.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(h) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe are excluded from income under Public Law 98-64 (25 U.S.C. 117b). Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion. For ANRVC dividend distributions, see paragraph IV.(a) of this Appendix.

Note—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

3. The authority citation for subpart L of part 416 continues to read as follows.

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

4. Section 416.1234 is revised to read as follows:

§ 416.1234 Exclusion of Indian lands.

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, we will exclude any interest of the individual (or spouse, if any) in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the Federal Government.

5. In § 416.1236, paragraphs (a)(3) and (a)(10) are revised and paragraph (a)(12) is added to read as follows:

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) * * *

(3) Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93–134, as amended by Public Law 97–458, 25 U.S.C. 1407. Indian judgment funds include interest and investment income accrued while the funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds. This exclusion will not apply to proceeds from sales or conversions of initial purchases or to subsequent purchases.

* * * * *

(10) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: Cash, including cash dividends on stock received from a Native Corporation, is disregarded to the extend that it does not, in the aggregate, exceed $2,000 per individual each year (the $2,000 limit is applied separately each year, and cash distributions up to $2,000 which an individual received in a prior year and retained into subsequent years will not be counted as resources in those years); stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to the exclusion under section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Public Law 100–241, 43 U.S.C. 1626(c), effective February 3, 1988.

* * * * *

(12) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under Public Law 98–64. Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from resources under this exclusion. For treatment of ANRVC dividend distributions, see paragraph IV.(a)(10) of this appendix.

* * * * *

[FR Doc. 92–17583 Filed 7–24–92; 8:45 am]
BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 9

[Notice No. 745; Ref: Notice No. 742]

RIN 1512–AA31

Wine Labeling Amendments (88F–221P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for a notice of proposed rulemaking (NPRM), published in the **Federal Register** on June 19, 1992 [57 FR 27401], concerning wine labeling amendments. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the numerous wine labeling amendments in the NPRM.

DATES: Written comments must be received by August 21, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; ATTN: Notice No. 745.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1992, ATF published Notice No. 742 in the **Federal Register** (57 FR 27401), proposing to amend wine labeling regulations in 27 CFR part 4 to:

(1) Broaden the use of the "Estate bottled" designation,

(2) Allow the use of a harvest year designation for fruit, berry and agricultural wines,

(3) Expand the use of a viticultural area designation,

(4) Allow the use of multicounty or multistate appellations of origin for other than grape wine,

(5) Allow the use of the designation "other than standard" on a wine label,

(6) Allow the use of a vineyard, orchard, farm or ranch name on a wine label,

(7) Allow the use of a brand name with a varietal (grape type) name,

(8) Allow more than three grape varieties on a wine label, and

(9) Address the use of a geographic brand name which has a viticultural area significance.

The comment period for Notice No. 742 was scheduled to close on July 20, 1992. Prior to the close of the comment period ATF received a request to extend the comment period 90 days. The extension was requested by the Wine Institute, a trade association which represents 465 California winery members.

The Wine Institute stated that it needed at least 90 days additional time for their members to adequately review the numerous proposed wine labeling regulation revisions. The request for an extension of the comment period expressed particular concern for proposed revisions of the "Estate bottled" designation.

After considering the Wine Institute's request, ATF finds that a 30 day extension of the comment period is warranted and is, therefore, extending the comment period until August 21, 1992.

Drafting Information

The author of this document is James A. Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer Protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Dated: July 17, 1992.

Daniel R. Black,

Acting Director.

[FR Doc. 92–17627 Filed 7–24–92; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 55 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to adopt provisions similar to the Federal counterpart regulations which provide for reclamation agreements between Ohio and coal mine operators who are in danger of bond forfeiture.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 11, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on August 6, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 3, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated December 11, 1991 (Administrative Record No. OH–1612), Ohio submitted proposed Program Amendment Number 55. The substantive changes proposed by Ohio in this amendment concerned delinquent reclamation, reclamation agreements and conditions under which bond forfeiture may be avoided, and terminating the rights of the permittee to reclaim.

OSM announced receipt of proposed Program Amendment Number 55 in the December 31, 1991, **Federal Register** (56 FR 67559), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on January 30, 1992. The public hearing scheduled for January 27, 1992, was not held because no one requested an opportunity to testify.

By letter dated March 3, 1992 (Ohio Administrative Record No. OH–1659), OSM provided Ohio with its questions and comments about the December 11, 1991, amendment submission. By letter dated April 1, 1992 (Ohio Administrative Record No. OH–1673), Ohio responded and requested clarification of OSM's March 3, 1992, comments. OSM and Ohio discussed those comments on April 8, 1992 (Ohio Administrative Record No. OH–1676), and on May 7, 1992 (Ohio Administrative Record No. OH–1696).

By letter dated June 15, 1992 (Ohio Administrative No. OH–1719), Ohio submitted Revised Program Amendment Number 55. This new amendment submission contains further revisions to section 1501:13–7–06 of the Ohio Administrative Code (OAC) concerning reclamation agreements between Ohio and coal mine operators who are in danger of bond forfeiture. The amendment proposes numerous changes to paragraph notations and nonsubstantive wording changes to clarify the rule. The substantive changes proposed by Ohio in the revised amendment are discussed briefly below:

(1) Bond Forfeiture Criteria

Ohio is revising OAC section 1501:13–7–06 by adding paragraph (A)(4) to provide the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) shall forfeit the permittee's bond whenever the permittee defaults on the conditions under which Ohio accepted the bond.

(2) Showing Cause of Why the Chief Should Not Forfeit the Permittee's Bond

Ohio is revising OAC section 1501:13–7–06 paragraph (B) to provide that, before the Chief forfeits the permittee's performance bond because of abandonment of the coal mining and reclamation operation or because of the permittee's inability to comply with a notice of violation issued for failure to complete any phase of reclamation, the Chief shall order the permittee to show cause why the Chief should not deem the operation abandoned or why the permittee has the ability to comply with the requirements of chapter 1513. of the Ohio Revised Code.

(3) Bond Forfeiture Procedures

Ohio is revising OAC section 1501:13–7–06 paragraphs (C) and (C)(1) to provide that, when the performance bond is to be forfeited, the Chief shall issue a bond forfeiture order to the permittee which identifies the forfeiture area within the permit and the forfeiture amount.

Ohio is adding new paragraphs (C)(2)(a) through (c) to OAC section 1501:13–7–06 to provide the bond forfeiture orders may include the terms of a reclamation agreement entered into between the Chief and the permittee to avoid bond forfeiture. Such an agreement would include a timetable for the permittee's performance of reclamation and abatement of all violations so as to meet the conditions of the permit and the reclamation plan. The Chief would rescind the forfeiture order upon the permittee's satisfactory performance under the reclamation agreement. The Chief would immediately forfeit the performance bond if the permittee fails to enter into a reclamation agreement within twenty days of the issuance of the bond forfeiture order or fails to comply with any of the terms or conditions of the reclamation agreement.

Ohio is revising OAC 1501:13–7–06 paragraph (C)(4) to provide that, in the event that the permittee does not enter into a reclamation agreement or fails to

comply with the terms of a reclamation agreement as provided for under proposed paragraph (C)(2), the Chief's bond forfeiture order shall inform the permittee that the performance bond filed with Ohio is now property of the State or subject to collection by the State.

(4) Reclamation by a Surety

Ohio is revising OAC section 1501:13–7–06 paragraph (E) to provide that each surety must inform the Chief, within sixty days of notification of the permittee's failure to elect to enter into a reclamation agreement or the permittee's failure to comply with the terms of a reclamation agreement, of the surety's intent to complete reclamation or to pay the full amount of its liability under the surety bond. Ohio shall terminate the rights of the surety to perform reclamation if the surety fails to so notify the Chief within sixty days.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on August 3, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. DOI has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of Executive Order 12778. Under SMCRA Section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 19, 1992.

Tim Dieringer,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–17616 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[AMS–FRL–4156–8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines

In the matter of Particulate Emission Regulations for 1993 Model Year Buses, Particulate Emission Regulations for 1994 and Later Model Year Urban Buses, Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses, Test Procedures for Urban Buses, and Oxides on Nitrogen Emission Regulations for 1998 and Later Model Year Heavy-duty Engines.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of comment period and public workshop.

SUMMARY: This notice announces an upcoming public workshop and the reopening of the comment period for EPA's proposed urban bus and heavy-duty engine (HDE) regulations that were published on September 24, 1991 (56 FR 48350). It describes two additional options under consideration for the proposed urban bus retrofit/rebuild program. This notice also explains a change under consideration in the useful life requirements for the proposed 1994 and later model year urban bus particulate matter (PM) standard, and the proposed 1998 and later model year HDE oxides of nitrogen (NOx) standard.

DATES: EPA will hold a public workshop on the issues discussed in this notice on August 6, 1992. The workshop will start at 9:30 a.m. and will continue throughout the day as long as necessary to complete testimony. Written comments will be accepted until September 8, 1992.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–91–28 at the address listed below.

The public workshop will be at the National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105.

Materials relevant to this notice are contained in Public Docket A–91–28. This docket is located in Room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Philip N. Carlson, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4270. Persons who wish to receive free of charge a copy of the regulatory text under consideration for the items contained in today's notice should call the above mentioned contact person. The regulatory text under consideration is also available in the public docket referenced above (Appendix A of "Supplementary Information—EPA Proposal for an Urban Bus Retrofit/Rebuild Program").

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 24, 1991, EPA published a Notice of Proposed Rulemaking (NPRM) (56 FR 48350) proposing regulations for a number of bus, urban bus and HDE programs required by the 1990 amendments to the Clean Air Act. Among the regulations proposed in the NPRM were regulations for a proposed retrofit/rebuild program for urban buses. Section 219(d) of the Clean Air Act requires that EPA develop regulations governing emissions from 1993 and earlier model year (MY) urban bus engines that are rebuilt or replaced after January 1, 1995. EPA has discretion under the statute to set an emission standard or an emission technology requirement for the affected engines. The retrofit/rebuild program is to apply in Metropolitan Statistical Areas (MSAs) and Consolidated Metropolitan Statistical Areas (CMSAs) with 1980 populations of 750,000 or greater.

In the September 1991 NPRM, EPA proposed two separate options for the urban bus retrofit/rebuild program. Under the first option, bus operators would have to meet, at the time of rebuild, a PM standard of 0.05–0.10 grams per brake horsepower-hour (g/bhp-hr). Under the second option, bus operators would have to meet, at the time of rebuild, a PM standard of 0.25–0.30 g/bhp-hr.

EPA received a wide variety of comments on the September 1991 NPRM, most of which basically supported one or the other of the two proposed standards. Most comments against the more stringent standard of 0.05–0.10 g/bhp-hr raised concerns over the cost, durability, and availability of particulate trap systems that would likely be used to meet the standard.

In response to the comments received on the September 1991 NPRM, and in an attempt to develop a more flexible, market-based program, EPA is considering an urban bus retrofit/rebuild program which would allow bus operators to choose between two options that were not proposed in the September 1991 NPRM. As noted above, this notice describes those two options EPA is now considering for the retrofit/rebuild program.

Option 1 is a performance based standard which would require that rebuilt or replacement engines meet a specified PM emission standard or percentage emission reduction as long as certified equipment able to meet these requirements can be purchased for less than a specified cost. Option 2 would be a fleet averaging program set up in a manner to yield an emission reduction equivalent to that expected from Option 1 described above, but would allow bus operators added flexibility in how they achieve the reduction. The following section provides more details of each of the two new options under consideration for the final rule.

The September 1991 NPRM also proposed a new PM standard for 1994 and later MY urban buses and a new NOx standard for 1998 and later MY HDEs. Section (202)(d) of the amended Clean Air Act contains a requirement that the useful life provisions for new HDE standards be equal to or greater than the useful life period for light-duty vehicles, engines and trucks, which was increased to ten years or 100,000 miles under the Clean Air Act Amendments of 1990. As a result, EPA is proposing to extend the current HDE useful life requirements from eight years to ten years for the two new standards contained in the September 1991 NPRM. The current HDE useful life mileage requirements for these new standards would remain the same. Section II.B provides more details on the change in HDE useful life requirements under consideration for the final rule.

II. Description of Revisions to Proposal

A. Urban Bus Retrofit/Rebuild Program

The following section describes the two options EPA is considering for the urban bus retrofit/rebuild program. Under the program described in today's notice, operators of urban buses in the affected areas would have to be in compliance with all of the requirements of one of the two options described below. Bus operators would be allowed to switch back and forth between the options detailed below from year to year. However, if a bus operator switches to a different option after the program begins, then the bus operator must show that it has been in compliance with the requirements of the newly chosen option for all previous years of the program as well as the current year. As noted earlier, the proposed regulatory text for the two options under consideration for the urban bus retrofit/rebuild program is available in the public docket for this rulemaking (see Appendix A of "Supplementary Information—EPA Proposal for an Urban Bus Retrofit/Rebuild Program").

1. Option 1: Performance Based Program

The first approach available to operators of urban buses would be a performance based requirement. At the time an urban bus engine is rebuilt or replaced, bus operators would be required to install equipment certified to meet a PM standard of 0.10 g/bhp-hr for that engine model. However, the bus operator would only be required to install such equipment if the equipment could be purchased for less than some specified maximum incremental amount. EPA is considering a cost limit of $5000, as described further below. The $5000 limit would apply to all types of equipment certified to meet the 0.10 g/bhp-hr rebuild PM standard, including retrofit particulate traps and alternative fuels conversion kits. For alternative fuel conversion kits, if a bus operator does not already have refueling facilities to accommodate alternative fuels, the bus operator could include the cost of installing such facilities in its calculation of incremental cost, distributed evenly over the number of buses they plan to convert to alternative fuels. EPA specifically requests comments on the appropriate cost limit for meeting the 0.10 g/bhp-hr rebuild standard, including justification for the value of such a limit.

It is likely that for some bus models, especially older models for which fewer buses remain in use, no equipment will be certified that can comply with the 0.10 g/bhp-hr PM standard. However, engine upgrades, such as manufacturer's rebuild kits, may be available that result in significant PM reductions. One example is the upgrade kit currently available for the Detroit Diesel 6V92TA engine. In cases where equipment

certified to meet the 0.10 g/bhp-hr PM standard does not exist, but where engine upgrades do exist, Option 1 would require that the engine upgrade equipment be used at time of rebuild, so long as the equipment provides a reasonable benefit at a reasonable cost. More specifically, such upgrades would have to result in at least a 25 percent reduction in engine-out PM levels on that engine model for a cost of $2000 or less. EPA's desire in setting a minimum percent reduction requirement of 25 percent is to assist in the development of engine upgrade kits, such as those kits which upgrade an engine to a more recently certified configuration of an engine, as opposed to individual pieces of equipment, none of which result in significant emission reductions operating alone. Setting a lower minimum PM percent reduction requirement could lead to numerous requests for certification of individual parts that result in only minimal emissions reduction. Allowing equipment to be certified that results in lower percentage reductions of PM could also lower the effectiveness of the retrofit/rebuild program, especially if more than one piece of equipment is certified for a given engine model. In such a case, bus operators would likely choose the least expensive means of meeting the program requirements (i.e., individual components), resulting in lower emission reductions than would be possible with the use of an upgrade kit.

In addition to the back-up requirement of engine upgrades for engines where no equipment is available to meet the 0.10 g/bhp-hr PM rebuild standard, there would be an additional requirement for engines where no upgrade kit meets the minimum PM percent reduction or cost limitations discussed above. If at the time an engine is rebuilt or replaced, no equipment is available which meets either of the above standards (0.10 g/bhp-hr standard for $5000 or less, or 25 percent PM reduction for $2000 or less), the bus operator would be required to rebuild the engine to its original configuration, or at the bus operator's option, it could rebuild the engine to a configuration that has a certification PM level lower than the PM level of the original engine configuration.

As noted above, equipment that would either be used to meet the 0.10 g/bhp-hr PM standard or the 25 percent PM reduction requirement would need to be certified. A complete description of the proposed certification requirements are presented later in this notice. As part of the certification process, equipment manufacturers would also be required to submit information showing that its equipment does not cause the engine to exceed any other certification emission standards applicable for that specific engine model. The equipment manufacturer would need to include emissions data for oxides of nitrogen (NOx), hydrocarbons (HC) and carbon monoxide (CO).

If a bus operator chooses Option 1 as described above, it would be required to use technology which has been certified for its specific engine when that engine is rebuilt or replaced. However, because bus operators need to plan their budgets in advance, it is important for them to know ahead of time what equipment will be required under Option 1. Therefore, EPA would establish a six-month period between the time when retrofit/rebuild equipment is certified and when it would be required to be used by a bus operator rebuilding an engine. Providing such a period should allow bus operators sufficient time to make budgeting decisions. EPA requests specific comment on the length of the period that would be appropriate to give bus operators necessary leadtime to plan their budgets.

EPA considers this program a derivative of the two options proposed in the September 1991 NPRM, in that the primary and secondary standards under this program are roughly equivalent to the standards proposed in the two September 1991 options, except that cost limits have been added. This performance based option would offer engine manufacturers, aftermarket parts suppliers, and others an equal opportunity to develop emission control technology which could result in potentially significant reductions of urban bus PM emissions.

Moreover, EPA believes that the retrofit/rebuild program described above would meet the requirements of the Clean Air Act to establish an "emission standard or emissions control technology requirement [that] shall reflect the best retrofit technology and maintenance practices reasonably achievable." It would directly incorporate limitations on cost, which the Agency believes is an appropriate implementation of the Clean Air Act's mandate that EPA shall require the best technology "reasonably achievable". EPA believes that cost is a significant consideration in determining what technology is reasonably achievable. Economic and cost considerations are significant factors in determining appropriate requirements under similar standards. For example, both the terms "best available control technology" and "reasonably available control technology" have been defined to include considerations of cost and economic impacts. (See Clean Air Act section 169(3) and 44 FR 53761 (September 17, 1979).)

EPA believes that this situation justifies a specific cost limit as part of the emission standards. In most cases in which EPA sets new vehicle emission standards, a large number of vehicles will be covered by the regulations and there are numerous manufacturers that will compete in the market. For example, over 200,000 heavy-duty vehicles are sold each year in the United States. The resulting competition, and the ability for manufacturers to achieve a large volume of sales, off-setting development costs, provides an incentive for manufacturers to enter the market and for manufacturers to keep costs as low as possible. However, the urban bus retrofit/rebuild program will affect a very limited number of vehicles. The total number of 1993 and earlier MY urban buses that will be affected by the retrofit/rebuild program over the entire life of the program is approximately 35,200 buses. Moreover, because this program will regulate buses certified over several years, during which time emission standards for new buses varied considerably, buses regulated under the program will have engine and chassis characteristics that are very different from one another. In turn, this may limit the competition among retrofit/rebuild equipment manufacturers, since the development of such equipment may require significant capital expenditures for each bus type. Additionally, unlike new emission standards, which generally regulate vehicle or engine manufacturers, the retrofit/rebuild program will be directed towards bus operators, who have little direct control of the development of retrofit/rebuild equipment. This could potentially result in the creation of a captive market of bus operators that could be subject to price abuse by equipment manufacturers. Moreover, though EPA believes that later model buses subject to this program will be able to meet the 0.10 g/bhp-hr PM standard without prohibitive costs, EPA is not convinced that buses from model years before 1988 will be able to meet this standard without prohibitive costs. for this reason, EPA believes that a cost limit is appropriate and will prevent bus operators from incurring unreasonably high expenses to comply with the retrofit/rebuild program.

For the 0.10 g/bhp-hr PM standard, EPA is proposing an incremental equipment cost limit of $5,000 (in 1991

dollars). As proposed, the limit would apply to the purchase price of the equipment certified to meet the 0.10 g/bhp-hr PM rebuild standard and would not include installation, shipping, taxes, or other related costs. EPA believes that $5,000 is a reasonable cost limit based on the comments received on the original proposal. Donaldson Corporation, a manufacturer of aftermarket particulate traps, submitted comments on the costs of particulate trap systems showing that current costs run between $8,100 and $17,500 per unit. However, Donaldson also forecast that with increased production and further improvements in technology, particulate trap costs in the 1995 time frame are expected to be below $5,000 per unit.

In setting the cost limit at $5000, EPA has attempted to balance the cost of the program to bus owners with the emission reduction goals of the Act and the fact that equipment manufacturers will not manufacture and market retrofit equipment to meet a 0.10 g/bhp-hr rebuild PM standard unless they have the financial incentive to do so. EPA believes that setting a cost limit higher than $5000 could require bus operators to incur unreasonable costs. Based on comments submitted on the September NPRM, an incremental cost of $5000 would result in a 50 percent increase in rebuild costs over the current typical rebuild cost of $10,000. Considering credible comments from the American Public Transit Association and several individual transit companies, EPA believes that many transit operators will be unable, without significant financial hardship, to incur large increases in operating expenses to cover the cost of a retrofit/rebuild program that may require rebuild expenses to increase by over 50 percent. Because transit companies operate on a very tight budget, significantly higher rebuild costs could make it necessary for transit companies to raise fares, a very unpopular decision and a difficult process according to transit companies. A higher cost limit would also increase the incentive for a bus operator to delay or not perform a rebuild, lowering the potential emission benefit of the program.

A cost limit lower than $5000 would likely limit the availability of such rebuild equipment and reduce the environmental impact of the program, according to comments on the September NPRM. Comments from Donaldson Company and ICI Products indicate that the current cost for a retrofit particulate trap can be as high as $17,500, and that the current cost to convert a bus to run on Methanol/Avocet is as high as $17,000. Costs will have to come down significantly from these current costs to meet a cost limit of $5000. The most optimistic cost projections from Donaldson and ICI Products for such equipment in the 1995 time frame are at or near the $5000 limit; a lower limit would thus have the likely effect of ruling out retrofit technology for several families of bus engines.

EPA also believes that a $5000 cost limit is reasonable from a cost effectiveness standpoint. Using a maximum cost of $5000 for a particulate trap, and including fuel economy impacts and maintenance costs that would be expected from using a particulate trap, a $5000 limit results in a discounted cost effectiveness of approximately $16,700 per ton of PM emissions reduction. This is similar to the cost effectiveness of the 0.10 g/bhp-hr urban bus PM standard of $12,900–$14,700 per ton. The reader is directed to the supporting documentation contained in the public docket for this rulemaking ("Supplementary Information—EPA Proposal for an Urban Bus Retrofit/Rebuild Program") which contains an analysis of the cost effectiveness of the retrofit/rebuild program presented in this notice. The cost effectiveness of the retrofit/rebuild program does vary somewhat depending on the age of the bus. However, older buses, which will be experiencing their second or later rebuild, tend to be the higher PM emitting buses. Therefore, even though older buses have fewer miles left before they will be retired, the higher emission reduction which could be obtained from meeting the 0.10 g/bhp-hr rebuild standard offsets the lower remaining mileage. The result of this is a reasonable cost effectiveness for older model year buses as well as for newer model year buses.

In the less stringent 25 percent reduction case, EPA is considering a cost limit of $2000 (in 1991 dollars). EPA believes a cost limit is necessary for engine rebuild equipment in order to limit the potential for price abuse that could occur with a captive market for such rebuild equipment. The lower cost limit results from consideration of the type of equipment that is used in rebuilding an engine, the lower emission reduction that would be realized with this equipment, compared to a trap retrofit or an alternative fuel conversion, and the cost effectiveness of using such equipment. A typical engine upgrade kit replaces engine parts from an older engine configuration with equipment from a more recent model year configuration of that engine. The increased cost of such an upgrade kit is the incremental cost of the newer model year parts over the equipment being replaced. Based on comments received from Cummins Engine Company and Detroit Diesel Corporation on the September 1991 NPRM, such upgrade kits are expected to be available for $2000 or less (incremental to typical rebuild costs).

EPA believes that a $2000 cost limit is reasonable for the 25 percent reduction requirement. Although it may be feasible to develop more complicated engine upgrades, such as those which would include the retrofitting of turbocharging and/or aftercooling, the incremental cost of doing such upgrade kits would be much higher than $2000, and the modifications would not result in significantly higher emissions benefits. (SCRTD projected that the incremental equipment cost for retrofitting a mechanically controlled 6V–92TA engine to the electronically controlled DDECII configuration would be approximately $6700 per bus.) In addition, if EPA were to implement a cost limitation of $2000 for an upgrade that achieves a 25 percent reduction in PM, the discounted cost effectiveness would be around $15,900 per ton, just about the same as the cost effectiveness of the 0.10 g/bhp-hr rebuild standard assuming a $5000 cost noted above.

EPA is considering the $5000 and $2000 cost limits in order to protect bus operators from price abuse. However, EPA has concerns that such limits may end up effectively setting the cost of the available equipment, especially if there is a lack of adequate competition among retrofit/rebuild equipment manufacturers as mentioned earlier. EPA requests comment on the $5000 and $2000 cost limits under consideration for this option, as well as appropriate cost figures or other means by which EPA could ensure a reasonable program. EPA also requests comment on the 25 percent minimum PM reduction requirement under consideration for engine rebuild equipment. Commenters should provide justification for any alternative cost figures or minimum percent reduction requirements.

EPA has estimated the PM emission reductions which are likely to be realized from the performance based option. Figure 1 shows the projected baseline emissions from the 1993 and earlier urban buses included in the retrofit/rebuild program assuming there were no retrofit/rebuild program. In addition, Figure 1 presents the likely minimum and maximum levels possible under the option described above. The minimum reduction estimate is based on the assumption that durable, low cost

particulate traps will not be generally available and that the one currently available upgrade kit for the Detroit Diesel 6V92TA engine will be the only equipment available to meet the requirements of the retrofit/rebuild program. The maximum reduction estimate assumes that all engines could meet the 0.10 g/bhp-hr PM rebuild standard. This estimate is based on comments by Donaldson that up to 95 percent of the 1993 and earlier urban bus fleet could be retrofit with particulate traps for $5000 or less. The reader is directed to the supporting documentation for this notice contained in the public docket for this rulemaking ("Supplementary Information-EPA Proposal for an Urban Bus Retrofit/Rebuild Program") for a description of the calculations used in preparing Figure 1.

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Figure 1
Estimated Range of Particulate Emissions Under Option 1 (Performance Based Program)

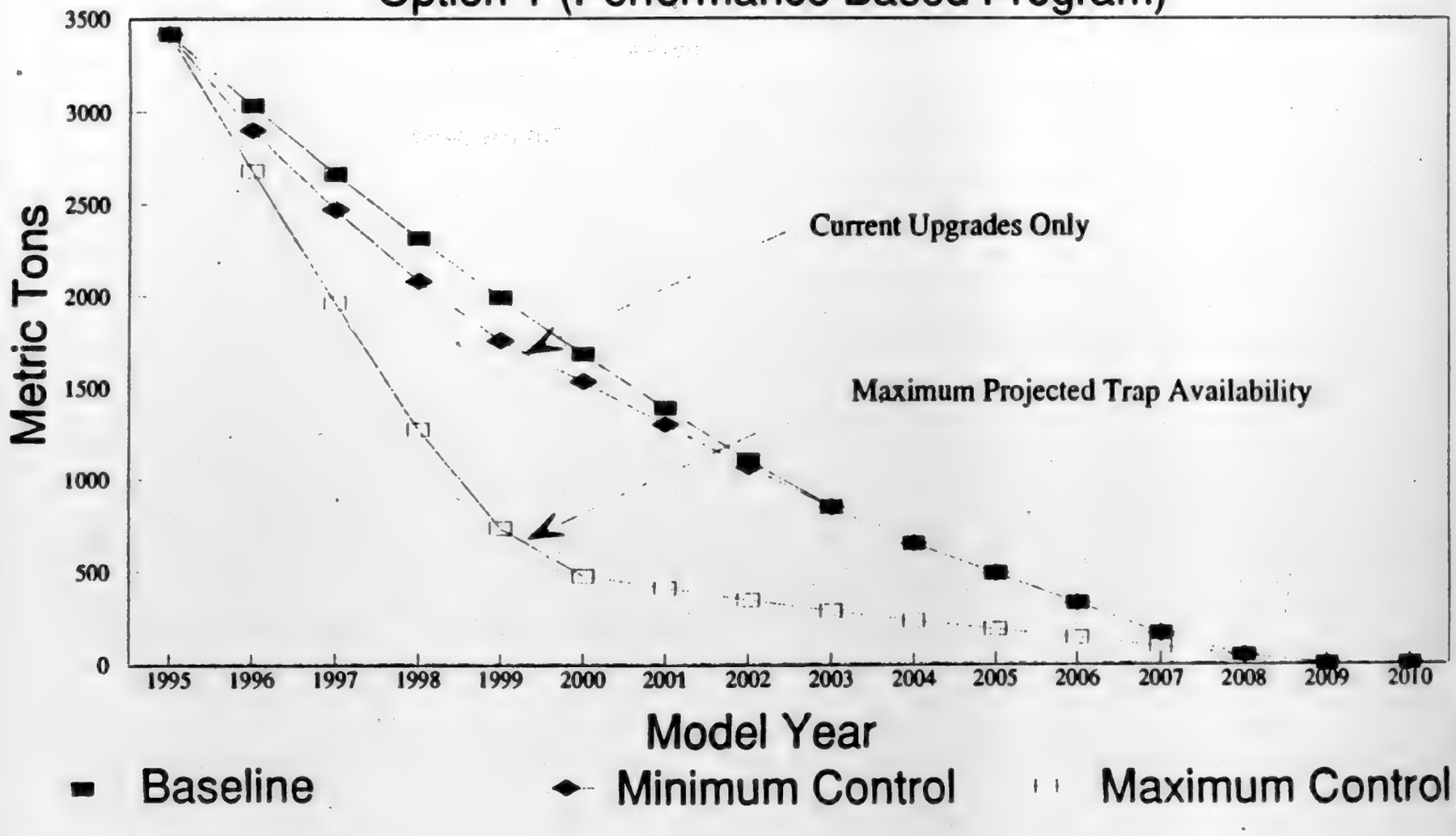

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One point that should be noted with regard to this retrofit/rebuild program is that under this option, EPA would not require a bus operator to rebuild any engine; nor would EPA require that any rebuild be performed by a specific date. The retrofit/rebuild program requirements only become effective when a bus operator chooses to rebuild an engine. Since most bus operators have limited budgets, they could conceivably elect a variety of ways to reduce the economic impact of the program, for example, by delaying or reducing the number of rebuilds performed after January 1, 1995. Such operational changes could significantly reduce the environmental benefit of the retrofit/rebuild program.

2. Option 2: Averaging Based Program

The Agency is also considering giving operators of urban buses the option of a market-based averaging program. EPA is interested in implementing market-based programs that meet the statutory requirements while easing the burden on the regulated industry. Specifically, the retrofit/rebuild program could be more effective if bus operators were given greater flexibility in meeting the requirements of the program. EPA is aware that Option 1, alone, may be inflexible and could cause problems for bus operators that do not have the financial resources to retrofit much of their fleet. As noted by the American Public Transit Association, and supported by Metro-Dade Transit Agency and New Jersey Transit, the public transit industry has limited funding and in many areas is currently facing financial hardship. Also, there is no indication of a funding increase from the Federal government to cover any major costs associated with this program. Therefore, much of the cost would either have to be internalized by the public transit companies, causing further financial hardship, or would be shifted to mass transit customers. This could result in reduced ridership and increased use of low-occupancy automobiles, which would likely have an adverse impact on the environment.

In an effort to increase the effectiveness of the program, EPA has developed a market-based approach that allows each bus operator to average its PM emissions and achieve a fleet-wide reduction rather than engine-specific reductions. This type of approach was suggested by one commenter who believed that it would lessen the economic burden on bus operators while encouraging effective particulate reduction. The averaging approach is designed to allow bus operators to choose from among many means of reducing fleet average PM emissions. They may choose from all certified retrofit/rebuild technologies, including any certified alternative fuels conversions, weighing emission reductions against equipment costs. This program is also designed to give bus operators credit for retiring old buses as soon as possible. The details of how this averaging program was derived and how it would work are described below.

a. *Assumptions upon which averaging program is based.* EPA has chosen to base the averaging program on its best estimate of the air quality benefit that would likely occur if Option 1 alone were implemented. In this way, equivalent benefits should be achieved regardless of which option is taken by bus operators. Figure 2 contains EPA's estimate of the emission reduction that would most likely be realized under Option 1. The reader is directed to the EPA document, "Supplementary Information-EPA Proposal for an Urban Bus Retrofit/Rebuild Program," which is contained in the public docket for this rulemaking, for a description of the calculations used in preparing Figure 2. In order to construct this estimate and, in turn, the equivalent averaging program, several assumptions had to be made about what could be expected if Option 1 alone were implemented. These assumptions are strictly for the purpose of developing Option 2 requirements and would not in any way affect the requirements for bus fleets operating under Option 1.

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Figure 2
Estimated PM Emissions Reduction Under
Option 2 (Averaging Based Program)

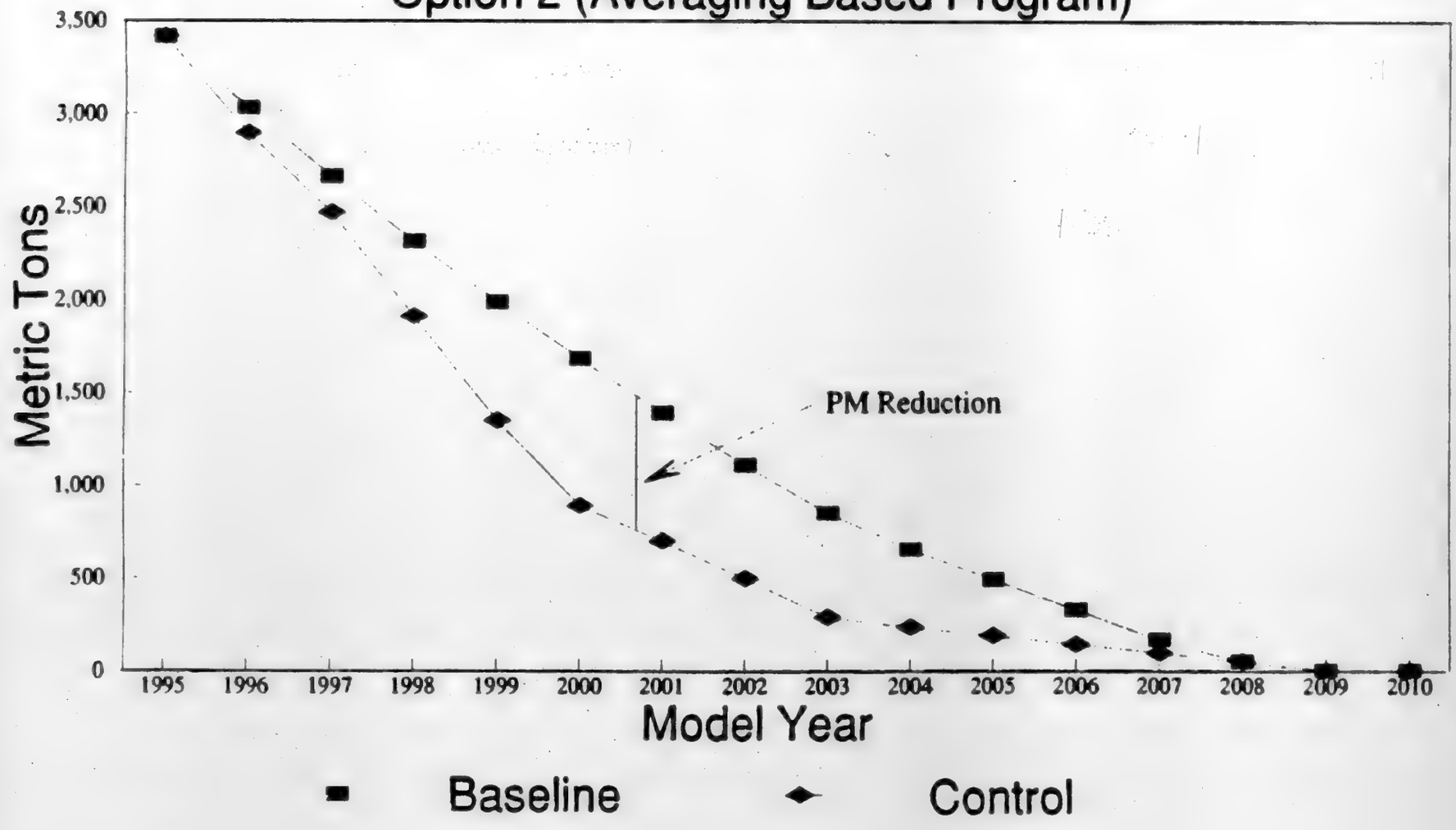

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The first critical assumption EPA had to make was which engines would actually have equipment available meeting the cost and emission requirements of Option 1. Based on the information mentioned earlier, EPA believes that suitable technology to meet the 0.10 g/bhp-hr PM rebuild standard will be made available for engines manufactured in and after model year 1988 when the first PM standard went into effect for urban buses. Because 1988 and later MY engines were certified to 0.60 g/bhp-hr or less, EPA would expect that these engines, when rebuilt or retrofitted, could achieve the 0.10 g/bhp-hr standard and maintain this level for the remainder of an engine's life. Again, the most likely retrofit equipment to be available for installation under the program is the particulate trap because of cost and technical considerations.

EPA believes it is far less likely that pre-1988 MY buses can be retrofitted to achieve and maintain a 0.10 g/bhp-hr level, for two reasons. First, since there was no PM standard in place before 1988, PM levels for these engines are generally higher than the emissions from later model year engines. Most of these engines are mechanically controlled, and in some cases naturally aspirated, which characteristically cause higher emissions. EPA has assumed such pre-1988 engines average about 0.50 g/bhp-hr, but some engines could be emitting at a much higher level. This would be especially likely for older, high mileage engines. While trap technology could be available for some of these engines to achieve 0.10 g/bhp-hr (current trap efficiencies are about 85%), it is unlikely that this low level could be maintained for the rest of the engine's life (the trap supplier will be responsible for retrofit trap performance up to 290,000 miles). EPA believes that trap suppliers will be unwilling to warrant traps on these high emitting engines for this long a period or will be unable to produce traps for such engines (with the required warranty) for less than the $5000 cost limit.

The second reason EPA feels that equipment meeting the 0.10 g/bhp-hr standard will probably not be available for pre-1988 MY buses is that, based on comments received, bus operators may not be willing to undertake the expense to install such systems on these older buses. Some commenters said that retrofitting older buses would not be cost efficient since the buses would be retired relatively soon after the retrofit. In such cases, bus operators would likely rebuild older bus engines one last time before the retrofit/rebuild program starts and try to make the engines last until they could be retired, thus avoiding the rebuild requirements. These factors suggest that the market for pre-1988 MY engines would be very small and not attractive to trap suppliers who would be required to certify the trap systems for use with the engines.

Under Option 1, bus operators would be required to use upgrade kits on engines not able to achieve the 0.10 g/bhp-hr standard. EPA has assumed that one upgrade kit for the Detroit Diesel 6V92TA engine will be available for use under the program. This kit is currently available and there is no reason to believe the kit will be removed from the market. EPA received comments from Cummins Engine Company that an upgrade kit could be made available for the L-10 engine. However, since very few L-10 engines were sold before 1988, and since EPA believes that 1988 and later My L-10 engines can, and therefore will be required under Option 1 to meet the 0.10 standard, EPA considers it unlikely that kit development will be undertaken. Engine manufacturers have indicated that other pre-1988 engine types do not present an opportunity for an upgrade that would offer a significant PM emission benefit, because of the low volume of these other pre-1988 models that will be rebuilt after 1995 and because there is no apparent upgrade technology that would allow such upgrades to be made profitably by manufacturers. EPA has no information suggesting that these comments are incorrect. Therefore, EPA has assumed that only the currently available kit for the 6V92TA engine will be available for the retrofit/rebuild program for purposes of establishing the averaging option.

In estimating the impact of the retrofit/rebuild program on rebuild practices, EPA has assumed that bus operators would modify their rebuild practices in such a way that the overall fleet cost of rebuilds would not significantly increase due to the retrofit program during the life of the program. EPA believes this is a reasonable assumption because, as described below, it is feasible for bus operators to reduce their fleet retrofit costs by modifying their rebuild practices to increase the time between rebuilds and potentially by eliminating some rebuilds altogether. Moreover, as noted earlier, the public transit industry has a need to save costs because it has limited funding and in many areas is currently facing financial hardship.

Based on industry input, EPA has assumed that under current operating practices the first rebuild of a bus engine generally occurs after five years, with subsequent rebuilds occurring in the eighth and eleventh year of operation. Based on information from the Federal Transportation Administration (formerly Urban Mass Transportation Administration), it appears that buses are kept for about 15 years on average. In addition, EPA assumed that the nationwide bus population age is evenly distributed over the model years that will be affected by this program. Comments to EPA provided by South Coast Regional Transit District indicate that a current typical engine rebuild costs about $10,000. Comments from other transit companies and manufacturers indicate that this estimate is reasonable. Using this cost and rebuild schedule information, EPA estimated the overall cost of current rebuilds to bus operators that would be affected by the retrofit/rebuild program. EPA then developed an annual rebuild schedule based on the presumption that bus operators will modify their current average rebuild schedule of five, eight, and eleven years in order to keep rebuild costs under the program relatively equal to current rebuild costs (using the increased costs necessary to retrofit or upgrade 1988 and later engines and pre-1988 6V92TA engines). EPA assumed a trap cost of $5000, core replacement cost of $700 (based on the current core replacement cost provided by Donaldson Company) incurred after 150,000 miles of trap operation, and an upgrade cost of $2000 for this analysis. Further detail of this analysis is provided in the public docket for this rulemaking under the title, "Supplementary Information—EPA Proposal for an Urban Bus Retrofit/Rebuild Program."

Figure 3 presents the estimated current rebuild schedule for pre-1994 MY buses as well as the modifications to the rebuild schedule anticipated under the retrofit/rebuild program. The modifications that EPA assumed would occur are based on engineering judgement as to what could reasonably be expected given today's rebuild practices. EPA believes that it is reasonable to assume that rebuilds of 1988 and later MY buses scheduled for 1995 could be done one year earlier, in 1994, in order to postpone installing high cost technology. In addition, EPA has assumed that the overall number of rebuilds under the program could be reduced by improved engine maintenance and rebuild practices, resulting in rebuilds being spaced further apart. EPA assumed that with actions such as these, the time interval between rebuilds could be extended by one to two years without engine failure occurring. Finally, EPA assumed that

rebuild patterns for pre-1988 MY buses would remain the same since these buses would likely only have engine upgrade technology available for retrofit. EPA believes that the added cost due to the upgrade would be insufficient to warrant shifting the rebuild schedule for these model years.

EPA recognizes that rebuild schedules vary greatly among transit companies depending on the maintenance practices, rebuild decision criteria, extensiveness of rebuilds, economic factors and other considerations. EPA's goal in designing Figure 3 was to quantify the affects of the rebuild program on fleet rebuild practices in order to more realistically assess the overall benefit of the program. EPA requests comments on Figure 3 and the assumptions used to derive it. In particular, EPA requests comments on whether it is appropriate for EPA to include in its averaging schedule the assumptions that bus operators will move rebuilds up one year to 1994 or delay rebuilds for up to two years in order to postpone the effects of the rebuild regulations. EPA also requests suggestions on ways improve this analsis and to better represent the national bus fleet on average. Commenters should provide data to support their comments where possible.

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Figure 3
Estimated Current Rebuild Schedule

Calendar Year

Engine Model Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
1993						R1			R2			R3				RETIRE
1992					R1 →			R2			R3				RETIRE	
1991				R1 →			R2			R3				RETIRE		
1990		← R1				R2 →			R3 →				RETIRE			
1989		R1			R2		← R3					RETIRE				
1988	R1			R2		← R3					RETIRE					
1987			R2			R3				RETIRE						
1986		R2			R3				RETIRE							
1985	R2			R3				RETIRE								
1984			R3				RETIRE									
1983		R3				RETIRE										
1982	R3				RETIRE											
1981				RETIRE												
1980			RETIRE													
1979		RETIRE														

R1 = First Engine Rebuild
R2 = Second Engine Rebuild
R3 = Third Engine Rebuild

Adjustment Under Option 1 Indicated By: ——→

Rebuild Not Performed Under Option 1 Indicated By: ▨

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b. *Operation of the averaging program.* If Option 1 alone were applied to the national urban bus fleet covered by this regulation, under the above assumptions, the average PM level of buses covered by the program would be similar to those given in Figure 4. (The reader is directed to the supporting documentation for this notice contained in the public docket for this rulemaking for a complete description of the calculations used in preparing Figure 4.) Under Option 2, if an individual bus company had a mix of buses matching the national mix, this curve would approximate the average PM level EPA would expect that transit operator to achieve. However, because all bus fleets differ in engine mix, some bus operators will be able to achieve a fleet average PM level below the national average using the best retrofit technology reasonably achievable, while other companies will not be able to meet the national average. If EPA were to require all bus operators to meet the same fleet PM emission average, some operators would not need to install the best technology reasonably achievable, while others would be required to meet an average that is infeasible for their fleets. Therefore EPA believes it is appropriate to allow for individual, fleet specific targets to be calculated based on the engine makeup of a bus operator's fleet.

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Figure 4
Estimated National Fleet Average PM
Level Under Rebuild Program

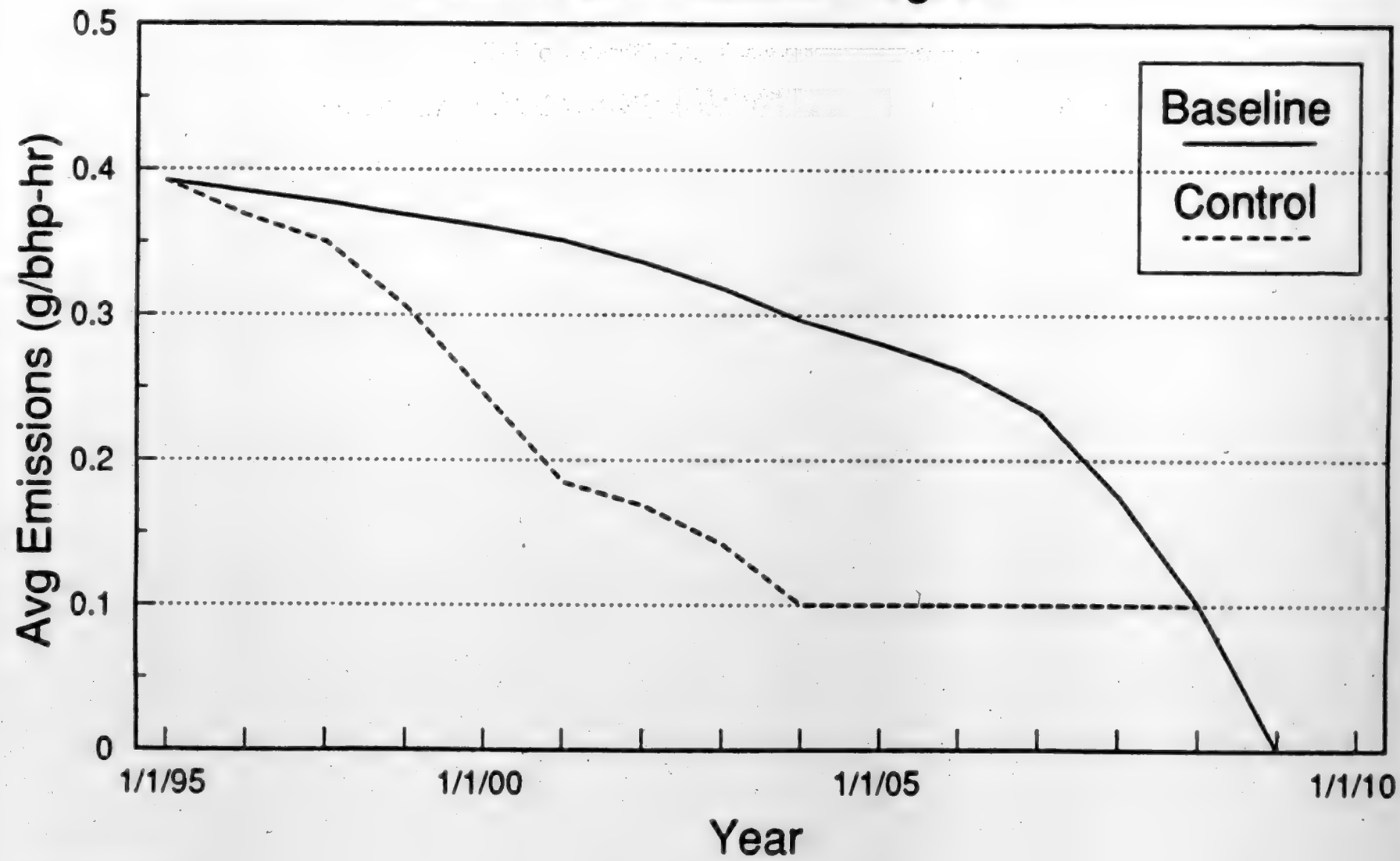

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Using the above assumptions, a process was developed for calculating an annual target level for a fleet (TLF) for an individual bus fleet. The TLF is the maximum level of PM emissions that a bus operator's pre-1994 MY fleet would be allowed to emit on average during a given calendar year. It represents the weighted average emission level a pre-1994 MY fleet would be expected to achieve under Option 1, assuming all engines were rebuilt and retired on the adjusted schedule presented in Figure 3. Specifically, a bus operator's TLF for a given year would equal the expected average emissions of the operator's fleet as of January 1st of that calendar year. For example, a bus operator's TLF for 1998 would equal the expected emissions from the operator's fleet if the operator had rebuilt and retired all of the buses expected to be rebuilt or retired according to Figure 3 by January 1, 1998 (i.e., during the years 1995, 1996, and 1997.) Annual targets for all of the years of the rebuild averaging program would be calculated at the beginning of the program by the transit operator, based on the operator's pre-1994 MY fleet as of January 1, 1995. This approach allows a bus operator to calculate its TLFs well in advance in order to plan a strategy for meeting its annual targets. Of course, if pre-1994 MY buses were added to the fleet after this date, new TLFs would have to be calculated to reflect the new fleet mix.

In order to calculate its annual TLFs, a bus operator must know the PM emission levels to use for each engine in its pre-1994 fleet both before and after the engine's rebuild time (shown in Figure 3). Table 1 contains a list of all engines known by EPA to be covered under the retrofit/rebuild program. Table 1 also provides the assumed PM levels for both before and after an engine is rebuilt under the program to be used in calculating the TLF. Also provided is an estimate of the percentage of the national pre-1994 MY fleet each engine model is expected to represent as of January 1, 1995. These percentages are based on the "Transit Bus Engine Rebuilding Survey" provided by the American Public Transit Association (APTA), and have been included to give an indication of the program's impact. The pre-rebuild PM levels are taken from certification data submitted by engine manufacturers during the certification process. For pre-1988 MY engines, EPA assumed a pre-rebuild level of 0.50 g/bhp-hr except where the engine manufacturer provided data indicating a different level during the comment period for the September 1991 NPRM. The 0.50 g/bhp-hr PM level for pre-1988 engines is based on limited testing of pre-1988 heavy-duty engines performed by EPA. EPA requests comment on the accuracy and completeness of the information in Table 1.

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Table 1

Urban Bus Engine PM Levels

Engine Model	Model Year Sold	% of Affected Population	Pre-Rebuild PM Level (g/bhp-hr)	Post-Rebuild PM Level (g/bhp-hr)
DDC 6V92TA	1979-1987	32%	0.50	0.30
	1988-1989	<1%	0.30	0.10
DDC 6V92TA DDECI	1986-1987	4%	0.50	0.50
DDC 6V92TA DDECII	1988-1991	21%	0.31**	0.10
	1992	6%*	0.25	0.10
	1993	6%*	Certification Level	0.10
DDC 6V71N	1973-1987	8%	0.50	0.50
	1988-1989	<1%	0.50	0.10
DDC 6V71T	1985-1986	3%	0.50	0.50
DDC 8V71N	1973-1984	<1%	0.50	0.50
DDC 6L71TA	1990	<1%	0.59	0.10
	1988-1989	<1%	0.31	0.10
DDC 6L71TA DDEC	1990-1991	<1%	0.30**	0.10
Cummins L10	1985-1987	1%	0.65	0.65
	1988-1989	3%	0.55	0.10
	1990-1991	4%	0.46**	0.10
Cummins L10 EC	1992	2%*	0.25	0.10
	1993	2%*	Certification Level	0.10
Other Engines	Pre-1988	8%	0.50	0.50
	1989-1993	-	Certification Level	0.10

* Estimate based on current sales

** 1991 PM standard of 0.25 g/bhp-hr was met using emission credits under EPA's banking and trading program

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In order to compute a target level for a fleet (TLF) for a particular bus fleet, the information in Table 1 would be used in conjunction with the adjusted rebuild schedule in Figure 3 and a list of all pre-1994 buses in an operator's bus fleet. Figure 3 indicates which emission level (pre-rebuild or post-rebuild) to use on any given date in order to calculate a target level for a fleet (TLF). The date at which the emission level changes from the pre-rebuild PM level to the post-rebuild PM level is January 1st of the year following the first rebuild scheduled to occur under the program according to Figure 3. For example, a bus operator would calculate its TLF for 1998 using the pre-rebuild PM levels for the buses that are not scheduled to be rebuilt in 1995, 1996 or 1997 (which according to Figure 3, are buses from MY 1993, 1992, 1990, 1989, and 1998) and using the post-rebuild PM levels for the buses that are scheduled to be rebuilt in 1995, 1996, and 1997 (buses from MY 1991, 1987, 1986, 1985, and 1984).

The target level for a fleet (TLF) for any given calendar year would be the weighted average of the expected emission levels (taken from Table 1) of all pre-1994 MY buses that are fifteen years old or less in that year. Equation 1 below would be used to calculate the target. It should be noted that if a fleet has more than one engine type for a given model year, a weighted PM emissions level would need to be calculated and used for calculating the TLF. If all buses of a given model year have the same engine type, the weighted PM emissions level would simply be the PM emission level of that engine type.

Equation 1

$$TLF_{CY} = \frac{\left(\sum_{MY=CY-15}^{1992} (B_{MY}) * (WP_{MY})\right)}{\sum_{MY=CY-15}^{1993} (B_{MY})}$$

B = Number of buses as of 1/1/95
WP = Weighted Projected PM emissions level
CY = Calendar year of target
MY = Model year

Where:

$$WP_{MY} = \frac{\left(\sum_{1}^{z} (B_z) * (P_z)\right)}{\sum_{1}^{z} (B_z)}$$

z = All engine configurations in MY
B = Number of buses as of 1/1/95
P_z = Engine specific PM level (See Table 1)

In order for a bus operator to comply with the averaging program, the actual fleet average level of emissions attained by the operator must be equal to or below its TLF. The fleet level attained (FLA) by a bus operator is the weighted average of the actual (i.e., certified) PM emission levels of all the pre-1994 MY buses in the fleet. The FLA would equal the sum of the emission levels of every bus in the company's fleet divided by the total number of buses. A bus' actual emission level will vary depending on whether the engine is in its original configuration or whether emission reduction technology has been installed. For this program, engines in their original configuration are assumed to be operating at their pre-rebuild levels in Table 1. For engines not in their original configuration, the post-rebuild emission level will depend on the certification level of the equipment that was installed at time of rebuild. The post-rebuild particulate emission level obtained by such equipment will be determined as part of the certification process described later in this notice. Buses retired early (sooner than the 15 year average life used in equation 1) would be treated as though they were modified buses with zero emissions. Equation 2 would be used to calculate the bus operator's fleet level attained (FLA) of PM emissions. TLF and FLA values should be rounded to two decimal places.

Equation 2

$$FLA = \frac{\left(\sum_{MY=MY_1}^{1993} (B_{MY}) * (WE_{MY})\right)}{\left(\sum_{MY=MY_1}^{1993} B_{MY}\right) + B_R}$$

B = Number of buses still in fleet
WE = Weighted PM Emissions
MY_1 = Model year of oldest bus

Where:

B_R = Number of buses retired that would have been less than 15 years old on 12/31 of the calendar year for which the FLA is being calculated, and

$$WE_{MY} = \frac{\left(\sum_{1}^{q} (B_q) * (E_q)\right)}{\sum_{1}^{q} (B_q)}$$

q = All engine configurations in MY
B = Number of buses still in fleet
E_q = Engine specific PM emissions level
MY = Model year

Example

To provide a thorough understanding of how the averaging program would work, it will be applied to a fictitious transit authority called "Rapid Transit". Table 2 shows Rapid Transit's assumed fleet makeup along with pre-rebuild and post-rebuild emission levels taken from Table 1.

TABLE 2.—MAKEUP OF HYPOTHETICAL "RAPID TRANSIT" BUS FLEET

Engine	Model year	Quantity as of 1/1/95	Pre-rebuild level (g/bhp-hr)	Post-rebuild level (g/bhp-hr)
DDC 6V92TA DDEC II	1992	75	0.25	0.10
Cummins L-10	1990	100	.46	.10
Cummins L-10	1989	30	.46	.10
DDC 6V92TA DDEC II	1989	5	.31	.10
MAN	1987	80	.50	.50
DDC 6V92TA	1984	150	.50	.30
DDC 6V71N	1982	70	.50	.50
DDC 6V71N	1977	100	.50	.50

The first step is to calculate a target level for a fleet (TLF) for each year. A sample TLF calculation is provided in Table 3 for the Rapid Transit's bus fleet for calendar year 1996. Since the 1984 and 1987 MY engines are scheduled to be rebuilt in 1995, only those buses would be expected to be at their post-rebuild level. The complete set of targets for Rapid Transit's fleet is shown in Table 4.

Next, the bus operator would be able to develop a strategy to comply with the target levels. Table 4 presents one approach open to Rapid Transit that would comply with the Option 2 averaging program. The strategy used in this approach maximizes the number of buses retired earlier than 15 years of use while it minimizes the number of particulate traps necessary to meet the requirements. Table 5 presents a sample fleet level attained (FLA) calculation for 2,000, given the schedule shown in Table 4. For this example, EPA assumed that traps would reduce the post-rebuild particulate emissions level to 0.10 g/bhp-hr in order to calculate the FLAs. When actual FLAs are calculated under

the program, the emission level provided during the equipment certification process would be used for the post-rebuild particulate emissions level.

TABLE 3.—SAMPLE CALCULATION OF TLF FOR CALENDAR YEAR 1996

Engine	Model year	Quantity	PM level (g/bhp-hr)	Buses × PM level
DDC 6V92TA DDEC II	1992	75	0.25	18.75
Cummins L-10	1990	100	.46	46.00
Cummins L-10	1989	30	.46	13.80
DDC 6V92TA DDEC II	1989	5	.31	1.55
MAN	1987	80	.50	40.00
DDC 6V92TA	1984	150	.50	45.00
DDC 6V71N	1982	70	.50	35.00
DDC 6V71N	1977	(1)	(1)	(1)
Bus and emission total		510		210.10

[1] Retired.

$$TLF\ 1996 = \frac{TotalEmissions}{TotalBuses} = \frac{200.1}{510} = 0.39\ g/bhp\text{-}hr$$

TABLE 4.—RAPID TRANSIT ACTIONS UNDER REBUILD PROGRAM

Calendar year	TLF*	Actions taken during calendar year to achieve following year's TLF	FLA*
1995	N/A	Retire 100 '77 MY buses	
		Upgrade 150 '84 MY buses	0.46+
1996	0.39	No rebuilds or retirements occur	.39
1997	.39	Retire 70 '82 MY buses	.39
1998	.38	Retire 37 '84 MY buses at 14 years	.38
1999		Retire 113 '84 MY buses	
	.35	Retire 80 '87 MY buses at 12 years	.35
		Install traps on 53 '90 MY buses	
2000	.21	No rebuilds or retirements occur	.21
2001	.21	No rebuilds or retirements occur	.21
2002		Retire 35 '89 MY buses	
	.21	Retire 47 '90 MY buses at 14 years	.10
		Install traps on 20 '92 MY buses	
2003	.10	No rebuilds or retirements occur	.10
2004	.10	Retire 14 '92 MY buses at 12 years	.10
2005		Retire 53 '90 MY buses	
	.10	Retire 19 '92 MY buses at 13 years	.10
2006	.10	No rebuilds or retirements occur	.10
2007	.10	Retire 42 '92 MY buses	.10

*The FLA listed for each calendar year is the actual emission level calculated on January 1 of that year. Beginning on January 1 of a calendar year (and over the entire year), the FLA must be at or below the TLF for that calendar year.

TABLE 5.—SAMPLE CALCULATION OF 2000 FLA

Engine	Model year	Quantity	PM level (g/bhp-hr)	Buses × PM level
DDC 6V92TA DDEC II	1992	75	0.25	18.75
Cummins L-10	1990	47	0.46	21.62
		53	0.10	5.30
Cummins L-10	1989	30	0.46	13.80
DDC 6V92TA DDEC II	1989	5	0.31	1.55
MAN	1987	80	0.00	(1)
DDC 6V92TA	1984	(2)	(2)	(2)
DDC 6V71N	1982	(2)	(2)	(2)
DDC 6V71N	1977	(2)	(2)	(2)
Bus and emission total		290		61.02

[1] Retired early.
[2] Retired.

The strategy shown in Table 4 is only one of several combinations of actions that could be taken to satisfy the program requirements. Bus operators would be able to choose any combination of emission reduction technology and bus retirement that best suited their situation. This allows maximum flexibility for the market to determine the most cost effective means for reducing emissions. Also, it should be noted that in order for FLAs to be at or below a TLF on January 1st of a given year, the bus operator must take actions (e.g., engine upgrades, trap retrofits, bus retirements) during the previous calendar year(s).

EPA is aware that working toward clean air is already a high priority for many transit companies across the country. Many have demonstration programs for pollution control technologies such as particulate traps and alternative fuels. These are often funded through special grants from Federal, State, or local government entities. EPA believes that benefits beyond those projected in Figure 2 may be achieved through the continuation and expansion of these efforts. Also, availability of additional funding for the rebuild program would reduce the need to revise rebuild schedules. This would also increase the benefits of the program. However, there is no evidence at this time that additional funding will be available in the future.

c. *Legal authority for averaging program.* EPA believes that this averaging program is consistent with the statutory requirements of section 219(d). Under section 219(d), EPA must promulgate regulations requiring that urban buses comply with an "emissions standard or emissions control technology requirement [that] reflects(s) the best retrofit technology and maintenance practices reasonably achievable." Though this language is silent on the issue of averaging, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing section 219(d). EPA may prescribe either an emission standard or technology requirement. The statute does not specify what standard or technology must be implemented. The use of the phrase "reasonably achievable" gives EPA discretion in determining the technology or maintenance practices upon which the regulations will be based. Moreover, the language of section 219(d) requires that "urban buses" comply with EPA's regulations, rather than requiring "any" or "each" or "every" urban bus to comply with EPA's regulations. This indicates that EPA's regulations may apply to urban buses in the aggregate, and need not apply to each urban bus individually. Taking these points together, EPA believes the statute permits the Agency to consider the emissions and cost savings potential of averaging in setting standards under this section, and to set average standards where such standards meet the statutory standard-setting test of reflecting the best retrofit technology and maintenance practices reasonably achievable.

EPA believes that the averaging program detailed above is fully consistent with this provision. The program gives bus operators the flexibility to meet their required emissions level using the most cost effective strategy available to them. The program also gives manufacturers of control technology a greater incentive to keep prices low as bus operators will have more ability to choose different methods of reducing emissions.

In addition, EPA believes that the restrictions included under this program can result in environmental benefits. The emission requirements mandated for affected fleets under this program are derived from the assumptions discussed in part 2.A. above. These assumptions include specific schedules for the rebuilding and retirement of each bus in an affected fleet. EPA has no independent authority under section 219(d) to require any bus operator to rebuild or retire its buses at any specific time or according to any specific schedule.[1] Therefore, in the absence of this averaging program, EPA regulations would not give bus operators any incentive to rebuild or retire their buses in a timely manner and in fact could give operators an incentive to delay rebuilding or retirement, potentially resulting in a large number of pre-1993 buses operating at high emissions levels even into the next decade. Because older buses generally are the highest-emitting buses, postponement of their rebuild or retirement would have an adverse environmental impact.

The averaging program, however, requires bus operators to meet a fleet-wide emission level that assumes that buses are retired on the usual schedule, after about fifteen years of use. Additionally, though EPA's rebuild schedule assumes some delay in rebuilding post-1988 engines, this assumption is reasonable, for the reasons discussed in part 2.A., and precludes even further postponements in rebuilding that may occur absent such an averaging program. Moreover, as EPA has designed this program to encourage the timely retirement of older buses, the program will encourage the purchase of new urban buses that must meet much stricter emissions standards.

In any event, the averaging program has been carefully structured to have no adverse environmental impact. The emission levels proposed to be achieved by each affected urban bus fleet would be the same as those expected if all urban buses in each affected fleet complied with Option 1.

[1] EPA may have authority to require such rebuilding or retirement under its general rulemaking and enforcement provisions.

3. Certification of Retrofit/Rebuild Equipment

In order to ensure that the retrofit/rebuild options described above will result in actual emission reductions, an equipment certification program will be necessary. In the September 1991 NPRM, EPA discussed a certification program based on the type of equipment needing to be certified. For engine-based retrofits/rebuilds, EPA proposed that if an engine was brought to a configuration identical to one previously demonstrated to meet the rebuild standards, further testing would not be necessary. For aftertreatment-based retrofits/rebuilds, EPA requested comments on how to certify such equipment.

In response to the September 1991 NPRM, commenters generally supported EPA's approach for certification of engine-based rebuilds. EPA did not receive detailed comments in the area of aftertreatment certification. In light of the two retrofit/rebuild options contained in today's notice, EPA requests comments on the following approach for certification of retrofit/rebuild equipment.

For exhaust aftertreatment certification, the equipment manufacturer would need to perform emissions testing on an engine equipped with the aftertreatment system. The engine/aftertreatment system would be required to be tested over the Federal test procedure (FTP) for heavy-duty engines. In order to obtain certification, the manufacturer would have to comply with the 0.10 g/bhp-hr PM rebuild standard for a period of 290,000 miles, with an allowable maintenance interval of 150,000 miles.

To meet these certification requirements, an equipment manufacturer would have to submit emissions data showing compliance with the 0.10 g/bhp-hr PM standard for a given engine/aftertreatment system combination. In addition, they would have to assume liability for the emissions performance of the equipment

(if properly installed during the rebuild) for 290,000 miles, with an allowable maintenance interval of 150,000 miles. Since the engines on which this equipment will be retrofit are older engines, equipment manufacturers would need to certify their system on a representative engine which has been rebuilt at least once under normal operating conditions (i.e., around 200,000 miles of actual operation).

If the same aftertreatment system is to be used on more than one engine model, the equipment manufacturer would need to perform emissions testing on only the highest PM emitting engine model (based on engine-out PM levels without exhaust aftertreatment). If the highest PM emitting engine can meet the 0.10 g/bhp-hr PM standard using the aftertreatment system, EPA would accept this as proof that all lower emitting PM engines meet the standard as well. Determination of which engine has the highest PM levels would be based on previous certification data for 1988 and later engines, or would need to be supported by engine testing for pre-1988 engines. As noted above, the equipment manufacturer still would be required to assume liability for the performance of the aftertreatment equipment on all of the applicable engine models for 290,000 miles of use, with a 150,000 mile allowable maintenance interval.

The certification requirements for engine-based rebuilds would depend on the type of equipment needing to be certified. If an equipment manufacturer wishes to certify an upgrade kit which brings an older version of an engine to a later model year configuration of the same engine which was already certified, certification testing may not be required. In such a case, the equipment manufacturer would be required to show, based on existing certification data, that an engine equipped with the upgrade kit complies with the retrofit/rebuild standard of 0.10 g/bhp-hr or achieves at least a 25 percent PM reduction on that engine model.

In order to prove that an equipment configuration results in a 25 percent or greater PM emission reduction, the equipment manufacturer could compare existing certification PM data for the new configuration to that of the old configuration, if both exist. Otherwise, (as for pre-1988 engine models when there was no certification PM standard) the equipment manufacturer would be required to test an engine over the FTP both before and after installing the equipment on the same engine. Based on the results, the equipment manufacturer must demonstrate compliance with either the 0.10 g/bhp-hr PM standard or the 25 percent PM reduction. In addition to these requirements, the equipment manufacturer must assume emissions liability for their equipment for 290,000 miles, with an allowable maintenance interval of 150,000 miles.

For engine-based equipment that brings an engine to a configuration different than any previously certified engine configuration, the certification process would be similar to that described earlier for exhaust aftertreatment equipment. The equipment manufacturer would have to test an engine over the FTP both before and after installing the equipment. The emissions data from such testing must demonstrate compliance with the 0.10 g/bhp-hr PM standard or meet the 25 percent PM reduction requirement. For fuel conversion kits, the equipment manufacturer would be required to warranty the emissions performance for 290,000 miles, with an allowable maintenance interval of 150,000 miles.

To demonstrate compliance with the 25 percent reduction, the equipment manufacturer could also test a bus on a chassis dynamometer over a typical bus driving cycle. The manufacturer would have to test the bus both before and after installing the rebuild equipment. Based on the PM emissions measured during each test, the manufacturer would need to show a 25 percent reduction in PM emissions in order to qualify for certification under this provision. The equipment manufacturer would also be required to submit information which supports the test cycle as a typical urban bus driving cycle.

EPA requests comments on all of the certification provisions described above. Commenters are encouraged to submit alternative ideas for certification, including justification for such ideas.

4. Provisions for Buses Retrofit or Upgraded Before 1995

One area that was not discussed in the NPRM or in the comments EPA received is how to handle buses that already have particulate traps or alternative fuels technology installed prior to the start of the program. This would include buses which were retrofit with traps or alternative fuels, as well as buses purchased with the emission reduction technology already installed. A variety of technologies are currently being demonstrated in fleets across the country and it is likely that more buses will be equipped with such technologies before the start of the program in 1995. This becomes important under both options since these buses will likely be operating at PM levels below the levels contained in Table 1 and may already be at or below the 0.10 g/bhp-hr PM level. Without including provisions for previously retrofit or upgraded buses, EPA's alternatives would be to either require certification testing over the FTP or require installation of certified equipment, both of which EPA believes to be unreasonable for the reasons discussed below and may act as a deterrent for installing emission reduction equipment voluntarily before the program begins.

EPA believes the purpose of including provisions for previously rebuilt or upgraded buses is to avoid placing new requirements on buses that are already equipped with technology that achieves significant emission reductions at the beginning of the program. There may be little or no emissions benefit from replacing an uncertified trap system with a certified system or installing a trap system on an alternatively fueled vehicle at time of rebuild, as would be required without these provisions. EPA believes that where buses have been purchased or retrofit before 1995 with such emissions reduction technology, these buses will meet the "best technology reasonably achievable" requirements of the program, as long as the engine and any aftertreatment equipment is in proper working condition and is providing a suitable level of particulate control. In general, trap equipped and alternatively fueled buses have been shown to operate at or below the 0.10 g/bhp-hr PM level in tests conducted by EPA and industry. Summaries of EPA's test results have been placed in the public docket for this rulemaking (EPA documents "EPA Testing of a Methanol-Fueled Detroit Diesel Corporation 6V-92TA Diesel Bus Engine" and "Heavy-Duty Engine Testing Report, Donaldson Dual Trap Oxidizer System, Test Results—1990"). In addition, Detroit Diesel Corporation has certified a 6V92TA methanol fueled engine which would meet the 0.10 g/bhp-hr PM standard and is in the process of certifying a trap equipped engine that is expected to meet the 0.10 g/bhp-hr PM standard.

Furthermore, certification testing for such equipment may not be practical given the small volumes and the potential variety of system configurations, and the fact that such equipment has already been installed. Also, it is unclear who would be responsible for such testing even if it were required. Finally, EPA does not want to discourage bus operators from installing equipment which lowers the PM level of their buses. Without such provisions, bus operators will be less

likely to install equipment before 1995 if they may be required to replace the equipment once the program begins in 1995.

Since most of the technologies currently being used have not been certified, EPA must estimate the PM level at which these previously retrofit buses are operating based on the testing that has been conducted. EPA's limited testing indicates that for buses previously equipped with particulate traps or converted to alternative fuels, a PM level of 0.10 g/bhp-hr can reasonably be expected. (As mentioned above, EPA memos summarizing the results from EPA's testing of a trap equipped bus, and a methanol-fueled diesel bus engine have been placed in the public docket for this rulemaking.) In addition, comments received from the Manufacturers of Emission Controls Association and ICI Products on particulate traps and alternatively-fueled vehicles support such an assumption. EPA requests any test data on the emission performance of retrofit buses currently in-use that will further help determine the validity of this assumption.

Under Option 1, bus operators would not be required to retrofit alternative fueled buses or replace existing trap systems at time of rebuild if their bus could comply with the provisions described below. Under Option 2, bus operators would use the engine's original certification PM level as the pre-rebuild PM level in order to calculate their target level for a fleet (TLF) as usual. However, the bus operator could now assume a PM level of 0.10 g/bhp-hr for buses that comply with the provisions described below when calculating their fleet level attained (FLA) of PM emissions. In effect, this gives the bus operator appropriate credit for a retrofit done before the beginning of the retrofit/rebuild program.

Even though EPA would not require certification testing over the FTP for such previously retrofit systems/engines as it would require for new retrofit equipment, EPA is considering requiring that in order for a bus to take advantage of these provisions, that the bus should not exhibit any visible emissions during normal operation. (To require certification over the FTP for such buses would not be practical and would be very expensive since a bus operator would have to remove its buses from operation and ship the engine to one of the few test laboratories capable of performing the heavy-duty FTP.) EPA would use a stall speed test to determine whether visible emissions occur during normal operation as described below. While opacity does not exactly correlate to PM emissions measured over the FTP cycle, visible emissions are a signal that a problem exists with a trap-equipped bus or an alternatively-fueled bus. Visible emissions occur at an opacity level of about four percent.

One transit operator that has done considerable opacity testing found that exhaust from a trap equipped bus often could not be read on an opacity meter while the same bus without the trap registers about ten percent peak opacity during a stall test. The engine that was tested had a certification engine-out PM level without the trap of 0.30 g/bhp-hr. One comment received by EPA on the September 1991 NPRM and supported by transit operators in discussions with EPA indicated that a general threshold for visible emissions is about 0.25 g/bhp-hr. The reader is directed to the EPA memorandum, "Opacity of Urban Bus Exhaust During a Stall Speed Test," contained in the public docket for this rulemaking for a summary of EPA's discussions with transit operators concerning the stall speed test.

Again, EPA recognizes that smoke is an indication of high PM emissions but a direct correlation to a specific PM level may not be made in all cases. However, based on the limited data above, EPA feels a smoke test may be a useful tool for these provisions and also for enforcement where no other testing is reasonably available for such purposes. Given the complexity of trap systems and alternative fuels conversions, and given the current cost of such systems, EPA does not expect less efficient systems to be offered for sale before the program starts as a way of taking advantage of the provisions for buses retrofit prior to 1995. EPA requests comments on the use of opacity testing in this program including any data that would help EPA determine its usefulness. EPA also requests comments on the likelihood that emission control equipment installed on buses retrofit before 1995 would degrade in a manner that would allow exceedance of the 0.10 g/bhp-hr level without failing the opacity test.

If buses do exhibit visible emissions, EPA would not assume that they meet the best technology reasonably achievable, and the buses would not be covered by the provisions described above. The bus operator would be required to assume that the bus is operating at the original certification level for purposes of determining compliance with Option 1 or calculating its FLA under Option 2.

For purposes of determining whether or not a bus complies with the requirements of these provisions and can be assumed to be operating at a PM emission level of 0.10 g/bhp-hr, a visual opacity check would be performed over a short test procedure commonly known in the bus industry as a stall speed test. (As described in the enforcement section, EPA could perform the stall speed test during an audit on such buses to confirm compliance with these provisions.) This test procedure, found in most bus maintenance and transmission manuals, is currently used as a check of the engine and transmission. It is usually run after engine tuneup, engine or transmission repair, or whenever the engine appears to be operating at less than peak efficiency. It has also been developed for use as an emissions short test in an effort to correlate a short test with the FTP cycle.[3] EPA believes that this test is a reasonably simple way to simulate a fully loaded bus pulling away from a curb, which is generally when the worst PM emissions would be expected to occur.

The test consists of first securing the coach using the brakes and blocking the vehicle and then, with the transmission in drive, depressing and accelerator to wide open throttle and loading the engine by "stalling" the transmission. Stall speed is the maximum engine RPM, with transmission engaged and the bus remaining stationary. There are safety precautions and precautions to protect the engine and transmission (given in the maintenance manual) which also must be followed. EPA would not run the test during unusual operating times such as right after a cold start or after an unusually long period of engine idle when trap equipped buses have been known to have brief visible emissions due to reasons other than trap failure. EPA requests comments on the use of this test procedure and suggestions on ways to best tailor it to suit this program, preferably supported by data.

At time of rebuild the bus operator would have a choice of installing certified equipment or continuing to use the previously installed equipment. Under these provisions, the bus operator can assume a level of 0.10 g/bhp-hr for these buses even if no certified equipment is installed, provided no visible emissions occur during the stall speed test. If a bus operator chooses to continue to use the previously installed equipment, then the general emission

[3] "Development of an I/M Short Emissions Test for Buses", David M. Human and Terry L. Ullman, SAE paper 920727.

performance of the equipment would be the bus operator's responsibility. This responsibility would continue until either certified equipment was installed or the bus was retired.

EPA believes that a visual check of PM emissions could be useful even though it does not guarantee that the bus meets the 0.10 g/bhp-hr PM level. There will be relatively few buses to which these provisions apply. EPA believes that even if such buses do exceed the 0.10 g/bhp-hr PM level, these exceedances would not likely be enough to justify the replacement of working equipment with new certified equipment. EPA requests comments on all aspects of the above provisions for buses retrofitted before 1955. EPA is especially interested in comments on the use of the stall test and opacity as a performance check. Commenters should provide data to support their comments where possible.

These provisions also would apply to 1993 MY buses that must comply with a new vehicle PM standard of 0.10 g/bhp-hr. These buses will likely be certified and sold with aftertreatment technology. At time of rebuild, EPA would not require the replacement of such equipment under these provisions. Fleet operators would likely check the equipment to make sure it was mechanically sound and, based on this inspection, make a decision on whether or not to replace components or entire systems.

Buses with engines that have been upgraded to a later certified engine configuration before January 1, 1995 could also be covered under these provisions. EPA would assume that such buses were operating at the certification level of the later model year engine configuration for purposes of determining compliance with Option 1 or 2. For example, a 1982 Detroit Diesel 6V92TA engine upgraded to the 1989 6V92TA configuration would be assumed to be operating at the PM level of the 1989 configuration. Buses that are equipped with upgrade kits that are covered under these provisions would not be subject to the stall test described above. However, the bus operator would be responsible for maintaining the engine at the upgraded configuration until the bus is retired.

5. Enforcement

EPA believes that the enforcement provisions of section 203(a)(5) give EPA considerable discretion to determine which persons are subject to liability for violations of section 219. Unlike the enforcement provisions for new vehicles, which specify which actors are liable for violations (generally manufacturers), section 203(a)(5) prohibits any person from violating section 219. Given this discretion, EPA must determine which persons should be held liable for violations of the retrofit/rebuild program.

For enforcement of the retrofit/rebuild program, EPA believes the liability falls onto two groups. Equipment manufacturers would be responsible for the emissions performance of their equipment while bus operators would be responsible for meeting the retrofit/rebuild program requirements detailed in either Option 1 or Option 2.

Equipment manufacturers would be responsible for submittal of certification data for their equipment certification, as described above, as well as providing instructions on how to install and properly maintain the equipment. The equipment manufacturer would also be required to assume liability for equipment that is properly installed and maintained as described in the instructions. Therefore, if EPA determines that the bus operator properly installed and maintained the equipment, and the equipment fails to comply with the provisions contained in today's notice, liability would rest on the equipment manufacturer.

For bus operators, the September 1991 NPRM contained proposed regulations for the enforcement of the retrofit/rebuild program. The proposed regulations detailed the records that bus operators would be required to maintain under the program. These records included purchase records, receipts, and part numbers for parts and components used in the rebuilding of urban bus engines. Under both of the retrofit/rebuild program options contained in today's notice, EPA foresees a similar means of enforcement. For the purpose of showing compliance with the retrofit/rebuild program, bus operators would be required to maintain the above information until all 1993 and earlier urban buses have been retired from their fleet.

EPA is also considering expanding the use of the stall speed test discussed in the previous section as an enforcement check for all buses that are retrofit with equipment certified to the 0.10 g/bhp-hr PM level. EPA received comments supporting the use of a general opacity test as an enforcement tool for this program. During an audit of a bus operator, EPA could request that a stall test be performed on any bus that has been rebuilt with equipment certified to the 0.10 g/bhp-hr PM standard to determine whether the retrofit/rebuild equipment is operating properly. EPA believes the stall test may be a more effective enforcement tool compared to testing an engine and retrofit system over the FTP transient cycle to determine if the retrofit equipment is meeting the 0.10 g/bhp-hr PM standard. As noted earlier, testing a bus engine over the heavy-duty engine FTP is not very practical on a large scale since it requires the removal of the engine from the bus and shipping it to a test laboratory. EPA would expect that failure of the stall test would lead to a determination of the cause of failure and liability. EPA requests comment on whether or not to expand the use of the stall test in this way.

Under the retrofit/rebuild program, bus operators would not be required to submit information to EPA stating the option with which they are complying. In fact, bus operators would be allowed to switch back and forth between options. However, a bus operator cannot switch to an option unless it can show that it has been in complete compliance with the requirements of that option for all previous years of the program, as well as the current year.

Transit operators will be required to keep records on equipment purchases and histories of individual buses subject to the requirements as described in the NPRM for this program. If upon inspection of a bus operator's records, EPA finds that the bus operator is not in compliance with one of the options described in today's notice, the bus operator would be held liable. As stated in section 205(a) of the Clean Air Act, any person who violates the provisions of the urban bus retrofit/rebuild program shall be subject to a civil penalty of not more than $25,000 per violation. For Option 1, EPA would consider each bus that is rebuilt without installing the appropriate equipment to be a separate violation, subject to a separate $25,000 penalty. For Option 2, if a fleet is in violation of its TLF, EPA would make a determination of the minimum number of buses that would need to be retrofitted or rebuilt in order to comply with the TLF. The bus operator would be subject to a separate $25,000 penalty for each of these buses that would need to be retrofitted or rebuilt. EPA specifically requests comments on the enforcement provisions contained in today's notice.

B. HDE Standards Useful Life Requirements

As noted above, the September 1991 NPRM also proposed two new emissions standards as required by the Clean Air Act. First, EPA proposed a PM standard for 1994 and later MY urban buses. Second, EPA proposed a NO_x standard for 1998 and later MY heavy-duty

engines. The NPRM did not directly address the useful life requirements for the new standards. As a result, the requirements would have been the same as for the current HDE standards. The current useful life requirements are eight yeas for all HDEs, or 110,000 miles for light HDEs, 185,000 miles for medium HDEs, and 290,000 miles for heavy HDEs.

However, a provision of the Clean Air Act Amendments of 1990 requires that the useful life provision for these new urban bus and HDE standards be revised. Section 202(d)(1) of the Clean Air Act, as amended, requires that for light-duty vehicles, light-duty vehicle engines and light-duty trucks, any requirement that first becomes applicable after the enactment of the Amendments must mandate a useful life of ten years or 100,000 miles, whichever occurs first, unless the Clean Air Act specifies another useful life. Moreover, section 202(d)(2) requires that regulations prescribing useful life for any other motor vehicle engines (except motorcycles), including HDEs and urban buses, shall be the same period as that required in paragraph 202(d)(1) "* * * unless the Administrator determines that a period of use of greater duration or mileage is appropriate in lieu thereof." In previous rulemakings, EPA has determined that HDEs would be subject to a useful life requirement for mileage greater than 100,000 miles (i.e., the mileage requirements of 110,000 miles, 185,000, and 290,000 miles mentioned above). However, EPA's previous rulemakings had set the duration of the useful life period for HDEs at eight years, which is less than the ten years now required by section 202(d)(2). In order to comply with the revised Clean Air Act, EPA is proposing to extend the useful life requirements for the 1994 PM standard for urban buses and the 1998 NO_x from eight years to ten years, while retaining the current useful life mileage provisions.

The emission standards already in place for HDEs will not be affected by this proposed change in HDE useful life. The Clean Air Act states that the revised useful life requirements are only for new standards promulgated after the enactment of the 1990 Amendments. Therefore, the only HDE emissions standards which would be affected a this time are the proposed 1994 and later MY urban bus PM standard and the proposed 1998 and later HDE NO_x standard. EPA is not proposing to apply the useful life change to the proposed 1993 MY bus PM standard, also contained in the September 24, 1991 NPRM. EPA believes this is justified because the 1993 bus PM standard is not a new standard, but rather, it expands the applicability of the existing 1993 MY urban bus PM standard to a slightly larger group of buses for only one year.

III. Public Participation

In order to provide interested parties with sufficient time for the review of today's notice prior to the public workshop, the agency distributed advance copies to a variety of groups that have expressed interest in the retrofit/rebuild program in the past.

EPA is holding a public workshop on this notice and reopening the comment period for this rulemaking in order to facilitate a better understanding of the proposals and to provide the public with the maximum opportunity for input in developing the final rule. Comments are invited on all of the areas described in today's notice. For those submitting comments, whenever possible, full supporting rationale, data, and detailed analyses should be submitted to allow EPA to make maximum use of the comments.

At the workshop, EPA will make a presentation highlighting the options and information contained in today's notice. After EPA's presentation, attendees will be encouraged to ask questions and make oral presentations. Any person desiring to present testimony at the public workshop is asked to notify the contact person listed above of such intent at least seven days before the workshop. The contact person should also be provided with an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the workshop to schedule the order of testimony.

EPA suggests that a sufficient number of copies of the statement or material for presentation be brought to the workshop for distribution to the audience. In addition, it would be helpful for EPA to receive an advance copy of any statement or material for presentation before the scheduled workshop date. The official record will be kept open for 30 days following the workshop to allow submission of rebuttal and supplementary testimony.

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, will be the presiding officer at the workshop. The workshop will be conducted informally, and technical rules of evidence will not apply. A court reporter will be present at the workshop to make a transcript of the proceedings and a copy will be placed in the docket. Anyone desiring a copy of the transcript should make individual arrangements with the court reporter at the time of the workshop.

Dated: July 15, 1992.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-17660 Filed 7-24-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Below 1 GHz Negotiated Rulemaking Advisory Committee; Schedule of Meetings

July 23, 1992.

AGENCY: Federal Communications Commission.

ACTION: Notice of Advisory Committee Establishment, Notice of Advisory Committee Meetings.

SUMMARY: The Federal Communications Commission has established the Below 1 GHz LEO Negotiated Rulemaking Committee (Committee). This Committee will provide expert advice and recommendations on technical matters related to the establishment and regulation of a low-Earth orbiting satellite service in the frequency bands below 1 GHz (little LEOs). The establishment of this Committee is necessary and in the public interest.

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice also advises interested persons of the initial and proposed subsequent meetings of the Committee.

DATES: August 10, 1992 at 9:30 a.m., August 18, 1992 at 9:30 a.m., August 24, 1992 at 9:30 a.m., September 1, 1992 at 9:30 a.m., September 8, 1992 at 9:30 a.m., September 16, 1992 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., room 856, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Committee was established by the Federal Communications Commission to bring together present and future applicants, and present users of the affected frequency bands, to discuss and to recommend approaches to resolve

technical sharing and coordination issues involved in the establishment and regulation of a new satellite service. The FCC has solicited nominations for membership on the Committee pursuant to the Negotiated Rulemaking Act of 1990, Public Law 101-648, November 28, 1990, and will select members to achieve a balanced membership given the purpose and objectives of the Committee. See Public Notice in CC Docket No. 92-76, 57 FR 18857 (May 1, 1992), 7 FCC Rcd 2370 (1992).

The agenda for the first meeting is as follows:

1. Introductory Comments: Gerald P. Vaughan, Deputy Chief, Common Carrier Bureau; Thomas S. Tycz, Designated Federal Officer and Deputy Chief, Domestic Facilities Division.
2. Selection of Facilitator.
3. Approval of Agenda.
4. Committee Charter.
5. Committee Membership.
6. Work Program.
   —Tasks
   —Schedule
   —Report.
7. Organization of Work
   —Identification of Available Information
   —Informal Working Groups.
8. Agenda for Next Meeting.
9. Other Business.

At subsequent meetings, the Committee will seek to determine and to recommend approaches to resolve the domestic sharing problems among the present and future little LEO applicants, as well as among the little LEO satellite service networks and existing satellite service networks in the affected frequency bands. The Committee will also discuss international sharing and coordination issues.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no place oral participation, but the public may submit written comments to Thomas S. Tycz, the Committee's Designated Federal Officer, before the meeting.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Designated Federal Officer of the Below 1 GHz LEO Negotiated Rulemaking Committee, and Deputy Chief, Domestic Facilities Division, Federal Communications Commission, at (202) 634-1817.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-17765 Filed 7-24-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 92-28]

RIN 2125-AD02

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to the President's memorandum of January 28, 1992, on the subject of "Reducing the Burden of Government Regulation," the FHWA, as lead agency for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) 42 U.S.C. 4601-4655, proposes several amendments to the governmentwide rule implementing the Uniform Act found at 49 CFR part 24. The amendments would enhance the relocation assistance benefits available to displaced businesses, and replace the language in subpart G, relating to the application or certification, with a simplified regulatory provision. Also, a proposed technical amendment would conform the language of one paragraph to the two statutes cited therein.

DATES: Comments must be received on or before September 10, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92-28, Federal Highway Administration, room 4232, HCC-10, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope.

FOR FURTHER INFORMATION CONTACT: Roger C. Kezar, Chief, Policy Development Branch, Office of Right-of-Way, HRW-11, (202) 366-2021; or Reid Alsop, Office of Chief Counsel, HHC-31, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The governmentwide single rule [49 CFR part 24] implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. 4601 *et seq.*, was published in the **Federal Register** on March 2, 1989 (54 FR 8912). During the slightly more than three years that this comprehensive regulation has been in effect, the FHWA, as the lead agency responsible for the development and issuance of this regulation with the active cooperation of the Department of Housing and Urban Development [HUD] and sixteen other Federal agencies, has become aware of the need to amend the regulation for purposes of clarification and simplification.

On January 28, 1992, the President issued a Memorandum For Certain Department and Agency Heads entitled "Reducing the Burden of Government Regulation" which called upon those Departments and agencies to review their existing regulations, in order to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy.

While the monetary relocation assistance benefits provided in the regulation are primarily established by the Uniform Act, there is some administrative discretion, particularly with regard to determining moving and related expenses provided to business by section 202 of the Uniform Act (42 U.S.C. 4622).

The FHWA believes, as a result of its review of this regulation, that the proposed amendments would enhance the relocation assistance benefits provided to displaced businesses, thus increasing their chances of a successful relocation, and would reduce the regulatory burden imposed on such businesses as well as on State and local governments implementing the regulation.

In addition to the proposed amendments that would assist displaced businesses, the FHWA also proposes (1) a technical amendment of § 24.2(g)(2)(x) to eliminate a conflict with the two statutes cited therein and (2) to revise §§ 24.602 and 24.603, relating to certification application and monitoring, to simplify these provisions.

This NPRM is limited in scope to the amendments proposed. The FHWA intends to continue to cooperate with the HUD and other Federal agencies in making these proposed amendments. We also anticipate identifying additional changes to this regulation as a result of that cooperation, and these

changes will be proposed for public comment as they are identified.

Section-by-Section Analysis

In § 24.2(g)(2)(x) there is a conflict with the two statutes it cites. Those statutes apply only to home owners and their replacement housing benefits. The regulation, however, covers all persons and all relocation benefits and therefore could result in a denial of benefits to tenants and businesses covered by the Uniform Act. The proposed revision will conform the regulation to the statutory limitations.

The definition of "small business" in § 24.2(t) has been a matter of concern because it would appear to exclude from eligibility for the reestablishment payment certain businesses [coin operated car washes and laundromats, rental properties, and storage facilities] where an employee is not present at all times. The purpose of the requirement that there be at least one employee on site was to emphasize that there must be ongoing economic activity at the displacement site in order to qualify for reestablishment payments. The FHWA has advised, in response to specific inquiries, that a coin-operated facility or a storage building visited by employees of the business on a regular basis, daily or at least weekly, would qualify the business for reestablishment expenses. This would also apply to an occupied rental property at which the owner maintains personal property and for which rental property the owner is responsible for maintenance. The proposed change would make it clear that such businesses are included within the definition of "small businesses"and would thus be eligible for the reestablishment payment of up to $10,000 provided by § 24.304.

Several changes to § 24.304 are proposed that would remove regulatory limitations upon receipt of the reestablishment payment by small businesses, farms, and nonprofit organizations. The first paragraph of § 24.304 would be amended to replace the conditional language "may be eligible" with "is entitled," thus putting the qualification for the receipt of payment in a more positive light. The word "may" would be removed from paragraph (a) as misleading and unnecessary. The monetary limitations upon payment for certain specific costs contained in paragraphs (a)(3), (a)(8), and (a)(10) would be removed, along with the related waiver provision in paragraph (a)(13). While removal of these restrictions was recommended by a number of the commenters responding to the July 21, 1988, NPRM on part 24 (FHWA Docket No. 87–22), the FHWA elected to retain the dollar limits as cost controls for expenses believed most vulnerable to abuse. Experience, the $10,000 limit imposed by the Uniform Act itself, and the limited number of waivers requested, together with the general requirement that the displacing agency determine if the expense claimed is reasonable and necessary, indicate the dollar limits are not serving a worthwhile purpose. Further, it is unnecessarily burdensome to both the displacing agency and the Federal funding agency to process a waiver where the displacing agency has already made a finding that the expense claimed is reasonable and necessary. It is also proposed that paragraph (b)(3), concerning refurbishments at the replacement site for aesthetic purposes, be removed as unnecessarily restrictive to displaced small businesses, farms, and nonprofit organizations, as well as being unnecessarily burdensome on the displacing agency.

Subpart G would be amended by removing all of the present text of §§ 24.602 and 24.603 and substituting an abbreviated process for obtaining the certification application and proceeding to certification approval. In the more than five years since certification procedure was authorized by the amendments to the Uniform Act, not a single agency has sought to obtain acceptance of its "certification."

Cross References

Part 24 of title 49, CFR, constitutes the governmentwide regulation implementing the Uniform Act. The regulations of seventeen other Federal Departments and agencies contain a cross reference to this part in their regulations, and the change proposed in this notice of proposed rulemaking would be directly applicable to the relocation assistance activities of these departments and agencies. Those departments and agencies, and the parts of the Code of Federal Regulations which contain a cross reference to this part, are listed below:

Department of Agriculture

7 CFR part 21

Department of Commerce

15 CFR part 11

Department of Defense

32 CFR part 2509

Department of Education

34 CFR part 15

Department of Energy

10 CFR part 1039

Environmental Protection Agency

40 CFR part 4

Federal Emergency Management Agency

44 CFR part 25

General Services Administration

14 CFR part 105–51

Department of Health and Human Services

45 CFR part 15

Department of Housing and Urban Development

24 CFR part 42

Department of the Interior

41 CFR part 114–50

Department of Justice

41 CFR part 128–16

Department of Labor

29 CFR part 12

National Aeronautics and Space Administration

14 CFR part 1208

Pennsylvania Avenue Development Corporation

36 CFR part 904

Tennessee Valley Authority

18 CFR part 1306

Veterans Administration

38 CFR part 25

Consequently, the proposed change in this NPRM would be directly applicable to the relocation assistance activities of those seventeen departments and agencies. The proposed change would also apply to other agencies within DOT that are covered by the Uniform Act.

RULEMAKING ANALYSES AND NOTICES

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, nor is it a significant rule under the policies and procedures of the Department of Transportation relating to regulations. The rulemaking would not affect the level of funding available in Federal or federally assisted programs covered by the Uniform Act, or otherwise have a significant economic impact, so that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impacts

The FHWA has also analyzed this action for the purpose of the National

Environmental Policy Act (42 U.S.C. 4321 et seq.), and has determined that this action would not have any effect on the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action, in effect, both clarifies and simplifies current regulatory requirements.

Paperwork Reduction Act

This proposed rule is not subject to the Paperwork Reduction Act (44 U.S.C. 3501, et seq.), since it does not require the collection or retention of any new data.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

In accordance with the foregoing, the FHWA proposes to amend part 24 of title 49, Code of Federal Regulations, as set forth below.

PART 24—[AMENDED]

1. The authority citation for 49 CFR part 24 continues to read as follows:

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

2. In § 24.2, paragraphs (g)(2)(x) and (t) are revised to read as follows:

§ 24.2 Definitions.

* * * * *

(g) * * *

(2) * * *

(x) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93–477 or Pub. L. 93–303, except that such owner remains a displaced person for purposes of subpart D of this part; or

* * * * *

(t) *Small business.* A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.304.

* * * * *

24.304 [Amended]

3. Section 24.304 is amended by revising the introductory text of the section, the introductory text of paragraph (a), paragraphs (a)(3), (a)(8), and the introductory text of (a)(10); by removing paragraph (a)(13); and by removing paragraph (b)(3), then redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4), respectively. As revised, § 24.304 reads as follows:

§ 24.304 Reestablishment expenses—non-residential moves.

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(t), farm or nonprofit organization is entitled to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

* * * * *

(3) Construction and installation costs for exterior signing to advertise the business.

* * * * *

(8) Advertisement of replacement location.

* * * * *

(10) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

* * * * *

4. Section 24.602 is revised to read as follows:

§ 24.602 Certification application.

An agency wishing to proceed on the basis of a certification may request an application for certification from the lead agency [Director, Office of Right-of-Way, HRW–1, Federal Highway Administration, 400 Seventh St. SW., Washington, DC 20590]. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding agency, in accordance with application procedures.

5. In § 24.603, paragraph (d) is revised to read as follows:

§ 24.603 Monitoring and corrective action.

* * * * *

(d) The lead agency may require periodic information or data from affected Federal or State agencies.

Issued on: July 20, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–17639 Filed 7–24–92; 8:45 am]

BILLING CODE 4910–22–M

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. 462]

Exemption of Demurrage From Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served April 21, 1992 (57 FR 14688, April 22, 1992), the Commission requested comments on a proposal to exempt demurrage from certain regulation. By decision served May 12, 1992 (57 FR 20443, May 13, 1992), the Commission prescribed a comment due date of July 21, 1992. By petition filed July 13, 1992, The National Industrial Transportation League (NITL) and The Association of American Railroads (AAR) jointly request a six-month extension until January 21, 1993, to file comments. NITL and AAR state additional time is needed to provide them an opportunity to discuss this proceeding and, following NITL's annual meeting in November, to attempt to produce a joint document for submission to the Commission. In view of the Commission's interest in expediting review of deregulatory proposals only a 60-day extension will be permitted. Consistent with the July 15, 1992, filing by National Grain and Feed Association, the Commission encourages discussion of issues among all willing participants.

DATES: Initial comments are due on September 21, 1992.

ADDRESSES: Send an original and 15 copies of comments referring to Ex Parte No. 462 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder: (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: July 21, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–17666 Filed 7–24–92; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 57, No. 144
Monday, July 27, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Canyon Railway, Inc., Passenger Railway Service, Grand Canyon Airport to Grand Canyon Village; Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the Department of Agriculture, Forest Service, and the Department of the Interior, National Park Service, joint lead agencies, have prepared a draft environmental impact statement to assess the impacts of the provision of initiating passenger rail service from Grand Canyon Airport, Tusayan, Arizona, to the Maswick Transportation Area in Grand Canyon Village, Grand Canyon National Park.

The proposal, Alternative A, would provide for the construction of 5.4 miles of new railway line on the national forest, with 1.1 miles on an old rail line alignment, and use of existing rail line within the national park. One wash would need to be crossed within the airport property. Additional features are the construction of two depots, 75 acres of parking, a road for maintenance, and the addition of storage tanks for fuel, water and wastewater. A maximum of eight (8) trips per day would be generated between the airport and Maswick. Interpretive activities and visitor orientation to the park and national forest would be integrated into the service.

In addition to the proposal, five alternatives are analyzed. Alternatives B, C and D all provide for the proposed passenger service but vary in the track alignment and length to be constructed, the amount of national forest lands needed and generally increase the number of washes that would be crossed. In addition, Alternative D provides for a single depot. Alternative E is a non-rail alternative,utilizing a shuttle bus system in conjunction with a parking area outside the park. Alternative F is the no action alternative.

Comments on the draft environmental impact statement should be directed to the Forest Supervisor, Kaibab National Forest, 800 South State Street, Williams, AZ 86048, telephone number (602) 635–2681. Comments must be received no later than September 30, 1992. Requests for additional information and/or copies of the statement should be directed to the above address or to the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon National Park, AZ 86023, telephone number (602) 638–7701.

Copies of the draft statement are available for inspection at the park headquarters, Forest Supervisor's office, and libraries at Flagstaff, Williams, Northern Arizona University, and Arizona State University. Copies are also available at the following addresses: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, 600 Harrison Street, suite 600, San Francisco, CA 94107–1372, and at the Regional Office, Southwest Region, USDA Forest Service, 517 Gold Ave. SW., Albuquerque, NM 87102.

Dated: June 1, 1992.

William M. Lannan

Forest Supervisor, Kaibab National Forest.

Dated: June 9, 1992.

W.H. Patton,

Regional Director, Western Region.

[FR Doc. 92–17646 Filed 7–24–92; 8:45 am]
BILLING CODE 3410–11–M and 4310–70–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA–91–017–A]

Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of intent to amend.

SUMMARY: This document proposes to amend the recommended manufacturing milk requirements (Recommended Requirements) by incorporating provisions for an expanded drug residue monitoring program. The proposal would provide State regulatory agencies and the dairy industry with guidance in carrying out sampling, testing and monitoring activities relating to drug residues in manufacturing grade milk. The proposal also would include a provision for a State-sanctioned penalty to be imposed on a manufacturing grade milk producer who ships milk testing positive for drug residue. In addition, the proposal would provide guidelines for the storage and proper labeling of drugs used on the dairy farm.

The proposal to expand the drug residue monitoring program was initiated at the request of the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA, the Food and Drug Administration (FDA), dairy trade associations and producer groups.

DATES: Comments should be filed by August 26, 1992.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be made available for public inspection at the Dairy Division in room 2750–S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "non-major" under the criteria contained therein.

Under the authority of the Agricultural Marketing Act of 1946, the U.S. Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These

recommended requirements are available for adoption by the various States. The purpose of the model requirements is to promote, through State adoption and enforcement, uniformity in State dairy laws and regulations relating to manufacturing grade milk.

In July 1991, the Dairy Division of NASDA passed a resolution recommending that the manufacturing grade milk drug residue monitoring program be revised using the Grade A drug residue monitoring program as a prototype. The Grade A program is based on the requirement that the milk on every bulk milk pickup tanker be sampled and tested, prior tc processing, for the presence of beta lactam drugs. In addition, the Grade A program provides for the temporary suspension of a producer's Grade A permit, or an equivalent penalty, in the case of a producer who ships milk testing positive for beta lactam drugs.

In order to establish an expanded manufacturing grade milk drug residue monitoring program, as requested by NASDA, this document proposes the following changes to the Recommended Requirements:

1. Provide that all marketed manufacturing grade milk be sampled and tested for the presence of beta lactam drugs

Currently, the Recommended Requirements provide for the testing of milk for antibiotics at a minimum frequency of four times in six months. The proposed revisions specify that all manufacturing grade milk intended for processing be sampled by the defined methods and tested for beta lactam drugs.

2. Provide that the testing of all marketed manufacturing grade milk be completed prior to processing.

Currently, the Recommended Requirements do not provide guidelines for the timely completion and reporting of antibiotic tests. The proposed revisions specify that testing be completed prior to processing the load of milk.

3. Define State regulatory agency and industry responsibilities for the implementation of the expanded drug residue monitoring program

The successful implementation of any regulatory program requires cooperation between State officials and industry personnel. In order for the State regulatory agency to adequately supervise and enforce the drug residue monitoring program, the dairy industry must maintain accurate records and follow uniform procedures. The proposed revisions define the responsibilities of each party in the execution of this program.

The proposal requires the industry to notify the appropriate State regulatory agency of (a) each occurrence of a load sample testing positive for drug residue; (b) the identity of any producer whose milk causes a load sample to test positive for drug residue; and (c) the intended and final disposition of the load of milk represented in a sample testing positive for drug residue. Milk testing positive for beta lactams is to be disposed of in a manner that removes it from the human and animal food chain, unless reconditioned under FDA guidelines.

The proposal provides for the State regulatory agency to: (a) Monitor the industry's sampling and testing methods for accuracy, consistency, and thoroughness; (b) perform comparison milk sample testing to evaluate the plant's recorded results; (c) review the industry's records of response to a positive drug residue test; and (d) sanction penalties on producers who have shipped milk testing positive for drug residue.

4. Provide for a State-sanctioned penalty to be imposed on a manufacturing grade milk producer who ships milk testing positive for drug residue

In order to emphasize the importance of utilizing milk production methods that prevent drug residues in milk, the proposal requires that there be a State-sanctioned penalty imposed on a producer for each occurrence of shipping milk testing positive for drug residue.

Additionally, following a third violation of shipping milk testing positive for drug residue within a 12-month period, the appropriate State agency would initiate administrative procedures to suspend the producer's milk shipping privileges, according to that State's policy.

5. Require a producer who ships milk testing positive to participate in a milk-quality improvement educational program

After each occurrence of shipping milk testing positive for drug residue, a producer would be required to meet with a licensed veterinarian within 21 days to review the "Milk and Dairy Beef Quality Assurance Program." The "Quality Assurance Program" was developed by the Joint Liaison Committee of the American Veterinary Medical Association and the National Milk Producers Federation, with the cooperation and support of the USDA, the FDA, industry, and academia to help milk producers identify and eliminate the causes of drug residues in milk.

6. Provide detailed guidelines for the labeling and storage of farm chemicals and animal drugs

A central element of the "Milk and Dairy Beef Quality Assurance Program" is the proper labeling and storage of drugs located in the milk production areas. The proposed revisions specify that the labeling of animal drugs used on manufacturing grade farms shall conform to federal regulations and that the drugs be stored according to intended use.

7. Mark other revisions and editorial changes in the Recommended Requirements to reflect the expansion of the current drug residue monitoring program

The proposal would require dairy plants to: (a) Test the milk of new and transfer producers for the presence of drug residues prior to acceptance of the milk at the plant; (b) retain drug residue test results for a minimum of 12 months; (c) include in a producer's records the results of drug residue tests for the preceding 12 months; and (d) instruct plants to provide fieldman assistance to farmers regarding drug residue issues.

8. Make revisions in the Recommended Requirements to update and clarify somatic cell testing requirements

Proposed changes include correcting the action level at which the Wisconsin Mastitis Test must be confirmed.

State regulatory agencies that are responsible for overseeing the sanitation requirements relating to the production and processing of farm separated cream are encouraged to include such cream in a drug residue monitoring program.

For the reasons set forth in the preamble, the Recommended Requirements which were published in the **Federal Register** issue of April 7, 1972 (37 FR 7048) and amended August 27, 1985 (50 FR 34726) are proposed to be amended as follows:

1. In sec. B2., paragraphs (i), (j) and (p) are revised to read as follows:

Sec. B2. Terms Defined

* * * * *

(i) *Producer.* The person or persons who exercise control over the production of the milk delivered to a plant, and who receives payment for this product. A "new producer" is one who is initiating the shipment of milk from a farm. A "transfer producer" is one whose shipment of milk from a farm is shifted from one plant to another plant. A "producer/processor" is one who

manufactures dairy products on the dairy farm entirely from his own milk, or from his own milk combined with milk from one or more other producers.

(j) *Dairy farm or farm.* A place or premise where one or more milking cows or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold, or offered for sale to a manufacturing plant.

* * * * *

(p) *Rejected milk.* Milk rejected from the market according to the provisions of sec. C5.

* * * * *

2. Sec. C1. is revised to read as follows:

Sec. C1. Basis

The quality classification of raw milk for manufacturing purposes from each producer shall be based on an organoleptic examination for appearance and odor, a drug residue test and quality control tests for sediment content, bacterial estimate and somatic cell count.

3. Sec. C5. is revised to read as follows:

Sec. C5. Rejected Milk

A plant shall reject specific milk from a producer if the milk fails to meet the requirements for appearance and odor (sec. C2.), if it is classified No. 4 for sediment content (sec. C3.), or if it tests positive for drug residue (sec. C12.).

4. Secs. C7. through C10. are revised to read as follows:

Sec. C7. Excluded Milk

A plant shall not accept milk from a producer if:

(a) The producer's initial milk shipment to a plant does not meet the requirements for acceptable milk (secs. C3. and C4.);

(b) The milk has been in a probational (No. 3) sediment content classification for more than ten calendar days (sec. C3.);

(c) The milk has been classified "Undergrade" for bacterial estimate for more than four successive weeks (sec. C4.);

(d) Three of the last five milk samples have exceeded the maximum somatic cell count level of 1,000,000 per ml. (sec. C11.);

(e) The producer's milk shipments to either the Grade A or the manufacturing grade milk market currently are not permitted due to a positive drug residue test (sec. C12.); or

(f) The producer is delinquent in completing a review of the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian following an occurrence of shipping milk testing positive for drug residue (sec. C12.).

Sec. C8. Quality Testing of Milk From Producers

(a) *New producers.*

(1) An examination and tests shall be made on the first shipment of milk from a new producer or from a producer resuming shipment to a plant after a period of non-shipment.

The milk shall meet the requirements for:

(i) "Acceptable milk" (secs. C2., C3., and C4.);

(ii) Somatic cell count (sec. C11.); and

(iii) Drug residue level (sec. C12.).

(2) Thereafter, each milk shipment shall meet the requirements of sec. C2., and shall be tested in accordance with the provisions of secs. C3., C4., C11., and C12.

(b) *Transfer producers.*

(1) An examination and test shall be made by the new buyer on the first shipment of milk from a transfer producer. The milk shall meet the requirements for:

(i) "Acceptable milk" (secs. C2., C3., and C4.);

(ii) Somatic cell count (sec. C11.); and

(iii) Drug residue level (sec. C12.).

(2) Thereafter, each milk shipment shall meet the requirements of sec. C2, and shall be tested in accordance with the provisions of secs. C3., C4., C11., and C12.

(3) In addition, the new buyer shall determine from the producer's records that:

(i) The milk is currently classified "acceptable" for bacteria and sediment;

(ii) Three of the last five consecutive milk samples do not exceed the maximum somatic cell count level requirements;

(iii) The last shipment of milk received from the producer by the former plant did not test positive for drug residue; and

(iv) Milk shipments currently are not excluded from the market due to a positive drug residue test.

(4) When a producer discontinues milk delivery at one plant and begins delivery at another plant for any reason, the new buyer shall not accept the first milk delivery until he has requested from the previous buyer a copy of the record of:

(i) The producer's milk quality tests covering the preceding 90 days;

(ii) The producer's drug residue test results for the preceding 12-month period; and

(iii) a statement of the farm certification status and date of certification, if so provided under State regulations.

(5) The previous buyer shall furnish the new buyer with such information within 24 hours after receipt of the request. A new buyer may accept a transfer producer's milk after making the request for records, but before receiving them, if he first confirms the producer's records verbally from the previous buyer. If verbal communication is used to ascertain the status of quality records, the new buyer shall send to the previous buyer, as soon as possible, a written confirmation of the conversation.

(6) If the new buyer fails to receive the quality records from the previous buyer, he shall report this fact to the appropriate State regulatory agency. The new buyer may then, alternatively, obtain from the producer a copy of the test results for sediment content, bacterial estimate, and somatic cell count for the preceding 90-day period and a copy of the drug residue test results for the preceding 12-month period. A farm inspection shall then be made to confirm or establish certification of the transfer producer's farm.

Sec. C9. Record of Tests

Accurate records of the results of the milk quality and drug residue tests for each producer shall be kept on file at the plant for a period of not less than 12 months. The record shall be available for examination by the regulatory agency.

Sec. C10. Field Service

A representative of the plant shall arrange to promptly visit the farm of each producer whose milk tests positive for drug residue, exceeds the maximum somatic cell count level, or does not meet the requirements for acceptable milk. The purpose of the visit shall be to inspect the milking equipment and facilities and to offer assistance to improve the quality of the producer's milk and eliminate any potential causes of drug residues. A representative of the plant should routinely visit each producer as often as necessary to assist and encourage the production of high quality milk.

5. Sec. C11. is revised to read as follows:

Sec. C11. Somatic Cell Count

(a) A laboratory examination to determine the level of somatic cells shall be made on each producer's milk at least four times in each six-month period at irregular intervals. Samples shall be analyzed at a laboratory approved by the State regulatory agency.

(b) A confirmatory test for somatic cells shall be done when a herd sample exceeds either of the following screening tests results:

(1) California Mastitis Test—Weak Positive (CMT 1).

(2) Wisconsin Mastitis Test—WMT value of 18 mm.

(c) The confirmatory test for somatic cells shall be performed by using one of the following procedures:

(1) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-methyl green stain shall be used for goat milk.

(2) Electronic Somatic Cell Count.

(3) Optical Somatic Cell Count.

(d) The results of the confirmatory test for somatic cells shall be the official result.

(e) Whenever the confirmatory somatic cell count indicates the presence of more than 1,000,000 somatic cells per ml., the following procedures shall be applied:

(1) The producer shall be notified with a warning of the excessive somatic cell count.

(2) Whenever two of the last four consecutive somatic cell counts exceed 1,000,000 per ml., the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two of the last four consecutive samples exceed 1,000,000 per ml.

(f) An additional sample shall be taken after a lapse of three days but within 21 days of the notice required in paragraph (e)(2) of this section. If this sample also exceeds 1,000,000 per ml., subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer shall be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 1,000,000 per ml. The samples shall be taken at a rate of not more than two per week on separate days within a three-week period.

6. New secs. C12., C13., C14., and C15. are added to read as follows:

Sec. C12. Drug Residue Level

(a) *Industry responsibilities.*

(1) *Sampling and testing program.*

(i) All milk shipped for processing or intended to be processed on the farm where it was produced shall be sampled and tested, prior to processing, for beta lactam drug residue. Collection, handling and testing of samples shall be done according to procedures established by the appropriate State regulatory agency.

(ii) When so specified by the U.S. Food and Drug Administration (FDA), all milk shipped for processing, or intended to be processed on the farm where it was produced, shall be sampled and tested, prior to processing, for other drug residues under a random drug sampling program. The random drug sampling program shall include at least four samples collected in at least four separate months during any six-month period.

(iii) When the Commissioner of the FDA determines that a potential problem exists with an animal drug residue or other contaminant in the milk supply, a sampling and testing program shall be conducted, as determined by the FDA. The testing shall continue until such time that the Commissioner of the FDA determines with reasonable assurance that the potential problems has been remedied.

(iv) The dairy industry shall analyze samples for beta lactams and other drug residues by methods evaluated by the Association of Official Analytical Chemists (AOAC) and accepted by the FDA as effective in determining compliance with established "safe levels" or tolerances. "Safe levels" and tolerances for particular drugs are established and amended by the FDA. The industry may employ on a temporary basis other test methods evaluated by the Virginia Polytechnic Institute and State University, or by other institutions using equivalent evaluation procedures, and determined to demonstrate accurate compliance results. These test methods may be used until they are evaluated by the AOAC and accepted or rejected by the FDA.

(2) *Individual producer sampling.*

(i) *Bulk milk.*

A milk sample for beta lactam drug residue testing shall be taken to each farm and shall include milk from each farm bulk tank.

(ii) *Can milk.*

A milk sample for beta lactam drug residue testing shall be formed separately at the receiving plant for each can milk producer included in a delivery, and shall be representative of all milk received from the producer.

(iii) *Producer/processor.*

A milk sample for beta lactam drug residue testing shall be formed separately according to paragraphs (a)(2) (i) and (ii) of this section for milk produced or received by a producer/processor.

(3) *Load sampling and testing.*

(i) *Bulk milk.*

A load sample shall be taken from the bulk milk pickup tanker after its arrival at the plant and prior to further commingling.

(ii) *Can milk.*

A load sample representing all of the milk received on a shipment shall be formed at the plant, using a sampling procedure that includes milk from every can on the vehicle.

(iii) *Producer/processor.*

A load sample shall be formed at the plant using a sampling procedure that includes all milk produced and received.

(4) *Sample and record retention.*

A load sample that tests positive for drug residue shall be retained according to guidelines established by the appropriate State regulatory agency. The records of all sample test results shall be retained for a period of not less than 12 months.

(5) *Industry follow-up.*

(i) When a load sample tests positive for drug residue, industry personnel shall notify the appropriate State regulatory agency immediately, according to State policy, of the positive test result and of the intended disposition of the shipment of milk containing the drug residue. All milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines.

(ii) Each individual producer sample represented in the positive-testing load sample shall be singly tested as directed by the appropriate State regulatory agency to determine the producer of the milk sample testing positive for drug residue. Identification of the producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the appropriate agency, according to State policy.

(iii) Milk shipment from the producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue.

(b) *Regulatory agency responsibilities.*

(1) *Monitoring and surveillance.*

The appropriate State regulatory agency shall monitor the milk industry's drug residue program by conducting unannounced on-site inspections to observe testing and sampling procedures and to collect samples for comparison drug residue testing. In addition, the regulatory agency shall

review industry records for compliance with State policy. The review shall seek to determine that:

(i) Each producer is included in a routine, effective drug residue milk monitoring program utilizing AOAC-evaluated and FDA-approved methods to test samples for the presence of drug residue;

(ii) The regulatory agency receives prompt notification from industry personnel of each occurrence of a sample testing positive for drug residue, and of the identity of each producer identified as a source of milk testing positive for drug residue;

(iii) The regulatory agency receives prompt notification from industry personnel of the intended and final disposition of milk testing positive for drug residue, and that disposal of the load is conducted in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines; and

(iv) Milk shipment from a producer identified as a source of milk testing positive for drug residue completely and immediately ceases until a milk sample taken from the dairy herd does not test positive for drug residue.

(2) *Enforcement.*

(i) A penalty sanctioned by the State regulatory agency shall be imposed on the producer for each occurrence of shipping milk testing positive for drug residue.

(ii) The producer shall review the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian within 21 days after each occurrence of shipping milk testing positive for drug residue. A certificate confirming that the "Quality Assurance Program" has been reviewed shall be signed by the responsible producer and a licensed veterinarian. The appropriate State regulatory agency shall be notified after the program has been reviewed.

(iii) If a producer ships milk testing positive for drug residue three times within a 12-month period, the appropriate State agency shall initiate administrative procedures to suspend the producer's milk shipping privileges, according to State policy.

Sec. C13. Radionuclides

Composite milk samples from selected areas in each State should be tested for biologically significant radionuclides at a frequency which the regulatory agency determines to be adequate to protect the consumer.

Sec. C14. Pesticides and Herbicides

Composite milk samples should be tested for pesticides and herbicides at a frequency which the regulatory agency determines is adequate to protect the consumer. The test results from the samples shall not exceed established FDA limits.

Sec. C15. Added Water

Milk samples from each producer should be tested for added water at a frequency which the regulatory agency determines is adequate to prevent the addition of water to the milk.

7. Sec. D5.(e) is revised and D5.(f) is added to read as follows:

Sec. D5. Milkhouse or Milkroom

* * * * *

(e) The milkhouse or milkroom shall be kept clean and free of trash. Animals and fowl shall not be allowed access to the milkhouse or milkroom at any time.

(f) *Farm chemicals and animal drugs.*

(1) Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be clearly labeled and used in accordance with label instructions, and shall be stored in a manner which will prevent accidental contact with milk and milk contact surfaces.

(2) Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered to such animals.

(3) When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be stored in a closed, tight-fitting storage unit. Such drugs shall further be segregated in such a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals.

(4) Drugs labeled for use in non-dairy animals shall not be stored with drugs labeled for use in dairy animals. When drugs labeled for use in non-dairy animals are stored in the barn, the drugs shall be located in an area of the barn separate from the milking area.

(5) Herbicides, fertilizers, pesticides and insecticides that are not approved for use in dairy operations shall not be stored in the milkhouse, milkroom, or milking area.

(Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted)

Signed at Washington, DC on July 20, 1992.

Daniel D. Haley,

Administrator, Agricultural Marketing Service.

[FR Doc. 92–17540 Filed 7–24–92; 8:45 am]

BILLING CODE 3410–02–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware State Advisory Committee will convene at 9:30 a.m. and adjourn at 12:30 p.m. on Friday, August 14, 1992, J.C. Boggs Federal Building, General Services Administration (GSA) Conference Room 3207–09, 844 King Street, Wilmington, DE 19801. The purpose of the meeting is to consider program ideas by the members and decide upon a project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Henry A. Heiman at 302/658–1800; or John I. Binkley, Director, ERO at (202/523–5264); or TDD (202/376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–17606 Filed 7–24–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled the following committee and workgroup meetings. Dates and locations are listed below:

Observer Oversight Committee:

The Observer Oversight Committee will meet on August 13, 1992, and possibly continue the meeting into August 14. The meeting will begin at 8:30 a.m. on August 13, in room 2079, Building 4, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA. The Committee will

discuss proposed changes to the existing Observer Program for 1993 and beyond.

Gulf of Alaska Rockfish Committee

The newly-established Gulf of Alaska Rockfish Committee will meet August 20, 1992, and possibly continue the meeting on August 21 if necessary. The meeting will begin at 10 a.m. on August 20, in the first-floor meeting room at the Travelodge at the Juneau Airport. The Committee will review a proposed trawl closure in the Eastern Gulf of Alaska and begin the process to develop a comprehensive rockfish management plan for the entire Gulf of Alaska.

Bering Sea/Aleutian Islands and Gulf of Alaska Groundfish Teams (BSAI–GOA)

The BSAI and GOA groundfish plan teams will meet September 1–4, 1992, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA. The meeting will begin at 8:30 a.m. on September 1, in room 2079, Building 4 at the Center. The Teams will review available stock assessments and catch statistics and begin preparation of Stock Assessment and Fishery Evaluation documents for the 1993 season.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271—2809.

Dated: July 22, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–17675 Filed 7–24–92; 8:45 am]

BILLING CODE 3510—22—M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of permit modification (P322B).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 735 issued to College of the Atlantic, 105 Eden Street, Bar Harbor, Maine 04609, April 22, 1992, (56 FR 19350) is modified to allow the researcher to approach or attempt to approach a single individual or discrete group of animals within 100 feet no more than six (6) times, for photo-identification and/or biopsy darting.

This modification becomes effective upon signature.

Documents pertaining to this Permit, as modified, are available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713–2289); and Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Dated: July 20, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–17582 Filed 7–24–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Temporary Suspension of the Export Visa Arrangement for Certain Cotton Textile Products Produced or Manufactured in the Territory of the Former Union of Soviet Socialist Republics

July 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs temporarily suspending the existing export visa arrangement.

EFFECTIVE DATE: July 28, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has decided to temporarily suspend the existing export visa arrangement established for certain cotton textile products, produced or manufactured in the territory of the former Union of Soviet Socialist Republics and exported from the territory of the former Union of Soviet Socialist Republics on and after July 28, 1992. (See 55 FR 33745, published in the Federal Register on August 17, 1990.)

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 21, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 13, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton textile products, produced or manufactured in the Union of Soviet Socialist Republics which are not properly visaed by the Government of the Union of Soviet Socialist Republics.

Effective on July 28, 1992 and until further notice, an export visa shall no longer be required for shipments of textile products, produced or manufactured in the territory of the former Union of Soviet Socialist Republics and exported from the territory of the former Union of Soviet Socialist Republics on and after July 28, 1992.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–17634 Filed 7–24–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Task Force on the Future of American Nuclear Forces; Meeting

ACTION: Notice of task force meeting.

SUMMARY: The Defense Policy Board Task Force on the Future of American Nuclear Forces will meet in closed session on 11–13 August 1992 from 0800 to 1700 at the RDA Logicon Facility located at 6053 West Century Blvd, Los Angeles, California. The mission of the Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning matters relating to U.S. nuclear force policy. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: July 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-17581 Filed 7-24-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Amend systems of records.

SUMMARY: The Department of the Air Force proposes to amend 14 existing systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amended systems will be effective August 26, 1992, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330-1000.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697-3491 or DSN 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DOD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Updated Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23676 May 24, 1991
56 FR 26800 Jun. 11, 1991
56 FR 31394 Jul. 10, 1991 (Updated Index Guide)
56 FR 32181 Jul. 15, 1991 (Updated Systems Identification)
56 FR 63718 Dec. 5, 1991
57 FR 1907 Jan. 16, 1992
57 FR 24600 June 10, 1992

The amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety.

Dated: July 15, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

AMENDMENTS

F010 ARPC A

SYSTEM NAME:

Background Material, (50 FR 22335, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280-5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to end of entry "and Executive Order 9397."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are protected by guards."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208-5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280-5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280-5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager."

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F010 ARPC A

SYSTEM NAME:

Background Material.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letter request for orders, amendments, including justification on files on special authorizations when required by order publishing activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1162, Reserves: Discharge, and Executive Order 9397.

PURPOSE(S):

Used for publication of discharge orders and to verify that discharge orders were published.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of

record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name, and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files for 1 year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, police and investigating officers, witnesses and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F011 ARPC A

SYSTEM NAME:

Locator or Personnel Data, (50 FR 22341, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 267, Ready Reserve; Standby Reserve; Retired Reserve: Placement and status of members; 268, Ready Reserve; 270, Ready Reserve: Training requirements; 271, Ready Reserve: Continuous screening; 273, Standby Reserve: Composition, inactive status list; 275, Personnel records; 278, Dissemination of information; 591, Reserve components: Qualifications; 592, Commissioned officer grades; 593, Commissioned officers: Appointment, how made; term; 594, Commissioned officers: Original appointment; limitation; 8013, Secretary of the Air Force: Powers and duties, delegation by, and Executive Order 9397."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software. Records are protected by guards."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written request for information should contain full name of individual, Social Security Number, current address, and the case (control) number shown on correspondence received from the Center (if applicable). For personal visits, the individual should provide current Reserve identification card and/or drivers license."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Records manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F011 ARPC A

SYSTEM NAME:

Locator or Personnel Data.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve and Air National Guard personnel. Retired and former Air Force military personnel. HQ ARPC civilian personnel. Air Force active duty military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards, forms, ledgers, record request, computer listings containing individual's name or names, Social Security Number, Air Force service number, grade, Reserve status, present and former address, record of employer, work production statistics, parent and other relevant Reservist or personnel data, Veterans Administration claim number, education institutes Reservist attended, school affiliations, correspondence to and from Federal agencies and employers trying to establish current address of Reservists, vouchers for medical service, final payment of medical service bills, medical action required, notes indicating if individual is authorized to earn point credit, and other personnel data. Documents which contain a summary of action taken or to be taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 267, Ready Reserve; Standby Reserve; Retired Reserve: Placement and status of members; 268, Ready Reserve; 270, Ready Reserve: Training requirements; 271, Ready Reserve: Continuous screening; 273, Standby Reserve: Composition, inactive status list; 275, Personnel records; 278, Dissemination of information; 591, Reserve components: Qualifications; 592, Commissioned officer grades; 593, Commissioned officers: Appointment, how made; term; 594, Commissioned officers: Original appointment; limitation; 8013, Secretary of the Air Force: Powers and duties, delegation by, and Executive Order 9397.

PURPOSE(S):

Used to control records distribution; to record location of record, actions taken or/to be taken; used to manage individual's records and Management Information System data; to answer inquiries from individual and Air Force units to which individuals are assigned or are to be assigned or other agencies with a need to know of action taken; to verify if author of a letter was a member/or is a member of Reserve and what his or her Social Security Number should be; to search for good address and stop computer mail from going to bad address; used to refer for administrative discharge action on Reservist that cannot be located, advise Reservist or civilian of Reserve matters or Center actions; to provide comprehensive record of all medical actions taken by Surgeon's Office and record authorization for physical examinations at Government expense or no expense and record voucher number; used in preparing point credit authorization and forwarding authenticated point credit forms to servicing personnel office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, visible file binders/cabinets, card files, on paper, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number, system identifier and/or voucher number, school affiliation, or by last address of Reservist.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written request for information should contain full name of individual, Social Security Number, current address, and the case (control) number shown on correspondence received from the Center (if applicable). For personal visits, the individual should provide current Reserve identification card and/or drivers license.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Records manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information provided by the individual, extracted from individual records, individual advanced personnel data computer system. For address information secured from last recorded employer, postmaster of city of last recorded address, telephone information operator at last city of good address, parents of Reservist, other relatives of Reservist, Veterans Administration if Reservist has a claim number listed in master personnel record, college or university Reservist attended, Selective Service Board, Internal Revenue Service, public utilities or any other lead that may be found in the master personnel record of the Reservist, military pay records at Defense Finance Accounting System (DFAS), log books and from Consolidated Base Personnel Offices. Medical information is also secured from medical facilities, physicians, medical specialists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F030 ARPC A

SYSTEM NAME:

Application for Identification (ID) Cards, (50 FR 22365, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to end of entry "and Executive Order 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F030 ARPC A

SYSTEM NAME:

Applications for Identification (ID) Cards.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for ID cards and discharge orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 499, Military, naval, or official pass; 506, Seals of departments or agencies; and 701, Official badges, identification cards, other insignia, as implemented by Air Force Regulation 30–20, Issue and Control of Identification (ID) Cards, and Executive Order 9397.

PURPOSE(S):

Used as a suspense file pending receipt of ID card or correspondence from Reservist advising of prior disposition of identification card.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Destroy when notified that credential has been returned to issuing activity by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is extracted from master personnel record when individual is discharged from the Air Force Reserve.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F030 ARPC B

SYSTEM NAME:

Point Credit Aecounting Record System (PCARS), [50 FR 22366, May 29, 1985].

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, and Headquarters Air Force Military Personnel Center (HQ AFMPC), Randolph AFB, TX 78150–6001. Air National Guard and Air Force Reserve activities. Official mailing addresses are published as an appendix to the Air

Force's compilation of record system notices."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to end of entry "and Executive Order 9397."

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SAFEGUARDS:

Insert before last sentence "Those in computer storage devices are protected by computer system software."

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RETENTION AND DISPOSAL:

After the word "macerating" add "or burning." Add as last sentence "Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, HQARPC, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F030 ARPC B

SYSTEM NAME:

Point Credit Accounting Record System (PCARS).

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, and Headquarters Air Force Military Personnel Center (HQ AFMPC), Randolph AFB, TX 78150–6001. Air National Guard and Air Force Reserve activities. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve and National Guard Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, orders, forms, and reports which include identifying personnel data including name, Social Security Number, address, grade, and retirement/retention date; record of retirement points and service earned prior to and record of points earned, by type duty, for the current retirement year. Reports include automated listings, processed transactions, rejected transactions, accession transactions, point summary lists, statistical reports, individual point summary reports, and input lists for participation verification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1331, Age and service requirements; 1332, Computation of years of service in determining entitlement to retired pay; 1333, Computation of years of service in computing retired pay; 1334, Time not creditable toward years of service; 1335, Inactive status list; 1336, Service credited for retired pay benefits not excluded for other benefits; 1337, Limitation on active duty, as implemented by Air Force Manual 30–130, Vol I, Base Level Military Personnel System; Air Force Regulations 35–41, Vol II, Reserve Training; 35–7, Service Retirements; and 35–3, Service Dates and Dates of Rank, and Executive Order 9397.

PURPOSE(S):

Used to maintain accurate listings of transactions processed to active Reserve force member's point credit account; to reconcile strength of the Air National Guard and Air Force Reserve members between the various mechanized accounting systems; to identify new members of the Air Force Reserve and Air National Guard; to certify accuracy and completeness of transactions manually submitted to the point record as required by Air Force audit requirements; to advise member and Reserve managers of the member's participation in Reserve affairs; for promotion evaluation considerations, and for determination of retirement eligibility .

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software. Records are protected by guards.

RETENTION AND DISPOSAL:

Documents not required for inclusion in military personnel record system are retained in office files until superseded, obsolete, no longer needed for reference, or after 16 months, whichever is sooner, then destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from master personnel record and authorized point credit documents obtained from automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ARPC A

SYSTEM NAME:

Administrative Discharge for Cause on Reserve Personnel, (50 FR 22395, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000 (non-unit assigned personnel), and Headquarters Air Force Reserve, Robins AFB, GA 31098–5000 (unit assigned personnel)."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add "and Executive Order 9397" to end of entry.

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets, and are protected by guards."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit assigned personnel), or the Chief, Personnel Actions Division, Robins AFB, GA 31908–5000 (unit assigned personnel).

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit assigned personnel), or the Chief, Personnel Actions Division,Robins AFB, GA 31908–5000 (unit assigned personnel)). Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO between 8 a.m. and 3 p.m., or at HQ AFRES/DPAA, Robins AFB, GA between 8 a.m. and 4:45 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F035 ARPC A

SYSTEM NAME:

Administrative Discharge for Cause on Reserve Personnel.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000 (for non-unit assigned personnel), and Headquarters Air Force Reserve, Robins AFB, GA 31098–5000 (for unit assigned personnel).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Board proceedings, board waiver, recommendations, and other records which result in discharge.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1162, Reserves: Discharge; 1163, Reserve components; members; limitations on separation as implemented by Air Force Regulations 35–41, Vol III, Separation Procedures for USAFR Members; 35–24, Disposition of Conscientious Objectors; Headquarters Air Reserve Personnel Center Regulation 45–19, Discharge for Inability to Locate, and Executive Order 9397.

PURPOSE(S):

To effect the administrative separation of officer members of the United States Air Force Reserve (USAFR) from their appointment as Reserve officers and to effect the administrative separation of enlisted members of the USAFR from their enlistment as Reserve members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name and by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files for 1 year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping,

macerating, or burning. HQ AFRES forwards copies of actions resulting in discharge to the HQ ARPC for inclusion in the individual's Master Personnel Record Group. Individual's military personnel record is then forwarded to the National Personnel Record Center, 9700 Page Boulevard, St Louis, MO 63132–2001 for permanent storage.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver CO 80280–5000, and Vice Commander, Robins Air Force Base, GA 31098–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit assigned personnel), or the Chief, Personnel Actions Division, Robins AFB, GA 31908–5000 (unit assigned personnel).

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit assigned personnel), or the Chief, Personnel Actions Division, Robins AFB, GA 31908–5000 (unit assigned personnel). Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO between 8 a.m. and 3 p.m., or at HQ AFRES/DPAA, Robins AFB, GA between 8 a.m. and 4:45 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, police and investigating officers and from witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ARPC B

SYSTEM NAME:

Informational Management Personnel Records, (50 FR 22396, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000; Headquarters United States Air Force, Office of Air Force Reserve (AF/RE), Washington, DC 20330–5000; United States Air Force Academy (USAF Academy), CO 80440–5000; major commands, and major subordinate commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices of record systems notices."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 262, Purpose; 274, Retired Reserve; 275, Personnel records; 672, Reserve components generally; 673, Ready Reserve; 2001, Reserve components; 8013, Secretary of the Air Force: Powers and duties; delegation by; 8067, Designation: Officers to perform certain professional functions, as implemented by Air Force Regulations 35–41, Vol I, Assignments Within the Reserve Components; AFR 35–41, Vol II, Reserve Personnel Policies and Procedures - Reserve Training; AFR 35–44, Military Personnel Records System, and Executive Orders 9397 and 11366."

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RETRIEVABILITY:

Delete entry and replace with "Retrieved by name and/or Social Security Number."

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000, and system managers at other system locations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000, or to agency officials at location of assignment.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000, or to agencies officials at location of assignment.

Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays. Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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F035 ARPC B

SYSTEM NAME:

Informational Personnel Management Records.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000; Headquarters United States Air Force, Office of Air Force Reserve, Washington, DC 20330–5000; United States Air Force Academy, CO 80440–5000; major commands, and major subordinate commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve and Air National Guard personnel. Civilian/active military applicants to the Air Force Reserve. Retired and former Air Force military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer and airman assignment files which includes correspondence; memos; completed forms; messages; vacancy authorization data for assignment approvals/disapprovals; waivers; manning assistance; discharges; screening data; orders; evaluation reports; documents changing training category; personnel data; photographs; chaplain ecclesiastical endorsement; record of security clearance; miscellaneous correspondence to and from individual; documents pertaining to individual that are not authorized for inclusion in other military personnel record systems; case file of Reserve personnel placed on active duty containing copies of special and Reserve orders; correspondence; documents complete with information used for travel overseas; assignment instructions; list of actions taken by technician; board actions on involuntary airmen; certified receipts acknowledgment of receipt of special orders card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 262, Purpose; 274, Retired Reserve; 275, Personnel records; 672, Reserve components generally; 673, Ready Reserve; 2001, Reserve components; 8013, Secretary of the Air Force: Powers and duties; delegation by; 8067, Designation: Officers to perform certain professional functions, as implemented by Air Force Regulations 35–41, Vol I, Assignments Within the Reserve Components; AFR 35–41, Vol II, Reserve Personnel Policies and Procedures - Reserve Training; AFR 35–44, Military Personnel Records System, and Executive Orders 9397 and 11366.

PURPOSE(S):

Used to determine eligibility/suitability for assignment/reassignment with the Air Force Reserve; determine eligibility for retired related action, to make determinations on discharges or mobilization, deferments, fulfillment of statutory requirements, voluntary and involuntary order to extended active duty (EAD) and temporary release, status of active duty tour, position occupied; training reports. These include but are not limited to members participating in the Chaplain, Judge Advocate, Surgeon General Program. Records maintained as a historical file. Answers to correspondence/telephone inquiries; updating and/or changing information in computer and/or individual Reservist record. Used as a reference file to answer inquiries from Reservist being called to active duty, to send gaining active units additional copies as requested, used as substantiating documents to show action was taken in accordance to prescribing directives. Information on personnel in the Chaplain, Judge Advocate, Surgeon General and other officer management programs is used by personnel responsible for program in order to assist Reservists in their careers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders/card files/note books/binders and in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name and/or by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Retain in office files until inactivation, reassignment or separation, no longer needed for reference or one year after annual cutoff. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000, or to agency officials at location of assignment.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000, or to agencies officials at location of assignment. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information supplied by individual as relates to but not limited to requesting assignment, application for retirement, military orders, personnel data, master personnel record, correspondence, statement of military service from other military components; annual survey and Advance Personnel Data System, correspondence from serving Consolidated Base Personnel Office/Consolidated Reserve Personnel Office and major command units. Instructions from Air Force Military Personnel Center, Randolph Air Force Base, TX 78150–6001, instructions and board actions from Air Force Reserve, Robins Air Force Base, GA 31098–6001, Air Force Training Corps/SDAA, Maxwell Air Force Base, AL 36112–6678, the National Guard Bureau, Washington DC 20331–6008, major air commands, and from HQ USAF/JAEC, Washington DC 20314–5000. Information from source documents prepared on behalf of the Air Force Advance Personnel Data System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ARPC C

SYSTEM NAME:

Correction of Military Records for Officers and Airmen, (50 FR 22397, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add "and Executive Order 9397" to end of entry.

* * * * *

PURPOSE(S)

Delete "Manpower and Personnel Center," and insert "Air Force Military Personnel Center, Randolph AFB, TX 78150–6001."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From subject of the record and military personnel records."

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F035 ARPC C

SYSTEM NAME:

Correction of Military Records of Officers and Airmen.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel and Air National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files containing letters from individual Reservist requesting correction of military record, related documents and replies to Reservist.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 275, Personnel records, as implemented by Air Force Regulation 31–3, Air Force Board for Correction of Military Records, Headquarters Air Reserve Personnel Center Regulation 45–4, Correction of Military Records, and Executive Order 9397.

PURPOSE(S):

Used by office managers and section supervisors and technicians to process correction of Reserve records when requested. Base files are sent to Air Force Military Personnel Center, Randolph AFB, TX 78150–6001 for final action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Destroyed after 3 years by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From subject of the record and military personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ARPC D

SYSTEM NAME:

Data Change/Suspense Notification, (50 FR 22398, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 275, Personnel records, as implemented by Air Force Regulation 35–41, Vol I, Assignments Within the Reserve Components; Headquarters Air Reserve Center Regulation 45–7, Annual Surveys of Non-EAD Reservists, and Executive Order 9397."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets and are protected by guards."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays. Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 ARPC D

SYSTEM NAME:

Data Change/Suspense Notification.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and forms used to record discrepancies or changes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 275, Personnel records, as implemented by Air Force Regulation 35–41, Vol I, Assignments Within the Reserve Components; Headquarters Air Reserve Center Regulation 45–7, Annual Surveys of Non-EAD Reservists, and Executive Order 9397.

PURPOSE(S):

To resolve discrepancies detected during annual records review.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in the performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets and are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files for 1 year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written request should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license .

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from source documents prepared on behalf of the Air Force Advanced Personnel Data System or supplied by Reservist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ARPC E

SYSTEM NAME:

Flying Status Actions, (50 FR 22398, May 29, 1985).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 275, Personnel records as implemented by Air Force Regulation (AFR) 60–13, Aviation Service, Aeronautical Ratings and Badges; AFR 60–1, Flight Management, and Executive Order 9397."

* * * * *

PURPOSE(S):

Delete entry and replace with "To record each member's flying pay entitlement status and to monitor continuing entitlement in accordance with existing directions; to record each individual's flying activities, both hours and specific events, and provide indications of successful attainment of standards or deficiencies; to determine each rated member's eligibility to perform operational flying in accordance with existing USAF directives, and to provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications and training deficiencies."

* * * * *

STORAGE:

Add to end of entry "in computers and computer output products."

SAFEGUARDS:

Add before last sentence "Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Add to end of entry "Computer records are destroyed by erasing, deleting or overwriting."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 ARPC E

SYSTEM NAME:

Flying Status Actions.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve and Air National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and related documents pertaining to request for suspension, non-rated officer utilization, aeronautical rating data documents that pertain to aeronautical ratings or suspensions and request for update of the uniform officer record and applications for other flying status/actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C 275, Personnel records as implemented by Air Force Regulation (AFR) 60–13, Aviation Service, Aeronautical Ratings and Badges; AFR 60–1, Flight Management, and Executive Order 9397.

PURPOSE(S):

To record each member's flying pay entitlement status and to monitor continuing entitlement in accordance with existing directions; to record each individual's flying activities, both hours and specific events, and provide indications of successful attainment of standards or deficiencies; to determine each rated member's eligibility to perform operational flying in accordance with existing USAF directives, and to provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications and training deficiencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from source documents prepared on behalf of the Air Force Advanced Personnel Data System or supplied by Reservist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ARPC G

SYSTEM NAME:

Officer Promotion, (50 FR 22399, May 29, 1985).

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add "and Executive Order 9397" to end of entry.

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From military personnel records."

* * * * *

F035 ARPC G

SYSTEM NAME:

Officer Promotions.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000; Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty officer personnel. Air Force Reserve and Air National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Proceedings, findings and related documents such as rosters, board membership and board support and orders announcing promotion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8362, Commissioned officers: Selection boards; 8366, Commissioned officers: Promotion to captain, major, or lieutenant colonel; 8367, Commissioned officers: Promotion to captain, major, or lieutenant colonel; selection board procedures; 8371, Commissioned officers: Air Force Reserve; promotion to colonel as implemented by Air Force Regulation 36–11, Reserve of the Air Force Officer Promotions, and Executive Order 9397.

PURPOSE(S):

Used by promotion division personnel in preparation for promotion boards and by the actual promotion board when convened.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in note books/binders.

RETRIEVABILITY:

Retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files for 2 years after annual cutoff, then retired to Washington National Records Center, Washington DC 20409, for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From military personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

F035 ARPC I

SYSTEM NAME:

Requests for Discharge from the Air Force Reserve, [50 FR 22400, May 29, 1985].

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000 (non-unit assigned personnel). Headquarters, Air Force Reserve, Robins Air Force Base, GA 31098–6001 (unit assigned personnel)."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C 275, Personnel records, and Executive Order 9397."

* * * * *

PURPOSE(S):

Delete entry and replace with "To effect the administrative separation of officer and enlisted members of the United States Air Force Reserve who requests discharge or separation by reason of dependency or hardship or for the convenience of the government from their appointment as Reserve members."

* * * * *

STORAGE:

Add to end of entry "in computers and on computer output products."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software. Records are protected by guards."

RETENTION AND DISPOSAL:

Add to end of entry "Computer records are destroyed by erasing, deleting or overwriting."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, and Vice Commander, HQ AFRES, Robins Air Force Base, GA 31098–6001".

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit assigned personnel) or the Chief, Personnel Actions Division, Robins Air Force Base, GA 31098–6001 (unit assigned personnel).

Written request for information should contain full name of individual, Social Security Number, current address, and the case (control) number shown on correspondence received from HQ ARPC or HQ AFRES (if applicable). For personal visits, the individual should provide current Reserve identification card and/or drivers license."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Records manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit personnel) or to HQ AFRES/DPAA, Robins Air Force Base, GA 31098–6001 (unit assigned personnel).

Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, between 8 a.m. and 3 p.m. on normal workdays, or at HQ AFRES/DPAA, Building 210, Robins Air Force Base, GA 31098–6001, from 8 a.m. to 4:45 p.m. on normal workdays. Individuals desiring to see their records should provide a current Reserve identification card and/or drivers license."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b, or may be obtained from the system manager".

* * * * *

F035 ARPC I

SYSTEM NAME:

Requests for Discharge from the Air Force Reserve.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000 (non-unit assigned personnel). Headquarters, Air Force Reserve (HQ AFRES), Robins Air Force Base, GA 31098–6001 (unit assigned Personnel).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and other documents relating to discharge or separation by reason of dependency or hardship or for the convenience of the government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 275, Personnel records, and Executive Order 9397.

PURPOSE(S):

To effect the administrative separation of officer and enlisted members of the United States Air Force Reserve who requests discharge or separation by reason of dependency or hardship or for the convenience of the government from their appointment as Reserve members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. HQ AFRES forwards copies of actions resulting in discharge to the HQ ARPC for inclusion in the individual's Master Personnel Record Group. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, and Vice Commander, HQ AFRES, Robins Air Force Base, GA 31098–6001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit assigned personnel) or the Chief, Personnel Actions Division, Robins Air Force Base, GA 31098–6001 (unit assigned personnel).

Written request for information should contain full name of individual, Social Security Number, current address, and the case (control) number shown on correspondence received from HQ ARPC or HQ AFRES (if applicable). For personal visits, the individual should provide current Reserve identification card and/or drivers license.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Records manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000 (non-unit personnel) or to HQ AFRES/DPAA, Robins Air Force Base, GA 31098–6001 (unit assigned personnel).

Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000, between 8 a.m. and 3 p.m. on normal workdays, or at HQ AFRES/DPAA, Building 210, Robins Air Force Base, GA 31098–6001, from 8 a.m. to 4:45 p.m. on normal workdays.

Individuals desiring to see their records should provide a current Reserve identification card and/or drivers license.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from source documents prepared on behalf of the Personnel Data System or supplied by Reservist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F045 ARPC A

SYSTEM NAME:

Air Force Reserve Application, (50 FR 22434, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change the word "Commission" to "Commissioned," and add to end of entry "and Executive Order 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000, telephone (301) 370–4667. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F045 ARPC A

SYSTEM NAME:

Air Force Reserve Application.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty personnel, civilian employees and former employees, Air Force Reserve and Air National Guard personnel, dependents of military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of application for appointment as reserve of the Air Force and comparable forms, correspondence, and related papers.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 275 Personnel Records; 672 Reserve Components General; 8358 Commissioned Officers original appointment; service credit, 8359 Commissioned Officers original appointment, determination of grade, as implemented by Air Force Regulation 36–15, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories - Reserve of the Air Force and USAF (Temporary), and Executive Order 9397.

PURPOSE(S):

To determine if individual qualifies for appointment or commissioning in the Reserve of the Air Force on voluntary entry on Extended Active Duty (EAD)

and justification, if any, for an Air Force Specialty Code (AFSC). Medical applications are forwarded for approval to AFMPC/SG, Randolph Air Force Base, TX 78150–6001.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in card files and file folders.

RETRIEVABILITY:

Retrieved by Social Security Number, by name, or case control number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Destroy one year after approval or one year after individual declines appointment. Applications for entrance on active duty are destroyed after one year or when superseded, obsolete and no longer needed for reference or inactivation whichever is sooner. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from individual applying for appointment in the reserve, applications for extended active duty, and statement of military who served in the Navy or Marine Corps.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ARPC A

SYSTEM NAME:

Professional Military Education (PME), (50 FR 22446 May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 262, Purpose, as implemented by Air Force Regulation 50–5, USAF Formal Schools (Policies, Responsibilities, General Procedures, and Course Announcements), Air Force Regulations 35–41, Vol II, Reserve Personnel Policies and Procedures - Reserve Training; and 53–8, USAF Officer Professional Military Education System."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license."

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F050 ARPC A

SYSTEM NAME:

Professional Military Education (PME).

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning school PME quotas, school selection boards results selecting a Reservist to attend a PME course.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 262, Purpose, as implemented by Air Force Regulation 50–5, USAF Formal Schools (Policies, Responsibilities, General Procedures, and Course Announcements), Air Force Regulations 35–41, Vol II, Reserve Personnel Policies and Procedures -

Reserve Training; and 53–8, USAF Officer Professional Military Education System.

PURPOSE(S):

Used to monitor, manage and comply with the requirements to fulfill the quotas allocated to Reservist by the office of primary responsibility at HQ ARPC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders/note books/ binders.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from master personnel record and individual's application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F160 ARPC A

SYSTEM NAME:

Physical Examination Reports Suspense, (50 FR 22506, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete "Air Force Regulation 60–43" and insert "Air Force Regulation 160–43," and add to end of Entry "of non-EAD Reservists, and Executive Order 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80208–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable."

RECORD ACCESS PROCEDURES:

Records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

Delete entry and replace with "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F160 ARPC A

SYSTEM NAME:

Physical Examination Reports Suspense File.

SYSTEM LOCATION:

Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incomplete reports of physical examinations, correspondence to and from Reservists/individuals.

AUTHORITY FOR MAINTAINING THE SYSTEM:

10 U.S.C. 275, Personnel Records, as implemented by Air Force Regulation 160–43, Medical Examination and Medical Standards, and Headquarters Air Reserve Personnel Center Regulation 45–7, Annual Survey of Non-EAD Reservists, and Executive Order 9397.

PURPOSE(S):

Information in files is used to provide control of Reservists/individual medical status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of

record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in suspense file until completed, then filed in the individual health record.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Reserve Personnel Center, Denver, CO 80280–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000.

Written requests should contain full name, SSN, current mailing address, and the case (control) number on correspondence received from the Center, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Records Manager, Headquarters Air Reserve Personnel Center/IMD, Denver, CO 80280–5000. Records may be reviewed in the Records Review Room, Headquarters Air Reserve Personnel Center, Denver, CO, between 8 a.m. and 3 p.m. on normal workdays.

Requester must be able to provide sufficient proof of identity, with an Armed Forces identification card or a drivers license.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from examining facilities, physicians military and civilian, and summary of physician's evaluation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–17585 Filed 7–24–92; 8:45 am]

BILLING CODE 3810–01–F

Department of the Army

Fort Hood Environmental Impact Statement Record of Decision

July 20, 1992.

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: The Department of the Army has announced the approval to proceed with the realignment of the 5th Infantry Division (Mechanized) from Fort Polk, Louisiana to Fort Hood, Texas. In accordance with Public Law 101–510, the Army will implement the recommendations of the Defense Base Closure and Realignment Commission.

As Environmental Impact Statement (EIS) was prepared to assess the impacts of the realignment. Based on the findings of the final EIS, the Army has adequately assessed the impacts of the realignment, and has taken all practical measures to avoid or mitigate harmful environmental effects. The Army has complied or will comply with all environmental laws and regulations during this realignment.

The move will begin immediately. The majority of the units will move over a one year period to minimize the number of enlisted personnel housed in non-modernized barracks and provide sufficient time to execute the realignment in a manner which will reduce disruption to military operations and readiness, logistical resources, and families. The realignment will transfer approximately 12,300 military authorizations to Fort Hood and increase the installation's civilian requirements by approximately 500.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Record of Decision, contact Mr. Arver Ferguson, (817) 334–3246 or write to: United States Army Corps of Engineers, Fort Worth District, ATTN: CESWF–PL–RE, 819 Taylor Street, Fort Worth, Texas 76102–0300.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health) OASA (I, L&E).

[FR Doc. 92–17578 Filed 7–24–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.004D]

Desegregation of Public Education Program for Desegregation Assistance Centers; Inviting Applications for New Grant/Cooperative Agreement Awards for Fiscal Year (FY) 1993

PURPOSE OF PROGRAM: The Desegregation Assistance Center Program is designed to provide financial assistance to operate regional Desegregation Assistance Centers (DACs), to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools, and in the development of effective methods of copying with special educational problems occasioned by desegregation.

ELIGIBLE APPLICANTS: A public agency (other than a State educational agency or a school board) or a private, nonprofit organization is eligible to receive a grant/cooperative agreement through this program.

Deadline for Transmittal of Applications: September 22, 1992.

Deadline for Intergovernmental Review: November 21, 1992.

Applications Available: July 31, 1992.

Estimated Available Funds: $7.4 million.

Estimated Range of Awards: $500,000 to $900,000.

Estimated Average Size of Awards: $740,000.

Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) Education Department General Administrative Regulations (EDGAR) in CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86, and (b) the regulations for this program in 34 CFR parts 270 and 272.

For Applications or Information Contact: Annie Mack, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC, 20202–6246. Telephone: (202) 401–0358. Deaf and hearing impaired individuals may

call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: July 21, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–17595 Filed 7–24–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to National Council on Radiation Protection and Measurement

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to the National Council on Radiation Protection and Measurements (NCRP) under Grant No. DE–FG01–92EW50644. The proposed grant will provide funding in the estimated amount of $712,058 for NCRP to study and make recommendations on Radionuclide Contamination, Radioactive and Mixed Waste, and Basic Radiation Protection Criteria.

In accordance with 10 CFR 600.14(e)(1), it has been determined that this represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. NCRP is well recognized as providing the means by which nationally and internationally recognized experts can focus their efforts on problems of radiation protection and measurement. The organization has established competence and maturity in radionuclide assessment. The 75 Council members are drawn from distinguished universities, laboratories, medical institutions, and businesses. Over 500 adjunct specialists (engineering, medical, and scientific) serve various NCRP committees on a volunteer basis.

It is determined under subpart 10 CFR 600.7(b)(2)(i)(G) that the proposed effort is deemed valuable and fulfills a public purpose by providing a common good with national significance. This grant will ensure that a comprehensive program of risk assessment in broad areas of radioactivity, mixed wastes, and radiation protection will be used by industries employing radiation sources to assure their equipment and practices apply the latest concepts of protection. Furthermore, it is anticipated that non-government groups concerned with improving radiation protection will use the Council for technical guidance, which will be beneficial in reduction of potential exposure of personnel to radiation.

The anticipated term of the proposed grant is 36 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Mr. Bernard G. Canlas, PR–322.3, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 92–17671 Filed 7–24–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 8864–007 and 9025–005 Washington]

Weyerhaeuser Co.; Availability of Environmental Assessment

July 21, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license and prepared an Environmental Assessment (EA) for the following proposed projects:

1. Calligan Creek Hydroelectric Project, to be located on Calligan Creek, in King County, near North Bend, WA
2. Hancock Creek Hydroelectric Project, to be located on Hancock Creek, in King County, near North Bend, WA.

In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed projects, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17629 Filed 7–24–92; 8:45 am]

BILLING CODE 6717–01–M

Project Nos. 2327–002, et al.

Hydroelectric Applications; James River-New Hampshire Electric, Inc., et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a *Type of Application:* New Major License.

b. *Project No:* 2327–002.

c. *Date Filed:* February 1, 1989.

d. *Applicant:* James River-New Hampshire Electric, Inc.

e. *Name of Project:* Cascade Hydro Project.

f. *Location:* On the Androscoggin River, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. George W. Hill, James River—New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Deadline Date:* See Paragraph D5.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D5.

l. *Description of Project:* The existing operating project commenced operation in 1916 and was issued an initial license in 1964, which will expire in December 1993. The licensee has applied for a new license and proposes major modifications to the licensed project. The proposed project would consist of: (1) An existing 53-foot-high and 583-foot-long concrete gravity dam with 3-foot-high flashboards; (2) an existing reservoir with gross storage capacity of 200 acre-feet; (3) an existing headworks structure and forebay; (4) an existing powerhouse equipped with two turbine-generators for a total rated capacity of 7,920 kW; (5) a new intake; (6) a new 18-foot-diameter, 7,400-foot-long steel penstock; (7) a new powerhouse containing a single turbine-generating unit rated at 14,300 kW; and (8) appurtenant facilities. The proposed project would have a total capacity of 22,220 kW and an average annual generation of 103,300 MWh.

m. *Purpose of Projects:* All project energy generated would be utilized by the applicant for sale of its customers.

n. *This notice also consists of the following standard paragraphs:* D5.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at the office of Mr. George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

2. a. *Type of Application:* Amendment of License.

b. *Project No.:* 4851–003.

c. *Date Filed:* May 22, 1992.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Sly Creek Transmission Line.

f. *Location:* At Oroville-Wyandotte Irrigation District's South Fork Project, FERC No. 2088, transmitting power from the Sly Creek Powerhouse to PG&E's Woodleaf-Palermo transmission line in Butte County, California.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. Rodney Strub, Pacific Gas and Electric Company, P.O. Box 770000, Mail—P10A, San Francisco, CA 94177, (415) 973–5310.

i. *FERC Contact:* Don Wilt, (202) 219–2676.

j. *Comment Date:* August 28, 1992.

k. *Description of Amendment:* The licensee has requested an extension of the expiration date of its Sly Creek transmission line license from July 31, 2002, to July 1, 2010. This would coincide with the expiration date of their Woodleaf-Palermo transmission line license (FERC No. 2281) and with the expiration date of the power purchase contracts between Oroville-Wyandotte Irrigation District (OWID) and the licensee from OWID's South Fork Project. In addition, it would allow the licensee to reduce its filing requirements by filing a single application for relicensing the transmission line instead of two separate applications.

l. *This notice also consists of the following standard paragraphs: B, C, and D2.*

3. a. *Type of Application:* Minor License.

b. *Project No.:* 9713–001.

c. *Date Filed:* July 21, 1988.

d. *Applicant:* Alphine Hydroelectric Company.

e. *Name of Project:* Alphine Hydro Project.

f. *Location:* On the Cascade Alphine Brook in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harold Turner, Alphine Hydroelectric Company, P.O. Box 7191, Concord, NH 03301, (603) 497–3940.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Dealine Date:* See Paragraph D5.

k. *Status of Environmental Anaylsis:* This application is ready for environment analysis at this time—see attached paragraph D5.

l. *Description of Project:* The proposed project would consist of: (1) The existing 25-foot-high and 178-foot-long cut granite gravity dam; (2) an existing reservoir with gross storage capacity of 3.7 acre-feet with a surface area of .44 acre at normal pool elevation of 1,220 feet MSL; (3) an existing 12-inch-diameter and 2,200-foot-long buried cast iron penstock; (4) a new concrete powerhouse having one generating unit rated at 115 kW; (5) a new tailrace; (6) a new 50-foot-long, three-phase transmission line; and (7) appurtenant facilities. The proposed project would have an average annual generation of 500 MWh. The existing dam is owned by the James River Paper Company, Berlin, New Hampshire.

m. *Purpose of Project:* All project energy generated would be sold to the James River Company or the Public Service Company of New Hampshire.

n. *This notice also consists of the following standard paragraphs:* D5.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at the Office of Mr. Harold Turner, Alphine Hydroelectric Company, Concord, NH 03301, (603) 497–3940.

Standard Paragraphs

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D5. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 18, 1992 for Project Nos. 2327–002 and 9713–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (November 2, 1992 for Project Nos. 2327–002 and 9713–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary

circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 21, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17613 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST91-05247, et al.]

East Texas Gas Systems, et al. Meeting

July 20, 1992.

Take notice that on July 30, 1992, the Pipeline Compliance Staff of the Federal Energy Regulatory Commission will meet with the Union Pacific Intrastate Pipeline Company. The purpose of the meeting is to discuss the specific requirements of the Section 311 regulations in order to ensure the company's compliance with these regulations.

The meeting will be held at 825 North Capitol Street NE., in room 3400, beginning at 2 p.m. Any persons interested in attending the meeting should contact John F. Joseph (202) 208-0711.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17612 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-92-569-000, et al.]

Viking Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Viking Gas Transmission Company

[Docket No. CP92-569-000]

July 16, 1992.

Take notice that on July 1, 1992, Viking Gas Transmission Company (Viking), 1010 Milam Street, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-569-000, as supplemented and amended on July 8 and 13, 1992, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new delivery point for transportation service provided for Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (PNG), under Viking's blanket certificate issued in Docket No. CP82-414-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking proposes to install and operate a 2-inch hot tap and related facilities, including a skid mounted, positive displacement meter (maximum rated capacity of 3,200 Mcf per day), at M.P. 2213+20.7 (site 2) on Viking's system in Camp Ripley, Morrison County, Minnesota. Viking explains that the delivery point would be used for deliveries of gas under a gas transportation agreement dated October 1, 1990, under which Viking provides an interruptible transportation service to PNG in accordance with Viking's Rate Schedule IT-2. Viking states that PNG would reimburse it for the cost of the facilities, estimated to be $111,000.

Comment date: August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Williamsville Water Company, Inc.

[Docket No. CP92-586-000]

July 17, 1992.

Take notice that on July 9, 1992, Williamsville Water Company, Inc. (Williamsville), P.O. Box 400, Kosciusko, Mississippi 39090, filed an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations, 18 CFR 284.224, requesting blanket certificate authorization to engage in the sale, transportation (including storage) and assignment of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williamsville states that it is a Mississippi Corporation and is a public utility providing natural gas distribution service subject to the regulation of the Mississippi Public Service Commission (the Mississippi PSC). Williamsville states that it has received a certificate of public convenience and necessary from the Mississippi PSC authorizing Williamsville to develop, construct, operate, and maintain underground natural gas storage caverns near Allen, Copiah County, Mississippi.

Williamsville further states that its application before the Commission requests authorization for a blanket certificate to render transportation (including storage) services in interstate commerce for the same rates and under the same terms and conditions approved by the Mississippi PSC for services provided to LDCs, end-users, and public utiliaties located within the State of Mississippi.

Comment date: August 7, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP92-587-000]

July 17, 1992.

Take notice that on July 9, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-587-000 a request pursuant to § 157.205 of the Commission's Regulations to construct a sales tap to deliver natural gas to International Paper Company (IP) in DeSoto Parish, Louisiana under Texas Eastern's blanket certificate issued in Docket No. CP82-535-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate a four-inch hot tap on Texas Eastern's 24-inch Line No. 11 in DeSoto Parish, Louisiana to deliver up to 100,000 dth per day of natural gas to IP, on an interruptible basis, under Texas Eastern's Rate Schedule IT-1. Texas Eastern states the proposed facilities would have no effect on its peak day or annual deliveries and would be accomplished without detriment or disadvantage to its other customers. Texas Eastern states that IP would reimburse Texas Eastern for the cost of the facilities which is estimated to be $30,400. IP would construct and operate a 4-inch metering and regulating station and 1.41 miles of 6-inch pipeline between the meter and the delivery point to IP, it is indicated.

Comment date: August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP92-590-000]

July 17, 1992.

Take notice that on July 10, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-590-000 a request which is pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate delivery tap facilities located in Coconino County, Arizona to permit the firm transportation and delivery of natural gas for Citizens Utilities Company (Citizens), under its blanket certificate issued in Docket No. CP82-435-000, pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states it has provided sales service to Citizens for resale to consumers situated in various communities and areas in the state of Arizona under the terms of a service agreement dated August 17, 1981. El Paso indicates that effective September 1, 1991, Southern Union elected to convert its firm sales entitlements under its existing service agreements to firm transportation service under the provisions of El Paso's global settlement in Docket No. RP88-44-000, *et al.* It is stated that the transportation service is being provided under the terms of a transportation agreement dated August 28, 1991.

El Paso states that Citizens has advised that the Wing Mountain Residential Subdivision located near Citizens' distribution system in Coconino County, Arizona would require natural gas for residential space heating. In order to accommodate Citizens' request, El Paso proposes to construct and operate a 1-inch O.D. tap and valve assembly, with appurtenances, at a point on El Paso's existing 1¼ inch O.D. Fort Valley Line in Coconino County, Arizona at an estimated cost of $6,416 and at a pressure not to exceed 60 psig.

El Paso estimates annual and peak day volumes to the proposed facility during the third year of operation of 6,373 Mcf and 59 Mcf, respectively. El Paso states that the volumes would have a negligible effect upon its system's peak day and annual deliveries. El Paso states that the construction of the proposed delivery tap is not prohibited by El Paso's existing tariff and that the volumes to be delivered at the proposed tap are within the certificated entitlements of Citizens.

Comment date: August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Arkansas Western Pipeline Company

[Docket No. CP92-570-000]

July 20, 1992.

Take notice that on July 1, 1992 Arkansas Western Pipeline Company (AW Pipeline), 1083 Sain Street, Fayetteville, Arkansas 72702-1408, filed in Docket No. CP92-570-000, an abbreviated application pursuant to section 7(c) of the Natural Gas Act requesting the Commission to issue a certificate of public convenience and necessity authorizing: (1) The construction and operation of certain pipeline facilities; (2) part 284 transportation service under a blanket certificate; (3) the routing activities under a subpart F of part 157 blanket certificate; and (4) certain proposed initial rates for transportation service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, AW Pipeline proposes to construct and operate approximately one (1) mile of 10-inch pipeline across the St. Francis River and approximately seven and one half (7.5) miles of 8-inch pipeline (all in Missouri), extending from the terminus of the Noark Pipeline System (Noark), an Arkansas intrastate pipeline, near the town of Piggott in Clay County Arkansas and terminating at an interconnection with the facilities of Associated Natural Gas Company, a local distribution company, near the town of Kennett in Dunklin County, Missouri. AW Pipeline states that this proposed pipeline will have a daily capacity of 33,700 Dth per day, and will be operated at an inlet pressure of 550 pounds per square inch gauge (psig) and an outlet pressure of 475 psig. AW Pipeline states that it does not propose to install any compression facilities at this point in time.

AW Pipeline states that the estimated cost of constructing this proposed pipeline is $2,702,900 and that these costs will be financed from funds on hand, or will be obtained from AW Pipeline's parent company, Southwestern Energy Company.

AW Pipeline states that it will provide distributors and end-users in southeastern Missouri with access, via Noark, to competitively priced gas from the Arkoma Basin and supplies off of three interstate pipeline—Mississippi River Transmission Corporation, Natural Gas Pipeline Company of America, Inc., and Texas Eastern Transmission Corporation. Further, AW Pipeline states that it will be a transportation—only pipeline, that is, it will make no sales of any kind.

AW Pipeline states that its proposed initial rates are as follows:

Firm Transportation:

Demand Charge:

Maximum rate—$1.4923 per dekatherm (Dth).

Minimum rate—$0.0000 per Dth.

Commodity Charge:

Maximum rate—$0.0002 per dekatherm (Dth).

Minimum rate—$0.0002 per Dth.

Interruptible Transportation (125% Load Factor):

Maximum rate—$.0394 per (Dth).

Minimum rate—$0.0002 per Dth.

AW Pipeline states that these rates do not include any Annual Charge Adjustment charges.

Lastly, AW Pipeline states: (1) That it believes that any environmental disturbance related to the proposed construction activities will be of short duration and/or minimal impact; (2) that it is important to note that AW Pipeline will utilize directional drilling to install pipeline facilities safely under the St. Francis River; and (3) that once constructed, the proposed pipeline will yield a beneficial environmental impact, by permitting access to competitively placed natural gas, which will replace or offset the use of higher pollutant fuels.

Comment date: August 10, 1992, in accordance with Standard Paragraph F at the end of the notice.

6. Llano, Inc., Colonial Gas Company, Rochester Gas and Electric Corporation, Energyline, Inc.

[Docket Nos. CI92-61-000; CI92-62-000; CI92-63-000]

July 20, 1992.

Take notice that on July 10, 1992, Llano, Inc., and on July 13, 1992, Colonial Gas Company, Rochester Gas and Electric Corporation and Energyline, Inc. (Applicants), filed applications under sections 4 and 7 of the Natural Gas Act (NGA) for unlimited-term blanket certificates with pregranted abandonment. Applicants request authorization to make sales in interstate commerce for resale of all Natural Gas Policy Act categories of natural gas subject to the Commission's NGA jurisdiction, and/or gas purchased from non-first sellers such as interstate and intrastate pipelines or local distribution companies, natural gas purchased under any existing or subsequently approved interstate pipeline tariff, imported natural gas and liquefied natural gas. Applicant' applications are on file with the Commission and open for public inspection.

Comment date: August 7, 1992, in accordance with Standard Paragraph J at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP92-597-000]

July 20, 1992.

Take notice that on July 15, 1992, William Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-597-000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to relocate the point of delivery of gas to the United Cities Company Kickapoo town border in Leavenworth County, Kansas, and to construct approximately 1,838 feet of 6-inch pipeline to maintain service to the Carter Waters Haydite plant (Carter Waters) and the Kansas Power & Light Company (KPL Gas service) Dearborn and New Market town borders located in Platte County, Missouri, under blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that it be on file with the Commission and open to public inspection.

WNG states that it proposes to relocate the Kickapoo town border from the St. Joe 12-inch pipeline to the adjacent St. Joe 16-inch pipeline and to construct approximately 1,838 feet of 16-inch pipeline between the St. Joe 12-inch and the adjacent St. Joe 16-inch in order to maintain service to Carter Waters and the Dearborn and New Market town borders. The projected volume of delivery is not expected to exceed the total volumes currently being delivered of 1,296 Dth on a peak day and 151,058 Dth annually. The estimated cost of construction is approximately $80,980, which will be paid from funds on hand.

WNG also states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: September 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipeline Company

[Docket No. CP92-592-000]

July 20, 1992.

Take notice that on July 10, 1992, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251-1478, pursuant to section 7(b) of the Natural Gas Act, filed in Docket No. CP92-592-000, an application requesting permission and approval to abandon compression facilities and related station piping as well as the unused certificate authority to provide the compression service for a third party in Calcasieu Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, United intends to abandon three 1,300 horsepower turbine driven compressor units, multiple 12-inch tube meter station, and related piping, all known as the Vinton Compressor Station. The compressor units and the meter station will be abandoned in place. The related piping will also be abandoned in place and capped and filled with nitrogen. United contends that the Vinton Compressor Station was certified in Docket No. CP78-471-000,[1] to interconnect the facilities to Transcontinental Gas Pipeline Company (Transco) and Tennessee Gas Pipeline Company (Tennessee) in southeastern Louisiana in order for United to maintain access to gas supplies in the Gulf of Mexico.

United also requests authorization to abandon certificate authority to compress natural gas for National Fuel Gas Supply Corporation (National Fuel) because the certificate has never been used. United states further that National Fuel consents to the abandonment of the unused certificate authorization.

Comment date: August 10, 1992, in accordance with Standard Paragraph F at the end of this notice.

[1] 57 FPC 199 (1977).

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 156.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17628 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-14-000]

CNG Transmission Corp.; Staff Attendance at Conference

July 21, 1992.

Take notice that the Federal Energy Regulatory Commission Staff will attend a conference to be held on Thursday, July 30, 1992, at 10 a.m. at the Ritz-Carlton Hotel, located at 2100 Massachusetts Avenue, NW., Washington, DC. The conference will be convened by CNG Transmission Corporation for the purpose of discussing CNG's summary of its proposed plan for implementation of Order No. 636. For additional information, please contact Kevin J. Lipson at (202) 955-6667.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17631 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-204-009]

East Tennessee Natural Gas Co.; Compliance Filing

July 21, 1992.

Take notice that on July 15, 1992, East Tennessee Natural Gas Company (East Tennessee), tendered for filing the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1992:

Substitute Twenty Third/Sheet No. 4 and 5
Substitute Twenty Fourth/Sheet No. 4 and 5

East Tennessee states that in accordance with the July 8, 1992 letter order, East Tennessee submits the instant sheets to add its take-or-pay surcharge amount ("adjustment under section 26") to the total "rate after adjustment" for its SGS-1 and SGS-2 rate schedules.

East Tennessee states that copies of the filing are being mailed to all affected customers on East Tennessee's system and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before July 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17610 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-185-001]

El Paso Natural Gas Co.; Compliance Filing

July 21, 1992.

Take notice that on July 17, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (C) of the Commission's order issued July 2, 1992 at Docket No. RP92-185-000 certain tariff sheets to become effective July 3, 1992.

El Paso states that on June 2, 1992 at Docket No. RP92-185-000, El Paso filed with the Commission certain tariff sheets revising various provisions contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1-A and Second Revised Volume No. 1, to become effective July 1, 1992. Ordering paragraph (C) of the July 2, 1992 order provided for the acceptance and suspension to become effective July 3, 1992, subject to refund, of those tariff sheets addressing failure to pay bills, subject to El Paso filing within fifteen (15) days of the date of the order revised tariff sheets reflecting the conditions stated in the order. Accordingly, El Paso has filed the tendered tariff sheets in compliance with the conditions set forth in ordering paragraph (C) of the July 2, 1992 order.

El Paso requested waiver of the Commission's Regulations, as appropriate, in order that the tendered tariff sheets may become effective July 3, 1992, the same date as authorized by the Commission's order issued July 2, 1992 at Docket No. RP92-185-000.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before July 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17608 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-104-002, RP92-131-003]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

July 21, 1992.

Take notice that on July 16, 1992, in compliance with the Commission's June 18 Order, K N Energy, Inc. submitted for filing an original and five copies each of the following tariff sheets to K N's FERC Gas Tariff:

Fourth Revised Volume No. 1:

Substitute Ninth Revised Sheet No. 4
Substitute Ninth Revised Sheet No. 4B

First Revised Volume No. 1-A:

Substitute Fourth Revised Sheet No. 4

First Revised Volume No. 1-B:

Substitute Second Revised Sheet No. 66

The only purpose of this compliance filing is to reflect the June 1, 1992 effective date approved by the June 18 Order.

K N states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17609 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-051]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 21, 1992.

Take notice that Northern Natural Gas Company (Northern) on November 12, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets:

Third Revised Volume No. 1

Second Revised Sheet No. 74K
First Revised Sheet No. 74M
Second Revised Sheet No. 74N

Original Volume No. 2

First Revised Sheet No. 1W
First Revised Sheet No. 1Y
Second Revised Sheet No. 1Z

Northern states that such tariff sheets are being submitted in compliance with the Commission's September 3, 1992 order in Docket Nos. RP88-259-046, CP89-1227-012, RP90-124, RP90-161 and RP89-136, which approved the IGIC Extension Settlement.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17607 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-69-000]

Northwest Pipeline Corp.; Conference

July 21, 1992.

Take notice that on Tuesday, August 18 and, if necessary, Wednesday, August 19, 1992, a conference will be convened in the captioned restructuring docket to discuss Northwest Pipeline Corporation's summary of its proposed plan to implement Order No. 636.

The conference will be held at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The conference will begin at 10 a.m. on August 18. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons may call Michael Goldenberg at (202) 208-2294.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17630 Filed 7-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-204-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

July 21, 1992.

Take notice that on July 17, 1992, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1992:

First Substitute Fourth Revised Sheet No. 16D
First Substitute Fourth Revised Sheet No. 16T
First Substitute Original Sheet No. 34P.03

South Georgia states that the purpose of this filing is to implement a monthly pro rata fuel retention provision applicable to all of its transportation services. This provision is to be implemented in lieu of the annual fuel adjustment provision currently subject to suspension in Docket No. RP92-74. South Georgia requests a waiver of the Commission's Regulations to make this filing effective August 1, 1992.

South Georgia states that copies of the filing will be served upon its shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 28, 1992. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17611 Filed 7-24-92; 8:45 am]

BILLING CODE 6710-01-M

Office of Fossil Energy

[FE Docket No. 92-74-NG]

J. Aron & Co.; Application for Blanket Authorization To Import and Export Natural Gas, Including LNG, From and to Canada, Mexico, and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 18, 1992, of an application filed by J. Aron & Company (Aron) for blanket authorization to import and export up to 350 Bcf of natural gas, including liquefied natural gas (LNG), from and to Canada, Mexico, and other countries over a two-year term beginning on the date of first delivery. Aron intends to utilize existing pipeline and LNG facilities for the transportation of the volumes to be imported and exported and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 26, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S.

Department of Energy, Forrestal Building, Room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Aron, a New York general partnership with its principal place of business in New York City, is a major dealer in crude oil and petroleum products, precious metals, foreign exchange and grain. Aron proposes to import natural gas for it own account, as well as for the account of others for which Aron may act as agent. The natural gas well be imported and exported under short-term, market-responsive contracts of two years or less, and will enter or exit at existing points along the international border.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issue determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to negotiate freely their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import/export authority. The applicant asserts that imports made under this arrangement would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, and oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Aron's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 17, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–17672 Filed 7–24–92; 8:45 am]

BILLING CODE 6450–01–M

FARM CREDIT ADMINISTRATION

[BM–16–JUL–92–03]

Policy Statement Concerning Alternative Means of Dispute Resolution

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: On July 16, 1992, the Farm Credit Administration (FCA) Board adopted a policy addressing the use of alternative means of dispute resolution (ADR) that provides a framework within which to consider possible applications of ADR. The policy states that the FCA will consider using various forms of ADR to resolve disputes when settlement negotiations have come to a deadlock, that any such consideration will be based on factors such as the impact of the ADR procedure on the effective and efficient regulation of the Farm Credit System, that the FCA's Dispute Resolution Specialist will provide guidance to FCA personnel on the appropriate use of ADR, and that ADR can be initiated once all parties to a dispute have consented to its use.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Frances Pedersen, Senior Attorney, Litigation and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement concerning the alternative means of dispute resolution is set forth below in its entirety:

Effective Date: 16-JUL-92.

Effect on Previous Action: None.

Source of Authority: Administrative Dispute Resolution Act, Public Law 101–552, H.R. 2597, 101st Congress, 2d Session.

Whereas, the Farm Credit Administration (FCA) Board finds:

The Administrative Dispute Resolution Act (Act), Public Law 101–552 (November 15, 1990), addresses the concern that traditional methods of dispute resolution, such as litigation and administrative adjudication, have become increasingly time-consuming

and expensive. The Act authorizes and encourages greater use of alternative means of dispute resolution (ADR), requiring each Federal agency to adopt a policy addressing the use of ADR.

ADR consists of informal, voluntary procedures used by parties who seek to resolve their disputes by consent. Such procedures include, but are not limited to, settlement negotiations, mediation, conciliation, facilitation, fact-finding, arbitration, and mini-trials, or any combination thereof. By emphasizing the common goals of the parties and fostering an atmosphere of cooperation, ADR can offer a less contentious and more expeditious alternative to traditional methods of dispute resolution such as litigation and administrative adjudication.

The use of ADR in appropriate circumstances is consistent with the FCA's mission as an agency. The mission of the FCA is to provide an effective regulatory environment that facilitates the competitive delivery of financial services to agriculture by the Farm Credit System, while protecting the public, the taxpayer, and the investor by using wisdom, sound judgment, and vision. In fulfilling this mission, the FCA seeks to employ innovative regulatory techniques that efficiently use agency resources. The appropriate use of ADR can promote the FCA's goal of effective and efficient regulation. By expediting the resolution of certain disputes, ADR can reduce the FCA's transaction costs, increase the FCA's productivity, and help the FCA accomplish its mission as an agency.

Therefore, the FCA Board adopts the following policy statement:

It is the policy of the FCA to resolve disputes in an effective and efficient manner. Many of the disputes encountered by the FCA are resolved most effectively and efficiently through settlement negotiations between the FCA and the other parties to the disputes prior to the initiation, or in the early stages of, more formal litigation or administrative adjudication. The FCA will continue to use settlement negotiations as a method of dispute resolution.

To the extent that there is a stalemate in settlement negotiations between the parties, the FCA will consider whether it is appropriate to use other forms of ADR. In assessing the advisability of using ADR procedures other than settlement negotiations, the FCA will consider whether such procedures are likely to reduce the FCA's transaction costs, increase the FCA's productivity, and help the FCA accomplish its mission of effective and efficient regulation. Section 4(b) of the Act, as codified at 5 U.S.C. 582(b), sets forth certain factors that the FCA will also consider in deciding whether it is appropriate to use such ADR procedures.

The FCA's Dispute Resolution Specialist (ADR Specialist), designated by the Chairman, as Chief Executive Officer, is responsible for the implementation of this policy statement. The ADR Specialist is available to assist FCA personnel in considering the appropriate application of ADR procedures. Before deciding whether it is appropriate to use an ADR procedure other than settlement negotiations, FCA personnel will consult with, and obtain the concurrence of, the ADR Specialist or his/her designee.

The ADR Specialist and those FCA personnel involved in resolving disputes are encouraged to attend educational and training programs relating to the theory and application of ADR on a regular basis, as the FCA budget permits.

Based on the voluntary nature of ADR, all parties to a dispute must agree to use an ADR procedure before it can be initiated.

Dated this 16th day of July, 1992.
By Order of the Board.
Signature date: July 21, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-17601 Filed 7-24-92; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1900]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed by August 11, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Brenham, Texas) (RM No. 7553) Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Crestview and Wastby, Florida) (MM Docket No. 90-91, RM-7108) Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Boonville and Columbia, Missouri) (MM Docket No. 91-135, RM-7697) Number of Petitions Filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-17632 Filed 7-24-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 31, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 31, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests a strengthening in domestic final spending, although industrial production and overall employment do not appear to have picked up correspondingly. Retail sales registered large gains in January and February, with data on inventories, which are available through January, showing some offsetting decline in that month. Single-family housing starts increased substantially further in January and February. Recent data on orders and shipments of nondefense capital goods indicate an increase in outlays for business equipment, but non-residential construction has remained in a steep decline. The nominal U.S. merchandise trade deficit narrowed slightly in January and was essentially unchanged from its average rate in the fourth quarter. Industrial production rose considerably in February, partly reflecting an upturn in motor vehicle assemblies, but was little changed on balance over the first two months of the year. Total nonfarm payroll employment rebounded in February from a large decline in January. With the labor force growing appreciably in recent months, the civilian unemployment rate has risen to 7.3 percent. Wage and price increases have continued to trend downward.

Most interest rates have risen appreciably since the Committee meeting on February 4-5. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies increased substantially over the intermeeting period.

[1] Copies of the Record of policy actions of the Committee for the meeting of March 31, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Growth of M2 and M3 accelerated in February, but M2 appears to have leveled off and M3 to have declined in March. Much of the growth in the broader aggregates over recent months has been accounted for by a surge in transactions balances.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. With regard to M3, the Committee anticipated that the ongoing restructuring of depository institutions would continue to depress the growth of this aggregate relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure of reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 3-1/2 and 1-1/2 percent, respectively.

By order of the Federal Open Market Committee, July 20, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92-17587 Filed 7-24-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0300]

Drug Export; Human Immunodeficiency Virus Type 2 (HIV-2) Western Blot Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cambridge Biotech Corp. has filed an application requesting approval for the export of the biological product Human Immunodeficiency Virus Type 2 (HIV-2) Western Blot Kit to Australia, Belgium, Canada, Denmark, France, The Federal Republic of Germany, Italy, Japan, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cambridge Biotech Corp., 365 Plantation St., Worcester, MA 01605, has filed an application requesting approval for the export of the biological product Human Immunodeficiency Virus Type 2 (HIV-2) Western Blot Kit to Australia, Belgium, Canada, Denmark, France, The Federal Republic of Germany, Italy, Japan, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Cambridge Biotech HIV-2 Western Blot Kit is an in vitro qualitative assay for the detection and identification of antibodies reactive to Human Immunodeficiency Virus Type 2 (HIV-2) antigens in human serum or plasma. It is intended for use with persons of unknown risk as an additional, more specific test for antibodies to HIV-2 in human serum or plasma specimens found repeatably reactive by screening procedures, such as enzyme-linked immunosorbent assay (ELISA). The application was received and filed in the Center for Biologics Evaluation and Research on June 18, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 6, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 15, 1992.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[Fr Doc. 92-17618 Filed 7-24-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N-0301]

Drug Export; Influenza Virus Vaccine, Subvirion, Trivalent Types A and B

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Connaught Laboratories Inc., has filed an application requesting approval for the export of the biological product Influenza Virus Vaccine, Subvirion, Trivalent Types A and B to Denmark, Finland, Norway, Sweden, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug

Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Connaught Laboratories, Inc., Rt. 611, P.O. Box 187, Swiftwater, PA 18370, has filed an application requesting approval for the export of the biological product Influenza Virus Vaccine, Subvirion, Trivalent Types A and B to Denmark, Finland, Norway, Sweden, and the United Kingdom. The influenza virus vaccine is infected with a specific type of influenza virus to reduce the likelihood of infection and lessons the severity of disease if infection occurs. The application was received and filed in the Center for Biologics Evaluation and Research on June 22, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 6, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 15, 1992.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 92–17619 Filed 7–24–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92N–0302]

Drug Export: MTS Anti–IgG Card™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Micro Typing Systems, Inc., has filed an application requesting approval for the export of the biological product MTS Anti–IgG Card™ to Canada and Switzerland.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Micro Typing Systems, Inc., 1295 SW. 29th Ave., Pompano Beach, FL 33069, has filed an application requesting approval for the export of the biological product MTS Anti–IgG Card™ to Canada and Switzerland. The MTS Anti–IgG Card™ is a combination of the Antiglobulin reagent incorporated into gel, known as the MTS Gel Test System to be used for the direct and indirect antiglobulin test. The application was received and filed in the Center for Biologics Evaluation and Research on June 3, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 6, 1992 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30–day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 15, 1992.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 92–17620 Filed 7–24–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 83N–0363]

Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability; Supplement to Points to Consider; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a supplement entitled, "Points to Consider in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid

Characterization and Genetic Stability." The supplement has been developed to revise and update information in a previously issued points to consider (PTC) document in order to improve the document's usefulness; it is neither a regulation nor a guideline, but represents the current thinking of the Center for Biologics Evaluation and Research (CBER).

ADDRESSES: Submit written requests for single copies of the PTC and supplement to the Congressional, Consumer, and International Affairs Branch (HFB–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, except that written requests delivered by carriers other than the U.S. Postal Service should be submitted to the Congressional, Consumer, and International Affairs Branch (HFB–142), Food and Drug Administration, Suite 109, Metro Park North 3, 7564 Standish Pl., Rockville, MD 20855. Send two self-addressed, adhesive labels to assist that office in processing your requests. Submit written comments on the PTC and supplement to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. "Points to Consider in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability" and comments received are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: S. J. Whidden, Center for Biologics Evaluation and Research (HFB–132), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1989 (54 FR 46305), FDA last announced the availability of the PTC entitled "Points to Consider in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology" (draft of April 10, 1985). The agency is now announcing the availability of a supplement to this PTC document. This supplement presents guidance regarding the characterization of the expression construct for the production of recombinant deoxyribonucleic acid (DNA) protein products in eukaryotic and prokaryotic cells. The expression construct is defined as the expression vector containing the coding sequence of the recombinant protein. Characterization of the expression construct was one of the PTC issues addressed. Since that time there have been advances in analytical technologies for protein and nucleic acid characterization, which have occurred in parallel with advances in fermentation and cell culture technologies. At present, it is believed that analytical data derived from either nucleic acid testing or protein structural testing alone do not allow for a complete evaluation of the identity and purity of a recombinant protein product.

As technology advances, CBER may consider new information and may revise this document, if needed. This document is intended to extend and clarify the types of information that are considered valuable in assessing the structure of the expression construct used to produce recombinant DNA proteins. In developing this document, CBER has attempted to take into consideration recent advances in biochemical technology, past history of different production systems, information derived from international meetings, and comments submitted to FDA.

This PTC supplement presents new information, summarizes certain available information and directs attention to regulations, PTC documents, and other related documents that are pertinent to development of such products. In response to future requests for the PTC, "Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology: Nucleic Acid Characterization and Genetic Stability," FDA will send the original PTC and this PTC supplement.

The current guidelines, PTC documents, and other related documents referenced in the PTC and supplement may be obtained from the Congressional, Consumer, and International Affairs Branch (address above).

The recommendations included in this information package are not requirements. A manufacturer may choose to use alternative procedures even though they are not described in the PTC and this PTC supplement. A manufacturer who wishes to use other procedures is encouraged to discuss the matter with the agency. Interested persons are encouraged to use this opportunity to submit comments on the PTC supplement if they have suggestions. The comments will be reviewed by FDA to determine whether the material provided should be revised or if additional information should be included in the PTC supplement.

Dated: July 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–17621 Filed 7–24–92; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OPHC–025–N]

Health Maintenance Organizations; HMO Qualification Determinations and Compliance Actions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or modified service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (FQHMOs) during the period August 6, 1991 through March 31, 1992. Additionally, it sets forth compliance actions taken by the Office of Prepaid Health Care Operations and Oversight for the period September 1, 1991 through March 31, 1992. This notice is in accordance with our regulations at 42 CFR 417.144 and 417.163, which require publication in the **Federal Register** of certain determinations relating to FQHMOs.

FOR FURTHER INFORMATION CONTACT: Christine Boesz, (202) 619–0840.

SUPPLEMENTARY INFORMATION:

A. Qualification Determinations

As part of our evaluation and determination of qualification of an entity as a Federally qualified health maintenance organization (FQHMO), our regulations at 42 CFR 417.144(e), promulgated under Title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication in the **Federal Register** of the names, addresses and descriptions of the service areas of new FQHMOs. We interpret this requirement as applying to revisions of service areas of currently approved FQHMOs, as well. Our last notice containing this information was published January 6, 1992 (57 FR 413).

There are three categories of FQHMOs: Operational, transitionally qualified, and pre-operational (see 42 CFR 417.141 for definitions of these terms).

The Office of Prepaid Health Care Operations and Oversight, HCFA, under delegation of authority from the

Secretary, has determined that the following entities are operational FQHMOs under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) or have expanded their previously qualified service areas:

1. New FQHMOs

a. *IHC Group, Inc. (IHC)* (Group Model, see section 1310(b)(1) of the Act), 36 South State, 14th Floor, Salt Lake City, Utah 84174. IHC's Federally qualified service area includes the following counties in their entirety: Davis, Salt Lake, Utah, and Weber.

Date of qualification: August 23, 1991.

b. *PCA Health Plans of Florida, Inc. (PCA)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 6101 Blue Lagoon Drive, Suite 300, Miami Beach, Florida 33126. PCA's Federally qualified service area of Miami includes Broward and Dade Counties in their entirety and the following zip codes in Palm Beach County:

Palm Beach County

33401 through 33419	33480
33424 through 33429	33483
33431 through 33439	33484
33441 through 33447	33486
33458 through 33470	33487
33477	33494
33478 33496 through 33498.	

Date of qualification: August 27, 1991.

c. *Gulf South Preferred Health Plan, Inc. (GSPHP)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 5615 Corporate Boulevard, Suite 5, Baton Rouge, Louisiana 70808. GSPHP's Federally qualified service area includes the following parishes in their entirety: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James, Tangipahoa, West Baton Rouge, and West Feliciana.

Date of qualification: September 17, 1991.

2. Service Area Expansions and Regional Components of Existing FQHMOs

a. *Bay State Health Care (BSHC)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 101 Main Street, Cambridge, Massachusetts 02142. BSHC's previously Federally qualified service area has been expanded into Barnstable, Essex, Middlesex, Nantucket Island, Norfolk, Plymouth, Suffolk and Worcester Counties and the following zip codes in Bristol County:

Bristol County

031	02714	02771
048	02715	02777
334	02717	02779
356	02718	02780
357	02725	02790
375	02740	02791
702	02744 through 02748	
703	02760 through 02764	
712	02766 through 02769	

The following towns are excluded: Acushnet, Dartmouth, Fairhaven, Fall River, New Bedford, Somerset, Swansea, Westport.

Date of qualification for service area expansion: August 6, 1991.

b. *Bridgeway Plan for Health (BPH)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 1700 California Street, suite 500, San Francisco, California 94109. BHP's previously Federally qualified service area has been expanded to include Eldorado, Placer, Sacramento, Yolo Countries in their entirety, and the following zip codes in Marin and San Mateo Counties:

Marin

94901 through 94915	94952
94924	94956
94930	94957
94933	94960
94937	94963
94938	94964
94945	94970
94947 through 94950.	

San Mateo

94002	94037
94010	94061 through 94065
94011	94070
94018	94301 through 94309
94019	94401 through 94404
94025.	

Date of qualification for service area expansion: September 16, 1991.

c. *Greater Amarillo Health Plan (GAHP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 1901 Medi Park, 2000, Amarillo, Texas 79106. GAHP's previously Federally qualified service area has been expanded to include the following zip codes in Carson, Deaf Smith, Hutchinson, Moore, Oldham, and Swisher Countries:

Carson	79039, 79060, 79097
Deaf Smith	79045
Hutchinson	79007, 79070
Moore	79029
Oldham	79001
Swisher	79066

Date of qualification for service area expansion: October 1, 1991.

d. *Health Maintenance of Oregon (HMO)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 1800 SW. First Avenue, Portland, Oregon 97201. HMO's previously Federally qualified service area has been expanded to include the following counties in their entirety in Oregon and Washington: Oregon—Columbia, Hood River, remainder of Clackamas; Washington—Clark, Klickitat, and Skamania.

Date of qualification for service area expansion: November 1, 1991.

e. *PCA Health Plans of California (PCA)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 3201 Del Paso Boulevard, Sacramento, California 95815. PCA's previously Federally qualified service area has been expanded to include Butte, Colusa, Glenn, Sierra, Sutter and Yuba Counties in their entirety, and the following zip codes of Plumas, Solano and Yolo counties:

Plumas County		Solano County	Yolo County
95915	95963	95620	95606
95923	95964		95607
95934	96020		95627
95947	96103		95637
95952	96105		95679
95956	96106		95694
95971	96122		95697
95980	96135		95698
			95937

Date of qualification for service area expansion: November 6, 1991.

f. *Community Health Network of Louisiana, Inc. (CHNL)* (Direct Contract Model, see section 1310(b)(2(B) of the Act), 2431 South Acadian Thruway, Suite 350, P.O. Box 80159, Baton Rouge, Louisiana 70898. CHNL's Federally qualified regional component includes the following parishes in Louisiana in their entirety: Jefferson, LaFourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Terrebonne, and Washington.

Date of qualification for the regional component: December 23, 1991.

B. Compliance Actions

Section 1312(b)(1) of title XIII of the Act and implementing regulations at 42 CFR 417.163(c)(1) and 417.163(d)(1), which set forth procedures for enforcing the assurance given to the Secretary by FQHMOs, require us to publish a notice in the **Federal Register** when we determine that an entity is not in compliance with qualification requirements for FQHMOs, or when we revoke an FQHMO's qualification. In a noncompliance notice, the FQHMO is directed to initiate corrective action within 30 days of the date of the notice or within any longer period that the Secretary determines to be reasonable. If the Secretary determines that a FQHMO has failed to initiate corrective action in accordance with the notice of noncompliance or has not carried out or refuses to carry out corrective action, the Secretary will revoke the entity's Federal qualification and will notify them of this action. In this notification, we provide the FQHMO with an opportunity to request a reconsideration of the revocation, including a fair hearing. If an FQHMO requests a reconsideration of the revocation notice, the Secretary will reissue a revocation notice and no further administrative remedy is available to the FQHMO. The final decision (either to revoke Federal qualification or restore the FQHMO to compliance status) resulting from the reconsideration process will be published in the **Federal Register**.

The Office of Prepared Health Care Operations and Oversight gives notice of the following compliance actions affecting FQHMOs for the period September 1, 1991 through March 31, 1992:

1. Letters of Noncompliance

a. Kaiser Foundation Health Plans of Georgia, Inc., Atlanta, Georgia

On November 27, 1992 we issued a letter of noncompliance to Kaiser Foundation Health Plans of Georgia, Inc. We initiated noncompliance action because of a continued lack of financial plan development and inadequate administration and management in support of the financial planning process. The financial plan and supporting assumptions submitted have been determined to be unacceptable due to significant and unanticipated operating losses accrued within 9 months of the financial plan development. The HMO's monthly and quarterly reporting of assumptions submitted have been determined to be unacceptable due to significant and unanticipated operating losses accrued within 9 months of the financial plan development. The HMO's monthly and quarterly reporting of financial performance is being monitored on a continuing basis against the financial plan.

b. Health Guard, Bellair, Ohio

On December 18, 1991 Health Guard was placed in noncompliance based on continued operating losses, negative working capital and absence of adequate available financing. Financial performance is being monitored on a continuing basis.

c. Group Health Association, Inc., Washington, DC

On March 31, 1992, a letter of noncompliance was issued to Group Health Association, Inc. for not maintaining satisfactory administrative and managerial arrangements. More specifically, the plan's computerized complaint monitoring system, housed in its administrative offices, includes data that are not representative of GHA's enrollment population.

2. Notices of Revocation

Organization	Date issued	Reason
Ocean State Health Plan, Providence, Rhode Island.	01/01/92	Voluntary relinquishment.
Share of Nebraska, Omaha, Nebraska.	01/01/92	Voluntary relinquishment.
Travelers Health Network of Austin, Richardson, Texas.	01/14/92	Voluntary relinquishment (Merger).
Group Health Partnership, Philadelphia, Pennsylvania.	03/03/92	Voluntary relinquishment.

C. Availability of Additional Information

A cumulative list of FQHMOs and additional information may be obtained by writing to the following address: Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, Room 4406 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, except for Federal holidays. Interested persons should contact Margie Ridley for an appointment, telephone (202) 619–2756.

Authority: (42 U.S.C. 300e) Title XIII of the Public Health Service Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 10, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–17637 Filed 7–24–92; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 14 and 15, 1992, Building 31, Conference Room 6, Building 31, Bethesda, Maryland.

This meeting will be open to the public on September 14, Building 31, Conference Room 6, from 8:30 a.m. to 11 a.m. for opening remarks; the report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on September 14 from 11 a.m. to 5:30 p.m. and on September 15, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, telephone: 301–496–7301 will provide a summary of the meeting, and a roster of Council members. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood

Building, room 938, Bethesda, Maryland 20892, telephone: 301–496–7061 will provide substantive program information upon request.
(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]); and 93.375, Minority Biomedical Research Support [MBRS])

Dated: July 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–17589 Filed 7–24–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 57 FR 21120, May 18, 1992) is amended to reflect the revision of the functional statement for the Office of the Director, Personnel Management Office, Office of Program Support.

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the heading and functional statement for the *Office of the Director (HCA571)* and substitute the following:

Office of the Director (HCA571). (1) Provides leadership and technical guidance to CDC in planning, coordinating, and conducting an effective personnel and labor-management relations program for civil service, Commissioned Corps, and visiting program personnel; (2) plans, directs, and evaluates the activities of the Personnel Management Office; (3) advises the Director, CDC, and other CDC management staff on all matters relating to personnel management.

Effective Date: July 9, 1992.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 92–17628 Filed 7–24–92; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–931–430–11, Closure Notice NV–030–92–04]

Shooting Closure; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Shooting closure, notice.

SUMMARY: Notice is hereby given that the area north of Reno near Winnemucca Ranch Road known as Moon Rocks will hereafter be closed to shooting to protect persons and property. The public lands described by this closure lie within the Mt. Diablo Meridian, T. 23 N., R. 20 E., unsurveyed sec. 21, W½ NE¼, SE¼ NE¼. Among other uses, this area is an unimproved campground and staging area for motorcycle events. It should be noted that the shooting restriction does not prohibit legitimate hunting activities, and therefore does not conflict with Nevada Department of Wildlife Regulations. This rule will be posted at the Moon Rocks. Recreational shooters may use other public lands where public safety is not at risk.

DATES: This closure goes into effect on September 15, 1992, and will remain in effect until the Carson City District Manager determines it is no longer needed.

COMMENT PERIOD: The BLM requests comments from the public concerning this closure notice. The comment period will be open until September 5, 1992. Comments received or postmarked after the close of the comment period may not be considered in making the final decision regarding this closure.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Area Manager, Bureau of Land Management, 1535 Hot Springs Rd., #300, Carson City, NV 89706, (702) 885–6000.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1(a) and 8365.1–6. Any person who fails to comply with a closure order is subject to arrest and fines of up to $1,000.

A map showing the closed area is posted in the Carson City District Office.

Dated: July 20, 1992.

James W. Elliott,

Carson City District Manager.

[FR Doc. 92–17635 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–HC–M

[WY–920–02–4143–11; WYW127208]

Coal Leases, Wyoming; Correction

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of correction legal description.

SUMMARY: This notice corrects an error in the legal description for a Notice of Invitation for sodium exploration license WYW127208, which appeared in the **Federal Register** on July 20, 1992, (57 FR 32024). The legal description in the Notice of Invitation reads:.

T. 17 N., R. 108 W., 6th P.M., Wyoming.
Sec. 6: Lots 8 thru 14, S2NE, SENW, E2SW, SE;
Sec. 8: All;
Sec. 18: All;
Sec. 20: All;
Sec. 28: All;
Sec. 30: Lots 5 thru 8, E2W2, E2;
Sec. 34: All.
T. 17 N., R. 109 W., 6th P.M., Wyoming.
Sec. 12: Lots 1 thru 10, SW, W2SE;
Sec. 14: All;
Sec. 20: All;
Sec. 22: All;
Sec. 24: Lots 1 thru 10;
Sec. 26: All;
Sec. 28: All.

Containing 8305.88 acres.

The legal description in the Notice of Invitation should read:

T. 17 N., R. 108 W., 6th P.M., Wyoming.
Sec. 6: Lots 8 thru 14, S2NE, SENW, E2SW, SE;
Sec. 8: All;
Sec. 18: Lots 5 thru 8, E2W2, E2;
Sec. 20: All;
Sec. 28: All;
Sec. 30: Lots 5 thru 8, E2W2, E2;
Sec. 34: All.
T. 17 N., R. 109 W., 6th P.M., Wyoming.
Sec. 12: Lots 1, 4 thru 6, 8 thru 10, SWSE, SW;
Sec. 14: All;
Sec. 20: All;
Sec. 22: All;
Sec. 24: Lots 1 thru 16;
sec. 26: All;
Sec. 28: All.

Containing 8,624.41 acres.

The notice of Invitation is also changed to reflect that any party electing to participate in the exploration program must send written notice to United States Borax & Chemical Corporation, Western Regional Exploration Office, Attn: Robert J. Kellie, 255 Glendale Ave., Suite 19, Sparks NV 89431. The balance of the Notice of Invitation remains unchanged.

Lynn E. Rust,

Chief Branch of Mining Law & Solid Minerals.

[FR Doc. 92–17625 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–22–M

[CO-070-0-4410-13-241A]

Grand Junction District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of meeting.

SUMMARY: The Grand Junction District Advisory Council will meet on Thursday, August 20, 1992. The meeting will convene at 9 a.m. in the third floor conference room at the Bureau of Land Management Office, 2815 H Road, Grand Junction, Colorado.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) introduction, (2) opening remarks by District Manager, (3) discussion on future functions of the council, (4) updates on current issues within the Grand Junction Resource Area and (5) discussion of issues that the Council can act upon (supplementary information will be provided to members via mail.)

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 and 11:30 a.m. to file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado, 81506 by August 15, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Council meeting will be available for public inspection in the District Office thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, District Manager, Grand Junction District Office, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 891506, phone (303) 244-3000.

Tim Hartzell,

District Manager.

[FR Doc. 92-17440 Filed 7-24-92; 8:45 am]

BILLING CODE 4310-JB-M

[WY-040-09-4370-13]

Rock Springs District Advisory Council, Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Advisory Council.

DATES: September 9 and 10, 1992, 8:30 a.m. until 4:30 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Gene Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Review minutes of last meeting.
3. Status of the Green River Resource Management Plan.
4. Wilderness Study Area Land Exchanges.
5. Wild Horse Management Status and Projections.
6. Municipal Landfills on Public Lands.
7. Grazing Allotment Adjustments-Kemmerer Resource Area.
8. ADC Proposal and Review.
9. Oil and Gas Update.
10. Bone Draw Review.
11. Public Comment Period.

The meeting is open to the public. Interested persons may make oral statements to the Council between 2 and 3 p.m. on September 10, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by September 8.

Depending on the number of persons wishing to make oral statements, at time limit per person may be established by the District Manager.

John S. McKee,

Associate District Manager.

[FR Doc. 92-17605 Filed 7-24-92; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-92-4212-14; N-53169]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the community of Cal-Nev-Ari, Clark County, Nevada, has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Pub. L. 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 30 S., R. 63 E.,
Sec. 25: E½SE¼SE¼
Sec. 36: N½N½NE¼NE¼NE¼
T. 30 S., R. 64 E.,
Sec. 31: Lots 5 through 12
Aggregating 31.78 acres (gross).

This parcel of land, situated in Cal-Nev-Ari, is being offered as a direct sale to Nancy L. Kidwell as a result of occupancy trespass that has occurred on public lands. The lands will be sold at not less than fair market value as determined by appraisal. The subject land is not required for any Federal purposes. The sale is consistant with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of all mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the mineral interests.

The patent, when issued, will contain the following reservations to the United States: A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945, and will be subject to: An easement for streets, roads, public utilities, and flood control purposes in accordance with the transportation plan for Clark County.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any

or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws.

Dated: July 13, 1992.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 92–17442 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–HC–M

[WY–040–3110–10–K004]

Big Sandy Management Framework Plan, Sweetwater and Fremont Counties, WY; Intent To Evaluate an Exchange Proposal and Possible Amendment

AGENCY: Bueau of Land Management. Interior.

ACTION: Notice of Intent to Evaluate an Exchange Proposal and Possible Amendment of the Big Sandy Management Framework Plan; Vacation Notice; Sweetwater and Fremont Countries, Wyoming.

SUMMARY: The Bureau of Land Management has received an exchange proposal from the State of Wyoming to exchange 1,280 acres of State of Wyoming land located inside the Honeycomb Buttes Wilderness Study Area for some portion of 2,560 acres of Federal land administered by the Bureau of Land Management. The following described public land located in Sweetwater and Fremont Counties, are being considered for exchange to the State of Wyoming under the authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Selected Public Lands

Sixth Principal Meridian

T. 26 N., R. 98 W., sec. 29, all;
Sec. 31, all;
Sec. 32, all;
Sec. 33, all.

The above land contains 2,560 acres.

Some of the lands described above may be deleted from consideration to eliminate the possible conflicts that could arise during processing or to achieve equal values between the offered and selected lands in the exchange.

In exchange, the United States proposes to acquire the following land from the State of Wyoming:

T. 26 N., R. 99 W., sec. 16, all.
T. 27 N., R. 100 W., sec. 36, all.

The above land aggregates 1,280 acres.

The Notice of Preparation of an Environmental Assessment, which was published on July 2, 1992, in 57 FR 29525, is hereby vacated.

FOR FURTHER INFORMATION CONTACT: Bill LeBarron, Area Manager, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming 82901, 307–362–6422.

SUPPLEMENTARY INFORMATION: The exchange is proposed to facilitate more effective public land management by consolidating Federal ownership within the Honeycomb Buttes Wilderness Study Area in order to preserve the wilderness values. The proposal exchange would be on an equal value basis. Commercial development of the State inholdings in the Honeycomb Buttes Study Area would conflict with a wilderness designation and a wilderness designation would limit the commercial or economic utility of the State land inholdings to the State. Evaluation of this proposal may result in an amendment to the BLM Big Sandy Management Framework Plan. Information and scoping mail-out packets for the proposed exchange, Environmental Analysis (EA), and possible Amendment of the Big Sandy Management Frmework Plan, may be obtained by calling or writing the Green River Resource Area Office at the above address. Scoping comments should also be sent to this address.

The publication of this notice segregates the Federal land described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206(b) of the Federal Land Policy and Management Act of 1976. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. For a period of thirty (30) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, Highway 191 North, Rock Springs, Wyoming 82902.

Dated: July 16, 1992.

William W. LeBarron,

Area Manager.

[FR Doc. 92–17604 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–22–M

[ES–962–9800–12; ES–045435, Group 183, Florida]

Filing of Plat of the Dependent Resurvey

The plat of the dependent resurvey of a portion of the south, east, west, and north boundaries, a portion of the subdivisional lines, the survey of the subdivision of sections 13, 20, 21, 22, 24, 26, 27, 28, 29, 30, 35 and 36; and the metes-and-bounds survey of certain parcels in sections 13 and 24, Township 17 South, Range 26 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 9, 1992.

The survey was made upon request submitted by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 9, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: July 16, 1992.

Larry Hamilton,

Acting State Director.

[FR Doc. 92–17580 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–GJ–M

[MT–940–08–4520–11]

Land Resource Management

AGENCY: Montana State Office, Bureau of Land Management, Interior.

SUMMARY: Plats of survey for the following described land accepted May 13, 1992, will be officially filed in the Montana State Office, Billings, Montana, effective 30 days after publication.

Fifth Principal Meridian, South Dakota

T. 93 N., R. 62 W.

The plat, in two sheets, representing the dependent resurvey of portions of the west boundary, the subdivisional lines, certain lot lines, subdivision of certain sections, and the adjusted original meanders of the former left bank of the Missouri River; and the survey of the east and west center lines of section 20, north and south center lines of certain sections, a portion of the present left bank of the Missouri River, and certain division of accretion lines, Township 93 North, Range 62 West, Fifth Principal Meridian, South Dakota.

T. 93N., R. 63 W.

The plat, in two sheets, representing the dependent resurvey of portions of the west boundary, the north boundary, the subdivisional lines, the subdivision of certain sections, and the adjusted original meanders of the former left bank of the Missouri River; and the survey of the north and south center lines of certain sections, the east and west center line of NW¼SE¼ of section 6, a portion of the present left bank meanders of the Missouri River, and certain division of accretion lines, Township 93 North, Range 63 West, Fifth Principal Meridian, South Dakota.

T. 94 N., R. 64 W.

The plat, in two sheets, representing the dependent resurvey of portions of certain lot lines, the south boundary, the east boundary, the subdivisional lines, the subdivision of certain sections, and the adjusted original meanders of the former left bank of the Missouri River; and the survey of the north and south center lines of certain sections, the east and west center line of the NW¼NE¼ of section 36, the present left bank of the Missouri River, and certain division of accretion lines, Township 94 North, Range 64 West, Fifth Principal Meridian, South Dakota.

T. 94 N., R. 65 W.

The plat representing the dependent resurvey of portions of the north boundary, the east boundary, the subdivisional lines, the subdivision of certain sections, and the adjusted original meanders of the former left bank of the Missouri River; and the survey of the division of original lot 4 of section 12, the line between lots 2 and 3 of section 13, certain division of accretion lines, and the present left bank meanders of the Missouri River through Township 94 North, Range 65 West, Fifth Principal Meridian, South Dakota.

T. 95 N., R. 65 W.

The plat representing the dependent resurvey of portions of the subdivisional lines, and the subdivision of certain sections, and the survey of a portion of the meanders of the present left bank of the Missouri River, Township 95 North, Range 65 West, Fifth Principal Meridian, South Dakota.

The triplicate original of the preceding described plats will be immediately placed in the open files and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

If a protest against these surveys, as shown on the plats, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. The protested plat of survey will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

This survey was executed at the request of the Bureau of Indian Affairs, Aberdeen Area Office.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: July 16, 1992.

Francis R. Cheery, Jr.,

Associate State Director.

[FR Doc. 92-17602 Filed 7-24-92; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Yosemite National Park; Phase II of the Concession Contract Solicitation; Informational Notice

The National Park Service will issue Phase II of the Statement of Requirements (Prospectus) for hotel, restaurant, and other services at Yosemite National Park in early July 1992. This notice is for information only. The initiation of a two phase contracting process was announced in the **Federal Register** on Monday, March 30, 1992. Twelve applicants have completed the Phase I process and have been invited by the National Park Service to participate in the Phase II process. Offers under the Phase II process will be due in accordance with the terms of the Statement of Requirements (Prospectus), Phase II. The due date is expected to be in November 1992. A selection of the new concessioner is expected to be completed by early 1993.

Dated: July 13, 1992.

Lewis S. Albert,

Acting Regional Director, Western Region.

[FR Doc. 92-17642 Filed 7-24-92; 8:45 am]

BILLING CODE 4310-70-M

Gates of the Arctic National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming joint meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Roll call and review of agenda.

(2) Approval of Minutes.

(3) Superintendent's welcome:

a. Introduction of guests.

b. Review of SRC function and purpose.

(4) SRC Member Subsistence Reports.

(5) Federal Subsistence Management Program:

a. Subsistence Resource Advisory Council Program status report (nomination process).

b. Federal Board actions.

(6) Hunting recommendations work session:

a. Status report on hunting plan recommendations submitted to the Secretary.

b. Status report on Hunting Plan Recommendation 4.

c. Review public and agency comments on Draft Hunting Plan Recommendation 5.

d. Review previous SRC resolutions.

e. Develop new draft hunting plan recommendations.

(7) Superintendent's Report.

(8) Public and other agency comments.

(9) Set time and place of next SRC meeting.

DATE: The meeting will begin at 9 a.m. on Tuesday, August 4, 1992, and conclude around 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, August 5, 1992, and conclude around 5 p.m.

LOCATION: The meeting will be held at the Commacks Lodge, Shungnak, Alaska.

FOR FURTHER INFORMATION CONTACT: Roger Siglin, Superintendent, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul F. Haertel,

Acting Regional Director.

[FR Doc. 92-17645 Filed 7-24-92; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the

Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE & TIME: August 25, 1992, 3:30 p.m. to 5 p.m., August 26, 1992, 8 a.m. to 3 p.m.

ADDRESSES: Radisson Plaza Hotel, 35 South 7th Street, Minneapolis, Minnesota 55402.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by P.L. 101–398, September 28, 1990.

Dated: July 9, 1992.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 92–17643 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–70–M

Advisory Commission of the San Francisco Maritime National Historical Park; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Advisory Commission of the San Francisco Maritime National Historical Park will be held from 1:30 p.m. to 4:30 p.m. (PDT) on Thursday, August 20, 1992 in Building A (Room A–1), Fort Mason, San Francisco, California. The Advisory Commission was established for a period of ten years by Public Law 100–348 to provide advice on the management and development of the park.

The main agenda items at this public meeting will be the presentation of progress reports on restoration work on the historic ships, and on the present status and future milestones for the park's General Management Plan. The public will have an opportunity for comments after each agenda item.

The meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval by the Commission. Upon approval, a transcript will be available by contacting the Superintendent, San Francisco Maritime National Historical Park, Fort Mason, Building E, Second Floor, San Francisco, California 94123.

Dated: July 17, 1992.

Lewis S. Albert,

Acting Regional Director, Western Region.

[FR Doc. 92–17641 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–70–M

Santa Fe National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Santa Fe National Historic Trail Advisory Council will be held on August 27–28, 1992, at 8:30 a.m., at the Hilton Plaza Inn, 45th and Main, Kansas City, Missouri.

The Santa Fe National Historic Trail Advisory Council was established pursuant to Public Law 90–543 establishing the Santa Fe National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Review of interpretive planning matters.
—Auto tour route signing.
—Fundraising proposals.
—Status of certification projects and agreements with cooperators.
—Historical research projects.
—Marketing.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Trail Manager.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Trail Manager, Santa Fe National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Trail Manager, located in room 358, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: July 14, 1992.

Rick Smith,

Acting Regional Director, Southwest Region.

[FR Doc. 92–17644 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Program for Registration of Claims Against Estonia, Latvia and Lithuania.

(2) FCSC Optional Form 2–92. Foreign Claims Settlement Commission of the United States (FCSC).

(3) One-time.

(4) Individuals or households, Businesses or other for-profit, Non-profit institutions and Small business or organizations. FCSC Optional Form 2–92 will be used to collect information to estimate value of U.S. nationals' outstanding claims against Estonia, Latvia, and Lithuania for uncompensated expropriation of property, to enable Department of State to determine whether to pursue *en bloc* settlement agreements with those countries, and amounts to be sought.

(5) 1,000 annual responses at 2.0 hour per response.

(6) 2,000 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: July 21, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–17598 Filed 7–24–92; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree Brought Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Allied Products Corp.*, Civil Action No. C92–2043, was lodged with the United States District Court for the Northern District of Iowa on July 14, 1992. This Consent Decree resolves a Complaint filed by the United States against Allied Products Corporation pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover costs incurred in response to contamination at the White Farm Equipment Dump Site ("the Site") in Charles City, Iowa, and to compel the cleanup of the Site. As part of the settlement in this case, Allied Products Corporation will perform a remedial action at the Site, and will reimburse the United States for costs incurred by the United States subsequent to the date of entry of the Consent Decree. This settlement does not require Allied Products Corporation to reimburse the United States for approximately $250,000 in costs it incurred prior to the entry of the Consent Decree.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Allied Products Corp.*, DOJ number 90–11–2–665.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Iowa, 425 Second Street SE, Suite 950, The Center, Cedar Rapids, Iowa 52401, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. When requesting a copy of the Consent Decree, please enclose a check in the amount of $21.25 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–17651 Filed 7–24–92; 8:45 am]

BILLING CODE 4410–01–M

Automation Components, Inc.; Notice of Lodging of Consent Decree

In accordance with 42 U.S.C. 9622(i), notice is hereby given that on July 16, 1992 three proposed consent decrees in *United States of America* v. *Automation Components, Inc., et al.*, Civil Action No. 90–1279, were lodged with the United States District Court for the District of New Jersey. The United States' complaint sought recovery of response costs and/or penalties, and punitive damages under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), against the partnership of Sigmund & Presto, Dominick Presto, Randolph Products Company, the Estate of Wendell Randolph, and Matlack Systems, Inc. and 5 other defendants who failed to comply with Administrative Orders issued to them by EPA and/or were responsible for hazardous wastes found at the Scientific Chemical Processing ("SCP") Site in Newark, New Jersey.

Pursuant to the terms of the first consent decree, the partnership of Sigmund & Presto and Dominick Presto shall pay a total of $50,000 in past response costs incurred by the United States in connection with the SCP Site. Pursuant to the terms of the second consent decree, Matlack Corporation shall pay a total of $75,000 in past response costs incurred by the United States in connection with the SCP Site and shall pay penalties and punitive damages totalling $125,000. Pursuant to the terms of the third consent decree, Randolph Products shall pay a total of $85,000 in past response costs incurred by the United States in connection with the SCP Site and the estate of Wendell Randolph, shall pay penalties and punitive damages totalling $300,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Automation Components, Inc., et al.*, D.J. Ref. 90–11–2–486.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad St., room 502, Newark, NJ 07102 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. The proposed consent decree may also be examined at the Consent Decree Library 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, telephone (202) 347–2072. A copy of each proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004.

In requesting a copy of each consent decree, please enclose a check in the amount of $6.00 per copy payable to the "Consent Decree Library."

Roger Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–17649 Filed 7–24–92; 8:45 am]

BILLING CODE 4410–01–M

Settlement Agreement With National Wildlife Federation in Action Under Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 23, 1992, the United States District Court for the District of Massachusetts approved and entered the following Settlement Agreement Between Plaintiffs the United States and the Commonwealth of Massachusetts and Intervenor National Wildlife Federation, in *United States* v. *AVX Corporation, et al.*, Civil Action Nos. 83–3882–Y, 83–3889–Y (D. Mass.).

Text of Agreement

Settlement Agreement Between Plaintiffs the United States and the Commonwealth of Massachusetts and Intervenor National Wildlife Federation

Introduction

1. The United States, on behalf of the National Oceanic and Atmospheric Administration (NOAA) as a federal trustee for natural resources, and the Commonwealth as a state trustee for natural resources, filed complaints in the U.S. District Court for the District of Massachusetts on December 9 and 10, 1983, respectively, seeking damages for injury to, destruction of, and loss of natural resources resulting from releases of polychlorinated biphenyls ("PCBs") and other hazardous substances in New Bedford Harbor, Massachusetts, and adjacent waters under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607 ("CERCLA").

2. The United States and the Commonwealth ("plaintiffs") amended their complaints in these actions in February 1984 to set forth, in addition to the claims for natural resource damages, claims on behalf of the Administrator of the Environmental Protection Agency ("EPA") for recovery of response costs under section 107 of CERCLA and for injunctive relief under section 106 of CERCLA, and claims on behalf of the Commonwealth for recovery of response costs under section 107 of CERCLA and state law.

3. Plaintiffs filed these actions in order to meet a potential statute of limitations deadline at a time when it was not possible for EPA to have prepared a Record of Decision ("ROD") regarding remedial action to be taken at the site, or for the federal and state natural resources trustees to have developed an estimate of the damages recoverable for natural resource injury.

4. In 1989, plaintiffs requested that the District Court defer previously-scheduled trial dates until after the remedial decision-making process was complete and the final ROD had been issued by EPA. In asking the District Court to defer trial, plaintiffs explained that their "proposal will provide an opportunity for comprehensive settlement discussions at a time when the amount of defendants' potential liability for all of the governments' claims will be known." Plaintiffs' Memorandum in Support of Motion to Modify Court's Pretrial Orders, at 14 (Sept. 25, 1989).

5. Plaintiffs further explained that their "proposal comports with Congressional intent regarding the proper measurement of natural resource damage[s] under CERCLA and the relationship of such damage claims to the Agency's remedial decision-making, will result in a more efficient resolution of all claims in this case, and affords the parties a meaningful opportunity for productive settlement negotiations on all claims before any trial is held." *Id.* at 3.

6. Plaintiffs also explained that "[b]ecause EPA's selected remedy for the PCB contamination in New Bedford Harbor will then be known [following the issuance of the ROD], plaintiffs will be able to include in their natural resource claim an assessment of damages based on any costs to further restore or replace natural resources once EPA's remedial action is implemented * * *." *Id.* at 4.

7. The District Court did not grant plaintiffs' motion and thus declined to defer the trials on liability. Instead, the District Court only deferred trial on the amount of cleanup costs and natural resource damages. Faced with impending trials on liability, including causation of injury to natural resources, plaintiffs entered into settlement negotiations with the defendants based on the information regarding cleanup costs and natural resource damages then available.

8. The National Wildlife Federation ("NWF") was permitted to intervene in this action in April 1989 in order to brief and argue the legal requirements applicable to any proposed consent degree lodged with the District Court for consideration and approval. *In re Acushnet River & New Bedford Harbor: Proceedings Re Alleged PCB Pollution*, 712 F. Supp. 1019, 1023 (D. Mass. 1989).

9. On April 6, 1990, EPA issued an initial operable unit ROD selecting the remedial action for the area of New Bedford Harbor with the highest levels of PCB contamination (the "Hot Spot ROD"). The Hot Spot ROD calls for dredging of contaminated sediment and incineration of the dredged materials in a temporary treatment facility onshore. This portion of the remedial action was estimated to cost approximately $15 million.

10. On December 18, 1990, plaintiffs lodged a proposed consent decree with the District Court, which settled all of plaintiffs' claims against two of the five defendants named in the lawsuit, Aerovox Incorporated and Belleville Industries, Inc.

11. On May 24, 1991, after soliciting public comment on the proposed Aerovox/Belleville decree, plaintiffs filed a motion with the District Court for approval of the decree. The Aerovox/Belleville decree provided that these defendants would pay a total of $12.6 million in settlement of the United States' claims for both past response costs and future cleanup costs and for natural resource damages. In exchange for this cash settlement, the decree provided Aerovox and Belleville with covenants not to sue for response and cleanup costs and natural resource damages, although it contained reservations of the governments' rights with respect to previously unknown conditions and new information.

12. In response to plaintiffs' motion, NWF argued that the District Court should not approve the Aerovox/Belleville decree because EPA, in April 1990, had only issued a ROD for one portion of the New Bedford Harbor site known as the "Hot Spot" region. NWF also maintained that plaintiffs should not be permitted to release Aerovox and Belleville from liability for natural resource damages because plaintiffs had not estimated the amount of money that would be needed to restore damaged resources in New Bedford Harbor.

13. In reply to NWF's objections to the proposed decree with Aerovox and Belleville, plaintiffs stated that, "as the record of this case demonstrates, the Plaintiffs generally agree with NWF that it is preferable to settle cleanup cost claims after EPA has made its cleanup decision and a specific estimate of the costs of cleanup is available." Plaintiffs' Reply Memorandum in Support of Motion to Enter Consent Decree With Aerovox Incorporated and Belleville Industries, Inc., at 9 (July 3, 1991) (emphasis in original). However, the District Court had denied in material part Plaintiffs' 1989 motion to defer trial until after the final ROD was issued, and plaintiffs took the position that, under these circumstances, they were not "prohibited from negotiating an otherwise favorable pretrial settlement containing a covenant not to sue." *Id.* (emphasis omitted).

14. On July 16, 1991, the District Court granted plaintiffs' motion to approve the Aerovox/Belleville decree. NWF

appealed this ruling to the United States Court of Appeals for the First Circuit. In a decision dated April 21, 1992, the Court of Appeals dismissed NWF's appeal for lack of jurisdiction without reaching the merits of NWF's arguments. See *United States* v. *AVX Corporation*, No. 91–1895 (1st Cir., April 21, 1992).

15. On September 19, 1991, plaintiffs filed with the District Court a proposed consent decree with defendant AVX Corporation and, December 20, 1991, plaintiffs moved the District Court to approve the decree. Under the AVX decree, plaintiffs will recover $66 million, plus interest accrued on that amount from August 23, 1990 to the date payment is made, to compensate plaintiffs for response and cleanup costs and natural resource damages. In exchange for this cash settlement, plaintiffs granted AVX covenants not to sue for response and cleanup costs and natural resource damages. The AVX decree contains reservations of the governments' rights with respect to previously unknown conditions and new information, and also provides that plaintiffs may "institute proceedings against AVX in this action or in a new action seeking to compel AVX (1) to perform additional response actions in connection with the Remedial Action to the extent that the total Remedial Costs exceed $130.5 million, and (2) to reimburse the United States and the Commonwealth for any Remedial Costs over and above the first $130.5 million in Remedial Costs."

16. The consent decree with AVX was approved by the District Court on February 3, 1992, and the Court entered final judgment against AVX on March 6, 1992. On May 1, 1992, NWF filed a notice of appeal of the AVX judgment to the United States Court of Appeals for the First Circuit.

17. In January 1992, EPA issued its Proposed Plan for the Estuary and lower Harbor/Bay portion of the site (the "PRAP"). Under the PRAP's "preferred alternative," EPA would dredge sediment in the Estuary and the lower Harbor/Bay contaminated with PCBs at concentrations exceeding 50 parts per million. Dredged sediments would be disposed of in shoreline confined disposal facilities that would be constructed as part of the remedial action. The PRAP also states that EPA, in coordination with the Federal and State Natural Resource Trustees, is conducting a Supplemental Feasibility Study on additional areas of concern in the Bay portion of the site. After this work is completed, EPA will issue an addendum to the PRAP. The estimated cost of the proposed alternative in the January 1992 PRAP is $33 million. The public will have an opportunity to submit written comments on the preferred alternative, the supplemental FS, and the addendum PRAP, as well as on eight other alternatives summarized in the PRAP, and a public information meeting and public hearing will be held.

Agreement

18. In view of EPA's issuance of the January 1992 PRAP and the circumstances of this case, and in light of plaintiffs' position as set forth in §§ 19–22 below, NWF hereby agrees to dismiss with prejudice its pending appeal in the First Circuit with respect to the AVX consent decree, and hereby waives any right to seek further judicial review of the Court of Appeals' decision dismissing NWF's appeal with respect to the Aerovox/Belleville decree. NWF may, consistent with this Court's 1989 order granting its intervention, raise legal objections to any consent decree subsequently presented to the Court, but it waives any right to appeal from approval of any such consent decrees in this case. NWF is waiving its right to seek further review of the Court of Appeals' decision dismissing its appeal with respect to the Aerovox/Belleville decree because this agreement makes any review of that decision moot. NWF does not waive any right to raise any claim in any other case that is either now pending or that may be filed in the future.

19. Plaintiffs will invite a member of NWF to hold the position of ex-officio, non-voting member of the Trustee Council created pursuant to Section VII of the Memorandum of Agreement Concerning Natural Resource Damages in the Matter of *United States, et al.*, v. *AVX Corporation, et al.*, Civil Action No. 83–3882–Y (D. Mass). That Council serves as the planning and implementation group for the restoration activities the Governments will undertake with respect to the natural resources of the New Bedford Harbor Environment, using the monies recovered in any settlements in this action.

20. Without waiving their respective positions on the law, the United States, the Commonwealth, and NWF (collectively "the parties") agree that it is generally preferable for a government not to settle natural resource damages claims until it has a reasonable estimate of the damages recoverable for the natural resource injuries known to have occurred at a site, including, as appropriate, the funds that will be needed to restore, replace, or acquire the equivalent of the injured natural resources. If such an estimate is available, the government may assess whether a particular settlement agreement, or combination of agreements, will provide for appropriate actions necessary to protect and restore the natural resources that have been injured.

21. The parties agree that there may be circumstances in which it is neither feasible nor required for the United States or the Commonwealth to postpone settlement until it has a reasonable estimate of natural resource damages. The parties do not necessarily agree on precisely what circumstances would justify a settlement of natural resource damage claims before the government has a reasonable estimate of the recoverable damages. Plaintiffs believe that such circumstances include, for example, cases where a court refuses to postpone a trial until a damages assessment has been completed, where a responsible party's ability to pay is limited such that it is a dominant consideration in settlement negotiations, where the cost of a damages assessment would be disproportionate to the expected damages, or where the litigation risks on liability against an allegedly responsible party are serious. Unless these or other justifying circumstances are present, plaintiffs believe that it is appropriate to refrain from releasing responsible parties for natural resource damage claims until the government has a reasonable estimate of damages.

22. The United States will publish this agreement in the **Federal Register**.

Roger Clegg,

Acting Assistant Attorney General Environment & Natural Resources Division.

[FR Doc. 92–17850 Filed 7–24–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances: Establishment of the 1992 Aggregate Production Quota for Methcathinone

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of an Established 1992 Aggregate Production Quota.

SUMMARY: This notice establishes the 1992 aggregate production quota for Methcathinone, a Schedule I controlled substance.

DATES: This order is effective on July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration,

Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA, pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On March 28, 1992, a notice proposing to establish a 1992 aggregate production quota for methcathinone was published in the **Federal Register** (57 FR 22490). All interested persons were invited to comment on or object to the proposal on, or before, June 29, 1992. No comments or objections were received.

This is not a major rule for purposes of Executive Order (E.O.) 12291. Pursuant to Sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been submitted for review by the Office of Management and Budget (OMB). The Administrator certifies that this rule meets the applicable standards set forth in sections 2(a) and 2(b)(2) of E.O. 12778. Rules establishing aggregate production quotas for controlled substances in Schedules I and II are required by statute and are essential to a criminal law enforcement function of the United States. Without the periodic establishment and adjustment of aggregate production quotas, pharmaceutical manufacturers in the United States could not lawfully produce a wide variety of medically necessary pharmaceutical drugs. Accordingly, such rules are not subject to the moratorium on regulations ordered by the President in his memorandum of January 28, 1992, as amended.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that this matter raises no Federalism implications which would warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment and revision of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international obligations of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA, hereby, orders that the 1992 aggregate production quota for methcathinone, expressed in grams of anhydrous base, be established as follows:

Basic class	1992 aggregate production quota (grams)
Schedule I:	
Methcathinone	2

Dated: July 20, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–17636 Filed 7–24–92; 8:45 am]

BILLING CODE 4410–09–M

Controlled Substances: Establishment of the 1992 Aggregate Production Quota for Normorphine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of an established 1992 aggregate production quota.

SUMMARY: This notice establishes the 1992 aggregate production quota for Normorphine, a Schedule I controlled substance.

DATES: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA, pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On March 27, 1992, a notice proposing to establish a 1992 aggregate production quota for normorphine was published in the **Federal Register** (57 FR 10678). All interested persons were invited to comment on or object to the proposal on, or before, April 27, 1992. No comments or objections were received.

This is not a major rule for purposes of Executive Order (E.O.) 12291. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, this rule has been submitted for review by the Office of Management and Budget (OMB). The Administrator certifies that this rule meets the applicable standards set forth in sections 2(a) and 2(b)(2) of Executive Order 12778. Rules establishing aggregate production quotas for controlled substances in Schedules I and II are required by statute, fulfill United States obligations under the Single Convention on Narcotic Drugs, 1961, and other international treaties, and are essential to a criminal law enforcement function of the United States. Without the periodic establishment and adjustment of aggregate production quotas, pharmaceutical manufacturers in the United States could not lawfully produce a wide variety of medically necessary pharmaceutical drugs. Accordingly, such rules are not subject of the moratorium on regulations ordered by the President in his memorandum of January 28, 1992.

This action has been analyzed in accordance with the Principles and criteria contained in Executive Order 12612 and it has been determined that this matter raises no Federalism implications which would warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment and revision of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international obligations of the United States. Such quotas impact predominately upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA, hereby, orders that the 1992 aggregated production quota for normorphine, expressed in grams of anhydrous base, be established as follows:

Basic class	1992 Aggregate production quota (grams)
Schedule I:	
Normorphine	2

Dated: May 29, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-17800 Filed 7-24-92; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Proposed Revised 1992 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 1992 aggregate production quotas.

SUMMARY: This notice proposes revised 1992 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA). Since the establishment of the 1992 aggregate production quotas on November 29, 1991 (56 FR 61052), the DEA has reviewed data submitted by the registered manufacturers concerning 1991 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

DATES: Comments or objections should be received on or before August 26, 1992.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202)307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On November 29, 1991, a notice of the 1992 established aggregate production quotas was published in the **Federal Register** (56 FR 61052). The notice stipulated that the Administrator of the DEA would adjust the quotas in early 1992 as provided for in title 21, Code of Federal Regulations, § 1303.23(c). These aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1992 and do not include amounts which may be imported for use in industrial processes.

Based on a review of 1991 year-end inventories, 1991 disposition data estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administration and other information available to the DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1992 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base.

	Previously established 1992 aggregate production quota	Proposed revised 1992 aggregate production quota
Schedule I:		
2,5 - Dimethoxyamphetamine	13,500,000	13,600,000
Schedule II:		
Alfentanil	6,300	7,400
Amobarbital	358,000	108,000
Amphetamine	285,000	469,000
Cocaine	669,000	356,000
Codeine (for sale)	63,726,000	61,171,000
Codeine (for conversion)	6,477,000	6,948,000
Desoxyephedrine	1,068,000	1,065,000
Levodesoxyephedrine	1,043,000	1,042,000
Methamphetamine	25,000	23,000
Dextropropoxyphene	89,065,000	91,658,000
Dihydrocodeine	589,000	375,000
Diphenoxylate	695,000	731,000
Hydrocodone	3,891,000	4,825,000
Hydromorphone	222,000	253,000
Levorphanol	10,000	6,800
Meperidine	8,533,000	8,714,000
Methadone	2,181,000	2,264,000
Methadone Intermediate(4-cyano-2-dimethylamino-4,4-diphenylbutane)	2,726,000	2,830,000
Methylphenidate	2,147,000	3,411,000
Morphine (for sale)	4,937,000	5,991,000
Morphine (for conversion)	74,753,000	75,353,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,034,000	982,000
Oxycodone (for sale)	2,757,000	3,128,000
Oxycodone (for conversion)	6,300	241,300
Pentobarital	15,178,000	15,019,000
Phenylacetone	956,000	1,876,000
Secobarbital	650,000	471,000
Sufentanil	450	610

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

This is not a major rule for purposes of Executive Order (E.O.) 12291. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been submitted for review by the Office of Management and Budget (OMB). The Administrator certifies that this rule meets the applicable standards set forth in sections 2(a) and 2(b)(2) of Executive Order 12778. Rules establishing aggregate production quotas for controlled substances in Schedules I and II are required by statute, fulfill United States obligations under the Single Convention on Narcotic Drugs, 1961, and other international treaties, and are essential to a criminal law enforcement function of the United States. Without the periodic establishment and adjustment of aggregate production quotas, pharmaceutical manufacturers in the United States could not lawfully produce a wide variety of medically necessary pharmaceutical drugs. Accordingly, such rules are not subject to the moratorium on regulations ordered by the President in his memorandum of January 28, 1992.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that this matter raises no Federalism implications which would warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment and revision of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international obligations of the United States. Such quotas impact predominately upon major manufacturers of the affected controlled substances.

Dated: May 29, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-17599 Filed 7-24-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Panel Meeting; Museum Advisory

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting the Museum Advisory Panel (Utilization of Museum Resources Panel A: Presentation and Education Section) to the National Council on the Arts will be held on August 11-13, 1992 from 9:15 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 11 from 9:15 a.m.-10 a.m. The topics will be introductory remarks and general discussion.

The remaining portions of this meeting on August 11 from 10 a.m.-5:30 p.m. and August 12-13 from 9:15 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of the section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussion at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-17652 Filed 7-24-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: New System of Records

AGENCY: National Science Foundation.

ACTION: Notice of new system of records and routine uses.

New System of Records

This provides notice of the existence and character of a proposed new system of records, NSF-53, designated "Public Transportation Subsidy Program". This system will be established and maintained by the NSF, enabling it to collect and use information relating to its employees who are eligible to participate in the subsidy program. The information will be solicited in accordance with the Privacy Act of 1974 and will be used to facilitate implementation of an experimental Metro subsidy program.

EFFECTIVE DATE: The new system of records and its routine uses will become effective 30 days after publication of this notice (August 26, 1992), unless comments are received on or before that date that would result in a contrary determination. In this case a notice will be published to that effect.

COMMENTS: Comments should be addressed to the NSF Privacy Act Officer, Office of Information and Resource Management, National Science Foundation, room 208, 1800 G Street, NW., Washington DC 20550. Written comments will be available for public inspection in Room 208, at the above address between the hours of 9 a.m. and 4 p.m.

NSF-53

SYSTEM NAME:

Public Transportation Subsidy Program.

SYSTEM LOCATION:

National Science Foundation, Office of Information and Resource Management, Division of Administrative Services, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Science Foundation full-time permanent employees, grades GS-10 and below, who participate in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, social security numbers, issue dates, and subsidy preference information—METRO passes or tokens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This information may be released to other Federal agencies for use in evaluating the overall effectiveness of public transportation programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records are maintained manually and in a computer system at NSF.

RETRIEVABILITY:

Records are retrieved alphabetically by last name or by social security number.

SAFEGUARDS:

NSF employs a security guard and the building is locked during non-business hours when the guard is not on duty. Rooms in which records are kept are locked during non-business hours. Passwords are needed to access information in computer system.

RETENTION AND DISPOSAL:

Profiles used to determine eligibility will be deleted from the system when employee retires, leaves the Foundation, or is no longer eligible for the program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Administrative Services, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information is gathered from the individual and from the NSF Personnel Data Base and verified by eligible employee Identification Card.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: July 21, 1992.

Herman G. Fleming,

NSF Privacy Act Officer.

[FR Doc. 92-17815 Filed 7-24-92; 8:45 am]

BILLING CODE 7555-01

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-09681-MLA; ASLBP No. 92-666-01-MLA]

UMETCO Minerals Corp.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

In the Matter of UMETCO Minerals Corp., P.O. Box 1029, Grand Junction, Colorado 81502, Source Materials License No. SUA-1358.

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to requests for a hearing submitted by the State of Utah. The State of Utah desires a hearing on Amendment No. 30 to Source Materials License No. SUA-1358 issued to UMETCO on June 1, 1992.

The presiding officer in this proceeding is Administrative Judge James P. Gleason.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Thomas D. Murphy to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Gleason and Judge Murphy in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge James P. Gleason, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 20th day of July 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-17667 Filed 7-24-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form RI 25-41

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. The RI 25-41 form, Initial Certification of Full-time School Attendance, is used to pay a survivor annuity to children who are 18 years of age or older. OPM must determine that the child is unmarried and a full-time student in a recognized school.

Approximately 1200 RI 25-41 forms will be completed per year. The form requires 90 minutes to complete. The annual burden is 1800 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received on or before August 26, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-17571 Filed 7-24-92; 8:45 am]

BILLING CODE 6325-01-M

Request of a Revised Information Collection for Expedited Clearance of Standard Form 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for an expedited clearance of a revised information collection. Standard Form 2809, Health Benefits Registration, is used by individuals who are eligible to enroll or change their enrollment status under the Federal Employees Health Benefits Program (FEHBP). The form has been revised to collect additional demographic information on individuals covered under FEHBP. This form must be available for the 1992 Federal Employees Health Benefit Open Season.

Approximately 12,000 Standard Forms 2809 will be completed per year. The form requires approximately 45 minutes to complete. The annual burden is 9,000 hours.

A draft copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before August 1, 1992. OMB will act upon this clearance by August 4, 1992.

ADDRESSES: Send of deliver comments to—

Robert A. Yuran, Deputy Assistant Director, Office of Financial Control and Management, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4312, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth-Toomey, Chief, Administrative Management Branch, (202) 606-0623

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Federal Employees Health Benefits Program

Standard Form 2809 Revised June 1992

Form Approved: OMB No. 3206-0160

Health Benefits Registration Form

Uses for Standard Form (SF) 2809

Use this form to:

- Enroll in the FEHB Program; or
- Elect not to enroll in the FEHB Program (employees only); or
- Change your FEHB enrollment from Self Only to Self and Family and/or from your present plan or option to another plan or option because of an event described in the Table on page 6; or
- Change your FEHB enrollment from Self and Family to Self Only; or
- Cancel your FEHB enrollment.

Who May Use SF 2809

1. Employees eligible to enroll in or currently enrolled in the FEHB Program, including temporary employees eligible under 5 U.S.C. 8906a.

2. Annuitants (other than CSRS/FERS annuitants) eligible to enroll in or currently enrolled in the FEHB Program, including individuals receiving monthly compensation from the Office of Workers' Compensation Programs.

Note: CSRS/FERS annuitants—Do not use this form. To obtain the appropriate form, write to: Office of Personnel Management, Insurance Services Branch, P.O. Box 14172, Washington, D.C. 20044.

3. Former spouses eligible to enroll in or currently enrolled in the FEHB Program under the Spouse Equity law or similar statutes.

4. Individuals eligible for temporary continuation of coverage under the FEHB Program, including:

- Former employees (who separated from service);
- Children who lose FEHB coverage; and
- Former spouses who are not eligible for FEHB under item 3 above.

Note: Former spouses and children of CSRS/FERS annuitants—Do not use this form. To obtain the appropriate form, write to address shown in item 2 above.

Instructions for Completing SF 2809

Type or Print Firmly

Part A. You must complete this part.

Item 1. Give your last name, first name and middle initial.

Item 2. Enter your Social Security Number. (See Privacy Act Statement on Page 5.)

Item 3. Give your date of birth, using numbers to show the month, day and year.

Item 4. Enter your permanent home mailing address.

Item 5. Place an "X" in the appropriate box.

Item 6. Place an "X" in the box that signifies your current marital status (if you are separated but not divorced, you are still married).

Item 7. Give your telephone number where you can be reached during normal business hours. Be sure to include the area code.

Part B. Complete this part to enroll or change your enrollment in the FEHB Program. (If you are changing your enrollment, also complete PART C.)

Item 1. Enter the plan name and appropriate enrollment code from the front cover of the brochure of the plan you want to enroll in or change to. (The enrollment code shows the plan and option you are electing and whether you are enrolling for Self Only or Self and Family.) If you are just changing from one option to another and/or from Self Only to Self and Family or from Self and Family to Self Only, enter the name of your present plan and the new enrollment code.

If the plan you want is a prepaid plan (CMP/HMO), be sure you live in the plan's enrollment area. If it is an employee organization plan, be sure you are eligible to enroll in the plan; you must be or become a member of the plan's sponsoring organization.

Your signature in Part F authorizes deductions from your salary, annuity or compensation to cover your cost of the enrollment you elect in this item, unless you are required to make direct payments to the employing office.

Items 2a through 2f.

Complete these items only if your enrollment is for Self and Family. (If you need extra space for additional family members, list them on a separate sheet and attach.)

Item 2a. Indicate the first name and middle initial of each covered family member.

Item 2b. Provide the ZIP code if it is different from the enrollee's ZIP code in Part A, item 4.

Item 2c. Give your dependent's date of birth, using numbers to show the month, day and year. (e.g., 06/30/91)

Item 2d. Indicate *M* for male or *F* for female.

Item 2e. Provide the code which indicates the relationship of the eligible family member to you.

1. Spouse
2. Unmarried dependent child under age 22 (including an adopted child)
3. Step child, foster child or recognized child
4. Unmarried disabled child over age 22 incapable of self support.

Item 2f. Enter your dependents' Social Security Number. (See Privacy Act Statement on Page 5.)

Family Members Eligible for Coverage

- Unless you are a former spouse, family members eligible for coverage under your Self and Family enrollment include your spouse and your unmarried dependent children under age 22. Eligible children include your legitimate or adopted children; and recognized children born out of wedlock, stepchildren or foster children, if they live with you in a regular parent-child relationship. A recognized child born out of wedlock also may be included if a judicial determination of support has been obtained or you show that you provide regular and substantial support for the child.

Other relatives, *e.g.*, your parents are not eligible for coverage even through they live with you and are dependent upon you.

- If you are a former spouse, family members eligible for coverage under your Self and Family enrollment are the unmarried dependent natural or adopted children under age 22 of both you and your former spouse.
- Children whose marriage ends before they reach age 22 become eligible for coverage under your Self and Family enrollment from the date the marriage ends until they reach age 22.
- In some cases, an unmarried disabled child who is 22 years old or older is eligible for coverage under your Self and Family enrollment if you have adequate medical certification of a mental or physical handicap that existed before his or her 22nd birthday and renders the child incapable of self-support.

Note: *Your employing office (see Note under General Information on page 3) can give you additional details about family member eligibility, including the documentation required for coverage of a disabled child age 22 or older.*

Item 3a. Place an "X" in the appropriate box if you completed item 1 of this part. If you answer "Yes," complete items 3a through 3b.

Item 3b. Indicate an additional insurance coverage for you or your dependents. If you or your dependents have Medicare, indicate which part(s).

Part C. You must complete this part if you are changing your enrollment.

Item 1. Enter the name of the plan in which you are presently enrolled.

Item 2. Enter your present enrollment code.

Item 3. Enter the number of the event that permits your change from the Table on page 6. (Leave this item blank if you are changing from Self and Family to Self Only.)

Item 4. Using numbers, enter the date of the event that permits your change. For Open Season changes, enter the date on which the Open Season begins. (Leave this item blank if you are changing from Self and Family to Self Only.)

Part D. Place an "X" in the box provided only if you are an employee who does not wish to enroll in the FEHB Program. (Be sure to read the Information about electing not to enroll on page 4.)

Part E. Place an "X" in the box provided if your wish to cancel your FEHB enrollment. Also enter your present enrollment code in the space provided. (Be sure to read the Information about canceling your enrollment on page 4.)

Part F. You must complete this part.

Item 1. Sign your name. Do not print.

Item 2. Enter the date you sign, using numbers to show the month, day and year.

Leave Part G and Remarks section blank. They are for agency use only.

If You are Registering for Someone Else

If you are registering for an employee or an annuitant, under a written authorization from him or her to do so, sign your name in Part F and attach the written authorization.

If you are registering for a former spouse eligible for coverage under Spouse Equity or for an individual eligible for temporary continuation of coverage as his or her court-appointed guardian, sign your name in Part F and attach evidence of your court-appointed guardianship.

General Information

The following material about the FEHB Program will be furnished to you by, or may be obtained from, your employing office (see Note below):

FEHB plan brochures, which contain detailed information about plan benefits and the contractual description of coverage.

Employees

FEHB Program information for Federal Civilian Employees and U.S. Postal Service Employees (SF 2809–A), which explains your rights and obligations under the Program.

FEHB Enrollment Information Guide and Plan Comparison Chart, which contains enrollment, plan and rate information, as follows:

RI 70–1 Federal Employees (Non-Postal)
RI 70–2 Postal Employees
RI 70–7 Employees in Positions Outside the Continental U.S. (including Alaska, Hawaii, Guam and Puerto Rico)
RI 70–8 Temporary Employees Eligible for FEHB Under 5 U.S.C. 8906a
RI 70–10 Visually Impaired Employees

Annuitants

FEHB Enrollment Information Guide and Plan Comparison Chart, which contains enrollment, plan and rate information for:

Annuitants in retirement systems other than CSRS/FERS (RI 70–4)

Individuals receiving compensation from the Office of Workers' Compensation Programs (RI 70–6)

Former Spouses (Spouse Equity)

FEHB Enrollment Information Guide and Plan Comparison Chart, which contains enrollment, plan and rate information for former spouses (RI 70–5)

Individuals Eligible for Temporary Continuation of Coverage

FEHB Enrollment Information Guide and Plan Comparison Chart, which contains enrollment, plan and rate information for former employees, children and former spouses eligible for temporary continuation of coverage (RI 70–5)

Note: "Employing office" means the office of an agency or retirement system that is responsible for health benefits actions for an employee, an annuitant, a former spouse eligible for coverage under Spouse Equity or an individual eligible for temporary continuation of coverage.

Dual Enrollment

Normally, you are eligible to enroll if you are covered as a family member under someone else's enrollment in the FEHB Program. However, such dual enrollments may be permitted under certain circumstances in order to:

- Protect the interests of children who otherwise would lose coverage as family members, or
- Enable an employee who is under age 22 and covered under a parent's enrollment and becomes the parent of a child to enroll for Self and Family coverage.
- No person (enrollee or family member) is entitled to receive benefits under more than one enrollment in the Program. (Each enrollee must notify his or her plan of the names of the persons to be covered under his or her enrollment who are not covered under the other enrollment.)

Temporary Continuation of Coverage (TCC)

While the employing office notifies a former employee of his or her eligibility for temporary continuation of coverage, the employing office must be notified when a child or former spouse becomes eligible.

- For the eligible child of an enrollee, the enrollee must notify the employing office within 60 days after the qualifying event occurs, *e.g.*, child reaches age 22.
- For the eligible former spouse of an enrollee, the enrollee or the former spouse must notify the employing office within 60 days after the former spouse's change in status, e.g., the date of the divorce or former spouse's remarriage before reaching age 55.

An individual eligible for temporary continuation of coverage who wants to continue FEHB coverage may choose any plan (for which he or she is eligible), option and type of enrollment. The time limits for former employee, child or former spouse to file the SF 2809 with the employing office appear in Events No. 24, 25 and 26 in the Table on page 6.

Note: If someone other than the enrollee notifies the employing office of he child's eligibility for temporary continuation of coverage within the specified time period, the child's opportunity to file the SF 2809 ends 60 days after the qualifying event. If someone other than the enrollee or the former spouse notifies the employing office of the former spouse's eligibility for continued coverage within the specified time period, the former spouse's opportunity to file the SF 2809 ends 60 days after the change in status.

Effective Dates

Your employing office can give you the specific date on which your enrollment or enrollment change will take effect. Additional information about effective dates appears in the Table on page 6.

Note 1: If you are changing your enrollment from Self and Family to Self Only so that your spouse can enroll for Self Only, you should coordinate the effective date of your spouse's enrollment with the effective date of your enrollment change to avoid a gap in your spouse's coverage.

Note 2: If you are cancelling your enrollment and intend to be covered under someone else's enrollment at the time you cancel, you should coordinate the effective date of your cancellation with the effective date of your new coverage to avoid a gap in your coverage.

Cancellation of Enrollment

You may cancel your enrollment at any time. However, if you cancel, neither you nor any family member covered by your enrollment will be entitled to a 31-day extension of coverage for conversion to nongroup coverage. Moreover, family members who lose coverage because of your cancellation will not be eligible for temporary continuation of coverage. (Be sure to read the additional information below about cancelling your enrollment.)

Employees Who Elect Not to Enroll or Who Cancel Their Enrollment

To be eligible for an FEHB enrollment after you retire, you must retire:

- Under a retirement system for Federal civilian employees, and
- On an immediate annuity.

In addition, you must be currently enrolled in a plan under the FEHB Program and must have been enrolled (or covered as a family member) in a plan under the Program for:

- The five years of service immediately before retirement (i.e., commencing date of annuity entitlement), or
- If fewer than five years, all service since your first opportunity to enroll. (Generally, your first opportunity to enroll is within 31 days after your first appointment [in your Federal career] to a position under which you are eligible to enroll under conditions that permit a Government contribution toward the enrollment.)

If you do not enroll at your first opportunity or if you cancel your enrollment, you may later enroll or reenroll only under the circumstances explained in the Table on page 6. Some employees delay their enrollment or reenrollment until time to qualify for FEHB coverage as a retiree; however, there is always the risk that they will have to retire earlier than expected (e.g., due to disability or involuntary separation) and not be able to meet the five-year requirement for continuing FEHB coverage into retirement. Please understand that when you elect not to enroll or cancel your enrollment you are voluntarily accepting this risk. An alternative would be to enroll in or change to a lower cost plan so that you meet the requirements for continuation of your FEHB enrollment after retirement.

Note: Temporary employees eligible for FEHB under 5 U.S.C. 8906a—Your decision not to enroll or to cancel your enrollment will not affect your future eligibility to continue FEHB enrollment after retirement.

Annuitants Who Cancel Their Enrollment

You cannot reenroll as an annuitant unless you are continuously covered as a family member under another person's enrollment in the FEHB Program during the period between your cancellation and reenrollment. See the Table on page 6 for events that allow eligible annuitants to reenroll.

Former Spouses (Spouse Equity) Who Cancel Their Enrollment

If you cancel your enrollment in the FEHB Program, you cannot reenroll as a former spouse. However, if you stop the enrollment because you acquire other FEHB coverage, your right to FEHB coverage under spouse equity continues. You may reenroll as a former spouse when the other FEHB coverage ends.

If you cancel a family enrollment, the covered children may be eligible for continued coverage if the children are receiving a survivor annuity based on the service of the other parent, and the other parent had family coverage at the time of death. In this circumstance, you should contact the other parent's retirement system promptly to have the children enrolled as survivor annuitants. The children must enroll for FEHB coverage as survivor annuitants within 31 days after your cancellation.

Temporary Continuation of Coverage Enrollees Who Cancel Their Enrollment

If you cancel your TCC enrollment, you cannot reenroll. Your family members who lose coverage because of your cancellation cannot enroll for TCC in their own right nor can they convert to a nongroup policy. However, family members who are Federal

employees or annuitants may enroll in the FEHB Program when you cancel your coverage if they are eligible for FEHB coverage in their own right.

Note 1: If you become covered by a regular enrollment in the FEHB Program, either in your own right or under the enrollment of someone else, your TCC enrollment is suspended. You will need to send documentation of the new enrollment to the employing office maintaining your TCC enrollment so that they can stop the TCC enrollment. If your new FEHB coverage stops before the TCC enrollment would have expired, the TCC enrollment can be reinstated for the remainder of the original eligibility period (18 months for separated employees).

Note 2: Former spouses (spouse equity) and temporary continuation of coverage enrollees who fail to pay their premiums within specified time frames are considered to have voluntarily cancelled their enrollment.

Privacy Act Statement

The information you provide on this form is needed to document in your records file maintained by your employing office your enrollment in the Federal Employees Health Benefits Program under Chapter 89, title 5, U.S. Code. This information will be shared with the health insurance carrier you select so that it may (1) identify your enrollment in the plan, (2) verify your and/or your family's eligibility for payment of a claim for health benefits services or supplies, and (3) coordinate payment of claims with other carriers with whom you might also make a claim for payment of benefits. This information may be disclosed to other Federal agencies or Congressional offices which may have a need to know it in connection with your application for a job, license, grant or other benefit. It may also be shared and is subject to verification, via paper, electronic media, or through the use of computer matching programs, with national state, local or other charitable or social security administrative agencies to determine and issue benefits under their programs. In addition, to the extent this information indicates possible violation of civil or criminal law, it may be shared and verified, as noted above, with an appropriate Federal, state, or local law enforcement agency. While the law does not require you to supply all the information requested on this form, doing so will assist in the prompt processing of your enrollment.

We also request that you provide your Social Security Number so that it may be used as your individual identifier in the Federal Employees Health Benefits Program. Executive Order 9397, dated November 22, 1943, allows Federal agencies to use the Social Security Number as an individual identifier to distinguish between people with the same or similar names.

Agencies other than the Office of Personnel Management may have further routine uses for disclosure of information from the records systems in which they file copies of this form. If this is the case, they should provide you with any such uses which are applicable at the time they ask you to complete this form.

Public Burden Statement

We think this form takes an average of 45 minutes to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project, (3206–0160), Washington, D.C. 20503.

BILLING CODE 6325-01-M

HEALTH BENEFITS REGISTRATION FORM

Federal Employees Health Benefits Program

Form Approved: OMB No. 3206-0160

- Complete Part A and Parts B, C, D, and E as applicable.
- Do not separate the copies. Your employing office will certify the completed form and return your copy to you.
- Type or Print Firmly.
- Sign and date in Part F.

PART A - *Fill in this part.*

1. Name *(Last, first, middle initial)*	2. Social Security number	3. Date of birth *(mo., day, yr.)* / /
4. Your home mailing address *(include ZIP code)*	5. Sex ☐ Male ☐ Female	6. Are you now married? ☐ Yes ☐ No
	7. Telephone number ( )	

PART B - *Fill in this part if you wish to enroll or change your enrollment in the Federal Employees Health Benefits (FEHB) Program.*

1. I elect to enroll in a health benefits plan as shown below. (Copy the information requested below from front cover of brochure of the plan you select.)

Name of plan — Enrollment code ▶ ☐☐☐☐

2a. Names of family members	2b. ZIP code	2c. Date of birth *(mo., day, yr.)*	2d. Sex	2e. Relationship "code"	2f. Social Security number
		/ /			
		/ /			
		/ /			
		/ /			
		/ /			

3a. Do you, your spouse or any other eligible family members have any group health insurance coverage other than the FEHB plan in which you are now enrolling or enrolled? ☐ No ☐ Yes ⟶ Complete 3b

3b. Type of insurance ▶ Medicare ☐ No ☐ Yes ⟶ *Indicate part below* ☐ CHAMPUS ☐ Other private *(specify name)*

PART C - *Fill in this part, as well as PART B, to change enrollment.*

1. Present Plan name	2. Present Plan enrollment code ▶ ☐☐☐	3. Number of event that permits change *(See Table of Permissable Changes)* ☐	4. Date of event that permits change *(mo., day, yr.)* / /

PART D - *Employees Only*

Place an "X" in the box below if you wish NOT TO ENROLL in the FEHB Program.

☐ I elect not to enroll in the Federal Employees Health Benefits Program.

My signature in PART F certifies that I have read and understand the information regarding this election.

PART E - *CANCELLATION*

Place an "X" in the box below if you wish to CANCEL your enrollment.

☐ I elect to cancel my enrollment in the Federal Employees Health Benefits Program. I am currently enrolled under the code shown at the right.

Present Plan enrollment code ☐☐☐

My signature in PART F certifies that I have read the information in the instructions regarding cancellation of enrollment and that I understand that I must meet the 5-year requirement to qualify for FEHB coverage after retirement.

PART F - *Fill in this part.*

WARNING: Any intentionally false statement in this application or willful misrepresentation relative thereto is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001.)

1. Your signature *(Do not print)*	2. Date

PART G - *To be completed by agency*

1. Name and address of employing office	2. Date received in employing office	3. Effective date of action	4. SF 2811 report number
	5. Payroll office number	6. Payroll contact and telephone number ( )	
	7. Personnel contact and telephone number ( )		
	8. Signature of authorized agency official	9. Phone number ( )	

Remarks

TABLE OF PERMISSIBLE CHANGES IN ENROLLMENT

Enrollment May Be Cancelled or Changed From Family to Self Only at Any Time

No.	Events That Permit Enrollment Change	Change Permitted			Time Limit in Which Registration Form Electing Change Must Be Filed With Employing Office**
	Event	From Not Enrolled to Enrolled	From Self Only to Family	From One Plan or Option to Another	
1	Open Season.	Yes*†	Yes	Yes	As announced by the Office of Personnel Management.
2	Change in marital status. (Marriage, divorce, annulment, death of spouse.)	Yes*†	Yes (Except former spouses)	Yes (Except former spouses)	From 31 days before to 60 days after change in marital status.
3	Other change in family status. (For example, birth of a child, legal separation, discharge from military service of a spouse or of a child under age 22).	No	Yes	No	Within 60 days after change in family status.
4	Enrollee or family member moves from an area served by a prepaid plan (CMP/HMO) in which enrolled at time of move.	Does not apply	Yes	Yes	At any time after presenting written notice to the employing office of the move.
5	Termination of enrollment by employee organization plan because of termination of membership in organization.	Does not apply	No	Yes	Within 31 days after termination of enrollment in plan.
6	Employee, annuitant or former spouse (spouse equity), covered as a family member under another's FEHB enrollment, loses coverage other than by cancellation or change to Self Only of the covering enrollment; or employee, covered under another federally sponsored health benefits program, loses such coverage for any reason.	Yes*	Does not apply	Does not apply	Within 31 days after termination (except, for employees, within 60 days after the death of the enrollee). Coverage is effective the first day of the pay period that begins after the employing office receives the SF 2809. If election is made within the time limit, but after expiration of the 31-day extension of coverage (or too close to the expiration of the 31-day extension of coverage), there will be a break in coverage.
7	Employee, annuitant or former spouse (spouse equity), covered as a family member under another's FEHB enrollment, loses coverage because of change of the covering enrollment from Family to Self Only.	Yes, for Self Only*	Does not apply	Does not apply	Within 31 days after change of covering enrollment has been filed. Coverage is effective the first day of the pay period that begins after the employing office receives the SF 2809. If election is made within the time limit, but during a pay period following the one in which the change to Self Only was filed, there will be a break in coverage.
8	Employee transfers to overseas post of duty from the United States, or reverse.	Yes*	Yes	Yes	Within 31 days before or after move.
9	Employee returns to active civilian duty or annuitant separates from military service which was not limited to 30 days or less.	Yes*†	Yes	Yes	Within 31 days after return to active civilian duty or separation from military service.
10	Your plan stops participating in the FEHB Program.	Does not apply	Yes	Yes	As set by the Office of Personnel Management.
11	Self Only enrollment under this Program of employee's or annuitant's spouse terminates as a result of change in spouse's Federal employment status or 365 days' nonpay status.	No	Yes	No	Within 31 days after termination of spouse's enrollment. Coverage is effective the first day of the pay period that begins after the employing office receives the SF 2809. If election is made within the time limit, but after expiration of the 31-day extension of coverage (or too close to the expiration of the 31-day extension of coverage), there will be a break in coverage.
12	Employee who is not enrolled loses coverage under parent's non-Federal health plan.	Yes*	Does not apply	Does not apply	Within 31 days after loss of coverage, except within 60 days after the death of the parent.
13	Enrolled employee retires from overseas post of duty and is eligible to continue enrollment as annuitant.	Does not apply	Yes	Yes	Within 60 days after retirement.
14	Enrollee becomes eligible for Medicare.	Does not apply	No	Yes	At any time beginning 30 days before becoming eligible for Medicare.
15	Enrollee's eligible child (or children) loses coverage under another's FEHB enrollment.	No	Yes	No	Within 31 days after child's (children's) loss of coverage. Coverage is effective the first day of the pay period that begins after the employing office receives the SF 2809. If election is made within the time limit, but after expiration of the 31-day extension of coverage (or too close to the expiration of the 31-day extension of coverage), there will be a break in coverage.

* Individuals must be otherwise eligible to enroll.

† Employees only.

** Also selected effective date information

No.	Events That Permit Enrollment Change: Event	Change Permitted: From Not Enrolled to Enrolled	From Self Only to Family	From One Plan or Option to Another	Time Limit in Which Registration Form Electing Change Must Be Filed With Employing Office**
16	Employee or an eligible family member loses coverage under Medicaid (State program of medical assistance for the needy).	Yes* employee loss	Yes family member loss	Does not apply	Within 31 days after termination of Medicaid or loss of Medicaid coverage by family member.
17	Employee, annuitant or former spouse (spouse equity), covered as a family member under another's FEHB enrollment, loses coverage due to cancellation of the covering enrollment.	Yes*	Does not apply	You must enroll in the same plan and option as that from which coverage is lost. If eligible to enroll in that plan, within 31 days after cancellation of the covering enrollment. If not eligible to enroll in that plan, you may enroll in the same option of any available plan within the 31-day period. Coverage is effective the first day of the pay period that begins after the employing office receives the SF 2809. If election is made within the time limit, but during a pay period following the one in which the cancellation was filed, there will be a break in coverage.	
18	Enrolled employee's employment status changes from full-time to part-time career employment as defined in the Federal Employees Part-Time Career Employment Act of 1978.	No	No	Yes	Within 31 days after the change in employment status.
19	Employee or employee's spouse loses coverage under spouse's non-Federal health plan when spouse terminates employment to accompany employee who accepts a position is directed out of commuting area.	Yes*	Yes	No	Within 31 days before or 180 days after move.
20	Employee's or annuitant's spouse involuntarily loses his or her non-Federal health insurance coverage, or coverage for his or her dependents; or employee's or annuitant's eligible child (or children) loses non-Federal coverage under the other parent's health plan because the other parent involuntarily loses coverage for his or her dependents.	Yes* †	Yes	No	Within 31 days before or after spouse's or dependent's loss of coverage; or within 31 days before or after child's (or children's) loss of coverage.
21	Former spouse who is eligible to enroll under the authority of the Civil Service Retirement Spouse Equity Act of 1984 (P.L. 98-615), as amended, the Intelligence Authorization Act of 1986 (P.L. 99-569), or the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (P.L. 100-204).	Yes*	Does not apply	Does not apply	Generally, within 60 days after divorce or within 60 days after the date of OPM's notice of eligibility to enroll.
22	Temporary employee completes one year of service in accordance with 5 U.S.C. 8906a.	Yes*	Does not apply	Does not apply	Within 31 days after becoming eligible.
23	Temporary employee, eligible under 5 U.S.C. 8906a, changes to a nontemporary appointment.	Yes*	Yes	Yes	Within 31 days after changing to non-temporary appointment.
24	Employee separated from service and eligible for temporary continuation of coverage.	Does not apply	Yes	Yes	Within 60 days after the later of: separation; or receiving notice of the opportunity to elect temporary continuation of coverage. Coverage is effective the day after other FEHB coverage ends, including the 31-day extension of coverage. If election is made after the end of the 31-day extension of coverage, the effective date will be retroactive.
25	Child of employee, former employee or annuitant stops meeting the requirements for unmarried dependent children.	Yes*	Does not apply	Does not apply	Within 60 days after the later of: the qualifying event; or the child's receiving notice of the opportunity to elect temporary continuation of coverage (based on the enrollee's notification to the employing office of the child's eligibility). Coverage is effective the day after other FEHB coverage ends, including the 31-day extension of coverage. If election is made after the end of the 31-day extension of coverage, the effective date will be retroactive.

* Individuals must be otherwise eligible to enroll.

† Employees only.

** Also selected effective date information.

No.	Events That Permit Enrollment Change	Change Permitted			Time Limit in Which Registration Form Electing Change Must Be Filed With Employing Office**
	Event	From Not Enrolled to Enrolled	From Self Only to Family	From One Plan or Option to Another	
26	Former spouse meets the requirement in 5 U.S.C. 8901(10) of having been enrolled in an FEHB plan as a covered family member at some time during the 18 months before the marriage ended, but does not meet one or both of the other two requirements of 5 U.S.C. 8901(10).	Yes*	Does not apply	Does not apply	Within 60 days after the later of: the qualifying event; the date coverage under Subpart H of 5 CFR Part 890 was lost, if the loss occurred within 30 months of the qualifying event; or the former spouse's receiving notice of the opportunity to elect temporary continuation of coverage (based on the enrollee's or former spouse's notification to the employing office of the former spouse's eligibility). Coverage is effective the day after other FEHB coverage ends, including the 31-day extension of coverage; or the date of the qualifying event, if later. If election is made after the end of the 31-day extension of coverage or the date of the qualifying event, the effective date will be retroactive.
27	Former employee, former spouse or child whose temporary continuation of coverage under 5 CFR Part 890 Subpart K terminates due to other FEHB coverage, loses the other FEHB coverage.	Yes*	Does not apply	You must reenroll in the same plan and option as that in which you were enrolled prior to obtaining the other FEHB coverage, if eligible to enroll in that plan, within 31 days after the other coverage ends, but not later than the expiration of the period of eligibility for the temporary continuation of coverage. If not eligible to enroll in that plan, you may enroll in the same option of any available plan within the 31-day time limit.	

* Individuals must be otherwise eligible to enroll.

** Also selected effective date information.

† Employees only.

[FR Doc. 92-17685 Filed 7-24-92; 8:45 am]

BILLING CODE 6325-01-C

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

July 21, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Equitable Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–8789)
Greater China Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–8790)
Jardine Fleming China Region Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8791)
Consolidated Freightways, Inc.
Depositary Shares (each representing 1/10 share of Series C Conversion Preferred), No Par Value (File No. 7–8792)
USF&G Corporation
$5 Series C Cumulative Convertible Redeemable Preferred Stock, No Par Value (File No. 7–8793)
Daxor Corporation
Common Stock, $.01 Par Value (File No. 7–8794)
Abex, Inc.
Common Stock, $.01 Par Value (File No. 7–8795)
Managed Municipal Portfolio, Inc.
Common Stock, $.001 Par Value (File No. 7–8796)
MuniYield California Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8797)
MuniYield New York Insured Fund II
Common Stock, $.10 Par Value (File No. 7–8798)
MuniYield Quality Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8799)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 11, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–17592 Filed 7–24–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 21, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Authentic Fitness Corporation
Common Stock, $.001 Par Value (File No. 7–8800)
Ambac, Inc.
Common Stock, $.01 Par Value (File No. 7–8801)
Bradless, Inc.
Common Stock, $.01 Par Value (File No. 7–8802)
British Telecommunications Plc
Second Interim, American Depositary Shares (File No. 7–8803)
Carter-Wallace, Inc.
Common Stock, $1.00 Par Value (File No. 7–8804)
Cone Mills Corporation
Common Stock, $.10 Par Value (File No. 7–8805)
Delta Air Lines, Inc.
Depositary Shares, 7% Series Convertible Preferred (File No. 7–8806)
Hospital Staffing Services, Inc.
Common Stock, $.001 Par Value (File No. 7–8807)
Interco, Inc.
Common Stock, No Par Value (File No. 7–8808)
MBIA, Inc.
Common Stock, $1.00 Par Value (File No. 7–8809)
Transportacion Maritima Mexicana, S.A. De C.V.
American Depositary Shares, Representing Series L Shares (File No. 7–8810)
Transportacion Maritima Mexicana, S.A. De C.V.
American Depositary Shares, Representing Ordinary Participation Certificates (representing financial interests in Series A Shares) (File No. 7–8811)
Ultramar Corporation
Common Stock, $.01 Par Value (File No. 7–8812)
Equitable Companies Incorporated
Common Stock, $.01 Par Value (File No. 7–8813)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 11, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–17591 Filed 7–24–92; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Champion International Corporation, Common Stock $.50 Par Value; Rights to Purchase Preference Stock, Participating Cumulative Series, $1 Par Value—Which Presently are Attached to the Common Stock; Preference, Stock, $1.20 Cumulative Convertible Series, $ Par Value—All of Which was Redeemed on April 14, 1986; Preference Stock, $4.60 Cumulative Convertible, $1 Par Value—All of Which was Redeemed on May 17, 1986) File No. 1–3053

July 21, 1992.

Champion International Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, it decided to withdraw the above-specified securities from listing on the PSE

because the Company believes that this cost-cutting action is appropriate in today's very competitive business environment.

In addition, all of these securities, except the Company's Common Stock, have been redeemed, and the Company's Common Stock remains listed on the New York Stock Exchange, Inc.

Any interested person may, on or before August 11, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-17590 Filed 7-24-92; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Data Switch Corporation, T-Bar Incorporated 9% Convertible Subordinated Debentures due 1996) File No. 1-9780

July 21, 1992.

Data Switch Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security form listing and registration include the following:

According to the Company, there is currently only $3,539,000 principal amount of Debentures outstanding as of this date of the original $15,000,000 principal amount originally issues. Also, the Company states that there has been little trading activity in the Debentures, the last trade known to the Company being in November 1991.

Finally, in making the decision to withdraw the Debentures form listing on the Amex the Company considered the direct and indirect costs and expenses in connection with maintaining such listing, the number of record holders of the Debentures, the availability of a market maker and the limited trading record of the Debentures. The Company does not see any material advantage in continuing the trading of the Debentures on the Amex.

Any interested person may, on or before August 11, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-17593 Filed 7-24-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Training and Qualifications Subcommittee; Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Training and Qualifications Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on August 6, 1992, at 9 a.m.

ADDRESSES: The meeting will be held at the FAA Headquarters in the MacCracken Room, 10th Floor, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Etta Schelm, Flight Standards Service (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Training and Qualifications Subcommittee to be held on August 6, 1992, at the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for the meeting will include progress reports from the General Aviation Working Group, Air Carrier Working Group, and Cabin Safety Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on July 21, 1992.

Tom Toula,

Acting Executive Director, Training and Qualifications Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-17664 Filed 7-24-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Clark County, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Clark County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Fendrick, District Administrator, Federal Highway Administration, room 254, Federal Office Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Tel. 317/226-7481.

SUPPLEMENTARY INFORMATION: The Indiana Department of Transportation (INDOT) is examining alternatives to upgrade about 8.7 miles of I-65 between the Ohio River and SR 311 at Sellersburg. This freeway section, dating from the early 1960's, is critically deficient in capacity and does not meet today's design policies and standards, especially at interchanges. This document analyzes solutions to these deficiencies, including no action, mass transit, and build alternatives. Build

alternatives include mainline I–65 reconstruction, revised interchange configurations, and changes to the local surface street network.

A scoping meeting held October 25, 1991 was attended by: FHWA; INDOT's Division of Program Development and Seymour District Office; and, the Indiana Department of Natural Resources divisions of Water, Outdoor Recreation, and Fish and Wildlife. Scoping packets were sent to those unable to attend the meeting: the U.S. Fish and Wildlife Service, Field Supervisor; U.S. Soil Conservation Service, State Conservationist; U.S. Department of Interior, National Park Service; U.S. Environmental Protection Agency, Region V, Environmental Review Section; U.S. Department of Housing and Urban Development, Region V; U.S. Army Corps of Engineers, Louisville District; INDOT, Division of Aeronautics; Indiana Geological Survey, Environmental Geology Section; Indiana Department of Environmental Management; and, Ball State University, Department of Anthropology, Archaeological Resources Management Service. No additional formal scoping is planned at this time.

Two committees aided the study process: A Study Task Force (STF) with representatives of local political jurisdictions and businesses; and a Technical Review Committee (TRC) with agency staff representation. These groups have provided a forum for both political and technical issues. Dozens of meetings have been held with these groups, agencies, business groups, and individuals. Public meetings were held January 17, 1991 and September 18, 1991, to explain the project and record public comments. A formal public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 123372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: July 14, 1992.

J.D. Tucker,

Planning and Research Engineer, Indianapolis, Indiana.

[FR Doc. 92–17440 Filed 7–24–92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 23–92]

Treasury Notes of July 31, 1994, Series AC–1994 (CUSIP No. 912827 G2 2)

Washington, July 22, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC, 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the

designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to Section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are

accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Gerald Murphy,
Fiscal Assistant Secretary.

Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note. A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census of statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2–Year and 5–Year Notes Totaling $25,500 Million

The Treasury will auction $15,000 million of 2-year notes and $10,500 million of 5-year notes to refund $19,319 million of securities maturing June 30, 1992, and to raise about $6,175 million new cash. The $19,319 million of maturing securities are those held by the public, including $977 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $25,500 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,854 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED JULY 31, 1992

[July 22, 1992]

Amount offered to the public	$15,000 million	$10,500 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AC–1994, (CUSIP No. 912827 G2 2)	Series P–1997, (CUSIP No. 912827 G3 0).
Maturity date	July 31, 1994	July 31, 1997.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	January 31 and July 31	January 31 and July 31.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, July 28, 1992	Wednesday, July 29, 1992
(a) noncompetitive	Prior to 12 noon, EDST	Prior to 12:00 noon, EDST
(b) competitive Settlement (final payment due from institutions):	Prior to 1:00 p.m., EDST	Prior to 1 p.m., EDST.
(a) funds immediately available to the Treasury	Friday, July 31, 1992	Friday, July 31, 1992.
(b) readily-collectible check	Wednesday, July 29, 1992	Wednesday, July 29, 1992.

[FR Doc. 92–17782 Filed 7–23–92; 12:01 pm]
BILLING CODE 4810–40–M

[Department Circular—Public Debt Series—No. 24–92]

Treasury Notes of July 31, 1997, Series P–1997 (CUSIP NO. 912827 G3 0)

Washington, July 22, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account

in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to Section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and amount bid. A separate tender and customer list should be submitted for each competitive yield. For non-competitive bids, the customer list must provide, for each customer, the name of the customer and amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title or the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau

of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3 Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner)s), acting together or separately, who own the majority or controlling interest, in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $25,500 Million

The Treasury will auction $15,000 million of 2-year notes and $10,500 million of 5-year notes to refund $19,319 million of securities maturing June 30, 1992, and to raise about $6,175 million new cash. The $19,319 million of maturing securities are those held by the public, including $977 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $25,500 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,854 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED JULY 31, 1992

[July 22, 1992]

Amount Offered to the Public	$15,000 million	$10,500 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AC-1994, (CUSIP No. 912827 G2 2)	Series P-1997, (CUSIP No. 912827 G3 0).
Maturity date	July 31, 1994	July 31, 1997.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	January 31 and July 31	January 31 and July 31.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, July 28, 1992	Wednesday, July 29, 1992.
(a) noncompetitive	Prior to 12 noon, EDST	prior to 12 noon, EDST.
(b) competitive	Prior to 1 p.m., EDST	prior to 1 p.m., EDST.
Settlement (final payment due from institutions):		
(a) funds immediately available to the Treasury	Friday, July 31, 1992	Friday, July 31, 1992.
(b) readily-collectible check	Wednesday, July 29, 1992	Wednesday, July 29, 1992.

[FR Doc. 92-17761 Filed 7-23-92; 12:01 am]
BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 21, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20222.

U.S. Customs Service

OMB Number: 1515-0050
Form Number: None
Type of Review: Extension
Title: Recordkeeping Requirements for Drawback Claims
Description: The Drawback Regulations provide specific procedures as to what type of records and forms are needed for compliance with the law. 19 CFR 191.22 and 191.32 detail the records which must be maintained for 3 years after payment of drawback
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 3,500
Estimated Burden Hours Per Recordkeeper: 7 hours
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 24,500 hours
Clearance Officer: Ralph Meyer (202) 927-1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 396-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Department Reports Management Officer

[FR Doc. 92-17656 Filed 7-24-92; 8:45 am]
BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 21, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Focus Group Interviews Concerning the Federal Tax Deposit Coupon Book Reorder Process
Description: These focus group interviews are necessary to determine the effectiveness of the new automated system to reissue Federal Tax Deposit (FTD) Coupon Books. The results will be used to evaluate clarity of instructions and to explore methods of improving the deposit system in an attempt to measure burden reduction
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,400
Estimated Burden Hours Per Respondent: 3 hours
Frequency of Response: Other (one-time interviews)
Estimated Total Reporting Burden: 237 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 92–17657 Filed 7–24–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: July 17, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

U.S. Customs Service

OMB Number: 1515–0090
Form Number: None
Type of Review: Extension
Title: Exporters Summary of Exportations
Description: Under the Exporters Summary Procedure the drawback entry shall be supported by a chronological summary of the exports and other required documentation to fully establish the fact of exportation. This permits consolidation of claims on a periodic basis and substantially reduces the paperwork involved
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 15,000
Estimated Burden Hours Per Respondents: 3 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: hours
OMB Number: 1515–0106
Form Number: None
Type of Review: Reinstatement
Title: Special Form of Entry of Articles for Exhibition
Description: This form of entry is needed to provide a means by which U.S. Customs may control the entry of material for exhibits.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 35
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 502 hours
Clearance Officer: Ralph Meyer (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Officer Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–17467 Filed 7–24–92; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 21, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: 1992 Service Center Correspondence Customer Satisfaction Survey.
Description: The data collected will be used to evaluate the level of satisfaction of taxpayers receiving IRS service center generated correspondence from Returns Processing and Collection functions to identify possible areas of program improvement.
Respondents: Individuals or households.
Estimated Number of respondents: 2,960.
Estimated Burden Hours Per Respondent: 16 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 765 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–17658 Filed 7–24–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 21, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1010.
Form Number: IRS Form 1120–RIC.
Type of Review: Revision.
Title: U.S. Income Tax Return for Regulated Investment Companies.
Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 3,277.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—54 hours, 3 minutes
Learning about the law or the form—16 hours, 25 minutes
Preparing the form—32 hours, 55 minutes
Copying, assembling, and sending the form to the IRS—4 hours, 17 minutes
Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 352,835 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 92-17650 Filed 7-24-92; 8:45 am]
BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 144
Monday, July 27, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Portion of Agenda Item From July 16th Open Meeting

Consideration of a *Tentative Decision* concerning requests for pioneer's preferences in Gen Docket No. 90-314, previously listed as part of Item 9 in the Commission's Notice of July 9, 1992, was deleted from the Commission Meeting Agenda for July 16, 1992, and the matter has been returned to the staff for further consideration.

Issued: July 17, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-17695 Filed 7-23-92; 10:03 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92-17576.

PREVIOUSLY ANNOUNCED DATE AND TIME:
Thursday, July 30, 1992, 10:00 a.m.,
Meeting Open to the Public.

THE FOLLOWING ITEMS ARE ADDED TO THE AGENDA:

Gephardt for President Committee, Inc.,
Request for Extension to Make Repayment to United States Treasury (LRA #338)
Jack Kemp for President Committee, Inc.,
Request for Extension to Make Repayment to United States Treasury (LRA #328)

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Press Officer,
Telephone: (202) 219-4155.

Delores R. Harris,

Administrative Assistant.

[FR Doc. 92-17837 Filed 7-23-92; 3:29 pm]

BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week July 27, 1992.

Open meetings will be held on Tuesday, July 28, 1992, at 10:00 a.m., and on Wednesday, July 29, 1992, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, July 30, 1992, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the schedule matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, July 28, 1992, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment Rules 2a19-2 and 2a3-1 under the Investment Company Act of 1940 (the "Act"). Rule 2a19-2 would conditionally exempt certain general partners of management investment companies and business development companies from the definition of "interested person" under the Act. Rule 2a3-1 would exempt certain limited partners from the definition of "affiliated person" under the Act. For further information, please contact Edward J. Rubenstein at (202) 272-2048.

2. Consideration of whether to propose for public comment rule 23c-3 under the Investment Company Act (the "Act"), together with rule 14e-6 under the Securities Exchange Act (the "Exchange Act") and amendments to rules 10b-6 and 13e-4 under the Exchange Act. Rule 23c-3 would provide for periodic repurchases by closed-end management investment companies at net asset value. Consideration also will be given to whether to propose for public comment rule 22e-3 under the Act, together with rule 27c-2 under the Act and amendments to rules 0-1 and 22c-1 under the Act. Rule 22e-3 would exempt certain open-end management investment companies and registered separate accounts from the prohibition in section 22(e) of the Act on suspending redemptions or taking longer than seven days to make payment upon redemptions. Consideration also will be given to publishing for comment staff guidelines to Forms N-1A, N-2, N-3, and N-4 under the Act. For further information, please contact Robert G. Bagnall or Karen L. Skidmore, at (202) 272-2048.

3. Consideration of whether to authorize the Division of Investment Management to apply the Investment Advisers Act of 1940 on the basis of conduct and effects in responding to a no-action request. The Division of Investment Management has proposed to require foreign advisers to comply with the Advisers Act only with respect to their United States clients. In addition, the Division of Investment Management has proposed to permit foreign advisers not registered with the Commission greater flexibility in organizing subsidiaries that are registered advisers. For further information, please contact Eli Nathans at (202) 272-3021.

The subject matter of the open meeting scheduled for Wednesday, July 29, 1992, at 10:00 A.M., will be:

1. Consideration of whether to amend Regulation E under the Securities Act of 1933. Regulation E provides a conditional exemption from registration under the 1933 Act for securities issued by small business investment companies that are registered under the Investment Company Act of 1940 and by business development companies that elect to be regulated under the 1940 Act. The amendments would increase the aggregate offering price of (a) securities of a small business investment company that may be offered within a twelve-month period from $5 million to $15 million and (b) securities of a small business investment company or business development company offered by a person other than the issuer from $100,000 to $1.5 million. For further information, please contact Kathleen K. Clarke at (202) 272-2097.

2. Consideration of whether to adopt the Small Business Initiatives proposed by the Commission on March 11, 1992, including significant revisions to the exempt offerings available to small business issuers and the registration and reporting system for such issuers. For further information, please contact Martin Dunn or Amy Bowerman at (202) 272-2573.

3. Consideration of whether to propose additional rule and form changes applicable to small business issuers, intended to facilitate their access to the capital markets and decrease their costs of compliance with registration and reporting requirements. For further information, please contact Martin Dunn or Amy Bowerman at (202) 272-2573.

The subject matter of the closed meeting scheduled for Thursday, July 30, 1992, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272-2100.

Dated: July 22, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-17554 Filed 7-23-92; 2:23 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1450]

TIME AND DATE: 10 a.m. (EDT), Wednesday, July 29, 1992.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on June 18, 1992.

DISCUSSION ITEM:

1. Preliminary Rate Review.

ACTION ITEMS:

New Business

C—Power

C1. Modification of Growth Credit Program to Include Certain Customers with Demands Between 250 kW and 1000 kW.

C2. Interruptible Wheeling by TVA for Louisville Gas and Electric Company.

E—Real Property Transactions

E1. Public Action Sale of the Reese Ferry, Alabama, Metering Station Property Affecting Approximately 1.27 Acres of Land in Jackson County, Alabama.

E2. Public Auction Sale of Chickamauga-Georgia State Line Transmission Line Property Affecting Approximately 0.57 Acre in Hamilton County, Tennessee.

E3. Sale of Permanent Easement Affecting Approximately 0.16 Acre of East McMinnville Substation Property in McMinnville, Tennessee.

E4. Abandonment of Easement Rights Affecting Approximately 1 Acre of Fort Loudoun Lake Land in Knox County, Tennessee.

E5. Grant of Permanent Easement Affecting Approximately 0.47 Acre of Guntersville Lake Land in Marion County, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Personal Service Contract with Kuether & Associates, Inc.

F3. Personal Services Contract with Parsons Main, Inc.

F4. Supplement to Contract No. TV-83425V With Bechtel Corporation.

F5. Supplement to Personal Services Contract No. TV-82788V with ViaTech Services, Inc.

F6. Supplement to Personal Services Contract No. TV-82909V with B&W Nuclear Services Company.

INFORMATION ITEMS:

1. Appointment of TVA's Designated Agency Safety and Health Official.

2. Memorandum of Understanding Between TVA and the National Rural Electric Cooperative Association.

3. Agreement with West Town Mall Joint Venture for the Relocation of TVA Transmission Lines and Associated Matters.

4. Delegation of Authority to Approve Supplements to Personal Services Contracts with ENSR Consulting and Engineering and Science Applications International Corporation for Standby Environmental Support.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: July 22, 1992.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 92-17805 Filed 7-23-92; 2:24 pm]

BILLING CODE 8120-08-M

Corrections

Federal Register
Vol. 57, No. 144
Monday, July 27, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0033]

RIN 0905-AA06

Oral Health Care Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

Correction

In the issue of Thursday, July 9, 1992, on page 30534, in the second column, in the correction of proposed rule document 92-11177, the corrected heading should read as follows:

"§ 356.52 [Corrected]".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Programs, Final Total Allocations, Allocation Formulas and Formula Rationales for Program Year 1992 Regular Program and Calendar Year 1992 Summer Youth Employment Program

Correction

In notice document 92-10229 beginning on page 18927 in the issue of Friday, May 1, 1992, make the following corrections:

1. On page 18929, in the 1st column of the table, in the 26th entry, in the 1st line, "McCosikee" should read "Miccosukee".

2. On page 18931, in the 1st column of the table, in the 26th entry, in the 1st line, "Zini" should read "Zuni".

3. On page 18932, in the first column of the table, in the second entry, in the third line, "99-0689-55-177-02" should read "99-1-0689-55-177-02".

4. On the same page, in the 2d column of the table, in the 20th entry, "1,476,263" should read "1,476,283".

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federal register

Monday
July 27, 1992

Part II

Department of Education

Rehabilitation Short-Term Training; Proposed Priorities for Fiscal Year 1992; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Short-Term Training; Proposed Priorities for Fiscal Year 1993

AGENCY: Department of Education

ACTION: Notice of proposed priorities for fiscal year 1993.

SUMMARY: The Secretary proposes priorities for fiscal year 1993 under the Rehabilitation Short-Term Training program. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to maintain and upgrade the basic skills and knowledge of trained rehabilitation professionals in the areas of: (1) Functional assessment of individuals with cognitive disabilities; and (2) provisions of the Individuals with Disabilities Education Act (IDEA).

DATES: Comments must be received on or before August 26, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Ann Queen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3038 Switzer Building, Washington, DC 20202–2649.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Melia, U.S. Department of Education, 400 Maryland Avenue, SW., room 3324 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 732–1400. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Rehabilitation Short-Term Training program is authorized by section 304 of title III of the Rehabilitation Act of 1973, as amended. The purpose of this discretionary grant program is to provide Federal support for the development and conduct of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

This program supports AMERICA 2000, the President's strategy for helping the nation move toward achievement of the National Education Goals. These proposed priorities would advance goal five, which calls for every adult American to possess the knowledge and skills necessary to compete in an global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 1—Functional Assessment of Individuals With Cognitive Disabilities

Background

Rehabilitation planning and decision making must be based on valid, relevant information derived from assessments that delineate an individual's strengths and limitations. Various studies funded by the Rehabilitation Services Administration (RSA) (Indices, 1979; Institute on Rehabilitation Issues, 1983; Policy Studies Associates, 1986; and Berkeley Planning Associates, 1989) indicate that a functional assessment approach yields pertinent information that leads to accurate and supportable decisions on eligibility and determinations of severity of handicap. Also, accurate functional assessment improves the formulation of vocational goals and the establishment of intermediate objectives and services to accomplish individualized written rehabilitation programs.

Although considerable instrumentation has been developed for functional assessment, and although vocational rehabilitation (VR) practice now incorporates significant use of the functional assessment approach, rehabilitation practitioners often have not received specific training to carry out functional assessment (Halpren, A.S., and Fuhrer, M.S., eds., Functional Assessment in Rehabilitation, Paul H. Brookes Publishing Co., 1984). The need is particularly acute to train practitioners to assess individuals with cognitive disabilities, including persons with specific learning disabilities, traumatic brain injury, severe and persistent mental illness, and autism (Fifth National Forum on Issues in Vocational Assessment, University of Wisconsin-Stout, 1991). Persons with these disabilities often have functional capacities that are difficult to assess, thus requiring special care in selection of instrumentation and an inter-disciplinary approach to interpretation of findings (RSA Program Circular 90–07).

The Secretary also proposes to fund several Special Projects and Demonstrations in FY 1993 that will develop model approaches to functional assessment for individuals with cognitive disabilities. The Secretary will coordinate the oversight and administration of these projects to assure that rehabilitation professionals, educators, and related agencies and organizations derive the maximum benefits from these efforts to improve functional assessment of individuals with cognitive disabilities.

Priority

Projects must—

- Develop training to enhance rehabilitation functional assessments and related services provided by practitioners working in public and related nonprofit private agencies to individuals with specific learning disabilities, traumatic brain injury, severe and persistent mental illness, and autism;
- Provide this training for educators who are preparing individuals for careers in rehabilitation and for trainers of personnel working in or with State VR agencies, centers for independent living, client assistance programs, rehabilitation facilities, and community-based programs for individuals with disabilities; and
- Be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.

Proposed Priority 2—Training Rehabilitation Practitioners and Educators on Provisions of the Individuals With Disabilities Education Act (IDEA)

Background

The recently enacted Individuals with Disabilities Education Act, Public Law 101–476, 20 U.S.C. chapter 33, 1990, attempts to address some of the issues relating to the transition of individuals with disabilities from school to work. IDEA has expanded the definition of

"transition services" to encompass post-school outcomes, such as competitive integrated employment, supported employment, and independent living. IDEA requires the identification of employment and other post-school adult living objectives in any transition-related planning. IDEA mandates that individualized education plans (IEPs) reflect the nature and scope of interagency linkages and responsibilities.

Educators who are preparing individuals for careers in rehabilitation and trainers of personnel working in or with State VR agencies need to become familiar with these new requirements and modify existing curricula to reflect these new provisions and their impact on VR services. Under IDEA, State VR personnel will be more actively involved in transition planning for students with disabilities.

RSA will coordinate the oversight of this project with the Office of Special Education (OSEP) to assure that the training provided is consistent with the regulations and related guidance and policy materials developed by OSEP for implementation of IDEA.

Priority

Projects must—

- Develop training on: (1) The transition requirements of the IDEA and (2) the impact of these new requirements on the provision of vocational rehabilitation services to students with disabilities. The training must focus on the involvement of VR personnel in the development and modification of IEPs and the importance of collaboration between VR counselors and special education teachers in the successful transition of individuals with disabilities from school to work;
- Provide training through seminars or workshops for preservice educators and State VR agency personnel on the transition requirements under the IDEA; and
- Be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3324 Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 385 and 390.

Program Authority: 29 U.S.C. 774.

(Catalog of Federal Domestic Assistance Number 84.246, Rehabilitation Short-Term Training)

Dated: July 21, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-17594 Filed 7-24-92; 8:45 am]

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Monday
July 27, 1992

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 573
Food Additives Permitted in Feed and Drinking Water of Animals; Selenium; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 86F-0060]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; denial of certain requests for hearing and response to certain objections.

SUMMARY: The Food and Drug Administration (FDA) is denying certain requests that it has received for a hearing on and stay of a final rule (April 6, 1987 (52 FR 10887)), that increased the maximum permitted use level of selenium in animal feeds. After reviewing the objections to, and the requests for a hearing on and stay of, the final rule based on human food safety, animal safety, manufacturing controls, economic harm, and certain procedural issues, FDA has concluded that those objections do not raise a genuine and substantial issue of fact that justifies a hearing or staying the final rule.

FDA is deferring a decision on requests for a stay of and a hearing on the final rule based on claimed actual and potential adverse environmental effects of the increased level of selenium permitted by the final rule, pending a legislative-type hearing on those claimed effects. That hearing will be held on August 25 and 26, 1992, as announced in a notice published in the **Federal Register** of June 26, 1992 (57 FR 28606).

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV09226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8731.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 6, 1987 (52 FR 10887) (corrected June 4, 1987, 52 FR 21001), in response to a petition by the American Feed Industry Association, 1501 Wilson Blvd., suite 1100, Arlington, VA 22209, FDA issued a final rule (the 1987 amendments) amending the selenium food additive regulation, § 573.920 (21 CFR 573.920). The 1987 amendments permitted: (1) An increase from 0.1 to 0.3 part per million (ppm) in the level of selenium (as sodium selenite or sodium selenate) in complete feeds for cattle, sheep, chickens, ducks, and swine (except for weanling swine, which was already approved at 0.3 ppm); (2) an increase from 0.2 to 0.3 ppm for turkeys; (3) a proportional increase in the limit feeding (feed supplements and salt-mineral mixtures) consumption rates for sheep and beef cattle to 0.7 and 3 milligrams per head per day, respectively; (4) an increase in the selenium fortification levels for salt-mineral mixtures for sheep and cattle to 90 and 120 ppm, respectively; and (5) more flexibility in certain manufacturing controls by eliminating the requirement for premix manufacturers to analyze each production batch of selenium premix. At the time, the regulation was amended to include requirements for current good manufacturing practices (CGMP's). FDA based its decision on manufacturing and safety data in the petition and in its files. The agency had published a notice announcing the filing of the food additive petition (FAP 2201) in the **Federal Register** of February 21, 1986 (51 FR 6321). Persons adversely affected by the 1987 amendments were given the opportunity to file objections to it by May 6, 1987.

In April, May, and July 1987, six organizations filed objections to or comments on the 1987 amendments. Some of these organizations requested a hearing on their objections, a stay of the 1987 amendments, or both a hearing and a stay on the grounds that the agency had not properly considered the effect of the amendments on the environment, on human food safety, on target animal safety, on manufacturing controls, or on the economic viability of a company. There were, in addition, objections based on alleged procedural deficiencies in the proceeding. Finally, one organization (the National Mixer-Feeder Association) objected to the 1987 amendments on the grounds that the level of selenium allowed in the selenium premixes was not proportionally increased with the increase in selenium permitted in the feed. This objection was appropriate and the agency corrected the oversight in the June 4, 1987, correction to the final rule.

In response to the June 4, 1987, correction to the 1987 amendments, one organization (Micro Tracers, Inc.) filed an additional objection on July 3, 1987, and requested the agency to rescind the amendments on the grounds that the agency had not properly considered the impact of increasing the potency of selenium premixes and eliminating the requirement that every batch of selenium premix be analyzed.

The most substantial requests for a stay or a hearing were grounded in objections to the environmental impact analysis report submitted by the American Feed Industry Association or the agency's finding of no significant impact. Those requests were based on claims of actual and potential significant adverse environmental effects due to the 1987 amendments. In order to update the existing environmental analysis with additional information from the scientific literature and to obtain additional information on certain environmental issues, FDA's Center for Veterinary Medicine (CVM) set out its tentative responses to those issues in a notice published in the **Federal Register** of July 11, 1989 (54 FR 29019) (the 1989 notice). The 1989 notice also provided an opportunity for additional comments on the environmental issues.

This document does not address any of the environmentally based objections lodged in support of requests for a stay of or a hearing on the 1987 amendments. FDA will make a decision on those requests and respond to those objections following a legislative-type hearing under 21 CFR part 15 on the environmental issues identified in the notice of hearing as published in the **Federal Register** of June 26, 1992 (57 FR 28606).

This document denies requests for a stay of or a hearing on the 1987 amendments and responds to objections to those amendments insofar as the requests and objections relate to human food safety, target animal safety, manufacturing controls, claims of economic harm, and certain alleged procedural deficiencies.

A. Requests for Hearing and Stay

Section 409(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(f)) provides that within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such an order may file objections specifying with particularity the provisions of the order considered objectionable, stating reasonable grounds for the objections, and requesting a public hearing on such objections.

Under § 571.110 (21 CFR 571.110) of the food additive regulations, objections and requests for a hearing are governed by part 12 of FDA's regulations (21 CFR part 12). Under § 12.22(a): (1) Each objection must be submitted on or before the 30th day after the date of publication of the final rule; (2) each objection must be separately numbered; (3) each objection must specify with particularity the provision of the regulation or proposed order objected to; (4) each objection on which a hearing is requested must specifically so state;

failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) each objection requesting a hearing must include a detailed description and analysis of the factual information to be presented in support of the objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

B. Standard for Granting a Hearing

The criteria for deciding whether to grant or deny a hearing are stated in § 12.24(b). The regulation states that a hearing will be granted when the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations, denials, or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner of Food and Drugs (the Commissioner) concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., 21 CFR 10.20, 12.21, 12.22, 314.200, 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing." *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 21409215 (1980), reh. den., 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott, and Dunning, Inc.*, 412 U.S. 609, 62009621 (1973). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test. *Georgia Pacific Corp.* v. *U.S. E.P.A.*, 671 F.2d 1235, 1241 (9th Cir. 1982). If a hearing request fails to identify any evidence that would be the subject of a hearing, there is no point in holding one.

A hearing request must not only contain evidence, but that evidence must raise a material issue of fact concerning which a meaningful hearing might be held. *Pineapple Growers Ass'n* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing. *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), cert. denied, 362 U.S. 911 (1960). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. (See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971)). Put another way, a hearing is justified only if the objections are made in good faith, and if they "draw in question in a material way the underpinnings of the regulation at issue." *Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. (See *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), cert. denied, 358 U.S. 872 (1958)).

As discussed in section II. of this document, FDA is denying the nonenvironmentally related requests that it received for a hearing on the 1987 amendments because none of those requests raises a genuine and substantial issue of fact.

C. Standard for Granting a Discretionary Stay

Under section 409(e) of the act (21 U.S.C. 348(e)), a food additive regulation is effective upon publication. Section 409(e) of the act also provides, however, that FDA may stay the effective date of the regulation if a hearing is requested. Section 10.35(d)(1) of the agency's regulations governing administrative stay of action provides that FDA may grant a stay in those situations in which the stay is in the public interest.

Prior to promulgation of the final rule amending the selenium food additive regulation, the agency made a determination that increasing the permitted level of supplemental selenium in animal feed was safe. To justify a stay pending a hearing, the objections would have to make a substantial showing to the contrary (40 FR 40682 at 40687, September 3, 1975). FDA is denying as moot requests for a stay submitted by American Council of Independent Laboratories, Inc., and Micro Tracers, Inc. Those requests were based on human food safety, target animal safety, manufacturing controls, economic harm, and certain alleged procedural deficiencies. The requests are moot because the agency has determined that the objections and evidence submitted do not justify a hearing. (See section II. of this document.)

D. Objections to and Comments on the 1987 Amendments

FDA received five objections to and one comment on the 1987 amendments. Four of the objections were accompanied by a request for a hearing or a stay. One objection requesting a hearing also requested that an environmental impact statement (EIS) be prepared. That objection will not be addressed in this document but will be addressed following the legislative-type hearing on certain environmental issues.

One objection to and one comment on the 1987 amendments pointed to a specific aspect of the rule, but did not request a hearing. However, to the extent that that objection was similar to an objection that was accompanied by a request for a hearing, the former will be discussed along with the latter. Several objections that incorporated a request for a hearing were not submitted to FDA until after the close of the objection period. Hence, those objections failed to satisfy the requirements of section 409(f)(1) of the act (21 U.S.C. 348(f)(1)) and need not be considered further by the agency. *ICMAD* v. *HEW*, 574 F.2d 553, 558 n.8 (D.C. Cir.), cert. denied, 439 U.S. 893 (1978). However, to the extent that issues raised in the tardy objections were also raised by the timely objections, they will also be addressed in this document.

II. Objections and Comments

A. Human Food Safety

The State of California Health and Welfare Agency, Micro Tracers, Inc., and the Natural Resources Defense Council claimed that the agency did not adequately consider the effect of increasing the allowable levels of selenium in animal diets and the resulting selenium levels in animal

products on the human dietary intake of selenium. Each organization then argued that the increase in human dietary intake of selenium would pose a significant risk to human health (ref. 1, p. 1; ref. 2, p. 10; and ref. 3, p. 2). Micro Tracers, Inc., and the Natural Resources Defense Council requested a hearing.

The State of California Health and Welfare Agency, Micro Tracers, Inc., and the Natural Resources Defense Council alleged that the selenium content of food products including meat, eggs, and milk will increase as a result of the 1987 amendments. Factual information submitted in support of this objection did not contain any specific evidence to challenge the agency's conclusions that the levels of selenium found in tissues of animals supplemented with 0.3 ppm of selenium are within the normal range of values found in tissues of unsupplemented animals fed adequate levels of selenium and that these levels are safe to humans who consume those tissues. This range of normal values was set out by the agency in a January 21, 1987, memorandum and placed on file in the docket of this proceeding (ref. 4).

Two pertinent articles cited by the objectors (studies by Arnold et al. (ref. 5) and Ort and Latshaw (ref. 6)) considered levels of dietary selenium much higher than that provided for in the 1987 amendments. Dietary selenium levels of 0.2, 2.0, and 8.0 ppm were fed to hens in the study by Arnold et al. The selenium level (0.9 ppm) found in the target tissue (liver) in hens supplemented with 2.0 ppm of selenium was within the range of normal values (0.1 to 0.9 ppm (ref. 4)). Ort and Latshaw studied the liver and egg selenium values in laying hens fed 0, 0.1, 1.0, 3.0, and 5.0 ppm of selenium (ref. 6). When interpolated by FDA to a level of 0.3 ppm supplemental selenium, selenium concentrations are approximately 0.38 ppm in the liver and 0.22 ppm for whole eggs. Both values are within the normal values for liver (0.1 and 0.9 ppm) and eggs (0.1 to 0.5 ppm) (ref. 4).

The State of California Health and Welfare Agency, Micro Tracers, Inc., and the Natural Resources Defense Council ignore the fact that, according to Arnold et al. (ref. 5), eggs from hens fed semipurified diets, with 2.0 ppm of selenium added, contained selenium in amounts similar to those found in eggs from hens fed unsupplemented corn-soy diets (containing 0.4 ppm of selenium). Those organizations also overlook the fact that, according to Ort and Latshaw (ref. 6), if chickens were fed toxic levels of selenium, it is improbable that the meat and eggs would be toxic to humans.

In addition to the studies by Arnold et al. (ref. 5) and Ort and Latshaw (ref. 6), the Natural Resources Defense Council referred to a study by Goehring et al. (ref. 7) in which swine were fed diets supplemented with sodium selenite to provide selenium levels ranging from 0.54 to 8.3 ppm. This study did not evaluate tissue selenium levels at supplementation rates under the conditions set forth in § 573.920. Nevertheless, swine supplemented at the 0.54 ppm level averaged a selenium liver concentration of 0.64 ppm, which is within the normal range (0.1 to 0.9 ppm) for swine fed diets unsupplemented with selenium (ref. 7).

None of these studies provides a basis to contest the agency's conclusion regarding levels of selenium in tissue, nor do they provide a basis for a hearing. Quite the contrary, the studies support the conclusion in question. Moreover, data collected by FDA from 1982 to 1989 as part of the United States Total Diet Study (ref. 8) show no significant increase in the average selenium content of eggs (0.25 ppm) or beef liver (0.58 ppm) or in the daily selenium intake for the eight age/sex groups studied as part of the survey (refs. 9 and 10).

In further support of its argument that human food safety had not been adequately considered, the Natural Resources Defense Council alleged that as a result of the increase in selenium in animal feed: (1) The increased levels of selenium in animal wastes, which when used as fertilizers, may lead to higher levels of selenium in food crops; (2) bioconcentration and bioaccumulation of selenium will occur in the aquatic food chain as a result of agricultural runoff and will increase the level of selenium in fish and wildfowl; and (3) the occurrence of *Salmonella* bacterial contamination of the meat will increase (ref. 3, p. 4). Micro Tracers, Inc., also alleged that the increase in supplemental selenium in feeds (ref. 2, p. 10) and the increase in the level of selenium permitted in the premix (ref. 2, p. 24) would lead to higher levels of selenium in food crops and increase the incidence of *Salmonella* in meat and poultry.

Points 1 and 2 relate to the indirect human food exposure to selenium through environmental routes because both the level of selenium in food crops grown using animal waste as fertilizers and the level of selenium in fish and wildfowl tissues are influenced by the environmental cycling of selenium. The agency has determined that these issues are environmentally related as described in 40 CFR 1508.8 and, thus, FDA will not address them in this document. Rather, FDA will address these issues following the legislative-type hearing on certain environmental issues.

The Natural Resources Defense Council contended as a basis for point 3 that because sodium selenite enhances the growth of many species of *Salmonella* and inhibits the growth of other enteric bacteria in laboratory media, animal products derived from animals receiving *Salmonella*-contaminated feeds and increased level of selenium supplementation would have increased *Salmonella* contamination. This increase, in turn, would result in an increased incidence of risk of *Salmonella* infection in people (ref. 3, p. 5). The Natural Resources Defense Council provided three references allegedly demonstrating the growth-enhancing effect of selenium in enrichment broths and selective agars for the isolation of *Salmonella* (refs. 11, 12, and 13).

The Natural Resources Defense Council's contention (ref. 3, p. 10) that sodium selenite is an effective growth media for *Salmonella* is not correct. Sodium selenite is not used in growth media to stimulate the growth of *Salmonella*; selenium inhibits the growth of *Salmonella* but to a lesser extent than other organisms also normally present with *Salmonella*. The use of sodium selenite in growth media at a level of 0.4 percent (0.2 percent selenium) is to selectively inhibit the other organisms present to enable the isolation of *Salmonella* from various samples. Selective inhibition is discussed in the study by Banwert and Ayers (ref. 13) (cited by the Natural Resources Defense Council) in which the addition of 0.2 percent of selenium (2,000 ppm) to laboratory nutrient broth inhibited the growth of eight species of *Salmonella*. That level is 6,000 times higher than the 0.3 ppm permitted by the 1987 amendments. There was no evidence submitted to show that selenium at a level of 0.3 ppm will selectively inhibit enteric bacteria and result in increased *Salmonella* levels in animals.

The other studies cited by the Natural Resources Defense Council (refs. 11 and 12) did not include control values for the growth of organisms in a standard nutrient broth. Without such values, these studies are inadequate to demonstrate the effect of selenium on the growth of *Salmonella*.

The remaining information submitted by the Natural Resources Defense

Council and Micro Tracers, Inc. (refs. 14 and 15) also does not provide evidence to support the contention that the increased selenium level in feeds and premixes will increase the *Salmonella* contamination of animals receiving contaminated feeds because of the greater inhibiting effect of selenium on other enteric bacteria. Reference 14 suggests that in cases of selenium toxicity, the animal's immune function would be reduced, resulting in increased susceptibility to *Salmonella* infections. There are no data to show toxicity from selenium at the level of 0.3 ppm permitted by the 1987 amendments; quite the contrary, the data show that that level is safe. Thus, whatever the merits of the suggestion of reduced immune function and increased susceptibility to infection, the suggestion is inapplicable insofar as the 1987 amendments are concerned. Reference 15 addresses the contamination of meat and poultry with *Salmonella* and the adequacy of the U.S. Department of Agriculture's meat and poultry inspection programs. It is not relevant to the contention concerning selenium supplementation of animal feed and *Salmonella* contamination.

The Natural Resources Defense Council and Micro Tracers, Inc., have not provided any basis, nor cited any evidence, concerning *Salmonella* that would call into question the agency's conclusion regarding human food safety. Thus, they have failed to justify a hearing on this objection.

Micro Tracers, Inc., and the Natural Resources Defense Council alleged that elimination of the premix batch analysis requirement will increase the possibility of violations of the maximum levels permitted by the 1987 amendments, and consequently, increase human exposure to selenium (ref. 2, p. 10; and ref. 3, p. 5). These organizations contended that without the premix analysis requirement, manufacturers will use more selenium than allowed, thus increasing human exposure to selenium. No data were provided to support this contention. A hearing will not be granted on the basis of mere allegations or contentions (§ 12.24 (b)(2)). Micro Tracers, Inc., and the Natural Resources Defense Council must, at a minimum, "raise a material issue concerning which a meaningful hearing must be held." *Pineapple Growers Ass'n of Hawaii* v. *FDA, supra.*

The agency's analysis of the data and its conclusion on human food safety was placed on public file under docket number 86F000060 (ref. 4). Neither the State of California Health and Welfare Agency, Micro Tracers, Inc., nor the Natural Resources Defense Council has proffered any evidence or explanation that challenges or calls into question the agency's analysis of the data or its conclusion that the amounts of selenium in edible animal products are insufficient to raise human health concerns. Therefore, the objectors have not met their "threshold burden of tendering evidence suggesting the need for a hearing." (See *Costle* v. *Pacific Legal Foundation, supra.*)

B. Animal Safety

Micro Tracers, Inc., alleged that impact on animal and poultry health was not adequately addressed in light of the elimination of the premix batch analysis requirement and requested a hearing on its objection (ref. 2, p. 11). (The requirement is described in detail in section II.C.1. of this document.) Micro Tracers, Inc., contended that since there were at least four incidents of selenium toxicity and animal death due to misformulated premixes prior to 1987, when the requirement of premix batch analysis was in place, elimination of the requirement would "lead to an increased number of misformulated selenium premixes and permit on-farm mixing of selenium into feeds leading to increased loss of animal and poultry life." Allegedly supporting information submitted by Micro Tracers, Inc., included a copy of an FDA Health Hazard Evaluation (class I recall of a swine vitamin-mineral premix overformulated with selenium) (ref. 16), three articles describing selenium toxicosis in swine (refs. 17, 18, and 19), an economic evaluation of the cost of misformulating a selenium premix versus the cost of batch analysis (ref. 20), and a 1983 list of premix manufacturers "in probable violation of the analysis requirements" (ref. 21).

None of the submitted information supports Micro Tracers, Inc.'s, contention that FDA did not adequately consider the effect of the removal of the premix batch analysis requirement on animal safety. The 1982 FDA Health Hazard Evaluation, class I Recall (ref. 16) cited by Micro Tracers, Inc., was for an overformulated vitamin-mineral premix found to contain 2,500 ppm of selenium. The premix was implicated in the death of about 130 swine. FDA investigators found that a vitamin-mineral premix and not a 0.02 percent selenium premix (the type of premix subject to the premix batch analysis requirement) was the source of the excess selenium; violation of the CGMP's by not adequately cleaning the production facilities was the cause of the overformulation.

FDA considered this information before issuing the 1987 amendments. The information does not show that the premix batch analysis requirement for the 0.02 percent selenium premix would have prevented overformulation and protected animal health in this case. Rather, the information shows that adherence to CGMP is important in properly mixing a selenium premix and most likely would have prevented loss of animal life in this incident.

Micro Tracers, Inc., also cited three articles (refs. 17, 18, and 19) that describe incidents of selenium toxicosis in swine herds consuming feeds containing vitamin-mineral premixes with excess selenium (more than 10 ppm) and asserts that misformulated selenium premixes are responsible for the loss of animal life (ref. 2, p. 11). These studies show that selenium toxicosis and loss of animal life can result from feeds overformulated with selenium, but because the source of the excess selenium was not the premix subject to the premix batch analysis requirement, these studies do not establish that the requirement prevents overformulation or protects animal health.

The remaining information (an economic evaluation of the cost of misformulating a selenium premix versus the cost of batch analysis (ref. 20) and a 1983 list of premix manufacturers "in probable violation of the analysis requirements," (ref. 21)) consists of speculation based on theoretical calculations offered by Micro Tracers, Inc. The firm did not provide any factual evidence to support these theoretical calculations. A hearing will not be granted on the basis of mere allegations or contentions (21 CFR 12.24(b)(2)).

FDA does not dispute that selenium can be toxic. The agency recognizes that dietary selenium concentrations above 2 ppm can result in toxicosis. For this reason, FDA regulates selenium in animal food as a food additive, with a maximum supplemental level of 0.3 ppm in animal feeds, and requires premix manufacturers to follow CGMP and maintain complete production records to ensure that selenium premixes are properly formulated (§ 573.920(d)). (By contrast most other common mineral ingredients are considered to be generally recognized as safe (GRAS) (21 CFR part 582).) The objector has not provided any information that provides a basis, nor cited any evidence, that would call the agency's conclusion on animal safety into question. Thus, it has failed to justify a hearing on this objection.

C. Manufacturing Controls

1. Premix Analysis Requirement

Prior to the 1987 amendments, manufacturers of selenium premixes were required by § 573.920(d) to analyze each production batch of 0.02 percent selenium premix used to supplement complete feeds for chickens, swine, sheep, beef and dairy cattle, and ducks, and each production batch of 1.0 percent selenium used to supplement salt-mineral mixtures for sheep and beef and dairy cattle and establish that the level of selenium in the premix did not exceed the maximum level. In the 1987 amendments, FDA removed the requirement that premix manufacturers assay every batch of selenium premix. This change was made in response to the FAP submitted by the American Feed Industry Association.

The premix analysis requirement was incorporated into the original food additive regulation for selenium (39 FR 1355, January 8, 1974) over concerns regarding the toxicity of selenium and whether selenium could be safely incorporated into feed by the feed industry. The premix analysis requirement was intended to ensure the addition of selenium to animal feeds as provided for by the regulation. Given the history of safe use of selenium by the feed industry since 1974, the agency concluded that the requirement to analyze every production batch of selenium was excessive, impractical, and unnecessarily restrictive to ensure the safe use of selenium by that industry. Further, the premix analysis requirement exceeded that required for drugs used in animal feed.

FDA also amended § 573.920(d) to require that premix manufacturers maintain complete and accurate records of the production and distribution of selenium premixes and that each premix manufacturer institute production controls, which include analyses, to ensure the level of selenium and quality of the premix. The agency believes that these requirements are adequate to ensure the safe use of selenium in animal feeds.

The American Council of Independent Laboratories contended that the removal of the premix analysis requirement was not prudent in light of the cost of selenium formulation errors but provided no factual information to support its contention (ref. 22, p. 2). It submitted a letter dated January 5, 1987, from a scientist in the U.S. Department of the Interior's Fish and Wildlife Service commenting on the need for quality assurance and quality control procedures (ref. 23). The letter does not address the removal of the premix batch analysis requirement. CVM agrees with the need for quality control and assurance procedures and for this reason amended § 573.920(d) to require appropriate production and quality controls.

Micro Tracers, Inc., (ref. 2, p. 7) and the Natural Resources Defense Council (ref. 3, p. 5) claimed that the removal of the premix batch analysis requirement would result in an increase in the misformulation of selenium in feeds and the possibility of violations of the maximum allowable limit. Micro Tracers, Inc., further alleged that the feed industry has violated the premix batch analysis requirement on a widespread basis (ref. 2, p. 7). These organizations requested a hearing on their objections.

The Natural Resources Defense Council provided no factual information to support its claim. Under FDA's regulations, a hearing will not be granted on the basis of mere allegations (§ 12.24(b)(2)). Consistent with this regulation, the relevant case law provides that where a party requesting a hearing only offers allegations without an adequate proffer to support them, the agency may properly disregard those allegations. *General Motors Corp.* v. *FERC*, 656 F.2d 791, 798 n. 20 (D.C. Cir. 1981).

Micro Tracers, Inc., submitted a copy of an FDA Health Hazard Evaluation for a class I recall of a swine vitamin-mineral premix overformulated with selenium (ref. 16), three journal articles describing selenium toxicosis in swine (refs. 17 through 19), an economic evaluation of the cost of misformulating a selenium premix versus the cost of batch analysis (ref. 20), and a 1983 list of premix manufacturers "in probable violation of the analysis requirements" (ref. 21). These references are also discussed in section II. B. of this document.

FDA previously considered the class I recall and the journal articles in reviewing the selenium FAP (ref. 24). The class I recall was not for a selenium premix. Rather, it was for a vitamin-mineral product found to contain 2,500 ppm selenium, and that product was not required to be analyzed for selenium. Thus, a requirement for batch analysis would not have prevented overformulation. The selenium toxicoses described in refs. 17, 18, and 19 resulted from feeds overformulated through the use of vitamin-mineral premixes added to diets and not to the use of the selenium premixes that were subject to the premix analysis requirement. The economic evaluation and the list of allegedly violative premix manufacturers are not relevant to the question whether individual batch analysis is essential for quality control. Further, Micro Tracers, Inc.'s, statement in a reference submitted to the agency (ref. 21) that approximately 80 percent of selenium added to feeds has been via the use of analyzed premixes undermines its claim of widespread violation of the premix analysis requirement. Micro Tracers, Inc., has not proffered any evidence that challenges or calls into question the agency's decision to remove the premix analysis requirement and has not met the "threshold burden of tendering evidence suggesting the need for a hearing." (See *Costle* v. *Pacific Legal Foundation*, *supra*).

2. Miscellaneous comments

Central Soya (ref. 25, p. 1) and the National Mixer-Feeder Association (ref. 26, p. 1) contended that FDA should delete the requirement in § 573.920(c)(1) that selenium be incorporated into a complete feed by adding no less than 1 pound of a premix. Central Soya also requested (ref. 25, p. 2) that the caution statement in § 573.920(e) be changed. The National Mixer-Feeder Association requested a hearing on its objection.

The requirement that selenium be added to a complete feed by using no less than 1 pound of premix and the required caution statement were not changed by the 1987 amendments. Moreover, none of the information in American Feed Industry Association's FAP provided any information about either of those requirements. Thus, neither requirement is in issue in this proceeding. The correct way to seek changes in § 570.920(c) and (e) is to file an FAP. Nevertheless, Central Soya and the National Mixer-Feeder Association commented on these sections of the regulation, and the agency will consider these comments.

The National Mixer-Feeder Association contended that the premix requirements set forth in § 573.920(c)(1) do not adequately ensure that the maximum levels of selenium will be observed because the practice of using dilute premixes to make complete feeds results in cross-contamination and increases the level of food additive in complete feeds. The National Mixer-Feeder Association also argued that by requiring that selenium be added to feed in a dilute premix to produce a complete feed, FDA is effectively precluding mixer-feeders from adding concentrated sources at levels below 1 pound per ton to produce a complete feed, even though evidence shows that the technology employed by mixer-feeders using concentrates is significantly less likely

to cause cross-contamination or violative levels of additives in complete feed. The National Mixer-Feeder Association argued that the 1 pound premix requirement is based upon two incorrect assumptions: first, that mixing errors and misuse are the primary cause of unsafe levels, and second, that additional mixing steps do not contribute to unsafe levels or cross contamination.

The National Mixer-Feeder Association cited five references on residues, cross-contamination, and premixing. The first four references (refs. 27 through 30) discuss the main causes of sulfa residues in swine as feed carryover in mixing equipment and feed transport systems and cross-contamination of nonmedicated and medicated feed. Sulfonamides have unique electrostatic properties making residues hard to remove from feed mill equipment (ref. 27). No information was provided to suggest, much less show, that this type of cross-contamination occurs with selenium premixes. The fifth reference discusses a nonpeer-reviewed study completed at Kansas State University (ref. 31). The study suggests that in well-controlled experiments using sophisticated mixing equipment, a mill can effectively use a concentrate to add microingredients rather than use a premix. FDA is aware of this study, but the agency has no information, nor did National Mixer-Feeder Association provide any data, to show that on-farm feed mixing equipment employed by mixer-feeders is capable of uniformly mixing microingredients using less than 1 pound per ton of feed.

When the selenium food additive regulation was established in 1974, the 1 pound requirement was based upon the smallest amount of an ingredient that feed manufacturers could mix uniformly or with an equal degree of dispersion into a ton of feed. In FDA's judgment, that requirement is still necessary for the safe manufacture of selenium-supplemented feeds, and Central Soya and National Mixer-Feeder Association have not provided any evidence for concluding that common mixing equipment used by feed manufacturers or mixer-feeders is capable of effectively mixing quantities less than 1 pound into a ton of feed, or that cross-contamination of selenium premixes, which would result in unsafe selenium premixes, occurs.

According to Central Soya, the caution statement assumes that the directions for premixes are for obtaining the maximum selenium level permitted by the regulation. The firm requested that the caution statement be amended to read "Caution: Follow label directions. The addition of higher levels of selenium than approved by regulation is not permitted." Section 573.920(e) of the selenium regulation requires that the label or labeling of any selenium premix bear adequate directions for use and the following caution statement: "Caution: Follow label directions. The addition to feed of higher levels of this premix containing selenium is not permitted." The agency believes that adequate directions for use should include directions for mixing to achieve the maximum levels, as well as directions for including selenium at lower levels of use. On this basis, the present caution statement is appropriate for all use levels of selenium premixes.

D. Economic Harm

Micro Tracers, Inc., argued that removal of the premix analysis requirement would cause substantial economic harm to the company (ref. 2, p. 13). The substantial economic harm alleged by Micro Tracers, Inc., even if true, cannot justify a hearing on a food additive decision. That is because, as a matter of law, economic harm is not a factor that is part of FDA's decision to establish or amend a food additive regulation. Section 409 of the act specifies a number of factors FDA is to consider in deciding whether to issue a food additive regulation. Those factors do not include economic considerations, and FDA concludes that the food additive provisions of the statute do not permit, much less invite, analysis of costs to Micro Tracers, Inc., in this matter. See Nitrofurans; Withdrawal of Approval of New Animal Drug Applications; Final rule; final decision following a formal evidentiary public hearing (August 23, 1991, 56 FR 41902 at 41903), citing *American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981).

E. Objections Based on Alleged Procedural Deficiencies

The American Council of Independent Laboratories and Micro Tracers, Inc., argued that the agency failed to publish a proposed rule with an opportunity for comment, followed by a final rule based on the agency's study and evaluation of the comments received (ref. 2, p. 7; and ref. 22). Micro Tracers, Inc., requested a hearing on that objection. Additionally, the Natural Resources Defense Council requested, by letter of April 24, 1987 (ref. 32), that the comment period (meaning the period to file objections) be extended for 45 days.

Neither the act nor the agency's regulations requires the agency to issue a general notice of proposed rulemaking to establish a food additive regulation. The statute and the regulations require instead the publication of a notice of filing of an FAP, followed by a final rule establishing a food additive regulation, if appropriate. (See section 409(b)(5) and (c) of the act and § 571.1(i)(2) and (j).) Notice was given in the **Federal Register** of February 21, 1986 (51 FR 6321), that FDA had filed and was considering the American Feed Industry Association's petition to amend the selenium food additive regulation. The final rule amending the regulation, published on April 6, 1987 (52 FR 10887), provided a 30-day period for anyone adversely affected by the ruling to file an objection. In short, the act sets out specific procedures to be followed in rulemaking in response to an FAP, and FDA has fully complied with these procedures in this matter.

The time period for objections is established by statute. Section 409(f) of the act provides that any person adversely affected by publication of an order may file objections within 30 days after such order (*ICMAD* v. *HEW*, 574 F.2d at 558 n.8.).

A hearing will not be granted on issues of policy or law (§ 12.24(b)(1)). Thus, FDA's publication of a final rule following a notice of the filing of an FAP and the time period for objections, in observance of statutory procedures, are not issues on which a hearing can be held.

The Natural Resources Defense Council and Micro Tracers, Inc., also claimed that staff of CVM advised two California State agencies that FDA would publish a proposed rule, with 60 days for comment, prior to publishing a final rule to amend the selenium food additive regulation (ref. 2, p. 7; and ref. 3, p. 3). Such statements by FDA personnel do not constitute a statement by FDA and are not binding on the agency (§ 10.85(k); see *Stauffer Chemical Co.* v. *FDA*, No. 80095769 (9th Cir. Jan. 20, 1982), and do not justify a hearing, particularly if founded on a misunderstanding of applicable statutory procedures. In any event, the statutory procedure for notice of filing of the FAP and for filing objections to and requests for hearing on the final rule provided opportunities for persons adversely affected by the final rule to participate in the proceeding.

III. References

The following references have been placed on display in the Dockets Management Branch (HFA09305), Food and Drug Administration, Rm. 10923, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested

persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fan, A. M., The State of California Health and Welfare Agency, Obj. 2 to FDA Docket No. 86F090060, April 29, 1987.

2. Eisenberg, D. A., Micro Tracers, Inc., Obj. 4 and Obj. 8 to FDA Docket No. 86F090060, May 4, 1987 and July 3, 1987.

3. Ahmend, A. K., N. J. Chorover, and M. Deeny, The National Resources Defense Council, Obj. 7 to FDA Docket No. 86F090060, May 6, 1987 and June 6, 1987.

4. Livingston, R., Director, Division of New Animal Drug Evaluation, CVM, memorandum to George Graber, Director, Division of Animal Feeds, CVM, January 21, 1987.

5. Arnold, R. L. et al., "Dietary Selenium and Arsenic Additions and Their Effects on Tissue and Egg Selenium," *Poultry Science*, 52:847, 1973.

6. Ort, J. F. and J. D. Latshaw, "The Toxic Level of Sodium Selenite in the Diet of Laying Chickens," *Journal of Nutrition*, 108:1114, 1978.

7. Goehring, T. B. et al., "Effects of Seleniferous Grains and Inorganic Selenium on Tissue and Blood Composition and Growth Performance of Rats and Swine," *Journal of Animal Science*, 59:725, 1984.

8. Pennington, J. A. T. and B. Young, "Iron, Zinc, Copper, Manganese, Selenium, and Iodine in Foods from the United States Total Diet Study," *Journal of Food Composition and Analysis*, 3:166, 1990.

9. Pennington, J. A. T., B. E. Young, and D. B. Wilson, "Nutritional Elements in U.S. Diets: Results from the Total Diet Study, 1982 to 1986," *Journal of the American Dietetic Association*, 89:659, 1989.

10. Pennington, J. A. T. and B. Young, "Total Diet Study Nutritional Elements, 1982091989," *Journal of the American Dietetic Association*, 91:179, 1991.

11. Jaquess, P. A. and C. G. Hollis, "The Effects of Selenium on the Metabolism of *Salmonella typhmurium*," *Developments in Industrial Microbiology*, 21:393, 1980.

12. Greenfield, J. and C. H. Bigland, "Selective Inhibition of Certain Enteric Bacteria by Selenite Media Incubated at 35 and 43 Degrees," *Canadian Journal of Microbiology*, 16:1287, 1970.

13. Banwert, G. J. and J. C. Ayers, "Effect of Various Enrichment Broths and Selective Agars upon the Growth of Several Species of *Salmonella*," *Applied Microbiology*, 12:296, 1953.

14. Kilness, A. W., "Selenium, Bacteria, and the Immune System," presented at Selenium IV Symposium, University of California, Berkley, March 21, 1987.

15. "Meat and Poultry Inspection: The Scientific Basis of the Nation's Program," National Academy Press, 1985.

16. CVM, FDA, "Request for Concurrence on Class I Recall Classification," December 22, 1982.

17. Casteel, S. W. et al., "Selenium Toxicosis in Swine," *Journal of the American Veterinary Medical Association*, 186:1084, 1985.

18. Harrison, L. H. et al., "Paralysis in Swine Due to Focal Symmetrical Poliomalacia: Possible Selenium Toxicosis," *Veterinary Pathology*, 20:265, 1983.

19. Wilson, T. M. et al., "Selenium Toxicity and Porcine Focal Symmetrical Poliomyelomalacia: Description of a Field Outbreak and Experimental Reproduction," *Canadian Journal Comparative Medicine*, 47:412, 1983.

20. Eisenberg, D. A., Micro Tracers, Inc., Economic Evaluation of Misformulating a Selenium Premix to FDA Docket No. 86F090060, (Sup. 2) August 21, 1987.

21. Eisenberg, D. A., Micro Tracers, Inc., Future Direction of Manufacture of Selenium Premixes to FDA Docket No. 86F090060, (Sup.2) August 21, 1987.

22. Maxfield, A. F., The American Council of Independent Laboratories, Obj. 1 to FDA Docket No. 86F090060, April 29, 1987.

23. Smith, G. J., letter to D. A. Eisenberg, January 5, 1987.

24. Price, W. D., Deputy Director, Division of Animal Feeds, CVM, memorandum, April 29, 1986.

25. Klinger, C. W., Central Soya, Obj. 3 to FDA Docket No. 86F090060, May 4, 1987.

26. Pratt, W., The National Mixer-Feeder Association, Obj. 6 to FDA Docket No. 86F090060, May 6, 1987.

27. Meyerholz, G. W., "Causes of Sulfa Residues in Swine," unpublished, July 1, 1986.

28. Deyoe, C. W., "Products Control," *Feed Manufacturing Technology*, vol. and date not available.

29. McEllhiney, R. R., "The Case Against Premixing," *Feed Management*, 35:32, 1984.

30. Eisenberg, S., "Microingredient Carryover," *Feedstuffs*, 48:82, 1976.

31. McEllhiney, R. R., "Dilution in a Premix," *Feed Management*, 34:29, 1983.

32. Chorover, N. J., The National Resources Defense Council letter to William D. Price, Division of Animal Feeds, CVM, FDA, April 24, 1987.

IV. Summary and Conclusions

Based on a comprehensive evaluation of all relevant evidence other than that relating to claimed actual and potential adverse environmental effects, the agency has concluded that the use of selenium in animal foods under the conditions set forth in the April 6, 1987, final rule amending the selenium food additive regulation, as corrected June 4, 1987, is safe. The objections and comments to the 1987 amendments relating to human and animal safety, manufacturing controls, economic harm, and the procedures by which the agency published the final rule do not justify a stay or a hearing. FDA is deferring a decision on whether to grant a stay of or a hearing on the 1987 amendments based on claimed actual and potential adverse environmental effects pending a legislative-type hearing on those claimed effects. That hearing will be held on August 25 and 26, 1992, as announced in a notice of hearing published in the **Federal Register** of June 26, 1992 (57 FR 28606).

Dated: July 20, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-17573 Filed 7-24-92; 8:45 am]

BILLING CODE 4160-01-F

federal register

Monday
July 27, 1992

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 44, et al.
Implementation of OMB Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 44, 45, 85, 207, 213, 221, 232, 236, 242, 277, 280, 570, 575, 576, 577, 578, 579, 880, 881, 883, 884, 885, and 886

[Docket No. R-92-1581; FR-2594-I-02]

RIN 2501-AB19

Implementation of OMB Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions"

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: OMB Circular A-133 provides policy guidance to Federal agencies for establishing uniform requirements for audits of awards provided to institutions of higher education and other nonprofit organizations. Through this rule, HUD incorporates the provisions of the circular.

DATES: Effective Date: August 26, 1992.

Comment Due Date: September 25, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410. Comments should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna M. Abbenante, Deputy Chief Financial Officer for Operations, room 10184, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-3532. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: OMB Circular A-133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards. It supersedes Attachment F, subparagraph 2h, of Circular A-110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

The provisions of Circular A-133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Institutions of Higher Education and Other Nonprofit Institutions whether they are recipients receiving awards directly from Federal agencies, or are subrecipients receiving awards indirectly through other recipients.

This rule adopts the provisions of Circular A-133 by adding to title 24 of the Code of Federal Regulations, a new part 45—Non-Federal Audit Requirements for Institutions of Higher Education and Other Nonprofit Institutions. Part 45 incorporates the requirements set forth in Circular A-133.

This rule also makes numerous technical changes throughout the parts of title 24 in order to make the cross-referencing and conforming changes necessary for implementation of Circular A-133. Included in these technical changes are a number of changes needed as a result of the definition of "Federal financial assistance," as set forth in the circular. That definition now covers loans, loan guarantees, and insurance. Therefore, programs that make, guarantee, or insure loans to nonprofit mortgagors have been brought within he coverage of Circular A-133, as it is implemented at part 45.

However, for HUD programs whose regulations are set forth in 24 CFR parts 207, 213, 221, 232, 236, 242, 277, 880, 881, 883, 884, 885, and 886, a nonprofit institution is the nonprofit corporation which owns the individual property receiving the HUD assistance. Each project under the parts 200 series and many projects under the parts 800 series are required to complete project-specific audits because they are deemed to be separate entities. The audits currently conducted under applicable HUD Audit guides for these programs will serve as the organization-wide audits required by OMB Circular A-133 and this part. In performing the compliance review required by paragraph 13.c. of OMB Circular A-133, auditors should consider the compliance requirements set forth in the OMB Compliance Supplement. In accordance with the regulatory agreement incident to the insured mortgage, where HUD provides federal funding, the audit reports pertaining to nonprofit organizations subject to these regulations are to be submitted within 60 days after the end of the fiscal year audited.

The substitution of Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions, for Circular A-110, Attachment F, subparagraph 2h (which covered grants to universities, hospitals, and other nonprofit organizations) leaves open the issue of coverage of hospitals. The explanation for this omission, advanced by OMB, is that most hospitals receive reimbursement from the federally funded Medicaid and Medicare programs, each of which has its own statutory audit requirements. Albeit hospitals which are affiliated with universities are covered by Circular A-133 by reason of that affiliation and non-university affiliated hospitals, which receive federal funds pursuant to research contracts, are subject to contract closing audits, there still remains the question of coverage of non-university affiliated hospitals that may be receiving HUD assistance. Therefore, the coverage of hospitals under Circular A-110, Attachment F, subparagraph 2h, is continued under Circular A-133 for non-university affiliated hospitals that receive HUD assistance.

The Department has determined that notice and public procedures are impracticable and, therefore, is publishing this rule as an interim rule. The rule repeats the substantive audit requirements of Circular A-133, and because the OMB Circular was published for comment in the **Federal Register** (November 10, 1988, 53 FR 45744) before being made effective, there is ample justification for making this rule effective without an additional comment period. There does exist, however, the possibility that public interest might be expressed with reference to the programs of the Department of Housing and Urban Development to which the rule is being made applicable. For that reason, the Department is inviting public comment for a period of sixty days, and will take these comments into account in promulgating a final rule.

Other Matters

Environmental Determination

The content of this rule does not constitute a development, nor affect the physical condition of project areas or building sites, but relates only to auditing and fiscal functions. Thus, the authorities and standards of § 50.4 of 24 CFR Part 50 (the regulations implementing Section 102(2)(C) of the National Environmental Policy Act of

1969) are inapplicable to this rule; therefore, it is categorically excluded from the NEPA requirements pursuant to 50.20(k).

Regulatory Impact Analysis

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, invocation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule does not impose additional audit requirements, but merely makes uniform the procedures that will be followed.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

Semiannual Agenda of Regulations

This rule was listed as item 1115 in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 44

Accounting, Grant programs, Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Reporting and record keeping requirements.

24 CFR Part 45

Audit requirements-nonprofits, universities; Reporting and record keeping requirements.

24 CFR Part 85

Accounting, Grant programs, Intergovernmental relations, Reporting and record keeping requirements.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and record keeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and record keeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and record keeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and record keeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and record keeping requirements.

24 CFR Part 277

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and record keeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and record keeping requirements, Virgin Islands, Student aid.

24 CFR Part 575

Civil rights, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and record keeping requirements.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Emergency shelter grants, Homeless, Reporting and record keeping requirements.

24 CFR Part 577

Grant programs—housing and community development, Homeless, Community facilities, Employment, Grant programs—social programs, Handicapped, Mental health programs, Nonprofit organizations, Reporting and record keeping.

24 CFR Part 578

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Reporting and record keeping requirements, Mental health programs, Nonprofit organizations, Technical assistance.

24 CFR Part 579

Grant programs—housing and community development, Homeless, Reporting and record keeping requirements, Community facilities, Grant programs—social programs.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent

subsidies, Reporting and record keeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and record keeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and record keeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 44—NON-FEDERAL GOVERNMENTAL AUDIT REQUIREMENTS

1. The authority for Part 44 is revised to read as follows:

Authority: 31 U.S.C. 7501–7507; 42 U.S.C. 3535(d).

2. The title for Part 44 is renamed "Non-Federal Audit Requirements for State and Local Government."

§ 44.3 [Amended]

3. Paragraph (c) of § 44.3 is revised to remove the reference to "Circular A–110, Uniform requirements for grants to universities, hospitals, and other nonprofit organizations" and to add instead "Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions, as set forth in 24 CFR part 45."

4. Paragraph (a) § 44.6 is revised to read as follows:

§ 44.6 Subrecipients.

* * * * *

(a) Determine whether State or local subrecipients have met the audit requirements of this part and whether subrecipients covered by OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions," have met those requirements, as set forth in 24 CFR part 45.

* * * * *

§ 44.6 [Amended]

5. Paragraph (b) of § 44.6 is amended to remove the reference to "Circular A–110" and to add instead "Circular A–133 (as set forth in 24 CFR part 45)".

6. A new part 45 is added to title 24 of the Code of Federal Regulations to read as follows:

PART 45—NON-FEDERAL AUDIT REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

Sec.

45.1 Purpose.
45.2 Scope of audit.
45.3 Frequency of audit.
45.4 Submission of reports.
45.5 Audit costs.

Authority: 42 U.S.C. 3535(d).

§ 45.1 Purpose.

(a) This part implements the audit requirements for recipient organizations in OMB Circular A–133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions." OMB Circular A–133 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541. OMB Circular A–133 supersedes Attachment F, subparagraph 2h, of OMB Circular A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Institutions." This part incorporates the requirements set forth in OMB Circular A–133.

(b) Nonprofit institutions (except for those participating in the HUD programs listed in paragraph (c) of this section), as defined in OMB Circular A–133, (including hospitals that are not affiliated with an institution of higher education) that receive financial assistance from HUD directly or as subrecipients, or have an outstanding HUD direct, guaranteed or insured loan balance are required to have audits conducted in accordance with the following requirements:

(1) Nonprofit institutions that have combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totalling $100,000 or more a year shall have an audit conducted in accordance with the requirements of OMB Circular A–133. However, nonprofit institutions meeting the above criteria but participating in only one Federal financial assistance program have the option of having an audit of their institution made in accordance with the provisions of OMB Circular A–133 or a program-specific financial audit. Such program-specific financial audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audit shall be performed in accordance with any applicable HUD audit guide. If the program does not have an applicable HUD audit guide, the audit shall include the compliance tests described in any applicable OMB Compliance Supplement for the specific program involved. If the program is not covered by an applicable HUD audit guide or OMB Compliance Supplement, the auditor shall design appropriate compliance tests in accordance with Government Auditing Standards.

(2) Nonprofit institutions that have combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totalling between $25,000 and $100,000 a year shall have an audit conducted in accordance with the requirements of OMB Circular A–133, or a program-specific financial audit. Such program specific financial audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audits shall be performed in accordance with any applicable HUD audit guides. For those programs that do not have an applicable HUD audit guide, the audits shall include the compliance tests described in any applicable OMB Compliance Supplement for each of the programs involved. For those programs not covered by an applicable HUD audit guide or OMB Compliance Supplement, the auditor shall design appropriate compliance tests in accordance with Government Auditing Standards.

(3) Nonprofit institutions that have combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totalling less than $25,000 shall be exempt from Federal audit requirements, but records must be available for review by appropriate officials of HUD or the subgranting entity.

(4) Nonprofit institutions having only outstanding HUD direct, guaranteed or insured loans that were made, guaranteed or insured prior to the effective date of this part, are required to conduct audits in accordance with HUD program-specific audit requirements. Such program specific financial audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audits shall be performed in accordance with any applicable HUD audit guides. For those programs that do not have an applicable HUD audit guide, the audits shall include the compliance tests

described in any applicable OMB Compliance Supplement for each of the programs involved. For those programs not covered by an applicable HUD audit guide or OMB Compliance Supplement, the auditor shall design appropriate compliance tests in accordance with Government Auditing Standards.

(c) For HUD programs whose regulations are set forth in 24 CFR parts 207, 213, 221, 232, 236, 242, 277, 880, 881, 883, 884, 885, and 886, a nonprofit institution is the nonprofit corporation which owns the individual property receiving the HUD assistance. Each project under the Parts 200 series and many projects under the Parts 800 series are required to complete project-specific audits because they are deemed to be separate entities. The audits currently conducted under applicable HUD audit guides for these programs will serve in full satisfaction of the organization-wide audit requirements of OMB Circular A–133 and this part. In performing the compliance review required by paragraph 13.c. of OMB Circular A–133, auditors should consider the compliance requirements set forth in the HUD audit guides applicable to these programs, in addition to the OMB Compliance Supplement. In accordance with the regulatory agreement incident to the insured mortgage, the audit reports pertaining to nonprofit organizations subject to these regulations are to be submitted within 60 days after the end of the fiscal year audited.

(d) The requirements of this part are applicable to nonprofit institutions with respect to any fiscal year that begins on or after January 1, 1990.

§ 45.2 Scope of audit.

The audit shall be made by an independent auditor, as defined in OMB Circular A–133, in accordance with Government Auditing Standards covering financial audits issued by the Comptroller General of the United States and the requirements of OMB Circular A–133.

§ 45.3 Frequency of audit.

Audits shall be made annually unless the specific audit requirements for all of the programs involved permit a lesser frequency in which case the audit shall be made every two years.

§ 45.4 Submission of reports.

Except for the organizations subject to the requirements set forth in § 45.1(c), the report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

§ 45.5 Audit costs.

The cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, "Cost Principles for Universities" or Circular A–122, "Cost Principles for Nonprofit Organizations," FAR subpart 31, or other applicable cost principles or regulations.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

7. The authority for part 85 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

§ 85.26 [Amended]

8. Paragraph (b)(1) of § 85.26 is amended to remove the reference to "Circular A–110, Uniform requirements for grants to universities, hospitals, and other nonprofit organizations" and to add instead "Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions".

9. Paragraph (b)(2) of § 85.26 is amended to remove the reference to "Circular A–110" and to add instead "Circular A–133 (as set forth in 24 CFR part 45)."

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

10. The authority for part 207 is revised to read as follows:

Authority: 12 U.S.C. 17012–11(e), 1713, 1715b; 42 U.S.C. 3535(d).

11. A new paragraph (f)(6) is added to § 207.19 to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(f) *Methods of operation.*

* * * * *

(6) Nonprofit organizations that receive mortgage insurance as mortgagors under this part shall conduct audits in accordance with HUD audit requirements at 24 CFR part 45.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

12. The authority for part 213 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

13. Section 213.30 is amended by redesignating the existing paragraph (h) as paragraph "(i)" and adding a new paragraph (h) to read as follows:

§ 213.30 Methods of operation.

* * * * *

(h) Nonprofit organizations that receive mortgage insurance as mortgagors under this part shall conduct audits in accordance with HUD audit requirements at 24 CFR part 45.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

14. The authority for part 221 is revised to read as follows:

Authority: 12 U.S.C. 1701(a), 1715b, 17151; 42 U.S.C. 3535(d).

15. A new paragraph (f) is added to § 221.530 to read as follows:

§ 221.530 Supervision applicable to all mortgagors.

* * * * *

(f) Nonprofits receiving assistance under this part shall comply with the audit requirements in 24 CFR part 45.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

16. The authority for part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, 1715z(9); 42 U.S.C. 3535(d).

17. A new paragraph (c) is added to § 232.45 to read as follows:

§ 232.45 Supervision by Commissioner.

* * * * *

(c) Nonprofit organizations that receive mortgage insurance as mortgagors under this part shall conduct audits in accordance with HUD audit requirements at 24 CFR part 45.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

18. The authority for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

19. Subpart E is revised to read as follows:

Subpart E—Audits

§ 236.901 Audit.

(a) Where a State or local government receives interest reduction payments under section 236(b) of the National Housing Act, it shall conduct audits in accordance with HUD audit requirements at 24 CFR part 44.

(b) Where a nonprofit mortgagor receives interest reduction payments under section 236(b) of the National Housing Act, it shall conduct audits in accordance with HUD audit requirements at 24 CFR part 45.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

20. The authority for part 242 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z–7; 42 U.S.C. 3535(d).

21. Section 242.79 is amended to designate the existing paragraph as paragraph "a" and to add a new paragraph b to read as follows:

§ 242.79 Supervision of mortgagor—books and accounts.

* * * * *

(b) Nonprofit organizations that receive mortgage insurance as mortgagors under this part shall conduct audits in accordance with HUD audit requirements at 24 CFR part 45.

PART 277—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

22. The authority for part 277 continues to read as follows:

Authority: Sec. 102, 73 Stat. 667; 12 U.S.C. 1701q.

23. A new § 277.12 is added to part 277 to read as follows:

§ 277.12 Audit requirements.

Nonprofit organizations that receive loans under this part shall conduct audits in accordance with HUD audit requirements at 24 CFR part 45.

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

24. The authority for part 280 is revised to read as follows:

Authority: 12 U.S.C. 1715l note; 42 U.S.C. 3535(d).

§ 280.207 [Amended]

25. Paragraph (h) of § 280.207 is amended to remove the reference to "OMB Circular A–110" and to add instead "OMB Circular A–133 (as set forth in 24 CFR part 45)."

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

26. The authority for part 570 continues to read as follows:

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d).

27. Paragraph (b) introductory text and (b)(4) of § 570.502 are revised to read as follows:

§ 570.502 Applicability of uniform administrative requirements.

* * * * *

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations," or OMB Circular No. A–21, "Cost Principles for Educational Institutions," as applicable, and OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" (as set forth in 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following attachments to OMB Circular No. A–110:

* * * * *

(4) Attachment F, "Standards for Financial Management Systems," except for paragraph 2(h) which is superseded by OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions;"

* * * * *

28. Section 570.610 is amended to add "A–133 (implemented at 24 CFR part 45)," behind the reference to A–122.

PART 575—EMERGENCY SHELTER GRANTS PROGRAM: HOMELESS HOUSING ACT OF 1986

29. The authority for part 575 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 11376.

§ 575.59 [Amended]

30. Paragraph (h) of § 575.59 is amended to remove the reference to "OMB Circular A–110" and to add instead "OMB Circular A–133, as set forth at 24 CFR part 45."

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

31. The authority for part 576 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 11376.

§ 576.79 [Amended]

32. Paragraph (i) of § 576.79 is amended to remove the reference to "OMB Circular A–110" and to add instead "OMB Circular A–133, as set forth in 24 CFR part 45."

PART 577—TRANSITIONAL HOUSING

33. The authority for part 577 is revised to read as follows:

Authority: 42 U.S.C. 3535(d); 11386.

§ 577.335 [Amended]

34. Paragraph (g) of § 577.335 is amended to remove the reference to "OMB Circular A–110" and to add instead "OMB Circular A–133, as set forth in 24 CFR part 45."

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

35. The authority for part 578 is revised to read as follows:

Authority: 42 U.S.C. 3535(d); 11386.

§ 578.335 [Amended]

36. Paragraph (g) of § 578.335 is amended to remove the reference to "OMB Circular A–110" and to add instead "OMB Circular A–133, as set forth in 24 CFR part 45."

PART 579—SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS

37. The authority for part 579 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 11301 note.

38. Paragraph (g) of § 579.325 is amended to remove the reference to "OMB Circular A–133, as set forth in 24 CFR part 45."

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

39. The authority for part 880 is revised to read as follows:

42 U.S.C. 1437a, 1437c, and 1437f, 3535(d).

40. The existing paragraph in § 880.211 is redesignated paragraph (a), and a new paragraph (b) is added to read as follows:

§ 880.211 Audit.

* * * * *

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS FOR SUBSTANTIAL REHABILITATION

41. The authority for part 881 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, and 1437f, 3535(d).

42. The existing paragraph in § 881.211 is redesignated paragraph (a), and a new paragraph (b) is added to read as follows:

§ 881.211 Audit.

* * * * *

(b) Where a nonprofit organization is the eligible owner of a project, financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

43. The authority for part 883 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, and 1437f, 3535(d).

44. The existing paragraph in § 883.313 is redesignated paragraph (a), and a new paragraph (b) is added to read as follows:

§ 883.313 Audit.

* * * * *

(b) Where a nonprofit organization is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

45. The authority for part 884 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, and 1437f, 3535(d).

46. The existing paragraph in § 884.124 is redesignated paragraph (a), and a new paragraph (b) is added to read as follows:

§ 884.124 Audit.

* * * * *

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

47. The authority for part 885 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d).

48. Part 885 is amended to add a new § 885.10 to read as follows:

§ 885.10 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

49. The authority for part 886 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, and 1437f, 3535(d).

50. The existing paragraph in § 886.131 is redesignated paragraph (a), and a new paragraph (b) is added to read as follows:

§ 886.131 Audit.

* * * * *

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements of 24 CFR part 45 shall apply.

51. The existing paragraph in § 886.336 is redesignated paragraph (a), and a new paragraph (b) is added to read as follows:

§ 886.336 Audit.

* * * * *

(b) Where a nonprofit organization is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

Dated: July 13, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92-17506 Filed 7-24-92; 8:45 am]

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July 27, 1992

Part V

Department of Transportation

Coast Guard

33 CFR Parts 95 and 151
Revised Penalty Provisions; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 95 and 151

[CGD 92-007]

RIN 2115-AE23

Revised Penalty Provisions

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Oil Pollution Act of 1990 (OPA 90) revised the statutory penalty provisions for operating a vessel while intoxicated; for violating the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 (MARPOL 73/78); and for violating certain other statutory and regulatory provisions for the prevention of pollution from ships. Parallel citations contained in Federal regulations are being updated to reflect the statutory changes. The revisions are intended to correct the text of the regulations by restating statutorily prescribed penalties.

EFFECTIVE DATES: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Charles T. Vekert, Project Manager, OPA 90 Staff (G-MS-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001; (202) 267-6220.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Charles T. Vekert, Project Manager.

Regulatory History

There have been no prior publications in the **Federal Register** in connection with this rulemaking.

Background and Purpose

On August 18, 1990, section 4302 of Public Law 101-380, the Oil Pollution Act of 1990 (OPA 90), amended the penalty provisions contained in a number of pollution prevention and marine safety laws. This OPA 90 section revised nine penalty provisions contained in title 46 and five penalty provisions contained in title 33 of the United States Code. Of these 14 revised penalty provisions, two currently have restated, parallel provisions contained in the implementing Federal regulations. These two regulations need to be changed to be consistent with the new penalties enacted by Congress in OPA 90.

The purpose of this rulemaking is to revise the two Federal regulation provisions to reflect the statutory changes made by section 4302 of OPA 90.

Discussion of Amendments

1. Section 95.055 Penalties

Subtitle II of title 46 of the United States Code contains the codified law pertaining to vessels and seamen. 46 U.S.C. 2302(c), prohibits operation of a vessel while under the influence of alcohol or a dangerous drug, as determined under standards prescribed by regulation. The penalty provision of the implementing regulations, 33 CFR 95.055, currently provides that an individual who is intoxicated when operating a vessel in violation of 46 U.S.C. 2302(c) is liable for either a civil penalty or a criminal penalty of a fine of not more than $5,000, imprisonment for not more than one year, or both. OPA 90 made no change in the civil penalty provision, but altered the criminal penalty provision so that a person violating the statute "commits a class A misdemeanor."

A class A misdemeanor is punishable by imprisonment up to one year (18 U.S.C. 3581(b)(6)) and a fine of not more than $100,000 18 U.S.C. 3571(b)(5)) or, if death results, $250,000 (18 U.S.C. 3571(b)(4)). For this reason, § 95.055 is being revised by this rulemaking to update the language in accordance with the OPA 90 amendment and also to refer the reader to 18 U.S.C. 3551 *et seq.* for further guidance. The entire section is reworded so as to better accommodate the amendatory language.

Because the penalty provisions prescribed by statute provide the legal basis for enforcement of the statutory and regulatory provisions prohibiting the operation of a vessel while intoxicated, the Coast Guard considered deleting § 95.055 altogether to avoid periodic updating in the future due to statutory changes in penalties for violation of 46 U.S.C. 2302(c). However, the Coast Guard determined that restatement of the penalty provisions prescribed by statute will provide additional useful information to the public.

2. Section 151.04(c) Penalties for Violation

The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) was originally enacted in 1980 to implement MARPOL 73/78. The general provisions for the implementation of MARPOL 73/78 are contained in 33 CFR part 151. In subpart A, certain statutory penalties for various types of violations, both civil and criminal, are restated. As noted above, recent amendments by OPA 90 have rendered the penalty provision contained in § 151.04(c) inconsistent with the law.

Section 151.04(c) is being revised to correctly reflect the statutory provision as amended by OPA 90 in August 1990. OPA 90 removed the direct reference to a specific criminal imprisonment term and fines for violation of 33 U.S.C. 1908(a), and replaced it with a new provision that provides that a person who knowingly violates MARPOL 73/78 "commits a class D felony."

A class D felony is punishable by imprisonment of not more than 6 years (18 U.S.C. 3581(b)(4)) and a fine of not more than $250,000 for an individual (18 U.S.C. 3571(b)(3)) or not more than $500,000 for an organization (18 U.S.C. 3571(c)(3)). For this reason, § 151.04(c) is being revised by this rulemaking to update the language in keeping with the OPA 90 amendment and also to refer the reader to 18 U.S.C. 3551 *et seq.* for further guidance. Additional language contained in the statute, regarding a monetary reward for providing information leading to a conviction, has also been restated in paragraph (c) to complete the regulatory restatement and give notice to the public.

Because the penalty provisions prescribed by statute provide the legal basis for enforcement of the Act to Prevent Pollution from Ships (1980) and consequently, the enforcement of MARPOL 73/78 (rather than the Federal regulation), the Coast Guard considered deleting the penalty restatement in § 151.04(c) altogether, to avoid periodic updating in the future due to statutory changes. However, § 151.04 also contains restatements of penalties for other provisions of 33 U.S.C. 1908 not affected by OPA 90. The deletion of only paragraph (c) may mislead or confuse the reader, as might a deletion of the entire § 151.04.

3. Notice Under Administrative Procedures Act

Both of these regulatory changes are effective upon publication. There has been no notice of proposed rulemaking with a comment period, nor will there be a 30-day period between publication and the effective date. Both of these are usually required by the Administrative Procedures Act (APA). However, the APA makes an exception where good cause can be shown (5 U.S.C. 553 (b) and (d)(3).

This rulemaking is a technical amendment to existing regulations. No rights are affected by these revisions because the statute (OPA 90) itself

provides the bases and effective date of August 18, 1990, for the increased penalties. For this reason, the Coast Guard finds that neither a notice of proposed rulemaking with a comment period nor a delayed effective date are necessary.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and not significant under the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary. This rulemaking merely updates penalty provisions currently contained in federal regulations, restating statutorily prescribed penalties for the convenience of the user of the Code of Federal Regulations. These restatements are, in and of themselves, without legal effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking was required. This rule did not require a general notice of proposed rulemaking and is, therefore, exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

This rule only makes a technical amendment so that the correct penalties are restated in the regulations. Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3551 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule will not individually or cumulatively have a significant effect on the human environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects

33 CFR Part 95

Alcohol abuse, Drug abuse, Marine safety, Penalties.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 95 and 151 as follows:

PART 95—OPERATING A VESSEL WHILE INTOXICATED

1. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 2302, 3306, and 7701; 49 CFR 1.46.

2. Section 95.055 is revised to read as follows:

§ 95.055 Penalties.

An individual who is intoxicated when operating a vessel in violation of 46 U.S.C. 2302(c)—

(a) Is liable to the United States Government for a civil penalty of not more than $1,000; or

(b) Commits a class A misdemeanor, as described in 18 U.S.C. 3551 *et seq.*

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

3. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j) (1) (C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

4. In § 151.04, paragraph (c) is revised to read as follows:

§ 151.04 Penalties for violation.

* * * * *

(c) A person who knowingly violates MARPOL 73/78, the Act, or the regulations of this subpart commits a class D felony, as described in 18 U.S.C. 3551 *et seq.* In the discretion of the Court, an amount equal to not more than one-half of the fine may be paid to the person giving information leading to conviction.

* * * * *

Dated: July 15, 1992.

A. E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–17848 Filed 7–24–92; 8:45 am]

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Monday
July 27, 1992

Part VI

Department of Transportation

Office of the Secretary

49 CFR Part 24

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs; Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

RIN 2125 AC75

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends 49 CFR 24.103(d), which concerns the qualifications of appraisers who value property for Federal and federally assisted projects. The amendment provides that, if a detailed appraisal is necessary, and the agency employs a contract (fee) appraiser to perform the appraisal, such appraiser must be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) Public Law 101–73, 103 Stat. 183, 511 (Aug. 9, 1989). Title XI of the FIRREA requires the establishment of State programs for the licensing and certification of appraisers performing appraisals for federally related transactions under the jurisdiction of Federal financial institution regulatory agencies. Using such certified appraisers for detailed appraisals of property subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), 42 U.S.C. 4601–4655, will strengthen the integrity of the appraisal process. This rule will apply to the real property acquisition activities of 18 Federal agencies including the Department of Transportation.

EFFECTIVE DATE: This regulation is effective on December 31, 1992, the effective date of Title XI of the FIRREA.

FOR FURTHER INFORMATION CONTACT: G.B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW–20, (202) 366–0142; or Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: .

Background

The FIRREA established requirements for State licensing and certification of appraisers for thrift institution appraisal work when there is a Federal financial interest in the transaction. The FIRREA is not by its terms directly applicable to the acquisition of real property for Federal and federally assisted projects. Regulations implementing the Uniform Act contain appraisal criteria, in 49 CFR 24.103, that are applicable to such acquisitions.

An interagency group organized by the Office of Management and Budget (OMB) concluded that requiring the use of State certified appraisers, when detailed appraisals by contract (fee) appraisers are necessary for acquisitions for Federal and federally assisted projects, would ensure greater appraisal accuracy and consistency, and thereby enhance the appraisal process. A NPRM proposing that such a requirement be added to 49 CFR 24.103 was published on June 19, 1991, (56 FR 28302). The background of this amendment is discussed further in the preamble to the NPRM.

Cross References

Part 24 of title 49, CFR, is the government-wide regulation implementing the Uniform Act. The regulations of seventeen other Federal departments and agencies contain a cross reference to this part in their regulations, and this amendment of part 24 will be directly applicable to the real property acquisition activities for those departments and agencies. Those departments and agencies, and the parts of the Code of Federal Regulations which contain a cross reference to this part, are listed below:

Department of Agriculture, 7 CFR part 21
Department of Commerce, 15 CFR part 11
Department of Defense, 32 CFR part 2509
Department of Education, 34 CFR part 15
Department of Energy, 10 CFR part 1039
Environmental Protection Agency, 40 CFR part 4
Federal Emergency Management Agency, 44 CFR part 25
General Services Administration, 41 CFR part 105–51
Department of Health and Human Services, 45 CFR part 15
Department of Housing and Urban Development, 24 CFR part 42
Department of the Interior, 41 CFR part 114–50
Department of Justice, 41 CFR part 28–16
Department of Labor, 29 CFR part 12
National Aeronautics and Space Administration, 14 CFR part 1206
Pennsylvania Avenue Development Corporation, 36 CFR part 904
Tennessee Valley Authority, 18 CFR part 1306
Veterans Administration, 38 CFR part 25

Comments Received in Response to the NPRM

On June 19, 1991, (56 FR 28302) the FHWA published a NPRM to elicit comments on a proposal to amend 49 CFR part 24 to require that any agency using a contract (fee) appraiser to prepare a detailed appraisal in connection with a Federal or federally assisted project pursuant to 49 CFR 24.103(a) must use an appraiser certified under State law in accordance with title XI of the FIRREA.

In response to the NPRM, the FHWA received a total of 24 comments representing 1 Federal agency, 16 State highway agencies, 1 professional association, and 6 individuals.

Five commenters were opposed to adoption of the proposed amendment to part 24. Two commented that the FIRREA applied only to thrift institution appraisal work and not to activity under the Uniform Act. This was acknowledged in the preamble to the NPRM, which also discussed the necessity and prudence of a limited application of the FIRREA principles to certain transactions covered by the Uniform Act. One comment stated that a double standard relating to staff and fee appraisers would be established which would generate problems involving a variety of working relationships and lead to complications in condemnation actions. It was recommended that the certification requirement either should be applied to all appraisers working on Federal or federally assisted projects, or not applied at all. We have carefully considered these objections but are not persuaded that they overcome the obvious and compelling need to establish, within a limited scope, a reasonable consistency in the qualifications of appraisers to be employed for detailed appraisals where a Federal financial interest exists. We believe this amendment is neither more nor less than what is needed under the circumstances.

Two respondents commented the amendment would add nothing to an already efficient and economical system of safeguards for appraisal integrity. While we are certain that such systems of safeguards exist in a number of agencies, we do not, even for those agencies, consider this requirement redundant since its primary intent is to establish consistency among agencies in the development of detailed appraisals. One of the respondents seems to misinterpret the amendment to require the use of contract (fee) appraisers for all detailed appraisals. The amendment does not preclude the use of staff appraisers, certified or not, for such appraisals. This was pointed out in the NPRM.

One respondent noted that specialty appraisers need not in all instances be certified. This is correct. The requirement for certification is limited to appraisal assignments requiring the

preparation of a detailed appraisal pursuant to § 24.103(a).

One respondent commented that the amendment would preclude an agency from obtaining the services of a very qualified fee appraiser for a detailed appraisal assignment if that appraiser has elected not to become certified. This is generally correct. If, however, for a given assignment, such an appraiser, though not certified, is better qualified than other available and certified appraisers, the waiver provision of § 24.7 could be employed to obtain that appraiser's services.

Two comments suggested that State licensed appraisers also be permitted to make detailed appraisals. Since our concern is to establish a minimum qualification requirement commensurate with the difficulty of the appraisal assignment, we are not adopting this suggestion.

Three comments expressed concern that an adequate number of certified appraisers may not be available, particularly in rural areas. Since this rule is directed solely at the use of contract (fee) appraisers performing detailed appraisal assignments, an agency facing this problem may need to review its detailed appraisal requirements to determine if they are too restrictive, or consider expanded use of staff appraisers for such assignments. The option of using the waiver provision of § 24.7, on a limited and case-by-case basis, is also available.

One comment suggested that an agency using appraisers who are not certified in condemnation actions would be in jeopardy of having the testimony of such appraisers discredited by the condemnee. Presumably this would be most likely to arise in those instances where the agency is using a non-certified appraiser and the condemnee is using a State certified appraiser. There are, of course, other possible situations. While we agree with this observation, we do not consider it advisable to speculate on the treatment that will be afforded appraisers in future condemnations on the basis of their possessing, or not possessing, a license or certificate under State law. Neither the FIRREA, nor the Uniform Act and its implementing regulation, 49 CFR part 24, address the varied and complex evidentiary problems that may arise in eminent domain litigation.

One comment stated that requiring fee appraisers to be certified for all detailed appraisals is more restrictive than if the specific FIRREA dollar thresholds were used. The only dollar threshold the FIRREA sets is that, "a State certified appraiser shall be required for all federally related transactions having a value of $1,000,000 or more * * *" (§ 1113(1)). Section 1113 also gives an agency the responsibility to determine if transactions are of sufficient financial or public policy importance that a State certified appraiser should be used. We believe that public acquisition of real property is of sufficient financial and public policy importance that appraisal problem complexity is a more meaningful standard than a given dollar threshold. Again, if warranted, agencies should review their criteria for detailed appraisals to determine if they are too restrictive.

One respondent suggested that a person certified in one State be permitted to perform detailed appraisal assignments in any State. We concur with this suggestion and this regulation would not prohibit it. However, if a State implements appraiser controls that go beyond the FIRREA's requirements the use of out-of-State appraisers on federally assisted State and local projects may be prohibited by State law and/or implementing regulations. Where this situation exists, State and local agencies required to comply with Uniform Act requirements may wish to encourage out-of-State appraisers to obtain a temporary certification, or become qualified through reciprocity provisions. Or the agencies may seek an exception from the provision(s) from the appropriate State authority.

One respondent noted there are two certified appraiser categories, residential and general, but the amendment refers only to certified appraisers. Two certified appraiser categories have been created in several States. In those States this amendment allows agencies the flexibility to develop procedures using either certified category depending upon the appraisal problem encountered. The discretion to make a determination of this nature rests with the agency.

Two respondents recommended the addition of definitions for the terms "detailed appraisal" used in 49 CFR 24.103(2) and "complex acquisition." For a variety of reasons, including differences in State laws, regulations, and practices and differences in Federal and State agency goals and mission, it would be virtually impossible to develop, and certainly inappropriate to promulgate, definitions of these terms that would be meaningful for all concerned agencies. These terms are left to the reasonable discretion of the acquiring agencies.

One respondent opined that the Appraisal Standards Board's Uniform Standards for Professional Appraisal Practice (USPAP) should apply to all appraisals under the Uniform Act, including those that are non-detailed. The point, apparently, is that USPAP standards should apply to low value and simple (non-detailed) appraisal assignments. While this is beyond the purview of the amendment of section 103(d) it should be noted that the Appraisal Standards Board has determined the provisions of 49 CFR 24.103 and 24.104 are consistent with USPAP.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures.

The FHWA has analyzed the effect of this action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking would not affect the level of funding available in Federal or federally assisted programs covered by the Uniform Act, or otherwise have a significant economic impact, so that neither a preliminary regulatory impact analysis nor a preliminary regulatory evaluation is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact upon a substantial number of small entities" an analyses be prepared identifying any significant alternatives to the rule that would minimize the economic impacts on small entities. The rule requires that there be consistency in the qualifications of contract appraisers when detailed appraisals are required for Federal and federally assisted projects. Based on the information available, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impacts

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implication to warrant the preparation of a federalism assessment.

The current regulation requires that detailed appraisals must reflect nationally recognized appraisal standards and that agencies must establish appraiser qualifications consistent with the level of difficulty of the appraisal. The FIRREA established a new nationwide State-based system for appraiser qualifications that is applicable to various federally-related transactions. Applying the FIRREA to fee appraisers on projects covered by the Uniform Act reflects current regulatory requirements and is not considered to have significant federalism impacts.

Paperwork Reduction Act

This rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, since it does not require the collection or retention of any new data.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Issued on: July 20, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, part 24 of title 49, Code of Federal Regulations, is amended as set forth below:

PART 24—[AMENDED]

1. The authority citation for part 24 is revised to read as follows:

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

2. Section 24.103(d) is amended by designating the text after the heading "Qualifications of appraisers" as paragraph (d)(1) and by adding paragraph (d)(2) to read as follows:

§ 24.103 Criteria for appraisals.

* * * * *

(d) *Qualifications of appraisers.*

(1) * * *

(2) If the appraisal assignment requires the preparation of a detailed appraisal pursuant to § 24.103(a), and the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

(12 U.S.C. 1331 *et seq*).

* * * * *

[FR Doc. 92-17638 Filed 7-24-92; 8:45 am]

BILLING CODE 4910-22-M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

S. 2780/P.L. 102-324

To amend the Food Security Act of 1985 to remove certain easement requirements under the conservation reserve program, and for other purposes. (July 22, 1992; 106 Stat. 447; 1 page) Price: $1.00

Last List July 23, 1992

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
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1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
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53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
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400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
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1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
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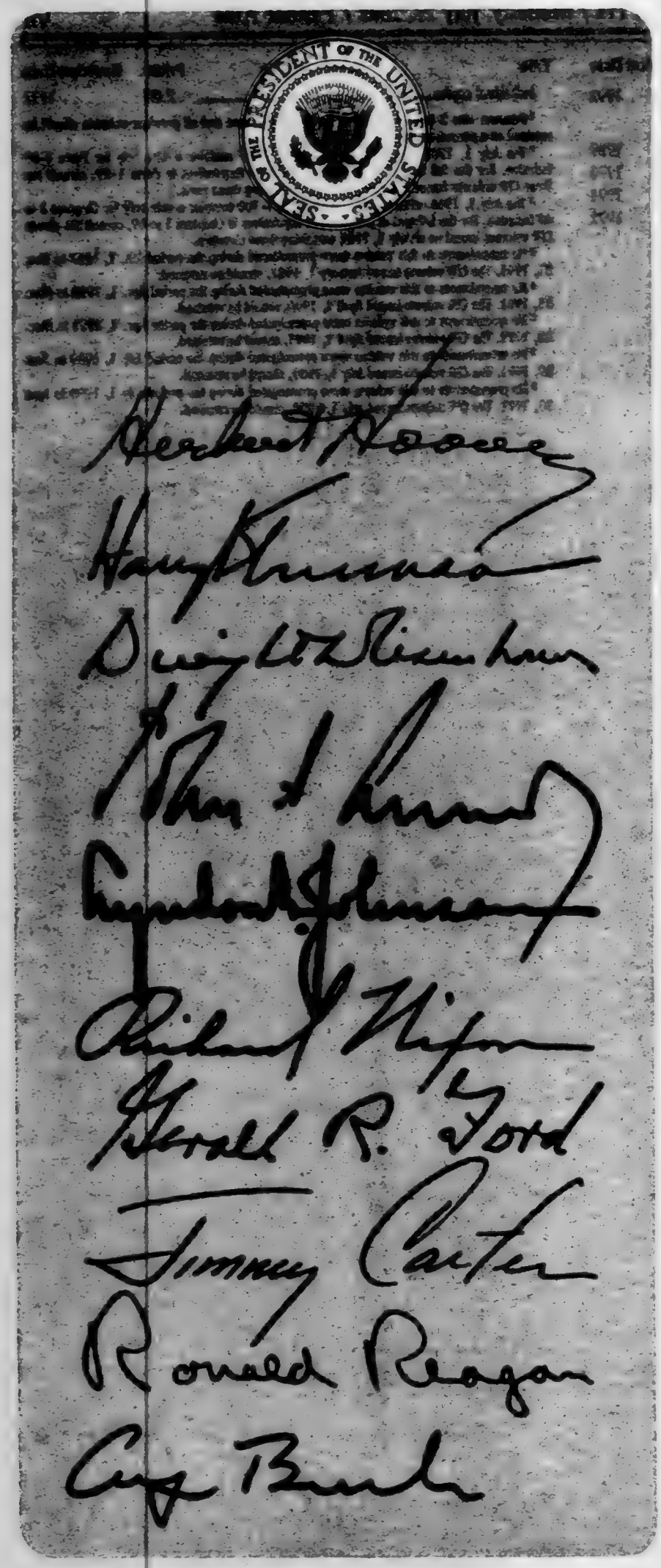

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Vol.
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7-28-92
Vol. 57 No. 145
Pages 33267-33424

federal register

Tuesday
July 28, 1992

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Federal Register
Vol. 57, No. 145
Tuesday, July 28, 1992

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2610

Implementation of the Equal Access to Justice Act

AGENCY: Office of Government Ethics.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing an interim final regulation to establish procedures, in accordance with the Equal Access to Justice Act and guidance from the Administrative Conference of the United States, for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Office of Government Ethics. This rule describes the parties eligible for awards and the proceedings which are covered. The rule also explains how to apply for awards, and the procedures and standards which the Office of Government Ethics will use to make awards.

DATES: This interim regulation will become effective August 27, 1992. Public comments are invited and must be received by September 28, 1992.

ADDRESSES: Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Ms. Glynn.

FOR FURTHER INFORMATION CONTACT: Marilyn Glynn, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act, at 5 U.S.C. 504(c)(1), requires every agency to establish, by regulation, procedures for the submission and consideration of applications for an award of fees and expenses incurred in connection with an adversary adjudication before the agency. On October 1, 1989, the Office of Government Ethics, formerly part of the Office of Personnel Management, was established as a separate executive branch agency and is therefore adopting this rule for the implementation of the Equal Access to Justice Act.

The Equal Access to Justice Act (EAJA) lessens the financial burden on private parties who prevail against the United States Government in adversary adjudications before a Federal agency by authorizing the award of attorney fees and expert witness fees. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust.

This interim rule, for codification at 5 CFR part 2610, follows the final revised model rule issued on May 6, 1986 (51 FR 16659) by the Administrative Conference of the United States pursuant to its consultative role under EAJA. However, certain modifications have been made to adapt the model rule to the responsibilities and organization of the Office of Government Ethics (the Office), including the list of definitions at § 2610.101 and the enumeration of covered Office proceedings at § 2610.104.

I. General Provisions

Subpart A of the interim final rule contains general provisions describing the purpose of the Equal Access to Justice Act and its coverage. Section 2610.101 defines the terms frequently used in the rule. Section 2610.102 contains a summary of the rule's provisions. Section 2610.103 explains that the rule applies to any adversary adjudication pending or commenced before the Office of Government Ethics on or after October 1, 1989, the date the Office became a separate executive branch agency. Adversary adjudications commenced or pending before the Office, but not finally disposed of before that date, are governed by the rules and policies implementing the Equal Access to Justice Act as adopted by the Office of Personnel Management.

The types of proceedings covered by the rule are listed in § 2610.104. These proceedings include adversary adjudications conducted under certain provisions of the Debt Collection Act of 1982 (5 U.S.C. 5514), the Contracts Disputes Act of 1978 (41 U.S.C. 605, 607), and the Ethics in Government Act of 1978 (5 U.S.C. app.). Covered proceedings under the Ethics in Government Act include hearings which may be requested by an individual Federal employee pursuant to section 402 (f)(2)(B)(iii) of the Act, concerning the Director's investigation of alleged conflicts of interest on the part of the employee and his or her authority to order the employee to take corrective action.

Section 2610.105 of the rule describes the types of applicants who are eligible for an award of attorney fees and expenses under the rule. A prevailing applicant may receive an award for fees and expenses unless the position of the Office was substantially justified. Section 2610.106 states the standards the Office will apply in making this determination. The rule specifically provides that awards for fees and expenses incurred prior to the initiation of a proceeding will be made only if the expenses were reasonably incurred in preparation for the proceeding. Section 2610.107 describes the amount and type of fees and expenses which may be paid under the rule.

The Office may promulgate regulations permitting an increase in the amount of attorney fees that may be paid under the rule. Section 2610.108 describes the procedure a person must follow to petition the Office to promulgate such a rule. Section 2610.109 explains how the EAJA applies when another agency of the United States participates in a proceeding before the Office.

II. Information Required from Applicants

Subpart B of the rule describes the information which must be submitted by an applicant for attorney fees. Section 2610.201 lists the specific information which must be contained in an application for an award. Most applicants must submit a net worth exhibit establishing the applicant's worth as of the date the underlying proceeding was initiated. The information that must be contained in the exhibit is described at § 2610.202. Section 2610.203 explains how fees and expenses must be documented by a full and itemized accounting for each expense. Finally, § 2610.204 describes when an application may be submitted.

III. Procedures for Considering Applications

Subpart C of the rule contains the procedures which must be followed when seeking an award of attorney fees and expenses. Section 2610.301 establishes the jurisdiction of an adjudicative officer and makes clear that the termination of an adjudicative officer's authority in the underlying proceeding does not terminate his or her authority to render a decision concerning the award of fees and expenses. Section 2610.302 sets forth the manner for filing pleadings and other documents. Section 2610.303 describes how, and when, counsel representing the Office may respond to an application for attorney's fees. Section 2610.304 states that an applicant may respond to the Office's answer within 15 days. Section 2610.305 permits parties other than the applicant to file comments on the application for attorney fees and expenses.

Before the Office makes a decision on an application for attorney fees and expenses, the applicant and agency counsel may agree on a proposed settlement of the award. The procedures for a settlement are set forth in § 2610.306. Similarly, further proceedings such as a conference on an application for attorney fees and expenses may be conducted in particular cases. Section 2610.307 describes how, and when, those proceedings may be held.

Section 2610.308 states when the Office must issue a decision on an application and what information the decision must contain. Section 2610.309 describes the procedures for agency review of an initial decision on an application; § 2610.310 provides for judicial review. Finally, § 2610.311 explains how an applicant may obtain payment of an award that has been granted.

Administrative Procedure Act

Pursuant to section 553 of title 5 of the United States Code, as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. Since this rule is interpretive in nature and concerns matters of agency procedure and practice, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553. However, interested persons are invited to submit written comments to OGE on this interim regulation, to be received on or before September 28, 1992. The Office of Government Ethics will review all comments received and consider any modifications to this rule which appear warranted.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because the number of proceedings covered by the rule will be extremely small and they will primarily affect current and former executive branch Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this regulation does not contain information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, since the collections of information called for under this rule are expected to involve nine or fewer persons each year. Section 2610.201(f) of this rule contains a statement informing the public of this matter.

List of Subjects in 5 CFR Part 2610

Administrative practice and procedure, Claims, Conflict of interests, Equal access to justice, Government employees.

Approved: June 24, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, text is added to 5 CFR part 2610 to read as follows:

PART 2610—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.

2610.101 Definitions.
2610.102 Purpose.
2610.103 When the Act applies.
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2610.306 Settlement.
2610.307 Further proceedings.
2610.308 Decision.
2610.309 Agency review.
2610.310 Judicial review.
2610.311 Payment of award.

Authority: 5 U.S.C. 504(c)(1); 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2610.101 Definitions.

(a) *Act* means the Equal Access to Justice Act, 5 U.S.C. 504, as amended.

(b) *Adjudicative officer* means the official, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise, who presided at the adversary adjudication.

(c) *Adversary adjudication* means:

(1) An adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but not including an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license; and

(2) An appeal of a decision of a contracting officer made pursuant to section 6 of the Contracts Disputes Act of 1978 (41 U.S.C. 605) as provided in section 8 of that statute (41 U.S.C. 607).

(d) *Agency counsel* means:

(1) When the position of the Office is being represented, the attorney or attorneys designated by the Office's General Counsel to represent the Office in a proceeding covered by this part; and

(2) When the position of another agency of the United States is being represented, the representative or representatives as designated by that agency.

(e) *Office* means the United States Office of Government Ethics, or the organizational unit within the Office responsible for conducting an adversary adjudication subject to this part.

(f) *Proceeding* means an adversary adjudication as defined above.

(g) *Director* means the Director of the United States Office of Government Ethics.

§ 2610.102 Purpose.

The Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings ("adversary adjudications") before the Office of Government Ethics. An eligible party may receive an award when it prevails over the Office unless the Office's position was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Office will use to make them.

§ 2610.103 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Office of Government Ethics on or after October 1, 1989, which is the date the Office became a separate executive agency. Prior to October 1, 1989, the Office was part of the Office of Personnel Management. Any adversary adjudication pending or commenced before October 1, 1989, and not finally disposed of by that date, is governed by the rules and policies implementing the Equal Access to Justice Act as adopted by the Office of Personnel Management.

§ 2610.104 Proceedings covered.

(a) This part applies to adversary administrative adjudications conducted by the Office of Government Ethics. When all other conditions in the Act and in these rules are met, the types of proceedings to which this part applies are adversary administrative adjudications conducted by the Office under:

(1) The Debt Collection Act of 1982, 5 U.S.C. 5514;

(2) The Contract Disputes Act of 1978, 41 U.S.C. 605, 607;

(3) The Ethics in Government Act of 1978, section 402(f)(2), 5 U.S.C. app., and subpart E of part 2638 of this chapter.

(b) The Office's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered matters.

§ 2610.105 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2,000,000;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7,000,000, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; and

(5) any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7,000,000 and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the underlying proceeding was initiated. For appeals of decisions of contracting officers made pursuant to section 6 of the Contracts Disputes Act of 1978, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. An individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 2610.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the Office was substantially justified. The position of the Office includes, in addition to the position taken by the Office in the adversary adjudication, the action or failure to act by the Office upon which the adversary adjudication is based. The burden of proof that an award should not be made to an ineligible prevailing applicant because the Office's position was substantially justified is on the Office. No presumption arises that the Office's position was not substantially justified simply because the Office did not prevail.

(b) Awards for fees and expenses incurred before the date on which a proceeding was initiated will be made only if the applicant can demonstrate that they were reasonably incurred in preparation for the proceeding.

(c) An award under this part will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding, if the applicant has falsified the application (including documentation) or net worth exhibit, or if special circumstances make the award sought unjust.

§ 2610.107 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) Except as provided in § 2610.108, no award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Office pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agency, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

§ 2610.108 Rulemaking on maximum rate for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Office may adopt regulations providing that attorney fees may be awarded at a rate higher than $75.00 per hour in some or all of the types of proceedings covered by this part. The Office will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553.

(b) Any person may file with the Office a petition for rulemaking to increase the maximum rate for attorney fees as provided in 5 U.S.C. 504(b)(1)(A)(ii). The petition should identify the rate the petitioner believes the Office should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Office will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 2610.109 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Office of Government Ethics and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants

§ 2610.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Office that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2,000,000 (if an individual) or $7,000,000 (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Office to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification made by the applicant or authorized officer or attorney of the applicant under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) These collections of information are not subject to Office of Management and Budget review under the Paperwork Reduction Act (5 U.S.C. chapter 35) because they are expected to involve nine or fewer persons each year. (See 5 CFR 1320.4(a)).

§ 2610.202 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 2610.105(f)) when the underlying adversary adjudication was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the Office, but need not be served on any other party to the proceeding, if any. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request by another party or the public to inspect or copy the exhibit shall be resolved in accordance with the Office of Government Ethics'

established procedures under the Freedom of Information Act.

§ 2610.203 Documentation of fees and expenses.

The application shall be accompanied by full and itemized documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed, pursuant to § 2610.306.

§ 2610.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Office of Government Ethics' final disposition of the proceeding.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Office and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Subpart C—Procedures for Considering Applications

§ 2610.301 Jurisdiction of adjudicative officer.

Any provision in the Office's rules and regulations other than this part which limits or terminates the jurisdiction of an adjudicative officer upon the effective date of his or her decision in the underlying proceeding shall not in any way affect his or her jurisdiction to render a decision under this part.

§ 2610.302 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 2610.202(b) for confidential financial information.

§ 2610.303 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Office may file an answer to the application. Agency counsel may request an extension of time for filing. If agency counsel fails to answer or otherwise fails to contest or settle the application within the 30-day period, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the Act.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted for good cause by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 2610.307.

§ 2610.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 2610.307.

§ 2610.305 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 2610.306 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the settlement procedure applicable to the underlying procedure. If an eligible prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 2610.307 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the Office was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 2610.308 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Office's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 2610.309 Agency review.

Within 30 days after issuance of an initial decision under this part, either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Director (or his or her designee) may decide to review the initial decision on his or her own initiative, in accordance with the Office's review or appeal procedures applicable to the underlying proceeding. If neither the applicant nor agency counsel seeks review and the Director (or designee) does not take review on his or her own initiative, the initial decision on the application shall become a final decision of the Office of Government Ethics 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Director (or his or her designee, if any). If review is taken, the Office will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 2610.310 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 2610.311 Payment of award.

An applicant seeking payment of an award shall submit a copy of the Office's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts, to the Associate Director for Administration, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917. The Office will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant, the Office, or any other party to the proceedings.

[FR Doc. 92–17676 Filed 7–27–92; 8:45 am]
BILLING CODE 6345–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1310–92]

RIN 1115–AB72

Changes to Chapter 15 of the United States-Canada Free-Trade Agreement (FTA)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR part 214 relating to Canadian citizens seeking temporary entry to engage in activities at a professional level under section 214(e) of the Immigration and Nationality Act (Act). It results from the consultative process called for by Article 1503 of the United States-Canada Free-Trade Agreement (FTA). This rule will facilitate the temporary entry of Canadian citizens coming to the United States to engage in professional activities.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone: (202) 514–3946.

SUPPLEMENTARY INFORMATION: On March 19, 1991, at 56 FR 11528, the Immigration and Naturalization Service (Service) published a proposed rule with request for comments by May 20, 1991, to change Schedule 2 to Annex 1502.1 to chapter 15 of the FTA. The Government of Canada also published the proposed changes in the Canada Gazette. On July 10 and 11, 1991, the United States/Canada working group for Chapter 15 met in Ottawa and exchanged comments received. This final rule reflects the public comments and incorporates the agreed-upon changes to Annex 1502.1 into regulation.

The Service received six comments from interested parties; the Government of Canada also received six comments as a result of the Canada Gazette announcement. All of the comments were reviewed and considered in writing this final rule. The discussion which follows intersperses comments received by the Service with comments received by the Government of Canada, provides the agreed-upon position on the issue, and indicates any revisions made based on the comments.

The Service received two comments urging that Certified Management Accountant (C.M.A.) be added as an alternative means of qualifying as an accountant under Schedule 2. The Government of Canada received three comments on the same issue as well as two comments urging that Certified General Accountant (C.G.A) be added.

The Governments of the United States and Canada are in agreement that the qualifications required for the designations of C.M.A and C.G.A. reflect the standards desired for Schedule 2 occupations. As a consequence, this final rule contains both the C.M.A. and the C.G.A. designations as acceptable alternatives for qualification as an accountant.

Three commenters supported the addition of industrial designers to Schedule 2 as set forth in the proposed rule.

Two commenters supported the proposed inclusion of interior designers in Schedule 2. One of these commenters suggested that membership in their professional organization be considered as evidence of qualification as an interior designer. The Government of Canada received two comments from organizations of interior designers which also suggested that membership be considered as evidence of qualification. The Governments of the United States and Canada do not believe that membership in the organizations that commented constitutes reliable evidence that the existing requirements have been met. Accordingly, the Service will not change the qualifications as they exist (i.e., baccalaureate degree, or post-secondary diploma and three years experience).

Since there were no public comments received on the consolidation of the terms "medical technologist" and "clinical lab technologist" into the joint term "medical laboratory technologist (Canada)/medical technologist (U.S.)" with a footnote specifying the duties performed, the Service feels that it is necessary to advise the public that the joint term does not include other allied medical occupations, such as radiologic technologists, respiratory therapists, and nuclear medicine technologists. These occupations are being considered separately for inclusion in Schedule 2.

In reviewing this rule, the Service's General Counsel found that the footnote on the duties of a medical laboratory technologist (Canada)/medical technologist (U.S.), as published in the proposed rule, could be read in an overly restrictive manner. The Governments of the United States and Canada have now agreed to changed language which is less restrictive and which indicates that, although the individual should be qualified to perform all duties of a technologist, he or she may not be doing all those duties in a given job situation.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment, Organization and functions (Government agencies), Passports and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187; 8 CFR part 2.

2. In § 214.6, paragraph (d)(2)(ii) is revised to read as follows:

§ 214.6 Canadian citizens seeking temporary entry to engage in business activities at a professional level.

* * * * *

(d) * * *

(2) * * *

(ii) *Schedule 2 to Annex 1502.1 of the FTA.* Pursuant to the FTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions or occupations set forth in Schedule 2 to Annex 1502.1. The professions or occupations in Schedule 2 and the minimum requirements for each are as follows:

Schedule 2 (Annotated)

—Accountant—baccalaureate degree, C.P.A., C.A., C.G.A., or C.M.A.
—Architect—baccalaureate degree or state/provincial license [1]
—Computer Systems Analyst—baccalaureate degree, or post-secondary diploma and three years' experience
—Disaster relief insurance claims adjuster—baccalaureate degree or three years' experience in the field of claims adjustment
—Economist—baccalaureate degree
—Engineer—baccalaureate degree or state/provincial license [1]
—Forester—baccalaureate degree or state/provincial license [1]
—Graphic designer—baccalaureate degree, or post-secondary diploma and three years' experience
—Hotel manager—baccalaureate degree in hotel/restaurant management, or post-secondary diploma in hotel/restaurant management and three years' experience in hotel/restaurant management
—Industrial designer—baccalaureate degree, or post-secondary diploma and three years' experience
—Interior designer—baccalaureate degree, or post-secondary diploma and three years' experience
—Land surveyor—baccalaureate degree or state/provincial/federal license [1]
—Landscape architect—baccalaureate degree
—Lawyer—member of bar in province or state, or L.L.B., J.D., L.L.L., or B.C.L.
—Librarian—M.L.S., or B.L.S. (for which another baccalaureate degree was a prerequisite)
—Management consultant—baccalaureate degree or five years' experience in consulting or related field
—Mathematician—baccalaureate degree
—Medical Allied Professionals
—Dentist—D.D.S., D.M.D., or state/provincial license [1]
—Dietitian—baccalaureate degree or state/provincial license [1]
—Medical laboratory technologist (Canada)/medical technologist (U.S.)—baccalaureate degree, or post-secondary diploma and three years' experience [2]
—Nutritionist—baccalaureate degree
—Occupational therapist—baccalaureate degree or state/provincial license [1]
—Pharmacist—baccalaureate degree or state/provincial license [1]
—Physician (teaching and/or research only)—M.D. or state/provincial license [1]
—Physio/physical therapist—baccalaureate degree or state/provincial license [1]
—Psychologist—state/provincial license [1]
—Recreational therapist—baccalaureate degree
—Registered nurse—state/provincial license [1]
—Veterinarian—D.V.M., D.M.V., or state/provincial license [1]
—Range manager (range conservationist)—baccalaureate degree
—Research assistant (working in a post-secondary educational institution—baccalaureate degree
—Scientific technician/technologist
—Must work in direct support of professionals in the following disciplines: Agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics;
—Must possess theoretical knowledge of the discipline; and
—Must solve practical problems in the discipline, or apply principles of the discipline to basic or applied research.
—Scientist
—Agriculturist (agronomist)—baccalaureate degree
—Animal breeder—baccalaureate degree
—Animal scientist—baccalaureate degree
—Apiculturist—baccalaureate degree
—Astronomer—baccalaureate degree
—Biochemist—baccalaureate degree
—Biologist—baccalaureate degree
—Chemist—baccalaureate degree
—Dairy scientist—baccalaureate degree
—Entomologist—baccalaureate degree
—Epidemiologist—baccalaureate degree
—Geneticist—baccalaureate degree
—Geochemist—baccalaureate degree
—Geologist—baccalaureate degree
—Geophysicist—baccalaureate degree
—Horticulturist—baccalaureate degree
—Meteorologist—baccalaureate degree
—Pharmacologist—baccalaureate degree
—Physicist—baccalaureate degree
—Plant breeder—baccalaureate degree
—Poultry scientist—baccalaureate degree
—Soil scientist—baccalaureate degree
—Zoologist—baccalaureate degree
—Social worker—baccalaureate degree

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[1] The terms "state/provincial license" and "state/provincial/federal license" mean any document issued by a state, provincial, or federal government as the case may be, or under its authority, which permits a person to engage in a regulated activity or profession.

[2] Must be seeking entry to perform, in a laboratory, chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of disease.

—Sylviculturist (forestry specialist)—baccalaureate degree
—Teacher
—College—baccalaureate degree
—Seminary—baccalaureate degree
—University—baccalaureate degree
—Technical publications writer—baccalaureate degree, or post-secondary diploma and three years' experience
—Urban planner—baccalaureate degree
—Vocational counselor—baccalaureate degree

* * * * *

Dated: June 22, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-17614 Filed 7-27-92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 92-72]

Addition of the Republic of Vanuatu to the Coastwise-Trade List of Nations Entitled to Certain Reciprocal Vessel Privileges

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding the Republic of Vanuatu to the list of nations whose vessels are entitled to certain reciprocal coastwise-trade privileges relating to the transport of certain articles between points in the U.S. Customs has been duly informed that the Government of the Republic of Vanuatu places no restrictions on the carriage of any article covered by the reciprocity provisions of the Jones Act by U.S. vessels between its ports. Therefore, Customs is extending reciprocal coastwise-trade privileges to Vanuatu-flagged vessels.

EFFECTIVE DATE: This amendment is effective July 28, 1992. These reciprocal privileges for vessels registered in the Republic of Vanuatu became effective on January 1, 1992.

FOR FURTHER INFORMATION CONTACT: B. James Fritz, Carrier Rulings Branch (202) 927-0840.

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. app. 883), referred to as the Jones Act, provides generally that no merchandise shall be transported by water, or by land and water, between points in the U.S. except in vessels built in and documented under the laws of the U.S. and owned by U.S. citizens. However, the sixth proviso, as amended, states that, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the U.S., reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

The regulations implementing these reciprocal coastwise transportation privilege provisions are found at § 4.93, Customs Regulations (19 CFR 4.93). Section 4.93(a)(1) provides for the exemption for certain nations' vessels transporting empty cargo vans, empty lift vans, and empty shipping tanks, and § 4.93(b)(1) enumerates those nations found to extend reciprocal privileges to U.S. vessels in this regard. Section 4.93(a)(2) provides for a similar exemption relating to stevedoring equipment and material, and § 4.93(b)(2) similarly enumerates those nations found to extend similar reciprocal privileges to U.S. vessels in this regard.

In a letter dated April 16, 1992, from the Government of the Republic of Vanuatu to the Department of State, the Government of the Republic of Vanuatu declared that, effective January 1, 1992, U.S.-flag vessels have been permitted to carry empty containers and related equipment and all other items enumerated at 19 CFR 4.93(a) coastwise in Vanuatu. The Department of State advised the Chief, Carrier Rulings Branch, U.S. Customs Service, that this declaration of the Government of Vanuatu offered satisfactory evidence to establish reciprocity as required by the Act and requested that the Republic of Vanuatu be added to the list of nations at 19 CFR 4.93 whose vessels are permitted to transport between points of the U.S. the items enumerated at (a)–(e) in the sixth proviso. The Chief, Carrier Rulings Branch, is of the opinion that satisfactory evidence had been furnished to grant the reciprocal privileges allowed under § 4.93, effective January 1, 1992, and requested that the Republic of Vanuatu be added to the list of nations enumerated at § 4.93(b) (1) and (2).

Authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Because this amendment merely reflects a statutory requirement that confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are not required. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations and Disclosure Law Branch.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Maritime carriers, Vessels, Coastwise trade.

Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in the Republic of Vanuatu, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * *

§ 4.93 [Amended]

2. In § 4.93, paragraphs (b) (1) and (2) are amended by inserting, in appropriate alphabetical order, "Vanuatu, Republic of" in the list of nations entitled to reciprocal privileges.

Dated: July 21, 1992.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 92-17764 Filed 7-27-92; 8:45 am]

BILLING CODE 4620-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 87-45 FCC 92-286]

Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document changes the method for pricing the conveyances of capital interests in overseas communications facilities between or among U.S. carriers. The new pricing policy will result in prices set by negotiations between the buyer and seller that will reflect market conditions. This action is in response to growing competition in the international facilities market. The purpose and effect of the action are to lift artificial restraints on the price of these facilities, thereby encouraging the building of facilities by allowing facility owners to recover their costs in building and maintaining the facilities.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Suzan Balk Friedman, attorney/advisor, International Policy Division, Common Carrier Bureau, (202) 632-7265.

SUPPLEMENTARY INFORMATION: The rulemaking corrects the problems associated with the conveyance of capital interests, known as indefeasible rights of use (IRUs) in overseas facilities between or among U.S. carriers. Under the current system, carriers who chose to build overseas facilities for future sale must bear the risk and burden of carrying those facilities yet are limited to receiving only the net book value of the facilities upon sale. The pricing scheme acts as a disincentive for facility owners to build and sell facilities. The Commission found that recent developments in the international telecommunications marketplace have signalled greater competition in the provision of these facilities. Three other pricing plans were proposed but the Commission found that there are no workable alternatives to net-book-cost pricing other than a market-based approach. Accordingly, the Commission adopted a policy whereby conveyances of IRUs between or among U.S. carriers will be priced at a negotiated, market-based price. The Report and Order provides that the Commission will retain jurisdiction to review any violations of our new IRU pricing policy, such as pricing above fair market value, either on our own motion or upon complaint from interested parties. Fourteen interested parties filed comments in this proceeding in response to the Commission's request for comments in the Notice of Proposed Rulemaking. The notice of proposed rulemaking appeared in the **Federal Register** on March 17, 1987 at 52 FR 8313.

Summary of Report and Order

The following is a summary of the Commission's Report and Order in CC Docket No. 87-45, adopted June 30, 1992 and released July 22, 1992. The full texts of all Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, Downtown Copy Center, 202-452-1422, 1114 21st Street NW., Washington, DC 20036.

1. In this Report and Order, the Commission adopted a new pricing policy to govern the transfer of ownership interests or other capital interests, such as indefeasible rights of use (IRUs) in overseas communications facilities between or among U.S. carriers. The Commission is replacing the net-book-cost standard with a flexible, market-oriented pricing policy. The Commission considered several other pricing policies but determined that none offered a workable alternative to market-based pricing. Net-book-cost is the original cost of the capital interest in the facility minus the accumulated depreciation at the time of the conveyance. An IRU interest in a communications facility is a form of acquired capital in which the holder possesses an exclusive and irrevocable right to use the facility or, depending on the particular IRU contract, any right to salvage. The new market pricing standard will apply to all conveyances of ownership interests or other capital interests in overseas communications facilities between or among U.S. carriers which take place after the effective date of this order. In addition, the Commission will apply the new pricing policy to those facilities whose authorizations contained the condition that conveyances of ownership or IRU interests in the facilities must be priced at net-book-cost or "in conformance with whatever pricing policy the Commission may adopt in the future."

2. The Commission concluded that the net-book-cost standard is no longer in the public interest because it places an undue burden on the ratepayers of a facility's original owners/investors. These ratepayers must incur the cost of holding idle circuits for future demand, while other carriers may choose to make a minimal initial investment in a facility and then acquire additional circuits, when the need arises, at net-book-cost. The Commission stated that, as a result, the ratepayers of the original investors absorb excessive costs while providing a windfall to the ratepayers of the acquiring carriers. The Commission further stated that restricting the price of a conveyance of a circuit creates a disincentive for a carrier to convey circuits to other carriers. Finally, the Commission was concerned that the net-book-cost standard distorted the facilities planning process because of the artificial restraint on the price of conveyances of such facilities.

3. Due to these concerns, as well as the growth of competition in the international facilities market, it is no longer necessary for the Commission to regulate the price of conveyances of ownership interests. The Commission has fostered competition by the lifting of a number of regulatory restraints on entry by providers of international telecommunications facilities and services. Moreover, another indication that competition is increasing is that U.S. carriers have a wider choice of overseas transmission facilities than ever before. Specifically, a carrier has the ability to be a joint owner of a cable and to carry space capacity to meet its current and/or future needs. Moreover, the adoption of the price cap rules, which replaced the traditional rate of return method of setting rates with incentive based price cap rules, removed a carrier's incentive to overbuild facilities in order to increase its rate base.

4. The Commission anticipates that carriers will be more willing to convey overseas circuits if the price is set by negotiation rather than by regulation. Conversely, carriers might be more willing to purchase capital interests if they could recover a fair market price upon sale of the interest. In addition, the Commission noted that a more flexible pricing policy would encourage more efficient facilities planning.

5. Finally, the Commission stated that it will retain jurisdiction to review any violations of our new IRU pricing policy, such as pricing above fair market value, either on our own motion or upon complaint from interested parties.

6. Accordingly, *It is ordered*, pursuant to 47 U.S.C. 151, 154(i)–(j), 201–205, 211, 213, 214, 218, 220, and 222, that prices for conveyances of capital interests between or among U.S. carriers shall be determined by negotiation between circuit owners and prospective purchasers.

7. *It is further ordered* That the market-oriented pricing policy adopted in this proceeding shall apply to all conveyances which take place after the effective date of this order, including those facilities conditioned on a future policy change.

8. *It is further ordered* That this Commission shall monitor the market shares of the U.S. international service carriers and that this Commission retains jurisdiction over the terms of carrier-to-carrier sales of capital interests in overseas communications facilities to review any abuses of the market-oriented pricing policy on our own motion or pursuant to a section 208 complaint.

9. *It is further ordered* That the market-oriented pricing policy adopted in this proceeding shall become effective August 27, 1992.

10. *It is further ordered* That this proceeding is terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17894 Filed 7–27–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 391

[FHWA Docket No. MC–90–6]

RIN 2125–AC44

Qualification of Drivers; Medical Examination

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Federal Motor Carrier Safety Regulations (FMCSRs) to permit health care professionals to perform physical examinations of commercial motor vehicles drivers provided certain conditions are met. These health care professionals must be authorized by the State in which they are licensed, certified, or registered to perform such examinations and must be proficient in the use of, and use, the medical protocols necessary to perform the examination in accordance with the FMCSRs. This action will increase the number of professionals authorized to perform the physical/medical examinations and provide greater flexibility to drivers and motor carriers in choosing more convenient times and locations for the required examinations at a lower cost.

EFFECTIVE DATE: This rule is effective August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Eliane Viner, (202) 366–0641, Office of Motor Carrier Standards, or Mr. Raymond Cuprill, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1990, the FHWA published a notice of proposed rulemaking (NPRM) (55 FR 13812) that would amend 49 CFR 391.43(a) to permit physician assistants (PA's) and advanced practice nurses (APN's) (a group that includes advanced registered nurses, nurse practitioners and advanced nurse practitioners) to perform the physical examination required by part 391 of the FMCSRs, provided that the final determination and certification of the driver's medical qualification is completed by a doctor of medicine or osteopathy. The NPRM was initiated in response to a written request from the American Academy of Physician Assistants (AAPA) and a petition from the Pioneer Medical Clinic of Pierce, Idaho, requesting that the FHWA amend the Federal regulations to permit PA's and APN's to perform the required physical examination. In support thereof, the AAPA and the American Academy of Nurse Practitioners (AANP) submitted documentation detailing the qualifications and capabilities of these health care professionals.

The NPRM generated 527 comments from interested parties, including: 136 from PA's, 107 from doctors of medicine (MD's), 100 from doctors of chiropractic (DC's), 67 from registered nurses (RN's), 52 from advanced practice nurses (APN's), 17 from clinic or group administrators, 17 from motor carriers, 13 from various unidentified individuals, 8 from doctors of osteopathy (DO's), 3 from drivers, 3 from State DOT's, 2 from elected congressional representatives, and one each from the International Brotherhood of Teamsters (IBT) and the American Trucking Associations (ATA). Generally, most of the commenters favored the proposal. A very large number of the commenters limited their comments to specific issues that were of interest to them, and as a result, failed to comment on other issues raised in the NPRM. Consequently, the FHWA's discussion of the comments will be presented in terms of issues as identified below.

Discussion of Comments

Should PA's and APN's be Permitted To Perform the Required Physical Examination?

There were 500 commenters in favor of permitting PA's and APN's to perform the physical examination. The commenters expressed their belief that PA's and APN's should be allowed to make the medical qualification determination and sign the medical card, because these health care professionals currently have the authority to conduct such examinations under State law. They further contended that they have ample training, education and experience to adequately discharge the functions required by § 391.43.

Twenty-seven commenters opposed the NPRM. Those who opposed the NPRM as written include 15 MD's 2 DO's, 6 motor carriers, 2 clinic administrators, and 2 individuals. Those commenters contended that anyone less qualified than an MD or DO should not be allowed to perform the required physical examination or make the medical qualification determination. They argue MD's and DO's are most qualified to perform the required physical examination, and that the current medical certification procedure should be maintained.

FHWA's Response

Currently, 48 States (except Mississippi and New Jersey) and the District of Columbia license PA's (more than 48,000) and APN's (more than 25,000) to perform physical and medical examinations, among other professional health care services. Both PA's and APN's are trained to take medical histories, perform physical and medical examinations, order laboratory tests, and make preliminary diagnoses, prescribe appropriate treatments. The APN's are also authorized under the various States' licensing standards to initiate, monitor, and alter drug and other medical treatments, manage

selected medical problems, and make consultation referrals to medical specialists as needed. The FHWA recognizes that PA's and APN's services are in great demand by small communities experiencing a shortage of doctors. The FHWA, therefore, concludes that allowing PA's and APN's to perform the required physical examination and sign the medical examiner's certificate is warranted due to the current practices of the various States, the high utilization of PA and APN services by doctors, and the nationwide acceptance of these health care professionals by the general public.

To limit the completion of the required physical examination to MD's and DO's, would fail to recognize existing State law and may compound the recognized shortage of medical services available in certain geographic areas of the country. The FHWA is additionally requiring those health care professionals to be proficient in the use of, and use, the medical protocols necessary to adequately perform the physical examination required by 49 CFR 391.43(d). The term "medical examiner" will now embrace more than two groups of health care professionals. The FHWA is, therefore, requiring the examining health care professional to place his/her title and license or certification number and the State in which the license or certification was issued immediately below the printed name of the examining health care professional on both the examination form and the medical certificate. This will ensure the proper identification of the medical examiners and allow verification of such licenses at any time.

Should Other Health Care Professionals Be Permitted To Perform the Physical Examination?

There were 492 commenters who supported or did not object to allowing other health care professionals such as doctors of chiropractic (there are currently more than 39,000 practicing chiropractors nationwide) to perform the required physical examination. Supporters contend that all States require licensure of DC's based upon an applicant passing of the national chiropractic examination administered by the National Board of Chiropractic examiners, and that all States have established boards to monitor and regulate DC's. Commenters in favor of the DC's maintain that doctors of chiropractic have extensive education backgrounds, and are considered physicians by all regulating States. Additionally, those commenters contended that many individuals, especially drivers (an occupation particularly prone to back and spinal degeneration), choose to be examined and treated by DC's, a fact recognized by many of the States' Freedom of Choice Statute-Workers' Compensation programs.

There were 35 commenters opposed to allowing other health care professionals to perform the required physical examination. Those who opposed this proposal included the ATA, the IBT, and several MD's. Those commenters contended that DC's do not possess the skill and knowledge to perform the required physical examination. The ATA asserted that "available information indicates that chiropractors are not qualified to detect and evaluate many medical deficiencies which could result in the inability of the driver to safely operate a commercial motor vehicle." The IBT stated that they agree with ATA's position.

FHWA's Response

Based on the information received in response to the NPRM, the FHWA has decided that other health care professionals, including doctors of chiropractic, should be permitted to perform the driver physical examination, if they are authorized under State law to conduct such examinations and are proficient in the use of, and use, the medical protocols necessary to adequately perform the physical examination required by 49 CFR 391.43. The FHWA does not agree with the ATA's assertion stated above since all but three States, through their licensing procedures, have exercised proper authority over DC's seeking to practice in their jurisdictions. These health care professionals are licensed, registered, and/or certified under their State statutes to perform physical examinations. Chiropractors are also required to refer any patient, with any condition(s) outside the scope of their practice, to MDs, DOs and/or other medical specialists. This is consistent with what other medical practitioners do in this age of specialization.

The FHWA does not intend to limit the scope of other health care professionals wishing to perform the driver physical examination, provided they meet the conditions stated above (i.e., State authority and protocols). The driver physical examination required by the FMCSRs is accomplished by comparing measured physical or medical results against the established minimum standards in 49 CFR part 391. The physical examination does not require sophisticated diagnosis or treatment. In the event that such diagnostic analysis is required, the FHWA would expect the health care professional, consistent with sound medical practices, to promptly refer the patient to the appropriate health care specialist.

The FHWA is defining "health care professional" broadly, not by health care title. This will allow all health care professionals an opportunity to participate to the extent allowable under State licensing standards. It will also afford drivers and motor carriers the increased flexibility to meet the requirements of § 391.43.

Should State Authorized Health Care Professionals Be Permitted To Make The Medical Qualification Determination?

There were 474 commenters in favor of removing the current restriction in the regulation that the medical qualification determination be completed only by a MD or DO. The commenters contend that States allow health care professionals to make this medical determination without supervision or guidance from a MD or DO.

Fifty three commenters contend that the restriction should be retained. They argued that only MD's and DO's are qualified to make this determination regardless of whether or not they actually performed the examination.

FHWA's Response

There is sufficient justification to permit PA's, APN's, DC's and other health care professionals to make the driver medical qualification determination and sign the physical examination form and the medical examiner's certificate. Allowing a variety of health care professionals to perform the required physical examinations is proper because it is currently authorized by existing State laws and such action will have no adverse effect on highway safety. There is wide acceptance and utilization of these health care professionals by the public, health care facilities, MD's and DO's. The use of these health care professionals by drivers and motor carriers will, in many cases, result in a cost savings because the fees charged will generally be less than those charged by MDs or DOs. Because many of these health care professionals provide health care in many geographic areas where MDs and DOs are in limited supply or totally absent, obtaining a physical examination will be somewhat easier and more convenient. It must be clearly understood that this document does not change the definition of the term Medical Review Officer contained in § 391.85. The term Medical Review Officer continues to be defined as a

licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.

Rulemaking Analyses and Notices

Regulatory Impact

The action taken by the FHWA in this document amends parts 390 and 391 of the FMCSRs to allow health care professionals, other than MD's or DO's, who are licensed, certified, and/or registered in accordance with applicable State law to perform portions of or the entire physical examination required of commercial motor vehicle drivers engaged in interstate commerce. This action will increase the number of professionals authorized to perform the physical/medical examinations and provide greater flexibility to drivers and motor carriers in choosing more convenient times and locations for the required examinations at a lower cost.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the policies and procedures of the DOT. This action will increase the number of professionals authorized to perform the physical/medical examinations and provide greater flexibility to drivers and motor carriers in choosing more convenient times and locations for the required examinations at a lower cost. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; U.S.C. 605(b)), the FHWA has evaluated the effects of this rule on small entities. Based on this evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This amendment does not contain a collection of information requirement. The information collection requirements contained in 49 CFR 391.43 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2125–0080.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 390

Motor carriers, Motor vehicle safety.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: July 20, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subchapter B, chapter III, parts 390 and 391 as set forth below:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.5 [Amended]

2. Section 390.5 is amended by adding a new definition of *health care professional* to read as follows:

Section 390.5 Definitions

* * * * *

Health care professional means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes, but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

* * * * *

PART 391—QUALIFICATION OF DRIVERS

3. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. app. 2505, 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 391.43 [Amended]

4. Section 391.43 is amended by revising paragraph (a)(1); by redesignating paragraphs (c), (d), (e), and (f) as paragraphs (d), (e), (f), and (g), respectively; by adding a new paragraph (c); by revising the reference to "paragraph (e)" in newly designated paragraph (f) to read "paragraph (g)"; revising the terms "examining physician" and "examining doctor" to read "examining health care professional" in newly designated paragraphs (d), (e) (six places) and (g) (two places); by adding to the forms "Examination to Determine Physical Condition of Drivers" and "Medical Examiner's Certificate" in newly designated paragraphs (e) and (g), immediately below "(Name of examining health care professional (print))", the following:

(Title) (License or Certification No.)
(State)

Section 391.43 Medical Examination; Certificate of Physical Examination

(a)(1) Except as provided by paragraph (b) of this section, the medical examination shall be performed by a licensed health care professional as defined in § 390.5 of this subchapter.

* * * * * *

(b) * * *

(c) Health care professionals shall:

(1) Be knowledgeable of the specific physical and mental demands associated with operating a commercial motor vehicle and the requirements of

this subpart, including the medical regulatory criteria prepared by the FHWA as guidelines to aid the health care professional in making the qualification determination; and

(2) Be proficient in the use of and use the medical protocols necessary to adequately perform the medical examination required by this section.

* * * * *

[FR Doc. 92-17640 Filed 7-27-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Alava, Washington, at midnight, July 22, 1992, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 13,100 coho salmon for the subarea will be reached by midnight, July 22, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of coho salmon.

DATE: Effective at 2400 hours local time, July 22, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 7, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery for all salmon species in the subarea from the U.S.-Canada border to Cape Alava, Washington, would open July 6, and continue through the earliest of October 1 or the attainment of either a subarea quota of 13,000 coho salmon or an overall quota of 33,000 chinook north of Cape Falcon, Oregon.

Based on the best available information on July 20, the recreational fishery catch in the subarea from the U.S.-Canada border to Cape Alava is projected to reach the 13,000 coho salmon quota by midnight, July 22, 1992. Therefore, the fishery in this subarea is closed to recreational fishing for all salmon species effective 2400 hours local time, July 22, 1992.

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this closure was given prior to 24 hours local time, July 22, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding the closure of the recreational fishery between the U.S.-Canada border and Cape Alava, Washington. The State of Washington will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 7, 1992.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 23, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17807 Filed 7-23-92; 2:55 am]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 920387-2181]

RIN 0648-AD67

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; notice of final specifications to establish a Pacific halibut bycatch allowance; technical amendment.

SUMMARY: NMFS announces approval of (1) authority for the annual apportionment of a Pacific halibut bycatch allowance to the demersal shelf rockfish (DSR) hook-and-line fishery conducted in the Southeast Outside (SEO) District in the Eastern Regulatory Area of the Gulf of Alaska (GOA), and (2) directed fishing standards for DSR. These actions are necessary to make this fishery separately accountable for incidental catches of Pacific halibut, to prevent an unnecessary fishery closure, and to limit the amounts of DSR that might be taken as bycatch in other fisheries. Also, NMFS announces a 10 metric ton bycatch allowance of Pacific halibut to the DSR fishery in 1992. Finally, technical amendments are approved to implement fully the intent of Amendments 22 and 25 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) that have already been approved by the Secretary of Commerce (Secretary). These actions are intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Effective July 23, 1992.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may

be obtained from Steven Pennoyer, Director, Alaska Region, Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed by the Secretary under the FMP, which was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act), and is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 672. General regulations that also pertain to the U.S. fisheries are implemented at 50 CFR part 620.

At times, amendments to the FMP and/or its implementing regulations are necessary to resolve problems pertaining to management of the groundfish fisheries. In some instances, the FMP allows certain measures to be changed by regulatory amendments without amending the FMP itself. This action contains two regulatory amendments that are authorized by the FMP.

Establishment of Authority to Apportion Pacific Halibut Bycatch Allowance to the SEO District DSR Hook-and-Line Fishery and Establishment of Directed Fishing Standards for the DSR Fishery

First, authority is established for NMFS, in consultation with the Council, to apportion the Pacific halibut prohibited species catch (PSC) limit specified for hook-and-line gear as bycatch allowances between (1) the DSR hook-and-line fishery in the SEO District and (2) all other GOA hook-and-line fisheries. This regulation amends procedures in which the Council, during its September meeting, recommends an annual halibut PSC limit for hook-and-line gear. Under this procedure, the Council may recommend apportionments of the halibut PSC limit specified for hook-and-line gear as bycatch allowances for (1) the directed fishery for DSR in the SEO District, and (2) all other hook-and-line gear. Each year, NMFS will propose these allowances in the **Federal Register** and comments will be invited. The Council, during its December meeting, will recommend final bycatch allowances of the halibut PSC mortality limit between the DSR hook-and-line fishery and all other hook-and-line fisheries. NMFS will implement these allowances to govern halibut bycatch mortality in the hook-and-line fisheries for the subsequent fishing year. This is the same procedure contained at § 672.20(f)(2)(ii) that presently govern the specification of halibut PSC limits for the hook-and-line and trawl fisheries.

Second, directed fishing standards are established for DSR that limit the amount of DSR that could be retained by vessels during directed fishing closures for DSR. Directed fishing standards for sablefish were editorially revised and included for the convenience of the reader. Both regulatory amendments were recommended by the Council at its meeting of December 2–9, 1991. A notice of proposed rulemaking was published on April 8, 1992 (57 FR 11930), and comments were requested until May 8, 1992. A description of, and reasons for, the regulatory amendments are contained in the notice of proposed rulemaking.

Response to Comments

Two comments were received during the comment period supporting the measures described in the notice of proposed rulemaking. Comments are summarized and responded to as follows:

Comment 1: The measure to provide a separate PSC limit for the DSR fishery is necessary to provide greater opportunity to harvest the DSR quota in the SEO District, and, therefore, it should be implemented.

Response: NMFS concurs. This measure was approved.

Comment 2: The measure to establish directed fishing standards applicable to DSR is necessary to reduce the danger of DSR being overfished, reduce the potential for preemption of the directed DSR fishery resulting from DSR bycatches in other fisheries, and still allow incidentally caught DSR to be landed rather than wasted.

Response: NMFS concurs. This measure was approved.

NMFS has considered the reasons for the regulatory amendments, and the comments received, and has determined that these regulatory amendments are necessary for fishery conservation and management. These actions will promote economic growth because they will reduce the likelihood that the DSR hook-and-line fishery will be closed prematurely, thereby promoting greater utilization of available DSR stocks.

Establishment of 10-mt Pacific Halibut Bycatch Allowance for the SEO DSR Hook-and-Line Fishery

Under § 672.20(f)(2)(ii), NMFS already has specified a final 1992 halibut bycatch limit of 750 metric tons (mt) for hook-and-line gear (57 FR 2844, January 24, 1992). Contingent upon approval of the regulatory measures described above, NMFS proposed to apportion 10 mt of the PSC limit as a bycatch allowance to the 1992 DSR fishery using hook-and-line gear in the SEO District and the balance of 740 mt as a bycatch allowance to all other GOA hook-and-line fisheries (57 FR 27725, June 22, 1992). Comments were invited until July 2, 1992. No comments were received.

NMFS approves amended Table 3 of the 1992 specifications for groundfish in the GOA to apportion the 750 mt Pacific halibut as follows: (1) 10 mt to the DSR hook-and-line fishery and (2) 740 mt to the other hook-and-line gear fisheries.

TABLE 3.—ALLOCATION OF PACIFIC HALIBUT PSC LIMITS BETWEEN GEAR TYPES, IN MT

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan. 1-Mar. 31	600	Jan. 1-May 14	200	June 29-Dec. 31	10
Apr. 1-June 30	600	May 15-Aug. 31	490		
Jul. 1-Sep. 29	400	Sep. 1-Dec. 31	50		
Sep. 30-Dec. 31	400				
Total	2,000		740		10

Under § 672.20(f)(2)(ii), the Regional Director will close the DSR directed fishery with hook-and-line gear in the SEO District for the remainder of the fishing year if he determines that the 10 mt allowance will be reached.

Technical Amendments

Two technical amendments are included in this final rule. Both apply to the definition of "reporting area" in § 672.2 and correct drafting errors in the regulatory text.

First, a technical amendment to regulations at § 672.2 is implemented to delete the definition of the East Yakutat District and delete reference to statistical area 68 in the definition of a reporting area. This change is necessary to establish consistency with the intent of Amendment 22 to the FMP, which was approved on January 31, 1992, and specifically reads as follows:

> * * * for purposes of managing sablefish and rockfish stocks, the Eastern Regulatory Area is divided into two districts: West Yakutat (140°–147° W. longitudes) and Southeast Outside (132°40′ W. longitudes and north of 54°30′ N. latitude).

Regulations implementing this amendment (57 FR 10430, March 26, 1992) revise the definition of statistical area to delete reference to the East Yakutat District (statistical area 68).

The second technical amendment deletes reference to statistical area 621 in the definition of reporting area. That action was authorized under Amendment 25 to the FMP (57 FR 2683, January 23, 1992).

The substance of these technical amendments were analyzed in the EA/RIR/FRFAs that were prepared for Amendments 22 and 25, respectively. The technical amendments are consistent with the goals and objectives of the amendments and faciliate implementation of Amendments 22 and 25 that already have been approved.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that the reasons justifying promulgation of this rule make it impracticable and contrary to the public interest to delay its effective data under the rulemaking provision of the Administrative Procedure Act, 5 U.S.C. 553. If apportionment of a bycatch allowance of 10 mt of halibut PSC to the 1992 demersal shelf rockfish fishery from the overall 1992 hook-and-line halibut PSC is to have its intended effect, it must be implemented before the hook-and-line PSC is reached. NMFS anticipates that the hook-and-line PSC will be reached soon, leaving an insufficient amount to apportion to the 1992 DSR fishery.

The Alaska Region, NMFS, prepared an EA for this rule and the Assistant Administrator concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see ADDRESSES).

The final regulatory flexibility analysis prepared as part of the EA/RIR/FRFA concludes that this rule would have significant effects on small entities. A summary of this analysis is contained in the Classification section in the proposed rulemaking (57 FR 11930, April 8, 1992). The summary concludes that this action will reduce the likelihood of a premature closure of the directed fishery for this target species category. It will foster economic growth, because it will allow further utilization of the available demersal shelf rockfish harvest quota.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/FRFA prepared by the Alaska Region, NMFS.

This rule does not include a collection of information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies declined to comment on the consistency determination within the statutory time period, and consistency is inferred.

This rule does not include policies with federalism implication sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

NMFS concluded formal consultations under section 7 of the Endangered Species Act on the FMP and fisheries in 1991. The biological opinions issued for the consultations concluded that the FMP and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of NMFS. Adoption of the management measures described in this proposed rule will not affect listed species in a way that was not already considered in the aforementioned biological opinions. NMFS has determined that no further consultation is required for adoption of this action.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping.

Dated: July 23, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.1, paragraph (d) is revised to read as follows:

§ 672.1 Purpose and scope.

* * * * *

(d) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing for demersal shelf rockfish in the Southeast Outside District, and which are registered under the laws of the State of Alaska:

5 AAC 28.110—Fishing seasons.
5 AAC 28.130—Gear.
5 AAC 28.160—Harvest guidelines.
5 AAC 28.190—Harvest of bait by commercial permit holders.

3. In § 672.2, definitions of "regulatory district" and "reporting area" are revised to read as follows:

§ 672.2 Definitions.

* * * * *

Regulatory district means any of the two districts of the Eastern Regulatory area described as follows:

(1) Southeast Outside district— means statistical area 65; and

(2) West Yakutat district—means statistical area 64. *Reporting area* means the relevant Gulf of Alaska statistical area and, in addition to the State waters described in the relevant statistical area, all State waters between the shore and any inshore boundary of that statistical area. With respect to any groundfish species, any groundfish species group, or any prohibited species, the relevant Gulf of Alaska statistical areas include each of the following statistical areas described below: 61, 62, 63, 64, and 65. A reporting area is identified by the same number used to identify the associated statistical area.

* * * * *

4. In § 672.20, paragraph (g)(3) is removed, paragraph (g)(4), which currently is suspended by emergency rule (57 FR 11433, April 3, 1992; as corrected at 57 FR 14667, April 22, 1992; and extended at 57 FR 29223, July 1, 1992), is redesignated as (g)(3) and remains suspended through September 30, 1992, and paragraph (f)(1)(ii), (f)(2)(i), (g)(1), and (g)(2) are revised to read as follows:

§ 672.20 General limitations.

* * * * *

(f) * * *

(1) * * *

(ii) *Hook-and-line gear*—(A) *Groundfish other than demersal shelf rockfish in the Southeast Outside District.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear in groundfish fisheries other than the directed fishery for demersal shelf rockfish in the Southeast Outside District will reach the halibut bycatch allowance, or seasonal apportionment thereof, specified for hook-and-line gear under paragraph (f)(2) of this section, NMFS will publish a notice in the **Federal Register** prohibiting directed fishing for groundfish, other than demersal shelf rockfish in the Southeast Outside District, by vessels using hook-and-line gear for the remainder of the season to which the halibut bycatch allowance or seasonal apportionment thereof applies.

(B) *Demersal shelf rockfish in the Southeast Outside District.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear in the directed fishery for demersal shelf rockfish in the Southeast Outside District will reach the halibut bycatch allowance or seasonal apportionment thereof, specified for this fishery under paragraph (f)(2) of this section, NMFS will publish a notice in the **Federal Register** prohibiting directed fishing for demersal shelf rockfish in the Southeast Outside District, by vessels using hook-and-line gear for the remainder of the season to which the halibut bycatch allowance or seasonal apportionment thereof applies.

* * * * *

(2) * * * (i) *Notices of proposed halibut PSC limits.* After consultation with the Council, NMFS will publish a notice in the **Federal Register** specifying the proposed halibut PSC limit for vessels using trawl gear. The notice also will specify the proposed halibut PSC limit for vessels using hook-and-line gear, which may be further apportioned as bycatch allowances to vessels participating in the directed fishery for demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area and to all other hook-and-line gear fisheries. The notice also may specify a halibut PSC limit for vessels using pot gear. Each PSC limit or bycatch allowance proposed under this paragraph may be apportioned by season under paragraph (f)(2)(iii) of this section. Each halibut PSC limit also may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on these proposals will be accepted for 30 days after the notice is published in the **Federal Register**.

* * * * *

(g) * * *

(1) *Trawl gear*—(i) *Sablefish.* The operator of a vessel is engaged in directed fishing for sablefish if he retains at any particular time during a trip sablefish caught using trawl gear in an amount equal to or greater than:

(A) 15 percent of the aggregate amount of deep water flatfish, flathead sole, and rockfish species of the genera *Sebastes* and *Sebastolobus* retained at the same time by the vessel during the same trip; plus

(B) 5 percent of the total amount of all fish species not identified under paragraph (g)(1)(i)(A) of this section retained at the same time by the vessel during the same trip.

(ii) *Demersal shelf rockfish.* The operator of a vessel is engaged in directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf rockfish caught using trawl gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, flathead sole, sablefish, "other rockfish," and thornyhead rockfish, plus 10 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

(2) *Hook-and-line gear*—(i) *Sablefish.* The operator of a vessel is engaged in directed fishing for sablefish if he retains at any particular time during a trip sablefish caught using hook-and-line gear in an amount equal to or greater than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

(ii) *Demersal shelf rockfish.* The operator of a vessel is engaged in directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf rockfish caught using hook-and-line gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flathead, flathead sole, sablefish, "other rockfish," and thornyhead rockfish, plus 10 percent of the amount of all fish species retained at the same time by the vessel during the same trip.

* * * * *

[FR Doc. 92-17806 Filed 7-23-92; 2:55 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 145
Tuesday, July 28, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 91N-0134]

Certain Misbranding Sections of the Federal Food, Drug, and Cosmetic Act that are, and that are not, Adequately Being Implemented by Regulation; Notice of Proposed Lists

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing, as required by the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (the 1990 amendments), proposed lists delineating which of six sections of the Federal Food, Drug, and Cosmetic Act (the act) that define circumstances in which a food is misbranded are adequately being implemented by FDA regulations and which are not. These six sections are: Sections 403(b) (offered for sale under the name of another food), 403(d) (misleading container), 403(f) (information of appropriate prominence), 403(h) (compliance with standard of quality and fill), 403(i)(1) (common or usual name), and 403(k) (declaration that the product contains artificial flavoring, coloring, or preservatives).

Based upon the recommendations of the National Academy of Sciences (NAS), Institute of Medicine (IOM), Food and Nutrition Board (hereinafter referred to as "the IOM"), the agency is proposing to find that all but section 403(d) of the act are being adequately implemented. These recommendations are contained in a report to FDA from the IOM, entitled "Food Labeling: Toward National Uniformity." FDA contracted for this report in accordance with the 1990 amendments.

DATES: Written comments by September 28, 1992. The agency intends to issue final lists delineating which of the six sections of the act that define circumstances in which a food is misbranded are adequately being implemented by regulation by November 8, 1992, in accordance with requirements of the 1990 amendments. FDA also intends to issue by the November 8, 1992, deadline any proposed revisions to its regulations that are necessary because of a conclusion that FDA is not adequately implementing one of the sections in question, as required by section 6(b)(3)(C) of the 1990 amendments.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

I. Background

The 1990 amendments amend the act (21 U.S.C. 321 *et seq.*) to provide, among other things, for Federal preemption of certain food standards and labeling requirements issued by a State or political subdivision of a State.

The preemption provisions are complex. Section 6(a) of the 1990 amendments adds section 403A to the act (21 U.S.C. 343-1), which groups the sections of the act that will have preemptive effect. Read in conjunction with section (10)(b)(1) of the 1990 amendments, section 403A provides that the preemptive effect of these sections of the act will be phased-in on a group-by-group basis.

Section 403A(a)(3) of the act states that "no State or political subdivision of a State may directly or indirectly establish under any authority, or continue in effect as to any food in interstate commerce * * * any requirement for the labeling of food of the type required by section 403(b), 403(d), 403(f), 403(h), 403(i)(1), or 403(k) that is not identical to the requirements of such section * * *." The six provisions listed in section 403A(a)(3) of the act do not become preemptive, however, until FDA determines (as prescribed in section 6(b) of the 1990 amendments) that each is being adequately implemented by Federal regulations (see section 403A(a) of the act and section 10(b)(1)(C) of the 1990 amendments).

In accordance with section 6(b) of the 1990 amendments, FDA entered into a contract with NAS under which the IOM was to study the adequacy of the implementation of the Federal, State, or local requirements addressed in section 403A(a)(3) of the act. The IOM formed a committee to do much of its work under the contract. To facilitate this study, FDA announced in the Federal Register of May 8, 1991 (56 FR 21388), that the IOM would hold a public meeting at NAS on May 30, 1991, to solicit information and comments pertaining to current State and local laws and regulations that require the labeling of food that is the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the act.

The IOM was unable to schedule this public meeting before the May 8, 1991, deadline imposed by the 1990 amendments because of unforeseen circumstances. The IOM's initial meeting on this issue was held on May 29 and 30, 1991, with the second day devoted to the public meeting.

Eight oral presentations were made at the May 30, 1991, public meeting. Presentations were made by representatives of food industries, trade associations, a consumer group, and the Association of Food and Drug Officials (AFDO). The IOM also received seven written submissions from AFDO; the Texas Department of Health, Division of Food and Drugs; the Florida Department of Agriculture and Consumer Services; the National Food Processors Association; the Department of Consumer Protection for the State of Connecticut; the Center for Science in the Public Interest; and the State of New York Department of Law, on behalf of the Attorneys General of the States of California, Iowa, Minnesota, Missouri, New York, Texas, and Wisconsin.

To obtain further information on the six pertinent sections beyond that which was submitted in response to the May 30, 1991, public meeting, the IOM held several panel discussions with individuals knowledgeable about the congressional intent underlying section 6(b) of the 1990 amendments and the concerns of State and local regulators, industry, and consumers about the impact of Federal preemption. The IOM

also gathered information directly from FDA, the States, and local jurisdictions.

The information collected from the public meeting, the formal comments to the public meeting notice, panel discussions, and the informal comments received by the IOM form the basis upon which the IOM developed its report and recommendations. A written transcript of the May 30, 1991, public meeting, formal comments to the public meeting notice, and the information collected by the IOM upon its own initiative, from the States, local jurisdictions, FDA, and other sources are on file at the Dockets Management Branch (address above).

At the time of its May 8, 1991, announcement of the IOM's public meeting, FDA did not expect that the delay in the completion of the report would affect the publication by August 8, 1991, of proposed lists of the sections of the act in question that are, and that are not, adequately being implemented by regulation, as required under section 6(b)(3)(A) of the 1990 amendments. Subsequently, however, the IOM informed FDA that the magnitude and importance of the undertaking, as well as the complexity of the issues involved in the study, would further delay the completion of the study until the first part of 1992.

Citing the intent of Congress in enacting section 6(b) of the 1990 amendments and the belief that publishing the proposed lists without benefit of the IOM's report and recommendations would be inappropriate, FDA announced in the **Federal Register** of October 24, 1991 (56 FR 55130), its intention to publish in the **Federal Register** in early 1992 a proposed list determining whether or not the misbranding sections that are the subject of this rulemaking (sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the act) are adequately being implemented by regulation.

On April 23, 1992, the IOM submitted to FDA the final draft manuscript of the report of its findings. This report is entitled "Food Labeling: Toward National Uniformity" (hereinafter referred to as the IOM report). The IOM report published in June 1992. Copies of the final draft manuscript and the published IOM report are on file with the Dockets Management Branch (address above). Copies of the IOM report may be purchased from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418.

II. The IOM Report

A. Introduction

Consistent with section 6(b) of the 1990 amendments, the charge to the IOM was to conduct a study: (1) Of State and local laws that require the labeling of food that is of the type required by sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the act; and (2) of those sections of the act and the regulations issued by FDA to enforce them, to determine whether the sections and the regulations adequately implement the purposes of those sections. The IOM interpreted its charge broadly, and while FDA is evaluating the IOM report, the agency is in no way bound to ultimately follow any of the IOM's recommendations.

B. The Criteria for Determining Adequate Implementation

The IOM report states that it used the following criteria in determining whether the six misbranding sections under review are being adequately implemented by FDA:

(1) A definition of "adequate" as "equal to, proportionate to, or fully sufficient for a specified or implied requirement" was used as a foundation for decisions.

(2) The intent of any section and of any regulation was a consideration. The IOM also considered the effect of the use of sections 403(a)(1), 403(e), and 403(i)(2) in conjunction with the six provisions that were the subject of the study.

(3) The absence of an FDA implementing regulation did not lead to an automatic conclusion that implementation is inadequate.

(4) The level of enforcement was not a consideration in determining adequacy of implementation.

(5) The strictest requirement, whether Federal, State, or local, was not automatically recommended for adoption as the national standard.

(6) The IOM limited its study of the six sections of the act to the implementing regulations for which rulemaking had been completed and to any published advisory opinions, as defined in 21 CFR 10.85 on these sections.

(7) In reviewing State and local requirements and their relationship to the six provisions of the act under study, the IOM viewed its own jurisdiction broadly to ensure a fair, balanced review of the materials provided by State and local officials and by other interested persons.

The IOM report also states that all State requirements assembled were reviewed, evaluated, and categorized according to the following criteria:

(1) Whether an adequate Federal regulation exists on the issue.

(2) Whether the agency has not adequately implemented the act in the area of concern represented by the State requirement. On this issue, the IOM considered a State requirement's national importance and its national prominence as indicated by the frequency of attention to the issue by the States.

(3) Whether the State requirement meets a demonstrated local need.

(4) Whether the State requirement provides only economic protection to the industry, is without consumer benefit, and has no other redeeming virtue.

The IOM, in determining the adequacy of FDA's implementation of the six misbranding sections, focused its work on that which was outlined within the specific language of the 1990 amendments. In approaching the task of defining "adequate implementation," the IOM examined the Congressional Record, sought guidance from persons intimately involved in the development of section 6(b) of the 1990 amendments, considered the views of the State and local governments and industry and consumer groups, examined sources other than Federal regulations (e.g., FDA advisory opinions and compliance policy guides), and reviewed State laws and regulations as indicators of the adequacy of FDA implementation of the six misbranding sections of the act subject to the IOM's review.

The IOM then assessed the strength of the overall combined evidence gathered through its public meeting, written submissions in response to the public meeting notice, panel discussions at the meetings it held, review of the Congressional Record, requests to the States, and communications with several organizations representing food and drug officials. The IOM's conclusions as to the adequacy of FDA's implementation of the six misbranding sections subject to its review reflect the strength and preponderance of the evidence as well as the IOM's evaluation of Congress' intent in implementing section 6(b) of the 1990 amendments.

C. The IOM's Recommendations

The IOM's recommendations as to the adequacy of the six misbranding sections (sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k)) under study are as follows:

Section 403(b)—The IOM perceived no major differences among the views of States, industry, and consumer groups on FDA implementation of section 403(b), which was perceived as adequate. Accordingly, the IOM concluded that section 403(b) is adequately implemented.

Section 403(d)—The IOM considered deceptive or slack filled containers a matter of national importance and concluded that the perception on the part of State officials and consumer groups that there is a problem supports

that conclusion. Accordingly, the IOM concluded that section 403(d) is not adequately implemented.

Section 403(f)—The IOM concluded that FDA regulations in 21 CFR Part 101 utilize a balance of location, continuity, size, and ink color to establish standard and predictable formats for food labeling. Accordingly, the IOM concluded that section 403(f) is adequately implemented.

Section 403(h)—The IOM concluded that FDA regulations in 21 CFR 130.14 establish adequate procedures for labeling products that fail to meet standard of quality and fill of container. Rarely, the IOM noted, are products found that contain the required statements set forth under section 403(h). This is, the IOM further noted, because of both the imparted inferior connotation of a product with crepe labeling and the link with standards of identity and fill for many products. Accordingly, the IOM concluded that section 403(h) is adequately implemented.

Section 403(i)(1)—The IOM concluded that FDA regulations in 21 CFR Part 102 establish adequate procedures for the development and application of common or usual names under section 403(i)(1). Accordingly, the IOM concluded that section 403(i)(1) is adequately implemented.

Section 403(k)—The IOM concluded that FDA regulations in 21 CFR 101.22, along with the proposed regulatory changes in response to the 1990 amendments (56 FR 28592, June 21, 1991), establish or will establish adequate rules on declaration of flavors, colorings, and preservatives. Accordingly, the IOM concluded that section 403(k) is adequately implemented.

III. Proposed Lists

The agency has reviewed the IOM recommendations related to the adequacy of Federal implementation of sections 403(b), 403(d), 403(f), 403(h), 403(i)(1), and 403(k) of the act. The IOM recommended finding that all but section 403(d) (misleading container) are adequately being implemented. Based on these recommendations, FDA is proposing, in accordance with section 6(b)(3)(A) of the 1990 amendments, to find that the following sections are adequately implemented by FDA's regulations: sections 403(b), 403(f), 403(h), 403(i)(1), and 403(k) of the act. Based upon the same considerations, FDA is also proposing to find that section 403(d) of the act on misleading containers is not being adequately implemented by FDA's regulations.

The agency is publishing these proposed lists based on the recommendations of the IOM. However, because the IOM report was published late, FDA has not yet fully evaluated the IOM recommendations. Thus, the agency is publishing these proposed lists for public comment while it fully evaluates the IOM recommendations. Later, FDA will publish final lists that will be based on its complete analysis of the IOM report as well as the comments it receives on these proposed lists and other relevant information.

IV. Comments

Interested persons may, on or before September 28, 1992, submit to the Dockets Management Branch (address above) written comments regarding these proposed lists. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with section 6(b)(3) of the 1990 amendments, FDA must issue by November 8, 1992, its final lists of the sections of the act that are, and that are not, being adequately implemented. If the agency does not issue the final lists by November 8, 1992, the 1990 amendments provide that the proposed lists shall be considered the final lists, and preemption will become effective on November 8, 1992, for those sections found to be adequately implemented in the proposed lists. The agency is advising that it will not grant any requests for extension of the comment period beyond September 28, 1992.

Under the 1990 amendments, FDA must propose revisions by November 8, 1992, and issue final revisions by May 8, 1993, to any regulations found to be inadequately implemented (section 6(b)(3) of the 1990 amendments). The preemptive effect of those sections that have not been adequately implemented will become effective on the effective date of the revisions to the regulations that were initially found to be inadequate. If the agency does not issue final revisions by May 8, 1993, the proposed revisions will be considered the final revisions under the 1990 amendments, and preemption will become effective on the effective date of the rules that, on May 8, 1993, are considered final rules.

Dated: June 18, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92-17693 Filed 7-27-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Availability of Department of the Navy Records and Publication of Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is publishing a proposed rule to delete one exemption rule and add one exemption rule to 32 CFR 701.119. The new specific exemption rule is proposed to be added to existing Navy exemption rules for exempt systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed record system to be exempt is identified as N05520-5, entitled "Navy Joint Adjudication and Clearance Systems (NJACS)".

DATES: Comments must be received on or before August 27, 1992, to be considered by this agency.

ADDRESSES: Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwen Aitken (703) 614-2004.

SUPPLEMENTARY INFORMATION: Executive Order 12291. The Director, Administration and Management, has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management, certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management, certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 701

Privacy.

For reasons set forth in the preamble, 32 CFR 701.119 is amended as follows:

1. The authority citation for 32 CFR part 701, subpart G, continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 701.119 is proposed to be amended by removing paragraphs (b)(4) and (b)(5), redesignating paragraphs (b)(6) and (b)(7) as (b)(4) and (b)(5); and adding a new paragraph (e)(2) as follows;

§ 701.119 Exempt Navy record systems.

* * * * *

(b) *Bureau of Naval Personnel* * * *

(e) *Naval Investigative Service*—

* * *

(2) *ID–N05520–5*

System Name. Navy Joint Adjudication and Clearance Systems (NJACS).

Exemption. Portions of this system of records may be exempt from the following subsections of 5 U.S.C. 552a(d)(1–5).

Authority. 5 U.S.C. 552a(k)(1) and (k)(5).

Reasons. Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

* * * * *

Dated: July 15, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–17111 Filed 7–27–92; 8:45 am]

BILLING CODE 3810–01

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–92–015]

Drawbridge Operation Regulations; Bear Creek, Dundalk and Sparrows Point, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations that govern the operation of the Peninsula Parkway Bridge across Bear Creek, mile 2.1, between Dundalk and Sparrows Point, Maryland, by eliminating bridge openings between the hours of 10 p.m. and 6 a.m. year round. If this change is approved, existing advance notice provision for bridge openings from April 16 through November 15, from 12 midnight to 8 a.m., except Saturdays, Sundays, and Federal and State holidays will be discontinued. This change is being considered because of the infrequent number of requests for draw openings during the nighttime. This action would relieve the bridge owner of the burden of having a bridge tender available 24 hours a day, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before September 11, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written comments or data. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed based on comments and data received.

Drafting Information

The drafters of this notice are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Discussion of Proposed Rule

The Baltimore County, Department of Public Works has requested that nighttime openings of the Peninsula Parkway Bridge across Bear Creek, mile 2.1, between Dundalk and Sparrows Point, Maryland, be eliminated due to the low number of nighttime openings requested. The Coast Guard is proposing to restrict the passage of vessels between the hours of 10 p.m. and 6 a.m. year round, and also to discontinue the existing provision requiring at least one half hour notice for the bridge to open from 12 midnight to 8 a.m., from April 16 through November 15. The bridge will continue to open on signal between the hours of 6 a.m. and 10 p.m. year round.

33 CFR 117.543(a) currently pertains to the opening of this bridge as well as the Baltimore County Revenue Authority (Dundalk Avenue) highway toll bridge at mile 1.5. The Baltimore County Revenue Authority (Dundalk Avenue) highway toll bridge has been dismantled and removed. The proposed rule will eliminate that part of the existing rule pertaining to the Baltimore County Revenue Authority Bridge, and only pertain to the operation of the Peninsula Parkway Bridge.

According to the drawlogs for the Peninsula Parkway Bridge, the waterway is used entirely by recreational vessels. The drawlogs recorded between the hours of 10 p.m. and 6 a.m., from June 12, 1988 through October 20, 1991, showed that the number of vessels requiring bridge openings during this period decreased from one vessel per night to one vessel every other night.

As indicated in the drawlogs, eliminating openings during the nighttime hours would have a minimal impact on the recreational users of this waterway since requests for openings during these hours are so infrequent.

Regulatory Evaluation

This propose rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation

will be non-existent, since the waterway is used entirely by recreational vessels. Since the economic impact of this proposal is expected to be so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with this proposal for permanent regulations.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This proposed rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 117 continues to read as follows.

Authority: 33 U.S.C. 499 CFR 1.46; 33 CFR 1.05.1(g).

2. Paragraph (a) of section 117.543 is revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.543 Bear Creek.

(a) The draw of the Peninsula Parkway bridge, mile 2.1, between Dundalk and Sparrows Point, shall open on signal; except that, from 10 p.m. to 6 a.m. the bridge need not open.

* * * * *

Dated: July 8, 1992.

W. T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92-17788 Filed 7-27-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 155

[CGD 91-034]

RIN 2155-AD81

Vessel Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings of the Oil Spill Response Plan Negotiated Rulemaking Committee.

SUMMARY: As required by the Federal Advisory Committee Act (FACA), the Coast Guard is giving notice of the schedule of open meetings of the Oil Spill Response Plan Negotiated Rulemaking Committee to complete review of issues related to vessel oil spill response plans.

DATES: The meetings will begin on August 18, 1992 from 9 a.m. to 5 p.m. The meetings will continue as necessary on August 19–21 beginning at 8;30 a.m.

ADDRESSES: The meetings will be held in room 4436 at DOT Headquarters, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Commander Glenn Wiltshire, Project Manager, Oil Pollution Act of 1990 Staff (G–MS–1), at (202) 267–6739 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On January 10, 1992, the Coast Guard published a notice of establishment of an advisory committee for regulatory negotiation and notice of meetings (57 FR 1139). The notice announced the establishment of the negotiated rulemaking committee to develop a report, including a recommended proposal and final rule, concerning vessel oil spill response plans and carriage of discharge-removal equipment. The Committee completed its initial series of meetings on March 27, 1992 and provided a report with recommendations. The recommendations related to vessel response plans were incorporated in a notice of proposed rulemaking (NPRM) published in the June 19, 1992 **Federal Register** (57 FR 27514).

The Committee will reconvene August 18, 1992 to review comments received on the NPRM that apply to its original recommendations, and to make its recommendations for the final rule. If necessary, the Committee will meet daily through August 21, 1992 to complete its business.

All committee meetings will be open to the public, subject to space availability. In accordance with the requirements of FACA, the Coast Guard will keep minutes of the committee meetings. These minutes will be placed in the public docket (CGD 91–034) for this rulemaking and will be available for public inspection and copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

Dated: July 17, 1992.

R.C. North,

Captain, U.S. Coast Guard, Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-17787 Filed 7-27-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-4157-2]

Vehicle Inspection and Maintenance Requirements for State Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of regulatory text, location of public hearing site and correction of proposed rulemaking.

SUMMARY: This notice supplements the Notice of Proposed Rulemaking, Vehicle Inspection and Maintenance Requirements for State Implementation Plans, published in the **Federal Register** on July 13, 1992 (57 FR 31058) and contains the full regulatory text associated with the proposed rule.

DATES: Written comments on this proposed rule will be accepted until August 27, 1992. EPA will conduct a public hearing on this Notice of Proposed Rulemaking on August, 12 and 13, 1992. The hearing will convene at 9 a.m. on August 12 and continue until 5 p.m.; and will resume on August 13 and

continue until such time as all testimony has been presented. The official records of the public hearing will close on August 27, 1992, rather than 30 days after the hearing as stated in the original proposal.

ADDRESSES: Written comments on this proposed rule should be submitted (in duplicate if possible) to: Environmental Protection Agency, The Air Docket, Room M-1500 (LE-131), Waterside Mall, Attention: Docket No. A-91-75, 401 M Street SW., Washington, DC 20460.

The public hearing will be held at the Hyatt Regency on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001. Materials relevant to this proposed rulemaking are contained in Docket No. A-91-75. The docket is located on the first floor of the above address and may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Eugene J. Tierney, Office of Mobile Sources, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. (313) 668-4456 or refer to EPA's July 13, 1992 **Federal Register** 40 FR 31058.

TO ARRANGE TO TESTIFY CONTACT: Gretchen Anderson at 313/668-4446.

Dated: July 16, 1992.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble it is proposed to revise part 51 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. **Authority:** 42 U.S.C. 7401(b)(1), 7410, 7470-7479, 7501-7508, and 7601(a).

Appendix N [Reserved]

2. Appendix N of Part 51 is removed and reserved.

3. A new subpart S is added to part 51 to read as follows:

Subpart S—Inspection/Maintenance Program Requirements

Sec.

51.350 Applicability.
51.351 Enhanced I/M performance standard.
51.352 Basic I/M performance standard.
51.353 Network type and program evaluation.
51.354 Adequate tools and resources.
51.355 Test frequency.
51.356 Vehicle coverage.
51.357 Test procedures and standards.
51.358 Test equipment.
51.359 Quality control.
51.360 Waivers.
51.361 Motorist compliance enforcement.
51.362 Motorist compliance enforcement program oversight.
51.363 Quality assurance.
51.364 Enforcement against contractors, stations and inspectors.
51.365 Data collection.
51.366 Data analysis and reporting.
51.367 Inspector training and licensing or certification.
51.368 Public information and consumer protection.
51.369 Improving repair effectiveness.
51.370 Compliance with recall notices.
51.371 On-road testing.
51.372 State implementation plan submissions.
51.373 Implementation deadlines.
Appendix A to Subpart S—Steady-State Test Equipment
Appendix B to Subpart S—Test Procedures
1. Idle Test.
2. Two Speed Idle Test.
3. Loaded Test.
4. Preconditioned Idle Test.
5. Idle Test with Loaded Preconditioning.
6. Preconditioned Two Speed Idle Test.
Appendix C to Subpart S—Steady-State Short Test Standards
1. Short Test Standards for 1981 and Later Model Year Light-duty Vehicles.
2. Short Test Standards for 1981 and Later Model Year Light-duty Trucks.
Appendix D to Subpart S—Steady-State Short Test Equipment
1. Steady-State Test Exhaust Analysis System.
2. Steady-State Test Dynamometer.
Appendix E to Subpart S—Transient Test Driving Cycle

Subpart S—Inspection/Maintenance Program Requirements

§ 51.350 Applicability.

Inspection/maintenance (I/M) programs are required in both ozone and carbon monoxide (CO) nonattainment areas, depending upon population and nonattainment classification or design value.

(a) *Nonattainment Area Classification and Population Criteria.* (1) States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of the area's attainment classification. In the case of a multi-state MSA, enhanced I/M shall be implemented in all ozone transport region portions if the sum of these portions has a population of 100,000 or more, irrespective of the population of the portion in the individual ozone transport region state or area.

(2) Apart from those areas described in paragraph (a)(1) of this section, any area designated as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Census-defined urbanized area population of 200,000 or more, shall implement enhanced I/M in the 1990 Census-defined urbanized area.

(3) Any area designated as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating I/M programs that were part of an approved State Implementation Plan (SIP) as of November 15, 1990 and shall update those programs as necessary to meet the basic I/M program requirements of this regulation. Any such area required by the Clean Air Act, as in effect prior to November 15, 1990, to have an I/M program shall also implement a basic I/M program. More serious ozone or CO areas shall also continue operating existing I/M programs and shall upgrade such programs, as appropriate, pursuant to these regulations.

(4) Any area designated as moderate ozone nonattainment shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area.

(5) Any area outside an ozone transport region designated as serious or worse ozone nonattainment, or moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1990 Census-defined urbanized area population of less than 200,000 shall implement basic I/M in the 1990 Census-defined urbanized area.

(6) If the boundaries of a moderate ozone nonattainment area are changed pursuant to § 107(d)(4)(A) of the Clean Air Act, such that the area includes additional urbanized areas, then a basic I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.

(7) If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to § 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas, if the 1980 Census-defined urban area population is 200,000 or more.

(8) If a marginal ozone nonattainment area is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area. If the area is reclassified to serious or worse, an enhanced I/M program shall be

implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. If less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

(9) If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. If less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

(b) *Extent of Area Coverage.* (1) In an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded.

(2) Outside of ozone transport regions, programs shall nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed as long as an equal number of non-urban residents of the MSA containing the subject urbanized area are included to compensate for the exclusion.

(3) Emission reduction benefits from expanding coverage beyond the minimum required urban area boundaries can be applied toward the reasonable further progress requirements and can be used for offsets, provided the covered vehicles are operated in the nonattainment area, but not toward the enhanced I/M performance standard requirement.

(4) In multi-state urbanized areas outside of ozone transport regions, I/M is required in those states in the subject multi-state area that have an urban area population of 50,000 or more, as defined by the Bureau of Census in 1980. In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement enhanced I/M, any state with a portion of the urbanized area having a population of 50,000 or more shall implement an enhanced program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.

(c) *Requirements After Attainment.* All I/M programs shall provide that the program will remain effective, even if the area is redesignated to attainment status, until the state submits and EPA approves a maintenance plan, under § 175A, which convincingly demonstrates that the area can maintain the relevant standard for the maintenance period without benefit of the emission reductions attributable to the I/M program. The state shall commit to fully implement and enforce the program throughout such period, and, at a minimum, for the purposes of SIP approval, legislation authorizing the program shall not sunset prior to the attainment deadline.

(d) *SIP Requirements.* The SIP shall describe the applicable areas in detail and shall include the legal authority necessary to establish program boundaries.

§ 51.351 Enhanced I/M performance standard.

(a) Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The performance standard shall be established using the following model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls, except as provided in paragraph (e) of this section. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M, the performance standard must be met for both oxides of nitrogen (NO_x) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section.

(1) *Network Type.* Centralized testing.

(2) *Start Date.* For areas with existing I/M programs, 1983. For areas newly subject, 1994.

(3) *Test Frequency.* Annual testing.

(4) *Model Year Coverage.* Testing of 1968 and later vehicles.

(5) *Vehicle Type Coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) *Exhaust Emission Test Type.* Transient mass-emission testing on 1986 and later model year vehicles using the IM240 driving cycle, two-speed testing (as described in appendix B of this subpart) of 1981–1985 vehicles, and idle testing (as described in appendix B of this subpart) of pre-1981 vehicles is assumed.

(7) *Emission Standards.* (i) Emission standards for 1986 through 1993 model year light duty vehicles, and 1994 and 1995 light-duty vehicles not meeting Tier 1 emission standards, of 0.80 gpm hydrocarbons (HC), 15 gpm CO, and 2.0 gpm NO_x;

(ii) Emission standards for 1986 through 1993 light duty trucks less than 6,000 pounds gross vehicle weight rating (GVWR), and 1994 and 1995 trucks not meeting Tier 1 emission standards, of 0.80 gpm HC, 15 gpm CO, and 2.5 gpm NO_x;

(iii) Emission standards for 1986 through 1993 light duty trucks greater than 6,000 pounds GVWR, and 1994 and 1995 trucks not meeting Tier 1 emission standards, of 0.80 gpm HC, 15 gpm CO, and 3.0 gpm NO_x;

(iv) Emission standards for 1994 and later light duty vehicles meeting Tier 1 emission standards of 0.70 gpm non-methane hydrocarbons (NMHC), 15 gpm CO, and 1.4 gpm NO_x;

(v) Emission standards for 1994 and later light duty trucks under 6,000 pounds GVWR and meeting Tier 1 emission standards of 0.70 gpm NMHC, 15 gpm CO, and 2.0 gpm NO_x;

(vi) Emission standards for 1994 and later light duty trucks greater than 6,000 pounds GVWR and meeting Tier 1 emission standards of 0.80 gpm NMHC, 15 gpm CO, and 2.5 gpm NO_x;

(vii) Emission standards for 1981–1985 model year vehicles of 1.2% CO, and 220 ppm HC for the idle, two-speed tests and loaded steady-state tests (as described in appendix B of this subpart); and

(viii) Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO_2) on vehicles subject to a steady-state test (as described in appendix B of this subpart).

(8) *Emission Control Device Inspections.* Visual inspection of the catalyst and fuel inlet restrictor on all 1984 and later model year vehicles.

(9) *Evaporative System Function Checks.* Evaporative system integrity (pressure) test on 1983 and later model year vehicles and an evaporative system transient purge test on 1986 and later model year vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver Rate.* A 1% waiver rate, as a percentage of failed vehicles.

(12) *Compliance Rate.* A 98% compliance rate.

(13) *Evaluation Date.* Enhanced I/M programs shall be shown to obtain the

same or lower emission levels as the model program by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_x shall be the same as for ozone.

(b) *On-road Testing.* The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population as a supplement to the periodic inspection required in paragraph (a) of this section. Specific requirements are listed in § 51.371 of this subpart.

(c) *On-board Diagnostics (OBD).* The performance standard includes testing of the vehicle's on-board diagnostics system for vehicles certified to comply with requirements for such capability; however, regulations governing the design of OBD systems are not yet final. EPA will revise this section to establish credits and requirements for OBD testing when OBD regulations are final.

(d) *Modeling Requirements.* Equivalency of the emission levels which will be achieved by the I/M program design in the SIP to those of the model program described in this section shall be demonstrated using the most current version of EPA's mobile source emission model or an alternative approved by the Administrator using EPA guidance to aid in the estimation of input parameters. If the Administrator finds, under section 182(b)(1)(A)(i) of the Act pertaining to reasonable further progress demonstrations or section 182(f)(1) of the Act pertaining to provisions for major stationary sources, that NO_x emission reductions are not beneficial in a given ozone nonattainment area, then NO_x emission reductions are not required of the enhanced I/M program.

(e) In the case of El Paso, Texas, providing that its SIP has been approved as meeting the reasonable further progress requirements of the Act and that the Administrator has not determined that a milestone has been missed, the model program inputs shall be as in paragraph (a) of this section, except that the transient and purge tests shall be assumed for 1990 and later model year vehicles two-speed testing on 1981–1989 model year vehicles, idle testing on 1968–1980 model year vehicles and pressure testing on 1971 and later vehicles.

§ 51.352 Basic I/M performance standard.

(a) Basic I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels achieved from highway mobile sources as a result of the program. The performance standard shall be established using the following model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls. Similarly, the emission reduction benefits of the state's program design shall be estimated using the most current version of the EPA mobile source emission model, and shall meet the minimum performance standard both in operation and for SIP approval.

(1) *Network Type.* Centralized testing.

(2) *Start Date.* 1983.

(3) *Test Frequency.* Annual testing.

(4) *Model Year Coverage.* Testing of 1968 and later model year vehicles.

(5) *Vehicle Type Coverage.* Light duty vehicles.

(6) *Exhaust Emission Test Type.* Idle test.

(7) *Emission Standards.* No weaker than specified in 40 CFR part 85, subpart W.

(8) *Emission Control Device Inspections.* None.

(9) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(10) *Waiver Rate.* A 0% waiver rate.

(11) *Compliance Rate.* A 100% compliance rate.

(12) *Evaluation Date.* Basic I/M programs shall be shown to obtain the same or lower emission levels as the model inputs by 1997 for ozone nonattainment areas and 1996 for CO nonattainment areas; and for serious or worse ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter.

(b) *On-board Diagnostics.* The performance standard includes testing of the vehicle's on-board diagnostics system for vehicles certified to comply with requirements for such capability; however, regulations governing the design of OBD systems are not yet final. EPA will revise this section to establish credits and requirements for OBD testing when OBD regulations are final.

(c) *Modeling Requirements.* Equivalency of emission levels which will be achieved by the I/M program design in the SIP to those of the model program described in this section shall be demonstrated using the most current version of EPA's mobile source emission model and EPA guidance on the estimation of input parameters. Areas required to implement basic I/M programs shall meet the performance standard for the pollutants which cause them to be subject to basic requirements. Areas subject as a result of ozone nonattainment shall meet the standard for VOCs.

§ 51.353 Network type and program evaluation.

Enhanced I/M programs shall be operated in a centralized test-only format, unless the state can demonstrate that a decentralized test-and-repair program would be equally effective in achieving the enhanced I/M performance standard. Basic I/M programs can be either centralized or decentralized at the state's discretion, but a decentralized program shall be demonstrated to achieve the same emission reduction as the program described in § 51.352 of this subpart.

(a) *Presumptive Equivalency.* A network consisting of stations that perform official I/M testing and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services (except as provided in § 51.369(b)(1) of this subpart) shall be considered equivalent to a centralized, test-only system.

(b) *Provisional Equivalency.* (1) Enhanced I/M areas may choose to implement a decentralized, test-and-repair network on a trial basis and shall be granted provisional equivalency if the state submits a plan meeting the requirements of this paragraph.

(2) *Test and repair evaluation.* The SIP include a commitment to submit to EPA an assessment of the program based on the evaluation testing required in paragraph (d) of this section, that determines whether the program is meeting the performance standard. The commitment schedule shall provide sufficient time for EPA to make an equivalency determination and, if necessary, for the state to implement the back-up program required in paragraph (b)(3) of this section.

(3) *Back-up Program.* The SIP shall include a plan to implement a back-up program consisting of a centralized, test-only network with transient emission testing, or equivalent. The plan shall include legal authority signed by the Governor and certified by the Attorney General, fully adopted regulations, and any other components needed to implement the back-up program. Implementation of the back-up program shall be automatic unless the Administrator makes a finding in the **Federal Register** that the test-and-repair system will meet the performance standard by November 15, 1999, or can do so with program design changes that

are normal I/M input parameters to the EPA emission factor model, or that accelerate the retirement of older, high emitting vehicles. The back-up program shall be implemented no later than January 1999 in an annual program, or January 1998 in a biennial program.

(4) *Reasonable Further Progress.*

For the purposes of satisfying the requirements of § 182(b)(1)(A)(i) and § 182(c)(2) of the Clean Air Act, relating to Reasonable Further Progress requirements, the credit claimed for a test-and-repair program shall be in accordance with paragraph (c) of this section. Credit for the effectiveness of the back-up program may be claimed beginning with scheduled implementation. Credit adjustments may occur at any time based on the results of the program evaluation required in paragraph (d) of this section.

(c) *Case-by-Case Equivalency.* (1) Credits for test-and-repair networks, i.e., those not meeting the requirements of paragraph (a) of this section, are assumed to be 50% less than those for a test-only network for the tailpipe emission test, purge test, evaporative system integrity test, catalyst check, and gas cap check; and 75% less for the evaporative canister checks, PCV check, and air system checks. Smaller reductions in credits for the various test protocols may be claimed if a state can demonstrate to the satisfaction of the Administrator that based on past performance with the specific test-type and inspection standards employed, its test-and-repair system will exceed these levels. At a minimum, such a demonstration shall include:

(i) Surveys that assess the effectiveness of repairs performed on vehicles that failed the tailpipe emission test and evaporative system tests;

(ii) In programs including tampering checks, measurement of actual tampering rates, their change over time, and the change attributable to finding and fixing such tampering as opposed to deterrence effects; and

(iii) The results of undercover surveys of inspector effectiveness as it relates to identifying vehicles that need repair.

(2) In the case of hybrid systems including both test-only and test-and-repair facilities, full credit shall apply to the portion of the fleet initially tested and subsequently retested at a test-only facility meeting the requirements of paragraph (a) of this section, and to the portion of the fleet initially tested and failed at a test-and-repair facility but subsequently passing a retest at a test-only facility meeting those same requirements. The credit loss assumptions described in paragraph (c) of this section shall apply to the portion of the fleet initially tested at a test-only facility and subsequently retested at a test-and-repair facility, to the portion of the fleet initially passed at a test-and-repair facility, and to the portion initially failed at a test-only facility and retested at a test-and-repair facility.

(3) Areas operating test-and-repair networks or hybrid networks may, in the future, claim greater effectiveness than described in paragraph (c)(1) of this section if a demonstration of greater effectiveness is made to the satisfaction of the Administrator using the program evaluation protocol described in paragraph (d) of this section.

(d) *Program Evaluation.* I/M programs shall include an ongoing evaluation to qualify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Clean Air Act and this regulation.

(1) The state shall report the results of the program evaluation on a biennial basis, starting two years after the initial start date of mandatory testing as required in § 51.373 of this subpart, in addition to that required in paragraph (b) of this section (for enhanced test-and-repair programs.

(2) The evaluation shall be used to establish actual emission reductions achieved for the purposes of satisfying the requirements of § 182(g)(1) and § 182(g)(2) of the Clean Air Act, relating to Reductions in Emissions and Compliance Demonstration.

(3) The evaluation program shall consist, at a minimum, of those items described in paragraph (c)(1) of this section and mass emission test data using the procedure specified in § 51.357(a)(11) of this subpart, or any other procedure approved as equivalent, and evaporative system checks for model years subject to those procedures. The test data shall be obtained from a representative, random sample, taken annually at the time of initial inspection (before repair), of at least 0.1 percent of the vehicles subject to inspection in a given year which shall receive a state administered or monitored IM240 mass emission test or equivalent, as specified in this paragraph, at the time the initial test is due.

(4) The program evaluation test data shall be used to calculate a local fleet emission factor that shall be compared to the emission factor projection in the SIP, as updated using the most recent version of the EPA emission factor model. If the comparison shows that the emission factor target specified in § 51.351 or § 51.352, as applicable, has not been achieved, then the state is required to take corrective action. Corrective action shall include whatever measures necessary to achieve the target, in accordance with paragraph (b)(3) of this section.

(e) *SIP Requirements.* (1) The SIP shall include a detailed description of the network to be employed, the required legal authority, and, in the case of areas making claims under paragraph (c) of this section, the required demonstration.

(2) The SIP shall include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

(3) The SIP for enhanced I/M areas that are implementing a test-and-repair network shall also address all of the requirements of paragraph (b) of this section. The SIP shall demonstrate that there is adequate time to complete the evaluation, to submit the data to EPA for review, to allow EPA to take formal action, and to implement the back-up program to meet the performance standard by the November 15, 1999 deadline.

§ 51.354 Adequate tools and resources.

(a) *Administrative Resources.* The program shall maintain the administrative resources necessary to perform all of the program functions including quality assurance, data analysis and reporting, and the holding of hearings and adjudication of cases. A portion of the test fee or a separately assessed per vehicle fee shall be collected, placed in a dedicated fund and retained, to be used to finance program oversight, management, and capital expenditures. Alternatives to this approach shall be acceptable if the state can demonstrate that adequate funding of the program can be maintained in some other fashion. Reliance on future uncommitted annual or biennial appropriations from the state or local General Fund is not acceptable.

(b) *Personnel.* The program shall employ sufficient personnel to effectively carry out the duties related to the program, including administrative audits, inspector audits, data analysis, program oversight, program evaluation, public education and assistance, and enforcement against stations and inspectors as well as against motorists who are out of compliance with program regulations and requirements.

(c) *Equipment.* The program shall possess equipment necessary to achieve the objectives of the program and meet program requirements, including a steady supply of vehicles for covert auditing, test equipment and facilities

for program evaluation, and computers capable of data processing, analysis, and reporting. Equipment or equivalent services may be contractor supplied or owned by the state or local authority.

(d) *SIP Requirements.* The SIP shall include a description of the resources that will be used for program operation, and discuss how the performance standard will be met.

(1) The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in § 51.366 of this subpart.

(2) The SIP shall include a detailed description of personnel resources. The plan shall include the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

§ 51.355 Test frequency.

The performance standards for I/M programs assume an annual test frequency; other schedules may be approved if the required emission reductions are achieved. The SIP shall describe the test schedule in detail, including test year selection scheme if testing is other than annual. The SIP shall include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

§ 51.356 Vehicle coverage.

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR. The standard for basic I/M programs does not include light duty trucks. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered, garaged, or primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles.

(a) *Subject vehicles.* (1) All vehicles of a covered model year and vehicle type shall be tested according to the applicable test schedule, including leased vehicles whose registration or titling is in the name of an equity owner other than the lessee or user.

(2) All subject fleet vehicles shall be inspected. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles. If all vehicles in a particular fleet are tested during one part of the cycle, then the quality control requirements shall be met during the time of testing only. Any vehicle available for rent in the I/M area or for use in the I/M area shall be subject.

(3) Subject vehicles which are registered in the program area but are primarily operated in another I/M area shall be tested, either in the area of primary operation, if the program in that area is willing to test the vehicle and provide compliance documentation, or in the area of registration. Alternate schedules may be established to permit convenient testing of these vehicles.

(4) Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area. The installation shall use one of the following methods to establish proof of compliance:

(i) Presentation of a valid certificate of compliance from the I/M program.

(ii) Presentation of proof of vehicle registration within the geographic area covered by the I/M program, except for any program whose enforcement is not through registration denial.

(iii) Another method approved by the state I/M program administrator.

(5) Special exemptions may be permitted for certain subject vehicles provided a demonstration is made that the performance standard will be met.

(b) *SIP Requirements.* (1) The SIP shall include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area.

(2) The SIP shall include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions shall be accounted for in the emission reduction analysis.

(3) The SIP shall include the legal authority necessary to implement and enforce the vehicle coverage requirement.

§ 51.357 Test procedures and standards.

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program.

(a) *Test Procedure Requirements.* Emission tests and functional tests shall be conducted according to good engineering practices to assure test accuracy.

(1) Initial tests (i.e., those occurring for the first time in a test cycle) shall be performed without repair or adjustment at the inspection facility, prior to the test.

(2) The vehicle owner or driver shall have access to the test area such that observation of the entire official inspection process on the vehicle is permitted. Such access may be limited but shall in no way prevent full observation;

(3) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition or of fast pass/fail algorithms.

(4) Tests involving measurement shall be performed with program-approved equipment that has been calibrated according to the quality control procedures contained in Appendix A to this subpart.

(5) Vehicles shall be rejected from testing if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

(6) Vehicles shall be retested after repair for any portion of the inspection that is failed on the previous test to determine if repairs were effective. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest.

(7) *Steady-State Testing.* Steady-state tests shall be performed in accordance with the procedures contained in appendix B to this subpart.

(8) *Emission Control Device Inspection.* Visual emission control device checks shall be performed through direct observation or through indirect observation using a mirror, video camera or other visual aid. These inspections shall include a determination as to whether each subject device is present and properly connected and whether it is the correct type for the certified vehicle configuration.

(9) *Evaporative System Purge Test Procedure.* The purge test procedure shall consist of measuring the total purge flow (in standard liters) occurring in the vehicle's evaporative system during the transient dynamometer emission test specified in paragraph (a)(11) of this section. The purge flow measurement system shall be connected to the purge portion of the evaporative

system in series between the canister and the engine, preferably near the canister. The inspector shall be responsible for ensuring that all items that are disconnected in the conduct of the test procedure are properly re-connected at the conclusion of the test procedure. Alternative procedures may be used if they are shown to be equivalent or better to the satisfaction of the Administrator. Any damage done to the evaporative emission control system during this test shall be repaired at the expense of the inspection facility.

(10) *Evaporative System Integrity Test Procedure.* The test sequence shall consist of the following steps:

(i) Test equipment shall be connected to the fuel tank canister hose at the canister end. The gas cap shall be checked to ensure that it is properly, but not excessively tightened, and shall be tightened if necessary.

(ii) The system shall be pressurized to 14 ±0.5 inches of water without exceeding 26 inches of water system pressure.

(iii) Close off the pressure source, seal the evaporative system and monitor pressure decay for two minutes.

(iv) Remove the gas cap after two minutes and monitor for a sudden pressure drop, indicating that the fuel tank was pressurized.

(v) The inspector shall be responsible for ensuring that all items that are disconnected in the conduct of the test procedure are properly re-connected at the conclusions of the test procedure.

(vi) Alternative procedures may be used if they are shown to be equivalent or better to the satisfaction of the Administrator. Any damage done to the evaporative emission control system during this test shall be repaired at the expense of the inspection facility.

(11) *Transient Emission Test.* The transient emission test shall consist of 240 seconds of mass emission measurement using a constant volume sampler while the vehicle is driven through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The driving cycle shall include acceleration, deceleration, and idle operating modes as specified in Appendix E to this subpart. The 240 second sequence may be ended earlier using fast pass or fast fail algorithms and multiple pass/fail algorithms may be used during the test cycle to eliminate false failures. The transient test procedure, including algorithms and other procedural details, shall be approved by EPA prior to use in an I/M program.

(12) *On-Board Diagnostic Checks.* (Reserved).

(13) *Approval of Alternative Tests.* Alternative test procedures may be approved if the Administrator finds that—

(i) Such procedures are in accordance with good engineering practice, including errors of commission (at the same cutpoint level) no higher than the tests they would replace;

(ii) Such procedures show a correlation with the Federal Test Procedure (with respect to their ability to detach high emitting vehicles and ensure their effective repair) equal to or better than the tests they would replace; and

(iii) Such procedures would produce equivalent emission reductions in combination with other program elements.

(b) *Test Standards.* (1) *Emissions Standards.* HC, CO, and CO + CO_2 emission standards shall be applicable to all vehicles subject to the program and repairs shall be required for failure of any standard regardless of the attainment status of the area. NO_x emission standards shall be applied to vehicles subject to a transient test in ozone nonattainment areas and in an ozone transport region, unless a waiver of NO_x controls is provided to the state under § 51.351(d) of this subpart.

(i) *Steady-State Short Tests.* The steady-state short test emission standards for 1981 and later model year light duty vehicles and light duty trucks shall be at least as stringent as those in Appendix C to this subpart.

(ii) *Transient Test.* Transient test emission standards shall be established for HC, CO, CO_2, and NO_x for subject vehicles based on model year and vehicle type.

(2) *Visual Equipment Inspection Standards.* (i) Vehicles shall fail visual inspections of subject emission control devices if such devices are part of the original certified configuration and are found to be missing, disconnected, or improperly connected.

(ii) Vehicles shall fail visual inspections of subject emission control devices if such devices are fund to be incorrect for the certified vehicle configuration under inspection. Aftermarket parts, as well as original equipment manufacture parts, may be considered correct if they are of proper design and fit for the certified vehicle configuration. Where an EPA aftermarket approval or self-certification program exists for a particular class of subject parts, vehicles shall fail visual equipment inspections if the part is neither original equipment manufacture nor from an approved or self-certified aftermarket manufacturer.

(3) *Functional Test Standards.* (i) *Evaporative System Integrity Test.* Vehicles shall fail the evaporative system pressure test if the system cannot maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 ± 0.5 inches of water or if no pressure drop is detected when the gas cap is removed as described in paragraph (a)(10)(iv) of this section. Additionally, vehicles shall fail the evaporative test if the canister is missing or obviously damaged, if hoses are missing or obviously disconnected, or if the gas cap is missing.

(ii) *Evaporative Canister Purge Test.* Vehicles with a total purge system flow measuring less than one liter, over the course of the transient test required in paragraph (a)(9) of this section, shall fail the evaporative purge test.

(4) *On-Board Diagnostics Test Standards.* (Reserved.)

(c) *Fast Test Algorithms and Standards.* Special test algorithms and pass/fail algorithms may be employed to reduce test time when the test outcome is predictable with near certainty, if the Administrator approves by letter their equivalency to full procedure testing.

(d) *Applicability.* Vehicles that have been altered from their original certified configuration are to be tested in the same manner as other subject vehicles.

(1) Vehicles with replacement engines shall be subject to the test procedures and standards for the chassis model year, or engine model year, whichever is newer, including visual equipment inspection for all parts that are part of the original certified configuration and part of the normal inspection.

(2) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the program (e.g., from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of paragraph (b)(1) of this section.

(3) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the program determines that the alternatively fueled vehicle configuration would meet the new vehicle standards for that model year without such devices.

(e) *SIP Requirements.* The SIP shall include a description of each test procedure used. The SIP shall incluue

the rule, ordinance or law describing and establishing the test procedures.

§ 51.358 Test equipment.

Computerized test systems are required for performing any measurement on subject vehicles.

(a) *Performance Features of Computerized Test Systems.* The test equipment shall be certified by the program to meet the requirements contained in appendix D to this subpart, and newly acquired systems shall be subjected to acceptance test procedures to ensure compliance with program specifications.

(1) Emission test equipment shall be capable of testing all subject vehicles and shall be updated from time to time to accommodate new technology vehicles as well as changes to the program.

(2) At a minimum, emission test equipment:

(i) Shall be automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(ii) Shall be secure from tampering and/or abuse;

(iii) Shall be based upon written specifications; and

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles.

(3) The vehicle owner shall be provided with a computer-generated record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record. The test report shall include:

(i) A vehicle description, including license plate number, vehicle identification number, and odometer reading;

(ii) The date and time of test;

(iii) The name or identification number of the individual(s) performing the tests and the location of the test station and lane;

(iv) The type of tests performed, including emission tests, visual checks for the presence of emission control components, and functional, evaporative system checks;

(v) The applicable test standards;

(vi) The test results, including exhaust concentrations and pass/fail results for each mode measured, pass/fail results for evaporative system checks, and which emission control devices inspected were passed, failed, or not applicable;

(vii) A statement indicating the availability of warranty coverage as required in Section 207 of the Clean Air Act; and

(viii) Certification that tests were performed in accordance with the regulations and, in the case of decentralized programs, the signature of the individual who performed the test.

(ix) For vehicles that fail the tailpipe emission test, information on the possible causes of the specific pattern of high emission levels found during the test.

(b) *Functional Characteristics of Computerized Test Systems.* The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.

(1) The test system shall automatically:

(i) Make a pass/fail decision for all measurements;

(ii) Record test data to an electronic medium;

(iii) Conduct regular self-testing of recording accuracy;

(iv) Perform electrical calibration and system integrity checks before each test, as applicable; and

(v) Initiate system lockouts for:

(A) Tampering with security aspects of the test system;

(B) Failing to conduct or pass periodic calibration or leak checks;

(C) Failing to conduct or pass the constant volume sampler flow rate check (if applicable);

(D) Failing to conduct or pass any of the dynamometer checks, including coast-down, roll speed and roll distance, power absorption capability, and inertia weight selection checks (if applicable);

(E) Failing to conduct or pass the pressure monitoring device check (if applicable);

(F) Failing to conduct or pass the purge flow metering system check (if applicable); and

(G) A full data recording medium or one that does not pass a cyclical redundancy check.

(2) Test systems in enhanced I/M programs shall include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy.

(3) The test system shall insure accurate data collection by limiting, cross-checking, and/or confirming manual data entry.

(4) (Reserved for OBD test equipment requirements)

(c) *SIP Requirements.* The SIP shall include written technical specifications for all test equipment used in the program and shall address each of the above requirements. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

§ 51.359 Quality control.

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

(a) *General Requirements.* (1) The practices described in this section and in Appendix A to this subpart shall be followed, at a minimum.

(2) Preventive maintenance on all inspection equipment shall be performed on a periodic basis, not to exceed 1 month.

(3) Computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any circumstances which require a service representative to work on the equipment.

(b) *Requirements for Steady-State Emissions Testing Equipment.* (1) In high-volume stations (those performing 5000 or more tests per year) leak checks shall be conducted at least every four hours and whenever a change in the sample system is made. In stations performing fewer than 5,000 tests per year, vacuum or gas decay leak checks shall be performed on a daily basis and whenever a change in the sample system is made. Leaks shall be repaired if they are greater than 2%.

(2) Automatic zero and span checks and a hydrocarbon hang up check shall be performed before each test.

(3) In high-volume stations, analyzers shall undergo two point calibrations daily and shall continually compensate for changes in barometric pressure. Calibration shall be checked at least every four hours and the analyzer adjusted if the reading is more than 2% different from the span gas value. In low-volume stations, analyzers shall undergo a two point calibration every 72 hours, unless changes in barometric pressure are compensated for automatically. Calibration points shall include points at less than 20% of scale, and greater than 60% of full scale. If barometric pressure compensation occurs, analyzers shall be calibrated a minimum of once a week.

(4) In high-volume stations, monthly multi-point calibrations shall be performed. Low-volume stations shall perform multi-point calibrations every six months. Calibration points shall be at 20%, 40%, 60%, and 80% of full scale.

(5) For analyzers that use ambient air as zero air, provision shall be made to draw the air from outside the inspection bay or lane in which the analyzer is situated.

(6) The analyzer housing shall be constructed to protect the analyzer

bench and electrical components from ambient temperature and humidity fluctuations that exceed the range of the analyzer's design specifications.

(7) Analyzers shall automatically purge the analytical system after each test.

(c) *Requirements for Transient Exhaust Emission Testing and Evaporative Canister Purge Testing Equipment.* Equipment shall be maintained according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Exceptions to the procedures and the frequency of the following checks may be approved by the Administrator based on a demonstration of equivalent performance.

1. *Dynamometer.* Once per week, the calibration of each dynamometer and each fly wheel shall be checked by a dynamometer coast-down procedure comparable to that in § 86.118–78 of this title. If the difference between the measured coast-down time and the theoretical coast-down time is greater than ±1 second, the testing system shall lock out.

Constant Volume Sampler. (i) The constant volume sampler (CVS) flow calibration shall be checked daily by a procedure that identifies deviations in flow from the true value. Deviations greater than ±4% shall be corrected.

(ii) The sample probe shall be cleaned and checked at least once per month. The main CVS venturi shall be cleaned and checked at least once per year.

(iii) Verification that flow through the sample probe is at the design proportion to the flow in the mixing stream shall be done daily. Deviations greater than the design tolerances shall be corrected.

(3) *Analyzer System.* (1) *Calibration Checks.* (A) Upon initial operation, calibration curves shall be generated for each analyzer. The calibration curve shall consider the entire range of the analyzer as one curve. At least 6 calibration points plus zero shall be used in the lower portion of the range corresponding to an approximate emission level of 0 to 2 gpm HC, 0 to 30 gpm CO, 0 to 3 gpm NO_x, and 0 to 400 gpm CO_2. For the case where a low and a high range analyzer is used, the high range analyzer shall use at least 6 calibration points plus zero in the lower portion of the high range scale corresponding to approximately 100% of the full-scale value of the low range analyzer. For all analyzers, at least 6 calibration points shall also be used in the area of the maximum nonlinearity of non-linear instruments, or the upper one third of the linear instruments. Between the range defined by the emission level and the range defined by linearity, an additional 6 calibration points shall be used. Gas dividers may be used to obtain the intermediate points for the general range classifications specified. The calibration curves generated shall be a polynomial of no greater order than 4th order, and shall fit the data within 0.5% at each calibration point.

(B) For all calibration curves, curve checks, span adjustments, and span checks, the zero gas shall be considered a down-scale reference gas, and the analyzer zero shall be set at the trace concentration value of the specific zero gas used.

(ii) The basic curve shall be checked monthly by the same procedure used to generate the curve, and to the same tolerances.

(iii) On a daily basis prior to vehicle testing-

(A) The curve for each analyzer shall be checked by adjusting the analyzer to correctly read a zero gas and an up-scale span gas, and then by correctly reading a mid-scale span gas within 2% of point. If the analyzer does not read the mid-scale span point within 2%, the system shall lock out. The up-scale span gas shall correspond to the average emission concentration over the test equivalent to approximately 2 gpm HC, 30 gpm CO, 3 gpm NO_x, or 400 gpm CO_2. The mid-scale point shall be approximately one half of the up-scale point; and

(B) After the up-scale span check, each analyzer in a given facility shall analyze a sample bag filed with a random concentration corresponding to approximately 0.5 to 3 times the cut point (in gpm) for the constituent. The value of the random sample may be determined by a gas blender. The deviation in analysis from the sample bag concentration for each analyzer shall be recorded and compared to the historical mean and standard deviation for the analyzers at the facility and at all facilities. Any reading exceeding 3 sigma shall cause the analyzer to lock out.

Ratio of Methane Response = Flame Ionization Detector response in ppmC / ppm methane in cylinder)

(iv) *Spanning Frequency.* The zero and up-scale span point shall be checked, and adjusted if necessary, at 2 hour intervals following the daily mid-scale curve check. If the zero or the up-scale span point drifts by more than 2% for the previous check (except for the first check of the day), the system shall lock out, and corrective action shall be taken to bring the system into compliance.

Spanning Limit-Checks. The tolerance on the adjustment of the up-scale span point is 0.4% of point. A software algorithm to perform the span adjustment and subsequent calibration curve adjustment shall be used. However, software up-scale span adjustments greater than ±10% shall cause the system to lock out, requiring system maintenance.

(iv) *Integrator Checks.* Once per week in each test lane, emissions from a randomly selected vehicle with official test value greater than 60% of the standard (determined retrospectively) shall be simultaneously sampled by the normal integration method and by the bag method. The data from each method shall be put into a historical data base for determining normal and deviant performance for each test lane, facility, and all facilities combined. Specific deviations exceeding ±5% shall require corrective action.

(vii) *Interference.* CO and CO_2 analyzers shall be checked prior to initial service, and on a yearly basis thereafter, for water interference. The specifications and procedures used shall generally comply with either § 86.122–78 or § 86.321–79 of this title.

(viii) *NO_x Converter Check.* The converter efficiency of the NO_2 to NO converter shall be checked on a weekly basis. The check shall generally conform to § 86.123–78 of this title, or EPA MVEL Form 305–01. Equivalent methods may be approved by the Administrator.

(ix) *NO/NO_x Flow Balance.* The flow balance between the NO and NO_x test modes shall be checked weekly. The check may be combined with the NO_x convertor check as illustrated in EPA MVEL Form 305–01.

(x) *Additional Checks.* Additional check shall be performed on the HC, CO, CO_2, and NO_x analyzers according to best engineering practices for the measurement technology used to ensure that measurements meet specified accuracy requirements.

(xi) *System Artifacts (Hang-up).* Prior to each test a comparison shall be made between the background HC reading, the HC reading measured through the sample probe (if different), and the zero gas. Deviations from the zero gas greater than 10 parts per million carbon (ppmC) shall cause the analyzer to lock out.

(xii) *Ambient Background.* The average of the pre-test and post-test ambient background levels shall be compared to the permissible levels of 10 ppmC HC, 20 ppm CO, and 1 ppm NO_x. If the permissible levels are exceeded, the test shall be voided and corrective action taken to lower the ambient background concentrations.

(xiii) *Analytical Gases.* Zero gases shall meet the requirements of § 86.114-79(a)(5). CO, CO_2, and NO_x calibration gases shall be single blends using nitrogen as the diluent. Calibration gas for the flame ionization detector shall be a single blend of propane with a diluent of air.

(4) *Purge Analysis System.* On a daily basis each purge flow meter shall be checked with a simulated purge flow against a reference flow measuring device with performance specifications equal to or better than those specified for the purge meter. The check shall include a mid-scale rate check, and a total flow check between 10 and 20 liters. Deviations greater than ±5% shall be corrected. On a monthly basis, the calibration of purge meters shall be checked for proper rate and total flow with three equally spaced points across the flow rate and the totalized flow range. Deviations exceeding the specified accuracy shall be corrected.

(d) *Requirement for Evaporative System Integrity Test Equipment.* (1) On a weekly basis pressure measurement devices shall be checked against a reference device with performance specifications equal to or better than those specified for the measurement device. Deviations exceeding the performance specifications shall be corrected. Flow measurement devices, if any, shall be checked according to paragraph (c)(4) of this section.

(2) Systems that monitor evaporative system leaks shall be checked for integrity on a daily basis by sealing and pressurizing.

(e) *Document Security.* Measures shall be taken to maintain the security of all documents by which compliance with the inspection requirement is established including, but not limited to inspection certificates, waiver certificates, license plates, license tabs, and stickers.

(1) Compliance documents shall be counterfeit resistant. Such measures as the use of special fonts, water marks, ultra-violet inks, encoded magnetic trips, unique bar-coded identifiers, and difficult to acquire materials may be used to accomplish this requirement.

(2) All inspection certificates, waiver certificates, and stickers shall be printed with a unique serial number and an official program seal.

(3) Measures shall be taken to ensure that compliance documents cannot be stolen or removed without being damaged.

(f) *SIP Requirements.* The SIP shall include a description of specific quality control and record keeping procedures. The SIP shall include the rule, ordinance or law describing and establishing the quality control procedures and requirements.

§ 51.360 Waivers.

The program may allow the issuance of a waiver that allows a motorist to complete the I/M program requirements without meeting the applicable test standards, as long as prescribed criteria are met.

(a) *Waiver Issuance Criteria.* The waiver criteria shall include the following at a minimum.

(1) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in paragraphs (a)(5) and (a)(6) of this section. The operator of a vehicle within the statutory age and mileage coverage under § 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(2) Waivers shall not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in paragraphs (a)(5) and (a)(6) of this section.

(3) Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made to determine if repairs were actually made if, given the nature of the repair, it can be visually confirmed.

(4) Repairs shall be performed by a recognized repair technician in order to qualify for a waiver.

(5) In basic I/M programs, a minimum of $75 for pre-81 vehicles and $200 for 1981 and later vehicles shall be sent in order to qualify for a waiver.

(6) In enhanced I/M programs, the motorist shall make an expenditure of at least $450 in repairs to qualify for a waiver. The I/M program shall provide that the $450 minimum expenditure shall be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

(i) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(ii) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(7) A time extension, not to exceed the period of the inspection frequency, may be granted to obtain needed repairs on a vehicle in the case of hardship when waiver requirements have been met, but the extension may be granted only once and shall be tracked and reported by the program.

(b) *Quality Control of Waiver Issuance.* (1) Enhanced programs shall control waiver issuance and processing by establishing a system of agency-issued waivers. The state may delegate this authority to a single contractor but inspectors in stations and lanes shall not issue waives. Basic programs may permit inspector-issued waivers as long as quality assurance efforts include a comprehensive review of waiver issuance.

(2) The program shall include methods of informing vehicle owners or lessors of potential warranty coverage, and ways to obtain warranty repairs.

(3) The program shall insure that repair receipts are authentic and cannot be revised or reused.

(4) The program shall insure that waivers are only valid for one test cycle.

(5) The program shall track, manage, and account for time extensions or exemptions so that owners or lessors cannot receive or retain a waiver improperly.

(c) *SIP Requirements.* (1) The SIP shall include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate shall be used for estimating emission reduction benefits in the modeling analysis.

(2) The state shall take corrective action if the waiver rate exceeds that committed to in the SIP or revise the SIP and the emission reductions claimed.

(3) The SIP shall describe in detail the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration.

(4) The SIP shall include the necessary legal authority to issue waivers, set and adjust cost limits as required in paragraph (a)(5) of this section, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

§ 51.361 Motorist compliance enforcement.

Compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. An enhanced I/M area may use an existing alternative if it demonstrates that the alternative has been more effective than registration denial. A basic I/M area may use an alternative enforcement mechanism if it demonstrates that the

alternative will be as effective as registration denial. Two other types of enforcement programs may qualify for enhanced I/M programs if demonstrated to be more effective: Sticker-based enforcement programs and computer-matching programs. For newly implementing enhanced areas, including newly subject areas in a state with an I/M program in another part of the state, there is no provision for enforcement alternatives in the Act.

(a) *Registration Denial.* Registration denial enforcement is defined a rejecting an application for initial registration or reregistration of a used vehicle unless the vehicle has complied with the I/M requirement prior to application. In designing its enforcement program, the state shall:

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the program;

(2) Adopt a schedule of testing (either annual or biennial) that clearly determines when a vehicle shall comply prior to registration;

(3) Design a testing certification mechanism (either paper-based or electronic) that shall be used for registration purposes and clearly indicates whether the certification is valid for purposes of registration, including:

(i) Expiration date of the certificate;

(ii) Unambiguous vehicle identification information; and

(iii) Whether the vehicle passed or received in waiver;

(4) Routinely issue citations to motorists with expired or missing license plates and provide for enforcement officials other than police to issue citations including parking meter attendants to cite parked vehicles in noncompliance;

(5) Structure the penalty system to deter non-compliance through the use of mandatory minimum fines constituting a meaningful deterrent and through a requirement that compliance be demonstrated before a case can be closed;

(6) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal;

(7) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers may re-start the clock on the inspection cycle only if proof of current compliance is required at title transfer;

(8) Prevent the fraudulent initial classification or reclassification of a vehicle from subject to non-subject or exempt by requiring proof of address changes prior to registration record modification, and documentation from the testing program (or delegate) certifying based on a physical inspection that the vehicle is exempt;

(9) Limit and track the use of time extensions to prevent repeated extensions;

(10) Provide for meaningful penalties for cases of registration fraud;

(11) Limit and track exemptions for vehicles claimed to be out-of-state; and

(12) Insure vehicle registration transfer when vehicle owners move into the I/M area.

(b) *Alternative Enforcement Mechanisms.* (1) *General Requirements.* The program shall demonstrate that a non-registration-based enforcement program is currently more effective than registration-denial enforcement in enhanced I/M programs or, prospectively, as effective as registration denial in basic programs. The following general requirements shall apply.

(i) For enhanced I/M programs, the area in question shall have had an approved SIP with an operating I/M program using the alternative mechanism prior to enactment of the Clean Air Act Amendments of 1990. While modifications to improve compliance may be made to the program that was in effect at the time of enactment, the expected change in effectiveness cannot be considered in determining acceptability;

(ii) The state shall assess the alternative program's effectiveness, as well as the current effectiveness of the registration system, including the following:

(A) Determine the number and percentage of vehicles subject to the I/M program that were in compliance with the program over the course of at least one test cycle; and

(B) Determine the number and fraction of the same group of vehicles as in paragraph (b)(i)(ii)(A) of this section that were in compliance with the registration requirement over the same period. Late registration shall not be considered non-compliance.

(iii) An alternative mechanism shall be considered more effective if the fraction of vehicles complying with the existing program, as determined according to the requirements of this section, is greater than the fraction of vehicles complying with the registration requirement. An alternative mechanism is as effective if the fraction complying with the program is at least equal to the fraction complying with the registration requirement.

(2) *Sticker-based Enforcement.* In addition to the general requirements, a sticker-based enforcement program shall demonstrate that the enforcement mechanism will swiftly and effectively prevent operation of subject vehicles that fail to comply. Such demonstration shall include the following.

(i) An assessment of the current extent of the following forms of non-compliance and demonstration that mechanisms exist to keep such non-compliance within acceptable limits.

(A) Use of stolen, counterfeit, or fraudulently obtained stickers;

(B) In states with safety inspections, the use of "Safety Inspection Only" stickers on vehicles that should be subject to the I/M requirement as well; and

(C) Operation of vehicles with expired stickers, including a stratification of non-compliance by length of noncompliance and model year.

(ii) The program as currently implemented or as proposed to be improved shall also:

(A) Require an easily observed external identifier such as the county name on the license plate, an obviously unique license plate tab, or other means that shows whether or not a vehicle is subject to the I/M requirement;

(B) Require an easily observed external identifier, such as a windshield sticker or license plate tab that shows whether a subject vehicle is in compliance with the inspection requirement;

(C) Impose monetary fines at least as great as the estimated cost of compliance with I/M requirements (e.g., test fee plus minimum waiver expenditure) for the absence of such identifiers;

(D) Require that such identifiers be of a quality that makes them difficult to counterfeit, difficult to remove without destroying once installed, and durable enough to last until the next inspection without fading, peeling, or other deterioration;

(E) Perform surveys in a variety of locations and at different times for the presence of the required identifiers such that at least 10% of the vehicles or 10,000 vehicles (whichever is less) in the subject vehicle population are sampled each year;

(F) Track missing identifiers for all inspections performed at each station, with stations being held accountable for all such identifiers they are issued; and

(G) Assess and collect significant fines for each identifier that is unaccounted for by a station.

(3) *Computer Matching.* In addition to the general requirements, computer-matching programs shall demonstrate that the enforcement mechanism will

swiftly and effectively prevent operation of subject vehicles that fail to comply. Such demonstration shall:

(i) Require an expeditious system that results in at least 90% of the subject vehicles in compliance within 4 months of the compliance deadline;

(ii) Require that subject vehicles be given compliance deadlines based on the regularly scheduled test date, not the date of previous compliance;

(iii) Require that motorists pay monetary fines at least as great as the estimated cost of compliance with I/M requirements (e.g., test fee plus minimum waiver expenditure) for the continued operation of a noncomplying vehicle beyond 4 months of the deadline;

(iv) Require that continued non-compliance will eventually result in preventing operation of the non-complying vehicle (no later than the date of the next test cycle) through, at a minimum, suspension of vehicle registration and subsequent denial of reregistration;

(v) Demonstrate that the computer system currently in use is adequate to store and manipulate the I/M vehicle database, generate computerized notices, and provide regular to said system while maintaining auxiliary storage devices to insure ongoing operation of the system and prevent data losses;

(vi) Track each vehicle through the steps taken to ensure compliance, including:

(A) The compliance deadline;

(B) The date of initial notification;

(C) The dates warning letters are sent to non-complying vehicle owners;

(D) The dates notices of violation or other penalty notices are sent; and

(E) the dates and outcomes of other steps in the process, including the final compliance date;

(vii) Compile and report monthly summaries including statistics on the percentage of vehicles at each stage in the enforcement process; and

(viii) Track the number and percentage of vehicles initially identified as requiring testing but which are never tested as a result of being junked, sold to a motorist in a non-I/M program area, or for some other reason.

(c) *SIP Requirements.* (1) The SIP shall provide detailed information concerning the enforcement process, including:

(i) A detailed description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement;

(ii) An identification of the agencies responsible for performing each of the applicable activities in this section;

(iii) A description of and accounting for all classes of exempt vehicles; and

(iv) A description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles, e.g. those operated in (but not necessarily registered in) the program area.

(2) The SIP shall include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analyses.

(3) The SIP shall include the legal authority to implement and enforce the program.

(4) The SIP shall include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

§ 51.362 Motorist compliance enforcement program oversight.

The enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary.

(a) *Quality Assurance/Quality Control.* A quality assurance program shall be implemented to insure effective overall performance of the enforcement system. Quality control procedures are required to instruct individuals in the enforcement process regarding how to properly conduct their activities. At a minimum, the quality control/quality assurance program(s) shall include:

(1) Verification of exempt vehicle status by inspecting and confirming such vehicles by the program or its delegate;

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry;

(3) Maintenance of an audit trail to allow for the assessment of enforcement effectiveness;

(4) Establishment of written procedures for personnel directly engaged in I/M enforcement activities;

(5) Establishment of written procedures for personnel engaged in I/M document handling and processing, such as registration clerks or personnel involved in sticker dispensing and waiver processing, as well as written procedures for the auditing of their performance;

(6) Tracking and follow up on out-of-area or exemption-triggering registration changes;

(7) Analysis of registration-change applications to target potential violators;

(8) A determination of enforcement program effectiveness through periodic audits of test records and program compliance documentation;

(9) Enforcement procedures for disciplining, retraining, or removing enforcement personnel who deviate from established requirements, or in the case of non-government entities that process registrations, for defranchising, revoking or otherwise discontinuing the activity of the entity issuing registrations; and

(10) The prevention of fraudulent procurement or use of inspection documents by controlling and tracking document distribution and handling, and making stations financially liable for missing or unaccounted for documents by assessing monetary fines reflecting the "street value" of these documents (i.e., the test fee plus the minimum waiver expenditure).

(b) *Information Management.* In establishing an information base to be used in characterizing, evaluating, and enforcing the program, the state shall:

(1) Determine the subject vehicle population;

(2) Permit EPA audits of the enforcement process;

(3) Assure the accuracy of registration and other program document files;

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party review; through automated or redundant data entry; and, through automated analysis for valid alpha-numeric sequences of the vehicle identification number (VIN), certificate number, or license plate number;

(5) Compare the testing database to the registration database to determine program effectiveness, establish compliance rates, and to trigger potential enforcement action against non-complying motorists; and

(6) Sample the fleet as a determination of compliance through parking lot surveys, road-side pull-overs, or other in-use vehicle measurements.

(c) *SIP Requirements.* The SIP shall include a detailed description of enforcement program oversight and information management activities.

§ 51.363 Quality assurance.

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse and to determine whether procedures are being followed, are

adequate, whether equipment is measuring accurately, and whether other problems might exist which would impede program performance. The quality assurance and quality control procedures shall be periodically evaluated to assess their effectiveness and relevance in achieving program goals.

(a) *Performance Audits.* Performance audits shall be conducted on a regular basis to determine whether inspectors are correctly performing all tests and other required functions. Performance audits shall be of two types: overt and covert, and shall include:

(1) Performance audits based upon written procedures and results shall be reported using either electronic or written forms to be retained in the inspector and station history files, with sufficient detail to support either an administrative or civil hearing;

(2) Performance audits in addition to regularly programmed audits for stations employing inspectors suspected of violating regulations as a result of audits, data analysis, or consumer complaints.

(3) Overt performance audits shall be performed at least twice per year for each lane or test bay and shall include:

(i) A check for the observance of appropriate document security;

(ii) A check to see that required record keeping practices are being followed;

(iii) A check for licenses or certificates and other required display information; and

(iv) Observation and written evaluation of the inspector(s) ability to properly perform an inspection.

(4) Covert performance audits shall include:

(i) Remote visual observation of inspector performance, which may include the use of aids such as binoculars or video cameras, at least once per year per inspector in high-volume stations;

(ii) Site visits at least once per year per number of inspectors using covert vehicles set to fail;

(iii) For stations that conduct both testing and repairs, at least one covert vehicle visit per station per year including the purchase of repairs and subsequent retesting if the vehicle is initially failed;

(iv) Documentation of the audit, including vehicle condition and preparation, sufficient for building a legal case and establishing a performance record;

(v) Covert vehicles ranging in model years across the spectrum of vehicles included in the program, including a full range of introduced malfunctions covering the emission test, the evaporative system tests, and emission control component checks (as applicable);

(vi) Sufficient numbers of covert vehicles and auditors to allow for frequent rotation of both to prevent detection by station personnel; and

(vii) Access to on-line inspection databases by state personnel to permit the creation and maintenance of covert vehicle records.

(b) *Record Audits.* Station and inspector records shall be reviewed or screened at least monthly to assess station performance and identify problems that may indicate potential fraud or incompetence. Such review shall include:

(1) Software-based, computerized analysis to identify statistical inconsistencies, unusual patterns, and other discrepancies;

(2) Visits to inspection stations to review records not already covered in the electronic analysis (if any); and

(3) Comprehensive accounting for all official forms that can be used to demonstrate compliance with the program.

(c) *Equipment Audits.* During overt site visits, auditors shall conduct quality control evaluations of the required test equipment, including (where applicable):

(1) A gas audit using gases of known concentrations and comparing these concentrations to actual readings;

(2) A check for tampering, worn instrumentation, blocked filters, and other conditions that would impede accurate sampling;

(3) A check for critical flow;

(4) A check of the Constant Volume Sampler flow calibration;

(5) A check for the optimization of the Flame Ionization Detector fuel-air ratio using methane;

(6) A leak check;

(7) A check to determine that station gas bottles used for calibration purposes are properly labelled and within the relevant tolerances;

(8) Functional dynamometer checks addressing coast-down, roll speed and roll distance, inertia weight selection, and power absorption;

(9) A check of the system's ability to accurately detect background pollutant concentrations;

(10) A check of the pressure monitoring devices used to perform the evaporative canister pressure test; and

(11) A check of the purge flow metering system.

(d) *Auditor Training and Proficiency.* (1) Auditors shall be formally trained and knowledgeable in:

(i) The use of analyzers;

(ii) Program rules and regulations;

(iii) The basics of air pollution control;

(iv) Basic principles of motor vehicle engine repair, related to emission performance;

(v) Emission control systems;

(vi) Evidence gathering;

(vii) State administrative procedures laws;

(viii) Quality assurance practices; and

(ix) Covert audit procedures.

(2) Auditors shall themselves be audited at least once annually.

(3) The training and knowledge requirements in paragraph (1) of this section may be waived for temporary auditors engaged solely for the purpose of conducting covert vehicle runs.

(e) *SIP Requirements.* The SIP shall include a detailed description of the quality assurance program, and copies of written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits.

§ 51.364 Enforcement against contractors, stations and inspectors.

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements.

(a) *Imposition of Penalties.* A penalty schedule shall be developed that establishes minimum penalties for violations of program rules and procedures.

(1) The schedule shall categorize and list violations and the minimum penalties to be imposed for first, second, and subsequent violations and for multiple violation of different requirements.

(2) Substantial penalties shall be imposed on the first offense for violations that directly affect emission reduction benefit. At a minimum, inspector and station license suspension shall be imposed for at least 6 months whenever a vehicle is intentionally improperly passed for any required portion of the test. Contractor employed inspectors shall be removed from inspector duty for 6 months.

(3) All findings of violations of rules or procedural requirements shall result in mandatory fines. In the case of neglect, a first offense shall result in a fine of no less than $100 or 5 times the inspection fee, whichever is greater, for the contractor or the licensed station, and the inspector if involved.

(4) Any finding of inspector incompetence shall result in mandatory training before inspection privileges are restored.

(5) License suspension or revocation shall mean the individual is barred from direct or indirect involvement in any

inspection operation during the term of the suspension or revocation.

(b) *Legal Authority.* (1) The quality assurance officer shall have the authority to temporarily suspend station and inspector licenses (after approval of a superior) immediately upon finding a violation or equipment failure that directly affects emission reduction benefits, pending a hearing when requested. In the case of immediate suspension, a hearing shall be held within seven calendar days of a written request by the station licensee or the inspector. Failure to hold a hearing within 7 days when requested shall cause the suspension to lapse. In the event that a state's constitution precludes such a temporary license suspension, the enforcement system shall be designed with adequate resources and mechanisms to process such a case within three station business days of the finding.

(2) The oversight agency shall have the authority to impose penalties against the licensed station or contractor, as well as the inspector, even if the licensee or contractor had no direct knowledge of the violation but was found to be careless in oversight of inspectors or has a history of violations. Contractors and licensees shall be held fully responsible for inspector performance in the course of duty.

(c) *Recordkeeping.* The oversight agency shall maintain records of all warnings, civil fines, suspensions, revocations, and violations and shall compile statistics on violations and penalties on an annual basis.

(d) *SIP Requirements.* (1) The SIP shall include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations.

(2) In the case of state constitutional impediments to immediate suspension authority, the state Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law.

(3) The SIP shall describe in detail the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other details related to the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In states without immediate suspension authority, the SIP shall demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

§ 51.365 Data collection.

Accurate data collection is essential to the management, evaluation, and enforcement of an I/M program. The program shall gather test data on individual vehicles, as well as quality control data on test equipment.

(a) *Test Data.* The goal of gathering test data is to unambiguously link specific test results to a specific vehicle, I/M program registrant, test site, and inspector, and to determine whether or not the correct testing parameters were observed for the specific vehicle in question. In turn, these data can be used to distinguish complying and noncomplying vehicles as a result of analyzing the data collected and comparing it to the registration database, to screen inspection stations and inspectors for investigation as to possible irregularities, and to help establish the overall effectiveness of the program. At a minimum, the program shall collect the following with respect to each test conducted:

(1) Test record number;

(2) Inspection station and inspector numbers;

(3) Test system number;

(4) Date of the test;

(5) Emission test start time and the time final emission scores are determined;

(6) Vehicle Identification Number;

(7) License plate number;

(8) Test certificate number;

(9) Gross Vehicle Weight Rating (GVWR);

(10) Vehicle model year, make, and type;

(11) Number of cylinders;

(12) Transmission type;

(13) Odometer reading;

(14) Category of test performed (i.e., initial test, firstretest, or subsequent retest);

(15) Fuel type of the vehicle (i.e., gas, diesel, or other fuel);

(16) Type of vehicle preconditioning performed;

(17) Emission test sequence(s) used;

(18) Hydrocarbon emission scores and standards for each applicable test mode;

(19) Carbon monoxide emission scores and standards for each applicable test mode;

(20) Carbon dioxide emission scores and standards for each applicable test mode;

(21) Nitrogen oxides emission scores and standards for each applicable test mode;

(22) Results (Pass/Fail/Not Applicable) of the applicable visual inspections for the catalytic converter, air system, gas cap, evaporative system, positive crankcase ventilation (PCV) valve, fuel inlet restrictor, and any other visual inspection for which emission reduction credit is claimed; and

(23) Results of the evaporative system functional tests.

(b) *Quality Control Data.* At a minimum, the program shall gather and report the results of the quality control checks required under § 51.359 of this part, identifying each check by station number, system number, date and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks.

§ 51.366 Data analysis and reporting.

Data analysis and reporting are required to allow for monitoring and evaluation of the program by program management and EPA, and shall provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element.

(a) *Test Data Report.* The program shall submit to EPA by July of each year a report providing basic statistics on the testing program for January through December of the previous year, including:

(1) The number of vehicles tested by model year and vehicle type;

(2) By model year and vehicle type, the number and percentage of vehicles:

(i) Failing the emissions test initially;

(ii) Failing the emission control component check initially;

(iii) Failing the evaporative system functional and integrity checks initially;

(iv) Failing the first retest for tailpipe emissions;

(v) Passing the first retest for tailpipe emissions;

(vi) Initially failed vehicles passing the second or subsequent retest for tailpipe emissions;

(vii) Initially failed vehicles passing the emission control component check on the first or subsequent retest by component;

(viii) Initially failed vehicles passing the evaporative system functional and integrity checks on the first or subsequent retest by component;

(ix) Initially failed vehicles receiving a waiver; and;

(x) Vehicles with no known final outcome (regardless of reason);

(3) The initial test volume by model year and test station;

(4) The initial test failure rate by model year and test station; and

(5) The average increase or decrease in vehicle emission levels after repairs by model year, vehicle type, and test type.

(b) *Quality Assurance Report.* The program shall submit to EPA by July of each year a report providing basic statistics on the quality assurance program for January through December of the previous year, including:

(1) Number of vehicles for which incorrect data entries were made by station, including the number of vehicles:

(i) Assigned as an initial test when the test was actually a retest;

(ii) Assigned as "not applicable" for an emission control component that was applicable;

(iii) Assigned as "pass" for an emission control component that was not applicable for the vehicle entered;

(iv) Retested with an older model year than that reported on a previous test(s);

(v) Retested with a different vehicle type than that reported on a previous test(s);

(vi) Assigned a vehicle type that conflicts with the VIN entered;

(vii) Assigned an incorrect VIN; and

(viii) Assigned other incorrect data by type;

(2) The number of inspection stations and lanes;

(i) Operating throughout the year;

(ii) Receiving two or more administrative audits in the year;

(iii) That have been audited only once within the given year;

(iv) That have not been audited;

(v) That have been shut down as a result of administrative audits;

(vi) That have received one covert audit;

(vii) That have received two covert audits; and;

(viii) That have received more than two cover audits;

(3) The number of covert audits:

(i) Conducted with the vehicle set to fail the emission test;

(ii) Conducted with the vehicle set to fail the component check;

(iii) Conducted with the vehicle set to fail the evaporative system checks;

(iv) Conducted with the vehicle set to fail any combination of two or more of the above checks;

(v) Resulting in a false pass for emissions;

(vi) Resulting in a false pass for component checks;

(vii) Resulting in a false pass for the evaporative system check; and

(viii) Resulting in a false pass for any combination of two or more of the above checks;

(4) The number of inspectors and stations:

(i) That were suspended, fired, or otherwise prohibited from testing as a result of covert audits;

(ii) That were suspended, fired, or otherwise prohibited from testing for other causes;

(iii) That received written warnings based on overt audits;

(iv) That received written warnings based on covert audits; and

(v) That received fines;

(5) The number of inspectors licensed or certified to conduct testing;

(6) The number of hearings held to consider adverse actions against inspectors and stations;

(7) The number of hearings resulting in adverse actions against inspectors and stations;

(8) The total amount collected in fines from inspectors and stations by type of violation;

(9) The number of inspectors required to obtain additional training as a result of rule violations;

(10) The total number of covert vehicles available for undercover audits over the year; and

(11) The number of covert auditors available for undercover audits;

(c) *Quality Control Report.* The program shall submit to EPA by July of each year a report providing basic statistics on the quality control program for January through December of the previous year, including:

(1) The number of emission testing sites and lanes in use in the program;

(2) A description of the emissions analysis system(s) in use at such sites;

(3) The type and actual frequency of quality control checks and calibrations performed on the emissions analysis systems, dynamometers, evaporative system monitoring devices, ambient air sampling devices, and flow rate regulating systems;

(4) The concentration, accuracy specifications, and blend tolerances of calibration gases and audit gases;

(5) The number of quality control audits performed by program management by station and lane;

(6) The number and percentage of stations that have failed quality control audits; and

(7) Number and percentage of stations and lanes shut down as a result of quality control audits.

(d) *Enforcement Report.* (1) All varieties of enforcement programs shall, at a minimum, submit to EPA by July of each year a report providing basic statistics on the enforcement program for January through December of the previous year, including:

(i) An estimate of the number of vehicles subject to the inspection program, including the results of an analysis of the registration data base;

(ii) The percentage of motorist compliance based upon a comparison of the number of valid final tests with the number of subject vehicles;

(iii) The total number of compliance documents issued to inspection stations;

(iv) The number of missing compliance documents;

(v) The number, length, and nature of time extensions and other exemptions granted to motorists; and

(vi) The number of compliance surveys conducted, number of vehicles surveyed in each, and the compliance rates found.

(2) Registration denial based enforcement programs shall provide the following additional information:

(i) A detailed report of the program's efforts and actions to prevent motorists from falsely registering vehicles out of the program area or falsely changing fuel type or weight class on the vehicle registration, and the results of special studies to investigate the frequency of such activity;

(ii) The fine for driving with an expired registration or invalid sticker;

(iii) The fine for failure to register in the place of residence; and;

(iv) The number of registration file audits, number of registrations reviewed, and compliance rates found in such audits.

(3) Computer-matching based enforcement programs shall provide the following additional information:

(i) The schedule of fines and penalties for failing to comply with program requirements;

(ii) The number and percentage of subject vehicles that were tested by the initial deadline, and by other milestones in the cycle;

(iii) The program's efforts to detect and enforce against motorists falsely changing vehicle classifications to circumvent program requirements, and the frequency of this type of activity; and

(iv) The number of enforcement system audits, and the error rate found during those audits.

(4) Sticker-based enforcement systems shall provide the following additional information:

(i) The schedule of fines and penalties for failing to comply with program requirements;

(ii) The program's efforts to prevent, detect, and enforce against sticker theft and counterfeiting, and the frequency of this type of activity;

(iii) The program's efforts to detect and enforce against motorists falsely changing vehicle classifications to circumvent program requirements, and the frequency of this type of activity; and

(iv) The number of parking lot sticker audits conducted, the number of vehicles surveyed in each, and the noncompliance rate found during those audits.

(e) *Additional Reporting Requirements.* In addition to the above annual reports, programs shall submit to EPA by July of every other year, biennial reports addressing:

(1) Any changes made in program design, funding, personnel levels, procedures, regulations, and legal authority, with detailed discussion and evaluation of the impact on the program of all such changes; and

(2) Any weaknesses or problems identified in the program within the two-year reporting period, what steps have already been taken to correct those problems, the results of those problems, the results of those steps, and any future efforts planned.

(f) *SIP Requirements.* The SIP shall provide detailed information concerning the types of data to be collected, the source and annual allocation of resources in support of this program function, and a description of the equipment to be used in the performance of required analyses.

§ 51.367 Inspector training licensing or certification.

All inspectors shall receive formal training and be licensed or certified to perform inspections.

(a) *Training.* (1) Inspector training shall impart knowledge of the following:

(i) The air pollution problem, it causes and effects;

(ii) The purpose, function, and goal of the inspection program;

(iii) Inspection regulations and procedures;

(iv) Technical details of the test procedures and the rationale for their design;

(v) Emission control device function, configuration, and inspection;

(vi) Test equipment operation, calibration, and maintenance;

(vii) Quality control procedures and their purpose;

(viii) Public relations; and

(ix) Safety and health issues related to the inspection process.

(2) If inspector training is not administered by the program, the responsible state agency shall monitor and evaluate the training program delivery.

(3) In order to complete the training requirement, a trainee shall pass (i.e., a minimum of 80% of correct responses) a written test covering all aspects of the training. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The program shall take appropriate steps to insure the security and integrity of the testing process.

(b) *Licensing and Certification.* (1) All inspectors shall be either licensed by the program or otherwise certified by an organization other than the employer in order to perform official inspections.

(2) Completion of inspector training and passing required tests shall be a condition of licensing or certification.

(3) Inspector licenses and certificates shall be valid for no more than 2 years, at which point refresher training and testing shall be required prior to renewal.

(4) Licenses or certificates shall not be considered a legal right but rather a privilege bestowed by the program conditional upon adherence to program requirements.

(c) *SIP Requirements.* The SIP shall include a set of instructional materials for the inspector training program, an example of the written test, and a description of the training program, the hands-on test, and the licensing or certification process.

§ 51.368 Public information and consumer protection.

(a) *Public Awareness.* The SIP shall include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Motorists that fail the I/M test shall be given a list of certified repair technicians in the area and information on the results of repairs performed by repair technicians in the area, as described in § 51.369(b)(1) of this subpart. Motorists that fail the I/M test shall also be provided with interpretive diagnostic information based on the particular portions of the test that were failed.

(b) *Consumer Protection.* The oversight agency shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the I/M program. This shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistle blowers and following up on complaints by the public or others involved in the process. it shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test. The SIP shall include a detailed consumer protection plan.

§ 51.369 Improving repair effectiveness.

Effective repairs are the key to achieving program goals and the state shall take steps to ensure the capability exists in the repair industry to repair vehicles that fail I/M tests.

(a) *Technical Assistance.* The oversight agency shall provide the repair industry with information and assistance related to vehicle inspection diagnosis and repair.

(1) The agency shall regularly inform repair facilities of changes in the inspection program, training course schedules, common problems being found with particular engine families, diagnostic tips and the like.

(2) The agency shall provide a hot line service to assist repair technicians with specific repair problems and answer technical and legal questions that arise in the repair process.

(b) *Performance Monitoring.* (1) An oversight agency shall monitor the performance of individual motor vehicle repair service providers, and provide to the public at the time of initial failure, a summary of the performance of local service providers that have repaired vehicles for retest. Performance monitoring shall include statistics on the number of vehicles submitted for a retest after repair by the service provider, the percentage passing on first retest, the percentage requiring more than one repair/retest trip before passing, and the percentage receiving a waiver.

(2) Programs shall provide feedback, including statistical and qualitative information to individual service providers on a regular basis (at least quarterly) regarding their success in repairing failed vehicles.

(3) A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed and the service provider that performed the repairs.

(c) *SIP Requirements.* The SIP shall include a description of the technical assistance program to be implemented and a description of the procedures to

be used in meeting the performance monitoring requirements of this section.

§ 51.370 Compliance with recall notices.

States shall establish methods to ensure that vehicles subject to enhanced I/M and that are included in either a "Voluntary Emissions Recall" as defined at 40 CFR 85.1902(d), or in a remedial plan determination made pursuant to § 207(c) of the Act, receive the required repairs. States shall require that owners of recalled vehicles have the necessary recall repairs completed, either in order to complete an annual or biennial inspection process or to obtain vehicle registration renewal. All recalls for which owner notification occurs after July 1, 1994 shall be included in the enhanced I/M recall requirement.

(a) *General Requirements.* (1) The state shall have an electronic means to identify recall vehicles based on lists of VINs with unresolved recalls made available by EPA, the vehicle manufacturers, or a third party supplier approved by the Administrator. The state shall update its list of unresolved recalls on a quarterly basis at a minimum.

(2) The state shall require owners or lessees of vehicles with unresolved recalls to show proof of compliance with recall notices in order to complete either the inspection or registration cycle.

(3) compliance shall be required on the next registration or inspection date after notification of recall was received by the state.

(b) *Enforcement.* (1) A vehicle shall either fail inspection or be denied vehicle registration if the required recall repairs have not been completed.

(2) In the case of vehicles obtaining recall repairs but remaining on the updated list provided in paragraph (a)(1) of this section, the state shall have a means of verifying completion of the required repairs; electronic records or paper receipts provided by the authorized repair facility shall be required. The vehicle inspection or registration record shall be modified to include (or be supplemented with other VIN-linked records which include) the recall campaign number(s) and the date(s) repairs were performed. Documentation verifying required repairs shall include the following:

(i) The VIN, make, and model year of the vehicle, and

(ii) The recall campaign number and the date repairs were completed.

(c) *Reporting Requirements.* The state shall submit to EPA, by July of each year for the previous calendar year, an annual report providing the following information:

(1) The number of vehicles in the I/M area initially listed as having unresolved recalls, segregated by recall campaign number;

(2) The number of recall vehicles brought into compliance by owners;

(3) The number of recall vehicles still in non-compliance that, as of the end of the calendar year, were not yet due for inspection or registration;

(4) The number of recall vehicles still in non-compliance that have either failed inspection or been denied registration on the basis of non-compliance with recall; and

(5) The number of recalled vehicles that are otherwise not in compliance.

(d) *SIP Submittals.* (1) The SIP shall describe the procedures used to incorporate the vehicle lists provided in program (a)(1) of this section into the inspection or registration database.

(2) The SIP describe the quality control methods used to insure the recall repairs are properly documented and tracked.

(3) The SIP shall describe the method (inspection failure or registration denial) used to enforce the recall requirements.

§ 51.371 On-road testing.

On-road testing is defined as the measurement of HC, CO, NO_x, and/or CO_2 emissions on any road or roadside in the nonattainment area or the I/M program area. On-road testing is required in enhanced I/M areas and is an option for basic I/M areas.

(a) *General Requirements.* (1) On-road testing is to be part of the emission testing system, but is to be a complement to testing otherwise required.

(2) On-road testing is not required in every season or on every vehicle but shall evaluate the emission performance of 0.5% of the subject fleet each year.

(3) The on-road testing program shall provide information about the emission performance of in-use vehicles, by measuring on-road emissions through the use of remote sensing devices or roadside pullovers including tailpipe emission testing. The program shall collect, analyze and report on-road testing data.

(4) Owners of vehicles found to be high emitters shall be notified that the vehicles are required to pass an out-of-cycle follow-up inspection; notification may be by mailing in the case of remote sensing on-road testing or through immediate notification if roadside pullovers are used.

(b) *SIP Requirements.* (1) The SIP shall include a detailed description of the on-road testing program, including the types of testing, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing.

(2) The SIP shall include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements.

(3) Emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP shall include technical support for the claimed additional emission reductions.

§ 51.372 State implementation plan submissions.

(a) *SIP Submittals.* The SIP shall address each of the elements covered in this rulemaking, including, but not limited to:

(1) A schedule of implementation of the program including interim milestones leading to mandatory testing. The milestones shall include, at a minimum:

(i) Passage of enabling statutory or other legal authority;

(ii) Proposal of draft regulations and promulgation of final regulations;

(iii) Issuance of final specifications and procedures;

(iv) Issuance of final Request for Proposals (if applicable);

(v) Licensing or certifications of stations, inspectors;

(vi) The date mandatory testing will begin for each model year to be covered by the program;

(vii) The date full-stringency cutpoints will take effect;

(viii) All other relevant dates.

(2) An analysis of emission level targets for the program using the most current EPA mobile source emission model or an alternative approved by the Administrator showing that the program meets the performance standard described in § 51.351 or § 51.352, as applicable;

(3) A description of the geographic coverage of the program, including ZIP codes if the program is not county-wide;

(4) A detailed discussion of each of the required design elements, including provisions for federal facility compliance;

(5) Legal authority related to implementation of the I/M program, including testing, contracting, and enforcement authority as needed and

authority to conduct the evaluation program;

(6) Legal authority for I/M program operation until such time as it is no longer necessary (i.e., until a Section 175 maintenance plan without an I/M program is approved by EPA);

(7) Implementing regulations, interagency agreements, and memoranda of understanding;

(8) Evidence of adequate funding and resources to implement all aspects of the program; and

(9) For areas attempting to demonstrate equivalency under § 51.353(b) of this subpart, the regulations and legal authority requiring implementation of the back-up program.

(b) *Submittal Schedule.* The SIP shall be submitted to EPA according to the following schedule—

(1) States shall submit a SIP revision by November 15, 1992 which includes the schedule required in paragraph (a)(1) of this section and a formal commitment from the Governor to the adoption and implementation of an I/M program meeting all requirements of this rule.

(2) A SIP revision, including all necessary legal authority and the items specified in paragraphs (a)(1) through (a)(9) of this section, shall be submitted no later than November 15, 1993.

(3) States will be required to revise SIPs as EPA develops further regulations. Revisions to incorporate onboard diagnostic checks in the I/M program shall be submitted within 2 years after promulgation of OBD regulations under Section 202(m)(3) of the Clean Air Act, as amended.

§ 51.373 Implementation deadlines.

I/M programs shall be implemented as expeditiously as practicable.

(a) Decentralized basic programs shall be fully implemented by July 1, 1993, and centralized basic programs shall be fully implemented by January 1, 1994.

(b) For areas newly required to implement basic I/M after promulgation of this regulation (as a result of failure to attain, reclassification, or redesignation) decentralized programs shall be fully implemented within one year of obtaining legal authority. Centralized programs shall be fully implemented within two years of obtaining legal authority. More implementation time may be approved by the Administrator if an enhanced I/M program is implemented.

(c) All requirements related to enhanced I/M programs shall be implemented by July 1, 1994, with the following exceptions.

(1) Areas switching from an existing test-and-repair network, to a test-only network may phase in the change between July of 1994 and January of 1996. Starting in July of 1994, at least 30% of the vehicles that will eventually be subject to transient IM240 testing by 1996 shall participate in the test-only system. By January 1, 1996, all applicable vehicle model years and types shall be included in the test-only system. During the phase-in period, all requirements of this regulation shall be applied to the test-only portion of the program; existing requirements may continue to apply for the test-and-repair portion of the program until it is phased out by July 1, 1996.

(2) Areas starting new test-only programs and those with existing test-only programs may also phase in the transient and evaporative system checks between July 1, 1994 and January 1, 1996, starting with 30% coverage by July 1994 as in paragraph (c)(2) of this section. Other program requirements shall take effect on July 1, 1994. For existing test-only areas that have testing services contract expiration dates no later than December 31, 1994, alternate schedules for initiation of transient and evaporative emission tests may be approved.

(d) In the case of areas newly required to implement enhanced I/M after promulgation of this regulation (as a result of failure to attain, reclassification, or nonattainment designation) enhanced I/M shall be implemented within 24 months of obtaining legal authority.

(e) Legal authority for the implementing agency or agencies to implement and enforce an I/M program consistent with these regulations shall be obtained from the state legislature or local governing body in the first legislative session after this rule takes effect or after being newly required to implement or upgrade an I/M program as in paragraph (b) or (c) of this section, including sessions already in progress if at least 21 days remain before the final bill submittal deadline.

Appendix A to Subpart 5—Steady-State Test Equipment: Calibations and Adjustments

(a) Equipment shall be calibrated in accordance with the manufacturers' instructions.

(b) *Prior to each test.*—(1) *Hydrocarbon Hang-up Check.* Immediately prior to each test the analyzer shall automatically perform a hydrocarbon hang-up check. If the HC reading, when the probe is sampling ambient air, exceeds 20 ppm, the system shall be purged with clean air or zero gas. If HC hang-up does not drop below 20 ppm within 150 seconds the analyzer shall lock out from testing.

(2) *Automatic Zero and Span.* The analyzer shall conduct an automatic zero and span check prior to each test. The span check shall include the HC, CO, and CO_2 channels, and the NO and O_2 channels, if present. If zero and/or span drift cause the signal levels to move beyond the adjustment range of the analyzer, it shall lock out from testing.

(3) *Low Flow.* The system shall lock out from testing if sample flow is below the acceptable level as defined in paragraph (b)(6) of appendix D to this subpart.

(c) *Daily Checks.* A system leak check shall be performed within twenty-four hours before the test and may be performed in conjunction with the gas calibration described in subparagraph (1) of paragraph (d). If a leak check is not performed within the preceding twenty-four hours, or if the analyzer fails the leak check, the analyzer shall lock out from testing. The leak check shall be a procedure demonstrated to effectively check the sample hose and probe for leaks and shall be performed in accordance with good engineering practices. An error of more than ±3% of the reading using low range span gas shall cause the analyzer to lock out from testing and shall require repair of leaks.

(d) *Every Seventy-Two Hours.* (1) *Gas Calibration.* The analyzer shall automatically require and successfully pass a gas calibration for HC, CO, and CO_2 within seventy-two hours before the test. Gas calibration shall be accomplished by introducing gas that meets the requirements of paragraph (d)(3) of this appendix into the analyzer through the calibration port. If the analyzer reads the span gas within the allowable tolerance range (i.e., the square root of sum of the squares of the span gas tolerance described in paragraph (d)(3) of this appendix and the calibration tolerance, which shall be equal to 2%), no adjustment of the analyzer is necessary. The gas calibration procedure shall correct readings that exceed the allowable tolerance range to the center of the allowable tolerance range. The pressure in the sample cell shall be the same with the calibration gas flowing during calibration as with the sample gas flowing during sampling. If the system is not calibrated, or the system fails the calibration check, the analyzer shall lock out from testing.

(2) *Span Points.* A two point gas calibration procedure shall be followed. The span shall be accomplished at one of the following pairs of span points:

(A) 300 ppm propane (HC), 1.0% carbon monoxide (CO), 6.0% carbon dioxide (CO_2), 1000ppm nitric oxide (if equipped with NO).

1200 ppm propane (HC), 4.0% carbon monoxide (CO), 12.0% carbon dioxide (CO_2), 3000 ppm nitric oxide (if equipped with NO).

(B) 0 ppm propane, 0.0% carbon monoxide, 0.0% carbon dioxide, 0ppm nitric oxide (if equipped with NO).

600 ppm propane (HC), 1.6% carbon monoxide (CO), 11.0% carbon dioxide (CO_2), 1200 ppm nitric oxide (if equipped with NO).

(3) *Span Gases.* The span gases used for the gas calibration shall be traceable to National Institute of Standards and Technology (NIST) standards ±2%, and shall be within two percent of the span points specified in paragraph (d)(2) of this appendix. Zero gases shall conform to the specifications

given in paragraph (a)(5) of § 86.114–79 of this title.

(e) *Monthly Check.* Within one month preceding each loaded test, the accuracy of the roll speed indicator shall be verified and the dynamometer shall be checked for proper power absorber settings.

(f) *Semi-annual Check.* Within six months preceding each loaded test, the road-load response of the variable-curve dynamometer or the frictional power absorption of the dynamometer shall be checked by a coast down procedure similar to that described in § 86.118.78 of this title. The check shall be done at 30 mph, and a power absorption load setting to generate a total horsepower (hp) of 4.1 hp. The actual coast down time from 45 mph to 15 mph shall be within ±1 second of the time calculated by the following equation:

$$\text{Coast Down Time} = \frac{0.0508 * W}{HP}$$

where W is the total inertia weight as represented by the weight of the rollers (excluding free rollers), and any inertia flywheels used, measured in pounds. If the coast down time is not within the specified tolerance the dynamometer shall be taken out of service and corrective action shall be taken.

(g) *Other Checks.* In addition to the above periodic checks, these shall also be used to verify system performance under the following special circumstances.

(1) *Gas Calibration.* Each time the analyzer electronic or optical systems are repaired or replaced, a gas calibration shall be performed prior to returning the unit to service.

(2) *Leak Checks.* Each time the sample line integrity is broken, a leak check shall be performed prior to testing.

Appendix B to Subpart 5—Test Procedures

1. Idle Test

(a) *General requirements. (1) Exhaust gas sampling algorithm.* The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two lines per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this subpart, and the measured value for HC and CO as described in paragraph (a)(1) of this section. A vehicle shall pass the test mode if any pair of simultaneous measured values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards. (3) *Void test conditions.* The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO_2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) *Multiple exhaust pipe.* Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) *Test sequence.* (1) The test sequence shall consist of an first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (d) of this section shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating.)

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO_2 shall be greater than or equal to six percent.

(c) *First-change test.* The test timer shall start (tt=0) when the conditions specified in paragraph (b)(2) of this section are met. The first-chance test shall have an overall maximum test time of 145 seconds (tt=145). The first-chance test shall consist of an idle mode only.

(1) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described under paragraph (c)(2) of this section. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (c)(2)(i) of this section are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(iv) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (c)(2)(i), (ii) and (iii) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

(v) *Optional.* The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration lower than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(d) *Second-chance test.* If the vehicle fails the first-chance test, the test timer shall reset to zero (tt=0) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds (tt=425). The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) *Preconditioning mode.* The mode timer shall start (mt=0) when the engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) *Idle mode.* (i) *Ford Motor Company and Honda vehicles.* The engines of 1981–1986 Ford Motor Company vehicles and 1984–1985 Honda Precludes shall be shut off for not more than 10 seconds and restarted. This procedure should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (d)(2)(iii) of this section. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the idle mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (d)(2)(iii)(A) of this section are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90).

measured values are less than or equal to the applicable short test standards described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (d)(2)(iii)(A), (d)(2)(iii)(B), and (d)(2)(iii)(C) of this section are satisfied by an elapsed time of 90 seconds (mt=90).

2. Two Speed Idle Test

(a) *General requirements.* (1) *Exhaust gas sampling algorithm.* The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) *Pass/fail determination.* A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this regulation, and the measured value for HC and CO as described in paragraph (a)(1) of this section. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) *Void test conditions.* The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO_2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) *Multiple exhaust pipes.* Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) *Test sequence.* (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode followed by a high-speed mode.

(ii) The second-chance high-speed mode, as described under paragraph (c) of this section, shall immediately follow the first-chance high-speed mode. It shall be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described under paragraph (d) of this section, shall follow the second-chance high-speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO_2 shall be greater than or equal to six percent.

(c) *First-chance test and second-chance high-speed mode.* The test timer shall start (tt=0) when the conditions specified in paragraph (b)(2) of this section are met. The first-chance test and second-chance high-speed mode shall have an overall maximum test time of 425 seconds (tt=425). The first-chance test shall consist of an idle mode followed immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(1) *First-chance idle mode.* (i) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (c)(1)(ii) of this section. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode terminated as follows:

(A) The vehicle shall pass the idle mode and the mode shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the mode shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (c)(1)(ii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the idle mode and the mode shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the idle mode and the mode shall be terminated if none of the provisions of paragraph (c)(1)(ii)(A), (B), and (C) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

(E) *Optional.* The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(2) *First-chance and second-chance high-speed modes.* This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode.

(i) The mode timer shall reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value shall be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer shall reset to zero (mt=0) and timing resumed. The minimum high-speed mode length shall be determined as described under paragraphs (c)(2)(ii) and (iii) of this section. The maximum high-speed mode length shall be 180 seconds elapsed time (mt=180).

(ii) *Ford Motor Company and Honda vehicles.* For 1981–1986 model year Ford Motor Company vehicles and 1984–1985 model year Honda Preludes, the pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10) using the following procedure. This procedure should not be used for other vehicles.

(A) A pass or fail determination, as described below, shall be used, for vehicles that *passed* the idle mode, to determine whether the high-speed test should be terminated *prior* to or at the end of an elapsed time of 180 seconds (mt=180).

(1) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, prior to an elapsed time for 30 seconds (mt=30), the measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(2) The vehicle shall pass the high-speed mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (c)(2)(ii)(A)(*1*) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(3) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(4) *Restart.* If at an elapsed time of 90 seconds (mt=90) the measured values are greater than the applicable short test standards as described in paragraph (a)(2) of this section, the vehicle's engine shall be shut off for not more than 10 seconds after returning to idle and then shall be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=90) and resume upon engine restart. The pass/fail determination shall resume as follows after 100 seconds have elapsed (mt=100).

(i) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, at any point between an elapsed time of 100 seconds (mt=100) and 180 seconds (mt=180), the measured values are less than or equal to the applicable short test standards described in paragraph (a)(2) of this section.

(ii) The vehicle shall fail the high-speed mode and the test shall be terminated if paragraph (c)(2)(ii)(A)(*4*)(*i*) of this section is not satisfied by an elapsed time of 180 seconds (mt=180). (B)A pass or fail determination shall be made for vehicles that *failed* the idle mode and the high-speed mode terminated at the *end* of an elapsed time of 180 seconds (mt=180) as follows: (1) The vehicle shall pass the high-speed mode and the mode shall be terminated at an elapsed time of 180 seconds (mt=180) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(2) *Restart.* If at an elapsed time of 90 seconds (mt=90) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in paragraph (a)(2) of this section, the vehicle's engine shall be shut off for not more than 10 seconds after returning to idle and then shall be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=90) and resume upon engine restart. The pass/fail determination shall resume as follows after 100 seconds have elapsed (mt=100).

(i) The vehicle shall pass the high-speed mode and the mode shall be terminated at an elapsed time of 180 seconds (mt=180) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(ii) The vehicle shall fail the high-speed mode and the test shall be terminated if paragraph (c)(2)(ii)(B)(*2*)(*i*) of this section is not satisfied by an elapsed time of 180 seconds (mt=180).

(iii) *All Other Light-Duty Motor Vehicles.* The pass/fail analysis for vehicles not specified in paragraph (c)(2)(ii) of this section shall begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination, as described below, shall be used for vehicles that *passed* the idle mode, to determine whether the high-speed mode should be terminated *prior* to or at the end of an elapsed time of 180 seconds (mt=180).

(1) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(*2*) The vehicle shall pass the high-speed mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (c)(2)(iii)(A)(*1*) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(3) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(4) The vehicle shall fail the high-speed mode and the test shall be terminated if none of the provisions of paragraphs (c)(2)(iii)(A)(*1*), (*2*), and (*3*) of this section is satisfied by an elapsed time of 180 seconds (mt=180).

(B) A pass or fail determination shall be made for vehicles that *failed* the idle mode and the high-speed mode terminated at the *end* of an elapsed time of 180 seconds (mt=180) as follows: (1) The vehicle shall pass the high-speed mode and the mode shall be terminated at an elapsed time of 180 seconds (mt=180) if any measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(2) The vehicle shall fail the high-speed mode and the test shall be terminated if paragraph (c)(2)(iii)(B)(*1*) of this section is not satisfied by an elapsed time of 180 seconds (mt=180).

(d) *Second-chance idle mode.* If the vehicle fails the first-chance idle mode and passes the high-speed mode, the test timer shall reset to zero (tt=0) and a second-chance idle mode shall commence. The second-chance idle mode shall have an overall maximum test time of 145 seconds (tt=145). The test shall consist of an idle mode only.

(1) The engines of 1981–1986 Ford Motor Company vehicles and 1984–1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. This procedure should not be used for other vehicles.

(2) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm the mode timer shall reset to zero and resume timing. The minimum second-chance idle mode length shall be determined as described in paragraph (d)(3) of this section. The maximum second-chance idle mode length shall be 90 seconds elapsed time (mt=90).

(3) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the second-chance idle mode shall be terminated as follows:

(i) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the second-chance idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (d)(3)(i) of this section are not# satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(iii) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(iv) The vehicle shall fail the second-chance idle mode and the test shall be terminated if none of the provisions of paragraphs (d)(3)(i),(ii), and (iii) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

3. Loaded Test

(a) *General requirements.* (1) *Exhaust gas sampling algorithm.* The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) *Pass/fail determination.* A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this subpart and the measured value for HC and CO as described in paragraph (a)(1) of this section. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) *Void test conditions.* The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO_2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) *Multiple exhaust pipes.* Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) *Test sequence.* (1) The test sequence shall consist of a loaded mode using a chassis dynamometer followed immediately by an idle mode as described under paragraphs (c)(1) and (2) of this section.

(2) The test sequence shall begin only after the following requirement are met:

(i) The dynamometer shall be warmed up, in stabilized operating condition, adjusted, and calibrated in accordance with the procedures of Appendix A to this subpart. Prior to each test, variable-curve dynamometers shall be checked for proper setting of the road-load indicator or road-load controller.

(ii) The vehicle shall be test in as-received condition with all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(iii) The vehicle shall be operated during each mode of the test with the gear selector in the following position:

(A) In drive for automatic transmissions and in second (or third if more appropriate) for manual transmissions for the loaded mode;

(B) In part or neutral for the idle mode.

(iv) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(v) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(vi) The measured concentration of CO plus CO_2 shall be greater than or equal to six percent.

(c) *Overall test procedure.* The test timer shall start (tt=0) when the conditions specified in paragraph (b)(2) of this section are met and the mode timer initiates as specified in paragraph (c)(1) of this section. The test sequence shall have an overall maximum test time of 240 seconds (tt=240). The test shall be immediately terminated upon reaching the overall maximum test time.

(1) *Loaded mode.* The mode timer shall start (mt=0) when the dynamometer speed is within the limits specified for the vehicle engine size according to the following schedule.

Dynamometer Test Schedule

Gasoline engine size (cylinders)	Roll Speed (mph)	Normal Loading (brake horsepower)
4 or less	22-25	2.8-4.1
5-6	29-32	6.8-8.4
7 or more	32-35	8.4-10.8

If the dynamometer speed falls outside the limits for more than five seconds in one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described in paragraph (c)(1)(ii) of this section. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the loaded mode and the mode shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (a)(2) of this section.

(B) The vehicle shall fail the loaded mode and the mode shall be terminated if paragraph (c)(1)(ii)(A) of this section is not satisfied by an elapsed time of 90 seconds (mt=90).

(C) *Optional.* The vehicle may fail the loaded mode and any subsequent idle mode shall be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(2) *Idle mode.* (i) The mode timer shall start (mt=0) when the dynamometer speed is zero and the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (c)(2)(ii) of the section. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (c)(2)(ii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a) of this section.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (c)(2)(ii)(A), (c)(2)(ii)(B), and (c)(2)(ii)(C) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

4. Preconditioned Idle Test

(a) *General requirements.* (1) *Exhaust gas sampling algorithm.* The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) *Pass/fail determination.* A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this regulation, and the measured value for HC and CO as described in paragraph (a)(1) of this section. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) *Void test conditions.* The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentrations of CO plus CO_2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) *Multiple exhaust pipes.* Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) *Test sequence.* (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of a preconditioning mode followed by an idle mode.

(ii) The second-chance test as described under paragraph (d) of this section shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO_2 shall be greater than or equal to six percent.

(c) *First-chance test.* The test timer shall start (tt=0) when the conditions specified in paragraph (b)(2) of this section are met. The test shall have an overall maximum test time of 200 seconds (tt=200). The first-chance test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) *Preconditioning mode.* The mode timer shall start (mt=0) when the engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 30 seconds (mt=30). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) *Idle mode.* (i) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (c)(2)(ii) of this section. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of

an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria for paragraph (c)(2)(ii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (c)(2)(ii)(A), and (B), and (C) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

(E) *Optional.* The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration less than 1800 ppm HC is found at an elapsed time of 30 seconds (mt=30).

(d) *Second-chance test.* If the vehicle fails the first-chance test, the test timer shall reset to zero and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds. The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) *Preconditioning mode.* The mode timer shall start (mt=0) when engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If the engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) *Idle Mode.* (i) *Ford Motor Company and Honda vehicles.* The engines of 1981–1986 Ford Motor Company vehicles and 1984–1985 Honda Preludes shall be shut off for not more than 10 seconds and then shall be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. This procedure should not be used for other vehicles.

(ii) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (d)(2)(iii) of this section. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The pass/fail analysis shall begin after an elapsed time for 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (d)(2)(iii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (d)(2)(iii)(A), (B), and (C) of this section is satisfied by an elapsed time of 90 seconds (mt=90) .

5. Idle Test with Loaded Preconditioning

(a) *General requirements.* (1) *Exhaust gas sampling algorithm.* The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) *Pass/fail determination.* A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in appendix C to this subpart, and the measured value for HC and CO as described in paragraph (a)(1) of this section. A vehicle shall pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) *Void test conditions.* The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO_2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) *Multiple exhaust pipes.* Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) *Test sequence.* (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (d) of this section shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The dynamometer shall be warmed up, in stabilized operating condition, adjusted, and calibrated in accordance with the procedures of appendix A to this regulation. Prior to each test, variable-curve dynamometers shall be checked for proper setting of the road-load indicator or road-load controller.

(ii) The vehicle shall be tested in as-received condition with all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(iii) The vehicle shall be operated during each mode of the test with the gear selector in the following position:

(A) In drive for automatic transmissions and in second (or third if more appropriate) for manual transmissions for the loaded preconditioning mode;

(B) In park or neutral for the idle mode.

(iv) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(v) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(vi) The measured concentration of CO plus CO_2 shall be greater than or equal to six percent.

(c) *First-chance test.* the test timer shall start (tt=0) when the conditions specified in paragraph (b)(2) of this section are met. The test shall have an overall maximum test time of 155 seconds (tt=155). The first-chance test shall consist of an idle mode only.

(1) The mode time shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described in paragraph (c)(2) of this section. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (c)(2)(i) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between and elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(iv) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (c)(2) (i), (ii), and (iii) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

(v) *Optional.* The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration less than 1800 ppm HC is found at an elapsed time of 30 seconds (mt=30).

(d) *Second-chance test.* If the vehicle fails the first-chance test, the test timer shall reset to zero (tt=0) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 200 seconds (tt=200). The test shall consist of a preconditioning mode using a chassis dynamometer, followed immediately by an idle mode.

(1) *Preconditioning mode.* The mode timer shall start (mt=0) when the dynamometer speed is within the limits specified for the vehicle engine size in accordance with the following schedule.

DYNAMOMETER TEST SCHEDULE

Gasoline engine size (cylinders)	Roll speed (mph)	Normal loading (brake horsepower)
4 or less	22–25	2.8–4.1
5–6	29–32	6.8–8.4
7 or more	32–35	8.4–10.8

The mode shall continue for a minimum elapsed time of 30 seconds (mt=30). If the dynamometer speed falls outside the limits for more than five seconds in one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) *Idle mode.* (i) The mode timer shall start (mt=0) when the dynamometer speed is zero and the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm, the mode time shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (d)(2)(ii) of this section. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (d)(2)(ii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (d)(2)(ii)(A), (B), and (C) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

6. Preconditioned Two Speed Idle Test

(a) *General requirements.* (1) *Exhaust gas sampling algorithm.* The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be simple running average of the measurements taken over five seconds.

(2) *Pass/fail determination.* A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in appendix C to this subpart, and the measured value for HC and CO as described in paragraph (a)(1) of this section. A vehicle shall pass the test mode if any pair simultaneous values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) *Void test conditions.* The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO_2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) *Multiple exhaust pipes.* Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) *Test sequence.* (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of a first-chance high-speed mode followed immediately by a first-chance idle mode.

(ii) The second-chance test as described under paragraph (d) of this section shall be performed only if the vehicle fails the first-change test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO_2 shall be greater than or equal to six percent.

(c) *First-chance test.* The test timer shall start (tt=0) when the conditions specified in paragraph (b)(2) of this section are met. The test shall have an overall maximum test time of 290 seconds (tt=290). The first-chance test shall consist of an high-speed mode followed immediately by an idle mode.

(1) *First-chance high-speed mode.* (i) The mode timer shall reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If the engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value shall be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer shall reset to zero (mt=0) and timing resumed. The high-speed mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the high-speed mode and the mode shall be terminated at an elapsed time of 90 seconds (mt=90) if any measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(B) The vehicle shall fail the high-speed mode and the mode shall be terminated if the requirements of paragraph (c)(1)(ii)(A) of this section are not satisfied by an elapsed time of 90 seconds (mt=90).

(C) *Optional.* The vehicle shall fail the first-chance test and any subsequent test shall be omitted if no exhaust gas concentration lower than 1800 ppm HC is found at an elapsed time of 30 seconds (mt=30).

(2) *First-chance idle mode.* (i) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rmp, the mode timer shall reset to zero and resume timing. The minimum first-chance idle mode length shall be determined as described in paragraph (c)(2)(ii) of this section. The maximum first-chance idle mode length shall be 90 seconds elapsed time (mt=90).

(ii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (c)(2)(ii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (c)(2)(ii)(A), (B), and (C) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

(d) *Second-chance test.* If the vehicle fails either mode of the first-chance test, the test timer shall reset to zero (tt=O) and a second-chance test shall commence. The second-chance test shall be performed based on the first-chance test failure mode or modes as follows:

(A) If the vehicle failed only the first-chance high-speed mode, the second-chance test shall consist of a second-chance high-speed mode as described in paragraph (d)(2) of this section. The overall maximum test time shall be 280 seconds (tt=280).

(B) If the vehicle failed only the first-chance idle mode, the second-chance test shall consist of a second-chance pre-conditioning mode followed immediately by a second-chance idle mode as described in paragraphs (d)(3) and (4) of this section. The overall maximum test time shall be 425 seconds (tt-425).

(C) If both the first-chance high-speed mode and first-chance idle mode were failed, the second-chance test shall consist of the second-chance high-speed mode followed immediately by the second-chance idle mode as described in paragraphs (d)(2) and (4). However, if during this second-chance procedure the vehicle fails the second-chance high-speed mode, then the second idle mode may be eliminated. The overall maximum test time shall be 425 seconds (tt=425).

(2) *Second-chance high-speed mode.* (i) *Ford Motor Company and Honda vehicles.* The engines of 1981–1986 Ford Motor Company vehicles and 1984–1985 Honda Preludes shall be shut off for not more than 10 seconds and then shall be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. This procedure should not be used for other vehicles.

(ii) The mode timer shall reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If the engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value shall be invalidated and the mode continued. The minimum second-chance high-speed mode length shall be determined as described in paragraph (d)(2)(iii) and (iv) of this section. If any excursion lasts for more than ten seconds, the mode timer shall reset to zero (mt=0) and timing resumed. The maximum second-chance high-speed mode length shall be 180 seconds elapsed time (mt=180).

(iii) In the case where the second-chance high-speed mode is *not* followed by the second-chance idle mode, the pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the high-speed mode and the test shall be terminated if at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (d)(2)(iii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the high-speed mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(D) The vehicle shall fail the high-speed mode and the shall be terminated if none of the provisions of paragraphs (d)(2)(iii)(A), (B), and (C) of this section is satisfied by an elapsed time of 180 seconds (mt=180).

(iv) In the case where the second-chance high-speed mode *is* followed by the second-chance idle mode, the pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the high-speed mode and the mode shall be terminated at the end of an elapsed time of 180 seconds (mt=180) if any measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(B) The vehicle shall fail the high-speed mode and the mode shall be terminated if paragraph (d)(2)(iv)(A) of this section is not satisfied by an elapsed time of 180 seconds (mt=180).

(3) *Second-chance preconditioning mode.* The mode timer shall start (mt=0) when engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If the engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall resert to zero and resume timing.

(4) *Second-chance idle mode.* (i) *Ford Motor Company and Honda vehicles.* The engines of 1981–1986 Ford Motor Company vehicles and 1984–1985 Honda Preludes shall be shut off for not more than 10 seconds and then shall be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. This procedure should not be used for other vehicles.

(ii) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If the engine speed exceeds 1100 rpm or falls below 350 rpm the mode timer shall reset to zero and resume timing. The minimum second-chance idle mode length shall be determined as described in paragraph (d)(4)(iii) of this section. The maximum second-chance idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determinating shall be made for the vehicle and the mode shall be terminated as follows:

(A) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the second-chance idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (d)(4)(iii)(A) of this section are not satisfied, and the measured values are less than or equal to the applicable short test standards as described in paragraph (a)(2) of this section.

(C) The vehicle shall pass the second-chance idle mode and the test shall be immediately terminated if, at any point between an elapsed of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (a)(2) of this section.

(D) The vehicle shall shall fail the second-chance idle mode and the test shall be terminated if none of the provisions of paragraphs (d)(4)(iii)(A), (B), and (C) of this section is satisfied by an elapsed time of 90 seconds (mt=90).

Appendix C to Subpart S—Steady-State Short Test Standards

1. Short Test Standards for 1981 and Later Model Year Light-duty Vehicles

For 1981 and later model year light-duty vehicles for which any of the test procedures described Appendix B to this subpart are utilized to establish Emissions Performance Warrantly eligibility (i.e., 1981 and later model year light-duty vehicles at low altitude and 1982 and later model year vehicles at high altitude to which high altitude certification standards of 1.5 gpm HC and 15 gpm CO or less apply), short test emissions for all tests and test modes shall not exceed:

(1) Hydrocarbons: 220 ppm as hexane.

(2) Carbon monoxide: 1.2%

2. Short Test Standards for 1981 and Later Model Year Light-duty Trucks

For 1981 and later model year light-duty trucks for which any of the test procedures described in appendix B to this subpart are utilized to establish Emissions Performance Warrantly eligibility (i.e., 1981 and later model year light-duty trucks at low altitude and 1982 and later model year trucks at high altitude to which high altitude certification standards of 2.0 gpm HC and 26 gpm CO or less apply), short test emissions for all tests and test modes shall not exceed:

(1) Hydrocarbons: 220 ppm as hexane.

(2) Carbon monoxide: 1.2%.

Appendix D to Subpart S—Steady-State Short Test Equipment

1. Steady-State Test Exhaust Analysis System

(a) *SamplingSystem.* (1) *General requirements.* The sampling system for

steady-state short tests shall, at a minimum, consist of a tailpipe probe, a flexible sample line, a water removal system, particulate trap, sample pump, flow control components, tachometer or dynamometer, analyzers for HC, CO, and CO_2, and digital displays for exhaust concentrations of HC, CO, and CO_2, and engine rpm. Materials that are in contact with the gases sampled shall not contaminate or change the character of the gases to be analyzed, including gases from alcohol fueled vehicles. The probe shall be capable of being inserted to a depth of at least ten inches into the tailpipe of the vehicle being tested, or into an extension boot if one is used. A digital display for dynamometer speed and load shall be included if the test procedures described in Appendix B to this subpart, Section 3 or 5, are conducted. Minimum specifications for optional NO and O_2 analyzers are also described in this section. The analyzer system shall be able to test, as specified in at least one section in Appendix B to this subpart, all model vehicles in service at the time of sale of the analyzer.

(2) *Temperature Operating Range.* The sampling system and all associated hardware shall be of a design certified to operate within the performance specifications described in paragraph (b) in ambient air temperatures ranging from 42 to 110 degrees Fahrenheit. The analyzer system shall, where necessary, include features to keep the sampling system within the specified range.

(3) *Humidity Operating Range.* The sampling system and all associated hardware shall be of a design certified to operate within the performance specifications described in paragraph (b) at a minimum of 80 percent relative humidity throughout the required temperature range.

(4) *Barometric Pressure Compensation.* Barometric pressure compensation shall be provided. Compensation shall be made for elevations up to 6000 feet (above mean sea level). At any given altitude and ambient conditions specified in (2) and (3), errors due to barometric pressure changes of ±2 inches of mercury shall not exceed the accuracy limits specified in paragraph (b).

(5) *Dual Sample Probe Requirements.* When testing a vehicle with dual exhaust pipes, a dual sample probe of a design certified by the analyzer manufacturer to provide equal flow in each leg shall be used. The equal flow requirement is considered to be met if the flow rate in each leg of the probe has been measured under two sample pump flow rates (the normal rate and a rate equal to the onset of low flow), and if the flow rates in each of the legs are found to be equal to each other (within 15% of the flow rate in the leg having lower flow).

(6) *System Lockout During Warm-up.* Functional operation of the gas sampling unit shall remain disabled through a system lockout until the instrument meets stability and warm-up requirements. The instrument shall be considered "warmed-up" when the zero and span readings for HC, CO, and CO_2 have stabilized, within ±3% of the full range of low scale, for five minutes without adjustment.

(7) *Electromagnetic Isolation and Interference.* Electromagnetic signals found in an automotive service environment shall not cause malfunctions or changes in the accuracy in the electronics of the analyzer system. The instrument design shall ensure that readings do not vary as a result of electromagnetic radiation and induction devices normally found in the automotive service environment, including high energy vehicle ignition systems, radio frequency transmission radiation sources, and building electrical systems.

(8) *Vibration and Shock Protection.* System operation shall be unaffected by the vibration and shock encountered under the normal operating conditions encountered in an automotive service environment.

(9) *Propane Equivalency Factor.* The propane equivalency factor shall be displayed in a manner that enables it to be viewed conveniently, while permitting it to be altered only by personnel specifically authorized to do so.

(b) *Analyzers* (1) *Accuracy.* The analyzers shall be of a design certified to meet the following accuracy requirements when calibrated to the span points specified in appendix A to this subpart:

Channel	Range	Accuracy	Noise	Repeatability
HC, ppm as hexane	0–400	±12	6	8
	401–1000	±30	10	15
	1001–2000	±80	20	30
CO, %				
0–2.00		±0.06	0.02	0.03
	2.01–5.00	±0.15	0.06	0.06
	5.01–9.99	±0.40	0.10	0.15
CO_2, %	0–4.0	±0.6	0.2	0.3
	4.1–14.0	±0.5	0.2	0.3
	14.1–16.0	±0.6	0.2	0.3
NO, ppm	0–1000	±32	16	20
	1001–2000	±80	25	30
	2001–4000	±120	50	60

(2) *Minimum Analyzer Display Resolution.* The analyzer electronics shall have sufficient resolution to achieve the following:

HC	1	ppm HC as hexane.
CO	0.01	% CO.
Co_2	0.1	% CO_2.
NO	1	ppm NO.
RPM	1	rpm.

(3) *Response Time.* The response time from the probe to the display for HC, CO, and CO_2 analyzers shall not exceed eight seconds to 90% of a step change in input. For NO analyzers, the response time shall not exceed twelve seconds to 90% of a step change in input.

(4) *Display Refresh Rate.* Dynamic information being displayed shall be refreshed at a minimum rate of twice per second.

(5) *Interference Effects.* The interference effects for non-interest gases shall not exceed ±10 ppm for hydrocarbons, ±0.05 percent for carbon monoxide, ±0.20 percent for carbon dioxide, and ±20 ppm for oxides of nitrogen.

(6) *Low Flow Indication.* The analyzer shall provide an indication when the sample flow is below the acceptable level. The sampling system shall be equipped with a flow meter (or equivalent) that shall indicate sample flow degradation when meter error exceeds three percent of full scale, or causes system response time to exceed 13 seconds to 90 percent of a step change in input, whichever is less.

(7) *Engine Speed Detection.* The analyzer shall utilize a tachometer capable of detecting engine speed in revolutions per minute (rpm) with a 0.5 second response time and an accuracy of ±3% of the true rpm.

(8) *Test and mode timers.* The analyzer shall be capable of simultaneously determining the amount of time elapsed in a test, and in a mode within that test.

(9) *Sample rate.* The analyzer shall be capable of measuring exhaust concentrations of gases specified in this section at a minimum rate of twice per second.

(c) *Demonstration of conformity.* The analyzer shall be demonstrated to the satisfaction of the inspection program manager, through acceptance testing procedures, to meet the requirements of this section and that it is capable of being maintained as required in Appendix A to this subpart.

2. Steady-State Test Dynamometer

(a) The chassis dynamometer for steady-state short tests shall provide the following capabilities:

(1) *Power absorption.* The dynamometer shall be capable of applying a load to the vehicle's driving tire surfaces at the horsepower and speed levels specified in paragraph (b).

(2) *Short-term stability.* Power absorption at constant speed shall not drift more than ±0.5 horsepower (hp) during any single test mode.

(3) *Roll weight capacity.* The dynamometer shall be capable of supporting a driving axle weight up to four thousand (4,000) pounds or greater.

(4) *Between roll wheel lifts.* These shall be controllable and capable of lifting a minimum of four thousand (4,000) pounds.

(5) *Roll brakes.* Both rolls shall be locked when the wheel lift is up.

(6) *Speed indications.* The dynamometer speed display shall have a range of 0–60 mph, and a resolution and accuracy of at least 1 mph.

(7) *Safety interlock.* A roll speed sensor and safety interlock circuit shall be provided which prevents the application of the roll brakes and upward lift movement at any roll speed above 0.5 mph.

(b) The dynamometer shall produce the load speed relationships specified in sections 3 and 5 of appendix B to this regulation.

Appendix E to Subpart S—Transient Test Driving Cycle

Time	Speed
0*	0
2	0
3	0

Time	Speed
4	0
5	3
6	5.9
7	8.6
8	11.5
9	14.3
10	16.9
11	17.3
12	18.1
13	20.7
14	21.7
15	22.4
16	22.5
17	22.1
18	21.5
19	20.9
20	20.4
21	19.8
22	17
23	14.9
24	14.9
25	15.2
26	15.5
27	16
28	17.1
29	19.1
30	21.1
31	22.7
32	22.9
33	22.7
34	22.6
35	21.3
36	19.
37	17.1
38	15.8
39	15.8
40	17.7
41	19.8
42	21.6
43	23.2
44	24.2
45	24.6
46	24.9
47	25
48	25.7
49	26.1
50	26.7
52	28.6
53	29.3
54	29.8
55	30.1
56	30.4
57	30.7
58	30.7
59	30.5
60	30.4
61	30.3
62	30.4
63	30.8
64	30.4
65	29.9
66	29.5
67	29.8
68	30.3
69	30.7
70	30.9
71	31
72	30.9
73	30.4
74	29.8
75	29.9
76	30.2
77	30.7
78	31.2
79	31.8
80	32.2
81	32.4
82	32.2
83	31.7
84	28.6
85	25.1
86	21.6
87	18.1
88	14.6
89	11.1
90	7.6
91	4.1
92	0.6
93	0
94	0
95	0
96	0
97	0
98	3.3
99	6.6
100	9.9
102	16.5
103	19.8
104	22.2
105	24.3
106	25.8
107	26.4
108	25.7
109	25.1
110	24.7
111	25.2
112	25.4
113	27.2
114	26.5
115	24
116	22.7
117	19.4
118	17.7
119	17.2
120	18.1
121	18.6
122	20
123	20.7
124	21.7
125	22.4
126	22.5
127	22.1
128	21.5
129	20.9
130	20.4
131	19.8
132	17
133	17.1
134	15.8
135	15.8
136	17.7
137	19.8
138	21.6
139	22.2
140	24.5
141	24.7
142	24.8
143	24.7
144	24.6
145	24.6
146	25.1
147	25.6
148	25.7
149	25.4
150	24.9
152	25.4
153	26
154	26
155	25.7
156	26.1
157	26.7
158	27.3
159	30.5
160	33.5
161	36.2
162	37.3
163	39.3
164	40.5
165	42.1
166	43.5
167	45.1
168	46
169	46.8
170	47.5
171	47.5
172	47.3
173	47.2
174	47.2
175	47.4
176	47.9
177	48.5
178	49.1
179	49.5
180	50
181	50.6
182	51
183	51.5
184	52.2
185	53.2
186	54.1
187	54.6
188	54.9
189	55
190	54.9
191	54.6
192	54.6
193	54.8
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200	56.7
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207	51.8
208	52.1
209	52.5
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211	53.5
212	54
213	54.9
214	55.4
215	55.6
216	56
217	56
218	55.8
219	55.2
220	54.5
221	53.6
222	52.5
223	51.5
224	50.5
225	48
226	44.5
227	41
228	37.5
229	34
230	30.5
231	27
232	23.5
233	20
234	16.5
235	13
236	9.5
237	6
238	2.5
239	0

[FR Doc. 92-17769 Filed 7-27-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 51 and 52

[FRL-4158-3]

New Source Review Simplification Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of workshop.

SUMMARY: The EPA is currently revising its new source review (NSR) rules (40 CFR 51.160–166, 40 CFR appendix S, 40 CFR 52.10, 40 CFR 52.21, and 40 CFR 52.24) to incorporate the requirements of the 1990 Clean Air Act Amendments. In conjunction with this revision, the EPA is considering ways to simplify the NSR process. In order to facilitate its efforts to identify potential methods for simplifying the NSR process, the EPA will conduct a workshop that is open to the public and solicit comments from any interested parties.

The purpose of this workshop is to identify and discuss potential approaches for simplifying the NSR process. Approximately 25–30 selected representatives from industry, environmental organizations, EPA Regions, and State/local air pollution control agencies knowledgeable on the NSR rules will be invited to serve as spokespersons to present suggestions and ideas. Invitees have been allocated the majority of the time to identify and discuss the various NSR issues and potential simplification methods. It time permits, the general public will also be given an opportunity to present their ideas.

This workshop is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: This workshop will convene on August 12, 1992 from 8 a.m. until 5 p.m. and August 13, 1992 from 8 a.m. until 1 p.m. Written comments may be submitted to Wm. Larry Elmore, Agency contract, until September 13, 1992.

ADDRESSES: This workshop will be held at the Omni-Europa Hotel, 1 Europa Drive, Chapel Hill, North Carolina 27514, telephone 1–800–843–6664

A summary of this workshop will be included in docket A–90–37 for the NSR rulemaking, including all written comments submitted within 30 days of the workshop. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., weekdays at EPA's Air Docket (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Public Participation: The workshop will be open to the public. Seating for interested members of the public will be available on a first-come, first-serve basis and will begin at 7:30 a.m. each day of the workshop.

FOR FURTHER INFORMATION CONTACT: Wm. Larry Elmore, New Source Review Section (MD–15), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone: (919) 541–5433; telefax: (919) 541–0237.

Dated: July 21, 1992.

D.K. Berry,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 92–17776 Filed 7–27–92; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[Ex Parte No. MC–206]

Revision to Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Commission proposes to adopt new accounting and reporting provisions that would significantly reduce the annual compliance burden by about 350,000 hours. The Uniform System of Accounts (USOA) would no longer be required as the prescribed accounting system. Class II motor carriers would not be required to file either annual or quarterly reports. In addition, comments are sought on amending the classification regulations by raising the annual transportation revenue threshold for Class I status from $5 million (1978 dollars) to a minimum of $25 million (1993 dollars), or alternatively, to $50, $75 or $100 million. As alternatives to *Annual Report Form M* reporting, public comment is also sought on a proposal to confine annual reporting to publicly traded Class I carriers which would submit their SEC 10K and shareholder report forms or to limit reporting to quarterly reports only. Lastly, comments and suggestions are invited for simplification of *Form M*.

DATES: Comments must be received on or before August 26, 1992.

ADDRESSES: An original and fifteen copies, if possible, of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, (202) 927–6387, (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: The Commission has decided to initiate this proceeding to set forth several proposals which would result in substantial reduction of regulatory accounting and reporting burden. The basis for these proposals is the Commission policy which requires the collection of data only if the information is used by the Commission on a regular and frequent basis. Accordingly, the Commission believes that only the largest Class I motor carriers should be required to file annual reports, and that quarterly reporting should be eliminated. Class II motor carriers would be relieved from all periodic reporting. Because the classification revenue thresholds have not been raised since 1979, the Commission proposes to increase the level to at least $25 million for Class I motor carriers, but comments are also requested on alternative threshold levels of $50, $75 and $100 million. At $25 million, only an estimated 300 or so motor carriers would continue to report. The Commission also proposes to allow these carriers to use generally accepted accounting principles (GAAP) as the basis for preparing the reports instead of requiring the use of our prescribed USOA found at 49 CFR part 1207.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This revision will not have a significant economic impact on a substantial number of small entities and this decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is estimated that no additional burden hours per response are required to complete this collection of information. It is anticipated that the proposed changes would benefit smaller motor carriers because they would not be subject to the Commission's reporting requirements. The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and 5 CFR part 1320. Respondents may direct comments concerning the paperwork burden and burden estimates to the OMB and ICC by addressing them to:

Office of Management & Budget, Office of Information and Regulatory Affairs, Desk Officer for ICC, Washington, DC 20503.

Interstate Commerce Commission, ATTN: Forms Clearance Officer, room 1312, Washington, DC 20423.

List of Subjects

49 CFR Part 1207

Accounting, and reporting and recordkeeping requirements, Motor carriers.

49 CFR Part 1249

Motor carriers, Reporting and classification.

Decided: July 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Phillips commented with a separate expression. Vice Chairman McDonald and Commissioner Simmons dissented with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1207 and 1249 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

1. The authority citation for part 1207 continues to read as follows:

Authority: 49 U.S.C.10321, 10751, 11142, and 11145; 5 U.S.C. 553.

§ 1207.1 [Amended]

2. Instruction 36 of § 1207.1 is redesignated as § 1207.2, Business Entertainment Expenses.

3. § 1207.1 is proposed to be revised to read as follows;

§ 1207.1 Accounting regulations for motor carriers of property.

The Uniform System of Accounts for common and contract carriers of property has been deprescribed effective January 1, 1993. Motor carriers of property shall follow Generally Accepted Accounting Principles for all accounting matters with the exception of business entertainment expenses which shall be dealt with in accordance with § 1207.2.

PART 1249—REPORTS OF MOTOR CARRIERS

4. The authority citation for part 1249 continues to read as follows:

Authority: 49 U.S.C. 11142 and 11145; 5 U.S.C. 553.

§ 1249.1 [Amended]

5. Section 1249.1 is proposed to be amended by removing the words "and quarterly" from the heading of the section, removing the words "and Class II" from where it now twice appears in the first sentence in paragraph (a), and revising the words "Class III" to the words "Class II" at the beginning of the second sentence in paragraph (a).

§ 1249.2 [Amended]

6. In § 1249.2(a), Class I and Class II definitions, the words "$5 million" are proposed to be revised to read alternatively to "$25 million," "$50 million," "$75 million," or "$100 million." Also, in paragraph (b)(4) revise the words "Bureau of Accounts" to the words "Office of Economics."

[FR Doc. 92-17669 Filed 7-27-92; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 57, No. 145
Tuesday, July 28, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on Tuesday, September 15, 1992.

Date: September 15, 1992, (9 a.m. to 5 p.m.).

Location: U.S. Department of State.

This meeting is the first in a two-meeting module which will examine the A.I.D./PVO relationship from the perspective of U.S. private voluntary organizations. The purpose of the meeting will be to examine the program and institutional trends of PVO's over the last decade. The meeting will touch upon three broad areas: the role of private voluntarism in international development; the evolution of U.S. private voluntary organizations; and, the strengths, weaknesses and comparative advantages of private voluntary organizations.

The meeting is free and open to the public. However, Notification by Friday, September 11, 1992, through the advisory committee headquarters is required. Persons wishing to attend the meeting must call Theresa Graham or Susan Saragi (703) 351–0202, or facsimile (703) 351–0212. Persons attending must include their name, organization, birth date and social security number for security purposes.

Dated: July 15, 1992.

Sally H. Montgomery,

Deputy Assistant Administrator, Office of Private and Voluntary Cooperation, Bureau for Food and Humanitarian Assistance.

[FR Doc. 92–17722 Filed 7–27–92; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent to Grant a Partially Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant a partially exclusive patent license to Organon Teknika Corporation, Durham, North Carolina, on U.S. Patent Application Serial No. 07/586,116, "Preenriched Broth Medium for the Simultaneous Sampling of Foods for *Salmonella* and *Listeria*, filed September 21, 1990. Notice of Availability for licensing the invention was given in the **Federal Register** on April 3, 1991.

DATES: Comments must be received by September 28, 1992.

ADDRESS: Send comments to: USDA–ARS—Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/504–6786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant a partially exclusive license to practice the aforementioned invention. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective partially exclusive patent license will be royalty-bearing and will comply with the terms and condition of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive patent license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 92–17793 Filed 7–27–92; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 92–093–1]

List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the months of April and May 1992. This action has been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the listing.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 435–8245. For copies of the list or to be placed on the mailing list, write to Ms. Montgomery at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for

determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Protect Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the lists for the months of April and May 1992. The monthly lists are also mailed on a regular basis to interested persons. To be placed on the mailing list you can call or write the person designated under "**FOR FURTHER INFORMATION CONTACT.**".

Done in Washington, DC, this 23rd day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17786 Filed 7-27-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Creaky Hart Timber Sale, Idaho Panhandle National Forests Shoshone County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Forest Service is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber and build roads in the Browns Creek and Uranus Creek drainages. The area is located approximately 10 air miles northeast of Kellogg, Idaho. Part of the proposed timber harvest and road construction are proposed within the Trouble Creek roadless area (#01138).

DATES: Written comments concerning the scope of the analysis must be received by September 11, 1992.

ADDRESSES: Submit written comments and suggestions concerning scope of the analysis to Mr. Steve Williams, District Ranger, Wallace Ranger District, Box 14, Silverton, Idaho, 83867. Public meetings will be held in Prichard and Silverton, Idaho to review existing information and facilitate public scoping.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Rod Chaffe, Project Coordinator, Wallace Ranger District, P.O. Box 14, Silverton, ID 83867 Telephone: (208) 752-1221.

SUPPLEMENTARY INFORMATION: The proposed action involves federally owned lands in all or portions of Sections 5-10, 15-20, T.50N., R.3E.; and Sections 1-3, 10-15, 23-25, T.50N., R.4E., Boise Meridian. Implementation of the proposed activity will begin in Fiscal Year 94. The project area will include about 11,800 acres in lands allocated to Management Areas 1 and 4; with an estimated output of 16 million board feet of timber, and construction or reconstruction of 10 miles of road. Various harvest methods; tractor and cable yarding systems would be used.

A number of issues have been identified. Major issues focus on the effects harvest and road construction will have on the resources of the Trouble Creek Roadless Area, health and growth of forest stands, fisheries and water quantity and stream channel stability, and effects of the visual resources along the Coeur d'Alene River Road. Detailed alternatives will be developed, including a no action alternative will be analyzed. Other possible alternatives to be analyzed include, a leave it green alternative, a minimum new roads alternative and a various levels of development alternative.

The Forest Service is the lead agency in this project. This EIS will tier to the Final EIS and Forest Plan (Forest Plan Record of Decision; September 1987). The Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, desired future conditions, and management area prescriptions for management practices that will be utilized during the implementation of the Forest Plan.

The Creaky Hart Analysis Area contains about 11,800 acres. Approximately 5,700 acres of those are in the Trouble Creek Roadless Area. The Analysis Area is allocated to the following Management Areas (MA):

—Approximately 50 percent is in Management Area 1 which is designed to intensively manage for timber production.

—Approximately 50 percent is in Management Area 4 which is designed to provide timber production within big game winter range. A large proportion of this management area has a high visual sensitivity.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. Public meetings will be held in Prichard and Silverton, Idaho to review existing information and facilitate public scoping. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying the interested public of opportunities to participate through meetings, personal contacts, or written comments. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, etc.)

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February, 1993. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process.

First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* vs *NRDC*, 435 U.S. 519, 553, (1978). Also, environmental objections that could be raised at the Draft EIS stage, but are not raised until after completion of the Final EIS, may be waived or dismissed by the court. *City of Angoon* vs *Hodel*, 803 F.2d. 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.* vs *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully be considered and responded to in the Final EIS.

The Final EIS is scheduled to be completed by June, 1993. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Mr. Steve Williams, District Ranger, Wallace Ranger District, is the responsible official. As the responsible official, he will document the decision and reasons for the decision in the Record of Decision.

Dated: July 15, 1992.

Steve Williams,

District Ranger.

[FR Doc. 92-17716 Filed 7-27-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Lower Lamoille Watershed, VT

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Lamoille Watershed, Chittenden, Franklin and Lamoille Counties, Vermont.

FOR FURTHER INFORMATION CONTACT: John C. Titchner, State Conservationist, Soil Conservation Service, 69 Union Street, Winooski, Vermont 05404, telephone (802) 951-6795.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John C. Titchner, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection and water quality improvement. The planned works of improvement include conservation land treatment and agricultural waste management practices.

The notice of a finding of no significant impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John C. Titchner, State Conservationist.

No administration action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: July 21, 1992.

John C. Titchner,

State Conservationist

[FR Doc. 92-17743 Filed 7-27-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 64-91 and Foreign-Trade Zone 177—Evansville, IN]

Proposed Subzone Meade Johnson & Company, Pharmaceutical Plant Evansville and Mt. Vernon, IN; Amendment to Application

Notice is hereby given that the application submitted by the Indiana Port Commission, grantee of FTZ 177, requesting special-purpose subzone status for the pharmaceutical and nutritional products manufacturing facilities of Meade Johnson & Company (MJC) located in Evansville and Mt. Vernon, Indiana (56 FR 56186, 11/1/91) has been amended to include two additional sites in Evansville, Indiana. The original application requested subzone status for the company's main plant (Site 1) in Evansville and a production/warehouse complex (Site 2) in Mt. Vernon. This amendment adds two other related MJC facilities to the subzone application: (Site 3)—the Mead Johnson Post Office Annex Warehouse (1.2 acres, 39,000 sq. ft.), leased and operated by MJC, 1901 West Illinois St., Evansville; and, (Site 4)—a warehouse facility (8.2 acres, 270,000 sq. ft.), leased and operated by Warehousing, Inc., to handle MJC products, 301 North Kentucky Ave., Evansville. MJC will be the zone operator of both additional sites. The application remains otherwise unchanged.

The comment period is reopened until September 11, 1992.

Dated: July 21, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-17696 Filed 7-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 24-92]

Proposed Foreign-Trade Zone—Dona Ana County, New Mexico Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of County Commissioners of Dona Ana County, New Mexico, requesting authority to establish a general-purpose foreign-trade zone in Dona Ana County, New Mexico, adjacent to the Santa Teresa Station of the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 14, 1992. The applicant is authorized to make the proposal under Senate Bill 586, Chapter 154, as amended, 40th Legislature of the State of New Mexico, First Session, approved April 3, 1991.

The proposed foreign-trade zone would consist of 2 sites (983 acres) in Dona Ana County. Site 1 (777 acres) is located within the Santa Teresa Airport complex (1,712 acres), approximately 6 miles north of the United States-Mexico Border Crossing at Santa Teresa. The complex is operated by the County of Dona Ana, which is also the principal

owner. Site 2 (206 acres) is within the West Mesa Industrial Park (1,820 acres) adjacent to the Las Cruces International Airport, some 40 miles northwest of the Santa Teresa Border Crossing. It is owned by the City of Las Cruces.

The application indicates there is a need for zone services in the Dona Ana County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as flexible polyurethane foam and fabric for the automotive industry, weight training equipment, and glass and packaging products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 28, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 13, 1992.

While no public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

County Manager's Complex, 180 West Amador Avenue, room 105, Las Cruces, New Mexico 88001.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 20, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–17697 Filed 7–27–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[Application No. 87–8A004]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Machine Tool Builders' Association (now known as AMT—The Association For Manufacturing Technology ("AMT")) on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87–00004, was issued to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989), April 20, 1989 (54 FR 19427, May 5, 1989), May 31, 1989 (54 FR 24931, June 12, 1989), May 29, 1990 (55 FR 23576, June 11, 1990) June 7, 1991 (56 FR 28140, June 19, 1991), and November 27, 1991 (56 FR 63932, December 6, 1991).

NMTBA's (AMT's) Export Trade Certificate of Review has been amended to:

1. Change the name of its current Export Trade Certificate of Review from "The National Machine Tool Builders' Association (a.k.a. NMTBA—The Association for Manufacturing Technology)" to "AMT—The Association For Manufacturing Technology." The Export Trade, Export Markets, and Export Trade Activities and Methods of Operation covered by the certificate of review are unchanged;

2. Add each of the following companies as a new "Member" of the Certificate: Airlock Manufacturing Company, Birmingham, AL; Automation & Modular Components, Inc., Auburn Hills, MI; Berger Lahr Motion Technology, Inc., Plymouth MI (controlling entity: Sig-Holding USA, Inc.); Century Machine, Inc., Colter, IA; Control Laser Corporation, Orlando, FL (controlling entity: Quantronix Corporation); D.A. Griffin Corporation, Buffalo, NY; Huron Machine Products, Inc., Fort Lauderdale, FL; Hypneumat, Inc., Milwaukee, WI; J.A.C.P., Inc., Cleves, OH; Lynn Electronics Corp., Charlotte, NC; Metl-Saw Systems, Inc., Benicia, CA (controlling entity: Inductotherm Industries); Miyano Machinery USA, Inc., Wood Dale, IL (controlling entity: Miyano Machinery Japan, Inc.); Pacific Roller Die Company, Inc., Hayward, CA; and The J. L. Wickham Company, Inc., Baltimore, MD;

3. Delete each of the following companies as a "Member" of the Certificate: Advanced Technologies, Incorporated; B & H Tool and Machine Corporation; Bayer Industries, Inc.; CIMA USA; Cross & Trecker Corporation; Elb-Florida, Inc.; Ferranti Sciaky, Inc.; Miller Fluid Power; NATCO, Inc.; Roto-Finish Co. Inc.; Siber Hegner North America Inc.; Spitfire, a Unit of General Signal; Standard Tool & Manufacturing Co.; Sweco, Inc.; Textron Inc./North American Machine Tool Division; and Trumpf Industrial Lasers, Inc.; and

4. Change the listing of the company name for the current "member" Giddings and Lewis, A Division of AMCA International Corp., to Giddings & Lewis, Inc.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 20, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–17698 Filed 7–27–92; 8:45 am]

BILLING CODE 3510–DR–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of

a field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Application SN 7-858,959, a reissued application of U.S. Patent No. 4,912,206 titled, "cDNA Clone Encoding Brain Amyloid of Alzheimer's Disease," for use with transgenic animals carrying the gene sequences covered by the patent application to TSI Corporation, having a place of business at Innovation Drive, Worcester MA 01605. The patent rights in this invention have been assigned to the United States of America.

The prospective field of use exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective partially exclusive license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers four clones that have been isolated from an adult human brain cDNA library using an oligonucleotide probe corresponding to the first 20 amino acids of the brain amyloid polypeptide of the Alzheimer's disease. The open reading frame of the sequenced clone coded for 97 amino acids including the known amino acid sequence of this polypeptide. The 3.5 kb messenger RNA has been detected in mammalian brains and human thymus. The gene is highly conserved in evolution and has been mapped to human chromosome 21.

The availability of the invention for licensing was published in the **Federal Register** of October 23, 1990. A copy of US Patent No. 4,912,206 may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00.

Requests for claims of the reissued application (under a nondisclosure agreement), inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92-17717 Filed 7-27-92; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limit for Certain Wool Apparel Products Produced or Manufactured in Brazil

July 22, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as a mutually satisfactory solution concerning Category 443 was not reached during consultations held on June 22, 1992, the United States Government has decided to control imports in this category for the prorated period beginning on July 29, 1992 and extending through March 31, 1993.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Brazil, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 21971, published on May 26, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 15 and 19, 1988, as amended, between the Governments of the United States and Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 29, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in category 443, produced or manufactured in Brazil and exported during the period beginning on July 29, 1992 and extending through March 31, 1993, in excess of 55,639 numbers. [1]

Textile products in Category 443 which have been exported to the United States on and after July 29, 1992 shall remain subject to the aggregate limit established in the directive dated May 19, 1992 for the period April 1, 1992 through March 31, 1993.

Imports charged to this category for the period April 30, 1992 through July 28, 1992 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-17760 Filed 7-27-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limits have not been adjusted to account for any imports exported after July 28, 1992.

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract

market in three-month Euromark time deposit futures, three-month Euroyen time deposit futures, and options on those two futures contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulations 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 27, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME three-month Euromark time deposit futures contract, the three-month Euroyen time deposit futures contract, or the options on those two futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 22, 1992.

Gerald Gay,

Director.

[FR Doc. 92–17710 Filed 7–27–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on August 9–21, 1992 at the Beckman Center, Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At that time the Board will examine the substance, interrelationships, and the US national security implications of three critical areas identified and tasked to the Board by the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Acquisition. The subject areas are: Technical Military Capabilities for Future Contingencies; Simulation, Readiness, and Prototyping; and Engineering in the Manufacturing Process. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Acquisition, for his consideration in determining resource policies, short- and long-range plans, and in shaping appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB meeting, concerns matters listed in 5 U.S.C. 552(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: July 23, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–17766 Filed 7–27–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Intent to Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Beam Tech Corporation, P.O. Box 68025, San Antonio, TX 78268, an exclusive domestic license under United States Letters Patent No. 5,003,050, which matured from application Serial No. 07/489,561 filed 7 March 1990 in the names of Johnathan L. Kiel, and Gerald J. O'Brien for "Diazoluminonelanin and a Method for Preparing Same" and/or United States Letter Patent No. 5,028,541 which matured from application Serial No. 07/56,034 filed 1 June 1987 in the names of Johnathan L. Kiel and Gerald J. O'Brien for "Flow-Through Cell Cultivation System" and/or patent application Serial No. 07/779,694 filed 21 October 1991 in the names of Johnathan L. Kiel, Jill E. Parker, Eric A. Holwitt, and Harvey A. Schwertner for "Biosynthesis of Diazomelanin and Diazoluminomelanin" and/or patent application Serial No. 07/821,525 filed 15 January 1992 in the names of Johnathan L. Kiel, John L. Alls, Richard A. Weber and Jill E. Parker for "Rapid Identification of Environment Bacillus" and/or patent application Serial No. 07/829,015 filed 6 May 1992 in the names of Johnathan L. Kiel, David N. Erwin, David M. Simmons, and Christopher McQueen for "Blood and Tissue Rewarming Device."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent and/or patent applications may be obtained upon request from the same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, AFLSA/JACP, 1900 Half Street, SW., Washington DC 20324–1000, Telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–17718 Filed 7–27–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Office of the Secretary of the Army, Draft Environmental Impact Statement for Base Realignment at Aberdeen Proving Ground, MD

Dated: July 22, 1992.

AGENCY: Department of Defense, United States Army.

ACTION: Notice of Availability.

SUMMARY: The recommendation to establish an Army Research Laboratory facility at Aberdeen Proving Ground, Maryland and to realign some Army research and technology functions to the new facility was mandated by Public Law 101–510 (BRAC 91), the Defense Base Closure and Realignment Act of 1990. This document focuses on the environmental and socioeconomic impacts and mitigations associated with the construction of the Army Research Laboratory facility at Aberdeen Proving Ground.

No long-term adverse ecological or environmental health effects are expected due to the construction of the Laboratory facility. The small increase in population, caused by the realignment of research and technical functions to the new Laboratory facility, is expected to have a net positive impact on the local economy. The preferred alternative site for the proposed construction project will not significantly impact environmental resources.

A scoping meeting was held in Aberdeen, Maryland, on January 7, 1992. Public Notices requesting input and comments from the public were issued in the regional area surrounding Aberdeen Proving Ground.

ADDRESSES: The public is encouraged to comment on the draft Environmental Impact Statement. Copies of the draft Environmental Impact Statement can be requested by contacting Mr. John Butler at (410) 962–4937 or by writing to: United States Army Corps of Engineers, Baltimore District, ATTN: CENAB–PL–EM, P.O. Box 1715, Baltimore, Maryland 21203–1715. Written public comments and suggestions received within 45 days of this Notice of Availability will be addressed in the final Environmental Impact Statement.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health), OASA(I,L&E).

[FR Doc. 92–17680 Filed 7–27–92; 8:45 am]

BILLING CODE 3710–08–M

Environmental Impact Statement to Assess the Impacts of Disposal of Fort Benjamin Harrison, IN

July 22, 1992.

AGENCY: United States Army, DoD.

ACTION: Notice of intent.

SUMMARY: Public Law 101–510 (BRAC (91)), the Defense Base Closure and Realignment Act of 1990 mandates the closure of Fort Benjamin Harrison, Indiana. The Army is required by law to analyze the environmental and socioeconomic impacts of the disposal of real property excess to the Department of Defense at Fort Benjamin Harrison. An Environmental Impact Statement will be prepared to analyze and document the impacts of disposal.

Alternatives

a. No Action.
b. Transfer Property to Other Agencies.
c. Lease Property.
d. Sell Property.

Scoping: The public will be notified of the scoping meeting to be held in vicinity of Fort Benjamin Harrison. Exact date, time and location will be distributed via local media. Public notices requesting input and comments from the public will be issued in the regional area surrounding Fort Benjamin Harrison.

ADDRESSES: Written comments may be forwarded to: Commander, Fort Benjamin Harrison, Attention: Director of Installation Support (Colonel Greg Miller), Fort Benjamin Harrison, Indiana 46216–5000.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Colonel Greg Miller, (317) 542–5383.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health) OASA (I,L&E).

[FR Doc. 92–17681 Filed 7–27–92; 8:45 am]

BILLING CODE 3710–08–M

Proposed Plan Containing the Environmental Response and Corrective Actions for Environmental Restoration and Cleanup of Jefferson Proving Ground

AGENCY: U.S. Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Army announced today the availability of the proposed plan containing the environmental response and corrective actions required for the environmental restoration and cleanup, with a range of reuse options, for the entire 55,000 acres of Jefferson Proving Ground, Madison, Indiana. This action is in accordance with the Defense Authorization Act for FY 92, Public Law 102–190.

Jefferson Proving Ground will cease operations and realign its mission to Yuma Proving Ground, Arizona, by September 30, 1995.

A public comment period of 60 days begins with publication of this Notice of Availability. Also, as part of the 60-day comment period, a public meeting will be held in 45 days in the Madison, Indiana area.

A final plan is scheduled for submission to Congress in January 1993, as part of the President's fiscal year 1994 budget submission.

A future National Environmental Policy Act (NEPA) analysis will address specific reuse alternatives and their environmental and socioeconomic impacts. The proposed plan can be reviewed at the Jefferson, Ripley and Jennings Counties libraries.

Comments on the proposed plan are acceptable either orally at the public meeting or in writing.

ADDRESSES: Written comments may be forwarded to: Mr. Bob Jameson, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001; or by telephone at (703) 274–8157.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health) OASA (I,L&E).

[FR Doc. 92–17682 Filed 7–27–92; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates/Time of Meeting: 17–19 August 1992.
Time: 0800–1700 hours.
Place: Pentagon, Washington, DC.

The Army Science Board Ad Hoc Subgroup reviewing the U.S. Army Materiel Command (AMC) Research, Development and Engineering Centers (RDEC) will meet for initial discussions to plan the review. The Group will discuss how to structure a review of the AMC RDEC's. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C.,

specifically subparagraph (2) and (9) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The matters to be discussed relate solely to the internal personnel rules and practices of the Army, and discloses information the premature disclose of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–17719 Filed 7–27–92; 8:45 am]

BILLING CODE 3710–8–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 24 August 1992.

Time: 1000–1130 hours.

Place: Pentagon, Washington, DC.

The members of the ASB Study Group on Longbow for Apache and Comanche will meet with representatives from the Army Materiel Systems Analysis Activity to review Longbow Fire Control Radar Stationary Target Indications. Representatives of the Missile Command will discuss technology and classified parameters of the radar. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified, proprietary, and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–17720 Filed 7–27–92; 8:45 am]

BILLING CODE 3710–8–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 27 August 1992.

Time: 0900–1600 Hours.

Place: Vienna, VA 22182.

Agenda: The Army Science Board Ad Hoc Subgroup on "Evaluating and Selecting Proposals" will meet to discuss the study terms of reference and plan of action. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–17721 Filed 7–27–92; 8:45 am]

BILLING CODE 3710–8–M

Defense Logistics Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Logistics Agency, DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend an existing record system notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective without further notice on August 27, 1992 unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DOD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (Updated Mailing Addresses)
55 FR 32284, Aug. 8, 1990
55 FR 32947, Aug. 13, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19838, Apr. 30, 1991
56 FR 31392, Jul. 10, 1991 (Updated Index)
56 FR 35852, Jul. 29, 1991
56 FR 52017, Oct. 17, 1991
56 FR 55910, Oct. 30, 1991
56 FR 56065, Oct. 31, 1991
56 FR 65245, Dec. 16, 1991
57 FR 2715, Jan. 23, 1992
57 FR 13718, Apr. 17, 1992
57 FR 13718, Apr. 21, 1992
57 FR 20471, May 13, 1992
57 FR 28490, Jun. 25, 1992
57 FR 29294, Jul. 1, 1992

The amendment is not within the purview of subsection (r) of the Privacy Act which requires the submission of an altered system report. The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety.

Dated: July 23, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.11 DMDC

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base (52 FR 37495, Oct 7, 1987).

Changes:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Add a new second paragraph "To the Office of Finance of the U.S. House of Representatives and the Disbursing Office of the U.S. Senate, records of individual indebtedness from this system of records consisting of individual name, Social Security Number and amount, to be used to identify House and Senate members and their employees indebted to the Federal government for the purpose of collecting the debts."

* * * * *

S322.11 DMDC

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base.

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Decentralized segments: Military and civilian payment and personnel centers of the military services, the Office of Personnel Management, and Federal creditor agencies.

Backup location: Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officers and enlisted personnel, members of reserve and guard components, retired military personnel. All Federal-wide civilian employees and retirees. Individuals identified by Federal creditor agencies as delinquent in repayment of debts owed to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, duty and home address, and various dates, identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982 (Pub. L. 97–365); 5 U.S.C. 5514 "Installment Deduction of Indebtedness"; 10 U.S.C. 136; 4 CFR Chapter II "Federal Claims Collection Standards"; 5 CFR 550.1101–1108 "Collection by Offset from Indebted Government Employee"; "Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982", March 30, 1983 (48 FR 15556, April, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987); and Office of Management and Budget Guidelines (54 FR 52818, June 19, 1989) interpreting the provisions of the Privacy Act (5 U.S.C. 552a) pertaining to computer matching.

PURPOSE(S):

The primary purpose for the establishment of this system of records is to maintain a computer data base permitting computer matching in compliance with the Privacy Act of 1974 (5 U.S.C. 552a) as amended, to assist and implement debt collection efforts by Federal creditor agencies under the Debt Collection Act of 1982 to identify and locate individual debtors.

To increase the efficiency of U.S. Government-wide efforts to collect debts owed the U.S. Government.

To provide a centralized Federal data bank for computer matching of Federal employment records with delinquent debt records furnished by Federal creditor agencies under an Interagency agreement sponsored and monitored by the Department of the Treasury and the Office of Management and Budget.

To identify and locate employees or beneficiaries who are receiving Federal salaries or other benefit payments and indebted to the creditor agency in order to recoup the debt either through voluntary repayment or by administrative or salary offset procedures established by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Individual's name, SSN, Federal agency or military service, category of employees, Federal salary or benefit payments, record of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose of contacting the debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

To the Office of Finance of the U.S. House of Representatives and the Disbursing Office of the U.S. Senate, records of individual indebtedness from this system of records consisting of individual name, Social Security Number and amount, to be used to identify House and Senate members and their employees indebted to the Federal government for the purpose of collecting the debts.

The Defense "Blanket Routine Uses" do not apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Records are stored on magnetic computer tape.

RETRIEVABILITY:

Records are retrieved by social security number and name from a computerized index.

SAFEGUARDS:

Primary location at the W.R. Church Computer Center, Monterey, CA, tapes are stored in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At the backup location in Monterey, CA, tapes are stored in rooms protected with cipher locks, the building is secured after hours, and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Records are erased within six months after each match cycle.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests for information should contain the full name, social security number, current address and telephone number of the individual requesting information.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations are contained in Defense Logistics Agency Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Federal creditor agencies, the Office of Personnel Management and DoD personnel and finance centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–17785 Filed 7–28–92; 8:45 am]
BILLING CODE 3810–01–M

Department of the Navy

Navy Affirmative Salvage Claims

AGENCY: Department of the Navy, DoD.

ACTION: Notice

SUMMARY: The Department of the Navy is authorized by 10 USC 7361-7367 to render salvage services to civilian and

foreign vessels and to be compensated for such services. The rates of compensation were published in 32 CFR Part 754 and amended at 47 FR 6011, Feb. 10, 1982. 32 CFR Part 754 was removed by 51 FR 19830, June 3, 1986, because the underlying Navy instruction was canceled. That instruction has been replaced by Naval Sea Systems Command Instruction (NAVSEAINST) 4740.8. NAVSEAINST 4740.8 will shortly be replaced by NAVSEAINST 4740.8A which will contain the revised rates for ships and craft set forth below. Some of the rates have increased and some have decreased since the last publication of rates at 53 FR 4700, Feb. 17, 1988.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Peck, Assistant Supervisor of Salvage (Admiralty), Naval Sea Systems Command (Code 00CL), Washington, DC 20362-5101. Telephone number (703) 607-2753.

SUPPLEMENTARY INFORMATION: The Navy does not maintain salvage facilities beyond its own requirements. It is authorized by 10 USC 7361-7367 to provide salvage facilities for private vessels in appropriate circumstances. This authority does not obligate the Navy to maintain excess salvage facilities, nor to render salvage assistance.

It is the policy of the Department of the Navy, however, to assist in the salvage of privately owned vessels when such assistance is required and requested, where adequate privately owned salvage facilities do not exist or are not readily available, and where Navy salvage assets are reasonably available.

Charges for Navy salvage services are independent of the value of the object of the operation and of the operation's success. The user will be billed the full amount, regardless of whether the property is salved or lost and irrespective of the ultimate success or failure of the salvage operation.

The Navy adopts the per diem rates below as a matter of policy, and does not waive nor surrender the right to submit a salvage bonus claim. Per diem billing is made on the express condition that the bills be paid promptly and in full. Until receipt of payment the Navy reserves all rights, including the right to withdraw the per diem billing without notice and to present a claim under traditional principles of admiralty law.

The following rates apply for each day of 24 hours or any part thereof, for salvage services rendered by the Navy:

(1) *Ships and craft*	*Rate*
Salvage ship (ATS)	$33,800
Salvage ship (ARS)	48,700
Fleet tug (T-ATF 166 class)	
with salvage crew	17,100
without salvage crew	14,600
Large tug	6,800
Medium tug	5,400
Floating crane (200 ton) (YD)	10,100
Diving tender	4,100

Rates for other types of vessels will be established on a case-by-case basis, normally by analogy to the least expensive type of scheduled vessel capable of performing the salvage assistance rendered. Per diem charges normally begin when the assisting vessel leaves her berth or diverts from her voyage, and end when she arrives back at her berth or regains her pre-diversion position upon completion of the salvage operation.

(2) *Salvage and oil spill response equipment:* Per diem rates for portable salvage equipment, oil and hazardous substance spill response equipment, and special equipment, are based on equivalent commercial rates. If commercial rates are not available, charges will be based upon the schedule of rental rates published at 55 FR 14106 for Rental of Navy Salvage Equipment. If not so scheduled, they will be established on a case-by-case basis.

(3) In addition to the above rates, charges may include out-of-pocket costs for a salvage operation, including but not limited to:

(a) Consumable materials procured for the operation;

(b) Equipment lost, damaged, destroyed or expended in connection with the operation;

(c) Repairs to ships and craft damaged during or in connection with the salvage operation;

(d) Navy Industrial Fund charges;

(e) Travel and personnel per diem costs;

(f) Civil Service or contractor employee overtime paid by or charged to the Navy;

(g) Transportation of Things (TOT);

(h) Rental of commercial equipment; and

(i) Other specific procurements and direct charges, including contractor charges and wages and expenses of additional personnel required by the operation.

Fuel, lube oil, water and other consumables expended by Navy vessels in the ordinary course of an operation are included in the per diem charges for those vessels. A charge will be made, however, to recover the cost of extraordinary usage of such consumables in connection with the operation.

Dated: July 15, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-17745 Filed 7-27-92; 8:45 am]

BILLING CODE 3810-AE-F

Rental of Navy Salvage and Oil Spill Response Equipment

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy is authorized by 10 USC 7361-7367 to rent its salvage equipment to civilian companies in appropriate circumstances. Naval Sea Systems Command Instruction (NAVSEAINST) 4740.8 outlines the Navy's policy and procedures for rentals. Pursuant to that instruction, certain daily rental rates have been established and are published below.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Peck, Assistant Supervisor of Salvage (Admiralty), Naval Sea Systems Command (Code 00CL), Washington, DC 20362-5101. Telephone (703) 607-2753.

SUPPLEMENTARY INFORMATION: The Navy does not maintain salvage facilities beyond its own requirements. It is authorized by 10 USC 7361-7367 to provide salvage facilities and assistance for private vessels in appropriate circumstances. This authority does not obligate the United States or the Department of the Navy to maintain excess salvage facilities, nor to render salvage assistance.

It is the policy of the Department of the Navy, however, to assist in the salvage of privately owned vessels when such assistance is requested and is required by the circumstances, and where adequate privately owned salvage facilities do not exist or are not readily available.

Charges for salvage assistance by the Navy are independent of both the value of object of the operation and the operation's success. The user will be billed the full amount of daily rental charges regardless of whether the property is salved or lost and irrespective of the ultimate success or failure of the salvage operation.

The Navy adopts the per diem rates below as a matter of policy, and does not waive nor surrender the right to claim salvage. Per diem billing is made on the express condition that the bill be paid promptly and in full. Until receipt

of full payment the Navy reserves the right to withdraw the per diem billing without notice and to present a claim for salvage under traditional principles of admiralty law, including a claim for environmental salvage.

Per diem rates charged for salvage services rendered by Navy vessels are published elsewhere in this issue of the *Federal Register*. For the rental of salvage equipment by the Navy the following rates apply for each day of 24 hours or any part thereof:

Equipment type	Rate
Class V skimmer vessel	$2,400
Class XI skimmer unit	2,400
24-foot tow boat	1,901
23-foot inflatable boat with motor	720
19-foot inflatable boat with motor	720
17-foot inflatable boat with motor	200
18-foot boom tending boat	144
Oil storage bladder	355
40-foot command trailer	520
Command van	520
Workshop van	400
Rigging van	400
Cleaning van	66
Oil containment boom (per 55-foot section)	129
Boom mooring system	47
8-ton portable crane	617
6-inch submersible hydraulic pump	900
Mod 6 hydraulic power unit	900
Mod 7 hydraulic power unit	300
Auger pump	185
Satellite communications system	393

The above charges apply from the time the equipment begins transportation from the site(s) where it is issued until it arrives back at that site or at another location designated by the Navy. The renter will also be charged for all necessary repairs, including work necessary to refurbish the equipment to ready-for-issue condition, normal wear and tear excepted, and for government-provided transportation to and from the site of the operation. The renter will be charged replacement cost for all equipment lost or damaged beyond economical repair.

Dated: July 15, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-17744 Filed 7-27-92; 8:45 am]

BILLING CODE 3810AE-F

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend two existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 27, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22671, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 28, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48678, Nov. 21, 1990
55 FR 53167, Dec. 27, 1991
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
55 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59217, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991
57 FR 2719, Jan. 23, 1992
57 FR 2726, Jan. 23, 1992
57 FR 2898, Jan. 24, 1992
57 FR 5430, Feb. 14, 1992
57 FR 9246, Mar. 17, 1992
57 FR 12914, Apr. 14, 1992
57 FR 14698, Apr. 22, 1992
57 FR 18472, Apr. 30, 1992
57 FR 26422, Jun. 10, 1992
57 FR 26821, Jun. 16, 1992
57 FR 28499, Jun. 25, 1992
57 FR 28502, Jun. 25, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: July 10, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N04060-1

System name:

Navy and Marine Corps Exchange and Commissary Sales Control and Security Files, (51 FR 18132, May 16, 1986).

Changes:

System name:

Delete "and Commissary".

System location:

Delete entry and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

Categories of individuals covered by the system:

In lines two and three, delete "and Commissaries".

* * * * *

Authority for maintenance of the system:

At end of entry, add "and Executive Order 9397."

Purpose(s):

Delete entry and replace with "To control sales, prevent and detect abuse of privileges, and determine responsibility when there are violations of regulations or criminal statutes. Information may be furnished to the Naval Investigative Service Command or command legal personnel for prosecution of military offenses and other administrative actions."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete paragraph two.

Storage:

Delete entry and replace with "Automated records may be stored on magnetic media. Manual records may be stored in file folders or microform, in file cabinets or other containers."

Retrievability:

Delete entry and replace with "Name and Social Security Number."

* * * * *

Retention and disposal:

Delete entry and replace with "Records are retained for six years and then destroyed."

System manager(s) and address:

Delete entry and replace with "Policy Official: Commander, Navy Exchange Service Command, Naval Station, New York, Staten Island, NY 10305–5097. The system manager is the Commanding Officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of records notices."

Record access procedure:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the commanding officer of the naval activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of records notices."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "Individual; investigators; witnesses; and activity sales and contract records."

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(k)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager."

* * * * *

N04060–1

SYSTEM NAME:

Navy and Marine Corps Exchange Sales Control and Security Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers and employees at Navy and Marine Corps Exchanges, including individuals making large dollar volume purchases and contract purchases; individuals having requested adjustments or made claims; individuals having previously passed bad checks or been apprehended for shoplifting.

CATEGORIES OF RECORDS IN THE SYSTEM:

Sales and contract records; lists, logs, or card records of individuals; claims and adjustment records; large volume purchase records; mail orders; customer special order records; customer list; correspondence; and abuser notification letters. Records of complaints and investigations of regulatory and criminal violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To control sales, prevent and detect abuse of privileges, and determine responsibility when there are violations of regulations or criminal statutes. Information may be furnished to the Naval Investigative Service Command or command legal personnel for prosecution of military offenses and other administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Federal Bureau of Investigation or foreign organizations for further investigation or prosecution.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic media. Manual records may be stored in file folders or microform, in file cabinets or other containers.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access is provided on a need-to-know basis, only. Automated records are located in restricted areas accessible only to authorized persons. Manual records and computer printouts are maintained in locked or controlled access areas.

RETENTION AND DISPOSAL:

Records are retained for six years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

The system manager is the Commanding Officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of records notices.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves should address written inquiries to the commanding officer of the naval activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of records notices.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5;32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; investigations; witnesses; and activity sales and contract records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

N04066–1

System name:

Bad Checks and Indebtedness Lists, (52 FR 45850, December 2, 1987).

Changes:

* * * * *

System location

Delete entry and replace with "Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 (for all Navy exchanges)."

Categories of individuals covered by the system:

In line 11, delete the phrase "or service number".

* * * * *

Authority for maintenance of the system:

At end of entry add "80 Stat 308 and 88 Stat 393, Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365); and Executive Order 9297."

Purpose(s):

Delete entry and replace with "To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy. Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

At beginning of entry add "To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by Navy against the tax payer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217 and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other Navy purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose."

* * * * *

Storage:

At end of entry add "and floppy and hard disks."

* * * * *

Retention and disposal:

Delete the word "six" and replace with "ten".

Sytem manager(s) and address:

Delete entry and replace with "Policy Official: Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Record Holder: Director, Treasury Division (TD), Naval Station New York, Staten Island, NY 10305–5097 (for Navy exchanges)."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this sytem of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "The individual; the bank involved; activity sales records; Internal Revenue Service; credit bureaus; and the Defense Manpower Data Center."

* * * * *

N04066–1

SYSTEM NAME:

Bad Checks and Indebtedness Lists.

SYSTEM LOCATION:

Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 (for all Navy exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons of Navy exchanges who have passed bad checks; recruits who have open accounts with Navy exchanges; patrons who have made C.O.D. mail order transactions and those patrons who make authorized charge or credit purchases where their accounts are maintained on the basis of an identifying particular such as name and/or Social Security Number.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check(s);

correspondence relative to attempt by the Navy exchange to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had one or more checks returned through their own fault or negligence); Accounts Receivable Ledger, detailed by patron; COD Sales Ledger.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6011; 80 Stat 308 and 88 Stat 393, Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365); and Executive Order 9397.

PURPOSE(S):

To maintain an automated tracking and accounting sytem for individuals indebted to the Department of the Navy. Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by Navy against the tax payer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other Navy purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name and taxpayer identification number (SSN).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: magnetic tape; printed reports; file folders; file cards, and floppy and hard disks.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Locked file cabinets; supervised office spaces; supervised computer tape library which is accessible only through the computer center (entry to the computer center is controlled by a combination lock known by authorized personnel only).

RETENTION AND DISPOSAL:

Records are kept for ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Record Holder: Director, Treasury Division (TD), Naval Station New York, Staten Island, NY 10305–5097 (for Navy exchanges).

NOTIFICATION PROCEDURE:

Individual's seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the bank involved; activity sales records; Internal Revenue Service; credit bureaus; and the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–16877 Filed 7–28–92; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 27, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington DC 20503. Requests for copies of the proposed information collection requests should

be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address sepcified above.

Dated: July 22, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Bilingual Education and Minority Language Affairs

Type of Review: Revisions.
Title: Application and Annual Survey of Bilingual Education SEA Program.
Frequency: Annually.
Affected Public: State or local government.
Reporting Burden:
Responses: 57.
Burden Hours: 3,420.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State educational agencies to apply funding under the Bilingual Education SEA Program. It will also be used to collect, aggregate, analyze, and report data and information on their limited English proficient students. The Department will use the information to make grant awards.

Office of Vocational and Adult Education

Type of Review: New.
Title: Financial Status Report for the State-administered Vocational Education Programs.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 53.
Burden Hours: 2,730.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This data will be used to determine State's compliance with the Carl D. Perkins Vocational and Applied Technology Education Act of 1990. In addition, it will be used to close out each year's grant and to provide information for the Secretary's report to Congress on the status of vocational education.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Performance Report for the Women's Educational Equity Act Program.
Frequency: Annually.
Affected Public: Individuals or households; state or local governments; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 30.
Burden Hours: 90.
Recordkeeping Burden:
Recordkeepers: 30.
Burden Hours: 6.
Abstract: This report is used by grantees who have participated in the Women's Educational Equity Act Program. The Department uses this information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Guarantee Agency Monthly Claims and Collections Report.
Frequency: Monthly.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 672.
Burden Hours: 2,016.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form is used by guarantee agencies to request payments of reinsurance for default, bankruptcy, death, and disability claims paid to lenders and for costs incurred for supplemental preclaims assistance. The Department will use the information to reimburse agencies for claims paid to lenders and overpayment refunds to borrowers in connection with the IRS income tax refund offset program.

Office of Postsecondary Education

Type of Review: Extension.
Title: Physician's Certification of Borrower's Total and Permanent Disability.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 2,652.
Burden Hours: 1,326.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form is used by lenders to obtain information from a borrower's physician to support a disability claim to the Departmet. The Department uses the information to show the aggregate amount of disability claims under the Federal Student Assistance Programs.

Office of Educational Research and Improvement

Type of Review: New.
Title: Fast Response Survey System—National Assessment of Vocational Education Teacher Survey.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 2,000.
Burden Hours: 1,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This survey will be used to provide descriptive information on vocational education and academic courses in public secondary schools. The Department will use the information to report to Congress.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Early Estimate Portion of the Private Schools Survey.
Frequency: Annually.
Affected Public: Small businesses or organizations.
Reporting Burden:
Responses: 1,200.
Burden Hours: 600.
Recordkeeping Burden:

Recordkeepers: 0.
Burden Hours: 0.

Abstract: This collection will be used to sample the private school universe to produce early estimates of the universe characteristics. The Department will use the information to build an NCES universe frame of private schools that is of sufficient accuracy and completeness to serve as a sampling frame for NCES surveys of private schools. The Department will also use the survey to generate annual data on the total number of private schools, teachers, and students.

[FR Doc. 92-17712 Filed 7-27-92; 8:45 am]
BILLING CODE 4000-1-M

[CFDA No.: 84.073C]

National Diffusion Network Program—New State Facilitator Project Notice inviting applications for a new award for fiscal year (FY) 1993

Purpose of Program: To provide a grant to disseminate exemplary education programs within Ohio. This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by making current information about exemplary programs available to educators.

Note: Under the State Facilitator Projects program, the Secretary makes an award in each State. In FY 1992, the Secretary made new awards for a State Facilitator project in each State except Ohio.

Eligible Applicants: Any public or nonprofit private agency, organization, or institution located in Ohio may apply for the State Facilitator award.

Deadline for Transmittal of Applications: September 8, 1992.

Deadline for Intergovernmental Review: November 6, 1992.

Applications Available: July 30, 1992.

Available Funds: The Administration estimates that $208,000 will be available for this project for FY 1993. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Award: $158,500–208,000.

Estimated Average Size of Award: $183,000.

Estimated Number of Awards: One.

Note. The Department is not bound by any estimate in this notice.

Project Period. Up to 42 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; (b) the regulations under 34 CFR part 98 (Student Rights in Research, Experimental Activities, and Testing); and (c) the regulations for this program in 34 CFR parts 785 and 786.

For Applications or Information Contact: Ms. Helen O'Leary, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208–5645. Telephone: (202) 219–2139. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2962.

Dated: July 22, 1992.

Diane Ravitch,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92-17711 Filed 7-27-92; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Proposed Tampa Electric Coal-Fired Integrated Gasification Combined Cycle Project

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of the proposed coal-fired Integrated Gasification Combined Cycle (IGCC) power plant and associated transmission lines at a Tampa Electric Company (TECO) site in Polk County, Florida, and to conduct a public scoping meeting.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a project proposed by TECO. The Region IV Office of the U.S. Environmental Protection Agency (EPA) has requested "Cooperating Agency" status because of their responsibilities pursuant to the Clean Water Act and the likelihood that the proposed project would require a National Pollutant Discharge Elimination System (NPDES) permit.

The proposed project involves the construction and operation of a new coal-fired nominal 260-megawatt electric (MWe) (approximately 1900 tons per day) IGCC power plant and associated transmission lines in Polk County, Florida. TECO is the utility servicing the area. DOE is proposing to provide cost-shared financial assistance for the project. However, no EPA financing is involved in the project.

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE regulations for compliance with NEPA (57 FR 15122, April 24, 1992). The purpose of this notice is to invite public participation in the process that DOE will follow to comply with NEPA and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT AND DATES: To ensure that the full range of issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by Thursday, August 27, 1992. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold a public scoping meeting at which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The location, date, and time for the scoping meeting are provided in the section of this notice entitled Scoping Meeting. Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Mr. Bruce J. Buvinger at the address noted below.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meeting, or questions concerning the project, should be directed to: Mr. Bruce J. Buvinger, Environmental Specialist, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, WV 26507–0880, telephone: (304) 291–4379. Envelopes should be labeled "Scoping for TECO EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS

process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Tel. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under terms of Public Law No. 100–446, Congress provided approximately $575 million to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's Clean Coal Technology (CCT) Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following in common:

(1) All are intended to increase the use of coal in an environmentally acceptable manner, and

(2) All are ready to be proven at the demonstration scale.

On May 1, 1989, DOE issued Program Opportunity Notice (PON) Number DE–PSO1–89FE61825 for Round III of the CCT program, soliciting proposals to conduct cost-shared projects to demonstrate innovative, energy efficient, economically competitive technologies. These technologies must be capable of: (1) Achieving significant reductions in the emissions of sulfur dioxide and/or the oxides of nitrogen from existing facilities to minimize environmental impacts such as transboundary and interstate pollution and/or (2) providing for future energy needs in an environmentally acceptable manner. The PON provided that candidate technologies must be capable of either retrofitting or repowering existing facilities. Such existing facilities currently may be designed to use any fuel (e.g., coal, oil, gas, etc.) and may be either stationary (e.g., power plants) or mobile (e.g., transportation applications). The demonstration projects, however, can be at new facilities, provided the technology is capable of retrofitting or repowering applications. In response to the solicitation, 48 proposals were received.

From these 48 proposals, thirteen projects were selected by DOE for negotiation in December 1989, including a project proposed by CRSS Capital Inc., and TECO Power Services Corp., known as the Air-Blown IGCC Demonstration Project. After selection, CRSS Capital and TECO formed a partnership entity called Clean Power Cogeneration, Inc. (CPC). At that time, the proposed project site was the City of Tallahassee, Florida's, Arvah B. Hopkins power station. DOE published a **Federal Register** NOI for the CPC project on March 7, 1991 (56 FR 9691). However, uncertainties regarding the project resulted in the publication of a notice of postponement of the scoping meeting (April 26, 1991; 56 FR 19345).

In September, 1991, the site of the proposed project was relocated to Polk County, Florida. Additionally, the CPC Limited Partnership was restructured. CRSS Capital has ceased its participation in the project, and TECO has assumed all of CRSS Capital's previous obligations.

TECO has requested financial assistance from DOE for the design, construction, and demonstration of an approximately 1900 tons-per-day (nominal 260 MWe) IGCC plant. The proposed project would occupy about one-third of the 4348-acre site in west-central Florida, in the southwestern corner of Polk County, approximately 28 miles southeast of Tampa. Much of the site and surrounding region in this part of Florida has been used for phosphate mining, which is still continuing in this area. The proposed IGCC project would be fueled with medium- to high-sulfur content eastern bituminous coal to produce electric power for the utility grid. Cost, environmental, and technical data from the protect would be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative. After the anticipated 24-month Federally-assisted demonstration period of operation, TECO intends to continue operating the plant commercially to meet customer needs for power.

Proposed Action

The proposed Federal action is for DOE to provide cost-shared financial assistance to TECO for the construction and operation of the IGCC Project. The objective of the project is to demonstrate the integration of technologically advanced subsystems, including a gasifier, gas turbine, steam boiler/turbine, and a hot gas cleanup system, to produce power in an efficient, economical, and environmentally sound manner. In addition, TECO would install a cold gas cleanup system which could be operated in parallel with the hot gas cleanup system. DOE will not share in costs associated with the cold gas cleanup system. The estimated cost-shared portion of the proposed demonstration project is approximately $242 million, of which DOE's share would be 50 percent. The total estimated cost for TECO's entire project, including aspects associated with cold gas cleanup design, construction and operation, is $640 million. The project would last approximately 84 months, including design, construction, and demonstration. Construction would commence in January 1994; however, no DOE funds would be provided for construction until the NEPA process has been completed. Operation of the project during the anticipated 24-month demonstration period would provide the information and experience needed for future applications and commercialization of the IGCC technology. Once DOE's involvement is completed, TECO intends to continue operating the plant.

The TECO site is located in southwestern Polk County, Florida, about 17 miles south of the City of Lakeland, 11 miles south of the City of Mulberry, 11 miles west of Fort Meade, and 13 miles southwest of the City of Bartow. The site consists of 4,348 acres, and is bounded by the Hillsborough County line along the western boundary; Fort Green Road (County Road 663) on the east; portions of County Road 630, Bethlehem Road, and Albritton Road on the north; and State Road 674 and several phosphate mine settling ponds on the south. State Road 37 bisects the site, running in a southwest-northeast direction. In general, lands surrounding the site and in the region have been used for previous and ongoing surface phosphate mining operations. The portion of the property to the east of State Road 37 consists primarily of unreclaimed land from previous phosphate mines. The areas west of State Road 37 is currently being mined for phosphate, and these operations are scheduled to continue into 1994.

The proposed coal-fired IGCC Project would occupy approximately one-third of the existing 4,348 acre site and would include the following facilities:

- A handling system to receive, store, crush, and convey coal.
- A gasifier that converts solid coal into coal gas to be used as a fuel in a combustion (gas) turbine.
- An air separation unit which produces 95% pure oxygen to use in the gasifier.
- A Hot Gas Cleanup (HGCU) System that will remove sulfur from the coal gas at high temperatures.
- A parallel Cold Gas Cleanup (CGCU) System that will remove sulfur from the coal gas at lower temperatures.
- A combustion turbine to burn the clean coal gas and generate electricity.
- A Heat Recovery Steam Generator (HRSG) to make steam.
- A steam turbine that generates electricity from steam.

• A stack to handle exhaust gases produced by combustion of the coal gas.

The proposed project would require the construction of two short transmission lines to tie into TECO's existing 230 kilovolt (kV) system. A northern transmission line corridor would extend about 5 miles north of the site, running through rural and phosphate mining areas. An eastern transmission line corridor would be approximately one mile long and would lie within the proposed site.

Alternatives

Under its authority pursuant to Public Law No. 100–446, DOE is presented with only two alternatives: (1) To cooperatively fund the proposed project; and (2) to decline to fund it (the "no action" alternative). In the latter case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. The facility probably would not be constructed and operated; therefore, neither potential environmental impacts related to facility construction and operation, nor potential environmental benefits resulting from commercialization of the technology, would occur.

DOE acknowledges the obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the TECO IGCC Demonstration Project.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS:

(1) The "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and oxides of nitrogen controls to meet New Source Performance Standards would continue to be used; and

(2) The proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Identification of Environmental Issues

The following issues associated with the construction and operation of the proposed TECO Project will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) *Air Quality:* The effects of air emissions within the region surrounding the site.

(2) *Water Resources and Water Quality:* The qualitative and quantitative effects on water resources and other water users in the region.

(3) *Floodplains:* The 100-year floodplain for the pre-mining condition has been documented by the Federal Emergency Management Agency. The vast majority of the floodplain areas on-site have been mined and generally are not longer connected to the stream drainage basins. The main plant site area would be developed at elevations well above the 100-year flood stage. After development and reclamation of the site and project construction, no facilities will be located in areas subject to the 100-year flood.

(4) *Wetlands:* The majority of the site and adjacent properties have been disturbed through past and current mining operations. The site would be reclaimed in accordance with Florida Department of Natural Resources requirements to restore equivalent acreages of wetland habitat that existed prior to mining. If required, formal wetland jurisdictional determinations by both state and federal agencies would be conducted on-site for wetland areas which may be affected by the project.

(5) *Socioeconomics:* Potential bearing on communities that might be affected by the project.

(6) *Land Use:* The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project.

(7) *Solid Waste:* The environmental effects of generation, treatment, transport, storage, and disposal of solid wastes.

(8) *Biological Resources:* There are several federally endangered, threatened, or candidate species which are either present or potential present on the site. Potential disturbance or destruction of species, including the potential effects on threatened or endangered species of flora and fauna will be evaluated.

(9) *Cultural Resources:* Potential effects on historical, archaeological, scientific, or culturally important sites.

(10) *Cumulative Impacts:* CEQ NEPA regulations require that the EIS evaluate the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site. DOE currently is aware of several energy-related facilities proposed for the vicinity of the TECO project, including TECO's plans for additional capacity at the site of the proposed project.

Issues that are significant will be addressed in detail; issues that are not significant will be discussed in less detail, or as appropriate to clarify and distingu among alternatives.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR part 1500–1508) and DOE's regulations for compliance with NEPA (57 FR 15122, April 24, 1992).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is through and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7) DOE's NEPA Guidelines require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in a Draft EIS will be determined, in part, from written comments submitted by mail, and comments prosented orally or in writing at public scoping meetings (see below). The results of the scoping process will be incorporated into a document called an Implementation Plan (IP), which provides guidance for the preparation of an EIS.

The above preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. DOE identified the reasonable alternatives and potential environmental issues shown above based on its experience with similar subjects that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given

above may warrant examination, and new matters may be identified for potential evaluation. The scoping process will involve all interested agencies (Federal, State, County, and local), groups, and individual members of the public. Interested parties are invited to participate in the scoping process by providing comments on both the alternatives and the issues to be addressed in the EIS. DOE will consider all comments in preparing the IP, which will specify the reasonable alternatives, identity the significant environmental issues to be analyzed in depth, and eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. When complete, the IP will be available for public review at the locations identified below.

Scoping Meeting

A public scoping meeting will be held at the location, on the date, and at the time indicated below. This scoping meeting will be informal, with a presiding officer designated by DOE who will establish procedures governing the conduct of the meeting.

The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at any of the scoping meetings. They will be called on to present their comments as time permits. Oral and written comments will be given equal weight by DOE. Written comments may also be submitted after the scoping meetings, but should be postmarked by Thursday, August 27, 1992, and forwarded to Mr. Bruce J. Buvinger, Environmental Specialist, Morgantown Energy Technology Center, as provided in the **ADDRESS** section of this Notice. Written comments postmarked after that date will be considered to the degree practicable.

The meeting is scheduled as follows:

Date: Wednesday, August 12, 1992
Time: 7 p.m. (Registration opens at 6 p.m.)
Place: For Meade Community Center, Fort Meade, Florida 33841

A complete transcript of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, and at the Department of Energy,. Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcript will also be made available during normal business hours at the following locations:

1. Tampa Hillsborough Public Library, 900 North Ashley Drive, Tampa, Florida 33602
2. Tampa Electric Company, Mulberry Customer Service Office, 101 2nd St. NW., Mulberry, Florida 33860

In addition, copies of the public scoping meeting transcript will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Mr. Bruce J. Buvinger Environmental Specialist, Morgantown Energy Technology Center, at the address given in the Invitation to Comment and Dates section of this notice.

Signed in Washington, DC this 22nd day of July 1992, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92-17964 Filed 7-27-92; 8:45 am]

BILLING CODE 6450-01-M

Floodplain and Wetland Notification for Proposed Environmental Restoration Action at the Department of Energy's Oak Ridge Reservation, Oak Ridge, Tennessee

AGENCY: U.S. Department of Energy.

ACTION: Notice of Floodplain and Wetland Involvement and opportunity to comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish measures to prevent the migration of radiologically contaminated soils from the K-25 site, specifically the K-1407-B Surface Impoundment on the DOE Oak Ridge Reservation, Oak Ridge, Tennessee. These activities may take place in the 100-year floodplain of Poplar Creek Watershed. All activities related to the proposed environmental restoration action would occur within a restricted (fenced) area of approximately 1.3 acres on federally owned property. This proposed action would consist of fill and a cap to preclude the transport of radiologically contaminated soils from the K-25 site.

DATE: Comments are due no later than August 12, 1992.

ADDRESS: Send comments to Mr. Robert C. Sleeman, Director, Environmental Restoration Division (EW-91), Oak Ridge Field Office, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831-8541, or fax comments to 615-576-6074.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 or call (202) 586-4600.

SUPPLEMENTARY INFORMATION: DOE would take the proposed action as a remedial action under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order 12580, and National Contingency Plan. The excavated surface impoundment would be backfilled with borrow soil and capped with clay and a vegetative cover.

The proposed action, if implemented, would be carried out the concurrence of the U.S. Environmental Protection Agency, the Army Corps of Engineers, and the Tennessee Department of Environment and Conservation. The proposed remedy is intended to reduce potential exposure to radiation. The action would be performed in such a manner as to avoid or minimize potential impacts on the floodplain.

DOE will prepare a floodplain assessment and publish a statement of findings in accordance with 10 CFR part 1022. Maps and further information are available from DOE at the Information Resource Center, 105 Broadway Avenue, Oak Ridge, Tennessee, 37831-8541.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-17795 Filed 7-27-92; 8:45 am]

BILLING CODE 6450-01-M

Extension of Financial Assistance Award; Energy Child Development Center, Inc.

AGENCY: U.S. Department of Energy..

ACTION: Notice of a noncompetitive grant award extension to an organization substantially owned or controlled by one or more current Department of Energy employees.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR

600.7(b)(2)(i) (B) and (G), it is making a noncompetitive extension award to Energy Child Development Center, Inc. (ECDC), under Grant Number DE–FG01–91AD69085. The extension grant will provide an increase in funding in the amount of $42,000 ($112,000 was obligated on the basic grant).

The purpose of the grant extension is to provide additional time and funding support to the ECDC for continued operation of the Department of Energy Forrestal child care and development facility (the "facility") which provides child care and development services for Federal employees.

The child care and development center project is necessary to support the Department's mission. This relationship to mission was defined by the Secretary in the "Determination To Establish Child Care Centers in Department of Energy Facilities in Forrestal and Germantown" dated April 4, 1989. The DOE support of this program should assist the Department in furthering certain statutorily recognized social goals such as equal employment opportunities. The ECDC, a non-profit corporation established and controlled by DOE employees, has been actively involved, since its inception in 1989, in departmental efforts to establish a child care and development facility. ECDC members have participated in the design and equipment of the facility and in the development of a curriculum for all stages of child development. This organization is chartered specifically to provide child care and development services at the facility and is therefore uniquely positioned to operate and manage the facility.

Based on the findings made above regarding the uniqueness of this corporate entity and the public interest served in the award of this grant, the restriction of 10 CFR 600.7(c)(2) regarding eligibility of an organization substantially owned or controlled by one or more current DOE employees has been waived.

The period of performance for the extension is from July 15, 1992 through January 14, 1993.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Rosemarie H. Marshall, 1000 Independence Avenue SW., Washington, DC 20585.

Jeffrey Rubenstein,

Director, Operations Division "A", Office of Placement and Administration.

[FR Doc. 92–17798 Filed 7–27–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–720–000, et al.]

Century Power Corp., et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Century Power Corp.

[Docket No. ER92–720–000]

July 17, 1992.

Take notice that on July 13, 1992, Century Power Corporation (Century) tendered for filing an agreement between Century and Utah Associated Municipal Power Systems (UAMPS). The agreement provides for the sale to UAMPS 15 MW of capacity and associated energy from Century's entitlement in San Juan Unit No. 3 effective July 1, 1992 through September 30, 1992.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Co.

[Docket Nos. ER90–525–008, ER90–525–000, ER89–582–004, ER88–630–009, and ER83–647–003]

July 17, 1992.

Take notice that on July 1, 1992, New England Power Company (NEP) filed a Compliance Refund Report associated with three separate refund obligations. NEP stated that these refunds were sent to your Primary Customers on June 5, 1992 in respect to Settlement Agreements in Docket Nos. ER90–525–000 *et al.* and Docket No. ER83–647–000.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Power Inc.

[Docket No. ER92–288–000]

July 17, 1992.

Take notice that on July 14, 1992, Iowa Power Inc. (Iowa Power) tendered for filing the second amendment to the original filing for this docket dated January 27, 1992.

Iowa Power states that the second amendment to the filing provides for a revised Exhibit F of the General Facilities Agreement between Iowa Power and Central Iowa Power Cooperative (CIPCO).

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Co.

[Docket No. ER92–72–000]

July 17, 1992.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on July 13, 1992, tendered for filing an Interchange Agreement between itself and Otter Tail Power Company. The Interchange Agreement provides for the purchase or sale of Negotiated Capacity Service and General Purpose Energy Service.

Wisconsin Electric requests an effective date of July 15, 1992. Wisconsin Electric is authorized to state that Otter Tail Power Company joins in the requested effective date.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Co.

[Docket No. ER92–693–000]

July 17, 1992.

Take notice that on July 6, 1992, Puget Sound Power & Light Company (Puget Sound) tendered for filing certain information related to its Residential Purchase and Sale Agreement with Bonneville Power Administration (BPA) under the Pacific Northwest Electronic Power Planning and Conservation Act.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Co.

[Docket No. ER92–718–000]

July 17, 1992.

Take notice that on July 13, 1992, Portland General Electric Company tendered for filing proposed changes in Rate Schedule No. 73, as set forth in Amendment No. 1 to the Long-term Power Sale Agreement with Western Area Power Administration. This change effects minor adjustments in scheduling and billing, with no net increase or decrease in sales or revenues.

Copies of the filing have been served on the distribution list, as included in the filing.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Tucson Electric Power Co.

[Docket No. ER92–719–000]

July 17, 1992.

Take notice that on July 13, 1992, Tucson Electric Power Company (Tucson) tendered for filing an

Interchange Agreement (the Agreement) between Tucson and the city of Vernon (Vernon). The purpose of the Agreement is to establish the terms and conditions for the interconnection of the electrical systems of Tucson and Vernon and the exchange of economy energy. Tucson states that services may be provided under Service Schedule A to the Agreement entitled "Economy Energy Interchange."

It has been requested that the Agreement be accepted for filing and become effective sixty (60) days after the date of such filing pursuant to 18 CFR 35.2(e).

Copies of this filing have been served on all parties affected by this proceeding.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Co.

[Docket No. ER89-34-004]

July 17, 1992.

Take notice that on July 13, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a compliance report in accordance with the Commission's May 12, 1992 letter accepting for filing the Interconnection Agreement between Pacific Gas and Electric Company (PG&E) and the Northern California Power Agency (NCPA) in the above referenced dockets. The Commission required that PG&E submit a compliance report showing, among other refunds, the refund made to NCPA due to collection in excess of the settlement rates during the period of January 1, 1991 through March 31, 1992. On June 26, 1992, all refunds were paid to NCPA.

Copies of this filing have been served upon NCPA, the California Public Utilities Commission and the parties to the service list in the above referenced dockets.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Interstate Power Co.

[Docket No. ER92-505-000]

July 17, 1992.

Take notice that on June 24, 1992, Interstate Power Company tendered for filing an amendment to its April 29, 1992 filing in the above-referenced docket.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Co.

[Docket No. ER92-710-000]

July 17, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the Public Utility Commission of the City of Adrian and Interstate. Interstate states that this amendment revises the transmission loss factors.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Co.

[Docket No. ER92-709-000]

July 17, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the City of Worthington, Minnesota and Interstate. Interstate states that this amendment revises the transmission loss factors.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Interstate Power Co.

[Docket No. ER92-708-000]

July 17, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the City of Mountain Lake, Minnesota and Interstate. Interstate states that this amendment revises the transmission loss factors.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Interstate Power Co.

[Docket No. ER92-707-000]

July 17, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the Municipal Light and Water Commission of the City of Westbrook, Minnesota and Company. Interstate states that this amendment revises the transmission loss factors.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket Nos. ER92-317-002 and ER92-456-002]

July 17, 1992.

Take notice that on July 10, 1992, Public Service Company of Colorado tendered its compliance filing in this proceeding. This compliance filing was made at the direction of the Commission in its June 12, 1992 order in this proceeding. The compliance filing consists of revised terms and conditions for the Transmission Service Tariff filed in Docket No. ER92-317-000 and revised rate sheets for the four contracts filed in Docket No. ER92-456-000.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Indiantown Cogeneration, L.P.

[Docket No. QF90-214-001]

July 17, 1992.

On July 13, 1992, Indiantown Cogeneration, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure of the facility.

Comment date: August 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Central Maine Power Co.

[Docket No. ER92-48-000]

July 17, 1992.

Take notice that on July 8, 1992, Central Maine Power Company (CMP) tendered for filing Revised Exhibits 7, 8, 10, and 11. The Revised Exhibits 7, 8, 10 and 11 are intended as substitutes for the original Exhibits 7, 8, 10 and 11 that were included in CMP's supplemental filing, dated June 29, 1992, in the above referenced docket. The original and supplemental filing sought approval of the following schedules and agreements:

1. Energy Reservation Charge Rate Schedule (First Revision), effective as of April 26, 1980;

2. Amendment and Consent to Sales Agreement, effective as of May 1, 1984, between CMP and Boston Edison Company (BECO);

3. Amendment and Consent to Sales Agreement, effective as of April 2, 1983, between CMP and Central Vermont Public Service Corporation (CVPS);

4. Amendment and Consent to Sales Agreement, effective as of June 11, 1983, between CMP and Connecticut Municipal Electric Energy Cooperative (CMEEC);

5. Amendment and Consent to Sales Agreement, effective as of January 20, 1983, between CMP and Green Mountain Power Corporation (GMP);

6. Amendment and Consent to Sales Agreement, effective as of September 17,

1983, between CMP and New England Power Company (NEP);

7. Amendment and Consent to Sales Agreement, effective as of May 1, 1983, between CMP and Massachusetts Municipal Wholesale Electric Company (MMWEC);

8. Amendment and Consent to Sales Agreement, effective as of April 28, 1980, between CMP and Northeast Utilities Companies (NU);

9. Amendment and Consent to Sales Agreement, effective as of June 16, 1981, between CMP and Public Service Company of New Hampshire (PSNH); and

10. Amendment and Consent to Sales Agreement, effective as of April 22, 1991 between CMP and Unitil Power Corp. (Unitil).

CMP has served a copy of the filing on each affected customer and state regulatory commission.

Comment date: July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corp.

[Docket No. ER92-671-000]

July 17, 1992.

Take notice that on June 26, 1992, Florida Power Corporation (FPC) tendered for filing a Transmission Service Agreement between Oglethorpe Power Corporation and FPC.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Interstate Power Co.

[Docket No. ER92-706-000]

July 17, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the City of Lakefield, Minnesota and Interstate. Interstates states that this amendment revises the transmission loss factors.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER92-689-000]

July 17, 1992.

Take notice that on July 2, 1992, PacifiCorp tendered for filing executed copies of the Power and Transmission Service Agreement between PacifiCorp, Public Service Company of Colorado, Tri-State Generation and Transmission Association, Inc.

Comment date: July 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Kamine/Besicorp Syracuse L.P.

[Docket No. QF88-269-002]

July 17, 1992.

On July 6, 1992, Kamine/Besicorp Syracuse L.P., of 1620 route 22 East, Union, New Jersey, 07083, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the Town of Geddes, Village of Solvay, Onondaga County, New York. The Commission previously certified the facility as a qualifying cogeneration facility. [Kamine LCP Cogen Co. Inc., 43 FERC ¶ 62,241 (1988), and Kamine/Besicorp Syracuse L.P., 58 FERC ¶ 62,031 (1992)]. The instant request for recertification is due to the updated thermal requirements of the host facilities.

Comment date: August 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Interstate Power Co.

[Docket No. ER92-711-000]

July 20, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the City of Windom, Minnesota and Company. Interstate states that this amendment revises the transmission loss factors.

Comment date: August 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Interstate Power Co.

[Docket No. ER92-712-000]

July 20, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 1 to the Electric Service Agreement between the City of Jackson, Minnesota and Interstate. Interstate states that this amendment revises the transmission loss factors.

Comment date: August 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power Corp.

[Docket No. ER92-671-000]

July 20, 1992.

Take notice that on July 10, 1992, Florida Power Corporation (Florida Power) filed a request to amend its filing in the above docket to allow an effective date of July 20, 1992 for the filed transmission service agreement with Oglethorpe Power Corporation, filed on June 26, 1992, instead of August 26, 1992 as originally requested. The purpose of the amendment is to allow Florida Power to provide transmission service for an opportunity transaction between Tampa Electric and Oglethorpe to begin on July 20, 1992.

Comment date: August 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Interstate Power Co.

[Docket No. ER92-713-000]

July 20, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 2 to the Electric Service Agreement between the Public Utilities Commission of the City of Springfield, Minnesota and Interstate. Interstate states that this amendment revises the transmission loss factors.

Comment date: August 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Lakewood Cogeneration, L.P.

[Docket No. QF88-416-003]

July 20, 1992.

On July 10, 1992, Lakewood Cogeneration, L.P. (Applicant) tendered for filing a supplement to its filing in this docket.

The amendment provides additional technical information pertaining to its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Sithe/Independence Power Partners, L.P.

[Docket No. QF92-142-000]

July 20, 1992.

On July 14, 1992, Sithe/Independence Power Partners, L.P. (Applicant) tendered for filing a supplement to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Arroyo Energy, Limited Partnership

[Docket No. QF92-179-000]

July 20, 1992.

On July 6, 1992, Arroyo Energy, Limited Partnership, 18552 MacArthur Boulevard, No. 324, Irvine, California

92715, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 525 North Tulip Street, Escondido, California. The facility will consist of a gas turbine generator, a heat recovery boiler (HRB) and an extraction/condensing steam turbine generator. Thermal energy from the facility, in the form of extraction steam and steam from the HRB will be used in absorption refrigeration equipment which provides refrigeration for the host ice skating and health facility. The net electric power production capacity of the facility will be 49.8 MW. The primary energy source for the facility will be natural gas. Installation of the facility is expected to begin in 1995.

Comment date: August 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17701 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES92-47-000, *et al.*]

UtiliCorp United Inc., et al., Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES92-47-000]

July 21, 1992.

Take notice that on July 15, 1992, UtiliCorp United Inc. (UtiliCorp) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue up to and including 425,000 shares of common stock, par value $1.00 per share. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp

[Docket No. ER92-721-000]

July 22, 1992.

Take notice that on July 14, 1992, PacifiCorp tendered for filing a Notice of Cancellation of Service Agreement No. 9 under PacifiCorp's Electric Tariff, Original Volume No. 5 and Twelfth Revised Sheet No. 3.0 Superseding Eleventh Revised Sheet No. 3.0 of PacifiCorp's FERC Electric Tariff, Original Volume No. 5. (Index of Utilities Executing Service Agreements).

Comment date: August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

GEO East Mesa Limited Partnership-GEM 2

[Docket No. QF 88-203-005]

July 22, 1992.

On July 14, 1992, GEO East Mesa Limited Partnership (Applicant) of 18101 Von Karman Ave., Suite 1700, Irvine, California 92715-1007, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is presently certified for 19.6 MW [59 FERC ¶ 62,323 (1992)]. The instant recertification is requested to reflect an increase in the net electric power production capacity of the facility. Applicant represents that the increase in capacity is due to two adjustments to the certified net. First, the recalculation of the net capacity which reflects the actual design configuration and operation. Second, the inclusion of the non-power production portions of the energy used by reinjection pumps.

Comment date: August 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

GEO East Mesa Limited Partnership-GEM 1

[Docket No. QF88-202-005]

July 22, 1992.

On July 14, 1992, GEO East Mesa Limited Partnership (Applicant) of 18101 Von Karman Ave, Suite 1700, Irvine, California 92715-1007, submitted for filing an application for recertification of a facility as qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is presently certified for 19.6 MW [59 FERC ¶ 62,323 (1992)]. The instant recertification is requested to reflect an increase in the net electric power production capacity of the facility. Applicant represents that the increase in capacity is due to two adjustments to the certified net. First, the recalculation of the net capacity which reflects the actual design configuration and operation. Second, the inclusion of the non-power production portions of the energy used by reinjection pumps.

Comment date: August 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Interstate Power Company

[Docket No. ER92-716-000]

July 22, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment No. 5 to the Electric Service Agreement between the Municipal Light and Water Department Board of Trustees of the City of Bellevue and Interstate.

Interstate states that this amendment revises the transmission loss factors.

Comment date: August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER92-725-000]

July 22, 1992.

Take notice that on July 14, 1992, Maine Public Service Company (Maine Public) tendered for filing a proposed initial rate schedule pertaining to the short term, nonfirm sale of capacity and energy. The rate will be negotiated between Maine Public and the purchaser at the time of the transaction, but not to exceed Maine Public's cost of service for the units available for sale. A Service Agreement will be executed prior to the time of a purchase by a particular utility and submitted to the Commission. Maine Public has

requested that the rate schedule become effective on July 15, 1992.

Comment date: August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Company

[Docket No. ER92-715-000]

July 22, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment Nos. 2, 3, 4 and 5 to the Electric Service Agreement between the Board of Trustees of the Municipal Electric Utility of the City of Independence, Iowa and Interstate.

Interstate states that these amendments revise the firm power commitment and transmission loss factors.

Comment date: August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Interstate Power Company

[Docket No. ER92-714-000]

July 22, 1992.

Take notice that on July 13, 1992, Interstate Power Company (Interstate) tendered for filing Amendment Nos. 2 and 3 to the Electric Service Agreement between the Board of Trustees of Municipal Utilities of McGregor, Iowa and Interstate.

Interstate states that these amendments revise the firm power commitment and transmission loss factors.

Comment date: August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Central Hudson Gas & Electric Corporation

[Docket No. ER92-726-000]

July 22, 1992.

Take notice that on Central Hudson Gas & Electric Corporation (Central Hudson) on July 16, 1992 tendered for an amended filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated January 31, 1992 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $4,075.67 to $3,823.17 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, an increase in the monthly Transmission Charge from $4,414.05 to $4,075.67 to $3,823.17 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, an increase in the annual Operation and Maintenance Charge from $4,179.49 to $5,367.57 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1992.

Copies of the filing were served upon the New York State Electric and Gas Corporation.

Comment date: August 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17779 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2016-012 Washington]

City of Tacoma; Availability of Environmental Assessment

July 22, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to amend the license for the Cowlitz River Project to make revisions to the approved recreation plan, including the development of a major recreation facility. The project is located on Riffe Lake in Lewis County, Washington. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17704 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-598-000, et al.]

Transcontinental Gas Pipeline Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipeline Corporation

[Docket No. CP92-598-000]

July 21, 1992.

Take notice that on July 16, 1992, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-598-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Delhi Gas Pipeline Corporation (Delhi) certain small-diameter gathering pipelines and related measurement and regulating stations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TGPL states that the facilities it seeks authority to abandon are located in production areas in the Laredo/Lopeno, Texas area (Webb and Zapata Counties) and in the East Texas area (Rusk County). It is further stated that after the sale of the subject facilities by TGPL to Delhi, such facilities would be incorporated by Delhi into its intrastate pipeline systems in these two areas and would no longer be jurisdictional facilities.

TGPL indicates that as part of settlement of a lawsuit between TGPL and Delhi, TGPL agreed to sell to Delhi and Delhi agreed to purchase from TGPL the subject facilities, subject to approval by the Commission. TGPL further indicates that it desires to sell these facilities to Delhi because they attach gas supply sources directly to Delhi's intrastate pipeline system. TGPL states that it originally built and owned these facilities because they attached gas supplies under gas purchase contract to TGPL. However, it is stated that certain sellers have terminated their gas purchase contracts with TGPL, and overall volumes purchased by TGPL

continue to be reduced. Moreover, TGPL indicates that these facilities are far removed from TGPL's system and TGPL pays Delhi a fee for operating the facilities on behalf of TGPL.

It is stated that Delhi would purchase the subject facilities at their net book values as of December 31, 1991. TGPL further states that the total purchase price of the Laredo/Lopeno facilities is $870,229.56 and the total purchase price of the East Texas facilities is $349,835.36 for a grand total of $1,220,064.92.

TGPL states that it is requesting that the Commission issue to TGPL an order (a) permitting and approving the abandonment of the subject facilities by sale to Delhi; and (b) declaring that, with the abandonment so approved, the facilities would be part of Delhi's intrastate pipeline system and that neither Delhi nor such facilities would thereafter be subject to the Commission's jurisdiction under the NGA by virtue of this sale and purchase of such facilities.

Comment date: August 11, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Pelican Interstate Gas System

[Docket No. CP92-602-000]

July 22, 1992.

Take notice that on July 20, 1992, Pelican Interstate Gas System (Pelican), 1600 Smith, Suite 4775, Houston, Texas 77002, filed in Docket No. CP92-602-000 a petition for declaratory order declaring that its facilities are gathering facilities exempt from jurisdiction consistent with section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Pelican states that the Commission on February 5, 1992, issued a declaratory order in *Blue Dolphin Pipe Line Company*, 58 FERC ¶ 61,103 (referred to as *Blue Dolphin*), where the Commission found that facilities which function in the same manner, and have the same general configuration as those of Pelican's are non-jurisdictional gathering facilities. Pelican requests that the Commission declare that the Pelican system and services that it provides are exempt from the Commission's NGA jurisdiction pursuant to section 1(b) of the NGA. In addition, Pelican requests that its original certificate issued in Docket No. CP88-323, 40 FPC 395, authorizing the construction of operation of its facilities, its open-access blanket certificate issued in RP89-73-000, as well as any related certificates be rescinded.

Pelican states that in *Blue Dolphin*, the Commission declared that approximately 49.75 miles of 20-inch and 16-inch pipeline qualify as gathering. It is indicated that those facilities consist of 1.75 miles of 20-inch pipeline that interconnect platforms located on the Outer Continental Shelf, extend from one of the platforms for 38.8 miles, through a 20-inch pipeline, to an onshore processing plant, and thereafter continuing beyond the tailgate of the plant for an additional 9.2 miles through a 16-inch pipeline to both an intrastate pipeline and to chemical plants owned by a third party. It is stated that the Commission concluded that Blue Dolphin qualified as a gatherer because its facilities satisfied the "modified primary function" test set forth in *Amerada Hess Corp., et al*, 52 FERC ¶ 61,268 (1960), (*"Amerada Hesss"*). It is indicated that under that test the Commission applies five criteria to determine the jurisdictional status of a facility: (1) The diameter and length of a facility; (2) the location of compressors and processing plants; (3) the extension of facilities beyond a central point in the field; (4) the location of wells along all or part of the facility; and (5) the geographic configuration of the system.

Pelican states that the facilities which together comprise its gathering system which begins in offshore Louisiana, West Cameron and High Island areas and terminates in Cameron Parish, Louisiana consists of the following facilities:

(1) 27.56 miles of 16-inch pipe (Line1-16) that extends from West Cameron Block 165 to the onshore terminus of the system in Cameron Parish, Louisiana;

(2) 23.5 miles of 12-inch pipe (Line 1-12) from West Cameron Block 165 to West Cameron Block 229;

(3) 1.535 miles of 4-inch pipe (Line 12-4) from West Cameron Block 118 to an interconnection with Line 1-16 at West Cameron Block 117;

(4) 3.997 miles of 6-inch pipe (Line 13-6) from West Cameron Block 289 to an interconnection with Line 1-16 at West Cameron Block 165;

(5) 16.38 miles of 12-inch pipe (Line 2-12) from High Island Block 129 to an interconnection with Line 1-16 at West Cameron Block 165; and

(6) 11.95 miles of 10-inch pipe (Line 3-10) from High Island Block 14 to West Cameron Block 117 where the Line 3-10 facilities interconnect with Line 1-16 facilities.

Pelican states that the total length of the Pelican system is approximately 85 miles.

Pelican argues that the length and configuration of its facilities are solely a function of the geographic/geologic location of the reserves attached to the system, and are typical of other systems that have been granted gathering status by the Commission.

Pelican also argues that it further meets the modified primary test because it owns no compression or processing facilities. Pelican indicates that field compression facilities operated by producers are located on the production platforms to bring the gas to a pressure to enable it to enter Pelican's lines. It is also indicated that while Pelican's system operates at a pressure of 1000 psig, the Commission has previously determined that a maximum operating pressure of 1,440 psig is not inconsistent with a determination that a gathering function is being performed. It is also indicated that at the production platforms the producers also dehydrate and separate liquids from the gas to prevent the collection of water in the system. It is also indicated that after moving through the Pelican facilities, the gas enters a liquid separation facility owned by unaffiliated third parties and delivered into the facilities of Natural Gas Pipeline of America.

Pelican also states that, with respect to the extension of facilities beyond a central point in the field, there is no central point in the field. It is indicated that the Pelican system is configured generally like an inverted Y, but with gas entering the inverted leg of the Y on Line 1-16 approximately midway from the onshore terminus of the system and gas enters the system at various locations along the entire length of the system. It is also indicated that wells attached to the system are located throughout the producing areas in which Pelican has facilities.

It is also argued that the configuration of the integrated facilities supports its status as a gatherer. It is stated that systems that resemble a Y have been found to comprise a network configuration that provided gathering service.

Pelican also states that it also satisfies additional criteria previously considered by the Commission set forth in determining gathering. It is indicated that Pelican makes no sales of gas, has no system supply, and has no local distribution customers. It is also indicated that after January 1, 1993, the date Natural has elected to terminate Pelican's firm transportation service, Pelican will have no firm transportation customers. It is stated that after that date all shippers on the Pelican system will be interruptible transportation customers.

Comment date: August 12, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP92-580-000]

July 22, 1992.

Take notice that on July 7, 1992, El Paso Natural Gas Company (Applicant), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-580-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting authorization to construct and operate certain pipeline, metering and compression facilities in order to provide transportation service to the International Boundary between the United States and the Republic of Mexico (hereby called the Yuma Lateral Expansion Project), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate the following facilities to link Applicant's existing interstate system to a point of interconnection with facilities to be sited at the International Boundary between the United States and the Republic of Mexico in Yuma County, Arizona, near San Luis Rio Colorado, Sonora, Mexico:

Compression

1. Wenden Compressor Station

Install one (1) 6,500 ISO horsepower Solar Taurus compressor unit, with appurtenances, and one (1) 5,650 ISO horsepower Solar Centaur "H" compressor unit, with appurtenances, at the existing Wenden Compressor Station located in La Paz County, Arizona.

Pipeline

2. Wenden Compressor Station to Quartzite, Arizona

Install approximately 21.0 miles of 36-inch O.D. pipeline, with appurtenances, commencing at the Wenden Compressor Station at milepost 670.5 on Applicant's existing 30-inch O.D. pipeline and terminating at milepost 691.5 in La Paz County, Arizona.

3. Install approximately 93.5 miles of 30-inch O.D. pipeline, with appurtenances, at milepost 714.6 on Applicant's existing 30-inch O.D. pipeline in La Paz County, Arizona, and terminating in Yuma County, Arizona.

Meter Stations

4. Yuma, Arizona

Install two (2) 8-inch standard orifice-type meter runs, with appurtenances, at milepost 91.8 on Applicant's proposed 30-inch pipeline located in Yuma County, Arizona.

5. International Boundary

Install one (1) 16-inch standard orifice-type meter run, with appurtenances, at milepost 93.5 at the terminus of Applicant's proposed 30-inch pipeline located in Yuma County, Arizona.

Applicant estimates the cost of the proposed facilities to be $91,899,440. Applicant indicates that it will finance the proposed construction through use of internally generated funds or through short-term borrowing.

Applicant states that its proposal will provide for firm and interruptible transportation service of up to 400,000 Mcf/d of natural gas, primarily for shippers serving existing and proposed electric generation facilities and other possible needs in Baja California Norte, Mexico, and existing and proposed electric generating facilities and other possible needs in the Yuma, Arizona area.

Applicant indicates that it has received from shippers requests for service in the area served from the facilities downstream of Applicant's Wenden Compressor Station amounting to an additional 2.1 Bcf per day of new capacity. Applicant states that, based on current negotiations, the requested services actually represent a near-term requirement for approximately 400,000 Mcf per day in new capacity from the existing mainline south towards Yuma. Applicant further states that it intends to finalize negotiations with shippers in the near future.

Applicant states that the single largest use for the proposed capacity is the 606 megawatt, Rosarito Power Plant which is located in Baja California Norte, Mexico. Applicant indicates that the Rosarito Power Plant, which currently generates electricity for use within Mexico, currently uses a very high sulphur residual oil. Applicant further indicates that plans are now underway to convert the existing plant to natural gas beginning in July, 1994, and that the Comision Federal de Electricidad is currently reviewing a plan for the phased expansion of capacity of the plant over a five-year period.

Applicant indicates that Petroleos Mexicanos (PEMEX) will own the necessary downstream pipeline in Mexico to move gas from the International Boundary to the Rosarito Power Plant and other potential delivery points.

Applicant submits that it has offered transportation arrangements to the expansion shippers which allow for flexible receipt points. Applicant further states that it may receive gas from the San Juan, Permian, or Anadarko Basins or from any pipeline interconnect. Applicant states that its existing pipeline system upstream of the Wenden Compressor Station is capable of receiving and transporting to the Wenden Compressor Station all or any portion of the proposed additional 400,000 Mcf per day of additional throughput from any of the above-named supply sources without significant additional capital investment.

Applicant states that the various shippers utilizing Applicant's proposed facilities at the border will be required to obtain the proper authorizations from the Department of Energy, Office of Fossil Energy for the exportation of natural gas. Applicant further states that it will not itself export any gas, and does not require any export authorization.

Applicant indicates that it filed concurrently with the subject application, an application for an order, under Section 3 of the Act and § 153.1 of the Commission's Regulations under the Act, authorizing the siting of pipeline facilities at the International Boundary between the United States and the Republic of Mexico in Yuma County, Arizona near San Luis Rio Colorado, Sonora, Mexico, and under § 153.10 of the Commission's Regulations under the Act, for a Presidential Permit authorizing the proposed construction, connection, operation and maintenance of pipeline facilities at the International Boundary.

Applicant proposes to provide service utilizing the proposed facilities in accordance with its current Rate Schedules T-1 and T-3. Applicant states that new shippers will be offered Transportation Service Agreements in accordance with Rate Schedule T-1 and T-3, with system-wide receipt points, and with delivery points located on the proposed expansion facilities.

Applicant requests pre-approval of rolled-in rate treatment for those costs subject to the necessary showing in the appropriate rate case. Applicant states that it is willing to accept the financial risk for undersubscription, and it is willing to agree that its existing customers will be shielded from any risk of economic harm.

Comment date: August 12, 1992, in accordance with Standard Paragraph F at the end of the notice.

4. El Paso Natural Gas Company

[Docket No. CP92-581-000]

July 22, 1992.

Take notice that on July 7, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-581-000 an application pursuant to section 3 of the Natural Gas Act and §§ 153.3 and 153.10 through 153.12 of the Commissions Regulations and Executive Order 10485, as amended by Executive Order 12038, and Secretary of Energy Delegation Order No. 0204-112. In that application, El Paso requested an order authorizing the siting, construction, operation and maintenance of pipeline facilities at the United States-Mexico international boundary in Yuma County, Arizona near San Luis Rio Colorado, Sonora, Mexico. In addition, El Paso requested a Presidential Permit covering the proposed construction, connection and operation of pipeline facilities at the United States-Mexico border, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

El Paso request authorization to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Mexico in Yuma County, Arizona near San Luis Rio Colorado, Sonora, Mexico. El Paso proposes to construct approximately 60 feet of 30-inch O.D. pipeline, with appurtenances, necessary to connect El Paso's upstream facilities with a new pipeline system to be owned in Mexico by Petroleos Mexicanos (PEMEX).

El Paso states that it is filing concurrently an application, pursuant to section 7(c) of the Natural Gas Act, for authorization to construct and operate approximately 114.5 miles of pipeline, 12,150 horsepower of compression, and certain metering facilities, with appurtenances, to transport natural gas from its existing interstate system to the International Boundary (hereby called the Yuma Lateral Expansion Project).

El Paso states that the proposed facilities to be constructed and operated at the International Boundary will constitute a portion of the Yuma Lateral Expansion Project and will facilitate the transportation and delivery of up to 350,000 Mcf per day of natural gas to PEMEX at the International Boundary for eventual delivery to the Rosarito Power Plant for electric generation in Baja California Norte, Mexico, and to possible delivery to other Mexican communities located along the line to be constructed in Mexico.

El Paso submits that the proposed border facilities will be made available to any shipper who has executed a transportation service agreement with El Paso. El Paso also submits that the shippers who execute transportation service agreements with El Paso will obtain the necessary export authorization from the Department of Energy, Office of Fossil Energy prior to the commencement of service.

El Paso states that the transportation rates to be charged by El Paso for transportation service are those rates set forth in its firm transportation service Rate Schedule T-3 and its interruptible transportation service Rate Schedule T-1. El Paso further states that the rates between the shippers and the ultimate purchaser in Mexico will be set by competition, and should be comparable to rates charged by any selling entity for similar service in the United States.

Comment date: August 12, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17777 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-717-000]

Bangor Hydro-Electric Co.; Filing

July 22, 1992.

Take notice that on July 13, 1992, Bangor Hydro-Electric Company (Bangor) tendered for filing a Notice of Termination of FERC Rate Schedule No. 4. Bangor states that this cancellation is effective as of August 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17705 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

Old Dominion Electric Cooperative; Filing

[Docket No. ER92-432-001]

July 22, 1992.

Take notice that Old Dominion Electric Cooperative (Old Dominion), on June 11, 1992, tendered for filing supplementary information pursuant to its rate tariff, accepted for filing by the Director of the Division of Applicants of the Office of Electric Power Regulation by letter order dated May 18, 1992.

Old Dominion's original filing included a generic version of the Amended and Restated Wholesale Power Contract between Old Dominion and its member cooperative customers. In its original filing Old Dominion indicated that it would file executed copies of that contract, including

customer specific terms of service under the tariff, subsequent to FERC acceptance of the tariff. The executed contracts are the subject of this filing.

The executed contracts submitted by Old Dominion are unchanged format the generic version of the contract submitted with the rate filing. The filing does not modify or otherwise affect the rates or charges calculated pursuant to the Comprehensive Cost of Service formula accepted by the Commission. The filing is ministerial in nature and does not serve to change any charges, classifications or calculations under the accepted formulary rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17702 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

Southern Natural Gas Co., Rescheduling Informal Settlement Conference

[Docket No. RP92-134-000]

July 22, 1992.

Take notice that the informal settlement conference previously set for Wednesday, July 29, 1992 has been rescheduled for Monday, August 3, 1992, at 11 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy Carr at (202) 208-1240 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17703 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

Texas Eastern Transmission Corp.; Petition To Amend

[Docket No. CP92-475-001]

July 22, 1992.

Take notice that on July 17, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-475-001, a petition to amend Docket No. CP92-475-000, which is currently pending before the Commission, so as to abandon a related sales service to United Cities Gas Company (United Cities) under Rate Schedule SCQ, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Eastern states that in Docket No. CP92-475-000, it requested permission and approval to abandon its firm obligation to provide firm storage service under Rate Schedule SS-1 to United Cities. Texas Eastern also states that in Docket No. CP92-475-000, the abandonment of storage service is requested to accommodate United Cities, which has arranged for other storage service and desires to terminate its Rate Schedule SS-1 storage service. In addition, it is stated that simultaneously with the abandonment of service in Docket No. CP92-475-000 to United Cities, Texas Eastern will initiate firm storage service to Mississippi Valley Gas Company pursuant to its blanket storage certificate issued in Docket Nos. CP90-186-001 and RP88-67-000, *et al.*

Texas Eastern states that it has discovered that it failed to request authorization to abandon the related sales service to United Cities under Rate Schedule SCQ, therefore, requests permission and approval, herein, to abandon the sales service to United Cities provided under Texas Eastern's Rate Schedule SCQ. Texas Eastern further states that the sales service under Rate Schedule SCQ is available only to fill Rate Schedule SS-1 storage service.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 3, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17706 Filed 7-27-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-79-NG]

Czar Gas Corporation Inc.; Application to Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 23, 1992, of an application filed by Czar Gas Corporation Inc. (Czar Inc.) for blanket authorization to import up to 146 Bcf of natural gas from Canada and to export up to 146 Bcf of natural gas to Canada. The application requests that the authorization be approved for a period of two years beginning on the date of the first delivery. Only existing U.S. pipeline facilities would be used to transport this gas.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 27, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:
C. Frank Duchaine Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Czar Inc. is a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, and a wholly-owned subsidiary of Czar Resources Ltd. Czar Inc. markets gas produced by affiliated and nonaffiliated companies to pipelines, local distribution companies and commercial and industrial end-users. According to the application, the authority requested by Czar Inc. contemplates the following types of import and export arrangements: (1) Importation of supplies of Canadian natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian markets; and (4) exportation of domestically produced gas for eventual return (via import) to U.S. markets.

Czar Inc. proposes to import and export this gas either for its own account or as agent on behalf of others. Although the identity of the parties are not known at this time, Czar Inc. states that the individual transactions would be conducted through arms-length bargaining and the price would be competitive in the marketplace. The gas to be exported is asserted to be incremental to the needs of current domestic purchasers in the area from which the supplies would come.

The decision on Czar Inc.'s application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement would be in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Czar Inc.'s application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 21, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–17797 Filed 7–27–92; 8:45 am]
BILLING CODE 6450–01–M

[FE Docket No. 92–71–NG]

Offshore Gas Marketing, Inc.; Application for Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on June 11, 1992, by Offshore Gas Marketing, Inc. (OGM) requesting blanket authorization to export up to 150 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery. OGM intends to use existing pipeline facilities, and will submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 27, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056,

FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: OGM, a Texas corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of Deep Tech International, Inc. and was formed to purchase, resell, and transport natural gas in the interstate, intrastate and export natural gas markets. The exported gas would come from production areas in the United States with surplus supplies of natural gas. No contracts for the sale of the proposed exports have been executed, however, OGM asserts that such contracts will be the product of arms-length negotiations between OGM and its Mexican customers and the natural gas prices will reflect market conditions.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identity the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of OGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 17, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–17798 Filed 7–27–92; 8:45 am]

BILLING CODE 6540–01–M

[FE Docket No. 92–24–NG]

Salmon Resources, Ltd.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on February 25, 1992, as amended July 9, 1992, by Salmon Resources Ltd. (Salmon) for authorization to import up to 20,500 MMBtu per day of Canadian natural gas over a 15-year term, and up to 9,800 MMBtu per day over a ten-year term, pursuant to two gas purchase contracts between Salmon and Shell Canada Limited (Shell). The imported gas would enter the U.S. at a point on the international border near Port of Morgan, Montana/Monchy, Saskatchewan, through the pipeline facilities of Northern Border Pipeline Company (Northern Border).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 27, 1992.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9487.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Salmon, a Wyoming corporation with its principal place of business in Lakewood, Colorado, is a wholly owned subsidiary of Shell. Salmon intends to resell the gas to Midwest Gas, a Division of Iowa Public Service Company (Midwest Gas), and Enron Gas Marketing, Inc. (Enron) under separate agreements. Gas sold to Midwest Gas would be delivered on the Northern Border system to an interconnection with the Northern Natural Gas pipeline system at Ventura, Iowa. Gas sold to Enron would be delivered by Northern Border to an interconnection with Northern Natural at Ventura and Clear Lake, Iowa. The gas would be transported in the U.S. by Northern Border and Northern Natural to the system of Midwest Gas, and using the facilities of Northern Border and either Northern Natural or if the gas purchase agreement is amended to add Clear Lake as a delivery point, using the facilities of Natural Gas Pipeline Company of America (NGPL), to the Enron markets. In Canada, Shell has arranged with NOVA Corporation of Alberta (NOVA) and Foothills PipeLines Ltd. (Foothills) to transport the gas from the fields in Alberta to Monchy, Saskatchewan.

Shell/Salmon/Midwest Gas Agreement

Under a March 1, 1991, agreement with Shell, Salmon has agreed to purchase up to a maximum daily quantity (MDQ) of 20,500 MMBtu commencing on the date of the DOE authorization of Salmon's import application through November 1, 2006. The terms of the Shell-Salmon agreement are derived from and incorporate a gas sales contract between Salmon and Midwest Gas. Under this contract, Midwest Gas must take or pay for a minimum annual quantity equal to 80 percent of the MDQ on an annual aggregate basis. This minimum purchase obligation is subject to a one-year make-up period and an annual deficiency payment equal to 20 percent of the commodity charge times the deficiency volume.

The price payable to Shell by Salmon in connection with the Midwest Gas sale is equal to the price paid by Midwest Gas to Salmon minus the transportation charges paid by Salmon to Northern Border, less 1.5 percent for Salmon costs. The price payable to Salmon by Midwest Gas consists of a demand charge equal to the sum of monthly demand charges of Canadian transporters or $308,730, whichever is greater, and a commodity charge equal to 94 percent of Northern Natural's monthly commodity rate. The contract provides for limited renegotiation of the commodity charge if it exceeds by 120 percent a monthly price based on average spot prices in the same midwest gas market, and arbitration if the parties cannot agree on a new commodity charge.

Shell/Salmon/Enron Agreement

Like the Midwest Gas arrangement, The second Shell-Salmon contract, dated March 31, 1991, incorporates a gas sales contract between Salmon and Enron. This contract provides for the sale of a daily contract quantity (DCQ) of 9,800 MMBtu commencing on the date of the DOE authorization of Salmon's import application through November 1, 2001. Enron is required to purchase each month quantities of (a) "Tier I gas" equal to the monthly contract quantity (MCQ) multiplied by the rate of take under Enron's contracts in its California markets, and (b) "Tier II gas" equal to the MCQ less the quantity of Tier I gas purchased, provided that the quantity of Tier I gas purchased for the year shall equal at least 65 percent of the MCQs in such contract year.

The price payable to Shell by Salmon in connection with the Enron sale is equal to the price paid by Enron to Salmon minus the transportation charges paid by Salmon to Northern Border, less 1.5 percent. The price payable to Salmon by Enron consists of a demand charge and Tier I and II commodity charges. The demand charge each month equals the lesser of (1) Salmon's actual cost of reserving firm transportation for the DCQ on Northern Border, or (2) $0.50 per MMBtu multiplied by the DCQ multiplied by the number of days in that month. The Tier I commodity charge is equal to the actual monthly weighted average sales price during the month in which Salmon delivers the gas to Enron paid by Enron's California firm markets having terms of at least one year, less Northern Natural's interruptible transportation rate. The Tier II commodity charge is equal to a monthly reference index based generally on the sum of average spot market gas price indices of three major U.S. pipeline companies supplying gas into the midwest U.S. market area plus transportation and fuel, less a marketing fee and the demand charge for that month.

The contract provides for renegotiation of the gas price prior to completion of the five-year primary term. If agreement is not reached, either Enron or Salmon has the right to terminate the contract.

The decision on Salmon's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters will be considered in making a public interest determination, including need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Salmon asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the proposed import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Salmon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 21, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-17799 Filed 7-27-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Proposal to Establish Additional Designated Federal Points of Delivery for Power From the Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to establish additional designated Federal points of delivery.

SUMMARY: On February 7, 1986, Western Area Power Administration (Western) published the Final Post-1989 General Power Marketing and Allocation Criteria (Criteria), 51 FR 4843, for the Salt Lake City Area Integrated Projects (SLCA/IP), which included the Colorado River Storage Project (CRSP). Listed in Part III, Section D, thereof, "Delivery Conditions," are the designated or equivalent Federal points of delivery, tap points, and voltages at which delivery of SLCA/IP power will be available. Subsequent to that notice, Western amended the Criteria and added three additional points of delivery, one each in Arizona, Colorado, and Utah, which was published July 6, 1987, in the **Federal Register** (52 FR 25300), dated July 6, 1987.

The points listed in the notice dated February 7, 1986, are repeated below as follows:

Designated or Equivalent Federal Points of Delivery, Tap Points, and Voltages

Arizona:	
Glen Canyon	69 kV
Kayenta	230 kV
Long House Valley	230 kV
Mesa [1] [2]	230 kV
Pinnacle Peak [1]	230 kV
Colorado:	
Ault	230 kV
Beaver Creek [2]	115 kV
Colbran Switchyard	115 kV
North Main Tap (Gunnison).	115 kV
Gore Pass Tap	138 kV
Green Mountain	115 kV
Gunnison	115 kV
Hayden	138 kV
Lost Canyon	115, 230, or (345 kV) [3]
Midway	115, 230 kV
Montrose	115 kV
Pueblo [2]	115 kV
Rangely	138 kV
Salida (Poncha Junction).	115 kV
Skito Tap	115 kV
Story [2]	230 kV
Weld	115/230 kV
New Mexico:	
Albuquerque [2]	115 kV
Ambrosia Lake [2]	115 kV
Elephant Butte	69/115 kV
Four Corners	230 or (345 kV) [3]
Shiprock	115/230/(345 kV) [4]
Utah:	
Brigham City Tap [2]	138 kV
Bountiful Tap [2]	138 kV
Centerfield [2]	138 kV
Fillmore [2]	138 kV
Flaming Gorge	69/24.9 kV
Hale Plant Tap [2]	138 kV
Hyrum [2]	138 kV
Murray Tap [2]	138 kV
New Castle Tap [2]	138 kV
Paragonah [2]	138 kV
Sigurd [2]	138 kV
Smithfield Tap [2]	138 kV
South Provo Tap [2]	138 kV
Springville [2]	138 kV
St. George [2]	138 kV
Vernal	138 kV
Upalco Tap [2]	138 kV
Henrieville Tap [2]	230 kV
Archer	115/230 kV
Casper [2]	115 kV
Glenrock [2]	230/115 kV
Thermopolis [2]	115 kV
Fontenelle	69 kV
Montana:	
Yellowtail [2]	230 kV

[1] Deliveries to Southern Division Nevada customers are made from Mesa or Pinnacle Peak.

[2] Points of delivery on another Federal system or the system of a non-Federal entity.

[3] Scheduled for uprating from 230 kilovolts (kV) to 345 kV.

[4] A 345-kV yard previously under construction has been completed.

The July 6, 1987, notice amended the Criteria by adding the following points to those listed above:

Powell, Arizona—69 kV
Gunnison, Colorado—115 kV or 12.5 kV
Tyzack, Utah—138 kV

Since publishing of the February 7, 1986, and July 6, 1987, **Federal Register** notices, Western has completed the uprating and construction of the Western Colorado 345-kV transmission system from Craig, Colorado, to Shiprock, New Mexico, and has also completed the construction and interconnection of the Bears Ears-Bonanza 345-kV transmission line from Craig, Colorado, to Bonanza, Utah. Western therefore proposes to further amend the Criteria by adding the following designated Federal points of delivery and voltages in Arizona, Colorado, and Utah at which delivery of SLCA/IP power will be available:

Arizona:	
Glen Canyon	230 kV
J. Dean Stevens Tap	69 kV
Colorado:	
Bears Ears	345 kV
Hayden	230kV
Craig	230/345 kV
Rifle	230/345 kV[1]
North Fork	230 kV
Grand Junction	345 kV
Blue Mesa	115 kV
Montrose	345 kV
Hesperus	345 kV
Utah:	
Bonanza	345 kV

[1] Western has plans to construct a 345-kV substation at Rifle.

In addition to the points listed above, SLCA/IP power may be delivered at any future interconnection to the Federal Colorado River Storage Project Transmission System, as may be mutually agreed between Western and a requesting part.

DATES: Written comments on the proposal are due in the office of the Area Manager at the address given below no later than August 27, 1992. This proposal will become final 30 days after its publication in the **Federal Register** unless Western publishes

another **Federal Register** notice reflecting any differences between this original proposal and any amended final determination.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606, (801) 524-6372.

SUPPLEMENTARY INFORMATION: The Glen Canyon delivery point is located adjacent to the Glen Canyon Dam approximately 1 mile west of Page, Arizona.

The J. Dean Slavens Tap delivery point is located approximately 1 mile southwest of Glen Canyon Substation.

The Bears Ears delivery point is located approximately ¾ of a mile north of the Craig Generating Station Switchyard where Western's 345-kV lines terminate at the Bears Ears Substation, about 4 miles southwest of Craig, Colorado.

The Hayden delivery points is located adjacent to the Hayden Generating Station, approximately 3 miles east of Hayden, Colorado.

The Craig delivery points are located at the Craig Generating Station Switchyard where Western's 230-kV and 345-kV lines intersect the Craig Generating Switchyard, about 4 miles southwest of Craig, Colorado.

The Rifle delivery points are located at Western's Rifle Substation, approximately 3 miles south of Silt, Colorado.

The North Fork delivery point is located approximately 4 miles south of Paonia, Colorado.

The Grand Junction delivery point is located at the Grand Junction Substation, approximately 4 miles southeast of Clifton, Colorado.

The Blue Mesa delivery point is located adjacent to Blue Mesa Dam approximately 2 miles west of Sapinero, Colorado, approximately 25 miles west of Gunnison, Colorado.

The Montrose delivery point is located at the Montrose Substation, approximately 5 miles southwest of Montrose, Colorado.

The Hesperus delivery point is located at the Hesperus Substation, approximately 7 miles southeast of Hesperus, Colorado.

The Bonanza delivery point is located at the Bonanza Generation Station, approximately 28 miles southeast of Vernal, Utah.

With the completion of the Western Colorado and Bears Ears-Bonanza 345-kV transmission projects, Western proposes to establish these additional designated Federal points of delivery for the benefit of the customers of the SLCA/IP, which is administered by Western.

Issued at Golden, Colorado, July 17, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-17800 Filed 7-27-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4158-5]

Science Advisory Board

Environmental Health Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Environmental Health Committee (EHC) of the Science Advisory Board will meet on August 17 and 18, 1992 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007. The hotel telephone number is (202) 338-4600.

The meeting, which is open to the public, will start at 9 a.m. each day, and adjourn no later than 5 p.m. each day.

The main purpose of the meeting is to review the Office of Research and Development's draft document Dermal Exposure Assessment: Principles and Applications (EPA/600/8-91/011B, January 1992). Principal issues to be discussed include the validity of certain assumptions about skin composition and dermal absorption; the application of certain models for evaluating dermal absorbed dose; and the use of measured absorption constants in evaluating dermal absorbed dose. Additional information on the topic, and copies of the draft document can be obtained from Miss Kim Hoang (RD-689), Office of Health and Environmental Assessment, Office of Research and Development, USEPA, 401 M St. SW., Washington, DC 20460. Miss Hoang may be called at (202) 260-2059. The Committee will also be briefed on Agency conflict of interest policy.

An agenda for the meeting is available from Ms. Mary Winston, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202-260-6552). Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Health Committee, by telephone at the number noted above or by mail to the address noted above. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by August 11, 1992. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: July 20, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 92-17775 Filed 7-27-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-44589; FRL-4079-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on ortho-, meta- and para-phenylenediamine (CAS Nos. 95-54-5, 108-45-2, and 106-50-3), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for ortho-, meta- and para-phenylenediamine were submitted by E. I. du Pont de Nemours and Company pursuant to a test rule at 40 CFR 799.3300. They were received by EPA on July 8, 1992. The submissions describe subchronic neurotoxicity testing including functional observational battery, motor activity and neuropathology. Health effects testing is required by this test rule. This chemical is used in aramid fibers, rubber and plastic antioxidants, photographic chemicals, dye intermediates, corrosion inhibitors and pesticides.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is

unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44589). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 20, 1992.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–17772 Filed 7–27–92; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59310; FRL 4081–8]

Certain Chemical; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 92–15, August 12, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–59310)" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW, Rm. 201ET, Washington, DC 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 92–15

Close of Review Period. August 26, 1992.

Manufacturer. Confidential.

Chemical. (G) Tertiary ammonium chloride.

Use/Production. (G) Fabric softner ingredient. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: > 2,000 mg/kg species (mouse). Static acute toxicity: time LC50 96h 3.1 mg/L species (killfish). Skin irritation: slight species (guinea pig). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

Dated: July 22, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–17771 Filed 7–27–92 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59309A; FRL–4081–1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–92–13 and TME–92–14. The test marketing conditions are described below.

EFFECTIVE DATES: (July 21, 1992.).

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–92–13 and TME–92–14. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–92–13 and TME–92–14. A bill of lading accompanying each shipment must state that the use of the substances is restricted to that approved in the respective TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substances.

TME–92–13

Date of Receipt: June 11, 1992.

Notice of Receipt: June 24, 1992 (57 FR 28180).

Applicant: Confidential.

Chemical: (G) 2-Propenamide, copolymer with cationic monomer.

Use: (G) Retention/draining aid in papermaking; industrial wastewater flocculant.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

TME-92-14

Date of Receipt: June 11, 1992.
Notice of Receipt: June 24, 1992 (57 FR 28180).
Applicant: Confidential.
Chemical: (G) 2-propenamide, terpolymer with cationic monomers.
Use: (G) Industrial wastewater flocculant; water clarification of produced oil field fluids.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: Confidential.
Risk Assessment: EPA identified no significant health concerns for the test market substances. Regarding environmental concerns, based on test data available to the Agency on structurally similar compounds, the substances may be acutely toxic to aquatic life. These same data, however, indicate that the potential effects of these TME substances will be significantly mitigated in natural surface waters. Therefore, EPA has determined that the test market activities will not present an unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: July 21, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-17773 Filed 7-27-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPT-59299O; FRL-4080-7]

Certain Chemicals; Extension of Test Marketing Period for Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of extension to the test marketing period for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME-91-19 and TME-91-20. Therefore, this extension is a modification of the previously granted TMEs. The test marketing conditions are described below.

EFFECTIVE DATES: (July 20, 1992).

FOR FURTHER INFORMATION CONTACT: David Giamporcaro, Section Chief, Biotechnology Program, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-613, 401 M St. SW., Washington, DC 20460, (202) 260-6362.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the extension of the test marketing period for TME-91-19 and TME-91-20. EPA has determined that test marketing of the pesticide intermediates described below, under the conditions set out in the TME applications and modification requests, and for the modified time periods specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the original application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-91-19 and T-91-20

Notice of Approval of Original Application: July 8, 1991 (56 FR 30923).

Further extension of Modified Test Marketing Period: October 19, 1992, representing a 90 day extension from the previous expiration date of July 21, 1992.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: July 20, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-17774 Filed 7-27-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of review: Extension of the expiration date of a currently approved collection without any change in the method or substance of collection.

Title: Recordkeeping And Disclosure Requirements In Connection With Regulation M (Consumer Leasing).

Form Number: None.

OMB Number: 3064-0083.

Expiration Date of OMB Clearance: August 31, 1992.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 7,636.

Annual Hours per Respondent: 4.0.

Total Annual Hours: 30,690.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0083, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before September 11, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation M (12 CFR 213) implements

the consumer leasing provisions of the Truth In Lending Act. Regulation M is issued by the Board of Governors of the Federal Reserve System ("FRB") under the authority of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*) Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: July 22, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-17684 Filed 7-27-92; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the method or substance of collection.

Title: Recordkeeping and Disclosure Requirements in Connection With Regulation E (Electronic Funds Transfers).

Form Number: None.

OMB Number: 3064-0084.

Expiration Date of OMB Clearance: August 31, 1992.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 7,636.

Annual Hours per Respondent: 120.4.

Total Annual Hours: 919,150.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0084, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before September 28, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation E (12 CFR 205) establishes the rights, liabilities, and responsibilities of parties in electronic funds transfers ("EFT") and protects customers using EFT systems. Regulation E is issued by the Board of Governors of the Federal Reserve System ("FRB") under the authority of title IX of the Consumer Credit Protection Act (15 U.S.C. 1693). Section 904 of the Act (15 U.S.C. 1693b) designates the FRB as the issuer of the implementing regulations, and section 917(a) of the Act (15 U.S.C. 1693o) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: July 22, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-17686 Filed 7-27-92; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the method or substance of collection.

Title: Recordkeeping And Disclosure Requirements In Connection With Regulation B (Equal Credit Opportunity).

Form Number: None.

OMB Number: 3064-0085.

Expiration Date of OMB Clearance: August 31, 1992.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 7,636.

Annual Hours per Respondent: 43.0.

Total Annual Hours: 327,829.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0085, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before September 11, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation B (12 CFR part 202) prohibits creditors from discriminating against applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information, and requires creditors to give applicants a written notification of rejection of an application. Regulation B is issued by the Board of Governors of the Federal Reserve System ("FRB") under the authority of Title VII of the Consumer Credit Protection Act (15 U.S.C. 1691). Section 703 of the Act (15 (U.S.C. 1691b) designates the FRB as the issuer of the implementing regulations, and section 704(a) of the Act (15 U.S.C. 1691c) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: July 22, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-17687 Filed 7-27-92; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for

review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Recordkeeping and Disclosure Requirements In Connection With Regulation Z (Truth In Lending).

Form Number: None.

OMB Number: 3064–0082.

Expiration Date of OMB Clearance: August 31, 1992.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 7,636.

Annual Hours per Respondent: 787.

Total Annual Hours: 6,011,648.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0082, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before September 11, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation Z (12 CFR 226) prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts. Regulation Z is issued by the Board of Governors of the Federal Reserve System ("FRB") under the authority of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*) Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: July 22, 1992.

Federal Deposit Insurance Corporation.

[FR Doc. 92–17683 Filed 7–27–92; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Food and Shelter National Board Program Amendment

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the Emergency Food and Shelter National Board Program (EFSP) Plan's previously published listing of localities selected for funding.

DATES: Funding for the additional localities began May 14, 1992.

FOR FURTHER INFORMATION CONTACT: Fran McCarthy, Disaster Assistance Programs, Federal Emergency Management Agency, (202) 646–3652, or Robert G. Chappell, Chair, EFSP National Board, (202) 646–3615.

SUPPLEMENTARY INFORMATION: Funding for the additional localities is from a reallocation of $1.4 million. This sum includes unexpended or reclaimed funds from the local level as well as earned interest and unexpended administrative funds from the National level. The criteria for selection were based on unemployment data for the period March 1991 through February 1992. Jurisdictions not previously receiving direct funding, including balance of counties, had to meet the following criteria to qualify:

- Jurisdictions, including balance of counties, with 18,000+ unemployed and a 5.3% rate of unemployment.
- Jurisdictions, including balance of counties, with 500 to 17,999 unemployed and a 7.9% rate of unemployment.
- Jurisdictions, including balance of counties, with 500 or more unemployed and an 11% rate of poverty.

Also, jurisdictions with the highest percentage of increase in unemployment levels since the previous allocation qualified for an award.

The following is a listing of jurisdictions that meet the above requirements:

Emergency Food and Shelter Program National Board Reallocations—Phase X

Alabama	10–0070–00 Crenshaw County.	2,023.00
Alaska	10–0202–00 Kenai Peninsula Borough.	2,604.00
	10–0206–00 Kodiak Island Borough.	4,116.00
Arizona	10–0248–00 Gila County.	1,348.00
	10–0254–00 La Paz County.	4,337.00
California	10–0696–00 Los Angeles City/ County.	378,750.00
Connecticut	10–1422–01 Fairfield Census/Bridgeport.	13,199.00
	10–1422–02 Fairfield Census/Danbury.	4,017.00
	10–1422–03 Fairfield Census/Norwalk.	4,878.00
	10–1422–04 Fairfield Census/Stamford.	6,600.00
	10–1436–00 Hartford Census County.	34,286.00
	10–1458–00 New Haven Census County.	32,252.00
	10–1478–00 State Set-Aside Committee, CT.	65,033.00
Florida	10–1692–00 Pasco County.	96,999.00
Idaho	10–2142–00 Blaine County.	3,183.28
	10–2208–00 Shoshone County.	1,005.00
Illinois	10–2220–00 Aurora/ Dupage, Kane Counties.	36,737.00
	10–2348–00 Boone County.	2,126.00
	10–2364–00 Christian County.	3,161.00
	10–2374–00 Cook County.	81,569.00
	10–2378–00 Chicago County.	124,880.00
	10–2404–00 De Witt County.	2,039.00
	10–2464–00 Kankakee County.	4,406.00
	10–2478–00 Lee County.	10,324.00
	10–2494–00 Macoupin County.	2,156.00
	10–2496–00 Madison County.	10,120.00
	10–2508–00 Mercer County.	2,262.00
	10–2516–00 Moultrie County.	4,243.00
	10–2524–00 Perry County.	1,403.00
	10–2556–00 Shelby County.	5,006.00
	10–2578–00 Whiteside County.	8,541.00
	10–2580–00 Will County.	15,680.00
	10–2588–00 Winnebago County.	12,019.00
Indiana	10–2670–00 Fountain County.	3,434.00
Kentucky	10–3328–00 Bell County.	1,245.00
	10–3334–00 Boyd County.	2,109.00
	10–3348–00 Caldwell County.	6,812.00
	10–3358–00 Carter County.	1,660.00
	10–3386–00 Fleming County.	6,144.00
	10–3406–00 Greenup County.	1,422.00
	10–3412–00 Harlan County.	1,628.00
	10–3420–00 Henry County.	6,720.00
	10–3424–00 Hopkins County.	1,753.00
	10–3454–00 Letcher County.	1,375.00
	10–3470–00 Mc Lean County.	6,456.00
	10–3478–00 Marshall County.	6,700.00
	10–3482–00 Mason County.	6,924.00
	10–3498–00 Muhlenberg County.	1,349.00
	10–3514–00 Perry County.	1,294.00
	10–3516–00 Pike County.	2,713.00
	10–3554–00 Webster County.	6,684.00

Louisiana	10-3606-00 Catahoula Parish.	3,346.00
	10-3608-00 Claiborne Parish.	3,113.00
	10-3618-00 East Carroll Parish.	3,653.00
	10-3620-00 East Feliciana Parish.	2,747.00
	10-3646-00 La Salle Parish.	6,578.00
	10-3672-00 Red River Parish.	6,060.00
Michigan	10-4664-00 Cheboygan County.	2,397.00
	10-4736-00 Leelanau County.	3,628.00
	10-4744-00 Mackinac County.	1,497.00
Minnesota	10-4940-00 Faribault County.	6,156.00
Mississippi	10-5144-00 Humphreys County.	6,216.00
	10-5202-00 Perry County.	6,060.00
	10-5238-00 Walthall County.	6,024.00
	10-5250-00 Winston County.	1,107.00
	10-5252-00 Yalobusha County.	6,868.00
Montana	10-5556-00 Fergus County.	2,732.34
	10-5614-00 Roosevelt County.	4,169.03
	10-5618-00 Sanders County.	4,261.08
New Mexico	10-6050-00 Chaves County.	2,496.00
New York	10-6174-00 Genesee County.	22,569.00
	10-6182-00 Jefferson County.	5,322.00
North Carolina	10-6326-00 Anson County.	1,143.00
	10-6336-00 Bladen County.	1,415.00
	10-6338-00 Brunswick County.	2,360.00
	10-6450-00 Madison County.	6,960.00
	10-6512-00 Transylvania County.	2,124.00
Ohio	10-6826-00 Morrow County.	4,962.00
Oklahoma	10-6902-00 Adair County.	6,780.00
	10-6968-00 Latimer County.	2,962.00
	10-7012-00 Murray County.	3,234.00
	10-7054-00 Seminole County.	1,135.00
	10-7058-00 Stephens County.	1,445.00
Oregon	10-7098-00 Columbia County.	5,916.00
	10-7116-00 Hood River County.	10,536.00
	10-7120-00 Jefferson County.	2,512.00
Pennsylvania	10-7312-00 Pike County.	14,400.00
	10-7340-00 Wyoming County.	7,236.00
Tennessee	10-7628-00 Campbell County.	2,237.00
	10-7656-00 Decatur County.	3,938.42
	10-7710-00 Johnson County.	2,719.90
	10-7744-00 Meigs County.	3,354.82
	10-7786-00 Smith County.	2,130.24
Texas	10-7916-00 Burnet County.	2,165.00
	10-8020-00 Dimmit County.	2,700.00
	10-8062-00 Frio County.	3,946.00
	10-8134-00 Hockley County.	1,689.00
	10-8170-00 Jim Wells County.	1,596.00
	10-8280-00 Newton County.	2,507.00
	10-8302-00 Pecos County.	2,353.00
	10-8310-00 Presidio County.	2,836.00
	10-8414-00 Tyler County.	2,544.00
	10-8468-00 Young County.	2,713.00
Virginia	10-8630-00 Culpeper County.	1,173.00
	10-8652-00 Giles County.	1,203.00
	10-8710-00 Northumberland County.	1,840.00
Washington	10-8858-00 Adams County.	1,069.00
	10-8868-00 Kittitas County.	1,436.00
	10-8906-00 Mason County.	3,9602.00
	10-8920-00 Skagit County.	18,104.00
West Virginia	10-8950-00 Huntington/Cabell, Wayne Cos..	6,273.00
	10-8954-00 Barbour County.	1,108.00
	10-8956-00 Boone County.	1,250.00
	10-8960-00 Braxton County.	1,156.00
	10-8964-00 Hancock County.	1,406.00
	10-8966-00 Hardy County.	3,670.00
	10-8992-00 Jefferson County.	2,132.00
	10-9002-00 Logan County.	1,956.00
	10-9004-00 McDowell County.	1,608.00
	10-9006-00 Marion County.	2,766.00
	10-9008-00 Marshall County.	1,861.00
	10-9010-00 Mason County.	1,527.00
	10-9020-00 Monroe County.	3,535.00
	10-9024-00 Nicholas County.	1,730.00
	10-9054-00 Upshur County.	1,516.00
Wisconsin	10-9220-00 Racine County.	37,436.00

(Catalog of Federal Domestic Assistance No. 83.523, Federal Emergency Management Food and Shelter Program)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-17778 Filed 7-27-92; 8:45 am]

BILLING CODE 6718-07-M

FEDERAL MARITIME COMMISSION

Tampa Port Authority/Starlite Cruises; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224-200624-001.

Title: Tampa Port Authority/Starlite Cruises, (Suncoast) Inc., Non-Exclusive Preferential Agreement.

Parties: The Tampa Port Authority ("Port Authority"), Starlite Cruises, (Suncoast) Inc. ("Starlite").

Synopsis: The Agreement provides for a joint marketing effort between the parties wherein the Port Authority through October 31, 1993, will allocate, on two day cruises or less, an amount of one dollar and fifty cents ($1.50) per passenger embarking or disembarking Starlite's vessels at the passenger facility.

Agreement No. 203-011063-010.

Title: United States/Jamaica Discussion Agreement.

Parties: Crowley Caribbean Transport, Inc., Kirk Lines Ltd., Sea-Land Service, Inc., Calypso Container Lines, Shipping Corporation of Trinidad and Tobago, Ltd., West Indies Shipping Corporation, North American Caribbean Line Ltd., Blue Caribe Line.

Synopsis: The proposed amendment deletes Shipping Corporation of Trinidad and Tobago, Ltd., West Indies Shipping Corporation, North American Caribbean Line Ltd., and Calypso Container Lines as parties to the agreement.

Agreement No. 207-011380.

Title: HUAL/V.A.G. Transport Joint Service Agreement.

Parties: Hoegh-Ugland Auto Liners A/S (HUAL), V.A.G. Transport GmbH & Co. OHG (VAGT).

Synopsis: The proposed Agreement will permit the parties to establish a joint service for the carriage of liner

cargo, including automobiles and other rolling stock, in the trade from ports in Germany to ports on the U.S. Atlantic Coast.

Dated: July 21, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-17688 Filed 7-27-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070692 AND 071792

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
General Parts, Inc., Northern Industries, Inc., Northern Industries, Inc	92-1119	07/06/92
The Morgan Stanley Leveraged Equity Fund II, L.P., Presidio Oil Company, Mountain Gas Resources, Inc	92-1126	07/06/92
Edward P. Welter, ABF Investors, Inc., Fab Investors Inc	92-1154	07/06/92
Telefonaktiebolaget L M Ericsson, Joint Venture Corporation, Joint Venture Corporation	92-1158	07/06/92
General Electric Company, Joint Venture Corporation, Joint Venture Corporation	92-1159	07/06/92
Mycogen Corporation, The Lubrizol Corporation, The Lubrizol Corporation and Lubrizol Genetics, Inc	92-1160	07/06/92
The Lubrizol Corporation, Mycogen Corporation, Mycogen Corporation	92-1161	07/06/92
Baker & Hughes Incorporated, Borg-Warner Corporation, BW-Hughes Tool Stock Corporation	92-1163	07/06/92
Carlton L. Rintz, Sensormatic Electronics Corp., Sensormatic Electronics Corp	92-1164	07/06/92
FPL Group, Inc., Compagnie Generale des Eaux, Cogeneration National Corporation	92-1165	07/06/92
Peter Steiner, The Turner Corporation, The Turner Corporation	92-1166	07/06/92
Esther Baumann-Steiner, The Turner Corporation, The Turner Corporation	92-1167	07/06/92
American General Corporation, Trustmark Corporation, Credit Centers, Inc	92-1168	07/06/92
Fluor Corporation, Bethlehem Steel Corporation, Primeacre Land Corporation and BethEnergy Mines Inc	92-1145	07/07/92
C. Itoh, Ito-Yokado Co., Ltd., The Southland Corporation	92-1169	07/07/92
Pioneer Electronic Corporation, Carolco Pictures Inc., Carolco Pictures Inc	92-1174	07/07/92
Pitney Bowes Inc., The Regency Group, Inc., Atlantic Mortgage & Investment Corporation	92-1172	07/09/92
First Financial Management Corporation, McDonnell Douglas Corporation, TeleCheck Services, Inc	92-1177	07/09/92
Scott K. Ginsburg, Century Broadcasting Corporation, FM Radio Broadcast Station KMEL	92-1173	07/10/92
Merrill Lynch Capital Appreciation Company Ltd., II, Unifax Holdings, Inc., Unifax Holdings, Inc	92-1182	07/10/92
Edward K. Christian, Boston Ventures Limited Partnership, Saga Communications Limited Partnership	92-1187	07/10/92
Provident Life & Accident Insurance Company of America, John Hancock Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company	92-1190	07/10/92
Green Equity Investors, L.P., Pacific Enterprises, United Merchandising Corp	92-1197	07/10/92
Tyler Capital Fund, L.P., The Mead Corporation, Ampad Corporation	92-1206	07/10/92
La Chemise Lacoste S.A., Crystal Brands, Inc., Crystal Brands, Inc	92-1216	07/10/92
Compagnie Financiere Ehrbar, The Horn & Hardart Company, The Horn & Hardart Company and The Hanover Companies	92-1199	07/13/92
Forest Laboratories, Inc., E. I. du Pont de Nemours and Company, The Du Pont Merck Pharmaceutical Company	92-1179	07/14/92
Forest Laboratories, Inc., Merck & Co., Inc., The Du Pont Merck Pharmaceutical Company	92-1186	07/14/92
First Financial Management Corporation, Payment Services Company—U.S., Payment Services Company—U.S	92-1188	07/15/92
The Reliable Life Insurance Company, Vereniging AEGON, Monumental Life Insurance Company	92-1194	07/15/92
Vereniging AEGON, The Reliable Life Insurance Company, The Reliable Life Insurance Company	92-1195	07/15/92
Green Equity Investors, L.P., Pacific Enterprises, Thrifty Holdings, Inc	92-1198	07/15/92
American Home Products Corporation, Imperial Chemical Industries PLC, ICI Americas Inc	92-1146	07/16/92
Medical Care International, Inc., Critical Care America, Inc., Critical Care America, Inc	92-1175	07/16/92
Critical Care America, Inc., Medical Care International, Inc., Medical Care International, Inc	92-1176	07/16/92
Burlington Resources, Inc., Mobil Corporation, Mobil Producing Texas & New Mexico Inc	92-1185	07/16/92
Enron Corp., 1991 Enron NGL Trust, 1991 Enron/NGL Trust assets	92-1203	07/16/92
Formosa Plastics Corporation, USA, Chi Tai Lee, Country Plastics Systems, Inc	92-1133	07/17/92
Finalco Limited Partnership I, Intelogic Trace, Inc., Intelogic Trace TexCom Group, Inc. and The	92-1201	07/17/92
ITT Corporation, Marriott Corporation, Four Seven Redevelopment Corporation, Airline	92-1202	07/17/92
Vereniging AEGON, American National Insurance Company, Commonwealth Life and Insurance Company	92-1210	07/17/92
The Reliable Life Insurance Company, American National Insurance Company, Commonwealth Life and Insurance Company	92-1211	07/17/92
E-Z Serve Corporation, The Equitable Life Assurance Society of the U.S., TOC Retail, Inc	92-1212	07/17/92
International Transport Services Limited, Larry L. Hillblom, DHL International limited	92-1215	07/17/92
Kyoei Steel Ltd., FLS Holdings Inc., FLS Holdings Inc	92-1220	07/17/92
Bacardi Limited, Allied-Lyon, Inc., Fleming Packaging Corp	92-1221	07/17/92
Lehman Brothers Merchant Banking Portfolio Partnership, Loral Corporation, Space Systems/Loral, Inc	92-1222	07/17/92
Land Free II Investments Limited, Price Communications Corporation, The New York Law Publishing Company	92-1223	07/17/92
The Equitable Life Assurance Society of the U.S., Tide West Oil Company, Tide West Oil Company	92-1224	07/17/92
Tide West Oil Company, The Equitable Life Assurance Society of the U.S., Draco Gas Partners, L.P	92-1226	07/17/92
Alusuisse-Lonza Holding Ltd., Therma-Plate Corporation, Therma-Plate Corporation	92-1236	07/17/92
IVAX Corporation, Dr. and Mrs. N. Craig Roberts, Flori Roberts, Inc. and Searoads, Inc	92-1238	07/17/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–17755 Filed 7–27–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Developmental Disabilities

Meeting of the Interagency Committee on Developmental Disabilities

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Notice of meeting.

SUMMARY: The Interagency Committee on Developmental Disabilities (ICDD) was established in 1984 by section 108(b) of the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (42 U.S.C. 6007 [b]) to "meeting regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." In 1990, the Act was amended to provide that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register**. Under section 107(c)(1)(E) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6006(c)(1)(E)), the Secretary must annually report on "the accomplishments of the interagency committee in comparison to the goals and objectives of such committee." The ICDD is chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

MISSION AND GOALS: The mission of the ICDD is to promote the collaboration of appropriate Federal departments and agencies to improve the effectiveness of Federal programs in assisting persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community and in such other ways that assist people with developmental disabilities to attain a more normalized and higher quality of life.

The ICDD has adopted the following goals:

- To exchange information on Federal activities that affect people with developmental disabilities so that each agency is able to utilize this information in managing and directing its programs;
- To identify the needs of people with developmental disabilities and barriers to achieving the goals of the Developmental Disabilities Act and to recommend solutions for meeting these needs and removing these barriers.
- To establish coordinated planning, when appropriate, for activities that are complementary or similar;
- To stimulate joint activities (e.g., joint research, joint development of policies and regulations, joint demonstration or evaluation projects) among the affected Federal agencies.

The ICDD meets regularly on the first Tuesday in December, April and August. The meeting is open to the public.

DATE: Tuesday, August 4, 1992, from 9:30 a.m. to 11:30 a.m.

ADDRESS: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Edward Burke, room 327D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington DC 20201 (202) 690–7693 or Wendell Johnson, room 3127, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202 (202) 205–9674.

SUPPLEMENTARY INFORMATION: At the meeting the ICDD will discuss: (1) Status of long-term funding strategies for persons with disabilities in supported employment; (2) the agreement between the Departments of Education and Labor on policy guidelines for the application of the Fair Labor Standards Act and the Individuals with Disabilities Education Act to students with severe disabilities engaging in transitional work activities; and other matters that may arise.

Dated: July 17, 1992.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 92–17707 Filed 7–27–92; 8:45 am]

BILLING CODE 4130–01–M

Food and Drug Administration

Studies for the Development and Improvement of Analytical Methodology for Animal Drug Residues in Tissues; Availability of Grants (Cooperative Agreements); Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the anticipated availability of approximately $300,000 for Fiscal Year (FY) 1993 for cooperative agreements to support studies on the development of analytical methodologies for residues of animal drugs in tissues. FDA anticipates making up to three awards in FY 93 for an approximate amount of $100,000 each (this amount is for total costs including any indirect costs requested). Awards are subject to the availability of funds. The purpose of this program is to provide financial assistance to support basic research and development on the isolation, separation, detection, quantitation, and identification of animal drug residues in tissue matrices (including milk). Support for these agreements may be for a period of up to 3 years.

DATES: The closing date for submission of applications is October 26, 1992. (See section IX. Method of Application, for details of submission of applications).

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., Rm. 3–40, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

NOTE: Applications hand-carried or commercially delivered should be addressed to Park Bldg., Rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Robert L. Robins, address above.

Regarding the programmatic aspects of this notice: David B. Batson, Center for Veterinary Medicine (HFV–500), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8702.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of the publication *Healthy People 2000*. Potential applicants may obtain a copy of *Healthy People 2000* (full report; Stock No. 017–001–00474–0) or *Healthy People 2000* (summary report; Stock No. 017–001–00473–1) through the Superintendent of Documents,

Government Printing Office, Washington, DC 20402–9325, 202–783–3238.

I. Background

Tolerances for residues of new animal drugs in meat, poultry, milk, and eggs are prescribed in 21 CFR Part 556, Subpart B. In order to ensure that the tolerances are met, FDA requires, as a condition of approval of a new animal drug application, that analytical methods be available that can be used to monitor compliance.

Because the responsibility for monitoring analytical methods for residues of individual approved drugs in meat, milk, and eggs rests primarily with FDA, FDA is interested in funding research that will lead to improved monitoring programs for residues by introducing: (1) Multiresidue methods of analysis, (2) new analytical techniques that were not available at the time of approval of many animal drugs, and (3) labor-saving and solvent-minimizing techniques that will improve the efficiency of residue monitoring. The agency has also undertaken the development of residue methods for certain individual drugs, e.g., chloramphenicol, for which there has been evidence of unapproved use in food animals. Under its residue methods development program, the agency has, since 1986, funded a number of cooperative agreements with academic and research laboratories that were designed to evaluate the applicability of new and emerging technology in analytical chemistry to State and Federal residue monitoring programs. Accomplishments of this program to date include the introduction of matrix solid phase dispersion, new liquid chromatography/mass spectrometry (LC/MS) interfaces such as particle beam, molecular weight cut-off filters, on-column (LC) concentration of analytes, and tandem mass spectrometry into one or more official residue methods of analysis. Other techniques that were investigated under the program, but have not yet been utilized in an official method, include fluorescence polarization immunoassay, supercritical fluid extraction, and atmospheric pressure ionization MS. Special consideration will be given to funding proposed research that will employ new and emerging analytical technology to meet the goals and objectives outlined below.

II. Research Goals and Objectives

The specific objective of this program will be to provide financial assistance to investigators conducting basic research and development on the isolation, separation, detection, quantitation, and unambiguous identification of animal drug residues in tissue matrices (including milk). Projects that fulfill any one or a combination of the following objectives will be considered for funding:

1. Extraction and clean-up of extracts are often the rate limiting steps in terms of time, sensitivity, and specificity of currently available analytical methods for residues. Research on new approaches to make these steps more efficient is needed. One specific need is for techniques designed to reduce, or even eliminate, the use of organic solvents, especially those solvents that are incompatible with subsequent chromatography or immunoassay separation and detection steps in many analytical procedures. A second need is for extraction techniques that are amenable to automation.

2. Improved techniques for analyte separation and detection are needed that are characterized by high sample capacity, high sensitivity, and increased specificity. Examples of techniques that might find application in residue monitoring programs include immunoaffinity chromatography and the use of biosensors to detect very low levels of certain analytes. One significant problem that the use of biosensors might help solve is the need for a rapid test that can be used to confirm positive milk samples found in industry and state milk monitoring programs. In order to provide the necessary increase in confidence that an over-tolerance/over-action level of residue is indeed present in the milk sample, the analytical response of the confirmatory procedure should rely on a different physical property of the analyte than that measured by the currently utilized receptor- and enzyme-linked immunosorbent assay (ELISA) - based screening assays for milk.

3. Analytical methods used to regulate residue levels in food provide a high degree of confidence that the analyte being quantified is the drug residue the method is designed to determine. This is usually accomplished by subjecting all positive samples to a separate confirmatory procedure. Virtually all official confirmatory procedures are based on mass spectrometry. Despite the significant advances made in mass spectrometry in recent years, adequate confirmatory procedures do not exist for a number of high molecular weight, low tolerance, or otherwise unique animal drug residues. Beta lactam and aminoglycoside antibiotics are two examples of drugs in this category. Also, the development of confirmatory procedures based on alternative, specific technologies such as infrared spectrometry would be of interest. Initial efforts along these lines would best be directed to drug residues that are assigned relatively high tolerances and possess other characteristics that make them amenable to confirmation by the new technology.

4. The development of new analytical systems and strategies capable of multiresidue separation, determination and/or confirmation would be of interest.

III. Animal Drug List

The major focus of research proposed for funding under these cooperative agreements should be on demonstrating the applicability of new and emerging analytical techniques for residue monitoring programs and not on the development of a regulatory method for residues of a given animal drug. As a practical matter, however, applicants will find it necessary to select specific compounds on which to conduct their research. For this reason, CVM is providing the following list of animal drugs that at one time needed improved analytical methods for residues in meat, milk, or eggs. The fact that methods for some of the drugs on the list have been, or are being, developed should not constrain applicants from selecting those drugs as subjects for their research on analytical technology that is new to existing residue monitoring programs.

aklomide
amoxicillin
ampicillin
amprolium
azaperone
cephapirin
chloramphenicol
chlorothiazide
chlortetracycline
cloxacillin
dexamethasone
dihydrostreptomycin
3,5-dinitrobenzamide
erythromycin
fenbendazole
furosemide
hetacillin
hygromycin-B
levamisole
lincomycin
neomycin
oxfendazole
oxytetracycline
penicillin
phenothiazine
piperazine
prednisolone
spectinomycin

streptomycin
tetracycline
thiabendazole
xylazine
zoalene

IV. Reporting Requirements

A program progress report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies of this report shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF-269) on time will be grounds for suspension or termination of the grant. Progress reports will be required quarterly within 30 days following each Federal fiscal quarter (January 31, April 30, July 30, October 31), except that the fourth report, which will serve as the annual report and be due 90 days after the budget expiration date. CVM program staff will advise the grantee of the suggested format for the program progress report at the appropriate time. A final FSR (SF–269), program progress report, and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of grantees will be conducted on an ongoing basis and written reports will be done at least quarterly by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the grantee organization. The results of these reports will be duly recorded in the official grant file and may be available to the grantee upon request.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52 and 45 CFR Parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and any for-profit organization. For-profit organizations must exclude fees or profit from their request for support.

C. Length of Support

The length of support will be for up to 3 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year; and/or (2) the availability of funds.

VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under the request for applications (RFA). Substantive involvement includes but is not limited to the following:

1. FDA will appoint project officers who will actively monitor the FDA-supported program under each award. During monitoring, FDA may direct or redirect the selection of animal drugs to be studied.

2. FDA will establish an Analytical Advisory Group which will provide guidance and direction to the project officer with regard to the analytical methods, animal drugs, and animal tissues to be investigated. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used.

3. FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, and coauthorship of publications.

4. FDA will cooperate extensively in the production of animal tissues containing incurred residues.

VII. Review Procedures and Criteria

A. Review Methods

All applications submitted in response to this request for applications will first be reviewed by grants management and program staff for responsiveness to this request for applications. If applications are found to be nonresponsive, they will be returned to the applicant.

Responsive applications will be reviewed and evaluated for scientific and technical merit by experts in the subject field. This review will take the form of either competitive review panels or field readers. To ensure fairness, the score by both types of reviews (panels and readers) will be combined into one rank order for the entire competition. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence of the recommendations made by the first level reviewers with funding decisions made by the Commissioner, Food and Drug Administration.

B. Review Criteria

Applications will be reviewed according to the following criteria:

1. Research should be proposed on an analytical technique/drug residue/tissue matrix combination that is new and novel, i.e., one that is not currently being used in State or Federal residue monitoring programs.

2. Whether the proposed study is within the budget and costs have been adequately justified and fully documented;

3. Soundness of the rationale for the proposed study and appropriateness of the study design to address the objectives of the RFA;

4. Availability and adequacy of laboratory and associated animal facilities;

5. Availability and adequacy of support services, e.g., biostatistical computer, etc., and;

6. Research experience, training, and competence of the principal investigator and support staff.

VIII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 9/91) or the original and two copies of the PHS 5161 for State and local governments with sufficient copies of the appendix for each application, should be delivered to Robert L. Robins (address above). No supplemental material will be accepted after the established closing date. The outside of the mailing package and item 2 of the application face page should be labeled, "Response to RFA–FDA–CVM–92–1".

IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before October 26, 1992. Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

NOTE: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this

method, applicants should check with their local post office.

B. Format for Application

Applications must be submitted on Grant Application Form PHS–398 (Rev. 9/91). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, the National Institutes of Health. Applications from State and local governments should be submitted on Form PHS 5161. Completed applications should be submitted to: Robert L. Robins (address above). Applications hand-carried or commercially delivered should be addressed to Park Bldg., Rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857. The face page of the application must reflect the request for applications number RFA–FDA–CVM–92–1. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by (PHS) to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of an application which have been specifically identified by page number, paragraph, etc., by the applicant as containing confidential commercial information or other information that is exempt from public disclosure will not be used or disclosed except for evaluation purposes.

Dated: July 6, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–17692 Filed 7–27–92; 8:45 a.m.]

BILLING CODE 4160–01–F

[Docket No. 92C–0265]

Kemira, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kemira, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of phlogopite mica as a color additive for use in externally applied drugs and externally applied cosmetics, including those for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 2C0238) has been filed by Kemira, Inc., P.O. Box 368, Savannah, GA 31402. The petition proposes to amend the color additive regulations in §§ 73.1496 *Mica* and 73.2496 *Mica* (21 CFR 73.1496 and 73.2496) to provide for the safe use of phlogopite mica as a color additive for use in externally applied drugs and externally applied cosmetics, including those for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: July 15, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–17747 Filed 7–27–92; 8:45 a.m.]

BILLING CODE 4160–01–F

[Docket No. 83F–0245]

Purac Biochem b. v. (Formerly C. V. Chemie Combinatie Amsterdam C. C. A.); Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3A3727) filed by Purac Biochem b. v. (formerly C. V. Chemie Combinatie Amsterdam C. C. A.) proposing that the food additive regulations be amended to provide for the safe use of 4-O-(β-galactosyl)-D-glucitol as a reduced calorie sweetening agent for food.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 19, 1983 (48 FR 37708), which was corrected in the Federal Register of September 27, 1983 (48 FR 44113), FDA published a notice that it had filed a petition (FAP 3A3727) from C. V. Chemie Combinatie Amsterdam C. C. A., Gorinchem, Holland. This petition proposed that Part 172 (21 CFR Part 172) be amended to provide for the safe use of 4-O-(β-galactosyl)-D-glucitol as a reduced calorie sweetening agent for food. Purac Biochem b. v. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 22, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–17746 Filed 7–27–92; 8:45 a.m.]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3477]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a

toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 22, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Improvement Assistance Program (CIAP): Reporting/Monitoring.
Office: Public and Indian Housing.
Description of the Need for The Information and its Proposed Use: Form HUD–52826 and HUD–53001 provides the Public Housing Agency and Indian Housing Authority (herein referred to as HA) with a systematic method of recording and reporting its actual obligations and expenditures and for determining the current status of its comprehensive improvement assistance program (CIAP) in progress. It also enables the HUD Field Office to monitor HA obligations and expenditures and to ensure that modernization work is progressing in a timely manner. The collected information will also be used to satisfy HUD's review and monitoring responsibilities.
Form Number: HUD–52826 and HUD–53001.
Respondents: State or Local Governments and Non–Profit Institutions.
Frequency of Submission: On Occasion and Quarterly.
Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
Form HUD–52826	600		4		1.5		3,600
Narrative report on management improvements	150		4		1.5		900
Request for proposal for professional services relating to management improvements	75		1		2.0		150
Form HUD–53001	600		1		1.0		600

Total Estimated Burden Hours: 5,250.
Status: Reinstatement.
Contact: Pris P. Buckler, HUD, (202) 708–1640. Jennifer Main, OMB, (202) 395–6880.

Dated: July 22, 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Improvement Assistance Program (CIAP): Survey Instrument.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The Public Housing Agency and the Indian Housing Authority (herein referred to as the HA) are required to use the survey instrument to prepare for the Joint Review, and on-site inspection of the development proposed for comprehensive modernization, conducted by both the HA and the HUD Field Office.
Form Number: HUD–52827.
Respondents: State or Local Governments, Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey Instrument	300		1		12		3,600

Total Estimated Burden Hours: 3,600.
Status: Reinstatement.
Contact: Pris P. Buckler, HUD, (202) 708–1640; Jennifer Main, OMB, (202) 395–6880.

Dated: 22, July 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Pre-foreclosure Sale Demonstration Program-FR–2714.
Office: Housing.
Description of the Need for the Information and its Proposed Use: Defaulting mortgagors with stagnant or declining property value can qualify to sell their homes at current fair market value to third-party buyers. HUD pays the shortfall between proceed and mortgage indebtedness to the mortgagee via the claims process. Mortgagor avoids foreclosure; HUD saves foreclosure, maintenance and marketing cost.
Form Number: None.
Respondents: Individuals or Households, Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Submission: Monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applicants	13,040		1.027		0.669		8,959

Total Estimated Burden Hours: 8,959.
Status: Extension.
Contact: Joseph Bates, HUD, (202) 708–3680; Jennifer Main, OMB, (202) 395–6880.

Dated: 22, July 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monthly Reports for Establishing Net-Income.
Office: Housing.
Description of the Need for the Information and its Proposed Use: Accounting reports submitted by selected owners and agents of Multifamily Projects will be used to monitor compliance with contractual agreements and to analyze cash flow trends as well as occupancy and rent collection levels. The reports will alert field staff of the need for remedial actions to correct deficiencies or the need for more aggressive servicing action.
Form Number: HUD–93479, 93480 and 93481.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Submission: Monthly and Recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Monthly Reports	4,000		12		3.5		168,000
Recordkeeping	4,000		1		1		4,000

Total Estimated Burden Hours: 172,000.
Status: Extension.
Contact: James J. Tahash, HUD, (202) 708–3944; Jennifer Main, OMB, (202) 395–6880.

Dated: 22, July 1992.

[FR Doc. 92–17784 Filed 7–27–92; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–92–3475]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 17, 1992.

John T. Murphy,
Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public and Indian Housing: Demolition/Disposition/Conversion/Taking.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The purpose of the Housing Authorities request is to seek HUD approval of a change in a public housing development application from what was originally authorized under the Annual Contribution Contract.
Form Number: None.
Repondents: State or Local Governments, and Non-Profit Institutions.
Frequency of Submission: On Occasion and Recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	120		1		15.8		1,900
Recordkeeping	120		7		10		1,200

Total Estimated Burden Hours: 3,100.
Status: Reinstatement.
Contact: Virginia Mathis, HUD, (202) 708–1640, Jennifer Main, OMB, (202) 395–6880.

Dated: July 17, 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) Program—Annual Progress Report.
Office: Community Planning and Development.
Description of the Need for the Information and its Proposed Use: This information is used to monitor progress and to learn how to coordinate comprehensive supportive services designed to enable homeless families with children currently living in transitional housing to achieve long-term self-sufficiency by obtaining and remaining in permanent housing.
Form Number: HUD–40077.
Repondents: State or Local Governments, and Non-Profit Institutions.
Frequency of Submission: Annually and Recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	250		1		94.86		26,580
Environmental assessment	60		1		14		840
Recordkeeping for application	40		1		1		40
Recordkeeping for APR	14		1		200		2,800
Reporting for APR	14		1		10		140

Total Estimated Burden Hours: 30,380.
Status: Revision.
Contact: James N. Forsberg, HUD (202) 708–4300, Jennifer Main, OMB, (202) 395–6880.

Dated: July 17, 1992.

[FR Doc. 92–17715 Filed 7–27–92; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–92–999; FR 3299–D–01]

Order of succession, Acting Assistant Secretary for Community Planning and Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Order of succession.

SUMMARY: The Assistant Secretary for Community Planning and Development is revising the order of succession of officials authorized to serve as Acting Assistant Secretary for Community Planning and Development when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office.

EFFECTIVE DATE: July 6, 1992.

FOR FURTHER INFORMATION CONTACT: John C. Barnett, Organization and Management Services Division, Office of Management, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., room 7230, Washington, DC 20410, (202) 708–2087. A telecommunications device for deaf persons (TDD) is available at (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Order of Succession supersedes the Order of Succession of designees to act as Acting Assistant Secretary for Community Planning and Development published on February 26, 1991 at 56 FR 7873. The authorization to act under this Order is subject to the 30-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President by and with the advice and consent of the Senate, may be filled temporarily for not more than 30 days.

Accordingly, the Assistant Secretary for Community Planning and Development designates the following order of succession:

Section A. Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Community Planning and Development is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Community Planning and Development, the following are hereby designated to serve as Acting Assistant Secretary for Community Planning and Development with all the powers, functions, and duties delegated or assigned to the Assistant Secretary for Community Planning and Development:

(1) Deputy Assistant Secretary for Grant Programs
(2) Deputy Assistant Secretary for Economic Development
(3) Deputy Assistant Secretary for Operations

These officials shall serve as Acting Assistant Secretary for Community Planning and Development under this order of succession in the order specified herein and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office. If all the officials designated in this order of succession are unable to act as Acting Assistant Secretary for Community Planning and Development by reason of absence, disability, or vacancy in office, officials designated to serve as acting officials for these designated officials will serve in this same order of succession. Authorization to serve as Acting Assistant Secretary of Community Planning and Development shall not exceed 30 days pursuant to the Vacancies Act, 5 U.S.C. 3348.

Section B. Authorization

Each head of an organizational unit of the Office of Community Planning and Development is authorized to designate an employee under his/her supervision to act for him/her by reason of absence, disability, or vacancy in the position of head of the unit.

Section C. Supersedure

This Order of Succession supersedes the Order published on February 26, 1991 at 56 FR 7873.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 13, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development

[FR Doc. 92–17714 Filed 7–27–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice if hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records maintained by the Geological Survey. The system of records notice being abolished is entitled "Office of Minerals Exploration (OME) Financial Assistance Applications—Interior, USGS–16," and was previously published in the **Federal Register** on February 16, 1988 (53 FR 4467). The records described in the existing system of records notice continue to be maintained, but the records are not retrieved by a personal identifier. The records are retrieved by a docket or contract number and by the state, county and geologic information. The records are therefore not subject to the Privacy Act.

This change shall be effective on publication in the **Federal Register** (July 28, 1992). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, 1849 "C" Street, NW., Mail Stop 2242, (PMI), Washington, D.C. 20240, telephone 202–208–5339.

Dated: July 17, 1992.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

[FR Doc. 92–17723 Filed 7–27–92; 8:45 am]

BILLING CODE 4310–31

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Delmarva Fox Squirrel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft revised recovery plan for the Delmarva Fox Squirrel. This population now occurs naturally in four counties on the Eastern Shore of Maryland, and has been introduced to localities in Maryland, Delaware, Pennsylvania, and Virginia. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 31, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan can obtain a copy from the U.S. Fish and Wildlife Service, region five, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158, telephone (617) 965–5100, ext. 316.

FOR FURTHER INFORMATION CONTACT: Mary J. Parkin (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing recovery plans.

The document submitted for review is the draft Delmarva Fox Squirrel (*Sciurus niger cinereus* Recovery Plan (Second Revision). Remnant populations of this subspecies persist naturally in portions of four counties on the Eastern Shore of Maryland, representing less than 10% of its historical range; in addition, the squirrel has been introduced to 17 sites within its historical range, at least 11 of which appear to be successfully established.

The Delmarva fox squirrel's forested habitat is subject to continued loss and fragmentation through overcutting and land use changes, although this is balanced to some extent by regeneration of forest resources. Hunting may have also contributed to the decline of this species over a large part of its range. The Delmarva fox squirrel was listed as an endangered species in 1967.

The overall objective of the draft recovery plan is to delist the Delmarva fox squirrel by increasing its population and protecting its habitat. The species will be reclassified from endangered to threatened status when: (1) Ecological requirements and distribution within the remaining natural range are understood sufficiently to permit effective management, (2) benchmark populations are shown to be stable or expanding based on at least five years of data, and (3) ten new colonies are successfully established throughout the historical range. Delisting will be considered when, in addition to the above: (4) Five additional (post-1990) colonies are established outside of the remaining natural range, (5) periodic monitoring shows that translocated populations have persisted over the recovery period, (6) mechanisms that ensure perpetuation of suitable habitat at a level sufficient to allow for desired distribution are in place within all counties in which the species occurs, and (7) mechanisms are in place to ensure protection of new populations, allow for expansion, and provide inter-population corridors to permit gene flow among populations.

This will be accomplished through determining the species' population status and distribution, determining habitat availability and use, protecting the squirrels and their habitat, implementing management to maintain suitable habitat for the squirrel, planning and conducting additional translocations, and fostering increased public awareness of the squirrel's status and recovery needs.

This revised recovery plan is being submitted for agency review. After consideration of comments received during the review period, the plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 21, 1992.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 92–17833 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

[PRT-770046]

Applicant: Gerret Copeland, West Palm Beach, FL.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) from the captive herd of F.W.M. Bowker, Jr., Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

[PRT-770082]

Applicant: Heather Tunstall, Tampa, FL.

The applicant requests a permit to import 8 turquoise parakeets (*Neophema pulchella*) and 8 scarlet-chested parakeets (*Neophema splendida*) bred in captivity by Mr. Willy de Herdt of Belgium for enhancement of propagation.

[PRT-769851]

Applicant: Bruce J. Turner, Johnson City, TN 37601.

The applicant requests a permit to take (capture and sacrifice) 10 specimens devils hole pupfish (*Cyprinodon diabolis*) and 20 specimens of each of the following species of pupfish: *Cyprinodon nevadensis mionectes, Cyprinodon maclarius, Cyprinodon nevadensis pectoralis* and *Cyprinodon radiosus*, for DNA research. Pupfish will be collected in Nevada from Ash Meadows and in California from Bishop and Salton Seas and its adjacent waters.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: July 23, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–17699 Filed 7–27–92; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NM–930–4212–24; NMNM 89114]

Termination of Small Tract Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Small Tract Classification No. 34 affecting 32 acres of Federal mineral estate in Eddy County. Classification No. 34 determined the suitability of the lands for disposal in aid of the expansion of the small community of Loco Hills, New Mexico. The lands within the immediate vicinity of Loco Hills were conveyed into private ownership, with all minerals reserved to the United States Government. This action also terminates the segregative effect and will open the Federal mineral estate to mining and mineral leasing.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–7115, 505–438–7594.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U.S.C. 682a), it is ordered as follows:

1. Pursuant to 43 CFR 2091.7–1(b)(2), and the authority delegated to me by BLM Manual 1203, Classification Order, New Mexico Small Tract Classification No. 34, dated May 29, 1953, which classified approximately 32 acres of public lands as suitable for small tracts is hereby terminated insofar as it affects the following described lands:

New Mexico Principal Meridian

T. 17 S., R. 30 E.,
Sec. 20, lots 3 to 6, inclusive, and lots 8, 9, and 11
Sec. 21, lots 1, 22, 23, 24, lots 29 to 36, inclusive, and lots 51, 55, 58, 59, 64, 70, 71, 74, 75, 78, 80, 82, 83, and 84.

The areas described aggregate 32 acres in Eddy County.

2. At 8 a.m. on August 27, 1992, the lands will be open to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 10, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–17724 Filed 7–27–92; 8:45 am]

BILLING CODE 4310–FB–M

[NV–030–92–05] [NV–951–4340–11–24–1A]

Temporary Closure of Public Lands; Washoe County, NV

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1992 Reno National Championship Air Races.

EFFECTIVE DATE: September 14 through September 20, 1992.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Telephone (702) 885–6000.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼;
Sec. 16, N½ and SW¼.

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure orders are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated this 15th day of July, 1992.
James W. Elliott,
District Manager.
[FR Doc. 92-17720 Filed 7-27-92; 8:45 am]
BILLING CODE 4310-HC-M

[OR-110-6310-11-257A; G2-332]

Medford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Medford District Office.

ACTION: Notice.

SUMMARY: This notice announces the meeting date of the Medford District Advisory Council on September 3, 1992, at 8:30 a.m. at the Medford District Office, 3040 Biddle Road, Medford, Oregon. This notice is given in accordance with Public Law 99-463.

FOR FURTHER INFORMATION CONTACT: Kurt Austermann, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone 503-770-2424.

SUPPLEMENTARY INFORMATION: The meeting will begin at 8:30 a.m. in the Oregon room of the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. The agenda for the Advisory Council includes a status report on the District's Resource Management Plan and efforts to revise the Management Plan for the Wild and Scenic Rogue River.

Persons interested in making oral statements during the Council meeting may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration. Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business September 2, 1992. Depending on the number of persons wishing to make oral statements, per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

David A. Jones,
District Manager.
[FR Doc. 92-17725 Filed 7-27-92; 8:45 am]
BILLING CODE 4310-33-M

[AK-050-02-4230-21; AA-75657]

Lease of Public Land; Soule Lake, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a 5 year renewable commercial lease to James M. Wright. The lease is intended to resolve an unintentional occupancy trespass on public lands.

DATES: Comment and an application must be received on or before September 11, 1992.

ADDRESSES: Comments and an application must be submitted to the Glennallen District Manager, P.O. Box 147, Glennallen, Alaska 99588-0147.

FOR FURTHER INFORMATION CONTACT: David Mushovic, (907) 822-3217.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 2920, is described as within:

Sec. 4, T. 20 S., R. 5 W., Fairbanks Meridian.

An application will only be accepted from James M. Wright, who owns the existing structures located on the subject site. The comments and application must include a reference to this notice. Fair market rental as determined by appraisal will be collect for the use of these lands, as well as full payment of past trespass liabilities, and reasonable administrative and monitoring costs for processing the lease . A final determination will be made after completion of an environmental assessment.

Dated: July 16, 1992.
Gene R. Keith,
District Manager.
[FR Doc. 92-17725 Filed 7-27-92; 8:45 am]
BILLING CODE 4310-33-M

DEPARTMENT OF INTERIOR

[CA-060-4740-10]

Prohibition of Commercial Vending Along and Adjacent to Gecko Road in the Imperial Sand Dunes Near Glamis, Imperial County, California, Except on the Established "Vending Pad" Developed for That Purpose

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Prohibition of Commercial Vending on Public Lands along and adjacent to Gecko Road in the Imperial Sand Dunes.

SUMMARY: Notice is hereby given that commercial vending on and adjacent to Gecko Road in the Imperial Sand Dunes near Glamis, Imperial County, California is prohibited. The exception to this rule is commercial vending which takes place on the established "vending pad" adjacent to Gecko Road, located approximately 4.25 miles south of Highway 78. This rule does not apply to vending conducted from mobile vending vehicles in a safe manner *off* of the asphalt roadway, e.g. ice cream/ice trucks. Further exception to this rule may be granted on a case by case basis at the El Centro Resources Area Manager's discretion.

Order: As of the prescribed effective date, Gecko Road will be closed to all commercial vending except on the vending pad 4.25 miles south of Highway 78 and mobile vending vehicles. For the purpose of this rule, "commercial vending" refers to the sale and purchase of any item be it food, clothing, accessories, equipment, fuel, or any other commodity, or the proffering of any service for economic gain. This includes advertisement or presentation of products for their promotion or for the enticement of any other commercial venture. For the purpose of this rule, Gecko Road refers to the roadway itself and its shoulders for a distance of 500 feet to either side of road centerline.

All exemptions to this rule will be by written authorization of the El Centro Resource Area Manager. Persons seeking an exemption must submit a written request to the El Centro Resource Area Manager (333 So. Waterman Ave., El Centro, CA 92243). Requests must include a detailed description outlining the purpose and need for the vending activity to be exempt from the existing Imperial Sand Dunes Recreation Area Management Plan (RAMP), specific area(s) needed and the dates for which the exemption is requested.

BACKGROUND: Gecko Road is a heavily used part of the Imperial Sand Dunes Recreation Area, being popular for camping and access to the dunes. Previous commercial vending along the side of the road has caused disruption of vehicle circulation with great potential for vehicle accidents and other safety hazards. This supplementary rule is consistent with management prescriptions in the Imperial Sand Dunes RAMP and seeks to reduce the occurrence of such hazards while giving vendors a convenient location to conduct business near the camping areas that traditionally receive high use near Gecko Road.

EFFECTIVE DATE: This closure will be effective on July 28, 1992 and will remain in effect until rescinded or modified by the authorized officer.

SUPPLEMENTARY INFORMATION: The authority for this prohibition is found in 43 CFR 8365.1–6. Violation of this prohibition is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed one year.

Dated: July 16, 1992.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 92–17741 Filed 7–27–92; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

[WY–010–5700–11; WYW–123107]

Realty Actions; Sales, Leases, etc.; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed exchange involving public lands in Park County Wyoming.

SUMMARY: The surface estate of the following described public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Sixth Principal Meridian

T. 50 No., R. 99 W.,
sec. 33, tract 41.
The area described contains 40.92 acres.

T. 50 N., R. 101 W.,
sec. 6, lots 3–7;
sec. 10, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
sec. 16, lot 1.
The areas described aggregate 593.30 acres.

T. 51 N., R. 101 W.,
sec. 18, lots 11 and 12;
sec. 19, lot 5, NW¼NE¼, S½NE¼, SE¼;
sec. 20, lots 7–9;
sec. 30, lot 1, lot 2;
sec. 31, lots 1–5, W½NE¼, SE¼NE¼, E½NW¼, E½SW¼, NW¼SE¼;
sec. 32, lots 2–4;
sec. 34, lot 1, lot 2, Tract 38 A, Tract 38 B, Tract 38 C.
The areas described aggregate 1,349.60 acres.

T. 50 N., R. 102 W.,
sec. 1, lot 1, SE¼NE¼;
sec. 12, lot 1, lot 2, lot 5;
sec. 13, lot 3.
The areas described aggregate 203.55 acres.

T. 51 N., R. 102 W.,
sec. 36, lots 1 and 6, SE¼NE¼, E½SE¼.
The areas described contains 184.96 acres.

T. 51 N., R. 103 W.,
sec. 14, lot 6, SW¼SW¼;
sec. 15, lot 5, SE¼SW¼, SE¼;
sec 21, lots 1–4;
sec. 22, N½, N½SW¼, SE¼;
sec. 23, SW¼;
sec. 27, N½NE¼.

The areas described aggregate 1,253.72 acres.

EFFECTIVE DATE: The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for exchange pursuant to section 206(b) of the Federal Land Policy and Management Act of 1976. The segregative effect will terminate upon issuance of patent or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

FOR FURTHER INFORMATION CONTACT: Lylia Livingston, Bureau of Land Management, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82414, (307) 587–2216.

SUPPLEMENTARY INFORMATION: Some of the lands described may be deleted from consideration to eliminate possible conflicts that could arise during processing, to achieve equal values between the offered and selected lands in the exchange. The first selection of properties will be made to achieve comparable values between the offered and selected lands.

Private lands to be acquired by the United States are under negotiation but are generally located within T. 53 N., R. 98 W.; T. 53 N., R. 99 W.; T. 53 N., R. 100 W.; T. 49 N., R. 103 W.; Sixth Principal Meridian, Park County Wyoming. A Notice of Realty Action with detailed information on lands to be exchanged will be published in the **Federal Register** when an agreement with the proponent is reached.

Dated: July 22, 1992.

Darrell Barnes,

Worland District Manager.

[FR Doc. 92–17804 Filed 7–27–92; 8:45 am]

BILLING CODE 4310–22–M

[ES–062–4730–12; ES–045439, Group 142, Wisconsin]

Filing of Plat of Dependent Resurvey and Subdivision of Section 12 and 13

The plat of the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 12 and 13 of Township 38 North, Range 9 West, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 10, 1992.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 10, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: July 20, 1992.

Denise P. Meridith,

State Director.

[FR Doc. 92–17728 Filed 7–27–92; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 18, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 12, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Maricopa County

Fort McDowell, Indian Rt. 1, off AZ 87, Yavapai Indian Reservation, Fort McDowell, 92001050

ARKANSAS

Pulaski County

Runyan, J.P., House, 1514 S. Schiller, Little Rock, 92001067

CONNECTICUT

Hartford County

Copper Ledges and Chimney Crest, Along Founders Dr. between Bradley and Woodland Sts.,

FLORIDA

Brevard County

Barton Avenue Residential District (Rockledge MPS), 11–50 Barton Ave., Rockledge, 92001046

Rockledge Drive Residential District (Rockledge MPS), 15–23 Rockledge Ave., 219–1361 Rockledge Dr. and 1–11 Orange Ave., Rockledge, 92001045

Valencia Subdivision Residential District (Rockledge MPS), 14–140 Valencia Rd., 825–827 Osceola Dr. and 24–28 Orange Ave., Rockledge, 92001047

Walton County

Biddle, Perry L., House (DeFuniak Springs MPS), 203 Scribner Ave., DeFuniak Springs, 92001049

DeFuniak Springs Historic District (DeFuniak Springs MPS), Roughly bounded by Nelson and Park Aves. and 2nd and 12th Sts., DeFuniak Springs, 92001048

GEORGIA

Turner County

Ashburn Commercial Historic District, Roughly, Main St. between Murray and Monroe Aves., Ashburn, 92001042

MASSACHUSETTS

Middlesex County

Bogle—Walker House, 55 and 62 Goodman's Rd., Sudbury, 92001044

MICHIGAN

Washtenaw County

Salem Methodist Episcopal Church and Salem Walker Cemetery, 7150 Angle Rd., Salem Township, Salem, 92001054

MISSOURI

Platte County

Washington Chapel C.M.E. Church, 1137 West St., Parkville, 92001055

MONTANA

Lewis and Clark County

Kemna, Herman, House, 635 First St., Helena, 92001056

NEW YORK

Essex County

Adsit Log House, Point Rd. N of Ligonier Pt., Willsboro, 92001053

Montgomery County

Temple of Israel, 8 Mohawk Pl., Amsterdam, 92001043

Ontario County

Rippey Cobblestone Farmhouse (Cobblestone Architecture of New York State MPS), 1227 Leet Rd., Seneca, 92001051

St.Bridget's Roman Catholic Church Complex, 15 Church St., between Church and Michigan Sts., Bloomfield, 92001052

UTAH

Carbon County

Harmon, Oliver John, House, 211 South 200 East, Price, 92001058

Salt Lake County

Anderson, John A., House (Sandy City MPS), 510 East 8800 South, Sandy, 92001066

Draper—Steadman House, 13518 South 1700 West, Riverton, 92001057

Farrer, Benjamin and Jane Cook, House (Sandy City MPS), 530 East 8800 South, Sandy, 92001065

Farrer, John William, House (Sandy City MPS), 39 E. Pioneer, Sandy, 92001064

Holman, Abba R., Block, 142 E. Main St. (8720 South) Sandy, 92001063

Nelson, Nels A., House (Sandy City MPS), 8840 South 90 East, Sandy, 92001062

Peterson, Charles, House (Sandy City MPS), 82 East 8880 South, Sandy, 92001061

Sandy Co-Op Block (Sandy City MPS), 8750 S. Center St. (150 East), Sandy, 92001060

Utah County

Douglass, Samuel, House, 215 N. Main St., Payson, 92001059

VERMONT

Windsor County

Kendron Brook Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), Town Hwy. 65 over Kendron Brook, Woodstock, 92001037

West Woodstock Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), Town Hwy. 50 over the Ottauquechee R., West Woodstock, 92001038

WASHINGTON

Pierce County

Rialto Theater (Movie Theaters in Washington State MPS), 310 Ninth St., Tacoma, 92001041

Spokane County

Central Schoolhouse (District No. 49) (Rural Public Schools in Washington State MPS), Jct. of Ritchey and Four Mound Rds., NW corner, Nine Mile Falls vicinity, 92001040

(FR Doc.92-17647 Filed 7-27-92; 8:45 am)

BILLING CODE 4130-65-M

DEPARTMENT OF JUSTICE

Davis Abatement Systems, Inc.; Lodging of Consent Decree

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that on July 15, 1992, a proposed Consent Decree in *United States* v. *Davis Abatement Systems, Inc.*, Civil Action No. 91-C-278, was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed Consent Decree requires Davis Abatement Systems, Inc. to comply in the future with the federal Clean Air Act provisions concerning asbestos abatement operations and to pay a Clean Air Act civil penalty of $15,000.00 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Davis Abatement Systems, Inc.*, D.J. Ref. No. 90-5-2-1-1553.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Wisconsin, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202; at the Region V Office of U.S. EPA, Records Center, Seventh Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044.

Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, 202-347-2072. In requesting a copy, please refer to the case by name and D.J. Ref. No. 90-5-2-1-1553 and enclose a check in the amount of $3.25 (25 cents per page for reproduction cost), payable to the Consent Decree Library.

John C. Cruden,

Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 92-17729 Filed 7-27-92; 8:45 am]

BILLING CODE 4410-01-M

Minnesota Mining and Manufacturing Co.; Lodging of Stipulation and Order of Dismissal

Notice is hereby given that a Stipulation and Order of Dismissal in *United States* v. *Minnesota Mining and Manufacturing Company*, Civil Action No. 87-C-7631 has been filed with the United States District Court for the Northern District of Illinois on July 16, 1992. The Complaint filed by the United States alleged that 3M violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Illinois State Implementation Plan ("SIP") regulating the emission of volatile organic compounds ("VOCs") at a facility located in Bedford Park, Illinois. The proposed Stipulation and Order requires Defendant to pay the United States $25,000.00 in civil penalties and to dismiss its counterclaims with prejudice.

The Department of Justice will receive comments relating to the proposed Stipulation and Order of Dismissal for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Minnesota Mining and Manufacturing Company*, D.J. Ref. No. 90-5-2-1-1099.

The proposed Stipulation and Order may be examined at the Office of the United States Attorney for the Northern District of Illinois, Office of the United States Environmental Protection Agency, 111 West Jackson Boulevard, Chicago, Illinois 60604, and at the

Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the Joint Stipulation and Order of Dismissal may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $1.25 (25 cents per page) for reproduction costs, payable to the Consent Decree Library.

John C. Cruden

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-17731 Filed 7-2-92; 8:45 am]

BILLING CODE 4410-01-M

Miles Diagnostic, Corp., et al.; Consent Judgment

In accordance with Department Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *Miles Diagnostics Corporation; Miles, Inc.; Cooper Development Company; and Revlon, Inc.*, Civil Action No. 92-1928, was lodged with the United States District Court for the District of Puerto Rico on July 8, 1992. The proposed consent decree requires the Defendants to implement remedial measures for the Frontera Creek Superfund Site, located in Humacao, Puerto Rico, set forth in the September 24, 1991 Record of Decision, and to pay past and future oversight costs incurred by the United States for its oversight of the work performed under the Consent Decree. The remedy consists of identification, excavation, and removal of mercury contaminated in the ditch and property of the Technicon facility. In the Consent Decree, the Defendants agree to implement the 1991 Record of Decision, and to pay all past and future oversight costs incurred by the United States at the Site in overseeing work performed under the Consent Decree.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Miles Diagnostics Corporation, et al.* D.O.J. Ref. No. 90-11-2-769.

The Consent Decree may be examined at the Office of the United States Attorney, Federal Building, room 101, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00998; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10288; and at the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $37.00 (for copying costs) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 92-17730 Filed 7-27-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,009; Semtech Corpus Christi Corp., Corpus Christi, TX

TA-W-27,236; Coltec Industries, Inc., Fairbanks Morse Engine Div., Beloit, WI

TA-W-27,153; McCormick and Baxter Creosoting Co., Portland, OR

TA-W-27,238; Bates Fabrics, Inc., Lewiston, ME

TA-W-27,334; Gemini Mining Corp., Stoystown, PA

TA-W-27,214; United Technologies, Motor Systems, Columbus, MS

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,351; New York Rail Car Corp., Brooklyn, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,266; Pinkham Lumber Co., Ashland, ME

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-27,279; Visy Board Packaging, Inc., Philadelphia, PA.

Aggregate U.S. imports of corrugated products are negligible.

TA-W-27,333; Pearl Laboratories, Saddle Brook, NJ

U.S. imports of ophthalmic lenses for eyeglasses decreased absolutely in 1991 compared to 1990.

TA-W-27,052; Potter & Brumfield Siemens, Princeton, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,243; Mobil Oil Corp., E & P Div., New Exploration Ventures, Dallas, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,166; Wellhead Systems, Inc., Odessa, TX

U.S. imports of oil and gas field machinery were negligible in the relevant period.

TA-W-27,146; Inter-City Products (USA), Red Bud, Il

U.S. imports of air conditioning, refrigeration and heating equipment declined absolutely and relative to domestic shipment in 1992 compared to 1991.

TA-W-27,274; L-Bar Products, Inc., Chewelah, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,226 J.E. Merit, Inc., Addy, WA

The workers' firm does not produce an article as required for certification

under Section 222 of the Trade Act of 1974.

TA–W–27,285; Prestoline Electric, Inc., Wagner, OK

U.S. imports of integral horsepower motors, generators, alternators and magnetos declined absolutely in 1991 compared to 1990 and declined in the January through March 1992 period compared to the same period in 1991.

Affirmative Determinations

TA–W–27,170; Petroleum, Inc., Wichita, KS

A certification was issued covering all workers separated on or after April 8, 1992.

TA–W–27,175; Nicor Oil and Gas Corp., Houston, TX

A certification was issued covering all workers separated on or after April 13, 1992.

TA–W–27,181; Liberty Lumber Co., Inc., Arlington, WA

A certification was issued covering all workers separated on or after April 16, 1991.

TA–W–27,186; Dynapower and Stratopower, Watertown, NY

A certification was issued covering all workers separated on or after April 16, 1991.

TA–W–27,215; Bendix Heavy Vehicle Systems, Salisburg, NC

A certification was issued covering all workers separated on or after April 27, 1991.

TA–W–27,141; Stride Rite Footwear of Missouri, Inc., Molding Facility, Tipton, MO

A certification was issued covering all workers separated on or after January 1, 1992.

TA–W–27,200; Sherico Cedar Products, Forks, WA

A certification was issued covering all workers separated on or after April 22, 1991.

TA–W–27,205; Mallard Bay Drilling, Inc., Lafayette, LA

A certification was issued covering all workers separated on or after April 23, 1991.

TA–W–27,263; Ritz-Tex Manufacturing, Montrose, PA

A certification was issued covering all workers separated on or after May 5, 1991.

TA–W–27,260; Rexnord Corp., Roller Chain Operation, Springfield, MA

A certification was issued covering all workers separated on or after May 6, 1991.

TA–W–27,280, TA–W–27,281 & TA–W–27,282; Bowie Manufacturing, Bowie, TX, Olney Manufacturing Co., Olney, TX & Haggar Apparel Co., Dallas, TX

A certification was issued covering all workers separated on or after April 20, 1991.

TA–W–27,228; Acme Boot Co., Clarksville, TN

A certification was issued covering all workers separated on or after April 27, 1991.

TA–W–27,253; Otis Engineering, Wireline Div. (A Subsidiary of the Halliburton Co.), New Iberia, LA

A certification was issued covering all workers separated on or after May 1, 1991.

TA–W–27,322; Schnadig Corp., International Table Div., Henderson, KY

A certification was issued covering all workers separated on or after May 29, 1991.

TA–W–27,383; Brown Shoe Co., Houston, MO

A certification was issued covering all workers separated on or after June 1, 1991.

TA–W–27,306; Cluett Peabody & Co. Inc. (The Arrow Co), Austell, GA

A certification was issued covering all workers separated on or after May 12, 1991.

TA–W–27,307; Thomas Industries, Inc., Beaver Dam, KY

A certification was issued covering all workers separated on or after May 15, 1991.

TA–W–27,330; Bokenkamp Drilling Co., Lafayette, LA

A certification was issued covering all workers separated on or after May 18, 1991.

TA–W–27,336; R & S Tong Service, Odessa, TX

A certification was issued covering all workers separated on or after May 20, 1991.

TA–W–27,374; Marjo Fashions, Inc., Newark, NJ

A certification was issued covering all workers separated on or after June 1, 1991.

TA–W–27,172, TA–W–27,187, & TA–W–27,189 & TA–W–27,190; Milpark Drilling Fluids, Houston, TX, Corpus Christi, TX & Lafayette, LA

A certification was issued covering all workers separated on or after April 13, 1991.

TA–W–27,192, TA–W–27,193; Milpark Drilling Fluids, Laurie, MS and Anchorage, AK

A certification was issued covering all workers separated on or after April 13, 1991.

I hereby certify that the aforementioned determinations were issued during the month of July 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 20, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–17748 Filed 7–27–92; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; Indian and Native American Employment and Training Programs; Proposed Designation Procedures for Grantees for Program Years 1993–94

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed designation procedures for grantees; request for comments.

SUMMARY: This document contains proposed procedures by which the Department of Labor (DOL) will designate potential grantees for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA). The designations will by for JTPA Program Years (PYs) 1993 and 1994 (July 1, 1993 through June 30, 1995). This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

DATES: The public is invited to submit written comments on the proposed procedures. Such written comments must be received on or before August 27, 1992.

ADDRESSES: Send written comments to: Assistant Secretary for Employment and Training, U.S. Department of Labor, Employment and Training Administration, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Paul A. Mayrand, Director, Office of Special Targeted Programs (OSTP).

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington,

DC 20210. Telephone: 202–535–0502 (this is not a toll-free number).

Job Training Partnership Act; Indian and Native American Programs; Proposed Designation Procedures for Program Years 1993–94—Table of Contents

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Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the JTPA and in the regulations at 20 CFR part 632. The specific organization eligibility and application requirements for designation are set forth at 20 CFR 632.10 and 11. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under section 401. It designates such entities as potential Native American grantees which will be awarded grant funds contingent upon all other grant award requirements being met. This notice describes how DOL will designate potential grantees who may apply for grants for Program Years 1993 and 1994. A designated entity may apply for a grant for PY 1993 and for a grant PY 1994 without further competition.

The designation process has two parts. The Advance Notice of Intent (see Part II, below) is optional although strongly recommended. The final Notice of Intent (see Part III, below) is mandatory for all applicants. Any organization interested in being designated as a Native American grantee should be aware of and comply with the procedures in these parts.

The amount of JTPA Section 401 funds to be awarded to designated Native American grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The grantee application process is described at 20 CFR 632.18 and 20.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general principles are instrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR part 632 subpart B regardless of their apparent standing in the preferential hierarchy (see Part IV, Preferential Hierarchy For Determining Designations, below). The basic eligibility, application and designation requirements are found in 20 CFR part 632 subpart B.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to program services and are best serviced by a responsible organization directly representing them and designated pursuant to the applicable regulations. JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or federally recognized tribe, band or group on its reservation is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. A reservation organization which may have its service area given to another qualified organization for reasons specified in the regulations will be given a future opportunity to reestablish itself as the designated grantee, should it so desire.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person or by telephone, as time and circumstances permit. When such vacancies occur, the Grant Officer will continue to utilize input from the Division of Indian and Native American Programs (DINAP) when designating alternative service deliverers.

(4) In designating Native American grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in Part VIII (1) *Indian or Native American-Controlled Organization* of this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input from DINAP when designating alternative service deliverers.

(5) All applicants, including incumbent grantees other than tribes serving their own reservations, must submit evidence of significant support from other Native American-controlled organizations within the communities (geographic service areas) which they are currently serving or requesting to serve. The following documentation must be submitted:

(a) Evidence of organizational type, i.e., copy of articles of incorporation or charter, etc.; [see definition in part VIII (1), *Indian or Native American-Controlled Organization* of this notice].

(b) Evidence of Indian and Native American control;

(c) Size of the organization;

(d) Current Indian and Native American membership; and

(e) An attestation from the Indian and Native American-controlled organization that it supports the subject applicant to serve the specific geographic service area in which it is located.

In order for letters of support to be considered, the items enumerated above must be included.

(6) The Grant Officer will make the designations using a two-part process: (a) Those applicants described in Part IV, Preferential Hierarchy For Determining Designations (1), below, as Indian tribes, bands or groups on Federal or State reservations for their reservation; Oklahoma Indians only as specified in Part VII, Special Designation Situations, below; and Alaskan Native entities only as specified in Part VII, Special Designation Situations, below, who apply for their geographic service areas will be designated on a noncompetitive basis if all preaward clearances, responsibility reviews, and regulatory requirements are met. (b) All other applicants and those described in Part IV, Preferential Hierarchy For Determining Designations (1), below, who apply for off-reservation service delivery areas will be considered on a competitive basis and only information submitted with the Notice of Intent, as well as preaward clearances, responsibility reviews and all regulatory requirements will be considered.

(7) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past 18 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing

capability to deliver employment and training services within an established geographic service area. Such preference will be determined through input from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(8) In preparing applications for designation, applicants should bear in mind that the purpose of JTPA is "to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment." (JTPA section 2, 29 U.S.C. 1501.)

II. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive requests at the local level prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a complete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective Section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential incumbent and non-incumbent competitors, to resolve conflicts if possible and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change geographic service area requests in the final Notice of Intent. Therefore, as noted above, final submissions should be prepared with these possibilities in mind. Although the regulations permit incumbents to submit no more than a Standard Form 424 Federal Assistance (SF 424) for their existing geographic service areas, this choice may not be in the incumbent's best interests in the event of unanticipated competition.

The SF 424 is no longer used for the advance notification process. As in the PY 1991–1992 designation cycle, DOL will utilize the Advance Notice of Intent to expedite the identification of potentially competitive applicants.

By October 1 of the year preceding a designation year (in this case, by October 1, 1992), all organizations interested in being designated as section 401 grantees should submit an original and two copies of an Advance Notice of Intent. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. The Advance Notice of Intent is to be sent to the Chief, Division of Indian and Native American Programs at the address cited above.

Complete instructions for the Advance Notice of Intent process will be mailed to all current grantees on or about September 15, 1992. Incumbents will also receive a description of their present geographic service area at this time. New applicants may request copies of the Advance Notice of Intent instructions by writing to the Chief, Division of Indian and Native American Programs at the address cited above.

DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants (including incumbents who have not submitted Advance Notices of Intent) with copies of all Advance Notices of Intent submitted for their requested areas. The notification will occur on or about November 30, 1992. The notification will state that organizations are encouraged to work out any conflicting requests among themselves, and that a final Notice of Intent should be submitted by the required postmark of January 1, 1993, deadline (see Part III, Notice of Intent, below).

Under the Advance Notice of Intent process, it is DOL policy that, to the extent possible within the regulations, a geographic service area and the applicant that wants to operate a Section 401 program in that area are to be determined by the Native American community to be served by the program. In the event the Native American community cannot resolve differences, applicants should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice of Intent is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice of Intent.

III. Notice of Intent

All applicants must submit an original and two copies of a final Notice of Intent, postmarked no later than January 1, 1993, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. Exclusive of charts or graphs and letters of support, the Notice of Intent should not exceed 75 pages of double-space unreduced type.

Final Notices of Intent are to be sent to the Chief, Division of Indian and Native American Programs at the address cited above.

The regulations permit current grantees requesting their existing geographic service areas to submit an SF 424 in lieu of a complete application. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Notice of Intent even if their geographic service area request has not changed in the event that competition occurs. Tribes, bands and groups (including Alaskan Native entities) should consider submitting a full Notice of Intent if they currently serve areas beyond their reservation boundaries.

Applicants are encouraged to modify the geographic service area requests identified in their Advance Notices of Intent to avoid competition with other applicants. Applicants should not add territory to the geographic service area requests identified in the Advance Notice of Intent. Any organization applying by January 1, 1993, for non-contiguous geographic service areas shall prepare a separate, complete Notice of Intent for each such area unless currently designated for such areas.

It is the DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand delivered deadlines (see Part V, Use of

Panel Review Procedure, below). All information provided before the deadline must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

IV. Preferential Hierarchy for Determining Designations

In cases in which only one organization is applying for a clearly identified geographic service area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same area (in whole or in part), DOL will utilize the order of designation preference described in the hierarchy below. The organization which falls into the highest category of preference will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands or groups on Federal or State reservations for their reservation; Oklahoma Indians only as specified in Part VII, Special Designation Situations, below; and Alaskan Native entities only as specified in Part VII, Special Designation Situations, below.

(2) Native American-controlled, community-based organizations as defined in Part VIII (1) of the glossary in this notice, with significant support from other Native American-controlled organizations within the service community. This includes tribes applying for geographic service areas other than their own reservations.

Competition shall occur only when a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent. Such potential will be determined by the consideration of such factors as the following: Completeness of the application and quality of the contents; documentation of past experience; Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. If there is no incumbent, new applicants qualified for this category would compete against each other.

(3) Organizations (private nonprofit or units of State or local government) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations without a Native American advisory process. In the event such an organization is designated, it must subsequently develop a Native American advisory process.

The Chief, DINAP, will make hierarchal determinations. He may convene a task force to assist in making such determinations. The task force also may perform such technical and advisory functions as determining which geographic service areas have more than one applicant for designation, documenting the eligibility of new applicants, and ascertaining the timeliness of final Notice of Intent submissions. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the hierarchy. Within the regulatory time constraints of the designation process, the Chief, DINAP, will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion.

V. Use of Panel Review Procedure

Competition may occur under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not reapplied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy, when there are no applicants qualified for the first and second categories.

When competition occurs, the Grant Officer may convene a review panel of Federal officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, based on its application, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the final Notice of Intent. The panel will not give weight to simple assertions. Any information must be supported by adequate and verifiable documentation, e.g., supporting references must contain the name of the contact person, an address and telephone number.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.20 and 632.11)

(a) Previous experience in successfully operating an employment and training program serving Indians and Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(c) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Applicant's identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points. (20 CFR 632.11)

(a) Private sector involvement—10 points.

(b) Community support as defined in Part VIII. Designation Process Glossary (1), below, and documentation as provided in Part I. General Designation Principles (5), above—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11)

(a) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(b) Experience of senior management staff to be responsible for DOL grant, if designated—5 points.

VI. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, OSTP, the DOL Employment and Training Administration's Office of Grants and Contracts Management and Office of Management Services, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and

operational capability, and responsibility. The Grant Officer's decisions will be provided to all applicants by March 1, 1993, as follows:

(1) Designation Letter

The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographic service area requested in the final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) Conditional Designation Letter

Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) Nondesignation Letter

Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the nondesignation and given the basic reasons for the determination. An applicant for designation that is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, and subsequently, may appeal the nondesignation to an administrative law judge under the provisions of 20 CFR part 636. If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situation

(1) Alaskan Native Entities

DOL has established geographic service areas for Alaskan Native employment and training programs based on the following: (a) The boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); (b) the boundaries of major subregional areas where the primary provider of human resource development and related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. In the past, these entities have been regional nonprofit corporations, associated corporations established by the regional nonprofit corporation, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 1993 and 1994.

(2) Oklahoma Indians

DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, geographic service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1993 and 1994 to preserve continuity and prevent unnecessary fragmentation.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) Indian or Native American-Controlled Organization

This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of hierarchy determinations, the governing board must have decision making authority for the Section 401 program.

(2) Service Area

This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined finally by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) Community Support

This is evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic service area for which designation is requested.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC this 22nd day of July, 1992.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Herbert Fellman,

Chief, Division of Indian and Native American Programs.

James C. DeLuca,

Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 92-17749 Filed 7-27-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SPACE COUNCIL

Meeting of the Space Launch Strategy Implementation Task Group

AGENCY: National Space Council.

ACTION: Notice of partial meeting closure.

SUMMARY: The Space Launch Strategy Implementation Task Group will meet in closed session from 1:45–5 p.m. on July 30, 1992 and from 1:45–3:30 p.m. on July 31, 1992.

DATES: July 30 and 31, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Stephen Hopkins, (703) 685-3307, or James Beale, National Space Council, Executive Office of the President, Washington, DC (202) 395-6175.

SUPPLEMENTARY INFORMATION: As previously announced (57 FR 31221, July 14, 1992), the Space Launch Strategy Implementation Task Group will meet between 8:30 a.m. and 5 p.m. on July 30 and 31, 1992 at ANSER, Suite 800, 1215

Jefferson Davis Highway, Arlington, Virginia. This meeting will be closed to the public from 1:45–5 p.m. on July 30, 1992 under exemption 1 (classified matters) and exemption 4 (privileged or confidential commercial and financial information) and from 1:45–5 p.m. on July 31, 1992, under exemption 1 (classified matters) of 5 U.S.C. 552b(c). All other portions will be in open session. Persons interested in attending should contact Stephen Hopkins, ANSER, (703) 685–3307.

James R. Beale,

Committee Action Officer.

[FR Doc. 92–17709 Filed 7–27–92; 8:45 am]

BILLING CODE 3128–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies Panel A Section) to the National Council on the Arts will be held on August 19, 1992 from 9 a.m.–9 p.m., August 20 from 9 a.m.–10:30 p.m., and August 21 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 19 from 9 a.m.–10 a.m. and on August 21 from 9 a.m.–10:30 a.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on August 19 from 10 a.m.–9 p.m., August 20 from 9 a.m.–10:30 p.m., and August 21 from 10:30 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 20, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–17732 Filed 7–27–92; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies Panel B Section) to the National Council on the Arts will be held on August 24, 1992 from 9 a.m.–9 p.m., August 25 from 9 a.m.–10:30 p.m., and August 26 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 24 from 9 a.m.–10 a.m. and on August 26 from 9 a.m.–10:30 a.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on August 24 from 10 a.m.–9 p.m., August 25 from 9 a.m.–10:30 p.m., and August 26 from 10:30 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 20, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–17733 Filed 7–27–92; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Presenting Organizations Panel B Section) to the National Council on the Arts will be held on August 18, 1992 from 9 a.m.–7 p.m., August 19–20 from 8:30 a.m.–6 p.m., and August 21 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 21 from 2 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on August 18 from 9 a.m.–7 p.m., August 19–20 from 8:30 a.m.–6 p.m., and August 21 from 8 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the

full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 20, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–17734 Filed 7–27–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors Review of the Instrumentation and Instrument Development and Special Projects Programs; Meeting

The National Science Foundation announces the following meeting:

Date and Time: August 6–7, 1992, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G St. NW, room 312, Washington, DC

Type of Meeting: Closed.

Contact Person: Dr. Frank Harris, Acting Division Director, Biological Instrumentation and Resources, rm 312, NSF, Washington, DC 20550 202–357–9880.

Purpose of Meeting: To provide oversight review of the Instrumentation and Instrument Development and Special Projects Programs.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If decisions were open to the public, these matters that are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Reason for Late Notice: Difficulty in arranging meeting schedules of members.

Dated: July 23, 1992.

[FR Doc. 92–17756 Filed 7–27–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Draft Report on Accident Source Terms for Light-Water Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability for comment of Draft NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plant.".

SUMMARY: This notice announces the availability for comment of draft NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants." The information in this report provides revised accident source terms for light-water reactors (LWR) to replace those given in report TID–14844, issued in 1962. When final, these source terms are to be implemented through a rulechange to 10CFR50 for use in the design and licensing of future light-water reactor nuclear power plants. Although these revised source terms are intended to be applied toward future plant designs, voluntary proposals for their use by present reactor licensees will be considered by the NRC staff.

Any interested party may submit comments on this report for consideration by the staff. To be certain of consideration, comments must be received within 90 days of the date of this Federal Register notice and should be sent to the contact indicated below. Comments received after this date will be considered to the extent practical.

A copy of draft NUREG–1465 has been placed in the NRC Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555. A free single copy may be obtained by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution and Mail Services Section, P–370, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3916.

Dated in Rockville, Maryland this 21st day of July, 1992.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 92–17783 Filed 7–27–92; 8:45 am]

BILLING CODE 7590–01–M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued a draft report entitled "Manual for Conducting Radiological Surveys in Support of License Termination" (NUREG/CR–5849). This draft manual, prepared for the NRC by Oak Ridge Associated Universities, is now available for review and comment.

The draft manual describes procedures for planning, conducting, and documenting site surveys which can be used to demonstrate that a site has been decontaminated to a level consistent with the Commission's criteria. It discusses the role of surveys in the decommissioning process, survey planning and design, selection and use of radiological instrumentation, conducting the survey, interpreting survey results, and documenting and reporting survey results. It also includes a sample Survey Plan and a sample Final Status Survey Report prepared in accordance with the procedures contained in the manual.

Although the draft manual does not constitute formal guidance from the Nuclear Regulatory Commission for the conduct of radiological surveys, it may serve as a source document for future guidance or as a reference document for licensee use. The draft manual also serves as potentially useful background for discussions and workshops related to the enhanced participatory rulemaking on radiological criteria for decommissioning currently being planned by the Commission. Comments are solicited on the draft manual, particularly with regard to the usefulness and appropriateness of the approaches outlined.

Copies of NUREG/CR–5849 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

A free single copy of the draft NUREG/CR–5849 may be requested by those considering submitting comments by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Trial use of the report in developing comments is encouraged.

Comments on the draft report should be submitted to David L. Meyer, Chief, Rules and Directives Review Branch, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the comments received may be examined at the NRC Public Document Room at 2120 L Street, NW.

(Lower Level), Washington, DC. Comments will be most helpful if they are received by January 28, 1993.

For further information contact James C. Malaro, Radiation Protection and Health Effects Branch, Mail Shop NL/S-139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3764.

Dated at Rockville, Maryland, this 28th day of June, 1992.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications Office of Nuclear Regulatory Research.

[FR Doc. 92-17781 Filed 7-27-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Vermont Yankee Nuclear Power Corporation, (licensee) for an amendment to Facility Operating License No. DPR-28 issued to the licensee for operation of the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on January 22, 1992 (57 FR 2603).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to delete specific supervisory titles from a section of the Technical Specifications relative to the composition of the Plant Operations Review Committee (PORC) and authorizes the Plant Manager to appoint members.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter, dated July 21, 1992.

By August 27, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.K. Gad, III, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 27, 1991, and (2) the Commission's letter to the licensee dated July 21, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 21st day of July 1992.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Acting Director, Project Directorate I-3, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 92-17782 Filed 7-27-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30946; File No. SR-Amex-92-20]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Specialist Disclosure of Orders on the Book

July 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend rule 174 to permit a specialist, upon request of a member conducting a market probe, to disclose information regarding orders on his book which are at or near the prevailing quotation.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange rule 174 currently prohibits a specialist from disclosing to any person other than a Floor Official or other official of the Exchange any information regarding orders entrusted to him as a specialist, or the name of a bidder or offeror. However, a specialist, when requested, must disclose whether a bid or offer is in whole or in part for an account in which he has an interest, and the specialist is also permitted to respond to a request for the names of buying and selling member organizations in completed or partially executed transactions unless specifically directed to the contrary by the parties involved.

The Exchange believes that its marketplace will be made even more efficient if information regarding buying and selling interest at or near the prevailing quotation is made available to members conducting a market probe, and the Exchange is therefore proposing to amend rule 174 so that specialists may disclose such information, as well as the identity of the firm or firms that placed the orders. The amendment is similar to changes recently made to the comparable rule of the New York Stock Exchange ("NYSE").[1] Rather than

[1] See Securities Exchange Act Release No. 29418 (June 25, 1991), 56 FR 28937, (notice of filing of File No. SR-NYSE-89-02).

requiring members entering orders with the specialist to specifically grant permission to the specialist to disclose the name of the bidder or offeror, as required by the NYSE rule, the Exchange rule will permit the specialist to disclose such information unless specifically directed to the contrary by the entering broker. As is the case under the NYSE rule, information given by the specialist to one member must be made available in a fair and impartial manner to any member who inquires.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, by providing Exchange members and the investors they represent with more information with which to make trading decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-20 and should be submitted by August 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17765 Filed 7-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30944; File No. SR-CBOE-92-09]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Chicago Board Options Exchange, Inc. Relating to Position Limits for European-Style Standard & Poor's 500 Stock Index Options Settled Based on the Opening Prices of Component Securities

July 21, 1992.

I. Introduction

On April 22, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposal to raise position and exercise limits for European-style [3] Standard & Poor's ("S&P") 500 Stock Index options that settle based on the opening prices of component securities and to broaden the existing hedge exemption from position limits. The proposal would also gradually phase-out all S&P 500 Stock Index options where settlement value upon expiration is based on the closing prices of component securities.[4]

Notice of the proposed rule changes were published for comment and appeared in the **Federal Register** on May 13, 1992.[5] Four comment letters were received on the proposed rule change.[6] This order approves the proposal.

II. Background

Since the inception of standardized options trading, the options exchanges have had in place rules imposing limits on the aggregate number of options contracts of the same class that a market participant or market participants acting in concert could hold or exercise.[7] Specifically, these restrictions are known as position and exercise limits. These rules are intended to, among other things, prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the holder of an options position.

The CBOE believes, however, that the present rules governing index option position and exercise limits are too restrictive given the increasingly large equity portfolios that institutional investors and member firms manage and control. Specifically, the CBOE suggests that these investors have utilized the futures and over-the-counter ("OTC") derivatives markets in conjunction with the management of their assets because SPX position limits are too low. Accordingly, the CBOE has submitted this proposal to increase existing SPX position and exercise limits and broaden the hedge exemption from position limits to afford investors, namely institutional investors and member firms, greater opportunity and flexibility to use SPX

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1991).

[3] A European-style option is one that can be exercised only on the expiration date.

[4] The CBOE currently trades a S&P 500 Stock Index option, called the NSX, that settles based on the opening prices of component securities. The CBOE also presently trades several S&P 500 Stock Index options that settle based on the closing prices of component securities. In particular, SPX, long-term options on the S&P 500 Stock Index ("SPL"), and long-term options on a Reduced Value S&P 500 Stock Index ("LSX") currently settle based on the closing prices at expiration. For purposes of this order, however, the term SPX encompasses both NSX and SPX options, unless otherwise indicated.

[5] See Securities Exchange Act Release No. 30673 (May 6, 1992), 57 FR 20539.

[6] See letters from the Honorable Christopher J. Dodd, Chairman, Securities Subcommittee, Committee on Banking, Housing and Urban Affairs, United States Senate, to Richard C. Breeden, Chairman, SEC, dated June 10, 1992; from Michael Rybinski to Richard C. Breeden, Chairman, SEC, dated July 7, 1992; from Daniel S. Carroll to Richard C. Breeden, Chairman, SEC, dated July 7, 1992; and from Harvey Wong to Richard C. Breeden, Chairman, SEC, dated July 10, 1992.

[7] Position limits impose a ceiling on the number of options contracts relating to an underlying instrument which an investor, or group of investors acting in concert, may own or control. Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of option contracts on a particular underlying security within five consecutive business days.

options in the hedging of their large stock portfolios.[8]

In addition, the CBOE's proposal to phase-out closing price settlement of SPX contracts in favor of settlement based on the opening prices of component securities is responsive to recommendations made by the Commission to dampen volatility associated with "Expiration Fridays." [9] Specifically, in an effort to address stock market volatility experienced on the four Fridays per year when individual stock options, stock index options, stock index futures and options on such futures all expire together, the Commission has encouraged the index options markets to switch to opening or morning settlement.[10] The Commission believes that opening-price settlement of derivative stock index products would allow the markets to apply pre-opening procedures to the significant order imbalances and increased volume experienced on quarterly expirations, thereby contributing to the orderly unwinding of SPX position and related equity positions. Indeed, in 1987, opening-price settlement of certain derivative instruments was implemented by the Chicago Mercantile Exchange ("CME"), New York Futures Exchange ("NYFE") and the New York Stock Exchange ("NYSE").[11] In addition, in April 1987, the CBOE introduced the NSX option, however, the remainder of its S&P 500 contracts continue to settle based on closing prices at expiration.

III. Description of the Proposal

The Exchange proposes to base the settlement value of all expiring European-style SPX options on the opening prices of the component securities ("A.M.-settled") instead of the closing prices ("P.M.-settled"), increase its existing position and exercise limit rules for its SPX contract and broaden the existing hedge exemption from position limits for customers and market professionals. To accomplish the elimination of P.M.-settled SPX contracts, the Exchange proposes to terminate the introduction of new P.M.-settled SPX contracts and re-name the NSX as SPX.[12] The proposed changes also include increasing SPX position limits from 25,000 to 45,000 contracts on the same side of the market and eliminating the telescoping provision for near-month positions.[13] In addition, the proposal establishes exemptions for certain hedge positions [14] and customer facilitation transactions involving A.M.-settled SPX options. A detailed summary of the proposed position limit changes follows.

First, the CBOE proposes to amend CBOE Rule 24.4 to increase the existing SPX position limit from 25,000 to 45,000 contracts and eliminate the telescoping provision of CBOE Rule 24.4 for A.M.-settled European-style SPX options.[15]

Second, the proposal would authorize CBOE's Department of Market Surveillance to grant an increased array of exemptions from the basic position and exercise limit of the Rule for positions in A.M.-settled SPX options.[16] Proposed new interpretation .02 to Rule 24.4 lists seven (the last three of which are new) hedging transactions and positions involving A.M.-settled SPX options and a qualified portfolio which, upon application by public customers [17] and approval by the Exchange, will not be counted against position limits up to a limit of 150,000 contracts.[18] These positions and transactions include:

(1) Long put(s) used to hedge the holdings of a qualified portfolio (as defined in Interpretation .01, subpart (d), of Rule 24.4; [19]

(2) Long call(s) used to hedge a short position in a qualified portfolio;

(3) Short call(s) used to hedge the holdings of a qualified portfolio (a "covered write position");

(4) Short put(s) used to hedge a short position in a qualified portfolio;

(5) A covered write position accompanied by long put(s), where the short call(s) expire with the long put(s), and the strike price of the short call(s)

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[8] Exercise limits will correspond to position limits, such that investors are permitted to exercise during any five consecutive business days, only the number of option contracts set forth as the position limits. Accordingly, exercise limits will equal the number of contracts set forth in the position limit rule plus any available hedge and/or facilitation exemptions. For example, an exercise limit of 195,000 contracts would be available if the maximum hedge exemption is applicable (45,000 position limit plus 150,000 hedge exemption).

[9] Quarterly expirations are the four expiration Fridays each year on which *all* stock index futures, stock index options, and options on stock index futures expire concurrently. Expiration Friday is the one Friday each month, including the four quarterly expirations, on which at least *some* stock index derivative instruments expire. Usually, Expiration Friday is the third Friday following the third Monday of each month.

[10] *See* letter from Shirley E. Hollis, Acting Secretary, SEC, to Kenneth R. Leibler, President, American Stock Exchange, Inc.; Walter E. Auch, Chairman, CBOE; Gordon S. Macklin, Chairman, National Association of Securities Dealers, Inc.; Robert J. Birnbaum, President, NYSE; James S. Gallagher, President, Pacific Stock Exchange, Inc.; and Nicholas A. Giordano, Chairman, Philadelphia Stock Exchange, Inc., dated June 13, 1988.

[11] *See* letters from Jean A. Webb, Secretary, CFTC, to Dr. Thomas E. Killcollin, Senior Vice President and Chief Economist, CME, dated February 25, 1987 (CME) and Lynn K. Gilbert, Deputy Secretary, CFTC, to Richard T. Pombonyo, Director, Product Development, NYFE, dated April 24, 1987 (NYFE); and Securities Exchange Act Release Nos. 24276 (March 27, 1987), 52 FR 13894 and 25804 (June 15, 1988), 53 FR 23474 (NYSE).

[12] The increased position and exercise limits and broadened hedge exemption only apply to A.M.-settled, European-style SPX contracts. Thus, outstanding SPX and SPL contracts with P.M.-settlement will continue to be subject to the lower position and exercise limits until they are phased out. All positions in A.M. and P.M. settled SPX contracts will be aggregated. With respect to American-style indexes or equity options or for P.M.-settled, European-style index or equity options, however, no changes are proposed for position limits or existing position limit hedge exemptions.

[13] The telescoping provision in CBOE Rule 24.4 limits index options positions to 15,000 contracts on the same side of the market in the near-term expiration month.

[14] Under existing rules, the hedge exemption program allows public customers to apply for a "hedge exemption" from established position limits for broad-based index options if those customers hold pre-approved portfolios of long positions in common stocks. In addition, this hedge exemption is also available to public customers with accounts having short stock positions who seek to offset economic risk by buying calls or selling puts on a broad-based stock index. The maximum size of an exempted position, however, cannot exceed the unhedged value of the qualified stock portfolio, and no exempted positions can exceed 75,000 contracts, regardless of the size of the stock portfolio. These rules would continue to apply to any broad-based index option traded on the CBOE except for A.M.-settled SPX contracts.

[15] *See supra* note 13.

[16] The CBOE believes that the seven listed options positions generally are taken by market participants to reduce the risks associated with certain equity market positions through the establishment of off-setting positions that provide minimal speculative opportunities.

[17] *See* CBOE Rule 7.4(a) and proposed Interpretation .02 to CBOE Rule 24.4.

[18] Proposed Commentary .02(d) to Rule 24.4 would permit the CBOE to grant hedge exemptions to public customers for positions in A.M.-settled, European-style SPX contracts to the extent the underlying value of the option does not exceed the unhedged value of the qualified portfolio. The unhedged value would be determined as follows: (1) the values of the net long or short positions for each of the stocks or their equivalent of the qualified portfolio are totalled; and (2) the value of (a) any opposite side of the market calls and puts in A.M.-settled SPX contracts, (b) any opposite side of the market positions in S&P 500 Stock Index futures, and (c) any economically equivalent opposite side of the market positions in A.M.-settled SPX contracts or S&P 500 options on stock index futures, is subtracted from the total. As previously stated, the exemption is limited to 150,000 same side of the market contracts. For example, assuming a qualified portfolio of $7.9 billion and an index level of 410 for the S&P 500, the 45,000 SPX position limit provides coverage of up to $1.8 billion while the hedge exemption of 150,000 SPX contracts allows additional SPX positions of $6.1 billion.

[19] Interpretation .01(d) to Rule 24.4 defines a qualified portfolio as follows: The stock portfolio or its equivalent is composed of net long or short positions in common stocks in at least four industry groups and contains at least twenty stocks, none of which accounts for more than 15% of the value of the portfolio ("qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks or their equivalents.

equals or exceeds the strike price of the long put(s) (a "hedgewrap");

(6) A long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) equals or exceeds the strike price of the short put(s), which total position is used to hedge the holdings of a qualified portfolio (a "debit put spread position"); and

(7) A covered write position accompanied by a debit put spread position, where the short call(s) expires with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s).[20]

As noted above, however, in no event may positions exempt under the proposed hedge exemption exceed 150,000 contracts on the same-side-of-the-market option contracts in A.M.-settled SPX contracts. Before public customers may establish "exempted positions," however, they must receive approval for the hedge exemption from the CBOE's Department of Market Surveillance. In addition, under the proposal, Exchange approval for the position limit hedge exemptions may be granted on the basis of oral representations. If approval is based on oral representations the customer or members receiving the exemption shall, within no more than five business days, furnish the CBOE's Department of Market Surveillance with appropriate documentation and forms substantiating the basis for the exemption.[21]

Third, the proposal would authorize the CBOE to grant a higher position limit exemption for hedged positions applicable to money managers controlling or managing several options accounts.[22] In particular, if the request is approved by the CBOE, a money manager could hold up to 250,000 exempted same-side-of-the-market SPX contracts in its aggregate accounts, with any single account under its control limited to 135,000 exempted same-side-of-the-market option contracts. With respect to the aggregation of non-exempted positions, however, all of the aggregated accounts of a money manager will still be subject to the proposed 45,000 SPX position limit.

Fourth, proposed new interpretation .03 to Rule 24.4 would enable a member organization to obtain a position limit exemption of up to 100,000 SPX contracts on the same-side-of-the-market in order to facilitate the execution of large customer orders.[23]

Prior to executing a facilitating trade, however, a member organization must receive approval from the CBOE's Exemption Committee.[24] The proposal also provides that Exchange approval may be given on the basis of verbal representations, in which event, the member organization shall furnish the CBOE's Department of Market Surveillance with appropriate forms and documentation substantiating the basis for the exemptions within five business days.[25]

The proposal would establish several requirements member organizations must satisfy in order to receive approval of a facilitation trade exemption. No member organization may request a facilitation exemption for customer or member use in index arbitrage. Neither the member's nor the customer's order may be contingent on "all or none" or "fill or kill" instructions and the order may not be executed until the SPX Order Book Official has announced the orders to the entire crowd via an audio system and crowd members have been given a reasonable time to participate in the trade. In addition, the member must hedge, within five business days after the execution of a facilitation exemption order, all exempt options positions that have not been otherwise liquidated and furnish the Exchange's Department of Market Surveillance with documentation describing the resulting hedge position(s).[26] In meeting this requirement, the member organization must liquidate and establish its customer's and its own option and stock position or their equivalent in an orderly fashion, and in a manner calculated not to cause unreasonable price fluctuations or unwarranted price changes. Finally, once liquidated or reduced, the member organizations may not increase the exempted option positions without approval from the Exchange.

IV. Comment Letters

The Commission received four comment letters. The first letter was from the Chairman of the United States Senate Subcommittee on Securities supporting the CBOE's proposal to move the time for determining the expiration settlement value of its SPX contract from the close to the open of the trading day. In supporting this aspect of the proposal, Senator Dodd emphasized that "[t]hese actions taken by the exchanges should provide a greater opportunity for investors and market professionals to react to order imbalances and enhance investors' overall confidence in the U.S. markets."[27] Subsequent letters from individual investors argue that changing the procedure for determining the settlement value of the SPX contract from the close to the open at expiration will have an adverse impact on the small investor, by eliminating potential trading opportunities for those investors.[28]

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[20] The first four proposed hedge positions are presently available for equity options pursuant to Interpretation .04 to Rule 4.11.

[21] *See* letter from Dr. William Barclay, Vice President, Strategic Planning and International Development, CBOE, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated April 22, 1992.

[22] A position limit hedge exemption may be granted to an individual or an organization controlling or managing customer accounts in which option positions are held, *i.e.*, a money manager. The determination that one is a money manager is based on the concept of control over accounts pursuant to Interpretation .03 of CBOE Rule 4.11.

[23] A facilitation trade is a transaction that involves crossing an order of a member firm's public customer with an order from the member firm's proprietary account. *See* CBOE Rule 6.74 and 6.53(m). In addition, proposed Interpretation .03 to Rule 24.4 defines a facilitating order of a firm's own customer as one that will enter, clear and have the resulting position carried with the firm.

[24] The Exemption Committee is composed of twenty-three members who administer the criteria for granting position limit exemptions. In the case of written requests, a panel of three officials will review the exemption request after the close with the exemption effective the next business day. For oral requests, one official will consider the exemption request based on the selected criteria with another official reviewing such decision. The full three-person panel will then review the action the next time they meet. Conversation between Joyce Klouda, Staff Attorney, CBOE, and Jeffrey P. Burns, Attorney, Division of Market Regulation, Branch of Options Regulation, SEC, on July 9, 1992.

[25] *See supra* note 20.

[26] The facilitation exemption member organization, if requested, must also provide to the CBOE any information or documents concerning the exempted options and hedge positions and notify the Exchange of any material change in the exempted options position or the hedge.

[27] See *supra* note 6; Senator Dodd also referred to the NYSE's modification of its procedures for handling market-on-close orders. See Securities Exchange Act Release No. 30680 (May 6, 1992), 57 FR 20720 (File No. SR–NYSE–92–09).

[28] The Commission believes that these concerns are unfounded. First, the Commission does not believe that investor opportunity to profit through trading in SPX contracts will be significantly hampered or adversely effected as a result of shifting the SPX to opening price settlement. Profit from trading in SPX options is related to a myriad of factors and none of the fundamental economic factors that determine the price of an SPX options are affected by basing the settlement of SPX options on the opening prices of component securities. Even if particular strategies may no longer be feasible as a result of AM expiration, the Commission does not believe that switching the SPX to opening price settlement will make trading in the contract any more or less profitable. Second, for all of the reasons stated above, the Commission believes the potential benefits to the market as a whole from the CBOE's proposal justifies the potential consequences. Of course, the Commission will continue to monitor market events and the implications of the proposal for investors.

V. Discussion

As discussed below, the Commission believes that the CBOE proposal is consistent with section 6 of the Act, in general, and section 6(b)(5), in particular, in that it should help remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and the public interest. Moreover, the Commission believes that the CBOE's proposal to switch the SPX option to an A.M.-settled option instead of a P.M.-settled option may help ameliorate the price effects associated with expirations of SPX options.

A. A.M. Settlement of SPX Options

The Commission believes that the CBOE proposal to switch the SPX contract from a p.m.-settled contract to an a.m.-settled contract is a reasonable attempt to address and ameliorate the effects on the equity markets that have been associated with, but not necessarily the result of, the expiration of index options.[29] The Commission notes that the CBOE's proposal is consistent with actions taken by other securities and futures exchanges to settle their expiring index options or futures contracts based on the opening prices of component securities.[30] The Commission believes that settling these index products based on opening prices, coupled with the auxiliary opening procedures developed by the NYSE,[31] have significantly improved the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Indeed, based on the performance of the stock, options and futures markets over the past several years during expiration Fridays, the Commission continues to believe that "in general, basing the settlement of index products on opening, as opposed to closing, prices on expiration Fridays helps alleviate the stock market volatility once experienced frequently on expiration Fridays."[32]

The Commission has identified several benefits to opening-priced settlement for broad-based index options. First, an opening price settlement method for SPX options can help facilitate the development of contra-side interest to alleviate order imbalances in underlying markets from the unwinding of index-related positions. In contrast to expirations associated with P.M.-settled SPX options, firms providing contra-side interest will not necessarily assume overnight or weekend position risks because they will have the rest of the day to liquidate or trade out of their positions. Second, even if the opening price settlement results in a significant change in underlying stock prices, participants in the markets for those stocks will have the remainder of the trading day to adjust to those price movements and to determine whether those movements reflect changes in fundamental values or rather short-term supply/demand considerations. In addition, settling SPX options at the opening will allow corresponding stock positions associated with expiring SPX contracts to be subject to the NYSE's auxiliary opening procedures implemented on expiration Fridays. These procedures provide for the orderly entry, dissemination and matching of orders.[33]

In sum, on the basis of the expirations over the past five years, the Commission believes that opening-price settlement of stock index options and futures is beneficial. Opening-price settlement procedures have operated smoothly and effectively and have contributed to dampening expiration Friday volatility. The Commission believes that moving all SPX options to opening settlement will permit the market to benefit from the pre-opening procedures described above when positions in the contract are unwound on expiration Fridays. Accordingly, the Commission finds that switching the settlement of the SPX contract from the close to the open at expiration is consistent with the Act and the protection of investors and the public interest.

B. Position and Exercise Limit Increase

In establishing specific position and exercise limits as proposed by the options exchanges, the Commission has attempted to balance two competing concerns. First, limits must be sufficiently low to prevent investors from disrupting the underlying cash market. Second, limits must not be established at levels that are so low as to unnecessarily discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain fair and orderly markets.

The Commission believes that the proposed position limit of 45,000 A.M.-settled SPX contracts on the same side of the market will increase the depth and liquidity of the SPX market[34] without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities. As previously noted, markets that exhibit active and deep trading, as well as broad public ownership, are more difficult to manipulate or disrupt than less active markets with smaller public floats.[35] In this regard, the S&P 500 is a broad-based, capitalization-weighted index consisting of 500 of the most actively traded and liquid stocks in the U.S.[36] Accordingly, given the size and breadth of the S&P 500 Index, the Commission believes that increasing SPX position limit to 45,000 contracts in tandem with moving the SPX to opening price settlement will not increase any manipulative concerns. In addition, the Exchange's surveillance program will

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[29] *See* Division of Market Regulation, SEC, *The October 1987 Market Break* ("Market Break Study") (February 1988); Division of Market Regulation, SEC, *Market Analysis of October 13 and 16, 1989* ("Mini-Break Report") (December 1990); Report to the Board of Directors of the NYSE, *Market Volatility and Investor Confidence* ("Blue Ribbon Panel") (June 7, 1990).

[30] *See supra* note 10.

[31] *See infra* note 33.

[32] *See* Securities Exchange Act Release No. 24276 (March 27, 1987), 52 FR 10836.

[33] Specifically, the NYSE's auxiliary opening procedures require all stock orders relating to options or futures contracts that settle based on opening expiration Friday prices to be received by 9 a.m., Eastern Standard Time. The NYSE then disseminates the size of substantial market order imbalances (50,000 shares or more) as of 9 a.m. in stocks which are major components of broad-based stock indexes. To facilitate the entry of orders, on expiration Fridays, the NYSE makes its automatic order routing system, known as "SuperDot," available to accept orders at 7:30 a.m. In addition, the NYSE's Opening Automated Report Service ("OARS"), an enhancement to SuperDot, is available at the opening. OARS accepts pre-opening market orders up to 30,099 shares and executes these orders at the market opening. This enhancement to the SuperDot system stores the pre-opening orders, continuously pairs buy and sell orders, and presents order imbalances to specialists up to the time each stock opens for trading. This OARS information, along with the knowledge of the standing limit orders, and the interests represented on the NYSE trading floor and in the Intermarket Trading System ("ITS"), enable the specialist to facilitate and report the opening price and volume for each stock within moments. See Securities Exchange Act Release No. 25202 (December 21, 1987), 52 FR 48355.

[34] The increase in position limits likely will increase trading activity in SPX options and could increase market depth and liquidity by giving institutional investors wider latitude in trading to manage their portfolios.

[35] *See* Securities Exchange Act Release No. 25736 (May 24, 1988), 53 FR 20301.

[36] In fact, according to S&P data, the market value of the Index is approximately 74% of the total value of the U.S. equity market (Based on figures for 1991, Source: S&P). The Commission also notes the absence of discernible manipulative concerns that have arisen under the current SPX position and exercise limits.

continue to be applicable to the trading of SPX options and should detect and deter trading abuses arising from the increased position and exercise limits.

1. Hedge Exemption

As detailed above, the proposal lists seven hedging transactions and positions involving A.M.-settled SPX contracts and a qualified portfolio which, upon application and approval by the Exchange,[37] will not be counted against position limits for a public customer. These seven listed positions are positions intended to reduce the risks of equity market positions. The proposal, however, limits the number of contracts on the same side of the market to 150,000. In addition, money managers are provided even greater flexibility, with an upward limit of 250,000 same side of the market contracts for all accounts under management provided that no single account has more than 135,000 contracts on the same side of the market.

The Commission believes that the CBOE proposal is consistent with the Commission's approach to position and exercise limits and adequately balances the benefits derived from increased position and exercise limits against the potential for increased market disruptions and manipulations. Specifically, because any SPX options position in excess of the outstanding SPX position limit must be fully hedged in conformity with the seven listed hedge positions, market disruption concerns are reduced. Moreover, to the extent that an SPX options position is hedged with a qualified stock portfolio, it should be more difficult to profit from an intermarket manipulation because an increase in the value of the SPX options position usually will be accompanied by a corresponding decrease in the value of the cash position. Accordingly, the Commission does not believe that the proposed expansion of the hedged position limit for SPX options (in tandem with moving the price settlement of the SPX at expiration to the open) will disrupt options or equity markets or materially increase the possibility of manipulation in the underlying securities or options. In addition, the Commission believes that the expansion of the hedge exemption to include the hedgewrap and debit put spread as qualified hedge positions is consistent with the Act because such hedged positions involve limited systemic risk to the marketplace.[38]

Nevertheless, larger options positions raised the incentive and potential to engage in intermarket manipulations by providing a greater potential gain from the derivative position. The Commission, however, is confident that existing surveillance capabilities of the Exchange are sufficient to detect and deter trading abuses arising from the increased position and exercise limits associated with the hedge exemption proposal. Accordingly, the Commission believes that the CBOE proposal to increase its position limit exemption for SPX hedged positions is warranted in order to add needed flexibility for money managers, institutional investors and other professional traders.

Finally, the Commission believes that the larger hedged SPX position limit exemption for money managers (*i.e.*, 250,000 contracts with no more than 135,000 in one account), is reasonable and consistent with the Act because it will provide further flexibility to money managers in managing their accounts.[39] Even though a money manager could control up to 250,000 SPX contracts under this proposal, the Commission does not believe this limit will increase the potential for market disruption or manipulation for several reasons. First, even with this higher hedged position limit, no single account could hold pursuant to the exemption more than 135,000 SPX contracts, or 15,000 contracts less than the hedged exemption for other type of accounts. Second, the exempted options positions must be associated with one of the seven enumerated hedged positions contained in Interpretation .02 to CBOE rule 24.4. As noted above, our concerns about manipulation are reduced to the extent the positions are fully hedged.

2. Facilitation Exemption

The Commission believes that the "customer facilitation exemption" from SPX position and exercise limit rules for member organizations will further enhance the depth and liquidity of the options and underlying cash markets by providing members greater flexibility in executing large SPX customer orders.[40] In addition, the Commission believes that the risk of executing large customer orders in SPX options will be reduced by distributing such risk among market participants.

The Commission also believes that the Exchange has proposed several safeguards in connection with the facilitation exemption that will serve to minimize any potential market disruption or manipulation concerns. First, the member organization must receive approval from the Exchange prior to executing facilitating trades.[41] In this regard, the Commission believes that permitting the CBOE to grant oral approval of facilitation exemptions will not result in trading abuses because of the follow-up documentation required. Second, a facilitation exemption member must hedge all exempt options positions that have not been previously liquidated within five consecutive business days after the execution of the facilitation exemption order, and furnish to the Exchange documentation reflecting the resulting hedged positions. Third, the facilitation exemption member is required to provide the Exchange with any information or documents requested concerning the exempted options positions and the positions hedging them.[42] Fourth, a facilitation exemption member is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Thus, the Commission concludes that the member organization customer facilitation exemption from position and exercise limits (in tandem with moving the price settlement of the SPX at expiration to the open) is consistent with the Act and will promote fair and orderly markets.

VI. Conclusion

The Commission finds that changing the SPX in an A.M.-settled contract is consistent with the Act and may ameliorate volatility associated with the expiration of index products. The Commission also finds that the proposed increase in position and exercise limits, together with the broader hedge exemption, for A.M.-settled SPX

[37] A customer must receive approval for the hedge exemption from the CBOE's Department of Market Surveillance prior to taking on the greater positions. Although approval may be granted orally, the customer is required to follow-up with appropriate forms and documentation for the exemption within a time period designated by the Exchange.

[38] In this regard, the effect of the expansion of the hedge exemption on credit risks likewise should be minimal because the SPX contract, like all standardized options under the jurisdiction of the SEC, are issued and cleared by the Options Clearing Corporation ("OCC"). These exemptions from position and exercise limits do not carry over to exempt the position holder from CBOE and OCC margin deposit requirements. Accordingly, hedged positions must be accessible to the members and/or OCC in the event the positions must be liquidated.

[39] Money managers occasionally execute trades and then allocate such trades to specific managed accounts. The proposal for increased position limits will facilitate these money manager operations.

[40] Under existing Exchange rules, a market-maker participant in a facilitation transaction may obtain an exemption from position limits. *See* Interpretation .05 to Rule 4.11.

[41] *See supra* text following note 23.

[42] The Exchange is authorized to liquidate, as expeditiously as possible consistent with the maintenance of an orderly market, those positions carried by a member that are in excess of applicable position limits. *See* CBOE Rule 4.14.

contracts will allow more effective hedging of large stock portfolios and may increase the depth and liquidity of the stock index options market. At the same time, for the reasons discussed above, the Commission does not believe that an expansion of the hedge exemption for A.M.-settled SPX contracts will materially increase the potential for disruption in the underlying cash market or render the SPX readily susceptible to manipulation. In addition, the Commission believes that providing member organizations with SPX position and exercise exemptions for the purpose of facilitating large customer orders will better serve the needs of the investing public by distributing the risks of large customer transactions to several market participants.

In summary, the Commission believes that the increase in position and exercise limits will benefit market participants by allowing them to take larger positions in the context of an exchange-traded and regulated product without unnecessarily increasing manipulative concerns. In addition, although the hedging exemption appears large, the Commission is satisfied that on a fully hedged basis the positions will not present significant manipulation concerns. Similarly, the facilitation exemption is limited and must be liquidated or fully hedged within five business days. Further, the Commission further believes that these exemptions are appropriate in light of the composition, depth and liquidity of the S&P 500 Stock Index, making it less susceptible to manipulation.

Nevertheless, as a result of the significant increase in options positions that may result from the new 45,000 position limit, in addition to the elimination of the telescoping provision and the expansion of exemptions from SPX position limits, the Commission believes that the CBOE should study the market impact of these changes. Specifically, the Commission expects the CBOE to report on an annual basis for the next three years on the following matters:

(1) The number of market participants that are at or near the 45,000 position limit level;

(2) Any market impact concerns or issues raised by the large options positions, such as frontrunning, minimanipulation, capping and pegging, and other similar trading abuses;

(3) Any discernible effects on the options and related markets due to the increased position limits and the change in the hedge exemptions (*i.e.*, depth and liquidity);

(4) How often the hedge and facilitation exemptions are utilized;

(5) The frequency and size of the hedge exemptions utilized;

(6) The number of position limit violations;

(7) Any disciplinary actions brought as a result of such violations; and

(8) The number of oral exemption requests, the number of requests granted, and the number of times documentation was not timely filed.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[43] that the proposed rule change (SR–CBOE–92–09), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[44]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17752 Filed 7–27–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30945; International Series No. 425; File No. SR–PHLX–92–13]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to the Listing of Short-Term, End-of-Month Expiration Foreign Currency Options

July 21, 1992.

On April 17, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing of foreign currency options that will expire on the Saturday following the last Friday of the expiration month for certain near-term expiration months ("end-of-month expiration"). Currently, all foreign currency options traded on the Exchange expire during the middle of the expiration month. The new, end-of-the-month expiration options will be traded on the PHLX in addition to the existing foreign currency options expiring at the middle of the month.

The proposed rule change was published for comment in the **Federal Register** on May 12, 1992.[3] No comments were received on the proposed rule change.

The Exchange proposes to amend its Rules 1000(b)(21) and 1012(a)(ii) to provide for the listing of three additional end-of-the-month expiration foreign currency options which will be listed and traded on all foreign currencies, including cross rate currencies, presently underlying options traded on the PHLX. Under the proposal, the month-end foreign currency options will only be available in the two nearest term consecutive month expirations and the nearest term cycle month expiration. Specifically, the options will expire on the Saturday following the last Friday of the expiration month.[4] Accordingly, this end-of-the-month expiration feature will provide expirations approximately two weeks apart from existing foreign currency options expirations in the two nearest consecutive month expirations and the first cycle month expiration.

The proposed short-term, end-of-the-month expiration foreign currency options will trade simultaneously with, not independent of, currently listed and traded foreign currency options and the Exchange's cross-rate currency options.[5] The proposed short-term, end-of-the-month expiration foreign currency options will be subject to the same rules that presently govern the trading of existing foreign currency options, contracts, including sales practice rules, margin requirements, and floor trading procedures. With regard to position and exercise limits, the PHLX proposes to aggregate positions in all foreign currency options as well as cross-rate foreign currency options that are based on the same underlying foreign currencies. In addition, in connection with the proposal, the Exchange has distributed a circular to all Exchange Options Members, Member Organizations and Foreign Currency Options Participants describing the new end-of-the-month expiration options, the contract specification of these contracts, and other material rules and procedures applicable to these options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[6] In

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[43] 15 U.S.C. 78s(b)(2) (1982).

[44] 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] See Securities Exchange Act Release No. 30869 (May 6, 1992), 57 FR 20913.

[4] Presently, PHLX Rule 1000(b)(21) provides that foreign currency options expire on the Saturday preceding the third Wednesday of the expiration month. With respect to each class of foreign currency options, the PHLX trades options with six expirations of up to one year in length with two consecutive month and four cycle month expirations, as well as longer-term foreign currency options listed on an every other cycle month expiration basis with up to thirty-six months until expiration.

[5] See Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 56109.

[6] 15 U.S.C. 78f(b)(5) (1982).

particular, the Commission believes that the proposed rule change is designed to provide investors with additional means to hedge foreign currency portfolios and cash flows from short-term market risk, thereby facilitating transactions in foreign currency options. Specifically, by providing investors with the ability to use short-term foreign currency options that expire in two week intervals, the PHLX proposal will allow investors more flexibility to tailor their foreign currency options positions to satisfy their investment objectives. For instance, according to the PHLX, foreign currency options provide a strategic investment tool for sophisticated retail options customers, multi-national corporations and proprietary traders who manage and hedge foreign currency exposures. In addition, banking institutions trade short-term foreign currency options to hedge the risk of trading in the foreign currency, forward and cash markets. Accordingly, the Commission believes the PHLX proposal is a reasonable response by the Exchange to meet the demands of sophisticated foreign currency market participants who are increasingly focusing on shorter term foreign currency options products.[7] Finally, the Commission believes the proposal will provide portfolio managers and other institutional currency market participants with an alternative to using futures contracts, forward contracts and/or off-exchange customized derivative instruments to satisfy their short-term foreign currency investment needs, thereby promoting competition among these markets.

In addition, the Commission believes that the PHLX proposal will help to promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed currency market to short-term, end-of-the-month expiration foreign currency options. The attributes of the Exchange's foreign currency options market versus an over-the-counter market include, but are not limited to, a regulated market center, a liquid auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.

The Commission also notes that the Exchange's existing rules applicable to foreign currency options, including among others, strike price interval, bid/ask differential, price continuity, and sales practice rules and position and exercise limits will apply to the short-term, end-of-the-month expiration foreign currency options. Accordingly, the Commission believes that the month-end expiration options will not compromise the protection of investors or have an adverse market impact. In fact, as noted above, the Commission believes the month-end expiration options will provide important benefits to market participants as they seek to hedge or speculate on short-term foreign currency fluctuations. The Commission also does not believe that the listing of end-of-the-month foreign currency options will cause a proliferation of options series since the month-end options will only be available for the three nearest term expiration months.

Lastly, based on representations for the PHLX, the Commission believes that the Options Price Reporting Authority ("OPRA") will have adequate computer processing capacity to accommodate the additional options listed in connection with the short-term, end-of-the-month expiration foreign currency options. Specifically, the Exchange represents that "our systems and the OPRA lines will be more than adequate to accommodate the listing and trading of Month-End Foreign Currency Options." [8]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PHLX–92–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret McFarland,

Deputy Secretary.

[FR Doc. 92–17753 Filed 7–27–92; 8:45 am]

BILLING CODE 8010–01–M

[7] According to the Exchange, short-term foreign currency options have been actively traded in the over-the-counter ("OTC") market both in the U.S. and globally.

[8] See letter from Murray L. Ross, Secretary, PHLX, to Jeffrey P. Burns, Attorney, Division of Market Regulations, SEC, dated July 2, 1992.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1991).

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New System of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), TVA is publishing for public comment a proposed notice for a new system of records: TVA–36, "Section 26a Permit Application Records—TVA."

DATES: Comments on this notice must be received by August 27, 1992.

ADDRESSES: Comments should be sent to Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402–2801. As a convenience to commenters, TVA will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (615) 751–2902. Receipt of FAX transmittals will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, (615) 751–2523.

SUPPLEMENTARY INFORMATION: TVA is publishing a proposed new system of records notice to cover existing records which, due to a change in how TVA accesses the records, are now covered by the Privacy Act of 1974, as amended. Pursuant to 5 U.S.C. 552a(r), a report on this new system of records has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget. The text of the proposed new system of records notice is set forth below.

TVA–36

SYSTEM NAME:

Section 26a Permit Application Records—TVA.

SYSTEM LOCATION:

For applications involving private facilities located on TVA reservoirs, such as boathouses, piers, docks, launching ramps, marine railways, beaches, utilities, and ground improvements, the records are maintained in the following locations:

—Manager, Property Management, Eastern Land Resources District, TVA, 2611 West Andrew Johnson Highway, Morristown, TN 37814.

—Manager, Property Management, Central Land Resources District, TVA, PO Box 606, Athens, TN 37303.

—Manager, Property Management, Southern Land Resources District, TVA, 170 Office Service Warehouse Annex, Muscle Shoals, AL 35660.

—Manager, Property Management, Western Land Resources District, TVA, PO Box 280, Paris, TN 38242.

For applications involving other facilities, the records are maintained by the Manager, Property Management and Administration Department, Land Resources, TVA, Ridgeway Road, Norris, TN 37828.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes individuals who have filed a section 26a application for approval of construction of such things as boat ramps, docks, bridges, and dams located along, across, or in the Tennessee River and its tributaries. Also included in this system may be individuals whose structures do not have section 26a permits, or whose approved structures have deteriorated so as to pose a threat to navigation, flood control, public lands or reservations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section 26a permit applications made by individuals, businesses and industries, utilities, and federal, state, county and city government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

PURPOSE(S):

Section 26a of the Tennessee Valley Authority Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and the environment and determine if the project can be approved. Rules on the application for review and approval of such plans are published in 18 CFR part 1304, Approval of Construction in the Tennessee River System and Regulation of Structures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State or other Federal agencies for use in program evaluation, providing assistance to program participants, or engaged at TVA's direction in providing support services to the program, to the extent necessary to the performance of those services.

To TVA consultants, contractors, subcontractors or individuals who contract or subcontract with TVA, who are engaged in studies and evaluation of TVA's administration or other matters involving its section 26a program or who are providing support services to the program, to the extent necessary to the performance of the contract.

To provide information to a Federal, State, or local entity, in response to its request, in connection with the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant and necessary to the requesting agency's decision on such matters.

To respond to a request from a Member of Congress regarding the status of a specific application.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, on microfilm, and in hardcopy files.

RETRIEVABILITY:

Records in the Property Management and Administration Department, Norris, Tennessee, may be retrieved by personal identifier (name of applicant), land tract number, or section 26a application number, stream location, reservoir, county, or subdivision. Records in field offices are interfiled with land tract records and are retrieved by land tract number.

SAFEGUARDS:

Access to and use of these records are limited through physical, administrative, and computer system safeguards to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Property Management and Administration Department, Land Resources, TVA, Norris, TN 37828.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name. A land tract number, section 26a permit application number, stream location or legal property description is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from individual to whom the record pertains. Information may also be obtained from other Federal, State, county or city government agencies; public records and directories; landowners, tenants, and other individuals and business entities, including financial institutions, having an interest in or knowledge related to land ownership, appraisal, or title history; and TVA personnel and contractors including independent appraisers and commercial title companies.

Charles E. Price,

Interim Vice President, Information Services.

[FR Doc. 92–17742 Filed 7–27–92; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 92–41; Notice 1]

Long Range Strategic Planning

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comment.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is preparing to meet the challenges of the 21st century through a long range strategic planning initiative. Strategic planning will strengthen NHTSA's capability, flexibility and responsiveness in meeting the motor vehicle and traffic safety challenges that lie ahead.

The purpose of this notice is to invite comment, suggestions and

recommendations from all individuals and organizations that have an interest in highway safety, motor vehicle safety, the Agency's non-safety programs and/or other of NHTSA's activities. These comments should address the specific questions listed in the notice as well as the strategic planning process, the elements that the commenter believes should be considered in the plan, and substantive input on any elements for which the commenter has information, data or expertise.

DATES: Comments are due no later than September 28, 1992.

ADDRESS: Comments should refer to the docket number of this notice and should be submitted to: Docket Section, NHTSA, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Dr. Carl E. Nash, Director, Office of Strategic Planning and Evaluation, NPP–10, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1570.

SUPPLEMENTARY INFORMATION: NHTSA was established by the Highway Safety Act of 1970, as the successor to the National Highway Safety Bureau, to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966. It also carries out consumer programs established by the Motor Vehicle Information and Cost Savings Act of 1972.

NHTSA is responsible for reducing deaths, injuries and economic losses resulting from motor vehicle crashes. This is accomplished by setting and enforcing safety performance standards for motor vehicles and items of motor vehicle equipment, and through grants to state and local governments to enable them to conduct effective local highway safety programs. NHTSA investigates safety defects in motor vehicles, sets and enforces fuel economy standards, helps states and local communities reduce the threat of drunk drivers, promotes the use of safety belts, child safety seats and air bags, investigates odometer fraud, establishes and enforces vehicle anti-theft regulations and provides consumer information on motor vehicle safety topics. NHTSA also conducts research on driver behavior and traffic safety to develop the most efficient and effective means of bringing about safety improvements.

NHTSA has a solid record of major achievements over its 25 year history. The fatality rate has dropped from 5.5 deaths per 100 million vehicle miles traveled in 1966 to a historic low of 1.9 in 1991. Improved vehicle safety features such as safety belts, air bags, energy absorbing steering columns and side impact protection have reduced deaths and injuries in crashes. NHTSA's efforts to encourage stronger safety laws at the state level have resulted in increased safety belt usage, a reduction in alcohol-related crashes, more focused police traffic services, and a revolution in emergency medical services.

Despite this success, the Agency sees much unfinished business. More than 40,000 people still lose their lives in motor vehicle crashes annually and many more are seriously injured. These highway losses cost society more than $100 billion annually. Automobile theft and odometer fraud also cost U.S. consumers billions of dollars each year. In the absence of effective efforts, highway losses could increase in coming years as the number of licensed drivers and vehicle miles of travel increase.

To prepare to meet the challenges of the 21st century, NHTSA is embarking upon a long range strategic planning initiative. The initiative will have two phases. Phase I begins with this solicitation of the views of individuals and public and private organizations interested in the nation's highway and motor vehicle safety programs or the Agency's non-safety programs such as fuel economy, vehicle theft, and odometer fraud. Phase I also will involve the collection and synthesis of a broad range of data and information about current and emerging highway and motor vehicle safety problems and programs. The input from these sources will provide the foundation for Phase II.

Phase II of the strategic planning process will use the information generated in Phase I to formulate future scenarios and establish the vision, mission, values and goals to carry the Agency into the 21st century. Strategies for realizing the vision, mission, values and goals will then be developed and presented in the Agency's strategic plan.

The Agency requests information that will assist it in assessing the potential effects that changes in demographic, economic, institutional, and technological factors over the next 10 to 15 years will have on safety. A particular objective is to gain an understanding of the implications these factors may have for highway safety and NHTSA in the future. The Agency also requests information pertaining to its institutional relationships, its mission, and how it functions to achieve its mission.

The following are some of the key issues that the Agency would like commenters to address. In addition to general comments, the public is requested to submit documents, analyses, or reference citations that are germane to the issues. The Agency is particularly interested in learning about emerging or potential safety problems and in receiving recommendations for addressing such problems effectively. The "future" time frame under consideration is 10 to 15 years. Based on the information received in response to this notice, the Agency will consider the need to hold public hearings on issues brought forward by commenters.

A. Futher Factors and Issues

What do you consider to be the critical highway safety issues facing the nation in the future?

What do you consider to be the key demographic and social influences on highway safety (e.g., age, gender, geographic distribution, alcohol consumption, etc.) and how might they affect highway safety in the future?

What changes do you envision in fleet size and mix and how might they affect highway safety in the future?

How do you view the need for internationally harmonized safety standards as they affect auto safety in the U.S., the U.S. automotive industry, and the national economy in the future?

What changes do you envision in energy and environmental issues and how might they affect public policy and highway safety in the future? What changes in design, technology and vehicle use do you anticipate as a result of environmental considerations?

What changes do you envision in the automotive industry (e.g., its structure, international competition, etc.) and how might they affect motor vehicle safety in the future?

What changes do you envision in the area of auto and medical insurance and how might they affect highway safety and long-term injury outcomes in the future?

What changes do you envision in the national, state and local economies and how might they affect public policy and highway safety in the future? Will these economic changes require changes in Federal funding programs or delivery systems for highway safety?

What changes do you envision in vehicle theft and odometer fraud and how might they affect NHTA's future program efforts in these areas?

What research, sciences and technologies do you think NHTSA should pursue that would enable the Agency and the auto industry to improve motor vehicle safety more effectively and efficiently in the future? Are there current examples of regulatory

agencies that successfully support cooperative research with regulated industries and other interested parties? How might such an initiative between NHTSA and the auto industry best be structured?

What do you consider to be analytical needs in motor vehicle and highway safety that cannot be met with existing data? What data are needed to meet them? How might these data be collected, integrated, processed and made available in a cost-effective manner in the future?

What role will the media play in highway safety and how can NHTSA cost-effectively work with the media to promote safety programs?

What changes in the area of Federal, state and local legislation do you envision and how might that legislation affect traffic safety in the future?

What changes do you envision in the state and community highway program and how might that affect NHTSA's grant programs?

B. Technology

What changes do you envision in roadway and vehicle-related technologies and how might they affect highway safety in the future?

What technological changes do you envision in other modes of passenger and freight transportation and how might they affect highway safety in the future?

What changes do you envision in medical technology and how might they affect highway safety in the future (in the context of crash fatalities and injuries, including the severity of injury)?

What changes do you envision in automation, information management and work place alternatives (such as working at home with a computer and modern) and what affects might they have on highway safety and how people do work?

What changes do you envision in law enforcement practices and technologies and how might they affect safety in the future?

What technologies are now available, or will be in the future, that will assist aging and/or physically disabled drivers to maintain safe driving skills?

C. Institutional Relationships

How do you and/or your organization interact with NHTSA? Please explain the elements and dynamics of the relationship.

Does NHTSA help you do your job and/or help your organization achieve its mission? If so, how?

How could NHTSA improve its relationship with other organizations and institutions?

How could NHTSA provide greatest value to the individual citizen as well as the public and private organizations interested in highway and motor vehicle safety?

Are you aware of any organizations and institutions that NHTSA does not have a relationship with presently, but with whom we should interact? If so, who are they and what would be the benefit of establishing such relationships?

How could agencies responsible for highway safety and those responsible for highway design, construction and maintenance work more effectively to improve safety for pedestrians, bicyclists and motorists?

D. NHTSA's Role and Mission

In your view, should there be major changes in NHTSA's role/mission in the future?

What do you consider to be NHTSA's strengths and weaknesses in dealing with highway and motor vehicle safety issues (include comments on programmatic aspects, organizational aspects, etc.)?

In what ways could NHTSA have a greater affect in reducing injury and loss of life on the nation's highways?

How can NHTSA improve the way it does business?

It is requested, but not required that ten copies of each comment be submitted. No comments may exceed 15 (fifteen) pages in length. (49 CFR 553.21). Necessary attachments may be appended to those submissions without regard to the 15 page limit.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket room at the above address both before and after that date. To the extent possible, comments filed after the closing date will be considered. The Agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those people desiring to be notified upon receipt of their comments by the docket section should include a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of their comments, the docket supervisor will return the postcard by mail.

Issued on: July 22, 1992.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 92-17739 Filed 7-27-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Treasury Department, Bureau of Alcohol, Tobacco and Firearms, gives notice of a proposed alteration to the system of records entitled Internal Security—Treasury/ATF .006, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system notice was last published in its entirety in the **Federal Register**, Vol. 57, page 13932, April 17, 1992.

The purpose of this alteration is to bring the existing Privacy Act notice into compliance with the requirements of the Privacy Act. Changes have been made to the notice to more accurately describe the following: The categories of individuals covered by the system; the categories of records within the system; change in building location, as well as several editorial changes.

DATES: Comments must be received no later than August 27, 1992. The alteration to the system of records will be effective September 28, 1992, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to Disclosure Branch, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Room 8250, Washington, DC 20226. Comments will be made available for inspection and copying in the Bureau Reference Library upon request.

FOR FURTHER INFORMATION CONTACT: Joyce Thomas, Senior Disclosure Specialist, Disclosure Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 927-8480.

SUPPLEMENTARY INFORMATION: The specific changes to the record system (Treasury/ATF.006) being altered are set forth below. Under "System Location:" after "Bureau of Alcohol, Tobacco and Firearms", delete "1200 Pennsylvania Avenue NW." and change address to "650 Massachusetts Avenue NW."

Under "Categories of Individuals Covered by the System:" following "(3) Applicants for employment." add "(4) Non-Bureau employees involved in criminal acts towards Bureau employees and Bureau property. (5) Individuals who were interviewed by Internal Affairs Special Agents. (6) Contract employees involved in integrity matters."

Under "Categories of Records in the System:" after "(a) Conduct of employees." insert "and contract employees" in front of the period.

Under "Routine Uses of Records Maintained in the System Including Categories of Users and the Purposes of Such Uses:" add the words "and contract employees" at the end of the first sentence in front of the period.

Under "Storage:" insert "and computer system (hard disk)" after the word "cabinets."

Under "System Manager(s) and Address:" delete "1200 Pennsylvania Avenue NW." and in its place, add "850 Massachusetts Avenue NW."

Under "Record Source Categories:" After "(12) Other government agencies." add "(13) Claimants. (14) Victims."

Dated: July 21, 1992.

David M. Nummy,

Assistant Secretary (Management).

[FR Doc. 92-17700 Filed 7-27-92; 8:45 am]

BILLING CODE 4810-31

Customs Service

[T.D. 92-71]

Unresolved Reliquidation and Protest Actions Involving Merchandise Subject to Antidumping and Countervailing Duty Orders

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice

SUMMARY: The Customs Service, in conjunction with the Office of Import Administration, International Trade Administration, Department of Commerce, is requesting parties that filed requests for reliquidation or protest actions prior to January 1, 1992, that involved merchandise subject to antidumping and countervailing duty orders and remain unresolved, to notify Customs in writing that the party/protestant still has an interest in proceeding with the protest.

EFFECTIVE DATE: Notifications should be received by September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey Laxague, Office of Trade Operations (202) 927-0402.

SUPPLEMENTARY INFORMATION:

Background

The Customs Service and the Office of Import Administration, International Trade Administration, Department of Commerce, are coordinating their efforts to clear up the backlog of unresolved requests for reliquidation and protests concerning merchandise subject to antidumping or countervailing duty orders under sections 514 and 520(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1520(c)).

Notification to Customs

To ensure that all such actions are resolved, Customs is requesting parties that filed such actions prior to January 1, 1992, to notify Customs that the party/protestant is still interested in proceeding with the action. Such parties should submit a true copy of the request for reliquidation or protest and supporting documentation that was filed with Customs so that the nature of the action can be verified and its pendency confirmed. All such information should be submitted to: U.S. Customs Service, Office of Trade Operations, Import Specialist Division, room 1334, 1301 Constitution Avenue, NW., Washington, DC 20229.

We emphasis that this notice only relates to requests for reliquidation and protests filed prior to January 1, 1992, which involved merchandise subject to antidumping and/or countervailing duty orders.

Dated: July 20, 1992.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 92-17763 Filed 7-27-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by August 27, 1992.

Dated: July 21, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Request for Organizational Data from Builder, VA Form Letter 26-312.
2. The form letter is completed by builders and sponsors to identify individuals who have controlling, proprietary, or financial interest in their company. The information is used to determine eligibility for participation in the Loan Guaranty Program.
3. Businesses or other for-profit.
4. 4,000 hours.
5. 30 minutes.
6. On occasion.
7. 8,000 respondents.

[FR Doc. 92-17738 Filed 7-27-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 145
Tuesday, July 28, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3 (a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: July 30, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of a matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 963rd Meeting—July 30, 1992, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 4885-035, Twin Falls Hydro Associates, L.P.
CAH-2.
Project Nos. 7270-008 and 010, Northern Wasco County People's Utility District
CAH-3.
Project Nos. 9840-009 and 010, Appomattox River Water Authority
CAH-4.
Omitted
CAH-5.
Omitted
CAH-6.
Project No. 9401-000, Halecrest Company
Project No. 8595-000, Energy Storage Corporation
Project No. 9105-000, Esperanza Power Limited
Partnership
CAH-7.
Project No. 8192-005, BMB Enterprises, Inc.
CAH-8.
Project No. 3109-019, Eugene Water and Electric Board
CAH-9.
Project No. 2614-018, City of Hamilton, Ohio

Consent Electric Agenda

CAE-1.
Docket No. ER92-521-000, Hartwell Energy Limited Partnership
CAE-2.
Docket No. ER92-592-000, Yankee Atomic Electric Company
CAE-3.
Docket No. ER92-624-000, Western Resources, Inc. and Kansas Gas and Electric Company
CAE-4.
Docket No. ER92-361-001 and ER92-362-001, Green Mountain Power Corporation
CAE-5.
Docket No. ER92-317-001 and ER92-456-001, Public Service Company of Colorado
CAE-6.
Docket No. ER92-286-001, New England Power Company
CAE-7.
Docket No. EL91-56-001, Houlton Water Company, Van Buren Light and Power District, and Eastern Maine Electric Cooperative, Inc. v. Maine Public Service Company
CAE-8.
Docket No. ER82-769-012, Minnesota Power & Light Company
CAE-9.
Docket No. ER90-245-000 (Phase II), Canal Electric Company
Docket No. ER90-247-000 (Phase II), Montaup Electric Company, Eastern Edison Company and Blackstone Valley Electric Company
CAE-10.
Docket No. FA89-28-000, System Energy Resources, Inc.
CAE-11.
Docket No. EL92-23-000, Bechtel Power Corporation
CAE-12.
Docket Nos. ER92-25-000, ER92-26-000 and ER92-31-000, Long Island Lighting Company
CAE-13.
Docket No. ER92-330-002, Green Mountain Power Corporation
CAE-14.
Docket Nos. ER92-346-000 and ER92-347-000, Central Hudson Gas & Electric Company
Docket No. ER92-379-000, Kansas Power & Light Company
Docket Nos. ER92-382-000 and ER92-550-000, New England Power Company
Docket No. ER92-430-000, Potomac Electric Power Company
Docket Nos. ER92-446-000 and ER92-538-000, Kansas Gas & Electric Company
Docket No. ER92-473-000, Puget Sound Power & Light Company
Docket No. ER92-486-000, Utilicorp United, Inc.
Docket Nos. ER92-495-000, ER92-496-000, ER92-497-000, ER92-498-000, ER92-499-000, ER92-500-000, ER92-501-000, ER92-502-000, ER92-503-000 and ER92-504-000, Tucson Electric Power Company
Docket No. ER92-525-000, Florida Power & Light Company
Docket No. ER92-529-000, Centerior Energy
Docket No. ER92-532-000, Washington Water Power Company
Docket No. ER92-534-000, St. Joseph Light & Power Company
Docket No. ER92-535-000, UNITIL Power Corporation
Docket No. ER92-539-000, Pacific Gas & Electric Company
Docket Nos. ER92-540-000, ER92-541-000 and ER92-542-000, Duke Power Company
Docket No. ER92-544-000, Montaup Electric Company
Docket No. ER92-547-000, PacifiCorp Electric Operations
Docket No. ER92-548-000, Southern California Edison Company

Consent Oil and Gas Agenda

CAG-1.
Docket No. RP92-196-000, Transwestern Pipeline Company
CAG-2.
Docket No. RP89-48-017, Transwestern Pipeline Company
CAG-3.
Docket Nos. RP92-196-000, RP91-204-008, RP91-79-000, *et al.*, and TQ92-5-2-000, East Tennessee Natural Gas Company
CAG-4.
Omitted
CAG-5.
Docket No. RP92-200-000, Texas Eastern Transmission Corporation
CAG-6.
Docket No. RP92-193-000, Texas Eastern Transmission Corporation
CAG-7.
Docket No. RP92-194-000, Florida Gas Transmission Company
CAG-8.
Omitted
CAG-9.
Docket No. RP92-184-000, Columbia Gas Transmission Corporation
CAG-10.
Docket No. RP92-195-000, El Paso Natural Gas Company
CAG-11.
Docket No. RP92-199-000, ANR Pipeline Company
CAG-12.
Docket Nos. RP92-197-000, TQ92-11-4-000 and TM92-17-4-000, Granite State Gas Transmission, Inc.
CAG-13.
Docket No. TM92-8-22-000, CNG Transmission Corporation
CAG-14.
Docket Nos. TA92-1-52-000 and 001, Western Gas Interstate Company
CAG-15.
Docket Nos. TA92-1-86-000 and RP92-180-000, Pacific Gas Transmission Company

CAG–16.
Omitted
CAG–17.
Docket No. TQ92–5–1–000, Alabama-Tennessee Natural Gas Company
CAG–18.
Docket Nos. TA92–1–7–002 and 005, Southern Natural Gas Company
CAG–19.
Docket No. RP92–191–000, Northwest Pipeline Corporation
CAG–20.
Docket Nos. RP91–26–000, RP91–162–000 and RP92–18–000, El Paso Natural Gas Company
CAG–21.
Docket Nos. RP91–100–000, RP91–101–000, RP91–102–000 and RP91–134–000, Texas Gas Transmission Corporation
Docket Nos. RP91–72–000, 003, RP91–73–000, 002, RP91–74–000, RP91–75–000, 002, TM91–6–17–000, TM91–7–17–000, TM91–10–17–000 and TM91–11–17–000, Texas Eastern Transmission Corporation
Docket Nos. RP91–80–000, RP91–86–000, RP91–87–000, TM91–8–20–000, TM91–9–20–000, TM91–12–20–000, TM92–4–20–000 and TM92–13–20–000, Algonquin Gas Transmission Company.
Docket Nos. RP91–51–000, RP91–98–000, RP91–125–000, TM91–6–22–000, TM91–7–22–000, TM91–9–22–000, TM92–4–22–000, TM92–5–22–000 and TM92–7–22–000, CNG Transmission Corporation
CAG–22.
Docket No. RP92–74–003, South Georgia Natural Gas Company
CAG–23.
Docket No. RP92–111–005, North Penn Gas Company
CAG–24.
Docket No. TQ92–5–17–001, Texas Eastern Transmission Corporation
CAG–25.
Docket No. RP92–160–001, Tennessee Gas Pipeline Company
CAG–26.
Docket Nos. RP91–161–009 and RP92–3–005, Columbia Gas Transmission Corporation
CAG–27.
Docket Nos. TM92–10–21–001 and RP91–41–013, Columbia Gas Transmission Corporation
CAG–28.
Docket Nos. RP88–262–020, CP89–917–008, TA89–1–28–008, TA90–1–28–006, RP88–88–013 and RP91–229–009, Panhandle Eastern Pipe Line Company
CAG–29.
Docket No. RP91–229–007, Panhandle Eastern Pipe Line Company
CAG–30.
Docket No. RP91–229–008, Panhandle Eastern Pipe Line Company
CAG–31.
Omitted
CAG–32.
Omitted
CAG–33.
Docket No. RP87–115–005, Williston Basin Interstate Pipeline Company
CAG–34.
Docket No. RP92–165–002, Trunkline Gas Company
CAG–35.
Omitted
CAG–36.
Docket No. TA92–1–9–005, Tennessee Gas Pipeline Company
CAG–37.
Omitted
CAG–38.
Omitted
CAG–39.
Omitted
CAG–40.
Docket Nos. CP91–667–001 and CP90–2275–001, ANR Pipeline Company
CAG–41.
Docket Nos. RP89–183–029 and TC89–8–002, Williams Natural Gas Company
CAG–42.
Docket Nos. RP89–183–035, 036, TC89–8–003, RP91–43–004, TM91–3–43–004, RP91–152–010, 011 and 012, Williams Natural Gas Company
CAG–43.
Docket Nos. RP91–152–019 and RP89–183–040, Williams Natural Gas Company
CAG–44.
Omitted
CAG–45.
Docket No. TA92–1–37–001, Northwest Pipeline Corporation
CAG–46.
Docket Nos. TA87–1–37–011 and RS92–69–000, Northwest Pipeline Corporation
CAG–47.
Docket Nos. RP89–137–000, 001, RP89–219–002, 000, 001, RP90–50–003, TM90–1–37–002 and TM90–4–37–002, Northwest Pipeline Corporation
CAG–48.
Docket No. RP88–11–001, Northwest Pipeline Corporation
CAG–49.
Docket Nos. RP88–47–034, RP89–196–004 and RP91–166–009, Northwest Pipeline Corporation
CAG–50.
Docket Nos. P91–2392–002 and RP82–56–024, Northwest Pipeline Corporation
Docket No. CP91–2393–002, Williams Gas Processing Company
CAG–51.
Docket No. CP92–79–001, Northwest Pipeline Corporation
Docket No. G–17350–011, Pacific Gas Transmission Company
CAG–52.
Docket No. CP92–296–000, Northwest Gas Pipeline Corporation
Docket No. CP92–289–000, El Paso Natural Gas Company
CAG–53.
Docket No. RP91–212–000, Stingray Pipeline Company
CAG–54.
Docket No. PR92–13–000, Arkansas Western Gas Company
CAG–55.
Docket No. PR91–23–000, Midcoast Ventures I
CAG–56.
Docket Nos. RP91–65–000, 006, 007 and CP89–2107–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–57.
Omitted
CAG–58.
Omitted
CAG–59.
Docket No. RP90–8–008, United Gas Pipe Line Company v. Transcontinental Gas Pipe Line Corporation
CAG–60.
Docket No. FA89–16–000, Carnegie Natural Gas Company
CAG–61.
Omitted
CAG–62.
Docket Nos. GP91–8–000, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73 v. Rocky Mountain Natural Gas Company, a Division of KN Energy, Inc.
Docket No. GP91–10–000, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73
CAG–63.
Docket Nos. RS92–69–000 and RP91–166–000, Northwest Pipeline Corporation
CAG–64.
Docket Nos. RS92–46–000, RP90–109–000, *et al.* and TA91–1–86–000, Pacific Gas Transmission Company
CAG–65.
Docket No. RS92–9–000, Questar Pipeline Company
CAG–66.
Docket Nos. RS92–60–000, 001, RP91–188–000 and CP92–261–000, El Paso Natural Gas Company
CAG–67.
Docket No. CP89–1953–002, ANR Storage Company
CAG–68.
Docket Nos. RP89–183–000, 002, TC89–8–000, RP91–43–000, TM91–3–43–000, RP91–152–000 and RS92–12–000, Williams Natural Gas Company
CAG–69.
Docket No. RS92–54–000, Western Transmission Corporation
CAG–70.
Docket No. RS92–40–000, Louisiana-Nevada Transit Company
CAG–71.
Docket No. RS92–78–000, Sabine Pipe Line Company
CAG–72.
Docket Nos. CP89–362–003 and CP89–363–003, North Country Gas Pipeline Corporation
CAG–73.
Docket No. CP89–93–008, Williams Natural Gas Company
CAG–74.
Docket Nos. CP91–780–004 and RP92–112–002, Northwest Pipeline Corporation
CAG–75.
Docket No. CP92–479–001, New York State Electric & Gas Corporation
CAG–76.
Docket No. CP91–1627–001, Tennessee Gas Pipeline Company
CAG–77.
Docket No. CP89–2048–008, Kern River Gas Transmission Company
Docket No. CP89–1–011, Mojave Pipeline Company
CAG–78.
Docket No. CP88–105–002, Yukon Pacific Company, L.P.

CAG–79.
Omitted
CAG–80.
Docket No. RM90–7–001, Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
Docket No. GP88–11–004, Hadson Gas Systems, Inc.
Docket No. CP88–286–005, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, *et al.*
Docket Nos. RP88–61–015, RP88–67–048 and RP88–175–003, Texas Eastern Transmission Corporation
CAG–81.
Docket No. CP89–2057–001, TPC Transmission, Inc.
Docket No. CP92–354–000, TPC Transmission, Inc., TPC Services, Inc. and Tejas Power Corporation
CAG–82.
Docket Nos. CP92–515–000, CP92–516–000 and CP92–517–000, Transcontinental Gas Pipe Line Corporation
CAG–83.
Docket No. CP92–573–000, Transcontinental Gas Pipe Line Corporation
CAG–84.
Omitted
CAG–85.
Docket No. CP92–230–000, Northern Natural Gas Company
CAG–86.
Docket No. CP92–207–000, Transwestern Pipeline Company
CAG–87.
Docket No. CP92–226–000, Texas Eastern Transmission Corporation and CNG Transmission Corporation
CAG–88.
Docket No. CP92–151–000, Algonquin Gas Transmission Company
CAG–89.
Omitted
CAG–90.
Docket Nos. CP89–638–005 and 007, CNG Transmission Corporation
CAG–91.
Docket No. CP92–166–000, Algonquin LNG, Inc. and Algonquin Gas Transmission Company
CAG–92.
Docket No. CP91–1616–000, ANR Pipeline Company
Docket No. CP91–1634–000, Great Lakes Gas Transmission Limited Partnership
CAG–93.
Omitted
CAG–94.
Docket No. CP92–216–000, Peoples Natural Gas Company, Division of UtiliCorp United Inc. v. Natural Gas Pipeline Company of America
CAG–95.
Docket No. CP92–322–000, National Fuel Gas Supply Corporation v. Tennessee Gas Pipeline Company
CAG–96.
Docket No. RM92–13–000, Revisions to Regulations Governing NGPA Section 311 Construction ad the Replacement of Facilities
CAG–97.
Docket No. RP91–166–010, Northwest Pipeline Corporation
CAG–98.
Docket Nos. RP92–53–001 and 002, Kern River Gas Transmission Company
CAG–99.
Docket No. CP91–2394–002, Questar Pipeline Company
CAG–100.
Docket No. CI90–58–003, New England Power Company and The Narragansett Electric Company
Docket No. CI91–33–003, JMC Fuel Services, Inc.
Docket No. CI91–35–003, Connecticut Natural Gas Corporation
Docket No. CI91–52–003, Providence Gas Company and Prov Energy Investments, Ltd.
Docket No. CI91–28–003, Northern Minnesota Utilities
Docket No. CI91–75–003, Peoples Natural Gas Company, Division of UtiliCorp United, Inc.
Docket No. CI91–78–003, Gulf States Pipeline Corporation
Docket No. CI91–79–003, Transok, Inc.
Docket No. CI91–85–003, Commonwealth Gas Company
Docket Nos. CI91–94–002 and 003, New York State Electric & Gas Corporation
Docket Nos. CI91–97–002 and 003, Niagara Mohawk Power Corporation
Docket Nos. CI91–104–002 and 003, New Jersey Natural Gas Company
Docket Nos. CI92–1–002 and 003, Washington Natural Gas Company
Docket Nos. CI89–461–002 and 003, Quantum Chemical Corporation
Docket Nos. CI91–88–002 and 003, Doswell Limited Partnership
Docket Nos. CI91–93–002 and 003, Lockport Energy Associates, L.P.
Docket Nos. CI91–101–002 and 003, North Jersey Energy Associates
Docket Nos. CI91–102–002 and 003, North Energy Associates
Docket Nos. CI91–103–002 and 003, Ocean State Power II
Docket No. CI91–106–003, Honda of America Mfg., Inc.
Docket Nos. CI91–126–002 and 003, Manville Corporation, *et al.*
Docket Nos. CI91–128–002 and 003, Cogen Energy Technology, L.P.
Docket No. CI91–123–002, Omega Pipeline Company
Docket No. CI91–5–002, Westar Marketing Company
Docket No. CI92–6–002, HPL Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. ER91–569–001, Entergy Services, Inc. Order on rehearing regarding power and transmission rates.
E–2.
Omitted

Miscellaneous Agenda

M–1.
Docket No. RM91–12–000, Administrative Dispute Resolution. Notice of Proposed Rulemaking.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Omitted

II. Restructuring Matters

RS–1.
(A)
Docket No. RM91–11–002, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations
Docket No. RM87–34–068, Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol. Rehearing of Order No. 636.
(B)
Docket No. CP88–433–005, El Paso Natural Gas Company
Docket Nos. RP89–48–018, CP89–1126–003, RP89–222–007, RP89–254–006, CP88–133–005 and CP89–886–004, Transwestern Pipeline Company
Docket No. TA91–1–86–002, Pacific Gas Transmission Company
Docket No. CP91–2466–001, Windward Energy & Marketing Company v. Pacific Gas Transmission Company and Pacific Gas & Electric Company. Order on requests for rehearing and clarification of order dealing with buy/sell transactions.
(C)
Docket No. CP90–134–003, Algonquin Gas Transmission Company
Docket No. RP88–45–022, Arkla Energy Resources
Docket No. CP86–311–010, CNG Transmission Corporation
Docket No. RP86–186–001, *et al.*, Columbia Gas Transmission Corporation
Docket No. CP90–1292–004, East Tennessee Natural Gas Company
Docket No. RP89–50–022, Florida gas Transmission Company
Docket No. CP90–406–006, High Island Offshore System
Docket No. CP89–2047–007, Kern River Gas Transmission
Docket No. CP89–174–002, Midwestern Gas Transmission Company
Docket No. CP89–1–015, Mojave Pipeline Corporation
Docket No. CP89–1580–004, Northwest Pipeline Corporation
Docket No. CP90–187–004, Oklahoma-Arkansas Pipeline Company
Docket No. RP89–73–010, Pelican Interstate Gas System
Docket No. CP88–136–031, Texas Eastern Transmission Corporation
Docket No. CP88–686–008, Texas Gas Transmission Corporation
Docket No. CP88–328–010, Transcontinental Gas Pipeline Corporation
Docket No. RP91–197–003, United Gas Pipeline Company
Docket No. CP90–1874–005, U–T Offshore System
Docket No. CP90–272–001, Viking Gas Transmission Company
Docket No. CP90–706–004, Wyoming Interstate Company, Ltd. Order on requests for rehearing and clarification of order requiring modifications of pre-

Order No. 636 capacity brokering programs.

(D)

Docket No. CP89–2107–002, Arkla Energy Resources, Inc.

Docket No. CP90–2275–002, ANR Pipeline Company

Docket Nos. CP88–312–007 and 015, Natural Gas Pipeline Company of America. Order on requests for rehearing of order dismissing pending ISS applications.

(E)

Docket No. CP89–137–007, ANR Pipeline Company

Docket No. CP89–1554–008, Colorado Interstate Gas Company

Docket No. CP88–651–008, Northwest Pipeline Corporation

Docket No. CP89–1627–002, Williams National Gas Company

Docket No. CP90–186–009, Texas Eastern Transmission Corporation

Docket No. CP88–314–003, Natural Gas Pipeline Company of America

Docket No. CP91–1252–007, Questar Pipeline Corporation

Docket No. CP92–462–001, Panhandle Eastern Pipe Line Company. Order on requests for rehearing of order announcing the Commission's intention to terminate individual company blanket storage certificates.

(F)

Docket No. RM92–9–000, Regulations Governing Blanket Marketer Sales Certificate. Notice of Proposed Rulemaking.

RS–2.

(A)

Docket Nos. RS92–11–000, RP88–67–000, *et al.*, TA90–1–17–000, TA91–1–17–000, 001, 002, 003, 004, 005, TA92–1–17–000, 001, 002, 003, 004, RP92–171–000, TF91–3–17–000, 001, TF91–4–17–001, TF91–5–17–000, TQ91–3–17–000, 001, TQ91–4–17–000, TQ92–1–17–000, 001, 002, TF92–1–17–000, TF92–2–17–000, TQ92–3–17–000, TQ92–4–17–000, TQ92–5–17–000, RP85–177–088, 093, RP89–255–002, 003, RP90–119–003, 005, CP88–136–024, CP90–2154–000 and 001, Texas Eastern Transmission Corporation

Docket Nos. RP90–15–000 and 001, Equitrans, Inc. v. Texas Eastern Transmission Corporation. Order on compliance filing, requests for consolidation and motions to intervene.

(B)

Docket No. RS92–11–000, Texas Eastern Transmission Corporation. Order on compliance filing.

RS–3.

Docket Nos. RS92–1–000, RP89–161–021, RP89–172–000, CP90–2275–000 and CP91–687–000, ANR Pipeline Company. Order on settlement proposal.

III. Pipeline Certificate Matters

PC–1.

Docket No. CP90–1391–001, Arcadian Corporation v. Southern Natural Gas Company. Order on rehearing of order denying requests for direct service.

Dated: July 23, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17940 Filed 7–24–92; 3:36 pm]

BILLING CODE 6717–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 3, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–17937 Filed 7–24–92; 3:23 pm]

BILLING CODE 6210–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, July 30, 1992.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open and Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: In open session, the Commission will consider and act upon the following:

1. *LJ's Coal Corporation*, Docket No. VA 90–47 (Issues include whether the judge erred in concluding that LJ's did not violate 30 C.F.R. § 49.6(b).)

2. *Secretary of Labor for Price & Vacha and UMWA v. Jim Walter Resources, Inc.*, Docket No. SE 87–128–D (Issues include whether the judge erred in concluding that Jim Walter's discharge of Price & Vacha under its substance abuse program violated their rights under section 105(c) of the Mine Act, 30 U.S.C. § 815(c).)

In Closed session, the Commission will consider and act upon the following:

3. *ASARCO, INC.*, Docket No. SE 88–82–RM, etc. (Issues include whether the judge erred in requiring the Secretary of Labor to disclose to ASARCO all or part of five documents that the Secretary contends are protected by the informant's privilege.)

It was determined by a unanimous vote of the Commissioners that the third item be held in closed session. Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Dated: July 23, 1992.

[FR Doc. 92–17936 Filed 7–24–92; 8:45 am]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 27, August 3, 10, and 17, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 27

Wednesday, July 29

9:30 a.m.

Periodic Briefing on EEO Program (Public Meeting) (Contact: William Kerr, 301–492–4665)

11:00 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:00 p.m.

Briefing on National Research Council Report: Nuclear Power—Technical and Institutional Options for the Future (Public Meeting)

3:00 p.m.

Discussion of Litigative and Related Matters (Closed—Ex. 9B and 10)

Thursday, July 30

2:00 p.m.

Briefing on Status of Staff Efforts to Resolve Thermo-Lag Fire Barrier Issues (Public Meeting)

Friday, July 31

8:30 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

10:00 a.m.

Periodic Meeting with Advisory Committee on Medical Uses of Isotopes (Public Meeting) (Contact: Larry Camper, 301–504–3417)

Week of August 3—Tentative

Tuesday, August 4

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 10—Tentative

Wednesday, August 12

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 17—Tentative

Tuesday, August 18

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: July 23, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92–17927 Filed 7–24–92; 2:36 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 57, No. 145
Tuesday, July 28, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Proposed Additions

Correction

In notice document 92-16264 beginning on page 30726 in the issue of Friday, July 10, 1992, between **SUMMARY** and **ADDRESSES**, insert "**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 10, 1992".

BILLING CODE 1505-01-D

GENERAL ACCOUNTING OFFICE

4 CFR Parts 22 and 30

Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations, Claims, General

Correction

In rule document 92-16384 appearing on page 31272 in the issue of Tuesday, July 14, 1992, make the following corrections:

1. On page 31272, in the second column, in the first full paragraph, in the last line, "3720" should read "3702".

§ 30.1 [Corrected]

2. On the same page, in the third column, in § 30.1(b), in the last line, "7212(a)" should read "7121(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket PS-102; Amdt. No. 7]

RIN 2137-AC

Control of Drug Use in NAtural gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

Correction

In rule document 92-16360 beginning on page 31279 in the issue of Tuesday, July 14, 1992, in the third column, in the **SUMMARY**, in the last line, "January 21, 1995" should read "January 2, 1995".

BILLING CODE 1505-01-D

federal register

Tuesday
July 28, 1992

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 665

Bus Testing Program; Reinstatement and Modification of Interim Final Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[Docket No. 89-B]

RIN 2132-AA30

Bus Testing Program; Reinstatement and Modification of Interim Final Rulemaking

AGENCY: Federal Transit Administration, DOT.

ACTION: Interim final rule.

SUMMARY: On August 23, 1989, the Federal Transit Administration (FTA) published an interim final rule for its bus testing facility program. Although the FTA initially stated that these rules would be in effect only until September 30, 1990, the FTA subsequently extended the deadline until July 1, 1991. FTA extended the date indefinitely on September 13, 1991. However, since this extension was made after July 1, 1991, the rule must be reinstated by republishing it in toto. In addition to republishing the interim final rule, the FTA has included several changes to the interim final rule which are explained fully in the preamble.

DATES: Effective Date: This part is effective October 1, 1989, except for section 665.11(e)(3), which is effective November 8, 1990. Specific further amendments published in today's **Federal Register** (§§ 665.5, 665.11 (c), (d), (e) (4), (5), and (f), and 665.29 (c), and (d)) become effective August 27, 1992.

Comment Due Date: Comments must be submitted by September 28, 1992.

FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090; for legal issues, Richard Wong, Office of the Chief Counsel, (202) 366-1936. The test facility can be reached by contacting Bohdan Kulakowski, Director, Bus Research and Testing Program, Pennsylvania Transportation Institute, Penn State, Research Office Park, University Park, PA 16802, (814) 863-1893.

ADDRESSES: For comments, Federal Transit Administration, Department of Transportation, Office of the Chief Counsel, Docket No. 89-B, 400 Seventh Street SW., room 9316, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 1989, the FTA published a notice of proposed rulemaking (NPRM) to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 317 directs the Secretary of the Department of Transportation (DOT) (as delegated to the FTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no funds obligated by the FTA after September 30, 1989, under the Federal Transit Act, as amended (FT Act), may be used to purchase a "new bus model" unless a bus of such model has been tested at the facility.

To ensure that bus testing procedures were in place before the statutory deadline of October 1, 1989, the agency indicated in the NPRM that it would issue interim guidance in advance of the agency's final rule. The guidance was provided in the interim final rule issued on August 23, 1989 (54 FR 35158). Comments on the interim procedures were due on November 23, 1989. However, due to the complex nature of the issues involved, a specific request on behalf of the industry by the American Public Transit Association, and the FTA's belief that it should give commenters maximum opportunity to comment, the comment period was extended for 90 days.

The agency's NPRM was expansive, proposing that all vehicles used in mass transit after April 2, 1987 (the effective date of STURAA) be subject to testing at the facility. In addition, the agency specifically requested comment on a range of issues.

The August 23, 1989, interim final rule narrowed the scope of the proposed rule somewhat, and provided that only certain larger-sized buses would be subject to the bus testing procedures. The interim final rule also stated that the agency, after appropriate notice and as conditions warranted, might expand the scope of vehicles to be tested at the facility during the interim period. The FTA stated in the interim final rule that it would remain in effect only until September 30, 1990. The agency's intention was to publish final requirements for all of the issues raised in the NPRM by that time.

On October 9, 1990, however, the FTA published modifications to the interim final rule (55 FR 41174). These modifications expanded the scope of buses that are required to be tested, amended some definitions, and extended the effective date of the interim final rule until July 1, 1991.

On September 13, 1991, the FTA eliminated the termination date from the interim final rule to make its effectiveness permanent (56 FR 46572). Since this was after the July 1, 1991, termination date, the Office of the Federal Register's procedures require that the agency reinstate the rule. Today's republication accomplishes this. The need for reinstatement does not in any way alter the regulations requirements or suspend their effectiveness on FTA's recipients.

In addition to this, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240) has amended section 317 of the STURRA in two significant ways. First, it requires additional tests to be performed for emissions and fuel economy. Second, it specifically adds alternative fuel buses to those required to be tested. This rulemaking does not include changes in response to these statutory mandates. Subsequent rulemakings will address these changes.

In addition, the ISTEA authorizes the FTA to pay 80 percent of the costs of bus testing. This new funding ratio has been implemented and was announced in a **Federal Register** notice published on March 13, 1992 (57 FR 8954).

II. OVERVIEW OF MODIFICATIONS

Consistent with the FTA's intention articulated in the NPRM, the FTA is amending its interim final rule to do several things. In general, two additional categories of buses are required to be tested, partial testing is permitted under specified circumstances, and several definitions have been added or modified consistent with these changes. A detailed description of each of these changes follows.

A. Authority

The Authority statements in the interim final rule has been revised to reflect the statutory name change to the Urban Mass Transportation Act of 1964, as amended by Section 3003 of the ISTEA. The agency's authorizing legislation is now the Federal Transit Act. The substantive citation remains the same.

B. New Categories of Covered Vehicles (§ 665.11)

As first published, the bus testing interim final rule covered only heavy duty large buses, heavy duty small buses, and purpose-built medium duty buses. The FTA expanded these categories in the second interim final rule by including all medium duty buses, including those that are body-on-chassis type designs.

The FTA had proposed in the NPRM to cover all types of buses, including vans. The agency decided to phase in the implementation of the rule for the various categories proposed to coincide with the readiness of the testing facility to test vehicle types. The facility is now

able to test the last categories of vehicles that the FTA had proposed—vans and other small vehicles.

Today's interim final rule adds two categories of small vehicles. The first category includes vehicles with a minimum service life of five years or 150,000 miles. Such vehicles are usually light duty mid-sized buses that are approximately 25–35 feet in length. The second category includes vehicles that have a minimum service life of four years or 100,000 miles. Such vehicles are usually light duty small buses, cutaways or modified vans approximately 16–28 feet in length.

The FTA has determined that two such categories are needed instead of one for all small vehicles, because there are sufficient distinct service life characteristics to necessitate subdividing. These characteristics most appropriately require treating 5-year useful life and 4-year useful life vehicles separately.

It is important to note several things about these two new categories. First, the FTA has now completed all the categories that it has intended to cover under the bus testing procedures since the publication of the NPRM.

Second, unmodified vans are not included in this regulation. The FTA has determined that unmodified, mass produced vans do not require testing under these procedures because the manufacturers themselves test them sufficiently to meet the goals of the statutory requirement. "Mass produced van or chassis," is defined in § 665.5 to mean "a van or chassis that has or is projected to have an annual production rate of 20,000 or more units."

Accordingly, unmodified, mass produced vans are not required to be tested according to these procedures before an FTA recipient may use FTA funds to purchase them.

The FTA defines "modified van" in § 665.5 to mean "a mass produced van that is being modified to have a major structural change or addition such as a raised roof, extension to the chassis, or a significant replacement of a vehicle body section, by a party other than the original van manufacturer." The FTA requests comments on this decision and specifically whether changes to a mass produced van by the original manufacturer should require a van to be tested. Furthermore, the FTA asks commenters to address the issue whether the annual production rate in the definition of "mass produced van or chassis" should be increased or decreased.

Third, the FTA has revised the descriptions of each of the existing categories of vehicles to be consistent with the form used for the two new categories. Instead of listing the type of bus by size, the categories now list the service life, in both years and miles, first, with an example of that type of bus second. Thus, the first category in § 665.11(b)(1) used to read "Heavy duty large buses, approximately 35–40 foot, as well as articulated buses, with a minimum service life or [sic] 12 years or 500,000 miles." Now this material will be in § 665.11(e)(1) and will read, "Minimum service life of 12 years or 500,000 miles typified by heavy duty large buses, as well as articulated buses." This represents no change in the substance of the rule, but merely describes the categories in a more useful and helpful manner.

C. Partial Testing (§ 665.11)

The FTA is also adding to the interim final rule the concept of partial testing. This is found in §§ 665.11 which permits a bus to be less than fully tested in certain circumstances. Consistent with this change, § 665.11(b) now explicitly requires full testing only when a new bus model has not been tested previously at the Altoona Bus Research and Testing Center.

The intention of adding partial testing is to reduce the cost of bus testing for those bus models that already have undergone full bus testing at the Altoona facility. In general, § 665.11(d) of today's interim final rule requires that in such circumstances only those tests which affect specific components or parts of the vehicle and may produce significantly different data from previous tests must be performed. Section 665.5 defines "partial testing" as "the performance of those bus tests which may yield significantly different data from that obtained in previous bus testing conducted at the bus testing facility." It is important to note that partial testing only applies if a vehicle has been tested already at the Altoona facility. Testing at a site other than Altoona does not entitle it to these partial testing procedures.

The determination of which tests would be required to be done will be made by the FTA on a case-by-case basis. Such decisions will depend on the change made to the bus model and an evaluation for each bus test procedure of the potential of such change to impact significantly the data previously obtained at the Bus Testing Center. Requests should be sent to the Office of Technical Assistance and Safety, FTA, 400 Seventh Street SW., Washington, DC 20590.

Sections 665.11 (c) and (f) cover the application of partial testing in two specific situations. Section 665.11(c) addresses the issue of testing vehicles on mass produced chassis. As discussed above, a mass produced chassis is one that has or is projected to have an annual production rate of 20,000 or more units. According to today's interim final rule, if such a chassis has been tested previously in Altoona, and now is used on a new model not previously tested, then partial testing is all that is required. Requests still will be considered on a case-by-case basis by the FTA.

The FTA has determined that partial testing is appropriate in this situation because a single full testing of a model with a mass produced chassis provides sufficient test data on the chassis to evaluate the performance of this chassis in most other vehicles for the purposes of this regulation. In addition, manufacturers of mass produced chassis undertake a thorough testing program, which generally is more stringent than that called for under this part. This does not mean, however, that some change in configuration, which affects vehicle handling, stability or structural integrity, would not trigger testing of the entire bus model at the testing facility.

A second application of partial testing in the interim final rule is found in § 665.11(f). This section addresses the concern of which, if any, tests must be performed on a vehicle model which has been tested in one category, but is later purchased to meet the specifications of a different category. Such a situation arises, for example, when a bus has been tested as a seven-year bus, but is accepted in a different procurement as meeting the specifications of a 12-year bus. The FTA has received many letters describing similar situations like this and the letters conclude with the question, "Does the bus have to be retested?"

New § 665.11(f) now clearly states that, while tests performed in a higher service life category need not be repeated when a bus is used in lower service applications, the use of a bus model in a service life application higher than it has previously been tested will require additional testing. The rationale for this is obvious, since tests for lower service life applications are not as stringent as for higher applications, *e.g.*, the durability tests are shorter. The rule does not specify which tests must be repeated. Consistent with the concept of partial testing, the determination of which tests to repeat will be made on a case-by-case basis.

D. Definitions (§ 665.5)

In addition to the several new definitions discussed above, additional definitions are different in today's

interim final rule. The first three reflect the change in the agency's name (to FTA from UMTA) and its authorizing legislation (to the Federal Transit Act from the Urban Mass Transportation Act of 1964). These include, in the definition of "recipient" a reference to the receipt of financial assistance under the FT Act; in the definition of "Administrator" reference to the FTA, not UMTA; and third, the definition of "UMT Act" has been replaced by a definition of the FT Act.

Fourth, the FTA is modifying the definition of "major change in components." As modified by the October 9, 1990, interim final rule, the definition of this term meant "a change in a vehicle's engine, axle, transmission, suspension or steering components." Since the regulation recognizes that the requirements for testing need to vary if the vehicle is built on a mass produced chassis, the definition of "major change in components" has been expanded to account for these vehicles.

For vehicles not manufactured on a mass produced chassis, the definition reads as it did under the October 9, 1990, interim final rule. The October 9, 1990, interim rule contained examples of what would be included in this definition, and we repeat these examples today.

Within the context of these definitions, the following examples of "major changes" are provided; changes such as these would require a vehicle to be tested at the facility.

1. Examples of a major change in configuration include, but are not limited to:

a. Replacement of metal structural elements with new materials, such as composites or wood.

b. Fabrication of structural elements in a substantially different manner, such as two piece mullion instead of a single one.

c. Relocation of the wheelchair lift from the back of the bus to the front (or vice versa).

d. Changing the width (96 inches to 102 inches) or length (35 foot to 40 foot) of the bus (or vice versa).

e. Change in vehicle weight distribution that changes the center of gravity, *e.g.*, raising the roof or adding extra weight on the roof.

f. A bus made from a different shell material, *e.g.*, a change from aluminum to a composite material.

g. A bus with a major change in floor height, *e.g.*, a new low floor bus.

2. Examples of a major change in engine include, but are not limited to:

a. An engine design that has not been used in transit service.

b. Powerplant configuration change such as a change from a "T" Drive to an angle drive (or vice versa).

3. Examples of a major configuration in transmission include, but are not limited to:

a. A transmission design that has not been used in transit service.

b. Change from "V" drive to in-line (or vice versa).

c. Engine/transmission combination that results in a major change in the torque delivered to the rear drive axle.

4. Examples of a major change in axle include, but are not limited to:

a. Change in total drive train plus rear axle to provide for major torque change at drive wheels.

b. Major redesign of rear drive axle.

c. Change from a two-axle design to a three-axle design (or vice versa).

d. Change in location of bus drive axle, or going from a rear to front drive (or vice versa).

5. Examples of a major change in suspension include, but are not limited to:

a. Change in front suspension from solid axle to independent suspension (or vice versa).

b. Change from standard axle suspension system to "A" frame or "H" frame at rear.

c. Major change in distance between air bags in support system.

d. Addition or deletion of radius rods and sway bars, or changing from solid radius rod to hydraulic and spring action bars.

e. Addition or removal of the bus kneeling system.

6. Examples of major change in steering include, but are not limited to:

a. Addition or deletion of power assist steering system.

b. Major change in the number of turns of steering wheel from lock-to-lock. (55 FR 41175)

However, for vehicles produced on a mass produced chassis, a major change in components is limited to, "a change in the vehicle's chassis from one major design to another." A major change in chassis design is a change in frame structure, material or configuration, or a change in chassis suspension type.

The reason for this is because for vehicles built on mass produced chassis, the chassis is appropriately treated as a single component, rather than as an assembly of components. In addition, since sufficient manufacturer's test data exists for the chassis, additional testing is unnecessary.

E. Other Changes

The FTA has made changes to §§ 665.29 (c) and (d). Previously, the rule prohibited the manufacturer of the vehicle from providing any maintenance or repair to a vehicle being tested. The facility operator provided all maintenance and repair.

The experience gained in over two years of operation indicates that while this approach is still sound, a modification is required. There are instances when it would have been more effective and efficient for the manufacturer to perform the maintenance and repair. Consequently, the FTA has revised these provisions to require the manufacturer to provide maintenance or repairs when the operator of the facility determines that the manufacturer is the best party to do so. The rule requires that the operator make the determination that the manufacturer perform the work, and permits the operator to supervise the work.

III. Additional Information

The FTA wishes to stress that, pursuant to § 665.7(b), it is the grantee's responsibility to assess whether a vehicle is a new bus model requiring testing under this part. In making this decision, the grantee should obtain from the manufacturer all the data it determines is needed. Such data may include: (1) The date the proposed bus model was first introduced into mass transportation service; (2) The date, if applicable, when the model was tested at the Altoona facility; (3) What, if any changes, in configuration and/or components are being made in the proposed model from a model that has been tested; and (4) Whether such changes are major within the context of this part. In making a determination of whether the changes are major, grantees and manufacturers may contact the FTA in writing for guidance and assistance.

Finally, the FTA plans to publish its final rule on bus testing in the future. That rulemaking will address all issues raised by comments to the NPRM to each of the three interim final rules that the FTA has published.

IV. Regulatory Analyses and Certifications

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and the FTA has determined that this is not a major rule. As promulgated, this rule will not result in an annual effect on the economy of $100 million or more, nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovations or

the ability of United States-based enterprises in domestic or export markets.

B. Regulatory Evaluation

This regulation is significant under the Department Regulatory Policies and Procedures because of the potential high level of public interest. A final regulatory evaluation will be prepared before the final rule is issued. These interim procedures will assist the agency in its continuing effort to collect specific cost data on the program.

The agency docketed a preliminary regulatory evaluation when it published the NPRM. Subsequently, it docketed an Addendum outlining the data available at the time the first interim final rule was published on August 23, 1989. In connection with today's interim final rule, the agency has docketed additional material which, in part, analyzes the impact on small entities pursuant to the Regulatory Flexibility Act. A more complete discussion of this analysis is contained in Section C, below. The FTA will issue a final regulatory analysis at the time the final rule is issued.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, the FTA has stated in the previous interim final rules that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act. As a result of the change made in this interim final rule by permitting partial testing, especially as it applies to vehicles built on mass produced chassis, and by exempting unmodified mass produced vans, the agency now believes that this rule will not have a significant economic impact on small entities. The material added to the preliminary regulatory evaluation discusses this determination in detail.

In addition, the FTA has determined that the economic impact of this rule on these entities will not be significant because under the ISTEA the FTA will pay for 80 percent of the cost of the testing. This significant reduction in the actual financial expense that small manufacturers will have to bear adds further support to the determination that the economic impact will not be significant.

D. Paperwork Reduction Act

The collection of information requirements in this rule are subject to the Paperwork Reduction Act (44 U.S.C. chapter 35). Section 317 of the STURRA specifically requires the establishment of the facility. The paperwork requirements contained in this rule have been submitted to the Office of Management and Budget and have received approval (OMB No. 2132–0550).

E. Federalism—Executive Order 12612

The FTA has reviewed this rule in light of the Federalism considerations set forth in Executive Order 12612. That Executive Order requires each Federal agency to address the impact of its regulation on State and local governments. Although this rule will have definite Federalism implications, because it will impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from the FTA, this rulemaking is required by statute. The FTA considered the Federalism implications of this rulemaking during its development, and has designed it to provide recipients with as much flexibility as possible under the law. The FTA does not expect that this rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government.

In addition, the FTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local government, and the FTA does not expect that this rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly, the FTA has determined that the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Lists of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons described in the Preamble, 49 CFR part 665 is added as set forth below:

PART 665—BUS TESTING

Subpart A—General

Sec.
665.1 Purpose.
665.3 Scope.
665.5 Definitions.
665.7 Grantee certification of compliance.

Subpart B—Bus Testing Procedures

665.11 Testing requirements.
665.13 Test report and manufacturer certification.

Subpart C—Operations

665.21 Scheduling.
665.23 Fees.
665.25 Transportation of vehicles.
665.27 Procedures during testing.

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

Authority: 49 U.S.C. App. 1601 et seq., 1608(h); 49 CFR 1.51.

Subpart A—General

§ 665.1 Purpose.

An applicant for Federal financial assistance under the Federal Transit Act for the purchase or lease of buses with funds obligated by the FTA after September 30, 1989, must certify to the FTA that any new bus model acquired with such assistance has been tested in accordance with this part. This part contains the information necessary for a recipient to ensure compliance with this provision.

§ 665.3 Scope.

(a) This part applies to a recipient of Federal financial assistance under sections 3, 9, 16(b)(2), or 18 of the FT Act, and, except as provided in subsections (b), (c), and (d) is effective October 1, 1989;

(b) The provisions of section 665.11(e)(3) are effective November 8, 1990;

(c) The provisions in sections 665.11 (c), (d), and (f) concerning partial testing are effective August 27, 1992; and

(d) The provisions in §§ 665.11 (e) (4) and (5) of this part concerning the last two categories of buses which must be tested, apply to advertisements for bids or requests for proposals for buses issued on or after August 27, 1992.

§ 665.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Transit Administration or designee.

Bus means a rubber-tired automotive vehicle used for the provision of mass transportation service by or for a recipient.

Bus model means a bus design or variation of a bus design usually designated by the manufacturer by a specific name and/or model number.

Bus testing facility means a testing facility established by renovation of a facility constructed with Federal assistance at Altoona, Pennsylvania, under section 317(b)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and includes proving ground facilities operated in connection with the facility.

FT Act means the Federal Transit Act, as amended (49 U.S.C. app. 1601 et seq.).

Major change in chassis design means, for vehicles manufactured on a mass produced chassis, a change in frame structure, material or configuration, or a change in chassis suspension type.

Major change in components means:

(1) For those vehicles that are not manufactured on a mass produced chassis, a change in a vehicle's engine, axle, transmission, suspension, or steering components;

(2) For those that are manufactured on a mass produced chassis, a change in the vehicle's chassis from one major design to another.

Major change in configuration means a change which may have a significant impact on vehicle handling and stability, or structural integrity.

Mass produced van or chassis means a van or chassis that has or is projected to have an annual production rate of 20,000 or more units.

Mass transportation service means the operation of a vehicle which provides general or special service to the public on a regular and continuing basis.

Modified van means a mass produced van that is being modified to have a major structural change or addition, such as a raised roof, extension to the chassis, or a significant replacement of a vehicle body section, by a party other than the original van manufacturer.

New bus model means a bus model which—

(1) Has not been used in mass transit service in the United States before October 1, 1988; or

(2) Has been used in such service but which after September 30, 1988, is being produced with a major change in configuration or components.

Partial testing means the performance of those bus tests which may yield significantly different data from that obtained in previous bus testing conducted at the bus testing facility.

Recipient means an entity which receives funds under sections 3, 9, 16(b)(2), or 18 of the FT Act, either directly from FTA or through a State administering agency.

Test report means the final document prepared by the operator of the bus testing facility stating the results of the tests performed on each bus.

§ 665.7 Grantee certification of compliance.

(a) In each application to the FTA for the purchase or lease of buses, a recipient shall certify that any new bus model, or any bus model with a major change in configuration or components, to be acquired or leased with funds obligated by the FTA after September 30, 1989, will be tested at the bus testing facility, and a test report provided before final acceptance of the first vehicle by the recipient.

(b) It is the responsibility of the recipient in dealing with a manufacturer, to determine whether a vehicle to be acquired is subject to these procedures.

Subpart B—Bus Testing Procedures

§ 665.11 Testing requirements.

(a) A new bus model to be tested at the bus testing facility shall—

(1) Be a single model;

(2) Meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in part 571 of this title;

(3) Be substantially fabricated and assembled by techniques and tooling that will be used in production of subsequent buses of that model.

(b) If the new bus model had not been previously tested at the bus testing facility, then the new bus model shall undergo the full tests requirements for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise;

(c) If the new bus model had not been previously tested at the bus testing facility and is being produced on a mass produced chassis that has been previously tested on another bus model at the bus testing facility, then the new bus model may undergo partial testing requirements;

(d) If the new bus model had been previously tested at the bus testing facility, then the new bus model may undergo partial testing requirements.

(e) The following vehicle types shall be tested:

(1) Minimum service life of 12 years or 500,000 miles—typified by heavy duty large buses, approximately 35–40 foot, as well as articulated buses.

(2) Minimum service life of ten years or 350,000 miles—typified by heavy duty small buses, approximately 30 foot.

(3) Minimum service life of seven years or 200,000 miles—typified by medium duty mid-size buses, approximately 25–35 foot.

(4) Minimum service life of five years or 150,000 miles—typified by light duty mid-size buses, approximately 25–35 foot.

(5) Minimum service life of four years or 100,000 miles—typified by light duty small buses, cutaways, and modified vans, approximately 16–28 foot.

(f) Tests performed in a higher service life category (*i.e.*, longer service life) need not be repeated when the same bus model is used in lesser service life applications. However, the use of a bus model in a service life application higher than it has been tested for may make the bus subject to the bus testing requirements.

(g) The operator of the facility shall develop a test plan for the testing of vehicles at the facility, which generally follows the guidelines set forth in appendix A of this part.

§ 665.13 Test report and manufacturer certification.

(a) Upon completion of testing, the operator of the facility shall provide a test report to the entity that submitted the bus for testing.

(b) (1) A manufacturer of a new bus model or a bus produced with a major change in component or configuration shall provide a copy of the test report to a recipient during the point in the procurement process specified by the recipient.

(2) A manufacturer who releases a report under paragraph (b)(1) of this section also shall provide notice to the operator of the facility that the report is available to the public.

(c) If a bus model subject to a test report has a change that is not a major change under this part, the manufacturer shall advise the recipient during the procurement process and shall include description of the change and its basis for concluding that it is not a major change.

(d) A test report shall be available publicly once the owner of the report makes it available during the recipient's procurement process. The operator of the facility will have available for distribution copies of all the publicly available reports.

(e) The test report is the only information or documentation that will be made available publicly in connection with any bus model tested at the facility.

Subpart C—Operations

§ 665.21 Scheduling.

(a) A manufacturer may schedule a vehicle for testing by contacting Penn State's Transportation Institute (PSTI) at the following address: The Pennsylvania State University, Pennsylvania Transportation Institute, Research Building B, University Park, PA 16802, (814) 863–1889.

(b) Upon contacting PSTI, the manufacturer will be provided the following:

(1) A draft contract for the testing;

(2) A fee schedule; and

(3) The draft test procedures that will be conducted on the vehicle.

(c) PSTI will provide final test procedures to be conducted on the vehicle at the time of contract execution.

(d) PSTI will process vehicles for testing in the order in which the contracts are signed.

§ 665.23 Fees.

(a) Fees charged by the operator are according to a schedule approved by the FTA, which include different fees for partial testing.

(b) Fees will be prorated for a vehicle withdrawn from the facility before the completion of testing.

§ 665.25 Transportation of vehicle.

A manufacturer is responsible for transporting its vehicle to and from the facility at the beginning and completion of the testing.

§ 665.27 Procedures during testing.

(a) The facility operator shall perform all testing, consistent with established procedures at the facility and with the test procedures provided to the manufacturer at the time of contract execution.

(b) The manufacturer of a bus being tested may terminate the test program at any time before the completion of testing, and shall be charged a fee for the tests performed.

(c) The operator shall perform all maintenance and repairs on the test vehicle, consistent with manufacturers specifications, unless the operator determines that the nature of the maintenance or repair is best performed by the manufacturer under the operator's supervision.

(d) The manufacturer may observe all tests. The manufacturer may not provide maintenance or service unless requested to do so by the operator.

Appendix A to Part 665—Tests To Be Performed at the Bus Testing Facility

The seven tests to be performed on each vehicle are required by STURAA and are based in part on tests described in the FTA report "First Article Transit Bus Test Plan", which is mentioned in the legislative history of section 317. When appropriate, SAE test procedures and other procedures accepted by the transit industry will be used. The seven tests are described in general terms in the following paragraphs.

1. Maintainability

The maintainability test includes bus servicing, preventive maintenance, inspection, and repair. It also will include the removal and reinstallation of the engine and drive train components that would be expected to require replacement during the bus' normal life cycle. Much of the maintainability data will be obtained during the bus durability test at the proving ground. Up to twenty-five percent of the bus life will be simulated and there will be servicing, preventive maintenance, and repair actions. These actions will be done by test facility staff, although manufacturers will be allowed to maintain a representative on site during the testing. Test facility staff may require a manufacturer to provide vehicle servicing or repair, under the supervision of the facility staff. Since the operator will not become familiar with the detailed design of all new bus models that are tested, tests to determine the time and skill required to remove and reinstall an engine, a transmission, or other major propulsion system components may require advice from the bus manufacturer. All routine and corrective maintenance will be carried out by the test operator in accordance with the manufacturer's specifications.

The maintainability test report will include the frequency, personnel hours, and replacement parts or supplies required for each action during the test. The accessibility of selected components and other observations that could be important to a bus user will be included in the report.

2. Reliability

The question of reliability will be addressed by recording all bus breakdowns during testing. It is recognized that with one test bus it is not feasible to conduct statistical reliability tests. It is anticipated that bus operation on the durability course should reveal the problems that would otherwise not be detected until much later during scheduled transit service. The bus failures, repair time, and the actions required to get the bus back into operation will be recorded in the report.

3. Safety

The safety test will consist of a handling and stability test. The handling and stability test is an obstacle avoidance or double-lane change test that will be performed at the proving ground. The double-lane change course will be different for each type of bus and the speed could be different for each type of bus. Coach speed will be held constant throughout a given test run. Individual test runs will be made at increasing speeds up to 45 mph or until the coach can no longer be operated safely over the course, whichever speed is lower. Both left-and-right-hand lane changes will be tested.

4. Performance

The performance test will be performed on the proving ground and will measure acceleration and gradeability with the test vehicle operated at seated load weight. Top speed also will be measured if it can be done safely on the track. The test will be performed using a fifth wheel or equivalent and associated instrumentation. The bus will be accelerated at full throttle from standstill to maximum safe speed on the track. The report will include a table of time required to accelerate to each 10 mph increment of speed and when possible, the top speed. The gradeability capabilities will be calculated both from the test data and a test from a dead stop on a minimum of a 15 percent grade.

5. Structural Integrity

Two different structural integrity tests will be performed. Structural strength and distortion tests will be performed at the testing facility in Altoona and structural durability tests will be performed at the proving ground.

a. Structural Strength and Distortion Tests

(1) The structural strength and distortion tests will be conducted and will be different for each type of bus. For example, a shakedown of the bus structure will be conducted by loading and unloading the bus no more than three times with a distributed load equal to 2.5 times gross load. The bus then will be loaded with a distributed load to gross vehicle weight. (Gross vehicle weight is a curb weight plus gross load.) Increase in floor deflection will be measured as the bus weight is increased from curb weight to gross vehicle weight. Then the bus will be loaded with a distributed load equal to 2.5 times gross load. The bus then will be unloaded and inspected for any permanent deformation on the floor or coach structure.

(2) The bus will be loaded to gross vehicle weight, with one wheel on top of a 6-inch-high curb and then in a 6-inch-deep pot hole. This test will be repeated for all four wheels. The test will verify: (a) Normal operation of the steering mechanism and (b) Operability of all passenger doors, passenger escape mechanisms, windows, and service doors. In addition, a water leak test will be conducted.

(3) Using a load-equalizing towing sling, a static tension load equal to 1.2 times the bus curb weight will be applied to the bus towing fixtures (front and rear). The load will be removed and the two eyes and adjoining structure will be inspected for damages or permanent deformations.

(4) The bus at curb weight will be towed with a heavy wrecker truck for several miles after which it will be inspected for structural damage or permanent deformation.

(5) With the bus at curb weight probable damages due to tire deflating and jacking will be tested.

(6) With the bus at curb weight possible damages or deformation associated with lifting the bus on a two post hoist system or supporting it on jack stands will be assessed.

b. Structural Durability.

The structural durability test also will be different for each type of bus, but all tests will be performed on the durability course at the proving ground, simulating up to twenty-five percent of the vehicle's normal service life. During the test there will be inspections of the bus structure and the mileage and identification of possible structural anomalies.

6. Fuel Economy

This test will be run to determine the fuel economy in miles per gallon or equivalent of the new bus models. The test will be run at seated load weight on a duty cycle that simulates transit service for the type of vehicle being tested. The fuel measurement devices under consideration include volumetric, gravimetric, flow and pressure.

This fuel economy test bears no relation to the calculations done by the Environmental Protection Agency (EPA) to determine fuel economy levels for the Corporate Average Fuel Economy Program. However, the test will provide data which can be used by recipients in their purchase decisions.

7. Noise

There will be two noise tests: a. Interior noise and vibration; and b. Exterior noise. It is recognized that different levels of noise are expected and acceptable with different types of vehicles and different test procedures might be required.

Issued on: July 20, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-17304 Filed 7-27-92; 8:45 am]

BILLING CODE 4910-62-M

federal register

Tuesday
July 28, 1992

Part III

Department of Labor

Office of Labor-Management Standards

29 CFR Part 470

Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees; Notice and Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

RIN 1294-AA06

Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Interim procedural notice.

The Office of Labor-Management Standards (OLMS) is issuing this interim procedural notice to assist federal contractors and subcontractors in meeting their obligations under Executive Order 12800 (57 FR 12985, April 14, 1992) during the period between the May 13, 1992 effective date of the Order and the date OLMS issues a final rule implementing the Order. A proposed rule to implement the Order also is being published elsewhere in this separate part of the **Federal Register**.

This interim procedural notice is intended to provide guidance to employers who, on or after May 13, 1992, enter into a federal contract (except small purchase contracts governed by part 13 of the Federal Acquisition Regulation (48 CFR part 13)), or an amendment, renegotiation or renewal of such a contract, and to all employers holding subcontracts or purchase orders entered into in connection with such a contract. During this interim period, a way that such employers may fulfill their posting obligations under the Order is by replicating the text of the Employee Notice which is set forth below on paper no smaller than 20" by 24" using type that is at least as easily visible and readable as 48 point Korinna type (with the caption in type that is at least as easily visible and readable as 72 point Korinna boldface caps) and posting it in conspicuous places in and about their plants and offices, including all places where notices to employees are customarily posted. Following is the text of the required Notice:

Notice to Employees

Under federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact either a Regional Office of the National Labor Relations Board or:

National Labor Relations Board, Division of Information, 1717 Pennsylvania Avenue, NW., Washington, DC 20570

The last sentence of the Notice, however, shall be omitted in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*).

Executive Order 12800 also requires federal contractors and subcontractors to include a clause in federally connected subcontracts and purchase orders requiring subcontractors and vendors to post the notice also. See the interim rule published by the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration on May 12, 1992 (57 FR 20373), effective May 13, 1992, so amending the Federal Acquisition Regulation.

Procedures Under Executive Order 12291

OLMS has determined that this interim procedural notice (1) is not a "major rule" under Executive Order 12291 in that it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices; or have an adverse effect on competition in the marketplace; and (2) will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act. Therefore, an impact or flexibility analysis under Executive Order 12291 is not required.

Signed at Washington, DC, this 17th day of July 1992.

Marshall J. Breger,

Acting Assistant Secretary for Labor-Management Standards.

[FR Doc. 92-17553 Filed 7-27-92; 8:45 am]

BILLING CODE 4510-86-7

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 470

RIN 1294-AA06

Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Labor-Management Standards (OLMS) is proposing this rule to implement Executive Order 12800, which was signed by President Bush on April 13, 1992 and published in the **Federal Register** on April 14, 1992. Executive Order 12800 requires government contractors and subcontractors to post notices informing their employees that under federal law, they cannot be required to join a union or maintain membership in a union to retain their jobs, and employees who choose not to be union members may object to the use of their compulsory union dues and fees, collected pursuant to a lawful union-security agreement, for activities other than collective bargaining, contract administration, and grievance adjustment, and may be entitled to a refund and an appropriate reduction in future payments. This proposed regulation, in accordance with Executive Order 12800, requires that, where applicable, each government contracting agency include certain provisions of the Order in its government contracts, and that covered government contractors and subcontractors include these provisions in their nonexempt subcontracts and purchase orders.

DATES: Interested parties may submit written comments on this proposal. To be assured of consideration, all comments must be submitted by August 27, 1992.

ADDRESSES: Written comments should be submitted to Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210

FOR FURTHER INFORMATION CONTACT: Marshall J. Breger, Acting Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., room S2203, Washington, DC 20210, telephone (202) 523-9674.

SUPPLEMENTARY INFORMATION:

Background

The United States Supreme Court ruled in 1988 that the National Labor Relations Act (NLRA) prohibits a union, over the objections of bargaining unit employees who have chosen not to be full union members, from expending fees and dues collected from those employees on activities not germane to the union's representational purposes, *i.e.*, collective bargaining, contract administration, and grievance handling. *Communications Workers of America* v. *Beck*, 487 U.S. 735.

Beck, although not the first case in which the Supreme Court has imposed restrictions on expenditures of objecting nonmembers' dues, is significant because it applies to the large portion of the private sector that is covered by the National Labor Relations Act, 29 U.S.C. 151 *et seq.* In reaching its decision in Beck, the Court relied heavily upon earlier rulings pertaining to a provision of the Railway Labor Act (RLA) that the Court found to be in all material respects identical to the NLRA provisions at issue in Beck, 487 U.S. at 744. These earlier decisions held that the RLA does not permit union expenditure of compulsory dues and fees in support of political causes objected to by nonmember employees, *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961), but permits only the charging of expenses "germane to collective bargaining," *Railway Clerks* v. *Allen*, 373 U.S. 113, 122 (1963), and "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Ellis* v. *Railway Clerks*, 466 U.S. 435, 448 (1984). The Court noted that the nearly identical language of the RLA and the NLRA provisions "* * * reflects the fact that in both Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their costs." Beck, 487 U.S. at 746.

The Supreme Court has also addressed the constitutionality and scope of union-security provisions in public sector employment, *see, e.g.*, *Lehnert* v. *Farris Faculty Association*, 111 S. Ct. 1950, (1991); *Abood* v. *Detroit Board of Education*, 431 U.S. 209 (1977) and has there found rights and restrictions correspondent to those in the private sector.

[C]hargeable activities must: (1) Be "germane" to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding "free riders"; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop.

Lehnert, 111 S. Ct. at 1959.

The principal aim of Excutive Order 12800, (57 FR 12985, April 14, 1992; 57 FR 13413, April 16, 1992), and this proposed rule is to provide employees, labor organizations and contracting employers with information concerning the rights of employees and thereby to promote harmonious relations in the workplace for purposes of ensuring the economical and efficient administration and completion of Government contracts.

The proposed regulation will be a new part 470 and will contain three Subparts. Each is discussed below.

Subpart A—Preliminary Matters

This Subpart contains definitions, the Employee Notice clause, and exemptions. Definitions pertaining to federal contractor and subcontractor status generally are patterned after the Department's Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60-1.

The Employee Notice provided in § 470.2(a)(1) of this proposal is drawn directly from the text of Executive Order 12800. OLMS seeks comments on whether a poster containing the Notice should be printed by the Department and supplied to covered contractors, or whether contractors should be required, or permitted, to prepare the posting themselves. If the rule were to provide for contractor preparation, a contractor would fulfill its posting obligations under the Order by replicating the text of the Employee Notice given in proposed § 470.2(a)(1) on paper no smaller than 20" by 24" using type that is at least as easily visible and readable as 48 point Korinna type (with the caption in type that is at least as easily visible and readable as 72 point Korinna boldface caps) and posting it consistent with the requirements of the Order.

To clarify contractor posting obligations during the period between the May 13, 1992 effective date of the Order and the date OLMS issues this proposed rule in final form, OLMS also is publishing elsewhere in this separate part of the **Federal Register** an interim procedural notice. That notice advises covered contractors to replicate the Employee Notice in the size and form noted above, and post it in conspicuous places in and about their plants and offices, including all places where notices to employees are customarily posted.

Executive Order 12800 also requires federal contractors and subcontractors to include a clause in federally

connected subcontracts and purchase orders, thus requiring subcontractors and vendors to post the notice also. That clause appears in section 2(a) (1)–(3) of the Order, and § 470.2(a) (1)–(3) of this proposal. To implement this requirement, on May 12, 1992, the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration jointly issued an interim rule with request for comment (57 FR 20373) so amending the Federal Acquisition Regulation, effective May 13, 1992 (48 CFR subpart 22.15, and 52.22–18).

As a result of the exemptions in proposed §§ 470.3 and 470.4, the Order's requirements would apply to employers of 15 or more persons holding federal contracts and subcontracts of $25,000 or more. Such contractors and subcontractors, with some exceptions would be required to post the required Notice at their establishments and/or construction work sites involved in work under federal contracts. The 15 employee threshold is consistent with that under Title VII of the Civil Rights Act of 1964, as amended, and the eventual threshold under Title I of the Americans with Disabilities Act. The $25,000 contract threshold is consistent with the Order's section 2 exclusion of small purchase contracts governed by part 13 of the Federal Acquisition Regulation (48 CFR 13.000–13.507).

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

The enforcement procedures in this Subpart rely on the Department's regulations at 29 CFR part 18 governing administrative hearings before Administrative Law Judges, and, in particular, on the provisions for expedited hearings at 29 CFR 18.57. The post-hearing procedures for imposing sanctions or penalties are drawn from section 6 of the Order.

Subpart C—Ancillary Matters

This Subpart addresses miscellaneous matters drawn either directly from the Order (e.g., the Secretary's authority to delegate functions under section 9 of the Order), or from OFCCP regulations (e.g., the protections in 41 CFR 60–1.32 against intimidation and interference).

Regulatory Procedures

The Department of Labor has determined that this proposed rule is not a "major rule" under Executive Order 12291 in that it will not have an annual effect on the economy of $100 million dollars or more; cause a major increase in costs or prices; or have an adverse effect on competition in the marketplace. Therefore, no regulatory impact analysis is required.

The Department certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Recordkeeping

The proposed rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*)

List of Subjects in 29 CFR Part 470

Administrative practice and procedure, Government contracts, Labor unions.

Accordingly, OLMS proposes to amend 29 CFR chapter IV as set forth below.

Signed at Washington, D.C., this 17th day of July 1992.

Marshall J. Breger,

Acting Assistant Secretary for Labor-Management Standards.

A new subchapter C, consisting of part 470, is added to 29 CFR chapter IV to read as follows:

SUBCHAPTER C—EXECUTIVE ORDER 12800, NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

PART 470—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

Subpart A—Preliminary Matters

Sec.

470.1 Definitions.
470.2 Employee notice clause.
470.3 Contract exemptions.
470.4 Contractor exemptions.

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

470.10 Compliance reviews.
470.11 Complaints.
470.12 Processing when violation found.
470.13 Enforcement proceedings.
470.14 Sanctions and penalties.
470.15 Hearing required.
470.16 Reinstatement of ineligible prime contractors or subcontractors.

Subpart C—Ancillary Matters

470.20 Rulings and interpretations.
470.21 Delegation of authority by the Secretary.
470.22 Intimidation and interference.
470.23 General.

Authority: Executive Order 12800 (57 FR 12985, April 14, 1992; 57 FR 13413, April 16, 1992).

Subpart A—Preliminary Matters

§ 470.1 Definitions.

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Labor-Management Standards.

(b) *Collective bargaining agreement (CBA),* for purposes of this part, means an agreement between a government contractor and a labor organization which represents some or all of the contractor's employees concerning such matters as grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(c) *Construction* as used in paragraphs (d) and (j) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(d) *Construction work site* means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor or subcontractor meets a demand or performs a function relating to the contract or subcontract.

(e) *Contract* means, unless otherwise indicated, any government contract or subcontract.

(f) *Contracting agency* means any department, agency, establishment or instrumentality in the executive branch of the government, including any wholly owned government corporation, which enters into contracts.

(g) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor, at any tier.

(h) *Department* means the U.S. Department of Labor.

(i) *Government* means the government of the United States of America.

(j) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "services", as used in this section includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository. The term "Government contract" does not include agreements in which the parties stand in the relationship of employer

and employee, and federally assisted contracts.

(k) *Labor organization* means any organization of any kind, any agency, or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(l) *Modification* means any alteration in the terms and conditions of a contract, including amendments, renegotiations and renewals.

(m) *Order* or *Executive Order* means Executive Order 12800 dated April 13, 1992 (57 FR 12985, April 14, 1992; 57 FR 13413, April 16, 1992).

(n) *Person*, as used in paragraphs (j), (o), (r) and (s) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(o) *Prime contractor* means any person holding a contract with a contracting agency, and, for the purposes of Subpart B of this Part, "General Enforcement; Compliance Review and Complaint Procedures" includes any person who has held a contract subject to the Order.

(p) *Rules, regulations, and relevant orders of the Secretary of Labor*, as used in § 470.2(a)(2) means rules, regulations, and relevant orders of the Assistant Secretary for Labor-Management Standards, or his or her designee, issued pursuant to the Order.

(q) *Secretary* means the Secretary of Labor, U.S. Department of Labor or his or her designee.

(r) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(s) *Subcontractor* means any person holding a subcontract and, for the purpose of subpart B of this part, "General Enforcement; Compliance Review and Complaint Procedures," any person who has held a subcontract subject to the Order.

(t) *Union* means a labor organization as defined in paragraph (k) of this section.

(i) *Union-security agreement* means an agreement entered into between a contractor and a labor organization which requires certain employees of the contractor to pay uniform periodic dues and initiation fees to that labor organization.

(v) *United States*, as used in this part, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 470.2 Employee notice clause.

(a) *Government Contracts.* Except in contracts exempted in accordance with § 470.3, all government contracting agencies shall, to the extent consistent with law, include the provisions contained in section 2 of the Order in every government contract, other than collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8) and small purchase contracts governed by Part 13 of the Federal Acquisition Regulation (48 CFR part 13), entered into, amended, renegotiated, or renewed on or after May 13, 1992.

Required Contract Provisions

(1) During the term of this contract, the contractor agrees to post a notice, of such size and in such form as the Secretary of Labor may prescribe, in conspicuous places in and about its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the last sentence shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151–188)).

Notice to Employees

Under federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact either a Regional Office of the National labor Relations Board or:

National Labor Relations Board, Division of Information, 1717 Pennsylvania Avenue, NW., Washington, DC 20570

(2) The contractor will comply with all provisions of Executive Order 12800 of April 13, 1992, and related rules, regulations, and orders of the Secretary of Labor.

(3) In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order 12800 of April 13, 1992, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

(4) The contractor will include the provisions of paragraphs (1) through (3) in every subcontract or purchase order entered into in connection with this contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order No. 12800 of April 13, 1992, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any such subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. Provided, however, that if the contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Subcontracts.* Each prime contractor or subcontractor shall include the clause in paragraph (a) of this section in each of its nonexempt subcontracts.

(c) *Inclusion by reference.* The clause in paragraph (a) of this section may be included by reference in all government contracts, subcontracts and purchase orders.

(d) *Incorporation by operation of the Order.* By operation of the Order, the clause in paragraph (a) of this section shall be considered to be a part of every contract and subcontract required by the Order and the regulations in this Part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(e) *Adaptation of language.* The Assistant Secretary may make such changes in the contractual provisions of the Order as may be necessary to reflect Acts of Congress, clarifications in the law by the courts, or otherwise to fully and accurately inform employees of their rights under the Order.

(f) *Employee notice format.* The employee notice posting shall replicate the text of the Employee Notice in § 470.2(a)(1) on paper no smaller than 20" by 24" using type that is at least as easily visible as 48 point Korinna type with the caption in type that is at least as easily visible and readable as 72 point Korinna boldface caps.

§ 470.3 Contract exemptions.

(a) *Transactions of less than $25,000.* The requirements of this part do not apply to contracts and subcontracts of less than $25,000, other than contracts and subcontracts with depositories of federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes. *Provided,* that—

(1) No agency, contractor or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the Order and the regulations in this Part; and

(2) Where a contractor has contracts or subcontracts with the government in any 12-month period which have an aggregate total value (or reasonably can be expected to have an aggregate total value) of $25,000 or more, the less than $25,000 exemption does not apply, and the contracts are subject to the Order and the regulations in this Part.

(b) *Specific contracts.* The Assistant Secretary may exempt an agency or any person from requiring the inclusion of any or all of the Employee Notice clause in any specific contract or subcontract when the Assistant Secretary deems that special circumstances in the national interest so require. Requests for exemption must be in writing and directed to the Assistant Secretary for Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(c) *Withdrawal of exemption.* When any contract or subcontract is of a class exempted under this section, the Assistant Secretary may withdraw the exemption for a specific contract or subcontract or groups of contracts or subcontracts when in the Assistant Secretary's judgment such action is necessary or appropriate to achieve the purposes of the Order.

§ 470.4 Contractor exemptions.

(a) *Number of employees.* The requirement to post the Employee Notice given in § 470.2(a)(1) (hereafter, posting requirement) does not apply to contractors and subcontractors that employ fewer than 15 persons.

(b) *Union representation.* The posting requirement does not apply to contractor establishments or construction work sites where there are no employees of the contractor represented by a union.

(c) *State law.* The posting requirement does not apply to contractor establishments or construction work sites where state law forbids enforcement of union-security agreements.

(d) *Non-federal work.* The posting requirement does not apply to facilities of a contractor, subcontractor or vendor that are in all respects separate and distinct from activities related to the performance of the contract: *Provided,* That such exemption will not interfere with or impede the effectuation of the purposes of the Order.

(e) *Work outside the United States.* The posting requirement does not apply to work performed outside the United States that does not involve the recruitment or employment of workers within the United States.

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

§ 470.10 Compliance reviews.

(a) An on site review may be conducted by the Department to determine a contractor's or subcontractor's compliance with the requirements of this part. Such a review may be limited to compliance with this Part or may be included in an on site compliance review conducted under other laws, executive orders and/or regulations enforced by the Department.

(b) During such a review, a determination will be made whether:

(1) The Employee Notice is posted in conspicuous places in and about each of the contractor's establishments and/or construction work sites not exempted by § 470.4, including all places where notices to employees are customarily posted; and

(2) The provisions of the Employee Notice clause are included in nonexempt subcontracts and purchase orders.

(c) The results of the review will be documented in the review record which will include findings regarding the contractor's compliance with the requirements of the Order and this Part and, as applicable, conciliation efforts made, corrective action taken and/or enforcement recommended.

§ 470.11 Complaints.

(a) *Filing complaints.* Complaints may be filed by an employee of a covered contractor or subcontractor alleging that the contractor or subcontractor has failed to post the Employee Notice as required by the Order and this part; and/or has failed to include the Employee Notice clause in nonexempt subcontracts or purchase orders. Complaints may be filed with the Office of Labor-Management Standards (OLMS), 200 Constitution Avenue, NW., Washington, DC 20210, or with any OLMS area or district office.

(b) *Contents of complaints.* The complaint must be in writing, and shall include the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor alleged to have violated the Order, an identification of the alleged violation and the establishment or construction work site where it is alleged to have occurred, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant.

(c) *Referrals.* The Department will refer complaints alleging use of union dues or fees for purposes unrelated to a collective bargaining agreement and/or seeking a refund or future adjustment of such dues or fees, to the National Labor Relations Board or other appropriate agency.

(d) *Complaint investigations.* In investigating complaints filed with the Department of Labor pursuant to paragraph (a) of this section, the Department will evaluate the allegations of the complaint and develop a case record including findings regarding the contractor's compliance with the requirements of the Order and this part and, as applicable, conciliation efforts made, corrective action taken, and/or enforcement recommended.

§ 470.12 Processing when violation found.

(a) If any Department of Labor complaint investigation or compliance review indicates a violation of the Order or this part, reasonable efforts shall be made to secure compliance through conciliation.

(b) Before the contractor can be found to be in compliance with the Order or this part, it must correct the violation (e.g., by posting the required notices, by notifying nonexempt subcontractors and vendors of the inclusion of the Employee Notice clause in their subcontract or purchase order by operation of the Order) and must make a commitment, in writing, not to repeat the violation.

(c) If a violation cannot be resolved by informal means, the Assistant Secretary may proceed in accordance with § 470.13.

(d) For reasonable cause shown, the Assistant Secretary may reconsider or cause to be reconsidered any matter on

his/her own motion or pursuant to a request.

§ 470.13 Enforcement proceedings.

(a) *General.* (1) Violations of the Order may result in administrative proceedings to enforce the Order. Violations may be found based upon, *inter alia,* any of the following:

(i) The results of a compliance review;

(ii) The results of a complaint investigation;

(iii) A contractor's refusal to allow an on site review or investigation to be conducted;

(iv) A contractor's refusal to supply records or other information as required by the Order and the regulations in this part.

(2) If a determination is made that the Order or the regulations in this part have been violated, and the violation has not been corrected through conciliation, the Assistant Secretary may refer the matter to the Solicitor of Labor for institution of administrative enforcement proceedings.

(b) *Administrative enforcement proceedings.* (1) Administrative enforcement proceedings shall be conducted under the control and supervision of the Solicitor of Labor, under the hearing procedures set forth in 29 CFR Part 18, Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

(2) Unless otherwise provided by the Office of the Solicitor in its complaint, all hearings shall be conducted in accordance with the rules for expedited proceedings at 29 CFR 18.42.

(3) The administrative law judge shall certify his or her recommended decision issued pursuant to 29 CFR 18.57 to the Assistant Secretary. The decision shall be served on all parties and amici.

(4) Within 10 days (25 days in the event that the proceeding is not expedited) after receipt of the administrative law judge's recommended decision, either party may file exceptions to the decision. Exceptions may be responded to by the other parties within 7 days (25 days if the proceeding is not expedited) after receipt. All exceptions and responses shall be filed with the Assistant Secretary.

(5) After the expiration of time for filing exceptions, the Assistant Secretary shall issue a final Administrative order. In an expedited proceeding, unless the Assistant Secretary issues a final Administrative order within 30 days after the expiration of time for filing exceptions, the administrative law judge's recommended decision shall become the final Administrative order. If the Assistant Secretary determines that the contractor has violated the Order or the regulations in this part, the final Administrative order may enjoin the violations, require the contractor to provide appropriate remedies and, subject to the procedures in § 470.14, impose appropriate sanctions.

§ 470.14 Sanctions and penalties.

(a) Consistent with section 8 of the Order, each contracting department and agency shall cooperate with the Assistant Secretary and provide such information and assistance as the Assistant Secretary may require in the performance of the Assistant Secretary's functions under the Order and regulations in this part.

(b) Before imposing the sanctions described in paragraph (e) of this section, the Assistant Secretary shall consult with affected agencies, and provide the heads of those agencies the opportunity to respond and provide written objections.

(c) If the contracting agency provides written objections, those objections shall include a complete statement of reasons for the objections, among which reasons shall be a finding that, as applicable, the completion of the contract, or further contracts or extensions or modifications of existing contracts, is essential to the agency's mission.

(d) The sanctions and penalties described in this section, however, shall not be imposed by the Assistant Secretary so long as the head of the contracting agency continues personally to object to the imposition of such sanctions and penalties.

(e) After the consultation described in this section:

(1) *Existing contracts.* The Assistant Secretary may direct a contracting agency to cancer, terminate, suspend, or cause to be canceled, terminated or suspended, any contract, or any portions thereof, for failure of the contractor to comply with its contractual provisions as required by section 2 of the Order and the regulations in this part. Contracts may be canceled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon compliance.

(2) *Future contracts.* The Assistant Secretary may provide that one or more contracting agencies shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor.

(f) Whenever the Assistant Secretary has exercised his or her authority pursuant to paragraph (e) of this section, the contracting agency shall report the actions it has taken to the Assistant Secretary within such time as the Assistant Secretary shall specify.

(g) Periodically, the Assistant Secretary shall publish and distribute, or cause to be published and distributed, to all executive agencies a list of the names of contractors that have, in the judgment of the Assistant Secretary, failed to comply with the provisions of the Order and this part, or of related rules, regulations, and orders of the Assistant Secretary, and have been declared ineligible under the Order and the regulations in this part.

§ 470.15 Hearing required.

Neither an order for debarment of any contractor from further government contracts under section 6(b) of the Order nor the inclusion of a contractor on a published list of noncomplying contractors under section 6(c) of the Order shall be carried out without affording the contractor an opportunity for a hearing.

§ 470.16 Reinstatement of ineligible prime contractors or subcontractors.

Any prime contractor or subcontractor declared ineligible for further contracts or subcontracts under the Order may request reinstatement in a letter directed to the Assistant Secretary.

Subpart C—Ancillary Matters

§ 470.20 Rulings and interpretations.

Rulings under or interpretations of the Order or the regulations contained in this part shall be made by the Assistant Secretary or his or her designee.

§ 470.21 Delegation of authority by the Secretary.

Consistent with section 9 of the Order, the Secretary may delegate any function or duty of the Secretary under this Order to any officer in the Department of Labor or to any other officer in the executive branch of the government, with the consent of the head of the department or agency in which that officer serves.

§ 470.22 Intimidation and interference.

The sanctions and penalties contained in § 470.14 may be exercised by the Assistant Secretary against any prime contractor or subcontractor who fails to take all necessary steps to ensure that no person intimidates, threatens, or coerces any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to

the administration of the Order or the regulations in this part.

§ 470.23 General.

Consistent with section 11 of the Order, nothing contained in the Order or this part, or promulgated pursuant to the Order or this part, is intended to confer any substantive or procedural right, benefit, or privilege enforceable at law by a party against the United States, its agencies or instrumentalities, its officers, or its employees, nor to authorize the assessment of any dues or fees by any labor organization.

[FR Doc. 92-17532 Filed 7-27-92; 8:45 am]

BILLING CODE 4510-06-M

federal register

Tuesday
July 28, 1992

Part IV

Department of Education

Office of Educational Research and Improvement—Library Programs; Notice Inviting Applications for New Awards for Fiscal Year 1993

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs; Invitation To Apply for New Awards for Fiscal Year 1993

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1993.

SUMMARY: The Secretary invites applications for new awards for fiscal year 1993 and announces closing dates for the transmittal of applications under the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Library Career Training Program, Strengthening Research Library Resources Program, College Library Technology and Cooperation Grants Program, Foreign Language Materials Acquisition Program, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

The invitation for applications for new awards under the Library Literacy Program (CFDA No. 84.167A) is scheduled to be announced in the Federal Register at a later date.

These programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to improve library services, to enhance the skills of library staff, to increase the quality and availability of library holdings, and other activities. The National Education Goals specifically call for:

- Children to start school ready to learn (Goal 1);
- Students to demonstrate competency in challenging subject matter and to learn to use their minds well (Goal 3); and
- Adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship (Goal 5).

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in Section II of this notice.

To contact any persons named in this announcement, deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by title II of the Higher Education Act (HEA) (20 U.S.C. 1021 *et seq.*) must be an eligible institution under the terms of 20 U.S.C. 1141(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Ms. Lois Moore, U.S. Department of Education, Office of Postsecondary Education, Debt Collection and Management Assistance Service, Division of Eligibility and Certification, 400 Maryland Avenue, SW., room 3522, Washington, DC 20202–5323, (202) 708–4913.

Organization of Notice. This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcements for each program.

SECTION I.—PROGRAM AND CLOSING DATES FOR LIBRARY PROGRAM

Title of program and CFDA No.	Applications available	Application deadline date	Deadline for intergovernmental review	Tentative award date	Estimated available funds [1]	Estimated range of awards [1]	Estimated avg. size of awards [1]	Estimated number of awards [1]
Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (84.163A).	8/21/92	10/05/92	NA	02/26/93	[3] 904,000 [4] 603,000	NA	[3] $4,000	225
Library Career Training Program—Fellowship Awards (84.036B).	08/24/92	10/06/92	12/10/92	02/19/93	5,000,000	10,800–129,000	14,800	70
Strengthening Research Library Resources Program (84.091A).	08/10/92	10/09/92	01/15/93	05/14/93	5,000,000	35,000–550,000	165,000	30
College Library Technology and Cooperation Grants Program (84.197A—D).	11/02/92	[2] 11/20/92 01/15/93	03/15/93	08/27/93	3,400,000	15,000–300,000	A 65,000 B 180,000 C 100,000 D 125,000	30
Foreign Language Materials Acquisition Program (84.239A).	11/20/92	02/19/93	[5] 04/23/93	07/15/93	976,000	4,000–125,000	A 73,000 [6] B 30,000	31
Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (84.163B).	02/04/93	04/05/93	NA	08/02/93	904,000	17,000–160,000	62,000	12

[1] The Department is not bound by any estimates in this notice. The estimated available funds reflect fiscal year 1992 appropriation amounts; however, the Administration's budget request for fiscal year 1993 does not include funds for these programs, other than set-asides for Indian Tribes. Applications are being invited to allow sufficient time for evaluation and completion of the grant process before the end of fiscal year 1993 should the Congress appropriate funds for these programs.

[2] 10/09/92 for eligibility information for institutions needing to establish eligibility (Part I only); 11/20/92 for all project descriptions (Part II).

[3] Indian Tribes.

[4] Hawaiian Natives

[5] This deadline also applies to comments from State Library Administrative agencies.

[6] By law, (A) up to 30 percent of the funds available may be used to make grants in amounts between $35,000–$125,000 (B) of the remaining funds, no grant may exceed $35,000.

Section II—Application Notices

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV)

Purpose of Program: Provides noncompetitive basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Eligible Applicants: (a) Indian Tribes recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians; (b) Alaskan Native villages or regional or village corporations as defined in or established under the Alaskan Native Claims Settlement Act: however, two or more Alaskan Native villages, regional corporations, or village corporations may not receive basic grant allocations that serve the same population; and (c) Organizations primarily serving and representing Hawaiian natives and recognized by the Governor of Hawaii.

Applicable Regulations: (a) The Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 771; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 (for grants to Hawaiian native organizations), 75, 77, 79 (for grants to Hawaiian native organizations), 80 (for grants to Indian Tribes), 81, 82, and 85.

For Applications or Information Contact: Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone: (202) 219–1315.

Program Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84.036B—Library Career Training Program—Fellowships and Institutes (Higher Education Act, Title II, Part B)

Purpose of Program: Provides grants to train persons in librarianship through fellowships, institutes, and traineeships.

Eligible Applicants: Institutions of higher education and library organizations and agencies.

Applicable Regulations: (a) The Library Career Training Program Regulations in 34 CFR part 776; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80 (for public library organizations or agencies), 82, 85, and 86 (for institutions of higher education).

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications for fellowships that meet one of the following priorities. The Secretary funds under this competition only applications for fellowships that meet one of the following priorities:

Priority 1: To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Priority 2: To increase excellence in library education by encouraging study in librarianship and related fields at the doctoral level.

Invitational Priority: Within absolute priority 2 specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Applications for fellowships that place particular emphases on the study of library planning, evaluation, and research.

For Applications or Information Contact: Yvonne B. Carter, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone: (202) 219–1315.

Program Authority: 20 U.S.C. 1021, 1032.

CFDA No. 84.091A—Strengthening Research Library Resources Program (Higher Education Act, Title II, Part C)

Purpose of Program: Provides grants to the Nation's major research libraries to maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Eligible Applicants: Institutions with major research libraries as defined in 34 CFR 778.2.

Applicable Regulations: (a) The Strengthening Research Library Resources Program Regulations in 34 CFR part 778; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Supplementary Information: The application contains two parts in the Program Narrative section: Part I—Status as a Major Research Library and Part II—Description of the Project. These parts must be submitted separately as follows: Those applicants who need to establish status as a major research library must submit Part I of the Program Narrative section by 10/9/92; applicants who established status in fiscal year 1989 or later need not submit Part I. All applicants must submit Part II of the Program Narrative section by 11/20/92.

For Applications or Information Contact: Louise Sutherland or Linda Loeb, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Program Authority: 20 U.S.C. 1021, 1041.

CFDA No. 84.197A–D—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part D)

Purpose of Program: To encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking, to improve the library and information services provided to them by public and nonprofit private organizations, and to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences. There are four categories of awards: (a) Networking; (b) Combination; (c) Services to Institutions; and (d) Research and Demonstration.

Eligible Applicants: The following are eligible to receive awards under this program:

(a) For Networking Grants, institutions of higher education.

(b) For Combination Grants, combinations of institutions of higher education.

(c) For Services to Institutions Grants, public or nonprofit private organizations (other than institutions of higher education) that provide library and information services to institutions of higher education on a formal cooperative basis.

(d) For Research and Demonstration Grants, institutions of higher education.

Applicable Regulations: (a) The College Library Technology and Cooperation Grants Program Regulations in 34 CFR part 779; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85 and 86.

For Applications or Information Contact: Neal Kaske, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Program Authority: 20 U.S.C. 1021, 1047.

CDFA No. 84.239A—Foreign Language Materials Acquisition Program (Library Services and Construction Act, Title V)

Purpose of Program: This program makes grants to State and local public libraries for the acquisition of foreign language materials. By law, (a) up to 30 percent of the funds available may be used to make grants in amounts between $35,000 and $125,000; (b) of the remaining funds, no grant may exceed $35,000. The law also provides that no recipient may receive more than one grant under this program in the same fiscal year.

Eligible Applicants: State public libraries and local public libraries.

Applicable Regulations: (a) The Foreign Language Materials Acquisition Program Regulations in 34 CFR part 768; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, and 85.

For Applications or Information Contact: Nancy Cavanaugh, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Program Authority: 20 U.S.C. 371.

CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV)

Purpose of Program: This program makes competitive awards to eligible Indian tribes to establish or improve public library services. All available funds for library services to Hawaiian natives are awarded through the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (CFDA No. 84.163A).

Eligible Applicants: Indian Tribes and Alaskan Native villages or regional or village corporations that have met eligibility requirements for the Library Services to Indian Tribes Program—Basic Grants Program (CFDA No. 84.163A) and received such Basic Grants in the same fiscal year as the year of application.

Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority 1: To assess and plan for tribal library needs.

Invitational Priority 2: To train or retrain Indians as library personnel.

Invitational Priority 3: To purchase library materials.

Invitational Priority 4: To conduct special library programs for Indians such as summer reading programs for children, outreach programs for elders, literacy tutoring, and training in computer use.

Applicable Regulations: (a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 772; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, and 85.

For Applications or Information Contact: Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Program Authority: 20 U.S.C. 361 *et seq.*

Dated: July 22, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–17713 Filed 7–27–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
July 28, 1992

Part V

Department of Labor

Board of Service Contract Appeals; Establishment; Notice

DEPARTMENT OF LABOR

[Secretary's Order 3–92]

Board of Service Contract Appeals; Establishment

Dated: July 10, 1992.

Subject: Establishment of the Board of Service Contract Appeals.

1. Purpose

To establish and describe the composition, authority and responsibilities of the Board of Service Contract Appeals.

2. Authority and Directives Affected

a. Department of Labor regulations at 29 CFR part 8 provide that the Secretary shall establish a Board of Service Contract Appeals which is appointed by and responsible to the Secretary of Labor.

b. This Order supersedes sections 3(a)(6), 3(a)(19) and 3(b)(1) of Secretary's Order 3–90, dated April 4, 1990, which reserved authority for the Deputy Secretary of Labor to perform the functions of the Board of Service Contract Appeals in issuing final agency decisions and all rulings on substantive issues pursuant to the Contract Work Hours and Safety Standards Act and the McNamara-O'Hara Service Contract Act of 1965 (as amended), as provided in 29 CFR part 8, pending the appointment of a duly constituted Board. This Order also supersedes the memorandum from Secretary Martin to the Deputy Secretary, dated November 25, 1991, delegating interim authority to the Deputy Secretary to perform the functions of the Board of Service Contract Appeals.

3. Establishment, Delegation of Authority and Assignment of Responsibility

The Board of Service Contract Appeals, which is hereby established, shall act as the authorized representative of the Secretary of Labor in deciding appeals concerning questions of fact and law, taken in the discretion of the Board, from final decisions of the Administrator, Wage and Hour Division or authorized representative; and from decisions of Administrative Law Judges (currently issued under Subparts B, D, and E of 29 CFR part 6) arising under the McNamara-O'Hara Service Contract Act and the Contract Work Hours and Safety Standards Act (except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and on such other matters which may be specifically referred to the Board by the Secretary of Labor. The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations which has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The Board also shall not have jurisdiction to review decisions to deny or grant exemptions, variations, and tolerances and does not have the authority independently to take such actions.

4. Composition

The Board of Service Contract Appeals shall consist of three public members, appointed by the Secretary of Labor, one of whom shall be designated Chair. The Secretary may appoint one or more Alternate or Senior Members, not to exceed the number of such members on the Wage Appeals Board as prescribed in section 3 of Secretary's Order No. 1–91. The Board of Service Contract Appeals shall sit, hear cases, render decisions and perform all other functions only in panels of 3 or fewer members (whether or not including a Senior or Alternate Member) assigned by the Chair. A vacancy in the membership of the Board of Service Contract Appeals shall not impair the authority of the remaining member(s) to exercise all the powers and duties of the Board of Service Contract Appeals.

5. Terms of the Members

a. Of the initial appointments of members of the Board of Service Contract Appeals pursuant to this Order, member terms (whether "Chair," "Member," "Senior Member," or "Alternate Member") shall expire on the dates of expiration of a corresponding member term of the Wage Appeals Board, as provided in Secretary's Order 1–91. Thereafter, each member shall be appointed for a term not to exceed 2 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

b. Appointment of a member of the Board of Service Contract Appeals shall not affect the authority of the Secretary to remove any member at any time.

6. Voting

Unless the petitioner consents to disposition by a single member, decisions of the Board shall be by majority vote. Where petitioner consents to disposition by a single member, other interested parties shall have an opportunity to oppose such disposition, and such opposition shall be taken into consideration by the Board in determining whether the decision shall be by a single member or majority vote.

7. Location of Board Proceedings

The Board shall hold its proceedings in Washington, DC, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

8. Rules of Practice and Procedure

The Board shall prescribe such rules of practice and procedure as it deems necessary or appropriate for the conduct of its proceedings. The rules which are prescribed in 29 CFR part 8 as of the date of this Order shall govern the proceedings of the Board until changed.

9. Departmental Counsel

The Solicitor of Labor shall provide counsel to represent the Administrator, Wage and Hour Division, or authorized representative, in proceedings before the Board.

10. Effective Date

This Order is effective immediately.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–17802 Filed 7–23–92; 1:59 pm]

BILLING CODE 4510–23–M

federal register

Tuesday
July 28, 1992

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107 and 171

Hazardous Materials Transportation Registration and Fee Assessment Program; Clarification of Registration Provisions; Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket HM-208]

Hazardous Materials Transportation Registration and Fee Assessment Program; Clarification of Registration Provisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Clarification concerning registration provisions.

SUMMARY: In this document, RSPA clarifies regulatory provisions and corrects errors in an instructional brochure, concerning registration requirements of a final rule published July 9, 1992 in the **Federal Register** under Docket HM-208.

EFFECTIVE DATE: The final rule at 57 FR 30820 is effective August 31, 1992. This document clarifies portions of that rule.

FOR FURTHER INFORMATION CONTACT: Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis (202) 366-4109, or Beth Romo, Office of Hazardous Materials Standards (202) 366-4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: A final rule was published July 9, 1992 under Docket HM-208 (57 FR 30620) to establish a national registration program, as mandated by Congress in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), for persons engaged in the offering for transportation and transportation of certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons subject to the registration program are required to annually file a registration statement with RSPA and pay an annual fee of $300, $250 of which is to fund a nationwide emergency response training and planning grant program for States and local governments and $50 of which is to offset DOT processing costs. An initial filing deadline of August 31, 1992 was imposed for filing the registration statement and paying the fee.

Immediately after the final rule was published, RSPA publicized the registration program in a number of ways, including distribution of over 200,000 instructional brochures, entitled Hazardous Materials Registration Program—What You Need to Know, containing a registration statement form as referenced in § 107.608(d). RSPA has received a large number of inquiries concerning who must register. In this notice, RSPA is acknowledging errors in the instructional brochure and providing a correction of those errors and a narrative discussion of who is subject to the new registration requirements.

Error in the Instructional Brochure

On the second and third panels of the brochure, paragraphs [E] and [G], respectively, are in error. In paragraph [E], the words "a hazardous material or" should be removed. Paragraph [G] incorrectly implies that certain large bulk packagings are not subject to registration. Paragraph [G] of the brochure should read as follows:

[G] Bulk packagings having capacities less than 3500 gallons (or 468 cubic feet), even when 5000 pounds or more of one hazard class is offered for transportation or transported (Note: this exception is in effect until July 1, 1993).

Clarification on Registration Statement Form—DOT Form F 5800.2

In the "Requirements" section and in section 5 (Prior Year Survey Information) of the registration statement form, in paragraph E, the words "a hazardous material or" should be removed. Paragraph E should read:

E. Offered or transported in commerce a shipment of 2,170 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

Applicability Provisions of Paragraphs (d) and (e) of § 107.601

RSPA has received hundreds of telephone calls from persons who are confused about the bulk packaging exception in paragraph (e) and how it relates to paragraph (d). The definition of bulk packaging is found in § 171.8 of the Hazardous Materials Regulations. A bulk packaging is defined as a packaging other than a vessel or a barge which has no intermediate form of containment and has:

(1) A maximum capacity greater than 119 gallons (450 liters) for liquids;

(2) A maximum net mass greater than 882 pounds (400 kg) for solids; or

(3) A water capacity greater than 1000 pounds (454 kg) for gases.

It is important to note that paragraphs (d) and (e) of § 107.601 are separate provisions. The bulk packaging exception in paragraph (e) applies only to the provisions of paragraph (e) and provides no exception to the bulk packaging registration requirements in paragraph (d).

Under paragraph (d) of § 107.601, any hazardous material offered for transportation or transported in a bulk packaging having a capacity equal to or greater than 3500 gallons (or greater than 468 cubic feet) is subject to registration requirements, even when placards are not required.

Under paragraph (e) of § 107.601, a hazardous material in a bulk packaging, container or tank having a capacity of less than 3500 gallons (or less than or equal to 468 cubic feet) is excepted from the registration requirements until July 1, 1993. Therefore, until July 1, 1993, paragraph (e) only applies to a shipment of hazardous materials in non-bulk packagings which: (1) Has a gross weight of 5000 pounds or more of one hazard class; (2) requires placarding; and (3) is loaded at one facility.

Aggregate Quantities Under § 107.601(e)

If an offeror or transporter loads a shipment at one facility consisting of 3000 pounds gross weight of one hazard class and 3000 pounds gross weight of another hazard class, both hazard classes require placards. However, this shipment is not subject to the § 107.601(e) registration requirements because the shipment must be 5000 pounds or more of one hazard class, not an aggregate quantity of different hazard classes.

If a shipment consisting of 3000 pounds gross weight of one hazard class is loaded at Facility A and is then transported to Facility B where another 3000 pounds gross weight of the same hazard class is loaded, this shipment is not subject to the registration requirements. Under § 107.601(e), there must be a one hazard class offering of 5000 pounds gross weight or more that is loaded at one facility.

Applicability of the Term "Person"

RSPA has received numerous inquiries as to how companies having diverse branches or plant locations must register. As discussed in the preamble to the final rule and also as defined under 49 App. U.S.C. 1802, the term "person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise.

Each separately incorporated subsidiary subject to § 107.601 must

register and pay a fee separate from its parent company. However, a parent company may submit separate registration statements on behalf of, and for, each of its subsidiaries subject to the registration program (and itself, if also subject to the registration program) and enclosed one combined registration fee payment.

If branch offices or plant locations of a company are not separately incorporated, the company is required to submit only one registration statement and pay a single fee. However, the registration statement must indicate each state in which a covered activity took place.

Persons Excepted From Registration and Fee Requirements

Agencies of the Federal Government, agencies of States, agencies of political subdivisions of States, employees of such agencies with respect to their official duties, and employees of a "hazmat employer," including owner-operators of motor vehicles under a 30-day or longer lease to registered motor carriers, are excepted from the registration requirements.

A farmer engaging in any of the covered activities must register and pay a fee. However, there has been some confusion about the applicability of the rule to farmers and other persons offering or transporting hazardous materials weighing more than 5,000 pounds in a "small" bulk packaging, container or tank (i.e., with a capacity less than 3,500 gallons), such as a nurse tank. Until July 1, 1993, a nurse tank (which is limited to 3,000 gallons or less under 49 CFR 173.315(m)) is not subject to registration requirements.

A two-year delay of application is provided to foreign offerors, including foreign subsidiaries of domestic corporations and foreign governments performing an offeror function.

If a person engaged in any of the covered activities between July 1 and August 31, 1992, but does not intend to engage in any of these activities after August 31, 1992, that person is not subject to the registration requirements. Even though the registration year is July 1, 1992 through June 30, 1993, the registration requirements do not go into effect until August 31, 1992. Activities conducted prior to this date do not require registration.

Persons Not Excepted From Registration and Fee Requirements

As mandated by HMTUSA, the registration requirements apply to intrastate offerors and transporters in all transportation modes. Therefore, even if a company only ships in intrastate commerce and is not subject to the Department's Hazardous Materials Regulations (49 CFR parts 171–180), it is subject to the registration requirements.

Federal contractors are not excepted from the registration and fee program. Likewise, offerors or transporters of hazardous waste are required to register if they are engaged in any activity subject to the registration requirements.

Foreign carriers are required to register by the initial deadline of August 31, 1992. Foreign carriers include Canadian or Mexican motor or rail carriers, foreign airline carriers, and merchant vessel carriers transporting any of the specified hazardous materials in or on U.S. territory (see § 171.8 definition of "United States"), including airspace and territorial seas.

Issued in Washington, DC, on July 23, 1992, under the authority delegated in 49 CFR part 1.

Alan I. Roberts,

Associate Administrator, Hazardous Materials Safety.

[FR Doc. 92–17770 Filed 7–27–92; 8:45 am]

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The President

Presidential Determination No. 92-35—Determination on Extending the Agreement for Cooperation Between the United States of America and the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy

Proclamation 6461—Buffalo Soldiers Day, 1992

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Title 3—

The President

Presidential Determination No. 92–35 of June 30, 1992

Determination on Extending the Agreement for Cooperation Between the United States of America and the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed agreement to extend for a period of 10 years the Agreement for Cooperation Between the United States of America and the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy, signed at Washington June 30, 1980, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement for an additional period of 10 years will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement on extension and authorize its execution.

George Bush

THE WHITE HOUSE,
Washington, June 30, 1992.

[FR Doc. 92–18009
Filed 7–27–92; 10:17 am]
Billing code 3195–01–M

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Proclamation 6461 of July 24, 1992

Buffalo Soldiers Day, 1992

By the President of the United States of America

A Proclamation

On July 28, 1866, recognizing the contributions of the more than 180,000 black Americans who fought to preserve the Union during the Civil War, the United States Congress established six regular Army regiments of black enlisted soldiers. Of those six units, the 9th and 10th Cavalry regiments eventually became two of the most highly decorated units in American military history. Despite suffering the discrimination and the injustice that plagued all black Americans during the days of segregation, the members of the 9th and 10th Cavalry regiments served with pride and distinction. On this occasion, we celebrate their outstanding legacy of service.

Organized at Greenville, Louisiana, and at Fort Leavenworth, Kansas, respectively, the 9th and 10th Cavalry regiments played key roles in the development of the western United States. In addition to protecting settlers as they crossed the frontier via wagon trains and railroads, these skilled horsemen and soldiers assisted in the construction of roads and forts and in the pursuit of cattle thieves and other outlaws. During a battle in 1867 near Fort Hays, Kansas, Cheyenne warriors remarked that the black American soldiers fought as fiercely and with as much strength as buffaloes. Hence, members of the 9th and 10th Cavalries proudly adopted the name "Buffalo Soldiers" as a badge of honor.

While the Buffalo Soldiers blazed many significant trails in the history of the American frontier, their achievements were not limited to the western United States. Members of the 9th and 10th Cavalry regiments also served in Virginia, Vermont, and New York, and answered the call to duty in places as far-flung as Cuba, Mexico, and the Philippines. They served alongside Theodore Roosevelt and his legendary Rough Riders at San Juan Hill, and they continued to prove their courage and mettle through two world wars and the conflict in Korea. By the time of their integration in 1952, the Buffalo Soldiers had earned well over a dozen Congressional Medals of Honor, as well as numerous campaign and unit citations. From their ranks emerged several famed military leaders, including General Benjamin O. Davis, Sr., Colonel Charles Young, and Lieutenant Henry Flipper, the first black graduate of West Point.

Although they often received the worst food and equipment and labored without the respect and recognition that were their due, the Buffalo Soldiers served proudly and with a standard of bravery and skill worthy of the United States Army. Their achievements in the face of adversity not only helped to open doors for younger black Americans, in the military and in society as a whole, but also set a timeless example for all those who wear our Nation's uniform. Today, we celebrate the great legacy of the Buffalo Soldiers and acknowledge their special place of honor in the history of the United States.

The Congress, by Senate Joint Resolution 92, has designated July 28, 1992, as "Buffalo Soldiers Day" and has requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 28, 1992, as Buffalo Soldiers Day. I urge all Americans to observe this day with appropriate programs and activities in honor of the black Americans who served our Nation as members of the 9th and 10th Cavalry regiments.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-18016
Filed 7-27-92; 10:37 am]
Billing code 3195-01-M

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S. 1150/P.L. 102-325

Higher Education Amendments of 1992. (July 23, 1992; 106 Stat. 448; 395 pages) Price: $12.00

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The Weekly Compilation of **Presidential Documents**

Administration of George Bush

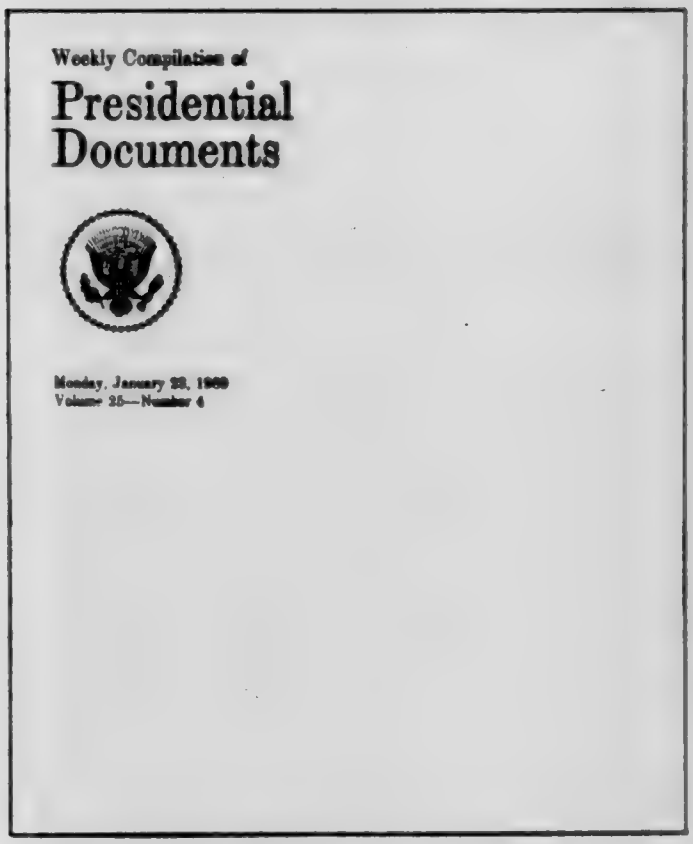

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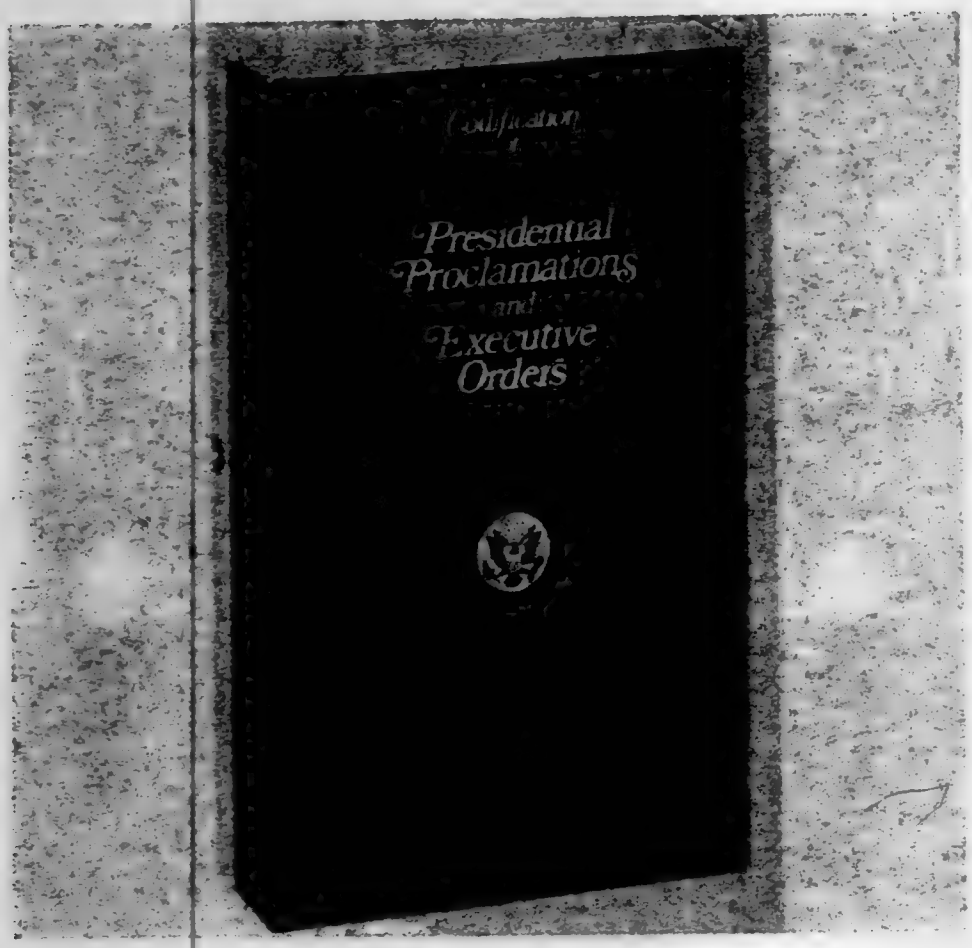

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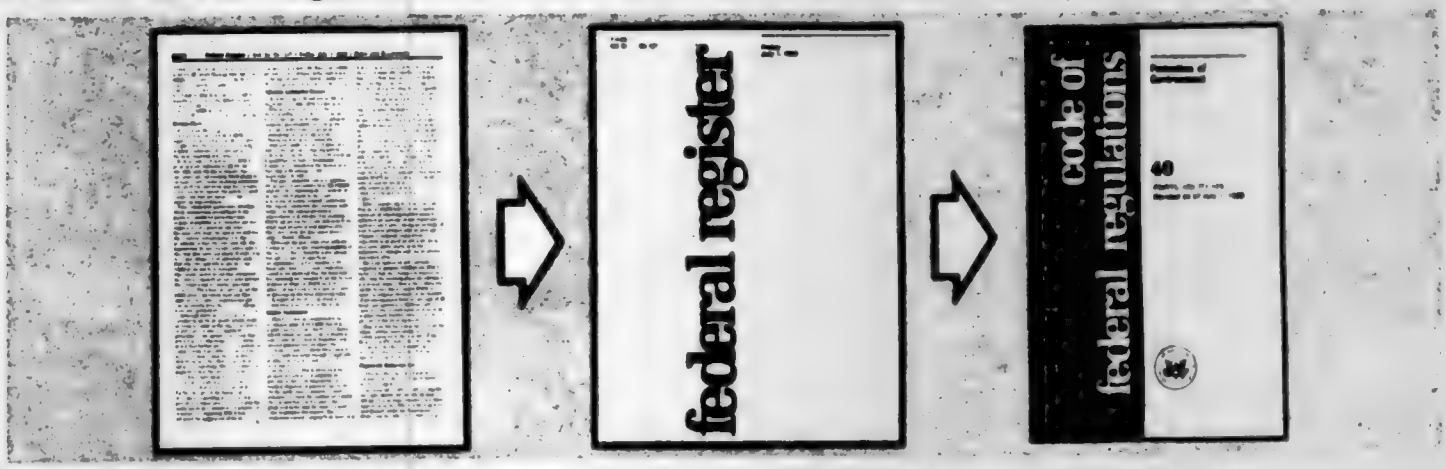

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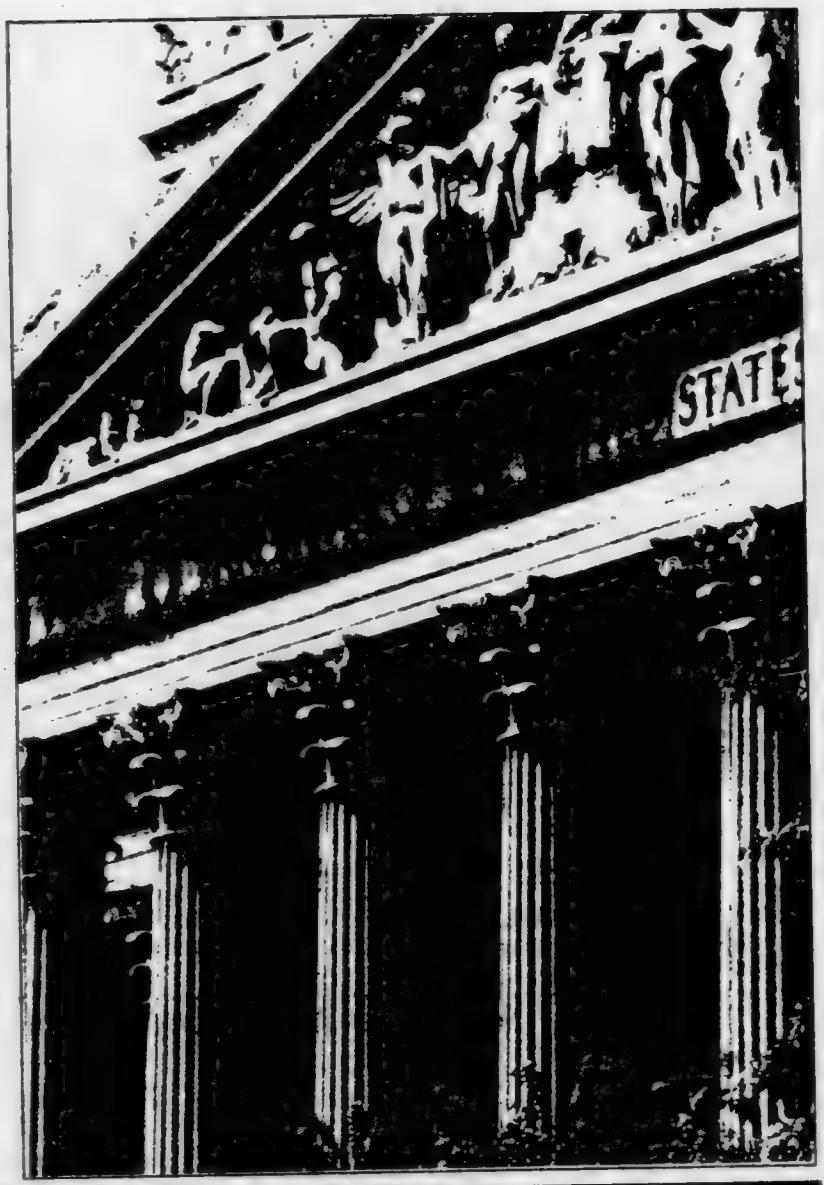

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Rules and Regulations

Federal Register
Vol. 57, No. 146
Wednesday, July 29, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AC96

Sugar

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the Sugar Price Support Program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 206 of The Agricultural Act of 1949 (the 1949 Act), as amended. The national (weighted-average) loan rate for 1992-crop raw cane sugar will be 18.00 cents per pound. The national (weighted-average) loan rate for 1992-crop refined beet sugar will be 23.33 cents per pound.

DATES: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Timothy R. Murray, Sweeteners Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) P.O. Box 2415, Washington, DC 20013, telephone 202–690–1891.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and it has been determined to be "major" since this action may have an annual effect on the economy of $100 million or more. A regulatory impact analysis is available from the above-mentioned contact.

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this final rule applies are Commodity Loans and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the price-support loan program has been completed. It has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

The amendments to 7 CFR part 1435 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule: Preempt state laws to the extent such laws are consistent with the provisions of this final rule; are not retroactive; and are not subject to administrative appeal remedies.

Background

This final rule amends 7 CFR part 1435 to set forth the 1992 national price support levels for use in administering CCC sugar price support programs.

Section 206 of the 1949 Act provides that the Secretary of Agriculture is required to support the price of the 1991 through 1995 crops of sugar beets and sugarcane through nonrecourse loans. Section 206 further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18.00 cents per pound, raw value, and the price of domestically grown sugar beets at such level as will reflect the ratio of sugar beet grower returns to the returns of sugarcane growers.

List of Subjects in 7 CFR Part 1435

Loan programs-agriculture, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is amended as follows:

PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

2. In § 1435.4, paragraph (b) is revised to read as follows:

§ 1435.4 Method of support and loan rates.

* * * * *

(b) The basic (weighted average) loan rates for the 1992 crops of domestically grown:

(1) Sugarcane shall be 18 cents per pound of raw cane sugar; and

(2) Sugar beets shall be 23.33 cents per pound.

* * * * *

Signed July 23, 1992, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–17847 Filed 7–28–92; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1369–92]

Adding Orlando, Florida to the List of Ports of Entry To Accept Application for Direct Transit Without Visas

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Orlando, Florida, to the list of ports of entry at 8 CFR 214.2(c)(1) where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States as a direct transit without visa. This change is necessary to accommodate the

increase in international commerce serving Orlando, Florida.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Gottlieb, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–2660.

SUPPLEMENTARY INFORMATION: This final rule adds Orlando, Florida, to the list of ports designated at 8 CFR 214.2(c)(1) as ports where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made. The Orlando International Airport in Orlando, Florida, has added international passenger service, specifically arrivals transiting between Western Europe and Central and South America. In the context of the increase in international activity at Orlando, the airport authority wants to ensure that they can accommodate these commercial air passengers.

Compliance with the provisions of 5 U.S.C. 553 for notice of proposed rulemaking and delayed effective date is unnecessary, because this rule relates to agency management. See 5 U.S.C. 553(a)(2).

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Passports and visas, Ports of entry, Travel restrictions.

Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 8 CFR part 2.

§ 214.2 [Amended]

2. As designated in § 214.2 paragraph (c)(1), the listing of ports of entry authorized to accept transit without visa applications is amended by adding "Orlando, FL," in alphabetical sequence immediately after "Norfolk, VA."

Dated: June 23, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–17849 Filed 7–28–92; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 72, 73, and 75

RIN 3150–AD03

Minor Amendments to the Physical Protection Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that cover the physical protection of special nuclear material. These amendments will (1) supplement the definitions section, (2) delete action dates that no longer apply, (3) correct outdated terms and cross references, (4) clarify wording that is susceptible to differing interpretations, (5) correct typographical errors, and (6) make other minor changes. The amendments are the result of a systematic review of NRC's safeguards regulations.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Stanley P. Turel, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3739; Priscilla Dwyer, Domestic Safeguards Branch, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2478; or Donald M. Carlson, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–3212.

SUPPLEMENTARY INFORMATION: The NRC Safeguards Interoffice Review Group has conducted a systematic review of the Agency's safeguards regulations and guidance documents to identify areas in the regulations that are out of date, inconsistent, or susceptible to differing interpretations. In doing so, the review group identified other areas in the regulations where minor changes are warranted. The NRC published in the **Federal Register** on August 15, 1989 (54 FR 33570), proposed amendments consisting of minor corrections and changes to its regulations identified by the review group that cover the physical protection of special nuclear material. The comment period ended on September 29, 1989. The changes are summarized here with a brief discussion.

1. The substance of paragraphs (b), (c), and (d) of 10 CFR 73.40 has been moved to appendix C of 10 CFR part 73 and combined with the safeguards contingency plan specifications already there. The requirement for having a safeguards contingency plan is included in each of the sections of the regulations covering security requirements for the specific class of licensee (i.e., §§ 73.20, 73.25, 73.26, 73.40, 73.46, 73.55, 73.60).

2. To avoid possible confusion, definitions of the commonly used terms Category I, Category II, and Category III have been added to the definitions sections of 10 CFR parts 70 and 73.

A formula quantity of strategic special nuclear material is sometimes referred to as a Category I quantity of material; special nuclear material of moderate strategic significance is sometimes referred to as a Category II quantity of material; and special nuclear material of low strategic significance is sometimes referred to as a Category III quantity of material. The current regulations do not include these category designations, although they are sometimes used.

3. Inconsistencies among the general auditing requirements have been removed for the safeguards contingency plans and physical security programs of transportation and fuel cycle licensees who possess Category I material.

Inconsistencies in both the content of the audits and resultant follow-up actions have been eliminated. The record retention period for results of these audits is being made consistent at 3 years.

4. A definition for the term "contiguous sites" has been added to 10 CFR parts 70 and 73. In the final definition, the words "* * * means locations subject to the control of a licensee, * * *" have been grammatically changed to read "* * * means licensee controlled locations, * * *" In addition, the words "* * * and for the possession, use, or storage of special nuclear material * * *" have been deleted from the definition since they generally appear in the introductory language of applicable regulations. Action dates that have passed have been eliminated. The outdated term "industrial sabotage" has been replaced by the current term "radiological sabotage." Incorrect

references to parts of the regulations that have been moved or deleted have been corrected. Paragraph designations in references, in other parts of the regulations, to definitions in § 70.4 have been removed because those designations were deleted in an amendment published in the **Federal Register** on April 28, 1989 (54 FR 14051). Several areas in the regulations have been clarified where the wording was susceptible to differing interpretations. The notification requirement for changes to the safeguards contingency plan that do not decrease the plan's effectiveness has been revised to require that the original be sent to the NRC headquarters office with a copy to the regional office, instead of vice versa. Finally, several typographical errors have been corrected.

Summary of Public Comments

Three letters of comment were received: Two from nuclear power plant licensees and one from NUMARC, an umbrella organization of the nuclear power industry whose membership includes every utility responsible for constructing or operating a commercial nuclear power plant in the United States. Copies of comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

All three commenters addressed only the amendment that would restore the sentence inadvertently omitted, while amending the physical protection requirements in 1986, from § 73.55(d), Access Requirements. It reads:

"Access to vital areas for the purpose of general familiarization and other nonwork-related activities may not be authorized except for good cause shown to the licensee." This sentence follows the requirement in § 73.55(d)(7)(i) that the licensee "Establish an access authorization system to limit unescorted access to vital areas during non-emergency conditions to individuals who require access in order to perform their duties."

The first commenter stated that the restrictions, presumably made explicit by the inserted sentence, should be withdrawn to allow tours with the provision of appropriate security measures to ensure plant safety and that "This change would limit access to nuclear plant vital areas even when under escort." Another commenter asserted that the inserted sentence "needs clarification" but did not specify what additional clarification was required. The third commenter stated that it would be beneficial if a definition of "good cause" were provided by the Commission in the rule and if additional guidance were provided as to what constitutes nonwork-related activities.

The NRC agrees that the subject sentence is not clear, particularly with respect to how it applies to escorted persons, and has decided not to reinsert the sentence. As stated in item 5 of the Supplementary Information published with the proposed rule, the NRC was concerned that the inadvertent omission of the sentence would be construed as a " 'signal' that vital areas could be 'opened up' to 'public sightseeing tours' or 'open house visits' without close licensee oversight." The NRC continues to be concerned about unnecessary escorted personnel traffic in vital areas, especially the control room, but considers that licensee security plans generally provide an adequate basis for the control of such practice. The NRC concludes that licensee security plans, in implementing 10 CFR 73.55(d)(7), would not permit licensees to grant access to persons, either unescorted or escorted, who have no legitimate purpose for such access. Further, prior to granting escorted access, licensees would consider the number of visitors each escort would be allowed to monitor and other controls. Means of achieving the purpose of the visit without entering vital areas also would be considered (e.g., touring the control room simulator rather than the control room). Examples of legitimate small tours, which might include brief access to vital areas, are visits by government officials, the press, or local science teachers. In summary, visitors should not be permitted access to vital areas at operating sites unless there is a good reason and due consideration is given to plant and personnel safety and radiological concerns.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved under the Office of Management and Budget approval number 3150-0009 for part 70, approval number 3150-0132 for part 72, approval number 3150-0002 for part 73, and approval number 3150-0055 for part 75.

Regulatory Analysis

These minor amendments impose no new restrictions or requirements, and therefore, have no significant impact. Accordingly, a regulatory analysis is considered not necessary and has not been prepared.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendments, as promulgated, are very minor in nature and the impact on any licensee is minimal. In the matter of reporting certain changes to the security program, the amendments merely reverse who receives the original and who receives the copy. The other changes are of an administrative nature and, therefore, do not alter the current implementation of the regulations by a licensee.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR part 50 licensees. Therefore, a backfit analysis is not required for this final rule.

List of Subjects

10 CFR Part 70

Criminal penalties, Hazardous materials—Transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Criminal penalties, Hazardous materials—Transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 70, 72, 73, and 75.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22(a), (b), (d)–(k), 70.24 (a) and (b), 70.32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. 2201(b), 2201(i) and 2201(o)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 70.4 is amended by adding a definition for "Contiguous sites" in proper alphabetical sequence, revising paragraph (2) of the definition "Plutonium processing and fuel fabrication plant," revising definitions "Formula quantity," "Special nuclear material of low strategic significance," and "Special nuclear material of moderate strategic significance" to read as follows:

§ 70.4 Definitions.

* * * * *

Contiguous sites means licensee controlled locations, deemed by the Commission to be in close enough proximity to each other, that the special nuclear material must be considered in the aggregate for the purpose of physical protection.

* * * * *

Formula quantity means strategic special nuclear material in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U–235) + 2.5 (grams U–233 + grams plutonium). This class of material is sometimes referred to as a Category I quantity of material.

* * * * *

Plutonium processing and fuel fabrication plant * * *

(2) Research and development activities involving any of the operations described in paragraph (1) of this definition except for research and development activities utilizing unsubstantial amounts of plutonium.

* * * * *

Special nuclear material of low strategic significance means:

(1) Less than an amount of special nuclear material of moderate strategic significance as defined in paragraph (1) of the definition of strategic nuclear material of moderate strategic significance in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in U-235 isotope) or 15 grams of uranium-233 or 15 grams of plutonium or the combination of 15 grams when computed by the equation, grams = (grams contained U-235) + (grams plutonium) + (grams U-233); or

(2) Less than 10,000 grams but more than 1,000 grams of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope); or

(3) 10,000 grams or more of uranium-235 (contained in uranium enriched above natural but less than 10 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category III quantity of material.

* * * * *

Special nuclear material of moderate strategic significance means:

(1) Less than a formula quantity of strategic special nuclear material but more than 1,000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or more than 500 grams of uranium-233 or plutonium, or in a combined quantity of more than 1,000 grams when computed by the equation, grams = (grams contained U-235) + 2 (grams U-233 + grams plutonium); or

(2) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category II quantity of material.

* * * * *

3. In § 70.19, paragraph (a)(2) is revised to read as follows:

§ 70.19 General license for calibration or reference sources.

(a) * * *

(2) Any Government agency as defined in § 70.4 that holds a specific license issued by the Commission that authorizes it to receive, possess, use, or transfer byproduct material, source material, or special nuclear material; and

* * * * *

4. In § 70.22, paragraphs (h)(1) and (k) are revised to read as follows:

§ 70.22 Contents of applications.

* * * * *

(h)(1) Each application for a license to possess or use at any site or contiguous sites subject to licensee control, a formula quantity of strategic special nuclear material as defined in § 70.4, other than a license for possession or use of this material in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter, must include a physical security plan consisting of two parts. Part I must address vital equipment, vital areas, and isolation zones, and must demonstrate how the applicant plans to meet the requirements of §§ 73.20, 73.40, 73.45, 73.46, 73.50, 73.60, 73.70, and 73.71 of this chapter in the conduct of the activity to be licensed, including the identification and description of jobs as required by 10 CFR 11.11(a). Part II must list tests, inspections, and other means to demonstrate compliance with such requirements.

* * * * *

(k) Each application for a license to possess or use at any site or contiguous sites subject to licensee control, special nuclear material of moderate strategic significance or 10 kg or more of special nuclear material of low strategic significance as defined under § 70.4, other than a license for possession or use of this material in the operation of a nuclear power reactor licensed pursuant to part 50 of this chapter, must include a physical security plan that demonstrates how the applicant plans to meet the requirements of paragraphs (d), (e), (f), and (g) of § 73.67 of this chapter, as appropriate. The licensee shall retain a copy of this physical security plan as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material under each license, and if any portion of

the plan is superseded, retain that superseded portion of the plan for 3 years after the effective date of the change.

5. In § 70.32, paragraph (g) is revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(g) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C to part 73 of this chapter for bringing about the actions and decisions contained in the Responsibility Matrix of its safeguards contingency plan. The licensee shall retain the current safeguards contingency plan procedures as a record for the entire period during which the licensee possesses the appropriate type and quantity of special nuclear material under each license for which the procedures were developed and, if any portion of the plan is superseded, retain that superseded portion for 3 years after the effective date of the change. The licensee shall not make a change that would decrease the safeguards effectiveness of the first four categories of information (i.e., Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in any licensee safeguards contingency plan prepared pursuant to §§ 70.22(g), 70.22(j), 72.184, 73.20(c), 73.26(e)(1), 73.46(h)(1), or 73.50(g)(1) of this chapter without the prior approval of the NRC. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee may make changes to the licensee safeguards contingency plan without prior NRC approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee must maintain each change to the plan made without prior approval as a record during the period for which possession of a formula quantity of special nuclear material is authorized under a license and retain the superseded portion for 3 years after the effective date of the change and shall furnish a report containing a description of each change within 60 days after the change is made to the Director of Nuclear Material Safety and Safeguards, with a copy to the Regional Administrator of the appropriate NRC Regional Office as specified in appendix A to part 73 of this chapter.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

6. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72 (b), (c), 72.74 (a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186, are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44, (a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90(a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102 (c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b) (3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.58, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234(e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 72.184, paragraph (a) is revised to read as follows:

§ 72.184 Safeguards contingency plan.

(a) The requirements of the licensee's safeguards contingency plan for responding to threats and radiological sabotage must be as defined in appendix C to part 73 of this chapter. This plan must include Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix, the first four categories of information relating to nuclear facilities licensed under part 50 of this chapter. (The fifth and last category of information, Procedures, does not have to be submitted for approval.)

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

8. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); secs. 201 as amended 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161). Section 73.37(f) is also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B), and (h), 73.55(h)(2) and (4)(iii)(B), 73.57, 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Section 73.2 is amended by adding a definition for "Contiguous sites" in proper alphabetical sequence, and revising the definitions of "Formula quantity," "Special nuclear material of moderate strategic significance," and "Special nuclear material of low strategic significance" to read as follows:

§ 73.2 Definitions.

* * * * *

Contiguous sites means licensee controlled locations, deemed by the Commission to be in close enough proximity to each other, that the special nuclear material must be considered in

the aggregate for the purpose of physical protection.

* * * * *

Formula quantity means strategic special nuclear material in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium). This class of material is sometimes referred to as a Category I quantity of material.

* * * * *

Special nuclear material of low strategic significance means:

(1) Less than an amount of special nuclear material of moderate strategic significance as defined in paragraph (1) of the definition of strategic nuclear material of moderate strategic significance in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in U-235 isotope) or 15 grams of uranium-233 or 15 grams of plutonium or the combination of 15 grams when computed by the equation, grams = (grams contained U-235) + (grams plutonium) + (grams U-233); or

(2) Less than 10,000 grams but more than 1,000 grams of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope); or

(3) 10,000 grams or more of uranium-235 (contained in uranium enriched above natural but less than 10 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category III quantity of material.

* * * * *

Special nuclear material of moderate strategic significance means:

(1) Less than a formula quantity of strategic special nuclear material but more than 1,000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or more than 500 grams of uranium-233 or plutonium, or in a combined quantity of more than 1,000 grams when computed by the equation, grams = (grams contained U-235) + 2 (grams U-233 + grams plutonium); or

(2) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category II quantity of material.

* * * * *

10. In § 73.20, paragraph (b)(3) is redesignated as paragraph (b)(4), a new paragraph (b)(3) is added, and paragraphs (b)(2) and (c) are revised to read as follows:

§ 73.20 General performance objective and requirements.

* * * * *

(b) * * *

(2) Is designed with sufficient redundancy and diversity to ensure maintenance of the capabilities described in §§ 73.25 and 73.45;

(3) Includes a safeguards contingency capability that can meet the criteria in appendix C to this part "Licensee Safeguards Contingency Plans;" and

* * * * *

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall establish, maintain, and follow NRC-approved safeguards physical protection and safeguards contingency plans that describe how the licensee will comply with the requirements of paragraphs (a) and (b) of this section.

11. In § 73.26, paragraph (h)(6) is revised to read as follows:

§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.

* * * * *

(h) *Test and Maintenance Programs.*

* * *

(6) The transportation security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include an audit of transportation security procedures and practices, an evaluation of the effectiveness of the transportation physical protection system, an audit of the transportation physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the review, management's findings on whether the transportation security program is currently effective, and any actions taken as a result of recommendations from prior reviews, must be documented in a report to the responsible organization management and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. These reports must be maintained in an auditable form, available for inspection for a period of 3 years.

* * * * *

§ 73.40 [Amended]

12. In § 73.40, paragraphs (b), including footnote 1, (c), and (d) and the designation (a) are removed.

13. In § 73.46, paragraphs (g)(6) and (h)(1) are revised to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(g) *Test and Maintenance Programs.*

* * *

(6) The security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The security program review must include an audit of security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the security program review, and any actions taken, must be documented in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operations. These reports must be maintained in an auditable form, available for inspection for a period of 3 years.

(h) *Contingency and response plans and procedures.* (1) The licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the strategic special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plans." Contingency plans must include, but not limited to, the response requirements listed in paragraphs (h)(2) through (h)(5) of this section. The licensee shall retain the current safeguards contingency plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain that superseded portion for 3 years after the effective date of change.

* * * * *

14. In § 73.50, paragraphs (g)(1) and (h) are revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

* * * * *

(g) *Response requirement.* (1) The licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the special nuclear material

and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plans." The licensee shall retain the current safeguards contingency plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain the superseded portion for 3 years after the effective date of the change.

* * * * *

(h) Each licensee shall establish, maintain, and follow an NRC-approved training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of paragraph (a)(4) of this section.

15. In § 73.55, paragraphs (b)(4)(ii), (g)(4), and (h)(1) are revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) * * *

(4) * * *

(ii) Each licensee shall establish, maintain, and follow an NRC-approved training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of this paragraph. The licensee shall maintain the current training and qualifications plan as a record until the Commission terminates the license for which the plan was developed and, if any portion of the plan is superseded, retain that superseded portion for 3 years after the effective date of the change. The training and qualifications plan must include a schedule to show how all security personnel will be qualified 2 years after the submitted plan is approved. The training and qualifications plan must be followed by the licensee 60 days after the submitted plan is approved by the NRC.

* * * * *

(g) * * *

(4) The security program must be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The security program review must include an audit of security procedures and practices, an evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results and recommendations of the security program review, management's findings on whether the security program is currently effective, and any actions taken as a result of recommendations from prior program reviews must be documented in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. These reports must be maintained in an auditable form, available for inspection, for a period of 3 years.

(h) *Response requirement.* (1) The licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in appendix C to this part, "Licensee Safeguards Contingency Plans."

* * * * *

16. In § 73.60, the introductory text and paragraph (e) are revised to read as follows:

§ 73.60 Additional requirements for the physical protection of special nuclear material at nonpower reactors.

Each nonpower reactor licensee who, pursuant to the requirements of part 70 of this chapter, possesses at any site or contiguous sites subject to control by the licensee uranium–235 (contained in uranium enriched to 20 percent or more in the U–235 isotope), uranium–233, or plutonium, alone or in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U–235) + 2.5 (grams U–233 + grams plutonium), shall protect the special nuclear material from theft or diversion pursuant to the requirements of paragraphs 73.67 (a), (b), (c), and (d), in addition to this section, except that a licensee is exempt from the requirements of paragraphs (a), (b), (c), (d), and (e) of this section to the extent that it possesses or uses special nuclear material that is not readily separable from other radioactive material and that has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.

* * * * *

(e) *Response requirement.* Each licensee shall establish, maintain, and follow an NRC-approved safeguards contingency plan for responding to threats, thefts, and radiological sabotage related to the special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans."

* * * * *

17. In § 73.67, the introductory text of paragraphs (c), (d), and (f) and paragraph (c)(2) are revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(c) Each licensee who possesses, uses, transports, or delivers to a carrier for transport special nuclear material of moderate strategic significance, or 10 kg or more of special nuclear material of low strategic significance shall:

* * * * *

(2) Within 30 days after the plan submitted pursuant to paragraph (c)(1) of this section is approved, or when specified by the NRC in writing, implement the approved security plan.

(d) *Fixed site requirements for special nuclear material of moderate strategic significance.* Each licensee who possesses, stores, or uses quantities and types of special nuclear material of moderate strategic significance at a fixed site or contiguous sites, except as allowed by paragraph (b)(2) of this section and except those who are licensed to operate a nuclear power reactor pursuant to part 50, shall:

* * * * *

(f) *Fixed site requirements for special nuclear material of low strategic significance.* Each licensee who possesses, stores, or uses special nuclear material of low strategic significance at a fixed site or contiguous sites, except those who are licensed to operate a nuclear power reactor pursuant to part 50, shall:

* * * * *

18. In § 73.70, paragraph (c) is revised to read as follows:

§ 73.70 Records.

* * * * *

(c) A register of visitors, vendors, and other individuals not employed by the

licensee pursuant to §§ 73.46(d)(13), 73.55(d)(6), or 73.60. The licensee shall retain this register as a record, available for inspection, for 3 years after the last entry is made in the register.

* * * * *

19. In appendix B to part 73, the Introduction is revised to read as follows:

Appendix B to Part 73—General Criteria for Security Personnel

* * * * *

Introduction

Security personnel who are responsible for the protection of special nuclear material on site or in transit and for the protection of the facility or shipment vehicle against radiological sabotage should, like other elements of the physical security system, be required to meet minimum criteria to ensure that they will effectively perform their assigned security-related job duties. In order to ensure that those individuals responsible for security are properly equipped and qualified to execute the job duties prescribed for them, the NRC has developed general criteria that specify security personnel qualification requirements.

These general criteria establish requirements for the selection, training, equipping, testing, and qualification of individuals who will be responsible for protecting special nuclear materials, nuclear facilities, and nuclear shipments.

When required to have security personnel that have been trained, equipped, and qualified to perform assigned security job duties in accordance with the criteria in this appendix, the licensee must establish, maintain, and follow a plan that shows how the criteria will be met. The plan must be submitted to the NRC for approval and must be implemented within 30 days after approval by the NRC unless otherwise specified by the NRC in writing.

* * * * *

20. In appendix C to part 73, the Introduction is revised and a new section on Audit and Review is added to read as follows:

Appendix C to Part 73—Licensee Safeguards Contingency Plans

Introduction

A licensee safeguards contingency plan is a documented plan to give guidance to licensee personnel in order to accomplish specific defined objectives in the event of threats, thefts, or radiological sabotage relating to special nuclear material or nuclear facilities licensed under the Atomic Energy Act of 1954, as amended. An acceptable safeguards contingency plan must contain: (1) a predetermined set of decisions and actions to satisfy stated objectives, (2) an identification of the data, criteria, procedures, and mechanisms necessary to efficiently implement the decisions, and (3) a stipulation of the individual, group, or organizational entity responsible for each decision and action.

The goals of licensee safeguards contingency plans for responding to threats, thefts, and radiological sabotage are:

(1) to organize the response effort at the licensee level,

(2) to provide predetermined, structured responses by licensees to safeguards contingencies,

(3) to ensure the integration of the licensee response with the responses by other entities, and

(4) to achieve a measurable performance in response capability.

Licensee safeguards contingency planning should result in organizing the licensee's resources in such a way that the participants will be identified, their several responsibilities specified, and the responses coordinated. The responses should be timely.

It is important to note that a licensee's safeguards contingency plan is intended to be complementary to any emergency plans developed pursuant to appendix E to part 50 or to § 70.22(i) of this chapter.

* * * * *

Audit and Review

At intervals not to exceed 12 months, the licensee shall provide for a review of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include an audit of safeguards contingency procedures and practices, and an audit of commitments established for response by local law enforcement authorities.

The licensee shall document the results and the recommendations of the safeguards contingency plan review, management findings on whether the safeguards contingency plan is currently effective, and any actions taken as a result of recommendations from prior reviews in a report to the licensee's plant manager and to corporate management at least one level higher than that having responsibility for the day-to-day plant operation. The report must be maintained in an auditable form, available for inspection for a period of 3 years.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

21. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201; sec. 201, 88 Stat. 1242 as amended, (42 U.S.C. 5841). Section 75.4 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

22. In § 75.4, paragraph (f)(1) is revised to read as follows:

§ 75.4 Definitions.

* * * * *

(f) *Effective Kilogram* * * *

(1) For special nuclear material: The amount specified in § 70.4 of this chapter.

* * * * *

Dated at Rockville, Maryland this 14th day of July, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-17666 Filed 7-28-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 561, 563, 563c, 567, and 571

[No. 92-26]

RIN 1550-AA01

Miscellaneous Capital and Capital-Related Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations by modifying or removing obsolete or incorrect references to its regulations setting minimum regulatory capital requirements for savings associations. The OTS is also correcting citation errors and adding language clarifying the provisions contained in its risk-based capital regulation and the capital distribution regulation. The final rule also clarifies the treatment of sales with recourse and maturing capital instruments for purposes of the capital regulations and removes the accounting provisions for deferred loan losses.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: John Connolly, Program Manager, (202) 906-6465, Deborah Kennedy, Program Analyst, (202) 906-7324, Policy; Theresa Stark, Senior Attorney, (202) 906-7054, Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On November 8, 1989 the OTS published an interim final rule establishing the minimum regulatory capital requirements for savings associations as required by section 5(t) of the Home Owners' Loan Act, 12 U.S.C. 1464(t). 54

FR 46845 (Nov. 8, 1989). Because the capital regulations were promulgated as an interim final rule, the OTS requested further comment on all aspects of the rule.

On November 30, 1989 the OTS published a final rule transferring and recodifying regulations of the former Federal Home Loan Bank Board (Bank Board) and the Federal Savings and Loan Insurance Corporation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). 54 FR 49411 (Nov. 30, 1989). This rule changed, reorganized, and removed obsolete references from the OTS's regulations made necessary by the passage of FIRREA. It also incorporated the text of the interim final minimum regulatory capital regulation, which had been adopted before the recodification. Certain typographical and other technical errors appeared in part 567 as it was printed in one or both of these documents and have been codified into the Code of Federal Regulations.

The OTS is today amending its capital regulations to conform the regulatory language to the intent of the OTS as expressed in the preamble to the interim final rule and to correct technical errors. The OTS is also amending its accounting requirements as they relate to deferred loan losses and open-end management companies. The removal of these regulatory provisions was proposed as part of a larger group of amendments to the accounting and reporting requirements for thrifts published at 56 FR 13085 (March 29, 1991) to conform with the capital treatment of those items as explained in 54 FR 46845, 46862–3 (Nov. 8, 1989).

The amendments made today were proposed on April 16, 1991. Some of the proposed amendments to part 567 were purely technical, such as the addition of a comma or removal of a parenthesis to clarify the meaning of a paragraph. Several other amendments were proposed to clarify the regulations in accordance with the statements of policy contained in the preamble to the interim final rule. For example, the definition of "qualifying multifamily mortgage loan" was amended to indicate that multifamily loans must be first mortgage loans to meet the definition. The OTS also proposed conforming amendments in order that all regulations cross-referencing the capital requirements for savings associations would refer to the appropriate requirements under part 567. In addition to these amendments, the proposal introduced regulatory changes of a more substantive nature for comment, including a definition of the term "recourse" for capital purposes and those amendments proposed by the Office of the Comptroller of the Currency (OCC) to its capital requirements. 55 FR 42017 (Oct. 17, 1990).

I. Summary of Comments; OTS Response

The OTS received a total of 33 comment letters in response to its proposed capital and capital-related amendments. Those who submitted comments included: 15 savings associations; 13 trade associations; three law firms; one government corporation; and one member of the United States Senate. The OTS also reviewed and considered 19 comment letters received in response to the invitation to comment on the interim final capital rulemaking while preparing this final rule.

Today's amendments are meant to bring consistency to the capital requirements of 12 CFR part 567 and to other, existing regulations that are tied to capital. Today's rulemaking is not intended to modify or update substantive aspects of those regulations that may otherwise require such attention. Rather, the OTS will address the policy issues raised by these amendments in future rulemakings.

A. "In Compliance" With Capital Standards

The OTS received 30 comment letters regarding whether thrifts operating in compliance with a capital plan approved by the OTS should be deemed to be "in compliance" with their capital requirements. All of these commenters urged adoption of the position of the OCC, which is set forth at 12 CFR 3.7 (1992).[1] The commenters strongly urged that institutions with approved capital plans be deemed to be in compliance with capital requirements generally. Many suggested that OTS's regulatory concerns regarding individual thrifts be handled on a case-by-case basis at the time a particular thrift's capital plan is approved.

The commenters argued that negative consequences result from OTS's current policy, which is that an institution operating under an approved capital plan is not deemed to be in compliance with its capital requirements. The negative consequences most frequently mentioned were: (1) Thrifts' competitive disadvantage vis-a-vis banks in raising capital and attracting deposits; (2) the erosion of public confidence in thrift institutions operating under approved capital plans; and (3) the effect on contractual arrangements such as debentures, mortgage servicing arrangements, and bond and liability insurance.

Several commenters believed that the recovery of the thrift industry would be further hindered unless institutions with approved capital plans are deemed to be in compliance with their capital requirements. Many also argued that the legislative history of FIRREA supports adoption of the same policy as the OCC follows and adherence to the principle that no thrift should be deemed out of compliance with its capital requirements unless its plan has been affirmatively rejected by the OTS.

After careful consideration of these comments, the OTS has determined to modify its policy as follows: A thrift will be deemed to be in compliance with section 567.2 of OTS's regulations [2] if: it is operating under an approved capital plan, and it is not critically undercapitalized within the meaning of section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) [3] and OTS regulations implementing that section. Neither the OTS nor the other Federal banking agencies have yet promulgated regulations implementing FDICIA's prompt corrective action provisions. Until the OTS's final implementing regulations take effect, a thrift will not be deemed to be critically undercapitalized for the purposes described here unless it has core capital [4] of less than 2%.

A thrift satisfying these two criteria may represent that it is in compliance with section 567.2. The thrift will not be able to avail itself of the more flexible treatment accorded well capitalized thrifts under OTS's differential regulation approach, however. The OTS has many regulations and policies that are applied differently depending on a savings association's actual capital levels. The OTS intends to maintain a clear distinction based on actual capital levels for purposes of applying these

[1] Section 3.7 requires that any bank having capital ratios lower than the minimum ratios required under 12 CFR 3.6 must submit a capital plan. The bank may assume that its plan is acceptable unless the OCC notifies it to the contrary. Moreover, "[a] bank in compliance with an acceptable plan to achieve the applicable minimum capital ratios will not be deemed to be in violation of § 3.6." 12 CFR 3.7 (1992).

[2] 12 CFR 567.2 (1992). Section 567.2 is the analogue of § 3.6 of the OCC's regulations: it sets forth the minimum capital requirements applicable to savings associations just as § 3.6 does for national banks.

[3] Pub. L. 102–242, 105 Stat. 2236, 2253 (Dec. 19, 1991).

[4] Core capital is defined at 12 CFR 567.5 (1992).

regulations and policies. Accordingly, OTS will continue to permit the most flexible treatment only for those institutions that meet or exceed the minimum statutory requirements of section 5(t)(2) of the Home Owners' Loan Act (HOLA). 12 U.S.C. 1464(t)(2). Those requirements currently include: 1.5% tangible capital; 3% core capital; [8] and the currently applicable risk-based capital requirement of 7.2%.

B. Recourse

OTS proposed to adopt the definition of recourse set forth in the June 1990 Federal Financial Institutions Examination Council (FFIEC) request for comment for capital purposes. The OTS received nine comments addressing the proposed definition of "recourse." One commenter applauded the OTS's effort to clarify the term, even if only temporarily, prior to the FFIEC's final report. Eight comments were critical of the proposal.

Many commenters thought that the final definition developed by FFIEC would be less stringent than the proposal and, therefore, that the OTS should not attempt to define the term before FFIEC's final action. Several commenters thought that an interim definition would serve only to confuse matters and to increase transaction costs overall.

Several commenters found the language of the proposed definition unclear, overbroad, and indefinite. These commenters pointed out that one could interpret the definition to include standard representations and warranties, implicit recourse arrangements, and non-credit risks such as interest rate, liquidity, currency, market and prepayment risks. The commenters uniformly argued that standard representations and warranties should be exempted from the definition because of the adverse impact on the secondary mortgage market that would result. The commenters also agreed that the definition should not apply to implicit recourse arrangements because no legally enforceable recourse arrangement exists. Commenters also favored separating the credit risks from other forms of risk and requested clarification of the definition.

Two commenters favored recognition of third party guarantees, such as mortgage insurance, in the definition of recourse. These commenters argued that where a savings association purchases insurance for the amount of recourse retained, then the risk of default on the underlying mortgages is effectively transferred from the association to the third party insurer.

Several other commenters favored the adoption of the Federal Reserve's treatment of spread accounts and risk-sharing arrangements. A spread account is an off-balance sheet account where funds accumulate in the account either through a charge against earnings or based on the difference between the rate paid to the purchasers of the securities and the higher yield on the underlying mortgages. Losses are charged against the spread account. Under risk-sharing arrangements, buyers and sellers proportionately share in any losses. Those commenters favoring the Federal Reserve's approach stated that the Federal Reserve currently excludes spread accounts and risk sharing arrangements from the definition of recourse, and urged OTS to do the same.

Finally, in response to the request for comments regarding the OCC's outstanding proposal on recourse, commenters were uniformly critical. The OCC has proposed to amend footnote 14 of its risk-based capital guidelines (regarding assets sold with recourse) to clarify that assets sold with recourse are included for purposes of computing a national bank's capital requirement even though a sale with recourse qualifies for sales treatment under the Call Report. The OCC has stated in its proposal, however, that it does not intend that mortgage sales should be included as "assets sold with recourse" for risk-based capital purposes if they carry less than significant risk of loss and meet certain other criteria. The criteria are: (1) the bank has not retained more than a minimal risk of loss; (2) the maximum amount of exposure to loss that the bank has retained at the time of the transfer is equal to or less than the amount of probable loss that the bank has reasonably estimated that it will incur on the transferred mortgages; and (3) the bank has created a liability account or other special reserve in an amount equal to its maximum exposure. See 55 FR 42017, 42020 (Oct. 17, 1990).

The commenters favored the approach the OTS has taken in Regulatory Bulletin 28 (April 26, 1991) (RB 26), recognizing limited recourse, rather than the proposed OCC approach. One commenter argued that the OCC's proposal would be highly problematic for thrifts selling loans into the mortgage securities market. In particular, the commenter stated that the proposed OCC requirement that the amount of recourse retained may not exceed the actual expected losses on the loans sold does not conform to long-standing practices in the mortgage securities market requiring credit enhancements greater than the actual expected loss. This commenter urged the OTS not to adopt the OCC proposal because it does not give credit or incentive for negotiating limited recourse arrangements where the exposure is greater than actual expected loss but less than the applicable capital requirement. Moreover, the commenter urged that the OTS not adopt the OCC proposal as part of a technical amendments package because of the significant impact on the mortgage securities industry. In fact, the commenter requested that the OTS repropose the recourse issue separately to provide for a more extensive discussion of all of the issues involved.

The OTS has determined that the benefits of defining recourse only for risk-based capital purposes outweigh the drawbacks identified by commenters. The OTS wishes to clarify that the definition adopted today does not include risks other than credit risk. Also excluded from the definition are contractual conditions that are under the direct control of the thrift or may be verified by the thrift at the time the contract is entered. The OTS does not intend, however, to exclude recourse obligations arising from contractual agreements that may be commonplace in the industry but over which the thrift has no control. The definition of "standard representations and warranties" is also under review in an interagency context and may be subject to further modification.

Implicit recourse arrangements are only included in the definition to the extent that OTS observes, with respect to a particular institution, a pattern of behavior in its transactions that, if consistently used to provide recourse, will be treated as recourse for capital computation purposes. Thus, OTS intends to retain enough flexibility in the definition of recourse to capture transactions that are intended to evade the capital regulations.

The OTS will reserve its response to the comments regarding third party guarantees at this time because that issue is being addressed by a FFIEC working group. The OTS will continue to participate in the FFIEC effort to develop a comprehensive treatment for recourse arrangements and represent the views of commenters on this issue in the context.

At this time, the OTS has decided not to adopt the same approach as the OCC has taken in its proposal regarding asset

[8] The OTS has proposed a regulation that would increase the leverage ratio requirement. 56 FR 16,283 (April 22, 1991).

sales with recourse. The OCC modifications are designed to clarify that, for risk-based capital purposes, loan sales with recourse under programs of the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) are considered sales with recourse. The OTS's current rule is clear with respect to this issue.[6] The amendment made to the OCC rule creates a difference between the two agencies' treatment of loan sales with recourse; the OTS believes, however, that the FFIEC working group addressing recourse will resolve such differences.

C. Non-Includable Subsidiaries

Four commenters addressed the treatment of investments in subsidiaries engaged as of April 23, 1989 in activities not permissible for a national bank. One commenter fully supported the approach set forth in the proposal: grandfathering the amount of a thrift's investment in its nonincludable subsidiary that existed on April 12, 1989, rather than each actual investment in the subsidiary. Thus, the amount of the investment subject to the phase-out would be the lesser of the current amount invested or the amount invested on April 12, 1989. For example, as of April 12, 1989, a thrift had $20 million invested in a nonincludable subsidiary. During 1990, the level of the investment decreased by $15 million to $5 million. During 1991, the investment in the subsidiary increases by $7 million to $12 million. The mount of investment that is subject to grandfathering on January 1, 1992, is $12 million since this is the lower of the current amount invested and the $20 million invested as of April 12, 1989.

Three commenters raised an issue related to the requirement that was not addressed in the proposal. Two of these three commenters said that the proposed amendments could be interpreted to mean that, in determining the amount of investments to be deducted from assets and capital, a savings association must compare current and April 12, 1989 investment levels for each non-includable subsidiary separately, rather than for all non-includable subsidiaries as a whole. The commenters argued that a subsidiary-by-subsidiary investment test will lead to inconsistent capital deductions among similarly situated savings associations during the phase-in period. In other words, some associations will be penalized because of the form of the corporate structures on April 12, 1989.

After considering these comments, the OTS has revised the proposed amendment to 12 CFR 567.5(a)(2)(v)(A) to remove any ambiguity that could be construed to require savings associations with similar investments in one or more subsidiaries to deduct those investments differently based on the corporate structure of the initial investments.

D. Miscellaneous Amendments

Two commenters supported the proposed amendments to the capital distributions regulation, 12 CFR 563.134. Three commenters supported the amendment to permit savings associations to treat maturing capital instruments issued on or before October 7, 1989 on the same basis as those issued afterward.

Two commenters raised concern regarding the liability growth regulation, 12 CFR 563.131. Both commenters thought that the reference to 6% of liabilities was redundant, confusing and unnecessary. After consideration of these comments the OTS agrees that the reference to 6% of liabilities is obsolete and is deleting that portion of the regulation.

The OTS received comments regarding purchased mortgage servicing rights (PMSRs). One commenter objected to the language that would require PMSRs to meet the three-part test of 12 CFR 567.5(a)(2)(ii) because it would reopen the determination and confuse matters. Section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 requires Federal financial institutions regulators to address PMSRs. This section takes effect on February 17, 1992. OTS anticipates that in conjunction with other regulatory agencies it will re-examine this issue and may propose regulatory changes. In the interim, in light of its new statutory authority under this section, OTS is temporarily leaving § 567.5(a)(2)(iii) unchanged.

One commenter asked for clarification that the term "qualifying mortgage loan" includes a loan to individuals for the purchase and construction of their own homes, secured by a first mortgage on the home. This commenter points out that this position would be consistent with the OCC's regulations.

The OTS has previously opined [7] that loans to individuals for the purchase and construction of their own homes are includable in the 50% risk-weight category if the loan meets all of the other qualifications of a "qualifying mortgage loan." The OCC explicitly addresses this issue in its risk-based guidelines. The OTS is adding comparable language to its regulation to clarify this point. The OTS is also taking this opportunity to clarify that non-qualifying mortgage loans that did not qualify solely due to loan-to-value ratios at origination and are subsequently paid down to a loan-to-value ratio of less than 80 percent (calculated using value at origination) may become qualifying loans if they meet all other requirements for qualifying mortgages.

One commenter, discussing the conforming changes from "regulatory capital" to "total capital," argued that these changes were not merely technical but would, if adopted, have significant substantive effects. The commenter argued that total capital would exclude or limit certain pre-FIRREA regulatory capital and, in so doing, would increase the capital levels required. Another commenter pointed out that the conforming amendments fail to change the term regulatory capital in 12 CFR 545.82(e).

The OTS believes that it has provided adequate notice and opportunity to comment on the proposed changes to the regulations tied to capital levels. It believes that the use of "total capital," rather than "core capital" or "tangible capital" in setting these levels best approximates the earlier levels tied to "regulatory capital."

Finally, the OTS received one comment regarding the removal of the regulatory provisions for deferred loan losses after the publication of the proposed amendments to the accounting and reporting requirements earlier this year. The commenter, a trade association, asserted that FIRREA mandated the removal of deferred loan losses and, therefore, agreed with the OTS's proposal to remove § 563c.14 and references to deferred loan losses contained in § 563.233 (c) and (d). The OTS is making those changes to bring this section into conformity with the capital rule revisions promulgated in November 1989. Other amendments to § 563.233 proposed in March are deferred until such time as the proposed amendments to the accounting and reporting requirements are finalized.

II. Description of Final Rule

Today's final rulemaking does not differ significantly from the proposal. Aside from changes made in response to comments received by the OTS, as discussed above, the major differences between today's rule and the proposal are: (1) The removal of the regulatory provisions for deferred loan losses (discussed above in section I.D.); (2) the

[6] See 12 CFR 567.8(a)(2)(i)(C) (1992).

[7] Chief Counsel Op., May 14, 1991.

deletion of section 563.94 (mortgage transactions with the Federal Home Loan Mortgage Corporation); and (3) the addition of several paragraphs of regulatory language modelled upon that proposed by the OCC.

Upon further reflection, OTS determined that the amendments proposed to 12 CFR 563.94 would render the regulation superfluous. Furthermore, the deletion of this section has no impact on other regulatory provisions. Thus, the section is removed in today's final rule.

The changes based on the OCC's October, 1990 proposal are adopted by the OTS pursuant to FIRREA's mandate that the OTS adopt "all relevant substantive definitions" established by the OCC for national banks and that the standards prescribed by the OTS be no less stringent than the capital standards applicable to national banks. The amendments that the OTS expects to be finalized by the OCC include definitions of the terms "central government", "original maturity", and "unconditionally cancelable". The amendments also add two items to the 20 percent risk-weight category and add certain unused commitments to the zero percent credit conversion factor under certain circumstances.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act Analysis is not required.

Executive Order 12291

The Director of the Office of Thrift Supervision has determined that this proposal does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Paperwork Reduction Act

The collections of information referenced in this proposed rule may be found at 12 CFR 545.74, 545.82, 563.10, 563.131, 563.173, and 567.5. The approval of investments in and activities conducted by a service corporation contained in § 545.74 constitutes a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0013. The OTS requires this information to ascertain whether such activities of the service corporation reasonably relate to the activities of the parent savings association, and whether such activities are being conducted in the best interest of the association. The OTS requires this information only when a savings association files an application or notice with the OTS.

The approval of activities, the issuance of additional securities by, and the providing of capital by a Federal savings association to establish a finance subsidiary contained in § 545.82 constitute a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0033. The OTS requires this information to ascertain whether the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary or the issuance of additional securities by an existing finance subsidiary, is likely to adversely affect the financial condition or the safe and sound operation of the parent Federal savings association.

The approval to issue earnings-based accounts in an amount of up to 20% of the savings association's assets and information describing in detail the loans to be used in calculating the contingent interest on the certificates contained in § 563.10 constitute a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0027. The OTS requires this information to ascertain whether the savings association meets or exceeds its regulatory capital requirement or whether there are other bases for supervisory concern before the savings association is allowed to issue earnings-based accounts.

The approval of a savings association's growth plan to increase its total liabilities within any 2-quarter period at a rate greater than 12.50 percent contained in § 563.131 constitutes a collection of information that has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0028. The OTS requires this information to ascertain the effect of the growth plan upon the savings association's regulatory capital, the financial strength of the savings association, and the stability of the savings association's earnings over the 6 preceding calendar quarters.

Recordkeeping requirements for a savings association engaging in forward commitments is contained in § 563.173; it has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0011. The OTS requires these records to maintain a current register of the savings association's forward commitments, and documentation of the savings association's ability to fund all outstanding forward commitments when due.

The approval of subordinated debt securities for inclusion in a savings association's regulatory capital is contained in § 567.5; it has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507(h)) and has been assigned control number 1550–0030. The OTS requires this information to ascertain whether the subordinated debt securities were issued pursuant to regulations and memoranda of the OTS, may comprise an association's supplementary capital, and may therefore be included in a savings association's regulatory capital.

No revisions are proposed to the information collections and recordkeeping requirements contained in these sections. Only technical, nonsubstantive changes are being made to these regulations.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 561

Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563c

Accounting, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, *Code of Federal Regulations*, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.14 is amended by revising paragraph (c) to read as follows:

§ 545.14 Determination and distribution of earnings.

* * * * *

(c) *Distribution on share accounts.* No distribution of earnings on share accounts may be made under this section until provision has been made for payment of expenses and for the pro rata portion of credits to reserves required by the Federal savings association's charter and by part 567 of this chapter.

3. Section 545.35 is amended by revising paragraph (d) to read as follows:

§ 545.35 Other real estate loans.

* * * * *

(d) A Federal savings association's aggregate investment in nonresidential real estate loans under this section shall not exceed 400 percent of the association's total capital (as calculated pursuant to 12 CFR 567.5(c)), unless the OTS finds that such additional amount will not present a significant risk to the safe and sound operation of the association and is consistent with prudent operating practices. If the OTS authorizes any Federal savings association to exceed the 400 percent of total capital limitation, the OTS shall closely monitor the condition and lending activities of such association to ensure that the association carries out all authority under section 5(c) of the Act in a safe and sound manner and complies with this paragraph (d) and all other applicable laws and regulations.

4. Section 545.38 is amended by revising paragraph (b)(3) to read as follows:

§ 545.38 Insured and guaranteed loans.

* * * * *

(b) * * *

(3) The Federal savings association invests not more than the greater of 2.5 percent of its assets or one-half of its total capital (as calculated pursuant to 12 CFR 567.5(c)) in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the association.

* * * * *

5. Section 545.74 is amended by revising paragraph (d)(2) to read as follows:

§ 545.74 Service corporations.

* * * * *

(d) *Amount of investment.* (1) * * *

(2) In addition to the amounts that it may invest under paragraph (d)(1) of this section, an association that meets its applicable capital requirement under part 567 of this chapter may lend additional amounts as follows:

(i) An amount not to exceed the association's total capital as calculated pursuant to 12 CFR 567.5(c) may be invested in conforming loans and functionally equivalent leases made to each service corporation of which the association owns, or holds with power to vote, not more than ten percent of the capital stock; and to each joint venture in which a service corporation in which the association is a stockholder, including subsidiaries of such service corporation:

(A) Owns or holds with power to vote not more than a total of ten percent of the capital stock; or

(B) Is a limited partner and has contributed not more than ten percent of such joint venture's capital.

(ii) An aggregate outstanding amount not to exceed fifty percent of the association's total capital as calculated pursuant to 12 CFR 567.5(c) may be invested in conforming loans and functionally equivalent leases to all service corporations in which the association owns more than ten percent of the capital stock, and to all joint ventures in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations:

(A) Own or hold with power to vote more than a total of ten percent of the capital stock; or

(B) Are partners.

* * * * *

6. Section 545.82 is amended by removing and reserving paragraph (c)(2) and by revising the introductory text of paragraph (e) to read as follows:

§ 545.82 Finance subsidiaries.

* * * * *

(c) * * *

(2) [Reserved]

* * * * *

(e) *Transfer of proceeds of the issuance of securities.* All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs (including any proceeds held in the subsidiary for collateral maintenance, fee payment, or any other necessary expenses related to the finance subsidiary's securities issuances or collateralizing assets) associated with the issuance of securities by the finance subsidiary and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent Federal savings association. Such remittance may be made by the payment of dividends on the common stock issued by the finance subsidiary to its parent; by a redemption of the common stock issued by the finance subsidiary to its parent Federal savings association; by the repayment of any loan made by the parent to the finance subsidiary as part of the capitalization of the subsidiary; or by the purchase of assets of, or liabilities issued by, the parent Federal savings association (subject to the limitations of paragraph (c)(1) of this section on the aggregate and per-issuance transfers by a parent Federal savings association to a finance subsidiary): *Provided,* That any capital stock (common or preferred), mutual capital certificate, subordinated debt, or any other security that would otherwise be considered to be capital as defined in part 567 of this chapter shall not, if issued by the parent Federal savings association to its finance subsidiary, be included in the parent Federal savings association's capital unless:

* * * * *

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 561—DEFINITIONS

7. The authority citation for part 561 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

8. Section 561.55 is amended by revising paragraph (b)(2) and adding paragraph (c) to read as follows:

§ 561.55 With recourse.

* * * * *

(b) * * *

(2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: *Provided,* That the savings association designates adequate reserves for the subordinate interest or guarantee.

(c) This definition does not apply for purposes of determining the capital adequacy requirements under part 567 of this subchapter.

PART 563—OPERATIONS

9. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

10. Section 563.10 is amended by revising paragraphs (b)(2), (c)(1)(i), and (c)(3)(v) and by removing paragraph (d) and redesignating paragraph (e) as new paragraph (d) to read as follows:

§ 563.10 Earnings-based accounts.

* * * * *

(b) *Limitations.* * * *

(2) The savings association is in compliance with its capital requirements under part 567 of this subpchapter;

* * * * *

(c) *Permission for increased issuance.* (1) * * *

(i) Whether the savings association meets or exceeds the capital requirements specified in part 567 of this subchapter or any amount of capital required to be maintained in an applicable supervisory directive or operating agreement;

* * * * *

(3) * * *

(v) Information showing the financial condition of the applicant including, but not limited to, the applicant's capital adequacy (under part 567 of this subchapter and paragraph (c)(1)(i) of this section);

* * * * *

11. Section 563.80 is amended by revising the first sentence of the introductory text of paragraph (e)(1) to read as follows:

§ 563.80 Borrowing limitations.

* * * * *

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the savings association meets its capital requirement under part 567 of this subchapter, it shall, at least ten business days prior to issuance, file with the Regional Director or his or her designee a notice of intent to issue securities evidencing such borrowings. * * *

* * * * *

12. Section 563.84 is amended by revising the introductory text of paragraph (b)(7) to read as follows:

§ 563.84 Transfer and repurchase of government securities.

* * * * *

(b) * * *

(7) *Eligibility requirements.* A savings association that issues or has outstanding repurchase agreements issued pursuant to paragraph (b) of this section shall calculate its total capital on a monthly basis in accordance with part 567 of this subchapter. A savings association that does not have total capital equal to the sum of one percent of all liabilities of the savings association, plus an amount equal to 20 percent of the savings association's assets classified under § 563.160 of this part, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements:

* * * * *

§ 563.94 [Removed]

13. Section 563.94 is removed.

§ 563.96 [Amended]

14. Section 563.96 is amended by removing the term "regulatory capital" and by adding in lieu thereof the phrase "total capital as determined in accordance with § 567.5(c) of this subchapter".

15. Section 563.131 is amended by revising paragraph (b) to read as follows:

§ 563.131 Liability growth.

* * * * *

(b) Any savings association is exempted from the preapproval requirement of paragraphs (a) and (c) of this section if it meets its fully phased-in capital requirements as defined in part 567 of this subchapter. Such a savings association must provide notice to OTS of its intention to grow in excess of the standard set by paragraph (a) of this section.

* * * * *

16. Section 563.134 is amended by revising paragraphs (a)(3), (a)(6), and (b)(1) to read as follows:

§ 563.134 Capital distributions.

(a) *Definitions* * * *

* * * * *

(3) *Fully phased-in capital requirement* means an association's fully phased-in capital requirements as defined in § 567.1(kk) of this subchapter.

* * * * *

(6) *Shares* means common and preferred stock; and any options, warrants, or other rights for the acquisition of such stock. This term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution. The term "share" does include:

(i) Convertible securities upon their conversion into common or preferred stock; and

(ii) Securities structured for the purpose of evading the restrictions on capital distributions in this section.

* * * * *

(b) *Limits on capital distributions*—(1) *Tier 1 Association.* (i) A tier 1 association is authorized to make capital distributions during a calendar year up to the higher of:

(A) 100 percent of its net income to date during the calendar year plus the amount that would reduce by one-half its surplus capital ratio at the beginning of the calendar year; or

(B) 75 percent of its net income over the most recent four-quarter period.

(ii) A tier 1 association shall not make capital distributions in excess of the foregoing limit except in accordance with the notice and opportunity for objection process provided by paragraph (e) of this section.

* * * * *

17. Section 563.173 is amended by revising paragraph (c)(2) to read as follows:

§ 563.173 Forward commitments.

* * * * *

(c) *Limitations* * * *

(2) *Percent of assets.* A savings association's outstanding forward commitments to purchase securities plus short put options entered into pursuant to § 563.175 of this part may not exceed an amount equal to 5 percent of its assets if total capital is 3 percent or less of assets, 10 percent of its assets if total capital is over 3 percent but less than 5 percent of assets, or 15 percent of its assets if total capital is 5 percent or more of assets.

* * * * *

18. Section 563.175 is amended by revising paragraph (a)(13)(iii) to read as follows:

§ 563.175 Financial options transactions.

(a) *Definitions.* * * *

(13) *Permissible counterparty.* * * *

(iii) A savings association that is subject to the regulation and supervision of the OTS and is in compliance with the applicable capital requirements contained in part 567 of this subchapter;

* * * * *

19. Section 563.233 is amended by revising paragraphs (c) and (d) to read as follows:

§ 563.233 Accounting principles and procedures.

* * * * *

(c) By no later than the period beginning on or after January 1, 1989, all unaudited financial statements and financial reports to the OTS shall be prepared on the basis of generally accepted accounting principles.

(d) By no later than the period beginning on or after January 1, 1989, Statements of Condition shall be prepared on the basis of generally accepted accounting principles. Each

statement of condition shall include in bold type in the body of the statement the following language: "Federal Deposit Insurance Corporation (FDIC), an agency of the U.S. government insures all depositors up to $100,000 in accordance with the rules and the regulations of the FDIC." A footnote indicating the savings association's regulatory capital requirements and the amount of regulatory capital that the savings association has available to meet those requirements. Regulatory capital requirements for savings associations are defined in 12 CFR Part 567. The footnote shall include the following language: "This statement has been prepared in accordance with the regulatory reporting requirements of the Office of Thrift Supervision (OTS). Tangible, Core, and Total Capital are the elements of regulatory capital determined under such reporting requirements. Regulatory capital is a basis by which the OTS determines whether a savings association is operating in a safe and sound manner."

* * * * *

PART 563C—ACCOUNTING REQUIREMENTS

20. The authority citation for part 563c is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), m, n, w.

§ 563c.14 [Removed]

21. Section 563c.14 is removed.

PART 567—CAPITAL

22. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

22a. Part 567 is amended by removing footnote 2 in § 567.5(a)(1)(ii) and by redesignating footnotes 3 through 7 as footnotes 5 through 9, respectively.

23. Section 567.1 is amended by removing paragraph (a)(2)(i) and by redesignating existing paragraphs (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) as new paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii); by revising paragraphs (a)(3)(iii), (k), and (o); by removing the fourth and fifth sentences of paragraph (p) and adding three new sentences in their place; by revising paragraphs (q), (u), (v) and (w)(2)(ii)(C); by adding a new footnote 2 to paragraph (ee) introductory text between the words "goodwill" and "resulting" to read: "[2] Goodwill that has been written off of an association's balance sheet for its GAAP financial statements or Thrift Financial Report cannot be counted as supervisory goodwill."; by revising paragraph (gg) and by adding new paragraphs (kk) and (ll) to read as follows:

§ 567.1 Definitions.

(a) *Adjusted total assets.* * * *

(3) * * *

(iii) Investments in any subsidiary subject to consolidation under paragraph (a)(2)(ii) of this section; and

* * * * *

(k) *High quality mortgage-related securities.* The term *high quality mortgage-related securities* means any mortgage-related security as defined in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), and any mortgage-backed securities issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. It includes mortgage-backed bonds meeting rating and collateral requirements equivalent to those established under 15 U.S.C. 78c(a)(41).

* * * * *

(o) *Mortgage-related securities.* The term *mortgage-related securities* means any mortgage-related qualifying securities under section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), *Provided,* That the rating requirements of that section shall not be considered for purposes of this definition.

(p) *OECD-based country.* * * * The term *Central government* means the national governing authority of a country; it includes the departments of ministries and agencies of the central government and the central bank. The U.S. Central Bank includes the 12 Federal Reserve Banks. The definition does not include the following: State, provincial or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations are guaranteed by the central government.

(q) *Original maturity.* The term *original maturity* means, with respect to a commitment, the earliest date after a commitment is made on which the commitment is scheduled to expire (*i.e.*, it will reach its stated maturity and cease to be binding on either party), *Provided,* That either:

(i) The commitment is not subject to extension or renewal and will actually expire on its stated expiration date; or

(ii) If the commitment is subject to extension or renewal beyond its stated expiration date, the stated expiration date will be deemed the original maturity only if the extension or renewal must be based upon terms and conditions independently negotiated in good faith with the customer at the time of the extension or renewal and upon a new, *bona fide* credit analysis utilizing current information on financial condition and trends.

* * * * *

(u) *Qualifying mortgage loan.* The term *qualifying mortgage loan* means a 1–4 family residential first mortgage loan that is prudently underwritten and is performing and not more than 90 days past due with a documented loan-to-value ratio not exceeding 80 percent (at origination) unless insured to at least an 80 percent loan-to-value ratio by private mortgage insurance provided by an issuer approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. Nonqualifying mortgage loans that are subsequently paid down to a loan-to-value ratio of less than 80 percent (calculated using value at origination) may become qualifying loans if they meet all other requirements for qualifying mortgages. Loans to individual borrowers for the construction of their own homes may be included as qualifying mortgage loans.

(v) *Qualifying multifamily mortgage loan.* The term *qualifying multifamily mortgage loan* means a first mortgage loan on an existing property consisting of 5–36 dwelling units with an initial loan-to-value ratio of not more than 80% where an average annual occupancy rate of 80% or more of total units has existed for at least one year.

(w) *Qualifying supervisory goodwill.* * * *

(2) * * *

(ii) * * *

(C) Minus the amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of—

(*1*) 20 years; or

(*2*) The remaining period for amortization in effect on April 12, 1989 under regulatory accounting practices.

* * * * *

(gg) *Unconditionally cancelable.* The term *unconditionally cancelable* means, with respect to a commitment-type lending arrangement, that the savings association may, at any time, with or without cause, refuse to advance funds

or extend credit under the facility. In the case of home equity lines of credit, the savings association is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the line, and terminate the commitment to the full extent permitted by relevant Federal law.

* * * * *

(kk) *Recourse.* The term *recourse* means the acceptance, assumption, or retention of some or all of the risk of loss generally associated with ownership of an asset. It is not necessarily a function of ownership or prior ownership of an asset, nor does it arise only as an incident of an asset sale.

(ll) *Fully phased-in capital requirements.* The term *fully phased-in capital requirements* means the capital requirement that will be effective at the expiration of all transition periods and phase-ins established by section 5(t) of the Act or by this part 567.

24. Section 567.2 is amended by revising the heading of paragraph (b) and paragraph (b)(2) to read as follows:

§ 567.2 Minimum regulatory capital requirements.

* * * * *

(b) *Transition period for risk-based capital requirement.* * * *

(2) From December 31, 1990 until December 30, 1992, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 90% of the amount required under paragraph (a)(1) of this section.

* * * * *

§ 567.4 [Amended]

25. Section 567.4 is amended in paragraph (a)(1) introductory text by removing the phrase "12 U.S.C. 1464(d)(2)" and adding in lieu thereof the phrase "12 U.S.C. 1464(s)" and in the concluding text of paragraph (a)(1) by removing the phrases "12 U.S.C. 1464(d)(8)" and "12 U.S.C. 1464(d)(2)" and adding in both places the phrase "12 U.S.C. 1818".

26. Section 567.5 is amended by adding new footnote 3 to paragraph (a)(1) introductory text between the words "elements," and "less" to read: "[3] Stock issues where the dividend is reset periodically based on current market conditions and the savings association's current credit rating, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to supplementary capital, regardless of cumulative or noncumulative characteristics."; by adding new footnote 4 to paragraph (a)(1)(ii) after the word "surplus" to read: "[4] Stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report, likewise shall not be considered in calculating capital. For example, preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries shall not be included in capital. Similarly, common stock with mandatorily redeemable provisions is not includable in core capital."; by adding a semicolon in place of the comma at the end of paragraph (a)(1)(ii); by adding a semicolon in place of the period at the end of paragraph (a)(1)(iv); by revising paragraphs (a)(2)(v)(A) introductory text and (b)(3)(i); and by revising newly designated footnote 7 in paragraph (b)(4) to read as follows:

§ 567.5 Components of capital.

(a) *Core Capital.* * * *

(2) *Deductions from core capital.*

* * *

* * * * *

(v)(A) If a savings association has any investments (both debt and equity) in one or more subsidiaries engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, core capital in accordance with paragraph (a)(2)(v) of this section. The savings association must first deduct from assets and, thus, core capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next, the savings association must deduct from assets and, thus, core capital the applicable percentage set forth in paragraph (a)(2)(v)(B) of this section of the lesser of:

* * * * *

(b) *Supplementary Capital.* * * *

(3) *Transition rules for maturing capital instruments.—(i) Maturing capital instruments issued on or before November 7, 1989.* All maturing capital instruments issued on or before November 7, 1989, are includable in supplementary capital to the extent such instruments were includable in capital pursuant to the regulations of the OTS in effect as of that date, including any applicable amortization schedules. With the prior approval of the OTS, a savings association may include maturing capital instruments issued on or before November 7, 1989, in supplementary capital in accordance with the treatment set forth in paragraph (b)(3)(ii) of this section.

* * * * *

[7] The amount of the general valuation loan and lease loss allowances that may be included in capital is based on a percentage of risk-weighted assets. The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of the assets required to be deducted under § 567.6 in establishing risk-weighted assets—"excess GVA" defined as assets required to be deducted from capital under § 567.5(a)(2). A savings association may deduct excess GVA from the gross sum of risk-weighted assets (*i.e.*, risk-weighted assets including general valuation allowances) in computing the denominator of the risk-based capital standard. Thus, a savings association will exclude the same amount of excess GVA from both the numerator and the denominator of the risk-based capital ratio.

27. Section 567.6 is amended by revising the first sentence of the introductory text of paragraph (a); by adding a semicolon in place of the period at the end of paragraphs (a)(1)(ii)(N) and (O) and by revising paragraphs (a)(1) heading and (a)(1)(ii)(R) and adding paragraph (a)(1)(ii)(S); by revising paragraph (a)(1)(v)(A); by revising the heading for paragraph (a)(1)(vi) and paragraph (a)(1)(vi)(A); by redesignating paragraph (a)(1)(vi)(C) as paragraph (a)(1)(vi)(C)(*1*) and by adding a new paragraph (a)(1)(vi)(C)(*2*); by revising the heading and the introductory text of paragraph (a)(2); by revising the parenthetical at the end of paragraph (a)(2)(i)(C); and by revising paragraphs (a)(2)(iv) heading and (a)(2)(iv) (A) through (C) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) *Risk-weighted Assets.* Risk-weighted assets equal assets plus consolidated off-balance sheet items where each asset or item is multiplied by the appropriate risk weight as set forth in this section. * * *

(1) *On-balance sheet assets.* * * *

(ii) *20 percent risk weight (Category 2).* * * *

(R) Claims on, or guaranteed by depository institutions other than the central bank, incorporated in a non-OECD country, with a residual maturity of one year or less;

(S) That portion of local currency claims conditionally guaranteed by central governments of non-OECD countries, to the extent the savings

association has local currency liabilities in that country.

* * * * *

(v) *200 percent risk weight (Category 5).* (A) All repossessed assets or assets that are more than 90 days past due, *provided,* that 1–4 family residential mortgage loans that are more than 90 days past due are placed in the 100 percent risk weight category;

* * * * *

(vi) *Indirect ownership interests in pools of assets.* (A) Except as provided in paragraph (a)(1)(vi)(C) of this section, assets representing an indirect holding of a pool of assets, *e.g.,* mutual funds, are assigned to risk-weight categories under this section based upon the risk weight that would be assigned to the assets in the portfolio of the pool.

* * * * *

(C) (*1*) * * *

(*2*) The minimum risk weight that may be assigned to an ownership interest described in this paragraph (a)(1)(vi) is 20%.

(2) *Off-balance sheet activities.* Risk weights for off-balance sheet items are determined by a two-step process. First, the face amount of the off-balance sheet item must be multiplied by the appropriate credit conversion factor listed in this section. This calculation translates the face amount of an off-balance sheet exposure into an on-balance sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate risk weight category depending on the obligor (*i.e.,* the 20 percent risk weight category if the obligor is a domestic depository institution or the 100 percent risk category if the obligor is a private party) and any underlying collateral, *provided* that, the maximum risk weight assigned to the credit-equivalent amount of an interest-rate or exchange-rate contract is 50 percent. Guarantees and other direct credit substitutes by savings associations of the obligations of their service corporations and subsidiaries that qualify as equity investments are assigned a credit-equivalent amount of the entire value of the direct credit substitute. The following are the credit conversion factors and the off-balance sheet items to which they apply:

(i) * * *

(C) * * * (Where associations hold a mortgage-related security or a participation certificate (PC) in a mortgage loan swap with recourse, or a subordinated portion as an on-balance sheet asset, the security, PC, or subordinated portion should not be risk-weighted for purposes of the risk-based capital requirement except where the amount of capital otherwise required against the recourse liability under this paragraph would be less than the amount of capital that would otherwise be required against the security, PC, or subordinated portion. The savings association must hold in capital the greater amount of capital that would be required to be held against either the liability or the security, PC, or subordinated portion.);

* * * * *

(iv) *Zero percent credit conversion factor (Group D).* (A) unused commitments with an original maturity of one year or less;

(B) Unused commitments with an original maturity greater than one year, if they are unconditionally cancelable at any time at the option of the savings association and the savings association has the contractual right to make, and in fact does make, either:

(*1*) A separate credit decision based upon the borrower's current financial condition before each drawing under the lending facility; or

(*2*) An annual (or more frequent) credit review based upon the borrower's current financial condition to determine whether or not the lending facility should be continued; and

(C) The unused portion of retail credit card lines or other related plans that are unconditionally cancelable by the savings association in accordance with applicable law.

* * * * *

28. Section 567.9 is amended by revising paragraphs (c)(1) and (c)(3)(i) introductory text to read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) *Deductions from tangible capital.* * * *

(1) Any intangible assets (except for purchased mortgage servicing rights, which are includable in assets and, therefore, not deducted from tangible capital in the lesser of the amount specified in § 567.5(a)(2)(iii)(A) of this part or any amount specified by the Federal Deposit Insurance Corporation by regulation pursuant to section 5(t)(4) of the Act).

* * * * *

(3)(i) If a savings association has any investments (both debt and equity) in one or more subsidiary(ies) engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, tangible capital in accordance with this paragraph (c)(3)(i). The savings association must first deduct from assets and, thus, capital the amount by which any investments in such a subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next, the savings association must deduct from assets and, thus, tangible capital the applicable percentage set forth in paragraph (c)(3)(ii) of this section of the lesser of:

* * * * *

29. Section 567.10 is amended by revising the heading of paragraph (a); removing and reserving paragraph (a)(1); and by revising the introductory text of paragraph (a)(2) and paragraph (f) to read as follows:

§ 567.10 Consequences of failure to meet capital requirements.

(a) *Capital plans.* (1) [Reserved]

(2) The Director shall require any savings association not in compliance with capital standards to submit a capital plan that:

* * * * *

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken under this section or order or directive issued to comply with the requirements of this part.

30. Section 567.11 is amended by revising paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 567.11 Reservation of authority.

(a) *Transactions for purposes of evasion.* The Director or the Regional Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this part.

* * * * *

(c) *Reservation of authority.* Notwithstanding the definitions of core and supplementary capital in § 567.5 of this part, OTS may find that a particular type of purchased intangible asset or capital instrument constitutes or may constitute core or supplementary capital, and may permit one or more savings associations to include all or a portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes.

* * *

PART 571—STATEMENTS OF POLICY

31. The authority citation for part 571 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.23 [Removed]

32. Section 571.23 is removed and reserved.

Dated: Jan. 31, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-17685 Filed 7-28-92; 8:45 am]

BILLING CODE 6720-01-M

Internal Revenue Service

26 CFR Parts 1 and 53

[TD 8423]

RIN 1545-AP93

Taxation of Tax-Exempt Organizations' Income From Ordinary and Routine Investments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations relating to the taxation of tax-exempt organizations' unrelated business taxable income. The Service published proposed regulations on September 3, 1991 (56 FR 43571), to conform to 1978 statutory amendments regarding securities loans and to clarify that income from certain investments is not subject to unrelated business income tax. After receiving and considering public comments, the Service is finalizing the proposed regulations with modifications.

EFFECTIVE DATE: These amendments are effective for income from notional principal contracts for amounts received after August 30, 1991. See "**SUPPLEMENTARY INFORMATION**" for further details.

FOR FURTHER INFORMATION CONTACT: Regina L. Oldak, (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Although generally exempt from federal income taxation, an organization described in section 501(a) of the Internal Revenue Code of 1986 must pay tax on its unrelated business taxable income, as defined in section 512. Section 512(a)(1) defines unrelated business taxable income (UBTI) as generally meaning gross income from any unrelated trade or business (as defined in section 513) regularly carried on by the organization, less deductions that are directly connected with that trade or business, computed with the modifications provided in section 512(b).

Section 512(b)(1) provides that "[t]here shall be excluded all dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and annuities, and all deductions directly connected with such income." The legislative history indicates that Congress intended to exclude investment income from UBTI. See S. Rep. No. 81-2375, 81st Cong., 2d Sess. 30 (Aug. 22, 1950); H.R. Rep. No. 81-2319, 81st Cong., 2d Sess. 36 (June 23, 1950); and S. Rep. No. 94-1172, 94th Cong., 2d Sess. 3 (1976).

In response to requests for clarification regarding whether income or expense derived from certain notional principal contracts is UBTI, the Service published a Notice of Proposed Rulemaking (NPRM) on September 3, 1991 (56 FR 43571). The NPRM proposed that the list of exclusions for dividends, interest, and annuities in § 1.512(b)-1(a) be expanded to also exclude from UBTI, to the extent determined by the Commissioner in a revenue ruling, substantially similar income from an exempt organization's ordinary and routine investments in connection with a securities portfolio. The NPRM also proposed that such substantially similar income be treated as gross investment income for purposes of sections 590(e) and 4940(c)(2). The preamble to the proposed regulations included the text of a revenue ruling proposed to be issued under the authority of the regulations. The proposed revenue ruling stated that, for purposes of sections 512(b), 590(e), and 4940(c)(2), income from interest rate swaps and currency swaps was determined by the Commissioner to be substantially similar income from ordinary and routine investments in connection with a securities portfolio.

The NPRM also proposed to add payments with respect to securities loans (as defined in section 512(a)(5)) to the list of exclusions from UBTI in § 1.512(b)-1(a) in order to conform the regulations to the statute, which was amended by Public Law 98-345 (1978). No comments were received regarding this provision.

A public hearing was held on December 6, 1991.

Public comments received by the Service generally welcomed the guidance as an important step to clarify this area of the law, but suggested several modifications. Most of the comments suggested that the exclusion from UBTI should apply to all notional principal contracts, not just interest rate and currency swaps. Several comments requested that the Service expressly exclude from UBTI income from particular types of notional principal contracts, notably equity and commodity swaps. Some comments requested that the exclusions be provided in the regulations, rather than in revenue rulings. Some comments also requested that the regulations (or revenue ruling) define the term notional principal contract.

Discussion of Final Regulations

The final regulations amend the regulations under section 512(b)(1) to conform to and incorporate the 1978 statutory amendment regarding securities loans. In addition, the final regulations respond to public comments by eliminating the need for a revenue ruling and clarifying that section 512(b)(1) generally excludes not only dividends, interest, payments with respect to securities loans, and annuities, but also income from notional principal contracts. The final regulations also exclude other income from an exempt organization's ordinary and routine investments that the Commissioner determines to be substantially similar to dividends, interest, payments with respect to securities loans, annuities, and income from notional principal contracts. The final regulations further respond to public comments by clarifying that for purposes of this regulation, the term notional principal contract includes contracts defined in Treas. Reg. § 1.863-7 or regulations issued under section 446.

The final regulations clarify that the new exclusions being added to § 1.512(b)-1(a) do not apply to exempt organizations that act as brokers or dealers (including organizations that make a market in derivative financial products, as described in Treas. Reg. § 1.954-2T(a)(4)(iii)(B)) and that none of the exclusions in § 1.512(b)-1(a) affects the exclusion from UBTI of certain gains or losses under section 512(b)(5). Thus, the regulations do not affect the treatment of any gain or loss from the extinguishment, assignment, or other disposition of any swap position. Generally, a non-dealer exempt organization's gain or loss from sales or other dispositions of non-inventory property would be excluded from UBTI under section 512(b)(5). The final regulations retain and restate the current regulations' limitations with respect to income from debt-financed property and interest and annuity

income derived from controlled organizations.

The final regulations also amend the regulations under sections 509(e) and 4940(c)(2), so that investment income that is excluded from UBTI under section 512(b)(1) is included in the gross investment income of a private foundation.

One comment on the proposed regulations questioned whether, in order for an investment to be excluded as substantially similar income from ordinary and routine investments, the investment must be ordinary and routine from each exempt organization that engages in the transaction. The Service and the Treasury Department intend the phrase ordinary and routine in this context to mean investments which are ordinarily and routinely engaged in by investors in capital, commodity, and similar financial markets. In order to exclude an amount from UBTI, it is not necessary for an exempt organization to demonstrate that it ordinarily and routinely engages in such transactions.

The fact that these regulations exclude certain income from UBTI is not intended to affect determinations under any relevant fiduciary standards of state or federal law.

Dates

The effective dates of the rules of § 1.512(b)–1(a) that were in effect prior to this Treasury decision remain the same. The exclusion under § 1.512(b)–1(a)(1), and the inclusion under §§ 1.509(a)–3(a)(3)(i) and 53.4940–1(d)(1), of income from notional principal contracts is effective for amounts received after August 30, 1991. However, an organization may apply the exclusion under § 1.512(b)–1(a)(1) of income from notional principal contracts prior to that date, provided that such amounts are treated consistently for all open taxable years. Furthermore, an organization that excludes from UBTI income from notional principal contracts under § 1.512(b)–1(a)(1) prior to that date must include that income in its gross investment income under §§ 1.509(a)–3(a)(3)(i) and 53.4940–1(d)(1). Unless otherwise provided by the Commissioner, the exclusion under § 1.512(b)–1(a)(1), and the inclusion under §§ 1.509(a)–3(a)(3)(i) and 53.4940–1(d)(1), of income that the Commissioner determines to be substantially similar income from ordinary and routine investments is effective for amounts received after the date of the Commissioner's determination.

Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Regina L. Oldak, Office of Associate Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.507–1 through 1.514(g)–1

Foundations, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Reporting and recordkeeping requirements, Trusts and trustees.

Amendment to the Regulations

The amendments to 26 CFR parts 1 and 53 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.509(a)–3, paragraph (a)(3)(i) is amended by adding a new sentence at the end to read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

(a) * * *

(3) * * *

(i) * * * For purposes of section 509(e), gross investment income includes the items of investment income described in § 1.512(b)–1(a).

* * * * *

Par. 3. In § 1.512(b)–1, paragraph (a) is revised to read as follows:

§ 1.512(b)–1 Modifications.

* * * * *

(a) *Certain Investment Income*—(1) *In general.* Dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), annuities, income from notional principal contracts (as defined in Treasury Regulations 26 CFR 1.863–7 or regulations issued under section 446), other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner, and all deductions directly connected with any of the foregoing items of income shall be excluded in computing unrelated business taxable income.

(2) *Limitations.* The exclusions under paragraph (a)(1) of this section do not apply to income derived from and deductions in connection with debt-financed property (as defined in section 514(b)). Moreover, the exclusions under paragraph (a)(1) of this section do not apply to gains or losses from the sale, exchange, or other disposition of any property, or to gains or losses from the lapse or termination of options to buy or sell securities. For rules regarding the treatment of these gains and losses, see section 512(b)(5) and § 1.512(b)–1(d). Furthermore, the exclusions under paragraph (a)(1) of this section do not apply to interest and annuities derived from and deductions in connection with controlled organizations. For rules regarding the treatment of such amounts, see section 512(b)(13) and § 1.512(b)–1(l). Finally, the exclusions under paragraph (a)(1) of this section of income from notional principal contracts and income that the Commissioner determines to be substantially similar income from ordinary and routine investments do not apply to income earned by brokers or dealers (including organizations that make a market in derivative financial products, as described in Treasury Regulations 26 CFR 1.954–2T(a)(4)(iii)(B)).

(3) *Effective dates.* The effective dates of the rules of paragraphs (a)(1) and (a)(2) of this section that were in effect prior to this Treasury decision remain the same. The exclusion under paragraph (a)(1) of this section of income from notional principal contracts is effective for amounts received after August 30, 1991. However, an organization may apply the exclusion under paragraph (a)(1) of this section of income from notional principal contracts prior to that date, provided that such amounts are treated consistently for all open taxable years. Unless otherwise provided by the Commissioner, the exclusion under paragraph (a)(1) of this section of income that the Commissioner determines to be substantially similar income from ordinary and routine investments is effective for amounts

received after the date of the Commissioner's determination.

* * * * *

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 4. The general authority citation for part 53 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 53.4940–1, paragraph (d)(1) is amended by adding a new sentence at the end to read as follows:

§ 53.4940–1 Excise tax on net investment income.

* * * * *

(d) * * *

(1) * * * For purposes of paragraph (c) of this section, gross investment income also includes the items of investment income described in § 1.512(b)–1(a).

* * * * *

George O'Hanlon,

Acting Commissioner of Internal Revenue.

Approved: June 16, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–17677 Filed 7–28–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–30]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.502.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 29, 1992 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.502 are effective from 9:30 a.m. to 5 p.m., August 29, 1992. If inclement weather causes the event to be postponed, the regulations will be effective from 9:30 a.m. to 5 p.m., August 30, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Cape May (609) 884–6981.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately forty to fifty powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated.

Dated: July 15, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92–17789 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–92–31]

Special Local Regulations for Marine Events; U.S. Marine Corps Insertion/Extraction Demonstration; Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the U.S. Marine Corps Insertion/Extraction Demonstration, an annual event to be held August 14, 1992 on the Severn River, Annapolis, Maryland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. They will restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 11:45 a.m. to 4 p.m., August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204, or Commander, Coast Guard Group Baltimore (301) 576–2520.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the U.S. Marine Corps Insertion/Extraction Demonstration. The demonstration will be held on the Severn River in the vicinity of the United States Naval Academy. The demonstration will be conducted by personnel qualified to conduct rapell and fastrope insertion, free-fall, and static line parachute jumps and SPIE operations with one CH–46 and/or CH–53 helicopter to support such operations. The marines will be lifted from the water by small craft and helicopter. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

Dated: July 15, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92–17790 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–92–46]

Special Local Regulations for Marine Events; Blackbeard Pirate Jamboree; Town Point, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Blackbeard Pirate Jamboree to be held on the Elizabeth River at Town Point Park, Norfolk and

Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 12:15 p.m. to 3 p.m., September 19, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application to hold the Blackbeard Pirate Jamboree on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The event will consist of a parade of sail followed by an orchestrated water drama with cannon fire between two vessels. Since many spectator vessels are expected to be in the area to watch the jamboree, the regulations in 33 CFR 100.501 are being implemented for the safety of life and property. The waterway will not be closed for an extended period, therefore commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: July 17, 1992.

W. T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92–17792 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–92–47]

Special Local Regulations for Marine Events; 14th Annual Diet Pepsi Triathlon, Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.513.

SUMMARY: This notice implements 33 CFR 100.513 for the 14th Annual Diet Pepsi Triathlon. The swim portion of the event will be held in Wrightsville Channel between daybeacon 18 (LLNR 28050) and daybeacon 23 (LLNR 28065). These regulations restrict vessel traffic within the regulated area during the event. These Special Local Regulations are considered necessary to control vessel traffic and to provide for the safety of the participants in the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.513 are effective from 6 a.m. to 9:45 a.m., September 27, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Fort Macon (919) 247–4548.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Wilmington Family YMCA submitted an application to hold the swim portion of the 14th Annual Diet Pepsi Triathlon at Wrightsville Beach, North Carolina. The swim portion of the triathlon will consist of approximately 700 swimmers racing in a section of Wrightsville Channel. The regulations in 33 CFR 100.513 govern the activities of the swim portion of the triathlon in Wrightsville Channel between Wrightsville Channel Daybeacon 18 (LLNR 28050) and Wrightsville Channel Daybeacon 23 (LLNR 28065). Because the swim portion of the triathlon is an event of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. The waterway will be closed during the event. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

Dated: July 17, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92–17791 Filed 7–28–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–4123–2]

State Underground Injection Control Program; Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of state primacy program.

SUMMARY: The Commonwealth of Puerto Rico has submitted an application under section 1422 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h–1, for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After review of the application, the EPA has determined that the Commonwealth's UIC program for all classes of injection wells meets the requirements of the SDWA and, therefore, approves it.

EFFECTIVE DATE: This approval shall become effective on July 29, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 1992.

ADDRESSES: The public docket and supporting documents for this rulemaking are available for review during normal business hours at the Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Walter Andrews, Chief, Drinking/Ground Water Protection Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, room 845, New York, New York 10278. Phone: (212) 264–1800.

SUPPLEMENTARY INFORMATION: Part C of the SDWA contains provisions for an UIC program. Section 1421 of the SDWA

requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDW's). The State or Commonwealth shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (1) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under section 1421 of the SDWA; and (2) will keep such records and make such reports with respect to its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall, by rule, approve, disapprove, or approve in part, the State or Commonwealth's UIC program.

The Commonwealth of Puerto Rico was listed as needing a UIC program on March 19, 1980 [FRL 1439-1 in Vol. 45, No. 55 of the FR]. The Commonwealth submitted an application under section 1422 on February 13, 1990, for a UIC program to be administered by Puerto Rico's Environmental Quality Board (EQB). On February 6, 1991, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by Puerto Rico's EQB. The public hearing was held on March 12, 1991, in San Juan, Puerto Rico. No public comments were received.

After review of the application, EPA has determined that the Puerto Rico UIC program submitted by Puerto Rico's Environmental Quality Board for Classes I, II, III, IV, and V injection wells meets the requirements of section 1422 of the SDWA and is hereby approved.

This program replaces the existing EPA-administered program for all Class I, II, III, IV, and V injection wells on non-Indian lands. EPA promulgated an UIC program for Puerto Rico on December 30, 1984 in order to comply with the requirement of the SDWA to promulgate a Federally-administered program in the absence of a State-administered program. Now that EPA has determined that the State-administered program meets all applicable Federal requirements, the EPA is withdrawing the EPA-administered program for Class I, II, III, IV, and Class V injection wells on non-Indian lands and establishing the State-administered program as the applicable UIC program for Class I, II, III, IV, and V injection wells on non-Indian lands in the Commonwealth of Puerto Rico.

This approval will be codified in 40 CFR part 147, State Underground Injection Control Programs, at § 147.2650 currently reserved for the State-administered program. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference into the Federal regulations. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA. See 40 CFR 147.1(e).

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

EPA has determined that an Information Collection Request under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is unnecessary because today's decision imposes no new federal reporting or record-keeping requirements.

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), The Administrator certifies that approval by EPA under section 1422 of the SDWA of the application by the Commonwealth of Puerto Rico's Environmental Quality Board will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. This rule imposes no new requirements on small entities.

In light of the absence of public comment on the proposed approval, there is good cause for making this approval effective immediately. 5 U.S.C. 553(d).

List of Subjects in 40 CFR Part 147

Administrative practice and procedure, incorporation by reference, intergovernmental relations, reporting and record keeping requirements, underground injection.

Dated: April 6, 1992.

William K. Reilly,

Administrator.

As set forth in the preamble, part 147 of title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart BBB—Puerto Rico

1. The authority and source citations for part 147 continue to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Source: 49 FR 20197, May 11, 1984, unless otherwise noted.

2. Section 147.2650 is revised to read as follows:

§ 147.2650 State-administered program—Class I, II, III, IV, and V wells.

The Underground Injection Control Program for all classes of wells in the Commonwealth of Puerto Rico, other than those on Indian lands, is the program administered by Puerto Rico's Environmental Quality Board (EQB), approved by the EPA pursuant to the Safe Drinking Water Act (SDWA) section 1422. This program consists of the following elements, as submitted to EPA in the Commonwealth's program application.

a. *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the Commonwealth of Puerto Rico. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the following locations: EPA, Region II, 26 Federal Plaza, room 845, New York, NY 10278; EPA, Headquarters, 401 M Street, SW., room E1101A, Washington, DC 20460; or the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(1) Underground Injection Control Regulations of the Commonwealth of Puerto Rico, Parts I through V and appendices A and B, adopted September 14, 1983 (Amended July 20, 1988).

(2) Puerto Rico Public Policy Environmental Act (PRPPE), Title 12 Laws of Puerto Rico Annotated (LPRA) Chapters 121 and 131, 1977 edition, as amended 1988 edition, and Chapter 122, 1988 edition.

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region II and the Commonwealth of Puerto Rico's EQB signed by the Regional Administrator on August 23, 1991.

(c) Statement of legal authority. (1) Attorney General's statement on the Commonwealth of Puerto Rico's Authority to apply for, assume and carry out the UIC Program, dated June 26, 1987. (2) Letter from the Governor of the Commonwealth of Puerto Rico requesting the program, dated July 16, 1987.

(d) Program description. The Description of the Commonwealth of Puerto Rico's Underground Injection Control Program, dated with the effective date October 30, 1988.

3. By revising § 147.2651 to read as follows:

§ 147.2651 EPA-administered program—Indian lands.

(a) Contents. The UIC program for all classes of wells on Indian lands in the Commonwealth of Puerto Rico is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) Effective date. The effective date for the UIC program on Indian Lands in the Commonwealth of Puerto Rico is November 25, 1988.

[FR Doc. 92-17423 Filed 7-28-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 91-269; FCC 92-259]

Widespread Implementation of Home Automation and Communication Technology

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The adopted rule relaxes restrictions on the amount of RF energy that can be conducted onto the AC power lines by carrier current transmitters operating under 47 CFR part 15, and provides additional interference protection to AM broadcasters. The adopted rule also relaxes restrictions on the signal strength that can be used to distribute television signals throughout a home.

These changes are adopted as a result of two petitions filed by the home automation industry, a *notice of proposed rulemaking* adopted in response to these petitions, and all of the comments filed in ET Docket 91-269. These changes are intended to encourage the development of advanced home automation and communications systems.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 91-269, FCC 92-259, adopted June 18, 1992, and released July 15, 1992. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Paperwork Reduction

The changes to the rules implemented by this Report and Order will not implement new or modified information collection requirements.

Summary of the Report and Order

1. By this action, the Commission amends 47 CFR part 15 of its rules to facilitate the introduction of sophisticated, new home automation and communications systems. This is accomplished by eliminating existing requirements that unnecessarily restrict home automation and communications systems that use carrier current and master antenna technology.

2. Home automation and communications systems employ a variety of communications technologies, including the use of the home electrical wiring to distribute radio frequency (RF) signals that control or monitor appliances and other electrical devices ("carrier current"), and cables to distribute radio and television signals ("master antennas"). In 1990, the Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG), and Smart House Limited Partnership ("Smart House"), filed separate petitions for rulemaking requesting that the Commission modify certain regulations in 47 CFR part 15 that posed impediments to the introduction of advanced home automation and communication technology. In response to these petitions, the Commission adopted a *notice of proposed rulemaking* (Notice) (56 FR 48502, September 25, 1991) that proposed to change the signal limits that apply to carrier current systems and to increase the maximum output signal level permitted for television and video distribution systems used in the home.

3. *Carrier Current Issues.* Carrier current systems use a home's electrical wiring as a communications path. The Commission's rules subject these systems to emission limits designed to prevent harmful interference to authorized radio communications. EIA/CEG notes that, under the current rules, carrier current systems operating on frequencies below 450 kHz are not subject to conducted emissions limits on their operating frequency. However, it further notes that harmonic and spurious emissions from such systems that are in the frequency range 450 kHz-30 MHz are subject to a conducted emission limit of 250 microvolts. We observe that carrier current systems operating on frequencies in the 450 kHz-30 MHz range are not subject to any conducted emission limits; *e.g.*, such systems are not subject to conducted limits on their operating signal, harmonics or spurious emissions. EIA/CEG asserts that there is no reason for treating carrier current systems using frequencies below 450 kHz differently from those using frequencies above 450 kHz. A test report submitted by EIA/CEG with its petition indicates that carrier current systems operating below 450 kHz would not interfere with AM radio. Accordingly, EIA/CEG requests that carrier current systems operating below 450 kHz be exempted from the present limits on conducted emissions.

4. In the notice, we proposed to eliminate the existing conducted limit for carrier current systems operating below 450 kHz. In response to concerns that this action could result in increased interference to AM broadcasting due to higher spurious emissions, we also proposed to establish a 1000-microvolt conducted limit on emissions in the AM broadcast band that would apply to all carrier current transmissions not intended to be received by a standard AM broadcast receiver.

5. Most of the parties addressing this matter support the proposed changes in the conducted limits. However, a few parties propose that we adopt additional requirements such as a limit on the cumulative emissions of all devices operating under 47 CFR part 15 within the home, RF susceptibility standards, and a prohibition of the operation of low power, nonlicensed transmitters on amateur radio, broadcasting, satellite, and Citizens Band frequencies.

6. We believe that the proposed changes to our carrier current rules are appropriate, including the 1000-microvolt limit on nonbroadcast-conducted emissions in the AM band. We find no basis for adopting additional restrictions on the use of carrier current technology. Furthermore, it is beyond the scope of this proceeding to consider changes in emission limits for other devices operating under 47 CFR part 15.

7. *Master Antenna Issues.* Signals transmitted by cable throughout a home that are intended to be received by standard TV receivers fall under the definition of a TV Interface Device (TVID) and are regulated under 47 CFR part 15. Smart House contends that the general TVID output signal limit currently contained in 47 CFR part 15 is not sufficient to ensure reliable distribution of television signals

throughout the home. Smart House notes that a 6 dB higher limit on output signals is permitted for TVIDs used as master antenna systems, and it contends that systems used in homes are in fact master antenna systems. The TVID regulations describe a master antenna system as including central distribution systems used in large buildings like apartment complexes.

8. The notice proposed to amend 47 CFR 15.115(b)(3) of the rules to define master antenna system as referring to TV interface devices employed for central distribution of television and other video signals within any building. The notice also proposed to require that such interface devices be designed to: (1) Distribute multiple television signals at the same time; (2) Distribute such signals by cable to all TV broadcast receivers in the building; and (3) Distribute all over-the-air and, if appropriate, cable signals.

9. Most of the commenters favor expanding the definition of a master antenna system to specifically include television distribution systems used in the home. Based on the comments, we are adopting a revised definition of a master antenna system that will include television and video distribution systems used in the home.

10. For the above reasons, and for reasons explained in the complete report and order, we are adopting the rule changes as proposed in the notice, with minor modifications. We are making these changes effective August 28, 1992, in order to remove as soon as possible the existing impediments to the implementation of home automation and communications systems.

11. The Final Regulatory Flexibility Analysis is contained in the text of the order.

12. Accordingly, it is ordered that under the authority contained in sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 CFR part 15 of the Commission's Rules and Regulations is amended as set forth below. These rules and regulations are effective August 28, 1992. *It is further ordered* that this proceeding is terminated.

13. For further information on this proceeding, contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, telephone 202–653–8138.

List of Subjects in 47 CFR Part 15

Computer technology, Home improvement, Labeling, Radio, Reporting and recordkeeping requirements, Communications equipment, Security measures, Telephone, Television, Wiretapping and electronic surveillance.

47 CFR part 15 is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. 47 CFR 15.3 is amended by revising the first sentence in paragraph (f) to read as follows:

§ 15.3 Definitions.

* * * * *

(f) *Carrier current system.* A system, or part of a system, that transmits radio frequency energy by conduction over the electric power lines. * * *

* * * * *

3. 47 CFR 15.31 is amended by adding a sentence to the end of paragraph (h) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(h) * * * A device which incorporates a carrier current system shall be tested as if the carrier current system were incorporated in a separate device; that is, the device shall be tested for compliance with whatever rules would apply to the device were the carrier current system not incorporated, and the carrier current system shall be tested for compliance with the rules applicable to carrier current systems.

* * * * *

4. 47 CFR 15.107 is amended by revising paragraph (c) to read as follows:

§ 15.107 Conducted limits.

* * * * *

(c) The limits shown in paragraphs (a) and (b) of this section shall not apply to carrier current systems operating as unintentional radiators on frequencies below 30 MHz. In lieu thereof, these carrier current systems shall be subject to the following standards:

(1) For carrier current systems containing their fundamental emission within the frequency band 535–1705 kHz and intended to be received using a standard AM broadcast receiver: no limit on conducted emissions.

(2) For all other carrier current systems: 1000 uV within the frequency band 535–1705 kHz.

(3) Carrier current systems operating below 30 MHz are also subject to the radiated emission limits in § 15.109(e).

* * * * *

5. 47 CFR 15.115(b)(3) and the note following (b)(3) are revised to read as follows:

§ 15.115 TV interface devices, including cable system terminal devices.

* * * * *

(b) * * *

(3) The term "master antenna" used in this section refers to TV interface devices employed for central distribution of television or other video signals within a building. Such TV interface devices must be designed to:

(i) Distribute multiple television signals at the same time;

(ii) Distribute such signals by cable to outlets or TV receivers in multiple rooms in the building in which the TV interface devices are installed; and,

(iii) Distribute all over-the-air or cable signals.

Note: Cable-ready video cassette recorders continue to be subject to the provisions for general TV interface devices.

* * * * *

6. 47 CFR 15.207 is amended by revising paragraph (b) to read as follows:

§ 15.027 Conducted limits.

* * * * *

(b) The limit shown in paragraph (a) of this section shall not apply to carrier current systems operating as intentional radiators on frequencies below 30 MHz. In lieu thereof, these carrier current systems shall be subject to the following standards:

(1) For carrier current systems containing their fundamental emission within the frequency band 535–1705 kHz and intended to be received using a standard AM broadcast receiver: no limit on conducted emissions.

(2) For all other carrier current systems: 1000 uV within the frequency band 535–1705 kHz.

(3) Carrier current systems operating below 30 MHz are also subject to the radiated emission limits in §§ 15.205, 15.209, 15.221, 15.223, 15.225 or 15.227, as appropriate.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17813 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–341; RM–7836, RM–7897]

Radio Broadcasting Services; Altamont and Bandon, OR, and Tulelake, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Western States Broadcasting, substitutes Channel 249C1 for Channel 267C at Altamont, Oregon, and modifies the license of Station KCHQ (FM) to specify operation on the lower class channel. See 56 FR 61220, December 2, 1991. At the request of Michael T. McKenna, the Commission allots Channel 243C3 to Bandon, Oregon, and Channel 243C2 to Tulelake, California, as each community's first local aural transmission service. Channel 249C1 can be allotted to Altamont with a site restriction of 24.8 kilometers (15.5 miles) southwest to accommodate petitioner's desired transmitter site, at coordinates North Latitude 42–05–36 and West Longitude 121–59–35. Channel 243C3 can be allotted to Bandon with a site restriction of 12.1 kilometers (7.5 miles) south to avoid a short-spacing to Station KACW, Channel 297C1, North Bend, Oregon, at coordinates 43–00–30; 124–25–30. Channel 243C2 can be allotted to Tulelake without the imposition of a site restriction, at coordinates 41–57–24; 121–28–30. With this action, this proceeding is terminated.

DATES: Effective September 8, 1992. The window period for filing applications for Channel 243C3 at Bandon, Oregon, and Channel 243C2 at Tulelake, California, will open on September 9, 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–341, adopted July 6, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Tulelake, Channel 243C2.

3. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 267C and adding Channel 249C1 at Altamont, and adding Bandon, Channel 243C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17816 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–340; RM–7851, RM–7894]

Radio Broadcasting Services; Harbeck-Fruitdale and Rogue River, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Grants Pass Broadcasting Corporation, substitutes Channel 252C2 for Channel 252A at Harbeck-Fruitdale, Oregon, and modifies the license of Station KLDR to specify operation on the higher class channel. See 56 FR 60957, November 28, 1991. Channel 252C2 can be allotted to Harbeck-Fruitdale in compliance with the Commission's minimum distance separation requirements at Station KLDR's licensed transmitter site, at coordinates North Latitude 42–22–56 and West Longitude 123–16–29. At the request of Michael T. McKenna, Channel 234C3 is allotted to Rogue River, Oregon, as the community's first local FM transmission service. Channel 234C3 at Rogue River requires a site restriction of 12.0 kilometers (7.5 miles) southeast to avoid short-spacings to Stations KMGE, Channel 233C, Eugene, Oregon, and KOOS, Channel 235C1, North Bend, Oregon, at coordinates 42–21–04; 123–04–35. With this action, this proceeding is terminated.

DATES: Effective September 8, 1992. The window period for filing applications for Channel 234C3 at Rogue River, Oregon, will open on September 9, 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–340, adopted June 6, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 252A and adding Channel 252C2 at Harbeck-Fruitdale, and by adding Rogue River, Channel 234C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17817 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–94; RM–7955]

Radio Broadcasting Services, Springfield, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 234C2 for Channel 234A at Springfield, Minnesota, and modifies the construction permit for Station KLRP (FM) to specify operation on Channel 234C2 in response to a petition filed by James Ingstad Broadcasting, Inc. See 57 FR 19837, May 8, 1992. The coordinates for Channel 234C2 are 44–22–45 and 95–19–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–94, adopted July 8, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may

also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 234A and adding Channel 234C2 at Springfield.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17815 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–74; RM–7952]

Radio Broadcasting Services; Byrdstown, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Donald Poore, allots Channel 244A to Byrdstown, Tennessee. See 57 FR 13328, April 16, 1992. Channel 244A can be allotted to Byrdstown, Tennessee, in compliance with the Commission's minimum distance separation requirements with a restriction of 8.1 kilometers (5.0 miles) northeast in order to avoid a short-spacing to Station WDOD–FM, Channel 243C, Chattanooga, Tennessee. The coordinates for the allotment of Channel 244A to Byrdstown are North Latitude 36–38–10 and West Longitude 85–05–22. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 8, 1992. The window period for filing applications will open on September 9, 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–74, adopted July 2, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Byrdstown, Channel 244A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17819 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–308; RM–6691 and RM–7008]

Radio Broadcasting Services; Neenah-Menasha, Rhinelander and Rudolph, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 262C2 for Channel 261A at Neenah-Menasha, Wisconsin, and modifies the license for Station WEMI(FM) to specify operation on the higher class channel in response to a petition filed by Evangel Ministries, Inc. See 54 FR 29756, July 14, 1989. The coordinates for Channel 262C2 are 44–15–17 and 88–26–13. To accommodate the upgrade at Neenah-Menasha, we shall substitute Channel 261C1 for Channel 262C1 at Rhinelander, Wisconsin, and modify the license for Station WRHN(FM) accordingly. Canadian concurrence has been obtained for the allotment at Rhinelander at coordinates 45–38–08 and 89–22–42. The counterproposal filed by Point-Rapids Broadcasting, Inc. to substitute Channel 260C3 for Channel 260A at Rudolph, Wisconsin, and modify the license for Station WIZD(FM) has been denied (RM–7008). With this action, this proceeding is terminated.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89–308, adopted July 2, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 261A and adding Channel 262C2 at Neenah-Menasha and by removing Channel 262C1 and adding Channel 261C1 at Rhinelander.

Federal Communications Commission

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–17818 Filed 7–28–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

50 CFR Part 23

RIN 1018–AB29

Endangered Species Convention; Amendments to Appendix III

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the saffron toucanet (*Baillonius bailloni*), chestnut-eared aracari (*Pteroglossus castanotis*), red-breasted toucan (*Ramphastos dicolorus*), the spot-billed toucanet (*Selenidera maculirostris*), and the hill myna (*Gracula religiosa*) have

been added to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). A list of species contained in the CITES appendices is presented for informational purposes in 50 CFR 23.23(f). Any specimen of these five species, whether alive or dead including all parts and derivatives, is covered by the provisions of the Convention. Appendix III comprises species subject to regulation in particular CITES Party nations that have requested the cooperation of the other Parties in controlling trade in such species. The addition of the saffron toucanet, chestnut-eared aracari, red-breasted toucan, and spot-billed toucanet was initiated at the request of Argentina and the hill myna at the request of Thailand. The addition of these five birds to Appendix III of CITES entered into effect and became enforceable on June 11, 1992, under the terms of the Convention.

DATES: This action is effective on July 29, 1992. The Service will consider all comments received by September 28, 1992 on whether to enter a reservation on any or all of these species.

ADDRESSES: Please send correspondence concerning this notice to Chief, Office of Scientific Authority; room 725, Arlington, Square Building; U.S. Fish and Wildlife Service; Washington, DC 20240. The fax number is 703–358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia 22203. Comments and other information received are available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain species of animals and plants. Species for which trade is controlled are included in three appendices. Appendix III includes native species that any Party nation identifies to the CITES Secretariat as being subject to regulation within its national jurisdiction for purposes of restricting or preventing exploitation, and for which it needs the cooperation of other Parties in controlling trade. Appendix II includes species that although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also includes species that must be subject to regulation in order that the trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix I includes species threatened with extinction that are or may be affected by trade.

Trade in Appendix III species, including any part or derivative not exempted, requires the issuance of either an export permit, a re-export certificate, or a certificate of origin. An export permit is required if the shipment originates from the nation that added the species to Appendix III. Export to or from other Party nations requires presentation of either "a certificate of origin" or, in the case of re-export, "a certificate from the nation of re-export", and these documents verify that specimen(s) originated from the non-listing Party nations and/or are being legally re-exported.

This notice updates the list of CITES species reproduced in the U.S. Code of Federal Regulations (CFR) at 50 CFR 23.23(f) by adding the saffron toucanet, chestnut-eared aracara, red-breasted toucan, spot-billed toucanet, and hill myna to Appendix III as determined respectively by the governments of Argentina and Thailand, pursuant to Article XVI paragraph 1 of the Convention. Any specimen of these species, whether alive or dead including all parts and derivatives, is covered by the provisions of the Convention. The CITES Secretariat notified all Party nations on March 13, 1992 of the addition of these five birds to Appendix III. In accordance with CITES Article XVI, paragraph 2, these additions become effective June 11, 1992; 90 days after notification.

Any Party at any time may enter a reservation on any species added to Appendix III, thereby exempting itself from implementing the Convention for that particular species. The limited effects of a reservation in alleviating exporters and importers from documentation requirements were thoroughly discussed in the **Federal Register** notice of November 17, 1987 (52 FR 43924). In a resultant March 28, 1988, **Federal Register** notice (53 FR 9945; also see 53 FR 12497; 4/14/88), the Service made a procedural change in requesting comments about reservations. As there is no time limit for reserving on a species added to Appendix III, a proposed rule normally is not published; public comments on the issue of whether to enter a reservation are requested with publication of the final rule, and if appropriate, entering a reservation will be considered.

With regard to these five species of birds, the Service does not perceive any significant biological, trade, or legal issue that would warrant recommending the entering of reservation(s). It is unlikely that substantive comments for reservation(s) will be received or that any reservation would be taken. For these reasons and because a reservation if deemed appropriate can be taken at any future time, good cause exists to omit the proposed-rule notice and public-comment process, since it is unnecessary and contrary to the public interest [5 U.S.C. 553(b)].

Because the species covered in this notice were added to Appendix III of the Convention effective June 11, 1992, and because of the other reasons mentioned above, the Service finds that good cause exists for making this action effective upon publication [5 U.S.C. 553(d)].

Therefore, the Service announces the listing of the saffron toucanet, chestnut-eared aracari; red-breasted toucan, and spot-billed toucanet by Argentina and the hill myna by Thailand in appendix III of CITES, effective June 11, 1992. The Service at this time has not recommended entering any reservations(s), and would only consider doing so if valid and compelling reasons are shown that implementation of these listings is contrary to the interests or laws of the United States. A reservation on any of these five species of birds can be taken at any time; the Service now solicits comments on whether to enter reservation(s) on any of these species, for which no opportunity for comments was previously provided. The Service will consider all comments received, and if appropriate, will recommend that the United States enter reservation(s).

Note.—The Department has determined that amendments to the Convention's appendices, which result from actions of Parties to the Convention, do not require preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that these listing actions are not rules for purposes of Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Notices on Appendix III species listings do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This notice was prepared by Dr. Richard M. Mitchell, Office of Scientific Authority, under authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Export, Imports, Transportation, and Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, for the reasons set forth above, Part 23, subchapter C of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. Amend § 23.23(f) by adding the following five entries of bird species, alphabetically under the appropriate taxonomic Class and Order, to:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	Date listed (month/day/year)
CLASS AVES	BIRDS		
Order Piciformes:	Woodpeckers, Toucans, Jacamars, Barbets:		
Ballonius baffoni	Saffron toucanet	III (Argentina)	6/11/92
Pteroglossus castanotis	Chestnut-eared aracari	III (Argentina)	6/11/92
Ramphastos dicolorus	Red-breasted toucan	III (Argentina)	6/11/92
Selenidera maculirostris	Spot-billed toucanet	III (Argentina)	6/11/92
Order Passeriformes:	Perching Birds:		
Gracula religiosa	Hill myna	III (Thailand)	6/11/92

(Addition of the saffron toucanet, chestnut-eared aracari, red-breasted toucan, spot-billed toucanet and hill myna to CITES Appendix III).

Dated: July 13, 1992.

Richard N. Smith,

Deputy Director.

[FR Doc. 92-17338 Filed 7-28-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 920780-2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: NMFS issues this interim rule to allow limitations on tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina through August 31, 1992. This area exhibits intermittently high concentrations of a brown alga, *Dictyopteris* sp. that makes trawling with TEDs impracticable. Shrimp inhabit the alga, and fishermen wish to harvest the algae to catch the shrimp. When algal concentrations are high, TEDs may reduce shrimp retention by excluding a large portion of the algae and the shrimp within. The tow time alternative will allow fishermen to harvest shrimp more productively. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow times are allowed in lieu of TEDs, and to determine whether algal concentrations continue to make TED use impracticable.

DATES: Comments on this interim rule must be submitted by August 28, 1992.

This rule is effective from July 24, 1992 through August 31, 1992, except for the exemption registration provision in § 227.72(e)(8)(i), which requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which is not yet effective. When OMB approval is received, the effective dates of § 227.72(e)(8)(i) will be announced in the Federal Register.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this interim rule should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2322) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893-3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in waters off of North Carolina. NMFS regulations at 50 CFR parts 217 and 227 require shrimp trawlers 25 feet (7.6 meters) long or longer in offshore waters of the Atlantic Area, which includes waters off North Carolina, to use approved turtle excluder devices (TEDs) in trawls from May 1 through August 31, each year. Shrimp trawlers less than 25 feet long in offshore waters of the Atlantic Area are required to limit tow times to 90 minutes or less, or use TEDs, during the same times. Tow time is defined as the

interval from trawl doors entering the water to trawl doors being removed from the water.

Algal Clogging

Shrimp fishermen in North Carolina have complained that they cannot economically catch shrimp in a limited area off North Carolina with TEDs installed due to the presence of concentrations of a winged brown alga, *Diclyopteris* sp. These fishermen harvest the alga, which contains shrimp.

The area in question is approximately 30 nautical miles in length, between Rich Inlet, North Carolina (34°17.6'N. latitude) and Brown's Inlet, North Carolina (34°35.7'N. latitude) extending from the COLREGS line to 1 nautical mile offshore. The alga is reported to grow on adjacent offshore hard bottom areas. It breaks loose during storms and concentrates in shallow coastal waters.

The bottom between these two inlets consists of scattered rock, sea grasses, and brown algae. The area is a highly productive shrimp area fished historically by about 30 local shrimp trawlers. Only fishermen with local knowledge operate in these waters, and during daylight hours only because of the threat of gear loss. Fishermen report that high concentrations of algae necessitate short tow times and that they can only tow for 15–30 minutes. If algae are less concentrated, tow times can increase accordingly.

NMFS TED Testing

NMFS has very limited information about the extent of algae concentrations in this area throughout the year. NMFS gear specialists conducted an assessment of the algae problem in July 1989 and evaluated several different types of TEDs. At that time, the gear specialists documented the presence of large concentrations of brown algae near New River Inlet, which lies between Rich Inlet and Brown's Inlet. More recently, the North Carolina Division of Marine Fisheries (DMF) reported that on June 18, 1992, a shrimp trawler using TED-equipped nets in the offshore waters between Rich Inlet and Bear Inlet (Bear Inlet is north of the proposed North Carolina restricted area) experienced clogging that reduced tow times to between 15 and 30 minutes.

In conjunction with its July 1989 assessment of the algal clogging problem, NMFS tested a large, grid-type TED, specifically modified to exclude seagrass and algae, and compared it to non-TED equipped nets. Shrimp catches with and without TEDs were highly variable; both TED and non-TED equipped nets clogged with algae. The NMFS observers aboard found that more algae had been excluded from the TED equipped net and the shrimp loss was greater.

Additional weedless-type TEDs were tested by shrimp fishermen in cooperation with DMF and North Carolina Sea Grant (Sea Grant) with the same result. The weedless TEDs released a significant portion of the algae, but elimination of the algae did not solve the problem, because shrimp were also excluded.

Results of these tests show that a TED does not yet exist to allow productive shrimp trawling in high concentrations of algae. However, NMFS is continuing research and additional testing is necessary to determine whether gear modifications can allow effective shrimp trawling with TEDs under heavy algal conditions.

Recent Developments

Fishermen assert that periodic algal concentrations in this area off of North Carolina have been known to exist for many years. Prior to implementation of the sea turtle conservation regulations, fishermen were able to harvest the algae and associated shrimp using standard shrimp trawls. Tow duration was limited by abundance of algae, according to fishermen. When the sea turtle conservation regulations were first implemented from May through August of each year (54 FR 37812, September 8, 1989), fishermen complained of shrimp losses associated with TED use. More complaints were made when regulations required the use of TEDs from September 1, 1991, through April 30, 1992 (56 FR 43713, September 4, 1991). That rule effectively required year-round TED use in this fishery. Recent evidence indicates that increased sea turtle conservation measures are necessary in the Atlantic area, and NMFS has proposed regulations to require TED use in all waters, year-round, with certain exceptions, including when NMFS determines that environmental conditions make TED use impracticable (57 FR 18446, April 30, 1992).

In an April 1992 meeting involving local fishermen, NMFS, Sea Grant, and DMF, fishermen requested an exemption from TED requirements that would allow them to use limited tow times. NMFS does not believe that a limited exemption from TED requirements will adversely affect turtles if sufficient conservation measures are required. However, given the limited amount of information in this regard, as well as the limited information about algal concentrations, NMFS believes that it is only prudent to allow such an exemption to the extent that it is demonstrated that TED use is not practicable and sea turtles are adequately protected.

Sea Turtle Conservation Measures

This interim rule establishes a restricted area in which the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), or his designee, may authorize the use of restricted tow times of up to 55 minutes (measured from the time trawl doors enter the water, until they are retrieved from the water) by shrimp trawlers, when NMFS finds that the concentration of brown algae makes trawling with TEDs impracticable. Shrimp trawlers are required to register with the Assistant Administrator in order to use restricted tow times in lieu of TEDs. Owners and operators of shrimp trawlers are advised that the State of North Carolina issues authorizations to fish in the North Carolina restricted area.

NMFS does not anticipate that there will be adverse effects to sea turtles by substituting tow times for TEDs if shrimpers comply with the tow time requirements. The 55-minute tow time limitation allows at least 30 minutes bottom time for trawl nets, and is within the 15–30 minute trawl times reported by the North Carolina fishermen when algae are heavily concentrated in the restricted area. The 55-minute tow time has also been determined to constitute an acceptable limit for forced submergence of sea turtles in shrimp trawls, and the more restricted tow time facilitates enforcement. The National Academy of Sciences report, "Decline of the Sea Turtles: Causes and Prevention," provided guidance on effects of tow times on sea turtles. The report concluded that tow times of 40 minutes in summer months and 60 minutes during winter months would provide protection comparable to that afforded by TEDs. Thus, a tow-time limitation appears to be an effective alternative to mandatory TED use and should provide comparable protection for sea turtles.

A tow time restricted to 55 minutes will also facilitate enforcement of compliance with this conservation measure. Enforcement of tow-time limitations is problematic, because it is time-consuming and requires a significant presence of enforcement officers who must continually watch as a trawler deploys its nets, monitor the fishing activity throughout the timed tow, and finally, witness retrieval of the trawls. However, in this case, the shorter tow time, the relatively limited area of surveillance, and the use of on-board observers will improve enforceability.

This interim rule establishes a framework for NMFS to modify the required conservation measures through notice in the Federal Register, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, NMFS will impose any necessary additional or more stringent measures, including requiring more restrictive tow times, synchronized tow times, or termination of the TED-use exemption program, if it determines that the concentration of algae no longer makes trawling with TEDs impracticable, if NMFS determines that there is insufficient compliance with the required conservation measures, if compliance can't be monitored effectively, or if NMFS monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching, or has exceeded, the incidental take level established by the biological opinion for this rule issued as a result of consultation under section 7 of the ESA. That level is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or two lethal takes of loggerhead turtles. Finally, NMFS may impose any necessary additional conservation measures, including termination of the exemption program, if significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur.

This rule requires vessels participating in this program to carry a NMFS-approved observer, if requested by the Assistant Administrator, to document the incidental capture of sea turtles, and to monitor compliance with required conservation measures, including restricted tow times, and resuscitation of captured turtles in accordance with 50 CFR 227.72(e)(1)(i).

Finally, NMFS authorization for the use of 55-minute tow times in the restricted area will be rescinded by publication in the Federal Register if NMFS determines that trawling with TEDs is feasible during the effective dates of this rule.

NMFS will monitor algal concentrations regularly in the restricted area through limited observer coverage and the testing of TEDs to evaluate the need for continued TED exemption for this local fishery.

The provisions of this interim rule do not preclude the State of North Carolina from implementing more stringent protective measures for sea turtles in the North Carolina restricted area.

Future Actions by NMFS

On April 30, 1992, NMFS issued a proposed rule that would expand the use of TEDs to all areas at all times of the year from North Carolina through Texas (57 FR 18446, April 30, 1992). The proposed rule contains a provision whereby the Assistant Administrator may allow compliance with tow-time restrictions as an alternative to the TED requirement if it is determined that special environmental conditions in a particular area, such as accumulation of seagrass or algae, make trawling with TED-equipped nets impracticable. The special environmental conditions must be documented by NMFS and, if a tow-time limitation is substituted for the TED requirement, observers on vessels or other measures could be required on vessels to ensure compliance.

NMFS anticipates that a long-term solution to the algae clogging problem in North Carolina will be addressed when NMFS has gathered sufficient monitoring data on the extent and duration of algae in this area, and completed research to determine whether gear modifications to allow TED use when harvesting shrimp in heavy algal concentrations is feasible. NMFS will be able to respond to environmental conditions such as this in a more timely manner when the current proposed rule (57 FR 18446) is made final. However, if that rule is not finalized by September 1, 1992, when conservation measures specified in the current regulations are no longer in effect in the Atlantic Area, NMFS will propose an extension of those regulations, including the provision to authorize restricted tow times in lieu of TEDs, if it is determined that special environmental conditions make trawling with TED-equipped nets impracticable. Accordingly, this interim rule is effective only until September 1, 1992.

Classification

The Assistant Administrator has determined that this interim rule is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This interim rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The basic regulations that this rule amends were determined not to be major.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for this action that concludes that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

In the final rule that implemented the sea turtle conservation regulations (52 FR 24244, June 29, 1987), NMFS concluded that, to the maximum extent practicable, the regulations were consistent with the coastal zone management programs of each of the southeastern states that has an approved program under the Coastal Zone Management Act. Since this rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the initial consistency determination, a new consistency determination is not required. Neither this rule nor the ESA preclude a state from adopting more stringent sea turtle protection measures.

Paragraph 227.72(e)(8)(i) of this rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, requests for registration to trawl using restricted tow times in lieu of TEDs in the North Carolina restricted area. A request to make this collection has been submitted to the Office of Management and Budget (OMB). The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment on this rule. Failure to implement interim measures immediately would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this rule relieves a

restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective. NMFS is requesting public review and comment on this interim rule and will consider changes to the provisions of this rule recommended as a result of that review.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine Mammals, Transportation.

List of Subjects

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: July 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1521–1543; and 16 U.S.C. 742a *et seq.*

2. In § 217.12, a new definition for "North Carolina restricted area" is temporarily added effective from July 24, 1992, through August 31, 1992, in alphabetical order, to read as follows:

§ 217.12 Definitions.

* * * * *

North Carolina restricted area means that portion of the offshore waters between Rich Inlet, North Carolina (34°17.6'N. latitude) and Brown's Inlet, North Carolina (34°35.7'N. latitude), the inner boundary of which is the 72 COLREGS demarcation line, as described in the definition for "inshore" in this section, and the seaward boundary of which is 1 nautical mile east of that line.

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, paragraphs (e)(2)(i) and (e)(3)(ii) are temporarily suspended from July 24, 1992 through August 31, 1992; and new paragraphs (e)(2)(v), (e)(3)(v), (e)(6)(vi) through (e)(6)(viii), and (e)(8) are temporarily added from July 24, 1992 through August 31, 1992, to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(v) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), and (e)(8) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet (7.6 meters) or longer in length fishing for white, brown, pink, or seabob shrimp (or rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of requirements):

(A) *Atlantic Ocean:*

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991, through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(3) * * *

(v) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet (7.6 meters) in length for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991, through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(6) * * *

(vi) Trawl in the North Carolina restricted area, except as authorized in paragraph (e)(8) of this section.

(vii) Falsify information required by paragraph (e)(8)(ii) of this section.

* * * * *

(8) *North Carolina restricted area*—(i) *Registration requirement.* Any owner or operator of a shrimp trawler (regardless of length) who wishes to trawl in the North Carolina restricted area, other than those who are in compliance with paragraph (e)(2) of this section, must register with the Regional Director, NMFS, Southeast Region at least 24 hours before the first fishing trip following the effective date of this rule by telephoning at (813) 893–3163 and providing the following information:

(A) The name and official number of the vessel;

(B) The time and date of the telephone registration;

(C) The number of the State permit authorizing fishing in the restricted area;

(D) A statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; and

(E) The dates trawling operations in the North Carolina restricted area are expected to be conducted.

(ii) *Observers.* If required by the Assistant Administrator, the owner and operator of a shrimp trawler trawling in the North Carolina restricted area must a carry a NMFS-approved observer.

(iii) *Tow times.* Except for those trawlers that are in compliance with paragraph (e)(2) of this section, a shrimp trawler trawling in the North Carolina restricted area must limit each tow time to 55 minutes, measured as the time from trawl doors entering the water to trawl doors being removed from the water.

(iv) *Additional sea turtle conservation measures.* The Assistant Administrator may impose additional restrictions on shrimp trawlers trawling in the North Carolina restricted area by publishing a notice in the Federal Register, if he determines that this is necessary to ensure the protection of endangered and threatened sea turtles, or if he determines that environmental conditions no longer make TED use impracticable.

(A) The Assistant Administrator may require more restrictive tow times, synchronized tow times, or other suitable measures, if NMFS documents the death of one or more sea turtles by vessels participating in this program, or if significant or unanticipated levels of takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur.

(B) The Assistant Administrator may terminate the exemption from required TED use specified in this paragraph (e)(8) if two or more deaths of any sea turtle by vessels participating in this program are documented, if significant or unanticipated levels of takings or strandings of sea turtles associated with fishing activities in the North Carolina restricted area occur, or if NMFS determines either that shrimpers are not complying with required conservation measures or that conditions are such

that it is not practicable to monitor compliance.

(C) The Assistant Administrator may terminate or limit the exemption from required TED use until September 1, 1992, if NMFS determines that algal concentrations no longer make the use of TEDs impracticable.

* * * * *

[FR Doc. 92-17893 Filed 7-24-92; 4:40 pm]
BILLING CODE 3510-22-M

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50 CFR Part 260

[Docket No. 920667-2167]

Seafood Inspection

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability to all interested persons of a new seafood inspection service based on Hazard Analysis Critical Control Point (HACCP) principles. This new service, under the NMFS voluntary, fee-for-service seafood inspection program, is a refinement of an existing inspection service. The HACCP-based service will allow participants an opportunity to receive the management and economic benefits of producing safe, wholesome, and properly labeled products more consistently and the marketing benefits of using marks associated with the program, with more efficient use of NMFS resources.

DATES: The HACCP-based inspection service is available as of July 29, 1992.

ADDRESSES: Information about the HACCP-based service may be obtained from the National Marine Fisheries Service, Inspection Services Division, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard Cano, Inspection Services Division, NMFS, 302-713-2355.

SUPPLEMENTARY INFORMATION:

Background

NMFS operates a voluntary, fee-for-service seafood inspection program under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and Reorganization Plan No. 4 of 1970. The program offers inspection, grading, and certification services, including the use of official marks which indicate that specific products have been federally inspected.

In 1971, a new provision, at 50 CFR 260.103(c), was added to the regulations (36 FR 21041, Nov. 3, 1971), which stipulated that "[o]fficial establishments operating under Federal inspection should have an effective quality control program as appropriate for the nature of the products and processing operations." To assist official establishments in the development of quality control systems, NMFS announced and later implemented guidelines in 1972 notices in the **Federal Register** (37 FR 9328, May 9, 1972; 37 FR 16679, Aug. 18, 1972). Those guidelines, which became part of the inspection program, known today as the Integrated Quality Assurance (IQA) program, required that the quality control system have a written plan of the operation, identification of control points with acceptance criteria and a corrective action plan, as well as identified personnel responsible for oversight of the system. The guidelines, based on HACCP principles, required continuous monitoring and recordkeeping by the contracting party. Under the guidelines, the participant has also been able to grade products in accordance with U.S. grade standards and apply the U.S. Grade A and the Packed Under Federal Inspection marks to complying products.

Through the IQA program, NMFS relies on the results of product examinations conducted by the participant's quality assurance function to reduce the amount of NMFS inspection effort. The IQA program has been a significant and successful departure from the traditional practice of maintaining continuous NMFS presence in the establishment. The HACCP-based program now being made available is a refinement of the existing IQA system of inspection.

About HACCP

HACCP is a non-traditional, non-continuous inspection technique that focuses on problem prevention and problem solving by the industry. It includes identifying and monitoring potential hazards by defining the operational steps and its hazards, the critical control points, and preventative measures. It is a system that relies heavily on proper monitoring and recordkeeping by the industry, and provides for reduced destructive sampling of the finished product as compared to the end-product sampling required under the traditional or continuous inspection system, as well as the current IQA program. HACCP has been recognized to be an effective quality control and management tool since its introduction in the 1970's in the production of food for U.S. astronauts and its continued use in the low-acid canned food industry.

The National Academy of Sciences (NAS), an internationally recognized scientific organization, has acknowledged and recommended the use of HACCP principles in the food processing industry. In four separate reports on microbiological hazards, meat, poultry, and seafood, the NAS has recommended the use of HACCP since it provides a more scientific, analytical, and economical approach than that provided by traditional inspection and quality control methods. The NAS has also stated that HACCP should likewise be applied at points in the food chain other than the processing level, *i.e.*, in production, storage, transport, retail sales, and at food service establishments.

The application of HACCP principles in seafood inspection is also becoming recognized internationally as a mechanism to apply uniform inspection procedures worldwide. Canada's Quality Management Program illustrates successful implementation of HACCP concepts. The European Economic Community has completed regulatory guidelines to be implemented by each of the member states by 1993 that include the use of this concept. Other countries, such as Iceland and Thailand, have recognized the value of the HACCP approach and are proceeding to adopt its principles.

With these efforts in the forefront, the HACCP-based service offered by NMFS' voluntary seafood inspection program is consistent with the global activities to harmonize inspection protocols.

Approach and Benefits

The new HACCP-based service encompasses all products in the facility, rather than specified products as in the existing service, and addresses the following areas:

(1) Food Safety—issues usually addressed through biological, chemical or physical criteria;

(2) Food Hygiene—characteristics of a product or process relating to wholesomeness or sanitation; and

(3) Economic Fraud—illegal or misleading actions that defraud consumers, including species substitution, short weight, overglazing, and short fill.

Although HACCP involves substantial self-monitoring by the industry, the HACCP-based service is not a self-certification service. It relies on unannounced system audits by NMFS. The frequency of the audits is determined by the ability of the facility to monitor its operation. By means of these audits, NMFS reviews the records produced through industry self-monitoring. NMFS-certified industry personnel who have been trained in

HACCP principles are responsible for oversight of monitoring, recordkeeping, and laboratory analyses. The NMFS audits determine whether the participant's HACCP-based system is in compliance by checking for overall sanitation, accordance with good manufacturing practices, labeling, and other requirements. In addition, in-process reviews, end-product sampling, and laboratory analyses are performed by NMFS at frequencies based on the potential risk associated with the product and/or the firm's history of compliance.

In summary, by following HACCP-based monitoring procedures, which include periodic laboratory analyses, major processing errors can be prevented. Thus, HACCP allows for industry resources—money, people, equipment—to be focused on the essential elements of the process. From a regulatory standpoint, the HACCP concept allows structuring so that NMFS inspection frequencies can be varied depending on an individual facility's controls. Therefore, firms that can demonstrate that they can maintain consistent control can be inspected less frequently. This leaves NMFS inspection resources available for problem areas.

NMFS believes that the HACCP-based service will provide an opportunity for the seafood industry to receive the management benefits of applying HACCP principles and the marketing benefits of using the marks associated with the voluntary seafood inspection program. In addition, NMFS believes the HACCP-based service will enhance the safety, wholesomeness, and economic integrity of seafood marketed in the United States, as well as improve seafood industry quality assurance and regulatory oversight at lower seafood inspection costs than presently paid to NMFS.

Fees and Charges

Fees are assessed for HACCP-based services to recover the cost of the services rendered, as required by the Agricultural Marketing Act of 1946. The fees and charges are established, assessed, and collected in accordance with the regulations set forth in 50 CFR part 260. Fees and charges may be adjusted as necessary to recover costs. The current hourly fees for the services and the laboratory costs for various analyses are set forth in a notice at 57 FR 9108 (Mar. 16, 1992). A copy of the notice is available (see **ADDRESSES**). Travel expenses associated with the service are billed separately.

Firms interested in participating in the NMFS HACCP-based inspection program will receive a packet of information by contacting the Inspection Services Division (see **ADDRESSES**). This information includes a Submission Guide which provides guidance in the development of an effective HACCP plan. At the request of the firm, NMFS will provide further assistance in developing the firm's plan, to be charged at the existing Type III rate for consultative services (currently $40.55 per hour).

After completion, the HACCP plan is submitted to NMFS for review. Review of the plan will be charged as a flat fee based on the current Type III rate for consultative services as follows:

(1) $40.55 per hour × 5 hours = $202.75, for the first process; and

(2) $40.55 per hour × 3 hours = $121.65, for each process thereafter.

In the event that NMFS suggests changes to the HACCP plan, subsequent reviews will be charged at the current Type III rate.

Following NMFS approval of the HACCP plan, NMFS validation inspection to determine that the plan is being applied successfully is charged at the current Type III rate, plus travel and laboratory costs, where necessary. The total cost of a validation inspection will vary depending on such factors as the size of the firm, the number and complexity of the processes covered under the HACCP plan, the risks associated with the products involved, and the completeness of the presented plan.

After contract implementation, the fees for the HACCP-based service will be charged at the Type I rate for in-plant inspection services (currently $32.45 per hour, except for Alaska and Minnesota). The fees for any services provided on an overtime basis or on Sunday or legal holidays will be charged at the overtime or Sunday/holiday rates (currently $48.70 per hour and $64.90 per hour, respectively). Travel costs and any laboratory analysis costs are billed separately.

NMFS will discuss fully the details of the costs with each applicant before any contractual arrangements are made. The costs associated with the program will be specific to each facility.

Use of Marks

Products produced under the HACCP-based service may bear the "Packed Under Federal Inspection" or the "U.S. Grade A" mark, or any other USDC approved mark provided that: (1) The participant identifies in-process controls and these controls are documented sufficiently to ensure compliance with the specific criteria in the appropriate U.S. grade standard or specification; and (2) end-product evaluation of the product, conducted by NMFS during system auditing, confirms the status of the product in accordance with the applicable standard or specification.

Training

Each participating facility must employ at least one NMFS-certified person trained in HACCP principles.

NMFS will provide, on a fee basis, the required HACCP training for industry personnel. The NMFS training, presently conducted in Gloucester, Massachusetts, at the National Seafood Inspection Program training facility, consists of 2 days of practical application of HACCP principles.

In addition, NMFS recognizes the interest of various organizations in providing training in HACCP principles. NMFS is willing to work with these organizations on a consultative basis to provide assurance that the training is adequate for those individuals interested in participating in the NMFS HACCP-based inspection service. For those who already have practical knowledge of HACCP or who have attended industry-sponsored HACCP training courses, NMFS is developing an examination that will determine whether the individual is sufficiently knowledgeable in HACCP principles. Specifics related to the frequency and cost of testing will be developed based on the level of inquiries.

Impact on Current Participants

The HACCP-based inspection service is available to any current participant. The traditional "continuous" inspection service will remain available.

However, since the HACCP-based service is most closely related to the IQA program, participants in the IQA program will be required to convert to the HACCP-based service within 1 year of the publication date of this notice, if they wish to continue with a less than continuous inspection service.

Future Notices

As experience is gained in the HACCP-based service, further review and modification may be undertaken with due notice to NMFS inspection service users and other interested parties.

Classification

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Under Secretary of Commerce for Oceans and Atmosphere has determined that this action is not a "maior rule"

requiring preparation of a regulatory impact analysis under E.O. 12291. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices; nor will it have a significant adverse effect on competition, employment, investment, productivity or innovation.

This action contains a collection-of-information requirement for purposes of the Paperwork Reduction Act. A request for a collection of information has been submitted to the Office of Management and Budget for approval.

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 260

Food grades and standards, Food labeling, Seafood.

Dated: July 23, 1992.

Samuel W. McKeen,

Acting Deputy Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-17894 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of the drift gillnet fishery.

SUMMARY: The Secretary of Commerce (Secretary) closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that the entire annual quota for swordfish that may be harvested by drift gillnet will be reached on or before July 23, 1992. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota.

EFFECTIVE DATES: Closure is effective 1200 hours local time July 23, 1992, through 2359 hours local time December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

By final rule effective December 10, 1991 (56 FR 65007, December 13, 1991), the Secretary implemented quotas and closure provisions for Atlantic swordfish. A quota of 40,785 pounds (18,500 kilograms) was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, and July 1 through December 31.

Approximately 32,000 pounds (14,515 kilograms) of swordfish were landed by drift gillnet vessels during January 1 through June 30, 1992. NMFS estimated that 15 drift gillnet vessels would begin fishing on or about July 1, 1992. Based on the number of vessels that would fish and recent average catch per set of approximately 1,570 pounds (712 kilograms) for the month of July, NMFS determined that the combined drift gillnet quota from the January 1 through June 30 period, and the July 1 through December 31 period, would be reached on or before July 8, 1992. Hence, the drift gillnet fishery for Atlantic swordfish was closed effective 0001 hours local time July 8, 1992.

After receiving the actual catch data, NMFS determined that approximately 19,000 pounds (8,626 kilograms) remained unharvested. Because this was an unusual circumstance in that about 20 percent of the total quota remains unharvested, NMFS determined that it was appropriate to reopen, with conditions to assure that the quota was not overrun. Reports from the vessels fishing indicate that the quota will be reached on July 23, 1992; therefore the drift gillnet fishery for Atlantic swordfish is closed effective 1200 hours local time July 23, 1992, through 2359 hours local time December 31, 1992. Vessels must report to Pat Gerrior at 508-548-5123 ext. 291 or Dick Stone at 301-713-2347 by 1200 hours (noon) local time on July 23, 1992, that they have ceased fishing, total number of swordfish on board, estimated total dressed weight, and port of arrival. Vessels must be in port by 1200 hours (noon) on July 24, 1992.

During this closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet (1) may not fish for swordfish from the North Atlantic swordfish stock; (2) may not possess more than two swordfish per trip in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude; and (3) may not land more than two swordfish in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is authorized by 50 CFR 630.26 and complies with E.O. 12291.

(Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*)

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: July 23, 1992.

Richard Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17844 Filed 7-23-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 146
Wednesday, July 29, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-90-301]

RIN 0581-AA73

Kiwifruit; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action will withdraw the proposed rule to revise the United States Standards for Grades of Kiwifruit. Comments received in response to the notice of proposed rulemaking do not support the proposed changes.

DATES: This withdrawal is effective July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090-6456. (202) 720-2185.

SUPPLEMENTARY INFORMATION: In September 1990, the Kiwifruit Administrative Committee (KAC), the marketing order committee under the Federal marketing order for kiwifruit grown in California, requested the Agricultural Marketing Service (AMS) to revise U.S. Standards for Grades of Kiwifruit, 7 CFR part 51, §§ 51.2335 through 51.2341. The KAC recommended three specific changes to the standard.

The first change was in reference to § 51.2340 Classification of Defects, specifically Discoloration. Kiwifruit has two basic types of discoloration, black sooty mold and alligator skin. The proposed change would have defined alligator skin as a defect, separating it from other types of discoloration. Black sooty mold would then have been the primary form of discoloration, with tighter tolerances for this defect. The recommended change also involved the definition of "Mature" under § 51.2339. The current standard defines "mature" as the point in the ripening process at which "the fruit has reached the stage of development which will ensure the proper completion of the ripening process." It also requires "the minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent." The KAC requested that the soluble solids requirement be deleted from the definition.

The proposed rule was published in the **Federal Register** on Wednesday, December 18, 1991 (Vol. 56, No. 243, pages 65688-65691). The amount period ended February 18, 1992. A total of 27 comments were received by AMS. Twenty of these comments from growers, packers, shippers, and a broker were completely against all aspects of the proposal.

Although there were no specific references among the comments concerning the segregation of alligator skin from other types of discoloration, there were many adverse comments about the relative costs and benefits of the proposed tighter restrictions applied to black sooty mold. Many comments were also made about removing the soluble solids requirement from the maturity definition. Most respondents addressing this issue opposed deleting the present test without replacing it with another.

Four responses were completely in favor of the proposal as written. The responses were from brokers, wholesalers, or receivers. There were no growers who commented in favor of the proposed changes.

Three respondents, a grower, the New Zealand Marketing Board, and the KAC, were in favor of the proposal only on a conditional basis. The New Zealand Marketing Board was in favor of both changes proposed to the discoloration section but not the elimination of the soluble solids requirement for maturity. The KAC and a grower were in favor of the changes concerning alligator skin and the soluble solids requirement but opposed the change concerning black sooty mold.

As the record does not support the proposed changes, the Agency is withdrawing the proposed rule. The Department expects that issues raised in the proposed rule will continue to be discussed by those who buy and sell kiwifruit, and is prepared to assist interested parties in examining these issues.

In consideration of the foregoing, the proposed rule published in the **Federal Register** (Vol. 56, No. 243, pages 65688-65691) on December 18, 1991 is hereby withdrawn.

Dated: July 23, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-17882 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AC14

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: A proposed rule was published in the **Federal Register** on December 2, 1991 (56 FR 61191), which sets forth regulations to implement the provisions of part VII of subtitle B of title III of the Agriculture Adjustment of 1938, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), with respect to marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for fiscal years 1992 through 1996.

Subsequent to publication of this proposed rule in the **Federal Register**, section III of the Food, Agriculture, Conservation and Trade Act Amendments of 1990 (technical corrections) substantially amended pertinent sections of the 1990 Act with respect to marketing allotments. Also, proposed procedures for allocating allotments for crystalline fructose, were not in the published proposed rule.

Accordingly, the proposed rule is withdrawn. Another proposed rule will be published in the near future to set forth regulations with respect to marketing allotments which will include changes made by the technical corrections as well as other additions to the proposal deemed necessary.

FOR FURTHER INFORMATION CONTACT: Robert Barry, Director, Sugar Analysis Division, USDA, ASCS, room 3730-S,

P.O. Box 2415, Washington, DC 20013 or call 202-720-3391.

SUPPLEMENTARY INFORMATION: The proposed rule provided a 60-day comment period which ended on February 3, 1992. Twenty-three comments were received. These comments will be taken into consideration along with those received in response to the reproposal of this proposed rule.

Signed July 23, 1992, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-17083 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-41-AD]

Airworthiness Directives; L'Hotellier Quick Connectors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Aviation Administration (FAA) has received reports of failures of L'Hotellier quick connectors that are installed on certain aircraft (primarily gliders and sailplanes). These connectors allow the operator of the aircraft to quickly connect and disconnect the aircraft control systems during assembly and disassembly for storage purposes. The reports reveal that these connectors are inadvertently becoming disconnected, which could result in loss of control of the aircraft if it occurred in flight. The purpose of this advance notice is to seek comments from interested persons regarding the best action (if any) to be taken in order to correct this potential problem. All comments and ideas will be evaluated by the FAA. The FAA will then continue to research and evaluate the situation to decide whether rulemaking is needed.

DATES: Comments must be received on or before November 13, 1992.

ADDRESSES: Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-41-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Information related to this notice can be examined at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chalpin, Program Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before any rulemaking action is proposed. After consideration of the available data and comments, a notice of proposed rulemaking (NPRM) will be issued if it is determined that it is in the public interest to proceed with regulatory action. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-41-AD." The postcard will be date stamped and returned to the commenter.

Availability of ANPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-41-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received three reports of failures of L'Hotellier quick connectors that are installed on certain aircraft. These ball and swivel joint connectors allow the operator of the aircraft to quickly connect and disconnect the aircraft control systems during assembly and disassembly for storage purposes. These L'Hotellier quick connectors are utilized on, but not limited to, the following aircraft:

- All Glaser-Dirks Models 100, 200 and 400 sailplanes
- All Grob Model gliders
- All Schempp-Hirth Model sailplanes
- All Alexander Schleicher Model gliders; and
- All Lempke Schneider Model gliders

The reports reveal that these connectors are inadvertently becoming disconnected, which could result in loss of control of the aircraft if it occurred in flight. The installation of an optional spring pin is recommended during assembly to assure a positive lock. The FAA has determined that there could be several reasons for the referenced failures. Among these include the lack of preflight check procedures, improper assembly, and inadequate inspection and maintenance requirements.

The FAA is issuing this advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision whether to initiate rulemaking. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken to correct this problem. In this regard, the FAA is especially interested in comments and viewpoints on the following:

1. Which sailplanes or gliders do you normally fly?

a. How many L'Hotellier quick connectors are installed?

b. In which control systems are these connectors installed?

2. Have you ever had a L'Hotellier quick connector disconnect in flight?

a. If so, what was the result?

b. Was the safety pin installed?

3. Elaborate on the difficulty of connecting these L'Hotellier quick connectors?

4. Is the connector/connection readily visible when performing the connection operation?

5. Explain any problems in determining whether the joint is properly fastened.

6. Comment on the feasibility of inspecting the safety pin guide hole to determine if the connection is fully mated.

7. Have you installed the safety pin on the connectors and what is your opinion of the effectiveness of these pins?

8. Explain any problems when installing the safety pin.

9. Do you have to replace the L'Hotellier quick connectors more often

than you feel is necessary because of excessive wear?

10. Is there a notation in the sailplane maintenance record as to when:

a. The last three inspections of the L'Hotellier quick connector were made?

b. The last time the L'Hotellier quick connector was cleaned and lubricated?

11. Comment on the adequacy of the procedures contained in the maintenance manual as to how to inspect and maintain the L'Hotellier quick connectors.

12. Please provide the replacement history of any L'Hotellier quick connectors (or any part) by providing:

a. Which connector(s) have been replaced.

b. When each connector was replaced; provide in number of hours time-in-service, landings, or assemblies and disassemblies.

13. Provide any additional information that you feel would help in preventing failures of L'Hotellier quick connectors.

14. Have you received any information relating to this topic through safety seminars, public information classes, or any other general information programs? If so, please share the view, ideas and incidents you received and what you think to be the most important.

Issued in Kansas City, Missouri on July 22, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-17904 Filed 7-28-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Field Organization—Portland, ME

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations by updating the list of Customs stations under the jurisdiction of the district director, Portland, Maine. Customs proposes to remove from the list the station at Knoxford Line (Mars Hill), no longer in operation, and add the stations at Daaquam, Estcourt, Ste. Aurelie and St. Pamphile, which are operational but unlisted.

DATES: Comments must be received on or before September 28, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Peg Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control, (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better services to carriers, importers, and the public, Customs is proposing to amend the list of Customs stations contained in § 101.4(c), Customs Regulations (19 CFR 101.4(c)). The list shows a station located at Knoxford Line (Mars Hill), under the jurisdiction of the district director, Portland, Maine. The building at this location was demolished many years ago, and the road that the station was located on now serves no useful purpose. Inasmuch as the station at Knoxford Line (Mars Hill) is no longer operational, Customs is proposing to remove this station from its list of Customs stations. By contrast, four locations which primarily service woodcutting operations in the area are operational and manned. Customs is proposing that these four locations be added to the list of Customs stations, under the supervision of the district director, Portland. The stations are located at Ste. Aurelie, Daaquam, St. Pamphile and Estcourt, Maine.

Comments

Prior to adoption of this proposal, consideration will be given to any written comments timely submitted to the Customs Service. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act 5 U.S.C. 552, § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291 and Regulatory Flexibility Act

In that the proposed amendment relates to agency organization and management, it is not subject to E.O. 12291. Likewise, although Customs is hereby soliciting public comments, no notice of proposed rulemaking in this regard is required pursuant to 5 U.S.C. 553(a)(2). Accordingly, the proposed amendment is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, it is asserted that the proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small entities to the extend contemplated by that Act.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspections, Exports, Imports, Organizations and functions (Government agencies).

Proposed Amendment

It is proposed to amend part 101, Customs Regulations (19 CFR part 101), as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66,1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

§ 101.4 [Amended]

2. It is proposed to amend § 101.4(c), Customs Regulations (19 CFR 101.4(c)), by removing "Knoxford Line (Mars Hill) * * * Bridgewater" from the columns headed, respectively, "Customs stations" and "Port of entry having supervision" for the Portland, Maine District, and inserting in appropriate alphabetical order under these column headings the following four Customs stations and corresponding ports of entry having supervision: "Daaquam, Maine * * * Jackman"; "Estcourt, Maine * * * Fort Kent"; "Ste. Aurelie, Maine * * * Jackman"; and "St. Pamphile, Maine * * * Jackman".

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-17758 Filed 7-28-92; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Parts 101 and 102

Customs Service Field Organization Santa Teresa, NM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations governing the Customs field organization by establishing Santa Teresa, New Mexico, as a port of entry. The document also proposes to establish the Santa Teresa Airport, which is within the boundaries of the proposed port of entry, as a designated airport for the purposes of report of arrival and Customs clearance. Currently, Santa Teresa is a temporary Customs station, and the former user fee airport is operating as a landing rights airport. Because of the traffic in the area which already exists, and the anticipated growth in that traffic, Customs has determined that a need exists to create a port of entry at Santa Teresa. Through this proposed change, the general public and importers will be served better and Customs personnel and resources will be more efficiently utilized.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Margaret Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 566–8157.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by establishing a port of entry at Santa Teresa, New Mexico. The airport at Santa Teresa which recently lost its status as a user fee airport by operation of law, is now operating as a landing rights airport. As an interim measure, Customs has established a temporary Customs station at Santa Teresa under authority of § 101.4(d). However, analysis of the traffic in the area indicates that the activity in the Santa Teresa area will soon meet the minimum criteria for the establishment of a port of entry. The criteria for determining whether a port of entry should be established by Customs was initially identified in T.D. 82–37 on March 9, 1982 (47 FR 10137). The criteria in that T.D. was subsequently revised by T.D. 86–14 (February 5, 1986, 51 FR 4559) and T.D. 87–65 (May 4, 1987, 52 FR 16328).

The criteria used by Customs in determining whether the creation of a port of entry are whether the community requesting creation of the port can: (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); and (3) have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius). In addition, T.D. 82–37 provides that the "actual or potential Customs workload (minimum number of transactions per year)" must meet one of several alternate criteria, one of which is "2,500 consumption entries." Finally, T.D. 82–37 provides that the facilities at the location must include adequate warehousing space for secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

The Regional Commissioner of the Southwest Region has reported to Customs Headquarters that the Santa Teresa area is well served by air, rail, and highway modes of transportation. The population within a 70-mile radius of the proposed port is contained in a variety of jurisdictional units and communities. Both El Paso, Texas and Juarez, Mexico are within that radius, as are several smaller communities. The 1990 El Paso County estimated population was over 606,000, while Dona Ana County, New Mexico added another 15,000. The estimated 1990 population of Juarez, Mexico is 1.2 million. All these figures are expected to grow significantly in the coming years. Creation of a port of entry at Santa Teresa will more evenly distribute the vehicular traffic which is currently forced to pass through El Paso, Texas. There is significant construction taking place in and around the vicinity of the proposed port of entry of Santa Teresa to build inspection booths and stations, administration buildings and other support facilities to allow Customs to perform its mission in a safe and efficient manner. Customs has received commitments from several corporate importers that they will utilize Santa Teresa as a port of entry once it becomes operational. Studies conducted by several sources have indicated that, once the port becomes operational, over 25,000 commercial vehicles will use the port per year, and approximately 6,000 consumption entries will be filed per year.

Currently, the only port of entry along the New Mexico-Mexico border is located in the far western portion of the State. Diplomatic negotiations have been held with the Government of Mexico concerning the creation of a port of entry at Santa Teresa, and both governments are in agreement with such an action.

Customs is also proposing to amend § 122.24(b) by adding the Santa Teresa Airport to the list of airports designated as airports at which private aircraft arriving in the Continental U.S. must report intended arrival pursuant to § 122.23(b) and land for Customs processing in accordance with § 122.24(b). Section 122.23 provides, in relevant part, that: "All private aircraft arriving in the Continental U.S. via the U.S.-Mexico border * * * from a foreign place in the Western Hemisphere south of 33 degrees north latitude, * * * from any place in Mexico, * * * shall furnish notice of intended arrival to Customs at the nearest designated airport to the point of crossing * * * for the first landing in the U.S." Section 122.24 provides that such aircraft "shall land for Customs processing at the nearest designated airport to the border or coastline crossing point * * *." At present, there is no designated airport in the State of New Mexico. By identifying the Santa Teresa Airport as a designated airport, Customs will benefit the flying public by increasing the options available for reporting arrival and obtaining Customs processing. The addition of this airport will also reduce delays at existing designated airports by permitting a better distribution of the inspection burden.

The proposed boundaries of the port of entry of Santa Teresa are as follows:

Beginning at the junction of the boundary between Texas and New Mexico with the U.S.-Mexico border, west, along the Mexico-U.S. border until it intersects the range line between Range 1 East and Range 2 East, New Mexico Principal Meridian; at that point, north along that range line until it reaches the line between Township 27 South and Township 28 South; then east along the Township line until it reaches the Texas-New Mexico border; then southeast along the Texas-New Mexico border to the beginning point.

If the proposed boundaries of the port are adopted, the lists of Customs

regions, districts, and ports of entry in 19 CFR 101.3(b) will be amended accordingly. The listing of user fee airports in 19 CFR 122.39(b) will be amended to delete the Santa Teresa Airport, and the listing of designated airports in 19 CFR 122.24(b) will be amended to include the Santa Teresa Airport.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority: These changes are proposed under the authority of 5 U.S.C. 301, 19 U.S.C. 2, 55b, 66, 1433, 1436, 1459, 1590, 1623, 1624, 1644 and 49 U.S.C. App. 1509.

Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approval: July 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-17757 Filed 7-28-92; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 142

Identifying Information Required on Entry Documents

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Clarification.

SUMMARY: This document sets forth proposed examples indicating the party in the U.S. to whom imported merchandise is sold or consigned, or the premises in the U.S. to which it is delivered, which party or premises must be identified in the Customs entry or release documents covering the merchandise.

DATE: Comments must be received on or before September 28, 1992.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1310 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Kelley, Office of Cargo Enforcement and Facilitation, (202)-566-5354.

SUPPLEMENTARY INFORMATION:

Background

Merchandise imported and entered for consumption must be supported by Customs entry and entry summary documentation. Briefly stated, this entry documentation is detailed in § 142.3, Customs Regulations (19 CFR 142.3), and consists of the information which must be filed with Customs to secure the release of imported merchandise from Customs custody (19 CFR 141.0a(a)); entry summary documentation is that which must be filed in order to enable Customs to assess duties, and collect statistics with respect to the merchandise, and to determine whether other requirements of law or regulation are met (19 CFR 141.0a(b)).

In addition, in certain circumstances as enumerated in § 142.21, Customs Regulations (19 CFR 142.21), merchandise may be initially released under a special permit for immediate delivery, in accordance with section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), and in these circumstances as well, the information required by § 142.3 must be provided, except that a commercial invoice need not be submitted at such time (see 19 CFR 142.22(a)).

Customs capability to identify fully all parties involved with imported merchandise being entered or released is essential in order to support investigative efficiency. Information concerning the party in the U.S. to whom such merchandise is sold or consigned represents one of several elements which Customs considers in the process of assessing the risks associated with the transaction and determining the appropriate level of examination to be accorded the merchandise involved. This process is know generally as "cargo selectivity".

In this latter regard, principally to correct a problem on the Northern Border, § 142.3 was amended by T. D. 90-92, 55 FR 49879, to add a new paragraph (a)(6), in order to specifically require that entry or release documents include the identity of the party in the U.S. to whom the imported merchandise is sold or consigned, or if this is unknown at the time of entry or release, the premises in the U.S. to which the merchandise is delivered. Section 142.3(a)(6) reads as follows:

> When merchandise is imported having been sold, or consigned, to a person in the United States, the name, street address, and appropriate identification number of that person as provided in § 24.5 of this chapter, shall be shown on the entry documents (CF 3461, 3461 ALT, 7501). When, at the time of immediate delivery, entry or release, there is no known buyer, the name, street address, and appropriate identification number (as above) of the premises in the United States to which the merchandise is to be delivered must be shown on the entry or release documents.

Under § 142.3(a)(6), the required information, including the appropriate identification number or numbers, must be provided for each entry of imported merchandise processed through cargo selectivity, whether the entry is electronically or manually transmitted to Customs.

In particular, for a consolidated entry, where the entry is made listing one broker or freight forwarder as consignee, the required information must be submitted for each separate and distinct shipment within the consolidated shipment.

The notice of proposed rulemaking which led to the final rule adopting § 142.3(a)(6) set forth seven examples which were designed and intended to illustrate the application of the identification requirement contained in this regulation (55 FR 2528, 2529). These examples, however, were dropped from the final rule because they created confusion on the part of the brokerage community as to which party should be identified in some of the more complex import transactions (T.D. 90-92, 55 FR 49879, 49883). However, it was stated in the final rule that examples "meeting the needs of both Customs and the trade

[would] be developed and issued separately" (*ibid.*).

Accordingly, Customs has since worked with the trade community in an effort to develop a new series of examples, set forth below, that are believed to be more consistent with the identification requirements of § 142.3(a)(6), and which identify the correct party or premises in the U.S., that must be shown on the Customs entry or release documents in the most frequently encountered import transactions. The address of the party in the U.S. to whom imported merchandise is sold or consigned must, of course, be located within the U.S.

Examples

Example 1. ABC Company, a distributor of telephone equipment located in Seattle, Washington, places an order with Canadian Bell Limited of Vancouver, Canada, and arranges for the importing carrier to deliver the goods directly to several customers of ABC Company in the U.S.

ABC Company is the ultimate consignee for Customs purposes, since that is the party which purchased the merchandise from the Canadian shipper.

Example 2. XYZ Limited is a Canadian company which produces and delivers baked goods to twenty retail food stores in the U.S. on a daily basis.

Since the baked goods are ordered/purchased separately from the Canadian supplier by the individual stores in the U.S., each of these stores is the ultimate consignee for Customs purposes.

Example 3. Montreal Furniture Company, a Canadian manufacturer of office furniture, leases storage space at the Champlain Warehouse Service in Champlain, New York. As orders are received from customers in the U.S., delivery is made from the Champlain storage facility.

The Champlain Warehouse Service should be shown on the entry or release documents in accordance with § 142.3(a)(6), since there is no known buyer of the merchandise at the time of its importation and those are the premises in the U.S. to which the imported goods are being delivered.

Example 4. Calgary Instruments Limited ships a small parcel containing a medical instrument to the UPS (United Parcel Service) hub in Sweetgrass, Montana, for subsequent delivery to Memorial Hospital in Great Falls, Montana. Reliable Broker is the importer of record for this shipment.

Memorial Hospital is the ultimate consignee for this shipment, since it is the purchasing party, and UPS is merely a nominal consignee in the transaction.

Example 5. An employee of Ontario Jewelry Sales Limited of Mississauga, Canada, imports in her personal baggage a collection of diamonds for display and possible sale at a jewelry exhibition taking place at the Intercontinental Hotel in Manhattan, New York.

As in Example 4, since this shipment is not being imported subject to a contract of purchase or delivery at the time of importation, the Intercontinental Hotel should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the place to which the diamonds are being delivered.

Example 6. The Wilkins Fur Company, Limited, of Toronto, ships twenty mink coats to the Williamson Exposition Company of Boston, which is handling the arrangements for a trade fair on behalf of the National Association of Fur Garment Wholesalers to be held at the Plaza Hotel in New York City.

Since there is no known buyer at the time of importation of the mink coats, the Williamson Exposition Company of Boston should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the entity to which the coats are consigned.

Example 7. Manitoba Auto Supply of Winnipeg ships ignition kits to the U.S. The buyer shown on the invoice is Minneapolis Auto Specialties of 2800 Hennepin, Minneapolis, Minnesota. Marty's Car Parts in Racine, Wisconsin, is shown as the "ship to" party.

As in Example 1, the ultimate consignee for Customs purposes is Minneapolis Auto Specialties, since that is the party which purchased the merchandise from the Canadian shipper.

Example 8. Manitoba Auto Supply ships ignition kits to Minneapolis Auto Specialties in Duluth, Minnesota. The buyer shown on the invoice is Minneapolis Auto Specialties located at 2800 Hennepin in Minneapolis, Minnesota.

As in Example 7, Minneapolis Auto Specialties in Minneapolis is the ultimate consignee since that is the party in the U.S. which purchased the merchandise.

Example 9. Acme Compressor Company, Limited, of Edmonton, Alberta, buys an air compressor from the Trucking Supply Company of Regina, Saskatchewan, and is listed as the buyer on the invoice. Acme shops the compressor to the Lindquist Trucking Company in Ambrose, North Dakota.

The Lindquist Trucking Company should be shown on the entry or release documents in accordance with § 142.3(a)(6), since that is the place in the U.S. to which the goods are being delivered.

Example 10. Strong-as-Nails Steel Company of Dorval, Quebec, ships a load of steel to U.S. Steel in Allentown, Pennsylvania. On the Special Summary Steel Invoice (Customs Form 5520), U.S. Steel is listed as the importer in Block #8. The buyer of the steel listed in Block #7 is Structures Unlimited of Philadelphia, Pennsylvania.

As in Example 1, the ultimate consignee is Structures Unlimited as it is the U.S. buyer of the steel.

Example 11. Beauty Limited of Montreal, Quebec, sells a shipment of cosmetics to Total Woman, Inc. (a U.S. company) in care of (c/o) Unique Image of Albany, New York. There is no address listed on the invoice for the buyer, Total Woman, Inc.

The ultimate consignee in this case is Total Woman, Inc., which is the buyer in this transaction. Its name and address must therefore be included on the Customs entry or release documents.

Example 12. Spring Water Company of Los Angeles purchases a load of bottled water from Healthy Water Limited of Calgary, Alberta. The address of Spring Water Company is listed as a post office box in Los Angeles. The water is shipped to Ralph's Grocery Store on Sepulveda Boulevard in Los Angeles.

The ultimate consignee is Spring Water Company of Los Angeles as the U.S. buyer of the water, regardless of the fact that its address shows a post office box.

Example 13. FTX Company in Mexico City ships a load of door knobs to the Rio Company in El Paso, Texas. There are no other parties located in the U.S. shown on the invoice.

The Rio Company should be shown on the entry or release documents in accordance with § 142.3(a)(6) since there is no known buyer of the merchandise at the time of its importation and those are the premises in the U.S. to which the imported goods are being delivered. However, if there is a known buyer that name must be used.

Example 14. ABC Garments of Edmonton, Alberta, manufactures children's clothing and sells to small boutiques in the U.S. These boutiques place orders (usually small) with ABC Garments which will accumulate a number of orders before sending them as a consolidated shipment with their customhouse broker listed as consignee.

Although § 141.51, Customs Regulations (19 CFR 151.51), allows all merchandise arriving on one vessel and consigned to one consignee (in this case, the broker) to be included in one entry,

the ultimate consignee (*i.e.*, the person to whom the merchandise is sold) for each shipment in the consolidated entry must be provided to Customs in accordance with §§ 141.86(a)(2) and 142.3(a)(6), Customs Regulations (19 CFR 141.86(a)(2) and 142.3(a)(6)). Furthermore, pursuant to §§ 24.5(a) and 142.3(a)(6), Customs Regulations (19 CFR 24.5(a) and 142.3(a)(6)), a Customs Form 5106 would also have to be filed for each ultimate consignee for which entry is made.

Example 15. Through Quicksilver Delivery, an international courier company, Just Fabrics, Limited, of Montreal, ships a parcel of fabric cuttings to Dresses-Are-Us in London, England. Dresses-Are-Us is listed as the destination party on the invoice. After Customs clearance, the parcel is forwarded to England by A–1 Freight Forwarders of Buffalo, New York.

Because there is no known buyer in the U.S., A–1 Freight Forwarders in Buffalo, New York, should be shown on the entry or release documents in accordance with § 142.3(a)(6), since theirs are the premises in the U.S. to which the merchandise is to be delivered before being forwarded to England.

Example 16. Top Hat Ltd., ships twenty orders of clothing accessories on individual bills of lading to various consignees. The entire shipment is included on a master bill of lading designating a customs broker as consignee.

One entry would be filed in this situation in accordance with § 141.51, Customs Regulations (19 CFR 141.51). Although the broker listed as consignee on the master bill of lading may be the importer of record, tariff-line items would designate the individual ultimate consignees. Ultimately, all twenty ultimate consignees would be listed on the entry. Some line items may be repeated for more than one ultimate consignee.

Comments

Consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: July 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–17759 Filed 7–28–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

Definition and Registration of Mid-Level Practitioners

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: The DEA proposes to amend its regulations by defining the term mid-level practitioner (MLP) in part 1304. Concurrent with the establishment of this definition, DEA will establish a new category of registration, MLP, under which advanced practice nurses, physician assistants, and others will receive individual DEA registrations granting controlled substances privileges consistent with the authority granted them by the state.

To implement this new category of registration, DEA also proposes to amend part 1304 to allow DEA to inspect and copy a MLP's practice agreement, guideline, protocol or other state required documents which describe the conditions of his/her authority to dispense controlled substances; and to clarify the exemption from the registration requirement of institutional practitioners and agents of other DEA registrants and the authority of MLPs to conduct research as a coincident activity in part 1301.

DATES: Written comments and objections must be received on or before September 28, 1992.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act of 1970 (CSA) established a closed system of distribution of pharmaceutical controlled substances to both ensure their availability for legitimate medical purposes and to prevent their diversion to illicit use. The registration by DEA of all manufacturers, distributors and dispensers of controlled substances is the foundation of this closed system.

When the CSA was enacted, state authority to dispense controlled substances was granted only to selected traditional medical disciplines which had broad authority to diagnose and determine treatment. [Note: the term dispense means to deliver a controlled substance to the ultimate user, including by administration or prescription.] DEA's system of registration was designed to allow a corresponding authority, including the ability to independently purchase, store, and dispense controlled substances. Pharmacists or wholesalers could expect, with a reasonable degree of certainty, that a registered practitioner issuing a prescription or ordering controlled substances was authorized by both DEA and the state to engage in such activities.

The evolution of advanced practice nurses and physician assistants as primary health care providers authorized to dispense controlled substances, makes the historical, operational process of the DEA registration system inconsistent with current authorized practices. The original system of practitioner registration did not anticipate a class of practitioners with such widely disparate authority. Some states have granted MLPs authority to dispense controlled substances without the oversight and approval of a traditional practitioner, while other states have granted a more restricted controlled substance dispensing authority. For example, in some states, the collaborating physician may establish the MLP's specific controlled substance dispensing authority. Thus, modifications to the DEA registration system are necessary to permit a supplier or pharmacist to distinguish between classes of registrants which may be subject to restricted state authority and traditional registrants with broad authority.

On February 4, 1991 (56 FR 4181), DEA proposed that advanced practice nurses, physician assistants and others, then defined as affiliated practitioners, be allowed to prescribe controlled substances utilizing the DEA registration

number, with a unique suffix, of their collaborating physician. DEA has since determined that the procedure could not adequately address the unique practices of these health care professionals. The proposal was subsequently withdrawn on April 24, 1992 (57 FR 15037).

DEA now proposes to amend part 1304 to define MLP as an individual practitioner other than a physician, dentist, osteopath, veterinarian, ophthalmologist or podiatrist, who is licensed, registered or otherwise permitted in the United States or the jurisdiction in which he/she practices to dispense a controlled substance in the course of professional practice as a primary health care provider.

Based on the new definition, DEA will create a separate registration category for MLPs. The procedures used under this system will parallel those which have been used with traditional practitioner registrations. Upon application, each qualified MLP will be issued an individual DEA registration to dispense controlled substances to the extent that the registrant is authorized to dispense controlled substances by the state in which he/she will practice. The administrative structure of the number will identify the registrant as a MLP. Applicants will certify on their applications for registration and reregistration the controlled substances authority they have been granted by the state, the schedules of controlled substances they may handle, and any other controlled substance restrictions.

Part 1304 will also be amended to require that MLPs maintain a readily available copy of their practice agreement, guideline, protocol, or other documents which describe the conditions of their authorization to dispense controlled substances which are required by the state, and make such items available to DEA upon request for inspection and copying. This will provide DEA details regarding the specific circumstances under which a MLP practices without imposing a burdensome requirement that such documents be submitted with each application for registration or reregistration.

Section 1301.22(b)(6) will be amended to clarify when research is permitted as a coincident activity by registered MLPs, and §§ 1301.24 (b) and (c) will be amended to include MLPs in the registration exemption for practitioners in certain settings. It should be noted that practitioners in institutional settings who issue orders for medication for direct administration to a patient, such as nurse anesthetists in the normal course of their practice, are not prescribing within the meaning the § 1306.02(f), and would be exempt from registration. In that context, DEA neither requires nor encourages registration for MLPs acting as agents of other registrants.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(c) of E.O. 12291, this proposed rule has been submitted to the Office of Management and Budget for review, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*

This proposed rule responds to the requirements of title 21, United States Code, section 823(f), that DEA registrations must be issued to those persons who are authorized by state authorities to dispense controlled substances, and is essential to the criminal law enforcement function of the United States. Further, Mid-Level Practitioners have expressed a strong interest in being registered by DEA. Accordingly, it is not subject to the moratorium on regulations ordered by the President of the United States.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug Traffic Control, Security measures.

21 CFR Part 1304

Drug Enforcement Administration, Drug Traffic Control, Reporting requirements.

For reasons set out above, it is proposed that 21 CFR parts 1301 and 1304 be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.22 is proposed to be amended by revising paragraph (b)(6) as follows:

§ 1301.22 Separate registration for independent activities.

* * * * *

(b) * * *

(6) A person registered to dispense controlled substances in Schedules II through V shall be authorized to conduct research and to conduct instructional activities with those substances, except that a mid-level practitioner, as defined in § 1304.02(f), may conduct research coincident to his/her practitioner registration only to the extent expressly authorized by state statute.

* * * * *

3. Section 1301.24 is proposed to be amended by revising paragraphs (b) and (c) introductory text to read as follows:

§ 1301.24 Exemption of agents and employees; affiliated practitioners.

* * * * *

(b) An individual practitioner, as defined in § 1304.02 of this chapter (other than an intern, resident, foreign-trained physician, or physician on the staff of a Veterans Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government), who is an agent or employee of another practitioner, other than a mid-level practitioner, registered to dispense controlled substances may, when acting in the usual course of his/her employment, administer and dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he/she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself. (For example, a staff physician employed by a hospital need not be registered individually to administer and dispense, other than by prescribing, controlled substances within the hospital.)

(c) An individual practitioner, as defined in § 1304.02 of this chapter, who is an intern, resident, mid-level practitioner, foreign-trained physician or physician on the staff of a Veterans Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government, may dispense, administer and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom he/she is employed in lieu of

being registered him/herself, provided that:

* * * * *

PART 1304—[AMENDED]

1. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(d), 965, unless otherwise noted.

2. Section 1304.02 is proposed to be amended by redesignating the current paragraphs (f) through (i) as paragraphs (g) through (j) and adding a new paragraph (f) to read as follows:

§ 1304.02 Definitions

* * * * *

(f) The term mid-level practitioner means an individual practitioner (as defined in § 1304.02(d)), other than a physician, dentist, osteopath, veterinarian, ophthalmologist, or podiatrist, who is licensed, registered, or otherwise permitted in the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice. Mid-level practitioners would include state authorized primary health care providers such as nurse practitioners, nurse midwives, nurse anesthetists, and physician assistants.

* * * * *

3. Section 1304.03 is proposed to be amended by redesignating the current paragraphs (e) through (g) as paragraphs (f) through (h), adding a new paragraph (e), and revising new paragraph (h) as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(e) Each registered mid-level practitioner shall maintain in a readily retrievable manner such protocols, practice guidelines, agreements, and other documents required by the state which describe the conditions and extent of his/her authorization to dispense controlled substances and shall make such items available for inspection and copying by authorized employees of the Administration.

* * * * *

(h) Notice required by paragraphs (f) and (g) of this section shall be given at the time the person applies for registration or reregistration and shall be made in the form of an attachment to the application, which shall be filed with the application.

Dated: June 11, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 92-17873 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-264-82]

RIN 1545-AE88

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of the location of public hearing on proposed regulations.

SUMMARY: This document provides notice of a change of location for the public hearing on proposed regulations relating to adjustments to the basis of a shareholder's stock in an S corporation to a shareholder as well as proposed regulations relating to the treatment of distributions by and S corporation to its shareholders.

DATES: The public hearing will be held on Monday, September 14, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 24, 1992.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-264-82], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8543, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1367 and 1368 of the Internal Revenue Code. These proposed regulations were published in the **Federal Register** for Tuesday, June 9, 1992 (57 FR 24426).

There has been a change in the location of the public hearing. The hearing will be held in the Commissioner's Conference Room (room 3313), Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

In all other respects the details regarding the hearing will remain the same.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-17831 Filed 7-28-92; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[Notice No. 746]

Change in the Frequency of Filing Reports of Bonded Wine Premises Operations and Wine Excise Tax Returns (92F030P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to reduce administrative burdens on the wine industry by (1) Allowing certain small bonded wine premises proprietors to file reports annually instead of monthly and (2) allowing certain small bonded wine premises proprietors who pay less than $1,000 annually in wine excise tax to file tax returns and pay such tax annually instead of semi-monthly.

DATES: Written comments must be received by August 28, 1992.

ADDRESSES: Send written comments: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; ATTN: Notice No. 746.

FOR FURTHER INFORMATION CONTACT: James A. Hunt and Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, President Bush announced a regulatory initiative. This initiative called for a review of all existing regulations and programs to identify any which impose substantial costs on the economy. As part of this review, ATF is proposing to (1) Allow certain small winery proprietors to file

their reports of bonded wine premises operations annually instead of monthly and (2) allow certain small bonded wine premises proprietors who pay less than $1,000 annually in wine excise tax to pay such tax annually instead of semi-monthly.

Report of Bonded Wine Premises Operations, ATF F 5120.17

On June 19, 1990, ATF published Treasury Decision ATF-299 (55 FR 24874) which revised and recodified the wine regulations issued under the Internal Revenue Code into a new 27 CFR part 24. As part of the simplification of the wine regulations, proprietors of bonded wine premises who did not expect to have any inventory change or reportable operation in a subsequent month or months could file a statement to that fact and be exempt from filing a monthly report of bonded wine premises operations until the next change in inventory or reportable operation.

ATF is proposing to allow small bonded wine premises proprietors to file their report of bonded wine premises operations annually instead of monthly. The criteria proposed for a small winery proprietor to file an annual report of bonded wine premises operations are based on the size and scope of the winery operations as recorded on each monthly report. Proprietors should note that the criteria of small wine premises for report purposes are not the same as the criteria for a small winery eligible for the wine tax credit under 26 U.S.C. 5041. A bonded wine premises proprietor may submit an annual report of operations if during the previous calendar year none of the reports on ATF 5120.17 exceeded 20,000 gallons when totaling Part I columns (a) through (e) of section A line 12 plus section B line 7, or if a proprietor does not expect to exceed such 20,000 gallon quantity in any month of the current calendar year. These columns represent the opening inventories of bulk and bottled wines in all tax classes, and all operations increasing the amounts to be accounted for during the month, such as production, receipt in bond, and bottling. To begin the annual filing of a report of bonded wine premises operations, a proprietor would state such intent in the "Remarks" section when filing a monthly ATF F 5120.17. If a proprietor determines that the 20,000 gallon quantity will be exceeded in any month, an ATF F 5120.17 will be filed for that month and for all subsequent months of the calendar year. However, if there is a jeopardy to the revenue, the regional director (compliance) may require any proprietor filing reports of bonded wine premises operations annually to file such report monthly.

The major reason for requiring a report of operations is for ATF to determine compliance with Internal Revenue Code wine regulations and specifically, wine excise tax payments. Over 97 percent of this wine excise tax is paid by larger wineries and, as discussed below, many of the smaller wineries are already filing annual tax returns. Experience has shown that our audit approach is adequate to prevent any significant jeopardy to the revenue.

A secondary reason for the report of operations is to provide monthly statistical data to the wine industry and ATF for the purpose of determining industry trends. If these small bonded wine premises proprietors filed their reports of operations annually instead of monthly, the monthly reports of operations received from the larger wineries would still provide most of the data furnished to ATF (over 97 percent). Under the proposed criteria for qualifying, more than 1,000 of the approximately 1,650 bonded wine premises proprietors would file an annual report of operations instead of a monthly report. This would reduce the number of reports filed by over 11,000 and reduce the number of burden hours in preparing and sending monthly reports of operations. Proprietors close to the maximum operational level for annual reporting may still need to spend some time each month ensuring they have not exceeded that level. However, based on the monthly reports now submitted to ATF, most of the bonded wine premises affected by this proposal do not conduct operations close to the 20,000 gallon level.

If this proposal becomes a final rule, ATF Form 5120.17 will be revised accordingly. If ATF F 5120.17 is revised, ATF is proposing to delete Part II, Summary of Domestic Wines in Taxpaid Rooms, from ATF F 5120.17 as an additional reduction in the burden of reporting wine premises operations. This notice of proposed rulemaking also contains conforming changes to the regulations which refer to the form title, Monthly Report of Wine Cellar Operations, and to the monthly reporting requirements.

Increasing the Wine Excise Tax Amount to Qualify for Filing Annual Tax Returns to $1,000

One of the major revisions to Treasury Decision ATF-299 was allowing small winery proprietors paying less than $500 in wine excise tax for the previous calendar year to file tax returns and pay such tax annually instead of semi-monthly for the current calendar year unless and until the wine excise tax liability exceeds $500 for the current year. This revision significantly reduced the number of tax returns required to be filed by proprietors of small wineries. ATF has determined that increasing the amount to $1,000 would allow approximately 100 more wine premises proprietors to file annual tax returns. Such an increase would result in a reduction of approximately 2,300 tax returns being filed. Additionally, about another 100 small winery proprietors would not have to be concerned about reaching their $500 (but not more than $1,000) per year wine excise tax limit and being required to file semi-monthly tax returns the next calendar year. Under the current regulations, up to $500 in excise tax which has been determined but not paid is already covered by the wine operations bond. This amount was increased from $100 when the wine regulations were recodified in 1990. ATF is proposing an increase to $1,000 in the wine bond limit under 27 CFR 24.146(a) for wine on which tax has been determined but not paid in order to allow this new filing option.

Proprietors should be aware that the regulatory increase in the dollar amount of the wine bond available for wine removed from bonded wine premises on which the tax was determined but not paid does not automatically raise this limit on existing bonds. In order to obtain this additional coverage, the proprietor must procure a new bond or a consent of surety expressly providing for the $1000 amount. For example, some proprietors still have wine bonds showing a $100 amount, while other proprietors have increased this amount to $500 as a result of TD-ATF-299. For either of these proprietors to use the proposed option of making a single annual taxpayment of up to $1000, such proprietor must obtain a new bond or consent of surety providing for the $1000 coverage. Otherwise the proprietor is entitled to the annual payment option only up to the amount of $100 or $500, depending on its bond terms.

Executive Order 12291

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that any regulation resulting from this notice of proposed rulemaking would not constitute a "major rule" since it would not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and,

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this notice of proposed rulemaking because a final rule would not have a significant economic impact on a substantial number of small entities. Any final rule would not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because it does not impose any new reporting requirements. This proposal, if implemented, will eliminate some of the reporting and filing requirements applicable to small bonded wine premises proprietors.

Public Participation

ATF requests comments from all interested persons. Comments received no later than the closing date of the comment period will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is public information. During the comment period, any person may submit a request to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine whether a public hearing would be necessary.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal authors of this document are James A. Hunt and Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic Fund Transfers, Excise Taxes, Exports, Food Additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling houses, Transportation, Vinegar, Warehouses, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 24—Wine, is amended as followed:

PART 24—WINE

Paragraph 1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5273, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.65(b) is amended by revising the third sentence to read as follows:

§ 24.65 Claims for wine or spirits lost or destroyed in bond.

* * * * *

(b) * * * Any other claim for allowance of loss will be attached to and submitted with the ATF F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period in which the inventory required by § 24.313 is taken or, in the case of discontinuance of the premises or change in proprietorship, to the final report filed. * * *

* * * * *

Par. 3. Sections 24.75(f), 24.136(d) and 24.140(b) are amended by removing the words "Monthly Report of Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 3a. Section 24.136(d) is amended by removing the words "Monthly Report of Bonded Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 4. Section 24.146, paragraphs (a) and (b) are amended by removing the amount "$500" where it appears and adding, in its place, the amount "$1000".

Par. 5. Section 24.148 is amended by removing the amount "$500" from the two locations where it appears in the chart and adding, in its place, the amount "$1000".

Par. 6. Section 24.176 is amended by revising the last two sentences to read as follows:

§ 24.176 Crushing and fermentation.

* * * Upon completion of fermentation or removal from the fermenter, the volume of wine will be accurately determined, recorded and reported on ATF F 5120.17, Report of Bonded Wine Premises Operations, as wine produced. Any wine or juice remaining in fermentation tanks at the end of the reporting period will be recorded and reported on ATF F 5120.17.

* * * * *

Par. 7. Section 24.197 is amended by revising the last sentence to read as follows:

§ 24.197 Production by fermentation.

* * * The quantity of liquid in fermenters at the close of each reporting period will be reported on the ATF F 5120.17, Report of Bonded Wine Premises Operations.

* * * * *

Par. 8. Section 24.237 is amended by removing the words "Monthly Report of Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 9. Section 24.268 is amended by removing the word "month" and adding, in its place, the words "reporting period".

Par. 10. Section 24.273 is amended by revising paragraph (a) to read as follows:

§ 24.273 Exception to filing semi-monthly tax returns.

(a) Any proprietor who has paid wine excise taxes in an amount less than $1000 during the previous calendar year may file the Excise Tax Return, AFT F 5000.24, and remittance, within 30 days after the end of the calendar year instead of semi-monthly as required by § 24.271. However, if before the close of the current calendar year the wine excise tax owed will exceed the amount of the coverage under the proprietor's operations bond for wine removed from

bonded wine premises on which tax has been determined but not paid, the proprietor will file an Excise Tax Return with the total remittance on the date the wine excise tax owed will exceed such amount and file an aggregate Excise Tax Return within 30 days after the close of the calendar year showing the total wine tax liability for such calendar year. If before the close of the current calendar year the wine excise tax liability (including any amounts paid or owed) equals $1000 or more, the proprietor will commence semi-monthly filing of the wine Excise Tax Returns and making of payments as required by § 24.271.

* * * * *

Par. 11. Section 24.275 is amended by revising paragraph (a)(2) and the first sentence of paragraph (a)(3) to read as follows:

§ 24.275 Prepayment of tax.

(a) * * *

(2) The tax deferral bond is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of the bond by more than the amount of such tax covered by the wine operations coverage of the wine bond; or,

(3) There is no approved tax deferral bond and the total amount of tax unpaid at any one time exceeds the coverage under the wine operations coverage of the wine bond for wine removed from bonded wine premises on which tax has been determined but not paid. * * *

* * * * *

Par. 12. Sections 24.292(b) and 24.293(b) are amended by removing the words "Monthly Report of Wine Cellar Operations for the month" and adding, in their place, the words "Report of Bonded Win Premises Operations for the reporting period".

Par. 13. Section 24.294(b) is amended by removing the words "Monthly Report of Wine Cellar Operations" and adding, in their place, the words "Report of Bonded Wine Premises Operations".

Par. 14. Section 24.295(b) is amended by removing the words "Monthly Report of Wine Cellar Operations for the month" and adding, in their place, the words "Report of Bonded Wine Premises Operations for the reporting period".

Par. 15. Section 24.300 is amended by revising the last sentence of paragraph (b) and by revising paragraph (g) to read as follows:

§ 24.300 General.

* * * * *

(b) * * * Source records and supplemental or auxiliary records may be used as a record of an operation or transaction and to prepare the ATF F 5120.17, Report of Bonded Wine Premises Operations, provided the record will readily allow for verification of an operation or transaction by ATF officers.

* * * * *

(g) *ATF F 5120.17, Report of Bonded Wine Premises Operations.* A proprietor who conducts bonded wine premises operations will summarize transaction entries and submit an ATF F 5120.17 to the regional director (compliance) on a monthly basis, except that:

(1) A proprietor who files a monthly ATF F 5120.17 and does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months, may attach a statement to the next report filed that, until a change in the inventory or a reportable operation occurs, an ATF F 5120.17 will not be filed.

(2) A proprietor who filed monthly ATF F 5120.17 reports during the previous calendar year and none of the reports exceeded 20,000 gallons when totaling Part I columns (a) through (e) of section A line 12 plus section B line 7, or a proprietor who does not expect to exceed such 20,000 gallon quantity in any month during the current calendar year, may file an annual instead of a monthly ATF F 5120.17. To begin the annual filing of a report of bonded wine premises operations, a proprietor will state such intent in the "Remarks" section when filing a monthly ATF F 5120.17. If a proprietor determines that the 20,000 gallon quantity will be exceeded in any month, an ATF F 5120.17 will be filed for that month and for all subsequent months of the calendar year. If there is a jeopardy to the revenue, the regional director (compliance) may at any time require any proprietor filing a report of bonded wine premises operations annually to start filing such report monthly. The information reported on an ATF F 5120.17 will be maintained in accordance with the requirements of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367, 5555))

* * * * *

Par. 16. Section 24.303 is amended by revising paragraph (d) to read as follows:

§ 24.303 Formula wine record.

* * * * *

(d) The volume produced and the gain or loss resulting from the production of each lot as determined by comparing the volume finished with the volume used (report the total loss or gain on the ATF F 5120.17 for the period in question);

* * * * *

Par. 17. Section 24.313 is amended by revising the third and fourth sentences of the introductory text to read as follows:

§ 24.313 Inventory record.

* * * The inventory record will be retained on file with the proprietor's ATF F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period when the inventory was taken. If at other times a complete inventory of all wine is taken, losses disclosed will be reported on the ATF F 5120.17 and the inventory record will also be maintained on file with the report for that period. * * *

* * * * *

Par. 18. Section 24,316 is amended by revising the last sentence to read as follows:

§ 24.316 Spirits record.

* * * The proof gallons of spirits received, used, removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of each reporting period and reported on the ATF F 5120.17.

* * * * *

Par. 19. Section 24.317 is amended by revising the last sentence to read as follows:

§ 24.317 Sugar record.

* * * At the close of each reporting period, the account will be balanced and the quantity of each kind of sugar remaining on hand will be shown.

* * * * *

Signed: June 12, 1992.

Stephen E. Higgins,

Director.

Approved: July 6, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–1780 Filed 7–28–92; 8:45 am]

BILLING CODE 4810–31–92

Fiscal Service

31 CFR Part 357

[Department Of The Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Fiscal Service, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends until March 8, 1993, the deadline for submission of comments on the proposed rule to govern Treasury bonds, notes, and bills ("securities") held in the commercial book-entry system, also known as the Treasury/Reserve Automated Debt Entry System, or Trades. The proposed rule was published in the **Federal Register** on April 9, 1992 (57 FR 12244), as corrected by a notice published on May 13, 1992 (57 FR 20572). Comments were to have been submitted on or before September 8, 1992.

DATES: Comments must be received on or before March 8, 1993.

ADDRESSES: Comments should be sent to: Office of the Chief Counsel, Bureau of the Public Debt, room 503, E Street Building, Washington, DC 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel (202) 219–3320, or Cynthia Reese, Deputy Chief Counsel (202) 219–3320.

SUPPLEMENTARY INFORMATION: The Department has received a request from twenty-three members of the Book-Entry Treasury Regulations Task Force of the Investment Securities Subcommittee of the UCC Committee of the Business Law Section of the American Bar Association, to extend the period for submission of comments on the proposed regulations for six months. The extension has been requested in view of the current progress being made to revise Article 8 of the Uniform Commercial Code. This group believes that "if sufficient attention can be directed to achieving consensus with respect to the rules that will govern securities transactions under a uniform state law, the availability of those rules (even if not in absolutely final form) will prove invaluable to market participants and practitioners alike in providing comments on the form and substance of federal regulation for Treasury securities."

In the "Background" section of the preamble to the proposed rule, as published on April 9, 1992, Treasury noted that a drafting committee of the National Conference of Commissioners on Uniform State Laws had been formed to revise Article 8 of the Uniform Commercial Code, and was in the process of addressing some of the same issues presented in the proposed regulations. Treasury also expressed the view that ultimately it would be desirable, to the extent possible, to have the same law apply to U.S. Treasury securities as applies to other securities. To this end, and to be able to consider its rule in the light of the examination of this area of the law being provided by experts and other interested persons, Treasury has decided to extend the comment period on the proposed rule to March 8, 1993. Commenters who are able to do so are encouraged to submit their comment letters before that date.

Dated: July 22, 1992.

Richard L. Gregg,

Commissioner of the Public Debt.

[FR Doc. 92–17767 Filed 7–28–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AF87

Health Professionals Educational Assistance Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The VA (Department of Veterans Affairs) proposes to amend its Medical Regulations by adding new sections to implement the provisions of Public Law 101–366. Section 205 of that law creates the "Stipend Program for Members of the Selected Reserve" (herein after referred to as "Stipend Program"), codified at 38 U.S.C., chapter 76, subchapter V.

The existing VA Health Professional Scholarship Program regulations implement the provisions of 38 U.S.C., chapter 76, subchapters I–IV. The proposed regulations, which implement the provisions of subchapter V, will follow those sections of §§ 17.613–17.618. These new regulations will be coordinated with the existing regulations in the management and operation of the Stipend Program.

DATES: Comments must be submitted on or before September 28, 1992. Comments will be available for public inspection until October 7, 1992. These new regulatory additions and changes are proposed to be made effective 30 days after publication of the Final Rule in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulatory amendments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection in room 170 at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 7, 1992.

FOR FURTHER INFORMATION CONTACT: Charlotte F. Beason, ED.D., Director, Associated Health Professions Education Programs Service (143), (202) 535–7527.

SUPPLEMENTARY INFORMATION: The Veterans Administration Health Care Amendments of 1980, (Pub. L. 96–330) 38 U.S.C., chapter 73—subchapter IV, (repealed by Pub. L. 100—322) established the Veterans Administration Health Professional Scholarship Program which assisted in providing an adequate supply of trained physicians and nurses for VA and for the Nation; and if needed by VA, other specified health-care professionals. The Veterans Benefits and Service Act of 1988, (Pub. L. 100–322) amended Pub. L. 96–330 by establishing 38 U.S.C., Chapter 76—Health Professionals Educational Assistance Program containing "Subchapter I—General, §§ 7601–7604;" "Subchapter II—Scholarship Program, §§ 7611–7618;" "Subchapter III—Tuition Reimbursement Program, §§ 7621–7625;" and "Subchapter IV—Administrative Matters, Sections 7631–7636." This improved and expanded legislation authorized VA, among other things, to provide scholarship awards to students in a wider array of disciplines as needed by VA.

The Veterans Benefits Amendments Act of 1989, (Pub. L. 101–237) directed that VA in selecting applicants for scholarship awards, ensure that an equitable allocation of awards be made to students pursuing an associate degree in nursing. The Department of Veterans Affairs Nurse Pay Act of 1990, (Pub. L. 101–366) directs VA to implement the "Stipend Program" under 38 U.S.C. chapter 76, Health Professionals Educational Assistance Program, subchapter V, 7651–7655. Governed by Pub. L. 101–366, VA proposes to add new regulations to 38 CFR part 17, following § 17.612. The title of the proposed regulations is "Stipend Program for Members of the Selected Reserve."

The purpose of the Stipend Program is to assist in providing an adequate supply of specified health care professionals for VA and the Nation. As part of the Health Professional Educational Assistance Program, the Secretary of Veterans Affairs may select qualified individuals to receive assistance under subchapter V.

To be eligible to receive assistance, an individual must be accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in an accredited course of education that is approved by the Secretary, and that leads toward completion of a degree in a specified health profession involving direct patient care and care incident to direct patient care.

Stipend awards are available for education leading to one degree. Students in the upper division (junior/senior year) of a baccalaureate, or entry-level masters, or last year of an associate degree program in the disciplines specified by the Secretary may be eligible to apply. However, the Secretary may not approve an application under 38 U.S.C. 7603, of an individual applying to receive assistance under subchapter V unless the individual is entitled to benefits under chapter 106 of title 10.

The Secretary may pay to a person selected to receive assistance under subchapter V the amount of $400 (adjusted in accordance with 38 U.S.C. 7631) for each month of the person's enrollment in a program of education covered by the agreement of the person entered into under 38 U.S.C. 7603. Payment of such benefits for any period shall be coordinated with any payment of benefits for the same period under chapter 106 of title 10. Any person receiving assistance under 38 U.S.C., chapter 76, subchapter V, shall agree to provide service, in the full-time clinical practice of the person's profession as a full-time employee of the Department of Veterans Affairs, for a service obligated period of 1-year for each year, or portion thereof, for which a stipend award is provided.

Any person receiving or who has received a reserve member stipend and who fails to perform the service for which the student is obligated shall be liable to the United States in an amount determined in accordance with 38 U.S.C. 7617(c)(1). Any amount owed the United States shall be paid to the United States during the 1-year period beginning on the date of the breach of the agreement.

Should a student be unable to perform the obligated service, as a result of performing active duty including active duty training, under 38 U.S.C. 7654, the student shall be permitted to perform that service upon completion of the active duty service. The Secretary may, by regulation, waive the requirement for the performance of the service for which the student is obligated under § 7654, when the Secretary determines that the student is unable to perform the service for reasons beyond the control of the student or in any case in which the waiver would be in the best interest of the student and the United States.

VA has determined that these proposed regulations are not major as defined by Executive Order 12291, Federal Regulation. They will not have an effect on the economy of $100 million and will not result in any major increases in costs or prices for anyone; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed regulations affect only individuals who apply for the Stipend Program for Members of the Selected Reserve under the Health Professionals Educational Assistance Program. These regulations will, therefore, impose no regulatory burdens on small entities.

The Catalog of Federal Domestic Assistance Number for this program is: 64.023.

List of Subjects in 38 CFR Part 17

Health professions, Scholarship awards, and Stipend awards.

Approved: June 10, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

2. Part 17 is amended by adding, after section 17.612, an undesignated Center Heading and an authority citation followed by §§ 17.613, 17.614, 17.615, 17.616, 17.617, and 17.618 to read as follows:

Stipend Program for Members of the Selected Reserve

Authority: 38 U.S.C. 7651–7655.

§ 17.613 Purpose.

The Stipend Program for Members of the Selected Reserve (hereafter referred to as "Stipend Program") is designed to grant educational assistance on a competitive basis to qualified applicants in the Selected Ready Reserve. The stipend program is not an entitlement program. Members of the Selected Ready Reserve, who are eligible for the Selected Reserve Educational Assistance Program (GI Bill), may apply to compete for stipend awards. The Stipend Program will assist in providing an adequate supply of specified health care professionals for VA and the Nation.

§ 17.614 Program administration.

As part of the Health Professional Educational Assistance Program, which includes the Scholarship Program (38 U.S.C. 7611–7618), the Stipend Program will follow the regulations as established in 38 CFR part 17, §§ 17.600–17.612 as well as those regulations noted in §§ 17.613–17.618.

§ 17.615 Eligibility.

(a) The Secretary of Veterans Affairs may select qualified individuals to receive assistance under the Stipend Program. To be eligible to receive assistance, a student must be a U.S. citizen accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in an accredited program of education that is approved by the Secretary. The program must lead toward completion of a degree in a specified health profession involving direct patient care and care incident to direct patient care.

(b) Stipend awards are available for education leading to one degree. Students in the upper division of a baccalaureate, or entry-level masters, or last year of associated degree program in the disciplines specified by the Secretary may be eligible to apply. However, the Secretary may not approve the application, under 38 U.S.C. 7603, of the student applying to receive assistance under subchapter V unless the student is entitled to benefits under chapter 106 of title 10, and scores above the 50th percentile on the Armed Forces Qualification Test.

§ 17.616 Amount of assistance.

The Secretary may pay to a student selected to receive assistance under this Stipend Program the amount of $400 (adjusted in accordance with 38 U.S.C. 7631) for each month the person is enrolled in a program of education covered by the Stipend Program agreement under 38 U.S.C. 7603. Payment of the stipend will be coordinated with any payment of benefits for the same period under chapter 106 of title 10.

§ 17.617 Obligated service.

Any student receiving assistance under 38 U.S.C. chapter 76, shall agree to provide service, in the full-time clinical practice of their profession as a full-time employee of the Department of Veterans Affairs, for a service obligated period of one year for each year, or portion thereof, for which the stipend award is provided.

§ 17.618 Breach of agreement; liability.

(a) A student who is receiving or has received a reserve member stipend and who fails to perform the service for which the student is obligated shall be liable to the United States in an amount determined in accordance with 38 U.S.C. 7617(c)(1). Any amount owed the United States shall be paid to the United States during the 1-year period beginning on the date of the breach of the agreement.

(b) Should a student be unable to perform the obligated service, as a result of performing active duty including active duty training, under 38 U.S.C. 7655, the student shall be permitted to perform that service upon completion of the active duty service. The Secretary may waive the requirement for the performance of the service for which the student is obligated under § 7654, when the Secretary determines that the student is unable to perform the service for reasons beyond the control of the student or in any case in which the waiver would be in the best interest of the student and the United States.

[FR Doc. 92-17736 Filed 7-28-92; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 21

RIN 2900-AF91

Dependents' Education; Determining the Eligibility Period

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: Eligible surviving spouses have a ten-year period during which they must use their Dependents' Educational Assistance. A review of the Department of Veterans Affairs' (VA's) administrative experience and a careful reading of the governing statute suggest that VA has been too restrictive in determining when this ten-year period begins. VA, therefore, is proposing to liberalize the criteria for determining the beginning of surviving spouses' eligibility periods.

DATES: Comments must be received on or before August 28, 1992. Comments will be available for public inspection until September 8, 1992.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 8, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.3046(b)(5) governs the determination of the beginning date of eligibility for dependents' educational assistance for most surviving spouses. It states that when the veteran's death occurred after November 30, 1968, and VA made a determination of eligibility for the surviving spouse after October 27, 1986, the beginning date of eligibility is either the date of death for a veteran who died while a total service-connected disability evaluated as permanent in nature existed; the date VA determines that the veteran died of a service-connected disability; or any date between the preceding events (i.e., the veteran's death and VA's determination concerning service-connection) that the surviving spouse may choose as the beginning date.

Thus, under this regulation, if VA finds that a veteran died of a service-connected disability, but did not also have a permanent and total service-connected disability rating at the time of death, the veteran's spouse would have no intervening period from which to choose a beginning date.

However, under the governing provisions of statute, (38 U.S.C. 3501(a)(1)(B) and 3512(b)), where eligibility of a surviving spouse is based on the veteran's death from a service-connected disability, the spouse is allowed a choice of beginning dates between the date of the veteran's death and the date of VA's decision that the death was service-connected. The proposed regulation would correctly give such surviving spouses this choice.

Further, is the case of a surviving spouse who becomes eligible solely based on the veteran's having dies while a total, service-connected disability evaluated as permanent in nature existed, 38 U.S.C. 3501(a)(1)(D) and 3512(b) together provide that such spouse's eligibility period begins on the date of the veteran's death. There are no alternative dates from which to select. Accordingly, the proposed regulation would provide no choice of beginning date to such a surviving spouse.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as the term is defined in E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The certification can be made because the amended regulation directly affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 19, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

For the reasons set out in the preamble, 38 CFR part 21, subpart C is amended as set forth below.

1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501, 3500-3566.

2. In § 21.3046 paragraph (b)(5) is revised and its authority citation is added to read as follows.

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

* * * * *

(b) *Beginning date of eligibility period-surviving spouses.* * * *

(5) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents educational assistance after October 27, 1986, VA will determine the beginning date of the 10-year period as follows.

(i) If the surviving spouse's eligibility is based on the veteran's death while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is the date of death.

(ii) If the surviving spouse's eligibility is based on the veteran's death from a service-connected disability, the surviving spouse will choose the beginning date of the 10-year period. That date will be no earlier than the date of death and no later than the date of the VA determination that the veteran's death was due to a service-connected disability.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99-576)

* * * * *

[FR Doc. 92-17737 Filed 7-28-92; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

Department of Veterans Affairs

38 CFR Part 21

RIN 2900-AF36

Veterans Education; Implementation of Legislation Affecting the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Act to amend title 38, United States Code, with respect to veterans education and employment programs which was enacted on March 22, 1991, has several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). Chief among these is the provision of vocational flight training in this program. These proposed regulations will acquaint the public with the way in which the Department of Veterans Affairs (VA) will administer these new provisions of law.

DATES: Comments must be received on or before August 28, 1992. Comments will be available for public inspection until September 8, 1992. VA and Department of Defense intend to make the amendments to §§ 21.5060 and 21.5100, like the sections of law they implement, retroactively effective on March 22, 1991. VA and Department of Defense intend to make the amendments to §§ 21.5072, 21.5138 and 21.5250, like the section of law they implement, retroactively effective on April 1, 1991.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 8, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Public Law 102-16 contains many provisions affecting VEAP. Among these are the inclusion of vocational flight training in this program, and a change in the rule concerning when participants will be automatically disenrolled from the program. The regulations governing VEAP must be amended to implement the law.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and Department of Defense find that good cause exists for making the amendments to §§ 21.5060 and 21.5100, like the provision of law they implement, retroactively effective on March 22, 1991. VA and Department of Defense find that good cause exists for making the amendments to §§ 21.5072, 21.5138 and 21.5250, like the provision of law they implement, retroactively effective on April 1, 1991. These amended regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for this program is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 10, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary of Defense, (Military Manpower & Personnel Policy).

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.5060 paragraph (b)(3) and its authority citation are revised to read as follows:

§ 21.5060 Disenrollment.

* * * * *

(b) * * *

(3) The individual has not utilized all of his or her entitlement to benefits

within the 10-year period stated in § 21.5041, and at the end of one year thereafter has not filed a claim for educational assistance allowance as provided in § 21.5030(c).

(Authority: 38 U.S.C. 101, 3225, 3232)

* * * * *

3. In § 21.5072 paragraph (h) and its authority citation are added to read as follows.

§ 21.5072 Entitlement charge.

* * * * *

(h) *Flight training courses.* (1) A charge against the period of entitlement for pursuit of a flight training course will be one month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(4)(viii). When this computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at under § 21.5138(a)(4)(viii) is $150 at the time educational assistance allowance is paid for a period of flight training, the individual will be charged one month of entitlement for each $150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.

(Authority: 38 U.S.C. 3231(f); Pub. L. 102-16) (Apr. 1, 1991)

4. In § 21.5100 paragraph (d)(1) and the authority citation for paragraph (d) are revised to read as follows.

§ 21.5100 Counseling.

* * * * *

(d) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, VA must provide counseling as described in 38 U.S.C. 3697A prior to selection of a program of education or training. The counseling will follow the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. This requirement that counseling be provided is met when—

* * * * *

(Authority: 38 U.S.C. 3241, 3697A)

5. In § 21.5138 paragraph (a)(5) and its authority citation are added to read as follows.

§ 21.5138 Computation of benefits payments and monthly rates.

* * * * *

(a) * * *

(5) For flight training the entitlement factor will be computed as follows:

(i) Enter the amount of the individual's contributions remaining in the fund.

(a) _____

(ii) Enter the individual's remaining months of entitlement.

(b) _____

(iii) Divide line a by line b. Enter the quotient.

(1) _____

(iv) Enter two times the amount in line 1.

(2) _____

(v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual.

(c) _____

(vi) Enter the individual's remaining months of entitlement.

(d) _____

(vii) Divide line c by line d. Enter the quotient.

(3) _____

(viii) Total (lines 1, 2 and 3)

(4) _____

(ix) Enter the charges for flight training certified by the school.

(e) _____

(x) Multiply line e by .60.

(5) _____

(xi) Divide line 5 by line 4. Enter the quotient. (This is the entitlement factor.)

(6) _____

(Authority: 38 U.S.C. 3231(f))

6. Section 21.5250 is revised in its entirety to read as follows.

§ 21.5250 Courses.

(a) *General.* In administering benefits payable under chapter 32, title 38, U.S.C., the Department of Veterans Affairs and, where appropriate, the State approving agencies shall apply the following sections in the same manner as they were applied in the administration of chapters 34 and 36.

(1) Section 21.4250 (except paragraph (c)(1))—Approval of courses.

(2) Section 21.4251—Period of operation of course.

(3) Section 21.4252—(except paragraph (f))—Courses precluded.

(4) Section 21.4253—Accredited courses.

(5) Section 21.4254—Nonaccredited courses.

(6) Section 21.4255—Refund policy; nonaccredited courses.

(7) Section 21.4256—Correspondence courses.

(8) Section 21.4257—Cooperative courses.

(9) Section 21.4258—Notice of approval.

(10) Section 21.4259—Suspension or disapproval.

(11) Section 21.4260—Courses in foreign countries.

(12) Section 21.4261—Apprentice courses.

(13) Section 21.4262—Other training on-the-job courses.

(14) Section 21.4265—Practical training approved as institutional training.

(15) Section 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 3241, 3435, 3473, 3476, 3672, 3675, 3676, 3678, 3679, 3686, 3689)

(b) *Flight courses.* In administering benefits payable for flight training under chapter 32, title 38, U.S.C. VA and the State approving agencies will apply the provisions of § 21.4263 Flight training—38 U.S.C. chapters 30 and 32 and 10 U.S.C. chapter 106. Educational assistance allowance is payable for flight training undertaken by a veteran or serviceperson after March 31, 1991, but is not payable for a course of flight training which commences after September 30, 1994.

(Authority: 38 U.S.C. 3241; Pub. L. 102-16) (Apr. 1, 1991)

[FR Doc. 92-17740 Filed 7-28-92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300247; FRL-4053-1]

RIN 2070 AC-18

Crufomate; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.295 for residues of the insecticide crufomate (2-chloro-4-(1,1-dimethylethyl)phenylmethyl methylphosphoramidate) and its metabolite 2-chloro-4-(1,1-dimethylethyl)phenol in or on fat, meat, and meat byproducts of cattle, goats, and sheep. EPA is initiating this action because all registered uses of crufomate

on these livestock animals have been voluntarily cancelled by the registrants.

DATES: Written comments, identified by the document control number [OPP-300247], must be received on or before September 28, 1992.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: On October 1, 1988, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the insecticide crufomate were voluntarily cancelled by the registrants in response to EPA's 1987 dioxin/furan contamination Data Call-In.

Since the registrations for crufomate products were cancelled more than 3 years ago, stocks of these products (in the inventory of formulators or distributors and dealers) have presumably been depleted. Accordingly, the Agency believes that these products are no longer offered in commercial trade.

The tolerances under the Federal Food, Drug, and Cosmetic Act for residues of crufomate in or on meat, fat, and meat byproducts of cattle, goats, and sheep were obtained in conjunction with the FIFRA registration. EPA has no information to suggest that crufomate is used on livestock animals whose meat is exported to the U.S.

Since crufomate is no longer registered for use on livestock animals or livestock premises, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.295 for residues of crufomate in or on meat, fat, and meat byproducts of cattle, goats, and sheep. Further, since crufomate is not a persistent chemical and its registrations for use were cancelled more than 3 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains crufomate may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal to revoke all crufomate tolerances listed in 40 CFR 180.295 be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300247]. All written comments filed in response to this document will be available for public inspection in the Public Docket and Freedom of Information Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of crufomate on cattle, goats, and sheep were voluntarily cancelled by the registrants more than 3 years ago, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 15, 1992.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.295 [Removed]

2. By removing § 180.295 *Crufomate; tolerances for residues.*

[FR Doc. 92-17548 Filed 7-28-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300255; FRL-4068-5]

RIN 2070-AC18

Profluralin; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.348 for residues of the herbicide profluralin [*N*-(cyclopropylmethyl)-*a,a,a*-trifluoro-2,6-dinitro-*N*-propyl-*p*-toluidine] in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of profluralin on food crops have been voluntarily canceled.

DATES: Written comments, identified by the document control number [OPP-300255], must be received on or before September 28, 1992.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Killian Swift, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5317.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the pesticide profluralin in or on the raw agricultural commodities alfalfa (fresh), alfalfa hay, cottonseed, safflower seed, seed and pod vegetables (dry or succulent), seed and pod vegetable fodder and forage, soybean hay, and sunflower seed; eggs, milk, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep. These tolerances are listed in 40 CFR 180.348.

In April 1984, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the herbicide profluralin were voluntarily canceled by the sole registrant.

The tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of profluralin in or on the various raw agricultural commodities listed above were obtained in conjunction with the FIFRA registration. The EPA has no information to suggest that profluralin is used on any of the above-named crops exported to the United States.

Since profluralin is no longer registered for use on food or feed crops, and since a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA proposes to revoke all the tolerances listed in 40 CFR 180.348 for residues of profluralin. Further, since profluralin is not a persistent chemical and since its registrations were voluntarily canceled 8 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains profluralin may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal to revoke all profluralin tolerances listed in 40 CFR 180.348 be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300255]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291 the EPA must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The EPA has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of profluralin were canceled in 1984, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 15, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.348 [Removed]

2. By removing § 180.348 *Profluralin: tolerances for residues.*

[FR Doc. 92-17549 Filed 7-28-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-155, RM-8020]

Radio Broadcasting Services; Blair, Nebraska; Storm Lake, Perry and Sac City, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sunrise Broadcasting of Nebraska, Inc., seeking the substitution of Channel 268C3 for Channel 292A at Blair, Nebraska, and the modification of Station KBWH (FM)'s license to specify the higher class channel. To accommodate the allotment of Channel 268C3 to Blair, petitioner also requests the modification of Station KAYL's license by substituting Channel 269C1 for Channel 268C1 at Storm Lake, Iowa, the modification of Station KDLS-FM's license by substituting Channel 286A for Channel 289A at Perry, Iowa, and the substitution of Channel 248A for unoccupied and unapplied for Channel 286A at Sac City, Iowa. The Commission also proposes to allot Channel 247C3 to Blair to accommodate any competing expressions of interest which may be filed for Channel 268C3 at Blair. See also **SUPPLEMENTARY INFORMATION**, infra.

DATES: Comments must be filed on or before September 15, 1992, an reply comments on or before September 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun, Esq., Rosenman & Colin, 1300 19th Street, N.W., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 92-155, adopted July 2, 1992, and released July 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

The coordinates for Channel 268C3 at Blair are North Latitude 41-38-52 and West Longitude 96-17-55. The coordinates for Channel 247C3 at Blair are 41-42-20; 96-17-22. The coordinates for Channel 286A at Perry are 41-49-58; 94-02-15. The coordinates for Channel 269C1 at Storm Lake are 42-38-05; 95-10-10. The coordinates for Channel 248A at Sac City are 42-25-12; 95-00-18.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regrading proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-17820 Filed 7-28-92; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 28)]

Rail General Exemption Authority: Export Corn and Export Soybeans

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served July 15, 1992 (57 FR 31489, July 16, 1992), the Commission sought public comment by August 17, 1992, on whether to exempt from regulation the rail transportation of export corn and export soybeans. By letter filed July 20, 1992, the Association of American Railroads (AAR) requests a 30-day extension until September 16, 1992, to file comments. AAR states additional time is needed because the current schedules of its counsel and necessary member road personnel do not allow adequate time to prepare and review evidentiary submissions by August 17, 1992. The request is reasonable and will be granted.

DATES: Initial comments are due on September 16, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 28) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar: (202) 927-5660.

[TDD for the hearing impaired: (202) 927-5721]

Decided: July 23, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17876 Filed 7-28-92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Notice of Extension of the Final Decision to List the Washington, Oregon, and California Population of the Marbled Murrelet as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of 6-month extension of deadline and reopening of the comment period.

SUMMARY: On June 20, 1991, the Fish and Wildlife Service (Service) proposed to determine the Washington, Oregon, and California population of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) to be a threatened species, under the provisions of the Endangered Species Act of 1973, as amended (Act). The Act requires the Service to make a final determination on such proposals within 12 months, but provides for a 6-month extension if there is substantial

disagreement regarding the sufficiency or accuracy of the available data relevant to that determination. The Service finds that there is such a disagreement and therefore extends the deadline with respect to the decision to list the marbled murrelet.

DATES: The deadline for final action on the proposal is now December 20, 1992. The public comment period is reopened until September 28, 1992.

ADDRESSES: Comments and materials should be sent to Portland Field Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Field Supervisor, at the above address (503/231–6179).

SUPPLEMENTARY INFORMATION: .

Background

The Service proposed threatened status for the marbled murrelet occurring in Washington, Oregon, and California on June 20, 1991 (56 FR 28362). It is believed that the marbled murrelet in this three-State area has been adversely affected by timber harvest operations, potential oil spills, and gill net fisheries off the Washington coast. The marbled murrelet is listed as threatened by the Canadian Government in British Columbia, Canada. The marbled murrelet occurring in Alaska is not listed and is not included in the listing proposal. However, the Service continues to evaluate its status.

The North American subspecies of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) ranges from the Aleutian Archipelago in Alaska, eastward to Cook Inlet, Kodiak Island, Kenai Peninsula, and Prince William Sound, southward coastally throughout the Alexander Archipelago of Alaska, and through British Columbia, Washington, and Oregon, to central California. Some wintering birds are found in southern California. A separate subspecies (*B. m. perdix*) is present in Asia.

Concentrations of marbled murrelets offshore are almost always adjacent to older forests on-shore. Nelson (1990) and Ralph et al. (1990) found marbled murrelets were absent offshore where on-shore older forests were absent. Large geographic gaps in offshore marbled murrelet numbers occur in areas such as that between central and northern California (a distance of 480 kilometers (300 miles)), and between Tillamook County, Oregon, and the Olympic Peninsula in Washington (a distance of about 190 kilometers (120 miles)), where nearly all older forests have been removed near the coast. Small rafts of marbled murrelets may be found associated with remaining isolated stands of older forests (e.g., the Nemah site). Historically, records for California indicate that marbled murrelets were found "regularly" and were "plentiful" along the coast from Monterey County north to the Oregon border (Grinnell and Miller 1944, Paton and Ralph 1988). Historical records of marbled murrelets also showed significant numbers during the season near the mouth of the Columbia River in Clatsop County, Oregon. Currently, marbled murrelets are rarely found in this area, where extensive harvesting of older forests has also occurred (Nelson et al., in press).

Population size for marbled murrelets is most accurately estimated by counting the numbers of birds observed in the marine environment. Washington's breeding population is estimated to be a maximum of 5,000 birds (Speich et al., in press). The current population estimates for Oregon and California are fewer than 1,000 pairs (Nelson et al., in press), and about 2,000 birds (Carter el al. 1990), respectively. By extrapolating from known population numbers in relation to the remaining available nesting habitat, it has been estimated that 60,000 marbled murrelets may have been found historically along the coast of California (Larsen 1991).

The general issue of what constitutes a listable vertebrate population under the Act has been a longstanding concern due to the difficulties inherent in identifying and designating population segments for broad ranging species such as the marbled murrelet. The Act currently defines "species" to include "any subspecies of fish and wildlife * * * and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." The original language in the Act referred to "taxa in common spatial arrangement that interbreed when mature." The definition of "species" was modified in subsequent amendments to limit its applicability to vertebrates only and to change "common spatial arrangement" to "distinct population segment." However, the Act never has precisely defined what is meant by "population." The Service generally considers threats to species at the species or subspecies level under the Act, but occasionally focuses on threats or impacts to distinct population segments if deemed appropriate for a species. In 18 cases since the enactment of the Act has the Service acted to identify and separately list vertebrate populations.

When considering whether to list a population segment, the Service assesses the biological significance of the population segment to the species or subspecies as a whole. Thus, threats to a population will vary depending on which segment of the species' range is being considered. Additionally, one segment may be significantly threatened, but the biological importance of that segment to the species as a whole may not be considered significant to the listing of a species.

Section 4(b)(6)(a)(i) of the Act requires the Service to take one of three alternative actions within one year of a listing proposal: (1) Publish a final regulation listing the species, (2) publish a notice that the listing proposal is being withdrawn, or (3) publish a notice that the one year period is being extended under section 4(b)(6)(a)(i). That section provides that the Service may extend the one-year period for up to 6 months upon finding "that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination" of whether to list the species. The Service must base its decisions under these provisions on the best scientific and commercial data available. As discussed below, the Service believes there is a substantial disagreement regarding the sufficiency of the scientific data relevant to identification and designation of the population segment or segments of the overall range of the subspecies that should be the subject of any listing action that is taken. The Service accordingly is extending the deadline for making a final decision on the listing proposal in order to resolve the population issue.

Information received during the comment period indicates there is such a substantial disagreement regarding the marbled murrelet. Some of the comments questioned the Service's proposal to consider the tri-State area as a single population for the purposes of listing under the Act, and recommended that alternate listings were more appropriate. The Oregon Department of Fish and Wildlife, for instance, recommended that the Service treat the marbled murrelet in California as a separate population that should be listed as endangered. Another comment cited data on logging practices and impacts from the Exxon Valdez oil spill to support a recommendation that the marbled murrelet in Alaska should be listed along with those in the tri-State area. Another comment questioned the validity under the Act of the proposed decision to identify the United States-

Canada border as the limit of a population. These conflicting views, together with the relative scarcity of data concerning the locations and status of the marbled murrelet in the tri-State area, indicates a disagreement concerning the sufficiency of existing data to support a definitive determination as to whether the marbled murrelet in the proposed tri-State area represents one disjunct population, more than one population, or is a continuum of a single population with Canada and Alaska. Information that might enable a definitive determination, such as data from marking studies showing that segment populations overlap or evidence of breeding interchange among apparently disjunct marbled murrelet concentrations in California and Oregon or between the tri-State area and Canada or Alaska, are not currently available. Moreover, the issue of whether there is one or more distinct population segments in the tri-State area, or whether even the entire area comprises a population, could have a significant and even determinative impact on the ultimate listing decision.

With regard to the marbled murrelet, the disagreement over the sufficiency of the data on which to designate a discrete vertebrate population (or populations) became more apparent as a result of the comments received on the proposal. Further analysis of the available population and threat data for the subspecies is required in order adequately to evaluate both the threats to the subspecies as a whole, the threats to various population segments, and the significance of various population segments to the subspecies. The Service is concerned that its final decision on the designation of a listable population be consistent with actions taken with similar species.

The issues involved in the decision concerning the marbled murrelet are complex, and are hampered by limited data availability in key areas, particularly as it relates to identification of discrete population segments. The additional time required for the Service to adequately address these issues is not anticipated to appreciably impact the status of the subspecies. The majority of older forests utilized by the marbled murrelet occurs on land under Federal jurisdiction (U.S. Forest Service and Bureau of Land Management), and there is approximately 80 percent habitat overlap with the listed northern spotted owl. Further, most old growth forests under Federal jurisdiction are subject to a complete prohibition on new timber sales as a result of three separate Federal court injunctions. See *Lane County Audubon Society* v. *Jamison*, Nos. 91–36019 and 91–36340 (9th Cir., filed March 4, 1992) (prohibits awarding of new BLM timber sales); *Portland Audubon Society* v. *Lujan*, No. 87–1160–FR (D. Ore, filed June 8, 1992) (prohibits offering or awarding, or logging pursuant to, of new BLM timber sales in habitat suitable for the northern spotted owl); *Seattle Audubon Society* v. *Moseley*, No. C92–479WD (W.D. Wash., filed July 2, 1992) (prohibits awarding of new timber sales in habitat suitable for the northern spotted owl). Moreover, management actions in these areas during the extended review period for the marbled murrelet listing proposal will not significantly impact the subspecies, because old growth forests under this jurisdiction are currently subject to Federal Court injunctions that prohibit timber sales as described above. The Service believes the cumulative effect of these injunctions will provide the fullest habitat protection possible during the extended review period.

For all of the above reasons, the Service extends until December 20, 1992, the period within which to determine whether the marbled murrelet in Washington, Oregon, and California should be listed as a threatened species. The Service solicits additional data on the question of the appropriate designation of distinct population segments, if any, for the marbled murrelet.

References Cited

Carter, H.R., D.L. Jaques, C.S. Strong, G.J. McChesney, M.W. Parker, and J.E. Takewawa. 1990. Draft rept. Survey of seabird colonies of northern and central California in 1989. U.S. Fish and Wildl. Serv., Northern Prairie Wildlife Research Center.

Grinnell, J. and A.H. Miller. 1944. The distribution of the birds of California. Pacific Coast Avifauna No. 27, Cooper Ornithological Society, Berkeley, CA. 608 pp.

Larsen, C.J. 1991. Report to the Fish and Game Commission: A status review of the marbled murrelet (*Brachyramphus marmoratus*) in California. California Dept. of Fish and Game, Wildlife Management Division, Department Candidate Species Report 91–1.

Nelson, S.K. 1990. Distribution of the marbled murrelet in western Oregon. Interim Report, Oregon Dept. of Fish and Wildlife, Nongame Wildlife Research Program, Contract 89–9–02, Portland, OR. 46 pp.

Nelson, S.K., M.L.C. McAllister, M.A. Stern, D.A. Varoujean, and J.M. Scott. In press. The marbled murrelet in Oregon, 1899–1987. *In* Carter, H.R. (ed.). Status, Distribution, and Management of the Marbled Murrelet, Proc. W. Found. Vert. Zool.

Paton, P.W. and C.J. Ralph. 1988. Geographic distribution of the marbled murrelet in California at inland sites during the 1988 breeding season. California Dept. of Fish and Game, Sacramento, CA. 35 pp.

Ralph, C.J., S.L. Miller, N.L. Naslund, B. O'Donnell, P.W.C. Paton, and J. Seay. 1990. Marbled murrelet research during 1989 in northern and central California—an interim report. Technical Report 1990–8, Nongame Bird and Mammal Section Report, California Dept. of Fish and Game, Sacramento, CA. 39 pp.

Speich, S.M., T.R. Wahl, and D.A. Manuwal. In press. The numbers of marbled murrelets in Washington marine waters. Proc. W. Found. Vert. Zool.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and Threatened Species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 24, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–18046 Filed 7–27–92; 2:16 pm]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 146
Wednesday, July 29, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

RIN 0560-AC77

1992-1993 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth the determination of the 1992-1993 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Rebecca Fial, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013, 202-690-0012.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major. It has been determined that this rule will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State and local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loan and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). Executive Order 12778 is not applicable to this notice.

Discussion

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, The Agricultural Statistics Board, National Agricultural Statistical Service (NASS), U.S. Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

Since the determination of the 1992-1993 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined the 1992-1993 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1992-1993 Marketing Year]

Kinds of tobacco	Cents per pound
Flue-Cured	129
Burley	134

RATE OF PENALTY—Continued

[1992-1993 Marketing Year]

Kinds of tobacco	Cents per pound
Fire-Cured (Type 21)	114
Fire-Cured (Types 22 and 23)	160
Dark Air-Cured (Types 35 and 36)	138
Virginia Sun-Cured (Type 37)	108
Cigar-Filler and Binder (Types 42, 43, 44, 54, and 55)	116

Signed at Washington, DC on July 23, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 92-17846 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 92-106-1]

Bird Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice that the Animal and Plant Health Inspection Service has personnel available to provide services for 13 additional privately operated bird quarantine facilities for birds imported into the United States, and that applications for approval of these facilities may now be submitted for consideration. We have personnel to provide services for: six additional facilities in Miami, FL; two in Newark, NJ; one in Nogales, AZ; one in Phoenix, AZ; one in Del Rio, TX; one in Laredo, TX; and one in McAllen, TX.

DATES: Consideration will be given to applications received on or before September 28, 1992. They should be addressed to the Import-Export Animals Staff, VS, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5097.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 (referred to below as the regulations) include, among other things, provisions

concerning the importation of birds into the United States. Section 92.105 requires, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, or research birds imported from any part of the world be entered at certain ports. Section 92.106(a) requires, with certain exceptions, that these birds be quarantined at one of our quarantine facilities or at a privately operated quarantine facility approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Section 92.106(c)(5) of the regulations sets forth the provisions for selection of applicants for consideration for approval of privately operated bird quarantine facilities. In accordance with these regulations, we are giving notice that APHIS has personnel available to provide services for 13 additional privately operated bird quarantine facilities and is now accepting applications for consideration for approval of these facilities.

Applications

An applicant must submit a completed VS Form 17-11.[1] "Application of Approval of Quarantine Facilities for Birds," or a document which states that it is an application for approval of a quarantine facility for birds and includes the following information (the same as that called for by VS Form 17-11):

(1) Applicant's name, address, and telephone number;

(2) Status of applicant, such as individual, partnership, or corporation (if incorporated, include State where incorporated and date of incorporation);

(3) Name, title, and address of intended operators, partners, officers, directors, holders or owners of 10 per centum or more of voting stock, and employees in a managerial or executive capacity;

(4) (Optional) Address where the bird quarantine facility will be located;

(5) (Optional) A drawing of the floor plan for the facility showing the location of bird holding areas, equipment storage areas, office areas, clothes storage and change areas, feed storage areas, necropsy room (showing entry and refrigeration), washing areas for equipment, shower areas, ventilation arrangements, and entries and exits;

(6) (Optional) Whether the water source of the facility will be public or private;

(7) (Optional) Whether disposal of waste from the facility will be by sewer or incinerator, or both;

(8) Whether priority status is requested, and, if so, the extenuating circumstances relied on for such request; and

(9) Date; certification by signature of the intended operator, partner, or officer; and title of such individual after the following language: "Application is hereby made for approval of a USDA Approved Quarantine Facility for bird importations. I certify that the information provided herein is true and correct to the best of my knowledge and belief, and agree to comply with the applicable regulations in 9 CFR part 92."

Consideration of Applications

If the number of applications for bird quarantine facilities at a specified port of entry does not exceed the number of announced openings, each application shall be considered for approval of a facility at that port of entry.

If the number of applications for bird quarantine facilities at a specified port of entry exceeds the number of announced openings, priority status for selection shall be given to applications from operators of currently approved facilities who request to transfer operations from a facility at a port of entry where they currently operate to a facility at a port of entry specified in the announcement, if the Administrator determines that there is a change in circumstances beyond the control of the operator which makes it impracticable to continue operations at the currently approved facility, such as termination of services from a Government agency or termination of services from airlines.

The following procedures shall apply when considering applications eligible for priority status at a specified port of entry:

(1) If the number of applications eligible for priority status does not exceed the number of announced openings, each application eligible for priority status shall be considered for approval of a facility at that port of entry.

(2) If the number of applicants with one or more applications eligible for priority status at a specified port of entry is fewer than the number of openings but the number of applications eligible for priority status exceeds the number of openings, each applicant with one or more applications eligible for priority status shall first be selected for consideration for approval of one facility at that port of entry. Then, if there is a sufficient number of remaining openings at that port of entry, each applicant who submitted two or more applications eligible for priority status shall be selected for consideration for approval of a second facility. However, if the number of applicants who submitted two or more applications eligible for priority status exceeds the number of remaining openings, the applicants to be selected for consideration for approval for a second opening shall be determined based on a drawing. The proceeding shall continue in this matter until there are no more openings.

(3) If the number of applicants with one or more applications eligible for priority status exceeds the number of announced openings, each of these applicants (regardless of the number of applications submitted) will be eligible to be selected for consideration for approval of no more than one new facility at that port of entry, and the selection of such applicants to be considered for approval shall be determined based on a drawing.

The following procedures shall apply for consideration of applications not included as eligible for priority status if one or more openings remain for bird quarantine facilities at a specified port of entry after all applications eligible for priority status have been selected for consideration (applicants selected for consideration for approval based on priority status are not eligible to be considered under these provisions for remaining openings in the same drawing in which they received priority status):

(1) If the number of applicants is fewer than the number of remaining openings but the number of applications exceeds the number of remaining openings, each applicant shall first be selected for consideration for approval of one facility at that port of entry. Then, if there is a sufficient number of remaining openings, each applicant who submitted two or more applications shall be selected for consideration for approval of a second facility. However, if the number of applicants who submitted two or more applications exceeds the number of remaining openings, the applicants to be selected for consideration for approval for a second opening shall be determined based on a drawing. The proceeding shall continue in this manner until there are no more openings.

(2) If the number of applicants exceeds the remaining number of announced openings, an applicant (regardless of the number of applications submitted by such applicant) will be eligible to be selected for consideration for approval of no more than one new facility at that port of entry, and the selection of such

[1] VS Form 17-11 is available from the Administrator, c/o the Import-Export Animals Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

applicants to be considered for approval shall be determined based on a drawing.

Drawing

If a drawing is necessary, the participants in the drawing shall be notified by registered or certified mail of the date, place, and time of the drawing so that they may attend; however, attendance by participants is not required.

Notification

Applicants selected for consideration for approval of a bird quarantine facility shall be notified of such selection by registered or certified mail. As a condition of approval as a bird quarantine facility, the facility must comply with the requirements set forth in this section within 18 months from the date of notification. The Administrator may refuse approval of any bird quarantine facility if an intended operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime set forth in paragraphs (c)(6)(ii) (B) or (C) of § 92.106. Before a decision is made with respect to the eligibility of any facility for approval, a person inspection of the facility shall be made by a Veterinary Medical Officer of APHIS to determine whether it complies with the standards set forth in this section. Approval of any bird quarantine facility shall be contingent on a determination made by the Administrator that adequate personnel are available to provide services required by the facility if approved.

Additional provisions concerning privately operated quarantine facilities are set forth in paragraphs (a) and (c) of § 92.106 of the regulations. These provisions, among other things, contain certain minimum requirements concerning location, construction, sanitation, security, and operational procedures.

Authority: 7 U.S.C. 1622; 91 U.S.C. 1306, 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51 and 371.2(d)

Done in Washington, DC, this 23rd day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17879 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

Single Family Housing Inventory

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Farmers Home Administration (FmHA), an agency of the United States Department of Agriculture, has entered into a Memorandum of Understanding with the Department of Housing and Urban Development (HUD) to coordinate the use of FmHA Single Family Housing (SFH) inventory properties for the benefit of participants in the HUD HOPE 3 Program. FmHA acquires SFH properties in inventory as a result of liquidation of its loan security. Inventory properties which meet FmHA program standards are repaired and sold, preferably to FmHA program applicants on program credit terms. Nonprogram properties are broom cleaned and sold for cash or on nonprogram credit terms. HUD, through the HOPE 3 program, provides home ownership opportunities for low income families and individuals (Participants) by providing grantees (Grantees) with Federal assistance to initially acquire and rehabilitate government owned properties. Grantees acquire SFH properties from government agencies and sell them to Participants at affordable prices, after making needed repairs. Alternatively, Grantees can facilitate direct acquisition and repair of housing by Participants by providing financing, funds for down payments, repairs and/or subsidized interest rates.

FOR FURTHER INFORMATION CONTACT: Further information about the HUD–FmHA Memorandum of Understanding of the use of FmHA SFH inventory properties in the HUD HOPE 3 Program may be obtained from FmHA through Frances B. Calhoun, Division Director, SFH Servicing and Property Management, or Reed J. Petersen, Branch Chief, SFH Property Management, Farmers Home Administration, USDA, room 5307, 14th and Independence Avenues, SW., Washington, DC 20250, telephone 202–720–1452, or from HUD through Marcia Dodge, Deputy Director, CPD/OUR telephone 202–708–2685 or John Garrity, Director, HOPE 3, telephone 202–708–0324 at 451—7th Street, SW., Washington, DC 20410.

Dated: June 22, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-17845 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

[Docket No. 92-018N]

FSIS Strategic Planning

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Food Safety and Inspection Service (FSIS) is seeking public input for a strategic plan that will guide the Agency's programs through the year 2000. This notice solicits participation by consumer and other public interest groups, the meat and poultry industry, academia, and any other interested members of the public. FSIS is also seeking input from its employees at all levels.

DATES: Comments must be received on or before August 28, 1992.

ADDRESSES: Written comments to: Policy Office: Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dan Vitiello, Director, Planning Coordination and Analysis Unit, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–2843.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this notice. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 92–018N. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

FSIS is planning to enhance the scientific and public health basis of meat and poultry inspection. The Agency is seeking the most effective

inspection systems to guarantee safe, wholesome and accurately labeled products for consumers and to encourage industry innovations in these areas. At the same time, the Agency must utilize its resources to focus inspection on the areas that pose the most risk to the public health.

Three separate reports from the National Academy of Sciences have made recommendations concerning various aspects of meat and poultry inspection. The reports are: Meat and Poultry Inspection: The Scientific Basis of the Nation's Program, 1985; Poultry Inspection: The Basis for a Risk-Assessment Approach, 1987; and Cattle Inspection: Committee on Evaluation of USDA Streamlined Inspection System for Cattle, 1990.

To build a framework for the future, FSIS is seeking input on the issues that should be addressed in its strategic plan and on priorities that should be met to enhance the public health. The Agency is seeking ideas on the best approaches to applying its Operating Principles to meat and poultry inspection. The Operating Principles are:

I. Public Health Protection—FSIS' primary responsibility is to ensure safe meat and poultry in order to protect the public health.

II. Economic Fraud—FSIS will also strive to ensure that meat and poultry products are truthfully and accurately labeled.

III. Risk-Based Allocation of Resources—The allocation of Agency resources should be based on the risks to the public inherent in a product, a process, or a producer.

IV. Regulatory Enforcement—The Agency will make full use of its regulatory authorities to enforce industry accountability for providing safe, wholesome, and accurately labeled products.

V. Use of Science and Technology—The Agency will design and implement inspection programs that take full advantage of contemporary science and technology.

VI. Design of Prevention Systems—The Agency will focus on prevention and will assist the public and private sectors to design process and production control systems that enhance public health protection.

VII. Total Quality Service—The Agency will provide the highest quality service by fully involving its employees and constituents, recognizing excellence and continuously improving its operations.

VIII. Human Resources—FSIS recognizes that a diverse, highly skilled, and dedicated workforce is essential to its mission.

Once a draft strategic plan is developed, FSIS will seek more public input on that specific document.

Done at Washington, DC, on July 23, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-17865 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Exemption of the Silver Creek Salvage Sale, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Silver Creek project area, Emmett Ranger District, Boise National Forest are exempted from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective on July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Cyd Weiland, NFMA/NEPA Coordinator, or Don Dittmer, Timber Management Assistant, Emmett Ranger District, Boise National Forest, 1648 North Washington, Emmett, ID 83617, Telephone: 208-365-3811.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir tussock moth, and bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Emmett Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damaged acres, where appropriate. They have also prepared the Silver Creek Salvage Environmental Assessment (EA) to identify issues, develop alternatives, and analyze the effects of implementing timber salvage and other recovery activities.

The analysis area for the Silver Creek Salvage EA is located 16 air miles north of Garden Valley, Idaho. The area includes about 12,660 acres with insect mortality scattered throughout. The Forest will harvest approximately 2-3 million board feet from about 2,000-3,000 scattered acres. This sale would harvest only dead and dying trees using helicopter (approximately 720-1,650 scattered acres), and ground-based logging systems (about 1,350 scattered acres). Cutting areas would not exceed five acres in size. About 80 acres of the Peace Rock Inventoried Roadless Area would be harvested by helicopter. Any new opening (outside of the Peace Rock area) larger than three acres would be evaluated and scheduled for planting, if stocking is considered inadequate and natural regeneration is not expected to be successful.

There is no road or helicopter-landing construction proposed for the salvage operations. Approximately 6.8 miles of road would be reconstructed. About 38.4 miles would be maintained by blading, or blading and brush trimming, to facilitate log haul. Management director for the Silver Creek Salvage area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project areas. In addition, the Forest Plan describes standards to protect soil, water, wildlife, visual, and other on site resources. The proposed action for the Silver Creek Salvage project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

The Silver Creek Salvage include a 3,850-acre portion of the Peace Rock roadless area. That portion of the Peace Rock area within the project area has been allocated to commercial timber production as well as other multiple uses by the Forest Plan. Salvage timber would be removed from approximately 80 acres of this IRA using helicopters. Landings would be adjacent to existing roads outside the roadless area.

Forest Pest Management Specialist and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting and reforestation will not control the epidemic, these activities will: (1) Recover valuable timber that would otherwise deteriorate, and (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the salvage timber sale, breeding insects can be removed in the logs (bark beetles) and Knutson-Vandenburg (KV-V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is

sufficient justification to expedite this project. The decision will be implemented after publication of this notice in the **Federal Register**. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $155,000. Of this, approximately $39,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Silver Creek Salvage and Recovery Project, Emmett Ranger District, Boise National Forest, from appeal. The environmental assessment has disclosed the effects of the proposed actions on the environment and addressed issues resulting from the proposal.

Dated: July 22, 1992.

John P. Butt,

Director, Planning and Budget Intermountain Region, USDA Forest Service.

[FR Doc. 92-17735 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Fessenden Recreation Center RC&D Measure, NC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fessenden Recreation Center, Dare County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, 4405 Bland Road, suite 205, Raleigh, North Carolina 27609; Phone number (919) 790-2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for installing recreational facilities on the Fessenden Tract in the community of Buxton, Hatteras Island. The planned works of improvement include constructing a recreation center, wetland enhancement and water access boardwalk, parking areas, and improving the ballfield. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of Finding of No Significant Impact (NOFONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: July 15, 1992.

Coy A. Garrett,

State Conservationist.

[FR Doc. 92-17857 Filed 7-28-92; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, August 19, 1992, at the Urban County Government Building, City Council Chambers, 200 E. Main Street, Lexington, Kentucky 40507. The meeting will include: (1) A discussion of the status of the Commission; (2) a discussion and update of the current project; and (3) a session to receive information from community leaders on bigotry and related violence in Kentucky with an emphasis on Lexington.

Persons desiring additional information, or planning a presentation to the Committee should contact Kentucky Chairperson Thelma Clemons 502/893-1055 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 21, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-17835 Filed 7-28-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Maryland State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil rights, that a meeting of the Maryland State Advisory Committee will convene at 9 a.m. and adjourn at 6 p.m. on Wednesday, August 12, 1992, Montgomery College, Board of Trustees Hearing Room 115, 900 Hungerford Drive, Rockville, MD 20850, Phone: 301/279-5272. The purpose of the meeting is to gather information from knowledgeable sources regarding civil rights problems of Asian Americans in Montgomery County. Representative viewpoints will be presented by Asian American membership organizations, Montgomery County officials for human relations, employment services, public schools and law enforcement.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Dr. H. DeWayne Whittington at 301/623-4521; or John I. Binkley, Director, ERO at (202/523-5264); or TDD (202/3376-8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 22, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-17839 Filed 7-28-92; 8:45 am]

BILLING CODE 6336-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Inspection and Certification; Notice of Availability NMFS HACCP-based Inspection Service.

Form Number: None.

Type of Request: New collection.

Burden: 35 respondents; 875 reporting hours; average hours per response—25 hours; 35 recordkeepers—167 annual hours per recordkeeper.

Needs and Uses: The information to be collected from participants will be used by NMFS in determining compliance with the program. The reported information, a Hazard Analysis Critical Control Point (HACCP) plan, describes the products and processing operations, the hazards associated with each step of the process, and the facility's monitoring procedures. NMFS will be auditing the facility and its records to determine the facility's maintenance of its plan.

Affected Public: Business or other for-profit, small businesses or organizations.

Frequency: On occasion, recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 23, 1992.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 92-17862 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Registration to Trawl for Shrimp Using Restricted Tow Times in Lieu of Turtle Excluded Devices in the North Carolina Restricted Area.

Form Number: None.

Type of Request: New collection.

Burden: 30 respondents; 4 reporting hours; average hours per response—.08 hours.

Needs and Uses: Fishermen wanting to trawl in the restricted area using to times in lieu of turtle excluded devices must call to register with the National Marine Fisheries Service, and provide information on the name and number of the vessel, appropriate state authorization, and date of proposed fishing.

Affected Public: Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Officer Building, Washington, DC 20503.

Dated: July 23, 1992.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 92-17867 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-06-M

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	product
Aqua Kleer Industries, Inc	9420 E. Doubletree Ranch Rd., Scottsdale, AZ 85258.	6/25/92	Water filtration devices.
Sandia Oil & Gas Corporation	909 N.E. Loop 410, Ste. 818, San Antonio, TX 78209.	6/25/92	Crude oil and natural gas.
Apparel Suppliers of California, Inc	687 Anita Street, Chula Vista, CA 91911	6/25/92	Men's suits, jackets, trousers and tuxedos (apparel).
Sicilian Chef, Inc. T/A Caesar's Pasta Products	1001 Lower Landing Road, Blackwood, NJ 08012.	6/25/92	Pasta (food and beverage).
Robert P. Miller Company	327 Main Street, Shoemakersville, PA 19555	6/25/92	Apparel—Men's shirts and underwear (briefs).
Cushman Industries, Inc	806 Windsor Street, Hartford, CT 06120	6/25/92	Machinery and equipment—work holding devices for machine tools.
Schuler-Subra, Inc	83 Doat Street, Buffalo, NY 14211	7/02/92	Metal products—stainless steel kitchen counters, sinks and range hoods.
Scanner Graphics, Inc	325 Minor Avenue, North, Seattle, WA 98109	7/02/92	Misc.—Photographic plates and film for offset reproduction.
Thiel Tool & Engineering Co., Inc	4622 Bulwer Avenue, St. Louis, MO 63147	7/06/92	Misc.—Auto bumper stampings and body stampings.
Cabin Creek Quilts Cooperative Association	4208 Malden Drive, Malden WV 25306	7/06/92	Quilts.

Firm name	Address	Date petition accepted	product
Fairfield Manufacturing Company, Inc	U.S. 52 South, Lafayette, IN 47903	7/06/92	Metal products—high precision custom gears and planetary gear systems.
Kistler-Morse Corporation	10201 Willows Road, NE., Redmond, WA 98052	7/06/92	Weighing system consists of two basic parts: a sensor and a display.
Package Machinery Co	24 West Street, Safford Springs, CT 06076	7/06/92	Mach. and equip.—machinery that weighs, wraps, packs, fills and seals, also bag making machines.
Parker Metal Corporation	60 Prescott Street, Worcester, MA 01605	7/06/92	Misc.—shopping and carry out carts, blister package, auto hardware and nails.
Zenith Fuel Systems, Inc	1048 Industrial Park Road, Bristol, VA 24201	7/06/92	Metal products—carburetors and repair kits.
Aero Systems, Incorporated	9650 Rush Street, South El Monte, CA 91733	7/07/92	Structural aerospace components.
Pawtucket Foam Products	181 Conant Street, Pawtucket, RI 02860	7/08/92	Apparel—jackets, pants, headwear, mittens, slippers and accessories used in out door camping.
Divelbiss Corporation	9776 Mt. Gilead Road, Fredericktown, OH 43019.	7/08/92	Electronics—controllers for voltage not exceeding 1000 volts and accessories.
Nevers Industries, Inc	14125 21st Avenue North, Minneapolis, MN 55447.	7/14/92	Wood visual boards.
Noel Seafood Company, Inc	Rt. 5, Box 38 (Highway 694), Abbeville, LA 70510.	7/14/92	Crawfish.
International Crystal Mfg. Co., Inc	10 N. Lee Street, Oklahoma City, OK 73126-0330.	7/14/92	Quartz Crystals.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 21, 1992.

Kathleen W. Lawrence,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 92-17872 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Addendum to Notice of Initiation; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Antidumping Investigations, room B-099, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-0161.

Selection of Respondents

This is to inform interested parties in these investigations of the procedures the Department intends to follow in selecting the foreign manufacturers which will be required to respond to an antidumping questionnaire. In accordance with our normal practice, separately for each investigations, we expect to issue questionnaires only to those manufacturers whose sales volume accounts for the top 60 percent of exports of the subject merchandise to the United States during the period of investigation (January–June, 1992). This will be know as the "mandatory respondents" in the respective investigations.

Any manufacturer intending to file a voluntary response (*i.e.*, on which does not expect to be captured by the 60 percent cut-off described above) should notify the Assistant Secretary for Import Administration no later than August 7, 1992. Once the Department has determined the total number of mandatory respondents in all 48 antidumping investigations involving these steel products, and after analyzing the requests of potential voluntary respondents, we will announce our position on whether any voluntary responses can be accepted given current budgetary constraints resulting in resource and personnel shortages.

Those companies considering the filing of a voluntary response should be aware of the Department's policy regarding such responses. Once a company voluntarily submits a response to the antidumping questionnaire, it will be afforded the same treatment as a mandatory respondent. That is, we will allow the respondent to correct deficiencies in its response which are identified by the Department. However, should the response, in the opinion of the Department, be incomplete, inaccurate, untimely, or unverifiable, the Department will assign to that company an estimated margin based on the best information available, and not the "All Others" margin (*i.e.*, the weighted-average margin of the other respondents with affirmative margins).

Dated: July 22, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-17864 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping Duty Investigations and Postponement of Preliminary Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT:

Contact persons	Telephone	Office
European Countries:		
Gary Taverman	202-377-0161	Antidumping Investigations.
Louis Apple	202-377-1769	Antidumping Investigations.
Steve Alley	202-377-5288	Antidumping Investigations.
Korea:		
Ed Yang	202-377-5254	Antidumping Compliance.
Maureen Flannery	202-377-2923	Antidumping Compliance.
All Other Countries:		
Laurie Luckenger	202-377-3793	Agreements Compliance.
Richard Weible	202-377-3793	Agreements Compliance.

Mailing address for all contacts: Import Administration, Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

INITIATIONS

The Petitions

On June 30, 1992, we received petitions filed in proper form by the following companies: Armco Steel Company, L.P.; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; Geneva Steel; Gulf States Steel Inc. of Alabama; Laclede Steel Company; Lukens Steel Company; LTV Steel Company, Inc.; National Steel Corporation; Sharon Steel Corporation; U.S. Steel Group (a unit of USX Corporation); and WCI Steel, Inc. In accordance with 19 CFR 353.12, petitioners, in varying combinations, allege that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (CRCS), and certain cut-to-length carbon steel plate (steel plate) from various countries are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that industries in the United States are being materially injured, or are threatened with material injury, by reason of those imports. For a list of specific cases filed against particular countries, the case number, and the petitioners for that case, see appendix I to this notice.

Petitioners have stated that they have standing to file their respective petitions because they are interested parties, as defined under section 771(9)(C) of the Act, and because they filed the petitions on behalf of the U.S. industries producing the products that are subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, any of these petitions, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigations

The petitions cover four separate classes or kinds of merchandise, as follows:

(1) Certain hot-rolled carbon steel flat products;

(2) Certain cold-rolled carbon steel flat products;

(3) Certain corrosion-resistant carbon steel flat products;

(4) Certain cut-to-length carbon steel plate.

For complete descriptions of these products, see Appendix II to this notice.

United States Price and Foreign Market Value

In many of these petitions, petitioners provided multiple methodologies for calculating United States price (USP) and foreign market value (FMV). For each petition, given the statutory preference for price-to-price comparisons, we have analyzed only the most appropriate methodology among those included in the petition (in most cases, a comparison of USP derived from invoices or price quotations to a home market price) to determine whether or not there is reason to believe that the merchandise is being, or is likely to be, sold at less than fair value. For purposes of these initiations, no further adjustments were made to petitioners' calculations. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review all of the bases for the petitioners' estimated dumping margins in determining BIA. In addition, for those companies and products against which we are initiating a cost of production investigation (see below), we have also analyzed the allegations comparing USP to constructed value.

Petitioners' estimates of USP are based on either actual prices from invoices or quotes to U.S. customers, or IM-145 import statistics. If a petition included both types of USP estimates, we relied on actual prices or quotes, where possible. Where appropriate, petitioners adjusted delivered prices to reflect ex-factory prices.

Except for the petitions involving Poland and Romania, petitioners' estimates of FMV are based on actual price quotations to home market customers, home market price lists, published reports of domestic prices, or constructed value. Where appropriate, delivered prices were adjusted to reflect exfactory prices. In addition, petitioners adjusted these prices for differences in circumstances of sale and taxes, as appropriate.

Petitioners contend that FMV of Polish- and Romanian-produced imports subject to the respective investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy (NME) countries. Pursuant to section 771(18) of the Act, Poland and Romania are considered to be NMEs and the Department has treated each as such in all previous proceedings (see, *e.g.*, Final Results of Administrative Review: Electric Golf Cars from Poland, 58 FR 10334 (March 25, 1992), and Preliminary Determination of Sales at Less than fair Value: Circular Welded Non-alloy Steel Pipe from Romania, 57 FR 17890 (April 28, 1992) (Steel Pipe from Romania)). Parties will have the opportunity to address these NME determinations in the respective investigations and provide relevant information and argument on them. In addition, parties will have the opportunity in each investigation to submit comments on whether FMV should be based on prices or costs in each NME (see, Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-plated Lug Nuts from the People's Republic of China, 57 FR 15052 (April 24, 1992)).

Because of the extent of central control in a NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters in each country. Only if individual NME exporters can demonstrate an absence of central control with respect to the subject merchandise, both in law and in fact, will they be entitled to separate, company-specific rates (see, Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), for a discussion of the information the Department considers appropriate in this regard).

In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production, as valued in a market economy country. Absent evidence that the Polish and Romanian governments have selected which factories produce the subject merchandise for export to the United States, we intend to base FMV only on those factories in Poland and Romania, respectively, which are known to produce steel plate for export to the United States.

Petitioners calculated FMV for Poland and Romania on the basis of the factors of production. In valuing the factors of production, petitioners used several alternative countries as surrogates for Poland and Romania. For initiation purposes, we have accepted petitioners' choice of Argentina as having an economy comparable to Poland's and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act. For Romania, we used petitioners' surrogate country data from Turkey, rather than from Algeria for purposes of the initiation because in the most recent determination involving a steel product from Romania, Steel Pipe from Romania, Turkey was determined to be the steel-producing country most comparable to Romania in terms of economic development from among the surrogate countries whose data were included in this petition.

Alleged dumping margins based on the methodologies analyzed are listed by country and product in appendix I.

Home Market Sales Below Cost of Production

Petitioners also allege that specific potential respondents in some of these investigations are selling the subject merchandise in their home markets at prices below their costs of production. These allegations are based on a comparison of company-specific home market prices with the cost of production (COP). COP was based on either the COP of an efficient U.S. producer adjusted for known differences in the country of production, and/or company specific information, when applicable, or on published reports detailing the costs of specific foreign producers, and on the company's financial statements, when applicable.

Based on the information presented, we have reason to believe or suspect that the home market sales of the following producers are being made at less than COP:

Country	Case	Producer(s)
Austria	Cold-rolled steel	Voest Alpine Stahl Linz.
Belgium	Steel plate	S.A. Cockerill Sambre.
Brazil	Cold-rolled steel	Usinas Siderúrgica de Minas Gerais, S.A. (USIMINAS)
Canada	Steel plate	Algoma Steel Corp., STELCO, Inc.
France	Hot-rolled steel	Usinor/Sacilor.
France	Cold-rolled steel	Usinor/Sacilor.
Italy	Hot-rolled steel	Ilva, S.p.A.
Italy	Cold-rolled steel	Ilva, S.p.A.
Italy	Steel plate	Ilva, S.P.A.
Korea	Hot-rolled steel	Pohang Iron & Steel Co.
Netherlands	Hot-rolled steel	Hoogovens Ijmuiden Verkoopkantor BV (Hoogovens).
Netherlands	Cold-rolled steel	Hoogovens.
United Kingdom	Cold-rolled steel	British Steel, PLC.
United Kingdom	Steel plate	British Steel, PLC.

Accordingly, pursuant to section 773(b) of the Act and 19 CFR 353.51, we are initiating COP investigations with respect to the companies and products named above.

We have, however, rejected the following COP allegations: hot-rolled steel, CRCS, and steel plate from Brazil; cold-rolled steel, CRCS, and steel plate from Germany; cold-rolled steel, CRCS, and steel plate from Korea; and cold-rolled steel and steel plate from Spain. We have also reject COP allegations for one of the named producers of steel plate in Belgium, S.A. Foreges de Clabecq (Clabecq), and cold-rolled steel in Brazil, Cia Siderúrgica Paulista (COSIPA). Except for the allegation against Clabecq, these allegations have been rejected because the petitioners failed to supply adequate company-specific home market pricing data for the producers named in each allegation (*see, Al Tech Specialty Corp.* v. *U.S.*, 575

F.Supp. 1277 (CIT 1983)). Regarding Clabecq, we rejected the COP allegation because the COP did not exceed the home market price when COP was adjusted to company-specific costs. In accordance with 19 CFR 353.31(c)(i), petitioners will have until 45 days prior to the scheduled date of the preliminary determinations to perfect these allegations, and to make any additional COP allegations.

Initiation of Investigations and Postponement of Preliminary Determinations

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether a petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioners supporting the allegation.

We have examined the petitions and found that each complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of the named steel products from various countries are being, or are likely to be, sold in the United States at less than fair value. The specific investigations are identified in appendix I. Each investigation covers only one class or kind of merchandise from one country and is identified by a single case number.

In accordance with section 733(c) of the Act, the Department determines that these investigations are extraordinarily complicated by reason of one or more of the following: (1) The significant number and complexity of the transactions to be considered; (2) the novelty of the issues presented by reason of the large number of simultaneous investigations involving four different classes or kinds of steel products; and (3) the large number of firms whose activities must be investigated. We also determine that additional time is necessary for making our preliminary determinations. Accordingly, on the assumption that the parties concerned will cooperate in these investigations, we are postponing our preliminary determinations until not later than 210 days after the filing of the petitions, *i.e.*, January 26, 1993. If the parties concerned with a particular investigation are found not to be cooperative, we may issue our preliminary determinations not later than 160 days after the filing of the petitions.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by August 14, 1992, whether there is a reasonable indication that imports of hot-rolled steel, cold-rolled steel, CRCS, and steel plate from the named countries are materially injuring, or threaten material injury to, the respective U.S. industries. Any ITC determination that is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 20, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

Appendix I

Country	Product	Case No.	Petitioners	Estimated LTFV margin range (percent)	Estimated below Cop/CV-price margin range (percent)
Argentina	CR	A-357-808	A,B,Gu,I,L,N,S,U,W	43.90-51.58	N/A
Australia	CR	A-602-802	A,B,Gu,I,L,N,S,U,W	25.94	N/A
Australia	CRCS	A-602-803	A,B,Ge,Gu,I,L,N,S,U,W	19.07-37.94	N/A
Austria	CR	A-433-803	A,B,Gu,I,L,N,S,U,W	6.24-9.18	28.24-33.04
Belgium	HR	A-423-803	A,B,Ge,Gu,I,L,N,S,U,W	1.52-1.90	N/A
Belgium	CR	A-423-804	A,B,Gu,I,L,N,S,U,W	23.49	N/A
Belgium	Plate	A-423-805	B,Ge,GU,I,L,S,U	25.55	21.01
Brazil	HR	A-351-814	A,B,Ge,Gu,I,L,La,N,S,U,W	45.00-87.00	(1)
Brazil	CR	A-351-815	A,B,Gu,I,L,N,S,U,W	0.31-88.00	44.00
Brazil	CRCS	A-351-816	A,B,Ge,Gu,I,L,N,S,U,W	43.00	(1)
Brazil	Plate	A-351-817	B,Ge,Gu,I,Lu,S,U	53.00-109.00	(1)
Canada	HR	A-122-820	A,B,Ge,Gu,I,L,N,S,U,W	21.90-27.80	N/A
Canada	CR	A-122-821	A,B,Gu,I,L,N,S,U,W	33.20-58.30	N/A
Canada	CRCS	A-122-822	A,B,Ge,Gu,I,L,N,S,U,W	13.00-45.10	N/A
Canada	Plate	A-122-823	B,Ge,Gu,I,Lu,S,U	7.90-36.20	37.70-75.40
Finland	Plate	A-405-802	B,Ge,Gu,I,Lu,S,U	7.00-43.00	N/A
France	HR	A-427-806	A,B,Ge,Gu,I,L,La,N,S,U,W	5.16-20.94	7.76
France	CR	A-427-807	A,B,Gu,I,L,N,S,U,W	10.29-14.24	28.84
France	CRCS	A-427-808	A,B,Ge,Gu,I,L,N,S,U,W	6.02	N/A
France	Plate	A-427-809	B,Ge,Gu,I,Lu,S,U	5.64-27.94	N/A
Germany	HR	A-428-813	A,B,Ge,Gu,I,L,La,N,S,U,W	9.28-15.43	N/A
Germany	CR	A-428-814	A,B,Gu,I,L,N,S,U,W	33.29	(1)
Germany	CRCS	A-428-815	A,B,Ge,Gu,I,L,N,S,U,W	19.94-40.79	(1)
Germany	Plate	A-428-816	B,Ge,Gu,I,Lu,S,U	15.44-37.98	(1)
Italy	HR	A-475-805	A,B,Ge,Gu,I,L,La,N,S,U,W	11.03	27.73
Italy	CR	A-475-806	A,B,Gu,I,L,N,S,U,W	10.94	50.15
Italy	Plate	A-475-807	B,Ge,Gu,I,Lu,S,U	4.24-5.93	43.43
Japan	HR	A-588 824	B,Ge,Gu,La,S,U,W	3.76-10.32	N/A
Japan	CR	A-588-825	B,Gu,S,U,W	9.15-17.44	N/A
Japan	CRCS	A-588-826	B,Ge,Gu,S,U,W	6.79-18.19	N/A
Japan	Plate	A-588-827	B,Ge,Gu,Lu,S,U	2.71-14.70	N/A
Korea	HR	A-580-814	A,B,Ge,Gu,I,L,La,N,S,W	54.49-76.89	54.49-76.89
Korea	CR	A-580-815	A,B,Gu,I,L,N,S,U,W	30.99-41.45	(1)
Korea	CRCS	A-580-816	A,B,Ge,Gu,I,L,N,S,U,W	2.47-20.27	(1)
Korea	Plate	A-580-817	B,Ge,Gu,I,Lu,S,U	3.19-8.48	(1)
Mexico	CRCS	A-201-808	A,B,Ge,Gu,I,L,N,S,U,W	22.06-152.84	N/A
Mexico	Plate	A-201-809	B,Ge,Gu,I,Lu,S,U	48.42-49.25	N/A

Country	Product	Case No.	Petitioners	Estimated LTFV margin range (percent)	Estimated below Cop/CV-price margin range (percent)
Netherlands	HR	A-421-803	A,B,Ge,Gu,I,L,La,N,S,U,W	1.71	52.40-58.70
Netherlands	CR	A-421-804	A,B,Gu,I,L,N,S,U,W	1.86-8.43	31.11-45.60
Poland	Plate	A-455-802	B,Ge,Gu,I,Lu,S,U	62.10-73.80	N/A
Romania	Plate	A-485-803	B,Ge,Gu,I,L,S,U	87.80-101.80	N/A
Spain	CR	A-469-802	A,B,Gu,I,L,N,S,U,W	21.71-38.50	(1)
Spain	Plate	A-469-803	B,Ge,Gu,I,Lu,S,U	18.76-62.13	(1)
Sweden	Plate	A-401-805	B,Ge,Gu,I,L,S,U	19.34	N/A
Taiwan	CR	A-583-817	A,B,Gu,I,L,N,S,U,W	23.66-34.97	N/A
Taiwan	CRCS	A-583-818	A,B,Ge,Gu,I,L,N,S,U,W	12.61-45.05	N/A
United Kingdom	CR	A-412-813	A,B,Gu,I,L,N,S,U,W	13.04-23.02	34.26
United Kingdom	Plate	A-412-814	B,Ge,Gu,I,L,S,U	1.19-71.76	46.55

KEY:
PRODUCTS:
HR=Hot-rolled Carbon Steel.
CR=Cold-rolled Carbon Steel.
CRCS=Corrosion-Resistant Carbon Steel.
PLATE=Cut-to-Length Carbon Steel Plate.
N/A=Not Applicable—No COP allegation.
(1)=COP allegation rejected, as discussed in text of notice.
PETITIONERS:
A=Armco Steel Company, L.P.
B=Bethlehem Steel Corporation.
Ge=Geneva Steel.
GU=Gulf States Steel Inc. of Alabama.
I=Inland Steel Industries, Inc.
L=LTV Steel Co., Inc.
La=Laclede Steel Company.
Lu=Lukens Steel Company.
N=National Steel Corporation.
S=Sharon Steel Corporation.
U=U.S. Steel Group—a Unit of USX Corporation.
W=WCI Steel, Inc.

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below.

Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Hot-Rolled Carbon Steel Flat Products

These products include hot-rolled carbon steel flat products, of solid rectangular (other than square) cross section, or rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils, or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.000.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat products, of solid rectangular (other than square) cross section, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of solid rectangular (other than square) cross section, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils, or in straight lengths which, if of a thickness less than 4.75 millimeters are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate").

or both chromium and chromium oxides ("tin-free steel").

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief) of solid rectangular (other than square) cross section, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat products in straight lengths, of solid rectangular (other than square) cross section, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

[FR Doc. 92-17586 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-815]

Amendment of the Preliminary Determination in the Antidumping Duty Investigation of Certain Welded Stainless Steel Pipes From Taiwan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1992.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Ray Hampton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8830 or 377-0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

After publication of our preliminary determination (57 FR 27735, June 22, 1992), petitioners alleged that Jaung Yuann Enterprise Co., Ltd.'s (JYE) home market prices per metric ton were compared to its cost of production per kilogram. Petitioners also claimed that there was a misplaced decimal in JYE's interest rate and that ocean freight and insurance expenses should be converted from New Taiwan Dollars (NT$) into U.S. dollars. On July 6, 1992, counsel for respondent JYE filed comments on an alleged error in our calculations. Respondent's comments were not filed within the time frame specified by the Department and were, therefore, untimely.

The Department agrees with petitioners' allegations regarding the home market price and cost of production comparison and the misplaced decimal in the interest rate. However, it is not necessary to convert the ocean freight and insurance expenses from NT$ into U.S. dollars as these expenses should not have been deducted from the gross price to calculate the value-added tax. For price-to-price comparison only, we added to the U.S. price the amount of value-added tax that would have been collected if the merchandise had not been exported. After correcting these errors, the preliminary margin changed from the 3.58 percent published in the original determination to 17.50 percent. The Customs Service shall require a cash deposit or posting of a bond equal to JYE's amended estimated preliminary dumping margin of 17.50 percent. The cash deposit/bonding rate of "All Others" is now 8.07 percent.

Accordingly, consistent with proposed regulation 353.15(g) (which will codify existing practice), we are correcting the ministerial errors in the preliminary determination of this investigation. See 57 FR 1,131, 1,133 (Jan. 10, 1992) (to be codified at 19 CFR 353.15(g)).

This notice is published pursuant to 19 CFR 353.25.

Dated: July 21, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-17863 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910935-2137]

RIN 0693-AA78

Technical Interpretation No. 1, Invalid Arguments in Intrinsic Functions, for Federal Information Processing Standard (FIPS) 21-3, COBOL

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of Technical Interpretation No. 1 FIPS 21-3, COBOL.

SUMMARY: Technical Interpretation No. 1 pertains to the handling of invalid arguments in intrinsic functions for FIPS 21-3 COBOL. On November 25, 1991 (56 FR 59244), notice was published in the **Federal Register** that an interpretation for FIPS COBOL was under consideration. Comments were received from nine Federal agencies and one industry organization. None of the comments opposed the technical interpretation developed by NIST. All comments are available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

Technical Interpretation No. 1 for FIPS 21-3, COBOL, is provided in this notice. The technical interpretation serves as additional specifications but requires no change to FIPS 21-3 which became effective on June 29, 1990 and which adopts voluntary industry standards, ANSI X3.23-1985 and ANSI X3.23-A-1989.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Kailey, National Institute of Standards and Technology, Gaithersburg, MD 20899 (301) 975-3259.

AUTHORITY: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Dated: July 23, 1992.

John W. Lyons,

Director.

Technical Interpretation No. 1, Invalid Arguments in Intrinsic Functions, for FIPS 21-3, COBOL

Definition of the Problem: The following questions have been raised concerning invalid arguments being specified in intrinsic functions:

1. If it is syntactically detectable at compile time that a given intrinsic function argument violates a specified constraint rule for the function argument, must FIPS conforming compilers nevertheless process the specified intrinsic function as conforming source code?

2. If an intrinsic function argument references a data item whose data is the correct class and category (and all other

argument constraints for the function are correct) but the data item referenced by the argument contains invalid data, is it considered a constraint violation or an incompatible violation in FIPS COBOL?

3. If, at run-time, an intrinsic function argument violates an argument constraint specified in the standard (a violation of range or permissible value rather than a violation of class or category), does the phrase "the returned value for the function is undefined" mean that:

(a) The behavior of the program from that statement on is undefined; or

(b) The value returned from the function is undefined, but the program must continue to execute in accordance with the COBOL rules for transfer of control; or

(c) There is some other meaning concerning program execution continuation and transfer of control?

4. If the answer to the previous question is that the program must continue to execute after evaluation of a function whose argument violates argument constraints, does it mean that although the value returned is undefined the value must be consistent with the function type?

Discussion of the Issues

References: (1) ANSI X3.23–1985, page I–9, paragraph 1.6.

(2) ANSI X3.23–1985, page I–9, paragraph 1.7.

(85) ANSI X3.23–1985, page III–23, definition of Source Program.

(4) ANSI X3.23–1985, page IV–25, paragraph 4.4.

(5) ANSI X3.23–1985, page VI–70, paragraph 6.4.7.

(6) ANSI X3.23a–1989, page A–24, entry for page XVII–98.

(7) ANSI X3.23a–1989, page A–27, paragraph 1.2.2.

Reference 3 states that in X3.23–1985 the term source program "always refers to a syntactically correct set of COBOL statements." The first sentence of reference 1 states, "A conforming source program is one which does not violate the explicitly stated provisions and specifications of Standard COBOL." Thus, whether or not a violation of an explicitly stated argument constraint is detectable at compile time, if such a violation exists in a source program that program does not conform to Standard COBOL.

The third paragraph of reference 1 above states, "There are, in Standard COBOL, situations in which the results of executing a statement are undefined or unpredictable (see XVII–96, Undefined Language Element List). A COBOL source program which allows this to happen may nevertheless be a conforming program, although the resultant execution is not defined by Standard COBOL."

The last sentence of reference 7 above states, "If, at the time a function is referenced, the arguments specified for that reference do not have values that comply with the specified constraints, the returned value for the function is undefined." Reference 6 above placed this sentence on the Undefined Language Element List. Thus, according to reference 1 cited above, if a program allows a reference to a function whose argument does not have a value that complies with the constraints specified for that argument, the resultant execution of that program is not defined in Standard COBOL.

Reference 2 above elaborates further on this position by stating that, "The translation of a conforming source program by a conforming implementation and the subsequent execution of the resultant object program is defined only to the extent specified in Standard COBOL. However, the preceding statement does not imply that the program will be translated or executed successfully; translation and execution depends on other factors, such as * * * the date upon which the program operates." Therefore, even if the program that allows a reference to a function whose argument does not have a value that complies with the constraints specified for that argument is determined to be a conforming source program, the subsequent execution of the resultant object program still is not defined in Standard COBOL (reference 1, third paragraph).

Interpretation: The interpretation is that any time in a source program an intrinsic function argument constraint specification is violated, the returned value for the function is undefined and the resultant execution of that program also is undefined. This interpretation applies whether or not the argument constraint violation is detectable at compile time.

Specific responses to each of the questions stated in the Definition of the Problem above are as follows:

Question 1. A source program that is not a syntactically correct set of COBOL statements (reference 3) is not a conforming COBOL source program (reference 1). The translation of a nonconforming source program by a conforming implementation is not addressed and therefore is undefined in Standard COBOL.

Question 2. If the content of a data item referenced as an intrinsic function argument does not conform to the implicitly or explicitly specified attributes of that data item (reference 4), the stated provisions of Standard COBOL have been violated. If such a violation exists in a source program the resultant execution of that program is undefined in Standard COBOL (reference 1). Whether such a violation is categorized as an argument constraint violation or an invalid data violation (reference 5), the results of executing a program containing such a violation is undefined in Standard COBOL.

Question 3. If, at the time of reference, the value of a data item referenced as an intrinsic function argument does not comply with the specified constraints for that argument, the returned value for the function is undefined (reference 7), and therefore, the resultant execution of the program is undefined (references 1 and 2). The continued execution of the program in accordance with the rules for transfer of control (reference 5) is likewise undefined.

Question 4. This question is irrelevant since continued execution of the program is undefined. See the response to question 3.

Clarification of FIPS 21–3, COBOl. None.

[FR Doc. 92–17920 Filed 7–28–92; 8:45 am]
BILLING CODE 3510–CN–M

Public Meeting on U.S. Technical Participation in 9th Quadrennial Conference of the International Organization of Legal Metrology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Announcement of Pre-conference meeting prior to 9th Quadrennial Conference of the International Organization of Legal Metrology (OIML).

DATES: Ninth Quadrennial Conference of OIML, Athens, Greece, November 2–6, 1992. Pre-conference meeting, National Institute of Standards and Technology, Physics Building, room A 366, September 15, 1992 from 9:30 a.m. to 4 p.m.

SUMMARY: The National Institute of Standards and Technology will hold a public meeting to discuss U.S. technical participation in the 9th Quadrennial Conference of OIML. The principal focus will be on existing and proposed OIML Recommendations on legal measuring instruments that will be presented for ratification by the Conference. These Recommendations and OIML-member nations' technical comments on them will be reviewed with interested parties who will be given an opportunity to present their views on the

Recommendations and other relevant issues of the Conference.

The public meeting is open to all interested parties. Participants with an expressed interest in particular topics may obtain copies of the Conference technical agenda, including copies of the Recommendations to be ratified. A written summary of oral presentations by interested parties should be arranged and scheduled beforehand. Written comments are welcome at any time.

FOR FURTHER INFORMATION CONTACT: Samuel E. Chappell, Chief; Office of Standards Management; National Institute of Standards and Technology; Gaithersburg, MD 20899; telephone 301/975–4023; fax 301/963–2871.

SUPPLEMENTARY INFORMATION: OIML is a treaty organization in which the United States and 48 other nations participate. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce and for monitoring and maintaining public health and safety. The harmonized results are to promote international trade of affected instruments and products.

Nineteen Recommendations will be presented for ratification by the Conference in these categories: Those already approved by the International Committee of Legal Metrology (CIML) between 1989 and 1991 and those that will be approved at a CIML meeting just prior to the Conference. These Recommendations and the OIML-member nations holding the responsible secretariat are as follows:

Category (1)

R 95 Ships' tanks—General requirements (Romania).
R 96 Measuring container bottles (France).
R 97 Barometers (United Kingdom).
R 60 Metrological regulations of load cells (USA).
R 98 High-precision line measures of length (Russia).
R 99 Instruments for measuring vehicle exhaust emissions (Germany).
R 100 Atomic absorption spectrometers for measuring metal pollutants in water (USA).
R 101 Indicating and recording pressure gauges, vacuum gauges and pressure-vacuum gauges with elastic sensing elements (ordinary instruments) (Russia).
R 76 Nonautomatic weighing instruments (France, Germany).
R 102 Sound calibrators (People's Republic of China).
R 103 Pure-tone audiometers (Germany).
R 104 Measuring instrumentation for human response to vibration (Germany).

Category (2)

—Reference standard liquids for the calibration and verification of viscometers (Russia).
—Pressure gauges and vacuum gauges with elastic sensing elements (Russia).
—Refractometers for the measurement of the mass concentration of fruit juices (Germany).
—Direct mass flow measuring systems for quantities of liquids (USA).
—Discontinuous totalizing automatic weighing instruments (United Kingdom).
—Automatic rail weighbridges (United Kingdom).
—Electronic weighing instruments (USA).

Dated: July 23, 1992.

John W. Lyons,

Director.

[FR Doc. 92–17880 Filed 7–28–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 6, 1992, NOAA published in the **Federal Register** (57 FR 375) a final rule that revised the regulations (50 CFR parts 601 and 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The final rule, effective February 5, 1992, implemented parts of sections 108 and 109 of Public Law 101–627, the Fishery Conservation Amendments of 1990, which amended and reauthorized the Magnuson Act through September 30, 1993.

In accordance with the above-mentioned final rule, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) has revised its SOPP, which was originally published in the **Federal Register** on June 15, 1977. Interested parties may obtain a copy of the Mid-Atlantic Council's revised SOPP by contacting John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building room 2115, 300 South New Street, Dover, DE 19901–6790; telephone (302) 674–2331.

Dated: July 23, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–17843 Filed 7–28–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Application of an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

July 24, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs to apply a limit.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has decided to apply the limit on cotton printcloth and sheeting in Categories 313/315 established in the bilateral textile agreement with the former Union of Soviet Socialist Republics to the twelve successor states—Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova,

Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

A copy of the bilateral agreement with the former Union of Soviet Socialist Republics is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 61233, published on December 2, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns counting imports of cotton textile products in Categories 313 and 315, produced or manufactured in Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1984); pursuant to the Bilateral Textile Agreement of December 28, 1989 between the Governments of the United States and the former Union of Soviet Socialist Republics (Armenia, Azerbaijan, Byelarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 31, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton sheeting and printcloth in Categories 313/315, produced or manufactured in the 12 successor states to the former Union of Soviet Socialist Republics, cumulatively, and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of 25,000,000 square meters [1] of which not more than 4,000,000 square meters shall be in Category 315.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the bilateral agreement between the Governments of the United States and the former Union of Soviet Socialist Republics.

Also, effective on July 31, 1992, you are directed to cancel the directive issued to you on November 25, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes a limit on cotton textile products in Categories 313/315, produced or manufactured in the Union of Soviet Socialist Republics and exported during 1992.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–17868 Filed 7–28–92; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

July 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting certain limits.

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by the application of swing. Category 300/301 is being decreased to account for the increases to the other categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 23, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 23, 1992, you are directed to amend further the directive dated November 22, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
218	10,785,167 square meters.
300/301	3,228,321 kilograms.
338/339	2,330,989 dozen of which not more than 1,757,457 dozen shall be in Categories 338-S/339-S [2]
352	1,742,829 dozen.
359-C [3]	514,142 kilograms.
617	15,663,769 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Categories 338-S/339-S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-17869 Filed 7-28-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Thursday, August 27, 1992, beginning at 9 a.m. and ending at 5 p.m.; and Friday, August 28, 1992, beginning at 8:30 a.m. and ending at 12 noon.

ADDRESS: Roger Williams University, in the Architecture Building, Thesis Room, One Old Ferry Road, Bristol, Rhode Island 02809.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB-3, 7th & D Streets, SW., Washington, DC 20202-7582 (202) 708-7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a study of institutional lending in the Stafford Student Loan Program. The Congress has also directed the Advisory Committee to assist with a series of special assessments and produce a study pertaining to loan simplification.

The Advisory Committee will meet in Bristol, Rhode Island on August 27, 1992, from 9 a.m. to 5 p.m., and on August 28, from 8:30 a.m. to 12 noon.

The proposed agenda includes (a) a reauthorization summary and the Department of Education's implementation of reauthorization changes; (b) discussions of a loan simplification study and the proposed examination of early eligibility determination; and (c) an Advisory Committee planning session for the upcoming year's agenda including a regulatory update.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: July 22, 1992.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 92-17809 Filed 7-28-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(AU)-8, for the transfer from Australia to the United Kingdom of a damaged fuel element for repair and subsequent return to Australia. The fuel element contains 141.17 grams of uranium enriched to 60 percent in the isotope uranium-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 23, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92-17916 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Financial Assistance Award to the State of Wyoming (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of a noncompetitive financial assistance award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i), (C) and (F) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a forty-eight month Grant to the State of Wyoming, Cheyenne, WY in the amount of $306,950.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone (304) 291-4386, Procurement Request No. 21-92MC29424.000.

SUPPLEMENTARY INFORMATION: The purpose of this grant is to provide the State of Wyoming with resources sufficient to ensure that an in-depth review of the environmental aspects of U.S. DOE-METC field sites in Wyoming is performed, that known clean-up technologies are evaluated in relation to the environmental situation at each of the field sites, and that independent State oversight of clean-up operations at the field sites is conducted to ensure compliance with State statutes, regulations, and Applicable or Relevant and Appropriate Requirements (ARARs).

Dated: July 22, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92-17918 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Financial Assistance Award to the University of Kentucky (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) and (D), the DOE, Morgantown Energy Technology Center, gives notice of its plans to renew a Grant to the University of Kentucky, Lexington, Kentucky, in the amount of $26,800.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4386, Procurement Request No. 21–92MC28203.503.

SUPPLEMENTARY INFORMATION: The University of Kentucky will cost share 25 percent of the effort or $6,800. The pending award is based on an unsolicited application for assistance with the publication of proceedings from the Eastern Oil Shale Symposia held each year in Lexington, KY. The University of Kentucky annually hosts the Eastern Oil Shale Symposium in Lexington, Kentucky, to provide a forum for individuals conducting research in eastern oil shale to meet, to present, and discuss the results of their work. DOE's support of this activity will enable the University to publish and circulate the symposium results to the general public.

Dated: July 22, 1992.

Louie L. Calaway,

Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–17917 Filed 7–28–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Anadarko Trading Co. Docket No. 92–76–NG, Anthem Energy Co., L.P., Docket No. 92–81–NG, Prairielands Energy Marketing, Inc., Docket No. 92–82–NG, Mercado Gas Services, Inc., Docket No. 92–85–NG, Access Energy Corp. Docket No. 92–86–NG, Pacwest Resources, Inc., Docket No. 92–87–NG, BP Gas Inc., Docket No. 92–89–NG, Amoco Energy Trading Corp. Docket No. 92–91–NG; Applications for Blanket Authorization to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that the applications in the attached appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. The applicants request blanket authorization to import and/or export natural gas from and to foreign countries on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the borders of the United States that would not require the construction of new pipeline or LNG processing facilities.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the below address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time, August 28, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: P.G. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commentor, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authorities. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protest, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protest, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed to the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided.

such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of facts, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on July 22, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

APPENDIX

Filing date	Applicant name and docket no.	Two-year maximum			Comments
		Import volume	Export volume	Import/export volume*	
6/22/92	Anadarko Trading Company (92-76-NG)	30.0 Bcf			Imports from Canada.
6/24/92	Anthem Energy Company, L.P. (92-81-NG)		65.7 Bcf		Exports to Mexico.
6/25/92	Prairielands Energy Marketing, Inc. (92-82-NG)	50.0 Bcf	50.0 Bcf		Imports/Exports from/to Canada.
7/02/92	Mercado Gas Services, Inc. (92-85-NG)		43.8 Bcf		Exports to Mexico and other foreign countries.
7/06/92	Access Energy Corporation (92-86-NG)		365.0 Bcf		Exports (including LNG) to any foreign country.
7/07/92	Pacwest Resources, Inc. (92-87-NG)	146.0 Bcf			Imports from Canada.
7/07/92	BP Gas Inc. (92-89-NG)		50.0 Bcf		Exports to Mexico.
7/10/92	Amoco Energy Trading Corporation (92-91-NG)	300.0 Bcf			Imports from Canada.

[FR Doc. 92-17915 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No.92-88-NG]

Nicholson & Associates, Inc.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on July 7, 1992, of an application filed by Nicholson & Associates, Inc. (Nicholson) for blanket authorization to import up to 146 Bcf of natural gas from Canada over a two-year term beginning with the date of first delivery. Nicholson intends to use existing pipeline facilities, and will submit quarterly reports of its transactions. Additionally, Nicholson requests a shortened notice period for its application.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 28, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Nancy M. Ellett, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G-064, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4669.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Nicholson, a Washington corporation with its principal place of business in Bellevue, Washington, is a marketer of natural gas in the United States. Nicholson proposes to import gas, acting either on its own behalf or as an agent for others, for sale to a variety of purchasers in U.S. markets, including industrial end users, agricultural users, electric utilities, pipelines and distribution companies. The gas to be imported by Nicholson will be supplied by individual producers, producer groups, associations and pipeline companies, and the terms of the supply contracts will depend upon current market conditions for the gas.

In requesting a shortened notice period for its application, Nicholson states that its pending natural gas sales arrangements are dependent upon import authorization from DOE. DOE has determined that this reason is insufficient to support a shortened notice period, and, consequently, the request is denied.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Nicholson's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 21, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-17919 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 92-18: Subsurface Science Program

AGENCY: Office of Energy Research, Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for Special Research Grants in support of research on the origins of microorganisms in the deep subsurface. This is a coordinated, multidisciplinary program directed towards determination of the origins of microorganisms that occur in deep sediments and geological formations with emphasis on field investigations. Included is the refinement of innovative concepts for investigating the survival, adaptation, and physiological capabilities of these microorganisms, provided that such techniques can be integrated rapidly into a field program. Emphasis is on collaborative, interdisciplinary research that draws on the fields of microbiology, geology, geochemistry, hydrology, microbial ecology, and molecular biology.

The major goals of the program are (1) to determine the distinctive physiological mechanisms and environmental conditions by which microorganisms are maintained in the deep subsurface for long periods and (2) to determine the distinctive physiological mechanisms and environmental conditions by which microorganisms are transported to the deep subsurface.

DATES: Formal applications submitted in response to this Notice must be received by 4:30 p.m., EDT, November 16, 1992, to be accepted for merit review in January 1993 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program notice 92-18 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Mail Stop G-236, Washington, DC 20585, Attn: Program Notice 92-18. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Frank J. Wobber, Office of Health and Environmental Research, ER-74 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, (301) 903-5324.

SUPPLEMENTARY INFORMATION: To achieve the two major goals described in the Summary (1.0, 2.0), priority research areas (1.1-2.4) have been identified and are designated by number, as follows:

1.0 Goal 1: Determination of distinctive physiological mechanisms and environmental conditions by which microorganisms are maintained in the subsurface for long periods.

1.1. Adaptation mechanisms or evolutionary changes that have occurred in subsurface microorganisms, and the influence of hydrological, geochemical, and geological conditions on microbial evolution.

1.2 Genetic and physiological characteristics of microorganisms that are responsible for their long-term maintenance in subsurface environments.

1.3 Hydrogeological and geochemical conditions that influence survival of microorganisms and microbial communities.

1.4 *In situ* microbial activity, including substrate metabolism and nutrient requirements of subsurface microorganisms, as it specifically relates to long-term adaptation, evolution, or survival. (Activity related to contaminant degradation is excluded.)

2.0 Goal 2: Determination of distinctive physiological mechanisms and environmental conditions by which microorganisms are transported to the deep subsurface over long periods.

2.1 Rates and paths of transport of microorganisms in subsurface sediments and lithologies.

2.2 Hydrogeological and geochemical conditions that control transport of microorganisms in subsurface porous media.

2.3 Microbial community dynamics, physiology, and cell morphology, as they relate to transport through porous media.

2.4. Determination of the time of deposition of microorganisms in a subsurface environment, through the utilization of molecular clocks, biochemical markers, or geological dating methods.

When submitting applications, the research area that most closely relates to the proposed research must be indicated on the face of the application and in the application by referring to the appropriate number (1.2, 2.1, etc.). The Project Description in the application must contain a section that describes the relationship of the proposed research to the stipulated research area and goal. Alternative research areas may be considered, but they must be consistent with the overall theme of this solicitation and with the priorities of the Program, as described in the Program Plan document (see below). These should be designated as "0.0". Research on development of advanced techniques must address a specific goal and research area as part of an experimental program and not in isolation. Applicants that propose to conduct field work must provide details of site requirements and estimated costs in an Appendix A see below).

A DOE Program Plan, which provides further details on the rationale, goals, and research priorities of this Program, has been prepared. Anyone considering submission of an application is strongly encouraged to review this document before preparation of the formal application. A copy of the Program Plan may be obtained by calling (301) 903–4208.

In 1985, the DOE (OHER) initiated research within the Subsurface Science Program (SSP) to investigate the abundance, diversity, and physiology of microorganisms in deep subsurface environments. One of the motivations for this research was the need for efficient and cost-effective technologies for dealing with the contaminants in subsurface sediments and groundwater systems at DOE sites. One possible strategy for clean-up of these sites is *in situ* bioremediation, in which the physiological processes of microorganisms are utilized to degrade organic chemicals and immobilize inorganic contaminants, such as heavy metals. However, in order to exploit such technologies in the long term, it is necessary to obtain fundamental information on subsurface microorganisms, their physiological capabilities, and the environmental factors that control their distribution in the subsurface. Such research can provide information that is critical not only for the development of bioremediation strategies, but also for a basic scientific understanding of the occurrence, diversity, and ecology of microorganisms in a relatively unexplored and inaccessible environment, the terrestrial deep subsurface biosphere.

Under the auspices of the SSP, drilling and sampling was conducted at four primary sites: the Savannah River site on the Southeast Coastal Plain in South Carolina, the Idaho National Engineering Laboratory site on the Snake River Plain of Southeast Idaho, the Hanford site at the Pasco Basin in South Central Washington, and in the Nevada Test Site tunnels. Techniques were developed for aseptic sampling of subsurface microorganisms, and fundamental information was obtained on the presence, distribution, and physiological characteristics of these microorganisms. This was accomplished by collaborative, multidisciplinary, and multi-institutional groups of investigators; this "team" approach will continue to be an organizational feature of this program, although some turnover in individual investigators is expected, as a result of evolving program priorities and merit review.

Major findings of this research were that diverse assemblages of microorganisms existed in the subsurface and that some of these organisms differed from known terrestrial and aquatic bacteria. These observations have led to fundamental questions concerning the survival and physiological characteristics, transport properties, and evolutionary history of these organisms. The detection of microorganisms in aquifers below confining clay layers, in deeply buried subsoils, and in thick vadose zone sediments, where transport would be severely limited, suggests that some microorganisms have survived for long periods, perhaps since deposition of the original sediments. Exploratory research of an isolated, deeply buried structural basin was initiated early in 1992 to determine whether microrganisms were present, and thus would have survived for long periods (relates to Goal 1.0). Preliminary research to transport of microorganisms (Goal 2.0) was completed at the Savannah River site in 1990.

A critical component of this new research initiative is the selection of appropriate sites for testing hypotheses. To establish that microorganisms were entrapped at the time of sediment deposition, systems that have been sequestered from the surface for long periods (e.g., thousands to millions of years) are required for eliminating transport as a possible mechanism for introduction of microorganisms. Examples of such sites are deep isolated basins, deep confined aquifers, and vadose zone sediments where there is negligible vertical recharge from overlying sediments. To investigate whether transport is a dominant source of microorganisms, sites with well characterized flow paths within confined aquifers and studies of deep vadose zone sediments, such as buried subsoils, may be necessary.

The DOE anticipates that additional drilling and sampling will be conducted, either by taking advantage of drilling initiated by other parties or through the establishment of program-dedicated field sites. The DOE describes generic sites in the Program Plan. Applicants who intend to include field sampling in their research applications must describe their field site requirements in a separate appendix A. Appendix A must also contain an estimate of costs for field sampling, which should not be included in the application budget. Field research design and protocols should be generally consistent with site properties stipulated by the DOE. Site properties not identified by DOE that the investigator considers essential to conduct the research, must be satisfactorily justified.

It is anticipated that approximately $2.5 million will be available for grant awards during FY 1993, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds. Previous awards have ranged from $20,000 per year up to $300,000 per year (total costs with terms from 1 to 3 years). Most awards are in the $80,000 to $125,000 per year (total costs) range for 3 years. Similar award sizes are anticipated for new grants.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the ER Application and Guide for the Special Research Grant Program and 10 CFR part 605. The application kit and guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Washington, DC 20585. Telephone requests may be made by calling (301) 903–4208. Instructions for

preparation of an application are included in the application kit. The Catalog of Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on July 20, 1992.

D.D. Mayhew,

Deputy Director for Management Office of Energy Research.

[FR Doc. 92-17924 Filed 7-28-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Decision To Sign Proposed Billing Credits Contracts

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Decision. BPA File No.: BCR-8. BPA announces its decision to sign Billing Credit Contracts for Generation Activities, Conservation Activities, and Customer System Efficiency Improvements (CSEI) in response to the BPA Billing Credit Solicitation.

SUMMARY: BPA, in compliance with its Billing Credits Policy, as amended August 30, 1984 (48 FR 20275), and its Billing Credit Solicitation July 1990, signed three contracts with three public bodies or cooperative utilities for a proposed conservation contract, a proposed CSEI contract, and proposed generation contract.

BPA signed a conservation contract for a heat pump project with Coos-Curry Cooperative. This project will provide for the installation of heat pump heating systems in weatherized homes that have forced-air electric heating systems.

Also pursuant to its Billing Credits Policy, BPA has signed a contract with Tacoma City Light for a CSEI project. This CSEI project proposes to increase the production capability of two hydroelectric resources by improving the efficiency of turbines located at the project sites.

In addition, BPA has signed a generation contract with Emerald People's Utility District for a biomass project at a publicly owned landfill site.

The Administrative Record for BPA's Billing Credit Solicitation contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the evaluation process for proposals, and environmental considerations. The Administrative Record includes two appendices: Appendix A—Billing Credit Solicitation, and Appendix B—Issue Resolution Log. Addendum One of the Administrative Record—Customer System Efficiency Improvements Contract Development, and Amendment A to Addendum One provide specific information about CSEI projects and how billing credits for these projects are determined. Addendum Two of the Administrative Record—Contract Development Conservation Proposals, provides specific information about the conservation projects and how billing credits are determined. Addendum Three of the Administrative Record—Generation Proposes Contract Development, provides specific information about the generation projects and how billing credits are determined for these projects.

BPA announced its intent to sign the conservation contracts, the availability to the contracts, and Addendum Two in a **Federal Register** notice (57 FR 9250). These documents were available for review for 30 days.

BPA announced its intent to sign the CSEI contracts, the availability of the contracts, Draft Administrative Record, appendices, Addendum One and Amendment A to Addendum One in two **Federal Register** Notices (57 FR 1161 and 57 FR 9250). These documents were available for review for 30 days.

BPA announced its intent to sign the generation contract, the availability of the contract, the Draft Administrative Record, appendices, and Addendum Three in one **Federal Register** notice (57 FR 22212). These documents were available for review for 30 days.

Responsible Official: Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's Billing Credit contracts, the Administrative Record, and addenda.

DATES: Payment or credits will not be made or granted until October 27, 1992.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific Conservation, CSEI, Generation Billing Credit Contract(s), or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503-230-3478 in Portland, or toll-free 800-622-4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, room 243, Portland, Oregon 97208, 503-230-4551

Mr. Robert Laffel, Eugene District Manager, Federal Building, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-465-6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-2518

Ms. Carol S. Fleischman, Spokane District Manager, Room 112 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-3279

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98807, 509-662-4377

Mr. Terence G. Esvelt, Puget Sound Area, Manager, 201 Queen Avenue North, Suite 400, Seattle, Washington 98109, 206-553-4130

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226

Mr. Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, room 450, Boise, Idaho 83702, 208-334-9137

Ms. Ruth Bennett, Idaho Falls Acting District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706

SUPPLEMENTARY INFORMATION:

I. Background

BPA is self-financing power marketing agency within the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 *et seq.*, to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northern Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839 (c) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839b(1). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 839d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation. Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. After receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA then developed a solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average megawatts of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

II. Billing Credit Proposals

The proposals submitted in response to the Billing Credit Solicitation were divided into two groups, conservation and generation resources. Because CSEI projects reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission, or distribution, they were considered a subset of conservation measures, but covered in separate contracts.

III. Description of the Conservation Proposals

Thirty-seven conservation proposals representing twenty-six public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Thirteen proposals were withdrawn, three utilities withdrew from participation in group-sponsored proposals, and some proposals were rejected. Conservation projects include measures in the residential, commercial, industrial, and agricultural sectors to reduce electric power consumption or increase production. Conservation projects include residential weatherization, lighting retrofit, institutional and industrial energy conservation measure, municipal water system improvements, heat pump installation, and removal of irrigation pumps. These measures reduce electric power consumption or increase production. Also, BPA released a previous **Federal Register** Notice announcing the signing of four conservation contracts on May 27, 1992.

BPA has signed a contract with this public body for the following conservation project.

1. Coos-Curry Cooperative—Heat Pump Proposal

This project meets the qualifications for billing credits. This action is categorically excluded from the procedural requirements of the National Environmental Policy Act (52 FR 47669) under categorical exclusion determination dated April 18, 1991, July 3, 1991, and November 1, 1991. Therefore, BPA signed a contract with that same customer.

IV. Description of the CSEI proposals

Twenty-four CSEI proposals representing 30 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. CSEI projects include voltage modifications, reconductoring, transformer replacements, and other system improvements undertaken to reduce electric power consumption or losses as a result of an increase in the efficiency of electric use, production, transmission or distribution. Also, BPA released a previous **Federal Register** Notice announcing the signing of one CSEI contract on May 27, 1992.

BPA has signed a contract with this public body for the following CSEI project:

1. Tacoma City Light—Cushman and La Grande Turbine project—a turbine improvement project.

This project meets the qualifications for billing credits. This action is categorically excluded from the procedural requirements of the National Environmental Policy Act (52 FR 47669) under categorical exclusion determinations dated April 18, 1991, July 3, 1991, and November 1, 1991. Therefore BPA signed a contract with that same customer.

V. Description of the Generation Proposals

Seventeen generation proposals representing 11 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Proposed generation projects included hydroelectric, biomass, and cogenerative projects to produce electricity. Five of the 17 proposals were withdrawn during the evaluation process and three proposals were rejected for not meeting the threshold criteria.

BPA has signed a contract with this public body for the following generation project:

1. Emerald Public Utility District—Short Mountain project—a biomass project.

BPA signed this contract based on the analysis in the environmental assessment (DOE/EA 0551). In that analysis, DOE determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, the preparation of an environmental impact statement is not required and DOE issued a Finding of No Significant Impact.

VI. Methodology for Determining Conservation Billing Credits

The payment of billing credit (BC) will be calculated by using the following formula: $BC=(AC-PF)\times Savings\times C_s$. As shown in Exhibit F of the contracts, alternative cost (AC), minus the Priority Firm (PF) rate, times the savings from the measures, times the cost share percentage (C_s), equals BC.

VII. Methodology for Determining Generation Billing Credits

The payment or billing credit (BC) for this Customer will be calculated and paid monthly as follows:

As Emerald PUD is a Metered Requirements Customer under its Power Sales Contract with BPA, the monthly BC will be equal to the lesser of the Alternative Cost (AC) or Net Cost (NC) multiplied by the monthly amounts of estimated firm energy as specified in the contract, less the amount of Priority Firm (PF) Rate dollars the Customer avoids paying as a result of the Billing Credit Resource. The estimated firm energy is compared to the actual metered generation at the end of each year, and a "true-up" payment is made by the appropriate party.

VIII. Materials Available

Copies of the Billing Credits Policy, the Draft Administrative Record, its appendices, Addendum One, Amendment A to Addendum One, Addendum Two, and Addendum Three are available from BPA's Public Involvement Office. Refer to the "For Further Information Contact" section of this notice.

Issued in Portland, Oregon, on July 20, 1992.

John S. Robertson,

Deputy Administrator.

[FR Doc. 92-18041 Filed 7-27-92; 1:33 pm]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District and Nebraska Public Power District; Intention To Prepare a Revised Draft Environmental Impact Statement

July 22, 1992.

The Federal Energy Regulatory Commission (FERC) has received comments on the Draft Environmental Impact Statement (DEIS) for the Kingsley Dam, FERC No. 1417 and the Keystone Dam, FERC No. 1835 (Platte River Projects). The two hydropower projects are located on the Platte River in Nebraska.

The FERC staff has reviewed the comments and determined that a revised DEIS will be prepared. The revised DEIS will address the substantial amount of new information filed subsequent to the preparation of the DEIS and broaden the treatment of alternatives analyzed.

Scoping Meetings

FERC staff will conduct scoping meetings in Nebraska to review the scope and the alternatives to be assessed in the revised DEIS. The place and time of these meetings will be announced in a subsequent notice.

Procedures

The purpose of the notice is to invite all interested individuals, organizations, tribes, and agencies to assist the staff in identifying the scope of environmental issues that should be analyzed in the revised DEIS. Anyone who has views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. The closing date for comments will be 30 days after the scoping meetings.

All comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Kingsley Dam and Keystone Dam Projects, Nebraska, Project Nos. 1417 and 1835.

All those that are formally recognized by the Commission as intervenors in the Kingsley Dam and Keystone Dam Projects proceedings are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission to serve a copy of the document on each person whose name is on the official service list.

For further information please contact S. Ronald McKitrick at (202) 219–2783.

Lois D. Cashell,

Secretary.

[FR Doc. 92–17842 Filed 7–28–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4158–8 and EPA Project Number SE 87–01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Colmac Energy, Inc.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on June 28, 1988 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to Colmac Energy, Inc. for the construction and operation of a 49 MW biomass-fired power plant to be located in Riverside County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: 12.0 lbs/hr or 20 ppm of SO2, 7.5 lbs/hr or 0.01 gr/dscf of TSP, 45 lbs/hr or 173 ppm of CO, and 30 lbs/hr or 70 ppm of NO_x all 3-hr averages.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1244 or FTS (415) 744–1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: Baghouse for TSP, limestone injection for SO2, and ammonia injection (SNCR) for NO_x.

DATES: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 28, 1992.

Dated: July 20, 1992.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 92–17903 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4158–9 and EPA Project Number SAC 90–01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Unocal Corporation

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 21, 1992 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to Unocal Corporation to expand Unocal's existing agricultural nitrogen products plant in West Sacramento, California. The permit is subject to certain conditions, including an allowable emission rate for NOx as follows: from the tail gas reactor, the more stringent of 29.77 lbs/hr, 89 ppm, or 1.2 lbs/ton of acid, 3-hour average; from the startup boiler, 3.83 lbs/hr or 40 ppm, 3-hr average.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Fransciso, CA 94105, (415) 744–1244 or FTS (415) 744–1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: chilled absorption and selective catalytic reduction on the nitric acid plant. Low NOx burners on the startup boiler.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 28, 1992.

Dated: July 20, 1992.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 92–17902 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4158–7]

Solicitation for Research Grant Proposal—1993 Exploratory Research Grants

AGENCY: U.S. Environmental Protection Agency.

ACTION: General research grant solicitation.

SUMMARY: The U.S. Environmental Protection Agency (EPA), through its Office of Exploratory Research (OER) is seeking grant applications to conduct

exploratory environmental research in biology, chemistry, physics, engineering, or socioeconomics. Investigations are sought in these research disciplines which focus on any aspect of pollution identification, characterization, abatement or control, or address the effects of pollutants on the environment. In addition, research is sought on environmental policy and its social and economic consequences.

This solicitation only concerns the research grants administered by EPA's Office of Exploratory Research, and outlines procedures for receiving grant assistance from that office.

In addition to this general annual solicitation, applications are sought periodically through more narrowly defined proposal requests, referred to as Requests for Applications (RFA). While this document does not contain any RFA solicitations, it does provide an announcement of tentative RFA titles and approximate issue dates for each proposed RFA.

The main purpose of OER's Research Grants Program is to support advanced research in the environmental sciences, engineering and economics at U.S. academic institutions. The principal products sought are high quality scientific and technical articles in referred technical journals.

The Application

Application forms, instructions, and other pertinent information for assistance programs are available in the EPA Research Grants Application/ Information Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits are available from: U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M Street, SW., Washington, DC 20460, (202) 260–9266.

Each application will consist of the Application for Federal Assistance Form (Standard Forms 424 and 424A) and separate sheets providing the budget break-down for each year of the project, resumes for the principal investigator and co-workers, abstract of the proposed project, and a project narrative. All certification forms (drug-free workplace, etc.) must be signed and included with the application.

Special Instructions

Proposed projects must be investigative research which advances the state of knowledge in the environmental sciences and technology. Proposals will not be accepted that are routine monitoring, state-of-the-art or market surveys, literature reviews, development or commercialization of proven concepts, or the preparation of materials and documents, including process designs or instruction manuals.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

The following special instructions apply to all applicants responding to this solicitation:

- Applications must be identified by printing "OER–93" in the upper right hand corner or block 10 of Application Form SF–424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.
- A one page abstract must be included with the application.
- The project narrative section of the application must not exceed twenty-five 8½×11 inch, consecutively numbered pages of standard type (10–12 characters per inch), including tables, graphs and figures. For purposes of this limitation, the "project narrative section" of the application consists of the following items in the Application/Information/ Kit:

(1) Description of Project.
(2) Objectives.
(3) Results or Benefits expected.
(4) Approach.
(5) General Project Information.
(6) Quality Assurance (If needed).

Attachments, appendices, and reference lists for the narrative section may be included, but are within the 25 page limitation.

Items not included under the 25 page limitation are the SF–424 and other forms, budgets, resumes, and the abstract.

Resumes must not exceed two consecutively numbered pages for each principal investigator and should focus on education, positions held and most recent or related publications.

Itemized budgets, including budget justifications must not exceed 5 consecutively numbered pages (excluding budget information on the SF–424 forms.)

Applications not meeting these requirements will not be forwarded to reviewers without corrections. Applicants will be notified of deficiencies and requisite changes will be requested.

Application Submission/Closing Dates

To be considered, the original and eight copies of the application must be received by EPA's Grant Operation Branch no later than close of business on the closing date. Fully developed research grant applications, prepared in accordance with instructions in the Application for Federal Assistance Form SF–424, should be sent to the Grants Operation Branch. Informal, incomplete or unsigned proposals will not be considered. The application must be sent to: U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M Street, SW., Washington, DC 20460.

For overnight express mail, the address is: U.S. Environmental Protection Agency, Grants Operation Branch, Fairchild Building, room 801, 499 South Capitol Street, SW., Washington, DC 20460, (202) 260–9266.

Closing dates for all applications responding to this solicitation are February 1, 1993 and August 2, 1993.

Guidelines and Limitations

The typical grant issued by OER is for a total cost of approximately $100,000 per year for two or three years. Funding levels range from a minimum of about $40,000 to approximately $150,000 per year. All budget costs and justifications, particularly requests for equipment, will be carefully reviewed. The maximum project period is three years; shorter periods are encouraged, as are funding requests substantially lower than $150,000 per year. Subcontracts for research to be conducted under the grant should not exceed approximately 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Eligibility

The following eligibility requirements apply to both the general solicitation and targeted announcements (RFA's).

Academic and nonprofit institutions located in the U.S., and state or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project.

Potential applicants who are uncertain of their eligibility should study the restrictive language of the law governing the area of research interest or contract EPA's Grants Operation Branch at (202) 260–9266.

Federal agencies and Federal employees are not eligible to participate in this program.

Review and Selection

All grant applications are initially

reviewed by the Agency to determine their legal and administrative acceptability.

Acceptable applications are then reviewed by an appropriate peer review panel. This review is designed to evaluate and rank each proposal according to its scientific merit and utility as a basis for recommending Agency approval or disapproval. Each peer review panel is composed primarily of non-EPA scientists, engineers and economists who are experts in their respective disciplines.

The panels use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity).
- Qualifications of the principal investigator and staff including knowledge of relevant subject areas.
- Utility of the research including potential contribution to scientific knowledge in the environmental area.
- Availability and adequacy of facilities and equipment.
- Budgetary justification—in particular justification and cost requests for equipment will be carefully reviewed.

A summary statement of the scientific review and recommendation of the panel is provided to each applicant.

Grants are selected by EPA on the basis of technical merit, program balance and budget.

Funding Mechanism

For all general and targeted grants, the funding mechanism will consist of a grant agreement between EPA and the recipient.

Federal grant regulation 40 CFR 30.307 requires that all recipients provide a minimum of 5% of the total project cost, which may not be taken from Federal sources. OER will not support a request for a deviation from this requirement for any grant supported by its Research Grants Program.

Contacts

Applicants may telephone the OER info-line for further information on schedules and review processes. The number is (202) 260–7474. Applicants with additional questions may contact the appropriate individuals identified in Table I. Their address is: U.S. Environmental Protection Agency, Office of Exploratory Research (RD–675), 401 M Street, SW., Washington, DC 20460.

TABLE I: CONTACTS FOR THE GENERAL SOLICITATION

Discipline	Contact	Phone number (prefix 202)
Biology	Clyde Bishop	260–5727
Chem/Physics of Air	Deran Pashayan	260–2606
Chem/Physics of Water/Soil	Louis Swaby	260–7453
Engineering	Louis Swaby	260–7453
Socioeconomic	Robert Papetti	260–7473

Minority Institution Assistance

Preapplication assistance is available upon request from potential investigators representing institutions identified by the Secretary, Department of Education, as Historically Black Colleges or Universities (HBCUs) or the Hispanic Association of Colleges and Universities (HACUs).

The application Form SF–424, instructions, subject areas, and review procedures are the same as those for the general grants program.

FOR FURTHER INFORMATION CONTACT: Virginia Broadway, U.S. Environmental Protection Agency (RD–675), 401 M Street, SW., Washington, DC 20460, (202) 260–7664.

Targeted Grants

The Office of Exploratory Research addresses specific research topics which appear to merit extra emphasis or special attention by issuing a separate RFA for each such topic. The RFA is a mechanism by which a formal announcement is released describing a high priority initiative in well defined scientific areas.

Applicants are invited to submit research applications in response to an RFA (for a limited number of grants) using the Standard Application for Federal Assistance Form SF–424 and other forms described in the Grant Application Kit. One copy of the application with original signatures plus eight copies should be mailed directly to the Grants Operations Branch.

The deadline for receipt of applications is identified in the RFA announcement.

As in the case of the general grants program, an application for a targeted grant (RFA) is only considered when a fully developed proposal is submitted. Special guidelines and limitations tailored to each RFA will be published in the individual RFA announcements.

Unless otherwise identified in individual RFAs, procedures, guidelines and limitations are the same for grants issued under the general and targeted grants programs.

OER does not expect to issue any new RFA's for Fiscal Year 1993. Superfund grants, which in the past have been awarded via the RFA mechanism, will be awarded under this general solicitation to successful applications which focus on the identification, remediation, and monitoring of Superfund sites.

Interested readers are reminded that an RFA in health, entitled "Biomarkers of Toxic Pollutants in Human Health—HLT–01–92" was issued in January, 1992, and has a second closing date of October 15, 1992. A copy of this announcement can be obtained by calling (202) 260–7445, or from the December 13, 1991 issue of the Federal Register (56 FR 65059). Questions concerning the RFA should be addressed to Clyde Bishop at (202) 260–5727.

Applications in the environmental health program are solicited by RFA only. Applications not responding to a specific RFA in the environmental health area will be returned to the applicant without further consideration.

Dated: July 22, 1992.

Robert A. Papetti,

Director, Research Grants Staff, Office of Exploratory Research.

[FR Doc. 92–17900 Filed 7–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4159–6]

National Environmental Education Advisory Council; Public Meeting

Notice is hereby given that the National Environmental Education Advisory Council will hold its second meeting on August 27–28, 1992, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC. The meeting is expected to be held from 9 a.m.–5 p.m. on August 27th and from 9 a.m.–3 p.m. on August 28th.

The Advisory Council was established pursuant to section 9 of the National Environmental Education Act of 1990 (Pub. L. 101–619) to advise the Administrator of the U.S. Environmental Protection Agency (EPA) on the implementation of the Act. The first meeting of the Council was held in February 1992. Minutes of this meeting are available to the public upon request.

The purpose of the August 27–28, 1992, meeting of the Council is to discuss the EPA Office of Environmental Education's (OEE) progress in implementing its environmental education program. The Council is

expected to issue its first set of recommendations to EPA following the meeting. Subcommittees of the Council have been formed to address broad issues such as OEE's strategic goals for environmental education, grants, and communication with the public. Other items expected to be discussed include the status of the Council's development of a national environmental education report to Congress and OEE's progress in designing an environmental education awards program.

Members of the public are invited to attend the meeting and to submit written comments to EPA following the meeting. For additional information on the Advisory Council, the upcoming meeting, or to submit written comments following the meeting, please contact Ms. Kathleen MacKinnon, U.S. Environmental Protection Agency, Office of Environmental Education (A-107), 401 M Street SW., Washington, DC 20460, 202-260-4951.

Dated: July 23, 1992.

Kathleen MacKinnon,

Designated Federal Official, National Environmental Education, Advisory Council.

[FR Doc. 92-17901 Filed 7-28-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 22, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy Contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0425

Title: Section 74.913, Selection procedure for mutually exclusive ITFS applications

Action: Extension of a currently approved collection

Respondents: Non-profit institutions

Frequency of Response: On occasion reporting

Estimated Annual Burden: 150 responses; 1 hour average burden per response; 150 hours total annual burden.

Needs and Uses: Section 74.913(d) requires applicants tied in a comparative selection proceeding to submit a statement of the number of students at its proposed receive locations who are formally enrolled in classes for credit toward an academic degree or diploma, or a legally required certification or license. This claim of students who would benefit from the proposed system must correlate to and be supported by the educational programs proposed in its application. Applicants will not be required to submit their student enrollments and the extent of their proposed ITFS systems unless and until it is determined that they are tied in a comparative selection proceeding. The data will be used by FCC staff to determine the most qualified applicant to provide ITFS service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-17812 Filed 7-28-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Port of New Orleans Coastal Cargo Company; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200392-002.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Terminal Agreement.

Parties:

Port of New Orleans, Coastal Cargo Company, Inc.

Synopsis: The subject modification provides for the extension of the Agreement on a month-to-month basis until a new lease can be negotiated.

Dated: July 23, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-17821 Filed 7-28-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-44]

Revenue Protection Services Inc, as Agency for Bottacchi Line v. International Resource Services, Inc. and Sunshine Loading Service, Inc.; Filing of Complaint and Assignment

Notice is given that a compliant filed by Revenue Protection Services, Inc. as agent for Bottacchi Line ("Complainant") against International Resource Services, Inc. and Sunshine Loading Service, Inc. ("Respondents") was served July 21, 1992. Complainant alleges that Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to the applicable tariffs or service contracts for a shipment from Miami, Florida to Buenos Aires, Argentina in March 1990.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 21, 1993, and the final decision of the Commission shall be issued by November 18, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-17824 Filed 7-28-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder Licenses; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Best Freight Forwarding Inc., 3323 N.W. 116th Street, Miami, FL 33167.
Officers: Roberto Leal, President; Raquel Leal, Secretary/Treasurer; Daniel Verano, Vice President.
Alejandro Villar, 10541 SW 107th Street, Miami, FL 33176; Sole Proprietor.
International Freight Agency, 155–06 South Avenue, Jamaica, New York 11434; Peter John Lingard, Sole Proprietor.
Uni-Pac Shipping, Inc., 13900 East Valley Blvd., LaPuente, CA 91744.
Officers: Jimmy Jiang, President; Beverly Jiang, Vice President.
WPJA International Freight Systems Inc., 550 NW 79th Ave., Miami, FL 33166.
Officers: Winston Pigott, President/Director, Kim Marie Pigott, Vice President/Director.
Honeybee International Forwarding, 5680 Ayala Ave., Irwindale, CA 91706.
Officer: Samih Salim Abushousheh, President/Director.
Transcontinental Marketing Corporation, dba TRAMACO, 321 Columbus Ave., Boston, MA 02116–5114.
Officers: John P. Combellack, President, Paul W. Wilson, Vice President, Lawrence L. Curtis, Controller.

Dated: July 23, 1992.
By the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 92–17822 Filed 7–28–92; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1781) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 670.
Name: H.P. Lambert Co.
Address: 258 Friend Street, Boston, MA 02114.
Date Revoked: May 20, 1992.
Reason: Failed to furnish a valid surety bond.

License Number: 3034–R.
Name: Uniport, Inc.
Address: 125 Moen Ave, Cranford, NJ 07016.
Date Revoked: June 9, 1992.
Reason: Failed to furnish a valid surety bond.

License Number: 1794.
Name: Three Way Corporation dba Three Way Ocean Freight, A Division of Three Way Corporation.
Address: 1120 Karlstad Dr., Sunnyvale, CA.
Date Revoked: June 14, 1992.
Reason: Failed to furnish a valid surety bond.

License Number: 1326.
Name: Home-Pack Transport, Inc.
Address: P.O. Box 739, Garfield, New Jersey 07026
Date Revoked: June 20, 1992.
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92–17823 Filed 7–28–92; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R-0770]

10 Percent Revenue Limit on Bank-Eligible Securities Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: In 1987 and 1989 the Board authorized bank holding companies to engage, through separate subsidiaries ("section 20 subsidiaries"), in underwriting and dealing in securities that a bank may not underwrite and deal in directly ("ineligible securities"). In order to ensure compliance with section 20 of the Glass-Steagall Act, the Board provided that the amount of revenue a section 20 subsidiary may derive from ineligible securities activities may not exceed 10 percent of the total revenue of the subsidiary. Section 20 prohibits a member bank from being affiliated with a company that is "engaged principally" in underwriting and dealing in securities. The Board believes that recent changes in the level and structure of interest rates involving unusually low levels of short-term rates and an historically steep yield curve have the potential for distorting the revenue test as an accurate measure of whether a section 20 subsidiary is engaged principally in ineligible securities activities. The Board, therefore, proposes to provide an alternative to the current revenue test to take into account such changes, and requests comment on possible alternative tests.

DATES: Comments must be received by August 27, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0770, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452-3750), Scott G. Alvarez, Associate General Counsel (202/452-3583), Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452-2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorthea Thompson (202/452-4544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Section 20 of the Glass-Steagall Act

Section 20 of the Glass-Steagall Act prohibits a member bank from becoming an affiliate of any company that is "engaged principally in the issue, flotation, underwriting, public sale, or distribution" of securities. 12 U.S.C. 377. The Board and the courts have recognized that section 20 permits a member bank to be affiliated with a company whose largest activity is underwriting and dealing in the kind of securities that banks may underwrite and deal in directly ("eligible securities", so long as the company does

not conduct sufficient underwriting and dealing activities with regard to ineligible securities to be deemed to be "engaged principally" in those ineligible securities activities.[1]

Calculation of "Engaged Principally"

After careful review of the terms, legislative history, and purpose of section 20 and related provisions of the Glass-Steagall Act, the Board in 1987 concluded that a company would not be "engaged principally" in ineligible securities activities for purposes of the Glass-Steagall Act if those activities were not "substantial" relative to the other activities of the company.[2] The Board also concluded that an activity was not substantial if the gross revenue derived from the activity did not exceed the range of between 5 and 10 percent of the total gross revenues of the company.

The Board determined to base its consideration of the substantiality of an activity on a measure of the gross revenue of the company because the Board believed that a test based on gross revenue was "an objective and meaningful measure of the importance of the activity to the enterprise as a whole."[3] The Board also found that a test based on gross revenue "reflects the level of risk involved in the activity," which was an important consideration behind enactment of the Glass-Steagall Act. Finally, the Board indicated that a gross revenue test would pose the fewest operational difficulties and would "avoid the potential for manipulation present in a test based solely on sales volume," which was the test advocated most strongly by the applicants.[4]

The Board determined to adopt the more conservative 5 percent threshold when the first section 20 applications were initially approved in April 1987, but committed to review that level within a year. In September 1989, following that review, the Board permitted securities affiliates to engage in ineligible securities activities up to 10 percent of gross revenues.[5]

In authorizing and regulating the section 20 subsidiaries, the Board has sought to achieve two objectives: to approve only those activities that most clearly comply with applicable statutory limits, and to assure that, as shown by the section 20 subsidiaries' actual experience with newly-authorized functions, expanded securities functions do not impair bank safety and soundness or result in conflicts of interest.

Effect of Recent Changes in Interest Rate Structure

In monitoring the operations of the existing section 20 subsidiaries, the Board has noted that historically unusual changes in interest rate configurations recently have affected the revenue test as a measure of the relative importance of eligible and ineligible securities activities in ways that were not anticipated by the Board when that test was established. Short-term interest rates have declined to their lowest levels since the early 1960's and, although long-term rates have also declined, these rates have declined much less than short-term rates, leaving an unusually sharply upward sloping yield curve. These unforeseen developments in turn have biased the relative revenue derived by some section 20 companies from their securities operations.

The sharp decline in short-term rates has an especially marked effect on revenues obtained by section 20 subsidiaries from their eligible securities operations. First, eligible securities activity at many subsidiaries tends to involve a high proportion of short-term instruments and, second, eligible activity on average derives a greater percentage of revenue from interest earnings than does ineligible activity. Recent revenue data from a number of section 20 subsidiaries do show significant declines in revenue derived from eligible securities activities. Since there has been very little corresponding decline in long-term rates, revenue earned by these subsidiaries from holding ineligible securities, many of which tend to be of medium- to long-term maturity, has not declined to the same extent. Thus, the revenue currently derived by some section 20 subsidiaries from eligible and ineligible activities suggests that the relative importance of eligible activities in the subsidiary's business has declined, in some cases substantially.

However, according to recent data on the section 20 subsidiaries, other indicators of the relative importance of eligible activities, in particular, the proportion of eligible and ineligible assets held by these subsidiaries, have not decreased, suggesting that the relative level of eligible activity has not declined as much as the revenue data suggest. The decline in the ratio of eligible to total revenue at these subsidiaries apparently can be attributed more to the extraordinary level and shape of the yield curve rather than to changes in the subsidiary's mix of eligible and ineligible activities. The results produced by the revenue test may not be indicative of any shift in underlying activity, and the revenue test, due to its dependence on interest rates, may not be as reliable a measure of "engaged principally" as the Board had anticipated in September 1989 and in earlier orders.

While the degree of the decline in eligible revenues will necessarily vary from section 20 subsidiary to section 20 subsidiary, depending on the kinds and maturity of assets each subsidiary holds and the nature of the business it conducts, a comparison of rates prevailing when the 10 percent limit was established and rates prevailing at present suggests that the effect of the sharp drop in short-term rates in the past few months will very likely have a large impact on at least some of the section 20 subsidiaries. For example, using the most simplistic assumptions—that the duration of the ineligible securities held by a section 20 subsidiary can be represented by a corporate bond, that the duration of its eligible securities can be represented by a 3-month Treasury bill rate, and that all of the subsidiary's revenue is derived from interest on securities held—at interest rates prevalent in September 1989, when the Board increased the revenue limit to 10 percent, the amount of ineligible securities that the subsidiary could hold under the 10 percent revenue limit was approximately 7-1/4 percent of total assets, given the difference at that time between Treasury bill and corporate bond rates. With the interest rate structure prevalent today, the same subsidiary could hold only about 3-3/4 percent of its total assets in ineligible securities, because of the current very wide disparity between short- and long-term rates.

This effective change in the revenue test was not intended by the Board when it established the 10 percent limit. In the Board's view, the reduction in a section 20 subsidiary's eligible revenues due solely to the highly unusual and unforeseen alteration in the historic relationship between short- and long-term interest rates should not artificially force the subsidiary to restrict its ineligible activities to levels below what would be permitted by the 10 percent test under the interest rate patterns that prevailed when the Board established that limit. Accordingly, the Board has decided to allow section 20 subsidiaries, at their election, to use an alternative

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[1] *Citicorp*, 73 Federal Reserve Bulletin 473, 484 (1987) ("*Citicorp*"); *Securities Industry of America v. Board of Governors*, 839 F.2d 47, 67-8 (2d Cir. 1988).

[2] *Citicorp* at 484.

[3] *Citicorp* at 484.

[4] *Id.*

[5] 75 Federal Reserve Bulletin 751.

test for determining compliance with the statutory "engaged principally" restriction, instead of the current revenue test.

The Board notes, however, that the existing revenue test can be adjusted by a variety of methods to account for unusual changes in the yield curve. The Board requests public comment on appropriate methods that may be employed to achieve this objective. The Board is specifically requesting comment on two different methods of creating an alternative test:

1. Revenue Test Indexed to Interest Rate Changes

Under this proposed technique, the 10 percent revenue test would be modified to account for changes in the level and slope of the yield curve since September 1989. Section 20 subsidiaries would be allowed to adjust their current interest and dividend revenue on a quarterly basis to compensate for the unintended consequences of the shift in risk-free rates since 1989. In effect, this adjustment would be an attempt to calculate the revenue that would have been earned from eligible and ineligible activities in the current period if the Treasury yield curve were as it was in September 1989.

Several steps would be required under this method of adjusting revenue. These steps could be incorporated in the memoranda section of the FR Y-20, Schedule SUD-I, which section 20 subsidiaries use to report current financial information.

a. The subsidiary would need to calculate the average duration of its eligible and ineligible assets for the quarter in question. Ideally, such a calculation would be made at the close of business each day, since interest and dividends are earned on securities held as of that time. The Board requests comment on whether less frequent calculations, such as weekly or monthly, might be adequate.

b. Having made this calculation, the subsidiary would consult a table, published by the Board, that provides an adjustment factor corresponding to various portfolio durations. Each adjustment factor represents the ratio of interest rates in September 1989 on Treasury securities to average interest rates on Treasury securities in the most recent quarter for obligations having that particular duration.

c. Current interest and dividend revenue for the eligible and ineligible categories would then be scaled by the appropriate adjustment factors.

d. Adjusted interest and dividend revenue would be added to the other types of revenue earned by the subsidiary to calculate an adjusted ratio of ineligible to total revenue for the subsidiary.

The Board recognizes that computation of daily duration estimates might prove burdensome for some section 20 subsidiaries. Section 20 subsidiaries would not be required to use the indexed revenue limit and could continue to use the current revenue test. However, once a subsidiary chooses the alternate indexed method of applying the 10 percent limit, the subsidiary would be expected to continue to use that method for some fixed period of time, such as five years.

The adjustment technique outlined may not be the best one available. For one thing, because it is applied to all interest and dividend revenue, in effect this technique adjusts risk premiums embodied in interest rates as well as the base risk-free rate. More complex methods taking account of additional factors seem to entail even more burdensome data and reporting requirements. The Board solicits comments on other methods that might be used to accomplish the same adjustment, as well as comments on the feasibility and burden of the technique suggested.

2. Alternate Asset-Based Test

A section 20 subsidiary, at its election, would be allowed to compute compliance with the "engaged principally" language of section 20 on the basis of assets, rather than on the basis of the existing revenue test. Specifically, such a subsidiary would be viewed as in compliance with section 20 for any quarter if the average daily assets held in connection with underwriting and dealing in ineligible securities for that quarter, when added to the average daily assets held in connection with ineligible securities activities for the previous seven quarters, does not exceed 10 percent of the average daily total assets of the subsidiary for that quarter and the previous seven quarters.

A test based on the value of securities assets held by a section 20 subsidiary is less sensitive to alterations in interest rate relationships than a test based solely on revenue. Thus, an asset-based test might represent a more accurate measure of the relative importance of eligible and ineligible securities activities.

When the Board initially selected revenue as the best indicator of whether specific securities activities are a substantial activity of a section 20 subsidiary, the Board noted two basic problems with a test based on average assets. The Board expressed concern that, compared to a revenue test, an asset-based test can be more easily manipulated by inflating the asset base solely to support ineligible activity. Also, the Board found that an average asset test, even if computed on a daily basis, would not take into account underwriting activities, since underwriters typically hold the securities being sold only for a few hours.[6] The Board seeks comment on whether it is appropriate to implement modifications to an asset-based test designed to minimize these defects.

For example, in order to prevent section 20 subsidiaries from engaging in "matched book" or similar transactions in eligible securities for the sole purpose of offsetting ineligible securities activities, specific limits could be imposed on the use of such transactions to artificially increase eligible assets totals in an asset-based test. One other possible restriction is a separate cap on the total amount of revenues that may be derived from ineligible securities activities during any calendar quarter. This cap would serve as a check to assure that manipulation of the eligible asset base does not allow a subsidiary to substantially expand its ineligible securities business. Such a revenue limit would be set at a level somewhat higher than 10 percent, such as 15 percent. If an asset-based test is adopted, the Board would expect to scrutinize, through the examination process, transactions that do not appear to have been entered into for any ostensible business purpose but rather for manipulating the eligible asset base. Comment is also solicited as to any other objective standards that may be adopted to ensure the integrity of an asset-based test.

If an asset-based test is adopted, a section 20 subsidiary could be given the option of compliance with that test in lieu of the current revenue limit. In order to prevent a subsidiary from repeatedly shifting between revenue and asset tests in an effort to maximize its eligible securities base, a section 20 subsidiary that chooses the asset-based test may be precluded from changing back to the revenue test for some fixed period of time, such as five years.

In addition to proposing basic changes in the 10 percent revenue test, the Board is also concerned that the recent sharp and unanticipated alterations in the yield curve might have severe immediate effects on the operations of at least some section 20 companies. The Board is also concerned that these effects will occur before an alternative to the current revenue limit can be

[6] *Citicorp*, at 464.

implemented and that section 20 subsidiaries may need time to adjust to these unforeseen changes.

For this reason, the Board amends its earlier section 20 orders to permit a section 20 subsidiary to elect to comply with the 10 percent test on a quarter-by-quarter basis, instead of the 8-quarter rolling average prescribed in those orders, until an alternative test for complying with the 10 percent limit is implemented by the Board, or until the end of the fourth quarter of 1992, whichever is earlier.[1] The alternative quarter-by-quarter computation period as a measure of the substantiality of a section 20 company's compliance with the "engaged principally" limit is fully consistent with the terms and purpose of the Act. The availability of a quarter-by-quarter basis for computation may alleviate the need for drastic adjustments in the level of ineligible activity caused by recent pronounced declines in short-term rates and eligible revenue that might otherwise be necessary under the 8-quarter average method where no adjustment is made for interest rate distortion. A section 20 subsidiary is not required to use the quarter-by-quarter method and may continue to compute compliance with the revenue test using an 8-quarter rolling average.

To prevent manipulation, a section 20 subsidiary that elects to comply with the 10 percent limit on a quarter-by-quarter basis must continue to comply on that basis until the Board adopts an alternative to the current revenue test, or until the end of the fourth quarter of 1992, whichever is earlier. A section 20 subsidiary that chooses to use the quarter-by-quarter computation period for the current quarter, must advise the appropriate Reserve Bank within 10 days from the date of this order.

By order of the Board of Governors of the Federal Reserve System, July 22, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-17839 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

Bailey Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Bailey Financial Corporation, Clinton, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of M.S. Bailey & Son, Bankers, Clinton, South Carolina.

2. Harbor Bankshares Corporation, Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Harbor Bank of Maryland, Baltimore, Maryland.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Jones Bancorp, Inc., Marcellus, Michigan; to become a bank holding company by acquiring 90 percent of the voting shares of G.W. Jones Exchange Bank, Marcellus, Michigan.

2. Pyramid Bancorp, Inc., Grafton, Wisconsin; to become a bank holding company by acquiring up to 100 percent of the voting shares of Grafton State Bank, Grafton, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Harlingen Bancshares, Inc., Harlingen, Texas; a *de novo* company to become a bank holding company by acquiring 100 percent of the voting shares of HN Bancshares of Delaware, Inc., Wilmington, Delaware; and Harlingen National Bancshares, Inc., Harlingen, Texas, and existing bank holding company, and thereby indirectly acquire Harlingen National Bank, Harlingen, Texas. In connection with this application, HN Bancshares of Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Harlingen National Bank, Harlingen, Texas.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17860 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

Central Arkansas Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank

[1] After that time, all section 20 subsidiaries must comply with any applicable test on a rolling average 8-quarter basis.

indicated or the offices of the Board of Governors not later than August 21, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Central Arkansas Bancshares, Inc., Arkadelphia, Arkansas; to engage *de novo* through its subsidiary, Central Arkansas Securities, Inc., Hot Springs, Arkansas, in providing securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17861 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

Jimmy G. and Wilda R. Hankins, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 17, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jimmy G. and Wilda R. Hankins, Marietta, Oklahoma; to acquire an additional 9.33 percent of the voting shares of Bank of Love County, Marietta, Oklahoma.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. John Weatherford McEvoy & Nancy Anita McEvoy, Casa Grande, Arizona; to acquire between 9.68 percent and 15.05 percent of the voting shares of Sunstate Bancshares, Inc., Casa Grande, Arizona, and thereby indirectly acquire The Bank of Casa Grande Valley, Casa Grande, Arizona.

2. Kjell H. Ovale, San Francisco, California; to acquire 40.2 percent of the voting shares of Marin National Bancorp, San Rafael, California, and thereby indirectly acquire First National Bank of Marin, San Rafael, California.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17858 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

SouthTrust Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to acquire CK Federal Savings Bank, Concord, North Carolina, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of North Carolina.

Board of Governors of the Federal Reserve System, July 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17859 Filed 7-28-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

President's Youth Fitness Program; Correction

AGENCY: President's Council on Physician Fitness and Sports (PCPFS), HHS.

ACTION: Correction.

SUMMARY: A Notice in the **Federal Register** of July 20, 1992, (57 FR 32022) invited public comment on the appropriateness of a proposal that the physical-fitness testing programs of the President's Council on Physical Fitness and Sports and of the American Alliance for Health, Physical Education, and Recreation and Dance be unified into one program, to be entitled "The President's Youth Fitness Program." The Notice inadvertently omitted an indication of the length of the comment period and of its closing date. The intent is that there be a 60-day comment period, with a closing date of September 18, 1992.

ADDRESSES: Christine G. Spain, Director; Research, Planning and Special Projects, President's Council on Physical Fitness and Sports; 701 Pennsylvania Avenue NW., suite 250; Washington, DC 20004.

Dated: July 22, 1992.

John Gallivan,

PHS Regulations Officer.

[FR Doc. 92-17877 Filed 7-28-92; 8:45 am]

BILLING CODE 4160-17-M

Public Health Service

Centers for Disease Control Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 57 FR 29732–29733, July 6, 1992) is amended to revise functional statements for the National Center for Environmental Health.

On June 25, 1992, the Secretary, Health and Human Services, approved the (1) establishment of the National Center for Injury Prevention and Control and (2) title change for the National Center for Environmental Health and Injury Control to the National Center for Environmental Health.

Section HC–B, Organization and Functions, is hereby revised as follows:

National Center for Environmental Health (HCN), Office of the Director (HCN1). References to the National Center for Environmental Health and Injury Control and CEHIC should be changed to the National Center for Environmental Health and NCEH, as appropriate.

All references to NCEHIC should be changed to NCEH in the following functional statements: Office of Planning, Evaluation, and Legislation (HCN13), Office of Program Operations and Management (HCN14), and the Information Resources Management Group (HCN17).

Effective Date: July 20, 1992.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 92–17905 Filed 7–28–92; 8:45 am]

BILLING CODE 4160–18–M

Social Security Administration

Privacy Act of 1974; Computer Matching Programs

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Publication of Notice of Computer Matching to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: We are publishing a notice of a computer matching program that SSA conducts that is subject to the requirements of Pub. L. 100–503. The purpose of this publication is to meet the reporting and publication requirements of Pub. L. 100–503.

DATES: We filed a report of the subject SSA matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on June 26, 1992. The matching program is effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100–503, the Computer Matching and Privacy Projection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;
(2) Provide notification to applicants and beneficiaries that their records are subject to matching;
(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;
(4) Furnish detailed reports to Congress and the Office of Management and Budget; and
(6) Establish a Data Integrity Board (DIB) that must approve match agreements.

B. SSA Computer Matches Subject to Pub. L. 100–503

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of Pub. L. 100–503. Below is a brief description followed by a detailed notice of a match that SSA will be conducting as of July 1, 1992 or later.

SSA Matching with Railroad Retirement Board (RRB)—Master Beneficiary Record (MBR)/RRB

Purpose: To assist in adjudicating claims for benefits under title II of the Social Security Act and programs administered by RRB. Data is exchanged so that the correct benefit amount can be paid.

Dated: June 26, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) Master Beneficiary Record (MBR) Matching With Railroad Retirement Board (RRB) Records

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

Section 18 of the Railroad Retirement Act (RRA) requires that earnings treated as compensation under the RRA be considered as wages under the Social Security Act (the Act) for purposes of determining entitlement under the Act if the number holder has less than 120 months of railroad service. The purpose of this matching program is for SSA to obtain RRB earnings records for matching the SSA's earnings records on Retirement, Survivors, and Disability insurance (RSDI) beneficiaries. SSA will use the data to establish entitlement to, and amount of, Social Security benefits.

In addition, under section 7 of the RRA, SSA provides earnings other data to RRB to determine the correct payment of RRB benefits.

C. Authority for Conducting the Matching Program

Sections 202 and 205 of the Act (42 U.S.C. 402 and 405) and 45 U.S.C. 231.

D. Categories of Records and Individuals Covered by the Match

The RRB records consist of identifying information and railroad earnings from its Service and Compensation Record file. SSA's records consist of RSDI data maintained in the Master Beneficiary Record (MBR) system (last published in the **Federal Register** on April 9, 1992 (57 FR 12322, 12328)). The MBR maintains records about individuals who are claimants for, or beneficiaries of, RSDI benefits.

E. Inclusive Dates of the Match

The matching program will begin on July 1, 1992 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget,

whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments of the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235.

[FR Doc. 92-17869 Filed 7-28-92; 8:45 am]
BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-92-3433; FR-3145-N-02]

NOFA for Fair Housing Initiatives Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of extension of time for submission of applications.

SUMMARY: On May 29, 1992, HUD published a Notice of Funding Availability (NOFA) that announced HUD's funding of $6.9 million for the Fair Housing Initiatives Program (FHIP). The purpose of this Notice is to extend the time for submission of applications until August 28, 1992.

DATES: The application due date originally announced for July 28, 1992 is extended by this Notice to August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Funded Programs Division, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-3214. Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) on 202-708-3214 for information on the program. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's FY 1992 funding of $6.9 million for the Fair Housing Initiatives Program (FHIP) was published on May 29, 1992 (57 FR 22872). This program provides assistance to State and local agencies, public and private nonprofit organizations, and other public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. The NOFA provided that an application for funding would be made available following publication of the NOFA, and that the application due date and time would be specified in the application list. In no event, however, would the application be due before July 28, 1992.

The application due date that was specified in the application kit is July 28, 1992. However, because some applicants experienced delay in receiving their application kits, and because funds were made available for the first time for the Administrative Enforcement Initiative under FHIP, the Department has determined that it would be appropriate to provide additional time for the preparation and submission of applications.

Applications will now be due on or before 4 p.m. on Friday, August 28, 1992. Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The application kits are revised to reflect this extended due date. Applicants that have already submitted applications will be given full consideration and do not have to submit another application, but they may, at their option, withdraw their first application and submit a new, revised application on or before the extended due date.

In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the extended deadline. Applicants should take this practice into account and make early submission of their materials to avoud any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the extended deadline will not be considered.

Dated: July 27, 1992.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92-18073 Filed 7-28-92; 8:45 am]
BILLING CODE 4210-28-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3354; FR-3167-N-02]

Extension of Application Submission Deadline Notice of Fund Availability (NOFA) for FY 1992; Public Housing Development/Major Reconstruction of Obsolete Public Housing/Family Self-Sufficiency

AGENCY: Office of the Assistant Secretary for Public and Indian housing, HUD.

ACTION: Notice of extension of Homeownership Replacement Housing application submission deadlines.

SUMMARY: HUD is extending from August 3, 1992 to September 1, 1992 the period for submitting applications for public housing development funds which request to use such assistance to meet replacement housing requirements under the HOPE 1 (Homeownership and Opportunity for People Everywhere) Program or the section 5(h) Homeownership Program. All other types of assistance to be allocated under the FY 1992 Notice of Fund Availability published in the **Federal Register** on June 18, 1992 (*see* 57 FR 27330) remain subject to the original August 3, 1992 deadline.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Public Housing Development program, contact Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW., room 4136, Washington, DC 20410. Telephone (202) 708-1800. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These are not toll-free numbers.)

For questions concerning the replacement housing requirements under the HOPE 1 and section 5(h) programs, contact Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-4233.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On June 18, 1992, HUD published a Notice of Fund Availability (NOFA) announcing the availability in FY 1992 of funds for

public housing development and for Major Reconstruction of Obsolete Projects (MROP) (*see* 57 FR 27330).

The NOFA indicated that development applications would be limited to replacements for demolition/disposition including any HOPE 3 transfers subject to section 18 of the United States Housing Act of 1937 (USHA), replacements for homeownership transfer under HOPE 1, replacements for homeownership under section 5(h) of the USHA, litigation settlement, MROP and Family Self-Sufficiency Incentive Award housing.

The submission deadline for public housing development and MROP applications was August 3, 1992. In this Notice, the Department is extending from August 3, 1992 to September 1, 1992 the submission deadline with respect to a limited class of potential public housing development applications. This class consists of those applications which request public housing development funds to provide replacement housing under either the HOPE 1 program, or the section 5(h) Homeownership Program.

All other applications for public housing development funds—including applications requesting replacements for demolition/disposition subject to section 18 of the USHA (including any HOPE 3 transfers), litigation settlement, and Family Self-Sufficiency Incentive Award housing, remain subject to the August 3, 1992 deadline. Applications for MROP also remain subject to the August 3, 1992 deadline.

The Department believes that this extension of the submission deadline is necessary to coordinate effectively the replacement housing requirements under the HOPE 1 and section 5(h) Homeownership Programs with the public housing development program, which provides assistance for one type of replacement housing under those programs.

(With respect to the HOPE 1 program, the need for this extension is particularly highlighted by HUD's recent decision to extend the deadline for the submission of HOPE 1 implementation grant applications (*see* 57 FR 24504), and to extend the period for curing deficiencies (*see* 57 FR 30225). The Department believes that unless it likewise extends the period for submission of a public housing new development application requesting replacement housing assistance to be used under the HOPE 1 program, it will be exceedingly difficult to coordinate the supply and demand of replacement housing under these two programs.)

Dated: July 23, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-17874 Filed 7-28-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-08-4120-11; NDM 81258]

Coal Leases, Exploration Licenses, etc.: Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation.

Coal Exploration License Application NDM 81258

Members of the public are hereby invited to participate with The Coteau Properties Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Mercer County, North Dakota:

T. 145 N., R. 88 W., 5th P.M.,
Sec. 8: E½NE¼;
Sec. 20: SW¼.
T. 145 N., R. 88 W., 5th P.M.,
Sec. 2: Lot 1, SE¼NE¼.
318.33 acres—Mercer County, North Dakota.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107-6800; and The Coteau Properties Company, P.O. Box 1089, Beulah, North Dakota 58523. Such written notice must refer to serial number NDM 81258 and be received no later than 30 calendar days after publication of this notice in the **Federal Register** or 10 calendar days after the last publication of this notice in the Beulah Beacon, whichever is later. This notice will be published once a week for 2 consecutive weeks in the Beulah Beacon.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by The Coteau Properties Company is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana 59107 during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: July 20, 1992.

Francis R. Cherry, Jr.,

Associate State Director.

[FR Doc. 92-17854 Filed 7-28-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-921-08-4120-11; MTM 81096]

Coal Leases, Exploration Licenses, etc.; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation.

Coal Exploration License Application MTM 81096

Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.,
Sec. 14: SW¼NE¼, NE¼NW¼;
Sec. 15: NW¼SW¼SE¼, S½SW¼SE¼;
Sec. 22: SE¼NE¼;
Sec. 23: NE¼NE¼, S½NW¼;
Sec. 25: SW¼SW¼,
Sec. 26: N½SW¼, NW¼SE¼;
Sec. 27: S½NE¼.
T. 8 S., R. 40 E., P.M.M.,
Sec. 30: NE¼SW¼, NW¼SE¼.
590.00 acres—Big Horn County.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107-6800; and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 81096 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Big Horn County News, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the Big Horn County News.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Spring Creek Coal Company is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd street, Billings, Montana during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: July 17, 1992.
John A. Kwiatkowski,
Acting State Director.
[FR Doc. 92-17855 Filed 7-28-92; 8:45 am]
BILLING CODE 4310-DN-M

[CO-050-4333-10]

Emergency Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure to motorized vehicle use on 1,800 acres of BLM lands for the protection of public safety and natural resource values.

SUMMARY: The following public lands have been closed to motorized vehicle travel: The area south of Monte Vista Colorado and west of the Monte Vista National Wildlife Refuge in T. 37N., R. 7 E., those portions east of BLM road 5100 in sections 2, 3, 10, 11.

The intent of this action is to reduce a dangerous situation in where hunters pursuing elk that leave the Monte Vista National Wildlife Refuge create a safety hazard due to firearm cross-fire. A State highway located between the refuge and the affected BLM managed lands results in additional safety concerns.

This action does not restrict hunting use in the area but will only require hunters to access the area on foot rather than using their vehicles. The closure is also intended to protect the fragile vegetation and highly erodible soils from undue degradation caused by cross-country vehicle travel.

This closure is being implemented under the authority of the Code of Federal Regulations 43 CFR 8341.2(a). Penalty for violation includes a fine of not more than $1,000.00, or imprisonment for not longer than 12 months, or both.

DATES: Closure to become effective immediately and continue until May 31, 1993.

ADDRESSES: Comments can be directed to: Bureau of Land Management, Area Manager, 1921 State Street, Alamosa, CO 81101 or District Manager, P.O. Box 2200, Canon City, CO 81215-2200.

FOR FURTHER INFORMATION CONTACT: Joe Kraayenbrink, Area Manager, San Luis Resource Area, (719) 589-4975.

SUPPLEMENTARY INFORMATION: Any comments will be evaluated by the State Director, who may sustain, vacate or modify this closure.

Stuart L. Freer,
Associate District Manager.
[FR Doc. 92-17856 Filed 7-28-92; 8:45 am]
BILLING CODE 4310-JB-M

[ES-962-4730-12; ES-045440, Group 142, Wisconsin]

Filing of Plat of Dependent Resurvey

The plat of the dependent resurvey of a portion of the subdivisional lines of Township 38 North, Range 8 West, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 10, 1992.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 10, 1992.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: July 20, 1992.
Denise P. Meridith,
State Director.
[FR Doc. 92-17825 Filed 7-28-92; 8:45 am]
BILLING CODE 4310-GJ-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through September 1992. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. The Reclamation announcements of individual repayment and water service contract actions will be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. These public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C Street, NW., Washington, DC 20240; telephone 202-208-3014.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) section 43 CFR 426.20 of the rules and regulations published in 48 FR 54785, December 6, 1983, Reclamation will publish notice of proposed or amendatory repayment contract actions for any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1992. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made

available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate Reclamation officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(Pub. L.) Public Law
(R&B) Rehabilitation and Betterment
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724-0043, telephone 208-334-1894.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.

2. Individual Irrigators, M&I, and Miscellaneous Water Users; Columbia Basin, Minidoka, Umatilla, and Crooked River Projects; Idaho, Montana, Oregon, and Washington: Temporary (interim) repayment and water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum for terms up to 40 years.

4. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum for terms up to 40 years.

5. New Dry Creek Ditch Company, Ltd., Boise Project, Idaho; North Unit ID, Deschutes Project, Oregon; American Falls Reservoir District Number 2, Burgess Canal Company, Clark and Edwards Canal and Irrigation Company, Craig-Mattson Canal Company, Danskin Ditch Company, Enterprise Canal Company, Ltd., Farmers Friend Irrigation Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Long Island Irrigation Company, Parks and Lewisville Irrigation Company, Ltd., Parson Ditch Company, Peoples Canal and Irrigation Company, Poplar ID, Rigby Canal and Irrigating Company, Rudy Irrigation Canal Company, Ltd., Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat ID, Wapinitia Project, Oregon; Roza ID Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

6. Forty-four Palisades Reservoir Shareholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

7. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

8. Baker Valley Irrigation District, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

9. Crooked River Project, Oregon: Irrigation repayment or water service contracts with several individuals, with the Ochoco Irrigation District, and with North Unit Irrigation District for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir (Arthur R. Bowman Dam).

10. Palisades Water Users Inc., Minidoka-Palisades Project, Idaho: Repayment contract for additional 500 acre-feet of storage space in Palisades Reservoir.

11. Willow Creek Water Users, Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

12. Five Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to third parties.

13. Bridgeport Irrigation District, Bridgeport, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

14. Hermiston Irrigation District, Umatilla Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Cold Springs Dam.

15. Ochoco Irrigation District and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Arthur R. Bowman Dam and Ochoco Dams.

16. The Dalles Irrigation District, The Dalles Project, Oregon: SRPA loan repayment contract; $2,000,000 proposed loan obligation.

17. Oroville-Tonasket Irrigation District, Chief Joseph Dam Project, Washington: SRPA loan repayment contract; $661,500 proposed loan obligation.

18. State of Idaho, Payette Division of the Boise Project, Idaho: Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.

19. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet; $1.50 per acre-foot for a term of up to 40 years.

20. P.P.R.T. Water System, Inc., Idaho: Amendatory contract to defer the 1990 and 1991 construction installments of a contract for a loan to construct facilities authorized pursuant to the Emergency Drought Act of 1977.

21. Douglas County, Oregon: SRPA loan repayment contract; proposed loan obligation of $20,715,760 and grant of $9,228,380.

22. Mitigation, Inc., Palisades/Ririe Projects, Idaho: Contract for storage space in Palisades and Ririe Reservoirs

(18,900 and 80,500 acre-feet, respectively) pursuant to section 5(a) of the Fort Hall Indian Water Rights Act of 1990.

23. Trinity Springs Ltd., Boise Project, Idaho: Industrial water service contract for the purchase of 800 acre-feet of storage space annually in Anderson Ranch Reservoir for a 40-year period; water to be used in commercial production of bottled mineral water.

24. United States Fish and Wildlife Service, Boise Project, Idaho: Irrigation water service contract for the purchase of approximately 200 acre-feet of storage space annually in Anderson Ranch Reservoir for a 40-year period; water to be used on crops for wildlife mitigation purposes.

25. City of Madras, Deschutes Project, Oregon: Renewal of municipal water service contract for approximately 125 acre-feet per acre annually from the project water supply for a 40-year period; water to be used for lawn watering.

26. Willammette Basin water users, Willamette Basin Project, Oregon: Add language to form of water service contract to provide for periodic reviews, with adjustments made if necessary, to mitigate for adverse impacts to natural resources.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract for up to 9,000 acre-feet from New Melones Reservoir.

2. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note:* Copies of the standard form of temporary water service contract for the various types of services are available, upon written request, from the Regional Director at the address shown above.

3. Friant Division Contractors, CVP, California; Renewal of existing long-term water service contracts with contractors on the Friant-Kern and Madera Canals or diverters from Millerton Reservoir; most contracts expire 1992–1997, two contracts expire later; water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

4. Shasta Dam Area Public Utilities District, CVP, California: Renewal/Increase of M&I water supply contract; less than 6,000 acre-feet.

5. U.S. Fish and Wildlife Service, CVP, California; Long-term contract for approximately 150,000 acre-feet of CVP water for Federal refuges in the CVP service area.

6. Contra Costa Water District, CVP, California; Amendatory water service contract to add the operation of the Los Vaqueros Project, including an additional point of delivery; the amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy.

7. Centerville Community Services District, CVP, California: Water service contract for up to 800 acre-feet of M&I water annually.

8. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement of 800 acre-feet.

9. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

10. Redwood Valley Water District, SRPA, California: Amendatory loan repayment contract to restructure annual repayment schedule.

11. Sutter Butte Mutual Water Company, CVP, California: Water service contract for a long-term supplemental water supply to provide Company's water users an alternate water supply during periods of deficiency in their appropriative water rights; annual water quantity not determined at this time.

12. Butte Slough Irrigation Company, CVP, California: Water service contract for a long-term supplemental water supply to provide Company's water users an alternate water supply during periods of deficiency in their appropriative water rights; annual water quantity not determined at this time.

13. Madera ID. Hidden Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1993.

14. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1993.

15. Truckee Carson Irrigation District, Newlands Project, Nevada: Warren Act contract to convey and/or store nonproject water.

16. Truckee Carson Irrigation District, Newlands Project, Nevada: Contract for repayment of construction costs of Newlands Project.

17. San Luis Water District, CVP, California: Amendatory water service contract to provide that the District pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

18. Carmichael Irrigation District, CVP, California: Water service contract for a long-term supplemental water supply to provide District's water users an alternate water supply during periods of deficiency in their appropriate water rights; annual water quantity not determined at this time.

19. Delta Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003; water quantities in existing contracts range from 70 to 50,000 acre-feet.

20. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add point of diversion on turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area.

21. United States Department of Veteran Affairs, CVP, California: Contract for M&I water purposes in support of the new San Joaquin Valley National Cemetery near Santa Nella, California.

22. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet; Stony Creek Watershed above Black Butte Dam.

23. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet; above Black Butte Dam.

24. San Luis Water District, CVP, California: Amendment to Contract No. 14–06–200–7773A to transfer lands and allocated share of CVP water supply to San Luis Water District from Romero Water District.

25. Romero Water District, CVP, California: Amendment to Contract No. 14–06–200–7758 to transfer lands and allocated share of CVP water supply to San Luis Water District.

26. ID's and similar water user entities, CVP, California: Amendatory water service contracts; to change the definition of "year" to conform to the standard CVP water year of March 1 through the end of February.

27. Sacramento River water rights settlement contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP

water rates and update standard contract articles.

28. City of Tracy, CVP, California: Amend water service Contract No. 14-06-200-7858A to reallocate up to 13,300 acre-feet from Mercy Springs WD, Contract No. 14-06-200-3365A, to City of Tracy and terminate the Mercy Springs WD contract.

29. Sierra Pacific Power Company and Pyramid Lake Tribe, Washoe and Truckee-Storage Projects, Nevada and California: Interim contract to convey and/or store non-project water.

30. Naval Air Station and Truckee Carson ID, Newlands Project; Nevada: Amend water service Agreement No. 14-06-400-1024 for the use of project water on Naval Air Station land.

31. Del Puerto WD, CVP, California: Amend water service Contract No. 14-06-200-922 to include M&I use.

32. El Dorado County Water Agency, San Juan Suburban WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan Suburban WD, and 22,000 acre-feet for Sacramento County Water Agency.

33. Non-Federal entity, CVP, California: Cost-sharing agreement with a yet to be determined non-Federal entity for the Folsom Dam and Reservoir reoperation.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006-1470, telephone 702-293-8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

2. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the City of Tucson, Arizona.

3. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Stephen Sturges, Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 20,424 acre-feet per year total.

4. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,292 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

5. Gila River Indian Community,CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. Armon Curtis, Arlin Dulin, Jacy Rayaner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts; purpose is to amend their contracts to exempt them from the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

8. Imperial ID, Lower Colorado Water Supply Project, California: Contract providing for O&M of the project well field.

9. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

10. County of San Bernardino, SRPA, California: Repayment contract for a $29.6 million loan.

11. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

12. Bullhead City, Consolidated Water Co., Lake Havasu City, Havasu Water Co., Quartzsite, McAllister Subdivision, City of Parker, Marble Canyon, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 15,146 acre-feet per year as recommended by the Arizona Department of Water Resources.

13. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment present perfected right of 500 acre-feet of diversions annually, and the National Park Service's Federal Establishments perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

14. Imperial Irrigation District of Metropolitan Water District of Southern California, California: Construction and funding contract to conserve water along a portion of the All-American Canal in accordance with Title II All-American Canal Lining Act dated January 25, 1988.

15. Elsinore Valley Municipal Water District, SRPA, California: Repayment contract for a $22.3 million loan.

16. Cibola Valley Irrigation and Drainage District, BCP, Arizona: Amendment of current contract for additional Colorado River water; change in service areas to include lands owned by Ronald E. Swan and Lois C. Bishop, et al; diversion points; and RRA exemption.

17. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service areas, diversion points, and RRA exemption.

18. Miscellaneous present perfected rights holders, BCP, Arizona and California: Contracts for entitlements of Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the BCP. Miscellaneous present perfected rights holders are listed in the *Arizona* v. *California* settlement.

19. Federal Establishment present perfected rights holders: Individual contracts for administration of Colorado River water entitlements of the Colorado River, Fort Mojave, Quechan, and Cocopah Indian Tribes.

20. Yuma County Water Users' Association, Yuma Project, Arizona: Contract to enable the Association to administer non-irrigation water within its service area.

21. Havasu Water Company, Lower Colorado Water Supply Project, California: Temporary contract to convert a test well to a production well for no more than 200 acre-feet of Project water.

22. City of Yuma, BCP, Arizona: Contract amendment to add an additional point of diversion.

23. Fort McDowell Indian Community, SRPA, Arizona: Repayment contract for a $13 million loan.

24. Imperial Irrigation and Drainage District and Metropolitan WD of Southern California, BCP, California: Temporary contract to store approximately 200,000 acre-feet of water that is expected to be saved over a 2-year period under a test water conservation program that involves land fallowing and modified irrigation plan for alfalfa.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone 801-524-5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

7. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

8. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B work of selected project facilities.

9. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 5,165 acre-feet of project water for irrigation purposes.

10. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the City of 3,000 acres; expand terms of water rights assignments from 25 years to 75 years; and allow assignments outside City limits under authority of the Public Service Board.

11. Mancos Water Conservancy District, Mancos Project, Colorado: Amendatory WCUA contract to remove contract restrictions that prevent the Mancos Water Conservancy District from developing hydropower on the Mancos Project.

12. James A. and Sandra J. Stratman, Blue Mesa Reservoir, Wayne N. Aspinall Unit, CRSP, Colorado: Water service contract for domestic use of 1 acre-foot for 40 years.

13. Uintah Water Conservancy District, Vernal Unit, CUP, Utah: Repayment contract under safety of dams programs for the repair of Steinaker Dam.

14. The National Park Service, Bureau of Land Management, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for between 180,000 to 740,000 acre-feet of project water to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

15. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Water service contract for 500 acre-feet for 1 year for municipal and domestic use.

16. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

17. Collbran Conservancy District, Collbran Project, Colorado: Amendatory contract defining priority of use of project water.

18. Department of Energy, Los Alamos, San Juan-Chama Project, New Mexico: Amendment to water service contract to increase Department of Energy allowance for O&M costs.

19. U.S. Fish and Wildlife Service, North Fork Water Conservancy District, Paonia Project, Colorado: Contract for releases to support endangered fish in the Gunnison and Colorado Rivers: Water available for releases will come from reserve capacity held by Reclamation as a sediment pool, estimated to be 1,800 acre-feet annually: Contract will define the terms and conditions associated with delivery of this water.

20. Rio Grande Water Conservation District, Closed Basin Division, San Luis Valley Project, Colorado: Water service contract for furnishing priority 4 water to third parties: Contract will allow District to market priority water, when available, for agricultural, municipal and/or industrial use.

21. Bridge Valley Water Conservancy District, Lyman Project, Wyoming: Repayment contract under safety of dams program for the repair of Meeks Cabin Dam.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region: Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contract for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5-years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw Irrigation District, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

4. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contracts; proposed second round contract negotiations for sale of agricultural, municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

5. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Contingent upon passage of authorizing legislation, terminate the Cedar Bluff Irrigation District's repayment contract; use of the District's portion of the reservoir storage capacity will be sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

6. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

7. Corn Creek Irrigation District, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

8. East Bench Irrigation District, East Bench Unit, P–SMBP, Montana: D&MC contract for $300,000 for minor construction work over a 10-year period.

9. Glen Elder Irrigation District, Glen Elder Unit, P–SMBP, Kansas:

Negotiations for a long-term contract for agricultural water service from Waconda Lake.

10. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

11. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs of the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

12. Sargent Irrigation District, Middle Loup Division, P–SMBP, Nebraska: R&B loan repayment contract not to exceed $2,475,000.

13. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the Association's water conveyance system.

14. Malta Irrigation District, Malta Division, Milk River Project, Montana: R&B contract for repayment of up to $5,600,000.

15. Midvale Irrigation District, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

16. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Contingent upon passage of authorizing legislation, negotiate amendatory contract to increase irrigable acreage within the project.

17. Palmetto Bend Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the Board's remaining repayment obligation and interest in the Palmetto Bend Project to the Authority.

18. Canadian River Municipal Water Authority, Canadian River Project, Texas: Amendatory contract to reflect credit for project lands transferred to the National Park Service under Public Law 101–628 for the Lake Meredith National Recreation Area.

19. Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

20. Hidalgo County Irrigation District No. 6, Texas: SRPA contract for a 20-year loan for up to $5,712,900 to rehabilitate the District's irrigation facilities.

21. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

22. Shoshone, Heart Mountain, Willwood, and Deaver Irrigation Districts, Shoshone Project, Wyoming: R&B contract for loans totaling $7,500,000 to rehabilitate project irrigation facilities with the Shoshone Irrigation Project Joint Powers Board.

23. City of Aurora, Fryingpan-Arkansas Project, Colorado: Long-term carriage contract for up to 1,000 acre-feet of M&I conveyance capacity in the Fryingpan-Arkansas Project facilities.

24. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

25. City of Estes Park, Colorado-Big Thompson Project, Colorado: Modification of water service contract to change point of diversion and other administrative revisions.

26. City of Loveland, Colorado-Big Thompson Project, Colorado: Long-term M&I conveyance contract for conveyance of up to 12,000 acre-feet of city-owned water annually through Federal project facilities.

27. Belle Fourche Irrigation District, Belle Fourche Unit, P–SMBP, South Dakota: Amendment to D&MC contract to extend work through 1995 and provide an additional $1 million to complete the work.

28. North Platte Project and Glendo Unit, P–SMBP, Wyoming and Nebraska contractors: Repayment contracts for safety of dam modifications.

29. State of Colorado, Armel Unit, P–SMBP, Colorado: Repayment contract for safety of dam modification.

Dated: July 22, 1992.

J. Austin Burke,

Assistant Commissioner.

[FR Doc. 92–17911 Filed 7–28–92; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL TRADE COMMISSION

[Inv. 332–326]

Economic Integration in East Asia; Implications for the United States

AGENCY: United States International Trade Commission.

ACTION: Change in date of hearing.

FOR FURTHER INFORMATION CONTACT: Diane Manifold at 205–3271. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 205–2000.

SUPPLEMENTARY INFORMATION: In a notice published Wednesday, July 15, 1992 (57 FR 31386) the Commission announced two public hearings to be held on October 21 and October 28, 1992. One of those dates has been changed and the hearings will be held beginning at 9:30 a.m. on October 21 and October 22, 1992.

Authority: Section 332 of the Tariff Act of 1930, as amended.

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–17908 Filed 7–28–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–337]

Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus; Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add a Respondent

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation amending the complaint and notice of investigation to name SMC Microtronic Co., Ltd. (SMC) of Hong Kong as an additional respondent.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 15, 1992, complainant SGS-Thompson Microelectronics, Inc. (ST) filed a motion to amend its complaint to name SMC as an additional respondent. Neither the existing respondents nor SMC opposed the motion. The Commission investigative attorneys supported ST's motion. On July 6, 1992, the presiding ALJ issued an ID (Order No. 33) amending the complaint and notice of investigation to add SMC as an additional respondent in this investigation. No petitions for review of the ID or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

By order of the Commission.

Issued: July 22, 1992.

[FR Doc. 92-17907 Filed 7-28-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-336]

Certain Single In-Line Memory Modules and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation terminating the investigation with prejudice as to the remaining respondents. The Commission is retaining jurisdiction over the administrative protective order and related orders while it considers the issues of post-termination document retention and use of confidential business information obtained in this investigation by Commission employees in other investigations.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On June 9, 1992, complainant Wang Laboratories, Inc. filed a motion to terminate the investigation as to Mitsubishi Electronics America, Inc., Mitsubishi Electric Corporation, (collectively "Mitsubishi") NMB Technologies, Inc. and NMB Semiconductor Co., Ltd., (collectively "NMB"), the only respondents remaining in the investigation. The motion was supported by the Commission investigative attorneys (IAs), and opposed by Mitsubishi and NMB. On June 17, 1992, Wang filed a reply to respondents' opposition to termination of the investigation. On June 18, 1992, the IAs also filed a reply to respondents' opposition. On June 19, 1992, the presiding ALJ issued an ID terminating the investigation with prejudice as to the refiling of a section 337 complaint by Wang against the Mitsubishi or NMB respondents based on the same alleged unfair acts set forth in the complaint. On June 27, 1992, respondent NMB petitioned for review of the ID. On July 2, 1992, Wang filed an opposition to NMB's petition for review. On July 2, 1992, the IAs also filed an opposition to NMB's petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: July 22, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-17906 Filed 7-28-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-540 and 541 (Final)]

Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-540 and 541 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason or imports from the Republic of Korea and Taiwan of certain welded stainless steel pipes,[1] provided for in subheadings 7306.40.10 of 7306.40.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* June 22, 1992.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain welded stainless steel pipes from the Republic of Korea and Taiwan are being sold in the United States at less than fair value within the meaning

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[1] The merchandise subject to these investigations is welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the investigations also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312. WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of WSSP are currently classifiable under the flowing Harmonized Tariff Schedule (HTS) subheadings: 7306.40.1000, 7306.40.5010, 7306.40.5030, 7306.40.5050, and 7306.40.5070. Although these subheadings include both pipes and tubes, the scope of these investigations is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 18, 1991, by Avesta Sandvik Tube, Inc.; Bristol Metals; Damascus Tubular Products; Trent Tube Division, Crucible Materials Corp.; and the United Steelworkers of America.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on October 27, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on November 10, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 3, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 6, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is November 3, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is November 18, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 18, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 23, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-17909 Filed 7-28-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 20, 1992, a proposed consent decree in *United States* v. *Cannons Engineering Corporation, et al.*, Civil Action No. 88-1786-WF, was lodged with the United States District Court for the District of Massachusetts. The decree resolves claims of the United States against defendant Scott Brass, Inc. ("Settling Defendant"), in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at three Superfund Sites. The three sites are the Cannons Engineering Superfund Site in Bridgewater, Massachusetts, the Plymouth Superfund Site in Plymouth, Massachusetts, and the Tinkham's Garage Superfund Site in Londonderry, New Hampshire (collectively, the "Sites").

In the proposed consent decree the Settling Defendant agrees to pay the United States approximately $75,000.00 in settlement of the United States' claims for past and future response costs incurred and to be incurred by the Environmental Protection Agency at the Sites. The proposed decree embodies a *de minimis* settlement under the terms of 42 U.S.C. 9622(g).

The proposed decree may be examined at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the decree, please enclose a check for $5.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cannons Engineering Corporation, et al.*, (DOJ Reference No. 90-11-3-105).

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-17834 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984 Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on June 15, 1992, pursuant to section 6(a) of the National Cooperative Research Act of

1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium (ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), filed a written notification simultaneously with the Attorney General and the Federal Trade Commission. The notification discloses (1) the identities of the parties to the Consortium and (2) the nature and objectives of the Consortium. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Consortium and its general areas of planned activity are given below.

ILZRO has sought and received written commitments to participate in the Consortium from: ASARCO Inc., New York, NY; Billiton U.K. Ltd., Derbyshire, ENGLAND; Bitrod Corporation, Fenton, MO; Brunswick Mining & Smelting, New Brunswick, CANADA; Cominco Ltd., Toronto, CANADA; CMP Batteries Ltd., Bolton, ENGLAND (representing Compagnie Europeenne d'Accumulateurs, Clichy, FRANCE); C&D Charter Power Systems, Plymouth Meeting, PA; The Doe Run Company; St. Louis, MO; East Penn Manufacturing Co., Inc., Lyon Station, PA; GNB Industrial Battery Company, Lombard, IL; Hagen Battery AG, Soest, GERMANY (representing Tudor Group); Johnson Controls Inc., Milwaukee, WI; Met-Mex Penoles S.A. de C.V., Col. Cuauhtemoc, MEXICO; M.I.M. Holdings Ltd., Brisbane, AUSTRALIA; Mitsubishi Materials Corporation, Saitama, JAPAN; Mitsui Mining & Smelting Company Ltd., Tokyo, JAPAN; Pasminco Metals Pty. Ltd., Melbourne, AUSTRALIA; Yuasa Battery Company Ltd., Tokyo, JAPAN; and Yuasa-Exide Inc., Reading, PA. The Consortium has received verbal commitments from: Fiamm S.p.A., Montecchio, ITALY; Hawker Batteries Ltd., Market Harborough, UNITED KINGDOM; RSR Corporation, Dallas TX; Trojan Battery Company, Sante Fe Springs, CA; and Varta Batterie AG, Kelkheim/Ts., GERMANY; and O&C Corporation, Indianapolis, IN.

Participants will provide economic support, advice, and other assistance to the Consortium, which, as an ILZRO project, is subject to the oversight of the ILZRO Board of Directors.

ILZRO's current membership consists primarily of companies from the lead, zinc and affiliated industries. ILZRO is a non-profit, tax-exempt research organization whose functions include the management of research to improve existing uses and advance new applications for lead and zinc. The ALABC program has been established by ILZRO to carry out research and development into the use of the lead-acid battery in electric vehicles. The ALABC participants include companies who are not members of ILZRO.

The objective of the Consortium is to provide technology to accelerate the design and development of a lead-acid battery for immediate use in electric vehicles, together with the technology, related systems and equipment needed to support widespread usage of lead-acid batteries to power electric vehicles. Specifically, the Consortium will sponsor research and development programs aimed at producing a lead-acid battery system and related support systems with superior qualities for motive power uses and in high serial production volumes. The Consortium seeks to develop a lead-acid battery technology which will allow the mass production and sale of electric vehicles to consumers in the near future.

Membership in the Consortium remains open, and the parties intend to file additional written notification disclosing all changes in memberhsip to the Consortium.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17826 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Marathon Oil Company "1992 Horizontal Well Gravel Pack Program"

Notice is hereby given that, on June 26, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in a project titled the "1992 Horizontal Well Gravel Pack Program" filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objective of the research to be performed in accordance with said project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in the 1992 Horizontal Well Gravel Pack Program, together with the nature and objectives of the research program, are given below.

The current parties to the 1992 Horizontal Well Gravel Pack Program Agreement are: Agip Spa, 21020 Milano, Italy; ARCO Oil and Gas Company, Plano, TX; BP Exploration Inc., Houston, TX; Chevron Oil Field Research Co., La Habra, CA; Conoco, Inc., Houston, TX; Dowell Schlumberger Incorporated, Tulsa, OK; Marathon Oil Company, Lafayette, LA; Oryx Energy Company, Dallas, TX; Petrobras, Rio de Janeiro, RJ Brasil 21910; Statoil, 4033 Forus Norway; and Texaco, Inc., Bellaire, TX.

The objective of the project is to collect, compile and distribute to the participants information and gravel pack data regarding procedures and methods of gravel packing horizontal oil wells using Marathon Oil Company's proprietary 100-ft., full-scale, high pressure wellbore model. The study will generate data useful for a cased-hole, gravel pack completion. Research and development work required in furtherance of this project is to be carried out by Marathon Oil Company.

Participation in this project is open to all parties meeting the conditions of the program agreement. The project commenced on February 18, 1992, and will last until all project work is completed, until the project is otherwise terminated, or until December 31, 1992, whichever occurs first. Information regarding participation in this project may be obtained from Dr. John A. Davis, Jr., Director of the Petroleum Technology Center, Marathon Oil Company, P.O. Box 269, Littleton, CO 80160-0269.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17832 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Pyrethrin Joint Venture

Notice is hereby given that on July 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Pyrethrin Joint Venture filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the corporate names of two members of the Pyrethrin Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Joint Venture member Fairfield American Corporation, Rutherford, NJ, has changed its corporate name and location to Roussel UCLAF Corporation, Englewood Cliffs, NJ, and Joint Venture member Prentiss Drug and Chemical Corporation, Floral

Park, NJ, has changed its corporate name to Prentiss Incorporated.

No other changes have been made in either the membership, corporate names, or planned activities of the Joint Venture. Membership in this Joint Venture remains open, and the members to the Joint Venture intend to file additional written notification disclosing all changes in membership.

On February 6, 1986, the Pyrethrin Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 18, 1986, 51 FR 9286. On April 15, 1991, the Pyrethrin Joint Venture filed an additional notification. The Department of Justice published the notice in the **Federal Register** in response to this additional notification on May 20, 1991, 56 FR 23089.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17829 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Smart House, L.P.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P., on July 6, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the identifies of additional parties to the Smart House Project ("the Project") and parties which have ceased to be involved in the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovey of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the additional parties to the Project, those which have ceased to be involved in the Project, and those whose relationship to the Project has changed, are given below.

The following parties no longer are involved in the venture: Edison Electric Institute, Washington, DC; Kenwood U.S.A. Corporation, Long Beach, CA; NEC Home Electronics (U.S.A.) Inc., Wood Dale, IL; Sanyo Fisher (USA) Corporation, Chatsworth, CA; Sharp Electronics Corporation, Mahwah, NJ; Staubli Corporation, Duncan, SC; Teknika Electronics Corporation, Fairfield, NJ; Toshiba America, Inc., Wayne, NJ; and Westinghouse Electric Corporation, Columbus, OH.

The following additional parties are now participating in the venture: ADEMCO, Syosset, NY; Carrier Corporation, Indianapolis, IN; Enerzone Systems Corporation, Dallas, TX; Powerline Control Systems, Northridge, CA; S-MOS Systems, San Jose, CA; Softdesk Inc., Henniker, NH; UGI Utilities, Inc., Lancaster, PA; and Voyager Security Systems, Morgan Hill, PA.

No other changes have been made in either the membership or the planned activities of the Project.

On June 14, 1985, the predecessor in interest to Smart House, L.P., filed the original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 17, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, April 5, 1988, November 2, 1988, June 30, 1989, February 26, 1990, August 7, 1990, February 4, 1991, and November 4, 1991, Smart House, L. P., or its predecessor in interst, filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), January 28, 1986 (51 FR 3520), May 16, 1986 (51 FR 18049), August 28, 1986 (51 FR 30724), January 15, 1987 (52 FR 1673), May 8, 1987 (52 FR 17490), July 30, 1987 (52 FR 28494), September 22, 1987 (52 FR 35596), January 5, 1988 (53 FR 186), March 21, 1988 (53 FR 9154), May 3, 1988 (53 FR 15750), December 8, 1988 (53 FR 49614), August 23, 1989 (54 FR 35091), April 9, 1990 (55 FR 13199), September 6, 1990 (55 FR 36711), March 15, 1991 (56 FR 11273), December 23, 1991 (56 FR 66454), and May 29, 1992 (57 FR 22829), respectively.

The principal business address of the Project is 400 Prince Georges Boulevard, Upper Marlboro, MD 20772-8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17827 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984 "Further Development of Molecular Sieves To Reduce Cold Start Emissions From Automobiles"

Notice is hereby given that, on June 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "Further Development of Molecular Sieves to Reduce Cold Start Emissions from Automobiles." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Ford Motor Company, Dearborn, MI (effective March 25, 1992) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On September 9, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 8, 1991, 56 FR 50729. A list of additional parties was published on May 29, 1992, 57 FR 22830.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17828 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—South Carolina Research Authority

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the South Carolina Research Authority ("SCRA") on June 8, 1992 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

The participants in the program, led by SCRA, Columbia, SC are: The Boeing Company (acting through its Defense & Space Group), Seattle, WA; Digital Equipment Corporation, Maynard, MA; Hughes Aircraft Company, Los Angeles, CA; Hewlett-Packard Company, Palo Alto, CA; Mentor Graphics, Wilsonville, OR; Martin Marietta (acting through its Electronics Information and Missiles

Group), Bethesda, MD; Rockwell International, Cedar Rapids, IA; and Versant Object Technology Corporation, Menlo Park, CA.

The objective of the program entitled "PREAMP" is to advance the state-of-the-art in product design and manufacture. The program will demonstrate the technology with electronic products and combine advance technologies, including capabilities in database management and knowledge engineering to provide a fully integrated standards-based, data-sharing, automated framework for concurrent engineering in the electronics industry. In addition, the program will define product and manufacturing process data models for use within the automated framework.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-17833 Filed 7-28-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Finding of No Significant Impact for the consolidation of the San Jose Job Corps Center in San Jose, CA; Response to Comments

Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500 to 1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor (DOL), Employment and Training Administration (ETA), Office of Job Corps, in accordance with 29 CFR 11.11(d), has prepared this project chronology and response to comments received regarding the Finding of No Significant Impact (FONSI) for the consolidation of the San Jose Job Corps Center (Center) in San Jose, California, published in the **Federal Register** on December 27, 1991. 56 FR 67105.

As noted in the FONSI, the present San Jose Job Corps Center operations are split between two separate locations within the City of San Jose—the main campus, in downtown San Jose, and the Conniff School site, in suburban San Jose. The purpose of the proposed action is to consolidate operations at one location, which involves relocating the main campus activities to the Conniff site. This will necessitate the rehabilitation and upgrading of existing facilities and some new construction. The Conniff site has been in continuous use by Job Corps since 1972, under a lease agreement with the alum Rock Union Elementary School District, and was used as a public school prior to that. In June 1986, DOL purchased the facility.

In June 1986, Job Corps made known it would purchase the Conniff site. At the same time, plans for the relocation and consolidation of the site were announced. Since then, Job Corps has undertaken a significant number of steps to respond to issues regarding the consolidation, including environmental concerns. The information which follows serves to highlight major steps which have taken place.

Throughout the period following announcement of the site's purchase, the Center's newsletter, the "Communicator," provided on-going information regarding both purchase of the Conniff site and plans for the Center consolidation. The "Communicator" is a monthly publication distributed to over 400 individuals in the San Jose area, including elected officials, heads of human services agencies, and those in the immediate area of the Conniff site. During this same time, the Center staff and Community Advisory Board (CAB) also initiated contact with key political leaders to inform them of the Center's progress toward consolidation.

Community outreach efforts were initiated with an open house at the Conniff site in December 1989, at which time the Center consolidation plans were discussed. There was active participation by members of the community.

On March 15, 1991, a press release was issued and contacts were made regarding community meetings to be held at the Conniff site. These meetings were held on April 4 and 6, 1991. Following the meetings, a number of questions were received from neighbors and other interested community members about the Center's plans. In response to these questions, the Center scheduled another community meeting on June 8, 1991, and also invited interested individuals to tour the main campus in downtown San Jose. The downtown site tour was held on May 21, 1991, and, on the same day, a letter announcing a June 8, 1991, meeting subsequently held, was distributed to the Conniff neighborhood. On July 9, 1991, a meeting was held by a committee representing all concerned parties, as a result of which the decision was made by DOL to redo the Environmental Assessment (EA) prepared in the mid-1980's.

DOL contracted an environmental firm, Optimum Services & Systems, Inc., (OSS) to conduct the EA. On July 31, 1991, neighborhood representatives met with OSS to identify concerns to be considered in the EA. The EA report was finalized and delivered to the National Office of Job Corps on November 7, 1991. Based on the EA, DOL made a Finding of No Significant Impact (FONSI) and announced the FONSI in the **Federal Register** on December 27, 1991. 57 FR 67105. On February 6, 1992, the Regional Office began distributing copies of the EA to all individuals in the Conniff neighborhood and all persons who requested it. The Department also arranged for a representative of the neighborhood group to receive copies of all background resource documents collected by OSS in preparing the EA. These materials were received by the neighborhood representative on March 18, 1992.

Subsequently, the period during which the record was kept open was extended from 30 to 60 days at the request of the neighborhood group. That period closed with no formal comments being received by DOL regarding consolidation activities at the Conniff site, although some have been received since then.

The EA made a number of specific recommendations regarding noise, traffic, aesthetics, archeology, and history. In response to one EA recommendation, an archeological assessment was performed on December 10, 1991, with reporting completed on January 8, 1992. Based on the data derived from the records, the literature search, and the field survey, it was determined that no cultural resources which are listed or eligible for listing on the National Register of Historic Places will be impacted by the proposed project. The study recommended that the project proceed with no additional cultural resource investigation.

In addition, in response to recommendations and contracts between the Center and neighbors, Job Corps has made a number of revisions to project plans, including changes to bus routings and bus turnaround areas, additional plantings to increase visual privacy, improving outside lighting, noise insulation, addition of security staff, and redesign of the site to provide more off-street parking for Center staff.

All questions and comments received have been reviewed and addressed by DOL and are included in the administrative record. Highlights of the most significant questions and responses are provided here.

1. Police protection, particularly jurisdiction and response time, has been raised as a concern. Specifically, some residents have expressed concern about

Job Corps students roaming the community unchaperoned

Discussions about police security are provided in sections IV.B.7.b and V.B.7 of the EA. As noted therein, because the Conniff site is within the incorporated limits of the City of San Jose, police service is the responsibility of the City Police Department. Services to the community surrounding the Conniff site are provided by the Santa Clara County Sheriff's Department. In the event of an emergency, the county Communications Dispatcher can request service from the City of San Jose Police Department, the Santa Clara County Sheriff's Department, or the California Highway Patrol. A description of this working relationship was provided in appendix D of the EA.

Discussions regarding supervision of Job Corps students and on-Center security were provided in sections II.A.2, IV.B.7.b, V.A.5, and V.B.7 of the EA. With respect to the students, security guards will be on duty both day and night. The students are held responsible for their behavior through daily accountability checks and they are under the general supervision of the staff at all times.

2. Some members of the community have raised concerns about disturbance to the neighborhood from facility noise, particularly noise from student activities.

Discussions regarding possible noise from the consolidated facility were provided in sections V.A.5, VII.D.1, and VII.E.1 of the EA. Potential noise sources such as construction activities, vehicular traffic, student activities, and building appurtenances were discussed in the context of concerns both to the students of the consolidated Center and to neighbors in the surrounding residential community. Construction will be limited to the hours between 7 a.m. and 7 p.m. and exhaust equipment will be muffled during construction. Center staff and non-resident student vehicles will be used primarily during the morning and evening rush hours when local residents are also commuting; therefore, they should not contribute significantly to noise levels. No increase of bus traffic is expected.

With respect to student activities, during the day, students will be primarily in classrooms. In the late afternoons and evenings, students will have some free time to socialize in the dormitories, recreation buildings, and on the center grounds. Most of this activity is expected to be centered around the central court-yard area, where any noise generated will be mitigated by the center building arrangement and landscaping. Center staff will provide general supervision, and noise should not reach a level that would be a nuisance to the community surrounding the center.

3. The question of the zoning designation of the area for the consolidated facility and possible need for revision of designation has been raised.

Land use was discussed in sections IV.B.1 and V.B.1 of the EA. The specific zoning designation for the Conniff site is R–1–B–8, a special residential zoning. According to chapter 20.24 of the City zoning regulations, permitted uses include public and private schools. The Conniff site has been in continuous use as a day school since before 1972, first as a part of the Alum Rock School District and, since 1972, as a Job Corps Center. The proposed use of the Conniff site as a residential school is also consistent with the City of San Jose's planned use of that area, as discussed further below.

City planners and administrators have participated in the planning and development of the project from the beginning#. Further, as part of the EA study, OSS made a careful review of the City of San Jose's Horizon 2000 General Plan, which is the basic operational plan for the City. It represents official City of San Jose policy regarding the future character and quality of development. The Horizon 2000 General Plan designates the Conniff site as a Public/Quasi-Public category area in its Land Use/Transportation Diagram. This category is used to designate such public land uses as schools, colleges, corporation yards, homeless shelters, libraries, fire stations, convention centers, and hotels.

Section IV.B.2 of the Horizon 2000 General Plan also states that one of the goals of the Plan is to create more job opportunities for existing residents, particularly those who suffer from chronic unemployment, and to achieve parity between jobs and resident workers. The same section further states that it is the City's policy to cooperate with appropriate institutions and agencies in providing job opportunities for the economically, physically, and socially disadvantaged.

Section VI.A of the Horizon 2000 General Plan provides that the "land uses shown on the Land Use/Transportation Diagram are not, in all cases, reflective of the existing zoning of property. In such cases, the General Plan land use indicates the intent of the City as to what is the appropriate future zoning." Thus, the Horizon 2000 General Plan is the document that governs zoning decisions, not currently zoning categories.

For all of these reasons, the location of a residential Job Corps center at the Conniff site is consistent with the broad meaning and intent of the City as expressed by its application of the Public-Quasi-Public Land use category to the Conniff site.

4. A neighborhood group has expressed concern about the appropriateness of the site for the students and the neighborhood. In particular, some residents are concerned that recreational facilities "do not exist" within walking distance for the students.

There will be a recreation facility of the site, and there is a significant amount of on-site outside space that will be used for recreation. Provision is being made to adapt this space for on-Center recreational use. The Center does not intend to substitute neighborhood facilities for its own.

5. Some members of the community are concerned about use of the Conniff site should Job Corps leave in the future.

Sections VII.A and VII.B of the EA addressed the issues of short-term use versus long-term productivity and irreversible losses, respectively. As noted in these sections, the Conniff site is not presently being used to its full potential. The proposed project will constitute an improvement to the Conniff site, and no irreversible losses are associated with the proposed action.

6. Some community members have expressed concern about the appropriateness of the Conniff site for use as a Job Corps center, stating that a residential neighborhood was inappropriate and citing examples of Job Corps centers which are not located in such neighborhoods.

The concern that the site is an inappropriate choice for a Job Corps center because of its relative population density and its location within a single-family residential neighborhood is misplaced. There are Job Corps centers across the country with denser populations than the one proposed for the Conniff site, and many centers are located within residential neighborhoods. Furthermore, prior to the present consolidation project, the site was evaluated by a team of design and construction professionals and found to be well suited for Job Corps use.

7. Concerns have been expressed about sewerage facilities, and some community representatives state that sewer problems are common in the area, due to the "older system currently in place." Some residents state that adding a permanent housing facility for 360 or more people would only make the problem worse.

Discussions regarding sewage collection were provided in sections IV.B.6.b and V.B.6.b of the EA. Additionally, appendix E of the EA provided a letter from James W. Foley, Division Manager, Design and Construction Division, Department of Public Works, City of San Jose. In this letter, Mr. Foley states "the City's sanitary sewer collection system has adequate capacity to serve the proposed use of the site." While the letter stipulates the condition that no sewage from the proposed project may be "discharged to a sewer which ultimately discharges to the four-inch cast iron sewer main in Viewmont Avenue," the proposed project does not include any such discharge.

8. Some members of the community are concerned about access through the Conniff site.

In order to ensure the public's safety and protect the Federal Government's liability, the site will be closed to public access.

9. Some members of the community fear that increases in traffic from the Center will cause problems on local streets.

Discussions regarding transportation issues were provided in sections IV.B.6.e, V.B.6.e, VII.D.2 and VII.E.2 of the EA. These sections discussed issues such as Center bus approach and departure routes and parking areas for staff and non-resident students, as well as the effects of increased traffic on neighborhood streets. As noted in the EA, the increase in traffic volume is not expected to affect traffic flow on neighborhood streets.

The chronology presented above shows clearly that DOL has, in good faith, complied with all applicable regulations during its planning process. DOL has also demonstrated its commitment to an appropriate evaluation of potential environmental impacts (as stated in the FONSI). Responses to the FONSI, all of which were received after the expiration of the 60-day period during which the administrative record was held open, have been, nevertheless, considered, and to the extent they were persuasive, caused changes to be made. Therefore, the Department of Labor, Employment and Training Administration, Office of Job Corps, reaffirms the FONSI, that the consolidation of the San Jose Job Corps Center to the Conniff site in San Jose, California, will not cause any significant impact to the environment.

Dated at Washington, DC, this 23rd day of July, 1992.

Peter Rell,

Director of Job Corps.

[FR Doc. 92-17895 Filed 7-28-92; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Iowa State Standards; Notice of Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667; hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa Plan and the adoption of subpart J of part 1952 containing the decision. Iowa was granted final approval under section 18(e) of the Act on July 2, 1985.

The Iowa Plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated March 10, 1992, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Occupational Exposure to Bloodborne Pathogens, Final Rule, 29 CFR 1910.1030, as published in the **Federal Register** (56 FR 64175, dated December 6, 1991). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on January 8, 1992; hearing scheduled for January 30, 1992, comments were presented by the Iowa Dental Association; and resolution adopted by the Division of Labor Services on February 12, 1992, pursuant to Chapter 17a, Iowa Code. The standard was effective March 4, 1992; and notice of its adoption was published by the State on March 4, 1992.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; extension of partial stay and amendment of final rule, 29 CFR 1926.58, as published in the **Federal Register** (55 FR 3732, dated February 5, 1990). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on January 8, 1992; hearing scheduled for January 30, 1992 (no comments were received); and resolution adopted by the Division of Labor Services on February 12, 1992, pursuant to Chapter 17a, Iowa Code. The standard was effective March 4, 1992, and notice of its adoption was published by the State on March 4, 1992.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, room N3700, 200 Constitution Avenue, NW; Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

4. Public Participation

Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State Plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective July 29, 1992. (Section 18, Public Law 91-596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Kansas City, Missouri, this 7th day of May, 1992.

John T. Phillips,

Regional Administrator.

[FR Doc. 92-17897 Filed 7-28-92; 8:45 am]

BILLING CODE 4510-26-M

Minnesota State Standards; Approval

Background. Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for the Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On June 8, 1973, notice was published in the **Federal Register** (38 FR 15076) of the approval of the Minnesota plan and the adoption of subpart N or part 1952 containing the decision.

The Minnesota plan provides for the adoption of Federal standards as State standards by reference after an opportunity for public comment and/or requests for public hearings. OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the state prior to federal review and approval.

By notice published on March 16, 1992 in the Minnesota State Register (cited as 16 S.R. 2054) and incorporated as part of the plan, Minnesota has adopted State standards comparable to:

1. Occupational Exposure to Formaldehyde; Extension of Administrative Stay, as published in the **Federal Register**, Volume 56, No. 113 dated June 13, 1991; Volume 56, No. 153 dated August 8, 1991; and Volume 56, No. 219 dated November 13, 1991.

2. Occupational Exposure to Asbestos, Tremolite, Anthophylite, and Actinolite; Extension of Partial Stay and Amendment of Final Rule, as published in the **Federal Register**, Volume 56, No. 171 dated September 4, 1991.

3. Safety Standards for Stairways and Ladders Used in the Construction Industry; Technical Amendments to the Final Rule, as published in the **Federal Register**, Volume 56, No. 164 dated August 23, 1991.

These standards, which are contained in the Minnesota Occupational Safety and Health Codes and Rules, were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings. No written comments or requests for hearing on objections were received concerning the proposed standards. The order of adoption was published in the State Register (16 S.R. 2054) on March 16, 1992, pursuant to Minnesota Statute 182.655 (1974).

Decision. Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards and amendments are identical to the Federal standards and accordingly are approved.

Location of Supplement for Inspection and Copying. A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, room 3244, Chicago, Illinois 60604; State of Minnesota, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55155; and the Directorate of Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation. Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process, or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Minnesota State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective on July 29, 1992.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Chicago, Illinois, this 30th day of June.

Michael G. Connors,

Regional Administrator.

[FR Doc. 92-17896 Filed 7-28-92; 8:45 am]

BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Grant and Cooperative Agreement Awards

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to four (4) organizations that applied for funding under the Corporation's announcement of funding availability published in 57 FR 1944, (May 6, 1992). These four grantees will provide representation to appellants before the United States Court of Veterans Appeals. A total of $900,000 will be awarded to the following grantees:

Name of Grantee	State	Amount
The Veterans Consortium	DC	$703,000
Disabled American Veterans	DC	50,000
National Veterans Legal Services Project/Paralyzed Veterans of America	DC	85,000
Swords to Plowshares	CA	62,000
Total		900,000

This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this thirty-day public comment period.

DATES: All public comments and recommendations must be received by the close of business on August 28, 1992.

ADDRESS: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Christopher Sundseth, Project Liaison, Office of Field Services, Legal Services Corporation (202) 336-8911.

July 23, 1992.

Charles T. Moses, III,

Deputy Director, Office of Field Services.

[FR Doc. 92-17870 Filed 7-28-92; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Science Resources Studies; Notice of Amendment

The Special Emphasis Panel in Science Resources Studies is holding a meeting in Washington, DC on August 6, 1992. This meeting was announced in the Federal Register on July 16 (57 FR 31542) as a meeting opened to the public. The committee will be discussing the preparation of a draft congressionally mandated report. Information included in the report may involve discussion of data obtained from academic institutions which necessitates closing the meeting. The agenda for this meeting has been amended to read:

9–10 a.m.—Discussion of format of the report and presentation of the data. (Open)
10–5 p.m.—Review and discussion of a congressionally mandated report. (Closed).

Reason for Closing: The discussion could disclose data from individual institutions that is privileged or confidential. These matters are within exemptions (4) of 5 U.S.C. 552b(c) of the Government in the Sunshine Act.

Dated: July 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–17912 Filed 7–28–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–0299]

Umetco Minerals Corp. Gas Hills Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend source material license SUA–648 for the Gas Hills Mill to incorporate reclamation schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-648, Umetco Minerals Corporation's Gas Hills Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires September 14, 1992.

ADDRESSES: Copies of the response from Umetco Minerals Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, CO, and the NRC Public Document Room 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO, 80225.

Comments may be hand-delivered to room P–223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303–231–5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the Federal Register on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 22, 1991.

The proposed schedule calls for placement of the final cover by December 31, 1995, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation milestone schedule and concluded that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA–648 to incorporate the schedules proposed by the licensee by adding License Condition No. 59 as follows:

59. The licensee shall complete site reclamation in accordance with the approval reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 54 and 58, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile:

For the Inactive Impoundment—complete.
For the A–9 Impoundment—December 31, 1993.
For the Heap Leach Impoundment—December 31, 1993.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion:

For the Inactive Impoundment—complete.
For the A–9 Impoundment—complete.
For the Heap Leach Impoundment—complete.

(3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background:

For the Inactive Impoundment—December 31, 1995.
For the A–9 Impoundment—December 31, 1995.
For the Heap Leach Impoundment—December 31, 1995.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40:

For the Inactive Impoundment—December 31, 1996.
For the A–9 Impoundment—December 31, 1996.
For the Heap Leach Impoundment—December 31, 1996.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1996.

C. Any license amendment request to revise the completion dates specified in section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 7th day of July 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall, Director,

Uranium Recovery Field Office.

[FR Doc. 92–17910 Filed 7–28–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Extension

Rule 15a–4—File No. 270–7.
Rule 15b1–2—File No. 270–12.
Rule 15b1–4—File No. 270–9.
Rule 15b6–1 and Form BDW—File No. 270–17.
Proposed Rule 15c2–10—File No. 270–324.
Rule 17a–1—File No. 270–244.
Rule 17a–3—File No. 270–26.
Rule 17a–4—File No. 270–242.
Rule 17a–7—File No. 270–147.
Rule 17Ad–6—File No. 270–151.
Rule 17Ad–7—File No. 270–152.
Rule 19d–1—File No. 270–198.
Rule 19h–1—File No. 270–247.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*):

Rule 15a–4, grants a temporary exemption from broker-dealer registration to certain members of national securities exchanges if the exchange files a statement with the Commission. Approximately 20 exchanges incur an average annual burden of 8 hours to comply with this rule.

Rule 15b1–2, requires a statement of financial condition to be filed with an application for registration as a broker-dealer. Approximately 3000 broker-dealers incur an average annual burden of 3 hours to comply with this rule.

Rule 15b1–4, permits a fiduciary who succeeds to the business of a registered broker-dealer and files a statement with the Commission to continue to operate the broker-dealer's business without submitting a separate application for registration as a broker-dealer. Approximately 5 fiduciaries incur an average burden of 5 hours per year to comply with this rule.

Rule 15b6–1, requires notice to be filed on Form BDW by a broker-dealer who wishes to withdraw from registration. Approximately 847 broker-dealers incur an average burden of one-half hour per year to comply with this rule.

Proposed Rule 15c2–10, would require sponsors of proprietary trading systems to provide the Commission with certain information relating to the systems' operations, and to maintain certain records. Approximately 16 sponsors would incur an average burden of 210 hours per year to comply with this rule.

Rule 17a–1, requires certain self-regulatory organizations to maintain records relating to their self-regulatory activities, and to make these records available to the Commission on request. Twenty-six respondents incur an average burden of approximately 50 hours per year to comply with this rule.

Rule 17a–3, requires certain exchange members, brokers and dealers to maintain specified records. Approximately 6000 firms incur an average burden of 249 hours per year to comply with this rule.

Rule 17a–4, requires broker-dealers to preserve certain records required to be maintained by Rule 17a–3 and other rules. Approximately 8800 broker-dealers incur an average burden of 250 hours per year to comply with this rule.

Rule 17a–7, requires foreign broker-dealers registered with the Commission to maintain copies of their books and records in the United States, or to agree to make them available on request. Three broker-dealers incur an average burden of one hour per year to comply with this rule.

Rule 17Ad–6, requires registered transfer agents to maintain certain records. Approximately 1700 transfer agents incur an average burden of 480 hours per year to comply with this rule.

Rule 17Ad–7, requires registered transfer agents to preserve certain records required to be maintained by Rule 17Ad–6 and other rules. Approximately 1700 transfer agents incur an average burden of 114 hours per year to comply with this rule.

Rule 19d–1, requires a self-regulatory organization to file notice with the Commission upon taking any final disciplinary action. Nineteen self-regulatory organizations incur an average burden of 20 hours per year to comply with this rule.

Rule 19h–1, requires a self-regulatory organization to file notice with the Commission when it proposes to admit a person to, or continue a person in, membership or participation notwithstanding a statutory disqualification with respect to that person. Three self-regulatory organizations incur an average burden of 150 hours per year to comply with this rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 20, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17840 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 18857; International Series Rel. No. 426; 812–7916]

The Latin American Investment Fund, Inc., et al.; Notice of Application

July 21, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Latin America Investment Fund, Inc., The Latin America Equity Fund, Inc., The Chile Fund, Inc., The Brazilian Equity Fund, Inc., The Emerging Markets Telecommunications Fund, Inc., and any similar investment fund formed in the future with authority to invest in Latin America for which BEA Associates serves as investment adviser (the "Funds"); and BEA Associates (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Funds to co-invest, with one another and certain offshore funds advised by the Adviser, in Latin American securities acquired through privately-negotiated transactions.

FILING DATE: The application was filed on May 6, 1992 and amended on July 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 17, 1992, and should be

accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Citicorp Center, 153 East 53rd Street, 58th Floor, New York, New York 10022–4669.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is close-end, non-diversified, management investment company registered under the Act. The initial public offering of the shares of each Fund was registered under the Securities Act of 1933, and the shares of each Fund are listed for trading on the New York Stock Exchange.

2. The Adviser serves as investment adviser to each of the Funds. The Adviser, a general partnership organized under New York state law, is registered under the Investment Advisers Act of 1940. The Adviser has sole investment discretion for each Fund and makes all decisions affecting assets in the Funds' portfolios, under the supervision of each Fund's Board of Directors ("Board") and in accordance with each Fund's stated policies, except that Salomon Brothers Asset Management, Inc. acts as investment adviser to The Latin American Investment Fund, Inc. with respect to sovereign debt investments.

3. In addition to serving as adviser to the Funds, the Adviser also serves as investment adviser to six investment funds, authorized to invest in Latin American securities, which are not required to be registered under the Act (a) pursuant to section 3(c)(1) because their outstanding securities are beneficially owned by less than 100 persons, or (b) because they are not organized or otherwise created under the laws of the United States or any state, have not made use of the mails or any means or instrumentality of interstate commerce in connection with any public offering of their securities, and their outstanding securities are beneficially owned by less than 100 U.S. persons. These funds, along with any similar entity created, advised, sponsored or otherwise organized by the Adviser or its affiliates in the future, are designated herein as the "Offshore Funds."

4. Each Fund invests primarily in securities issued by issuers located in one or more countries in Latin America.[1] Each Fund invests, in accordance with the investment policy set forth in its prospectus, in a combination of equity securities and corporate and government debt securities of Latin American issuers. Each Fund invests in listed and unlisted securities, except for The Brazilian Equity Fund, Inc. which invests only in listed securities.

5. Applicants request an order of the Commission to permit any one or more Funds to make investments through privately-negotiated transactions, concurrently with one or more other Funds and/or one or more Offshore Funds (a "Co-Investment"), subject to the conditions set forth below.

6. The securities markets of Latin American countries are substantially smaller and less liquid than the major securities markets in the United States. A high proportion of the shares of many Latin American companies may be held by a limited number of persons, thus limiting the shares available for investment by a Fund. The ability to co-invest will benefit the Funds by increasing favorable investment opportunities available to them. Co-investing will permit the funds to participate in investment opportunities from which they would otherwise be precluded by their size, increase the diversification of their portfolio holdings, and perhaps invest on more favorable terms.

7. In order to avoid conflicts of interest, the ability of a Fund to enter into a Co-Investment with respect to a portfolio company in which another Fund, an Offshore Fund, the Adviser or any of their affiliates has an interest prior to the receipt of the order requested by this application is prohibited. Additionally, the Funds and the Offshore Funds will not acquire different classes of securities from the same issuer unless securities of each class are acquired by each party in amounts proportionate to each other and on identical terms.

[1] Latin America for purposes of the application consists of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela.

Applicants' Legal Conclusions

1. Section 17(d) of the Act and rule 17d–1 thereunder require an order of the Commission before an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, may participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered company, or a company controlled by such registered company is a participant. Where two investment companies have in common an investment adviser, directors, and/or officers, the companies may be considered to be under common control and, therefore, "affiliated persons" of each other as defined in section 2(a)(3) of the Act.

2. The terms of the proposed arrangements are not less advantageous to any Fund than they are to any other such Fund or any Offshore Fund, and vice versa. The proposed Co-Investments will be consistent with the provisions, policies and purposes of the Act since each Fund will be offered the opportunity to participate in the transactions with each other participating Fund or Offshore Fund on an identical basis. For these reasons, applicants assert that their proposal meets the standards for granting exemptive relief under section 17(d) and rule 17d–1.

3. Applicants also seek an exemption pursuant to section 6(c). Applicants submit that it would be impractical to attempt to obtain separate exemptive relief for each Co-Investment. Furthermore, Applicants submit that the exemption sought would be "consistent with the protection of investors" and with "the purposes fairly intended by the policy and provisions of [the Act]," as required by section 6(c), because given the respective roles played by each Fund, each Fund's Board, and the Adviser, the conflicts of interest that rule 17d–1 was designed to prevent are simply not present.

Applicant's Conditions

Applicants agree that any order of the Commission permitting the Co-Investments will be subject to the following conditions:

1. No Co-Investments (except for follow-on investments made pursuant to condition 8 below) will be made pursuant to the requested order with respect to portfolio companies in which the Adviser, any Fund or Offshore Fund, or any of their affiliates has previously acquired an interest.

2. The Boards of each Fund will be comprised of a majority of non-interested directors. The Board of each Fund participating in a Co-Investment, including a majority of the non-interested directors, will approve Co-Investments in advance. To facilitate each Board's determinations, the Adviser will provide the Board of a Fund with periodic information listing all investments made by the other Funds and the Offshore Funds that would be suitable for investment by a Fund, other than those effected on an exchange or in an over-the-counter market.[2]

3. (a) Before a Co-Investment, the Adviser will make a preliminary determination as to whether each particular Co-Investment opportunity meets an individual Fund's applicable investment objective, policies and restrictions. A particular Co-Investment will be deemed eligible for investment by all Funds for which the Adviser makes a favorable determination ("eligible Funds"). Co-Investment opportunities will be offered to eligible Funds in amounts proportionate to total assets. The Adviser will maintain written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in (a), information concerning the proposed Co-Investment will be distributed to the Board of each eligible Fund. Such information will be presented in written form and will include the name of each eligible Fund and the maximum amount offered each eligible Fund.

(c) Information regarding the Adviser's preliminary determinations referred to in (a) will be reviewed by the Board of each eligible Fund, including the non-interested directors. Each Board, including a majority of the non-interested directors, will make an independent decision as to whether to participate and the extent of participation in a Co-Investment based on such factors as are deemed appropriate under the circumstances. If a majority of the non-interested directors of a Fund determines that the amount proposed to be invested by the Fund is not sufficient to obtain an investment position that they consider appropriate under the circumstances, the Fund will not participate in the Co-Investment. Similarly, a Fund will not participate in a Co-Investment if a majority of the non-interested directors of the Fund determines that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances, although the non-interested directors of a Fund may make a determination that the Fund take other than their allotted portion of an investment, pursuant to condition 5 below. A Fund will only make a Co-Investment if a majority of the non-interested directors of the Fund prior to making the Co-Investment conclude, after consideration of all information deemed relevant (including the extent to which such participation is on a basis different from or less advantageous than that of other participants), that the investments by any other participant Fund or participant Offshore Fund would not disadvantage the Fund in the making of such investment, in maintaining its investment position or in disposing of such investment, and that participation by the Fund would not be on a basis different from or less advantageous than that of any other participant Fund or participant Offshore Fund. The non-interested directors of a Fund will maintain at the Fund's office written records of the factors considered in any decision regarding the proposed Co-Investment.

(d) The non-interested directors of a Fund will, for purposes of reviewing each recommendation of the Adviser, request such additional information from the Adviser as they deem necessary for the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accountants, as they deem appropriate for the reasonable exercise of this oversight function.

4. The directors of a Fund, including a majority of the non-interested directors, will make their own decision and have the right to decide not to participate in a particular Co-Investment. There will be no consideration paid to the Adviser or its affiliates, directly or indirectly, including without limitation any type of brokerage commission, in connection with a Co-Investment. However, the Adviser and its affiliates will continue to receive advisory and other fees from the Funds and the Offshore Funds and may participate indirectly in a Co-Investment through their existing interests in a Fund or an Offshore Fund.

5. Each Fund and each Offshore Fund will be entitled to purchase a portion of each Co-Investment equal to the ratio of a participating Fund's or Offshore Fund's, as the case may be, total assets to the total assets of each other Co-Investment participant. Any Co-Investment participant may determine not to take its full allocation, as long as, in the case of a Fund, a majority of the non-interested directors determines that not doing so would be in the best interest of the Fund. All follow-on investments (as defined in condition 8 below), including the exercise of warrants or other rights to purchase securities of the issuer, will be allocated in the same manner as initial Co-Investments. If a Fund or an Offshore Fund decides to participate in a Co-Investment opportunity to a lesser extent than its full allocation, that entity's portion may be allocated to the other Co-Investment participants based on their respective total assets. If one or more Funds decline to participate in a Co-Investment opportunity, the remaining Funds and the Offshore Funds shall have the right to pursue such investment independently. Similarly, if one or more Offshore Funds decline to participate in a Co-Investment opportunity, the remaining Offshore Funds and the Funds shall have the right to pursue such investment independently.

6. Co-Investments in securities by a Fund with any other Fund or Offshore Fund will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, purchased at the same unit consideration, and the approval of such transactions, including the determination of the terms of the transactions, by the Fund's non-interested directors will be made in the same time period.

7. Except as described below, the Funds and the Offshore Funds will participate in the disposition of securities held by them as Co-Investments on a proportionate basis at the same time and on the same terms and conditions (a "lock-step" disposition). For this purpose, a distribution of securities to the partners or shareholders of an Offshore Fund upon dissolution shall not be deemed a "disposition" of securities. (However, to the extent that an Offshore Fund distributes securities in dissolution to partners or shareholders who are affiliates of the Funds, such partners or shareholders will be bound by the lock-

[2] Although over-the-counter market transactions may be broadly defined to include every transaction other than those actually occurring on a securities exchange, for purposes of this application, the term means an organized market of broker-dealers regularly buying and selling securities through a communications network. It specifically excludes isolated purchase and sale transactions (referred to herein as "privately-negotiated transactions"), the terms of which are individually negotiated between an issuer and an investor or small group of investors or between investors directly without the involvement of a broker or dealer and the use of an organized trading facility. Since transactions on an exchange or over-the-counter market can be effected at a price available to all market participants at any time, disclosure about these types of transactions would not provide any benefit to the Funds in evaluating compliance with the conditions contained in the application.

step disposition procedures established herein.) If a Fund or an Offshore Fund elects to dispose of a security purchased in a Co-Investment with one or more Funds or Offshore Funds, notice of the proposed sale will be given to the non-interested directors of the relevant Fund(s) and to the relevant Offshore Fund(s) at the earliest practical time. The Funds and the Offshore Funds will participate in the disposition of such security on a lock-step basis, unless the non-interested directors of a Fund determine that the Fund should not participate in such sale or not participate on a lock-step basis. A Fund need not participate on a lock-step basis in the disposition of securities sold by any other Fund or an Offshore Fund if the non-interested directors of the Fund find that the retention or sale, as the case may be, of the securities is fair to the Fund and that the Fund's participation or choice not to participate in the sale on a lock-step basis is not the result of overreaching by any other Fund or Offshore Fund. If such a finding is not made, then the relevant Fund must participate in such sale on the basis of a lock-step disposition. Like a Fund, an Offshore Fund may elect not to participate in a sale of securities held as Co-Investments or not to participate on a lock-step basis. If at any time the result of a proposed disposition of any portfolio security held by a Fund or an Offshore Fund would alter the proportionate holdings of each class of securities held by the other Funds and Offshore Funds holding the Co-Investment, then the non-interested directors of the Fund or Funds involved must determine that such a result is fair to the relevant Fund(s) and is not the result of overreaching by any other Fund or Offshore Fund. The non-interested directors will record in the records of the Funds the basis for their decisions as to whether to participate in such sale.

8. If a Fund or an Offshore Fund determines that it should make a "follow-on" investment (i.e., an additional investment in a portfolio company in which a Co-Investment has been made pursuant to the order requested hereby) in a particular portfolio company whose securities are held by it and one or more Funds, or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to such other Fund(s), including its or their non-interested directors at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by a Fund in a follow-on investment and provide the recommendation to the non-interested directors of the Fund along with notice of the total amount of the follow-on investment. Each Fund's non-interested directors will make their own determination with respect to follow-on investments. Follow-on investments will be entered into on the same basis as initial Co-Investments and will be subject to the same approval procedure as those required for initial Co-Investments. Assuming that the amount of a follow-on investment available to a Fund is not based on the amount of the Fund's initial Co-Investment, the relative amount of investment by each Fund participating in a follow-on investment will be based on a ratio derived by comparing the total current assets of each participating Fund and Offshore Fund with the total amount of the available follow-on investment. Each Fund will participate in such investment if a majority of its non-interested directors determines that such action is in the best interest of the Fund. The non-interested directors of each Fund will record in their records the recommendation of the Adviser and their decision as to whether to engage in a follow-on transaction with respect to that portfolio company, as well as the basis for such decision.

9. A decision by the directors of a Fund (i) not to participate in a Co-Investment, (ii) to take less or more than the Fund's full *pro rata* allocation or (iii) not to sell, exchange or otherwise dispose of a Co-Investment in the same manner and at the same time as another Fund or an Offshore Fund shall include a finding that such decision is fair and reasonable to the Fund and not the result of overreaching of the Fund or its stockholders by the Offshore Funds. The non-interested directors of each Fund will be provided quarterly for review all information concerning Co-Investments made by the Funds and the Offshore Funds, including Co-Investments in which the Fund declined to participate, so they may determine whether all Co-Investments made during the preceding quarter, including those Co-Investments they declined, complied with the conditions set forth above. In addition, the non-interested directors of each Fund will consider at least annually the continuing appropriateness of the standards established for Co-Investments by the Fund, including whether use of such standards continues to be in the best interest of the Fund and its shareholders and does not involve overreaching of the Fund or its shareholders on the part of any party concerned.

10. No non-interested director of a Fund will be an affiliated person of any Offshore Fund or have had, at any time since the beginning of the last two completed fiscal years of any Offshore Fund, a material business or professional relationship with any Offshore Fund.

11. Each Fund and each Offshore Fund will each bear its own expenses associated with the disposition of portfolio securities. The expenses, if any, of distributing and registering securities under the Securities Act of 1933 sold by one or more Fund and/or Offshore Fund at the same time will be shared by selling Fund(s) and Offshore Fund(s) in proportion to the relative amounts they are selling.

12. Neither the Adviser nor any of its affiliates (other than the Offshore Funds pursuant to any order issued on this application) nor any director of a Fund will participate in a Co-Investment with one or more Funds unless a separate exemptive order with respect to such Co-Investment has been obtained. For this purpose, the term "participate" shall not include either the existing interests of the Adviser or its affiliates in, or their management fee and expense reimbursement arrangements with, Offshore Funds.

13. Each Fund will maintain all records required of it by the Act, and all records referred to or required under these conditions will be available for inspection by the Commission. The Funds will also maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development company and the Co-Investments were approved by the non-interested directors under section 57(f).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17841 Filed 7-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30948; File No. SR-DTC-92-09]

Self-Regulatory Organizations; The Depository Trust Company; Filing of Proposed Rule Change Relating to the Establishment of an "Honest Broker" Mechanism

July 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1) (1988).

June 16, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing herewith a proposed rule change establishing an "honest broker" mechanism to, in extraordinary circumstances, facilitate the liquidation of securities that have been pledged by book-entry in DTC.

The proposed procedures are as follows:

Procedural Outline

i. DTC's honest broker procedures will be activated only upon a pledgor's request when pledgee banks are unwilling to return pledged securities directly to a pledgor and only at DTC's option after consultations with concerned parties indicate that such action is appropriate.[2] DTC will notify pledgees and DTC's participants of the activation of the honest broker procedures, and will advise its participants of the possibility that deliveries in settlement of their transactions with the pledgor, if any, may be received from the DTC honest broker participant account. In performing the role of honest broker, DTC will undertake no risk other than that arising from its own gross negligence.

ii. DTC will establish an honest broker participant account (the "DTC HB account") for the receipt and redelivery of the pledged securities.

iii. In operating the DTC HB account, DTC will be acting exclusively as agent for the pledgee banks delivering securities to that account.

iv. Each pledgee bank will have to notify DTC of its intent to use the honest broker mechanism and shall use DTC's Demand of Collateral procedures for pledged positions that such pledgee bank intends to deliver to the DTC HB account.[3]

v. By some specified time early enough in the day to ensure orderly settlement, the pledgor will send the information set forth below via DTC's Participant Terminal System ("PTS") to each affected pledgee bank (which will be able to view the information on the next business day via PTS) and to DTC.[4] The information, respecting transactions that the pledgor proposes to have settled through the honest broker mechanism on the next business day, shall consist of the following:

(A) The identity of each issue for which the pledgee bank is requested to deliver shares to the DTC HB account.

(B) For each issue, information as to the pledgor's transactions proposed to be settled that day by redelivery of the pledged positions (which information the pledgor shall furnish to DTC over PTS). Such information shall be in standard delivery order ("DO") format, and shall include for each delivery quantity, price, and settlement amount.

(C) With the information submitted to DTC only, the pledgor will also have to identify the DTC participant account to which each redelivery is to be made.

vi. DTC will provide to the pledgee banks on the morning of settlement day: (A) pricing information on short positions in National Securities Clearing Corporation's ("NSCC") Continuous Net Settlement ("CNS") system; and (B) the aggregate delivery price for each issue (assuming that all of the shares are delivered).

vii. Based upon the above information, each pledgee bank can decide whether to deliver pledged positions to the DTC HB account, and will notify the pledgor and DTC accordingly.

viii. The pledgor will advise the DTC participants to which deliveries are to be made to expect those deliveries from the DTC HB account. Provided that no bankruptcy ruling or court imposed stay has occurred, shares will then be delivered from the DTC HB account with deliveries made in descending price-per-share order (other than deliveries to settle open NSCC CNS short positions, which will be effected first).[5] All settlement credits will be made to the DTC HB account.[6]

ix. For each issue, DTC will allocate on a *pro rata* basis to any pledgee banks that had delivered pledged securities to the DTC HB account: (A) any proceeds received from the redeliveries; and (B) any securities remaining in the account (including deliveries that were reclaimed or otherwise not completed).

Summary

In summary, a pledgee bank that had delivered pledged securities to the DTC HB account could be assured that at the end of the day:

(A) DTC would credit the pledgee bank with the bank's *pro rata* share of any proceeds received by DTC for redeliveries made in such issue; and

(B) DTC would allocate to the pledgee bank on a *pro rata* basis the bank's share of any securities that had not been redelivered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will, in extraordinary circumstances, facilitate the liquidation of securities positions that have been pledged by book-entry in DTC. Deliveries of these pledged positions would be made to DTC for redelivery to participants in settlement of their transactions with the pledgor (typically, a broker under financial stress). The objective of this mechanism is to assure any pledgee bank that delivers pledged securities to the honest broker (DTC) that at the end of the processing day the pledge bank will receive from DTC: (A) its *pro rata* share of any proceeds received by DTC for redeliveries made in such issue; and (B) its *pro rata* share of any securities that had not been redelivered.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder, and in particular Section 17A(b)(3)(A), because it promotes efficiencies in the clearance

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[2] It may be appropriate to activate the procedures in the event of a pledgor's extended operational outage.

[3] Under DTC's Demand of Collateral procedures a pledgee bank can move securities from the pledgee's DTC pledge account to the general account of any DTC participant (other than the pledgor) including the DTC HB account or the bank's own participant account.

[4] Depending on operational considerations, it may be necessary to vary the timing set forth herein—possibly requiring notification by the pledgor and affirmation by the pledgee bank as early as the day prior to settlement.

[5] DTC will not process any free deliveries.

[6] DTC will make special arrangements with NSCC for the related money credits for the NSCC CNS short positions.

and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

An "honest broker" vehicle was used in February 1990 to liquidate securities that had been pledged by Drexel Burnham. At the request of a committee of senior executives from financial institutions, clearing organizations, and exchanges formed to identify and suggest improvements in payment and settlement practices (the "Payment and Settlement Committee" or "PSC"), DTC worked with the PSC's Honest Broker Subcommittee to develop the proposed rule change that is set forth above. On January 22, 1992, the full PSC reviewed and endorsed the proposal for release. On February 11, 1992, DTC issued a notice to its participants soliciting comments on the proposed rule change. The comments that were received were generally favorable, indicating that the proposed procedure would be an important step towards maintaining orderly and timely settlement during times of financial crisis. Various technical questions and questions as to future plans were raised, as were general questions relating to bankruptcy matters. DTC has been advised that the view of those bankruptcy law experts who have reviewed the proposal at DTC's request is that the proposal does not appear to raise any special bankruptcy concerns.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR–DTC–92–09 and should be submitted by August 19, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17685 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30949; File No. SR–NASD–92–24]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Fee on Cleared Transactions

July 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 11, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the terms of Substance of the Proposed Rule Change

The NASD is proposing to amend section 8 of Schedule A to the NASD By-Laws [1] to change the fee imposed on members for cleared transactions. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A

* * * * *

Section 8—Fee on Cleared Transactions

Each member shall be assessed a *transaction* charge [not to exceed 12 cents per side] *of $.0625 per 1,000 shares, with a minimum charge per side of $.025 and a maximum charge per side of $.46875* for each over-the-counter transaction with another member of the Association *reportable through Act* [cleared through a registered clearing agency] in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under section 8 of Schedule A to the By-Laws, the NASD charges a fee on cleared transactions in over-the-counter equity securities. The rule imposes a fixed charge per trade side and is designed to recover some of the costs incurred in maintaining regulatory programs and monitoring trading in securities cleared through the National Securities Clearing Corporation ("NSCC").

Currently, the fee is based on NSCC

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[1] *NASD Securities Dealers, Manual*, CCH ¶ 1759.

trade reports that are limited to information which does not reflect all over-the-counter ("OTC") transactions. Other OTC transactions, such as internalized trades out of dealer inventory, and trades facilitated through the OTC Bulletin Board service for non-NASDAQ OTC securities, are not reported by NSCC and, thus, are not covered by the fee. Additionally, as a fixed charge per trade side, the fee may result in disproportionately higher costs for member firms who trade more frequently in smaller volume.

The NSCC has decided to discontinue providing the trade report upon which the billing for the regulatory fee is based. However, the recently implemented Automated Confirmation Transaction service (ACT) receives and compiles trade report data on virtually all OTC transactions, including internalized trades and the OTC Bulletin Board. ACT now provides a complete profile of all NASDAQ and third market trading data.

The proposed rule amends section 8 of Schedule A to extend the regulatory fee on cleared transactions between members to all transactions reportable through the ACT service and replaces a per side charge with a charge of $.0625 per 1,000 shares (equivalent to $.0000625 per share) coupled with minimum and maximum charge limits. The minimum charge of $.025 per side is equivalent to the per share charge multiplied by 400 shares, and the maximum charge of $.46875 per side is equivalent to the per share charge multiplied by 7500 shares. The current per side charge is $.12.

The proposed rule is consistent with the principle that the NASD's regulatory scope extends to all OTC transactions. The per share formula of the proposed rule, with maximum and minimum charges, also reflects the NASD's recognition that regulatory costs can be more equitably distributed among the members according to a formula based on the size of each transaction.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act.[2] In pertinent part, section 15A(b)(5) requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls. The NASD believes that, for the reasons stated above, the proposed rule change provides for the equitable allocation of reasonable fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change became effective June 11, 1992 pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19(b)–4 thereunder in that it constitutes an amendment to a provision through which the NASD imposes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and augments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17686 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30955; File No. SR–NASD–92–23]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Amending Schedule G to the By-laws to Require Use of a Special Indicator for Certain Pricing Formula Trades

July 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1992 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule G to the By-laws to require members to use a special indicator to denote transactions priced on an average-weighting or other special pricing formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[2] 15 U.S.C. 78o–3(b)(5) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 3, 1992, the Commission approved the NASD's proposal to extend the reporting hours specified in Schedule G for listed securities until 5:15 p.m., to coincide with the newly expanded hours of the Consolidated Tape Association ("CTA").[1] In addition, the Commission approved the use of a new identifier to denote agency cross trades that have been reported at a price based on an average-weighting or other formula rather than a current negotiated price. The NASD is submitting this rule change to establish that the indicator selected by the participants of the CTA to identify these specialized trade reports is the letter "B."

An example of a transaction warranting the indicator would be a trade negotiated during the trading day to be executed after 4 p.m. at a price equal to the average of weighted prices of transactions taking place during the trading day. Certain institutions find such a trade attractive because it ensures that they will not purchase at the high for the day or sell at the low. Trade reports such as these, although timely made, may not relate to the closing CTA price and carry no identifier describing their specialized nature. In order to alleviate confusion with regard to these trade reports, the NASD requested members to mark all such trades as ".SLD" pending approval of a permanent indicator by the CTA denoting the specialized sale condition and implementation of applicable amendments to Schedule G to codify the new requirement.

The NASD has notified vendors of the meaning of the new last sale "B" indicator and that the indicator will be available for vendor use on June 15, 1992, pending Commission approval.[2] The proposed amendment also clarifies that average priced trades occurring during the day should also carry the special "B" indicator.

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. In addition, the proposed rule change furthers the objective set forth in section 11A(a)(1)(C)(iii) of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Reporting transactions in listed securities within 90 seconds after execution is required and the NASD believes that the use of special indicators for specially priced trades obviates investor confusion with regard to those transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The NASD believes that the proposed amendments are appropriate and necessary to avoid investor confusion regarding out of range trade prices. In light of these factors, the NASD requests that the Commission approve the rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act, and specifically, section 15(A)(b)(6) of the Act in that the amendments are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market. In addition, the Commission finds that the proposed rule change furthers the objective set forth in section 11A(a)(1)(C)(iii) of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

The Commission also is approving the proposed rule change on an accelerated basis. In approving the NASD's proposal to require transaction reporting for exchange-listed securities until 5:15 p.m., the Commission encouraged the NASD to implement the new, permanent identifier as soon as practicable.

The Commission believes that accelerated approval is appropriate to avoid investor confusion with regard to trade reports that may reflect average-weighting prices. Thus, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1992.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed amendments to Schedule G to the NASD By-laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17887 Filed 7–28–92; 8:45 am]

BILLING CODE 8010-01-M

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[1] Securities Exchange Act Release No. 30437 (March 3, 1992), 57 FR 8370.

[2] Members have also been notified that for input purposes, members will be required to attach a "W" indicator on incoming trade reports, as the "B" indicator in the Nasdaq system represents bunched trades. The Nasdaq system will read the "W" input and translate the modifier to "B" to transmit the trade report to SIAC and the vendors as "B."

[Release No. 34-30950; File No. SR-NYSE-92-16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Changes Relating to Proposed Amendments to Rules 196, 199, 200, 201, 204, 205, 208, 209, 210 and 211 Regarding Implementation of a Signature Guarantee Program

July 23, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1992, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The text of the proposed rule changes consists of amendments to rules 196, 199, 200, 201, 204, 205, 209 and 210 pertaining to implementation of a "signature guarantee program" as contemplated by 17 CFR 240.17Ad–15 and the rescission as unnecessary or obsolete of rules 208 and 211.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The New York Stock Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Purpose

In order to facilitate compliance with transfer agents' requirements for verification of signatures on guarantees made by member organizations, the Exchange, under its existing signature service program, maintains an extensive file of sample authorized signatures provided by the participating organizations and makes these samples available to transfer agents.

Pursuant to rule 17Ad–15 recently adopted under the Act, transfer agents may reject signature guarantees from a guarantor that is not a participant in a "signature guarantee program" as contemplated by that rule. Non-participants in such a "signature guarantee program" risk rejection of transfers. The Exchange wishes to administer a "signature guarantee program" as contemplated by that rule, but has determined that its current signature service program may not qualify.

The purpose of the proposed rule changes is to enable the Exchange to convert its existing signature service program to a signature guarantee program contemplated under rule 17Ad–15 which uses medallion imprints in place of signatures in effecting assignments, powers of substitution, signature guarantees and other certifications and guarantees incident to the transfer, payment, exchange, purchase or delivery of certificates representing securities (including, but not limited to, erasure guarantees, one-and-the-same guarantees and situs certifications).

One aspect of the implementation of this program will be that the participants make certain indemnities and obtain insurance and a surety bond for the purpose of providing adequate protection to transfer agents against risk of financial loss under certain circumstances, as contemplated by rule 17Ad–15. The participants also will bear the Exchange's administrative expenses in connection with the program; accordingly, a charge to participants of $300 to be paid upon filing an application and annually thereafter has been approved by the Finance Committee of the Exchange's Board of Directors, pursuant to duly delegated authority.

Incidental to the foregoing purpose, the rule changes also reflect the consolidation and restatement of certain rules relating to guarantees, transfers and deliveries of securities, the elimination of certain unnecessary or obsolete rules and the amendments of certain cross-references altered by the changes.

(b) Statutory Basis

The proposed rule changes are consistent with section 6(b)(5) of the Act in that they generally are designed to foster coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities and to protect investors and the public interest by codifying appropriate means for effecting signature guarantees, assignments, powers of substitution and other certifications and guarantees incidental to securities transactions.

The proposed rule changes also are consistent with Section 17A(a)(1) of the Act in that they foster prompt and accurate clearance and settlement of securities transactions by facilitating the signature guarantee process and related activities.

In addition, the New York Stock Exchange believes that the proposed rule changes are in keeping with Section 17A(d)(5) of the Act and rule 17Ad–15 thereunder in that they facilitate implementation of a "signature guarantee program" as contemplated by that rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

The Exchange has requested that the Commission approve the proposed rule changes as soon as possible after the aforesaid date of publication and that such approval indicate that the proposed rule changes become effective on August 24, 1992.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17888 Filed 7-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30947; File No. SR-Phlx-92-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc., Amending the By-Laws Regarding the Board of Governors Term of Office and the Scheduling of the Annual Organizational Meeting

July 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on July 9, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx hereby submits a proposed rule change to amend its By-Laws to provide for an extension of the term of office for members of the Board of Governors and to slate the organizational meeting of the Board following the annual election for the fourth Wednesday of March. These amendments are designed to provide the Chairman more time between the annual election and the first meeting of the Board of Governors thereafter to consider his recommendations to the Board for appointments to Standing and Special Committees.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed By-Law amendments came at the suggestion of the recently elected Chairman who noted at the Board's organizational meeting following the annual election that he had insufficient time to deliberate, consult, and contact members and persons associated with member organizations respecting his recommendations to the Board for appointments to Standing and Special Committees. The proposed By-Law amendments provide an additional week between the annual election on the second Monday of March and the Scheduled organizational meeting of the Board on the fourth Wednesday of March.

The proposed By-Law amendments are designed to aid the governance process at the Phlx by allowing the Chairman adequate time to consider and make recommended selections to Standing and Special Committees to be appointed by the Board at its organizational meeting.

2. Statutory Basis

The proposed rule change is based on section 6(b)(3) of the Act in that it is designed to assure a fair representation of the Exchange members in the selection of Committees and to facilitate the proper administration of its affairs.

The proposed By-Laws amendments, in accordance with Phlx By-Laws Article XXII, section 22-2, were noticed to the membership by Circular #77-92, dated May 22, 1992. No written petitions were filed with the Office of the Secretary requesting a special meeting respecting the proposed amendments. The Phlx Board of Governors at its June 24, 1992 regularly scheduled meeting approved the adoption of the By-Law amendments as proposed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at

the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-92-17 and should be submitted by August 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17889 Filed 7-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18860; 812-7870]

North American Security Trust, et al.; Application

July 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: North American Security Trust ("NAST") and NASL Series Trust ("Series Trust").

RELEVANT ACT SECTIONS: Order requested pursuant to sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act to the extent necessary to permit each present or future portfolio of NAST and Series Trust to engage in principal transactions with securities dealers that may be deemed to be affiliated persons of affiliated persons of the portfolio solely because of subadvisory relationships with one or more of applicants' other portfolios.

FILING DATE: The application was filed on February 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 17, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 695 Atlantic Avenue, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272-3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Series Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. Series Trust has ten separate investment portfolios, all but one of which are diversified and each of which offers a separate series of shares of beneficial interest. Shares of Series Trust are not offered directly to the public. Rather, Series Trust currently serves as the underlying investment medium for funds invested in variable annuity contracts issued by North American Security Life Insurance Company ("Security Life"). Security Life is a wholly-owned subsidiary of North American Life Assurance Company, a mutual life insurance company based in Toronto, Canada.

2. NAST is a Massachusetts business trust registered under the Act as an open-end management investment company. NAST has nine separate, diversified investment portfolios, each of which offers a separate series of shares of beneficial interest to the public.

3. Currently, NAST and Series Trust have the same officers and trustees. In addition, NAST Financial Services, Inc. ("NASL Financial"), a registered broker-dealer and investment adviser and a wholly-owned subsidiary of Security Life, acts as the investment adviser of each portfolio of NAST and Series Trust. NASL Financial also serves as the distributor for NAST and as the principal underwriter of Security Life's variable annuity contracts that are funded by investment in the Series Trust.

4. Under the terms of its advisory agreements with Series Trust and NAST, NASL Financial selects, contracts with and compensates subadvisers for Series Trust's and NAST's investment portfolios (the "Subadvisers"). NASL Financial monitors the compliance of the Subadvisers with the investment objectives and related policies of each portfolio, reviews the performance of the Subadvisers, and reports periodically on their performance to the trustees. NASL Financial also provides certain administrative services and expense guarantees to Series Trust and NAST.

5. Applicants have a combined total of five Subadvisers. Oechsle International Advisors, L.P., a Delaware limited partnership, serves as Subadviser to the Global Equity and Global Government Bond portfolios of Series Trust and the Global Growth portfolio of NAST. Salomon Brothers Asset Management Inc, an indirect, wholly-owned subsidiary of Salomon Inc, serves as Subadviser to each applicant's U.S. Government Securities portfolio. Wellington Management Company, a Massachusetts partnership, serves as Subadviser to each applicant's Growth and Income, Investment Quality Bond, and Money Market portfolios. Fidelity Management Trust Company ("Fidelity"), a wholly-owned subsidiary of FMR Corp., serves as Subadviser to the Equity, Conservative Asset Allocation, Moderate Asset Allocation, and Aggressive Asset Allocation portfolios of Series Trust. Goldman Sachs Asset Management, a division of Goldman, Sachs & Co., a New York limited partnership, serves as Subadviser to the Growth, Conservative Asset Allocation, Moderate Asset Allocation, and Aggressive Asset Allocation portfolios of NAST. Each of the Subadvisers, except for Fidelity, is a registered investment adviser. Fidelity is not an investment adviser for purposes of the Investment Advisers Act of 1940, because it falls within the definition of "bank" as set forth in section 202(a)(2) of that act.

6. None of the Subadvisers is an affiliated person of any other of the Subadvisers. Each Subadviser directly or indirectly competes with each other Subadviser in the investment advisory business and certain of the Subadvisers directly or indirectly compete as securities dealers. None of the Subadvisers is an affiliated person of NASL Financial, Security Life, or any officer, trustee, or employee of either applicant, and none of the Subadvisers owns 5% or more of the shares of any portfolio of either applicant.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 17(b) and 6(c) of the Act to permit applicants to engage in principal transactions entered into in the ordinary course of business between any present or future portfolio of either applicant and any registered securities dealer which is not the Subadviser to the portfolio engaging in the transaction

and which is not an affiliated person (within the meaning of section 2(a)(3) of the Act) of (a) the portfolio engaging in the principal transaction, (b) the Subadviser of that portfolio, (c) NASL Financial, (d) any officer, trustee, or employee of either applicant, or (e) Security Life.

2. Section 17(a), among other things, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, (a) from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property, or (b) from borrowing money or other property from such registered company. Section 17(b) provides, however, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Because NAST and Series Trust have the same investment adviser and the same trustees and officers, each of their portfolios might be deemed to be under common control with each other of their portfolios and, therefore, an affiliated person (within the meaning of section 2(a)(3) of the Act) of each other portfolio. While applicants do not concede that all portfolios of applicants are under common control, they assume, solely for purposes of this application, the existence of such control relationship so that each portfolio of each applicant may be deemed to be an affiliated person of each other portfolio. Accordingly, because a Subadviser is an affiliated person of any of applicants' portfolios that it manages, it may be deemed to be an affiliated person of an affiliated person of any of applicants' portfolios that it does not manage.

4. Each Subadviser, as an affiliated person of each portfolio it manages and as an affiliated person of an affiliated person of each other portfolio, is prohibited by section 17(a) of the Act from engaging in principal transactions with any of the portfolios. Section 17(a) may also prohibit wholly-owned subsidiaries of a Subadviser, parents of a Subadviser, and wholly-owned subsidiaries of such parents from engaging in principal transactions with portfolios not managed by such Subadviser. The only type of principal transaction that would be permitted under the requested order is one that might be deemed to be prohibited by section 17(a) solely because of a registered securities dealer's direct or indirect subadvisory relationship to a portfolio other than the one engaging in the transaction.

5. Applicants assert that under the terms of the requested order, a Subadviser would not be able to cause a portfolio to trade with an affiliated person of anyone with the theoretical or actual power to affect its business relationship as Subadviser to the portfolio. In each transaction permitted by the requested relief, the Subadviser would be dealing, on behalf of the portfolio it managed, with an entity that, in economic reality, is a competitor of that Subadviser. Each such transaction would be the product of arms-length bargaining between competitors. Applicants submit that this is not a situation where a controlling person of an investment company might try to circumvent the prohibition against self-dealing by acting through an affiliate. Applicants state that it would be contrary to the interests of applicants' shareholders to create artificial barriers to dealing with any registered securities dealer where there is not the possibility of self-dealing.

6. Applicants believe that the proposed transactions will meet the standards of section 17(b). Because there will be no conflict of interest inherent in a Subadviser's decision to execute a portfolio transaction with a dealer that is an affiliated person of an affiliated person of the portfolio solely because of a subadvisory relationship with one or more of applicants' other portfolios, there is no danger of overreaching on the part of any person concerned with the transaction. Because the pecuniary interests of the portfolio's Subadviser are solely and directly aligned with those of the portfolio, it is reasonable to conclude that the consideration to be paid or received by the portfolio will be reasonable and fair. Moreover, transactions permitted by the requested order will be consistent with the policies of the portfolio involved, inasmuch as each Subadviser is required by its agreement with NASL Financial to formulate and implement a continuous investment program for each portfolio consistent with the investment objectives and related investment policies for each such portfolio as described in the registration statement of the particular applicant. Finally, applicants argue that permitting the proposed transactions will be consistent with the general purposes of the Act, because the ability to engage in such transactions increases the likelihood of applicants' portfolios achieving the best price and execution on their principal transactions.

7. Based upon the foregoing, applicants believe that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to issue an order pursuant to sections 6(c) and 17(b) of the Act exempting principal transactions of the type for which relief is requested from the provisions of section 17(a) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17890 Filed 7-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18859; 811-5766]

T. Rowe Price International Equity Fund, Inc.; Application for Deregistration

July 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: T. Rowe Price International Equity Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 17, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on August 17, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 100 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch

Applicant's Representations

1. Applicant is a diversified open-end management company incorporated under the laws of Maryland. On February 13, 1989, applicant registered under the Act by filing a Notification of Registration pursuant to section 8(a). On this same date, applicant filed a registration statement on Form N–1A, pursuant to section 8(b) of the Act, and registered an indefinite number of shares under the Securities Act of 1933. Applicant's registration statement was declared effective, and its initial public offering commenced, on May 1, 1989.

2. On February 12, 1992, applicant's board of directors approved an Agreement and Plan of Reorganization (the "Reorganization") between the applicant and the "Scudder Portfolio") of the Scudder Variable Life Investment Fund, a Massachusetts business trust. The board of directors determined that the Reorganization was in the best interest of applicant's shareholders and recommended that shareholders approve the Reorganization. On or about March 19, 1992, proxy materials relating to the Reorganization were distributed to applicant's shareholders. The Scudder Portfolio included such proxy materials as part of the Proxy Statement/Prospectus it filed on Form N–14 in connection with the Reorganization. At a special meeting held on April 23, 1992, the holders of a majority of applicant's outstanding shares approved the Reorganization.

3. On April 27, 1992 (the "Closing Date"), applicant transferred its assets, having an aggregate net asset value of $9,012,873, to the Scudder Portfolio in exchange for shares issued by the Scudder Portfolio. Immediately thereafter, such shares of the Scudder Portfolio were distributed to the shareholders of the applicant. As a result of the exchange, each of applicant's shareholders owned shares of the Scudder Portfolio having an aggregate net asset value equal to the net asset value of shares of the applicant owned by the shareholder immediately prior to completion of the Reorganization.

4. Applicant paid all expenses, fees, and other charges related to the Reorganization. Such expenses, consisting of legal and accounting expenses, totaled approximately $5,000. Unamortized organizational expenses totaling $6,200 were borne by Rowe Price-Fleming International, Inc., applicant's investment adviser.

5. Applicant filed Articles of Transfer and Articles of Dissolution with the State of Maryland on April 27, 1992.

6. At the time of filing of the application, applicant had no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17891 Filed 7–28–92; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Ripley-Corinth 161-kV Transmission Line

AGENCY: Tennessee Valley Authority.

ACTION: Notice of no practicable alternative to impacting wetlands.

SUMMARY: The Tennessee Valley Authority (TVA) proposes to construct a 161-kV transmission line connecting TVA's Ripley, Mississippi, 161-kV substation and Corinth, Mississippi, 161-kV substation. An environmental assessment, in accordance with the National Environmental Policy Act, is being prepared. This proposal will result in the disturbance of about 33 acres of wetlands; however, it has been determined that no practicable alternative exists. TVA is requesting public comment on the impact to wetlands.

DATES: TVA will consider all relevant comments received by August 12, 1992, before a final decision is made on the proposal.

ADDRESSES: Any comments on this proposal should be addressed to M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: For additional information on this action, call M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority at (615) 632–6578.

SUPPLEMENTARY INFORMATION: TVA has transmission system weaknesses that could result in a power outage to most of Tippah Electric Power Association (EPA) during the summer demand peak. Tippah EPA is a distributor of electric power in north central Mississippi. The Tippah system is dependent on a 20-mile-long transmission line from New Albany 161-kV substation to Ripley 161-kV substation, without an alternate source of supply. The swampy and stormprone nature of the area exacerbates service reliability.

This project would provide a second 161-kV power feed to the Tippah EPA system to improve reliability of power service. A new 161-kV transmission line is proposed to be built from Ripley substation to Corinth substation—a distance of approximately 31.25 miles. New facilities would also be added to both substations. The transmission line route would also go across an intermediate site in Kossuth to allow Alcorn County Electric Power Association (EPA) to build a 161-kV substation and take delivery from the new line. The proposed Ripley-Corinth transmission line would have an in-service date of November 1, 1994.

Construction of the proposed transmission line would result in right-of-way clearing and vegetation removal affecting approximately 33 acres of wetlands. Placement of structures within the wetlands may be avoided. Following construction, vegetation on these wetland rights-of-way would be managed so as to impede normal successional patterns. This successional intervention on forested wetlands could worsen impacts of previous clearing.

Other wetland values and functions unrelated to forest canopy vegetation would remain intact through use of Best Management Practices (BMPs) for construction and maintenance.

The proposed transmission line route has been selected to avoid wetlands as much as practical. Crossings of the Little Hatchie, Hatchie, and Tuscumbia Rivers are unavoidable and account for most of the wetland acreage to be impacted. The state of Mississippi, in a letter dated August 29, 1991, requested that TVA avoid routing the transmission line through Kellum Hollow. This has been accomplished by moving the route of the proposed transmission line to the southeast onto the adjacent ridge.

Wetland impacts would be further minimized through application of the following BMPs for clearing, construction, and maintenance, on these forested wetlands. These BMPs would include:

1. Identified wetlands, streams, and drainways would not be modified so as to alter natural hydrological patterns.

2. Naturally occurring hydric soils would not be disturbed or modified in any way that would alter their hydrological properties.

3. Right-of-way clearing within forested wetlands would be accomplished by hand where possible and would be restricted to the minimal width necessary to allow for construction and operation of the proposed line.

4. If heavy equipment is required to accomplish right-of-way clearing within forested wetlands, lay-down pads would be used to remove vegetation and string transmission line cable.

5. Sediment control fencing would be placed downslope from construction activity to trap sediment and prevent its migration into waterways or water bodies.

6. Within wetland areas or along streams, stumps would not be uprooted or removed.

7. Future right-of-way maintenance within identified wetlands would be conducted during traditionally dry seasons and would avoid the use of heavy equipment. Chemical maintenance would only be done using chemicals labeled by the Environmental Protection Agency for wetlands use.

Dated: July 21, 1992.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 92-17853 Filed 7-28-92; 8:45 am]

BILLING CODE 8210-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets No. 48084 and 48086; Order 92-7-27]

Applications of Private Jet Expeditions, Inc., for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Private Jet Expeditions, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 6, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 48084 and 48086 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: July 22, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-17871 Filed 7-28-92; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 92-35; Notice 1]

Koito Manufacturing Co., Ltd.; Receipt of Petition for Determination of Inconsequential Noncompliance

Koito Manufacturing Co.; Ltd. (Koito), of Shimizu-Shi, Shizuoka-Ken, Japan, has determined that some of the vehicle equipment it manufactures fails to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment," Federal Motor Vehicle Safety Standard (FMVSS) No. 108, and has filed an appropriate report pursuant to 49 CFR part 573. Koito has also petitioned to be exempted from the notification and remedy requirements of the national Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the period of January 1990 through June 1992, Koito produced 325,364 headlamps which were installed on vehicles manufactured by Toyota, Mitsubishi, Chrysler, Subaru, Geo, Mazda, and Nissan. The headlamps failed to include the "O" mark required by FMVSS No. 108 for a point of reference when aiming the lamps.

Section S7.7.5.2(a)(2) Horizontal aim states that "(a)n 'O' mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle." Sections S7.7.5.2(a)(1) Vertical aim and (a)(2) reference the necessity to provide "an equal number of graduations from the 'O' position representing angular changes in the axis." The subject headlamps do not bear the "O" mark.

Koito supports its petition for inconsequential noncompliance with the following:

(1) The purpose of the "O" mark would be to provide the base point on the scale. In place of this mark, the Koito headlamps concerned make use of a pair of lines which are clearly distinguished by their color and/or their thickness (bold). Even in the absence of the "O" mark, the user and dealer can easily determine the reference lines and perform a correct aiming adjustment.

(2) The vehicle operator's manual fully explains the method of aiming the method of aiming the headlamp. It should be noted that the user does not require reference to the "O" mark to follow the maker's instructions correctly.

(3) Headlamps which are equipped with aiming pads allow aiming by an aimer which must satisfy Society of Automotive Engineers (SAE) J602 requirements, as stipulated by FMVSS. Of aimers meeting SAE J602 requirements and currently available on the market, the most popular is the one made by H-Company.

This aimer does not make use of the "O" mark. It features indicator scale reference lines which are very similar to Koito's VHAD (Vehicle Headlamp Aiming Device) reference lines, and which function in the same way. We believe that the great majority of the

users and dealers are well accustomed to this system.

(4) Up to the present date, Koito has not received any claim or complaint representing a user's inability to determine the reference line positions.

(5) In order to demonstrate the efficacy of this aiming system, Koito has conducted a demonstration test. Ten unbiased subjects with no prior familiarity with the system were asked to readjust headlamps which had been deliberately misaligned. All ten were successful in making the required corrections in the manner intended by the designers of this system.

(6) All of the concerned headlamps were subject to the test and were certified (to be in) compliance (with) all the requirements, including (the) VHAD adjusting system, in FMVSS 108 by ETL Testing Laboratories Inc., an authoritative organization in the United States. This shows that there is no problem in headlamp aiming inspection and adjustment.

Interested persons are invited to submit written data, views, and arguments on the petition of Koito, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 28, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 23, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-17889 Filed 7-28-92; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 146
Wednesday, July 29, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 29, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Cigarette Lighters.

The Commission will consider a proposed consumer product safety standard that would require disposable and novelty lighters to meet specified requirements for child-resistance.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: July 22, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–18051 Filed 7–27–92; 2:30 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 31561.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 8:00 a.m., August 19, 1992.

CHANGES IN THE MEETING: Date of the meeting is August 10, 1992.

CONTRACT PERSON FOR MORE INFORMATION: David S. Trump, M.D., Executive Secretary of the Board of Regents, 301–295–3886.

Dated: July 27, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–18072 Filed 7–27–92; 3:12 pm]

BILLING CODE 3810–01–M

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federal register

Wednesday
July 29, 1992

Part II

Federal Election Commission

11 CFR Parts 109, 110, and 114

Independent Expenditures; Corporate and Labor Organization Expenditures; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 109, 110 and 114

[Notice 1992-11]

Independent Expenditures; Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is considering several revisions to parts 109, 110 and 114 of its regulations governing communications by corporations and labor organizations, including new provisions regarding independent expenditures by certain nonprofit corporations. These proposals would implement the Supreme Court's opinion in *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"), and several subsequent judicial decisions. This notice also addresses issues raised by the National Right to Work Committee ("NRWC") in a Petition for Rulemaking filed with the Commission on February 24, 1987 in response to the *MCFL* opinion.

Please note that the draft rules that follow do not represent a final decision by the Commission regarding the NRWC petition or the *MCFL* decision. In several areas the Commission is considering different alternatives, which appear consecutively in the draft rules as A–1, A–2, B–1, B–2, etc., but which are not discussed in that order in the supplementary information which follows. Accordingly, a second public hearing has been scheduled to obtain further comment on the issues and proposed rules discussed in this notice. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before September 18, 1992. The Commission will hold a hearing at 10 a.m. on October 14 and 15, 1992. Persons wishing to testify at the hearing must so indicate in their written comments.

ADDRESSES: Comments should be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor hearing room, 999 E Street NW., Washington, DC. Annotated and reorganized copies of this document, which may assist commenters in following the placement of the alternatives included in the proposed rules, are available for inspection and copying through the Commission's Public Disclosure Division, 999 E Street NW., Washington, DC 20463. In addition, copies of Agenda Document #92–86–A, which contains hypothetical advertisements to promote discussion by commenters on the concept of "express advocacy", are also available through the Public Disclosure Division.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or toll free (800) 424–9530. The Public Disclosure Division may be contacted at (202) 219–4140 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment on proposed revisions to 11 CFR 109.1, 110.13, and 114.1 through 114.4, 114.12 and proposed new section 114.10 in light of recent judicial interpretations of 2 U.S.C. 441b. This section of the Federal Election Campaign Act of 1971 ("the Act" or "FECA") generally prohibits corporations and labor organizations from using general treasury monies to make contributions or expenditures in connection with federal elections. However, the proposed rules would recognize several exceptions, which are based on the Supreme Court's decision in the *MCFL* case. These proposals would only apply to expenditures, since *MCFL* did not limit the prohibitions on contributions.

First, the Commission is considering replacing the partisan/nonpartisan standards in current 11 CFR part 114 with new language at draft § 114.2 prohibiting corporations and labor organizations from making expenditures for communications to the general public expressly advocating the election or defeat of federal candidates. Revised language is also being considered in 11 CFR 109.1 to provide further guidance as to what types of communications constitute express advocacy as interpreted in *Buckley* v. *Valeo*, 424 U.S. 1, 44 n. 52 (1976) ("*Buckley*"), *MCFL* and *Federal Election Commission* v. *Furgatch*, 807 F.2d 857 (9th Cir.), *cert. denied*, 108 S. Ct. 151 (1987) ("*Furgatch*").

In addition, the attached draft rules include substantial changes to the specific provisions in §§ 114.3 and 114.4, regarding candidate debates, candidate appearances, voter guides, voting records, voter registration activities and get-out-the-vote drives. In *Buckley*, the Supreme Court made a distinction between independent expenditures and contributions. The Court observed, "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley* at 47. Thus, *Buckley* could be interpreted to prohibit all contacts with candidates. However, the Commission recognizes that some limited forms of contact may be necessary to preserve the current range of permissible activity. Therefore, these proposals draw a distinction between permissible contacts with candidates which are necessary to conduct these activities, and more extensive coordination that will result in in-kind contributions.

Finally, the proposed rule at 11 CFR 114.10 would set forth criteria for determining when nonprofit corporations possess the three features essential to the Supreme Court's decision that corporations like Massachusetts Citizens for Life, Inc. may not be bound by the restrictions in section 441b on independent expenditures. The draft regulations would expressly permit qualifying corporations to use general treasury funds for independent expenditures, and would explain the reporting obligations when exempt corporations make independent expenditures.

A. Background

In the *Massachusetts Citizens for Life* decision, the Supreme Court interpreted section 441b of the FECA to mean that expenditures for communications must constitute express advocacy to be subject to the prohibition of that section. *MCFL* at 249. For the first time, the Supreme Court also distinguished between different types of corporations in considering the constitutionality of 2 U.S.C. 441b. The Supreme Court concluded that nonprofit corporations having certain essential features do not possess the characteristics which Congress legitimately perceived as having the potential to exert an undesirable influence on the electoral process. These essential features consist of: (1) Being formed for the express purpose of promoting political ideas and not engaging in business activities; (2) having no shareholders or other persons affiliated so as to have a claim on assets or earnings or other economic disincentives for disassociating; and (3) not being established by a business corporation or a labor union, and having a policy of not accepting contributions from such entities. *MCFL* at 264. Thus, the Court held that section 441b's prohibition of independent expenditures

is unconstitutional as applied to incorporated entities such as MCFL, Inc.

The *MCFL* case involved a nonprofit corporation organized to promote specific ideological beliefs. Massachusetts Citizens for Life, Inc. was financed by voluntary contributions from members of the public who shared its beliefs, and by other fundraising activities, such as bake sales and raffles. The case arose because the corporation expended general treasury monies for the production and public distribution of a special newsletter which indicated whether certain clearly identified federal candidates supported or opposed its positions on particular issues. The newsletter also urged readers to vote "pro-life."

When the case reached the Supreme Court, MCFL argued, *inter alia*, that its special newsletter did not expressly advocate the election or defeat of a clearly identified federal candidate, and that only communications containing express advocacy should be prohibited under 2 U.S.C. 441b. First, the Supreme Court stated that "an expenditure must constitute 'express advocacy' in order to be subject to the probation of § 441b." *MCFL* at 249. The Supreme Court then ruled that MCFL's publication "goes beyond issue discussion to express electoral advocacy. * * * The 'Special Edition' thus falls squarely within § 441b, for it represents express advocacy of the election of particular candidates distributed to members of the general public." *Id.* at 249–50.

Based on this portion of the decision, the National Right to Work Committee filed a Petition for Rulemaking urging the Commission to revise 11 CFR 114.3 and 114.4 to conform to the statement in the *MCFL* opinion that "express advocacy" is the appropriate standard for determining when independent communications by corporations and labor organizations are prohibited under section 411b. See Rulemaking Petition; National Right to Work Committee, Notice of Availability, 52 FR 16275 (May 4, 1987). Thus, the petition took the position that the Commission's partisan/nonpartisan standards governing corporate and labor organization communications to the entity's restricted class and the general public are unconstitutional under *MCFL*.

The Commission subsequently sought public input on whether to initiate a rulemaking to determine the extent to which *MCFL* case necessitated either changes in the part 114 rules governing independent expenditures by certain nonprofit incorporated advocacy groups possessing the three features essential to the holding in *MCFL*, or changes in the scope of the "independent expenditure" provisions at 11 CFR part 109, or the implementation of an "express advocacy" test for all corporations and labor organizations covered by 11 CFR part 114. An Advance Notice of Proposed Rulemaking, published on January 7, 1988 (53 FR 416), presented these issues. The Commission indicated in the Advance Notice that it viewed the express advocacy statement in *MCFL* as dicta, noting that the statement was unnecessary to the resolution of the case, and thus did not represent a final resolution of the issue by the Court. ANPRM, 53 FR 416. The Advance Notice also raised the following ancillary questions concerning this portion of the opinion: 1. Should the Commission revise its regulations at that time, or wait until the Court has an opportunity to clarify this area in a case where the issue is squarely presented? 2. Should the Commission revise the 441b regulations to distinguish between independent expenditures that solely involve communications and other activities where communication plays little or no part? 3. Can the nonpartisan standard in 11 CFR 114.4 be interpreted consistently with an express advocacy test, thus eliminating the need for regulatory revision? 4. To what extent and how should the Commission revise the definition of "expressly advocating" in 11 CFR 109.1(b)(2) in light of the *MCFL* and *Furgatch* opinions?

Over 17,000 comments were received in response to the Advance Notice. The vast majority of the commenters submitted virtually identical letters urging the Commission to act favorably on NRWC's rulemaking petition, and/or to confine the regulations to communications expressly advocating election or defeat of candidates, so as to avoid impinging upon the freedom of speech rights upheld by the Supreme Court. The Commission received detailed comments from several sources. A public hearing was held on November 16, 1988, at which two commenters testified as to how the Commission should implement the *MCFL* opinion. The detailed comments and testimony reflect a wide range of views as to how the Commission should proceed in response to the *MCFL* opinion. Some commenters supported adoption of an express advocacy standard and opposed the Commission's position that this statement in the opinion was dicta that need not be followed. However, these comments disagreed as to how broadly or narrowly to define express advocacy. Some believed that the concept should be narrowly limited to the phrases enumerated by the Supreme Court in *Buckley*, so as to avoid impinging upon the First Amendment rights. However, others pointed to statements in the *MCFL* and *Furgatch* opinions to support a substantially broader interpretation of express advocacy. The Commission also received suggestions concerning election-related activities by business corporations or labor unions where no communication is involved, such as providing the use of facilities to a candidate's campaign. One possibility suggested was to treat such activity as an impermissible in-kind contribution made in connection with a federal election, but not to treat it as an impermissible expenditure. Another suggestion was to adopt an express advocacy standard for contributions as well as expenditures and to treat providing corporate or union facilities as a form of express advocacy. Finally, the Commission notes that two other commenters, including one of the testifying witnesses, favored simply retaining the current statutorily-created prohibition against both contributions and expenditures in connection with federal elections, while creating an exception allowing certain incorporated nonprofit advocacy groups to make independent expenditures.

Subsequently, in *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (1990) ("*Austin*"), the Supreme Court provided additional guidance as to the nature of the exception it created in *MCFL* for certain nonprofit corporations through its interpretation of a Michigan statute containing prohibitions very similar to section 441b of the FECA. In other litigation, two lower courts relied upon an express advocacy standard to evaluate corporate communications under section 441b of the FECA. In *Faucher* v. *Federal Election Commission*, 743 F. Supp. 64, (D.Me. 1990) ("*Faucher*"), the court invalidated the Commission's voter guide regulations at 11 CFR 114.4(b)(5)(i). The Court concluded that the Commission's voter guide rule is not authorized by the FECA "as interpreted by the Supreme Court in [*MCFL*], to the extent that the regulation makes the permissibility of voter guides * * * hinge upon on whether such guides are 'nonpartisan' in a broad sense that includes issue advocacy rather than the narrower test of 'express advocacy'." *Id.* at 72. Similarly, in *Federal Election Commission* v. *National Organization of Women*, 713 F. Supp. 428 (D.D.C. 1989) ("NOW"), another district court applied an express advocacy test to determine whether section 441b permitted an incorporated membership organization to use general treasury funds for solicitation letters directed to the general public. The court

concluded that the letters in question did not go beyond issue discussion to express electoral advocacy. The Commission subsequently appealed both of these lower court decisions.

The Commission also issued a second notice seeking further comments on what changes to its regulations are warranted in light of the additional guidance provided by the Supreme Court's decision in *Austin*. See 55 FR 40397 (Oct. 3, 1990), comment period extended 55 FR 45809 (Oct. 31, 1990). The second notice also welcomed comments on the express advocacy questions raised by the *Faucher* and *NOW* decisions.

Eight commenters responded to the second notice, including some who reiterated their earlier positions. Most, but not all, of the commenters urged the Commission to adopt an express advocacy test for purposes of section 441b expenditures. Although one comment favored the development of definitions which precisely set out what activity will be deemed within the scope of the FECA under such a standard, another comment supported the use of a case by case approach. There was also some support for modifying the regulations to reflect the approach taken in the *Furgatch* opinion regarding what constitutes express advocacy. The Commission also received specific suggestions for delineating the class of nonprofit corporations falling within *MCFL*'s exemption. Two comments advocated a broad scope for the exemption created in *MCFL*, although a third comment emphasized the narrowness of the group of organizations possessing the three essential features delineated in *MCFL* and *Austin*.

Subsequently, the District Court's decision in *Faucher* was upheld by the Court of Appeals for the First Circuit. *Faucher* v. *Federal Election Commission*, 928 F.2d 468 (1st Cir. 1991), *cert. denied*, _____U.S._____, 112 S. Ct. 79 (1991). Consequently, the Commission sought certiorari in *Faucher*, continuing to argue that the express advocacy standard should not be made applicable to the 441b prohibition on corporate expenditures. On October 7, 1991, the Supreme Court denied the petition for certiorari, and thus declined to consider narrowing or otherwise modifying the statements made in *MCFL*. Accordingly, the Commission moved for the dismissal of its appeal in *NOW* and is resuming consideration of several substantial changes to its regulations necessitated by the *MCFL* decision.

The draft rules would codify the reduced scope of the prohibition on corporate expenditures. The proposed language would set forth the general rule that corporations and labor organizations are prohibited from making expenditures for communications to the general public expressly advocating the election or defeat of a clearly identified candidate. The draft regulations would also establish criteria for determining whether nonprofit corporations qualify for the exemption from section 441b's prohibition on independent expenditures. The proposals are explained more fully below. Please note that the attached draft rules do not represent a final decision by the Commission regarding the NRWC petition or the issues presented in this rulemaking.

B. The Express Advocacy Standard

The proposed rules which follow incorporate an express advocacy standard in several sections of 11 CFR part 114. First, new language in § 114.2 would prohibit corporations and labor organizations from making expenditures for communications to the general public that expressly advocate the selection or defeat of a clearly identified candidate, group of candidates, or candidates of a clearly identified political party. However, the draft regulations would not change the current prohibition against contributions made by corporations and labor organizations in connection with federal elections. It is important to note that the new provision prohibiting expenditures for communications containing express advocacy would apply to all corporations and labor organizations except for nonprofit corporations meeting certain criteria, as explained in new § 114.10. Thus, nonprofit corporations satisfying the criteria under § 114.10 would be permitted to make expenditures for communications to the general public which contain express advocacy, including registration and voting communications, official registration and voting information, voting records and voter guides, if made independently of any candidates. If the nonprofit corporation did have contact with candidates in conducting these activities, it would be subject to the rules set forth in § 114.4 regarding the limited extent of such contact and could not include express advocacy. However, if the communication or activity did involve express advocacy, any coordination would compromise the independence of the communications and possible future communications, resulting in prohibited in-kind contributions.

The draft would preserve the distinction in the current regulations between the rules governing communications to the restricted class (set forth at 11 CFR 114.3) and the rules governing communications beyond the restricted class (as set out in 11 CFR 114.4). However, the proposals would delete the more restrictive language in current § 114.3(a)(1) prohibiting corporate and labor organization expenditures for "partisan" communications to the general public. Section 114.3 would continue to permit corporations and labor organizations to communicate with their restricted classes on any subject. The references to "partisan" activities would be replaced with narrower provisions that would only apply to communications containing express advocacy. For example, § 114.3(b) would be revised to state more explicitly that only communications expressly advocating the election or defeat of a clearly identified candidate are subject to the reporting requirements of 11 CFR 100.8(b)(4) and 104.6.

The provisions of § 114.4 regarding communications by corporations and labor organizations to persons outside the restricted class would also be substantially revised and reorganized. The nonpartisan standards found in the current regulations would be replaced by language prohibiting express advocacy in candidate appearances, debates, voter guides, voting records, and voter registration and get-out-the-vote drives. Section 114.4(c)(1) would also include language to clarify that the term "general public" includes anyone who is not in the restricted class.

Similarly, the draft which follows would delete the term "partisan" from § 114.12(b). As revised, this provision would permit corporations and labor organizations to make meeting rooms available to a particular candidate or political committee if the room is made available to any other candidate or committee upon request.

Finally, please note that a definition of "restricted class" would be added at 11 CFR 114.1(j). This definition would clarify that the terms "restricted class" and "solicitable class" may not be coextensive. For example, a trade association's restricted class consists of its members and its own executive and administrative employees and their families. In contrast, the trade association's solicitable class also includes its member corporations' stockholders and the executive and administrative personnel, if the member corporations have approved the solicitations.

C. Defining Express Advocacy

The Commission seeks comments on two alternative sets of revisions to the definition of express advocacy set out in 11 CFR 109.1(b)(2). Both Alternatives A–1 and A–2 would continue to list the specific phrases set forth in the *Buckley* opinion as examples of express advocacy. They would also indicate that "express advocacy" includes other expressions of support or opposition, as suggested by the Supreme Court in *Buckley* and *MCFL*, and as delineated by the Ninth Circuit in *Furgatch*. For example, under Alternative A–1, express advocacy would include suggestions to take actions such as to contribute or to participate in campaign activity. In contrast, Alternative A–2 would indicate that express advocacy constitutes an exhortation, and that there must be no other reasonable interpretation of the exhortation other than encouraging the candidate's election or defeat, rather than another type of action on a specific issue. Alternative A–2 would also indicate that a communication constitutes an exhortation if it is made within a specified number of days before an election, and it does not encourage any type of action on any specific issue. Comments are requested as to what an appropriate time frame should be. This time period could be as short as 14 days, or as long as six months, prior to an election, or any other time period considered reasonable.

MCFL makes clear that isolated portions of a communication are not to be read separately in determining whether a communication constituted express advocacy. Instead, the communication should be read as a whole. See 479 U.S. at 249–50. Further, the *Furgatch* opinion evaluated the contents of the communication in question "as a whole, and with limited reference to external events." *Id.* at 864. For example, external factors of significance in *Furgatch* included the existence of an upcoming presidential election and the timing of the advertisement a week before the general election. Similarly, the Commission's proposed changes in both alternatives would recognize that all statements and expressions included in the communication must be evaluated in terms of pertinent external factors such as the context and timing of the communication. In addition, both proposed definitions would clarify that communications consisting of several pieces of paper will be read together.

The two alternatives differ as to the application of the requirement that the candidates be "clearly identified." Alternative A–1 indicates that this includes candidates of a clearly identified political party and a clearly identified group of candidates, such as the "pro-life" candidates in the *MCFL* case. Alternative A–2 would not specifically mention clearly identified groups of candidates, but would include messages such as "Vote Republican" or "Vote Democratic" if made within a specified period prior to a special or general election or an open primary. Again, this time period could be as short as 14 days, or as long as 6 months, prior to an election, or any other time period considered reasonable. Alternatively, the period between the primary and general elections could be viewed as the time when such messages refer to clearly identified candidates. In contrast, under Alternative A–1, these phrases would refer to clearly identified candidates if made at any time after specific individuals have become Republican or Democratic candidates within the meaning of the FECA in the geographic area in which the communication is made. As a general matter, the Commission seeks comments on when a message such as "Vote Democratic" or "Vote Republican" refers to one or more clearly identified candidates, rather than being just a message of support for a party. Finally, Alternative A–2 would also specifically state that "with respect to an election" includes references such as "Smith '92" or "Jones is the One."

The Commission is also considering a third option for defining "express advocacy" in lieu of the two alternatives presented in the proposed rules. By revising the existing definition of "expressly advocating" in Part 109, the two alternatives set forth in the proposed rules continue the Commission's current approach of applying the same definition of "express advocacy" in all contexts under the FECA. However, the Commission could decide to draft a new definition of "express advocacy" for inclusion in Part 114 that would apply only to corporations and labor organizations governed by that Part. The purpose of drafting a separate definition would be to focus more specifically on implementing the *MCFL* Court's dictate that "express advocacy" is the standard when determining what is an expenditure under 2 U.S.C. 441b. This definition would center on whether a communication urged action with respect to a federal election rather than on whether the communication also related to a clearly identified candidate. Thus, this approach would take a different view of "express advocacy" for organizations subject to the prohibitions of section 441b.

To illustrate the difficulty involved in applying an "express advocacy" standard, the Commission has included Agenda Document #92–86–A in the rulemaking record. This document contains seven hypothetical advertisements, each of which is assumed to be published within two weeks of an election. These examples are available on request through the Commission's Public Disclosure Division and may assist commenters in analyzing the proposals contained in this Notice.

D. Specific Activities

Sections 110.13, 114.3 and 114.4 set forth proposed changes to the rules governing candidate appearances, candidate debates, voting records, voter guides, registration and voting communications, the distribution of official registration and voting information, and supporting or conducting registration and get-out-the-vote drives. The draft rules also contain new language that would set forth the Commission's current policies regarding endorsements of candidates and facilitating the making of contributions. Alternative proposals would address the use of corporate or labor organization logos, trademarks and letterhead. As noted above, the primary change in the proposed amendments is the new language indicating that corporate or labor organization expenditures for communications to those outside the restricted class may not contain express advocacy.

Another significant change would be the addition of new language in §§ 109.1, 110.13, 114.2, 114.3, and 114.4 indicating when corporate and labor organization expenses will be treated as impermissible in-kind contributions to particular candidates. Prior to the *MCFL* decision, the Commission had not needed to examine the extent to which corporate and labor organization expenditures could be treated as in-kind contributions, because such expenditures in connection with elections were prohibited, unless subject to a specific exemption. Under the proposed regulations, coordination of corporate or labor organization activities with candidates may result in prohibited in-kind contributions or may compromise the independence of future activities, although certain limited contact is specifically permitted by §§ 114.3 and 114.4. For example, an in-kind contribution would be made if discussions between a corporation's staff and candidates or their campaign staff go beyond the limited contact

reasonably necessary to carry out permissible activities such as preparing voter guides for distribution to the general public. Limited contact, in this example, would include discussions of the format, structure and timing of an appearance or voter guide, and discussions of a candidate's positions on issues relevant to the activity. Please note that, in the case of a communication just to the restricted class, exceeding the limitations on contact will not cause that activity or future communications to the restricted class to be considered in-kind contributions. However, discussions of specific campaign strategy or tactics in the context of any activity conducted under § 114.3 or § 114.4 may compromise the ability of a corporation's or labor organization's separate segregated fund to make independent expenditures in the future. Moreover, such discussions may also cause future activities under § 114.4 to be treated as prohibited in-kind contributions by the corporation or labor organization.

Finally, § 114.4 would be restructured to follow the format of § 114.3. Section 114.4 would begin with a general explanation of the types of communications that may be made to the general public, to rank and file employees, and solely to the restricted class.

1. Candidate Appearances

The Commission seeks comments on several questions regarding corporate and labor organization funding of candidate appearances before the restricted class and other employees, and on several possible amendments to the regulations at 11 CFR 114.3(c)(2) and 114.4(b)(2).

Proposed § 114.4(b)(2) would follow the current rules at § 114.4(a)(2) by allowing rank and file employees who are not in the restricted class to attend candidate appearances organized by corporations or labor organizations. The Commission is seeking comments on several questions that have been raised concerning candidate appearances under this section. First, if rank and file employees outside the restricted class attend the candidate appearance, one question that could be resolved in these rules is whether the candidate may solicit and collect contributions during the appearance. For example, should the candidate be able to pass the hat or place donation boxes in the room? Both the present and the proposed language prohibits the corporation or labor organization from soliciting contributions during these candidate appearances. The draft rules would also incorporate the Commission's established policy that corporations and labor organizations are not permitted to facilitate the making of contributions to candidates, such as by providing envelopes addressed to the candidate. See, *e.g.*, AO 1987–29, n. 2. Thus, the question is whether a candidate should be able to use donation boxes during an appearance without this being treated as impermissible facilitation by the corporation or labor organization.

In situations where one candidate appears at a corporate or labor organization event, the attached draft of § 114.4(b)(2) would follow the current provisions by requiring corporations to let the other candidates for that office come and speak if they so request. However, comments are sought on possibly requiring a corporation to notify the other candidates in advance whenever they invite a candidate to appear. Prior notification would provide the other candidates with a real opportunity to request comparable appearances. In cases where a candidate shows up to shake hands on corporate premises, without a prior invitation, notice could be given to the other candidates as soon as feasible.

Comments are also requested on new language in § 114.4(b)(2) that would not allow the corporation or labor organization to favor one candidate through the structure or format of the candidate appearance. One example of this may be giving rank and file employees time off to listen to one candidate but not to listen to others. Another example arises where candidates receive unequal time or facilities, unless it is clearly impractical to provide all candidates with similar opportunities, such as where a candidate requests to appear after a labor organization's convention is over.

Several issues have arisen regarding § 114.3(c)(2), which governs the presence of news media at candidate appearances before only the restricted class. For example, a news organization may wish to reprint or broadcast the candidate's appearance in its entirety. Concerns have been raised that a candidate appearance before a corporation's or labor organization's restricted class would be transformed by this type of gavel to gavel coverage into a general public appearance. Accordingly, the Commission seeks comments on two alternative proposals, which have several parts located in §§ 114.3(c)(2) (i) and (iii) and 114.4(b)(2)(viii). In § 114.3(c)(2)(iii), Alternative C–1 would indicate that such coverage is permissible provided that two conditions are met. First, if the corporation or labor organization permits one media representative to cover the appearance, all *bona fide* media organizations must be given the opportunity to cover the event. This could be accomplished through pooling arrangements, if necessary. Secondly, if the corporation or labor organization permits the news media to cover an appearance by one candidate, the news media must be given the opportunity to cover all other candidates who appear. Alternative C–2, found in § 114.3(c)(2)(i) would indicate that the corporation or labor organization may not permit the media to cover such candidate appearances before just the restricted class. Instead, under Alternative C–2 at § 114.4(b)(2)(viii), in addition to the two requirements on media access, media coverage of candidate appearances is only permissible if rank and file employees may also attend, all candidates for the same seat who request to appear are given a similar opportunity, and the corporation or labor organization does not expressly advocate, or encourage the audience to expressly advocate, the election or defeat of any candidate. Both Alternatives C–1 and C–2 would also replace the current language allowing "limited invited guests" to attend candidate appearances with more specific language covering guests who are being honored or speaking or participating in the event.

It is important to note that the amendments under consideration would not change the Commission's analysis of cases in which a corporation invites the general public to attend a speech. In those cases, the Commission would continue to examine whether the individual is appearing as a candidate or in another capacity, such as an officeholder or a prominent speaker on a particular issue. See, *e.g.*, AO 1992–6.

The Commission is, however, considering a possible new exception that would permit colleges, universities, and other incorporated nonprofit educational institutions which are exempt from federal taxation under 26 U.S.C. 501(c)(3) to make their premises available to groups associated with the school wishing to invite candidates to address students, faculty and the general public. The proposed provisions in § 114.4(c)(7) are intended to ensure that these candidate appearances will not become campaign rallies, fundraising events, or opportunities for the school or group issuing the invitation to expressly advocate, or encourage the audience to expressly advocate, the election or defeat of the candidate who is appearing. The presence of campaign banners, posters, balloons and other

similar items would be viewed as indicative of a campaign rally.

These proposals would not permit candidates to collect contributions during the appearance, although candidates could ask for contributions to be sent to the candidate's campaign committee. Under the draft rules, educational institutions could allow the media to cover these candidate appearances and to broadcast them to the general public, provided the schools follow the guidelines set out at either Alternative C–1 in § 114.3(c)(2)(iii) or Alternative C–2 in § 114.4(b)(2)(viii). Comments are sought on these proposals. The Commission is also considering whether to adopt a similar approach for candidate appearance in churches and synagogues.

2. Candidate Debates

The changes proposed in the candidate debate regulations at 11 CFR 110.13 and 114.4(f) are generally similar to the changes described above regarding candidate appearances under § 114.4(b)(2). First, staging organizations would not be allowed to manipulate the structure and format of debates so as to favor one or more participating candidate, such as by allocating the time unequally or by giving only one candidate advance information as to the nature of the topics to be covered or the specific questions to be asked. Staging organizations would also not be permitted to expressly advocate in support of or opposition to any clearly identified candidate during the debates. However, a news organization that stages a candidate debate would be able to produce an editorial containing express advocacy under the news story exception to the definition of contribution and expenditure in 11 CFR 100.7(b)(2) and 100.8(b)(2). Finally, the proposed revisions would recognize that a limited amount of contact with candidates is necessary to conduct debates.

3. Voting Records

The attached draft of § 114.4(c)(4) would modify the voting records regulation in two respects. First, new language would prohibit voting records, and all accompanying communications to the general public, from expressly advocating the election or defeat of one or more clearly identified candidates. The proposed amendments would also disallow coordination with candidates in distributing voting records. Comments are sought as to whether to permit or prohibit corporations and labor organizations from obtaining directly from the candidates voting information and data on which votes to include.

4. Voter Guides

As discussed above, the First Circuit concluded in *Faucher* that the current provisions of § 114.4(b)(5)(i) exceed the regulatory boundaries imposed by the FECA as interpreted by the Supreme Court. 928 F.2d at 472. Consequently, the Commission is considering several changes to these rules. First, the proposed revisions, which would be located in § 114.4(c)(5), would allow corporations and labor organizations to prepare and distribute to the general public their own voter guides or to obtain voter guides prepared by nonprofit organizations that are tax-exempt under 26 U.S.C. 501 (c)(3) or (c)(4). The factors currently set forth in § 114.4(b)(5)(i) would be replaced with a more limited set of requirements intended to ensure the same amount of space is provided for each candidate's response, that the voter guide does not contain express advocacy, and that contact with candidates is limited to the preparations reasonably necessary to produce the guide, such as written communications regarding the candidate's positions on issues. The proposed revisions would also eliminate the current restrictions on the geographic area in which voter guides may be distributed, but would prohibit coordinating the distribution of voter guides with candidates.

5. Voter Registration and Get-Out-The-Vote Drives

Section 114.3(c)(4) sets forth provisions governing voter registration and get-out-the-vote drives aimed at a corporation's or labor organization's restricted class. Voter drives aimed at other employees or the general public are covered in renumbered § 114.4(d). The Commission is considering revising both of these provisions in several respects. First, the draft language which follows would distinguish between the speech and nonspeech components of voter drives. Thus, the proposals would conform to the *MCFL* decision by applying an express advocacy standard to the speech components of voter drives. New language would be added to § 114.4(d) to indicate that communications containing express advocacy may not be made during voter drives aimed at employees outside the restricted class, or during voter drives aimed more broadly at the general public. In contrast, § 114.3(c)(4) would be revised to state explicitly that express advocacy is permissible in voter drive communications aimed solely at a corporation's or labor organization's restricted class. Thus, the proposed revisions to § 114.3(c)(4) would also retain the current language specifically permitting voter drive communications to urge the restricted class to vote for particular candidates and to register with a particular party.

The draft rules would also include changes regarding the nonspeech components of voter drives. Section 114.4(d) would be changed to permit corporations and labor organizations to conduct voter registration and get-out-the-vote drives without the involvement of a nonprofit organization which is tax exempt under 26 U.S.C. 501(c)(3) or (c)(4). Such drives could not be targeted primarily at those who are or were registered with only one political party, such as only Republicans or only Democrats. In addition, workers could not be paid only to register voters supporting a particular candidate or political party. Finally, the proposed rules in §§ 114.3 and 114.4 would continue the current policy that information and assistance in registering and voting shall not be withheld on the basis of support for or opposition to particular candidates or political parties. The Commission seeks comments on these proposals.

6. Endorsements

The Commission is proposing adding new § 114.4(c)(6) to provide a statement as to its current policy regarding public endorsements of candidates by corporations and labor organizations. This language would continue the approach taken in AO 1984–23, where the Commission permitted a corporation to include an endorsement in a publication directed to its restricted class. In addition, the new rule would allow the endorsement to be made during the candidate's appearance before the restricted class. The Commission is considering two alternative approaches regarding further corporate or labor efforts to publicize the endorsement. Under Alternative D–1, the corporation or labor organization may spend a *de minimis* amount to issue a press release regarding the endorsement to its usual media contacts. This language would also explicitly recognize that the press release may be accompanied by a routine press conference. In contrast, Alternative D–2 would permit the corporation or labor organization to publicize the endorsement only by responding to questions posed during a routine press conference. Finally, the proposed rules would permit corporations and labor organizations to have contact with candidates to the limited extent necessary to make the endorsement, without treating these communications

as impermissible in-kind contributions. The Commission seeks comment, however, on whether this limitation on candidate contact would inhibit the corporation's or labor organization's ability to obtain the information needed to make an endorsement decision. If so, how can the rules be structured to avoid the coordination problems raised by these communications?

7. Facilitating the Making of Contributions

As part of the extensive revisions to 11 CFR 114.3 and 114.4, the Commission is proposing adding new language to these sections to set forth the current policies regarding facilitating the making of contributions. In AOs 1987–29, 1986–4 and 1982–2, and in the 1977 Explanation and Justification of § 114.3, the Commission has stated that corporations and labor organizations may not facilitate the making of contributions to particular candidates or political committees other than their own separate segregated funds. *Explanation and Justification of Regulations*, H. Doc. No. 95–44, 95th Cong., 1st Sess. at 104–105. Draft § 114.3(d) would list examples of activities which constitute facilitation, such as providing envelopes addressed to the committee.

The proposed rules would follow the current policy that facilitation does not include situations where an individual's contribution to the separate segregated fund is earmarked for a specific candidate. In such cases, the contribution will be counted against the individual's limitations on contributions to both the separate segregated fund and to the candidate. If the separate segregated fund exercises direction or control over the contribution, the contribution will also count against the separate segregated fund's contribution limits. See 11 CFR 110.6. Moreover, if the corporation or labor organization uses treasury funds to seek earmarked contributions from its restricted class to specific candidates through its separate segregated fund, such contributions will be attributable to the limits of the separate segregated fund and the individual contributors.

8. Use of Logos, Trademarks and Letterhead

This rulemaking provides an opportunity to address the use of corporate or labor organization logos, trademarks and letterhead. The Commission has encountered situations in which executives of corporations or labor organizations use official corporate or labor organization stationery, whether or not reproduced at the executive's personal expense, to solicit funds or support for a candidate. *E.g.*, MURs 3066, 1690 and 1261. The use of such stationary in these instances is something of value and may assist the candidate in garnering support or soliciting funds, and thus constitutes a prohibited corporate or labor organization contribution. The question presented is whether such a logo, trademark or letterhead may be used if the corporation or labor organization is reimbursed for the intangible value of the item(s), or whether their use (except through ordinary commercial transactions in the usual course of business) should be prohibited.

Comments are sought on two alternative approaches, which are set out in different sections of the regulations. The first option, which is set out as Alternative B–1 in the definitions § 114.1(a)(1), is to treat logos, trademarks and letterhead as something of value and a contribution or expenditure if provided without charge or at less than the fair market value. That approach would allow individuals and candidates to reimburse corporations and labor organizations for the cost of the stationery plus the value of using the corporate or union symbol, name, etc. One difficulty with this approach is ascertaining the fair market value, given subjective considerations such as goodwill. Thus, the second option, which is set forth as Alternative B–2 in § 114.4(b)(1), is to simply prohibit such uses, whether or not the corporation or labor organization is reimbursed for the use, with four exceptions for: Corporations qualifying for the *MCFL* exception; communications to the restricted class, as described under 11 CFR 114.3; communications beyond the restricted class, as permitted under 11 CFR 114.4; and solicitations made in accordance with 11 CFR 114.5 through 114.8.

The proposed language of both alternatives would also apply to situations in which an individual makes a communication either by using personal stationery or by appearing in a campaign ad, where the letter or advertisement indicates that the individual is acting on behalf of the corporation or labor organization, including references to the individual's official title at that organization. However, this proposal would enable an individual to include a general identification such as "auto maker," whereas "Vice President of XYZ Automobile Corporation" would be precluded. These proposals would supersede AOs 1984–43 and 1978–77 in this respect. Please note that these communications would not fall within the narrow scope of permissible corporate and labor organization endorsements discussed above. The Commission welcomes comments on whether there are any conditions under which a corporate or labor official could include references to his or her official title in a communication without creating the appearance that he or she is acting in an official, rather than individual volunteer, capacity.

E. Coordination with Candidates

As noted above, the *MCFL* decision addressed the scope of the FECA's prohibition against corporate expenditures. However, the prohibition against corporate contributions was expressly reaffirmed in *MCFL*, 479 U.S. at 260. Accordingly, the proposed rules which follow would preserve the statutory ban on contributions made by corporations and labor organizations in connection with federal elections. This includes in-kind contributions resulting from the coordination of election-related corporate or union communications with candidates, although the limited types of activities described in 11 CFR 114.3 and 114.4 may involve contact with candidates. Thus, the proposed rules would distinguish between the limited contact with candidates that is necessary to produce voter guides, or to make endorsements or to hold candidate appearances, and the more extensive discussions resulting in arrangement, coordination or direction of these and other activities by the candidate or the campaign staff. In addition, 11 CFR 109.1(b)(4) would be amended to reflect this distinction. Please note that the draft rules generally do not distinguish between verbal and written communications. Nevertheless, comments are requested as to whether the proposed voter guide provision should restrict permissible contact to written communications with candidates which are "limited to the preparations reasonably necessary to produce the voter guide." Please note that draft language in new § 114.2(c) would indicate that the limited types of election-related contact with a candidate, which are described in §§ 114.3 and 114.4, will not cause those activities to be treated as prohibited in-kind contributions or expenditures. In addition, contact beyond these limits, for the purpose of making communications just to the restricted class, will not cause that activity or future communications to the restricted class to be considered in-kind contributions. Nevertheless, any contacts may be used as evidence of

impermissible coordination that would negate the independence of other activities directed to the general public which are conducted by the corporation, labor organization, or separate segregated fund.

F. Exempt Corporations

1. Introduction

In *MCFL*, the Supreme Court recognized an exception to the prohibition on independent expenditures by corporations and labor organizations contained in 2 U.S.C. 441b. Noting that "MCFL was formed to disseminate political ideas, not to amass capital," the Court said that "MCFL is not the type of 'traditional corporatio[n] organized for economic gain' that has been the focus of regulation of corporate political activity." 479 U.S. at 259.

The Court's decision is based on its conclusion that "[v]oluntary political associations do not suddenly present the specter of corruption merely by assuming the corporate form * * *. Some corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of their incorporated status." *Id.* at 263. The Court went on to list the "three essential features" of these corporations that are "more akin to voluntary political associations," and therefore, like MCFL, are not subject to the prohibitions on independent expenditures contained in 2 U.S.C. 441b.

The Commission proposes to add new section 114.10 to implement the portions of the *MCFL* decision that create an exception from section 441b for these "MCFL-type" organizations. The Commission is seeking comment on two versions of this section that take different approaches to defining the MCFL exception. Generally, version 1 uses the language of the MCFL and *Austin* decisions to describe an MCFL corporation. Version 2 takes a broader tax law approach.

Since the two versions take different approaches, they are set out separately in the proposed rules. However, the two versions would have several paragraphs in common. Specifically, paragraphs (b), (d), (e)(1), (f), (g) and (h) would be the same in both versions. Therefore, rather than reprint the common paragraphs in version 2 of the proposed rules, we have inserted in their place cross references to the corresponding paragraphs in version 1. Commenters should refer to the narrative discussion of version 1 for a more detailed explanation of these common paragraphs.

The two versions use different terms to describe those organizations that qualify for the MCFL exception. Version 1 uses the term "exempt corporation." Version 2 uses the term "qualified corporation." By proposing these two alternatives, the Commission hopes to elicit comments on which term would be preferable. Commenters are encouraged to express their views on these two alternatives, and to submit suggestions of other terms that might be used to describe these corporations. Since version 1 uses the term "exempt corporation" to describe MCFL organizations, the narrative portion of this notice will use that term in most instances. However, commenters should regard the term "exempt corporation" as synonymous with the term "qualified corporation."

In accordance with the *MCFL* decision, an "exempt corporation" would be allowed to use treasury money to make independent expenditures without violating 2 U.S.C. 441b. However, exempt corporations would still be subject to the existing prohibition on contributions, including in-kind contributions, contained in section 441b and the regulations. See proposed 11 CFR 114.2. They would also be subject to certain limitations when they make independent expenditures.

In *MCFL*, the Supreme Court addressed the concern that "persons may desire that an organization use their contributions to further a certain cause, but may not want the organization to use their money to urge support for or opposition to political candidates solely on the basis of that cause." 479 U.S. at 261. The Court suggested that this concern could be met by "requiring that contributors be informed that their money may be used for such a purpose." *Id.* The Commission regards this as important "to ensure[ ] political resources reflect political support." *Id.* at 264. Therefore, paragraph (f) of proposed § 114.10 would require an exempt corporation that solicits donations to inform potential donors of the possibility that their donations might be used for election influencing purposes.

Exempt corporations would also be required to comply with certain reporting requirements. Those making independent expenditures aggregating in excess of $250 in a calendar year would be required to file reports under 11 CFR 109.2. In addition, they would be required to file a qualifying statement showing that they qualify for exempt status. These reporting requirements are discussed further below.

Finally, when an exempt corporation's major purpose is making independent expenditures, that corporation becomes a political committee that is subject to the registration and reporting requirements of 11 CFR parts 102 and 104. The proposed rules define the circumstances under which an exempt corporation's major purpose will be considered to be making independent expenditures.

2. Version 1

a. Exempt Corporation Status

In *MCFL*, the Supreme Court said that "*MCFL* has three features essential to our holding that it may not constitutionally be bound by section 441b's restriction on independent expenditures." 479 U.S. at 263–64. Paragraph (c) of proposed § 114.10 breaks these features down into separate paragraphs. Corporations with all these features will qualify for an exemption from section 441b.

Under the first feature, an exempt corporation is one that was formed for the express purposes of promoting political ideas and cannot engage in business activities. 479 U.S. at 264. The proposed rules break this first feature down into two elements which are addressed in separate paragraphs in the interest of clarity.

The first aspect of this feature is set forth in proposed paragraphs (b)(1), (b)(2) and (c)(1). A corporation must have only one express purpose, the promotion of political ideas, in order to satisfy the first element. A corporation "whose bylaws set forth more varied purposes * * * which are not inherently political * * *" would not qualify for an exemption. *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652, 662 (1990). To clarify the phrase "promotion of political ideas," paragraph (b)(1) indicates that this term includes both issue advocacy and election influencing activity. The term "political purposes," which is used later in the proposed rules, also includes both kinds of activity.

Several comments received by the Commission in response to the Advance Notice of Proposed Rulemaking suggested a flexible approach to this portion of the first feature. They argue that statements in the corporation's organic documents should not be read too literally, nor should they be the exclusive criteria for exempt status. The proposed rule does allow for flexibility in the corporation's organic documents. For example, the corporation could include boilerplate language such as "any lawful purpose" in its articles of

incorporation or bylaws and still qualify as an exempt corporation. In addition, tax-exempt organizations that operate "exclusively for the promotion of social welfare" under 26 U.S.C. 501(c)(4) would satisfy this portion of the first feature. The Commission regards this purpose as consistent with the proposed rule.

The proposed rule also accounts for other matters in determining express purpose. The Commission would regard statements made by the corporation through its agents, and the corporation's actual activities, as evidence of the corporation's purpose. Paragraph (b)(2)(iii) is included to indicate that the Commission may look beyond statements made in a corporation's articles of incorporation to determine its express purpose. If the corporation's actual activities are inconsistent with the exemption, it will lose its exempt status. This approach is consistent with *Austin*, which involved a corporation that complied and disseminated various kinds of information, provided publications and educational services to its members, many of which are nonpolitical, and promoted ethical business practices. The Supreme Court said "[the corporation's] nonpolitical activities suffice to distinguish it from MCFL in the context of this characteristic." 494 U.S. at 663.

Many of the commenters also suggested that a corporation's tax exempt status under 26 U.S.C. 501(c)(4) should support a presumption that it satisfies the first feature. The Commission agrees that section 501(c)(4) status is relevant to the question of whether a corporation qualifies for an exemption. Consequently, it is included in paragraph (c)(5) of the proposed rule, discussed further below. However, the *Austin* decision indicates that, with regard to the first feature, the focus is on the activities conducted and the statements made by the corporation. Therefore, the proposed rule focuses on those matters in relation to the first feature, and considers tax exempt status separately.

The second element of the first feature is set forth in proposed paragraph (c)(2). In *MCFL*, the Supreme Court said that exempt corporations "cannot engage in business activities." 479 U.S. at 264. Thus, under proposed paragraph (c)(2), only those corporations that cannot engage in business activities would be entitled to an exemption. The use of the word "cannot" in the *MCFL* opinion suggests that corporations would not satisfy the business activity prohibition solely by showing that they have not engaged in business activities in the past. Instead, only those that are unable to engage in business activity in the future would fall within the scope of the exemption.

Proposed paragraph (b)(2) contains a non-exhaustive list of activities that would be considered business activities for the purposes of this section. For example, if a corporation receives income as a result of providing goods or services to its members or to the general public, that corporation would be engaging in business activity. Under this rule, a corporation that engages in activity such as selling books or calendars through commercial retail stores would be engaging in business activity. This is to be distinguished from political fundraising activities that are expressly described to potential donors as a request for donations that will be used for political purposes. Fundraising activities so described are not business activities under the proposed rule.

For the limited purposes of 11 CFR 114.10(b)(2), the term "members" would encompass a larger class of persons than it does in 11 CFR 114.1(e), where it defines those persons considered part of a membership organization's solicitable class. In this situation, "members" includes any person who is eligible to participate in activities conducted by the organization. There would be no change in the § 114.1(e) definition of "members" for solicitation purposes. The Commission welcomes comments on this subject, and encourages suggestion of a term that might be substituted for "members" in order to make this distinction clearer.

The second feature that distinguished MCFL from other corporations was that "it ha[d] no shareholders or other persons affiliated so as to have a claim on its assets or earnings." 479 U.S. at 264. Consequently, the proposed rules would exclude corporations that have shareholders or other affiliated persons with a financial interest in the corporation. This "no shareholders" requirement is designed to "ensure[ ] that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." *Id.* Under proposed paragraph (c)(3)(i), no persons associated with an exempt corporation would be allowed to have any ownership or other financial interest in the corporation.

However, in *Austin*, the Supreme Court recognized that persons who are not shareholders may also face disincentives to disassociate with the corporation. "Although the Chamber also lacks shareholders, many of its members may be similarly reluctant to withdraw as members even if they disagree with the Chamber's political expression, because they wish to benefit from the Chamber's nonpolitical programs * * *. The Chamber's political agenda is sufficiently distinct from its educational and outreach programs that members who disagree with the former may continue to pay dues to participate in the latter." 494 U.S. at 663.

Consequently, the proposed rules separate these two concepts by addressing "shareholders and other persons" in paragraph (c)(3)(i) and other "disincentives to disassociate" in paragraph (c)(3)(ii). Corporations would have to satisfy both paragraphs in order to be entitled to an exemption.

Paragraph (c)(3)(ii) contains a non-exhaustive list of the kinds of benefits that would disqualify the corporation if they were offered or conferred by the corporation and conditioned on continued membership. The benefits listed are the kind that led the *Austin* Court to recognize that disincentives to disassociate take various forms, many of which are less onerous than loss of a job or an ownership interest. In *Austin*, access to educational seminars, conventions, and "contacts with other members of the business community" were strong enough disincentives to negate the second feature. 494 U.S. at 662–63. The proposed rule takes the same approach. "Certainly members would be disinclined to terminate their involvement with the organization on the basis of less extreme disincentives than the loss of employment." 494 U.S. at 663.

It is important to note that corporations that do not qualify for exempt status because they condition benefits on continued membership would not be able to remedy this and qualify for an exemption by disclosing the political nature of their membership solicitations. See proposed § 114.10(f). Such a disclosure would make members aware of how the income generated by their membership is used. However, it would not eliminate the "disincentive to disassociate" created by benefits conditioned on maintaining membership.

The third feature that distinguished MCFL from other corporations was "MCFL was not established by a business corporation or labor union, and it is its policy not to accept contributions from such entities." *MCFL*, 479 U.S. at 264. Therefore, under paragraph (c)(4) of the proposed rules, no corporation established by a business corporation or labor organization, and no corporation directly or indirectly accepting donations of anything of value from a business corporation or labor

organization, would be eligible for an exemption.

In order to ensure that corporations have this feature, the proposed rules would require corporations to have a written policy against accepting donations from business corporations and labor organizations. "This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace." *Id.* The proposed rules also seek to deter less apparent conduit activity, by excluding corporations that might be receiving business or labor donations or support indirectly through a third organization.

Many of the comments submitted in response to the previous notices suggested that the Commission adopt a rule that would allow an exempt corporation to accept a *de minimus* amount of corporate contributions without losing its exemption. The commenters suggested that the Commission require exempt corporations to segregate these contributions in a separate account in order to avoid the Court's concerns.

In both *MCFL* and *Austin* the Court placed great importance on the need to prevent the use of exempt corporations as conduits for prohibited contributions. The *MCFL* Court said that one of the reasons MCFL's independent spending could not be restricted was because "it [was MCFL's] policy not to accept contributions from [business corporations or labor unions]." 479 U.S. at 264. The Court viewed MCFL's independence, and its policy against accepting business or labor organization contributions, as significant barriers to the dangers of conduit activity. Since an unqualified policy is the best way of ensuring that exempt corporations are not used as conduits for corporate or labor organization contributions, the proposed rule does not contain a *de minimus* exception or a separate account requirement.

However, the Commission recognizes that some organizations that do not qualify for an exemption may wish to reconstitute themselves so that they qualify for exempt status. The Commission is considering creating a mechanism whereby a previously nonexempt corporation could qualify for an exemption if it adopted all of the essential characteristics of an exempt corporation. In particular, the nonexempt corporation would be required to purge its accounts of corporate and labor organization donations and implement a policy to ensure that it does not accept these donations in the future. Once it adopts the essential characteristics, purges its accounts, and implements such a policy, the corporation would qualify for exempt status after the expiration of a minimum time period. The Commission is interested in comments on such a mechanism, and on the amount of time that should expire before the corporation qualifies for the exemption.

The Commission also recognizes that, in some situations, a corporation that does not qualify for the exemption may wish to set up a separate corporation that does qualify in order to engage in election influencing activity. One example of this would be an organization that is tax-exempt under 26 U.S.C. 501(c)(3) ("(c)(3)") that establishes a related organization that is tax-exempt under section 501(c)(4) ("(c)(4)"). Since the (c)(3) organization can accept donations from business corporations and labor organizations, and may share certain operating expenses with the (c)(4), this arrangement raises an issue as to whether the (c)(4) should be exempt from section 441b.

If the (c)(3) pays more than its share of the total operating expenses, the (c)(3) is, in effect, subsidizing the operation of the (c)(4), and may be doing so with business corporation and labor organization donations. If the (c)(4) were an exempt corporation, these impermissible donations would be facilitating the making of independent expenditures, a result that the *MCFL* Court was clearly trying to avoid.

The Commission has drafted two alternatives to proposed § 114.10(c)(4) in order to elicit commenters' views on this issue. Alternative E–1 would limit section 441b exempt status to corporations that have "no organizational relationship with any organization that accepts" donations from business corporations and labor organizations. This alternative seeks to avoid the question of whether one organization is subsidizing the other by denying both organizations exempt status under § 114.10. Under this rule, there would be no need to determine whether each organization is paying an appropriate share of the expenses.

Alternative E–2 would take a narrower approach. It would allow an exempt corporation to have an organizational relationship with a group that accepts business corporation or labor organization donations, so long as the exempt corporation does not accept donations from such an organization. Under this rule, an exempt corporation could have an organizational relationship with a 501(c)(3) tax-exempt organization.

However, if the (c)(3) organization accepts business corporation or labor organization donations, the exempt corporation could not accept donations from the (c)(3). Consequently, if the two organizations share operating expenses such as rent, office supplies, staff, or utilities, some method of accurately allocating those expenses between the two organizations would be necessary in order to ensure that business corporation and labor organization donations are not facilitating the making of independent expenditures. The Commission seeks comments on how this allocation might be accomplished, and on whether it would be preferable to avoid the need for allocation by choosing the first alternative.

Finally, proposed paragraph (c)(5) would limit the exemption to corporations that are non-profit, tax exempt, social welfare organizations described in 26 U.S.C. 501(c)(4). Corporations must fit this description in order to be exempt from the prohibition on independent expenditures. One commenter noted that application for formal recognition of exempt status under section 501(c)(4) is permissive rather than mandatory. Therefore, under the proposed rules, a 501(c)(4) organization may qualify for the section 441b exemption regardless of whether it applies to the Internal Revenue Service for formal recognition of its tax exempt status.

The Commission is considering an alternative version of paragraph (c)(5) in an effort to limit the scope of the exemption from section 441b to small grass roots organizations that operate primarily on the local level. The alternative version would limit the exemption to section 501(c)(4) organizations that are eligible to file IRS Form 990EZ. Form 990EZ is the short form of IRS Form 990, the return required of organizations that are exempt from income tax under section 501(c) of the Internal Revenue Code. Form 990EZ is available to organizations that have gross receipts during the year of less than $100,000 and total assets at the end of the year of less than $250,000. See Form 990EZ, Short Form Return of Organization Exempt From Income Tax, and accompanying instructions. The IRS created this form to minimize the reporting burdens on smaller tax-exempt organizations. This is consistent with the goal of the *MCFL* Court.

As part of this approach, the Commission would further limit the reporting requirements for exempt corporations, which are discussed in detail below. Specifically, exempt corporations would not be required to report their total disbursements. This information is used to determine

whether the corporation's major purpose is the making of independent expenditures. Instead, the Commission would require the exempt corporation to certify that its independent expenditures did not equal or exceed fifty percent its total disbursements during the time periods contained in paragraph (h). See discussion of paragraph (e)(1) below. Eliminating the need to submit figures for total disbursements would reduce the reporting requirements for exempt corporations.

The Commission is also considering limiting the section 441b exemption to groups that use the less sophisticated fundraising techniques typically employed by grass roots organizations. One criterion under consideration would deny the exemption to organizations that utilize more formalized fundraising methods such as direct mail solicitation. *MCFL* involved an organization whose resources came from garage sales, bake sales, dances, raffles and picnics. In contrast, solicitation by direct mail typically involves a greater level of sophistication and organization. Therefore, the Commission is considering limiting the section 441b exemption to organizations that use the less formalized fundraising techniques.

b. Reporting Independent Expenditures

In *MCFL*, the Supreme Court recognized the need to impose disclosure requirements to prevent "massive undisclosed political spending" by MCFL-type organizations and the use of these organizations as "conduits for undisclosed spending by business corporations and unions." 479 U.S. at 262. The Court suggested that the requirements of 2 U.S.C. 434(c) would protect against these dangers.

Section 434(c) requires persons, other than political committees, that make independent expenditures exceeding $250 in a calendar year to report certain information, such as the identity of any persons whose contributions exceed $200 in a calendar year. Section 109.2 of the regulations explains these reporting requirements in greater detail.

Paragraph (e) of proposed § 114.10 would require exempt corporations to report in accordance with § 109.2. Exempt corporations would be required to file a report when they make independent expenditures exceeding $250 in a calendar year. Additional reports would be required for each subsequent reporting period in which the exempt corporation makes independent expenditures.

Since exempt corporations would be treated as "persons" for reporting purposes, they would be expected to comply with these reporting requirements by filing FEC Form 5. The Commission is proposing to modify this form slightly so that it can be used in this situation. The revised form would require an exempt corporation to indicate its total disbursements during certain time periods. This information could be used to determine whether the exempt corporation has triggered political committee status. See discussion of § 114.10(h). Providing space for this information on Form 5 would obviate the need for an additional form or letter, thereby minimizing the reporting burdens on exempt corporations. Otherwise, FEC Form 5 would remain the same.

As indicated, the additional information requested is necessary to implement proposed paragraph (h), discussed below.

The proposed rules contain two alternative versions of paragraph (h) that use different time periods to determine whether an exempt corporation has triggered political committee status. Consequently, the proposed rules contain corresponding alternative versions of paragraph (e)(1). The first alternative, F–1, would require the corporation to report its total disbursements during the current calendar year from the beginning of the year through the close of the reporting period. The second alternative, F–2, would require the corporation to report its total disbursements during the previous calendar year.

As mentioned in the discussion of proposed paragraph (c)(5), the Commission is considering a third option for paragraph (e)(1) that is not contained in the proposed rules. Under this third alternative, the Commission would not require an exempt corporation to report its total disbursements for the time periods described in paragraph (h). Instead the Commission would require the exempt corporation to certify that the independent expenditures it made did not equal or exceed fifty percent of its total disbursements during those time periods. This would reduce the reporting requirements for exempt corporations by eliminating the need to submit figures for total disbursements. Commenters are encouraged to express their views on this third alternative.

The Commission will also need other information in order to determine whether a corporation qualifies for exempt status.

Consequently, when an exempt corporation makes independent expenditures that it is required to report under 11 CFR 109.2(a), it would also be required to submit a statement containing this information. The information is listed in § 114.10(e)(2)(ii), which closely tracks the requirements for exempt status in proposed section 114.10(c).

The statement containing this information would be referred to as the corporation's qualifying statement. The statement could be submitted either along with, or prior to, the corporation's first independent expenditure report. It is important to note that the corporation would not be required to submit a qualifying statement unless it makes independent expenditures that must be reported under 11 CFR 109.2(a). In other words, no statement would be required unless the corporation makes independent expenditures aggregating in excess of $250 in a calendar year. If the corporation stays below that level, it need not submit a qualifying statement.

The proposed rules would allow the corporation to submit the qualifying statement in letter form. However, corporations would also have the option of reporting this information using a form that the Commission is proposing to create for this purpose. If the information provided in the qualifying statement were to change, the corporation would be required to file an amendment with its next independent expenditure report. Amendments could also be in letter form, and would need to contain only the corporation's name and the corrected information.

c. Exempt Corporation as Political Committees; Major Purpose Test

In *MCFL*, the Supreme Court said that "should MCFL's independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." 479 U.S. at 262. Paragraph (h) of the proposed rules sets forth the circumstances under which an exempt corporation will trigger political committee status. The Commission is proposing alternative versions of this provision in order to elicit comments on the complicated issues involved. Commenters are encouraged to submit their views on both versions.

Alternative G–1 lays out a two part test for political committee status. If an exempt corporation falls within the statutory definition of political committee at 2 U.S.C. 431(4), and its major purpose is campaign activity, it will become a political committee. The corporation falls within the statutory definition of political committee if it has made more than $1000 of independent expenditures during the calendar year. The corporation's major purpose will be campaign activity if its independent

expenditures equal or exceed fifty percent of its total disbursements during either one of two time periods. The two parts of this test are described in more detail below.

The sequence of the events involved in this two part test is very important. The corporation will not become a political committee unless it falls within the definition of political committee when its major purpose becomes campaign activity. In other words, the corporation will not become a political committee unless, on the last day of the time period during which its independent expenditures exceed fifty percent of its total disbursements, it has made more than $1000 in independent expenditures since the beginning of that calendar year. These two events must occur simultaneously.

The corporation's major purpose will be campaign activity if its independent expenditures equal or exceed fifty percent of its total disbursements during either one of two time periods. The two time periods are the current calendar year from the first day of the year to the close of the current reporting period, and the sixty days prior to an election in which the corporation made independent expenditures. If the corporation's independent expenditures equal or exceed fifty percent of its total disbursements during either time period, its major purpose would be considered campaign activity.

When using the current calendar year to date time period, the Commission would look backward from the closing date of each reporting period to the beginning of the calendar year in order to determine whether fifty percent or more of the corporation's total disbursements were for independent expenditures. For example, if an exempt corporation filed a report for the third quarter, the Commission would use the time period from January 1 through September 30 in order to determine the corporation's major purpose. If independent expenditures represent fifty percent or more of the corporation's total disbursements during that period, the corporation's major purpose would be campaign activity.

Some corporations may confine their independent expenditure activity to the critical time period before the election. Therefore, the proposed rule would also use the sixty days before an election as an alternative time period for determining major purpose. If an exempt corporation's independent expenditures during the sixty days preceding an election equal fifty percent or more of its total disbursements during the same time period, the corporation's major purpose will be campaign activity. This test would only be used to determine the major purpose of exempt corporations whose independent expenditure activity significantly increase during the preelection period. Therefore, the proposed rules would not require all exempt corporations to report their total disbursements during the sixty day preelection period. If an exempt corporation's disclosure reports reveal a significant increase in campaign activity during the sixty day time period, the proposed rule would allow the Commission to request that the corporation disclose its total disbursements during the period in order to determine if the corporation has triggered political committee status.

As indicated above, an exempt corporation whose major purpose is campaign activity would become a political committee only if it falls within the statutory definition of political committee at 2 U.S.C. 431(4). Section 431(4) defines political committee as an organization that makes expenditures aggregating in excess of $1000 in a calendar year. In the case of an exempt corporation, the corporation would have to exceed the $1000 threshold on or before the close of the reporting period or the date of the election. In other words, the corporation would become a political committee only if, on the closing data of the reporting period or the date of the election, it had made more than $1000 of independent expenditures since the beginning of that calendar year.

Alternative G–2 would tie the fifty percent threshold to the calendar year. Early each year, the corporation would be required to report its total disbursement during the previous calendar year. If fifty percent or more of the corporation's total disbursements were for independent expenditures, the corporation's major purpose would be campaign activity. If it made more than $1000 of independent expenditures by the end of that year, the corporation would become a political committee.

The calendar year approach would require less reporting than alternative G–1, but may not adequately serve the purposes of the FECA. Because it determines political committee status only once a year, it would allow some exempt corporations to operate as political committees for extended periods of time without registering and reporting as such and without eliminating impermissible funds from their accounts. Commenters are encouraged to express their views on this alternative.

The Commission also welcomes comments on several other issues raised by the major purpose concept. First, should the test turn on whether independent expenditures are "a" major purpose or "the" major purpose of the corporation? Should political committee status be triggered at the fifty percent level, or at some lower level if, even at the lower level, the corporation's independent expenditure activity still constitutes the greatest percentage category of corporate activities? If the Commission were to adopt a plurality rather than majority approach, how should the amount spent on independent expenditures be compared to other corporate activities—i.e., would the Commission need to establish categories of activities that it would compare in order to determine a corporation's major purpose?

In *MCFL*, the Supreme Court acknowledged that MCFL-type organizations that become political committees "would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns." 479 U.S. at 262. Consequently, the proposed rules would require an exempt corporation to eliminate all impermissible funds from its cash on hand before it becomes a political committee. Since exempt corporations cannot accept corporate or labor organization contributions, the impermissible funds that would have to be eliminated in this context would be contributions from federal contractors, foreign nationals, and in excess of the contribution limits. This requirement places exempt corporations that trigger political committee status under section 114.10 an equal footing with other political committees, which are required to dispose of impermissible funds before they cross the $1000 threshold.

3. Version 2

As noted earlier, version 2 uses the term "qualified corporation" to describe an MCFL-type organization. Version 2 takes a broader, tax law approach to defining these corporations. This version seeks comments on simply defining an MCFL corporation as one that is organized under 501(c)(4) of the Internal Revenue Code, subject to certain specifically enumerated exceptions.

In order to qualify as a tax exempt organization under section 501(c)(4), a corporation must engage in "social welfare" activity conferring benefits on a charitable class or the community at large. An organization whose activities primarily benefit its own membership is not eligible for (c)(4) status.

Version 2 describes MCFL-type organizations as "qualified corporations," and focuses on two

points. First, a qualified corporation is generally one that is organized under section 501(c)(4). Second, such an organization will not be a qualified corporation if it has any of the features listed in proposed section (c)(2) (i) through (vi). These features track the rationale of the *MCFL* and *Austin* opinions. Two additional disqualifying features would be the existence of a separate segregated fund, and ineligibility to file IRS Form 990EZ.

Version 2 would also require a simpler version of the qualifying statement than would be required under paragraph (e)(2) of version 1. As indicated in the proposed rules, paragraphs (b), (d), (e)(1), (f), (g), and (h) would be the same in version 2 as they are in version 1.

The Commission welcomes comments on the proposed revisions to parts 109, 110 and 114 and the issues raised in this Notice.

List of Subjects

11 CFR Part 109

Campaign funds, Elections, Political candidates, Political committees and parties, Reporting requirements.

11 CFR Part 110

Campaign funds, Elections, Political candidates, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that, as anticipated by the Supreme Court, in *MCFL*, there may not be a substantial number of small entities affected by the proposed rules. In addition, the only new requirement is the completion of the proposed Qualifying Statement, which would not have a significant economic impact on the small entities affected.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

1. The authority citation for part 109 would continue to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

2. 11 CFR part 109 would be amended by revising paragraphs (b)(1) and (b)(2) and by republishing the introductory text of paragraph (b)(4) adding paragraph (b)(4)(iii) to section 109.1 to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

* * * * *

(b) For purposes of this definition—

(1) *Person* means an individual, partnership, committee, association, exempt corporation under 11 CFR 114.10(c), or any organization or group of persons, including a separate segregated fund established by a labor organization, corporation, or national bank (see part 114) but does not mean a labor organization, nonexempt corporation under 11 CFR 114.10(c), or national bank.

Alternative A–1

(2) (i) *Expressly advocating* means any communication that, when taken as a whole, includes an expression of support for or opposition to a clearly identified candidate, a clearly identified group of candidates, or to the candidates of a clearly identified political party, with respect to an election.

(ii) *Support for or opposition to* includes, but is not limited to, expressions such as *vote for, elect, support, cast your ballot for,* and *Smith for Congress,* or *vote against, defeat,* or *reject,* and suggestions to take action to affect the result of an election such as to make contributions or to participate in campaign activity.

(iii) *Taken as a whole* means that all statements, expressions and messages contained in the communication, whether in the same or separate documents, are read together in light of the circumstances under which they were made and with limited reference to external events.

Alternative A–2

(2) *Expressly advocating* means any communication, or portion thereof, which constitutes an exhortation to support or oppose a clearly identified candidate with respect to an election.

(i) An *exhortation to support or oppose*—

(A) Includes phrases such as *vote for, elect, support, cast your ballot for, Smith for Congress, vote against, defeat* or *reject.*

(B) Also includes any other message which contains a reference to a clearly identified candidate, if the message taken as a whole with limited reference to external events is susceptible to no other reasonable interpretation than as encouraging the candidate's election or defeat rather than some other course of action on a specific issue. *Taken as a whole* means that all statements, expressions and messages contained in the communication, whether in the same or separate documents, are read together in light of the circumstances under which they were made and with limited reference to external events.

(C) If a communication is made within _____ days preceding an election, and it contains a reference to a clearly identified candidate, and it does not encourage any action on any specific issue, the communication will constitute an exhortation to support or oppose that clearly identified candidate.

(ii) *Clearly identified candidate* means the candidate's name, nickname, photograph, drawing, or other unambiguous reference to his or her identity such as "the President", "your Congressman", or "the incumbent", or to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of George." The phrases "Vote Republican" or "Vote Democratic" refer to clearly identified candidates if made within _____ days preceding a special or general election or an open primary election.

(iii) *With respect to an election* includes any express, implied or understood reference to an upcoming election, such as "SMITH '92" or "JONES IS THE ONE".

[end of Alternatives A–1 and A–2]

* * * * *

(4) *Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate* means—

* * * * *

(iii) But may include limited contacts with candidates, candidates' agents and authorized committees of candidates regarding candidate appearances, candidate debates, voter guides, endorsements and publications, as described in 11 CFR 110.13(b)(4), 114.2(c), 114.3 and 114.4.

* * * * *

PART 110–CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 would be revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

4. 11 CFR Part 110 would be amended by revising section 110.13 to read as follows:

§ 110.13 Candidate debates.

(a) *Staging organizations.* (1) A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3) or (c)(4) and which does not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with 11 CFR 110.13(b) and 114.4(f).

(2) Broadcasters, *bona fide* newspapers, magazines, and other periodical publications may stage candidate debates in accordance with 11 CFR 110.13(b) and 114.4(f).

b. *Debate structure.*—The structure of debates staged in accordance with 11 CFR 110.13 and 114.4(f) is left to the discretion of the staging organization, provided that:

(1) Such debates include at least two candidates;

(2) No candidate is favored through the structure or format of the candidate debate, such as my designing the debate to provide one or more candidates with more time than other participating candidates, or by providing one candidate with more advance information regarding the topics to be addressed or the specific questions to be asked;

(3) No communication made by the staging organization during the debate expressly advocates the election or defeat of any clearly identified candidate, clearly identified group of candidates, or candidates of any clearly identified political party. Communications made at other times by staging organizations that are broadcasters, *bona fide* newspapers, magazines and periodical publications shall be governed by 11 CFR 100.7(b) (2) and 100.8(b)(2).

(4) Contact with the candidate, the candidate's agents and the candidate's authorized committee(s) shall be limited to communications reasonably necessary to staging the debate, such as discussions of the structure, format and timing of the debate, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to staging the debate.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

5. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8) (B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

6. 11 CFR Part 114 would be amended in § 114.1 by adding new text at the end of paragraph (a)(1), by revising paragraph (a)(2)(ii) and by adding paragraph (j) to section 114.1 as follows:

§ 114.1 Definitions.

Alternative B–1 [See § 114.4 (c)(1) for Alternative B–2)

(a) (1) * * * The term *anything of value* includes:

(i) The use of a corporate or labor organization logo, trademark, or letterhead without charge or at less than the fair market value; or

(ii) The inclusion of information, including but not limited to an official title, in a communication indicating that the individual making the communication is acting in his or her capacity as a representative of a corporation or labor organization.

This shall not prevent an exempt corporation under 11 CFR 114.10(c) from using its logo, registered trademark, or letterhead in communications to the general public, and shall not prevent a corporation, labor organization or separate segregated fund from using the corporation's or labor organization's logo, trademark, or letterhead in communications, including solicitations, made in accordance with 11 CFR 114.3 through 114.8.

[end of Alternative B–1]

(2) * * *

(ii) Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and executive or administrative personnel, and their families, as described in 11 CFR 114.3;

* * * * *

(j) *Restricted class.* A corporation's restricted class is its stockholders and executive or administrative personnel, and their families. A labor organization's restricted class is its members and executive or administrative personnel, and their families. The restricted class of an incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock is its members and executive or administrative personnel, and their families. [The solicitable class of a corporation, labor organization, membership organization, cooperative, corporation without capital stock or trade association, as described in 11 CFR 114.5(g), 114.7 and 114.8, may include some persons who are not considered part of the organization's restricted class, and may exclude some persons who are in the restricted class.]

7. 11 CFR part 114 would be amended by revising section 114.2 to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

(a) National banks and corporations organized by authority of any law of Congress are prohibited from making a contribution, as defined in 11 CFR 114.1(a), in connection with any election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office. National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures for communications to the general public expressly advocating the election or defeat of a clearly identified candidate, a clearly identified group of candidates, or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State or Federal office.

(1) Such national banks and corporations may engage in the activities permitted by 11 CFR part 114, except to the extent that such activity is foreclosed by provisions of law other than the Act.

(2) The provisions of 11 CFR part 114 apply to the activities of a national bank, or a corporation organized by any law of Congress, in connection with local, State and Federal elections.

(b) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election. Except as provided at 11 CFR 114.10, corporations and labor organizations are prohibited from making expenditures for communications to the general public expressly advocating the election or defeat of a clearly identified candidate, a clearly identified group of candidates, or the candidates of a clearly identified political party, with respect to a Federal election.

(c) Corporations and labor organizations are prohibited from coordinating the election-related activities described in 11 CFR Part 114 with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee, except to the limited extent specifically permitted under 11 CFR 114.3 and 114.4. The limited contact permitted under 11 CFR 114.3 and 114.4 shall not cause a corporation's or labor organization's disbursements for the activities described in those sections to become contributions or expenditures. Moreover, contacts beyond those permitted under 11 CFR 114.3 shall not

cause future activities conducted under that section to be considered contributions or expenditures. However, any communications may be considered evidence that could negate the independence of other activities conducted by the corporation, labor organization or its separate segregated fund. See 11 CFR 109.1 regarding independent expenditures and coordination with candidates.

(d) A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

(e) No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.

8. 11 CFR part 114 would be amended by revising § 114.3 to read as follows:

§ 114.3 Disbursements for communications to the restricted class in connection with a Federal election.

(a) *General.* (1) Corporations and labor organizations may make communications on any subject, including communications containing express advocacy, to their restricted class or any part of that class. Corporations and labor organizations may also make the communications permitted under 11 CFR 114.4 to their restricted class or any part of that class. The activities permitted under this section may involve election-related contact with candidates and political committees only to the extent permitted by this section. See 11 CFR 109.1 and 114.2(c) regarding independent expenditures and coordination with candidates.

(2) Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock may make communications to their restricted class, or any part of that class as permitted in paragraphs (a)(1) and (c) of this section.

(b) *Reporting communications containing express advocacy.* Disbursements for communications expressly advocating the election or defeat of a clearly identified candidate made by a corporation, including a corporation described in paragraph (a)(2) of this section, or labor organization to its restricted class shall be reported in accordance with 11 CFR 100.8(b)(4) and 104.6.

(c) *Means of making communications containing express advocacy.* The means of making communications containing express advocacy for which disbursements must be reported under paragraph (b) of this section include, but are not limited to, the examples set forth in paragraphs (c)(1) through (4) below.

(1) *Publications.* Printed material expressly advocating the election or defeat of a clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party may be distributed by a corporation or by a labor organization to its restricted class, provided that:

(i) The material is produced at the expense of the corporation or labor organization;

(ii) The material constitutes a communication of the views of the corporation or the labor organization, and is not the republication or reproduction in whole or in part, of any broadcast, transcript or tape or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents. A corporation or labor organization may, under this section, use brief quotations from speeches or other materials of a candidate that demonstrate the candidate's position as part of the corporation's or labor organization's expression of its own views; and

(iii) Except as provided in 11 CFR 114.2(c), contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to produce the publication, such as discussions of the candidate's speeches and campaign materials and the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to produce the publication.

(2) *Candidate and party appearances.*

Alternative C–1 (Continued at § 114.3(c)(2)(iii) and § 114.4(b)(1)(viii))

(i) A corporation may allow a candidate or party representative to address its restricted class at a meeting, convention or other function of the corporation. A labor organization may allow a candidate or party representative to address its restricted class at a meeting, convention, or other function of the labor organization. A corporation or labor organization may allow employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, other guests of the corporation who are being honored or speaking or participating in the event, and representatives of the news media to be present during a candidate or party representative appearance under this section.

Alternative C–2 (Continued at § 114.4(b)(1)(viii))

(i) A corporation may allow a candidate or party representative to address its restricted class at a meeting, convention or other function of the corporation. A labor organization may allow a candidate or party representative to address its restricted class at a meeting, convention, or other function of the labor organization. A corporation or labor organization may allow employees outside the restricted class of the corporation or labor organization who are necessary to administer the meeting, and other guests of the corporation who are being honored or speaking or participating in the event to be present during a candidate or party representative appearance under this section. However, the corporation or labor organization may not allow representatives of the news media to be present during a candidate or party representative appearance unless the appearance meets the conditions set forth at 11 CFR 114.4(b)(1).

[end of Alternative language]

(ii) The candidate or party representative may ask for contributions to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party. The incidental solicitation of persons outside the corportion's or labor organization's restricted class who may be present at the meeting as permitted by this section will not be a violation of 11 CFR 114.5(g).

Alternative C–1 (See § 114.4(b)(1)(viii) for continuation of Alternatives C–1 and C–2)

(iii) If the corporation or labor organization permits more than one candidate to address its restricted class, and permits the news media to cover or carry an appearance by one candidate, the corporation or labor organization shall also permit the news media to cover or carry the appearances by the other candidate(s). If the corporation or labor organization permits a representative of the news media to cover or carry a candidate appearance, the corporation or labor organization shall provide all other representatives of the news media with equal access for covering or carrying that candidate appearance. The corporation or labor organization may require the news media to use a pooling arrangement to provide all representatives of the news

media with equal access for covering or carrying candidate appearances.

[end of Alternative language]

(iv) Except as provided in 11 CFR 114.2(c), contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to arrange the candidate appearance, such as discussions of the structure, format and timing of the candidate appearance, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to arrange the candidate appearance.

(3) *Phone banks.* A corporation or a labor organization may establish and operate phone banks to communicate with its restricted class, urging them to register and/or vote for a particular candidate or candidates, or to register with a particular political party.

(4) *Registration and get-out-the-vote drives.* A corporation or a labor organization may conduct registration and get-out-the-vote drives aimed at its restricted class. Registration and get-out-the-vote drives include providing transportation to the polls. Such drives may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular candidate or candidates. Information regarding and assistance in registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates, or a particular political party.

(d) *Facilitating the making of contributions.* Corporations and labor organizations are prohibited from facilitating the making of contributions to candidates or political committees, other than the separate segregated funds of the corporations and labor organizations. Examples of facilitating the making of contributions include—

(1) Providing materials used to transmit or deliver contributions, such as stamps, envelopes addressed to the candidate or political committee, or other similar items which would assist in transmitting or delivering contributions;

(2) Collecting contributions to a candidate or political party in conjunction with an appearance by the candidate or party representative; and

(3) Enrolling members of a corporation's or labor organization's restricted class in a payroll deduction plan, check-off system, or other plan which deducts contributions from dividend or payroll checks, other than a plan used to make contributions to the corporation's or labor organization's separate segregated fund or an employee participation plan pursuant to 11 CFR 114.11. See 11 CFR 110.6 regarding contributor earmarking of contributions made through a separate segregated fund to a candidate.

9. 11 CFR Part 114 would be amended by revising § 114.4 to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

(a) *General.* Any communications which a corporation or labor organization may make to the general public under paragraph (c) of this section may also be made to the corporation's or labor organization's restricted class and to other employees and their families. Communications which a corporation or labor organization may make to its restricted class and to other employees, but not to the general public are found in paragraph (b) of this section. Communications which a corporation or labor organization may make only to its restricted class are found at 11 CFR 114.3. The activities permitted under this section may involve election-related contact with candidates and political committees only to the extent permitted by this section. See 11 CFR 109.1 and 114.2(c) regarding independent expenditures and coordination with candidates. Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock will be treated as corporations for the purpose of making communications beyond the restricted class under this section.

(b) *Communications by a corporation or labor organization to its employees and its restricted class*—(1) *Candidate and party appearances on cooperate premises or at a meeting, convention or other function.* Corporations may permit candidates, candidates' representatives or representatives of political parties on corporate premises or at a meeting, convention, or other function of the corporation to address or meet its restricted class and other employees of the corporation and their families, in accordance with the conditions set forth in paragraphs (b)(1) (i) through (viii) of this section.

(i) If a candidate for the House or Senate or a candidate's representative is permitted to address or meet employees, all candidates for that seat who request to appear must be given a similar opportunity to appear;

(ii) If a Presidential or Vice Presidential candidate or candidate's representative is permitted to address or meet employees, all candidates for that office who are seeking the nomination of a major party or who are on the general election ballot in enough States to win a majority of the electoral votes and who request to appear must be given a similar opportunity to appear;

(iii) If representatives of a political party are permitted to address or meet employees, representatives of all political parties who had a candidate or candidates on the ballot in the last general election or which are actively engaged in placing or will have a candidate or candidates on the ballot in the next general election and who request to appear must be given a similar opportunity to appear;

(iv) A corporation, its restricted class, or other employees of the corporation or its separate segregated fund shall not, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under this section, and shall not facilitate the making of contributions to any such candidate or party;

(v) A corporation or its separate segregated fund shall not, in conjunction with any candidate or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate, clearly identified group or candidates or candidates of a clearly identified political party and shall not promote or encourage express advocacy by other employees;

(vi) No candidate shall be favored through the structure or format of the candidate appearance, such as by providing one or more candidates with more time or a substantially better location than other candidates who appear, unless the corporation is able to demonstrate that it is clearly impractical to provide all candidates with similar times or locations;

(vii) Contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to arrange the candidate appearance, such as discussions of the structure, format and timing of the candidate appearance, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to arrange the candidate appearance; and

Alternative C–1 (Continued from § 114.3(c)(2)(i) and (iii))

(viii) A corporation may allow representatives of the news media to be present during a candidate or party representative appearance under this section, in accordance with the procedures set forth at 11 CFR 114.3(c)(2)(iii).

Alternative C–2 (Continued from § 114.3(c)(2)(i))

(viii) If the corporation or labor organization permits more than one candidate to address its employees, and permits the news media to cover or carry an appearance by one candidate, the corporation or labor organization shall also permit the news media to cover or carry the appearances by the other candidate(s). If the corporation or labor organization permits a representative of the news media to cover or carry a candidate appearance, the corporation or labor organization shall provide all other representatives of the news media with equal access for covering or carrying that candidate appearance. The corporation or labor organization may require the news media to use a pooling arrangement to provide all representatives of the news media with equal access for covering or carrying candidate appearances.

[end of Alternatives C–1 and C–2]

(2) *Candidate and party appearances on labor organization premises or at a meeting, convention or other function.* A labor organization may permit candidates, candidates' representatives or representatives of political parties on the labor organization's premises or at a meeting, convention, or other function of the labor organization to address or meet its restricted class and other employees of the labor organization, and their families, in accordance with the conditions set forth in paragraphs (b)(1)(i) through (iv), (vi) through (viii), and paragraphs (b)(2) (i) and (ii) of this section.

(i) No official, member, or employee of a labor organization or its separate segregated fund shall, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party representative under this section, and shall not facilitate the making of contributions to any such candidate or party.

(ii) No official, member, or employee of a labor organization or its separate segregated fund shall, in conjunction with any candidate or party representative appearance under this section, expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party.

(c) *Communications by a corporation or labor organization to the general public*—(1) *General.* A corporation or labor organization may make the communications described in paragraphs (c)(2) through (c)(5) of this section to the general public. Notwithstanding the provisions of paragraph (c) of this section, an exempt corporation under 11 CFR 114.10(c) may include express advocacy in any communication made to the general public under paragraphs (c)(2) through (c)(5) of this section. The general public includes anyone who is not in the restricted class. The corporation or labor organization may include its logo or otherwise identify itself as the sponsor of a communication made to the general public under paragraph (c)(2) through (c)(5) of this section.

Alternative B–2 (See § 114.1(a)(1) for Alternative B–1) (c)(1) [The first four sentences would be the same as paragraph (b)(1) above.]

However, no person, including a corporation or labor organization, shall use a corporate or labor organization logo, trademark, or letterhead in any communication to the general public which contains express advocacy or solicits contributions. No individual making a communication expressly advocating the election or defeat of any clearly identified candidate or soliciting funds for any candidate shall include information indicating that he or she is acting in his or her capacity as a representative of a corporation or labor organization, including, but not limited to, reference to the corporation's or labor organization's name or the official's title at the corporation or labor organization. This shall not prevent an exempt corporation under 11 CFR 114.10(c) from using its logo, trademark, or letterhead in communications to the general public, and shall not prevent a corporation, labor organization or separate segregated fund from using the corporation's or labor organization's logo, trademark, or letterhead in communications to the restricted class under 11 CFR 114.3 or in solicitations under 11 CFR 114.5 through 114.8.

[end of Alternative B–2]

(2) *Registration and voting communications.* A corporation or labor organization may make registration and get-out-the-vote communications to the general public, provided that the communications do not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party. The preparation and distribution of registration and get-out-the-vote communications shall not be coordinated with any candidate, group of candidates or political party. A corporation or labor organization may make communications permitted under this section through posters, billboards, broadcasting media, newspapers, newsletters, brochures, or similar means of communication with the general public.

(3) *Official registration and voting information.* (i) A corporation or labor organization may distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by the official election administrators.

(ii) A corporation or labor organization may distribute official registration-by-mail forms to the general public if registration by mail is permitted by the applicable State law. A corporation or labor organization may distribute absentee ballots to the general public if permitted by the applicable State law.

(iii) A corporation or labor organization may donate funds to State or local government agencies responsible for the administration of elections to help defray the costs of printing or distributing registration or voting information and forms.

(iv) The corporation or labor organization shall not, in connection with any such distribution, expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party and shall not encourage registration with any particular political party.

(v) The reproduction and distribution of registration or voting information and forms shall not be coordinated with any candidate, group of candidates or political party.

(4) *Voting records.* A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress, provided that the voting record and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of a clearly identified political party. The distribution of voting records shall not

be coordinated with any candidate, group of candidates or political party.

(5) *Voter guides.* (i) A corporation or labor organization may prepare and distribute to the general public voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions, including voter guides obtained from a nonprofit organization which is exempt from Federal taxation under 26 U.S.C. 501(c)(3) or (c)(4) and which does not support, endorse or oppose candidates or political parties, provided that—

(A) The questions are directed in writing to all of the candidates for a particular seat or office, giving the candidates equal time to respond, except that in the case of Presidential and Vice Presidential candidates the corporation or labor organization may choose to direct the questions only to those candidates seeking the nomination of a major party or to those appearing on the general election ballot in enough States to win a majority of the electoral votes;

(B) No candidate is favored through the structure or format of the voter guide, such as by designing the voter guide to provide one or more candidates with greater prominence and other participating candidates, or by devoting unequal space to the responses of each candidate;

(C) The voter guide does not expressly advocate the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of any clearly identified political party; and

(D) Contact with each candidate, candidate's agents, and candidate's authorized committee(s) is limited to written communications reasonably necessary to produce the voter guide, such as discussions of the structure, format and timing of the voter guide, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to produce the voter guide.

(ii) The sponsoring organization may impose limitations on the number of words per response when the questions are initially sent to the candidates for their comments.

(iii) The sponsor may ask each candidate to provide biographical information such as education, employment positions, offices held, and community involvement and may impose a limitation on the number of words per submission.

(iv) The voter guide may be made available to the general public in any geographic area, but the distribution of the voter guide shall not be coordinated with any candidate, group of candidates or political party.

(6) *Endorsements.* A corporation or labor organization may endorse a candidate and may communicate the endorsement to its restricted class through the publications described in 11 CFR 114.3(c)(1) or during a candidate appearance under 11 CFR 114.3(c)(2). The corporation or labor organization may publicly announce the endorsement and state the reasons therefor, in accordance with the conditions set forth in paragraphs (c)(6)(i) and (ii) of this section.

Alternative D–1

(i) The public announcement of the endorsement shall be made through a press release or press conference. Disbursements for the press release or press conference shall be *de minimis*. The disbursements shall be considered *de minimis* if the press release and notice of the press conference is distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing press releases or holding press conferences.

Alternative D–2

(i) The public announcement of the endorsement shall only be made in response to questions posed at a routine press conference. Disbursements for the press conference shall be *de minimis*. The disbursements shall be considered *de minimis* if notice of the press conference is distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when holding press conferences.

[end of Alternatives D–1 and D–2]

(ii) Contact with the candidate, the candidate's agents and the candidate's authorized committee(s) shall be limited to the communications reasonably necessary to make the endorsement, such as discussions of the candidate's position on issues, but shall not include discussions of campaign strategy or tactics not necessary to make the endorsement.

(7) *Candidate appearances on educational institution premises.* An incorporated nonprofit educational institution which is exempt from federal taxation under 26 U.S.C. 501(c)(3), such as a school, college or university may allow associated organizations, such as student groups, to sponsor appearances by candidates, candidates' representatives or representatives of political parties at which such individuals address or meet the general public on the educational institution's premises in accordance with the conditions set forth in paragraphs (c)(7)(i) through (c)(7)(vii) of this section.

(i) The educational institution must have an established policy allowing associated organizations to sponsor such appearances, and this policy shall not favor any one candidate or political party over any other. The policy will not be considered to favor any candidate or political party if any group associated with the educational institution is allowed to sponsor such an appearance in the educational institution's facilities, and any other groups are permitted a similar or comparable opportunity if they so request;

(ii) No candidate, candidate's representative, or representative of a political party shall collect contributions from members of the audience in conjunction with an appearance under paragraph (c)(7) of this section. The educational institution shall not, either orally or in writing, solicit or direct or control contributions by members of the audience to any candidate or party in conjunction with any appearance by any candidate or party representative under paragraph (c)(7) of this section, and shall not facilitate the making of contributions to any such candidate or party;

(iii) An educational institution shall not, in conjunction with any candidate or party representative appearance under paragraph (c)(7) of this section, expressly advocate the election or defeat of any clearly identified candidate or candidates of a clearly identified political party, and shall not promote or encourage express advocacy by members of the audience;

(iv) Contact with each candidate, candidate's agent, and candidate's authorized committee(s) shall be limited to the communications reasonably necessary to arrange the candidate appearance, such as discussions of the structure, format and timing of the candidate appearance, and discussions of the candidate's positions on issues, but shall not include discussions of campaign strategy or tactics not necessary to arrange the candidate appearance;

(v) An educational institution may allow representatives of the news media to be present during a candidate or party representative appearance under this section, in accordance with the procedures set forth at 11 CFR 114.3(c)(2)(iii);

(vi) Educational institutions allowing candidates, candidates' representatives and representatives of political parties to make political appearances in the

institution's facilities pursuant to paragraph (c)(7) of this section shall ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and are not conducted as campaign rallies or events; and

(vii) In order to qualify under this section, the educational institution or its associated organization must ensure that admission to the event is available to the institution's academic community or the general public (whichever is invited) without regard to party affiliation or support of any particular candidate. The educational institution or its associated organization, and not the candidate's campaign or the political party, must have control over access to the facility by the audience.

(d) *Registration and get-out-the-vote drives.* A corporation or labor organization may support or conduct voter registration and get-out-the-vote drives which are aimed at employees outside its restricted class and the general public in accordance with the conditions set forth in paragraphs (d)(1) through (d)(6) of this section. Registration and get-out-the-vote drives include providing transportation to the polls.

(1) The corporation or labor organization shall not make any communication expressly advocating the election or defeat of any clearly identified candidate, clearly identified group of candidates or candidates of any clearly identified political party as part of the voter registration or get-out-the-vote drive.

(2) The registration or get-out-the-vote drive shall not be coordinated with any candidate, group of candidates or political party.

(3) The registration drive shall not be directed primarily to individuals previously registered with one particular political party, as opposed to another political party, or to individuals intended to be registered with a particular party. The get-out-the-vote drive shall not be directed primarily to individuals currently registered with one particular political party as opposed to another political party.

(4) These services shall be made available without regard to the voter's political preference. Information regarding and assistance in registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates or a particular political party.

(5) Individuals conducting the registration or get-out-the-vote drive shall not be paid on the basis of the number of individuals registered or transported who support a particular candidate, group of candidates or political party.

(6) The corporation or labor organization shall notify those receiving information or assistance of the requirements of paragraph (d)(4) of this section. The notification shall be made in writing at the time of the registration or get-out-the-vote drive.

(e) *Incorporated membership organizations, incorporated trade associations, incorporated cooperatives and corporations without capital stock.* An incorporated membership organization, incorporated trade association, incorporated cooperative or corporation without capital stock may permit candidates, candidates' representatives or representatives of political parties to address or meet members and employees of the organization, and their families, on the organization's premises or at a meeting, convention or other function of the organization, in accordance with the conditions set forth in paragraph (b)(2)(i) through (viii) of this section.

(f) *Candidate debates.* (1) A nonprofit organization qualified under 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.

(2) A *bona fide* broadcaster, newspaper, magazine or other periodical publication may use its own funds to defray costs incurred in staging public candidate debates held in accordance with 11 CFR 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage candidate debates held in accordance with 11 CFR 110.13 and § 114.4(f).

10. 11 CFR part 114 would be amended by adding 114.10 as follows:

§ 114.10 Nonprofit corporations exempt from the prohibition on independent expenditures.

Version 1 of § 114.10

(a) *Scope.* This section describes those corporations that are exempt from the prohibition on independent expenditures contained in 11 CFR 114.2. It sets out the requirements for demonstrating exempt status, for reporting independent expenditures, and for disclosing the potential use of solicited funds for political purposes. It also describes the circumstances under which an otherwise exempt corporation will become a political committee.

(b) *Definitions.* For the purposes of this section—

(1) *The promotion of political ideas* and *political purposes* include both issue advocacy and election influencing activity.

(2) A corporation's *express purpose* includes:

(i) The corporation's purpose as stated in its charter, articles of incorporation, or bylaws, except that a statement such as "any lawful purpose," "any lawful activity," or other comparable statement will not preclude a finding under paragraph (c) of this section that the corporation's only express purpose is the promotion of political ideas;

(ii) The corporation's purpose as publicly stated by the corporation or its agents; and

(iii) Any purpose evidenced by activities in which the corporation actually engages.

(3)(i) The term *business activities* includes but is not limited to:

(A) The provision of goods or services to members or to the general public which results in income to the corporation from members, the general public, or the provider of the services; and

(B) Advertising or promotional activity which results in income to the corporation, other than in the form of membership dues or donations.

(ii) The term *business activities* does not include political fundraising activities that are expressly described in writing to potential donors as requests for donations that will be used for political purposes.

(iii) For the purposes of paragraph (b)(3) of this section, the term members includes all persons eligible to receive services provided by the corporation or participate in activities conducted by the corporation.

(4) The term *shareholder* has the same meaning as the term stockholder, as defined in 11 CFR 114.1(h).

(c) *Exempt corporations.* For the purposes of this section, an exempt corporation is a corporation:

(1) Whose only express purpose is the promotion of political ideas;

(2) That cannot engage in business activities;

(3) That has:

(i) No shareholders or other persons affiliated in any way that allows them or could allow them to make a claim on the organization's assets or earnings at any time during or after its existence; and

(ii) No persons affiliated in any way that creates a disincentive for them to disassociate themselves from the

corporation if they disagree with its position on any political issue. This includes but is not limited to:

(A) Persons receiving benefits such as credit cards, insurance policies or savings plans, if, in order to receive such benefits, persons must maintain a membership in the corporation;

(B) Persons receiving training or information, other than newsletters or similar publications devoted to the promotion of political ideas, if access to the training or information is conditioned upon maintaining a membership in the corporation; and

(C) Persons receiving other associational benefits, such as professional prestige or business contacts, if the benefits would be lost by failing to maintain a membership in the corporation;

Alternative E–1

(4) That was not established by a business corporation or labor organization, does not directly or indirectly accept donations of anything of value from business corporations or labor organizations, has a written policy against directly or indirectly accepting donations of anything of value from business corporations or labor organizations, and has no organizational relationship with any organization that accepts donations of anything of value from business corporations or labor organizations; and

Alternative E–2

(4) That was not established by a business corporation or labor organization, does not directly or indirectly accept donations of anything of value from business corporations, labor organizations, or any other organization that accepts donations from business corporations or labor organizations, and has a written policy against directly or indirectly accepting donations of anything of value from business corporations or labor organizations; and

[end of Alternatives E–1 and E–2]

(5) That is described in 26 U.S.C. 501(c)(4).

(d) *Permitted corporate independent expenditures.* (1) An exempt corporation may make independent expenditures, as defined in 11 CFR part 109, without violating the prohibitions against corporate expenditures contained in 11 CFR part 114.

(2) Except as provided in paragraph (d)(1) of this section, exempt corporations remain subject to the requirements and limitations of 11 CFR part 114, including those provisions prohibiting corporate contributions, whether monetary or in-kind.

(e) *Exempt corporations; reporting requirements.*

Alternative F–1

(1) *Reporting independent expenditures.* Exempt corporations that make independent expenditures aggregating in excess of $250 in a calendar year shall file reports as required by 11 CFR 109.2. When filing these reports, the corporation shall also indicate the total amount of disbursements it has made since the beginning of the calendar year.

Alternative F–2

(1) *Reporting independent expenditures.* Exempt corporations that make independent expenditures aggregating in excess of $250 in a calendar year shall file reports as required by 11 CFR 109.2. When filing these reports, the corporation shall indicate the total amount of disbursements it made during the previous calendar year.

[end of Alternatives F–1 and F–2]

(2) *Demonstrating exempt status.* Corporations claiming an exemption from the prohibition on independent expenditures shall file, in accordance with 11 CFR 104.4(c), a qualifying statement showing that they qualify for exempt status.

(i) Qualifying statements filed under this section shall be submitted at any time on or before the due date of the corporation's first independent expenditure report. If there is any change in the information provided in the qualifying statement, an amended statement shall be submitted with the corporation's next report of independent expenditures. Amendments may be in the form of a letter, and need only indicate the name of the corporation and the change or correction.

(ii) This qualifying statement may be made either by filing FEC Form _____ or by submitting a letter containing the following information:

(A) The name and address of the corporation, and the signature and printed name of the individual filing the qualifying statement;

(B) A copy of the relevant portions of the corporation's charter, articles of incorporation, or bylaws that shows the stated purpose of the corporation, or a complete quotation of the corporation's stated purpose taken from those documents;

(C) A statement indicating whether the corporation was established by a business corporation or labor organization;

(D) A description of the method by which the corporation ensures that the donations it receives, or cash or anything else of value, do not come directly or indirectly from business corporation or labor organizations;

(E) A statement indicating whether the corporation has an organizational relationship with any organization that accepts donations from business corporations or labor organizations;

(F) A description of the services and benefits that the corporation provide to its members; and

(G) A statement indicating whether the corporation is an organization described in 26 U.S.C. 501(c)(4).

(f) *Solicitation; disclosure of use of contributions for election influencing purposes.* When an exempt corporation solicits donations of anything of value, it shall inform potential donors in writing that it may use their donations for election influencing purposes.

(g) *Non-authorization notice.* Exempt corporations making independent expenditures under this section shall comply with the requirements of 11 CFR 110.11.

Alternative G–1

(h) *When exempt corporations become political committees; major purpose test.* (1) If at any time making independent expenditures becomes the major purpose of an otherwise exempt corporation, the corporation will become a political committee and shall register and report as required by 11 CFR parts 102 and 104, provided that, on the date described in paragraph (h)(2) (i) or (ii), the corporation would be a political committee under 11 CFR 100.5(a) because it had made more than $1000 in independent expenditures since the beginning of that calendar year.

(2) The major purpose of an exempt corporation is making independent expenditures when:

(i) On the closing date of any reporting period, fifty percent or more of its total disbursements since the beginning of the current calendar year were for independent expenditures as defined in 11 CFR 109.1; or

(ii) On the date of an election, as defined in 11 CFR 100.2, fifty percent or more of the corporation's total disbursements for the 60 days preceding the election were for independent expenditures as defined in 11 CFR 109.1.

(3) Before becoming a political committee, an exempt corporation shall eliminate from its cash on hand any funds that do not comply with the limitations and prohibitions of the Act.

Alternative G–2

(h) *When exempt corporations become political committees; major purpose test.* (1) If at any time making independent expenditures becomes the major purpose of an otherwise exempt corporation, the corporation will become a political committee and shall register and report as required by 11 CFR parts 102 and 104, provided that, on the last day of the calendar year referred to in paragraph (h)(2), the corporation would be a political committee under 11 CFR 100.5(a) because it had made more than $1000 in independent expenditures since the beginning of that calendar year.

(2) The major purpose of an exempt corporation is making independent expenditures when fifty percent or more of its total disbursements during a calendar year were for independent expenditures as defined in 11 CFR 109.1.

(3) Before becoming a political committee, an exempt corporation shall eliminate from its cash on hand any funds that do not comply with the limitations and prohibitions of the Act.

[end of Alternatives G–1 and G–2] [end of Version 1]

Version 2 of § 114.10

(a) *Scope.* This section describes those corporations that are, and are not, qualified to make independent expenditures under 11 CFR part 109.

(b) [same as version 1]

(c) *Qualified Corporations.* (1) A qualified corporation is a nonprofit social welfare corporation organized under section 501(c)(4) of the Internal Revenue Code and any other not-for-profit corporation having features more akin to a voluntary political association than a business firm.

(i) "Features akin to a voluntary political association" include, but are not limited to, being formed for the express purpose of promoting political ideas.

(ii) "Features akin to a business firm" do not include selling or renting a membership list to commercial entities for the organization's own fundraising purposes.

(2) A corporation is not qualified under this section if:

(i) It engages in business activity for profit; or

(ii) Has any shareholders or other persons having a claim on the assets or earnings of the organization; or

(iii) Has exclusive membership services creating a financial disincentive for members to disassociate themselves from the corporation; or

(iv) Was established by, or accepts contributions from, a corporation or labor organization organized under section 501(c)(3) of the Internal Revenue Code; or

(v) Sponsors or is affiliated with any separate segregated fund or political action committee organized under the Federal Election Campaign Act; or

(vi) Is ineligible to file a Tax Form 990EZ.

(d) [same as version 1]

(e) *Exempt corporations; reporting requirements.* (1) [same as version 1]

(2) Corporations claiming qualification to make independent expenditures shall file, simultaneously with any report due under § 109.2, a qualifying statement made either by FEC form _____ or by letter which states the corporation complies with section (c)(1) of this section and does not contain any of the features listed in part (c)(2) (A)–(F) of this section.

(f) [same as version 1]

(g) [same as version 1]

(h) [same as version 1]

11. 11 CFR part 114 would be amended by revising paragraph (b) of § 114.12 to read as follows:

§ 114.12 Miscellaneous provisions.

* * * * *

(b) Notwithstanding any other provision of part 114, a corporation or a labor organization which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a political committee or candidate if the meeting rooms are made available to any candidate or political committee upon request and on the same terms given to other groups using the meeting rooms.

* * * * *

Dated: July 17, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92–17304 Filed 7–28–92; 8:45 am]

BILLING CODE 6715–01–M

federal register

Wednesday
July 29, 1992

Part III

Office of Personnel Management

5 CFR Parts 831 et al.
Court Orders Affecting Retirement Benefits; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 841, 842, 843, 846, and 890

RIN 3206–AE14

Court Orders Affecting Retirement Benefits

AGENCY: Office Of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to improve processing of court orders affecting retirement benefits under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The final regulations establish rules of interpretation and procedures for processing court orders that divide retirement benefits or award survivor annuities, provide model paragraphs for use in preparing court orders, and create a single uniform set of procedures for processing court orders under FERS and CSRS. The regulations are needed to streamline OPM's procedures to allow disputes over the interpretation of State court orders to be brought to closure more easily and quickly, minimizing hardship to the former spouse.

EFFECTIVE DATE: August 28, 1992.

ADDRESSES: Send court orders affecting CSRS or FERS benefits to Office of Personnel Management, Retirement and Insurance Group, P.O. Box 17, Washington, DC 20044; or deliver to Court-ordered Benefits Section, Allotments Branch, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On January 2, 1992, we published (at 57 FR 120) proposed regulations concerning court orders affecting retirement benefits to replace the existing separate sets of interim regulations under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). We received six comments on the proposed regulations. The comments are discussed later in this supplementary information.

These regulations apply only to court orders affecting CSRS and FERS basic benefits administered by OPM. These regulations do not apply to court orders affecting the Thrift Savings Plan. The Federal Retirement Thrift Investment Board administers the Thrift Savings Plan. The Board processes court orders relating to the Thrift Savings Plan pursuant to regulations found at subpart I of part 1650 of title 5, Code of Federal Regulations. Court orders relating to the Thrift Savings Plan must be submitted directly to the Board's recordkeeper, the National Finance Center in New Orleans.

1. History of the Current Regulations

On May 13, 1985, we published (at 50 FR 20064) interim regulations which, in part, revised our procedures for processing court orders affecting benefits under CSRS. Those interim rules were necessary to implement the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA) (Pub. L. 98–615).

On September 8, 1986, we published (at 51 FR 31927) interim regulations amending the interim regulations published May 13, 1985. The September 8th interim regulations implemented several changes to CSRSEA made by the Federal Employees Benefits Improvement Act of 1986 (Pub. L. 99–251). The September 8th interim regulations also included changes based on comments received in response to the interim regulations published May 13, 1985.

On February 3, 1987, we published (at 52 FR 3209) interim regulations amending the interim regulations for processing court orders under CSRS to implement the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. 99–556).

On March 12, 1990, we published (at 55 FR 9093) amendments to the interim regulations implementing CSRSEA. The amendments included revised guidelines explaining how we interpret certain language used in court orders affecting CSRS benefits.

On December 30, 1986, we published (at 51 FR 47021) proposed regulations for revising our procedures for processing court orders under CSRS to expedite payments to the former spouses. On September 9, 1991, we withdrew (at 56 FR 45883) those proposed regulations.

On December 31, 1986, we published (at 51 FR 47190) interim regulations for processing court orders affecting FERS basic benefits. Those interim regulations implemented for FERS the procedures that we had proposed the day before for CSRS. This final rule replaces the interim regulations published December 31, 1986, for court orders affecting FERS benefits.

This final rule replaces both the CSRS interim regulations published May 13, 1985, as amended, and the FERS interim regulations published December 31, 1986, for court orders affecting retirement benefits.

2. Reasons to Change Processing Procedures

These final regulations will make it easier for the parties in a divorce to ensure that OPM will divide CSRS or FERS benefits, or provide a survivor benefit, in accordance with their wishes. In enacting the provisions allowing OPM to honor the decisions of State courts respecting a former spouse's interest in an employee's retirement benefits, the intent of Congress was that the Federal Government not insert itself into marital property disputes. These final regulations assure that the dispute-resolution role rests in the hands of the State courts as was originally intended by the Congress.

Under the current interim regulations for court orders, a process has evolved that, rather than truly protecting the rights of all parties, often simply resulted in delays in payments to former spouses and hardships to them. Under the existing interim regulations, when we receive a court order that awards a benefit to a former spouse of a CRS or FERS retiree, the retiree can protest OPM's decision through frequently lengthy administrative procedures. This may create financial hardship because, under CSRS procedures, no money is paid while the administrative proceedings are pending. Since the aftermath of many divorces is often an emotionally charged situation, some retirees deliberately use the process to delay payments for as long as possible.

These final regulations synthesize our experience in processing court orders since 1978, and contain two important changes that we believe will improve our service to people affected by these orders. First, the regulations will make it easier for people to submit court orders that will be acceptable to OPM. The regulations are very detailed as to what constitutes a court order that is acceptable for processing, and as to the exact meaning of court order terminology. The definitions in these regulations are designed to give the most commonly-used meaning to words most often encountered in court orders. This will allow OPM to accept as many court orders as possible rather than rejecting orders, which would require the parties to return to State courts. To further facilitate preparation of acceptable orders, appendices to the regulations contain model paragraphs that attorneys can use to ensure that, in drafting orders, the language they select will both produce the intended result and meet OPM's processing requirements.

Second, because the regulations prescribe in detail what is and is not acceptable for processing, OPM can now assume the appropriate role for itself, which is a ministerial role, rather than a mediator in marital property disputes. This role belongs to the State courts. If a court order is so flawed that it is not sufficiently clear to satisfy our requirements, the appropriate action is for the parties to return to the State court to correct the problem. Likewise, if the retiree contends that the court intended its order to have a different meaning than the clear meaning it has under these regulations, the proper forum for the retiree's complaint is the State court. OPM will require the employees and former spouses to settle the disputes in the State courts where they belong, not in Federal proceedings. The courts issuing the orders are in the best position to determine the meaning of their own orders. This will result in faster resolution of disputes and eliminate the delay in payments to former spouses with court orders that comply with the requirements of the regulations.

3. Changes From the Existing Interim Regulations That Have Broad Application

These regulations consolidate the CSRS and FERS regulations concerning court orders affecting retirement benefits into a single set of regulations applicable to both retirement systems. The final regulations include the changes that we proposed to make the regulations easier to use by both the legal community in drafting and submitting court orders and by OPM staff in applying the regulations to court orders. These final regulations distinguish clearly among regulations that affect employee annuities, refunds of employee contributions, and former spouse survivor annuities. Under the existing interim regulations, some sections contain regulations pertaining to more than one of these different benefits. This resulted in a lack of clarity about which regulatory provisions apply to which types of benefit. These final regulations also divide rules into separate subparts covering procedures, requirements, and terminology. These changes make it easier for the legal community to focus on the provisions that effect benefits involved in the case with which they are concerned. A side effect of clearly dividing the regulations by the type of benefits the order seeks to affect is repetition of provisions that apply to more than one type of benefit. The repetition has added greatly to the length of these regulations; however, separate provisions about the effect of court orders on different types of benefits will simplify this very difficult subject and enhance the usability of the regulations.

As we proposed, these final regulations change several terms that have caused confusion or misunderstandings under the current regulations. We hope that the new terms will make the regulations easier to understand.

The term, "employee retirement benefits," that is used in the current regulations has been replaced by its two component parts, "Employee annuities" and "Refunds of employee contributions." The failure to distinguish between these two distinct types of benefits in the current regulations makes the regulations more complex and difficult to understand. Although most of the rules relating to "employee retirement benefits"apply to both annuities and refunds, some of the rules affecting "employee retirement benefits" make sense only for annuities, and others, only for refunds. Treating annuities and refunds separately makes the regulations longer; however, we believe that it also makes them simpler for attorneys and others to use.

The term, "former spouse annuity," which is used in the current regulations, has been replaced by "former spouse survivor annuity." Comments on prior regulations demonstrated that most commenters did not understand that "former spouse annuity" in the current regulations is only used when we are referring to the survivor benefit payable to a former spouse. The term has never included payments to a former spouse during a retiree's lifetime.

The term, "qualifying court order," which is used in the existing interim regulations, has been replaced by "court order acceptable for processing." The principal reason for this change is to eliminate any similarity in terminology between court orders affecting CSRS and FERS benefits and "qualified domestic relations orders," QDRO's, under the Employees Retirement Income Security Act (ERISA), 29 U.S.C. 1001 *et seq.* In addition, the new term is more consistent with our role under the proposed regulations as the ministerial processor of court orders.

4. Preparing a Court Order

A court order may affect any of three types of retirement benefits paid by OPM. The regulations treat each of the three—employee annuities, refunds of employee contributions, and survivor annuities—independently. In preparing a court order, attorneys should keep in mind that we consider each of the three types of awards separate and independent of the other two, and should exercise great care in each type of benefit they intend to affect. Our requirement that the award of each type of benefits be independent does not mean that the court award of one type of benefit cannot affect another. For example, awarding a former spouse survivor annuity requires a reduction in the employee annuity. If the former spouse has been awarded a portion of the gross or net employee annuity, the former spouse's portion of the employee annuity will be affected.

A complete court order requires three separate provisions—one addressing each type of benefit that the court can affect. However, frequently, courts intend to award only a portion of the employee annuity or a survivor annuity, rather than a complete retirement package. The regulatory structure is designed to maintain a clear separation between court orders affecting different types of benefits.[1] This permits a court that intends only to divide an employee annuity to consider only subparts A, B, C, and F of these regulations. Similarly, if the court intends to award only a survivor annuity, only subparts A, G, H, and I of these regulations apply.

5. Changes Required by U.S. Court of Appeals Decision

Section 838.806 and newly redesignated § 838.1004(e) (formerly § 831.1704(e)) have been revised to comply with the decision of the United States Court of Appeals for the Federal Circuit in the case of *Newman* v. *Love*, No. 91–3268 (Fed. Cir. April 15, 1992).

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[1] Subpart A contains definitions and other material of significance to all types of court orders affecting CSRS or FERS. The rest of the part is divided into three major units depending on whether the court order applies to employee annuities, refunds of employee contributions, or former spouse survivor annuities. For each unit, separate subparts cover procedures for processing, requirements that court orders must satisfy, and definitions of terms frequently used in court orders. (The terminology section for employee annuities and refunds of employee contributions are combined to avoid excessive duplication.

The subparts (B, D and G,) regulating procedures contain rules relating to former spouse filing requirements and to our actions upon receipt of court orders. In addition, they contain rules and limitations that the State court cannot change such as such as when benefits are paid. The subparts (C, E, and H) regulating requirements that court orders must satisfy certain rules pertaining to the requirements that a court order must meet to be acceptable for processing. The subparts (F and I) defining terms explains our understanding of the meaning of terms commonly used in court orders. By choosing the correct term, the State court can tell us exactly what to do. We assume that State courts are familiar with our assigned meanings of these terms and have used them in the way that they are defined in these subparts.

The Court found that OPM has authority to honor a court order for survivor annuity, if the order is the first order addressing marital property issues, even if the order is issued after the retirement of the former employeee OPM's existing interim regulations and the proposed rules interpreted the law (sections 8341(h)(4) and 8445(d) of title 5, United States Code) to prevent us from honoring a post-retirement court order that ordered us to allow a survivor annuity if this order was not issued prior to, or as part of, the divorce decree.

6. Comments on the Proposed Regulations

As stated above, we received six comments on the proposed regulations. The comments were generally supportive of the proposed regulations, especially of the provisions providing former spouses with prompt notice whether a court order was acceptable for processing.

We have considered all of the comments. Many of the comments suggested editorial changes. Only substantive comments are discussed below.

The Federal Retirement Thrift Investment Board requested that we clarify that these regulations apply only to CSRS and FERS basic benefits administered by OPM. We agree with this suggestion and have included a detailed clarification in the second paragraph of this supplementary information and have added a new paragraph (d) in § 838.101 to expressly state that these regulations do not apply to the Thrift Saving Plan.

One commenter objected to the provisions in § § 838.302 and 838.803 that provide that any court order labelled a "Qualifying Domestic Relations Order" or "QDRO" is not acceptable for processing. The commenter complains that a former spouse could be deprived of benefits because an attorney or court makes a "trivial" error. (This is particularly true in cases affecting survivor annuity where we are prohibited by statute from accepting a modification after the retirement or death of the employee.)

ERISA created the term QDRO to describe a court order that summarizes the division of retirement benefits under ERISA plans. We decided to prohibit use of this label because we have seen from experience that attorneys prepare these orders on the assumption that they can provide any benefits available under ERISA to CSRS and FERS.[3] Since we are exempt from ERISA, some provisions that ERISA plans must honor do not apply to us. The current practice of honoring as much of a QDRO as we can under our law has been difficult and controversial even when we were attempting to comply with the court's intent as well as its words. For our function to be ministerial, we and the court must be speaking the same language. To assure that the court has used our terminology, rather than ERISA's terminology, we proposed to prohibit QDRO's.

The proposed total ban on QDRO's is more severe than necessary to accomplish its purpose. We have revised sections 838.302 and 838.803 to relax the total ban on QDRO's to accept court orders labelled QDRO's if the court orders expressly state that they are written in conformity with our regulations. We do not want to create an unnecessary trap for the uninformed. Since we can guarantee that the purpose of the ban—that the court understands that we are exempt from ERISA and that the court is using the terminology as provided in the regulations—is satisfied by requiring that any QDRO mention our regulations, we will accept QDRO's that expressly acknowledge that they are written to conform with our regulation. In addition, we have added a model paragraph that could be used for this purpose.

The requirement that a QDRO expressly state that it conforms with the regulations is necessary because even if the QDRO's terminology is acceptable, the court's intent may have been that the terms have different meanings than those assigned under these regulations. Abandoning the ban on QDRO's without requiring that QDRO's mention our regulations undermines the reasonableness of our assumption that the court is using our terminology, rather than ERISA terminology. That assumption is necessary for our actions to be ministerial, rather than having to interpret each court order.

One commenter objected to § 838.302(b), which provides that a court order directed at employee annuity that expressly provides that the former spouse's portion of the employee annuity may continue after the death of the employee or retiree, such as a court order providing that the former spouse's portion of the employee annuity will continue for the lifetime of the former spouse, is not acceptable for processing. The commenter stated that the order should be acceptable with respect to the former spouse's portion of the employee annuity during the lifetime of the employee. Under these regulations the order would not be acceptable for any purpose because, in view of the fact that the court will have demonstrated its lack of awareness that the statutory authority for a State court to award the former spouse a share of employee annuity stops at the employee's death (a survivor annuity award must be specifically included in the court order), we do not know what the court intended to provide. This lack of awareness about the nature of our benefits indicates that the court, having considered the distribution of marital property as a whole, and having approved a distribution that, by law, cannot be honored with respect to a significant part of it (survivor benefits), needs to issue a new order. As the commenter noted, an amended court order can generally substitute acceptable language and be effective retroactively, as described in §§ 838.225 and 838.234.

One commenter objected to our failure to include a provision in the regulations to allow the court to correct errors in survivor annuity awards. Section 8341(h)(4) of title 5, United States Code, provides a strict statutory bar to any modification of survivor annuity provisions in a court order after the retirement or death of the employee. We do not allow corrections because the law simply bars all such modifications. we note that in *Newman* v. *Love, supra,* the court, considering the statutory bar to these modifications, determined that the first order dividing marital property is not a modification for this purpose.

One commenter questioned the lack of a provision in the proposed regulations on administrative or judicial appeal rights. The commenter applauds our desire to follow State court orders rather than to mediate between the court and the parties. However, the commenter suggests that the regulation should clearly provide that appeals from OPM decisions based on interpretation of Federal law are still appropriate. We have added § 838.136 to clarify the situations in which administrative appeal rights are available.

Actions taken by OPM in cases under these regulations are those ordered by the State court and for this reason they are not appealable to MSPB. MSPB does not have authority to review the State court order, and because we are merely following the explicit instructions of the court, appeal to MSPB is inappropriate. This will assure that marital property

[3] The most important difference between ERISA plans and CSRS and FERS is that under ERISA the former spouse's share of the benefit can begin when the employee reaches the minimum retirement age, even if the employee is still working. The availability of this early benefit, or lack of availability, can seriously alter negotiations over the settlement agreement.

distribution disputes will be resolved by the State courts, as Congress originally intended. This approach ensures the quickest final resolution of these disputes by avoiding a Federal administrative appeal level that cannot decide on the merits of the distribution. The parties to the divorce may return to the State court to resolve the dispute, instead of delaying the final resolution by resorting to an inappropriate Federal administrative review.

Issues concerning the validity of regulations themselves are issues of Federal law. Accordingly § 838.136 clarifies that if the issue in dispute is the validity of the regulations, our final decision on that issue is appealable to MSPB.

In cases in which an appeal to MSPB is authorized, we will not delay withholding from the employee annuity or payment to the former spouse during the pendency of the appeal. An allegation that a provision of these regulations is invalid does not suspend operation of that provision.

One commenter objected to the proposed rule that any portion of an employee annuity awarded to the former spouse reverts to the employee upon the death of the former spouse unless a court order provides otherwise. The proposed regulation would change the procedures that we currently follow on the death of the former spouse but this change would rarely alter the ultimate result. When the former spouse dies and an employee annuity continues to be payable, the current interim regulations require us to request further instructions from the court that issued the order. Usually, the court does not respond, which the current regulations provide has the same effect as instructing us to restore the former spouse's share to the employee. The proposed regulations merely would eliminate the step of contacting the court, but would not preclude an amended court order to require the deceased former spouse's share to be sent to another person.

The commenter suggests that the former spouse's heirs, rather than the employee, receive the former spouse's share if the court order provides no instructions concerning payments after the death of the former spouse. Since enactment of the statute authorizing State courts to divide employee annuities, we have consistently maintained that the statute did not authorize State courts to require us to distribute payments to multiple payees. Accordingly, our regulations have always included a provision that we would not pay heirs directly.[3] We will pay heirs indirectly if the court orders us to pay a central account—such as a single bank account, an attorney's trust account, or the registry of the court—for distribution to the heirs. This allows distribution as the court wishes while avoiding problems associated with payment of small shares. Accordingly, we are retaining the provision in the proposed regulations.

One commenter asked about the application of these regulations to voluntary contributions and excess deductions. Voluntary contributions may be made by CSRS-covered employees in addition to normal retirement deductions. They earn interest and may be used to purchase additional annuity. Excess deductions are retirement deductions taken from the salary of CSRS-covered employees who service exceeds the amount necessary (usually 41 years and 11 months) to qualify for the maximum annuity (80 percent of average salary).

These regulations do not apply to voluntary contributions or refunds of excess deductions. Section 8345(j) of title 5, United States Code, provides that State courts in divorce or legal separation proceedings may affect payments under CSRS "which would otherwise be made to an employee or Member based upon his service." OPM's payments based on voluntary contributions (regardless of whether the payment is as an annuity or in a lump sum) is based on the amount of the voluntary contributions plus interest. The payments are not "based on his service." Accordingly, voluntary contributions fall outside the statutory authorization for court orders to affect CSRS benefits.

Section 8342(h) of title 5, United States Code, provides that, at the retirement or death of the employee, the balance of excess deductions not applied toward the service credit deposits is deemed a voluntary contribution. Accordingly, when we pay excess deductions to the employee we are paying "voluntary contributions," and for this reason the payment is not subject to a State court order.

One commenter suggested that a former spouse should be able to begin to receive benefits when the employee reaches the age and service requirements for retirement, even if the employee continues to work or otherwise fails to apply for retirement. The statutes authorizing us to honor State court orders only grant State courts authority to affect payments that would otherwise be made to the employee. Because no payments are made to the employee until the employee separates from Federal service and files and application, we have no statutory authority to pay the former spouse before the separation and application requirements have been met.

[3] The ban on direct payment to heirs has one exception. We accept court orders that direct us, after the death of the former spouse, to pay the children of former spouse and the employee.

7. Other Amendments to the Proposed Regulations

We have made minor changes in several other provisions. The supplementary information for the proposed regulations stated that we were delaying the implementation date for the regulations to give the public, especially the legal community, notice of the new requirements and standards. We intended the delay to provide time for dissemination of information about the new requirements and standards. The proposed regulations would have established July 1, 1992, as the date when the new requirements and procedures would begin to apply. Section 838.101(c) establishes January 1, 1993, as the new date when we will begin processing court orders under the new procedures established by these regulations. Court orders that we receive before that date will be processed under subpart J of part 838. The procedures under subpart J contain the existing interim CSRS regulations. Of course, the model language in appendix A to subparts F and I is available for immediate use. Using the model language produces the same award under subpart J (the regulations covering court orders that we receive before the implementation date) as under the new regulations (subparts A through I).

We have amended § 838.421(b)(3) to eliminate CSRS or FERS claim numbers from the list of examples of identifying information that should be provided for court orders directed at refunds of employee contributions. Separated employees applying for refunds will not have such claim numbers.

We have amended § 838.623(c)(2) concerning how we use the amount of unused sick leave in computations of the former spouse's share of an employee annuity to state that these computations only apply to employee annuities under CSRS or to the CSRS component of a FERS annuity. Unused sick leave is not used in the computation of an annuity under FERS rules. Accordingly, the rules for determining when to include sick leave in computing the former spouse's share have no application to normal FERS benefits.

We have eliminated proposed section 838.725 and redesignated section 838.726 as section 838.725. Proposed section 838.725 stated that we would not accept an amended court order awarding a survivor annuity if issued after the retirement or death of the employee. The proposed section 838.725 has been eliminated because section 838.806 contains specific detailed requirements on amended court orders and covers all the information previously contained in proposed section 838.725.

We have added § 838.923 concerning cost-of-living adjustments (COLA's) on the future survivor annuity rate before the death of a retiree. Section 838.735 provides that we will add COLA's to all former spouse survivor annuities actually being paid. The new § 838.923 provides that we will apply COLA's (occurring after the retirement of the employee) to the future survivor annuity rate unless the court order expressly orders us not to include them. Model paragraph ¶704 has been amended to include sample language for excluding COLA's before the death of a retiree.

The proposed regulations included approximately 45 changes to Title 5 of the Code of Federal Regulations to conform existing regulations with the proposed regulatory structure for court orders affecting retirement benefits. Since that time, we have discovered approximately 15 more provisions requiring conforming amendment. Most of these changes correct cross references to sections or subparts that are being redesignated or removed by these regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects

5 CFR Parts 831, 841, 842, 843, and 846

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

1. Part 838 is added to read as follows:

Subpart A—Court Orders Generally

Organization and Structure of Regulations on Court Orders

Sec.

838.101 Purpose and scope.
838.102 Regulatory structure.
838.103 Definitions.

Statutory Limit on Court's Authority

838.111 Exemption from legal process except as authorized by Federal law.

Division of Responsibilities

838.121 OPM's responsibilities.
838.122 State courts' responsibilities.
838.123 Claimants' responsibilities.
838.124 Employees' and retirees' responsibilities.

Procedures Applicable to All Court Orders

838.131 Computation of time.
838.132 Payment schedules.
838.133 Minimum awards.
838.134 Receipt of multiple court orders.
838.135 Settlements.
838.136 Administrative Appeal Rights.

Address for Filing Court Orders With OPM

Appendix A to Subpart A of Part 838—Addresses for Serving Court Orders Affecting CSRS or FERS Benefits

Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

Regulatory Structure

838.201 Purpose and scope.

Availability of Funds

838.211 Amounts subject to court orders.

Application and Processing Procedures

838.221 Application requirements.
838.222 OPM action on receipt of a court order acceptable for processing.
838.223 OPM action on receipt of a court order not acceptable for processing.
838.224 Contesting the validity of court orders.
838.225 Processing amended court orders.

Payment Procedures

838.231 Commencing date of payments.
838.232 Suspension of payments.
838.233 Termination of payments.
838.234 Collection of arrearages.
838.235 Payment of lump-sum awards.
838.236 Court orders barring payment of annuities.
838.237 Death of the former spouse.

Procedures for Computing the Amount Payable

838.241 Cost-of-living adjustments.
838.242 Computing lengths of service.
838.243 Minimum amount of awards.

Subpart C—Requirements for Court Orders Affecting Employee Annuities

838.301 Purpose and scope.
838.302 Language not acceptable for processing.
838.303 Expressly dividing employee annuity.
838.304 Providing for payment to the former spouse.
838.305 OPM computation of formulas.
838.306 Specifying type of annuity for application of formula, percentage or fraction.

Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions

Regulatory Structure

838.401 Purpose and scope.

Availability of Funds

838.411 Amounts subject to court orders.

Application and Processing Procedures

838.421 Application requirements.
838.422 Timeliness of application.
838.423 OPM action on receipt of a court order acceptable for processing.
838.424 OPM action on receipt of a court order not acceptable for processing.
838.425 Contesting the validity of court orders.

Payment Procedures

838.431 Correcting failures to provide required spousal notification.
838.432 Court orders barring payment of refunds.

Procedures for Computing the Amount Payable

838.441 Computing lengths of service.

Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions

838.501 Purpose and scope.
838.502 Expressly dividing a refund of employee contributions.
838.503 Providing for payment to the former spouse.
838.504 OPM computation of formulas.
838.505 Barring payment of refunds.

Subpart F—Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

Regulatory Structure

838.601 Purpose and scope.

Identification of Benefits

838.611 Identifying the retirement system.
838.612 Distinguishing between annuities and contributions.

Computation of Benefits

838.621 Prorata share.
838.622 Cost-of-living and salary adjustments.
838.623 Computing lengths of service.
838.624 Distinguishing between formulas and fixed amounts.
838.625 Types of annuity.

Model Paragraphs

Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

838.701 Purpose and scope.

Limitations on Survivor Annuities

838.711 Maximum former spouse survivor annuity.

Application and Processing Procedures

838.721 Application requirements.
838.722 OPM action on receipt of a court order acceptable for processing.
838.723 OPM action on receipt of a court order not acceptable for processing.
838.724 Contesting the validity of court orders.
838.725 Effect on employee and retiree election rights.

Payment Procedures

838.731 Commencing date of payments.
838.732 Termination of entitlement.
838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.
838.734 Payment of lump-sum awards by survivor annuity.
838.735 Cost-of-living adjustments.

Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities

838.801 Purpose and scope.
838.802 CSRS limitations.
838.803 Language not acceptable for processing.
838.804 Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.
838.805 OPM computation of formulas in computing the designated base.
838.806 Amended court orders.
838.807 Cost must be paid by annuity reduction.

Subpart I—Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

838.901 Purpose and scope.

Identification of Benefits

838.911 Identifying the retirement system.
838.912 Specifying an award of a former spouse survivor annuity.

Computation of Benefit

838.921 Determining the amount of a former spouse survivor annuity.
838.922 Prorata share defined.
838.923 Cost-of-living adjustment before the death of a retiree.

Miscellaneous Provisions

838.931 Court orders that provide temporary awards of former spouse survivor annuities.
838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.
838.933 Payment of the cost of a former spouse survivor annuity.

Model Paragraphs

Appendix A to Subpart I of Part 838—Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities

Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, and J also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

Subpart A—Court Orders Generally

Organization and Structure of Regulations on Court Orders

§ 838.101 Purpose and scope.

(a)(1) This part regulates the Office of Personnel Management's handling of court orders affecting the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), both of which are administered by the Office of Personnel Management (OPM). Generally, OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees, Members, or retirees that award a portion of the former employee's or Member's retirement benefits or a survivor annuity to a former spouse.

(2) In executing court orders under this part, OPM must honor the clear instructions of the court. Instructions must be specific and unambiguous. OPM will not supply missing provisions, interpret ambiguous language, or clarify the court's intent by researching individual State laws. In carrying out the court's instructions, OPM performs purely ministerial actions in accordance with these regulations. Disagreement between the parties concerning the validity or the provisions of any court order must be resolved by the court.

(b) This part prescribes—

(1) The requirements that a court order must meet to be acceptable for processing under this part;

(2) The procedures that a former spouse must follow when applying for benefits based on a court order under sections 8341(h), 8345(j), 8445 or 8467 of title 5, United States Code;

(3) The procedures that OPM will follow in honoring court orders and in making payments to the former spouse; and

(4) The effect of certain words and phrases commonly used in court orders affecting retirement benefits.

(c)(1) Subparts A through I of this part apply only to court orders received by OPM on or after January 1, 1993.

(2) Subpart J of this part applies only to court orders received by OPM before January 1, 1993.

(d) This part has no application to the Thrift Savings Plan described in subchapter III of chapter 84 of title 5, United States Code.

§ 838.102 Regulatory structure.

(a) This part is organized as follows:

(1) Subpart A contains information and rules of general application to all court orders directed at CSRS or FERS retirement benefits.

(2) Subparts B and C of this part contain information about court orders directed at ongoing employee annuity payments.

(3) Subparts D and E of this part contain information about court orders directed at refunds of employee contributions.

(4) Subpart F of this part contains information about the effect of words and phrases commonly used in court orders affecting ongoing employee annuity payments and refunds of employee contributions.

(5) Subparts G, H, and I of this part contain information about court orders awarding former spouse survivor annuities.

(6) Subpart J of this part contains the rules applicable to court orders filed under procedures in effect prior to the implementation of this part. These rules continue to apply to court orders received by OPM before January 1, 1993.

(b) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(c) Part 581 of this chapter contains information about garnishment of Government payments including salary and CSRS and FERS retirement benefits.

(d) Parts 294 and 297 of this chapter and §§ 831.106 and 841.108 contain information about disclosure of information from OPM records.

(e) Subpart V of part 831 of this chapter and subpart G of part 842 of this chapter contain information about how

court orders affect eligibility to make an alternative form of annuity election.

(f) Part 1600 of this title contains information about court orders affecting the Federal Employees Thrift Savings Plan.

(g) Subpart F of part 831 of this chapter, subpart F of part 841 of this chapter, and part 843 of this chapter contain information about entitlement to survivor annuities.

(h) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about refunds of employee contributions and lump-sum death benefits.

(i) Parts 870, 871, 872, and 873 of this chapter contain information about the Federal Employees Group Life Insurance Program.

§ 838.103 Definitions.

In this part (except subpart J)—

Civil Service Retirement System or *CSRS* means the retirement system for Federal employees described in subchapter III of chapter 83 of title 5, United States Code.

Court order means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands, or any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

Court order acceptable for processing means a court order as defined in this section that meets the requirements of subpart C of this part to affect an employee annuity, subpart E of this part to affect a refund of employee contributions, or subpart H of this part to award a former spouse survivor annuity.

Employee means an employee or Member covered by CSRS or FERS.

Employee annuity means the recurring payments under CSRS or FERS made to a retiree. "Employee annuity" does not include payments of accrued and unpaid annuity after the death of a retiree under section 8342(g) or section 8424(h) of title 5, United States Code.

ERISA means the Employees Retirement Income Security Act, 29 U.S.C. 1001 *et seq.*

Federal Employees Retirement System or *FERS* means the retirement system for Federal employees described in chapter 84 of title 5, United States Code.

Former spouse means (1) in connection with a court order affecting an employee annuity or a refund of employee contributions, a living person whose marriage to an employee has been subject to a divorce, annulment of marriage, or legal separation resulting in a court order, or (2) in connection with a court order awarding a former spouse survivor annuity, a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service covered by CSRS or who performed at least 18 months of civilian service creditable under FERS, and whose marriage to the employee of retiree was terminated prior to the death of the employee or retiree.

Former spouse survivor annuity means a recurring benefit under CSRS or FERS, or the basic employee death benefit under FERS as described in part 843 of this chapter, that is payable to a former spouse after the employee's or retiree's death.

Gross annuity means the amount of monthly annuity payable after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, *gross annuity* also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

Member means a Member of Congress covered by CSRS or FERS.

Net annuity means the amount of monthly annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums under section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this chapter, (3) deducted for life insurance premiums under section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, (5) properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled, or (6) properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled. Unless the court order expressly provides otherwise, *net annuity* also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

Reduction to provide survivor benefits means the reduction required by section 8339(j)(4) or section 8419(a) of title 5, United States Code.

Refund of employee contributions means a payment of the lump-sum credit to a separated employee under section 8342(a) or section 8424(a) of title 5, United States Code. *Refund of employee contributions* does not include lump-sum payments made under section 8342(c) through (f) or section 8424(d) through (g) of title 5, United States Code.

Retiree means a former employee or Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee. *Retiree* does not include a person receiving an annuity only as a current spouse, former spouse, child, or person with an insurable interest. Self-only annuity means the recurring payments to a retiree who has elected not to provide a survivor annuity to anyone. Unless the court order expressly provides otherwise, self-only annuity also includes any lump-sum payments made to the retiree under section 8343a or section 8420a of title 5, United States Code.

Separated employee means a former employee or Member who has separated from a position in the Federal Government covered by CSRS and FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively, and is not currently employed in such a position, and who is not a retiree.

Statutory Limit on Court's Authority

§ 838.111 Exemption from legal process except as authorized by Federal law.

(a) Employees, retirees, and State courts may not assign CSRS and FERS benefits except as provided in this part.

(b) CSRS and FERS benefits are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

Division of Responsibilities

§ 838.121 OPM's responsibilities.

OPM is responsible for authorizing payments in accordance with clear, specific and express provisions of court orders acceptable for processing.

§ 838.122 State courts' responsibilities.

State courts are responsible for—

(a) Providing due process to the employee or retiree;

(b) Issuing clear, specific, and express instructions consistent with the statutory provisions authorizing OPM to provide benefits to former spouses and the requirements of this part for awarding such benefits;

(c) Using the terminology defined in this part only when it intends to use the meaning given to that terminology by this part;

(d) Determining when court orders are invalid; and

(e) Settling all disputes between the employee or retiree and the former spouse.

§ 838.123 Claimants' responsibilities.

Claimants are responsible for—

(a) Filing a certified copy of court orders and all other required supporting information with OPM;

(b) Keeping OPM advised of their current mailing addresses;

(c) Notifying OPM of any changes in circumstances that could affect their entitlement to benefits; and

(d) Submitting all disputes with employees or retirees to the appropriate State court for resolution.

§ 838.124 Employees' and retirees' responsibilities.

Employees and retirees are responsible for—

(a) Raising any objections to the validity of a court order in the appropriate State court; and

(b) Submitting all disputes with former spouses to the appropriate State court for resolution.

Procedures Applicable to all Court Orders

§ 838.131 Computation of time.

(a) The rules applicable for computation of time under §§ 831.107 and 841.109 of this chapter apply to this part.

(b)(1) Appendix A of this subpart lists the proper addresses for submitting court orders affecting CSRS and FERS benefits.

(2) A former spouse should submit the documentation required by this part to the address provided in Appendix A of this subpart. The component of OPM responsible for processing court orders will note the date of receipt on court orders that it receives.

(3) If a court order is delivered to OPM at an address other than the address in Appendix A of this subpart, the recipient will forward the court order to the component of OPM responsible for processing court orders. However, OPM is not considered to have received the court order until the court order is received in the component of OPM responsible for processing orders.

§ 838.132 Payment schedules.

(a) Under CSRS and FERS, employee annuities and survivor annuities are payable on the first business day of the month following the month in which the benefit accrues.

(b) In honoring and complying with a court order, OPM will not disrupt the payment schedule described in paragraph (a) of this section, despite any provision in the court order directing a different schedule of accrual or payment of amounts due the former spouse.

§ 838.133 Minimum awards.

Payments under this part will not be less than one dollar per month. Any court order that awards a former spouse a portion of an employee annuity or a former spouse survivor annuity in an amount of less than one dollar per month will be treated as an award of an annuity equal to one dollar per month.

§ 838.134 Receipt of multiple court orders.

(a) Except as provided in paragraph (c) of this section, for court orders affecting employee annuities or awarding former spouse survivor annuities, in the event that OPM receives two or more court orders acceptable for processing—

(1) When the court orders affect two or more former spouses, the court orders will be honored in the order in which they were issued to the maximum extent possible under § 838.211 or § 838.711.

(2) When two or more court orders relate to the same former spouse or separated spouse, the one issued last will be honored.

(b)(1) Except as provided in paragraph (c) of this section, for court orders affecting refunds of employee contributions, in the event that OPM receives two or more court orders acceptable for processing—

(i) When the court orders affect two or more former spouses—

(A) The refund will not be paid if either court order prohibits payment of the refund of contributions; otherwise,

(B) The court orders will be honored in the order in which they were issued until the contributions have been exhausted.

(ii) When two or more court orders relate to the same former spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the refund of employee contributions.

(c) With respect to issues relating to the validity of a court order or to the amount of payment—

(1) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from the same jurisdiction, OPM will consider only the latest court order; or

(2) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from different jurisdictions—

(i) If one of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the court order issued by that jurisdiction; or

(ii) If none of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the latest court order.

§ 838.135 Settlements.

(a) OPM must comply with the terms of a properly filed court order acceptable for processing even if the retiree and the former spouse agree that they want OPM to pay an amount different from the amount specified in the court order. Information about OPM's processing of amended court orders is contained in §§ 838.225 and 838.725.

(b)(1) OPM will not honor a request from the former spouse that an amount less than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.

(2) OPM will not honor a request from the retiree that an amount greater than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.

§ 838.136 Administrative appeal rights.

(a) Issues concerning application of these regulations are not appealable to the Merit Systems Protection Board. OPM's actions to apply these regulations are not subject to further administrative review.

(b)(1) Issues concerning the validity of these regulations are appealable to the Merit Systems Protection Board. Such an appeal must be filed in accordance with the procedures established by the Board and may not be filed before OPM has issued its final decision, including a notice of the right to appeal, on the validity of the regulation. Such an appeal is limited to the issue of the validity of the regulation.

(2) Any claim that a provision of these regulations is invalid, must be presented to the Merit Systems Protection Board before the validity of the regulation may be reviewed in the Federal courts.

Address for Filing Court Orders With OPM

Appendix A to Subpart A of Part 838—Addressees for Serving Court Orders Affecting CSRS or FERS Benefits

(a) The mailing address for delivery of court orders affecting CSRS or FERS benefits by the United States Postal Service is—

Office of Personnel Management,
Retirement and Insurance Group, P.O. Box 17, Washington, DC 20044

(b) The address for delivery of court orders affecting CSRS or FERS benefits by process servers, express carriers, or other forms of handcarried delivery is—

Court-ordered Benefits Section,
Allotments Branch, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC

Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

Regulatory Structure

§ 838.201 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders directed at employee annuities under CSRS or FERS. OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award a portion of an employee annuity to a former spouse.

(b) This subpart prescribes—

(1) The circumstances that must occur before employee annuities are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of an employee annuity based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart C of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to affect an employee annuity.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect on employee annuity of a court order acceptable for processing.

Availability of Funds

§ 838.211 Amounts subject to court orders.

(a)(1) Employee annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the employee annuity to the former employee have been met, including, but not limited to—

(i) Separation from a position in the Federal service covered by CSRS or FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively;

(ii) Application for payment of the employee annuity by the former employee; and

(iii) The former employee's immediate entitlement to an employee annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at employee annuities.

(3) OPM cannot pay a former spouse a portion of an employee annuity before the employee annuity begins to accrue.

(b) Payment to a former spouse under a court order may not exceed the net annuity.

(c) Waivers of employee annuity payments under the terms of section 8345(d) or section 8465(a) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked or received before the date that OPM receives a court order acceptable for processing.

Application and Processing Procedures

§ 838.221 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of an employee annuity. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at employee annuity;

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee has not retired under CSRS or FERS or died, the mailing address of the employee.

(c)(1) When court-ordered payments are subject to termination (under the terms of the court order) if the former spouse remarries, no payment will be made until the former spouse submits to OPM a statement in the form prescribed by OPM certifying—

(i) That a remarriage has not occurred;

(ii) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage; and

(iii) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage.

(2) OPM may subsequently require periodic recertification of the statements required under paragraph (c)(1) of this section.

§ 838.222 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins to accrue, and if known, the date on which OPM commences payment under the order;

(iii) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit; and

(iv) That, if he or she disagrees with the amount of the monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins or accrue, and if known, the date on which OPM commences payment under the court order;

(iv) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit;

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vi) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree dies after payments from an employee to a former spouse have begun, OPM will inform the former spouse that the employee or retiree has died and that OPM can only honor court orders dividing employee annuities during the lifetime of the retiree.

(c) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is not in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) That benefits cannot begin to accrue until the employee retires;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit; and

(iv) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee, separated employee, or retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit;

(iv) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(v) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the accrual of former spouse benefits as determined under § 838.231.

§ 838.223 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the court order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart C of this part.

§ 838.224 Contesting the validity of court orders.

(a) An employee, separated employee, or retiree who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares the court order submitted by the former spouse is invalid; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until OPM receives a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.

§ 838.225 Processing amended court orders.

(a) If the employee, separated employee, retiree, or former spouse submits an amended court order pertaining to payment of a portion of the employee annuity, OPM will process the amended court order prospectively only, effective against employee annuity accruing beginning the first day of the second month after OPM receives the amended court order.

(b) A court order is not effective to adjust payments prior to the first day of the second month after OPM receives the court order unless—

(1) The court order—

(i) Expressly directs OPM to adjust for payment made under the prior court order; and

(ii) Determines the total amount of the adjustment or the length of time over which OPM will make the adjustment; and

(iii) Provides a specific monthly amount of the adjustment or a formula to compute the amount of the monthly adjustment; and

(2) Annuity continues to be available from which to make the adjustment.

Payment Procedures

§ 838.231 Commencing date of payments.

(a) A court order acceptable for processing is effective against employee annuity accruing beginning the first day of the second month after OPM receives the court order.

(b)(1) OPM will not begin payments to the former spouse until OPM receives all the documentation required by § 838.221 (b) and (c).

(2) If payments are delayed under paragraph (b)(1) of this section, after OPM receives all required documentation, it will authorize payment of the annuity that has accrued since the date determined under paragraph (a) of this section but the payment of which was delayed under paragraph (b)(1) of this section.

§ 838.232 Suspension of payments.

(a) Payments from employee annuities under this part will be discontinued whenever the employee annuity payments are suspended or terminated. If employee annuity payments to the retiree are restored, payments to the former spouse will also resume subject to the terms of any court order acceptable for processing in effect at that time.

(b) Paragraph (a) of this section will not be applied to permit a retiree to deprive a former spouse of payment by causing suspension of payment of employee annuity.

§ 838.233 Termination of payments.

A former spouse portion of an employee annuity stops accruing at the earliest of—

(a) The date on which the terms of the court order require termination;

(b)(1) The last day of the first month before OPM receives a court order invalidating, vacating, or setting aside the court order submitted by the former spouse if OPM receives the latest court order no later than 20 days before the end of the month; or

(2) The last day of the month in which OPM receives a court order invalidating, vacating, or setting aside the court order submitted by the former spouse if OPM receives the latest court order than 20 days before the end of the month; or

(c) The last day of the first month after OPM receives an amended court order;

(d) The last day of the first month before the death of the retiree; or

(e) Except as provided in § 838.237, the date on which the former spouse dies.

§ 838.234 Collection of arrearages.

Specific instructions are required before OPM may pay any arrearage. Except as provided in § 838.225(b), OPM will not increase a former spouse's share of employee annuity to satisfy an arrearage due the former spouse. However, under § 838.225, OPM will prospectively honor the terms of an amended court order that either increases or decreases the court order's entitlement.

§ 838.235 Payment of lump-sum awards.

If a court order acceptable for processing awards a former spouse a lump-sum amount from the employee annuity and does not state the monthly rate at which OPM should pay the lump-sum, OPM will pay the former spouse equal monthly installments at 50 percent of the gross annuity (subject to the limitations under § 838.211) at the time

of retirement or the date of the order, whichever comes later, until the lump-sum amount is paid.

§ 838.236 Court orders barring payment of annuities.

(a) State courts lack authority to prevent OPM from paying employee annuities as required by section 8345(a) or section 8463 of title 5, United States Code. OPM will not honor court orders directing that OPM delay or otherwise not pay employee annuities at the time or in the amount required by statute.

(b) Except as otherwise provided in this subpart, OPM will honor court orders acceptable for processing that direct OPM to pay the employee annuity to the court, an officer of the court acting as a fiduciary, or a State or local government agency during the pendency of a divorce or legal separation proceeding.

§ 838.237 Death of the former spouse.

(a) Unless the court order acceptable for processing expressly provides otherwise, the former spouse's share of an employee annuity terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee annuity reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a court order acceptable for processing or an amended court order acceptable for processing that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

(1) The court;

(2) An officer of the court acting as fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

Procedures for Computing the Amount Payable

§ 838.241 Cost-of-living adjustments.

Unless otherwise provided in the court order, when the terms of the court order or § 838.621 provide for cost-of-living adjustments on the former spouse's payment from employee annuity, the cost-of-living adjustment will be effected at the same time and at the same percentage rate as the cost-of-living adjustment in the employee annuity.

§ 838.242 Computing lengths of service.

(a)(1) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

(2) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

(b) Unused sick leave is counted as "creditable service" on the date of separation for an immediate CSRS annuity; it is not apportioned over the time when earned. Unused sick leave is not countable as "creditable service" in a FERS annuity (except in a CSRS component for an employee who transferred to FERS) or in a deferred CSRS annuity.

§ 838.243 Minimum amount of awards.

OPM will treat any court order that awards a former spouse a portion of an employee annuity equal to less than $12 per year as awarding the former spouse $1 per month.

Subpart C—Requirements for Court Orders Affecting Employee Annuities

§ 838.301 Purpose and scope.

This subpart regulates the requirements that a court order directed at employee annuity must meet to be a court order acceptable for processing.

§ 838.302 Language not acceptable for processing.

(a) *Qualifying Domestic Relations Orders.* (1) Any court order labeled as a "qualified domestic relations order" or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing unless the court order expressly states that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(2) When a court order is required by paragraph (a)(1) of this section to state that the provisions of a court order concerning CSRS or FERS benefits are governed by this part the court order must expressly—

(i) Refer to part 838 of title 5, Code of Federal Regulations, and

(ii) State that the provisions of the court order concerning CSRS or FERS benefits are drafted in accordance with the terminology used in this part.

(3) Although any language satisfying the requirements of paragraph (a)(2) of this section is sufficient to prevent a court order from being unacceptable under paragraph (a)(1) of this section, OPM recommends the use of the language provided in ¶ 001 in appendix A to subpart F of this part to state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(4) A court order directed at employee annuity that contains the language described in paragraph (a)(2) of this section must also satisfy all other requirements of this subpart to be a court order acceptable for processing.

(b) *Benefits for the lifetime of the former spouse.* Any court order directed at employee annuity that expressly provides that the former spouse's portion of the employee annuity may continue after the death of the employee or retiree, such as a court order providing that the former spouse's portion of the employee annuity will continue for the lifetime of the former spouse, is not a court order acceptable for processing.

§ 838.303 Expressly dividing employee annuity.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it expressly divides the employee annuity as provided in paragraph (b) of this section.

(b) To expressly divide employee annuity as required by paragraph (a) of this section the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of the employee annuity using terms that are sufficient to identify the employee annuity as explained in § 838.612.

§ 838.304 Providing for payment to the former spouse.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it provides for OPM to pay the former spouse a portion of an employee annuity as provided in paragraph (b) of this section.

(b) To provide for OPM to pay the former spouse a portion of an employee annuity as required by paragraph (a) of this section the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the retiree to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the employee annuity awarded to the former spouse.

(c) Except when the court order directed at employee annuity contains a provision described in paragraph (b)(2) of this section, a court order directed at employee annuity that instructs the retiree to pay a portion of the employee annuity to the former spouse is not a court order acceptable for processing.

(d) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that a court order directed at employee annuity provide for OPM to pay the former spouse, OPM strongly recommends that any court order directed at employee annuity expressly direct OPM to pay the former spouse directly.

§ 838.305 OPM computation of formulas.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information that OPM can compute the amount of the former spouse's monthly benefit using only the express language of the court order, subparts A, B, and F of this part, and information from normal OPM files.

(b)(1) To provide sufficient instructions and information for OPM to compute the amount of the former spouse's share of the employee annuity as required by paragraph (a) of this section the court order must state the former spouse's share as—

(i) A fixed amount;

(ii) A percentage or a fraction of the employee annuity; or

(iii) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order directed at employee annuity or normal OPM files.

(2) Normal OPM files include information about—

(i) The dates of employment for all periods of creditable civilian and military service;

(ii) The rate of basic pay for all periods of creditable civilian service;

(iii) The annual rates of basic pay for each grade and step under the General Schedule since 1920;

(iv) The amount of premiums for basic and optional life insurance under the Federal Employees Group Life Insurance Program;

(v) The amount of the Government and the employee shares of premiums for any health insurance plan under the Federal Employees Health Benefits Program;

(vi) The standard Federal income tax withholding tables;

(vii) The amount of cost-of-living adjustments under section 8340 or section 8462 of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(viii) The amount of pay adjustments to the General Schedule under section 5303 (or section 5305 prior to November 5, 1990) of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(ix) The provision of law under which a retiree has retired; and

(x) Whether a retiree has elected to provide survivor benefits for a current spouse, former spouse, or a person with an insurable interest.

(c)(1) A court order directed at employee annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the employee annuity.

(2) A court order directed at employee annuity is not a court order acceptable for processing if it awards the former spouse a "community property" fraction, share, or percentage of the employee annuity and does not provide a formula by which OPM can compute the amount of the former spouse's share of the employee annuity from the face of the court order or from normal OPM files.

(d) A court order directed at employee annuity is not a court order acceptable for processing if the court order awards a portion of the "present value" of an annuity unless the amount of the "present value" is stated in the court order.

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by—

(1) A fixed amount or fixed annual amounts that are stated in the order;

(2) The rate of cost-of-living or salary adjustments as those terms are described in § 838.622;

(3) The percentage change in pay that the employee actually received excluding changes in grade and/or step; or

(4) The percentage change in either of the national indices used to compute cost-of-living or salary adjustments as those terms are described in § 838.622.

§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.

(a) A court order directed at employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are net annuity, gross annuity, or self-only annuity, which are defined in § 838.103. Unless the court order otherwise directs, OPM will apply the formula, percentage, or fraction to gross annuity. Section 838.625 contains information on other methods of describing these types of annuity.

Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions

Regulatory Structure

§ 838.401 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders that affect refunds of employee contributions under CSRS or FERS. OPM must comply with court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that—

(1) Award a portion of a refund of employee contributions to a former spouse; or

(2) If the requirements of §§ 838.431 and 838.505 are met, bar payment of a refund of employee contributions.

(b) This subpart prescribes—

(1) The circumstances that must occur before refunds of employee contributions are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of a refund of employee contributions based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart E of this part contains the rules that a court order directed at a refund of employee contributions must satisfy to be a court order acceptable for processing.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect on a refund of employee contributions of a court order acceptable for processing.

Availability of Funds

§ 838.411 Amounts subject to court orders.

(a)(1) Refunds of employee contributions are subject to court orders acceptable for processing only if all of the conditions necessary for payment of

the refund of employee contributions to the separated employee have been met, including, but not limited to—

(i) Separation from a covered position in the Federal service;

(ii) Application for payment of the refund of employee contributions by the separated employee; and

(iii) Immediate entitlement to a refund of employee contributions.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at refunds of employee contributions.

(b) Payment under a court order may not exceed the amount of the refund of employee contributions.

Application and Processing Procedures

§ 838.421 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of a refund of employee contributions. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at a refund of employee contributions.

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or separated employee, such as his or her full name, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee or separated employee has not applied for a refund of employee contributions, the current mailing address of the employee or separated employee.

§ 838.422 Timeliness of application.

(a) Except as provided in § 838.431 and paragraph (b) of this section, a court order acceptable for processing that is directed at a refund of employee contributions is not effective unless OPM receives the documentation required by § 838.421 not later than—

(1) The last day of the second month before payment of the refund; or

(2) Twenty days after OPM receives the Statement required by § 838.2007(c) or § 843.208(b) of this chapter if the former spouse has indicated on that Statement that such a court order exists.

(b) If OPM receives a copy of a court order acceptable for processing that is directed at a refund of employee contributions but not all of the documentation required by § 838.421, OPM will notify the former spouse that OPM must receive the missing items within 15 days after the date of the notice or OPM cannot comply with the court order.

§ 838.423 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at a refund of employee contributions, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order;

(iii) Whether OPM has a record of unrefunded employee contributions on the employee;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of a refund of employee contributions; and

(vi) That, if the former spouse disagrees with the formula, the former spouse must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of the refund of employee contributions;

(vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) The failure of OPM to provide, or of the employee or separated employee or the former spouse to receive, the information specified in this section does not affect the validity of payment under the court order.

§ 838.424 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart E of this part.

§ 838.425 Contesting the validity of court orders.

(a) An employee or separated employee who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee or separated employee submits a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.

Payment Procedures

§ 838.431 Correcting failures to provide required spousal notification.

The interests of a former spouse with a court order acceptable for processing that is directed at a refund of employee contributions who does not receive notice of an application for refund of employee contributions because the employee or separated employee submits fraudulent proof of notification or fraudulent proof that the former spouse's whereabouts are unknown are protected if, and only if—

(a) The former spouse files a court order acceptable for processing that affects or bars the refund of employee contributions with OPM no later than the last day of the second month before the payment of the refund; or

(b) The former spouse submits proof that—

(1) The evidence submitted by the employee was fraudulent; and

(2) Absent the fraud, the former spouse would have been able to submit

the necessary documentation required by § 838.421 within the time limit prescribed in § 838.422.

§ 838.432 Court orders barring payment of refunds.

A court order, notice, summons, or other document that attempts to restrain OPM from paying a refund of employee contributions is not effective unless it meets all the requirements of § 838.505 or part 581 of this chapter.

Procedures for Computing the Amount Payable

§ 838.441 Computing lengths of service.

(a) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

(b) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions

§ 838.501 Purpose and scope.

This subpart regulates the requirements that a court order directed at or barring a refund of employee contributions must meet to be a court order acceptable for processing.

(a) A court order is directed at a refund of employee contributions if it awards a former spouse a portion of a refund of employee contributions.

(b) A court order bars a refund of employee contributions if it prohibits payment of a refund of employee contributions to preserve a former spouse's court-awarded entitlement to a portion of an employee annuity or to a former spouse survivor annuity.

§ 838.502 Expressly dividing a refund of employee contributions.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it expressly awards a former spouse a portion of a refund of employee contributions as provided in paragraph (b) of this section.

(b) To expressly award a former spouse a portion of a refund of employee contributions as required by paragraph (a) of this section, the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of a refund of employee contributions using terms that are sufficient to identify the refund of employee contributions as explained in § 838.612.

§ 838.503 Providing for payment to the former spouse.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it provides for OPM to pay a portion of a refund of employee contributions to the former spouse as provided in paragraph (b) of this section.

(b) To provide for OPM to pay a portion of a refund of employee contributions to the former spouse as required by paragraph (a) of this section, the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the employee or separated employee to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the refund of employee contributions awarded to the former spouse.

(c) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that the court order provide for OPM to pay the former spouse, OPM strongly recommends that the court order expressly direct OPM to pay the former spouse directly.

§ 838.504 OPM computation of formulas.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can compute the amount of the former spouse's share of the refund of employee contributions using only the express language of the court order, subparts A, D, and F of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information that OPM can compute the amount of the former spouse's share of the refund of employee contributions as required by paragraph (a) of this section requires that the court order state the former spouse's share as—

(1) A fixed amount;

(2) A percentage or a fraction of the refund of employee contributions; or

(3) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order directed at a refund of employee contributions is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the refund of employee contributions.

§ 838.505 Barring payment of refunds

A court order barring payment of a refund of employee contributions is not a court order acceptable for processing unless—

(a) It expressly directs OPM not to pay a refund of employee contributions;

(b) It awards, or a prior court order acceptable for processing has awarded, the former spouse a former spouse survivor annuity or a portion of the employee annuity; and

(c) Payment of the refund of employee contributions would prevent payment to the former spouse under the court order described in paragraph (b) of this section.

Subpart F—Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

Regulatory Structure

§ 838.601 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award benefits in a court order directed at an employee annuity or a refund of employee contributions. OPM applies the meanings to determine whether a court order directed at an employee annuity or a refund of employee contributions is a court order acceptable for processing and to establish the amount of the former spouse's share of an employee annuity or a refund of employee contributions.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse a portion of an employee annuity or a refund of employee contributions.

(2) This subpart informs the legal community about the definitions to apply terms used in drafting court orders so that the resulting court orders contain the proper language to accomplish the aims of the court.

(c)(1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse's share of an employee annuity or a refund of employee contributions.

(2) By using the language in appendix A of this subpart, the court, attorneys, and parties will know that the court

order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the appendix.

Identification of Benefits

§ 838.611 Identifying the retirement system.

(a) To satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1), a court order must contain language identifying the retirement system to be affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" benefits, or benefits payable "based on service with the U.S. Department of Agriculture," etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits or Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to the entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of §§ 838.303(b)(1) and 838.502(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse a portion of an employee annuity or a refund of employee contributions under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

§ 838.612 Distinguishing between annuities and contributions.

(a) A court order using "annuities," "pensions," "retirement benefits," or similar terms satisfies the requirements of §§ 838.303(b)(2) and 838.502(b)(2) and may be used to divide an employee annuity and a refund of employee contributions.

(b)(1) A court order using "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity at the time of retirement or the date of the court order, whichever comes later, until the specific dollar amount is reached.

Computation of Benefits

§ 838.621 Prorata share.

(a) *Prorata share* means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a prorata share of an employee annuity or a refund of employee contributions by using the term "prorata share" and identifying the date when the marriage began satisfies the requirements of §§ 838.305 and 838.504 and awards the former spouse a prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee's retirement awards the former spouse a prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the "value" of an annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a prorata share as defined in paragraph (a) of this section.

§ 838.622 Cost-of-living and salary adjustments.

(a)(1) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "cost-of-living adjustments" or "COLA's" occurring after the date of the decree but before the date of retirement provides increases equal to the adjustments described in or effected under section 8340 or section 8462 of title 5, United States Code.

(2) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "salary adjustments" or "pay adjustments" occurring after the date of the decree provides increases equal to the adjustments described in or effected under section 5303 of title 5, United States Code until the date of retirement.

(b)(1) Unless the court order directly and unequivocally orders otherwise, a court order that awards a former spouse a portion of an employee annuity either on a percentage basis or by use of a fraction or formula provides that the former spouse's share of the employee annuity will be adjusted to maintain the same percentage or fraction whenever the employee annuity changes as a result of—

(i) Salary adjustments occurring after the date of the decree and before the employee retires; and

(ii) Cost-of-living adjustments occurring after the date of the decree and after the date of the employee's retirement.

(2) A court order that awards a former spouse a specific dollar amount from the employee annuity prevents the former spouse from benefiting from salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.

(c)(1)(i) Except as provided in paragraph (b) of this section, a court order that contains a general instruction to calculate the former spouse's share effective at the time of divorce or separation entitles the former spouse to the benefit of salary adjustments occurring after the specified date to the same extent as the employee.

(ii) To prevent the application of salary adjustments after the date of the divorce or separation, the court order must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply salary adjustments after the specified date in computing the former spouse's share of the employee annuity.

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee's retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse's share of an employee annuity provides that the former spouse is entitled to the application of cost-of-living adjustments after the date of the employee's retirement in the manner described in § 838.241.

(ii) To award cost-of-living adjustments between a specified date and the employee's retirement, the court order must specifically instruct OPM to adjust the former spouse's share of the employee annuity by any cost-of-living adjustments occurring between the specified date and the date of the employee's retirement.

(iii) To prevent the application of cost-of-living adjustments that occur after the employee annuity begins to accrue to

the former spouse's share of the employee annuity, the decree must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply cost-of-living adjustments occurring after the date of the employee's retirement.

§ 838.623 Computing lengths of service.

(a) Sections 838.242 and 838.441 contain information on how OPM calculates lengths of service.

(b) Unless the court order otherwise expressly directs—

(1) For the purpose of describing a period of time to be excluded from any element of a computation, the term "military service" means military service as defined in section 8331(13) of title 5, United States Code, and does not include civilian service with the Department of Defense or the Coast Guard; and

(2) For the purpose of describing a period of time to be included in any element of a computation, the term "military service" means all periods of military and civilian service performed with the Department of Defense or the Coast Guard.

(c)(1) When a court order contains a formula for dividing employee annuity that requires a computation of service worked as of a date prior to separation and using terms such as "years of service," "total service," "service performed," or similar terms, the time attributable to unused sick leave will not be included.

(2) When a court order contains a formula for dividing employee annuity that requires a computation of "creditable service" (or some other phrase using "credit" or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation (involving a CSRS employee annuity or the CSRS component of a FERS employee annuity) as follows:

(i) If the amount of unused sick leave is specified, the court order awards a portion of the employee annuity equal to the monthly employee annuity at retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified plus the number of months of unused sick leave specified (which sum is rounded to eliminate partial months) and whose denominator is the months of "creditable service" used in the retirement computation.

(ii) If the amount of unused sick leave is not specified, the court order awards a portion of the employee annuity equal to the monthly rate at the time of retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified (no sick leave included) and whose denominator is the number of months of "creditable service" used in the retirement computation (sick leave included).

(d)(1) General language such as "benefits earned as an employee with the U.S. Postal Service * * *" provides only that CSRS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., service performed with other Government agencies will be included).

(2) To limit the computation of benefits to a particular period of employment, the court order must—

(i) Use language expressly limiting the period of service to be included in the computation (e.g., "only U.S. Postal Service" or "exclusive of any service other than U.S. Postal Service employment"); or

(ii) Specify the number of months to be included in the computation; or

(iii) Describe specifically the period of service to be included in the computation (e.g., "only service performed during the period Petitioner and Defendant were married" or "benefits based on service performed through the date of divorce").

§ 838.624 Distinguishing between formulas and fixed amounts.

(a) A court order that contains both a formula or percentage instruction and a dollar amount is deemed to include the dollar amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction controls.

(b) A court order that awards a portion of the "present value" of an employee annuity and specifically states the amount of either the "present value" of the employee annuity or of the award is deemed to give the former spouse "a specific dollar amount" that is payable from a monthly employee annuity and will be paid as a lump-sum award in accordance with § 838.235.

§ 838.625 Types of annuity.

(a) Terms that are synonymous with net annuity are—

(1) Disposable annuity; and

(2) Retirement check.

(b) Terms that are synonymous with self-only annuity are—

(1) Life rate annuity;

(2) Unreduced annuity; and

(3) Annuity without survivor benefit.

(c) All court orders that do not specify net annuity or self-only annuity apply to gross annuity.

Model Paragraphs

Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

This appendix provides recommended language for use in court orders attempting to divide employee annuity. A court order directed at employee annuity should include five elements:

- Identification of the benefits;
- Instructions that OPM pay the former spouse;
- A method for computing the amount of the former spouse's benefit;
- Identification of the type of annuity to which to apply a fraction, percentage or formula; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

The court order may also include instructions for disposition of the former spouse's share if the former spouse dies before the employee. By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language in this appendix does not award a benefit that is payable after the death of the employee. A separate, distinct award of a former spouse survivor annuity is necessary to award a former spouse a benefit that is payable after the death of the employee. Appendix A to subpart I of this part contains model language for awarding survivor annuities and contains some examples that award both a portion of an employee annuity and a survivor annuity.

The model language uses the terms "[former spouse]" to identify the spouse who is receiving a former spouse's portion of an employee annuity and "[employee]" to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as "Petitioner" and "Respondent," or the names of the parties should replace "[former spouse]" and "[employee]."

Similarly, the models are drafted for employees covered by the Civil Service Retirement System. The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System.

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¶ 001 Language required in Qualified Domestic Relations Orders.

Using the following paragraph will expressly state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part. A court order directed at employee annuity (or awarding a survivor annuity) that is labelled a "Qualified Domestic Relations Order" or is issued on an ERISA form will not be automatically rendered unacceptable under § 838.302(a) or § 838.803(a) if the court order contains the following paragraph.

"The court has considered the requirements and standard terminology provided in part 838 of Title 5, Code of Federal Regulations. The terminology used in the provisions of this order that concern benefits under the Civil Service Retirement System are governed by the standard conventions established in that part."

100 Series—Identification of the benefits and instructions that OPM pay the former spouse.

¶ 101 Identifying retirement benefits and directing OPM to pay the former spouse.

Using the following paragraph will expressly divide employee annuity to satisfy the requirements of § 838.303 and direct OPM to pay the former spouse a share of an employee annuity to satisfy the requirements of § 838.304.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from 200 series of this appendix.] The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 102–110 [Reserved].

¶ 111 Protecting a former spouse entitled to military retired pay.

Using the following paragraph will protect the former spouse interest in military retired pay in the event that the employee waives the military retired pay to allow crediting the military service under CSRS or FERS. The paragraph should be used only if the former spouse is awarded a portion of the military retired pay. "If [Employee] waives military retired pay to credit military service under the Civil Service Retirement System, [insert language for computing the former spouse's share from 200 series of this appendix]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

200 Series—Computing the amount of the former spouse's benefits.

Paragraphs 201 through 204 contain model language for the most common types of wards that court orders make to former spouses. Subsequent paragraphs in the 200 series contain model language for less common, more complex awards.

Awards other than fixed amounts require that the court order specify the type of annuity ("gross," "net," or self-only) on which the award is computed. The types of annuity are defined in § 838.103. Variations on type of annuity are covered by the 300 series of this appendix.

¶ 201 Award of a fixed monthly amount.

Using the following paragraph will award the former spouse a fixed monthly amount. OPM will not apply COLA's to a fixed monthly amount unless the court order expressly directs that OPM and COLA's using the language in ¶ 231 of this appendix or similar language.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 202 Award of a percentage.

Using the following paragraph will award the former spouse a stated percentage of the employee annuity. Unless the court order expressly directly that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert a number] percent of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 203 Award of a fraction

Using the following paragraph will award the former spouse a stated fraction of the employee annuity. Unless the court order expressly directly that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides languege for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert fraction] ths of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].

¶ 204 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the employee annuity. Prorata share is defined in § 838.621. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s [insert 'gross,' 'net,' or self-only] monthly annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 205–210 [Reserved].

¶ 211 Award based on a stated formula.

Using the following paragraphs will award the former spouse a share of the employee annuity based on a formula stated in the court order. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to apply the formula unless the necessary data is contained in normal OPM files.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a share of [employee]'s [insert 'gross,' 'net,' or self-only] monthly annuity under the Civil Service Retirement System to be computed as follows: [Insert formula for computing the former spouse's share.]"

"The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 212–230 [Reserved].

¶ 231 Awarding COLA's on fixed monthly amounts.

Using the following paragraph will award COLA's in addition to a fixed monthly amount to the former spouse. The model awards COLA's at the same rate applied to the employee annuity.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. When COLA's are applied to [employee]'s retirement benefits, the same COLA applies to [former spouse]'s share. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 232 Excluding COLA's on awards other than fixed monthly amounts.

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or prorata share of the employee annuity, rather than a fixed dollar amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶ 202, ¶ 203, ¶ 204, or ¶ 211 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert 'when [employee] retires' if the employee has not retired, or 'of this order' if the employee is already retired] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

300 Series—Type of annuity.

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the "gross," "net," or self-only annuity as defined in § 838.103 in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from "gross," "net," or self-only annuity as defined in § 838.103.

¶ 301 Awards based on benefits actually paid.

The court order may include a formula that effectively uses the court's definition of net annuity rather than the one provided by § 838.103. For example, using the following paragraph will award the former spouse a prorata share of the employee annuity reduced only by the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s monthly annuity under the Civil Service Retirement System, where monthly annuity means the self-only annuity less the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 302–310 [Reserved].

¶ 311 Awards of earned annuity in cases where the actual annuity is based on disability.

Using the following paragraph will award a former spouse a prorata share of what the employee annuity would have been based on only the employee's actual service in cases where the actual employee annuity is based on disability. The paragraph also allows the court order to provide for the former spouse's share to begin when the employee reaches a stated age, using age 62 as an example. As with all other formulas the court order must specify whether the computation applies to "gross," "net," or self-only annuity. OPM will apply COLA's that occurred after the date of the disability retirement to the former spouse's share. The following paragraph should be used only for disability retirees under CSRS. Under FERS, section 8452 of title 5, United States Code, provides a formula for recomputation of disability annuities at age 62 to approximate an earned annuity. Therefore to award a portion of the "earned" benefit under FERS add the introductory phrase, "Starting when [employee] reaches age 62," to the paragraph describing how to compute the amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United State's

Government. Starting when [employee] reaches age 62, [former spouse] is entitled to a prorata share of [employee]'s [insert "gross," "net," or self-only] monthly annuity under the Civil Service Retirement System, where monthly annuity means the amount of [employee]'s monthly annuity computed as though [employee] had retired on an immediate, nondisability annuity on the commencing date of [employee]'s annuity based on disability. In computing the amount of the immediate annuity, the United States Office of Personnel Management will deem [employee] to have been age 62 at the time that [employee] retired on disability. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

400 Series—Refunds of employee contributions.

Court orders that award a former spouse a portion of a future employee annuity of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee separates before becoming eligible to retire and requests a refund of employee contributions. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

¶ 401 Barring payment of a refund of employee contributions.

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a portion of the employee annuity. "The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

¶ 402 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The sentence on the beginning date of the marriage is unnecessary if the beginning is stated elsewhere in the order. The award of a prorata share is used only as an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. Note that a refund of employee contributions voids the employee's rights to an employee annuity and the former spouse's right to any portion of that annuity.

"If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

500 Series—Death of the former spouse.

¶ 501 Full annuity restored to the retiree.

No special provision is necessary to restore the entire annuity to the retiree upon the death of the former spouse. Unless the court order expressly provides otherwise, OPM will pay the former spouse's share to the retiree after the death of the former spouse.

¶ 502 Former spouse share paid to children.

Using the following paragraph will award the former spouse's share of an employee annuity to the children, including any adopted children, of the employee and former spouse.

"If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to surviving children of the marriage including any adopted children, in equal shares. Upon the deaths of any child, that child's share will be distributed among the other surviving children."

The language may be modified to terminate the payments to the children when they reach a stated age. A court order that includes such a provision for termination must include sufficient information (such as the children's dates of birth) to permit OPM to determine when the children's interest terminate. OPM will not consider evidence outside the court order (and normal OPM files) to establish the children's dates of birth.

¶ 503 Former spouse share paid to the court.

Using the following paragraph will provide for payment of the former spouse's share of an employee annuity to the court after the death of the former spouse. This would allow a court officer to administer the funds. "If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to this court at the following address: "[Insert address where checks should be sent. The address may be up to six lines and should include sufficient information for court officials to credit the correct account.]"

Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

§ 838.701 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders awarding former spouse survivor annuities under CSRS or FERS (including the FERS basic employee death benefit as defined in § 843.602 of this chapter). OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award former spouse survivor annuities.

(b) This subpart prescribes—

(1) The commencing and terminating dates of former spouse survivor annuities based on court orders acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a former spouse survivor annuity based on a court order under section 8341(h) or section 8445 of title 5, United States Code.

(c)(1) Subpart H of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to award a former spouse survivor annuity.

(2) Subpart I of this part contains definitions that OPM uses to determine the effect of a court order in connection with a former spouse survivor annuity.

Limitations on Survivor Annuities

§ 838.711 Maximum former spouse survivor annuity.

(a) Under CSRS, payments under a court order may not exceed the amount provided in § 831.614 of this chapter.

(b) Under FERS, payments under a court order may not exceed amount provided in § 842.613 of this chapter plus the basic employee death benefit as defined in § 843.102 of this chapter.

Application and Processing Procedures

§ 838.721 Application requirements.

(a)(1) A former spouse (personally or through a representative) must apply in writing to be eligible for a former spouse survivor annuity based on a court order acceptable for processing. No special form is required to give OPM notice of the court order.

(2) OPM may require an additional application after the death of the employee, separated employee, or retiree. This additional application will be on a form prescribed by OPM.

(b)(1) The application letter under paragraph (a)(1) of this section must be accompanied by—

(i) A certified copy of the court order;

(ii) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(iii) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(iv) The current mailing address of the former spouse;

(v) If the employee has not retired or died, the mailing address of the employee; and

(vi) A statement in the form prescribed by OPM certifying—

(A) That the former spouse has not remarried before age 55;

(B) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage before age 55; and

(C) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage before age 55.

(2) OPM may subsequently require recertification of the statements required by this paragraph.

§ 838.722 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity based on the service of a living retiree, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order; and

(iii) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the monthly benefit; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) Of the amount and commencing date of the reduction in the retiree's annuity;

(v) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the amount of the former spouse survivor annuity; and

(vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(b) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity, but the employee, separated employee, or retiree has died, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit will begin to accrue, and if known the date on which OPM will commence payment under the court order; and

(iii) Of the amount on the monthly former spouse survivor annuity and the formula OPM used to compute the former spouse survivor annuity.

(2) Anyone whom OPM knows will be adversely affected by the court order—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) How the court order may adversely affect him or her; and

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(c) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity and the employee or separated employee has not retired or died, OPM will attempt to inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and

(iii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before the employee or separated employee retires or dies; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and the OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and

(iv) That, if he or she—

(A) Contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; or

(B) Disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before he or she retires or dies.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree, the former spouse, or anyone else to receive, the information specified in this section does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the former spouse's entitlement as determined under § 838.731.

§ 838.723 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart H of this part.

§ 838.724 Contesting the validity of court orders.

(a) An employee, retiree or person adversely affected by a court order who alleges that a court order is invalid must prove the invalidity of the court order by submitting to OPM a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee, separated employee, retiree, or person adversely

affected by the court order submits to OPM a court order described in paragraph (a) of this section or, if issued before the retirement or death of the employee or separated employee, a court order acceptable for processing amending or superseding the court order submitted by the former spouse.

§ 838.725 Effect on employee and retiree election rights.

(a) A court order acceptable for processing that awards a former spouse survivor annuity does not affect a retiring employee's or retiree's rights and obligations to make survivor elections under subpart F of part 831 of this chapter or subpart F of part 842 of this chapter.

(b) A court order acceptable for processing that awards a former spouse survivor annuity requires OPM to pay a former spouse survivor annuity and prevents OPM from paying an elected survivor benefit to a widow or widower or another former spouse if the election is inconsistent with the court order.

Payment Procedures

§ 838.731 Commencing date of payments.

(a) A former spouse survivor annuity based on a court order acceptable for processing begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(1) The first day after the date of death of the employee, separated employee, or retiree; or

(2) The first day of the second month after OPM receives a copy of the court order acceptable for processing.

(b) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and supporting documentation required under § 838.721.

§ 838.732 Termination of entitlement.

(a) A former spouse survivor annuity (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) or the right to a future former spouse survivor annuity based on a court order acceptable for processing terminates in accordance with the terms of the court order but no later than the last day of the month before the former spouse remarries before age 55 or dies.

(b) If the employee dies before the former spouse remarries before age 55 or dies, the former spouse's entitlement to the FERS basic employee death benefit as defined in § 843.602 of this chapter based on a court order acceptable for processing terminates in accordance with the terms of the court order.

§ 838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.

(a) If a former spouse of a retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing while the retiree is living and—

(1) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will continue the reduction to comply with court orders in the order specified in § 838.135;

(2) If paragraph (a)(1) of this section does not obligate the entire entitlement lost by he former spouse, OPM will continue the reduction to provide a current spouse survivor annuity or a former spouse survivor annuity based on a timely-filed election under § 831.604, § 831.605, § 831.612, § 831.613, § 842.603, § 842.604, § 842.611, or § 842.612 of this chapter; or

(3) If paragraphs (a)(1) and (a)(2) of this section do not obligate the entire entitlement lost by the former spouse, the retiree (except a retiree under CSRS who retired before May 7, 1985 and who remarried before February 27, 1986) may elect within 2 years after the former spouse loses entitlement to continue the reduction to provide a survivor annuity for a spouse acquired after retirement.

(b)(1) If a former spouse of an employee or retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing after the death of the employee or retiree and—

(i) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will pay the next entitled former spouse in the order specified in § 838.135; or

(ii) If paragraph (b)(1) of this section does not obligate the entire entitlement lost by the former spouse, OPM will pay the balance to a current spouse of the deceased—

(A) Retiree who had elected a reduced annuity to provide a current spouse annuity (as defined in § 831.603 or § 842.602); or

(B) Employee.

(2) Except as provided in § 838.734—

(i) The former spouse survivor annuity based on paragraph (b)(1)(i) of this section begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(A) The first day of the month in which the former spouse with the earlier-issued court order loses entitlement; or

(B) The first day of the second month after OPM receives a copy of the court order acceptable for processing; or

(ii) The current spouse annuity under paragraph (b)(1) (ii) of this section begins to accrue on the first day of the month in which the former spouse loses entitlement.

(c) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and supporting documentation required under § 838.721.

§ 838.734 Payment of lump-sum awards by survivor annuity.

OPM will not honor court orders awarding lump-sum payments (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) to a former spouse upon the death of an employee or retiree.

§ 838.735 Cost-of-living adjustments.

(a) OPM applies cost-of-living adjustments to all former spouse survivor annuities in pay status at the time of the adjustment and in the amount provided by Federal statute.

(b) OPM will not honor provisions of a court order that alters the time or amount of cost-of-living adjustments or that attempts to prevent OPM from applying cost-of-living adjustments to a former spouse survivor annuity in pay status.

Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities

§ 838.801 Purpose and scope.

This subpart regulates the requirements that a court order awarding a former spouse survivor annuity must meet to be a court order acceptable for processing.

§ 838.802 CSRS limitations.

(a) A court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the marriage terminated on or after May 7, 1985.

(b) In the case of a retiree who retired under CSRS before May 7, 1985, a court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the retiree was receiving a reduced annuity to provide a survivor annuity to benefit that spouse on May 7, 1985.

§ 838.803 Language not acceptable for processing.

(a) *Qualifying Domestic Relations Orders.* (1) Any court order labeled as a "qualified domestic relations order" or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing unless the court order expressly states that the

provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(2) When a court order is required by paragraph (a)(1) of this section to state that the provisions of a court order concerning CSRS or FERS benefits are governed by this part the court order must—

(i) Expressly refer to part 838 of Title 5, Code of Federal Regulations, and

(ii) Expressly state that the provisions of the court order concerning CSRS or FERS benefits are drafted in accordance with the terminology used in this part.

(3) Although any language satisfying the requirement of paragraph (a) (2) of this section is sufficient to prevent a court order from being unacceptable under paragraph (a)(1) of this section, OPM recommends the use of the language provided in ¶001 in appendix A to subpart F of this part to state that the provisions of the court order concerning CSRS or FERS benefits are governed by this part.

(4) A court order directed at employee annuity that contains the language described in paragraph (a)(2) of this section must also satisfy all other requirements of this subpart to be a court order acceptable for processing.

(b) *Employee annuity cannot continue after the death of the retiree.* Any court order that provides that the former spouse's portion of the employee annuity shall continue after the death of the employee or retiree, by using language such as "will continue to receive benefits after the death of" the employee, that the former spouse "will continue to receive benefits for his (or her) lifetime," or "that benefits will continue after the death of" the employee, but does not use terms such as "survivor annuity," "death benefits," "former spouse annuity," or similar terms is not a court order acceptable for processing.

§ 838.804 Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it expressly awards a former spouse survivor annuity or expressly directs an employee or retiree to elect to provide a former spouse survivor annuity as described in paragraph (b) of this section.

(b) To expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity as required by paragraph (a) of this section the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.911; and

(2) (i) Expressly state that the former spouse is entitled to a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912; or

(ii) Expressly direct the retiree to elect to provide a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912.

§ 838.805 OPM computation of formulas in computing the designated base.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can determine the amount of the former spouse's monthly benefit using only the express language of the court order, subparts A, G and I of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information for OPM to compute the amount of a former spouse survivor annuity as required by paragraph (a) of this section, if the court order uses a formula to determine the former spouse survivor annuity, it must not use any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse survivor annuity.

§ 838.806 Amended court orders.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if it is issued after the date of retirement or death of the employee and modifies or replaces the first order dividing the marital property of the employee or retiree and the former spouse.

(b) For purposes of awarding, increasing, reducing, or eliminating a former spouse survivor annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse survivor annuity, the court order must be—

(1) Issued on a day prior to the date of retirement or date of death of the employee; or

(2) The first order dividing the marital property of the retiree and the former spouse.

(c) A court order that awards a former spouse survivor annuity and that is issued after the first order dividing the marital property of the retiree and the former spouse has been vacated, set aside, or otherwise declared invalid is not a court order acceptable for processing if—

(1) It is issued after the date of retirement of death of the retiree;

(2) It changes any provision concerning a former spouse survivor annuity in the court order that was vacated, set aside or otherwise declared invalid; and

(3)(i) The court order is effective prior to the date when it is issued; or

(ii) The retiree and former spouse do not compensate the Civil Service Retirement and Disability Fund for any uncollected annuity reduction due as a result of the court order vacating, setting aside, or otherwise invalidating the first order terminating the marital relationship between the retiree and the former spouse.

(d) In this section, "date of retirement" means the later of—

(1) The date that the employee files an application for retirement; or

(2) The effective commencing date for the employee's annuity.

(e) In this section, "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued nunc pro tunc).

(f)(1) In this section, the "first order dividing the marital property of the retiree and the former spouse" means—

(i) The original written order that first ends (or first documents an oral order ending) the marriage if the court divides any marital property (or approves a property settlement agreement that divides any marital property) in that order, or in any order issued before that order); or

(ii) The original written order issued after the marriage has been terminated in which the court first divides any marital property (or first approves a property settlement agreement that divides any marital property) if no marital property has been divided prior to the issuance of that order.

(2) The first order dividing marital property does not include—

(i) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the court order making

the amendment, explanation, clarification, or interpretation; or

(ii) Any court order issued under reserved jurisdiction or any other court order issued subsequent to the original written order that divide any marital property regardless of the effective date of the court order.

§ 838.907 Cost must be paid by annuity reduction.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, from annuity paid by OPM. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(b) The amount of the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, may be paid—

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is directed at employee annuity; or

(2) By reduction of the employee annuity.

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by section 8339(j)(4) or section 8419 of title, 5, United States Code, from the employee annuity.

Subpart I—Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

§ 838.901 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award a former spouse survivor annuity in a court order, and for OPM to determine whether a court order awarding a former spouse survivor annuity is a court order acceptable for processing and the amount of the former spouse survivor annuity.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse survivor annuity.

(2) This subpart informs the legal community about the definition to be applied to terms used in court orders, to permit the resulting orders to be more carefully drafted, using the proper language to accomplish the aims of the court.

(c)(1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse survivor annuity.

(2) By using the language in appendix A of this subpart, the court, attorneys, and parties will know that the court order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the appendix.

Identification of Benefits

§ 838.911 Identifying the retirement system.

(a) To satisfy the requirements of § 838.804(b)(1), a court order must contain language identifying the retirement system affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" survivor benefits, or "survivor benefits payable based on service with the U.S. Department of Agriculture," etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.804(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of § 838.804(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to this entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of § 838.804(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse survivor annuity under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.804(b)(1).

(d) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(1), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in § 843.602 of this chapter at the time of the divorce.

§ 838.912 Specifying an award of a former spouse survivor annuity.

(a) To satisfy the requirements of § 838.804(b)(2), a court order must specify that it is awarding a former spouse survivor annuity. The court order must contain language such as "survivor annuity," "death benefits," "former spouse survivor annuity under 5 U.S.C. 8341(h)(1)," etc.

(b)(1) A court order that provides that the former spouse is to "continue as" or "be named as" the beneficiary of CSRS survivor benefits or similar language satisfies the requirements of § 838.804(b)(2).

(2) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(2), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in § 843.602 of this chapter at the time of the divorce.

(c) Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Under CSRS, section 8341(h) of title 5, United States Code, provides for "former spouse survivor annuities" and section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages. The corresponding FERS provisions are sections 8445 and 8444, respectively.

(1) OPM will enforce court orders to provide section 8341(h) or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8341(h) or section 8445 annuity, the court order must use terms such as "former spouse survivor annuity," "section 8341(h) annuity," or "survivor annuity."

(2) OPM cannot enforce court orders to provide "insurable interest annuities" under section 8339(k) or section 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The retirees may also elect to cancel the insurable interest annuity to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the nonemployee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement or if another former spouse has already been awarded a section 8341(h) annuity. However, the court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM cannot enforce the court order. Language including the words "insurable interest" or referring to section 8339(k) or section 8444 does

not satisfy the requirements of § 838.804(b)(2).

(3) In court orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8341(h)," the section reference will control.

Computation of Benefit

§ 838.921 Determining the amount of a former spouse survivor annuity.

(a) A court order that contains no provision stating the amount of the former spouse survivor annuity provides the maximum former spouse survivor annuity permitted under § 831.614 or § 842.613 of this chapter and satisfies the requirements of § 838.805.

(b)(1) A court order that provides that "a former spouse will keep" or "an employee or retiree will maintain" the survivor annuity to which he or she was entitled at the time of the divorce satisfies the requirements of § 838.805 and provides a former spouse survivor annuity in the same proportion to the maximum survivor annuity under § 831.614 or § 842.613 of this chapter as the former spouse had at the time of divorce. For example, a former spouse of an employee would be entitled to a maximum survivor benefit; a former spouse of a retiree (who was married to the retiree at retirement and continuously until the divorce resulting in the court order) would be entitled to the survivor benefit elected at retirement.

(2) If, at the time of divorce, the employee covered by FERS had at least 18 months of civilian service creditable under FERS but less than 10 years of service creditable under FERS, a former spouse with a court order described in paragraph (b)(1) or paragraph (b)(2) of this section may be entitled to the basic employee death benefit as defined in § 843.602 of this chapter, but is not entitled to any other former spouse survivor annuity based on the court order.

(c)(1) A court order that awards a former spouse survivor annuity of less than $12 per year satisfies the requirements of § 838.805 and provides an initial rate of $1 per month plus all cost-of-living increases occurring after the later of—

(i) The date of the court order; or

(ii) The date when the employee retires.

(2) The reduction in the employee annuity will be computed as though the court order provided a former spouse survivor annuity of $1 per month.

(d)(1) A court order that awards a former spouse survivor annuity while authorizing the employee or retiree to elect a lesser former spouse survivor annuity upon the employee's or retiree's remarriage satisfies the requirements of § 838.805, and provides the former spouse survivor annuity at the rate initially provided in the court order but does not allow the employee or retiree to elect a lesser benefit for the former spouse.

(2) To provide full survivor annuity benefits to a former spouse while authorizing the employee or retiree to elect a lesser former spouse survivor annuity benefit in order to provide survivor annuity benefits for a subsequent spouse, the court order must provide for a reduction in the former spouse survivor annuity upon the employee's or retiree's election of survivor annuity benefits for a subsequent spouse.

(3) A reduction in the amount of survivor benefits provided to the former spouse does not satisfy the requirements of § 838.805 if it is contingent upon the employee's or annuitant's remarriage rather than his or her election of survivor annuity benefits for a subsequent spouse.

§ 838.922 Prorata share defined.

(a) *Prorata share* means the fraction of the maximum survivor annuity allowable under § 831.614 or § 842.613 of this chapter whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a "prorata share" of a survivor annuity by using that term and identifying the date when the marriage began satisfies the requirements of § 838.805 and awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of a survivor annuity, as of a specified date before the employee's retirement, awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the "value" of a survivor annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a former spouse survivor annuity equal to a prorata share as defined in paragraph (a) of this section.

§ 838.923 Cost-of-living adjustment before the death of a retiree.

A court order that awards a former spouse survivor annuity is deemed to order OPM to add to the survivor annuity rate cost-of-living adjustments that occur before the death of a retiree (in the same manner as these adjustments are applied to the survivor rate generally) unless the court order contains an instruction expressly directing OPM not to add these adjustments to the survivor annuity rate. (See § 838.735 for information concerning cost-of-living adjustments after the death of an employee or retiree.)

Miscellaneous Provisions

§ 838.931 Court orders that provide temporary awards of former spouse survivor annuities.

A provision in a court order that temporarily awards a former spouse survivor annuity satisfies the requirements of § 581.804(b)(2), but the temporary award becomes permanent on the date on which OPM is barred from honoring a modification of the court order (the date of retirement or death, or, in the case of a post-retirement divorce, the date of the initial court order), as provided in sections 8341(h)(4) and 8445(d) of title 5, United States Code.

§ 838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.

(a) Except as provided in paragraph (b) of this section, a court order that gives the former spouse the right to elect a former spouse survivor annuity satisfies the requirements of § 838.8804(b)(2) and provides a former spouse survivor annuity in the amount otherwise provided by the court order.

(b) A former spouse who has been awarded a former spouse survivor annuity by a court order that gives the former spouse the right to elect a former spouse survivor annuity may irrevocably elect not to be eligible for a former spouse survivor annuity based on the court order.

(c) The former spouse may make the election under paragraph (b) of this section at any time after the issuance of the court order. An election under paragraph (b) of this section—

(1) Must be in writing and in the form prescribed by OPM;

(2) Is effective on the first day of the month following the month in which OPM received the election; and

(3) Is irrevocable once it has become effective.

(d) The reduction in an employee annuity based on a court order that gives the former spouse the right to elect a former spouse survivor annuity terminates on the last day of the month in which OPM receives the former spouse's election under paragraph (b) of this section.

§ 838.833 Payment of the cost of a former spouse survivor annuity.

(a) A court order that unequivocally awards a former spouse survivor annuity and directs the former spouse to pay for that benefit satisfies the requirements of § 838.805, and—

(1) If the former spouse has also been awarded a portion of the employee annuity then the cost of the survivor benefit will be deducted from the former spouse's share of the employee annuity (if sufficient to cover the total cost—there will be no partial withholding); otherwise,

(2) The reduction will be taken from the employee annuity and collection from the former spouse will be a private matter between the parties.

(b) a court order that conditions the award of a former spouse survivor annuity on the former spouse's payment of the cost of the benefit satisfies the requirements of § 838.805 only if a court order acceptable for processing also awards the former spouse a portion of the employee annuity sufficient to cover the cost.

Model Paragraphs

Appendix A to Subpart I of Part 838—Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities

This appendix provides recommended language for use in court orders awarding former spouse survivor annuities. A former spouse survivor annuity is not a continuation of a former spouse's share of an employee annuity after the death of the employee. A former spouse's entitlement to a portion of an employee annuity cannot continue after the death of the employee. A court order that attempts to extend the former spouse's entitlement to a portion of an employee annuity past the death of the employee is not effective. The model language in this appendix does not award benefits payable to the former spouse during the lifetime of the employee. A separate, distinct award of a portion of the employee annuity is necessary to award a former spouse a benefit during the lifetime of the employee. Appendix A to subpart F of this part contains model language for a portion of an employee annuity.

Attorneys should exercise great care in preparing provisions concerning former spouse survivor annuities because sections 8341(h)(4) and 8445(d) of title 5, United States Code, prohibit OPM from accepting modifications after the retirement or death of the employee. (See § 838.806 concerning unacceptable modifications.) A court order awarding a former spouse survivor annuity should include four elements:

- Identification of the retirement system;
- Explicit award of the former spouse survivor annuity.
- Method for computing the amount of the former spouse's benefit; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language uses the terms "[former spouse]" to identify the spouse who is receiving a former spouse survivor annuity and "[employee]" to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as "Petitioner" and "Respondent," or the names of the parties should replace "[former spouse]" and "[employee]."

Similarly, except when the provision applies only to the basic employee death benefit (defined in § 843.103 of this chapter) that is available only under the Federal Employees Retirement System, the models are drafted for employees covered by the Civil Service Retirement System (5 U.S.C. 8331 *et seq.*). The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System (5 U.S.C. chapter 84.).

Statutory references used in the models are to CSRS provisions (such as section 8341(h) of title 5, United States Code). When appropriate, the corresponding FERS provision (such as section 8445 of title 5, United States Code) should be used.

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700 Series—Computing the amount of the former spouse's benefit.

Paragraphs 701 through 704 contain model language for awards of former spouse survivor annuities in amounts that do not require specification of the base on which the former spouse's share will be computed. Situations in which the computational base need not be specified include amounts defined by law or regulation. For example, the maximum former spouse survivor annuity is fixed by statute generally at 55 percent of the employee annuity under CSRS and 50 percent of the employee annuity under FERS.

Paragraphs 711 and 712 contain model language for awards of former spouse survivor annuities that use the employee annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Paragraphs 721 and 722 contain model language for awards of former spouse survivor annuities that use the maximum possible survivor annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Using the maximum possible survivor annuity as the base will generally award 55 percent under CSRS and 50 percent under FERS of the amount that using the employee annuity as the base would produce.

Paragraphs 750 and higher contain model language to implement the most common other types of awards.

Each model paragraph includes a reference to the statutory provision under CSRS that authorizes OPM to honor court orders awarding former spouse survivor annuities. The FERS statutory provision that corresponds to section 8341(h) (mentioned in the first

sentence of each example) is section 8445.

¶ 701 Award of the maximum survivor annuity.

Using the following paragraph will award the maximum possible former spouse survivor annuity. Under CSRS, the maximum possible survivor annuity is 55 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time. Under FERS, the maximum possible survivor annuity is 50 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System."

¶ 702 Award that continues the pre-divorce survivor annuity benefits.

Using the following paragraph will award a former spouse survivor annuity equal to the amount that the former spouse would have received if the marriage were never terminated by divorce.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System in the same amount to which [former spouse] would have been entitled if the divorce had not occurred."

¶ 703 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the maximum possible survivor annuity. Prorata share is defined in § 838.922. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorate share. The marriage began on [insert date]."

¶ 704 Award of a fixed monthly amount.

Using the following paragraph will award a former spouse survivor annunity that will start at the amount stated in the order when the employee or retiree dies, unless the stated amount exceeds the maximum possible former spouse survivor annunity. If the amount stated in the order exceeds the maximum possible former spouse survivor annunity, the court order will be treated as awarding the maximum. After payment of the former spouse survivor annuity has began, COLA's will be applied in accordance with § 838.735. If the final sentence of this model paragraph is omitted, OPM will add COLA's occurring after the date of the employee's retirement or the date of issuance of the court order, whichever is later.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annunity under the Civil Service Retirement System. The amount of the former spouse survivor annunity will be equal to $[insert a number] per month. The Office of Personnel Management is ordered not to increase this amount by COLA's occurring before death of [employee or retiree]."

¶ 705–710 [Reserved].

¶ 711 Award of a percentage or fraction of the employee annunity.

Using the following paragraph will award a former spouse survivor annunity equal to the stated percentage or fraction of the employee annunity. The stated percentage or fraction may not exceed 55 percent under CSRS or 50 percent under FERS.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annunity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to [insert a percentage or fraction] percent of the [employee]'s employee annunity."

¶ 712 Award based on a stated formula as a share of employee annuity.

Using the following paragraphs will award a former spouse survivor annuity in an amount to be determined by applying a stated formula to employee annuity. The amount of the former spouse survivor annuity may not exceed 55 percent of the employee annuity under CSRS or 50 percent under FERS. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the [employee]'s employee annuity computed as follows:

"[Insert formula.]"

¶ 713–720 [Reserved].

¶ 721 Award of a percentage or fraction of the maximum survivor annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the maximum possible survivor annuity. The stated percentage or fraction may not exceed 100 percent.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to [insert a percentage or fraction] of the maximum possible survivor annuity.

¶ 722 Award based on a stated formula as a share of maximum survivor annuity.

Using the following paragraphs will award a former spouse survivor annuity based on a stated formula to be applied to the maximum possible survivor annuity. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the maximum possible survivor annuity computed as follows:

"[Insert formula.]"

¶ 723–750 [Reserved].

¶ 751 Changing amount of former spouse survivor annuity based on remarriage before retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries before retirement. Upon the employee's remarriage before retirement the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible

and prorata share are used as examples only; other amounts may be substituted. Similar language is not acceptable for remarriages after retirement.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] remarries before retirement. If [employee] remarries before retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert data]."

¶ 752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries after retirement and elects to provide a survivor annuity for the spouse acquired after retirement. Upon the employee's remarriage after retirement and election to provide a survivor annuity for the spouse acquired after retirement, the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts maybe substituted. The change in the amount of the former spouse survivor annuity must be triggered by the election, which is a part of normal OPM files, rather than the remarriage, which is not documented in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] elects to provide a survivor annuity for a new spouse acquired after retirement. If [employee] elects to provide a survivor annuity to a new spouse acquired after retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert data]."

¶ 800 Series—Paying the cost of a former spouse survivor annuity.

A court order awarding a former spouse survivor annuity requires that the employee annuity be reduced. The reduction lowers the gross employee annuity. The costs associated with providing the former spouse survivor annuity must be paid by annuity reduction. Under § 838.807, if the former spouse is awarded a portion of the employee annuity sufficient to pay the cost associated with providing the survivor annuity, the former spouse's share maybe reduced to pay the cost.

¶ 801 Costs to be paid from the employee annuity.

No special provision on payment of the costs associated with providing the former spouse survivor annuity is necessary if the court intends the cost to be taken from the employee annuity.

¶ 802 Costs to be paid from former spouse's share of the employee annuity.

Using the following paragraph will award the former spouse a prorata share of the employee annuity and a prorata share of the maximum possible survivor annuity and provide that the cost associated with the survivor annuity be deducted from the former spouse's share of the employee annuity. Prorata share and self-only annuity are used as examples only; another amount or type of annuity may be substituted.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s self-only monthly annuity under the Civil Service Retirement System. [Former spouse]'s share of [employee]'s employee annuity will be reduced by the amount of the costs associated with providing the former spouse survivor annuity awarded in the next paragraph. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share.

¶ 900 Series—Refunds of employee contributions.

Court orders that award a former spouse survivor annuity based on the service of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee requests a refund of employee contributions before becoming eligible to retire. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

¶ 901 Barring payment of a refund of employee contributions.

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a former spouse survivor annuity. "The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

¶ 902 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The award of a prorata share is used only an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. A refund of employee contributions voids the employee's rights to an employee annuity unless the employee is reemployed under the retirement system. Payment of the refund of employee contributions will also extinguish the former spouse's right to a court-ordered portion of an employee annuity or a former spouse survivor annuity unless the employee is reemployed and reestablishes title to annuity benefits.

"If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse.]"

2. Subpart Q of part 831 of this chapter consisting of sections 831.1701 through 831.1718 and appendices A and B is redesignated as subpart J of part 838, sections 838.1001 through 838.1018 and appendices A and B of subpart J, respectively. Subpart Q is reserved.

3. Newly redesignated § 838.1001 is removed and reserved; § 838.1010 is removed; and § 831.2009 of this chapter is redesignated as § 838.1010.

4. In newly redesignated § 838.1002, paragraphs (c) and (d) are revised to read as follows:

¶ 838.1002 Relation to other regulations.

* * * * *

(c) Subpart F of part 831 of this chapter, subpart F of part 842 of this chapter, and subpart C of part 843 of this

chapter contain information about entitlement to survivor annuities.

(d) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about entitlement to lump-sum death benefits.

* * * * *

5. In newly redesignated § 838.1004, paragraph (e) is revised to read as follows:

§ 838.1004 Qualifying court orders.

* * * * *

(e)((1) For purposes of awarding, increasing, reducing, or eliminating a former spouse survivor annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse annuity, the court order must be—

(i) Issued on a day prior to the date of retirement or date of death of the employee; or

(ii) The first order dividing the marital property of the retiree and the former spouse.

(2) In paragraph (e)(1) of this section, "date of retirement" means the later of—

(i) The date that the employee files an application for retirement; or

(ii) The effective commencing date for the employee's annuity.

(3) In paragraphs (e)(1) and (e)(4) of this section "issued" means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued nunc pro tunc).

(4)(i) In paragraph (e)(1)(ii) of this section, the "first order dividing the marital property of the retiree and the former spouse" means—

(A) The original written order that first ends (or first documents an oral order ending) the marriage if the court divides any marital property (or approves a property settlement agreement that divides any marital property) in that order, or in any order issued before that order; or

(B) The original written order issued after the marriage has been terminated in which the court first divides any marital property (or first approves a property settlement agreement that divides any marital property) if no marital property has been divided prior to the issuance of that order.

(ii) The first order dividing marital property does not include—

(A) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the court order making the amendment, explanation, clarification, or interpretation; or

(B) Any court order issued under reserved jurisdiction or any other court orders issued subsequent to the original written order that divide any marital property regardless of the effective date of the court order.

6. Newly redesignated § 838.1012 is revised to read as follows:

§ 838.1012 Death of the former spouse.

(a) Unless the qualifying court order expressly provides otherwise, the former spouse's share of employee retirement benefits terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee retirement benefits reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a qualifying court order or an amended qualifying court order that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

(1) The court;

(2) An officer of the court acting as a fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

§§ 831.603, 831.620, 831.624, 838.1003, 838.1004, 838.1006, 838.1007, 838.1009, 838.1010, 838.1011, 838.1016, 841.110, 841.804, 842.602, 842.615, 890.808, Appendix A to Subpart J of Part 838, Appendix B to Subpart J of Part 838 [Amended]

7. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
831.603	"Net annuity"	831.1703	838.103 of this chapter.
831.620	(b)(2)(ii)	831.1705	838.721 or § 838.1005 of this chapter.
831.624	(b)	831.1703	838.103 of this chapter.
831.624	(c)	831.1703	838.103 of this chapter.
838.1003	"Qualifying court order".	831.1704	838.1004.
838.1004	(c)(1)(i)	831.1709	838.1009.
838.1004	(c)(1)(ii)	831.1708	838.1008.
838.1006	(b)	831.1708	838.1008.
838.1006	(d)(2)	831.1705	838.1005.
838.1007	(a)(1)	831.1705	838.1005.
838.1007	(a)(1)	831.1706	838.1006.
838.1007	(a)(2)	831.1705	838.1005.
838.1007	(a)(2)	831.1704	838.1004.
838.1007	(a)(3)	831.1705	838.1005.
838.1007	(a)(3)	831.1706	838.1006.
838.1007	(a)(3)	831.1704	838.1004.
838.1007	(b)	831.1708	838.1008.
838.1009	(a)(1)	831.1708	838.1008.
838.1009	(b)	831.1706	838.1006.
838.1010	(e)	831.1705	838.1005.
838.1010	(f)(2)(ii)	831.1705	838.1005.
838.1011	(a)(3)	831.1705	838.1005.
838.1011	(b)(2)(ii)	831.1705	838.1005.
838.1016	(a)	831.1706	838.1006.
Appendix A to Subpart J	I. A. 2.	5305	5303.
Appendix A to Subpart J	I. C. 1.	831.1704(b)	838.1004(b).
Appendix A to Subpart J	I. F.	Subpart Q of Part 831	subpart J of part 838.
Appendix A to Subpart J	II. C.	831.1703	838.1003.
Appendix A to Subpart J	II. E.	831.1703	838.1003.
Appendix A to Subpart J	V. D.	831.1704(b)	838.1004(b).
Appendix A to Subpart J	VI. B.	831.1704(b)	838.1004(b).
Appendix B to Subpart J	III. G.	831.1704(b)	838.1004(b).

Section	Paragraph	Remove	Add
841.110	(f)	Subpart I of this part	part 838 of this chapter.
841.804		841.905(b)	838.111(c) of this chapter.
842.602	"Net annuity"	841.902	838.103 of this chapter.
842.615	(b)	841.902	838.103 of this chapter.
890.806	(c)	831.1704	part 838 of this chapter.

§§ 838.1002, 838.1003, 838.1006, 838.1007, 838.1009, 838.1010, 838.1016, [Amended]

8. In the list below, for each section and paragraph indicated in the left two columns, add the words "of this chapter" after the section reference indicated in the third column where it appears in the paragraph:

Section	Paragraph	Section reference
838.1002	(b)	831.106.
838.1002	(g)	831.109.
838.1003	"Former spouse annuity".	831.603.
838.1006	(c)(3)	831.614.
838.1006	(d)(3)	831.607.
838.1007	(c)	831.109.
838.1009	(a)(2)	831.109.
838.1010	(e)(2)	831.2007(c).
838.1010	(g)(1)	831.603.
838.1016	(a)	831.614.

PART 831—RETIREMENT

Subpart F—Survivor Benefits

9. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

10. In § 831.603, the definition of "qualifying court order" is revised to read as follows:

§ 831.603 Definitions.

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8341(h) of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

Subpart V—Alternative Forms of Annuity

11–12. In § 831.2203, paragraph (b) is revised to read as follows:

§ 831.2203 Eligibility.

* * * * *

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter or under a qualifying court order as defined in § 838.1003 of this chapter may not elect an alternative form of annuity.

* * * * *

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

13. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.507 also issued under section 505 of Pub. L. 99–335; § 841.508 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469.

Subpart H—Waiver of Benefits

14. In § 841.802, the definition of "qualifying court order" is revised to read as follows:

§ 841.802 Definitions

* * * * *

Qualifying court order means a court order acceptable for processing as defined in § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter.

* * * * *

Subpart I—Court Orders Affecting Retirement Benefits

15. Subpart I of part 841 is removed and reserved.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

16. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart F—Survivor Elections

17. In § 842.602, the definition of "qualifying court order" is revised to read as follows:

§ 842.602 Definitions

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

Subpart G—Alternative Forms of Annuity

18. In § 842.703, paragraph (b) is revised to read as follows:

§ 842.703 Eligibility.

* * * * *

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter

may not elect an alternative form of annuity.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

19. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.206, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

20. In § 843.102, the definition of "qualifying court order" is revised to read as follows:

§ 846.102 Definitions.

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

21. The authority citation for part 846 continues to read as follows:

Authority: 5 U.S.C. 8461(g); § 841.201(b) also issued under 5 U.S.C. 7701(b)(2); § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335.

22. In § 846.102, the definitions of "former spouse" and "qualifying court order" are revised to read as follows:

§ 846.102 Definitions.

* * * * *

Former spouse means a former spouse as defined in § 838.103 or § 838.1003 of this chapter.

* * * * *

Qualifying court order means a court order acceptable for processing as defined in § 838.103 of this chapter or a qualifying court order as defined in § 838.1003 of this chapter.

* * * * *

23. In § 846.202, the first two sentences of paragraph (a) are revised to read as follows:

§ 846.202 Condition for making an election.

(a) An election under § 846.102 of this part may not become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under subpart F of part 831 of this chapter or part 838 of this chapter. As provided in section 301(d)(2)(A) of the FERS Act of 1986, this section applies only if OPM has been duly notified concerning any qualifying court order and has received the documentation required in § 838.211, § 838.721, or § 838.1005 of this chapter. * * *

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

24. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p., 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064.

25. Section 890.802 is revised to read as follows:

§ 890.802 Definition.

In this subpart, a *Qualifying court order* means a court order acceptable for processing as defined in § 838.103 of this chapter or qualifying court order as defined in § 838.1003 of this chapter.

26. In § 890.808(b)(1), the last sentence is revised to read as follows:

§ 890.808 Employing office responsibilities.

* * * * *

(b) * * *

(1) * * * A request for the retirement system's determination whether a court order is a qualifying court order for health benefits enrollment under this subpart must be accompanied by the documentation specified in § 838.221, § 838.721, or § 838.1005 of this chapter.

* * * * *

[FR Doc. 92–17591 Filed 7–28–92; 8:45 am]

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Wednesday
July 29, 1992

Part IV

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; Notice

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower National Program for Mathematics and Science Education—State Curriculum Frameworks for Mathematics and Science

AGENCY: Department of Education.

ACTION: Notice of Final Priority for Fiscal Years 1992 and 1993.

SUMMARY: The Secretary announces a priority for fiscal years 1992 and 1993 for projects that will assist in the development and implementation of State curriculum frameworks, kindergarten through grade 12 (K–12), together with new approaches to teacher education and certification appropriate to the frameworks.

The Secretary takes this action to focus Federal financial assistance on State curriculum frameworks as the starting point for systemic improvement in mathematics and science education.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Becky Wilt, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern time.

SUPPLEMENTARY INFORMATION: The Eisenhower National Program for Mathematics and Science Education supports projects of national significance in mathematics and science instruction at the elementary and secondary levels. One of the six National Education Goals calls for U.S. students to be first in the world in mathematics and science achievement by the year 2000. The President's AMERICA 2000 strategy for helping the Nation achieve the Goals calls for the creation of world-class national standards for student achievement in the five core subjects, including mathematics and science, and for a system of improved assessments tied to the standards.

The National Council on Education Standards and Testing (NCEST), a congressionally created group of 32 individuals charged with investigating the desirability and feasibility of standards and improved assessments, issued its report in January 1992. The report called for the development of national standards and a national system of voluntary assessments as an urgently needed first step in reforming American education.

Standards for mathematics have been developed by the National Council of Teachers of Mathematics. Substantial progress in developing world-class standards in science has also been made under the leadership of such organizations as the National Science Teachers Association and the American Association for the Advancement of Science. The National Academy of Sciences began a project in the fall of 1991 to complete the development of standards for the sciences.

World-class standards that define what students should know and be able to do in the subject areas of math and science provide the foundation for systemic reform. State curriculum frameworks serve as the bridge between these standards and the classroom by providing guidelines for the content of the curriculum and for how that content should be organized and presented. They provide the guidelines for curriculum and course design at the district, school, and classroom levels.

Defining what students in a State should learn is a critical step in the process of ensuring that the State's students are prepared to meet world-class standards. Engaging more and more States in this process will help to achieve national consensus on world-class standards for American students and will prepare the way for all students to reach these standards. States must participate as lead agents in the design of these and related activities because they bear central responsibility in matters of education, and are best placed to coordinate efforts to raise general standards, to disseminate curricular frameworks, to influence new directions in teacher education and professional development, and to establish appropriate criteria for teacher certification.

States, or States working with other entities of their own choice, may apply for funding to support a project in either math or science or both. But in every case, the development of a curricular framework must be accompanied by closely related plans for teacher education and certification as well as for professional development and recertification.

The Secretary notes that this priority is consistent with, and complementary to, the National Science Foundation's (NSF) Statewide Systemic Initiative. Whereas the NSF Initiative embraces a comprehensive array of approaches, this priority for the Eisenhower National Program directly focuses on the development of coherent, integrated K–12 curricula consistent with national standards, and on specified programs for teacher education and certification needed to implement those curricula.

On May 1, 1992, the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 19014).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition in FY 1992 was published in the **Federal Register** on June 15, 1992 (57 FR 26756). A notice inviting applications under this priority in FY 1993 will be published in the **Federal Register** at a later date.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, eight parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: One commenter expressed concern that the priority did not state the goal of being first in the world in mathematics and science achievement.

Discussion: The supplementary information provided with the priority notice explains that the priority reflects the fourth National Education Goal, which states that by the year 2000 U.S. students should be first in the world in science and mathematics achievement. Further, this goal is discussed thoroughly in a number of publications concerning the AMERICA 2000 Educational Strategy. A reference in the priority itself is not necessary.

Changes: None.

Comments: The Secretary received a number of comments that suggested that the Department guard against what might appear to be an endorsement of any one organization's conception of national standards for mathematics or science education. One commenter expressed the view that the Department should not require funded projects to build mathematics frameworks upon standards developed by the National Council of Teachers of Mathematics (NCTM), but rather should allow grantees the option of basing frameworks on other nationally recognized standards for mathematics education. Another commenter recommended that the priority state that

documents prepared by the major curriculum reform movements in science education are draft documents that should not be used as standards in the development of a State framework. On the other hand, a commenter expressed surprise that the priority did not cite the *California Science Framework* as a model for other State frameworks.

Discussion: The Secretary believes that, as national standards for mathematics and science education reach final form and gain acceptance in that form, States should build their curriculum frameworks upon them. The NCTM standards are widely recognized as the national standards for mathematics and therefore the priority requires that applicants build upon these standards in developing frameworks.

The Secretary agrees that science standards are in the process of emerging and that grantees should not be required to build on each specific curriculum reform project named in the priority. However, the Secretary sees no need to refer to documents produced by those projects as drafts. The Secretary does not consider it appropriate to cite any one State's framework as a model for other States to follow.

Changes: The priority has been revised to allow grantees to build science curriculum frameworks upon science standards emerging from any of the major curriculum reform projects named in the priority, rather than require that the frameworks build upon all of these projects.

Comments: One commenter suggested that the priority acknowledge the importance of computer education in curriculum frameworks for mathematics and science education.

Discussion: The Secretary recognizes that technology is an integral part of instruction in mathematics and science. For example, the NCTM standards address the role of technology in math, and the Secretary expects that emerging science standards will also incorporate uses of technology. The Secretary presumes that each State will incorporate technology into its curriculum framework to the extent appropriate for the framework.

Changes: None.

Comments: One commenter recommended that States be allowed to develop assessment programs under the priority.

Discussion: While the Secretary concurs that there is a need for better assessments and would like to see more work on them, he views the development of curriculum frameworks based on standards as a necessary first step in systemic reform. The Secretary hopes to support assessment activities related to the frameworks in the future.

Changes: None.

Comments: One commenter thought that the priority did not provide opportunities for the business community to participate in the development of curriculum frameworks.

Discussion: The priority provides these opportunities. Section (d) of the priority states that each funded project must include representatives of business, labor, and industry among the members of the advisory committee.

Changes: None.

Comments: A commenter recommended that the priority's requirement that the frameworks serve all children be expanded to cite children with disabilities and gifted children specifically.

The commenter also suggested that the priority require that experienced educators of children with disabilities and gifted children be included among the developers of State frameworks, and that links between curriculum frameworks and teacher education and certification include preparation for teachers to instruct exceptional children.

Discussion: The priority is intentionally broad to be inclusive of all students. However, the Secretary agrees that this priority should ensure the involvement of educators with an expertise in working with students with disabilities.

Changes: The priority has been revised to require each grantee to include educators expert in working with students with disabilities on the advisory committee that guides the activities of the project.

Comments: A commenter expressed the view that efforts to develop new approaches to teacher education and certification should receive emphasis equal to that given the implementation of State curriculum frameworks.

Discussion: The Secretary believes that sections (b) and (c) of the proposed priority give serious and substantive attention to teacher education, certification, recertification, and professional development insofar as these activities relate to the development of curriculum frameworks.

Changes: None.

Comments: A commenter recommended that the Department require grantees to meet with other grantees so that persons developing curriculum frameworks in different States will have an opportunity to share their experience and avoid duplication of effort.

Discussion: All grantees of the Eisenhower National Program for Mathematics and Science Education are routinely required to attend the annual meeting held jointly by the National Program and the Eisenhower Mathematics and Science Education State Grant Program. This meeting will afford grantees working on curriculum frameworks the opportunity to meet with colleagues engaged in the same work in different States.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 755.12(c) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

State Curriculum Frameworks for Mathematics and Science Education

Projects in which States, or States in collaboration with other entities, carry out all the following activities:

(a) Develop a State curriculum framework, kindergarten through grade 12 (K–12), that reflects world-class standards and will be made available for local schools and districts to implement, or to adapt, for themselves. These frameworks must cover mathematics or science or both disciplines. The frameworks must embody coherent, non-repetitive curricula carefully designed to ensure that all children study challenging subject material in every grade, K–12. Frameworks must build upon nationally recognized mathematics standards developed by the National Council of Teachers of Mathematics and science standards emerging from major curriculum reform projects, such as the National Science Teachers Association's *Scope, Sequence, and Coordination* project, the American Association for the Advancement of Science's *Project 2061—Science for All Americans*, and the work of the Mathematical Sciences Education Board and the National Academy of Sciences. The design of these frameworks must involve college and university scholars and specialists as well as teachers and administrators from public or private schools working together as equal collaborators.

(b) Develop model guidelines for effective approaches to teacher education and certification based upon the world-class standards and the State curriculum framework tied to those world-class standards. The model guidelines must be developed in cooperation with one or more institutions of higher education in the State. The collaborative work of

designing these model guidelines must also involve scholars and specialists, school teachers, and school administrators from public or private schools.

(c) Develop criteria for teacher recertification, and design and pilot test a model, cost-effective inservice professional development program for teachers based upon the world-class standards and the State curriculum framework tied to those standards. Again, the work of designing these programs must involve collaboration among scholars and specialists, school teachers, and school administrators from public or private schools. In addition, these programs must be pilot tested in a variety of schools throughout the State.

(d) Provide the Secretary with a copy of the evaluation conducted under 34 CFR 75.590.

To guide the activities of the project, each project must establish an overall advisory committee that includes classroom teachers, educators with expertise in working with students with disabilities, university scholars in mathematics and science, State and local school administrators, representatives of private schools, specialists in teacher education, representatives of the State legislature, the Governor's office, and State and local boards of education, and representatives of business, labor, industry, and the community at large.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR Part 755.

Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Dated: July 13, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-17848 Filed 7-28-92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday,
July 29, 1992

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

NOFA for Rental Voucher Program and Rental Certificate Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3472; FR-3155-N-01]

NOFA for Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1992 and procedures for allocating funds and approving IHA/PHA applications.

SUMMARY: The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. This notice identifies the amount of housing assistance budget authority available for incremental rental vouchers and rental certificates for each HUD Field Office jurisdiction during Fiscal Year 1992. This notice also:

(1) Invites Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds;

(2) Provides instructions to HAs governing the submission of applications; and

(3) Describes procedures for rating, ranking, and approving HA applications.

DATES: Applications must be received in the HUD Field Office/Indian Programs Office by 3 p.m. local time (i.e., time at the office where the application is submitted) on August 28, 1992.

ADDRESSES: The basic application, Form HUD-52515, may be obtained from, and completed applications are to be submitted to, the appropriate HUD Field Office/Indian Program Office for the jurisdiction in which the applicant is located (see Section II, Application Process, of the NOFA). (Application forms are also attached to this NOFA.)

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-fee.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and have been assigned OMB control number 2502-0123.

I. Purpose and Substantive Description

A. Authority

The regulations governing the Rental Certificate Program and the Rental Voucher Program are published at 24 CFR parts 882 and 887. The regulations for allocation of housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

B. Allocation Amounts

(1) *Housing needs formula.* Approximately $2 billion of budget authority is available this fiscal year for the Rental Certificate and Rental Voucher Programs for incremental use. Of this amount, approximately $1.1 billion is for rental certificates and approximately $924 million is for rental vouchers. Budget authority of approximately $650 million ($460 million for rental certificates and $190 for rental vouchers) is being allocated to HUD Field Offices under this NOFA, using the housing needs factors established in accordance with 24 CFR 791.402. This is in addition to the approximately $933 million of budget authority that was made available for rental vouchers and rental certificates in connection with the Family Self-Sufficiency Program under NOFAs published at 56 FR 49812 (September 30, 1991) and 57 FR 312 (January 3, 1992).

(2) *Metropolitan—nonmetropolitan mix.* Separate housing needs factors were developed for the metropolitan and nonmetropolitan portions of each Field Office jurisdiction. On a nationwide basis, approximately 17 percent of the Fiscal Year 1992 budget authority for the Rental Voucher Program and Rental Certificate Program incremental units is designated for nonmetropolitan areas. The nonmetropolitan housing needs factors were applied to the housing assistance budget authority available for use in nonmetropolitan areas, and the metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas.

The Department has determined that metropolitan areas and nonmetropolitan areas within each Field Office jurisdiction are the smallest practicable areas to which budget authority can be allocated. Given the limited amount of FY 1992 budget authority, it is not practicable to allocate budget authority to smaller allocation areas and still ensure that funding is sufficient to support feasible programs and meet the statutory obligation to provide sufficient resources for rental rehabilitation needs.

(3) *Program type.* Attachment 5 to this NOFA announces the allocation of housing assistance budget authority for the Rental Voucher and Rental Certificate Programs to each Field Office based on the housing needs factors. The allocation of housing assistance budget authority to each Field Office, however, is a total for both Programs, and represents an approximate 29 percent-Rental Voucher Program/71 percent-Rental Certificate Program mix. Field Offices are given flexibility to decide whether to approve Rental Certificates or Rental Vouchers for any HA application, regardless of which program the HA requested in its application, in order to use the budget authority allocated for each program.

This notice also provides, for each Field Office, an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the Field Office. These estimates are based on the average fair market rents for two-bedroom units in the Field Office's jurisdiction. The actual number of units assisted will vary from these estimates because of differences in the actual bedroom size mix, among other factors.

(4) *Potential additional funding.* In the event additional rental voucher or rental certificate funding becomes available for incremental use during Fiscal Year 1992, the Department plans to distribute any additional funding to Field Offices using the same percentage distribution as reflected in Attachment 5 to this NOFA. Any additional funding will be used to fund approvable HA applications under the competitive requirements in this NOFA.

c. Rental Rehabilitation Program Obligations

(1) For low-income families living in units rehabilitated under the Rental Rehabilitation Program (24 CFR part 511), section 8(u) of the United States Housing Act of 1937 provides that:

(a) Rental vouchers or rental certificates shall be made available for families who are required to move out of their units because of physical rehabilitation activities or because of overcrowding;

(b) At the discretion of the HA, rental vouchers or rental certificates may be made available for families who would have to pay more than 30 percent of

adjusted income for rent after rehabilitation whether they choose to remain in or move from the project; and

(c) HUD shall allocate rental certificates or rental vouchers to ensure that sufficient resources are available to address the physical or economic displacement, or potential economic displacement, of families living in rental rehabilitation projects.

(2) The HA application must specify the number of rental vouchers and/or rental certificates requested for families living in rental rehabilitation projects for which the HA does not have sufficient rental vouchers or rental certificates (using unissued or turnover rental vouchers or rental certificates).

(3) Field Office/Indian Program Office staff will rate and rank HA applications that request rental vouchers and/or rental certificates for families living in rental rehabilitation projects with all other HA applications.

(4) In determining the minimum number of rental vouchers or rental certificates to allocate to a HA, Field Office/Indian Programs Office staff must first determine the total number of rental vouchers and rental certificates needed during calendar year 1992 for families affected by rental rehabilitation activities (as described in paragraph (1) of this section I.C), and the number of rental vouchers and rental certificates that are already available to the HA without additional funding because rental vouchers or rental certificates are unissued or are expected to turn over. In reviewing the amount of assistance available to a HA for these families, the Field Office/Indian Programs Office staff must make certain that the HA has enough rental certificates for low-income families, but not very low-income families, that are affected by rental rehabilitation activities but are not eligible for rental vouchers.

(5) The Field Office/Indian Programs Office will determine the minimum amount of assistance to be provided to a HA during Fiscal Year 1992 as follows:

(a) The total number of eligible families affected by rental rehabilitation activities will be determined as follows:

(i) The Field Office/Indian Program Office will identify the rental rehabilitation projects to be completed by December 31, 1992 and identify the number of eligible families living in those projects that will be physically displaced (i.e., forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit as a result of rental rehabilitation activities) or whose rent would be more than 30 percent of income as a result of rental rehabilitation activities.

(ii) Families whose incomes are between 50 percent and 80 percent of median income and whose rent after rehabilitation would be more than 30 percent of their adjusted income, but that are not physically displaced, are ineligible for rental vouchers. Because rental certificates must be made available for these low-income families, the number of these families should be separately identified.

(b) From the total number of eligible families affected by rental rehabilitation activities, subtract:

(i) The number of rental vouchers and rental certificates under Annual Contributions Contract (ACC) but not issued to families (do not include in the number of rental vouchers and rental certificates under ACC any special allocations of rental vouchers and rental certificates that were provided by HUD to be used for special purposes such as opt-outs, public housing demolition or disposition, desegregation of public housing projects, or rental certificates approved by HUD for use in connection with project-based assistance);

(ii) The number of rental vouchers and rental certificates that are expected to turn over (i.e., those rental vouchers or rental certificates that are expected to be available for reissuance) in the HA jurisdiction during calendar year 1992; and

(iii) The number of rental certificates and rental vouchers reserved for the HA under the Family Self-Sufficiency Program incentive award NOFA.

(c) The remainder, computed in accordance with the above, equals the minimum number of rental vouchers or rental certificates that must be allocated to the HA during Fiscal Year 1992.

D. Eligibility

All HAs are invited by this notice to submit applications for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

E. Selection Criteria/Rating Factors

(1) *Selection Criterion 1: HA Administrative Capability (32 points)*—(a) *Description:* Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements. If a HA is not administering a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, the Field Office/Indian Programs Office will rate HA administration of the Public or Indian Housing Program. For purposes of this NOFA, a HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If a HA is not administering a Rental Certificate, Rental Voucher, Moderate Rehabilitation, Public Housing or Indian Housing Program, the Field Office/Indian Programs Office will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(b) *Rating: 16–32 points.* Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing or other housing programs) as excellent; there is no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Program Office inspection and also failed to meet HQS at the time of the previous HA inspection; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1991;

1–15 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or Public/Indian Housing or other housing programs) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Programs Office inspection and also failed to meet HQS at the time of the previous HA inspection; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for Public/Indian Housing units) under ACC for one year or more was at least 85 percent as of September 30, 1991;

0 points. If none of the above statements apply, assign 0 points.

(c) *Field Office/Indian Programs Office Assessment:* In assigning points for administrative capability for a State or regional HA application, the Field Office/Indian Programs Office shall determine the HA's leasing rate separately for metropolitan areas and for nonmetropolitan areas and use the applicable rate to score points for administrative capability.

(2) *Selection Criterion 2: Underfunding of Housing Needs (25 points).*

(a) *Description:* The degree to which the housing needs of the area specified in the HA's application from which the HA draws families to assist (primary area) have previously been underfunded, relative to the needs of other localities within the allocation area, taking into account such factors as the number of assisted housing units and the number of very low-income renter households eligible for such assistance. The Field Office will, wherever practicable, consider needs being met by all federally assisted rental housing programs, including the FmHA Section 515 Rural Rental program, but will, as a minimum, consider assistance provided under the Rental Voucher Program, the Rental Certificate Program, other Section 8 Programs, and the Public or Indian Housing Program.

In accordance with Notice PIH 91-45 (HUD), the Field Office will notify FmHA of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing projects, with which HUD agrees, will receive no points.

(b) *Rating and assessment:* The Field Office will evaluate whether housing needs in the primary area specified in the application have been underfunded with respect to assisted housing provided to other communities in the allocation area, and will assign one of three point-values, as follows:

25 points. Housing needs in the area(s) specified in the application have been severely underfunded.

12 points. Housing needs in the area(s) specified in the application have been moderately underfunded.

0 points. Housing needs in the area(s) specified in the application have received a proportionate share of funding or have been overfunded.

(3) *Selection Criterion 3: Homeless Program (20 points).*

(a) *Description:* The percentage of the units in the application that will be targeted to homeless families. Points will not be awarded under this criterion for HA efforts to assist families that are doubled up in another family's home or that are living in substandard housing.

(b) *Rating:* The Field Office/Indian Program Office will assign one of four point-values, as follows:

20 points. If 75–100% of the units being applied for will be used for the homeless.

15 points. If 50–74% of the units being applied for will be used for the homeless.

10 points. If 1–49% of the units being applied for will be used for the homeless.

0 points. None of the units being applied for will be used for the homeless.

(c) *Field Office/Indian Programs Office Assessment:* The Field Office/Office of Indian Programs shall evaluate the capacity of the HA to have a homeless program operational within six months of ACC execution. If the Field Office/Indian Programs Office determines that the HA does not have the capacity to coordinate the provision of supportive services (if applicable) and implement a homeless program of the size indicated in the HA application, up to one-half of the points assigned to the HA under this criterion may be deducted.

(4) *Selection Criterion 4: Local Initiatives (3 points)*—(a) *Description.* (i) Extent to which HAs provide families with greater housing opportunities (e.g., State or regional HAs, or local HAs participating in voluntary exchange programs and interjurisdictional mobility programs). (ii) Extent to which HAs demonstrate locally initiated efforts in support of their Rental Voucher and Rental Certificate Programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(b) *Rating:* The Field Office/Indian Program Office will assign one of three point-values, as follows:

3 points: HA is a State or regional HA or local HA participating in voluntary mobility programs, and the State or locality provides local support (e.g., financial, manpower for inspection services) to its Rental Voucher or Rental Certificate Program.

2 points: HA provides broad housing choice, *or* the State or locality provides support to the HA's Rental Voucher or Rental Certificate Program.

0 points: HA does not provide broad housing choice, and the State or locality does not provide support to the HA's Rental Voucher or Rental Certificate Program.

F. Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period (refer to Section IV, Corrections to Deficient Applications, of this NOFA), the Field Office/Indian Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section III, Checklist of Application Submission Requirements, of this NOFA). The Field Office/Indian Programs Office notification of rejection letter must state the basis for the decision.

(2) Applications that fall into any of the following categories will not be processed:

(a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending.

(b) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of non-compliance.

(c) HUD has denied application processing under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(d) The HA has serious unaddressed, outstanding Inspector General audit findings, fair housing and equal opportunity monitoring review findings, or Field Office/Indian Programs Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of a HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(e) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent, or, in the case of a HA not currently administering a Rental

Voucher or Rental Certificate Program, the leasing rate for all units available for occupancy in the Public or Indian Housing Program is less than 75 percent. (For a State or regional HA, the Field Office/Indian Programs Office shall determine the HA's leasing rate separately for metropolitan and nonmetropolitan areas, and shall use the applicable rate in determining whether to accept the application under this paragraph.)

(f) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

G. Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of local government. The Field Office/Indian Programs Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

Section 213 comments submitted by units of general local government that have approved Comprehensive Housing Affordability Strategies (CHASs) should address how the HA application for rental vouchers and/or rental certificates relates to the priorities for assistance identified in the local government's CHAS, and should include comments on the household types (i.e., elderly, family, large-family) that the HA proposes to serve.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the local unit of government.

H. Funding Applications

(1) *Maximum funding allowed.* The Field Office/Office of Indian Programs may not approve funding for a HA under this NOFA for more than the greater of 10 percent of the HA rental voucher and rental certificate units under reservation or 50 units.

(2) *Minimum funding allowed.* The Field Office/Office of Indian Programs may not approve funding for a HA under this NOFA for less than 25 units, unless:

(i) The HA requests fewer than 25 units;

(ii) The application is being funded only to meet rental rehabilitation obligations; or

(iii) The residual budget authority after funding higher ranking applications is insufficient to fund at least 25 units.

(3) *Funding procedure.* The Field Office must develop a procedure for approval of applications (including applications rated by the Office of Indian Programs) in rank order until all the housing assistance budget authority is used. The Field Office may elect to approve 100 percent of the units requested in all top-ranked applications or some lower percentage of the units requested in all applications (including applications from IHAs) that score above a Field Office-determined funding cut-off, up to the maximum number of units allowed. If applications (including applications from IHAs) that score above a Field Office-determined funding cut-off are to be funded at less than 100 percent, the Field Office must apply the same percentage reduction to the number of units requested in each application.

Alternatively, the Field Office may divide approvable applications into two categories: Those scoring over 40 points, and those scoring 40 points or less. The Field Office may choose to apply different percentage reduction for each of the two ranking categories so that a higher percentage of units requested would be approved for all applications in the higher category and a lower percentage of units requested would be approved for all applications in the lower category. The Field Office must apply the same percentage reduction to each application within each of the two ranking categories.

Where a Field Office funds applications according to rank order, only to find it has some number of units left, but not enough to fund the next fundable application in its entirety or for the minimum of 25 units, that application can be funded to the extent of the number of units available.

If a HA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the metropolitan area or nonmetropolitan area allocation, the Field Office will award the available form of assistance, even though not specifically requested by the applicant.

The Field Office must promptly notify the applicable Office of Indian Programs as to the status of any applications from IHAs and, if applicable, the amount of budget authority to be made available for IHA applications that were rated high enough to receive funding.

(4) *Ensuring funding for families displaced from rental rehabilitation projects.* (a) When all applications have been rated and ranked, Field Offices must determine whether all applications with identified rental rehabilitation needs will be approved. If not, proposed funding for all higher ranked applications without rental rehabilitation needs must be reduced by the same percentage to provide funding for all identified rental rehabilitation needs in lower ranked applications. Thus, rental rehabilitation needs identified in applications that otherwise fall below the funding cut-off must be funded.

(b) The Field Office will make its determination under paragraph (a) of this subsection by identifying the number of units in each application needed for:

(i) Families that will be physically displaced from units to be rehabilitated under the Rental Rehabilitation Program; and

(ii) Families that would have to pay more than 30 percent of adjusted income for rent as a result of rental rehabilitation activities.

(c) In identifying the number of units under paragraph (b) of this subsection, the Field Office will compare the HA estimate and the Field Office/Indian Programs Office estimate developed in accordance with the procedures identified in section I.C(5) of this NOFA. The Field Office/Indian Programs Office estimate shall be used unless it is clearly incorrect.

I. Reallocations of Funds

Each Field Office shall make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one Field Office to another when the funds are not likely to be used in the Field Office to which they were initially assigned. In such cases, the following procedures shall be followed:

(a) *Reallocations within the same state.* If the allocation of funds to a Field Office cannot be used within the Field

Office jurisdiction during Fiscal Year 1992, the Regional Office must, if possible, reallocate those funds to another Field Office within the same State where they can be used during Fiscal Year 1992. In making these reallocations, priority must be given to Field Offices where additional funds are needed for families affected by Rental Rehabilitation Program activities.

(b) *Reallocations between states.* If a Regional Office cannot use funds within the same State, the Regional Office may request Headquarters approval to reallocate funds to another State within the jurisdiction of the Regional Office. In approving such a reallocation, Headquarters must consider whether these funds are needed within the same Region or other Regions for families affected by Rental Rehabilitation Program activities.

A request for Headquarters approval of a reallocation between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, the metropolitan/nonmetropolitan mix, and the amount to be reallocated subsequently to each State. These requests must be submitted to Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) for approval.

(c) *Reallocations between metropolitan and nonmetropolitan areas.* The Regional Office must follow the original fund assignments for metropolitan and nonmetropolitan areas when it reallocates unused budget authority. If there are not enough approvable applications for the designated metropolitan or nonmetropolitan budget authority, the Regional Office may switch the budget authority between a metropolitan and a nonmetropolitan area within the same State, provided that an offsetting switch can be made in another State within the same Region. If an offsetting switch cannot be made and the metropolitan or nonmetropolitan amounts require changes to the regional fund assignments, the Regional Office must obtain the approval of the Budget Division, Office of Management and Policy, Office of Public and Indian Housing, before switching budget authority between a metropolitan and a nonmetropolitan area.

J. Notification of Funds Awarded

(1) After the Field Offices have reviewed, rated, and ranked applications, and the Field Offices and Offices of Indian Programs have approved the applications, Regional Offices must submit to Headquarters a list of all approved applications, listed by Field Office. The Regional Office application approval list is due in Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) on the tenth working day following the date set by Headquarters for completion of application ranking and selections.

(2) The Regional Offices must provide the following information for each application approved:

(a) The name and address of the HA;

(b) The project number, and the number of rental vouchers and the number of rental certificates, as applicable, approved for the HA;

(c) The amount of contract authority and budget authority, stated separately for rental vouchers and rental certificates; and

(d) The number of rental vouchers and the number of rental certificates for each of the following: Rental rehabilitation, the homeless, and other purposes.

(3) Assistance provided under the Section 8 Existing Housing Program is generally categorically excluded from environmental assessment under the National Environmental Policy Act (42 U.S.C. 4332) (see 24 CFR 50.20(d)). However, where assistance provided under this NOFA is used by the HA for project-based certificate assistance under 24 CFR part 882, subpart G, HUD will perform an environmental review to the extent required be 24 CFR 882.713 before the HA enters into an agreement with the owner for the assistance.

K. Administrative Fees

(1) The administrative fees for units in Fiscal Year 1992 appropriations are specified as follows:

	Rental Vouchers	Rental Certificates
(a) FY 1992 Incremental (Fees Provided by FY 1992 Appropriation):		
(1) On-going	8.2%	8.2%
(2) Preliminary	$275	$275
(3) Hard-to-house	$45	$45
(b) FY 1992 Opt-outs/Public Housing Demolition (Replacements and Relocation):		
(1) On-going	6.5%	7.65%
(2) Preliminary	$215	$250
(3) Hard-to-house	$45	$45
(c) Renewal of Renal Vouchers and Rental Certificates:		
(1) On-going	6.5%	7.65
(2) Preliminary	$0	$0
(3) Hard-to-house	$45	$45

(2) For budget preparation, submission of requisitions, and approving year-end operating statements, HAs should use the August 3, 1990, Housing Notice (H–90–53), Administrative Fee Requirements for the Housing Voucher and Certificate Programs, to determine the blended rate for all rental voucher or rental certificate increments for a given HA.

L. Headquarters Reserve

The Department is retaining approximately $68 million of the budget authority available for incremental rental vouchers and rental certificates in a Headquarters Reserve for use in connection with natural disasters, litigation, desegregation, and other housing emergencies, consistent with 24 CFR 791.407.

M. Other Allocations

In addition to the budget authority for incremental rental vouchers and rental certificates, $7.4 billion of additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1992 for rental vouchers and rental certificates for the following purposes:

(a) *Opt-Outs and prepayments.* Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should indicate whether rental vouchers, rental certificates, or both are needed, and should include all necessary data. Requests for funding to assist families living in Loan Management Set-Aside Projects as described in paragraph (a)(i) below must be consistent with section VIII(A) of HUD Notice H 91–60 (dated July 9, 1991), Instructions for Section 8 Loan Management Set-Aside Contract Renewals, to determine the amount of funds required. Funding under this category is to assist families that are adversely affected by an owner's decision to opt-out of a Section 8 contract or to prepay an FHA-insured mortgage, as follows:

(i) Families living in a Section 8 Loan Management Set-Aside (LMSA) Project where the Section 8 Housing Assistance Payments Contract ends.

(ii) Families living in a Section 8 New Construction, Substantial Rehabilitation, or Loan Management Set-Aside project, where the owner has sole discretion to, and does, "opt-out" of an additional term of assistance under the Section 8 Housing Assistance Payments Contract.

(iii) Families living in a section 236 or section 221(d)(3) Below Market Interest Rate project, where the owner prepays the mortgage.

(b) *Public housing demolition and disposition (relocation and replacement).* To assist families that are living in public housing projects that are being demolished or disposed of with HUD approval. Relocation assistance

may be provided in the form of 5-year rental voucher or rental certificate funding. Replacement housing may be provided in the form of 15-year funding for rental certificate assistance.

(c) *Rental certificate and rental voucher renewals.* Headquarters will allocate funds directly to the Field Offices to provide for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1992. Renewal funding will be provided in-kind (i.e., rental voucher funding for expiring rental voucher increments, and rental certificate funding for expiring rental certificate increments).

(d) *Section 23 conversions.* Headquarters will allocate certificate funds directly to the Field Offices to provide tenant-based rental assistance to residents of section 23 leased housing for which leases are expiring or have been terminated. Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should include all data necessary to determine the amount of funds required.

(e) *Section 8 amendments.* Rental Certificate program cost amendments Provide budget authority increases to HA rental certificate programs to support increases in housing assistance payments to maintain the HA's program at the number of units originally approved by HUD. Funds are allocated on a needs basis based on actual housing costs and tenant contributions.

(f) *HOPE 1 and section 5(h) homeownership programs.* To provide replacement housing for HOPE 1 and section 5(h) projects. Field Office/Office of Indian Programs requests for rental certificate or rental voucher funding under this category will be approved on a first-come, first-served basis. Field Offices/Indian Programs Offices should include all data pertinent to determining the amount of funds required.

(g) *Family unification.* To assist eligible families that the public child welfare agencies have certified are families for which the lack of adequate housing is a primary factor in either the imminent placement of the families' children in out-of-home care, or the delayed discharge of children to the families from out-of-home care. Appropriations were provided for a demonstration program to be administered by public housing agencies in 11 States: Missouri, New York, New Jersey, California, Maryland, Michigan, Ohio, Texas, Pennsylvania, Florida, and Massachusetts. HUD recently published a separate NOFA describing the application and funding process for family unification rental certificates.

(h) *HOPE for elderly independence.* To assist frail elderly persons to live independently. HUD is conducting a national competition for supportive services grants. PHAs selected in the grant competition will be invited to submit applications for rental vouchers. The Department recently published a NOFA describing the application and funding process for HOPE for Elderly Independence (see 57 FR 23008, May 29, 1992).

(i) *Moving to opportunity demonstration.* To assist families with children to move out of areas with high concentrations of persons living in poverty through contracts with nonprofit organizations. Appropriations were provided for rental certificates to be used in a demonstration involving five cities with populations over 400,000, in metropolitan areas of over 1,500,000 population. The Department plans to publish a NOFA describing the application and funding process in summer 1992.

(j) *Veterans Administration supportive housing.* To assist homeless veterans with rental housing after their having received medical treatment from the Veterans Administration (VA). The VA has conducted a competition among its medical facilities. PHAs in the localities of the selected VA facilities were invited to apply for rental vouchers. A separate announcement describing the application and funding process was published in the **Federal Register** on March 20, 1992 (see 57 FR 9956).

(k) *St. Louis demonstration.* Appropriations were provided to replace public housing units in St. Louis that are eligible for demolition or disposition with five-year rental certificate assistance.

(l) *PHA portability fees.* To pay special preliminary fees to HAs under Rental Voucher and Rental Certificate Program portability provisions. The Department issued a HUD Notice PIH 92–14 (PHA), dated April 22, 1992, that describes administrative procedures for requesting the special preliminary fees.

II. Application Process

A. Obtaining Application Materials

Form HUD–52515, Application for Existing Housing, may be obtained from the local HUD Field Office/Indian Programs Office. (Except as provided for Indian Housing Authorities in Section II.B, Submitting Applications, of this NOFA, only an original application should be submitted; it is not necessary to submit additional copies of the application.) In addition, the basic application, and other required submissions, are attached to this NOFA, as follows: Form HUD–52515 [Attachment 1]; Certification for a Drug-Free Workplace [Attachment 2]; Text for the Certification Regarding Lobbying [Attachment 3]; and Standard Form LLL, Disclosure of Lobbying Activities [Attachment 4].

B. Submitting Applications

HA applications must be received in the HUD Field Office/Indian Programs Office by 3 p.m. local time (i.e., the time at the office where the application is to be submitted) on August 28, 1992. The Indian Programs Office is the place of official receipt for IHA applications. An IHA also must submit, at the same time, a copy of its application to the HUD Field Office that has jurisdiction over the portion of the State in which the IHA is located. Field Offices/Indian Programs Offices will be responsible for notifying their HAs of the exact address and room number where applications are to be submitted.

III. Application Submission Requirements

A. Generally

(1) Applications must be submitted to the local Field Office/Indian Programs Office on Form HUD–52515 in accordance with the applicable program regulations.

(2) The application must identify the number of rental vouchers and rental certificates requested for families living in rental rehabilitation projects and for the homeless. The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the Field Office/Indian Programs Office can only rate and rank the application based on information the Office has on hand.

(3) Attachment 5 at the end of this notice lists the HUD Field Offices and the number of units and budget authority available for each Field Office. HAs should limit their applications to a reasonable number of rental vouchers and rental certificates, based on the capacity of the HA to lease all the units within 12 months of ACC execution. The number of units on the HA application may not exceed the greater of: (a) Ten percent (10%) of the total rental vouchers and rental certificates under reservation for the HA; or (b) 50 units. An application may exceed this limit only if the HA cannot, within this limit, meet the needs of families affected by rental rehabilitation activities.

(4) HAs shall submit only one application (Form HUD–52515) with the exception of regional and State-wide HAs (see paragraph (5) of this section II.B of the NOFA). If both rental certificates and rental vouchers are requested on the same application, then the application will be given two project numbers, one for the Rental Certificate Program and one for the Rental Voucher Program. The total number of units applied for may not exceed the ten percent or 50-unit limitation.

(5) Regionals and State-wide HAs may submit one application for metropolitan areas and one application for nonmetropolitan areas, and each application will be considered separately. Each regional or State-wide HA application may request up to ten percent (10%) of the total rental vouchers and rental certificates the HA has under reservation for metropolitan areas or nonmetropolitan areas as applicable, or 50 units, whichever is greater.

(6) The Field Office/Indian Programs Office will reduce the number of units requested in any application that exceeds the ten percent or 50-unit limit to the greater of ten percent (10%) of the total number of rental vouchers and rental certificates under reservation or 50 units.

B. Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See Certification Regarding Drug-Free Workplace Requirements, Attachment 2 to this NOFA.)

C. Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) (the Byrd Amendment) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA (other than an IHA that meets the definition of "person" in 24 CFR 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the texts for the Certification Regarding Lobbying (Attachment 3) and Standard Form LLL, Disclosure Form to Report Lobbying (Attachment 4) are attached to this NOFA.

D. Checklist for Technical Requirements

The following checklist specifies the required information that must be submitted in the HA's application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST

[Application for Rental Vouchers and Rental Certificates]

HA		Field Office		
Yes	No	Yes	No	
___	___	___	___	The application contains a completed Form HUD 52515.
___	___	___	___	The application specifies the number of rental vouchers and/or rental certificates requested for families living in rental rehabilitation projects, the homeless, or other uses.
___	___	___	___	The application states by number of bedrooms the total number of units requested by the HA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled families.
___	___	___	___	The application demonstrates that the project requested is responsive to the condition of the housing stock in the community and the housing assistance needs of low income families (including the elderly, handicapped, disabled, large families and those displaced) residing in or expected to reside in the community.
___	___	___	___	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office/Indian Programs Office they do not have to be resubmitted.
___	___	___	___	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and/or 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed or have been approved by the Field Office/Indian Programs Office. In the latter case, each proposed variation shall be specified and justified.
___	___	___	___	The application contains the HA schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, a HA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
___	___	___	___	The application (for rental vouchers and/or rental certificates) contains estimates of the average adjusted income for prospective participants for each bedroom size.

[Requirement for Drug-Free Workplace Certification and Anti-Lobbying Certification and Disclosure Statement]

HA		Field Office		
Yes	No	Yes	No	
___	___	___	___	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (Attachment 2).)
___	___	___	___	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. The Department has determined that IHAs established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage. To comply, HAs must submit an Anti-lobbying Certification (Attachment 3) and, if warranted, a Disclosure of Lobbying Activities (Attachment 4).

IV. Correction's to Deficient Applications

To be eligible for processing, an application must be received by the appropriate Field Office/Indian Programs Office no later than the date and time specified in section II of this NOFA. The Field Office/Indian Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the Field Office and/or Indian Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate Field Office/ Indian Program Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. A HA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/ disclosure requirements, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

A. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

D. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD responsibilities. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088), and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban

Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (TDD/Voice) (this is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 1437a, 1437c, 1437f.

Dated: July 21, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-M

ATTACHMENT 1

Application for Existing Housing

Section 8 Housing Assistance Payments Program

Send original and two copies of this application form and attachments to the local HUD Field Office

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0123 (exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0123), Washington, D.C. 20503.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for :
How many Certificates? | How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application | Phone Number | Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (City, Town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count									Total Dwelling Units
	Elderly, Handicapped, Disabled			Non-Elderly						
	Efficiency	1-BR	2-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check √ the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Accessibility Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

form HUD-52515

BILLING CODE 4210-33-C

Attachment 2

Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C) Instructions for Certification

1. By signing and/or submitting this application or grant assessment, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacturer, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such convictions;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Attachment 3

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4910-31-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.) Attachment 4

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

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ATTACHMENT 5

FY 92 SECTION 8 ALLOCATION FACTORS BY HUD OFFICE

HUD OFFICE	METRO		NONMETRO		COMPOSITE	
	UNITS	DOLLARS	UNITS	DOLLARS	UNITS	DOLLARS
BOSTON, MASSACHUSETTS OFFICE	504	25,374,020	47	1,959,750	551	27,333,770
HARTFORD, CONNECTICUT OFFICE	221	9,935,560	25	1,002,665	246	10,938,225
MANCHESTER, NEW HAMPSHIRE OFFICE	85	3,549,620	117	4,098,095	202	7,647,715
PROVIDENCE, RHODE ISLAND OFFICE	80	3,126,325	0	0	80	3,126,325
BUFFALO, NEW YORK OFFICE	348	10,991,000	112	3,352,710	460	14,343,710
NEW YORK, NEW YORK OFFICE	2,003	85,493,040	25	903,840	2,028	86,396,880
NEWARK, NEW JERSEY OFFICE	624	28,872,470	0	0	624	28,872,470
BALTIMORE, MARYLAND OFFICE	220	7,922,090	25	778,040	245	8,700,130
CHARLESTON, WEST VIRGINIA OFFICE	43	1,267,100	88	2,168,050	131	3,435,150
PHILADELPHIA, PENNSYLVANIA OFFICE	494	17,593,125	61	1,831,960	555	19,425,085
PITTSBURGH, PENNSYLVANIA OFFICE	208	5,837,770	61	1,767,255	269	7,605,025
RICHMOND, VIRGINIA OFFICE	184	5,661,715	114	2,914,950	298	8,576,665
WASHINGTON, D.C. OFFICE	242	12,574,955	0	0	242	12,574,955
ATLANTA, GEORGIA OFFICE	250	8,073,570	186	4,058,665	436	12,132,235
BIRMINGHAM, ALABAMA OFFICE	166	4,227,290	100	2,032,180	266	6,259,470
COLUMBIA, SOUTH CAROLINA OFFICE	110	2,912,595	92	2,012,635	202	4,925,230
GREENSBORO, NORTH CAROLINA OFFICE	199	5,408,415	200	4,755,865	399	10,164,280
JACKSON, MISSISSIPPI OFFICE	41	1,155,240	163	3,506,275	204	4,661,515
JACKSONVILLE, FLORIDA OFFICE	609	20,561,795	54	1,499,990	663	22,061,785
LOUISVILLE, KENTUCKY OFFICE	113	3,026,325	147	3,314,720	260	6,341,045
KNOXVILLE, TENNESSEE OFFICE	75	1,942,125	36	774,235	111	2,716,360
NASHVILLE, TENNESSEE OFFICE	135	3,902,990	67	1,449,415	202	5,352,405
CARIBBEAN OFFICE	161	4,384,760	52	1,125,120	213	5,509,880
CHICAGO, ILLINOIS OFFICE	768	30,477,140	142	3,735,440	910	34,212,580
CINCINNATI, OHIO OFFICE	155	4,408,270	25	606,675	180	5,014,945
CLEVELAND, OHIO OFFICE	287	8,300,660	55	1,431,720	342	9,732,400
COLUMBUS, OHIO OFFICE	119	3,342,890	67	1,632,990	186	4,975,880
DETROIT, MICHIGAN OFFICE	332	10,685,395	25	650,490	357	11,335,885
GRAND RAPIDS, MICHIGAN OFFICE	108	3,181,820	75	1,976,315	183	5,158,135
INDIANAPOLIS, INDIANA OFFICE	206	6,019,545	86	2,080,195	292	8,099,740
MILWAUKEE, WISCONSIN OFFICE	230	6,920,215	102	2,566,605	332	9,486,820
MINNEAPOLIS–ST. PAUL, MINNESOTA OFFICE	172	6,397,345	82	2,116,500	254	8,513,845
FORT WORTH, TEXAS OFFICE	372	11,574,910	159	3,780,420	531	15,355,330
HOUSTON, TEXAS OFFICE	227	6,543,160	38	960,360	265	7,503,520
LITTLE ROCK, ARKANSAS OFFICE	59	1,572,525	109	2,296,470	168	3,868,995
NEW ORLEANS, LOUISIANA OFFICE	228	7,012,150	96	1,948,960	324	8,961,110
OKLAHOMA CITY, OKLAHOMA OFFICE	98	2,783,835	90	1,910,580	188	4,694,415
SAN ANTONIO, TEXAS OFFICE	198	6,147,415	54	1,243,540	252	7,390,955
DES MOINES, IOWA OFFICE	73	2,235,655	111	2,824,315	184	5,059,970
KANSAS CITY, MISSOURI OFFICE	156	4,368,145	112	2,519,885	268	6,888,030
OMAHA, NEBRASKA OFFICE	46	1,300,570	56	1,314,985	102	2,615,555
ST. LOUIS, MISSOURI OFFICE	124	3,814,890	66	1,435,470	190	5,250,360
DENVER, COLORADO REGIONAL OFFICE	260	7,960,290	197	5,593,205	457	13,553,495
HONOLULU, HAWAII OFFICE	67	3,569,580	35	1,677,230	102	5,246,810
LOS ANGELES, CALIFORNIA OFFICE	1,526	74,800,100	36	1,442,730	1,562	76,242,830
PHOENIX, ARIZONA OFFICE	122	4,248,560	40	1,191,800	162	5,440,360
SACRAMENTO, CALIFORNIA OFFICE	132	4,556,580	25	860,685	157	5,417,265
SAN FRANCISCO, CALIFORNIA OFFICE	726	36,560,920	64	2,229,150	790	38,790,070
ANCHORAGE, ALASKA OFFICE	0	0	25	1,107,395	25	1,107,395
PORTLAND, OREGON OFFICE	157	5,216,740	129	4,064,895	286	9,281,635
SEATTLE, WASHINGTON OFFICE	227	8,177,160	71	2,196,405	298	10,373,565

[FR Doc. 92-17857 Filed 7-28-92; 8:45 am]

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H.R. 158/P.L. 102-326

To designate the building in Hiddenite, North Carolina, which houses the primary operations of the United States Postal Service as the "Zora Leah S. Thomas Post Office Building". (July 23, 1992; 106 Stat. 843; 1 page) Price: $1.00

H.R. 4505/P.L. 102-327

To designate the facility of the United States Postal Service located at 20 South Montgomery Street in Trenton, New Jersey, as the "Arthur J. Holland United States Post Office Building". (July 23, 1992; 106 Stat. 844; 1 page) Price: $1.00

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102d Congress, 2nd Session, 1992

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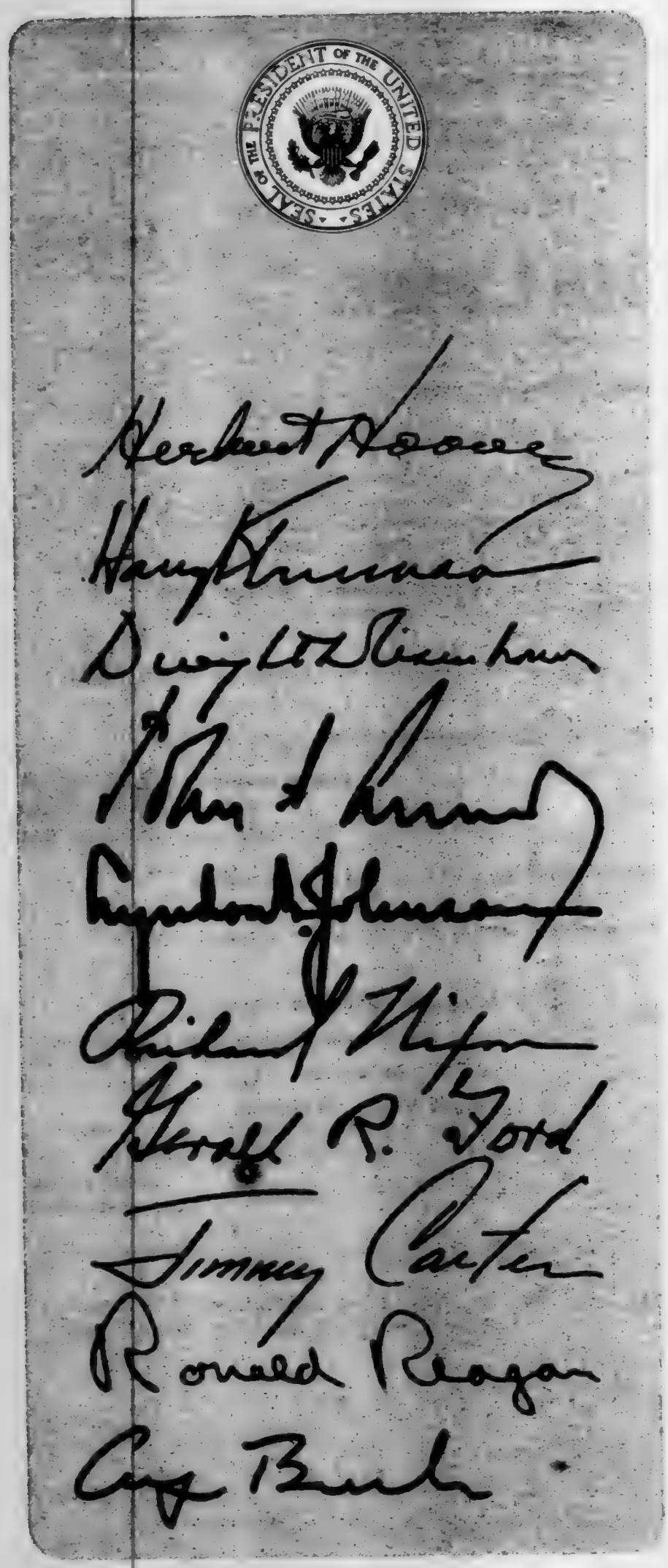

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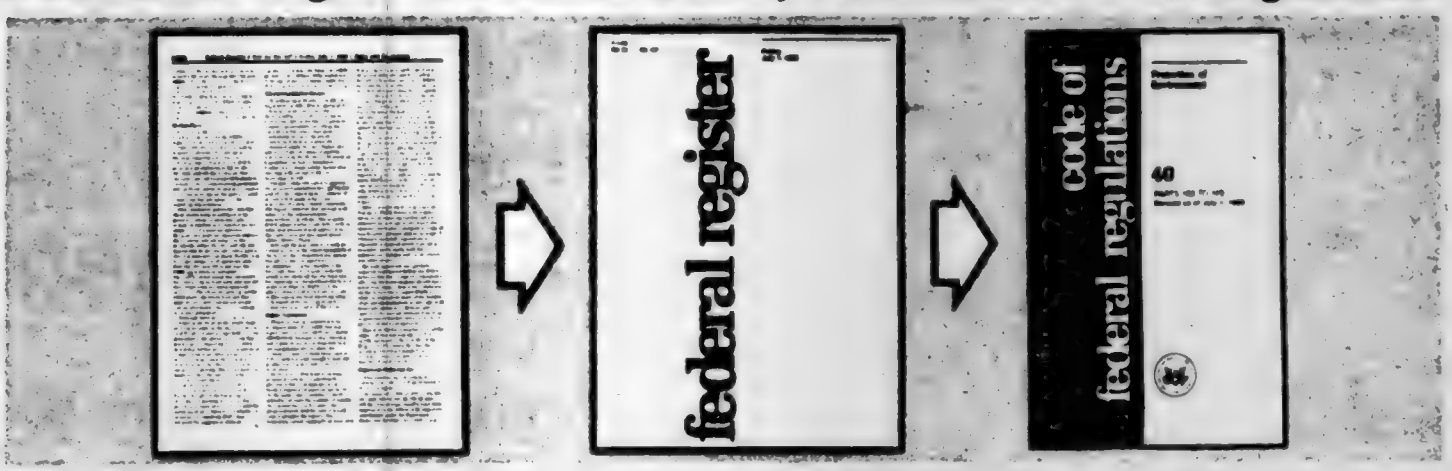

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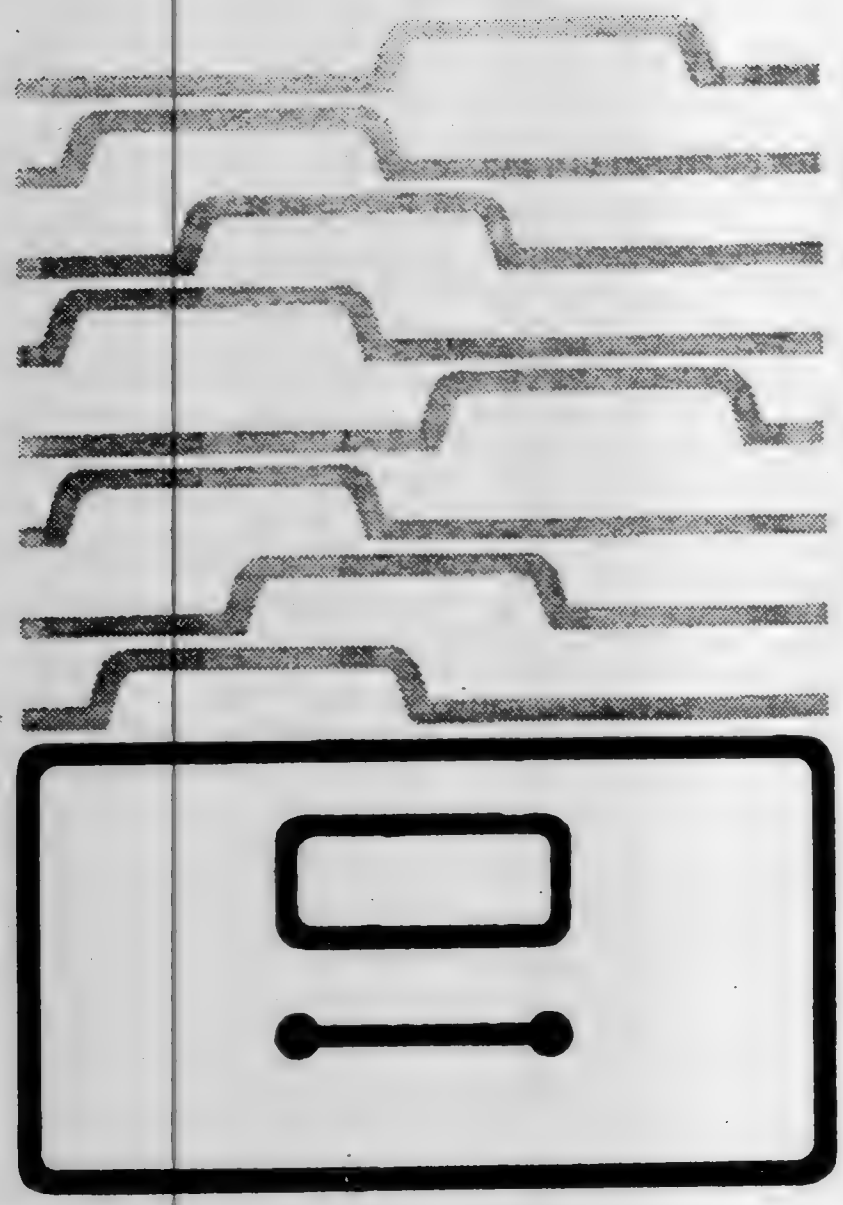

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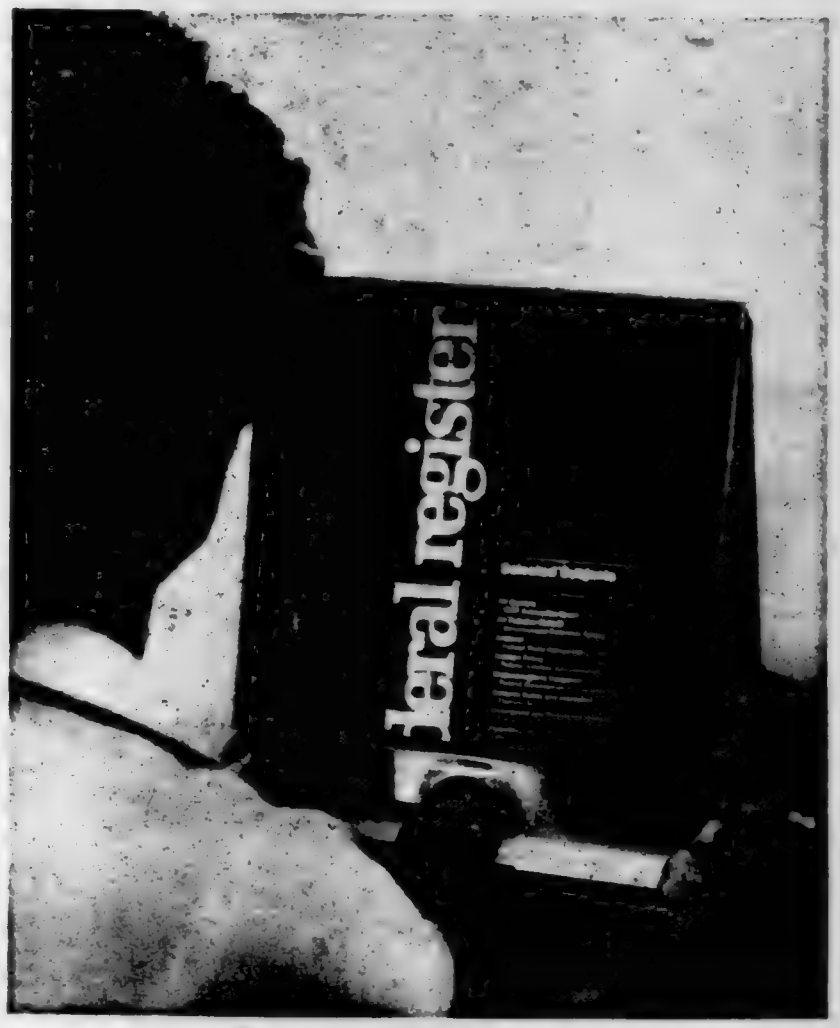

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Title 3—

The President

Presidential Determination No. 92–36 of July 21, 1992

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended—Burma

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $3 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the ERMA Fund) to meet the unexpected and urgent refugee needs of Burmese refugees and displaced persons. These funds may be contributed on a multilateral or bilateral basis as appropriate to international organizations, private voluntary organizations, and other governmental and nongovernmental organizations engaged in this relief effort.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, July 21, 1992.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 91-019-2]

RIN 0579-AA24

Scrapie Flock Certification and Animal Identification Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing a voluntary scrapie sheep and goat flock certification program to reduce the incidence and control the spread of scrapie, a sheep and goat disease. Among other features, this program establishes an official identification system for certain sheep and goats in flocks participating in the flock certification program. This rule was developed by the Scrapie Negotiated Rulemaking Advisory Committee, and reflects early steps toward the long-term goal or eradication of scrapie in the United States. This long-term goal should be facilitated by further scientific research on the nature and means of spread of scrapie, and requires development of additional methods for diagnosis and control of scrapie, such as a live-animal diagnostic test for the disease. We are also requiring a permanent, indelible mark on certain sheep and goats as a condition for interstate movement. The animals which are required to be identified are: scrapie-positive sheep and goats, and sheep and goats from infected flocks and source flocks except: (1) sheep and goats, other than high-risk animals, from infected and source flocks that meet certain specified requirements, and (2) high-risk animals less than one year of age moving in slaughter channels. (Owners of flocks participating in the voluntary scrapie sheep and goat flock certification program will meet these requirements.) This rule will affect persons who move certain sheep and goats interstate.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6954.

SUPPLEMENTARY INFORMATION:

Background on Scrapie

Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The disease develops slowly, with an incubation period lasting from months to years. The signs which then become manifest may include nervousness, incoordination, slight muscular tremors, visible weight loss, lack of luster in the animal's wool, and itching. Infected animals become debilitated and die.

There is no diagnostic test for confirming the presence of the disease in a live animal, and generally the presence of the disease cannot be detected until the animal becomes clinically ill. Due to the lack of a live-animal diagnostic test, efforts to control and eliminate the disease depend upon the cooperation of flock owners and veterinarians in reporting clinically ill animals. There is no known treatment for the disease. Control efforts have therefore focused upon the destruction of certain animals in order to reduce the incidence and prevent the spread of scrapie.

The impact of scrapie could increase if the spread of scrapie is not controlled or if its incidence increases. Additionally, a scrapie-like disease called bovine spongiform encephalopathy (BSE) has recently caused serious outbreaks of cattle disease in the United Kingdom, where scrapie has been prevalent for more than 200 years. The spread of BSE in countries with scrapie-infected animals has been epidemiologically associated with the use of rendered, scrapie-infected sheep carcasses as a source of supplemental protein in cattle feed. BSE is not known to exist in the United States; however, the possibility that it could become established is a strong additional argument for effective control of scrapie in the United States.

On November 2, 1988, we published in the **Federal Register** (53 FR 44200-44202, Docket No. 88-131) an advance notice of proposed rulemaking that solicited comments on whether to remove the regulations for destroying animals because of scrapie and discontinue the Scrapie Eradication Program while we considered alternative programs for controlling the disease. The commenters represented numerous diverse interests, including State and Federal government officials, industry associations, sheep producers, breeders, farmers, veterinarians, and other individuals. A number of the commenters stressed that a successful scrapie control or eradication program would require the support of the divergent interests affected by the disease. Many commenters felt that a continuing dialogue among the different factions of the sheep and goat industries and Federal and State regulatory officials should be encouraged.

The comments we received suggested that it would be highly desirable to involve all interested parties in developing an effective, uniform program that could be implemented through cooperative Federal-State efforts. On July 13, 1989, we published in the **Federal Register** (54 FR 29576-29577, Docket No. 89-079), a second advance notice in which we responded to the comments we received addressing Docket No. 88-131. In the July 13th notice, we informed the public of our determination to continue the current Scrapie Eradication Program until development of a revised and improved scrapie program had been explored. In the July 13th notice, we stated that we were considering the regulatory option of conducting a negotiated rulemaking in order to develop such a program. We concluded that consensus on a scrapie program is attainable, and that we should proceed with negotiated rulemaking.

Scrapie Negotiated Rulemaking Advisory Committee

On February 26, 1990, the Animal and Plant Health Inspection Service (APHIS) published a notice in the **Federal Register** (55 FR 6662-6663, Docket No. 89-139) announcing our intent to

establish an advisory committee to develop a proposed rule containing alternatives to the current regulatory program for the control of scrapie. This committee, called the Scrapie Negotiated Rulemaking Advisory Committee (the Committee), was subsequently established in accordance with the Federal Advisory Committee Act. Invitations to join the Committee were sent to representatives of the following parties with a definable stake in the outcome of the proposed rule.

All of these organizations accepted membership on the Committee, except for the American Rambouillet Breeders Association, which was unable to participate. APHIS was also a Committee member.

American Association of Small Ruminant Practitioners
American Farm Bureau Federation
American Hampshire Sheep Association
American Rambouillet Breeders Association
American Polypay Sheep Association
American Sheep Industry Association, Inc.
American Suffolk Sheep Society
Continental Dorset Club
National Assembly of Chief Livestock Health Officials
National Suffolk Sheep Association
United State Animal Health Association

The Committee drafted operating procedures as its first meeting. These procedures allowed additional representatives to join the Committee, if the addition of the new members was approved by a consensus of the Committee. At its second meeting, the Committee agreed to allow the American Meat Institute and the National Renderers Association to join the Committee. These two organizations accepted membership and became Committee members as of the third Committee meeting.

The Committee met eight times between May 1990 and January 1991. During those meetings, the Committee reached consensus on the content and requirements of a program to reduce the incidence of scrapie and control its spread. The Committee recorded its consensus views in the form of three documents: two proposed rules; and a Uniform Methods and Rules (UM&R) document, a handbook for participants in flock certification that describes flock management procedures, including animal identification, recordkeeping, diagnostic procedures for scrapie, and other technical matters. The UM&R also describes four classes of certification status a participating flock can achieve: Certifiable Classes C, B, A, and Certified. Class C flocks are the lowest level, must meet lesser requirements than higher levels, and are in a higher risk category for scrapie than the other levels. Certified flocks are the highest level, must meet the strictest requirements, and are in the lowest risk category for scrapie.

On July 16, 1991, we published a proposed rule in the **Federal Register** (56 FR 32342–32352, Docket No. 91–019) reflecting the consensus of the Committee members, proposing the Voluntary Scrapie Flock Certification Program, and telling interested persons how to obtain a copy of the UM&R. This proposed rule invited comments to be submitted on or before September 16, 1991.

Proposed Rule Comments and Responses

We received comments from 48 commenters prior to the close of the comment period. These commenters included associations of sheep producers, other animal industry associations, research scientists, veterinarians, State government officials, slaughter and rendering companies, and other members of the public. Of these 48 commenters, 28 strongly supported adopting the proposed rule, and stated their belief that the proposed rule, if administered as proposed and properly funded, will lead to control and eventual eradication of scrapie. Thirteen commenters strongly opposed adopting the proposed rule, and the remainder discussed proposed rule issues without specifically recommending that the rule be either adopted or withdrawn.

The issues raised by commenters, and changes we made in response to some comments, are discussed below.

Comment: Of the 28 commenters writing to support the proposed rule, 24 also supported implementation and funding by APHIS of a limited indemnity program as designed by the Scrapie Negotiated Rulemaking Advisory Committee (the Committee).

Response: In addition to the scrapie certification program contained in the proposed rule, the Committee also reached consensus of a limited indemnity program for sheep infected with scrapie. Since the final Committee meeting in January 1991, we drafted a proposed rulemaking document which, if adopted, would provide Federal indemnity to help eradicate scrapie. This proposed rule (APHIS Docket No. 91–150–1) is published elsewhere in this issue of the **Federal Register**. The APHIS scrapie certification and indemnity programs will be funded at the levels authorized by Congressional action in USDA appropriations bills.

Comment: Seventeen commenters objected to costs they perceived in the program, including both direct costs to participating flock owners and generalized economic harm to sheep industries. Several of these commenters noted that large commercial producers, such as western range flocks, would have difficulty meeting both the costs and the management requirements of the program.

Response: For sheep producers, participation in the Voluntary Scrapie Flock Certification Program means that their flocks will be subject to management that can eventually result in certification as a scrapie-free flock. We believe the benefits to participating sheep producers far outweigh the costs because certified sheep should have an increased economic value for both domestic and export sales. The major costs to participating sheep producers will be from identification devices such as the electronic implant, a cost which should decrease as the devices become widely available.

In terms of generalized impact on the sheep industry, as opposed to economic impacts on participating flocks, we believe that the sheep industry in general will benefit from the development of new markets for certified scrapie-free United States sheep. It is likely that over the first few years of program operations the demand for certified sheep will exceed the supply, and that higher prices offered for certified sheep will motivate additional sheep producers to join the certification program. This financial motivation to join the certification program is one of the reasons we expect the program to succeed. However, we expect the pool of flocks participating in the certification program to be small (though growing) over the next several years, and expect that during this time there will be a healthy market for sheep from nonparticipating flocks. Sheep from nonparticipating flocks will presumably sell for a smaller average price than sheep from participating flocks, but they will also be produced at a smaller average cost, since their production cost will not include costs associated with the certification program.

We recognize that large commercial producers will have to expend more resources than small producers to participate in the certification program, and that their current flock management practices are not as readily adaptable to the certification program as are the practices of the typical small flock. In general, small sheep producers already

devote significant attention to individual sheep in their flocks, and the additional identification and record-keeping requirements for certification are not a major new investment for them. In contrast, if a large commercial producer decides to participate in the certification program, the producer would usually have to greatly increase the amount of attention, identification, and recordkeeping associated with each sheep.

One aspect of the final rule which should ameliorate this impact on large commercial producers is the exception of certain animals under one year of age from the identification requirement. Many large commercial producers sell the majority of their lambs to slaughter before they reach the age of one year, and commercial flocks would not bear the burden or cost of identifying these animals. In another aspect of the final rule, large commercial flocks may choose not to advance beyond the Certifiable Class C status of the program. As described in the Uniform Methods and Rules, Certifiable Class C status requires significantly less recordkeeping and less frequent inspections than higher levels of status.

Comment: Eleven commenters wrote that increased funding of research would be preferable to implementing the proposal. They suggested that better information in any of the following areas might result in more effective approaches to scrapie control: live-animal tests; genetic susceptibility to scrapie; epidemiology of scrapie, and nature of the scrapie agent.

Response: APHIS favors increased research on all these scrapie-related issues, but we are not authorized to fund or perform basic scientific research. The Agricultural Research Service, as well as other Federal and State agencies and universities, conduct and fund research on various aspects of scrapie and the scrapie agent. We are carefully monitoring the results of this research, and if research results suggest ways to improve the scrapie certification program, we will propose changes to it. In the meantime, we believe that the scrapie certification program represents an effective first step toward scrapie control, using the scientific knowledge currently available.

Comment: Eight commenters recommended that, in view of research tracing the spread of scrapie and bovine spongiform encephalopathy (BSE) to the use of some types of animal feed containing rendered ruminant protein, the use of ruminant feed containing rendered ruminant protein should be banned in the United States, as it has been in the United Kingdom and other countries.

Response: At this time, we do not believe a ban on domestically produced animal feed containing ruminant protein is necessary to prevent the spread of the scrapie or BSE agent through such feed. However, APHIS and other Federal agencies continue to monitor risks associated with animal feed, and may propose rulemaking on the subject if it seems necessary to control these risks.

Epidemiologic factors believed conducive to the development of BSE in the United Kingdom are significantly different from those in the United States. These factors include the relative numbers of sheep and dairy cattle, the amount of scrapie infection, the amount of sheep-derived meat and bone meal fed to cattle in relation to other protein supplements, and the average age of dairy cattle in the two countries. We believe that increased industry awareness of the probable link between BSE and scrapie further reduces the risk of BSE occurring in the United States. APHIS has mounted an educational effort to help inform U.S. cattle producers about BSE and its probable origin and means of spread. We have held briefings on the issue and widely distributed press release and fact sheets to animal industries. In addition, voluntary actions initiated by the National Renderers Association have reduced the potential for scrapie-infected material being processed in rendering plants.

Comment: Six commenters stated that the proposed program would not be truly voluntary in nature, because buyers would buy sheep only from participating flocks, and because State governments may use the program as a model and make part or all of it mandatory through State law.

Response: We anticipate that it will be many years before there are enough participating flocks to meet the total demand for sheep purchases in the United States. During that period, most buyers will have to purchase from nonparticipating flocks if they want to buy sheep. It is true that we expect the average price of sheep from participating flocks to be higher than the price of sheep from nonparticipating flocks, and that this will encourage flock owners to participate. This results from the basic fact that in a free market, sheep certified scrapie-free will be more highly valued. We are using this fact to allow sheep producers who wish to add to the value of their sheep to do so by joining the program, but we do not require anyone to join.

State governments are already free to enact State laws and regulations concerning sheep production. Adoption of this final rule does not increase or decrease their authority to do so.

Comment: Four commenters addressed the need for a better test to determine that animals are scrapie-positive. They pointed out that it is difficult and expensive to submit brain samples for histopathology, and that many submitted samples are unusable. One of these commenters suggested that the definition of a scrapie-positive animal be amended to allow use of newly-available tests for protease-resistant protein (PrPres) to show whether an animal is scrapie-positive.

Response: We agree that scrapie control would be enhanced by a better test for scrapie, but examination of brain samples is currently the only reliable test. If easier test methods are proven reliable, we will propose to change the regulations to take advantage of them. We agree that use of protease-resistant protein tests (which still require submission of brain samples) can aid the diagnosis of scrapie-positive animals. We are changing the definition of scrapie-positive animal in § 54.1 and § 79.1 to allow testing "through histological examination of central nervous system samples from the animal for microscopic lesions in the form of nuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examination."

Comment: Four commenters wrote that, seen in context, scrapie is not one of the more important flock management problems facing U.S. sheep producers, and that the costs of the proposed program outweigh its possible benefits.

Response: The true incidence of scrapie in the United States is not known with certainty, but the number of reported cases has risen in recent years. While many flock owners do not consider scrapie a major flock management problem, it would become one if this trend continues. Therefore, we believe now is the appropriate time to institute an effective scrapie control program. Certainly the costs of a control program would be greater if we did not begin it until the problem became more widespread. As discussed elsewhere in this document, we believe the costs of the program will be offset by higher prices and expanded markets for sheep from certified flocks.

Comment: Four commenters questioned whether use of electronic implants for identification in the

program is realistic and cost-effective. They asked about supplies and costs of the devices, and suggested that use of lip tattoos, nose prints, or other methods may be more suitable. Two commenters suggested that APHIS should provide details on acceptable methods for applying the indelible, 1" × 1" S-mark that is required for animals from infected or source flocks moved interstate.

Response: There are two types of identification in the rule: an electronic implant ID for sheep in participating flocks (see § 79.2(a)(3)), and an indelible 1" × 1" mark in the form of the letter "S" for certain animals from infected or source flocks that are moved interstate (see § 79.2(a)). The electronic implant was chosen for participating flocks because the certification program depends on a uniform identification system that is not subject to loss or tampering, that can be easily read and recorded with a low error rate under field conditions. All available identification technologies were evaluated using these criteria, including tattoos and nose prints, and the electronic implant was determined to be the best choice for the certification program. While electronic implant ID is a relatively new technology for animal identification, it has been thoroughly tested, and we believe that it will become more commonly used and cost-effective as the scrapie certification program becomes established.

APHIS did not wish to be unnecessarily specific regarding how to apply the indelible 1" × 1" mark in the form of the letter "S" required by § 79.2(a) for some sheep and goats, as we wished to allow sheep and goat producers to select the method that works best for their circumstances. If we receive a substantial number of requests for this type of guidance, we will consider publishing voluntary guidelines on how to do the marking, or adding mandatory marking procedures to the regulations.

Comment: Three commenters stated that the rule, and the control methods it uses, were based on a possibly unwarranted assumption that scrapie is an infectious disease transmitted by an agent. These commenters suggested that it is more correct to address scrapie through a genetics model that considers genetic susceptibility to the disease and a genetically-controlled incubation period that may vary from breed to breed.

Response: There is ample evidence that scrapie is an infectious disease. The incubation period has been shown to be genetically controlled in the Cheviot breed of sheep in England so that some animals develop clinical scrapie approximately 2 to 4 years after exposure (short incubation period), while others may not develop clinical scrapie within their lifetime (long incubation period). The role genetics plays in scrapie incubation length has still not been well defined for most breeds of sheep. However, a control program based on selection for the long incubation period would not address the problem of infected, but clinically normal sheep potentially shedding the scrapie agent.

Comment: Three commenters stated that the records participating flock owners are required to keep are too extensive, time-consuming, and costly to maintain.

Response: We believe the record requirements represent the minimum amount of recordkeeping necessary to effectively track the movement of sheep infected with and exposed to scrapie, a basic requirement for the success of a scrapie control program. For many flocks the records required by the rule represent little more than the records the flock owners already keep for breeding and sale purposes, although some records may have to be kept in a different format to comply with the rule. We believe that where the recordkeeping places an additional burden on flock owners, it is a necessary burden for program success.

Comment: One commenter suggested that research does not indicate that scrapie is transmitted by contacts with rams, and that the restrictions on commingling flocks with regard to rams are not needed. The commenter believes that this restriction will also be costly for producers who form partnerships to share one genetically superior ram as a sire.

Response: The methods by which scrapie is spread are still not fully understood, and at this point we do not have adequate information to rule out the possibility that scrapie may be spread by rams under some circumstances, since the scrapie agent has been found in rams. The sense of the Committee was that the possibility of scrapie transmission by rams should be addressed in the regulations. While transmission of scrapie by rams does not appear to be a major means of scrapie spread, the Committee decided that this potential means of scrapie spread should be addressed.

Comment: Two commenters stated that the proposed program is too vulnerable to fraud by participating flocks, and that this opportunity would render the program ineffective.

Response: We believe that the use of permanent identification through electronic implants will greatly reduce the possibility of fraud. In addition, APHIS maintains controls to guard against fraud in all of its programs, and believes these controls to be largely effective.

Comment: One commenter suggested that the UM&R statement that applications for enrollment in the program would be reviewed within 60 days should be changed to 30 days because 60 days is too long. The same commenter believes that when a flock owner disputes a flock certification status decision, it should be appealed to the State Scrapie Certification Board before it is appealed to the Administrator.

Response: The Committee set the timeframe for review of applications at 60 days after carefully considering the steps involved in application review and the probable levels of resources available to perform these tasks. While many applications will probably complete the review process in less than 60 days, we do not believe it would be realistic to reduce this timeframe to 30 days.

Regarding appeal of a flock's certification status, a dispute on certification status may be appealed to the State Scrapie Certification Board before it is appealed to the Administrator. The commenter seems to have misread the "Uniform Methods and Rules-Voluntary Scrapie Flock Certification," which states on page 7 that a flock owner whose certification status is reduced shall be given "opportunity to present his/her views to the State Scrapie Certification Board," and may also appeal the decision of the Board to the Administrator. To eliminate the possibility of confusion regarding the right to appeal a decision regarding flock certification status, we are changing the UM&R to specifically provide that a flock owner may appeal the decision to reduce the certification status to the State Scrapie Certification Board.

Comment: One commenter stated that the goat industry should have been represented on the Scrapie Negotiated Rulemaking Advisory Committee. This commenter noted that although scrapie is not a significant problem in goats in the United States, the final rule should discuss impacts on the goat industry.

Response: The final rule establishes a certification program that can be used for both sheep and goats. We agree that scrapie does not appear to be a significant problem in goats in the United States. Only three cases of scrapie have ever been diagnosed in goats in this country, and all three were

animals that had been raised or commingled with sheep. We do not foresee that adoption of the final rule will have any significant economic impacts on the goat industry. However, we do invite goat owners to participate in the Voluntary Scrapie Flock Certification Program, and we intend to distribute materials, fact sheets, and press releases regarding the program to goat associations as well as sheep associations in the future.

Comment: One commenter stated that use of the negotiated rulemaking process for scrapie was not in the public interest, because it allowed special interest groups veto power over any proposed control programs.

Response: The negotiated rulemaking process for scrapie relied on consensus by a group of interested parties, all of whom had an interest in developing an effective control program. No one party had more of a "veto power" than any other party. We believe that the process was in the public interest, because it allowed a broad cross section of the sheep industry, associated industries, veterinary practitioners, researchers, and regulatory agencies to reach consensus on a proposal.

The proposed definition of "Flock plan" mentions exposed flocks in connection with infected flocks and source flocks. We are changing the term "Exposed flock" to "Trace flock" and are defining it to clearly identify flocks eligible to enter into a flock plan, as follows:

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

A trace flock is designated if there is some evidence the flock may contain animals infected with scrapie (i.e., a single animal born in the flock tests positive for scrapie within 54 months of birth), but not the same degree of evidence that would cause the flock to be designated a source flock (which occurs if two animals born in the flock test positive for scrapie within 60 months of each other, while both are under 54 months of age). The definition of trace flock, like the definition of source flock, is based on scientific studies on the average time it takes for a sheep that becomes infected with scrapie to show signs of scrapie, or test positive for scrapie. These studies conclude that a sheep younger than 54 months that has scrapie probably became infected at or near birth.

We are adopting the proposal as a final rule, with the changes discussed above. In addition, this final rule makes nonsubstantive editorial changes to the proposal, to clarify the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291 and we have determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this rule, if adopted, will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are approximately 11 million sheep in the United States, including 785,000 registered sheep and 10,215,000 nonregistered sheep. These sheep are divided among approximately 112,000 flocks or producers, including approximately 26,000 registered flocks and 86,000 nonregistered flocks.

The Voluntary Scrapie Flock Certification Program described in this document is not a rulemaking action and is not subject to the analytical requirements of Executive Order 12291 and the Regulatory Flexibility Act. Therefore, potential economic impacts of the Voluntary Scrapie Flock Certification Program are not discussed in this section.

This rule will affect a small number of sheep and goat producers who own scrapie-infected or source flocks and desire to move animals from them interstate, by imposing a small cost for identification of each animal moved. We estimate that it will cost approximately 50 cents to identify a sheep or goat from a scrapie-infected or source flock to meet the requirements of this rule. We have collected the following information on the number of scrapie-infected and source flocks that are known to us as of January 11, 1991:

Scrapie-infected flocks: 108
Scrapie source flocks: 13
Sheep in scrapie-infected flocks: 7,430
Goats in scrapie-infected flocks: 9
Sheep in scrapie source flocks: 3,418
Total infected and source flocks: 121
Total animals in these flocks: 10,857

The Committee considered various alternatives to this rule. One alternative was to establish a continuing program to destroy all flocks containing infected and exposed animals, using a broad definition of "exposed." Depopulating entire flocks in this way would cost the Federal government millions of dollars in indemnity payments, and would result in vast losses to the industry. Both APHIS and the industry view this approach as undesirable because most of the animals that would be destroyed would likely present minimal risk of spreading the disease and, by sheer volume, would account for most of the indemnity paid. This could also lead to abuse of the indemnity provisions by flock owners who fail to report scrapie when the market price of sheep and goats is high because they would stand to lose many animals worth far more than the indemnity would compensate. If the market price is depressed, however, this approach could result in increased reporting of infected flocks in order to receive the indemnity. Also, when sheep market prices are low, flock owners eligible for indemnity might enlarge their flocks by buying low-cost animals in order to maximize their indemnity payments.

Another alternative was to abolish the existing scrapie program and do nothing until a live-animal diagnostic test for scrapie is developed. After such a test is developed, APHIS could design a program to use the test to identify and destroy infected animals. This alternative was not selected because the date such a test could be ready is uncertain, and the scrapie problem needs to be addressed now.

The selected alternative will impose a small identification cost on persons who move the following types of animals interstate: Scrapie-positive animals, animals from an infected flock, and animals from a source flock (except high-risk animals less than one year of age moving in slaughter channels from flocks that meet the requirements of § 79.2, and animals other than high-risk from scrapie infected flocks and scrapie source flocks that meet the requirements of § 79.2). We are not able to determine the exact number of these animals. This rule will potentially be applicable to 121 flocks, or approximately 0.1 percent of the approximately 112,000 flocks in the United States. Animals in these flocks number 10,857, or approximately 0.1 percent of all sheep and goats in the United States. If all these flock owners decided to move all their animals interstate, the identification costs would average approximately $45 per flock ($5,426.50 divided among 121 flocks). However, it is extremely unlikely that these owners would choose to move all these animals interstate, and, therefore, the identification costs for these animals will probably be less than this estimate. In addition, some of these owners will

probably choose to comply with the requirements in § 79.2, which allow interstate movement of certain animals from infected flocks and source flocks without requiring the identification discussed above. We currently do not have reliable estimates of the cost of complying with the requirements in § 79.2, and invite comments supplying information in this area.

The identification costs to the owners of scrapie-infected and source flocks should be at least partially balanced by the economic gains the owners accrue through having access to interstate markets which may pay higher prices for their animals. The overall cost of this identification to the sheep and goat industry is also balanced by the benefits that accrue to the industry by enabling APHIS and State governments to use the identification to better tract the movements of animals from scrapie-infected and source flocks. Potential control of scrapie spread is also improved through this tracking.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Upon adoption of this rule:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) It will not require administrative proceedings before parties may file suit in court challenging its provisions.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, part 3015, subpart V.)

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0101.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

9 CFR Part 79

Animal diseases, Goats, Quarantine, Scrapie, Sheep, Transportation.

Accordingly, 9 CFR parts 54 and 79 are amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 54.2 through 54.9 [Designated as Subpart A]

2. The heading for part 54 is revised to read as set forth above, and a new "Subpart A—Animals Destroyed Because of Scrapie" is established to include §§ 54.2 through 54.9 currently contained in part 54.

3. In § 54.1 the definitions of "Flock" and "State representative" are revised, and the following definitions are added to read as follows:

§ 54.1 Definitions.

* * * * *

Accredited Veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A of this chapter and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS representative. An individual employed by APHIS in animal health activities who is authorized by the Administrator to perform the function involved.

Area Veterinarian in Charge. The veterinary official of Veterinary Services, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

* * * * *

Breed Association and Registries. Organizations which maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

* * * * *

Flock. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

Flock Plan. A written flock management agreement designated by the owner of a flock, an accredited veterinarian, and a Veterinary Services representative or State representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock, source flock, or trace flock. The flock plan shall require an edipemiologic investigation to identify high-risk animals that must be removed from the flock, and shall include other requirements found necessary by the Veterinary Services representative or State representative to control scrapie in the flock. These other requirements may include, but are not limited to, cleaning and disinfection of flock premises, education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and control the spread of scrapie, and maintaining records of animals in the flock.

High-Risk Animal. An animal which is:

(1) The progeny of a scrapie-positive dam;

(2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups (groups that are managed as separate units and are not commingled during lambing and for 60 days following the date of the last lamb is born in a lambing season, and that do not use the same lambing facility unless the lambing facility is cleaned and disinfected between lambings by removing all organic matter and spraying the lambing facility with a 2 percent sodium hydroxide solution or 0.5 percent sodium hypochlorite solution); or

(3) Born in a source or trace flock during the same lambing season as a scrapie-positive ewe or ram in the same flock.

Infected Flock. Any flock in which a Veterinary Services representative or State representative has determined an animal to be a scrapie-positive animal. A flock will no longer be an infected

flock after it has completed the requirements of a flock plan.

* * * * *

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through histological examinations of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examinations.

Source flock. A flock in which a Veterinary Services representative has determined that at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis. A flock will no longer be considered a source flock after it has combined the requirements of a flock plan.

* * * * *

State representative. An individual employed in animal health activities by a State or a political subdivision of a State, and who is authorized by the State or political subdivision to perform the function involved.

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

Uniform Methods and Rules—Voluntary Scrapie Flock Certification. Uniform methods and rules for reducing the incidence and controlling the spread of scrapie through flock certification.[1]

* * * * *

4. A new subpart B is added to part 54, to read as follows:

Subpart B—Voluntary Scrapie Flock Certification Program

Sec.
54.10 Administration.
54.11 Participation.
54.12 State Scrapie Certification Boards.
54.13 Cooperative agreements with States.

[1] Individual copies of the UMRR may be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782; or from the American Sheep Industry Association, Producer Services, 6911 S. Yosemite Street, Englewood, CO 80112-1414, telephone (303) 771-3500.

Subpart B—Voluntary Scrapie Flock Certification Program

§ 54.10 Administration.

(a) The Voluntary Scrapie Flock Certification Program is a cooperative effort between APHIS; members of the sheep and goat industry including owners of flocks, slaughterers and renderers, and breed associations and registries; accredited veterinarians; and State governments. APHIS coordinates with State Scrapie Certification Boards and State animal health agencies to encourage flock owners to reduce the incidence of scrapie by voluntarily complying with the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification."

§ 54.11 Participation.

Any owner of a flock may apply to enter the Voluntary Scrapie Flock Certification Program by sending a written request applying for enrollment to a State Scrapie Certification Board, or to the Administrator. A notice containing a current list of flocks participating in the Voluntary Scrapie Flock Certification Program, and the certification status of each flock, will be published in the Federal Register from time to time. This list may also be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

(Approved by the Office of Management and Budget under control number 0579-0101).

§ 54.12 State Scrapie Certification Boards.

An Area Veterinarian in Charge, after consulting with a State representative and industry representatives, may appoint a State Scrapie Certification Board for the purpose of coordinating activities for the Voluntary Scrapie Flock Certification Program, including making decisions to admit flocks to the Voluntary Scrapie Flock Certification Program and to change flock status in accordance with the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification." No more than one State Scrapie Certification Board may be formed in each State. Each State Scrapie Certification Board shall include as members the Area Veterinarian in Charge, one or more State representatives, one or more accredited veterinarians, and one or more owners of flocks, and at the discretion of the Area Veterinarian in Charge may include other members.

§ 54.13 Cooperative agreements with States.

APHIS may execute a cooperative agreement with the animal health agency of any State to cooperatively carry out administration of the Voluntary Scrapie Flock Certification Program within that State. These cooperative agreements will describe the respective roles of APHIS and State personnel in implementing the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification Program," and may: specify the financial, material, and personnel resources to be committed to the Voluntary Scrapie Flock Certification Program by APHIS and the State; assign specific Voluntary Scrapie Flock Certification Program activities to APHIS or State personnel; establish schedules for APHIS representatives or State representatives to visit participating flocks; establish procedures for maintaining and sharing Voluntary Scrapie Flock Certification Program records specified in the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification Program," and specify other responsibilities of State representatives and Veterinary Services representatives in support of the Voluntary Scrapie Flock Certification Program.

(Approved by the Office of Management and Budget under control number 0579-0101).

5. Part 79 is revised as follows:

PART 79—SCRAPIE IN SHEEP AND GOATS

Sec.
79.1 Definitions.
79.2 General restrictions.
79.3 Designation of scrapie-positive animals, source flocks, and infected flocks; notice to owners; publication.

Authority: 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 79.1 Definitions.

Accredited Veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture authorized to act in his or her stead.

Animal. A sheep or goat.

Breed Associations and Registries. Organizations which maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

Exposed animal. Any animal which has been in the same flock at the same time within the previous 60 months as a scrapie-positive animal, excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock, and do not occur during or immediately after parturition for any of the animals involved. Limited contacts do not include commingling (when animals concurrently share the same pen or same section in a transportation unit where there is uninhibited physical contact).

Flock. All animals maintained on any single premises; and all animals under common ownership or supervision on two or more premises which are geographically separated, but among which there is an interchange or movement of animals.

Flock Plan. A written flock management agreement designed by the owner of a flock, an accredited veterinarian, and a Veterinary Services representative or State representative in which each participant agrees to undertake actions specified in the flock plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock, source flock, or trace flock. The flock plan shall require an epidemiologic investigation to identify high-risk animals that must be removed from the flock, and shall include other requirements found necessary by the Veterinary Services representative or State representative to control scrapie in the flock. These other requirements may include, but are not limited to, cleaning and disinfection of flock premises, education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and control the spread of scrapie, and maintaining records of animals in the flock.

High-Risk Animal. An animal which is:

(1) The progeny of a scrapie-positive dam;

(2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups (groups that are managed as separate units and are not commingled during lambing and for 60 days following the date the last lamb was born, and that do not use the same lambing facility unless the lambing facility is cleaned and disinfected between lambings by removing all organic matter and spraying the lambing facility with a 2 percent sodium hydroxide solution or 0.5 percent sodium hypochlorite solution); or

(3) Born during the same lambing season as a scrapie-positive ewe or ram in a source flock or trace flock.

Infected Flock. Any flock in which a Veterinary Services representative or State representative has determined an animal to be a scrapie-positive animal. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through histological examination of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examination.

Source Flock. A flock in which a Veterinary Services representative has determined that at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis. A flock will no longer be considered a source flock after it has completed the requirements of a flock plan.

State. Each of the 50 States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories or possessions of the United States.

State representative. An individual employed in animal health activities by a State or political subdivision of a State, and who is authorized by the State or political subdivision to perform the function involved.

Trace flock. A flock in which a Veterinary Services representative has determined that one animal, which was diagnosed as a scrapie-positive animal at an age of 54 months or less, was born.

Veterinary Services representative. An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture in animal health activities who is authorized by the Administrator to perform the function involved.

(Approved by the Office of Management and Budget under control number 0579-0101.)

§ 79.2 General restrictions.

(a) No scrapie-positive animal, animal from an infected flock, or animal from a source flock may be moved interstate, unless the animal has been permanently identified with an indelible mark in the form of the letter "S" at least 1" by 1" applied on the left jaw; *Except that,* high-risk animals less than one year of age moving in slaughter channels and animals other than high risk animals are not required to be permanently identified if the animals are from infected flocks or source flocks meeting the following conditions:[1]

(1) The owner of the flock or his or her agent has signed an agreement with the Administrator in which the owner of the flock or his or her agent agrees to comply with the requirements of this section until the time the flock is no longer an infected flock or source flock.

(2) The owner of the flock or his or her agent shall immediately report to a State representative, Veterinary Services representative, or an accredited veterinarian any animals in the flock exhibiting the following: weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, swaying of back end; increased sensitivity to noise and sudden movement; tremor, "star gazing", head pressing, recumbency, or other signs of neurological disease or chronic wasting illness. Such animals must not be removed from the flock without written permission of a Veterinary Services representative or State representative.

(3) The owner of the flock or his or her agent shall identify all animals 1 year of age or over within the flock. All animals less than 1 year of age will be identified when a change of ownership occurs, with the exception of those moving

[1] Owners of flocks participating in the Voluntary Scrapie Flock Certification Program described in 9 CFR Part 54 agree to follow the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification" (the UM&R), which include, among other requirements, the conditions in this section. Individual copies of the UM&R may be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782; or from the American Sheep Industry Association, Producer Services, 6911 S. Yosemite Street, Englewood, CO 80112-1414, telephone (303) 771-3500.

within slaughter channels. The form of identification will be an electronic implant providing a unique identification number which may be applied by the owner of the flock or his or her agent in accordance with instructions by a Veterinary Services representative, State representative, or an accredited veterinarian.

(4) The owner of the flock or his or her agent shall maintain, and keep for a minimum of five years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock: the animal's individual identification number from its electronic implant and any secondary form of identification the owner of the flock may choose to maintain; sex; breed; date of acquisition and source (previous flock), if the animal was not born in the flock; and disposition, including the date and cause of death, if known, or date of removal from the flock.

(5) The owner of the flock or his or her agent shall allow breed associations and registries, livestock markets, and packers to disclose records to Veterinary Services representatives or State representatives, to be used to trace source flocks and exposed animals.

(6) The owner of the flock or his or her agent shall make animals in the flock and records required to be kept under paragraph (a)(4) of this section available for inspection by Veterinary Services representatives and State representatives, given reasonable prior notice.

(7) Upon request of a Veterinary Services representative, the owner of the flock or his or her agent will have an accredited veterinarian collect and submit tissues from animals reported in accordance with paragraph (a)(2) of this section to a laboratory designated by a Veterinary Services representative.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579-0101.)

§ 79.3 Designation of scrapie-positive animals, source flocks, and infected flocks; notice to owners; publication.

(a) A Veterinary Services representative or State representative will determine an animal to be a scrapie-positive animal after determining that the animal has been diagnosed with scrapie in accordance with the definition of a scrapie-positive animal in § 79.1 of this part. A Veterinary Services representative or State representative will determine a flock to be a source flock after reviewing sale, movement, and breeding records that indicate the flock meets the definition of a source flock. A Veterinary Services representative or State representative will determine a flock to be an infected flock after determining that a scrapie-positive animal is in the flock.

(b) As soon as possible after making such a determination, a Veterinary Services representative or State representative will attempt to notify the owner of the flock in writing that the flock contained a scrapie-positive animal, or is an infected flock, or source flock.[2] The notice will include a description of the interstate movement restrictions and identification requirements contained in this part. (Approved by the Office of Management and Budget under control number 0579-0101.)

Done in Washington, DC, this 23 day of July, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17676 Filed 7-29-92; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 89-025F]

RIN 0583-AA43

Additional Curing Methods for Destroying Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food Safety and Inspection Service is correcting three typographical errors in its final regulation for additional curing methods for destroying trichinae, which was published on Monday June 22, 1992. (57 FR 27870).

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: William C. Smith, Director, Processed Products Inspection Division, Science & Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 720-3840.

SUPPLEMENTARY INFORMATION: On June 22, 1992, the Food Safety and Inspection Service published a final rule (57 FR 27870) which amended § 318.10 of the Federal meat inspection regulations (9 CFR 318.10) that prescribes the treatment of pork and products containing pork to destroy trichinae. There were three typographical errors that are corrected as follows:

On page 27874, in the third column, in § 318.10(c)(3)(i) Method No. 7, in the title of the first Table the second line "105 Millimeters (4 1/16 Inches) Or; is corrected to read "105 Millimeters (4 1/8 Inches) Or".

On page 27875, in the second column, in § 318.10(c)(3)(iv) Method No. 3(F)(2), line 9, the temperature "69 °F (15.6 °C)" is corrected to read "60 °F (15.6 °C)".

On page 27876, in the third column, in § 318.10(c)(3)(iv) Method No. 6(B), line 3, the temperature "110 °F (41 °C)" is corrected to read "110 °F (43 °C)".

Done at Washington, DC on: July 23, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-17938 Filed 7-29-92; 8:45 am]

BILLING CODE 3410-DM-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Privacy Act regulations. The regulations are amended to show that the "reviewing official" is now the Vice President, Employee Worklife, and to instruct individuals who wish to appeal TVA's initial determination not to amend or correct that individual's record to deliver their appeal to the Vice President, Employee worklife.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency practice. Since this rule is non-substantive, it is being made effective immediately, July 30, 1992.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the

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[2] A current list of flocks determined to be infected flocks or source flocks will be published in the Federal Register from time to time. This list may also be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552a.

2. Section 1301.12 is amended by revising paragraph (f) to read as follows:

§ 1301.12 Definitions.

* * * * *

(f) The term *reviewing official* means TVA's Vice President, Employee Worklife, or another TVA official designated by the Vice President in writing to decide an appeal pursuant to § 1301.19;

* * * * *

3. Section 1301.19 is amended by revising paragraph (a) introductory text to read as follows:

§ 1301.19 Appeals on initial adverse agency determination on correction or amendment.

(a) An individual may appeal an initial determination refusing to amend that individual's record in accordance with this section. An appeal must be taken within 20 days of receipt of notice of TVA's initial refusal to amend the record and is taken by delivering a written notice of appeal to the Vice President, Employee Worklife, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall be signed by the appellant and shall state:

* * * * *

Charles E. Price,

Interim Vice President, Information Services.

[FR Doc. 92–18004 Filed 7–29–92; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8424]

RIN 1545–AN51

Group Term Life Insurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations which prescribe the cost of group term life insurance for purposes of section 79 of the Internal Revenue Code. This revision is necessary to conform to statutory changes concerning the cost of group term life insurance for individuals over 63 years of age. These regulations provide guidance to employers who must use these costs to calculate amounts includible in the gross income of their employees because of group term life insurance provided by the employers.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Betty Clary, (202) 566–3496 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations under section 79 of the Internal Revenue Code. The regulations reflect the amendment of section 79 by section 5013 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) with respect to individuals over 63 years of age.

Explanation of Provisions

Section 79 of the Internal Revenue Code (Code) generally permits an employee to exclude from gross income the cost of the first $50,000 of employer-provided group term life insurance coverage. The remaining cost of the coverage is included in the employee's gross income. Currently, the cost of the insurance coverage is determined on the basis of the employee's actual age, using uniform premiums prescribed in the regulations under section 79 of the Code. Under prior law, the cost of group-term coverage for an individual age 64 or older was calculated using age 63. This special rule for individuals over age 63 was eliminated by section 5013 of the Technical and Miscellaneous Act of 1988 (TAMRA), thereby requiring the Internal Revenue Service to develop uniform premium rates for individuals over age 63.

On November 20, 1989, the Internal Revenue Service published in the **Federal Register** (54 FR 47995), a notice of proposed rulemaking by cross-reference to a temporary regulation published the same day in the **Federal Register** (54 FR 47978) under section 79 of the Internal Revenue Code. The temporary regulation, § 1.79–3T, added rates to the uniform premium table for individuals age 65 to 69 ($2.10 per month per $1,000 of group term life insurance protection) and for individuals age 70 and older ($3.76 per month per $1,000 of group term life insurance protection). These rates were developed using the same data and assumptions as had been used previously to develop rates for individuals younger than 65. The rates for individuals under 65 did not change.

Written and oral comments were received from the public concerning the regulation. No one requested a public hearing and none was held. The issues raised by the comments had been considered prior to the publication of the temporary regulation, or were outside the scope of the regulation.

Several comments were received criticizing the temporary regulation, which was published on November 20, 1989, for making the rates for individuals 64 and older effective as of January 1, 1989. During the formulation of the temporary regulation, the Service concluded that, because the effective date of section 5013 of TAMRA was January 1, 1989, Congress intended that regulations prescribing the rates for the older age groups also be effective as of that date.

A number of commenters expressed the view that the current uniform premium rates do not reflect changes in the mortality experience and gender mix of employees that have occurred since the uniform premium table was last updated in 1983. They believe that this results in rates that are too high for some age groups but too low for others. The Internal Revenue Service agrees that the uniform premium table should be revised, and a regulation project was opened in 1989 for that purpose. The project has been delayed, however, because the mortality statistics published by the Society of Actuaries that are used to develop the uniform premium rates are also in the process of revision.

Finally, some commenters argued that the uniform premium rates should be the same for all employees, regardless of age. This issue is answered by statute since section 79(c) of the Internal Revenue Code requires the uniform premiums to be computed on the basis of five-year age brackets.

Accordingly, this Treasury decision adopts the temporary regulation in final form without substantive change, by removing § 1.79–3T and incorporating that section's uniform premium table directly in § 1.79–3.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of

the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Betty Clary of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.79–3 is amended by revising paragraph (d)(2) to read as follows:

§ 1.79–3 Determination of amount equal to cost of group-term life insurance.

* * * * *

(d) * * *

(2) For the cost of group-term life insurance provided after December 31, 1988, the following table sets forth the cost of $1,000 of group-term life insurance provided for one month, computed on the basis of 5-year age brackets. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year.

TABLE I.—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

5-year age bracket	Cost per $1,000 of protection for 1-month
Under 30	$0.08
30 to 34	.09
35 to 39	.11
40 to 44	.17
45 to 49	.29
50 to 54	.48
55 to 59	.75
60 to 64	1.17
65 to 69	2.10
70 and above	3.76

* * * * *

Par. 3. Section 1.79–3T is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Dated: July 5, 1992.

Approved:

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–17935 Filed 7–29–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 43

[T.D. 8422]

RINS 1545–AO41; 1545–AP03

Final Regulations Regarding the Tax on Transportation by Water

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains regulations that implement the tax on the transportation of passengers on covered voyages by certain vessels under sections 4471 and 4472 of the Internal Revenue Code ("the Code") as enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106, 2362). These regulations affect persons providing transportation by water.

EFFECTIVE DATE: These regulations are effective for voyages beginning on or after January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, Jr., on (202) 566–4077 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations to be added to part 43 of title 26 of the Code of Federal Regulations ("CFR") under sections 4471 and 4472 of the Code. On Friday, October 12, 1990, the Internal Revenue Service ("the Service") published temporary regulations in the **Federal Register** (T.D. 8314; 55 FR 41519, as corrected in 55 FR 46667) on the Excise Tax on Transportation by Water under section 4471. A Notice of Proposed Rulemaking cross-referencing the temporary regulations was published the same day in the **Federal Register** (55 FR 41546). Also on Friday, October 12, 1990, the Service published a Notice of Proposed Rulemaking in the **Federal Register** (55 FR 41545, as corrected in 55 FR 46132) proposing regulations under section 4472. Further, on Thursday, January 3, 1991, the Service published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 233) proposing amendments to the regulations on the Excise Tax on Transportation by Water (26 CFR part 43) by cross-reference to temporary regulations published the same day in the **Federal Register** (T.D. 8328; 56 FR 179). Written comments responding to the notices were received and a public hearing was held on April 8, 1991.

Explanation of Provisions

The regulations provide taxpayers with rules and definitions for complying with the tax imposed by section 4471 of the Code. The preamble to the proposed regulations generally explains the provisions of the regulations except as discussed below.

Section 4471 of the Code imposes a tax of $3 per passenger on a covered voyage to be paid by the person providing the covered voyage. The tax is to be imposed only once for each passenger, either at the time of first embarkation or disembarkation in the United States. A "covered voyage" is a voyage of a commercial passenger vessel that extends over one or more nights, or of a commercial vessel that transports passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States. A passenger vessel is any vessel with stateroom or berth accommodations for more than 16 passengers.

One commentator suggested that the regulations should clarify that a single "voyage" does not encompass different sets of passengers. In keeping with the definition of "covered voyage" contained in section 4472 of the Code, the regulations define "voyage" in relation to the movement of a vessel and independent of the itinerary of the passengers of the vessel. The itinerary of a passenger or of a group of passengers may include all or any part of a voyage by a vessel.

Several commentators suggested that the definition of "over 1 or more nights" as 18 or more hours including midnight fails to take account of the customary practices of the charter fishing industry. Commentators suggested that the definition should be revised to include one complete period of darkness. The Service and the Treasury Department believe that this definition is too expansive and is not consistent with Congressional intent. For example, under the suggested definition, a voyage commencing after nightfall on day one would not extend for one complete period of darkness until sunrise on day three. However, in order to address the commentators' concerns, the final regulations provide that a voyage extends over 1 or more nights if it extends for more than 24 hours.

Several commentators suggested that the regulations may be in conflict with recognized principles of international law. They contended that, to the extent the tax applies to foreign vessels

conducting gambling outside the territorial waters of the United States, the United States lacks both territorial and subject jurisdiction over the activity being taxed and that by failing to limit the application of the tax the regulations make an unwarranted assumption of extra-territorial jurisdiction. One commentator cited *Equal Employment Opportunity Commission* v. *Arabian American Oil Company*, 111 S.Ct. 1227 (1991) (*Aramco*), for the proposition that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." Another commentator suggested that the tax is a de facto income tax on revenue derived from gambling and that imposition of such a tax is in violation of tax treaties between the United States and other countries.

The activity being taxed, the first embarkation or disembarkation in the United States of passengers on a covered voyage, is within the territorial jurisdiction of the United States. The tax is not imposed on gambling activities, or on income derived from gambling activities; rather, gambling is only one element in the determination of whether a voyage is a "covered voyage" for purposes of imposing the tax. In addition, the statutory language on its face unambiguously indicates that Congress intended activities outside the territorial limits of the United States to be considered in determining whether a voyage is a "covered voyage." Therefore, the tax is a legitimate and well recognized exercise of territorial jurisdiction.

One commentator recommended that at least 10 percent of a vessel's gross income should be derived from gambling before passengers are considered to be engaged in gambling aboard the vessel. This recommendation is not adopted because it would (in many cases) preclude the operator from passing the tax on to the passenger because the gambling revenues of the vessel could not be determined until the end of the voyage. A rule based on determining the percentage of gross receipts from various sources would also be more difficult for taxpayers to comply with and for the Service to administer.

A commentator suggested that the tax be limited to persons who actually gamble. This comment was not adopted because the statute makes no such distinction; it imposes the tax on each passenger on a covered voyage. Moreover, the Service could not administer a tax that depended on a passenger's conduct on the vessel.

In response to a comment, the final regulations modify the definition of "passenger" to exclude persons who, although routinely carried aboard vessels, are not paying passengers. Thus, the Master, the crew, and other persons actively engaged in the business of the vessel or its owners (such as, lecturers, instructors or group tour leaders in the employ of the vessel or its owners) are not "passengers" subject to the tax. On the other hand, persons on "familiarization" or promotional trips such as independent travel agents, vendors, contest winners, and tour group leaders not in the employ of the vessel or her owners are "passengers" subject to the tax.

Requirements for Filing Returns, Paying Tax, and Using Government Depositaries

For the rules relating to filing returns, paying tax, and using government depositaries, see the regulations under 26 CFR part 40.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Edward B. Madden, Jr., Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. Other personnel from the Service and Treasury Department, however, participated in their development.

List of Subjects in 26 CFR Part 43

Excise taxes, Gambling, Transportation by water, Vessels.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR, part 43, is amended as follows:

PART 43—[AMENDED]

Paragraph 1. The authority citation for part 43 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§43.0–1T [Redesignated as §43.0–1]

Par. 2. Section 43.0–1T is redesignated as § 43.0–1 and the section heading is amended by removing "(temporary)".

§43.4471–1T [Redesignated as §43.4471–1]

Par. 3. Section 43.4471–1T is redesignated as § 43.4471–1 and the section heading is amended by removing "(temporary)".

Par. 4. New § 43.4472–1 is added to read as follows:

§ 43.4472–1 Definitions.

(a) *In general.* For definitions of the terms "covered voyage" and "passenger vessel," see sections 4472 (1) and (2).

(b) *Voyage.* For purposes of this section, "voyage" means a journey of a vessel that includes the outward and homeward trips or passages. The voyage commences when the vessel begins to load passengers and continues during the entire ensuing period until the vessel has made one outward and one homeward passage (including intermediate passages, if made). A voyage may be a covered voyage with respect to a passenger even if the passenger does not make both an outward and homeward passage or if the point of first embarkation or disembarkation by the passenger in the United States is an intermediate stop of the vessel.

(c) *Over 1 or more nights.* A voyage is considered to extend over 1 or more nights if it extends for more than 24 hours.

(d) *Engaged in gambling.* A passenger is engaged in gambling aboard a vessel if that person is participating as a player in any policy game or other lottery, or any other game of chance, for money or other thing of value, provided that the policy game, other lottery, or game of chance is conducted, sponsored, or operated by the owner or operator of the vessel, as either principal or agent, or by an employee, agent, or franchisee of the owner or operator of the vessel. A passenger is not engaged in gambling aboard a vessel if the passenger participates with other passengers in a casual, "friendly" game of chance that is not conducted, sponsored, or operated by the owner or operator of the vessel or by an employee, agent, or franchisee of the owner or operator.

(e) *Territorial waters.* For purposes of sections 4471 and 4472, the territorial waters of the United States are those waters within the international boundary line between the United States and any contiguous foreign

country or within 3 nautical miles (3.45 statute miles) from low tide on the coastline. No inference is intended as to the extent of the territorial limits for other tax purposes.

(f) *Passenger.* For purposes of sections 4471 and 4472, "passenger" means an individual carried on the vessel except—

(1) The Master; or

(2) A crew member or other individual engaged in the business of the vessel or her owners. A person is engaged in the business of the vessel or her owners if the person is an employee of the vessel or her owners or has a duty, contractual or otherwise, to perform on the vessel on behalf of the vessel or her owners. For example, a person engaged as an entertainer, instructor, or lecturer for the benefit of the passengers is not a passenger, but a person on a promotional trip such as a travel agent or contest winner is a passenger even though the vessel or her owners may derive some future benefit from the promotion.

George O'Hanlon,

Acting Commissioner of Internal Revenue.

Approved: June 29, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-17830 Filed 7-29-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Baltimore, MD Regulation 92-05-27]

Safety Zone Regulation: Chesapeake Bay, Smith Point, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the U.S. Army Corps of Engineers wreck removal operation of three charted wrecks in the Chesapeake Bay. Diving operations will be conducted using explosive charges to clear/remove obstructions in the vicinity of Smith Point, VA. The safety zone is needed to control commercial & recreational vessel traffic and to provide for the safety of life and property on navigable waters. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on July 22, 1992, at 7:00 a.m. and terminates at 7 p.m. 31 August 1992. Main shipping traffic will be affected as described. Area a. July 22–26, Area b. July 27–August 15, Area c. August 22–31. Hours of operation will be from 7 a.m. to 7 p.m. daily.

FOR FURTHER INFORMATION CONTACT: LT Cynthia L. Stowe, U.S.C.G. Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Specifically, the U.S. Army Corps of Engineers requested Coast Guard assistance on July 09, 1992, leaving insufficient time to publish a NPRM in advance of the event. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent any damage to vessels which could be caused by explosives in the area.

Drafting Information

The drafters of this regulation are LT Cynthia L. Stowe, project officer for the Captain of the Port, Baltimore, Maryland and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District legal staff.

Discussion of Regulation

The circumstances requiring this regulation arose on July 09, 1992 when the U.S. Army Corps of Engineers requested Coast Guard assistance during the removal of obstructions to navigation in the vicinity of Smith Point, Chesapeake Bay, to take place July 22, 1992 to August 31, 1992. The operation will include the removal of three charted wrecks in the vicinity of Smith Point located within the Chesapeake Bay main shipping channel. The safety zones will consist of a circle with a 200 yard radius around each wreck. The safety zones will be on the western edge of the inbound channel but will not close the shipping channel. The three wreck areas a–c are located as follows: Area a. latitude 37–57–44.88 North; longitude 76–11–42.11 West; area b. latitude 37–55–12.48 North; longitude 76–11–11.74 West; area c. latitude 37–57–49.56 North; longitude 76–11–54.61 West. The Army Corps of Engineers survey vessel LINTHICUM will remain on station and monitor channel 13 VHF–FM.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

This regulation is considered not major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the emergency rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.45.

2. A new section 165.T551 is added to read as follows:

§ 165.T551 Safety Zone: Chesapeake Bay Smith Point, VA.

(a) *Location:* The following area is a safety zone: A circle with a 200 yard radius around three charted wrecks in the vicinity of Smith Point, VA. The safety zones will be on the western edge of the inbound channel but will not close the shipping channel. The three wreck areas are located as follows: Area a. latitude 37–57–44.88 North; longitude 76–11–42.11 West; area b. latitude 37–55–12.48 North; longitude 76–11–11.74 West; area c. latitude 37–57–49.56 North; longitude 76–11–54.61 West.

(b) *Effective Date:* This regulation becomes effective on July 22, 1992, at 7 a.m. and terminates at 7 p.m. August 31, 1992, unless sooner terminated by the Captain of the Port, Baltimore, Maryland. Main shipping traffic will be affected as described. Area a. July 22–26, Area b. July 27–August 15, Area c. August 22–31. Hours of operation will be from 7 a.m. to 7 p.m. daily.

(c) *Regulation:* (1) In accordance with the general regulations in § 165.23 of this part, entry into the safety zone is

prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962-5105.

(2) The Coast Guard Patrol Commander and each Coast Guard vessel enforcing the safety zone can be contacted on VHF-FM channels 13 and 16.

Dated: July 22, 1992.

D.B. Crawford,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 92-18036 Filed 7-29-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 271

[FRL-4190-3]

Georgia; Final Authorization of State's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends a final rule granting the State of Georgia authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The final rule on Georgia's application for program revision, which included a provision addressing RCRA sections 3004(t) (2) and (3), was published on September 4, 1986, at (51 FR 31619). This action is necessary to deauthorize Georgia for RCRA section 3004(t) (2) and (3) which is a non-delegable provision.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland St., NE., Atlanta, Georgia 30365, (404) 347-2234.

SUPPLEMENTARY INFORMATION: Georgia applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA) on September 25, 1985. The Environmental Protection Agency (EPA) reviewed Georgia's application and published a Final Decision on September 4, 1986. On September 16, 1986, Georgia was granted authorization for all changes made to the Federal program from the date the State received Final Authorization up to and including the July 15, 1985, codification rule, except for the authority to implement RCRA section 3005(j). A detailed discussion of the revisions for which Georgia was granted Final Authorization was included in EPA's tentative decision published July 7, 1986 (51 FR 24549). Georgia's program submission included a provision addressing RCRA section 3004(t) (2) and (3). Those provisions create a Federal cause of action for any person with a claim arising from conduct for which financial assurances are required under RCRA. This action may be asserted directly against the guarantor of the assurances if (1) the owner or operator of the facility is in bankruptcy or other similar proceedings under Federal law, or (2) the person with the claim is not likely to obtain jurisdiction over the facility owner/operator in either Federal or State court. The cause of action created by section 3004(t) is always available in Federal court and, therefore, is not delegable to States. States are welcome to create parallel causes of action viable in state courts, but to the extent that States do so, the State cause of action cannot limit the availability of the Federal action. Therefore, EPA is deauthorizing its prior authorization for this provision to the State of Georgia.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92-18045 Filed 7-29-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[FHWA Docket Nos. MC-88-12, MC-91-2, and MC-91-3]

RIN 2125-AC67

Federal Motor Carrier Safety Regulations; General; Emergency Relief Exemption; Emergency Tow Truck Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to exempt motor carriers and drivers from certain parts of the FMCSRs when directly responding to emergencies. This rule constitutes the FHWA's final action on three notices of proposed rulemaking (NPRM). Two NPRMs proposed to exempt motor carriers and drivers from most of the FMCSRs when responding to regional disasters or local emergency situations. The third NPRM proposed certain relief from the hours of service rules for tow truck motor carrier operations and tow truck drivers. This rule will allow motor carriers and drivers responding to emergencies to be exempt from the FMCSRs while providing direct assistance to the emergency relief efforts.

The FHWA is also making certain technical amendments to the hours of service regulations in part 395.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FHWA requested public comments on three NPRMs which address emergency relief response as follows:

1. Disaster Relief [56 FR 24162, May 29, 1991, Docket No. MC-91-2].
2. Local Emergencies [56 FR 24166, May 29, 1991, Docket No. MC-91-3].
3. Tow Truck Operations [55 FR 27844, July 6, 1990, Docket No. MC-88-12].

II. Comments to the Dockets

A. Regional Disasters [Docket MC–91–2]

The proposal to address emergencies created by regional disasters would exempt motor carriers and drivers operating in interstate commerce from the requirements of parts 390 through 399 when providing direct assistance as part of a disaster relief effort. To accomplish this, the proposed rule provided that the exemption would be utilized only when a disaster had occurred and the President of the United States, a Governor of a State, or his or her authorized representative had publicly declared that assistance was needed to supplement State and local efforts to save lives and property, to protect public health and safety, or otherwise to lessen the impact of a disaster in any part of the United States. The exemption would last the length of the emergency or 30 days from the time of the initial declaration, whichever was less, except that a motor carrier could apply for, and the Regional Director of Motor Carriers (RD) may approve, an extension of time prior to the expiration of the relief exemption.

Comments Submitted to the Docket

The FHWA received sixty-six comments to this NPRM. The commenters included industry associations, motor carriers, labor unions, Federal and State law enforcement agencies, one transportation advocacy group and the Secretary of Defense. Some of the commenters also addressed docket MC–91–3. Generally, the comments supported the proposal.

Comments About Definitions

Comments: Many commenters asked that specific types of disasters be included in the definition of "disaster" and "direct assistance." The FHWA defined "disaster" in the NPRM as "any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, snow storm, drought, forest fire, explosion, blackout, or other occurrences, natural or man-made, as determined by the President of the United States or a Governor of a State." Many public utilities suggested that "ice storm" be included in the definition. The American Trucking Associations (ATA) requested that "Acts of war/terrorism" be included. Indianhead Truck Line Inc. proposed that the FHWA incorporate crude oil spills in the definition of "disaster".

FHWA Response: The FHWA believes the definition published in the NPRM covers most disasters. The President has broad statutory and constitutional discretion to respond to threats to national security. The definition of an "emergency" included in the final rule encompasses an emergency declared by the President in response to acts of war or terrorism, but it is simply not feasible to list every possible event separately. However, because of these comments, and for other reasons, the FHWA has changed the definition somewhat. See section III, Final Rule.

Who May Declare a Disaster or Emergency

Comments: Commenters were concerned with the provision to require a disaster declaration by the President of the United States, a Governor of a State or his or her authorized representative. Fourteen public utility motor carriers and Edison Electric Institute requested that electric utilities be allowed to respond immediately after a disaster occurred. Mississippi Power Company's comments were representative of those submitted by many electric utilities. According to Mississippi Power, the "requirement that a disaster declaration be made prior to the commencement of relief operations poses two problems: (1) It does not cover all situations in which emergency electrical power restoration is required; and (2) it does not provide advanced notice for electric utilities to adequately prepare for disaster relief," for example, by sending equipment to an area where a hurricane might come ashore. Mississippi Power also noted that, "[a]lthough emergency relief is needed during (ice storms, freezing rain, and snow) storms, under the Proposed Rulemaking, unless a disaster is declared, utilities would not be granted an exemption from the FMCSRs to provide this relief. This would effectively prohibit the utilities from providing emergency assistance after ice storms, freezing rain, and snow." The National Tank Truck Carriers, Inc. requested that the FHWA's nine Regional Directors of Motor Carriers be given the authority to issue exemptions to trucking companies wishing to conduct "emergency relief" operations.

FHWA Response: The FHWA did not propose, and is not adopting, a universal exemption from the FMCSRs for electric utilities. The exemption was to be available only during large-scale disasters which are inherently unpredictable and require a response well beyond the range of routine events like ice Storms. Although disruptive, such storms are a fact of life for utilities. When they occur, relief may well be available under the local emergencies rule (described below).

The FHWA believes that the Regional Directors of Motor Carriers (RD) should have the authority to exempt motor carriers and drivers. The FHWA has amended the final rule to allow the RDs to waive the FMCSRs for motor carriers and drivers after the RD has determined that an emergency exists.

Comments: The ATA and the Tennessee Public Service Commission believes the FHWA should expand the declaration provision to include local officials. The ATA argued that "the language dealing with requests for disaster relief is predicated on the assumption that such requests will be transmitted directly from the competent authority to each motor carrier to be involved." the Federal Express Corporation requested the FHWA to expand the authority to declare an emergency to include other Federal officials in addition to the President.

FHWA Response: The FHWA did not intend this language to be restrictive. After a disaster has been declared, the exemption may be used by all motor carriers providing direct assistance to the disaster relief effort. The authorized individual declaring the disaster need not specify individual motor carriers allowed to use the exemption; rather, an individual motor carrier will decide if it wishes to participate in the relief work.

Comments: The International Brotherhood of Teamsters (IBT) was concerned that the declaration of a disaster might not be issued until after the emergency relief effort had subsided. The IBT cited the June 28, 1991, Southern California earthquake as an example. It wrote that although the Governor's Office of Constituent Services indicated to the Teamsters that the initial clean-up lasted approximately 48 hours, the Governor of California did not declare the earthquake a disaster until July 5, 1991.

The U.S. Secretary of Defense serves as the Executive Agent of the National Communications System and the National Transportable Telecommunications Capability. Counsel for the Secretary requested that the FHWA allow "automatic" exemptions for parties asked to engage in disaster relief efforts. The Secretary argued that the "official declaration" language limits the scope of possible emergency response. The Secretary requested that telecommunications carriers involved in providing a response to an emergency at the request of any Federal, State or local official be allowed to take the exemption.

FHWA Response: The public's safety is adequately served by recognizing the authority of the following persons to declare a disaster that would trigger the operation of this rule: (1) The President of the United States, (2) a Governor of a State, (3) any authorized representative of the President or Governor of a State having authority to declare a disaster, or (4) the Regional Director of Motor Carriers for the FHWA region in which the emergency occurs.

The final rule includes some of the commenters suggestions. See section III, Final Rule.

Recordkeeping Comments

Comments: PSI Energy suggested that the FHWA suspend the accident reporting regulations in part 394 for the duration of the disaster, but thereafter require motor carriers to report accidents which may have occurred during the period of the exemption.

The Minnesota Department of Transportation proposed that motor carriers be required to keep a file with seven items relating to the disaster relief provided, including at a minimum: (1) List of the drivers used, (2) list of the vehicles used, (3) dates and times relief operations were conducted, (4) description of the services provided, (5) declaration documentation, (6) date of declaration, and (7) date disaster conditions ended.

FHWA Response: Although PSI Energy's and Minnesota DOT's type of documentation would be convenient for a law enforcement official investigating a motor carrier's compliance, the FHWA believes that other records maintained by motor carriers who provide disaster relief will be adequate to demonstrate participation under this rule. Additional recordkeeping would be burdensome to participating motor carriers and perhaps would create a disincentive for motor carriers to provide direct assistance in emergencies. Therefore, the FHWA has determined that existing records will adequately facilitate enforcement review, whenever applicable.

The FHWA intends to propose that the current motor carrier-based accident reporting requirements in 49 CFR 394 be eliminated and replaced with a police-generated report submitted to the FHWA by the States. A **Federal Register** notice on this subject is to be published soon.

Statutory Comments

Comments: Duquesne Light Company recommended that the FHWA delete the proposed requirement that intrastate motor carriers have minimum financial responsibility coverage because "we believe that compliance with this requirement would cause unnecessary delays in providing disaster assistance * * *."

FHWA Response: The Motor Carrier Act of 1980, which created the financial responsibility requirement, does not authorize an exemption from its provisions. Motor carriers that do not have minimum levels of financial responsibility cannot participate in the emergency relief effort on the authority of this rule.

Comments: Duquesne Light Company also recommended that the FHWA reconsider the NPRM's Federalism Assessment statement: "Nothing in this document preempts any State law or regulation." Duquesne Light Company argued that "it seems appropriate that, if exemption form the FMCSR's is being proposed (for disaster relief) at the Federal level, a similar relaxation of statutes should also exist at the State level. Otherwise, it is conceivable that relief assistance could be delayed while waiting to obtain fuel tax stickers or satisfy other similar State mandates."

FHWA Response: Duquesne Light Company appears to be asking the FHWA to require the States to grant the same exemptions that are granted in this rule. The FHWA has no authority to require States to waive the application of State safety laws or mandates. the FHWA does require States to have compatible State safety regulations and to enforce the FMCSRs on interstate commercial motor carriers, but the FHWA cannot force States to adopt these exemptions for intrastate motor carriers under current Federal statutes. The States are encouraged to adopt the FMCSRs for the intrastate motor carriers. Motor carriers operating under this exemption through a State in interstate commerce would not be prohibited from doing so by that State.

Comments: National Tank Truck Carriers, Inc. requested that "only carriers who have a 'satisfactory' safety rating should be permitted to take part in this exemption." It believes there are sufficient numbers of "safe" carriers that could handle the emergency situation.

FHWA Response: The FHWA believes motor carriers should be permitted to participate to the maximum extent possible in providing direct assistance in emergency relief and disaster situations. The only motor carriers not exempted from the FMCSRs by this rule are motor carriers subject to an operational out-of-service order based on the finding that they are an imminent safety hazard (49 CFR 386.72(b)) and hazardous materials carriers and passenger carriers that were shut down after failing to improve an unsatisfactory rating to conditional or satisfactory after 45 days. (See interim final rule, 56 FR 40801, August 16, 1991.) The Motor Carrier Safety Act of 1990 requires the latter carriers to cease hazardous materials and passenger operations, and this rule cannot and does not waive that requirement.

Comments: Nineteen comments addressed the question whether 30 days was a sufficient time period to respond effectively to most disasters. Eighteen commenters agreed that 30 days would be sufficient, and one, Atlantic Electric, thought that 45 days would be more "workable."

FHWA Response: Since the overwhelming majority of commenters found the length of the proposed exemption adequate, the final rule retains the 30-day period included in the NPRM. However, the time period lasts only as long as there is direct assistance being provided to the emergency relief effort, not to exceed 30 calendar days, unless extended by an express act of the Regional Director of Motor Carriers.

Comments: Three commenters opposed the NPRM: the Maine State Police, the IBT, and the Advocates for Highway and Auto Safety. The Maine State Police argued that "[t]his proposed regulation does not limit or identify the motor carriers involved in the relief effort nor are there adequate safeguards in place within FHWA to provide assurance that motor carriers involved or not involved in relief efforts would be asked to document their participation in the effort."

FHWA Response: It is the FHWA's intent to exempt motor carriers providing direct assistance to restore essential services and supplies while responding to the declared emergency. The motor carriers must be able to document that an emergency existed, that a declaration of an emergency was made by a person authorized to do so and that the assistance they provided met the requirements of the definition of direct assistance in order to claim the exemption. Therefore, the FHWA believes adequate safeguards are in place to demonstrate compliance with the intent of this final rule.

Comments: The IBT opposed the rule because it believed the FHWA was responding to a hypothetical problem. The Teamsters argued that the last two years have proven that exemptions from the FMCSRs are not warranted, because "1. Compliance with the FMCSRs did not pose any impediment to their efforts, those of their members, or activities of motor carriers employing Teamsters to carry out emergency relief activities,

[and] 2. None of the Teamster local unions [are] aware of any complaints by motor carriers about burdens or obstacles posed by the FMCSRs, as these companies engaged in direct response activities."

FHWA Response: Although motor carriers employing IBT members may not have had any difficulty complying with the FMCSRs and did not complain about burdens or obstacles posed by the FMCSRs, public utilities have petitioned the FHWA for regulatory relief while responding to disasters. The FHWA believes their request is reasonable. The exemption granted by this rule will allow wholly intrastate motor carriers to provide interstate relief services in a disaster area. However, the FHWA believes a motor carrier should be granted an exemption from the FMCSRs only for the period the carrier is directly involved in the relief effort, or 30 days, whichever is less. The wording on the length of the exemption has been changed to reflect this conclusion.

Comments: Advocates for Highway and Auto Safety (Advocates) were concerned that the proposed rule would increase accident risks by allowing unsafe drivers and vehicles to operate in areas that would be disorganized. The Advocates argued that the lack of signalized traffic controls would affect safe traffic behavior and that motor carriers may press into service drivers and equipment that would not otherwise comply with the FMCSRs.

FHWA Response: The FHWA does not believe that safety will be compromised because of this rulemaking action. It is true that major disasters like hurricanes often put traffic signals out of service, but they also knock down power lines, trees and buildings, and strew roads with debris. Rescue vehicles move slowly and carefully, and automobile traffic virtually disappears at first, as commuters stay home from work. The purpose of this rule is to ensure that essential services like electricity are restored rapidly so that daily life, including large volumes of traffic moving smoothly and safely through signalized intersections, can resume as soon as possible. Most interstate motor carriers and drivers that will be utilizing this exemption are already complying with the FMCSRs. There is no reason to believe these carriers will not operate in a safe manner during the emergency. Despite out determination to assist motor carriers to respond to emergencies without administrative or procedural burdens, the FHWA believes carriers and drivers must, at a minimum, comply with Part 383, Commercial Driver's License, and the financial responsibility provisions of Part 387 even while providing direct assistance during emergencies.

B. Local Emergencies [Docket MC–91–3]

The FHWA published two NPRMs that would grant exemptions from the hours of service regulations for motor carriers and drivers responding to local emergencies. The FHWA proposed on May 29, 1991, to exempt motor carriers and drivers of commercial motor vehicles from the requirements of § 395.3 (a) and (b) while such vehicles are being used to respond directly to an emergency situation at the request of a State or local government official having jurisdiction and authority over emergency situations, including, but not limited to, law enforcement or emergency response officials.

The May 29 NPRM included five conditions that motor carriers and drivers would have to meet in order to comply with the proposed exception. The conditions were:

(1) The driver must be in full compliance with the FMCSRs at the time of the request;

(2) There must be no other drivers with unused driving time available at the same location;

(3) The request for emergency response must be made by a State or local government official, such as a law enforcement or emergency response official;

(4) Upon completion of the emergency response operations, the driver must go off duty for a minimum of 8 consecutive hours and until sufficient time has accrued for the driver to meet the requirements of § 395.3(b); and

(5) A notation of the time, type of emergency, and the name, title, address, and telephone number of the public official making the request, must be recorded upon the applicable record of duty status required to be maintained in compliance with § 395.8 of this subpart.

Comments Submitted to Docket

The FHWA received 73 comments on this NPRM. The commenters included industry associations, motor carriers, labor unions, Federal and State law enforcement agencies and one transportation safety group.

The Five Conditions

The principal concerns mentioned by the commenters were the five conditions to be met in order to qualify for the exemption.

Condition No. 1—Drivers in Full Compliance with the FMCSRs

Comments: Many commenters argued that drivers should not be required to be in compliance with the FMCSRs at the time a request is made for assistance.

FHWA Response: The FHWA agrees. Motor carriers have drivers employed who may not regularly drive in interstate commerce. They also may have drivers who have not been qualified under the FMCSRs or who have allowed their qualifications to lapse. Emergencies require immediate attention and the FHWA does not want to impede the availability of drivers and motor carriers to provide for delivery and restoration of essential goods and services. Refer to Section III, Final Rule, for a discussion of the additional persons who may be involved in using the exemption.

Condition No. 2—Drivers With Available Hours

Comments: Twenty-six commenters wrote about the condition that required motor carriers to use all drivers at the same location with available hours first. Eight commenters (the National Private Truck Council, American Bus Association, the National Water Well Association, the Minnesota Department of Transportation, Spill Recovery of Indiana, Inc., and three public utilities, Northern Lights, Inc., American Electric Power, and Potomac Edison Power) wrote that motor carriers should use all drivers with available hours first. Seventeen commenters, of which twelve are public utilities, wrote that the requirement should include a reference to drivers that have the necessary skills to perform the specific job required. The commenters argued that the phrase "necessary skills" would indicate that only drivers of commercial motor vehicles who also have the training to perform safety-sensitive functions other than driving (such as electric line repairing, spill clean-up, etc.) would be allowed to respond to the emergency. They contended that the rule, as proposed, might have required motor carriers to use maintenance shop mechanics to respond to downed power line emergencies, if the mechanics were the only drivers with hours available. Mechanics, however, have no training in repairing electrical lines, and that could have dangerous consequences.

FHWA Response: The FHWA agrees with the arguments of the seventeen commenters. The FHWA does not intend to impede quick action in responding to emergencies. The FHWA is deleting this requirement.

Condition No. 3—Who May Declare An Emergency

Comments: The major concern raised by the commenters was the requirement that a State or local government official having jurisdiction and authority to respond to an emergency, including law enforcement and emergency response officials, must request the assistance. One motor carrier, Wisconsin Public Service Corporation, agreed that this requirement was reasonable, but thirteen commenters thought it was too limited and restrictive. Federal Express Corporation requested that "State or local" be deleted, so that any government official, Federal, State or local, would be able to declare the emergency in cases of labor interruptions or strikes affecting interstate commercial transportation.

Eleven public utilities and their trade association, Edison Electric Institute, requested that the FHWA allow others to declare an emergency, including a motor carrier, the president of a motor carrier, a customer, or anyone.

FHWA Response: The FHWA agrees that there may be Federal officials in addition to the President who have authority to declare emergencies, and the FHWA has therefore changed the wording of the final rule. It should be noted that FHWA officials do not have authority to declare a public emergency, although the rule permits the Regional Director of Motor Carriers to waive the FMCSRs under certain listed conditions.

Condition No. 4—Rest and Recovery from Fatigue

Comments: Another frequently expressed concern was the condition that the driver go off duty after the emergency for a minimum of 8 consecutive hours and until sufficient time had accrued for the driver to meet the requirements of § 395.3(b). Edison Electric Institute and eight public utilities objected to this requirement; specifically, the requirement that the driver comply with § 395.3(b). This section prohibits a motor carrier from requiring or permitting a driver to drive, and prohibits a driver from driving, a commercial motor vehicle after being on duty 60 hours in 7 days or after being on duty 70 hours in 8 days, depending on how many days per week a motor carrier operates its business.

The California Highway Patrol requested that drivers be required to proceed to the nearest safe resting place at the conclusion of the disaster relief efforts. The driver would then be placed off-duty for at least 8 consecutive hours before returning to the motor carrier's principal place of business or terminal.

FHWA Response: The FHWA believes the driver should be allowed to return to the terminal or normal work reporting location before going off duty. However, the final rule prohibits the motor carrier from requiring the driver to return immediately to the normal work reporting location if the driver decides that he or she is too tired to drive safely.

The FHWA disagrees with the argument that no more than 8 hours of rest is needed to recover fully from the fatigue of working during an emergency. The FHWA believes that additional time is necessary when the 60 or 70 hour rules are exceeded. Refer to Section III, Final Rule, for a discussion of the additional off-duty time the FHWA is requiring.

Condition No. 5—Recordkeeping

The final condition proposed in the NPRM would have required a driver to record the government official's name, title, address and telephone number along with the time and type of emergency on the applicable record of duty status. This was included to assist FHWA investigators in tracking down requestors of assistance. Many commenters thought this requirement was unreasonable because it would cause them to prepare duplicate paperwork. Many electric companies argued that they presently record this information for compliance with State and local laws and it would be unreasonable for them to duplicate the information onto a record of duty status.

FHWA Response: Because the final rule exempts the motor carrier and driver from part 395 altogether during an emergency, the FHWA agrees that the requirement is unnecessary.

The FHWA will expect motor carriers to provide appropriate documentation for inspection by FHWA investigators upon demand, especially during compliance reviews after the response operations have ended. The documentation must indicate, at a minimum, that an emergency had been declared by a public official who has authority to declare emergencies and that the motor carrier was providing direct assistance to the emergency relief efforts.

Comments About Definitions

Comments: Federal Express Corporation requested that FHWA expand the definition of the term "emergency situation" to "include any labor interruption which impairs the transportation of interstate commerce." Federal Express argued that "cargo carriers often experience significant demands for additional service when threatened strikes, prolonged labor arbitration or actual strikes occur."

FHWA Response: Strikes can create emergency situations requiring government intervention. For example, carriers might be asked to transport medical and surgical supplies, blood products, food, or even human organs for transplantation if deliveries to hospitals were interrupted by a strike. However, the FHWA recognizes that job actions are a normal part of a market economy. It is not our intent to authorize the use of this rule to influence the outcome of strikes. The FHWA will monitor developments in this area. The situation described by Federal Express Corporation (i.e. greatly increased cargo volume as shippers try to beat a strike deadline or shift from one mode to another) would rarely qualify as an emergency under the rule the FHWA is today adopting.

Comments: Midwest Industrial Supply requested that the definition of "emergency situation" include "instance[s] where carriers are providing a service necessary to abate an environmentally-sensitive emission problem for which EPA (the Environmental Protection Agency) has issued an enforcement order to a third party that requires the third party to abate immediately the harmful emissions." The Pennzoil Company requested that the FHWA include "protection of the environment" in the definition of "emergency situation." Indianhead Truck Line Inc. requested that the FHWA incorporate crude oil spills in the definition of "disaster" in Docket MC–91–2, but also apply that example to this docket.

FHWA Response: Participating in a routine environmental cleanup undertaken in response to an EPA abatement order would not normally qualify a motor carrier for an exemption under the final rule. However, a sudden or large-scale release of hazardous materials that threatened public health might well trigger an emergency declaration by the appropriate official, or perhaps a waiver of the FMCSRs by the Regional Director. The critical factor in declared emergencies, and thus in our rule, is not the type of event, but the impact of the event on public safety and welfare.

Comments: Northern Lights, Inc. requested that the FHWA reclassify a utility lineman as a "driver-salesperson." "This simple clarification would resolve most of the existing difficulties."

FHWA Response: This exception is for drivers who are engaged in selling goods or services to customers, such as

snack/beverage vendor drivers, plumbers, and heating/air conditioning repairmen. Utility linemen do not sell their services to a customer directly and the FHWA is unwilling to extend this narrow exception to drivers whose activity is far removed from retail sales.

Comments: Midwest Industrial Supply and the Minnesota Department of Transportation commented that the NPRM defined "emergency situation" in the preamble, but did not define the term in the rule.

FHWA Response: The final rule, which combines two NPRMs, includes a revised definition of "emergency" from the proposed rule on disaster relief.

C. Tow Truck Operations [Docket MC–88–12]

On July 6, 1990, in response to a petition from the Towing and Recovery Association of America, Inc. (TRAA), the FHWA proposed to exempt tow truck operators from the requirements of § 395.3. The proposed rule included conditions that tow truck operators would have to meet to be exempted from the hours of service requirements. Specifically, it was proposed that drivers who had their rest time interrupted by emergency calls must be "on-call" and could be used only if there were no other available drivers, with unused driving time, currently working at the time of the emergency. As proposed, "on call" would have meant that the driver was (a) on duty as defined in § 395.2; or (b) off-duty and had advised the employer of his/her whereabouts.

Comments Submitted to the Docket

The FHWA received seven comments in response to the NPRM. The commenters included four industry associations, two State agencies, and one environmental service company. Six of the commenters supported relief from the hours of service requirements.

Rest and Recovery From Fatigue

Comments: The major concern of the TRAA was the proposal to require a tow truck driver to accumulate 8 consecutive hours off-duty time after responding to an emergency incident before returning to his/her regular workshift. The TRAA contended that highway safety would not be compromised if the tow truck driver's off-duty time were accumulated in two separate periods. The TRAA argued "that [because] motor vehicle accidents are fortuitous events occurring at random and unpredictable times and places, it is not economically feasible for a standard-size towing firm, which typically is a small family-owned business operating on a very narrow profit margin, to operate a full employee shift during the hour of low call volume—primarily nights."

FHWA Response: The FHWA is not persuaded by those arguments. The 8 consecutive hours off duty required by § 395.3 are necessary for the protection of the driver and public safety. The FHWA believes the accumulation of off-duty time in two separate periods would compromise highway safety. It is true that the FMCSRs allow drivers and motor carriers to use two separate periods when utilizing sleeper berth equipment on the vehicle or in motor carrier provided sleeping accommodations at a natural gas or oil-well work site. The rest periods used in that exception are not comparable to the unregulated off-duty timer periods discussed by the TRAA. Drivers may use normal off-duty time for activities other than resting or sleeping.

Who May Declare an Emergency

Comments: The American Automobile Association (AAA) contended that the relief requested by the TRAA should be expanded to include tow truck operators responding to emergency road service calls from stranded motorists.

FHWA Response: The FHWA believes that, in the interest of public safety, relief is warranted for tow truck motor carriers and drivers who respond to police requests for assistance in removing disabled vehicles. Such a request from a police officer will exempt tow truck operators and drivers from parts 390 to 399 of the FMCSRs when the vehicles pose an immediate threat to human life or public welfare. Wrecked or disabled vehicles often constitute such a threat. Accidents sometimes block major highways completely, and even if traffic continues to move, the presence of damaged vehicles on or near the roadway creates obstacles and distractions which increase the risk of further accidents. Cars or trucks disabled by mechanical problems or lack of fuel may also be a threat since other drivers sometimes assume they are moving and attempt to follow them. Public safety officials have the expertise to determine whether immediate action is necessary to correct situations like this. Some of the emergencies in which a tow truck operator is summoned by law enforcement or emergency response officials will, in all likelihood, involve stranded motorists. However, tow truck operators responding to routine road-service calls from private parties are not covered by the exemption.

III. Final Rule

Section 390.5 Definitions

The term "direct assistance" has been changed to include telecommunications as an essential service, as proposed by the Secretary of Defense, AT&T, Bell South and GTE Service Corporation. In reviewing the commenters' recommendations that telecommunications be included in the definition, it became apparent that the media, especially television and radio companies, might want to use the exemption, too. These companies, or any other companies that the FHWA has not specifically addressed, may use the exemption when they are providing direct assistance services to mitigate or alleviate the results of the emergency. Reporting newsworthy events does not qualify for this exemption. The assistance must be direct assistance to the emergency relief effort as defined by this rule.

The sentence beginning "Upon termination of the relief services * * *" has been removed from the definition of direct assistance and placed in § 390.23(b).

The term "disaster" has been changed to "emergency." The FHWA believes that the term emergency is more useful in the context of this rule because local events which could not reasonably be classified as disasters are included in the exemption from parts 390 through 399.

The FHWA is amending the definition to include some particular types of "storm." The FHWA is adding after the word storm, the phrase "(e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.)."

The term "emergency" is being revised to include the following phrase after "occurrence, natural or man-made,":

> Which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel) or otherwise immediately threatens human life or pubic welfare, provided such hurricane, tornado, or other event results in (1) a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Regional Director of Motor Carriers for the region in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or (2) a request by a police officer for two trucks to move wrecked or disabled vehicles.

The new language, most of which is taken from the definition of "direct

assistance," imposes certain limits on the availability of the emergency exemption. The hurricane, tornado or other occurrence must (A) have a substantial impact, either regionally or locally (it interrupts the delivery of essential services or supplies, or it poses an immediate threat to public welfare), and (B) it must be severe enough to trigger the declaration of an emergency by a public official authorized to do so. A storm that does not produce a declaration by a public official is not an emergency for purposes of this regulation, and a declared emergency has no effect on a motor carrier's obligation to comply with the FMCSRs unless it meets the specific conditions of this rule. Only when both tests are met will a motor carrier or driver be exempt from the FMCSRs.

Additionally, the FHWA agrees with the Secretary of Defense, the Tennessee Public Service Commission and the ATA that motor carriers and drivers should be exempt from the FMCSRs when Federal, State and local government officials declare emergencies. The FHWA did not intend to impose narrow restrictions on the scope of possible emergency response and therefore has incorporated these proposals into the rule. The FHWA believes most motor carriers should be allowed to participate. However, the FHWA is limiting the length of time that motor carriers and drivers may use the exemption for local emergencies. That issue is discussed later.

The definition of "emergency relief" has been changed by removing the references to the President and the Governor and replacing them with the cross-reference "as defined in this section." A change similar to this was suggested by the Minnesota Department of Transportation.

Section 390.23 Relief from Regulations.

This section has been revised to include regional and local emergencies and tow truck operations. After a regional or local emergency has been declared by a public official having authority to do so, the motor carriers and drivers who respond will be exempt from parts 390 through 399 of the FMCSRs while they are providing direct assistance to the emergency relief effort. Tow trucks responding to a police officer's request for assistance in removing disabled vehicles are also exempt.

Regional Emergencies

The exemption for regional emergencies is similar to the disaster relief NPRM, as it is predicated on the declaration of the emergency by the President of the United States, a Governor of a State, or their authorized representatives. The Regional Director of Motor Carriers for the region in which the emergency occurs may also waive the regulations for motor carriers or drivers. The exemption or waiver would be in effect for the length of the motor carrier's or driver's direct assistance in the emergency relief effort or a maximum of 30 days, whichever is less. Motor carriers may request an extension of the 30-day exemption from the Regional Director of Motor Carriers, but they must request and receive approval before the initial 30-day period expires.

Local Emergencies

The NPRM of May 29, 1991, which would have exempted motor carriers and drivers from the requirements of § 395.3, has been revised. The FHWA has broadened the final rule to exempt motor carriers and drivers from parts 390 through 399 after a Federal, State or local government official having authority to declare public emergencies has made such a declaration.

In the NPRM, the exemption required the State or local government official to request assistance from a particular motor carrier or driver. The FHWA has removed this requirement, so that any motor carrier or driver may provide direct assistance once a declaration of an emergency has been made by a government official. The exemption is effective for the motor carrier and/or driver as long as they are providing direct assistance to the emergency relief effort, but for no longer than 5 calendar days including the initial day of the emergency. The 5-day period shall not be extended.

Tow Truck Responding to Emergencies

The NPRM of August 11, 1988, which would have exempted tow truck motor carriers and drivers from the requirements of § 395.3, has also been revised. The FHWA has broadened the final rule to exempt motor carriers and drivers from parts 390 through 399 after a Federal, State or local police officer has requested their assistance.

The exemption is effective for the motor carrier and/or driver as long as they are providing direct assistance to the emergency relief effort, but for no longer than 24 hours including the initial hour of the emergency. The 24-hour period shall not be extended.

The FHWA believes these changes will facilitate prompt restoration of essential services and supplies to affected communities, minimize loss of life and property damage and protect the health of individuals, while maintaining highway safety.

Rest and Recovery After Direct Assistance

As discussed above, the motor carrier and driver will be subject to the requirements of parts 390 through 399, upon completion of the direct assistance to the regional and local emergency relief effort. The FHWA has decided that, for purposes of this rule, direct assistance terminates when the motor carrier or driver begins interstate commercial operations with cargo not destined for the emergency area or drives or dispatches the vehicles to a non-affected location to begin operations in commerce. FHWA will permit a driver to return empty to the terminal or normal work reporting location in exempt status as part of the emergency relief effort. However, the driver may not be required by a motor carrier to return immediately to the terminal or any other work location, if the driver determines that he or she needs rest. Once at the normal work reporting location, the driver must be relieved of all duty and responsibilities. The driver may also be relieved of all duty and responsibilities at the emergency site prior to returning empty to the motor carrier's terminal or the driver's normal work reporting location.

In either case, drivers of commercial motor vehicles who are providing direct assistance to emergency relief efforts must, before returning to normal duty in interstate commerce, (1) take at least 8 hours off-duty, if they have driven more than 10 hours or have been on duty more than 15 hours, and (2) take 24-hours off-duty, if they have been on duty more than 60 hours in 7 days or 70 hours in 8 days.

Section 390.25 Extension of Relief From Regulations—Regional Emergencies

This section has been revised slightly for clarity. Most of the commenters believed that the 30-day period was sufficient time to provide emergency relief services to affected areas.

The initial 30-day period begins at the time of the declaration of the emergency by the President or a Governor, or the exemption from the regulations by the Regional Director of Motor Carriers. The FHWA envisions motor carriers beginning many regional emergencies under the exemption provided for under local emergencies and perhaps before the President or Governor formally declares a broader emergency, or having the Regional Director exempt motor carriers. Under this scenario, the motor carrier or driver may have up to 35 days

to provide direct assistance in response to the declared emergency.

However, the FHWA does not believe that motor carriers and drivers should be allowed an extension of the local emergency or tow truck exemption in the absence of a declared regional emergency.

Section 95.12 Removed

Section 395.12, the predecessor of this rule, is being removed.

This final rule is being issued under the authority of section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, title II, section 206(f), 98 Stat. 2832, 2835, codified at 49 U.S.C. app. 2505(f) (1988)). Section 206(f) reads in part as follows:

> After notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. * * * Any waiver authorized under this subsection shall be published in the **Federal Register**, together with the reasons for such waiver.

This waiver authority has been delegated to the FHWA [49 CFR 1.48(aa) (1990).

The FHWA has determined that this rule meets the requirements of section 206(f). As the petitioners and the comments to the dockets have demonstrated, the FMCSRs sometimes prevent motor carriers and drivers from participating quickly and effectively in emergency relief activity. It would be a travesty of "public interest" to enforce rules that actually delay efforts to protect lives and property. Conversely, the safe operation of commercial motor vehicles may well depend on rapid emergency response, e.g. to clear roads blocked by a storm, or restore electricity to traffic signals, or replenish fuel supplies. The FMCSRs are designed to enhance safety, but the regulatory burdens they entail are not justifiable when their effect during the limited periods when emergencies can most effectively be contained or mitigated, is to increase the risks to public health and welfare.

This is not to say that the FHWA believes this rule will impair the safety of motor vehicle operations during emergencies. The financial responsibility and commercial driver's license requirements (49 CFR parts 387 and 383, respectively) remain in effect. Tort law and the threat of higher insurance premiums will also act as a check on negligence. There is no reason to believe that motor carriers and drivers exempted from the FMCSRs by this rule will suddenly become indifferent to maintenance and operational safety practices.

Tehnical Amendments

The FHWA is also making certain technical amendments. All of the exemptions and exceptions found in part 395 are being incorporated into a new § 395.1, Scope of the rules in this part. The FHWA believes that this change will make it easier for drivers and motor carriers to understand these requirements. This consolidation is only a technical change. The following table describes this consolidation:

Old section	New section	Subject
395.3(a)(3)	395.1(i)	Sleeper-berth time.
395.3(b)(3)	395.1(c)	Driver Salespersons.
395.3(c)	395.1(g)	Retail Store Deliveries.
395.3(d)	395.1(d)(1)	Oilfield off-duty time.
395.3(b)(3) and (e)	395.1(j)(1)	Alaska maximum driving and on-duty time.
395.3(f)	395.1(d)(2)	Oilfield on-duty time.
395.7	395.1(l)	Travel time.
395.8(k)(2)	395.1(h)	Retention of driver's record of duty status.
395.8(l)(1)	395.1(e)	100 air-mile radius.
395.8(l)(2)	395.1(k)	Hawaiian driver's records of duty status.
395.10(a)	395.1(b)(1)	Adverse driving conditions.
395.10(b)	395.1(j)(2)	Adverse conditions in Alaska.
395.11	395.1(b)(2)	Emergency conditions.

The exception for drivers encountering adverse driving conditions in the State of Alaska is being moved from § 395.10(b) to § 395.1(i)(2) and the definition of adverse driving conditions, § 395.10(c) is being moved to § 395.2 Definitions.

The emergency conditions rule which was at § 395.11 is being moved to the exceptions section under adverse driving conditions, § 395.1(b)(2). The FHWA's published interpretations to the Federal Motor Carrier Safety Regulations (42 FR 60078; Nov. 23, 1977) included a discussion of § 395.11. The interpretation is still valid and is reprinted here for the convenience of motor carriers. See 42 FR 60087, item number 6.

Note: The regulatory citations reflect the new numbering scheme described above.

Emergency Conditions—Section 395.1(b)(2)

a. *Loading and unloading delays. Section 395.1(b)(2).* While it is true that unforeseen contingencies do arise from time to time in the course of motor carrier operations, loading and unloading delays are not unusual. The Safety Regulations, under two separate sections (395.1(b)(1) and 395.1(b)(2)), make ample allowances for contingencies that cannot always be anticipated. Loading and unloading delays do not fall within the definitions of the two sections above.

b. *Ordinary mechanical failures.*

Mechanical failures are not treated as emergencies for purposes of §§ 395.1(b)(1) or 395.1(b)(2). The majority of mechanical difficulties are the result of failure to assume a high degree of responsibility as to maintenance and inspection. Section 395.1(b)(1) is explicit in that a driver may not drive or be permitted or required to drive after he/she has been on duty 15 hours following 8 consecutive hours off duty. Under § 395.1(b)(2), if a genuine emergency occurs, a driver may complete his or her run and be on duty for more than 15 hours without being in violation of the provisions of the Hours of Service Regulations, if such run reasonably could have been completed absent the emergency.

c. *Emergency conditions are unforeseen circumstances.*

An absolute prerequisite for any such claim must be that the run is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver started on his or her tour of duty.

The term "in an emergency" shall not be construed as encompassing such things as driver's desire to get home, shipper's demands, market declines, shortage of drivers, or mechanical failures.

This exception should not be confused with the rule contained in § 390.23, which is the major subject of this rulemaking action. Section 390.23 exempts motor carriers and drivers from the requirements of the 10, 15 and 60/70 hour rules.

The FHWA is revising § 395.3 to reference paragraphs moved to § 395.1.

The FHWA is also amending the term "driver-salesman" to "driver-salesperson" and changing the words "he" or "his" to "he/she" or "his/her" wherever they appear in the definition of a driver-salesperson in § 395.2. Similarly, the word "he" used in the definition of "on duty time" is being changed to "he/she."

Finally, the term "motor vehicle," previously used in these regulations, has been changed wherever it appeared to "commercial motor vehicle" to promote consistency with the definitions used in 49 CFR part 390 and in the Motor Carrier Safety Act of 1984.

Rulemaking Analyses and Notices

Regulatory Impact

Emergencies are events that require immediate action to protect human life and the public welfare. This rule will remove regulatory requirements that could slow emergency response efforts by drivers and motor carriers. The technical amendments included in this document merely rearrange, move, consolidate, and make conforming changes to various sections of part 395. For this reason, and since the amendments impose no additional burdens, the FHWA is making these technical amendments final without prior notice and opportunity for comment. Furthermore, an opportunity to comment on these amendments is unnecessary because it is anticipated that useful information would not be received because of the procedural nature of the action.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rule reduces motor carriers' regulatory burdens and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA has evaluated the effects of this rulemaking on small entities. This final rule would exempt drivers and motor carriers from some or all of the FMCSRs in an emergency, thereby enabling them to provide direct assistance in a timely and effective manner to Communities experiencing hardship. This amendment would make emergency assistance available which, but for this change, might be unavailable or available only at a greater cost or after some delay in time. Since this amendment removes regulatory restrictions and procedural burdens during times of emergencies, the FHWA believes that this rule will not have an economic impact on small entities.

For these reasons, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the FHWA certifies that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Nothing in this document preempts any State law or regulation.

This final rule does not limit the policy-making discretion of the States. States will not be required as part of the Motor Carrier Safety Assistance Program to adopt this rule for intrastate safety regulations, but they will have to adopt this amendment for the enforcement of interstate operations. The issues addressed in this final rule therefore have no federalism implications.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This final rule will remove, for intrastate or interstate motor carriers that provide "direct assistance" and "emergency relief" during publicly declared emergencies, the need for prior application for and approval by the FHWA of regulatory relief, as is currently required by the regulations. This rule will remove motor carriers' and drivers' collection of information requirements while providing direct assistance to emergency relief efforts. There are no information collection requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 390

Emergency situation assistance, Highway safety, Highways and roads, Motor carriers.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, parts 390 and 395 as set forth below:

Issued on: July 24, 1992.

T.D. Larson,

Administrator.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for 49 CFR part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; and 49 CFR 1.48.

2. Section 390.5 is amended by adding the definitions of *Direct assistance, Emergency,* and *Emergency relief,* and placing them in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, electricity, medial care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided

such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Regional Director of Motor Carriers for the region in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or

(2) A request by a police officer for tow trucks to move wrecked or disabled vehicles.

Emergency relief means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

* * * *

3. Section 390.23 is revised to read as follows:

§ 390.23 Relief from regulations.

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) *Regional emergencies.*

(i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The Regional Director of Motor Carriers has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in § 390.25, this exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the Regional Director, whichever is less.

(2) *Local emergencies.*

(i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or

(B) The Regional Director of Motor Carriers has declared that a local emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the Regional Director, whichever is less.

(3) Tow Trucks responding to emergencies.

(i) The exemption provided by paragraph (a)(3) of this section is effective only when a request has been made by a Federal, State or local police officer for tow trucks to move wrecked or disabled vehicles.

(ii) This exemption shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief, or 24 hours from the time of the initial request for assistance by the Federal, State or local police officer, whichever is less.

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest shall be permitted at least 8 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until:

(1) The driver has met the requirements of § 395.3(a) of this chapter; and

(2) The driver has had at least 24 consecutive hours off-duty when:

(A) The driver has been on duty for more than 60 hours in any 7 consecutive days at the time the driver is relieved of all duty if the employing motor carrier does not operate every day in the week, or

(B) The driver has been on duty for more than 70 hours in any 8 consecutive days at the time the driver is relieved of all duty if the employing motor carrier operates every day in the week.

4. Section 390.25 is added to read as follows:

§ 390.25 Extension of relief from regulations—emergencies.

The Regional Director of Motor Carriers may extend the 30-day time period of the exemption contained in § 390.23(a)(1), but not the 5-day time period contained in § 390.23(a)(2) or the 24-hour period contained in § 390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the Regional Director in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The Regional Director shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the Regional Director approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

PART 395—[AMENDED]

5. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

6. Section 395.1 is added to read as follows:

§ 395.1 Scope of rules in this part.

(a) *General.* The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (k) of this section.

(b) *Adverse driving conditions.* (1) Except as provided in paragraph (i)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the 10-hour maximum driving time permitted by § 395.3(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for vehicle occupants and security for the vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 8 consecutive hours off duty; or

(ii) After he/she has been on duty 15 hours following 8 consecutive hours off duty.

(2) *Emergency conditions.* In case of any emergency, a driver may complete his/her run without being in violation of the provisions of these regulations, if such run reasonably could have been completed absent the emergency.

(c) *Driver-salesperson.* The provisions of § 395.3(b) shall not apply to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

(d) *Oilfield operations.* (1) In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(2) In the case of specially trained drivers of specially constructed oil well servicing vehicles, on-duty time shall not include waiting time at a natural gas or oil well site; *provided,* that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. Such records shall be made available upon request of the Federal Highway Administration.

(e) *100 air-mile radius driver.* A driver is exempt from the requirements of Section 395.8 if:

(1) The driver operates within a 100 air-mile radius of the normal work reporting location;

(2) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(3) At least 8 consecutive hours off duty separate each 12 hours on duty;

(4) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and,

(5) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on duty each day;

(iii) The time the driver is released from duty each day; and

(iv) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

(f) *Retail store deliveries.* The provisions of § 395.3 (a) and (b) shall not apply with respect to drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25, both inclusive, of each year.

(g) *Retention of driver's record of duty status.* Upon written request to, and with the approval of, the Regional Director of Motor Carriers for the region in which the motor carrier has its principal place of business, a motor carrier may forward and maintain the driver's records of duty status at a regional or terminal office. The addresses and jurisdictions of the Regional Directors' offices are shown in § 390.27 of this chapter.

(h) *Sleeper berths.* Drivers using sleeper berth equipment as defined in § 395.2 or who are off duty at a natural gas or oil well location, may cumulate the required 8 consecutive hours off duty, as required by § 395.3, resting in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.

(i) *State of Alaska.* (1) The provisions of § 395.3 shall not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iii) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(2) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in § 395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run. After he/she completes the run, that driver must be off duty for 8 consecutive hours before he/she drives again.

(j) *State of Hawaii.* The rules in § 395.8 do not apply to a driver who drives a commercial motor vehicle in the State of Hawaii, if the motor carrier who employs the driver maintains and retains for a period of 6 months accurate and true records showing—

(1) The total number of hours the driver is on duty each day; and

(2) The time at which the driver reports for, and is released from, duty each day.

(k) *Travel time.* When a driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time shall be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he/she shall be considered off duty for the entire period.

7. Section 395.2 is revised to read as follows:

§ 395.2 Definitions.

As used in this part, the following words and terms are construed to mean:

Adverse driving conditions means snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

Automatic on-board recording device means an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized with specific operations of the vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

Driver-salesperson means any employee who is employed solely as such by a private carrier of property by commercial motor vehicle, who is engaged both in selling goods, services, or the use of goods, and in delivering by commercial motor vehicle the goods sold or provided or upon which the services are performed, who does so entirely within a radius of 100 miles of the point at which he/she reports for duty, who devotes not more than 50 percent of his/her hours on duty to driving time. The term *selling goods* for purposes of this section shall include in all cases solicitation or obtaining of reorders or new accounts, and may also include other selling or merchandising activities designed to retain the customer or to increase the sale of goods or services, in addition to solicitation or obtaining of reorders or new accounts.

Driving time means all time spent at the driving controls of a commercial motor vehicle in operation.

Eight consecutive days means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Multiple stops means all stops made in any one village, town, or city may be computed as one.

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. *On-duty time* shall include:

(1) All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this chapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time* in this section;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth as defined by the term *sleeper berth* of this section;

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time spent performing the driver requirements of §§ 392.40 and 392.41 of this chapter relating to accidents;

(7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;

(8) Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier; and

(9) Performing any compensated work for any nonmotor carrier entity.

Seven consecutive days means the period of 7 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Sleeper berth means a berth conforming to the requirements of § 393.76 of this chapter.

Twenty-four-hour period means any 24-consecutive-hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

8. Section 395.3 is revised to read as follows:

§ 395.3 Maximum driving and on-duty time.

(a) Except as provided in §§ 395.1(b)(1), 395.1(f), and 395.1(i), no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

(1) More than 10 hours following 8 consecutive hours off duty; or

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(b) No motor carrier shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate every day in the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates motor vehicles every day of the week.

§ 395.7 [Removed]

9. Section 395.7 is removed and reserved.

§ 395.8 [Amended]

10. Section 395.8 is amended by removing paragraph (k)(2); by redesignating paragraph (k)(3) as (k)(2); and removing paragraph (l).

§ 395.10 [Removed]

11. Section 395.10 is removed and reserved.

§ 395.11 [Removed]

12. Section 395.11 is removed and reserved.

§ 395.12 [Removed]

13. Section 395.12 is removed and reserved.

[FR Doc. 92-18038 Filed 7-29-92; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 299

[Docket No. 920649-2149]

RIN 0648-AD29

U.S. Nationals Fishing in the Russian Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues an interim final rule that revises the procedures for owners and operators of U.S. vessels to conduct fishing operations for fishery resources over which the Government of the Russian Federation exercises sovereign rights or fishery management authority. These revisions will improve U.S. fisheries management in the U.S. exclusive economic zone (EEZ).

DATES: This rule is effective July 29, 1992 except § 299.5 (b), (c) and (d) which contain information collection requirements subject to OMB approval under the Paperwork Reduction Act. These sections will be made effective upon OMB approval of the requirements. Comments on this interim final rule must be received by September 14, 1992.

ADDRESSES: Send comments to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Telex 467856 (US COM FISH CI), FAX (301) 588-4967.

Comments regarding the estimate of the paperwork burden or any other aspect of the information collection requirements under §§ 299.3(a) (2), and 299.5 (b), (c) and (d) should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20235, Attention: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, (301) 713-2337.

SUPPLEMENTARY INFORMATION: U.S. nationals have been eligible to engage in fishing operations in the Russian economic zone (EZ) since the United States and the former Union of Soviet Socialist Republics (U.S.S.R.) signed the Agreement on Mutual Fisheries Relations on May 31, 1988. On July 17, 1989, NMFS issued an interim final rule that specified the procedures for U.S. nationals to conduct fishing operations for fishery resources over which the former U.S.S.R. exercised sovereign rights or fishery management authority (54 FR 29896). Since that date, and owing to significant political changes within that country, new governments have been established in the Republics making up the former Soviet Union. The Department of State has determined that all rights and obligations due under the Mutual Fisheries Agreement (Agreement) with the former Soviet Union have now been assumed by the Russian Federation. Therefore, this interim final rule replaces references to "the Union of Soviet Socialist Republics" or "Soviet(s)" or "U.S.S.R." in 50 CFR part 299 with "Russian Federation" or "Russia" in most places.

During the years since the Agreement was signed, U.S. activity has significantly increased in the Russian EZ. However, NMFS has received very little information concerning U.S. fishing activities in the Russian EZ. At the same time, NMFS has observed increased landings of undocumented fish in U.S. ports, allegedly harvested from the Russian EZ in joint ventures. Some of these species or product-types would have been unlawful if harvested or processed in the EEZ. NMFS is concerned that some portion of these landings may actually consist of fish illegally harvested and processed in the EEZ. In order to obtain better information concerning U.S. fishing activities in the Russian EZ and to document the origin and quantity of fish that are harvested in fishing operations in the Russian EZ and brought into the EEZ, NMFS is amending 50 CFR part 299 to:

1. Require the responsible U.S. vessel owner to apply for Russian fishing permits through NMFS and to send all revisions to any such applications to NMFS;

2. Require the responsible U.S. vessel owner to provide a copy of the permit issued by the Russian authorities for that vessel together with any conditions or restrictions imposed subsequent to the application to NMFS; and

3. Establish certain reporting and recordkeeping requirements which must be met by the U.S. vessel owner and operator prior to the vessel departing the EEZ for the Russian EZ and prior to reentering the EEZ either to fish, or to land in a U.S. port fish taken in the Russian EZ. The rule requires copies of such reports to be maintained for 3 years.

In addition, the rule revises part 299 to require U.S. vessel owners and operators to report fish and fish production carried onboard when departing the EEZ for operations in the Russian EZ and to report additional production derived from the Russian EZ when reentering the EEZ and prior to conducting any fishing operations in the EEZ following reentry.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is necessary for the conservation and management of fisheries off the West Coast and Alaska and that it is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

This rule is authorized under the Magnuson Act, 16 U.S.C. 1822(a)(4)(A), which authorizes the Secretary of State in cooperation with the Secretary of Commerce to enter into reciprocal fishing agreements, and 16 U.S.C. 1855(g), which authorizes the Secretary of Commerce to promulgate regulations necessary to carry out the provisions of the Magnuson Act.

This action is exempt from the provisions of E.O. 12291 under section 1(a)(2) because the regulations are issued with respect to a foreign affairs function of the United States and because it implements certain provisions of the Agreement with the Russian Federation that govern the activities of U.S. vessels and their owners when operating in the Russian EZ and when exiting and reentering the EEZ in association with operations in the Russian EZ.

This action is not subject to section 553 of the Administrative Procedure Act (APA) because it involves a foreign affairs function of the United States. Although not required by law to do so, the Assistant Administrator is soliciting public comments on this rule, and will consider them to the extent discretion exists to make modifications consistent with national law and the Agreement.

Because neither the APA nor any other statute requires public notice and opportunity to comment upon this rule, no regulatory flexibility analysis is required.

This rule contains information collection requirements subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The application requirements found at § 299.3(a)(2) have been previously approved by OMB under control number 0648–0228. The public reporting burden of the requirements is 30 minutes per response. A request for the new requirements has been submitted to the Office of Management and Budget. The public reporting burden of the new requirements is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing, and recording the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Operations Support and Analysis Division, NMFS, and OMB (see **ADDRESSES**).

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6. The Assistant Administrator has determined that this action does not pose significant threats to the human environment and is unlikely to result in any additional effect on the human environment not already analyzed in the environmental assessment prepared for the 1989 interim final rule (54 FR 29696; July 17, 1989).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 299

Fisheries, Foreign fishing, Reporting and recordkeeping requirements, Russian Federation, Treaties, U.S.-Russia Agreement.

Dated: July 22, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 299 is revised to read as follows:

PART 299—U.S. NATIONALS FISHING IN THE RUSSIAN FISHERIES

Sec.

299.1 Purpose.
299.2 Definitions.
299.3 Procedures.
299.4 Permit issuance.
299.5 Recordkeeping and reporting.
299.6 Requirements.
299.7 Prohibited acts.
299.8 Penalties.

Authority: 16 U.S.C. 1801 *et seq.*

§ 299.1 Purpose.

This part regulates U.S. nationals fishing in the Russian fisheries and implements the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

§ 299.2 Definitions.

The terms used in this part have the following meanings:

Affiliates mean two persons (including individuals and entities) related in such a way that—

(1) One indirectly or directly controls or has power to control the other; or

(2) A third party controls or has power to control both.

Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a reorganized entity having the same or similar management, ownership, or employees as a former entity.

Agreement means the Agreement Between the Government of the United

States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) or a designee.

Exclusive Economic Zone or *EEZ* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing or *to fish* means any activity that does, is intended to, or can reasonably be expected to result in catching or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

Fishing vessel means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

NMFS means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

National of the United States or *U.S. national* means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the United States. In the case of a corporation, partnership or other non-natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

Operator, with respect to any vessel, means the master or other individual on board and in charge of either the vessel, the vessel's fishing operation, or both.

Owner, with respect to any vessel, means any person who owns that vessel in whole or in part, whether or not it is leased or chartered to or managed by another person, or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, or manager, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel, any officer, director, manager, controlling shareholder of any entity described in this paragraph, any agent designated as such by any person described in this paragraph, and any affiliate of any person described in this paragraph.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of such government.

Processing means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel's behalf or to assist another vessel.

Relevant laws and regulations of the Russian Federation means those Russian laws and regulations that concern fishing for fishery resources over which Russia exercises sovereign rights or fishery management authority.

Russian and *Federation* mean the Russian Federation, its government, or any organ or entity of its government.

Russian continental shelf and the phrase *continental shelf of Russia* mean the seabed and subsoil of the submarine areas over which, consistent with international law, Russia exercises sovereign rights.

Russian Economic Zone and *Russian EZ* mean a zone of waters off the coast of Russia beyond and adjacent to the Russian territorial sea extending a distance of up to 200 nautical miles from the baseline from which the territorial sea is measured, within which, consistent with international law, Russia has sovereign rights over the fishery resources.

Russian Federation or *Russia* means the governing entity that succeeded the Union of Soviet Socialist Republics, and that is the successor party to the Agreement of May 31, 1988.

Russian fisheries, Russian fishery resources, and *fishery resources over which Russia exercises sovereign rights or fishery management authority* mean fishery resources within the Russian EZ, fishery resources of the Russian continental shelf, and anadromous species that originate in the waters of Russia, whether found in the Russian EZ or beyond any exclusive economic zone or its equivalent.

Scouting means any operation by a vessel exploring (on behalf of the vessel or another vessel) for the presence of fish by any means that do not involve the catching of fish.

Support means any operation by a vessel assisting fishing by another vessel, including—

(1) Transferring or transporting fish or fish products; or

(2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

Vessel of the United States, U.S. vessel, fishing vessel of the United States, or *U.S. fishing vessel,* as the context requires, means a vessel or a fishing vessel that is documented or numbered under the laws of the United States or of any state, or otherwise subject to the jurisdiction of the United States.

§ 299.3 Procedures.

(a) *Application for annual permits.* (1) *General.* U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Attention: Office of Fisheries Conservation and Management, F/CM1. Application for a permit must be made by submitting a complete application to NMFS at the same address.

(2) *Application information.* Applications must include the following information:

(i) The vessel name;

(ii) The vessel type;

(iii) The vessel's U.S. Coast Guard documentation number or state registration number;

(iv) The vessel's port of registration;

(v) The name of the vessel owner;

(vi) The type of fishing operation being proposed, i.e., fishing, exploration connected with the fishing operation, transport or support operations;

(vii) The objects of fishing operations i.e., the requested species and tonnage amounts involved in the operation;

(viii) The type of fishing gear to be employed unless the application is for a mothership, processing, or transport vessel which has not received a quota as result of prior negotiations or agreements;

(ix) The vessel's registered net tonnage;

(x) The vessel's cargo capacity, i.e., type of storage capacity (freezer or dry storage), number of holds and actual hold capacity in metric tonnage of fishery products;

(xi) The vessel's engine power (h.p.) and maximum speed (in knots);

(xii) The vessel's gross registered tonnage, its overall length (in meters), and the depth (in meters);

(xiii) The vessel's International Radio Call Sign (IRCS);

(xiv) The vessel's radio control frequencies;

(xv) The vessel's radio-telephone frequencies;

(xvi) The master's name and address; and

(xvii) The number of crew members.

(xviii) Any other information requested by the application form or otherwise required by the competent authorities of the Russian Federation.

(b) *Other application information.* Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than ten vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.

(c) *Review of Applications.* NMFS will review each application, and if it is complete, forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation. NMFS will return incomplete applications to the applicant.

(d) *Action by Russian Federation.* The competent authorities of the Russian Federation will review each application, determine whether to issue a permit, establish such conditions and restrictions related to fishery management and conservation as may be needed, and determine any fees. Those authorities will inform the U.S. Fisheries Attache in Moscow of such determinations and the proposed conditions and restrictions and fees, the attache will then inform the Assistant Administrator and the Department of State. The Department of State, after consulting with the Assistant Administrator, will then notify the competent authorities of the Russian Federation of the acceptance or rejection of the conditions and restrictions and, in the case of a rejection, the State Department's objections. In the event the Department of State notifies the competent authorities of the Russian Federation of its objections to a decision not to issue a permit, or to specific conditions and restrictions, the two governments may consult with respect to these issues. The Department of State, after consulting with the Assistant Administrator, may submit a revised application.

(e) *Direct Communication.* U.S. applicants may communicate directly with the Russian Federation with regard to the status of their applications or permits and are encouraged to do so. Owners and operators should make direct contact and work with Russian industry and government authorities.

§ 299.4 Permit issuance.

(a) *Acceptance.* Once the Department of State has accepted the conditions and restrictions proposed by the Russian Federation and all fees have been paid, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue a permit to the vessel owner for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the permit. The vessel owner may not transfer the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in the permit application information submitted to NMFS under § 299.3, at the address specified in § 299.3(a), within 7 calendar days of the change.

(b) *Copies.* The vessel owner and operator must mail a copy of each permit and any conditions and restrictions issued for that vessel by the Russian Federation within 7 calendar days of its receipt to NMFS at the address specified in § 299.3(a).

(c) *Validity.* Any permit issued by the Russian Federation with respect to a vessel subject to this part will be deemed to be a valid permit only if:

(1) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in § 299.3(b)(1);

(2) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in paragraph (a) of this section; and

(3) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in paragraph (a) of this section.

The permit will be rendered invalid by: The transfer or sale of the permit specified in paragraph (a) of this section; the failure to submit to NMFS any changes in permit application information as required by paragraph (a) of this section; failure to submit to NMFS any permit copy required by paragraph (b) of this section or any other information or report required by any other provision of this part; or the failure to pay required permit fees.

(d) *Port calls.* U.S. fishing vessels that have been issued permits pursuant to the Agreement are authorized to enter the ports of Murmansk, Korf, Oktyabrski, and Provideniya in Russia to purchase bait, to replenish ship's stores or fresh water, to obtain bunkers, to provide rest for or make changes in their crews, to obtain repairs and other services normally provided in these ports, and, as necessary, to receive permits. Authorized vessels en route to one of the designated ports to receive a permit will be treated as non-fishing vessels, so long as such vessels observe the provisions of the Agreement. All such entries are subject to the applicable laws and regulations of the Russian Federation. U.S. nationals making port calls in Russia or entering the Russian territory must comply with the laws and regulations of Russia applicable to persons within the territorial jurisdiction of the Russian Federation. Entry of U.S. fishing vessels to ports of the Russian Federation will be permitted subject to notice to INFLOT, forwarded by the vessel's agent or owner using Telex, teletype, or telegram so as to be received 4 days in advance of the port entry. Information concerning communication procedures may be obtained from the Fisheries Attache, Embassy of the Russian Federation, 1609 Decatur Street, NW., Washington, DC 20011.

(e) *Visas.* Multiple entry visas valid for 6 months for entry into the ports specified in paragraph (d) of this section may be obtained by submitting crew lists to the Fisheries Attache, Embassy of the Russian Federation, at the address listed in paragraph (d) of this section. The crew list must be submitted at least 14 days prior to the first entry of the vessel into a port of Russia. An amended (supplemental) crew list may be submitted subsequent to the departure of a vessel from a U.S. port, subject to these provisions, provided that any visa issued thereunder will be valid only for 6 months from the date of issuance of the original crew list visa. Notification of entry to a port of Russia pursuant to paragraph (d) of this section must specify if shore leave is requested under such multiple entry visa.

(f) *Emergency medical treatment.* In cases where a U.S. seaman is evacuated from his vessel to Russia for emergency medical treatment, authorities of the United States will ensure that the seaman departs from Russia within 14 days after release from the hospital.

(g) *Exchange of crews.* The exchange of crews of U.S. fishing vessels in a port in Russia specified in paragraph (d) of this section will be permitted subject to

submission to the Embassy of the Russian Federation, Washington, DC, at the address listed in paragraph (d) of this section, of applications for individual transit and crewman visas for replacement crewmen. Applications must be submitted 14 days in advance of the arrival of the crewmen at a port of Russia and must indicate the names, dates, and places of birth, the purpose of the visit, the vessel to which assigned, and the modes and dates of arrival of all replacement crewmen. Individual passports or seamen's documents must accompany each application. Subject to its national laws and regulations, the Embassy of the Russian Federation will affix transit and crewman visas to each passport or seaman's document before it is returned. In addition to the above requirements, the Fisheries Attache, Embassy of the Russian Federation, must receive, 14 days in advance of arrival, the name of the vessel and date of its expected arrival, a list of names, dates and places of birth for those crewmen who will be admitted to a port of Russia, and the dates and manner of their departure from the port of Russia.

(h) *Research vessels.* Special provisions will be made as necessary regarding the entry into ports of the United States or Russia of research vessels of the two countries that are engaged in a mutually agreed upon research program in accordance with the Agreement. Requests for entries of such research vessels should be forwarded to the competent authorities of the relevant government through diplomatic channels.

(i) *Russian-imposed sanctions.* (1) The Russian Federation will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken.

(3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

§ 299.5 Recordkeeping and reporting.

(a) *General.* The owner and operator of a vessel subject to this part are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this part must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

(b) *Vessel permit abstract report.* (1) The owner and operator of a vessel subject to this part must submit to NMFS Headquarters, Silver Spring, Maryland, a permit abstract report containing the following information:

(i) Vessel name;

(ii) Russian Federation permit number;

(iii) Duration of permit (*e.g.*, 1/1/91–12/31/91);

(iv) Authorized areas of fishing operations in geographic coordinates;

(v) Authorized catch quota in tons;

(vi) Authorized fishing gear; and

(vii) Type of permit (*e.g.*, catcher).

(2) The report must be telefaxed to (301) 588–4967 or telexed to 467856 (US COM FISH CI) within 5 calendar days of receipt of the Russian permit.

(c) *Activity reports.* The owner and operator of a vessel subject to this part must submit to NMFS Alaska Region, Juneau, by telefax to (907) 586–7013, the following reports:

(1) *Depart Report (Action code DEPART).* At least 24 hours before the vessel departs from the EEZ for the Russian EZ, NMFS must receive the following information:

(i) The date (month and day), and time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will depart the EEZ for the Russian EZ; and

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish product (listed by species and product codes) on board the vessel at the time it will depart the EEZ.

(2) *Return Report (Action code RETURN).* At least 24 hours before a vessel that has been in the Russian EZ enters the EEZ, NMFS must receive the following information:

(i) The date (month and day), time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will enter the EEZ; and

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish products (listed by species and product codes) on board the vessel at the time it will enter the EEZ, and the areas (Russian EZ, U.S. EEZ, or other) in which such fish products were harvested or received.

(3) All reports must specify: The appropriate action code ("DEPART" or "RETURN"); the vessel's name and international radio call sign (IRCS); the sender's name and telephone number, and FAX, TELEX, and COMSAT numbers; the date (month and day) and time (hour and minute GMT) that the report is submitted to NMFS; and the intended date and U.S. port of landing. See tables 1 and 2 of this section for product and species codes.

(d) *Recordkeeping.* The owner and operator of a vessel subject to this part must retain all copies of all reports required by this part on board the vessel for 1 year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records are aboard the vessel.

TABLE 1—NMFS SPECIES CODES

Species Code and Species Name
110 Pacific cod
120 Other flatfish (all flatfish except yellowfin sole, rock sole, arrowtooth flounder, and Greenland turbot)
121 Arrowtooth and/or Kamchatka flounder (*Atheresthes stomias* and/or *Atheresthes evermanni*)
123 Rock sole
127 Yellowfin sole
130 Ling cod
134 Greenland turbot
139 Other rockfish (all rockfish and thornyheads except POP, sharpchin, northern shortraker, and rougheye)
141 Pacific ocean perch (*Sebastes alutus* only)
160 Sculpins
171 Shortraker/rougheye rockfish (*Sebastes borealis*/S. *aleutianus*)
172 Sharpchin/northern rockfish (*Sebastes zacentrus*/S. *polyspinis*)
193 Atka mackerel
213 Grenadier
270 Pollock
510 Smelt
511 Eulachon
516 Capelin
689 Sharks
700 Skates
710 Sablefish
870 Octopus
875 Squid
000 Salmon
001 Crab, unspecified
200 Pacific halibut
235 Pacific herring
410 Salmon, chinook
420 Salmon, Sockeye
430 Salmon, coho
450 Salmon, chum
540 Trout, steelhead
920 Unspecified king crab
921 Red king crab
922 Blue king crab
923 Gold/Brown king crab
930 Unspecified Tanner crab
931 Bairdi Tanner crab
932 Opilio Tanner crab

TABLE 2—NMFS PRODUCT CODES

Product Code and Product Type

1. Whole fish/food fish
2. Whole fish/bait
3. Bled only (throat or isthmus slit to allow blood to drain)
4. Gutted only (belly slit and viscera removed)
6. Head and gutted, with roe
7. Headed and gutted, Western cut (head removed just in front of the collarbone, and viscera removed)
8. Headed and gutted, Eastern cut (head removed just behind the collarbone, and viscera removed)
10. Headed and gutted, tail removed (head removed usually in front of the collarbone, and viscera and tail removed)
11. Kirimi (head removed either in front or behind the collarbone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak)
12. Salted and split (head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail; product salted)
13. Wings (on skates, side fins are cut off next to body)
14. Roe (eggs, either loose or in sacs, or skeins)
15. Pectoral girdle (collarbone and associated bones, cartilage and flesh)
16. Heads (heads only, regardless where severed from body)
17. Cheeks (muscles on sides of head)
18. Chins (lower jaw, muscles, and flesh)
19. Belly (flesh in region of pelvic and pectoral fins and behind head)
20. Fillets with skin and ribs (meat and skin with ribs attached, from sides of body behind head and in front of tail)
21 Fillets with skin, no ribs (meat and skin with ribs removed, from sides of body behind head and in front of tail)
22. Fillets with ribs and no skin (meat and skin with ribs removed, from sides of body behind head and in front of tail)
23. Fillets, skinless/bone removed (meat with ribs and skin removed, from sides of body behind and in front of tail)
30. Surimi (paste from fish flesh and additives)
31. Minced (ground flesh)
32. Fish meal (ground fish and fish parts, including bone meal)
33. Fish oil (rendered oil)

§ 299.6 Requirements.

(a) *Compliance with permit requirements.* (1) U.S. nationals and vessels subject to this part must have a valid permit, as specified in § 299.4(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this part that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) *Compliance with Russian law.* U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) *Protection of marine mammals.* U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel was acting in accordance with any permit or authorization issued by the Russian Federation.

(d) *Cooperation with enforcement procedures.* (1) The operator of, or any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the Russian Federation to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of Russia.

(2) The operator of, and any person aboard, any U.S. vessel subject to this part, must comply with directions issued by authorized officers of the Russian Federation in connection with the seizure of the vessel for violation of the relevant laws or regulations of the Russian Federation.

(3) U.S. nationals and vessels subject to this part must pay all fines and penalties and comply with forfeiture sanctions imposed by the Russian Federation for violations of its relevant laws and regulations.

(4) The operator of, and any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing records, and catch for purposes of enforcing the Magnuson Act, the Agreement, and this part.

(e) *Compliance with observer requirements.* The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Russian EZ or for Russian fishery resources to which a Russian observer is assigned must—

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer;

(2) Provide to the observer, at no cost to the observer or the Russian Federation, the courtesies and accommodations provided to ship's officers;

(3) Cooperate with the observer in the conduct of his or her official duties; and

(4) Reimburse the Russian Federation for the costs of providing an observer aboard the vessel.

§ 299.7 Prohibited acts.

It shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation;

(b) To violate the provisions, conditions, and restrictions of an applicable permit;

(c) To violate the relevant laws and regulations of Russia;

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in § 299.6(c);

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 299.6(d);

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation;

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation;

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation;

(i) While fishing in the Russian EZ, or for Russian fishery resources, to refuse or fail to allow a Russian observer to board a vessel subject to this part;

(j) To fail to provide to a Russian observer on board a vessel fishing in the Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship's officers;

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this part;

(l) To fail to reimburse the Russian Federation for the costs incurred in the utilization of Russian observers placed aboard such vessel;

(m) To refuse to allow an authorized officer of the United States to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the Magnuson Act or this part;

(n) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the United States in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the Magnuson Act or this part;

(o) To resist a lawful arrest for any act prohibited under the Magnuson Act or this part;

(p) To interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act or this part;

(q) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, transship, import, export, or traffic in any manner, any fish or parts thereof taken or retained, landed, purchased, sold, traded, acquired, or possessed, in any manner, in violation of the relevant laws and regulations of the Russian Federation, the Magnuson Act, or this part;

(r) For a vessel subject to this part to enter the Russian EZ to fish unless a permit application has been submitted through NMFS to the competent authorities of the Russian Federation by the U.S. Department of State for such vessel as provided in this part;

(s) To refuse to allow an authorized officer to inspect any report or record required to be made or kept under the Magnuson Act, the Agreement, or any provision of this part;

(t) To refuse, or to fail, to submit fishing gear, fish, proceeds, fishing permit, fish-related records (such as reports, logs, tally sheets, fish tickets, and charts), or other property, subject to such person's control, to inspection, detention, or seizure by an authorized officer, or to interfere with or prevent by any means, such inspection;

(u) To make or use any false statement or representation, oral or written, to an authorized officer, or to conceal any material fact (including by omission), concerning any matter subject to investigation by that officer under the Magnuson Act, the Agreement, or this part;

(v) To falsify or fail to make, keep, or submit, any report or record required to be made, kept, or submitted under the Magnuson Act, the Agreement or this part in the manner, and within the time, required by this part;

(w) To fish for Russian fisheries or to possess fish taken in Russian fisheries on board a vessel subject to this part without a valid permit or other valid form of authorization issued by the competent authorities of the Russian Federation on board the vessel;

(x) To make a false statement in an application for a permit subject to this part;

(y) To falsify, or fail to report to NMFS, any change in the information contained in a permit application subject to this part within 7 calendar days of such change;

(z) To attempt to do, cause to be done, or aid and abet in doing, any of the foregoing; or

(aa) To violate any other provision of this part.

§ 299.8 Penalties.

In addition to any fine, penalty, or forfeiture imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of § 299.7 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable laws and regulations of the United States.

[FR Doc. 92-17780 Filed 7-29-92; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 147
Thursday, July 30, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 91-150-1]

Scrapie Indemnification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our scrapie regulations regarding payment of indemnification resulting from the destruction of sheep or goats affected by scrapie or exposed to scrapie, and bloodline animals, by removing the provisions for bloodline animals, establishing an indemnification payment amount of $150 for registered animals and $50 for other animals, and by making other, nonsubstantive changes. This proposal is based on a consensus reached by the Scrapie Negotiated Rulemaking Advisory Committee.

If adopted, this proposal would affect the owners of sheep or goat flocks participating in the indemnification program by reducing the maximum indemnification that may be paid for each sheep or goat and by establishing new requirements for the payment of indemnity because of scrapie.

DATES: Consideration will be given only to comments received on or before September 14, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-150-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6954.

SUPPLEMENTARY INFORMATION:

Current Indemnification Program

The regulations in 9 CFR part 54 (referred to below as the regulations) include provisions for the payment of Federal indemnification to the owners of sheep and goats destroyed due to the disease scrapie. Under the current regulations, if an animal is destroyed because it is determined to be either affected with scrapie, exposed to scrapie, or in the bloodline of an animal affected with scrapie, indemnification may be paid to its owner following appraisal of the animal at fair market value. The appraisal is done by an appraiser selected and employed by Veterinary Services, or, if the owner and State representative approve, the appraisal may be done by a Veterinary Services representative, either alone or with a State representative. The owner must agree, in writing, to accept this compensation from the United States government before the indemnification is paid.

The indemnification ceiling has been increased several times since the regulations were first promulgated in 1954 and is provided in § 54.7(a) of the regulations. Currently, the amount paid to the owner as indemnification is equal to two-thirds of the appraised value of the animal, not to exceed $300 per head.

The Federal regulations authorizing destruction and indemnity payments for certain animals because of scrapie have been amended several times since they were first promulgated in 1954. The amendments responded to revised assessments of the effectiveness of the eradication program, new evaluations of the risks presented by certain animals in infected flocks, and the availability of Federal funds for indemnity payments to animal owners, flock surveillance, and disease detection programs.

The regulations that were in effect from 1975-1983 provided that exposed animals as well as affected and bloodline animals were authorized for destruction and indemnification. An affected animal was defined in a 1978 amendment of the regulations to mean "[a]n animal for which a diagnosis of scrapie has been made by a Veterinary Services representative or State representative." Prior to 1978, a bloodline animal was defined to mean "any sheep or goat which is: the sire or dam of an affected animal; the descendant of an affected animal; or the full or half brother or sister of an affected animal."

During its early stages the eradication program was intended to prevent lateral transmission of scrapie by contact, and required depopulation of entire infected and source flocks if scrapie was reported. However, under these regulations flock owners risked losing valuable bloodline animals if they reported the disease. Following an analysis of flock depopulation and indemnification under the eradication program, the regulations were amended in 1983 to provide less drastic means for eradicating the disease and controlling its spread. Under the 1983 amendments of the regulations, destruction of animals and the payment of indemnification were authorized for: (1) Affected animals, that is, animals diagnosed by a Veterinary Services or State representative as having scrapie, and (2) bloodline animals. A definition of "bloodline animal" was added to read "[t]he dam of an affected animal and the dam's first generation progeny, the maternal granddam of an affected animal, the first generation progeny of an affected animal, and all succeeding generations of female progeny from female progeny of an affected female animal." This definition concentrated on the dam and female progeny of affected animals, a group representing higher risks than related males. Depopulation of entire flocks was no longer required. Except for a recent amendment of the regulations in 1988, explained below, the regulations as amended in 1983 are currently in effect.

The 1983 amendment authorizing indemnification only for affected and female bloodline animals was prompted by the unavailability of sufficient funds to indemnify owners for all affected and exposed animals. The supplementary information accompanying that amendment justified this change by pointing out that most of the indemnification paid before the change was not for animals affected by scrapie,

but for exposed animals believed to present minimal risk of transmitting the disease. (See 48 FR 16235, April 15, 1983.)

Some industry representatives have expressed concern that the more extensive destruction and indemnification policy from 1975 to 1983 may have posed a disincentive to keeping accurate flock records and to accurate reporting of the disease by flock owners, and was therefore not effective in eradicating the disease. We share their concern. Agency reports indicate that fewer flocks were reported as infected each year during the 1975-1983 period than following the 1983 amendment, under which only affected and female bloodline animals were eligible for destruction and indemnification. Reports of scrapie increased after 1983. We cannot determine whether the increased level of reporting of scrapie following the 1983 amendments is due to more owners choosing to apply for indemnity because it was made available without involving depopulation of entire flocks, or if the increase is due to reduced effectiveness of the eradication program as a result of not requiring flock depopulation.

Under the regulations that took effect in 1983, once an animal was determined to be an affected animal by the Animal and Plant Health Inspection Service (APHIS), all animals in the flock, except bloodline animals, were considered to be scrapie-exposed animals. All affected and bloodline animals could be destroyed and Federal indemnification paid for these animals. Although not required by the regulations, APHIS chose to subject the remaining animals to surveillance and periodic inspections for 42 months following the most recent exposure to scrapie. Surveillance involves significant costs to Federal and State governments for personnel, travel time, and travel expenses. To address surveillance costs, the regulations in § 54.8 were amended on January 29, 1988 (53 FR 2580–2582, Docket No. 87–087), to once again allow whole-flock destruction and indemnification, but only when a cost-benefit analysis establishes that it is more cost effective to destroy the flock than to maintain it under surveillance. This January 1988 amendment also limited the indemnification paid each year to the amount of funds appropriated by Congress that appear to be available for this purpose for the remainder of the fiscal year.

The current scrapie indemnification regulations are not entirely consistent with the new Voluntary Scrapie Flock Certification Program (Docket No. 91–144, referred to below as the Program) published elsewhere in this issue of the **Federal Register** and effective October 1, 1992. For example, the Program uses epidemiologic investigation in conjunction with a flock management plan to identify animals with a high risk of contracting scrapie, rather than using a bloodline approach. Also, membership in the Program and participation in Program flock plans provide a cost-effective alternative to the choice the current regulations provide for exposed flocks; i.e., whole-flock depopulation.

Therefore, we are proposing to revise the indemnification regulations in 9 CFR part 54 as described below.

Proposed Scrapie Indemnification Program

As discussed above, APHIS recently established the Voluntary Scrapie Flock Certification Program, a scrapie control program that was designed by the Scrapie Negotiated Rulemaking Advisory Committee (the Committee). The Committee agreed that the implementation and effectiveness of the Program would be enhanced by a concentrated effort at the outset to destroy designated animals in a number of flocks in which a clinical diagnosis of scrapie has been confirmed by laboratory studies.

Elimination of these animals would appreciably reduce the amount of existing infection and diminish the probability of continued exposure of animals which have not yet acquired the disease.

The Committee also agreed that after the known infection has been reduced in this manner, it should not be necessary to continue an intensive destruction and indemnification program in addition to the Voluntary Scrapie Flock Certification Program. The flock certification program could thus proceed without the necessity of the costly indemnification provisions.

During the period the scrapie indemnification program is in effect, it should result in the destruction of numerous scrapie-positive and scrapie-exposed animals. The removal of these animals should aid the future success of the Voluntary Scrapie Flock Certification Program by removing many known or probable sources of scrapie.

An intensive scrapie indemnification program lasting six months was seen as desirable by the Committee. However, as discussed below, limiting scrapie indemnification to a strict time period established at the outset is not workable due to uncertainties in the level of scrapie indemnity funds available to achieve the goals of indemnification.

The length of time the proposed scrapie indemnification program would exist would depend on the total number of sheep for which indemnification applications are made, and the funds available to APHIS to pay indemnities. Currently, APHIS has approximately $1.5 to $1.9 million in contingency funds available to pay scrapie indemnities. This sum is probably sufficient to pay indemnification for most but not all of the approximately 180 flocks currently known to APHIS to be infected with scrapie or to be the source of animals infected with scrapie. This sum is not sufficient to pay indemnification for all the applications for indemnification APHIS expects to receive, since we are certain there are other infected and source flocks not yet known to APHIS.

To cope with the fact that current funds are not sufficient to provide for all anticipated indemnification needs, and the fact that future funding levels for scrapie indemnification are unpredictable, we propose the requirements described below for equitable distribution of available scrapie indemnification funds. During its existence, the scrapie indemnification program would disburse available scrapie indemnification funds in accordance with these proposed regulations.

At some future time, APHIS would determine that the purpose of the scrapie indemnification program is near achievement, i.e., that the number of scrapie-infected and scrapie source flocks has been reduced to the point that remaining reservoirs of scrapie infection can be managed by non-indemnification programs such as the Voluntary Scrapie Flock Certification Program. When APHIS believes that the scrapie indemnification program is approaching that point, we would publish a proposal in the **Federal Register** to discontinue the scrapie indemnification program.

The regulations we propose to add consist of new §§ 54.2 through 54.6. Their proposed requirements are discussed below.

Proposed § 54.2, "Animals eligible for indemnification payments," lists the animals for which indemnity may be paid. We propose to pay indemnity for animals in infected flocks or source flocks, two terms defined in the Voluntary Scrapie Flock Certification Program final rule published elsewhere in this issue of the **Federal Register** and discussed below. We propose to pay indemnity for the entire depopulation of such flocks, except when APHIS exercises discretion based on epidemiologic investigation to depopulate only high-risk animals

within the infected or source flocks. Indemnity may also be paid for animals that an APHIS representative or State representative requests to be destroyed for diagnostic testing to identify infected or source flocks.

We propose to pay indemnity for animals in infected flocks or source flocks to reduce the numbers of animals in these flocks, which would aid the effort to control scrapie. Destroying these animals would prevent them from spreading scrapie to other animals, and would reduce the number of flocks that are known reservoirs of scrapie. We propose to pay indemnity for animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected or source flocks because testing these animals supports the program goal of controlling scrapie by helping to identify flocks that are reservoirs of scrapie.

This section also addresses what would happen if at any time the funds available for indemnity payments are not sufficient to pay for all applications approved for indemnification. As discussed below regarding proposed § 54.3(b), an indemnification application would not be approved unless sufficient funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity appear to be available to pay the indemnity. However, exact and current figures are not always available regarding the precise balance of available funds and the precise cost of each indemnification application in progress. At times, approved indemnification applications may represent a cost greater than the Congressionally appropriated or contingency funds available for indemnification. If this occurs, applicants for indemnification whose applications have been approved[1] in accordance with § 54.3(b) would be paid in the chronological order in which their applications were approved by APHIS, until available indemnification funds have been exhausted.

A flock owner may qualify for indemnification based on a determination that his or her flock is an infected flock or source flock. Under 9 CFR 79.3, a Veterinary Services representative or State representative determines a flock to be an infected flock after determining that a scrapie-positive animal is in the flock. According to part 79, a scrapie-positive animal is "An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, United States Department of Agriculture, or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through histological examination of central nervous system samples from the animal for microscopic lesions in the form of neuronal vacuoles or spongy degeneration, or by the use of protease-resistant protein analysis or other confirmatory techniques used in conjunction with histological examination."

Section 79.3 states that a Veterinary Services representative or State representative will determine a flock to be a source flock "after reviewing sale, movement, and breeding records that indicate the flock meets the definition of a source flock." The definition of source flock in part 79 states that it is a flock in which "at least two animals, that were diagnosed as scrapie-positive animals at an age of 54 months or less, were born. In order to be a source flock, the second scrapie-positive diagnosis must be made within 60 months of the first scrapie-positive diagnosis."

The only other owners of animals eligible for indemnification, in addition to owners of infected or source flocks, are owners of animals destroyed for diagnostic testing for scrapie at the request of an APHIS representative or State representative for the purpose of identifying infected flocks and source flocks.

Proposed § 54.2 also provides that no indemnity shall be paid to an owner who fails to provide APHIS, within 30 days of request, with bills of sale, pedigree registration certificates issued by breed or registry associations, and all other records regarding movement of animals into and from the flock containing animals for which the owner has applied for indemnification. This is an incentive to provide these records. Our reasons for needing these records are discussed below, in the discussion of § 54.4.

Proposed § 54.2(b) provides that no indemnity shall be paid for an animal acquired by the owner, other than through birth into the flock, during the 6 months prior to the date APHIS receives an application for indemnification, or to an owner of a flock who has owned a flock for less than one year prior to the date APHIS receives an application for indemnification. This provision is to discourage entrepreneurs from seeking to acquire scrapie-affected animals solely for the purpose of obtaining indemnity payments. If such activity occurred, any resulting movement of scrapie-affected animals and their introduction into new flocks could spread scrapie, and increase indemnity payments required for this program.

Proposed § 54.3, "Application by owners for indemnification payments," describes how owners must apply for indemnity payments. It states that the application must include certain information about the owner's flock and the reasons the owner believes he or she may qualify for indemnity payments, including information concerning whether an APHIS or State representative ever notified the owner that the flock was an infected flock or source flock, and information concerning any diagnosis of scrapie made for animals in the flock, any signs of scrapie[2] observed in the flock by the owner, and any movement of animals into the flock from infected flocks or source flocks. This information is needed by APHIS to decide whether the flock has been determined to be, or should be determined to be, an infected flock or a source flock.

In addition, the application must include signed release letters addressed to any breed associations or registries that maintain records of the owner's sheep or goats, authorizing the associations or registries to release to APHIS all records maintained by the association or registry on sheep or goats currently or formerly owned by the owner. This provision is needed to authorize APHIS to obtain information we may need to identify other flocks that may have scrapie, i.e., flocks the applicant obtained animals from or flocks to which the applicant transferred animals.

[1] No matter when an application for indemnification for an infected or source flock is received by APHIS, it cannot be approved until after the flock is determined to be an infected flock or source flock. Because the tests used to identify infected and source flocks are very time-consuming, if two flock owners apply at the same time for indemnification but one of the flocks was already determined to be an infected or source flock prior to the time of application, that flock would probably be approved for indemnification sooner than the other flock. There are approximately 180 flocks that have already been identified as infected or source flocks. We believe it is equitable that if the proposed program is adopted, members of this group who apply for indemnification would effectively have first priority if competition for limited funds affects the availability of indemnity funds. Many of the owners of these flocks applied for indemnification under the existing program but were denied it due to insufficient funds. If these owners reapply under the new program, approval of their applications would be speeded because their flocks have already been determined to be infected flocks or source flocks.

[2] Signs of scrapie are listed in § 79.2(a)(2) of this chapter, added by the Voluntary Scrapie Flock Certification Program final rule published elsewhere in this issue of the **Federal Register**, effective October 1, 1992.

Proposed § 54.3(b) describes how APHIS would evaluate and approve applications. APHIS would evaluate each application to determine whether the animals for which indemnification is requested are eligible for indemnification payments in accordance with proposed § 54.2. APHIS would approve an application, and notify the applicant in writing of the date of approval, after determining that sufficient funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity appear to be available to provide indemnification to the applicant and after determining that the application requests indemnification only for animals eligible for indemnification payments under the regulations.

Proposed § 54.4, "Certification by owners," states that as a condition of receiving indemnity payments, the owner must sign a written agreement with APHIS to do the following:

(a) The owner will make available for review within 30 days of request by an APHIS representative all bills of sale, pedigree registration certificates issued by breed or registry associations, and other records regarding movement of animals into and from the flock containing animals for which an indemnification application is made;

(b) If the owner maintains any flock after the payment of indemnification, the owner shall maintain the flock in accordance with the Voluntary Scrapie Flock Certification Program procedures referenced in subpart B of this part. This condition will significantly reduce the risk that if the owner continues to maintain a flock, it could become reinfected with scrapie.

(c) If the animal for which indemnification is paid is subject to any mortgage, the owner shall consent to the payment of the indemnification to the person holding the mortgage. This simply ensures that the indemnity payment will go to the person or persons entitled to the value of the animal.

Proposed § 54.5, "Amount of indemnification payments," states that indemnity paid under the regulations shall be paid in the amount of $150 for each registered animal destroyed and $50 for each other animal destroyed. The Committee established these values after considering both the average fair market value of sheep and goats in the United States, and the much lower average fair market value of sheep and goats from flocks known to be affected with scrapie. The Committee believes these values will provide a strong incentive for owners of eligible animals to apply for indemnity payments.

Proposed § 54.6, "Procedures for destruction of animals," sets forth proposed requirements for the destruction of animals for which indemnity is paid, and for the disposal of their carcasses. These requirements are necessary to ensure that the animals are destroyed and properly disposed of, to prevent the risk that they could continue to spread scrapie. In general, animals would be destroyed on their premises because moving them presents a risk that the animals could spread disease during movement, or could be separated from the flock and eventually be added to another flock. Animals could be moved to another location for destruction only with prior approval of an APHIS representative, who would not approve movement if it presents a risk of spreading disease. This section also requires that destroyed animals be buried, incinerated, or otherwise disposed of in accordance with applicable State law. Burial, incineration, and other methods approved by State law for disposal of animals exposed to disease are all methods that prevent the further spread of scrapie from the remains of the destroyed animals. Finally, this section also requires that the destruction and disposition of the animals shall be supervised by an APHIS representative. Supervision by an APHIS representative would ensure that animals for which indemnity is paid are actually destroyed, and would ensure that their carcasses are disposed of in accordance with the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

At present, there are about 11 million sheep and 2 million goats in the United States. This includes approximately 785,000 registered sheep and 10,215,000 nonregistered sheep. These animals are divided among approximately 112,000 flocks or producers, including approximately 28,000 registered flocks and 86,000 nonregistered flocks.

The current regulations allow owners of flocks affected by scrapie to apply for Federal indemnification. Indemnification may be paid for affected animals, bloodline animals and, in some cases, animals exposed to affected animals. Over the past 10 years approximately 10,000 animals have been destroyed in accordance with the regulations, with $2.2 million, or an average of $220 per animal, paid in indemnification. The indemnity paid was based on two-thirds of the fair market value of the animals destroyed, up to $300 per head. However, funds limitations meant that not all applications for indemnification were approved.

This proposed amendment, if adopted, would limit the indemnity paid to $150 per head for each registered animal destroyed and $50 for each other animal destroyed. In addition, the proposed rule would require applicants for indemnification to meet certain additional requirements, not in the current regulations, regarding access by APHIS to records concerning the flock, and participation by the flock owner in the Voluntary Scrapie Flock Certification Program.

Despite the facts that the rule, if adopted, would authorize a smaller average indemnity per animal and require flock owners to meet more conditions to qualify for indemnification, we believe that the rule, if adopted, would result in a large increase in applications for indemnification. This expectation rests on several factors. Since this indemnification program is intended to be discontinued after the number of scrapie-infected and scrapie source flocks has been sufficiently reduced, after which indemnification applications will not be accepted, flock owners who have been putting off applying for indemnification (perhaps waiting for the optimum situation of economic return) will be encouraged to apply while they can. Also, market conditions have increasingly turned against owners of animals from flocks known or suspected to be scrapie-infected or scrapie-exposed. As it becomes harder for these owners to sell their animals on the open market at a profit, they will become more motivated to apply for indemnification. Finally, many flock owners plan to join the Voluntary Scrapie Flock Certification Program, which would require them to dispose of any scrapie-infected or scrapie-exposed sheep or goats they possess. The

proposed indemnity regulations would allow these flock owners to recoup at least part of the cost of these animals.

The cost of the proposed indemnification program may fall anywhere within a wide range, depending largely on the total number of animals for which indemnification is paid during the life of the indemnification program. The indemnification payment per animal would be fixed at $150 for a registered animal and $50 for each other animal. We expect that flock owners will apply for indemnification for approximately 48,000 animals that are eligible for indemnification. This figure is based on the total number of infected flocks known to APHIS, and estimates by the American Sheep Industry Association of the number of sheep and goats eligible for indemnification.

APHIS data show that there are approximately 10,000 sheep known to be in infected or source flocks, and there is a reasonable expectation, based on the limited data available in this area, that the real figure for sheep in infected or source flocks is several times this number. As discussed above, we expect most flock owners eligible for indemnification, especially owners of registered sheep eligible for the higher indemnification rate, to apply for indemnification during the time indemnification would be available.

In light of this expectation, we estimate that indemnification costs to APHIS will fall in a range between $2.4 million (the indemnification cost for 48,000 nonregistered sheep or goats) and $7.2 million (the indemnification cost for 48,000 registered sheep or goats). We believe that registered animals are likely to comprise about 70 percent of the requests for indemnification, resulting in a total indemnification cost of approximately $5.76 million.

Sheep and goat owners applying for indemnification would endure a cost consisting of the difference between the indemnity payment they receive and the market price they could have obtained for the destroyed animals. However, in very many cases, there is no market for animals from flocks affected with scrapie, meaning that owners do not have the option of selling the animals for more than the indemnification price. Sheep and goat owners applying for indemnification would also pay whatever costs they incur in applying for indemnification and complying with the conditions involved in qualifying for it. We do not expect these application and compliance costs to be substantial, but we currently have insufficient data to estimate them.

The Committee considered various alternatives to this proposed rule. One alternative would be to establish a program to destroy all flocks containing infected and exposed sheep or goats, using a broad definition of "exposed," and without expressing any intent to discontinue indemnification after it has achieved specified goals. Depopulating entire flocks in this way would cost the Federal government many millions of dollars in indemnification payments, and would result in vast losses of animals to the industry. Both APHIS and the industry view this approach as undesirable because most of the animals that would be destroyed would likely present minimal risk of transmitting the disease and, by sheer volume, would account for most of the indemnification paid. This approach could also lead to abuse of the indemnification provisions by flock owners who fail to report scrapie when the market price of sheep and goats is high because they would stand to lose many animals worth far more than the indemnification they would receive. If the market price is depressed, however, this approach could result in increased reporting of infected flocks in order to receive indemnification payments. Also, when sheep market prices are low, flock owners eligible for indemnification might enlarge their flocks by buying low-cost animals in order to maximize their indemnification payments.

A majority of the approximately 112,000 sheep flocks or producers in the United States are small business entities. Most of the flock owners who have applied for indemnity in the past have been small entities, and this would probably continue to be true under the proposed indemnification program. We expect no more than approximately 500 small entities to apply for indemnification under the proposed program. Applicants who are approved would probably accrue a slight economic benefit from the indemnity payment, compared to the prices for which they could otherwise sell their sheep.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) It will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to:

(1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and

(2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 54

Animal diseases, Goats, Indemnification payments, Scrapie, Sheep.

Under the circumstances described above, we propose to amend 9 CFR part 54 (as amended by the Voluntary Scrapie Flock Certification Program final rule published elsewhere in this issue of the Federal Register, which is effective October 1, 1992) as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Part 54 would be amended by revising "Subpart A—Animals Destroyed Because of Scrapie" to read as follows:

Subpart A—Scrapie Indemnification Program

Sec.

54.2 Animals eligible for indemnification payments.

54.3 Application by owners for indemnification payments.

Sec.
54.4 Certification by owners.
54.5 Amount of indemnification payments.
54.6 Procedures for destruction of animals.

Subpart A—Scrapie Indemnification Program

§ 54.2 Animals eligible for indemnification payments.

(a) An indemnification payment for an animal may be paid only after the owner of the animal has applied for indemnification and the application has been approved in accordance with § 54.3. Indemnification payments may be paid only for the following:

(1) Total depopulation of flocks that were determined to be infected flocks or source flocks; or, at the discretion of APHIS based on epidemiologic investigation, depopulation of high-risk animals from infected flocks or source flocks; and,

(2) Animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected flocks and source flocks.

(b) If at any time funds appropriated by Congress for scrapie indemnity or APHIS contingency funds devoted to scrapie indemnity are not sufficient to pay all owners whose indemnification applications have been approved by APHIS in accordance with § 54.3(b), available funds will be paid in chronological order based on the dates that applications are approved by APHIS until available indemnification funds have been exhausted.

(c) No indemnification payment shall be made for an animal if the owner of the animal fails to provide APHIS, within 30 days of request by an APHIS representative or State representative, with bills of sale, pedigree registration certificates issued by breed or registry associations, and all other records regarding movement of animals into and from the flock containing animals for which the owner has applied for indemnification.

(d) No indemnification payment shall be made for an animal acquired by the owner, other than through birth within the flock, during the 6 months prior to the date of receipt by APHIS of an application by the owner for indemnification, or to an owner who has been an owner of a flock for less than one year prior to the date of receipt by APHIS of an application by the owner for indemnification.

§ 54.3 Application by owners for indemnification payments.

(a) An owner must apply to receive indemnification by submitting to the Administrator a written request containing the following information about the owner and the flock containing animals for which the application to receive indemnification is made:

(1) Name, address, and social security number (optional) of the owner;

(2) Number, breed(s), sex, and any individual identification of animals in the flock;

(3) Address of the premises on which the flock is located;

(4) Reasons the owner believes animals in his or her flock may be eligible for indemnification, including:

(i) If an APHIS representative or State representative notified the owner that his or her flock was an infected flock or source flock, the date such notice was given and the name of the APHIS representative or State representative who gave the notice;

(ii) If the owner is aware of any diagnosis of scrapie made for animals in the flock, the date of the diagnosis, identification of any animals destroyed in the process of making such diagnosis, and the name of the person or organization who made the diagnosis;

(iii) Any signs of scrapie listed in § 79.2(a)(2) of this chapter that are observed in the flock by the owner; and

(iv) Any movement of animals into the owner's flock from infected flocks or source flocks; and

(5) Signed release letters addressed to any breed associations or registries that maintain records of the owner's animals, authorizing the breed associations or registries to release to APHIS all records maintained by the breed associations or registries on animals currently or formerly owned by the owner.

(b) APHIS will evaluate each application to determine whether it is complete and includes the agreement required by § 54.4, and whether the animals for which indemnification is requested are eligible for indemnification payments in accordance with § 54.2. APHIS will approve an application, and notify the applicant in writing of the date of approval, after determining that the application requests indemnification only for:

(1) Animals in a flock that has been determined to be an infected flock or a source flock, or

(2) Animals destroyed for diagnostic testing at the request of an APHIS representative or State representative to identify infected flocks and source flocks. Indemnity will be paid until available indemnification funds have been exhausted.

§ 54.4 Certification by owners.

Before any indemnification payment is made to an owner, the owner must sign a written agreement with APHIS, certifying the following:

(a) The owner will make available for review, within 30 days of a request by an APHIS representative, all bills of sale, pedigree registration certificates issued by breed or registry associations, and other records regarding movement of animals into and from the flock containing animals for which an indemnification application is made;

(b) If the owner maintains any flock after the payment of indemnification, the owner shall maintain the flock in accordance with the Voluntary Scrapie Flock Certification Program procedures referenced in subpart B of this part;

(c) If the animal for which indemnification is paid is subject to any mortgage, the owner shall consent to the payment of the indemnification to the person holding the mortgage.

§ 54.5 Amount of indemnification payments.

Indemnity paid in accordance with § 54.2 shall be paid in the amount of $150 for each registered animal destroyed and $50 for each other animal destroyed.

§ 54.6 Procedures for destruction of animals.

(a) Animals for which indemnity is sought, other than animals destroyed for diagnostic testing, shall be destroyed on the premises where the animals are held, pastured, or penned at the time indemnity is approved; except that the animals may be moved for destruction to another location when movement to the location is approved in advance by an APHIS representative.

(b) The carcasses of animals destroyed in accordance with this section shall be disposed of by burial, incineration, or other disposal methods authorized by applicable State law.

(c) The destruction and disposition of animals destroyed in accordance with this section shall be performed in the presence of an APHIS representative.

Done in Washington, DC, this 23d day of July, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17892 Filed 7-29-92; 8:45 am]
BILLING CODE 3410-34-F

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 92-228]

RIN 1550-AA52

Reporting Requirements for Adjustable-Rate Mortgage Index Data

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS), proposes to amend its reporting regulation to require any member savings association within the jurisdiction of a Federal Home Loan Bank (FHLBank), that reports data from which a FHLBank calculates and publishes an adjustable-rate mortgage index, to continue to provide the FHLBank with such data upon the FHLBank's request. Such data currently may be extracted directly from the monthly Thrift Financial Report (TFR) by the FHLBank or reported to a FHLBank based on, but independently of, the TFR. The proposed regulation will ensure that the adjustable-rate mortgage index data continues to be reported, upon the FHLBank's request, notwithstanding the elimination of the monthly TFR.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. (92-228). These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 4 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, (202) 906-7275, Regulations and Legislation Division, Chief Counsel's Office; Patrick G. Berbakos, Deputy Assistant Director, Supervisory Systems, (202) 906-6720, Thomas A. Loeffler, Assistant Director of Supervisory Operations, (202) 906-5762, Supervisory Operations; Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On January 21, 1992, the OTS published a notice and request for comment in the Federal Register proposing to eliminate the monthly TFR as of January 1, 1993. 57 FR 2314 (1992). The OTS expects that savings associations will realize significant financial benefits from the elimination of the monthly TFR and that there will be a corresponding reduction in the paperwork burden on the thrift industry.

As set forth more fully in the notice and request for comment, the monthly TFR data were designed to be, and have been, used for a number of purposes other than monitoring the safety and soundness of savings associations. See 57 FR 2314 (1992). These purposes include providing the HFLBanks with data for calculating and publishing adjustable rate-mortgage indices.

The Federal Home Loan Bank of San Francisco (FHLB–San Francisco) was among the commenters. The FHLB–San Francisco expressed concern that elimination of the monthly TFR would jeopardize a critical publication. Savings associations under the jurisdiction of the FHLB–San Francisco currently extract the cost of funds data from their monthly TFR and report the data to the FHLB–San Francisco. The FHLB–San Francisco uses the data to calculate and publish the cost of funds for those Eleventh District savings associations as an adjustable-rate mortgage index used throughout the home mortgage lending industry. The FHLB–San Francisco noted the importance of certain TFR data and stated that if savings associations ceased to provide key data items it would be unable to publish the adjustable-rate mortgage index, which is the base index for over $250 billion of home mortgage loans nationwide.

The OTS recognizes that certain data contained in the monthly TFR are sufficiently important to the publication of adjustable-rate mortgage indices and to the efficient functioning of the home loan mortgage market to justify their continued collection.

The OTS has legal authority to require savings associations to continue to report adjustable rate-mortgage index data to the Federal Home Loan Banks. Section 402(e)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") authorizes the OTS to:

> take such action as may be necessary to assure that the indexes prepared by the (former) Federal Savings and Loan Insurance Corporation, the (former) Federal Home Loan Bank Board, and the Federal Home Loan Banks immediately prior to enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

Accordingly, the OTS proposes to amend its reporting regulations, 12 CFR 563.180, to require, upon the request of any FHLBank, member savings associations that currently provide data from which an adjustable-rate mortgage index is calculated to continue to report such data to the Federal Home Loan Bank. Such data will be limited to the data a savings association submitted to its FHLBank on or before August 9, 1989, the date of enactment of the FIRREA, and that was used for the calculation of an adjustable-rate mortgage index.

The OTS notes that the proposed regulation does not perpetuate the monthly TFR, which will be eliminated effective January 1, 1993. Nor does the proposed regulation impose a new reporting requirement. Rather, the data reporting regulation requires the continuation of an existing reporting requirement, but of a much more limited scope.

Solicitation of Comments

The OTS solicits comments on all aspects of this proposed regulation, including any suggested alternative means of collecting the adjustable-rate mortgage index data. A 30-day comment period is provided.

Executive Order 12291

The OTS has determined that this proposal does not constitute a "major rule" and, therefore, the preparation of a regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that the regulation proposed herein will not have a significant impact on a substantial number of small savings associations.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information in this proposed regulation is in 12 CFR 563.180(e). The information will be used

by the Federal Home Loan Banks in the publication of adjustable-rate mortgage indices and allow the home loan mortgage market to function efficiently.

Estimated total annual reporting burden: 25,200 hours.

Estimated average annual burden hours per respondent: 12.

Estimated number of respondents: 2100.

Estimated annual frequency of responses: 12.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby proposes to amend 563, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1828, 3806; 42 U.S.C. 4106.

2. Section 563.180 is amended by adding a new paragraph (e) to read as follows:

§ 563.180 Criminal referrals and other reports and statements.

* * * * *

(e) *Adjustable-rate mortgage indices.* Upon the request of its Federal Home Loan Bank, any savings association that reported on the monthly Thrift Financial Report and from which data a Federal Home Loan Bank calculated and published an adjustable-rate mortgage index shall continue to report such data to the Federal Home Loan Bank notwithstanding the OTS's elimination of the monthly Thrift Financial Report. The data to be reported under this paragraph shall be limited to those data a savings association reported for an adjustable-rate mortgage index calculated and published by a Federal Home Loan Bank on or before August 9, 1989.

Dated: May 26, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-17939 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 78N-052N]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Tentative Final Monograph for OTC Nasal Decongestant Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of proposed rulemaking that appeared in the **Federal Register** of June 19, 1992 (57 FR 27658), to amend the tentative final monograph for over-the-counter (OTC) nasal decongestant drug products to modify the drug interaction precaution statement required in the labeling of oral nasal decongestant drug products. The document was published with some inadvertent errors in the language proposing to amend 21 CFR 341.80. This document corrects those errors.

DATES: Written comments on the proposed regulation by August 18, 1992; written comments on the agency's economic impact determination by August 18, 1992. FDA is proposing that the final rule based on this proposal be effective 12 months after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

In FR Doc. 92-14355, appearing on page 27658, in the **Federal Register** of Friday, June 19, 1992, the following corrections are made:

1. On page 27659, in the first column, in the first full paragraph, in the fifth and sixth lines, the phrase "Do not take" is corrected to read "Do not use".

§ 341.80 [Corrected]

2. On page 27660, in the second column, in § 341.80 *Labeling of nasal decongestant drug products*, in paragraph (c)(1)(i)(*d*), appearing in the first and second lines, the phrase "Do not take" is corrected to read "Do not use".

Dated: July 22, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-17934 Filed 7-29-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0372-88; INTL-0401-88]

RIN 1545-AM15; 1545-AL80

Intercompany Transfer Pricing and Cost Sharing Regulations Under Section 482; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to intercompany transfer pricing and cost sharing under section 482 of the Internal Revenue Code.

DATES: The public hearing will be held on Monday, August 31, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 17, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [INTL-0372-88; INTL-0401-88], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking that contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 482 of the Internal Revenue Code of 1986. The proposed regulations

appeared in the **Federal Register** on Thursday, January 30, 1992 (57 FR 3571).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, August 17, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Becasue of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying.

Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-18085 Filed 7-27-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Alaska Abandoned Mine Land Reclamation (AMLR) Program (hereinafter, the "Alaska AMLR Program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) 30 U.S.C. Sections 1231 *et seq.* This amendment would implement a State-administrated Abandoned Mine Land Emergency Program in accordance with Section 410 of SMCRA.

This notice sets forth the times and locations that the Alaska AMLR Program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. August 31, 1992. If requested, a public hearing on the proposed amendment will be held on August 24, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on August 14, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett of the Casper Field Office, at the address listed below.

Copies of the Alaska AMLR Program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-5776.

Samuel M. Dunaway Jr., Acting Director, Division of Mining, Department of Natural Resources, P.O. Box 107016, Anchorage, Alaska 99510-7016, Telephone: (907) 563-1853.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 1983, the Secretary of the Interior approved the Alaska AMLR program. General background information, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alaska AMLR program can be found in the December 23, 1983, **Federal Register** (48 FR 56753).

II. Proposed Amendment

By letter dated May 28, 1992, (Administrative Record No. AK-D-1), Alaska submitted a proposed amendment to its AMLR Program pursuant to SMCRA. Alaska submitted the proposed amendment at the request of the Director, OSM. Alaska proposes to amend the Alaska Reclamation Plan to implement a State-administered Abandoned Mine Land Emergency Program in accordance with Section 410 of SMCRA.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Alaska AMLR Program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., m.d.t. August 14, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public

and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195; October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884, the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of AMLP programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations will not have a significant economic effect upon a substantial number of small entities. This rule will not impose any new Federal requirements; rather it will ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 17, 1992.

W. Hord Tipton,

Deputy Director, Operations & Technical Services.

[FR Doc. 92-17960 Filed 7-29-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of Indiana's response to a required program amendment codified in the Federal regulations at 30 CFR 914.16(a) concerning the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The required amendment concerns notification of permit decisions to commenters or objectors to a permit application, and to each party to an informal conference or hearing. Indiana's response to the required amendment is intended to assert that the Indiana statutes and rules currently allow for appropriate and timely notification in accordance with SMCRA and that an amendment is not necessary.

This notice sets forth the times and locations that the Indiana program, the required amendment, and Indiana's response will be available for public inspection, the comment period during which interested persons may submit written comments on Indiana's response, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 31, 1992; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on August 24, 1992; and requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 14, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Acting Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the response letter, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, Room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of Indiana's response letter by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Acting Director, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated February 15, 1991 (Administrative Record No. IND-0836), the Indiana Department of Natural Resources (IDNR) submitted proposed Program Amendment Number 91-2 to the Indiana program at Indiana Code (IC) 13-4.1-4-5.3 and other statutory provisions. Proposed IC 13-4.1-4-5.3 added a provision to the Indiana program that within 10 days after a permit is issued, the director of IDNR shall notify: local government officials; each person identified in the permit application under IC 13-4.1-3-3(a)(2); each person who has requested a hearing under IC 13-4.1-4-2(c)(2); and each person who has requested such a notice.

Upon review of the proposed amendment, OSM concluded that the proposed provision does not appear to afford adequate notice to commenters and objectors to a permit application because they would not be notified until a permit is issued. After a permit is issued, the time period specified in IC 13-4.1-4-5(b) for requesting a hearing on a permit decision has expired. Therefore, the proposed provision would not satisfy the Federal regulations at 30 CFR 773.19(b). In the **Federal Register** notice in which OSM announced approval of Program Amendment Number 91-2, OSM also required that

Indiana amend the Indiana program to provide timely notice to commenters and objectors and to each party to an informal conference or hearing (56 FR 37016–37019; August 2, 1991).

By letter dated May 4, 1992 (Administrative Record No. IND–1078), the IDNR submitted a response to the required amendment at 30 CFR 914.16(a). In the letter, Indiana asserted that the current Indiana program statutes and regulations allow for appropriate and timely notification in accordance with SMCRA and that an amendment of the Indiana program to satisfy 30 CFR 914.16(a) is not necessary.

The full text of the letter submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the Indiana program is no less effective than the Federal regulations at 30 CFR 773.19(b)(1).

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the information submitted by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the information is deemed adequate, the required amendment codified at 30 CFR 914.16(a) will be removed.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. August 14, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES.**" A summary of the meeting will be included in the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations would not have a significant economic effect upon a substantial number of small entities. This rule would not impose any new Federal requirements; rather it would ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–17968 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administration Record Number PA 808.00) would expand the definition of "coal preparation activity." The proposed amendment would also amend the definition of "valid existing rights" under section 86.1 (Definitions) by listing the actual calendar date when subsection 86.1(iii), concerning coal preparation activities and their associated haul roads, became effective. Lastly, the proposed rule makes it clear that any coal preparation activity at the site of ultimate coal use under the anthracite program is not subject to the regulations.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August

31, 1992, to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on August 24, 1992. Requests to present testimony at the hearing must be received on or before 4 p.m. on August 14, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, telephone: (717) 782–4036.

Pennsylvania Department of Environmental Resources, Bureau of Mining and Reclamation, Room 209 Executive House, 2nd and Chestnut Streets, P.O. 2357, Harrisburg, Pennsylvania 17105, telephone: (717) 787–5103.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

The Pennsylvania Department of Environmental Resources (PADER) submitted a proposed amendment (Administrative Record Number PA 720) on December 5, 1988, concerning coal preparation activities that were not previously regulated under its approved program. OSM approved the proposed amendment (54 FR 29704) on July 14, 1989.

On June 2, 1992, PADER submitted a proposed amendment (Administrative Record Number PA 808.00) to make minor revisions to PADER'S coal preparation regulations. The revisions expand the definition of coal preparation activity to include a facility associated with the coal preparation activity and make the definition consistent in Chapters 86, 88, and 89.

The amendment clarifies the effective date of subsection (iii) of the definition of "valid existing rights" in section 86.1 (Definitions) by listing the actual calendar date when subsection 86.1 (iii), concerning coal preparation activities and their associated haul roads, became effective. The amendment revises the coverage of off-site coal preparation activities under the anthracite program by exempting any activity located at the site of ultimate coal use. This revision is similar to that approved for the Bituminous program on May 31, 1991.

Proposed amendment changes are summarized below. Editorial changes are not included.

1. Sections 86.1, 88.1 and 89.5 Definitions-Coal Preparation Activity

The definition of coal preparation activity is expanded in the respective subsections to include a facility associated with the coal preparation activity and impoundments.

2. Section 86.1 Definitions-Valid Existing Rights

Subsection (iii), concerning coal preparation activities and their associated haul roads, is revised to show the actual calendar date that the provision approved by OSM on July 14, 1989 (54 FR 29704), became part of PADER's approved program. Proposed amendments are not part of PADER approved program until a notice is published in the *Pennsylvania Bulletin* stating that the amendment has been approved by OSM. The notice stating that the coal preparation plant permitting rules (PA 720) were effective on August 25, 1989, was published in 19 Pa.B. 3674 on August 26, 1989. Subsection (iii) was part of PA 720; thus, PADER deleted the phrase, "the effective date of this subsection" and inserted the date specified in the notice.

3. Section 88.381 General Requirements

Subsection 88.381(a) is revised to make it clear that the anthracite rules cover all off-site coal preparation activities except those that are located at the site of ultimate coal use. This change makes the anthracite provision consistent with the bituminous counterpart (section 89.171) that was approved on May 31, 1991 (56 FR 24687).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on August 14, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will

be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations would not have a significant economic effect upon a substantial number of small entities. This rule would not impose any new Federal requirements; rather it would ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that, to the extent allowed by law, the regulation meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the State regulations. The only decision allowed is approval, disapproval, or conditional approval of State program amendments.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 17, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-17070 Filed 7-29-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administrative Record Number PA-807.00) would expand the coverage of the Pennsylvania Department of Environmental Resource's (PADER) Small Operator Assistance Program (SOAP) by increasing the coal production eligibility limit from 100,000 to 300,000 tons. The amendment includes other changes to SOAP required by OSM in a Federal rulemaking (56 FR 24687, May 31, 1991) concerning coal production periods and family ownership.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on August 31, 1992 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on August 24, 1992. Requests to present testimony at the hearing must be received on or before 4 p.m. on August 17, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Pennsylvania Department of Environment Resources, Bureau of Mining and Reclamation, room 209, Executive House, 2d and Chestnut Streets, P.O. 2357, Harrisburg, Pennsylvania 17105, Telephone: (717) 787-5103.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 which includes the Abandoned Mine Lands Reclamation (AML) Act of 1990, as amended. Section 6011 (Small Operator Assistance), of the AML Act of 1990 amends section 507(c) of SMCRA by increasing the SOAP coal production eligibility limit for any surface coal mining operator from 100,000 tons to 300,000 tons. The proposed amendment includes a similar change.

PADER's program amendment (Administrative Record Number PA-790.00), dated December 22, 1989, included changes to its SOAP rules. In a Federal rulemaking (56 FR 24687, May 31, 1991) for PA 790.00, the Director found that PADER must make additional changes to its SOAP rules. Specifically, on page 24691, the Director required PADER to: (1) make it clear that any and all consecutive 12-month periods must be considered in the determination of

eligibility for assistance and (2) clarify that all coal produced by operations owned by the applicant's family members and relatives must be counted toward the 100,000 ton limitation. The proposed amendment includes changes that are intended to comply with the Director's requirements.

Proposed amendment changes are summarized below. Editorial changes are not included.

1. Section 86.83 Eligibility for Assistance

a. Subsection (a)(2) is amended to clarify that the coal production eligibility period applies to any consecutive 12-month period and to increase the coal production eligibility limit from 100,000 tons to 300,000 tons.

b. Subsection (b)(5) is amended to clarify that all coal produced by operations owned by the applicant's family members and relatives must be counted toward the coal production eligibility limit.

2. Section 86.94 Applicant Liability

a. Subsection (a)(4) is amended to clarify that the applicant is liable for the costs of laboratory services if the applicant's coal production exceeds 300,000 tons during any consecutive 12-month period.

b. Subsection (a)(5) is amended to clarify that both the applicant and the successor to permit are jointly liable for the costs of laboratory services if the successor's coal production exceeds 300,000 tons in any 12-month period.

III. Public Comment Procedures

In accordance with the provisions of 30 CRR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CRR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on August 14, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made part of the Administrative Record.

Executive Order 12778

The rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined that, to the extent allowed by law, the regulation meet the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17 (h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the State regulations. The only decision allowed is approval, disapproval, are conditional approval of State program amendments.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is modeled after and based upon counterpart Federal regulations for which an economic analysis and certification was previously made that such regulations would not have a significant economic effect upon a substantial number of small entities. This rule would not impose any new Federal requirements; rather it would ensure that existing requirements established by SMCRA and previously promulgated by OSM will be met by the State. In making the determination for the current rule, the Department of the Interior relied upon the data and assumptions in the previous analysis.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director Eastern Support Center.

[FR Doc. 92-17971 Filed 7-29-92; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 61

[RIN 3067-AB71]

National Flood Insurance Program; General Provisions and Insurance Coverage

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the General Provisions and Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) by clarifying certain insurance coverage provisions, amending the NFIP definitions of terms, and by establishing a new SFIP for the insuring of residential condominium building associations and the individual unit owners residing in such buildings, while making appropriate amendments to the existing SFIP forms, the Dwelling Form and the General Property Form. In addition, it is proposed that optional coverages be offered under the Dwelling Form whereby policyholders may purchase coverage for certain losses due

to: (1) Land subsidence, water seepage and sewer backups; (2) increased cost of construction arising out of compliance with local floodplain management ordinances; and (3) the standard policy's limitations of coverage in basements.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; (202) 646-3419.

SUPPLEMENTARY INFORMATION: Before discussing the more extensive changes involved in the establishment of a condominium master policy for residential condominium buildings and conforming changes to the Dwelling Form, it is appropriate to review the proposed coverage clarifications inasmuch as these will, if adopted, be included in all of the SFIP forms, including the general property policy form.

The flood insurance coverage clarifications proposed include:

1. In the Definitions section of the General Provisions, at § 59.1, and variously, in the SFIP, at § 61.13, a new definition of "association" is proposed to describe a group of unit owners which manages a condominium building. A new definition of "elevated building" is proposed in aid of simplification of the existing definition and in order to improve the Agency's litigation position in litigation involving elevated buildings. A new definition of "valued policy" is added. A new definition of "residential condominium building" is added. The definition of "direct physical loss by or from flood" is proposed to be amended by the addition of language making it clear that the SFIP is not a "valued policy" (in which the face amount of the policy is arrived at after inspection of the property by agreement between the insured and the insurer) and not subject to state laws which provide that, in a total loss of a building from the peril insured against, the insurer is liable for the face amount of the policy, even if the building, at the time of the loss, is worth less than the policy's coverage limits. As a matter of tax-payer expense, the NFIP could not incur the cost of inspecting nearly 2.5 million properties annually. A new definition of "coinsurance" is proposed to be added to the new SFIP residential condominium building form to encourage policyholders to insure to value by providing for a sharing of the cost to restore a building damaged by flood in cases in which the condominium association carries insufficient limits of insurance coverage on the building. A new definition of "improvement" is proposed to be added, and a new definition of "unit" is proposed in conjunction with the SFIP condominium forms of coverage. The definition of "special hazard area" is proposed to be added to the SFIP by way of clarifying the grant of coverage in the case of enclosures below the elevated floors of elevated buildings located in non-special hazard areas, with conforming changes at § 61.5(f)(9) of the regulations and in the SFIP, in Article V(f).

2. In Part 61—Insurance Coverage and Rates, at § 61.3, it is proposed to amend the grant of coverage for additions and extensions to include coverage only for a building which is attached to the insured structure by means of a common wall. Of course, covered contents in that part of the building are included. At § 61.4, and in the SFIP's conforming language in the "Losses Not Covered" article, the grant of coverage for losses arising due to sewer backup or seepage of water is limited to losses in which there has been, at the same time, actual physical contact between surface flood water and the insured building. In a final rule published on May 7, 1992, 57 FR 19539, FEMA revised the minimum deductibles (for buildings and contents separately) for flood insurance policies where subsidized premium rates are used to calculate the premiums. The new minimum deductibles ($750.00) will apply to policies issued or renewed on and after October 1, 1992, for buildings (and the contents in them) that were built before the effective date of the Flood Insurance Rate Map for the community or December 31, 1974, whichever is later, and that are located in zones A, AO, AH, A1-30, AE, VO, V1-30, VE, or V. Now, at § 61.5, paragraph (d), new deductibles are being proposed for the insuring of residential condominium buildings. At § 61.6, a new paragraph (c) is proposed to be added whereby, in the case of a residential condominium building in a regular program community, the allowable limits of building coverage are stated in terms of the number of units times the allowable limits of coverage for single family homeowners, in recognition of the program concept that in the residential condominium building, the unit owner is to be treated as a single-family homeowner. In addition, in the SFIP, the "Liberalization" clause is proposed to be amended to clarify that it only applies to losses occurring on or after the effective date of any policy changes. Finally, general editorial revisions to the SFIP are proposed to be made in connection with this rule.

3. As to the SFIP, in addition to the proposed changes discussed above, FEMA proposes to add a new policy form to accommodate the needs of residential condominium building associations and the unit owners of the dwelling units in such buildings. The changes proposed, therefore, are to the appendices to § 61.13 and will, if adopted, result in the following sequence of appendices:

- A (1), a revised Dwelling Form
- A (2), a revised General Property Form
- A (3), a new Residential Condominium Building Association Form

In addition, the proposed rule contemplates that the SFIP will be revised, in all of its forms, to clear up a long standing problem in property insurance: Whether certain items of property are covered under the building coverage as real property or under the personal property coverage as personal property. Certain property, such as carpeting, household appliances, lighting fixtures, draperies, etc., has historically presented property loss claims professionals with the dilemma of whether coverage is afforded for such property under building coverage or contents (personal property) coverage. The proposed SFIP forms will clear up the problem, by listing the kinds of property which can only be covered under the policy's building coverage and the kinds of property which can only be covered under the personal property coverage.

What follows is background information leading to this proposal.

Prior to January 1, 1989, residential condominium building associations and their member/unit owners insured their respective interests under the General Property and Dwelling Forms, respectively, of the SFIP.

For example, using NFIP regular program limits of coverage (see § 61.6), the association could insure the building's common elements under the General Property form for an amount equal to the lesser of its actual cash value (replacement cost value of the building at the time of loss, less depreciation) or the statutory limits of coverage available for the insuring of residential buildings other than single family residences, which is $250,000.00. Also, an association could insure a 2-4 unit residential condominium building under the Dwelling Form for $250,000.00.

At the same time, a unit owner could obtain insurance under the Dwelling form with coverage for:

1. Losses involving individually owned building and contents items;

2. Losses involving common element building damage to the building in which the unit is located in the event the loss exceeds the building coverage available to the condominium association and provided the total building loss payments attributable to the unit owner under both policies does not exceed the statutory limit of $185,000.00;

3. Assessments levied against the policyholder for building damage to other condominium structures of the association insured by the NFIP in an amount equal to the lesser of the available statutory limits of the building's common elements at the policy's inception date or the insured value of the damaged common property.

Under the above coverage provisions, it was possible for an association of condominium unit owners to obtain a policy of flood insurance covering the building's commonly owned elements in the sum of $250,000.00 and for each unit owner in that building to obtain the statutory single family limit of building coverage (of $185,000.00) to insure the unit owner's interest in the building, i.e., the improvements owned by the unit owner within the unit and the unit owner's responsibility for damages to the parts of the building owned in common with the other unit owners. If every unit owner purchased the allowable limit and the association did likewise, assuming the actual cash value of the building exceeded the statutory limits, in this case, $185,000.00 times the number of units, the building would be over-insured by $250,000.00. To correct this situation in the adjustment of total losses to such buildings, the Dwelling Form provides for a reduction in the amount to be paid equal to the value of the unit owner's share in the $250,000.00 paid under the association policy. Also, the general property form of SFIP contained an endorsement whereby, in a flood loss situation, any building coverage not used to pay for damages to the common elements could be applied toward payment of losses sustained by unit owners to improvements and installed appliances within the units owned solely by the affected unit owners.

Given this array of coverage provisions, in order to avoid duplicate payments or payments in excess of the statutory cap, NFIP insurers receiving a claim under a Dwelling policy for building damage sustained by a unit owner were instructed not to pay any part of the building loss until the insurer had satisfied itself that the condominium association had not insured the building for the maximum allowable amount of coverage. Adjusters were instructed to obtain either a copy of any condominium association policy or a letter signed by an officer of the association to the effect that no such policy existed prior to the adjustment of any Dwelling Policy loss.

Another aspect of the pre-1988 condominium insurance program is that, in cases in which the association took out the maximum building coverage of $250,000.00 and only a few of the unit owners purchased building coverage under the Dwelling form, the building could be underinsured, leaving the unit owners exposed to substantial assessments for the repair of building damages exceeding the association's policy limits.

In the next phase of the NFIP condominium insurance program, aimed primarily at encouraging condominium associations to insure the building to value, on January 1, 1988, FEMA introduced a new Condominium Master Policy (CMP) program.

Under this program, what follows are some of the key provisions which were incorporated into the NFIP's insurance manual, the business manual used by private sector property insurance agents when applying for flood insurance on behalf of their clients:

• *Eligibility.* To qualify for coverage under the Condominium Master Policy, a building must be in the Regular Program, contain at least 5 units, and have at least 3 floors. Only one building per policy is allowed.

Improvements within the units are also covered under the Condominium Master Policy. However, only contents owned in common are covered. Contents that are owned by individual unit owners must be insured under an individual unit owner's contents policy.

The residential unit owner should purchase contents coverage under the Dwelling Form. The non-residential unit owner should purchase contents coverage under the General Property Form.

• *Replacement Cost Coverage.* Replacement Cost Coverage is not available under the Condominium Master Policy at this time.

• *Coverage Limits.* The maximum amount of building coverage that can be purchased is the actual cash value of the building or the total (residential plus non-residential) number of units in the building times $185,000, whichever is less.

The coverage limits for contents is the actual cash value of the contents owned in common up to a maximum of $80,000 per building. A unit owner's occupant's contents coverage must be purchased under a separate policy (Dwelling Form).

• *Assessment Coverage.* Condominium Master Policy assessment coverage applies only when the building covered by the CMP is fully insured. The assessment coverage then applies to the common elements of any other building of the condominium association covered by flood insurance that is:

(i) In the name of the condominium association;

(ii) Provided under the Act; and

(iii) In an amount at least equal to the actual cash value of the building's common elements at the beginning of the current policy term or the maximum building coverage limit available under the Act, whichever is less.

Prominent among the purposes of the CMP program was the introduction of a condominium building insurance program which would encourage insurance to value while, at the same time, remove the possibility that duplicate payments could, despite claims adjuster and supervisor training efforts, occur when both the association and unit owner held a policy insuring the same property. This thrust was needed because, under the CMP program, the owner-insurance factor could be as much as $185,000.00 times the number of units in one policy, plus additional policies on each unit in the amount of $185,000.00, providing the same coverage.

To achieve the desired results, agents were notified that, as to their residential condominium association clients, the association was to notify unit owners of the benefits of a Condominium Master Policy and, if a unit owner had purchased an individual Dwelling Policy that provides building coverage, the association was to encourage the unit owner to contact the agent to determine if that coverage is needed. It was also pointed out to the agents that when insurance to value is purchased on the Condominium Master Policy, there would not be a need for individual unit policies.

Associations were also advised, through their agents, that unit owners and their agents were to consult with any existing mortgagee on an individual unit owner's policy to ensure that a mortgagee's mandated insurance requirement was being met. In such instances, the unit owner or the producer was advised to show the mortgagee evidence of the new Condominium Master Policy, documenting the amount of coverage. The advice went on to state that if a mortgagee determined that the coverage

purchased under the Condominium Master Policy was insufficient to meet the mandatory purchase requirements, the mortgagee could insist that a separate unit owner's building coverage policy remain in force.

The purposes of the proposed rule establishing a new, distinct SFIP for the insuring of residential condominium buildings are to bring economic factors to bear in the effort to encourage insurance to value in the case of residential condominium building association policies and to strengthen the safeguards against the possibility that duplicate claim payments could be made due to the existence of unit owner policies in these buildings. Thus, a new policy is being proposed, one with a penalty clause, i.e., a coinsurance clause which requires the insured condominium association to share in the flood loss if it has not insured the building to 80% of its replacement cost value. It is also the purpose of the proposed rule, to require residential condominium building associations to insure to value, and to place a strong limitation on the use of the unit owner's current assessment coverage availability by stipulating in the Dwelling Form that the unit owner's assessment coverage is excess over the association's coverage and by notifying the unit owner policyholder that his or her loss will not be paid until the NFIP has verified the extent to which the unit owner's loss may be covered under the condominium association policy.

At the core of this proposal, of course, stands the issue of why insurance to value is such an important property insurance principle. FIA believes—particularly in respect to the NFIP—that it is a bedrock principle of insurance because it:

- Provides an insurer with sufficient premium dollars to operate a fiscally sound insurance program.
- Provides policyholders with coverage needed for severe losses.
- Eliminates inequity in situations in which one insured insures property for its full value and another, at the same rate, insures property for a fraction of its value. Both insureds receive the same degree of compensation in a loss situation, yet the one insuring to value pays a larger share of the combined premium.

To sum up, the purpose of this proposal is to channel condominium associations into the property insurance mainstream of insurance to value by introducing a residential condominium building association policy with replacement cost coverage and a coinsurance clause for the building coverage.

The new CMP program will preserve the best features of the current program while achieving its purposes. The new CMP program is proposed to establish a Residential Condominium Building Association Policy of flood insurance with:

- Replacement cost coverage (building only);
- Limits not to exceed $185,000 times number of units;
- 80% co-insurance factor for building coverage;
- Building and contents coverage for:
- All commonly owned contents otherwise eligible.
- Entire building, including unit-owner improvements and appliances within units.
- Eligibility for all residential condominium associations as to any residential condominium building having 75% of its interior space occupied by residential units, with no limitation on the number of units or floors the building must have as a condition for eligibility—an improvement over the current CMP program.
- Contents coverage on an ACV basis, with no coinsurance clause.

The coinsurance clause formula and the way in which it will dissuade condominium associations from underinsuring condominium buildings is described as follows:

$$\frac{\text{Insurance Carried}}{\text{Insurance Required}} \times \text{Amount of Loss} = \text{Limit of Recovery}$$

a. *Example 1:* The insurance carried is $500,000.00, the replacement cost value of the building is $1,000,000.00 (which is available under the National Flood Insurance Program) and the amount of the loss is $240,000.00. The formula is applied as follows:

$$\frac{\$500,000.00}{\$1,000,000.00 \times 80\%} \times \$240,000.00 =$$

$$\frac{\$500,000.00}{\$800,000.00} \times \$240,000.00 = \$149,500.00 \text{ Limit of Recovery } *$$

* ($150,000 Less Deductible). The balance of the loss in the sum of $90,500.00 is not covered.

b. *Example 2:* The insurance carried is $1,850,000.00, the replacement cost value of the building is $2,000,000.00 and the amount of loss is $1,000,000.00. The formula is not applied because $1,850,000 exceeds $1,600,000 ($2,000,000 × 80%). The Insured is paid the full amount of the loss ($1 Million).

FEMA believes that it is appropriate and necessary at this time to establish coinsurance provisions as a strong inducement for the insuring of residential condominium buildings to value because, in the first place, the NFIP cannot refuse to insure such buildings. As long as the community is eligible to participate in the NFIP and the building meets the program's insurance coverage underwriting criteria, the NFIP must insure it, even if the building is seriously underinsured. In view of this statutory mandate, FEMA believes it is not in the best interests of the NFIP policyholders who pay premiums to insure their property to value to utilize their premium dollars to help defray the losses of those who pay less in premiums, but at the same rate, and who insure the building in an amount which they judge is enough to cover the damages caused by a moderate flooding event.

The NFIP has not had to use taxpayers' funds to meet the insurance program's loss and administrative costs since 1985 and has operated and funded its flood insurance activities strictly through the reserving and investing of the premiums paid by its policyholders. Those who underinsure their property gain a benefit from such premium reserves disproportionate to the benefits gained by those who insure to value and pay enough premiums to cover the catastrophic loss.

Underinsurance also diminishes premium income in a way which could jeopardize taxpayer funds in a catastrophic flooding situation, or a series of catastrophic floods because, should the NFIP exhaust its premium reserves in paying losses, additional funds will have to come out of the general treasury through the NFIP's statutory borrowing authority of $1 billion.

In addition, recent studies and inquiries by the Federal Insurance Administration (FIA) concerning the extent to which there may be an underinsurance problem in the case of the Condominium Master Policy Program indicate that such a problem exists.

For example, in one study of over 70 CMPs issued by the NFIP through its direct federal insurance program, 25% of the residential condominium buildings insured were under-insured and some carry limits as low as $250,000, which represents only a fraction of the values of the buildings insured. Incidentally, the carrying of the $250,000 limit signals another fiscally unfortunate aspect of the underinsurance practice. Prior to the introduction of the CMP program, the

quarter of a million dollar limit for building coverage was the maximum amount of coverage available, and the premium for this coverage is $932.00. Under the CMP program, the premium is only $483.50 (A-zone rates, lowest floor at base flood elevation, condominium building with more than one floor, no basement). The reason for the rate differential is that, in establishing rates for the CMP, the expectation was that the residential condominium association would insure their buildings to value, but this has not occurred to the extent it should have. In addition to the NFIP's direct program experience, the indication FIA has obtained from many of the WYO Program companies (see 44 CFR 62.23) issuing NFIP flood insurance to their policyholders under an arrangement with the Federal Insurance Administrator is that the companies, too, are experiencing underinsurance problems under the CMP program.

With the introduction of the new condominium master policy program, FIA expects that the additional premium funds generated by the proposed rule's insurance to value inducements will help assure sufficient policyholder premium reserves for the continued administration of the NFIP without resort to taxpayer subsidies.

Regarding the proposal to display in each policy form the exact nature of many of the items of property which are intended to be covered, as applicable, *only* under building coverage, or *only* under the personal property coverage, it is believed that this change, too, will generate additional premium funds. This is so because, in the adjustment of property insurance losses under the NFIP and, in the private sector, under the 1968 Homeowners Policy Program, many items of "building equipment" covered under the building coverage constituted personal property for which coverage was also provided under the contents, or personal property, coverage. This resulted in a loss adjustment involving solely the building coverage in the payment, under building coverage, for such items as tools, fans, washing machines, dryers, pool equipment, outdoor equipment, and the like.

Under the NFIP, personal property coverage-in-force constitutes only about 14% of the building coverage and, with the building coverage rates being generally lower than the rates for personal property coverage, there exists a built-in inducement for policyholders to purchase, under the current rules, low limits of personal property coverage because a great many items of personal property are also covered, as "building equipment" and "outdoor equipment", under the building coverage. A few years ago, the Homeowner's Program was amended to delete "building equipment" and "outdoor equipment" coverage. Now the NFIP proposes to restructure its SFIPs so as to provide only Building Coverage and Personal Property Coverage, under which coverages building and outdoor equipment will be covered, as appropriate, depending upon whether a particular item of property is real property or personal property.

In addition, the NFIP proposes to provide further clarification of what constitutes building and personal property items of coverage by specifically listing certain of the key items of property in its policies. By so doing:

1. Policyholders will be encouraged to purchase adequate personal property coverage to cover items such as many household appliances, for which coverage has in the past been provided under the building coverage.

2. Policyholders, insurance agents, and loss adjusters will have a clear statement, at the time of a loss, of what is covered under the building coverage and what is covered under the personal property coverage. This will end a great deal of confusion and help put to rest, as to the NFIP, the conflicting court decisions as to these items which have evolved over the past few decades.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, as amended. OMB control number 3067-0021 is assigned to the collection of information under this proposed rule.

Public reporting and recordkeeping burden for the collection of information titled "Claims for National Flood Insurance Program" is estimated to average 3.8 hours per claim. The estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information requirements. The information required under the terms of the Standard Flood Insurance Policies described in appendixes A(1), A(2), and A(3) of the proposed rule is collected using the following FEMA forms:

FEMA Form No.	Title	Burden estimate
81-40	Worksheet-contents-personal property	2.5 hours.
81-40	Worksheet-building	2.5 hours.
81-41A	Worksheet-building (Cont'd)	1.0 hour.
81-42	Proof of loss	5-6 minutes.
81-43	Notice of loss	4 minutes.
81-44	Statement as to full cost of repair or replacement cost coverage, subject to the terms and conditions of this policy	6-7 minutes.
81-57	National Flood Insurance Program preliminary report	4 minutes.
81-58	National Flood Insurance Program final report	4 minutes.
81-59	National Flood Insurance Program narrative report	5-6 minutes.
81-63	Cause of Loss and Subrogation report	45 minutes to 1 hour.

Send comments regarding the burden estimates or any aspect of the collection, including suggestions for reducing the burden, to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, and to the Office of Management and Budget, Paperwork Reduction Project (3067-0021), Washington, DC 20503.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under

Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Parts 59 and 61

Flood Insurance.

Accordingly, FEMA proposes to amend 44 CFR parts 59 and 61 as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for part 59 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 59.1 is proposed to be amended to read as follows:

a. By removing the current definition of *Elevated building.*

b. By adding, alphabetically, new definitions of *Association, Elevated building, Residential condominium building,* and *Valued policy* to read as follows:

§ 59.1 Definitions.

* * * * *

Association means a group of unit owners which manages a residential condominium building in which the insured unit owner maintains a residence.

* * * * *

Elevated building means a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

* * * * *

Residential condominium building means a building owned by the members of a condominium containing one or more residential units and in which at least 75% of the floor area within the building is residential.

* * * * *

Valued policy means a policy contract in which the insurer and the insured agree on the value of the property insured, that value being payable in event of total loss.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

4. Section 61.3 is proposed to be amended by adding a new sentence at the end thereof to read as follows:

§ 61.3 Types of coverage.

* * * Additions and extensions attached to a structure for which coverage is provided shall not include a structure which is attached to the insured structure by any means other than a common wall.

§ 61.4 [Amended]

5. Section 61.4 is proposed to be amended, at paragraph (c), line 5, by removing the period after the word "situation" and adding the following, "unless at the same time there has been actual physical contact between surface flood water and the insured property described in the application for flood insurance.".

6. Section 61.5 is proposed to be amended as follows:

a. By revising paragraphs (d) (1) and (d) (2) to read as follows:

§ 61.5 Special terms and conditions.

* * * * *

(d)(1) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. For a building located in an Emergency Program community or for any building located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for buildings built before the effective date of the FIRM (or December 31, 1974, whichever is later) are used to compute the premium, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $750.00; and (ii) for contents (i.e., insured personal property) losses, $750.00; provided, however, in the case of a residential condominium building in a Regular Program community having five or more units, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $7,500.00; and (ii) for contents (i.e., insured personal property) losses, $7,500.00.

(2) For buildings other than those described in paragraph (d)(1) of this section, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $500.00; and (ii) for contents (i.e., insured personal property) losses, $500.00; provided, however, in the case of a residential condominium building in a Regular Program community having five or more units, the amount of the deductible for each loss occurrence is (i) for structural (i.e., insured building) losses, $5,000.00; and (ii) for contents (i.e., insured personal property) losses, $5,000.00.

* * * * *

§ 61.5 [Amended]

b. In paragraph (d)(3) add above the "Note," the following new "Category Four" of "Optional Deductibles" to read as follows:

* * * * *

(3) * * *

CATEGORY FOUR—RESIDENTIAL CONDOMINIUM BUILDING POLICIES

Options.....	Policy combining building and contents	Single Coverage only policy (either building or contents)
	$10,000/$10,000	$10,000
	$25,000/$10,000	$25,000

* * * * *

c. In paragraph (f)(9), line 1, after the first reference of the phrase "Post-FIRM building," add the phrase "which is located in a special hazard area".

7. Section 61.6 is proposed to be amended by adding a new paragraph (c), to read as follows:

§ 61.6 Maximum amounts of coverage available.

* * * * *

(c) In the insuring of a residential condominium building in a Regular Program community, the maximum limits of building coverage permitted under the Act is the lesser of $185,000.00 times the number of units in the building or the building's replacement cost. The maximum limit of contents coverage permitted under the Act in a Regular Program community is the lesser of $80,000.00 or the actual cash value of the contents.

§ 61.13 [Amended]

8. Section 61.13 is proposed to be amended as follows:

a. By removing the parenthetical phrase in paragraph (a) and adding in its place the following parenthetical phrase:

("General Property, Dwelling, and Residential Condominium Building Association")

b. By adding, in paragraph (d) after the word "than" and before the word "through", the phrase "by the express written consent of the Administrator".

9. Appendix A (1) of part 61 is proposed to be revised to read as follows:

Appendix A (1)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in title 44 of the Code of Federal Regulations, subchapter B]

Dwelling Form

READ THE POLICY CAREFULLY. THE COVERAGE PROVIDED IS SUBJECT TO LIMITATIONS, RESTRICTIONS AND EXCLUSIONS. THIS POLICY COVERS ONLY A RESIDENTIAL BUILDING, NOT A CONDOMINIUM, DESIGNED FOR PRINCIPAL USE AS A DWELLING PLACE FOR NO MORE THAN FOUR FAMILIES, OR A SINGLE FAMILY DWELLING UNIT IN A CONDOMINIUM BUILDING.

Insuring Agreement

AGREEMENT OF INSURANCE between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we," "our," and "us,") and the Insured, (hereinafter known as "you" and "your").

We insure you against all *DIRECT PHYSICAL LOSS BY OR FROM FLOOD* to the insured property, based upon:

1. Your having paid the correct amount of premium; and

2. Our reliance on the accuracy of the information and statements you have furnished; and

3. All the terms of this policy, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, you are insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

We insure only:

A. The named Insured and legal representatives;

B. Any mortgagee and loss payee named in the *application and declarations page* in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

AS USED IN THIS POLICY—

Act means the National Flood Insurance Act of 1968, and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the *policy* to be issued and the correct premium payment. The correct premium payment must accompany the *application* for the policy to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the *condominium building* in which you, as the insured unit owner, maintain your residence.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building* having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H, and a *walled and roofed building* in the course of construction, alteration or repair.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Condominium Association Policy means a *policy* of *flood* insurance coverage issued to an *association* pursuant to the *Act*.

Declarations Page is a computer generated summary of information furnished by you in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and our name. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *flood* (as defined in this *policy*).

Dwelling means a *building* designed for use as a residence for no more than four families and a single family *dwelling unit* in a *condominium building*.

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page*.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant*. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, *Write Your Own company* expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land area from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, installations, or additions comprising a part of the insured *building* or *condominium dwelling unit*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between you and us; it includes this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. Only one *dwelling building*

or *unit*, specifically described by you in the *application*, may be insured under this *policy*, unless application to cover more than one *dwelling building* or *unit* is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a Flood Insurance Rate Map (FIRM) is in effect and full limits of coverage are available under the *Act*.

Residential condominium building means a *building* owned by the members of a *Condominium Association* and containing one or more residential *units*.

Special hazard area means an area having special *flood*, mudslide, (i.e., mudflow) and/or *flood*-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, AE, A99, AH, VO, V1–30, VE, V, M or E.

Unit means a single family *dwelling unit*, owned by the named Insured, in a *condominium building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that *building* will resist flotation, collapse and lateral movement.

Write Your Own company means a private sector property insurance company that is authorized to sell the *National Flood Insurance Program Policy* pursuant to an arrangement with the Federal Insurance Administrator.

Article 3—Losses Not Covered

We only provide coverage for *direct physical loss by or from flood* which means we do not cover:

A. *Compensation, reimbursement or allowance for*:

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Your additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface *flood* water and the insured property, or from freezing, thawing, or the pressure or weight of ice or water.

4. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the described *dwelling* or from any condition which is within your control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 A.M. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by you, a loss which is already in progress as of 12:01 A.M. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which your insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by your modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by you or any member of your household.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. Loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered

(Subject to Articles 3, 5, and 6 Provisions, Which Also Apply to the Other Articles, Terms and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

Subject to paragraph C below, we cover your *dwelling* which includes:

A. A residential *building*, not a condominium, designed for principal use as a *dwelling* place for no more than four families, including:

1. Additions and extensions attached to and in contact with the *dwelling* by means of a common wall.

2. Materials and supplies to be used in constructing, altering or repairing the *dwelling* or an appurtenant structure while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

3. An appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover the *dwelling*, including additions to the *dwelling*. By exercising this option, you reduce the amount of insurance available to cover other loss relating to Coverage A.

This option may not be used to extend coverage to *buildings*:

a. Occupied, rented or leased in whole or in part for *dwelling* purposes (or held for such use); or

b. Used in whole or in part for business or farming purposes (or held for such uses); or

c. Which are boathouses.

4. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed*;

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1-30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE

or V1-30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-30 and the top of the floor in Zones AH, AE or A1-30.

B. Or, we cover your single-family *dwelling unit*, including *improvements* therein owned solely by you, in a *condominium building*, along with your share of assessments made against you as a tenant in common in that *building's* common elements and the common elements of any other *building* of your *Condominium Association* covered by insurance that is:

1. In the name of your *Condominium Association*;

2. Provided under the *Act*; and

3. In an amount at least equal to the *actual cash value* of the *building's* common elements at the beginning of the current *policy* term or the maximum *building* coverage limit available under the *Act*, whichever is less.

Provided, with respect to coverage for single-family *dwelling unit* assessments:

1. Coverage is available only when each of the *unit* owners comprising the membership of the *Association* are also assessed by reason of the same cause and provided the assessment arises out of a *direct physical loss by or from* flood to the *condominium building* in which your unit is located or to another *condominium building* of the *Association*, as to which the *condominium* documents (Articles of Association, Declarations, and your Deed) impose upon you the responsibility for such an assessment). The deductibles provisions of *Article 7* of this *policy* do not apply to assessments.

2. Assessments made by the *Association* to recoup the amount of a loss deductible incurred by the *Association* in connection with any *condominium building* or contents *policy* of insurance are not covered.

3. Assessments made by the *Association* in connection with loss of or damage to personal property, including any contents of any *condominium building* of the *Association*, are not covered.

4. Assessments made by the *Association* of a *condominium building* are not covered if the assessments are made to recoup loss not reimbursed to the *Association*, under a *policy* of insurance issued pursuant to the *National Flood Insurance Program*, by reason of the fact that the *condominium building* insured under such *policy* was not, at the time of the loss, insured in an amount equal to the lesser of 80% or more of the full replacement cost of the *building* or the maximum amount of insurance available under the *National Flood Insurance Program*.

C. And, under this "Coverage A—Building Property", we cover fixtures including the following items of property, if owned solely by you, for which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall mirrors permanently installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Sprinklers
- Built-in Dishwashers
- Garbage Disposal Units
- Outdoor Antennas and Aerials
- Pumps and machinery for operating them
- Carpet Permanently Installed Over Unfinished Flooring
- Built-in Microwave Ovens
- Hot Water Heaters, Including Solar Water Heaters
- Ranges and Stoves
- Radiators
- Kitchen Cabinets
- Light Fixtures
- Plumbing Fixtures
- Refrigerators

Coverage B—Personal Property

A. *Subject to paragraphs B. and C. below*, we cover personal property:

1. Owned by you as contents incidental to the occupancy of the *building*.

2. Owned by members of your family in your household.

3. At your option and within the limits of personal property coverage you have purchased, owned by your guests and servants.

Such personal property is covered while stored:

a. Within your *dwelling*;

b. Within a fully enclosed *building* at the property address;

c. Within a *building* having in place two or more rigid walls and a fully secured roof if the contents are secured to prevent flotation out of the *building* during flooding. The flotation out of the *building* during flooding of any such contents shall be deemed to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation; or

d. At a temporary location, as expressly authorized under this *policy* (see Article 5, paragraph C.2.).

B. Coverage, under this "Coverage B—Personal Property", includes the following property if owned solely by you, for which coverage is *not provided* under "Coverage A—Building Property":

- Clothes Washers.
- Clothes Dryers.
- Food Freezers.
- Air Conditioning Units.
- Portable Dishwashers.
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed.
- Carpet not permanently installed over unfinished flooring.
- Outdoor equipment and furniture stored inside the *dwelling* or another fully enclosed *building* at the property address.
- Portable microwave ovens and "cook-out" grills, ovens and the like.

C. *Limitations*. Under this "Coverage B—Personal Property" we shall not reimburse you for loss as to:

1. Personal property owned by you in common with any *unit* owners comprising the membership of a *Condominium Association*.

2. The following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

Within the limits of your coverage, we cover any expense you incur, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a *flood*. Under these provisions coverage extends to:

A. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property.

B. Parts of the insured property which is anywhere:

1. On the described premises; and

2. On property beyond the boundaries of the described premises.

Article 5—Special Provisions Applicable To Coverages A, B, and C

A. *Condominium unit owner coverage in excess over Association coverage*. The insurance under this *policy* shall be excess over any insurance in the name of your *Condominium Association* covering the same property covered by this *policy*. Loss shall not be paid under "Coverage A—Building Property", paragraph B., and under "Coverage B—Personal Property" until we have verified the extent to which loss to *improvements* and personal property within your *unit*, and to the common elements of your *building* or any other *building* of your *Condominium Association*, is covered by any insurance in the name of your *Condominium Association*.

Should the amount of insurance collectible under this *policy* for a loss, when combined with any recovery available to you as a tenant in common under any *Condominium Association flood* insurance *policy* provided under the *Act* for the same loss, exceed the statutorily permissible limits of *building* coverage available for the insuring of single-family *dwellings* under the *Act*, then the limits of *building* coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

B. *This policy is not a valued policy*. Loss will be paid, provided you have purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

C. *Insured Property, Covered Locations*. Your *dwelling* and personal property are covered while the property is located:

1. At the property address shown on the *application* or endorsement, if corrected by endorsement; and

2. For 45 days, at another place above ground level or outside of the *special hazard area*, to which any of the insured property

shall necessarily be removed by you in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, in moving any of your insured property temporarily away from the peril of *flood* shall be reimbursed to you in an amount not to exceed $500. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement.

D. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by you for the purchase of the following items are also covered, in an aggregate amount not to exceed $500:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;
2. Fill for temporary levees;
3. Pumps; and
4. Wood;

all for thepurpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement.

For reimbursement under this paragraph D to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

Article 6—Property Not Covered

We do *not cover* any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tank and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building* or *unit*.

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on your premises, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

F. *Building enclosures and personal property lower than the elevated floors of elevated buildings, and basements, including personal property in a basement, as follows:*

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in *Article 2:*

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other *improvements*, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., except for the case of a *dwelling unit* in a *condominium building* as to which the *Association's* coverage is sufficient to cover such property, the following *building* and personal property items *are covered* so long as you have *purchased building* and personal property coverage, *as appropriate:*

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and or tanks used in conjunction with solar energy
- Furnaces
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Elevators and equipment, except for such equipment located below the *base flood* level if such equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49% of the *actual cash value* of such *building* or unit is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers, meaning units* which are primarily containers, rather than *buildings* (such as gas and liquid tanks).

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which you bear a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the Flood Insurance Rate Map (FIRM) or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss

occurrence is determined as follows: we shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: we shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

Article 8—Replacement Cost Provisions

Subject to *Article 7* and the limits of building coverage you have purchased, these provisions shall apply only to a single family *dwelling* which is your principal residence and which is covered under this *policy*.

For purposes of this *Article 8*, a single family *dwelling* qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your *building* for either:

1. 80% of the calendar year immediately preceding the loss; or

2. 80% of the period of your ownership of the insured *building*, if less than one calendar year immediately preceded the loss.

The following are excluded from replacement cost coverage:

1. A *unit* in a *condominium building*.

2. Outdoor antennas and aerials, awnings, and other outdoor equipment, all whether attached to the *building* or not.

3. Carpeting.

4. Appliances.

Under this Article:

A. If at the time of loss the total amount of insurance applicable to the *dwelling* is 80% or more of the full replacement cost of such *dwelling*, or is the maximum amount of insurance available under the *National Flood Insurance Program*, the coverage of this *policy* applicable to the *dwelling* is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to the *dwelling* is less than 80 of the full replacement cost of such *dwelling* and less than the maximum amount of insurance available under the *National Flood Insurance Program*, our liability for loss shall not exceed the larger of the following amounts:

1. The *actual cash value* (meaning replacement cost less depreciation) of that part of the *dwelling* damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the *dwelling* damaged or destroyed, which the total amount of insurance applicable to the *dwelling* bears to 80% of the full replacement cost of such *dwelling*.

If 80% of the full replacement cost of such *dwelling* is greater than the maximum amount of insurance available under the *National Flood Insurance Program*, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. Our liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building*; or

2. The replacement cost of the *dwelling* or any part thereof identical with such *dwelling* on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *dwelling* or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said *dwelling*, we shall not be liable for any loss under paragraph A. or subparagraph B.2. of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said *dwelling* is 80% or more of the full replacement cost of such *dwelling*, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest *basement* floor, or where there is no *basement*, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

G. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) *home* which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet or personal property (contents) covered under this *policy*, nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your *dwelling* sustains a total loss or if we should pay you the entire *building* loss proceeds under these Replacement Cost Provisions, there is no requirement that you rebuild the *building* at the insured property address.

I. If the community in which your property is located has been converted from the Emergency Program to the Regular Program during the current *policy* term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the *National Flood Insurance Program* at the beginning of the current *policy* term instead of at the time of loss.

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this *policy*, which shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes us to issue a *policy* to you based on a premium amount which is less than the premium amount which would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance whether collectible or not, except insurance in the name of the *Condominium Association*, issued pursuant to the *Act*, we will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss.

If there is other insurance in the name of the *Condominium Association* covering the same property covered by this *policy*, this insurance shall be excess over the other insurance.

D. *Amendments, Waivers, Assignment:* This *policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this *policy* can constitute a waiver of any of our rights. Except in the case of 1. a contents only *policy*, and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You:*

You may cancel this *policy* at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described *building* or *unit* to someone else. In this case, we will refund to you, once we receive your written request for *cancellation* (signed by you), the excess of premiums paid by you which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. You cancel a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and we have received a written concurrence in the *cancellation* from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2. shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

3. You cancel because we have determined that your property is not, in fact, in a *special hazard area;* and you were required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to the *Act;* and the lender or Federal agency no longer requires the retention by you of the

coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss for which you may receive compensation under the *policy;*

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which your property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, you shall be entitled to a pro rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material facts including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to you in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy;*

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph F.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us prior to a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we shall give a notice of additional premium due, and if you *remit* and we *receive* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the *policy*, we shall give a notice of premium due, and if you *remit* and we *receive* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the "*Declarations Page*" which is attached to the *policy*. We are under no obligation to:

1. Send you any renewal notice or other notice that your *policy* term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part.

2. Assure that *policy* changes reflected in endorsements submitted by you during the *policy* term and accepted by us are included in any renewal notice or new *policy* which we send to you. "*Policy* changes" includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by us at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to *Article 8*, paragraph F. above. If the renewal premium payment is mailed by certified mail to the *National Flood Insurance Program* prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period, even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received at the office of the *National Flood Insurance Program* and, in that event, we shall not be obligated to provide you with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, you may be requested during the *policy* term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent *application* for or renewal of insurance.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us prior to the expiration of the *policy* being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent *application* or other appropriate form (received by the *National Flood Insurance Program* prior to the mailing of the renewal notice by us), does, in all respects for purposes of the *National Flood Insurance Program*, presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, in the event we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which we determine could preclude the likelihood of its being actually and timely received by you prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which we determine was attributable to the above circumstance, we shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we shall not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a *flood* loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the *policy*

signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, "owner") and the interest, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount you claim is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy;* and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

5. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss which includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

6. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss*: If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values*, amounts of loss claimed, and any written plans and specifications for repair of the damaged property which you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any *policies* of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the *condominium* documents including the Declarations of the *condominium*, its Articles of Association or Incorporation, and other *condominium* documents if you are a *unit* owner in a *condominium building*; and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace:* We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options*: We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable:* Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment:* You may not abandon damaged or undamaged insured property to us.

However, we may permit you to keep damaged, insured property ("salvage") after a loss and we will reduce the amount of the loss proceeds payable to you under the *policy* by the value of the salvage.

N. *Appraisal:* If at any time after a loss, we are unable to agree with you as to the *actual cash value* or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by both of us equally.

O. *Loss Clause:* If we pay you for damage to property sustained in a *flood* loss, you are still eligible, during the term of the *policy*, to collect for a subsequent loss due to another *flood*. Of course, all loss arising out of a single, continuous *flood* of long duration shall be adjusted as one *flood* loss.

P. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom we have actual notice prior to the payment of loss proceeds under this *policy*).

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this *policy*; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify us of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void

If this *policy* is cancelled by us, it shall continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease, and we shall have the right, on like notice, to cancel this agreement.

Whenever we shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, we shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full

assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations:* If you fail to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit:* You may not sue us to recover money under this *policy* unless you have complied with all the requirements of the *policy*. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation:* Whenever we make a payment for a loss under this *policy*, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible or the maximum payable under the *policy* for any one *building* loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this *policy*;

2. Not to seek renewal of this *policy*; and

3. Not to apply for any *flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

U. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the *Act*. When we find that duplicate *policies* are in effect, we shall by written notice give you the option of choosing which *policy* is to remain in effect under the following procedures:

1. If you choose to keep in effect the *policy* with the earlier effective date, we shall by the same written notice give you an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If you choose to keep in effect the *policy* with the later effective date, we shall by the same written notice give you the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or your insurable interests, whichever is less.

We shall make a refund to you, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect. For purposes of this paragraph U., the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing *policy* limits, the usual procedures for increasing *policy* limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* you choose to keep in effect.

Article 10—Liberalization Clause

If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should we have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to your benefit as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to your benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

IN WITNESS WHEREOF, we have signed this *policy* below and hereby enter into this Insurance Agreement.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021.)

10. Appendix A(2) of part 61 is proposed to be revised to read as follows:

Appendix A(2)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in title 44 of the Code of Federal Regulations, subchapter B]

General Property Form

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions.

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and

2. Except for personal property coverage, for a unit in a condominium building.

Insuring Agreement

Agreement of Insurance between the Federal Emergency Management Agency (FEMA), as Insurer, and the Insured.

The Insurer insures the Insured against all *Direct physical loss by or from flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and

2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this policy:

A. The named Insured and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page* in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the described *Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building* having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *"flood"* (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policy writing and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page*.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant*. This fee was established by section 1307(a) (1) (B) (iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, *Write Your Own company* expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A-1 above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *"manufactured home"* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a building for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a Flood Insurance Rate Map (FIRM) is in effect and full limits of coverage are available under the *Act*.

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75% of the floor area within the *building* is residential.

Special hazard area means an area having special *flood*, mudslide (i.e., mudflow), and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, RE, A99, AH, VO, V130, VE, V, M or E.

Unit means a *unit* not used for any dwelling purposes, in a *Condominium Building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Write Your Own company means a private sector property insurance company that is authorized to sell the *National Flood Insurance Program Policy* pursuant to an arrangement with the Federal Insurance Administrator.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface *flood* water and the insured property, or from freezing, thawing, or the pressure or weight of ice or water.

4. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 A.M. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 A.M. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5 and 6 Provisions, Which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

This *policy* covers a *building* (the *"building"*) at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including, if owned in common by a *Condominium Association*, as named Insured, all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and a part of the *building*.

3. Fixtures, machinery and equipment, including the following property, all while within the *building* and owned by the named Insured, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall Mirrors Permanently Installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Ventilating Equipment
- Fire Extinguishing Apparatus
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Sprinklers
- Outdoor Antennas and Aerials
- Pumps and Machinery for Operating them
- Carpet Permanently Installed Over Unfinished Flooring
- In the Units Within the *Building*, *Installed*:
  - •• Built-in Dishwashers
  - •• Garbage Disposal Units
  - •• Hot Water Heaters
  - •• Kitchen Cabinets
  - •• Built-in Microwave Ovens
  - •• Plumbing Fixtures
  - •• Radiators
  - •• Ranges
  - •• Refrigerators
  - •• Stoves

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed*;

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B, C, and D, below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned solely by the Insured, or in common by the *unit* owners of a *condominium*, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. In the case of a *condominium*, owned solely by a *condominium association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. When the insurance under this *policy* covers personal property (contents), coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this *policy* covers other than household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: merchandise and stock, materials and stock supplies of every description, furniture, fixtures, machinery and equipment of every description all owned by the Insured and all while within the described enclosed *building*. Bailees' goods are specifically excluded from coverage under this *policy*.

2. When the insurance under this *policy* covers household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: all household and personal property usual or incidental to the occupancy of the premises as a residence, except any property more specifically covered in whole or in part by other insurance including the peril insured against in this *policy*, belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the *option of the Insured*, belonging to a servant or guest of the Insured—all while within the described enclosed *building*.

C. Coverage for personal property includes the following property, subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units Installed in the *Building*
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

D. *Limitations.* Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

E. The Insured, if not an owner of the described *building*, may apply up to 10% of the amount of insurance applicable to the personal property covered under this item, not as an additional amount of insurance, to cover loss to *improvements* to the described *building* which have been made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, even though the *improvements* are not legally subject to removal by the Insured.

F. The Insured, if a *condominium unit* owner in the described *building*, may apply up to 10% of the amount of insurance on personal property covered under this *policy*, not as an additional amount of insurance, to cover loss to the interior walls, floors, and ceilings that are not otherwise covered under a *condominium association policy* insuring the described non-residential *condominium building*.

G. In the case of personal property owned by the Insured in a *condominium building*, as a *condominium unit* owner, as well as in common with other *condominium unit* owners, should the amount of insurance collectible under this *policy* for a loss, when combined with any recovery available to the Insured as a tenant in common under any *condominium association flood* insurance coverage provided under the *Act* for the same loss, exceed the statutorily permissible limits of personal property coverage available under the *Act* for the insuring of the personal property, then the limits of personal property coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

The insurance under this *policy* shall be excess over any insurance in the name of the *Condominium Association* covering the same property. Loss shall not be paid under this policy until the Insurer has verified the extent to which such loss is covered by any insurance in the name of a *condominium association*.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this *policy* for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this *policy* to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property, Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application*; and

2. For 45 days at another place above ground level or outside of the *special hazard area*, to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured, including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $500.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building*.

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy*.

F. *Building enclosures and personal property lower than the elevated floors of elevated buildings, and basements, including personal property in a basement, as follows:*

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in *Article 2:*

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., above, the following *building* and personal property items *are covered* so long as the

Insured has *purchased building* and personal property coverage, *as appropriate*:

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and/or tanks used in conjunction with solar energy
- Furnaces
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Elevators and equipment, except for such equipment located below the *base flood* level if such equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers, meaning units* which are primarily containers, rather than *buildings* (such as gas and liquid tanks).

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

K. *Residential condominium buildings* and their contents owned by the Insured as a tenant in common with others under a *condominium* form of ownership and any *building* components and contents owned solely by the Insured in connection with a *residential condominium building*.

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the Flood Insurance Rate Map (FIRM) or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

Article 8—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, *provided*, if at the time of loss, there is other insurance *made available* under the *Act*, in the name of a *unit* owner which provides coverage for the same loss covered by this *policy*, this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event the Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient

premium, the Insurer shall give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the "*Declarations Page*" which is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *"Policy changes"* includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured:* The Insured may cancel this *Policy* at any time but a refund of premium money will only be made when:

1. Except with respect to a *condominium building* or a *building* which has a *condominium* form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for *cancellation* (signed by the Insured) the excess of premiums paid by the Insured which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2. shall be pro rata but with retention of the *expense constant* and the *Federal nolicy fee*.

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to P.L. 93–234, § 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy*.)

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee

or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy*; *provided*, that in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only):* Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

5. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

6. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values*, amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* In case the Insured and the Insurer shall fail to agree as to the *actual cash value* of the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the

State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation:* In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term "*effective date*" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 9—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021].

11. Appendix A(3) of part 61 is proposed to be added to read as follows:

Appendix A(3)—Federal Emergency Management Agency, Federal Insurance Administration, Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

Residential Condominium Building Association Policy

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions. This policy covers only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

Insuring Agreement

Agreement of Insurance between the Federal Emergency Management Agency (FEMA), as Insurer, and the Insured.

The Insurer insures the Insured against all *Direct Physical Loss by or From Flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and

2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this *policy:*

A. The named Insured *condominium association, unit* owners in the insured *residential condominium building* and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page* in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As Used in this Policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of unit owners which manages the described *Residential Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building* having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date.*

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Coinsurance means that the Insurer's liability for loss under the *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the property bears, at the time of loss, to the value of the insured property under the terms and conditions of this *policy*, provided, if the property is insured at the time of loss in an amount equal to the lesser of 80% or more of its full replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of the *policy*, as if the amount of insurance and the value of the insured property are equal.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s).*

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy.*

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *"flood"* (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act.*

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page.*

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant.* This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4014, and is not subject to producers' commissions, *Write Your Own company* expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building*, including the *units* within the insured *building.*

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6.*

Mobile home means a *manufactured home.*

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a Flood Insurance Rate Map (FIRM) is in effect and full limits of coverage are available under the *Act.*

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75% of the floor area within the *building* is residential.

Residential Condominium Building Association Policy means a *policy* of *flood* insurance coverage issued to an *Association* pursuant to the *Act.*

Special hazard area means an area having special *flood*, mudslide (i.e., mudflow), and/or *flood*-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–30, AE, A99, AH, VO, V1–30, VE, V, M or E.

Unit means a single family dwelling *unit*, in a *Residential Condominium Building.*

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Write Your Own company means a private sector property insurance company that is authorized to sell the *National Flood Insurance Program Policy* pursuant to an arrangement with the Federal Insurance Administrator.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood.*

2. Rain, snow, sleet, hail or water spray.

3. Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface *flood* water and the insured property, or from freezing, thawing, or the pressure or weight of ice or water.

4. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 A.M. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 A.M. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the flood is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4 Property Covered (Subject to Articles 3, 5 and 6 Provisions, which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement)

Coverage A Building Property

This *policy* covers the *Residential Condominium Building* (the "building") at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and a part of the *building*.

3. Fixtures, machinery and equipment, including the following property, all while within the *building*, including its *units*, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall Mirrors Permanently Installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Ventilating Equipment
- Fire Extinguishing Apparatus
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Sprinklers
- Outdoor Antennas and Aerials
- Pumps and Machinery for Operating them
- Carpet Permanently Installed Over Unfinished Flooring
- In the *Units* Within the *Building, Installed:*
  - •• Built-in Dishwashers
  - •• Garbage Disposal Units
  - •• Hot Water Heaters
  - •• Kitchen Cabinets
  - •• Built-in Microwave Ovens
  - •• Plumbing Fixtures
  - •• Radiators
  - •• Ranges
  - •• Refrigerators
  - •• Stoves

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building:*

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed;*

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B. and C. below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned by the *unit* owners of the *condominium* in common, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. Owned solely by the *Condominium Association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. Coverage for personal property includes the following property, whether owned by the *Association* or *unit* owner and subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units Installed in the Building
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

C. *Limitations.* Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss in any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this *policy* for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the Insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property. Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application;* and

2. For 45 days at another place above ground level or outside of the *special hazard area,* to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood,* due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured, including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7,* shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building,* reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $500.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7,* shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood.*

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building.*

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building.*

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building,* operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy.*

F. *Building enclosures and personal property lower than the elevated floors of elevated buildings, and basements, including personal property in a basement, as follows:*

1. In a *special hazard area,* at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building,* including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building.*

2. In a *basement* as defined in *Article 2:*

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided,* with regard to both 1. and 2., above, the following *building* and personal property items *are covered* so long as the Insured has *purchased building* and personal property coverage, *as appropriate:*

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and/or tanks used in conjunction with solar energy
- Furnaces
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Elevators and equipment, except for such equipment located below the *base flood* level if such equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit,* where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers, meaning units* which are primarily containers, rather than *buildings* (such as gas and liquid tanks).

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.,* and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy.*

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for any property located in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the Flood Insurance Rate Map (FIRM) or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: In the case of a *residential condominium building* having one to four *units*, the Insurer shall be liable only when such loss exceeds $750.00; and, in the case of a *residential condominium building* having five or more *units*, the Insurer shall be liable only when such loss exceeds $7,500.00; or as to any *residential condominium building*, the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: In the case of a *residential condominium building* having one to four *units*, the Insurer shall be liable only when such loss exceeds $500.00; and, in the case of a *residential condominium building* having five or more *units*, the Insurer shall be liable only when such loss exceeds $5,000.00; or, as to any *residential condominium building*, the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

Article 8—Replacement Cost Coverage (For Building Coverage Only)

Subject to *ARTICLES 7 and 8*, this policy will, in the event of a loss for which there is coverage and subject to the limits of *building* coverage purchased, pay the full cost of repair or replacement of the damaged parts of the *building* without deduction for depreciation. Under this Article:

A. The following outdoor property, whether attached to the insured *building* or not, are excluded from Replacement Cost Coverage: antennas, aerials, carpeting, awnings, appliances, and other outdoor equipment.

B. Carpeting inside the insured *building* and laid over or affixed to finished or unfinished flooring is excluded from Replacement Cost Coverage.

C. The Insurer's liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building*; or

2. The cost to repair or replace the *building* or any part thereof with material of like kind and quality on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *building* or any part thereof intended for the same occupancy and use.

D. The Insurer shall not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged *building*, or parts thereof, is completed.

E. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) home which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

F. If the *building* sustains a total loss or if the Insurer should pay the entire *building* loss proceeds under these Replacement Cost Provisions; there is no requirement that the *building* be rebuilt at the insured property address.

Article 9—Coinsurance (For Building Coverage Only)

A. In consideration of the rate and form under which this *policy* is written, it is expressly stipulated and made a condition of this contract that the Insurer's liability for loss under this *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the insured property bears, at the time of loss, to the replacement cost value of the insured property, as follows:

1. If at the time of loss the total amount of insurance applicable to the insured property is the lesser of 80% or more of the full replacement cost of the insured property or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of this *policy*, as if the amount of insurance and the value of the insured property are equal.

2. If at the time of loss the Insured has not purchased the maximum amount of insurance available under the *National Flood Insurance Program*, or if the replacement cost value of the covered property at the time of the loss times 80% is greater than the amount of insurance purchased to cover the property, the full cost of replacement or repair of the insured property, subject to the terms and conditions of this *policy*, arising out of a covered loss, shall not be paid and payment shall be made as follows:

To the extent the Insured has not purchased insurance in an amount equal to the lesser of 80% or more of the full replacement cost of the insured property at the time of loss or the maximum amount of insurance available under the *National Flood Insurance Program*, the Insured will not be reimbursed fully for a loss. The amount of loss to be paid in such cases shall be determined in accordance with the following formula:

$$\frac{\text{Insurance Carried}}{\text{Insurance Required}} \times \text{Amount of Loss} = \text{Limit of Recovery}$$

a. *Example 1*: The insurance carried is $500,000.00, the replacement cost value of the building is $1,000,000.00 (which is available under the *National Flood Insurance Program*) and the amount of the loss is $240,000.00. The formula is applied as follows:

$$\frac{\$500,000.00}{\$1,000,000.00 \times 80\%} \times \$240,000.00 = \frac{\$500,000.00}{\$800,000.00} \times \$240,000.00 = \$149,500.00 \text{ Limit of Recovery}^{*}$$

* ($150,000 Less Deductible) The balance of the loss in the sum of $90,500.00 is not covered.

b. *Example 2:* The insurance carried is $1,850,000.00, the replacement cost value of the *building* is $2,000,000.00 and the amount of loss is $1,000,000.00. The formula is not applied because $1,850,000 exceeds $1,600,000 ($2,000,000 × 80). The Insured is paid the full amount of the loss ($1 Million).

B. In determining if the whole amount of insurance applicable to the *building* is 80% or more of the full replacement cost of such *building*:

1. The replacement cost value of any covered *building* property described in *Article 4* shall be included and the replacement cost value of any *building* property described in *Article 4* which constitutes property not covered under this *policy* shall not be included.

2. Regarding *improvements*, only the replacement cost value of *improvements* installed by the *Association* shall be included.

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the

limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, *provided*, if at the time of loss, there is other insurance *made available* under the *Act*, in the name of a *unit* owner which provides coverage for the same loss covered by this *policy*, this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event the Insured or its agent has:

(1) sworn falsely; or

(2) fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term, of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer shall give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the "*Declarations Page*" which is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. "*Policy changes*" includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the expiration date prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured:* The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1. shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to P.L. 93–234, § 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy*.)

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy, provided,* that in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only:* Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

5. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

6. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values*, amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium*

Documents: The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* If at any time after a loss, the Insurer is unable to agree with the Insured as to the *actual cash value*—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation:* In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the Act for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first building damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term "*effective date*" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, the Insurer has executed and attested these presents.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067-0021).

12. Appendix A (1) of part 61 is proposed to be amended by the addition of three endorsements which may be purchased at the option of the Insured, as follows:

Optional Endorsement to Appendix A(1)—Federal Emergency Management Agency Federal Insurance Administration Standard Flood Insurance Policy

Dwelling Form Endorsement #1—Coverage for Increased Costs of Repair or Reconstruction Due to a Community Flood Plain Management Ordinance

For an additional premium, we cover any increased costs of repair or reconstruction you incur in complying with a determination by your local community's land use authority that the insured single family, detached dwelling sustained substantial damage in a flood and that the dwelling must be repaired or reconstructed in a manner required by the flood plain management ordinances or regulations adopted by the community pursuant to 44 CFR Part 60—Criteria for Land Management and Use—of the regulations of the National Flood Insurance Program.

This endorsement is subject to the following conditions:

1. For purposes of this endorsement "substantial damage" means damage sustained by a structure and caused by a flood whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2. This endorsement applies only to the single family, detached building described in the application as the insured dwelling.

3. At the time of the loss, the insured dwelling must be insured for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program.

4. The deductible applicable to the additional coverage afforded by this endorsement for each building loss is the sum of $3,000 and is in addition to the deductible amount otherwise applicable under the policy to building coverage loss.

5. Any claim payment made under this endorsement, together with any claim payment made for direct physical damage to the building arising out of the same flood, cannot exceed the lesser of the limits of building coverage you have purchased or the statutorily permissible building coverage limits under the National Flood Insurance Program.

6. To the extent this endorsement applies, Paragraph A.5 of Article 3—Losses Not Covered is deleted.

7. All other Articles and provisions of this policy apply.

* * * * *

Optional Endorsement to Appendix A(1)—Federal Emergency Management Agency Federal Insurance Administration Standard Flood Insurance Policy

Dwelling Form Endorsement #2—Deletion of the Basement Coverage Limitation for Certain Buildings

For an additional premium, Paragraph F.2. is deleted with respect to the insured single family, detached dwelling, subject to the following conditions:

1. This endorsement applies only to the single family, detached dwelling, described in the application as the insured dwelling.

2. The insured dwelling was originally constructed with a finished floor, subgrade on all sides and containing, as originally constructed, a living room, dining room, and kitchen.

3. This endorsement is applicable only to buildings (a) constructed or substantially improved on or before December 31, 1974, or before the date of the initial Flood Insurance Rate Map (FIRM) of the community, whichever is later, or (b) located in flood zones A, AO, A99, B, C, D, or X, regardless of the date of construction.

4. The deductible applicable to the additional coverage afforded by this endorsement for each building and contents loss, separately, is the sum of $500, together with the deductible amount for building and contents coverage, as appropriate, which is otherwise applicable under Article 7 of this policy.

5. At the time of the loss, the insured dwelling must be insured for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program.

6. All other Articles and provisions of this policy apply.

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Optional Endorsement to Appendix A(1)—Federal Emergency Management Agency Federal Insurance Administration Standard Flood Insurance Policy

Dwelling Form Endorsement #3—Amending the Land Subsidence, Seepage of Water and Sewer Backup Exclusions

For an additional premium in the case of a single family, detached dwelling, the following language is, as indicated, deleted from or added to Article 3—Losses Not Covered:

1. At Paragraph B.1., the words "land subsidence," are deleted.

2. At Paragraph B.3., the words "Sewer backup or seepage of water unless at the same time there has been actual physical contact between surface flood water and the insured property, or from" are deleted and the word "freezing" is changed to "Freezing".

This endorsement is subject to the following conditions in order that the language changes to Article 3, Paragraph B.1. and 3. can be given effect at the time of a loss:

a. There must be a general and temporary condition of flooding in the area, and

b. The flooding is the proximate cause of the land subsidence, sewer backup or seepage of water, and

c. The land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours from the onset of the flooding, and

d. The deductible applicable to the additional coverage afforded by this endorsement for each building and contents loss is, separately, the sum of $250, together with the deductible amount for building and contents coverage, as appropriate, which is otherwise applicable under this policy.

e. At the time of the loss, the insured dwelling must be insured for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program.

f. All other Articles and provisions of this policy apply.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 19, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-17514 Filed 7-29-92; 8:45 am]

BILLING CODE 6718-05-M

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule: Withdrawal.

SUMMARY: This document proposes to withdraw proposed amendments to 45 CFR part 1607, which prescribes requirements for governing bodies of the Legal Services Corporation's ("LSC" or "Corporation") recipients. This proposed withdrawal is intended to implement congressional intent that the Corporation not impose requirements on recipient governing bodies that are additional to, or more restrictive than, the provisions of section 1007(c) of the LSC Act or LSC's FY 1992 appropriations act.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St., NE., Washington DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On October 19, 1987, LSC published proposed revisions to 45 CFR Part 1607, which sets out requirements for the governing bodies of its recipients. See 52 FR 38,900 (Oct. 19, 1987). The Operations & Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") held hearings on the proposed changes on November 20, 1987, and on January 28-29, 1988. The Board heard public comment on February 26, 1988.

While the revisions were still under consideration, Congress included a proviso in LSC's FY 1988 appropriations act, Pub. L. 100-202, 101 Stat. 1329-33 (1987), which prohibited the Corporation from imposing requirements on its

recipients' governing bodies that are additional to, or more restrictive than, the provisions of section 1007(c) of the LSC Act. Although the LSC Board voted to accept several of the proposed revisions, they were never published as final, in part due to the fact that each subsequent appropriations act has included the restrictive proviso.

The consistent use of this restriction in LSC's appropriations acts demonstrates a congressional intent that LSC not impose requirements on recipient governing bodies that are additional to, or more restrictive than, the provisions of section 1007(c) of the LSC Act. Therefore, the Corporation is requesting comment on its proposal to withdraw the proposed revisions to the rule. For the revisions as proposed, see 52 FR 38,900 (Oct. 19, 1987).

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-17998 Filed 7-29-92; 8:45 am]

BILLING CODE 7050-01-M

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45 CFR Part 1609

Fee-Generating Cases

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule; Withdrawal.

SUMMARY: This document proposes to withdraw proposed amendments to 45 CFR part 1609, which governs acceptance of fee-generating cases by the Legal Services Corporation's recipients, to reflect congressional intent that LSC grantees not be subject to any amendments to part 1609 that were not in operational effect on October 1, 1988.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St., NE., Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation ("LSC" or "Corporation") published at 52 FR 50982 (Dec. 19, 1988) proposed amendments to 45 CFR part 1609, LSC's regulation governing LSC recipients' acceptance of fee-generating cases. The Committee on Operations and Regulations ("Committee") of LSC's Board of Directors ("Board") heard public comment on the proposed regulation on January 20, 1989, at its meeting in Raleigh, North Carolina. At that time, the committee voted to recommend to the Board a revised version of Part 1609. On January 27, 1989, in Washington, DC, the Board considered the committee recommendation but deferred action on it until the next Board meeting, which was held on March 3, 1989, in Atlanta, Georgia. At the March meeting, the Board voted to accept the committee recommendation with amendments.

The revisions, however, were never published as final, largely due to a congressional prohibition against their implementation that first appeared in LSC's FY 1990 appropriations act, Pub. L. 101-162, 103 Stat. 1036-37 (1989). This prohibition, which has been retained in all subsequent appropriations acts covering LSC, provides that LSC grants and contracts "shall not be subject to any amendments to regulations relating to fee-generating cases (45 CFR part 1609) * * * not in operational effect on October 1, 1988." See Pub. L. 102-140, 105 Stat. 824 (1991), incorporating, Pub. L. 101-515, 104 Stat. 2153 (1990).

The consistent use of this restriction in LSC's appropriations acts since FY 1990 demonstrates a congressional intent that LSC not implement the proposed revisions. Therefore, the Corporation is requesting public comment on its proposal to withdraw the proposed revisions to the rule. For the proposed revisions, see 52 FR 50982 (Dec. 19, 1988).

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-17999 Filed 7-29-92; 8:45 am]

BILLING CODE 7050-01-M

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45 CFR Parts 1610 and 1611

Use of Funds From Sources Other Than the Corporation; Eligibility

AGENCY: Legal Services Corporation.

ACTION: Proposed Rules; Withdrawal.

SUMMARY: This document proposes to withdraw proposed amendments to 45 CFR Parts 1610 and 1611 which govern Legal Services Corporation recipients' use of non-LSC funds and set guidelines for eligibility for LSC-funded legal assistance. This proposal is intended to reflect congressional intent that LSC grantees not be subject to any amendments to parts 1610 and 1611 that were not in operational effect on October 1, 1988.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St. NE., Washington DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On January 3, 1989, the Legal Services Corporation ("LSC" or "Corporation") published proposed revisions to 45 CFR part 1610 on use of non-LSC funds, 54 FR 46 (Jan. 3, 1989); and to 45 CFR Part 1611 on eligibility, 54 FR 48 (Jan. 3, 1989). A total of 88 comments were received and considered. The LSC Board of Directors' ("Board") Committee on Operations and Regulations ("Committee") heard public comment on the proposed regulations at its meeting in Atlanta, Georgia, on March 2, 1989. The Committee voted to defer further consideration of the proposed revisions until its next meeting, which was held in Alexandria, Virginia, on April 13, 1989. At that meeting, the Committee voted to recommend the proposed revisions with amendments to the LSC Board. On April 14, 1989, the Board voted to accept the committee recommendations with amendments.

The amendments were never published as final, largely due to a congressional prohibition against their implementation that first appeared in LSC's Fiscal Year 1990 appropriations act, Pub. L. 101-162, 103 Stat. 1036-37 (1989). This prohibition, which has been retained in all subsequent appropriations acts for LSC, provides that LSC grants and contracts "shall not be subject to any amendments to regulations relating to * * * the use of private funds (45 CFR parts 1610 and 1611) * * * not in operational effect on October 1, 1988." See Pub. L. 102-140, 105 Stat. 824 (1991), incorporating Pub. L. 101-515, 104 Stat. 2153 (1990).

The consistent use of this restriction in LSC's appropriations acts since FY 1990 demonstrates a congressional intent that LSC grants or contracts not be subject to the proposed regulations. Therefore, the Corporation is requesting comment on its proposal to withdraw the proposed revisions to the rule. Revisions to part 1610 as proposed are at 54 FR 46 (Jan. 3, 1989). Revisions to Part 1611 as proposed are at 54 FR 48 (Jan. 3, 1989).

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-18000 Filed 7-29-92; 8:45 am]

BILLING CODE 4060-01-M

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations to conform with a statutory proviso in the Legal Services Corporation's ("LSC" or "Corporation") appropriations act for the current fiscal year that limits the Corporation's ability to implement certain private funds provisions to those restrictions expressly set out in the LSC Act.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On July 29, 1987, LSC published at 52 FR 28434 its final lobbying rule, 45 CFR part 1612. At the same time, LSC requested public comments on part 1612's private funds provisions. See 52 FR 28441 (July 29, 1987). On August 27 and 28, the Committee on Operations and Regulations ("Committee") of the Corporation's Board of Directors ("Board") heard public comment at its meeting in Seattle, Washington. As a result of its deliberations in Seattle, the Board approved two clarifying changes to the rule but rejected arguments that LSC's regulation of private funds was unauthorized and unconstitutional. The approved revisions were never published as final.[1]

Congress soon thereafter imposed a restriction in the form of a proviso in LSC's appropriations act on the Corporation's authority to use any LSC funds to implement or enforce those private funds provisions in the 1987 rule that were not explicitly authorized by the LSC Act. Pub. L. No. 100-202, 101 Stat. 1329 (1987). This restriction was applicable to the already published 1987 rule. Publication of the clarifying amendments would not have satisfied the concerns of Congress. With some minor changes, Congress has continued to include in LSC's appropriations acts the restriction on part 1612's private funds provisions. *See* Pub. L. No. 100-459, 102 Stat. 2226-2227 (1988); Pub. L. No. 101-162, 103 Stat. 1036-1037 (1989); Pub. L. No. 102-140, 105 Stat. 824 (1991), incorporating Pub. L. No. 101-515, 104 Stat. 2152 (1990).

The consistent use of this restriction demonstrates a congressional intent that LSC not regulate a grantee's private funds for restrictions in LSC's appropriations acts that are not also included in the LSC Act. Therefore, the Corporation is soliciting comments on part 1612's private funds provisions.

There is an important distinction between the LSC Act and LSC's appropriations act. Section 1010(c) of the LSC Act prohibits the use of private funds by LSC grantees for activities prohibited by the Act. 42 U.S.C. 2996i(c). The appropriations act, on the other hand, generally applies only to LSC's grantees' federal funds. Part 1612 extends the application of section 1010(c) to activities prohibited by LSC's appropriations act that are allowed under the LSC Act.[2] Thus, part 1612 presently prohibits the use of private funds by LSC grantees for activities prohibited by LSC's appropriations act in addition to those activities prohibited by the LSC Act.

The above cited proviso prohibits application of part 1612's private funds provisions to activities prohibited by LSC's appropriations act but not prohibited by the LSC Act. LSC has identified three activities that are restricted by the appropriations act but not prohibited by the LSC Act. Under the LSC Act, recipients may:

(1) Engage in self-interest lobbying;

(2) Engage in grassroots lobbying on behalf of an eligible client; and

(3) Disseminate information about public policies and political activities.

These three activities are prohibited by LSC's appropriations act.

Only one revision to part 1612 is necessary to conform the rule to the appropriations act proviso since § 1612.13 already provides exceptions for two of these three activities. A new § 1612.13(e) is proposed to be added that would allow grassroots lobbying on behalf of an eligible client. An exception for self-interest lobbying already exists in § 1612.13(a), and § 1612.13(d) already provides an exception for the dissemination of information about public policies and political activities.

List of Subjects in 45 CFR Part 1612

Civil disorders, Legal services, Lobbying, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 45 CFR part 1612 is proposed to be amended as follows:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

1. The authority citation for part 1612 continues to read as follows:

Authority: Sec. 1006(b)(5), 1007(a) (5), (6) and (7), 1011, 1008(e), Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b)(5), 2996f(a) (5), (6) and (7), 2996j, 2996g(e)); Pub. L. 95-431, 92 Stat. 1021; Pub. L. 96-68, 93 Stat. 416; Pub. L. 96-536, 94 Stat. 3166; Pub. L. 97-161, 96 Stat. 22; Pub. L. 97-377, 96 Stat. 1874; Pub. L. 98-166, 97 Stat. 1071; Pub. L. 99-180, 99 Stat. 1185.

2. Section 1612.13 is amended by adding paragraph (e) to read as follows:

§ 1612.13 Private funds.

* * * * *

(e) A recipient may use private funds to engage in grassroots lobbying at the request of a current eligible client of that recipient to the extent such activities are necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities, but no recipient shall solicit a client for the purpose of making such representation possible.

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92-18001 Filed 7-29-92; 8:45 am]

BILLING CODE 7050-01-M

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45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations to allow representation of permanent amnesty aliens, *i.e.*, aliens who have adjusted their status to that of permanent resident alien under the provisions of the Immigration and Nationality Act ("INA").

[1] The Board voted approval of a revision to § 1612.13(c) that would have added the language emphasized below to provide that:

"A recipient may use private funds to pay reasonable annual dues to organizations which are tax exempt under section 501(c)(3) of the Internal Revenue Code, provided, however, that such funds may be used only for purposes otherwise permitted by the Act and all regulations adopted pursuant thereto that apply to private funds."

Second, the Board voted approval of a grandfather provision that provided as follows:

"(e) A recipient may use private funds to fulfill existing obligations under the grant or contract from a private donor entered into prior to February 21, 1986, if the activities could be carried out consistent with sections 1007(a)(5) and 1010(c) of the Act. This authority shall expire on February 21, 1988."

[2] Section 1612.2 provides that recipients may not use private funds for any legal assistance activities prohibited by the rule. 45 CFR § 1612.2. Exceptions to this prohibition are set out in § 1612.13.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Office of the General Counsel, Legal Services Corporation, 750 First St. NE., Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336–8810.

SUPPLEMENTARY INFORMATION: On April 27, 1989, the Legal Services Corporation ("LSC" or "Corporation") published at 54 FR 18111 a final rule which, in part, prohibited LSC recipients from representing permanent amnesty aliens for a period of five years from the date they received their temporary resident status. The rule's prohibition on such representation was adopted pursuant to a provision in the 1986 amendments to the INA which disqualified amnesty aliens from being eligible for "programs of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need." 8 U.S.C. 1255a(h). Both the United States Department of Justice ("DOJ") and LSC interpreted the prohibition as disqualifying amnesty aliens from legal services funded by LSC. See DOJ Rule, 54 FR 29434–29438 (July 12, 1989).

However, the amnesty alien provision of LSC's rule was challenged in Federal court and the United States District Court for the Northern District of California issued a permanent injunction against implementation of that provision. *California Rural Legal Assistance, Inc.* v. *Legal Services Corp.*, 727 F. Supp. 553 (N.D. Cal. 1989), *aff'd*, 917 F.2d 1171 (9th Cir. 1990). Due to the injunction against enforcement of the rule's amnesty alien provision, amnesty aliens who gain permanent resident status remain eligible for LSC-funded legal assistance. LSC proposes amending § 1626.4(a) to bring the rule into conformity with these developments.

List of Subjects in 45 CFR Part 1626

Aliens, Legal services, Migrant labor, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 45 CFR part 1626 is proposed to be amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The authority citation for part 1626 continues to read as follows:

Authority: Sec. 1006(e); Pub. L. 93–355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 99–603, 100 Stat. 3417; Pub. L. 100–459, 102 Stat. 2186.

2. Section 1626.4 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is present in the United States and who is within one of the following categories shall be eligible for legal services: (1) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the Immigration and Nationality Act (INA)(8 U.S.C. 1101(a)(20)).

* * * * *

Dated: July 24, 1992.

Victor M. Fortuno,

General Counsel.

[FR Doc. 92–18002 Filed 7–29–92; 8:45 am]

BILLING CODE 7050–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 34, 35, and 43

[CC Docket No. 92–145, FCC No. 92–285]

Elimination of and Revisions to the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking which proposes to eliminate certain regulations contained in the Commission's Rules and also proposes to eliminate the related Annual Reports Form R and O. Finally, the Commission requires record carriers to file a letter each year on operating revenues and communications plant. We are proposing these changes because we do not see a need for these record carriers to continue accounting under uniform systems of accounts or to file extensive data with us. This proposal will provide effective and adaptive regulation for record carriers while eliminating regulations that are unnecessary or inimical to the public interest.

DATES: Comments must be filed on or before September 7, 1992, and reply comments must be filed on or before September 22, 1992.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stephen Steckler, Common Carrier Bureau, Accounting and Audits Division, 202–634–1861.

SUPPLEMENTARY INFORMATION: The Commission's Notice of Proposed Rulemaking eliminates the accounting systems in parts 34 and 35 of the Commission's Rules and also proposes to eliminate the associated annual reports filing requirements in part 43 of our Rules. Finally, we propose to requiring record carriers with annual revenue of over $100 million to file an annual letter on the value of total communications plant and revenue.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications, Television.

47 CFR Part 34

Communications common carriers, Radio, Telegraph, Uniform Systems of Accounts.

47 CFR Part 35

Communications common carriers, Telegraph, Telephone, Uniform Systems of Accounts.

47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17811 Filed 7–29–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 92–153; RM–7783, FCC 92–320]

Private Land Mobile Radio Services; 72–76 MHz Fire Radio Call Box Operations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has released a Notice of Proposed Rule Making that proposes amending its rules to permit the Fire Radio Service to conduct fire call box operations on ten low-power frequencies in the 72–76 MHz band on a shared basis with the Forest Products, Special Industrial, Manufacturers, and Railroad Radio Services. This action is necessary to obtain interference-free fire call operation and should result in more effective and efficient fire service.

DATES: Comments must be submitted on or before September 11, 1992, and reply

comments on or before September 28, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making (Notice)*, PR Docket No. 92–153, adopted July 10, 1992, and released July 22, 1992. The full text of the Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, telephone (202) 452–1422.

Summary of Notice of Proposed Rule Making

1. Section 90.21(c)(3) of the Commission's Rules, 47 CFR 90.21(c)(3), allocates frequencies in the 72–76 MHz band to the Fire Radio Service for fixed operations, including fire call box operations. These frequencies are shared with other radio services pursuant to 90.257(a) of the Commission's Rules, 47 CFR 90.257(a).

2. Fire call box operations are limited to a transmitter output power of one watt, but co-channel licensees in the other radio services may be authorized to transmit with a power level of up to 300 watts. These higher-power co-channel operations cause interference and adversely affect the operation of fire call box systems, thereby imperiling the safety of life and property. There are other shared frequencies in the 72–76 MHz band that are designated for low-power mobile use and can be useful for call box operations. These frequencies, while reserved for low power mobile use, may be operated as either mobile, base, or fixed stations.

3. The likelihood of interference could be reduced if fire call box operations were permitted on the ten low-power 72–76 MHz mobile frequencies used by other radio services. We, therefore, propose to modify the appropriate sections of part 90 of our Rules to include the Fire Radio Service as an eligible for the low-power 72–76 MHz frequencies available in the Forest Products, Special Industrial, Manufacturers, and Railroad Radio Services.

Initial Regulatory Flexibility Analysis

4. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Communications equipment, Emergency medical services, Individuals with disabilities, Radio, Reporting and recordkeeping requirements.

Amendatory Text

It is proposed to amend 47 CFR part 90 as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. 47 CFR 90.21 is amended by adding to the Fire Radio Service Frequency Table in paragraph (b) ten additional frequencies from 72.44 MHz through 75.60 MHz, immediately following the 72.00 to 76.00 MHz entry, and adding paragraph (c)(19) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.44	Mobile	19
72.48	.....	19
72.52	.....	19
72.56	.....	19
72.60	.....	19
75.44	.....	19
75.48	.....	19
75.52	.....	19
75.56	.....	19
75.60	.....	19
*	*	*

(c) * * *

(19) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required. All communications on this frequency must be conducted by persons or organizations charged with specific fire protection responsibility. All operations on this frequency are subject to the provisions of § 90.257(b).

* * * * *

3. 47 CFR 90.67 is amended by revising the first sentence of paragraph (c)(34) to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(c) * * *

(34) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

4. 47 CFR 90.73 is amended by revising the first sentence of paragraph (d)(7) to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(d) * * *

(7) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

5. 47 CFR 90.79 is amended by revising the first sentence of paragraph (d)(4) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(d) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

6. 47 CFR 90.91 is amended by revising the first sentence of paragraph (c)(2) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(c) * * *

(4) This frequency is available on a shared basis in the Manufacturers, Forest Products, Special Industrial, Railroad, and Fire Radio Services and interservice coordination is required.

* * *

* * * * *

7. 47 CFR 90.257 is amended by revising the introductory text of paragraph (b) and the first sentence of paragraph (b)(1) to read as follows:

§ 90.257 Assignment and use of frequencies in the band 72–76 MHz.

* * * * *

(b) The following criteria shall govern the authorization and use of frequencies within the band 72–76 MHz by mobile stations in the Special Industrial, Manufacturers, Forest Products, Railroad, and Fire Radio Services.

(1) Mobile operation on frequencies in the 72–76 MHz band is subject to the conditions that no interference is caused to the reception of television stations operating on Channel 4 or 5. * * *

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17314 Filed 7–29–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 7, 10, 15, 16, 17, 37, 44, 46, and 52

[FAR Case 91–85]

Federal Acquisition Regulation; Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to FAR Part 37, Service Contracting, to: (1) Implement Office of Federal Procurement Policy Letter 91–2, Service Contracting, published at 56 FR 15112, April 15, 1991; and (2) to clarify and restructure part 37 as a result of recommendations made by members of the public and various Federal agencies. FAR parts 5, 7, 10, 15, 16, 17, 44, 46, and 52 were also affected as a result of these changes to part 37 and are accordingly amended.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 28, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAR case 91–85 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0186 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–85.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils decided to restructure and clarify part 37 as a result of revisions suggested by industry and various Federal agencies, including military departments, civilian and defense agencies, the Office of Personnel Management, the Office of Federal Procurement Policy, the Contract Services Association, the Professional Services Council, the Logistics Management Institute, and others.

In addition to revising part 37, this rule:

(1) Moves Subpart 5.5, Paid Advertisements, with minor revisions, to new subpart 37.7;

(2) Revises parts 7, 10, 15, 16, 37, 44, and 46 to implement OFPP Policy Letter 91–2 performance based contracting methods;

(3) Makes substantive revisions to Subpart 17.2, Options;

(4) Revises one existing clause in 52.217;

(5) Revises five clauses in 52.237 and adds a new provision, Identification of Uncompensated Overtime.

In addition, numerous minor editorial and technical changes were made to the language in parts 17 and 37.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because of the burden associated with identifying uncompensated overtime hours and rates included in proposals and subcontractor proposals under the new provision 52.237–XX, Identification of Uncompensated Overtime. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The proposed rule revises the Federal Acquisition Regulation (FAR) parts 5, 10, 15, 16, 17, 37, 44, 46, and 52 to implement the Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting, and makes other revisions to part 37. One of the revisions implements the statutory requirements of section 834, Public Law 101–510, concerning uncompensated overtime. Although the statutory requirement applies only to DOD, both GSA and NASA have agreed the language is appropriate for Governmentwide use. The Regulatory Flexibility Act applies only to the language being added to the FAR concerning uncompensated overtime. The rule will affect all small businesses that submit offers for services estimated at $100,000 or more, that are acquired on the basis of number of hours to be provided rather than on the task to be performed. There are paperwork burden requirements associated with this rule. A request for Approval of a Collection of Information Under the Paperwork Reduction Act has been submitted to the Office of Management and Budget. The requirements concerning uncompensated overtime in this proposed rule are currently in the Defense Federal Acquisition Regulation (DFARS). When this proposed rule is implemented in the FAR as a final rule, the DFARS language will be removed. There are no alternatives. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 91–85), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Service Contracting/ Solicitation Provision, "Identification of Uncompensated Overtime", is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 5, 7, 10, 15, 16, 17, 37, 44, 46, and 52

Government procurement.

Dated: July 23, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 5, 7, 10, 15, 16, 17, 37, 44, 46, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 5, 7, 10, 15, 16, 17, 37, 44, 46, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

5.5 [Removed]

2. Subpart 5.5 is removed.

PART 7—ACQUISITION PLANNING

3. Section 7.101 is amended by adding the definition *Draft solicitation* to read as follows:

7.101 Definitions.

* * * * *

Draft solicitation means a solicitation issued for a known requirement, prior to finalization of the requirements definition and/or acquisition strategy, for the purpose of obtaining potential offerors' comments. Draft solicitations shall contain a notice stating that comments on the solicitation are being solicited, not offers, and that a subsequent solicitation for offers may be issued.

* * * * *

4. Section 7.102 is amended by designating the undesignated paragraph as "(a)" and adding paragraph (b) to read as follows:

7.102 Policy.

* * * * *

(b) Acquisition plans for service contracts shall describe the strategies, methods and techniques which will be used to integrate performance-based contracting methods (see subpart 37.2) into the acquisition, or provide rationale for use of other methods.

5. Section 7.103 is amended by redesignating paragraph (k) as paragraph (l), removing the word "Assuring" and inserting in its place "Ensuring"; and adding a new paragraph (k) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(k) Ensuring that experiences from prior acquisitions are used in defining requirements and acquisition strategies. For services, greater use of performance-based contracting methods should generally occur for follow-on acquisitions.

* * * * *

6. Section 7.105 is amended by revising paragraphs (a)(1), (a)(4), and (b)(6); redesignating paragraphs (b)(17) through (b)(19) as (b)(18) through (b)(20); and adding a new (b)(17) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(a) *Acquisition background and objectives*—(1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.

* * * * *

(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need.

* * * * *

(b) * * *

(6) *Product descriptions and descriptions of services to be performed.* In accordance with part 10, explain the choice of description types to be used in the acquisition.

* * * * *

(17) *Quality assurance.* For services, discuss:

(i) How the Government quality assurance surveillance plan will be developed and maintained;

(ii) How it will relate to the statement of work; and

(iii) Any clauses for deductions from payment for nonconforming services (see subpart 46.4).

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

7. Section 10.002 is amended by revising paragraph (a)(4)(ii) to read as follows:

10.002 Policy.

* * * * *

(a) * * *

(4) * * *

(ii) Performance results required, to include identification of standards of performance; or

* * * * *

8. Section 10.004 is amended by revising the section heading; in paragraph (a) by inserting the paragraph heading "*General.*" after "(a)"; revising paragraphs (b) (1) and (2); removing the existing paragraph (b)(4); redesignating paragraph (b)(3) as (b)(4); and adding new paragraph (b)(3) to read as follows:

10.004 Selecting, tailoring, and preparing descriptions.

* * * * *

(b) *Purchase description.* (1) When authorized by 10.008, or when no other applicable product description exists, agencies may use a purchase description, subject to pertinent restrictions on repetitive use and consistent with the requirements at 10.002. An adequate purchase description should set forth the essential physical and functional characteristics of the materials required. Purchase descriptions shall not be written so as to specify a particular brand name product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(i) The particular brand name, product, or feature is essential to the Government's requirements, and other companies' similar products, or products lacking the particular feature, would not meet the minimum requirements for the item; and

(ii) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1).

(2) As many of the following characteristics as are necessary to express the Government's minimum requirements should be used in preparing purchase descriptions:

(i) Common nomenclature.

(ii) Kind of material; i.e., type, grade, alternatives, etc.

(iii) Electrical data, if any.

(iv) Dimensions, size, or capacity.

(v) Principles of operation.

(vi) Restrictive environmental conditions.

(vii) Intended use, including—

(A) Location within an assembly; and

(B) Essential operating condition.

(viii) Equipment with which the item is to be used.

(ix) Other pertinent information that further describes the item or material required, stating requirements in terms of function or performance to the extent practicable.

(3) *Descriptions of services to be performed.* Descriptions of services to be performed (also called statements of work, work statements, or performance work statements) shall be written, in accordance with agency procedures, so that they, to the maximum extent practicable—

(i) Define the requirements in terms of the results required rather than how the work is to be performed,

(ii) Include measurable (i.e., in terms of quality, timeliness, quantity) performance standards for the required results, and

(iii) Include surveillance plans based on performance work statements to provide the basis for assessment of contractor performance and deductions from payments for services not conforming to requirements (see 46.407).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

9. Section 15.102 is amended by adding a sentence at the end of the paragraph to read as follows:

15.102 General.

* * * Negotiation may be appropriate when the quality of performance is a significant factor or of greater importance than cost or price.

10. Section 15.404 is amended by revising the section heading and the introductory text of paragraph (a); and adding paragraph (d) to read as follows:

15.404 Presolicitation notices, conferences and draft solicitations.

(a) *General.* Presolicitation notices, conferences and draft solicitations may be used as preliminary steps in negotiated acquisitions in order to—

* * * * *

(d) *Draft solicitations.* If sufficient time is available and circumstances make it desirable, draft solicitations (7.101) may be used to assist in improving requests for proposals and purchase descriptions. For example, when an acquisition contains innovative incentive provisions, past performance problems have been encountered, or new, complex or critical services are required, a draft solicitation may be appropriate.

11. Section 15.605 is amended by adding a sentence at the end of paragraph (b); and revising paragraph (c) to read as follows:

15.605 Evaluation factors.

* * * * *

(b) * * * In acquisitions for professional and technical services, consideration shall be given to the inclusion of cost realism, particularly when proposals may include uncompensated overtime.

(c) While the lowest price or lowest total cost to the Government is properly the deciding factor in many source selections, in certain acquisitions the Government may select the source whose proposal offers the greatest value to the Government in terms of performance and other factors. In these cases, evaluation factors must reflect the relationship between technical and cost considerations. This may be the case, for example, in the acquisition of research and development of services, or when cost-reimbursement contracting is anticipated. In the acquisition of services, evaluation should be based, to the maximum extent practicable, on best overall value in terms of quality and other factors. The weighting of costs must be commensurate with the nature of the services being acquired. For example, it may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price if the effort being contracted for departs from clearly defined efforts or if highly skilled personnel are required. It may be appropriate to award to the technically acceptable offeror with the lowest price if the services are of a routine or simple nature, highly skilled personnel are not required, or the work product is clearly defined at the outset of the acquisition.

* * * * *

12. Section 15.608 is amended in paragraph (a) (1) by adding text to the end of the paragraph to read as follows:

15.608 Proposal evaluation.

(a) * * *

(1) * * * In acquisitions where services are being acquired on the basis of the number of hours provided, the contracting officer shall ensure that the use of uncompensated overtime will not degrade the level of technical expertise required to fulfill the Government's requirements. In such acquisitions, contracting officers shall conduct a risk assessment and use it to evaluate any proposal that reflects unrealistically low labor rates that may result in quality or service shortfalls or unbalanced distribution of uncompensated overtime among skill levels or its use in key technical positions.

* * * * *

13. Section 15.611 is amended in paragraph (c) by adding text to the end of the paragraph to read as follows:

15.611 Best and final offers.

* * * * *

(c) * * * Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from the source selection authority and the senior procurement executive for acquisitions under formal source selection or from the head of the contracting activity for all other acquisitions. Lower approval levels may be established in agency procedures.

14. Section 15.801 is amended by adding the definition *Cost realism* in alphabetical order to read as follows:

15.801 Definitions.

* * * * *

Cost realism means that a cost/price proposal is realistic for the work to be performed, reflects a clear understanding of the requirements and is consistent with various elements of the offeror's technical proposal.

* * * * *

PART 16—TYPES OF CONTRACTS

15. Section 16.104 is amended by adding paragraph (k) to read as follows:

16.104 Factors in selecting contract types.

* * * * *

(k) *Acquisition history.* Generally, the amount of risk to a contractor will decrease as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be more clearly defined. Therefore, contract types placing increasing risk on the contractor should be selected for follow-on contracts and product descriptions or descriptions of services to be performed should be more definitive than previous acquisitions for the same or similar requirements.

16. Section 16.202–2 is amended by revising the introductory paragraph to read as follows:

16.202–2 Application.

A firm-fixed-price contract is suitable for acquiring commercial products or commercial-type products (see 11.001), or for acquiring other supplies on the basis of reasonably definite functional or detailed product descriptions (see 10.001), or services with reasonably definitive descriptions (see 10.004(a)(5)) when the contracting officer can establish fair and reasonable prices at the outset, such as when—

* * * * *

17. Section 16.402–2 is amended by adding a new paragraph heading after (a); redesignating the existing text of paragraphs (a) through (d) as (a) (1) through (4); adding a new paragraph (b); redesignating paragraphs (e) through (g) as (c) (1) through (3); and inserting a new paragraph heading for (c) to read as follows:

16.402–2 Technical performance incentives.

(a) *Supply contracts.* (1) * * *

* * * * *

(b) *Services contracts.* Technical performance incentives for performance of objectively measurable tasks may be appropriate when quality of performance is critical and incentives are likely to motivate the contractor.

(c) *General.* (1) * * *

* * * * *

16.404–1 [Amended]

18. Section 16.404–1 is amended in the first sentence of paragraph (b)(1) by inserting the words "services or" after the word "for"; and in the second sentence of paragraph (b)(2) by removing the word "other" and inserting in its place "services or".

PART 17—SPECIAL CONTRACTING METHODS

19. Section 17.204 is amended in paragraph (e) by adding a new last sentence to read as follows:

17.204 Contracts.

* * * * *

(e) * * * For example, see Subpart 22.10 and section 37.104.

* * * * *

20. Section 17.205 is amended in paragraph (a) by adding a new last sentence to read as follows:

17.205 Documentation.

(a) * * * This documentation requirement does not apply to the use of the clause at 52.217–8, Option to Extend Services.

* * * * *

21. Section 17.207 is amended in paragraph (c)(3) by removing the word "The" and inserting in its place "For all options except those exercised under 52.217–8, Option to Extend Services,"; in paragraph (c)(4) by inserting a period after "part 5" and removing the remainder of the sentence; in the first sentence of paragraph (f) by inserting after "Before exercising an option," the words "except those exercised under 52.217–8, Option to Extend Services,"; redesignating the current paragraph "(g)" as "(h)"; and adding a new paragraph (g) to read as follows:

17.207 Exercise of options.

* * * * *

(g) When exercising the option under 52.217–8, Option to Extend Services, because a protest or mistake in bid precludes timely award of a new contract, no file documentation beyond that required for the protest or mistake in bid and by (c) (1), (2), and (4) of this section is required. When exercised in any other circumstances beyond the control of the contracting office, the contracting officer shall document the file as required by (c) (1), (2), and (4) of this section; describe the circumstances which caused the delay of the new contract; and provide rationale as to why the extension of the performance period of the existing contract is the most effective means of continuing performance of the services.

* * * * *

22. Section 17.208 is amended by revising paragraphs (f) and (g) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(f) The contracting officer shall insert a clause substantially the same as the clause at 52.217–8, Option to Extend Services, in solicitations and contracts for services when a follow-on contract is anticipated (see 37.106).

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.217–9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract a requirement that the Government shall give the contractor a written notice of its intent to extend the contract, a stipulation that an extension of the contract includes an extension of the option, and/or a specified limitation on the total duration of the contract.

23. Part 37 is revised to read as follows:

PART 37—SERVICE CONTRACTING

Sec.
37.000 Scope of part.

Subpart 37.1—Service Contracts—General

37.101 Definitions.
37.102 Policy.
37.103 Special aspects of service contracting.
37.104 Term and extension of service contracts.
37.105 Solicitation provisions and contract clauses.

Subpart 37.2—Performance-Based Contracting

37.200 Scope of subpart.
37.201 General.
37.202 Elements of performance-based contracting.
37.202–1 Statement of work.
37.202–2 Quality assurance.
37.202–3 Solicitation considerations.
37.202–4 Contract type.
37.202–5 Follow-on and repetitive requirements.
37.203 Justification.

Subpart 37.3—Personal Versus Nonpersonal Services

37.301 General.
37.302 Contracting officer determination.
37.303 Guidelines for determining personal services.
37.304 Experts or consultants.
37.305 Private sector temporaries.

Subpart 37.4—Advisory and Assistance Services

37.400 Scope of subpart.
37.401 Definition.
37.402 Policy.
37.403 Types of advisory and assistance services.
37.404 Exclusions.
37.405 Management controls.
37.406 Requesting activity responsibilities.
37.407 Contracting officer responsibilities.

Subpart 37.5—Dismantling, Demolition, or Removal of Improvements

37.500 Scope of subpart.
37.501 Labor standards.
37.502 Bonds or other security.
37.503 Payments.
37.504 Contract clauses.

Subpart 37.6—Nonpersonal Health Care Services

37.600 Scope of subpart.
37.601 Policy.
37.602 Contracting officer responsibilities.
37.603 Contract clauses.

Subpart 37.7—Paid Advertisements

37.700 Scope of subpart.
37.701 Definitions.
37.702 Authority.
37.703 Procedures.
37.704 Use of advertising agencies.

37.000 Scope of part.

This part prescribes policies and procedures which are specific to the acquisition of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. Additional guidance for research and development services is in part 35; architect-engineering services is in part 36; information resources is in part 39; and transportation services is in part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965 applies (see subpart 22.10).

Subpart 37.1—Service Contracts—General

37.101 Definitions.

Nonpersonal services contract means a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work. It requires the use of methods which describe requirements in terms of measurable performance standards (see subpart 37.2).

Personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, to be Government employees (see subpart 37.3).

Services means the expenditure of the time and effort of individuals or groups for the performance of identifiable tasks, rather than the delivery of an end item of supply. For purposes of this subpart, architect-engineer services acquired in

accordance with 40 U.S.C. 541–544, as amended, are excluded.

37.102 Policy.

(a) Agencies shall generally rely on the private sector for commercial services (see subpart 7.3), but in no event may a contract be awarded for the performance of an inherently governmental function.

(b) Agencies shall use performance-based contracting methods (see subpart 37.2), to the maximum extent practicable, for the acquisition of services, including those acquired under supply contracts, except:

(1) Architect-engineer services acquired in accordance with 40 U.S.C. 541–544, as amended (see part 36); and

(2) Construction (see part 36).

(c) Agencies shall not award personal service contracts (see subpart 37.3) unless specifically authorized by statute to do so (see 5 U.S.C. 3109).

37.103 Special aspects of service contracting.

(a) Contracting officers must use performance-based contracting for services or justify the use of any other method (see 37.203).

(b) Contracting officers must determine whether the services are personal or nonpersonal (see 37.303).

(c) Contracting officers should be alert to organizational conflict of interest situations when soliciting and awarding service contracts and, when appropriate, take action required by subpart 9.5.

(d) Service contracts may require contractors to deliver, store, use, or handle hazardous materials in the course of contract performance. When this is the case, the requirements of part 23 must be followed.

(e) Some service contracts require the contractor to obtain licenses or permits in order to perform. In those cases, solicitations and contracts, except those for mortuary services, must comply with 36.507.

(f) Contracting officers must verify that the contract file contains the certifications required of competing contractors, contracting officers, and procurement officials (see 3.104–9).

(g) Contracts with "Pinkerton Detective Agencies or similar organizations" are prohibited by 5 U.S.C. 3108. This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees. An organization providing guard or protective services does not thereby become a "quasi-military armed force", even though the guards are armed or the organization provides general investigative or detective services (see 57 Comp. Gen. 524).

37.104 Term and extension of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law.

(1) See 32.703–2 for contracts conditioned upon the availability of funds.

(2) See 32.703–3 for contracts crossing fiscal years.

(b) Agencies with multiyear contracting authority shall consider the use of such authority in order to offer a more stable long-term contract (see subpart 17.1).

(c) The total duration of any service contract subject to the Service Contract Act of 1965 (41 U.S.C. 351–357) shall not exceed 5 years (see subpart 22.10).

(d) Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. To avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(g)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

37.105 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.237–1, Site Visit, in solicitations for services to be performed on Government installations. If an organized site visit will be conducted, use the clause at 52.237–1, Site Visit, with its Alternate I.

(b) The contracting officer shall insert the clause at 52.237–2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to be performed on Government installations.

(c) The contracting officer may insert the clause at 52.237–3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) The contracting officer shall insert the clause at 52.237–8, Severance Payments to Foreign Nationals Employed Under a Service Contract Performed Outside the United States, in solicitations and contracts for services which may be performed in whole or in part outside the United States.

(e) When services estimated at $100,000 or more are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the contracting officer shall insert the provision at 52.237–XX, Identification of Uncompensated Overtime, in the solicitation. This provision requires offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act-exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct (see 15.608(a)(1)).

Subpart 37.2—Performance-Based Contracting

37.200 Scope of subpart.

This subpart prescribes policies and procedures for use of performance-based contracting in the acquisition of services. It implements Office of Federal Procurement Policy Letter 91–2, Service Contracting.

37.201 General.

Performance-based contracting methods provide the means to ensure that required performance quality levels are achieved and that payment is made only for services which meet contract standards. They—

(a) Describe the requirements in terms of results required rather than the method of performance of the work (see 10.002(a) (3) and 10.002(b));

(b) Use formal measurable (i.e., in terms of quality, timeliness, quantity, etc.) performance standards and quality assurance surveillance plans (see 10.004(a) (5), 46.103(a), and 46.401(a));

(c) Specify procedures for reductions to the contract price when services are not performed, or do not meet contract requirements (see 46.407(f));

(d) Include performance incentives based on quality (see Subpart 16.4); and

(e) Use acquisition strategies that provide for award of contracts which are most advantageous to the Government and best promote performance-based contracting (see 6.401, 7.102, 7.103, 7.105, 15.102, 15.404, 15.605, 15.801, 16.102, 16.103, 16.104, 16.202–2, 17.1 and 17.2)

37.202 Elements of performance-based contracting.

37.202–1 Statement of work.

Statements of work shall define the requirements in clear, concise language identifying specific tasks to be accomplished. They must be tailored individually to consider the period of performance, deliverable items, if any, and the desired degree of performance flexibility. When preparing statements of work, agencies shall, to the maximum extent practicable (see 10.004)—

(a) Describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided;

(b) Enable assessment of work performance against measurable performance standards (see 37.104(b));

(c) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost effective methods of performing the work;

(d) Consider issuing draft statements of work to assist in refining statements of work (see 15.405) and achieve the objectives of acquisition streamlining (see 7.105 (a)(8) and 10.002(d)); and

(e) Avoid combining requirements into a single acquisition which is too broad for the agency or a prospective contractor to effectively manage (see 37.104(d)(3)).

37.202–2 Quality assurance.

Agencies shall develop quality assurance surveillance plans when acquiring services (see Subpart 46.2). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

37.202–3 Solicitation considerations.

(a) Performance-based contracting can be accomplished either by sealed bid or negotiated procedures. Negotiated procedures are used when quality of performance is a significant factor, as is generally the case in professional and technical services.

(b) The prescription of contractor labor categories, levels of effort, and personnel qualifications should be avoided whenever possible to encourage innovative and efficient methods of performance.

(c) Requirements for services shall be supported by Government cost estimates. When using negotiated procedures, cost estimates shall include types of labor categories and their associated labor hours.

37.202–4 Contract type.

To the maximum extent practicable, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see Subpart 16.4). These incentives shall correspond to the specific performance standards in the quality assurance surveillance plan and shall be capable of being objectively measured.

37.202–5 Follow-on and repetitive requirements.

Agencies shall use experience gained from prior contracts to optimize the use of performance-based contracting methods in follow-on acquisitions by developing more definitive statements of work and performance standards, and in selecting contract types.

37.203 Justification.

When any method other than performance-based contracting is used, the contracting officer shall document the contract file with the justification for use of other methods in accordance with agency procedures.

Subpart 37.3—Personal Versus Nonpersonal Services

37.301 General.

(a) A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) An employer-employee relationship under a service contract occurs if, as a result of (1) the contract's terms or, (2) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(c) Each contract arrangement must be judged on its own facts and circumstances, with the key question being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract? The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see 37.303).

37.302 Contracting officer determination.

(a) The contracting officer is responsible for determining whether the proposed acquisition will result in a personal or nonpersonal services contract. In doubtful cases, document the file with—

(1) The opinion of legal counsel; and

(2) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the restriction against contracting for an inherently governmental function.

37.303 Guidelines for determining personal services.

Use the following descriptive elements as a guide in assessing whether a proposed contract is personal in nature:

(a) Performance in a government facility.

(b) Principal tools and equipment furnished by the Government.

(c) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(d) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(e) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(f) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(1) Adequately protect the Government's interest;

(2) Retain control of the function involved; or

(3) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

37.304 Experts or consultants.

The Office of Personnel Management (OPM) has established requirements which apply to acquiring the personal services of experts or consultants by contract. Therefore, the contracting officer shall coordinate with the cognizant civilian personnel office to ensure that OPM requirements are appropriately addressed.

37.305 Private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR part 300, Subpart E, Use of Private Sector Temporaries, and agency procedures.

Subpart 37.4—Advisory and Assistance Services

37.400 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.401 Definition.

Advisory and assistance services means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems.

37.402 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.405, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and development alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decisionmaking, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation;

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

37.403 Types of advisory and assistance services.

Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance. These services consist of—

(a) *Individual experts and consultants.* Individual experts and consultants are persons possessing special, current knowledge or skill that may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decisionmaking.

(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decisionmaking. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

(1) *Objective.* To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.

(2) *Areas of application.* All subjects, issues, or problems involving policy development of decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.

(3) *Outputs.* Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

(c) *Management and professional support services.* Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

(2) *Areas of application.* Management support or related systems such as program management, project monitoring and reporting, data collection, logistics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.

(d) *Engineering and technical service.* Engineering and technical services

(technical representatives) take the form of advice, training, or, under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

37.404 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Activities that are reviewed in accordance with the OMB Circular A–76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

(b) Architectural and engineering services as defined in part 36.

(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.

(d) Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

(e) Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).

(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.

(h) Clinical medicine.

(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational support activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

(j) Contracts entered into in furtherance of statutorily mandated advisory committees.

(k) Initial training, training aids, and technical documentation acquired as an integral part of the lease or purchase of equipment.

(l) Routine maintenance of equipment, routine administrative services (e.g., mail, reproduction, telephone), printing services, and direct advertising (media) costs.

(m) Auctioneers, realty-brokers, appraisers, and surveyors.

(n) The National Foreign Intelligence Program (NFIP).

(o) The General Defense Intelligence Program (GDIP).

(p) Tactical Intelligence and Related Activities (TIARA)

(q) Foreign Military Sales.

(r) Engineering and technical services as set forth in 37.403(d)

37.405 Management controls.

OMB Circular A–120 requires each agency to establish procedures for a written evaluation at the conclusion of the contract to assess the utility of the deliverables to the agency and the performance of the contractor.

37.406 Requesting activity responsibilities.

Requests for advisory and assistance services shall include—

(a) A statement certifying that the requirement is for advisory and assistance services as defined in this subpart.

(b) Written justification of need and certification that such services do not unnecessarily duplicate any previously performed work or services.

(c) Written approval for such services by an official at a level above the requesting office. However, in the case of requirements received by the contracting officer during the fourth quarter of the fiscal year, for award during the same fiscal year, the approval at the second level, or higher level if required by agency procedures, above the requesting office shall accompany the request for contract action.

(d) Properly chargeable funds certified by the cognizant fiscal/budget office.

37.407 Contracting officer responsibilities.

The contracting officer is responsible for determining whether any requested contractual action, regardless of dollar value, constitutes advisory and assistance services as described in this subpart. The contracting officer's determination shall be final. Before processing any contractual action for advisory and assistance services, the contracting officer shall verify that—

(a) Action is taken to avoid conflicts of interest in accordance with subpart 9.5;

(b) The applicable requirements of this subpart and 37.103 and 37.303 are met;

(c) The services being contracted for consist only of the types of services defined at 37.403;

(d) The request includes a statement of need and certification by the requesting official (see 37.406(a) and (b)); and

(e) Written approval for the requirement, including requests for contract modifications beyond the scope of the acquisition originally approved, has been obtained from the appropriate level(s) (see 37.406(c)).

Subpart 37.5—Dismantling, Demolition, or Removal of Improvements

37.500 Scope of subpart.

This subpart prescribes procedures for contracting for dismantling or demolition of buildings, ground improvements and other real property structures and for the removal of such structures or portions of them (hereafter referred to as "dismantling, demolition, or removal of improvements").

37.501 Labor standards.

Contracts for dismantling, demolition, or removal of improvements are subject to either the Service Contract Act (41 U.S.C. 351–358) or the Davis-Bacon Act (40 U.S.C. 276a–276a–7). If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies unless further work which will result in the construction, alteration, or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

37.502 Bonds or other security.

When a contract is solely for dismantling, demolition, or removal of improvements, the Miller Act (40 U.S.C. 270a–270f) (see 28.102) does not apply.

However, the contracting officer may require the contractor to furnish a performance bond (see 28.103) or other security in an amount that the contracting officer considers adequate to (a) ensure completion of the work, (b) protect property to be retained by the Government, (c) protect property to be provided as compensation to the contractor, and (d) protect the Government against damage to adjoining property.

37.503 Payments.

(a) The contract may provide that the (1) Government pay the contractor for the dismantling or demolition of structures or (2) contractor pay the Government for the right to salvage and remove the materials resulting from the dismantling or demolition operation.

(b) The contracting officer shall consider the usefulness to the Government of all salvageable property. Any of the property that is more useful to the Government than its value as salvage to the contractor shall be expressly designated in the contract for retention by the Government. The contracting officer shall determine the fair market value of any property not so designated, since the contractor will acquire title to this property. The value of this property will therefore be important in determining payment amounts, if any, that will be made to the contractor as compensation in the event of contract termination.

37.504 Contract clauses.

(a) The contracting officer shall insert the clause at 52.237–4, Payment by Government to Contractor, in solicitations and contracts solely for dismantling, demolition, or removal of improvements if it is estimated that the net result of performance will be payment to the contractor.

(1) The basic clause shall be used if the compensation to be paid the contractor is partially in the form of the value of the property to which title will be conveyed to the contractor and partially in the form of payment. If the clause is used, separate contract line items for the value of the property to be conveyed to the contractor and for dismantling, demolition, or removal of improvements work should be used. This will allow computation of the net amount to be inserted in part (a) of the clause.

(2) Alternate I shall be used if the Government is to retain title to all property under the contract.

(b) The contracting officer shall insert the clause at 52.237–5, Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if it is estimated that the net result of performance will be a payment to the Government.

(c) The contracting officer shall insert the clause at 52.237–6, Incremental Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if the net result of performance will be a payment to the Government and it would be advantageous to the Government to receive payments in increments.

Subpart 37.6—Nonpersonal Health Care Services

37.600 Scope of subpart.

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in 37.101.

37.601 Policy.

Agencies may enter into nonpersonal health care services contracts with physicians, dentists and other health care providers. Each contract shall—

(a) State that the contract is a nonpersonal services contract, as defined in 37.101, under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g., professional judgments, diagnosis for specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned;

(e) State that the contractor is required to ensure that its subcontracts for provisions of health care services, contain the requirements of the clause at 52.237–7, including the maintenance of medical liability insurance.

37.602 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain the certificate(s) of insurance evidencing the required coverage prior to commencement of performance.

37.603 Contract clause.

The contracting officer shall insert the clause at 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in contracts for nonpersonal health care services when the contract amount is expected to be within the small purchase limitation in 13.000.

Subpart 37.7—Paid Advertisements

37.700 Scope of subpart.

This subpart prescribes policies and procedures for contracting out paid advertisements.

37.701 Definitions.

Advertisement, as used in this subpart, means any single message prepared for placement in communications media, regardless of the number of placements.

Publication, as used in this subpart, means the placement of an advertisement in the printed media or the broadcasting of an advertisement over radio or television.

37.702 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated (5 U.S.C. 302(b)). Written authorization, in accordance with agency procedures, must be obtained prior to contracting for advertising in newspapers.

(b) *Other media.* Unless the agency head determines otherwise, advance written authorization is not required to place advertising in media other than newspapers.

37.703 Procedures.

(a) *General.* Contracts and orders for paid advertisements may be placed directly with the media or through an advertising agency.

(b) *Rates.* Payment rates for advertisements shall not exceed the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703).

(c) *Proof of advertising.* Every notice for advertising shall be accompanied by a copy of the advertisement or an affidavit of publication furnished by the publisher, radio or television station, or advertising agency concerned (44 U.S.C. 3703). Paying offices shall retain proof of

advertising until the General Accounting Office settles the paying office account.

(d) *Payment.* For paid advertisements requiring written authorization (see 37.702), the contracting officer shall attach a copy of the written authorization to the invoice and submit the invoice for payment in accordance with agency procedures.

37.704 Use of advertising agencies.

(a) *General.* Basic ordering agreements may be placed with advertising agencies for assistance in producing and placing advertisements when a significant number will be placed in several publications and national media. Services of advertising agencies include, but are not limited to, counseling the selection of the media, contacting the media in the interest of the Government, placing orders selecting and ordering typography, copy writing, and preparing rough layouts.

(b) *Use of commission-paying media.* The services of advertising agencies often can be obtained at no cost to the Government, over and above space costs, as many media give advertising agencies a commission or discount on the space cost that is not given to the Government.

(c) *Use of noncommission-paying media.* Some media do not grant advertising agencies a commission or discount, meaning that the Government can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertising in noncommission-paying media as a no-cost service, the basic ordering agreement shall so state. If, however, the advertising agency will not agree to place advertisements at no cost, the agreement shall provide that the Government may place orders directly with the media or specify an amount that the Government will pay if the agency places the orders.

(d) *Art work, supplies, and incidentals.* The basic ordering agreement may provide for the furnishing by the advertising agency of art work, supplies, and incidentals, including brochures and pamphlets, but not their printing. "Incidentals" include telephone calls, telegrams, and postage incurred by the advertising agency on behalf of the Government.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

24. Section 44.303 is amended by adding paragraph (j) to read as follows:

44.303 Extent of review.

* * * * *

(j) The use of performance-based contracting methods when subcontracting for services (see subpart 37.2).

PART 46—QUALITY ASSURANCE

25. Section 46.103 is amended by revising paragraph (a) to read as follows:

46.103 Contracting office responsibilities.

* * * * *

(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);

* * * * *

26. Section 46.401 is amended by revising paragraph (a) to read as follows:

46.401 General.

(a) Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans are required for service contracts. They should be prepared in conjunction with the preparation of the statement of work. The plan shall specify—

(1) The work requirements to be surveilled, and

(2) The method of surveillance for each.

* * * * *

27. Section 46.407 is amended by revising paragraphs (c)(1) introductory text and (f) to read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability of parts or assemblies, weight or appearance (where a consideration), or any other basic objective of the product description. However, there may be circumstances (e.g., reasons of economy or urgency) when acceptance of such supplies or services is determined by the contracting officer to be in the Government's interest. The contracting officer shall make this determination, based upon—

* * * * *

(f) If nonconforming supplies or services are accepted as authorized in paragraph (c) of this section, an equitable price reduction, as authorized by the inspection clause, or other consideration, shall be made. However, when supplies or services involving minor nonconformances are accepted, an equitable price reduction shall not be made unless (1) it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the equitable price reduction, or (2) the Government's interests otherwise require an equitable adjustment. For services, the contract shall, to the maximum extent practicable, identify the value of the individual work requirement tasks which will be subject to price or fee reduction. This value shall be used, in accordance with agency procedures, to determine the equitable adjustment for nonconforming services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

28. Section 52.217–9 is amended by revising paragraph (a) to read as follows:

52.217–9 Option to extend the term of the contract.

* * * * *

Option To Extend the Term of the Contract (XXX 1992)

(a) The Government may extend the term of this contract by written notice to the Contractor within (*insert in the clause the period of time in which the Contracting Officer has to exercise the option*); *provided*, that the Government shall give the Contractor a written notice of its intent to extend at least 60 days before the contract expires. The notice of intent does not commit the Government to an extension.

* * * * *

29. Section 52.237–1 is revised to read as follows:

52.237–1 Site visit.

As prescribed in 37.105(a), insert the following provision:

Site Visit (XXX 1992)

(a) Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions

that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: _____

Address: _____

Telephone: (_____)

(End of provision)

Alternate I (XXX XXXX). As prescribed in 37.105(a), substitute substantially the following for paragraph (b) of the basic provision:

(b) A site visit and pre-solicitation conference has been scheduled for _____ (*insert date and time*). Participants will meet at _____ (*insert location*). No other site visit will be authorized.

30. Section 52.237–2 is amended by revising the introductory paragraph; and removing the derivation line following "(End of clause)" to read as follows:

52.237–2 Protection of Government buildings, equipment, and vegetation.

As prescribed in 37.105(b), insert the following clause:

* * * * *

52.237–3 [Amended]

31. Section 52.237–3 is amended in the introductory paragraph by removing "37.110(c)" and inserting in its place "37.105(c)";

32. Section 52.237–4 is amended by revising the introductory paragraph; in paragraph (d) by removing the last two sentences; and revising Alternate I to read as follows:

52.237–4 Payment by Government to contractor.

As prescribed in 37.504(a), insert the following clause:

* * * * *

Alternate I (APR 1984). As prescribed in 37.504(a)(2), remove paragraph (d) from the basic clause and renumber the remaining paragraphs.

33. Section 52.237–5 is amended by revising the introductory paragraph and paragraph (b) to read as follows:

52.237–5 Payment by contractor to Government.

As prescribed in 37.504(b), insert the following clause:

* * * * *

(b) The Contractor shall remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date.

* * * * *

34. Section 52.237–6 is amended by revising the introductory paragraph and paragraph (c) to read as follows:

52.237–6 Incremental payment by contractor to Government.

As prescribed in 37.504(c), insert the following clause:

* * * * *

(c) The Contractor shall remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date.

(End of clause)

35. Section 52.237–7 is amended in the introductory paragraph by removing "37.403" and inserting in its place "37.603"; in paragraph (a) by revising the last sentence; by revising paragraph (b); and in paragraph (d) by revising the first sentence to read as follows:

52.237–7 Indemnification and medical liability insurance.

* * * * *

(a) * * * The Contractor shall require all health care providers performing under this contract to maintain, during the term of this contract, liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____ * _____.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of the insurability of all health care providers who will perform under this contract concerning the medical liability insurance required by paragraph (a) of this clause.

* * * * *

(d) Certificates of insurance evidencing the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. * * *

* * * * *

52.237–8 [Amended]

36. Section 52.237–8 is amended in the introductory paragraph by removing "37.110(f)" and inserting in its place "37.105(d)".

37. Section 52.237–XX is added to read as follows:

52.237–XX Identification of uncompensated overtime.

As prescribed in 37.105(e), insert the following provision:

Identification of Uncompensated Overtime (XXX 1992)

(a) *Definitions.* As used in this provision—

Uncompensated overtime means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act, without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave, shall be included in the normal work week for purposes of computing uncompensated overtime hours.

Uncompensated overtime rate is the rate which results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week.

(b) For any hours proposed against which an uncompensated overtime rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include a copy of its policy addressing uncompensated overtime with its proposal, and the historical basis for the rate of uncompensated overtime proposed.

(End of provision)

[FR Doc. 92–17801 Filed 7–29–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 394

[FHWA Docket Nos. MC–90–2 and MC–92–12]

RIN 2125–AC48

Notification and Reporting of Accidents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: The FHWA is proposing to eliminate the requirements that motor carriers submit accident reports to the FHWA and notify the FHWA of fatal accidents as currently required by 49 CFR part 394. Instead, the FHWA, in cooperation with the States, is proposing to implement a new accident reporting system based on State-required police accident reports, which will be electronically transmitted from the States to the FHWA. The FHWA is proposing to change the data which must be submitted and is proposing to revise the definition of "accident." Data obtained from this State-generated

source would replace data obtained from the current carrier self-reporting requirement.

DATES: Comments on this docket must be received on or before September 14, 1992.

ADDRESSES: Submit written, signed comments to GHWA Docket No. MC–90–2, Federal Highway Administration, Office of Chief Counsel, HCC–10, room 4232, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard .

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Kozlowski or Mr. Jeff Van Ness, Office of Motor Carrier Standards, (202) 366–2981, or Ms. Allison Smith, Office of Chief Counsel, (202) 366—834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 15, 1990 (55 FR 41705, Docket MC–90–2), to revise 49 CFR part 394, Notification and Reporting of Accidents, by changing the accident reporting criterion from that of property damage ($4,400) to towaway. The FHWA proposed to define a reportable accident as one in which a motor vehicle was damaged to the extent that it could not be safely driven away from the scene of the accident under its own power after simple repairs.

Moreover, on February 7, 1992, the U.S. Department of Transportation (DOT) published a Request for Comments in response to the President's announcement of a moratorium and review of regulations (see 57 FR 4744, Docket 92–12). That notice requested public comments on which Departmental regulations substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape. One hundred commenters recommended changes to the accident-reporting regulations.

Discussion of Comments

Commenters were concerned that the paperwork burden to motor carriers would increase because of the perceived increase in the number of accidents which, using the new definition, would have to be reported. Other commenters were equally concerned that there would be fewer accidents reported because of the proposed change. As stated in that NPRM, the FHWA estimated there would be an increase of about one additional accident report per motor carrier that would have to be submitted every three years. However, this rule would eliminate the requirement that carriers submit accident reports, thereby greatly reducing the paperwork burden concerns expressed by some of the commenters.

The FHWA proposed in the former NPRM, and is including in this NPRM, a definition of "disabling damage" which excludes situations where a motor vehicle is towed solely for the purposes of clearing the roadway. In response to the earlier NPRM, several commenters voiced concerns that an accident may occur in which no vehicle sustains disabling damage, but a vehicle is towed from the accident scene. This may include, for example, situations in which the commercial motor vehicle driver is found to be in violation of hours of service regulations. Those commenters believed that a "disabling damage" standard requiring accident reporting in such situations would increase the number of accidents required to be reported and, therefore, would result in increased reporting costs and potentially lower safety ratings for motor carriers.

The FHWA believes these comments have merit and proposes that accidents should only be considered reportable if they result in (1) the death of a person, (2) bodily injury to a person, who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident requiring a vehicle to be transported away from the scene by a tow truck or other vehicle.

Other commenters were concerned by the voluntary nature of the current accident reporting procedures and the lack of specific information on how to complete forms MCS 50–T and MCS 50–B. Since the FHWA is proposing to eliminate the motor carrier-based reporting requirement from the Federal Motor Carrier Safety Regulations (FMCSRs), these comments would be satisfied.

Need for Accident Data

Accident data is important to the FHWA in support of its motor carrier safety regulatory program and is an element in the safety fitness rating procedure. However, the preparation handling and data processing of these accident reports (form MCS 50–T for trucks and form MCS 50–B for buses) is time consuming and expensive both for industry and government. The FHWA estimates that preparation of these forms costs industry at least 35,000 person hours per year, at an hourly rate of about $20. Handling and processing cost the FHWA about $783,000 annually, resulting in a total annual cost of about $1.5 million. In spite of these costly efforts, a great many accidents still go unreported, and the accuracy of self-reported accident information is sometimes questionable. For these reasons, the prioritization and safety rating processes do not currently use data from forms MCS 50–T or MCS 50–B, but rely instead on accidents reported as a part of an on-site safety or compliance review. With the implementation of State-submitted police reports via SAFETYNET, the information gathered will provide a higher level of accuracy, consistency and national uniformity.

A study entitled, "Truck and Bus Accidents: Getting the Facts" (1991), prepared by the National Governors' Association (NGA), established guidelines for a uniform and reliable national data base for truck and bus accidents. A copy of this report has been placed in the docket for review. Reviewers may also obtain a copy of the report from National Governors' Association Publications, P.O. Box 421, Annapolis Junction, Maryland 20701. The telephone number is 301–498–3738. The cost of the publication is $15.

That report recommends, which the FHWA is proposing to adopt, that data on an accident be collected when an accident meets one of the following criteria: (1) One or more persons are killed; (2) one or more persons are injured as a result of the accident and transported from the accident scene for medical treatment; or (3) one or more motor vehicles incurring disabling damage as a result of the accident and transported away from the scene by a tow truck or other vehicle. In addition, the FHWA is proposing to retain in the definition certain occurrences that would not be considered in the criteria for the purposes of this rule. These occurrences are: (1) An occurrence involving only boarding and alighting from a stationary motor vehicle; (2) an occurrence involving only the loading or unloading of cargo; (3) an occurrence in the course of farm-to-market agriculture transportation (as defined in § 390.5) by the motor carrier; or (4) an occurrence in the course of the operation of a passenger car (as defined in § 571.3 of title 49) by a motor carrier and is not transporting passengers for hire or

hazardous materials of a type and quantity that require the vehicle to be marked or placarded in accordance with § 177.823 of this title.

The NGA also recommended that the following data be collected:

1. Carrier Identification
   1a. Name
   1b. Mailing Address: Street or P.O. Box, City, State (two-letter code), Zip Code
   1c. Source of Name (please check)
   1. Shipping Papers (truck) or Trip Manifest (bus)
   2. Side of Vehicle
   3. Driver
   1d. Carrier's Identification Numbers; US DOT (6 digits); ICC MC (6 digits)
   If none of the above State (indicate state and number) No number
2. Vehicle Configuration
   1. Bus (seats for more than 15 people, including driver)
   2. Single-unit truck (2-axle, 6-tire)
   3 Single-unit truck (3-or-more axle)
   4. Truck/Trailer
   5. Truck Tractor (bobtail)
   6. Tractor/Semi-trailer
   7. Tractor/Doubles
   8. Tractor/Triples
   9. Unknown Heavy Truck, cannot classify
3. Total Number of Axles on Vehicle, Including Trailers
4. Cargo Body Type
   1. Bus (seats for more than 15 people, including driver)
   2. Ban/Enclosed Box
   3. Cargo Tank
   4. Flatbed
   5. Dump
   6. Concrete Mixer
   7. Auto Transporter
   8. Garbage/Refuse
   9. Other
5. Hazardous Materials Involvement
   5a. Did this vehicle have a hazardous materials placard? (yes, no) Answer the following questions ONLY if response to 5a. is yes.
   5b. Indicate from the hazardous materials placard: (1) 4-digit placard number or name taken from the middle of the diamond or from the rectangular box (yes, no)
   5c. Was hazardous cargo from the placarded truck released? (yes, no) (Do not count fuel from the vehicle tank.)
6. Gross Vehicle Weight Rating
7. Sequence of Accident Events (for this vehicle) Sequence Event
   1 2 3 4 Ran Off Road
   1 2 3 4 Jackknife
   1 2 3 4 Overturn (Rollover)
   1 2 3 4 Downhill Runaway
   1 2 3 4 Cargo Loss or Shift
   1 2 3 4 Explosion or Fire
   1 2 3 4 Separation of Units
   1 2 3 4 Collision involving Pedestrian
   1 2 3 4 Collision involving Motor Vehicle in Transport
   1 2 3 4 Collision involving Parked Motor Vehicle
   1 2 3 4 Collision involving Train
   1 2 3 4 Collision involving Pedalcycle
   1 2 3 4 Collision involving Animal
   1 2 3 4 Collision involving Fixed Object
   1 2 3 4 Collision involving Other Object
   1 2 3 4 Other

While the current form MCS 50–T and MCS 50–B contain more data items, the FHWA expects the new SAFETYNET accident database to be more reliable because it eliminates the motor carrier's self-reporting requirement and is based instead on police accident reports. Consequently, the SAFETYNET database would provide a higher level of accuracy, consistency and national uniformity.

As a result of the work of the NGA and for the reasons given earlier, the FHWA is proposing to implement a new accident reporting system, based on State-required police reports which will be electronically transmitted from the States, under the Motor Carrier Safety Assistance Program (MCSAP) as part of the SAFETYNET electronic data sharing program. Information on MCSAP and SAFETYNET has been placed in the docket. States will be required, as part of their MCSAP grant, to participate in SAFETYNET no later than January 1, 1994. This deadline was set in the Motor Carrier Act of 1991, which reauthorized MCSAP through FY 1997 (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA) Pub. L. 102–240, section 4002, 105 Stat. 2140, 49 U.S.C. app. § 2302).

The FHWA published a notice of proposed rulemaking on April 16, 1992, proposing revisions to the MCSAP to implement, among other items, the new requirements of the authorizing legislation, including the SAFETYNET implementation requirement. The comment period for that NPRM (Docket MC–92–17) closed on June 15, 1992. See 57 FR 13572. The FHWA and the States (through the MCSAP lead agency) will ensure that the annual State Enforcement Plan (SEP) provides for the submission of the accident data according to prescribed standards. The SEP is the document which serves as the basis for monitoring and evaluating performance of the State under its MCSAP grant.

Discussion of the Notice of Proposed Rulemaking

In light of the comments to these dockets, the FHWA is proposing to eliminate the requirement that motor carriers report accidents, to adopt the towaway criterion for accidents for which motor carriers must maintain certain information, and to eliminate other requirements included in part 394. This rule would relieve carriers of the burden of filing MCS 50–T and MCS 50–B accident forms and part 394 would be removed and reserved.

The FHWA is proposing to replace the requirements for preparation, retention and submittal of reports contained in part 394 with a requirement that motor carriers maintain a simplified list of those accidents meeting the proposed definition. The new list would include for each such accident: date, nearest city, state, driver name, number of injuries, number of fatalities, and whether hazardous materials were released (other than fuel spilled from fuel tanks of vehicles involved in the accident). This rule would also require motor carriers to maintain copies of accident reports required by States, other governmental authorities or insurers. The list and the reports would be maintained for 365 days after the date of the accident, instead of the current period of three years, and must be filed so that they may be systematically retrieved.

Currently, 27 States are submitting the NGA accident data to the FHWA. The proposed date for termination of the motor carrier data submitted under part 394 is December 31, 1992. Motor carriers would be required to file a form MCS 50–T or form 50–B for any reportable accident, as currently defined, that occurred in calendar year 1992, even if the report could not be submitted until 1993. Accidents occurring on or after January 1, 1993, would be reported only by the States, through SAFETYNET.

This proposed recordkeeping requirement would provide motor carriers with a current list of accidents, thereby assisting them in modifying their safety program, if warranted. It would also assist Federal and State MCSAP investigators in evaluating a motor carrier's safety program more efficiently and effectively by reducing the time needed to review motor carrier records. An investigator would also be able to compare the motor carrier accident list with the SAFETYNET data to ensure that all accidents as defined in this rule are accounted for.

The FHWA intends to maintain the substance of § 394.15, Assistance in

investigations and special studies, regarding the availability of records. This section would be revised and redesignated as § 390.15.

The FHWA is proposing to eliminate the requirement for motor carriers to submit accident reports at this time based on the comments received in response to docket MC 90–2 and the requirement in the ISTEA regarding full implementation of SAFETYNET by States. Many commenters requested that the accident reporting system be improved so that reliable and accurate data would be submitted to the FHWA. The FHWA believes that the procedures in this NPRM would accomplish this objective.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being taken by the FHWA in this document proposes to eliminate the requirement for motor carriers to submit accident reports to the FHWA and other requirements. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. This rule is consistent with the objectives outlined in the President's memorandum of January 28, 1992, to Federal agencies on the subject of reducing unnecessary burdens of government regulations. An evaluation conducted pursuant to the President's memorandum estimated that relieving this reporting requirement would result in a cost savings of about $1.5 million annually, or about $750,000 annual cost savings each to the industry and the Federal government.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this proposal on small entities and has determined that since this action reduces requirements it will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed rule would reduce the amount of paperwork and other collection of information requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* by about 35,000 two-page documents per year.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 394

Highway Safety, Motor Carriers, Reporting and recordkeeping requirements.

Issued on: July 24, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA proposes to revise subchapter B of chapter III of title 49, Code of Federal Regulations, as set forth below.

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by adding two definitions, placing them in alphabetical order, as follows:

§ 390.5 Definitions.

In this subchapter:

Accident means

(1) Except as provided in paragraph (b) of this section, an occurrence involving a commercial motor vehicle which results in:

(i) The death of a person;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

(2) The term *accident* does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo; or

(iii) An occurrence in the course of farm-to-market agriculture transportation (as defined in § 390.5) by the motor carrier; or

(iv) An occurrence in the course of the operation of a passenger car (as defined in § 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

* * * * *

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

* * * * *

3. Part 390 is amended by adding § 390.15 to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an

authorized representative or special agent of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct answer to any question of the inquiry.

(b) Motor carriers shall maintain for a period of one year following the accident, as defined in § 390.5, the following information:

(1) A list of accidents containing for each accident:

(i) Date of accident,

(ii) Location of nearest city and State of accident,

(iii) Driver name,

(iv) Number of injuries,

(v) Number of fatalities, and

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of vehicles involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental authorities or insurers.

PART 394—[REMOVED AND RESERVED]

4. Part 394 is removed and reserved.

[FR Doc. 92-18037 Filed 7-29-92; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

Pelagic Fisheries of the Western Pacific Region; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments; correction.

SUMMARY: This document corrects an error in the notice of availability for Amendment 6 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP), which was published July 6, 1992 (57 FR 29692).

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Long Beach, California (310-980-4034) or Alvin Katekaru, Southwest Region, NMFS, Pacific Area Office, Honolulu, Hawaii (808-955-8831).

In proposed rule document 92-15727 on page 29692, in the issue of Monday, July 6, 1992, make the following correction:

Under "**FOR FURTHER INFORMATION CONTACT**", in the first column, in the third line of the paragraph, remove the words "Terminal Island, California (310-514-6660)" and replace them with the words "Long Beach, California (310-980-4034)".

Dated: July 24, 1992.

David S Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17914 Filed 7-29-92; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 147
Thursday, July 30, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 24, 1992.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

Agricultural Stabilization and Conservation Service

7 CFR 707—Application for Payment Amounts Due Persons Who Have Died, Disappeared, or Who Have Been Declared Incompetent

ASCS–325

On occasion

Individuals or households; 3,000 responses; 1,500 hours

Enda I. Samons (202) 475–5700

New Collection

Food and Nutrition Service

Non-Application in the School Lunch and Breakfast Programs Among Potentially-Eligible Households and Non-Participation in the School Lunch and Breakfast Programs Among Students Approved for Benefits

Single time

Individuals or households; State or local governments; 28,593 responses; 6,039 hours

Cindy Long (703) 305–2340

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 92–17995 Filed 7–29–92; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Cancellation of Alva's Designation, Request for Comments on the Need for Official Services in the Geographic Area Assigned to Alva, and Request for Applications From Persons Interested in Designation To Provide Official Services in the Geographic Area Assigned to the Alva, (OK) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Thomas Oller dba Alva Grain Inspection Department (Alva), advised FGIS that due to a decline in requests for official grain inspection services he plans to cease doing business on July 25, 1992, and is requesting voluntary cancellation of his designation. FGIS is cancelling the designation effective July 25, 1992, and is requesting comments on the need for official inspection services in the geographic area assigned to Alva. FGIS also is requesting persons interested in providing official services in this geographic area to submit an application for designation.

DATES: Applications and comments must be postmarked on or sent by telecopier (FAX) by August 31, 1992.

ADDRESSES: Applications and comments must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications and comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications and comments will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes FGIS' Administrator, after determining that there is a need for official services, to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

FGIS designated Alva, headquartered in Alva, Oklahoma, to provide official inspection services for the period beginning January 1, 1989, and ending December 31, 1992.

In the July 1, 1992, **Federal Register** (57 FR 29274), FGIS asked persons interested in providing official services in the Alva geographic area to submit an application for designation. Applications were to be due by July 31, 1992. Alva subsequently advised FGIS that they plan to cease operation on July 25, 1992, due to a decline in requests for official inspection services. Alva is requesting voluntary designation cancellation effective July 25, 1992. Persons wishing to obtain official inspection services in the Alva geographic area after July 25, 1992, should contact FGIS' Wichita Field Office at 316–269–7171 (FAX: 316–269–6163).

FGIS is requesting comments on the need for official inspection services in the geographic area served by Alva. At

the same time FGIS is extending the application period to August 31, 1992. FGIS will not designate an applicant unless it determines that there is a need for official services.

The geographic area assigned to Alva, in the State of Oklahoma, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, if there is a need for official services, is as follows:

Alfalfa, Beckham, Caddo, Custer, Dewey, Ellis, Greer, Harper, Kiowa, Major, Roger Mills, Washita, Woods, and Woodward Counties.

Interested persons are hereby given an opportunity to submit comments on the need for official inspection services in the geographic area assigned to Alva, as specified above, and to apply for designation under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the Alva, Oklahoma area, is for a period not to exceed 3 years beginning about February 1, 1993. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated after the FGIS determines that there is a need for official services.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 21, 1992

J. T. Abshier

Director, Compliance Division

[FR Doc. 92–17888 Filed 7–29–92; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Intent To Prepare an Environmental Impact Statement for the Adoption of a Conservation Strategy for the Mountain Plover (Charadrius montanus); Pawnee National Grassland, Weld County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Pawnee National Grassland, Forest Service is proposing to develop a conservation strategy for the Mountain Plover (*Charadrius montanus*). A conservation strategy is needed to ensure that continued existence of Mountain Plover is not jeopardized by management activities on the Grassland. This conservation strategy will be implemented only on the Pawnee National Grassland at this time. Management direction resulting from this Conservation Strategy will be incorporated as an amendment to the Arapaho and Roosevelt National Forests and Pawnee National Grassland Land and Resources Management Plan of May 4, 1984.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS).

DATES: Comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) should be received in writing by September 30, 1992.

ADDRESSES: Submit written comments, suggestions and questions to Jeffrey M. Losche, District Ranger, Pawnee National Grassland, 660 "O" Street, Greeley, Colorado, 80631.

FOR FURTHER INFORMATION CONTACT: Mark Ball, Project Coordinator, (303) 353–5004.

SUPPLEMENTARY INFORMATION:

In the fall of 1990 and the spring of 1991 the Forest Service received 35 applications for oil and gas lease of 38,423 acres on the Pawnee National Grassland from the oil and gas industry through the Bureau of Land Management. Law and regulation require Forest Service consent before BLM can offer leases for oil and gas under Forest Service managed lands. In accordance with requirements of the National Environmental Policy Act an Environmental Analysis (EA) was completed in October of 1991 and public meetings were held in Greeley, CO on June 27, 1991 and in Denver, CO on July 15, 1991. During the analysis of the issues and concerns raised at these scoping sessions and gathered from formal comments and letters it became apparent that a Finding of No Significant Impact (FONSI) could *not* be reached when the Mountain Plover's population decline was recognized. During the initial analysis it became evident that other management activities and uses of the Grassland may also have an adverse effect on the Mountain Plover, including recreation use, livestock management, wildlife management, travel management, etc.

The focus of the analysis was shifted from dealing with the oil and gas lease applications to preparing an Environmental Impact Statement (EIS) in order to disclose the impacts all Grassland management activities would have on the Mountain Plover as well as the limitations and effects a Mountain Plover conservation strategy would have on other Grassland resource activities.

Major, preliminary issues: Continuing Grassland uses and management activities such as livestock grazing, recreation, oil and gas development may have detrimental effects on Mountain Plover Population and habitat capability. Protecting the Mountain Plover and its habitat will have detrimental effects on activities such as livestock grazing, recreation, and oil and gas development. Should more be learned about the Mountain Plover before putting further restrictions on management activities or should the Forest Service act conservatively and restrict all activities until there is clear evidence that each activity has no adverse effect on Mountain Plover population or habitat?

All issues, concerns and comments gathered during the previous EA process have been retained. Additional issues, concerns and comments were gathered from a subsequent public meeting held in Greeley, CO on May 13, 1992 and comment period ending June 13, 1992.

Alternatives include continuing resource managements currently prescribed in the Forest and Grassland Resource Plan, managing resources to maintain Mountain Plover populations and habitat capability until the requirements of the species to maintain viable populations have been determined, or improve Mountain Plover habitat capability to reduce risk of the species becoming threatened or endangered.

The Deciding Official will be the Forest Supervisor, Arapaho and Roosevelt National Forests/Pawnee National Grassland, 240 West Prospect Road, Fort Collins, CO 80526–2098.

We expect to publish a Draft Environmental Impact Statement in December 1992, and to complete a Final Environmental Impact Statement in May, 1993.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's "Notice Of Availability" appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be most helpful, comments on the draft Environmental Impact Statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an

agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Date: July 21, 1992.

M.M. Underwood, Jr.

Forest Supervisor.

[FR Doc. 92-18018 Filed 7-29-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Northwest Iowa Power Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Northwest Iowa Power Cooperative (NIPCO), of Le Mars, Iowa. The proposed project consists of rebuilding approximately 40 miles of 69 kV transmission line in Monona and Woodbury Counties, Iowa. The FONSI is based on a borrower's environmental report (BER) prepared by NIPCO and submitted to REA. REA conducted an independent evaluation of the impacts resulting from the proposed construction and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the NIPCO BER as the Environmental Assessment (EA) for the project.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

Copies of the EA and FONSI are available for review at, or can be obtained from REA at the address provided herein or from Mr. Philip A. Hauan, Manager, Northwest Iowa Power Cooperative, P.O. Box 240, Le Mars, Iowa 51031.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by NIPCO and has determined that it represents an accurate assessment of the scope and level of environmental impacts of the proposed project. The BER, which includes input from certain State and Federal agencies, has been adopted by REA to serve as its EA.

REA has determined that the BER adequately considered the potential impacts of the proposed project and concluded that approval of the project would not result in a major Federal action significantly affecting the quality of the human environment. REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands, water quality, threatened or endangered species, or critical habitat. REA has identified no other potential significant impact resulting from construction and operation of the proposed transmission line.

Alternatives examined for the proposed project include no action and relocating the transmission line to a new right-of-way. REA determined that the proposed project is an environmentally acceptable alternative that meets NIPCO's need with a minimum of adverse environmental impact. REA has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, NIPCO published notices in a newspaper of general circulation in the area and requested comments on the proposed project. The public was given 30 days to respond to the notices. No responses to the notices were received by NIPCO or REA.

Dated: July 21, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92-18035 Filed 7-29-92; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-008]

Color Television Receivers From Korea; Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Court of International Trade Decision.

SUMMARY: On July 14, 1992, the United States Court of International Trade affirmed the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on color television receivers from Korea. *Daewoo Electronics Co., Ltd., et al.* v. *United States,* Slip Op. 92-107 (CIT July 14, 1992). If the Court's opinion in this case is not appealed, or is affirmed upon appeal, the final results of the first administrative review will be amended to reflect the margins found by the Department of Commerce in its remand results, which were affirmed by the Court of International Trade.

DATES: *Effective Date:* July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1989, the Court of International Trade (CIT), in *Daewoo Electronics Co., Ltd. et al.* v. *United States,* 712 F. Supp. 931 (CIT 1989), remanded the final results of the fires administrative review of the antidumping duty order on color television receivers (CTVs) from Korea (49 FR 50420, December 28, 1984) to the Department of Commerce (the Department) for reconsideration. On April 6, 1990, the Department submitted the final results of the redetermination on remand. These results were revised on May 9, 1990 correct certain clerical errors.

On March 25, 1991, the CIT issued another remand order instructing the Department to reconsider the final results of its redetermination on remand, including the measurement of tax incidence, which the CIT held should be done on a disaggregated basis for each

respondent and for each type of CTV. the Department completed its second remand in accordance with the CIT's instructions, and submitted it to the CIT on September 24, 1991.

In its decision in *Timken Co.*v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 USC 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. the CIT's decision of July 14, 1992 constitutes a decision not in harmony with the Department's final results of the first administrative review. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final results of the first administrative review of CTVs from Korea to reflect the margins of the Department's remand results, which were affirmed by the CIT.

Dated: July 23, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-18043 Filed 7-29-92; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Availability of a Joint Draft Environmental Impact Statement/ Environmental Impact Report (EIS/ EIR) for Arts Park LA, Los Angeles, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District (Federal); City of Los Angeles, Department of Recreation and Parks (State).

ACTION: Notice of availability of a joint draft environmental impact statement/ environmental impact report (EIS/EIR).

SUMMARY: This draft EIS/EIR analyzes the potential environmental impacts associated with the proposed construction of Arts Part LA. The applicant, The Cultural Foundation, proposes construction of approximately 200,000 square feet of facilities on a 60-acre parcel of land in the Lake Balboa area of the Supulveda Basin in the City of Los Angeles, California. The proposed action is consistent with the development plan for the area based on the 1981 Sepulveda Basin Master Plan and Final Environmental Impact Report/ Statement.

This Draft EIS/EIR has been prepared to fulfill the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

The overall analysis considers an array of alternatives developed to meet the primary planning objectives of providing a suitable cultural arts center in the San Fernando Valley. The Applicant's proposed action provides for the phase construction over a period of about ten years, beginning with development of a Performance Amphitheater and overall roadway infrastructure, then progressing to other proposed facilities, including the Natural History Museum, Performing Arts Pavilion, Arts Park Center, Artists' Outdoors Workshop, Children's Center for the Arts, Performance Grove, Demonstration Garden, Media Education Center and Parking Facilities. The anticipated impacts and cumulative effects of the construction of the Proposed Action, including mitigation measures, have been considered.

PUBLIC HEARING: Public hearings regarding this action are scheduled for August 27th 1992, at 2 p.m. and 7 p.m. in the Drill Room of the Marine Corps Reserve Center, 6337 Balboa Blvd., Encino, CA 91316-1584.

FOR FURTHER INFORMATION CONTACT: Comments concerning the Draft EIS/EIR should be received by September 14, 1992, and should be addressed to: U.S. Army Corps of Engineers, Los Angeles District, (Attn: Mr. Gene Seagle, CESPL-PD-RL), 300 North Los Angeles Street, Los Angeles, California 90012-2325. Telephone: (213)-894-5030. Fax: (213)-894-5312.

R.L. VanAntwerp,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 92-17975 Filed 7-29-92; 8:45 am]

BILLING CODE 3710-KF-M

U.S. Army Reserve Command Independent Commission; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army Reserve Command Independent Commission.

Date of Meeting: September 28 & 29, 1992.

Place: 1225 Jefferson Davis Highway, suite 1410, Arlington, Virginia 22202.

Time: 8 a.m.-5 p.m.

Purpose: The Commission was established to assess the progress and effectiveness of the United States Army Reserve Command since its establishment.

Summary of Agenda: This is the seventh meeting of the Commission. The Commission will review command and control alternatives and prepare recommendations for the Secretary of the Army.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee at the time and in the matter permitted by the committee. Anyone desiring to appear before the committee should contact the staff for procedures.

Ellis L. Pennington,

LTC, FA, U.S. Army Reserve Command, Independent Commission.

[FR Doc. 92-18013 Filed 7-29-92; 8:45 am]

BILLING CODE 3710-01-M

U.S. Army Reserve Command Independent Commission; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

Name of Committee: U.S. Army Reserve Command Independent Commission.

Date of Meeting: September 3, 1992.

Place: 1225 Jefferson Davis Highway, Suite 1410, Arlington, Virginia 22202.

Time: 8 a.m.—5 p.m.

Purpose: The Commission was established to assess the progress and effectiveness of the United States Army Reserve Command since its establishment.

Summary of Agenda: This is the sixth meeting of the Commission. The Commission will examine opportunities for improvement in command control of the USAR.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the matter permitted by the committee. Anyone desiring to appear before the committee should contact the staff for procedures.

Ellis L. Pennington,

LTC, FA, U.S. Army Reserve Command, Independent Commission.

[FR Doc. 92-18014 Filed 7-29-92; 8:45 am]

BILLING CODE 3710-01-M

Military Traffic Management Command; Rules and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Air Carrier, Air Forwarder and Air Taxi

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of procedural changes in DOD freight rate acquisition programs.

SUMMARY: The Military Traffic Management Command (MTMC), for the Department of Defense (DOD), intends to modify the procedures used to acquire rates and changes from the commercial air carrier industry for the movement of freight traffic. This modification is the issuance of a rules publication designed to standardize and simplify the procurement of rates and services for Government traffic moving by air transportation service under section 10721 of the Interstate Commerce Act. This publication, MTMC Air Rules Publication No. 20, is available in draft form for public review and comment. A copy of this publication may be obtained by writing HQ, Military Traffic Management Command, ATTN: MTIN–NG, room 629, 5611 Columbia Pike, Falls Church, VA 22041–5050 or telephone (703) 756–1585. Written comments concerning the proposed publication will be considered if received not later than September 14, 1992. Address comments to: Commander, Military Traffic Management Command, Attn: MTIN–NG, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Blaise J. Guzzardo, HQ, Military Traffic Management Command, Attn: MTIN–NG, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1585.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–17974 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–08–M

Proposed Addition of Electronic Data Interchange (EDI) Verbiage to the Personal Property Traffic Management Regulation, DOD 4500.34R

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of change.

SUMMARY: This is to advise all Department of Defense (DOD) approved domestic and international household goods, unaccompanied baggage, mobile home, and boat carriers of recommended changes to the Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34R, pertaining to Electronic Data Interchange (EDI). Changes to the PPTMR may be obtained by writing HQ, Military Traffic Management Command, ATTN: MTPP–MA, 5611 Columbia Pike, Falls Church, VA 22150–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Jebo, HQ Military Traffic Management Command, ATTN: MTPP–MA, 5611 Columbia Pike, Falls Church, VA 22150–5050, telephone: (703) 756–1600.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–17973 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense (DOD) is expanding its Defense Transportation Tracking System (DTTS) to track Security Risk Category (SRC) III and IV munitions effective 1 October 1992.

ADDRESSES: Military Traffic Management Command, ATTN: MT–SS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Irene Rosen, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1089.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide information on the expansion of the Defense Transportation Tracking System (DTTS).

The Military Services and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence have approved expansion of DTTS. The expansion implements a phased plan that will eventually result in the tracking of all DOD Categorized and Uncategorized munitions under Satellite Motor Surveillance Service (SM).

Accordingly, beginning on 1 October 1992, DTTS will implement the second step of the 3-step expansion plan. On that date, the tracking of SRC III and IV Arms, Ammunition and Explosives (AA&E) will commence. SRC I and II AA&E shipments, totalling about 6,000 per year, are currently being tracked. Tracking of SRC III and IV will add approximately 16,000 shipments annually to the SM tracking volume. During this phase of the expansion, the Department of Defense will pay up to $0.22 per mile for SM service. Carriers may charge at or below this rate to provide SM.

Carriers participating in the transport of DOD AA&E are invited to provide MTMC any comments or concerns they may experience in regards to this expansion of operations.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, Attn: MT–INNG, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–17976 Filed 7–29–92; 8:45 am]

BILLING CODE 3710–08–M

Availability for Non-exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Potentiation of Immunotoxin Action by Brefeldin A

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFF 404.6, announcement is made of the availability of U.S. Patent No. 5,112,607 entitled "Potentiation of Immunotoxin Action by Brefeldin A" issued May 12, 1992 for licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702–5012, telephone (301) 619–2065.

SUPPLEMENTARY INFORMATION: Ricin is a potent toxin which is essentially non-specific in the types of cells it kills. The toxin consists of two peptide chains:

(1) The B-chain binds to surface determinants found on virtually all cells and assists in inserting the A-chain into the cytosol of the cell.

(2) The A-chain enzymatically inactivates the protein synthetic machinery once it has entered the cytosol. Immunotoxins are designed to specifically kill predetermined target cells without harming other non-target cells in the population. This is accomplished by attaching ricin A-chain

to a monoclonal antibody directed to a surface determinant found exclusively on the selected target cell. While specificity is vastly increased, the target cell toxicities of immunotoxins have proven to be much lower than the native (A- B- chain) toxins. Brefeldin-A (BFA) has been shown to potentiate the specific, target cell toxicity of a number of immunotoxins. In addition, BFA blocks the non-specific toxicities of both native ricin and ricin A chain. The apparently low toxicity of BFA in animals suggests that the compound is a good candidate for potentiating the efficacy of immunotoxin therapy.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 92-17977 Filed 7-29-92; 8:45 am]

BILLING CODE 3710-08-M

Performance Review Boards; Membership

AGENCY: Senior Executive Service Office, Directorate of Civilian Personnel, Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, room 2C670, Washington, DC 20310-0300.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S. Code, requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office Secretary of the Army, are:

1. Mr. William K. Takakoshi, Special Assistant to the Under Secretary of the Army, Office of the Under Secretary of the Army
2. Mr. Walter W. Hollis, Deputy Under Secretary of the Army Operations Research, Office, Deputy Under Secretary of the Army (Operations Research)
3. Dr. Daniel Willard, Operations Research Analyst, Office, Deputy Under Secretary of the Army (Operations Research)
4. Dr. Robert N. Stearns, Deputy Assistant Secretary (Project Management), Assistant Secretary of the Army (Civil Works)
5. Mr. Morgan R. Rees, Deputy Assistant Secretary (Planning, Policy and Legislation), Assistant Secretary of the Army (Civil Works)
6. Ms. Erin J. Hausman, Assistant Deputy Assistant Secretary of the Army for Army Budget, Assistant Secretary of the Army (Financial Management)
7. Dr. Robert W. Raynsford, Special Advisor for Economic Policy and Productivity Programs, Assistant Secretary of the Army (Financial Management)
8. BG Roger Thompson, Director of Operations Directorate, Assistant Secretary of the Army (Financial Management)
9. Mr. Michael W. Owen, Principal Deputy Assistant Secretary of the Army (Installations, Logistics and Environment), Assistant Secretary of the Army (Installations, Logistics and Environment)
10. Ms. Patricia M. Hines, Deputy Assistant Secretary of the Army for Training, Education and Simulation, Assistant Secretary of the Army (Manpower and Reserve Affairs)
11. Mr. Robert M. Emmerichs, Deputy Assistant Secretary of the Army (Military Personnel Management and Equal Opportunity Policy), Assistant Secretary of the Army (Manpower and Reserve Affairs)
12. Mr. George E. Dausman, Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Research, Development and Acquisition)
13. Mr. Keith Charles, Deputy Assistant Secretary for Plans and Programs, Assistant Secretary of the Army (Research, Development and Acquisition)
14. BG William H. Campbell, Deputy for Program Assessment and International Cooperation, Assistant Secretary of the Army (Research, Development and Acquisition)
15. BG John E. Longhouser, Assistant Deputy for Systems Management, Assistant Secretary of the Army (Research, Development and Acquisition)
16. Mr. William E. Grayson, Principal Deputy General Counsel/Chief of Legal Services, Office of the General Counsel
17. Mr. Darrel L. Peck, Deputy General Counsel (Military and Civil Affairs), Office of the General Counsel
18. Mr. Earl J. Holliman, Army Spectrum Manager, Director of Information Systems for Command, Control, Communications, and Computers
19. BG David J. Kelly, Director for Systems Management, Director of Information Systems for Command, Control, and Computers
20. Mr. Thomas Druzgal, Deputy Auditor General, Army Audit Agency
21. Mr. Henry J. Fischer, Jr., Regional Auditor General (Northeastern Region), Army Audit Agency

The members of the Performance Review Board for the Office Army Acquisition Executive are:

1. Mr. Melvin E. Burcz, Program Executive Officer, Combat Support
2. Mr. Dale G. Adams, Program Executive Officer, Armaments
3. Mr. George G. Williams, Program Executive Officer (Fire Support)
4. BG William H. Campbell, Deputy for Program
5. BG John E. Longhouser, Deputy for Systems Management, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
6. Mr. George E. Dausman, Deputy Assistant Secretary of the Army for Procurement, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
7. Mr. George T. Singley, III, Deputy Assistant Secretary of the Army for Research and Technology/Chief Scientist, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
8. MG Dewitt T. Irby, Program Executive Officer, Aviation

The members of the Performance Review Board for the Office Consolidated Command Performance Review Board are:

1. Mr. William R. Lucas, Deputy to the Commander, Headquarters, Military Traffic Management Command
2. Mr. Thomas D. Collinsworth, Director, Military Traffic Management Command, Transportation Engineering Agency, Headquarters, Military Traffic Management Command
3. BG David A. Whaley, U.S. Army Commander, Military Management Traffic Command Eastern Area, Headquarters, Military Traffic Management Command
4. BG Daniel M. Kelleher, U.S. Army Commander, Military Management Traffic Command Western Area, Headquarters, Military Traffic Management Command
5. MG Henry M. Hagwood, Jr., Deputy Chief of Staff for Resource Management, U.S. Army Training and Doctrine Command

6. BG Paul Y. Chinen, Deputy Chief of Staff for Base Operation Support, U.S. Army Training and Doctrine Command
7. Mr. Mervin A. Frantz, Jr., Assistant Deputy Chief of Staff for Resource Management, U.S. Army Training and Doctrine Command
8. Dr. Eugene R. LaRocque, Jr., Director of Operations, TRADOC Analysis Command, U.S. Army Training and Doctrine Command
9. BG John G. Zierdt, Jr., Director, Resource Management, J8, Headquarter, Forces Command
10. Mr. William S. Fraim, Deputy Director for Personnel, J1, Headquarter, Forces Command
11. Dr. Michael L. Gentry, Technical Director, U.S. Army Information Systems Engineering Command, U.S. Army Information Systems Command
12. Mr. Leonard J. Mabius, Senior Technical Director/Chief Engineer, U.S. Army Information and Systems Command
13. MG Samuel A. Leffler, Deputy Commander, U.S. Army Information Systems Command
14. BG Robert E. Wynn, Commander, 7th Signal Command, U.S. Army Information Systems Command
15. Mr. Williams S. Rich, Jr., Deputy and Technical Director, U.S. Army Foreign Science and Technology Center, U.S. Army Intelligence and Security Command
16. BG Michael M. Schneider, Deputy Commander, HQ INSCOM, U.S. Army Intelligence and Security Command
17. Mr. Larry C. Hanson, Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Europe
18. Mr. Archie D. Grimmett, Assistant Deputy Chief of Staff for Personnel (Civilian Personnel)

The members of the Performance Review Board for the Office Chief of Staff Performance Review Board:

1. Ms. Janet C. Menig, Deputy Director of Management (Installation Management and Resourcing), Office, Chief of Staff of Army
2. Dr. J.J. Bellaschi, Deputy Director of Program Analysis and Evaluation, Office, Chief of Staff of Army
3. Mr. John A. Riente, Technical Advisor to the Deputy Chief of Staff for Operations and Plans, Deputy Chief of Staff for Operations and Plans
4. MG John H. Tilelli, Jr., Assistant Deputy Chief of Staff for Operations and Plans, Deputy Chief of Staff for Operations and Plans
5. Dr. Harold Booher, Director of MANPRINT, Deputy Chief of Staff for Personnel
6. MG Fred Gorden, Director of Military Personnel Management, Deputy Chief of Staff for Personnel
7. BG (P) Hubert G. Smith, Director, Transportation, Energy and Troop Support, Deputy Chief of Staff for Logistics
8. Mr. Arthur Keltz, Executive Director, Strategic Logistics Agency, Deputy Chief of Staff for Logistics
9. MG Cloyd H. Pfister, Assistant Deputy Chief of Staff for Intelligence, Deputy Chief of Staff for Intelligence
10. Dr. Shelba J. Proffitt, Director, Advanced Technology Directorate, U.S. Army Strategic Defense Command
11. Dr. Michael J. Lavan, Director, Directed Energy Weapons Directorate, U.S. Army Strategic Defense Command

The members of the Performance Review Board for the Army Materiel Command:

1. MG Dewitt T. Irby Jr., Program Executive Officer—Aviation
2. MG Thomas Prather, U.S. Army Troop Support Command
3. BG David J. Kelley, DCG U.S. Army Signal Center and Fort Gordon/Asst Cmdt, USA Signal School
4. BG J. W. Boddie, Jr., Deputy Commanding General for Procurement and Readiness, U.S. Army Armament, Munitions and Chemical Command, AMC
5. BG Robert T. Howard, Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command
6. BG Richard W. Wharton, Jr., Commander, White Sands Missile Range, U.S. Army Test and Evaluation Command, AMC
7. Mr. Melvin E. Burcz, PEO, Combat Support, Army Acquisition Executive
8. Mr. John L. Byrd, Jr., Director, U.S. Army Defense Ammunition Center and School, U.S. Army Armament, Munitions, and Chemical Command
9. Dr. Richard Chait, Chief Scientist, U.S. Army Materiel Command
10. Mr. Jerry L. Chapin, Deputy PEO, Close Combat Vehicles, Army Acquisition Executive
11. Dr. Charles H. Church, Director, Advanced Concepts and Technology Assessments, HQDA
12. Mr. Walter W. Clifford, Chief, Air Warfare Division, U.S. Army Materiel Systems Analysis Activity, AMC
13. Mr. William C. Dee, Associate Project Manager for Binary Munition, CRDEC, U.S. Army Armament, Munitions and Chemical Command
14. Dr. Kenneth L. Davis, Head Electronics Division, Office of Naval Research
15. Mr. Edward G. Elgart, Director of Procurement, U.S. Army Communications-Electronics Command, AMC
16. Ms. Louann Elledge, Director, Systems Integration and Management Activity, AMC
17. Mr. James E. Emahiser, Deputy to the Commander, U.S. Army Troop Support Command, AMC
18. Mr. Victor J. Ferlise, Chief Counsel, U.S. Army Communications-Electronics and Command, AMC
19. Mr. Frank E. Fiorilli, Comptroller, U.S. Army Communications-Electronics Command, AMC
20. Mr. Michael F. Fisette, Asst Deputy for International Cooperative Programs, U.S. Army Materiel Command
21. Mr. James L. Flinn, III, Director, Integrated Materiel Management Center, U.S. Army Missile Command, AMC
22. Dr. John T. Frasier, Director, BRL, U.S. Army Laboratory Command, AMC
23. Mr. David V. Gaggin, Director, AMC Avionics Research and Development Activity, U.S. Aviation Systems Command, AMC
24. Mr. Feliciano Giordano, Associate Technical Director, RD&E Center, U.S. Army Communications-Electronics Command, AMC
25. Dr. Kelly V. Grider, Director, Systems Simulation and Development, U.S. Army Missile Command, AMC
26. Mr. Darold Griffin, Principal Assistant Deputy for Research, Development, and Acquisition, U.S. Army Materiel Command
27. Mr. James C. Hill, Assistant Deputy Chief of Staff for Policy and Procedures, U.S. Army Materiel Command
28. Dr. Joseph W. Holmes, Director, Missile and Space Intelligence Center, Defense Intelligence Agency
29. Mr. Thomas L. House, Technical Director, U.S. Army Aviation Systems Command, AMC
30. Mr. Henry B. Jones, Director of Procurement and Production, U.S. Army Tank-Automotive Command, AMC
31. Mr. James C. Kelton, Technical Director, Combat Systems Test Activity, U.S. Army Test and Evaluation Command, AMC
32. Mr. Robert V. Kennedy, Director, Electronics and Weaponization, U.S. Army Aviation Systems Command, AMC
33. Dr. Clarence W. Kitchens, Jr., Chief, Terminal Ballistics Division, BRL, U.S. Army Laboratory Command, AMC
34. Mr. Edward J. Korte, Command Counsel, U.S. Army Materiel Command

35. Dr. Robert W. Lewis, Technical Director, Natick RD&E Center, U.S. Army Troop-Support Command, AMC
36. Mr. Victor Lindner, Associate Technical Director, Systems Development and Engineering, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC
37. Mr. Colin F. MacDonnell, Jr., Director, Concurrent Engineering, U.S. Army Communications-Electronics Command, AMC
38. Mr. Daniel M. McEneany, Director, Engineering, U.S. Army Aviation Systems Command, AMC
39. Mr. A. David Mills, Assistant Deputy Chief of Staff for Supply, Maintenance, and Transportation, U.S. Army Materiel Command.
40. Mr. Douglas R. Newberry, Director of Resource Management, U.S. Army Tank-Automotive Command, AMC
41. Dr. Kenneth J. Oscar, Director, Research, Development and Engineering Center, U.S. Army Tank-Automotive Command, AMC
42. Mr. Michael Parker, Technical Director, CRDEC, U.S. Army Armament Munitions and Chemical Command, AMC
43. Dr. Bennie H. Pinckley, Deputy Program Executive Officer, Air Defense
44. Mr. Raymond G. Pollard, III, Technical Director, U.S. Army Test and Evaluation Command, AMC
45. Ms. Renata Price, Deputy Dir, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC
46. Mr. Joseph J. Pucilowski, Jr., Director, CECOM Center for C3 Systems, U.S. Army Communications-Electronics Command, AMC
47. Mr. Jerry L. Reed, Dir, HDL, U.S. Army Laboratory Command, AMC
48. Mr. Alfred D. Reeder, Director Acquisition Center, U.S. Army Missile Command, AMC
50. Mr. Daniel J. Rubery, Logistics Director, U.S. Army Aviation Systems Command, AMC
51. Mr. Michael Sandusky, Deputy Chief of Staff for Program Analysis and Evaluation, U.S. Army Materiel Command
52. Dr. Robert E. Singleton, Director, Engineering & Environmental Sciences Division, U.S. Army Research Office, AMC
53. Mr. James M. Skurka, Director, C3I Logistics and Readiness Center, U.S. Army Communications-Electronics Command
54. Mr. Gary E. Tagtmeyer, Assistant Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command
55. Mr. Gary A. Tull, Acting Deputy Chief of Staff for Procurement, U.S. Army Materiel Command
56. Dr. Clarence G. Thornton, Director, ETDL, U.S. Army Laboratory Command, AMC
57. Mr. William T. Vomocil, Technical Director, Yuma Proving Ground, U.S. Army Test and Evaluation Command, AMC
58. Mr. William L. Vault, Director, Nuclear Survivability Laboratory, HDL, U.S. Army Laboratory Command, AMC
59. Dr. Horst R. Wittmann, Director, Electronics and Material Sciences, Air Force Office of Scientific Research
60. Mr. Morris J. Zusman, Technical Director, U.S. Army Belvoir RD&E Center, U.S. Army Troop-Support Command, AMC

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-18103 Filed 7-29-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10552-002-Idaho]

Contractors Power Group, Inc.; Availability of Environmental Assessment

July 24, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Mile 28 Hydroelectric Project, to be located on Bureau of Reclamation's Milner-Gooding Canal, in Jerome County, near Eden, Idaho, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18030 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-59-000]

Chandeleur Pipe Line Co.; Conference

July 24, 1992.

Take notice that on August 11, 1992, a conference will be convened in the above-captioned docket to discuss Chandeleur Pipe Line Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. For additional information, contact Joan Dreskin at (202) 208-0738.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18031 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-33-000]

East Tennessee Natural Gas Co; Conference

July 24, 1992.

Take notice that on August 26, 1992, a pre-filing conference will be convened in the captioned restructuring docket. The purpose of this conference is to address the summary of proposal to comply with Order No. 636 prepared by East Tennessee Natural Gas Company. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

The conference will be held in Hearing Room 1 in the offices of the Federal Energy Regulatory Commission at 810 N. Capitol Street, Washington, DC 20426. The conference will begin at 10 a.m. on August 26, 1992. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18032 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-19-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 24, 1992.

Take notice that on July 20, 1992, Granite State Gas Transmission, Inc., (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1,

containing changes in rates for effectiveness on the dates indicated:

Proposed Effective Dates

Fifteenth Revised Sheet No. 25, July 1, 1992
Sixteenth Revised Sheet No. 25, September 1, 1992

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that on June 30, 1992 and July 2, 1992, CNG filed changes in the charges for its Rate Schedule GSS service in Docket Nos. TM92-8-22-000 and TA92-1-22-000 for effectiveness on July 1 and September 1, 1992, respectively. According to Granite State, its filing tracks the same changes in its Rate Schedule GSS on the same effective dates proposed by CNG.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17944 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-205-000]

Southern Natural Gas Co.; Petition for Waiver of Regulations

July 24, 1992.

Take notice that on July 20, 1992, Southern Natural Gas Company (Southern), petitioned the Commission for a limited waiver of § 154.16 of the Commission's Regulations and Rule 2010 of the Commission's Rules of Practice and Procedure so as to permit Southern to serve on customers electing such service an abbreviated copy of future tariff filings made by Southern.

Southern states that in the abbreviated version of its tariff filings, Southern would propose to serve only the transmittal letter, the proposed tariff sheets and the statement of nature, reason and basis. Southern states that the abbreviated version of the filing would be served only on customers that submit an election in the form contained in Exhibit A attached to the filing, demonstrating their agreement of the service of the abbreviated form of the filing. Southern states that any customers electing such service will be free, however, to request a complete copy of a particular filing if, upon review of the abbreviated filing, it desires the expanded version of the filing.

Southern states that copies of the filing were mailed on all of Southern's sales and transportation customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17942 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-119-022 and RP92-206-000]

Tennessee Gas Pipeline Co.; Withdrawal of Tariff Sheet and Corrective Filing

July 24, 1992.

Take notice that on July 22, 1992, Tennessee Gas Pipeline Company (Tennessee), filed to withdraw the following tariff sheet, which had been filed on July 13, 1992, to amend Fourth Revised Volume I of its FERC Gas Tariff:

Substitute Original Sheet No. 22

Tennessee asserts that the changes in the notice provisions of the settlement required by the Commission's April 10 order in the referenced docket, which modified its "cosmic" settlement agreement, make the tariff filing unnecessary. In addition, Tennessee states that it seeks to withdraw this sheet because it failed to specify Tennessee's posted price, which was $1.48 per dth (plus adjustments for fuel) as communicated to its sales customers on June 26 by written facsimile communication.

Tennessee requests permission to withdraw the tariff sheet and will follow the procedures in the Revised Sheet No. 344 included in the July 13, 1992 filing for the month of August and succeeding months. Tennessee argues that because the customers received actual notice of the Tennessee's price for the month, which was less than the ceiling price ($1.4848) that is equal to 102% of the weighted index ($1.4557), there is good cause for the Commission to allow the sheet to be withdrawn.

Alternatively, Tennessee states that it is filing the following replacement tariff sheet:

2nd Substitute Original Sheet No. 22 to clarify the applicable gas rate.

Tennessee states that copies of the filing is being mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17941 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-391-012]

Transcontinental Gas Pipe Line Corp.; Compliance filing

July 24, 1992.

Take notice that on July 21, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing revised tariff sheets to Second Revised Volume No. 1, Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff (tariff) which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective as indicated on appendix A.

Transco states that the purpose of the instant filing is to implement revisions to its tariff necessitated by Commission orders issued June 4 and June 5, 1992 in Docket Nos. CP88-391-009, *et al.* and CP88-391-010, respectively. Such orders addressed, on rehearing, issues regarding Transco's Rate and GIC Settlements and Transco's compliance filing related thereto and also approved a Settlement filed February 14, 1992 by Transco and Sun Refining and Marketing Company which resolves all outstanding issues between Transco and Sun.

Transco states that copies of the instant filing were served to its customers, State Commissions and other interested parties to Docket No. CP88-391.

In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17913 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No.TM92-10-29-001]

Transcontinental Gas Pipe Line Corp.; Supplemental Filing

July 24, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 20, 1992 First Revised Original Sheet No. 61 and First Revised Original Sheet No. 62 to Third Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of these tariff sheets is May 1, 1992.

Transco states that the purpose of the instant filing is to correct a pagination error reflected in Transco's filing of April 1, 1992 (April 1 Filing) in Docket No. TM92-10-29-000. The April 1 Filing, including Third Revised Sheet No. 61 and Second Revised Sheet No. 62, was accepted by the Commission to be effective May 1, 1992. In preparing a subsequent filing, Transco has discovered that Sheet Nos. 61 and 62 were mispaginated. Therefore, in the instant filing, Transco is resubmitting Sheet Nos. 61 and 62 with corrected pagination. Transco states that in all other respects, the tariff sheets included in the instant filing are identical to those accepted by the Commission in Docket No. TM92-10-29-000 to be effective May 1, 1992.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties. In accordance, with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18033 Filed 7-29-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-72-NG]

Intalco Aluminium Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on June 15, 1992, by Intalco Aluminum Corporation (Intalco) requesting the renewal of its existing blanket import authorization (ERA Docket No. 88-71-NG). Intalco proposes to import up to 2 Bcf of natural gas from Canada over a period of two years beginning September 28, 1992, the day after their current two-year blanket import authorization expires. The gas would be imported at a border crossing point near Sumas, Washington, which connects with Westcoast Energy Inc., and transported in the U.S. over the Ferndale Pipeline System which is jointly owned and operated by Intalco. Intalco plans to utilize the gas that it imports at its aluminum smelting plant in Ferndale, Washington.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 31, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Departmental of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION:

C. Frank Duchaine Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Intalco, a Delaware corporation with its principle place of business in Ferndale, Washington asserts that the gas will be purchased under contracts of two years

or less with market-responsive price provisions. According to Intalco, it is dependent on Canadian gas for all of its supply requirements because there is no pipeline available to deliver domestic gas.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in the policy guidelines. Intalco asserts its proposed import transactions will be competitive. Parties opposing Intalco's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Intalco's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 27, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18042 Filed 7–29–92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4190–4]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Wilson Drain Site

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a cost recovery settlement agreement under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). This proposed settlement is intended to resolve the liability of two parties for response costs incurred at the Wilson Drain Site in Westland, Michigan. Section 122(i) of CERCLA requires that notice of proposed settlements under section 122(h) of CERCLA be public in the **Federal Register**. This notice seeks to elicit public comments to the Wilson Drain Site Cost Recovery Settlement Agreement pursuant to Section 122(i) of CERCLA.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Comments should be addressed to Kurt Lindland, Assistant Regional Counsel (CS–3T), U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604, and should refer to: Wilson Drain Site in Westland, Michigan.

FOR FURTHER INFORMATION CONTACT: Kurt N. Lindland, U.S. Environmental Protection Agency, Office of Regional Counsel, CS–3T, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886-7152.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the CERCLA, notice is hereby given of a proposed administrative cost recovery settlement concerning the Wilson Drain site located in Westland, Michigan. The Settlement resolves an EPA claim under section 107 of CERCLA against two parties. The settlement requires the settling parties to pay $40,000 to the Hazardous Substances Superfund. This agreement was signed by EPA Region V on July 7, 1992. EPA may withdraw its consent if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper or inadequate.

EPA is entering into this agreement under the authority of section 122(h)(1) of CERCLA. Section 122(h)(1) authorizes compromise and settlement of a claim under section 107 of CERCLA for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement allows the Settling Parties to reimburse EPA for past response costs at the Wilson Drain Site.

For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The Agency's response to comments received will be available for public inspection at the Office of Regional Counsel (CS–3T), U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, Illinois 60604.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel. Requests for copies should be addressed to Kurt Lindland, Mail code: CS–3T, 77 West Jackson Blvd., Chicago, Illinois 60604. The Office of Regional Counsel is currently located on the third floor at 111 West Jackson, Chicago, Illinois 60604. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92–18044 Filed 7–29–92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 278]

Grant To Develop Environmental Health Data Indicators for Community Assessments; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of funds in fiscal year (FY) 1992 for a grant to Washington State Department of Health (WSDH) to develop environmental health data for community assessment by local health agencies. These funds will be used to develop environmental health indicators and data for community health assessment purposes by establishing and pilot testing a data collection system to be used in conjunction with the CDC-sponsored "Assessment Protocol for Excellence in Public Health" (APEXHA). This system will be an invaluable aid to local public health officials and communities to focus and develop appropriate programs meeting relevant community-defined needs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This grant is authorized under the Public Health Service Act, section 301 [42 U.S.C. 241].

Eligible Applicants

Assistance will be provided only to the Washington State Department of Health for conducting this project. No other applications are solicited.

Washington State Department of Health (WSDH) is the most appropriate organization to conduct the work under this grant because:

1. WSDH, in conjunction with its local health departments, is the only state known to have developed a draft set of environmental health status indicators and environmental health process indicators upon which to base this project.

2. These indicators represent a totally innovative approach to community environmental health assessments for local health agencies and will serve as an important adjunct to CDC's major APEXPH initiative for local health agencies. The innovative character of these indicators is witnessed by the fact that they remained unaddressed in the APEXPH-development process because of the difficulty in formulating appropriate and sensitive indicators for environmental public health problems.

3. These draft indicators were developed in Washington by a committee of environmental health directors among Washington's local health departments. These local departments have already agreed to carry out this project and are familiar with its intent and requirements.

4. These indicators are to be a model, with nationwide applicability.

Availability of Funds

Approcimately $40,000 will be available in FY 1992 to support this grant. It is expected that the award will begin on or about September 30, 1992, and will be made for a 12-month budget period within a one-year project period.

Purpose

The purpose of this grant is to provide resources to a state health department to develop and refine, field test, and report the results of this field test, a set of health status indicators and environmental health process indicators. These indicators are expected to become an adjunct to APEXPH with nationwide applicability.

Program Requirements

The grantee must meet the following requirements:

1. Refine and field test a set of community environmental health status indicators and environmental health process indicators to enhance the ability of local health agencies to develop appropriate environmental health programs that meet relevant, community-defined needs.

2. Report findings to, and seek consultation as needed from, the Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. *Understanding of the Problem* (maximum 25 points)

Evidence of the applicant's understanding of the problem and the purpose of the grant.

2. *Measurable Objectives* (maximum 25 points)

The consistency of the measurable objectives with the stated purpose of the grant and the ability to meet the objectives and timetable within the specified period.

3. *Proposed Plan* (maximum 25 points)

The adequacy of the applicant's plan to carry out the activities proposed.

4. *Proposed Monitoring Plan* (maximum 25 points)

The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.

5. *Budget* (not scored)

The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds.

Executive Order 12372 Review

The Intergovernmental Review Requirements of Executive Order 12372, as established by DHHS regulations in 45 CFR part 100, are not applicable to this program.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number assigned to this program is 92.283.

Application Submission and Deadline

A signed original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III,

Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, on or before August 7, 1992.

1. *Deadline:* The application shall be considered as meeting the deadline if it is either:

a. Received on or before the deadline date; or,

b. Sent on or before the deadline date and received in time for submission to the independent review group. The applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or postal service. Private metered postmarks shall not be accepted as proof of timely mailing.

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. are considered late applications. A late application will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 278 and contact Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mail Stop E-14, Atlanta, Georgia 30305, (404) 842-6796 for business management technical assistance. Programmatic technical assistance may be obtained from Art Schletty, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control, Mail Stop F-28, Atlanta, Georgia 30333, (404) 488-4772.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone 202-783-3238).

Dated: July 23, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-18011 Filed 7-29-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90D-0428]

Human-Labeled Drugs Distributed and Used in Animal Medicine; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7125.35 entitled "Human-Labeled Drugs Distributed and Used in Animal Medicine." The revision was made in response to comments and experience with the first issue of CPG 7125.35.

ADDRESSES: Submit written requests for single copies of revised CPG 7125.35 to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.35 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8726.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7125.35 entitled "Human-Labeled Drugs Distributed and Used in Animal Medicine." The CPG formerly was entitled "Human Drugs Distributed to Veterinarians for Animal Use," and was issued on March 19, 1991. The revised CPG expresses FDA's intent with respect to the distribution and use of human-labeled drug products for use in animals to eliminate promotion by manufacturers, distributors, and pharmacies; ensure that distribution and dispensing are made only in response to requests by veterinary practitioners; refrain in ordinary circumstances from enforcement actions when human drugs are used or dispensed by veterinarians in treating nonfood producing animals; take enforcement action against veterinarians who cause illegal residues in food producing animals; limit use of human-labeled drugs in treating food producing animals to very narrow circumstances; and prohibit use, except by or on the order of a licensed veterinarian in the course of his or her practice. The guideline has been reviewed and commented on by members of the Center for Veterinary Medicine Advisory Committee and by others. The revisions have been made in response to comments and experience with the first issue of CPG 7125.35.

The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: July 20, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92-18020 Filed 7-29-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (FR Vol. 52, No. 108, p. 21377, dated Friday, June 5, 1987, Vol. 53, No. 45, p. 7402, dated Tuesday, March 8, 1988, Vol. 54, No. 219, p. 47581, dated Wednesday, November 15, 1989, Vol. 55, No. 122, p. 25888, dated Monday, June 25, 1990, and Vol. 56, No. 200, p. 51908, dated Wednesday, October 16, 1991) is amended to reflect a minor realignment within the Office of Budget and Administration (OBA), Office of the Associate Administrator for Management.

The specific changes to part F are:

- Section FH.20.A.4., Management Planning and Analysis Staff (FHA-1) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

4. Management Planning and Analysis Staff (FHA-1)

- Provides Agency-wide services, policy direction, and coordination with respect to HCFA's management analysis, planning, and control programs including: workplanning, management analysis, productivity improvement, Privacy Act, internal controls, Office of the Inspector General audit resolution functions, advisory and assistance services certification, contracting of commercial and industrial activities, the administrative issuances system, memorandum of understanding and interagency agreements, delegations of

authority, and paperwork reduction programs.

• Conducts special studies and analyses concerning Agency-wide and cross-cutting OBA issues and other broad-based administrative issues.

• Advises the OBA Director in management analysis activities.

• Develops, reviews, analyzes, and maintains existing or proposed Agency-wide delegation of authority.

• Provides services, policy direction, and coordination regarding the HCFA paperwork reduction activities.

• Section FH.20.A.1., Office of Human Resources (FHA6) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

1. Office of Human Resources (FHA6)

• Provides services, leadership, direction, and control with respect to personnel and related services within HCFA.

• Serves as the principle advisor to the Director of the Office of Budget and Administration on the operation of HCFA's personnel system, including recruitment and placement, position classification, personnel management evaluation, performance appraisal, employee development and training, employee relations, ethics functions, and labor relations.

• Administers the Agency special emphasis placement and executive personnel programs.

• Serves in a leadership role in providing authoritative advice and assistance to management officials in carrying out their position management responsibilities.

• Provides for an employee counseling service for employees in HCFA Central Office.

• Provides services, policy direction, and coordination with respect to the organizational analysis activities.

• Provides direct service and establishes policy for other HCFA components with respect to health and activities related to health matters.

• Section FH.20.A.1.a., Division of Information and Organizational Management (FHA61) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

a. Division of Information and Organizational Management (FHA 61)

• Coordinates all personnel information management activities for the Office of Human Resources. Administers and operates the Department's automated personnel/payroll system, Improved Management of Personnel Administration through Computer Technology, as it applies to HCFA components.

• Develops human resource functional requirements for and access to HCFA's Comprehensive Personnel System. Provides systems support and technical assistance on all other automated data processing and office automation activities that relate to human resources functions.

• Plans, directs and implements a comprehensive HCFA position classification and position management program for all positions GS–15 and below in the Central and Regional Offices. Inputs data into the automated personnel system and prepares statistical information and reports relating to the position management and classification program.

• Conducts the HCFA-wide organizational analysis program. Studies HCFA's organizational and functional arrangements and develops plans for assimilating new or modified functions into the HCFA organization.

• Conducts in-depth analyses of new legislation affecting HCFA for the purposes of determining the affect on HCFA's organizational structure. Develops recommendations for organizational changes, and submits proposals to upper management's consideration.

• Section FH.20.A.2, Office of Financial Management (FHA1) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

2. Office of Financial Management (FHA1)

• Provides financial and accounting services, leadership, and policy direction for HCFA's financial management programs. Operates the Agency's accounting and financial reporting activities and processes all obligations and expenditure documents including employee payroll and travel costs.

• Prepares, justifies, and executes the HCFA program and administrative budget. Coordinates with officials at the Department and at the Office of Management and Budget to resolve budget issues. Provides advice and assistance to HCFA components in the development and justification of their annual budgets.

• Manages the HCFA financial and manpower resource allocation activities. Prepared reports and other resource allocation control mechanisms for the Director, OBA and other senior HCFA staff.

• Section FH.20.A.2.a., Division of Budget (HFA15) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

a. Division of Budget (FHA15)

• Consolidates, prepares, and executes HCFA's budget and operates HCFA's budget system. Serves as the central information point for all budgetary matters including interagency agreements impacting on HCFA's funding and transfer of funds to and from other agencies. Provides advice on the reporting of program and financial data necessary for the presentation and defense of budget requests.

• Provides advice, guidance, and assistance to HCFA components in the development of budget justification materials and analysis including current services budgeting and other budgetary principles required by the Office of the Secretary, HHS, the Office of Management and Budget, and the Congress. Provides technical direction to HCFA regional components on all budgetary matters.

• Develops budget control systems necessary to ensure that appropriate measures are in place to prevent violations of the Anti-Deficiency Act.

• Maintains and monitors an allotment and allowance system sufficient to pinpoint responsibility and accountability for Federal funds.

• Provides staff expertise in the review and analysis of budgetary, operational, legislative, or regulatory proposals by HCFA operating components. Reviews these proposals to determine the fiscal impact on, and consistency with, HCFA and departmental management and programmatic objectives.

• Develops financial management policy as it relates to HCFA's programmatic objectives. Certifies the cost of all proposed program and demonstration waivers.

• Reviews financial data and makes recommendations as to the effectiveness of the waiver and potential termination or nonrenewal actions.

• Directs the allocation of HCFA's staffing resources among HCFA components, issues employment ceilings, and directs HCFA's manpower management system. Assures the validity of cost allocation data and monitors adherence to financial management policies among HCFA components.

Dated: July 21, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–17932 Filed 7–29–92; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project 1076–0059, Washington, DC 20503, telephone 202–395–7340.

Title: Tribal Participation Budget Planning Forms.
OMB approval number: 1076–0059.
Abstract: As set forth by Congress and Department/Bureau policy, these forms are needed to assure maximum Indian participation in the planning, administration, and direction of Indian programs. The forms enable tribal officials to participate in establishing program priorities and setting program funding levels at each tribe/agency budget location.
Bureau form number: BIA 4256, 4257, 5259.
Frequency: Annually.
Description of respondents: Tribal Officials.
Estimated completion time: 6.625 hours.
Annual responses: 400.
Annual burden hours: 2,650.
Bureau clearance officer: Gail Sheridan 202–208–2685.

Dated: July 21, 1992.

Lynn Ashe,

Acting Chief, Division of Program Development and Implementation.

[FR Doc. 92–18010 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–066–4333–12]

Closure; Palm Springs-South Coast Resource Area Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public entry to public lands.

SUMMARY: Notice is hereby given that Public Lands adjacent to Canyon Lake in Riverside County, California will be closed to public entry from the hours of 10 a.m. to 5:30 a.m. This closure will not apply to emergency response agencies conducting official business or to land or resource management agencies conducting studies under permit from the Bureau of Land Management, U.S. Fish and Wildlife Service, California Department of Fish and Game, City of Canyon Lake, Riverside County and any local agency charged with the management of the water in Canyon Lake. This use restriction covers those Public Lands within the City of Canyon Lake.

EFFECTIVE DATE: This order is effective upon signature of the authorized officer, July 1, 1992.

SUPPLEMENTARY INFORMATION: The purpose of this use restriction is to provide protection to the water quality of Canyon Lake. The lake is the major domestic water supply for municipalities in the area. The City of Canyon Lake has stated that due to the lack of proper sanitary facilities along the shoreline, water quality of the lake is being impacted. The greatest use impacting the quality is the utilization of the shoreline for uncontrolled camping purposes and the resultant remains of human waste and debris.

ORDER: Notice is hereby given that effective on the date of signature by the authorized officer of this notice, the following use restriction will be permanently in effect on Public Lands within the City of Canyon Lake.

1. No person may enter or remain on public lands, described below, between the hours of 10 p.m. and 5:30 a.m. Emergency agencies on official business, employees and permittee of the Bureau of Land Management, U.S. Fish and Wildlife Service, California Department of Fish and Game, City of Canyon Lake, County of Riverside and Lake Elsinore Water District will be exempt from this order if those persons are conducting official resource management duties.

San Bernardino Meridian, California

T. 5 S., R. 4 W.,
Secs. 26, 34

Authority for this use restriction may be found in 43 CFR 8364.1. Violations of this closure are punishable by a fine not to exceed $10,000 and/or 12 months in jail.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area, 63–500 Garnet Ave., P.O. Box 2000, North Palm Springs, CA 92258–2000, (619) 251–0812.

Dated: July 1, 1997.

Russell Kaldenburg,

Area Manager.

[FR Doc. 92–18005 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–00–4332–11; AZA 25479, AZA 25480]

Intent To Prepare Two Wilderness Management Plans and Associated Environmental Documents and Invitation To Participate in the Identification of Issues; Phoenix District Office, Phoenix Resource Area, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare wilderness management plans and environmental documents.

SUMMARY: Notice is hereby given of intent to prepare two wilderness management plans. This notice also constitutes the scoping notice required by the National Environmental Policy Act (40 CFR 1501.7).

(1) *Description of proposed planning action:* In accordance with Bureau of Land Management wilderness management policy guidance, two Wilderness Management Plans will be developed for two wilderness areas: Hassayampa River Canyon and Hell's Canyon Wilderness Areas. An Environmental Assessment of the impacts of the proposed actions and alternatives will be prepared prior to approval of each plan.

The plans will define the management practices and actions to be used to maintain each area's wilderness resources and will consider those issues and alternatives identified in a number of public open house and work group meetings. The public is invited to participate in open house meetings beginning in August 1992.

(2) *Geographic areas involved:* The two wilderness areas are located in the Sonoran Desert of south central Arizona, located in southern Yavapai and extreme northern Maricopa Counties, within a 30 mile radius of Wickenburg, Arizona.

(3) *Types of issues anticipated:* Wilderness values such as naturalness solitude and primitive recreational opportunities must be preserved. Use of these areas for developed public recreation and education, research, wildlife management and legal private purposes will be assessed. Acceptable levels of these uses as well as primitive

recreational activities will be identified. Actions necessary to administer the areas, e.g., signing, compliance enforcement, search and rescue, wild burro removal, and fire suppression will also be identified and acceptable levels of these activities determined.

(4) *Disciplines to be represented in the preparation of the management plans will include:* Wilderness, Recreation, Cultural, Wildlife, Range and Livestock Grazing, Lands and Minerals, and Fire Management.

(5) *The kind and extent of public participation opportunities to be provided:* Two public scoping meetings will be held to identify issues in managing both areas. These will be held in Phoenix and Wickenburg, Arizona at the following times and locations:

Thursday, August 27, 1992, 6 p.m.—9 p.m., Phoenix District Office Conference Room, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona.

Wednesday, September 9, 1992, 6 p.m.—9 p.m., Wickenburg Community Center, 160 North Valentine, Wickenburg, Arizona.

Written comments regarding issues will also be accepted until September 30, 1992. Comments should be sent to: Bureau of Land Management, Phoenix District Office, Attn: Arthur E. Tower, 2015 West Deer Valley Road, Phoenix, Arizona, 85027.

In addition, two Advisory Groups, one for each Wilderness Planning Area, made up of interested public and agency personnel, will be formed to assist in the development of each plan. Participation in these groups will be solicited through mailings, news releases, and personal contracts.

Interested publics will be sent copies of the completed draft Wilderness Management Plans and will have 45 days in which to comment. Interest in this mailing will be solicited and a mailing list maintained at the Phoenix District Office.

ADDRESSES: The location and availability of documents relevant to these management plans will be available for public review at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: William Gibson, Phoenix Resource Area, Telephone (602) 863–4464.

SUPPLEMENTARY INFORMATION: The plans which will cover both areas mentioned, includes a combined total of 21,040 wilderness acres. The areas were added to the Wilderness Preservation System by Public Law 101–628, of November 28, 1990, known as the Arizona Desert Wilderness Act of 1990. The management and use of these areas is directed by this law as well as the Federal Land Policy and Management Act of 1976 and the Wilderness Act of 1964.

Descriptions of the Hassayampa River Canyon and Hell's Canyon Wilderness Areas can be found in the Phoenix Final Wilderness Environmental Impact Statement of 1985.

Dated: July 21, 1992.

William T. Childress,

Acting District Manager.

[FR Doc. 92–18007 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–32–M

[OR120–6310–02 GPO 2–331]

Advisory Council Meeting

ACTION: Notice of meeting of the Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR, part 1780, that a meeting of the Coos Bay District Advisory Council will be held on August 27, 1992 at 1 p.m. in the conference room of the Coos Bay District Office at 1300 Airport Lane, North Bend, Oregon.

The agenda will include information about ongoing programs on the Coos Bay District, and provide the Council with a briefing on the preferred alternative currently being analyzed in the Coos Bay District Resource Management Plan.

The Coos Bay District Advisory Council is composed of 10 individuals with expertise in a wide variety of program areas including renewable resources, recreation, environmental protection and transportation and rights-of-way. The function of the Council is to provide the Coos Bay District Manager with advice on the management of district programs.

The meeting is open to the pubic and time will be provided for public comments. Individuals wishing to address the Council should notify Alan Hoffmeister, BLM Public Affairs Officer in the Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459. Phone 756–0100.

Melvin E. Chase,

District Manager.

[FR Doc. 92–18008 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–33–M

[NM–030–92–4212–13; NMNM 82703]

Termination of Segregation and Opening Order; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect upon a portion of the public lands identified in the Notice of Realty Action published in the **Federal Register**, Volume 56, No. 180, dated September 17, 1991, and opens the lands to the operation of the public land laws including location under the mining laws.

FOR FURTHER INFORMATION CONTACT: Harlen Smith, Area Manager, Socorro Resource Area, Bureau of Land Management, 198 Neel Avenue, Socorro, New Mexico 87801, (505) 835–0412.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 2201.1(b), the following described public lands were segregated from appropriation under the public land laws:

New Mexico Principal Meridian

T. 2 N., R. 4 E.,
  Sec. 3, lots 1 and 2;
  Sec. 10, lots 1 to 4, inclusive, E½NE¼, and SE¼.
T. 1 N., R. 12 W.,
  Sec. 19, lot 3 and NE¼SW¼.
T. 1 N., R. 13 W.,
  Sec. 13, SE¼SW¼ and S½SE¼;
  Sec. 24, NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼.
T. 1 N., R. 16 W.,
  Sec. 29, SE¼NW¼.
T. 3 N., R. 17 W.,
  Sec. 31, NE¼, E½NW¼, AND N½SE¼.
T. 3 S., R. 1 W.,
  Sec. 25, W½E½ (portion).
T. 2 S., R. 4 W.,
  Sec. 21, NW¼SE¼, N½SW¼, and SW¼SW¼;
  Sec. 25, lots 11 and 18;
  Sec. 29, NW¼NE¼ and N½NW¼;
  Sec. 30, lots 1,2,3, NE¼, E½NW¼, and NE¼SW¼
  Sec. 36, lots 6 to 9, inclusive, 11 and 12.
T. 2 S., R. 5 W.,
  Sec. 25, E½NE¼, E½SW¼, and SE¼.
T. 2 S., R. 9 W.,
  Sec. 19, S½SE¼;
  Sec. 20, SW¼, W½SE¼, and SE¼SE¼;
  Sec. 21, S½SW¼;
  Sec. 28, W½;
  Sec. 29;
  Sec. 30, E½;
  Sec. 33, W½.
T. 2 S., R. 10 W.,
  Sec. 13, W½SW¼ and SE¼SW¼;
  Sec. 14, N½SE¼SE¼, N½SW¼SE¼SE¼, SE¼SW¼SE¼SE¼, and SE¼SE¼SE¼;
  Sec. 24, N½NW¼ and SE¼NW¼.
T. 5 S., R. 16 W.,
  Sec. 8, tracts 37, 40, 41, and 46.
T. 2 S., R. 1 E.,
  Sec. 31, lot 11.

T. 4 S., R. 1 E.,
Sec. 18, lot 21;
Sec. 33, lot 17.
T. 5 S., R. 1. E.,
Sec. 4, lot 38, 40, and 41.

Upon publication of the Notice of Realty Action, the subject lands became segregated from all forms of appropriation under the public land laws and location under the mining laws, as they were being considered for disposal as part of the Boyd Ranch Land Exchange Proposal. Since these lands were eventually omitted from the final exchange package their segregation is no longer appropriate.

Pursuant to 43 CFR 2091.2–2(a)(2), the segregation effect on the above described lands will terminate on August 1, 1992. At 10 a.m. on August 1, 1992, the land will be open to the operation of the public land laws, generally subject to valid existing rights and requirements of applicable law.

Dated: July 17, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92–18006 Filed 7–24–92; 8:45 am]

BILLING CODE 4310–FB–M

[G–010–4212–13/G2–0117; NM87609]

Realty Action; Exchange of Lands in New Mexico

AGENCY: Bureau of Land Management, Farmington Resource Area, Interior.

ACTION: Notice of Realty Action on Proposed Land Exchange NM 87609. Exchange of public and withdrawn public land for private and trust land in San Juan, McKinley, Sandoval, Cibola and Rio Arriba Counties, New Mexico.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Withdrawn Public Land New Mexico Principal Meridian

	Acres
T. 21 N., R. 8 W.,	
Sec. 25: All	640.00
Sec. 27: Lots 1–4, N½, SE¼	645.59
T. 15 N., R. 11 W.,	
Sec. 3: S½N½, S½	480.00
Sec. 7: NE¼, Lots 3, 4, E½SW¼	308.79
Sec. 9: NE¼, S½	480.00
Sec. 13: All	640.00
Sec. 23: NW¼, SE¼	320.00
Sec. 31: Lots 1–4, E½W½	305.60
T. 16 N., R. 11 W.	
Sec. 3: S½	320.00
Sec. 5: Lots 3, 4, S½NW¼	163.57

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
Sec. 11: S½	320.00
Sec. 19: Lots 1, 2, E½NW¼, E½	475.17
Sec. 23: NE¼, S½	480.00
Sec. 27: All	640.00
Sec. 33: SW¼NE¼,N½NW¼S E¼	60.00
T. 17 N., R. 11 W.,	
Sec. 3: Lots 3, 4, S½NW¼, S½	480.84
Sec. 5: Lots 1–4, S½N½, S½	639.32
Sec. 7: Lots 1–4, E½W½, E½	637.92
Sec. 9: All	640.00
Sec. 17: NW¼, S½	480.00
Sec. 19: Lots 1, 2, E½NW¼, E½	479.68
Sec. 21: NE½, S¼	480.00
Sec. 23: All	640.00
Sec. 27: N½, SW¼	480.00
Sec. 29: E½	320.00
Sec. 33: N½, SW¼	480.00
Sec. 35: All	640.00
T. 18 N., R. 12 W.,	
Sec. 3: SW¼	160.00
Sec. 33: S½	320.00
T. 19 N., R. 12 W.,	
Sec. 1: Lots 1–4, S½N½, S½	645.88
Sec. 3: Lots 1–4, S½N½, SE¼	490.36
Sec. 11: All	640.00
Sec. 13: NE¼, S½	480.00
Sec. 15: N½, SE¼	480.00
Sec. 19: Lots 1, 2, E½NW¼, E½	477.85
Sec. 21: All	640.00
Sec. 23: NW¼, S½	480.00
Sec. 25: SE¼	160.00
Sec. 27: NW¼, S½	480.00
Sec. 29 NE¼	160.00
Sec. 33: E½	320.00
Sec. 35: W½	320.00
T. 17 N., R. 13 W.,	
Sec. 25: S½	320.00
Sec. 27: SW½	160.00
Sec. 29: S½	320.00
Sec. 35: All	640.00
T. 19 N., R. 13W.,	
Sec. 7: Lots 1, 2, E½NW¼	152.60
Sec. 9: SE¼	160.00
Sec. 15: N½, N½S½	480.00
Sec. 17: NW¼	160.00
Sec. Sec 19: Lots 3–8, E½SW¼, E½	620.50
T. 23N., R. 13 W.,	
Sec. 29: All	640.00
T. 14N., R. 18 W.,	
Sec. 1: Lots 1–4, S½N½, S½	640.80
Sec. 25: SW¼	160.00
T. 11N., R. 19W.,	
Sec. 5: Lots 1–4, S½N½, SE¼	480.32
T. 13 N., R. 20 W.,	
Sec. 13: NW¼	160.00
Sec. 15: NW¼, S½	480.00
T. 14 N., R. 20 W.,	
Sec. 21: N½, S½SW¼, SE¼	560.00
T. 12 N., R. 21 W.,	
Sec. 25: All	640.00
T. 13 N., R. 21 W.,	
Sec. 1: Lots 1–4, S½N½, SW¼	480.38
T. 14 N., R. 21 N.,	
Sec. 25: S½N½, S½	480.00
Subtotal	26,665.17

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
Public Land	
T. 9 N., R. 14 W.,	
Sec. 32: S½NW¼	80.00
T. 13 N., R. 12 W.,	
Sec. 10: SW¼	160.00
Subtotal	240.00

Comprising 29,905.17 acres of public and withdrawn public land. In exchange for these lands, the United States will acquire some or all of the following described lands from the Navajo Tribe (Tribe) under the authority of the Indian Land Consolidation Act, 25 USC 2201.

New Mexico Principal Meridian	
T. 22 N., R. 6 W.	
Sec. 1: Lots 1, 2, 3, 4, S½N½, S½	641.00
Sec. 11: NE¼, S½SE¼, E½NW¼, N½S½, SE¼SW¼	520.00
Sec. 12: NW¼, N½SW¼, SW¼SW¼	280.00
T. 23 N., R. 6 W.,	
Sec. 2: SW¼NW¼	40.00
Sec. 3: S½NE¼, SE¼NW¼	120.00
Sec. 5: E½, E½W½, W½SW¼	560.00
Sec. 6: SE¼, S½SW¼	240.00
Sec. 7: All	640.00
Sec. 8: N½, SW¼, SE¼SE¼	520.00
Sec. 9: S½SW¼, S½NW¼, NE¼SW¼, NW¼SE¼	240.00
Sec. 15: SW¼NE¼, NW¼SE¼, NE¼SW¼, SE¼NW¼	160.00
Sec. 17: NE¼NE¼	40.00
Sec. 18: Irregular Tract	602.00
Sec. 20: N½NE¼, SW¼NE¼, NW¼, SE¼SW¼, S½SE¼	400.00
Sec. 21: NW¼NW¼, SW¼SW¼	80.00
Sec. 22: S½, E¼, SE¼ (Partial Irregular Tract)	160.00
Sec. 24: All	640.00
Sec. 25: All	640.00
Sec. 27: N½NE¼	80.00
Sec. 29: N½NE¼, E½NW¼	160
T. 23 N., R. 7 W.,	
Sec. 3: N½	320.00
Sec. 11: S½, S½N½, N½NE¼	560.00
Sec. 12: N½, SE¼, NW¼SW¼	520.00
Sec. 13: Irregular Tract	625.00
Sec. 14: Irregular Tract	290.00
T. 24 N., R. 6 W.,	
Sec. 1: All	640.00
Sec. 3: Lots 3, 4, 5, 6, 11, 12	180.00
Sec. 4: Lots 1–5, 8–10, W½SE¼, E½SW¼, SW¼SW¼	398.20
Sec. 5: Lots 1, 2, 7, 8, 10, 11, 12 N½SW¼	207.13
Sec. 6: Lots 5, 9, 11–14, E½SW¼, NE¼SE¼	359.00
Sec. 7: Lots 1–4, E½W½, E½	638.00
Sec. 8: E½NE¼, SE¼	240.00
Sec. 9: NW¼NW¼, S½SE¼, NE¼SE¼	160.00
Sec. 10: S½, S½N½, NE¼NW¼	520.00
Sec. 12: S½SE¼	80.00
Sec. 13: E½NE¼	80.00
Sec. 15: S½NE¼, N½SE¼	160.00
Sec. 17 W½E½, NE¼NE¼, E½W½, W½NW¼, NW¼SW¼	480.00

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
Sec. 18: SW¼	160.00
Sec. 20: W½	320.00
Sec. 22: NE¼	160.00
Sec. 29: NW¼	160.00
Sec. 30: E½NE¼, SW¼NE¼, NW¼SE¼	160.00
Sec. 35: N½NE¼, NE¼NW¼	120.00
T. 24 N., R. 7 W.,	
Sec. 1: E½SE¼, SW¼SE¼, S½SW¼	200.00
Sec. 7: Lots 3, 4	81.00
Sec. 12: NE¼NE¼, W½NW¼, NW¼SW¼	160.00
Sec. 13: SE¼	160.00
Sec. 18: Lots 1, 2	81.00
Sec. 19: SE¼NW¼, NE¼SW¼, NW¼SE¼	120.00
Sec. 23: N½SW¼, SE¼SW¼, SE¼	280.00
Sec. Sec. 24: N½	320.00
Sec. 28: NE¼NE¼	40.00
Sec. 34: All	640.00
Sec. 35: All	640.00
T. 24 N., R. 8 W.,	
Sec. 10: All	640.00
Sec. 11: E½SW¼, W½SE¼, NE¼SE¼	200.00
Sec. 12: N½SW¼, SE¼SE¼	120.00
Sec. 13: E½NE¼, SE¼NE¼, S½	440.00
Sec. 14: N½, NE¼SE¼	360.00
T. 25 N. R. 6 W.,	
Sec. 15: S½SW¼	80.00
Sec. 21: W½NE¼, N½SE¼	160.00
Sec. 22: N½NW¼	80.00
Sec. 23: SE¼NE¼, NE¼SE¼	80.00
Sec. 24: SW¼NW¼, NW¼SW¼	80.00
Sec. 27: W½SW¼	80.00
Sec. 28: E½SE¼	80.00
Sec. 33: SW¼NE¼, NE¼SW¼, S½SW¼, NW¼SE¼	200.00
Sec. 34: NE¼SE¼	40.00
Sec. 35: SE¼NW¼, N½SW¼	120.00
T. 25 N., R. 7 W.,	
Sec. 17: S½NE¼, E½SW¼, SE¼	320.00
Sec. 20: NE¼, E½NW¼, N½SE¼	320.00
T. 25 N., R. 8 W.,	
Sec. 10: SW¼SW¼	40.00
Sec. 15: N½NW¼, NW¼NE¼	120.00
T. 25 N., R. 9 W.,	
Sec. 25: W½SW¼, NE¼NW¼, S½NW¼	200.00
Sec. 26: NE¼SE¼, S½SE¼	120.00
Sec. 35: N½	320.00
T. 26 N., R. 8 W.,	
Sec. 28: All	640.00
Sec. 33: All	640.00
T. 26N., R. 9W.,	
Sec. 4: W½SW¼, SE¼SW¼	120.00
Sec. 22: NE¼SE¼	40.00
Sec. 24: E½	320.00
Sec. 25: NE¼, W½	480.00
Sec. 26: NE¼NE¼, SE¼SE¼	80.00
T. 26 N., R. 10 W.,	
Sec. 8: E½NW¼, S½NE¼	160.00
Sec. 24: NW¼	160.00
T. 27 N., R. 8 W.,	
Sec. 21: SE¼SE¼	40.00
Sec. 22: N½SW¼, SW¼SW¼	120.00

Withdrawn Public Land New Mexico Principal Meridian—Continued

	Acres
T. 27 N. R. 10 W.,	
Sec. 7: S½SE¼, SE¼SW¼	120.00
Sec. 8: W½SW¼, SW¼NW¼, SE¼SW¼, SW¼SE¼	200.00
Sec. 17: NW¼NE¼, N½NW¼	120.00
Sec. 18: E½E½	160.00
Sec. 19: NE¼NE¼	40.00

Comprising 24,862.33 acres of private and trust lands.

This exchange is in the public interest. Benefits to be derived include:

1. All of the lands to be acquired by the United States are in the area designated for retention in the Farmington Resource Management Plan. Their acquisition will help consolidate Federal ownership and assist the BLM in future management of the areas for their wildlife, recreation and other values.

2. The Tribe will be acquiring parcels located in areas of high Indian ownership. This exchange will help in blocking up land ownership.

3. Most of the lands that the Tribe will acquire were withdrawn for Indian use and a land consolidation and exchange program. This exchange will help fulfill the intent of that withdrawal.

4. The two parcels of unappropriated public land are currently used by members of the Navajo Tribe. One parcel is used as a cemetery, the other has homes on it. Tribal ownership of the parcels will help secure rights for the occupants to remain.

The value of the lands being exchanged will be approximately equal. Equalization will be achieved by a cash equalization payment not to exceed 25 percent of the total value of lands to be transferred out of Federal ownership or by adjusting the acreages transferred. If an acreage adjustment is used to equalize the values, the authorized officer may waive the cash equalization payment if it is less than three percent of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less, in accordance with Section 9 of the Federal Land Exchange Facilitation Act of 1988 (Pub. L. 100–409).

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. All mineral deposits shall be reserved to the United States along with the right to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (43 U.S.C. 945).

3. All valid existing rights (e.g., rights-of-way and leases of record).

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For further information contact: Bob Moore, Farmington Resource Area (505) 327–5344. Information relating to the exchange is available for review at the Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401.

For a period of 45 days from the date of first publication of this notice interested parties may submit comments to the Area Manager, Farmington Resource Area, Bureau of Land Management at the above address. Objections will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 8, 1992.

Mike Pool,

Area Manager.

[FR Doc. 92–16937 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–331]

In the Matter of Certain Microcomputer Memory, Components Thereof and Products Containing the Same; Commission Determination Denying an Application for Interlocutory Appeal

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to deny an application for interlocutory appeal of the presiding administrative law judge's (ALJ's) Order No. 16 finding that complainant Chips and Technologies, Inc. ("Chips") had not met its burden of proof as to its claims of attorney-client privilege or work product immunity for several withheld documents.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone: (202) 205–3108. Copies of the Commission order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 5, 1992, the presiding ALJ issued Order No. 16 ruling on claims of privilege and immunity for documents withheld by complainant Chips. The ALJ found that Chips had not carried its burden of proof in establishing privilege or immunity for 46 documents. Chips subsequently reduced the number of withheld documents to 40.

On May 19, 1992, in response to a motion by Chips, the ALJ granted leave for Chips to file an application for interlocutory review of Order No. 16 with the Commission. On June 1, 1992, Chips filed its application for interlocutory review with the Commission. On June 5, 1992, respondent OPTi opposed Chips' application.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.70 (19 CFR 210.70, as amended).

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–17928 Filed 7–29–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–572 (Preliminary)]

Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain special quality carbon and alloy hot-rolled steel bars and rods and semifinished products,[3] covered by subheadings/statistical reporting numbers 7207.11.00, 7207.12.0010, 7207.19.0030, 7207.20.0025, 7207.20.0075, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00, 7224.10.0075, 7224.90.0045, 7224.90.0065, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

Background

On June 9, 1992, a petition was filed with the Commission and the Department of Commerce by Republic Engineered Steels, Inc., Massillon, OH, and The Timken Company, Canton, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain special quality hot-rolled and semifinished carbon and alloy steel products from Brazil. Accordingly, effective June 9, 1992, the Commission instituted preliminary antidumping investigation No. 731–TA–572. Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 1992 (57 FR 27064). The conference was held in Washington, DC, on June 30, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 24, 1992. The views of the Commission are contained in USITC Publication 2512 (June 1992), entitled, "Certain Special Quality Hot-rolled and Semifinished Carbon and Alloy Steel Products from Brazil: Determination of the Commission in Investigation No. 731–TA–572 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–18040 Filed 7–29–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–539–A through 539–F (Final)]

Uranium From Kazakhstan, Kyrgystan, Russia, Tajikistan, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: Effective Date: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: On June 2, 1992, the Commission instituted the subject investigations and established a schedule for their conduct (57 FR 27065, June 17, 1992). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from August 11, 1992, to October 16, 1992 (57 FR 30946, July 13, 1992). The Commission, therefore, is revising its schedule in the

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[1] The record is defined in § 207.2(f) of the Commissions's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Brunsdale and Crawford voted in the negative. Commissioner Rohr voted in the negative regarding finished free-machining bars.

[3] For purposes of this investigation, the imports subject to investigation are certain hot-finished carbon and alloy (other than stainless, high speed, silico-manganese, and tool steel) steel bars and rods, which have a uniform solid cross-section along their whole length and are in the shape of circles, segments of circles, ovals, rectangles, or other convex polygons. The subject bars and rods are of special bar quality engineered steel that are described in Society of Automotive Engineers (SAE) standards J403, J404, J411, J1081, J1249, J1268, and modifications thereof. Also included are certain alloy ingots (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel), and semifinished products of carbon and alloy steel (other than stainless steel, high-speed steel, silico-manganese steel, tool steel, and high-nickel alloy steel), of circular or rectangular (including square) cross-section with a width measuring less than four times thickness, of special bar quality engineered steel. Excluded from the scope of the investigation are imports of semifinished products or hot-rolled bars and rods which contain by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth; nonalloy steel ingots or other primary forms; semifinished or hot-rolled products of merchant quality steels (American Iron and Steel Institute (AISI) grades M 1000 through M 1044); hot-rolled bars and rods in coiled form; forged bars; and reinforcing bars and rods.

investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 5, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on October 13, 1992; the prehearing staff report will be placed in the nonpublic record on October 5, 1992; the deadline for filing prehearing briefs is October 13, 1992; the hearing will be held at the U.S. International Trade Commission Building on October 20, 1992; and the deadline for filing posthearing briefs is October 28, 1992.

For further information concerning these investigations see the Commission's notice of investigations cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 24, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-18039 Filed 7-29-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Victoria Dettmar, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6211.

Comments on the following assessments are due 15 days after the date of availability:

AB-167 (Sub-No. 1100X), Consolidated Rail Corporation—Abandonment Exemption—In Alliance, Ohio. EA available 7/24/92.

AB-167 (Sub-No. 1101X), Consolidated Rail Corporation—Abandonment Exemption—In Middletown, Orange County, New York. EA available 7/24/92.

AB-55 (Sub-No. 429X), CSX Transportation, Inc.—Abandonment in Harrison County, West Virginia. EA available 7/24/92.

Comments on the following assessment are due 30 days after the date of availability:

AB-3 (Sub-No. 103), Missouri Pacific Railroad Company—Abandonment—In Douglas, Champaign and Vermilion Counties, Illinois (Westville-Jamaica Branches). EA available 7/21/92.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18049 Filed 7-29-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 23, 1992, a proposed Consent Decree in *United States of America* versus *Allied Signal, Corporation, et al.* and *United States* versus *Warren Car Company et al.* consolidated at Civil Action No. 89-89 E ("*Allied Signal*" and "*Warren Car*"), was lodged with the United States District Court for the Western District of Pennsylvania.

The *Allied Signal* complaint filed by the United States in October 1989, and the complaint in *Warren Car* filed in April 1989, seek recovery of response costs incurred and to be incurred by the United States in responding to the release of hazardous substances alleged to have emanated from the Warren Car Company facility at the Starbrick Area Site in Starbrick, Pennsylvania pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a). Named as defendants in *Allied Signal* are a former operator and generators who are alleged to have contracted with the former operators for the cleaning or servicing of railroad tank cars which resulted in the disposal of hazardous substances from the tank cars at the facility. The *Warren Car* complaint District of Pennsylvania, 633 USPO & Courthouse, 7th and Grant Street, Pittsburgh, Pennsylvania 15219. Copies of the Consent Decree may also be examined and obtained in person at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library. When requesting a copy, please present or enclose a check in the amount of $2.90 (ten cents per page reproduction costs) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-17929 Filed 7-29-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that three proposed consent decrees in *United States* versus *Resource Conservation and Recovery of America, Inc.*, CV 0239-RLV, were lodged with the United States District Court for the Northern District of Georgia on July 8, 1992. This action was brought by the United States pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607.

Under the proposed consent decrees, Eugene Baggett, Raymond Bass, and Everett Harwell agree to pay $5,000, $12,000, and $15,000, respectively, to the United States to resolve the civil claims of the United States against these defendants for response costs incurred as the result of a removal action which took place at the Davis Farm site, in Gordon County, Georgia.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, Washington, DC 20530, and should refer to *United States* versus *Resource Conservation and Recovery of America, Inc.*, D.J. Ref. 90-11-3-283.

The proposed consent decrees may be examined at the office of the United States Attorney, Richard Russell Building, room 1800, 75 Spring Street, Atlanta, Georgia 30335; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 601 Pennsylvania Avenue Building NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decrees

may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.00, $3.50, and $3.50, respectively, (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 92-17933 Filed 7-29-92; 8:45 am]

BILLING CODE 4410-01-M

Membership of the Department of Justice's 1992 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1992 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs are to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: John C. Vail, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 514-6788.

Paul W. Mathwin,

Executive Secretary, Senior Executive Resources Board.

1992 Performance Review Board Members

Antitrust Division

Anthony V. Nanni, Chief, Litigation I Section.
Catherine G. O'Sullivan, Chief, Appellate Section.

Civil Division

Robert E. Kopp, Director, Appellate Staff.
JoAnn J. Bordeaux, Deputy Director, Torts Branch.
Helene M. Goldberg, Director, Torts Branch.

Civil Rights Division

Gerald W. Jones, Counsel to the Assistant Attorney General.
John Wodatch, Director, Office on the Americans with Disabilities Act.
David Flynn, Chief, Appellate Section.

Community Relations Service

Jeffery L. Weiss, Deputy Director.

Criminal Division

George W. Proctor, Director, Office of International Affairs.
Lee J. Radek, Director, Asset Forfeiture Office.
George T. Gilinsky, Senior Counsel, Office of Professional Development and Training.

Environment and Natural Resources Division

William J. Kollins, Chief, Land Acquisition Section.
William Cohen, Chief, General Litigation Section.
Anne Shields, Chief, Policy, Legislation & Special Litigation Section.

Justice Management Division

Robert F. Diegelman, Director, Management and Planning Staff.
James W. Johnston, Director, Procurement Services Staff.
Warren Oser, Senior Policy Advisor.

Office of Policy Development

Kevin R. Jones, Deputy Director.

Tax Division

John J. McCarthy, Senior Litigation Counsel.
Steven Shapiro, Chief, Civil Trial Section.
Mildred L. Seidman, Chief, Claims Court Section.

Bureau of Prisons

Arthur Beeler, Deputy Assistant Director, Health Services Division.
Thomas R. Kane, Assistant Director, Information Systems, Policy & Public Affairs Division.
M. Wayne Huggins, Director, National Institute of Corrections.
Patrick R. Kane, Assistant Director, Correctional Programs Division.

Executive Office for U.S. Attorneys

Richard DeHaan, Deputy Director, Relocation.

Executive Office for U.S. Trustees

Jeffrey M. Miller, Associate Director.

Immigration and Naturalization Service

Kenneth W. Rath, Associate Commissioner for Finance.
Joan C. Higgins, Assistant Commissioner, Detention and Deportation.
Michael D. Cronin, Assistant Commissioner, Inspections.
Kenneth E. Lopez, Director of Security.

Office of Justice Programs

Charles Lauer, Special Assistant to the Assistant Attorney General.

U.S. Marshals Service

G. Wayne Smith, Associate Director for Operations.

[FR Doc. 92-17931 Filed 7-29-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Washington State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of subpart F to part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letters dated September 5, 1985, from G. David Hutchins, and July 31, 1987, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to the Federal standard amendments 29 CFR 1910.35, 29 CFR 1910.37, 29 CFR 1910.38, 29 CFR 1910.107, and 29 CFR 1910.108, subpart E: Means of Egress and subpart H: Hazardous Materials, as published in the **Federal Register** (45 FR 60703) on September 12, 1980. The State standard amendments are contained in WAC 296-24. The State standard amendments were adopted on December 24, 1981, and effective January 23, 1982, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public

Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 81–32. The original State standards; subpart E: Means of Egress, received approval on August 8, 1975 (40 FR 33500), and subpart H: Hazardous Materials, received approval on August 9, 1977 (42 FR 40279). The Means of Egress amendment contains the following significant differences: Freezer and refrigerator rooms must be capable of opening from the inside, whether the outside is locked or not; and any doorway adjacent to railroad or trolley tracks must have warning signs to prevent people from exiting into tracks.

In response to a Federal standard, final rule and a rule revision, the State has submitted by letters dated August 31, 1990, and September 4, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to the Federal standard at 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, as published in the **Federal Register** (55 FR 3300) on January 31, 1990. The State's laboratory standard, which is contained in WAC 296–62–400, contains several minor editorial differences. It was adopted by Washington Administrative Order 90–10 on August 13, 1990, and became effective on September 24, 1990.

In response to Federal standards changes, the State submitted by letter dated September 26, 1986 from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the amended Federal standard, 29 CFR 1910.1043, Occupational Exposure to Cotton Dust, as published in the **Federal Register** (50 FR 51173) on December 13, 1985. The Washington Cotton Dust amendment, adopted July 25, 1986, effective August 25, 1986, by Washington Administrative Order 86–28, is contained in WAC 296–62–14533. Region X of the Occupational Safety and Health Administration returned this submittal on November 19, 1986, and requested that the State provide additional information. The State resubmitted by letter dated February 23, 1988 from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a second amendment comparable to the amended Federal standard, 29 CFR 1910.1043, Occupational Exposure to Cotton Dust, Final Rule, as published in the **Federal Register** (50 FR 51173) on December 13 1985 and Corrections published (51 FR 24324) on July 3, 1986. This State standard amendment modifies the original State standard adoption and adds sections 14537, 14539, and 14541 to make the adoption and adds sections 14537, 14539, and 14541 to make the State standard at least as effective as the OSHA standard. It was adopted on November 30, 1987, and became effective on December 30, 1987, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order number 87–24. The State standard includes these minor differences: A more inclusive definition of the term "blow down," a requirement to institute engineering and work practice controls "immediately" to reduce employee exposure to or below the permissible exposure limit, a compliance program description of each operation or process resulting in any level of exposure to Cotton Dust, and a semi-annual update requirement for the compliance program.

On its own initiative, the State of Washington has submitted by letter dated April 24, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State-initiated amendment to WAC 296–62–07107, Permissible Practice. The standard was modified to require employers to ensure that employees use respirators when required. This minor amendment was adopted on April 10, 1990, effective May 25, 1990, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08, as ordered and transmitted under Washington Administrative Order 90–01.

In response to Federal standards changes, the State has submitted by letter dated February 23, 1988, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State housekeeping amendment comparable to the Federal standard 29 CFR 1926.55(c), Construction, Gases, Vapors, Fumes, Dust, and Mists, published in the **Federal Register** (51 FR 22756) on June 20, 1986. In addition, the State on its own initiative submitted amendments to WAC 296–155–775(90), Demolition, in the same February 23, 1988, letter. Both State standards originally received approval on February 9, 1982 (47 FR 5956). Both State amendments were adopted on November 10, 1987, and became effective on December 30, 1987, under Washington Administrative Order 87–24. The administrative order was adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.12.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. In both amendments the State corrected references to its asbestos standards. The State also submitted by letter dated May 10, 1989, a State housekeeping amendment comparable to the Federal standard 29 CFR 1926.55(d), Construction, Gases, Vapors, Fumes, Dust, and Mists, published in the **Federal Register** (52 FR 46312) on December 4, 1987. It was adopted on July 6, 1988 and became effective on August 4, 1988. The amendment adds a reference to the State's formaldehyde standard.

In response to Federal standards changes, the State has submitted by letter dated May 13, 1987, from Richard A. Davis, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the Federal standard 1910.145(f) and appendixes A and B, Accident Prevention Tags, published in the **Federal Register** (51 FR 33260) on September 19, 1986. The original State standard, Accident Prevention Tags, received approval on January 30, 1976 (41 FR 4688). The State subsequently submitted a State-initiated amendment adopted on March 1, 1976, effective April 1, 1976, under Washington Administrative Order 76–6. A second State standard amendment was adopted on March 12, 1987, and became effective on April 11, 1987, under Washington Administrative Order 87–01. These administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. The standard contains the following significant differences which were either adopted in May 1973 or in March 1976: (1) The State uses portions of ANSI Z35.1–1968, Specifications for Accident Prevention Signs, that are not part of the OSHA standard, specifically examples of signs and symbols and standard proportions for safety instruction signs; (2) the State uses portions of ANSI Z35.2–1968, Specification for Accident Prevention Tags, that are not part of the OSHA standard, specifically an explanation of the use of tags in general, the use of "do not start" tags and the use of "out of order" tags, instruction to employees, the design and color of radiation tags and illustration of various tags. The State also includes requirements for the

construction of tags. In addition, the State's March 12, 1987 amendment did not include the requirements because the State's maritime standards do not have comparable tag requirements; there was, thus, nothing to exempt. OSHA considers this latter difference to be a minor administrative difference.

2. Decision

Having reviewed the State's submission in comparison with Federal Standards, it has been determined that the State's standards amendments for Means of Egress and Accident Prevention Tags are at least as effective as the Federal standard amendments. The Means of Egress amendment has been in effect since January 23, 1982, and the significant differences in the Accident Prevention Tags standard have been in effect since April, 1976. During this time OSHA has received no indication of significant objection to these different State standards either as to their effectiveness in comparison to the Federal standards or as to their conformance with product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

OSHA has also determined that the differences between the State and Federal amendments for Occupational Exposure to Hazardous Chemicals in Laboratories; Cotton Dust; Permissible Practice; Construction, Gases, Vapors, Fumes, Dust and Mists; and Demolition are minimal and that the State Standards amendments are thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary. OSHA has also determined that the State's amendment for Hazardous Materials is identical to the comparable Federal standard, and therefore approves the amendment.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; Department of Labor and Industries, General Administration Building, Olympia, Washington 98504; and the Office of State Programs, Occupational Safety and Health Administration, room N–3476, 200 Constitution Avenue, NW, Washington, 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable law. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective July 30, 1992. (Sec. 18, Pub. L. 91–596, 84 STAT. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington, this 31st day of October 1991.

James W. Lake,

Regional Administrator.

[FR Doc. 92–17898 Filed 7–29–92; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Locals Challenge Section) to the National Council on the Arts will be held on August 18, 1992 from 9 a.m.–4 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–10 a.m. The topics will be introductory remarks and overview of Challenge III.

The remaining portion of this meeting from 10 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 24, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–18034 Filed 7–29–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 6–8, 1992, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 22, 1992.

Thursday, August 6, 1992

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comments briefly regarding items of current interest.

8:45 a.m.–11:00 a.m.: Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) (Open)—The Committee will review and report on selected ITAAC for the GE ABWR.

Representatives of the NRC staff and GE will participate, as appropriate.

11:00 a.m.–12:30 p.m.: Supplement to Generic Letter 83–28, Required Actions Based on

Generic Implications of Salem ATWS Events (Open)—The Committee will review and report on a proposed supplement to Generic Letter 83–28 and a Differing Professional Opinion regarding this matter.

Members of the NRC staff and the nuclear industry will participate, as appropriate.

1:30 p.m.–2:30 p.m.: Emergency Planning and Preparedness (Open)—The Committee will review and report on proposed revision 3 to Regulatory Guide 1.101, Emergency Planning and Preparedness for Nuclear Reactors. Representatives of the NRC staff will participate, as appropriate.

2:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during the 387th ACRS meeting (July 9–11, 1992), including the NRC Severe Accident Research Program Plan; policy issues pertaining to certification of evolutionary and passive light-water reactor plants; schedule/plans for review of the GE ABWR design; and proposed resolution of Generic Issue 106, Piping and Use of Highly Combustible Gases in Vital Areas.

6:00 p.m.–6:30 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS positions regarding matters considered during this meeting, including ITAAC and proposed supplement to Generic Letter 83–28.

Friday, August 7, 1992

8:30 a.m.–10:00 a.m.: EPRI Requirements for Evolutionary LWRs (Open)—The Committee will review and comment on requirements proposed by the Electric Power Research Institute for evolutionary light-water reactors.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:15 a.m.–11:30 a.m.: Regulatory Requirements Marginal to Safety (Open)—The Committee will review and comment on proposed elimination of NRC regulatory requirements marginal to safety.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11:30 a.m.–12:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss matters proposed for consideration by the ACRS.

1:15 p.m.–3:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during the 387th ACRS meeting (July 9–11, 1992) and this meeting, including the NRC Severe Accident Research Program Plan; the proposed Standard Review Plan for Nuclear Power Plant License Renewal; and reactor component fatigue considerations for license renewal.

3:30 p.m.–5:00 p.m.: Meeting with Director, NRC Office of Nuclear Reactor Regulation (Open)—The Committee will discuss topics of mutual interest, including the status of actions regarding nuclear plant inspections resulting from the NRC Regulatory Impact Survey, NRR action regarding the IPE for the FitzPatrick Nuclear Plant, use of PRA by the regulatory staff, and other regulatory matters, as appropriate.

5:00 p.m.–6:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during the 387th ACRS meeting (July 9–11, 1992) and this meeting, including a proposed supplement to Generic Letter 83–28, Required Actions Based on Generic Implications of Salem ATWS Events.

6:15 p.m.–6:45 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS positions regarding items considered during this meeting, including regulatory requirements marginal to safety and EPRI requirements for evolutionary LWRs.

Saturday, August 8, 1992

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during the 387th ACRS meeting and this meeting as noted above.

11:30 a.m.–11:45 a.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss the status of appointment of members nominated for ACRS membership and qualifications of candidates proposed for consideration.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

11:45 a.m.–1:00 p.m.: ACRS Subcommittee Activities (Open/Closed)—The Committee will hear reports and discuss activities of cognizant subcommittees regarding designated assignments, including use of computers in nuclear power plant control and safety systems, and personnel matters related to the management and support of Committee activity.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:00 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss proposed reaction to ACRS comments and recommendations by the NRC Executive Director for Operations, and matters related to ACRS activities as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8:00 a.m. and 4:30 p.m. e.s.t.

Dated: July 24, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–18019 Filed 7–29–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445]

TU Electric Co., Comanche Peak Steam Electric Station, Unit 1; Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations Correction

In notice document 92–12330 beginning on page 22271, in the issue of Wednesday, May 27, 1992, make the following correction:

In the third full paragraph, in the third column, on page 22271, in line 15, the statement "conducted at 4°C not 4°F" should be corrected to read "conducted at 40°C not 40°F."

Dated at Rockville, Maryland, this 22nd day of July 1992.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18021 Filed 7-29-92; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2571]

Arkansas; Declaration of Disaster Loan Area

Clark County and the contiguous counties of Dallas, Hot Spring, Montgomery, Nevada, Ouachita, and Pike in the State of Arkansas constitute a disaster area as a result of damages caused by high straight line and tornadic winds which occurred on June 14 and 19, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 8, 1992 and for economic injury until the close of business on April 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—8.000%.

Homeowners Without Credit Available Elsewhere—4.000%.

Businesses With Credit Available Elsewhere—8.500%.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—8.500%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%.

The number assigned to this disaster for physical damage is 257111 and for economic injury the number is 765900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-18022 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Loan Area #2570]

Florida; Declaration of Disaster Loan Area

DeSoto and Sarasota Counties and the contiguous counties of Charlotte, Glades, Hardee, Highlands, and Manatee in the State of Florida constitute a disaster area as a result of damages caused by severe storms, heavy rains, and flooding beginning on June 25 and continuing. Applications for loans for physical damage may be filed until the close of business on Sept. 8, 1992 and for economic injury until the close of business on April 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations:

The interest rates are.

For Physical Damage

Homeowners With Credit Available Elsewhere—8.000%.

Homeowners Without Credit Available Elsewhere—4.000%.

Businesses With Credit Available Elsewhere—8.500%.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—8.500%.

For Economic Injury

Business and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%.

The number assigned to this disaster for physical damage is 257006 and for economic injury the number is 765800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-18023 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2564]

Minnesota; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 1, 1992, to the President's major disaster declaration of June 26, to include Nobles County, Minnesota, as a disaster area as a result of damages caused by severe storms flooding, and tornadoes which occurred June 16 through 20,1992.

In addition, small business located in the contiguous counties of Lyon and Osceola in the State of Iowa may file applications until the specified date at the aforementioned location. The economic injury number for Iowa is 766200.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 26, 1992, and for economic injury until the close of business on March 26, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 6, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-18024 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7660]

Oklahoma; Declaration of Disaster Loan Area

LeFlore, Payne and Tulsa Counties and the contiguous counties of Creek, Haskell, Latimer, Lincoln, Logan, McCurtain, Noble, Okmulgee, Osage, Pawnee, Pushmataha, Rogers, Sequoyah, Wagoner, and Washington in the State of Oklahoma, and Polk, Scott, and Sebastian Counties in the State of Arkansas constitute an economic injury disaster area as a result of damages caused by severe storms and high winds in Payne and Tulsa Counties and severe storms, high winds, and an LP gas explosion in LeFlore County which occurred on June 14-20, 1992. Eligible small businesses with credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on April 8, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155,
or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of Arkansas is 766100.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: July 8, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-18025 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, August 24, 1992, at the Days Inn, 900 East Main Street,

Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Carol A. White, District Director, U.S. Small Business Administration, 330 Maine Street, Hartford, Connecticut 06106, (203) 240-4670.

Dated: July 17, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-18026 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Thursday, August 27, 1992 at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, (808) 541-2990.

Dated: July 17, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-18027 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of the Lower Rio Grande Valley, will hold a public meeting at 3 p.m. on Thursday, August 20, 1992, at the Texas State Bank Board Room, 521 N. 77 Sunshine Strip, Harlingen, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren Street, Suite 500, Harlingen, Texas 78550, (512) 427-8625.

Dated: July 17, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-18028 Filed 7-29-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on August 11-12, 1992 at 8 a.m. Arrange for oral presentations by July 30, 1992.

ADDRESSES: The meeting will be held at the McDonnell Douglas Corporation, McDonnell Room, suite 1200, 1735 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Transport Airplane and Engine Subcommittee to be held on August 11-12, 1992, at McDonnell Douglas Corporation, McDonnell Room, suite 1200, 1735 Jefferson Davis Highway, Arlington, VA 22202. The agenda for the meeting will include:

- Opening Remarks
- Review of the Systems Review Task Force Document
- Review of Airworthiness Assurance Working Group Structural Fatigue Audit
- Reports of established working groups
- Status of harmonization activities and organization of working groups

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 30, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 15, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-18017 Filed 7-29-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: July 24, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0126.
Form Number: IRS Form 1120F.
Type of Review: Revision.
Title: U.S. Income Tax Return of a Foreign Corporation.
Description: Form 1120F is used by foreign corporations that have investments, or a business, or a branch in the United States. The IRS uses Form 1120F to determine if the foreign corporation has correctly reported its income, deductions and tax and if it has paid the correct amount of tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 18,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—103 hours, 4 minutes.
Learning about the law or the form—38 hours, 41 minutes.
Preparing the form—66 hours, 16 minutes.
Copying, assembling, and sending the form to the IRS—6 hours, 58 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,869,640 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–17996 Filed 7–29–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 23, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0017.
Form Number: International Capital Form BC and International Capital Form BC(SA).
Type of Review: Extension.
Title: Treasury International Capital Form BC/BC(SA)—Reporting Bank's Own Claims and Selected Claims of Broker or Dealer, to Foreigners, Payable in Dollars.
Description: This report is required by law (22 U.S.C. 95a, 286f and 3103) for timely and accurate information on U.S. international capital movements including data on the dollar claims of banks, other depository institutions, brokers and dealers in the U.S. *vis-a-vis* foreigners.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 875.
Estimated Burden Hours Per Response: 7 hours.
Frequency of Response: Monthly and Semi-annually.
Estimated Total Reporting Burden: 73,500 hours.
OMB Number: 1505–0019.
Form Number: International Capital Form BL–1 and International Capital Form BL–1(SA).
Type of Review: Extension.
Title: Treasury International Capital Form BL–1/BL–1(SA)—Reporting Bank's Own Liabilities and Selected Liabilities or Broker or Dealer, To Foreigners, Payable in Dollars.
Description: This report is required by law (22 U.S.C. 95a, 22 U.S.C. 286f and 3103) for timely and accurate information on U.S. international capital movements, including data on the dollar liabilities of banks, other depository institutions, brokers and dealers *vis-a-vis* foreigners.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Response: 7 hours.
Frequency of Response: Monthly and Semi-annually.
Estimated Total Reporting Burden: 75,600 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–17997 Filed 7–29–92; 8:45 am]
BILLING CODE 4810–25–M

Office of Thrift Supervision

Cherokee Valley Federal Savings Association Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Cherokee Valley Federal Savings Association, Cleveland, Tennessee, on June 12, 1992.

Dated: July 24, 1992.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 92–17959 Filed 7–29–92; 8:45 am]
BILLING CODE 6720–01–M

Coastal Federal Savings Bank, New London, Connecticut; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Coastal Federal Savings Bank, New London, Connecticut, on June 18, 1992.

Dated: July 24, 1992.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 92–18962 Filed 7–29–92; 8:45 am]
BILLING CODE 6720–01–M

Columbia Banking Federal Savings Association, Rochester, NY; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Coproation as sole Conservator for Columbia Banking Federal Savings Association, Rochester, New York, on June 11, 1992.

Dated: July 24, 1992.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 92–17958 Filed 7–29–92; 8:45 am]
BILLING CODE 6720–01–M

Cooper River Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Cooper River Federal Savings Association, North Charleston, South Carolina, OTS No. 2481, on June 5, 1992.

Dated: July 24, 1992.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 92–17955 Filed 7–29–92; 8:45 am]
BILLING CODE 6720–01–M

First Home Federal Savings Association Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Home Federal Savings Association, Pittsburgh, Pennsylvania, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17945 Filed 7-29-92; 8:45 am]

BILLING CODE

First American Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First American Federal Savings Bank, Greensboro, North Carolina, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17954 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

First Newport Federal Savings Bank Newport Beach, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Newport Federal Savings Bank, Newport Beach, California, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17960 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association Lewiston, Maine; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association, Lewiston, Maine, on May 21, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17951 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Federal Savings Bank, Norfolk, Virginia, on July 9, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17949 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Homefed Bank, FA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for HomeFed Bank, FA, San Diego, California, on July 6, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17950 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Home Unity Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Unity Federal Savings and Loan Association, Lafayette Hill, Pennsylvania, on June 4, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17953 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Jacksonville Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Jacksonville Federal Savings Association, Jacksonville, Florida, on June 25, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17947 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Republic Federal Savings Bank, Chicago, IL; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Republic Federal Savings Bank, Chicago, Illinois, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17956 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

San Clemente Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for San Clemente Federal Savings Bank, Irvine, California, on June 11, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17961 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Southern Federal Savings Association of Georgia; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Southern Federal Savings Association of Georgia, Atlanta, Georgia, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17946 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-02-M

Transohio Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority, contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Transohio Federal Savings Bank, Cleveland, Ohio, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17948 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Volunteer Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Volunteer Federal Savings Association, Little Ferry, New Jersey, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17952 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Cherokee Valley Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Cherokee Valley Federal Savings Bank, Cleveland, Tennessee, on June 12, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17978 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Coastal Savings Bank, FSB, New London, CT; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Coastal Savings Bank, FSB, New London, Connecticut, OTS No. 3633, on June 18, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17979 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Columbia Banking Federal Savings and Loan Association, Rochester, NY; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Columbia Banking Federal Savings and Loan Association, Rochester, New York, OTS No. 4209, on June 11, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17980 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Cooper River Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Cooper River Federal Savings Bank, North Charleston, South Carolina, OTS No. 2481, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17981 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

First American Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First American Savings Bank, F.S.B., Greensboro, North Carolina, OTS No. 3722, on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17982 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank, Lewiston, MA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings Bank, Lewiston, Maine, OTS No. 3823, on May 21, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17983 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

First Home Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Home Savings Association, Pittsburgh, Pennsylvania, OTS. No. 1233, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17984 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

First Newport Bank, F.S.B. Newport Beach, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Newport Bank, F.S.B., Newport Beach, California, OTS No. 8277, on June 19, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17985 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

First Security Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Security Federal Savings Bank, Pinehurst, North Carolina, OTS No. 0513, on May 21, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17986 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Homefed Bank, Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for HomeFed Bank, Federal Savings Bank, San Diego, California, OTS No. 3143 on July 6, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17989 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Home Savings Bank FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Savings Bank FSB, Norfolk, Virginia OTS No. 4728, on July 9, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17987 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Home Unity Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Unity Savings and Loan Association, Lafayette Hill, Pennsylvania, OTS No. 2521, on June 4, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17988 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Jacksonville Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Jacksonville Federal Savings Bank, Jacksonville, Florida, OTS No. 5108, on June 25, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc 92-17990 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Republic Savings Bank, F.S.B., Chicago, IL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Republic Savings Bank, F.S.B., Chicago, Illinois, OTS NO. 8213 on June 5, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17991 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Office of Thrift Supervision

San Clemente Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for San Clemente Savings Bank, F.S.B., Irvine, California, OTS No. 6991, on June 11, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17992 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Office of Thrift Supervision

Southern Federal Savings and Loan Association of Georgia; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southern Federal Savings and Loan Association of Georgia, Atlanta, Georgia, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-17993 Filed 7-29-92; 8:45 am]

BILLING CODE 6720-01-M

Transohio Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Transohio Savings Bank, Cleveland, Ohio, OTS NO. 1482, on July 10, 1992.

Dated: July 24, 1992.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 92-17965 Filed 7-29-92; 8:45 am]
BILLING CODE 6720-01-M

Volunteer Savings Bank, SLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Volunteer Savings Bank, SLA, Little Ferry, New Jersey, OTS No. 0182, on June 5, 1992.

Dated: July 24, 1992.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 92-17994 Filed 7-29-92; 8:45 am]
BILLING CODE 6720-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-80]

Action Concerning Canadian Practices Affecting Canadian Imports of Beer

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of implementation of action pursuant to section 305 of the Trade Act of 1974, as amended, 19 U.S.C. 2411 *et seq.* (Trade Act).

SUMMARY: Pursuant to section 301(a)(1) of the Trade Act, the United States Trade Representative (USTR) has imposed a 50 percent *ad valorem* duty upon all imports of beer (provided for in Harmonized Tariff Schedule of the United States heading 2203.00.00) produced in the province of Ontario, Canada. The increased duties will remain in effect for such time as is necessary to offset the harm caused by Canada's denial of U.S. rights under the General Agreement on Tariffs and Trade (GATT). The USTR also has instructed the interagency section 301 Committee to monitor imports of beer from all Canadian provinces in order to detect any diversion of shipments or production from Ontario to other provinces. If imports of beer from any other province increase significantly beyond historical levels, the USTR will consider whether to modify this action pursuant to section 307 of the Trade Act to increase duties upon imports from that province.

DATES: The increased duties will be assessed upon beer from Ontario that is imported, withdrawn from warehouse for consumption, or entered from a foreign trade zone or subzone on or after July 24, 1992.

ADDRESS: Section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David A. Weiss, Deputy Assistant United States Trade Representative for North American Affairs (202) 395-3412, or Edward Reisman, Office of the General Counsel (202) 395-7305.

SUPPLEMENTARY INFORMATION: On June 29, 1990, the USTR initiated an investigation pursuant to section 302 of the Trade Act in response to a petition filed by the G. Heileman Brewing Company regarding Canadian provincial liquor board practices. On September 14, 1990, the Stroh Brewery Company filed a similar petition concerning pricing and distribution practices of the province of Ontario. In accordance with section 304(a)(2) of the Trade Act, the USTR was required to issue its determination in the investigation by December 29, 1991.

On December 27, 1991, the USTR determined that Canadian provincial practices denied U.S. rights under a trade agreement (specifically, the GATT) and that action was therefore mandated by section 301(a). 57 FR 308 (January 3, 1992). This determination followed the adoption by the GATT Council of a dispute resolution panel report that found Canada's provincial practices concerning beer imports to conflict with the GATT. Over three years earlier, a prior GATT panel convened at the request of the European Community had concluded that these same Canadian provincial practices violated the GATT.

The USTR also determined on December 27, 1991, that the requisite action should be in the form of substantially increased duties on Canadian beer sufficient to offset fully the denial of U.S. rights under the GATT resulting from Canada's import restrictions concerning beer. Pursuant to section 305(a)(2) of the Trade Act, the USTR further determined that it was desirable to delay implementation of action until April 10, 1992, in order to provide Canada with a full opportunity to comply with the recommendations of the GATT panel.

On March 31, 1992, Canada submitted to the GATT Contracting Parties a proposal that purported to address the recommendations of the GATT panel report. The proposal failed to conform to the panel's recommendations, however, and would have been implemented over an excessive period of time (three years). Nevertheless, in order to make every effort to obtain a mutually satisfactory solution without the imposition of increased duties, the United States continued to consult with Canada in a spirit of compromise and flexibility. The USTR also determined that it was desirable to delay implementation of action to the maximum extent allowed by law (*i.e.*, until July 24, 1992) to provide Canada a final opportunity to remove its discriminatory beer practices. 57 FR 14,440 (April 20, 1992).

On April 25, 1992, the United States and Canada reached an "Agreement in Principle," in which Canada committed to bring some of its practices into conformity with the GATT. The "Agreement in Principle" also was intended to serve as a framework for a final agreement consistent with the GATT panel report. However, subsequent negotiations failed to result in the removal of many of the discriminatory practices, or even an agreement to remove them in the future. Some provinces have proposed ways in which their restrictive practices could be modified, at least in part, to comply with the GATT. The provinces of Ontario and Quebec, however, have insisted on maintaining discriminatory distribution systems, which require an extra warehousing step for imported beer with all its attendant costs.

Additionally, Ontario, which is the largest Canadian market for imported beer, has adopted a new beer pricing system that includes cost-of-service charges for imported beer only, exorbitantly high in-store cost-of-service charges, and other pricing mechanisms that serve disproportionately to raise the retail price of U.S. beer. These additional charges effectively prevent price competition and clearly contravene the conclusions of the GATT dispute settlement panel. Ontario also recently doubled a levy that applies to cans containing beer (primarily U.S. beer), thus exacerbating its GATT-inconsistent practices.

On July 14, 1992, during a meeting of the GATT Council, the United States addressed Canada's failure to bring its beer practices into conformity with the GATT, notwithstanding two adverse panel reports concerning those practices during the past four years. The United States representative to the GATT specifically noted that Canada's failure to make serious, persistent and convincing efforts to ensure observance by its liquor boards with the GATT left

the United States with very few practical options for resolving the dispute through the multilateral process.

Thus, despite the United States' concerted efforts to address this matter through bilateral negotiations and formal dispute settlement, Canada continues to deny U.S. rights under a trade agreement to the substantial detriment of U.S. beer producers and exporters. None of the provisions set forth in section 301(a)(2) of the Trade Act has been satisfied, and section 305(a)(2) requires the implementation of action by July 24, 1992.

Accordingly, the USTR has determined that the action announced on December 27, 1991, shall be implemented in the form of increased duties at the rate of 50 percent *ad valorem* on beer (provided for in Harmonized Tariff Schedule of the United States heading 2203.00.00) produced in the province of Ontario, Canada. The Harmonized Tariff Schedule of the United States will been modified to insert the following new heading in subchapter III of chapter 99, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", and "Rates of Duty 1-Special", respectively:

9903.22.03	Beer made from malt, the foregoing the product of the province of Ontario, Canada (provided for in heading 2203.00.00)	50%	50% (CA)

The increased duties will be effective with respect to articles of the subject merchandise imported, withdrawn from warehouse for consumption, or entered from a foreign trade zone or subzone on or after July 24, 1992. The duties will remain in effect for such time as is necessary to offset fully the denial of U.S. rights under the GATT resulting from the Canadian practices.

The USTR also has instructed the interagency section 301 Committee to monitor imports to beer from Canada to determine whether imports from provinces other than Ontario are increasing significantly, which would indicate that beer is being diverted from Ontario to other provinces for exportation to the United States. If it appears that beer is being diverted from Ontario to other provinces, the USTR may issue a modified determination pursuant to section 307 of the Trade Act to impose additional duties upon imports of beer from those provinces.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-17928 Filed 7-29-92; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40), dated May 7, 1991, revised the disciplinary, grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. This revision of MP-5, part II, chapter 8, "Disciplinary and Grievance Procedures," which incorporates these changes, was effective on April 21, 1992.

DATES: Names that appear on the panel may be selected to serve on a Board or as a grievance examiner 30 days after publication of this notice.

ADDRESSES: Send request for the list of the names of employees on the panel and written comments to: Secretary of Veterans Affairs (058A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert J. Clayton, Chief, Employee Relations Division (058A), Office of Personnel and Labor Relations, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535-8884.

SUPPLEMENTARY INFORMATION: Previously, VA policy under 38 U.S.C. 4110 provided employees with the opportunity for a pre-decisional review by a Disciplinary Board. The members of these Boards were recommended, selected and appointed on an as-needed basis. No preestablished list existed. In accordance with Public Law 102-40, the VA policy in VA manual MP-5, part II, chapter 8 was rewritten to provide for the use of Disciplinary Appeals Boards to hear post-decisional appeals from employees on major adverse actions arising in whole or in part from issues of professional conduct or competence. MP-5, part II, chapter 8 also provides for the Disciplinary Appeals Board Panel, which is a preestablished list of individuals from which Disciplinary Appeals Boards are selected. Employees, employee organizations, and other interested parties shall be provided (without charge) a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

Approved: July 22, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92-18003 Filed 7-29-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 147
Thursday, July 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 4, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, August 6, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Title 26 Certification Matters
Advisory Opinion 1992-26: Mr. Rainer K. Kraus on behalf of EZ Communications, Inc
Fiscal Year 1994 Budget
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,
Administrative Assistant.
[FR Doc. 92-18197 Filed 7-28-92; 3:18 pm]
BILLING CODE 6715-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-21A; Emergency Notice]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57FR32843—dated: July 23, 1992.

CHANGE OF TIME OF MEETING:

ORIGINAL TIME: July 30, 1992 at 2:30 p.m.

NEW TIME: July 30, 1992 at 10:30 a.m.

Notice is given that a Commission meeting was scheduled at 2:30 p.m., on July 30, 1992 and in conformity with 19 C.F.R. § 201.37(a), Commissioners Newquist, Nuzum, Crawford, Brunsdale, Rohr, and Watson have voted to change the time of the meeting to 10:30 a.m.

Commissioners Newquist, Nuzum, Crawford, Brunsdale, Rohr, and Watson determined by circulation of an action jacket that Commission business requires the change in the time of this meeting, affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Dated: July 28, 1992.

Paul R. Bardos,
Acting Secretary.
[FR Doc. 92-18171 Filed 7-28-92; 2:22 pm]
BILLING CODE 7070-02-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on August 9, 1992. The meeting will commence at 6:30 p.m.

PLACE: The Sir Francis Drake Hotel, 450 Powell Street, The Carmel Room, San Francisco California, (415) 392-3500.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of July 13, 1992 Meeting.
3. Consideration and Review of Budget and Expenses For the Nine-Month Period Ending June 30, 1992.
4. Consideration and Review of Nine-Month Projections for the Period of July 1, 1992 to September 30, 1992.
   a. Consideration of Need for Internal Budgetary Adjustments.
   b. Consideration of Reallocation of Fiscal Year 1992 Consolidated Operating Budget.
5. Consideration of Status Report on the Leasing of the Corporation's Former Headquarters Office Space.

OPEN SESSION: (Continued)

6. Consideration of Whether the Corporation's Annual Financial Audit Should be Conducted In Accordance With Generally Accepted Governmental Auditing Standards.
7. Consideration of Proposed Application For Funding Form that Solicits Data Regarding Grantee Property Insurance Coverage.
8. Consideration of Status of Management's Effort to Incorporate 1990 Census Data into Program Area Poverty Population Statistics for use by Congress and/or the Corporation in Making 1993 Grants, Including a Report from Management Concerning the Methods Used by Congress During the 1980's to Equalize Program Funding and the Impact on Programs (at Various 1993 Funding Levels) of Instantly Equalizing Funding for 1993 Grants.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336-8896.

Date Issued: July 28, 1992.

Patricia D. Batie,
Corporate Secretary.
[FR Doc. 92-18211 Filed 7-28-92; 3:54 pm]
BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Operations and Regulations Committee will be held on August 9, 1992. The meeting will commence at 4:30 p.m.

PLACE: The Sir Francis Drake Hotel, 450 Powell Street, The Carmel Room, San Francisco, California 94101, (415) 392-3500.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 13, 1992 Meeting.
3. Consideration of Report By Staff Regarding Competition Demonstration Projects.
4. Consideration of Notices Submitted to the **Federal Register** Regarding Proposed Amendments to Certain of the Corporation's Regulations.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 336-8896.

Date Issued: July 28, 1992.

Patricia D. Batie,
Corporate Secretary.
[FR Doc. 92-18210 Filed 7-28-92; 3:54 pm]
BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Provision for the Delivery of Legal Services Committee will be held on August 8, 1992. The meeting will commence at 12:00 p.m.

PLACE: The Marine Memorial Hotel, 609 Sutter Street, The Commandant's Room,

San Francisco, California; (415) 673–6672.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of May 17, 1992 Meeting Minutes.
3. Consideration of Status Report on the Innovative and Meritorious Grant Award Project.
4. Presentation by Steven Moore, Executive Director, Indian Law Support Center, Regarding Native American Issues.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 336–8896.

Date Issued: July 28, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18209 Filed 7–28–92; 3:54 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General Oversight Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on August 10, 1992, commencing at 8:00 a.m.Q02

PLACE: The Plan Pacific Hotel, 500 Post Street, The Olympic Ballroom A, San Francisco, California 94102, (415) 771–8600.Q02

STATUS OF MEETING: *Open,* except that a portion of the meeting will be closed pursuant to a majority vote of the Board of Directors to be taken prior to the Committee meeting. During the closed session, the Committee will discuss with the Inspector General his job performance during the past eleven month period and will consider and assess the Inspector General's performance. In addition, the Committee will approve the minutes of the executive session held by the Committee on July 13, 1992.[1] The closing will be authorized by the relevant section of the Government in the Sunshine Act [5 U.S.C. Section 552(b)(6)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5(e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C. 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 13, 1992 Meeting.
3. Consideration of Inspector General's Report on the General Activities of the Office of the Inspector General.

CLOSED SESSION:

4. Approval of Minutes of July 13, 1992 Executive Session.
5. Consideration and Assessment of the Inspector General's Job Performance During the Period of September 17, 1992 to Date.

OPEN SESSION: (Resumed)

6. Consideration of Motion to Adjourn Meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8896.

Date Issued: July 28, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18212 Filed 7–28–92; 3:54 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on August 10, 1992. The meeting will commence at 9:00 a.m.

PLACE: The Pan Pacific Hotel, 500 Post Street, The Olympic Ballroom A, San Francisco, California 94102, (415) 771–8600.

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board of Directors will consider and vote on approval of the draft minutes of the executive session held on July 14, 1992. In addition, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party. The Board of Directors will also receive and consider a status report on several investigations from the Inspector General. Further, and in connection with its two-phase performance assessment process related to the Inspector General, the Board of Directors will consider a recommendation by the Office of the Inspector General Oversight Committee regarding the assessment of the Inspector General's job performance. Consistent therewith, the Board of Directors will consider the reports received previously from the Corporation President and the Inspector General concerning activities of their respective offices over the past twelve-month period, as well as the activities planned for the next twelve-month period. In this regard, the Board of Directors will assess and hold separate discussions with the President and Inspector General regarding their respective job performances. A portion of the executive session will consist of briefings conducted by Corporation staff.[3] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), (7)(c), (d) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), (f)(3), (4) and (h)].[4] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its two reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION: [5]

1. Approval of Agenda.
2. Approval of Minutes of July 14, 1992 Meeting.
3. Chairman's and Members' Reports.
   a. Consideration of Proposal to Permit Board Members to be Compensated for Attending Annual Conferences Conducted by the Corporation's Board of Directors.

OPEN SESSION: (Continued)

4. Consideration of Operations and Regulations Committee Report.
5. Consideration of Office of the Inspector General Oversight Committee Report.
6. Consideration of Provision for the Delivery of Legal Services Committee Report.
7. Consideration of Audit and Appropriations Committee Report.
   a. Consideration of Reallocation of Fiscal Year 1992 Consolidated Operating Budget.

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session held on July 13, 1992, the closing is authorized as noted in the Federal Register notice corresponding to that committee meeting.

[3] That portion of the closed session which will consist of briefings does not come within the definition of a meeting for purposes of the Government in the Sunshine Act. 5 U.S.C. Section 552b(a)(2). The requirements of the Act, therefore, do not apply to this portion of the closed session. 5 U.S.C. Section 552b(b). *See also* 45 C.F.R. Sections 1622.2 and 1622.3.

[4] As to the Board's consideration and approval of the draft minutes of the executive session held on July 14, 1992, the closing is authorized as noted in the Federal Register notice corresponding to that Board meeting.

[5] The Board of Directors meeting will recess at 11:30 a.m. and reconvene at 2:00 p.m. in closed session.

b. Consideration of the Method To Be Proposed to Congress to Incorporate 1990 Census Data in Making 1993 Grants.
c. Consideration of Proposed Application for Funding Form That Solicits Data Regarding Grantee Property Insurance Coverage.

8. Consideration of Reauthorization Committee Report.
9. Consideration of Adoption of Proposed Guidelines for the Conduct of the Corporation's Annual Financial Audit.
10. Consideration of Proposal to Retain an Independent Insurance Consultant for the Corporation.
11. Consideration of the Frequency, Costs and Locations of Meetings of the Board of Directors.
12. President's Report.
13. Inspector General's Report.

CLOSED SESSION: [6]

14. Consideration of Recommendation of Office of the Inspector General Oversight Committee Regarding the Committee's Annual Assessment of the Inspector General's Job Performance.
15. Consideration and Annual Assessment of the Job Performances of the Corporation's:
a. President; and
b. Inspector General.
16. Consideration of Status Report by the Inspector General on Several Ongoing Investigations Involving Allegations of Violations of Criminal Laws.
17. Consideration of the General Counsel's Report on Pending Litigation to Which the Corporation is a Party.
18. Briefings Conducted by Corporation Staff.
19. Approval of Minutes of Executive Session Held on July 14, 1992.

OPEN SESSION: (Resumed)

20. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8896.

Date issued: July 27, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–18095 Filed 7–27–92; 4:27 pm]

BILLING CODE 7050–01–M

[6] It is anticipated that the closed session will conclude at approximately 4:05 p.m. The Board of Directors will reconvene the open session immediately thereafter.

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 33235 July 27, 1992].

STATUS: Open/closed meetings.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, July 22, 1992.

CHANGE IN THE MEETING: Deletion/time change.

The following open item will not be considered on Wednesday, July 29, 1992, at 10:00 a.m.

Consideration of whether to amend Regulation E under the Securities Act of 1933. Regulation E provides a conditional exemption from registration under the 1933 Act for securities issued by small business investment companies that are registered under the Investment Company Act of 1940 and by business development companies that elect to be regulated under the 1940 Act. The amendments would increase the aggregate offering price of: (a) Securities of a small business investment company that may be offered within a twelve-month period from $5 million to $15 million and (b) securities of a small business investment company or business development company offered by a person other than the issuer from $100,000 to $1.5 million. For further information, please contact Kathleen K. Clarke at (202) 272–2097.

A closed meeting schedule for Thursday, July 30, 1992, at 10:00 a.m., has been rescheduled for Monday, August 3, 1992, at 10:00 a.m.

Commissioner Roberts, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272–2100.

Dated: July 28, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18166 Filed 7–28–92; 2:21 pm]

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federal register

Thursday
July 30, 1992

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Final Rule

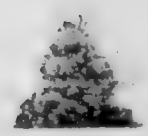

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4158-2]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA promulgates stratospheric ozone protection regulations (40 CFR part 82) required under title VI of the Clean Air Act Amendments of 1990, Public Law 101-549. Today's action promulgates regulations implementing the 1992 and later requirements of section 604, as well as the related provisions of sections 603, 607 and 616, in a manner consistent with the United States' continuing obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer as revised.

Through this action, EPA (1) Apportions baseline allowances to produce or import ozone depleting substances to companies that produced or imported certain ozone depleting substances in the baseline years; (2) allocates decreasing amounts of those allowances to the companies according to the phaseout schedule prescribed by section 604; (3) applies an 18-month cap from July 1, 1991, to December 31, 1992, on production and consumption as required under the Protocol; (4) permits transfers of allowances provided the transferor's remaining allowances are reduced by the amount it transferred plus one percent of the amount transferred; (5) permits production in excess of the amount authorized by the original allocation of allowances in order to supply developing countries that are operating under Article 5 of the Protocol, so long as producers provide adequate assurances that the production supplied to the developing country will not be reexported; (6) permits transfers of allowable production with other Protocol Parties under certain conditions; (7) changes procedures to facilitate the transformation of carbon tetrachloride without requiring extensive trading of allowances; (8) imposes minimal reporting and recordkeeping requirements, including those needed to include several newly regulated chemicals in the phaseout programs, as well as recordkeeping and reporting requirements by companies that transform carbon tetrachloride; and (9) requires that companies that produced controlled substances as by-products and did not destroy them with maximum available control technology (MACT) in 1989 but did not report their production in response to the section 114 information request in the November 26, 1990 **Federal Register** supply EPA with this information within 45 days of the publication of this document.

EFFECTIVE DATE: January 1, 1992.

ADDRESSES: Materials relevant to this rulemaking are contained in Air Docket No. A-91-50. The docket is located at U.S. Environmental Protection Agency (LE-131), 401 M Street, SW., Washington, DC 20460 in room M-1500, First Floor Waterside Mall and is open from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Martha Dye, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, 6202J, 401 M Street, SW., Washington, DC 20460, (202) 233-9093.

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I. Background

A. Overview of the Ozone Depletion Problem

Stratospheric ozone shields the earth's surface from dangerous ultraviolet (UV–B) radiation. In response to growing scientific evidence, a national and international consensus has developed that certain human-made halocarbons deplete stratospheric ozone. To the extent depletion occurs, it is believed that penetration of UV–B radiation will increase, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics.

Different chlorine- and bromine-containing substances vary in their potential to deplete stratospheric ozone. The fully halogenated chlorofluorocarbons (CFCs), halons, and carbon tetrachloride, for example, are such stable molecules that they reach the stratosphere largely intact and only there are degraded by high energy solar radiation. The chlorine or bromine from these chemicals is then released in forms (or chemical precursors of forms) which are extremely effective in depleting ozone. In contrast, methyl chloroform has a substantially shorter atmospheric lifetime but is used in such large quantities that it too contributes significantly to total atmospheric chlorine levels. Hydrochlorofluorocarbons (HCFCs) also have relatively short atmospheric lifetimes and are only beginning to be introduced as substitutes for fully halogenated CFCs. Future use of HCFCs must be carefully evaluated on the basis of both their potential volumes and their atmospheric lifetimes. The relative ability of a substance to contribute to ozone depletion is its "ozone depletion potential."

B. Scientific Evidence of Ozone Depletion

The initial hypothesis linking CFCs and depletion of the stratospheric ozone layer was published in 1974. A paper by research scientists Molina and Rowland suggested that industrial halocarbons could react in the stratosphere and destroy stratospheric ozone.

Between 1974 and 1987, the scientific community made remarkable advances in understanding atmospheric processes affecting stratospheric ozone. In response to this growing threat, the international community negotiated the Montreal Protocol, which limited the production and consumption of a narrow set of ozone depleting substances.

Significant ozone loss was first reported over Antarctica in 1985. In 1987, an international team of scientists collected and analyzed evidence linking the Antarctic ozone hole to ozone depleting chemicals. This report also suggested that some depletion of global ozone levels had already occurred (Ozone Trends Panel Report: Executive Summary, 1988). In response, the Parties to the Protocol agreed to accelerate the assessment process required under Article 6 of the Protocol. The results of the initial Protocol assessment were issued in 1989 and further heightened concern that chlorine- and bromine-containing substances had already led to a greater depletion of stratospheric ozone than had been expected.

This scientific assessment resulted in a call to strengthen national and international controls on ozone depleting chemicals. Adjustments adopted by the Parties to the Protocol in June of 1990 and Amendments to the Clean Air Act signed into law in November 1990 require a full phaseout of the most significant ozone depleting chemicals by the turn of the century.

The process of scientific review has continued since the 1989 Protocol assessments. In April 1991 the Executive Summary of the second assessment report was issued. This report stated that ozone depletion has occurred in the summertime over northern mid-latitudes. This new information will be examined in the context of possible further amendments to the Protocol in 1992 and in reference to a petition for a faster phaseout of controlled substances that EPA received under section 606 of the Clean Air Act on December 3, 1991 from the Natural Resources Defense Council, Friends of the Earth and the Environmental Defense Fund.

C. Past Efforts to Control Ozone Depleting Substances

1. Vienna Convention and 1987 Montreal Protocol

Recognizing the global nature of this issue, EPA participated in negotiations organized by the United Nations Environment Programme (UNEP) to develop an international agreement to protect the ozone layer. These negotiations successfully concluded with the signing of the Vienna Convention in 1985 and the signing of the original Montreal Protocol in 1987. Currently, 81 nations representing over 90 percent of the world's consumption of CFCs and halons are Parties to the Protocol (*see* appendix C to subpart A of 40 CFR part 82).

The 1987 Protocol required nations who join to restrict their production and consumption (defined as production plus imports minus exports of bulk chemicals) of CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 and halons 1211, 1301 and 2402. It did not regulate specific uses or emissions of these "controlled substances," but limited their production and importation instead. It also did not place limits on each of the substances, but instead grouped the substances (i.e., the CFCs listed above were placed in Group I and the halons were placed in Group II), and placed separate limits on the total ozone depletion potential (ODP) of each group. The Protocol thus allowed a nation to change the mix of controlled substances within each group that it produced and consumed, so long as the total ODP of the mix did not exceed the specified limits. The phrase "calculated level" was used to refer to this weighting of controlled substances based on their relative ODP.

As originally drafted, the Protocol called for annual production and consumption of the five most ozone depleting CFCs (i.e., Group I substances) and halons (i.e., Group II substances) to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992, respectively, and for CFCs to be reduced to 50 percent of 1986 levels by 1998. It also allowed for limited increases in production beyond the caps described above for the purposes of supplying

developing country Parties that are operating under Article 5 of the Protocol or trading allowable levels of production ("industrial rationalization") between Parties. In addition, the Protocol provided that after January 1, 1993 only exports to Parties would be subtracted from a Party's consumption, and it banned imports of controlled substances from nations which neither join nor comply with the Protocol.

2. 1988 Final Rule

a. *Overview.* EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradeable allowances. The Agency ensured compliance with the Protocol by creating production and consumption allowances equal to the quantity of production and consumption allowed under the Protocol. The Protocol's separate treatment of Group I and Group II controlled substances was reflected in separate allowances for each group of substances. Similarly, the Protocol's application of limits to the ODP of the groups of controlled substances ("calculated level") was carried over into the definition of allowances. Thus, allowances were specified in terms of a calculated level of a particular group of controlled substances, so that holders of allowances could select any mix of controlled substances within each group, provided that the total calculated level of the mix did not exceed the calculated levels of the allowances held.

b. *Baseline allowances.* EPA apportioned allowances to producers and importers of controlled substances based on their 1986 levels of production and imports. It then allocated percentages of the allowances according to the reduction schedule specified in the Protocol. For example, for the control periods during which CFC production and consumption were to be frozen at 1986 levels, EPA allocated 100 percent of baseline allowances.

c. *Interrelationship of Consumption and Production Allowances.* To reflect the interrelationship of the production and consumption limits, the Agency provided that a producer needed both production and consumption allowances to produce these chemicals (since production counted against both production and consumption limits), while importers needed only consumption allowances to import (since imports counted only against consumption).

To illustrate, a company that intended to manufacture a controlled substance had to have sufficient production allowances for the group of controlled substances to which the particular substance belongs in order to cover its level of production. Furthermore, since production is also included in the calculation of consumption, that company must also have had at least the same number of consumption allowances in order to produce the same controlled substances. For example, prior to producing one kilogram of CFC-12, a company must have had both a one-kilogram production allowance for Group I substances and a one-kilogram consumption allowance for the same group of substances. In producing that one kilogram, the company expended both the production allowance and consumption allowance.

A company could import controlled substances with consumption allowances alone, since imports were included in the definition of consumption but not of production. Like the producer, however, the importer had to hold prior to importing sufficient consumption allowances specific to the group of controlled substances to which the substance being imported belongs. Once the import occurred, the consumption allowances needed to cover the import were expended.

Exporters of controlled substances were not required to obtain allowances in order to export. Through the export of a controlled substance, a company decreased the volume of controlled substance available for consumption in the United States. Consequently, if certain conditions were met, an exporter could obtain additional consumption allowances from EPA after the controlled substances had been exported to a Party to the Montreal Protocol (see Additional Allowances). To obtain additional allowances, the company had to verify to the EPA that the export had occurred. EPA then granted additional allowances equal to the calculated level of the export.

The following specific examples further illustrate the interrelationships between these allowances:

1. A producer had 20 kilograms of Group I (CFCs) production allowances and 15 kilograms of Group I consumption allowances. Since both production allowances and consumption allowances were needed to produce, a producer could make only 15 kilograms of Group I substances, expending the 15 of its 20 production allowances and all of its 15 consumption allowances in the process. However, if the producer then exported 5 kilograms of Group I substances to a Party nation, it could receive 5 additional Group I consumption allowances from EPA upon proof of export. With the additional 5 Group I consumption allowances, the company could produce 5 more kilograms of Group I substances, expending its remaining 5 Group I production allowances and the 5 additional consumption allowances.

2. An importer had Group I consumption allowances equal to 20 kilograms. The importer imported 20 kilograms of Group I substances using the 20 kilograms of consumption allowances, and then repackaged 10 kilograms for re-export. Once these 10 kilograms had been exported, the importer could report the export to EPA and request additional allowances. Upon proof of export the company would receive 10 additional Group I consumption allowances.

Under EPA's 1988 rule, once any allowance was used to produce or import a controlled substance, that allowance was "expended" and could not be used again. In addition, allowances were only valid for the control period for which they were issued. Consistent with the twelve-month control requirements contained in the Protocol, allowances could never be carried over to the next control period.

d. *Additional allowances.* EPA's final rule also provided for granting additional allowances under certain circumstances. Exporters could receive additional consumption allowances for controlled substances exported to any nation before January 1, 1993 or to any other Protocol Party beginning January 1, 1993. Producers could receive additional production allowances for exporting controlled substances to developing country Parties to the Protocol or upon the transfer of production rights from another Party to the Protocol. In accordance with the regulations, allowances could also be obtained through trading.

e. *Reporting requirements.* To monitor industry's compliance with the production and consumption limits, EPA also required that producers and importers maintain records of their activities and report their production and import levels every quarter.

Since the original rule was promulgated in 1988, minor revisions have been issued on February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812).

3. 1990 Revision of Montreal Protocol

As noted earlier, the Protocol's 1989 scientific assessment confirmed that stratospheric ozone was being depleted more quickly than originally believed. In response to the assessment, the Parties

decided at their June 1990 meeting in London to completely phaseout by January 1, 2000, the CFCs and halons already subject to the Protocol's control requirements and carbon tetrachloride and the "other" fully halogenated CFCs not originally regulated by the Protocol. They also agreed to phaseout methyl chloroform by 2005. In addition, the Parties decided to shift from July-through-June control periods to calendar-year control periods, beginning with the 1993 control period. They provided for an 18-month transitional control period from July 1, 1991, to December 31, 1992, during which Parties would be obligated to limit their production and consumption of the already regulated CFCs and halons to 150 percent of baseline levels.

The changes in reduction requirements applicable to the already regulated CFCs and halons were made as "adjustments" to the Protocol and so became binding on the Parties six months after the receipt of formal notification under the terms of the Protocol. The 1990 adjustments accordingly took effect on March 7, 1991. The addition of carbon tetrachloride, methyl chloroform and the other CFCs was adopted as an "amendment" to the Protocol, which will take effect 90 days after 20 Protocol Parties ratify the Amendments. Under the Protocol, amendments bind only the Parties that ratify them. The U.S. has ratified the amendments. As a result, a nation that is a Party for purposes of the originally regulated CFCs and halons would not be a Party for purposes of carbon tetrachloride, methyl chloroform and the other CFCs until it has ratified the Amendments.

To encourage all nations to ratify or at least comply with the Protocol and the London Amendments, the Parties also adopted additional trade sanctions against nations that fail to join or comply with all or part of the Protocol. Article 4 originally required that Parties ban imports of controlled substances from non-Parties. Amendments to Article 4 require that Parties also ban exports of controlled substances to non-Parties and defines non-Parties for purposes of Article 4 as including, with respect to a particular controlled substance, a nation that has not agreed to be bound by the control measures in effect for that substance. Under amended Article 4, a nation that is a Party only for the original controlled substances will not be able to import the newly regulated controlled substances from other Parties or export the newly regulated controlled substances to other Parties beginning January 1, 1993.

The issue of what Parties are operating under Article 5 of the Protocol was addressed by the Parties, as well. Article 5 permits any developing country whose consumption of the original controlled substances is less than 0.3 kilograms per capita when it joins the Protocol to delay its compliance with the Protocol's control measures by ten years. The Parties originally delayed designating Article 5 nations on the basis that many countries had not submitted data showing that they were under the 0.3 kilogram cap. At their meeting in Nairobi in June, 1991, however, the Parties agreed on a list of Article 5 countries.

4. The Clean Air Act Amendments of 1990

Shortly after the Protocol Parties' London meeting, the United States Congress passed the Clean Air Act Amendments of 1990. The restrictions on production and consumption of ozone depleting substances found in title VI of the Clean Air Act are similar to those in the London Amendments, although interim targets are more stringent and the phaseout of methyl chloroform occurs earlier.

The Amendments to the Act also require EPA to promulgate regulations to ensure the "lowest achievable levels" of emissions in all use sectors, to ban nonessential products, to approve the use of safe substitutes only, and to mandate warning labels. Today's notice promulgates limits on production and consumption and is one of several regulations that will implement the Amendments' title VI provisions.

5. Temporary Final Rule

On March 6, 1991 (56 FR 9518), EPA published temporary regulations to implement the 1991 limits on the production and consumption of ozone depleting chemicals required by section 604 of the Act. The regulations took effect on January 1, 1991, and were to remain in effect only during 1991. Today's regulations pertain to all control periods beginning with the 1992 calendar year.

The temporary final rule revised EPA's regulations implementing the Montreal Protocol as needed to implement the 1991 production and consumption limits under section 604 in a manner consistent with the United States' obligations under the Protocol.

II. Statutory Authority

Title VI of the Clean Air Act as amended in 1990 provides for the phaseout of ozone depleting substances through provisions contained in several sections. Section 602 directs EPA to issue within 60 days after enactment of the 1990 Amendments two lists of ozone depleting chemicals. One list is to include the chemicals already regulated under the Protocol and EPA's regulations (i.e., the five CFCs and three halons), as well as the chemicals to be regulated under the revised Protocol (i.e., all other fully halogenated CFCs, carbon tetrachloride and methyl chloroform) and their isomers (except 1,1,2-trichloroethane, an isomer of methyl chloroform). The chemicals on that list are collectively called "class I" substances. The second list is to include all the HCFCs and their isomers; these chemicals are referred to as "class II" substances. For each of the chemicals listed, EPA must also assign an ozone depletion potential, a chlorine or bromine loading potential, an atmospheric lifetime and, within one year after enactment, a global warming potential (the relative ability of a controlled substance to contribute to global warming). EPA published the required initial listing notice, including ODPs, on January 22, 1991 (56 FR 2420).

Section 603 directs EPA to amend its regulations to implement new requirements regarding monitoring and reporting of class I and class II substances. Included in this section are requirements for industry reports on production, import, and export levels of class I and class II substances and periodic EPA reports to Congress on specified industry activities, atmospheric conditions, and the status of substitute technology.

Section 604(a) makes it unlawful for any person to produce any class I substance in an annual quantity greater than the specified percentages of the quantity of the substance produced by that person in the baseline year. (Section 601(2) defines baseline year as 1986 for the already regulated chemicals and 1989 for the newly regulated chemicals.) The provision is self effectuating. The first control period in the reduction schedule began on January 1, 1991, and ran through the end of 1991. Section 604(a) requires in the first control period a freeze on carbon tetrachloride and methyl chloroform at 1989 production levels and a 15 percent reduction for all remaining class I substances.

Section 604(c) calls for EPA to promulgate within ten months after enactment regulations to implement the production controls described above and to "insure" that United States consumption of the class I chemicals is reduced on the same schedule as production. Section 601(b) defines consumption as production plus imports

minus exports to nations which are Parties to the Montreal Protocol.

Section 607 requires EPA to promulgate within ten months after enactment rules "providing for issuance of allowances" for production and consumption of class I and II substances and governing the transfer of such allowances. The transfer rules are to require that each trade result in less overall production or consumption than would have occurred absent the trade.

Section 604(e) authorizes EPA to permit, after notice and opportunity for comment, production in excess of the limits for export to, and use in, developing countries that are operating under Article 5 of the Protocol. Like the Protocol, section 604(e) provides that such excess production must be solely for the purpose of supplying the basic domestic needs of such countries.

Section 616 requires EPA to promulgate, within two years after enactment, regulations authorizing trades of allowable production with other Parties to the Protocol. The regulations are to require, among other things, that trades do not result in more production than would have otherwise occurred.

Finally, section 614(b) addresses the relationship between the statute and the Protocol, stating that "in the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." It also provides that the title "shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol."

III. September 30, 1991 Proposal

In a Federal Register notice published on September 30, 1991, the Agency published proposed regulations for the implementation of the phaseout of ozone depleting substances as required by title VI of the Clean Air Act for 1992 and later. The notice included the proposed implementation of the requirements of section 604 of the Act as well as of the related provisions of sections 603, 607, and 616 in a manner consistent with the United States' continuing obligations under the Montreal Protocol. A detailed description of those provisions, the issues they raise, and EPA's proposed implementation of them may be found in the NPRM at 45 FR 49648.

Among the more significant issues addressed in the proposal was the reduction schedule for production and consumption of ozone depleting substances. The Act sets forth a phaseout schedule for the regulated chemicals. For 1992, production and consumption of CFCs and halons are limited to 80 percent of baseline levels, methyl chloroform is frozen at baseline levels and carbon tetrachloride is reduced to 90 percent of baseline levels. The limits on the production and consumption of ozone depleting chemicals are gradually reduced until 2000 (2002 for methyl chloroform), when the chemicals are to be phased out.

An additional cap on production and consumption to ensure compliance with the Protocol's somewhat different requirements was also proposed. As explained above, the temporary final rule shifted the control period to coincide with the calendar year, as required by the 1990 Amendments to the Clean Air Act. EPA proposed to safeguard against non-compliance with the Protocol's 150 percent cap for July 1991 through December 1992 by prohibiting any company from exceeding more than 150 percent of its baseline production and consumption of Group I (CFCs) substances from July 1, 1991 through December 31, 1992, except to the extent the company has received allowances authorizing additional production or consumption through intercompany trading, exports to Parties, and transfers of allowable production from other Parties. This prohibition is in addition to the prohibition against any person exceeding the allowances allocated to that person for the calendar-year control period established pursuant to section 604(a) of the Clean Air Act.

In the NPRM, EPA also proposed revisions to the trading provisions of the stratospheric ozone protection regulations as required under title VI. Section 607 of the Act requires that any trade between chemicals or companies result in less overall production or consumption than would have occurred absent the trade. In the notice the Agency proposed to permit transfers of allowances provided the transferor's remaining allowances are reduced by the amount it transferred plus one percent of the amount transferred. A one-percent offset was proposed as an amount large enough to provide a net environmental benefit without discouraging trading necessary to meet market demands.

Exports to Article 5 Parties were also addressed by the proposed regulations. Section 604 of the Act permits production in excess of the amount otherwise allowed in order to supply the basic domestic needs of developing countries that are operating under Article 5 of the Protocol. In the NPRM, the Agency proposed to implement this provision by requiring that producers provide adequate assurances that the production supplied to a developing country will not be re-exported.

The Agency also proposed to permit increases or decreases in production through transfers of allowable production with other Protocol Parties under certain conditions. Section 616 authorizes EPA to issue regulations providing for trades of allowable production with other Protocol Parties. If EPA approves a trade to another Party, it must revise the "production limits for the United States" such that the revised limits are the lesser of (a) the maximum production that the country is allowed under the Protocol minus the amount transferred, (b) the maximum production that is allowed under the country's applicable domestic law minus the amount transferred or (c) the average of the country's actual national production level for the three years prior to the transfer minus the production allowances transferred. In the case of a transfer to the United States, it was proposed that the principal diplomatic representative in the transferring country's embassy attest that the transferring country has revised its production limits in a similar manner.

In the NPRM, a change to the approach to granting additional allowances for transforming ozone depleting substances was proposed for carbon tetrachloride. Since over 81 percent of the carbon tetrachloride produced in this country is used to produce CFCs, the original system of approving additional allowances only after a chemical has been transformed is less workable for carbon tetrachloride. The proposed scheme provided allowances "up-front" prior to transformation, thus avoiding an unnecessarily burdensome stop-start production cycle.

IV. Summary of Changes to Proposed Rule

A. Definitions

1. Importer

The Agency proposed the following definition of "importer:" "the importer of record listed on U.S. Customs Service Form 7501 or 7512 for imported controlled substances." This definition is identical to that used in the past in 40 CFR part 82 (53 FR 30566), with the addition of the words "or 7512."

Comments received on the definition of importer stated that the importer of record should not be the party required to possess consumption allowances. These commenters were concerned that shipping agents and customs brokers who routinely put up Customs bonds for other companies are often listed as the

importer of record, and therefore would be held responsible for the import of controlled substances in which they have no economic interest. The commenters maintained that the existing regulations are in this way unfair and virtually impossible for brokers to comply with. As a result, they suggested that the definition of importer for purposes of compliance during the control period be the same as that used for purposes of granting baseline allowances, or "the first United States owner who is a supplier to or a member of the domestic industry that uses the controlled substances."

The Agency previously considered using this definition for enforcement purposes and rejected it (see 53 FR 18803 and 53 FR 30583). The Agency agrees that limiting the definition of importer to the importer of record could cause brokers to be held liable for imports of controlled substances although they were not granted baseline consumption allowances. However, as discussed in previous rulemakings (e.g., 53 FR 18803 and 53 FR 30583), the Agency must choose a definition that will make compliance monitoring administratively feasible. In general, requiring the importer of record to be the party that holds the consumption allowances has proved to be effective for compliance-monitoring purposes, as it allows the Agency to rely on data gathered from Customs entry summary forms to verify importer quarterly reports and to identify imports for which consumption allowances were not expended. EPA also does not believe that its definition of import puts Customs brokers or shipping agents in an impossible position. As several companies have demonstrated, one way to deal with the definition is for companies that have an economic interest in imported controlled substances and thus were granted baseline consumption allowances to ensure that they are designated as the importer of record on the entry summary form. Customs brokers and shipping agents can similarly require that the holder of allowances be designated the importer of record or that the needed allowances be transferred to them by the time the import occurs. In spite of the large volume of trade that brokers may handle, they remain responsible for the content of material that crosses the border into the United States under their bond. Clearly, many regulations ban the import of certain products or materials and brokers must be sure that the material they are importing is not prohibited. In the same way, they are responsible for ensuring that controlled substances under this subpart are not imported without the proper authorization.

One of the commenters also noted that the definition of importer is inconsistent with the definition of that term in a recent regulation promulgated by the Internal Revenue Service (IRS). The Agency, however, need not define importer in a manner consistent with IRS regulations, if, as is the case here, a different definition is more suitable to EPA's regulatory purposes.

Upon examining the definition of importer and its relation to Customs practices, the Agency determined that several different forms may be used when importing material into the United States. For example, Customs Form 3461 may be used for low value shipments in place of Form 7501. In order to guarantee that any person bringing controlled substances into the United States is subject to the import restrictions, which is and has been the objective of these restrictions, the Agency has determined that the definition of importer should read "the importer of record listed on U.S. Customs Service forms for imported controlled substances."

2. Production

a. *Exemption for immediately-destroyed by-products that are controlled substances.* The Agency proposed that carbon tetrachloride that is produced as a coincidental, unavoidable by-product (CUBP) of a manufacturing process and then immediately contained and destroyed be exempted from regulation under this subpart. This proposal was based on language in the Joint Explanatory Statement of the Committee of Conference that accompanied the Clean Air Act Amendments. The Agency requested comment on several issues relating to the definition of a (CUBP), immediate containment and destruction, and maximum available control technologies.

One commenter believed that this exemption should take the form of an alteration in the definition of production under the regulations. This company maintained that by restructuring the regulations in this manner, the inadvertent manufacture of a controlled substance immediately contained and destroyed is exempt from the definition of production rather than from the control of production.

The Agency, however, does not believe that it is appropriate to exempt CUBP production of Groups IV and V controlled substances from the definition of production. The Agency believes that it is more appropriate to include this exemption in § 82.4, Prohibitions, than under § 82.3, Definitions, because the exemption is not permanent and categorical, but rather is subject to case-by-case annual review by the Agency. CUBP production of controlled substances in Groups IV and V is therefore exempted from the production restrictions in today's regulations. This exemption is discussed in more detail below as part of the discussion of exemptions to the phaseout.

Another commenter argued that carbon tetrachloride that is used for explosion prevention in the manufacture of chlorine and subsequently destroyed should be exempted from the definition of production because it is essential for human safety.

The Agency does not believe that this use of carbon tetrachloride falls within the parameters of the CUBP exemption described in the Joint Explanatory Statement of the Committee of Conference on the 1990 Clean Air Act Amendments, because it does not involve the inadvertent manufacture of a controlled substance. Although the Protocol allows for controlled substances to be excluded from production if they are destroyed using destruction methods approved by the Parties, the Clean Air Act does not contain such an exclusion and the Joint Explanatory Statement specifically states that the Protocol's exclusion does not apply under domestic law except where the destroyed material is CUBP.

b. *Used and entirely consumed (Except for Trace Quantities).* The definition of production in the statute and in the proposed regulations excludes from production "the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals." In the NPRM, the Agency suggested that although the parenthetical phrase "except for trace quantities" does not appear in the Montreal Protocol definition, it is implicit because it is a law of chemistry that no chemical can ever be entirely consumed in the manufacture of another chemical. Thus, EPA found that the addition of the phrase in the regulations is warranted and not incongruous with the Protocol.

The only comment the Agency received on this point agreed that the exception for trace amounts is implicit in the Montreal Protocol's exclusion from "production" for amounts "entirely used as a feedstock in the manufacture of other chemicals."

3. Transformation—Distinction Between Transformation and Destruction

In the NPRM, the Agency discussed the difference between transformation and destruction. Essentially, the proposed definition of transformation was the use and entire consumption of a chemical in a process that produces another commercially useful chemical. The proposed definition of destruction was any process that results in the "expiration" of the chemical without any commercially useful end product being produced.

One company commented that defining "transformation" as a process that produces a commercial product that is sold, or an intermediate substance that is used in further manufacture limits transformation to only those processes where a commercial product is the direct product of the transformation reaction. This company stated that such a limitation would unnecessarily restrict commercial manufacturing use of controlled substances since, in many commercial processes, a controlled substance is used and entirely consumed but is not transformed into a commercial product (e.g., use of controlled substances as reaction inhibitors, solvents, or inert direct coolants). The same company argued that the proposed definition would force some processes where controlled substance use is essential to shut down. It contended that even where substitute chemicals are available, large sums of money would be spent on process retrofits without environmental benefit.

The commenter gave as an example of a process which it believed would not meet the proposed definition of transformation a process in which (1) The reaction process results in a commercial product or intermediate substance that could not otherwise be produced without the presence of the ozone depleting chemical; (2) the ozone depleting chemical is entirely consumed in the production process via a combustion reaction that transforms the controlled substance to a non-controlled substance; (3) the combustion device is a necessary and integral part of the commercial process where the ozone depleting chemical is used; (4) there is no storage of the ozone depleting substance between the use in the production of the commercial product and the controlled substance combustion because they are both parts of the same production process; (5) these operations cannot be characterized as a Resource Conservation and Recovery Act (RCRA) waste destruction operation; and (6) the ozone depleting chemical is generally burned as part of a process to vent steam and is not a solid waste as defined by RCRA. The commenter noted that although the process described above did not result in the transformation of the ozone depleting substance into a commercial product, it does meet the strict requirement that the substance be used and entirely consumed. Furthermore, the commenter stated, there is no practical difference between processes where the controlled substance is transformed directly to a commercial product and those where the ozone depleting chemical is used to produce a commercial product and is then transformed to a noncommercial chemical.

The Agency's definition of transformation would not necessarily exclude the process described above. EPA is aware of several transformation situations in which the manufacturing process requires that the controlled substance be broken down or chemically changed, without the ozone depleting substance actually forming part of the intended commercial product. One example is the use of carbon tetrachloride as a chlorine source for rejuvenating the catalyst in certain refinery or isomerization processes. In these cases, although the gasoline or isobutane being produced does not contain the reaction products of carbon tetrachloride, the carbon tetrachloride was transformed to produce chlorine atoms which were commercially useful when they rejuvenated the catalyst. Thus, EPA's proposed definition of transformation does not require that the reaction products become part of a saleable product.

In order for a process in which the reaction products do not become part of a saleable product to satisfy the definition of transformation, the following must be true. It must be essential for the manufacturing process that the controlled substance be broken down, and it must be physically impossible to recover the ozone depleting chemical after its use and still have it serve its purpose in the process. If it is not essential for the manufacturing process that the controlled substance be broken down, the "expiration" of the controlled substance is incidental and would most likely be as the result of destruction. The controlled substance is clearly not being incorporated into a commercially useful chemical. If it is physically possible to recover the ozone depleting chemical after it has served its purpose in the process, then it is not being transformed in the process and is only expiring in a separate, destruction step. If it is essential that the material be broken down, and as a result it is not recoverable, the process probably qualifies as transformation, as long as the actual reaction that is taking place clearly results in a commercially useful intermediary as one step in the manufacturing process. If it is not essential for the manufacturing process that the controlled substance be broken down, i.e., it is recoverable after performing its function in the process, it is probably not being transformed. This would be true if the material served as a solvent in the process, even if it were fed directly into an incinerator after completing its function.

The Agency cannot allow the definition of transformation to include manufacturing processes where controlled substances are used and then moved directly into an incinerator after use. Clearly, the purpose of the incinerator is simply to destroy the material. This is true even if the incinerator is attached to a vent in order to capture and destroy volatile emissions. If the Agency were to include these processes in the definition of transformation, a company using an ozone-depletor as a solvent could simply send the waste solvent directly to an incinerator and claim it as transformation. The Protocol, however, distinguishes between transformation of controlled substances in the production of another commercial chemical and destruction. As explained above, the Agency believes the key questions for determining whether a substance has been transformed is whether the substance has undergone a change in chemical composition in order to become a commercial product or intermediary as a necessary step in a production process. The Agency is providing exemptions in this rulemaking for production of controlled substances that are by-products of manufacturing processes, and is participating in a working group established by the Parties that is exploring issues related specifically to destruction.

One company supported the definition adopted by the Agency for transformation. Two other commenters, however, maintained that the definition of "transform" refers to manufacture of other chemicals "for commercial purposes", and that the regulations should clarify that commercial purposes means for sale by producers or for use by producers that would otherwise have to purchase it.

As a general rule, the phrase "commercial purposes" would have the meaning the commenters suggest. However, in the catalyst-rejuvenation

case discussed above, the chlorine atoms that activate the catalyst could not necessarily be sold or purchased in that form, and so although the product of the transformation is commercially useful, it could not otherwise have been sold or purchased. Thus EPA has decided not to restrict "commercial purposes" (as suggested by the commenters) to sale or use in place of purchased material.

One commenter asserted that the definition of transformation should be clarified because there are situations where both transformation and destruction occur in the same process (i.e., transformation where the controlled substance "expires" in the manufacture of another commercial chemical, and destruction where the "expiration" of the controlled substance results in the creation of another chemical which is a waste product). They maintained that this situation meets the exclusion from the definition of "production" since the controlled substance is essential to the reaction (in very small amounts relative to the commercial chemical), but is not itself incorporated into the molecules of the commercial chemical. In assisting the reaction, the controlled substance is broken into simpler compounds that are waste products. According to this company, the chemical is thus used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, and meets the definition of transformation even if the actual atoms of the controlled substance end up as waste-products after assisting the reaction. This commenter suggested that EPA either clarify the definition of transformation to include this type of process or expand the definition of transformation itself.

The Agency believes that the process described by this commenter would qualify as transformation. The key point in the above description is that "in assisting the reaction, the controlled substance is broken into simpler compounds." If it is necessary for the ozone depleting chemical to be broken down in order to serve its purpose in the reactor, it is being transformed. This again differs from the situation where the ozone depleting substance serves its purpose, remains intact, and only as a separate step is destroyed.

One commenter was generally in agreement with EPA's proposed distinction between transformation and destruction, and believed that specific processes including thermal oxidizers and halogen acid furnaces should be identified as transformation.

In applying the "commercial purposes" test to these processes, the Agency concludes that halogen acid furnaces would qualify as transformation because the resulting halogen acid is used or sold and not disposed of as a waste. Thermal oxidizers, however, would not qualify because the product of the controlled substance being broken down is not another chemical, but simply energy. In no way is the controlled substance being chemically changed to become a commercially useful chemical; the substance is destroyed in order to produce heat.

In summary, a controlled substance is transformed if it is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals. The "other chemicals" manufactured must be commercially useful. This includes uses in manufacturing processes and is not limited to commercial sale. Processes where the atoms that make up the controlled substance are rearranged to form only a waste product are destruction processes, not transformation.

B. Baseline Allowances

1. Class II Baseline

The Agency proposed to reserve the baselines for class II chemicals, because under § 605 the phaseout of those chemicals does not begin until 2015, and it will take some time for the market to determine what representative production levels for these substances would be. This proposal was supported by commenters.

2. Selection of Baseline Year and Baseline Allowances for Chemicals Added Later

In the NPRM, the Agency requested suggestions regarding the appropriate method for determining the baseline year and allowances for new chemicals to be added to the class I list of ozone depleting substances. The allocation of such allowances is subject to the provisions of sections 604 and 607 of the Clean Air Act.

One company responded with a suggestion on how to calculate the baseline allowances for CHF_2Br (Halon 1201, or bromodifluoromethane), a chemical that EPA intends to add to the list of ozone depleting substances and a potential substitute for Halons 1211 and 1301. The suggested approach for this particular substance will be discussed in the proposal to list Halon 1201 as a class I chemical and allocate baseline production and consumption levels for this chemical.

Since no other comments were received on the method for determining the baseline year and allowances, the Agency will continue to evaluate each substance on a case-by-case basis in order to determine a representative baseline year.

3. Method of Calculation of Baseline Allowances

EPA proposed baseline allowances for the Class I substances based on each company's production and consumption of each of the substances in the baseline year. Information on baseline-year activities was gathered under two information requests. The first request, dated December 14, 1987 (52 FR 47486), collected information on the amount of Group I and II controlled substances that firms had produced, imported or exported in 1986. More recently, the same information was requested for Groups III through V (other CFCs, carbon tetrachloride, and methyl chloroform) on November 26, 1990 (55 FR 49116). The Agency calculated a company's baseline production of a controlled substance by subtracting from the amount manufactured the amount of that company's product that was transformed or used as a feedstock in the baseline year. Consumption was calculated in a similar fashion, adding imports to the calculated production and subtracting baseline-year exports attributed to the company. A correction factor was applied to all baseline calculations to account for exported and transformed material that could not be attributed to a particular producer or importer.

Two companies commented that after the regulations are adopted, companies should be given an opportunity to challenge the baseline allowances and verify correct computation. In addition, these corporations believed that problems were created by the 1991 temporary final regulations because EPA collected information before defining key terms. These companies maintained that EPA should consider re-examining data in light of new definitions and reviewing data in cases in which definitions have changed. Another commenter also maintained that EPA may need to examine the process used to set baseline allowances for carbon tetrachloride, especially if it changes the method of applying production and consumption limits for that chemical.

The Agency has already given an opportunity for companies to challenge the baseline allowances by including them in the NPRM, and a lengthy description of the calculation method was provided to all involved. Although issues such as destruction versus transformation have required

clarification in this rulemaking, the Agency has recalculated the allowances to account for the changes in the definitions. The Agency received the additional information that was needed to make the changes since the publication of the proposal. The only issue concerning which the Agency may need additional information is that of controlled substances produced as by-products. As discussed below, the Agency is requesting the necessary information.

Comments from two companies mentioned that baseline allowances should reflect the percentage of a company's baseline-year production that will not be exported or transformed. These companies asserted that with the proposed EPA system, inventories can make baseline numbers artificially low or high. One company offered an alternative approach that would rely on emissive uses to set baseline allowances for heavily transformed substances.

EPA recognizes that the effect of subtracting 1989 exports and transformations from 1989 production and imports is not the same as calculating the actual amount of 1989 production and imports that were not and will not be exported or transformed. The Agency submits that it would be impossible to trace each molecule of 1989 controlled substances to ascertain its ultimate use or destination when there had been no requirement at that time to track the fate of the compound. In addition, it is possible that some amounts of controlled substances produced in 1989 will yet be transformed or exported at some future date. Again, it is not possible for EPA to determine the fate of all 1989 production. As a result, 1989 transformation and exports were used as a reasonable approximation.

The emissive uses approach would necessitate a supplementary survey of users that would cause a significant delay in the implementation of the provisions of the Act. Furthermore, the suggested method would depart from the Clean Air Act requirements by changing its most basic definitions, whereas the current method's assumptions are consistent with those definitions while making certain mathematical approximations in order to render its requirements achievable. EPA notes, moreover, that the Agency has calculated allowances in this manner beginning with the original phaseout regulations in 1988, and has reported U.S. baseline-year levels to the Protocol Secretariat using these calculations.

One company maintained that because of business cycles and economic factors, the same amount of carbon tetrachloride is not produced and used every year. As a result, the assumption that current-year transformations equal the amount of current-year production eventually transformed does not hold true. This company presented an example of two companies that produced the same amount of carbon tetrachloride in the baseline year, with the same amount eventually exported and transformed but a different amount sold to emissive uses. The example showed that inventories distort the numbers to create identical baselines for the two companies.

Another example mentioned by the same company shows how a producer that did not sell to emissive users in 1989 could receive baseline allowances, unlike another producer that did sell to emissive users. This situation could occur if the first company's sales for non-emissive uses were not transformed until 1990, and the second company had a high level of inventory at the end of 1988 that was sold or exported in 1989. The commenter stated that the results, as shown by these examples, are unfair and inconsistent with the goal of the Clean Air Act to eliminate emissive uses of ozone depleting substances.

These examples show that inventory can indeed affect the calculation of the baseline. However, as discussed above, it would be administratively burdensome and in many cases impossible to actually trace the fate of 1989 production. The new method of tracking carbon tetrachloride transformation as discussed below should remove any compliance difficulties that producers of this controlled substance for feedstock experienced during calendar year 1991 arising from idiosyncrasies of the carbon tetrachloride market in 1989.

One company commented that the Clean Air Act does not require EPA to use the proposed baseline calculation method, and that this method is inconsistent with the Act's definition of production. The company pointed out that the definition excludes only the amount transformed from the amount produced, as opposed to excluding the transformation of controlled substances that may have been produced in the previous year.

As noted earlier, the Agency has concluded that only the amount of each chemical transformed in the baseline year can be accurately ascertained and that calculating baseline allowances on this basis is consistent with the definition of production. As stated above, it would not be possible to trace later transformation of 1989-produced controlled substances. A simplifying assumption was necessarily made that the amount of previous-year production transformed in 1989 would be similar to the amount of 1989 production transformed in 1990. Although the Agency recognizes that business may fluctuate from year to year, the proposed approach is readily calculated and consistent with the relevant definitions.

One company remarked that EPA has changed allowance allocations from 1991 without stating so in the preamble, or explaining why the change was made. This company believed that the regulations should clarify that the allocations do not apply to 1991.

In the preamble to the NPRM, EPA discussed the calculations that caused a change in the baseline allowances between March 6, 1991 and this rulemaking. Some changes were made because of new information on companies' activities in the baseline year. Another change resulted from the distribution of two companies' negative Group IV consumption allowances over the rest of the companies receiving consumption allowances for carbon tetrachloride. These companies' baseline-year consumption was negative because the amount of carbon tetrachloride produced by them that was exported and transformed during 1989 was greater than the amount of carbon tetrachloride that they produced and imported during 1989. The resulting changes of the baseline allowances are not effective for 1991, as stated in the section of today's rule on Effective Date.

Another commenter maintained that re-allocation of the negative consumption is not needed in order to satisfy the Clean Air Act, which the commenter asserted sets limits on a per-person basis depending on the person's baseline-year production and consumption. Therefore, the company asserted that the allocation of the negative amounts should be deferred until Montreal Protocol provisions for carbon tetrachloride go into effect in 1995.

In response, the Agency notes that section 604(c) requires EPA "to promulgate regulations to insure that the consumption of class I substances in the United States is phased out" on the same schedule as is applicable to the production of class I substances (emphasis added). While section 604(a) defines production limits in terms of a percentage of a company's baseline-year production, section 604(c) requires EPA to define consumption limits that will insure that United States' consumption as a whole is subject to the same percentage reduction. Section 607 provides that allowances be granted in a

manner consistent with the applicable reductions prescribed by section 604. Thus, consumption allowances must be allocated in such a way that the total number of allowances granted equals total allowable U.S. consumption. For the aggregate number of consumption allowances to reflect U.S. consumption in the baseline year, the "negative" consumption accrued by some companies in the baseline year must be taken into account in this rulemaking.

Another comment explained one situation where a customer sought allowances for transformations, and EPA ruled the customer's process to be destruction. If this company were treated as a transformer in computing the 1989 baseline allowances, other companies' allocations would be too low. This commenter maintained that there is no check on EPA since the information upon which the allowances are based is not made available to the public.

The Agency is familiar with the case to which the commenter refers, and responds that in any case for which a company's designation may have changed, the baseline allowances have been adjusted accordingly. Many of the companies submitting baseline information filed claims of confidentiality, and, as such, the Agency cannot at this time make the information available to the public. EPA believes, however, that producers of controlled substances that wish to check the information submitted by their customers could do so by contacting those companies. EPA has provided companies with detailed spreadsheets describing exactly how their allowance allocations were affected by second-party reports.

One suggestion was made that EPA should resurvey customers after it issues final regulations in order to rectify potential problems. This company believed that a resurvey would not be a major impediment because it needs to be done in any event to make sure the feedstock numbers are correct.

EPA has examined the information collected on transformation and believes that the data set is consistent with the definitions set forth in this rulemaking. In addition, the comment period allowed companies the opportunity to submit additional data for EPA to revise their baseline numbers if they found them to be inaccurate in the proposed rule. Since the additional information resulting from refined definitions was submitted after the proposed rule was published, baseline numbers have changed slightly from those published in the proposed rule. The Agency does not anticipate that these changes will cause affected firms any difficulty in complying with today's regulations.

C. Implementation of Exemptions to the Phaseout

1. Exemption for Immediately-Destroyed By-Products That Are Controlled Substances

a. The exemption. EPA proposed that carbon tetrachloride that is a coincidental, unavoidable by-product (CUBP) of a manufacturing process that is immediately contained and destroyed by the producer using maximum available control technology be exempted from the limits on production of controlled substances. This exemption was based on statements made in the Joint Explanatory Statement of the Committee of Conference of the 1990 Clean Air Act Amendments, indicating that EPA should grant such exemptions on a case-by-case basis. The proposal stated that requests for such an exemption would be considered on a case-by-case basis, and if the exemption were not granted, the Agency would grant the requesting company baseline allowances (subject to the phaseout) based on the company's production of the chemical as a by-product in 1989.

One company supported EPA's observation in the NPRM that it would be unworkable to control companies that coincidentally produce and then destroy carbon tetrachloride through the proposed allowance system. Another company commented that EPA should exempt destroyed coincidentally-produced carbon tetrachloride and not provide allowances to its producers since the allowance system would not work in the long term because all of this production would then have to be phased out. This company contended that providing allowances could lead to the shutdown of facilities producing non-controlled substances.

In response to this comment, the Agency clarifies that it would only allot baseline allowances to by-product producers in situations where it could not grant an exemption. This would occur in cases where the chemical was produced intentionally, where as a by-product it was not destroyed with an appropriate destruction technique, or if the Protocol restrictions on carbon tetrachloride took effect before approved destruction techniques were defined. EPA notes that in such cases, having baseline allowances that are being phased down would stimulate the producer to arrange for the transformation of the chemical, or seek out an approved method of destroying the chemical, thus preventing damage to the ozone layer caused by its release. To ensure that all destruction technologies are considered by the Parties for approval, the Agency is actively participating in a UNEP working group on destruction technologies.

If companies eligible for this exemption have previously reported carbon tetrachloride by-product generation as production for the determination of their baseline, they should include that information with their request for the exemption. If the exemption is granted, their baseline will be reduced accordingly.

Another company suggested an amendment to the recordkeeping requirements in § 82.13(l) as follows: (1) If the Administrator's designated representative finds, based on the submitted information, that the carbon tetrachloride for which the exemption from the definition of "produced" is sought is an unavoidable, coincidental by-product of the production of another chemical and that MACT will be used to destroy it, he or she will exempt this manufacture from the definition of "produced."

The Agency does not agree that the exemption should take the form of an exclusion from the definition of production, because such a categorical exclusion from production would be inconsistent with the Joint Explanatory Statement of the Committee of Conference which is the basis for providing the exemption. The Agency believes that in light of the Joint Explanatory Statement it is more appropriate to exempt companies from the production limits on a case-by-case basis.

b. *First come, first served policy and interplay with the Montreal Protocol.* The proposal included the provision that exemptions for carbon tetrachloride that is CUBP be granted only up to the level of the U.S. production limit for carbon tetrachloride under the Montreal Protocol. The definition of production under the Montreal Protocol includes an exemption for material that has been destroyed by technologies approved by the Parties, but as of this writing no technologies have been so approved. As a result, there is a cap on the total amount of exemptions that could be given, set by the difference between the Protocol limits and total U.S. production and consumption. EPA proposed that the exemptions be granted on a first come, first served basis.

A number of companies pointed out that control of carbon tetrachloride under the Montreal Protocol does not begin until 1995, and thus there is no Protocol cap on the amount of

exemptions that can be granted until 1995. The Agency agrees and will grant unlimited exemptions until 1995. In 1995, if destruction techniques are not yet approved by the Parties, EPA will be unable to grant any further exemptions.

Another commenter stated that EPA should allow for the exclusion subsequent to 1995 since the Montreal Protocol includes an exclusion for destroyed controlled substances and the Clean Air Act conference report allows for such exclusion. Moreover, this company maintained that exclusion is appropriate because destroyed ozone depleting substances do not damage the ozone layer.

EPA cannot grant exemptions from Protocol limits, and thus from Clean Air Act limits, that are not sanctioned by the Montreal Protocol. The Clean Air Act Amendments specifically state that in situations where the Act and the Protocol are in conflict, the more stringent of the two should govern. Although the Montreal Protocol does allow for exemptions for destroyed controlled substances, it only allows them to the extent that the destruction technology has been approved by the Parties. To date, no technologies have been approved. Again, the Agency is working to assist the Parties in determining acceptable destruction technologies. The Agency notes that the exclusion for destroyed CUBPs discussed in the Joint Explanatory Statement of the Committee of Conference is more limited than the potential exclusion for destruction allowed under the Protocol. Therefore, even for control period prior to 1995, the Agency is permitting only a narrow exemption for destroyed CUBPs.

One company believed that EPA should re-open the matter for public comment well in advance of 1995 because exclusions will not be permitted starting in 1995, possibly forcing expensive alterations of production processes and costs not factored into the Regulatory Impact Analysis (RIA) before that date. Another commenter maintained that if an exemption for destruction is not allowed, companies that coincidentally produce and then destroy carbon tetrachloride would be forced eventually to alter their production processes at great cost and without measurable benefit to the environment.

EPA agrees that this could be an undesirable outcome if the Parties do agree on approved destruction technologies before 1995. The Agency anticipates that these technologies will be defined by that date.

One commenter stated that Congress and EPA did not mean to restructure the chemical industry (i.e., preclude the manufacture of non-controlled substances that create carbon tetrachloride as a coincidental by-product) when they approved the phaseout. The Agency recognizes the importance of the exclusion provision and intends to grant exemptions for inadvertent production to the greatest extent allowed by the statute and the international treaty.

The Agency is educating the Parties on this subject and will explore whether the Montreal Protocol should be amended to deal with this issue.

c. *Definition of maximum available control technology.* The Agency requested comment in the NPRM on how to define "maximum available control technology" (MACT), as used in the Clean Air Act Conference Report to describe the appropriate destruction technique for the purposes of granting a CUBP exemption. EPA suggested that for carbon tetrachloride, current RCRA requirements for the incineration of carbon tetrachloride as a hazardous waste would be an appropriate definition of MACT. Regulations under RCRA require in most cases that carbon tetrachloride be treated as a hazardous waste. The typical treatment method would be combustion in an incinerator, boiler or industrial furnace that has a 99.99 percent destruction or removal efficiency rating (40 CFR 264.343(a), 40 CFR 266.104).

One commenter stated that defining MACT on the basis of RCRA requirements is appropriate, but that EPA should consider expanding the definition to allow the use of a vent incinerator with 98 percent efficiency for several years, because it is the best technology reasonably available in certain process operations.

Although the use of a vent incinerator with 98 percent destruction efficiency may be allowable under other EPA regulations when carbon tetrachloride is not classified as a hazardous waste, the Agency believes that it is not sufficient for obtaining a CUBP exemption under the stratospheric ozone protection program. Congress in its Joint Explanatory Statement specified that maximum available control technology be used to destroy CUBP, and RCRA-permitted combustion devices with 99.99 percent efficiency are available. Requiring the maximum, as opposed to the reasonably, available control technologies also fits with the goal of the EPA stratospheric ozone protection regulations and title VI, which is to minimize emissions of ozone depleting substances that lead to atmospheric harm.

One company asserted that the MACT definition should be made to include any destruction technologies approved by the Parties of the Montreal Protocol. Another company stated that the definition of MACT should be consistent with the standards that will be established pursuant to section 112 of the Act, but that the definition should focus on specific compounds rather than on categories of sources. This commenter also stated that although RCRA standards for incineration of carbon tetrachloride would probably prevail, the Agency should allow for the consideration of other techniques that are equally or more efficient and cost effective.

The Agency agrees that destruction techniques that are as efficient as the RCRA combustion requirements for carbon tetrachloride should also qualify for the exemption. To the extent that any emissions standards under section 112 of the Clean Air Act require the use of technologies that have a destruction efficiency equal to or greater than 99.99 percent, EPA will consider them to be sufficient for the granting of the exemption for carbon tetrachloride produced as a by-product. When the Parties to the Protocol complete their analysis of destruction techniques, EPA will evaluate these to determine if they reflect MACT. As noted previously, the Clean Air Act exemption for destroyed controlled substances is narrower than the Protocol's potential exemption, and thus it does not necessarily follow that destruction techniques approved by the Parties will meet the MACT criterion for the destruction exemption under the Act.

Another company agrees that incineration with an efficiency of 99.99 percent should qualify as MACT for the destruction of carbon tetrachloride, but that a more inclusive definition including alternative technologies should be considered. This commenter stated that EPA should establish procedures to allow for the demonstration of treatment and destruction techniques with removal efficiencies that are equivalent to an incinerator permitted under RCRA.

EPA will consider each exemption request on a case-by-case basis, allowing for the possibility of other efficient destruction procedures with 99.99 percent efficiency in addition to combustion. For alternative destruction technologies, however, the requester must provide adequate documentation for the Agency to be able to make a determination that the destruction efficiency of the technique is at least 99.99 percent.

d. *Criteria for determining if controlled substances are unavoidable, coincidental by-products.* Two commenters suggested definitions of a coincidental, unavoidable by-product (CUBP), stating that a product is a CUBP if it is unintentionally manufactured in the course of manufacturing another product. One example provided was that carbon tetrachloride would be a CUBP of a production process if the amount of carbon tetrachloride produced could not be varied independently of the intended product (i.e., the quantity of a CUBP manufactured varies proportionately with the production of the intended product, and ceases when the intended product's production is stopped). Similarly, these companies asserted that if carbon tetrachloride is not manufactured for commercial purposes (i.e., sale or use in place of carbon tetrachloride that otherwise would be purchased), then it is a CUBP.

The Agency believes that requiring both the commercial test and the dependent-variable test is appropriate for determining if a substance is a coincidental, unavoidable by-product.

One company observed that identifying individual chemical processes that result in the CUBP of carbon tetrachloride would not be practical. Another company stated that a number of chlorination processes could result in the coincidental generation of small amounts of carbon tetrachloride that, under the proposed regulatory scheme, would be prohibited. As an example, this company noted that the chlorination of a municipality's drinking water supply could result in the formation of many organic chemicals such as carbon tetrachloride or other controlled substances.

The Agency does not have sufficient information to identify at this time all the chemical processes that result in the production of controlled substances as by-products. To the extent they are numerous, the Agency is concerned about their contribution to ozone depletion and believes that until more is known, this type of production should be subject to phaseout requirements unless the CUBP substances are destroyed by appropriate destruction techniques, in which case an exemption could be granted. In any case, companies that produced controlled substances as by-products and did not destroy them with MACT in 1989 should have reported their production in response to the section 114 information request in the November 26, 1990 **Federal Register**. Those companies that did not must supply EPA with this information within 45 days of the publication of this notice. Baseline production and consumption allowances will then be calculated for them by EPA. As producers of controlled substances, companies in this situation are subject to the phaseout provisions until such time as they begin providing for the destruction or transformation of their carbon tetrachloride production in accordance with the regulations promulgated today.

The Agency recognizes that very small quantities of carbon tetrachloride may be formed in water treatment plants if a municipality has chlorinated its water, but it does not believe that carbon tetrachloride so formed is covered by the definition of production. Chlorination does not involve "production" of a controlled substance even as a coincidental unavoidable by-product of a manufacturing process, since chlorination is not typically considered manufacturing. A specific exemption from the regulations is thus not necessary for the chlorination of water.

One commenter acknowledged that EPA correctly recognized that carbon tetrachloride can be a CUBP in the production of methylene chloride and methyl chloroform. In addition, this company wrote that carbon tetrachloride can be a CUBP in the high temperature, catalytic trimerization of cyanogen chloride to cyanuric chloride, which is a feedstock for numerous valuable chemicals.

Although the Agency has not developed an exhaustive list of chemical processes that create controlled substances as by-products, all of the above-mentioned processes would qualify for the exemption if they meet the commercial test and the dependent-variable test laid out in the definition of a CUBP.

e. *Interpretation of "immediately contained and destroyed by the producer"*—(i) *Immediately contained and destroyed.* EPA proposed that the phrase "immediately contained and destroyed" as used in the Joint Explanatory Statement be defined to allow for a 90-day storage period before destruction is required. This requirement would be similar to RCRA restrictions on the storage of hazardous waste prior to destruction.

Two commenters mentioned that the 90-day period is reasonable, but stated that where there is a shortage of incineration capacity a longer period should be allowed if the material is stored in RCRA-permitted tanks. These companies maintained that this exception may be necessary to make best use of MACT without over-building incinerators. This is particularly true of the period from 1995 to 1997 when MACT for eliminating CUBP carbon tetrachloride may not yet be widely available, but production allowances are reduced to 15 percent of the baseline. Moreover, one company asserted that the 90-day period should refer to the time that the carbon tetrachloride may remain at the producer's site before it must be shipped off-site for destruction (assuming that it is not destroyed on-site); and that at the destruction site it may be stored as long as necessary in accordance with RCRA. This company maintained that the 90-day period should refer to the time allowed until destruction or shipment to a destruction facility, and that the producer should not be held responsible for delays in off-site incinerator destruction.

Another company discussed an example of CUBP carbon tetrachloride that was not listed as hazardous waste and thus would not be subject to RCRA requirements for storage/destruction. The commenter stated that the Agency should allow at least 15 months for the material's eventual destruction and not limit the storage period to 90 days.

The Agency is concerned primarily that the controlled substance not be released to the atmosphere. This concern is largely alleviated if the CUBP is contained immediately after it was produced or left the reactor. As long as the material is contained, the actual time of destruction is less crucial. Indeed, the Joint Explanatory Statement arguably reflects such an approach, as "immediately" clearly modifies "contained" but does not necessarily modify "destroyed."

The Agency will thus grant a CUBP exemption if a company can show that it can adequately contain the chemical and that it has made definite provisions for its destruction. Although under these regulations there is no specific time period during which the destruction must take place, companies will of course still be subject to the RCRA limits to the extent that the material is a hazardous waste (e.g., 90 days for a non-RCRA-permitted generator or 180 days for a small quantity generator) and must provide documentation that they are in compliance with the relevant statute(s) (RCRA, Clean Air Act, Clean Water Act) when applying for the exemption, by providing EPA with copies of permits, manifests, exemptions, or other official documents.

One company stated that the term "immediately contained" should refer to the capture and containment of carbon

tetrachloride after it is removed from the process in which it is inadvertently generated. This company maintained that although in general the 90-day period would be appropriate, for continuous, closed-loop processes, this criterion is meaningless. The company suggested that in these instances, the continuous purge of the closed-loop process should also be considered immediately contained and destroyed.

The Agency agrees that such a process would be eligible for a CUBP exemption if the material is completely contained at all times, and the destruction device removes the chemical with at least 99.99 percent efficiency. This treatment of closed-loop processes is consistent with the definition of solid waste under RCRA (40 CFR part 261), which exempts materials reprocessed in closed-loop systems.

One company maintained that an adequate time must be allotted for the storage and destruction of the coincidentally produced by-product. This company stated that if a 90-day time limit were imposed, it should not begin to elapse until a reasonable quantity (e.g., 1,000 lbs) had been collected and packaged for safe transport to the destruction facility. The small quantity of carbon tetrachloride produced daily may not be enough for economical destruction. This company suggested that the time limit would commence after 1,000 pounds had been collected.

Again, insofar as the company is operating in compliance with applicable statutes (e.g., CAA, RCRA, CWA), containment is complete, and an appropriate destruction strategy is planned, these regulations allow the storage of approved CUBP material until an adequate quantity has been accumulated for destruction. Companies should include in their request for exemption a description of their handling of the CUBP an estimation of the amount accumulated and the period of time for which it is stored.

(ii) *Destruction by the producer: On-site versus off-site.* In the proposal, the Agency also discussed the meaning of "immediately contained and destroyed by the producer" from the standpoint of where the destruction must occur. EPA suggested that small generators of carbon tetrachloride might currently ship their waste off-site and requested comment on whether the phrase could be interpreted to permit both off-site and on-site destruction.

Several commenters maintained that EPA should permit off-site destruction or contracting with another firm for destruction because in some cases adequate incineration capacity is not available on-site, and it would be unfair to require that each producer have an incinerator. These comments also stated that if transport and destruction of carbon tetrachloride are conducted in a manner consistent with RCRA, it should be sufficient for title VI as well, and that EPA should clarify that "destroyed by the producer" is not being interpreted restrictively. One company noted that there may be many small generators who require incineration off-site. Another company agreed that off-site incineration should be allowed in light of the difficulty of burning or incinerating halogenated hydrocarbons and the difficulty of constructing new incinerators. This company maintained that as long as the release of carbon tetrachloride is controlled and the material is destroyed by a technology meeting the level of destruction efficiency identified in the applicable RCRA regulation, it should not matter whether such destruction occurs on-site or off-site.

The Agency has determined that there would be no measurable environmental benefit to restricting the exemption to on-site destruction by the producer itself. Furthermore, the Joint Explanatory Statement does not necessarily require that the producer destroy the chemical itself, but only that it be responsible for its destruction. Since carbon tetrachloride emissions and treatment are already tracked under RCRA, allowing the material to be destroyed off-site does not entail a loss of accountability. EPA has determined that if the manufacturer can show that it has made provisions for sufficiently efficient destruction of the carbon tetrachloride (off-site, on-site, or through a contractor) it will be eligible for the exemption.

One commenter stated that since the carbon tetrachloride is produced as a result of a chemical manufacturing operation, EPA should require that it be destroyed on-site and under strictly controlled conditions. This company contended that to send the carbon tetrachloride off-site, considering that it has no commercial value, would constitute an unnecessary exposure to the general public of its harmful properties

EPA currently regulates carbon tetrachloride waste generation, transport, and treatment under RCRA. The regulations under this statute give standards for each handler of the carbon tetrachloride and require that safeguards be taken in order to avoid unnecessary exposure to the general public. In the absence of any claims that these precautions are inadequate to protect the public welfare, the Agency finds that it would be inappropriate to make any further restrictions in this rulemaking. Thus by-product carbon tetrachloride produced and destroyed on-site or off-site is eligible for consideration for an exemption.

f. *Extension of the exemption.* In the NPRM, the Agency requested comment on what other controlled substances should be considered for exemptions in addition to carbon tetrachloride.

One company suggested that the destroyed-CUBP exemption be allowed for methyl chloroform as well. It was estimated that three percent of the 1987 methyl chloroform production was destroyed by incineration, and that as the availability of control equipment increases, methyl chloroform incineration will also increase.

Since methyl chloroform is currently produced as a CUBP in several production processes and is frequently destroyed, the Agency is allowing an exemption for coincidentally produced, incinerated methyl chloroform as well. The same destruction techniques are available for methyl chloroform and carbon tetrachloride, neither of which contain fluorine or bromine that can attack the refractive materials in incinerators, and RCRA standards for destruction of methyl chloroform that is a hazardous waste are the same as those for destruction of carbon tetrachloride. All the standards discussed above for determining whether or not a particular case qualifies for an exemption will apply for methyl chloroform, as well as carbon tetrachloride.

The Agency recognizes that Montreal Protocol controls take effect for methyl chloroform in 1993, and that Clean Air Act requirements are more stringent than the Protocol controls until 1995. The Agency is not promulgating a system for distributing exemptions during these control periods at this time. If no more methyl chloroform is destroyed during the 1993 and 1994 control period than is the case now (about three percent), the gap between the Montreal Protocol limit (100 percent of the baseline) and the Clean Air Act limit (90 percent of the baseline) should be more than enough to allow all companies with qualifying processes to be exempted. If, in 1992, requests for exemptions greatly exceed expectations and total more than ten percent of production in the baseline year, EPA will propose a method for distribution of exemptions for destroyed-CUBP methyl chloroform in a separate notice. As for 1995 and beyond, the Agency believes that appropriate destruction techniques will have been defined by 1995, when

Montreal Protocol controls and Clean Air Act controls coincide. If the Parties do not define appropriate destruction techniques by 1995, however, the Agency will no longer grant exemptions at that time.

Several commenters also suggested that other controlled substances produced as by-products be exempted. Another commenter asserted that any listed compound that meets the exemption criteria should be provided the exemption. Another company wrote that the definition of coincidentally-produced material should include other compounds in addition to carbon tetrachloride because during the manufacture of halons and other halocarbons, for instance, certain CFCs may be produced in small quantities as by-products.

Since CFC and halon production is currently restricted under the Montreal Protocol, and these substances can be destroyed only with difficulty and under special circumstances, the Agency will not at this time grant exemptions for them. Although destruction techniques have been identified, destruction facilities are not widely available for these substances, due to their tendency to corrode incinerator walls, and the Agency does not believe that it is appropriate to approve exemptions for their destruction prior to the Protocol Parties' designation of approved destruction techniques. When the Parties to the Protocol complete their analysis of destruction techniques, EPA will again examine the issue of granting the exemption for all controlled substances that are incidentally produced and destroyed by the techniques approved by the Parties.

2. Exemptions for De Minimis By-Product Production of Controlled Substances in Groups I–III

One company commented that the Agency has insufficient information relating to the incidental generation of controlled substances and is focusing only on the companies producing these materials as mainstream products in its proposal to exempt incidental, destroyed carbon tetrachloride. The commenter noted that a number of chlorination processes could result in the coincidental generation of small amounts of carbon tetrachloride. These processes would be prohibited by EPA's proposed regulations (e.g. a municipality chlorinating its drinking water supply). This company maintained that this is not a reasonable position for CUBPs generated as part of manufacturing or chlorination processes and stated that the Agency should obtain information concerning the environmental impacts of halogen chemistry in order to fashion a rational program to exclude from the regulations such de minimis generation until it is shown to pose an environmental problem. The suggestion was made in this comment that the Agency should investigate the unintended impacts of its regulations beyond the ozone depleting compound producing industry.

The Agency agrees that an exemption for de minimis by-product production whether or not it is destroyed could potentially be warranted in order to efficiently implement the phaseout. However, EPA has insufficient information on the subject at this time and thus will be requesting information from the regulated community in an upcoming **Federal Register** notice. The Agency has determined that additional study will be necessary to determine whether de minimis generation should be exempt from the phaseout. Persons that produce controlled substances in Group I, II or III as by-products of manufacturing processes will be required to provide information on the processes and the quantities of by-products being produced. In addition, companies that have fugitive emissions of any of the class I substances will be asked to report the annual amount that is emitted from each of their plants. For those companies that have this type of manufacturing process but that did not report it as production under the November 26, 1990 information request and thus have no allowances to cover their production, the Agency requests that this data be submitted as soon as possible so that allowances may be allotted or the issue may be otherwise resolved.

A suggestion was made by one company that the Agency should allow some de minimis generation of CFCs during the production of HCFCs and HFCs, such as a one-percent de minimis level in the production stream for exclusion from the scope of the regulations. Another company commented that a by-product that is not destroyed after production, or sold as feedstock and transformed, should be subject to the production phaseout.

The Agency is considering such an exemption from the phaseout for controlled substances in Groups I, II, and III that are produced as coincidental, unavoidable by-products of a manufacturing process. However, the Agency must investigate appropriate technologies and appropriate de minimis levels and the environmental impact of de minimis production for these groups of chemicals before a final decision can be reached. Persons that possess relevant information on this subject will be asked to submit it in an upcoming **Federal Register** notice.

3. Other Exemptions

In the NPRM, EPA requested comment on how some of the exemptions provided for in the Clean Air Act, but not in the Montreal Protocol, could be implemented in the future. The Agency noted, however, that under the exemption provisions themselves as well as section 614(b), it could not implement these exemptions unless and until it could do so in a way that was consistent with the Protocol. Since the Protocol does not yet permit these exemptions from its requirements, the Agency may not implement them, except to the extent that the Clean Air Act's limits are more stringent than the Protocol's. In such cases, the Clean Air Act creates a margin in which exemptions could be granted without running afoul of the Protocol. Even within this "compliance margin," the Agency is not making provisions for granting the exemptions because they are not warranted at this time, given the likely availability of the controlled substances under the Clean Air Act limits in at least the near term. The Agency is particularly hesitant to grant exemptions that are not currently vital since the Parties to the Protocol have not yet made provision for such exemptions. Furthermore, The Agency believes that these exemptions will for the most part not be needed until the time that the U.S. approaches the phaseout date. A summary and analysis of the comments received on the need for and implementation of the exemptions follows.

a. *Halons.* Section 604(g)(1) allows the Administrator to grant limited exemptions from the percentage reduction requirements for certain halons for purposes of fire suppression or explosion prevention where no safe and effective substitute has been developed. Paragraph (3) of that subsection also allows a limited exemption from the phaseout for halons needed for the same purposes in association with energy production on the North Slope of Alaska.

On the issue of implementing the exemptions to the extent that differences in the stringency between the Clean Air Act and the Protocol allow, one company commented that there is no guarantee that halon demand and production will continue to remain below allowable levels. It stated that, because there is no national halon recycling or banking infrastructure and no known substitute for Halon 1301 in

situations requiring the inertion of an occupied enclosed space for explosion prevention, demand could require new halon production in amounts greater than those allowed by the interim reduction requirements.

The Agency has monitored halon production, and to date, production is well below the allowed amount. In addition, halon demand is expected to decrease over the next few years as companies adopt alternative fire protection methods or chemical substitutes and as a bank for the storage and recycling of halons is established.

Another company commented that it is inappropriate to prohibit halon production exemptions in association with domestic crude oil or natural gas production on the North Slope of Alaska because the Parties have yet to agree to any such exemptions after the phaseout year. Two companies suggested that EPA should convene a STOPAC (Stratospheric Ozone Protection Advisory Committee) subcommittee of users and manufacturers to advise EPA on how exemptions should be implemented and maintained that EPA should acknowledge that the exemptions contained in the Clean Air Act may be applicable if at some future date the Parties amend the Protocol such that both it and the Clean Air Act are consistent.

In response, the Agency notes that it is not in any way eliminating the possibility of future exemptions, but at present does not believe that they are warranted, given the likely continued availability of controlled substances under Clean Air Act limits. For this reason, EPA believes that it would be premature to convene a STOPAC meeting on exemption implementation at this time.

b. *Methyl chloroform.* Section 604(d)(1) provides for another exemption specifically for essential uses of methyl chloroform, for which no safe and effective substitute is available.

One commenter asserted that methyl chloroform is an important transitional substance because of its low ODP and believed that when it is used as a replacement for CFCs it should be considered for exemption from the phaseout.

The Agency is required to phaseout methyl chloroform according to a specified schedule under the Clean Air Act and the Montreal Protocol, and substitution for CFCs could not be construed to be an "essential use" per se. EPA concurs with another commenter's view that exemptions should be left open until the availability of methyl chloroform is far more constrained and until the Parties have agreed on whether they are appropriate and if so in what applications.

c. *Analytical and research purposes.* One commenter requested an exemption for the use of carbon tetrachloride and CFCs for analytical and research purposes. This company maintained that they are unable to purchase carbon tetrachloride due to the current production and consumption limits. This company distributes carbon tetrachloride in small packages to laboratories for chemical analytical purposes and research, uses that are considered emissive. The comment provided the following example: Carbon tetrachloride and other CFCs are necessary as standards in testing for trace levels of contamination in drinking water, and no alternative products can be used to prepare standard solutions for this application. This comment proposes an exemption of the continued manufacture and use of these chemicals for use as analytical reagents in small quantities.

The Agency believes that such exemptions are not currently necessary, given the continued availability of production and consumption allowances for the ozone depleting chemicals. Since these research and analytical uses require only small quantities of the chemical, exemptions from the phaseout should not be needed to satisfy laboratory needs at this time. Since production and consumption of carbon tetrachloride is currently limited, but has yet to be completely phased out, EPA does not believe that companies should experience difficulties in locating suppliers of small quantities of the material.

D. Basic Prohibitions

1. Compliance

The September 30, 1991 proposal included a section on basic prohibitions (§ 82.4), which stipulated that no person may produce controlled substances at any time during any control period in excess of the amount of unexpended production allowances held by that person at that time, and that no person may produce or import controlled substances at any time during any control period in excess of the amount of unexpended consumption allowances held by that person at that time. For all the controlled substances except carbon tetrachloride, these requirements are identical to those that were originally promulgated in the August 12, 1988 rule limiting the production and consumption of CFCs and halons.

Two companies commented that the final regulations should apply production and consumption limits annually, rather than daily. These companies maintained that the Clean Air Act Amendments and the Montreal Protocol both provide for annual limits, and, therefore, that EPA has no statutory authority to require that companies have allowances before they produce or import instead of having sufficient allowances at the end of the control period to cover their total production and imports for the period.

The Agency does not agree that it lacks authority to require persons to possess allowances before they may produce or import ozone-depleting substances. While § 604's limits may be enforced on an end-of-year basis only as the commenters suggest, the statute itself does not require that they be so enforced. Section 604(b) calls on EPA to issue regulations implementing the phaseout in accordance with that and other applicable sections of the statute. Section 607(a) provides for issuance of allowances, as the Agency had done in its original phaseout regulations, and section 614(b) provides that Title VI provisions are to be construed in a manner that does not abrogate the U.S. obligations under the Protocol. In its original rule, the Agency required persons to hold allowances before they produced or imported to minimize the potential for exceedances that could cause the U.S. to exceed its Protocol limits. While the Protocol's limits were (and remain) annual, EPA judged that requiring allowances to be held at the time a person produced or imported was a worthwhile precaution against U.S. noncompliance with the Protocol. Nothing in title VI or its legislative history suggests that Congress disagreed with or intended to change the Agency's approach to implementing reductions in ozone-depleting substances. Indeed, Congress' adoption of EPA's allowance system suggests its satisfaction with EPA's approach to implementing the Protocol. If Congress had meant to prohibit EPA from requiring allowances to be held "up-front," surely it would have specified such a change to EPA's program.

Two companies asserted that the proposed rule, even if within the Agency's authority, represents overregulation and reflects an unfounded distrust of controlled substance producers. They commented that a daily test constitutes excessive interference in business practices and places an enormous accounting burden on producers without benefit to EPA or the environment. One company maintained that daily accounting creates problems for ozone depleting chemical producers that sell their products for

export or transformation and expect to receive production and consumption allowances in the future as the result of such uses.

The Agency disagrees with these comments. As stated above, requiring compliance by requiring the holding of allowances prior to production and consumption is appropriate in view of the U.S. obligations under the Montreal Protocol. Moreover, neither EPA nor producers of the original controlled substances have had difficulties with this system in the past.

This compliance mechanism is also necessary for EPA to track allowances throughout the control period in order to ascertain whether trades can be carried out without endangering compliance. Since companies can trade allowances at any time during a control period, the Agency must be aware of their compliance status in order to ensure that the trade will not result in a company's expending more allowances than it holds.

In general, the commenters on this subject appeared to be concerned with recouping allowances expended in the production of controlled substances for export or transformation. To the extent that the system for the tracking of carbon tetrachloride will no longer require this cycling of allowances, as described later, EPA believes that companies should have little difficulty remaining in compliance with the regulations.

One company stated that EPA would be able to assess compliance or stop drastic non-compliance without imposing a daily test. This company suggested that the Agency use quarterly reports to assess compliance and, if a company exceeds its allowances during a given quarter, require the company to submit evidence (such as its customers' IRS Certifications) that it would be able to retrieve enough allowances by the year's end.

EPA believes that the requirement for quarterly reports as well as the requirement for companies to have allowances before they produce or import are both necessary to ensure compliance with the production and consumption limits. In addition, the suggested control system would make it impossible for the Agency to monitor trading of allowances during the course of each quarter. Consequently, the Agency is continuing to follow the system established in the 1988 regulations and is requiring that companies keep records on a daily basis and report quarterly and that companies hold adequate unexpended allowances to cover their activities.

2 Consumption Limits

The proposed regulations required that companies that import controlled substances must hold consumption allowances, and may not import controlled substances in amounts that exceed their level of unexpended consumption allowances at any time. A controlled substance is imported at such time that it enters U.S. territory, with the exception of Maquiladora transactions where controlled substances of U.S. origin are imported into Mexico in-bond and then re-imported into the U.S. The regulations apply to any bulk quantity of the listed chemicals, including recycled material or that intended for recycling.

One company commented that, from a policy perspective, it is inappropriate to require a party to use consumption allowances for the import of used controlled substances that will be recycled. According to the company, it should be apparent that any quantity of used controlled substance that is recycled will be used in place of new production, thereby reducing controlled substance production. The same company maintained that the siting of recycling facilities should not be artificially affected by the need to use consumption allowances for imports. This company stated that this issue will be important in later phases of the phaseout when it is likely that the quantity of consumption allowances will not be sufficient to allow for both production of virgin material and for import of used controlled substances for reclamation. An alternative approach suggested by this company would be to allow used controlled substances to be transported across national boundaries for the purposes of reclamation without counting them towards the recipient country's consumption limit.

The Agency first notes that there is no assurance that recycled controlled substances will be used in place of new production. Indeed, the Agency expects that as the phaseout progresses, recycled substances will be used as a supplement to new production. In any event, the Protocol requires that imports of used controlled substances be included in the calculation of consumption, because of the practical difficulty of distinguishing between used and new substances. Exempting imports of controlled substances from applicable consumption limits would create a strong incentive to mislabel new controlled substances as used. Moreover, EPA does not believe that the expenditure of consumption allowances for imports of used controlled substances for recycling constitutes a disincentive or an obstacle to recycling. The domestic use and recycling of controlled substances is not restricted under these regulations and consumption allowances are not required to recycle controlled substances. Only used or recycled material crossing international borders is affected by the availability of consumption allowances. However, if this material is then re-exported, consumption allowances expended for the imports may be recovered upon export of the material through a request for additional consumption allowances. Thus, there may be no net loss in consumption allowances. Even under the phaseout, controlled substances could still be imported as long as at least an equal amount is exported (annual consumption must equal zero). To the extent that the suggestion is that material would leave the country, be recycled, and returned (or vice versa) this should not be a problem.

E. General Stringency of Regulations and Phaseout Schedule

The Agency proposed the phaseout schedule Congress set forth in the Act. In the NPRM, EPA noted that recent scientific evidence suggested a need to accelerate the phaseout schedule. The Agency explained, however, that the tight statutory deadline to which this rulemaking is subject did not permit the Agency to consider such an acceleration within the scope of the rulemaking.

One commenter stated that the rules should be formulated to be as stringent as possible in eliminating the production of controlled substances and preventing their emission to the atmosphere, and that there are too many provisions in the proposal for companies to increase their production allowances and not enough incentives for companies to reduce the world market of ozone depleting chemicals. The commenter urgently recommended revisions to the rule to accelerate the phaseout and to broaden the list of ozone depleting chemicals.

For the reasons cited above, today's regulations implement the phaseout schedule specified by the Clean Air Act. The Agency notes, though, that the production of ozone depleting chemicals is being further decreased due to the effects of the excise tax implemented by the IRS. Currently no companies are increasing their production of ozone-depletors and significant efforts are underway to find substitutes. However, as new scientific and technology developments occur, and in response to petitions received under the Clean Air Act Section 606, EPA will reassess the schedules contained in this rule. As mentioned previously, the Agency is

currently evaluating one such petition, received on December 3, 1991.

F. Recordkeeping and Reporting Requirements

1. Daily Production Records

The proposed regulations require producers to keep dated production records. One commenter claimed that daily mass balancing is unworkable because although daily production records exist, they contain only rough measurements. This company maintained that monthly rather than daily documentation should be used for mass balancing. This is because it takes several days for material to be completely processed and only then can it be measured for the purpose of a mass balance. In addition, this company asserted that improving the daily accounting would cost hundreds of thousands of dollars per plant, and still would not be as accurate as monthly documentation.

This comment is similar to comments received in response to the NPRM implementing the Montreal Protocol in 1987. At that time EPA determined that daily recordkeeping is important and that it is common business practice to keep daily records. Based on its review of data submitted by producers, EPA believes that current methods of daily recordkeeping will be sufficient to satisfy the requirements. Daily mass balancing is not required. The Agency recognizes that daily records may consist of rough measurements and as such are generally used by inspectors, not for a direct mass balance, but primarily as a check when discrepancies in other records are found.

2. Class II Reporting

The Agency proposed that, as required by the Clean Air Act, producers, importers, and exporters of Class II chemicals report their activities to the Agency on an annual basis.

One company's comments expressed support for quarterly Class I reports and annual Class II reports. Moreover, the company believed that the Agency should maintain all reports of HCFC activity in confidence until such time as it has established baseline levels for each of the producers.

The Agency follows the procedures outlined in 40 CFR subpart 2 when companies submit information with a confidentiality claim. Unless a specific finding is made that the information is not entitled to confidential treatment, the Agency will maintain it as such until disclosure is needed to carry out a Clean Air Act provision, including section 607 which requires the establishment of baselines. Aggregate production and consumption information on the HCFCs will be submitted to the Protocol secretariat at UNEP in fulfillment of EPA's reporting requirements to that body under the Montreal Protocol once the amendments enter into force.

G. Exchanges

1. Domestic Trading—Environmental Offset

a. *Offset amount.* Section 607 of the Clean Air Act provides for trading of allowances between chemicals in the same group. It requires, however, that any trade must "result in greater total reductions in production in each year of class I and class II substances than would occur in that year in the absence of such transactions." In the NPRM, the Agency proposed an implementation strategy for this environmental offset. EPA argued that it could not predict what would have occurred in the absence of the trade, and proposed that the assumption be made that all allowances available would be used in the absence of the trade. Based on this assumption, the required offset could be calculated every time a trade occurred, by subtracting a certain percentage of the amount of the trade from the transferor's unexpended allowances. EPA proposed that this percentage be based on the level of measurement error that companies would likely build into their compliance margin and upon the level of environmental benefit resulting from the offset, and arrived at a one-percent offset, although comment was requested on offset amounts of 0.1 percent and on two percent.

A number of commenters maintained that EPA had taken a satisfactory approach to the offset requirement by presuming reasonably that companies would have used allowances being transferred if a trade did not occur. An industry group noted that the evaluation of whether allowances would have been used in the absence of trades would have been highly subjective, even in the case of plant-closings, because a company may have kept its plant open if it had known that it could not trade its allowances.

One company commented that EPA should review the impact of the one-percent offset on the ability of the producing companies to supply both the needs of the U.S. and those of its trading partners. According to this company, as the phaseout schedules take effect and less virgin material is available to service the needs of the U.S., the Agency may need to revisit its decision.

The Agency believes that a one-percent offset will not cause any shortages or difficulties in supplying the country's needs for ozone depleting chemicals. If at some future date the offset becomes a significant problem, the Agency can revisit the issue.

The same industry group commented that the analysis on the margin of error in the NPRM was not relevant to the calculation of an appropriate environmental offset. The Agency had stated that the offset amount should be related to the measurement error present in companies' production estimations. The commenter stated that the margin of error moves rather than disappears when allowances are transferred, and thus the level of the offset does not need to be related to the level of measurement error.

EPA's concern was that if the percentage selected for the environmental offset were smaller than companies' actual production measurement error, there could be no guarantee that the trades would result in lower overall production. The Agency agrees that to a large extent, the margin of error would move with a transfer of allowances, since a cushion for measurement error would have to be maintained and production would be reduced accordingly. For example, if a company had 200 production allowances (authorizing 200 kg of production), and had a production measurement error of one percent, the company would probably not plan to produce more than 198 ± 1.98 kg of controlled substances. If the company traded away 100 allowances with a one-percent offset, it would only have 99 allowances left, and would likely only produce 98 ± 0.98 kg. The receiving company would similarly produce only 99 ± 0.99 kg, so the total production would only reach 197 ± 1.97 kg; the environmental offset would have effectively reduced total production by one kilogram. At the same time, the Agency notes that permitting allowances to be traded increases the value of any compliance cushion that companies build in and thus creates an incentive to share it. Overall, however, the Agency believes that regardless of particular companies' measurement errors, a one-percent offset will be sufficient to ensure an overall production reduction as a result of allowance transfers..

The group accepted EPA's conclusion that the offset should be at least 0.1 percent in order to satisfy the statutory requirement. Another commenter also agreed that 0.1 percent is quantifiable and enforceable and commented that one percent is excessive and unnecessary. The industry group stated that a one-percent offset is more than

sufficient to satisfy statutory requirements, but that the greater the percentage, the more trading will be discouraged.

None of the commenters presented compelling evidence that a one-percent offset would be damaging to industry or to trading, however. Therefore, the Agency does not believe that a reduction of the proposed one-percent offset is warranted. EPA analysis shows that one percent is an appropriate number to ensure a measurable environmental benefit while not harming business unnecessarily.

Several commenters endorsed the proposed one-percent offset factor, and believed that higher offset penalties will only discourage and hinder trading between chemicals, thereby resulting in less efficient utilization of production facilities and in increased costs to the economy.

The Agency agrees that an offset larger than one percent would be likely to discourage trading and could be harmful to small businesses. For this reason, it is adopting the proposed offset factor of one percent.

Two companies stated that although EPA explained in the preamble to the proposed regulations that a single trade between parties and chemicals should only be subject to one offset, the proposed regulations were unclear on this point. This company suggested that the language in § 82.12 be clarified to remove any doubt.

The Agency has added language to § 82.12 clarifying this point. It has also added language to specify that only trades of consumption and production allowances are subject to the offset. As discussed in the NPRM, trades of "authorizations to convert" or "potential production allowances" are not subject to the offset.

b. *Intra-company trading.* One comment stated that EPA should make it clear that the offset does not apply to intra-company transfers, citing section 607(c) of the Clean Air Act, which refers to trades between "2 or more persons."

The Agency notes that section 607(a) requires that the Agency promulgate rules for trading that "shall insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." Among the transactions authorized under this section are interpollutant transfers (section 607(b)) which permit allowances for one type of controlled substance to be exchanged for another type within the same group. These are the types of trades that would occur within a company as well as between companies. Although section 607(a)'s general statement could be interpreted to allow other methods of calculating the offset than set forth in section 607(c), using two different offset systems for trades between different companies and trades within the same company would be unnecessarily complex. Since both types of trades must be subject to an offset, the Agency finds that it is most logical to use the same offset for both.

Another company commented that where a trade occurs within the same corporate organization, domestically or internationally, it should not be necessary for a company to obtain advance authorization of the trade. This company asserted that the administration of this requirement would be burdensome on EPA and industry. Moreover, since the same company is on both sides of the trade, it is fully responsible for compliance and thus there is no need for EPA to pre-approve a company's production schedule. The company maintained that quarterly reports should be adequate.

The Agency does not agree that requiring EPA notification of intra-company trades is administratively burdensome. The number of such trades will be small. For the NPRM, the Agency analyzed of the trades of chemical-specific allowances that would have been necessary in the first control period, and found that fewer than five trades would have been needed for a large ozone depleting substance producer. In addition, the Agency's past experience with the ozone depleting chemical industry indicates that production plans do not change from day to day. Thus, the number of trades during the year is not expected to be large. The Agency notes that only towards the end of the control period, when allowances are being used up, would intra-company trading activity be likely to pick up. Even then, EPA believes its experience with trades and its commitment to communicate objections to trades within three days of receipt will ensure that trades late in the control period will be processed quickly.

The same commenter stated that requiring Agency pre-approval of each shift in the mix of chemicals produced by a single company is wasteful of resources and does little to accomplish improved compliance with the Clean Air Act and the Montreal Protocol.

If U.S. treaty obligations were not at stake, EPA non-objection might not be regarded by EPA as worthwhile. As a leader in the phaseout of ozone-depleting substances and with the existence of an international agreement, however, EPA believes it must take extra care that compliance is achieved. In this context, the Agency disagrees that the requirement to notify EPA prior to intra-company trades does little to improve prospects for compliance with the Clean Air Act and the Montreal Protocol. Since companies may trade allowances at any time during the control period, the Agency must be aware at all times of the number of allowances held by each company. For example, if a company internally traded all its allowances from CFC–114 to CFC–115 and then proposed to trade CFC–115 allowances to another company, EPA would not know that the company has CFC–115 allowances to trade and would object to the trade. Likewise, if the company did not have any CFC–114 allowances left, yet proposed to trade them, the Agency would not object to the trade and the second company could produce CFC–114 without there being any actual allowances to cover the production. In this way, compliance with the Montreal Protocol and the Clean Air Act would be endangered. The Agency also notes that EPA has only three business days in which to object to a trade, and thus companies would not be hindered by a paperwork bottleneck that could hinder the implementation of production plans.

c. *Transformer trading.* One commenter maintained that the proposed rule subjecting feedstock purchasers to the "offset" requirement when allowances necessary for the purchase of feedstocks are traded is unlawful and serves no legitimate purpose. This company also stated that the non-manufacturing feedstock users would be forced to compete in the market for increasingly scarce allowances. This company noted that each time a feedstock purchaser attempted to exchange his regenerated allowances with a manufacturer in order to facilitate the purchase of additional feedstocks it would be subject to a one-percent reduction. After 20 such cycles in one control period, the purchaser's allowances would be reduced by 17 percent. If product use expands, which may occur, the effect of repetitively applied offsets combined with diminishing allowances would create a shortage of allowances and feedstock. One of the most disturbing effects, according to this company, is that new feedstock uses, such as for CFC substitutes, would never be launched. Furthermore, this company commented that feedstock purchasers would gradually suffocate from lack of supply, while feedstock manufacturers would be awash with excess feedstock material.

The Agency agrees that placing an offset on trades, the purpose of which is to replenish allowances expended in feedstock production, is not mandated by the Act. Section 607 requires that allowance trades result in lower production than otherwise would have occurred. Under current market conditions, transformers receive allowances and trade them back to feedstock producers on the basis that the chemical originally produced was used as a feedstock, and, therefore, does not count as production. In that way, allowances expended to produce substances later transformed are only temporarily expended. As such, the "trade" of these allowances is simply an allowance reimbursement.

The same commenter asserted that the offset applied to transformers is classically anti-competitive in that it requires feedstock users to compete for diminishing supplies, thus driving the market price up unnecessarily and bestowing further advantage on those who manufacture their own feedstocks. This anti-competitive and economically damaging spiral of prices is not intended or sanctioned by the legislation and is sufficient reason, standing alone, to adopt an alternative regulatory scheme, according to this company. The commenter stated that the language employed in section 607 shows that the drafters did not envision that offsets would be required for trades by non-producers. This commenter argued that since all allowances expire at the end of the control period, this language can logically only apply to those with who are allocated baseline allowances, and not purchasers who only have allowances they have acquired.

Although EPA doubts that the potentially catastrophic consequences predicted by this commenter would actually take place in the event that an offset were placed on allowance transfers from transformers to producers, it concedes that this would not be a desired result of the Act. As explained earlier, the Agency believes it appropriate not to apply the offset to transfers of production and consumption allowances from transformers to producers. The Agency however does not agree that *all* trades by non-producers should be exempt from the offset. Although section 607(c) states specifically that "the transferor of such allowances will be subject, under such rules, to an enforceable and quantifiable reduction in annual *production*," subsection (d) states that "the rules under this section shall also provide for the issuance of *consumption* allowances in accordance with the requirements of this title and for the trading of such allowances *in the same manner as is applicable under this section to the trading of production allowances*" (emphasis added). EPA interprets this language to mean that transferors of consumption allowances should be subject to a reduction in annual consumption. For this reason, the Agency is only exempting traders of allowances from the offset in cases where it is clear that the purpose of the trade is to reimburse a producing or importing company for allowances expended in the production or import of feedstock material or material that is later exported. All other trades of production and consumption allowances are subject to a one-percent offset.

2. International Trades

a. *The proposal.* Section 616 of the Clean Air Act provides that trades of production between Parties to the Protocol also be subject to specific conditions. "Consistent with the Montreal Protocol, the United States may engage in transfers with other Parties to the Protocol under the following conditions:

(1) The United States may transfer production allowances to another Party if, at the time of such transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) The maximum production level permitted for the substance or substances concerned in the transfer year under the Protocol minus the production allowances transferred, (B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level of the substance or substances concerned for the three years prior to the transfer minus the production allowances transferred.

(2) The United States may acquire production allowances from another Party if, at the time of such transfer, the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in subsection (a)."

Under section 616, then, trades of allowable production between the U.S. and a Protocol Party cannot result in an increase in production over what would have occurred in the absence of the trade. In the case of a trade to a U.S. company, the trading Party must agree to reduce its production to the extent prescribed by section 616. In the case of a U.S. company trading production to other Parties, the U.S. must likewise reduce its production.

The Agency considered various methods of reducing overall U.S. production as called for in trades from U.S. companies to companies abroad, but proposed that the only fair way of distributing the offset would be to decrease the transferor's balance of production allowances by the amount required under section 616. Thus, the formula for calculating the transferor's revised production limit would be "the lesser of. (i) The unexpended production allowances held by the person * * * minus the amount transferred; or (ii) the unexpended production allowances held by the person * * * minus the amount by which the U.S. average annual production for the three years prior to the transfer is less than the United States' production allowable under this Part minus the amount transferred."

b. *Trades from the U.S. to other Montreal Protocol parties.* One commenter stated that although the proposal for intra-company international trades would appear to be workable under today's market conditions, as the phaseout moves forward and substitutes are developed, the formula will become unworkable. This is because the three-year average would be very low due to the rapid adoption of substitutes in some end uses and to the recent economic slowdown which has led to reduced demand for ozone depleting chemicals. The commenting company provided an example of how applying the offset could lead to severely diminished supplies of controlled substances in the U.S. If the U.S. were producing and consuming controlled substances at about 50 percent of its allowable levels, and that allowable level was 80 percent of baseline levels, the commenter claimed that a company transferring ten percent of its production rights to another country would severely restrict future production (i.e., only 80 percent minus 50 percent minus ten percent of the company's limits).

The Agency acknowledges that the U.S. production of some of the controlled substances has been well below allowable levels and agrees that implementation of section 616 could result in a severe curtailment of future production if a company were to transfer away its baseline production rights under the kind of scenario described above. The Agency notes, however, that under its proposed approach to implementing section 616, a trade could only take place if the U.S.

transferor had enough allowances to permit the reduction in actual U.S. production to be reflected in the transferor's adjusted allowance balance. In short, using the example given above, the transferor would have to have allowances equal to at least 30 percent of U.S. baseline production for it to trade its allowances abroad. In this way, any resulting curtailment in production would be for the transferor to absorb and would not directly affect other companies' ability to produce. EPA also points out that if the U.S. were already operating well below its allowable production in a future control period, it would not need the full amount of allowable production during that control period and trades of allowances would not necessarily result in such severe cutbacks at least for that period. In any event, regardless of the effect on future production, the Act clearly requires these adjustments to the U.S. production limit and the need to make such adjustments should be considered by those contemplating trades.

The same commenter stated that under the Agency's proposal, no company other than itself may be able to transfer production rights because the potential shortfall in national production could easily exceed the total production allowances held by any other producer. The company suggested as trades will become increasingly necessary under the phaseout, and that it would be uneconomical and bad policy for the U.S. to undertake a program that would effectively prohibit international trades.

One company also maintained that the first company requesting a transfer to another Party would be disproportionately penalized by having to absorb the entire national difference between the allowable production quantity and the three-year average of actual annual production.

The Agency agrees that its proposal could have the effect of unfairly limiting the availability of trading and that such a result should be avoided. The Agency has thus changed its requirement so that if more than one company trades production of a controlled substance to another Party or Parties, they will equitably share the burden of absorbing any shortfall in national production. Thus, the allowance balance of the company to trade first would be reduced by the full amount of its trade plus the difference between the allowable production and the three-year national average. If another company were then to trade away its production allowances for the same controlled substance, the first company would recoup part of what it lost and the second company's allowance balance would be reduced. The exact percentage of the required reduction levied on each company would be proportional to the amount of each company's trade. Since allowances are calculated in kilograms, the offset would also be determined in kilograms.

According to several commenters, the implementation of this requirement of the Clean Air Act as proposed would act as a severe disincentive to early cutbacks beyond those required by the Montreal Protocol, and would have a "chilling effect" on the free market's distribution of production of controlled substances throughout the world. They also contended that EPA's proposal regarding transfers to other Protocol Parties could be onerous and unworkable as it would seriously discourage any company from entering into a transfer with another Party.

The Agency believes that the commenters' problem is with the terms of section 616 itself, not with the Agency's manner of implementing it. That section clearly calls for U.S. production to be reduced not only by the amount being transferred but by any shortfall between U.S. actual and allowable production. Congress called for the required reduction to be calculated this way in order to ensure that the production being transferred was not production that would have otherwise gone unused, thereby sparing the ozone layer that amount of potential depletion. The Agency, required to implement the Clean Air Act requirements, has simply codified the most equitable method of distributing the effect of this requirement.

The same commenters suggested that EPA take under advisement and further consider its proposed approach to section 616, and not finalize it with the rest of the rule. The Agency notes, however, that until it implements section 616, no trades of production with Protocol Parties could be undertaken. The regulations that were effective in 1991 expired at the end of that year. Section 616 sets forth the basis on which EPA may allow international trades. In the absence of regulations implementing that provision, there could be no trades. As noted above, while section 616 may make international trades less attractive, EPA has no choice but to implement its requirements.

The Agency has altered its approach to section 616 in this final regulation in response to comments to make it more equitable and less burdensome on any individual firm. As the Act is very specific on this point, EPA does not believe that postponing this section's implementation would lead to a more satisfactory solution.

c. *Trades to the U.S. from other Montreal Protocol parties.* Section 616 also allows for transfers of production from other countries to the United States. If the Party nation agrees to reduce its production limit according to the provisions set forth in the Act, the U.S. may increase its production by the amount transferred.

One commenter asserted that transfers of methyl chloroform and carbon tetrachloride production from Parties do not make sense because other countries do not have limits yet. This company commented that EPA should clarify this point, and declare that a statement to UNEP proving a country's reduction in production would be sufficient to satisfy the Clean Air Act.

While section 616 appears to presume the existence of Protocol limits on the controlled substances being transferred, EPA does not believe that Protocol limits need exist for it to apply and be applied. The purpose of section 616 is to permit the U.S. to transfer production to or from other Parties so long as the total actual production of the U.S. and the Party engaged in the transfer does not increase. Before Protocol limits apply, the same purpose can still be served so long as the Party engaged in the transfer has placed or will place limits on the controlled substances being transferred and revises or sets those limits to reflect the adjustment required by section 616.

Section 616(a) provides that the transferring Party adjust its production level based on its allowable production under the Protocol, its allowable production under domestic law or its average annual production for the three years prior to the transfer. Before Protocol limits take effect, then, adjustments can be calculated based on domestic limits or average production levels. What is essential, though, is that the adjustment be binding on the transferring Party. If it has domestic limits, it must reduce them by the amount transferred. If it has no limits, it must establish limits equal to the average of its actual production in the last three years less the amount transferred.

For EPA to approve transfers of controlled substances, including those that are not yet subject to Protocol limits, the transferee must submit to the Agency a signed document from the principal diplomatic representative in the transferring nation's embassy in the United States stating that the appropriate authority within the nation has revised or established production limits as described. The Agency submits

that in cases where the compounds involved in the trade are not yet regulated under the Montreal Protocol, no purpose is served by sending a statement to UNEP that the country has reduced its production.

An industry group commented that it is unrealistic to expect other countries to revise their production limits as required by section 616 if the resulting limits were more stringent than the applicable Protocol limits. It argued that the Agency should not place the burden of negotiating lower national production limits on the U.S. company seeking the transfer and maintained that if the Agency did not act on a government-to-government basis to negotiate production reductions, no allowance trades from other countries could be carried out. Unless the Agency took part in negotiations, the group stated, allowances would flow only away from the U.S., resulting in lower U.S. employment and balance of trade without environmental gain.

The Agency does not believe that it is the U.S. government's place to negotiate with foreign governments on behalf of U.S. companies that wish to receive production rights from other nations. The Act is clear in requiring that the government of a Party restrict its production if a U.S. company is to receive production from that Party. If a foreign company wishes to transfer production rights, it must work with its government to achieve national reductions in production. Although the U.S. will continue to act on an international level to encourage nations to join the Protocol and phaseout ozone depleting substances, the Agency will act as an agent for U.S. firms wishing to carry out allowance transfers.

In addition, the Agency does not agree that this provision of the regulations will result in a one-way transfer of allowances away from the U.S. with negative economic consequences. Under the regulations, before trades of production from the U.S. can occur, EPA may evaluate the economic ramifications and, in cases where negative consequences are anticipated, disapprove the transfer.

H. Obtaining Additional Allowances—Transformation

1. Carbon Tetrachloride Transformation

a. *Summary of today's final rule.* EPA decided to change the provisions for the tracking of carbon tetrachloride production and transformation from those proposed in the September 30, 1991 notice in light of the comments received during the rulemaking proceeding. Under today's regulations, any company that produces carbon tetrachloride to be used as feedstock may do so without expending production and consumption allowances under certain conditions. In order for the company to avoid the prohibition against producing without allowances, however, the same amount of material it reports to EPA as "production for feedstock use" in a control period must be transformed by the end of the first quarter of the next control period. No "transformation allowances" or up-front commitments will be necessary for companies to produce carbon tetrachloride for feedstock. Instead, recordkeeping and reporting requirements needed to make this added flexibility for producers of carbon tetrachloride and feedstock users possibly have been promulgated.

b. *The proposal.* The Agency proposed a new system of "transformation" allowances for the production of carbon tetrachloride to be used as a feedstock. Under the system in effect in 1991, producers of carbon tetrachloride, like the producers of the other controlled substances, were not allowed to produce the chemical unless they had adequate production and consumption allowances to cover their production. After the chemical was transformed, the transforming company would be eligible to receive additional production and consumption allowances that could then be used to further produce or import additional carbon tetrachloride. Since a large percentage of the carbon tetrachloride produced is transformed, however, and two of the producing companies received no baseline consumption allowances, the 1991 system proved cumbersome and generated a large amount of paperwork while creating a stop-start production cycle.

The proposed system would provide for the allocation of allowances before the actual transformation occurred, upon the producer's proving to the Agency's satisfaction that it had sales commitments with companies that promised to transform the carbon tetrachloride received. Producers could use these transformation allowances to produce carbon tetrachloride for feedstock use within the same control period. Transformers would report their activities quarterly. Any amount of carbon tetrachloride produced pursuant to transformation allowances and not transformed by year-end would be considered a violation of the regulations.

c. *Proposed system versus 1991 system.* The Agency requested comment on the proposed system as well as the 1991 system. Two commenters commended EPA for developing a new approach, but said that the proposed system would not solve some problems of the 1991 system and would exacerbate other problems. Another commenter remarked that the proposed system would be an improvement from the current system in that would solve the problems of stop-start production and of requiring producers to have allowances before producing carbon tetrachloride for exempt uses (in 2000). However, according to this company, the proposed scheme still had several flaws, which are discussed in more detail below.

In preparing the final regulations, the Agency has taken these comments into account, and altered the proposed transformation allowance system so that it will work more smoothly while maintaining an effective compliance monitoring mechanism.

d. *Allowances for the production of feedstocks.* Two companies asserted that since the manufacture of controlled substances used for feedstock is not deemed production under EPA's regulations, no allowances of any kind should be required to manufacture carbon tetrachloride for that purpose. One company commented that the word "production" found in the Protocol and the Act does not include the manufacture of controlled substances that are wholly used and consumed in the manufacture of other substances, and thus that EPA's proposed regulations unjustifiably and without authority would prohibit the sale of controlled substances for feedstock purposes except to the extent permitted by existing production and consumption allowances. One commenter also contended that EPA's interpretation of production denies the plain and ordinary meaning of the words contained in the statute, cannot be reconciled with other parts of the statute, and is neither required nor suggested by the Montreal Protocol. According to this company, since the effect of EPA's interpretation is to place a restriction on trade in these chemicals that is not authorized or required by the Statue or the Protocol, the Agency's position is unlawful. One comment indicated that it would be less disruptive of business to interpret the feedstock exclusion as covering the current year's production that has been or will be used as feedstock, requiring only a certification that the material will be transformed eventually.

The Agency continues to believe that the Clean Air Act and Protocol definitions of production may be read to include any amount of feedstock chemical manufactured until it actually

is transformed. The Clean Air Act, after all, excludes from production those controlled substances that are "used and entirely consumed" in the manufacture of other chemicals (emphasis added). At the same time, EPA concedes that the use of the past tense does not necessarily connote that the substance must have been used and consumed before it may be excluded from production. There are strong policy reasons for interpreting production as the Agency has in the past, to ensure that controlled substances are not produced in amounts greater than the Protocol and Clean Air Act allow and then not transformed.

In the case of controlled substances largely used as feedstocks, however, EPA's past interpretation can be unwieldy to implement. To address this concern, the Agency believes that it is permissible to interpret the definition of production in such a way that any chemical transformed at any point in time is never deemed "produced" within the context of the Protocol and Act. For reasons discussed in the following sections, EPA has determined that the allocation of transformation allowances for the production of carbon tetrachloride as feedstock (a system premised on the first interpretation) would not provide significant compliance monitoring advantages, while it would increase industry's and EPA's administrative burden. Consequently, this rulemaking provides that companies may produce carbon tetrachloride for feedstock use without expending allowances.

One commenter stated that within the same company, EPA excludes the transformed chemical from production, and there is no compelling reason for treating transformation by other companies differently.

The Agency's response is that prior to today's rule, all production, including feedstock production required the expenditure of consumption and production allowances and was not excluded directly from production. The commenter is most likely referring to the Agency's suggested format for the producer's quarterly report, which is simplified by netting out the amount transformed during that quarter from the amount produced during that quarter (the regulations promulgated today do not change this reporting system for internal transformation). It has been under past rulemakings and continues to be prohibited, however, to produce controlled substances for feedstock use without expending production and consumption allowances to cover that production, so in-house transformation is treated the same as second-party transformation. This rulemaking alters that system for carbon tetrachloride only.

One commenter also remarked that with few producers and transformers involved, enforcement would be just as easy for second party transformation as for producer transformation. Therefore, according to the commenter, the two systems should be treated in the same manner, as Congress intended.

To date, however, the Agency has identified at least 30 companies that transform carbon tetrachloride, in addition to six companies that produce it as well. The tracking of second party transformation thus is not as simple as tracking internal producer feedstock use. Therefore, the Agency is placing specific controls on producing and transforming companies to ensure compliance, which are outlined below.

e. *Written contracts and commitments to transform.* One company and an industry group commented that the proposed requirement for written fixed-amount contracts before transformation allowances could be granted would alter current business practices. In addition, they stated that sending each new purchase order to EPA would involve considerable paperwork without corresponding benefits. These commenters were also concerned that the production limits would still be exceeded if customers do not take the amount of carbon tetrachloride ordered or do not transform it by the year-end.

These commenters maintained that elements of EPA's proposed requirements do not take account of everyday business practices, as contracts are often only for estimated amounts. These three companies stated that the proposed system would prevent production without advance orders, which would make the production process slow to respond to immediate or emergency needs.

Responding to these concerns, the Agency has removed the requirement that a producer obtain up-front commitments from purchasers to transform carbon tetrachloride. Since EPA is not establishing a system based upon the provision of "up-front" allowances for carbon tetrachloride, EPA does not believe it is necessary to require producers to obtain the up-front commitments, the purpose of which (as explained in the NPRM) would be to determine the precise amount of carbon tetrachloride intended for transformation so that the appropriate amount of allowances could be granted. Instead, a producer must report every quarter its sales of carbon tetrachloride to each feedstock-user and provide the IRS certificates of the customers involved. The certificate shows the customer's intent to transform and substantiates the producer's claim that its feedstock production in excess of its production allowances will be transformed. Thus, industry will have more flexibility in responding to emergency orders, while EPA will still have adequate assurance that the carbon tetrachloride will be transformed.

f. *Year-end problem.* Several commenters expressed concern about the provision in the proposed rule that all of the carbon tetrachloride produced pursuant to transformation allowances for one control period must be transformed within the same control period or be counted as production. This provision stemmed from the Agency's interpretation of production as excluding the quantity manufactured and already used as a feedstock, but including any quantity manufactured and not yet used as a feedstock, even if that is its intended use. This means that at year-end, any inventory of the chemical remaining (even if intended for transformation) would be counted as production. The proposed system would be advantageous for compliance monitoring because it would assure that transformation occurs before additional allowances are granted. However, in light of these comments and its experience implementing carbon tetrachloride controls in 1991, EPA believes that the disruptive effects of this approach outweigh the compliance monitoring advantages in the case of carbon tetrachloride. The broader interpretation of production discussed earlier, allowing the amount of chemical transformed after the control period in which it was produced (not just within the same year) to be excluded from production, avoids the problem of year-end shutdown. In order to avoid plant shut-downs at year end, the Agency has decided that carbon tetrachloride transformed by the end of the first quarter in the control period following the control period in which it was produced may be excluded from the previous control period's production. Producers will be required to report production separately from production-for-transformation, for which no allowances will be expended. The effect of these rules will be the same as dividing the carbon tetrachloride manufactured into "produced" and "transformed" quantities.

The final regulations allow for two types of carryovers. First, a three-month grace period for transformation after the

end of the control period in which it was produced is established. Second, the producing company must show only that an amount equivalent to the amount it produced during the control period without the expenditure of production and consumption allowances for that control period was transformed. This means that production from one control period that is transformed at the beginning of the following control period could count towards the amount that must be transformed during the current period. For those companies that do not have baseline consumption allowances, this second type of carryover could provide them with a needed cushion. For all companies, the carryover period will provide flexibility needed to deal with the unpredictable instances of untransformed inventory.

One company maintained that by 1996 it will have the capability to transform carbon tetrachloride produced as by-product with a superior, environmentally sound technology. This company proposes that EPA allow coincidentally produced carbon tetrachloride to be stored in 1995 and 1996. The commenter noted that this would not violate the Clean Air Act and Montreal Protocol because production for feedstock is not production.

If the Agency were to allow indefinite storage of production-for-feedstock, it would not be able to effectively monitor companies' compliance. Even if a company's production far exceeded its internal or its customers' transformation, it could always claim that the material was intended for future transformation. The Agency has determined that there must be some transformation cutoff date in order to ensure compliance with the Act and Protocol.

The Agency considered all of the carryover time periods suggested by commenters, ranging from 30 days to one year, and selected three months, or one quarter, as the most workable. Although some commenters indicated that any carryover from one year's production could be completely transformed by the end of the following January, a carryover period equal to one quarter reduces the reporting burden on companies by allowing them to provide information on the transformation in the first quarterly report. Six-month and one-year grace periods were rejected as being unnecessarily long, since previous-year compliance could not be determined until much later, in the case of the one-year grace period, up to 14 months after the end of the relevant control period.

Under the one-quarter carryover system, every transformer of carbon tetrachloride must report each quarter the amounts of carbon tetrachloride it has transformed. Each quarter, every producer will report its production intended for transformation and its non-feedstock production, and provide sales data and IRS certificates for each customer to which feedstock production was sold. After the end of the first quarter of the following control period, EPA will compute a mass balance. Compliance would be monitored for 1992 as follows: Amount Transformed in '92 + Amount Transformed in first quarter of '93 must be $\geq$ Amount Produced-for-Transformation in '92.

The next year, the mass balance will be calculated as follows: Amount Transformed in '93 − Amount Transformed in first quarter '93 that was attributed to '92 produced + Amount Transformed in first quarter of '94 must be $\geq$ the Amount Produced for Transformation in '93.

Under this system, companies may allot a certain amount of first quarter transformation to justify previous-year production for-feedstock uses. Any amount of first quarter transformation that exceeds what is needed to cover previous-year production will count towards transformation of feedstock production in the same year. All second, third and fourth quarter transformation will be attributed to production in the same year, along with as much of the next year's first quarter transformation as is necessary. Companies will be out of compliance if their first quarter transformation is not large enough to account for the previous year's remaining production-for-transformation.

An industry group inquired what would happen if a transformer starts a control period with inventory and ends the year with an untransformed inventory. For example, would a portion of any transformation that took place be allocated to the preexisting inventory and thus not be counted toward the current year's production? This commenter also asked what would happen if a transformation occurred early in the control period before carbon tetrachloride was actually purchased during that control period.

Under the feedstock tracking system, no transformation will be allotted to specific sources. A transformer beginning a year with inventory and ending the year with inventory does not present a problem because the amount transformed in that year could still be precisely calculated and matched against the producers' feedstock production. As a result, it does not matter if transformation of past-year purchases occurs, as this type of carryover is allowable if the total amount transformed in one control period plus the following carryover period minus the previous year's carryover is equal to or less than the amount produced in that year for feedstock.

One commenter maintained that transformation documentation should be based upon changes in bulk inventory, and not be tied to carbon tetrachloride in a specific shipment. This company stated that material received in bulk (e.g., by tank truck or rail car) would not be stored by discrete shipment, but would be combined in a single storage tank or battery of tanks.

The tracking system promulgated in this regulation allows for treatment of transformation reporting in a manner similar to the reporting of production, based on inventories, shipments and other pertinent information. The system thus avoids the problems of tracking the fate of individual shipments in a continuous manufacturing process.

g. *Liability if production for feedstock exceeds transformation.* Under the proposed rule, a carbon tetrachloride producer that produced no more than its transformation allowances permitted would still be liable if the carbon tetrachloride produced pursuant to the transformation allowances was not transformed in the same control period as it was produced. Several commenters objected that producers should not be held liable for the failure of purchasers who agreed to transform the production to do so. They maintained that as long as a carbon tetrachloride producer does not exceed its production allowances, the Agency should consider it in compliance.

In the final rule, the Agency has maintained the basic tenet of this aspect of its proposal—that producers remain ultimately liable for production not transformed. Under this rule, a company that produces without allowances a given quantity of carbon tetrachloride for feedstock use during a control period must ensure that at least that amount has been transformed by the end of the first quarter of the next control period. Any amount that is not transformed will be counted as production and production and consumption allowances will be deemed to have been expended. To the extent that a company's total production, including that not transformed, does not exceed its production and consumption allowances, it will be in compliance with the regulations. To the extent that its total production does exceed its allowances, it will be in violation.

The Agency has placed liability on the producer because the Act restricts production, not transformation. The specter of potential liability gives producers an incentive to ensure that their customers' claims that the carbon tetrachloride will be transformed are fulfilled. Since it is the producer who takes the first step in deciding whether or not to produce the chemical, and assures the Agency that this production will be transformed, it is clearly the producer's responsibility to see that the transformation is in fact carried out. Such liability is not only required by the statute, but also assures the protection of the environment. At the same time, producers may enter into contracts with transforming companies that contain clauses providing that the transforming companies will compensate the producer for any financial consequences of liability.

Several commenters maintained that EPA has the authority to hold customers liable because of its authority to limit production and transformation. One company contended that if the customer's action causes the carbon tetrachloride to be classified as production, then the customer becomes the de facto producer and as such is liable. Another commenter stated that if the Agency does not believe it has this authority, it could still place liability on transformers by granting transformation allowances only to companies that have signed a liability statement.

The Agency believes at this time that even if it has the legal authority to place liability on transformers, this would not be an effective way of ensuring compliance. As noted earlier, the number of transformers far exceeds the number of producers, and the monitoring of transformers thus presents greater difficulties than does the monitoring of producers.

One commenter remarked that for cases of failure to transform due to "Acts of God," there should be a provision allowing EPA to issue an enforceable consent order requiring the customer to transform or destroy the carbon tetrachloride within 180 days. If a customer does not comply, EPA should fine the customer and arrange for the destruction at the customer's expense.

The Agency is providing a 90-day grace period in which a producer and transformer can arrange for transformation of untransformed inventory, whether it is due to "Acts of God" or any other cause. If the material is not transformed within the first quarter after year-end, the Agency will take enforcement action and collect fines from the producer of the chemical. Producers may pass fines and costs onto their customers as they see fit through contract provisions.

Another company commented that the proposed liability system ensures that transformation will take place. This company suggested that compliance will be effected through normal contract procedures since the EPA is clearly placing the burden on the producers. Therefore, producers will establish adequate contract and other control mechanisms to assure that the transformation occurs because they would be exposed to substantial noncompliance penalties.

By contrast another company responded to the Agency's suggestion in the NPRM that producers could use provisions for liquidated damages in contracts in order to avoid the costs of fines for transformers' failure to transform. They stated that liquidated damages provisions are inadequate for two reasons: (1) a customer would not sign the contract, and (2) damages might be uncollectible (i.e., in the case of bankruptcy, the security interest would not cover the fines, and other creditors would be harmed). A supplementary comment added that it is not commercially realistic to believe that a company would agree to manufacture carbon tetrachloride even though it would be held liable if the purchaser did not transform the chemical. This company commented that there is no reason why the onus of the prohibitions cannot focus on the buyer.

The Agency believes that if a customer were already certifying on IRS certificates that it would transform the material and it could not obtain carbon tetrachloride without signing a contract containing the provisions discussed above, then it would not be difficult to reach an agreement on liquidated damages in cases of failure to transform. The Agency also submits that the risk that a customer will declare bankruptcy or otherwise default, is a risk normally encountered and that if a producer perceives the risk to be too high, it would not be prudent to continue selling feedstock to that customer. Producing companies, in addition to making responsible decisions about to whom to sell the material, could make provisions for transforming the remaining material at another company's or one of their own plants. Thus, liquidated damages provisions should prove to be an effective method by which producers can ensure that their customers are financially accountable for failure to transform.

In sum, the Agency continues to believe its proposed liability system will be the most effective in ensuring compliance. Although the Agency is not requiring fixed contracts between producers and transformers, it is likely that producers will arrange for these types of agreements in order to guard against being penalized for untransformed material.

One commenter asked which producer would be penalized if a customer of two producers failed to transform within the control period. Under the scheme for carbon tetrachloride transformation promulgated in this rulemaking, transformers are required to report exactly how much carbon tetrachloride from each producer was transformed in each quarter. In cases where product from several producers is mixed in tanks, the governing assumption for whose carbon tetrachloride was transformed first would be "first in, first out" (FIFO), unless the transformer indicates that it plans to use an alternate method. This method is widely-used in industry and has in the past been the basis of some companies' distinction between imported and domestically-produced material that is mixed before sale to transformers. Thus if a transformer received a shipment from one producer on the first of the month, and a shipment from another producer on the fifteenth of the month, the assumption would be that the first producer's material was transformed first. In this way, it could be determined to whom any untransformed material should be attributed. If a transformer does not wish to use the FIFO method, the company should submit a description of the alternate calculation method and a justification as to why FIFO is not satisfactory prior to submitting its first quarter report. The Agency will either approve or disapprove the request for the use of an alternate method, based on whether it can be reconciled with other transformers' calculation methods and FIFO.

Although today's rule makes the producer liable in cases where feedstock production exceeds transformed amounts during the five-quarter period, EPA will continue to monitor the effectiveness of relying solely on this compliance mechanism. If the Agency determines in the future that transforming companies are acting in bad faith by failing to transform, it will consider proposing regulations making transformers also liable pursuant to its statutory authority under section 615 of the Act. That section grants EPA broad authority to regulate practices or activities (such as failing to transform) that may reasonably be anticipated to contribute to ozone depletion and endanger public health or welfare.

h. *Provision for the export of carbon tetrachloride.* Two commenters remarked that elements of the proposed rule could eliminate their ability to produce for export because they cannot produce without consumption allowances. The commenters stated that two producers, including one of the commenters, have zero consumption allowances. That company commented that if the proposed system is adopted, it should be expanded to provide special export allowances under rules analogous to the rules for obtaining transformation allowances.

For exports, the Agency will use a process similar to that set up in 1991 for companies that needed up-front allowances in order to produce for transformation. Production of carbon tetrachloride for export does not present the same problems as production for transformation, as only a small percentage of the carbon tetrachloride manufactured in the U.S. is exported. Nevertheless, EPA recognizes the need for a mechanism for companies that did not receive baseline consumption allowances to enable them to produce and then export. These companies will be granted consumption allowances each year, equal to their production allowances for that year in order to produce for export. Companies must hold at least this number of consumption allowances at the end of the control period; they will receive consumption allowances equal to the number they expended to produce upon exporting their production. The Agency will allow companies to continue to process paperwork demonstrating that exports took place in the proper control period for up to 45 days after the end of the control period.

i. *Recordkeeping and reporting for the carbon tetrachloride transformation system.* Recordkeeping and reporting requirements have been changed from the proposal to be consistent with the carbon tetrachloride transformation system adopted here. Producers will be required to keep on-site records of:

- The type of information required under the 1991 rules; and
- Sales of material (invoices) to transformers.

Producers will also have to file quarterly reports registering:

- The same type of information required under the 1991 rules, with "production" including only carbon tetrachloride manufactured and not intended for transformation;
- The amount of "feedstock production" (carbon tetrachloride manufactured and intended for transformation);
- The amount of feedstock production sold to each transforming company; and
- IRS certificates for each transformer.

Transformers will be required to keep on-site records of:

- The same type of information required under the 1991 rules for companies that request additional allowances for the use of a controlled substance as feedstock;
- All purchases of carbon tetrachloride for feedstock;
- Shipments received and the date and quantity of material received;
- The source of all purchases and shipments; and
- Quarter-start inventories of carbon tetrachloride.

Transformers will also have to file quarterly reports including:

- A list of producers or importers from whom material was purchased; and
- The amount of each producer's or importer's material that was transformed during that quarter. If material from several producers or importers was mixed, the transformer should use the first in, first out (FIFO) method for determining whose production was transformed, unless the Agency has approved an alternate method for that company.

2. Transformation of Other Controlled Substances

One company commented that producers of methyl chloroform should also be allowed to exclude methyl chloroform that is transformed from production because in the future the use of methyl chloroform as a feedstock will increase. It presented the example of the production of HCFCs, which in 1995 may run into the same problems of allowance recycling delays and year-end problems as are experienced currently for carbon tetrachloride.

EPA recognizes that as the phaseout progresses, it may be appropriate to expand the carbon tetrachloride transformation system to other chemicals and to exports. To date, however, the burden of allowance cycling for chemicals other than carbon tetrachloride has not been large enough to warrant expanding the transformation system, which provides less assurance that production for feedstock purposes is actually transformed.

Another company remarked that it and a number of other companies use controlled substances as manufacturing feedstocks, including for HFCs being developed as CFC substitutes, and that their need for such feedstocks is expected to increase in the future. According to this commenter, these companies would be placed at an unnecessary and unauthorized competitive disadvantage simply because they buy, instead of make, their feedstock chemicals. It asserted that the proposed rules would place a "choke-hold" on companies that must purchase controlled substance feedstocks and products made with them, giving an enormous advantage to manufacturers who produce their own feedstocks. The commenter maintained that this aspect of the proposal was unnecessary to protect the ozone layer, and was not authorized or required by the Clean Air Act. Moreover, this company argued that the differential treatment of second-party transformers significantly injure the U.S. and individual companies. It added that at the conclusion of the phaseout period it would no longer be possible to purchase controlled substance feedstocks (except for carbon tetrachloride) because there would be no more allowances. Moreover, this company maintained that in the interim, supplies would be scarce and prices would be unnecessarily high, without environmental benefit.

The Agency has been monitoring allowance cycling for second-party feedstock use of CFC feedstocks since July of 1989 and has yet to encounter any situation where companies had difficulties purchasing feedstock chemicals because of a "choke-hold" on allowances. Indeed, to date there has been a surplus of allowances at the end of each control period. Again, as the phaseout begins to take effect, this situation could change. The Agency prefers, however, to continue with the current system, which has been effective and has not presented problems for chemicals other than carbon tetrachloride, until it is determined that the carbon tetrachloride transformation system as promulgated in these regulations is effective and can reasonably ensure compliance with international production and consumption limits. At that time, the Agency will reconsider switching other controlled substances over to this control system. It is not the Agency's intention to disadvantage second-party transformers or to stifle the production of CFC substitutes. The commenter has presented no compelling evidence that this is currently taking place.

3. Provision for the Import of Feedstock Carbon Tetrachloride

One company asserted that under the 1991 and proposed rules, importation of controlled substances for feedstock use can only be accomplished by expending

consumption allowances, which will become unavailable in 2000. In the interim, this company maintained that transfers of allowable production between Parties (to permit greater domestic production of controlled substances for feedstock use) would be subject to an even greater offset than that applied in the case of domestic transfers. As certain feedstock materials needed for industry are in short supply (e.g., Halon 2402), the company inquired as to why American industry should be denied the opportunity to import these feedstocks.

This comment raises several issues. The first is how the import of feedstock substances should be treated. The Agency has provided that companies that wish to import carbon tetrachloride for feedstock use do not need to expend consumption allowances. In this way the import of carbon tetrachloride feedstocks is treated in the same manner as the production of the same. The offset for inter-Party trading of allowable production should not directly affect importation of controlled substances. Second, other controlled substances (such as Halon 2402) are not being considered for this type of treatment currently for the reasons discussed above. However, if at a later date the Agency were to establish a similar system for the other controlled substances as well, provision would also be made for imported feedstocks and of these substances.

4. Transformation in Foreign Countries

One commenter maintained that after a Party transfers to the U.S. some amount of its allowable production, U.S. companies should be able to get production and consumption (or transformation) allowances for exporting the actual production that results when the exports are used as feedstocks in other countries upon submitting proof of export, transformation, and the importer's intended use.

EPA at this time cannot grant additional allowances for, or exempt from production limits, controlled substances that are manufactured for transformation abroad. The Parties to the Protocol have specifically addressed this issue and decided that the country in which the transformation takes place should be able to exclude from its limits the amount transformed. (*See* 55 FR 24491 June 15, 1990.) Moreover, the Agency could not inspect transformation facilities in other countries, and, therefore, would not be able to enforce production limits adequately.

I. Obtaining Additional Allowances—Exports

I. Proof That Exports to Article 5 Countries are Not Reexported

The Clean Air Act allows producing companies to increase their production by up to ten percent of their baseline for the purpose of supplying the basic domestic needs of developing countries operating under Article 5 of the Montreal Protocol. The Agency's proposed method of tracking this production is to create potential production allowances equal to ten percent of each company's baseline that can be converted into actual production allowances if companies can prove that they have exported to Article 5 countries for the purposes of supplying their basic domestic needs. The Agency proposed to define "basic domestic needs" as the parties have thus far defined it. This definition presumes that controlled substances supplied to developing countries are used for basic domestic needs to the extent that they are not re-exported in bulk form. The Agency proposed that companies that wish to convert potential production allowances to production allowances submit to EPA documentation verifying that the export has occurred, as well as proof that the material will not be re-exported. As proposed, the documentation could be in the form of a contract providing for liquidated damages equal to the resale price of the chemical in the event the provision not to re-export is breached or could reflect other means to guarantee that the goods would not be re-exported. The Agency requested comments on other forms this proof could take.

One company asserted that re-export should be allowed if it can be demonstrated that re-export is to serve the basic domestic needs of another Article 5 country and also that one test of basic domestic needs could be the fact that there is greater economic value in re-exportation than in internal use. This company stated that to dictate otherwise would disrupt free market forces.

The Agency responds that under the Protocol and section 614 of the Act it does not have the authority to broaden the definition of basic domestic needs as suggested. The Parties clearly indicated in the discussions accompanying the London Amendments that basic domestic needs are not defined to include bulk re-export of any kind.

The same commenter also suggested an alternative scheme for determining basic domestic needs under which EPA would determine the percentage of imports by each Article 5 country that typically is re-exported, and apply this factor to the U.S. exports in order to determine how many authorizations to convert should be given.

EPA does not believe that basing authorizations to convert on past re-exportation statistics would guarantee that countries would not re-export controlled substances in the future. In addition, the Agency finds that determining the re-export rates of all 43 Article 5 countries would be administratively and financially burdensome. This is particularly apparent in light of the fact that the Protocol's Secretariat, which has already requested these data, has not been able to fully determine past export rates for the developing countries.

The Agency is thus finalizing its proposed system, which allows companies to request only additional consumption allowances for exports to Parties that are not operating under Article 5, but allows companies that export to Article 5 countries that have submitted appropriate documentation to receive both consumption allowances and authorizations to convert potential production allowances.

2. Exports to Non-Party Complying Nations

The same company commented that the Agency should allow exports to nations that are not Parties to the Protocol but are complying with its terms to be subtracted from consumption.

Under the Protocol, the Agency may grant additional allowances for exports to non-Party complying nations if they have been identified as such by the Protocol Parties. To date, no non-Party countries have been identified as complying. As countries identified, the Agency will begin granting additional allowances for exports to these countries.

J. Comments on the Impact of the Action

The Agency prepared a Regulatory Impact Analysis (RIA) for this regulation. It discusses the costs and benefits of the action, including benefits resulting from a decrease in ozone depletion. The RIA also contains an analysis of companies' average burden for fulfilling the recordkeeping and reporting requirements.

Two commenters wrote that the RIA was flawed, particularly the sections linking ozone depletion to adverse human health effects. They suggested that the RIA be submitted to the Science Advisory Board for review and comment.

In 1988, the Agency prepared an extensive risk assessment which served as the basis for its original regulations implementing the provisions of the Montreal Protocol. This document included detailed information about the adverse human health effects associated with excess UV–B radiation and ozone depletion. This information was reviewed by the Science Advisory Board and forms much of the basis for the current RIA.

One company also stated that the industry burden estimated for the recordkeeping and reporting requirements was too small. The Agency believes, however, that although the estimate may be too low or too high for any one company, it accurately represents the average number of hours that would be spent by an affected industry entity to fulfill the requirements of this regulation.

V. Section-by-Section Description

A. Authority Citation

The statutory sections implemented by the regulations are sections 603, 604, 605, 607 and 616 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7671 *et seq.*).

B. Section 82.1—Purpose and Scope

This section states that the purpose of the regulations is to implement the Montreal Protocol and sections 603, 604, 605, 607 and 616 of the Clean Air Act.

C. Section 82.2—Effective Date

As proposed, January 1, 1992 is the effective date of these regulations. EPA has determined that it is necessary to maintain the January 1, 1992 effective date even though that will result in these regulations having a retroactive effective date because that effective date is necessary to avoid a period in which there are no regulations containing production and consumption restrictions in force. The temporary final rule promulgated by EPA was effective January 1, 1991 and established requirements only for the 1991 control period, which ended December 31, 1991. Thus, unless the regulations promulgated with this notice go into effect on January 1, 1992, there would have been a period running from December 31, 1991 until their effective date during which no regulations would have been effective. This would present a serious danger of being out of compliance with the Montreal Protocol, as no consumption limits would be in place during that period. Furthermore, it would mean that the Clean Air Act's production limits for 1992, which are self-effectuating, would have been in place without any implementing regulations, a situation that would create uncertainties with respect to producers' compliance with the production limits. (EPA determined that it was necessary to promulgate the temporary final rule concerning the 1991 control period with retroactive effect for similar reasons. See 56 FR 9518 (March 6, 1991).)

EPA does not believe that in the weeks between January 1, and today, any company has produced or imported in excess of the limits established by today's rule. All affected companies were notified of the upcoming regulations, were able to review the proposal and in general were made aware of the production and consumption restrictions through the requirements of the temporary final rule in 1991. The Agency contacted these companies by mail and sent each one a copy of the temporary final regulations, the subsequent NPRM, and the direct final amendment to the temporary final rule, published on December 30, 1991. The changes that have been made here to the proposal do not include any requirements that are more stringent than those in the proposed rule. Accordingly, the retroactive nature of the regulations should not pose a problem for the regulated community. For the reasons given in the temporary final rule regarding its retroactive effective date, including the fact that it is highly unlikely that any company would have exceeded its allocation of allowances for the whole year in the short period since January, EPA does not believe that any member of the regulated community will be placed out of compliance with the regulations as a result of their retroactive effect.

A savings clause has been included in the regulations so that enforcement action can continue to be taken for violations of the requirements of the temporary final rule.

D. Section 82.3—Definitions

Several definitions are revised to conform to the definitions set forth in section 601 of the Clean Air Act. In particular, the terms "import" and "production" are changed to conform to their section 601 counterparts, and "control period" is redefined to include the calendar-year period specified in this section. Several other refinements of definitions are included as well.

"Production" includes spills that may occur, as discussed in a previous rulemaking on spills promulgated by the Agency (55 FR 24490).

The proposed regulatory language concerning the exemption from the definition of import for Maquiladora transactions has been modified to reflect more accurately the nature of Maquiladora arrangements. Consequently, instead of providing an exemption for imports "from Mexico by companies operating under the Maquiladora Accord," the new regulatory language provides an exemption for "[b]ringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in-bond and was of U.S. origin." The new language better reflects the reality of the arrangement, which is that controlled substances crossing the border from the U.S. into Mexico "inbond" (i.e., under a bond insuring that the controlled substances will remain in Mexico only on a temporary basis) will be returned to the U.S. For the purposes of this regulation, therefore, the Agency will not require those persons importing controlled substances from a facility in Mexico operating under a Maquiladora arrangement to expend consumption allowances nor will the Agency grant allowances for an export to such a facility. The Agency believes that because allowances are expended when such controlled substances are initially produced in the United States, compliance with the Montreal Protocol will not be adversely affected by this exemption.

Section 601(7) does not define "importer." For the purposes of these regulations the Agency defines an importer as the person listed as the importer of record on U.S. Customs Service forms for the import of a controlled substance into the United States.

The Amendments also do not define "export" or "exporter." EPA is retaining its current regulatory definitions of these terms.

EPA is also retaining its definition of "controlled substance." This definition, which is based on its Protocol counterpart and includes elaboration adopted by the Parties, distinguishes between bulk chemicals, which are regulated, and products, which are not regulated under section 604. "Controlled substance" means any substance listed in appendix A to this part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance that is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be

transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance.

All of the above revisions to the definitions are being adopted as proposed, with the exception of the definition of importer. Several alterations have been made to the proposed definitions of calculated level, production and transformation for clarification purposes. Since the transformation allowance system is not being adopted, the definition of transformation allowances has been dropped. Definitions of CUBP and MACT have been added. The CUBP definition incorporates the commercial test and the dependent-variable test discussed above, and the MACT definition includes a requirement for 99.99 percent destruction efficiency.

E. Section 82.4—Prohibitions

In this section, EPA prohibits persons from producing or importing controlled substances in excess of the production allowances and consumption allowances they hold, with the exception of the production of carbon tetrachloride for feedstock and CUBP carbon tetrachloride and methyl chloroform. In addition, this section prohibits persons from producing or importing more than 150 percent of their baseline levels of Group I chemicals between July 1, 1991, and December 31, 1992, except to the extent they have obtained additional allowances by exporting to Parties in general or Article 5 countries in particular, by transforming Group I substances, or by obtaining allowable production from another Protocol Party during the same period. This added restriction on Group I chemicals ensures that the United States continues to meet its obligations under the Montreal Protocol. Companies are also prohibited from importing controlled substances in Groups I and II from non-Party countries.

Exemptions from the production and consumption restrictions have been added here as discussed above. These include the exemption for the production of carbon tetrachloride for feedstock that is transformed by the end of the first quarter of the next control period and the exemption for immediately contained and destroyed CUBP production of controlled substances in Groups IV and V.

Companies that wish to qualify for the exemption for immediately contained and destroyed CUBP production of carbon tetrachloride and methyl chloroform must submit the following information to EPA within 45 days after the beginning of the control period (except in 1992, when the information should be submitted 45 days after the publication of this notice):

—The name and address of the plant at which the CUBP production takes place, and the name and telephone number of a contact person;
—A description of the process of which the chemical is a by-product;
—The name of the primary chemical produced in the process;
—A description of the destruction technology to be used, including documentation showing that it has a destruction efficiency of at least 99.99 percent;
—An estimate of the annual production and subsequent destruction of the controlled substance;
—Documentation describing the handling of the material and showing that all procedures are consistent with regulations under RCRA or other applicable rules; and
—A statement of whether the process and destruction method was being used in 1989 and whether the amounts manufactured were included as "production" in reports submitted for use in EPA's baseline calculation.

This information is similar to that appearing in the proposed rule, with the addition of that relating to the 99.99 percent requirement, other regulations, and how the process was treated in baseline-year reports. In addition, these companies are required to keep on-site dated records of the quantity of the CUBP carbon tetrachloride and methyl chloroform produced at the facility, as well as dated records of the quantity of the CUBP controlled substance destroyed at the facility or shipped from there to an off-site destruction facility.

This section also specifies the equation that the Agency will use to calculate each company's compliance in the production of carbon tetrachloride for feedstock.

F. Sections 82.5 and 82.6—Apportionment of Baseline Production and Consumption Allowances

In these sections, EPA is promulgating each company's baseline production and consumption allowances for each chemical within the five groups of class I substances. The Agency is reserving the apportionment of allowances for class II substances as proposed.

EPA's method for baseline calculation remains unaltered from the proposal. As noted in the NPRM, to establish baseline allowances for the groups of newly regulated chemicals, EPA obtained information on and documentation of companies' 1989 production, import, and export of these chemicals through a request issued under section 114 of the Act. Because section 601(11) excludes from the definition of production the amount of a chemical used and entirely consumed (except for trace quantities) in the production of another chemical, the Agency also requested companies that had consumed or transformed the regulated chemicals as feedstock in the manufacture of another chemical to supply information documenting the transformation. Based on this information, the Agency calculated companies' baseline production and consumption allowances for the groups of newly regulated chemicals specified by section 602 (i.e., Group III—the newly regulated CFCs; Group IV—carbon tetrachloride; and Group V—methyl chloroform).

Baseline production allowances were calculated by excluding from the amount of the newly regulated chemicals produced in 1989 the amount of those chemicals transformed in the same year. The Agency attempted to trace every discrete amount of a chemical that had been transformed to the producer of that discrete amount of chemical and exclude that amount from the producer's baseline allowances. In some cases, however, EPA was unable to track the chemical transformed to its original producer. To account for these unassignable amounts of transformed chemicals, EPA applied a correction factor to distribute these amounts among producers of the relevant chemicals based on their respective market shares.

The Agency believes that this is a fair way of allocating transformation amounts to the producers of these chemicals, with the larger producers receiving the larger share of the documented, but unassignable, transformation amounts. This approach is also consistent with that taken by the Agency in a previous rulemaking apportioning baseline allowances. In that rulemaking, EPA decided that documented, but unassignable, exports of the regulated CFCs and halons should be allocated to producers based on their relative market share. As a result, larger producers had their consumption allowances decreased more than smaller producers.

EPA determined each company's consumption allowances by performing the consumption equation for each company based on that company's documented production, imports, and exports. For the chemicals for which the Agency is establishing baseline allowances in this rule, EPA was able, in most cases, to track all exports back to

the exported chemicals' producers. However, it was also necessary to allocate unassignable exports to producers in a manner similar to the method used to allocate unassignable transformation amounts to producers. As discussed above, consumption amounts that were negative for two companies were also distributed across companies receiving consumption allowances through use of a correction factor. In addition, since the Protocol as construed by the Parties and EPA's rule do not count imports transformed in the manufacture of other substances against applicable consumption limits, the Agency has not counted baseline-year imports transformed in the manufacture of other substances in calculating baseline consumption allowances. (See 55 FR 24491; June 15, 1990.)

In developing chemical-specific allowances for Groups I and II controlled substances for today's rulemaking, the Agency reviewed the original data submitted in compliance with the section 114 information request promulgated in 1987. In today's rule, producers are receiving chemical-specific production allowances based on what they had reported as production in 1986, excluding any production that was used and consumed as a feedstock for another chemical. Producers and importers of these chemicals are receiving chemical-specific consumption allowances based on their reported production, imports, and exports of these chemicals. The Agency is further adjusting individual consumption allowances within these two groups to take account of the unattributed exports. Chemical-specific, unattributed exports were apportioned to each consumption allowance holder based on the percentage share of the market that producer and/or importer held for that chemical.

Since allowances are no longer allotted on a group basis, they are promulgated here in units of unweighted kilograms, instead of by calculated level, as was used in the past. Although the ODP weights of the controlled substances are still relevant for allowance transfers, actual production and consumption limits now apply separately to each chemical and thus the concept of calculated level is no longer necessary for the purpose of allotting baseline allowances.

Although the baseline calculation method has remained unchanged from that proposed in the September 30, 1991 notice, actual numbers for Groups III, IV and V have changed slightly. These differences are due to the Agency's allowing companies to continue to submit baseline information through the comment period as well as refining the definitions of transformation and destruction. The changes result in baselines that more accurately reflect actual production and consumption in 1989.

G. Section 82.7—Granting and Phased Reduction of Allowances for Class I Controlled Substances

This section allocates percentages of baseline allowances for Group I, Group II, Group III, Group IV, and Group V controlled substances for all control periods until the year 2000 and beyond according to the schedule presented in section 604. Baseline production and consumption allowances are chemical-specific. This section is being promulgated as proposed.

H. Section 82.8—Grant and Phased Reduction of Allowances for Class II Controlled Substances

This section is reserved in this rulemaking.

I. Section 82.9—Availability of Additional Production Allowances

This section provides that persons with baseline production allowances for any controlled substance be granted potential production allowances equal to ten percent of their baseline allowances for that chemical for each year from 1992 through 1999, and 15 percent for each year from 2000 through 2010 (with adjustments for methyl chloroform). Potential production allowances may be converted to production allowances with proof of export to a developing country that is operating under Article 5 of the Protocol, as specified under § 82.11. This paragraph is being adopted unchanged from the proposal.

A company can also increase or decrease its production allowances by trading with another Party to the Protocol under the provisions of section 616. The Agency has adopted proposed regulations under § 82.9(b)(2) as final.

For trades to another Party, the submission must include the identity and address of the person seeking approval of the trade, the identity of the Party, the names and telephone numbers of contact persons for the person and for the Party, and the chemical and level of production being transferred. The trading company's production limit will be reduced according to the formula as proposed, except that if more than one company trades production to a Party in the same control period, the total offset amount will be recalculated and divided between the companies based on the ratio of the amount of their trades. Thus, the first company to trade will see an increase in its balance of allowances if a second company trades within the same control period.

For trades to the United States, similar information is required with the addition that the transferring Party must submit a document from that nation's embassy in the United States stating that it has revised its production limits according to the conditions stated in section 616.

EPA will review trades from and to other Montreal Protocol Parties on a one control period, one time trade basis, as well as permanent trades between Parties for the remaining control periods.

When a Party to the Protocol trades production for the remaining control periods to a company within the United States, the Agency will modify the U.S. company's production allowances to reflect the additional allowances received in trade. For the remaining control periods, the Agency will reduce that companies allowances by the required Clean Air Act schedules, adjusting the traded allowances by a ratio that accounts for the percentage reduction required by that control period relative to the percentage reduction required in the control period in which the trade was received. This is required to ensure that companies reduce their production according to the percentage reductions required under the Clean Air Act, and that total production is phased out by the turn of the century.

In addition, should a U.S. company trade all of its production for the remaining control periods to a Party of the Protocol, that company's zero production for the remaining years will not enter into any calculation of the past three year average if additional trades by other companies occur at a later date. EPA believes that other companies which may eventually trade should not be disadvantaged by the permanent trade of all trades of another company.

However, the Agency will include in the three year average calculation, any production of controlled substances by a company that had traded on a one time basis some production rights during that control period.

Finally, companies may receive additional production allowances for transforming Group I, II, III or V chemicals. To obtain additional production allowances for the transformation of these chemicals, a person must submit a request for production allowances that includes the identity and address of the person; the name and quantity of the controlled substance used and entirely consumed

in the manufacture of another chemical; a copy of the invoice or receipt documenting the sale from the producer of the chemical to the person; and the name, quantity, and verification of the commercial use of the resulting chemical. The Agency uses this information to confirm that the chemical was indeed transformed, and that production allowances were expended in the production of the chemical. If the transformed chemical was imported, the company cannot receive additional production allowances, since only domestic consumption allowances were expended in bringing the chemical into the country.

J. Section 82.10 Availability of Additional Consumption Allowances

Companies can receive additional consumption allowances for exports to Parties. Companies requesting additional consumption allowances must submit the following information: The identities and the addresses of the exporter and the recipient of the export; the Exporter's Identification Number (EIN) listed on the United States Census Export Declaration form; the names and telephone numbers of contact persons for the exporter and the recipient; the quantity and type of controlled substance; the source of the controlled substance and the date purchased; the date on which and the port from which the controlled substance was exported from the United States or its territories; the country to which the controlled substances were exported; the bill of lading and the invoice indicating the net quantity of controlled substance and date shipped and documenting the sale of the controlled substance to the purchaser; and the harmonized tariff number (or "commodity code") of the goods exported.

This information will be used by EPA to verify that the export actually occurred and to prepare end-of-year reports required by the Montreal Protocol. The Agency will review the information expeditiously and issue a notice granting additional consumption allowances to the exporter if all the submitted information indicates that the export actually occurred.

In this rule, the Agency has added a provision for producing companies that do not have baseline consumption allowances for Group IV that wish to produce for export. A limited number of consumption allowances will be granted to the producing company up front, equal to the level of their baseline production allowances for that year. At the end of the control period, the producer must have obtained at least that same quantity of consumption allowances and hold them unexpended in order to be in compliance.

Companies can also receive additional consumption allowances for the transformation of a controlled substance (other than carbon tetrachloride). Any application for additional production allowances for the transformation of a controlled substance will be treated as an application for additional consumption allowances. This section is being adopted as proposed.

K. Section 82.11 Exports to Article 5 Parties

Companies may obtain authorization to convert potential production allowances to production allowances by exporting controlled substances to developing countries that are operating under Article 5 of the Montreal Protocol.

The proof required by EPA in order to grant authorization to convert potential production allowances for exports to Article 5 countries is the same as that required for a request for additional consumption allowances for exports to Parties. However, the exporter must also adequately demonstrate that the export has not been and will not be re-exported in bulk form by submitting a copy of a contract specifying that the material cannot be re-exported and requiring payment of damages if it is re-exported.

This information will be used by EPA to verify that the export did indeed occur and to prepare end-of-year reports required by the Montreal Protocol. The Agency will review the information expeditiously and issue a notice granting authorization to convert potential production allowances to the exporter if all the submitted information indicates that the export did indeed occur and the material will not be re-exported. This section is also being adopted without alteration from the proposal.

L. Section 82.12 Exchanges

Companies must submit requests for inter-pollutant and inter-company allowance trades to EPA that include the identities and addresses of the transferor and the transferee; the names and telephone numbers of contact persons for the transferor and for the transferee; the type and amount of allowances being transferred; the amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades of potential production allowances, authorizations to convert, or trades from transformers to producers or importers for the purpose of allowance reimbursement); and the amount of unexpended allowances or authorizations for that chemical that the transferor holds as of the date the claim is submitted to EPA. The Agency uses this information to verify that sufficient allowances exist for the trade. The Agency will issue a "No Objection Notice" within three working days if EPA does not object to the trade. If EPA does deny the trade, the transferee will have ten working days to appeal the decision.

This section has been slightly altered from the proposal. Specifically, language has been added stating that the offset does not apply for trades of production and consumption allowances from transformers to producers for purposes of allowance reimbursement. Trades of potential production allowances and authorizations to convert are also not subject to the offset requirement. In addition, language has been added clarifying that in the case of an inter-pollutant/inter-company trade, the offset only applies once.

M. Section 82.13 Recordkeeping and Reporting

1. Producers

a. *Daily recordkeeping.* Producers are required to maintain dated records of the quantity of the class I controlled substances produced at each facility, including the dated records of the quantity of any carbon tetrachloride produced for feedstock use, the quantity of controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances, and the quantity of any virgin, used or recycled controlled substances introduced into the production process of new controlled substances. They are also required to keep records of the feedstock materials consumed in producing the regulated chemicals at each facility and records documenting the sale of carbon tetrachloride for feedstock use (invoices, bills of lading, etc.). EPA requires records of feedstocks consumed so that the Agency can approximate the quantity of controlled substances produced by monitoring the materials consumed. Records of shipments of controlled substances from each facility must be maintained as well. EPA believes that this requirement will aid the Agency in verifying production. Finally, EPA requires that all spills or releases of 100 pounds or more be recorded, including the date of occurrence and the estimated quantity of the controlled substance released.

These amounts should be included in production totals for reporting purposes.

EPA believes that current methods of recordkeeping will generally be sufficient to satisfy the recordkeeping requirements. EPA is aware that some producers may not make daily production estimates over weekends, and that production may not be measured directly, but may be determined from records of consumption, shipments, and inventories. For the purpose of verifying that these accounting procedures are acceptable, EPA is requiring that producers who have not previously done so submit within 120 days of publication of this final rule a report detailing how production is measured on a regular basis and how its methods are to be used to determine quarterly production figures in kilograms.

b. *Production reports.* EPA also requires that producers report on a quarterly basis, within 45 days after the end of the quarter. The Clean Air Act specifies that controls be on a calendar-year basis and thus EPA cannot allow compliance to be determined based on a company's fiscal period to the extent that it is different from the specified control period. However, if the first and last quarterly reports are adjusted to coincide with the beginning and end of the control period, the interim quarterly reports may be based on a fiscal quarter, provided EPA determines that a company's fiscal quarters follow the calendar quarters closely enough so as not to complicate its review of records.

Since one purpose of these reports is to provide EPA with information to verify production, EPA requires that producers submit the following information: summaries of quarterly production of the controlled substances (for carbon tetrachloride separating out production and manufacture-for-feedstock), specifying the quantity used and consumed as feedstock for controlled and non-controlled substances; summaries of total quarterly and control period to date production levels each class I controlled substance; and the producer's total expended and unexpended consumption allowances, expended and unexpended production allowances, potential production allowances, and authorization to convert potential production allowances to production allowances, as of the end of the quarter. In addition, firms must report the total shipments of each controlled substance from that plant in the quarter. For companies that produce carbon tetrachloride for feedstock use, the proposal has been altered to add a required reporting of amounts sold to each transforming company during the quarter, and the provision of IRS certificates showing that the purchaser intends to transform the material.

2. Importers

a. *Daily recordkeeping.* EPA is requiring the same import records as were contained in its previous regulations (56 FR 9518) and in the proposal, with the addition of requirements for importers of carbon tetrachloride to be used as feedstock. The rule requires that importers maintain daily records of the following: The quantity of virgin, used, and recycled controlled substances brought into the United States; the date and port of entry into the United States or its territories; the country from which the imported controlled substances were exported; and the port of exit. In addition, importers must record the commodity code and the importer number for each shipment and keep the following documentation to verify imports: The bill of lading and the invoice and United States Customs Entry Summary Form. This information will allow EPA to verify shipments against United States Census reports during compliance checks and investigations of potential violations. Retention of the bill of lading and the invoice is necessary to provide EPA with an independent check on quantities imported, separate from Census and Customs data.

Companies importing carbon tetrachloride for feedstock use must keep records documenting the sale of the material to transforming companies.

b. *Import reports.* EPA requires that importers, like producers, file quarterly reports within 45 days of the end of the quarter. Importers may receive shipments at several ports throughout the country and thus may need 45 days to collect and summarize information and report accurate quantities. Also since several importers are also producers, it is helpful for the reporting period for importers to be consistent with the 45-day reporting period for producers. Again, EPA cannot allow compliance to be determined based on a company's fiscal period to the extent that it is different from the specified control period. However, if the first and last quarterly reports are adjusted to coincide with the beginning and end of the control period, the interim quarterly reports may be based on a fiscal quarter, provided EPA determines that a company's fiscal quarters follow the calendar quarters closely enough so as not to complicate record review.

These reports must include the following: The quantity of controlled substances that are imported in that quarter, the level of each controlled substance imported for the quarter and the total for the control period, and the total quantity of expended and unexpended consumption allowances the importer holds at the end of the quarter. The importer must also provide a summary of the import activities that shall include the quantity of each import as recorded on the Entry Summary Form to the United States Customs Service, the date and port of entry into the United States or its territories, the country from which the imported controlled substances were imported, the port of exit, and the name and address from whom additional information can be obtained. In addition, the commodity code and the importer number must be provided to assist with comparison and verification of importer records with United States Census and Customs records. Finally, the Agency requires that importers, when reporting controlled substances contained in mixtures, state what percentage of the mixture consists of controlled substances. These requirements have been adopted as proposed.

The Agency, in implementing the previous rules, determined that exporters must report the residual amounts (heels) of controlled substances that remain in isotanks or canisters or other shipping containers that are returned to the United States as imports. Companies are entitled to receive, and do so when they request them, additional allowances for the full weight of their export. Therefore, as a matter of consistency the Agency must require companies to report the controlled substances that return in the form of heels as imports. These companies must have and expend consumption allowances in the import process. Thus, exporters who intend to return heels must possess allowances before the heels are returned and report heel imports quarterly.

Reporting requirements have been added for companies that import carbon tetrachloride for feedstock use. These companies must report the amount of carbon tetrachloride imported for feedstock use and the amounts sold during that quarter to transforming companies. IRS certificates for those companies must accompany the quarterly report.

3. Exporters

EPA is requiring the same reporting and recordkeeping requirements for exporters as were contained in its previous regulations (56 FR 9518) and

the proposal. Exports for which additional consumption allowances were not requested or for which the request was denied must be reported within 45 days after the end of the year. EPA requires this information to comply with the Montreal Protocol only and, therefore, does not believe that more frequent reporting is necessary. Since consumption allowances are not being granted for these exports, periodic monitoring and independent verification is not needed. Consequently, these exporters need only report at the end of the control period.

For these exports EPA requires that the following be submitted: Name and address of the exporter and recipient of the exports, the exporter's Employer Identification Number (EIN), the type and quantity of controlled substances exported and the percentage that is recycled or used, and the date and port from which the exports were shipped. The commodity code is also required because it allows EPA to verify these shipments. A final reporting requirement includes the date and source from whom the exported controlled substances were purchased.

4. Transformers

Companies that use any of the class I controlled substances in Groups I, II, III or V as feedstock and request additional allowances under §§ 82.9 and 82.10 of EPA's regulations and companies that transform carbon tetrachloride must maintain the following records on site: Dated records of the quantity of controlled substance used and entirely consumed in the manufacture of another chemical; copies of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person; dated records of the names, commercial use, and quantities of the resulting chemicals; and dated records of shipments to the purchasers of the resulting chemicals. These requirements are being adopted as proposed.

Recordkeeping requirements have been added for carbon tetrachloride transformers, including dated records of all shipments received and records of amounts of carbon tetrachloride in inventory at the beginning of each quarter.

Companies that transform carbon tetrachloride must report their activities quarterly, within 45 days after the end of the quarter. Such companies must provide the amount of carbon tetrachloride purchased from each producer and transformed during that quarter. The report should include the name and address of the producing and transforming company and the name and telephone number of the contact person at each company. Also provided should be the address of the facility at which the transformation took place, the name of the chemical produced as a result of the transformation, and the verification of its commercial use. This requirement is being altered slightly from the proposal to match the requirements under § 82.9 for requests for additional allowances for the use of controlled substances as feedstock.

5. Class II Controlled Substances

For class II controlled substances, companies who produced, imported, or exported a class II substance must file an annual report within 45 days after the end of the calendar year, stating the amount of each substance that such person produced, imported, and exported during that year. Each such report shall be signed and attested by a responsible officer of the company. This requirement is being adopted as proposed.

VI. Impact of Action

The Agency has prepared a Regulatory Impact Analysis that evaluates the costs and benefits of phasing out class I chemicals.

The costs and benefits of the phaseout were estimated by comparing the percentage of ozone depletion that would occur in the future if the phaseout were implemented to various scenarios, including a projected baseline that would occur in the absence of any regulation, the ozone depletion that would occur with the original 1987 Montreal Protocol limits, and the ozone depletion that would occur under the limits outlined in the London Amendments to the Montreal Protocol and in the amended Clean Air Act.

The RIA used two projections to estimate ozone depletion. The primary method is a parameterization based on a one dimensional model, which has been used in previous EPA analyses of the stratosphere, and is taken from Connell (1986). This model translates emissions of the class I and II chemicals into chlorine loadings, and transforms these loadings into estimates of depletion relative to ozone concentrations in 1970. This first projection does not take into account any depletion that may have occurred prior to 1988.

To account for the observed depletion prior to 1988, the Agency developed a second projection using an adjusted version of the one dimensional parameterized model. In this model, an adjustment factor was applied so that historical emission data, when entered into the model, predicted the observed estimated level of ozone depletion prior to 1988. For this adjustment, the Agency assumed that the average ozone trend over the latitudes 30° N–64° N was representative of the global change in column ozone, and that the trend is due to decreases in stratospheric chlorine. The model was further adjusted to account for the seasonal level of UV–B expected when ozone depletion occurs. The RIA provides results based on both model projections.

The major health benefits of these regulations are attributable to avoided effects of exposure to ultraviolet radiation. The major environmental effects are based on studies that found decreased crop and fish harvests associated with increased ultraviolet radiation. Decreased stratospheric ozone is also expected to lead to increased tropospheric ozone, which can also reduce crop yields, and lead to rapid deterioration of polymers. There are uncertainties related to the links between increased use of the substances and ozone depletion, as well as between decreases in stratospheric ozone and increases in UV–B radiation and their effects on human health and the environment.

A phaseout significantly reduces the rate of depletion of stratospheric ozone. Indeed, the atmospheric models indicate that ozone concentrations will return to historic levels in the middle of the next century under certain scenarios. However, it should be noted that these models have been shown to underpredict the level of ozone depletion in the past, and the two projections do not account for the most recent observation that ozone concentrations have decreased by three to five percent over the last decade in the northern mid-latitudes.

The health effects due to ozone depletion are generated from estimated dose-response relationships. These dose-response relationships have large uncertainties related to the type of population affected, and variability in the studies providing the data. A second human health benefit of ozone depleting compound regulation is reduced incidence of cataracts. The estimated increase in cataracts is roughly 0.5 percent for each percent increase in UV–B.

The quantifiable environmental benefits in the United States due to CFC, halon, methyl chloroform, and carbon tetrachloride regulation, although small when compared to the value of the avoided cancer benefits, are also substantial. Increases in ultra-violet radiation have been shown to affect crop yield and crop quality adversely. Again, the Agency emphasizes that

these benefit estimates are based on limited data containing many assumptions. However, they do provide an order of magnitude estimate of the likely benefits to preserving the ozone layer.

Social costs of reducing CFC, halon, and methyl chloroform use through regulation were estimated by examining the costs of alternative technologies and materials for producing CFC, halon, and methyl chloroform based products. Social costs are the additional amount of resources required to produce an equivalent amount of goods and services for consumers. Regulation also transfers income from consumers of class I based products to other sectors of society. The economic model calculated the costs that society would incur to meet the production targets of the Clean Air Act, based on available or future control technologies. The economic model generally selected those control options that were either already being used by industry, or were the least costly options available, thus minimizing the cost to society. Once selected, the model totalled the social costs and transfer payments needed each year to meet the reduction targets of the Clean Air Act.

The costs of these regulations are expected to depend on the speed at which specific user industries and the economy as a whole adopts techniques to reduce the use of ozone depleting compounds, and on the potential for these technologies to achieve the reductions required. Transfer payments generated by ozone depleting substance regulation are significant, particularly in the initial years of regulation. Cost estimates are also subject to considerable uncertainty because they are sensitive to technical innovation, and future energy and chemical costs.

To estimate costs and benefits distributed over time, the Agency applied several discount rates to various phaseout scenarios. The Agency applied discount rates of two, four, and ten percent to gauge their impact on social costs and benefits. The two and four percent discount rates represent possible estimates of the "consumption rate of interest," where two percent has been used and accepted by the Agency in previous analyses on the impact of regulations restricting the production and consumption of ozone-depleting substances. The ten percent discount rate represents the "real pre-tax rate of return on private investments" and is required by the Office of Management and Budget's 1972 circular A–94. The RIA discusses further the choice of the various discount rates and the circumstances under which each could most appropriately be used. The Agency believes that the two and ten percent discount rates may currently represent the outerbound estimates of the appropriate rate.

The following table summarizes the net incremental benefits in billions of 1985 dollars (between the London Amendments and the Clean Air Act Phaseout Scenarios) of the regulation at the three different discount rates using the two different modelling projections. The London Amendments provide the following net incremental benefits over the 1997 Montreal Protocol: For the unadjusted model—$226 billion to $887.6 billion at a two percent discount rate, $35.8 billion to $145.3 billion at a four percent discount rate, and $–0.6 to $2.2 billion at ten percent; for the adjusted model—$352.7 billion to $1,362 billion at two percent, $57.3 billion to $223.4 billion at four percent, and $0.1 billion to $4.2 billion at ten percent.

Model	Discount rate (%)	Net incremental benefits
Unadjusted	2	1.0–6.5
	4	(0.2)–1.3
	10	(0.3)–(0.2)
Adjusted (assuming a weighted average ozone depletion of approximately one percent).	2	1.6–8.5
	4	0.0–2.1
	10	(0.3)–(0.1)

The Agency is also developing a third projection of ozone depletion that includes the most recent ozone depletion calculations determined by NASA, using an initial depletion amount of 3.38 percent in 1989. The value of benefits to people born before 2075 exceed the control costs through 2075 using discount rates of two, four, and ten percent when the most current ozone depletion measurements are accounted for. Using the two percent discount rate, the net incremental benefits using the re-adjusted model are expected to range between 13.0 and 50.2 billions of 1985 dollars, with the results at the four percent rate ranging between 3.6 and 4.1 billion and the calculation at ten percent showing net incremental benefits from 0.1 to 1.2 billions of 1985 dollars.

VII. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires preparation of a Regulatory Impact Analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based industry to compete with foreign based enterprises in domestic or export markets.

EPA has determined that these regulations meet the criteria of a major rule. The Agency estimates that annual industry costs will exceed $100 million. A regulatory impact analysis has been prepared to analyze these costs and has been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that federal agencies examine the impacts of regulations on small entities. Under 5 U.S.C. 601(a), whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA).

The Agency originally published an RFA to accompany the August 12, 1988 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. The RFA concluded that of the industries affected by regulation of CFCs and halons only some segments of the foam blowing industry were potentially at risk. In contrast to almost all the other users of these chemicals, CFCs are a large percentage of the final costs for the foam industry.

Different sectors of the foam industry are likely to be affected differently. Indeed, the August 12 rule discussed how several foam sectors were already moving away from CFCs. Foam food packagers have shifted out of CFCs to HCFC–22 or other alternatives. Similarly, the industry sector that makes flexible molded foam has moved out of CFCs with minimal disruption, while the extruded polystyrene board-stock industry intends to eliminate the use of CFC–12 in the near future.

In updating this analysis to examine the other foam sectors, as well as those sectors using carbon tetrachloride and methyl chloroform, the Agency did re-examine the effect of increased price on several foam segments—polyurethane-sprayed and molded foam and foam insulation and board-stock. The insulating foam industry is investigating the use of HCFC–141b or a blend of HCFC–141b and HCFC–123. To the extent that these substitutes are determined to be technically and economically viable, the longer term

impact on these firms will be minimized. The industry is actively pursuing these options and is currently waiting for the results of toxicity studies required for its use of these chemicals.

Based on the analysis contained in the RFA, EPA does not believe that any foam industry segment will be substantially harmed over the long term, and that recent development of alternative blowing agents for use in these sectors indicate the competitiveness of this industry. Sectors using carbon tetrachloride and methyl chloroform are unaffected. In the applications where they are most commonly used, the value of the end product is not significantly related to the price of the chemicals, since they are used only in small volumes. Thus the final costs of industry will not be significantly affected by these regulations.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulation promulgated in this document will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

As required by § 35.04 of the Paperwork Reduction Act, 44 U.D.C. 3501 *et seq.*, EPA submitted an information collection request to the Office of Management and Budget for review. The recordkeeping and reporting requirements contained in this rulemaking were approved by the Office of Management and Budget under control number 2060–0170.

Industry reporting burden for this collection is estimated in the following table. It includes the time needed to comply with EPA's reporting and compliance monitoring requirements as well as that used for the completion of voluntary reports and requests under this rule.

Respondent activities	Respondent burden per occurrence							
	Frequency	Producer hours	Frequency	Importer hours	Frequency	Exporter hours	Frequency	Transformer hours
Conduct transfer transactions	1	8	1	8	4	8	0	0
Obtain additional allowances through exports	0	0	0	0	4	21	0	0
Convert potential allowances through exports	0	0	0	0	1	42	0	0
Convert potential allowances by receiving allowances from Party countries	1	82	0	0	0	0	0	0
Receive additional allowances for transforming	0	0	0	0	0	0	12	42
Comply with reporting and compliance monitoring requirements	4	88	4	60	4	60	4	32

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223y, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution, Chemicals, Chlorofluorocarbons, Clean Air Act Amendments of 1990, Exports, Imports, Recordkeeping and reporting requirements, Stratospheric ozone layer.

Dated: July 17, 1992.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Sections 82.14 and 82.20 are removed. Sections 82.1 through 82.13 are designated as subpart A and revised. Appendices A through C and E to part 82 are redesignated as appendices A through C and E to subpart A and revised, and appendix D to part 82 which is currently reserved is redesignated as appendix D to subpart A and reserved. The revised text is set forth below.

Subpart A—Production and Consumption Controls

Sec.

82.1 Purpose and scope.
82.2 Effective date.
82.3 Definitions.
82.4 Prohibitions.
82.5 Apportionment of baseline production allowances.
82.6 Apportionment of baseline consumption allowances.
82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.
82.8 Grant and freeze of baseline production and consumption allowances for class II controlled substances. [Reserved]
82.9 Availability of production allowances in addition to baseline production allowances.
82.10 Availability of consumption allowances in addition to baseline consumption allowances.
82.11 Exports to Article 5 Parties.
82.12 Transfers.
82.13 Record-keeping and reporting requirements.

Sec.

Appendix A to subpart A—Class I Controlled Substances

Appendix B to subpart A—Class II Controlled Substances

Appendix C to subpart A—Parties to the Montreal Protocol

Appendix D to subpart A—Nations Complying with, but not Party to, the Protocol [Reserved]

Appendix E to subpart A—Article 5 Parties

Subpart A—Production and Consumption Controls

§ 82.1 Purpose and scope.

(a) The purpose of these regulations is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 603, 604, 605, 607 and 616 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports) of certain ozone depleting chemicals, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone depleting substances with non-Parties.

(b) This rule applies to any individual, corporate, or governmental entity that

produces, transforms, imports, or exports controlled substances.

§ 82.2 Effective date.

(a) The regulations under this subpart take effect January 1, 1992.

(b) The regulations under this part that were effective prior to January 1, 1992 are saved for purposes of enforcing the provisions that were applicable prior to January 1, 1992.

§ 82.3 Definitions.

As used in this subpart, the term:

(a) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(b) *Baseline consumption allowances* means the consumption allowances apportioned under § 82.6 of this subpart.

(c) *Baseline production allowances* means the production allowances apportioned under § 82.5 of this subpart.

(d) *Calculated level* means the weighted amount of a controlled substance determined by multiplying the amount (in kilograms) of the controlled substance by that substance's ozone depletion weight listed in appendix A or appendix B to this subpart.

(e) *Class I* refers to the controlled substances listed in appendix A to this subpart.

(f) *Class II* refers to the controlled substances listed in appendix B to this subpart.

(g) *Consumption allowances* means the privileges granted by this subpart to produce and import class I controlled substances; however, consumption allowances may be used to produce class I controlled substances only in conjunction with production allowances. A person's consumption allowances are the total of the allowances he obtains under § 82.7 of this subpart (baseline allowances for class I controlled substances) and § 82.10 of this subpart (additional consumption allowances), as may be modified under § 82.12 of this subpart (transfer of allowances).

(h) *Control period* means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

(i) *Controlled substance* means any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance. Controlled substances are divided into two classes, class I and class II. Class I substances are further divided into five groups, Group I, Group II, Group III, Group IV and Group V, as set forth in appendix A to this subpart.

(j) *CUBP* means a coincidental unavoidable byproduct of a manufacturing process that is immediately contained and destroyed by the producer using MACT. A substance is CUBP if—

(1) The quantity of the substance generated by the manufacturing process cannot be varied independently of the intended product, varies proportionately with the production of the intended product, and ceases when the intended product's production is stopped; and

(2) It is not manufactured for commercial purposes, including for sale or use in place of substances that otherwise would be purchased.

(k) *Export* means the transport of virgin, used, or recycled controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(l) *Exporter* means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

(m) *Facility* means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

(n) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

(1) Off-loading used or excess controlled substances from a ship during servicing and

(2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin.

(o) *Importer* means the importer of record listed on U.S. Customs Service forms for imported controlled substances.

(p) *MACT* means, with respect to the destruction of CUBP, maximum available control technology having a destruction efficiency of no less than 99.99%.

(q) *Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

(r) *Nations complying with, but not joining, the Protocol* means any nation listed in appendix D to this subpart.

(s) *Party* means any nation that is a Party to the Montreal Protocol and listed in appendix C to this subpart.

(t) *Person* means any individual or legal entity, including an individual, corporation, partnership, association, State, municipality, political subdivision of a State, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

(u) *Plant* means one or more facilities at the same location owned by or under common control of the same person.

(v) *Potential production allowances* means the production allowances obtained under § 82.9(a) of this subpart.

(w) *Production* means the manufacture of a substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals or

(2) The reuse or recycling of a substance.

Production includes spilled or vented controlled substances equal to or in excess of one hundred pounds per event.

(x) *Production allowances* means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances he obtains under § 82.7 of this subpart (baseline allowances for class I controlled substances) and § 82.9(a), (b), and (c) of this subpart (additional production allowances) as may be modified under § 82.12 of this subpart (transfer of allowances).

(y) *Transform* means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

(z) *Unexpended consumption allowances* means consumption allowances that have not been used. At any time in any control period a person's unexpended consumption allowances are the total of the level of consumption allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported in that control period until that time.

(aa) *Unexpended production allowances* means production allowances that have not been used. At any time in any control period a person's unexpended production allowances are the total of the level of production allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

§ 82.4 Prohibitions.

(a) No person may produce, at any time in any control period, any class I controlled substance (except for

(1) Group IV controlled substances that are transformed by the end of the first quarter of the following control period, as determined in accordance with paragraph (f) of this section, or

(2) Group IV and V controlled substances for which the person has obtained an exemption in accordance with paragraph (e) of this section) in excess of the amount of unexpended production allowances for that substance held by that person under the authority of this subpart at that time for that control period. In no event may any person produce in the period from July 1, 1991 through December 31, 1992 a total calculated level of Group I controlled substances in excess of 150 percent of that person's baseline production allowances for Group I substances plus any additional production allowances for Group I controlled substances that the person obtained under §§ 82.9 and 82.12 of this subpart during this same period. Every kilogram of excess production constitutes a separate violation of this regulation.

(b) No person may produce or import, at any time in any control period, any class I controlled substance (except for

(1) Group IV controlled substances that are transformed by the end of the first quarter of the following control period as determined in accordance with paragraph (f) of this section, or

(2) Group IV and Group V controlled substances for which the person has obtained an exemption in accordance with paragraph (e) of this section) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. In no event may any person produce or import in the period from July 1, 1991 through December 31, 1992 a calculated level of Group I controlled substances in excess of 150 percent of that person's baseline consumption allowances plus any consumption allowances for Group I controlled substances that the person obtained under §§ 82.10 and 82.12 of this subpart during this same period. Every kilogram of excess production or importation constitutes a separate violation of this regulation.

(c) A person may not use production allowances to produce a quantity of class I controlled substances (with the exceptions set forth in paragraph (a) of this section) unless he or she holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances (with the same exceptions noted above) unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, only consumption allowances are required to import class I controlled substances (except for Group IV controlled substances that are transformed by the end of the first quarter of the control period following that in which the substance was imported).

(d) No person may import any quantity of Group I or Group II controlled substances from any nation not listed in Appendix C to this subpart (Parties to the Montreal Protocol) unless that nation is listed in appendix D to this subpart (Nations Complying with, But Not Party to, the Protocol). Every kilogram of controlled substances imported in contravention of this regulation constitutes a separate violation of this regulation.

(e) Any person may obtain, in accordance with the provisions of this paragraph, an exemption from the prohibitions set forth in paragraphs (a) and (b) of this section for CUBP Group IV and Group V controlled substances.

(1) A person must submit within 45 days after the beginning of each control period (or by September 14, 1992, for the 1992 control period) during which the person will produce CUBP Group IV and Group V a petition that includes the following:

(i) The identity and address of the person;

(ii) The name and telephone number of a contact person;

(iii) A description of the process of which the class I controlled substance is a by-product and the name of the CUBP produced;

(iv) The name of the primary chemical produced in the process;

(v) A description of the destruction technology to be used, including documentation showing that it has a destruction efficiency of at least 99.99 percent;

(vi) An estimate of the annual amount of production and subsequent destruction of the CUBP controlled substance;

(vii) A description of the handling of the material and a showing that all procedures are consistent with regulations under RCRA or other applicable rules; and

(viii) A statement of whether the process and destruction methods were being used in the baseline year and whether the amounts manufactured were included as "production" in reports submitted for use in the calculation of baseline allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (e)(1) of this section and will issue the person a notice granting the exemption for that amount or portion of Group IV or Group V substance that the Administrator determines is CUBP, provided the request satisfactorily demonstrates that the person's destruction technology is MACT and that the CUBP is handled in a manner consistent with other applicable law and regulations.

(3) If the Administrator determines that the request does not establish that the substances are CUBP or that the destruction technology is MACT and the CUBP is not handled in a manner consistent with other applicable law and regulations, the Administrator will issue a note disallowing the request for the exemption.

(4) The Administrator will adjust the person's baseline allowances if necessary based on the information submitted under paragraph (e)(1) of this section.

(f) Upon receipt of each person's first quarterly report as required under § 82.13 of this subpart, the Administrator will calculate the following quantities for each person that produced Group IV controlled substances for feedstock in the previous control period:

(1) The amount of the person's production transformed in the previous control period;

(2) The amount of the person's production transformed in the first

quarter of the previous control period attributable to the person's production in the control period previous to that;

(3) The amount of the person's production transformed in the first quarter of the current control period; and

(4) The amount that the person produced for transformation in the previous year.

If the Administrator finds that the quantity calculated in paragraph (f)(4) of this section is greater than the sum of the quantities calculated in paragraphs (f)(1) and (f)(3) of this section minus the quantity calculated in paragraph (f)(2) of this section, each kilogram by which the quantity calculated in paragraph (f)(4) of this section is greater, constitutes a separate violation.

§ 82.5 Apportionment of baseline production allowances.

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV, or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced class II controlled substances are apportioned baseline production allowances as set forth in paragraph (f) of this section.

(a) For Group I controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-11	Allied-Signal, Inc.	23,082,358
	E.I. DuPont de Nemours & Co.	33,830,000
	Elf Atochem, N.A	21,821,500
	Laroche Chemicals	12,856,364
CFC-12	Allied-Signal, Inc.	35,899,776
	E.I. DuPont de Nemours & Co.	64,849,000
	Elf Atochem, N.A	31,089,807
	Laroche Chemicals	15,330,909
CFC-113	Allied-Signal, Inc.	21,788,896
	E.I. DuPont de Nemours & Co.	58,553,000
CFC-114	Allied-Signal, Inc.	1,488,569
	E.I. DuPont de Nemours & Co.	4,194,000
CFC-115	E.I. DuPont de Nemours & Co.	4,176,000

(b) For Group II controlled substances:

Controlled substance	Person	Allowances (kg)
Halon-1211	Great Lakes Chemical Corp.	826,487
	ICI Americas, Inc.	2,135,484
Halon-1301	E.I. DuPont de Nemours & Co.	3,220,000
	Great Lakes Chemical Corp.	1,766,850
Halon-2402		

(c) For Group III controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-13	Allied-Signal, Inc.	127,125
	E.I. DuPont de Nemours & Co.	167,831
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp.	56,381
	Laroche Chemicals	29,025
CFC-111		
CFC-112		
CFC-211	E.I. Dupont de Nemours & Co.	11
CFC-212	E.I. Dupont de Nemours & Co.	11
CFC-213	E.I. Dupont de Nemours & Co.	11
CFC-214	E.I. DuPont de Nemours & Co.	11
CFC-215	E.I. DuPont de Nemours & Co.	511
	Halocarbon Products Corp.	1,270
CFC-216	E.I. DuPont de Nemours & Co.	170,574
CFC-217	E.I. Dupont de Nemours & Co.	511

(d) For Group IV controlled substances:

Controlled substance	Person	Allowances (kg)
CCl_4	Akzo Chemicals, Inc.	7,873,615
	Degussa Corporation	26,546
	Dow Chemical Company, USA.	16,987,747
	E.I. DuPont de Nemours & Co.	9,099
	Hanlin Chemicals-WV, Inc.	219,616
	ICI Americas, Inc.	853,714
	Occidental Chemical Corp.	1,059,358
	Vulcan Chemicals	21,931,987

(e) For Group V controlled substances:

Controlled substance	Person	Allowances (kg)
Methyl Chloroform.	Dow Chemical Company, USA.	168,030,117
	E.I. DuPont de Nemours & Co.	2
	PPG Industries, Inc.	57,450,719
	Vulcan Chemicals	89,689,064

(f) For class II controlled substances: (Reserved)

§ 82.6 Apportionment of baseline consumption allowances.

Persons who produced, imported, or produced and imported controlled substances in Group I or Group II in 1986 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced, imported, or produced and imported controlled substances in Group III, Group IV, or Group V in 1989 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (c), (d) and (e) of this section. Persons who produced, imported, or produced and imported class II chemicals are apportioned chemical-specific baseline consumption allowances set forth in paragraph (f) of this section.

(a) For Group I controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-11	Allied-Signal, Inc.	22,663,633
	E.I. DuPont de Nemours & Co.	32,054,283
	Elf Atochem, N.A	21,740,194
	Hoechst Celanese Corporation.	185,396
	ICI Americas, Inc.	1,673,436
	Kali-Chemie Corporation.	82,500
	Laroche Chemicals	12,695,726
	National Refrigerants, Inc.	693,707
	Refricentro, Inc.	160,687
	Sumitomo Corporation of America.	5,800
CFC-12	Allied-Signal, Inc.	35,236,397
	E.I. Dupont de Nemours & Co.	61,098,726
	Elf Atochem, N.A	32,403,869
	Hoechst Celanese Corporation.	138,865
	ICI Americas, Inc.	1,264,960
	Kali-Chemie Corporation.	355,440
	Laroche Chemicals	15,281,553
	National Refrigerants, Inc.	2,375,384
	Refricentro, Inc.	242,526
CFC-1113	Allied-Signal, Inc.	18,241,926
	E.I. Dupont de Nemours & Co.	49,602,856
	Elf Atochem, N.A	244,908
	Holchem	265,199
	ICI Americas, Inc.	2,399,700
	Refricentro, Inc.	97,386
	Sumitomo Corporation of America.	280,163
CFC-114	Allied-Signal, Inc.	1,429,582
	E.I. Dupont de Nemours & Co.	3,686,109
	Elf Atochem, N.A	22,880
	ICI Americas, Inc.	32,930
CFC-115	E.I. DuPont de Nemours & Co.	2,764,109
	Elf Atochem, N.A	633,007
	Hoechst Celanese Corporation.	8,893
	ICI Americas, Inc.	2,366,351
	Laroche Chemicals	135,520
	Refricentro, Inc.	27,337

(b) For Group II controlled substances:

Controlled substance	Person	Allowances (kg)
Halon-1211	Elf Atochem, N.A	411,292
	Great Lakes Chemical Corp.	772,775
	ICI Americas, Inc	2,116,641
	Kali-Chemie Corporation.	330,000
Halon-1301	E.I. DuPont de Nemours & Co.	2,772,917
	Elf Atochem, N.A	69,255
	Great Lakes Chemical Corp..	1,744,132
	Kali-Chemie Corporation.	54,380
Halon-2402	Ausimont	34,400
	Great Lakes Chemical Corp.	15,900

(c) For Group III controlled substances:

Controlled substance	Person	Allowances (kg)
CFC-13	Allied-Signal, Inc	127,124
	E.I. DuPont de Nemours & Co.	158,508
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp.	56,239
	ICI Americas, Inc	5,855
	Laroche Chemicals	29,025
	National Refrigerants, Inc.	16,665
CFC-111		
CFC-112	Sumitomo Corporation of America.	5,912
	TG (USA) Corporation.	9,253
CFC-211	E.I. DuPont de Nemours & Co.	11
CFC-212	E.I. DuPont de Nemours & Co.	11
CFC-213	E.I. DuPont de Nemours & Co.	11
CFC-214	E.I. DuPont de Nemours & Co.	11
CFC-215	E.I. DuPont de Nemours & Co.	511
	Halocarbon Products Corp.	1,270
CFC-216	E.I. DuPont de Nemours & Co.	170,574
CFC-217	E.I. Dupont de Nemours & Co.	511

(d) For Group IV controlled substances:

Controlled substance	Person	Allowances (kg)
CCl_4	Crescent Chemical Co.	56
	Degussa Corporation.	12,466
	Dow Chemical Company, USA.	8,170,561
	E.I. DuPont de Nemours & Co.	26,537
	Elf Atochem, N.A	41
	Hanlin Chemicals-WV, Inc.	103,133
	Hoechst Celanese Corporation.	3
	ICC Chemical Corp	1,173,723
	ICI Americas, Inc	855,466
	Occidental Chemical Corp.	497,478
	Sumitomo Corporation of America.	9

(e) For Group V controlled substances:

Controlled substance	Person	Allowances (kg)
Methyl Chloroform.	3V Chemical Corp	3,528
	Actex, Inc	50,171
	Atochem North America.	74,355
	Dow Chemical Company, USA.	125,200,200
	E.I. DuPont de Nemours & Co.	2
	IBM	2,026
	ICI Americas, Inc	14,179,850
	Ladlaw	420,207
	PPG Industries	45,254,115
	Sumitomo	1,954
	TG (USA) Corporation.	7,073
	Unitor Ships Service, Inc.	14,746
	Vulcan Chemicals	70,765,072

(f) For class II controlled substances: (Reserved)

§ 82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6 of this subpart.

Date	Group IV (%)	Group V (%)	Other class I substances %
1992	90	100	80
1993	80	90	75
1994	70	85	65
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000	0	20	0
2001	0	20	0
2002 and each year thereafter	0	0	0

§ 82.8 Grant and freeze of baseline production and consumption allowances for class II controlled substances. [Reserved]

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5(a) of this subpart is also granted potential production allowances equal to:

(1) 10 percent of his apportionment under § 82.5 of this subpart for each control period ending before January 1, 2000; and

(2) 15 percent of his apportionment under § 82.5 of this subpart for each control period beginning after December 31, 1999 and ending before January 1, 2011 (January 1, 2013 in the case of methyl chloroform).

A person may convert potential production allowances, either granted under this paragraph or obtained under § 82.12 (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 of this subpart (Exports to Article 5 Parties). A person may obtain authorizations to convert potential production allowances to production allowances by requesting issuance of a notice under § 82.11 of this subpart or by completing a transfer of authorizations under § 82.12 of this subpart.

(b) A company may also increase or decrease its production allowances by trading with another Party to the Protocol. A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person some amount of production that the nation is permitted under the Montreal Protocol or to receive from the person some amount of production that the person is permitted under this subpart.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of production being transferred; and

(v) The control period(s) to which the transfer applies.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of allowable production to be transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (b)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production allowances held by United States entities.

(4) The Administrator will issue the person a notice either granting or deducting production allowances and specifying the control periods to which the transfer applies, provided that the request meets the requirement of paragraph (b)(1) of this section for trades from Parties and paragraphs (b)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (b)(3) of this section for trades to Parties. For a trade from a Party, the Administrator will issue a notice that revises the production allowances held by the person to equal the unexpended production allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production allowable for that substance under this subpart minus the amount transferred.

The change in production allowances will be effective on the date that the notice is issued.

(5) If after one person obtains approval for a trade of allowable production of a controlled substance to a Party, one or more other persons obtain approval for trades involving the same controlled substance and the same control period, the Administrator will issue notices revising the production limits for each of the other persons trading that controlled substance in that control period to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus (the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production for that substance under this subpart) multiplied by the amount transferred divided by (the total amount transferred by all the other persons trading the same controlled substance in the same control period) minus the amount transferred by that person.

The Administrator will also issue a notice revising the production limit for each person who previously obtained approval of a trade of that substance in that control period to equal the unexpended production allowances held by the person under this subpart plus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production under this subpart multiplied by the amount transferred by that person divided by (the amount transferred by all of the persons that have traded that controlled substance in that control period). The change in production allowances will be effective on the date that the notice is issued.

(c) A person who does not produce a controlled substance in Group I, II, III or V may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that the person transforms in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(b) of this subpart.

(1) A person must submit a request for production allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity, and level of class I controlled substance transformed;

(iii) A copy of the invoice or receipt documenting the sale of the class I controlled substance to the person;

(iv) The name of the person from whom the class I controlled substances were purchased; and

(v) The name, quantity, and verification of the commercial use of the resulting chemical.

(2) The Administrator will review the information and documentation submitted under paragraph (c)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determined were transformed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed controlled substances as claimed, the Administrator will issue a notice disallowing the request for additional production allowances. Within ten working days after receipt of notification, the Party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as he finds appropriate in light of the available evidence.

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Any person may obtain, in accordance with the provisions of this paragraph, consumption allowances equivalent to the level of class I controlled substances that the person has exported from the United States and its territories to any nation listed in Appendix C to this subpart (Parties to the Montreal Protocol). The consumption allowance granted under this section will be valid only during the control period in which the exports departed the United States or its territories.

(1) The exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported, and what percentage, if any, of the controlled substances are recycled or used;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser; and

(ix) The commodity code of the controlled substance exported.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section, and will assess the quantity of controlled substances that the documentation verifies was exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined was exported. The grant of the consumption allowances will be effective on the date the notice is issued.

(b) A person who does not produce a class I controlled substance in Group I, II, III or V may obtain consumption allowances for that controlled substance equal to the level of a controlled substance either produced in or imported into the United States that the person transformed in accordance with the provisions of this paragraph.

(1) A person must submit a request for consumption allowances that includes the following:

(i) The identity and address of the person;

(ii) The name and quantity of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance to the person; and

(iv) The name, quantity, and verification of the commercial use of the resulting chemical.

(2) The Administrator will review the information and documentation submitted under paragraph (b)(1) of this section and will assess the quantity of controlled substance that the documentation and information verifies was transformed. The Administrator will issue to the person consumption allowances equivalent to the level of controlled substances that the Administrator determined was transformed. The grant of allowances will be effective on the date that the notice is issued.

(3) If the Administrator determines that the request for consumption allowances does not satisfactorily substantiate that the person transformed controlled substances as claimed, the Administrator will issue a notice disallowing the request for additional consumption allowances. Within ten working days after receipt of notification, the Party may file a notice of appeal, with supporting reasons, with the Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation. The Director may affirm or vacate the disallowance. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

(c) On the first day of each control period the Agency will grant consumption allowances to any person that produced and exported a Group IV controlled substance in the baseline year and that was not granted baseline consumption allowances under § 82.5 of this subpart.

(1) The number of consumption allowances any such person will be granted for each control period will be equal to the number of production allowances granted to that person under § 82.7 for that control period.

(2) Any person granted allowances under this paragraph must hold the same number of unexpended consumption allowances for the control period for which the allowances were granted by February 15 of the following control period. Every kilogram by which the person's unexpended consumption allowances fall short of the amount the person was granted under this paragraph constitutes a separate violation.

§ 82.11 Exports to Article 5 Parties.

In accordance with the provisions of this section, any person may obtain authorizations to convert potential production allowances to production allowances by exporting class I controlled substances to nations listed in appendix E to this subpart (Article 5 Parties). Authorizations obtained under this section will be valid only during the control period in which the controlled substance departed the United States or its territories. A request for authorizations under this section will be considered a request for consumption allowances under § 82.10 of this subpart as well.

(a) The exporter must submit to the Administrator a request for authority to convert potential production allowance to production allowances. That request must set forth the following:

(1) The identities and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The names and telephone numbers of contact persons for the exporter and for the recipient;

(4) The quantity and the type of controlled substances exported, its source and date purchased, and what percentage, if any, of the controlled substances are recycled or used;

(5) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(6) The country to which the controlled substances were exported;

(7) A copy of the bill of lading and invoice indicating the net quantity

shipped and documenting the sale of the controlled substances to the recipient;

(8) The commodity code of the controlled substance exported; and

(9) A copy of the contract covering the sale of the controlled substances to the recipient that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

(b) The Administrator will review the information and documentation submitted under paragraph (a) of this section, and assess the quantity of controlled substances that the documentation verifies were exported to an Article 5 Party. Based on that assessment, the Administrator will issue the exporter a notice authorizing the conversion of a specified quantity of potential production allowances to production allowances in a specified control year, and granting consumption allowances in the same amount for the same control year. The authorizations may be used to convert potential production allowances to production allowances as soon as the date on which the notice is issued.

§ 82.12 Transfers.

(a) *Inter-company transfers.* Any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances, as follows:

(1) The transferor must submit to the Administrator a transfer claim setting forth the following:

(i) The identities and addresses of the transferor and the transferee;

(ii) The name and telephone numbers of contact persons for the transferor and the transferee;

(iii) The type of allowances or authorizations being transferred, including the names of the controlled substances for which allowances are to be transferred;

(iv) The group of controlled substances to which the allowances or authorizations being transferred pertains;

(v) The amount of allowances or authorizations being transferred;

(vi) The control period(s) for which the allowances or authorizations are being transferred;

(vii) The amount of unexpended allowances or authorizations of the type and for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(viii) A statement of whether the trade is for the purpose of reimbursing a producer or importer for allowances expended in the production or import of transformed controlled substances; and

(ix) The amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades of potential production allowances, authorizations to convert, or trades from transformers to producers or importers for the purpose of allowance reimbursement).

(2) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, imports or exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances or authorizations sufficient to cover the transfer claim (i.e., the amount to be transferred plus, in the case of transferors of production or consumption allowances), one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(i) If EPA's records show that the transferor has sufficient unexpended allowances or authorizations to cover the transfer claim or if review of available information is insufficient to make a determination, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances or authorizations by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(ii) If EPA's records show that the transferor has insufficient unexpended allowances or authorizations to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (b)(2) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances or authorizations by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances or authorizations to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) *Inter-pollutant conversions.* Any person ("convertor") may convert consumption allowances, production allowances, potential production allowances, or authorizations to convert potential production allowances to production allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the group of controlled substances as the first as follows:

(1) The convertor must submit to the Administrator a conversion claim setting forth the following:

(i) The identity and address of the convertor;

(ii) The name and telephone number of a contact person for the convertor;

(iii) The type of allowances or authorizations being converted, including the names of the controlled substances for which allowances are to be converted;

(iv) The group of controlled substances to which the allowances or authorizations being converted pertains;

(v) The amount and type of allowances to be converted;

(vi) The amount of allowances to be subtracted from the convertor's unexpended allowances for the first controlled substance, to be equal to 101 percent of the amount of allowances converted (except for conversions of authorizations to convert potential production allowances and conversions of potential production allowances);

(vii) The amount of allowances or authorizations to be added to the convertor's unexpended allowances or authorizations for the second controlled substance, to be equal to the amount of allowances for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in appendix A to this subpart.

(viii) The control period(s) for which the allowances or authorizations are being converted; and

(ix) The amount of unexpended allowances or authorizations of the type and for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(2) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, and any production, imports, or exports of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended allowances or authorizations sufficient to cover the conversion claim (i.e., the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(i) If EPA's records show that the convertor has sufficient unexpended allowances or authorizations to cover the conversion claim or if review of available information is insufficient to make a determination, the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances or authorizations by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claim, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(ii) If EPA's records show that the convertor has insufficient unexpended allowances or authorizations to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(3) In the event that the Administrator does not respond to a conversion claim within the three working days specified in paragraph (b)(2) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended allowances by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or authorizations to cover the claims, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(c) *Inter-company transfers and Inter-pollutant conversions.* If a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended allowances for the first controlled substance will be equal to 101 percent of the amount of allowances converted and transferred in the case of transfer-conversions of production or consumption allowances.

§ 82.13 Record-keeping and reporting requirements.

(a) Unless otherwise specified, the record-keeping and reporting requirements set forth in this section take effect on January 1, 1992.

(b) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

(d) Records and copies of reports required by this section must be retained for three years.

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person ("producer") who will produce class I controlled substances during a control period must comply with the following record-keeping and reporting requirements:

(1) Within 120 days of July 30, 1992, or within 120 days of the date the producer first produces a class I controlled substance, whichever is later, every producer that has not already done so must submit to the Administrator a report describing:

(i) The method by which the producer in practice measures daily quantities of class I controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g., tank specifications, ambient temperature or pressure, density of the controlled substance);

(iii) Internal accounting procedures for determining plant-wide production;

(iv) The quantity of any fugitive losses accounted for in the production figures; and

(v) The estimated percent efficiency of the production process for the controlled substance.

Within 60 days of any change in the measurement procedures or the information specified in the above report, the producer must submit a report specifying the revised data or procedures to the Administrator.

(2) Every person that produced class I controlled substances as by-products and did not destroy them with MACT in 1989 but did not report this production in response to previous information request must supply EPA with the information previously requested on or before September 14, 1992.

(3) Every producer must maintain the following:

(i) Dated records of the quantity of each of the class I controlled substances produced at each facility;

(ii) Dated records of the quantity of Group IV class I controlled substances produced for feedstock use at each facility;

(iii) Dated records of the quantity of class I controlled substances used as feedstocks in the manufacture of controlled substances and in the manufacture of non-controlled substances and any class I controlled substance introduced into the production process of the same controlled substance at each facility;

(iv) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more class I controlled substances;

(v) Dated records of the quantity of raw materials and feedstock chemicals used at each facility for the production of controlled substances;

(vi) Dated records of the shipments of class I controlled substances produced at each plant;

(vii) The quantity of class I controlled substances, the date received, and names and addresses of the source of recyclable or recoverable materials containing class I controlled substances which are recovered at each plant;

(viii) Records of the date, the class I controlled substance, and the estimated quantity of any spill or release of a class I controlled substance that equals or exceeds 100 pounds; and

(ix) Dated records documenting the sale of Group IV controlled substances for feedstock.

(4) For each quarter, each producer must provide the Administrator with a report containing the following information:

(i) The production by plant in that quarter of each class I controlled substance, specifying the quantity of any class I controlled substance used for feedstock purposes for controlled and noncontrolled substances for each plant and totaled by class I controlled substance for all plants owned by the producer;

(ii) The amount of production for feedstock of Group IV controlled substances, by plant;

(iii) The levels of production (expended allowances) for all class I controlled substances for each plant and totaled for all plants for that quarter and totaled for the control period to date;

(iv) From each plant, the total shipments of each class I controlled substance produced at that plant in the quarter;

(v) The producer's total of expended and unexpended consumption allowances, potential production allowances, production allowances, and authorizations to convert potential production allowances to production allowances, as of the end of that quarter;

(vi) The quantity, the date received, and names and addresses of the source of recyclable or recoverable materials containing the class I controlled substance which are recovered at each plant;

(vii) The amount of Group IV controlled substances sold to each person for feedstock during the quarter; and

(viii) Internal Revenue Service Certificates showing that the purchaser of Group IV controlled substances for feedstock use intends to transform the Group IV controlled substances.

(5) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4 of this subpart.

(g) Importers of class I controlled substances during a control period must comply with the following record-keeping and reporting requirements:

(1) Any importer must maintain the following records:

(i) The quantity of each class I controlled substance imported, either alone or in mixtures, including the percentage of the mixture which consists of class I controlled substances;

(ii) The date on which the controlled substances were imported;

(iii) The port of entry through which the controlled substances passed;

(iv) The country from which the imported controlled substances were imported;

(v) The port of exit;

(vi) The commodity code for the controlled substances shipped;

(vii) The importer number for the shipment;

(viii) A copy of the bill of lading for the import;

(ix) The invoice for the import;

(x) The U.S. Customs Entry Summary Form; and

(xi) Dated records documenting the sale of Group IV controlled substances for feedstock.

(2) For each quarter, every importer must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraphs (g)(1) (i) through (vii) of this section for the previous quarter;

(ii) The total quantity imported in kilograms of each class I controlled substance for that quarter;

(iii) The levels of import (expended consumption allowances) of class I controlled substances for that quarter and totaled by chemical for the control-period-to-date; and

(iv) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(v) The amount of Group IV controlled substances imported for feedstock during the quarter;

(vi) The amount of Group IV controlled substances sold to each person for feedstock during the quarter; and

(vii) Internal Revenue Service Certificates showing that the purchaser of Group IV controlled substances for feedstock use intends to transform the Group IV controlled substances.

(h) For any exports of class I controlled substances not reported under § 82.10 of this subpart (additional consumption allowances) or § 82.11 of this subpart (Exports to Parties), the exporter who exported the class I controlled substances must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(1) The names and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The type and quantity of class I controlled substances exported and what percentage, if any, of the controlled substances are recycled or used;

(4) The date on which and the port from which the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported; and

(6) The commodity code of the controlled substance shipped.

(i) Every person who has requested additional production allowances under § 82.9(c) of this subpart or consumption allowances under § 82.10(c) of this subpart or who transforms Group IV controlled substances not produced by him or her must maintain the following:

(1) Dated records of the quantity and level of controlled substance used and entirely consumed in the manufacture of another chemical;

(2) Copies of the invoices or receipts documenting the sale of the controlled substance to the person;

(3) Dated records of the names, commercial use, and quantities of the resulting chemical(s);

(4) Dated records of shipments to purchasers of the resulting chemical(s);

(5) For transformers of Group IV controlled substances, dated records of all shipments of Group IV controlled substances received and the identity of the producer or importer of the Group IV controlled substances; and

(6) For transformers of Group IV controlled substances, dated records inventories of Group IV controlled

substances at each plant on the first day of each quarter.

(j) For every quarter, within 45 days after the end of the quarter, every person who transforms Group IV chemicals not produced by him or her must report the following:

(1) The name and address of the person and the name and telephone number of a contact person;

(2) The names and addresses of the persons that produced or imported the Group IV controlled substances that he or she has purchased and transformed and the name and telephone number of a contact person;

(3) The address of the facility at which the transformation took place;

(4) The name of the chemical produced as a result of the transformation and the verification of its commercial use; and

(5) By source in paragraph (j)(2) of this section, the amounts of Group IV controlled substances transformed by the person.

(k) For every control period, every person receiving an exemption for CUBP controlled substances in Groups IV and V must maintain the following information on site:

(1) Dated records of the quantity of the CUBP carbon tetrachloride and methyl chloroform produced at the facility; and

(2) Dated records of the quantity of the CUBP controlled substance destroyed at the facility or shipped from there to an off-site destruction facility.

(l) Every person who produces, imports, or exports class II chemicals must report its annual level of production, imports, and exports of these chemicals within 45 days of the end of each control period.

Appendix A to Subpart A—Class I Controlled Substances

Controlled substance	Ozone depletion weight
A. Group I	
$CFCl_3$—Trichlorofluoromethane (CFC–11)	1.0
CCl_2F_2—Dichlorodifluoromethane (CFC–12)	1.0
CCl_2F-$CClF_2$—Trichlorotrifluoroethane (CFC–113)	0.8
CF_2Cl-CCl_2F—Dichlorotetrafluoroethane (CFC–114)	1.0
$CClF_2$-CF_3—(Mono) chloropentafluoroethane (CFC–115)	0.6
All isomers of the above chemicals	
B. Group II	
CF_2BrCl—Bromochlorodifluoromethane (halon 1211)	3.0
CF_3Br—Bromotrifluoromethane (halon 1301)	10.0
$C_2F_4Br_2$—Dibromotetrafluoroethane (halon 2402)	6.0
All isomers of the above chemicals	
C. Group III	
CF_3Cl—Chlorotrifluoromethane (CFC–13)	1.0
C_2FCl_5 (CFC–111)	1.0
$C_2F_2Cl_4$—(CFC–112)	1.0
C_2FCl_7—(CFC–211)	1.0
$C_2F_2Cl_6$—(CFC–212)	1.0
$C_2F_3Cl_5$—(CFC–213)	1.0
$C_2F_4Cl_4$—(CFC–214)	1.0
$C_2F_5Cl_3$—(CFC–215)	1.0
$C_2F_6Cl_2$—(CFC–216)	1.0
C_2F_7Cl—(CFC–217)	1.0
All isomers of the above chemicals	
D. Group IV	
CCl_4—Carbon Tetrachloride	1.1
E. Group V	
$C_2H_3Cl_3$—1,1,1-Trichloroethane (Methyl chloroform)	.1
All isomers of the above chemical, except for 1,1,2-trichloroethane.	

Appendix B to Subpart A—Class II Controlled Substances

$CHFCl_2$-Dichlorofluoromethane (HCFC–21)	(1)
CHF_2Cl-Chlorodifluoromethane (HCFC–22)	0.05
CH_2FCl-Chlorofluoromethane (HCFC–31)	(1)
C_2HFCl_4-(HCFC–121)	(1)
$C_2HF_2Cl_3$ (HCFC–122)	(1)
$C_2HF_3Cl_2$-(HCFC–123)	0.02
C_2HF_4Cl-(HCFC–124)	0.02
$C_2H_2FCl_3$-(HCFC–131)	(1)
$C_2H_2F_2Cl_2$-(HCFC–132b)	(1)
$C_2H_2F_3Cl$-(HCFC–133a)	(1)
$C_2H_3FCl_2$-(HCFC–141b)	0.12
$C_2H_3F_2Cl$-(HCFC–142b)	0.06
C_3HFCl_6-(HCFC–221)	(1)
$C_3HF_2Cl_5$-(HCFC–222)	(1)
$C_3HF_3Cl_4$-(HCFC–223)	(1)
$C_3HF_4Cl_3$-(HCFC–224)	(1)
$C_3HF_5Cl_2$-(HCFC–225ca)	(1)
(HCFC–225cb)	(1)
C_3HF_6Cl-(HCFC–226)	(1)
$C_3H_2FCl_5$-(HCFC–231)	(1)
$C_3H_2F_2Cl_4$-(HCFC–232)	(1)
$C_3H_2F_3Cl_3$-(HCFC–233)	(1)
$C_3H_2F_4Cl_2$-(HCFC–234)	(1)
$C_3H_2F_5Cl$-(HCFC–235)	(1)
$C_3H_3FCl_4$-(HCFC–241)	(1)
$C_3H_3F_2Cl_3$-(HCFC–242)	(1)
$C_3H_3F_3Cl_2$-(HCFC–243)	(1)
$C_3H_3F_4Cl$-(HCFC–244)	(1)
$C_3H_4FCl_3$-(HCFC–251)	(1)
$C_3H_4F_2Cl_2$-(HCFC–252)	(1)
$C_3H_4F_3Cl$-(HCFC–253)	(1)
$C_3H_5FCl_2$-(HCFC–261)	(1)
$C_3H_5F_2Cl$-(HCFC–262)	(1)
C_3H_6FCl-(HCFC–271)	(1)
All isomers of the above chemicals	(1)

[1] Reserved.

Appendix C to Subpart A—Parties to the Montreal Protocol

Parties to the Montreal Protocol: Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Botswana (3/3/92), Brazil, Bulgaria, Burkina Faso, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, China, Costa Rica, Cyprus (8/26/92), Czechoslovakia, Denmark, Ecuador, Egypt, European Economic Community, Fiji, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Guinea (9/23/92), Hungary, Iceland, India (9/17/92), Indonesia (9/24/92), Iran, Ireland, Israel (9/28/92), Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Malawi, Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Republic of Korea (5/27/92), Russian Federation, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia.

Appendix D to Subpart A—Nations Complying With, But Not Parties to, the Protocol [reserved]

Appendix E to Subpart A—Article 5 Parties

Argentina, Bangladesh, Botswana (3/3/92), Brazil, Burkina Faso, Cameroon, Chile, China, Costa Rica, Cyprus (8/26/92), Ecuador, Egypt, Fiji, Gambia, Ghana, Guatemala, Guinea (9/23/92), India (9/23/92), Indonesia (9/24/92), Iran, Jordan, Kenya, Libyan Arab Jamahiriya, Malawi, Malaysia, Maldives, Mexico, Nigeria, Panama, Philippines, Republic of Korea (5/27/92), Sri Lanka, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago.

Tunisia, Turkey, Uganda, Uruguay, Venezuela, Yugoslavia, Zambia.

[FR Doc. 92-17661 Filed 7-29-92; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
July 30, 1992

Part III

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services' FY 1992 Homeless Families Support Services Demonstration Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–92–8]

Request for Applications Under the Office of Community Services' FY 1992 Homeless Families Support Services Demonstration Program

AGENCY: Office of Community Services, Administration for Children and Families (ACF), HHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Service's Homeless Families Support Services Demonstration Program (HFSSDP).

INTRODUCTION: This announcement is one of two planned 1992 notices of Federal fund availability for assistance to test integrated approaches to reducing homelessness among families with children. The Department of Health and Human Services (DHHS) seeks to coordinate grant made under this announcement with grants to be made later under the Department of Housing and Urban Development's (HUD) upcoming program of Supplemental Assistance for Facilities to Assist the Homeless. (SAFAH)

The SAFAH program provides grants to States, in collaboration with local government units and private nonprofit organizations, to assist families with children who are ready to leave transitional, or other homeless family shelters with support services, to locate, secure, and move to permanent housing through such activities as case management, housing search and housing counseling, first and last month's rent, and moving expenses.

The intent of the Homeless Families Support Services Demonstration Program is to support projects that develop and implement comprehensive and integrated systems of support services to prevent homelessness among a high risk targeted population through the provision of intensive and comprehensive supportive services. The program aims to enhance systems for addressing comprehensively the physical, social and educational development of low-income families who are homeless, were previously homeless and currently residing in governmentally subsidized housing, or families who are at imminent risk of becoming homeless. (Families at "imminent risk" of homelessness include those living in precarious housing situations, e.g., doubled up with another family; in unstable or inadequate housing; or those facing eviction or loss of housing.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for demonstration projects authorized by the Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations Act, 1992 (Pub. L. 102–170). The House Appropriations Committee Report and Senate Appropriations Committee Report indicated that Section 1110 (Social Services Research) of the Social Security Act was the mechanism for implementing this prospective demonstration program. See H.R. Rep. No. 121, 102d Cong., 1st Sess. 141(1991); S. Rep. No. 104, 102d Cong., 1st Sess. 194(1991). Both committee reports directed that such demonstration programs be modeled after the family support centers described in title VII of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act). See 42 U.S.C. 11481–11489.

OSC will implement this demonstration program as a component of the Department's strategy for addressing family homelessness in a manner consistent with the delivery system concepts envisioned in the McKinney Act Family Support Center Program. The Department's overall strategy is to support activities to stabilize both homeless families in temporary or transitional shelters and those families who are at imminent risk of becoming homeless and to provide comprehensive support services integrated with housing assistance to maximize the ability of those families to live self-sufficiently in permanent housing. The Homeless Families Support Services Demonstration program will establish a coordinating mechanism for case-managed support services essential to these families' efforts to achieve the highest level of self sufficiency possible. The primary purpose of this demonstration program is to provide the "glue" between neighborhood/community efforts to help homeless families and a system of private and public entities that need to be more responsive to homeless families and those who are at imminent risk of becoming homeless. The support systems developed, however, would be available for all every low-income families and we would encourage such comprehensive systems. The project will arrange for and organize the provision of services by State agencies, relevant public agencies, non-profit service agencies and private industry and voluntary sector organizations. Where necessary, a limited portion of the grants funds (not to exceed 25%) may be used to provide direct services. Eligible entities will be non-profit public or private organizations, or units of State and local government, which act as the lead community entity to coordinate and consolidate services to the homeless and at risk target populations specified in this announcement.

It is probable that applicants applying for Homeless Family Support Services program funds will also apply for housing assistance funds. Since the Homeless Families Support Services Demonstration program also targets assistance to those homeless families who are ready to move to permanent housing, the program may also qualify for SAFAH funds. With or without a SAFAH program, Homeless Families Support Services Demonstration program applicants must demonstrate that a system is in place which provides comprehensive services to homeless families and those at imminent risk of becoming homeless.

This program is intended to encourage new or expanded integration initiatives that generate State and local public and private partnerships. Applicants should demonstrate a commitment to pooling resources, providing a set of core outreach, intake, and stabilization services for homeless and at risk families with children, and establishing arrangements for longer-term support services essential to low-income family efforts to achieve self-sufficiency.

For demonstration sites, HHS will train project case workers in eligibility requirements and program access for Supplemental Security Income (SSI) and provide information and technical support concerning the use of Medicaid and federal discretionary resources.

The Department expects applications will include a similar commitment by the applicants' States to provide technical assistance and optional services, such as all Medicaid services for children, and improve access to AFDC (Aid to Families with Dependent Children), Medicaid, Food Stamps, and SSI. The program will demonstrate the efficacy of community oriented collaborative service arrangements, or other approaches providing case-managed, comprehensive, housing and supportive services to homeless and at risk families. Review criteria will favor applications proposing innovative, cost-effective programs that leverage public and private funds for more accessible services to homeless and at risk families. The Homeless Families Support Services Demonstration program is soliciting applications for project periods up to three years. Awards, on a

competitive basis, will be for one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget but within the three-year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that this would be in the best interest of the government. The first 60 days of the grant period may be used to complete planning necessary to finalize collaborative arrangements and activities among constituent agencies and providers.

Approximately $5,500,000 is available to support first year grant awards under this program announcement. An estimated 25 to 30 grants will be awarded at a maximum of $250,000 per grant.

CLOSING DATE: The closing date for receipt of applications is August 31, 1992.

ADDRESSES: Address applications to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Joseph R. Carroll or Sheldon Shalit, Office of Community Services, Homeless Grant Programs, (202) 401–9354 or (202) 401–4807.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Program Purpose

The Homeless Families Support Services Demonstration Program is an integral part of an HHS/HUD initiative to encourage and test integrated approaches to reducing homelessness among families with children. The purpose of this demonstration is to support projects that develop and implement comprehensive and integrated systems of support services for homeless and at risk families. The Homeless Families Support Services Demonstration Program encourages and subsidizes the design and establishment of community-based organizational entities that will develop and build support services linkages. These projects are directed at temporarily housed homeless families and those at imminent risk of homelessness to provide them with more accessible, integrated mainstream income and support services.

For the community, the program should tie together support service providers; organize a means to reduce duplication of these efforts; create a centralized locus for client access to various mainstream service providers; and, reduce the administrative and programmatic burden eventually placed upon the client.

For the client population, the program will seek to prevent further homelessness; enhance the living conditions in low income housing; improve the physical, social and educational development of low income at risk families and children; increase the potential for independence and self-sufficiency; increase literacy levels and basic employment skills.

Projects may fund case management activities and, to a limited extent (up to 25 percent), fill services gaps where it is demonstrated that such services are not available to these target populations.

B. Background

Population Characteristics

Studies suggest that at least 25 percent of all homeless, or about 150,000 people, on any given night, are members of homeless families. The number of homeless families with children has grown due to spillover of precariously housed low-income families, and a combination of a lack of affordable housing in some areas with low-paying jobs or low entitlement benefits.

Most often, homeless families are very low-income, multi-problem families in crisis, and consist of mother with 2–3 young children, most of whom are of preschool age. Also, half are victims of domestic violence, and almost 90 percent are single parent, urban families, disproportionally minority. Families often have short but multiple shelter stays, show increased rates of substance abuse and have a high incidence of health problems. Parents often leave children with relatives or foster parents before entering shelters.

The most in-depth look at homeless and at risk family programs around the country found that even city programs that best serve this population are characterized by weak linkages between service and housing agencies, a lack of follow-up with families relocated into permanent housing and failure to provide preventive services. Recent studies of family homelessness in the Bay Area of California and New York City indicate that, respectively, 44 and 50 percent of homeless families had been homeless before. These findings clearly point to the need for follow-up and service linkage as a critical prevention measure to eliminate recurring shelter stays.

Departmental Activities

In January of 1990, the Secretaries of the Departments of Health and Human Services and Housing and Urban Development signed a Memorandum of Understanding (MOU) committing the Departments to develop and implement cooperative efforts to help low-income families and individuals move towards economic independence and self-reliance. One of the initiatives resulting from this MOU was the creation of an interagency working group on homeless families with children to design strategies that encourage the development of accessible support service and housing assistance systems to prevent homeless families with children from becoming homeless.

The Homeless Families with Children Workgroup initially took steps to improve its understanding of the needs of homeless families and to learn how to best provide services to meet identified needs. In 1991, HHS funded a study of five cities making a concerted effort to meet the needs of homeless families with children. The study, Homeless Families With Children: Programmatic Responses of Five Communities by Macro Systems, Inc., found that while the shelter system for homeless families has improved considerably in recent years, there is insufficient coordination among the different service programs, especially those administered by public agencies, needed by this population and there is little follow-up with families moving into permanent housing to ensure sustained links to mainstream support services. The report points out the need for communities to develop "innovative housing/support services collaborations" and concludes that "improvements to the mainstream service system will do more to alleviate homelessness than targeting additional funds at the homeless service system."

A second study, Families on the Move: Breaking the Cycle of Homelessness by The Edna McConnell Clark Foundation, revealed similar findings. This study recommends short-term, intensive case management in conjunction with the reform of service systems that affect the lives of homeless families and enhanced local-level planning and coordination. The report highlights "the importance of identifying and revising intra-and interagency policies that hamper service delivery or inadvertently undermine the resettlement process."

As a result of these, and other assessments, the Homeless Families with Children Work Group was expanded, on Secretary Sullivan's

recommendation, to include other members of the Interagency Council on the Homeless. It was also charged with identifying specific actions and recommendations to address homelessness among families with children. Early in 1992, the Homeless Families with Children Work Group recommended six major focus areas to the Council as follows:

- Enhance support service integration through activities to expand and strengthen ongoing efforts to integrate services in local communities.
- Improve access to support services in child development, child welfare, child health, substance abuse treatment, and other family support services.
- Improve access to entitlement and related mainstream programs such as AFDC, SSI, Medicaid, and Food Stamps.
- Increase available housing from existing housing stock, improve access to public and assisted housing, and link housing and support services.
- Increase awareness of problems of homeless families including practices that work to reduce family homelessness and keep families together.
- Improve help for low-income families at risk of homelessness to achieve and maintain self-sufficient living.

This announcement, issued in consultation with HUD, is intended to respond to the Homeless Families with Children Work Group's recommendation to support coordinated efforts to integrate services and housing in order to reduce initial homelessness and subsequent episodes of homelessness.

C. Program Services

The expected size of the awards necessarily places considerable constraints on the ability of projects to pay for or actually provide services. The Department has determined that the most prudent use of project grant funds would be to support or supplement ongoing efforts to design, develop and implement projects that demonstrate how to leverage an array of supportive services that address the complex needs of homeless families as well as those at imminent risk of homelessness.

The project awards will primarily allow for the design, development and establishment of an organizational infrastructure that can provide an array of comprehensive and intensive case-managed social services to homeless families and those at imminent risk of homelessness. Approaches are sought that emphasize a coordinated effort by a range of community-oriented entities that consolidate resources to a targeted population in need.

Projects may fund case management activities and, to a limited extent (up to 25 percent), fill service gaps where it is demonstrated that such services are not available to these target populations.

Applicants must provide assurances that minimal core services (such as outreach; intake screening and assessment; family case management; emergency health care; family crisis and domestic violence counseling; child protective services; and assistance in obtaining permanent housing) will be made available to the target population.

In order to carry out the assurances noted above, it will be necessary for projects to establish working arrangements with housing, human service and education agencies accessing local, State and federal programs. These include safe temporary shelter; child care; health care, including mental health and substance abuse treatment; employment assistance; job training; early childhood development and parenting programs; education and training and other programs necessary to achieve stability and self-sufficiency.

Projects may be a homeless family component of an existing family oriented program for low income, at risk families or within a community-wide system targeted at serving the homeless and/or at risk families.

D. Program Beneficiaries

Projects proposed for funding under this announcement must directly benefit homeless families and low-income families at imminent risk of becoming homeless whose incomes are up to 125% of the DHHS poverty income guidelines as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in February or early March of each year. These revised guidelines may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this OCS program.

E. Eligible Applicants

Eligible entities must be non-profit public or private organizations or units of State and local government which act as the lead community entity to coordinate and consolidate services to the homeless target populations specified in this announcement.

The following are types of entities eligible to apply for grants under this announcement:

—Public or private nonprofit organizations specializing in provision of social services
—Any community-based organization of demonstrated effectiveness as a Community Action Agency under section 210 of the Economic Opportunity Act of 1984 (42 U.S.C. 2790)
—A Community development corporation
—Public housing agencies as defined in section 3(b)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437a(6))
—State Housing Finance Agencies
—Head Start agencies
—Local education agencies
—An institution of higher education
—A public hospital
—A private industry council as defined under section 102(a) of the Job Training Partnership Act (JPTA) (29 U.S.C. 1512)
—A community health center
—State and local agencies

More than one eligible entity in a State may apply, but separate applications must be submitted.

The eligible entity will have or be prepared to establish agreements with community services providers that respond to the assessed needs of the client populations. The program seeks to support eligible entities with written agreements either in place at the time of application or able to be in place within 60 days of grant award. While it is preferable that the eligible entity be physically located on or near the place(s) where its target population lives, it is conceivable that its administration and services may be off-site.

The grantee must arrange for and organize the provision of services by other entities such as State agencies, relevant public agencies, non-profit service agencies and private industry and voluntary sector organizations.

Applications for this announcement must indicate substantive State involvement in the form of commitments to provide staff and other resources and to explore ways to streamline State administrative procedures for services in project sites. Specifically, States would be expected to provide staff to provide technical assistance, mandatory and optional services (such as all allowable Medicaid services for children), and improve access to the AFDC, Medicaid, Food Stamp, and SSI programs.

Eligible applicants already engaged in demonstrating consolidation and coordination of services, e.g., SAFAH grantees, Robert Wood Johnson Homeless Family Projects, Healthy Start sites, Health Care for the Homeless Projects etc. may be community lead entities and will receive special attention since these sites are expected to have ongoing cooperative agreements in place and should be advanced in their activities to serve the homeless. Applicants applying for combined projects should be prepared to integrate its current activities within the scope of the application and the appropriate role of the lead agency designated in the application.

F. Project Period

This announcement is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that this would be in the best interest of the government.

Part II: Description of the Homeless Families Support Services Demonstration Program

A. Grantee Responsibilities

The Homeless Families Support Services Demonstration Program is intended to prevent the occurrence of homelessness by: 1) creating a centralized point for access to various service providers and the provision of intensive and comprehensive supportive services; 2) joining the case management functions offered by each of the service providers to provide for coordinated family case management; 3) tying together service providers and organizing a means to reduce duplication of effort in response to their potentially or previously homeless clientele; and, 4) reducing the administrative and programmatic burden eventually placed upon the client population.

To accomplish these goals, grantees are expected to have the capacity to coordinate, link and otherwise organize a cadre of existing providers. A Homeless Families Support Services Demonstration program should concentrate on coordination with existing Federally sponsored social services and housing programs such as the Community Services Block Grant (CSBG), AFDC/JOBS program and the SAFAH program.

The objectives of the grantees are expected to be: The prevention of homelessness among target group participants; the enhancement of the living conditions in low income housing; the improvement of the physical, social and educational development of low income children and families; the achievement of progress towards increased potential for independence and self-sufficiency among families served; an increase in literacy levels and basic employment skills of individuals served; and, the development of a clearly defined coordinating body that can arrange for the delivery of appropriate integrated services to the target population.

Each Homeless Families Support Services Demonstration project must include a comprehensive program to serve a targeted low-income population; coordinate and integrate activities with appropriate service providing agencies; expand, coordinate or contract for resources and mechanisms to provide services; provide overall case management services which coordinate all respective case management activities through a team approach; and, participate in an ongoing evaluation mechanism to address process and outcome issues as they relate to the efficacy and efficiency of the demonstration program. Additionally, each grantee's program must establish and provide necessary staff support for an advisory body representing the community, providers and target population including, to the extent possible, a member of a homeless or previously homeless family.

A program's intensive and comprehensive services may include any/all of the following: health and mental health screening; nutritional services; family crisis and domestic violence counseling; drug and alcohol counseling; child development programs; child care; job training and education; parenting classes; programs for young adults and teens; other programs necessary to achieve stability and self-sufficiency in preventing homelessness.

This announcement prescribes no single model for program organization, staffing or service delivery. Instead, it invites applicants to propose structures and mechanisms for delivering services that are unique to the community or neighborhood that it serves.

The operating and organizational structure of the program should include a range of agreements with community services providers that responds to the assessed needs of the client populations. These agreements are most essential to the success of the project. The program seeks to attract prospective grantees with written agreements either in place at the time of application or able to be in place within 60 days of the grant award. This is to assure an accelerated provision of services to the clients. In those cases where additional services are to be added to existing service patterns, the grantee will provide timetables for the inclusion of these added services. Prospective grantees will have a combination of existing and potential agreements and affiliations for services. It is recommended that the program include affiliations with entities that support and enlarge its service providing role. This may include affiliations with the academic community, such as schools of social work, that may provide a source of staff resources, student/intern placements and a site for scholastic investigation and research.

Most importantly, applicants must be closely identified with and located within circumscribed geographical boundaries that coincide with the location and residences of the target population. This catchment areas concept should be reflected in the physical location of the project which should be readily accessible to the target population. This in no way limits the possible configurations for project locus. Instead, it permits a range of possibilities that is consistent with the residential pattern of the target population. While the project is most likely to be physically located in or near the place(s) where its target population lives, it is conceivable that its administrative functions may be off-site or co-located with parent agencies.

Grantees are expected to cooperate with Federal evaluation contractor(s) that will be funded by the Department. Evaluation contractors will conduct assessments of program and service delivery models. Such cooperation will involve periodically furnishing needed process and outcome oriented data as required by the contractors and allowing them access to information that has not otherwise been provided by the grantee.

A percentage of non-Federal share, either in cash and/or in-kind contributions, secured from non-Federal sources is not required. The lack of a requirement is not intended in any way to discourage the use of applicant or third party financial and resource support. As indicated in the review criteria, applicants with written, agreed-upon commitments will score higher than those with proposed or envisioned

commitments, or no non-Federal participation. Further, it should be noted that as the project matures over the project life, there is an implicit encouragement of the assumption of costs of the project by the applicant and the constituent community participants.

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced.

B. Grant Proposals

To ensure that applicants with the most potential for demonstrating innovative ways to accomplish the goals of the program and establishing new, or expanding existing mechanisms for providing services to the target populations, applicants for grants shall develop their proposals in accordance with the factors described below:

Understanding

1. Identify the population and geographic location to be served by the project and how homeless and at risk families will be chosen for enrollment. Provide assurances in the form of demographic data that there are sufficient numbers of eligible families residing in the designated area to be served and that a sufficient number of these families will be enrolled in the program.

2. Provide assurances and describe how core and other services to be provided are closely related to the assessed needs of the target populations and that the needs to be addressed are important for successful prevention of homelessness and consistent with the objectives of this program.

Comprehensiveness

3. Identify and describe where and how the project will provide directly or arrange for intensive and comprehensive services. Furnish information on which services are to be provided on site and those of which are to be provided in off site locations. Applicant should clearly differentiate between those services which will be provided through the use of grant funds and those services which are committed to the project without use of grant funds.

4. Identify referral providers, agencies and organizations with which the applicant agency will coordinate in order to carry out the objectives of the grant. This necessarily includes those services which are committed to the project without cost to the grant.

5. Furnish relevant agreements and letters of commitment indicating which services and the level of effort (cost) that will be provided to project participants by those providers agencies and/or organizations. Applicants should describe current or previous relationships with these agencies and/or organizations.

Leveraging

6. Describe the extent to which the applicant, through its project, will coordinate and create linkages to existing service providers or new mechanisms for maintaining these organizational and service ties. This refers to the amounts of funds and activities including direct client services which are generated through the grant mechanism, but not necessarily paid for by grant funds.

Cost Effectiveness

7. Identify how the project will be administered and managed. Submit a first year timetable for implementing activities and enrolling families as well as a more general timetable for years 2 and 3. Provide a description of the applicant's previous program, administrative and fiscal experience in accomplishing goals and objectives similar to those outlined in this program. Provide information on experience in coordinating activities with State and local public or non-profit agencies and organizations. Provide resumes detailing the relevant education, training and experience of the key project staff, their responsibilities in connection with and the time they will be committing to this project. Applicants should furnish any information which illustrates their skills and capacity to accomplish the project goals and objectives in a timely manner. Every effort should be made to include on staff persons who are homeless or previously homeless.

8. Identify and describe in detail the proposed first year budget for the project and the next two-year projections and assure that the proposed costs are reasonable in view of the activities to be pursued. The first 60 days of the grant period may be used to complete planning necessary to finalizing collaborative arrangements and activities among participating agencies.

Expected Results

9. Identify, in measurable terms, expected outcomes for participating families and for systems change.

Part III: Criteria for Review and Evaluation of Applications

Applications will be reviewed and evaluated to assess the applicant's ability to carry out the project described under part II of this announcement, against the following criteria:

1. Understanding of Objectives and Need for Demonstrations (10 points)

The extent to which the application reflects a good understanding of the purpose of the program, the need for experimentation in this area, the problems, barriers and impediments that prevent the efficient and effective delivery of an array of intensive and comprehensive services to stabilize homeless and at risk families and prevent them experiencing initial or recurring episodes of homelessness.

Information provided in response to part II, section B, Numbers 1 and 2 of this announcement, will be used to review and evaluate applicants on the above criterion.

2. Approach (5 points)

The soundness and feasibility of the content, methods and organization of the project to specified goals and objectives—The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished; gives acceptable reasons for taking this approach as opposed to others; provides for a range of intensive and comprehensive supportive services and gives projections of the accomplishments to be achieved. Application describes the relationship between this project and other work planned, anticipated or underway with Federal assistance. Application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates in detail for the first year and more generally for the remaining two years.

Information provided in response to part II, section B, Numbers 2, 3, 4, 5, and 6 of this announcement, will be used to review and evaluate applicants on the above criterion.

3. Innovation (15 points)

The application identifies creative ways to identify and remove access barriers, and make use of entitlement and related mainstream programs such as AFDC, Medicaid, Supplemental Food Programs for Women, Infants and Children and SSI to stabilize homeless and at risk families, and to state General Assistance to foster family reunification and link them to longer-term support

services, education, and employment training opportunities. The application identifies innovative targeting to homeless families of block grant and other sources of funding including SSBG, CDBG, CSBG, ADMS (Alcohol, Drug Abuse and Mental Health Services) and JTPA (Job Training Partnership Act). Also, application describes any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements.

4. Comprehensiveness (25 points)

Application demonstrates breadth and depth in the strength of the consortia involved in the project. Application describes project coordination and linkages with organizations, agencies, and key groups as well as the activities and nature of their effort or contribution. Application includes the current or anticipated commitments stating kinds of service and level of effort from service providing organizations or agencies. Linkages established with other local systems-oriented or integration initiatives should include, where applicable, HHS-funded programs such as Family Service Centers and Child Support Centers; HUD-funded programs such as Family Self-Sufficiency and the joint HUD-Robert Wood Johnson Foundation Homeless Families programs. Expected State commitments include efforts to expedite AFDC, Medicaid, WIC and Food Stamp eligibility, and to improve access to these programs; and to target other State funded services to these sites served by the proposed program. Finally, partnerships established with various private (e.g. foundations, volunteer efforts) and key public programs are included.

Note: Applicants with written, agreed upon commitments will score higher than those with proposed or envisioned commitments.

Information provided in response to part II, section A and section B, numbers 2, 3, 4, 5, 6 and 7 of this announcement, will be used to review and evaluate applicants on the above criterion.

5. Staff Background and Experience (10 points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope. Staff background and experience should also reflect the ability to use and coordinate activities with other agencies for the delivery of intensive and comprehensive support services.

Information provided in response to part II, section B, number 7 of this announcement, will be used to review and evaluate applicants on the above criterion.

6. Leveraging and Cost Effectiveness (20 points)

The extent to which the applicant is able to pool or consolidate funds from other programs into this effort. The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. Applicants are encouraged, in the later phases of this project to seek committed funds to support this program beyond the term of this grant.

Note: Applications with committed funds and services and jointly operated programs will be awarded higher scores on this element.

Information provided in response to part II, section B, numbers 4, 7 and 8 of this announcement, will be used to review and evaluate applicants on the above criterion.

7. Expected Results (15 points)

The extent to which measurable expected results for participating families are identified.

Part IV: The Application Process

A. Availability of Forms

This announcement with attachments contains standard forms necessary to apply for awards under this program. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "**FOR FURTHER INFORMATION**" at the beginning of the announcement.

Agencies and organizations interested in applying for demonstration grant funds should submit an application on the Standard Form 424 included in this announcement.

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance in this announcement and the instructions in the attached applications package.

B. Application Submission

Applications must be submitted by the closing date. Refer to "**CLOSING DATE**" at the beginning of this document for the specific date.

1. *Deadlines*

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the ACF Office of Financial Management, Division of Discretionary Grants, 6th Floor OFM/DDG, 370 L'Enfant Promenade, SW., Washington, DC 20447, or

b. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof as timely mailing.)

2. Applications Submitted by Other Means

Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications will be accepted at the ACF Office of Financial Management, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC during the normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

3. Late Applications

Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

4. Extension of Deadline

The ACF Office of Community Services may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the Office of Community Services does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted.

One signed original application and two copies should be submitted.

C. Application Consideration

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Applications meeting the screening requirements will be reviewed competitively and scored against the criteria outlined in Part III of this announcement. The review will be conducted in Washington, DC. Such applications will be referred to Federal and non-Federal reviewers knowledgeable about programs dealing with housing, community action and supportive services. Reviewers will provide a numerical score and explanatory comments based solely on responsiveness to program requirements and evaluation criteria published in this announcement. Reviewers' scores weigh heavily in funding decisions but may not be the only factor considered. Applications generally will be considered in order of the average scores assigned by reviewers. Highly ranked applications are not guaranteed funding as other factors are considered, including: comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

The results of the competitive review will be taken into consideration by the Director of the Office of Community Services, who will recommend projects to be funded to the Assistant Secretary for Children and Families. The Assistant Secretary for Children and Families will make the final selections. Consideration will be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected and that various project designs and models are represented.

Successful applicants will be notified through a Notice of Grant Award. The award will state the amount of Federal funds awarded, the terms and conditions of the grant award, the effective date of the grant, the total project period and the budget period.

D. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Pennsylvania, Oregon, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the ACF can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. However, because applications are due 30 days from the date of this announcement and the grants are to be awarded in September, there is no sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

Part V: Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970–0062.)

The standard forms attached to this announcement shall be used when submitting applications for all funds under this announcement. It is suggested that you reproduce single-sided copies of the SF–424, SF–424A, and SF–424B, and type your application on the copies. If an item on the SF–424 does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable". If your submission on an item needs further explanation or is not directly responsive to the item requested, please explain or provide commentary in Item Number 23. This item may be extended by use of an additional sheet of paper, appropriately identified.

Prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

A. SF–424—"Application for Federal Assistance"

Item 1

For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications" and no Construction projects. Accordingly, check the "Non-Construction" box.

Item 2

"Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3

"Date received by State"—N/A.

Item 4

"Date received by Federal Agency"—Leave blank.

Item 5 and 6

The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the block entitled "Federal Identifier" located at the top right hand corner of the form.

Item 7

Mark the appropriate box. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "other". Proof of non-profit status, such as IRS determination, Articles of Incorporation, or By-Laws, must be included as an appendix to the project narrative.

Item 8

"Type of Application"—Please indicate the type of application.

Item 9

Enter "Office of Community Services, Administration for Children and families, DHHS"

Item 10

The Catalog of Federal Domestic Assistance Number for OCS programs covered under this announcement is 93.040. The title is "Homeless Families Support Services Demonstration Program"

Item 11

"Descriptive Title of Applicant's Project"—Enter the project title (a brief descriptive title) and the following letter designation must be used: "XY".

Item 12

"Areas Affected by Project"—List only the largest unit or units affected, such as State, county or city.

Item 13

"Proposed Project"—Enter the desirable starting date for the project and the proposed completion date. Projects may not exceed the maximum duration specified.

Item 14

"Congressional District of Applicant/Project"—Enter the number of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional district(s) where the project will be located.

B. SF-424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this form as well as the instructions set forth below:

Sections A, B, C, and D should reflect budget estimates for the first year of the project. Section E should present the estimates for Federal assistance for the second and third year of the project. The notice of grant award will reflect the amounts estimated for the second and third years of the project, subject to the availability of funds. Grant awardees will be required to submit a "continuation application" for each of the second and third years of the project.

In completing these sections, the "Federal Funds" budget entries should separately identify all Federal funds involved in the project, "Non-Federal" will include mobilized funds from all other sources—applicant, State, and other.

Section A—Budget Summary

Line 1: Column (a): Enter "OCS Homeless Families Support Services Demonstration Program";

Column (b): Enter 93.040.

Columns (c) and (d): Not Applicable for new applications.

Columns (e), (f) and (g): enter the appropriate amounts needed to support the project for the first budget period (Maximum $250,000).

Lines 2–4: Enter same information as above for any other Federal funds proposed to be used in the project. (Please explain status of funds; e.g., approved or requested, etc.)

Section B—Budget Categories

Allocability of costs are governed by applicable cost principles set forth in 45 CFR parts 74 (non-governmental) and 92 (governmental). A detailed itemized budget with a separate budget justification for each major item should be included, as indicated below.

Object Class Categories—Line 6: Enter the total amount of Federal funds required by the Object Class Categories of this section. Justifications and explanations should be presented within the application.

Personnel—Line 6a. Enter the estimated total costs of salaries and wages.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated the project, the individual annual salaries, and the cost to the project of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b: Enter the estimated total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel—Line 6c: Enter total costs of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the total number of traveler(s), total number of trips, destinations, number of days, transportation costs and subsistence allowances. Travel costs to attend one national workshop in Washington, DC by the project director should be included.

Equipment—Line 6d: Enter the estimated total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and acquisition cost per unit of $500 for non-profit organizations and a useful life of one year and an acquisition cost per unit of $5,000 or more for public organizations.

Justification: Only equipment required to conduct the project may be purchased with Federal funds. The applicant organization or its subgrantees must not have such equipment, or a reasonable facsimile, available for use in the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e: Enter the estimated total costs of all tangible personal property (surplus) other than that included on line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f: Enter the total costs of all contracts: (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or business to be financed by the applicant.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Subgrants and Pass-through Activity: Whenever the applicant/grantee intends to delegate part of the program to another agency, thus entering into an interagency agreement, the applicant/grantee must submit Sections A and B of this Form SF-424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR part 74, appendix H.

Applicants who anticipate procurements that will exceed $5,000

(non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

For successful applicants, the Notice of Grant Award may cite under Remarks, item 18, approval of this action. Also include any contracts with organizations for the provision of technical assistance.

Construction—Line 6g: New construction costs are not permitted under this program. This line may be used for renovation costs.

Other—Line 6h: Enter the estimated total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), space and equipment rentals, printing and publication, computer use, training costs including tuition, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line generally should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agency. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant organization is renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter total amounts of lines 6i and 6j.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, and whether it is cash or third-party in-kind. The firm commitment of these funds should be documented and submitted with the application in order to be given full credit in the review criteria.

Justification: Describe all non-Federal resources including third-party, cash and/or in-kind contributions. Except in unusual situations, this documentation should be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Grant Program—Line 8: Grant Program: Column (a): Enter the project title.

Column (b): Enter the amount of cash or donations to be made by the applicant.

Column (c): Enter the other contribution.

Column (d): Enter the amount of cash and third-party, in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Grant Program—Lines 9, 10, and 11 should be left blank.

Grant Program—Line 12: Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Federal—Line 13: Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12-month budget period.

Non-Federal—Line 14: Enter the amount of cash from all other sources needed by quarter during the first year.

Total—Line 15: Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

Applicants for three year projects will complete line 16, (a), (b) and (c).

Columns (a) and (b) refer respectively to the second and third years of the project.

Section F—Other Budget Information

Direct Charges—Line 21. Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Indirect Charges—Line 22. Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved and attach a copy of the rate agreement.

Remarks—Line 23. Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B—"Assurances-Non-Construction"

All applicants must fill out, sign, date and return the "Assurances" (see Attachment D) with the application.

PART VI: CONTENTS OF APPLICATION AND RECEIPT PROCESS

A. Contents of Application

Each application submission should include a signed original and two additional copies of the application.

Each application should include the following in the order presented:

1. Table of Contents;

2. Completed Standard Form 424 which has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization.

3. "Budget Information-Non-Construction Programs" (SF–424A);

4. A narrative budget justification for each object class category required under section B, SF–424A;

5. Filled out signed, and dated "Assurances-Non-Construction Programs" (SF–424B);

6. The applicant should sign attachment E. In so doing, the applicant is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E. Additionally, by signing and submitting this application, the applicant is certifying that it will comply with the Federal requirements concerning debarment regulations set forth in attachment F;

7. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at Attachment H.

8. Disclosure of Lobbying Activities, SF–LLL: Fill out, sign, and date form found at Attachment H, if appropriate.

9. An Executive Summary—not to exceed 300 words;

10. Appendices, including (where applicable) proof of non-profit status; proof that the organization is a community development corporation, commitments from service providing organizations, where applicable; Single Point of Contact comments, if applicable; Maintenance of Effort Certification and résumés.

The total number of pages for the entire application package, excluding Appendices, should not exceed 50 pages. Pages should be numbered sequentially throughout, excluding Appendices, beginning with the SF 424 as Page #1.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ X 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders, is specifically discouraged.

B. Acknowledgement of Receipt

All applicants will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9230.

Part VII: Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental).

Grantees will be required to submit quarterly progress and financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for any dissemination effort conducted by the Office of Community Services.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92 and OMB Circular A–133.

Section 1352 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients on Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 22, 1989 and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Homeless Families Support Services Demonstration Program.

Dated: July 22, 1992.

Eunice S. Thomas,

Director, Office of Community Services.

ATTACHMENT A—1992 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$6,810
2	9,190
3	11,570
4	13,950
5	16,330
6	18,710
7	21,090
8	23,470

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$8,500
2	11,480
3	14,460
4	17,440
5	20,420
6	23,400
7	26,380
8	29,360

For family units with more than 8 members, add $2,980 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$7,830
2	10,570
3	13,310
4	16,050
5	18,790
6	21,530
7	24,270
8	27,010

For family units with more than 8 members, add $2,740 for each additional member.

BILLING CODE 4130-01-M

Attachment B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4130-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agencies (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

Attachment C

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5

Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories:

Lines 6a–i

Show the totals of Lines 6a to 6h in each column.

Line 6j

Show the amount of indirect cost.

Line 6k

Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7

Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11

Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a). Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12

Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13

Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14

Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Enter the totals of amounts of Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19

Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20

Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21

Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22

Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23

Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

OMB Approval No. 0348–0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (43 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official —
Title _____
Applicant Organization _____
Date Submitted _____

BILLING CODE 4130–01–M

Attachment E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Attachment F

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California, 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (202) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico, 87503, Telephone (505) 827-3640, FAX (505) 827-3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611 Telephone (919) 733-0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce Office of Federal Assistance Management, 6801 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington, 98504-4151, Telephone (206) 753-4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by

section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4120-01-C

Attachment I—DHHS Regulations Applying to All Applications/Grantees Under the Homeless Families Support Services Demonstration Program

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (State and local governments and Indian Tribal affiliates):

Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Non-profit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension From Eligibility for Financial Assistance

Subpart F—Drug-Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Non-Discrimination on the Basis of Sex in the Admission of Individuals to Training Programs

Part 84—Non-Discrimination on the Basis of Handicap in Programs

Part 91—Non-Discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

[FR Doc. 92-17810 Filed 7-29-92; 8:45 am]

BILLING CODE 4130-01-M

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federal register

Thursday
July 30, 1992

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act: Fiscal Year 1992 Competitive Discretionary Grant Programs Announcement and Notice of Availability of Application Kit

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act: Fiscal Year 1992 Competitive Discretionary Grant Programs Announcement and Notice of the Availability of Application Kit

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of issuance of solicitations for discretionary grant programs under the Missing Children's Assistance Act and availability of the application kit.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of Competitive Discretionary Grant Programs to be funded under section 405 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5775 (Title IV of this Act is referred to as the Missing Children's Assistance Act). The total amount of funding available is $3,285,000. Each program announcement that follows contains specific instructions on competitive program requirements, including eligibility requirements and selection criteria for each competitive program. Following the program announcements is a section that summarizes general application and administrative requirements applicable to all announced programs. The Missing Children's Program Application Kit contains the discretionary program announcements, general application and administrative requirements, an application form (Standard Form 424), the OJJDP Peer Review Guideline, OJJDP Competition and Peer Review Procedure, and other supplemental information relevant to the application process.

DATES: Each program announcement specifies a due date for the receipt of applications. Applications received after the due dates will not be considered.

ADDRESSES: Applications must be received by mail or hand delivered by 5 p.m., on the due date at the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Program inquiries are to be addressed to the attention of the OJJDP staff contact person identified in each specific program announcement. For general information, contact Marilyn Silver, Information Dissemination Unit, (202) 307–0751. (This is not a toll-free number.) To order a Missing Children's Program Application Kit, or draft copies of OJJDP sponsored studies referred to in the solicitations, please call the Juvenile Justice Clearinghouse, toll-free, 24 hours a day, at 1–800–638–8736.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (the Act), 42 U.S.C. 5775, rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1992, 11 new programs, new awards for two continuing programs, and a program jointly funded by OJJDP and the National Institute of Justice (NIJ), to be awarded and administered by NIJ, constitute all section 405 programs. The Administrator issued Final Program Priorities, describing the funding activities under section 405 of the Act which OJJDP intends to carry out during Fiscal Year 1992, by publication in the **Federal Register** on June 24, 1992. Other new programs may also be funded under section 404 of the Missing Children's Assistance Act, 42 U.S.C. 5773.

The OJJDP program planning process for Fiscal Year 1992 is closely coordinated with the Assistant Attorney General and the Bureau components of the Office of Justice Programs (OJP). The Missing Children's Program discretionary programs that follow in this announcement are listed below in accordance with overall OJP program priorities, where applicable.

CONTINUING PROGRAMS WITH NEW AWARDS

Missing and Exploited Children Comprehensive Action Program (M/CAP)

Purpose

The purpose of this solicitation is to aid local communities in preventing abduction and exploitation of children, to provide information to assist in locating and recovering missing children, and to minimize the negative effects and consequences of abduction, serious runaway episodes, and exploitation on children and families through enabling individual communities to develop and maintain a multi-disciplinary, coordinated approach to these children and their families. This award will continue the national development, maintenance, and management of existing M/CAP program services.

Background

In recent years, the public has demanded that greater priority be given to crimes against children. M/CAP was designed to provide for a comprehensive community response to those missing children who run away or are abducted by non-family or family members and who are, as a consequence, in danger of exploitation, abuse, injury, and death. The M/CAP program is also designed to enable communities to improve education and prevention services with regard to missing and exploited children.

OJJDP considers the M/CAP program approach to the problem outlined in this solicitation to be an effective and cost-efficient way to provide a comprehensive approach to State and local agencies that will enable them to respond effectively to the problems and needs of missing children and their families. This is done through a process which facilitates the development of multi-agency teams and protocols and provides ongoing training and technical assistance support to these community-based teams. Each participating community develops its team and implementation plan according to the specific needs, resources and priorities of the community. M/CAP focuses on improving the knowledge and skill levels of the agencies involved and on improving the way existing agencies interact and coordinate information and services. M/CAP is designed so that staff time is the only cost to the participating agencies. What is required of the participating communities is commitment from agency heads and a community assessment process to determine service requirements and existing municipal agency capabilities. The information gathered from the assessment process is utilized to develop site-specific training curricula for an intensive 5 day multi-agency program development and implementation workshop, including training manuals for instructors and participants in the 5-day training program. The M/CAP program provides follow-up technical assistance and specialized training activities for each program site.

Sections 404 and 405 of the Act and the 1987 Report of the Attorney General's Advisory Board on Missing and Exploited Children identify a number of recommendations designed to improve the response to missing children and the abuse or sexual exploitation which may be a result. These recommendations constitute the principal elements of the M/CAP plan of

community action. These recommendations include:

- Multi-agency guidelines for reporting and investigating missing and exploited children cases;
- Training for juvenile services and law enforcement agencies in awareness and investigation of child abductions, runaway children and the abuse and exploitation that may result;
- Policies and procedures for juvenile services agencies to ensure that thorough background checks and investigations are conducted on persons working with children;
- Family and Juvenile Court policies to promote the exchange of case-appropriate information between agencies dealing with missing and exploited children;
- Programs to alleviate the trauma and intimidation that many missing children experience in court proceedings;
- Case management practices in cases involving abusers, abductors, and exploiters of missing children which produce more informed case disposition decisions by the court;
- School policies and procedures for flagging, recording, reporting, and documenting school transfer records in order to prevent the concealment of abducted children; and
- Public awareness and prevention programs for the community on missing children, child abuse, child exploitation, and child abduction.

Previous program activity has focused on several components: (1) The assessment of effective approaches to multi-agency team building, existing literature, and training materials; (2) the development of required procedures, assessment tools, and program and training materials; and (3) the development of four test sites. The four sites include Decatur, Illinois; Hillsborough County, Florida; Richland County, South Carolina; and Reno, Nevada. These sites were among those that requested to participate in M/CAP, successfully completed the community assessment process, and represent an array of populations and characteristics.

M/CAP is currently operating under a cooperative agreement (#88–MC–CX–K001) with Public Administration Service (PAS) in McLean, Virginia. Program information and materials are available upon request from the OJJDP staff person listed as the program contact at the end of this solicitation.

Goal

The primary goal of M/CAP is to provide expert specialized training and technical assistance for improved agency information sharing and enhanced management of resources and services in cases of missing and exploited children.

Objectives

The objectives of the M/CAP Program are:

(1) To identify and assess promising and effective community organization planning strategies and procedures for responding to the needs of missing and exploited children;

(2) To help municipal agencies implement programs which respond to the needs of missing and exploited children; and

(3) To disseminate promising and effective program development and implementation techniques for localities to respond to the needs of missing and exploited children.

Program Strategy

By the end of the three year project period, M/CAP will have developed 10 host sites, twenty satellite sites, and 60 affiliate sites. The first tier of 10 host sites will consist of sites that have the capability to be program training and technical assistance platforms and model sites for the M/CAP program process. The 20 satellite sites, which represent the second tier, will be selected from those sites which have successfully completed the community assessment process and demonstrated promising program implementation potential. These satellite sites will share in selected host site training and M/CAP implementation assistance delivered by OJJDP. It is anticipated that there will be at least one state-wide program based on this model. The third tier of up to 60 affiliate sites are jurisdictions which have requested information on the M/CAP program process and wish to be involved in a more unstructured, self-help M/CAP program development. This last tier may consist of small communities which would like the benefit of information and training, but do not need an active and on-going M/CAP team in their community.

The applicant will conduct training based on previously developed programs, with priority training provided to host and satellite sites. It will hold collective training workshops for affiliate sites when feasible. Program implementation assistance will require the utilization of existing training capabilities (facilities, talent and equipment) and the development of additional topic-specific curricula, training materials, and trainers which may be required for the expanded program. Technical assistance through information dissemination will require the continued development, production, and distribution of a variety of written guides and materials.

The applicant will develop and provide to the M/CAP site teams specialized training programs related to issues of missing and exploited children. The applicant will work with host sites to develop up to eight specialized training and technical assistance components for national M/CAP program replication workshops. The applicant will also train practitioners in host sites to act as mentors in satellite and affiliate sites. The specialized training projects will be developed according to the training needs identified by the community agencies participating in M/CAP, such as training for mental health professionals in providing reunification services for missing children and their families. Most training will be cross-disciplinary in nature, but some components will be tailored for individual professions.

The successful applicant will assist M/CAP sites in developing data collection and applied research on missing and exploited children in their communities. As other OJJDP-sponsored research on missing and exploited children is made available, the grantee will be expected to incorporate appropriate and relevant information and findings into M/CAP training and technical assistance components.

Eligibility Requirements

Applications are invited from public agencies or private nonprofit organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations, as long as one organization is designated as the applicant, and co-applicants are designated as such. The applicant and any co-applicant(s) must demonstrate, in addition to program knowledge and support experience, programmatic and fiscal management capabilities to implement a project of this size and scope effectively. Applicants who fail to demonstrate that they have the experience and capability to manage a program of this size and complexity will be ineligible for funding consideration.

Specific Eligibility Requirements

(1) The applicant must demonstrate the requisite knowledge of and experience with missing and exploited children issues necessary to provide capable, responsible management of a national demonstration program.

(2) The applicant must demonstrate the experience and capability to provide timely, relevant professional services in order to assure successful program continuity.

(3) The applicant must demonstrate the ability to develop and provide training related to missing and exploited children issues as well as service-oriented training materials to the recipient jurisdictional, professional, citizen, and community needs as they have been described in this solicitation.

(4) The successful applicant must demonstrate the technical and management capability that will be required to provide an M/CAP service delivery program to incorporate as many as 90 jurisdictions into a three tiered M/CAP program development effort.

(5) The applicant must demonstrate experience and expertise in providing technical assistance to a diverse audience requiring such services with regard to the missing and exploited children issues described in this solicitation. The applicant must demonstrate the capability to provide the required information technology and consultant expertise in order to produce a varied array of relevant training and program implementation guides and trainers for appropriate national program audience needs.

Selection Criteria

In general, all applications will be reviewed in terms of their demonstrated past, present, and potential ability to provide the requisite services and products as they are described in this solicitation.

The applicant will be evaluated and rated based on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (10 points)

The applicant must demonstrate a clear understanding of, and competence to deal with issues relating to missing and exploited children and the needs of the agencies who serve them.

(2) Statement of Goals and Objectives. (15 points)

The goals and objectives to be achieved by the project must be clearly defined, and expressed in operational terms consistent with the issues and performance requirements set forth in the problem statement(s).

(3) Project Design. (20 points)

The applicant must propose a project design, including a work plan, specific procedures to be carried out, performance schedules, expected accomplishments and products. The design must be consistent with the project's goals and objectives, and with the conceptualization of the problem statement.

(4) Project Management. (20 points)

The project's management structure and staffing must be appropriate for the successful implementation of the project. Key staff members should have significant experience in program management and in subject area(s) related to those addressed in this announcement.

(5) Organizational Capability. (25 points)

The applicant's ability to conduct the project successfully must be clearly documented in the proposal. The documentation should include organizational experience in conducting projects of the scope and complexity reflected in this program announcement. The applicant should demonstrate program management and information technology capabilities sufficient to perform the tasks described and defined in this solicitation.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost effective vis-a-vis the activities to be performed.

Award Period

The award will be for a project period of three years. One cooperative agreement will be awarded with an initial budget period of 12 months.

Award Amount

Up to $1,100,000 has been allocated for the initial 12 month budget period. Applicants should include an estimated budget for the second and third 12 month budget periods.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Robert O. Heck, Special Emphasis Division, at (202) 307–5914.

Investigation and Prosecution of Parental Abduction Cases

Purpose

The purpose of this project is to improve the response of the justice system to parentally abducted children and to reduce the incidence of abductions of children by family members by providing training and technical assistance to prosecutors and investigators.

Background

This is a continuing program which requires a new award. Conducted by the National Center for the Prosecution of Child Abuse, one of the research arms of the National District Attorney's Association (NDAA), the first stages of this project successfully produced legal research, including (1) a review of relevant case law and statutes, (2) the collection and review of existing information on prosecutorial, handling of family abductions and related issues, and (3) a survey of prosecutors to identify effective approaches to addressing issues in the area, a trial manual, and a training curriculum for prosecutors responsible for handling family abduction cases. The project is currently providing training and technical assistance to prosecutors as well as multi-disciplinary teams and developing and disseminating materials to facilitate replication of effective approaches to investigating and prosecuting parental abduction cases.

The criminal justice system is increasingly recognizing the prevalence and seriousness of parental abductions and placing greater emphasis on investigative and prosecutorial responses. Many states have raised parental abduction to a felony offense, punishable by imprisonment and large fines. In some states restitution is available for expenses incurred in recovering the child. With the view of parental abduction as simply a "family matter" changing in the eyes of both the public and the judiciary, the criminal justice system is increasingly under pressure to respond effectively to these cases. In many communities it falls to the prosecutor to mobilize the system's response in order to guarantee thorough investigation and prosecution. Abductions of children by parents involve complex investigative and legal issues. They present unique challenges to prosecutors and law enforcement agencies and require different handling from other criminal cases. However, most prosecutors receive little or no training or outside help with parental abduction cases. The lack of experience on the part of most prosecutors is hampered by rapid turnover of personnel, the relative unpopularity of handling parental abduction cases compared with other types of felony prosecutions, the common policy of rotating assistant prosecutors from one position to another, and the practice of assigning lower priority to these cases. For these reasons, there is an ongoing need for regular, high quality and cost-effective training in handling parental abductions.

The findings of recent studies appear to indicate that if parental abduction cases are more vigorously prosecuted, the incidence goes down. Without prosecutorial support, law enforcement involvement in parental abduction cases is infrequent and inconsistent, despite the existence of criminal statutes proscribing such conduct.

Parents who have financial resources may be able to turn to attorneys and private investigators for help; parents who cannot afford private assistance are left without a means to locate and recover their children. Recent studies indicate that a majority of left-behind parents fall into the latter category.

Program information and materials are available upon request from the OJJDP staff contact listed at the end of this solicitation.

Goal

The goal of this program is to increase awareness and knowledge on the part of prosecutors and other professionals about the serious and complex nature of parental abduction cases and to assist local prosecutors in improving the quality of investigation and prosecution of parental abductions.

Objectives

The objectives of this program are:

- To disseminate information to prosecutors on the local level through providing technical assistance as requested, guidance regarding effective strategies, and the development of articles, packets, and educational presentations;
- To provide training for prosecutors through national conferences on investigation and prosecution of parental abduction cases and to provide instructors for State, local, and national training programs and conferences;
- To produce, update, and distribute publications and other written materials, including distribution of the "Investigation and Prosecution of Parental Abduction" manual, contribution of articles for publication in professional journals, and development of new publications on "cutting edge" issues related to the handling of parental abduction cases; and
- To monitor, draft and evaluate federal and state legislation from the perspective and experience of prosecutors.

Program Strategy

The design of this program builds upon the original program by the American Prosecutors Research Institute on the Investigation and Prosecution of Parental Abduction Cases. The award recipient will implement three primary program strategies: technical assistance, training, and publications. These three strategies will be implemented on the local or individual, State or regional, and national levels.

The grantee will develop and implement training for prosecutors and investigators through providing instructors for local, State and regional conferences and through holding annual national conferences. Technical assistance will be made available to individual prosecutors for development of case strategy and for information on specialized topics such as the "underground railroad", cases involving allegations of domestic violence or child abuse, and model voir dire. The project strategy also calls for the development of collected resources and clearinghouse functions, and for the development of additional educational and informational materials which can be disseminated to the field. The grantee is also expected to identify and participate in ongoing exchanges of information with other key organizations and experts in the field, including other OJJDP grantees focusing on missing and exploited children. As new reports and findings on parental abduction issues become available, the grantee should update and incorporate the new information in training curriculum and resource materials. The project also calls for a project advisory board made up of experts in the field of parental abductions and approved by OJJDP.

Eligibility Requirements

Applications are invited from public agencies or private nonprofit organizations which can demonstrate knowledge of the civil and criminal justice issues relating to the investigation and prosecution of parental abduction cases, as well as experience and capability in curricula, technical assistance, and conference development.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, civil and criminal justice issues relating to the investigation and prosecution of parental abduction cases.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan and proposed products of the project must be directly linked with the stated objectives and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience is required in criminal justice issues relating to the investigation and prosecution of parental abduction. Also organizational experience is required in the development and implementation of training curricula, publications, technical assistance, and conference planning. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period for the grant is 36 months. One grant will be awarded with an initial 18 month budget period.

Award Amount

Up to $250,000 has been allocated for the initial 18 month budget period. Applicants shall include an estimated budget for the second 18 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Peter Freivalds, Training and Technical Assistance Division, OJJDP, at (202) 307–0598.

New Programs

The following solicitations refer specifically to three recently completed studies sponsored by OJJDP available from the Juvenile Justice Clearinghouse. The studies are:

"Families of Missing Children: Psychological Consequences and Promising Interventions," Center for the Study of Trauma, University of California at San Francisco. (Draft final report, 665 pages).

"Obstacles to the Recovery and Return of Parentally Abducted Children," Center on Children and the Law, American Bar Association. (Draft final report, approximately 257 pages.)

"The Reunification of Missing Children Project," Center for the Study of Trauma, University of California at San Francisco. (Draft final report, 145 pages.)

Legal Issues and Barriers To Using School, Public Service Agency, and Hospital Records and Information in Locating Missing Children

Purpose

This project will identify barriers to using school, hospital, and other public and private service agency records and information to assist in locating missing children.

Background

Law enforcement officers at times must use stealth to locate missing children. In some cases, particularly family abductions, the child can be located through the use of official records such as social service records or school transcripts. However, confidentiality laws, agency policies, and professional ethics often prevent the disclosure and dissemination of this information to parties beyond its immediate use. Law enforcement officers may not be able to access it. Indeed, there may be instances in which the veil of confidentiality should not be pierced in efforts to locate the missing child. Law enforcement personnel will benefit from a study designed to obtain information to identify the nature and extent of these barriers and the mechanisms by which various States, agencies and professionals are impacted by operation of these statutes, policies, and ethical codes in providing information to law enforcement agencies who are investigating a missing child case.

Goal

The goal of this program is to assess the barriers to law enforcement's ability to obtain and use school records, public service agency information, hospital records, and the information resources of other public and private agencies in locating missing children.

Objectives.

The objectives of this project are to:

- Identify public and private agencies and personnel that may have information potentially useful in locating a missing child;
- Examine confidentiality statutes at the Federal, State and local level that prevent or restrict access to this information;
- Identify other statutes, case law, or agency policies which prevent or restrict the use of these information resources;
- Examine other barriers, such as codes of professional ethics, which impact the ability of law enforcement to access relevant information; and
- Suggest mechanisms through which these statutes, policies, or professional codes may be modified to provide access to information that would be valuable in locating the abductor and the child(ren).

Program Strategy

The grantee will first identify non-law enforcement agencies and personnel which may have information that could aid in locating missing children. The survey should include battered women's shelters, the Internal Revenue Service, the branches of the military, public assistance agencies, adoption agencies, foster care agencies, schools, and other private and public child-service agencies. The grantee should identify a full range of relevant agencies for potential inclusion.

Second, the grantee will examine Federal and State statutes, case law, codes of professional ethics and conduct, and agency policies which impact access to the information contained in records of these agencies that would assist law enforcement in locating missing children.

Third, using the information gathered, the grantee will produce a guide to accessing and using such information. This guide shall indicate the flexibility provided by the various statutes, policies, and codes of conduct, the potential barriers they establish, and whether and under what circumstances identified barriers can be overcome to make needed information available to law enforcement agencies in missing child cases while, at the same time, protecting the legitimate confidentiality rights of individuals.

Finally, to disseminate this information and provide a wide review of the findings, the grantee will organize a symposium of professionals to discuss and critique the final draft of the guide. The grantee, in consultation with OJJDP, will invite to the symposium as groups of professionals representative of the agencies examined, such as school officials, social service professionals, community mental health workers, law enforcement personnel, judges (or appropriate judicial personnel), and others. The symposium will assist the grantee to refine the findings of the assessment and to indicate future policy directions.

Products

At each stage of the project, the grantee will submit a report to OJJDP that will demonstrate that these objectives have been met:

(1) A listing of agencies that potentially have information on missing children;

(2) An assessment protocol to determine the type of information available;

(3) A publishable guide to using the particular agencies for locating missing children; and

(4) Proceedings from the symposium.

Eligibility Requirements

Applications are invited from public and private non-profit agencies, organizations, educational institutions, or combinations thereof. Applicants must demonstrate that they have the necessary legal background and knowledge to examine the relevant statutes, case law, and professional codes or standards of conduct. Also, applicants must indicate they have the neccessary research background to produce a credible information guide.

Selection Criteria

Applications will be rated on the extent to which they meet the following selection criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant should expand on the problem with a narrative that indicates a full understanding of the difficulties involved in locating missing children. The applicant should indicate particular circumstances in which such information would be useful to law enforcement personnel and parents. The applicant should also show initiative in efforts to grasp the full extent of the stated problem and indicate how their proposal will address this problem.

(2) Statement of Goals and Objectives. (20 points)

The applicant must link the problem statement directly with concrete, measurable tasks or objectives. These tasks should show exactly what should be done to address the goals of the project as indicated in the problem statement.

(3) Project Design. (25 points)

The application will be evaluated on the soundness of the project design. Applicants should map out how the project tasks will be completed and how they directly apply to the stated goal of the project. The design should be consistent with generally accepted principles of research and investigation. OJJDP will require the four following tasks to be completed:

- A listing of the agencies (public and private) which may have useful

information for locating missing children;

• The drafting of an assessment protocol to examine the opportunities and barriers to using this information;

• The actual assessment of the accessibility of the information; and

• A symposium of professionals to discuss the findings of this grant. While the successful applicant will be encouraged to present creative solutions to the problem, the above four tasks link directly to the products OIJDP deems necessary for the successful completion of the project, and must be built into the project design.

(4) Project Management. (15 points)

The applicant must demonstrate that their organization has the managerial and organizational capability to undertake a project of this type. Applicants should indicate specific personnel who will accomplish the tasks. If specific personnel are not yet named, the applicant must include position descriptions along with minimum qualifications necessary of any individuals that will fill those positions. The applicant must indicate how their particular management structure will contribute to the successful completion of the project.

(5) Organizational Capability. (15 points)

The applicant must demonstrate that the organization has the capacity and the experience to undertake and complete a project of this nature and scope.

(6) Budget. (10 points)

Applications will be reviewed to assure that all costs will cover the expenses of the proposed project. Similarly, the budget will be reviewed to assure that all costs are reasonable for the type of project and activities required to carry out this project. All costs indicated must be allowable under OJP Financial Guidelines and Federal Policy.

Award Period

The project period for this program will be 12 months.

Award Amount

Up to $125,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 14, 1992.

Contact

For further information contact Joe Moone, Research and Program Development Division, at (202) 307–5929.

Cases of Legal Definition Abduction, Child Molestation and Exploitation by Nonfamily Members

Purpose

The purpose of this project is to provide information about cases of nonfamily legal definition child abduction, molestation and exploitation cases and the manner in which these cases are defined and treated by the community through the media and within the criminal justice system.

Background

Much of the controversy in the last decade about nonfamily child abduction has been about definitions, not numbers. Definitions in social science research differ from legal definitions, and legal definitions may vary substantially from one jurisdiction to the next. The "National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children in America" (NISMART), released by the Office of Juvenile Justice and Delinquency Prevention in 1990, addressed this problem by using a two-level definition. Within the category of nonfamily abduction, NISMART used a "legal definition" of abduction (or the crime of abduction as defined by state laws) and stereotypical kidnappings. Stereotypical kidnappings referred to the more common conception of stranger abductions involving long-term, long-distance, or fatal episodes while the legal definition included short-term abduction, and the coerced, unauthorized movement or detention of the child as a part of some rapes and assaults by nonfamily members. Using the legal definition, many violent crimes, including child sexual assault, can involve abduction as an element. NISMART estimated that there were between 3,200 and 4,600 legal definition abductions of children in 1988. At least two thirds of these cases involved sexual assault.

The estimates for legal definition abductions are the most difficult to validate against any other source, since many of these abductions are not thought of as abductions, even by law enforcement personnel, and they are not necessarily reported as such in the media. The sexual assault aspects of child molestation generally overshadow the aspect of a legal definition abduction. Police reporting methods, particularly regarding sexual assault crimes and abductions, are problematic and inconsistent. The NISMART researchers pointed out that the biggest potential unknown for estimates of legal definition abductions concerns crimes not reported to police and abductions not known to caretakers. The FBI estimates that only between 1% and 10% of these cases are ever reported to law enforcement. Currently there is no national data collection focused on children who are sexually abused or assaulted by nonfamily members each year. Also, national figures on homicide are not kept in a form that makes it possible to determine whether an abduction occurred together with the murder. The lack of uniformity and definition of charges contributes to the difficulty in understanding the scope and nature of not only legal definition abductions but also of the children who are sexually assaulted by nonfamily members.

Goals

The goals of this program are:

(1) To understand how the media portrays nonfamily abductions of children and how this portrayal may impact on the outcome of the criminal justice process and community perceptions of the problem.

(2) To identify prominent characteristics of nonfamily child abductions, as well as molestation and sexual exploitation in the context of legal definition abductions through media sources, police records and court data within selected sites.

(3) To analyze and compare definitions and handling of legal definition abductions and molestations by the media, law enforcement, and the courts within selected sites.

Objectives

The objectives of the program are to:

• Construct a representative sample of newspaper reports of incidents such as sexual assault, molestation, kidnapping, homicides, and other related victimization of children that may include nonfamily abductions.

• Compare the information found in newspapers, police reports, and court information (bargained pleas, verdicts, dispositions etc.) to determine "accuracy" in newspaper reports, and consistency between sources of reporting. The grantee may also examine police records for cases which were charged but not reported in the media.

• Using the information gathered from media, police, and court records, analyze and compare the ways in which cases of legal definition abduction and molestation are defined and handled.

• Explore media reporting of the community response to a range of incidents and their perceptions about the problem of child abduction and sexual molestation and exploitation and its impact on their community.

Program Strategy

Within the limits of resources available, select several jurisdictions to study. The grantee will examine all media reports available on nonfamily kidnappings, molestations, and exploitation of children to search for legal definition abductions. The grantee will gather from these reports basic information about the case.

From the total sample of cases, the grantee will select sites within the jurisdictions from which to draw a subsample of cases for further investigation. This investigation will include examination of police and court records as well as further tracking through the media. Police records may be examined for information on cases which were charged but not reported in the media. Besides information on the charges filed and case outcome, the information collected from these sources will be examined for ages of offenders and victims, offender occupation, a victim-offender relationship, number of victims, previous arrest history, involvement of child pornography or prostitution, and the criminal justice system status of the offender (on bail, probation, or parole).

The analysis will include an examination of the types of newspapers that report such crimes (such as urban or rural, West, South, or North, population size, etc.) and how the crimes are reported (such as seriousness, judgmental language, column inches, number of articles). Within the subsample of cases, the grantee will note consistencies and inconsistencies between the newspaper reports and the police records of the case. When tracking the cases further through the court system, the grantee will note inconsistencies between all three sources of information.

Following this examination, the grantee will look at the particular independent variables collected (such as arrest charge, demographics of offenders and victims, characteristics of the charge, bargained pleas, verdicts, dispositions). This examination will indicate the level of knowledge available to the public from the newspaper accounts.

Products

(1) A final report summarizing the findings. This report should include the following: (1) The findings about characteristics of nonfamily legal definition abduction and molestation and sexual exploitation cases, (2) consistencies and inconsistencies found between the three data sources, (3) information on how legal definition abductions and molestations of children are perceived by the community at large through media representation, and (4) how these cases are defined (i.e. differences in legal definition abduction in the selected sites) and handled by the criminal justice system.

(2) A public use data base. This data base should include all information collected. All individual identifying variables must be removed.

Eligibility Requirements

Applications are invited from public and private nonprofit agencies, organizations, educational institutions, or combinations thereof. Applicants must demonstrate that they have knowledge of child victims of sexual molestation, exploitation and abduction and provide evidence of their management and financial capability to implement effectively a project of this size and scope.

Selection Criteria

Applications will be rated on the extent to which they meet the following selection criteria.

(1) Conceptualization of the Problem. (20 points)

The applicant should expand on their understanding of data sources, data analysis, etc., with regard to this particular problem.

(2) Statement of Goals and Objectives. (20 points)

The applicant should expand on the above listed objectives providing clear definitions based upon the applicant's understanding of the problem, objectives, and available resources. Finally, the applicant should organize these objectives in such a way as to be consistent with the research design.

(3) Project Design. (25 points)

The applicant will be evaluated on the soundness of the project design. The solicitation does not dictate a specific direction for this project. OJJDP will be looking for inventive and creative methods to examine this problem. However, the proposed methodology must be fully explained. It must also be closely related to the goals of the project. The applicant must indicate how the proposed methodology will fulfill the project goals.

(4) Project management. (15 points)

The applicant must demonstrate that their organizations have the managerial and organizational capability to undertake a project of this type. The applicant must provide a list of all personnel to be involved in this project and specify which tasks will be performed by whom and under what timelines. The applicant must include résumés of all primary research personnel and indicate how their management structures will allow for the successful completion of the project.

(5) Organizational Capability. (10 points)

The applicant should indicate how its organization will direct the necessary resources, facilities, etc., to accomplish this project. In particular the applicant should provide evidence of past projects which indicate the ability to complete this project.

(6) Budget. (10 points)

The application will be reviewed to assure that all costs will completely cover the expenses of the proposed project. Similarly, the budget will be reviewed to assure that all costs are reasonable for the type of project. All costs indicated must be allowable under OJP Financial Guidelines and Federal Policy.

Award Period

The project period for this project will be 18 months.

Award Amount

Up to $200,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by August 28, 1992.

Contact

For further information contact Jeff Slowikowski, Research and Program Development Division, at (202)307–5929.

"Families of Missing Children: Psychological Consequences and Promising Interventions": A Study to Resurvey the Respondents in the Original Study

Purpose

The purpose of this resurvey is to provide an improved knowledge base for future development of programs to ameliorate the psychological effects on victims and families of family and non-family abductions and serious runaway episodes. It builds on the earlier project, "Families of Missing Children: Psychological Consequences," by resurveying the families who participated in that survey and again measuring levels of psychological distress in order to gather data in which the missing child has been recovered since the last survey and to identify more clearly the missing child situations in which the psychological effects dissipate after two years and those in which they do not.

Background

The results of the initial "Psychological Consequences" project indicated that it is appropriate to identify two traumas rather than just the one associated with each missing child incident. The initial trauma arises when the child is taken, but there is a second trauma at the time of resolution, the return of the child or the discovery that the child has been killed. At the conclusion of the initial study 50 missing children from the 279 cases had not been recovered. It is important to get data from any of these 50 cases in which there has been a recovery since the conclusion of the initial project because it is expected that these will be more serious cases due to the length of time the children would have been missing.

In the initial "Psychological Consequences" project, data was collected and analyzed using the double ABCX Model of Family Adaptation to Crisis developed by Hamilton McCubbin of the University of Wisconsin. A sample of 279 families were followed prospectively with in-home interviews in a time series measurement design from approximately one month post-disappearance to eight months post-disappearance. Changes in the levels of distress for each type of disappearance were measured in the initial project over a period not exceeding eight months, with the time after recovery often being much shorter. Whether or not a significant drop in psychological distress levels can now be measured two years after disappearance is important to the development of programs to help families cope with this distress.

Goal

The goal of this project is to assess the changes in the post-trauma responses of the 279 families composing the original sample, now that approximately two years have passed after the original data collection, in order to validate the conclusions reached in the original study over a longer period of time, particularly with regard to the trauma associated with the recovery of a body or a child.

Objectives

The objectives of the project are:

(1) To obtain responses to the original data collection instruments from as high a percentage of the 279 sample families as possible.

(2) To collect the data using methods equivalent to those employed originally, including in-home interviews, in order to isolate the variation in responses as due only to the passage of time.

(3) To analyze data using the double ABCX Model of Family Adaptation to Crisis and present the results showing changes from the results of the initial project and drawing conclusions from these results.

Program Strategy

(1) Applicants will be expected to present a plan for obtaining the highest possible rate of response. This plan will include working in cooperation with the original researcher, the University of California, San Francisco, to reestablish contact with the original victim families in order to assure the continuity of contact.

(2) Data collection instruments will be the same as used in the initial data collection including the following instruments: Symptom Check List—90, Achenback Child Behavior Check List, Family Inventory of Life Events, F-COPES, Frederick Trauma Reaction Index—Adult, Frederick Trauma Reaction Index—Child, and the Locke-Wallace Marital Satisfaction Scale.

(3) Data will be collected in the same manner used by the initial researcher, in the families' homes.

(4) Data will be analyzed using the double ABCX Model of Family Adaptation to Crisis and results will be presented showing changes from the results of the initial project and drawing conclusions from these results.

Products

A final report will be presented 90 days after the close of the grant period showing changes from the results of the initial project and drawing conclusions from these results.

Eligibility Requirements

Applications are invited from public and private nonprofit agencies, organizations, educational institutions, or combinations thereof. The applicant must demonstrate that they have knowledge and experience in the design and implementation of research projects of this size and complexity. They must demonstrate the ability to collect and analyze data using the double ABCX Model of Family Adaptation to Crisis employed in the initial project.

The applicant must provide further evidence of their management and financial capability to implement effectively a project of this size and scope. Those who fail to do so will be ineligible for funding consideration.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The problem to be addressed by the project should be clearly stated. The applicant should address the problems of achieving the maximum level of response on this resurvey, assuring the comparability of the data developed in this resurvey with that developed in the original survey, and analyzing the results to gain the most insight possible from the new information.

(2) Statement of Objectives. (20 points)

The objectives to be achieved by the project must be clearly defined. The applicant must link the problem statement directly with concrete, measurable tasks to achieve the program objectives. These tasks should show exactly what will be done to address the program objectives.

(3) Project Design. (20 points)

The application will be evaluated on the soundness of the project design. The applicant should provide a schedule for the implementation and completion of these tasks and demonstrate that they will achieve the objectives of the project. The design should comply with generally accepted principles of research and investigation.

(4) Project Management. (20 points)

The applicant must demonstrate that it has the managerial and organizational capability to undertake a project of this type, indicating specific personnel who will accomplish the tasks. If specific personnel are not yet named, the applicant must include position descriptions along with the qualifications necessary of any individuals who will fill those positions. The applicant must indicate how this particular structure will allow for the successful completion of the project.

(5) Organizational Capability. (15 points)

The applicant must have the capability to complete the tasks indicated in the application. In particular, the applicant must demonstrate experience in collecting, analyzing, and presenting data as required to complete this project.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken. The application will be reviewed to assure that all costs will completely cover the expenses of the proposed project. Similarly, the budget will be reviewed to assure that all costs are reasonable for the type of project envisioned in this solicitation. All costs indicated must be allowable under OJJDP grant regulations. The applicant

should show that all proposed costs will be used in the most effective manner possible to complete the project goals.

Award Period

The project and award period for this project is 12 months.

Award Amount

Up to $150,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Eric Peterson, Social Science Specialist, Research and Program Development Division, at (202)616–3644.

Model Sentencing and Custody Guidelines in Parental Abduction Cases

Purpose

The purpose of this project is improve the justice system response to parentally abducted children and deter abductions through the development of guidelines for prosecutors and judges on the effective handling of parental abduction cases and to minimize the negative effects on children by enabling judges to make more informed decisions regarding post-abduction custody.

Background

Recent OJJDP-sponsored studies on the obtacles to the recovery of parentally abducted children and on the psychological impact of abduction on children and families show that child victims of family abductions experience more trauma and long-term disturbances than is commonly believed. These, and other studies, indicate that primary motivations of family abductors in the majority of cases were anger and revenge against the other parent and that the abductors attempted to use their children to control and attack the opposing parent. Some parents were fleeing abuse directed at themselves, their child, or both, and needed protection. While studies indicate that up to 33% of parental abduction cases involve allegations of child abuse, a higher percentage reportedly involve a violent relationship between the parents. A recent study found that more than one-half of left-behind parents reported previous abuse by their partners, with three-quarters of abducting fathers having a history of violent behavior compared with one-quarter of abducting mothers. Fifteen percent of the abductions in the same sample involved the use of force. One study of missing children found that parentally abducted children were missing longer (an average of 499 days) than stranger abducted children (an average of 122.3 days), or runaway children (an average of 27.7 days).

Family abduction cases represent a wide variety of situations with regard to motivation, effects on the child, and outcomes. Regardless of whether an abduction is prompted by frustration with unsatisfactory custody or visitation arrangements or by a desire to punish or control the other parent, many abducting parents intentionally or unintentionally inflict serious emotional or physical harm upon their children. Legal outcomes differ greatly from state to state. OJJDP-sponsored studies indicate that few abductors are being prosecuted or are receiving sentences of any consequence, and custody is being awarded to the abductor in some cases. Consequently, in many jurisdictions, law enforcement involvement in these cases is infrequent and inconsistent.

Goal

The goal of the project is to develop guidelines that inform prosecutors and judges of the effects of parental abductions on children and families which will enable the criminal justice system to develop more accurate and effective responses to family abduction cases.

Objectives

The objectives of this program are to:

- Develop guidelines for prosecutors who must make decisions on charging in parental abduction cases.
- Develop guidelines for judges on sentencing and post-abduction and post-recovery custody determinations.
- From these judicial guidelines, develop a bench book for judges.

Program Strategy

The grantee will be responsible for reviewing current studies about the abduction of children and the consequences of this action on children and their families, as well as conducting surveys, if necessary, to determine judicial and prosecutorial needs in this area. In addition, reports and information on Federal and State statutes should be examined and analyzed. This information will be utilized to develop guidelines for prosecutors and judges to enable them to identify and address a wide range of cases with varying motivations and consequences to the abducted child. Examples of the factors to be considered include child concealment behaviors, use of force or violence at the time of the abduction, transporting a child out of state, changing a child's name, depriving the child of stable schooling, physical or sexual abuse, emotional and physical (including medical) neglect, and lying to the child by telling it that the other parent does not want it or is dead. The guidelines should be specifically directed to the complex concerns facing judges and court personnel and prosecutors, such as the types of situations in which abduction is likely to reoccur, a history of domestic violence which would affect the other parent and/or the child, the circumstances in which child custody might be granted to the abducting parent, and what visitation options and circumstances guiding them will be permitted after the recovery of the child.

The applicant will develop the judicial guidelines into a bench book as well as a series of articles that can be widely distributed to criminal and family court judges. The grantee will also develop a plan for dissemination to professionals through judicial, prosecutorial, and child welfare organizations.

To support this work the applicant will establish an advisory committee of judges, prosecutors and other practitioners and researchers. This advisory committee will advise the grantee on all aspects of the project and review and comment on all of the products.

The successful applicant will work with the grantee in the followup project to "Obstacles to the Recovery and Return of Parentally Abducted Children" to develop a training curriculum that can be incorporated into existing national, State and local judicial, prosecutorial and child welfare training.

Products

OJJDP expects the following products under this grant:

- Guidelines for prosecutors with regard to the handling of parental abduction cases.
- Guidelines for judges on the handling of parental abduction cases and the related custody issues.
- A judicial bench book which incorporates the guidelines and guidance for sentencing of parental abductors and guidance with regard to custody determinations in child abduction cases.

Eligibility Requirements

Applications are invited from public agencies and private organizations which can demonstrate knowledge of issues relating to missing and abducted children, experience with surveys,

development of guidelines, and capability in civil and criminal justice issues and training development. Joint proposals by more than one applicant are welcome, as long as one organization is designated as the applicant with fiscal responsibility for the grant and the other as the co-applicant.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of the problem and a competence to deal with issues relating to missing, abducted, and exploited children, including civil and criminal justice handling of parental abduction cases.

(2) Statement of the Goal and Objectives. (20 points)

The applicant must demonstrate a clear understanding of the goal and objectives to be achieved by this project and this understanding must be consistent with the requirements set forth in the conceptualization of the problem.

(3) Project Design. (25 points)

The program strategy, procedures, workplan or milestone chart, and proposed products of this project must be directly linked with the stated objectives, and with the problem addressed by this announcement. The applicant must provide a clear discussion of how it will accomplish the various tasks and responsibilities under this project.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant's ability to conduct the project successfully must be documented in the application. Organizational experience is also required in issues relating to missing and exploited children, including civil and criminal justice system handling of parental abduction cases, and development of publications and training curricula. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 18 months.

Award Amount

Up to $125,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 14, 1992.

Contact

For further information contact Len Johnson, Special Emphasis Division, at (202) 616–3657.

Model Treatment and Services Approaches for Mental Health Professionals Working With Families of Missing Children

Purpose

The purpose of this project is to increase knowledge of and develop effective treatment and services approaches for mental health professionals working with families of missing children in order to minimize the psychological consequences experienced by these victims and their families.

Background

"The Families of Missing Children: The Psychological Consequences and Promising Interventions" (Center for the Study of Trauma at University of California at San Francisco) study found that the vast majority of families of missing and recovered children do not receive any mental health services even though the experience of having a child abducted inflicts significant trauma upon the victim and the family members left behind. Only a limited number of criminological or psychological studies have specifically addressed missing children and their families. Previous studies have generally reported that there are profound negative psychological effects that result from the missing experience. The adverse psychological effects of the abduction response are peculiar to children and can be observed in their immediate responses as well as up to 4–5 years post-trauma. However, long-term traumatic effects may not be observed by parents for 6 months to 1 year post-trauma. Symptoms range in frequency and severity. The more severely disturbed children often may have pre-existing psychological problems. They may also come from families with pre-existing physical or emotional disturbances, and may have fewer extended family members in the community. Significant trauma symptoms have been reported in recovered children in parental abduction cases, including disordered sleep, violent behavior, uncontrolled crying, fearfulness, and separation difficulties. Children may also perceive the left-behind parent as having failed to protect' them and may react with anger and rejection. One study noted that the degree of trauma to children was affected by five factors: (1) Their age at the time of abduction, (2) how they were treated by the abductor, (3) the length of time gone, (4) the events and lifestyle experienced during the abduction, and (5) the type of support received upon recovery.

Other families experience post traumatic stress symptoms similar to those of the child victim, although often of lesser intensity. The "Families of Missing Children: Psychological Consequences and Promising Interventions" study also indicated that the majority of families of missing children experience clinically significant levels of distress. While the severity of trauma suffered by victims and families of non-family abduction is more commonly recognized, children and left-behind parents involved in parental abductions also suffer high levels of trauma and long-term distress. Children are usually abducted by a parent during or after the breakup of a marriage or relationship. As a consequence, in addition to the trauma ensuing from the loss of the child, the parent must also deal with other stressful factors stemming from the marital or relationship break-up. The literature review conducted in conjunction with this study found that there is a dearth of experience and knowledge and almost no research on abduction trauma and reactions of families to having a child abducted. Thus, parents who do seek mental health assistance are not likely to find a therapist with experience in either non-family or family abduction trauma.

Goal

Given the void in experience, information, and research on the psychological trauma associated with child abduction, the goal of this program is to develop, test, and refine model treatment and services approaches and training materials for use by mental health professionals in stabilizing family units upon recovery of missing children, and supporting the members of these family units and the returned child to

recover effectively from the associated emotional trauma.

Objectives

The objectives of the project are:

- Through existing research and interviews with victims and their families and therapists, to assess the experiences and effects of abductions (both family and nonfamily).
- To assess other treatment approaches which have been determined to be effective with child victims and their families.
- To develop and test program and family services approaches designed specifically for missing children and their families.
- To develop materials for training curricula and replication manuals.

Program Strategy

While the desirability of developing research-based treatment models is irrefutable, given the immediate need for professionally structured treatment and services approaches, the strategy anticipated for development of these programs anticipates an eclectic approach. The grantee may want to interview families and victims about their experiences and the effects, as well as therapists who have worked with victims and families. Program approaches should be developed which are based upon a combination of treatment approaches determined to be effective in cases involving child protection, family violence, gross family dysfunctioning, court ordered placement of children, familial incest, and marital conflict accompanied by serious violence, and post-traumatic stress disorder in children and adults. Treatment with families of soldiers missing in action should also be explored to determine if effective approaches were developed. The project may also include the development of a nationwide referral system.

Products

The end product should be two to three treatment and services approaches which can be tested in the second and third years of a three year project period, along with replication manuals, training curricula, and a complete literature review.

Eligibility Requirements

Applications are invited from public agencies and private nonprofit organizations that can demonstrate knowledge of issues relating to missing and exploited children and experience and capability in development of mental health treatment and services for victims. Joint proposals by more than one applicant are welcome, as long as one organization is designated as the applicant and the other as co-applicant.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues relating to missing and exploited children and the development of mental health treatment and services for victims of crime.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan describes a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in issues relating to missing and exploited children and development of mental health services and treatment is required. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 36 months.

Award Amount

The allocation of funds for the initial 18 month budget period is up to $200,000. The applicant must include an estimated budget for a second 18 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing & Exploited Children Program at (202) 616-3631.

Interviewing Adolescent Victims of Sexual Exploitation and Sexual Abuse

Purpose

The purpose of this program is to improve the response of the criminal and civil justice systems to missing children and exploited children by improving interviewing techniques for law enforcement, judicial and other professionals who deal with sexually abused or exploited adolescents.

Background

Interviewing adolescent victims of sexual abuse and exploitation requires particular skills and techniques. Due to their age and the nature of their exploitation, these victims are often extremely reluctant or unable to disclose or discuss their abuse or exploitation. There is little literature or training available in the field to instruct law enforcement personnel and medical and direct service providers on how to conduct interviews with the adolescent victim. However, individual practitioners in various police, prosecutorial, health, or related agencies have developed considerable proficiency in dealing with adolescent victims. Their expertise could be harnessed to train others.

Goal

The goal of this project is to develop information and techniques for interviewing adolescent victims of sexual abuse and exploitation for use by criminal justice personnel and other professionals.

Objectives

The objectives of this project are:

- To assess and inventory training needs in the subject area.
- To develop the necessary training curricula and related informational materials for professionals who conduct interviews with adolescent victims.

Program Strategy

In order to expand the availability of information and training in this area, OJJDP will sponsor an inventory and assessment of existing informational and training resources pertaining to this topic. Overall, the project will review

the protocols for conducting victim interviews and the distinctions between the first responder interview, the investigative interview, and the therapeutic interview. Joint investigative interviewing by law enforcement personnel and child protective services should also be addressed. Project documents are expected to cover: (1) Interviewing techniques, including types and purposes; (2) essential elements of sexual exploitation and abuse investigations; and (3) essential elements of adolescent psychology and behavior. The grantee is expected to draw on the expertise of experienced law enforcement investigators and others who have developed special skills in interviewing adolescent victims. A literature review should be included. The training should be tested in several sites.

Products

Final products expected by OJJDP include a literature review, a suggested training curriculum and a summary state-of-the-art monograph, as well as a listing of resources and practitioners with particular expertise in this area.

Eligibility Requirements

Applications are invited from public agencies and private organizations that can demonstrate the knowledge of issues relating to missing and exploited children, and the experience and capability in developing curricula and publications for law enforcement and social services and mental health personnel.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues relating to missing and exploited children, investigation of crimes against children, and curricula and publications development.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in issues relating to missing and exploited children, training curricula for investigators, and publications development is required. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 24 months.

Award Amount

Up to $125,000 has been allocated for the first 12 month budget period. The applicant must include an estimated budget for a second 12 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing and Exploited Children Program, at (202) 616–3631.

Resource Handbook of Victim Services and Assistance for Missing and Exploited Children and Their Families

Purpose

The purpose of this project is to enable families of missing children to minimize the negative psychological effects of the abduction or missing experience through the development of a resource handbook to be used by families and friends of missing children to help them recognize the emotional and physical needs of family members and to identify and access available services designed to assist them in coping with the loss, loss and recovery, or death of their child.

Background

The "Families of Missing Children: The Psychological Consequences and Promising Interventions" study found that the vast majority of families of missing and recovered children do not receive mental health services, guidance in coping with the return of a child, or other victims services and resources even though the experience of having a child abducted inflicts significant trauma upon both the victims and the family members left behind.

Families of missing and recovered children can (1) enhance their personal, marital, and family stability during this crisis when they know what constitutes expected or normative reactions of child loss; (2) improve the parent-child relationship when they know the child's experience during the event and after recovery; and (3) insure their understanding of ongoing needs of the non-missing children in the family when they know sibling reaction to child loss.

Goal

The goal of this project is to develop and publish a resource handbook for families and friends of missing children that will help them (1) understand the emotional and physical needs of family members and (2) identify and access available services designed to assist them in coping with the disappearance and recovery or death of their child.

Objectives

The objectives of this project are to:

- Assess the needs of families of missing children.
- Produce a resource handbook for families and friends of missing children that will help them (1) identify the emotional and physical needs of family members and (2) identify and access the types of available services designed to assist them in coping with the loss and recovery or death of their child.
- Develop a plan whereby the publication can be efficiently and economically updated from time to time to ensure that the information—especially available services and financial assistance—remains as current as possible.
- Develop and implement a plan for an initial distribution of the final product.

Program Strategy

This project requires the development of a specialized handbook designed to enable families to recognize their personal needs and the needs of their family and to identify and access services available on a local, State, and national basis. This publication will include information on the types of available victim compensation and assistance, e.g., local, State and Federal funds, a listing of national support organizations for families and victims,

as well as information on selecting a therapist. For situations involving a crime, the handbook will also address investigative, legal and court issues. The handbook will provide information for friends and extended family members on providing support and assistance to the family of a missing child. The handbook is not intended to be a comprehensive directory of local services nationwide but should instead focus on the broader types of assistance available and provide general information about accessing it.

Due to the multi-faceted nature of this publication, it is important that an Advisory Group be established to assist in determining the most important information to be included in the document. The applicant should give careful consideration as to who should be represented in the Advisory Group. It is recommended that the Group include such advisors as family members who have survived the loss and recovery or death of a child; therapists; medical doctors; family counselors; and representatives of social services, law enforcement, and the legal and court systems. The purpose of the Advisory Group is to assist in providing information for the resource handbook and reviewing and commenting on the final publication.

Production of the resource handbook should include a needs assessment of what victimized family members needed during and following their crisis. The assessment should cover what services were most helpful to the victims and their families and what "services" were either missing or harmful. The applicant should also conduct a literature review that includes, but is not limited to, physical and psychological advice to family members and friends of a missing child and available services designed to assist them in coping with the loss and recovery or death of their child. The applicant should submit a handbook organizational plan and outline and a final draft of the handbook to the Advisory Group for review and comment.

The multi-faceted nature of the publication requires that a data base be established and maintained to provide the most current data on available services, including financial assistance. The National Center for Missing and Exploited Children (NCMEC) presently maintains resource lists of State missing children clearinghouses, private nonprofit organizations focusing on missing children, and some national support groups. The applicant is expected to work with NCMEC in compiling the data on available sources. The applicant will develop an efficient, cost-effective plan whereby the resource handbook can be updated from time to time to ensure that the information remains as current as possible.

Publication of this handbook will be facilitated through NCMEC and dissemination will be primarily through NCMEC, missing children State clearinghouses, and other public and private organizations to the families of missing children they serve through an initial distribution effort and an ongoing basis as new cases arise. The applicant should develop a detailed marketing and dissemination plan to ensure that the product will reach the intended audience effectively.

Eligibility Requirements

Applications are invited from public agencies and private nonprofit organizations that can demonstrate the knowledge of issues relating to missing and exploited children and victims services, as well as experience and capability in producing publications.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues relating to missing and exploited children, services and assistance to victims of crime, and publications development.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in issues relating to missing and exploited children, resources and assistance for victims, and publications development is required. Key project personnel should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 12 months.

Award Amount

Up to $60,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 14, 1992.

Contact

For further information contact Cora Roy, Special Emphasis Division, at (202) 616-3659.

Symposium on International Child Abductions

Purpose

The purpose of this project is to provide information to assist in the location and return of internationally abducted children through holding a symposium for practioners in North America on critical issues regarding international child abductions.

Background

Parental child abductions are tragic and often difficult cases to resolve. When a child is abducted or moved across international borders the difficulties are compounded. The left-behind parent faces not only the pain of the loss of their child but intensified frustration and helplessness because their child is beyond the jurisdiction of U.S. laws and custody orders.

The increase in international marriages since World War II has resulted in increased international child abductions. Over the past 13 years the Department of State has been contacted on the cases of approximately 2800 children who have been abducted from the United States or kept from returning to the United States by one of their parents. In 1980, the Hague Convention on the Civil Aspects of International Child Abduction was initiated. As of this date, the Hague Convention has been ratified by 23 countries, including the United States in 1988. The Hague Convention sets international policy condemning parental abduction and seeks promptly to restore children to

their pre-abduction circumstances, thus limiting the harm they suffer as a result of the abduction. It also provides international laws and procedures for the resolution of these difficult disputes.

Despite the adoption of the Hague Convention by many countries and the success in recovering children under the Convention, international child abduction still poses complicated problems for parents, governments and other agencies involved in the location and recovery of these children. There is a lack of knowledge and information about recovering children under the Hague and other resources available to assist in international child abduction cases. The Convention will govern the return of the child only if both countries have ratified the Convention and only in cases occurring after ratification. Where the Hague Convention does not govern, there are a whole set of additional issues that must also be addressed. Information on the appropriate civil and criminal remedies and the interaction between them is available and should be presented during the forum.

Educating professionals from around the country and North America, who can in turn educate parents and the public about precautionary measures and the dangers and consequences of international abduction, may help prevent abductions or repeat abductions.

Goal

The goal of this project is to educate practitioners on the issues related to international child abductions.

Objectives

The objectives of this project are:

(1) To plan a conference on international child abductions;

(2) To develop individual workshops or roundtables regarding prevention of international child abductions, overcoming obstacles to locating and recovering abducted children in the world-wide arena, on the progress in implementation of the Hague Convention, the interaction of civil and criminal remedies and international trafficking in children;

(3) To hold the conference by mid-1993 in an accessible site;

(4) To develop the proceedings of the conference into a monograph for distribution; and

(5) To develop a dissemination plan to distribute the monograph and any related materials to the broadest possible audience of interested practitioners.

Program Strategy

The grantee would work cooperatively with the U.S. Department of State's Office of Citizens Consular Services (CCS), Interpol, the Office of International Affairs in the Criminal Division at the Department of Justice, the National Center for Missing and Exploited Children, and appropriate others to convene a forum of practitioners to examine current issues regarding international abductions, including prevention, overcoming obstacles for locating and recovering abducted children in a world-wide arena, and progress in the adoption and implementation of the Hague Convention. The symposium should be planned for mid-1993 to follow an international meeting of representatives of Hague Convention Central Authorities scheduled for January of 1993.

Besides providing a forum for reports and updates from the Hague Convention meeting, specific issues to be addressed should include court costs and legal fees, handling cases in non-Hague Convention countries, interaction between civil and criminal processes, techniques and assistance in locating abducted children abroad, needed policy improvements, training needs, public education as a deterrant, and trafficking in children.

Speakers and presenters would be drawn from the agencies mentioned above and others with expertise in handling international child abductions. Groups to be targeted for participation and attendance would include State Attorneys General, U.S. Attorneys, State prosecuting attorneys, judges, private attorneys, State missing children clearinghouse personnel, legislators, law enforcement officers, and media personnel. Invitations to participate in the symposium should also be extended to central authorities in Canada and Mexico.

An expected outcome of this forum would be the publication of a series of reports indicating directions for future study, training and information dissemination.

Eligibility Requirements

Applications are invited from public agencies and private nonprofit organizations that demonstrate the experience and capability in dealing with legal issues relating to international child abductions, conference and curricula development, and publications development.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues regarding legal obstacles to and remedies for resolving international abduction cases, symposium development, and the providing of information and training to the target population.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in legal issues, resource and conference development, and training is required. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period for this program is 12 months.

Award Amount

Up to $200,000 has been allocated for this project.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Douglas Dodge, Special Emphasis Division, (202) 616–3652.

Obstacles to the Recovery and Return of Parentally Abducted Children: Training, Technical Assistance and Product Resources

Purpose

The purpose of this project is to improve the justice system response to children who are abducted by family members through the dissemination to judges, prosecutors, law enforcement personnel, private attorneys, and policy makers information on the legal obstacles faced by parents and investigators in recovering parentally abducted children.

Background

Section 408 of the Act, 42 U.S.C. 5778, directed OJJDP to fund a study on the obstacles that prevent or impede the recovery and return of parentally abducted children. The study, "Obstacles to the Recovery and Return of Parentally Abducted Children" was conducted for OJJDP by the Center on Children and the Law at the American Bar Association. The interim report presented to Congress in November, 1991, identified and focused on three key legal obstacles. These obstacles were: (1) lack of knowledge of applicable law on the part of judges and attorneys; (2) lack of compliance by judges and attorneys, even when knowledgeable; and (3) lack of uniformity and specificity in State laws. In addition, left-behind parents often were unable to afford legal assistance or to find attorneys who would adequately and knowledgeably represent them. The final report, which was received by OJJDP on July 1, 1992, details other issues of a non-legal nature and will include specific recommendations for removing legal obstacles and improving interstate and interjurisdictional cooperation in parental abduction cases.

Goals

The goals of this project are:

(1) To increase the knowledge of judges, prosecutors, and policy makers as to the legal obstacles to recovering parentally abducted children and to existing civil remedies; and

(2) To identify and assess potential remedies for practical obstacles relating to accessibility of custody records and lack of available and affordable legal assistance for left-behind parents.

Objectives

The objectives of this project are to:

- Develop specialized publications and resources;
- Develop training curriculum for judges and dissemination through existing organizations which provide training for the judiciary; and
- Implement regional policy conferences on parental abductions and the implementation of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act.
- Assess the feasibility of remedies such as development of a child custody registry, development of a nationwide referral network of attorneys who handle family abduction cases, and problems of affordability of legal services for left-behind parents.

Program Strategy

OJJDP expects this project to develop materials and training for different audiences and create cooperative arrangements with existing organizations to disseminate these materials. Target audiences include lawyers, judges, law enforcement personnel, prosecutors, policy makers and public and private missing children's organizations.The successful applicant is expected to develop and disseminate model State statutes and to possibly hold a conference for State legislators and their staffs. In addition, procedures for establishing a national child custody registry and possible resources to assist left-behind parents in accessing knowledgeable legal representation are to be examined.

Products

Specific products will include:

(1) A written bench book for judges on the Uniform Child Custody Jurisdiction Act (UCCJA), the Parental Kidnapping Prevention Act (PKPA);

(2) A booklet of practice tips for attorneys in family law on handling family abduction cases;

(3) Information for left-behind parents on how best to work with the system to accomplish the recovery of an abducted child;

(4) Development of a written protocol for law enforcement for both civil and criminal cases;

(5) A fifty State, D.C., and territorial directory of relevant statutes and case law (on disk) related to family abductions; and

(6) A directory of legal resources and information for use in parental abduction cases and enforcement of child custody orders.

Eligibility Requirements

Applications are invited from public agencies and private organizations that can demonstrate the experience and capability to produce legal analysis, publications and training curricula for justice system personnel.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, issues regarding legal obstacles and remedies to parental abduction cases, curricula development, and the providing of information and training to the target population.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management. (15 points)

The project's management structure and staffing must be adequate for the successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability. (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the application. Organizational experience in legal issues, resource and curricula development, and training is required. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project period is 36 months.

Award Amount

Up to $250,000 has been allocated for this project for the first 18 month budget period. Applicants must include an estimated budget for a second 18 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing and Exploited Children Program, at (202) 616–3631.

Telecommunications Training for Law Enforcement Personnel on Techniques for Investigating Missing and Exploited Child Cases

Purpose

The purpose of this project is to address the particular needs of missing children by minimizing the negative impact of law enforcement procedures on children who are victims of abuse or sexual exploitation through the development and dissemination to law enforcement personnel of a comprehensive video training curriculum designed to improve investigative response.

Background

The past decade has seen a substantial increase in the number of cases involving missing and sexually abused and exploited children. The majority of cases of children abducted by non-family members involve sexual assault. Runaway children are frequently at serious risk of sexual assault and exploitation. Recent surveys of prosecutors and law enforcement reflect the growing burden these cases place on the criminal and civil justice system. The investigation and handling of missing and sexually exploited children present difficult challenges for the law enforcement officer and require special skills and knowledge. Most law enforcement agencies employ less than ten officers. Even the smallest agencies will encounter these cases, yet these law enforcement officers have few opportunities or resources to receive specialized and intensive training in the investigation of crimes against children.

Rapidly developing telecommunications technologies are becoming more accessible and economical in use. According to proponents of this type of technology, these methods can provide many advantages over more traditional training and information dissemination, including cost savings in travel and time, more timely transfer of information, and greater access to larger numbers of students or interested parties.

The distribution of video training programs supported by satellite or other technology to closed user group audiences may overcome many of the barriers to receiving specialized training faced by many law enforcement agencies. Training could occur through the existing law enforcement telecommunications systems or through structured teleconferencing.

Goal

The goal of this project is to provide state-of-the-art information on the investigation of missing and sexually abused and exploited children cases to a wide audience of small to mid-size police departments.

Objectives

The objectives of the project are:

- To support development of an integrated training course package to be used in model training approaches; and
- To develop and test dissemination strategies emphasizing utilization of cable and teleconferencing networks.

Program Strategy

OJJDP will select an organization to develop and produce a video training course about the investigation of missing and exploited children cases. This series of videotape presentations will focus on the investigation of missing children (including both family and non-family abductions), sexual abuse and exploitation of children, including related crimes committed against children who are missing or who may have been abducted, such as investigation of physical abuse injuries and homicides.

Related topics to be addressed in training videotapes include case management, developing offender profiles, techniques for interviewing child victims and suspects, and interacting with social service, medical, and mental health professionals. The curriculum should focus on basic, but state-of-the-art information and techniques, and should be consistent with other OJJDP-sponsored training programs for law enforcement. The curriculum should primarily represent situations and resources available to small and mid-size law enforcement agencies.

This project requires the selection of a project advisory committee approved by OJJDP consisting of experts and practitioners from law enforcement, child protective services, the medical field, mental health services, and prosecutors. This advisory committee will assist in the development of the curriculum. The grantee should consult with law enforcement officers currently serving as faculty for OJJDP's child abuse and exploitation training program as well as the training staff from the National Center for Missing and Exploited Children.

In addition to the series of training videotapes, the successful applicant will produce a small publication or pocket card for law enforcement agencies listing national and regional resources which provide training, information, and technical assistance in cases of missing and exploited children.

The successful grantee will also design and test a plan for regional and national dissemination utilizing cable and teleconferencing networks, law enforcement training academies, and professional organizations.

Specific products to be completed during this project are:

- A series of training videos;
- A small pamphlet or pocket card for law enforcement listing resources for training, information, and technical assistance;
- A pilot demonstration effort using telecommunications technology, and
- A summary report detailing opportunities for future dissemination.

Eligibility Requirements

Applications are invited from public agencies and private organizations which can demonstrate the capability to develop and produce a high quality series of training videos on the investigation of child maltreatment cases for law enforcement as well as the demonstrated capability for utilizing telecommunications technology for dissemination of training materials.

Selection Criteria

Applications will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 points)

The applicant must demonstrate a clear understanding of, and competence to deal with, investigative issues regarding child maltreatment cases, law enforcement training, and telecommunications technology.

(2) Statement of Objectives. (15 points)

The objectives to be achieved by the project must be clearly defined and consistent with the issues and requirements set forth in the conceptualization of the problem.

(3) Project Design. (30 points)

The procedures, workplan, and proposed products of the project must be directly linked with the stated objectives, and with the problem addressed by this announcement.

(4) Project Management (15 points)

The project's management structure and staffing must be adequate for the

successful implementation and completion of the project. The management plan must describe a system whereby logistical activities are handled in the most efficient and economical way.

(5) Organizational Capability (15 points)

The applicant organization's ability to conduct the project successfully must be documented in the proposal. Organizational experience with law enforcement training and utilization of telecommunications is crucial. Key project staff should have significant experience in the subject area addressed in this announcement.

(6) Budget. (10 points)

The proposed budget must be reasonable, allowable, and cost-effective vis-a-vis the activities to be undertaken.

Award Period

The project will be funded for 24 months.

Award Amount

Up to $200,000 has been allocated for the first 12 month budget period. Applicants must include an estimated budget for a second 12 month budget period.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Kathryn Turman, Missing and Exploited Children Program, at (202) 616–3631.

Funding Support for Specific Program Development for State Clearinghouses for Missing Children

Purpose

The purpose of this project is to strengthen the capabilities of State missing children clearinghouses and to improve coordination and cooperation among the systems serving missing children at the Federal, State, and local levels.

Background

There are currently 44 State missing children clearinghouses around the country. They differ widely as to statutory authority, mission, staff size, functions, and budget. While most State clearinghouses are part of a state law enforcement agency, some are housed in a State Department of Education or in the Attorney General's office. The State clearinghouses are a critical link in the national network of agencies and organizations involved in missing and exploited children cases. Through the National Center for Missing and Exploited Children (NCMEC) and other OJJDP grantees, training and technical assistance is provided for State clearinghouse personnel. OJJDP has provided funding for new computer systems for the State clearinghouses and has also provided a bulletin board technology link with other State clearinghouses and NCMEC. Through NCMEC, OJJDP also plans to establish computer age-progression labs in four State clearinghouses. The project presented in this solicitation will provide direct funding assistance to six to eight State clearinghouses for the development of special projects and functions.

Goal

The goal of this project is to assist State missing children clearinghouses to strengthen their role within their State through the development of specific projects and functions relating to missing and exploited children.

Objectives

The objectives of this project are:

- To generate new and innovative ways to serve the families of missing children and assist local law enforcement in the investigation of missing child cases;
- To facilitate the development of projects within State clearinghouses which would raise the visibility and viability of those clearinghouses;
- To develop models and processes for new programs and State clearinghouse functions for replication in other State clearinghouses.
- To develop programs which would expand the national networking capabilities among the State missing children clearinghouses and law enforcement agencies.

Program Strategy

Proposals are being solicited from designated State clearinghouses on missing and exploited children for cooperative agreements with OJJDP to develop and implement special programs and products designed to assist and improve the quality of services offered missing and exploited children by law enforcement and youth serving agencies.

OJJDP anticipates providing up to six grants (up to $50,000) to individual clearing- houses to develop special projects and products. OJJDP encourages the applicants to develop their programs in formats to serve as models for other State clearinghouses around the country to improve their service capabilities. These projects could include programs such as the development of a State-wide listing of investigators specializing in missing and/or exploited child cases; development and implementation of improved case management systems; the development of training and information dissemination programs designed for law enforcement personnel on investigating missing child cases and how to utilize and interface with their State clearinghouse; making their services known to law enforcement, lawyers, judges, attorneys, and parents; community education and prevention programs; and the development of a network of volunteers within the State who have experience and background in providing services for the parents of missing or exploited children. OJJDP will also consider submissions of original program ideas designed to improve the service capabilities of the State clearinghouse.

The successful applicant must be creative and innovative in its approach and strategy in designing and implementing this program. Applicants must be cost effective, develop their own strategy and budget for achieving the objectives and tasks of this initiative. The successful grantees must provide OJJDP with a report detailing the development of their programs and how they might be replicated for dissemination to other State clearinghouses.

Through a competitive peer review process, up to six applicants will be funded.

Eligibility Requirements

Applications are invited from eligible designated State missing children clearinghouses.

Selection Criteria

Applicants will be rated on the extent to which they meet the following criteria:

(1) Conceptualization of the Problem. (15 Points)

Applicants identify the nature and scope of the missing and exploited children problem to be addressed.

(2) Statement of Objectives. (10 Points)

Applicants provide a succinct statement demonstrating an understanding of the goals, objectives, and tasks associated with the program.

(3) Project Design. (20 Points)

Applicants clearly demonstrate an understanding of the nature of the program area and the soundness of the approach to implementing the needs to be addressed by the project. The

applicant must provide an innovative, yet replicable approach.

(4) Implementation Plan. (25 Points)

Project activities and management structures are adequate and appropriate. The feasibility and clarity of the time task plan is apparent as it addresses what, when, who, and where project activities will be performed and products developed.

(5) Organizational Capability. (20 Points)

Project management structure is adequate to conduct the project successfully. The applicants demonstrate adequate program management and experience in coordinating the type of task to be performed.

(6) Budget. (10 Points)

Proposed costs are complete, reasonable, and cost effective in relationship to the proposed strategy and task to be accomplished.

Award Period

The project period for these cooperative agreements will be 18 months.

Award Amount

Up to six applicants will be awarded up to $50,000 each. Future funding will be based upon performance and availability of funds.

Due Date

Applications must be received by mail or delivered to OJJDP by September 28, 1992.

Contact

For further information contact Frank Smith, Special Emphasis Division, at (202) 616–3656.

General Application and Administrative Requirements

General application and administrative requirements and conditions, including various certifications, are implicit in this announcement. These requirements and conditions are set forth in the Missing Children's Program Application Kit. The reader should consult with the Kit for details.

Gerald (Jerry) P. Regier,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 92–17851 Filed 7–29–92; 8:45 am]

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federal register

Thursday
July 30, 1992

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 207 et al.

Smoke Detectors for HUD-Assisted or Insured Rental Housing and Public and Indian Housing; Final rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 207, 213, 215, 220, 221, 231, 232, 234, 236, 242, 880, 881, 882, 883, 884, 885, 886, 887, 889, 890, 905, and 965

[Docket No. R-92-1567; FR-3081-F-02]

RIN 2501-AB39

Smoke Detectors for HUD-Assisted or Insured Rental Housing and Public and Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a rule proposed on November 22, 1991 (56 FR 59150) amending HUD regulations to require, at a minimum, one smoke detector on each level of a rental dwelling unit, assisted or insured by HUD, and in public and Indian housing dwelling units. The purpose of the rule is to assure that fire safety equipment is included and maintained in HUD-associated rental units, and to further the National Housing Goal of a decent home and a suitable living environment for every American family.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: For Section 8 rental certificate, rental voucher, and moderate rehabilitation programs, contact Gerald Benoit, Room 6122, telephone (202) 708-1800; (TDD (202) 708-4594); for Section 202 Elderly and Handicapped Housing, contact Robert Wilden, room 6116, telephone (202) 708-2730; (TDD (202) 708-4594); for Public and Indian Housing, contact Janice Rattley, room 4136, telephone (202) 708-1800; (TDD (202) 708-0850); for HUD-insured and other programs, contact James Tahash, room 6182, telephone (202) 708-3944; (TDD (202) 708-4594); 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

The primary objective of HUD housing programs is to advance the long-established national commitment to decent, safe, and sanitary housing for every American. This standard is required under Annual Contributions contracts with public housing agencies (PHAs) and Indian Housing Authorities (IHAs), as well as the Housing Assistance Payments contracts with owners of housing assisted under section 8 of the U.S. Housing Act of 1937. The standard is also the underlying purpose of HUD's Minimum Property Standards (MPS) and housing quality standards (HQS).

Fire safety in all HUD-associated rental units is critical to achieving the goal of a safe environment for all families residing in those units. The early detection of fires through smoke alarms can be a primary factor in saving lives and preventing injury. On November 22, 1991 (56 FR 59150), the Department invited public comment to a proposed rule amending its regulations to require that each affected unit contain, at a minimum, one working smoke detector to provide a measure of safety from fires to residents of those units.

Under the MPS contained in subpart S of 24 CFR part 200, all units developed or substantially rehabilitated with HUD assistance, including insured financing, since 1978 are required to be equipped with smoke detectors. In addition, public and Indian housing units that have received assistance for modernization under the Comprehensive Improvement Assistance Program (CIAP) since 1985 are required to have smoke detectors. Public and Indian housing units that receive modernization assistance under the new Comprehensive Grant Program (CGP), for PHAs and IHAs that own or operate 500 or more public or Indian housing units (250 or more units in fiscal year 1993), are required by the modernization standards in 24 CFR 968.115 and 905.603 to have smoke detectors. The Department also requires smoke detectors in all units owned by HUD or for which HUD is the mortgagee-in-possession.

With respect to all other units not covered by the requirements of the MPS, CIAP, or CGP, or units which HUD does not own or is not the mortgagee-in-possession, HUD believes that most of those units may already be equipped with smoke detectors under requirements imposed by State and local codes or by fire or liability insurance carriers. This rule is not intended to preempt those requirements, but to require that, in order to meet the HQS or regulatory requirements for the applicable programs, each assisted unit must contain at least one working smoke detector on each level of the unit.

The rule will amend the HQS in 24 CFR parts 882, 886, and 887, which describe the minimum requirements for units in the Section 8 Rental Certificate and Rental Voucher programs, the Moderate Rehabilitation programs, Project-Based Certificate Assistance, Loan Management Set-Aside and Property Disposition programs, as well as any other units required to meet the HQS described in those regulations. The rule also will amend subparts B and C of part 885, which govern Section 202 elderly and handicapped housing, as well as parts 880 (New Construction), 881 (Substantial Rehabilitation), 883 (State Housing Agencies), 884 (Section 515 Rural Rental Housing), and 215 (Rent Supplement). This final rule adds two programs inadvertently omitted from the proposed rule, by amending parts 889 (Supportive Housing for the Elderly) and 890 (Supportive Housing for Persons with Disabilities), which govern the new Section 202 and Section 811 programs.

The rule will also amend regulations governing HUD-insured multifamily rental projects and care-type properties (parts 207, 213, 215, 220, 221, 231, 232, 234, 236, and 242). Units in insured projects constructed or substantially rehabilitated after 1978 are required to contain smoke detectors under the MPS, as discussed above. The intent of the amendments is to ensure that pre-1978 insured projects are subject to the requirement as well.

With respect to public and Indian housing dwelling units, the rule amends 24 CFR parts 905 (Indian housing) and 965 (public housing). (On June 24, 1992 (57 FR 28240), HUD published a final rule consolidating into part 905 all regulations pertaining to Indian housing programs.)

The final rule requires that each unit be equipped with at least one battery-operated or hard-wired smoke detector, in proper working condition, located in a hallway adjacent to the bedroom or bedrooms, and one additional smoke detector on each level of a multilevel unit. The rule also requires that units occupied by hearing-impaired persons be equipped with alarm systems designed for the hearing-impaired and located in the bedrooms occupied by those persons.

II. Public Comments

During the comment period, which ended January 21, 1992, HUD received 24 public comments. Generally, the majority of the commenters favored the rule, but several requested clarification or some changes to the requirements. One commenter questioned the Department's legal authority to extend what amounts to minimum property standards on a retroactive basis to multifamily dwelling units. Section 2 of the National Housing Act of 1949 sets forth the goal of providing a decent home and suitable living environment for every American family. This goal has been reaffirmed again and again in subsequent housing legislation. The Department firmly believes that the provision of smoke detectors in

multifamily housing advances this goal. HUD regulations at 24 CFR 207.249 grant authority to the Secretary to amend the regulations pertaining to contract rights and obligations so long as the amendment does not "adversely affect the interest of a mortgagee or lender." The requirement that the mortgagor install smoke detectors in the insured project does not adversely impact the mortgagee. Indeed, it enhances the mortgagee's security by providing for an additional fire safety device in the building.

In the Regulatory Agreement (HUD-Form 92466) executed between HUD and the mortgagors for projects insured under sections 207, 220, 221(d)(4), 231, and 232 of the National Housing Act, the mortgagor contractually obligates itself to comply with certain HUD requirements. Specifically, paragraph 7 of the Agreement provides that "[o]wners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition." The Department believes that this provision can be interpreted to encompass the additional requirement that mortgagors install smoke detectors in insured projects, in compliance with their contractual agreement to maintain the premises in good repair and condition, since there is an increased risk of smoke and fire damage to the property where there is no early warning system.

In addition, it is the opinion of the Department that *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268 (1969), stands for the principle that HUD can impose an additional obligation on the parties to a housing contract provided that it does not amount to a substantial modification of the contract. The Regulatory Agreement does not preclude HUD from requiring the installation of safety devices, such as smoke detectors, by the mortgagor, when the technology is later developed and becomes available subsequent to the execution of the contract between HUD and the mortgagor. The Department believes that the smoke detector requirement does not amount to a substantial modification of the Agreement.

The remainder of the comments focused on the following areas:

Location of Smoke Detectors

One commenter stated that a local code to which it is subject requires that smoke detectors be located in each bedroom of a unit, and expressed concern that by following the local standard it would violate HUD's rule. Another commenter stated that the rule should allow for flexibility in the location of smoke detectors where the design of a unit makes another location more feasible. Several commenters recommended that the rule require more than one smoke detector per unit, and suggested they be located outside each separate sleeping area and on each additional level of a unit. A commenter also suggested that units should be equipped with residential sprinkler systems and range hoods with fusable link triggered automatic extinguishers. The commenter was especially concerned about housing located in rural areas served by undertrained volunteer firefighters with inadequate and outdated equipment, and stated that any extra measures for early warning of fires in these areas would reduce the risk of personal injury and property damage.

The Department has stated that the rule is not intended to preempt local or State fire safety codes. The purpose of the rule is to set out a minimum standard for HUD-associated housing. To the extent that a local code has a stricter standard or requires a different type of smoke detector (*e.g.*, hard-wired rather than battery-operated) or different location for the detector (*e.g.*, in each bedroom rather than adjacent to bedrooms), the local code should be followed, as long as HUD's minimum standard that each unit contain a smoke detector is met. Since the rule explicitly states that the required location of the detector is to be followed "to the extent practicable," inspectors of HUD-associated housing will be instructed to allow a degree of latitude on this issue. Under this standard, PHAs and owners have the discretion to install detectors in an alternate location if warranted by the design of the unit.

The costs involved in retrofitting units with sprinker systems would be prohibitive for some PHAs and owners, and such a requirement could conceivably result in some owners withdrawing from the programs. Again, the rule sets out minimum standards. PHAs or owners located in rural areas where firefighting protection may be limited or inadequate have the discretion to install a greater measure of protection on a voluntary basis.

The Department agrees with the comments that the rule should require that each level of a multilevel unit should be equipped with at least one smoke detector, and the final rule has been changed to include this requirement. The final rule for public and Indian housing units has also been changed at 24 CFR 965.805(a) and 905.340(b) to provide that public areas, such as community rooms, laundry rooms, and hallways and stairwells, must also be equipped with smoke detectors.

Battery-Operated vs. Hard-Wired Smoke Detectors

Several commenters argued that the rule should require hard-wired detectors, rather than battery-operated, since batteries wear out or are removed by residents. Others requested clarification concerning who is responsible for replacing batteries in battery-operated detectors, with two commenters suggesting that PHAs and owners should be responsible only for installation or provision, and that residents should be responsible for continued operation (*e.g.* changing batteries).

The Department is attempting to balance the need to protect residents from fire and the desire to keep owners' costs at a reasonable level. For that reason, the rule allowed owners the discretion to install either battery-operated or hard-wired smoke detectors, with a minimum of one detector per unit. The final rule has not been changed with regard to allowing the smoke detectors to be either battery-operated or hard-wired smoke detectors. Owners may make their own decisions regarding the type of detector to use. (The rule for public and Indian housing units allows battery-operated detectors on a temporary basis only for projects where modernization has not been completed. Under the CIAP program, hard-wired detectors are required and have already been installed by PHAs that have completed modernization.)

Owners (PHAs in the case of PHA-owned or -leased projects) and PHAs are responsible for installing, inspecting, and replacing batteries, as necessary, in the smoke detectors. A resident's responsibility under the lease to maintain and care for the unit extends to not tampering with smoke detectors and ensuring that batteries are kept in place. Residents also should be responsible for informing the owner or PHA of any problems with the smoke detectors, including the failure of the batteries, in the same manner that they are responsible for informing the owner or PHA of any other malfunction or maintenance need in their units.

Smoke Detectors for the Hearing-Impaired

Several comments dealt with the requirements for smoke detectors equipped with visual alarm systems for the hearing-impaired. They included recommendations with respect to technical specifications for visual

alarms and suggested these be included in the rule; a request for a definition of "hearing-impaired"; and instructions on what documentation will be necessary to determine whether a resident is hearing-impaired or which bedroom the person would occupy. Another commenter argued that the requirement for smoke detectors specifically designed for the hearing-impaired should be deleted, since it would necessitate inquiring about the nature of a handicap, which is prohibited.

The Department declines to give detailed technical specifications regarding smoke detectors for the hearing-impaired, and leaves this to the judgment of PHAs and owners. They may wish to consult organizations familiar with equipment for hearing-impaired persons for advice on this issue. The Department also declines to define hearing-impaired in the rule. HUD's position is that residents requiring visual alarms because of a hearing impairment should advise owners and PHAs of this need. If eligibility for housing or a preference depends on the resident being handicapped, PHAs and owners may, of course, make the appropriate inquiries. Otherwise, it is up to residents to request any special equipment, since they are often the best judge of their individual needs.

A number of the comments on this subject were concerned about the cost of providing special detectors for hearing-impaired persons and whether the owner or resident would pay for these special detectors, since Fair Housing regulations provide that disabled persons may install special equipment in any unit at their own expense. A few commenters were especially concerned about the cost of these smoke detectors since they must be hard-wired, and one suggested that portable visual/audio alarms would be much less of a cost burden for owners. A portable detector, which the commenter argued costs less than a permanently installed detector, has the advantage of eliminating the need to retrofit units over time due to resident turnover, and is returned when the resident moves.

It is the responsibility of owners and PHAs to provide the smoke detectors, which includes the cost of the equipment. The Department recognizes that permanently installed smoke detectors for the hearing-impaired may be costly. However, it is not willing to consider the use of portable equipment in fulfilling the minimum standard required under the rule. The possibilities of loss or improper use make portable detectors less reliable, especially when used as the sole warning system. The final rule has not been changed.

Finally, the Department received a comment on the requirements for smoke detectors for the hearing-impaired with respect to nursing homes. The commenter stated that most persons occupying rooms in nursing homes have some degree of impairment to their hearing, and therefore visual alarm detectors would have to be installed in all rooms. The commenter asserted that nursing homes and other care-type housing have smoke detector systems that are connected to a central alarm system, as well as to an alarm monitored on a 24-hour basis by professional staff. Visual alarms in each room in nursing homes and hospitals can be disturbing to the occupants and lead to panic and perhaps injury if an occupant attempts to leave the room unassisted by the professional staff. The Department agrees that the requirement for a visual alarm in each occupied room in nursing homes and hospitals is unnecessary if the smoke detector in the room is connected to a central alarm system and staff-monitored system. Parts 232 and 242 have been changed in the final rule to relax the requirement for smoke detectors designed for hearing-impaired persons if the room's smoke detector is connected to a central alarm system and monitored on a 24-hour basis, or otherwise has a system meeting industry standards.

Miscellaneous

A commenter asked how the Department intends to fund the purchase and installation of smoke detectors. As stated in the responses to comments related to detectors for the hearing-impaired, it is the responsibility of individual owners and PHAs to fund the purchase and installation of smoke detectors. For public and Indian housing units, PHAs may use operating funds or reserves to provide battery-operated detectors where hard-wired detectors are not already in place, or may apply for emergency CIAP or CGP funding if operating funds or reserves are insufficient. CIAP or CGP funds may be used to replace the battery-operated with hard-wired detectors in the normal course of a CIAP or CGP program. The final rule has been changed at 24 CFR 905.346(b) and 965.805(c) with respect to this issue.

One commenter recommended that the rule allow 90 to 120 days for installation, arguing that 60 days is insufficient time, and another commenter requested that the rule allow local HUD offices to grant extensions of time to PHAs with more than 500 units to install hard-wired smoke detectors, considering local conditions and circumstances. The Department has determined that the 60 days from the effective date of the final rule is sufficient time, since this is, in effect, 90 days from publication of the rule. The rule does not require the installation of hard-wired detectors, and large PHAs desiring to do so have the option of installing battery-operated detectors on a temporary basis. The final rule has not been changed.

Finally, one commenter stated that some smoke detectors on the market now contain a radioactive element in the sensor. While the risk from the radioactivity is minimum, the commenter believes the rule should prohibit their use. As stated earlier, the Department declines to provide technical specifications for the smoke detectors. However, owners and PHAs should inspect detectors before installation by owners and PHAs for any hazard that may be detrimental to the assisted families.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on the formation, maintenance, and general

well-being of the family and, thus, is not subject to review under that Order. The rule amends the property standards under which HUD-insured, Section 8-assisted, and public and Indian housing units are operated.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order. The requirements of the rule do not replace or affect any requirements that may already be imposed by States and local governments with respect to the use of smoke detectors in rental housing.

The Secretary, in accordance with the Regulatory Flexibility Act, (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that the rule does not have a significant economic impact on a substantial number of small entities. The rule applies equally to all owners of HUD-insured and Section 8-assisted housing, as well as PHAs and Indian Housing Authorities.

This rule was listed as item number 1130 in the Department's Semiannual Agenda of Regulations published at 57 FR 15820 on April 27, 1992 under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 231

Aged, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Homeownership, Public housing.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, for the reasons set forth in the preamble, 24 CFR parts 207, 213, 215, 220, 221, 231, 232, 234, 236, 242, 880, 881, 882, 883, 884, 885, 886, 887, 889, 890, 905, and 965 are amended to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701s-11(c), 1713, and 1715b; 42 U.S.C. 3535(d).

2. Part 207 is amended by adding § 207.24a under the undesignated center heading *Property Requirements*, to read as follows:

§ 207.24a Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Part 213 is amended by adding §213.41, to read as follows:

§ 213.41 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 215—RENT SUPPLEMENT PAYMENTS

5. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

6. Part 215 is amended by adding § 215.16, to read as follows:

§ 215.16 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

7. The authority citation for part 220 is revised to read as follows:

Authority. 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

8. Subpart C of part 220 is amended by adding § 220.506a, to read as follows:

§ 220.506a Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

9. The authority citation for part 221 is revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715l; 42 U.S.C. 3535(d).

10. Subpart C or part 221 is amended by adding § 221.545a, to read as follows:

§ 221.545a Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

11. The authority citation for part 231 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

12. Part 231 is amended by adding § 231.15 to Subpart a to read as follows:

§ 231.15 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

13. The authority citation for part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, and 17152 (9); 42 U.S.C. 3535(d).

14. Part 232 is amended by adding § 232.591, to read as follows:

§ 232.591 Smoke detectors.

After October 30, 1992, each occupied room must include at least one battery-operated or hard-wired smoke detector in proper working condition. If the room is occupied by hearing-impaired persons, the smoke detector must have an alarm system designed for hearing-impaired persons, unless the smoke alarm is connected to a central alarm system that is monitored on a 24-hour basis, or otherwise meets industry standards.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

15. The authority citation for part 234 is revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715y; 42 U.S.C. 3535(d).

16. Part 234 is amended by adding § 234.521, to read as follows:

§ 234.521 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

17. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z; 42 U.S.C. 3535(d).

18. Part 236 is amended by adding § 236.85, to read as follows:

§ 236.85 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

19. The authority citation for part 242 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z-7; 42 U.S.C. 3535(d).

20. Part 242 is amended by adding § 242.87a, to read as follows:

§ 242.87a Smoke detectors.

After October 30, 1992, each occupied room must include at least one battery-operated or hard-wired smoke detector in proper working condition. If the room is occupied by hearing-impaired persons, the smoke detector must have an alarm system designed for hearing-impaired persons, unless the smoke alarm is connected to a central alarm system that is monitored on a 24-hour basis, or otherwise meets industry standards.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

21. The authority citation for part 880 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

22. Section 880.207 is amended by adding paragraph (g), to read as follows:

§ 880.207 Property standards.

* * * * *

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

23. The authority citation for part 881 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

24. Section 881.207 is amended by adding paragraph (g), to read as follows:

§ 881.207 Property standards.

* * * * *

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

25. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 11381, and 11401.

26. Section 882.109 is amended by adding paragraph (r), to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(r) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

27. The authority citation for part 883 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

28. Section 883.310 is amended by adding paragraph (c), to read as follows:

§ 883.310 Property standards.

* * * * *

(c) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an

alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

29. The authority citation for part 884 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

30. Section 884.110 is amended by adding paragraph (d), to read as follows:

§ 884.110 Types of housing and property standards.

* * * * *

(d) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

31. The authority citation for part 885 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

32. Subpart B of part 885 is amended by adding § 885.429, to read as follows:

§ 885.429 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

33. Section 885.717 of subpart C, part 885, is amended by adding paragraph (d), to read as follows:

§ 885.717 Project standards.

* * * * *

(d) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—SPECIAL ALLOCATIONS

34. The authority citation for part 886 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

35. Section 886.113 is amended by redesignating paragraph (m) as paragraph (n), and by adding a new paragraph (m), to read as follows:

§ 886.113 Housing quality standards.

* * * * *

(m) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

* * * * *

36. Section 886.307 is amended by adding paragraph (p) to read as follows:

§ 886.307 Housing quality standards.

* * * * *

(p) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 887—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING VOUCHERS

37. The authority citation for part 887 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

38. Section 887.251 is amended by adding paragraph (m), to read as follows:

§ 887.251 Housing quality standards.

* * * * *

(m) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

39. The authority citation for part 889 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

40. Section 889.265 is amended by adding paragraph (g), to read as follows:

§ 889.265 Other Federal requirements.

* * * * *

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

41. The authority citation for part 890 is revised to read as follows:

Authority: 42 U.S.C. 8013; 42 U.S.C. 3535(d).

42. Section 890.260 is amended by adding paragraph (h), to read as follows:

§ 890.260 Other Federal requirements.

* * * * *

(h) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

PART 905—INDIAN HOUSING PROGRAMS

43. The authority citation for part 905 is revised to read as follows:

Authority: 25 U.S.C. 405e(b); 42 U.S.C. 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee, and 3535(d).

44. Part 905 is amended by adding a new § 905.346, to read as follows:

§ 905.346. Fire safety.

(a) *Applicability.* This section applies to all IHA-owned or -leased housing, including Mutual Help and Turnkey III.

(b) *Smoke detectors.* (1) After October 30, 1992, each unit must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by applicable state, local, or tribal codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this section must be equipped with a sufficient number, but not less than one for each area, or battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(3) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(4) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a IHA's planned CIAP or CGP program to meet the HUD Modernization Standards or applicable state, local, or tribal codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(3) of this section.

(5) IHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, IHAs may apply for emergency CIAP funding. IHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATIONS

45. The authority citation for part 965 is revised to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, 3535(d); and 4821-4846.

46. Part 965 is amended by adding subpart I, to read as follows:

Subpart I—Fire Safety

Sec.
965.800 Applicability.
965.805 Smoke detectors.

§ 965.800 Applicability.

This subpart applies to all PHA-owned or -leased housing housing, including Mutual Help and Turnkey III.

965.805 Smoke detectors.

(a) *Performance requirement.* (1) After October 30, 1992, each unit covered by this subpart must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by state or local codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this subpart must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(b) *Acceptability criteria.* (1) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are

jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(2) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a PHA's planned CIAP or CGP program to meet the required HUD Modernization Standards or state or local codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(1) of this section.

(c) *Funding.* PHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, PHAs may apply for emergency CIAP funding. The PHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

Dated: July 24, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92-17922 Filed 7-24-92; 8:45 am]

BILLING CODE 4210-32-M

federal register

Thursday
July 30, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Notice of Revision of FI&R and O&M Facilities Category and Rank Codes; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Automated FACCOM System FI&R and Operations and Maintenance (O&M) Facilities Category and Rank Codes

July 15, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of revision of FI&R and O&M facilities category and rank codes.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) through the Facilities Management and Construction Center and the Division of Safety Management have updated the backlog categories and ranking classification in the Automated Facilities Construction, Operation and Maintenance System (FACCOM) Facilities Category and Rank Codes for Facilities Improvement and Repair (FI&R) and Operation and Maintenance (O&M). The update will incorporate descriptions of deficiencies utilizing Occupational Safety and Health (OSHA) terminology. OSHA type violations are not sufficiently expressed in the current FACCOM system. This change coordinates the interpretive elements, inherent in data acquisition, via court tested standards. These revisions will promote standardization in the way findings are reported and, thereby, enable a more accurate prioritizing process for funding necessary corrections. All backlog items in the FACCOM system shall be categorized and ranked using the following:

General Category Classification

U=Emergency
S=Deficiencies affecting safety and health, including violations of Occupational Safety, Health (OSHA) Standards, Life Safety Code, Uniform Building Code, among other codes and laws, as applicable.
X=Violations of Environmental Protection Agency (EPA), Indian Health Service (IHS), Health Codes and Standards.
H=Violations related to Federal Accessibility and use standards by the handicapped.
M=Physical plant deficiencies—includes such items as structural, mechanical, electrical, roofs, walls, floors, foundations, utilities and paving, etc. Does not include finishes or programmatic needs.
E=Energy related items—includes such items as insulation, multi-glazed windows, heat recovery systems, etc.
P=Improvements related to space function and program needs in existing facilities.
C=Construction (New, Replacement, Additions).

Priority Ranking Classification

1=Serious safety deficiency.
2=Non-serious code and law violations.
3=Functional deficiency.

Specific Category & Rank Definitions

U–1=Emergency, must be abated immediately.
S–1=Serious deficiency which requires interim correction to be permanently corrected, as soon as possible.
S–2=Non-serious violations; including violations of institutional guidelines.
M–2=Physical plant (non-programmatic) deficiencies in violation of code.
M–3=Physical plant (non-programmatic) deficiency.
X–2=EPA or IHS code or other environmental deficiency.
H–2=Violation of Federal Accessibility and use codes and standards where handicapped persons are currently served.
E–2=Violation of Federal energy codes and standards.
E–3=Deficiencies which, when corrected, will reduce energy consumption.
P–3=Improvements related to program needs, includes the remodeling of existing spaces for functional or programmatic changes.
C–2=Construction (new, replacement or addition) to correct code and/or standards violations (subject to feasibility study verification).
C–3=Construction (new, replacement or addition) to accommodate functional or programmatic changes.

FOR FURTHER INFORMATION CONTACT: Chester D. Mills, Department of the Interior, Office of Construction Management, 1849 C Street NW., Mail Stop 2415, Washington, DC 20240, (202)208–3405.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–18012 Filed 7–29–92; 8:45 am]

BILLING CODE 4310–02–M

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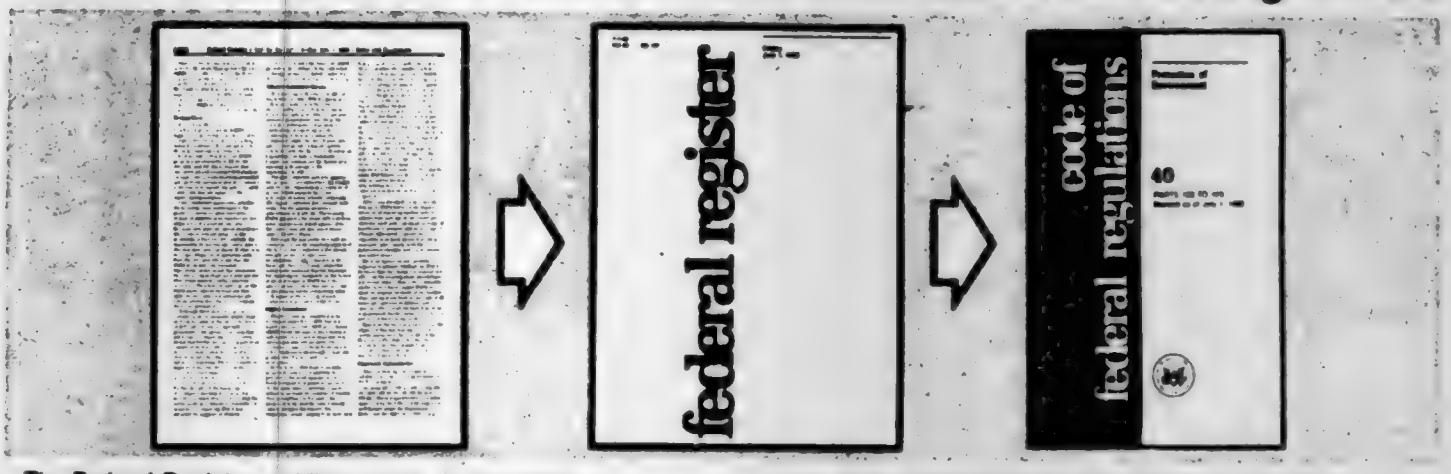

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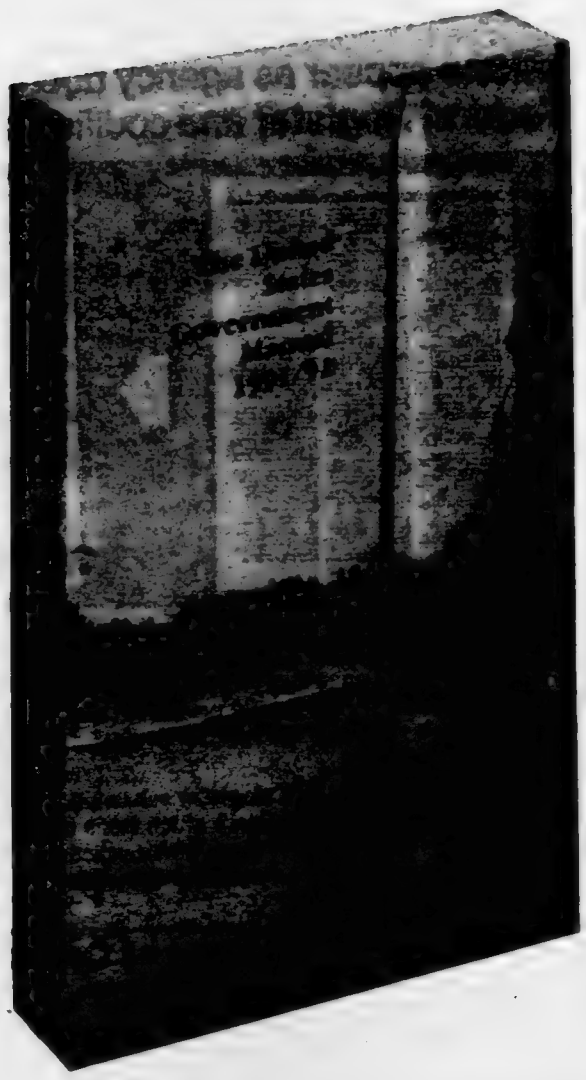

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Vol. 57 No. 148
Pages 33857-34060

federal register

Friday
July 31, 1992

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Title 3—

The President

Proclamation 6462 of July 28, 1992

Helsinki Human Rights Day, 1992

By the President of the United States of America

A Proclamation

Less than two decades ago, on August 1, 1975, the United States and Canada joined 33 European nations in adopting the Helsinki Final Act of the Conference on Security and Cooperation in Europe (CSCE). Affirming the "close link between peace and security in Europe and in the world as a whole," signatories to the declaration agreed to respect human rights and fundamental freedoms, "including freedom of thought, conscience, religion, or belief, for all without distinction as to race, sex, language or religion." Participating states recognized respect for human rights as "an essential factor" for the attainment of peace, justice, and cooperation among nations and agreed to settle disputes among themselves peacefully and on the basis of international law. This year the CSCE Summit, the first held in Helsinki since 1975, offered an historic setting to renew United States support for a strong Euro-Atlantic partnership based on shared goals and values.

Since its inception, the CSCE has championed human rights and democratic values. Originally set forth at Helsinki in 1975, these standards have been strengthened and reaffirmed by the Copenhagen, Geneva, and Moscow CSCE documents and by the 1990 Charter of Paris for a New Europe, through which members added to existing CSCE principles new and sweeping commitments to political pluralism and the rule of law. The Charter of Paris also established new CSCE institutions, such as the Conflict Prevention Center in Vienna, to strengthen the ability of the Conference to promote the peaceful resolution of disputes and the development of stable, democratic governments.

During the past two years, the Conference has evolved further to assist in the task of managing the dramatic changes that have been brought about in the CSCE community by the collapse of communism and the end of the Cold War. In addition to expanding its activities and institutions, as well as its mechanisms for fostering international dialogue and cooperation, the CSCE has welcomed new members from among the emerging states of Central and Eastern Europe and the 12 states that replaced the Soviet Union. We welcome these new CSCE participants and the commitment to human rights that their membership signifies.

While great advances have been made overall in promoting human rights, especially since the democratic revolutions that swept Europe in 1989, today some states are making only minimal progress while others are sliding backward into the mire of ethnic conflicts. Thus, this year's Helsinki Summit emphasized that political stability and lasting freedom can be based only on genuine respect for human rights, which forms the basis of the CSCE concept of international security and cooperation. At Helsinki, participating states broke new ground in enhancing the CSCE's ability to promote human rights, to manage change, and to prevent conflicts. In addition to establishing the office of a CSCE High Commissioner on National Minorities, which will assist in the investigation and prevention of conflicts arising from ethnic or minority tensions, the 1992 Helsinki document provides for an expanded Office of Democratic Institutions and Human Rights in Warsaw. To promote the nonviolent resolution of disputes, the document also envisages formal peacekeeping operations in support of political solutions, either by CSCE countries

directly or with the support of other international organizations such as NATO and the Western European Union (WEU).

Today the Euro-Atlantic community continues to be challenged by the legacy of the Cold War. The peoples of Europe's emerging states face many difficulties as they strive to overcome deeply rooted political and economic problems imposed by decades of Soviet repression and communist rule. Yet, during this period of great change, the principles set forth in the 1975 Helsinki Final Act and reaffirmed at follow-on meetings of the CSCE continue to offer a steady guide to peaceful, cooperative relations among states and to the just and democratic conduct of governments.

In recognition of the contributions of the CSCE toward the expansion of human rights and toward the development of a strong Euro-Atlantic partnership for freedom, the Congress, by Senate Joint Resolution 310, has designated August 1, 1992, as "Helsinki Human Rights Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 1, 1992, as Helsinki Human Rights Day and reaffirm the United States commitment to upholding human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs and activities, let us remember all those courageous individuals and groups of individuals who have made tremendous sacrifices to secure the freedoms that we enjoy. The God-given and inalienable rights affirmed in our Declaration of Independence and guaranteed by our Constitution are rights that many people in the world still struggle to obtain. Building on the foundation that was laid at Helsinki 17 years ago and that was fortified there last month, let us recommit ourselves to making peace and liberty the common heritage of all.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-18338
Filed 7-29-92; 4:04 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 204 and 245

[INS No. 1450-91]

RIN 1115-AD05

Special Immigrant Status; Aliens Who Have Served Honorably (or Are Enlisted To Serve) in the Armed Forces of the United States for at Least 12 Years

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of the "Armed Forces Immigration Adjustment Act of 1991" is to provide special immigrant status to a limited number of foreign nationals who have served honorably on active duty status in the Armed Forces of the United States. Congress enacted this legislation to provide eligible enlistees/veterans (and their spouses and children) with an opportunity to become lawful permanent resident aliens of the United States and thus become immediately eligible to apply for Naturalization as United States citizens. The Act contains its own numerical limitation scheme for these special immigrants, and adds a new subsection to section 245 of the Immigration and Nationality Act to accommodate their adjustment of status to that of aliens lawfully admitted for permanent residence. This regulation is necessary to recognize the patriotism and valor of aliens who, by virtue of their military service, have clearly demonstrated a commitment to support and defend the Constitution and laws of the United States.

DATES: This interim rule is effective on July 31, 1992. Written comments must be received on or before August 31, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Divisions, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1450-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Susan A. Dugas, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW.; room 7223, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: Public Law 102-110, enacted on October 1, 1991, amends the Immigration and Nationality Act to provide for special immigrant status for certain aliens who, pursuant to a bilateral international agreement or treaty, have served honorably (or are enlisted to serve) in the Armed Forces of the United States after October 15, 1978, and who apply for such status. This law further requires that such service be after lawful enlistment outside the United States and be for a period of twelve years or, alternatively, for six years if the individual has reenlisted for an additional six years. Nationals of the Philippines, the Federated States of Micronesia, and the Republic of the Marshall Islands are allowed to enlist in the United States Armed Forces each year, however, in the case of the latter two independent states, few of their nationals will have enlisted outside the United States, while most natives of the Philippines have to date enlisted in the Philippines. With the exception of wartime service under certain conditions, previous United States immigration law provided no special benefits for foreign nationals who enlisted in the Armed Forces of the United States. As a result, these individuals could not become United States citizens, were denied entry into positions that require access to classified information, and were denied entry into military officer programs.

The desire of Congress to recognize United States military service members has been historically demonstrated by the provisions of special naturalization benefits based upon military service. The recent implementation of Public Law 101-249, Posthumous Citizenship for Active Duty Service Act of 1990, clearly demonstrates the continuing desire of Congress to provide special recognition and benefits to aliens who serve or have served in the Armed Forces of the United States.

The grant of special immigrant classification pursuant to Public Law 102-110 allows the intended beneficiaries of section 101(a)(27)(K) of the Immigration and Nationality Act (the Act) to become eligible for an immigrant visa or adjustment of status to that of aliens lawfully admitted for residence. Generally, an applicant for such benefits must have served honorably for the required twelve years of active military duty and at least some part of that service must have occurred after October 15, 1978. However, an alien on active duty status at the time of seeking special immigrant status under section 101(a)(27)(K) of the Act, and who has served a total of six years of active duty, needs only to establish, to the satisfaction of the Immigration and Naturalization Service (Service), that he or she has reenlisted to incur a total active duty service obligation of at least twelve years. Public Law 102-110 also requires that the executive department of the Armed Forces under which the immigrant serves or served must have recommended the granting of special immigrant status to the immigrant.

This rule includes application procedures for the special immigrant including submission of evidence of past service or reenlistment, and the written recommendation of special immigrant status by the executive department of the military, to be submitted to the Service with Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. In order to make filing for benefits under section 101(a)(27)(K) of the Act as efficient and expeditious as possible, Service procedures will require that the alien obtain the certification of service and recommendation for special immigrant status directly from the executive department under which he or she served or is serving, before filing Form I-360 with the Service.

Allocation of Visa Numbers

Once an alien is granted special immigrant status under section 101(a)(27)(K) of the Act, his or her visa issuance is charged to the allocation of

employment-based fourth preference visas provided by section 203(b)(4) of the Act for the following year.

Numerical Limitations

Public Law 102–110 contains its own unique numerical limitation scheme for this category of special immigrant and requires that existing immigration ceilings for a given year be reduced by one third of the number of aliens granted special immigrant status under Public Law 102–110 during the previous year. The statute limits the number of military special immigrants granted visas or adjustment to permanent residency to a total of 2,000 per year for natives of countries which have a numerical limitation treaty or agreement with the United States allowing for enlistment of their nonresident nationals into the Armed Forces of the United States and to a total of 100 annually for countries without such a treaty. These limits do not apply to spouses and children of these special immigrants.

Exemptions From Certain Numerical Limitations

Persons who qualify for special immigrant status under section 101(a)(27)(K) of the Act as of the date of enactment of Public Law 102–110 (October 1, 1991) are exempt from separate numerical limitations of 2,000 (for countries with a treaty, namely, the Philippines) and 100 in all other cases. Persons not eligible as of the date of enactment are charged to both the country and the special immigrant numerical limits by reducing the numbers of employment-based visas and per country levels for a given year for natives of the foreign state. For countries "at ceiling", there are special rules for reductions in the number of employment-based immigrant visas for natives of the foreign state.

Public Law 102–110 specifically provides that spouses and children of eligible applicants be accorded special immigrant classification if they are "accompanying or following to join" special immigrants. This rule sets forth specific procedures for derivative beneficiaries (eligible spouses and children) under section 101(a)(27)(K) of the Act to apply for lawful permanent resident status, whether they are in the United States or outside the United States.

Pursuant to current immigration law, members of the Armed Forces of the United States who are travelling under official orders are not subject to inspection when entering the United States. This creates a problem for anyone seeking to adjust status to that of a lawful permanent resident under section 245 of the Act (which requires that the adjustment applicant must have been inspected and admitted, or paroled). In order to facilitate adjustment of status for Armed Forces special immigrants, Congress amended section 245 of the Act to provide that a special immigrant described in section 101(a)(27)(K) "shall be deemed, for the purposes of subsection (a), to have been paroled into the United States". Furthermore, although section 245(c) generally prohibits the adjustment of status of aliens who have failed to continuously maintain lawful nonimmigrant status or who have been employed without authorization in the United States, Armed Forces special immigrants (and their spouses and children) are exempt from this provision. Once the spouse or child of an Armed Forces special immigrant is granted special immigrant classification, and desires to adjust status in the United States, his or her application for adjustment will be adjudicated in accordance with the provisions of 8 CFR part 245 and new subsection 245(g) of the Act.

This rule also provides for automatic revocation of a petition to classify special immigrant classification under the general provisions of section 205 of the Act. Such revocation will occur if the special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge, prior to entering the United States with an immigrant visa or to approval of an application for adjustment of status to that of a lawful permanent resident. This provision is necessary in order to ensure that the alien continues to meet the qualifications set forth in the Act at the time the Armed Forces special immigrant is admitted to the United States for lawful permanent residence. If the Service is made aware by formal notification from the appropriate executive department that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete the total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the deportation provisions of section 241 of the Act, provided the alien is one of the classes of deportable aliens specified in section 241 of the Act. The Service may also pursue rescission proceedings under section 246 of the Act if the military special immigrant was not in fact eligible for adjustment of status.

If a special immigrant who obtains benefits under section 101(a)(27)(K) of the Act is granted status as an alien lawfully admitted for permanent residence, and meets the requirements of section 328 or 329 of the Act, he or she may file immediately for naturalization. The Service anticipates that the majority of section 101(a)(27)(K) special immigrants who obtain permanent residence will benefit by becoming eligible to apply for naturalization immediately. This rule includes instructions for the Service officer who conducts the adjustment of status interview to advise an applicant of his or her eligibility for immediate naturalization, if *prima facie* eligibility under section 328 or 329 of the Act is demonstrated.

An applicant may appeal the district director's decision to deny a petition for special immigrant status to the Associate Commissioner for Examinations in accordance with 8 CFR part 103, which this rule revises accordingly.

The Service's implementation of this rule as an interim rule, with a provision for a thirty-day period to receive public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (d)(3) and (b)(B). The reasons and the necessity for immediate implementation of this interim rule are as follows: The "Armed Forces Immigration Adjustment Act of 1991", Public Law 102–110, created a new special immigrant classification for aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years. The effect of this rule is to extend special immigrant status to a number of aliens who served honorably (or are enlisted to serve) on active duty with the United States Armed Forces. It does not restrict or remove any existing benefits. It is necessary to proceed with interim regulations, rather than proposed regulations, in order to allow the intended beneficiaries to apply for lawful permanent residence as soon as possible. Public Law 102–110 was enacted October 1, 1991 and became effective 60 days from enactment.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the

Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Administrative practice and procedure, Aliens, Employment, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. In § 103.1, paragraph (f)(2)(xxxv) is amended by removing the word "and" immediately after the ";".

3. In § 103.1, paragraph (f)(2)(xxxvi) is amended by removing the "." at the end of the sentence and adding in its place "; and".

4. In § 103.1, a new paragraph (f)(2)(xxxvii) is added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxvii) Petition for Armed Forces Special Immigrant under § 204.9 of this chapter.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

5. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

6. A new § 204.9 is added to read as follows:

§ 204.9 Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

(a) *Petition for Armed Forces special immigrant.* An alien may not be classified as an Armed Forces special immigrant unless the alien is the beneficiary of an approved petition to classify such an alien as a special immigrant under section 101(a)(27)(K) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow or Special Immigrant.

(1) *Who may file.* An alien Armed Forces enlistee or veteran may file the petition for Armed Forces special immigrant status in his or her own behalf. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed with the Service office having jurisdiction over the place of the alien's current or intended place of residence in the United States, or with the overseas Service office having jurisdiction over the alien's residence abroad.

(b) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(K) of the Act if:

(1) The alien has served honorably on active duty in the Armed Forces of the United States after October 15, 1978;

(2) The alien's original lawful enlistment was outside the United States (under a treaty or agreement in effect October 1, 1991) for a period or periods aggregating—

(i) Twelve years, and who, if separated from such service, was never separated except under honorable conditions; or

(ii) Six years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this rule and who has reenlisted to incur a total active duty service obligation of at least 12 years;

(3) The alien is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year; and

(4) The executive department under which the alien has served or is serving has recommended the granting of special immigrant status to the immigrant.

(c) *Derivative beneficiaries.* A spouse or child accompanying or following to join a principal immigrant who has requested benefits under this section may be accorded the same special immigrant classification as the principal alien. This may occur whether or not the spouse or child is named in the petition and without the approval of a separate petition, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the principal immigrant.

(1) The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's special immigrant application under section 101(a)(27)(K) of the Act was approved. The spouse or child of an immigrant classified as a section 103(a)(27)(K) special immigrant is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(2) When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is in the United States but was not included in the principal alien's application, the spouse or child shall file Form I–485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over his or her place of residence, regardless of the status of that spouse or child in the United States. The application must be supported by evidence that the principal alien has been granted special immigrant status under section 101(a)(27)(K) of the Act.

(3) When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is outside the United States, the principal alien may file Form I–824, Application for Action on an Approved Application or Petition, with the office which approved the original petition.

(4) *Revocation of derivative status.* The termination of special immigrant status for a person who was the principal applicant shall result in termination of the special immigrant status of a spouse or child whose status was based on the special immigrant application of the principal.

(d) *Documents which must be submitted in support of the petition.*

(1) A petition to classify an immigrant as a special immigrant under section 101(a)(27)(K) of the Act must be accompanied by the following:

(i) Certified proof of reenlistment (after 6 years of active duty service), or certification of past active duty status of 12 years, issued by the authorizing official of the executive department in which the applicant serves or has served, which certifies that the applicant has the required honorable active duty

service and commitment. The authorizing official need not be at a level above the "local command". The certification must be submitted with Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant; and

(ii) Birth certificate of the applicant establishing that the applicant is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year.

(2) Any documents submitted in support of the petition must meet the evidentiary requirements as set forth in 8 CFR part 103.

(3) Submission of an original Form DD–214, Certificate of Release or Discharge from Active Duty; Form G–325b, Biographic Information; and Form N–426, Request for Certification of Military or Naval Service, is not required for approval of a petition for special immigrant status.

(e) *Decision.* The petitioner will be notified of the director's decision and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner for Examinations in accordance with 8 CFR part 103.

(f) *Revocation under section 205 of the Act.* An alien who has been granted special immigrant classification under section 101(a)(27)(K) of the Act must meet the qualifications set forth in the Act at the time he or she is admitted to the United States for lawful permanent residence. If an Armed Forces special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge prior to entering the United States with an immigrant visa or approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence, the petition designating his or her classification as a special immigrant is revoked automatically under the general provisions of section 205 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility for the classification under section 101(a)(27)(K) of the Act.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

7. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

8. A new § 245.8 is added to read as follows:

§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

(a) *Application.* Each person applying for adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act must file a Form I–485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over the applicant's place of residence. Benefits under this section are limited to aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years, and their spouses and children. For purposes of this section, special immigrants described in section 101(a)(27)(K) of the Act and his or her spouse and children shall be deemed to have been paroled into the United States pursuant to section 245(g) of the Act. Each applicant must file a separate application with the appropriate fee.

(b) *Eligibility.* The benefits of this section shall apply only to an alien described in section 101(a)(27)(K) of the Act who applies for such adjustment. The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 102–110 may also apply for adjustment of status. The provisions of section 245(c) of the Act do not apply to the principal Armed Forces special immigrant or to his or her spouse or child.

(c) *Interview of the applicant.* Upon completion of the adjustment of status interview for special immigrants under section 101(a)(27)(K) of the Act, the director shall make every effort to determine *prima facie* eligibility for naturalization benefits, if the applicant is to be granted status as an alien lawfully admitted for permanent residence. If the director determines that the applicant is immediately eligible for naturalization under section 328 or 329 of the Act, the director shall advise the applicant that he or she is eligible to apply for naturalization on Form N–400, Application to File Petition for Naturalization. If the applicant wishes to apply for naturalization, the director shall instruct the applicant concerning the requirements for naturalization and provide him or her with the necessary forms.

(d) *Deportation provisions of section 241.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the deportation provisions of section 241 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 241 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

(e) *Rescission proceedings under section 246 of the Act.* If the Service determines that a military special immigrant under section 101(a)(27)(K) of the Act was not in fact eligible for adjustment of status, the Service may pursue rescission proceedings under section 246 of the Act.

Dated: June 17, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–18080 Filed 7–30–92; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 270

[INS No. 1408–92]

RIN 1115–AC36

Penalties for Document Fraud

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes within title 8 of the Code of Federal Regulations a new part 270, penalties for civil document fraud. Section 544 of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (November 29, 1990), provides for civil penalties for certain specified acts involving document fraud. This regulation establishes the procedures to be followed in the investigation of civil document fraud violations which will enable the Immigration and Naturalization Service to impose civil monetary penalties against those persons or entities involved in immigration related document fraud.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jill Arndt, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street, NW., room 7025, Washington, DC 20536, telephone 202–514–3093.

SUPPLEMENTARY INFORMATION: This rule amends title 8 of the Code of Federal

Regulations by adding a new part 270 relating to civil document fraud. This new part was necessitated by section 544 of the Immigration Act of 1990 (IMMACT), Public Law 101-649 (November 29, 1990), which amended the Immigration and Nationality Act (the Act) by adding section 274C, civil penalties for document fraud. On May 31, 1991, the Immigration and Naturalization Service (INS or the Service) published at 56 FR 24758 a proposed rule governing these provisions. As a result of the public comments received in response to the proposed rule, several changes have been incorporated into this final rule. What follows is an analysis of those sections of the proposed rule upon which comments were made. With the exception of the minor printing and typographical errors, the remaining sections of the proposed rule have been incorporated into the final regulation.

Section 270.1 defines the term "document." Twelve commenters suggested that the definition was too broad and beyond the scope of the statute. Commenters suggested that the definition of document be restricted to documentation used in satisfying the employment verification requirements of the Act.

Section 274C(a) of the Act provides that it is unlawful for any person or entity knowingly: (1) To forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this Act; (2) to use, attempt to use, possess, obtain, accept, receive, or provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act; or (3) to use, attempt to use, or to provide, or attempt to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act (emphasis supplied). The term "this Act" is defined in section 1 of IMMACT. Generally, when a provision of IMMACT is incorporated into the Immigration and Nationality Act of 1952, as amended, "this Act" refers to the Immigration and Nationality Act (title 8, United States Code) in its entirety. The preamble provides:

> Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

This language makes it clear that new provisions such as section 274C should be construed, in the absence of explicit evidence to the contrary, as operating upon the material provisions of the entire Act. Thus section 274C is applicable not only to document fraud in the employment verification system, such as fraudulent entries on Forms I-9 (Employment Eligibility Verification), but also to such document fraud as may be material to any other provision of the Act. Moreover, section 274C(a) (4) makes it unlawful "to accept, receive, or to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b)" (emphasis supplied). This is the only one of the four prohibited activities specified in section 274C which relates exclusively to section 274A. If Congress had intended to penalize only document fraud activities relating solely to the employer sanctions provisions of the Act, all four of the activities enumerated under section 274C would have been specifically directed to section 274A of the Act. Therefore, the Service has retained the definition in the proposed rule.

Section 270.2, paragraph (b) provides, in part, that the Service may initiate an investigation upon receipt of a complaint from a third party. Eleven commenters found this provision to be unclear. Commenters correctly assumed that a "third party" could be the same as "any person or entity having knowledge of a violation or a potential violation," as stated in § 270.2 paragraph (a). The rule has been slightly revised to eliminate any confusion about the relationship between paragraphs (a) and (b).

Many commenters suggested that a Notice of Intent to Fine should not be issued if it is based solely on hearsay in the form of Forms I-213 (Record of Deportable Alien), reports from INS informants, and other INS internal reports. Hearsay is admissible in administrative proceedings, and in appropriate circumstances, may be sufficient to support a finding of a violation. See, *e.g.*, *United States* v. *Mester Mfg. Co.*, 1 OCAHO 18 (6/17/88), *aff'd*, 879 F.2d 561 (9th Cir. 1989). Therefore, the Service maintains the language of the proposed rule.

Section 270.2, paragraph (c) provides that prior to the initiation of proceedings before an administrative law judge, the Service may issue subpoenas. Twelve commenters suggested that the INS does not have statutory authority to issue subpoenas in administrative section 274C investigations. In section 274C(d)(1)(B) of the Act, Congress gave individual subpoena authority to administrative law judges. The commenters claimed that since the Service was not specified under section 274C(d)(l)(B), the INS does not have the authority to issue subpoenas. INS subpoena authority contained in section 235(a) of the Act grants the Attorney General, any immigration officer, or a special inquiry officer the authority to issue subpoenas for the production of books, papers, and documents relating to any matter which is material and relevant to the enforcement of the Act. Ten commenters cited *United States* v. *Ramirez*, 905 F.2d 97 (5th Cir. 1990), and *United States* v. *Minker*, 350 U.S. 179 (1956), as a basis for limiting the INS's subpoena power under section 235(a). In *Minker*, however, the Supreme Court held only that an immigration officer may not subpoena a naturalized citizen to testify in an administrative proceeding if the purpose of such proceeding is to institute denaturalization proceedings (which requires a judicial hearing in a Federal District Court) against the citizen. This decision did not in any way limit the Service's subpoena power as it relates to other sections of the Act. See *Minker*, 350 U.S. at 185. *Ramirez*, does not in any way limit the INS's subpoena power. In fact, the question whether the INS had the authority to issue administrative subpoenas in the first instance was not raised by the parties. The district court *Ramirez* decision was reversed on jurisdictional grounds. The circuit court of appeals decision makes it clear that a respondent who receives an INS-issued administrative subpoena cannot seek judicial review of that subpoena until the Service seeks judicial enforcement.

Although no reported case has directly addressed the Service's authority to issue an administrative subpoena to enforce section 274A of the Act, numerous unpublished decisions from federal courts have uniformly upheld this power. Once a complaint in an employer sanctions case is filed with the Office of the Chief Adminfstrative Hearing Officer, it is the practice of the Service to obtain subpoenas from the presiding administrative law judge. The Service intends to follow the same practice in civil document fraud cases. Therefore, the Service retains the language of the proposed rule.

Section 270.2, paragraph (e) delineates the contents of a Notice of Intent to Fine. Thirteen commenters suggested that the Notice of Intent to Fine does not provide the respondent with an adequate explanation of the basis for the charge. The Notice of Intent to Fine provides the respondent with a detailed list of the factual allegations which serve as the basis for the violations charged by the Service, and with citations to the statutory provision(s)

alleged to have been violated. The Service therefore retains the language of the proposed rule.

Eleven commenters suggested that the language in § 270.2, paragraph (e)(1) referring to "the penalty that will be imposed" should be changed to read "the monetary amount of the penalty the Service intends to impose." Commenters maintained that the phrase "will be imposed" implies that a final decision has been made. The Service agrees with the commenters. Therefore, the language in § 270.2(e)(1) has been modified in accordance with the above-stated suggestion.

Twelve commenters suggested that because of adverse consequences that might result from the issuance of a final order under section 274C, the Notice of Intent to Fine should include a statement advising alien respondents of the consequences of such final order. The Notice of Intent to Fine is designed to initiate both section 274A and section 274C proceedings. A Notice of Intent to Fine containing an advisal to an alien respondent that a final order issued under section 274C will result in exclusion and/or deportation proceedings pursuant to the Act would be confusing to non-alien respondents. Service officers will be required to provide all respondents with Form I–822 (Notice of Rights and Waiver of Right to Contest a Notice of Intent to Fine). This form notifies respondents of their rights and of the consequences of a final order issued under section 274C of the Act. Therefore, the Service retains the language of the proposed rule.

In the proposed rule, § 270.2, paragraph (e) stated that the Notice of Intent to Fine will include an advisal to the respondent that the person or entity has the right to request a hearing before an administrative law judge, and that such a request must be received by the Service within 30 days from the service of the Notice of Intent to Fine. Twelve commenters suggested that this 30-day period be lengthened. These commenters alleged that many respondents may require additional time to obtain legal advice or counsel. Congress felt that 30 days would be a sufficient amount of time in which to request a hearing under ordinary circumstances, and the Service agrees that it should not take a respondent more than 30 days to request a hearing under normal circumstances. However, in order to address the possibility of extraordinary or compelling circumstances, the final rule will extend the 30-day time period to 60 days, and will further provide that a postmark date within the 60-day time period will constitute a timely request for hearing. Section 270.2 has been changed to reflect these changes.

Twelve commenters suggested that the Notice of Intent to Fine should be sent to the respondent by certified mail. The INS agrees with the commenters, and the service of a Notice of Intent to Fine will be accomplished by personal service pursuant to 8 CFR 103.5a(a)(2). This section defines personal service as some form of hand delivery of the document or mailing the document by certified or registered mail, return receipt requested to the person's last known address.

Twelve commenters suggested that § 270.2, paragraph (e)(2)(iii) and § 270.2, paragraph (f) should provide a respondent with an opportunity (based on good cause) to file a request for a hearing after the 30-day time period has otherwise expired. Commenters included postal delays and delays in the respondent's ability to obtain a translation of the document as examples of good cause for a delay. The final rule accommodates these commenters' suggestions by extending the time period in which to request a hearing from 30 days to 60 days. Furthermore, the final rule deems a request for hearing postmarked within the 60 days as timely. Sections 270.2(e)(2)(iii) and § 270.2(f) have been modified to reflect the change.

Twelve commenters suggested that the English version of a Notice of Intent to Fine be accompanied by a translation into the respondent's language to ensure that non-English-speaking respondents are advised of proposed charges and rights. Many of the commenters suggested that a bilingual notice is required pursuant to section 545 of IMMACT. Section 545 of IMMACT (section 242B(a)(3) of the Act) requires that deportation charging documents (Orders to Show Cause) be available in both Spanish and English. The issuance of a Notice of Intent to Fine does not initiate deportation proceedings. Therefore, section 545 is not applicable to this regulation, and the Service maintains the language of the proposed rule.

Eleven commenters suggested that the Notice of Intent to Fine contain a properly addressed form for the respondent to use and return in order to request a hearing. The INS may consider the feasibility of this suggestion in the future. However, time constraints make it necessary for the INS to implement this program with a separate written request for a hearing. On October 3, 1991, an interim rule amending 28 CFR part 68, Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices, was published in the **Federal Register**. This regulation, applicable to both sections 274A and 274C cases, was revised in part to permit a request for hearing to serve as a notice of appearance. The Service, after consultation with the Office of the Chief Administrative Hearing Officer (OCAHO), will consider the commenter's suggestion for future modification of the Notice of Intent to Fine.

Section 270.2, paragraph (f) provides in pertinent part that a respondent may waive the authorized period in which to request a hearing before an administrative law judge and ask that the INS issue a final order. Eleven commenters suggested that this sentence be deleted. Commenters maintained that unrepresented respondents would not be advised properly of the adverse effects a Final Order may have in future immigration proceedings. Comments conveyed concerns that respondents in custody could be misled or coerced into signing a waiver of their right to a hearing. Citing *Orantes-Hernandez* v. *Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988), *aff'd*, 919 F.2d. 549 (9th Cir. 1990) as an example, commenters claimed that the courts take a dim view of waivers of statutory rights. In *Orantes-Hernandez* v. *Meese*, the INS was required to notify detainees of their right to representation by counsel in deportation proceedings and their right to apply for asylum in the United States. The decision did not prohibit the INS from accepting requests for voluntary departure. The Service recognizes that a waiver, in order to be given effect, must be made voluntarily and with full knowledge of the consequences. Accordingly, the INS intends to fully advise respondents (including detainees) of their rights under section 274C prior to the acceptance of a waiver.

Several commenters maintained that unrepresented respondents in custody would unwittingly be misled into signing a waiver of their right to a hearing. Congress did not grant to the INS authority to hold a respondent in custody solely for the purpose of section 274C administrative fine proceedings. The custody status of a detained person is not based on the issuance of a Notice of Intent to Fine in section 274C proceedings. The Service, therefore, maintains the language of the proposed rule.

Two commenters suggested that the waiver provision of section 270 should not be implemented without responsible safeguards. Prior to the execution of a waiver, the respondent will be advised of his or her rights provided under section 274C of the Act. Additionally, if the respondent is not a United States citizen he or she will be advised that a waiver of a section 274C hearing will result in the issuance of a final order for a violation of section 274C and the respondent will be excludable and/or deportable from the United States pursuant to the Act. The regulation has been revised accordingly.

Section 270.2, paragraph (f) provides in part that any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. Eleven commenters suggested that this requirement is an unreasonable burden. Commenters maintained that limited access to a translation service could interfere with the respondent's right to request a hearing. The respondent is responsible for filing a written request for a hearing in a timely manner. This is a jurisdictional prerequisite, *United States* v. *Candelario Martinez, Jr.*, OCAHO Case No. 90100172 (6/6/90), and language that does not reasonably communicate respondent's desire for a hearing is not sufficient to invoke the jurisdiction of the tribunal; *United States* v. *Rosewood Office Products*, 1 OCAHO 193 (7/6/90). The INS must be able to tell, from the face of the document, that the respondent wishes to request a hearing. This can only be accomplished with a translation accompanying a request submitted in a foreign language. Therefore, the Service maintains the language of the proposed rule. This is consistent with translation requirements in other immigration proceedings. See 8 CFR 3.31 (deportation proceedings); 8 CFR 274a.9(d) (employer sanctions cases before the Service); 28 CFR 68.7(e) (administrative law judge proceedings).

Section 270.2, paragraph (g) provides that if a respondent does not file a timely written request for a hearing before an administrative law judge, the INS shall issue a final order from which there is no appeal. Nine commenters suggested that section 274C(d)(2)(B) of the Act empowered the Attorney General, not the INS, with the authority to issue final orders. Section 103(a) of the Act provides, in substance, that the Attorney General shall be charged with the administration and enforcement of the Act, and that he may require or authorize any employee of the Service or the Department of Justice to exercise any of the powers, privileges, or duties conferred or imposed by the Act *or regulations issued thereunder* upon any other employee of the Service (emphasis supplied); 28 CFR 0.105. The Attorney General has delegated this authority to the Commissioner of the INS; 8 CFR §§ 2.1 and 100.2(a). Promulgation of these regulations is undertaken pursuant to that delegation of authority.

One commenter suggested that since a section 274C Notice of Intent to Fine has potential exclusion and deportation consequences, the Service should be required to prove the allegation of fraud before an administrative law judge even if the respondent fails to request a hearing. Citing *Woodby* v. *INS*, 385 U.S. 276 (1966), the commenter maintained that an administrative law judge should be required to make an affirmative finding that there was clear, convincing, and unequivocal evidence that the respondent engaged in document fraud before an order could be used for the purposes of deportation. Section 274C(d)(2)(B) of the Act provides that if no hearing is requested, the order of the Attorney General (through the INS) is final and unappealable. Failure to request a hearing does not trigger the hearing process. Therefore, the Service feels it inappropriate to adopt the suggestion. *Woodby* was a case of statutory interpretation based on other grounds of deportation, namely entry without inspection and engaging in prostitution. The case holds only that in the deportation proceeding itself the grounds must be proved by clear and convincing evidence. It did not purport to limit the power of Congress to prescribe grounds of deportation which might be proved in whole or in part by evidence of the outcome of prior and distinct judicial or administrative proceedings. Nor did the *Woodby* Court purport to dictate the standard of review in such prior and distinct proceedings. For instance, where deportability is based on termination of conditional permanent residence, such termination is effected in a non-judicial context with a requirement of clear and convincing evidence; at the subsequent deportation hearing, the Service must prove the termination of conditional residence—but not the underlying facts—by clear and convincing evidence. See section 241(a)(1)(D) of the Act. Similarly, in the civil document fraud context, *Woodby* stands only for the proposition that the facts giving rise to the ground of deportation—including the existence of a final order—must be proved by clear and convincing evidence. Congress itself has set forth the standard of proof in the proceeding that gives rise to the final order, by providing in section 274C(d)(2)(B) of the Act that such an order can come into existence without an administrative hearing. Moreover, with the passage of the Immigration Act of 1990, Congress specifically provided that an alien who is the subject of a final order for violation of section 274C is deportable. Section 307(h)(8) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law No. 102–232, 105 Stat. 1733 (1991) (to be codified at section 241(a)(3)(C) of the Act). Therefore, *Woodby* is inapposite. The failure to timely request a hearing on the allegations contained in a Notice of Intent to Fine issued pursuant to section 274C of the Act results in a final and unappealable order for document fraud. A subsequent deportation proceeding charging an alien with deportability is a distinct proceeding governed by other provisions of the Act.

Twelve commenters expressed the opinion that the language of section 274C(d)(2)(B) of the Act indicates that a final order entered in the absence of a timely, written request for a hearing is only unappealable administratively. Commenters cited section 274C(d)(5) of the Act to propose that such an order may be subject to judicial review. Arguably, section 274C could be read to permit a respondent to ignore the administrative process and proceed directly to a federal appeals court. However, this cannot be what Congress intended.

The doctrine of failure to exhaust administrative remedies is well settled at law. See, *e.g.*, *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938). The purposes of this doctrine are to discourage frequent and deliberate flouting of agency procedure, to promote judicial economy, and to permit the agency to develop the facts and to apply its expertise. See *Cutler* v. *Hayes*, 818 F.2d 879, 890–91 (D.C. Cir. 1987). There are exceptions to this doctrine, such as when the agency process is no longer available, would not afford appropriate relief, or would necessarily be denied; *Panola Land Buyers Ass'n.* v. *Shuman*, 762 F.2d 1550, 1556 (11th Cir. 1985).

Not only would the commenters' interpretation allow a respondent to flout agency procedure, it would prevent the development of the facts and the creation of an administrative record. These latter effects are especially important in civil document fraud cases, where judicial review is vested directly in an appellate rather than a trial court. Moreover, although the administrative process is no longer available if a person or entity has failed to file a

request for hearing within 60 days, a statutory interpretation permitting a person or entity to ignore the administrative process and proceed directly to federal court would frustrate Congress's intent in creating an administrative proceeding for civil document fraud in the first instance. It is beyond peradventure that Congress did not intend to give greater rights to a litigant who has circumvented the administrative procedures set forth in the statute than to one who has followed these procedures. Therefore, the Service construes this section as requiring exhaustion of administrative remedies.

Section 270.3, paragraph (a) provides that nothing in section 274C of the Act shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18, United States Code. One commenter suggested that the Service may have unintentionally narrowed the field of relevant criminal fraud provisions located throughout the United States Code. The commenter cited 8 U.S.C. 1306(c), false registration of an alien and 48 U.S.C. 408, fraudulent use of a social security card, as examples of additional criminal provisions not proscribed under title 18, United States Code. The Service recognizes that a variety of criminal provisions exist within the United States Code that relate to document fraud. None of these provisions are affected by the enactment of section 544 of IMMACT. Therefore, the Service deems it inappropriate to deviate from the specific language of the statute.

Eleven commenters suggested that Notices of Intent to Fine should not be issued until administrative law judges are appointed to handle section 274C hearings and the procedures for conducting such hearings are established pursuant to the Administrative Procedures Act. Administrative law judges to decide employer sanctions cases were provided by section 101(a)(1) of the Immigration Reform and Control Act of 1986. On October 3, 1991, the Department of Justice, Executive Office for Immigration Review, published an interim rule with request for comments at 56 FR 50049 which revised 28 CFR 68. This revised regulation makes it clear that 28 CFR 69 is also applicable to proceedings commenced under section 274C of the Act. The same administrative law judges that hear cases under section 274A and 274B of the Act will preside over section 274C cases.

One commenter stated that the 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (Jan. 31, 1967) (the "Protocol"), to which the United States is a party, requires the United States to abide by the substantive provision of the 1951 United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150 (July 28, 1951) (the "Convention"). Article 31(1) of the Convention provides as follows:

> A Contracting State shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened * * * enter or are present in their territory without authorization provided they present themselves without delay and show good cause for their illegal entry or presence.

The commenter views the issuance of a Notice of Intent to Fine for civil document fraud as a penalty prohibited by the Convention. The commenter's views are well taken. In order to avoid any conflict with the Convention, the Service will construe the document fraud penalties as inapplicable to a case in which the only presentation of the document was pursuant to direct departure from a country in which the alien has a well-founded fear of persecution or from which there is a significant danger that the alien would be returned to a country in which the alien would have a well-founded fear of persecution. The Service will not issue a Notice of Intent to Fine for any such act of document fraud committed by an alien prior to the opportunity to present himself or herself without delay to an INS officer and to show good cause for his or her illegal entry or presence in accordance with Article 31(1) of the Convention. A new paragraph (i) has been added to section 270.2 of the final rule to reflect this change.

In accordance with 5 U.S.C. 605(b), the Commissioner of the INS certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

Although this regulation becomes effective on the date of publication in the **Federal Register**, the statute permitted enforcement of causes of actions for violations of the statute occurring after its enactment on November 29, 1990. The regulation therefore contemplates Notices of Intent to Fine for violations occurring on or after November 29, 1990.

List of Subjects in 8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of title 8 of the Code of Federal Regulations is amended by adding a new part 270 to read as follows:

PART 270—PENALTIES FOR DOCUMENT FRAUD

Sec.
270.1 Definitions.
270.2 Enforcement procedures.
270.3 Penalties.

Authority: 8 U.S.C. 1101, 1103, and 1324c.

§ 270.1 Definitions.

For the purpose of this part—

Document means an instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement of the Act. The term "document" includes, but is not limited to, an application required to be filed under the Act and any other accompanying document or material;

Entity means any legal entity, including, but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association, including an agent or anyone acting directly or indirectly in the interest thereof.

§ 270.2 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274C of the Act may submit a signed, written complaint to the Service office having jurisdiction over the business or residence of the potential violator or the location where the violation occurred. The signed, written complaint must contain sufficient information to identify both the complainant and the alleged violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* When the Service receives complaints from a third party in accordance with paragraph (a) of this section, it shall investigate only those complaints which, on their face, have a substantial probability of validity. The

Service may also conduct investigations for violations on its own initiative, and without having received a written complaint. If it is determined after investigation that the person or entity has violated section 274C of the Act, the Service may issue and serve upon the alleged violator a Notice of Intent to Fine.

(c) *Issuance of a subpoena.* Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated. The Service may issue subpoenas pursuant to its authority under sections 235(a) and 287 of the Act, in accordance with the procedures set forth in § 287.4 of this chapter.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274C of the Act is commenced when the Service issues a Notice of Intent to Fine. Service of this notice shall be accomplished by personal service pursuant to § 103.5a(a)(2) of this chapter. Service is effective upon receipt, as evidenced by the certificate of service or the certified mail return receipt. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 242.1 of this chapter or by an INS port director designated by his or her district director.

(e) *Contents of the Notice of Intent to Fine.*

(1) The Notice of Intent to Fine shall contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the monetary amount of the penalty the Service intends to impose.

(2) The Notice of Intent to Fine shall provide the following advisals to the respondent:

(i) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the government;

(ii) That any statement given may be used against the person or entity;

(iii) That the person or entity has the right to request a hearing before an administrative law judge pursuant to 5 U.S.C. 554–557, and that such request must be filed with INS within 60 days from the service of the Notice of Intent to Fine; and

(iv) That if a written request for a hearing is not timely filed, the Service will issue a final order from which there is no appeal.

(f) *Request for hearing before an administrative law judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the INS, within 60 days of the Notice of Intent to Fine, a written request for a hearing before an administrative law judge. Any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. A request for hearing is deemed filed when it is either received by the Service office designated in the Notice of Intent to Fine, or addressed to such office, stamped with the proper postage, and postmarked within the 60-day period. In computing the 60-day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine. A respondent may waive the 60-day period in which to request a hearing before an administrative law judge and ask that the INS issue a final order from which there is no appeal. Prior to execution of the waiver, a respondent who is not a United States citizen will be advised that a waiver of a section 274C hearing will result in the issuance of a final order and that the respondent will be excludable and/or deportable from the United States pursuant to the Act.

(g) *Failure to file a request for hearing.* If the respondent does not file a written request for a hearing within 60 days of service of the Notice of Intent to Fine, the INS shall issue a final order from which there shall be no appeal.

(h) *Issuance of the final order.* A final order may be issued by an officer defined in § 242.1 of this chapter, by an INS port director designated by his or her district director, or by the Director of the INS National Fines Office.

(i) *Service of the final order.*

(1) *Generally.* Service of the final order shall be accomplished by personal service pursuant to § 103.5a(a)(2) of this chapter. Service is effective upon receipt, as evidenced by the certificate of service or the certified mail return receipt.

(2) *Alternative provisions for service in a foreign country.* When service is to be effected upon a party in a foreign country, it is sufficient if service of the final order is made: (i) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(ii) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or

(iii) when applicable, pursuant to § 103.5a(a)(2) of this chapter.

Service is effective upon receipt of the final order. Proof of service may be made as prescribed by the law of the foreign country, or, when service is pursuant to § 103.5a(a)(2) of this chapter, as evidenced by the certificate of service or the certified mail return receipt.

(j) *Declination to file charges for document fraud committed by refugees at the time of entry.* The Service shall not issue a Notice of Intent to Fine for acts of document fraud committed by an alien pursuant to direct departure from a country in which the alien has a well-founded fear of persecution or from which there is a significant danger that the alien would be returned to a country in which the alien would have a well-founded fear of persecution, provided that the alien has presented himself or herself without delay to an INS officer and shown good cause for his or her illegal entry or presence. Other acts of document fraud committed by such an alien may result in the issuance of a Notice of Intent to Fine and the imposition of civil money penalties.

§ 270.3 Penalties.

(a) *Criminal penalties.* Nothing in section 274C of the Act shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18, United States Code.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274C of the Act. Civil penalties may be imposed by the Service or by an administrative law judge for violations under section 274C of the Act. The Service may charge multiple violations of section 274C of the Act in a single Notice of Intent to Fine, and may impose separate penalties for each such unlawful act in a single proceeding or determination. However, in determining whether an offense is a first offense or a subsequent offense, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense.

(1) A respondent found by the Service or an administrative law judge to have violated section 274C of the Act shall be subject to an order:

(i) To cease and desist from such behavior; and

(ii) To pay a civil penalty according to the following schedule:

(A) *First offense.* Not less than $250 and not more than $2,000 for each fraudulent document or each proscribed activity described in section 274C (a)(1)–(a)(4) of the Act, or

(B) *Subsequent offenses.* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed

activity described in section 274C (a)(1)–(a)(4) of the Act.

(2) Where an order is issued to a respondent composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for a fee for employment (without reference to the practices of, and not under the common control of or common control with, another subdivision), each subdivision shall be considered a separate person or entity.

Dated: July 23, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–17850 Filed 7–30–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–71; Special Conditions No. 25–ANM–59]

Special Conditions: British Aerospace BAe 125–800A Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for certain British Aerospace BAe 125–800A airplanes modified by K–C Aviation, Inc. These airplanes are equipped with high-technology digital avionics systems that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 21, 1992. Comments must be received on or before September 14, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–71, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM–71. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–71." The postcard will be date stamped, and returned to the commenter.

Background

On April 6, 1992, K–C Aviation, Inc. applied to the FAA Chicago Aircraft Certification Office for a supplemental type certificate (STC) to modify certain BAe 125–800A airplanes. The BAe 125–800A are two flightcrew, two-engine airplanes, each with a maximum takeoff weight of up to 27,400 lbs. The proposed modification incorporates the installation of an Electronic Flight Instrument System (EFIS) and additional navigation and avionic systems. The equipment originally installed in these airplanes presented the required information in the form of analog displays. The information presented is flight critical. The EFIS as a digital system is vulnerable to high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), K–C Aviation, Inc. must show that the modified BAe 125–800A airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A3EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A3EU are as follows: Part 10 of the Civil Air Regulations (CAR), as amended November 1, 1963; part 36 of the FAR, as amended by Amendments 36–1 through 36–12; and Special Federal Aviation Regulation (SFAR) 27, as amended by Amendments 27–1 through 27–4. In addition, compliance has been established with the optional requirements of § 25.1419 (Ice Protection). This certification is equivalent to part 4b of the CAR, dated December 1953, as amended by Amendment 4b–1 through 4b–11, exclusive of § 4b.350(e), and includes Special Civil Air Regulation SR–422B.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 4b as amended) do not contain adequate or appropriate safety standards for the modified BAe 125–800A airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state of the art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it

necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that new technology electrical and electronic systems, such as the EFIS, be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10–500 KHz	60	60
500–2000 KHz	80	80
2–30 MHz	200	200
30–100 MHz	33	33
100–200 MHz	150	33
200–400 MHz	56	33
400–1000 MHz	4,020	935
1–2 GHz	7,850	1,750
2–4 GHz	6,000	1,150
4–6 GHz	6,800	310
6–8 GHz	3,600	666
8–12 GHz	5,100	1,270
12–18 GHz	3,500	551
18–40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified British Aerospace BAe 125–800A airplanes:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Function whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–18089 Filed 7–30–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 25

[Docket No. NM–66; Special Conditions No. 25–ANM–57]

Special Conditions: Convair 340 or 440 Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for certain Convair Model 340 or 440 airplanes, modified by the Allison Gas Turbine Division of General Motors Corporation. These airplanes, which have been modified previously to incorporate Allison 501 series turbopropeller engines, are equipped with high-technology digital avionics systems that perform critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplanes are exposed to lightning and HIRF.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, FAA, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2135.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1984, the Allison Gas Turbine Division of General Motors Corporation applied for a supplemental type certificate to increase the fuselage length and maximum takeoff weight of

Convair Model 340 or 440 airplanes that have previously been modified to incorporate Allison 501–D22G engines in accordance with Supplemental Type Certificate (STC) No. SA4–1100. These are twin-engine, transport category airplanes with a maximum takeoff weight of 56,156 lbs. (Airplanes modified in accordance with STC No. SA4–1100 are sometimes unofficially referred to as 580's.) The present modification consists of:

1. An increase in the maximum takeoff weight from 58,156 lbs. to 63,000 lbs., an increase in the maximum landing weight from 53,000 lbs. to 58,000 lbs., and an increase in zero fuel weight from 50,000 lbs. to 55,000 lbs.

2. An increase in the fuselage length of 14 ft. 3 in.

3. An increase in the takeoff torque limit so that takeoff power is increased from 4,000 to 4,300 shp. Maximum continuous limits remain unchanged.

4. Installation of Electronic Flight Instrument Systems (EFIS) and related avionics systems. The equipment originally installed in these airplanes presented the required flight information in the form of electro-mechanical analog displays. The information presented is both flight critical and essential. The EFIS as a digital system is vulnerable to lightning and high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101, Allison Gas Turbine Division must show that the Convair 340 or 440, as modified by STC No. SA4–1100, and as further modified, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 6A6 and STC No. SA4–1100, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. 6A6 and STC No. SA4–1100 are as follows: Part 4b of the Civil Air Regulations, effective July 20, 1950, including Amendments 4b-1, 4b-3, and 4b-5; Special Civil Air Regulations No. SR–422B and SR–423; and Special Federal Aviation Regulation No. 27.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Convair 340 or 440 must also be shown to comply with the following sections of part 25, as amended by Amendments 25–1 through 25–72: § 25.869(a); § 25.1303 (a), (b), and (c); § 25.1309 (a) through (g); § 25.1321(e); § 25.1322 (a) through (d); § 25.1331 (a) and (b); § 25.1333 (a), (b), and (c); § 25.1335; § 25.1355 (a) and (c); § 25.1359 (a) through (d); § 25.1431 (a), (b), and (c); § 25.1525; § 25.1529; and § 25.1541(a).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Convair 340 or 440 airplanes, special conditions are prescribed under the provisions of § 21.101 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Convair 340 or 440 must comply with the noise certification requirements of part 36.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Convair 340 or 440 airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronics systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems

under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A) "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_o (e^{-at} - e^{-bt})$

where: t = time in seconds,

i = current in amperes, and

	Severe strike (Component A)	Restrike (Component D)	Multiple stroke (½ Component D)	Multiple burst (Component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	847,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

	200 KA	100 KA	50 KA	10KA
i_{peak} =				
and,				
$(di/dt)_{max}$ (amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	60	60
500 KHz–2 MHz	80	60
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	150	33
200 MHz–400 MHz	56	33
400 MHz–1 GHz	4,020	935
1 GHz–2 GHz	7,850	1,750
2 GHz–4 GHz	6,000	1,150
4 GHz–6 GHz	6,800	310
6 GHz–8 GHz	3,600	666
8 GHz–12 GHz	5,100	1,270
12 GHz–18 GHz	3,500	551
18 GHz–40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the United States.

Notice of Proposed Special Conditions No. SC-92-1-NM was published in the Federal Register on April 7, 1992 (57 FR 11693). No comments were received.

Conclusion

This action affects only the modified Convair 340 or 440 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the modified Convair 340 or 440 airplanes:

1. *Lightning Protection:* a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronics systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF):* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18070 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-3]

Revocation of Transition Area; Anoka, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action revokes the 700 foot transition area established at Anoka, MN. This action is due to the deactivation of Gateway North Industrial Airport, Ramsey, MN.

DATES: Effective Date: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 12, 1992, the Federal Aviation Administration proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot transition area established at Anoka, MN (57 FR 20215).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. The airspace designation for the transition area listed in this document will be removed from § 71.181 of Handbook 7400.7, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot transition area established at Anoka, MN. This action is due to the deactivation of Gateway North Industrial Airport, Ramsey, MN.

Aeronautical maps and charts will reflect the area returned to a noncontrolled status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348 (a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

Anoka, MN [Removed]

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Issued in Des Plaines, Illinois on July 21, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-18067 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-6]

Amended Transition Area; Albany, OR; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the

Albany, Oregon, transition area published in a final rule on June 9, 1992 (57 FR 24357), Airspace Docket Number 91-ANM-8.

EFFECTIVE DATE: 0901 u.t.c. July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 91-ANM-8, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 92-13507, Airspace Docket 91-ANM-8, published on June 9, 1992, (57 FR 24357), revised the description of the Albany, Oregon, transition area. An error was discovered in the mileage used to describe the transition area and extension. This action corrects that error by clarifying that the distances are specified in nautical miles. This change does not effect the size of the transition area or extension.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Albany, Oregon, transition area, as published in the **Federal Register** on June 9, 1992 (57 FR 24357), (**Federal Register** Document 92-13507; page 24358, column 1), is corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

§ 71.1 [Corrected]

Section 71.181 Designation [Corrected]

* * * * *

ANM OR TA Albany, Oregon [Corrected]

1. By removing "within a 6.1 mile radius of the Albany, Oregon Airport and within 1.7 miles either side of the Corvallis" and adding "within a 6.1 nautical mile radius of the Albany, Oregon Airport and within 1.7 nautical miles either side of the Corvallis".

2. By removing "from the 6.1 mile radius" and adding "from the 6.1 nautical mile radius".

* * * * *

Issued in Seattle, Washington, on July 22, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92-18189 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANM-5]

Alteration of VOR Federal Airway V-524

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the description of VOR Federal Airway V-524 between Hayden, CO, and Laramie, WY. This route will provide a more direct route between Hayden and Laramie. This action will improve traffic flow and reduce flying time. This action will also reduce controller workload.

EFFECTIVE DATE: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION

History

On June 13, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY (56 FR 27217). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received regarding the proposal. The Air Transport Association of America concurred with the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-524 located between Hayden, CO, and Laramie, WY. This route will improve the flow of traffic by providing a direct route between Hayden, CO, and Laramie, WY. The airport is experiencing considerable increases in air traffic especially during ski seasons. As this trend is projected to continue, the demand for adequate navigable airspace mandates this change. This action will improve existing routes within this region and provide additional routes to accommodate increasing air traffic; reduce fuel cost and flying time by providing a more direct route; and also reduce pilot/controller communications.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, as amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-524 [Revised]

From Hayden, CO; Laramie, WY; INT Laramie 089° and Scottsbluff, NE, 254° radials; Scottsbluff; North Platte, NE.

* * * * *

Issued in Washington, DC, on July 24, 1992.
Harold W. Becker,
Manager, Airspace-Rules and Aeronautical Information Division.
[FR Doc. 92-18147 Filed 7-30-92; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 816

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance With Court Order

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is suspending its regulations at 30 CFR 816.101 which prescribe national time and distance performance standards for the completion of rough backfilling and grading for surface mining operations. This action is being taken as a result of a Joint Stipulation of Dismissal submitted by the National Coal Association, the American Mining Congress, and DOI and entered by the D.C. District Court on April 16, 1992. On that date, the court dismissed without prejudice a complaint filed against DOI regarding these performance standards.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Hunter, Jr., Chief, Research and Technical Standards Branch, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone: (202) 343-1504.

SUPPLEMENTARY INFORMATION:

1. Background and Discussion of Suspended Rule.
2. Procedural Matters.

1. Background and Discussion of Suspended Rule

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act) sets forth the general requirements governing surface coal mining operations and the surface impacts of underground coal mining operations. OSM has by regulation implemented or clarified many of these requirements and established performance standards to be achieved by various types of mining operations.

In response to U.S. District Court and Court of Appeals decisions (*In re Permanent Surface Mining Regulation Litigation II*, 21 ERC 1724, October 1, 1984, and *National Wildlife Federation* v. *Hodel*, 839 F.2d 694, January 29, 1988), OSM proposed national time and distance performance standards for rough backfilling and grading for surface mining operations. This proposed rule, at 30 CFR 816.101, would have allowed regulatory authorities to submit alternative schedules in lieu of such national standards for area and contour mine operations. (53 FR 43970, October 31, 1988).

On December 17, 1991, OSM promulgated final 30 CFR 816.101. The final rule did not contain the provisions for alternative State-specific schedules which had been included in the proposed rule.

On February 14, 1992, the National Coal Association and the American Mining Congress filed a complaint in the U.S. District Court for the District of Columbia, *National Coal Association and American Mining Congress* v. *U.S. Department of the Interior, et al.*, Civ. No. 92-0408-CRR. The plaintiffs challenged the above regulation's failure to include the proposed alternative schedules. Among other reasons for challenging the rule, the plaintiffs objected to a lack of notice of and opportunity to comment on the agency's failure to adopt the provision which would have allowed alternative State-specific schedules.

On April 16, 1992, the district court entered a Joint Stipulation of Dismissal in the case. The Joint Stipulation, without conceding the merits of any party's claim, provided for dismissal of the action without prejudice, the suspension of the regulation described above, a reconsideration by the Secretary of all issues and the proposal of a new rule, if necessary. The Joint Stipulation also provided that the Secretary would proceed in good faith to consider all comments received on any proposed rule, which will be subject to the usual rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

In compliance with the Joint Stipulation, the regulation at 30 CFR 816.101, promulgated on December 17, 1991, is suspended in its entirety.

2. Procedural Matters

Administrative Procedure Act

Good cause exists under 5 U.S.C. 553(b)(3)(B) to issue this document without advance notice and comment. Publication of the suspension of 30 CFR 816.101 is required to implement the court-approved Joint Stipulation of Dismissal and is a necessary first step in the reconsideration of all issues. Further, suspension of this rule will have immediate impact on mining operations because such operations will continue to be subject to the State-specific contemporaneous reclamation regulations of State and Federal programs which are currently in effect and, prior to the December 17, 1991 rulemaking, were in effect during the preceding seven years when no national OSM rule was in place. A new rulemaking would be subject to the usual APA rulemaking requirements, including the opportunity for notice and public comment.

Executive Order 12291

The DOI has examined this suspension notice according to the criteria of Executive Order 12291 and determined that it is not a major rule and does not require a regulatory impact analysis for the same reasons that promulgation of § 816.101 in 1991 was not a major action and did not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this suspension notice will not have significant economic impact on a substantial number of small entities for the same reasons that promulgation of § 816.101 in 1991 did not have such an impact.

Federal Paperwork Reduction Act

The DOI has determined that this suspension notice does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* for the same reasons the promulgation of § 816.101 in 1991 did not require such approval.

National Environmental Policy Act

The effect of this suspension notice is covered by environmental assessments prepared by the DOI containing a finding that the promulgation of § 816.101 in 1991 would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessments are on file in the OSM Administrative Record, room 5131, 1100 L Street, NW., Washington, DC 20240.

Author

The author of this suspension notice is John T. Smathers, Division of Surface

Mining, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

List of Subjects in 30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface Mining.

Accordingly, 30 CFR Part 816 is amended as set forth below:

Dated: July 24, 1992.

David C. O'Neal,

Assistant Secretary, Land of Minerals Management.

SUBCHAPTER K—PERMANENT PROGRAM PERFORMANCE STANDARDS

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARD—SURFACE MINING ACTIVITIES

1. The authority citation for part 816 continues to read as follows:

Authority: Public Law 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Public Law 98–146, 30 U.S.C. 1257; and Public Law 100–34.

§ 816.101 [Amended]

2. 30 CFR 816.101 is suspended.

[FR Doc. 92–18139 Filed 7–30–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AF84

Regional Office Committees on Waivers and Compromises

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: In order to comply with recent legislative changes, the Department of Veterans Affairs (VA) is amending its regulations by establishing a one-year time limit for application for waiver of collection of a home loan program indebtedness.

EFFECTIVE DATES: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Debt Management Policy Division (047G7), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3405.

SUPPLEMENTARY INFORMATION: On pages 3975 through 3976 of the **Federal Register** of February 3, 1992, VA published a proposed regulation to establish a one-year time limit for application for waiver of collection of a home loan program indebtedness. No comments were received.

Public Law 102–54 (June 13, 1991) revised 38 U.S.C. 5302(b) so that a request for waiver of a debt arising out of 38 U.S.C. chapter 37 must now be made within one year after the date on which the veteran receives notice of the loan program indebtedness. Prior to this legislation, there was no time limit imposed on a request for waiver of a home loan program debt. However, in order for this new one-year time limit to be imposed on a debtor requesting waiver, VA must send such notice by means of certified mail. If VA notifies the debtor of a home loan program debt by means other than certified mail, then there is no time limit imposed on the debtor in which to request waiver. As a result of this legislative change, VA must now amend one of its regulations (38 CFR 1.964) to comply with the new time limit placed on waiver requests of loan program debts.

The Secretary hereby certifies that this final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this final rule is therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that this final rule primarily affects only individuals indebted to the U.S. Government as a result of participation in programs administered by the Department of Veterans Affairs.

This final rule has also been reviewed under E.O. 12291 and has been determined to be nonmajor because it will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Claims, Veterans.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below.

PART 1—GENERAL

1. The authority citation for part 1 is revised to read as follows:

Authority: Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

2. In § 1.964, paragraph (e) is revised to read as follows:

§ 1.964 Waiver; loan guaranty.

* * * * *

(e) *Application.* A request for waiver of an indebtedness under this section shall be made within one year after the date on which the debtor receives, by Certified Mail-Return Receipt Requested, written notice from VA of the indebtedness. If written notice of indebtedness is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

(Authority: 38 U.S.C. 5302(b))

* * * * *

Approved: June 26, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92–18106 Filed 7–30–92; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF46

Claims Based on Chronic Effects of Exposure to Mustard Gas

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations to include a regulation to establish service connection for specific disabilities or deaths resulting from the chronic effects of in-service exposure to mustard gas under certain circumstances. This regulation is necessary because VA believes that individuals exposed to mustard gas during secret tests of protective equipment during World War II have been disadvantaged when attempting to establish that their disabilities are service connected. The intended effect of this amendment is to make it easier for those individuals or their survivors to establish entitlement to VA benefits.

EFFECTIVE DATE: This amendment is effective July 31, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to add new section 3.316 to 38 CFR in the **Federal Register**

of January 15, 1992 (57 FR 1699–1700). Interested persons were invited to submit written comments, suggestions or objections on or before February 14, 1992. We received three comments, one from a Member of Congress, one from the Veterans of Foreign Wars of the United States and one from a private individual.

One commenter suggested that the rule should require that the listed conditions be manifested within a specified period following exposure to mustard gas, and that the rule as proposed discriminates against World War I veterans who were exposed to mustard gas under combat conditions.

The available English language literature dealing with the effects of exposure to mustard gas includes British and American reports of World War I mustard gas casualities, a 1933 VA study of both living and dead veterans who had been exposed to mustard gas during the war, and a 1960 study of U.S. Army and VA records of 2,718 men who had been hospitalized for mustard gas poisoning in 1918. A review of this literature by Veterans Health Administration (VHA) personnel indicated that for individuals who survive acute poisoning with mustard gas, the chronic, long-term effects (those lasting longer than one year) which have been noted include laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities. That review further indicated that any chronic effects begin shortly after exposure; onset of symptoms is not delayed.

If a World War I veteran files a claim based on residual disability due to mustard gas exposure, service medical records should show evidence of the acute effects of the exposure, and VA develops for evidence establishing that the long-term, chronic effects for which compensation is claimed first appeared shortly after exposure and have existed continually since that time. While it certainly becomes more difficult to establish continuity of a chronic disability with the passage of time, in the case of World War I veterans there was no government-imposed condition which would have discouraged or prevented them from filing claims based on exposure to mustard gas at an earlier date.

Veterans who were exposed to mustard gas during experimental tests of protective clothing and equipment during World War II, however, face a potentially insurmountable disadvantage when attempting to establish entitlement to compensation. Those tests were conducted behind a strictly enforced veil of secrecy, medical records associated with the tests are generally unavailable, and no long-term follow-up examinations were conducted. As a result, service medical records for individuals who participated in those tests may not show evidence of the acute effects of mustard gas exposure. Furthermore, it is likely that participants who developed chronic effects of exposure did not previously file compensation claims with VA solely because they had been instructed not to discuss their involvement in the tests. Physicians who may have treated these veterans for chronic effects more than 40 years ago have almost certainly retired from private practice, making it impossible for a veteran to establish that a chronic form of one of the specified disabilities has existed continually since exposure to mustard gas. For these reasons, VA believes that requiring a chronic form of one of the specified conditions, rather than establishing a manifestation requirement, better serves the purpose of this rulemaking.

Another commenter suggested that rather than naming specific conditions, this regulation should provide service connection for all diseases of the eyes, ears, nose and throat, as well as any damage to the respiratory, cardiovascular, renal and cutaneous systems. The third commenter suggested a specific list of additional conditions for inclusion.

VA does not concur. As discussed above, the proposed rule was based upon a review by VHA personnel of the available English language literature regarding the effects of exposure to mustard gas. That review identified the conditions specified in the regulation as the long-term effects of exposure. The information contained in those studies, however, is not sufficient to expand the list as suggested by either commenter. VA has contracted with the National Academy of Sciences (NAS) to conduct a review of the world medical and scientific literature, including that published in languages other than English, to determine the long-term health effects of exposure to mustard gas. The report is due in December 1992. After reviewing the NAS findings, VA will determine what, if any, change is warranted in our determination regarding the long-term effects of mustard gas exposure, and the regulation will be amended accordingly. In the meantime, we find no good cause to delay payment to those claimants who will be entitled under this rule while we attempt to determine whether the rule should cover a broader range of conditions.

One commenter noted that another agent, Lewisite, was also used during the secret testing of equipment and clothing during World War II, and suggested that the regulation also address the long-term effects of Lewisite exposure.

The literature VA has reviewed does not contain sufficient information regarding Lewisite to warrant a rule on its long-term effects. NAS will address the issue of exposure to other chemical agents, however, and we are deferring a decision as to whether rulemaking is warranted on other agents until more information is available to us.

Another commenter, because he did not find an effective date specified for the proposed rule, assumed that the liberalizing regulation rule found at 38 U.S.C. 5110(g) (formerly 3010(g)) applies.

The preamble to the proposed rule stated that the amendment was proposed to be, and in fact it is, effective the date of publication of the final rule (57 FR 1699). The Secretary finds good cause for doing so since this amendment relieves a restriction and will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102). The commenter is correct in assuming that benefits cannot be payable under this regulation earlier than its effective date.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted without amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or

on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Handicapped, Health care, Pensions, Pesticides and pests, Radioactive materials, Veterans, Vietnam.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. Add a new section to read as follows:

§ 3.316 Claims based on chronic effects of exposure to mustard gas.

Exposure to mustard gas while participating in full-body, field or chamber experiments to test protective clothing or equipment during World War II, together with the development of a chronic form of any of the following conditions manifested subsequent thereto, is sufficient to establish service connection for that condition: Laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities.

Approved June 9, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc 92-18107 Filed 7-30-92; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 14

RIN 2900-AF50

Recognition of Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing a final regulatory amendment regarding recognition of organizations which represent claimants for benefits before VA. This amendment will remove the requirement that a veterans' service organization be chartered by act of Congress in order to be recognized as a "national" organization for purposes of representation of claimants before this Department. The effect of this amendment will be to remove a requirement which the Department no longer considers a reliable indicator of the national scope of an organization.

EFFECTIVE DATE: This rule is effective July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard J. Hipolit, Deputy Assistant General Counsel, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523-3455.

SUPPLEMENTARY INFORMATION: On March 13, 1992, VA published in the **Federal Register** (57 FR 8852) a notice of proposed rulemaking to amend to § 14.628 of title 38, Code of Federal Regulations, to remove the requirement contained in paragraph 14.628(a)(2) that a veterans' service organization be chartered by act of Congress in order to be recognized as a "national" organization for purposes of representation of claimants before VA.

Officials or members of four veterans' service organizations commented on the proposed regulations. The president of one organization voiced support of the proposed amendment. This commenter stated that, so long as organizations recognized as "national" remain truly national in scope and stringent accreditation requirements remain in place to ensure quality assistance to claimants, such action will only benefit veterans and their dependents and survivors in the long run. The commenter expressed the view that the proposed amendment would enhance the quality and diversity of service available to veterans.

One commenter asserted that the proposed amendment would do away with the regulatory process now in place for qualification as a national organization, without proposing new guidelines or regulations to take its place. This commenter expressed concern that, without these guidelines, any organization would be able to claim that it is a national organization and therefore qualified to represent claimants for benefits before VA. This commenter stated that, as a result, the amendment would increase the quantity of claimants' representatives but dilute the quality of representation provided.

This commenter overlooked the fact that VA amended its regulations in 1988 to add specific criteria to § 14.628(a)(2) requiring that, in order to be recognized as a national organization, an organization must establish that its size and the scope of its operations are consistent with national status. These criteria will remain unchanged under the regulation as amended. Further § 14.628(d), which will remain unchanged, requires that organizations applying for recognition as either "national" or "other" organizations meet criteria designed to assure their ability to provide quality representation. We note, additionally, that regulations at § 14.628(e) require the submission of extensive information by organizations applying for VA recognition to assure that the applying organization is capable of meeting the needs of the claimants it will serve. In view of the fact that reliable sources have informed VA that Congress does not have the recourses to investigate or monitor organizations to determine if they are worthy of receipt or retention of a Federal charter, VA believes that the referenced regulations will provide greater assurance than would a chartering requirement that veterans will continue to receive the quality of representation they deserve

Another commenter stated that if small and poorly organized organizations were allowed to compete with chartered organizations, it would negate the exemplary record of the chartered organizations. This commenter objected to the amendment on the basis that VA would suddenly be confronted with demands for office space from organizations that have little or no record of achievement in handling veterans' service work. This commenter asserted that the proposed amendment might give rise to a demand that the Department expanded its facilities in order to accommodate new organizations, thereby having a severe economic impact on the United States Government and VA.

Our response to these comments is two-fold. First, given the extensive existing requirements for VA recognition in 38 CFR 14.628 (d) and (e), which are applicable to both "national" and "other" organizations, and the remaining criteria in § 14.628(a)(2) concerning the size and scope of operations of organizations recognized as national, it is virtually impossible that a new organization, ill-equipped to serve veterans and their dependents, would be recognized as a national organization by VA under the amended regulations. Second, under 38 CFR 14.637, space in VA facilities is provided for use by national organizations on a discretionary basis subject to availability. VA has no obligation to acquire additional space or otherwise restructure operations in order to accommodate a service organization, even if the organization is recognized as a national organization. The

amendment, thus, would not have any appreciable economic impact on the United States Government or VA.

Officials and members of one organization stated their view that Federal chartering gives recognition to deserving and competent organizations. They expressed concern that the proposed amendment could have unspecified, far-reaching negative implications for veterans' organizations and for veterans. They therefore suggested that the proposed amendment be delayed pending a study of potential detrimental effects.

As noted above, however, because the amendment will not result in recognition as a national organization for any group undeserving of such status, there should be no detrimental effects to VA claimants from the amendment. It is possible that the amendment could result in increased competition among service organizations for available space at VA facilities. However, in light of the remaining criteria for recognition as a national organization, the number of additional groups which could qualify for such space is likely to be limited. Further, while VA in no way intends to denigrate the many accomplishments of chartered organizations, whether Federal chartering is a process which provides deserved recognition to organizations is not determinative for purposes of this rulemaking. The key significance of Federal chartering for purposes of this rulemaking is whether this criterion is helpful in determining whether an organization is a national organization for purposes of § 14.628(a) or whether it must instead seek VA recognition under § 14.628(c). VA believes that the other criteria of § 14.628(a)(2), which, unlike Federal chartering, specifically related to the size and scope of operations of an organization, provide a better test of whether an organization should be considered national.

Va appreciates the comments and suggestions of those concerned individuals and organizations that responded to publication of the proposed amendment. The amendment is adopted as proposed. The final amendment is set forth below.

Since this amendment relieves a restriction which VA believes no longer serves a useful purpose, this amendment is made effective the date of publication of this notice in the **Federal Register**.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reasons for this certification are that the amendment will affect only a small portion of those organizations or individuals recognized by VA for claim representation purposes, that the organizations affected will be national in scope, and that the economic impact on those organizations will not be significant. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory-flexibility-analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions of government agencies, Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

For the reasons set forth in the preamble, it is proposed that 38 CFR part 14 be amended as set forth below:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 is revised to read as follows:

Authority: 38 U.S.C. 501(a), 5502, 5902–5905, unless otherwise noted.

2. In § 14.628, the introductory text in paragraph (a)(2) is revised, and the authority citation for § 14.628 is revised to read as follows:

§ 14.628 Recognition of organizations.

* * * * *

(a) *National organization.*

* * * * *

(2) It satisfies the following requirements:

* * * * *

(Authority: 38 U.S.C. 501(a), 5902)

Approved: July 10, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92–18105 Filed 7–30–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 412, 413, and 482

[BPD–423–F]

RIN 0938–AD25

Medicare Program; Fee Schedules for the Services of Certified Registered Nurse Anesthetists

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare regulations to allow certified registered nurse anesthetists (CRNAs) to receive Medicare payment for the anesthesia services and related care they furnish. In addition, this final rule sets forth the fee schedules under which payment is made for the services of CRNAs, except for the services of CRNAs in certain rural hospitals who are paid on a reasonable cost basis. This rule, which is effective for services furnished on or after January 1, 1989, implements section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4084 of the Omnibus Budget Reconciliation Act of 1987, section 411(i)(3) of the Medicare Catastrophic Coverage Act of 1988, section 608(c) of the Family Support Act of 1988, and sections 6106, 6107 and 6132 of the Omnibus Budget Reconciliation Act of 1989.

This final rule does not reflect the changes concerning the calculation of payment rates contained in section 1833(1)(4) of the Social Security Act, as enacted by section 4160 of the Omnibus Budget Reconciliation Act of 1990. Those changes apply to services furnished on or after January 1, 1991. Thus, the changes to the payment calculation provisions described and published below are applicable only to services furnished in calendar years 1989 and 1990.

DATES: This final rule is effective August 31, 1992, except for the final 1989 CRNA fee schedule rates, which apply to CRNA services furnished on or after January 1, 1989, and the policy that recognizes only the actual time for

fractional time units, which is effective for CRNA services furnished on or after April 1, 1990.

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James Menas, (410) 966–4507. All other issues

SUPPLEMENTARY INFORMATION:

I. Background

Anesthesiology services personally furnished by a physician are paid on a reasonable charge basis under Part B of the Medicare program (Supplementary Medical Insurance). In addition, payment may also be made on a reasonable charge basis for the personal medical direction that a physician furnishes to certified registered nurse anesthetists (CRNAs).

Anesthesia services furnished prior to January 1, 1989 by CRNAs employed and medically-directed by physicians were paid on a reasonable charge basis. Separate payment was not made for the CRNA service; rather, it was included with the reasonable charge payment for medical direction furnished by the physician. The reasonable charge was determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which was multiplied by the number of allowable units, or the physician's actual charge. The number of allowable units was the sum of the base units assigned to the anesthesia procedure, time units that represent the elapsed time of the anesthesia procedure (limited to no more than one time unit for each 15 minutes or fraction thereof of anesthesia time), and modifier units that took into account special factors such as the age or physical condition of the patient, if the physician billed and the carrier recognized modifier units. (The base units were reduced 10 percent, 25 percent, or 40 percent, respectively, for two, three, or four concurrent procedures.)

If a physician furnished medical direction for anesthesia procedures prior to January 1, 1989 that involved CRNAs who were not employed by the physician, the reasonable charge was also determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which was multiplied by the number of allowable units, or the physician's actual charge. However, in these cases, the number of allowable units was the sum of the base units assigned to the anesthesia procedure, time units, which were limited to no more than one time unit for each 30 minutes or fraction thereof of anesthesia time, and modifier units, if the physician billed and the carrier recognized modifier units. (The base units were reduced 10 percent, 25 percent, or 40 percent, respectively, for two, three, or four concurrent procedures.)

The difference in payment between a medically directed anesthesia procedure involving a CRNA who was the physician's employee and a medically directed anesthesia procedure involving a CRNA who was not the physician's employee was two time units per hour multiplied by the appropriate conversion factor.

Anesthesia services furnished prior to January 1, 1989 by CRNAs employed by hospitals or obtained under arrangements were paid to the hospital on a reasonable cost basis for anesthesia services furnished to hospital inpatients or outpatients. Anesthesia services furnished prior to January 1, 1989 by a CRNA employed by an ambulatory surgical center (ASC) or working as an independent contractor were included as part of the ASC's facility fee.

II. Summary of New Legislation

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. The provisions of section 9320 of Public Law 99–509 made the following changes (which are reflected in sections 1832(a)(2)(B), 1833(a)(1)(E), 1833(a)(1)(H), 1833(1), 1861(b)(4), (s)(11), and (bb), 1862(a)(14), and 1866(a)(4) of the Social Security Act (the Act)) that affect Medicare payment for the services of nurse anesthetists:

- Effective with services furnished on or after January 1, 1989, direct payment is provided for anesthesia services and related care furnished by CRNAs, subject to State licensure requirements and the requirements of the certifying body for nurse anesthetists.
- Medicare pays 80 percent of the lesser of the actual charge or the fee schedule amount for anesthesia services and related care after the Part B deductible has been met. Assignment is mandatory in order for CRNAs to receive payment for these services, and violators are subject to civil monetary penalties.
- The Secretary is directed to establish a fee schedule for CRNA services, using a system of time units, a system of base and time units, or any other appropriate methodology. The initial fee schedule must be based on audited data from cost reporting periods ending in Federal fiscal year (FY) 1985, and the fee schedule must be adjusted annually by the percentage increase in the Medicare economic index (MEI) in order to be effective on January 1st of each year. The fee schedule can be national or adjusted for geographic areas.
- No hospital that presents a claim or request for payment for services of a CRNA may treat any uncollected coinsurance amount imposed with respect to such services as a bad debt of the hospital.
- The reasonable cost pass-through provision ends effective for CRNA services furnished to hospital inpatients after December 31, 1988.
- The initial fee schedule must be set so that total payment for CRNA services, plus the applicable coinsurance in FY 1989, equals estimated total amounts that would have been paid in 1989 if the services were included as inpatient hospital services. The Secretary is also directed to adjust physician charges for medical direction or the fee schedule amounts, or both, to ensure that total payments plus coinsurance for all these services in 1989 and 1990 do not exceed the amounts that would have been paid absent this legislation. If this results in reductions in physician reasonable charges, a nonparticipating physician may not charge more than 125 percent of the reduced prevailing charge plus (in the first year) half the difference between his or her actual charge in the previous year and 125 percent of the reduced prevailing charge. Violators are subject to sanctions.

In addition, section 9320 of Pub. L. 99–509 added a new paragraph (11) to section 1861(s) of the Act to provide

specifically that "services of a certified registered nurse anesthetist (as defined in subsection (bb))" are among the medical and other health services that are covered under Part B of Medicare. Section 1861(bb)(1) of the Act states that "services of a certified registered nurse anesthetist" means anesthesia services and related care, furnished by a CRNA, which the CRNA is authorized to perform by the State in which the services are furnished. Section 1861(bb)(2) of the Act states that the term "CRNA" means a CRNA licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. Section 1861(bb)(2) of the Act further authorizes the Secretary, in prescribing these requirements, to use the same requirements as those established by a national organization for the certification of nurse anesthetists.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) was enacted. The provisions of section 4084 of Public Law 100-203, which amended sections 1833(l)(2) and (l)(5)(A) of the Act, made the following changes to the CRNA fee schedule legislation established by section 9320 of Public Law 99-509:

- The initial fee schedule could be developed from "other data as the Secretary determines necessary" in addition to using FY 1985 cost report data.
- The CRNA payment based on the fee schedule can be made to an ambulatory surgical center as well as the CRNA, the hospital, the physician, or group practice.

In addition to the changes made by section 4084 of Pub. L. 100-203, section 4048(a) of Public Law 100-203 amended section 1842(b) of the Act to provide that in determining the reasonable charge of a physician for medical direction of two or more CRNAs for anesthesia services furnished on or after April 1, 1988 and before January 1, 1991, the number of base units recognized for each concurrent procedure (other than cataract surgery or an iridectomy) is reduced by—

- Ten percent, in the case of medical direction of two CRNAs concurrently;
- Twenty-five percent, in the case of medical direction of three CRNAs concurrently; and
- Forty percent, in the case of medical direction of four CRNAs concurrently.

On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) was enacted. Section 411(i)(3) of Public Law 100-360 made technical amendments to section 4084 of Public Law 100-203 to provide that—

- The term "CRNA," as prescribed by the Secretary, also includes an anesthesiologist assistant (section 1861(bb)(2) of the Act); and
- With respect to CRNA services, the amounts paid would be 80 percent of the least of the—

—Actual charge;
—Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or
—Fee schedule amount (section 1833(a)(1)(H) of the Act).

Section 411 of Public Law 100-360 was not repealed by the Medicare Catastrophic Coverage Repeal Act of 1989, Public Law 101-234.

On October 13, 1988, the Family Support Act of 1988 (Pub. L. 100-485) was enacted. Section 608(c) of Public Law 100-485 amended section 9320 of Public Law 99-509 to allow certain hospitals that are located in a rural area (as defined for purposes of section 1886(d) of the Act) to continue to be paid on a reasonable cost basis for CRNA services during calendar years 1989, 1990, and 1991.

To qualify in 1989, a rural hospital must establish before April 1, 1989 to the satisfaction of the Secretary that—

- It employed or contracted with not more than one full-time equivalent CRNA as of January 1, 1988;
- It performed 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia in calendar year 1987; and
- Each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the calendar year that, in the prior year, it did not perform more than 250 surgical procedures including inpatient and outpatient procedures requiring anesthesia services.

The provisions added by section 608(c) of Public Law 100-485 are to be implemented so as to maintain budget neutrality consistent with section 1833(l)(3) of the Act.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) was enacted. Section 6132 amended section 608(c) of Public Law 100-485 as follows:

- The limit has been raised from 250 surgical procedures, both inpatient and outpatient, requiring anesthesia services to 500 surgical procedures.
- The expiration provision that allowed certain qualified rural hospitals to continue reasonable cost payments only through calendar year 1991 has been eliminated. Rural hospitals can continue to elect on a calendar year basis reasonable cost payments for CRNA services.
- The budget neutrality provision, which required us to adjust CRNA fee schedule rates to reflect the election of reasonable cost payments, has been eliminated.

Section 6106 of Public Law 101-239 revised the method by which time units are counted for anesthesia services furnished by physicians or CRNAs. For anesthesia services furnished on or after April 1, 1990, time units are counted based on the actual time of the fractional time unit. For anesthesia services furnished prior to April 1, 1990, fractional time units were rounded to a full time unit.

Section 6107(a) of Public Law 101-239 delays the update of the CRNA fee schedule conversion factors for CRNA services furnished on or after January 1, 1990 to April 1, 1990. Section 6107(b) provides that the percentage increase in the MEI used to update CRNA conversion factors applicable to CRNA services furnished on or after April 1, 1990 is zero percent.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) was enacted. Section 4160 of Public Law 101-508 amended section 1833(1)(4) to provide for a system of statutorily established conversion factors for both medically directed and nonmedically directed services furnished by CRNAs beginning in calendar year 1991 and ending for CRNA services furnished after calendar year 1998. The conversion factors are index-adjusted to account for geographical differences. This final regulation does not reflect the provision of this new legislation. Thus, the amendments published below to the regulations concerning the calculation of payments are effective only for services furnished in calendar years 1989 and 1990.

III. Summary of Provisions of the January 26, 1989 Proposed Rule

On January 26, 1989, we published a proposed rule in the **Federal Register** (54 FR 3803) to allow CRNAs to receive Medicare payment for anesthesia services and related care and to set forth the fee schedules that would be used to make payment for these services, except for the services of CRNAs in certain rural hospitals, which would be paid on a reasonable cost basis. In that rule, we proposed to implement the provisions of Public Law 99-509, Public Law 100-203, Public Law 100-360, and Public Law 100-485, and

we requested public comment on these changes.

A. Services of a CRNA or an Anesthesiologist Assistant

We proposed adding "services of a CRNA or an anesthesiologist assistant" to the list of covered medical and other health services in the regulations.

We proposed defining "CRNA" as a registered nurse who is licensed as a professional registered nurse by the State in which he or she practices and meets any other licensure requirements the State imposes with respect to nonphysician anesthetists, and either—

- Is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists; or
- Has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

Further, we proposed defining an "anesthesiologist assistant" as an individual who is permitted by State law to administer anesthesia, has successfully completed a six-year program for anesthesiologist assistants, two years of which consist of specialized academic and clinical training in anesthesia, and who is under the direct supervision of an anesthesiologist who is physically present.

In addition, we proposed defining the term "anesthetist" to include both anesthesiologist assistants and CRNAs. The use of this term represents a clear and convenient means of referring to both types of practitioners.

B. General Method of Payment

We proposed that effective with services furnished on or after January 1, 1989, payment for the services of a CRNA would be made, after the Part B deductible has been met, at 80 percent of the least of the—

- Actual charge;
- Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or
- Fee schedule amount.

C. Time Units

We proposed that services of CRNAs be paid on a basis similar to that used for anesthesiologists, that is, a system based on base and time units. We believe that use of the same type of system for anesthesia services furnished by CRNAs and anesthesiologists would be simpler for carriers to administer. Thus, we proposed that, for purposes of the fee schedule, one time unit would be allowed for each 15 minutes of anesthesia time.

In addition, we described the recommendations made by the Office of Inspector General (OIG) to change the way an anesthesia time unit is computed. The options were presented by OIG in a report entitled "Medicare Part B Payments for Unexpended Physician Efforts Relating to Anesthesia Services" (A–07–88–00082 issued on August 9, 1988). (Copies of this report can be obtained by writing to OIG at 330 Independence Ave., SW., Washington, DC 20201.) The options were as follows:

- Pay for actual time expended, rather than treating all fractional units as whole units. That is, 65 minutes would equal four and one-third time units instead of five units.
- Round all fractional units down to the next lower whole unit, that is, disregard all fractional time units. (For example, any amount of time between 61 and 74 minutes would equal four units instead of five units.)
- Pay only for those fractional units in excess of one-half as whole units. That is, any fraction equal to or less than one-half time unit (7.5 minutes) would be disregarded. (For example, 65 minutes would equal four units, but 68 minutes would equal five units.)

In the preamble to the proposed rule, we also stated our intention to eliminate the separate time unit element of the anesthesia payment system within 2 years of the effective date of this final rule. We indicated that the elimination of time units would be the subject of a separate notice of proposed rulemaking and that comments submitted in response to that proposed rule would be carefully considered before implementation of a revised time unit policy.

D. Development of a Fee Schedule

Physician anesthesia services furnished on or after January 1, 1989, but prior to March 1, 1989, the date the uniform relative value guide for physician anesthesia services was implemented, were paid on the basis of the carrier's specific relative value system. (The uniform relative value guide was implemented by Transmittal No. 1287 to the Medicare Carriers Manual (HCFA-Pub. 14), issued in February 1989.) The uniform relative value was implemented for anesthesia services furnished on or after March 1, 1989. Under the uniform relative value guide, modifier units were eliminated. Final regulations to implement the uniform relative value guide were published on August 7, 1990 (55 FR 15150). In sections 5261 and 8312 of the Medicare Carriers Manual, we also provided for CRNA services furnished on or after January 1, 1989, but prior to March 1, 1989, to be paid under the carrier specific relative value system. We provided for CRNA services furnished on or after March 1, 1989, to be paid under the uniform relative value guide. Modifier units were not recognized for CRNA services under either the carrier specific system or the uniform relative value guide.

The CRNA fee schedule payment would be determined by multiplying an appropriate conversion factor by the sum of the base units for the anesthesia procedure and the time units. For CRNA services, one time unit would be allowable for each 15 minutes or fraction thereof of anesthesia time.

We proposed establishing the CRNA fee schedule based on the 1986 American Association of Nurse Anesthetists (AANA) calendar year survey (with certain adjustments), and structuring it on an individual State-level basis. Within each State, we established two separate fee schedules; one for CRNAs working under the medical direction of an anesthesiologist and one for CRNAs working only under the general supervision of the surgeon.

In using the AANA salary survey to develop the State level fee rate or conversion factor for medically directed hospital-employed CRNAs, the following adjustments, explained in detail in the notice of proposed rulemaking, were made:

Step 1. Updating the 1986 earnings to the 1989 level—We proposed a six percent rate of increase annually through 1989 (projecting this rate of change through 1989 would require an increase of 19 percent (that is, $1.06 \times 1.06 \times 1.06$) over 1986 average earnings.)

Step 2. Fringe Benefit Adjustments—Because the value of fringe benefits was not reported on the AANA survey, we proposed using 20 percent of the 1986 national average salary or income of CRNAs as a reasonable approximation of the costs of fringe benefits incurred by hospitals for their CRNA employees.

Step 3. Billing Costs—We proposed increasing salaries and fringe benefits by seven percent to account for billing costs.

Step 4. Constructing a Conversion Factor—The annual earnings figures resulting from the adjustment in steps 1 through 3 above were translated into a conversion factor by—

- Dividing the adjusted average annual CRNA compensation by the average annual anesthesia caseload performed by a full-time medically

directed CRNA (649 cases) to derive average per case earnings; and

• Dividing this figure by the average of 11.6 units per case (the total of average time and base units per case) to compute a conversion factor.

Step 5. Malpractice Adjustment—The fee schedule conversion factor computed in step 4 was further adjusted to reflect the cost of malpractice insurance incurred by hospitals for their CRNA employees.

We also calculated a separate State specific rate for physician-employed medically-directed CRNAs. This rate was calculated by multiplying the 1989 participating physician prevailing charge conversion factor by a factor of 101/30 and dividing this amount by 12.1 units.

Finally, we proposed establishing a single blended rate that weighs medically-directed hospital-employed CRNA data at 58 percent and medically-directed physician-employed CRNA data at 42 percent. (Excluding CRNAs who are not medically-directed, nationally approximately 58 percent of medically-directed CRNAs are employed by hospitals and 42 percent are employed by physicians. These weights are based on data in the 1986 AANA's Annual Salary Survey.)

We proposed to establish the State-level rate for CRNAs who are not medically-directed by comparing the relationship between the national cost per case of full-time CRNAs who are not medically-directed and full-time hospital-employed CRNAs who are medically-directed and applying this ratio to the State-level rates for medically-directed CRNAs.

Section 608(c) of the Family Support Act required that we maintain budget neutrality in implementing the rural hospital cost election. The rural hospitals electing cost reimbursement would receive greater reimbursement under the cost election than under the fee schedule. As a result, we had to make an adjustment to the nonmedically-directed rate.

E. Continuation of Reasonable Cost Payments for Rural Hospitals

As required by section 9320 of Public Law 99–509 (as amended by section 608(c) of Pub. L. 100–485), we proposed to allow certain hospitals located in rural areas to continue to be paid on a reasonable cost basis for CRNA services furnished during calendar years 1989, 1990 and 1991. To qualify in 1989, a rural hospital must have established before April 1, 1989, to the satisfaction of the Secretary, that—

• As of January 1, 1988, it employed or contracted with a CRNA but not more than one full-time equivalent CRNA;

• In 1987, it had a volume of 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services; and

• Each CRNA employed by or under contract with the hospital must have agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the respective calendar year that in the prior year it did not furnish more than 250 surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services.

We proposed defining a full-time equivalent anesthetist as one or more anesthetists who, in total, work no more than 2,080 hours per year. These hours represent total hours at the hospital and include time spent in furnishing anesthesia services to patients and general services to the hospital. We also proposed defining surgical procedures requiring anesthesia services as those procedures in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

As required by section 9320(k) of Public Law 99–509 (as amended by section 608(c) of Public Law 100–485), a rural area would be defined in the same way it is defined for purposes of the inpatient hospital prospective payment system (in accordance with section 1886(d) of the Act). The definition is set forth at § 412.62(f) and provides that a rural area is any area outside of a Metropolitan Statistical Area (MSA), a New England County Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget, or the New England counties deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. (These requirements are explained in greater detail in the September 30, 1983 final rule on the inpatient hospital prospective payment system (53 FR 38499).) Since for purposes of payment under section 1886(d) of the Act, these hospitals are no longer classified as rural, we proposed that these hospitals also would not qualify as rural hospitals under section 9320(k) of Public Law 99–509 and would not be eligible to continue to receive payment on a reasonable cost basis for CRNA services during 1989, 1990, and 1991.

The legislation also requires that this provision be implemented so as to maintain budget neutrality consistent with section 1833(1)(3) of the Act. As indicated in the preamble to the proposed regulation, we assumed that the budget neutrality adjustment would affect only the nonmedically-directed rate and not the medically-directed rate. The rural hospitals that would qualify for reasonable cost payments would likely be those hospitals with nonmedically-directed CRNAs. As a result, in the proposed regulations, we reduced the nonmedically-directed CRNA conversion factor by 5.7 percent to account for the continuation of reasonable cost payments to rural hospitals furnishing fewer than 250 surgical procedures requiring anesthesia. This adjustment was necessary because the AANA data did not specifically exclude those rural hospitals that would qualify for reasonable cost payments. Data from these rural hospitals would produce conversion factors for CRNA services that are higher than the conversion factors for CRNA services for other rural hospitals with higher anesthesia caseloads.

F. Updating the Fee Schedule for 1989 and 1990

We proposed that for calendar years 1989 and 1990 we would update the CRNA fee schedule by the percentage increase in the MEI, as required by section 1833(1)(2) of the Act.

G. Relationship of Payment Under the Fee Schedule to Payment to Physicians for the Medical Direction of CRNAs

We proposed to revise the method of payment to physicians who medically-direct anesthesia procedures involving CRNAs, on or after January 1, 1989, to allow no more than one time unit for each 30 minutes of anesthesia time. One time unit for each 15 minutes would be allowed only if the physician personally performs the anesthesia procedure.

H. Supervision of CRNAs by Physicians Other Than Anesthesiologists

We proposed that, effective January 1, 1989, medical direction payments could not be made to a surgeon who concurrently supervises CRNAs and performs surgery.

We proposed that medical direction payments not be made to a radiologist or psychiatrist who furnishes nominal supervision of the anesthesia services since we do not believe these services meet the medical direction requirements under § 405.552.

I. Bad Debts Associated With CRNA Services

We proposed revising § 413.80 to implement section 1833(1)(5)(C) of the Act, which requires that a hospital that files a claim or a request for payment for the services of a CRNA may not use any uncollected coinsurance amount for a CRNA service as a bad debt.

J. Related Care Furnished by CRNAs

Section 1861(bb)(1) of the Act defines services of a CRNA as "anesthesia services and related care furnished" by a CRNA. We proposed not recognizing additional payments for related care services, such as pain management services, specialized monitoring activities, and other services not directly connected to the anesthesia service associated with the surgical service because payment for these services has been reflected in the CRNA conversion factor rates.

IV. Discussion of Public Comments

We received approximately 4,500 comments on the proposed regulations to implement a CRNA fee schedule payment system. The bulk of these comments were from individual CRNAs, CRNA groups, individual anesthesiologists, and anesthesiology groups. We received comments from nursing associations, the American Hospital Association (AHA), regional and State hospital associations, the AANA and State associations of nurse anesthetists, the American Society of Anesthesiologists, and the Anesthesia Care Team Society. We also received comments from such groups as the National Rural Health Association and the Blue Cross/Blue Shield Association.

The majority of anesthesiologists and anesthesiologist groups reacted positively to the proposed regulations. They expressed the view that the rates were fair, reasonable, and not disruptive to "anesthesia care" team practice arrangements. The majority of anesthesiologists commented favorably on the way the rates were blended so as to avoid further reductions in medical direction allowances.

The majority of commenters, who were CRNAs, viewed the proposal unfavorably, alleging that the proposed rates were too low, the proposed methodology was flawed, and payment was not separately recognized for related care services furnished by CRNAs.

A. Structure and Geographic Basis for the Fee Schedule

Comment: Instead of a State-level payment system, the AANA and other commenters proposed a national CRNA fee schedule that would include a national medically-directed CRNA rate (that is, $14) and a national nonmedically-directed CRNA rate (that is, $21). The proposal of national rates is predicated on the basis that there is more variation in CRNA salary/incomes within a State than there is in CRNA salary/incomes across State lines.

Response: Additional discussions with the AANA indicated that some of the impetus for national rates was due to the extreme variation in the proposed CRNA rates between contiguous States. This was highlighted by Idaho, which had the lowest proposed rate, and Wyoming, which had the third highest proposed rate. We believe, however, that data problems resulted in Idaho's having had the lowest rate. These data problems have been overcome through the use of better data and a change in the method used to develop nonmedically-directed rates in this final rule. Whereas the proposed methodology produced State-specific nonmedically directed rates by multiplying the State-specific medically-directed rate by a uniform national statistic, the final nonmedically-directed rates are generally based on State-specific data. The final regulations recognize the State as the geographic area for construction of the CRNA fee schedule.

Comment: The AHA and other commenters recommend a CRNA payment system that uses a geographic area smaller than the State as a unit for payment purposes. These commenters indicate that the State-specific CRNA conversion factor rates do not reflect differences in the costs of CRNA services, given variations in cost of living and wage rates within States.

Response: In the proposed regulations, we clearly pointed out that we do not have data available on CRNA payment rates on a county-wide basis that would allow construction of payment rates by locality. (Most localities are made up of a single State, a county, or a group of counties). In addition, we were concerned that establishing CRNA rates by locality or county or some other smaller division of the State might introduce artificial incentives for CRNAs to cross county or divisional levels to maximize payments.

The commenters are essentially suggesting that we use an index such as the hospital wage index to establish CRNA rates. Use of an index such as this is not appropriate in establishing CRNA rates because CRNA wages are not necessarily correlated with hospital wages. The salaries of CRNAs are often higher in rural areas than urban areas. We believe, and the AANA concurs, that whether or not an anesthesiologist directs the service is the relevant factor in explaining variations in CRNA salaries/income within a State.

Comment: Under the proposed rule, the CRNA rates were calculated using national anesthesia caseload averages and State-specific salary data. Several commenters indicated that combining national anesthesia caseload averages with area-specific salary data would likely distort the area-specific rates. These commenters recommended that State (or geographic) payment rates should consistently use data specific to the selected geographic areas so that accurate area-specific rates could be calculated.

Response: We are adopting this recommendation. Except as noted, we are computing State-specific rates using reported State-specific anesthesia caseloads. However, we have made adjustments where the State-specific anesthesia caseloads reported on the AANA's survey seemed overstated. The use of the overstated caseload resulted in an artificially low conversion factor for that State. We attempted to overcome this data problem by substituting a national average caseload for the State-specific caseload. Specifically, if the State average caseload was at least twenty-five percent greater than the national average caseload, we have substituted the national average caseload for the reported State-specific caseload. There are four States in which this occurred: Delaware, Georgia, and Rhode Island for the medically-directed rate, and Oklahoma for the nonmedically-directed rate. The reported State-specific average caseload produced a conversion factor that was unusually low. The substitution of a national average caseload for the State-specific average caseload produced a higher rate than the rate calculated from State-specific data for the four States mentioned above.

Comment: A number of commenters contended that the CRNA fee schedule payment rates are too low and do not adequately incorporate the cost of fringe benefits or overhead costs. The AANA specifically provided various data to support as much as a 26 percent adjustment for overhead. They also provided data sources supporting a fringe benefit factor greater than 20 percent. Overall, the AANA proposed a 20 percent salary adjustment for fringe benefits, a 20 percent salary adjustment for general overhead and billing costs, and a 10 percent salary adjustment for malpractice costs.

Response: We reviewed data from hospital cost reports that began on or after October 1, 1984 and ended before October 1, 1985, (that is, the second Prospective Payment System (PPS–2) cost reporting period) as well as cost reports that began on or after October 1, 1985 and ended before October 1, 1986, (that is, the third Prospective Payment System (PPS–3) cost reporting period). For 3,021 PPS–2 cost reports for which CRNA costs were allowed, fringe benefits averaged 13 percent of salary and other allocated overhead averaged 19 percent of salary. For 3,081 PPS–3 cost reports for which CRNA costs were allowed, fringe benefits averaged 12 percent of salary and other allocated overhead averaged 20 percent of salary. Based on these results, we are providing for a 32 percent salary adjustment for fringe benefits and other overhead.

We are also providing an adjustment for malpractice insurance. This adjustment is made on the basis of the most current State-specific rates (that is, 1989 rates) on malpractice premiums for CRNAs. (The source of the malpractice data is the St. Paul Marine and Fire Insurance Company.) The actual adjustment is the State-specific malpractice rate divided by the product to the average State level CRNA caseload and the average number of base and time units per case. There are different State caseloads and average units per case for the two categories of CRNAs. Thus, there are different malpractice add-ons depending on whether the CRNA is or is not medically-directed.

Comment: The AANA, various State hospital associations, and other commenters claimed that the CRNA fee schedule rates do not appropriately reflect increases in CRNA salaries since 1986.

Response: At the time we published the proposed CRNA rates, we did not have salary/income data beyond 1986. Since then, the AANA has supplied us with data on salary/income levels for 1987 and 1988. Although the 1986 survey provided information on full-time medically-directed and nonmedically-directed CRNAs, the data at the State level for nonmedically-directed CRNAs was not sufficient in itself to establish State-specific rates. The 1987 survey has a much better response rate than both the 1986 and the 1988 survey for nonmedically-directed CRNA salaries/incomes. The 1987 survey includes responses from both full-time and part-time CRNAs. Because the 1987 survey overcomes some of the data problems inherent to the 1986 survey and because its results are more current, we have decided to use the 1987 annual survey to compute State-level rates for both medically and nonmedically-directed CRNAs. Therefore, we need to trend the salaries/incomes only for 1988 and 1989. Data from the AANA's 1988 survey indicated a 9.4 percent increase in salary/income, and the AANA predicts a 12.8 percent increase for 1989. The 12.8 percent increase for 1989 is an average of the increase in CRNA salaries/incomes during 1987 and 1988.

We have decided to use the 9.4 percent increase from the AANA's 1988 survey. However we have decided not to use the AANA "predicted rate" of 12.8 percent for 1989 because it is not derived from currently reported CRNA salary levels. Instead, we are using a rate of 8.2 percent for 1989. This rate is the compounded annual rate of increase in CRNA salaries from 1982 through 1988. The combined trend factor for 1988 and 1989 is 1.18 (that is, 1.094×1.082).

Comment: The AANA and other commenters argued that the methodology for the nonmedically-directed CRNA rates understates the nonmedically-directed rates because it does not consider the differences in both the average caseload and the complexity of cases between the medically-directed CRNA and the nonmedically-directed CRNA.

Response: We have reviewed the proposed methodology and find that it adequately reflects differences in average caseload volumes between the two practice arrangements. We do, however, agree that the methodology does not adequately reflect differences in average caseload complexity between the two practice arrangements. The proposed conversion factor for nonmedically-directed services should have been approximately 6.3 percent higher because of the differences in caseload complexity. This is illustrated below. As noted in these comments, the 1987 AANA survey, because of its response rate, allows us to establish State-specific nonmedically-directed rates based on State-specific salary and caseload information rather than based on national statistics. Under the proposed methodology, the nonmedically-directed rate was not based on data reported by nonmedically-directed CRNAs at the State level. Rather, the State-specific nonmedically-directed rate was 137.5 percent of the medically-directed rate. Also, in developing the final nonmedically-directed rates, we used an average base/time unit value (10.9 units) that is specific to nonmedically-directed CRNAs. This value differs from the average base/time unit value (11.6 units) for hospital-employed medically-directed CRNAs.

	Hospital-employed medically-directed 1986 CRNA average salary	Nonmedically-directed 1986 CRNA average salary
Salary	$46,152	$56,805
1986 average cases	641	541
1986 average salary cost per case	$72	$105
Budget neutrality adjusted rate	$72	$99
Fringe benefits	1.20	.....
Trend factor	1.19	.....
Billing cost	1.07	.....
Malpractice (avg)	.10	.....
Adjustment factors (1.20×1.19×1.07+.10)	1.63	1.63
1989 adjusted salary cost per case ($72×1.63)	$117.36	$161.37
Average units per case	11.6	10.9
Average conversion factor (adjusted salary cost per case divided by average units per case)	10.12	14.80
Actual differential	1.462	.....
Proposed differential	1.375	.....

Comment: The AANA and other commenters pointed out that the law provides for "related care" services furnished by CRNAs to be paid under the CRNA fee schedule. They recommended that a separate and identifiable payment system be established for "related care" services. According to the AANA, some CRNAs provide almost only "related care" services and failure to provide separate payment for these services will result in no Medicare payment to these practitioners.

Response: In the proposed rule, we described related care services as insertion of arterial lines, central venous pressure lines, or Swan Ganz catheters, pain management services, and other services not directly connected to the anesthesia service or associated with the surgical service. We did not provide for separate payment for related care services. Rather, we acknowledged that the salary of the CRNA, as reported on the AANA's annual survey, reflected compensation for all activities including related care services. Moreover, we did not have any data that would allow us to determine to what extent the conversion factor should be adjusted to allow separate payment for related care services. As a result, we proposed to pay for related care services indirectly through the establishment of a conversion factor that would be higher than it would have been if related care services were paid separately. Further,

on average, related care services do not represent a significant percentage of services furnished by a CRNA.

We reexamined this issue in the context of the physician fee schedule payment system that takes effect January 1, 1992. In the final physician fee schedule regulation published in the **Federal Register** on November 25, 1991, (56 FR 59502), we stated that we will recognize separate payment for the same related care services furnished by anesthesiologists or CRNAs subject to certain conditions. Separate payment can be made for these services regardless of whether they are furnished alone or in connection with the physician anesthesia service.

Anesthesia service furnished by CRNAs can be medically directed or nonmedically directed, but related care services are medical or surgical services, not anesthesia procedures, and are therefore not subject to the general medical direction rules. If a CRNA typically furnishes anesthesia services without medical direction, we assume that the CRNA furnishes the related care service without the involvement of an anesthesiologist. If a CRNA typically furnishes anesthesia services under medical direction, we will assume that the anesthesiologist will furnish the related care service, and we will not pay for the CRNA's involvement with the related care procedure. Thus, payment for related care services furnished by CRNAs on or after January 1, 1992, will be consistent with payment for physicians.

B. Rural Hospitals and CRNAs

Comment: The AHA, State hospital associations, and other commenters recommended that the procedures threshold of 250 anesthesia cases should be substantially increased so that rural hospitals that otherwise meet the eligibility criteria can receive the reasonable cost exemption. The AHA specifically suggests that HCFA set the threshold at 1,300 anesthesia procedures or higher.

Response: Section 608(c) of Public Law 100–485 did allow the Secretary to establish the anesthesia procedures threshold at a level higher than 250 procedures. We did not initially propose a level higher than 250 procedures because we had no evidence or information from the hospital industry suggesting a more appropriate threshold.

The AHA's recommendation would have the effect of allowing all rural hospitals to qualify for reasonable cost payments for CRNA services. The fact that section 608(c) of Public Law 100–485 imposed a specific criterion for the hospital's anesthesia caseload volume is an indication that Congress did not intend for all rural hospitals to qualify.

Subsequently, section 6132 of Public Law 101–239 raised the threshold from 250 procedures to 500 procedures for rural hospitals, to be effective for anesthesia services furnished on or after January 1, 1990. Under section 6132 of Public Law 101–239, a rural hospital that qualified and was paid on a reasonable cost basis for CRNA services during calendar year 1989 can continue to be paid on a reasonable cost basis for CRNA services furnished during calendar year 1990 if it can establish before January 1, 1990 that it did not provide more than 500 surgical procedures, both inpatient and outpatient, requiring anesthesia services during 1989. A rural hospital that was not paid on a reasonable cost basis for CRNA services furnished during calendar year 1989 can be paid on a reasonable cost basis for CRNA services furnished during calendar year 1990 if:

- As of January 1, 1988, the hospital employed or contracted with a CRNA (but not more than one full-time equivalent CRNA); and
- In both 1987 and 1989, the hospital had a volume of 500 surgical procedures or fewer, including inpatient and outpatient procedures, that required anesthesia services.

For both groups of hospitals, each CRNA employed by or under contract with the hospital must agree in writing not to bill on a fee schedule basis for patient care services furnished at the hospital.

Comment: Several commenters requested that HCFA extend the deadline for a rural hospital to apply for eligibility for payment on a reasonable cost basis for calendar year 1989 to 60 days after publication of this final rule.

Response: Section 608(c) of Public Law 100–485 specifically provided that a hospital must have applied before April 1, 1989, to receive reasonable cost payments for CRNA services furnished in 1989. The intermediaries advised hospitals of the procedure for continuing reasonable cost payments in December 1988. This process provided a hospital with a sufficient period of time, approximately 4 months, in which to apply to its intermediary. Moreover, approximately 25 percent of rural hospitals claiming costs for CRNA services initially qualified for reasonable cost payments. We find no reason to extend the initial period during which rural hospitals could have applied.

Comment: Several commenters suggested that because of confusion surrounding the implementation of section 608(c) of Public Law 100–485, some rural hospitals that would otherwise have been eligible for reasonable cost payments might have billed for CRNA services under Part B after January 1, 1989. These commenters requested that any rural hospital that could document by April 1, 1989, that it met the appropriate criteria should be allowed to continue to be paid on a reasonable cost basis regardless of whether bills were submitted prior to that date for the hospital's CRNA services.

Response: One of the legislative criteria for a qualifying rural hospital is that each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services at the hospital. If the CRNA or the hospital does not satisfy this requirement or allows Part B billing to occur, then one of the qualifying criteria is not met.

The Program Memorandum issued to the intermediaries for distribution to rural hospitals (Transmittal No. A88–32) in December 1988 entitled "Direct Medicare Billing by CRNAs" also highlighted this point. It specifically noted the following:

> "Hospitals that are considering the continuation of reasonable costs for anesthesia services furnished by CRNAs on or after January 1, 1989, must ensure that CRNAs do not bill under the fee schedule for anesthesia services furnished on or after January 1, 1989, but before the hospital's election. If the CRNA or the CRNA's employer or contractor bills under the fee schedule, it will preclude the hospital's opportunity to elect reasonable costs for CRNA services."

In view of the foregoing, we are not accepting the commenters' recommendation. Also, since the Congress made changes in Public Law 101–239 that are effective January 1, 1990, it appears that Congress also did not see a need to grant hospitals relief from the prior provision.

Comment: Rural hospitals that wish to elect reasonable cost payment for CRNA services effective January 1, 1990, must demonstrate that the volume of anesthesia procedures does not exceed 500 procedures for the previous 12 months. However, the statistics for that 12-month period will not be available at the time providers are to be notified. One commenter suggested that the language of the regulation be revised to state that nine months' data, annualized, will be acceptable to demonstrate continued eligibility for reasonable cost payment.

Response: We are accepting this commenter's recommendation that 9 months' worth of data on anesthesia

cases, that is, from January 1st to September 30th of the preceding year, be acceptable for determining the annual number of anesthetics. However, we will apply this requirement for hospitals that wish to qualify for calendar years 1991 or later. Because of the short timeframe between enactment of Public Law 101–239 and hospitals' compliance with the requirements for reasonable cost payments for CRNA services furnished during 1990, we allowed hospitals to establish their qualification before March 1, 1990 instead of January 1, 1990. As a result, qualification for 1990 is based on the calendar year 1989 anesthesia caseload.

Comment: To qualify during 1989, a rural hospital must have employed or contracted with a qualified nonphysician anesthetist as of January 1, 1988. One commenter suggested that if contracts are not in writing, HCFA should require that oral contracts be committed to writing and signed by both parties. This will enable intermediaries to determine whether a provider meets the requirements and will facilitate any future auditing.

Response: We agree with this comment and find it necessary, for compliance and auditing purposes, that oral agreements for the provision of anesthesia services be committed to writing and signed by both parties.

Comment: One commenter asked at what point a rural hospital that qualified for this exception can change from reasonable cost to the fee schedule payment system for CRNA services.

Response: The election of reasonable cost payment for CRNA services applies to the calendar year for which the election is made.

Comment: Section 5261.I. of the Medicare Carriers Manual indicates that the intermediary will inform the carrier of the hospital's decision to elect reasonable cost. One commenter, however, pointed out that the instructions do not assign responsibility for obtaining and maintaining the signed agreements by CRNAs not to bill Part B.

Response: The hospital is responsible for furnishing the intermediary with signed CRNA/hospital agreements that there will be no billing to Part B. We are not requiring the intermediary to forward copies of the signed agreements to the carrier. Rather, the intermediary must notify the carrier of the qualified hospitals and their CRNAs.

Comment: One commenter asked what action is taken if the intermediary discovers that a provider actually does not meet the criteria for reasonable cost payments for calendar year 1989.

Response: The intermediary must recover reasonable cost payments from the hospital. The hospital or its CRNA must bill under the CRNA fee schedule for CRNA services furnished on or after January 1 of the affected calendar year.

Comment: Some commenters asked whether a rural hospital which did not qualify for reasonable cost payments for CRNA services during 1989 could elect reasonable cost payments for CRNA services in calendar years 1990 or 1991.

Response: Under section 608(c) of Public Law 100–485, only those rural hospitals that qualified in 1989 could continue to elect reasonable cost payment for CRNA services in 1990 and 1991. Section 6132 of Public Law 101–239 removes this restriction by allowing a rural hospital to qualify annually based on its anesthesia caseload from the immediately preceding year. It also removes the earlier expiration provision that allowed hospitals to receive reasonable cost payments only through calendar year 1991. Section 6132 of Public Law 101–239 imposes no expiration date. A rural hospital can qualify and continue to be paid on a reasonable cost basis for CRNA services for calendar years beyond 1991 if the hospital can establish that before January 1, 1990, it did not provide more than 500 surgical service procedures, both inpatient and outpatient, requiring anesthesia services during the immediately preceding year.

Comment: We proposed to reduce the nonmedically-directed CRNA fee schedule rates by 5.7 percent to account for low volume rural hospitals electing reasonable cost payments for CRNA services. This was necessary because the AANA supplied us with data from rural hospitals with varying anesthesia caseloads. The rural hospitals with 250 or fewer anesthesia cases would raise the level of the nonmedically-directed CRNA conversion factor, yet these hospitals would be paid on a reasonable cost basis rather than on a fee schedule basis. Our estimate was based on data from the 1987 HCFA Survey of PPS–2 hospitals claiming reasonable cost payments. Several commenters objected to the methods used to calculate our estimate.

Response: Section 6132 of Public Law 101–239 eliminated the budget neutrality provision for rural hospitals, which required that we adjust CRNA fee schedule rates to reflect the election of reasonable cost. As a result, we are not, as we did in the proposed rule, providing an additional "budget neutrality" adjustment to either the medically-directed rates or nonmedically-directed rates.

C. Monitored Anesthesia Care

The Medicare Carriers Manual (HCFA-Pub. 14–3) recognizes as a covered physician service monitored anesthesia care performed by or medically-directed by a physician. Under section 8310.E. of the Medicare Carriers Manual, monitored anesthesia care means the intraoperative monitoring of the patient's vital physiological signs by a physician or by a qualified individual under the medical direction of a physician. Monitored anesthesia care is provided in anticipation of the need for administration of general anesthesia or in the case of a patient's development of adverse physiological reaction to the surgical procedure. It also includes performance of a pre-anesthetic examination and evaluation, prescription of the anesthesia care required, administration of necessary oral or parenteral medications (for example, Atropine, Demerol, or Valium), and provision of indicated postoperative anesthesia care. The fact that the physician personally furnished or medically-directed the monitored anesthesia care does not automatically mean the monitored anesthesia care is a covered Part B service. The monitored anesthesia care service must be reasonable and medically necessary under the given circumstances.

The proposed rule did not address the issue of payment for monitored anesthesia care performed by a CRNA.

Comment: Commenters specifically asked whether a CRNA can be paid under the fee schedule for performing monitored anesthesia care with or without medical direction.

Response: We have considered these comments and are specifically adopting the policy that a CRNA can be paid under the CRNA fee schedule for performing monitored anesthesia care that is reasonable and medically necessary. Medicare will pay for a CRNA performing monitored anesthesia care with or without the medical direction of an anesthesiologist. We will specifically incorporate this policy in the manual instructions to implement the CRNA fee schedule.

D. Anesthesia Care Furnished to a Single Patient by a CRNA and an Anesthesiologist

Our prior policies on payment for physician anesthesia services recognize that the anesthesia service may be:

- Personally performed by an anesthesiologist;

- Performed by a teaching anesthesiologist under an "attending physician" relationship;
- Performed by an anesthesiologist with assistance provided by an anesthetist (Under this circumstance, the anesthesia service is deemed to have been personally performed by the anesthesiologist); or
- Medically-directed by an anesthesiologist.

Under section 1842(b)(13) of the Act, medical direction refers to the circumstances under which an anesthesiologist medically directs two, three, or four concurrent procedures involving qualified anesthetists. Thus, we have always viewed medical direction as occurring with concurrent procedures, not with a single anesthesia procedure.

The instructions in section 5261.G of the Medicare Carriers Manual to implement the proposed CRNA fee schedule recognized that both a CRNA and an anesthesiologist may be involved in a single anesthesia procedure. The policy in this section is directed to circumstances under which it is necessary for both an anesthesiologist and a CRNA to be continuously involved in the anesthesia care of the patient. Section 5261.G of the Medicare Carriers Manual provides that if an anesthesiologist and an anesthetist are both involved in a single anesthesia procedure, the procedure is considered personally performed by the anesthesiologist. No separate payment is recognized for the CRNA's service unless the carrier has received medical documentation showing that the involvement of both the anesthesiologist and the anesthetist are medically necessary.

Comment: Commenters pointed out that the CRNA fee schedule legislation provides for fee schedule payment for all medically necessary anesthesia services furnished by CRNAs, and it does not eliminate payments to CRNAs based on activities of an anesthesiologist. The commenters suggested that we expand medical direction to cover a single procedure involving an anesthesiologist and a CRNA. In this way, each anesthesia practitioner would be paid for the service he or she furnishes.

Response: As noted above, medical direction refers to the circumstances under which an anesthesiologist medically directs two, three, or four concurrent procedures involving qualified anesthetists. For medical direction to be covered, the anesthesiologist must perform the activities described in § 405.552. We are not proposing to expand the concept of medical direction to apply when an anesthesiologist and anesthetist provide services during a single procedure. We believe that our interpretation is consistent with section 1842(b)(13). Moreover, we are concerned that recognizing medical direction in a single anesthesia procedure would encourage inefficiencies in anesthesia practice arrangements. Our policies should not encourage the involvement of both practitioners in a single anesthesia procedure if either practitioner could appropriately furnish the service alone. We do, of course, recognize that there will be limited situations where it will be medically necessary for an anesthesia procedure to be furnished by both an anesthesiologist and a CRNA. Under these circumstances, we will continue to recognize payments for the services of each practitioner. This principle has been incorporated into our final regulations.

E. Supervision of CRNAs by Physicians Other Than Anesthesiologists

In the proposed regulation, we provided for the elimination of medical direction payments for surgeons who perform surgery and also supervise the services of a CRNA. We provided that the oversight of a CRNA's services by a surgeon is a quality control function that represents either a service to the provider of the type described in § 405.480(a) or an ASC facility service.

We did not receive any unfavorable comments on this proposal. Anesthesiologists who commented supported the elimination of medical direction payments to surgeons.

Comment: One commenter recommended that the regulation text specifically include the provision that the surgeon's supervision of the CRNA is covered only as an ASC facility service.

Response: We are including in the regulations at § 416.61 the provision that the surgeon's supervision of the CRNA is covered only as an ASC facility service. If the surgeon bills the ASC patient for a supervisory anesthesia service, the ASC will be found in violation of its participation agreement with HCFA (see § 416.35), which may result in termination of that agreement.

F. Bad Debts

Section 1833(l)(5)(C) of the Act requires that a hospital that files a claim or a request for payment for the services of a CRNA may not consider any uncollected coinsurance amount for a CRNA service a bad debt. The proposed regulations included a revision to § 413.80 to implement this provision.

Comment: One commenter indicated that the Provider Reimbursement Manual, Part I, (HCFA-Pub. 15–1) does not recognize bad debts associated with physician services. The commenter further pointed out that since CRNA services are not physician services, but rather hospital services, this provision is not consistent with the Provider Reimbursement Manual, Part I instructions in Chapter 3 concerning bad debts attributable to hospital services.

Response: Previously, anesthesia services furnished to hospital patients by CRNAs employed by the hospital or obtained under arrangements were covered as hospital services. The CRNA fee schedule legislation specifically creates a new coverage category for CRNA services. Since CRNA services are no longer considered hospital services, the PRM policy on uncollected deductibles and coinsurance associated with hospital services does not apply.

G. Billing for Anesthesia Time

Payment under the CRNA fee schedule is made on the basis of a conversion factor multiplied by the sum of base and time units. One time unit is allowed for each 15 minutes of anesthesia time. Anesthesia time begins when the physician or anesthetist begins to prepare the patient for induction of anesthesia and ends when the patient may be safely placed under post-operative supervision and the physician or anesthetist is no longer in personal attendance. The time unit basis of payment implies that the anesthetist or physician must furnish continuous and uninterrupted anesthesia care. Although we did not receive any specific comments on the time unit basis of payment, we were advised of situations that may occur in the outpatient department of a hospital or in an ASC in which a CRNA is not in continuous attendance with the patient.

Whenever the CRNA is not continuously attending to the patient immediately preceding induction up to postrecovery, the CRNA must appropriately note that a reduced service has been furnished. The carrier will appropriately recognize time units only for the anesthesia time spent with the patient by the CRNA or determine payment on another basis, based on the advice of the carrier's medical consultants.

As previously noted, it is our intention to ensure consistency and similarity between the CRNA payment system and the payment system for physician anesthesia services. In both the proposed regulations to implement the CRNA fee schedule and the uniform

relative value guide, we discussed three OIG options, on which we solicited comments, to change the current time unit policy. One of these options was to recognize only the actual time associated with a fractional time interval.

Section 6106 of Public Law 101–239 revised the method by which time units are counted for anesthesia services furnished by either physicians or CRNAs. That is, for anesthesia services furnished on or after April 1, 1990, the time unit is counted based on the actual time of the fractional time unit. Previously a fractional time unit was counted as a full time unit. Since we previously solicited comments on this matter and the legislation is sufficiently clear and detailed as to be self-implementing, we are finalizing this policy without an additional comment period. We are revising § 414.450(c) to reflect the policy that recognizes only actual time associated with a fractional time unit. We are instructing the carriers to calculate time units to one decimal place. The example provided below illustrates the calculation of a fractional time unit.

Example: A CRNA who is not medically directed furnishes an anesthesia procedure after April 1, 1990. The procedure has a base unit of 6 units and lasts 66 minutes or 4.5 units. The nonmedically directed CRNA rate is $14. The CRNA fee schedule amount is $147.00, or $14 x 10.5 units. The carrier pays the CRNA § 117.60, which is 80 percent of $147.00.

In the final rule to implement the resource-based physicians' fee schedule effective January 1, 1992, published in the **Federal Register** on November 25, 1991 (56 FR 59502), we decided to continue actual time as a separate payment element for both CRNA and physician anesthesia services. We have also revised the definition of anesthesia time to lessen the wide variation in reported anesthesia times.

Comment: Some commenters asked how payment would be determined for the CRNA's services when an anesthesiologist does not medically-direct the entire anesthesia case. For example, would the CRNA be paid at the medically-directed rate during the portion in which the physician is medically-directing the case and at the nonmedically-directed rate when the anesthesiologist is not medically-directing the case?

Response: We are not establishing a specific national payment rule for these circumstances because they are not the normal circumstances for anesthesia practice. Under these circumstances, the carrier has the authority to make a payment determination based on all the facts surrounding the case. Under these circumstances, the CRNA must indicate on the claim the time periods during which he or she was medically directed and the time periods during which he or she was not medically directed. If, for example, the anesthesiologist is present 50 percent or more of the total time in a medically-directed case, the carrier may consider the entire case to be a medically-directed case.

Comment: At least one commenter asked whether the medically-directed CRNA conversion factor would be recognized for CRNA services when the anesthesiologist supervises more than four concurrent procedures. HCFA does not recognize medical direction if the anesthesiologist is involved in more than four concurrent procedures.

Response: CRNA fee schedule payments are calculated using the medically-directed conversion factor for CRNA services regardless of the number of concurrent procedures directed or supervised by an anesthesiologist. As a practical matter, as long as anesthesiologists are involved with CRNAs in anesthesia services, the CRNA would consider the procedure to be medically directed or medically supervised. The CRNA is not generally aware of the number of concurrent procedures being directed or supervised.

H. Payment for CRNA Education and Training Costs

Comment: The AANA and others stated that the CRNA fee schedule legislation, the January 28, 1989 proposed regulations, and the Carriers Manual instructions failed to explain how payment will be made for nurse anesthetist educational programs. The AANA asked for a clarification of this policy.

Response: The CRNA fee schedule does not alter the methodology under which hospitals are paid for the cost of approved CRNA educational programs. That is, a hospital continues to be paid on a reasonable cost basis for allowable costs associated with an approved CRNA educational program it operates. Costs incurred by a hospital in conjunction with an approved CRNA educational program that it does not operate are not paid on a reasonable cost basis. (The cost of these educational activities is recognized as a normal operating cost and payment for these services is made through the prospective payment system for hospital inpatients.) Rules concerning payment to hospitals for the cost of educational activities are located at § 413.85.

Comment: The AANA and several other commenters recommended that Medicare pay the costs of approved CRNA training programs under the same methodology used for paying the cost of approved graduate medical education training programs.

Response: The services of interns and residents under approved graduate medical education training programs are paid for differently than the services of nonphysicians engaged in approved paramedical training programs. The way in which costs of approved paramedical training programs are paid to a hospital is described in the previous response (see § 413.85). Section 1886(h) of the Act provides that for cost reporting periods beginning on or after July 1, 1985, services of interns and residents in approved training programs are paid on the basis of a prospectively determined rate, which is calculated as a per intern/resident amount. Section 1886(h) of the Act does not extend this treatment to approved CRNA training programs or to approved paramedical training programs.

Comment: The AANA and other commenters requested that a teaching or supervising CRNA receive payment under the CRNA fee schedule for each of two concurrent cases involving student nurse anesthetists. (This comment was prompted by the proposed policy for teaching anesthesiologists, which was included in our February 7, 1989 proposed regulations on teaching physicians. Under those proposed regulations, we would have paid an unreduced amount when the teaching anesthesiologist is involved in two concurrent cases with residents.)

Response: We did not finalize the policy proposed in the February 7, 1989 NPRM on teaching physicians. Instead, in the final physician fee schedule regulations published November 25, 1991, we stated that we would continue the policy that allows unreduced payments for two concurrent cases involving residents through December 31, 1993 (56 FR 59563). This would give teaching hospitals the opportunity to adjust their practices. For services furnished after that date, we will uniformly apply medical direction payment rules to concurrent procedures regardless of whom the anesthesiologist is directing.

We understand that, at times, a teaching CRNA may supervise two concurrent cases involving student nurse anesthetists. The initial CRNA fee schedule legislation (section 9320 of Pub. L. 99–509) did not address the issue of payment for the services of CRNAs who teach student nurse anesthetists. Moreover, while the 1990 CRNA fee schedule legislation provides for two levels of payment for CRNAs, a rate for

medically-directed CRNAs and one for nonmedically-directed CRNAs, it also does not address the teacher/student anesthetist issue. Thus, there is no specific statutory provision that requires that we pay a teaching CRNA an unreduced or a reduced fee for each of two concurrently supervised cases.

The law, however, is specific with regard to medical direction services of anesthesiologists. It provides that under specified circumstances, payment is made for medical direction, and that this payment rate is lower than the payment rate that would apply if the anesthesiologist personally performed the service. Thus, while we have the specific authority to make payment, although reduced, for the anesthesiologists' involvement in concurrent cases, there is not similar authority for the teaching CRNA's involvement in concurrent cases.

We also note that, prior to the implementation of the CRNA fee schedule, the services of hospital employed CRNAs or those under contract with a hospital had been paid to the hospital on a reasonable cost basis. However, we did not provide, under this system, for payments, even on a cost basis, for the teaching CRNA's involvement in two concurrent cases. Since we have not historically provided for payment for the CRNA's involvement in two concurrent cases and there is no statutory requirement that we must do so, we are not providing for separate fee schedule payment for the teaching CRNA's involvement in each of two concurrent cases.

Comment: The AANA and other commenters recommended that medical direction payments be recognized if an anesthesiologist directs concurrent procedures, some of which involve student nurse anesthetists. These commenters suggest that this would represent a continuation of our current policy.

Response: We have addressed this issue in § 405.552 (a)(1)(iv) of the final physician fee schedule regulations published in the **Federal Register** on November 25, 1991 (56 FR 59502). We have revised the regulation text to allow an anesthesiologist to medically direct a qualified individual as defined in program operating instructions. In the operating instructions, we will consider student nurse anesthetists to be qualified individuals as long as the anesthesiologist is not directing more than two concurrent procedures involving student nurse anesthetists.

Comment: Section 4048 of Public Law 100–203 provides for a reduction in the base units for the physician's concurrent medical direction of anesthesia services involving qualified anesthetists and furnished on or after April 1, 1988 but before January 1, 1991. (As noted, under current policy, a qualified anesthetist situation can exist when a teaching CRNA continuously supervises the services of a student CRNA.) The number of base units associated with the physician service is reduced by 10 percent for each of two concurrent procedures, by 25 percent for each of three concurrent procedures, or by 40 percent for each of four concurrent procedures. The AANA recommended that the 10 percent, 25 percent, and 40 percent cuts not apply when an anesthesiologist medically-directs concurrent procedures involving both a teaching CRNA and a student anesthetist, or only a student anesthetist. Presumably, this would encourage anesthesiologists to become involved in CRNA training programs and would not provide a financial incentive to utilize anesthesia interns and residents instead of teacher CRNAs and student anesthetists.

Response: Section 4048 of Public Law 100–203 specifically refers to reductions in base units of concurrent procedures involving "nurse anesthetists". It does not provide for any exceptions to the base unit reductions. Therefore, we will reduce base units for medical direction services in circumstances involving the anesthesiologist's concurrent medical direction of procedures involving teaching and student CRNAs.

Comment: Proposed regulations published on February 7, 1989 (54 FR 5946), provide that if all physicians in a teaching hospital elect assignment for payment of all physician services, then the customary charge for physician services would be calculated at 90 percent of the prevailing charge. The 90 percent payment rate is specifically provided for in section 1842(b)(7) of the Act. Some commenters requested that CRNAs also be paid 90 percent of the fee schedule amount since they are required to accept assignment for all cases.

Response: We believe there is some confusion as to the application of the 90 percent rate. For teaching hospitals where assignment is elected for all physician services, the customary charge would be 90 percent of the prevailing charge. If this customary charge becomes the basis for the reasonable charge, the reasonable charge would be the product of 80 percent, 90 percent, and the prevailing charge (80 percent × 90 percent × the prevailing charge). If this same methodology were applied to CRNA services, payment would be 80 percent × 90 percent × the fee schedule, (which would result in a lesser amount than the current payment amount). As noted, the 90 percent payment rate is specifically established by section 1842(b)(7) of the Act and is applicable by its own terms only to physician services furnished by teaching physicians in a hospital. It does not apply to nonphysician services such as CRNA services. Instead, section 1833(a)(1)(H) of the Act specifically provides that after the deductible is met, CRNA services are paid at 80 percent of the lesser of the actual charge, the fee schedule amount, or the amount recognized for the same anesthesia service furnished by an anesthesiologist.

I. Definition of Categories of Anesthetists

We proposed defining "CRNA" as a registered nurse who is licensed as a professional registered nurse by the State in which he or she practices and meets any other licensure requirements the State imposes with respect to nonphysician anesthetists, and is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists or has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

This definition relied on certification by either of the two nationally recognized certifying bodies for nurse anesthetists, and thus reflected the provision of section 1861(bb) of the Act that authorizes the use of requirements established by a national organization for the certification of nurse anesthetists.

Comment: A commenter stated that the Council on Certification of Nurse Anesthetists (the Council) allows graduates of approved nurse anesthesia programs to be considered certification-eligible, without meeting further criteria, for 24 months after completion of their training. The commenter also stated that 24 months is the maximum time period for which any State allows recent graduates to practice without passing a certification examination. In the interest of consistency with the Council on requirements and in consideration of the provision of section 1861(bb)(2) of the Act, which allows use of the same requirements as those established by a national organization for the certification of nurse anesthetists, the commenter recommended that we allow recent graduates of approved training programs who have not successfully completed the certification examination to be considered CRNAs for up to 24

months after graduation (rather than 18 months as proposed) if to do so is consistent with State law.

Response: We agree that it would be appropriate to adopt a less restrictive rule on how long recent graduates may practice and have revised the regulations as suggested by the commenter.

Comment: A commenter supported our proposed interpretation of section 1861(bb)(2) of the Act that requires that a CRNA be licensed by the State as a registered nurse (54 FR 3805). The commenter opposed any interpretation that would require a CRNA to be licensed as a CRNA and stated that this would preclude payment to CRNAs in some 40 States.

Response: We agree with this comment and have adopted the provision of the proposed regulations that require an individual who wishes to be considered a CRNA to be licensed as a professional registered nurse (rather than as a CRNA) by the State in which he or she practices and to meet any other licensure requirement the State imposes with respect to nonphysician anesthetists.

Comment: A commenter objected to the provision in the proposed rule which restated the part of the hospital conditions of participation that provides that anesthesia administration by a CRNA must be done under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed. The commenter stated that the provision is contrary to the laws of some States that permit CRNAs to practice without supervision by a physician or other practitioner and that quality of care studies show there is no significant difference in outcomes whether the care is provided by CRNAs alone, anesthesiologists and CRNAs together, or anesthesiologists alone. In support of the latter statement, the commenter submitted synopses of several studies that addressed anesthesia care outcomes as they relate to the qualifications of the providers of care (anesthesiologists and CRNAs). These studies included a Report to Congress by the National Academy of Sciences (House Committee Print No. 36, "Health Care for American Veterans", p. 156, dated June 7, 1977); a study concerning anesthetic-related deaths from 1969 to 1976 by Albert Bechtoldt, Jr. and the Anesthesia Study Committee (North Carolina Medical Journal, April 1981); a study by Stanford Center for Health Care Research, "The Effect of the Provider," (published in Health Care Delivery in Anesthesia (1980), p. 137); and "Anesthesiology: Man, Machines and Morbidity" by Dr. Joseph A. Ricci (published in Physician Notes, December 1985). The commenter stated that these studies found no significant difference in anesthesia care outcomes between care provided by anesthesiologists and CRNAs.

Another commenter stated that there is no State that allows CRNAs to administer anesthesia without medical supervision although in some States CRNAs are allowed to practice on an independent contract or freelance basis without an anesthesiologist being present.

Response: We reviewed these comments carefully but did not make any changes to the proposed rule based on them. Regardless of whether some State laws allow CRNAs to practice independently, the laws of most States still require nonphysician anesthetists to administer anesthesia only under the supervision of a doctor of medicine or osteopathy. Moreover, the conditions of participation are intended to be minimum requirements that promote patient health and safety. We do not believe it would be practical to adopt as a national minimum standard for care a practice that is allowed in only some States. We also reviewed the information submitted in support of the statement that studies show no significant difference in outcomes according to whether services are performed by CRNAs alone, CRNAs and anesthesiologists together, or anesthesiologists alone. While some of the information supports the conclusion that similar results occur under each of these three sets of circumstances, we note that this commenter's submittal also states that existing studies of this issue do not correct for the differences in outcome caused by differences in age and in severity of illness among patients. We believe it would be wrong to conclude solely from the studies mentioned above that oversight by an anesthesiologist does not contribute significantly to the safety and quality of care. In view of the lack of definitive clinical studies on this issue, and in consideration of the risks associated with anesthesia procedures, we believe it would not be appropriate to allow anesthesia administration by a nonphysician anesthetist unless under supervision by either an anesthesiologist or the operating practitioner. Therefore, we did not adopt this comment.

We are adopting a change in the definition of "CRNA" that was not requested by commenters. Under this approach, a person could be designated as a CRNA for Medicare purposes if he or she: (1) Is licensed as a registered professional nurse by the State in which he or she practices, (2) meets any licensure requirements that State imposes with respect to nonphysician anesthetists, (3) has graduated from a nurse anesthesia educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs, or of such other accreditation organization as may be designated by the Secretary, and (4) has passed a certification examination of the Council on Recertification of Nurse Anesthetists, or such other certification organization as may be designated by the Secretary.

The examination requirement would not apply to otherwise qualified persons who have graduated within the past 24 months from a nurse anesthesia educational program that meets the standards of a certification organization as described above.

Comment: A commenter objected to the definition of anesthesiologist's assistant that was included in the proposed regulations. The commenter stated that the definition is not consistent with that used by the Committee on Allied Health Education and Accreditation (CAHEA), which is the publicly constituted and recognized body that oversees the accreditation process for anesthesiologist's assistant educational programs. The commenter also stated that the proposed provision, which requires that the anesthesiologist's assistant be under the direct supervision of an anesthesiologist who is physically present, does not accurately reflect actual patterns of practice in those States where anesthesiologist's assistants are used. The commenter also recommended that we adopt a definition that does not specify the number of years of education an anesthesiologist's assistant must have while permitting recognition of anesthesiologist's assistants who received their training at either of the pilot anesthesiologist's assistants programs, that is, the program previously conducted at Case Western Reserve and the Emory University program.

Another commenter expressed different views on the treatment of anesthesiologist's assistants. This commenter stated that anesthesiologist's assistants are trained to work only under the direction of an anesthesiologist in no more than a one-to-two ratio. The commenter stated that, therefore, anesthesiologist's assistants would not be eligible for payment for nonmedically-directed care or for related care services. The commenter recommended that anesthesiologist's assistants not be designated as

"anesthetists" in our regulations and that their services be discussed in separate regulations, in order to emphasize the differences between their scope of practice and that of CRNAs.

A third commenter, representing a national anesthesiologist organization, explicitly avoided taking a position on the number of anesthesiologist's assistants to be supervised by an anesthesiologist. The commenter stated that the organization has no policy as to medical direction ratios, either for CRNAs or anesthesiologist's assistants, except to state that medical direction of CRNAs should be in such a geographic and numerical relationship as to make possible the continual exercise of the medical judgment of the anesthesiologist.

Response: After considering the comments we received on this issue, we have decided to define an anesthesiologist's assistant as a graduate of a medical school-based anesthesiologist's assistant educational program that is both accredited by CAHEA and includes approximately two years of specialized basic science and clinical education in anesthesia that builds on a premedical undergraduate science background. In addition, the anesthesiologist's assistant must work under the direction of an anesthesiologist and must comply with all applicable requirements of State law, including any licensure requirements the State imposes on nonphysician anesthetists.

In adopting this definition, we took several factors into account. First, we believe that adopting a definition consistent with that used by a national accrediting organization such as CAHEA will help ensure that our definition reflects current medical practice and will make it possible to use a definition that is less prescriptive with respect to the length of these programs than the current definition in the regulations at § 482.52(a)(5). We also believe it is desirable to adopt a definition which encompasses currently practicing anesthesiologist's assistants as well as future graduates.

We considered, but did not adopt, the comments suggesting that anesthesiologist's assistants be permitted to work in no more than a one-to-two ratio (that is, one anesthesiologist to two anesthesiologist's assistants). Our concern is to define the term "anesthesiologist's assistant" in a way that will protect patient health and safety and permit payment for anesthesia and related care in a manner that is reasonable, equitable, and consistent with other requirements of the Medicare law. We believe we can accomplish this goal most effectively by defining the term "anesthesiologist's assistant" as described above and by permitting anesthesiologist's assistants to function under the same general requirements as CRNAs, except for the additional requirement for direction by an anesthesiologist and any additional restrictions that may be imposed by State law or by medical staff rules in settings such as hospitals and ASCs.

We also did not accept the comments recommending that anesthesiologist's assistants not be designated as anesthetists and thus not be governed by the same regulations as CRNAs. Section 1861(bb)(2) of the Act explicitly states that anesthesiologist's assistants are to be considered CRNAs for purposes of the Medicare law, and we do not have authority to establish a separate designation or set of regulations for them.

Comment: A commenter noted that in some States, registered nurses who are not fully certified CRNAs or recent graduates of approved training programs are permitted by State law to administer anesthesia if they meet certain experience requirements and comply with any applicable licensing requirements. The commenter stated that there is no indication that Congress intended to prohibit anesthesia administration by these individuals and recommended that we include them in the definition of an anesthesiologist's assistant.

Response: By adopting a definition of anesthesiologist's assistant which relies heavily on completion of a CAHEA-accredited program, we have allowed for variation in the type and length of training required of anesthesiologist's assistants. However, we do not believe it would be appropriate to apply the anesthesiologist's assistant designation to a person who has no formal, specific training as an anesthesiologist's assistant and whose knowledge of anesthesia administration is based largely or entirely on informal or on-the-job training. Therefore, we did not adopt this comment. Moreover, because under section 1861(bb) of the Act the definition of services of a CRNA refers only to CRNAs and anesthesiologist's assistants, we do not believe there is any other basis on which anesthetists who are not qualified as either CRNAs or anesthesiologist's assistants could be permitted to furnish these services.

J. Medical Direction of a Qualified Anesthetist

The regulations at § 405.552(a)(1)(iv) provided that one of the conditions for payment to a physician for a medical-direction service was the requirement that the physician "ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified individual." The preamble of the March 2, 1983 final rule (48 FR 8926) had indicated that a qualified individual could be a CRNA, anesthesiologist's assistant, intern or resident, or other qualified individual, consistent with State law and license requirements. We are making a change to § 405.552(a)(1)(iv) to replace the term "qualified individual" with "CRNA or an anesthesiologist's assistant". (As noted in a previous response, we will recognize medical direction when an anesthesiologist medically directs concurrent cases, one of which involves a student nurse anesthetist.) We are also including an intern or a resident as a qualified individual who can be medically directed.

The only individuals qualified to be paid under the CRNA fee schedule are CRNAs and anesthesiologist's assistants. Payment for the services of interns and residents is made to a hospital based on a prospectively determined rate for each intern or resident. Services furnished by other individuals, such as a registered nurse who is not a CRNA but licensed to administer anesthesia under State law, are neither paid under the fee schedule nor paid on a reasonable cost basis. As a result of our revision, the medical direction service furnished by a physician is not covered if the physician directs an individual other than a CRNA, a student anesthetist, anesthesiologist's assistant, intern or resident.

K. Update of the CRNA Fee Schedule

Section 1833(l)(1) of the Act provides that the CRNA fee schedule conversion factors are updated by the MEI. However, section 6107(a) of Public Law 101–239 delayed the implementation of the MEI update, including the MEI update of the CRNA fee schedule conversion factors for CRNA services furnished on or after January 1, 1990, to apply instead to CRNA services furnished on or after April 1, 1990. Section 6107(b) of Public Law 101–239 also provided that the percentage increase in the MEI used to update CRNA conversion factors applicable to CRNA services furnished on or after April 1, 1990, is zero. Thus, the 1989 final rates are also effective for CRNA services furnished in calendar year 1990.

V. Summary of Changes

A. Revised CRNA Fee Schedule Conversion Factors

- We are using a more current AANA survey to calculate the basic CRNA conversion factors. The AANA's 1986 survey was used in the proposed rule. The AANA's 1987 survey is used in this final rule.
- We are making a different adjustment for fringe benefits and overhead. In the proposed rule, an adjustment of 27 percent was made to take into account both fringe benefits and overhead. In this final rule an adjustment of 32 percent is made for both fringe benefits and overhead.
- We are using a different trend factor to update the basic conversion factors. In the proposed rule, the 1986 conversion factors were adjusted by a factor of 1.19, allowing for a 6.0 percent increase in CRNA salaries per year for 1987, 1988, and 1989. In this final rule, the 1987 conversion factors are adjusted by a factor of 1.18, allowing for a 9.4 percent increase in 1988 and an 8.2 percent increase in 1989.
- We have computed the nonmedically-directed conversion factors (with exceptions noted) on the basis of State-specific nonmedically-directed CRNA salaries, the State-specific average caseload of nonmedically-directed CRNAs, and the national average number of base and time units per case for a nonmedically-directed CRNA (see § 414.451(c)). (In the proposed rule, the nonmedically-directed conversion factors were computed by multiplying the State-specific medically-directed rate by a factor of 1.375.)
- We decreased the proposed nonmedically-directed conversion factors by 5.7 percent to account for rural hospitals that elect reasonable cost payments for CRNA services. Section 6132 of Public Law 101–239 eliminated the budget neutrality adjustment that existed previously for rural hospitals.

B. Payment for Related Care Services

CRNAs furnish services to patients in addition to anesthesia services. In the proposed rule, we did not provide for separate fee schedule payments for these related care services. In the November 25, 1991 Physician Fee Schedule final rule (56 FR 59502), we have provided for separate payments for certain related care services to be implemented with the effective date of the final physician fee schedule regulations (see § 410.69(b)). These related care services include certain medical and surgical services not specifically included under the CPT–4 anesthesia coding system.

C. Time Unit Policy Revision

The final regulations to implement the uniform relative value guide (published August 7, 1990 (55 FR 32078)) provide for a revision to the time unit payment system for physician anesthesia services furnished on or after April 1, 1990. Section 6106 of Public Law 101–239 revised the method by which time units are counted for anesthesia services furnished by physicians or CRNAs. For services furnished before April 1, 1990, a fractional time unit was considered a full unit. For services furnished on or after April 1, 1990, section 6106 of Public Law 101–239 provides that a time unit is determined based on the actual time represented by the fractional time interval (see § 414.450(c)). For example, if an anesthesia procedure is personally performed by an anesthesiologist and the procedure lasts 66 minutes, we would recognize 66/15 time units, that is 4.4 time units.

D. Definition of Anesthetists (Section 410.69(b))

- We are allowing recent graduates of approved training programs who have not yet successfully completed the certification examination to be considered CRNAs for up to 24 months after graduation (rather than for 18 months after graduation as proposed), if consistent with State law.
- We are defining an anesthesiologist's assistant as a graduate of a medical school-based anesthesiologist's assistant educational program that is accredited by the Committee on Allied Health Education and Accreditation (CAHEA) and that includes approximately two years of specialized basic science and clinical education in anesthesia that builds on a premedical undergraduate science background.
- The anesthesiologist's assistant must work under the direction of an anesthesiologist. However, we are removing the requirement previously in the hospital conditions of participation that allowed an anesthesiologist's assistant to provide anesthesia only under the direct supervision of an anesthesiologist who is physically present.

E. ASC Facility Service

We are specifically including in § 416.61(b) the policy that the operating physician's supervision of the CRNA is covered only as an ASC facility service. We are also revising the conditions of participation for surgical services for ASCs to make the definition of anesthesiologist and related requirements consistent with the hospital conditions of participation.

F. Technical Changes

1. We are changing the title of subpart E—"Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians," to read "Criteria for Determinations of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians".
2. We have revised § 411.15(m) to clarify that services of all CRNAs and anesthesiologist's assistants, not merely those who are physician-employed, are excluded from the rebundling requirement imposed by that section. This change is being made to make the regulation consistent with section 1862(a)(14) of the Act, which does not differentiate among anesthetists based on their employment status.
3. In the final regulations, we have deleted the change made to § 405.502 and added a new paragraph (d) to § 405.501. This paragraph includes, as an exception to the reasonable charge provision, payments made to CRNAs and nurse anesthetists.
4. We have replaced the term "anesthesiologist assistant" with "anesthesiologist's assistant" to reflect current usage by health care professionals.
5. We have added § 414.450 to reflect the provisions dealing with time units for services furnished on or after April 1, 1990. We have incorporated the provisions of § 405.553(c) of the proposed rule in §§ 414.450 through 414.453 of the final rule, which is new subpart H, Payment for the Services of Anesthetists, in 42 CFR part 414, Payment for Part B Medical and Other Health Services.
6. We have amended the table of contents for part 410 by adding a new § 410.69, Services of a certified registered nurse anesthetist or an anesthesiologist's assistant: Basic rule and definitions. Section 410.66 of the proposed rule has been redesignated as § 410.69, and the definition of anesthesiologist's assistant in this section has been changed.
7. We have amended § 412.113(c) to incorporate the provisions of section 6132 of Public Law 101–239.
8. We have added a new 42 CFR part 414 subpart H, Payment for the Services of Anesthetists.
9. In § 489.20(d), we have added "services of an anesthetist as defined in § 410.69 of this chapter" as a category of services that the hospital does not have

to furnish directly or under arrangements to its inpatients. This corrects the earlier omission of these services and implements section 1866(a)(1)(H) of the Act.

VI. Methodology for Determining Final CRNA Fee Schedule Rates

We used the AANA's 1987 Annual Survey to establish the final CRNA fee schedule rates. We divided the State salaries reported by full-time and part-time CRNAs by the product of the total administered anesthetics and the national average base and time unit amount per case. For hospital-employed, medically-directed CRNAs, the national average base and time units per case were 11.6 units; for nonmedically-directed CRNAs, the national average base and time units per case were 10.9 units. In summary, we adjusted the 1987 salaries/incomes as follows:

- A factor of 32 percent of salary/income was used to account for fringe benefits and overhead.
- The adjusted salary/income was increased using a 1988 trend factor of 9.4 percent and a 1989 trend factor of 8.2 percent.
- An allowance was made for malpractice insurance based on the 1989 State-specific rates for malpractice insurance for CRNAs.
- No budget neutrality adjustment is necessary for the rural hospital exception.

We viewed the data separated for hospital-employed medically-directed CRNAs and all nonmedically-directed CRNAs. There were some States and the District of Columbia with low responses, which we define as fewer than ten responses. These States are listed as follows:

Low response: Medically-directed hospital employed CRNA areas	Low response: Non-medically directed CRNA areas
Alaska	Alaska.
Arizona	Connecticut.
Arkansas	Delaware.
District of Columbia	District of Columbia.
Idaho	Maine.
Indiana	Maryland.
Iowa	Massachusetts.
Montana	New Hampshire.
Nevada	New Jersey.
Oklahoma	Rhode Island.
Utah	Vermont.
Vermont	
Wyoming	

Only in two States and the District of Columbia was there a low response rate for both types of CRNA practitioners. In these areas, neither a medically-directed nor a nonmedically-directed rate could be computed. For the remaining areas, we could compute a rate for at least one type of practitioner. The other State level rate could then be derived by multiplying the State level rate computed based on reported data by a national statistic. This methodology is illustrated for Arizona and Connecticut. Arizona did not have a sufficient number of responses from hospital-employed medically-directed CRNAs. Connecticut did not have a sufficient number of responses from nonmedically-directed CRNAs.

Example 1: The nonmedically-directed rate for Arizona based on State level responses is $21.13. The relationship between the national mean nonmedically-directed rate and the national mean hospital-employed medically-directed rate is 1.69. The derived hospital-employed medically-directed rate is $12.50 ($21.13/1.69). The derived blended medically-directed rate for Arizona is $10.09.

$(\$12.50 \times .58) + (\$6.77 \times .42) = \$10.09$

In this example, the figure of $6.77 represents the conversion factor that would be paid for CRNA services if the CRNA is employed and medically directed by a physician. The figure of $6.77 is computed by multiplying the 1989 participating physician prevailing charge conversion factor by 101/30 and dividing by 12.1 units.

Example 2: The medically-directed rate for hospital-employed medically-directed CRNAs for Connecticut based on State responses is $10.19. The derived nonmedically-directed rate for Connecticut is $17.22 ($10.19×1.69).

Alaska, the District of Columbia, and Vermont had a low response rate for each type of practitioner. We decided to establish a conversion factor for each of these by using the regional rate. The regions are based on the regional designations used in the hospital prospective payment system.

To ensure budget neutrality, we are, as described in the proposed rule, calculating a blended medically-directed rate. The blended rate is composed of the hospital-employed medically-directed rate that is assigned a weight of 58 percent and the physician-employed medically-directed that is assigned a weight of 42 percent. The methodology to calculate the physician-employed medically-directed rate remains unchanged from the proposed rate. The physician-employed medically-directed rate is calculated as follows:

(CF×101/30) divided by (12.1)

CF = State-specific participating physician prevailing charge conversion factor. In cases in which the State is not a single locality, a State-specific participating physician prevailing charge conversion factor was computed by weighing the locality participating physician prevailing charge conversion factor by the weight of locality-allowed anesthesia charges.

As noted in the proposed regulations, the average anesthesia procedure involving a physician-employed medically-directed CRNA lasts 101 minutes and has an average unit value of 12.1 units. Prior to 1989, the payment methodology provided that two time units an hour approximated Part B payment for the physician-employed medically-directed CRNA.

Since there were two different participating physician prevailing charge conversion factors in effect during 1989, there are two different State level medically-directed CRNA rates in 1989. One rate applies to CRNA services furnished on or after January 1, 1989 but before March 1, 1989. The other rate applies to medically-directed CRNA services furnished on or after March 1, 1989, but before January 1, 1990.

Since the blending process is not used to calculate the nonmedically-directed rate, there is only one nonmedically-directed rate applicable during 1989.

We have illustrated below the calculation of both the medically-directed and nonmedically-directed rates for Alabama for 1989 (See Tables 1 and 2). The medically-directed rate is calculated for services furnished on or after March 1, 1989.

Tables 1 and 2 each include an example for Alabama that explains the computation of the final March 1, 1989 blended medically-directed rate and the final 1989 nonmedically-directed rate for CRNA services. Table 3, column 1 provides the State-specific medically-directed rates effective for services furnished on or after January 1, 1989 and prior to March 1, 1989. Table 3, column 2 provides the State-specific medically-directed rates effective for services furnished on or after March 1, 1989. Table 3, column 3 provides the State-specific nonmedically-directed rates effective for services furnished in 1989. The carriers will determine adjustments based on the differences between the final rates and the proposed rates published in the January 26, 1989 proposed rule.

In general, the final medically-directed CRNA rates have increased on average by 7 percent from the proposed rates; the nonmedically directed CRNA rates have increased on average by 30

percent from the proposed rates. The fact that these rates have increased does not mean these rates are not budget neutral as required by law. The differences between the final and proposed rates are due to more current and reliable data on CRNA salaries/incomes and caseloads.

Table 1

Hospital Employed Medically-Directed Rate	
Total salaries based on 100 responses from full-time or part-time medically directed CRNAs in Alabama	$5,116,448
Total anesthetics administered by the 100 respondents in Alabama	59,583
Average salary cost per case	$85.87
Average number of base and time units per case involving CRNAs (units/care)	11.6
1987 conversion factor ($85.87/11.6)	$7.40
Adjustments for fringe benefits and overhead (7.40×1.32)	$9.77
Update adjustment ($9.77×1.18)	$11.53
Malpractice rate adjustment (Alabama)	$.77
1989 Hospital employed medically directed CRNA rate	$12.30
Physician Employed Medically-Directed Rate	
Average time per medically-directed case (minutes)	101
Average time and base units per Medicare case (units)	12.1
1989 weighted average prevailing charge conversion factor for participating anesthesiologists in Alabama	$16.10
March 1 conversion factor for medically-directed physician employed CRNAs ($16.10×101/30)/12.1)	$4.48
Blended Medically-Directed CRNA Rate	
National hospital-employed CRNA percentage (percent)	58
National physician-employed CRNA percentage (percent)	42
Hospital-employed medically-directed CRNA rate for Alabama	$12.30
Physician-employed medically-directed CRNA rate for Alabama	$4.48
Blended rate for Alabama (.58×$12.30)+(.42×$4.48)	$9.02

Table 2

Nonmedically-Directed CRNA Rate	
Total salaries/incomes based on 37 responses from full-time or parttime nonmedically-directed CRNAs in Alabama	$2,531,624
Total anesthetics administered by the 37 respondents in Alabama	21,067
Average salary cost per case	$120.06
1987 conversion factor ($120.06/10.9)	$11.01
Adjustments for fringe benefits and overhead ($11.01×1.32)	$14.54
Update adjustment ($14.54×1.18)	$17.16
Malpractice adjustment (Alabama)	$.86
1989 nonmedically-directed rate for Alabama	$18.02

TABLE 3

State	Jan. 1, 1989 [1]	Mar. 1, 1989 [1]	1989 [2]
Alabama	8.64	9.02	18.02
Alaska	9.51	9.58	19.94
Arizona	9.45	10.09	21.13
Arkansas	7.67	7.93	17.40
California	9.92	9.97	21.00
Colorado	7.43	7.70	18.81
Connecticut	8.05	8.05	17.22
Delaware	7.56	7.61	16.90
DC	8.27	8.33	15.43
Florida	9.61	9.70	16.25
Georgia	9.15	9.24	16.34
Hawaii	10.40	10.76	18.80
Idaho	9.43	9.45	22.10
Illinois	9.16	9.22	15.87
Indiana	6.87	7.27	14.83
Iowa	8.25	8.65	18.51
Kansas	9.48	9.61	18.88
Kentucky	8.84	8.93	14.20
Louisiana	8.60	9.01	16.69
Maine	6.93	7.03	15.24
Maryland	7.12	7.16	14.31
Massachusetts	7.79	7.78	16.71
Michigan	8.15	9.48	16.80
Minnesota	7.72	7.81	17.07
Mississippi	(3)	8.24	16.40
Missouri	9.08	9.53	18.62
Montana	9.02	9.53	19.01
Nebraska	8.60	8.59	16.50
Nevada	11.39	12.27	24.53
New Hampshire	7.76	7.76	18.05
New Jersey	8.35	8.37	17.25
New Mexico	8.17	8.55	23.43
New York	9.37	9.49	14.48
North Carolina	7.80	7.67	13.84
North Dakota	8.27	8.27	21.07
Ohio	9.51	9.74	17.24
Oklahoma	7.72	8.13	17.79
Oregon	6.51	6.55	18.21
Pennsylvania	7.25	7.32	10.51
Rhode Island	7.15	7.11	16.12
South Carolina	8.04	8.06	14.67
South Dakota	9.22	9.66	18.64
Tennessee	8.36	8.62	18.35
Texas	9.06	9.29	21.19
Utah	9.62	9.99	21.17
Virginia	6.95	7.22	16.86
Vermont	7.76	7.76	16.78
Washington	8.91	8.93	19.18
West Virginia	7.06	7.30	14.89
Wisconsin	8.72	8.87	16.86
Wyoming	10.95	11.17	26.56

[1] Medically directed rate.
[2] Nonmedically directed rate.
[3] To be computed by carrier.

VII. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under this final rule, aggregate payments plus coinsurance to hospitals, physicians, ASCs, and CRNAs for CRNA services are budget neutral with respect to previous program payments. However, this rule contains a provision that eliminates payment for medical direction services furnished by surgeons. This is an administrative initiative and was not part of the CRNA fee schedule legislation. This initiative provides benefit savings of $20 million for FY 1991, and $25 million for each of FYs 1992, 1993, 1994, and 1995.

Based on this projection, and the reasons discussed above, we do not expect any economic impact to result from this rule that will meet any of the E.O. 12291 criteria. We have, therefore, not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider individuals or States to be small entities. We do consider hospitals, physicians, ambulatory surgical centers, and CRNAs (all of which could be affected by this final rule) to be small entities. Because of the large number of small entities that could potentially be affected and the significance of these provisions on hospitals, physicians and CRNAs, we are preparing a regulatory flexibility analysis for this rule.

1. Impact on Hospitals

We expect that hospitals that employ CRNAs whose services are medically-directed by anesthesiologists will experience an average 21 percent reduction in payments for CRNA services than would have been made but for this rule. This reduction is due to blending of the rates for medically-directed CRNAs employed by hospitals and rates for medically-directed CRNAs employed by physicians. The rates for hospital-employed CRNAs were generally higher; therefore the blending of the two rates will result in a reduced rate for the hospitals.

Some hospitals may continue to bill for services of CRNAs and experience this loss. Other hospitals may transfer the risk in payment reductions associated with the CRNA fee schedule to CRNAs by reducing CRNA salaries. Still other hospitals may stop employing CRNAs, which will allow the CRNAs to bill directly. We anticipate that the amount by which a hospital is able to reduce its payment to CRNAs for services, the hospital's Medicare patient volume, and the degree to which the hospital wishes to exercise control over CRNAs will be among the factors that will determine whether hospitals continue to employ CRNAs and bill for CRNA services.

Approximately 500, or 25 percent of rural hospitals claiming costs for CRNA services, qualified for reasonable cost payments in calendar year 1989. Section 6132 of Public Law 101–239 amended section 9320(k) of Public Law 99–509 to raise the yearly threshold from 250 to 500 for the number of surgical procedures requiring anesthesia that would be performed in a rural hospital before the hospital would have to give up payment on a reasonable cost basis for CRNA services. This provision is effective for anesthesia services furnished on or after January 1, 1989. We estimate that approximately 1,000 rural hospitals will now qualify for reasonable cost payments under this provision in calendar year 1990, resulting in payments to more rural hospitals for CRNA services.

2. Impact on Physicians

a. *Anesthesiologists.* Because of the way the blended medically-directed CRNA rate has been computed in this final rule, the Medicare program will pay higher amounts for physician-employed medically-directed CRNAs than was previously paid for these services on a reasonable charge basis. This increase in payment is a result of the physician-employed charges being blended with costs for hospital employed CRNAs.

In addition, in this final rule, we recognize medical direction only if an anesthesiologist medically directs concurrent anesthesia procedures. If an anesthesiologist and a CRNA are involved in a single anesthesia procedure, we consider the service to be performed by the anesthesiologist. We will recognize payment for the CRNA service only if documentation is submitted showing it is medically necessary for both individuals to be personally involved in the performance of the anesthesia procedure. If documentation is furnished and the carrier determines that the CRNA service is medically necessary, the carrier pays the physician anesthesia service at the personally performed physician payment rate and the CRNA service at the medically directed rate.

b. *Surgeons.* In the proposed rule, as well as this final rule, we provided for the elimination of medical direction payments for surgeons who perform surgery and also supervise the services of a CRNA. We believe the payment of a separate charge for medical-directed anesthesia services is not currently a widespread practice. This final rule will bring national consistency to the policy of denying such claims. We estimate the benefit savings associated with this policy to be $20 million for each of FYs 1992, 1993, 1994, and 1995. Effective on or after January 1, 1989, however, to the extent a surgeon employs or contracts with a CRNA, the surgeon is entitled to receive the CRNA fee schedule payment for services the CRNA furnishes.

3. Impact on CRNAs

The potential effects of the 21 percent reduction on the hospital-employed CRNAs is discussed in section B.1. of this impact statement.

The revisions to the time unit policy, required by section 6106 of Public Law 101–239, are effective for anesthesiologist services furnished on or after April 1, 1990. Since § 414.450(c)(2) requires that services of anesthetists be paid on a basis similar to that used for anesthesiologists, for CRNA services furnished on or after April 1, 1990, we recognize only the actual time of the fractional time interval. Before April 1, 1990, a fractional time unit was considered a full unit. (This time unit policy revision is explained in section V.D. of the preamble.) Since the payment for fractional time units is a small part of total payments, we believe there will be a minimal reduction in payment amounts as a result of not rounding the time interval upward.

4. Impact on ASCs

Prior to January 1, 1989, services furnished by CRNAs employed by ASCs were paid as part of the ASC facility rate. As required by section 9320 of Public Law 99–509, as amended by section 4084 of Public Law 100–203, this final rule allows an ASC to be paid under the CRNA fee schedule for CRNAs that are employed by or under contract to the ASC. The allowance of a separate payment for CRNA services may encourage more ASCs to employ or contract with CRNAs.

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The provisions of this final rule will benefit some rural hospitals, including small rural hospitals, by allowing more rural hospitals to continue to employ CRNAs and be paid on a reasonable cost related basis if the hospital meets other requirements and selects this option. This final rule reflects current policy and procedures and serves to codify in regulations sections of Public Law 101–239 that have already been implemented by instructions. Therefore, we are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VIII. Other Required Information

Paperwork Reduction Act

This final rule contains no information collection requirements; therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Fee Schedules for Services of Certified Registered Nurse Anesthetists.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. The authority citation for subpart D continues to read as follows:

Authority: Secs. 1102, 1871 and 1887, of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395xx).

B. In § 405.480, the introductory text in paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 405.480 Payment for services of physicians to providers: General rules.

(a) *Allowable Costs.* Except as specified otherwise in § 413.102 of this chapter, § 405.485, or § 405.486, costs a provider incurs for services of physicians are allowable only if the following conditions are met:

* * * * *

(2) The services include a surgeon's supervision of services of a qualified anesthetist, but do not include physician availability services, except for reasonable availability services furnished for emergency rooms;

* * * * *

C. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842(b) and (h), 1848, 1861(b), (v), and (aa), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395m(b), 1395u(b) and (h), (1395w-4, 1395x(b), (v), and (aa), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

D. The heading of subpart E is revised to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians

E. In § 405.501, paragraph (a) is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 405.501 Determination of reasonable charges.

(a) Except as specified in paragraphs (b), (c), and (d) of this section, Medicare pays no more for Part B medical and other health services than the "reasonable charge" for such service. The reasonable charge is determined by the carriers (subject to any deductible and coinsurance amounts as specified in §§ 410.152 and 410.160 of this chapter).

* * * * *

(d) For services furnished on or after January 1, 1989 and before January 1, 1991, by a certified registered nurse anesthetist or an anesthesiologist's assistant, payment is made after the Part B deductible is met based on 80 percent of the least of the—

(1) Actual charge;

(2) Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or

(3) Fee schedule amount, as described in §§ 414.451 and 414.452.

* * * * *

II. Part 410 is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s) and (cc), 1861(aa), 1871 and 1881 of the 7, Social Security Act (42 U.S.C. 1302, 1395k, 13951, 1395m, 1395n, 1395x(r), (s) and (cc), 1395x(aa) 1395hh, and 1395rr).

B. In § 410.10, the introductory text is republished, and a new paragraph (t) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

* * * * *

(t) Services of a certified registered nurse anesthetist or an anesthesiologist's assistant.

* * * * *

C. In § 410.12, the introductory text of paragraph (a) and paragraph (a)(2) are revised to read as follows:

§ 410.12 Medical and other health services: Basic conditions and limitations.

(a) *Basic conditions.* The medical and other health services specified in § 410.10 are covered by Medicare Part B only if they are not excluded under subpart A of part 411 of this chapter, and if they meet the following conditions:

* * * * *

(2) *By whom the services must be furnished.* The services must be furnished by a facility or other entity as specified in §§ 410.14 through 410.69.

* * * * *

D. A new § 410.69 is added to read as follows:

§ 410.69 Services of a certified registered nurse anesthetist or an anesthesiologist's assistant: Basic rule and definitions.

(a) *Basic rule.* Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist or an anesthesiologist's assistant who is legally authorized to perform the services by the State in which the services are furnished.

(b) *Definitions.* For purposes of this part—

Anesthesiologist's assistant means a person who—

(1) Works under the direction of an anesthesiologist;

(2) Is in compliance with all applicable requirements of State law, including any licensure requirements the State imposes on nonphysician anesthetists; and

(3) Is a graduate of a medical school-based anesthesiologist's assistant educational program that—

(A) Is accredited by the Committee on Allied Health Education and Accreditation; and

(B) Includes approximately two years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

Anesthetist includes both an anesthesiologist's assistant and a certified registered nurse anesthetist.

Certified registered nurse anesthetist means a registered nurse who:

(1) Is licensed as a registered professional nurse by the State in which the nurse practices;

(2) Meets any licensure requirements the State imposes with respect to nonphysician anesthetists;

(3) Has graduated from a nurse anesthesia educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Programs, or such other accreditation organization as may be designated by the Secretary; and

(4) Meets the following criteria:

(i) Has passed a certification examination of the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, or any other certification organization that may be designated by the Secretary; or

(ii) Is a graduate of a program described in paragraph (3) of this definition and within 24 months after that graduation meets the requirements of paragraph (4)(i) of this definition.

III. Part 411 is amended as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1395x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

B. In § 411.15, the introductory text and paragraph (m)(1) are republished and paragraph (m)(2) is revised to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(m) Services to hospital inpatients—

(1) *Basic rule.* Except as provided in paragraph (m)(2) of this section, any service furnished to an inpatient of a hospital by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the hospital's inpatients.

(2) *Exception.* Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis, and services of an anesthetist as defined in § 410.69 of this chapter are not excluded.

IV. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

B. In § 412.1, paragraph (a) is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists' services, as described in § 412.113(c)) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

C. In § 412.2, the introductory text of paragraph (d) is republished and paragraph (d)(5) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

* * * * *

(5) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

D. In § 412.71, the introductory text of paragraph (b) is republished and paragraph (b)(8) is revised to read as follows:

§ 412.71 Determination of base year costs.

* * * * *

(b) *Modifications to base-year costs.* Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base-year inpatient operating costs, as necessary, to include malpractice insurance costs as described in § 413.55 of this chapter, and exclude the following:

* * * * *

(8) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

E. In § 412.113, paragraph (c) is revised to read as follows:

§ 412.113 Other payments.

* * * * *

(c) *Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements.* (1) For cost reporting periods beginning on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989, payment is determined on a reasonable cost basis for anesthesia services provided in the hospital by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiologist's assistants) employed by the hospital or obtained under arrangements.

(2)(i) For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989, through any part of a cost reporting period occurring before January 1, 1990, payment is determined on a reasonable cost basis for anesthesia services provided in a hospital by qualified nonphysician anesthetists employed by the hospital or obtained under arrangement, if the hospital demonstrates to its intermediary prior to April 1, 1989 that it meets the following criteria:

(A) The hospital is located in a rural area as defined in § 412.62(f) and is not deemed to be located in an urban area under the provisions of § 412.64(b)(3).

(B) The hospital must have employed or contracted with a qualified nonphysician anesthetist, as defined in § 410.66 of this chapter, as of January 1, 1988 to perform anesthesia services in that hospital. The hospital may employ or contract with more than one anesthetist; however, the total number of hours of service furnished by the anesthetists may not exceed 2,080 hours per year.

(C) The hospital must provide data for its entire patient population to demonstrate that, during calendar year 1987, its volume of surgical procedures

(inpatient and outpatient) requiring anesthesia services did not exceed 250 procedures. For purposes of this section, a "surgical procedure requiring anesthesia services" means a surgical procedure in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

(D) Each qualified nonphysician anesthetist employed by or under contract with the hospital has agreed in writing not to bill on a reasonable charge basis for his or her patient care in that hospital.

(ii) To maintain its eligibility for reasonable cost payment under paragraph (c)(2)(i) of this section in calendar years after 1989, a qualified hospital must demonstrate prior to January 1 of each respective year that for the prior year its volume of surgical procedures requiring anesthesia service did not exceed 500 procedures.

(iii) A hospital that did not qualify for reasonable cost payment for nonphysician anesthetist services furnished in calendar year 1989 can qualify for reasonable cost payment in subsequent calendar years, if it meets the criteria in § 412.113(c)(2)(i) (A), (B) and (D) above, and demonstrates to its intermediary prior to the start of the calendar year that it met these criteria. The hospital must provide data for its entire patient population to demonstrate that, during calendar year 1987 and the year immediately preceding its election of reasonable cost payment, its volume of surgical procedures (inpatient and outpatient) requiring anesthesia services did not exceed 500 procedures.

(iv) For administrative purposes for the calendar years after 1990, the volume of surgical procedures for the immediately preceding year is the sum of the surgical procedures for the nine month period ending September 30, annualized for the twelve month period.

* * * * *

V. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100-360 as amended by sec. 608(d)(3) of Pub. L 100-485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 100-234 (42 U.S.C. 1395ww (note)).

B. In § 413.1, paragraph (b) is amended by changing the reference in the first sentence from "paragraphs (c) through (e)" to "paragraphs (c) through (f)" and by adding a new paragraph (f) to read as follows:

§ 413.1 Introduction.

* * * * *

(f) *Services of qualified nonphysician anesthetists.* For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989, costs incurred for the services of qualified nonphysician anesthetists are not paid on a reasonable cost basis unless the provisions of § 412.113(c)(2) of this chapter apply. These services are paid under the special rules set forth in § 405.553 of this chapter.

C. In § 413.80, paragraph (a) is revised and a new paragraph (h) is added to read as follows:

§ 413.80 Bad debts, charity, and courtesy allowances.

(a) *Principle.* Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost; however, except for anesthetists' services described under paragraph (h) of this section, bad debts attributable to the deductibles and coinsurance amounts are reimbursable under the program.

* * * * *

(h) *Exception.* Bad debts arising from services for anesthetists paid under a fee schedule, as described in § 414.450 of this chapter, are not reimbursable under the program.

VI. Part 414 is amended to read as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1833(a), 1834(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395m(a), 1395hh, and 1395rr).

2. A new subpart H, consisting of §§ 414.450 through 414.453 is added to read as follows:

Subpart H—Payment for the Services of Anesthetists

Sec.

414.450 Payment for anesthetist services.
414.451 Basic methodology for calculating anesthetist fee schedules.
414.452 Updating and adjusting the anesthetist fee schedules.
414.453 Recipients of fee schedule payments.

Subpart H—Payment for the Services of Anesthetists

§ 414.450 Payment for Anesthetist Services.

(a) *Purpose.* This subpart implements section 1833(l) of the Act by specifying how payment is determined for the services of anesthetists furnished on or after January 1, 1989 and before January 1, 1991.

(b) *General rules.* For services furnished on or after January 1, 1989 and before January 1, 1991, the amount of payment for anesthetist services after the Part B deductible has been met is determined to be 80 percent of the least of the—

(1) Actual charge;

(2) Prevailing charge that would be recognized if the service had been performed by an anesthesiologist; or

(3) Fee schedule amount, which is the product of the applicable conversion factor, as described in paragraphs (b) through (d) of § 414.451, and the sum of the base and time units per case.

(c) *Medical direction and medical supervision.* If the physician medically directs two, three, or four anesthesia procedures involving anesthetists or medically supervises more than four concurrent anesthesia procedures involving anesthetists, the services of those anesthetists may be paid under the fee schedule. If a physician medically supervises more than four concurrent procedures involving anesthetists, the medically-directed conversion factor is used to determine payment.

(d) *Involvement of an anesthesiologist and an anesthetist in a single procedure.* If an anesthesiologist and an anesthetist are involved in a single procedure, the procedure is deemed to be furnished by the anesthesiologist. Payment may be made for the anesthetist service only if documentation is submitted to and approved by the carrier showing it is medically necessary for the anesthetist to be involved in the procedure.

(e) *Time intervals.* (1) For anesthesia services furnished by an anesthetist on or after January 1, 1989 and before April 1, 1990, no more than one time unit for each 15 minute interval or fraction thereof is recognized.

(2) For anesthesia services furnished by an anesthetist on or after April 1, 1990, the actual time associated with a fractional time interval is recognized.

§ 414.451 Basic methodology for calculating anesthetist fee schedules.

(a) *Fee schedules.* HCFA establishes separate State-level fee schedules for—

(1) Anesthetists whose services are medically-directed; and

(2) Anesthetists whose services are not medically-directed.

(b) *Calculation of conversion factors for anesthetists who are medically directed.*—(1) *Hospital-employed anesthetists.* State-specific conversion factors for medically-directed hospital-employed anesthetists are computed from the 1987 American Association of Nurse Anesthetists annual membership survey, as follows:

(i) An average cost per case is computed by dividing the total reported State salaries of full and part-time medically-directed hospital-employed anesthetists by the total reported anesthetics administered by the anesthetists.

(ii) A base conversion factor is computed by dividing the average cost per case by the estimated national average of base and time units for an anesthesia case involving a hospital-employed medically-directed anesthetist.

(iii) The conversion factor is adjusted to reflect an allowance that approximates fringe benefits and allowable hospital overhead associated with anesthetists' services.

(iv) The 1987 conversion factor is updated by an inflation factor through 1989.

(v) The conversion factor is increased to include a State specific amount for malpractice expense. The resultant amounts are considered to be State-specific conversion factors for medically-directed hospital-employed anesthetists.

(2) *Physician-employed anesthetists.* State-specific conversion factors for medically-directed physician-employed anesthetists are computed as follows:

(i) The 1989 Statewide locality prevailing charge conversion factor for anesthesia services of participating physicians, as adjusted by the MEI, is multiplied by the average time per anesthesia case involving a medically directed physician-employed anesthetist, and divided by 30 minutes. (If there are multiple localities within a State, or more than one carrier serves a State, a single, Statewide weighted average participating physician prevailing charge is applied.)

(ii) The resulting amount is divided by the average number of base and time units per anesthesia case involving a physician who medically directs and employs the CRNA.

(3) *Calculation of medically-directed conversion factors.* The applicable State-specific conversion factors for anesthetists who are medically directed are based on a blend of 58 percent of the hospital-employed conversion factor and 42 percent of the physician-employed conversion factor calculated under paragraphs (b)(1) and (b)(2) of this section, respectively.

(c) *Calculation of conversion factors for anesthetists who are not medically directed.* The State-specific conversion factors for anesthetists who are not medically directed are computed under the procedures in paragraph (b)(1) of this section except that:

(1) The total reported State salaries of full and part-time nonmedically-directed anesthetists and the total reported anesthetics administered by these anesthetists are used to compute an average cost per case; and

(2) A base conversion factor is computed by dividing the average cost per case by the estimated national average number of base and time units for an anesthesia case involving a nonmedically-directed anesthetist.

(d) *Exceptions.*—(1) *Insufficient State-level data for one conversion factor.* If only one of the State-level conversion factors can be calculated, the other conversion factor is calculated based on that factor and on national statistics.

(2) *Insufficient State-level data for both medically-directed and nonmedically-directed conversion factors.* If neither the State-level medically-directed nor nonmedically-directed conversion factors can be calculated from State-specific data, regional data are used to calculate both conversion factors.

§ 414.452 Updating and adjusting the anesthetist fee schedule.

(a) *General rules for updating the fee schedule conversion factors.* (1) Except as provided in paragraph (a)(2) of this section, for services furnished in calendar years after 1989, the fee schedule conversion factors applicable to each year are the previous year's conversion factors updated by the percentage increase in the Medicare Economic Index for that year.

(2) The fee schedule conversion factors for anesthetist services furnished in calendar year 1990 are the fee schedule conversion factors that were applicable to anesthetists' services furnished on December 31, 1989.

(b) *Adjusting the fee schedules.* The fee schedules may be adjusted for services furnished on or after January 1, 1990 to reflect data that are more accurate than the data used to construct the initial fee schedules.

§ 414.453 Recipients of fee schedule payments.

Fee schedule payments are made to the anesthetist who furnishes the service, or to a hospital, physician, group practice or ambulatory surgical center with which the anesthetist has an employment or contractual arrangement that provides for these payments to be made.

VII. Part 416 is amended as follows:

PART 416—AMBULATORY SURGICAL SERVICES

A. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863, and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395z, and 1395aa).

B. Section 416.42 is amended by revising paragraph (b) to read as follows:

§ 416.42 Condition for coverage—surgical services.

* * * * *

(b) *Standard: Administration of anesthesia.* Anesthetics must be administered by only—

(1) A qualified anesthesiologist; or

(2) A physician qualified to administer anesthesia, a certified registered nurse anesthetist or an anesthesiologist's assistant as defined in § 410.68(b) of this chapter, or a supervised trainee in an approved educational program. In those cases in which a non-physician administers the anesthesia, the anesthetist must be under the supervision of the operating physician, and in the case of an anesthesiologist's assistant, under the supervision of an anesthesiologist.

* * * * *

C. In § 416.61, a new paragraph (a)(8) is added and paragraph (b) is amended by adding a new sentence to the end.

§ 416.61 Scope of facility services.

(a) * * *

(8) Supervision of the services of an anesthetist by the operating surgeon.

(b) * * * In addition, they do not include anesthetist services furnished on or after January 1, 1989.

VIII. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

A. The authority citation for part 482 is revised to read as follows:

Authority: Secs. 1102, 1136, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a)

of the Social Security Act (42 U.S.C. 1302, 1320b–6, 1338, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

B. In § 482.52, the introductory text of paragraph (a) is republished and paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 482.52 Condition of participation: Anesthesia services.

* * * * *

(a) Standard: Organization and staffing. The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered by only—

* * * * *

(4) A certified registered nurse anesthetist

(CRNA), as defined in § 410.69(b) of this chapter, who is under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed; or

(5) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter, who is under the supervision of an anesthesiologist who is immediately available if needed.

* * * * *

IX. Part 489 is amended as follows:

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

A. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

B. In § 489.20, the introductory text is republished and paragraph (d) is revised to read as follows:

§ 489.20 Basic commitments.

The provider agrees—

* * * * *

(d) In the case of a hospital that furnishes inpatient hospital services to a beneficiary, to either furnish directly or make arrangements for all items and services (other than physicians' services as described in § 405.550(b) of this chapter and services of an anesthetist, as defined in § 410.69 of this chapter) for which the beneficiary is entitled to have payment made under Medicare; and

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 93.773, Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: March 24, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 24, 1991.

Louis W. Sullivan,

Secretary.

Editorial Note: This document was received by the Office of the Federal Register on July 14, 1992.

[FR Doc. 92–16943 Filed 7–30–92; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 920526–2126]

Marine Mammals; Fur Seal Act Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This rule eliminates the option, currently available in the Fur Seal Act regulations, for the Secretary to extend the subsistence harvest of fur seals on the Pribilof Islands beyond August 8 each year. The option is being eliminated to provide protection for female fur seals, which begin arriving on the beaches of the Pribilof Islands after the first week in August. This rule also changes the earliest possible start date of the subsistence harvest from June 30 to June 23. This change is made at the request of the Pribilof Aleuts to provide an additional week of potential harvesting in the face of the removal of the extension option.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 at 301–713–2332.

SUPPLEMENTARY INFORMATION: The northern fur seal (*Callorhinus ursinus*) population is considered depleted under the Marine Mammal Protection Act (MMPA) (51 FR 47156, December 30, 1986). The subsistence harvest of northern fur seals on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the MMPA, 16 U.S.C. 1316 *et seq.* (at 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof Islands communities of St. Paul and St. George using humane harvesting methods. The subsistence harvest has been regulated to minimize negative effects on the population by limiting the harvest to a 40-day harvest season (June 30–August 8) and limiting the age and sex of seals to be harvested to sub-adult males. The August 8 deadline was chosen to avoid an unacceptable taking of female fur seals. In early August, immature female seals begin arriving at the rookeries in large numbers and the immature females and males, which are not easily distinguished, become intermixed.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator, is required to terminate the harvest when it is determined that the subsistence demands of the Pribilof Aleuts have been met, or on August 8 of each year, whichever comes first. However, the regulations also establish criteria for extending the harvest period if the subsistence needs of the Pribilof Aleuts have not been met. Section 215.32(f)(2) authorized the Assistant Administrator to extend the harvest period until September 30 if, by August 8, the subsistence needs of the Pribilof Aleuts were not fulfilled, and the number of female seals taken during the harvest is low. With regard to the latter requirement, two standards of unacceptable levels of female take trigger termination of any harvest extension:

(1) If the total number of female seals taken during the harvest exceeds one half of one percent of the total number of seals taken; and

(2) If, during the extension period, five female seals are taken within 7 consecutive days.

Background

Between 1985 and 1991, extensions to the harvest season were requested and granted in 1986 and 1987. Extension of the harvest beyond the first week of August has resulted in an increase in the number of female seals taken. The harvest was suspended following the first day of the extension each time an extension was granted because of the unacceptable number of female seals taken. In response to the level of females taken during each of the extended harvest periods, NMFS announced its intent to amend 50 CFR 215.32(f) to eliminate the extension option for 1989 and subsequent years (53 FR 28887, August 1, 1988), although no further action was taken by NMFS at that time.

Following the August 1, 1988, notice by NMFS, the Aleut Community of St. Paul Island requested a change in the Fur Seal Act regulations to allow the subsistence harvest to begin June 23, 1 week earlier than the June 30 start date dictated by 50 CFR 215.32(c)(1). They cited a desire for seal meat by community members before June 30, a lack of meat remaining from the previous year's take, and the possible inability to harvest their quota of seals in the absence of the harvest extension option.

On June 3, 1991, NMFS published a proposed rule to eliminate the extension option and to begin the harvest 1 week earlier (on June 23 instead of June 30) (56 FR 25066). Because only sub-adult males dominate the harvest areas at that time, and all other mandatory controls upon the harvest still apply, no adverse impact on the seal population as a result of starting the harvest 1 week earlier is anticipated by NMFS. Because of the apparent inability of harvesters to distinguish subadult males from females despite best efforts, and because of the increased probability and demonstrated risk of taking females after August 8, NMFS proposed to eliminate the harvest extension option (50 CFR 215.32(f)(2)) of the Assistant Administrator (56 FR 25066, June 3, 1991).

This final rule adopts all changes proposed on June 3, 1991 (at 56 FR 25066).

Response to Comments

Comments on the proposed rule were to be postmarked on or before July 18, 1991. NMFS received one set of comments on this proposed rulemaking. That commenter agreed with NMFS proposal to eliminate the harvest extension option, but disagreed with NMFS suggestion of allowing the harvest to begin 1 week earlier. The commenter pointed to NMFS' own statements in the **Federal Register** notice announcing the emergency final rule to regulate the subsistence fur seal harvest to support its argument against an earlier start date.

In the July 9, 1986, **Federal Register** notice, NMFS explained its decision to open the harvest no earlier than June 30 by stating that an earlier start date would: (1) Focus harvesting on the wrong age group, (2) disrupt research data collection, and (3) be more costly to monitor (51 FR 24836). At that time, NMFS also observed that very few harvestable seals are present in the haul-out areas prior to the end of June; therefore, an earlier start date would not significantly increase the availability of seal meat.

The commenter felt that the reasons now advanced by NMFS to justify the earlier start date (the Pribilof Aleuts desire for seal meat before June 30, the inability to harvest the number of seals needed during the limited season, and the lack of meat left from the previous years harvest) were inadequate. In response to NMFS reasoning, the commenter responded that the record reflects that the fur seal harvest frequently does not begin until the 2nd week of July, and, pointing to the 1991 harvest as an example, the restricted time frame of the harvest has not been an obstacle to obtaining enough seals.

NMFS acknowledges both of these comments. Although the harvest has not started until well into July on some occasions, it must be understood that the subsistence harvest on the Pribilofs is conducted entirely by experienced volunteers. Because of this, it can be difficult to coordinate harvest personnel, equipment and weather conditions precisely on June 30 every year. On several occasions the start of the seal harvest season has coincided with halibut season and various construction projects, both of which otherwise employed many of the experienced sealers, making them unavailable for certain periods of time. Establishing the start date for the seal harvest 1 week earlier would merely make additional time available to conduct the harvest, it would of course not guarantee that all other factors would cooperate to allow the harvest to actually begin on June 23.

It is true that an earlier harvest start date would generally allow the taking of older animals, but the seals present in the haul-out areas by mid-June (3-and 4-year-old males) are still within the harvestable category of sub-adult males. And, although it is also true that an earlier start date will not significantly increase the availability of seal meat to the Pribilovians, even the small amounts that could be obtained would provide an important source of fresh meat, especially since by June there is generally little meat left from the previous year's harvest.

In the July 9, 1986, notice (51 FR 24828), NMFS did state that beginning the harvest before June 30 would increase the costs of monitoring, especially given the potential for harvest extensions requiring NMFS personnel to be present on the island for longer periods of time and perhaps having to make return trips to the islands to accommodate the additional harvesting. However, with the removal of the harvest extension option, NMFS believes the costs should approximately balance.

NMFS also established the June 30 start date in 1986 after considering the effect earlier harvesting would have on some continuing harvest research data collection taking place on the islands. However, the data now collected from the harvested animals is different from that collected during the commercial harvest and, as a result, this is no longer a valid concern.

Classification

For reasons discussed in previous environmental impact statements (EIS), it is hereby determined that the approval and implementation of this rule will not significantly affect the human environment, and that preparation of an EIS on this action is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations.

The Under Secretary for Oceans and Atmosphere has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only impact will be on individual native Alaskan residents of the Pribilof Islands in the form of a revised schedule for the annual fur seal harvest. Therefore, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 50 CFR part 215 is amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for 50 CFR part 215 continues to read as follows:

Authority: 16 U.S.C. 1151–1175, 16 U.S.C. 1361–1384.

2. Section 215.32 is amended by removing paragraph (f)(2) and redesignating paragraph (f)(1) as paragraph (f), and by revising paragraph (c)(1) to read as follows:

§ 215.32 Restrictions on taking.

* * * * *

(c)(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

* * * * *

Dated: July 24, 1992.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 92–18083 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of sablefish for vessels using hook-and-line gear in the West Yakutat District of the Gulf of Alaska (GOA) and is requiring that catches of sablefish be treated in the same manner as prohibited species and discarded. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in the West Yakutat District has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 27, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat District was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 3,553 metric tons.

The Director of the Alaska Region, NMFS, has determined that the share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat District has been reached. Therefore, NMFS, in accordance with § 672.24(c)(3)(ii), is requiring that further catches of sablefish must be treated as a prohibited species by persons using that type of gear, effective from 12 noon, Alaska local time (A.l.t.), July 27, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 27, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18052 Filed 7–27–92; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Parts 672 and 675

[Docket No. 920402–2102]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule prohibiting federally permitted U.S. vessels from fishing in the international waters of the Central Bering Sea in an area called the "Donut Hole" and from retaining on board fish harvested from the Donut Hole as long as that vessel is in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). This rulemaking is necessary to reduce the further exploitation of the Aleutian Basin pollock stock (*Theragra chalcogramma*), which is found in both the Donut Hole and in the EEZ. The rulemaking will:

(1) Promote the goals and objectives of the North Pacific pollock stocks off Alaska; and

(2) Further U.S. efforts regarding the negotiations with Japan, Poland, China, Korea, and the Russian Republic to establish an international conservation regime on the living resources of the Central Bering Sea.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802, telephone 907–586–7221.

SUPPLEMENTARY INFORMATION: The domestic and foreign ground fish fisheries in the EEZ of the GOA and the BSAI are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plans (FMPs) for Groundfish of the GOA and the BSAI. These FMPs were prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. *et seq.*) and are implemented by regulations at 50 CFR parts 611, 620, 672 and 675.

Two measures are implemented by this final rule. First, §§ 672.4 and 675.4, which govern the issuance of Federal fishing permits, are amended by prohibiting fishing in the Donut Hole by a federally permitted fishing vessel. Second, §§ 672.7 and 675.7, which govern general prohibitions, are amended to prohibit the entry of a U.S. fishing vessel into the EEZ if that vessel has fished in, or has on board any fish harvested from, the Donut Hole.

U.S. fishermen, who displaced foreign fleets of those nations that had a traditional fishery presence in the EEZ off Alaska, now fully utilize the groundfish resources of the EEZ off Alaska. Foreign fishermen have redirected their fishing effort to other fishing grounds, specifically the Donut Hole, and likely other such waters. By the mid-1980's, catches in the Donut Hole were reported to exceed catches in both the U.S. EEZ or the economic zone (EZ) of Russia. (Table 1).

TABLE 1.—REPORTED POLLOCK CATCHES IN THE DONUT HOLE AND IN THE U.S. EEZ AND THE EZ OF RUSSIA

[1,000s metric tons (mt)]

Year	Donut Hole	U.S. EEZ	Russian Federation
1985	336	1,179	662
1986	1,061	1,189	871

TABLE 1.—REPORTED POLLOCK CATCHES IN THE DONUT HOLE AND IN THE U.S. EEZ AND THE EZ OF RUSSIA—Continued

[1,000s metric tons (mt)]

Year	Donut Hole	U.S. EEZ	Russian Federation
1987	1,325	1,253	812
1988	1,396	1,229	1,327
1989	1,399	1,386	1,119
1990	876	1,353	814

The Donut Hole encompasses deep waters of the Aleutian Basin. The Aleutian Basin extends south into that part of the U.S. EEZ known as the Bogoslof District, defined at 50 CFR 675.2 as statistical area 518. Commercial fisheries data and scientific investigations on comparison of age, size composition, size-at-age and genetic structure demonstrate that pollock found in the Donut Hole and the Bogoslof District are from the same Aleutian Basin stock.

The status of the Aleutian Basin pollock stock is depressed. Even though the abundance of this stock was estimated at about 5 million mt in 1987, it has declined to a low of about 0.5 million mt in 1990. The current low level of pollock abundance is consistent with catch per unit of effort (CPUE) information obtained from the commercial fishery, as well as from NMFS stock survey data.

The Secretary implemented specifications for acceptable biological catch and total allowable catch (TAC) amounts for pollock in the Bogoslof District for 1992 equal to 25,000 mt and 1,000 mt, respectively, at 57 FR 3952 February 3, 1992. The Secretary implemented these specifications as recommended by the Council at its December 1991 meeting in response to the decline in the Aleutian Basin pollock stock.

Notwithstanding this action in the U.S. EEZ to conserve the Aleutian Basin pollock stock, U.S. vessels will continue to over-exploit this stock by fishing in the Donut Hole. Because the Aleutian Basin pollock stock moves between the EEZ and the Donut Hole, fishing in both areas will expose this stock to greater fishing effort and result in overfishing. To protect the Aleutian Basin pollock stock from over-exploitation, the Council recommended that the Secretary prohibit federally permitted U.S. fishing vessels from (1) fishing in the Donut Hole and (2) possessing or retaining on board in the EEZ off Alaska, fish caught in the Donut Hole. Even though pollock comprise more than 90 percent of the total harvests in the Donut Hole, NMFS decided that to promote efficient enforcement, a federally permitted U.S. vessel should be prohibited from fishing in the Donut Hole.

On November 18, 1991, the Third Conference on the Central Bering Sea was held in Washington, DC. At that conference, delegations from the United States, the Russian Federation, the People's Republic of China, the Republic of Korea, Poland and Japan discussed measures relating to the conservation and management of living marine resources of the Central Bering Sea, and specifically the pollock resources. The United States indicated that it would take strict measures in 1992 to conserve the depressed Aleutian Basin pollock stock. The United States reiterated its strong support of a proposal made at the Second Conference by the Russian delegation that all countries agree to a moratorium on pollock fishing in the Central Bering Sea in 1992. At the Third Conference, Russia contended once again that a moratorium on further pollock fishing in the Donut Hole is urgently needed to conserve the Aleutian Basin pollock stock and indicated its readiness to reduce substantially Russian fishing effort on pollock in its EZ. Also noted at the Third Conference was the fact that continuation of the pollock fishery in the Central Bering Sea would lead to a further disastrous decline of the resource.

In keeping with the U.S. policy of a moratorium on Donut Hole fishing, NMFS is issuing this final rule. The delayed effective date is to provide time for a federally permitted U.S. vessel that has a 1992 groundfish permit for the EEZ off Alaska to surrender it to NMFS if that vessel will continue or if it plans to fish in the Donut Hole, or to carry or transship Donut Hole resources in the EEZ off Alaska. A fishing vessel that surrenders its Federal fisheries permit to NMFS after the effective date of these regulations in order to (1) continue fishing operations in the Donut Hole, (2) begin fishing operations in the Donut Hole or (3) carry or transship Donut Hole resources in the EEZ is prohibited from fishing in the groundfish fisheries off Alaska for the remainder of the 1992 fishing year. In the future, a U.S. vessel that has been issued a Federal groundfish permit under 50 CFR parts 672 and 675 will be prohibited from fishing in the Donut Hole for that year.

NMFS anticipates that U.S. vessels will fish for pollock in the Donut Hole in the 1992 fishing year following the closure of the directed pollock fishery in the EEZ when the A season TAC for pollock, provided for at 50 CFR 675.20(a)(ii), is reached. This closure occurred March 6, 1992. Such U.S. vessels will be subject to the provisions of this rule.

Classification

This action is exempt from the provisions of E.O. 12291 under section 1(a)(2) because these regulations are issued with respect to foreign affairs functions of the United States. This action is not subject to section 553 of the Administrative Procedure Act because it involves a foreign affairs function, and is, therefore, not subject to the provisions respecting a 30-day delay of its effective date.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this rule and concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see **FOR FURTHER INFORMATION CONTACT**).

NMFS has determined that implementation of this rule is not likely to affect listed species in a manner or to an extent not already considered in formal consultations on these fisheries completed on April 19, 1991, June 5, 1991, and September 20, 1991.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, a definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Donut Hole means the international waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States.

* * * * *

3. In § 672.4, paragraph (j) is added to read as follows:

§ 672.4 Permits.

* * * * *

(j) *Condition.* No person may use a U.S. vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole during the fishing year for which the permit has been issued.

4. In § 672.7, paragraphs (h) and (i) are added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) Fish in the Donut Hole with a U.S. vessel that has been issued a fishing permit under § 672.4 of this part during the fishing year for which the permit was issued.

(i) Possess or retain on board a federally permitted U.S. fishing vessel permitted under § 672.4 of this part within the Gulf of Alaska fish harvested from the Donut Hole.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, a definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Donut Hole means the international waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States.

* * * * *

7. In § 675.4, paragraph (j) is added to read as follows:

§ 675.4 Permits.

* * * * *

(j) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole during the fishing year for which the permit has been issued.

8. In § 675.7, paragraphs (i) and (j) are added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) Fish in the Donut Hole with a U.S. vessel that has been issued a Federal fishing permit under § 675.4 of this part during the fishing year for which the permit was issued.

(j) Possess or retain on board a federally permitted U.S. fishing vessel permitted under § 675.4 of this part within the Bering Sea and Aleutian Islands management area fish harvested from the Donut Hole.

Dated: July 23, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-17913 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure of directed fishing.

SUMMARY: NMFS is closing the directed fishery for pollock by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of pollock total allowable catch (TAC) for the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 28, 1992, until 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The current allowance of pollock TAC to the offshore component in the BS is 434,995 metric tons (mt) (57 FR 32925, July 24, 1992).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the pollock allowance available for harvest by the offshore component in the BS will soon be reached. Therefore, NMFS is establishing a directed fishing allowance of 415,000 mt, and is setting aside the remaining 19,995 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the BS by the offshore component effective from 12 noon, A.l.t., July 28, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18127 Filed 7-28-92; 12:28 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92-049-1]

Black Stem Rust; Addition of Rust-Resistant Varieties of Berberis Thunbergii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the black stem rust quarantine and regulations to add *Berberis gladwynesis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid *Bailsel*, *Berberis koreana* X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," and *Berberis thunbergii* "Monlers" to the list of rust-resistant *Berberis* species. This change would allow for the movement of these newly developed varieties without unnecessary restrictions.

We are also proposing to add *Berberis thunbergii* "Crimson Pygmy" to the list of rust-resistant *Berberis* species. After a review of the relevant literature, we have determined that *Berberis thunbergii* "Crimson Pygmy" is a synonym for *Berberis thunbergii atropurpurea nana*, which is already included on the list of rust-resistant species. The addition of *Berberis thunbergii* "Crimson Pygmy" to the list would allow that variety to be marketed under its preferred U.S. name.

DATES: Consideration will be given only to comments received on or before August 31, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782. Please state that your comments refer to Docket No. 92-049-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8365.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR 301.38 *et seq.* (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia, and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust; rust-susceptible plants do pose such a risk.

Section 301.38-2 of the regulations includes a listing of regulated articles, and indicates which species of the genera *Berberis*, *Mahoberberis*, and *Mahonia* are rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In this proposed rule, we are proposing to add *Berberis gladwynensis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid *Bailsel*, *Berberis koreana* X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," *Berberis thunbergii* "Crimson Pygmy," and *Berberis thunbergii* "Monlers" to the list of rust-resistant *Berberis* species in § 301.38-2(b).

The proposed addition of *Berberis gladwynensis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid *Bailsel*, *Berberis koreana* X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," and *Berberis thunbergii* "Monlers" to the list of rust-resistant *Berberis* species is based on recent rust-resistant testing conducted by the Agricultural Research Service on the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-60 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result, before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants, *e.g.*, 6 plants tested twice or 3 plants tested 4 times. The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and being determined by USDA to be rust-resistant.

The proposed addition of *Berberis thunbergii* "Crimson Pygmy" to the list of rust-resistant *berberis* species is based on a review of the relevant literature. As a result of that review, we have determined that *Berberis*

...

thunbergii "Crimson Pygmy" is a synonym for *Berberis thunbergii atropurpurea nana*. Because the variety *atropurpurea nana* is already included on the list of rust-resistant *Berberis* species (and cultivars) in § 301.38–2(b), and because there is no question that "Crimson Pygmy" is a legitimate synonym for *atropurpurea nana*, *Berberis thunbergii* "Crimson Pygmy" can be added to the list of rust-resistant *Berberis* species without any additional testing by the Cereal Rust Laboratory.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would allow the interstate movement of *Berberis gladwynensis* "William Penn," *Berberis koreana* X *Berberis thunbergii* hybrid Bailsel, Berberis koreana X *Berberis thunbergii* hybrid *Tara*, *Berberis thunbergii atropurpurea* "Intermedia," *Berberis thunbergii* "Crimson Pygmy," and *Berberis thunbergii* "Monlers" into and through States or parts of States designated as protected areas. We have determined that this proposed change in the regulations would affect two commercial nurseries that might propagate the new species and numerous retail sales nurseries that might purchase and resell the varieties. The proposed change would enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas. It is unlikely that the addition of these varieties to the list of rust-resistant *Berberis* species would have any effect on prices, investment, productivity, or our international competitive position. It is possible that this change would positively affect innovation by allowing nurseries that develop new rust-resistant *Berberis* varieties the opportunity to market those varieties in protected areas. It is also possible that the proposed change would have some positive effect on nurseries that are small businesses by providing an opportunity for increased sales of rust-resistant *Berberis* species in protected areas. We cannot predict the exact number of nurseries that might be affected by the proposed change, nor can we predict the level of demand for these new species or the impact on nurseries producing or selling them. It is likely, however, that any effects would be positive as a result of additional plant sales.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmentl consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.38–2, paragraph (b) would be amended by adding, in alphabetical order, the following rust-resistant *Berberis* species:

§ 301.38–2 Regulated articles.

* * * * *

B. gladwynensis "William Penn".

* * * * *

B. koreana X *B. thunbergii* hybrid *Bailsel*.

B.Koreana X *B. thunbergii* hybrid *Tara*.

* * * * *

B. thunbergii atropurpurea "Intermedia".

* * * * *

B. thunbergii "Crimson Pygmy".

* * * * *

B. thunbergii "Monlers".

* * * * *

Done in Washington, DC, this 28th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–18167 Filed 7–30–92; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AAL–2]

Proposed Alteration and Establishment of VOR Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of VOR Federal airways located in the State of Alaska and to establish six new airways to replace the alternate airway segments in the descriptions of V–321, V–438, V–444, and V–506. The proposed actions is in support of the FAA agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway segments from the National Airspace System (NAS).

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 92–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC,

weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AAL-2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal airways located in the State of Alaska and to establish six new airways to replace the alternate airway segments in the descriptions of V-321, V-438, V-444, and V-506. The proposed action is in support of the FAA agreement with ICAO to eliminate all alternate airway segments from the NAS. The airspace designations for existing Federal airways listed in this document are published in § 71.125 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designations for these airways, and the airspace designations for the new airways proposed in this document, would be published subsequently in Section 71.125 of the Handbook, if this regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal Airways.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.125 Alaskan VOR Federal Airways

* * * * *

V-301 [New]

From Fairbanks, AK; INT Fairbanks 046°T (016°M) and Fort Yukon, AK, 198°T(186°M) radials; to Fort Yukon.

V-302 [New]

From Fairbanks, AK; INT Fairbanks 016°T (346°M) and Fort Yukon, AK, 228°T (198°M) radials; to Fort Yukon.

* * * * *

V-321 [Revised]

From Cape Newenham, AK, NDB via King Salmon, AK; to Homer, AK.

V-322 [New]

From Cape Newenham, AK, NDB; King Salmon, AK; INT King Salmon 087°T(066°M) and Homer, AK, 237°T(213°M) radials; to Homer.

* * * * *

V-438 [Revised]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL, 29 miles 55 MSL, 40 miles 12 AGL, via Homer, AK; INT Homer 027° and Anchorage, AK, 198° radials; Anchorage; Big Lake, AK; Fairbanks, AK; Fort Yukon, AK; 89 miles 12 AGL, 52 miles 95 MSL, 27 miles 75 MSL, 61 miles 12 AGL, Deadhorse, AK; to Barrow, AK.

V-439 [New]

From Kodiak, AK, 27 miles 12 AGL, 24 miles 35 MSL; INT Kodiak 358°T(335°M) and Homer, AK, 209°T(185°M) radials; 33 miles 55 MSL, 40 miles 12 AGL; to Homer.

* * * * *

V-444 [Revised]

From Barrow, AK, 117 miles 12 AGL, 102 miles 95 MSL, 69 miles 12 AGL, Evansville, AK, NDB; Bettles, AK; Fairbanks, AK; Big Delta, AK; Northway, AK; Burwash, YT, Canada.

V-445 [New]

From Bettles, AK; INT Bettles 155°T(128°M) and Fairbanks, AK, 307°T(279°M) radials; to Fairbanks.

* * * * *

V-506 [Revised]

From INT Kodiak, AK, 107° radial and the Anchorage Oceanic CTA/FIR boundary, 37 miles 20 MSL, 24 miles 12 AGL, via Kodiak; 50 miles 12 AGL, 50 miles 95 MSL, 51 miles 12 AGL, King Salmon, AK; 51 miles 12 AGL, 84

miles 70 MSL, 63 miles 12 AGL, Bethel, AK; Nome, AK; 35 miles 12 AGL, 71 miles 55 MSL, 53 miles 12 AGL, Kotzebue, AK; Hotham, AK, NDB; 69 miles 12 AGL, 124 miles 95 MSL, 98 miles 12 AGL, Barrow, AK.

V-507 [New]

From Nome, AK; 38 miles 12 AGL, 71 miles 55 MSL; INT Nome 009°T(352°M) and Kotzebue, AK, 222°T(202°M) radials; 56 miles 12 AGL; to Kotzebue.

* * * * *

Issued in Washington, DC, on July 23, 1992.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-18148 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASO-2]

Proposed Establishment of VOR Federal Airway V-373; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate VOR Federal Airway V-373 in the vicinity of Greensboro, NC. V-373 would be extended from Greensboro direct to Sand Hills, NC. Currently, there is no airway between those terminal areas, causing circuitous routing for operations between them. This action would improve flight planning and save fuel.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 92-ASO-2, Federal Aviation Administration, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-2." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate VOR Federal; Airway V-373 between Greensboro, NC, and Sand Hills, NC. Currently, there is no airway between those terminal areas, causing a circuitous routing for operations between them. This action would improve flight planning and save fuel. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal Airways.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-373 [New]

From Greensboro, NC, to Sand Hills, NC.

* * * * *

Issued in Washington, DC, on July 24, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-18149 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515-AA84

Proposed Customs Regulations Amendments Relating to the United States-Israel Free Trade Area Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend to Customs Regulations to implement the duty preference provisions of the Agreement which established the United States-Israel Free Trade Area.

DATES: Comments must be received on or before September 29, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Maritza Castro, Office of Trade Operations (202-566-2597); Legal Aspects: Craig Walker, Office of Regulations and Rulings (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations for the establishment of a U.S.-Israel free trade area which would eliminate tariffs and other trade-distorting practices between the two countries. Section 401 of the Trade and Tariff Act of 1984 (Public Law 98-573) amended section 102 of the Trade Act of 1974, 19 U.S.C. 2112, to authorize the President to enter into a bilateral trade agreement with Israel to establish a free trade area, subject to Congressional approval of implementing legislation. Section 402 of the 1984 Act, codified at 19 U.S.C. 2112 note, set forth specific country of origin and related criteria for any reduction or elimination of United States duties provided for in a trade agreement with Israel, and subsection (c) thereof directed the Secretary of the Treasury to prescribe such regulations a may be necessary to carry out the provisions of that section, after consultation with the United States Trade Representative.

Negotiations for the U.S.-Israel free trade area were concluded on February 26, 1985, and, on April 22, 1985, representatives of the U.S. and Israeli Governments signed the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter, "the Agreement"). Annex 1 of the Agreement sets forth the terms for immediate elimination or staged reduction of duties on products of Israel, with all products to become duty free on January 1, 1995. Annex 3 of the Agreement sets forth the rules of origin, including documentary requirements, which apply for purposes of free or reduced duty treatment under the Agreement.

On April 29, 1985, President Reagan sent a message to Congress transmitting the text of the Agreement, the text of a proposed United States-Israel Free Trade Area Implementation Act, and a proposed Statement of Administration Action to implement the Agreement; the President's message and the materials transmitted therewith were reprinted as House Document 99-61, 99th Congress, 1st Session. On June 11, 1985, the United States-Israel Free Trade Area Implementation Act of 1985, Public Law 99-47, was enacted. Sections 3 and 4 of this Act, codified at 19 U.S.C. 2112 note, approved the Agreement and Statement of Administrative Action as submitted to Congress and authorized the President to proclaim tariff modifications necessary to carry out the schedule of duty reductions with respect to Israel set forth in Annex 1 of the Agreement; section 5(b), also codified at 19 U.S.C. 2112 note, mandated the promulgation of regulations necessary or appropriate to carry out actions proposed in the Statement of Administrative Action in order to implement the Agreement. On August 30, 1985, President Reagan signed Proclamation 5365 which, *inter alia*, modified the tariff schedules to carry out the duty reductions under the Agreement, effective for articles entered, or withdrawn from warehouse for consumption, on and after September 1, 1985. The rules of origin and regulatory authority provisions, as contained in section 402 of the 1984 Act and as set forth in Annex I of the Proclamation are not set forth as General Note 3(c)(vi), Harmonized Tariff Schedule of the United States (HTSUS), and the specific duty treatment accorded to individual products under the Agreement is reflected throughout the HTSUS in the Special rate of duty subcolumn where the symbol "IL" appears in parentheses.

The U.S. Customs Service is responsible for the administration of laws and regulations regarding the entry of merchandise into the United States. Moreover, section III. B. of the Statement of Administrative Action submitted to Congress states that "Customs Service regulations will be amended to reflect the entry requirements for articles to be entered under the Agreement." Thus, the proposed regulations set forth in this document are directed specifically to those portions of the Agreement which concern the rules of origin and related provisions governing the duty-free or reduced-duty treatment of products imported from Israel. These rules do not confer origin or establish a criterion for determining origin of imported goods for any other purpose. For example, origin determinations for country or origin marking purposes under 19 U.S.C. 1304 are not affected.

The basic rules of origin set forth in Annex 3 of the Agreement (which are derived from section 402 of the Trade and Tariff Act of 1984, *supra*) are based on section 213(a) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2703(a)), which contains the origin rules governing duty-free treatment under the Caribbean Basin Initiative (CBI). Thus, in order to be eligible for reduced or duty-free treatment under the Agreement, an article imported from Israel must meet three basic requirements: (1) It must be imported directly from Israel into the customs territory of the U.S., (2) it must have its origin in Israel, *i.e.*, it either must be wholly the growth, product, or manufacture of Israel or must be a new or different article of commerce that has been grown, produced, or manufactured in Israel, and (3) it must have a minimum domestic content, *i.e.*, at least 35 percent of its appraised value must be attributed to the cost or value of materials produced in Israel plus the direct costs of processing operations performed in Israel. Annex 3 of the Agreement further parallels the origin rules in the CBI statute and implementing regulations (19 CFR 10.191-10.198) in that (1) the definitions or explanations of "imported directly", "wholly the growth, product, or manufacture", "cost or value of materials", and "direct costs of processing operations" are essentially the same as those under the CBI, (2) the cost or value of U.S.-produced materials may be counted toward the Israeli domestic content requirement to a maximum of 15 percent of the appraised value of the imported article, and (3) simple combining or packaging

operations or mere dilution with water or another substance will confer neither Israeli origin on an imported article nor Israeli or U.S. origin on a constituent material of an imported article.

Annex 3 of the Agreement sets forth documentary requirements to demonstrate compliance with the origin criteria, similar to the documentation used under the CBI and under the Generalized System of Preferences (GSP). Thus, the Agreement provides for submission of (1) a Certificate of Origin when the claim for duty-free or reduced-duty treatment is made and (2) a declaration setting forth the details (concerning the production or manufacture of the imported article) which were used to prepare the Certificate of Origin. Although the requirements for completion and submission of both documents are similar to those under the CBI and GSP, there are some differences which are discussed in the section-by-section discussion below.

In view of the similarity between the rules of origin under the Agreement and those under the CBI, the proposed regulations set forth in this document are based in significant part on the CBI regulations. However some variations have been made from the CBI approach, in some cases to reflect particular requirements under the Agreement and in other cases to simplify or otherwise improve on the layout of the CBI regulations. The proposed regulations are discussed in detail below.

Section-by-Section Discussion

Section 10.211 Scope

This section sets forth a general statement of the purpose of the regulations with reference to the Agreement and the implementing legislation relating thereto. The section is modeled on section 10.301 of the United States-Canada Free Trade Agreement (CFTA) implementing regulations (19 CFR 10.301). As in the case of the CFTA regulation, the last sentence is merely intended to clarify that the regulations apply only for duty preference purposes under the Agreement and not for purposes of country of origin determinations under other laws and regulations. Application of U.S. rules of origin will ordinarily result in a finding of a single country of origin for all purposes under U.S. customs law. However, as U.S. courts have ruled, there might be situations in which U.S. law compels different results under different country-of-origin provisions because of the language of the particular statutes being applied. Accordingly, the last sentence of this section reflects the ordinary operation of U.S. customs law.

Section 10.212 Definitions

This section sets forth definitions of terms that are used throughout the regulations under the Agreement.

Paragraph (a), which defines "Agreement", is self-explanatory.

Paragraph (b) is taken from Annex 3, paragraph 3, of the Agreement which was based on a similar provision in section 10.191(b)(3) of the CBI implementing regulations (19 CFR 10.191(b)(3)). Paragraph (b) is identical to the Agreement text except that reference is made to "Israel" rather than to a "Party" to reflect a U.S. import context.

Paragraph (c) reflects the standard definition of "entered" and is identical to the definition set forth in section 10.191(b)(4) of the CBI regulations (19 CFR 10.191(b)(4)).

Section 10.213 Eligibility Criteria in General

This section is modeled on the approach taken in section 10.302 of the CFTA implementing regulations (19 CFR 10.302) which makes a general reference to the requirements for preferential duty treatment with cross-references to the specific sections which set forth those requirements in detail. Customs believes that this general statement/cross-reference approach will facilitate the reader's overall understanding of the program and the requirements thereunder.

Section 10.214 Imported Directly

This section sets forth the "imported directly" requirement which is stated in Annex 3, paragraph 1(b), of the Agreement and which is defined in Annex 3, paragraph 8, of the Agreement. The Agreement provisions are based on section 10.193 of the CBI regulations (19 CFR 10.193).

The opening sentence of this section is similar to the opening statement in the CBI regulation. Although the expression "customs territory of the U.S." does not appear in the Agreement, it is used in the CBI regulation and must be included here because if appears in section 402 of the Trade and Tariff Act of 1984, *supra*, and in General Note 3(c)(vi)(B)(2), HTSUS.

Paragraphs (a)–(c) of this section incorporate the following minor editorial deviations from the language contained in Annex 3, paragraph 8, of the Agreement: (1) Use of "U.S." and "Israel", as appropriate, rather than "Party", (2) use of the past tense in some instances to reflect a U.S. import context, (3) addition of the words "while en route to the U.S." in paragraph (b) for the sake of clarity and to align on the corresponding CBI regulatory provision, and (4) replacement of the words "provided that" by "and" in paragraph (c)(2). In addition, paragraph (c) does not incorporate the fourth requirement of Annex 3, paragraph 8(c), of the Agreement (regarding compliance with the origin requirements under the Agreement). The Agreement provision was based on corresponding GSP and CBI regulatory provisions which were in effect when the Agreement was negotiated but which were subsequently deleted when the final CBI regulations were published (on the reasoning that the provision was redundant because goods must always meet the origin requirements in order to receive the duty preference under those program). Customs believes that this Agreement provision is equally unnecessary in the present context and thus should not be included in this section.

None of the variances from the Agreement text discussed above constitutes a substantive departure from the terms of the Agreement. Since the Agreement text was based on the CBI regulations, this proposed section will be interpreted in a manner which is consistent with interpretations of the CBI regulatory provisions.

Section 10.215 Country of Origin Criteria

This section sets forth the basic country of origin rules which apply under the Agreement. The Agreement rules were derived from the rules which apply under the CBI.

Paragraph (a) states the general rule that the article must be a product of Israel. Paragraph (a)(1), which refers to articles "wholly" the growth, product, or manufacture of Israel, is based on language in Annex 3, paragraph 1(a), of the Agreement. It is noted that the word "wholly" does not appear in the text of either section 402 of the 1984 Act or General Note 3(c)(vi)(B)(1), HTSUS. Customs believes that, as in the case of the CBI, the basic country of origin distinction must be between articles which are "wholly" the product of a country (in which case no change in country of origin has ever taken place) and articles which originated in one country and are later substantially transformed into a product of a second country. Paragraph (a)(2) states the substantial transformation rule and reflects language contained in Annex 3, paragraphs 1(a) and 4, of the Agreement. With the exception of the words "having a new name, character, or use", the language is identical to the wording in

the U.S. implementing legislation. The reference to a new name, character, or use is taken from Annex 3, paragraph 4, of the Agreement (which defines "country of origin" for purposes of the Agreement) and merely reflects the traditional test used to determine whether a new or different article has been created.

Paragraph (b) sets forth the simple combining or packaging or mere dilution exceptions contained in Annex 3, paragraph 2, of the Agreement and in the U.S. implementing legislation. The parenthetical express "as opposed to complex or meaningful" in paragraph (b)(1) is intended for clarification only and is based on an identical reference in section 10.195(a)(1) of the CBI regulations (19 CFR 10.195(a)(1)). In order to avoid unnecessary repetition, and in consideration of the fact that these exceptions were taken directly from the CBI origin rules, the last sentence of this paragraph simply makes a cross-reference to the CBI regulatory provision which explains the exceptions in detail.

Section 10.216 Value Content Requirement

This section sets forth the provisions which relate to the 35 percent value content requirement under the Agreement. In addition to a statement of the basic requirement, it contains provisions which are almost identical to sections 10.196 and 10.197 of the CBI regulations (19 CFR 10.196 and 10.197).

Paragraph (a) sets forth the basic requirement as contained in Annex 3, paragraph 1(c), of the Agreement and in the implementing legislation.

Paragraph (b) concerns the cost or value of materials countable toward the 35 percent requirement and is based on provisions contained in the Agreement, in the implementing legislation and in section 10.196 of the CBI regulations.

Paragraph (b)(1) defines "materials produced in Israel" in a manner similar to the approach in section 10.196(a) of the CBI regulations. Paragraph (b)(1)(ii) was specifically drafted to reflect (1) the application of the simple combining or packaging or mere dilution language to materials as provided in Annex 3, paragraph 2, of the Agreement and (2) the country of origin language which also applies to materials under Annex 3, paragraph 4, of the Agreement. The last sentence of paragraph (b)(1) cross-references to the useful examples contained in CBI section 10.196(a), and the words "except where the context otherwise requires" are intended to alert the reader to the fact that some aspects of those examples apply only in a CBI context.

Paragraph (b)(2) concerns the inclusion of U.S.-produced materials up to 15 percent of appraised value, as provided for in Annex 3, paragraph 5, of the Agreement and in the implementing legislation. The regulatory language is similar to CBI section 10.195(c), refers to materials produced "in the customs territory of the U.S." to align on the implementing legislation language, and provides that the origin rules applicable to Israeli materials also apply to such U.S. materials as stated in the Agreement.

Paragraph (b)(3) is taken directly from CBI section 10.196(b).

Paragraph (b)(4) sets forth the elements includable under the cost or value of materials as provided in Annex 3, paragraph 6, of the Agreement, which was based on section 10.196(c) of the CBI regulations. This paragraph refers to both Israeli and U.S. materials (to which the same rules must apply), and the last sentence reflects Agreement language taken directly from the last sentence of the CBI regulation.

Paragraph (c) sets forth provisions regarding direct costs of processing operations under the 35 percent requirement, as contained in Annex 3, paragraph 7, of the Agreement (essentially identical to section 10.197 of the CBI regulations, the format of which is followed here). Although the implementing legislation also covers this aspect of the Agreement, the Agreement text is followed here because it is more complete and is consistent with the legislative intent.

Paragraph (d), which states the presumption of compliance with the 35 percent requirement in the case of articles wholly produced in Israel, is based on section 10.195(d) of the CBI regulations.

Section 10.217 Procedures for Filing Duty Preference Claim and Submitting Supporting Documentation

This section is intended to cover all procedural requirements, including the submission of supporting documentation, under the Agreement. Customs believes that discussion of all procedural aspects, after the sections dealing with legal requirements, is an improvement over the organization found in the CBI regulations and will facilitate understanding and application of the regulations under the Agreement.

Paragraph (a), which concerns the procedure for filing a claim for a preference, is based on CBI section 10.192 but does not contain the first sentence of the CBI provision which Customs believes is redundant and thus unnecessary. The exception language at the beginning of the first sentence is intended to reflect the fact that those procedures do not apply in the case of an informal entry.

Paragraph (b), which sets forth documentary requirements under formal entry procedures, contains the Certificate of Origin and declaration requirements contained in Annex 3, paragraph 9, of the Agreement which was modeled on the requirements set forth in CBI section 10.198.

Paragraph (b)(1) discusses the Certificate of Origin and is based on CBI section 10.198(a)(1). It differs from the CBI provision principally (1) by making reference to a dual use (GSP/Agreement) Certificate to reflect the layout of the document reproduced as Attachment II to Annex 3 of the Agreement, and (2) by inclusion of the last two sentences which reflect the requirements for completing boxes 11 and 12 on the Certificate as adopted for use under the Agreement.

Paragraph (b)(2) concerns duplicate Certificates of Origin and is taken directly from CBI section 10.198(a)(3).

Paragraph (b)(3) concerns waiver of the Certificate of Origin, which is provided for in the Agreement. It combines CBI section 10.198(a)(4) with CBI section 10.198(a)(2) but without any reference to the bonding procedure contained in the latter CBI provision. The absence of a bonding provision is based on a policy decision taken by Customs, reflected in Customs Directive 3550–27 dated September 8, 1987, to reduce paperwork by requiring neither a bond for production of a missing document (such as the Certificate of Origin) nor actual submission of the missing document unless Customs specifically makes a request for it in writing. In order to be consistent with this Customs policy and with the Agreement which refers to only submission or waiver of the Certificate of Origin, this subparagraph states that, where the Certificate is not submitted with the entry summary, it is deemed to be waived unless Customs requests it in writing.

Paragraph (b)(4) concerns the supporting declaration and is based on CBI sections 10.198(c)(1) and (2). Although the Agreement does not specifically limit use of the declaration to cases involving articles not wholly the growth, product, or manufacture of Israel, Customs believes this limitation should apply for the same reason that it has applied under the CBI. Paragraph (b)(4)(i) essentially follows CBI section 10.198(c)(1) except that the wording of the declaration itself reflects the specific elements of information required under Annex 3, paragraph 9, of the Agreement

that are not required under the CBI (in particular, separate listings of materials wholly produced in Israel or the U.S. and of materials which retained third country origin). Paragraph (b)(4)(ii) is taken from CBI section 10.198(c)(2) without change.

Paragraph (c), which concerns informal entries, is based on CBI section 10.198(b) but also clarifies that fact that the procedures for filing claims in formal entry situations do not apply to informal entries.

Paragraph (d) concerns evidence of direct shipment and is based on CBI section 10.194. However, the last sentence of CBI section 10.194(a) has been omitted because it is covered by paragraph (e) discussed below.

Paragraph (e) concerns verification of documentation and is based on CBI section 10.198(d), but it refers to all documentation submitted under the section rather than only to evidence of country of origin.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12291

Because no notice of proposed rulemaking is required pursuant to 5 U.S.C. 552(a)(1), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 12291 do not apply. The economic impact of the United States-Israel Free Trade Area, which these proposed amendments would implement, flows from the Agreement and authorizing legislation with which these proposed amendments are merely in conformity.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in section 10.217. This information is required by Customs under the Agreement and pursuant to General Note 3(c)(vi)(E), HTSUS, and is used to determine whether imported merchandise meets the eligibility criteria for duty-free or reduced-duty treatment under the Agreement. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 14,406 hours.

The estimated average annual burden per respondent/recordkeeping is .2616 hours.

Estimated number of respondents and/or recordkeepers: 5550.

Estimated annual frequency of responses: 8.92.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports, Israeli Products.

Proposed Amendments to the Regulations

It is proposed to amend part 10, Customs Regulations (19 CFR part 10), as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 is amended by adding an authority for §§ 10.211–10.217 to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

§§ 10.211–10.217 Also issued under 19 U.S.C. 2112 note.

2. Part 10 is amended by adding a new center heading followed by new sections 10.211 through 10.217 to read as follows:

United States-Israel Free Trade Area Agreement

10.211 Scope.
10.212 Definitions.
10.213 Eligibility criteria in general.
10.214 Imported directly.
10.215 Country of origin criteria.
10.216 Value content requirement.
10.217 Procedures for filing duty preference claim and submitting supporting documentation.

United States-Israel Free Trade Area Agreement

§ 10.211 Scope.

The provisions of §§ 10.212—10.217 relate to the eligibility criteria and procedures for obtaining duty preferences for goods imported from Israel and designated for such preferences in General Note 3(c), Harmonized Tariff Schedule of the United States (HTSUS), and in the "special" rate of duty column of the HTSUS. These preferences were the subject of the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985, and approved under the United States-Israel Free Trade Area Implementation Act of 1985 (99 Stat. 82). In situations involving country of origin determinations for imported goods subject to bilateral restrictions or prohibitions or country of origin marking requirements under other provisions of law, other criteria for determining origin may be applicable.

§§ 10.212 Definitions.

The following definitions apply for the purposes of §§ 10.213 through 10.217:

(a) *Agreement.* "Agreement" means the agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985.

(b) *Wholly the growth, product, or manufacture of Israel.* "Wholly the growth, product, or manufacture of Israel" refers both to any article which has been entirely grown, produced, or manufactured in Israel and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in Israel, as distinguished from articles or materials imported into Israel from another country, whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into Israel.

(c) *Entered.* "Entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

§ 10.213 Eligibility criteria in general.

Articles classifiable under an HTSUS heading or subheading for which the symbol "IL" appears in the "special" column are eligible for a preference if each of the following requirements is met:

(a) *Imported directly.* The articles are imported directly from Israel as provided in § 10.214.

(b) *Country of origin criteria.* The articles comply with the country of origin criteria set forth in § 10.215.

(c) *Value content requirement.* The articles comply with the value content requirement set forth in § 10.216.

(d) *Filing of claim and submission of supporting documentation.* The claim for the preference is filled, and the documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.217.

§ 10.214 Imported directly.

In order to be eligible for a preference under the Agreement, an article shall be imported directly from Israel into the customs territory of the U.S. For purposes of this requirement, the words "imported directly" mean:

(a) Direct shipment from Israel to the U.S. without passing through the territory of any intermediate country; or

(b) If shipment was through the territory of an intermediate country, the articles in the shipment did not enter into the commerce of any intermediate country while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If shipment was through an intermediate country and invoices and other documents do not show the U.S. as the final destination the articles in the shipment, upon arrival in the U.S., are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail, and the articles are imported into the U.S. as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.215 Country of origin criteria.

(a) *General.* An article may be eligible for a preference under the Agreement only if the article is either:

(1) Wholly the growth, product, or manufacture of Israel, or

(2) A new or different article of commerce having a new name, character, or use, that has been grown, produced, or manufactured in Israel.

(b) *Exceptions.* No article shall be considered a new or different article of commerce for purposes of the Agreement by virtue of having merely undergone:

(1) Simple (as opposed to complex or meaningful) combining or packaging operations, or

(2) Mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

The principles and examples set forth in § 10.195(a)(2) shall apply equally for purposes of this paragraph.

§ 10.216 Value content requirement.

(a) *General.* An article may be eligible for a preference under the Agreement only if the sum of the cost or value of the materials produced in Israel, plus the direct costs of processing operations performed in Israel, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Cost or value of materials*—(1) "Materials produced in Israel" defined. For purposes of paragraph (a) of this section, the words "materials produced in Israel" refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of Israel; or

(ii) Subject to the exceptions set forth in § 10.215(b), substantially transformed in Israel into a new or different article of commerce having a new name, character, or use, which is then used in Israel in the production or manufacture of a new or different article imported into the U.S.

Except where the context otherwise requires, the examples set forth in § 10.196(a) shall apply for purposes of paragraph (b)(1) of this section.

(2) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article may be attributed to the cost or value of materials produced in the customs territory of the U.S. the provisions of paragraph (b)(1) of this section shall apply for purposes of determining whether materials were produced in the customs territory of the U.S.

(3) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate district director, the material shall not be considered to have been grown, produced, or manufactured in Israel or in the customs territory of the U.S.

(4) *Determination of cost or value of materials.* (i) The cost or value of materials produced in Israel or in the customs territory of the U.S. includes:

(A) The manufacturer's actual cost for materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by Israel or the U.S., provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(c) *Direct costs of processing operations.* (1) *Items included.* For purposes of paragraph (a) of this section, the phrase "direct costs of processing operations" means those costs directly incurred in and/or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific article under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported article:

(i) All actual labor cost involved in the growth, production, manufacture, or assembly of the specific article, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific article;

(iii) Research, development, design, engineering, and blueprint costs insofar

as they are allocable to the specific article; and

(iv) Costs of inspecting and testing the specific article.

(2) *Items not included.* For purposes of paragraph (a) of this section, the phrase "direct costs of processing operations" does not include items which are not directly attributable to the article under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific article or are not related to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesman's salaries commissions, or expenses.

(d) *Articles wholly the growth, product, or manufacture of Israel.* Any article which is wholly the growth, product, or manufacture of Israel, including articles produced or manufactured in Israel exclusively from materials which are wholly the growth, product, or manufacture of Israel, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.217 Procedures for filing duty preference claim and submitting supporting documentation.

(a) *Filing claim for duty preference.* Except as provided in paragraph (c) of this section, a claim for a duty preference under the Agreement may be made at the time of filing the entry summary by placing the symbol "IL" as a prefix to the HTSUS subheading number applicable to each article for which the preference is claimed on that document. If the duty preference is claimed subsequent to the time of filing the entry summary but before liquidation becomes final, the filing of the Certificate of Origin or declaration, as described in paragraph (b) of this section, shall constitute the written claim.

(b) *Shipments covered by a formal entry.*—(1) *Certificate of Origin.* Except as provided in paragraph (b)(3) of this section, the importer or consignee or other appropriate party having knowledge of the relevant facts regarding a shipment of merchandise covered by a formal entry, for which a duty preference is claimed under the Agreement, shall file with the district director with the entry summary, as evidence of compliance with the country of origin and value content requirements, a Certificate of Origin Form A adopted for use under the Generalized System of Preferences (GSP) but modified for dual use either under the GSP or under the Agreement. The Certificate of Origin shall be properly completed, with the declaration in box 12 signed in Israel by the exporter or other authorized party having knowledge of the facts to which the declaration relates. The certification in box 11 shall not be used when the Certificate of Origin is to be filed for purposes of a duty preference under the Agreement.

(2) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director shall accept a duplicate Certificate of Origin endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(3) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for a duty preference under the Agreement. If a properly completed Certificate of Origin is not filed with the entry summary, the entry shall nevertheless be accepted and production of the Certificate of Origin shall be deemed to be waived, unless the district director makes a written request for its production.

(4) *Articles not wholly the growth, product, or manufacture of Israel*—(i) *Declaration.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of Israel, the party which prepared and signed the Certificate of Origin in Israel shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the article, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

Declaration

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in Israel by means of processing operations performed in Israel as set forth below, (b) incorporate materials wholly the growth, product or manufacture of Israel or of the customs territory of the United States as set forth below, (c) incorporate materials from the third countries identified below which became the growth, product, or manufacture of Israel or of the customs territory of the United States by means of the processing operations as set forth below, and/or (d) incorporate materials which are the growth, product, or manufacture of third countries as set forth below:

Numbers or marks of packages, invoices, bills of lading	Description of article and quantity	Processing operations performed on article in Israel		Material produced in Israel, the U.S. or third country	
		Description of processing operations	Direct costs of processing operations	Description of material, country of production and production process	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party which prepared and signed the Certificate of Origin for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of preferential duty treatment under the Agreement.

(c) *Shipments covered by an informal entry.* The normal procedure for filing a claim for preferential duty treatment as set forth in paragraph (a) of this section need not be followed in a case involving a shipment covered by an informal entry, and the filing of a Certificate of Origin is not required for such a shipment. However, the district director may require submission of other

evidence of entitlement to preferential duty treatment, and the filing of a Certificate of Origin may be required in a case involving consolidation of individual shipments under § 143.22 of this chapter.

(d) *Evidence of direct importation.* (1) *Submission.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.214.

(2) *Waiver.* The district director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for preferential duty treatment under the Agreement.

(e) *Verification of documentation.* The documentation submitted under this section to demonstrate compliance with the requirements for preferential duty treatment under the Agreement shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, the district director may treat the entry as fully dutiable.

Carol Hallett,

Commissioner of Customs.

Approved: July 1, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-17923 Filed 7-30-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 91N-0494]

Workshop to Review Warnings, Use Instructions, and Precautionary Information under Section 314 of the National Childhood Vaccine Injury Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is holding a public meeting, "Workshop to Review Warnings, Use Instructions, and Precautionary Information for Childhood Vaccines." Section 314 of the National Childhood Vaccine Injury Act (the NCVIA) (Pub. L. 99-660) mandated that the warnings, use instructions, and precautionary information of specified childhood vaccines be reviewed and that their adequacy in warning health care professionals of the nature and extent of dangers posed by such vaccines be determined. This precautionary information is contained in the package insert of each vaccine licensed by FDA. The purpose of this workshop is to allow for public comment on these package inserts.

DATES: The workshop will be held on Friday, September 18, 1992, from 8:30 a.m. to 4:30 p.m. Written comments by December 18, 1992.

ADDRESSES: The workshop will be held in Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. Submit written requests for a single set of package inserts and summaries of information for the vaccines to the Congressional, Consumer, and International Affairs Staff (HFB-142), Metro Park North 3, Suite 109, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8228, facsimile 301-295-8286. Send two self-addressed, adhesive labels to assist that office in processing your requests. Submit written comments on the package inserts and summaries of information with the docket number found in brackets in the heading of this document to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the package inserts and summaries of information will be available for public examination on August 3, 1992. A copy of the issues that FDA will present at the workshop will be available for public examination on September 1, 1992, in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Submit written requests for a single copy of issues that FDA will present at the workshop to the Congressional, Consumer, and International Affairs Staff (address above). Send two self-addressed, adhesive labels to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Karen Chaitkin, Center for Biologics Evaluation and Research (HFB-3), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-8483, facsimile 301-227-8079.

SUPPLEMENTARY INFORMATION: Under section 314 of the NCVIA, the Secretary of Health and Human Services (the Secretary) is required to review the warnings, use instructions, and precautionary information issued by manufacturers of specified vaccines and to determine by rule whether the information adequately warns health care providers of the dangers posed by the vaccines. The specified vaccines are those listed in section 2114 of the Public Health Service Act (the PHS Act) (42 U.S.C. 300aa-14), which was added by the NCVIA. The specified vaccines include Tetanus, Diphtheria, Pertussis, Measles, Mumps, Rubella, Live Oral Poliovirus, Poliovirus Vaccines Inactivated, and any combinations of these. If it is determined that the information on these vaccines is inadequate, the manufacturers are to be required to revise and reissue the information.

The information described in section 314 of the NCVIA is contained in package inserts provided to health care professionals by the vaccine manufacturers and approved by FDA. The Center for Biologics Evaluation and Research (CBER) has been reviewing the approved package inserts as part of the process of determining the adequacy of the information being issued. FDA regulations previously issued under authority of the PHS Act (42 U.S.C. 262) and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) establish criteria for the adequacy of package inserts and other labeling for vaccines and other biological products. General criteria for labeling are set forth at 21 CFR parts 201 and 610. Specific labeling requirements for certain vaccines have also been established in 21 CFR parts 620 and 630. Consistent with the provisions of these existing regulations, some manufacturers have already updated the package inserts for certain vaccines since the NCVIA was enacted.

Another provision of the NCVIA, section 2128 of the PHS Act (42 U.S.C. 300aa-28), required the Secretary to develop and disseminate vaccine information materials for distribution by health care providers to the legal representatives of any child receiving one of the listed vaccines. The Centers for Disease Control developed vaccine information materials and issued a final rule requiring health care providers to provide such information prior to administering these vaccines. The final rule, published in the **Federal Register** of October 15, 1991 (56 FR 51798), was developed after extensive consultation with appropriate Government and nongovernment representatives.

In addition, under section 312 of the NCVIA, the Secretary had requested the Institute of Medicine (IOM) to prepare a report reviewing scientific studies on adverse events following pertussis or rubella vaccination. IOM published the report, "Adverse Effects of Pertussis and

Rubella Vaccines" on August 27, 1991. The IOM report on pertussis and rubella vaccines provides a useful summary of available scientific studies on adverse events related to these two vaccines. Also, under section 312 of the NCVIA, the Secretary is directed to amend the Vaccine Injury Table set forth in section 2114 of the PHS Act, if the findings in the IOM report so indicate. The report was presented at a public hearing of a Subcommittee of the National Vaccine Advisory Committee on November 8, 1991 (see 56 FR 54582, October 22, 1991). After consideration of the report findings and public comment, the Secretary will, if necessary, modify the Vaccine Injury Table through rulemaking.

Although many of the activities mandated by the NCVIA provisions are closely related, each has a somewhat different purpose or emphasis. For example, the rulemaking required by section 2126 of the PHS Act emphasized development of materials useful to parents or other legal representatives who may have little or no previous knowledge about these childhood vaccines. The rulemaking required by section 314 of the NCVIA focuses on information useful to health care providers who have medical training and may need detailed technical information about the vaccines.

Many of the issues discussed during the course of developing the vaccine information materials are also relevant to the review of the package inserts. However, there will also be issues related to content or format that are different with respect to package inserts. Many of those who participated in the process of developing the information materials may also be interested in this separate process of reviewing the package inserts. To provide an opportunity for all interested persons to participate in the process of reviewing the information provided by the vaccine manufacturers to health care providers, FDA is convening a workshop open to the public.

On August 3, 1992, approximately 6 weeks prior to the workshop to be held on September 18, 1992, FDA will place copies of the following on display at the Dockets Management Branch (address above): (1) The most recently approved package inserts; (2) the manufacturer's revised drafts of package inserts, and CBER's comments, if the revised package inserts have not been approved by the beginning of July 1992; or (3) the most recently approved package inserts, and CBER's comments, if the manufacturers have not sent any revised draft package inserts by the beginning of July 1992. Also on display will be copies of summaries of information which CBER believes to be appropriate for inclusion in the labeling. On September 1, 1992, the agency will place a copy of the issues FDA will present at the workshop on display at the Dockets Management Branch (address above). Single copies of the displayed materials can be obtained from the Congressional, Consumer, and International Affairs Staff (address above). The workshop will consist of presentations, exchanges of scientific and regulatory information, and discussions concerning the adequacy of the warnings, use instructions, and precautionary information contained in the package inserts. At the workshop, the agency will present a summary of the review process and a scientific discussion of the package insert reviews conducted by FDA for each of the childhood vaccines identified in section 2114 of the PHS Act. Other Government representatives, manufacturers, and interested parties will be given an opportunity to present their comments. Such oral presentations will be limited to 10 minutes or less. Requests to make presentations at the workshop should be sent to the contact person (address above) by August 18, 1992.

After a careful review of the scientific data and public comments received, FDA will publish a proposed rule in the **Federal Register**, setting out the agency's determination regarding adequacy of the package inserts and offering another opportunity for public comment before the agency makes a final determination which will be published in a final rule.

Dated: July 27, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18088 Filed 7-28-92; 8:45 a.m.]

BILLING CODE 4160-01-F

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21 CFR Part 166

[Docket No. 82P-0186]

Margarine; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a tentative final rule to amend the standard of identity for margarine to remove the list of permitted emulsifiers and the maximum use level restrictions for each from the current standard and to retain the provision for the use of safe and suitable emulsifiers without specified limitations. Appropriate use levels for the emulsifiers are those no greater than necessary to accomplish the intended functional effect in the margarine. This action responds to a petition filed by the National Association of Margarine Manufacturers and will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by August 31, 1992. The agency proposes that any final rule that may be issued based upon this tentative final rule shall become effective 60 days after date of publication of the final rule in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of October 30, 1984 (49 FR 43560), FDA published a proposal, based on a petition from the National Association of Margarine Manufacturers (NAMM), 1101 Fifteenth St. NW., suite 202, Washington, DC 20005, to amend the standard of identity for margarine (§ 166.110 (21 CFR 166.110)) to remove the specified limits on the amounts of emulsifiers that may be used. FDA also proposed to delete two types of emulsifiers, mono- and diglycerides of fatty acids esterified with citric acid and with tartaric acid, which were inadvertently listed in the standard when it was revised in consideration of the Codex standard (38 FR 25671, September 14, 1973). Section 166.110(b)(4) currently lists certain specific emulsifiers and the maximum use levels for each, but it also allows manufacturers the option of using other safe and suitable emulsifiers not listed in the standard. Interested persons were given until December 31, 1984, to submit comments. In the **Federal Register** of January 31, 1985 (50 FR 4525), the comment period was extended to January 30, 1985.

In the **Federal Register** of August 28, 1991 (56 FR 42668), FDA proposed to withdraw a number of proposed rules that were published before December 31, 1985, including the October 30, 1984 (49 FR 43560) proposal, to amend the standard of identity for margarine. In the **Federal Register** of December 30, 1991 (56 FR 67440), FDA published the

final action on the August 28, 1991 proposal. In the final action, FDA stated that the agency expected to complete the rulemaking proceeding on the margarine standard. The agency consequently deferred a decision to withdraw the October 30, 1984 proposal. FDA is now continuing rulemaking procedures on the margarine standard by issuing this tentative final rule.

The NAMM petition was filed under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)), which required formal rulemaking in any action for the amendment of a food standard. However, in November 1990, the Nutrition Labeling and Education Act of 1990 was signed into law, and it removed food standard rulemaking proceedings, except for action for the amendment or repeal of food standards of identity for dairy products or maple syrup, from the formal rulemaking proceedings of section 701(e) of the act. Therefore, further action on the NAMM petition is subject to the informal, notice and comment rulemaking proceedings of section 701(a) of the act, and this tentative final rule is being published under those procedures. Because there was a full opportunity to comment on the proposal when it was published in 1984, the comment period on this tentative final rule will be 30 days.

II. Comments to Proposal

Two comments were received in response to the proposal. The first was in favor of the proposed amendment. The second comment, from NAMM, opposed the agency's proposed deletion from the margarine standard, of the emulsifiers mono- and diglycerides of fatty acids esterified with citric acid or with tartaric acid. NAMM stated that by deleting these two emulsifiers from the margarine standard, the agency was going beyond the NAMM petition. NAMM subsequently advised the agency, in a letter dated October 28, 1991, that it no longer opposed this aspect of FDA's proposed action.

The agency has tentatively concluded that it is reasonable to provide for the optional use of safe and suitable emulsifiers in margarine, and that doing so will promote honesty and fair dealing in the interest of consumers. The phrase "safe and suitable" is defined in 21 CFR 130.3(d). A safe and suitable ingredient is one that has been affirmed as generally recognized as safe (GRAS), has been approved as a food additive for its intended use, or has otherwise been authorized for such use in accordance with sections 201(s) and 409 of the act (21 U.S.C. 321(s) and 348)). A safe and suitable ingredient is also one that performs an appropriate function in the food and is used only in an amount sufficient to achieve its intended purpose in the food. For example, margarine may not contain more emulsifier than is necessary to prevent water leakage from the water-in-oil emulsion or to prevent spattering during frying. Margarine may not contain emulsifiers in quantities intended to have a functional effect other than an effect that is appropriate for margarine. Thus, margarine used in baked products may not contain levels of emulsifiers sufficient to retard the staling process in those products.

Accordingly, the agency is issuing a tentative final rule to amend the standard of identity for margarine as set forth below. Anyone wishing to petition for food additive approval or GRAS affirmation for mono- and diglycerides of fatty acids esterified either with citric acid or tartaric acid may do so following the procedure set out in 21 CFR 171.1 or 170.35, respectively.

III. Economic Impact

FDA has examined the economic implications of this tentative final rule to amend Part 166 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small business where feasible. Because no marginal costs are expected to be incurred, the agency finds that this tentative final rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA announced in the proposal its tentative determination that this action will not have a significant adverse impact on a substantial number of small businesses. The agency has not received any information that would alter this determination.

This tentative final rule will amend the margarine standard of identity by removing the list of permitted emulsifiers and the maximum use level restrictions for each, currently associated with the provision for the use of safe and suitable emulsifiers. The amendment will also delete two specific types of emulsifiers, mono- and diglycerides of fatty acids esterified with citric and with tartaric acid, which were inadvertently listed in the standard when it was revised based on the Codex standard for margarine. As revised, the standard will provide for the use of any safe and suitable emulsifier in margarine. No changes in formulations will be required because the emulsifiers which are being removed were not in use in margarine in this country, according to the comments from the margarine industry.

FDA considered several options. One option is to take no action, which would mean that manufacturers of margarine products would continue to produce products that conform to the existing standards regardless of the availability of new ingredients or technologies.

A second option is to amend the standard of identity for margarine as proposed, i.e., remove the list of permitted emulsifiers and the maximum use level restrictions for each from the standard and provide for safe and suitable emulsifiers. This action would increase flexibility in the selection of ingredients for margarine and would allow for innovation.

A third option is to remove the Federal food standard for margarine, but this action would allow each State to establish its own food standard which could inhibit interstate trade.

The benefits of this tentative final regulation are to allow manufacturers to take advantage of new ingredients and technologies and to develop a wider variety of margarine products with a broad range of physical characteristics. Consumers will benefit from increased product choices and potentially lower manufacturing costs. Increased flexibility (e.g., providing for safe and suitable emulsifiers and other ingredients and levels of use in the standards) also reduces the costs associated with updating the standards to keep current with technology.

Because firms will not be required to reformulate products or to change existing labels, FDA finds that there are now marginal costs of this proposed amendment of the standard of identity for margarine. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, FDA has also determined that this tentative final rule will not have a significant adverse impact on a substantial number of small businesses.

IV. Environmental Impact

As stated in the October 30, 1984, proposal, the agency determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. FDA has not received any new information or comments that would alter its previous determination.

V. Comments

Interested persons may, on or before August 31, 1992, submit to the Dockets Management Branch (HFA–305) (address above) written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 166

Food grades and standards, Food labeling, Margarine.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR Part 166 be amended as follows:

PART 166—MARGARINE

1. The authority citation for 21 CFR Part 166 continues to read as follows:

Authority: Secs. 201, 401, 403, 407, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 347, 348, 371, 376).

2. Section 166.110 is amended by revising the third sentence in the introductory text of paragraph (a) and paragraph (b)(4) to read as follows:

§ 166.110 Margarine.

(a) * * * Margarine contains only safe and suitable ingredients, as defined in § 130.3(d) of this chapter. * * *

* * * * *

(b) * * *

(4) Emulsifiers.

* * * * *

Dated: May 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–18109 Filed 7–30–92; 8:45 a.m.]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 49

[PS–17–91]

RIN 1545–AP67

Facilities and Services Excise Tax on Communications

AGENCY: Internal Revenue Service, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits written comments from the public about issues that the Internal Revenue Service should address in proposed regulations relating to the excise tax on amounts paid for communications services, sections 4251, 4252, 4253, and 4254 of the Internal Revenue Code of 1986. All material submitted will be available for public inspection and copying.

DATES: Written comments concerning any of the regulations should be submitted by September 29, 1992.

ADDRESSES: Written comments should be sent to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Attn: CC:CORP:T:R (PS–17–91), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bernard H. Weberman, (202) 622–3163 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The current regulations relating to the excise tax on communications, 26 CFR 49.4251 *et seq.*, were last amended in 1964. Because the communications tax was continuously scheduled to expire from the time those regulations were published until the tax was made permanent by the Revenue Reconciliation Act of 1990, the regulations were not amended during that period.

Subsequent to publication of the 1964 regulations, the Excise Tax Reduction Act of 1965 amended the definitions of the three communications services subject to taxation, that is, local telephone service, toll telephone service, and teletypewriter exchange service. The 1965 Act also updated the definition of private communication service, which is excluded from the definition of local telephone service, eliminated the tax on telegraph service, added exemptions, and made other changes to the law. Further, since publication of the 1964 regulations, numerous communications services have been developed and marketed, the means of transmission have expanded, and the industry has been deregulated so that numerous domestic and foreign service providers are not in the market. In light of the above, a complete revision of the regulations is appropriate and consistent with the objective of reducing regulatory burden. Such a revision will assist taxpayers in understanding and complying with the communications tax by simplifying existing regulations and providing additional guidance to taxpayers needed for good business planning.

The Service requests comment on any matter deemed significant by a commentator. However, the Service is particularly interested in comments relating to the following:

(1) The impact of technological advances and service innovations on imposition of the tax; that is, a description of novel communications service and a discussion of whether they are "local telephone service," "toll telephone service," "teletypewriter exchange service," or "private communication service," as the case may be, under section 4252 of the Internal Revenue Code;

(2) Issues created by the expansion of transmission methods (for example, satellite signal, microwave signal, fiber optic line); and

(3) Areas in which clarification is needed as to who is the taxpayer and who is responsible to collect the tax.

Stuart Brown,

Associate Chief Counsel (Domestic).

[FR Doc. 92–18060 Filed 7–30–92; 8:45 am]

BILLING CODE 4830–01–M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 670, 671 and 672

Conservation of Antarctic Animals and Plants; Waste Regulation; Enforcement and Hearing Procedures

AGENCY: National Science Foundation (NSF).

ACTION: Notice of proposed rulemaking.

SUMMARY: NSF proposes to amend its regulations to add regulations governing waste management and disposal in Antarctica. These changes are designed to implement the provisions of the Antarctic Conservation Act that require the Director of NSF to promulgate regulations designating and governing the release of pollutants in Antarctica.

DATES: Comment must be received by September 29, 1992.

ADDRESSES: Comments should be sent to Miriam M. Leder, Assistant General Counsel, or Dr. Sidney Draggan, Environmental Officer, National Science Foundation, 1800 G Street, NW., room 501, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Miriam M. Leder at 202–357–9435.

SUPPLEMENTARY INFORMATION: The United States first established year-round scientific research stations in Antarctica in 1957–1958. At that time, the National Science Foundation (NSF) was responsible for the research component of the U.S. Antarctic

Program (USAP). Later, a Presidential Directive gave NSF overall management responsibility for the USAP, so that in addition to managing the research program NSF now also provides logistics and operations support through a civilian contractor and other government agencies (e.g., the Naval Support Force Antarctica and the U.S. Coast Guard).

The number of Antarctic researchers and support personnel has grown over the years, resulting in increased impacts on the Antarctic environment. Antarctic Treaty nations recognized the potential effect of such cumulative impacts, and adopted several Treaty recommendations addressing environmental issues. Congress also recognized the importance of protecting Antarctic flora and fauna, and, in 1978, enacted the Antarctic Conservation Act (ACA).

The ACA, among other things, specifically directs NSF to designate as pollutants substances liable to create hazards to human health, harm living resources, damage amenities, or interfere with other legitimate uses of Antarctica. It also directs NSF to specify actions which must, and actions which must not, be taken in order to prevent or control the discharge or other disposal of pollutants from any source within Antarctica.

In 1990, NSF formed the Antarctic Pollution Control Task Group whose purpose was to assist NSF in formulating the pollution control regulations required by the ACA. The Group consisted of representatives from government agencies, private industry and environmental groups. At about the same time, parties to the Antarctic Treaty began to meet to discuss, and eventually adopt, a Protocol on Environmental Protection to the Antarctic Treaty. The Protocol includes an Annex that mandates certain waste disposal and waste management practices.

This proposed rule is intended to implement the pollution control requirements of the ACA by establishing a comprehensive waste management scheme for Antarctic operations, consistent with the requirements of the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty. NSF believes that this approach will reduce the environmental impacts of USAP operations.

There has never been a comprehensive regulatory scheme in place to govern waste management and waste disposal in Antarctica, and this proposed rule is a starting point for NSF. As NSF gains experience in administering these regulations, it will be better able to identify deficiencies in its approach, gaps in coverage, need for greater specificity, and alternative methods for waste management and disposal. NSF plans to gather methods for waste management and disposal. NSF plans to gather baseline environmental data and conduct environmental monitoring so that better information is available on the environmental impacts of USAP operations. This information will help NSF to revise its waste management regulations appropriately. NSF fully anticipates amending and expanding its regulations over time, and will continue to examine U.S. domestic regulations and standards for guidance in this area.

Because of the logistical difficulties associated with Antarctic operations, programs which involve transportation of supplies and personnel into and out of Antarctica generally must be planned at least a year in advance. As a result, the effective date of the final regulations will be March 1, 1993. However, U.S. citizens, including USAP, are encouraged to comply with the regulations prior to that date to the extent such compliance is feasible.

Summary of Provisions

Subpart A—Introduction

The proposed rule applies to the Antarctic activities of all U.S. citizens and entities, including governmental entities. It bans the use of certain substances in Antarctica; requires a permit for the use or release of certain other substances (i.e., substances consisting of or containing chemicals listed by source, generic or chemical name in regulations issued under RCRA, CERCLA and the Clean Air Act, or other substances posing a real or potential substantial hazard to human health, living resources or the environment); and requires a permit for the release of any waste in Antarctica.

Subpart B—Prohibited Acts; Exceptions

It is unlawful for U.S. citizens and entities (including governmental entities) to use banned substances in Antarctica. It is also unlawful for them to use or release harmful pollutants, or to release wastes, except pursuant to permits granted by the Director of NSF. However, if activities are already authorized under a permit issued to another party (i.e., a master permit described below), or are permissible under other applicable legislation, no permit is required.

Subpart C—Permits

Permit applications must contain detailed information on the type and volume of expected releases of wastes and hazardous pollutants; arrangements for waste management, monitoring and personnel training; and contingency plans for controlling releases of harmful pollutants. Notices of the availability of permit applications will be published in the **Federal Register**, inviting the submission of comments by interested parties. NSF also intends to provide a copy of permit applications to the Administrator of EPA and to other interested government agencies for comment.

Permits will be conditioned upon compliance with applicable provisions of the Protocol, Antarctic Treaty, and regulations issued under the ACA, and with other conditions or restrictions that may be imposed by the Director of NSF The Director may modify, suspend or revoke a permit (i) to make it consistent with a change in applicable regulations, (ii) if a change in conditions makes the permit inconsistent with the purposes of the ACA or regulations promulgated thereunder, or (iii) if a term or condition of the permit or any regulation is violated. Permits with durations in excess of one year will be reviewed on a biannual basis to determine whether modification, suspension or revocation is appropriate.

Master permits may be issued which would cover activities undertaken under the auspices of a larger program or expedition. Individual participants will not need their own permits for activities that are contemplated by the master permit.

Subpart D—Waste Management

Prior to treatment or disposal, all waste must be stored in a manner that will prevent its dispersal into the environment. USAP hazardous waste is eventually removed from Antarctica on the annual supply ship that docks at McMurdo Station, but the ship arrives only once each year. As a result, transporting USAP hazardous waste must wait until a ship arrives. This may take in excess of one year. Transporting hazardous waste from other USAP stations to McMurdo Station also involves significant delays. The ship between Palmer and McMurdo Stations makes biannual trips, and transport of hazardous waste from South Pole Station to McMurdo Station takes place annually. As a result, the proposed rule provides for fairly long periods of time during which hazardous waste may be stored in Antarctica. However, it also imposes stringent requirements in connection with such storage, based, in large part, on EPA regulations governing

the temporary storage of hazardous waste.

Certain other categories of waste also must be removed from Antarctica for disposal. These include radioactive materials; electrical batteries; fuel; waste containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds; poly-vinyl chloride (PVC); polyurethane foam; rubber and lubricating oils; treated timbers and other products containing additives which can produce harmful emissions or releases; all other plastic wastes except low density polyethylene containers; solid non-combustible waste; damaged fuel drums; incinerator ash; and, to the maximum extent possible, liquid wastes other than sewage and domestic liquid wastes.

Sewage and domestic liquid wastes may be discharged into the sea under certain circumstances. Other combustible waste may be incinerated in incinerators which reduce harmful emissions or discharges to the maximum extent practicable. Open burning of wastes is prohibited at permanent stations, and will be phased out over a one-year period at all other locations.

USAP is required to categorize its waste stream; prepare and annually review waste management plans; prepare an inventory of locations of past activities; and clean up past and present waste disposal sites. It also intends to establish and maintain a materials and waste management manifest system.

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

The Director of NSF will review the list of banned substances and designated pollutants annually, and, based on specified criteria, may propose the designation or redesignation of any substance as a designated pollutant or other waste. The Director may also propose the designation or redesignation of a substance as a banned substance if the Director determines that the substance poses a substantial immediate hazard to health or the environment, or if the Parties to the Protocol or the Treaty agree that such substance should be banned from use in Antarctica. Prior to any such designation or redesignation, notice of the proposed designation or redesignation will be published in the **Federal Register**, inviting submission by interested parties of written comments.

Subpart F—Cases of Emergency

The provisions of the proposed rule do not apply in cases of emergency relating to the safety of human life or of ships, aircraft or other equipment and facilities of high value, or the protection of the environment.

As required by the Antarctic Conservation Act, NSF consulted with the Department of State prior to preparing this notice.

This is not a major rule as defined by Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

List of Subjects

45 CFR Part 670

Antarctica.

45 CFR Part 671

Antarctica.

45 CFR Part 672

Administrative practice and procedure, Antarctica.

For the reasons set forth in the preamble, NSF proposes to amend 45 CFR Part 670, and to add 45 CFR parts 671 and 672 as follows:

1. The authority citation for part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended: Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

2. 45 CFR part 670, subpart K is redesignated as part 672, and §§ 670.50 through 670.72 are redesignated §§ 672.1 through 672.22. under the following authority:

Authority: 16 U.S.C. 2401 et seq.

Part 671 is added to read as follows:

PART 671—WASTE REGULATION

Subpart A—Introduction

Sec.

671.1 Purpose of regulations.
671.2 Scope.
671.3 Definitions.

Subpart B—Prohibited Acts, Exceptions

671.4 Prohibited acts.
671.5 Exceptions.

Subpart C—Permits

671.6 Application for permits.
671.7 General issuance criteria.
671.8 Permit administration.
671.9 Conditions of permit.
671.10 Review, modification, suspension and revocation.

Subpart D—Waste Management

671.11 671.11 Waste storage.
671.12 Waste disposal.
671.13 Waste management for the USAP.

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

671.14 Annual review.
671.15 Publication of preliminary determination.
671.16 Designation and redesignation of pollutants.

Subpart F—Cases of Emergency

71.17 Cases of emergency.

Authority: 16 U.S.C. 2405.

Subpart A—Introduction

§ 671.1 Purpose of regulations.

The purposes of these regulations are to protect the Antarctic environment and dependent and associated ecosystems, to preserve Antarctica's value as an area for the conduct of scientific research, and to implement the Antarctic Conservation Act of 1978, Public Law 95-541, consistent with the provisions of the Protocol on Environmental Protection to the Antarctic Treaty, signed in Madrid, Spain, on October 4, 1991.

§ 671.2 Scope.

These regulations apply to any U.S. citizen's use or release of a banned substance, harmful pollutant or waste in Antarctica.

§ 671.3 Defintions.

(a) *Definitions.* In this part:

"Act" means the Antarctic Conservation Act of 1978, Public Law 95-541, 92 Stat. 2048 (16 U.S.C. 2401 et seq.)

Antarctica means the area south of 60 degrees south latitude.

Banned substance means any polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, plastic chips or similar loose packing material, and any other substance designated as such under subpart E of this part.

Designated pollutant means any substance designated as such by the Director pursuant to subpart E of this part, and any pesticide, radioactive substance, or substance consisting of or containing any chemical listed by source, generic or chemical named at 40 CFR 61.01 table 116.4A, part 261 (subpart D), § 302.4, parts 355 and 370, but shall not include any banned substance.

Director means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

Harmful pollutant means any designated pollutant or any other substance which poses or may pose a substantial present or potential hazard to human health, living resources, marine life or the environment.

Hazardous waste means any waste consisting of or containing one or more designated pollutants.

Incinerate or "Incineration" means the processing of material by mechanisms that:

(1) Involve the control of combustion air and/or fuel so as to maintain adequate temperature for efficient combustion;

(2) Contain the combustion reaction in an enclosed device with sufficient residence time and mixing for complete processing; and

(3) Control emission of gaseous or particulate combustion products.

Master permit means a permit issued to a federal agency, or its agents or contractors, or any other entity, covering activities conducted in connection with USAP or other expedition activities.

NSF or "Foundation" means the National Science Foundation.

Open burning" means combustion of any material by means other than incineration.

Permit means a permit issued pursuant to subpart C of this part.

Private permit means any permit other than a master permit.

Protocol means the Protocol on Environmental Protection to the Antarctic Treaty, signed by the United States in Madrid on October 4, 1991, and any and all Annexes thereto, as amended or supplemented from time to time.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, burying or disposing of a substance, whether intentionally or accidentally.

Station means McMurdo Station, Palmer Station, Amundsen-Scott South Pole Station and any other permanent USAP facility in Antarctica Designed to accommodate at least 50 persons.

Substance means any gas, liquid, or solid, or mixture thereof, including biological material.

Treaty means the Antarctic Treaty signed in Washington, DC, on December 1959.

United States means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territory of the Pacific Islands, including the Federated States of Micronesia and the Commonwealth of the Northern Mariana Islands.

United States Antarctic Program or *USAP* means the United States national program in Antarctica.

U.S. citizen means any individual who is a citizen or national of the United States; any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; and any department agency or other instrumentality of the Federal government or of any State, and any officer, employee, or agency of such instrumentality.

Use means to use, generate or create a substance, or to import a substance into Antarctica.

Waste means any substance that will no longer be used for any useful purpose, and does not include substances to be recycled in Antarctica, or substances to be reused in a manner different than their initial use. Recycling includes, but is not limited to, the reuse, further use, reclamation or extraction of a waste through a process or activity that is separate from the process or activity that produced the waste.

(b) *Pollutants, generally.* All designated pollutants, harmful pollutants and waste shall be considered pollutants for purposes of the Antarctic Conservation Act.

Subpart B—Prohibited Acts, Exceptions

§ 671.4 Prohibited acts.

Unless one of the exceptions stated in § 671.5 is applicable, it is unlawful for any U.S. citizen to:

(a) Use or release any banned substance in Antarctica;

(b) Use or release any harmful pollutant in Antarctica, except pursuant to a permit issued by NSF under Subpart C of this Part;

(c) Release any waste in Antarctica, except pursuant to a permit issued by NSF under subpart C of this part; or

(d) Violate any term or condition of a permit issued by NSF under subpart C of this part, or any term or condition of any of the regulations issued under this Part.

§ 671.5 Exceptions.

(a) A permit shall not be required under this part for activities of U.S. citizens that are already authorized under a USAP permit or under a private permit issued to another party.

(b) A permit shall not be required for any use or release of harmful pollutants or waste permitted under the Act to Prevent Marine Pollution from Ships (33 U.S.C. 1901 et seq.), as amended.

Subpart C—Permits

§ 671.6 Applications for permits.

(a) *General content of permit applications.* Each application for a permit shall be dated and signed by the applicant, and shall include the following information:

(1) The applicant's name, address and telephone number, the business or institutional affiliation of the applicant, or the name, address and telephone number of the president, principal officer or managing partner of the applicant, as applicable;

(2) A description of the types, expected concentrations and volumes of wastes and harmful pollutants to be released in Antarctica; the nature and timing of such releases; arrangements for waste management, including, without limitation, plans for waste reduction, minimization, treatment and processing, storage, transportation and disposal; arrangements for training and educating personnel to comply with these waste management requirements and procedures, and arrangements for monitoring compliance; and other arrangements for minimizing and monitoring the environmental impacts of proposed operations and activities;

(3) A description of the types, expected concentrations and volumes of harmful pollutants to be used in Antarctica; the nature and timing of such uses; the method of storage of harmful pollutants; and a contingency plan for controlling releases in a manner designed to minimize any resulting hazards to health and the environment;

(4) The desired effective date and duration of the permit; and

(5) The following certification:

I certify that, to the best of my knowledge and belief, and based upon due inquiry, the information submitted in this application for a permit is complete and accurate. Any knowing or intentional false statement will subject me to the criminal penalties of 18 U.S.C. 1001.

(b) *Address to which application should be sent.* Each application shall be in writing, and sent to: Permits Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

(c) *Sufficiency of application.* The sufficiency of the application shall be determined by the Director. The Director may waive any requirement for information, or require such additional information as he determines is relevant to the processing and evaluation of the application.

(d) *Publication of permit applications.* The Director shall publish notice in the **Federal Register** of each application for a permit and the proposed conditions of its issuance (including duration). The notice shall invite the submission by interested parties, the Environmental Protection Agency and other federal agencies, within 30 days after the date of publication of notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

§ 671.7 General issuance criteria.

(a) Upon receipt of a complete and properly executed application for a permit, the Director will decide whether and on what conditions he will issue a permit. In making this decision, the Director will carefully consider any comments or suggestions received from interested parties, the Environmental Protection Agency and other federal agencies pursuant to § 671.6(d) and will determine whether the permit requested meets the objectives of the Act and the requirements of these regulations.

(b) Permits authorizing the use or release of harmful pollutants or wastes may be issued only if, based on all relevant available information, the Director determines that such use or release will not pose a substantial hazard to health or the environment.

§ 671.8 Permit administration.

(a) *Issuance of permits.* The Director may approve an application for a permit in whole or in part, and may condition such approval upon compliance with additional terms and conditions. Permits shall be issued in writing, shall be signed by the Director, shall specify duration, and shall contain such terms and conditions as may be established by the Director and as are consistent with the Act and this part.

(b) *Denial.* An applicant shall be notified in writing of the denial of any permit request or part of a request, and the reason for such denial. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall constitute amendments of the application.

(c) *Amendment of applications or permits.* An applicant or permit holder desiring to have any term or condition of his application or permit modified must submit full justification and supporting information in conformance with the provisions of this part. Any application for modification of a permit that involves a material change beyond the terms originally requested will be subject to the same procedures as a new application.

(d) *Public notice of issuance or denial.* Within 10 days after the date of the issuance or denial of a permit, the Director shall publish notice of the issuance or denial in the **Federal Register**, including the conditions of issuance or basis for denial, as appropriate.

§ 671.9 Conditions of permit.

(a) *Conditions.* All permits issued pursuant to subpart C of this part shall be conditioned upon compliance with the relevant provisions of the Treaty and Protocol, such specific conditions or restrictions as may be imposed by the Director under § 671.7, and the provisions of subpart D hereof.

(b) *Possession of permits.* Permits issued under this part, or copies of them, must be in the possession of persons to whom they are issued or their agents when conducting the authorized action. Any permit issued shall be shown to the Director or to any other person with enforcement authority upon request.

(c) *Reports.* Permit holders must provide the Director with written reports of:

(1) any accidental release of harmful pollutants or waste promptly after the occurrence of such release, and

(2) the identity and quantity of all harmful pollutants removed from Antarctica or otherwise disposed of, and the method of disposal. The Director may also require permit holders to file reports of activities conducted under their permits. Such reports shall be submitted to the Director not later than June 30 for the preceding 12 months.

§ 671.10 Review, Modification, Suspension, and Revocation.

(a) The Director may modify, suspend or revoke, in whole or in part, any permit issued under this part:

(1) In order to make the permit consistent with any change to any regulation in this part made after the date of issuance of the permit;

(2) If there is any change in conditions which makes the permit inconsistent with the purposes of the Act and any regulation in this part; or

(3) In any case in which there has been any violation of any term or condition of the permit, any regulation in this part, or any provision of the Act.

(b) The Director shall review all unexpired permits issued under this part at least biannually to determine whether those permits should be modified, suspended or revoked as set forth in paragraph (a) of this section.

(c) Whenever the Director proposes any modifications, suspensions or revocations of a permit under this § 671.10, the permittee shall be afforded the opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation.

(d) Notice of the modification, suspension, or revocation of any permit shall be published in the **Federal Register** within 10 days from the date of the Director's decision.

Subpart D—Waste Management

§ 671.11 Waste storage.

(a) Prior to the treatment, disposal or removal of any wastes pursuant to § 671.12, all wastes shall be contained, confined or stored in a manner that will prevent dispersal into the environment;

(b) All hazardous wastes generated at or transported to any USAP station may be temporarily stored at such station prior to the treatment, disposal or removal of any wastes pursuant to § 671.12, provided all such hazardous waste is stored in either closed containers or tanks labeled to indicate their contents and the beginning date of accumulation of such waste, and further provided the following conditions are satisfied:

(1) If hazardous wastes are generated at or transported to McMurdo Station, they may be temporarily stored at that station for a period not to exceed 15 months;

(2) If hazardous wastes are generated at or transported to South Pole Station, they may be temporarily stored at that station while awaiting transport to McMurdo Station, for a period not to exceed 15 months;

(3) If hazardous wastes are generated at or transported to Palmer Station, they may be temporarily stored at that station while awaiting transport to McMurdo Station, for a period not to exceed 28 months;

(4) Containers holding hazardous wastes must be:

(i) In good, non-leaking condition with sufficient structural integrity for the storage of hazardous waste,

(ii) Made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the containers to contain such waste is not impaired, and

(iii) Inspected at least weekly for leakage and deterioration;

(5) Tank systems used for storing hazardous wastes must be in good, non-leaking condition with sufficient structural integrity for the storing of hazardous wastes; and systems must be inspected weekly to detect corrosion or releases of waste and collect data from monitoring and leak detection equipment, to the extent available, to ensure that they are functioning properly.

Prior to the expiration of the 15 month period referred to in § 671.11(b)(i), all hazardous wastes shall be treated,

disposed of or removed from Antarctica in accordance with § 671.12.

(c) All hazardous wastes generated at a location other than a permanent station may be temporarily stored at such location for a period not to exceed 12 months, in closed, non-leaking containers marked to indicate their contents. Such containers must be in good condition and made of or lined with material which will not react with and is otherwise compatible with the hazardous waste stored therein so as not to impair the ability of the container to contain the waste. Prior to the expiration of the 12 month period referred to above, all such hazardous wastes shall be either,

(1) Treated or processed, disposed of or removed from Antarctia pursuant to § 671.12, or

(2) Removed to a permanent station and temporarily stored at that station in accordance with paragraph (b) of this section.

§ 671.12 Waste disposal.

(a) The following wastes shall be removed from Antarctica:

(1) Radioactive materials;

(2) Electrical batteries;

(3) Fuel (both liquid and solid);

(4) Waste containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds;

(5) Poly-vinyl chloride (PVC), polyurethane foam, polystyrene foam, rubber and lubricating oils, treated timbers and other products containing additives which can produce harmful emissions or releases;

(6) All other plastic wastes except low density polyethylene containers (such as bags for storing wastes) provided such containers are incinerated in accordance with paragraph (e) of this section;

(7) Solid, non-combustible wastes; and

(8) Damaged or non-usable fuel, oil and chemical drums.

Notwithstanding the foregoing, the obligations set forth in paragraphs (a)(7) and (8) of this section shall not apply if the removal of such wastes by any practicable option would cause greater adverse environmental impacts than would be caused by leaving them in their existing locations.

(b) All liquid wastes other than sewage and domestic liquid wastes and wastes referred in paragraph (a) of this section shall be removed from Antarctica to the maximum extent practicable.

(c) Sewage and domestic liquid wastes may be discharged directly into the sea, taking into account the assimilative capacity of the receiving marine environment, and provided that such discharge occurs, wherever practicable, where conditions exist for initial dilution and rapid dispersal, and further provided that large quantities of such wastes (generated in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more) shall be treated at least by maceration. The by-product of sewage treatment by biological processes may be disposed of into the sea provided such disposal does not adversely affect the local environment.

(d) Residues of introduced animal carcasses, laboratory culture of micro-organisms and plant pathogens, and introduced avian products must be removed from Antarctica unless incinerated, autoclaved or otherwise sterilized.

(e) Combustible wastes not removed from Antarctica other than wastes referred to in paragraph (a) of this section, shall be burnt in incinerators which reduce harmful emissions or discharges to the maximum extent practicable and the solid residue of such incineration shall be removed from Antarctica. Any emission or discharge standards and equipment guidelines which may be recommended by the Committee for Environmental Protection constituted or to be constituted pursuant to the Protocol or by the Scientific Committee on Antarctic Research shall be taken into account.

(f) Sewage and domestic liquid wastes and other liquid wastes not removed from Antarctica in accordance with other provisions of this section, shall, to the maximum extent practicable, not be disposed of onto sea ice, ice shelves or grounded ice-sheet unless such wastes were generated by stations located inland on ice shelves or on the grounded ice-sheet. In such event, the wastes may be disposed of in deep ice pits if that is the only practicable option, provided the ice pits are not located on known ice-flow lines which terminate at ice-free land areas or in blue ice areas of high ablation.

(g) No wastes may be disposed of onto ice-free areas or into any fresh water system.

(h) Open burning of wastes is prohibited at all permanent stations, and shall be phased out at all other locations by March 1, 1994.

§ 671.13 Waste management for the USAP.

(a) In order to provide a basis for tracking USAP wastes, and to facilitate studies aimed at evaluating the environmental impacts of scientific activity and logistic support, the USAP shall classify its wastes in one of the following categories:

(1) Sewage and domestic liquid wastes;

(2) Other liquid wastes and chemicals, including fuels and lubricants;

(3) Solid wastes to be combusted;

(4) Other solid wastes; and

(5) Radioactive materials.

(b) USAP shall prepare and annually review and update a waste management plan (including plans for waste reduction storage and disposal) specifying for each of its permanent stations, field camps and ships (other than small boats that are part of the operations of permanent stations or are otherwise taken into account in existing management plans for ships):

(1) Current and planned waste management arrangements, including final disposal;

(2) Current and planned arrangement for analyzing the environmental effects of waste and waste management;

(3) Other efforts to minimize environmental effects of wastes and waste management; and

(4) Programs for cleaning up existing waste disposal sites and abandoned work sites.

(c) USAP shall designate one or more waste management officials to develop and monitor waste management plans and ensure that members of expeditions receive training so as to limit the impact of their activities on the Antarctic environment, and to inform them of the requirements of the Protocol and of this Part.

(d) USAP shall, to the extent practicable, prepare an inventory of locations of past activities (i.e., traverses, fuel depots, field bases, crashed aircraft) so that such locations can be taken into account in planning future scientific, logistic and waste management programs.

(e) USAP shall clean up its past and present waste disposal sites on land and abandoned work sites, except that it shall not be required to:

(1) Remove any structure designated as a historic site or monument; or

(2) Remove any structure or waste in circumstances where the removal would result in greater adverse environmental impact than leaving the structure or waste in its existing location.

(f) USAP shall circulate waste management plans and inventories described in this section in accordance with the requirements of the Treaty and the Protocol.

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

§ 671.14 Annual review.

The Director shall review the list of banned substances and designated pollutants at least annually, and may propose the designation or redesignation of any substance as a banned substance, designated pollutant or other waste, based on the following criteria:

(a) If the Director determines that a substance, including a designated pollutant, poses a substantial immediate hazard to health or the environment and such hazard cannot be eliminated through waste management practices or other methods, or if the Parties to the Protocol or Treaty agree that a substance should be banned from use in Antarctica, the Director may designate such substance a banned substance.

(b) If the Director determines that a substance poses a substantial present or potential hazard to health or the environment if improperly treated or processed, stored, transported, or disposed of, the Director may designate such substance a designated pollutant.

(c) If the Director determines that a substance previously designated a banned substance no longer displays the characteristics described in paragraph (a) of this section, the Director may remove such substance from the list of banned substances (to the extent consistent with the provisions of the Protocol), but if the Director determines that such substance has the characteristics described in paragraph (b) of this section, it shall be redesignated a designated pollutant.

(d) If the Director determines that a substance previously designated a designated pollutant no longer displays the characteristics described in paragraph (b) of this section, the Director may remove such substance from the list of designated pollutants.

(e) In making the determinations referred to in paragraphs (a) through (d) of this section, the Director shall take into account all relevant new information obtained through monitoring activities or otherwise.

§ 671.15 Publication of preliminary determination.

Prior to any designation or redesignation of substances pursuant to § 671.14 (including removal of such substances from lists of banned substances or designated pollutants), the Director shall publish notice in the **Federal Register** of any proposed designation or redesignation, including the basis therefor. The notice shall invite the submission by interested parties, the Environmental Protection Agency and other federal agencies, within 30 days after the date of publication of notice, of written data, comments, or views with respect to such action.

§ 671.16 Designation and redesignation of pollutants.

After review of any comments or suggestions received from interested parties, the Environmental Protection Agency and other federal agencies pursuant to § 671.15, the Director will make a final determination to designate and redesignate various substances as set forth above. Within 10 days after the date of such final determination, the Director shall publish notice of any action taken in the **Federal Register**.

Subpart F—Cases of Emergency

§ 671.17 Cases of emergency.

The provisions of this part shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or other equipment and facilities of high value, or the protection of the environment. Notice of any acts or omissions resulting from such emergency situations shall be reported promptly to the Director, who shall then notify the Treaty parties in accordance with the requirements of the Treaty and the Protocol.

Dated: July 27, 1992.

Charles H. Herz,

General Counsel, National Science Foundation.

[FR Doc. 92-18029 Filed 7-30-92; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 920246-2168]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a preliminary notice of change in the total allowable catch (TAC), allocations, quotas, and bag limits for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel, and in the maximum sustainable yield (MSY) for cobia, in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice proposes: (1) For the Gulf migratory group of king mackerel, increases in TAC and allocations, and in the western area (off Texas) and central area (off Louisiana, Mississippi, and Alabama), removal of the three-fish alternative bag limit available for persons fishing from charter vessels; (2) for the Atlantic migratory group of king mackerel, a change in the daily bag limit applicable to the southern area (off Florida), from five per person to the limit applicable to Florida's waters, but not to exceed five per person; (3) for the Gulf migratory group of Spanish mackerel, a change in the daily bag limit applicable to (a) The eastern area (off Florida) from five per person to the limit applicable to Florida's waters, but not to exceed ten per person; and (b) the western area (off Texas) from three per person to the limit applicable to Texas' waters, but not to exceed ten per person; (4) for the Atlantic migratory group of Spanish mackerel, change in the daily bag limit applicable to the southern area (off Florida), from five per person to the limit applicable to Florida's waters, but not to exceed ten per person; and (5) for cobia, an increase in MSY from 1.0 to 2.2 million pounds (m. lb.). The intended effects are to protect the mackerels and cobia from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on these species.

DATES: Written comments must be received on or before August 17, 1992.

ADDRESSES: Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with 50 CFR 642.27, the Councils appointed a stock assessment panel (panel) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the panel's 1992 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the

Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to the TAC, allocations, and bag limits.

Specifically, the Councils recommended that, effective with the fishing year that begins July 1, 1992, the annual TAC for the Gulf migratory group of king mackerel be increased to 7.80 m. lbs. This recommended TAC is within the range of the acceptable biological catch chosen by the Councils. For the 1992/93 fishing year, the Councils recommended no changes in the TAC or allocations for the other mackerel groups. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of each TAC. The Gulf king mackerel commercial allocation is divided by fixed percentages into quotas for eastern and western zones. Under these percentages and the recommended TAC, allocations and quotas for the fishing year that commences July 1, 1992, would be as follows:

Species and percent	m. lbs.
Gulf King Mackerel-TAC	7.80
Recreational allocation (68)	5.30
Commercial allocation (32)	2.50
Eastern zone (69)	(1.73)
Western zone (31)	(0.77)

The recreational fishery is regulated by both allocations and bag limits. For Gulf group king mackerel, the Councils recommended a uniform daily bag limit of two fish per person. The alternative daily bag limit, currently available for persons fishing from charter vessels in the western area (off Texas) and in the central area (off Louisiana, Mississippi, and Alabama), of three per person, excluding operator and crew, or two per person, including operator and crew, would be removed. The three-fish option for persons fishing from charter vessels in the eastern area (off Florida) was previously removed.

The Councils' intent in removing the three-fish option was to further reduce recreational fishing mortality and, thereby, address persistent problems caused by early reduction to zero of the bag limits in the Gulf king mackerel recreational fishery. In four of the last five fishing years the recreational allocation was reached and zero bag limits were implemented in December or January, negatively impacting important winter and spring recreational fisheries. Previous analyses indicate that elimination of the three-fish charter vessel option could moderately reduce catch and prolong recreational harvest. The Councils believe that the elimination of this option in the western and central areas, in combination with the increased TAC and recreational allocation, should afford Gulf-wide benefits by allowing uninterrupted recreational harvest in the EEZ throughout the fishing year under the two-fish bag limit.

For Atlantic group king mackerel, the Councils recommended changing the daily bag limit in the southern area (off Florida) to the bag limit applicable in Florida's waters, but not to exceed five fish per person. The daily bag limit in Florida's waters is currently two king mackerel per person.

For Gulf group Spanish mackerel, the Councils recommended changing the daily bag limits in the eastern area (off Florida) and in the western area (off Texas) to the bag limits applicable in Florida's and Texas' waters, respectively, but not to exceed ten fish per person. The daily bag limit in Florida's waters is currently five Spanish mackerel per person but is proposed by the Florida Marine Fisheries Commission to be increased to ten effective January 1, 1993. The daily bag limit in Texas' waters is currently three Spanish mackerel per person but is scheduled to increase to seven effective September 1, 1992.

For Atlantic group Spanish mackerel, the Councils recommended changing the daily bag limit in the southern area (off Florida) to the bag limit applicable in Florida's waters, but not to exceed ten fish per person. The daily bag limit in Florida's waters is currently five Spanish mackerel per person but, as for Gulf group Spanish mackerel, is proposed to be increased to ten effective January 1, 1993.

These bag limit changes would foster compatibility and simplicity between Federal and state fishing regulations, to promote compliance and enforceability, and to facilitate the achievement of optimum yield.

Finally, an increase from 1.0 to 2.2 m. lbs. in MSY is recommended for cobia. The current MSY of 1.0 m. lbs. was based solely on commercial landings estimates. Combined commercial and recreational landings have remained stable at 2.2 m. lbs. for a period greater than one generation, thus indicating that 2.2 m. lbs. is a more appropriate MSY.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils recommended changes are published for comment.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of $100 million used as a guideline for a "major rule."

The Councils prepared a regulatory impact review (RIR) on this action. The conclusions of the RIR are summarized as follows: The increased allocations of Gulf group king mackerel are expected to generate additional benefits in ex-vessel revenues, consumer surplus, and charter vessel profits. The changes in the bag limits for Atlantic group king mackerel and Gulf and Atlantic groups of Spanish mackerel have potential for benefits to the recreational sectors if Florida and Texas raise their respective bag limits.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed regulations are not likely to result in reduction of gross revenues to participants in the industry. Accordingly, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 22, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), first sentence	1.84	2.50
(a)(1)(i)	1.27	1.73
(a)(1)(ii)	0.57	0.77
(b)(1)	3.91	5.30

3. In § 642.28, paragraphs (a)(1)(i) through (a)(1)(iv) and (a)(3) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a)* * *

(1)* * *

(i) *King mackerel Gulf migratory group.* Possessing two king mackerel per person per day.

(ii) *King mackerel Atlantic migratory group.*

(A) *Northern area.* Possessing five king mackeral per person per day.

(B) *Southern area.* Possessing the limit specified by Florida, in Rule 46–12.004, Rules of the Department of Natural Resources, Florida marine Fisheries Commission, Florida Administrative Code, but not to exceed five king mackeral per person per day.

(iii) *Spanish mackeral Gulf migratory group.*

(A) *Eastern area.* Possessing the limit specified by Florida, in Rule 46–23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten Spanish mackerel per person per day.

(B) *Center area.* Possessing ten Spanish mackerel per person per day.

(C) *Western area.* Possessing the limit specified by Texas, in Rule 31–65.72, Texas Administrative Code, But not to exceed ten Spanish mackerel per person per day.

(iv) *Spanish mackerel Atlantic migratory group.*

(A) *Northern area.* Possessing ten Spanish mackerel per person per day.

(B) *Southern area.* Possessing the limit specified by Florida, in Rule 46-23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten Spanish mackerel per person per day.

* * * * *

(3) *Areas.* For the purposes of paragraph (a)(1) of this section,

(i) The boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42′45.6″ N. latitude) to the outer limit of the EEZ;

(ii) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. longitude) to the outer limit of the EEZ (identical to the boundary between the eastern and western zones in the commercial fishery); and

(iii) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas' waters) at 29°32.1′ N. latitude, 93°47.7′ W. longitude to point B (on the outer limit of the EEZ) at 28°11.4′ N. latitude, 92°53′ W. longitude.

* * * * *

[FR Doc. 92–18128 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 685

[Docket No. 920538–2138]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS requests public comment on a proposed rule recommended by the Western Pacific Fishery Management Council to reduce seasonally (October through January) the longline fishing area closures off the windward sides of the main Hawaiian Islands (MHI). This action will allow longline vessels to fish for bigeye tuna in waters around the MHI that are otherwise closed to longline fishing to prevent conflicts with troll and handline fishing vessels. This action is intended to reduce economic strain experienced by longline vessel operators as a result of the area closures without significantly increasing the risks of gear conflicts. It also may reduce the risk associated with longline vessels fishing far offshore in months with rough weather and dangerous ocean conditions.

DATES: Comments on the proposed rule must be received on or before August 31, 1992.

ADDRESSES: Comments on the proposed rule should be sent to Mr. Gary Matlock, Acting Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213.

Copies of the Environmental Assessment/Regulatory Impact Review establishing the original longline fishing area closures, and the supporting documentation for the proposed adjustment of the area closures, may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, 310–980–4034, Alvin Z. Katekaru, NMFS, 808–955–8831, or the Western Pacific Fishery Management Council at 808–541–1954.

SUPPLEMENTARY INFORMATION: Under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary of Commerce (Secretary) approved an amendment to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) that established longline fishing area closures around the MHI implemented by final rule (57 FR 7661, March 4, 1992). This amendment made permanent longline area closures that had been first imposed by emergency rule effective June 14, 1991 (56 FR 26816, June 19, 1991); corrected by a notice published on July 11, 1991 (56 FR 31689); and extended for a second 90-day period by a notice on September 20, 1991 (56 FR 47701). The regulations now prohibit fishing for pelagic species with longline gear within 75 nautical miles (nm) of Kauai County (which includes the islands of Kauai, Niihau, and Kaula) and Honolulu County (which is the island of Oahu), and within 50 nm around Maui County (which includes the islands of Maui, Kahoolawe, Lanai, and Molokai) and Hawaii County (which is the island of Hawaii). The closures are intended to prevent conflicts between longline gear and troll and handline gear by precluding longline fishing in areas on which troll and handline fisheries have been dependent. Additional information on the basis for this action may be found in the **Federal Register** of June 19, 1991 (56 FR 28816). The amendment also established procedures for adjusting the longline area closures through a rulemaking process, if necessary, to meet the goals and objectives of the FMP (50 CFR 685.24).

Several months after the closures went into effect under the emergency rule, the Council began to receive letters and phone calls indicating the closures had serious adverse impacts on some longline fishermen, fish processors, and fish brokers. Fishermen indicated catches had decreased. Processors and brokers said the quality of certain types of fish being landed was lower because longline vessels, forced to fish farther from shore, had to carry their fish on board longer before delivering to port. Some longline fishery representatives indicated that a number of vessel operators ceased fishing because they either lacked the vessel capacity or the skill and experience to fish successfully in waters beyond the closed zones. These spokesmen indicated the area closures were larger than necessary to prevent gear conflicts among the longline, troll, and handline sectors and asked that the closures be reduced.

At its meeting December 16–18, 1991, the Western Pacific Fishery Management Council (Council) took additional testimony from the longline fishery and related industries and from spokespersons for the troll and handline fishery sectors. Longline and related

industry representatives repeated their requests for adjustment of the closures to relieve economic strains. Troll and handline representatives argued against any reduction in the area closures. They indicated their belief that the dramatic increase in longline catches in the preceding 3 years had resulted in decreased catches for troll and handline fishermen. They indicated many troll and handline fishermen were now fishing much farther from shore than in the past in pursuit of tuna and billfish, and the existing area closures were necessary to both prevent gear conflicts and minimize interception of fish by longliners so catches could be maintained by troll and handline fishermen. They indicated that longline vessels had the capability to travel much farther from shore than troll and handline vessels and would not be unfairly affected by the closures. They emphasized that the longline fleet had maintained landings at the same rate in 1991 as in 1990, which meant that the closures (which were in effect much of the year) had not adversely affected the longline fleet.

Presented with this testimony, the Council designated a special committee of fishermen and processors to determine if some modification could be negotiated between the user groups. The committee was charged with examining the available information and determining whether an adjustment in the size or timing of the closures would minimize the economic and social impacts to all user groups while effectively preventing physical gear conflicts. This committee was to report to the Council at its March 1992 meeting.

At its March 16–17, 1992, meeting, the Council again was presented with substantial testimony from all pelagic fishery sectors concerning whether to adjust the area closures. The select committee was unable to agree on a recommendation for the Council. The longline fishery representatives indicated a special concern about the need for access to traditional nearshore areas to fish for bigeye tuna during the late fall and winter months. Troll and longline fishery representatives took the position that a reduction in the area closures should be allowed only for a limited period of time and only if conditioned on requirements for automated vessel tracking system (VTS) equipment on longline vessels, observer coverage on longliners in the reduced area, and a bycatch limit on blue marlin.

The Council's Pelagics Plan Team did not take a firm position on the issue, but indicated that some of the data indicated that longline fishermen could benefit from a reduction in the closure. The Plan Team recommended that blue marlin bycatch limits not be set. The Council's Scientific and Statistical Committee stated that the data indicated that the current area closures were excessive if the sole purpose was to prevent gear conflicts.

After reviewing the available information and hearing the comments on all sides of the issue, the Council concluded that a change in the area closures on a seasonal basis was warranted to reduce adverse economic impacts on the longline fishery sector without a significant reduction in the effectiveness of the closures in preventing gear conflicts. The Council did not condition this adjustment on a VTS or observer requirement or a bycatch limit. However, the Council agreed to develop an amendment to require VTS equipment on all longline vessels by September 1993 and an amendment authorizing the Regional Director to place observers on longline vessels to collect scientific data on catch composition, especially the catch of blue marlin in the longline fishery. These amendments are under preparation. The Council also agreed to convene a workshop on blue marlin management, including the possibility of bycatch limits.

The information considered included data from NMFS and the Hawaii Division of Aquatic Resources (HDAR) on fishing patterns before and after the closures went into effect; seasonal differences in fishing patterns; and the 1990 and 1991 catches by the different sectors. The data are not conclusive concerning the need for or impacts of the area closures, but suggest the following. First, according to State data, just under 50 percent of all reported trips by longline vessels in the first half of 1990 were within the areas now closed to longline fishing. According to NMFS data, in the months from November 1990 through February 1991, 28 to 46 percent of all longline effort was deployed in the areas now closed to longline fishing. This strongly suggests that the nearshore areas were relatively important to longline fishermen in the winter months, when bigeye tuna are most likely available around the MHI.

Second, HDAR data reported by commercial small boat operators (troll and handline vessels) indicate that during the period January 1990 through December 1991, more than 96 percent of all trips occurred within 20 miles of shore. On a monthly basis, between 1.4 percent and 3.4 percent of all reported trips in the months of October 1990 through January 1991, and October 1991 through December 1991 occurred beyond 20 miles from shore. This strongly suggests that the offshore areas are not crucial to troll and handline vessel operators in the months in which the area closures would be reduced. The data do not indicate a substantial increase in trips beyond 20 miles from shore in the 2-year period for which reports are available.

Third, the data are inconclusive concerning the extent to which longline catches have an effect on troll and handline catches or on the stocks of fish being taken. Longline catches increased sharply from 1987 through 1991. Catches were higher in 1991 than in 1990, in spite of the area closures which were in effect around the MHI for 6 months. However, the number of landings and overall activity by the longline fleet dropped sharply after the closures went into effect. It appears that some vessel operators were unable to adjust to the area closures and ceased fishing. Either these vessels lacked the physical capability (including lack of navigation equipment) to operate far from shore or the operators lacked the experience to fish successfully far from shore.

Further, notwithstanding the claims by troll and handline vessel operators, it is not clear that troll and handline landings decreased as the longline landings increased. According to the most current HDAR data, total commercial small boat pelagic species landings increased by 11 percent in 1991. Landings increased for all species except yellowfin tuna. It is noteworthy that longline catches of yellowfin tuna also decreased in 1991 from the 1990 level.

Based on these data, the Council concluded that a seasonal reduction in the longline area closures on the windward sides of the MHI is warranted. This will relieve an economic burden for at least some longline vessel operators, while not increasing significantly the probability of gear conflicts among the principal gear types in the pelagics fishery around Hawaii.

Proposed Action

The Council recommended that the longline fishery area closures around the MHI be as follows:

1. From October 1 through January 31 of the following year, longline fishing would be prohibited within waters approximately 25 nm from the windward shore of Kauai County, Maui County, and Hawaii County, and 50 nm off the windward coast of Oahu; and within waters approximately 75 nm off the leeward coasts of Kauai County and

Oahu and 50 nm of Maui County and Hawaii. The distances are approximations; the U.S. Coast Guard and NMFS Enforcement staff have provided specific latitude and longitude coordinates to designate the closed areas with straight lines that approximate the 25, 50, and 75 nm boundaries. In some areas, the closure may be slightly more or less than the mileage indicated.

2. From February 1 through September 30 each year, longline fishing would be prohibited within waters approximately 75 nm from Kauai County and Oahu, and within 50 nm of Maui County and Hawaii. Again, specific latitude and longitude coordinates are set to facilitate enforcement.

The Secretary agrees that there is sufficient basis to proceed with publication of this proposed rule.

Classification

This proposed rule is published under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the western Pacific pelagics fishery and is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for the emergency action implementing the original area closures and prepared a supplemental EA for the FMP amendment that established the current areas closures and the process for adjusting the area closures through rulemaking. The EA and supplemental EA concluded that the closures would not have a significant impact on the marine or human environment and were the basis for a Finding of No Significant Impact. There is no new information that would result in a different conclusion at this time, and this action falls within the scope of the alternatives considered in the EA and supplemental EA. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment under section 6.02.c.3(f) of NOAA Administrative Order 216–6. Copies of the EA and supplemental EA are available from the Council (see **ADDRESSES**).

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S. based enterprises. This conclusion is based on the analysis in the FMP amendment that established the current area closures and the supporting impact analysis for the Council's proposal, summarized in the following section.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This proposed rule will relieve an economic burden for a small segment (estimated at less than 10 percent) of the Hawaiian longline fleet that was more adversely affected than expected by the area closures that went into effect in 1991. The waters that would be open to longline fishing on a seasonal basis are important fishing grounds for these longliners which traditionally have fished for bigeye tuna in these waters and lack the capability and skills to fish farther from shore.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council's supporting documentation concludes that the proposed action would not affect any species listed under the Endangered Species Act, nor any critical habitat, in ways that differ from those evaluated in earlier documents. Biological Opinions and results of informal consultations under the Endangered Species Act pertaining to the pelagic fisheries in general, and the longline fishery in particular, have concluded that, with the conservation and management measures in effect under the FMP, the fisheries are not likely to jeopardize the continued existence of listed species or adversely modify any critical habitat. This proposed rule will not have any impacts that differ from those discussed in earlier documents. Therefore, NMFS has concluded that additional consultations are not necessary.

The Council determined that this proposed action is consistent to the maximum extent possible with the approved coastal management plan of the State of Hawaii. This initial determination has been submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 27, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is proposed to be amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.2, the definitions of "Guam longline fishing prohibited area" and "Hawaii longline fishing prohibited area" are removed, the definition of "Regional Director" is revised, and a new definition of "Longline fishing prohibited area" is added, to read as follows:

§ 685.2 Definitions.

* * * * *

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specific in § 685.24(b), (c), and (d).

* * * * *

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802, or a designee.

3. In § 685.5, paragraph (t) is revised to read as follows:

§ 685.5 Prohibitions.

* * * * *

(t) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 685.25.

4. Section 685.24 is redesignated § 685.26 and a new § 685.24 is added to read as follows:

§ 685.24 Longline fishing prohibited area management.

(a) Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in (b), (c), and (d) of this section.

(b) From February 1 through September 30 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by

straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	18°05' N	155°40'. W
B	18°20' N	156°25'. W
C	20°00' N	157°30' W.
D	20°40' N	161°40' W.
E	21°40' N	161°55' W.
F	23°00' N	161°30' W.
G	23°05' N	159°30' W.
H	22°55' N	157°30' W.
I	21°30' N	155°30' W.
J	19°50' N	153°50' W.
K	19°00' N	154°05' W.
A	18°05' N	155°40' W.

(c) From October 1, through the following January 31 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	18°05' N	155°40' W.
L	18°25' N	155°40' W.
M	19°00' N	154°45' W.
N	19°15' N	154°25' W.
O	19°40' N	154°20' W.
P	20°20' N	154°55' W.
Q	20°35' N	155°30' W.
R	21°00' N	155°35' W.
S	22°30' N	157°35' W.
T	22°40' N	159°35' W.
U	22°25' N	160°20' W.
V	21°55' N	160°55' W.
W	21°40' N	161°55' W.
E	21°40' N	161°55' W.
D	20°40' N	161°40' W.
C	20°00' N	157°30' W.
B	18°20' N	156°25' W.
A	18°05' N	155°40' W.

(d) The longlife fishing prohibited area around Guam shall be the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	Latitude	Longitude
A	14°25' N	144°00' E.
B	14°00' N	143°38' E.
C	13°41' N	144°33'30" E.
D	13°00' N	143°25'30" E.
E	12°20' N	143°37' E.
F	11°40' N	144°09' E.
G	12°00' N	145°00' E.
H	13°00' N	145°42' E.
I	13°27' N	145°51' E.

[FR Doc. 92-18128 Filed 7-30-92; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: ACTION.

ACTION: Information collection request submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: This notice provides information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency, covered under the Paperwork Reduction ACT (44 U.S.C. chapter 35), currently under review by OMB. ACTION is requesting an expedited review by OMB with final action by August 31, 1992 so that the approved form can be used to plan the first training conference beginning in the middle of November, 1992.

DATES: OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements received on or before August 31, 1992.

ADDRESSES: Send comments to both—

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 30525. (202) 606–5245.

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Office of ACTION Issuing Proposal: Office of Policy Research and Evaluation/Program Analysis and Evaluation Division.

Title of Forms: ACTION Training Conference Needs Assessment.

Need and Use: ACTION's legislation requires it to provide technical assistance to agencies and non-profit organizations which utilize or desire to utilize volunteers in connection with carrying out the purpose of the Domestic Volunteer Service Act of 1973. Information gathered in this information collection will be used to plan nine training conferences for project directors of ACTION programs.

Type of Request: Reinstatement of a previously approved data collection for which approval has expired.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: Once a year.

Estimated Number of Responses: 1,835.

Average Burden Hours per Response: 0.25 hours.

Estimated Annual Reporting or Disclosure Burden: 459 hours.

Regulatory Authority: 42 U.S.C. 4993.

Dated: July 27, 1992.

Mary Jane Maddox,

Acting Director, ACTION.

ACTION Training Conference Needs Assessment

Conducted by ACTION's Office of Policy Research and Evaluation Program Analysis and Evaluation Division

ACTION is preparing for its 1993 Regional Training Conferences. To help plan for these events, we want each of you, project directors and supervisors, to have the opportunity to express your needs and preferences. The advice you provide will help us shape training that meets your needs and contributes to the overall success of the conferences.

Please answer the questions on the following pages and return the questionnaire to us in the enclosed postage-paid envelope. It should take less than 15 minutes to complete the questionnaire.

Thank you for your cooperation in helping us plan for these conferences. If you have any questions regarding this form, contact David Rymph, Director, Program Analysis and Evaluation at the address listed below.

Please send this completed form within the next ten days to: ACTION, rm. 9100, 1100 Vermont Ave., NW., Washington, DC 20525.

We estimate that providing this information takes an average of 15 minutes, including the time for reviewing instructions, getting any needed data, and reviewing the requested information. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing time needed, to the Paperwork Reduction Project, OMB Clearance Number xxxx-xxxx, Office of Management and Budget, Washington, DC 20503

The Domestic Volunteer Service Act of 1973, Public Law 93–113, as amended, title I, part C, section 123, authorizes the solicitation of this information. Data collected in this study are covered by the Federal Privacy Act. All information you provide will be held in strictest confidence by ACTION. The purpose of this collection of information is to improve the training ACTION offers to its grantees and their project directors. Participation in this survey is voluntary. The information collected will be kept confidential and will not be released outside ACTION. No individual or organization will be identified in any report.

Upon request, ACTION may be able to provide alternative format versions of this questionnaire. Contact ACTION's Office of Policy Research and Evaluation, 1100 Vermont Ave., NW., Washington, DC 20525. Tel.: (202) 606–4821 or TDD: (202) 606–5256.

1. Please identify the ACTION programs you currently supervise. Check all that apply.

☐ VISTA ☐ FGP ☐ RSVP ☐ SCP

2. In what state is your project located? _____

3. How long have you been a supervisor/project director? _____years _____months

The following section is for VISTA supervisors only. FGP, RSVP and SCP project directors skip to number 5 on the next page.

4. If you are a VISTA supervisor, please read through the following list. Then select, by checking the appropriate boxes, up to twelve problem areas you would like to see addressed in your region's training conference.

• Recruitment & Development of VISTAs.
☐ Recruiting VISTA Volunteers.
☐ Orienting new volunteers (OJT).
☐ In-Service Training (IST).
☐ Career development techniques for Volunteers.
☐ Cultural diversity training.
☐ Accessing training resources in your community .
☐ Understanding adult training theory.
☐ Techniques for effective supervision.
• Resource Mobilization.
☐ Developing in-kind support.
☐ Developing a fund raising plan.
☐ Raising money in a poor community.
☐ Collaborating with other organizations.
☐ Recruitment and involvement of community volunteers.
• Program Emphasis Areas.
☐ Literacy.
☐ Housing/Homelessness.
☐ Economic/Job development
☐ Drug abuse.
☐ Hunger.
☐ Health.
☐ Rural programming.
• Volunteer Recognition.
☐ Recognition ideas.

☐ Using community resources for recognition.
• Evaluation.
☐ Evaluating project progress.
☐ Evaluating volunteer performance.
☐ Assisting advisory councils in designing evaluations.
• Public Relations.
☐ Developing a public awareness campaign.
☐ How to use the media.
☐ How to design and use newsletters.
☐ Public speaking techniques.
• Organization and Planning.
☐ How to do current year planning.
☐ How to do long range planning.
☐ How to form an Advisory Council.
☐ Maximizing Advisory Council resources.
☐ Writing a VISTA renewal application.
• Special Programming Needs.
☐ Project institutionalization.
☐ Successful placement of ARVs.
☐ Creating a positive climate for VISTA Volunteers.
☐ Conflict resolution.
☐ Local leadership development.
☐ Using computers.
☐ VISTA's interaction with sponsor advisory councils.
☐ Keeping VISTAs out of direct service.
☐ Collaborating with other ACTION programs and projects.

For other problem areas that are not listed here, see question 6 on the last page.

The following section is for FGP, RSVP and SCP project directors only. VISTA supervisors skip to number 6 on the next page.

5. If you are an OAVP director, please read through the following list. Then select, by checking the appropriate boxes, up to twelve problem areas you would like to see addressed in your region's training conference.

• Volunteer Recruitment/Placement
☐ Developing a recruitment plan.
☐ Determining appropriate target groups.
☐ Marketing strategies for recruitment.
☐ Interviewing and screening volunteers.
☐ Difficult to place volunteers.
☐ Utilizing retired, corporate and professionally skilled volunteers.
☐ Developing care plans and in-home agreements.
☐ Appropriate volunteer placements.
• Volunteer Training and Development
☐ Orientation for new volunteers.
☐ Training programs for volunteers.
☐ Designing in-service training.
☐ Accessing training resources in your community.
☐ Understanding adult training theory.
☐ Designing training for stations.
☐ Retiring the aging and fragile volunteer.
• Resource Mobilization
☐ Developing in-king support.
☐ Motivating others to help out.
☐ Developing a fund raising plan.
☐ Competing for local, limited resources.
☐ Building organization support for fundraising.
☐ Collaborating with other agencies and ACTION programs and projects.
• Project Management and Supervision
☐ Developing new volunteer stations.
☐ Delegation of authority and supervision.
☐ Using volunteers to help in administration.
☐ Effective records management.
☐ Meeting transportation needs.
☐ Monitoring volunteer stations.
• Volunteer Recognition
☐ Developing an ongoing recognition strategy.
☐ Increasing station recognition involvement.
☐ Using community resources for recognition.
• Evaluation
☐ Evaluating volunteer performance.
☐ Evaluating volunteer placements.
☐ Assisting advisory councils in developing evaluations.
☐ Evaluating station performance.
• Public Relations
☐ Developing a public awareness campaign.
☐ Public speaking techniques.
☐ How to use the media.
☐ How to design and use newsletters.
☐ Marketing for results.
• Organization and Planning
☐ How to do current year planning.
☐ How to do long range planning.
☐ Utilizing Advisory Council resources.
☐ The OAVP director as community leader and consultant.
☐ Writing an OAVP renewal application.
• Special Programming Needs
☐ Meeting emerging community needs with senior volunteers.
☐ Substance abuse.
☐ Conflict resolution.
☐ Creating a positive climate for volunteers.
☐ Using computers.
☐ Liability and volunteers.
☐ Liability and in-home services.
☐ Issues in rural programming.
☐ Working with your sponsor.

For other problem areas that are not listed here, see question 6 on the last page.

All supervisors and directors should complete the following questions

6. What other problem areas should be addressed at the conference?

7. Do you have specific expertise that you would be willing to share?

Yes ____ No ____ (If no, go to #7.)

If yes, please specify:

a. Content area (knowledge, technique, skill):

b. How do you propose to present it (workshop, panel discussion, lecture, etc.):

c: Your name and phone number so that we may contact you.

Name: _____

Address: _____

Phone: _____

8. What suggestions do you have that would make this a successful conference for you?

Thank you for your suggestions.

[FR Doc. 92-16141 Filed 7-30-92; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-121-1]

Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copies of this document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and

Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92-191-01	U.S. Department of Agriculture, Agricultural Research Service.	07-09-92	Plum trees genetically engineered to express the coat protein gene from papaya ringspot virus (PRSV) for resistance to plum pox virus.	Jefferson County, WV.

Done in Washington, DC, this 28th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-18168 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption of Huck Timber Sale and Beechnut Timber Sale From Appeal, Malheur National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Huck Timber Sale and Beechnut Timber Sale, located on the Long Creek Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

DATES: Effective on issuance of the Decision Notice for the Huck Timber Sale, and Beechnut Timber Sale.

FOR FURTHER INFORMATION CONTACT: Mark A. Boche, Forest Supervisor, Malheur National Forest, 139 N. Dayton St., or Carol Cushing, Timber Management Planner, Long Creek Ranger District, 528 E. Main St., John Day, Oregon 97845.

SUPPLEMENTARY INFORMATION: From 1990 to this year an infestation of western spruce budworms has been affecting major portions of the Malheur National Forest. Much of the infestation is in areas that support timber stands. In the Fall of 1990, an interdisciplinary team (IDT) surveyed much of the infested area to assess the damage to the resources that had occurred. Insect damage included damage to vegetation, soils, and water resources.

A District IDT identified the need to salvage the insect-killed trees in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 14 inches in diameter at breast height. Rapid drying of insect-killed trees is resulting in cracking or "checking," especially of the smaller diameter trees, which will quickly reduce the utility of sawlogs. It is also desirable to complete the logging quickly to begin artificial regeneration as soon as possible, establishing new stands more quickly.

The environment analysis of these actions began in December, 1990. After public meetings, and contacts with individuals and State and Federal agencies, the following major issues were identified: Diversity; recreation and other forest users; riparian and aquatic habitat; protection of watershed values; visual resource; old growth; and forest health.

The Huck IDT developed four alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 1,260 acres of heavily-infested land and produce about 9 MMBF of timber. Approximately 6 miles of specified roads and 3.7 miles of temporary roads would be constructed. This alternative protects and enhances riparian and aquatic habitat by implementing helicopter yarding of approximately 379 acres to reduce soil and riparian impacts. This alternative will also include a Forest Plan Amendment to allocate an old-growth replacement area further than ¼ mile of the dedicated old-growth area. The need for this is a result of an in-depth evaluation of the existing condition of timber stands surrounding the old-growth area. This stand could easily be managed to retain and promote old-growth characteristics better than stands adjacent to the dedicated stand.

The Oregon Department of Fish and Wildlife was consulted about the effects of this proposal on big game. They concurred with the proposal after minor modifications.

The Beechnut IDT developed four alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 96 acres of heavily infested land and produce about 1 MMBF of timber. Approximately 0.2 mile of temporary road would be constructed. This alternative protects and enhances riparian and aquatic habitat by implementing helicopter yarding of approximately 96 acres to reduce soil and riparian impacts. This alternative will also include a Forest Plan Amendment to implement timber management activities in a Sensitivity Level I foreground corridor of U.S. Highway 395. The need for this is result of an in-depth evaluation of the existing Forest Health condition of timber stands, and the development of a visual plan to meet the long-term desired condition for the corridor.

Biological evaluations have been completed for all plant, wildlife and fish Proposed, Endangered, Threatened and Sensitive species within both project areas. All Biological Evaluations indicated that projects could proceed as planned.

These salvage sales and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR part 217 is being followed. Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

This project will not be subject to review under 36 CFR part 217. Upon publication of this notice in the **Federal Register**, the Decision Notice for the Huck Timber Sale and Beechnut Timber Sale will be signed by the Forest Supervisor.

Dated: July 27, 1992.

John E. Lowe,

Regional Forester.

[FR Doc. 92-18111 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-11-M

Teratoid Tepee Resource Area, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, ID

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber and build roads in the Teratoid Tepee Resource Area. The area is located approximately 27 air miles northeast of Coeur d'Alene, Idaho. Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai and Shoshone Counties, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and need for the proposed action are to:

(1) Treat areas infected by root disease and insect infestation;

(2) Improve age-class distribution in the area; and

(3) Contribute to the District's share of the Forests' Allowable Sale Quantity.

The Forest Service also serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Identification of additional reasonable alternatives.

5. Identification of potential environmental effects of the alternatives.

6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of publication in the **Federal Register**. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Patrick Sheridan, Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 765-7381.

SUPPLEMENTARY INFORMATION: The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1: Consists of lands designated for timber production. The goals are to manage those lands suitable for timber production for the long-term growth and production of commercially valuable wood products as well as provide for soil and water protection, wildlife habitat, dispersed recreation opportunities and visual quality.

Management Area 4: Consists of lands designated for timber production within big-game winter range. The goal is to manage big-game winter range to provide forage to support projected big-game habitat needs, through scheduled timber harvest and permanent forage areas;

Management Area 6: Consists of lands designated for management of big-game summer range, to provide sufficient habitat to support projected elk populations, and to provide for the long-term growth and production of wood products;

Management Area 9: Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials.

Management Area 16: Consists of primary riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintainence of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue, and timber harvest and associated road building would be deferred. Other alternatives will examine the effects of timber harvest, varying in the volume harvested, silvicultural systems, and miles of road construction.

The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision, however, two periods of time are specifically identified for the receipt of comments: During the scoping process, and in the review of the Draft EIS (December, 1993).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

Meetings with area residents, organizations, and other agencies will be scheduled as needed.

The draft environmental impact statement (DEIS) is expected to be available for public review in December, 1993. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by April, 1994. The Forest Service will respond to the comments received in the FEIS. The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision

will be documented in a Record of Decision.

Dated: July 23, 1992.

Donald J. Bright,

District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 92-18078 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-11-M

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma Intermountain Region, Southern Idaho, Utah, Nevada, and Western Wyoming Rocky Mountain Region, Colorado, Kansas, Nebraska, South Dakota, and Eastern Wyoming

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: A Notice of Intent was originally published in the **Federal Register**, Vol 57, No. 44, Thursday March 5, 1992, page 7907. A revised Notice of Intent was published in the **Federal Register**, Vol 57, No. 67, Tuesday April 7, 1992, page 11707. This revised notice is being issued to update information on the scope of the environmental impact statement and responsible officials. The Forest Service is proposing to develop a conservation strategy for Mexican spotted owl (*Strix occidentalis lucida*) and will prepare an environmental impact statement on the proposed strategy and alternatives. A conservation strategy is needed to ensure that continued existence of Mexican spotted owls is not jeopardized by management activities on National Forest Land. The conservation strategy will be implemented on national forests in Arizona, New Mexico, southern Colorado, and southern Utah by each Forest Supervisor as management activities are planned.

DATES: Due to the extensive scoping and public participation that has already occurred, the Regional Foresters have determined there is no need for additional scoping prior to the release of the draft environmental impact statement. However, written comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) will be accepted and will continue to be considered in preparation of a final environmental impact statement.

ADDRESSES: Send written comments to USDA Forest Service; Southwestern Region; 517 Gold Avenue, SW.; Albuquerque, NM 87102; ATTN: Director of Wildlife.

FOR FURTHER INFORMATION CONTACT: Contact Southwestern Region Wildlife Staff Unit, (505) 842-3261; Rocky Mountain Region Renewable Resources Staff Unit, (303) 236-9562; or Intermountain Region Wildlife Staff Unit, (801) 625-5666.

SUPPLEMENTARY INFORMATION: The Forest Service is planning to develop a conservation strategy for Mexican spotted owls (*Strix occidentalis lucida*).

Mexican spotted owls are presently being considered for listing as a threatened or endangered species. A conservation strategy is needed to conserve and manage owl habitat so that continued existence of the species is assured while providing management guidelines for carrying out other national forest multiple use activities within owl habitat. Management activities within owl habitat are presently being guided by interim guidelines.

The Regional Forester, Southwestern Region; Regional Forester, Rocky Mountain Region; and Regional Forester, Intermountain Region, will be the responsible officials and will decide on the conservation strategy to be implemented on the national forests in Arizona, New Mexico, soother Colorado, and southern Utah.

Preliminary issues are: Whether or not Mexican spotted owls are adequately protected under present guidelines and effects of the strategy on other wildlife, other multiple uses, local economies, and biodiversity. Tentative alternatives include continuing current guidelines, ecologically based strategy, and total prohibition of activity in owl habitat.

Many public comments have been received concerning Mexican spotted owl management over the last several years and form the backbone for coping activities for this process. No additional scoping activities are planned before the draft environmental impact statement is issued.

It is expected that the draft environmental impact statement will be available in the fall of 1992, and the final environmental impact statement will be available the winter of 1992/1993.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 US 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: July 22, 1992.

Jerry D. Bowser,

Acting Deputy Regional Forester, Southwestern Region.

[FR Doc. 92-18124 Filed 7-30-92; 8:45 am]

BILLING CODE 3410-11-M

Plexus Bornite Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (56 FR 43903) on September 5, 1991, for a proposal to develop and operate a highly mechanized underground copper mine. The current title does not reflect the scope and purpose of this proposed analysis. The revised title of the EIS will be "The Bornite Project, an Underground Copper Mine."

The original NOI indicated that the mining proposal would not be in compliance with the direction in the 1990 Willamette National Forest Land and Resource Management Plan (Forest Plan). The NOI is revised to show that the proposed mine project will be in compliance with the Forest Plan.

William F. Funk, District Ranger was originally listed as the responsible official. The NOI is revised to show that Darrel L. Kenops, Forest Supervisor, is the responsible official for this EIS and decision.

Mike Hernandez was originally listed as the Project Coordinator. The NOI is

revised to show that Vince Puleo is the Project Coordinator and EIS team leader.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Vince Puleo EIS team leader. Detroit Ranger District, HC 73 Box 320, Mill City, Oregon 97360 telephone (503) 854–3366.

Dated: July 22, 1992.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 92–18112 Filed 7–30–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1991 Panel Wave 7.

Form Number(s): SIPP–11700, SIPP–11703, SIPP–11704, SIPP–11705(L).

Agency Approval Number: 0607–0702.

Type of Request: Revision of a currently approved collection.

Burden: 44,100 hours.

Number of Respondents: 29,400.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1991 Panel Wave 7 and the 1992 Panel Wave 4 are identical. They are the following: (1) Assets and Liabilities, (2) Retirement Expectations and Pension Plan Coverage, and (3) Real Estate Property and Vehicles. Wave 7 interviews will be conducted from February through May of 1993.

Affected Public: Individuals or households.

Frequency: Once during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18135 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1992 Panel Wave 4.

Form Number(s): SIPP–12400, SIPP–12403, SIPP–12405(L), SIPP–11704C.

Agency Approval Number: 0607–0723.

Type of Request: Revision of a currently approved collection.

Burden: 63,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1992 Panel Wave 4 and the 1991 Panel Wave 7 are identical. They are the following: (1) Assets and Liabilities, (2) Retirement Expectations and Pension Plan Coverage, and (3) Real Estate Property and Vehicles. Wave 4 interviews will be conducted from February through May of 1993.

Affected Public: Individuals or households.

Frequency: Once during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18134 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1993 Panel Core, Waves 1–8.

Form Number(s): SIPP–13001, SIPP–13100, SIPP–13003A.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 42,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census uses the Survey of Income and Program Participation (SIPP) to collect information concerning the distribution of income received directly as money or indirectly as in–kind benefits. The SIPP is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The Wave 1 questionnaire contains the SIPP's core. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The 1993 Wave 1 questionnaire contains two topical modules, Recipiency History and Employment History. Wave 1

interviews will be conducted from February through May of 1993.

Affected Public: Individuals or households.

Frequency: Two times a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18133 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Agriculture – Coverage Evaluation (Classification Error Survey).

Form Number(s): 92–A90.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 7,058 hours.

Number of Respondents: 18,500.

Avg Hours Per Response: 23 minutes.

Needs and Uses: The Census Bureau is conducting a program to evaluate the completeness and quality of the data collected in the 1992 Census of Agriculture. The coverage evaluation program is designed to measure errors in the census mail list (omissions and duplications) and in farm classification (farms classified as nonfarms and nonfarms classified as farms). This request is for OMB clearance of the Classification Error Survey will measure both types of classification errors and mail list duplication. Omissions on the census mail list are being determined through other means. The coverage evaluation program provides an independent check on the census results, as well as pertinent information for census data users on coverage and limitations of the census data. The program also aids the Census Bureau in identifying procedures associated with coverage errors that can provide the basis for improvements in the mail data collection and processing during the census.

Affected Public: Individuals or households, Farms.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18132 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Pollution Abatement Costs and Expenditures, and the Plant and Equipment Expenditures Survey – Supplement for Pollution Abatement.

Form Number(s): MA–200, PA–1.

Agency Approval Number: 0607–0176.

Type of Request: Revision of a currently approved collection.

Burden: 43,750 hours.

Number of Respondents: 17,500.

Avg Hours Per Response: Two and one half hours.

Needs and Uses: The Census Bureau uses Forms MA–200 (Survey of Pollution Abatement Costs and Expenditures) and PA–1 (Plant and Equipment Expenditures Survey – Supplement for Pollution Abatement) to measure private industry's cost to meet increasing Federal, state, and local regulations for controlling pollution. We use the MA–200 to collect data on capital expenditures and operating costs for pollution abatement in manufacturing plants; the PA–1 is for nonmanufacturing plants. The data from these forms are an essential source for monitoring the impact of environmental programs on the U.S. economy and the responsiveness to these programs. Revisions to the forms include formatting and presentation of the survey materials, addition of new items covering replacement of underground storage tanks and other environmental protection expenses, and the clarification of cost offsets.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–18136 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Action Affecting Export Privileges; Rolando S. Franco

In the matter of: Rolando S. Franco with addresses at 195 Willett Avenue, South River, New Jersey 08882 and c/o Franco & Sons, 195 Willett Avenue, South River New Jersey 08882, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Rolando S. Franco (Franco) of its intention to initiate an administrative proceeding against him pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991)) (the Act),[1] and part 788 of

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), based on allegations that:

(1) On or about October 21, 1986, Franco, acting in his capacity as president and export manager of Rhemz International Corporation, exported U.S.-origin integrated circuits from the United States to Switzerland without the validated license required by § 772.1(b) of the Regulations, in violation of § 787.6 of the Regulations;

(2) On or about March 13, 1987, Franco, acting in his capacity as president and export manager of Rhemz International Corporation, attempted to export, from the United States to Switzerland, a U.S.-origin graphic processor board without the validated export license Franco knew or had reason to know was required by § 772.1(b) of the Regulations, in violation of § 787.3(b) and § 787.4(a) of the Regulations; and

(3) On or about March 14, 1987, Franco, acting in his capacity as president and export manager of Rhemz International Corporation, attempted to export, from the United States to Switzerland, a U.S.-origin graphic processor board without the validated export license Franco knew or had reason to know was required by § 772.1(b) of the Regulations, in violation of § 787.3(b) and § 787.4(a) of the Regulations;

The Department and Franco having entered into a Consent Agreement whereby the Department and Franco have agreed to settle this matter by Franco's paying to the Department a civil penalty in the amount of $5,000 and by Franco's export privileges being denied for five years; and

The terms of the Consent Agreement having been approved by me;

It is Therefore ordered,

First, a civil penalty in the amount of $5,000 is assessed against Franco. Payment of the civil penalty shall be made to the Department within 30 days of the date of this Order, in the manner specified in the attached instructions.

Second, Rolando S. Franco, with addresses at 195 Willett Avenue, South River, New Jersey 08882, and c/o Franco & Sons, 195 Willett Avenue, South River, New Jersey 08882, and all of his successors, assigns, officers, representatives, agents, and employees, shall, for a period of five years from the date of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Franco by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public.

This Order is effective July 22, 1992.

Frank W. Deliberti,

Acting Assistant Secretary for Export Enforcement.

Entered this 22d day of July, 1992.

[FR Doc. 92-18015 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

November 1992 Japan Official Development Assistance Conference in Tokyo

AGENCY: International Trade Administration, Commerce.

ACTION: Revision of dates to submit expressions of interest for the November Japan Official Development Assistance Conference.

On June 10, 1992, the Department of Commerce ("The Department") issued a **Federal Register** notice (57 FR 24595) inviting U.S. companies to participate in the Japan Official Development Assistance (ODA) Conference in Tokyo to convene November 9–11, 1992. This conference is a direct result of the President's January 1992 trip to Japan and is a follow-on to the two successful A.I.D.-Department of Commerce sponsored ODA conferences held in Orlando, Florida and San Francisco, California in May 1989. The Department has received an unexpected and overwhelming response to participate in the conference. Unfortunately, the physical space for the conference is limited. Therefore, it has become necessary to revise the dates through which we will accept expressions of interest. Expressions of interest for partial participation must be received by Friday, November 4, 1992 rather than the original date of September 25, 1992. In addition, registration materials must be received by September 18, 1992.

ADDRESSES: Expression of interest and registration materials should be addressed to Robert Lurensky, Office of Energy, Environment and Infrastructure, room 2015–B, HCHB, Department of Commerce, Washington, DC 20230. Telephone: (202) 377–4002. Facsimile: (202) 377–0316.

FOR FURTHER INFORMATION CONTACT: Elizabeth Johns, office of Japan, room 2318, HCHB, Department of Commerce, Washington, DC 20230. Telephone: (202) 377–4527. Facsimile: (202) 377–0469.

Dated: July 27, 1992.

Marjory E. Searing,

Deputy Assistant Secretary for Japan.

[FR Doc. 92-18137 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-DA-M

Minority Business Development Agency

[Project I.D. No. 06-10-93002-01]

Business Development Center Applications: Corpus Christi MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $268,867 in Federal funds. An audit fee of $4,607 has been added to the Federal amount. The total funding breakdown is as follows: $268,867 Federal and $47,447 non-Federal for a total of $316,314. The period of performance will be from December 1, 1992 to November 30, 1993. The MBDC will operate in the Corpus Christi, Texas geographic service area and a rural initiative comprised of thirteen (13) counties (Jim Wells, Duval, Bee, Brooks, Aransas, Kleberg, Refugio, Live Oak, Kenady, Goliad, Victoria, Calhoun, McMullen).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

The Rural initiative's scope of work will be a proration of the MBDC's scope of work. However, the applicant must include a detail plan of action delineating how services will be provided to the specified rural area. Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A-129, "Managing Federal Credit Program," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-fee workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD-511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

Closing Date: The closing date for applications is August 31, 1992. Applications must be postmarked on or before August 31, 1992.

Note: Please mail completed application to the following address: Chicago Regional Office, 55 E. Monroe St., Suite 1440, Chicago, Illinois 60603.

FOR APPLICATION KIT OR OTHER INFORMATION CONTRACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767-8001.

Requests for application kit must be in writing.

A pre-bid conference will be held at 10 a.m., August 13, 1992, at Coastal Bend Council of Governments on 2910 Leopard Street, Corpus Christi, Texas.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable

regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 24, 1992.

William Fuller,

Deputy Regional Director, Dallas Regional Office.

[FR Doc. 92-18125 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Illinois River (Oregon) Winter Steelhead

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition and request for information.

SUMMARY: NMFS has received a petition to list indigenous, naturally spawning Illinois River (Oregon) winter steelhead (*Oncorhynchus mykiss*) and to designate critical habitat under the Endangered Species Act of 1973 (ESA). In accordance with section 4 of the ESA, NMFS has determined that the petition presents substantial scientific information indicating that the action may be warranted. NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and data regarding this action.

DATES: Comments and information must be received by October 29, 1992.

ADDRESSES: Comments should be submitted to Merritt Tuttle, Chief, Environmental and Technical Services Division, NMFS, 911 NE. 11th Avenue, room 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, NMFS, Portland, OR 97232 (503/230-5430) or Patricia Montanio, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife (List) and to designate critical habitat. Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary determines whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS interprets "substantial scientific or commercial information" to mean the amount of information that would lead a reasonable person to believe that the proposed measure may be warranted (50 CFR 424.14(b)).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

Critical Habitat

Section 4(a)(3) of the ESA requires that critical habitat normally be designated concurrently with a determination that a species is endangered or threatened. Critical habitat includes (1) those areas currently occupied by a species that contain those physical and biological features essential to the conservation of the species and that may require special management considerations or protection; and (2) those areas outside the current range of the species that are essential for the conservation of the species. Areas outside the current range of a species can only be designated if a designation limited to the species' existing distribution would be inadequate to ensure its recovery. However, unlike designating a species as endangered or threatened, economic impacts must be considered when designating critical habitat. An area may be excluded from the designation if it is determined that the benefits of exclusion outweigh the benefits of including the area as critical habitat and the exclusion will not result in the extinction of the species (see 50 CFR 424.01, 424.12, and 424.19).

Petition Received

On May 6, 1992, the Secretary of Commerce received a petition from the Oregon Natural Resources Council; Siskiyou Regional Education Project; Federation of Fly Fishers; Kalmiopsis Audubon Society; Siskiyou Audubon Society; Klamath/Siskiyou Coalition; Headwaters; The Wilderness Society; North Coast Environmental Center; Oregon Chapter, The Sierra Club; and the National Wildlife Federation to list indigenous, naturally spawning Illinois River (Oregon) winter steelhead (*O. mykiss*), and to designate critical habitat under the ESA. The petitioners supplemented their petition on June 23, 1992. As required for a petition to list a Pacific salmon stock (May 18, 1992, 57 FR 21056), the petition presents information on and discusses whether the petitioned population qualifies as a "species" under the ESA, in accordance with NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (November 20, 1991, 56 FR 58612). The Assistant Administrator for Fisheries, NOAA, has determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted. Under section 4(b)(3)(B) of the ESA, this determination requires that a review of the status of the Illinois River winter run of *O. mykiss* be conducted to determine if the petitioned action is warranted.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning the present and historic status of the Illinois River winter steelhead. NMFS is also soliciting information on whether or not this stock qualifies as a "species" under the ESA (November 20, 1991, 56 FR 58612). Copies of the petition are available from the **FOR FURTHER INFORMATION CONTACT** listed above.

NMFS is also requesting information on areas that may qualify as critical habitat for the Illinois River winter steelhead (see also Oct. 15, 1991, 56 FR 51684). Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present distribution should also be identified if such areas are essential to the recovery of the species. Essential features should also be identified. Essential features include but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

Economic Information Solicited

For areas potentially qualifying as critical habitat, NMFS is requesting information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements or management measures likely to result from the designation. Those responding to this request should first project specified areas as potential critical habitat for Illinois River winter steelhead and then project the economic consequences of designating those areas as critical habitat.

The economic cost to be considered in critical habitat designations under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). Therefore, NMFS must consider the incremental net costs specifically resulting from a critical habitat designation, above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. As a consequence, although information estimating the total economic impact of listing a species is welcome, comments most useful in determining critical habitat must clearly distinguish the incremental costs directly attributable to the designation of specific areas as critical habitat.

NMFS reiterates that it seeks information from any interested party and requests that such data, information, and comments be accompanied by: (1) Supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications; and (2) the party's name, address, and any association, institution, or business that the party represents.

Dated: July 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-18185 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Addition to Meeting Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda, previously published in the **Federal Register** at 57 FR 31176, on July 14, 1992, for a public meeting of the North Pacific Fishery Management Council (Council) at the Baranof Hotel in Juneau, Alaska, on August 4–5, 1992, is amended to add an additional item. All other information previously published remains unchanged. The addition to the agenda is as follows:

Addition to Agenda

Receive a report from the National Marine Fisheries Service on implementation of the 750 metric ton halibut prohibited species catch (PSC) for the longline fleet in the Bering Sea/Aleutian Islands. The Council may take action if appropriate.

For more information contact the, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18054 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team (Team) will hold a public meeting on July 30, 1992, beginning at 1 p.m. The meeting will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, room C–127, 8604 La Jolla Shores Drive, La Jolla, CA.

The purpose of this meeting is to: (1) Review the work in progress on limited entry; (2) discuss the work being done on the definition of overfishing and harvest guidelines; and (3) prepare for upcoming advisory subpanel and Pacific Fishery Management Council meetings.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18053 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team (Team) will hold a public meeting on August 23, 1992, beginning at 1 p.m. The meeting will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, room C–127, 8604 La Jolla Shores Drive, La Jolla, CA.

The purpose of this meeting is to: (1) Review the work in progress on limited entry; (2) discuss the work being done on the definition of overfishing and harvest guidelines; (3) compile recommendations to the Pacific Fishery Management Council (Council); and (4) prepare for upcoming advisory subpanel and Council meetings.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18056 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Permit No. 792; U.S. Army Corps of Engineers (P504A).

On May 12, 1992, notice was published in the **Federal Register** (57 FR 20247) that an application had been filed by the U.S. Army Corps of Engineers (Corps), Walla Walla District, Walla Walla, WA 99362–9265, to take listed Snake River Sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) for the purposes of scientific research and enhancement. An emergency permit allowing the requested activities for research on, and the enhancement of, Snake River chinook and sockeye salmon was issued on May 29, 1992. This emergency permit was in effect pending full public and governmental review of the application and is now superseded by issuance of this permit.

Notice is hereby given that on July 24, 1992, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the

above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503/230–5400).

Dated: July 24, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18062 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of Scientific Research Permit No. 748 (P77#50).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 729, issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, on April 30, 1991 (56 FR 21121), has been modified to add aerial surveys and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys.

This modification also grants authority for the addition of the following species to the list of cetaceans which may be sighted during the surveys, over the remaining two-year period that the Permit is valid: 100 Sei whales, *Balaenoptera borealis*; 100 Pygmy and dwarf sperm whales, *Kogia* spp.; 100 False killer whales, *Pseudorca crassidens*; 100 Striped dolphin, *Stenella coeruleoalba*; 100 Beaked whales, *Ziphius cavirostris* and *Mesoplodon* spp.

This modification became effective upon signature.

Documents pertaining to this Modification and Permit are available for review in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: July 23, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18061 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 791 (P771#63).

On May 7, 1992, notice was published in the **Federal Register** (57 FR 19608) that an application had been filed by the National Marine Mammal Laboratory, Alaska Fisheries Center, Northwest Region, 7600 Sand Point Way NE., BIN C15700—Building 1, Seattle, WA 98115–0070, National Marine Fisheries Service, to conduct aerial and vessel surveys for cetaceans, which will encompass observational, photo-ID and sound recording activities over a five-year period.

Notice is hereby given that on July 24, 1992 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700—Building 1, Seattle, WA 98115–0070, (206/526–6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, 9109 Mendenhall Mall Road, suite 6, Federal Annex, Juneau, AK 99802 (907/586–7221).

Dated: July 24, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18064 Filed 7–30–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

July 27, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government agreed to increase the limit for Category 225 for the current agreement period only.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 21971, published on May 26, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1992 and extends through March 31, 1993.

Effective on August 3, 1992, you are directed to amend the May 19, 1992, directive to increase the limit for Category 225 to 8,389,140 square meters [1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-18138 Filed 7-30-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after March 31, 1992.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 1, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 18869) of the proposed addition of the apron to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Apron, Disposable
8415-01-012-9164

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-18186 Filed 7-30-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48C) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Floorboard, Wood
2510–01–063–3893
Nonprofit Agency: Hardeman County Developmental Services Center, Bolivar, Tennessee
Clamp, Loop
5340–01–277–6184
5340–01–118–6677
5340–01–118–6696
5340–01–118–6697
5340–01–276–9169
5340–01–252–4644
5340–01–280–8990
5340–01–276–8539
5340–01–278–4043
5340–00–998–3164
Nonprofit Agency: United Cerebral Palsy Association of King-Snohomish Counties, Seattle, Washington
Bag, Dental Prosthesis
6520–00–926–9041
Nonprofit Agency: Wichita Industries and Services for the Blind, Wichita Kansas
Handle, Litter Pole, Wood
6530–01–247–7157
Nonprofit Agency: Arizona Industries for the Blind, Phoenix, Arizona
Plate, Paper, Pressed Board
7350–00–899–3054
7350–00–899–3055
7350–00–899–3056
Nonprofit Agency: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi
Box M16 Rifle
8149–00–X40–4785
(Requirements for the Anniston Army Depot, Alabama)
Nonprofit Agency: Helena Industries, Inc., Helena, Montana

Services

Audiocassette Reproduction
Fort Ord, California
Nonprofit Agency: Beacon Lighthouse, Inc., Wichita Falls, Texas
Janitorial/Custodial, Marine Corps Air Station Commissary, El Toro, California
Nonprofit Agency: Orange County Association for Retarded Citizens, Orange, California
Janitorial/Custodial, Paul G. Rogers Federal Building and Courthouse, 701 Clematis Street, West Palm Beach, Florida
Nonprofit Agency: Seagull Industries for the Disabled, Inc., Riviera Beach, Florida

Beverly L. Milkman,
Executive Director.

[FR Doc. 92–18187 Filed 7–30–92; 8:45 am]
BILLING CODE 6820–33–M

Procurement List, Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons with severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from the designated nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following service to the Procurement List for provision by the designated nonprofit agency:

Janitorial/Custodial, Hanscom Air Force Base, Massachusetts
Nonprofit Agency: Morgan Memorial Goodwill Industries, Inc., Roxbury, Massachusetts

Beverly L. Milkman,
Executive Director.

[FR Doc. 92–18188 Filed 7–30–92; 8:45 am]
BILLING CODE 6820–33–M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a wood pallet to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 31, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On May 29, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 22727) of the proposed addition of the pallet to the Procurement List. Comments were received from the current contractor for this pallet. The contractor stated that nonprofit agencies employing persons who are blind or have other severe disabilities should be required to compete for their Government contracts. The Committee believes that Congress would not have created the Committee's program, which designates nonprofit agencies in the program as mandatory sources for certain items the Government buys, if it intended these nonprofit agencies to receive Government contracts only through competitive bidding.

The contractor also questioned the Committee's method of assessing impact of proposed Procurement List additions on current contractors. The method mainly involves comparing the contractor's total annual sales with the

value of the contract proposed for addition to the Procurement List to determine what percentage of the contractor's sales the contract represents. Contractors may also inform the Committee of other factors which could bear on an impact determination.

The Committee has long used this method and considers it the fairest possible way of assessing impact in most situations. The contractor has not indicated what method the Committee should use other than to state that the dollar volume of contracts in this industry has little to do with profits. Accordingly, the Committee has used its standard method to reach its conclusion that addition of the pallet to the Procurement List would not have a severe adverse impact on this contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Pallet, Wood

3990–00–NSH–0069 40" x 48"

(Requirements for the Naval Supply Center, Pensacola, FL)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–18184 Filed 7–30–92; 8:45 am]

BILLING CODE 6820–33–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92–1–90CD]

Comments Regarding Distribution of 1990 Cable Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal has received requests for a partial distribution of the 1990 Cable Royalty Fund prior to the Final Declaration of Controversy in this matter.

The Tribunal requested comments by July 15, 1992, as to whether a controversy exists in the 1990 cable fund and for a notice of intent to participate. 57 FR 24026. Comments were received from all the parties who participated in the previous 1989 cable royalty distribution plus the British Broadcasting Corporation. While all indicated that a controversy exists, most comments indicated that some negotiations were underway and requested that the declaration of a controversy be deferred. These same parties requested, however, that the Tribunal distribute 90 percent of the 1990 royalties at the earliest possible date. The Tribunal, therefore, seeks comments regarding the proposed distribution of 90 percent of the 1990 cable royalty funds prior to the declaration of a controversy.

DATES: Comments are due August 14, 1992.

ADDRESS: An original and five copies shall be submitted to, Chairman, Copyright Royalty Tribunal, 1825 Connecticut Ave., NW., Suite #918, Washington, DC 20009, (202) 606–4400.

FOR FURTHER INFORMATION CONTACT: Commissioner J.C. Argetsinger, Copyright Royalty Tribunal, 1825 Connecticut Ave., NW., Suite #918, Washington, DC 20009, (202) 606–4400.

Dated: July 27, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92–18173 Filed 7–30–92; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Overseas Dependents Schools National Advisory Panel on the Education of Dependents With Disabilities

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Overseas Dependents Schools National Advisory Panel on the Education of Dependents with Disabilities (the Panel) has been renewed, effective July 23, 1992.

The Panel's charter has been amended to conform to the "Individuals with Disabilities Education Act Amendments of 1991," Public Law 102–119. The Panel provides advice and recommendations to the Director, Department of Defense Dependents Schools regarding the requirements for the education of dependent children with disabilities, as well as the rules and standards that should be developed and maintained for the operation of the schools system.

The membership of the Panel will continue to be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. Composition includes persons with disabilities, parents of persons with disabilities, special education teachers, regular education teachers, program administrators in the Dependents Schools system, and representatives of the military commands sponsoring the schools.

For additional information regarding the National Advisory Panel, please contact Ms. Trudy Pauls, telephone: 703–746–7867.

Dated: July 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–18058 Filed 7–30–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint Staff, the U.S. Mission to NATO, the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense

Investigative Service, the Defense Security Assistance Agency, the Strategic Defense Initiative Organization, the Defense Field Activities, and the U.S. Court of Military Appeals. The publication of PRB membership is required by 5 U.S.C 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Janet E. Thompson, Assistant Director for Executive personnel and Classification, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 697–8304.

Dated: July 28, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the OSD PRB; specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1992.

Chairman

Jeanne B. Fites

Members

Carolyn A. Carmack
Paul E. Chistolini
Gregory L. Colocotronis
Lee H. Frame
Anthony R. Grieco
Walter Jajko
Elaine F. Litman
Robert T. Mason
William M. McDonald
John H. McNeil
Michael G. Newman
Joseph V. Osterman
Roanlad S. OXley
Vincent P. Roske, Jr.
Roger F. Scheer
Mark B. Schneider
Robert R. Soule
Diana G. Tabler
Frank A. Tapparo
Nicolai Timeses, Jr.
Lindsey W. Williams

Alternates

Ronald L. Adolphi
Howard G. Becker
John V. Bolino
James M. Compton
Robert E. Doroxz
Robert A. Giacomo
Penman R. Gilliam
Thomas F. Granahan
Claiborne D. Haughton, Jr.
Sally K. Horn
Charles J. Infosino
H. Steven Kimmel
George G. Kundahl
Billy C. Murrell
Fred J. Newton
Jordan E. Rizer
Melvin W. Russell
Ronald P. Sanders
Eugene Sevin
Mary H.H. Smith
Roy C. Speight
John P. Springett
Michael A. Sterlacci
Christopher C. Wright

[FR Doc. 92–18123 Filed 7–30–92; 8:45 am]

BILLING CODE 3810-01-M

Meeting; Ada Board

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Federal Advisory Board for Ada (Ada Board) will be held Thursday and Friday, September 10 and 11, 1992 at Texas A&M University in College Station, TX.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland 20706, (703) 685–1477.

Dated: July 24, 1992.

L.M. Bynum,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 92–18057 Filed 7–30–92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Institute of Advanced Science and Technology at the University of Pennsylvania, Philadelphia, PA

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of the construction of the Institute of Advanced Science and Technology (IAST) to be located at the University of Pennsylvania, Philadelphia, Pennsylvania.

In Fiscal Year 1991, Congress provided a ten million dollar grant to establish IAST. The grant was awarded to the University of Pennsylvania through competitive procedures. The IAST, a complex of interactive university facilities, would foster research in the areas of Computer and Cognitive Science, Chemistry and Chemical Engineering, and Bioengineering, in addition to training future scientists and engineers. It would also facilitate the transfer of research findings to practical applications. The proposal calls for the demolition of an existing campus structure designated as an historic property, the construction of 100,000 square feet of new laboratory space, and the adaptive reuse of adjacent University buildings for related purposes.

The Air Force will conduct a scoping meeting to obtain public input to assist in determining the nature, extent and scope of environmental issues and concerns to be addressed in the EIS. The scoping meeting will be held at the University of Pennsylvania on August 19, 1992 in the Wistar Auditorium, 3601 Spruce Street, Philadelphia, Pennsylvania.

Public input and comments are solicited concerning the environmental impacts of the proposed program. If concerned persons are not able to attend the scoping meeting, written comments and suggestions will be accepted. To ensure that the Air Force will have sufficient time to fully consider public inputs on issues to be included in the EIS, written comments should be forwarded to the address below by September 11, 1992. Interested persons who seek further information concerning the IAST project or wish to comment on the proposed action and EIS should contact: Lt. Col. Gary P. Baumgartel, AFCEE/ESE, Building 1155, Brooks AFB, Texas 78235–5000, (512) 536–3869.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–17320 Filed 7–30–92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned

agreement involves approval of the following sale: Contract No. S–JA–439, for the sale of 593.6 grams of natural uranium, 20.013 grams of uranium enriched to 0.9911 percent in the isotope uranium-235, 30.019 grams of uranium enriched to 3.003 percent in the isotope uranium-235, 20.013 grams of uranium enriched to 4.949 in the isotope uranium-235, and 10.006 grams of uranium enriched 49.383 percent in the isotope uranium-235 to Nuclear Fuel Industries Ltd., Osaka, Japan for use as standards reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 28, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92–18178 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Proposed Finding of No Significant Impact, Consolidated Incineration Facility at the Savannah River Site, Aiken, SC; Public Comment Period Extension

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) has decided to extend the public review period on the proposed finding of no significant impact (FONSI) for the construction and operation of the Consolidated Incineration Facility (CIF) at the Savannah River Site (SRS) to August 31, 1992.

DATES: Comments on the proposed FONSI should be postmarked by August 31, 1992, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Comments or requests for copies of the EA should be addressed to: Stephen Wright, Director, Environmental and Laboratory Programs Division, Savannah River Field Office, U.S. Department of Energy, P.O. Box A, Aiken, South Carolina 29802. Telephone: (803) 725–3957. FAX: (803) 725–8434.

FOR FURTHER INFORMATION: For further information on the CIF project, contact Stephen Wright at the above address. For further information on DOE's general NEPA procedures, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: On July 1, 1992, the DOE published a notice in the **Federal Register** (57 FR 29299) announcing the availability of the proposed FONSI and the CIF environmental assessment with a 30–day comment period. The DOE received requests from several parties to extend the comment period. In response to these requests, and to ensure that all interested parties have time to comment, the comment period has been extended to August 31, 1992. Comments should be postmarked by August 31, 1992, to ensure consideration.

Issued at Washington, DC., this 29th day of July, 1992.

Peter Brush,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 92–18308 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Field Office (SR) Financial Assistance Award Intent To Award a Noncompetitive Cooperative Agreement

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive award of cooperative agreement.

SUMMARY: The DOE announces that it plans to award a renewal agreement to the South Carolina Institute of Archaeology and Anthropology (SCIAA), University of South Carolina, Columbia, South Carolina, for continuation of archaeological resource management, collections management, research, and public education at the Savannah River Site (SRS). The cooperative agreement will be extended for a five-year period with DOE support of $2,777,103; SCIAA will cost share $684,855 during the period. Pursuant to Section 600.7(b)(2)(i)(A) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that the activity to be funded is necessary for the satisfactory completion of an activity presently being funded by DOE and eligibility for this award shall be limited to SCIAA.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

PROJECT SCOPE: Since 1987, SCIAA has conducted the Savannah River Archaeological Research Program on the SRS; the site serves as a primary research facility for the investigation of archaeological research and problems associated with cultural development within the Savannah River Valley. This renewal will allow SCIAA to continue to research, preserve, and educate the public on the cultural heritage of the Savannah River Site and surrounding environs. The research efforts will focus on the development and change of cultural systems in the area with special emphasis on the identification and preservation of significant archaeological sites which contain key data relevant to the understanding of the past. In addition, the research will enable archaeologists, historians, geographers and geologists to comply with relevant laws and regulations and manage the archaeological resources more effectively.

As an agency of the State of South Carolina and a research institute of the University of South Carolina, SCIAA is in a unique position to provide both expert technical services and an unbiased interpretation of the archaeological resources. It is in the best interest of the public to investigate and preserve these archaeological resources through effective and aggressive cultural resource management.

Issued in Aiken, South Carolina on July 17, 1992.

Robert E. Lynch,

Doe Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92–18183 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 92–2 of the Defense Nuclear Facilities Safety Board Concerning Facility Representative Programs at DOE Defense Nuclear Facilities

AGENCY: Department of Energy.

ACTION: Notice of request for public comment.

SUMMARY: Pursuant to section 312(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 92–2 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 4, 1992, (57 FR 23576) concerning Facility Representative programs at DOE defense nuclear facilities.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before August 31, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: William H. Young, Assistant Secretary for Nuclear Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued In Washington, DC, On July 27, 1992.

Mario Fiori,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004

July 20, 1992.

Dear Mr. Conway: Your letter of May 28, 1992, forwarded the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 92–2 regarding the Department of Energy's (DOE) Facility Representative programs at defense nuclear facilities.

As you have noted, several DOE field offices have begun to develop site specific guidance on the selection, training and responsibilities of DOE Facility Representatives. When I approved the revised occurrence reporting order and the new direction for conduct of operations, I envisioned a Department-wide program that would help protect public health and safety at DOE's facilities. Your recommendation reinforces the need for the Department to continue to emphasize the need for well qualified facility representatives at its defense nuclear facilities. Due to the differences in facilities within the Department, however, some variance in Facility Representative requirements may prove to be appropriate. Additionally, some existing Facility Representative programs may prove to be currently in a state acceptable to the Department.

I accept the Board's recommendation. We will conduct an analysis of the existing DOE Facility Representative programs at defense nuclear facilities and use the results to either establish a more structured and formal Facility Representative program at these facilities, or to improve, if needed, those already performing well. I have tasked the Assistant Secretary for Nuclear Energy to develop an implementation plan for this recommendation by October 15, 1992.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 92–18182 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES92–48–000, et al.]

Old Dominion Electric Cooperative, et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Old Dominion Electric Cooperative

[Docket No. ES92–48–000]

July 23, 1992.

Take notice that on July 16, 1992, Old Dominion Electric Cooperative filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $125 million of short-term debt on or before September 15, 1994, with a final maturity date no later than September 15, 1995.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Cleveland Electric Illuminating Company

[Docket No. ER92–208–000]

July 24, 1992.

Take notice that on July 1, 1992, Cleveland Electric Illuminating Company (CEI) tendered for filing an amendment in the above-referenced docket.

Comment date: August 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. United Illuminating Company

[Docket No. ER92–703–000]

July 24, 1992.

Take notice that on July 9, 1992, United Illuminating Company (UI) tendered for filing a Notice of Cancellation of the agreement, dated October 25, 1991 between UI and Green Mountain Power Corporation.

Comment date: August 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Westmoreland-Hadson Partners

[Docket No. QF92–180–000]

July 24, 1992.

On July 7, 1992, Westmoreland-Hadson Partners (Applicant), c/o Westmoreland Energy, Inc., 2955 Ivy Road, Charlottesville, Virginia 22901, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Weldon Township, near Roanoke Rapids, North Carolina, and will consist of a pulverized coal-fired boiler and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used for space heating and cooling, and process uses. The primary energy source will be coal. The maximum net electric power production capacity of the facility will be 44 MW. The facility is scheduled to begin in 1992.

Comment date: August 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18085 Filed 7–30–92; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District, Nebraska Public Power District; Corrected Notice of Intention To Prepare a Revised Draft Environmental Impact Statement [1]

July 24, 1992.

The Federal Energy Regulatory Commission (FERC) has received comments on the Draft Environmental Impact Statement (DEIS) on applications for relicensing the Kingsley Dam Project No. 1417, and the Keystone Dam Project No. 1835. The two hydropower projects are located on the North Platte, South Platte, and Platte Rivers in Nebraska.

[1] This notice was originally issued on July 22, 1992.

The FERC staff has reviewed the comments and determined that a revised DEIS will be prepared. The revised DEIS will address the substantial amount of new information filed subsequent to the preparation of the DEIS and broaden the treatment of alternatives analyzed.

Scoping Meetings

FERC staff will conduct scoping meetings in Nebraska to review the scope and the alternatives to be assessed in the revised DEIS. The place and time of these meetings will be announced in a subsequent notice.

Procedures

The purpose of the notice is to invite all interested individuals, organizations, tribes, and agencies to assist the staff in identifying the scope of environmental issues that should be analyzed in the revised DEIS. Anyone who has views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. The closing date for comments will be 30 days after the scoping meetings.

All comments must be filed with the Secretary, Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Kingsley Dam and Keystone Dam Projects, Nebraska, Project Nos. 1417 and 1835.

All persons with an interest in these proceedings, including the license applicants, intervenors, and governmental entities, are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission to serve a copy of the document on each person whose name is on the official service list for these proceedings. See 18 CFR 4.34(b).

For further information, please contact S. Ronald McKitrick at (202) 219–2783.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18084 Filed 7–30–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–605–000, et al.]

Sea Robin Pipeline Company, et al.; Natural Gas Certification Filing

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Company

[Docket No. CP92–605–000]

July 23, 1992.

Take notice that on July 21, 1992, Sea Robin Pipeline Company (Sea Robin), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed an application with the Commission in Docket No. CP92–605–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is open to public inspection.

Sea Robin proposes to abandon a transportation service performed under its FERC Rate Schedule X–6 for Southern.[1] Sea Robin is authorized to transport up to 21,038 Mcf of natural gas per day on a firm basis for Southern form Ship Shoal Block 225, Eugene Island Blocks 260 and 275, East Cameron Blocks 231, 232, and 239, and East Cameron South Addition Block 240, all offshore Louisiana, to a point onshore near Erath, Vermilion Parish, Louisiana. Southern has notified Sea Robin that it wishes to terminate the agreement when the primary term expires on February 12, 1993.

No facilities would be abandoned in this proposal.

Comment date: August 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP92–600–000]

July 23, 1992.

Take notice that on July 17, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158–0900, filed in Docket No. CP92–600–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the existing Bellingham I Meter Station metering facilities, to construct and operate upgraded replacement metering facilities at the Bellingham I Meter Station (Bellingham MS) and to construct and operate approximately 8-miles of pipeline to partially loop its existing Bellingham Lateral, under the authorization issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that the combined facilities will all be located in Whatcom County, Washington, and hereinafter referred to as the Bellingham Facilities. Northwest states that the additional capacity at the Bellingham Facilities will enable it and the receiving local distribution company, Cascade Natural Gas Corporation (Cascade), to accommodate requests for additional transportation service to Encogen Northwest, L.P. (Encogen) and other end-users served by Cascade.

Northwest states that Cascade has requested that Northwest increase its delivery capacity at the Bellingham MS to facilitate the transportation of additional gas which will be required to serve Encogen's cogeneration facilities and other new requirements. According to Northwest, Encogen is a limited partnership formed to construct, own and operate a natural gas fired, combined cycle 160 megawatt cogeneration facility located downstream of Bellingham MS which will require up to 37,000 MMBtu per day of natural gas.

Northwest proposes to abandon and replace the existing Bellingham MS with two 8-inch regulators, a new 8-inch by 10-inch relief valve, two 12-inch turbine meter runs and associated appurtenances. It is stated that this will increase the maximum design capacity of the Bellingham MS from approximately 38,000 Mcf per day (Mcfd) at a minimum delivery pressure of 300 psig to 85,900 Mcfd at a minimum delivery pressure of 400 psig. Further, to accommodate the increase capacity needed at the meter station, Northwest proposes to partially loop its existing 6-inch Bellingham Lateral with 8 miles of 12-inch pipe. It is stated that this will increase capacity on the Bellingham Lateral from 19,400 Mcfd at 600 psig to 100,000 Mcfd at 600 psig.

It is estimated that the total cost of the Bellingham Facilities, including filing fees and AFUDC, will be $3,255,600. Pursuant to the facilities reimbursement provisions of Northwest's Rate Schedule TF–1, Northwest states that it will install and pay for the Bellingham Facilities, since the estimated revenues generated from the incremental load projected to result from service through the new Bellingham Facilities exceeds the estimated incremental cost-of-service for the Bellingham Facilities.

Comment date: September 8, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92–603–000]

July 23, 1992.

Take notice that on July 21, 1992, Transcontinental Gas Pipe Line

[1] *See* the Commission order issued April 5, 1974, in Docket No. CP73–102 (51 FPC 1221).

Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-603-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon three certificated interruptible transportation services for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco seeks authorization to abandon three interruptible transportation services which it indicates it has performed for Southern detailed as follows:

Transco's volume 2 tariff rate schedule	Certificate order date	Docket authorized	Primary term expiration
X-47	5-24-77	CP69-199	7-1-86
X-246	9-20-82 3-27-85	CP82-255	9-30-92
X-262	3-31-86	CP86-7	4-30-91

Transco states that it notified Southern by letter dated February 13, 1991, of its intent to terminate the service agreements underlying the listed rate schedules and to seek Commission authorization to abandon the services. Transco requests an order approving the abandonments effective September 30, 1992, for the service covered by Rate Schedule X-246 and on the date of the order for the services covered by Rate Schedules X-47 and X-262. No abandonment of facilities is proposed.

Comment date: August 13, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP92-599-000]

July 24, 1992.

Take notice that on July 17, 1992, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed a prior notice request with the Commission in Docket No. CP92-599-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a four-inch tap, meter station, and appurtenant facilities for Gulf Gas Utilities Company (Gulf Gas), under United's blanket certificate issued in Docket No. CP82-430-000, all as more fully set forth in the application which is open to public inspection.

United proposes to construct and operate a four-inch tap, meter station, and a flow computer on its existing TPL 1 pipeline in Dallas County, Texas, in order to deliver 840 MMBtu of natural gas per peak day for Gulf Gas' account to the Veterans Administration Hospital. Gulf Gas would reimburse United for the $11,367 estimated construction cost of the delivery tap. United states that its tariff does not prohibit the proposed modification of facilities. United also states that it would make the appropriate part 284 transportation filings once Gulf Gas' gas volumes begin to flow.

Comment date: September 8, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Company

[Docket No. CP92-601-000]

July 24, 1992.

Take notice that on July 20, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP92-601-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to enhance and operate three existing meter stations for delivery of gas to an existing industrial customer, Indiana Gas Company, under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the HGA, all as more fully set forth in the request which is open to public inspection.

ANR states that its proposal would have no adverse impact on the peak and annual entitlement of any other ANR customers. ANR also states that it would use the increased meter capacity to deliver open access transportation volumes pursuant to Rate Schedule FTS-1 of its FERC Gas Tariff.

Comment date: September 8, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP92-595-000]

July 24, 1992.

Take notice that on July 13, 1992, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP92-595-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide gas transportation service on a firm basis, for Rochester Gas and Electric Corporation (Rochester), a New York gas distribution company, and to construct and operate facilities necessary to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In particular, Great Lakes states that Rochester has requested that Great Lakes transport up to 55,500 Mcf per day (Rochester volumes) from various points of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR Pipeline), located at Capac, Farwell, and Muttonville, Michigan (respectively the Capac, Farwell, and Muttonville Receipt Points) to a point of interconnection between the facilities of Great Lakes and TransCanada Pipelines Limited (TransCanada) located on the international boundary, near St. Clair, Michigan (St. Clair Delivery Point).

The Rochester volumes received at the Capac, Farwell, and Muttonville Receipt Points would come from various domestic suppliers and from storage. Upon transportation and delivery by Great Lakes of the Rochester volumes to the St. Clair Delivery Point, TransCanada will transport the volumes through its facilities and those of Union Gas Limited (Union) and deliver the volumes to a proposed point of interconnection between the facilities of TransCanada and Empire State Pipeline (Empire), on the international boundary near Niagara Falls, New York. The gas will be transported by Empire to proposed points of interconnection between the facilities of Rochester and Empire.

To implement the arrangements, Great Lakes and Rochester have entered into a Transportation Service Agreement (Agreement) dated April 1, 1992. The agreement provides for a 14-year initial term for the firm service. To provide the service, Great Lakes proposes to construct and operate a 6.2 mile, 36-inch diameter pipeline loop in Genessee County Michigan. In addition, Great Lakes proposes to re-wheel two compressors and modify station piping, both at its Compressor Station No. 13, located in Genessee County, Michigan. The estimated cost of the proposed transmission facilities is $15,290,000. The facilities proposed in this application will be financed with funds generated internally, together with short-term borrowings under established lines of credit and/or issuance of commercial paper. It is contemplated that any short-term borrowings would be retired with funds generated internally.

The Agreement states that the reservation fee and utilization fee for the firm transportation rate will be $4.802 per Mcf and $0.00025 per Mcf respectively.

It is stated that the proposed transportation service will permit Rochester to reduce its purchased gas cost and diversify its system supply gas.

It is also stated that Rochester's customers would also benefit from use of storage services, which will increase the security and reliability of gas supply within Rochester's authorized service territories.

Comment date: August 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP92-604-000]

July 24, 1992.

Take notice that on July 21, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-604-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas with El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that by order issued August 9, 1979, in Docket No. CP79-114 (8 FERC ¶ 61,147), the Commission approved the exchange of up to 100,000 Mcf of natural gas per day, and the facilities necessary to make the exchange, pursuant to an exchange agreement dated November 30, 1978, between El Paso and WNG (formerly Cities Service Gas Company). WNG further states that the agreement is currently set out in WNG's FERC Gas Tariff Original Volume No. 2, as Rate Schedule X-15.

It is indicated that on January 6, 1986, WNG and El Paso received authority in Docket No. CP79-114-003 (34 FERC ¶ 62,013) to reduce the exchange volume from 100,000 Mcf per day to a volume not to exceed 35,000 Mcf per day and to change the unit of measure from an Mcf basis to a dekatherm basis.

WNG states that WNG and El Paso have mutually agreed to abandon the exchange agreement dated November 30, 1978, as amended, effective December 31, 1991. WNG further states that all exchange activity was suspended December 31, 1991, except for the elimination of any imbalance.

Comment date: August 14, 1992, in accordance with Standard Paragraph F at the end of the notice.

8. El Paso Natural Gas Company

[Docket No. CP92-607-000]

July 24, 1992.

Take notice that on July 22, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-607-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas with Williams Natural Gas Company (WNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that by order issued August 9, 1979, in Docket No.CP79-114 (8 FERC ¶ 61,147), the Commission approved the exchange of up to 100,000 Mcf of natural gas per day, and the facilities necessary to make the exchange, pursuant to an exchange agreement dated November 30, 1978, between El Paso and WNG (formerly Cities Service Gas Company). El Paso further states that the agreement is currently set out in El Paso's FERC Gas Tariff, Original Volume No. 2, as Rate Schedule X-51.

It is indicated that on January 6, 1986, WNG and El Paso received authority in Docket No. CP79-114-003 (34 FERC ¶ 62,013) to reduce the exchange volume from 100,000 Mcf per day to a volume not to exceed 35,000 Mcf per day and to change the unit of measure from an Mcf basis to a dekatherm basis.

El Paso states that WNG and El Paso have mutually agreed to abandon the exchange agreement dated November 30, 1978, as amended, effective December 31, 1991. El Paso further states that all exchange activity was suspended December 31, 1991, except for the elimination of any imbalance.

Comment date: August 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18083 Filed 7-30-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-054]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver to and Publishing of the Petition for Waiver From Evcon Industries, Inc; From the DOE Furnace Test Procedure

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Evcon Industries, Inc. (Evcon) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Evcon.

Evcon's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Evcon seeks to test using a blower delay time of 30 seconds for its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 31, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–054, Mail Stop CE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8757.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.37 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, any may be extended for an additional 180 days, if necessary.

On June 10, 1992, Evcon filed an Application for Interim Waiver regarding blower time delay. Evcon's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Evcon requests the allowance to test using a 30-second blower time delay when testing its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces. Evcon states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately one to two percent. Since current DOE test procedures do not address this variable blower time delay, Evcon asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19228, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, and 57 FR 23392, June 3, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; The Ducane Company, 56 FR 63943, December 6, 1991; and Consolidated Industries Corp., 57 FR 22220, May 27, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Evcon an Interim Waiver for its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Evcon was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, July 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Tom Chase,

Senior Design Engineer, Evcon Industries, Inc., P.O. Box 19014, Wichita, KA 67204–9014.

July 24, 1992.

Dear Mr. Chase: This is in response to your June 10, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Evcon Industries, Inc. (Evcon) BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 56 FR 2920, January 25, 1991; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, and 57 FR 23392, June 3, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; The Ducane Company, 56 FR 63943, December 6, 1991; and Consolidated Industries Corp., 57 FR 22220, May 27, 1992.

Evcon's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Evcon will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Evcon's Application for an Interim Waiver from the DOE test procedure for its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces regarding blower time delay is granted.

Evcon shall be permitted to test its BGU upflow, BGH horizontal, and BGD downflow series of gas furnaces on the basis of these test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t—, unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t—), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. Cyrus Nasseri,

Office of Conservation and Renewable Energy, U.S. Department of Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

June 10, 1992.

Dear Mr. Nasseri: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to 10 CFR 430.27. Waiver is requested from the furnace test procedure found in Appendix N to subpart B of part 430.

The current heat up test procedure requires a 1.5 minute delay between burner on and blower on. Evcon Industries is requesting authorization to use a 30 second time delay instead of 1.5 minutes. Evcon will be manufacturing a series of gas furnaces which include the BGU series upflow, BGH series horizontal and BGD series downflow models. These furnaces incorporate a non-adjustable electronic blower control which turns on the blower 30 seconds after the burner lights. When tested with the 30 second time delay, these furnaces show an increase of one to two percent AFUE compared to the current test procedure. Evcon believes that this is a worthwhile energy savings. Current test procedures do not give credit for the saved energy, thus providing inaccurate comparative data.

Evcon requests an interim waiver because it seems likely that our waiver will be granted. Similar waivers to allow fixed blower timings shorter than 1.5 minutes have been granted to several other manufacturers of similar products.

Confidential comparative test data which verify the results above are available upon your request.

A copy of this Petition for Waiver and Application for Interim Waiver is being sent to other manufacturers who domestically market similar products.

Sincerely,

Tom Chase,

Senior Design Engineer.

[FR Doc. 92–18180 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

[Case No. F–048]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures from Lennox Industries, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Lennox Industries, Inc. (Lennox) from the existing Department of Energy (DOE) test procedure for furnaces regarding blower time delay for the company's G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces.

Today's notice also publishes a "Petition for Waiver" from Lennox. Lennox's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Lennox seeks to test using a blower delay time of 60 seconds for its G21Q and GSR21Q series of condensing furnaces and a blower delay time of 45 seconds for its G21V and GSR21V series of condensing furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 31, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–048, Mail Stop CE–90, room 6B–25, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8757.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary of Conservation and Renewable Energy (Assistant Secretary) to grant an interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basis model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On February 10, 1992, Lennox filed an Application or Interim Waiver regarding blower time delay. Lennox's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 60-second blower time delay when testing its G21Q and GSR21Q series and a 45-second blower time delay when testing its G21V and GSR21V series of condensing furnaces. Lennox states that the 60-second and 45-second delay are indicative of how these furnaces actually operate. Such delays result in energy savings of approximately 1.0 to 2.0 percent. Since current DOE test procedures do not address this variable blower time delay, Lennox asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 56 FR 2920, January 25, 1991, and 57 FR 10166, March 24, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 10167, March 24, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 FR 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, and 57 FR 10161, March 24, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Lennox an Interim Waiver for its G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Lennox was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, July 27, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Mr. David W. Treadwell,
Vice President, Research and Development, Lennox Industries, Inc., P.O. Box 877, Carrollton, TX 75006.

July 24, 1992.

Dear Mr. Treadwell: This is in response to your February 10, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure for furnaces regarding blower time delay for Lennox Industries, Inc. (Lennox) G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 56 FR 2920, January 25, 1991, and 57 FR 10166, March 24, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, and 57 FR 10167, March 24, 1992; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 10167, March 24, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, and 57 FR 10161, March 24, 1992; Thermo Products Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992.

Lennox's Application for Interim Waiver does not provide sufficient information to

evaluate what, if any, economic impact or competitive disadvantage Lennox will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Lennox's Application for an Interim Waiver from the DOE test procedure for its G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces regarding blower time delay is granted. Lennox shall be permitted to test its G21Q, GSR21Q, G21V, and GSR21V series of condensing furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

February 10, 1992.

Dear Sir: This is a Petition for Waiver and an Application for Interim Waiver submitted pursuant to 10 CFR 430.27. Waiver is requested from the uniform test procedure for measuring energy consumption of furnaces. The procedure requires a 1.5 minute time delay between burner ignition and indoor blower activation during the heat-up portion of the test as outlined in appendix N to supbart B of part 430. Lennox manufactures condensing units with fixed timing controls which will activate the blower in less than 1.5 minutes after burner start-up. Under the current method of test the flue gas temperature measured in the stack reaches a value which is higher than will be seen in actual operation resulting in inaccurate comparative data.

Based on the use of fixed timing controls, we are requesting that Lennox Industries Inc. be permitted to test the following lines of condensing units with the indicated time delays between burner and blower startup.

Model series	Time delay
G21Q & GSR21Q	60 seconds.
G21V & GSR21V	45 seconds.

Our test data indicates that an energy savings of approximately 1% to 2% is achievable with this reduction in blower delay. Lennox has been granted a waiver permitting a 45 second blower on time to be used in the efficiency calculations for our G20 and G20R atmospheric furnaces. Several other manufacturers of condensing furnaces have also been granted waivers which permit calculations based on a fixed timing control.

Manufacturers that market similar products are being sent a copy of this petition. If any other information is required, please contact me.

Sincerely, Lennox Industries Inc.

David W. Treadwell,

Vice President, Research and Development.

[FR Doc. 92–18179 Filed 7–30–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–75–NG]

MCV Gas Acquisition General Partnership; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 19, 1992, of an application filed by MCV Gas Acquisition General Partnership (MCV Gas), requesting blanket authorization to import up to 20 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. MCV Gas intends to use existing pipeline facilities within the United States and states that it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time August 31, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 586–0503.

SUPPLEMENTARY INFORMATION: MCV Gas is a general partnership organized under the laws of the State of Michigan and a marketer or natural gas with its principal place of business at Midland, Michigan. MCV Gas' general partners are Midland Cogeneration Venture Limited Partnership (Midland) and PVCO Corp. Midland operates a combined-cycle, natural gas-fired cogeneration facility in Midland, Michigan.

In support of its application, MCV asserts that the terms of each purchase of gas to be imported will be voluntarily negotiated, short-term and market responsive. In particular, MCV Gas asserts that the price of the gas will be adjusted to reflect the prices and availability of competing fuels, including domestic natural gas supplies.

The decision on MCV Gas application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an impori arrangement in the markets served is the

primary consideration determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental affects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments recieved from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MCV Gas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC July 27, 1992.

Charles F. Vacek

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-18181 Filed 7-30-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-121-NG]

Western Gas Marketing Inc.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Western Gas Marketing Inc. (WGM Inc.) on December 31, 1991, as amended on January 21, 1992, May 28, 1992, and June 17, 1992 for authorization to import up to 600 Bcf of Canadian natural gas into the United States. In addition, WGM Inc. requests authorization to export to Mexico up to 50 Bcf of domestically produced natural gas and to export to Canada up to 100 Bcf of domestic natural gas. The term of the proposed import/export authorization would be for two years beginning on the date of first delivery after October 31, 1992, the date WGM Inc.'s existing blanket authorization to import and export gas expires. See DOE/FE Opinion and Order No. 442 (Order 442), (1 FE Para. 70,368), issued October 24, 1990, as amended by DOE/FE Opinion and Order No. 442-A (Order 442-A) issued February 28, 1992 (1 FE Para. 70,540).

The proposed imports and exports would take place at any point on the United States' international borders. WGM Inc. states it will notify DOE within two weeks after deliveries begin and will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 31, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: WGM Inc., and Oklahoma corporation with its principal place of business in Tulsa, Oklahoma, is a natural gas marketing company. Order 442 originally authorized Western Gas Marketing USA Ltd., (Western Gas USA) to import up to 300 Bcf of Canadian natural gas and to export to Canada up to 100 Bcf of domestic natural gas through October 31, 1992. This authority was transferred from Western Gas USA to WGM Inc. by Order 442-A to reflect the merger of Western Gas USA Ltd., and Allied Producers Gas Service Inc. (Allied). Under the authorization sought, WGM Inc. will import up to 600 Bcf of Canadian natural gas into the United States, additionally will export to Mexico up to 50 Bcf of domestically produced natural gas and to export to Canada up to 100 Bcf of domestic natural gas. WGM proposes to import or export natural gas either on its own behalf, or as agent on behalf of others,

for short-term and spot sales in the United States, Canada and Mexico. WGM Inc. asks that the import and export authorizations be granted without a daily or annual volume limitation.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these issues. The applicant asserts that this import/export arrangement would be competitive and there is no current need for the domestic gas proposed to be exported. Parties opposing this arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of WGM Inc.'s application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-18177 Filed 7-30-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4190-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 31, 1992.

For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: FIFRA Reregistration Fees (EPA ICR No.: 1495.02; OMB #2070-0101). This is a reinstatement of a previously approved collection. The EPA is requesting a one year clearance.

Abstract: Under the 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), pesticide registrants must pay a one-time fee to cover the costs of reregistering the active ingredients in their products. To determine the amount of this fee, EPA will ask registrants to indicate the source of the active ingredient in their products and the quantity marketed. The Agency uses this information to apportion fees based on market share and, in some cases, to decide whether a pesticide producer is exempt from the fee requirement. Small businesses may apply for a waiver of fees by completing a certification form.

Burden Statement: The burden for this collection of information is estimated to average 3.29 hours per response for reporting, and 0.28 hour per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Pesticide Producers.

Estimated No. of Respondents: 250.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 893 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street SW., Washington, DC 20460,

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: July 27, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-18158 Filed 7-30-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4190-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 13, 1992 Through July 17, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-AFS-G65054-NM Rating LO, Hay Timber Sale, Timber Harvest and Road Construction, Implementation, Lincoln National Forest, Cloudcroft District, Otero County, NM.

Summary

EPA had no objection to the preferred alternative.

ERP No. D-BIA-L99003-WA Rating EO2, I-5/88th Street Northeast Interchange Construction Project, Traffic Circulation Improvements and Tulalip Tribes Reservation Direct Freeway Access, Approval, Coast Guard Bridge Permit and COE Section 404 Permit, Snohomish County, WA.

Summary

EPA expressed environmental objections on the potential indirect effects of the project which may include noise, air quality degradation, water quality, and aesthetics. EPA further believed that the project had the potential to alter land use, increase development density, increase growth rates, and significantly increase traffic movements. EPA believed that additional information is needed on these effects and mitigation measures.

ERP No. DS-USN-K35030-CA Rating EO2, P-202 Naval Air Station Alameda and P-082 Naval Supply Center Oakland Dredging Projects, Additional Information, Site Designation, Implementation and Section 404 Permit, Alameda and Oakland Cities, San Francisco Bay, CA.

Summary

EPA expressed environmental objections because disposal alternatives for dredged material that may be unacceptable for ocean disposal were not considered. EPA believed that additional 10-day amphipod bioassays are needed before a final decision on suitability of the dredged material can be made, and that a detailed management and monitoring plan should be developed.

Final EISs

ERP No. F-AFS-K61120-AZ Mt. Lemmon Ski Valley Area, Development and Management, Special Use Permit, Coronado National Forest, Santa Catalina Ranger District, Pima County, AZ.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F-VAD-E80000-FL East Central Florida Medical Center (ECFMC) Construction, Alternative Site Selection, Brevard, Orange, Seminole and Volusia, Counties, FL.

Summary

EPA expressed environmental concerns about potential water quality impacts due to stormwater runoff, and ambient noise impacts.

Dated: July 27, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-18160 Filed 7-30-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4190-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Availability of Environmental Impact Statements Filed July 24, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920293, DRAFT EIS, AFS/NPS AZ, Grand Canyon Airport to Maswik Transportation Area, Grand Canyon Village Passenger Rail Service Construction and Operation, Approval and Special Use Permit, Coconino County, AZ, Due: September 20, 1991, Contact: William M. Lannaw (602) 635-2681. The U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's National Park Service are Joint Lead Agencies on this project.

EIS No. 920294, DRAFT EIS, FHW, CA, CA-126 Extension, I-5 to CA-14, Funding and Possible COE Section 404 Permit, City of Santa Clareta, Los Angeles County, CA, Due: September 14, 1992, Contact: Jim Bednar (916) 551-1310.

EIS No. 920295, FINAL EIS, FHW, IN, US 231/Wabash River Crossing Relocation and Construction, Country Road 350S to West Lafayette, Funding and COE Section 404 Permit, Wabash River, Tippecanoe County, IN, Due: August 31, 1992, Contact: James E. Threlkeld (317) 269-7481.

EIS No. 920296, FINAL EIS, AFS, UT, Deep Creek and Snow Bench Timber Sales, Approval and Implementation, Thousand Lake Mountain, Fishlake National Forest, Loa Ranger District, Wayne County, UT, Due: September 01, 1992, Contact: Gary O. Laing (801) 896-9233.

EIS No. 920297, DRAFT EIS, USA, MD, Aberdeen Proving Ground Research Laboratory Facility Realignment for Army Research and Technology Functions, Construction and Operation, Harford County, MD, Due: September 14, 1992, Contact: John Butler (410) 962-4937.

EIS No. 920298, FINAL EIS, AFS, WA, Leola Sullivan Timber Sale, Implementation, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille County, WA, Due: August 31, 1992, Contact: Andrew C. Mason (509) 446-7500.

EIS No. 920299, DRAFT EIS, BLM, Broadwell Basin Residuals Repository and Treatment Facility for Specified Hazardous Waste, Construction and Operation, Right-of-Way Grants, Mineral Material Sales Permits and COE Section 404 Permit, San Bernardino County, CA, Due: September 30, 1992, Contact: Sharon Paris (619) 256-3591.

EIS No. 920300, FINAL EIS, NPS, VA, Roanoke River/Blue Ridge Parkway Extension, Roanoke/Vinton City Limits to Smith Mountain Lake and Recreational and Interpretive Facilities Construction, Land Acquisition, Funding and COE Section 10 and 404 Permits, Bedford, Roanoke and Franklin Counties, VA, Due: September 01, 1992, Contact: Gary Everhardt (703) 345-3959.

EIS No. 920301, DRAFT EIS, FHW, NC, US 421 Transportation Improvements, just west of the South Fork New River to NC-1361 east of the Town of Deep Gap, Funding, Land Transfer and COE Section 404 Permit(s), Watauga

County, NC, Due: September 15, 1992, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 920302, DRAFT EIS, EPA, TX, Formosa Industrial Facilities Continued Operation and Expansion, Waste Water Discharges, National Pollutant Discharge Elimination System Permit Issuance, Point Comfort, Jackson County, TX, Due: September 14, 1992, Contact: Norm Thomas (214) 655–2260.

EIS No. 920303, DRAFT EIS, BOP, OH, Elkton Federal Correction Complex, Construction and Operation, Site Selection, Columbiana, Carroll or Portage County, OH, Due: September 14, 1992, Contact: Patricia Sledge (202) 514–6470.

EIS No. 920304, FINAL EIS, AFS, BOP, TX, Jefferson County Federal Correctional Complex, Construction and Operation, Site Selection, City of Beaumont, Jefferson County, TX, Due: September 01, 1992, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 920305, DRAFT EIS, COE, CA, Arts Park LA Development and Construction, Approval, Lake Balboa Park, Sepulveda Flood Control Basin, San Fernando Valley, City of Los Angeles, Los Angeles County, CA, Due: September 14, 1992, Contact: Mr. Gene Seagle (213) 894–5312.

EIS No. 920306, FINAL EIS, FTA, HI, Honolulu Rapid Transportation System Improvements, Waiawa through Downtown Honolulu to Waikiki and the University of Hawaii, Funding, Possible COE, Coast Guard Bridge and EPA Permits, Honolulu County, HI, Due: August 31, 1992, Contact: Robert Hom (415) 744–3116.

EIS No. 920307, DRAFT EIS, FHW, MT, US 2 Reconstruction, Columbia Heights to Hungary Horse, Funding, Land Transfer and COE Section 404 Permit, Flathead County, MT, Due: September 21, 1992, Contact: Dale Paulson (406) 449–5310.

EIS No. 920308, DRAFT SUPPLEMENT, NPS, CA, Yosemite National Park General Management Plan, Yosemite Housing Project, Implementation, Yosemite National Park, Mariposa County, CA, Due: September 30, 1992, Contact: Michael Finley (209) 372–0202.

EIS No. 920309, FINAL EIS, UAF, CT, ME, NH, NJ, MA, VT, NY, PA, Aircraft Conversions at the Bradley Air National Guard (ANG) Base, 103rd Tactical Fighter Group, Bradley International Airport, CT and Barnes Air National Guard (ANG) Base, MA, Change in Utilization of Military Training Airspace in the Northeastern U.S., Due: August 31, 1992, Contact: Harry Knudsen (301) 981–8143.

Dated: July 27, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–18160 Filed 7–30–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30341; FRL–4081–4]

Abbott Laboratories; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 31, 1992.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30341] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Attention PM 18, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phil Hutton, Registration Division (H7505C), Office of Pesticide Programs, rm. 213, CM #2, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Currently Registered Products

1. File Symbol: 275–IA. Applicant: Abbott Laboratories, Chemical and Agricultural Products Division, 1401 North Sheridan Road, North Chicago, IL 60064. Product name: Xentari Technical Powder. Biological Insecticide. Active ingredient: *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s) at 19 percent. Proposed classification/Use: General. For manufacturing use only. (PM 18)

2. File Symbol: 275–IL. Applicant: Abbott Laboratories. Product name: Xentari Water Dispersible Granule. Biological Insecticide. Active ingredient: *Bacillus thuringiensis* subsp. *aizawai* lepidopteran active toxin(s) at 10.3 percent. Proposed classification/Use: General. For terrestial, greenhouse, and aquatic food crop uses. (PM 18)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered. Comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: July 24, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–18131 Filed 7–30–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL-4190-6]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 170 *de minimis* parties for response costs incurred and to be incurred at the Tonolli Corporation Superfund Site, Nesquehoning, Pennsylvania.

DATES: Comments must be provided on or before August 31, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and should refer to: *In Re Tonolli Corporation Superfund Site*, Nesquehoning, Pennsylvania, U.S. EPA Docket No. III-92-35-DC.

FOR FURTHER INFORMATION CONTACT: Maria Parisi Vickers (215) 597-9387 or Susan Hodges, (215) 597-1715, U.S. Environmental Protection Agency, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tonolli Corporation Superfund Site, in Nesquehoning, Pa. The agreement was proposed by EPA Region III on June 1, 1992. Subject to review by the public pursuant to this Notice, the agreement is also subject to the approval of the Attorney General or his designee, United States Department of Justice. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

1. A. Edelstein and Son, Inc.
2. Aaron Ferer & Sons Co.
3. Abrams Metal Co.
4. Acme Metals
5. Action Metal Co., Inc.
6. Alchem Aluminum, Inc.
7. Alexandria Scrap Corporation
8. Alport Scrap & Salvage
9. American Hofmann Corp.
10. American Papers & Metals
11. Anglers Roost
12. Annadale Scrap Co.
13. Ansam Metal, Corp.
14. Ansonia International Corp.
15. Anthracite Battery Mfg., Inc.
16. Armstrong Containers, Inc.
17. Asarco Incorporated
18. Associated Lead
19. Atlantic Battery Co., Inc.
20. Auburn Golf Car
21. Barrett Battery Co.
22. Battery Systems Co.
23. Beacon Metal Co.
24. Bengart & Memel, Inc.
25. Bethlehen Steel Corp.
26. Billiton Metals and Ores
27. Boggs Scrap Iron and Metal
28. Boston Junk Co.
29. Brandywine Recycler Inc.
30. Bridon-American Corp.
31. Brookside Country Club
32. Buckeye Metals Co.
33. Bundy Tubing
34. Capital Iron & Steel Co., Inc.
35. Capital Scrap Iron and Metal Inc.
36. Ciba-Geigy Corp.
37. City Metals Co., Inc.
38. City Scrap and Salvage, Inc.
39. Continental Group Inc.
40. Continental Metals Corp.
41. Curcio Scrap Metal, Inc.
42. Cycle Systems Inc.
43. D. Katz & Sons Inc.
44. Dalphon and Walsh Salvage Inc.
45. Davis Brothers Scrap Co.
46. Davis Industries, Inc.
47. Delaware Metals Company
48. Delaware Valley Scrap Company
49. Diamond State Salvage Company
50. Diehl Service Center
51. Dubin Metals Inc.
52. E.I. DuPont de Nemours and Co.
53. Electrum Recovery
54. Ellenville Scrap Iron and Metal
55. Elman Recycling Co., Inc.
56. Empire Scrap Metals, Inc.
57. Essex Metal Alloy Co.
58. F.T. Silfies Inc.
59. Federated Metals Corp.
60. Frank Calandra, Inc.
61. Frank H. Nott
62. Fry's Metals
63. Fundamental Minerals and Metals Co.
64. Fusco Inc.
65. Gary's U-Pull It
66. General Metals and Smelting Co.
67. George's Salvage Company
68. Gilbert & Bennett Manufacturing
69. Gloucester Iron & Metal
70. GNB Batteries Incorporated
71. Gold Met
72. Golf Car Systems
73. Grant Mfg. & Alloy Inc.
74. H. Cartiff and Brother Inc.
75. Halpern and Stein, Inc.
76. Hammond Lead Products, Inc.
77. Harcon Corp.
78. Hazel Auto Parts, Inc.
79. Hornell Waste Material Company, Inc.
80. Hurwitz Brothers International
81. Imperial Metal and Chemicals Co.
82. Interstate Burlap & Bag, Inc.
83. Intra-American Metals, Inc.
84. J. Damato Paper Stock Corp.
85. J.E. Kodish and Sons, Inc.
86. J. Sepenuk & Sons, Inc.
87. J.W. Enterprises
88. Jacobson Metal Co.
89. James Tabit & Sons
90. KW Battery
91. Klein, S. Metals Co.
92. Kovatch Truck Center
93. Kovatch Oldsmobile, Inc.
94. L. Lavetan & Sons, Inc.
95. Lake City
96. Levine Iron & Metal, Inc.
97. Lexa Metal Corp.
98. Liberty Iron & Metal
99. Lion Metals Inc.
100. Louis Mack Co., Inc.
101. Lyell Metal Co., Inc.
102. M. Kimberling and Sons Inc.
103. M. Jacob and Sons
104. Manassas Scrap
105. Maryland Metals, Inc.
106. Maryland Recycle Co., Inc.
107. Maxnor Metals
108. Metal Shippers Inc.
109. Metal Traders Inc.
110. Metal Bank of America
111. Mid-Atlantic Equipment Company
112. Midwest Corp.
113. Mindlin Company
114. Morris Iron & Steel Co.
115. Moskowitz Bros., Inc.
116. National Standard Co.
117. New Jersey Zinc Co., Inc.
118. Non-Ferrous Processing Corp.
119. Noranda Sales Corp.
120. North American Philips Corp.
121. Olean Steel Sales
122. Omnisource Corp.
123. Orkin, Harry E.
124. Panther Valley School District
125. Parkway Iron & Metal Company, Inc.
126. Parkwood Iron & Metal Co.
127. Peanut City Iron & Metal Co., Inc.
128. Peck Iron & Metal Co., Inc.
129. Penn-Del Salvage, Inc.
130. Pfizer Co., Inc.
131. Phillip Brothers
132. Prince Georges Scrap
133. Quick Cable
134. R.E. Leppo
135. Raleigh Junk Co.
136. Reliable Junk Company
137. Remington Arms Co., Inc.
138. Resources Alloys and Metals Inc.
139. Riverside Auto & Scrap
140. Ross, Art
141. Roth Bros. Smelting Corp.
142. Roumm's Scrap Metal Co.
143. S.H. Landsmann & Son
144. Sam Kaufman & Son Metal Co.

145. Sam Allen & Son Metal Co.
146. Schiavone-Bonomo Corp.
147. Shore Auto Wrecker Inc.
148. St. Joe's Resources
149. Staiman Industries
150. State Line Scrap Co., Inc.
151. STR Scrap
152. Stump's Scrap Yard
153. Suisman & Blumenthal Inc.
154. TaraCorp Industries
155. Towanda Iron & Metals, Inc.
156. Tube City Iron & Metal Company
157. U.G.I. Corp.
158. U.S. Auto Radiator Manufacturer Corp.
159. United Alloys & Steel Corp.
160. United Scrap Processors, Inc.
161. Varta Industries
162. W.F. Wimmer Co.
163. Walter's Mobil
164. Weiss Scrap Metal Co.
165. Western Electric Company
166. Westinghouse Electric Corp.
167. Wire & Metal Separation System
168. Wise Metal Co., Inc.
169. Zelmore Brothers
170. Zuckerman Metals Inc.

These 170 parties collectively have agreed to pay $3,491,233 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. Of this amount $2,417,701 would reimburse EPA for past response costs incurred at the Tonolli Corporation Superfund Site, and the balance of $1,019,532 will be used to finance future work at the Site.

EPA is entering into the this agreement under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transactions costs. Under this authority EPA proposes to settle with potentially responsible parties at the Tonolli Superfund Site who are responsible for less than one percent of the volume of hazardous substances at the Site. EPA issued a draft settlement proposal on April 1, 1992, invited comments and conducted netogiations on that proposal. On June 1, 1992, EPA issued a final settlement proposal embodied in an Administrative Order on Consent which includes several substantial modifications made in response to comments by *de minimis* parties in letters to EPA and during negotiations with the Agency. The proposed settlement reflects and was agreed upon based on conditions known to the parties on June 1, 1992. *De minimis* settling parties will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the Tonolli Corporation Superfund Site excluding any federal claims for natural resource damages. They will also be required to pay a settlement premium of 65% on the expected future response costs to compensate EPA for the risks posed by settling before all costs are known.

The settlement as it is now proposed includes several adjustments to the volumetric shares of eligible *de minimis* parties; those adjustments were made after the final settlement proposal was sent to all eligible parties on June 1, 1992, in response to additional evidence provided by these parties or discovered by EPA. Those affected are:

1. Ansam Metal Corporation
2. Battery Salvage Division, Ace Battery, Inc.
3. Ellenville Scrap
4. Golf Car Systems
5. J.W. Enterprises
6. Koplik, William F.
7. Parkway Iron and Metal Corporation, Inc.
8. Ross, Art
9. Staiman Brothers.

The Environmental Protection Agency will receive written comments relating to this Agreement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent may be obtained from the EPA's Region III, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107.

Edwin Erickson,

Regional Administrator, Region III.

[FR Doc. 92-18159 Filed 7-30-92; 8:45 am]

BILLING CODE 6560-50-M

[OGWDW-FRL-4190-2]

Draft Ground Water Disinfection Rule Available for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water (OGWDW) is announcing the availability of a draft summary of the Ground Water Disinfection Rule for public review and comment. This rule, when promulgated, will include disinfection, performance, monitoring, reporting, and variance requirements for public water systems which use ground water not under the direct influence of surface water as a source. This rule will require disinfection as a treatment technique and will control for certain microbial contaminants (required by sections 1412(b)(8) and 1412(b)(1), respectively, of the 1986 Amendments to the Safe Drinking Water Act). In addition to general regulatory requirements, EPA has included explanations of "natural disinfection" as a means of complying with regulatory requirements, its choice of target organisms for treatment, and efforts to minimize the increase in burden on small systems in the draft rule package. EPA encourages and welcomes public comment on this draft rule. The public comment period for the draft rule will close September 30, 1992. Comments received by the closing date will be considered in the development of the propose rule. Comments received after the closing date will be considered in the development of the final rule.

FOR FURTHER INFORMATION CONTACT: To request a copy of the draft rule, call the Safe Drinking Water (SDW) Hotline at 1-800-426-4791 or write to the Drinking Water Resource Center (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. To ask questions, call the SDW Hotline at 1-800-426-4791. To submit comments concerning the draft rule, send to GWDR Comments Clerk (WH-550D), OGWDW, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

SUPPLEMENTARY INFORMATION: This draft rule is the third in a series of packages made available for public comment, following a strawman rule (June 1990) and draft rule criteria (June 1991), and incorporates public comments received on these earlier packages.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 92-18157 Filed 7-30-92; 8:45am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission received Office of Management and Budget approval for the information collection imposed on operator service providers (OSPs) in Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Phase II, 6 FCC Rcd 2314 pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. OMB also approved the modified information collection as

specified in the Order adopted May 18, 1992; released May 19, 1992 by the Common Carrier Bureau under delegated authority. See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90–313, Phase II, 7 FCC Rcd 3457 (Com. Car. Bur. 1992). No changes were made by OMB.

Federal Communications Commission

OMB Number: 3060–0468
Title: Policies and Rules Concerning Operator Service Providers (CC Docket No. 90–313)—Phase II
Expiration Date: December 31, 1993.
Description: All interstate providers of operator services must submit periodic reports concerning their rates, complaints about their services, and their costs of providing services. By Order, the Common Carrier Bureau modified the schedule for submission of the final report by OSPs and the period to be covered by the reports. See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90–313, Phase II, 7 FCC Rcd 3457 (Com. Car. Bur. 1992). OSPs are required to submit their fourth report on August 21, 1992. This report shall cover separately the first two calendar quarters of 1992, i.e., January 1, 1992 through March 31, 1992, and April 1, 1992 through June 30, 1992. OSPs are also required to submit data for the period July 1, 1992 through July 31, 1992 not later than September 21, 1992..
Frequency of Response: As directed. Reports must be submitted by August 21, 1992 and September 21, 1992 as indicated above.
Estimated Annual Burden: 2500 responses; 10 hours per response; 25,000 total burden hours.

For further information, contact Shoko Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18114 Filed 7–30–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

City of Long Beach/Long Beach Container; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011067–002.

Title: City of Long Beach/Long Beach Container Terminal, Inc. Terminal Agreement.

Parties: City of Long Beach ("Port"), Long Beach Container Terminal, Inc. ("LBCT")

Synopsis: The amendment reflects a change in the rental LBCT will pay for the use of four cranes on the Port's Pier A.

Agreement No.: 224–200598–001.

Title: City of Los Angeles and California Cartage Company Marine Terminal Agreement.

Parties: The City of Los Angeles ("Port") California Cartage Company ("CCC").

Synopsis: The Agreement adjusts the rent payable by CCC to the Port.

Dated: July 27, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–18082 Filed 7–30–92; 8:45 am]

BILLING CODE 6730–01–M

[C.O. 1, Amdt. No. 20]

Organization and Functions of the Federal Maritime Commission

The following delegations of authority are made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by amending subsection 9.14 to read as follows:

9.14 Authority contained in 46 CFR part 582 to cancel the tariff or tariffs of any common carrier, and suspend the license of any ocean freight forwarder, who fails to file an anti-rebate certification.

Dated: July 24, 1992.

Christopher L. Koch,

Chairman.

[FR Doc. 92–18081 Filed 7–30–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0770]

10 Percent Revenue Limit on Bank-Eligible Securities Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment; supplemental notice.

SUMMARY: This document supplements a request for comment which appeared in the **Federal Register** on July 29, 1992 (57 FR 33507).

DATES: Comments must be received by August 27, 1992.

ADDRESSES: Comments, which should refer to Docket No. R–0770, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m., and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B–1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), Scott G. Alvarez, Associate General Counsel (202/452–3583), Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452–2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–4544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On July 23, 1992, the Federal Reserve Board requested public comment on alternative methods to adjust the 10 percent revenue test limiting ineligible securities activities of Section 20 subsidiaries of bank holding companies. The current 10 percent test was designed to prevent Section 20

subsidiaries from being "engaged principally" in underwriting and dealing in bank-ineligible securities in violation of Section 20 of the Glass-Steagall Act.

The Board proposed alternative tests because it believed that changes in the level and structure to interest rates since the revenue test was last considered in September 1989 can alter the measure of whether a Section 20 subsidiary is "engaged principally" in ineligible securities in ways that were not foreseen by the Board. One possible alternative test suggested was a revenue test that is indexed to interest rate changes. The method of indexing proposed is to adjust current interest and dividend revenue in order to calculate the revenue that would have been earned in the current period if the Treasury yield curve were as it was in September 1989.

Under the proposed indexing method, current revenue would be adjusted by a series of factors supplied by the Board that very according to the average duration of the securities portfolio. For each duration the factor represents the ratio of interest rates in September 1989 on Treasury securities to the average interest rates in the most recent quarter. These adjustment factors would then be applied to current interest and dividend revenue.

In order to allow interested parties to determine how such a proposed index might operate in practice, and thereby to be in better position to comment on the appropriateness of a test using such an index, the Board is providing a sample table of adjustments that could be used under the proposed indexing revenue test to adjust interest and dividend revenue in the second quarter, assuming that this test were in effect. The sample table of adjustment factors being provided is constructed from the ratios of average interest rates in September 1989 to average interest rates in the second quarter of 1992. The risk-free rates used in calculating these factors are secondary-market quotes of the yields on Treasury bills for durations of three, six, and twelve months and on STRIPS, or zero-coupon Treasury securities, for durations of two years or more. The adjustment factors in this sample table are calculated using Wednesday observations but the Board would anticipate using daily data to calculate adjustment factors. A more detailed selection of durations could be make available if necessary.

To use the indexing method described in the Board's request for comments in conjunction with the sample table provided to determine compliance with the 10 percent revenue limit for the current quarter, a Section 20 subsidiary would calculate the average duration of its eligible and its ineligible securities portfolios over the quarter. To calculate indexed eligible revenues, the subsidiary would calculate the average duration of its eligible securities portfolio over the quarter and select from the sample table the adjustment factor appropriate for the duration. The subsidiary would then multiply the actual eligible interest and dividend revenue for the quarter by this adjustment factor to determine the indexed eligible interest and dividend revenue. The subsidiary would repeat this procedure based upon the average duration of its ineligible securities portfolio and the appropriate adjustment factor for that duration category to determine indexed ineligible interest and dividend revenue for the quarter. The indexed eligible and ineligible interest and dividend revenues would then be added to the other types of revenue earned during the quarter to calculate an adjusted ratio of ineligible revenue to total revenue subject to the 10 percent test.

The table of factors being provided is only one method by which current revenue could be adjusted to account for the level and structure of interest rates in September 1989. The Board requests comments on whether other methods of calculating these adjustments may be more appropriate.

The sample table is set forth as follows:

FACTORS TO ADJUST INTEREST AND DIVIDEND REVENUE

Duration	Ratio[1]
Months:	
1	2.10
3	2.10
6	2.06
12	1.93
Years:	
2	1.46
3	1.33
4	1.23
5	1.17
6	1.13
7	1.10
10	1.04
20	0.99
30	0.95

[1] Ratio of interest rates in September 1989 to second quarter 1992.

Note: Adjustment factors were calculated using secondary-market quotes of the yields on Treasury bills for durations of three, six and twelve months and on STRIPs, or zero-coupon Treasury securities, for durations two years and greater. Data are average of Wednesday observations.

By order of the Board of Governors of the Federal Reserve System, July 28, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-18330 Filed 7-30-92; 8:45 am]

BILLING CODE 6210-01-M

Central Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 24, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Central Bancshares, Inc., St. Paris, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First Central National Bank of St. Paris, St. Paris, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First National Bancorp, Gainesville, Georgia; to merge with First Citizens Bancorp of Cherokee County, Inc., Ball Ground, Georgia, and thereby indirectly acquire Citizens Bank, Ball Ground, Georgia.

Board of Governors of the Federal Reserve System, July 27, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18174 Filed 7-30-92; 8:45 am]

BILLING CODE 6210-01-F

First Union Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 92-16725) published at page 31517 of the issue for Thursday, July 16, 1992.

Under the Federal Reserve Bank of Richmond, the entries for First Union Corporation and Wachovia Corporation are revised to read as follows:

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (b)(11) of the Board's Regulation Y. **Comments on this application must be received by August 5, 1992.**

2. Wachovia Corporation, Winston-Salem, North Carolina; to acquire Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Southeast Switch, Inc.'s neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network; providing data processing, transmission and related services to other electronic funds transfer networks; and providing bank management consulting advice to depository institutions, pursuant to §§ 225.25(b)(7) and (b)(11) of the Board's Regulation Y. **Comments on this application must be received by August 5, 1992.**

Board of Governors of the Federal Reserve System, July 27, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18175 Filed 7-30-92; 8:45 am]

BILLING CODE 6210-01-F

Rick F. Riley, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 20, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Rick F. Riley, Kirksville, Missouri; to acquire an additional 10.83 percent for a total of 27.63 percent, and Randall E. Riley, Kirksville, Missouri, to acquire an additional 12.89 percent, for a total of 32.89 percent of the voting shares of Schuyler County Bancshares, Inc., Kirksville, Missouri, and thereby indirectly acquire Northeast Missouri State Bank, Kirksville, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Raymond Eugene McDonald, Greenville, Texas; to acquire an additional 29.46 percent of the voting shares of Colonial Bancshares of Greenville, Inc., Greenville, Texas, and thereby indirectly acquire Colonial Bank of Greenville, Greenville, Texas.

Board of Governors of the Federal Reserve System, July 27, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18176 Filed 7-30-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for September 1992.

The National Advisory Council on Drug Abuse will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(C) (2), (4), and (6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: National Advisory Council on Drug Abuse.
Meeting Date: September 16-17, 1992.
Place: National Institutes of Health, Building 31C, Conference Room #6, 9000 Rockville Pike, Bethesda, Maryland 20892.
Open: September 16, 9 a.m.-1 p.m. September 17, 9 a.m.-5 p.m.
Closed: Otherwise.
Contact: Ms. Barbara Baechtel, Room 10A-08, Parklawn Building, Telephone (301) 443-3229.

Committee Name: Drug Testing Advisory Board, NIDA.
Meeting Date: September 17, 1992.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: 9 a.m. to 12 p.m.
Closed: Otherwise.
Contact: Donna M. Bush, Ph.D., Room 9A-53, Parklawn Building, Telephone (301) 443-6014.

Dated: July 27, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-18108 Filed 7-30-92; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

AGENCY: Centers for Disease Control (CDC). Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The interim revisions pertaining to CDC-funded AIDS information and education materials and programs, as published in the June 15, 1992 **Federal Register** (57 FR 26742), will continue to remain in effect.

FOR FURTHER INFORMATION CONTACT: Gary West, National Center for Prevention Services, Centers for Disease Control, (404) 639-1480.

SUPPLEMENTARY INFORMATION: By **Federal Register** notice of June 15, 1992 (57 FR 26742), the Centers for Disease Control (CDC) published interim revisions to the terms and conditions for the receipt of CDC funds for AIDS prevention programs that develop educational and related program materials.

The June 15, 1992 notice revised the AIDS content guidelines in response to the May 1992 decision of the U.S. District Court for the Southern District of New York in the case of *Gay Men's Health Crisis* v. *Sullivan*, No. 88-CIV-7482 (S.D.N.Y. 1992).

In the June 15, 1992 revision, CDC deleted the "offensiveness" standard which the District Court held to be unconstitutional, and, as a matter of policy, CDC replaced this standard with the language contained in Section 2500 of the Public Health Service Act (42 U.S.C. 300ee).

The June 15, 1992 **Federal Register** notice also indicted that a decision was then pending as to whether or not to appeal the District Court's decision in *Gay Men's Health Crisis* v. *Sullivan*.

CDC has no practical problem with using this section 2500 standard in lieu of the "offensiveness" standard. Furthermore, recipients of CDC funds will continue to use Program Review Panels to determine the appropriate content of AIDS education and information materials. Accordingly, no appeal of the District Court's decision will be sought.

The interim revisions, as published in the June 15, 1992 **Federal Register** (57 FR 26742), will continue to remain in effect for CDC-funded AIDS prevention programs.

Dated: July 28, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control

[FR Doc. 92-18247 Filed 7-30-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92D-0273]

Extra-Label Use of New Animal Drugs in Food-Producing Animals; Listing of Additional Drugs; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7125.06 entitled "Extra-Label Use of New Animal Drugs in Food-Producing Animals." Consistent with the Commissioner's decision, published in the **Federal Register** of August 23, 1991 (56 FR 41902), the guide was revised to include the nitrofuran drugs among those drugs given the highest priority for regulatory attention regarding extra-label use. In addition, based on high regulatory concern, clenbuterol was also added to the general list, and the sulfonamide drugs (except approved uses of sulfadimethoxine, sulfabromomethazine, and sullfaethoxypyridazine) were added to the list regarding the prohibition of their use in lactating dairy cattle. Labeling information was added pertaining to dispensing for extra-label use.

ADDRESSES: Submit written requests for single copies of revised CPG 7125.06 to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.06 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8726.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7125.06 "Extra-Label Use of New Animal Drugs in Food-Producing Animals" to reflect the Commissioner's conclusion, published in the **Federal Register** of August 23, 1991, that the nitrofuran drugs (furazolidone and nitrofurazone) are unsafe for oral or parenteral use in food-producing animals. In addition, clenbuterol was added to the list of drugs for the highest regulatory attention when used in food-producing animals. Also, the list was revised to include the sulfonamide drugs (except for approved uses of sulfadimethoxine, sulfabromomethazine, and sulfaethoxypyridazine) in lactating dairy cattle.

The guide, as revised, includes the following:

(1) In all food-producing animals: Chloramphenicol, Clenbuterol, Diethylstilbestrol (DES), Dimethtridazole, Ipronidazole, other nitroimidazoles, Furazolidone (except for approved topical use), and Nitrofurazone (except for approved topical use);

(2) In lactating dairy cattle: Sulfonamide drugs (except approved uses of sulfadimethoxine, sulfabromomethazine, and sulfaethoxypyridazine).

These drugs are being listed as those of highest priority for regulatory attention regarding extra-label use in food-producing animals. Unlike the use of drugs in food-producing animals, under usual circumstances, veterinary practitioners may consider extra-label use of new animal drug products in nonfood-producing practice without being subject to FDA enforcement actions. In addition, the guide is revised to provide appropriate labeling for drugs prescribed or dispensed for extra-label use.

The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: July 20, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affiars.

[FR Doc. 92-18087 Filed 7-30-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92N-0136]

Proposed Implementation of International Conference on Harmonisation Consensus Regarding New Drug Applications; Proposed Implementation Document; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is reopening the comment period on the proposed implementation document that is consistent with the consensus developed by the Safety Working Group at the International Conference on Harmonisation (ICH) meeting. The notice of availability of this document published in the **Federal Register** of April 15, 1992 (57 FR 13105). This proposed implementation document describes scientific and technical aspects for conducting single-dose toxicity studies, reproduction and developmental studies, long-term toxicity studies, carcinogenicity studies, and the timing and duration of studies to be submitted to FDA in support of new drug applications. FDA is taking this action in response to a request for an extension of the comment period.

DATES: Written comments by August 14, 1992.

ADDRESSES: Submit written comments on the proposed implementation document to the contact person (address below) and to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alan Taylor, Center for Drug Evaluation and Research (HFD-150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4260.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 1992 (57 FR 13105), FDA published a notice that announced the availability of a proposed implementation document that is consistent with the consensus developed by the Safety Working Group of ICH. This document discusses FDA's present plan for adopting guidance to industry on: (1) Single-dose (acute) toxicity studies; (2) reproductive and developmental studies; (3) long-term toxicity studies; and (4) carcinogenicity studies. The proposed implementation also describes the timing and duration of animal studies relative to the expected extent and duration of human exposure to the drug. The agency also requested comments on the attachments to the implementation document. Interested persons were given until June 15, 1992, to submit written comments on the implementation document at the attachments.

On June 15, 1992, FDA received a request from the International Pharmaceutical Excipients Council to extend the comment period an additional 30 days.

The agency has carefully considered the request and has decided to extend the comment period to allow interested persons to submit meaningful comments on the implementation document. Accordingly, FDA is extending the comment period to August 14, 1992, so that interested persons will have an ample opportunity to comment on this important issue.

Interested persons may, on or before August 14, 1992, submit to the Dockets Management Branch and the contact person (addresses above) written comments on the draft implementation document and the attachments. Two copies of any comments are to be submitted to the Dockets Management Branch and a single copy is to be submitted to the contact person. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and a copy of the proposed implementation document may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18314 Filed 7-29-92; 2:56 p.m.]

BILLING CODE 4160-01-F

[Docket No. 92E-0080]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cefzil®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Cefzil® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joel P. Sparks, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Cefzil®. Cefzil® (cefprozil) is indicated for the treatment of patients with mild to moderate infections caused by susceptible strains of designated microorganisms in upper respiratory tract, lower respiratory tract, and skin and skin structure. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cefzil® (U.S. Patent No. 4,520,022) from Bristol-Myers Squibb Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter

dated June 11, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Cefzil® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cefzil® is 2,248 days. Of this time, 1,615 days occurred during the testing phase of the regulatory review period, while 633 days occurred during the approval phase These periods of time were derived from the following dates:

1. *The date an exemption under section 507(d) of the Federal Food, Drug, and Cosmetic Act became effective*: October 27, 1985. The applicant claims October 26, 1985, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 27, 1985, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act*: March 30, 1990. FDA has verified the applicant's claim that March 30, 1990, was the date the new drug applications (NDA's) for Cefzil® (NDA 50-664 and NDA 50-665) were initially submitted.

3. *The date the application was approved*: December 23, 1991. FDA has verified the applicant's claim that NDA's 50-664 and 50-665 were approved on December 23, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,305 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 29, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 27, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1992.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 92-18110 Filed 7-30-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 24, 1992.

(Call Reports Clearance Officer on (410) 965-4149 for copies of package)

1. Notice Regarding Substitution of Party Upon Death of Claimant-Reconsideration of Disability Cessation—0960-0351. The information on form SSA-770 is used by the Social Security Administration to determine the intent of substitute parties to pursue an appeal which was filed by a beneficiary who died. The respondents consist of such parties.

Number of Respondents: 300.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 25 hours.

2. Disability Determination and Transmittal—0960-0437. The information of form SSA-831 is used by the Social Security Administration (SSA) to document the State agency determination as to whether an individual who files a claim for disability benefits is eligible for those benefits. It is also used for program management and for evaluation. The respondents are State agency employees who make disability determinations for SSA.

Number of Respondents: 54.
Frequency of Response: 40,900.
Average Burden Per Response: 2,208,600
*Estimated Annual Burden:*5 52.150 hours.

3. Cessation or Continuance of Disability or Blindness Determination and Transmittal—Title XVI—0960-0443. The information on form SSA-832 is used by the Social Security Administration (SSA) to document State agency determinations as to whether an individual's disability benefits should be terminated or continued on the basis of his or her impairment. The respondents are State Disability Determination Services who make disability determinations for SSA.

Number of Respondents: 54.
Frequency of Response: 185.
Average Burden Per Response: 130 minutes.
Estimated Annual Burden: 5,000 hours.

4. Cessation or Continuance of Disability or Blindness Determination and Transmittal—0960-0442. The information of form SSA-833 is used by the Social Security Administration (SSA) to document determinations made regarding disability claims. The respondents are State agencies who make disability determinations for SSA.

Number of Respondents: 54.
Frequency of Response: 926.
Average Burden Per Response: 130 minutes.
Estimated Annual Burden: 125,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 27, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92-18048 Filed 7-30-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-89]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 31, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 24, 1992.

Randall H. Erben,

Acting Assistant Secretary for Planning and Community Development.

[FR Doc. 92–17921 Filed 7–30–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of Public Advisory Group—Exxon Valdez Oil Spill

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of establishment of Public Advisory Group—Exxon Valdez Oil Spill.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988).

Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing an advisory committee (the Public Advisory Group) on behalf of the Exxon Valdez Oil Spill Trustees.

This Public Advisory Group is established pursuant to the terms of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of the *United States of America* v. *State of Alaska*, Civil Action No. A91–081.

FOR FURTHER INFORMATION CONTACT: David Gibbons, Interim Administrative Director Restoration Team, c/o Exxon Valdez Oil Spill Restoration Team, 645 G St., Anchorage, AK 99501 (907) 278–8012; Fax (907) 276–7178.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the T/V Exxon Valdez ran aground on Bligh Reef in Prince William Sound in Alaska. Approximately 11 million gallons of North Slope crude oil were spilled into the waters of the Sound and were carried by currents south and west along the southeast side of Kenai Peninsula into the Gulf of Alaska, lower Cook Inlet, the northern coast of Kodiak Island and portions of the east coast of the Alaska Peninsula. Oil was deposited on beaches as far as 600 miles from Bligh Reef.

Massive cleanup and containment efforts were initiated by Exxon Company USA and were continued in 1990, 1991 and 1992. Damage Assessment studies were conducted and litigation was brought against the Exxon Companies by the State and Federal governments.

On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations.

Under the civil settlement agreement Exxon Companies agreed to pay to the governments $900 million over a period of ten years.

The use of these funds is specified in the approved Court document to be spent "* * * to reimburse or pay costs incurred by the United States or the Stare or both after March 12, 1991 to assess injury resulting from the oil spill and to plan, implement and monitor the restoration, rehabilitation, or replacement of natural resources, natural resource services, or archaeological sites and artifacts injured, lost, or destroyed as a result of the oil spill, or the acquisition of equivalent resources or services."

Except for certain reimbursements for past damage assessment and litigation costs of the two governments, Exxon's payments are deposited into the registry of the Court and withdrawn as restoration plans and programs are initiated by the two governments.

The two governments manage these joint funds through a six member Trustee Council composed of three State trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal Representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

To carry out its advisory role under the MOA, the Public Advisory Group will make recommendations to and advise the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment;

c. Planning, evaluation and conduct of restoration activities.

The Trustee Council will propose an annual program designed to facilitate restoration of resources and services injured by the T/V Exxon Valdez oil spill. This program will be presented to the Public Advisory Group during the public review process prior to approval by the Trustee Council.

The Public Advisory Group will consist of 15 members representing principal interests of the area impacted by the T/V Exxon Valdez oil spill. Members will reflect a broad range of interests, be knowledgeable about the area and be able to articulate differing perspectives and views concerning restoration of the injured resources and services.

The Public Advisory Group will function solely as an advisory body, and in compliance with provisions of the FACA.

Dated: June 16, 1992.

John E. Schrote,

Assistant Secretary, Policy, Management and Budget.

Certification

I hereby certify that the establishment of the Public Advisory Group, an advisory committee to make recommendations to and advise the Exxon Valdez oil spill Trustee Council in Alaska, is necessary and in the public interest in connection with the performance of duties mandated by the settlement of *United States* v. *State of Alaska*, No. A91-081 CV, and is in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and supplemented.

Dated: June 22, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92-18071 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Indian Business Development Program Applications and Requirements (25 CFR part 286).

OMB Approval Number: 1076-0093.

Abstract: The information being requested relates to potential of success of businesses on Indian reservations for which grant funds have been requested. Information will be used to select the applicants with best potential and to monitor progress so technical assistance can be provided when needed. Indian tribes and individuals will be affected.

Bureau Form Numbers: BIA Forms 8001, 8004, and 8005.

Frequency: On occassion.

Description of Respondents; Indian tribes, Indian organizations, and Indian individuals.

Estimated Completion Time:

Form	Time
8001	1 hour.
8004	30 minutes.
8005	30 minutes.

Annual Responses: 900.

Annual Burden Hours: 700.

Bureau Clearance Officer: Gail Sheridan 202 208-2685.

Dated: July 23, 1992.

Patrick A. Hayes,

Director, Office of Trust and Economic Development.

[FR Doc. 92-18077 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-060-02-5101-B002; CA-27365]

Broadwell Basin Residuals Repository and Treatment Facility for Specified Hazardous Waste Draft Environmental Impact Report/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, a Draft Environmental Impact Statement has been prepared for the proposed Broadwell Basin Residuals Repository and Treatment Facility for Specified Hazardous Waste in the California Desert Conservation Area, San Bernardino County, California. The proposed action is located at Broadwell Dry Lake, approximately 60 miles east of Barstow and approximately 8 miles north of Interstate 40 and Ludlow, California. This document has been prepared by the Bureau of Land Management (BLM) and the County of San Bernardino as a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) to meet the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

Reading copies are available at: BLM, Barstow Resource Area, 150 Coolwater Lane, Barstow; BLM, California Desert District, 6221 Box Springs Blvd, Riverside; San Bernardino County Government Center, 385 N. Arrowhead Avenue, Third Floor, San Bernardino; San Bernardino County Building, 15505 Civic Drive, Victorville; Newberry Springs Community Center, 30887 Newberry Road, Newberry Springs: and libraries in Victorville, Barstow, and San Bernardino.

DATES: Written comments on the draft must be delivered or postmarked no later than September 30, 1992. Oral and/or written comments may also be presented at the public meetings scheduled at the following locations and dates:

Location	Date	Time
Newberry Springs Community Center, 30887 Newberry Road, Newberry Springs, CA	August 31, 1992	7-9 p.m.
Holiday Inn, I-15 and Palmdale Road, Victorville, CA	September 1, 1992	7-9 p.m.
San Bernardino County Government Center, Hearings Chamber, 385 N. Arrowhead Avenue, San Bernardino, CA	September 2, 1992	7-9 p.m.

ADDRESSES: Written comments should be addressed to County of San Bernardino, Planning Department, 385 N. Arrowhead Avenue, Third Floor, San Bernardino, CA 92415-0182, Attn: Mr. Randy Scott.

FOR FURTHER INFORMATION CONTACT: Sharon Paris, BLM Project Manager, 150 Coolwater Lane, Barstow, CA 92392; telephone (619) 256-3591.

SUPPLEMENTARY INFORMATION: The Draft EIR/EIS identifies and describes the probable environmental impacts that would result from the proposed construction and operation of a specified hazardous waste disposal and treatment facility. The proposed action consists of an aboveground disposal area with a capacity of approximately 16 million tons, an 8.5 mile 60-foot wide right-of-way for an access road, and the mining of 10.4 million tons of coarse borrow material on a 363 acre site and

5.5 million tons of clay material on a 227 acre site.

Issues identified through the scoping process and evaluated in the EIR/EIS include geology, soils, hydrology, noise, biological resources, cultural and paleontological resources, air quality, water supply and quality, scenic/visual resources, transportation, land use, wilderness study areas, and public health and safety.

Dated: July 22, 1992.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 92-17803 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-40-M

[WY-030-02-4332-10]

Advisory Council To Hold Meeting and Field Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Rawlins District Advisory Council; meeting and field tour.

SUMMARY: Notice is hereby given in accordance with Public Law 94-597 that a meeting and field tour of the Rawlins District Advisory Council will be held. This notice sets forth the schedule for the meeting and field tour.

DATES: August 26, 1992, 9 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Ray Hanson, District Outdoor Recreation Planner, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The schedule of the meeting and field tour will include:

1. Field tour briefing and orientation of Sweetwater Canyon Wilderness Study Area at Sweetwater Station Rest Area, U.S. Highway 287 and Wyoming State Highway 135 at 9 a.m.

2. Travel to Sweetwater Canyon Wilderness Study Area at 10 a.m.

3. Tour Sweetwater Canyon Wilderness Study Area from 11 a.m. to 3 p.m.

4. Return to Sweetwater Station Rest Area and adjourn at 4 p.m.

The meeting and field tour is open to the public. Anyone interested in attending the meeting and field tour or making an oral presentation must notify the District Manager by August 12, 1992. Written statements may also be filed for the Council's consideration. Summary minutes of this meeting field tour will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Dated: July 22, 1992.

Al Pierson,

District Manager.

[FR Doc. 92-18074 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-02-4212-13; #CA 30060]

Notice of Realty Action, Notice of Intent To Amend the South Sierra Foothills Management Framework Plan, and Notice of Availability of Planning Criteria; Exchange of Public and Private Lands in Kern, Tulare, and San Luis Obispo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, notice of intent, and notice of availability.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 USC 1716):

Tract No. and Legal Description

T11N, R16W, SBM

1CM
Sec. 14 SE¼.
Sec. 21 N½, N½SW¼, E½SW¼SW¼, SE¼SW¼, SE¼.
Sec. 22 All.
Sec. 23 All.
Sec. 24 All.

The above public lands are located in Kern County, CA. An amendment to the Bureau's South Sierra Foothills Management Framework Plan has been proposed to provide for the exchange of the above public lands.

T27S,R10E, MDM

7C
Sec. 13 Lot 4.
8C
Sec. 13 Lots 1 and 2.
8C
Sec. 24 N½NE¼.
12C
Sec. 28 SE¼SW¼.

T27S, R11E, MDM

8C
Sec. 19 Lot 4, NE¼NW¼.

T28S, R13E, MDM

1S
Sec. 28 S½SW¼.
1S
Sec. 32 SE¼NE¼, N½SE¼.
1S
Sec. 33 Lots 1, 2, 3, and 4, N½, N½S½.
1S
Sec. 34 Lots 1, 2, 3, and 4, S½NE¼, NW¼, N½S½.
2S
Sec. 35 Lots 3 and 4, N½SE¼.

T29S, R13E, MDM

1S
Sec. 2 Lots 3 and 4, SW¼NW¼, W½SW¼.
1S
Sec. 3 Lots 1, 2, 3, and 4, S½N½, SE¼.
1S
Sec. 4 Lots 1 and 2.
2S
Sec. 1 Lots 2, 3, and 4, SW¼NW¼.
2S
Sec. 2 Lot 1, SE¼NE¼.
3S
Sec. 2 NW¼SE¼.
4S
Sec. 11 NE¼NW¼.
5S
Sec. 1 SE¼SW¼, SE¼.
5S
Sec. 11 S½NE¼, NE¼SW¼, N½SE¼.
5S
Sec. 12 N½, W½SW¼, NE¼SE¼.
6S
Sec. 14 S½NW¼, N½SW¼, SE¼SW¼, W½SE¼, SE¼SE¼.

T11N, R33W, SBM

1T
Sec. 9 Lot 1, NW¼,NE¼, S½NE¼, SE¼.
1T
Sec. 10 Lots 2 and 3, SW¼NW¼, SW¼, W½SE¼.
1T
Sec. 15 NW¼NE¼, NW¼.
1T
Sec. 16 NE¼.
2T
Sec. 8 N½NE¼.
2T
Sec. 9 W½NW¼.

The above public lands are located in San Luis Obispo County, California. In exchange for some of the above lands, the United States will acquire the following private lands from the Trust for Public Land, a private, nonprofit organization:

T17S, R29E, MDM

Sec. 9 S½S½.
Sec. 16 NE¼, SE¼NW¼, S½.
Sec. 17 NE¼SW¼NE¼, S½SW¼NE¼, SE¼SE¼NW¼, N½SW¼, N½SE¼, SE¼SW¼, S½SE¼.

The above private lands are located in Tulare County, CA.

SUPPLEMENTARY INFORMATION: Lands transferred from the United States will be offered for purchase to adjoining landowners by The Trust for Public Land, a private, nonprofit organization. The purpose of this exchange is to acquire lands in the Three Rivers, California area with important scenic, riparian, and access values. A secondary purpose of the exchange is to consolidate the Bureau lands and reduce the number of scattered, isolated Bureau tracts that are difficult for the Bureau to

manage. The public interest will be well served by completing the exchange. Publication of this notice in the **Federal Register** segregates the above public land from appropriation and entry under the public land laws, right-of-way laws, permit laws, and mining laws, but not exchange under Sec. 206 of the Federal Land Policy and Management Act of 1976. The segregative effective will end upon issuance of patent or two years from the date of publication in the **Federal Register**, whichever occurs first. This notice also fulfills the requirements of 43 CFR 1610.2, 3 for an amendment to the Bureau's current South Sierra Foothills Management Framework Plan, concerning the above Tract #1CM and its status for land exchange. The decision on the suitability of exchange for tract #1CM will be based upon the results of biological, cultural, and mineral reports to be done on the Tract, as well as the useability of the Tract by the general public. The exchange would be on an equal value basis, not an acre-for-acre basis. An independent appraisal will establish the fair market value of the public and private lands. Some of the above public land tracts may not be exchanged, in order to achieve an equal value with the above private land. All mineral rights on the above public lands are expected to be exchanged with the surface rights, however some mineral rights may be reserved to the United States based on the completion of a mineral report. On public land transferred to the Trust, the Bureau will reserve to the United States a right-of-way reservation for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945). Public land transferred to the Trust will also be subject to the following rights-of-way:

S 043926; for State Route 58; affects Tract #2S.
CA 4355; for underground telephone line; affects Tracts #2S & 4S.
S 078689; for a water tank; affects Tract #2S.
CA 13054; for two oil pipelines and an electric line; affects Tracts #2S, 3S, and 4S.
S 079809; for a firebreak; affects Tract #5S.

The proposed planning criteria for this amendment will provide guidance for the resolution of issues for Tract #1CM. The criteria will address protection of sensitive resources through the planning process. Planning criteria address: purpose and need for the criteria; goals; anticipated issues, decisions, and evaluation criteria; alternative management options; data needs; and the preparation schedule. The planning criteria are now available for comment. Copies may be obtained from the following address. The proposed plan amendment and environmental assessment will be available for public review upon request once the environmental assessment is complete. Interested parties may submit comments to the BLM Area Manager until September 14, 1992. For further information contact: Bureau of Land Management, Caliente Resource Area Office, Attn: Dan Vaughn, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861-4236.

Dated: July 3, 1992.

Kenneth L. Volpe,

Acting Area Manager.

[FR Doc. 92-16864 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-40-M

[MT-030-4212-14]

Notice of Realty Action, Sale of Public Land in North Dakota

SUMMARY: The following lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C., 1713), at not less than the estimated fair market value (FMV).

DATES: September 29, 1992.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dickinson District Office, 701-225-9148.

SUPPLEMENTARY INFORMATION:

Parcel and Legal Description

Fifth Principal Meridian

NDM79593
T. 151 N., R. 65 W., sec. 35: Lot 1, 5.3 acres, Benson County, FMV $300.
NDM79594
T. 154 N., R. 101 W., sec. 29: SWSE, Part, 10.0 acres, Williams County, FMV $800.
NDM79595
T. 155 N., R. 88 W., sec. 20: Lot 4, 6.87 acres, Mountrail County, FMV $475.
NDM79596
T. 157 N., R. 89 W., sec. 29: Lot 1, 16.8 acres, Mountrail County, FMV $1,175.
NDM79597
T. 157 N., R. 91 W., sec. 34: Lot 2, 17.3 acres, Mountrail County, FMV $1,200.
NDM79598
T. 156 N., R. 91 W., sec. 5: Lot 4, **60.55 acres, **15 acres above the high water line; Mountrail County, FMV $1,000.
NDM79599
T. 152 N., R. 87 W., sec. 1: Lot 6, 16.50 acres, Ward County, FMV $1,300.
NDM79630
T. 157 N., R. 50 W., sec 6: Lot 1, 10.94 acres, Walsh County, FMV $800.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

The lands will be offered for sale at public auction beginning at 10 a.m., M.D.T., on September 29, 1992, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be by modified competitive procedures. Tract lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dickinson District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 p.m., M.D.T., on September 28, 1992. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must be for not less than the appraised FMV specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the United States Department of the Interior, BLM, for not less than the 10 percent of the amount of the bid.

Bids on unsold parcels will be opened each Tuesday after the date of the sale at 10 a.m., M.D.T., until the parcels are sold. The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights including rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder, lessees and adjoining land owners will be notified. Lessees and adjoining land owners will be given the right to meet the highest bid. Lessees and adjoining land owners will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Once the

qualified high bidder is determined, the balance of the purchase price shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for conditions of sale, and planning and environmental documents, is available at the Dickinson District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Comments

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Dickinson District, at the above address. In the absence of objections, this proposal will become the final determination of the Department of the Interior.

Dated: July 23, 1992.

Gene C. Campbell,

Acting District Manager.

[FR Doc. 92-18076 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-DN-M

[AZA-050-02-4212-14; AZA 25294]

Arizona; Intent To Prepare a Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management Yuma District is preparing a plan amendment to the Yuma District Resource Management Plan. This amendment is being prepared to make 496.56 public acres located north of Quartzsite, Arizona, available for disposal through a direct sale. The land would be purchased by the town of Quartzsite for expansion of the 1,200-bed, medium security Federal prison site. The land would also provide a buffer zone between the town and the soon-to-be-built facility.

This Notice of Intent is being published in the **Federal Register** under the authority of title 43, Code of Federal Regulations, subpart 1610, section 2(c).

FOR FURTHER INFORMATION CONTACT: Michael A. Taylor, Areas Manager, Yuma Resource Area, Bureau of Land Management, telephone (602) 726-6300.

SUPPLEMENTARY INFORMATION: Complete records of all phases of the planning process will be available for public review at the Bureau of Land Management Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

Dated: July 21, 1992.

Herman L. Kast,

District Manager

[FR Doc. 92-18075 Filed 7-30-92; 8:45 am]

BILLING CODE 4310-32-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-329]

Global Competitiveness of U.S. Advanced-Technology Industries; Cellular Communications

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: July 23, 1992.

SUMMARY: Following receipt of a request on June 11, 1992, from the Senate Committee on Finance, the Commission instituted investigation No. 332-329, Global Competitiveness of U.S. Advanced-Technology Industries: Cellular Communications, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. Richard Brown (202-205-3438) or Ms. Susan Kollins (202-205-3441). For information on the legal aspects of this investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel (202-205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202-205-1107.

Background

This is one of three competitiveness studies requested by the Committee on Finance in its letter of June 11, 1992. The other two studies concern the aircraft and computer industries, respectively. These three studies are part of a series begun in 1990 at the request of the Committee. In a letter dated June 21, 1990, the Committee asked that the Commission, pursuant to sections 332 (b), (d), and (g) of the Tariff Act of 1930, expand its collection of and ability to analyze information on the competitiveness of advanced technology manufacturing industries in the United States. It also asked the Commission to undertake a two part process under which it would (1) Within 3 months of receipt of the letter, identify the U.S. advanced-technology industries to be monitored (using the criteria set out by the Committee) and recommend three of those industries as subjects for comprehensive Commission studies; and (2) within 12 months of receipt of a subsequent Committee letter either agreeing with or modifying the Commission's recommendations, submit its reports on the three industries.

In response, the Commission instituted investigation No. 332-294 for the purpose of identifying industries to be monitored and recommending three for comprehensive study. In its report to the Committee in September 1990, the Commission identified ten advanced-technology industries and recommended the following three for comprehensive study: Communications technology and equipment, pharmaceuticals, and semiconductor manufacturing and testing equipment. The Committee by letter of September 27, 1990, approved the Commission's recommendations, and the Commission furnished its reports on the three investigations (investigation Nos. 332-301, 332-302, and 332-303) in late September 1991. Notice of the institution of investigation No. 332-294 was published in the **Federal Register** of July 26, 1990 (55 FR 3053), and notice of the institution of the three comprehensive-study investigations was published in the **Federal Register** of November 15, 1990.

In the three new studies, the Commission will, as requested by the Committee in its June 11, 1992, letter, seek to examine all factors found by the Commission to be relevant to the global competitiveness of the subject industries, including but not limited to, government policies, regulatory and trade impediments, and research and development financing and expenditures. The Commission will also seek the views of experts on the implications of these factors for U.S. trade interests and policy. As requested, the Commission will submit its first industry report, cellular communications, by June 11, 1993.

Public Hearing

A public hearing in connection with the cellular communications investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on January 20, 1993. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than noon, January 6, 1993. Any prehearing briefs (original and 14 copies) should be filed not later than noon, January 6, and any posthearing briefs should be filed by February 3.

Written Submissions

In lieu of or in addition to appearing at the hearing, interested persons are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than February 3, 1993. All submissions should be addressed to the Secretary of the Commission at the Commission's office, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: July 24, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92–18155 Filed 7–30–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected. An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Miles ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics.
Annual Survey of Occupational Injuries and Illnesses.
1220–0045; BLS 9300.
Annually.
State and local government (as per State law); farms; businesses or other for-profit; non-profit institutions; small businesses or organizations.
280,000 respondents; 250,000 total hours; 54 minutes per response; 1 form.

The Annual Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data are used to evaluate the effectiveness of Federal and State programs and to prioritize scarce resources.

Signed at Washington, DC, this 27th day of July, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–18163 Filed 7–30–92; 8:45 am]

BILLING CODE 4510–22–M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance

of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Delaware:
DE91–4 (July 31, 1992) .....
DE91–5 (July 31, 1992) .....

Volume II

Missouri:
MO91–15 (July 31, 1992)..... p. All.

Volume III

Oregon:
OR91–4 (July 31, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware:
DE91–2 (Feb. 22, 1991)..... p. 95, pp. 96–100.

Florida:
FL91–48 (Feb. 22, 1991)..... p. 218c.

New Jersey:
NJ91–2 (Feb. 22, 1991)..... p. 701, pp. 703, 711.

New York:
NY91–13..... p. 901, pp. 904–905.
NY91–18 (Feb. 22, 1991)..... p. 931, p. 933.

Volume II

Illinois:
IL91–1 (Feb. 22, 1991) ..... p. 69, p. 79.
IL91–7 (Feb. 22, 1991) ..... p. 137, pp. 138–140.
IL91–9 (Feb. 22, 1991) ..... p. 153, pp. 154, 155.

Kansas:
KS91–6 (Feb. 22, 1991)..... p. All.

Michigan:
MI91–2 (Feb. 22, 1991)..... p. 461, p. 470.
MI91–17 (Feb. 22, 1991)..... p. All.
MI91–18 (Feb. 22, 1991)..... p. All.

Missouri:
MO91–1 (Feb. 22, 1991)..... p. 651, pp. 653–673d.

Nebraska:
NE91–1 (Feb. 22, 1991)..... p. All.
NE91–2 (Feb. 22, 1991)..... p. All.
NE91–3 (Feb. 22, 1991..... p. All.
NE91–5 (Feb. 22, 1991)..... p. All.
NE91–10 (Feb. 22, 1991)..... p. All.
NE91–11 (Feb. 22, 1991)..... p. All.

Volume III

California:
CA91–2 (Feb. 22, 1991)..... p. All.
CA91–4 (Feb. 22, 1991)..... p. All.

Oregon:
OR91–1 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of July 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–17930 Filed 7–30–92; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–27,129; TA–W27,130]

Cricketeer Manufacturing Co., Harrodsburg, KY; Joseph & Feiss Co.; Cleveland, OH.; Negative Determination Regarding Application for Reconsideration

By an application dated July 16, 1992, the Amalgamated Clothing & Textile Workers Union (ACTWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 18, 1992 and was published in the **Federal Register** on June 30, 1992 (57 FR 29100).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake

in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that the workers met the increased import criterion for men's and boys' wool suits.

The union is right in its contention that the workers met the aggregate import test. The Department's use of a broader import category (men's and boys' suits) accounts for the differences in data. However, these differences have no bearing on the decision since the Department in its original investigation conducted a survey of Cricketeers and Joseph & Feiss' major declining customers to determine whether increased imports contributed importantly to declines in sales or production and employment at the subject firms.

The Department's survey of Cricketeer and Joseph & Feiss' major declining customers shows that they did not decrease their purchases of men's wool suits and sportscoats from the subject firms in 1991 compared to 1990 or in the first quarter of 1992 compared to the same period in 1991 while increasing their reliance on imports during these same comparable periods.

Comments from the customers of the subject firms indicate that the market is soft for men's wool suits whether domestic or foreign because of the recession. Other customer comments indicate that family spending priorities changed during the recession from full fashion men's wool suits to more basic suits or just accessories (shirt and tie).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Wasington, DC, this 23rd day of July 1992.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-18165 Filed 7-30-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
General Electric Superabrasives (workers)	Worthington, OH	07/20/92	07/09/92	27,492	Superabrasives.
Major Electric Co., IncCo)	Odessa, TX	07/20/92	07/10/92	27,493	Provides electric power to oilwells.
Excellon Automation Co. (workers)	Torrance, CA	07/20/92	03/28/92	27,494	Printed circuit boards.
Maxwell House Coffee (workers)	Hoboken, NJ	07/20/92	06/07/92	27,495	Coffee.
Allied Signal Aerospace (workers)	Tempe, AZ	07/20/92	07/06/92	27,496	Commercial aerospace hardware and equipment.
New England Die Casting, Inc. (IAMAW)	West Haven, CT	07/20/92	07/10/92	27,497	Aluminum die castings.
General Motors, Truck and Bus Group (workers)	Shreveport, LA	07/20/92	07/06/92	27,498	Small pickup trucks.
George E. Failing Co. (workers)	Enid, OK	07/20/92	07/07/92	27,499	Oil well drilling equipment.
Damron Products (workers)	Butler, PA	07/20/92	07/07/92	27,500	Tea.
Online Resource Exchange, Inc. (company)	New Orleans, LA	07/20/92	07/06/92	27,501	Oil and gas services.
Online Resource Exchange, Inc. (company)	Houston, TX	07/20/92	07/06/92	27,502	Oil and gas services.
Garments Plus Co. (ILGWU)	Newark, NJ	07/20/92	07/06/92	27,503	Ladies' sportswear.
Coastal Oil and Gas Corp. (workers)	Houston, TX	07/20/92	06/21/92	27,504	Oil and gas.
Sayre Lingene, Inc. (workers)	Sayre, PA	07/20/92	07/06/92	27,505	Ladies' lingerie.
DuWel Products, Inc. (IAMAW)	Hartford, MI	07/20/92	07/06/92	27,506	Finishing zinc die castings.
DuWel Products Inc. (IAMAW)	Bangor, MI	07/20/92	07/06/92	27,507	Raw aluminum and zinc die castings.
Miller-Holzwarth Div. (company)	Byesville, OH	07/20/92	07/10/92	27,508	Periscopes and windshields.
Shelton Welltools, Inc. (company)	Woodward, OK	07/20/92	07/09/92	27,509	Oil, gas well logging.
Shelton Welltools, Inc. (company)	Oklahoma City, OK	07/20/92	07/09/92	27,510	Oil, gas well logging.
Victor Fluid Power (company)	Granite Falls, MN	07/20/92	07/10/92	27,511	Hydraulic welded cyclinders.
Wilson Industries, Inc. (workers)	Tioga, ND	07/20/92	07/09/92	27,512	Sell oilfield products.
Kate Jung Designs (workers)	Syracuse, NY	07/20/92	07/02/92	27,513	Hair accessories, costume jewelry.
Baumfolder Corp. (workers)	Sidney, OH	07/20/92	07/09/92	27,514	Paper folding machines and bindery equipment.
Mewbourne Oil Co. (workers)	Midland, TX	07/20/92	07/02/92	27,515	Oil and gas exploration.
Transmission Systems, Inc. (workers)	Fort Stockton, TX	07/20/92	07/07/92	27,516	Crude oil recovery.
Arkla Exploration Co. (company)	Shreveport, LA	07/20/92	07/14/92	27,517	Oil, gas exploration production.
Axem Resources, Inc. (company)	Denver, CO	07/20/92	07/07/92	27,518	Oil and gas.
Axem Resources, Inc. (company)	Belfield, ND	07/20/92	07/07/92	27,519	Oil and gas.
Axem Resources, Inc. (company)	Gillette, WY	07/20/92	07/07/92	27,520	Oil and gas.
Axem Resources, Inc. (company)	Woodward, OK	07/20/92	07/07/92	27,521	Oil and gas.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Axem Resources, Inc. (company)	Arnett, OK	07/20/92	07/07/92	27,522	Oil and gas.
Axem Resources, Inc. (company)	Freedom, OK	07/20/92	07/07/92	27,523	Oil and gas.
Axem Resources, Inc. (company)	Welty, OK	07/20/92	07/07/92	27,524	Oil and gas.
Axem Resources, Inc. (company)	Pond Creek, OK	07/20/92	07/07/92	27,525	Oil and gas.
Axem Resources, Inc. (company)	Perry, OK	07/20/92	07/07/92	27,526	Oil and gas.
Axem Resources, Inc. (company)	Sapulpa, OK	07/20/92	07/07/92	27,527	Oil and gas.

[FR Doc. 92-18164 Filed 7-30-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,174]

Mertz, Incorporated, Ponca City, OK

Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Mertz, Incorporated, Ponca City, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,174; Mertz, Incorporated
Ponca City, Oklahoma (July 21, 1992).

Signed at Washington, DC, this 23d day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18162 Filed 7-30-92; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Availability of Benefits Quality Control Annual Report Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of unemployment insurance benefits quality control annual reports for calendar year 1991.

SUMMARY: The purpose of this notice is to announce the availability of calendar year 1991 Quality Control (QC) Annual Reports of each State's Unemployment Insurance (UI) Program and indicate how they may be obtained.

DATES: The Federal digest will be available after July 31, 1992.

ADDRESSES: Copies may be obtained by writing to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., room S-4231, Washington, DC 20210. The digest and this notice contain a list of names and addresses of persons in each State who will provide the State report and clarifications upon request.

FOR FURTHER INFORMATION CONTACT: John Sharkey, Chief, Division of System Operations and Analysis, Office of Quality Control at 202-535-0656.

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on personal interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information from the 52 jurisdictions participating in the UI QC program. Five items are reported for each State: Total UI benefit dollars paid to the population of claimants; size of the QC samples; and the percentages of proper payments, overpayments, and underpayments in the population estimated from the QC investigations. Ninety-five percent confidence intervals have been computed for each of the three percentages presented (proper payments, overpayments, and underpayments). States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

In addition, each State has published its Annual Report separately. Persons interested in specific State reports are encouraged to request copies from the individual States using the attached mailing list.

They should also request clarifications of the data from the States since law, policies, and procedures in each State vary considerably. The data cannot be used to draw comparisons among States.

Signed at Washington, DC, on July 16, 1992.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

UI QC Annual Report, State Contacts, CY 1991

Alabama

Harris Cornett, Public Information Officer, Department of Industrial Relations, 649 Monroe Street, room 217, Montgomery, AL 36131, (205)242-8618.

Alaska

Karen Van Dusseldorp, Q.C. Data Analyst, P.O. Box 21149, Juneau, AK 99802-1149, (907)465-3000.

Arizona

Gwen Howe, UI Technical Support Manager, Department of Economic Security, P.O. Box 6123, Site 701B-4, Phoenix, AZ 85005, (602)542-3771.

Arkansas

Robert K. Morgan, Director, Unemployment Insurance, Employment Security Division, P.O. Box 2981, Little Rock, AR 72203, (501)682-3200.

California

Anita MacKenzie, Deputy Director, Communications Office, MIC 85, Employment Development, Department, P.O. Box 826880, Sacramento, CA 94280-0001, (916)654-9029.

Colorado

Wayne Drummond or Bill Lafferty, Colorado Dept. of Labor & Employment, Quality Control Unit, UI Staff Services, 251 East 12th Avenue, 3rd Floor, Denver, CO 80203, (303)620-4578.

Connecticut

Richard Ficks, Directors of Communications, Employment Security Division, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (203)566-4374.

Delaware

W. Thomas MacPherson, Director, Department of Labor, Division of Unemployment Insurance, P.O. Box 9029, Newark, DE 19714-9029, (302)368-6730.

District of Columbia

Roberta Bauer, Assistant Director, Compliance & Ind. Monitoring Staff, DC Dept. of Employment Services, 500 "C" Street, NW, room 511, Washington, DC 20001, (202)639–1206.

Florida

James M. Everington, QC Supervisor, Florida Dept. Labor & Emp. Security, Caldwell Building, room 106, Tallahassee, FL 32399–0209, (904)487–3448.

Georgia

Al Scott, Commissioner, Georgia Department of Labor, 148 International Blvd., NE., Suite 600, Atlanta, GA 30303, (404)656–3011.

Hawaii

Douglas Odo, U.I. Administrator, Dept. of Labor & Ind Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813, (808)548–6951.

Idaho

Dale Edstrom, QC Research Analyst, Idaho Department of Employment, 317 Main Street, Boise, ID 83735, (208)334–6285.

Illinois

Joseph Wojcik, Department of Employment Security, One Congress Center, QC Unit, room 301, 401 South State Street, Chicago, IL 60605, (312)793–1175.

Indiana

Robert Shade, Director of Integrity Programs, Department of Workforce Development, IN Dept. of Emp. & Training Services, 10 North Senate Avenue, Indianapolis, IN 46204, (317)232–7680.

Iowa

Larry Venenga, Q.C. Supervisor, Iowa Dept. of Employment, Services, 1000 East Grand Avenue, Des Moines, IA 50319, (515)281–8398.

Kansas

Joseph Ybarra, Q.C. Supervisor, 401 SW Topeka Blvd., Topeka, KS 66603, (913)296–4077.

Kentucky

Thomas DeName, Director, Div. of Unemployment Insurance, 275 East Main Street, 2nd Floor, East, Frankfort, KY 40621, (502)564–5283.

Louisiana

Marianne Sullivan, UI Claims Coordinator, LA Dept. of Employment & Training, P.O. Box 94094, Baton Rouge, LA 70804–9094, (504)342–7103.

Maine

Gail Thayer, U.I. Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330, (207)289–2316.

Maryland

Thomas Wendel, Executive Director, Unemployment Insurance Division, Dept. of Econ. & Emp. Development, 1100 North Eutaw Street, Baltimore, MD 21201, (301)333–5306.

Massachusetts

Rena Kottcamp, Director of Research, Division of Employment Security, Charles F. Hurley ES Building, Boston, MA 02114, (617)727–6556.

Michigan

Carol Haupt, Bureau of U.I., Employment Security Commission, 7310 Woodward Avenue, Detroit, MI 48202, (313)876–5465.

Minnesota

Bob Dockendorf, Minnesota Dept. of Jobs & Training, QC Unit, 2nd Floor, 390 North Roberts Street, St. Paul MN 55101, (612)297–3456.

Mississippi

Merrill Merkle, Mississippi Employment Security, Commission, P.O. Box 1699, Jackson, MS 39215–1699, (601)961–7764.

Missouri

Tom Deuschle, Director, Missouri Division of Emp. Security, P.O. Box 59, Jefferson City, MO 65104, (314)751–3978.

Montana

Robert R. Jensen, Administrator, Unemployment Insurance Division, P.O. Box 1728, Helena, MT 59624, (406)444–2723.

Nebraska

Allan Amsberry, UI Director or Don Gammill, UI Program Evaluation, Administrator, P.O. Box 94600, Lincoln, NE 68509–4600, (402)471–9000.

Nevada

Karren Rhodes, Public Information Officer, NV Employment Security Department 500 East Third Street, Carson City, NV 89713, (702)885–4620.

New Hampshire

Robert Dorsch, Assistant to the Commissioner, Dept. of Employment Security, 32 South Main Street, Concord, NH 03301, (603)224–3311.

New Jersey

Charles G. Davis, Asst. Commissioner for Employment, Security & Training, New Jersey Dept. of Labor, CN 058, Trenton, NJ 08625–0058, (609) 984–5666.

New Mexico

Betty Boyden-Campbell, Q.C. Supervisor, New Mexico Department of Labor, 401 Broadway N.E., P.O. Box 1928, Albuquerque, NM 87103, (505) 841–8435.

New York

Charles G. Kilb, Director, Division of Audit & Compliance, NY State Department of Labor, State Office Campus, building 12-room 261, Albany, NY 12240, (518) 457–0284.

North Carolina

Preston L. Johnson, UI Director, Employment Security Comm. of NC, P.O. Box 25903, Raleigh, NC 27611, (919) 733–3121.

North Dakota

Lyle Holverson, Job Service North Dakota, P.O. Box 1537, Bismarck, ND 58502, (701) 224–2825.

Ohio

Gay M. Gilbert, Director, Unemployment Compensation Division, Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, OH 43216, (614) 466–9756.

Oklahoma

Terry McHale, Program Chief, Oklahoma Employment Security Comm., Will Rogers Memorial Office Bldg., Oklahoma City, OK 73105, (405) 557–7206.

Oregon

Michelle Kennedy, Communications, Manager, Oregon Employment Division, 875 Union Street NE., room 303, Salem, OR 97311, (503) 378–3216.

Pennsylvania

Jack Rudy, Acting Director, Bureau of Unemployment Compensation, Benefits and Allowances Division, Department of Labor & Industry, 7th & Forster Streets, room 415, Harrisburg, PA 17121, (717) 787–3547.

Puerto Rico

Vilma Letecia Alvarez, Assistant Secretary of Labor, Puerto Rico Dept. of Labor, and Human Resources, 505 Munoz Rivera Avenue, Hato Rey, PR 00918, (809) 754–2131.

Rhode Island

Marvin Perry, Deputy Director, Department of Employment Security, 24 Mason Street, Providence, RI 02903, (401) 277–3648.

South Carolina

R. Michael Baker, U.I. Director, South Carolina Employ. Security, Comm., P.O. Box 995, Columbia, SC 29202, (803) 737–2400.

South Dakota

Dennis Angerhofer, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402–4730, (605) 622–2005.

Tennessee

Ann Ridings, TN Department of Employment Security, 10th Floor, Volunteer Plaza Bldg., 500 James Robertson Parkway, Nashville, TN 37245–2700, (615) 741–3190.

Texas

James Jackson, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2661 or Bert West, QC Supervisor, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2394.

Utah

Terry Burns, Director, Unemployment Insurance, Department of Employment Security, 174 Social Hall Avenue, P.O. Box 11249, Salt Lake City, UT 84147, (801) 533–2201.

Vermont

Robert Herbst, Quality Control Chief, Dept. of Employment & Training, P.O. Box 488, Montpelier, VT 05602, (802) 229–0311.

Virginia

F.W. Tucker, IV, Chief of Benefits, Unemployment Insurance Services, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, (804) 786–3032.

Washington

Marie Brillante, Assistant Commissioner, UI, WA Employment Security Department, Employment Security Bldg., 4th Floor, Olympia, WA 98504–5311, (206) 753–5120.

West Virginia

Andrew Richardson, Commissioner, Bureau of Employment Programs, 112 California Avenue, Charleston, WV 25305, (304) 558–2629.

Wisconsin

Chet Frederick, Department of Industry, Labor, and Human Relations, Quality Control Unit, P.O. Box 7905, Madison, WI 53707, (608) 266–8260.

Wyoming

Beth Nelson, Administrator, Unemployment Insurance Administration, P.O. Box 2760, Casper, WY 82602, (307) 235–3254.

[FR Doc. 92–17852 Filed 7–30–92; 8:45 am]
BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92–57; Exemption Application No. D–8955, et al.]

Grant of Individual Exemptions; Cisco Systems, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Cisco Systems, Inc., Located in Menlo Park, California

[Prohibited Transaction Exemption 92–57; Exemption Application No. D–8955]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) a loan (the Loan) by Cisco Systems, Inc. (the Employer) to the Cisco Systems, Inc. 401(k) Plan (the Plan), which is sponsored by the Employer, with respect to group annuity contract GA 07049–0000 (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the Plan's potential repayment of the Loan (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) no interest and/or expenses are paid by the Plan, (c) the Loan is made only in lieu of payments due from Mutual Benefit with respect to the accumulated book value of the GAC at the time of the Loan, (d) the Repayments are restricted to the amounts, if any, paid to the Plan by Mutual Benefit or other responsible third parties with respect to the GAC (the GAC Proceeds), (e) the Repayments do not exceed the total amount of the Loan, and (f) the Repayments are waived to the extent the Loan exceeds the GAC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992 at 57 FR 24819.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Equitable Life Assurance Society of the United States (Equitable) and Equitable Real Estate Investment Management, Inc. (EREIM)

[Prohibited Transaction Exemption 92–58; Exemption Application No. D–8708]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the

sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The lease (the Lease) of 16,560 square feet of office space and 1,215 square feet of storage space in One Bush Plaza, a commercial office building located in San Francisco, California, by the Asset Enhancement Fund (AEF), a pooled separate account established by Equitable, to EREIM, or to the renewal of the Lease for an additional term not in excess of five years (the Lease Renewal provided that: (a) The Lease and the Lease Renewal are for a limited term; (b) the terms of the Lease and the Lease Renewal are negotiated and approved by a qualified independent fiduciary who determines that the terms of the transactions are no less than fair market value and at least as favorable to AEF as the terms would have been in arm's length transactions between unrelated parties; and (c) the independent fiduciary continues to monitor the Lease and the Lease Renewal on behalf of AEF.

EFFECTIVE DATE: This exemption will be effective April 27, 1991.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992 at 57 FR 24822.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Anderson of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Society National Bank, Located in Cleveland, Ohio

[Prohibited Transaction Exemption 92–59; Exemption Application No. D–9064]

Correction

The Proposed Exemption was incorrectly numbered D–9046 in the Federal Register of Friday, May 29, 1992. The correct Application Number should have been D–9064.

Exemption

The sanctions resulting from the application of section 4974 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by the Society National Bank, or any of its affiliates (collectively, the Bank), from the Emblem Fund (Emblem), an open-end investment company registered under the Investment Company Act of 1940, for acting as the investment adviser for Emblem, in connection with the investment by certain individual retirement accounts (IRAs) and H.R. 10 plans (Keoghs) for which the Bank serves as a fiduciary, provided that the following conditions are met:

(a) No sales commissions are paid by the IRAs or the Keoghs in connection with the purchase or sale of shares of Emblem and no redemption fees are paid in connection with the sale of shares by the IRAs or Keoghs to Emblem;

(b) Each IRA or Keogh receives a rebate, in the form of an addition to income in the amount of such IRA's or Keogh's proportionate share of the reduction in net asset value of the investment brought about by the payment of the investment management fee charged to Emblem by the Bank. This addition to income will be transferred to the IRA or Keogh account on the same day as the reduction in value brought about by the payment of the investment advisory fee;

(c) A second fiduciary (the Second Fiduciary), who is independent of and unrelated to the Bank, receives full written disclosure of information including: (i) current prospectuses for each Emblem portfolio, and (ii) a statement describing the fee structures of the Bank as trustee, of the Bank as investment advisor to Emblem, and of Emblem. On the basis of such information, the Second Fiduciary authorizes in writing the investment of assets of the IRA or Keogh in Emblem, and the fees to be paid by Emblem to the Bank;

(d) The authorization referred to in paragraph (c) is terminable at will by the IRA or Keogh, without penalty to the IRA or Keogh, upon receipt by the Bank of written notice of termination. Full written disclosure of the information described in paragraph (c), along with a form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must be supplied to the Second Fiduciary no less often than annually. The instructions for such form must include the following information:

(i) The authorization is terminable at will by the IRA or Keogh, without penalty to the IRA or Keogh, upon receipt by the Bank of written notice from the Second Fiduciary; and

(ii) Failure to return the form will result in continued authorization of the Bank to engage in the transactions described in paragraph (c) on behalf of the IRA or Keogh.

(e) All dealings between the IRAs or Keoghs and Emblem are on a basis no less favorable to the IRAs and Keoghs than dealings with other shareholders of Emblem.

FOR FURTHER INFORMATION CONTACT: Mr. S.J. Ryan of the Department, telephone (202) 523–8671. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–18191 Filed 7–30–92; 8:45 am]

BILLING CODE 4510–29–M

[Exemption Application No. D–8737]

Withdrawal of Notice of Proposed Exemption Involving the Ophthalmic Associates, P.A. Employees' Money Purchase Pension Plan (the Ophthalmic Money Purchase Plan) Located Lansdale, PA

In the **Federal Register** dated January 27, 1992 (57 FR 3068), the Department of labor published a notice of proposed exemption (the Notice) from the

prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The Notice concerned the proposed sale by the Ophthalmic Money Purchase Plan to TJS Realty, a party in interest, of a 50 percent tenant-in-common interest in certain improved real property (the Property), for the total cash consideration of $555,250.

In a comment letter of February 25, 1992, the applicants' representative informed the Department of a change to the Notice. Specifically, the applicant's representative stated that the Ophthalmic Money Purchase Plan's 50 percent tenant-in-common interest in the Property, as described in the Notice, would be converted into a fee simple interest in one of two condominium units that would be partitioned from the Property prior to the proposed sale. The revised proposed transaction would then be described as a sale of a fee simple interest in a condominium by the Ophthalmic Money Purchase Plan to TJS Realty in lieu of a sale of a 50 percent tenant-in-common interest in the Property as published in the Notice.

Due to the material nature of this change, the Department has determined to withdraw this notice of proposed exemption from the **Federal Register**. Accordingly, this notice of pendency is hereby withdrawn.

Signed at Washington, DC this 28th day of July, 1992.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–18190 Filed 7–30–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement to Help Administer Site Visits to State and Regional Arts Agencies

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified individual or organization to assist the Endowment's States and Regional Program in the administration and coordination of on-site evaluations to assess projects supported by the Program and in connection with the review of applications. Duties include disbursement of funds to evaluators, making travel arrangements, maintaining records, and submitting reports. Those interested in receiving the Solicitation package should reference Program Solicitation PS 92–10 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92–10 is scheduled for release approximately August 24, 1992 with proposals due on September 23, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW. Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92–18172 Filed 7–30–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

New Standard Technical Specifications (Proof and Review); Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) previously noticed the availability of five draft reports of new standard technical specifications (STS) that were issued for comment in January 1991 (56 FR 5430). The NRC has revised the STS in response to the comments received and following public meetings with the utility owners groups. The NRC issued the updated STS for proof and review and has scheduled to issue them for trial use as Revision 0 in September 1992. Copies of the proof-and-review version of the STS have been placed in the NRC public document room.

The vendor-specific STS are as follows:

NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants"

NUREG–1431, "Standard Technical Specifications, Westinghouse Plants"

NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants"

NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4"

NUREG–1434, "Standard Technical Specifications, General Electric Plants, BWR/6"

The NRC staff has established an electronic bulletin board system (BBS) as a public service for anyone that wishes to obtain copies of electronic files of the STS. The NRC prepared the STS using WordPerfect, Version 5.1, word processing software and has placed them on the BBS in compressed form using "ZIP" data compression software to reduce the time required to download the files. The NRC BBS may be reached by telephone at (301) 504–1178. Access to the BBS is available using a personal computer and modem with any standard communication software package. The BBS operates at up to 2400 Baud with communication parameters set at 8 bits, no parity, and one stop bit (8–N–1). This service is on line 24 hours a day. The system operators are Tom Dunning and Chris Hoxie. They can be reached by (voice) telephone at (301) 504–1189 and 504–3138, respectively, if assistance is needed.

Copies of the proof-and-review version of the STS are also available for inspection, or copying for a fee, in the NRC Public Document Room, the Gelman Building—room LL6 (Lower Level), 2120 L Street, NW., Washington, DC 20555. Requests for copies may be made by mail to the NRC Public Document Room, by facsimile at (202)–634–3343, or by telephone (202)–634–3273. Those requesting copies should list the STS by number and title as noted above.

FOR FURTHER INFORMATION CONTACT: Mark Reinhart, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504–3139.

Dated at Rockville, Maryland, this 24th day of July, 1992.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, Technical Specifications Branch, Division of Operational Events Assessment, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18118 Filed 7–30–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–262]

Order Approving Decommissioning Plan and Authorizing Decommissioning

In the matter of Brigham Young University (Brigham Young University L–77 Research Reactor).

In the matter of Brigham Young University (Brigham YUoung University L–77 Research Reactor).

By application dated June 28, 1990, as supplemented on July 2, 1991 and March 9, 1992, Brigham Young University (the licensee or BYU) requested authorization to decommission and dismantle the BYU L–77 Research Reactor, Facility License No. R–109, located on the licensee's campus in Provo, Utah, and to dispose of the component parts, in accordance with the Decommissioning Plan for the L–77 Research Reactor (Decommissioning Plan) submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on August 1, 1991, (56 FR 36851). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the application with respect to the provisions of the Commission's rules and regulations and has found that the decommissioning, dismantling and disposal of component parts as stated in the licensee's Decommissioning Plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action (57 FR 32824). Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, the licensee is hereby authorized to decommission and dismantle the BYU L–77 Research Reactor facility covered by Facility License No. R–109, as amended, and dispose of the component parts in accordance with its Decommissioning Plan, as amended, and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it has performed to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the Decommissioning Plan and in the Commission's guidance which is set forth in the staff's Safety Evaluation. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R–109.

For further detail with respect to this action, see (1) the licensee's application for authorization to decommission and dismantle the facility, dispose of component parts, and terminate Facility License No. R–109, dated June 28, 1990, as supplemented; (2) the Commission's Safety Evaluation; and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of items (2) and (3) may be obtained by request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland, this 23d of July 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18119 Filed 7–30–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station Unit No. 1; Exemption

I.

Niagara Mohawk Power Corporation (NMPC or the licensee) is the holder of Facility Operating License No. DPR–63, which authorizes operation of Nine Mile Point Nuclear Station Unit No. 1 (the facility or NMP1), at a steady-state reactor power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Oswego County, New York. The license provides among other things, that it is subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

Appendix J to 10 CFR part 50 requires that primary reactor containments shall meet certain containment leakage test requirements. Among these are the requirements that containment isolation valves receive local leak rate tests (Type C) and the results of all of the Type C tests are to be added to the results of the Type B tests (i.e., containment penetrations) and the combined leakage rate shall be less than 0.60 La (maximum allowable containment leakage at calculated peak containment internal pressure during a design basis accident).

III.

By letter dated July 9, 1992, NMPC requested a revision to a schedular exemption which had been issued to NMPC on March 20, 1992. The March 20, 1992, schedular exemption had combined and extended, until startup from the fall 1994 refueling outage, two schedular exemptions issued to NMPC on October 17, 1988, and August 29, 1989. The October 17, 1988, August 29, 1989, and March 20, 1992, exemptions had provided NMP1 with temporary relief from the leakage requirements of 10 CFR part 50, appendix J for eight containment isolation valves (shutdown cooling isolation valves 38–01, 38–02, 38–12, and 38–13 and emergency condenser condensate return line valves 39–03, 39–04, 39–05, and 39–06). Extension of the exemptions from the 1992 refueling outage to the 1994 refueling outage was determined acceptable in the March 20, 1992, exemption. As was noted in the October 17, 1988, August 29, 1989, and March 20, 1992, exemptions, these valves will require modifications or replacements to meet the leakage requirements of 10 CFR part 50, appendix J.

The licensee's July 9, 1992, letter (1) requested that two emergency condenser condensate return line valves (39–05 and 39–06) be deleted from the March 20, 1992, exemption since these valves will be tested prior to startup to ensure their compliance with the leakage requirements of 10 CFR part 50, appendix J, and (2) provided a revised basis for the requested exemption for the two emergency condenser condensate return line check valves (39–03 and 39–04. Due to the duration of the forced outage which began on May 1, 1992, the refueling outage previously scheduled to begin in the fall of 1994 has been rescheduled to begin in early 1995. Therefore, the licensee's July 9, 1992, letter also requested that the duration of the exemption for the shutdown cooling isolation valves (38–01, 38–02, 38–12, and 38–13) and the emergency condenser condensate return line check valves (39–03 and 39–04) be extended until startup from the refueling outage now scheduled to begin in early 1995.

IV.

The licensee's July 9, 1992, letter provided a revised basis for the exemption issued on March 20, 1992.

The March 20, 1992, exemption combined and extended the October 17, 1988, and August 29, 1989, exemptions until startup from the 1994 refueling outage. The evaluations prepared by the NRC staff for the October 17, 1988, and August 29, 1989, exemptions were still valid; therefore, extension of these exemptions was determined to not cause undue risk to the public health and safety. Furthermore, it was determined that these extensions would reduce occupational exposures and the volume of radwaste to be generated. Occupational exposures would be reduced by delaying the modifications until the 1994 refueling outage when a chemical decontamination of the reactor coolant system will be performed. Radwaste volumes will be minimized by delaying the modifications until the 1994 refueling outage since only a single drain down of the reactor vessel will then be required.

The forced outage which began on May 1, 1992, due to thermal stress cracking in the emergency condenser condensate return line valves, required access to these valves. The licensee expedited delivery of replacement check valves for the 39–03 and 39–04 check valves. However, testing of the replacement check valves at the vendor's facility determined that the replacement valves would not meet system design specifications. As a result, replacement check valves meeting 10 CFR part 50, appendix J leakage requirements and system design specifications are not available for installation. Therefore, check valves 39–03 and 39–04 were removed from the emergency cooling system, repaired to restore them to original design standards, and reinstalled in the emergency cooling system. Since these check valves were not designed for low pressure testing, they will require future modifications or replacements to meet the leakage requirements of 10 CFR part 50, appendix J.

The licensee also obtained access to valves 39–05 and 39–06 during the forced outage. These valves were refurbished during the forced outage to ensure that the summation of leakage from these valves and other containment penetrations will meet the leakage requirements of 10 CFR part 50, appendix J. Therefore, these two valves (39–05 and 39–06) have been deleted from the March 20, 1992, exemption.

The basis on which the NRC staff granted the March 20, 1992, exemption extension was to allow the modifications to the valves to be performed coincident with reactor coolant system decontamination and reactor vessel drain down during the 1994 refueling outage. Although access to the emergency condenser condensate return line check valves was obtained during the forced outage which began on May 1, 1992, the same check valves (not designed for low pressure testing) were installed after repairs were made since suitable replacement check valves are not available. Additional time is required to obtain suitable replacement check valves.

As a result of component cracking due to thermal fatigue discovered the forced outage which began on May 1, 1992, the licensee has installed additional thermocouples to monitor the emergency condenser condensate return lines to determine the root cause of the thermal cracking. Analysis of data collected during the remainder of the current fuel cycle will not be completed in time to support resolution of this issue (possible relocation of the check valves or installation of a different type of valve) prior to the January 1993 refueling outage. Delaying modifications to resolve the thermal fatigue issue and delaying installation of valves which will meet the leakage requirements of 10 CFR part 50, appendix J will permit both issues to be resolved in a single modification which is expected to result in an occupational exposure saving of 50–75 person-rem. Therefore, since the exemption would provide only temporary relief from the testing requirements of appendix J to 10 CFR part 50 and since NMPC has made good faith efforts to comply with the leak testing requirements, the NRC staff believes that special circumstances exist that warrant extending the current exemption until startup from the 1995 refueling outage.

Other information provided in the licensee's submittals for the October 17, 1988, August 29, 1989, and March 20, 1992, exemptions remains valid.

V.

On the basis of the above evaluation, the NRC staff concludes that the requested revision to and extension of the temporary, schedular exemption from the Type C testing requirements of appendix J to 10 CFR part 50 for emergency condenser condensate return line valves 39–03 and 39–04 and shutdown cooling isolation valves 38–01, 38–02, 38–12, and 38–13 is justified and should be granted. The technical basis supports a revision to and extension of the March 20, 1992, exemption until restart of NMP1 from the 1995 refueling outage. The valves will then be included in the 0.6 La acceptance criteria for Type B and C tests.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, the revision to the exemption requested by the licensee's letter dated July 9, 1992, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and that special circumstances are present as set froth in 10 CFR 50.12(a)(2)(v).

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this Exemption will have no significant impact on the environment (July 21, 1992, 57 FR 32238).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of July 1992.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18120 Filed 7–30–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mary Hill, Executive Personnel Division, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 (202) 606–1590.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

The following have been selected as regular members of the Performance Review Board of the Office of Personnel Management:

Steven R. Cohen (Chair), Regional Director, Chicago Region.
Frances A. Sclafani, Associate Director, Investigations Group.
Claudia Cooley, Associate Director, Personnel Systems and Oversight Group.
Patricia W. Lattimore, Associate Director, Administration Group.
Leonard R. Klein, Associate Director, Career Entry Group.
Curtis J. Smith Associate Director, Retirement and Insurance Group.
Dona Wolf, Director, Human Resources Development Group.

The following have been selected as ad hoc members of the Performance Review Board of the Office of Personnel Management:

Anthony F. Ingrassia, Chairman, Federal Prevailing Rate Advisory Committee.
Frank D. Titus, Deputy Associate Director, Retirement and Insurance Group.

[FR Doc. 92-18065 Filed 7-30-92; 8:45 am]
BILLING CODE 6325-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Snowcreek, Summit County, UT

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Snowcreek located in Park City, Summit County, Utah, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until October 29, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Ms. Beth Shannahan, Resolution Trust Corporation, Transamerica Real Estate Management, 2255 North 44th Street, suite 255, Phoenix, AZ 85008, (602) 275-4662, FAX (602) 275-4316.

SUPPLEMENTARY INFORMATION: The Snowcreek property consists of approximately 52 acres of undeveloped land and is located at the intersection (northeast corner) of Highways 224 and 228, Park City Utah. Its location in Park City is approximately 25 miles east of downtown Salt Lake City via interstate 80. The site contains wetlands, undeveloped floodplains, and a Hillside Reserve that is maintained in open space. The property is contiguous with the Park City Municipal Golf Course and other lands managed by Park City as a Hillside Reserve. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441a-3).

Characteristics of the property include: The property is located on the eastern front of the Wasatch Mountain Range and Snow Creek flows through the property from south to north. The site contains about 7.5 acres of wetlands, 6 acres of floodplain, and 19.5 acres of the property is maintained in open space as a Hillside Reserve.

Property size: Approximately 52 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 29, 1992, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by October 29, 1992, to Ms. Beth Shannahan at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Snowcreek

Federal Register Publication Date: July 31, 1992.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, P.L. 101-591, Section 10(b)(2), (12 U.S.C. 1441a-3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Resolution Trust Corporation.

Dated: July 27, 1992.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92-18154 Filed 7-30-92; 8:45 am]
BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; North Point, Jefferson County, CO

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as North Point, located in the City of Westminster, Jefferson County, Colorado, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or a portion of the property may be mailed or faxed to the RTC until October 29, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Craig Tryon, Resolution Trust Corporation, Capitol Federal Savings, 2625 South Colorado Boulevard, Denver, CO 80222, (303) 691-1003, Fax (303) 756-3132.

SUPPLEMENTARY INFORMATION: The North Point property is located northwest of the City of Denver, in Westminster, Colorado. The southern portion of the property is crossed by 104th Avenue which intersects State Highway 36 (Denver/Boulder Turnpike) running along the western portion of the property. The property contains wetlands and is crossed by Big Dry Creek which is lined with riparian vegetation. The site is contiguous with lands managed by the City of Westminster for public open space, park, and recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591 (12 U.S.C. 1441A-3).

Characteristics of the property include: The property is undeveloped and consists of approximately 145.877 acres. The topography is gently rolling and the site appears to have been used as pasture and is covered with grasses and forbs. The foothills of the Rocky Mountains dominate the western vistas from the property.

Property size: Approximately 145.877 acres.

Written notice of serious interest in the purchase or other transfer of all or a portion of the property must be received on or before October 29, 1992, by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of all or a portion of the property must be submitted by October 29, 1992, to Mr. Craig Tryon at the above **ADDRESSES** and in the following form: Notice of Serious Interest, RE: North Point, Federal Register Publication Date: July 31, 1992.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, P.L. 101 -591, Section 10(b)(2), (12 U.S.C. 1441A–3(B)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: July 27, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–18153 Filed 7–30–92; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Equitable Co's, Inc.
Common Stock, $.01 Par Value (File No. 7–8844)
Hallwood Group, Inc.
Common Stock, $.10 Par Value (File No. 7–8845)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18086 Filed 7–30–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Carolco Pictures
Common Stock, $.01 Par Value (File No. 7–8846)
English China Clays Plc
American Depository Receipt (rep. 3 ord. shrs. 25p) (File No. 7–8847)
Excelsior Income Shares, Inc.
Common Stock, $.01 Par Value (File No. 7–8848)
First USA, Inc.
Common Stock, $.01 Par Value (File No. 7–8849)
Hubbell, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–8850)
Orion Capital Corp.
$2.125 Cum. Conv. Exch. Pfd., $1.00 Par Value (File No. 7–8851)
Pacific American Income Shares, Inc.
Common Stock, $.01 Par Value (File No. 7–8852)
Portec, Inc.
Common Stock, $1.00 Par Value (File No. 7–8853)
Reliance Electric Co.
Class A Common Stock, $.01 Par Value (File No. 7–8854)
Sequa Corp.
Class A Common Stock, No Par Value (File No. 7–8855)
Syborn Corp.
Common Stock, $.01 Par Value (File No. 7–8856)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18079 Filed 7–30–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Viacom, Inc.
Common Stock, $.01 Par Value (File No. 7–8814)
Agricultural Minerals Company L.P.
Common Units, No Par Value (File No. 7–8815)
Oxford Industries
Common Stock, $1 Par Value (File No. 7–8816)
Long Island Lighting Company
Pfd Stock $7.95 Series AA Cum., $25 Par Value (File No. 7–8817)
Equitable Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–8818)
Enquirer Star Group, Inc.
Warrants (File No. 7–8819)

MuniYield New York Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–8820)
MuniYield Quality Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8821)
MuniYield California Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–8822)
General Motor Corporation
Dep. Shares, Pfd Stock, $0.10 Par Value (File No. 7–8823)
Kasler Corporation
Common Stock, No Par Value (File No. 7–8824)
Western Gas Resources
Common Stock, $.10 Par Value (File No. 7–8825)
Ground Round Restaurants, Inc.
Common Stock, No Par Value (File No. 7–8826)
Latin America Dollar Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8827)
Nuveen Premium Income Municipal Fund, Inc. 2
Common Stock, $.01 Par Value (File No. 7–8828)
Nuveen Select Tax Free Income Portfolio 3
Shares of Beneficial Interest, $.01 Par Value (File No. 7–8829)
GTECH Holding Corporation
Common Stock, $.01 Par Value (File No. 7–8830)
American Strategic Income Portfolio, Inc. II
Common Stock, $.01 Par Value (File No. 7–8831)
Greater China Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–8832)
Jardine Fleming China Region Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8833)
Abex, Inc.
Common Stock, $.01 Par Value (File No. 7–8834)
Enterprise Oil Plc
American Depository Shares, Series A One Cum. Dollar Preference Share (File No. 7–8835)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18089 Filed 7–30–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25591]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

Dated: July 24, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 17, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Sawyer Gas of Jacksonville, Inc., et al. (31–870)

Sawyer Gas of Jacksonville, Inc. ("Sawyer") and Tri City Propane and Gas Company, Inc. ("Tri City"), 8801 South Yale Avenue, suite 310, Tulsa, Oklahoma 74137, wholly owned subsidiary companies of Heritage Propane Corporation, have filed an application under section 2(a)(4) of the Act for an order declaring them not to be gas utility companies.

Section 2(a)(4) defines a gas utility company as "any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers * * *) of natural or manufactured gas for heat, light, or power." That section also provides that the Commission may declare a company operating such facilities not to be a gas utility company if it "finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of [the Act] * * *."

Sawyer engages in the sale of propane in the State of Florida, and Tri City engages in the sale of propane in the States of New Mexico and Arizona, to retail customers in enclosed portable containers and through metered systems. The metered gas sold by Sawyer and Tri City represent sales made through piped systems that are supplied by delivering propane to large above-ground storage tanks that generally feed a particular mobile home park or subdivision. Sawyer and Tri City seek a declaration of non-utility status by reason of their asserted small percentage of sales through piped systems with meters.

To qualify for an exemption under section 2(a)(4), the Commission looks to metered gas sales to determine whether the amount of gas distributed at retail is significant. During fiscal year 1992, Sawyer sold 4.012 million gallons of propane and had revenues of $6.953 million. Piped sales represented 12.59% of the gallons sold and 13.45% of the revenues. During fiscal 1991, Tri City sold .626 million gallons of propane and had revenues of $525,724. Piped sales represented 4.04% of gallons sold and 3.69% of revenues.

The applicants assert that they are highly regulated by the states and the federal government in the areas of safety and transportation, but not as to price. They state that their propane activity does not constitute utility services under Florida, New Mexico or Arizona law.

Eastern Utilities Associates, et al. (70–7287)

Eastern Utilities Associates ("EUA"), a registered holding company, and EUA Cogenex Corporation ("Cogenex"), its nonutility subsidiary company, both of P.O. Box 2333, Boston, Massachusetts 02107, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(c), 12(f), and 13 of the Act

and rules 42, 45, 87, 90 and 91 thereunder.

By order dated December 19, 1986 (HCAR No. 24273) (the "Order"), EUA was authorized to acquire all of the issued and outstanding stock of a company, now known as Cogenex, engaged in the provision of energy management services to institutional customers. Cogenex evaluates a customer's site and advises the customer as to what steps should be taken to reduce energy consumption. Modifications may include building automation, lighting modifications, boiler replacement and heat recovery. Cogenex usually funds the initial cost of the recommended changes and is repaid through a contract based on calculating the energy savings with reference to a prescribed base year.

Cogenex also participates in various installed self-generation projects whereby an electric generator sited on the customer's premises supplies both heat and electricity, displacing a portion of the customer's retail electric consumption. The application states that any self-generation project which Cogenex undertakes will be certified as a qualifying cogeneration facility ("QF") under the Public Utility Regulatory Policies Act of 1978 and the regulations thereunder.

Cogenex also acts as an energy services contractor for several electric utilities to assist them in meeting their conservation and demand reduction goals. Finally, Cogenex provides training to its customers in the proper use and maintenance of energy equipment.

The Order conditions the conduct of Cogenex's business as follows:

> [Cogenex] will expand its operations outside of New England only if doing so will permit to utilize better the personnel and equipment already dedicated to the energy management services business and provided that the revenues of [Cogenex] attributable to customers located outside New England [the "Region"] remain less than the revenues attributable to customers located within that area [("50% Restriction")]. Cogenex now requests authorization to include New York as part of the Region and exclude all activities relating to QF's for purposes of determining compliance with the 50% Restriction.

Maine Yankee Atomic Power Company (70–7627)

Maine Yankee Atomic Power Company, Edison Drive, Augusta, Maine 04330, an indirect subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act.

By order dated July 18, 1989 (HCAR No. 24925), the Commission authorized Maine Yankee to borrow under a revolving credit agreement ("Credit Agreement") through August 31, 1992, in an aggregate principal amount not to exceed $50 million outstanding at any one time with maturities of from one day to ten years from the date of issuance.

Maine Yankee now proposes to: (1) Extend through August 31, 1995 its authorization to issue and sell promissory notes ("Notes") under the Credit Agreement in an aggregate principal amount not to exceed $50 million outstanding at any one time, and (2) to amend the Credit Agreement ("Proposed Amendment") in certain respects.

The Proposed Amendment would alter two of the four interest rate options provided for in the Credit Agreement, as follows: (1) If a European based rate is elected, the interest charge would increase from adjusted London Inter-Bank Offering Rate or other interbank market offering rate for U.S. dollars ("LIBOR") plus ⅝% to adjusted LIBOR plus ½%, for interest periods of 1, 2, 3 or 6 months (360 day basis); and (2) if a CD Rate is elected, the interest charge would increase from Adjusted CD Rate plus ½% to Adjusted CD Rate plus ⅝%, for interest periods of 30, 60, 90, or 180 days (360 day basis). The Proposed Amendment would also increase the bid loan fee payable to the Banks, in accordance with their pro rata commitments, on the aggregate principal amount of bid loans outstanding from ⅛% to 3/16% per annum.

Consolidated Natural Gas Company (70–7827)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act.

By order dated March 28, 1991 (HCAR No. 25283) ("Order"), the Commission authorized Consolidated, among other things, to borrow, from time-to-time through March 31, 1994, up to $300 million, pursuant to revolving credit agreements ("Credit Agreements") with the Chase Manhattan Bank acting for itself and as agent for eleven other banks. The loans made under the Credit Agreements may be either syndicated loans by a group of participating banks or money market loans made by individual participating banks.

Under the terms of the Credit Agreements, the bank loans may be in the form of revolving credits. Commitments under the Credit Agreements will commence as of the date thereof and will have an initial term expiring on the last business day in March of 1994. However, the Credit Agreements provided that on each anniversary date the term of the agreement can, at Consolidated's request with the approval of the banks, be extended for a period of one year. Consolidated, pursuant to such provision in the Credit Agreements, elected to extend the term of the Credit Agreement through March 31, 1995.

In connection with Consolidated's current extension and in anticipation of likely future extensions of the Credit Agreement, Consolidated now proposes to extend its authorization under the Order from March 31, 1994 to March 31, 1996. Any borrowing by Consolidated under such extended authorization will be subject to the same terms and conditions as authorized in the Order.

Consolidated Natural Gas Company (70–8013)

Consolidated Natural Gas Company ("CNG"), CNG Tower, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act, and Rule 50(a)(5) thereunder.

CNG proposes to issue and sell, through December 31, 1992, up to 4,600,000 shares of its authorized but unissued common stock, $2.75 par value ("Additional Stock"). It is anticipated by CNG that the proposed transaction will be structured to include the issuance and sale of a to-be-determined number of shares of Additional Stock: (i) To an underwriter(s) in the United States ("U.S. Underwriters"); (ii) to an international manager(s) ("Managers") outside the United States; and (iii) to such U.S. Underwriters or Managers to cover over-allotments (typically from 10% to 15% of the Additional Stock).

CNG states that the proceeds from the sale of the Additional Stock will be added to the treasury funds of CNG and subsequently used to finance, in part, capital expenditures of CNG and CNG's subsidiaries.

CNG requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for its issuance of the Additional Stock. CNG states that it believes that the flexibility to match readily terms and conditions of the Additional Stock offer and sale with the changing demands of the market will contribute to its achieving lowest cost funding. CNG further states that the involvement of both U.S. Underwriters and Managers necessitates coordination between the two underwriting groups. Accordingly, CNG further requests

authorization to begin negotiations with U.S. Underwriters and Managers for the public offering of the Additional Stock. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18090 Filed 7-30-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

Dated: July 27, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

North Canadian Oils, Ltd.
Common Stock, No Par Value (File No. 7-8836)
Automated Security Holdings Plc
American Depository Shares (each representing two ordinary shs of 10P each) (File No. 7-8837)
GTECH Holdings Corp.
Common Stock, $.01 Par Value (File No. 7-8838)
Charter Medical Corp.
(when issued), Common Stock, $.25 Par Value (File No. 7-8839)
Latin America Dollar Income Fund, Inc.
Comon Stock, $.01 Par Value (File No. 7-8840)
Nuveen Premium Income Municipal Fund, Inc. 2
Common Stock, $.01 Par Value (File No. 7-8841)
Nuveen Select Tax Free Income Portfolio 3
Shares of Beneficial Interest, Par Value $.01 (File No. 7-8842)
Patriot Global Div. Fund
Shares of Beneficial Interest, No Par Value (File No. 7-8843)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18094 Filed 7-30-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the federal safety laws and regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's argument in favor of relief.

Consolidated Rail Corporation

Waiver Petition Docket Numbers PB-90-2 and SA-90-4

The Consolidated Rail Corporation (Conrail) in conjunction with the Wheeling and Lake Erie Railway Company (W&LE) and the Norfolk Southern Corporation (NS) (on behalf of its operating subsidiaries) were granted conditional waivers of compliance with certain provisions of the Railroad Power Brakes and Drawbar Regulations (49 CFR part 232), under Docket No. PB-90-2, and the Safety Appliance Standards (49 CFR part 231), under Docket No. SA-90-4 (see notice of waiver petitions 55 FR 15095, April 20, 1990, for more detailed discussions of the Conrail petition and 56 FR 49817, October 1, 1991, for more detailed discussion of the W&LE petition).

The conditional waivers permitted NS RoadRailer trains to interchange with Conrail at Hagerstown, Maryland and with W&LE at Clairton, Pennsylvania for final destination to Portside or Kearny, New Jersey and return to the respective railroads. Conrail has once again petitioned the FRA for changes in the original routings granted in the conditional waivers of the RoadRailer trains over its lines. The railroad states, "As a result of changes in routing and traffic volume, Conrail now requests a Waiver of Compliance allowing the interchange of NS trains handling RoadRailer units to and from the following locations:

(1) From Hagerstown, Maryland for subsequent movement to Portside or Elizabeth, New Jersey; and

(2) From Bucyrus, Ohio via Altoona, Pennsylvania to Rutherford Yard, Harrisburg, Pennsylvania."

Conrail also advises the FRA that it no longer has any plans to receive RoadRailer trains from the W&LE, nor will either of the above referenced trains terminate at Kearny, New Jersey.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB-90-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 4, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 24, 1992.

Phil Oleksyzk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-18091 Filed 7-30-92; 8:45 am]

BILLING CODE 4910-06-M

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from Westinghouse Air Brake Company (WABCO) a request for a waiver of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved and the nature of the relief being requested.

Westinghouse Air Brake Company

Waiver Petition Docket Number H–92–3

The Westinghouse Air Brake Company (WABCO) seeks a waiver of compliance with certain provisions of the Locomotive Safety Regulations (49 CFR part 229). WABCO is requesting a temporary waiver of compliance with § 229.29, for all locomotives equipped with their EPIC 3101 and 3102 Microprocessor Controlled Brakes operating in the United States. Section 229.29 stipulates that all brake valves must be cleaned, tested and inspected every 736 calendar days. On January 29, 1985, FRA granted approval for the 26–L type air brake equipment to be cleaned, inspected and tested every 1104 calendar days. The waiver requests that the EPIC brake valves be maintained at the same interval as the 26L brake.

The EPIC brake equipments combine certain pneumatic features of the 26L brake with microprocessor controls. The EPIC air valves consist of rubber diaphragm type pistons, spool valves with "O" rings and rubber seated check valves. This same construction and similar configuration is used in the 26L brake valves which have previously shown to be capable of extended service life. In addition, each locomotive equipped with the EPIC brakes has an air dryer in the main reservoir air supply system to remove moisture.

Prototype and early production models of the EPIC brake have been in controlled service for several years. FRA has not wished to impede the development of this state of the art equipment and has therefore not taken exception to its design. Functionally, the EPIC brake is equivalent to the 26L Type. To establish the reliability of the EPIC brake equipment, FRA proposes that all such equipment be operated under a test waiver for a period of three years to determine the optimum maintenance interval. The electronic portion of the brake differs from the pneumatic portion in that it has an indefinite service life, subject only to abnormal conditions such as voltage surges, loss of power, etc. These are random type failures rather than failures due to service life.

The EPIC 3101 brake utilizes valvular portions which are very similar to the 26L brake. The 26L equipment was adapted to the microprocessor. The EPIC 3102 is the second generation brake with the valvular portions being completely redesigned to simplify the entire system. It is expected the EPIC 3102 will supercede the EPIC 3101.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–92–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Sireet, SW., Washington, DC 20590. Communications received before September 4, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on July 24, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–18092 Filed 7–30–92; 8:45 am]

BILLING CODE 4910–06–M

[BS–AP–NO. 3170]

Wheeling and Lake Erie Railway Company; Public Hearing

The Wheeling & Lake Erie Railway Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control system on the single and double main tracks of the Bellevue Line between CP Rex, milepost 184, near Rexford, Ohio and Yeomans West, milepost 54.8, near Bellevue, Ohio, a distance of approximately 129 miles.

This proceeding is identified as FRA Block Signal Application Number 3170.

The FRA has issued a public notice seeking comments of interested parties and is conducting a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Thursday, September 10, 1992, in City Council Chambers at City Hall, located at 218 Cleveland Avenue SW., in Canton, Ohio. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on July 24, 1992.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 92–18093 Filed 7–30–92; 8:45 am]

BILLING CODE 4910–16–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 27, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0144.

Form Number: IRS Form 2438.

Type of Review: Resubmission.

Title: Regulated Investment Company Undistributed Capital Gains Tax Return.

Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under IRC section 852(b)(3)(D). IRS uses this information to determine the correct tax.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hours, 39 minutes
Learning about the law or the form—35 minutes
Preparing and sending the form to the IRS—45 minutes

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 899 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Department Reports, Management Officer.
[FR Doc. 92–18150 Filed 7–30–92; 8:45 am]
BILLING CODE 4830–01–M

Bureau of Engraving and Printing

Privacy Act of 1974; Amendment to Existing System of Records Notice

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of Amendment to Privacy Act System of Records Notice, Treasury/BEP .021.

SUMMARY: The Bureau of Engraving and Printing (BEP) is making several amendments to the description of an existing system of records, Treasury/BEP .021, Investigative Files, to reflect: (1) The automation of the system of records; and (2) a change in the retention schedule of two categories of records.

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on August 31, 1992, unless modified by a subsequent notice to incorporate comments received from the public.

FOR FURTHER INFORMATION CONTACT: Lawrence F. Zenker, Disclosure Officer, Bureau of Engraving and Printing, Room 321–12A, 14th and C Streets, SW., Washington, DC 20228, Telephone: (202) 874–2687.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of the Treasury reviewed all Privacy Act systems of records and published all systems notices on April 17, 1992. This publication affects only the notice for the system maintained by the Bureau of Engraving and Printing, Treasury/BEP .021.

Treasury/BEP .021, Investigative Files, is being amended to reflect that the system has been automated. As a consequence, changes are reflected in the storage description for this system. Additionally, changes have been made under "Retention and Disposal" because the retention schedule for this system of records has been increased.

* * * * *

Treasury/BEP .021

SYSTEM NAME:

Investigative Files—Treasury/BEP.

* * * * *

STORAGE:

File Folders, 3x5 Index Cards, 5x8 Index Cards, Loose-Leaf Binders, Ledgers, Recording tape, Computer Database Programs, and Microfiche.

* * * * *

RETENTION AND DISPOSAL:

Destroyed within 90 days following notification of an employee's death, or, within five years after separation or transfer of incumbent employee; or, five years after expiration of contractual relationship. Product Discrepancy Investigative Reports and Bank Letter Investigative Reports are retained indefinitely.

* * * * *

Dated: July 23, 1992.

David M. Nummy,
Assistant Secretary (Management).
[FR Doc. 92–18151 Filed 7–30–92; 8:45 am]
BILLING CODE 4840–01–M

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of application Packages for the 1993 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1993 Tax Counseling for the Elderly (TCE) Program is September 8, 1992.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program. Internal Revenue Service Management and Operations Branch (T:T:M) 1111 Constitution Ave., NW., room 7207, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, Management and Operations Branch (T:T:M) room 7207, Internal Revenue Service, 1111 Constitution Ave., NW., room 7207, Washington, DC 20224. The non-toll-free telephone number is: (202) 622–7664.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978, Pub. L. No. 95–600, 92 Stat. 12810, November 6, 1978. Regulations were published in the **Federal Register** at 44 72113 on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individual age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1993 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in § 21.006.

John J. Mannion,
Chief, Management and Operations Branch.
[FR Doc. 92–18059 Filed 7–30–92; 8:45 am]
BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 148
Friday, July 31, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:33 a.m. on Tuesday, July 28, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,818—Silverado Banking, Savings and Loan Association, Denver Colorado

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman William Taylor, and concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: July 28, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-18239 Filed 7-29-92; 10:05 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 4, 1992.

PLACE: Room 600, 1730 K Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Island Creek Coal Co. v. Roy Farmer et al,* Docket No. VA 91-31-C (Issues include whether the judge erred in concluding that Roy Farmer had good cause for filing out of time a complaint for compensation brought under 30 U.S.C. § 821.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: July 28, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-18325 Filed 7-29-92; 3:05 am]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 5, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED.

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any time carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18244 Filed 7-29-92; 10:23am]

BILLING CODE 6210-01-M

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federal register

Friday
July 31, 1992

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 493 and 498

Clinical Laboratories Improvement Act Program; Accreditation and Exemption; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 493 and 498

[HSQ-181-F]

RIN 0938-AE62

Clinical Laboratories Improvement Act Program; Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and of CLIA Exemption Under State Laboratory Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule permits HCFA to approve or disapprove accreditation organizations and State laboratory programs and thereby determine that laboratories accredited by a HCFA-approved private, nonprofit accreditation organization are deemed to meet the requirements set forth in 42 CFR part 493 of the regulations, which implement section 353 of the Public Health Service Act (PHSA) or, in the case of State laboratory programs, are exempt from the requirements. Section 353 of the PHSA was enacted by the Clinical Laboratories Improvement Act of 1967 (CLIA '67) and was amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

EFFECTIVE DATE: This rule is effective August 31, 1992, except for the definitions of "accredited laboratory", "CLIA-exempt laboratory", and "HCFA agent", found in § 493.2, which will be effective on September 2, 1992.

FOR FURTHER INFORMATION, CONTACT: Irene Gibson, (410) 966-6768.

SUPPLEMENTARY INFORMATION:

Background

Under section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967 (CLIA '67), laboratories engaged in testing specimens in interstate commerce had to meet Federal requirements established under the CLIA '67 program in order to become or remain licensed to engage in interstate commerce. HCFA established the requirements, called "conditions," and standards, and was responsible for assuring that they were met. The Federal conditions under the CLIA program for granting licenses to laboratories were similar to the conditions of participation or for coverage that a laboratory had to meet in order to participate in Medicare or Medicaid. Each condition was usually comprised of one or more standards, which enumerated activities, outcomes, or other requirements that, upon evaluation by HCFA, its agents, or a State survey agency under contract with HCFA, served as the basis for determining compliance with a particular condition. If the laboratory failed to comply with any CLIA condition, we initiated an adverse action to revoke, suspend or limit the laboratory's CLIA license.

Section 353(d)(2) of the PHSA, as enacted by CLIA '67, stated that the provisions of section 353 requiring licensing did not apply to a laboratory in a hospital accredited by the Joint Commission on the Accreditation of Hospitals, later renamed the Joint Commission on the Accreditation of Healthcare Organizations (Joint Commission), or the American Osteopathic Association (AOA), or to an interstate laboratory inspected or accredited by either the Commission on Inspection and Accreditation of the College of American Pathologists (CAP) or by any other accreditation organization approved by the Secretary for this purpose. The accreditation standards applied by these organizations had to be equal to or more stringent than the requirements of section 353 and the regulations implementing it. In addition, there had to be adequate provision for assuring that the standards continued to be met by each accredited laboratory of a given accreditation organization. Section 353(l) of the PHSA, as enacted by CLIA '67, provided that where a State had enacted laws that set forth standards equal to or more stringent than the provisions of Section 353 or the regulations under that section, the Secretary could exempt laboratories in that State from compliance with that section.

HCFA, with the necessary scientific and technical support as needed from the Centers for Disease Control and the Food and Drug Administration of the Public Health Service (PHS), administers the CLIA program for HHS.

Three significant events occurred affecting clinical laboratories, both under the CLIA program and under Medicare and Medicaid. First, on October 31, 1988, Pub. L. 100-578, the Clinical Laboratory Improvement Amendments of 1988 (CLIA), was enacted. CLIA made every laboratory in the country that tests human specimens for health reasons subject to Federal regulation whether or not it participates in the Medicare or Medicaid program and whether or not it tests specimens in interstate commerce. CLIA also established test complexity as the basis for evaluating satisfactory performance in laboratory testing. (See discussion below under "Legislation".) Second, on March 14, 1990, we published in the **Federal Register** (55 FR 9538) final rules that consolidated and recodified regulations for the Medicare and Medicaid programs and for interstate laboratories into a new 42 CFR part 493. These rules were effective September 10, 1990. As of that date we have a single set of regulations for laboratories that are subject to Medicare or Medicaid or that test specimens in interstate commerce.

Third, on February 28, 1992 we published in the **Federal Register** (57 FR 7002) final rules that establish the performance requirements that laboratories must meet in order to be certified by HHS as in compliance with CLIA requirements and that supersede the March 14, 1990 regulations. With certain exceptions, the performance requirements are effective September 1, 1992.

Legislation

As stated earlier, on October 31, 1988, Congress enacted the Clinical Laboratory Improvement Amendments of 1988, which replaced in its entirety Section 353 of the PHSA. CLIA continues to provide for the accreditation of laboratories by accreditation organizations or exemption of laboratories from CLIA requirements when States apply requirements equal to or more stringent than the **Federal Register** requirements. These subsections were effective January 1, 1990. The content of the current CLIA provision concerning State licensure remains the same as under CLIA '67; however, the accreditation provision is much more detailed.

Section 353(e) states that a laboratory may be accredited for purposes of obtaining a CLIA certificate if the laboratory meets the standards of an approved accreditation organization and authorizes the organization to submit to the Secretary, State agency, or other designated HCFA agent, records or other information the Secretary requires.

According to the statute at section 353(e), the Secretary may approve a private, nonprofit organization for the accreditation of laboratories if the accreditation organization—

• Agrees to inspect a laboratory for purposes of accreditation at a frequency determined by the Secretary, using inspectors qualified to evaluate laboratory methodologies used in the performance of laboratory examinations and other test procedures;

- Applies standards equal to or more stringent than the standards issued by the Secretary in determining whether or not to accredit a laboratory;
- Provides adequate assurance that the standards of the accreditation organization continue to be met by the laboratories it accredits;
- Agrees to submit to the Secretary the name of any laboratory accredited by the organization that has had its accreditation denied, suspended, withdrawn, or revoked or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;
- Agrees to notify the Secretary at least 30 days before it changes its standards; and
- Agrees to notify each laboratory accredited by the organization within 10 days of a decision by the Secretary to withdraw his or her approval of the accreditation organization.

CLIA requires the Secretary to promulgate criteria and procedures for approving an accreditation organization and for withdrawing approval if it is determined that the accreditation organization does not meet Federal requirements. The statute does not specifically require the promulgation of specific criteria for the exemption of laboratories in a State. The decision whether or not to exempt all laboratories in a State from CLIA is discretionary with the Secretary.

Under CLIA, if the Secretary withdraws the approval of an accreditation organization, the certificate of any laboratory accredited by the organization continues in effect for 60 days after the laboratory receives notification of the withdrawal of the approval. The Secretary may extend the period for an additional period of time (which we have specified to be 60 days) if the laboratory submits to HCFA in a timely manner an application for accreditation by another accreditation organization or an application for a CLIA certificate based on an inspection for compliance with CLIA conditions by the State agency or other HCFA agent.

Under CLIA, if an accreditation organization withdraws or revokes the accreditation of a laboratory, the certificate of the laboratory will continue in effect—

- For 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or
- Until the effective date of any action taken by the Secretary under section 353(i) of the PHSA.

The performance of each approved accreditation organization or licensure agency is to be evaluated by HCFA annually. A sufficient number of accredited or licensed laboratories is to be inspected to allow a reasonable estimate of the performance of that organization.

The Secretary is to prepare and submit annually, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that describes the results of the evaluations conducted under section 353(e)(2)(D) of the PHSA.

Proposed Revisions to the Regulations

On August 20, 1990, we published a proposed rule to implement sections 353(e) and 353(p) of the PHSA as amended by CLIA (55 FR 33936). We proposed to add a new subpart E to 42 CFR part 493 to implement these sections. We proposed to institute the same requirements for both private accreditation organizations and for State licensure agencies. Although the statute does not require us to judge both by the same standards, we stated that we do not believe that it is reasonable to use different standards, since both entities function to assure us that laboratories meet statutory requirements for health and safety. The proposed regulations, therefore, addressed granting exemptions to and removing exemptions from specific State licensure agencies and the laboratories they license and were based on the statutory framework provided for private nonprofit accreditation organizations. The rationale for this approach was that we believe Congress could not have intended to allow the Secretary to grant exemptions to State licensure agencies without applying objective criteria to the State licensure programs, or to allow the Secretary to grant initial approvals without periodically re-evaluating those approvals. Based on the premise of the necessity of objective periodic re-evaluation, we used the list of statutory criteria provided for accreditation organizations because it is comprehensive and, we believe, conducive to maintaining the integrity of the deeming/exemption programs.

A. Requirements for Accreditation and Licensure Organizations

We proposed to include a general section, § 493.501, that would state the basic premise of the subpart: if a private nonprofit accreditation organization or State licensure agency for laboratories provides reasonable assurance to us that it requires the laboratories it accredits or licenses to meet requirements equal to or more stringent than CLIA conditions, we may deem its laboratories to be in compliance with CLIA, Medicare and Medicaid condition-level requirements. In new § 493.507, we would require that the laboratories be subject to validation inspections (surveys) performed by HCFA or its designee (see discussion on § 493.507) and authorize their accreditation organization or licensure agency to release to HCFA such records and reports as required by this regulation.

In § 493.503 we proposed to require each laboratory deemed to meet CLIA requirements under new subpart E to authorize its accreditation organization or State licensure agency to submit to us annually a copy of the laboratory's quarterly or semi-annual (if applicable) proficiency testing results for the purpose of establishing a system to make the proficiency testing results available, on a reasonable basis, upon request as required by section 353(f)(3) of CLIA. In case of a laboratory's failure to achieve successful participation in the proficiency testing program, the laboratory would be required to authorize its accreditation organization or State licensure agency to submit a report of test results to HCFA within 30 days of the notice of the failure. We would require submission of these results because section 353(f)(3) of CLIA requires that every laboratory issued a CLIA certificate must participate successfully in a proficiency testing program acceptable to HCFA for each specialty and subspecialty of test it performs. Failure to participate successfully or refusal to participate in a proficiency testing program would result in the laboratory's loss of deemed status and could possibly lead to suspension, revocation or limitation of the laboratory's CLIA certification if an inspection by a HCFA agent or the State survey agency found the laboratory's performance level warrants any of these actions.

In proposed § 493.504 we proposed to require that if an accreditation organization or licensure agency revokes or withdraws its accreditation or licensure from a laboratory, the certification would continue in effect until: (1) The effective date of a HCFA action to revoke, suspend, or limit a CLIA certificate or (2) 45 days after the laboratory receives notice of withdrawal or revocation of accreditation or licensure as required by the statute.

B. Definitions

In § 493.502, we proposed to define the following terms:

"Approved laboratory accreditation organization" would be defined as a

private, nonprofit accreditation organization or State licensure agency that has formally applied for and received HCFA's approval based on the organization's compliance with Federal requirements in accordance with this subpart.

"CLIA conditions" would mean the requirements laboratories must meet to receive a CLIA certificate.

"HCFA agent" would mean an entity other than the State survey agency with which HCFA may contract to perform inspections and review the functions of laboratories. A HCFA agent may be a professional organization, another component within HHS, or any other group that HCFA approves for this purpose.

"Rate of disparity" would mean the percent of validation inspections in which HCFA, the State survey agency or HCFA agent finds noncompliance with one or more conditions, but no comparable condition-level deficiencies were cited by the accreditation organization or licensure agency.

"State survey agency" would mean the State health agency or other appropriate State or local agency used by HCFA to perform inspections and review functions under CLIA.

"Substantial allegation" would mean a complaint from any of a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles) that reflects on the health and safety of individuals served by a laboratory and raises doubts as to a laboratory's compliance with any CLIA condition.

"Validation review period" would be the period after the end of a fiscal year during which HCFA conducts a review of the validation surveys for the previous fiscal year.

We also proposed to revise the definition in § 493.2 of "accredited laboratory" to delete the names of currently approved accreditation organizations and licensure agencies and to state simply that an accredited laboratory is one approved by an accreditation organization or licensure agency meeting the requirements of subpart E.

C. Approved Laboratory Accreditation and State Licensure Programs

In our proposed rule we noted that we had recently published a proposed rule (55 FR 20896, May 21, 1990) identifying regulatory requirements that laboratories would need to meet to satisfy CLIA requirements. Once those proposed requirements were included in an effective final rule, we intended to add a new section to subpart E to indicate that laboratories accredited or licensed by specified entities would be deemed to meet all CLIA conditions, with the exception of any requirement under section 353 of the PHSA that HCFA identifies in the future as being more stringent or more precise than the requirements of the accreditation organization or State licensure agency. The laboratory would not initially be deemed to meet the more stringent requirement(s), but would have to actually demonstrate that it meets these requirements.

We stated our intent to publish a notice in the **Federal Register** containing the name of each approved accreditation organization or State licensure agency and our basis for granting deeming authority to that accreditation or licensure organization. The notice would describe how the organization provides reasonable assurance to HCFA that laboratories accredited or licensed by the organization or agency meet CLIA requirements.

D. Federal Review of Accreditation Organizations and Licensure Agencies

We proposed to add § 493.506, outlining the process for Federal review and approval of accreditation organizations and licensure agencies. The regulations at § 493.506 would specify that HCFA's review of a private, nonprofit accreditation organization or State licensure agency will include, but not be limited to, an analysis of the following items.

HCFA would evaluate the equivalency of the requirements of the accreditation organization or State licensure agency to comparable HCFA requirements. In order to receive HCFA approval, each accreditation organization or State licensure agency would have to be able to demonstrate adequately that each of its requirements is as stringent as those of HCFA. We particularly invited comments regarding how accreditation organizations and State licensure agencies might be able to demonstrate that certain standards, although different from the Federal approach, are indeed equally as stringent as Federal CLIA requirements in terms of protecting individuals served by the laboratory. We also invited comments on the feasibility of the development of a comprehensive crosswalk by which to compare the standards of an accreditation organization or State licensure agency to those of HCFA. We would perform a detailed review of the accreditation or licensure organization's inspection process. Finally, we would assure that the organization's agreement provides for furnishing required services.

In reviewing the accreditation or licensure organization's inspection process, we would evaluate the following items:

- The composition of the inspection team, qualifications of the surveyors, and the ability of the organization to provide continuing education to surveyors in order to insure that the accreditation or licensure organization employs qualified surveyors who are able to perform accurate inspections, as required by section 353(e)(2)(A)(i) of the PHSA;
- The comparability of the comprehensive inspection and complaint inspection procedures of the accreditation organization or licensure agency, including those for routine inspection frequency as required by section 353(e)(2)(A)(ii) of the PHSA, to those of HCFA;
- The organization's or agency's procedures for monitoring laboratories to assure that the laboratories continue to meet its standards, as required by section 353(e)(2)(A)(iii) of the PHSA;
- The ability of the organization or agency to provide HCFA the necessary reports in electronic data in ASCII-comparable code, which can be electronically transmitted into the HCFA computer network, thus eliminating excess paperwork and staff time and facilitating the effective validation and assessment of the organization's inspection process as required by section 353(e)(2)(D) of the PHSA.
- The ability of the organization or agency to provide to HCFA annually reports of adverse actions resulting from PT results constituting unsuccessful participation in PT programs, and the PT failures within 30 days of the adverse action.
- The ability of the organization or agency to provide adequate funding to perform required inspections.

In assuring that the organization's or agency's agreement provides for furnishing all required services, we proposed to verify that it contain the following items. The organization or agency would agree to provide HCFA—

- Within 30 days of the action taken, the name of any laboratory accredited or licensed by the organization or State that has had its accreditation or State licensure denied, suspended, withdrawn, or revoked, or that has had any other adverse action taken against it by the organization. (This is not the same as suspension or revocation of a CLIA certificate, which are actions that can be taken by HCFA after a

laboratory's accreditation is suspended, withdrawn or revoked by the accreditation organization or if, after an inspection by the survey agency or other HCFA agent, the laboratory is found out of compliance with CLIA conditions and remains out of compliance.)

• As required by section 353 of the PHSA, documentation that each laboratory accredited or licensed by the organization or agency is notified within 10 days of HCFA's withdrawal of the recognition of the organization's deeming authority;

• An inspection schedule to facilitate the conducting of HCFA validation inspections; and

• Annually, facility-specific data to include but not be limited to the results of the laboratory's quarterly or semi-annual (if applicable) proficiency testing, except for the proficiency testing results of a laboratory that failed to achieve satisfactory results within 30 days of a notice of failure. This report could be incorporated within the report of the action taken by the accreditation organization or licensure agency resulting from the failure to achieve satisfactory proficiency testing results.

The regulations at § 493.501 would further provide for HCFA to publish a notice in the **Federal Register** containing the names of any private, nonprofit accreditation organization or State licensure agencies to which HCFA has given deeming authority, the basis for the granting of deeming authority to each organization, and a description of how each organization provides to HCFA reasonable assurance that laboratories accredited or licensed by each organization or agency meet CLIA requirements.

E. Validation Inspections

1. Basis for Inspection

We proposed at § 493.507 that we may require an inspection of an accredited laboratory by HCFA, its agents, or the State survey agency, in order to validate the process used by the laboratory's accreditation organization. We would inspect laboratories on a selective-sample basis or in response to substantial allegations of one or more deficiencies. Inspections conducted on a sample basis would be comprehensive, address all CLIA conditions, and be sufficient in number to allow a reasonable evaluation of the performance of each accreditation organization or State licensure agency. Inspections conducted in response to a substantial allegation of noncompliance would focus on any condition that HCFA determines is related to the allegation. If the State survey agency or other HCFA agent substantiates an allegation and HCFA determines that the laboratory is out of compliance with any CLIA condition, the State survey agency or other HCFA agent would conduct an inspection of all CLIA conditions.

Section 353(e)(2)(B) of the PHSA states that the Secretary shall promulgate criteria and procedures for approving an accreditation organization and for withdrawing approval of organizations that do not meet the requirements of Section 353(e)(2)(A) of PHSA. The validation process would establish the mechanism by which a determination is made that the accreditation organization no longer meets the requirements of Section 353(e)(2)(A) and that the approval of that organization's deeming authority should be withdrawn.

2. Effect of Selection for Inspection

The regulations at § 493.507(b) would specify the additional requirements for a laboratory selected for a validation inspection. The requirements would be consistent with the Secretary's statutory obligation to promulgate procedures for withdrawing the approval of an accreditation organization or State licensure agency and would be consistent with existing validation procedures applicable to accredited providers currently participating in the Medicare program under deemed status.

We proposed that a laboratory selected for a validation inspection must:

• Authorize its accreditation organization or licensure agency to release to HCFA, the State survey agency or designated HCFA agent, a copy of the laboratory's most recent full accreditation or licensure inspection, and any subsequent partial inspection;

• Authorize the validation inspection to take place at the facility; and

• Authorize HCFA, the State survey agency or any designated HCFA agent to monitor the correction of any deficiencies found through the validation inspection, to insure that they are corrected in a timely manner.

We proposed to require a copy of the laboratory's full inspection and any subsequent partial inspections for the purpose of comparing the findings of the accreditation organization or State licensure agency with those that HCFA may identify during the validation inspection. (The accreditation inspection would be disclosable to the public only if it is related to an enforcement action taken by the Secretary.)

3. Refusal to Cooperate with Inspection

We additionally proposed to require that if a laboratory selected for a validation inspection fails to provide the necessary authorizations for the validation inspection to be performed, it would no longer be deemed to meet CLIA conditions. This is because section 353(e)(1)(B) of the PHSA states that a laboratory may be accredited (deemed to meet CLIA conditions) if it, among other factors, authorizes the accreditation organization to submit to the Secretary required information. Failure to cooperate with the survey would either directly or indirectly result in a failure to provide necessary information to the Secretary and would result in a loss of deemed status. Instead, it would be subject to an inspection of all CLIA conditions by HCFA, the State survey agency or other designated HCFA agent in accordance with 42 CFR part 493, subpart N, and might also be subject to suspension, revocation, or limitation of its CLIA certificate as specified in the statute and in accordance with proposed § 493.1806 (April 2, 1991, 56 FR 13439) for failure to meet the requirements in part 493.

4. Consequences of the Finding of Noncompliance

We proposed at § 493.507(d) that if a validation inspection results in a finding that a laboratory is out of compliance with one or more CLIA conditions, the laboratory would no longer be deemed to be in compliance with CLIA conditions. Specifically, the laboratory would then be subject to the requirements at 42 CFR part 493 applied to laboratories that are not deemed under CLIA, and to a full review by HCFA, the State survey agency or other designated HCFA agent in accordance with 42 CFR part 493, subpart N. As authorized by the statute, the laboratory could also be subject to suspension, revocation, or limitation of its CLIA certificate as specified at § 493.1706.

5. Reinstatement

We proposed at § 493.507(e) that an accredited or State licensed laboratory would once again be deemed to meet CLIA conditions only if it withdraws any prior refusal to authorize its accreditation organization or licensure agency to release to HCFA a copy of its current accreditation or licensure inspection or notification of any adverse actions resulting from PT results, or withdraws any prior refusal to allow a validation inspection. Furthermore, HCFA, the survey agency, or other HCFA agent, via an onsite inspection and review of documentation, would

have to find the laboratory in compliance with all CLIA conditions.

F. Removal of HCFA Approval of Accreditation Organization's or Licensure Agency's Deeming Authority

The proposed regulations at §§ 493.509 and 493.511 would set forth specific criteria and procedures for removing the approval of a private, nonprofit accreditation organization or State licensure agency. The criteria and procedures would call for a review of the accreditation organization's or licensure agency's requirements to verify their comparability with HCFA and CLIA conditions. We would compare the results of the validation inspection with the most recent accreditation inspection to determine whether any disparities exist.

We would perform a deeming authority review whenever such review is warranted by our findings with respect to the comparability of requirements or the rate of disparity of findings. If our review indicated variance with our requirements, we could grant a conditional approval. If it indicated poor performance, we could provide for a probationary period of up to one year. At the end of the probationary period, the organization could keep its HCFA approval, or its approval could be withdrawn. If the deeming authority of an organization were no longer recognized, we would issue a notice in the **Federal Register** and allow accredited providers and suppliers opportunity to obtain HCFA certification. This proposed process is more fully discussed below.

1. Comparability Review (Section 493.509(a))

In addition to comparing the equivalency of an accreditation organization's accreditation requirements or a State licensure agency's licensing requirements to the comparable HCFA requirements when such an organization or agency applies for deeming authority or exemption from CLIA requirements, we also proposed to conduct a comparability review whenever new CLIA conditions are promulgated or an accreditation or licensure organization proposes to adopt new requirements. This would implement section 353(e)(2)(A)(ii) of the PHSA, which requires an accreditation organization's requirements to be equal to or more stringent than the requirements established by HCFA.

We would identify accreditation organizations and State licensure agencies whose procedures and requirements are not comparable with CLIA conditions, in order to safeguard physicians, laboratories, and the general public.

2. Validation Review (Section 493.509(b))

Following the end of a validation review period, we would identify any accreditation organizations or licensure agencies for which either or both of the following situations exist: (1) Validation inspection results indicate a rate of disparity of 20 percent or more between certifications of the accreditation organization or licensure agency and certifications of HCFA, the State survey agency or other HCFA agent; and (2) Validation inspection results over a period of two or more years indicate a pattern of increasing disparity between the certifications of the accreditation organization or licensure agency and certifications of HCFA, the State survey agency or other HCFA agent.

We solicited public comment regarding use of the 20 percent rate of disparity.

3. Notice (Section 493.509(c))

The regulations would specify that if the validation or comparability review finds that an accreditation organization or licensure agency is not meeting the requirements of this regulation, we would inform the organization in writing that its approval may be in jeopardy. The proposed notice would contain the following information:

- A statement identifying the CLIA requirements for which disparity was found, and the instance, rate, and patterns (if any) of the disparity;
- An explanation of the validation review on which our decision is based;
- A description of the procedures available for the organization to follow to explain or refute the findings of the validation review (that is, who to contact and the time frame for doing so); and
- A description of possible actions that may be imposed based on the findings of the validation review.

4. Deeming Authority Review (Section 493.511)

We would conduct a deeming authority review of an accreditation organization or licensure agency if the comparability or validation review produces findings of lack of comparability between requirements or disparity between accreditation and validation inspection results. We would review, as appropriate, the comparability of accreditation organization or State licensure requirements to ours and the procedures for inspecting and monitoring laboratories to reevaluate if the accreditation organization or licensure agency continues to meet Federal criteria.

In § 493.511 (b) and (c) we proposed that if we determine, following the deeming authority review, that the accreditation organization or licensure agency had failed to adopt requirements comparable to ours, the organization could be given a conditional approval of its deeming authority for a probationary period of up to six months during which it could adopt comparable requirements.

If we determined, following the deeming authority review, that the rate of disparity identified during the validation review indicates poor performance by the accreditation organization or licensure agency, we would take a number of actions. First, HCFA could provide the accreditation organization or licensure agency conditional approval of its deeming authority for a probationary period of up to one year (whether or not there are also noncomparable requirements) effective 30 days following the date of the determination. We would require the accreditation organization or licensure agency to release to us any facility-specific data we require for continued monitoring. We would require the accreditation organization or licensure agency to provide us with an inspection schedule for the purpose of intermittent onsite monitoring during the probationary period of the organization's inspection process by HCFA staff, State surveyors, HCFA agents, or all three.

The difference in the probationary periods would be based on the amounts of time we feel are necessary to correct disparity due to lack of comparability between requirements or disparity caused by poor performance on the part of the accreditation organization or State licensure agency. We could require additional validation inspections of laboratories as part of the process of monitoring the correction process on the part of the accreditation organization or licensure agency.

5. Action Following the Probationary Period

The proposed regulations further stated that within 60 days after the end of any probationary period, we would conduct a final determination review and make a final determination as to whether or not an accreditation organization or licensure agency continues to meet the criteria at § 493.506 and issue an appropriate notice (including reasons for this determination) to the accreditation organization or licensure agency.

This determination would be based on one or more of the following:

- The evaluation of the most recent validation inspection and review findings;
- The evaluation of facility-specific data and related information;
- The evaluation of the accreditation organization's or licensure agency's surveyors in terms of qualifications, continuing education, composition of the inspection team, and similar items;
- The evaluation of inspection procedures;
- The accreditation or licensure requirements.

The regulations would specify that if the accreditation organization or licensure agency has not made acceptable improvements during the probationary period, we may remove approval of deeming authority. HCFA review or action would not in any way affect or limit the conducting of any validation inspection. We would publish in the **Federal Register** a notice containing a justification for removal of deeming authority from an accreditation organization or licensure agency.

6. Continuation of Validity of CLIA Certificate (Section 493.511(g))

The proposed regulations would further provide for the CLIA certificate of affected laboratories to continue in effect for 60 days after the laboratory receives notification that its accreditation organization's or licensure agency's authorization to grant deemed status was being removed. Such a period would allow us the time to inspect to see if the affected laboratories meet CLIA requirements. The proposed regulations specified that we could extend this period for an additional 60 days if the laboratory submitted a timely application for accreditation by another approved accreditation organization or exemption by an approved licensure agency or submitted a timely application to HCFA for a CLIA certificate so that the laboratory's compliance with CLIA conditions can be determined.

G. Report

We proposed to prepare and submit a report annually to Congress that describes the results of the selective-sample validation inspection conducted under § 493.507 and the reviews conducted under § 493.509. The report would include the name of any accreditation organization or licensure agency that is given conditional approval during a probationary period by us.

H. Technical Revisions

We proposed to remove § 493.1701(b)(4) and § 493.1708 as they would be superseded by the new subpart E.

Comments and Responses

We received comments from 32 commenters in response to the proposed rule published on August 20, 1990. Commenters included professional associations, laboratories, accreditation organizations, State and City governments and consumers. While many of the commenters expressed overall support for the proposed regulation and/or approval of HCFA's "deeming" process, there was an array of concerns that we have summarized below.

Note: We have revised several terms for clarity and use these new terms in our responses to comments:

"CLIA-exempt" replaces "State-exempt";
"State laboratory program" or "State program" replaces "State licensure agency" and "State licensure program";
"Approved State laboratory program" or "approved State program" replaces "approved State licensure agency", "State exemption" and "exempt State"; and
"Condition level requirement" replaces "CLIA condition".

General Comments

We have summarized below those comments that do not pertain to a single section of the proposed regulations, but rather relate to the policies included in the proposed rule in general.

Expression of Support

Comment: Many commenters expressed overall support for the proposed regulations and the process by which HCFA will grant deeming authority to private nonprofit accreditation organizations or grant recognition to State licensure laws. (Hereafter, the term "deeming authority" will be used in the case of private nonprofit accreditation organizations, and the term "exemption" will apply to laboratories in States with approved State programs.)

Response: We appreciate the support we have received for this rule and are committed to the development of regulations that are reflective of the accreditation related aspects of the CLIA provisions and that will implement the law effectively.

Related Regulations

Comment: Several commenters recommended that HCFA publish all CLIA-related regulations simultaneously, in their entirety, in order to allow for a complete review and a chance to comment on all CLIA regulations at one time.

Response: We recognize that publishing CLIA regulations simultaneously would have facilitated a thorough review of the implementation of all CLIA legislation by enabling the reader to review related regulatory provisions at the same time. However, to do so would have ultimately resulted in some CLIA regulations being delayed; for example, three of these regulations were published on February 28, 1992. (HSQ–176–FC—Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988, 57 FR 7002, HSQ–177–F—Fee collection, 57 FR 7188, and HSQ–179–F—Enforcement Procedures for Laboratories, 57 FR 7218). We have cross-referenced other regulatory documents with **Federal Register** numbers and publication dates and agency control numbers to assist the reader in locating related material.

General Comments on Impact

Comment: One commenter stated that applying the same standards to the approval of accreditation agencies under section 353(e)(2) of the PHSA and to the granting of exemptions based on State laws under section 353(p)(2) of the Act conflicts with the statutory provisions and will cause significant implementation problems. The commenter believed that the PHSA provides for the granting of exemptions based on a review of State licensure law and not through the recognition of State licensure agencies.

Response: The commenter is correct in that there are different statutory provisions concerning deeming authority for approved accreditation organizations and approval of exemption from CLIA requirements of all laboratories in a State whose laws regarding the regulation of laboratories are equal to or more stringent than those specified in CLIA. While we have always recognized that there are differences in the statutory provisions with respect to both types of entities, we continue to believe that in all cases the protection of the health and safety of individuals using these laboratories, as well as that of the general public, is the paramount consideration in determining whether to approve a request for deeming authority by an accreditation organization or to approve a State's request for an exemption from CLIA requirements.

There are two major differences between deeming through accreditation and exemption under State law that must be considered in developing and implementing effective regulations: Accreditation is voluntary while State

licensure and regulation are mandatory and imposed under the force of law; and accreditation is national in scope while exemptions from CLIA requirements can be approved only on a State-by-State basis. Thus, while all licensed or approved laboratories in an approved State will be exempt from CLIA requirements, should the State satisfy us as to the equivalency of its requirements, the criteria we will use in making that determination will not differ substantially from those used in determining whether to approve a request for deeming authority by a private accreditation organization. However, we are aware that the unique characteristics of individual State laws and enforcement mechanisms may require more flexibility in our deliberations regarding these States. Therefore, we have accepted the commenter's suggestion and have included separate regulatory provisions for accreditation organizations and States in this final rule to implement these programs in a manner that is consistent with the respective treatment accorded to each under the statute. The provisions that apply to approved State programs are included in this final rule at §§ 493.513, 493.515, 493. 517, 493.519 and 493.521. It will still be necessary for a State that wishes all laboratories in that State to be exempt from the CLIA requirements to apply for approval of its State laboratory program and to demonstrate that its requirements for laboratories, imposed under State law, are equal to or more stringent than the CLIA requirements.

Approved State laboratory programs will be required to apply for the renewal of their approval every two years. There are a number of reasons that this reapplication procedure is necessary. First, while the approval of an accreditation organization is not time limited, the CLIA certificate of accreditation furnished to accredited laboratories is valid for two years. At the end of that time each laboratory determines whether to obtain a new certificate of accreditation or to apply for a regular certificate on the basis of a State survey agency inspection. In either case, the laboratory's approval under CLIA is good for two years. In the case of approved State laboratory programs, all of the laboratories in the State are exempt from CLIA requirements as long as the State's approval is in effect. To ensure that the treatment of both types of laboratories is comparable, we will approve a State laboratory program for a two year period.

Additionally, there are substantial costs involved in the administration of a laboratory certification or exemption program under an accreditation or State program. In the case of accredited laboratories, these costs are borne directly by the laboratories as reflected in the fees paid for the certificate of accreditation. The costs of administering approved State programs must be paid by the States, who may pass through these costs to the laboratories in the form of licensing fees or through some other mechanism. In any case, for a State laboratory program to receive approval for exemption of its laboratories, the State must agree to pay to HCFA the costs associated with the program. Some of these costs are general administrative costs involved in evaluating the initial application for approval, the costs of the validation program, and the cost of investigating complaints. We will recalculate these costs every two years, and we feel it could pose an unrealistic fiscal burden to expect a State to commit to make payments of an unknown amount for an indefinite period of time. By approving the State programs for a two year period, each State will have the opportunity to decide if it wishes to continue as an approved program or to have the laboratories in the State seek CLIA certification through accreditation or directly through inspection by the State survey agency.

The new regulation sections reflect the statutory framework for State laboratory programs and provide that it is up to the Secretary, through HCFA, to determine whether State laws are equal to or more stringent than CLIA requirements. Once we make that determination with respect to the laws of any State, a decision to exempt laboratories in that State from CLIA remains discretionary with HCFA.

Thus, HCFA will impose reasonable conditions, specified in this final rule, designed to ensure enforcement with equivalent CLIA requirements, on the decision to exempt the laboratories of any State. Once a State has satisfied these reasonable conditions and we have decided to exempt the laboratories of that State, by definition the laboratories in that State are not subject to Federal standards or enforcement. While these laboratories would be exempt from CLIA requirements, we can seek an injunction in Federal court under section 353(j) of CLIA with respect to individual laboratories found to have serious deficiencies that the State is unwilling to address, or we can withdraw approval of the State's laboratory program at any time. With respect to the reasonable conditions reflected in the new regulatory sections, in addition to establishing that its laws regarding laboratory requirements are equal to or more stringent than those imposed by CLIA, a State requesting exemption from CLIA must:

- Demonstrate that it has adequate enforcement authority and the administrative structure and resources adequate to enforce its State standards;
- Permit HCFA or its agents to perform validation inspections of laboratories in the State;
- Agree to pay the cost of these validation inspections; and
- Agree to take appropriate enforcement action against laboratories found by HCFA or its agents not to be in compliance with standards equivalent to CLIA standards.

We believe that most States enforce their laboratory laws through a licensure mechanism, but we have included in our definitions of State licensure and State licensure agency in § 493.2 language that allows for approval mechanisms other than licensure that may be employed by a State for the enforcement of its standards for laboratories.

When HCFA approves a State laboratory program, laboratories in that State will not have the option of seeking CLIA certification through accreditation. Laboratories that are exempt from CLIA, by definition, must comply with the requirements of their approved State laboratory program. Only if an approved State program were to recognize an accreditation program as having requirements equivalent to its own, and provided for the "deeming" of State requirements through accreditation under State law, would accreditation be of any consequence.

Requirements for both the accreditation organizations and State laboratory programs are generally the same. Below we summarize the differences in requirements for State laboratory programs.

1. Section 493.503, Proficiency testing requirements for laboratories with deemed status, specifies the proficiency testing (PT) requirements of laboratories with deemed status. In § 493.515, Federal review of laboratory requirements of State laboratory programs, we permit the States with an approved State laboratory program to govern the PT requirements independently. However, we note that HCFA will hold the States to the same requirements when conducting a comparability review.

2. Section 493.504, Revocation of accreditation, specifies the statutory requirements (criteria) to permit continued recognition of a laboratory by HCFA, after an accreditation

organization withdraws its accreditation. There exist no comparable requirements for State laboratory programs because only the State has the authority to issue a license or approve a laboratory in that State. The regulation requires that a laboratory must be licensed or approved if a State has a program for licensure or approval that is recognized by the Secretary.

3. Paragraph (a) of § 493.506, Federal review and initial approval of private, nonprofit accreditation organizations, permits an accreditation organization to request approval for all specialties and subspecialties or for specific ones. A State laboratory program must govern a laboratory in its entirety.

4. Section 493.507(d), Consequences of a finding of noncompliance, provides that if a validation inspection results in a finding of noncompliance, the laboratory is subject to the same requirements applied to laboratories that are not accredited. However, in the case of States, § 493.517(d) (also "Consequences of a finding of noncompliance") specifies that if a validation inspection results in a finding of noncompliance, a laboratory's State license or approval will continue to be recognized. We will refer the deficiencies to the State and require the State to take the appropriate enforcement action against the laboratory. We will then monitor the State to ensure that the recommended action is being enforced. If the State refuses to take the appropriate action, § 493.521, Removal of CLIA-exemption and final determination review, permits HCFA to remove recognition of the State laboratory program.

5. Section 493.507(e), Reinstatement, specifies the criteria HCFA will use to determine if an accredited laboratory's deemed status should be reinstated. There exists no similar requirement under the State laboratory program provisions since HCFA has no authority to remove a laboratory's State license or approval.

6. Sections 493.511, Deeming authority review and final determination review, and 493.521, Removal of CLIA exemption and final determination review, provide for a reconsideration when HCFA removes approval for recognition of an accreditation organization or State program.

7. Section 493.521(g) specifies that HCFA will cancel the approval of an approved State laboratory program if the State does not pay the applicable estimated costs of validation surveys. Approved States are obligated to pay applicable fees to the Federal goverment, whether or not these costs are passed on to the laboratories in licensing fees or by some other mechanism. In the case of accredited laboratories, validation costs are dispersed among all laboratories holding a certification of accreditation.

Comment: One commenter urged HCFA to reconsider the proposed rule. This party believed there would be significant, unnecessary adverse impacts on access to care as a result of the proposed rule. The implication of this comment was that requirements for obtaining a CLIA certificate are too strict, thereby limiting the number of laboratories that could receive one. If this happened, patients' access to laboratories also would be limited.

Response: The impact on access to care is not within the purview of this rule. However, it has been our objective under CLIA to develop regulations that provide an appropriate balance between the concern for access to care and the need to protect the public from inaccurate and potentially dangerous testing. The rule that addresses these issues was entitled "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988" (HSQ–176–F) and was published in the **Federal Register** on February 28, 1992 (57 FR 7002). In that rule we establish conditions that laboratories must meet to receive a CLIA certificate.

Comment: One commenter stated that HCFA should make it clear in the final rule that obtaining certification via accreditation by a "deemed" private organization is voluntary, not mandatory.

Response: We have accepted this suggestion. We have reflected this policy in the definition of accredited laboratory at § 493.2.

Comment: One commenter stated that, based on many years of experience in laboratory inspection and accreditation, the commenter's position is that no private, nonprofit organization or State licensure agency has the capacity to accredit or certify laboratories in the context of this regulation.

Response: We cannot make any predictions about which accreditation organizations or State laboratory programs will or will not be approved for CLIA purposes until a comparability review is performed to determine the equivalency of an accreditation organization's or State laboratory program's requirements and procedures to those of HCFA. Our commitment is that only quality laboratories be permitted to perform services. If an accreditation organization wishes to be granted deeming authority, it must have appropriate procedures for assuring that the standards are met by the accredited laboratory. Similarly, HCFA will closely examine the requirements established under State law for any State that requests exemption of its laboratories from CLIA.

Comment: One commenter stated that there should be an opportunity for public comment at the time an accreditation organization applies for deeming authority. The commenter believes that this is part of Congressional intent in drafting the accreditation provisions of CLIA and may be required under law.

Response: To provide for public comment each time any accreditation organization or State applies for deeming authority or exemption from CLIA requirements, respectively, would unduly complicate our task of implementing CLIA due to the large numbers of laboratories coming under regulation for the first time. We have sought public comments on our interpretation of the statute and resulting regulatory policies. We considered all comments and either incorporated changes into our final regulations or explained why we were not doing so. We believe our final regulations are reflective of public opinion. We will publish in the **Federal Register** the name of each approved accreditation organization or State laboratory program and our basis for granting deeming authority or approval to that organization or program. In addition, the **Federal Register** document will describe how the organization or program provides reasonable assurance to HCFA that laboratories accredited or licensed (or approved) by it can be deemed to meet condition level requirements or exempted from meeting them.

Comment: A few commenters stated that there is no mention of any fee that will be charged to the accreditation organization to cover the costs of HCFA's review and approval process of an accreditation organization's requirements.

Response: Unlike the provision of CLIA that fees be collected to monitor laboratory compliance (see 57 FR 7118, published on February 28, 1992 for our final rule on this subject), the law provides no authority to charge fees for approval of accreditation organizations. The costs associated with the requests by an organization to be granted "deeming authority" and the costs of validation inspections will be reflected in the fees collected from laboratories for the issuance of certificates of accreditation.

Comment: One commenter believed that HCFA should carefully scrutinize State programs, since they are much

more vulnerable to political forces attempting to dilute or eliminate regulations necessary to fulfill CLIA requirements.

Response: We are required by law to scrutinize the laboratory requirements of States as well as those of private, nonprofit accreditation organizations. We are committed to assuring that all organizations granted deeming authority and all States whose laboratories are granted exemption meet the applicable Federal criteria for such approval as set forth in §§ 493.506 through 493.515, and that all laboratories accredited by an approved organization or licensed or approved in a State with an approved State laboratory program meet condition level requirements that we have determined to be comparable to CLIA's.

Comment: One commenter recommended that a task force of HCFA, the States of New York and Pennsylvania and private accreditation organizations be formed to establish the final "deeming authority" regulations.

Response: The nature of the process by which we respond to comments on a published notice of proposed rulemaking offers an efficient and effective means to request and obtain input from a broad spectrum of the public. To include only a few members of the public on a task force to draft final regulations would, at best, be soliciting repetitive comments, and would, at worst, be contrary to the intent of the Administrative Procedure Act. Such an approach could allow an inequitable opportunity for certain parties to influence the agency's reaction to public comments and the ultimate formulation of policy.

Comment: One commenter believed that approval of accrediting organizations would add another bureaucratic level that would decrease efficiency while increasing costs.

Response: We disagree with this comment. Accreditation is strictly voluntary on the part of each laboratory. Therefore, the number of accreditation organizations approved would not in itself cause laboratories to incur additional costs or otherwise decrease efficiency.

Comment: One commenter stated that the proposed regulation should be modified to ensure that States with strong clinical laboratory statutes receive deemed status.

Response: States that have strong clinical laboratory statutes and apply for HCFA approval will be granted such an approval if by "strong" the commenter means that State requirements are such that we find them to be equal to or more stringent than the condition level requirements set forth in applicable sections of part 493.

Comment: One commenter stated that State licensing laws should be recognized simply based on the States' assurance that they provide an equivalent level of protection for patients. Another commenter stated that an accurate evaluation of equivalency under § 493.506(a) is absolutely essential for deemed status to operate appropriately and that reliance upon the accreditation organization or State alone to provide reasonable assurance is not sufficient.

Response: We do not believe it is appropriate to accept a State laboratory program's or a private accreditation organization's assertion that its standards are at least equivalent to Federal requirements. In either case, we are obliged to consider whether an organization's or State's standards are "equal to or more stringent" than those set forth in CLIA. In addition, we believe that for us to make this determination properly we need not only review substantive and procedural requirements of these entities to determine "equivalency", but we must also assess the efficacy of these standards and procedures, as applied by organizations and States on a continuing basis.

Application Process

Comment: Several commenters stated that the actual process for applying for deemed status is not outlined in the regulation.

Response: In response to the comment we have inserted the application process for accreditation organizations at § 493.501(c) and for States seeking approval of their laboratory programs at § 493.513(c). Accreditation organizations or States wishing to apply to HCFA for "deeming authority" or for "exemption", respectively, must provide the following information:

- The specialty(ies) or subspecialty(ies) for which an accreditation organization is requesting "deeming authority";
- A detailed comparison of individual laboratory requirements of the accreditation organization or State with the comparable condition level requirements; i.e., a crosswalk. The crosswalk will be used to help establish that the body of an organization's or State's requirements are equivalent to the body of applicable CLIA requirements. Where accreditation standards or State requirements differ in detail from specific condition level requirements, the organization or State must demonstrate how its standards are at least equal to CLIA's either by a comparison to the most nearly equivalent CLIA requirement or by demonstrating how a less stringent requirement in one instance is offset by more stringent requirements in a related area. We will make every effort to accept reasonable differences and encourage innovative approaches provided that the accreditation organization or State requirements substantiate the equivalency of the entire body of standards;
- A detailed description of the inspection process, including:

—The frequency of inspections;
—Copies of inspection forms;
—The review and decision-making process;
—The surveyor guidelines and/or instructions;
—The steps taken to monitor the correction of deficiencies;

- A description of the process for monitoring unsuccessful participation in a proficiency testing program, including action to be taken in response to proficiency testing failures;
- A description of the accreditation organization's or State's data management and analysis system with respect to its inspection process;
- Procedures for the removal or withdrawal of accreditation status or of State licensure or approval for laboratories that fail to meet the organization's or State laboratory program's standards;
- Current procedures employed to investigate and respond to complaints against accredited or exempt State licensed or approved facilities;
- Duration of a laboratory's accreditation, including a list of all those currently accredited; and
- In the case of approved State programs, a list of all licensed or approved laboratories, the expiration date of each laboratory's licensure or approval, and each laboratory's specialties and subspecialties. (This information is necessary for the laboratories in the State to be paid for claims under Medicare or Medicaid.)

Private accreditation organizations must also provide:

- Detailed information about the kinds of personnel (surveyors or inspectors) who perform inspections, including:

—The size and composition of individual accreditation or inspection teams;
—The education and experience requirements those inspectors must meet; and
—The content and frequency of the in-service training provided to inspection personnel;

• Procedures for providing PT information in response to public requests for such information; and

• A proposed agreement that stipulates the accreditation organization will comply with the specific notification procedures included in this rule.

HCFA will notify an organization or State if it finds that additional information is required.

Each accreditation organization or State will receive a written notice from the HCFA Administrator stating whether the request for "deeming authority" or CLIA-exemption of the laboratories in a State has been approved or denied. Approval of accreditation organization and State laboratory programs is for a six year term, at a maximum. We established this six year term of approval because we believe it would be irresponsible and unreasonable simply to approve an organization or laboratory program for an indefinite amount of time and not provide for further comprehensive reviews. Since HCFA has discretionary authority with respect to the approval of accreditation organizations and State laboratory programs, we must be able to impose reasonable conditions, such as the six year term, in order to ensure the health and safety of the patients and the general public.

A notice will also be published in the Federal Register indicating the accreditation organizations for which deeming authority and the States for which exemption was approved, and the rationale for these decisions.

All requests for "deeming authority" or "exemption" should be mailed to: Administrator, Health Care Financing Administration, Room 700 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Compliance Costs

Comment: One commenter stated that the added expense of having to comply with provisions of both CLIA '67 and CLIA may cause small laboratories to close.

Response: This comment does not come directly under the purview of this rule. The issue of costs to laboratories of meeting CLIA requirements is related to HSQ–176–FC—Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988, published February 28, 1992 (57 FR 7002). Certificate and compliance determination fees that laboratories must pay are specified in HSQ–177–F, Fee Collection, published February 28, 1992 (57 FR 7186).

Comment: One commenter believed that many accreditation programs will withdraw (not seek HCFA approval), rather than expend time, effort, and costs to comply with HCFA requirements.

Response: We recognize that some accreditation programs may have to revise their requirements and procedures in order to meet the requirements of CLIA. However, HCFA is charged with carrying out the law and implementing regulations that will reflect what we believe to be the most effective means of carrying out the purposes of the CLIA statute. By evaluating accreditation and State requirements taken as a whole, the approval process has the flexibility necessary to accommodate some differences in individual requirements while recognizing the equivalency of one body of standards to another body of standards.

Comment: One commenter believed that the public would be better served by a return to basics similar to those presented in CLIA '67; thus, all laboratories could be brought under some type of oversight, which in and of itself would improve the quality of health care in this country.

Response: We disagree with the commenter's suggestion that the public interest would be better served by implementing only minimal requirements for all laboratories. CLIA already provides that virtually every laboratory will be brought under oversight, and the requirements implemented must address the condition level requirements for laboratory performance specified in the statute. Additionally, this rule does not establish laboratory requirements but rather provides a mechanism for assessing the equivalency of accreditation organization and State licensure or approval requirements as compared to the Federal requirements.

Comment: One commenter stated that facilities that perform only limited testing as part of routine nursing services and are not reimbursed separately by Medicare or Medicaid would be required to comply with rules disproportionate to the extent of testing performed. One commenter believed that nursing facilities and intermediate care facilities for the mentally retarded that obtain their laboratory services from outside entities may encounter reduced access to certified laboratories especially in rural areas. Many of these facilities currently obtain laboratory services from physicians' offices or small independent laboratories. If the number of waivered tests or tests of moderate complexity are unrealistically limited, residents' access to services and timely follow-up care will be unnecessarily jeopardized.

Response: These two comments do not come directly under the purview of this rule. The issues concerning accessibility to laboratory services and waivered test requirements are related to the rule published on February 28, 1992 (57 FR 7002), specifying the conditions laboratories have to meet to be given a CLIA certificate.

Staff Availability

Comment: One commenter believed that the implementation of this regulation should be delayed until HCFA can address the problems of a shrinking personnel pool in the laboratory field.

Response: This comment does not come under the purview of this regulation if the commenter is referring to a diminishing source of personnel to staff clinical laboratories. The participation requirements published in the previously cited rule address personnel requirements for laboratories. However, if the commenter is referring to the unavailability of staff for accreditation organizations, we can only respond that the personnel inspecting the operation of a laboratory must be qualified by training and experience to perform any survey of laboratories.

Hospital Laboratories

Comment: One commenter stated that HCFA's involvement in hospital laboratory accreditation should be no greater than maintaining and reviewing the records provided by the various certifying agencies that already exist.

Response: We do not accept this suggestion. HCFA is responsible for ensuring that any hospital laboratory, accredited or not, is in compliance with the provisions of CLIA. It is true that HCFA will have to review the aforementioned records in order to validate findings used by the laboratory's accreditation organization or a State's inspection program. It will also be necessary for HCFA to inspect laboratories on a representative sample basis or in response to substantial allegations of deficiencies.

Comment: One commenter stated that since New York City's Laboratory Improvement Program was the first of any in this country to regulate clinical laboratories, "city licensure agency" should be allowed to act as an accreditation organization. One commenter submitted an application to HCFA for recognition as an accreditation agency.

Response: Regarding the commenter's remarks with respect to whether a city

licensure agency can act as an accreditation organization, any entity that meets the definition of an approved accreditation organization as specified at § 493.2 of this regulation may be accepted for approval of deeming authority. A city licensure agency could not be approved as an accreditation organization because the definition reflects the statutory requirement that approved accrediting bodies be private nonprofit organizations. However, HCFA may grant a CLIA exemption to laboratories licensed by a local government such as a city, provided that the city's requirements are determined by HCFA to be equal to or more stringent than CLIA requirements, and the city's authority for the regulation or licensure of laboratories has been explicitly delegated pursuant to State law. In such cases, we will view the local governmental entity as acting in its jurisdiction on behalf of the State in which it is undertaking responsibilities the State would be performing had it not explicitly empowered the local entity to perform the State's tasks. We have included a definition of State at § 493.2 to allow for such exemptions. If HCFA concludes that a State's laws authorize recognition of a local entity for State licensure or approval purpose, we will first advise the State of our conclusion and will not take any steps to recognize or approve a local entity unless the State concurs that HCFA is correctly interpreting State law.

Specific Comments

Following are comments we received on specific regulatory sections:

Section 493.501 General Requirements

Comment: One commenter requested § 493.501(a)(1)(i) be revised to require that accredited or licensed laboratories meet the specific CLIA program requirements in part 493.

Response: We cannot accept this recommendation. Laboratories deemed to meet CLIA requirements by virtue of accreditation by an approved accreditation organization will be issued a certificate of accreditation by HCFA that certifies "deemed" compliance with applicable CLIA requirements. Such a certificate indicates that the accreditation organization's requirements are equal to or more stringent than those of HCFA, and that accreditation by that organization provides reasonable assurance that the laboratory would meet CLIA requirements if inspected for them. In the absence of a CLIA inspection, such compliance is "deemed" or presumed.

On the other hand, laboratories inspected by a State that has had its laboratory program approved by HCFA are exempt from all provisions of section 353 of the Public Health Service Act, including the requirement at section 353(b) that the laboratory have a certificate that certifies compliance, or the presumption of compliance as in the case of laboratories accredited by an approved organization. Should a State have its requirements approved, then its requirements are applied in lieu of those promulgated by the Secretary in regulations pursuant to the CLIA statute. This is because HCFA has determined that the laboratories in that State satisfy a set of requirements equal to or more stringent than those specified in Federal regulation. Therefore, it would be inconsistent with the intent of the statute to require, in regulations, compliance with specific Federal requirements when the law permits compliance with equivalent or more stringent standards in the case of both accredited laboratories and CLIA exempt laboratories.

Section 493.502 Definitions

Comment: One commenter stated that the lack of definitions for general terms such as "conditions", "standards", and "requirements" causes some confusion throughout the proposed rule. The commenter stated that the term "CLIA conditions", as defined in the proposed rule, is confusing because these "conditions" that HCFA mandates are broadly stated and more analogous to the properly used term "standards", while "standards" are used in the context of very specific and detailed mandates. The commenter thought that the definition for "CLIA conditions" should be eliminated and wherever the term is used throughout subpart E, it should be replaced with "conditions and/or standards * * *"

Response: As a result of the issues raised in the above comment, we have amended the text by deleting the definition of the term "CLIA conditions" (since the definition in the enforcement procedures regulation (57 FR 2178) concerning condition level requirements is adequate) and we have clarified that the terminology describing levels of requirements may differ between that used in applicable subparts of part 493 and that used by accreditation organizations or State laboratory programs. (What we referred to as "CLIA conditions" in the proposed rule we refer to as "condition level requirements" throughout this final rule.) Because each organization can organize and identify its requirements in the manner it feels is most appropriate, the organization can establish that its requirements taken as a whole provide equal to or more stringent requirements.

We have also eliminated the proposed definitions section for this subpart, previously proposed as § 493.502, and have included all definitions at § 493.2, which is the definitions section for part 493.

Comment: A few commenters stated that the definition specified in the regulation for "HCFA agent" is not consistent with the statute.

Response: The term "HCFA agent" is not included in the CLIA legislation. HCFA made an administrative decision, based on the authority in section 353(o) of the PHSA, to provide for a "HCFA agent" for the purpose of broadening the types of entities that may be used by HCFA or a State survey agency for performing laboratory inspections. HCFA agents will be required to use HCFA forms, inspection processes and guidelines. The authority of these agents will be limited. That is, HCFA agents will provide HCFA with the laboratory inspection results and HCFA or the State survey agency will be responsible for the certifications. The definition of "HCFA agent" is included in § 493.2 of the text.

Comment: One commenter stated that proprietary organizations that would be eligible to assume survey and validation duties on behalf of HCFA should be excluded from the definition of "HCFA agents".

Response: The law explicitly states at section 353(o) of the PHSA, "In carrying out this section [section 353] the Secretary may, pursuant to agreement, use the services or facilities of any Federal or State or local public agency or *nonprofit private organization* * * *." (Emphasis added) We are including in the definition of "HCFA agent" the requirement that any "private" HCFA agent must be a nonprofit entity.

Comment: Three commenters stated that HCFA's definition of "deemed status" was unclear.

Response: We accept this comment and have included further clarification at § 493.501 of this rule.

Section 493.503 Proficiency Testing Requirements of Laboratories With Deemed Status

Comment: Many commenters believed that there was no need for the accreditation organization to report proficiency testing (PT) results to HCFA. The PT organizations already do this, so this reporting by the accreditation organizations would be duplicative.

Response: Based on the comments we received, we attempted to eliminate any

duplication in the processing of test results as reflected in the proposed regulations. We have revised § 493.506 to specify that, in the case of an accredited laboratory, the accreditation organization will handle the disclosure. HCFA will receive from accreditation organizations only those PT results that constitute unsuccessful participation in the PT program and adverse action resulting from PT results constituting unsuccessful participation in PT programs. In the case of CLIA-exempt laboratories, States are required to notify HCFA only of the action(s) taken by the State as a result of that unsuccessful participation.

Therefore, we will not require the PT organizations to submit test results to HCFA from accredited laboratories. We will, instead, require that the PT organization submit test data on an ongoing basis to applicable accreditation organizations or State laboratory programs so that the accreditation organizations or State programs can maintain the test results, as necessary, to respond to disclosure requests from the public, and so that they can monitor and take necessary accreditation or licensure or approval actions. HCFA intends to include this change in its future regulations implementing CLIA '88 (HSQ-176-FC, 57 FR 7002) when we issue technical corrections to that rule.

Comment: Six commenters believed that the 30-day time period for reporting PT failures is too short.

Response: We have clarified the regulation at §§ 493.506 and 493.515 to indicate that HCFA is to receive notification of actions taken by accreditation organizations and State laboratory programs resulting from PT failures within 30 days of the imposition of the adverse action.

Comment: Two commenters believed that an accreditation organization should be prevented from restricting participation in PT programs to its own PT service. The commenter recommended that an accreditation organization should permit participation in any CLIA-approved PT program.

Response: We do not accept this recommendation. We believe that an accreditation organization or a State should have the authority to determine which CLIA-approved proficiency testing program it will use to meet CLIA's PT requirements. We will not evaluate an accreditation organization's or State's requirements in any way other than to determine equivalency to Federal requirements, including PT requirements. Whatever criteria an accreditation organization or State uses for selecting a HCFA-approved proficiency testing program to achieve equivalency is left to the discretion of those entities.

Comment: One commenter asked if the proposed rule intended that in the case of PT failures, accreditation organizations and State licensure agencies had to require onsite PT.

Response: No. State laboratory programs and accreditation organizations are expected to impose the same PT requirements as specified in the final laboratory standards regulations, HSQ-176-FC, Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (57 FR 7002). Since the PT provisions in that rule require enrollment by all laboratories with certificates in a HCFA-approved PT program, the accreditation organization or State laboratory program must impose the same requirement.

Section 493.504 Revocation of Accreditation or State Licensure

Comment: One commenter stated that the accreditation status of a laboratory should not be affected by the suspension, revocation, or limitation of that laboratory's CLIA certificate. Another comment expressed concern regarding the timing of notification to HCFA of the removal of accreditation from a laboratory for serious deficiencies that could endanger laboratory patients or the public.

Response: We do not require that the suspension, revocation or limitation of a laboratory's certificate of accreditation by us have any affect on a laboratory's status with respect to its accreditation organization. However, as a practical matter, if the laboratory's certificate of accreditation is suspended, limited or revoked, the laboratory cannot test specimens in any area covered by the sanction. Thus, being accredited in these circumstances is meaningless.

In addition, since the statute requires an approved accreditation organization to notify HCFA within 30 days of the time it revokes a laboratory's accreditation, we will also require an approved organization or State laboratory program to notify HCFA within 10 days of the time it identifies a laboratory that has deficiencies that would be considered to be an immediate jeopardy or a hazard to the public health. We are also making a technical correction at § 493.504 to remove the incorrect citation of § 493.1704 we proposed. We have also deleted reference to the CLIA '67 term "letter of exemption". We have also changed the title in the final rule so that the section does not apply to State laboratory programs.

Section 493.506 Federal Review and Initial Approval of Private Nonprofit Accreditation Organizations and State Licensure Agencies

Comment: Several commenters believed that accreditation organizations should be granted deeming authority for specialties (e.g., blood banks, cytology).

Response: We accept this comment. HCFA will allow accreditation organizations to be granted "deeming authority" for certain specialties and subspecialties (i.e., blood banking, cytology). However, this does not relieve these accreditation organizations from accountability for monitoring compliance with other related requirements that are equivalent to CLIA requirements. For example, an accreditation organization approved for blood banking would be responsible for monitoring quality control, quality assurance, personnel requirements, recordkeeping, etc. as they pertain to blood banking. The text of this rule at § 493.506 is being amended to reflect this clarification. We have also revised the title to show that the provision no longer applies to State laboratory programs.

Comment: One commenter stated that the language in proposed § 493.506(c)(4)(ii), "each analyte and", should be deleted because the rules established under the CLIA enforcement rule published on February 28, 1992 (57 FR 7218) specifically refer to suspension and termination of approval only of specialties and subspecialties.

Response: We have accepted this comment and have revised this provision to require the accreditation organization to provide only those PT results to HCFA that constitute unsuccessful participation in the PT program and to provide notification of the adverse action(s) taken by that accreditation organization or State laboratory program. References to "each analyte" have been removed from this rule. Limitation of a CLIA certificate of accreditation constitutes suspension or termination of specialties or subspecialties.

Comment: One commenter stated that proposed § 493.506(c)(1) appears to give the accreditation organization the power to deny, suspend, withdraw, or revoke a deemed laboratory's certificate of accreditation. The commenter recommended that the wording be changed to limit the authority of an accreditation organization to withdrawing accreditation and

providing the information to HCFA. If it is truly HCFA's intent to allow the accreditation organization to revoke a certificate of accreditation, then the appeal and hearing opportunities stated in proposed §§ 493.622 and 493.626 (published August 3, 1990, 55 FR 31770) should be repeated in this section.

Response: The intent of proposed § 493.506(c)(1), (redesignated as § 493.506(b)(3)(i) in this final rule) was to convey that accreditation organizations can withdraw a laboratory's accreditation. We do not allow accreditation organizations to deny, suspend, or revoke laboratory certificates, which are issued only by the Department of Health and Human Services. We are revising § 493.506(b)(3)(i) to clarify this provision.

Comment: Two commenters expressed concern that certain accreditation organizations that obtain approval or States whose laboratory program is approved may wish to impose stricter standards than those developed by HCFA. The commenters believed that the statement "an accreditation body's standards must be equal to or more stringent than those under CLIA" has been abused over the past ten years.

Response: An accreditation organization or a State is explicitly permitted in accordance with sections 353(e)(2)(A)(ii) and (p)(2) of the PHSA to establish standards that are equal to or more stringent than the standards issued by the Secretary. Since facilities are free to seek accreditation or be surveyed under our rules, we see no need to prohibit accreditation organizations from establishing more stringent standards than those of the Secretary. Additionally, the statute specifically provides that nothing in section 353 of the Public Health Service Act shall affect the power of any State to enact and enforce laws relating to these matters that are not inconsistent with the CLIA statute or implementing regulations.

Comment: One commenter stated that data requested in "ASCII code" may not be included in the computer system of the accreditation organization and would therefore be a major cost factor for revising or writing the computer programs. Another commenter stated that the requirement to transmit data in "ASCII-comparable code" is meaningless without specifications for format and variety of other specifications and details.

Response: All references to ASCII code may be interpreted as the ability to generate standard electronic data files that are capable of being processed on mainframe computers. For example, EBCDIC STANDARD 6250 BPI tape is an acceptable alternative to ASCII. File formats, record layouts, edits and procedures are being designed. When these formats are finalized, we will advise accreditation organizations applying for deeming authority and States applying for approval of their laboratory programs that data be submitted to HCFA electronically, either on magnetic tape or through electronic data transmission. We also wish to point out that in the final rule we do not require the accreditation organization or State to submit the quarterly or semiannual PT results except for the PT failures that constitute unsuccessful participation in a specialty or subspecialty. This is a change from the provision in the proposed rule that required the submission of all PT results.

Comment: One commenter indicated that approved PT programs should be required in § 493.506 to supply data to the deeming authority in electronic form in ASCII-comparable code. Otherwise, other excess paperwork that HCFA would like to eliminate to save staff time would accrue to the deeming authority.

Response: Specific requirements for information transmission for PT programs do not come under the purview of this rule. The accreditation organizations, States, and PT programs will negotiate these items.

Comment: One commenter stated that § 493.506(c)(4)(i) should be deleted. The language is duplicative of the information specified in § 493.506(b)(4).

Response: We disagree with this comment. Although proposed §§ 493.506(b)(4) and 493.506(c)(4)(i) (redesignated as §§ 493.506(b)(2)(iv) and 493.506(b)(3)(iv)(A) in this final rule) contain similar language, these provisions address different requirements. Specifically, proposed § 493.506(b)(4) establishes, as one criterion that an accreditation organization must meet to be granted "deeming authority," the ability to provide data electronically. Proposed § 493.506(c)(4) specifies the information an accreditation organization must agree to provide to be granted deeming authority. However, as previously stated we do not require all PT results to be submitted to HCFA. We have revised the requirement in this final rule to require notification of only the unsuccessful participation in a PT program and any resulting adverse action.

Comment: Two commenters indicated that many States may have the equipment to submit reports electronically but would require a reasonable period of time to establish a system for obtaining PT results by a medium that is compatible with that of the States.

Response: We are not specifying the media by which States or accreditation organizations communicate with PT organizations. We only require that data transmitted to HCFA be submitted electronically and within the designated time. We will permit a reasonable time for states and organizations to refine their electronic communication systems.

Comment: One commenter recommended that proposed § 493.506(c)(5) (redesignated in this final rule as § 493.506(b)(3)(v)) be modified so that agencies or organizations would be required to give us advance notice of changes in their "standards" rather than their "requirements."

Response: We do not accept this comment. We feel it is important that the accreditation or State laboratory program agree to notify HCFA of changes to any requirements, including its standards.

Comment: One commenter stated that under proposed § 493.506(c)(4) the requests by HCFA for data from accreditation organizations should be discrete (i.e., HCFA should not be able to request any type of data it wants at any time it wants).

Response: We do not agree that our regulations should list all specific data needs. Our interest is in obtaining sufficient data to monitor the approved accreditation organizations' surveys of facilities and to obtain the results of such surveys. The specific data needed may vary from time to time and any list of specific items may become out-of-date. Further, we need to know, the responsiveness of the organizations to cited deficiencies, and we may need to request special data quickly, depending on the circumstances. We will not make unreasonable requests, but only those necessary to monitor the organization and the laboratories they accredit.

Comment: One commenter stated that an accreditation organization's inspectors should be approved by HCFA solely by virtue of their experience and the complexity of the laboratories they inspect, instead of by HCFA's qualifications.

Response: This rule does not specify any HCFA-mandated inspector qualifications. The qualifications an accreditation organization sets for inspectors will be evaluated by HCFA as part of the approval process and will consider the complexity of laboratories inspected. The accreditation organization must employ individuals with sufficient training and experience to provide us with reasonable assurance

that laboratories surveyed by its surveyors meet the applicable requirements.

Comment: Two commenters believed that HCFA should not approve accreditation organizations that require more stringent educational and experience requirements for inspectors or surveyors than HCFA does for its surveyors.

Response: We disagree. Accreditation organizations and States have the right to make this determination.

Comment: Several commenters stated that HCFA should clarify how the adequacy of staffing, finances and other resources of an organization or State will be determined.

Response: We do not believe this level of detail should be included in regulations; rather it is a subject for operating guidelines. We intend to review the number of staff, and the financial resources of an organization to determine its ability to conduct timely surveys, respond to complaints, report to HCFA as required, train surveyors, and perform the administrative functions necessary to support the number of laboratories accredited by the organization. In addition, we have included provisions for both the initial evaluation of applications and for validation activities that permit HCFA to go onsite to the accreditation or State program offices to verify information supplied by these bodies and to observe their operations more closely.

Comment: One commenter believed that deemed status should be limited to those organizations that have structured surveying programs in place, similar to the State survey agencies. Deemed status should not be given to organizations that have indicated a serious conflict between consultation and the enforcement of requirements.

Response: Each accreditation organization is reviewed on its own merits. To ensure that each program continues to meet CLIA requirements, we will be performing annual validation reviews on each accreditation organization approved. As part of those validation reviews, we will evaluate their ability to monitor the correction of deficiencies.

Comment: One commenter stated that under § 493.506 the statement "HCFA's review of a private, nonprofit accreditation organization or State licensure agency includes, but is not necessarily limited to, an evaluation of the following:" does not indicate that the organization or agency must have the ability to provide proficiency testing specimens when onsite PT testing is conducted as required in § 493.807 of the May 21, 1990 proposed rule.

Response: The organization or agency seeking approval is not required to provide additional PT specimens when onsite monitoring of PT testing is conducted. There may be onsite monitoring by HCFA or its agent of a laboratory's testing of PT specimens when the laboratory has not participated successfully in PT and wishes to be reinstated.

Comment: In the preamble of the proposed rule, we specifically invited comments on how accreditation organizations and State laboratory programs might be able to demonstrate that certain standards, although different from the Federal approach, are indeed equally as stringent as Federal CLIA requirements in terms of protecting individuals served by a laboratory. We also invited comments on the feasibility of the development of a comprehensive crosswalk by which to compare the standards of an accreditation organization or a State to those of HCFA. We received 20 such comments, and they are summarized below.

- Eight commenters were in favor of a crosswalk comparison of CLIA requirements to those requirements of an accreditation organization. One State said that a comparative analysis of standards of accreditation organizations and State licensure agencies with those established by HCFA is not only feasible, but essential to assure consistency among groups providing deemed status.
- One commenter was undecided. The commenter believed that HCFA should publish for comment more detailed criteria governing which programs would be considered to be equivalent and which inspection processes would be considered comparable.
- Eleven commenters argued against the crosswalk comparison of HCFA requirements to those requirements of an accreditation organization. Listed below is a summary of several of the comments received that were opposed to the development of a comprehensive crosswalk.
- One commenter stated that a crosswalk or line-by-line comparative approach is a rigid mechanism that would treat all requirements as having equal importance and would not allow the organizations or agencies to make exceptions or variations that respond to a particular laboratory's needs or circumstances.
- One commenter stated that HCFA should reconsider the standards-level approach to assessing equivalency and the competency of private accrediting organizations and instead evaluate the ability of the accrediting organization to identify good and bad performance.
- One commenter indicated a concern that such a comparison would require accreditation organizations to adopt requirements virtually identical to those of HCFA, thus eroding the individuality of established programs.
- One commenter stated that the regulations should allow approved accreditation organizations to carry out their programs according to their own methods and that HCFA should simply accept accreditation awarded by their programs.

Response: We appreciate the recommendations of the commenters. We acknowledge that there is a significant amount of concern among the commenters with respect to how an accreditation organization's or a State's requirements will be reasonably compared to those requirements established by HCFA. To eliminate much of this concern, we have defined the term "equivalency" at § 493.2 to mean that an accreditation organization's or a State's requirements, taken as a whole, are equal to or more stringent than the CLIA requirements established by HCFA, taken as whole. It is acceptable for an accreditation organization's or State's requirements to be organized differently or otherwise vary from the CLIA requirements as long as (1) all of the requirements taken as a whole provide at least the same protection as the CLIA requirements taken as a whole; and (2) a finding of noncompliance with respect to CLIA requirements taken as a whole is matched by a finding of noncompliance with the accreditation or State requirements taken as a whole. We have also included a requirement that accreditation organizations applying for deeming authority, or States applying for approval of their laboratory programs, must include in their application materials a crosswalk that provides a detailed analysis that demonstrates how accreditation or licensure or approval requirements, taken as a whole, are equal to or more stringent than the condition level requirements, taken as a whole.

Comment: One commenter expressed concern that HCFA has designed criteria that essentially would use the private accrediting body merely to enforce the Federal certification standards without recognizing the independent value of the private accreditation process.

Response: As indicated above, private accreditation organization or State laboratory requirements must reasonably compare to and provide the same protection or greater as the

corresponding requirements established by HCFA. Accreditation organization and States will enforce their own requirements, which may be essentially similar to Federal requirements.

Comment: One commenter stated that the proposed rule offers private accreditation organizations little incentive to seek deeming authority and would create disincentives for laboratories to continue to seek private accreditation because they would have to submit to two largely duplicative surveys.

Response: The duplicative surveys to which the commenter referred would only be an issue in the case of a sample validation survey or a complaint survey. These surveys will represent only a small percent of the accredited or CLIA-exempt laboratories and are necessary to ensure that the accreditation program is operating properly and that the laboratories are capable of providing accurate and reliable test results and that the health of individuals served by the laboratory and that of the general public is not adversely affected by laboratory operations and by testing procedures that do not meet the standards set forth in part 493. The decision of whether to seek approval of deeming authority is at the discretion of the individual accreditation organization. In a similar way, the decision to seek accreditation and be inspected by an accreditation organization rather than the State survey agency is at the discretion of each laboratory.

Section 493.507 Validation Inspections

Comment: Three commenters believed that validation of an accreditation organization should be done by an objective party instead of the State agency, one commenter suggesting the Office of the Inspector General as a more objective party. Additionally, another commenter recommended that HCFA should delete references to "the State agency" and "HCFA agent" throughout § 493.507 and state unequivocally that "all validation inspections will be performed by HCFA personnel who have scientific and technical education and training as well as inspection experience equivalent to that specified in approved accreditation organizations."

Response: For the purpose of evaluating the survey procedures of private, nonprofit accreditation organizations, the State survey agency is an objective party and is more familiar with HCFA survey regulations and procedures than HHS components such as the Office of the Inspector General (which does not specifically deal with ongoing inspection of facilities for compliance with HCFA program participation requirements). In the case of a State that has been granted approval of its laboratory program, we will not have it or any other State agency within that State conduct validation surveys to evaluate its own operation. To clarify these requirements, we have included definitions of State survey agency and HCFA agent at § 493.2. Therefore, as necessary, we will exercise the authority at section 353(o) of the PHSA, by which the Secretary can enter into agreement with other governmental or nonprofit organizations to assist HCFA in performing validation inspections. In addition, HCFA may utilize its own Federal surveyors for validation surveys of CLIA-exempt laboratories or accredited laboratories. State agencies, HCFA, and HCFA agents will possess the necessary scientific and technical education and experience and receive the necessary training to evaluate each accreditation organization objectively.

Comment: One commenter indicated that laboratories in exempt States should be exempt from the validation process.

Response: As previously stated, we believe Congress did not intend to allow the Secretary to approve a State laboratory program without imposing reasonable conditions to ensure enforcement with equivalent requirements or without periodically re-evaluating these approvals. We believe it is a reasonable condition to re-evaluate the State's requirements through validation inspections and to remove our approval of a State laboratory program if the State's requirements are no longer equal to or more stringent than the CLIA requirements. Although section 353(p)(2) allows the Secretary to exempt clinical laboratories in a State whose requirements are equal to or more stringent than the CLIA requirements, such exemptions remain discretionary with the Secretary. Accordingly, we believe it is consistent with the statute to have in place a system that will enable us to determine if exemptions, once granted, continue to satisfy statutory requirements. If we determine that they do not, the exemptions should be revoked. We believe that the performance of validation inspections provides us with the most effective means of assuring that objective.

Comment: One commenter indicated that language pertaining to validation inspection is too rigid. Specifically, the commenter thought we ought to change the policy embodied in the statement, "If a validation inspection results in a finding that the laboratory is out of compliance with one or more CLIA conditions, the laboratory is no longer deemed to meet the CLIA condition." Deemed status should only be lifted if a laboratory fails to comply with major conditions.

Response: We cannot accept this recommendation. All condition level requirements are considered major. On the other hand, if an accreditation organization or State has received approval of an accreditation or regulatory structure that is not exact in its replication of CLIA requirements, but that compensates in other areas so that its overall standards are at least equivalent to those established under CLIA (for example, a lower standard than CLIA is offset by a more stringent standard elsewhere in the requirements pertaining to the same CLIA conditions), HCFA would accommodate those distinctions in making its validation conclusions.

Comment: One commenter recommended that § 493.507(a) be rewritten to reflect more accurately the statutory authority provided under CLIA as follows: "HCFA may require the inspection of an accredited laboratory for any reason, including to validate its organization's accreditation process or in response to substantial allegations of deficiencies."

Response: We accept this recommendation; accordingly, we have revised the text at § 493.507(a). Additionally, HCFA may inspect any laboratory exempt from CLIA under an approved State laboratory program to enable HCFA to make a continuing assessment of the ability of the State program to assure its requirements, taken as a whole, are at least as stringent as CLIA requirements, taken as a whole.

Comment: One commenter recommended that the sample size for validation inspections be at least five percent.

Response: Because the statute does not require a particular sample size for validation surveys, we will not at this point establish such a sample size through regulations.

Comment: One commenter stated that there was no time limit within which a proposed validation inspection would have to occur.

Response: Historically, such time limits for validation surveys of other accredited facilities (i.e., hospitals) have been included within HCFA's internal operating instructions. We intend for this to be the case with laboratories as well. These types of timeframes and procedures that we impose on our

agents are subject to frequent change as a function of varying workloads, staff resources and other considerations. HCFA must reserve the right to alter such procedures expeditiously as situations warrant. At the current time, the guidelines provided in our instruction manual for the interval between an accreditation survey or inspection and a corresponding validation survey or inspection of a hospital is 60 days. We anticipate establishing a similar guideline for accredited or exempt laboratories in our operating instructions.

Comment: One commenter suggested that when a validation inspection is performed in response to a substantial allegation as noted in proposed § 493.507(a)(2), HCFA should notify the accreditation organization responsible for accrediting the laboratory in question.

Response: Historically, whenever an allegation of noncompliance with health and safety requirements is made against an accredited facility, HCFA notifies the accreditation organization unless the complaint pertains to things such as billing that have nothing to do with accreditation requirements. The Joint Commission on Accreditation of Healthcare Organizations is currently an approved deeming authority for the Medicare hospital program. It recently requested that it only be notified when an inspection or survey has been conducted and only of those survey results when a condition level deficiency is substantiated. The request was made to decrease unnecessary paperwork. These new notification policies will apply to all approved accredited providers and suppliers.

Comment: One commenter stated that §§ 493.507(b)(1), 493.507(b)(2), 493.507(b)(3), 493.507(c), 493.507(e)(1) and 493.507(e)(2) are redundant with § 493.501. The commenter recommended deletion of these redundant sections.

Response: The language contained in the sections referenced in the comment above is required as part of the general format of the regulation. Section 493.501 summarized general requirements of the regulation that are subsequently addressed in greater detail.

Comment: One commenter indicated that under § 493.507(a)(2), "Validation Inspections", the requirement for a "full" CLIA inspection for a deficiency may be too extreme, depending upon the interpretation of noncompliance with any CLIA condition.

Response: As part of the substantial allegation validation survey process, HCFA has always required a full survey to be performed if the survey agency substantiates that a facility is out of compliance with a condition. The rationale is that if one condition is out of compliance at the time of the validation survey, other conditions may also be out of compliance and may have existed undetected at the time of the accreditation or State laboratory program survey.

Comment: One commenter indicated that under § 493.507(d), "Consequences of the findings of noncompliance," the statement "finding that the laboratory is out of compliance with one or more CLIA conditions" is not clear as to exactly what conditions are meant and whether this refers to severe deficiencies found on inspection or other factors mentioned in subpart N.

Response: The statement "* * * finding that the laboratory is out of compliance with one or more CLIA conditions" means that a laboratory is found through a validation inspection to be out of compliance with one or more condition level requirements.

Comment: One commenter expressed concern about HCFA's proposed review (oversight) of accreditation organizations. The commenter wanted to know HCFA's plan to control for bias and other differing interpretations of Federal standards by the oversight inspection team.

Response: The State survey agency or other HCFA agent will not have access to the accreditation survey information before performing the validation survey in order to insure the objectivity of the surveyors or oversight inspection team. To further ensure the integrity of the process, HCFA will identify prior to the validation inspection those accreditation or State requirements that vary from specific condition level requirements. These specific differences will be identified in the application and approval process. The results from both the accreditation or laboratory program survey and the validation survey are forwarded to HCFA by the responsible entities and evaluated by HCFA personnel only.

Comment: One commenter suggested that under "Validation Inspections", in the preamble of the proposed rule, laboratories should not only be selected on a random sample basis, but also on the basis of their size, volume, and complexity of testing. The commenter noted that from past selections, it seemed that small volume laboratories performing simple tests have usually been selected. The chance of finding major problems in these types of facilities is very low.

Response: Under the Social Security Act, validation inspections have historically been performed based on a representative sample methodology. A relatively large number of small volume laboratories occurring in a random sample would only occur if the universe consisted largely of these types of laboratories or if the accreditation organization or laboratory program had recently surveyed a large number of small volume laboratories. Our current sample methodology is to select from facilities surveyed by the accreditation agency within the past 60 days. We have, for clarification, also revised the regulation text to indicate that a representative (instead of "selective") sampling methodology will be used. The details of the sampling methodology will be provided in instructions to HCFA's regional offices when the validation program begins.

Comment: A few commenters indicated that the validation inspection process, deeming authority review and final determination should be applicable to accreditation programs, State licensing agencies and other HCFA agents.

Response: As stated above, approved accreditation organizations as well as approved State laboratory programs will be subject to formal validation reviews as provided at §§ 493.507 and 493.517, respectively. The "other HCFA agents" are not subject to this formal process because they are often highly specialized and very limited in the scope of their survey activities with respect to laboratories. It has, however, always been HCFA policy to require HCFA central office and/or regional office staff to evaluate the performance of these agents, including the State survey agency.

Section 493.509 Continuing Federal Oversight of an Accreditation Organization or Licensure Agency Requirements' Equivalency to HCFA Requirements

Comment: In the preamble of the proposed rule, we specifically invited comments regarding use of the 20 percent rate of disparity. We received 17 such comments as summarized below. (These provisions have now been relocated to § 493.511.)

- A major accreditation organization stated that it had no basis for challenging this criterion or any other criterion that may be imposed by the Department of Health and Human Services. It recommended that whatever criteria may be adopted be applied in an objective fashion by an unbiased entity.
- Two commenters were in favor of the 20 percent rate of disparity. One commenter stated, "Based on our own experience in laboratory accreditation, we think that a 20 percent disparity rate

is appropriate." The other commenter stated that if the validation inspections were truly standardized and controlled by HCFA agencies, the 20 percent disparity rate proposed in § 493.509(b)(i) is reasonable.

• Eleven commenters argued against the 20 percent rate of disparity. Listed below is a summary of the views of the commenters:

—Three commenters indicated that rate of disparity should be more stringent.

—One commenter preferred that no percentage figure be included in the final rule. The commenter recommended that HCFA provide a phase-in period for evaluation of accreditation organizations of at least 24 months since more than 90 percent of the laboratories falling under the CLIA regulations have been previously unregulated and will be inappropriately sanctioned. Further, the commenter held the opinion that such a 20 percent requirement may well limit the number of private accrediting organizations willing to apply for deeming authority and is counterproductive to the intent of CLIA.

—One commenter indicated that the reliability of findings depends on the sampling methodology, the size of the sample, and the statistical analysis of survey data. Therefore, in the commenter's view, selection of an arbitrary rate of disparity would be meaningless. The commenter did not believe the proposal provides enough information to allow assessment of whether a 20 percent degree of disparity would be statistically significant.

—One commenter suggested that HCFA, rather than measuring the disparity in condition level deficiencies, should evaluate the overall effectiveness of the organization at identifying poorly performing providers.

—Two commenters indicated that the rate of disparity is an untried concept and is too rigidly applied in this proposal.

—One commenter stated that the large degree of subjectivity and the ambiguities posed by different interpretations of the rule would create rates of disparity greater than or equal to the 20 percent proposed by HCFA.

—Two of the commenters suggested that the 20 percent rate of disparity was overly stringent. One said that the rate of disparity is unduly punitive and would likely result in the inability of most nonprofit accreditation organizations and State licensure agencies to acquire deemed status. The other commenter said to quantify acceptability at 80 percent is unproven and overly stringent.

Response: As indicated earlier in this rule, we have defined the term "equivalency" to mean that an accreditation organization's or State's requirements, as a whole, are equal to or more stringent than the corresponding condition level requirements, as a whole, established by HCFA. It is acceptable for an accreditation organization or a State to organize its requirements differently than the HCFA requirements or to have equivalent but not identical requirements as long as all condition level requirements are captured in the requirements of the accreditation organization or State laboratory program. For example, an accreditation organization or State may impose a less stringent standard than CLIA that is balanced or offset by a more stringent requirement elsewhere in the accreditation or State requirements pertaining to the same or related CLIA conditions. Each CLIA requirement will be reviewed for its equivalency with a corresponding requirement of the accreditation organization or State laboratory program. The comprehensive crosswalk developed and used in the approval process will permit HCFA to determine if differences in the deficiencies (i.e., failure to meet a requirement) or lack of deficiencies between validation inspections and accreditation or State inspection constitute equivalent results. In calculating the rate of disparity, HCFA will use CLIA condition level deficiencies where the accreditation organization or State laboratory program did not identify similar deficiencies. It is possible that the "comparable condition-level" requirements of the accreditation organization or the State laboratory program are not called "conditions." It could be that during the initial development of a crosswalk between the CLIA requirements and those of the accreditation organization or State, a determination was made that a particular condition level requirement is equivalent in terms of level and constituent lower level requirements to a requirement of the accreditation organization or State or to some combination of requirements, including those instances where less stringent requirements are balanced by more stringent requirements elsewhere. In that case, in calculating the rate of disparity, HCFA will only use those CLIA condition level deficiencies where the accreditation organization or State laboratory program did not identify deficiencies with its own requirements, when clearly noncompliance with the accreditation or State requirements resulted in the finding of noncompliance by HCFA. As indicated previously, HCFA will accommodate these distinctions in making validation conclusions. We believe that by using this approach the 20 percent rate of disparity becomes more understandable and predictable. The ultimate result of this approach is an objective comparison between requirements established by an accreditation organization or State laboratory program and those of HCFA and a determination as to whether or not accredited and licensed or approved laboratories are surveyed against equivalent requirements. We have tried to ensure against the possibility that the threshold rate of disparity may, with experience, need to be adjusted by revising the rate of disparity definition at § 493.2 (originally proposed in § 493.502) and adding the phrase "and it is reasonable to conclude that the deficiencies were present at the time of an accreditation or State laboratory program's survey". Additionally, where validation findings exhibit any disparity with respect to the findings of an accreditation organization or a State, we expect the accreditation organization or State to demonstrate an improvement in the equivalency of its findings over time. Therefore, in addition to the deeming authority review that must be implemented at the 20 percent threshold, we will also institute a deeming authority review whenever the validation inspection findings, irrespective of the rate of disparity, indicate widespread or systematic problems in an accreditation organization's processes that provide evidence that the organization's requirements are no longer equivalent to the CLIA requirements taken as a whole. In either instance, HCFA may impose a conditional approval for a probationary period not to exceed one year any time a deeming authority review is undertaken. We are moving the criteria that will or may trigger a validation review from proposed § 493.509(b) to § 493.511(a), which already partly addresses the issue.

We have revised the title of § 493.509 to show that the provision applies only to accreditation organizations. We have included a similar provision for States at § 493.519 of this rule.

Since approval of a State laboratory program will be granted for a six-year period, the results of the validation inspections will be used as a criterion in determining whether the approval of the State laboratory program can be

renewed, when an approved State laboratory program applies for such renewal. At the conclusion of the six year term, any approved organization or State laboratory program will have to reapply. The nature of the materials we will require as part of the reapplication submission will be based on a range of issues, including performance as indicated by the results of validation activities, analysis of data relating to deemed activity, changes in the accreditation or State program over the term of the approval and the scope of any changes made to the CLIA program or its requirements. In addition, we will also determine if the reapplication process should occur more frequently than every six years for that particular accreditation organization or State and inform the organization or State of the shorter approval period.

A State approval will also include a provision making the exemption biennially subject to automatic cancellation if the State fails to pay assessed fees. We believe this two-year renewable term will facilitate expedient termination of a State's approval when a technically sophisticated regulations program is compromised by inadequate financial backing. Moreover, the automatic cancellation process would serve to minimize the losses to the user-financed CLIA program, without embarrassing the State by having approval withdrawn for poor performance.

Comment: One commenter stated that the disparity might be single inspector-dependent and not typical of the remaining inspectors.

Response: A consensus among survey inspectors must be reached and the inspection must be reviewed by supervisory staff in the State survey agency before a provider or supplier is formally notified of deficiencies. The cited deficiencies are indicated on the inspection forms and should be considered representative of the inspection team, not a single individual.

Comment: The legislation requires that an accreditation organization notify HCFA 30 days in advance before a change in its standards so that HCFA may have an opportunity to review the changes. One commenter recommended that under comparability review, if an accreditation organization or State laboratory program makes any significant change in its personnel requirements, then the changed personnel requirements should be subject to public comment.

Response: We do not accept this recommendation. It is not feasible under a comparability review to solicit public comments each time any changes occur in an accreditation organization's or a State's requirements, personnel or otherwise. This process would be too cumbersome and would imply that personnel requirements should be considered more important than other requirements established by the accreditation organization or State laboratory program. However, should a decision be made that these changes result in a determination that the requirements are no longer equivalent, action would be taken as outlined in §§ 493.511 and 493.521 (which concerns probation and possible removal of deeming authority or approval of a State laboratory program). We seek public comment on the policies that we incorporate into regulations. After those regulations become final, we then execute those policies. The determination of comparability of personnel requirements is only one instance of the implementation of policy for which we are responsible.

Comment: One commenter recommended that HCFA personnel and the approved accreditation organization's personnel jointly examine the inspection findings and disparities before any adverse action against the laboratory is imposed.

Response: We do not accept the comment. If the results of the validation inspection warrant HCFA taking an adverse action against a laboratory, HCFA will do so. We will, however, notify the approved accreditation organization of our action. We believe this process assists in maintaining the objectivity and integrity of the program and is consistent with past practice for the accreditation program for hospitals. If necessary, for CLIA-exempt laboratories HCFA will seek action through the courts.

Comment: One commenter questioned the provision in proposed § 493.509(b)(2)(i) that requires HCFA to notify an organization that is not meeting our regulations requirements. The commenter stated that the term "requirements" is vague and should be deleted.

Response: We agree and have made the change in the regulations text.

Comment: One commenter recommended that the opportunity to explain or justify any findings or discrepancies noted during the validation review be mandatory rather than optional.

Response: We agree that the opportunity for an accreditation organization or State to explain or justify any findings or discrepancies noted during a comparability or validation review should be mandatory and we feel the regulation reflects this situation. However, we cannot force an accreditation organization or State laboratory program to exercise its rights.

Comment: Several commenters expressed concern that there is no appeal mechanism available for accreditation organizations to use when HCFA withdraws its approval from such organizations.

Response: We agree with the commenter that such procedures are necessary and we have amended Part 488 of the regulations to provide a reconsideration mechanism for the removal of deeming authority from accreditation organizations. We have also incorporated the same reconsideration procedure for States whose request for approval of a laboratory program has been denied, or States whose approval has been removed. We are adding this provision to the rule to help assure that accreditation organizations and States with approved laboratory programs have a fair opportunity to contest adverse HCFA decisions affecting their status under the CLIA program. This procedure encompasses the opportunity for an informal hearing before a hearing officer at which time the affected parties may submit evidence and argument either in writing or orally. In this way, affected parties may help shape the contents of the administrative record that will underlie the agency's final decision. The reconsideration procedure will be made available only after the effective date of HCFA's decision to deny, withdraw, or not renew, as appropriate, the entity's approval under CLIA. We considered other alternatives but concluded that by the time an organization or State faces withdrawal of its approved status, it will have had extensive and lengthy opportunities not just to be apprised of its deficiencies, but to correct them as well. Every effort will already have been made by HCFA to accommodate the entity's interests in retaining its approved status, such that an adverse action will be the culmination of steps that have led HCFA to believe that it cannot realistically expect the necessary corrective actions to be taken.

Additionally, the reconsideration process will include an opportunity for the Administrator to review the hearing officer's decision to either affirm, modify, or reverse that decision. If the Administrator does not choose to assert that review authority within 30 days of the hearing decision, the hearing officer's decision will constitute final administrative action. Once there is a

final agency decision on the matter, the results will be published in the **Federal Register.**

Section 493.511 Deeming Authority and Final Determination Review

Comment: One commenter disagreed that accreditation organizations or States should be placed on probation due to lack of comparability between requirements and problems of poor performance. This commenter stated that an alternative, a continuum of sanctions including probation, suspension, termination and various forms of civil monetary penalties, should be allowed to be continued up to a year.

Response: We have revised the regulations language in §§ 493.509(c) and 493.519(c) to reflect that reapplication for HCFA approval is required by accreditation organizations and State programs at least every six years and permits HCFA to compel an organization or State to submit reapplication materials at any time. We will request those materials when a comparability or validation review indicates that the organization or State is not meeting the requirements of Part 493, Subpart E. We have no authority under the statute to impose suspension, termination, or civil money penalties on the accreditation organization or State for lack of comparability between requirements or problems of poor performance. In the case of poor performance, a probationary period of up to a year will frequently be necessary to allow for correction of systemic performance problems and for HCFA to validate through surveys whether or not performance has improved.

Comment: One commenter indicated that under § 493.511(b), by which conditional approval is given for a probationary period of six months to adopt comparable requirements, some flexibility in this time period might be advisable, especially where a State or city laboratory program must go through a time consuming process in order to revise existing laws and regulations.

Response: We agree with this comment and have revised the regulation at § 493.511(b) to provide a probationary period of up to one year to adopt comparable requirements. As previously discussed, the statute does not explicitly authorize exemption from CLIA requirements based on city laws unless the State has expressly delegated laboratory licensure and oversight responsibility to the city, so that the city acts as the State's agent under State law.

Regulatory Impact

In the preamble of the proposed rule, under the section entitled "Executive Order 12291", we specifically requested comments regarding the extent to which new requirements imposed by this rule and the proposed rule, "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) (55 FR 20896, May 21, 1990), would affect pricing schemes of accreditation organizations. We received four such comments from six commenters. A summary of the comments are as follows:

Comment: One accreditation organization believed that its accreditation fee will have to at least double if it is approved as an accreditation organization by HCFA. This increase will be primarily a consequence of increased paperwork, additional computer programming, data processing, and increased staff to comply with the proposed unrealistic time guidelines, etc.

Response: We recognize that the accreditation fee that some accreditation organizations charge may be increased above current charges. However, until we can review applications from accreditation organizations and States against the new CLIA requirements that were published February 28, 1992 (57 FR 7002), we cannot determine whether or not an accreditation organization's or State laboratory program's requirements are comparable to ours. Until that determination can be made, we cannot determine how extensive the changes are that such organizations will have to make, nor how costly those procedural enhancements will be. In either case, the decision to seek approval of deeming authority or of a State laboratory program is voluntary on the part of the organization or State.

Comment: Two commenters believed that if several States received deeming authority, and each of these States require licensure of all laboratories doing business within those States, then the cost may exceed $100 million. Large interstate commerce laboratories would have to pay licensure fees in several States or stop receiving specimens from those States.

Response: We do not have the authority to dictate to a State the requirements a laboratory must meet in order to operate within that State's jurisdiction. Our concern is whether a laboratory meeting those State requirements can be exempted from meeting CLIA requirements. We do wish to point out to the commenter that, for CLIA purposes, interstate laboratories may receive specimens from many States, but a CLIA certificate is required only in those States where testing is actually performed.

Comment: One commenter agreed with the spirit of the CLIA proposed regulation but felt that several portions of the text, if implemented, would be expensive, cumbersome and counterproductive.

Response: We have performed an assessment of the projected costs and other impacts of this regulation to the best of our ability, given the scarcity of data. We have, in developing our proposal and this final regulation, attempted to remain cognizant of the impacts on all involved parties. However, our major objective is to implement the CLIA requirements and thereby ensure reliable test results and the health of the individuals served by laboratories.

We refer the reader to the Regulatory Impact Analysis contained in HSQ–176–FC, Regulations Implementing the Clinics Laboratory Improvement Amendments of 1988, published on February 28, 1992 (57 FR 7002), which addresses the impact of the entire CLIA program.

Comment: Two commenters stated that we should reimburse the accreditation organization for any costs incurred by the organization for the collection, processing, and transmission of the data to HCFA.

Response: We acknowledge that there may be additional costs incurred by the accreditation organization or State laboratory program for the collection, processing, and transmission of the data required by HCFA. We will limit our requests to essential data only. There are no constraints on accreditation organizations and laboratory programs to set their fee schedules to meet the costs of managing their programs. We published in the **Federal Register** on February 28, 1992 (57 FR 7188) a final rule stating that our fee for laboratories that participate by virtue of a certificate of accreditation would be considerably less than laboratories needing a full inspection.

Summary of Revisions

We are adopting the proposed rule as final after making the following revisions that were discussed in detail earlier in the preamble to this final rule.

- In § 493.2, we add a clarification to show that laboratories are not required to be accredited by a private nonprofit accreditation organization. However, they have no choice regarding State approval or licensure. We also transfer all proposed definitions from § 493.502

to § 493.2 and make a number of clarifying technical revisions. We have separated the definitions of "approved accreditation organization" and what we called "State licensure agency" and now refer to as "State laboratory program". We also distinguish between the State laboratory program and the State survey agency by including a definition of each. In response to comments, we have added a definition of "equivalency". We also show that the rate of disparity is based on sample validation inspections and a reasonable conclusion that deficiencies cited by HCFA were present at the time the accreditation organization or State surveyed the laboratory. We include a definition of "CLIA-exempt laboratory" (which revises what we proposed as "State-exempt") and have added a definition of "State" to indicate that under certain narrowly defined circumstances a local government could qualify for approval of its laboratory program. We clarify that "validation review period" is a one year period and that it follows the most recent surveys performed by the accreditation organization or State.

• We have removed all references to State licensure and State laboratory programs from proposed §§ 493.501 through 493.511 and placed provisions concerning State licensure agencies in §§ 493.513 through 493.521. (Changes to §§ 493.513 through 493.521 parallel those in §§ 493.501 through 493.511.)

The nomenclature changes in the above two bullets reflect the fact that some States may not license their laboratories but instead approve them for operation in some other way and that the laboratories, rather than the State, are exempt from CLIA requirements.

• In § 493.501(a)(1), we clarify that accredited laboratories must meet requirements equivalent to condition level requirements. (Throughout the final rule we change all references from "CLIA conditions" to "condition level requirements" for clarity.)

• In § 493.501 we add a paragraph (c) to set forth the application process.

• In § 493.501, we add a paragraph (d)(4) to show that accreditation organizations can be approved for a maximum period of six years.

• We clarify in paragraph (e) (redesignated from paragraph (b) in the proposed rule) that we publish a notice when we grant deeming authority to an accreditation organization, rather than when we determine that a laboratory is deemed to meet condition level requirements, and that the notice will specify the term of approval.

• In § 493.503(b)(2) we update cross references and in § 493.503(b)(3) we clarify that the laboratory must authorize its accreditation organization to submit to HCFA the PT results that constitute unsuccessful participation in the PT program, and a notification of the accreditation organization's adverse actions resulting from the PT failures within 30 days of the imposition of the adverse action (rather than the notice of the failure).

• We add a paragraph (4) to § 493.503(b) to show that on the basis of notification of adverse actions we may take an adverse action against a laboratory that fails to participate successfully in a PT program.

• We make clarifying revisions in § 493.504 to be consistent with other revisions.

• In § 493.506, we make several clarifying changes concerning PT results and the codes in which they are transmitted. We also show that an accreditation organization may request and be granted "deeming authority" for specific specialty or subspecialty areas. We revise the title to no longer limit the section's applicability to initial approval.

• In § 493.507(a), we change "selective" sample to "representative" sample.

• We have redesignated the proposed paragraph (e) at § 493.507 as paragraph (c)(2)(i)-(iii) and added a new paragraph (e) to reflect that accreditation survey results are disclosable, a provision proposed at § 493.507(b). However, for Medicare participating laboratories, they are disclosable only if they are related to an enforcement action taken by the Secretary. This revision is being made to conform with the language previously included in the preamble of the proposed rule (55 FR 33940), which we inadvertently neglected to include in the regulations text. Section 6019 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101-239), enacted December 19, 1989, amended section 1865(a) of the Social Security Act to allow the Secretary to disclose an accreditation survey and information related to it to the extent the survey and information are related to an enforcement action taken by the Secretary for Medicare participating laboratories. For laboratories that have a CLIA certificate but do not participate in Medicare, disclosure of surveys are governed by the provisions of the Freedom of Information Act. (5 U.S.C. 552)

• We are also adding a new paragraph (f) to provide for our onsite observation of accreditation organization operations.

• In §§ 493.509 and 493.519, we make several clarifying revisions for consistency and move the criteria for triggering a validation review from § 493.509 to § 493.511. We also add the reapplication procedures that are to be followed every six years or sooner if the approval or CLIA exemption is in jeopardy. We also add that our notice to the organization or State will indicate what reapplication materials we need and, in cases not involving routine reapplication, give a deadline for their submission.

• In § 493.511, we give accreditation organizations that fail to adopt requirements comparable to condition level requirements a probationary period of up to but not more than one year (rather than six months) to adopt comparable requirements. We also make some technical revisions. In new paragraph (i) we provide for our immediate withdrawal of our approval of deeming authority of an accreditation organization in situations involving immediate jeopardy.

• We remove our proposed deletion of §§ 493.1701(b)(4) and 493.1708 as they were already replaced, on February 28, 1992 (57 FR 7002).

• In §§ 493.511 and 493.521 and new subpart D in part 488 we give the accreditation organizations and States reconsideration rights.

• In § 493.513 we revise paragraph (a) to show that a laboratory in an approved State laboratory program is exempt from CLIA program requirements for a period not to exceed six years. We also revise paragraph (k) to add the term of approval to the public notice content.

• In § 493.521 we revise paragraph (g) to show that HCFA will not renew the approval of a State laboratory program if the State fails to pay the applicable fees to pay for validation costs.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a final regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all accreditation organizations as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule revises the August 20, 1990 proposed rule with comment period, based on comments submitted by the public. Changes made as a result of comments received are summarized in the Comments and Responses section of this preamble. We do not believe that any of the changes incorporated into this final rule as a result of the comments would have any significant impact and we are therefore not preparing an analysis with respect to them.

Although we do not believe that the changes in this document will have a significant impact, we do acknowledge that there could be some impact on accredited laboratories and on laboratories in States with approved laboratory programs, especially with respect to use of accreditation or State exemption as a means of demonstrating compliance with CLIA requirements.

Inasmuch as these accredited or CLIA-exempt laboratories will be required to meet requirements that have equivalency with CLIA requirements, the impact on these laboratories will not differ substantially from the impact experienced by all laboratories as a result of the promulgation of the related final rules, HSQ-176-FC, Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (57 FR 7002) and HSQ-179-F, Enforcement Procedures for Laboratories (57 FR 7218). The regulatory impact analysis that accompanies HSQ-176-FC explains the overall regulatory impact of all CLIA provisions, including those implemented under this rule.

Paperwork Burden

Section 493.506 of this rule contains information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. These collections require an accreditation organization or State laboratory program to agree to notify us of certain survey and PT results and certain actions and provide us with reports and other information as needed. Public reporting burden for these collections of information is estimated to be one hour per response for each organization and agency every two years.

A notice will be published in the Federal Register when approval is obtained.

List of Subjects

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 493

Laboratories, Medicare, Medicaid, Health facilities, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR chapter IV is amended as set forth below:

A. Part 488 is amended as follows:

PART 488—SURVEY AND CERTIFICATION PROCEDURES

1. The authority citation for part 488 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a) and secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, 1883, 1913 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

2. Part 488 is amended by adding a new subpart D to read as follows:

Subpart D—Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs

Sec.

488.201 Reconsideration.
488.203 Withdrawal of request for reconsideration.
488.205 Right to informal hearing.
488.207 Informal hearing procedures.
488.209 Hearing officer's findings.
488.211 Final reconsideration determination.

§ 488.201 Reconsideration.

(a) *Right to reconsideration.* (1) A national accreditation organization dissatisfied with a determination that its accreditation requirements do not provide (or do not continue to provide) reasonable assurance that the entities accredited by the accreditation organization meet the applicable CLIA requirements is entitled to a reconsideration as provided in this subpart.

(2) A State dissatisfied with a determination that the requirements it imposes on laboratories in that State and under the laws of that State do not provide (or do not continue to provide) reasonable assurance that laboratories licensed or approved by the State meet applicable CLIA requirements is entitled to a reconsideration as provided in this subpart.

(b) *Eligibility for reconsideration.* HCFA will reconsider any determination to deny, remove or not renew the approval of deeming authority to private accreditation organizations, or any determination to deny, remove or not renew the approval of a State laboratory program for the purpose of exempting the State's laboratories from CLIA requirements, if the accreditation organization or State files a written request for a reconsideration in accordance with paragraphs (c) and (d) of this section.

(c) *Manner and timing of request for reconsideration.* (1) A national accreditation organization or a State laboratory program described in paragraph (b), dissatisfied with a determination with respect to its deeming authority, or, in the case of a State, a determination with respect to the exemption of the laboratories in the State from CLIA requirements, may request a reconsideration of the determination by filing a request with HCFA either directly by its authorized officials or through its legal representative. The request must be filed within 60 days of the receipt of notice of an adverse determination or nonrenewal as provided in subpart A of part 488 or subpart E of part 493, as applicable.

(2) Reconsideration procedures are available after the effective date of the decision to deny, remove, or not renew the approval of an accreditation organization or State laboratory program.

(d) *Content of request.* The request for reconsideration must specify the findings or issues with which the accreditation organization or State disagrees and the reasons for the disagreement.

§ 488.203 Withdrawal of request for reconsideration.

A requestor may withdraw its request for reconsideration at any time before the issuance of a reconsideration determination.

§ 488.205 Right to informal hearing.

In response to a request for reconsideration, HCFA will provide the accreditation organization or the State laboratory program the opportunity for an informal hearing as described in § 488.207 that will—

(a) Be conducted by a hearing officer appointed by the Administrator of HCFA; and

(b) Provide the accreditation organization or State laboratory program the opportunity to present, in writing or in person, evidence or documentation to refute the determination to deny approval, or to withdraw or not renew deeming authority or the exemption of a State's laboratories from CLIA requirements.

§ 488.207 Informal hearing procedures.

(a) HCFA will provide written notice of the time and place of the informal hearing at least 10 days before the scheduled date.

(b) The informal reconsideration hearing will be conducted in accordance with the following procedures—

(1) The hearing is open to HCFA and the organization requesting the reconsideration, including—

(i) Authorized representatives;

(ii) Technical advisors (individuals with knowledge of the facts of the case or presenting interpretation of the facts); and

(iii) Legal counsel;

(2) The hearing is conducted by the hearing officer who receives testimony and documents related to the proposed action;

(3) Testimony and other evidence may be accepted by the hearing officer even though it would be inadmissable under the usual rules of court procedures;

(4) Either party may call witnesses from among those individuals specified in paragraph (b)(1) of this section; and

(5) The hearing officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

§ 488.209 Hearing officer's findings.

(a) Within 30 days of the close of the hearing, the hearing officer will present the findings and recommendations to the accreditation organization or State laboratory program that requested the reconsideration.

(b) The written report of the hearing officer will include—

(1) Separate numbered findings of fact; and

(2) The legal conclusions of the hearing officer.

§ 488.211 Final reconsideration determination.

(a) The hearing officer's decision is final unless the Administrator, within 30 days of the hearing officer's decision, chooses to review that decision.

(b) The Administrator may accept, reject or modify the hearing officer's findings.

(c) Should the Administrator choose to review the hearing officer's decision, the Administrator will issue a final reconsideration determination to the accreditation organization or State laboratory program on the basis of the hearing officer's findings and recommendations and other relevant information.

(d) The reconsideration determination of the Administrator is final.

(e) A final reconsideration determination against an accreditation organization or State laboratory program will be published by HCFA in the **Federal Register.**

B. Part 493 is amended as follows:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act and secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12) and 1861(s)(13) of the Social Security Act (42 U.S.C. 263a, 1302, the sentence following sec. 1395x(s)(11), and sec. 1395x(s)(12) and (s)(13).)

2. The table of contents for part 493 is amended by adding a new subpart E to read as follows:

PART 493—LABORATORY REQUIREMENTS ,

* * * * *

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

Sec.

493.501 General requirements for accredited laboratories.
493.503 Proficiency testing requirements of laboratories with deemed status.
493.504 Revocation of accreditation.
493.506 Federal review and approval of private, nonprofit accreditation organizations.
493.507 Validation inspections of laboratories with certificates of accreditation.
493.509 Continuing Federal oversight of private nonprofit accreditation organizations.
493.511 Removal of deeming authority and final determination review.
493.513 General requirements for CLIA-exempt laboratories.
493.515 Federal review of laboratory requirements of State laboratory programs.
493.517 Validation inspections of CLIA-exempt laboratories.
493.519 Continuing Federal oversight of an approved State laboratory program.
493.521 Removal of CLIA exemption and final determination review.

3. Section 493.2 is amended by adding definitions of "Approved accreditation organization for laboratories," "Approved State laboratory program," "CLIA-exempt laboratory", "Equivalency," "Rate of disparity," "State," "State licensure," "State survey agency," and "Substantial allegation of noncompliance" and "Validation review period", and by deleting the definition of "State-exempt laboratory" and by adding the definitions of "Accredited laboratory" and "HCFA agent" to read as follows:

§ 493.2 Definitions.

* * * * *

Accredited laboratory means a laboratory that has voluntarily applied for and been accredited by a private, nonprofit accreditation organization approved by HCFA in accordance with this part;

Approved accreditation organization for laboratories means a private, nonprofit accreditation organization that has formally applied for and received HCFA's approval based on the organization's compliance with this part.

Approved State laboratory program means a licensure or other regulatory program for laboratories in a State, the requirements of which are imposed under State law, and the State laboratory program has received HCFA approval based on the State's compliance with this part.

* * * * *

CLIA-exempt laboratory means a laboratory that has been licensed or approved by a State where HCFA has determined that the State has enacted laws relating to laboratory requirements that are equal to or more stringent than CLIA requirements and the State licensure program has been approved by

HCFA in accordance with subpart E of this part.

* * * * *

Equivalency means that an accreditation organization's or a State laboratory program's requirements, taken as a whole, are equal to or more stringent than the CLIA requirements established by HCFA, taken as whole. It is acceptable for an accreditation organization's or State laboratory program's requirements to be organized differently or otherwise vary from the CLIA requirements, as long as (1) all of the requirements taken as a whole would provide at least the same protection as the CLIA requirements taken as a whole; and (2) a finding of noncompliance with respect to CLIA requirements taken as a whole would be matched by a finding of noncompliance with the accreditation or State requirements taken as a whole.

HCFA agent means an entity with which HCFA arranges to inspect laboratories and assess laboratory activities against CLIA requirements and may be a State survey agency, a private, nonprofit organization other than an approved accreditation organization, a component of HHS, or any other governmental component HCFA approves for this purpose. In those instances where all of the laboratories in a State are exempt from CLIA requirements, based on the approval of a State's exemption request, the State survey agency is not the HCFA agent.

* * * * *

Rate of disparity means the percentage of sample validation inspections for a specific accreditation organization or State where HCFA, the State survey agency or other HCFA agent finds noncompliance with one or more condition level requirements but no comparable deficiencies were cited by the accreditation organization or the State, and it is reasonable to conclude that the deficiencies were present at the time of the most recent accreditation organization or State licensure inspection.

Example: Assume the State survey agency, HCFA or other HCFA agent performs 200 sample validation inspections for laboratories accredited by a single accreditation organization or licensed in an exempt State during a validation review period and finds that 60 of the 200 laboratories had one or more condition level requirements out of compliance. HCFA reviews the validation and accreditation organization's or State's inspections of the validated laboratories and determines that the State or accreditation organization found comparable deficiencies in 22 of the 60 laboratories and it is reasonable to conclude that deficiencies were present in the remaining 38 laboratories at the time of the accreditation organization's or State's inspection. Thirty-eight divided by 200 equals a 19 percent rate of disparity.

* * * * *

State includes, for purposes of this part, each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and a political subdivision of a State where the State, acting pursuant to State law, has expressly delegated powers to the political subdivision sufficient to authorize the political subdivision to act for the State in enforcing requirements equal to or more stringent than CLIA requirements.

State licensure means the issuance of a license to, or the approval of, a laboratory by a State laboratory program as meeting standards for licensing or approval established under State law.

State survey agency means the State health agency or other appropriate State or local agency that has an agreement under section 1864 of the Social Security Act and is used by HCFA to perform surveys and inspections.

Substantial allegation of noncompliance means a complaint from any of a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles) that, if substantiated, would have an impact on the health and safety of the general public or of individuals served by a laboratory and raises doubts as to a laboratory's compliance with any condition level requirement.

* * * * *

Validation review period means the one year time period during which HCFA conducts validation inspections and evaluates the results of the most recent surveys performed by an accreditation organization or State laboratory program.

4. A new subpart E is added to read as follows:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

§ 493.501 General requirements for accredited laboratories.

(a) *Deemed status.* HCFA may deem a laboratory to meet all the applicable CLIA program requirements of this Part if the laboratory is accredited by a private, nonprofit accreditation organization for laboratories that—

(1) Provides reasonable assurance to HCFA that it requires the laboratories it accredits to meet all of the requirements equivalent to the CLIA condition level requirements specified in this part and would, therefore, meet condition level requirements if those laboratories had not been granted deemed status and had been inspected against condition level requirements; and

(2) Meets the requirements of § 493.506 of this subpart.

(b) *Laboratory requirements.* To be deemed to meet the applicable CLIA program requirements, a laboratory accredited by a private, nonprofit accreditation organization must—

(1) Authorize its accreditation organization to release to HCFA all records and information required by HCFA;

(2) Permit inspections as required by these regulations;

(3) Obtain a certificate of accreditation as required by § 493.632 of this part; and

(4) Pay the applicable fees as required by §§ 493.638 and 493.645 of this part.

(c) *Application and reapplication process for accreditation organizations.* In applying or reapplying to HCFA for deeming authority, a private nonprofit accreditation organization must provide the following information to the Administrator of HCFA—

(1) The specialty(ies) or subspecialty(ies) for which the organization is requesting "deeming authority";

(2) A detailed comparison of individual accreditation requirements with the comparable condition level requirements; i.e., a crosswalk;

(3) A detailed description of the inspection process, including the frequency of inspections, copies of inspection forms, instructions, and guidelines, a description of the review and decision-making process of accreditation inspections and a description of the steps taken to monitor the correction of deficiencies;

(4) A description of the process for monitoring proficiency testing (PT) performance, including action to be taken in response to unsuccessful participation in an approved PT program;

(5) A description of the accreditation organization's data management and analysis system with respect to its inspection and accreditation decisions, including the kinds of routine reports and tables generated by the system;

(6) Detailed information concerning the personnel who perform accreditation inspections, including but not limited to the size and composition of individual accreditation inspection teams, education and experience requirements

that those inspectors must meet and the content and frequency of the training provided to inspection personnel;

(7) Procedures to investigate and respond to complaints against accredited laboratories;

(8) A list of any currently accredited laboratories and the expiration date of each laboratory's accreditation;

(9) Procedures for making PT information available, including explanatory information required to interpret PT results, on a reasonable basis, upon request of any person;

(10) Procedures for removal or withdrawal of accreditation status for laboratories that fail to meet the organization's standards;

(11) A proposed agreement between the accreditation organization and HCFA with respect to the notification requirements specified in § 493.506(b)(3) of this subpart; and

(12) Whether accreditation inspections are announced or unannounced.

(d) *Application review process.* Once HCFA receives an application for deeming authority from a private nonprofit accreditation organization—

(1) HCFA will determine if additional information is necessary to make a determination for approval of the accreditation organization's application for deeming authority and will so notify the organization and give it an opportunity to provide the additional information.

(2) HCFA may visit the organization's offices to verify representations made by the organization in its application, including, but not limited to, review of documents and interviews with the organization's staff.

(3) The accreditation organization will receive a formal notice from HCFA stating whether the request for deeming authority has been approved or denied and the rationale for any denial.

(4) HCFA may approve an accreditation organization for a period not to exceed six years.

(5) An accreditation organization may withdraw its application for approval of deeming authority at any time prior to the official notification specified in paragraph (d)(3) of this section.

(6) Except as provided in paragraph (d)(8) of this section, any accreditation organization whose request for approval of deeming authority is denied may request, within 60 days of the notification of the denial, that its original application be reconsidered.

(7) Except as provided in paragraph (d)(8) of this section, any accreditation organization whose request for approval of deeming authority has been denied may resubmit its application if the organization—

(i) Has revised its accreditation program to address the rationale for denial of its previous request;

(ii) Can demonstrate that it can provide reasonable assurance that its accredited facilities meet condition level requirements; and

(iii) Resubmits the application in its entirety.

(8) If an accreditation organization has requested, in accordance with part 488, subpart D of this chapter, a reconsideration of HCFA's determination that its request for deeming approval is denied, it may not submit a new application for deeming authority until a final reconsideration determination is issued.

(e) *Publication of names of approved accreditation organizations.* HCFA publishes a notice in the **Federal Register** when it grants deeming authority to an accreditation organization under paragraph (a) of this section. The notice—

(1) Names the accreditation organization;

(2) Describes the basis for granting deeming authority to the accreditation organization;

(3) Describes how the accreditation organization provides reasonable assurance to HCFA that laboratories accredited by the organization meet CLIA requirements equivalent to those specified in this part and would, therefore, meet CLIA requirements if those laboratories had not been granted deemed status, but had been inspected against condition level requirements; and

(4) Specifies a term of approval not to exceed six years.

§ 493.503 Proficiency testing requirements of laboratories with deemed status.

(a) *General.* A laboratory deemed to meet condition level requirements must meet the proficiency testing (PT) requirements of this part.

(b) *Release of PT results.* (1) A laboratory deemed to meet condition level requirements must authorize its PT organization to furnish to its accreditation organization the results of the laboratory's participation in an approved PT program for the purpose of monitoring a laboratory's PT and for making the annual PT results, along with explanatory information required to interpret the PT results, available on a reasonable basis, upon request of any person.

(2) A laboratory that refuses to authorize the release of its PT results will no longer be deemed to meet the condition level requirements and will be subject to full review by HCFA, the State survey agency, or other HCFA agent in accordance with § 493.1777 of this chapter and may be subject to the suspension or revocation of its certificate of accreditation under § 493.1840 of this part.

(3) A laboratory with deemed status that has failed to achieve successful participation in an approved PT program must authorize its accreditation organization to release to HCFA its PT results that constitute unsuccessful participation in an approved PT program, in accordance with the definition of "unsuccessful participation in an approved PT program" as specified in this part. Such a laboratory must also authorize its accreditation organization to release to HCFA a notification of the actions taken by the organization as a result of the unsuccessful participation in a PT program within 30 days of the initiation of such actions.

(4) HCFA may, on the basis of the notification of adverse actions received from the accreditation organization, take an adverse action against a laboratory that fails to participate successfully in an approved PT program.

§ 493.504 Revocation of accreditation.

After a private, nonprofit accreditation organization withdraws or revokes its accreditation of a laboratory, the certificate of accreditation required by this part will continue in effect until the earlier of—

(a) 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation; or

(b) The effective date of any action taken by HCFA.

§ 493.506 Federal review and approval of private, nonprofit accreditation organizations.

(a) An accreditation organization may request and may be granted "deeming authority" for all specialties and subspecialties or for specific specialty or subspecialty areas. In the latter case, the accreditation organization will be accountable for the monitoring of compliance with all requirements equivalent to condition level requirements within the scope of the specialty or subspecialty.

(b) HCFA's review of a private, nonprofit accreditation organization includes, but is not necessarily limited to, an evaluation of the following—

(1) Whether the accreditation organization's requirements for laboratories are equal to or more

stringent than the condition level requirements for laboratories;

(2) The accreditation organization's inspection process to determine—

(i) The composition of the inspection team, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to inspectors;

(ii) The comparability of the organization's full inspection and complaint inspection requirements to those of HCFA, including but not limited to inspection frequency, and the ability to investigate and respond to complaints against accredited laboratories;

(iii) The organization's procedures for monitoring laboratories found to be out of compliance with its requirements. (These monitoring procedures are to be used only when the accreditation organization identifies noncompliance. If noncompliance is identified through validation inspections, HCFA, the State survey agency, or other HCFA agent monitors corrections as authorized at § 493.507(b)(4) of this subpart);

(iv) The ability of the organization to provide HCFA with electronic data and reports, including the crosswalk specified in § 493.501(c)(2), in ASCII-comparable code that are necessary for effective validation and assessment of the organization's inspection process;

(v) The ability of the organization to provide HCFA with electronic data in ASCII-comparable code related to the adverse actions resulting from PT results constituting unsuccessful participation in PT programs as well as data related to the PT failures, within 30 days of the initiation of adverse action;

(vi) The ability of the organization to provide HCFA with electronic data in ASCII-comparable code for all accredited laboratories, including the area of specialty or subspecialty;

(vii) The adequacy of numbers of staff and other resources; and

(viii) The organization's ability to provide adequate funding for performing required inspections; and

(3) The organization's agreement with HCFA that requires it to:

(i) Notify HCFA of any laboratory accredited by the organization that has had its accreditation withdrawn, revoked or limited by the accreditation organization denied, suspended, withdrawn or revoked or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;

(ii) Notify HCFA within 10 days of a deficiency identified in an accredited laboratory where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;

(iii) Notify HCFA of all newly accredited laboratories (or laboratories whose areas of specialty or subspecialty are revised) within 30 days;

(iv) Notify each laboratory accredited by the organization within 10 days of HCFA's withdrawal of recognition of the organization's deeming authority;

(v) Provide HCFA with inspection schedules, as requested, for the purpose of conducting onsite validation inspections;

(vi) Provide HCFA, the State survey agency or other HCFA agent with any facility-specific data to include, but not be limited to, the following (upon request):

(A) PT results that constitute unsuccessful participation in an approved PT program; and

(B) Notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation;

(vii) Provide HCFA written notification at least 30 days in advance of the effective date of any proposed changes in its requirements; and

(viii) Disclose any laboratory's PT results upon the reasonable request by any person.

§ 493.507 Validation inspections of laboratories with certificates of accreditation.

(a) *Basis for inspection.* HCFA, the State survey agency, or a HCFA agent may conduct an inspection of an accredited laboratory that has been issued a certificate of accreditation. The results of these inspections will be used to validate the accreditation organization's accreditation process. These inspections may be conducted on a representative sample basis or in response to substantial allegations of noncompliance.

(1) When conducted on a representative sample basis, the inspection is comprehensive, addressing all condition level requirements, or may be focused on a specific condition level requirement or requirements, and the number of laboratories sampled is sufficient to allow a reasonable estimate of the performance of each accreditation organization.

(2) When conducted in response to a substantial allegation of noncompliance, HCFA, the State survey agency or other HCFA agent inspects for any condition level requirement or requirements that HCFA determines to be related to the allegation. If HCFA, the State survey agency or other HCFA agent substantiates a deficiency and determines that the laboratory is out of compliance with any condition level requirement, HCFA, the State survey agency or other HCFA agent will conduct a full CLIA inspection.

(b) *Effect of selection for inspection.* A laboratory selected for inspection must:

(1) Authorize its accreditation organization to release to HCFA, the State survey agency or other HCFA agent, on a confidential basis, a copy of the results of the laboratory's most recent full, and any subsequent partial, accreditation inspection(s);

(2) Authorize the validation inspection to take place;

(3) Provide HCFA, the State survey agency, or other HCFA agent access to all facilities, equipment, materials, records and information that HCFA determines have a bearing on whether the laboratory is being operated in accordance with the requirements of this part, and permit HCFA, the State survey agency or other HCFA agent to copy any such material or require it to be submitted; and

(4) Authorize HCFA, the State survey agency or other HCFA agent to monitor the correction of any deficiencies found through the validation inspection.

(c) *Refusal to cooperate with the inspection.* (1) If a laboratory selected for inspection fails to comply with the requirements specified in paragraph (b) of this section it—

(i) Will be subject to full review by HCFA, the State survey agency or other HCFA agent in accordance with this part; and

(ii) May be subject to suspension, revocation, or limitation of its certificate of accreditation under this part.

(2) An accredited laboratory will be once again deemed to meet the condition level requirements by virtue of its accreditation when—

(i) It withdraws any prior refusal to authorize its accreditation organization to release a copy of the laboratory's current accreditation inspection, PT results, or notification of any adverse actions resulting from PT failure;

(ii) It withdraws any prior refusal to allow a validation inspection; and

(iii) HCFA finds that the laboratory meets all the condition level requirements.

(d) *Consequences of a finding of noncompliance.* If a validation inspection results in a finding that the laboratory is out of compliance with one or more condition level requirements, the laboratory is subject to the same requirements and survey and enforcement processes applied to laboratories that are not accredited and that are found out of compliance following a State agency inspection under this part and to full review by

HCFA, the State survey agency or other HCFA agent in accordance with this part; i.e., the laboratory will be subject to the principal and alternative sanctions specified in § 493.1806 of this part.

(e) *Disclosure of accreditation and validation inspection results.* The accreditation inspection results are disclosable to the public only if they are related to an enforcement action taken by the Secretary. The results of all validation inspections conducted by HCFA, the State survey agency or other HCFA agents are disclosable.

(f) *Onsite observation of accreditation organization operations.* As part of the validation review process, HCFA may conduct an onsite inspection of the accreditation organization's operations and offices to verify the organization's representations and to assess the organization's compliance with its own policies and procedures. Such an onsite inspection may include, but is not limited to, the review of documents, the auditing of meetings concerning the accreditation process, the evaluation of accreditation inspection results or the accreditation decision-making process, and interviews with the organization's staff.

§ 493.509 Continuing Federal oversight of private, nonprofit accreditation organizations.

(a) *Comparability review.* In addition to reviewing the equivalency of specified accreditation requirements to the comparable condition level requirements when an accreditation organization initially applies to HCFA for "deeming authority", HCFA reviews the equivalency of requirements—

(1) When HCFA promulgates new condition level requirements;

(2) When HCFA identifies accreditation organizations whose requirements do not continue to be equal to or more stringent than condition level requirements;

(3) When an accreditation organization adopts new requirements;

(4) When an accreditation organization adopts changes to its inspection process as required by § 493.511(b); or

(5) Every six years or sooner if HCFA determines the organization requires an earlier review.

(b) *Validation review.* Following the end of a validation review period, HCFA evaluates the validation inspection results for each approved accreditation organization.

(c) *Reapplication procedures.* (1) Every six years, or sooner as determined by HCFA, an approved accreditation organization must reapply for continued approval of deeming authority. HCFA will notify the organization of the materials the organization must submit as part of the reapplication procedure.

(2) An accreditation organization that is not meeting the requirements of this subpart, as determined through a comparability or validation review, must furnish HCFA, upon request and at any time, with the reapplication materials HCFA requests. HCFA will establish a deadline by which the materials are to be submitted.

(d) *Notice.* HCFA provides written notice to the accreditation organization indicating that its approval may be in jeopardy if a comparability or validation review reveals that an accreditation organization is not meeting the requirements of this subpart and that a deeming authority review is being initiated. The notice contains the following information—

(1) A statement of the discrepancies that were found as well as other related documentation;

(2) An explanation of HCFA's review process on which the final determination will be based and a description of the possible actions as specified in § 493.511 that may be imposed by HCFA based on the findings from the comparability or validation review;

(3) A description of the procedures available if the accreditation organization desires an opportunity to explain or justify the findings made during the comparability or validation review; and

(4) The reapplication materials the organization must submit and the deadline for that submission.

§ 493.511 Removal of deeming authority and final determination review.

(a) *Deeming authority review.* (1) HCFA reviews, as appropriate, the criteria described in § 493.506 to reevaluate whether the accreditation organization continues to meet all these criteria. HCFA conducts a deeming authority review of an accreditation organization's program if the comparability or validation review produces findings as described at § 493.509(a) of this subpart.

(2) HCFA conducts, at its discretion, a deeming authority review of an accreditation organization's program if validation review findings, irrespective of the rate of disparity, indicate widespread or systematic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to CLIA requirements, taken as a whole.

(3) HCFA conducts a deeming authority review whenever validation inspection results over a one-year period indicate a rate of disparity of 20 percent or more between the findings of the accreditation organization and the findings of HCFA, State survey agencies, or other HCFA agents.

(b) Following the deeming authority review, if HCFA determines that the accreditation organization has failed to adopt requirements equal to or more stringent than CLIA requirements, HCFA may give the accreditation organization a conditional approval effective 30 days following the date of HCFA's determination of its deeming authority for a probationary period, not to exceed one year, to adopt comparable requirements.

(c) Following the deeming authority review, if HCFA determines that there are widespread systematic problems in the organization's inspection process, HCFA may give the accreditation organization conditional approval of its deeming authority during a probationary period not to exceed one year that is effective 30 days following the date of HCFA's determination.

(d) Within 60 days after the end of any probationary period, HCFA will make a final determination as to whether or not an accreditation organization continues to meet the criteria described at § 493.506 of this subpart and issues an appropriate notice (including reasons for the determination) to the accreditation organization. This determination is based on the evaluation of any of the following:

(1) The most recent validation inspection and review findings as described at § 493.509(b) of this subpart. In order for the accreditation organization to continue to have deeming authority, it must continue to meet the criteria in § 493.506 of this subpart;

(2) Facility-specific data and other related information;

(3) The accreditation organization's surveyors in terms of qualifications, ongoing education and training, composition of inspection team, etc.;

(4) The organization's inspection procedures; and

(5) The organization's accreditation requirements.

(e) HCFA may remove recognition of deeming authority effective 30 days from the date that it provides written notice to the accreditation organization that its deeming authority will be removed if the accreditation organization has not made improvements acceptable to HCFA during the probationary period.

(f) The existence of any validation review, deeming authority review, probationary status, or any other action by HCFA with respect to an accreditation organization does not affect or limit the conduct of any validation inspection of its accredited laboratories.

(g) HCFA will publish a notice in the **Federal Register** containing a justification of the basis for removing the deeming authority from an accreditation organization.

(h) After HCFA withdraws approval of an accreditation organization's deeming authority, the CLIA certificates of accreditation of all affected laboratories continue in effect for 60 days after the laboratory receives notification of the withdrawal of approval. HCFA may extend the period for an additional 60 days for a laboratory if it determines that the laboratory submitted an application for inspection to another approved accreditation organization or an application for a certificate or certificate of waiver to HCFA, the State agency or other HCFA agent before the initial 60 day period ends.

(i) If at any time HCFA determines that the continued approval of deeming authority of any accreditation organization poses an immediate jeopardy to the patients of the laboratories accredited by that organization, or such continued approval otherwise constitutes a significant hazard to the public health, HCFA may immediately withdraw the approval of deeming authority of that accreditation organization.

(j) Any accreditation organization that is dissatisfied with a determination to withdraw its deeming authority may request a reconsideration of that determination in accordance with subpart D of part 488.

§ 493.513 General requirements for CLIA-exempt laboratories.

(a) HCFA may exempt from CLIA program requirements, for a period not to exceed six years, all State-licensed or approved laboratories in a State if the State—

(1) Has in effect laws that provide for requirements equal to or more stringent than condition level requirements;

(2) Has an agency that licenses or approves laboratories that meet requirements equal to or more stringent than the CLIA condition level requirements specified in this part and would, therefore, meet condition level requirements if those laboratories had not been exempted from CLIA, but rather had been inspected for compliance with condition level requirements;

(3) Meets the requirements and is approved in accordance with § 493.515 of this subpart;

(4) Demonstrates that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements;

(5) Permits HCFA or HCFA agents to inspect laboratories in the State;

(6) Requires laboratories in the State to submit to inspections by HCFA or HCFA agents as a condition of licensure or approval;

(7) Agrees to pay the cost of the validation program administered by HCFA in that State as specified in §§ 493.645(b) and 493.646 of this part; and

(8) Takes appropriate enforcement action against laboratories found by HCFA or HCFA agents not to be in compliance with requirements equivalent to CLIA requirements.

(b) A laboratory in a State with an approved State laboratory program must—

(1) Authorize the laboratory program to release to HCFA or HCFA agent all records and information required by HCFA; and

(2) Permit inspection as required by these regulations.

(c) In applying to HCFA for exemption from the CLIA program, the State must provide the following information to HCFA—

(1) A detailed comparison of individual licensure or approval requirements with the comparable condition level requirements; i.e., a crosswalk;

(2) A detailed description of the inspection process including the frequency of inspections, copies of inspection forms, instructions and guidelines, a description of the review and decision-making process of licensure or approval inspections, whether inspections are announced or unannounced and a description of the steps taken to monitor the correction of deficiencies;

(3) A description of the State's enforcement authority, administrative structure and resources to enforce the State standards;

(4) A description of the process for monitoring proficiency testing (PT) performance, including action to be taken in response to unsuccessful participation in a HCFA-approved PT program;

(5) The State's procedures for responding to, and for the investigation of, complaints against licensed or approved laboratories;

(6) A list of all currently licensed or approved laboratories and the expiration date of each laboratory's current license or approval;

(7) Procedures under State confidentiality and disclosure requirements for the release of PT information, including explanatory information required to interpret PT results; and

(8) For Medicare and Medicaid payment purposes, a list of the specialties and subspecialties of tests performed by each laboratory.

(d) The State must also submit the following supporting documentation—

(1) A written presentation that demonstrates the agency's ability to furnish HCFA with electronic data in ASCII comparable code, including the crosswalk specified in paragraph (c)(1) of this section;

(2) A statement acknowledging that the State will notify HCFA through electronic data transmission of—

(i) Any laboratory that has had its licensure or approval revoked or withdrawn or has been in any way sanctioned by the State within 30 days of any such action taken;

(ii) Changes in licensure (or approval) or inspection requirements; and

(iii) Changes in the specialties or subspecialties under which any laboratory in the State performs testing.

(e) If HCFA determines that additional information is necessary to make a determination for approval or denial of the application for exemption, HCFA will notify the State and afford it an opportunity to provide the additional information.

(f) HCFA may visit the State laboratory program offices to review the application of the State's policies and procedures and other information provided by the State. Such review includes, but is not limited to, examination of documents and interviews with staff.

(g) HCFA will furnish the State a formal notice stating whether the request for exemption has been approved or denied and the rationale for any denial.

(h) Except as provided in paragraph (m) of this section, any State whose application for approval for exemption, or for renewal of that approval, from CLIA has been denied may resubmit its request as soon as the State has taken the necessary action to address the rationale for any previous denial.

(i) A State may withdraw its request for exempt status at any time prior to the official notification specified in paragraph (g) of this section.

(j) Any State whose application for approval for exempt status is denied may request, within 60 days of the notification of the denial, that its original application or application for renewal be reconsidered in accordance with part 488, subpart D of this chapter.

(k) HCFA publishes a notice in the **Federal Register** when it grants exemption to a State under paragraph (a) of this section. The notice—

(1) Names the State;

(2) Describes the basis for granting the exemption to the State;

(3) Describes how the laboratory requirements of the State are equal to or more stringent than those specified in this part; and

(4) Specifies a term of approval not to exceed six years.

(l) A State that has received approval for the exemption of its laboratories from the CLIA program must reapply to HCFA every two years for renewal of its exemption status and renew its agreement to pay the cost of the HCFA administered validation program in that State.

(m) If a State has requested a reconsideration of HCFA's determination that its request for exemption, or for renewal of its exemption, of its laboratories from CLIA is denied, it may not resubmit its request until a final reconsideration determination is issued.

§ 493.515 Federal review of laboratory requirements of State laboratory programs.

(a) HCFA's review of a State laboratory program includes, but is not necessarily limited to, an evaluation of the following:

(1) Whether the State's requirements for laboratories are equal to or more stringent than the condition level requirements;

(2) The State's inspection process requirements to determine—

(i) The comparability of the full inspection and complaint inspection procedures to those of HCFA, including but not limited to inspection frequency and the ability to investigate and respond to complaints against licensed or approved laboratories;

(ii) The State's enforcement procedures for laboratories found to be out of compliance with its requirements;

(iii) The ability of the State to provide HCFA with electronic data and reports in ASCII-comparable code with the adverse or corrective actions resulting from PT results that constitute unsuccessful participation in PT programs and with other data HCFA determines are necessary for validation and assessment of the State's inspection process requirements;

(3) The State's agreement with HCFA to—

(i) Notify HCFA within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or has been in any way sanctioned;

(ii) Notify HCFA within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public.

(iii) Notify each laboratory licensed by the State within 10 days of HCFA's withdrawal of the State's exemption;

(iv) Provide HCFA with written notification of any changes in its licensure (or approved) and inspection requirements;

(v) Disclose any laboratory's PT results in accordance with a State's confidentiality requirements;

(vi) Take the appropriate enforcement action against laboratories found by HCFA not to be in compliance with requirements comparable to condition level requirements and report such enforcement actions to HCFA;

(vii) Notify HCFA of all newly licensed laboratories, including the specialties and subspecialties, for which any laboratory performs testing within 30 days; and subspecialties, for which any laboratory performs testing within 30 days; and

(viii) Provide HCFA, as requested, inspection schedules for validation purposes.

§ 493.517 Validation inspections of CLIA-exempt laboratories.

(a) *Basis for inspection.* HCFA or a HCFA agent other than the State survey agency may conduct an inspection of any laboratory in a State with an approved laboratory program. The results of these inspections will be used to validate the appropriateness of the exemption of that State's licensed or approved laboratories from CLIA program requirements. These inspections may be conducted on a representative sample basis or in response to substantial allegations of noncompliance.

(1) When conducted on a representative sample basis, the inspection may be comprehensive, addressing all condition level requirements, or may be focused on a specific requirement or requirements. The number of laboratories sampled is sufficient to allow a reasonable estimate of the performance of the State.

(2) When conducted in response to a substantial allegation of noncompliance, HCFA or a HCFA agent inspects for any condition level requirement or requirements that HCFA determines to be related to the allegation. If HCFA substantiates a deficiency and determines that the laboratory is out of compliance with any condition level requirement, HCFA or other HCFA agent will conduct a full CLIA inspection.

(b) *Effect of selection for inspection.* A CLIA-exempt laboratory selected for a validation inspection must—

(1) Authorize the State to release to HCFA or a HCFA agent, on a confidential basis, a copy of the results of the laboratory's most recent full, and any subsequent partial, licensure or approval inspection(s);

(2) Authorize the validation inspection to take place; and

(3) Provide HCFA or a HCFA agent access to all facilities, equipment, materials, records and information that HCFA determines have a bearing on whether the laboratory is being operated in accordance with the requirements of this part and permit HCFA or a HCFA agent to copy any such materials or to require such copies to be submitted.

(c) *Refusal to cooperate with the inspection.* If a laboratory selected for a validation inspection fails to comply with the requirements specified in paragraph (b) of this section, HCFA will notify the State.

(d) *Consequences of a finding of noncompliance.* If a validation inspection results in a finding that the laboratory is out of compliance with one or more condition level requirements, HCFA will direct the State to take the appropriate enforcement action(s).

(e) *Disclosure of State and validation inspection results.* The disclosure of State inspection results will be the responsibility of the approved State laboratory program, in accordance with State law. The results of all validation inspections conducted by HCFA or other HCFA agents are disclosable.

(f) *Onsite observation of State laboratory program operations.* As part of the validation review process, HCFA may conduct an onsite inspection of a State's laboratory program offices and operations to verify the State's representations and to assess the State's compliance with its own policies and procedures, including verification of State enforcement actions taken on the basis of validation inspections performed by HCFA or HCFA agents. Such an onsite inspection may include, but is not limited to, the review of documents, auditing meetings concerning the licensure or approval process, the evaluation of State inspection results and the licensure or

approval decision-making process, and interviews with State employees.

§ 493.519 Continuing Federal oversight of an approved State laboratory program.

(a) *Comparability review.* In addition to reviewing the equivalency of specified licensure or approval requirements to the comparable condition level requirements when a State initially applies to HCFA for exemption of its licensed or approved laboratories from condition level requirements, HCFA reviews the equivalency of requirements when—

(1) HCFA promulgates new condition level requirements;

(2) HCFA identifies a State whose requirements do not continue to be equal to or more stringent than condition level requirements;

(3) A State laboratory program adopts new requirements;

(4) A State laboratory program adopts changes to its inspection process requirements as required by § 493.521(b); or

(5) Every six years or sooner if HCFA determines the State laboratory requires an earlier review.

(b) *Validation review.* Following the end of a validation review period, HCFA evaluates the validation inspection results for each approved State laboratory program.

(c) *Reapplication procedures.* (1) Every six years, or sooner as determined by HCFA, an approved State laboratory program must reapply for continued approval of CLIA exemption. HCFA will notify the State of the materials the State must submit as part of the reapplication procedure.

(2) A State that is not meeting the requirements of this subpart as determined through a comparability or validation review must furnish HCFA, upon request and at any time, with the reapplication materials HCFA requests. HCFA will establish a deadline by which the materials are to be submitted.

(d) *Notice.* HCFA provides written notice to the State, indicating that its CLIA exemption may be in jeopardy if a comparability or validation review reveals that it is not meeting the requirements of this subpart and that a review is being initiated of the CLIA exemption of the State's laboratories. The notice contains the following information—

(1) A statement of the discrepancies that were found, as well as other related documentation;

(2) An explanation of HCFA's review process on which the final determination will be based and a description of the possible actions as specified in § 493.521 that may be imposed by HCFA based on the findings from the validation or comparability review;

(3) A description of the procedures available if the State desires an opportunity to explain or justify the findings made during the comparability or validation review; and

(4) The reapplication materials the State laboratory program must submit and the deadline for the submission of those materials.

§ 493.521 Removal of CLIA exemption and final determination review.

(a)(1) HCFA conducts a review of a State's laboratory program if the comparability review produces findings as described at § 493.519(a), of this subpart. HCFA reviews, as appropriate, the criteria described in § 493.515 to reevaluate whether the laboratory program continues to meet all these criteria.

(2) HCFA conducts, at its discretion, an exemption review of an approved State laboratory program if validation review findings, irrespective of the rate of disparity, indicate widespread or systematic problems in the State's licensure or approval processes that provide evidence that the State's requirements, taken as a whole, are no longer equivalent to CLIA requirements, taken as a whole.

(3) HCFA conducts a review of an approved State laboratory program whenever validation inspection results over a two-year period indicate a rate of disparity of 20 percent or more between the findings of the State and the findings of HCFA or other HCFA agents.

(b) Following the review, if HCFA determines that the State has failed to adopt requirements equal to or more stringent than CLIA requirements, HCFA may give the State, within 30 days of its determination, a conditional approval of its exempt status for a probationary period not to exceed one year to afford the State the opportunity to adopt equal or more stringent requirements.

(c) Following the review, if HCFA determines that there are widespread or systematic problems in the State's inspection process, HCFA may give the State conditional approval of the exemption of its licensed or approved laboratories during a probationary period not to exceed one year that is effective 30 days. following the date of the determination;

(d) Within 60 days after the end of any probationary period, HCFA makes a final determination as to whether or not a State continues to meet the criteria described at § 493.515 of this subpart and issues an appropriate notice (including reasons for the determination) to the State. This determination is based on the evaluation of any of the following—

(1) The most recent validation inspection(s) and review findings. In order for the State to continue to be exempt, it must meet the criteria in § 493.519 of this subpart;

(2) Facility-specific data, as necessary, as well as other related information;

(3) Inspection procedures;

(4) Licensure or approval requirements.

(e) HCFA may remove its approval of a State laboratory program effective 30 days from the date that it provides written notice to the State of this proposed action if the State has not made improvements acceptable to HCFA during the probationary period.

(f) The existence of any validation review, probationary status, or any other action by HCFA does not affect or limit the conducting of any validation inspection.

(g) HCFA will cancel the approval of a State laboratory program if the State fails to pay the applicable fees as specified in §§ 493.645 and 493.646.

(h) If HCFA determines at any time that the continued approval of a State laboratory program poses an immediate jeopardy to the patients of the laboratories in that State, or such continued approval otherwise constitutes a significant hazard to the public health, HCFA may immediately withdraw the approval of that State laboratory program.

(i) HCFA will publish a notice in the **Federal Register** containing a justification of the basis for removing its approval of the State laboratory program.

(j) After HCFA withdraws approval of a State laboratory program, the exempt status of licensed or approved laboratories in the State continues in effect for 60 days after the laboratory receives notification from the State of the withdrawal of HCFA's approval of the program. HCFA may extend this period for an additional 60 days for a laboratory if it determines that the laboratory submitted an application for accreditation to an approved accreditation organization or an application to HCFA for a certificate or certificate of waiver before the initial 60 day period ends.

(k) HCFA may withdraw a State laboratory program's approval if the State refuses to take enforcement action against a laboratory in that State where HCFA determined it to be necessary. Laboratories that are in a State where

program approval has been removed are subject to the same requirements and survey and enforcement processes applied to laboratories that are not exempt from meeting CLIA requirements.

(l) Any State that is dissatisfied with a determination to remove the approval of its laboratory program may request a reconsideration of that determination in accordance with part 488, subpart D of this chapter.

C. Part 498 is amended as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

1. The authority citation continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh and 1395ii), unless otherwise noted.

2. Section 498.3 is amended by adding new paragraphs (d) (11) and (12) to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(d) *Administrative actions that are not initial determinations.*

* * * * *

(11) The determination that the accreditation requirements of a national accreditation organization do not provide (or do not continue to provide) reasonable assurance that the entities accredited by the accreditation organization meet the applicable long-term care requirements, conditions for coverage, conditions of certification, conditions of participation, or CLIA condition level requirements.

(12) The determination that requirements imposed on a State's laboratories under the laws of that State do not provide (or do not continue to provide) reasonable assurance that laboratories licensed or approved by the State meet applicable CLIA requirements.

Dated: April 4, 1992.

J. Michael Hudson,

Acting Administrator, Health Care Financing Administration.

Approved: April 24, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-17689 Filed 7-30-92; 8:45 am]

BILLING CODE 4201-01-M

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federal register

Friday
July 31, 1992

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for Fiscal Years 1993 and 1994 for Rehabilitation Research and Training Centers; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Notice of Proposed Funding Priorities for Fiscal Years 1993 and 1994 for Rehabilitation Research and Training Centers

SUMMARY: The Secretary proposes funding priorities for several Rehabilitation Research and Training Centers (RRTC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Betty Jo Berland, U.S. Department of Education, 400 Maryland Avenue SW., room 3422, Switzer Building, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland. Telephone: (202) 732–1139. Deaf and hearing-impaired individuals may call (202) 732–5316 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains five proposed priorities under the RRTC program. These priorities address vocational rehabilitation and long-term mental illness; aging with a disability; disability statistics; and personal assistance services; and independent living services for underserved populations. Earlier this year NIDRR published priorities for other RRTCs and other programs for fiscal years 1993–1994. Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are established to conduct coordinated and advanced programs of rehabilitation research on designated rehabilitation problem areas and to provide training to researchers, service providers, and consumers. Each Center must disseminate and encourage the use of new rehabilitation knowledge and publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

The statute requires that each Center conduct training for providers of rehabilitation services at various levels, which may include undergraduate, in-service, and postgraduate education. Each RRTC also must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. NIDRR encourages all Centers to involve individuals with disabilities and minorities in clinical and research training.

Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronting individuals with disabilities in order to achieve the goals specified in the priority. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) require that applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in assuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities: (1) Full integration into the community, (2) full employment, (3) independence and empowerment, (4) maximum human functioning and health, (5) improved vocational rehabilitation services, and (6) the translation of new knowledge and technology into practice. The priorities proposed in this notice are derived from the long-range planning process and are intended to achieve one or more of these six outcomes.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications, and application materials are not available. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

PRIORITIES

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Vocational Rehabilitation and Long-Term Mental Illness

Background

Persons with long-term mental illness are one of the largest groups receiving services from State vocational rehabilitation agencies (Kraus and Stoddard, 1991). In recent years, studies have been conducted to identify the significant characteristics of persons with long-term mental illness, the characteristics of effective programs, and the environmental supports that contribute to successful vocational rehabilitation outcomes. While these studies have been helpful, the provision of vocational rehabilitation services to persons with long-term mental illness remains a significant issue (Jones, Levine, and Rosenberg, 1991). This is especially true for individuals "dually diagnosed" with substance abuse and long-term mental illness (Drake, Osher, and Wallach, 1991).

Priority

An RRTC on vocational rehabilitation and long-term mental illness shall—

- Determine the most effective vocational rehabilitation interventions for improving long-term employment outcomes;
- Provide training and technical assistance to vocational rehabilitation service providers to increase their use of research-based strategies and products to assist individuals with long-term mental illness to obtain employment in their chosen occupational fields;
- Develop, in coordination with related research supported by the Rehabilitation Services Administration, models to integrate vocational rehabilitation and other services for individuals with long-term mental illness;
- Develop models to provide appropriate vocational rehabilitation services during acute or crisis episodes of long-term mental illness; and

Identify workplace accommodations and the implementation strategies for those accommodations for individuals with long-term mental illness.

Proposed Priority 2—Aging with a Disability

Background

Many middle-aged and elderly individuals with disabilities are experiencing new physical, functional, psychological, and social support problems that are attributed to aging. Having benefitted from the strong emphasis on independent living in their earlier years, they live in their communities with expectations to continue independent and productive lives (Williams, 1987).

Individuals with disabilities often experience new impairments or functional losses as they age. For example, postpolio individuals can experience fatigue, weakness, and pain that compromises their ability to function; individuals with sensory impairments face decline in their other sensory systems, interfering with their compensations and adaptations for the original impairment; and individuals with long-term mental illness often find their acute episodes becoming more frequent, and accompanying dementias or other cognitive problems interfere with the ability to manage the original impairment.

A major challenge to the service system is to develop more capability to serve the growing numbers of persons who are "aging in" with long-standing disabilities. There is a shortage of well-trained personnel to work in the rehabilitation of older persons with disabilities and a paucity of research on effective rehabilitation techniques and applicable technology for this population.

The proposed Rehabilitation Research and Training Center would study services and outcomes for individuals aging with disabilities other than those who have spinal cord injuries or mental retardation. NIDRR is proposing separate priorities for RRTCs to address the needs of these populations.

Priority

An RRTC on aging with a disability shall—

- Develop models to predict, prevent, or treat complications of disability that are brought on by the aging process;
- Identify the prevalence of late onset complications in groups of people with an early onset physical disability;
- Develop models for the provision of home support and community services to prevent premature placement of disabled elderly individuals in domiciliary care;
- Identify, develop, and test service models that provide long-term care for elderly persons with disabilities in community environments;
- Develop models to serve minority individuals with disabilities as they age, capitalizing on informal and natural supports in the community that may be preferred sources of assistance; and
- Develop models to aid persons aging with disabilities to access rehabilitation services, independent living services, and appropriate technology to maintain employment and community living.

Proposed Priority 3—Disability Statistics

Background

There is need to improve the availability, degree of detail, and comparability of statistical data on disability. A number of Federal agencies, some States, and many private research institutions collect information, analyze some of it, and generate significant amounts of unanalyzed data. One of the major reasons for the current unsatisfactory state of statistical data on disability is the lack of a central resource for this information and an organized and comprehensive system for the collection, analysis, and synthesis of the data.

The major Federal agencies that routinely collect information on disability publish only a small fraction of statistical information derived from it and often publish at irregular intervals. Most agency data collections are driven by statutory requirements and are limited to program service statistics or data on individuals eligible for particular benefit programs.

At the same time there is a continuing demand from important users or potential users for (1) information on the incidence and prevalence of disability, and (2) distribution of this information to these users. Reliable information on service use, distribution of benefits, earnings, and costs of care is extremely valuable to individuals with disabilities and their organizations, planners, researchers, and policymakers.

Priority

An RRTC on disability statistics shall—

- Synthesize existing databases; conduct secondary analyses of critical and relevant data sets, including estimates of the incidence, prevalence, and distribution of various disabilities; and present these analyses in a series of detailed analytical reports;
- Identify major gaps in statistical information on the population of persons who are disabled, and make recommendations to the Department and other agencies as to how any major gaps that are identified can best be filled;
- Using existing data if feasible, develop more useful estimates of the number of individuals who are in congregate living settings such as halfway houses, group homes, adult foster care, and other intermediate living arrangements;
- Develop a database encompassing disability-related information on limitations in activities of daily living, patterns of service use, needs for

assistive devices, employment and earnings, benefits payments, insurance coverage, and demographic data;

• Serve as a repository and clearinghouse for statistical information on disability and as a resource center for researchers, consumers and consumer groups, planners, and policy makers; and

• Develop an equitable plan to further the objectives of the center by charging reasonable, cost-based fees for providing information to various categories of users in the RRTC's capacity as a clearinghouse and resource center.

Proposed Priority 4—Personal Assistance Services

Background

Personal assistance includes a wide range of services that have historically come under other rubrics, such as attendant care, home health services, home care, chore services, and homemaker services, as well as the services of readers and interpreters. For persons with severe disabilities, personal assistance means assistance with tasks aimed at maintaining health, personal appearance, comfort, safety, employment, and interactions within the community and society as a whole.

Personal assistance services (PAS) are often inaccessible to those most in need of them (Nosek, 1990). Because PAS require the full or part-time employment of workers, often at varying times and places at the convenience of the employers, PAS are expensive services that are often difficult to arrange logistically. Those individuals most in need of PAS are often unaware of the proper procedures to access services or are least able to pay for them. Recruitment and retention of competent, dependable personal assistants are also major problems because of low salaries, lack of health benefits, demanding work, relatively low status, lack of a career path, and deficits in the level and type of supervision provided by relatively inexperienced employers.

Priority

An RRTC on personal assistance services shall—

• Develop models for the delivery of effective PAS, including consumer-directed models;

• Develop models for the financing of PAS, with analyses of their cost and policy implications;

• Determine the cost-effectiveness of various models for providing PAS under various circumstances;

• Validate models for providing personal assistance at the worksite to increase employment among individuals with disabilities; and

• Develop a program of information dissemination and training to empower individuals with disabilities and inform those who provide services to them on the options for PAS.

Proposed Priority 5—Independent Living Services for Underserved Populations

Background

A 1992 Rehabilitation Services Administration report on the types of disabilities present among persons served by the IL Center programs showed that further efforts were necessary to enable Centers to serve persons with long-term mental illness (LTMI), those with cognitive or intellectual disabilities, individuals with head injuries, children with disabilities, the aging population with disabilities, persons who are members of minority ethnic groups, and persons with disabilities living in rural areas (Rehabilitation Services Administration, 1992).

The groups of persons listed in the preceding paragraph are underrepresented as consumers and managers of IL programs. The concept of IL is based on principles of peer management and direction, peer counseling, and advocacy. The concept was developed and implemented primarily by individuals whose disabilities did not affect significantly their capacities to execute the tasks required by the model. It is likely that individuals with mental illness or cognitive disabilities may need either an adapted model that enables them to achieve the same results or intensive training in the application of the existing model.

Existing IL programs may be either unfamiliar with the appropriate models or unable to modify their current models of participation. Similarly, the current outreach methodologies employed by IL programs are not effective with some groups of persons with disabilities due to barriers in language, culture, geography, or cognitive difficulty in understanding outreach materials.

Priority

An RRTC on independent living (IL) services for underserved populations shall—

• Assess the need for IL services and activities by individuals with LTMI and individuals with severe cognitive disabilities—particularly those from minority, rural, inner-city, homeless, aging, or youth populations;

• Develop models adapting the concepts and principles of IL—including self-direction, peer management, and self-representation—to individuals with LTMI and individuals with severe cognitive disabilities;

• Develop models to improve outreach to, and participation in IL programs by, individuals with LTMI and individuals with severe cognitive disabilities, particularly those from minority, rural, inner-city, homeless, aging, or youth populations;

• Develop strategies and provide training to enable IL programs and Centers to offer more effective services to individuals with LTMI and individuals with severe cognitive disabilities, particularly those from minority, rural, inner-city, homeless, aging, or youth populations;

• Develop models and provide training to enable individuals with LTMI and individuals with severe cognitive disabilities—particularly those from minority, rural, inner-city, homeless, aging, or youth populations—to increase their participation in the planning and administration of IL programs; and

• Evaluate the effectiveness of IL programs for the populations specified in this priority.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: May 14, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–18096 Filed 7–30–92; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Friday
July 31, 1992

Part IV

Securities and Exchange Commission

17 CFR Parts 240 and 249

Adoption of Form Amendments, Broker-Dealer Registration and Reporting; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

Release No. 34-30953

RIN 3235-AE49

Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form amendments.

SUMMARY: The Commission is adopting amendments to Form BD, the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934. The purpose of these amendments is to reduce the regulatory burden upon broker-dealers by eliminating reporting of certain minor self-regulatory organization rule violations, removing duplicative disclosure requirements, and by clarifying the instructions to the Form. The amendments also are designed to streamline the schedules to eliminate the requirement to disclose certain remote ownership interests in a broker-dealer and its control affiliates. In addition, the amendments update the disciplinary background provisions of the Form to reflect the 1990 amendments to the federal securities laws.

EFFECTIVE DATE: November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. D. Colby, Chief Counsel, or Belinda Blaine, Attorney, (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

I. Introduction

In Securities Exchange Act Release No. 29643 (September 6, 1991), 56 FR 44029 ("Release"), the Commission proposed several amendments to Form BD, the uniform registration form for broker-dealers under the Securities Exchange Act of 1934 ("Exchange Act").[1] The proposed amendments were designed to reduce the costs associated with broker-dealer registration by clarifying certain reporting requirements and by limiting the scope of ownership disclosure required by the schedules to the Form.[2] The amendments also were intended to update the disciplinary history provisions of the Form to reflect the expanded authority of the Commission and the self-regulatory organizations ("SROs") under the 1990 amendments to the Exchange Act. In developing these amendments to Form BD, the Commission's staff consulted with the North American Securities Administrators Association, Inc.'s ("NASAA") Forms Revision Committee, the NASD, and representatives of the securities industry. The NASAA membership voted to adopt the proposed amendments to Form BD in October 1991.[3]

The Commission received six comment letters on the proposed Form revisions.[4] These comments expressed unanimous support for the amendments on the grounds that they will reduce the burden on broker-dealers without adversely affecting the quality of the information provided by Form BD. The ABA, for example, stated that the "proposed amendments include some very helpful and constructive changes." While all of the comments agreed with the proposed revisions, most of the comments also suggested additional technical changes, as discussed further below.[5]

II. Description of the Amendments

A. Item 7: Background Information

1. Minor Rule Violations

The principal changes to the body of Form BD relate to Item 7, which requires disclosure of information concerning the disciplinary history of broker-dealers and their control affiliates. Specifically, Question (E)(2) of Item 7 currently requires applicants to disclose whether an SRO or commodities exchange has ever found the applicant or a control affiliate to have been involved in *any* violation of its rules. In the Release, the Commission proposed to amend Question E(2) to exclude SRO rule violations designated as "minor" pursuant to a plan approved by the Commission under Rule 19d-1 of the Exchange Act.[6] A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine.[7] The Commission reasoned that eliminating this disclosure requirement would facilitate the SROs' enforcement of certain trading and reporting rules applicable to their members. The Commission also noted that disclosure of such violations on Form BD was not essential to the registration process because the Commission already receives this information on a quarterly basis from SROs that have filed a plan with the Commission.[8]

All of the comments that addressed the proposed amendment to Item 7(E)(2) believed that it was appropriate.[9] The ABA, for instance, stated that, "[i]n addition to the lack of relevance of such findings to a determination of the suitability of an applicant or registrant, and the availability of such information to regulators in any instance, the Commission is properly sensitive to the burdens imposed on registrants by such disclosure." The ABA further suggested that the amendments should be extended to allow broker-dealers to omit disclosure of contested SRO rule violations where the fine imposed by the SRO is minimal. The ABA argued that it would unfairly penalize broker-dealers

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[1] See 17 CFR 240.15b1-1; 17 CFR 249.501. Form BD also may be used by broker-dealers to become a member of the National Association of Securities Dealers, Inc. ("NASD") and to register with all of the states, with the exception of New Jersey. In lieu of Form BD, New Jersey requires applicants to file for registration on Form SB-1. See 11C Pt. 2, H. Sowards & N. Hirsch, *Business Organizations—Blue Sky Regulation*, § 3.02 (1990).

Form BD was adopted in its current form in Securities Exchange Act Release No. 11424 (May 28, 1975), 40 FR 30634.

[2] As part of this ongoing effort to reduce the regulatory burden on broker-dealers, the Commission is preparing to join the Central Registration Depository ("CRD") system. See Securities Exchange Act Release No. 30950 (July 27, 1992) ("Release 34-30950").

[3] See NASAA Reports (CCH) ¶ 5,061 (October 24, 1991).

[4] American Bar Association, Subcommittee on Market Regulation of the Committee on Federal Regulation of Securities, Section of Business Law ("ABA"); Investment Company Institute ("ICI"); IDS Financial Services Inc.; Julius Baer Securities; National Regulatory Services, Inc. ("NRS"); and the New York Stock Exchange, Inc.

[5] The Release stated that the Commission was considering proposing similar amendments to Form ADV [17 CFR 249.0-1], the form for registration of investment advisers under the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)]. Several comments urged the Commission to adopt the same amendments to Form ADV in order to make Forms BD and ADV more uniform in appropriate respects. The Commission will take these comments into consideration in formulating amendments to Form ADV.

[6] 17 CFR 240.19d-1.

[7] These uncontested disciplinary infractions are not considered "final" for purposes of section 19(d)(1) of the Exchange Act (15 U.S.C. 78s(d)(1)). As a result, the SROs may report the infractions to the Commission on a periodic, as opposed to an immediate, basis.

[8] Moreover, the Commission has agreed to provide information regarding minor rule violations that are the subject of a plan approved by the Commission directly to requesting state regulatory authorities on a periodic basis.

[9] The Intermarket Surveillance Group ("ISG") also supported this amendment, and requested no-action relief from the staff of the Commission to permit members of ISG participant exchanges to immediately cease reporting such minor SRO rule violations on Form BD. No-action relief was granted pending adoption of the Form BD amendments in Intermarket Surveillance Group Participant Exchanges (May 13, 1992) [available on LEXIS].

who believe they have a valid defense to require them to disclose contested (but not uncontested) infractions of SRO rules.

The Commission has determined to adopt the revisions to Item 7(E)(2) as proposed. Thus, effective immediately, broker-dealers will no longer be required to disclose on Form BD any violation of an SRO rule that is designated as "minor" pursuant to an enforcement and reporting plan filed with, and approved by, the Commission pursuant to rule 19d–1 under the Exchange Act. To date, the Commission has approved the minor rule violation plans of the American, Boston, Cincinnati, New York, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange.[10] Question (E)(2) of Item 7, however, continues to require disclosure of all other SRO and commodities exchange rule violations. The Commission has determined not to adopt the ABA's suggestion at this time because it would be inconsistent with rule 19d–1(c)(2), which provides that an SRO rule violation is not considered minor if the sanctioned person seeks an adjudication or otherwise exhausts his or her administrative remedies with the SRO.

2. Foreign Sanctions and Administrative Orders

The proposed amendments also would have updated Item 7 to reflect recent amendments to the federal securities laws made by the International Securities Enforcement Cooperation Act of 1990 ("ISECA") [11] and the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act").[12] ICI, the only commenter to address these amendments, was generally supportive.[13]

The Commission therefore is expanding several questions in Item 7 to include a reference to foreign courts and regulatory authorities, and to Commission administrative and civil actions. For example, in addition to domestic felony convictions and certain misdemeanor convictions involving fraud and investment-related activities, Item 7(A) has been amended to require disclosure of similar convictions entered against the applicant or its control affiliate by a foreign court.[14] These amendments will enable the Commission and the SROs to obtain the information necessary to exercise their expanded authority under ISECA. In addition, as proposed, a new paragraph has been added to Question C of Item 7, which asks the applicant whether a Commission or Commodity Futures Trading Commission ("CFTC") action has ever resulted in the imposition of a civil monetary penalty on the applicant or a control affiliate, or whether the Commission or the CFTC has ever ordered the applicant or a control affiliate to cease and desist from any activity.[15]

As a result of the amendments to Item 7, registered broker-dealers will be required to determine whether they or any control affiliate (including individuals and firms) have been the subject of any finding of a foreign court or foreign financial regulatory authority, or a Commission or CFTC fine or cease and desist order. Any broker-dealer that determines that additional disclosure is required under revised Item 7 will need to file an amendment to Form BD on or promptly after November 16, 1992, the effective date of the Form amendments.[16]

B. Item 10: Types of Business Activities

The Commission also proposed to revise Item 10 of Form BD, which requires applicants for broker-dealer registration to check the appropriate boxes identifying the types of business that they are engaged in (or that they plan to engage in), excluding any business that accounts for less than ten percent of their total investment advisory or securities-related annual revenue. Under the proposed amendments, applicants would have been required to identify all of their investment-related business activities, regardless of the percentage of total revenue. The Commission specifically requested comment on whether Item 10 should continue to exclude activities that account for only a *de minimis* percentage of a broker-dealer's securities-related business.

In response, three comments argued that Item 10 should include a *de minimis* exception. According to ICI (commenting on the analogous item in Form ADV), disclosure of a business activity that constitutes only a nominal percentage of the applicant's total revenue is not relevant to the Commission in regulating the applicant's activities, nor is it relevant to potential clients of the applicant. The Commission agrees with these comments, and therefore has revised Item 10 to exclude activities that account for less than one

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[10] See Securities Exchange Act Release Nos. 21918 (April 3, 1985), 50 FR 14068, 27543 (December 15, 1989), 54 FR 53223 (American Stock Exchange); Securities Exchange Act Release Nos. 26737 (April 17, 1989), 54 FR 16438–I, 29191 (May 14, 1991), 56 FR 23098 (Boston Stock Exchange); Securities Exchange Act Release No. 28053 (September 1, 1988), 53 FR 34851 (Cincinnati Stock Exchange); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (New York Stock Exchange); Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (Pacific Stock Exchange); Securities Exchange Act Release No. 23491 (August 1, 1986), 51 FR 28469 (Philadelphia Stock Exchange); and Securities Exchange Act Release No. 30389 (February 13, 1992), 57 FR 6148 (Chicago Board Options Exchange).

[11] Pub. L. No. 101–550, §§ 201–207, 104 Stat. 2713 (Nov. 15, 1990), codified at 15 U.S.C. 78o(b), 78c. ISECA amended the Exchange Act to give the Commission the explicit authority to bar, suspend, or restrict the activities of broker-dealers and persons associated or seeking to becoming associated with a broker-dealer, based upon the findings of a foreign court or foreign securities authority.

[12] Public Law No. 101–429, §§ 101–102, 201–205, 401–403, 104 Stat. 931 (Oct. 15, 1990), codified at 15 U.S.C. 77, 78u(d), 78u–2, 78o–4, 80b–3, and 80b–9. The Remedies Act gave the Commission the authority to seek civil monetary penalties in court proceedings and to impose monetary penalties and order disgorgement in administrative proceedings. The Remedies Act also provided the Commission with both temporary and permanent cease and desist authority to prevent violations of the securities laws.

For further discussion of ISECA and the Remedies Act, see Release, 56 FR at 44030.

[13] ICI, however, further suggested that disclosure of violations of investment-related statutes and regulations under Item 7 (and Item 11 of Form ADV) should be limited to violations that have occurred in the past ten years. ICI reasoned that this would be consistent with Item 7(A) of Form BD, which only requires applicants (and their control affiliates) to disclose felony and misdemeanor convictions that have occurred within ten years of the date of the application for registration. The Commission has not adopted this suggestion because it believes that information regarding all violations of investment-related statutes and regulations is necessary to determine whether an applicant is subject to statutory disqualification. Under Sections 3(a)(39) [15 U.S.C. 78c(a)(39)] and 15(b)(4) [15 U.S.C. 78o(b)(4)] of the Exchange Act, a person is subject to statutory disqualification if he or she has willfully violated, *inter alia*, the Exchange Act, the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the rules or regulations thereunder, regardless of the date of the violation.

[14] In addition, amended Item 7(D) now requests information regarding specific findings of a foreign financial regulatory authority. The definition of "foreign financial regulatory authority" in section 3(a)(51) of the Exchange Act has been reproduced, with minor modifications, in Item 7. Question F of Item 7 has been retained to ensure that applicants report any orders of a foreign government, court, regulatory agency, or exchange relating to investments or fraud, that have not been disclosed in response to other questions in Item 7.

[15] Although orders imposing monetary sanctions and cease and desist orders are not specifically included in the term "statutory disqualification" under section 3(a)(39) of the Exchange Act, the amendments to Item 7 require disclosure of this information for two reasons: (1) To ensure that Form BD provides a complete description of an applicant's disciplinary history; and (2) to make this information available to state regulatory authorities for use in the registration process.

[16] Amendments to Form BD must be filed pursuant to rule 15b3–1 (17 CFR 240.15b3–1) and in accordance with the instructions to the form. For further discussion of the new filing requirements, see part III, *infra*.

percent of the applicant's securities-related revenue. This *de minimis* exception will ensure that broker-dealers are not required to continually update their forms to report infrequent activities, such as an occasional trade for a customer in the securities of a non-profit corporation, that are not part of their regular business. The Commission emphasizes, however, that any activity, however insignificant, that triggers a specific Commission or SRO requirement nevertheless will continue to be required to be reported under Item 10. For instance, broker-dealers will need to report all activities involving municipal securities, government securities, and options.[17]

C. Amendments to the Schedules

1. Schedules A, B, and C

Schedules A, B, and C to Form BD require applicants to disclose the identity of their executive officers, directors, partners, and direct and indirect owners. Specifically, with respect to shareholders, Schedules A and B currently require disclosure of (1) all five percent owners and all intermediate owners of the broker-dealer, and (2) all five percent owners of the intermediate owners and each successive five percent owner of those owners until individual owners are listed, unless the intermediary is a public reporting company under section 12 or 15(d) of the Exchange Act.[18] Similar provisions apply to limited partners that have contributed five percent or more of a partnership's capital.

In many cases, the current disclosure requirements have made registration both costly and burdensome for broker-dealers. For example, in order to comply with these requirements, broker-dealers have had to investigate and provide information about five percent owners of distant affiliates, even when those persons were not reasonably in a position to control the management or policies of the broker-dealer. Moreover, the existing reporting requirements often have been an impediment to the registration of applicants with foreign ownership due to the difficulty in obtaining ownership information about remote foreign interests.[19]

To address these problems, the Commission proposed in the Release to narrow the scope of the disclosure required by the schedules to Form BD. Rather than reporting each successive five percent indirect owner of a direct owner, under the proposed amendments, broker-dealers would only have been required to disclose each successive twenty-five percent indirect owner of a direct owner. In addition, the Commission proposed to simplify the structure of the schedules to assist registration examiners in determining the chain of ownership of each applicant.

Julius Baer Securities strongly endorsed the amendments to the schedules, stating that, "[t]his change will be genuinely helpful to broker-dealers with foreign ownership because it will remove a significant impediment to the registration and the updating of their disclosure." The ABA also believed that the new schedules were a significant improvement, and particularly supported the requirement that twenty-five percent indirect owners be disclosed on Schedule B.[20] While the ABA approved of the amendments, it recommended that they be extended to limit the scope of disclosure of direct owners of a broker-dealer. The ABA argued that, in many cases, the requirement to disclose all five percent direct owners results in broker-dealers having to disclose extremely diluted ownership interests.

The Commission has determined at this time to adopt the amendments to Schedules A, B, and C as proposed. By adding certain persons currently not required to be disclosed, and by eliminating disclosure of persons whose ownership interests are so remote they effectively are not in a position to control the broker-dealer, the amendments will focus attention on those persons that are most likely to be in a position to affect the management or policies of the broker-dealer. Any persons having actual control that are not required to be disclosed on the schedules will continue to be disclosed in response to Item 6 of the Form.[21]

(a) *Schedule A: Directors, officers, and direct owners.* Under the revised schedules, applicants will report executive officers, directors, and five percent direct owners on Schedule A.[22] Direct owners are persons who own, beneficially own, have the right to vote, or the power to sell or direct the sale of, five percent or more of the voting securities of the broker-dealer. Broker-dealers that are public reporting companies under section 12 or 15(d) of the Exchange Act, however, will not be required to list their direct owners on Schedule A because these owners already are disclosed pursuant to the requirements of section 13 of the Exchange Act.[23] In the case of an applicant that is a partnership, all general partners and those limited partners that have the right to receive upon dissolution, or that have contributed, five percent or more of the partnership's capital, will be reported on Schedule A.

For purposes of Schedule A, persons will be deemed to beneficially own securities that they have the right to purchase, in sixty days or less, through the exercise of an option, warrant, or right to purchase the security.[24] Persons also will be deemed to own securities held by certain immediate family members with whom they share the same residence.[25] The ABA questioned

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[17] *See, e.g.*, NASD Schedules to the By-Laws, Schedule C, Pt. II, § 2(f), NASD Manual (CCH) ¶ 1784. Under these rules, even if a broker-dealer plans to engage in only a *de minimis* business input and call options with the public, it must demonstrate that it has at least one registered options principal that has passed the appropriate NASD qualification examination.

Item 10 also has been amended to include additional categories of business activities. Questions E (broker-dealer selling corporate debt securities) and T.2. (broker-dealer selling tax shelters or limited partnerships in the secondary market) were suggested by the NASD, while Question X (broker-dealer selling interests in mortgages or other receivables) was suggested by the ABA.

[18] Ownership of a public reporting company under section 12 or 15(d) of the Exchange Act already is disclosed pursuant to section 13 of the Exchange Act (15 U.S.C. 78l, 78o(d), 78m).

[19] In addition, unlike owners of domestic companies that are registered under section 12 or 15 of the Exchange Act, foreign owners of broker-dealers typically are not registered and therefore are unable to take advantage of the exception from disclosure provided for public reporting companies.

[20] In addition, the Commission staff spoke to counsel for several broker-dealers who expressed unanimous support for the proposed amendments to the schedules.

[21] Item 6 generally asks for information concerning any person not named in the schedules that directly or indirectly controls the management or policies of the applicant through an agreement or other means, or that finances the business of the applicant.

[22] All *indirect* owners will be reported on Schedule B, while amendments to Schedules A and B will be made on Schedule C. *See* discussion, *infra*.

[23] An applicant that is directly owned by a public reporting company, X, but that is not itself a reporting company, would disclose X on Schedule A, but would not disclose the owners of X (*i.e.*, the indirect owners of the applicant) on Schedule B. See discussion, *infra*.

[24] Assuming that it is exercisable within 60 days, the option or warrant would be disclosed at the time it is acquired, rather than at the time it is exercised. See, generally, Rule 13d–3(d)(1) under the Exchange Act [17 CFR 240.13d–3(d)(1)].

[25] For these purposes, family members include children, stepchildren, grandchildren, parents, stepparents, grandparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law.

The Commission historically has deemed a person to be the beneficial owner of securities held by immediate family members sharing the same residence on the grounds that the relationship between that person and his or her relative often results in the person obtaining benefits substantially equivalent to ownership. As the Commission stated

Continued

whether specific disclosure of family holdings was necessary in light of the disclosure required by Item 6 of Form BD.[26] The Commission believes that disclosure of this information on the schedules will provide securities regulators with a more comprehensive depiction of the ownership of the broker-dealer. Moreover, the requirement to attribute family holdings is designed to prevent the concealment of ownership interests through the assignment of actual ownership to family members.

(b) *Schedule B: Indirect Owners.* Applicants for registration will now be required to report *indirect* ownership on Schedule B. Specifically, they will disclose all twenty-five percent owners of a direct owner, their twenty-five percent owners, and each successive twenty-five percent owner of a twenty-five percent owner, continuing up the chain of ownership until a reporting company is reached. If there is no reporting company in the chain of ownership, disclosure will cease when the last twenty-five percent owner is listed. The attribution rules of Schedule A discussed above also apply to indirect owners reported on Schedule B. In the case of an owner that is a partnership, all general partners and those limited partners that have the right to receive upon dissolution, or that have contributed, twenty-five percent or more of the capital of the partnership, must be disclosed on Schedule B. For example, a broker-dealer that is fifty percent owned by a reporting company, X, forty percent owned by a non-reporting company, Y, and ten percent owned by a partnership, Z, would report X, Y, and Z on Schedul A. The broker-dealer would not have to report the owners of X on Schedule B because X is a reporting company. It would be required to disclose the twenty-five percent owners of Y on Schedule B, as well as their twenty-five percent owners, and so on, until a reporting company or the last twenty-five percent holder is disclosed. It also would disclose on Schedule B the general partners of Z and all limited partners entitled to twenty-five percent of the proceeds upon dissolution, as well as their twenty-five percent owners, continuing up the chain of ownership until a reporting company or the last twenty-five percent owner is listed.

The amendments to Schedule B are based on the assumption that only twenty-five percent indirect owners of five percent direct owners are in a position to influence the policies of the broker-dealer.[27] Thus, Schedule B does not require disclosure of any person who, for example, has effective control of the applicant through twenty-four percent ownership of each of two fifty percent owners. If the combination of the two twenty-four percent ownership interests allows such person to "cause the direction of management or policies" of the broker-dealer, his or her ownership would be required to be reported in response to Item 6 of Form BD.

(c) *Schedule C: Amendments to schedules A and B.* All amendments to Schedules A and B, including additions and deletions of names reported on the schedules, will now be made on a separate Schedule C. Schedules A and B will be filed only with the initial application for registration.

2.Other Schedules

In addition, as proposed, the Commission is adopting minor amendments to Schedules D and E, and adding a new Schedule DRP to Form BD. Under the revised schedules, details of answers to items in Form BD will continue to be provided on Schedule D, *except* for answers to Item 7 and the other schedules to the Form. Descriptions of events resulting in an affirmative answer to Item 7 of the Form will be provided on a new Schedule DRP. This schedule, which is essentially the same as the DRP page currently filed by registered representatives with the NASD as part of Form U–4, will be integrated into the CRD system. Broker-dealers that maintain a current Form BD or Form U–4 on the CRD therefore will not be required to complete an entire Schedule DRP, but will only fill out Item 1 and attach a copy of the DRP page previously filed with the CRD.[28] For each new event resulting in an affirmative answer to Item 7 of Form BD or an update of an event that previously has been reported, the registrant will be required to file a new Schedule DRP (as is now required for Schedule D). Finally, Schedule E will continue to require broker-dealers to disclose information regarding their branch offices, albeit in a more structured format.[29]

III. Filing Instructions

The amendments to Form BD become effective on November 16, 1992. Thus, all applicants filing for broker-dealer registration on or after that date will be required to file on the new revised Form BD.

In addition, broker-dealers that currently are registered with the Commission should review their Form BD filings to determine whether they contain all of the information required by amended Item 7 (disciplinary background information). To the extent that the revisions to Form BD result in an affirmative answer to a question in Item 7, registered broker-dealers will be required to file an amendment to their Form BD on November 16, 1992 (or as soon as possible after that date).[30] Broker-dealers that can answer "no" to all of the questions in amended Item 7 will *not* be required to file an amended Form BD at that time. Further, all registrants will be required to file a new revised Schedule A and Schedule B the next time they need to amend their ownership information.[31]

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in Securities Exchange Act Release No. 26333 (December 2, 1988), 53 FR 49997, an attribution rule "focuses on family members in the same residence, who reasonably may be assumed to act in one degree or another as an economic unit, and who may benefit from each other's enrichment." See *also* Rule 16a–1(a)(2)(ii)(A) [17 CFR 240.16a–1(a)(2)(ii)(A)]; and Rule 16a–1(e) (defining "immediate family" for purposes of Section 16). Like Rule 16a–1, the Form BD attribution rule includes adoptive relationships.

[26] The ABA further questioned how securities beneficially owned by family members would be reported. Under the revised schedules, interests of family members would be disclosed separately, unless the family member in question exercises investment and/or voting power over the shares of the other member. In that case, the ownership interests would be aggregated. For example, if a father directly owned 4 percent of the applicant and an adult daughter sharing the same residence owned 2 percent, both would have to be named on Schedule A. If, however, the daughter was a minor child and the father exercised investment or voting power over the securities held in her name, the father would add the securities held by his daughter to his own holdings. The father thus would report 6 percent ownership of the applicant on Schedule A.

[27] The amendments also are consistent with the revised definition of "control" in the instructions to Form BD. Under this definition, persons who directly or indirectly have the right to vote, or the power to sell or direct the sale of, twenty-five percent or more of a class of voting securities are presumed to have control of the broker-dealer.

[28] Item 1 requests the name of the applicant or affiliate and certain other identifying information.

[29] Among other items, Schedule E requires disclosure of the location and name of the supervisor of each branch office, as well as any opening or closing of an office.

[30] The amendment would include page 1 (the execution page), page 3 or 4 (amended to show the new affirmative answers to questions in Item 7), and Schedule DRP (providing detailed information with respect to the affirmative answers to questions in Item 7).

[31] As discussed at note 2, *supra*, the Commission is preparing to join the CRD system. If the Commission's rule proposals relating to the CRD are adopted as proposed, broker-dealers that are not members of the NASD will be required to file a complete new Form BD (as amended) with the CRD over a fixed period of time. See Release 34–30959, discussing proposed amendments to the broker-dealer registration rules and filing instructions. This release also proposes several additional amendments to Form BD.

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act [32] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that the amendments to Form BD will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. On the contrary, the amendments should mitigate some of the costs currently associated with broker-dealer registration.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[33] regarding the revisions to Form BD. A copy of the FRFA may be obtained from Belinda Blaine, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549; at (202) 504–2418.

[32] 15 U.S.C. 78w(a)(2).

[33] 5 U.S.C. 603.

List of Subjects in 17 CFR Part 249

Broker-Dealers, Reporting and recordkeeping requirements, Securities.

V. Statutory Basis

15 U.S.C. 78*o*, 78o–5, 78q, 78w.

For the reasons set out in the preamble, the Commission is amending title 17, chapter II, part 249 of the Code of Federal Regulations as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

2. By revising Form BD (17 CFR 249.501) to read as follows:

§ 249.501 Form BD, for application for registration as a broker and dealer or to amend or supplement such an application.

Note: Form BD does not appear in the Code of Federal Regulations. The revised Form BD is attached as Appendix 1 to this release.

Dated: July 27, 1992.

By the Commission.

Jonathan G. Katz,

Secretary.

Appendix 1

Form BD

Uniform Application for Broker-Dealer Registration

BILLING CODE 8010-01-M

INSTRUCTIONS FOR FORM BD

1. **Updating** -- By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and, except for Schedule C, circle the number of the item being changed.

2. **Contact Employee** -- The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. **Format**

   - Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing and each amendment to the form. Amendments to Schedules C, D and DRP also must be accompanied by an Execution Page (Page 1). Schedules A & B are amended by filing Schedule C.
   - Type all information.
   - Give the name of the broker-dealer and date on each page.
   - Use only the Form BD and its Schedules or a reproduction of them.

4. **Definitions**

   - Applicant -- The broker-dealer applying on or amending this form.
   - Control -- The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)
   - Jurisdiction -- Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.
   - Person -- An individual, partnership, corporation or other organization.
   - Self-regulatory organization -- Any national securities or commodities exchange or registered securities association, or registered clearing agency.

5. **Schedules A, B and C** -- File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B.

6. **Schedule D** -- Schedule D provides additional space for explaining "yes" answers to Form BD items (except for Item 7), but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. **Schedule DRP** -- All information relating to an event reportable under Item 7 must be provided on Schedule DRP. Applicant may submit a partially completed Schedule DRP (as specified in the Schedule) only if the applicant or control affiliate for whom the Schedule is being filed has submitted a fully-completed Schedule DRP (in connection with another Form BD filing) or a DRP Page (in connection with a Form U-4 filing) relating to the occurrence of the same event to the Central Registration Depository (CRD) system of the NASD. In such cases this fully-completed Schedule DRP or DRP Page must be attached to the applicant's Schedule DRP.

8. **Schedule E** -- Schedule E amendments reporting changes in Branch Offices may be submitted without an execution page.

9. **Government Securities Activities**

   A. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting only a government securities business.

   B. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

   C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

10. **Federal Information Law and Requirements** -- The Exchange Act, Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

FORM BD
Page 1

Applicant:		CRD No.:	DATE MM/DD/YY

Uniform Application for Broker-Dealer Registration

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ Application ☐ Amendment

1. Exact name, principal business address, mailing address, if different, and telephone number of applicant:

A. Full name of applicant (if sole proprietor, state last, first and middle name):

_____

B. IRS Empl. Ident. No.:

_____

C. Name under which broker-dealer business primarily is conducted, if different:

_____

List on Schedule D any other name by which the firm conducts business.

D. If this filing makes a name change on behalf of the applicant, enter the previous name and specify whether the name change is of the applicant name (1A) or business name (1C):

_____ ☐ (1A) ☐ (1C)

E. Firm main address: (Do Not Use A P.O. Box)

_____ (Number and street) _____ (City) _____ (State) _____ (Zip Code - All Nine Digits)

F. Mailing address, if different:

_____

G. Business Telephone Number:

_____ (Area Code) _____ (Telephone Number)

H. Contact Employee:

_____ (Name and Title) _____ (Area Code) _____ (Telephone No.)

EXECUTION

For the purpose of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and applicant hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the applicant in said State(s) upon whom may be served any notice, process, or pleading in any action or proceeding against the applicant arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the applicant hereby consents that any such action or proceeding against the applicant may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if applicant were a resident in said State(s) and had lawfully been served with process in said State(s).

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1.E. and 1.F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____ _____

Date Name of Applicant

By: _____ _____

Signature and Title Print Name

Subscribed and sworn before me this _____ day of _____, _____ by _____

year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization. To amend, circle items being amended. Affix notary stamp or seal where applicable.

FORM BD Page 2

Applicant:		CRD No.:	DATE MM/DD/YY

2. Indicate in the boxes below each jurisdiction in which the applicant is registered or wishes to register as a broker-dealer. If any registration, license, or membership listed is of a restricted nature, explain fully on Schedule D.

____ Securities and Exchange Commission

SRO: ASE ☐ BSE ☐ CBOE ☐ CSE ☐ NSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ Other (Specify)____

JURISDICTION

AL ☐ AK ☐ AZ ☐ AR ☐ CA ☐ CO ☐ CT ☐ DE ☐ DC ☐ FL ☐ GA ☐ HI ☐ ID ☐
IL ☐ IN ☐ IA ☐ KS ☐ KY ☐ LA ☐ ME ☐ MD ☐ MA ☐ MI ☐ MN ☐ MS ☐ MO ☐
MT ☐ NE ☐ NV ☐ NH ☐ NJ ☐ NM ☐ NY ☐ NC ☐ ND ☐ OH ☐ OK ☐ OR ☐ PA ☐
RI ☐ SC ☐ SD ☐ TN ☐ TX ☐ UT ☐ VT ☐ VA ☐ WA ☐ WV ☐ WI ☐ WY ☐ PR ☐

3. Indicate date and place applicant obtained its legal status (i.e., place of incorporation, where partnership agreement was filed, or where applicant entity was formed):

Date of formation _____ (MM/DD/YY). Place of formation _____ of:

CORPORATION ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER ☐ Specify_____

Applicant's fiscal year ends _____ (MM/DD).

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these Schedules must be provided on Schedule C.

4. If applicant is a sole proprietor, state full residence address and Social Security Number.

Social Security No:_____

_____ (Number and street) _____ (City) _____ (State) _____ (Zip Code - All Nine Digits)

5. Is applicant at the time of this filing succeeding to the business of a currently registered broker-dealer? (Do not report previous successions already reported on Form BD)..... Yes ☐ No ☐

If "yes," answer the questions below and describe the details of the succession on Schedule D.

A. Date of Succession: _____

B. Name of Predecessor: _____

IRS Empl. Ident. No.:_____ Firm CRD No. (if any):_____ SEC File Number: 8-_____

6. Does any person not named in Item 1 or Schedules A, B, or C, directly or indirectly:

A. Control the management or policies of applicant through agreement or otherwise? See instructions for Definition of Control. (If yes, state on Schedule D the exact name of each person and describe the basis for the person's control.)..... Yes ☐ No ☐

B. Wholly or partially finance the business of applicant in any manner other than by: (1) a public offering of securities made pursuant to the Securities Act of 1933; (2) credit extended in the ordinary course of business by suppliers, banks and others; or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1)? (If "yes," state on Schedule D the exact name of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD Page 3	Applicant:		CRD No.:	DATE MM/DD/YY

7. Background Information

Use Schedule DRP for providing details to "yes" answers to the questions in Item 7.

Definitions:

- Control affiliate - A person named in Items 1.A., 6. or in either Schedules A, B or C as control persons or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by the applicant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.

- Investment or investment-related - Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).

- Involved - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

- Foreign financial regulatory authority - Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a membership organization, a function of which is to regulate the participation of its members in the activities listed above.

A. In the past ten years has the applicant or a control affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") in a domestic or foreign court to:

(1) a felony or misdemeanor involving:
- investment or an investment-related business
- fraud, false statements, or omissions
- wrongful taking of property, or
- bribery, forgery, counterfeiting or extortion? ..... Yes ☐ No ☐

(2) any other felony? ..... Yes ☐ No ☐

B. Has any domestic or foreign court:

(1) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity? ..... Yes ☐ No ☐

(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations? ..... Yes ☐ No ☐

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? ..... Yes ☐ No ☐

(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes? ..... Yes ☐ No ☐

(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities? ..... Yes ☐ No ☐

(5) imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity? ..... Yes ☐ No ☐

D. Has any other federal regulatory agency, any state regulatory agency, or foreign financial regulatory authority:

(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? ..... Yes ☐ No ☐

(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes? ..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD Page 4

Applicant:		CRD No.:	DATE MM/DD/YY

(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? Yes ☐ No ☐

(4) in the past ten years, entered an order against the applicant or a control affiliate in connection with an investment-related activity? Yes ☐ No ☐

(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? Yes ☐ No ☐

(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant? Yes ☐ No ☐

E. Has any self-regulatory organization or commodities exchange ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? Yes ☐ No ☐

(2) found the applicant or a control affiliate to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and Exchange Commission)? Yes ☐ No ☐

(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? Yes ☐ No ☐

(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? Yes ☐ No ☐

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud other than as reported in Items 7.A., B., or D.? Yes ☐ No ☐

G. Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item? Yes ☐ No ☐

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? Yes ☐ No ☐

I. Does the applicant have any unsatisfied judgments or liens against it? Yes ☐ No ☐

J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun? Yes ☐ No ☐

8. Does applicant:

A. Have any arrangement with any other person, firm or organization under which:

(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization? Yes ☐ No ☐

(2) The funds or securities of applicant or of any of its customers are held or maintained by such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR 240.15c3-3)? Yes ☐ No ☐

B. Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer? Yes ☐ No ☐

If the answer to any subsection of Item 8 is "yes," furnish full details on Schedule D as to each such arrangement, including the full name and principal business address of the other person, firm, or organization, and a summary of each such arrangement. Clearly label the subsection of Item 8 to which the details of each arrangement are provided.

9. Directly or indirectly, does applicant control, is applicant controlled by, or is applicant under common control with any partnership, corporation, or other organization engaged in the securities or investment advisory business? Yes ☐ No ☐

If the answer to Item 9 is "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. If any of the control affiliates are registered through the CRD system, indicate the Firm CRD number to aid in identification. See Instructions for Definition of Control.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD
Page 5

Applicant:		CRD No.:	DATE MM/DD/YY

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category that accounts for (or is expected to account for) less then 1% of annual revenue from the securities or investment advisory business.

A.	Exchange member engaged in exchange Commission business other than floor activities	☐ EMC
B.	Exchange member engaged in floor activities	☐ EMF
C.	Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D.	Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E.	Broker or dealer selling corporate debt securities	☐ [ ]
F.	Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G.	Mutual fund underwriter or sponsor	☐ MFU
H.	Mutual fund retailer	☐ MFR
I.	1. U.S. government securities dealer	☐ GSD
	2. U.S. government securities broker	☐ GSB
J.	Municipal securities dealer	☐ MSD
K.	Municipal securities broker	☐ MSB
L.	Broker or dealer selling variable life insurance or annuities	☐ VLA
M.	Solicitor of time deposits in a financial institution	☐ SSL
N.	Real estate syndicator	☐ RES
O.	Broker or dealer selling oil and gas interests	☐ OGI
P.	Put and call broker or dealer or option writer	☐ PCB
Q.	Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐ BIA
R.	Broker or dealer selling securities of non-profit organizations (e.g. churches, hospitals)	☐ NPB
S.	Investment advisory services	☐ IAD
T.	1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
	2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ [ ]
U.	Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V.	Trading securities for own account	☐ TRA
W.	Private placements of securities	☐ PLA
X.	Broker or dealer selling interests in mortgages or other receivables	☐ [ ]
Y.	Other (give details on Schedule D)	☐ OTH

		Yes	No
11. A.	Does applicant effect transactions in commodity futures, commodities or commodity options as a broker for others or dealer for its own account?	☐	☐
B.	Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D.)	☐	☐

12.	Is applicant applying for or continuing an existing solely registration as a government securities broker or dealer pursuant to Section 15C of the Securities Exchange Act of 1934?	☐	☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD
Page 6

Applicant:		CRD No.:	DATE MM/DD/YY

13. Notice of Government Securities Activities

A. Is applicant registered (or registering) as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer in addition to other broker-dealer activities?..... Yes ☐ No ☐

(Do not answer "yes" if applicant answered "yes" to Question 12.)

B. Is applicant ceasing its activities as a government securities broker or dealer?..... Yes ☐ No ☐

(Do not answer "yes" unless previously answered "yes" to Question 13A.)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule A of FORM BD Direct Owners and Executive Officers

Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 3)

1. Use Schedule A only in new applications to provide information on the direct owners and executive officers of the applicant. Use Schedule B in new applications to provide information on indirect owners. File all amendments on Schedule C. Complete each column.

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individual with similar status or functions;

   (b) in the case of an applicant that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the applicant, unless the applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) in the case of an applicant that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) in the case of an owner that is a trust, the trust and each trustee.

3. Complete the "Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

4. (a) In the "Control Person" column, enter "yes" if person has "control" as defined in the instructions to this form, and enter "no" if the person does not have control. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "control persons."

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

5. Ownership codes are: MA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
   A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule B of FORM BD Indirect Owners	Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 3)

1. Use Schedule B only in new applications to provide information on the indirect owners of the applicant. Use Schedule A in new applications to provide information on direct owners. File all amendments on Schedule C. Complete each column.

2. With respect to each owner listed on Schedule A, (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purpose of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (b) in the case of an owner that is a partnership, all its general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and

   (c) in the case of an owner that is a trust, each trustee.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. Complete the "Status" column by entering status as partner, trustee, shareholder, etc, and if shareholder, class of securities owned (if more than one).

5. (a) In the "Control Person" column, enter "yes" if the person has "control" as defined in the instructions to this Form, and enter "no" if the person does not have control.

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: C - 25% but less than 50% D - 50% but less than 75% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Entity in Which Interest is Owned	Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID	Official Use Only

Schedule C of FORM BD Amendments to Schedules A & B	Applicant:		CRD No.:	DATE MM/DD/YY

(Amendments to answers for Form BD Item 3)

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schedules for specific instructions for completing this Schedule C. Complete each column. File with a completed Execution Page (Page 1).

2. In the "Type of Amd." column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same person).

3. Ownership Codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

4. List below all changes to Schedule A:

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Type of Amd.	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

5. List below all changes to Schedule B:

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Type of Amd.	Entity in Which Interest is Owned	Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule D of FORM BD Continuation Sheet	Applicant:		CRD No.:	DATE MM/DD/YY

INSTRUCTIONS

- Use this Schedule D to report details of answers to Form BD Items except Item 7 and the other Schedules.
- File with a completed Execution Page (Page 1).
- Use this Schedule D only to report new information or changes/updates to previously submitted details. Do not repeat previously submitted information.
- Provide complete and concise information.

Item of Form	Answer

Schedule DRP of FORM BD Page 1	Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 7)

INSTRUCTIONS

- This Schedule DRP must be filed upon occurrence of an event reportable under Item 7 of Form BD.
- Use a separate schedule for each event or proceeding. An event or proceeding may be reported for more than one person or entity using one Schedule DRP. File with a completed Execution Page (Page 1).
- One event may result in more than one "yes" answer in Item 7; if so, use only one schedule to report all information relating to the single event.
- Provide clear and concise answers for each item on this schedule.
- It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this schedule.

1. A. The person(s) or entity(ies) for whom this Schedule DRP is being filed is (are): (check only one box)

☐ The Applicant ☐ One or more control affiliates ☐ Applicant and one or more control affiliates

If this Schedule DRP is being filed for a control affiliate, give the full name of the control affiliate below (for individuals, Last name, First name, Middle name). If the control affiliate is registered with the CRD, provide the CRD number. If not, indicate "non-registered" in the space for the CRD Number.

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

B. If the control affiliate is registered through the CRD, has the control affiliate submitted a DRP (with Form U-4) or Schedule DRP to the CRD system for the event?..... Yes ☐ No ☐

If answer is no, then complete Items 2-9 below. If the answer is yes, no other information on this schedule must be provided, but a copy of the DRP or Schedule DRP submission must be attached.

NOTE: The completion of this form does not relieve the control affiliate of its obligation to update its CRD records.

2. This Schedule DRP relates to the following questions in Item 7.

7A(1) ☐	7C(3) ☐	7D(4) ☐	7E(4) ☐
7A(2) ☐	7C(4) ☐	7D(5) ☐	7F ☐
7B(1) ☐	7C(5) ☐	7D(6) ☐	7G ☐
7B(2) ☐	7D(1) ☐	7E(1) ☐	7H ☐
7C(1) ☐	7D(2) ☐	7E(2) ☐	7I ☐
7C(2) ☐	7D(3) ☐	7E(3) ☐	7J ☐

3. Is this schedule being filed to change or update any information regarding a previously reported event or proceeding?..... Yes ☐ No ☐

4. Who initiated this event or proceeding? (Enter name of firm, regulator, customer, etc.)

_____

5. What type of event or proceeding was this? (i.e., Civil, Administrative, Criminal, Arbitration)

_____

Schedule DRP of FORM BD
Page 2

Applicant:		CRD No.:	DATE MM/DD/YY

6. On what date was the event or proceeding initiated?

7. Identify the docket or case number of the event or proceeding (if any).

8. What were the allegations against the applicant and/or control affiliate? (Include amounts of actual or alleged damages or claims, the type of product involved, and the name of the broker-dealer, if different from the current applicant.)

9. A. What is the current status of the event or proceeding?

B. On what date was this status reached?

C. What was the result? (Include felony/misdemeanor, a description of the penalties, amount of fine, payment or settlement; terms of the disposition, length of suspension or restriction, etc.)

10. You may provide a brief summary of this event or proceeding (Optional). (Your information must fit within the space provided.)

Schedule E of FORM BD	Applicant:		CRD No.:	DATE - MM/DD/YY

Use this schedule to open (ADD) or close (DELETE) business locations of applicant, and to update (CHANGE) information relating to existing applicant business locations other than the main office.

Instructions for Items 1-7. Complete Item 1-7 for each entry except where noted.

Item 1. Applicant must check one box only. For initial filings all business locations would be checked ADD. Failure to check this item will result in an incomplete filing and a delay in processing.

Item 2. Complete for all entries. The address must be the physical location. Post Office box only designations are not sufficient and cannot be processed.

Item 3. Complete for all entries. Give Supervisor name (last, first, middle) as it appears on most recent Form U-4 filing.

Item 4. Complete ONLY when applicant changes the address for an existing business location.

Item 5. Complete for all entries (if available).

Item 6. Complete for all entries. Will represent opening, closing, or effective date of change for that business location. Schedule E form date will be substituted for the effective date if Item 6 is incomplete or missing.

Item 7. Complete for all entries. Check YES or NO to denote whether location will be an Office of Supervisory Jurisdiction (OSJ) as defined in the NASD Rules of Fair Practice, Article III Section 27.

Item 8. Complete branch i.d. or billing code for all entries.

Repeat Items 1-8 for each business location submitted on this filing.

---

1. ___ADD ___DELETE ___CHANGE (you must check one box)

2. _____ Street
_____ P.O. Box (if appropriate), Suite, Floor
_____ City, State, Zip Code + 4

3. _____ Supervisor - Last, First, Middle Name

Complete Item 4 only if you are changing the address for this office.

4. _____ Street
_____ P.O. Box (if appropriate), Suite, Floor
_____ City, State, Zip Code + 4

7. OSJ Y___ or N___

8. I.D. or Code _____

5. _____ CRD Number of Supervisor

6. _____/_____/_____ Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE (you must check one box)

2. _____ Street
_____ P.O. Box (if appropriate), Suite, Floor
_____ City, State, Zip Code + 4

3. _____ Supervisor - Last, First, Middle Name

Complete Item 4 only if you are changing the address for this office.

4. _____ Street
_____ P.O. Box (if appropriate), Suite, Floor
_____ City, State, Zip Code + 4

7. OSJ Y___ or N___

8. I.D. or Code _____

5. _____ CRD Number of Supervisor

6. _____/_____/_____ Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE (you must check one box)

2. _____ Street
_____ P.O. Box (if appropriate), Suite, Floor
_____ City, State, Zip Code + 4

3. _____ Supervisor - Last, First, Middle Name

Complete Item 4 only if you are changing the address for this office.

4. _____ Street
_____ P.O. Box (if appropriate), Suite, Floor
_____ City, State, Zip Code + 4

7. OSJ Y___ or N___

8. I.D. or Code _____

5. _____ CRD Number of Supervisor

6. _____/_____/_____ Effective date (mm/dd/yr)

[FR Doc. 92-18169 Filed 7-30-92; 8:45 am]
BILLING CODE 8010-01-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-30959; File No. S7-25-92]

RIN 3235-AE54

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: In connection with its plan to coordinate the broker-dealer registration process with the Central Registration Depository, the Securities and Exchange Commission is publishing for comment several amendments to its broker-dealer registration rules. The proposed amendments would provide new instructions for filing Form BD, the uniform application form for broker-dealer registration, amendments to Form BD, and Form BDW, the uniform request form for broker-dealer withdrawal, with the Central Registration Depository. The amendments also would eliminate the requirement that applicants for broker-dealer registration file a statement of financial condition and representations regarding capital contributions, facilities, and financing, as part of their applications on Form BD. In addition, the Commission is proposing clarifying amendments to Form BD and the broker-dealer successor rules. Finally, the Commission is proposing an amendment to Schedule I of Form X-17A-5 (the FOCUS report) to require registered broker-dealers to disclose their affiliations, if any, with U.S. banks.

DATES: Comments should be received on or before August 31, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-25-92. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, or Belinda A. Blaine, Attorney, at (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In order to facilitate the broker-dealer registration process, the Securities and Exchange Commission ("Commission") is preparing to participate in the Central Registration Depository ("CRD"). The CRD is a computerized filing and data processing system operated by the National Association of Securities Dealers, Inc. ("NASD") that maintains registration information regarding NASD member firms and their registered personnel for access by state regulators, certain self-regulatory organizations ("SROs"), and the Commission.[1] The Commission's primary objective in joining the CRD system is to provide "one stop filing" for broker-dealers. Currently, applicants for broker-dealer registration that also are applying for membership in the NASD are required to file separate applications on Form BD, the uniform form for broker-dealer registration, with both the Commission and the NASD. Under the new system, broker-dealers will be able to file one application for registration on Form BD with the NASD, which will enter the information into the CRD system and then electronically forward the data to the Commission for review. Form BD amendments and withdrawals from registration on Form BDW also will be filed through the CRD.

The Commission believes that its direct participation in the CRD system will improve the efficiency of the registration process by creating a comprehensive, centralized database for all registrants, and by giving the Commission more immediate access to current data in filings made by broker-dealers. The new system also will result in significant cost savings to registrants, who will no longer be required to make multiple filings with the Commission, the NASD, and state agencies.

To prepare for its entry into the CRD system, the Commission is proposing several amendments to its broker-dealer registration rules and filing instructions, as well as certain clarifying amendments to Form BD. The Commission also is taking this opportunity to propose a revision to Schedule I to Form X-17A-5 (the FOCUS report), filed by broker-dealers with the Commission pursuant to rules 17a-5 and 17a-10 under the Securities Exchange Act of 1934 ("Exchange Act").[2]

[1] The CRD also contains information regarding the payment of filing fees and enforcement actions taken against broker-dealers and their registered personnel by the Commission, the SROs, the Commodity Futures Trading Commission, and state securities regulators.

[2] 17 CFR 240.17a-5, 240.17a-10.

II. Filing Procedures

The Commission plans to process broker-dealer filings through the CRD system in two phases. Under the first phase, all broker-dealers applying for registration with the Commission on or after November 16, 1992,[3] would file an executed original Form BD with the CRD.[4] Registered broker-dealers that are members of the NASD would *not* be required to file a new Form BD at that time because the CRD system already contains Form BD information on NASD members. However, any registered NASD member amending its Form BD filing on or after November 16, 1992, would need to file the amended pages, together with the execution page, with the CRD in accordance with the instructions to Form BD.[5]

The second phase of the plan involves only registered non-NASD member broker-dealers, whose filings would be processed through the CRD system over a period of seven months. These broker-dealers would be required to file a complete Form BD with the CRD during the week of:

(1) January 11, 1993, in the case of all non-NASD member broker-dealers whose SEC registration numbers are between 8-1656 and 8-26116;

(2) February 1, 1993, for all such broker-dealers whose SEC registration numbers are between 8-26158 and 8-33987;

(3) May 3, 1993, for all such broker-dealers whose SEC registration numbers are between 8-34006 and 8-38760;

(4) June 1, 1993, for all such broker-dealers whose SEC registration numbers are between 8-38763 and 8-41501;

(5) July 5, 1993, for all such broker-dealers whose SEC registration numbers are between 8-41505 and 8-43006;

(6) August 2, 1993, for all such broker-dealers whose SEC registration numbers are between 8-43009 and 8-43792; and

[3] All dates referred to in this release are approximate and subject to change.

[4] Consents to service of process filed by foreign broker-dealers on Forms 7-M, 8-M, 9-M, and 10-M pursuant to Rule 15b1-5 [17 CFR 240.15b1-5] and Rule 15Ca2-5 [17 CFR 240.15Ca2-5] would continue to be filed directly with the Commission, but a copy would be sent to the CRD with Form BD.

[5] In conjunction with this release, the Commission is publishing a release adopting several amendments to Form BD. See Securities Exchange Act Release No. 30958 (July 27, 1992). These amendments become effective on November 16, 1992. Accordingly, any broker-dealer applying for registration or amending its registration form through the CRD system would be required to use the current, revised version of Form BD. For example, to report an affirmative answer to a question in Item 7, a registered broker-dealer would need to file a new Schedule DRP (describing the event reportable under Item 7) in addition to the amended pages and page 1 of the form.

(7) September 6, 1993, for all such broker-dealers whose SEC registration numbers are 8–43794 and above.

Any subsequent amendments to these Form BD filings also would be filed with the CRD. Registered non-NASD member broker-dealers that need to amend their Form BD subsequent to November 16, 1992, but prior to their scheduled processing date, would promptly file a complete amended Form BD with the CRD.[6]

In addition, as of November 16, 1992, NASD member broker-dealers requesting withdrawal from registration would file one manually signed original Form BDW, the uniform request form for broker-dealer withdrawal, and a copy of the required sections of part II (or part IIA for non-clearing firms) of their FOCUS reports with the CRD.[7] Non-NASD member broker-dealers that have not previously filed a Form BD with the CRD would begin filing for withdrawal from registration with the CRD on September 30, 1993.[8] Non-NASD members, however, would continue to send a copy of Form BDW, together with the required attachments,[9] directly to the Commission's Office of Filings, Information, and Consumer Services.

The Commission is proposing to amend Rules 15b1–1, 15b3–1, and 15b6–1 [10] and to revise the special instructions for completing or amending Form BD [11] to incorporate the new instructions for filing registration materials through the CRD system, as described above. All applications, amendments, and withdrawals from registration filed with the CRD would be deemed to be filed with the Commission.[12] The General Instructions to Form BDW also would be revised to amend all references with respect to filing with the Commission.

III. Statement of Financial Condition and Representations

To facilitate broker-dealer registration through the CRD system, the Commission also is proposing to rescind rule 15b1–2 and related rules 15Ba2–2(b) and 15Ca2–2, all under the Exchange Act. [13] Rule 15b1–2 requires an applicant for broker-dealer registration to submit a statement of financial condition and other information regarding its financial resources as part of its application on Form BD. Specifically, the rule requires the applicant to provide: (i) Information regarding its assets, liabilities, and net worth; (ii) a schedule listing its securities and, if readily marketable, their market value; (iii) a computation of aggregate indebtedness and net capital in compliance with Rule 15c3–1 [14] under the Exchange Act (or the relevant rule of the national securities exchange of which the applicant is or will be a member); (iv) a statement describing the nature and source of capital, and representing that such capital has been and will continue to be contributed to the business; (v) a representation that adequate arrangements have been made for the establishment and maintenance of facilities, financing, and certain other aspects of its business; and (vi) a statement describing the arrangements made for obtaining the funds necessary to operate the business in the ensuing year, setting forth the anticipated expenses for that year, and providing information regarding arrangements made to obtain additional financing should it become necessary. Rules 15Ba2–2(b) and 15Ca2–2 contain similar disclosure requirements for non-bank municipal securities dealers whose business is exclusively intrastate and government securities broker-dealers.[15]

These filing requirements originally were intended to assist the Commission in determining whether applicants had the requisite amount of capital and the capacity to operate as a broker-dealer. The rules of the SROs, however, also require broker-dealers to file a statement of financial condition, or to otherwise demonstrate their ability to conduct business as a broker-dealer, with their applications for membership. For example, the NASD By-laws require an applicant for membership to file, among other things, its most recent balance sheet, a computation of net capital, and a copy of its written supervisory procedures. The NASD pre-membership interview also addresses the applicant's business plans to determine their adequacy and consistency with the federal securities laws and the rules of the NASD.[16] This information, as well as other registration information obtained by the SROs, is readily available to the Commission.

Thus, the Commission believes that the filing requirements under rules 15b1–2, 15Ba2–2(b), and 15Ca2–2 are duplicative and not necessary to ensure that applicants for broker-dealer registration comply with the net capital and other requirements of the Exchange Act.[17] Eliminating these requirements would result in significant savings to broker-dealers without affecting the Commission's ability to monitor the financial condition of applicants. Moreover, it would simplify the Commission's entry into the CRD system, thereby facilitating the broker-dealer registration process.

IV. Broker-Dealer Successor Rules

A. Introduction

The Commission has promulgated several rules under the Exchange Act governing the registration of successors

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[6] These broker-dealers would not be required to resubmit an application on their scheduled date.

Until further notice, all non-NASD members would need to file separately with the states in which they are registering. The NASD is developing modifications to the CRD system that eventually will allow non-NASD members to file for registration with the states through the CRD system.

[7] Form BDW instructs broker-dealers that file FOCUS reports to attach a copy of the "Statement of Financial Condition" and "Computation of Net Capital" sections. Broker-dealers that do not file FOCUS reports are required to attach a statement of financial condition giving the type and amount of the firm's net worth and assets and liabilities. Both the FOCUS report and the statement of financial condition must be dated no earlier than 10 days before the Form BDW is filed.

[8] Prior to September 30, 1993, non-NASD members would file Form BDW with the CRD only if they have already filed Form BD with the CRD. If they have not previously filed Form BD with the CRD, they would continue to file with both the Commission and the CRD.

[9] See n. 7, *supra*.

[10] 17 CFR 240.15b1–1, 240.15b3–1, and 240.15b6–1. Amendments also would be made to the analogous rules governing non-bank municipal securities dealers (whose business is exclusively intrastate) and government securities broker-dealers. *See* 17 CFR 240.15Ba2–2, 240.15Bc3–1, 240.15Ca1–1, 240.15Ca2–1, and 240.15Cc1–1.

[11] The Special Instructions to Form BD originally were adopted in Securities Exchange Act Release No. 11595 (August 14, 1975).

[12] However, the 45-day period under Section 15(b)(1) of the Exchange Act (or any other relevant filing period) would not begin to run until the CRD has transmitted the form data to the Commission and the Commission has determined that the filing is complete. For a brief discussion of Section 15(b)(1) *see* note 33, *infra*.

[13] 17 CFR 240.15b1–2, 240.15Ba2–2(b), and 240.15Ca2–2. Rule 15b1–2 was adopted in its current form in Securities Exchange Act Release No. 9504 (May 12, 1972), 37 FR 9866.

[14] 17 CFR 240.15c3–1.

[15] In lieu of a computation of net capital in compliance with the Exchange Act or the rules of the applicable national securities exchange, Rule 15Ca2–2(a) requires a firm registering as a government securities broker or dealer to provide a computation of capital in accordance with the capital requirements established by the Secretary of the Treasury. Firms applying for registration as a government securities broker or dealer also are not required to submit certain representations. See note 17, *infra*.

[16] NASD Schedules to the By-Laws, Schedule C, part I, § § (1)(a)-(c), NASD Manual (CCH) ¶ 1783.

[17] Currently, firms registering as government securities broker-dealers are not required to file a description of their arrangements for personnel, physical facilities, preservation of books and records, and supervision of personnel. As the Commission noted in the adopting release for rule 15Ca2–2, "generally this information is either disclosed on Form BD or is readily ascertainable by a SRO when it conducts a pre-membership interview, and therefore these requirements place an unnecessary burden on applicants." See Securities Exchange Act Release No. 24372 (April 21, 1987), 52 FR 16833.

to broker-dealers.[18] The broker-dealer successor rules apply when an unregistered entity assumes and continues the business of a registered broker-dealer, which then ceases its broker-dealer activities. The purpose of these rules is to allow the unregistered broker-dealer to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor broker-dealer.

The broker-dealer successor rules are intended to be used only in situations where there is a direct and substantial business nexus between the predecessor and the successor broker-dealer; they do not contemplate the sale of broker-dealer registrations. To ensure that there is a legitimate connection between the predecessor and successor, the rules require that the successor broker-dealer acquire or assume substantially all of the assets and liabilities of the predecessor's business.[19] Although the successor broker-dealer need not acquire every asset and liability of the predecessor, under this standard no significant asset or liability may be omitted.[20]

In addition, because the successor rules are intended to allow an unregistered successor broker-dealer to rely on the registration of its predecessor for a limited period of time, they do not apply to corporate reorganizations that only involve registered broker-dealers. In those cases, there is no interruption in the business of the registered broker-dealers; thus, each broker-dealer would only be required to file an amendment to Form BD pursuant to rule 15b3–1(b) to reflect any change in its operations. For instance, if two registered broker-dealers merge, the surviving broker-dealer would file an amended Form BD, while the acquired broker-dealer would file for withdrawal from registration on Form BDW. Similarly, if a person or entity merely acquires some or all of the shares of a registered broker-dealer, or if one registered broker-dealer purchases or otherwise assumes part of the business assets or personnel of another registered broker-dealer and both broker-dealers continue to operate as registered broker-dealers, there would be no need to use the successor provisions.[21]

B. Proposed Amendments to Rule 15b1–3

1. Succession by Amendment

The Commission is proposing minor structural changes to Rule 15b1–3 [22] in order to address certain ambiguities that have arisen with respect to the registration of successors to registered broker-dealers. The amendments to paragraph (b) of the rule would clarify that the only successions that may be completed by filing an amendment to Form BD are those successions that are the result of a formal change in the structure or legal status of the broker-dealer; *i.e.*, successions that involve the creation of a new legal entity, but no practical change in the operations of the broker-dealer. Thus, an internal corporate reorganization or restructuring in which broker-dealer activities are transferred from one entity to another within the same organization, but that does not result in a change of control of the broker-dealer, would be filed by amendment.[23] In contrast, a corporate reorganization involving a change of control, such as a change in the beneficial owners of the broker-dealer, must be filed by application on Form BD pursuant to paragraph (a) of Rule 15b1–3, described below.[24]

In addition, a succession based on a change in the state of incorporation or a change in the form of business, such as a change from a partnership to a corporation or a change in the tax status of a corporation, may be completed by amending the predecessor's Form BD promptly after the succession.[25] Finally, a change in the composition of a partnership by death, withdrawal, or inclusion of a partner, which results in the dissolution of the partnership under local law, would be completed by filing an amendment to Form BD in order to reflect the changes in the partnership.[26] In all of the above situations, the predecessor broker-dealer must cease operating as a broker-dealer.

2. Succession by Application

The Commission also is proposing several technical amendments to paragraph (a) of Rule 15b1–3 to clarify that in all other successor situations, the successor may operate under the registration of the predecessor for a limited period of time only if it files its own complete application for registration on Form BD. Thus, when an unregistered entity purchases or assumes substantially all of the assets and liabilities of a registered broker-dealer and then operates its business through the unregistered entity, the new entity must file a complete application on Form BD promptly after the succession, while the predecessor must file for withdrawal from registration on Form BDW pursuant to Rule 15b6–1.[27]

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[18] 17 CFR 240.15b1–3, 240.15Ba2–4, 240.15Ba2–6, and 240.15Ca2–3.

[19] A broker-dealer's status under the successor rules, however, is not determinative of whether the broker-dealer will be held liable for the acts of its predecessor. See, generally, *Ricciardello v. J.W. Gant & Co.*, [1989–1990] Fed. Sec. L. Rep. (CCH) ¶ 94,798 (July 7, 1989); and Securities Exchange Act Release No. 25531 (March 30, 1988) (successor broker-dealer held liable for the predecessor's failure, prior to the succession, to maintain the required balance of cash or qualified securities in its reserve account for the exclusive benefit of customers).

[20] The predecessor's liabilities, for example, may include: customer claims, monies or securities due to customers or other broker-dealers, pending legal actions relating to securities activities, unsatisfied judgments, and outstanding fees or fines. In a few instances, the staff of the Commission has granted no-action relief to allow successor broker-dealers to rely on Rule 15b1–3 without assuming a specific asset or liability of the predecessor. See, *e.g.*, *Alpha Management Inc.* (December 21, 1989) [available on LEXIS] (permitting a successor broker-dealer to file an application under paragraph (a) of Rule 15b1–3 without acquiring the shares of a subsidiary not engaged in broker-dealer activities); and *Franklin Financial Services, Inc.*, [1987–1988] Fed. Sec. L. Rep. (CCH) ¶ 78,329 (July 2, 1987) (allowing a successor to proceed under paragraph (a) without assuming unknown contingent liabilities of the predecessor. The predecessor represented that it would retain adequate funds in escrow to meet any such contingent liabilities). See also, generally, Rubin & Wilkinson, *Corporate Restructuring: The Meaning of "Substantially All" of a Corporation's Assets*, Insights, 9–13 (July 1991).

[21] In the latter case, both broker-dealers would file an amendment to their Form BD to reflect any changes in their operations.

[22] Rule 15b1–3 was adopted in its current form in 1985 pursuant to section 15(b)(2)(A) of the Exchange Act [15 U.S.C. 78o(b)(2)]. See Securities Exchange Act Release No. 22468 (September 26, 1985), 50 FR 41667.

[23] For example, an unregistered entity may acquire substantially all of the assets and liabilities of a registered entity owned by the same parent corporation by filing an amendment, provided that the surviving broker-dealer continues to be wholly owned by the parent corporation.

[24] For these purposes, the word "control" is defined in the instructions to Form BD.

[25] The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), Schedule D, and any other pages containing information that is no longer accurate as a result of the change in the form of organization of the broker-dealer. This amendment, which must be filed within 30 days of the date of the succession, would be deemed an application for registration filed by the predecessor and adopted by the successor.

[26] Other successor situations that may be completed by filing an amendment include a change: (i) From general corporation to S corporation status under subchapter S of the Internal Revenue Code of 1986, as amended; and (ii) in a registered broker-dealer's name that results in the dissolution of the broker-dealer under local law. If a broker-dealer's name change does not alter its legal status, however, the successor rules do not apply; instead, the broker-dealer would be required to promptly file an amendment to Form BD under Rule 15b3–1(b) to reflect its new name.

[27] 17 CFR 240.15b6–1. For example, a corporation providing both advisory and broker-dealer services may wish to separate these services by spinning off the broker-dealer activities into a new unregistered subsidiary. If the unregistered subsidiary acquires substantially all of the assets and liabilities of the broker-dealer operation or division of the corporation and there is a change of control of the broker-dealer, then paragraph (a) of Rule 15b1–3 would apply. See, e.g., *Alpha Management Inc.* (December 21, 1989) [available on LEXIS]. The

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Similarly, if two or more registered broker-dealers consolidate their firms and conduct their business through a new unregistered entity, which assumes substantially all of the assets and liabilities of the predecessor entities, the new entity would be required to file a complete application on Form BD, while the consolidating firms would each be required to file for withdrawal on Form BDW.[28]

Paragraph (a) of Rule 15b1–3 also applies to dual successions,[29] in which one registered broker-dealer subdivides its business into two or more new unregistered entities. A dual succession may occur, for instance, when a full service broker-dealer decides to separate its introducing broker functions from its clearing broker functions by creating two new separate entities. In that case, the successors in combination must acquire substantially all of the assets and liabilities of the predecessor broker-dealer. Each successor must then file a complete application on Form BD promptly after the succession, while the predecessor broker-dealer must file an application for withdrawal on Form BDW.

Although, as discussed above, the broker-dealer successor rules may be used to subdivide or reorganize a registered broker-dealer for legitimate business reasons, they may not be used to eliminate a substantial liability, to spin off personnel, or to transfer the registration of a "shell" broker-dealer that does not conduct any business.[30] Moreover, the broker-dealer successor rules are not available in cases where the predecessor broker-dealer continues to engage in broker-dealer activities.[31] Otherwise, confusion may result as to the registration status of the predecessor broker-dealer. Thus, if a registered broker-dealer shifts a portion of its business operations to a new unregistered entity, but remains in the broker-dealer business, the new entity must file a complete application for registration on Form BD and refrain from effecting securities transactions until its application is approved by the Commission pursuant to Section 15(b) of the Exchange Act.[32]

3. Filing

In addition to the structural amendments discussed above, the Commission is proposing to amend paragraph (a) of Rule 15b1–3 to provide that the registration of a predecessor broker-dealer ceases to be effective as the registration of the successor broker-dealer forty-five days after the application for registration on Form BD is filed by the successor, rather than seventy-five days after the succession.[33] The proposed amendments are intended to address situations in which a successor broker-dealer submits an application within thirty days of the succession, but because the application is incomplete in certain minor respects, the seventy-five day period expires before the successor broker-dealer's registration becomes effective. Under the modified rule, the forty-five day period would not begin to run until a complete application has actually been "filed" with the Commission.[34]

C. Proposed Amendments to Other Successor Rules

The Commission is proposing to revise the language of Rule 15Ca2–3 to be consistent with the proposed amendments to Rules 15b1–2 and 15b1–3, discussed above. Under rule 15Ca2–3,[35] a government securities broker-dealer that succeeds to and continues the business of a government securities broker-dealer registered pursuant to section 15C(a)(1)(A) of the Exchange Act,[36] may operate under the registration of the predecessor for seventy-five days if, within thirty days of the succession, it files (i) its own application for registration on Form BD, or (ii) in the case of a succession based on a change in the date or state of incorporation, form of organization, or composition of a partnership, an amendment to the predecessor's Form BD. The amendments to paragraph (a) of Rule 15Ca2–3 would provide that the registration of the predecessor broker-dealer ceases to be effective as the registration of the successor broker-dealer forty-five days after the application for registration is filed by the successor. For the reasons discussed in Part III of this release, the amendments to paragraph (b) of the rule would eliminate the requirement to file a statement of financial condition in conjunction with the amended Form BD.

Finally, corresponding structural changes would be made to Rules 15Ba2–4 and 15Ba2–6,[37] which permit a municipal securities dealer that succeeds to and continues the business of a registered municipal securities dealer to rely on the registration of the predecessor if it files an application or an amendment for registration on Form MSD (for a municipal securities dealer that is a bank or a separately identifiable department or division of a bank), or Form BD (for all other municipal securities dealers).

V. Form BD

The Commission also is proposing to amend Form BD to provide a uniform definition of the term "proceeding," as used in the disciplinary background provisions of the form. Specifically, Item 7(G) of Form BD requires applicants for broker-dealer registration to disclose whether they or their control affiliates are "now the subject of any proceeding that could result in a 'yes' answer" to the questions posed in parts A through F. The Commission historically has interpreted the term "proceeding" to include only administrative proceedings, civil litigation initiated by regulatory agencies, and final criminal actions.[38] In contrast, NASAA has interpreted "proceeding" to also include pending criminal charges and private civil litigation.[39]

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investment adviser would be subject to separate but similar successor provisions. *See* 15 U.S.C. 80b–3(g); 17 CFR 275.203–1(b), (c), (d).

Under the CRD's "mass transfer" categories (which determine whether the registered personnel of a broker-dealer may be transferred to another entity), this type of reorganization is referred to as an "acquisition."

[28] The CRD refers to this type of restructuring as a consolidation.

[29] The CRD refers to dual successions as partial acquisitions.

[30] *See* Securities Exchange Act Release No. 22468 (Sept. 28, 1985), 50 FR 41667.

[31] See, generally, *F.W. Horne & Co., Inc.* 38 S.E.C. 104 (1957) (finding that a successor broker did not succeed to the registration of another broker for purposes of the predecessor rule to rule 15b1–3, where the predecessor continued as a corporate entity with the ability to resume business in the future, and where the successor failed to acquire all of the assets of the predecessor broker).

[32] 15 U.S.C. 78o(b). The predecessor broker-dealer also would be required to promptly file an amendment on Form BD pursuant to rule 15b3–1(b) to reflect any changes in its operations. The CRD refers to this type of reorganization as a partial acquisition.

[33] This 45-day period would be consistent with Section 15(b)(1)(B) of the Exchange Act, which provides that the Commission has 45 days in which to grant registration or to institute proceedings to determine if registration should be denied.

[34] Under Rule 0–3 [17 CFR 240.0–3], a report or application is not "filed" for purposes of the Exchange Act until it fully complies with all of the requirements of the applicable rule or provision of the statute.

A successor broker-dealer, however, would not be permitted to "lock in" the 30 day window period by deliberately submitting an incomplete application, or by otherwise failing to file an application in good faith.

[35] Rule 15Ca2–6 was adopted in Securities Exchange Act Release No. 24372 (April 21, 1987), 52 FR 16833.

[36] 15 U.S.C. 78o–5(a)(1).

[37] Rules 15Ba2–4 and 15Ba2–6 were adopted in Securities Exchange Act Release No. 12602 (July 7, 1976), 41 FR 28048. As proposed, Rule 15Ba2–6 would be redesignated as Rule 15Ba2–4(b).

[38] Securities Exchange Act Release Nos. 2478 (February 6, 1976), 41 FR 7999, and 22468 (September 28, 1985), 50 FR 41667.

[39] NASAA Resolution (September 14, 1989).

In an effort to resolve these differing interpretations, the Commission, NASAA, and the NASD have developed a joint definition of the term "proceeding." Under this definition, which would be added to the instructions to Item 7, the term "proceeding" would include formal administrative and civil actions initiated by SROs, governmental agencies, and foreign financial regulatory authorities (as defined in Form BD), felony criminal indictments and informations, and misdemeanor informations involving the securities-related matters listed in Item 7(A)(1) of the form.[40] This interpretation of "proceeding," however, would not require broker-dealers to disclose investigations, civil litigation not initiated by an SRO or governmental agency, or criminal arrests and charges effected in the absence of a formal criminal indictment or information.

The Commission believes that adding this definition to Form BD would eliminate any existing confusion in the broker-dealer community as to the extent of disclosure required under Item 7. It also would be consistent with the purpose of Form BD—to provide a uniform application form that can be used to register with the states, the Commission, and the NASD.[41]

In addition, the Commission is proposing two clarifying amendments to Form BD. First, the instructions to the form would be revised to state explicitly that broker-dealers may only use the current version of Form BD when filing an application or an amendment.[42] Second, Schedule A would be amended to add a question that asks whether the applicant has any indirect owners to report on Schedule B. If this amendment is adopted as proposed, applicants will be able to avoid having to file a Schedule B only to indicate that they have no indirect owners.

VI. Schedule I of the FOCUS Report

Rule 17a–5 under the Exchange Act generally requires all registered broker-dealers to file monthly and quarterly reports with the Commission on Form X–17A–5 (also known as the "FOCUS" report).[43] To supplement either Part II or IIA of the FOCUS report, registrants also are required to file Schedule I at the end of each fourth quarter.[44] The purpose of this schedule is to obtain information about the economic and financial characteristics of the registrant.

Item 19 of Schedule I to the FOCUS report currently requests information about the registrant's affiliation with any foreign broker-dealer or bank. In addition to information about foreign bank affiliations, the Commission believes that it would be useful for regulatory purposes to obtain information about broker-dealer affiliations with U.S. banks. The Commission therefore is proposing to amend Schedule I to require broker-dealers to disclose whether they are an affiliate or subsidiary of a U.S. bank, and if so, to give the name of that affiliate or parent company, and the type of institution. The "Specific Instructions" to Schedule I also would be amended to refer to the definition of "bank" in section 3(a)(6) of the Exchange Act.[45]

VII. Conclusion and Request for Comments

The Commission believes that the proposed amendments to the broker-dealer registration rules would significantly reduce the burden on broker-dealers by eliminating the need to make multiple filings with federal and state securities regulators. The Commission solicits comments on these proposed amendments, including estimates of any costs or benefits perceived by commenters. In addition, the Commission requests comment on the proposed definition of "proceeding" and the amendment to Schedule I of the FOCUS report.

VIII. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act[46] requires the Commission, in adopting rules under the Exchange Act, to consider the impact on competition of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission preliminarily is of the view that adoption of the proposed amendments to the rules would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, in accordance with the requirements of the Regulatory Flexibility Act,[47] the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") regarding the proposed amendments. The IRFA states that the objectives of the proposed amendments are to (i) streamline the broker-dealer registration process by providing "one stop filing" through the CRD and by eliminating unnecessary paperwork; (ii) provide the Commission with more immediate, electronic access to data in broker-dealer filings; (iii) clarify the broker-dealer successor rules; (iv) reconcile the Commission and NASAA's differing interpretations of the word "proceeding," as used in Form BD; and (v) enable the Commission to obtain information about registered broker-dealers' affiliations with U.S. banks. The proposed amendments to the broker-dealer registration rules are the result of the Commission's ongoing efforts to find ways to reduce the costs and burdens associated with broker-dealer registration.

The analysis indicates that approximately 92 percent of the 487 broker-dealers that applied for registration in the first six months of 1991 met the definition of "small business" in Rule 0–10(c)(1). The proposed amendments would eliminate some of the existing costs imposed on these small businesses.

In addition, the IRFA states that, except for the requirement that registered non-NASD member broker-dealers file a complete new Form BD with the CRD on a one-time basis, the proposed amendments to the registration rules would not impose any additional reporting, recording, or other

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[40] A formal charge that is equivalent to an indictment or information but that is designated differently under state law also would be considered a "proceeding" for these purposes.

[41] If adopted as proposed, the joint definition would replace NASAA's interpretation of "proceeding," as expressed in its resolution, and the Commission's interpretation of "proceeding," as discussed in Securities Exchange Act Release Nos. 2478 (February 6, 1976), 41 FR 7088, and 22466 (September 28, 1985), 50 FR 41867.

[42] *I.e.*, the most recent form adopted by the Commission. As discussed above, in a separate release, the Commission is adopting several amendments to Form BD. Thus, broker-dealers filing for registration on or after November 16, 1992, the effective date of the form amendments, would need to file on revised Form BD.

[43] 17 CFR 240.17a–5. Form X–17A–5 appears at 17 CFR 249.617.

[44] See 17 CFR 240.17a–10. Pursuant to Rule 17a–10(a)(1), broker-dealers that are exempt from the filing requirements of Rule 17a–5(a) also are required to file Schedule I at the end of the calendar year.

[45] 15 U.S.C. 78c(a)(6). Under this section, the term "bank" is defined as: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; (c) any other banking institution doing business under the laws of any state or the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks; and (d) a receiver, conservator, or other liquidating agent of any institution or firm included in the above paragraphs. The Commission particularly requests comment on the proposed amendments to Schedule I.

[46] 15 U.S.C. 78w(a)(2).

[47] 5 U.S.C. 603(a).

compliance requirements on broker-dealers. The proposed amendments to Form BD and Schedule I of the FOCUS report would impose additional reporting and other compliance requirements on broker-dealers only to the extent that they would need to review their current filings to determine whether those filings contain all of the information required by the amended forms. The Commission believes that no specific federal rules or forms directly duplicate or conflict with these rules and forms.

The IRFA discusses significant alternatives to the proposed amendments, including the establishment of differing reporting requirements, the use of performance standards, and an exemption for small broker-dealers. The analysis concludes that these alternatives would not accomplish the objectives of the proposed amendments, nor would they be consistent with their overall purpose, which is to simplify the registration process for all broker-dealers.

A copy of the IRFA may be obtained from Belinda Blaine, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., mail stop 5–1, Washington, DC 20549, (202) 504–2418.

List of Subjects in 17 CFR Parts 240 and 249

Registration of Brokers and Dealers, Registration of Government Securities Brokers and Government Securities Dealers, Registration of Non-Bank Municipal Securities Dealers; Reporting and Recordkeeping Requirements, Securities, Broker-Dealers.

IX. Statutory Basis and Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. By amending § 240.15b1–1 by designating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 240.15b1–1 Application for registration of broker or dealer.

(a) * * *

(b) Every application for registration of a broker or dealer that is filed on or after November 16, 1992, shall be filed with the Central Registration Depository.

(c) An application for registration that is filed with the Central Registration Depository pursuant to this section shall be considered filed with the Commission for purposes of section 15(b) of the Act.

§ 240.15b1–2 [Removed]

3. By removing § 240.15b1–2.

4. By revising § 240.15b1–3 to read as follows:

§ 240.15b1–3 Registration of successor to registered broker or dealer.

(a) In the event that a broker or dealer succeeds to and continues the business of a broker or dealer registered pursuant to Section 15(b) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however,* That the registration of the predecessor broker or dealer will cease to be effective as the registration of the successor broker or dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a broker or dealer succeeds to and continues the business of a registered predecessor broker or dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

5. By revising § 240.15b3–1 to read as follows:

§ 240.15b3–1 Amendments to application.

(a) Every registered broker or dealer who is not a member of the National Association of Securities Dealers, Inc. shall file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended), and any subsequent amendments thereto pursuant to paragraph (c) of this section, with the Central Registration Depository beginning:

(1) The week of January 11, 1993, in the case of a broker-dealer whose SEC registration number is between 8–1656 and 8–26116;

(2) The week of February 1, 1993, in the case of a broker-dealer whose SEC registration number is between 8–26158 and 8–33987;

(3) The week of May 3, 1993, in the case of a broker-dealer whose SEC registration number is between 8–34006 and 8–38760;

(4) The week of June 1, 1993, in the case of a broker-dealer whose SEC registration number is between 8–38763 and 8–41501;

(5) The week of July 5, 1993, in the case of a broker-dealer whose SEC registration number is between 8–41505 and 8–43006;

(6) The week of August 2, 1993, in the case of a broker-dealer whose SEC registration number is between 8–43009 and 8–43792; and

(7) The week of September 6, 1993, in the case of a broker-dealer whose SEC registration number is 8–43794 and above.

(b) If the information contained in any application for registration as a broker or dealer filed by a broker or dealer who is not a member of the National Association of Securities Dealers, Inc. becomes inaccurate for any reason prior to the applicable date set forth in paragraph (a) of this section, the broker or dealer shall promptly file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository.

(c) If the information contained in any application for registration as a broker or dealer, or in any amendment thereto, becomes inaccurate for any reason, the broker or dealer shall promptly file with the Central Registration Depository an amendment on current Form BD correcting such information.

(d) Every amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15(b), 17(a), 18, 32(a), and other applicable provisions of the Act.

6. By amending § 240.15b6–1 by redesignating paragraphs (b), (c), and (d), as paragraphs (c), (d), and (e), adding paragraph (b), and revising newly designated paragraph (e) to read as follows:

§ 240.15b6–1 Withdrawal from registration.

(a) * * *

(b) Every notice of withdrawal from registration as a broker or dealer that is filed on or after November 16, 1992, by a broker or dealer who has previously filed an application for registration with the Central Registration Depository shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a broker or dealer shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

* * * * *

(e) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15(b), 17(a), and other applicable provisions of the Act.

7. By revising § 240.15Ba2–2 to read as follows:

§ 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

(a) An application for registration, pursuant to section 15B(a) of the Act, of a municipal securities dealer who is not subject to the requirements of § 240.15Ba2–1, that is filed on or after November 16, 1992, shall be filed with the Central Registration Depository on Form BD.

(b) Each applicant shall file with its application for registration a statement that such applicant is filing for registration as an intrastate dealer in accordance with the requirements of this section. Such statement shall be deemed a part of the application for registration.

(c) If the information contained in any application for registration pursuant to paragraph (a) of this section, or in any amendment to such application, is or becomes inaccurate for any reason, dealer shall promptly file with the Central Registration Depository an amendment on current Form BD correcting such information.

(d) Every application or amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15B, 17, 18(a), 32(a), and other applicable provisions of the Act.

8. By revising § 240.15Ba2–4 to read as follows:

§ 240.15Ba2–4 Registration of successor to registered municipal securities dealer.

(a) In the event that a municipal securities dealer succeeds to and continues the business of a registered municipal securities dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MSD, in the case of a municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or Form BD, in the case of any other municipal securities dealer, and the predecessor files a notice of withdrawal from registration on Form MSDW or Form BDW, as the case may be; *Provided, however,* That the registration of the predecessor dealer will cease to be effective as the registration of the successor dealer 45 days after the application for registration on Form MSD or Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal securities dealer succeeds to and continues the business of a registered predecessor municipal securities dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor dealer on Form MSD, in the case of a predecessor municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or on Form BD, in the case of any other municipal securities dealer, to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

§ 240.15Ba2–6 [Removed]

9. By removing § 240.15Ba2–6.

10. By amending § 240.15Bc3–1 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), adding paragraph (b), and revising newly designated paragraph (d) to read as follows:

§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.

(a) * * *

(b) Every notice of withdrawal from registration as a municipal securities dealer that is filed on Form BDW on or after November 16, 1992, by a dealer who has previously filed an application for registration with the Central Registration Depository shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a dealer on Form BDW shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

(c) * * *

(d) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15B, 17(a), and other applicable provisions of the Act.

11. By amending § 240.15Ca1–1 by adding paragraph (c) to read as follows:

§ 240.15Ca1–1 Notice of government securities broker-dealer activities.

* * * * *

(c) Any notice required pursuant to this section shall be considered filed with the Commission if it is filed with the Central Registration Depository.

12. By revising § 240.15Ca2–1 to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

(a) An application for registration, pursuant to section 15C(a)(1)(A) of the Act, of a government securities broker or government securities dealer that is filed on or after November 16, 1992, shall be filed with the Central Registration Depository on Form BD.

(b) Every registered government securities broker or government securities dealer who is not a member of the National Association of Securities Dealers, Inc. shall file a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository in accordance with the schedule set forth in § 240.15b3–1.

(c) Every application or amendment filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15, 15C, 17(a), 18, 32(a), and other applicable provisions of the Act.

§ 240.15Ca2–2 [Removed]

13. By removing § 240.15Ca2–2.

14. By revising § 240.15Ca2–3 to read as follows:

§ 240.15Ca2–3 Registration of successor to government securities broker or government securities dealer.

(a) In the event that a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal

from registration on Form BDW: *Provided, however,* That the registration of the predecessor government securities broker or government securities dealer will cease to be effective as the registration of the successor government securities broker or government securities dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes.

This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

15. By amending § 240.15Cc1–1 by revising the section heading, redesignating paragraphs (b) and (c) as paragraphs (c) and (d), adding paragraph (b), and revising newly designated paragraph (d) to read as follows:

§ 240.15Cc1–1 Withdrawal from registration of government securities broker or government securities dealer.

(a) * * *

(b) Every notice of withdrawal from registration as a broker or dealer that is filed on or after November 16, 1992, by a broker or dealer who has previously filed an application for registration with the Central Registration Depository shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a broker or dealer shall be filed with the Commission; *except that* such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

(c) * * *

(d) Every notice of withdrawal filed pursuant to this section shall constitute a "report" filed with the Commission within the meaning of sections 15, 15C, 32(a), and other applicable provisions of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Note: The following forms do not appear in the Code of Federal Regulations.

17. By revising Form BD (17 CFR 249.501), the Special Instructions for Completing or Amending Form BD, and the General Instructions to Form BDW (§ 249.501a).

Form BD—Uniform Application for Broker-Dealer Registration

Instructions for Form BD

1. Updating—By law, the applicant must update the Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason. Complete all amended pages in full and, except for Schedule C, circle the number of the item being changed.

2. Contact Employee—The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format

• Attach an Executive Page (Page 1) with original manual signatures to the initial Form BD filing and each amendment to the form. Amendments to Schedules C, D and DRP also must be accompanied by an Executive Page (Page 1). Schedules A & B are amended by filing Schedule C.

• Type all information.

• Give the name of the broker-dealer and date on each page.

• Use only the current version of Form BD and its Schedules or a reproduction of them.

4. Definitions

• Applicant—The broker-dealer applying on or amending this form.

• Control—The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

• Jurisdiction—Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.

• Person—An individual, partnership, corporation or other organization.

• Self-regulatory organization—Any national securities or commodities exchange or registered securities association, or registered clearing agency.

5. Schedules A, B and C—File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B.

6. Schedule D—Schedule D provides additional space for explaining "yes" answers to Form BD items (except for Item 7), but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule DRP—All information relating to an event reportable under Item 7 must be provided on Schedule DRP. Applicant may submit a partially completed Schedule DRP (as specified in the Schedule) only if the applicant or control affiliate for whom the Schedule is being filed has submitted a fully-completed Schedule DRP (in connection with another Form BD filing) or a DRP Page (in connection with a Form U–4 filing) relating to the occurrence of the same event to the Central Registration Depository (CRD) system of the NASD. In such cases this fully-completed Schedule DRP or DRP Page must be attached to the applicant's Schedule DRP.

8. Schedule E—Schedule E amendments reporting changes in Branch Offices may be submitted without an execution page.

9. Government Securities Activities

A. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting only a government securities business.

B. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

10. Federal Information Law and Requirements—The Exchange Act,

Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available.

Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

BILLING CODE 8010-01-M

FORM BD
Page 3

Applicant:		CRD No.:	DATE MM/DD/YY

7. Background Information

Use Schedule DRP for providing details to "yes" answers to the questions in Item 7.

Definitions:

- Control affiliate - A person named in Items 1.A., 6. or in either Schedules A, B or C as control persons or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by the applicant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.

- Investment or investment-related - Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).

- Involved - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

- Foreign financial regulatory authority - Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a membership organization, a function of which is to regulate the participation of its members in the activities listed above.

- Proceeding - A formal administrative or civil action initiated by a governmental agency, self-regulatory organization or foreign financial regulatory authority, a felony criminal indictment or information (or equivalent formal charge), or a misdemeanor criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

A. In the past ten years has the applicant or a control affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") in a domestic or foreign court to:

(1) a felony or misdemeanor involving:
- investment or an investment-related business
- fraud, false statements, or omissions
- wrongful taking of property, or
- bribery, forgery, counterfeiting or extortion? ..... Yes ☐ No ☐

(2) any other felony? ..... Yes ☐ No ☐

B. Has any domestic or foreign court:

(1) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment-related activity? ..... Yes ☐ No ☐

(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations? ..... Yes ☐ No ☐

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? ..... Yes ☐ No ☐

(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes? ..... Yes ☐ No ☐

(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities? ..... Yes ☐ No ☐

(5) imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity? ..... Yes ☐ No ☐

D. Has any other federal regulatory agency, any state regulatory agency, or foreign financial regulatory authority:

(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? ..... Yes ☐ No ☐

(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes? ..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Schedule A of FORM BD Direct Owners and Executive Officers

Applicant:		CRD No.:	DATE MM/DD/YY

(Answer for Form BD Item 3)

1. Use Schedule A only in new applications to provide information on the direct owners and executive officers of the applicant. Use Schedule B in new applications to provide information on indirect owners. File all amendments on Schedule C. Complete each column.

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individual with similar status or functions;

   (b) in the case of an applicant that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the applicant, unless the applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) in the case of an applicant that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) in the case of an owner that is a trust, the trust and each trustee.

3. Are there any indirect owners of the applicant required to be reported on Schedule B?..... Yes ☐ No ☐

4. Complete the "Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

5. (a) In the "Control Person" column, enter "yes" if person has "control" as defined in the instructions to this Form, and enter "no" if the person does not have control. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "control persons."

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
   A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

BILLING CODE 8010-01-C

Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, With the U.S. Securities and Exchange Commission

How to File

File one manually signed and notarized Form BD (with the schedules). Keep a copy for your files. A copy may be filed if manually signed and notarized and on standard 8½ × 11 white paper, in the same size as the original.

To file an amendment to Form BD, complete all amended pages or schedules and file with page 1, the execution page.

Where to File

Broker-dealers that are applying for registration should file Form BD and its schedules with the Central Registration Depository (CRD), P.O. Box 9401, Gaithersburg, Maryland 20898–9401. Any subsequent amendments to Form BD also should be filed with the CRD.

All registered broker-dealers that are not members of the National Association of Securities Dealers, Inc. (NASD) should file a complete Form BD and its schedules with the CRD during the week of:

(1) January 11, 1993, in the case of all non-NASD member broker-dealers whose SEC registration numbers are between 8–1656 and 8–26116;

(2) February 1, 1993, for all non-NASD members whose SEC registration numbers are between 8–26158 and 8–33987;

(3) May 3, 1993, for all non-NASD members whose SEC registration numbers are between 8–34006 and 8–38760;

(4) June 1, 1993, for all non-NASD members whose SEC registration numbers are between 8–38763 and 8–41501;

(5) July 5, 1993, for all non-NASD members whose SEC registration numbers are between 8–41505 and 8–43006;

(6) August 2, 1993, for all non-NASD members whose SEC registration numbers are between 8–43009 and 8–43792; and

(7) September 6, 1993, for all non-NASD members whose SEC registration numbers are 8–43794 and above.

Any subsequent amendments to these Form BD filings also should be filed with the CRD. Non-NASD members that need to file an amendment to their Form BD before their scheduled date should promptly file a complete Form BD with the CRD.

Foreign Broker-Dealers

Rules 15b1–5 and 15Ca2–5 require non-resident broker-dealers applying for registration to provide the Commission with a consent and power of attorney. This consent and power of attorney designate the Commission as agent for the service of process of any papers in connection with actions arising from the broker-dealer's business that are subject to the jurisdiction of the United States and that accrue while the broker-dealer is registered with the Commission. This consent and power of attorney, which is in addition to and separate from the consent to service of process provided on Form BD, should be filed directly with the Commission. A copy also should be filed with the CRD as part of the application on Form BD.

Successor Registration

A broker-dealer that assumes substantially all of the assets and liabilities, and that continues the business, of a registered predecessor broker-dealer is a successor broker-dealer. Rules 15b1–3, 15Ba2–4, and 15Ca2–3 require a successor broker-dealer to file a new Form BD (or, in special instances, to amend the predecessor broker-dealer's Form BD) within 30 days. The filing should indicate on page 2 of the form that the applicant is a successor. (*See* Securities Exchange Act Release No. [ ]).

Prohibited Broker-Dealer Names

* * * * *

Uniform Request for Broker-Dealer Withdrawal

General Instructions

- Each copy of this form must be *manually signed* by the proper individual.
- Type all information.
- Use only the Form BDW or a reproduction of it.
- *Filing Requirements*

Full Withdrawal

NASD Members: file Form BDW with the CRD beginning on November 16, 1992.

Non-NASD Members: file Form BDW with the CRD beginning on September 30, 1993. Prior to September 30, 1993, file Form BDW with the CRD if Form BD has already been filed with the CRD; if not, file with both the SEC and the CRD.

Attach a copy of FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. Firms that are not required to file FOCUS Reports should attach a Statement of Financial Condition giving the type and amount of the firm's assets, liabilities, and net worth. The FOCUS Report and Statement of Financial Condition must reflect the finances of the firm no earlier than 10 days before Form BDW is filed.

Non-NASD Members only should send a copy of Form BDW and all attachments to the Office of Filings, Information, and Consumer Services, SEC, 450 5th St., N.W., Washington, DC 20549.

Check with the states where registered for additional filing requirements.

Partial Withdrawal

File Form BDW with the CRD. Check with the states where registered for additional filing requirements. Amend Form BD and file with the CRD in accordance with the instructions to the form.

18. By amending Form X–17A–5 Schedule I (§ 249.617) by adding instruction 19a, b, and c to the Specific Instructions, redesignating Questions 19–22 as Questions 20–23, and adding Question 19 to read as follows:

Form X–17A–5, Schedule I.

* * * * *

Specific Instructions

* * * * *

19a b & c—Report whether respondent is directly or indirectly controlled by, or under common control with, a U.S. bank. If the answer is "yes," provide the name of the affiliated bank and/or bank holding company, and describe the type of institution. The term "bank" is defined in Section 3(a)(6) of the Securities Exchange Act of 1934.

* * * * *

19. (a) Respondent is directly or indirectly controlled by, or under common control with, a U.S. bank.

(Enter applicable code: 1=Yes 2=No) ____

(b) Name of parent or affiliate _____

(c) Type of institution _____

* * * * *

By the Commission.

Dated: July 27, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18170 Filed 7–30–92; 8:45 am]

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federal register

Monday
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federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Rules and Regulations

Federal Register
Vol. 57, No. 149
Monday, August 3, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV-92-032IFR]

Marketing Agreement No. 146, Domestically Produced Peanuts; Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1992 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the outgoing quality regulations and the current terms and conditions of indemnification for 1992 crop peanuts regulated under Marketing Agreement No. 146. The outgoing regulations are changed: (1) To allow commingling of peanut lots of different grade categories at the request of the buyer after the lots have passed quality and aflatoxin inspection and have been positive lot identified; and (2) to increase options for handling peanut lots which fail to meet quality and aflatoxin requirements by allowing second handlers to move such lots to approved blanchers for blanching. The terms and conditions of indemnification are changed to make the payment system consistent with the current financial condition of the indemnification program. These actions will improve the movement of peanuts to market, increase the volume of peanuts placed in marketing channels, and facilitate the payment of indemnification claims to handlers.

DATES: This interim final rule is effective August 3, 1992. Comments received by September 2, 1992, will be considered prior to finalization of the rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments received will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–6862.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to Marketing Agreement No. 146 [7 CFR part 998], regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674] (the Act).

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 70 handlers of peanuts subject to regulation under the agreement, and there are about 47,000 peanut growers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States covered under the agreement: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. The Virginia-Carolina area (Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1991 totalled 4.94 billion pounds, a 37 percent increase from 1990. The 1991 crop value is $1.4 billion, up 12 percent from 1990.

Aflatoxin was found in peanuts in the mid-1960's. Since that time, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 90 percent of U.S. shellers (handlers) have voluntarily signed the agreement. They handle an estimated 95 percent of the crop.

Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee). The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department. A sheller who has complied with these requirements is eligible for indemnification of losses incurred if the sheller's peanuts are deemed unsuitable for human consumption because of aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The incoming quality regulation specifies the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulation requires shellers to mill peanuts to meet certain quality specifications and to have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. If the chemical assay shows that the lot is positive as to aflatoxin, the lot is not allowed to be shipped to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

On March 4 and 5, 1992, the Committee unanimously recommended changes in paragraphs (d) and (h)(3) of § 998.200 *Outgoing quality regulation.*

The first change will amend paragraph (d) to allow commingling of peanut lots of different grade categories at the request of the buyer or receiver, after the lots have passed quality and aflatoxin inspection and have been positive lot identified (PLI). Some buyers do not have commingling equipment at their facilities. This rule will allow handlers to satisfy the occasional request received from buyers that multiple lots be mixed prior to shipment to the buyer. Because each commingled lot will lose its original identity, the Committee recommended that the entire commingled load no longer be considered PLI and that the peanuts comprising the load no longer be eligible for indemnification or appeal inspection. Loss of the handler's right to indemnification claims and appeal inspections on such lots should not represent a significant concern to handlers as lots that pass quality inspection and aflatoxin testing are not eligible for indemnification and normally do not require an appeal inspection.

A transfer certificate will be issued by the inspection service on the commingled load certifying that, prior to commingling, the individual lots were PLI and met all program requirements.

This change is beneficial to the industry because it facilitates movement of peanuts and helps handlers meet their customers' needs. The change is affected by adding the following at the end of paragraph (d): "* * * except that lots which are commingled at the request of the receiver will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified, and, therefore, no longer eligible for indemnification or for appeal inspection."

The second change in this action increases second-handler options for disposing of PLI shelled peanut lots which fail to meet outgoing quality and aflatoxin requirements. Paragraph (h)(1) of § 998.200, Outgoing quality regulation, provides disposition requirements for second handlers of such peanuts, by referring the second handlers to disposition options specified in paragraph (h)(3). Paragraph (h)(3) provides five options for disposing of such failed lots (to domestic crushing, for export, to Committee-approved non-handler crushers, to other signer-handlers for crushing or fragmentation and exportation, and to domestic animal feed use). However, paragraph (h)(3) does not list blanching, which is one of the most commonly used methods of making peanuts which fail quality requirements suitable for human consumption. The Committee believes the option of blanching had simply not been addressed as an issue in the past and that there was never an intent to exclude blanching from disposition options available to second handlers.

This change is affected by adding a sentence in paragraph (h)(3) providing that handlers may also blanch, or cause to have balanced, failed lots pursuant to paragraph (h)(2) of § 998.200. Provisions of paragraph (h)(2) include that: (1) Movement of blanched peanuts be accompanied by a valid grade inspection certificate; (2) handlers report such movement to the Committee and maintain records of such movement; (3) prior to certification for human consumption, the lot of peanuts meets quality requirements listed in paragraph (a) of § 998.200 for unshelled peanuts, damaged kernels, minor defects, moisture, foreign material content; (4) the lot be certified negative as to aflatoxin; and (5) residuals from such blanching must either be bagged, tagged and further disposed of according to provisions in paragraph (g)(3), or be disposed of to domestic crushing or exported.

Both of these actions will facilitate the movement of peanuts to market and, thus, increase the volume of peanuts placed in marketing channels. The Committee carefully reviewed current regulations and believes there will be no adverse impact from these changes on the outgoing quality regulation. In fact, the commingling amendment should help some smaller handlers meet load specification for buyers who had previously only dealt with large handlers.

The Committee also recommended amending § 998.300, the terms and conditions of indemnification, to make the payment system consistent with the current financial condition of the indemnification program. Current paragraphs (z)(1) through (7) of § 998.300 specify claim procedures and payment schedules based on the number of indemnification claims received by the Committee.

Each year, assessments on peanuts handled are placed into a fund from which are paid indemnification claims and costs incurred by the Committee in disposing of contaminated lots. During seasons when the aflatoxin contamination is low or moderate, the fund is sufficient to meet Committee's disposition expenses and claims. During seasons when aflatoxin contamination is high (most recently, the 1990 crop), the disposition expenses and claims may exceed the collected indemnification funds and supplementary insurance policy. When this happens, disposition expenses are paid as invoices are received. After all disposition expenses have been paid, indemnification claims are paid, on an adjusted basis, from the remainder of the fund. Disposition expenses, which totalled just under $200,000 in 1991, include preparation, delivery, chemical assay, and supervision of the crushing of contaminated lots.

Because the 1991 crop had only moderate aflatoxin contamination, indemnification claims did not exceed the funds collected and a surplus was accrued. The Committee recommended that disposition expenses incurred during the 1992 crop year be paid from surplus 1991 indemnification funds. The surplus is more than sufficient to meet projected disposition expenses. If the 1992 crop is high in aflatoxin contamination, this action will make more funds available for 1992 indemnification claims and decrease the delay in making claim payments.

Paragraphs (z) and (z)(1) provide for the payment of disposition expenses from indemnification funds collected during the year of payment. Therefore, because the disposition expenses for the 1992 season can be paid with surplus 1991 indemnification funds, paragraph (z) is revised and (z)(1) is deleted.

The Committee also recommended removal of paragraph (z)(5) which requires that indemnification payments on the 1991 crop be delayed until complete repayment of the commercial loan which had been obtained to fund 1990 crop indemnification. That loan

was repaid earlier this year. Therefore, paragraph (z)(5) is no longer applicable to the regulation, and is deleted.

Redesignation and conforming changes are also made to the other paragraphs under paragraph (z) to incorporate the removal of paragraphs (z)(1) and (z)(5).

The changes in the terms and conditions of indemnification for 1992 crop peanuts in this interim final rule are intended to allow prompt payment of claims in the event of a crop year with a high incidence of aflatoxin contamination.

At its March 4 and 5, 1992, meeting, the Committee recommended that the indemnification cap for 1991 crop peanuts of $9,000,000, including $5,000,000 of insurance coverage, be maintained for the 1992 crop peanuts.

No changes were recommended in § 998.100 *Incoming quality regulation* for the 1992 crop. Therefore, the incoming quality regulation applicable to 1991 crop peanuts continues to be effective for 1992 crop peanuts. Changes are made to the section headings of § 998.100 *Incoming quality regulation*, 998.200 *Outgoing quality regulation* and § 998.300 *Terms and conditions of indemnification* to make those regulations applicable to the 1992 crop year.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Written comments, timely received, in response to this action will be considered before finalization of this rule.

The information collection requirements that are contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

After consideration of the Committee's recommendation and all relevant information presented, it is found that the changes in the outgoing quality regulation and terms and conditions of indemnification, as set forth in this interim final rule, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes requirements currently in effect for peanut handlers who are signatory to the Agreement; (2) this action should be in effect as soon as possible as the 1992 crop year begins July 1, 1992; and (3) this action provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.100 is amended by revising the section heading to read as follows:

§ 998.100 Incoming quality regulation—1992 crop peanuts.

* * * * *

3. Section 998.200 is amended by revising the section heading, revising the current last sentence of paragraph (d), adding an additional sentence at the end of the paragraph (d), and adding a sentence after the first sentence of paragraph (h)(3), to read as follows:

§ 998.200 Outgoing quality regulation—1992 crop peanuts.

* * * * *

(d) * * * All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except that lots which are commingled at the request of the receiver will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for indemnification or for appeal inspection.

* * * * *

(h) * * *

(3) Handlers may dispose of positive lot identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation (§ 998.200): To domestic crushing, to export to countries other than Canada and Mexico, provided they meet fragmented requirements, to crushers who are not handlers but are approved by the Committee, to other handlers for crushing or fragmenting and exportation, or to domestic animal feed or to other handlers for such disposition, pursuant to paragraph (m) of the Outgoing Quality Regulation (§ 998.200). Handlers may also blanch, or cause to have blanched, such lots pursuant to paragraph (h)(2) of this section. * * *

* * * * *

4. Section 998.300 is amended by revising the section heading and paragraph (z) to read as follows:

§ 998.300 Terms and conditions of indemnification—1992 crop peanuts.

* * * * *

(z) Not withstanding the provisions of any other paragraph of these Terms and Conditions, the total payments and expenses allocated to indemnification claims, minus salvage proceeds, shall not exceed $9,000,000 in the aggregate. To assure that the $9,000,000 limit is not exceeded while dealing with claims' expenses on an equitable basis, the following payment schedule shall be followed:

(1) Authorized costs for blanching and remilling fees, freight and assay costs allocated to claims shall be paid pursuant to these Terms and Conditions, unless the Committee projects that these costs are likely to exceed the $9,000,000 limitations.

(2) If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims which are determined to be valid pursuant, to these Terms and Conditions.

(3) If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants at the rate prescribed in paragraph (x) of the Terms and Conditions, for "additional peanuts," on indemnified peanuts covered by claims, as determined to be valid pursuant to these Terms and Conditions.

(4) If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process shall be delayed until December 31 of the calendar year following the current crop year, or until other action is prescribed by the Committee, with the approval of the Secretary.

(5) If more than 2500 claims for indemnification have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total number of claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the claims' expense items referred to in paragraph (z)(1), minus salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

Dated: July 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-18371 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of a reduction in the basic discount rate at each Federal Reserve Bank. The Board has also amended Regulation A to change the rate for seasonal credit from a fixed rate to a flexible rate. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATES: These amendments to part 201 (regulation A) were effective July 27, 1992. The rate changes for short-term adjustment credit and for other extended credit were effective on the dates specified in §§ 201.51 and 201.52(b), respectively. The rate changes for seasonal credit in § 201.52(a) were effective January 9, 1992.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for short-term adjustment credit and, during an initial borrowing period, for other extended credit. In reducing the basic discount rate, the Board acted on requests submitted by the Boards of Directors of the twelve Reserve Banks. The new rates were effective on the dates specified below. The reduction was made in light of sustained weakness in credit and money growth, continued movement toward price stability, and the uneven progress of the economic recovery.

In November 1990, the Board announced a change in the seasonal credit rate from a fixed rate (identical to the basic discount rate) to a flexible market-based rate, effective January 9, 1992. Seasonal credit is designed to make funds available at the discount window to small and mid-sized agricultural banks that do not have access to national money markets. It is also used to some extent by banks in resort areas. A typical use of the program is to fund farmers over the planting and production cycle. The Board believes that the seasonal credit program continues to meet legitimate funding needs for many smaller banks. However, charging the basic discount rate for seasonal credit could be construed as an interest-rate subsidy to borrowers or a form of credit allocation. Thus, the Board determined that a market-based rate for seasonal credit would be more appropriate than the fixed basic discount rate. The flexible rate for seasonal credit is based on the federal funds rate and the secondary-market rate on ninety-day large certificates of deposit as measured over the previous reserve maintenance period, but in no case would this rate be less than the basic discount rate applicable to short-term adjustment credit.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of these amendments because the Board for the "good cause" stated above finds that delaying the changes in the basic discount rate and the seasonal credit rate calculation in order to allow notice and public comment on the changes is impracticable, unnecessary, and contrary to the public interest.[1]

The provisions of 5 U.S.C. 553(d) that prescribe 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate and the seasonal credit rate calculation is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601-612), the Board certifies that the change to the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The change reduces the rate of interest charged to borrowers from Reserve Banks, and the amendments will have no general effect on regulatory burdens for all depository institutions, no specific effect on such burdens for small depository institutions, and have no particular adverse effect on other small entities.

The change in the seasonal credit rate from a fixed to a flexible market-based rate will result in a higher rate of interest paid by borrowers under the seasonal credit program, who are generally small depository institutions. The Board believes, however, that the higher cost of funds under the new seasonal credit rate is outweighed by the equity of employing a market-based rate for this type of longer-term credit.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR part 201 as set forth below:

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(a).

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) are:

Federal reserve bank	Rate	Effective
Boston	3.0	July 2 1992.
New York	3.0	July 2, 1992.
Philadelphia	3.0	July 2, 1992.
Cleveland	3.0	July 6, 1992.
Richmond	3.0	July 2, 1992.
Atlanta	3.0	July 2, 1992.
Chicago	3.0	July 2, 1992.
St. Louis	3.0	July 7, 1992.
Minneapolis	3.0	July 2, 1992.
Kansas City	3.0	July 2, 1992.
Dallas	3.0	July 2, 1992.
San Francisco	3.0	July 2, 1992.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.3(b)(1) is a flexible rate that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for short-term adjustment credit as set out in § 201.51.

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) are:

Federal reserve bank	Rate	Effective
Boston	3.0	July 2, 1992.
New York	3.0	July 2, 1992.
Philadelphia	3.0	July 2, 1992.
Cleveland	3.0	July 6, 1992.
Richmond	3.0	July 2, 1992.
Atlanta	3.0	July 2, 1992.
Chicago	3.0	July 2, 1992.
St. Louis	3.0	July 7, 1992.
Minneapolis	3.0	July 2, 1992.
Kansas City	3.0	July 2, 1992.
Dallas	3.0	July 2, 1992.
San Francisco	3.0	July 2, 1992.

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for short-term adjustment credit, as set out in § 201.51, plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, July 27, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-18246 Filed 7-31-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-24-AD; Amendment 39-8330; AD 92-17-01]

Airworthiness Directives; Beech 35 and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80-21-02, which currently requires the installation of a fuel drain line on certain Beech Model A36TC airplanes. The Federal Aviation Administration (FAA) has determined that (1) the applicability of AD 80-21-02 should be extended to include certain Beech 35 series airplanes that are equipped with an optional Teledyne Continental Motors (TCM) TSIO-520-D engine; and (2) the fuel metering units on these airplanes as well as the fuel metering units on the Model A36TC airplanes should be inspected to ensure that there are no fuel leaks and that any leaking unit should be repaired. The actions specified by this AD are intended to prevent a fire in the engine compartment of the airplane caused by fuel leaks from the fuel metering unit or the idle mixture adjustment screw boss.

DATES: Effective September 11, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4145; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 35 and 36 series airplanes was published in the Federal Register on April 24, 1992 (57 FR 15036). The action proposed to supersede AD 80-21-02, Amendment 39-3968 (45 FR 74468, November 10, 1980), with a new AD that would: (1) Retain the fuel drain line installation required on certain Beech Model A36TC airplanes; (2) extend this fuel drain line installation to certain 35 series airplanes that are equipped with an optional TCM TSIO-520-D engine; (3) require an inspection of the fuel metering unit for leaks on all of the affected airplanes, and repair of the fuel unit if fuel leaks are found; and (4) require replacement of any deteriorated fuel drain hoses that have been installed in accordance with AD 80-21-02. The actions would be accomplished in accordance with Beech Service Bulletin No. 2420, dated February 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 2,729 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1.5 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $361,592.50.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 80-21-02, Amendment 39-3968 (45 FR 74468, November 10, 1980), and adding the following new AD:

92-17-01 Beech: Amendment 39-8330; Docket No. 92-CE-24-AD. Supersedes AD 80-21-02, Amendment 39-3968.Q02

Applicability: The following Model airplanes, certificated in any category:

1. A36TC, serial numbers EA-1 through EA-146.

2. S35, V35, V35A and V35B, serial numbers D-7140 and D-7310 through D-10403, that are equipped with an optional Teledyne Continental Motors (TCM) TSIO-520-D engine.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent a fire in the engine compartment of the airplane caused by fuel leaks from the fuel metering unit or the idle mixture adjustment screw boss, accomplish the following:

(a) For Model A36TC airplanes, determine whether a fuel drain hose is installed by accomplishing paragraphs 1. and 2. of PART I of the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) No. 2420, dated February 1992.

(1) If a fuel drain hose is not installed, prior to further flight, accomplish the following:

(i) Inspect the fuel metering unit for fuel leaks in accordance with paragraph 2. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(ii) Repair any fuel metering units found leaking as a result of the inspection required by paragraph (a)(1)(i) of this AD in accordance with paragraphs 3. and 4. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(iii) Install a fuel drain hose, part number (P/N) 106200C8-288, over the idle mixture screw boss in accordance with paragraphs 5. through 8. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(2) If a fuel drain hose is installed, prior to further flight, accomplish the following:

(i) Inspect the fuel metering unit for fuel leaks in accordance with paragraph 2. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(ii) Repair any fuel metering units found leaking as a result of the inspection required in paragraph (a)(2)(i) of this AD in accordance with paragraphs 3. and 4. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(iii) Check the condition of the fuel drain hose, and replace any hose that is deteriorated with a new hose, P/N 106200C8-288, in accordance with paragraphs 5. through 8. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(b) For Models S35, V35, V35A and V35B airplanes that are equipped with an optional TCM TSIO-520-D engine, accomplish the following:

(1) Inspect the fuel metering unit for fuel leaks in accordance with paragraph 2. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(2) Prior to further flight, repair any fuel metering units found leaking as a result of the inspection required by paragraph (b)(1) of this AD in accordance with paragraphs 3. and 4. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(3) Install a fuel drain hose, part number (P/N) 106200C8-288, over the idle mixture screw boss in accordance with paragraphs 5. through 8. of PART II of the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2420, dated February 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) The inspections, installation, and possible repairs required by this AD shall be done in accordance with Beech Service Bulletin No. 2420, dated February 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment (39-8330) supersedes AD 80-21-02, Amendment 39-3968.

(g) This amendment (39-8330) becomes effective on September 11, 1992.

Issued in Kansas City, Missouri, on July 17, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18097 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-31-AD; Amendment 39-8306; AD 92-15-12]

Airworthiness Directives; Aerospatiale Model ATR42-300 and -320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and -320 series airplanes, that requires modification of the nose landing gear (NLG) retraction control logic, and a functional test of the landing gear retraction manual override control. This amendment is prompted by investigation results which revealed that, on airplanes with manual override capability on the normal landing gear selector, the landing gear could be raised with the nose wheel not centered, which could jam the nose gear in the up position. The actions specified by this AD are intended to prevent a gear-up landing.

DATES: Effective September 8, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de

Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes was published in the **Federal Register** on April 17, 1992 (57 FR 13669). That action proposed to require modification of the nose landing gear (NLG) retraction control logic, and a functional test of the landing gear retraction manual override control.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,720 or $715 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–15–12. Aerospatiale: Amendment 39–8306. Docket 92–NM–31–AD.

Applicability: Model ATR42–300 and –320 series airplanes on which Modification 1694 (Aerospatiale Service Bulletin ATR42–32–0021) has been accomplished and on which Modification 2063 (Aerospatiale Service Bulletin ATR42–32–0028) has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the nose landing gear (NLG) retraction control logic, and perform a functional test of the landing gear retraction manual override control, in accordance with Aerospatiale Service Bulletin ATR42–32–0028, Revision 3, dated February 12, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification and functional test shall be done in accordance with Aerospatiale Service Bulletin ATR42–32–0028, Revision 3, dated February 12, 1991, which includes the following list of effective pages:

Page No.	Revision level	Date
1–2, 11, 13–21...	3	February 12, 1991.
3–10, 12.....	1	February 23, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 30, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–18098 Filed 7–31–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–265–AD; Amendment 39–8303; AD 92–15–09]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, that requires repetitive application of rain repellent fluid onto the windshields and adjacent sliding side windows. A terminating action is also provided, which, when accomplished, eliminates the need for repetitive applications of

rain repellent fluid. This amendment is prompted by reports of poor visibility during adverse weather, resulting from the inadequate operation of windshield washers and wipers. The actions specified by this AD are intended to prevent poor visibility through the windshield and adjacent sliding side window, which could adversely affect the pilot's and co-pilot's ability to navigate the airplane visually.

DATES: Effective September 8, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes was published in the **Federal Register** on January 22, 1992 (57 FR 2488). That action proposed to require repetitive application of rain repellent fluid onto the windshields and adjacent sliding side windows. A terminating action is also provided, which, when accomplished, eliminates the need for repetitive applications of rain repellent fluid.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

A second commenter requests that the proposal be revised to require the installation of Modification 35073A alone as terminating action for the repetitive applications of Repcon rain repellent as would be required by proposed paragraph (a). As proposed, paragraph (d) would require that two modifications, 35073A and 35198A, be accomplished in order to terminate this repetitive requirement. In support of this request, the commenter indicates that a conflict exists between the two service bulletins cited in the proposal. British Aerospace Service Bulletin ATP-30-3, Revision 3, dated October 19, 1990, which applies only to pre-modification 35073A airplanes, indicates that once Modification 35073A is installed, repetitive applications of Repcon rain repellent would no longer be necessary. Conversely, British Aerospace Service Bulletin ATP-30-10, dated September 30, 1991, states that two modifications, 35073A and 35198A, must be accomplished before the repetitive applications of Repcon may be discontinued.

The commenter notes that, while Modification 35073A involves relocating the windscreen washer nozzles to provide a better spray pattern of fluid, Modification 35198A does not affect the pattern of fluid spray on the windscreen. The commenter concludes that the intent of applying Repcon to the windscreen is to improve the flow of washer fluid onto the windscreens as an interim measure until Modification 35073A is installed; therefore, once that modification is accomplished, repetitive applications of Repcon would no longer be necessary.

The FAA concurs. The FAA has determined that the installation of Modification 35073A alone would discontinue the need for repetitive applications of Repcon. Additionally, the manufacturer has confirmed that this was its intent in recommending that modification. Paragraph (d) of the final rule has been revised accordingly.

Since issuance of the Notice, British Aerospace has issued Revision 1 to Service Bulletin ATP-30-10, dated February 24, 1992, which revises the service bulletin effectivity listing and provides materials cost and availability information that was not included at the time the service bulletin was originally issued. The FAA has revised the final rule to limit the applicability of the AD and to include this latest revision to the service bulletin as an appropriate service information source.

Paragraph (e) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,208 per airplane for those airplanes having serial numbers 2001 through 2019. Required parts will cost approximately $372 for all other airplanes. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,916 per airplane for those airplanes having serial numbers 2001 through 2019; and $2,022 per airplane for all other airplanes. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-15-09. British Aerospace: Amendment 39-8303. Docket 91-NM-265-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2041, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent poor windshield visibility, which could adversely affect the pilot's and co-pilot's ability to navigate the airplane visually, accomplish the following:

(a) For airplanes having serial numbers 2001 through 2041: Within 14 days after the effective date of this AD, and thereafter at intervals not to exceed 50 hours time-in-service, apply Repcon wipe-on rain repellent, or other equivalent rain repellent, onto the windshields and adjacent sliding side windows, in accordance with British Aerospace Service Bulletin ATP-30-3, Revision 3, dated October 19, 1990.

(b) For airplanes having serial numbers 2001 through 2019: Within 9 months after the effective date of this AD, relocate the windshield washer nozzles by incorporating Modification 35073A, in accordance with British Aerospace Service Bulletin ATP-30-10, dated September 30, 1991; or Revision 1, dated February 24, 1992.

(c) For airplanes having serial numbers 2001 through 2041: Within 9 months after the effective date of this AD, reroute the windshield washer fluid supply lines by incorporating Modification 35198A, in accordance with British Aerospace Service Bulletin ATP-30-10, dated September 30, 1991; or Revision 1, dated February 24, 1992.

(d) Accomplishment of the modification required by paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The rain repellent fluid applications shall be done in accordance with British Aerospace Service Bulletin ATP-30-3, Revision 3, dated October 19, 1990, which includes the following list of effective pages:

Page No.	Revision level	Date
1	3	October 19, 1990.
2-4	Original	November 1988.

The modifications shall be done in accordance with British Aerospace Service Bulletin ATP-30-10, dated September 30, 1991; or British Aerospace Service Bulletin ATP-30-10, Revision 1, dated February 24, 1992. These service bulletins contain the following list of effective pages:

Service bulletin number	Page number	Revision level	Date
ATP-30-10, Original issue	1-9, 11, 13, 15, 17, 19	Original	September 30, 1991.
	10, 12, 14, 16, 18	(These pages are not used.)	
ATP-30-10, Revision 1	1-9, 9A, 17, 19	1	February 24, 1992.
	11, 13, 15	Original	September 30, 1991.
	10, 12, 14, 16, 18	(These pages are not used.)	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 29, 1992.

Bill R. Boswell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18089 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-ASW-12; Amendment 39-8250; AD 92-11-01]

Airworthiness Directive; Messerschmitt-Bolkow-Blohm Model BO 105 LS A-3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive that is applicable to Messerschmitt-Bolkow-Blohm (MBB) Model BO 105 LS A-3 helicopters equipped with certain torque indication hose assemblies. This action requires replacement of the existing non-fire resistant hoses (one located on each engine) with fire resistant hoses. This amendment is prompted by the discovery of non-fire resistant torque indication hoses located in the engine fire zones. The actions specified in this AD are intended to prevent the failure of a torque indication hose during an engine fire, thereby fueling the fire with engine oil and leading to further damage and possible loss of the helicopter.

DATES: Effective August 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 1992.

Comments for inclusion in the Rules Docket must be received by September 17, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-12, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

The service information referenced in this AD may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2349, West Chester, Pennsylvania 19380. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North

Capitol Street NW., suite 700 Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Propulsion Branch, ANE–174, New England Region, 181 S. Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: The Canadian Air Transportation Administration, known as Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on MBB Model BO 105 LS A–3 helicopters with serial numbers (S/N) 2001 through 2037. Transport Canada advises that the torque indication hose, part number (P/N) AE707355–1, is not fire resistant. This hose must be fire resistant as required by FAR 27.1183(a).

MBB Helicopter Canada Ltd. has issued Alert Service Bulletin No. ASB–BO 105 LS–60–4, Revision 1, dated November 15, 1991, that specifies that the affected part must be replaced with an airworthy fire resistant hose, P/N AE705145–14. Transport Canada classified this service bulletin as mandatory and issued Airworthiness Directive Number CF–91–41 in order to assure the airworthiness of these helicopters.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since this condition described is likely to exist or develop on other helicopters of the same type design registered in the United States, this AD is being issued to help prevent failure of the torque indication hose during an engine fire, thereby fueling the fire with engine oil and leading to further damage and possible loss of the helicopter. This AD requires replacement of the affected hoses with fire resistant hoses. The required actions are to be accomplished in accordance with the service bulletin previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–12." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

AD 92–11–01 Messerschmitt-Bolkow-Blohm (MBB): Amendment 39–8250.

Docket Number 92–ASW–12.

Applicability: MBB Model BO 105 LS A–3 helicopters, serial numbers (S/N) 2001 through 2037, certificated in any category and equipped with a torque indication hose assembly, part number (P/N) AE707355–1.

Compliance: Required no later than July 31, 1992, unless previously accomplished.

To prevent failure of the torque indication hose assembly during an engine compartment fire, thereby fueling the fire with engine oil and leading to possible loss of the helicopter, accomplish the following:

(a) Replace the existing torque indication hose, P/N AE707355–1, on each engine with a new fire resistant torque indication hose, P/N AE705145–14, in accordance with Part 2, Accomplishment Instructions of MBB Alert Service Bulletin No. ASB–BO 105 LS–60–4, Revision 1, dated November 15, 1991.

(b) special flights permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may

be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager of the New York Aircraft Certification Office. NOTE: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, New York Aircraft Certification Office.

(d) The removal and replacement of the torque indication hose shall be done in accordance with Part 2, Accomplishment Instructions of MBB Helicopters Alert Service Bulletin No. ASB-BO 105 LS-80-4, which incorporates the following pages:

Pages	Revision level	Date
1 through 2	Revision 1	Nov. 16, 1981.
3 through 5	Original	Aug. 30, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2349, West Chester, Pennsylvania 19380. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, Room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on August 28, 1992.

Issued in Fort Worth, Texas, on April 22, 1992.

A.J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-18098 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-40; Amendment 39-8291; AD 92-15-07]

Airworthiness Directives; Textron Lycoming LTS101 Turboshaft and LTP101 Turboprop Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document supersedes an existing airworthiness directive (AD) applicable to Textron Lycoming LTS101 series turboshaft and LTP101 series turboprop engines that currently requires initial and repetitive inspections of all integrally cast power turbine (PT) rotors for blade cracking, and removal of rotors containing a crack. This amendment eliminates one of the current inspection methods, adds additional inspection requirements, identifies affected PT rotor part numbers, and establishes PT rotor speed ranges that must be avoided. This amendment is prompted by integrally cast PT rotor blades continuing to separate since issuance of the current AD. The actions specified by this AD are intended to prevent fracture of the integrally cast PT rotor blade, which can result in engine power loss and uncontained engine failure.

DATES: Effective September 2, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Textron Lycoming, Technical Publications, Department 30V, 550 South Main Street, Stratford, Connecticut 06497, and Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Engine Certification Office, ANE-140, FAA, New England Region, Engine & Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7121; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding airworthiness directive (AD) 87-11-09, Amendment 39-5902 (53 FR 16366, May 9, 1988), which is applicable to Textron Lycoming LTS101 series turboshaft and LTP101 series turboprop engines, was published in the Federal Register on November 25, 1991 (56 FR 59234). That action proposed to require periodic inspections of the power turbine (PT) rotor in accordance with Textron Lycoming Service Bulletin (SB) No. LT 101-72-00-0090, Revision 5, dated January 15, 1990, that includes Commercial Service Letter (CSL) 063 R-1, dated May 31, 1991. That action also proposed to establish PT rotor speed ranges for Textron Lycoming LTS101 turboshaft engines that must be avoided in accordance with Textron Lycoming SB No. LTS 101C-72-00-0131, dated September 17, 1990; Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222-00-57, dated December 21, 1990; and Bell Helicopter Textron ASB No. 222U-90-30, dated December 21, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter suggests adding language in the applicability paragraph to differentiate integrally cast PT rotors from the PT rotors with insertable blades. The FAA does not concur. In paragraphs (a), (b), and (c) of this final rule, the affected parts are clearly identified by part number. There is no need to further distinguish between affected and unaffected parts.

The commenter also suggests that the statement of unsafe condition should be changed to specify the integrally cast PT rotor blade to assist in identification of the part. The FAA concurs and has changed the statement accordingly.

The FAA has also reviewed the requirements of the NPRM for clarity and style. Minor changes have been made to paragraphs (a) and (b) for clarity, such as defining hours as hours time in service and inserting the words "PT rotor" before "blade cracks." In addition, without altering their substance, paragraphs (a), (b), (d), and (e) of the AD have been reworded for style.

After careful review of the available data, including the comment received above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on the operator nor increase the scope of the AD.

There are approximately 935 LTS101 and LTP101 series engines of the affected design in the worldwide fleet. The FAA estimates that 388 engines installed on aircraft of U.S. registry will be affected by this AD, that it would take approximately 3 manhours per engine to accomplish the required actions, and that the average labor rate would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $69,720.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is

determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-5902 (53 FR 16386, May 9, 1988), and by adding a new airworthiness directive, Amendment 39-8301, to read as follows:

AD 92-15-07 *Textron Lycoming*: Amendment 39-8301, Docket No. 91-ANE-40. Supersedes AD 87-11-09, Amendment 39-5902.

Applicability: Textron Lycoming LTS101 series turboshaft and LTP101 series turboprop engines installed on but not limited to Aerospatiale AS350, Bell 222, and MBB BK117 helicopters; and Piaggio P166-DL3, Airtractor AT302, and Cessna 421 airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the integrally cast power turbine (PT) rotor blade, which can result in engine power loss and uncontained engine failure, accomplish the following:

(a) Perform a Type I, Method C fluorescent penetrant inspection of Part Number (P/N) 4-141-070-XX and P/N 4-143-010-XX PT rotors installed in engines, in accordance with the procedures in Textron Lycoming Service Bulletin (SB) Number LT 101-72-00-0093, Revision 5, dated January 15, 1990, as follows:

(1) Inspect for PT rotor blade cracks within 50 hours time in service (TIS) or 300 PT cycles in service (CIS), whichever occurs first, since accomplishing the last inspection performed in accordance with AD 87-11-09.

(2) Thereafter, reinspect for PT rotor blade cracks at intervals not to exceed 50 hours TIS or 300 PT CIS, whichever occurs first, since the last Type I, Method C fluorescent penetrant inspection performed in accordance with paragraph (a) of this AD.

(3) Remove from service prior to further flight, cracked PT rotors found during the inspections required by paragraphs (a)(1) and (a)(2) of this AD. Prior to returning to service, replace with a serviceable PT rotor.

Note: For information on PT rotor cycle and counting methodology consult the latest revision to Textron Lycoming SB No. LT 101-71-00-0002.

(b) Perform a Type I, Method D fluorescent penetrant inspection of P/N 4-141-070-XX and P/N 4-143-010-XX PT rotors prior to installation into a PT module or prior to returning to service, in accordance with Textron Lycoming SB No. LT 101-72-00-0093, Revision 5, dated January 15, 1990. Cracked PT rotors found during this fluorescent penetrant inspection shall not be returned to service and must be replaced with a serviceable PT rotor.

(c) For PT rotors P/N 4-141-070-XX and P/N 4-143-010-XX installed in LTS101-650C-3, LTS101-650C-3A, and LTS101-750C-1 series engines, avoid continuous operation at certain PT operating speeds in accordance with Textron Lycoming SB Number LTS101C-72-00-0131, dated September 17, 1990, Bell Helicopter Textron Alert SB 222U-90-30, dated December 21, 1990, and Alert SB 22-90-57, dated December 21, 1990, within 20 hours time in service, after effective date of this AD, as follows:

(1) Avoid continuous engine operation at 97% to 98.5% power turbine (Np) speed, including autorotation and single engine operation. Operation in this speed range is only permitted for topping checks and when operations in this range are necessary to maintain safe flight.

(2) Install a cockpit tachometer decal and add the temporary rotorcraft flight manual supplement in accordance with applicable Bell Helicopter Textron ASB No. 222U-90-30 or Bell Helicopter Textron ASB No. 222-90-57, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The PT rotor inspection and removal criteria, the establishment of the PT rotor speed operation avoidance ranges, rotorcraft modification, and rotorcraft flight manual revisions shall be accomplished in accordance with the following service bulletins:

Document No.	Pages	Issue/revision	Date
Textron Lycoming SB LT 101-72-00-0093 including Commercial Service Letter CSL 063 R-1	1-4	Revision 5	1-15-90
	1-2	Revision 1	5-31-91
Textron Lycoming SB LTS 101C-72-00-0131	1-2	Original	9-17-90
Bell Helicopter Textron Alert SB 222-90-57	1-4	Original	12-21-90
Bell Helicopter Textron Alert SB 222U-90-30	1-4	Original	12-21-90

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, Technical Publications, Department 30V,

550 South Main Street, Stratford, Connecticut 06497, and Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(g) This amendment becomes effective on September 2, 1992.

Issued in Burlington, Massachusetts, on June 29, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-18101 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-278-AD; Amendment 39-8304; AD 92-15-10]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, that currently requires a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and No. 2, and recalibration, if necessary. This amendment requires repetitive check measurements of the static inverter voltage and frequency outputs, and recalibration, if necessary. A terminating action has also been added, which, when accomplished, eliminates the need for repetitive inspections. This amendment is prompted by a report of inadvertent operation of the stick shaker and stick pusher shortly after take-off, due to a faulty static inverter. The actions specified by this AD are intended to prevent erroneous stick shake and stick push occurrences, which could adversely affect the controllability of the airplane.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-01-02, Amendment 39-6846 (55 FR 52038, December 19, 1990), which is applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, was published in the **Federal Register** on February 12, 1992 (57 FR 5089). The action proposed to require repetitive check measurements of the static inverter voltage and frequency outputs, and recalibration, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraph (e) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $82,775. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6846 (55 FR 52038, December 19, 1990), and by adding a new airworthiness directive (AD), amendment 39-8304, to read as follows:

92-15-10. British Aerospace: Amendment 39-8304. Docket 91-NM-278-AD. Supersedes AD 91-01-02, Amendment 39-6846.

Applicability: British Aerospace Model BAC 1-11 200 and 400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous stick shake and stick push occurrences, which could adversely affect the controllability of the airplane, accomplish the following:

(a) Within 600 hours time-in-service or within 120 days after January 28, 1991 (the effective date of AD 91-01-02, Amendment 39-6846), whichever occurs first, measure the voltage and frequency outputs of Static Inverters No. 1 and No. 2, in accordance with

the Accomplishment Instructions in British Aerospace Alert Service Bulletin 27-A-PM6005, Issue 1, dated March 28, 1990, or Issue 2, dated June 17, 1991. If the measured voltage and/or frequency do not conform with the tolerances as detailed in the Maintenance Manual, Paragraph E, "Stall Protection—Simulated Flight Condition Check," prior to further flight, remove the inverter from the airplane and recalibrate it in accordance with the service bulletin.

(b) Repeat the measurements required by paragraph (a) of this AD at the later of the times specified in subparagraphs (b)(1) and (b)(2) of this AD:

(1) Within 600 hours time-in-service or 4 months after performing the measurement required by paragraph (a) of this AD, whichever occurs first; or

(2) Within 100 hours time-in-service after the effective date of this AD.

(c) After performing the measurements required by paragraph (b) of this AD, repeat the measurements thereafter at intervals not to exceed 600 hours time-in-service or 4 months, whichever occurs first.

(d) Within 12 months after the effective date of this AD, install Modification PM6005 in the number 1 and 2 inverters, in accordance with British Aerospace Service Bulletin 27-PM6005, dated June 11, 1991. Installation of Modification No. PM6005 in the number 1 and 2 inverters constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The measurements and recalibrations shall be done in accordance with British Aerospace Alert Service Bulletin 27-A-PM6005, Issue 1, dated March 28, 1990, or British Aerospace Alert Service Bulletin 27-A-PM6005, Issue 2, dated June 17, 1991. The modifications shall be done in accordance with British Aerospace Alert Service Bulletin 27-PM6005, dated June 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 7, 1992.

Issued in Renton, Washington, on June 29, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18102 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AGL-4]

Establishment of Transition Area, Gwinner, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Gwinner, North Dakota transition area to accommodate a new nondirectional radio beacon (NDB) runway 34 Standard Instrument Approach Procedure (SIAP) to Gwinner-Roger Melroe Field. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 u.t.c. October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 21, 1992 the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Gwinner, North Dakota (57 FR 14521).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area at Gwinner, North Dakota to accommodate a new NDB runway 34 Standard Instrument Approach Procedure (SIAP) to Gwinner-Roger Melroe Field. The SIAP is predicated on a non-federal NDB located on the airport. This action will lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Gwinner-Roger Melroe Field. This action will also change the operating status of the airport from VFR only to include IFR operations concurrent with the SIAP publication.

The development of the new SIAP procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot-controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL ND TA Gwinner, ND [New]

Gwinner-Roger Melroe Field, Gwinner, ND (lat. 46°13'07" N., long. 97°36'36" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Gwinner-Roger Melroe Field Airport.

* * * * *

Issued in Des Plaines, Illinois on July 20, 1992.

Chester W. Anderson,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 92-18144 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD 09-92-16]

Special Local Regulations: Race Rock Offshore Classic, Lake St. Clair, St. Clair Shores, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Race Rock Offshore Classic. This event will be held on Lake St. Clair, St. Clair Shores, MI, on the 16th of August, 1992, from 10 a.m. (EDST) until 1 p.m. (EDST), with a rain date on the 17th of August, 1992. This event will have an estimated 50 to 60 high performance power boats racing a closed course race on Lake St. Clair which could pose hazards to navigation in the area. Special Local Regulations which restrict other traffic in the area are necessary to ensure the safety of life and property on portions of Lake St. Clair during this event.

EFFECTIVE DATES: These regulations will become effective from 10 a.m. (EDST) until 1 p.m. (EDST), on August 16, 1992, or on August 17, 1992 (the rain date).

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Aids to Navigation & Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until July 6, 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Aids to Navigation & Waterways Management Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Race Rock Offshore Classic will be conducted on Lake St. Clair, St. Clair Shores, MI, between Gaukler Point and Point Huron, on the 16th of August, 1992, with a rain date on the 17th of August, 1992. This event will have an estimated 50 to 60 high performance power boats racing in a closed course race, which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will be regulating vessel traffic within this section of Lake St Clair and L'anse Creuse Bay. A no entry zone on the outside of the race course area between the race course and the shoreline will be established from Point Huron south to an east-west line one nautical mile south of Cutoff Canal (commonly known as the Spillway) in which no vessel may enter without prior approval of the Coast Guard Patrol Commander. The area of no entry includes all of the L'anse Creuse Bay area. A no wake zone on the outside of the race course area between the race course and the shoreline will be established from an east-west line one nautical mile south of Cutoff Canal (Spillway) south to Gaukler Point. Commercial vessels desiring to transit the regulated area shall provide prior notification to the Coast Guard Patrol Commander to ensure a safe transit can be made. Recreational vessel traffic desiring to transit the regulated area may do so only with prior approval of the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-T0916 to read as follows:

§ 100.35-T0916 Race Rock Offshore Classic, Lake St. Clair, St. Clair Shores, MI

(a) *Regulated Area:* That portion of Lake St. Clair, St. Clair Shores, MI, enclosed by a southwest line from Point Huron to Gaukler Point, thence northward along the St. Clair Shores, MI Shoreline to Point Huron.

(b) *Special Local Regulations:* (1) The regulated area will be restricted from 10 a.m. (EDST) until 1 p.m. (EDST), on the 16th of August, 1992, or on the rain date of the 17th of August, 1992, at the direction of the Coast Guard Patrol Commander, unless sooner terminated by the Coast Guard Patrol Commander. During the restricted periods, no vessel

may transit, anchor, or remain in the regulated area without the permission of the Coast Guard Patrol Commander. Vessels in the area shall comply with the directions of the Coast Guard Patrol Commander.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Commercial vessels desiring to transit the regulated area shall make an advance request to the Coast Guard Patrol Commander. All transiting vessel traffic will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 23, 1992.

G. A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 92-18303 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 92-28]

Elimination of Certain Regulatory Provisions

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations governing the publishing, filing and posting of carrier tariffs to eliminate certain outdated or unnecessary regulatory provisions.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, *Director,* Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Rules and regulations governing the publication and filing of tariffs for the waterborne transportation of property and passengers performed by common carriers in the domestic offshore trades, as required by the Shipping Act, 1916, 46 U.S.C. app. 801 *et seq.,* and the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 *et seq.,* are set forth in 46 CFR part 550. Similarly, rules and regulations governing the publication and filing of tariffs for the transportation of property performed by common carriers in the U.S./foreign trades, as required by the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.,* are set forth in 46 CFR part 580.

A review of parts 550 and 580 disclosed certain provisions which have expired or which no longer serve any regulatory purpose. Consequently, the Federal Maritime Commission ("Commission") published a proposed rule in the Federal Register on June 4, 1992 (57 FR 23568) which would remove these provisions. Comments in favor of the proposed rule were received from Crowley Maritime Corporation, Sea-Land Service, Inc. and the Inter-American Freight Conference. No adverse comments were received.

Therefore, parts 550 and 580 are being amended to remove certain unnecessary provisions. Section 550.1(a)(9), 46 CFR 550.1(a)(9), provides for the exemption from the tariff filing requirements applicable to the domestic offshore trades for transportation by Puget Sound Tug & Barge Company of general cargo in non-self-propelled barges from Seattle, Washington to the vicinity of Kivalina, Alaska, during calendar years 1988 and 1989. This exemption has expired. Similarly, § 580.12(c), 46 CFR 580.12(c), which provides for the continuation of certain time/volume rate contracts entered into prior to June 18, 1984, until July 17, 1985, or the term specified in the contract, whichever occurs first, has expired.

The Commission is also amending § 550.5(b)(8)(xiv), 46 CFR 550.5(b)(8)(xiv), and removing § 550.8, 46 CFR 550.8. Section 550.5(b)(8)(xiv) refers to the Automobile Manufacturers' Measurements guide, a publication which was indefinitely suspended by the Commission on July 15, 1987 (52 FR 26479). Since then, the Commission has not received any complaints or requests to reinstitute publication of the guide. Consequently, the reference to this publication is deleted.

Section 550.8 governs the filing of tariffs applicable to through intermodal transportation in the United States domestic offshore trades. Joint rail/water and motor/water rates are now exclusively subject to the jurisdiction of the Interstate Commerce Commission. See *Puerto Rico Maritime Shipping Authority* v. *ICC,* 645 F.2d 1102 (D.C. Cir 1981); *Trailer Marine Transportation Co.* v. *FMC,* 602 F.2d 329 (D.C. Cir. 1979). The Commission is, therefore, amending 46 CFR 550.5(b)(8)(xiv) and removing 46 CFR 550.8. New part 514, the Automated Tariff Filing and Information system rules, will be appropriately revised to conform to these changes.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the final rule in terms of that order and determined that the final rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Federal Maritime Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions, inasmuch as it merely removes outdated or unnecessary regulations.

This final rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 580

Cargo, Cargo vessels, Freight, Exports, Harbors, Imports, Maritime carriers, Rates, Reporting and recordkeeping

requirements, surety bonds, Water carriers, Water transportation.

Therefore, pursuant to 5 U.S.C. 553; sections 18, 35 and 43 of Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a; section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; and sections 8, 10, 11, 12, 13, 17 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1709, 1710, 1711, 1712, 1716 and 1722; chapter IV of Title 46, Code of Federal Regulations, is amended as follows:

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

§ 550.1 [Removed]

2. Section 550.1(a)(9) is removed.

3. Section 550.5(b)(8)(xiv)(A) introductory text is revised to read as follows:

§ 550.5 Contents of tariffs.

* * * * *

(b) * * *

(8) * * *

(xiv) * * *

(A) Automobiles shall be rated by measure. The cubic measurements for the five most recent model years will be that prescribed by the manufacturer of the particular make and model as shown on pages to herein.

* * * * *

§ 550.8 [Removed]

4. Section 550.8 is removed and reserved.

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1722.

§ 550.12 [Removed]

2. Section 580.12(c) is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–18206 Filed 7–31–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–6; FCC 92–318]

Filing and Processing of Applications for Unserved Areas in the Cellular Service and Modification of Other Cellular Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; postponement of dates for filing undated system information.

SUMMARY: This Order postpones the dates for filing updated system information by cellular radio licensees and new cellular applications for unserved area applications until future dates to be set by the Chief, Common Carrier Bureau. If this Order were not issued, certain cellular radio licensees would have to submit updated system information by July 16, 1992 and other licensees would have to file such information as well as applications for unserved areas on dates specified by the Commission's rules. This Order postpones all dates for submitting the relevant information and applications until the Chief, Common Carrier Bureau, issues public notices specifying due dates.

DATES: The dates for filing updated system information pursuant to § 22.925 of the Commission's Rules and the Second Report and Order in this docket and the dates for filing unserved area applications pursuant to § 22.6(b)(2) of the Commission's Rules are postponed until the Chief, Common Carrier Bureau, issues public notices setting forth relevant filing dates.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 90–6, adopted July 10, 1992 and released July 10, 1992. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Report and Order

On July 10, 1992, the Commission adopted an Order, denying the Motion to Postpone Filing of Updated System Information and Applications for Unserved Areas (Motion) filed by the Committee for Effective Cellular Rules (Committee). In its Motion, Committee requested that the dates for the filing of updated system information by existing cellular licensees and the acceptance of applications for new cellular licensees to cover unserved areas in any Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) be extended to a date at least 90 days after the Commission disposes of Committee's petitions for reconsideration of the Commission's First Report and Order, 6 FCC 6185 (1991), and Second Report and Order, 7 FCC Rcd 2449 (1992). The Commission found that Committee had not met the requirements for a stay, particularly regarding irreparable injury.

Nevertheless, the Commission on its own motion, postponed the dates for filing updated system information for all licensees, including those who would automatically be required to file such information 60 days before the end of their five-year fill-in period as well as those whose updated system information was due on July 16, 1992. The Commission also postponed the dates for filing unserved area applications until future dates are announced by public notice.

The Commission stated that this action was taken because petitions for reconsideration have asked for clarification of some filing requirements. The Commission determined that it would be administratively efficient to delay the filing of updated system information until it acts on the reconsideration petitions.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18223 Filed 7–31–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–82; RM–7843]

Radio Broadcasting Services; Eatonville, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Fatima Education Radio Foundation, allots Channel 285A to Eatonville, Washington, as the community's first local aural transmission service. See 57 FR 14555, April 21, 1992. Channel 285A can be allotted to Eatonville in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site without the imposition of a site restriction. The coordinates for Channel 285A at Eatonville are North Latitude 46–52–12 and West Longitude 122–16–06. Since Eatonville is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATES: September 8, 1992. The window period for filing applications will open on September 9, 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–82, adopted July 8, 1992, and released July 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Eatonville, Channel 285A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–18225 Filed 7–31–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–403; RM–7279, RM–7283, RM–7572, RM–7573]

Radio Broadcasting Services; Atchison, Horton and Wathena, Kansas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 229C3 to Horton, Kansas, in response to a counterproposal filed by KARE Radio, Inc. in MM Docket 90–403. See 55 FR 36840, September 7, 1990. The coordinates for Channel 229C3 at Horton are 39–37–36 and 95–18–25. There is a site restriction 19.6 kilometers (12.2 miles) east of the community. The petition filed by Lee Brandt proposing the allotment of Channel 229A to Wathena, Kansas, is denied (RM–7572). The petition filed by KARE Radio, Inc. to add Channel 229A to Atchison, Kansas, is denied (RM–7283). The counterproposal filed by Lee Brandt to add Channel 229C3 to Wathena, Kansas, is dismissed (RM–7572). With this action, this proceeding is terminated.

DATES: Effective September 8, 1992. The window period for filing applications for Channel 229C3 at Horton, will open on September 9, 1992, and close on October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 90–403, adopted July 9, 1992, and released July 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Horton, Channel 229C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–18233 Filed 7–31–92; 8:45 am]

BILLING CODE 6712–01–M

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Parts 9903 and 9904

Office of Federal Procurement Policy

Cost Accounting Standards Board; Recodification of Cost Accounting Standards Board Rules and Regulations

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Correction to final rule.

SUMMARY: On April 17, 1992, the Office of Federal Procurement Policy, Cost Accounting Standards Board, recodified at 48 CFR chapter 99 (57 FR 14148), the Cost Accounting Standards Rules and Regulations previously codified at both 48 CFR part 30, and 4 CFR parts 331 through 420. This document contains corrections to the final rule.

EFFECTIVE DATE: April 17, 1992.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

Background

Section 5 of Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, established a Cost Accounting Standards Board (CASB) within the Office of Federal Procurement Policy. On April 17, 1992, the CASB recodified, into a single set of uniform regulations, those Cost Accounting Standards that are applicable to covered Government contracts and subcontracts. See 57 FR 14148.

Need for Correction

As published, the final regulation contains errors which may prove to be misleading.

Correction of Publication

Accordingly, the publication of the final rule on April 17, 1992 (57 FR 14148) is corrected as follows:

PART 9900—[AMENDED]

1. On page 14152, in the third column, in the table of contents, the entry for

section 9904.403–62, is corrected to read as follows:

9904.403–62 Exemption. [Reserved]

9903.201–3 Solicitation provisions.

2. On page 14154, in the third column, in section 9903.201–3(d), the heading for Cost Accounting Standards Notices and Certification, is corrected to read as follows:

Cost Accounting Standards Notices and Certification (Apr 1992)

9903.201–4 Contract clauses.

3. On page 14155, in third column, in § 9903.201–4(a), the heading of the clause is corrected to read as follows:

Cost Accounting Standards (Apr 1992)

4. On page 14156, in the second column, in § 9903.201–4(c), the heading of the clause is corrected to read as follows:

Disclosure and Consistency of Cost Accounting Practices (Apr 1992)

5. On page 14156, in the third column, in § 9903.201–4(d), the heading of the clause is corrected to read as follows:

Consistency in Cost Accounting Practices (Apr 1992)

9903.202–9 Illustration of Disclosure Statement Form, CASB DS–1.

6. On page 14159, in § 9903.302–9, a new index page for CASB DS–2 is illustrated below:

BILLING CODE 3110–01–M

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	INDEX

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PART I	-	General Information	1
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FORM CASB DS-1 (REV 3/92)

BILLING CODE 3110-01-C

9904.403-62 Exemption. [Reserved]

7. On page 14191, in the first column, the text of § 9904.403-62 is removed and the section is reserved.

9904.410 [Corrected]

The following corrections are made to appendix A to § 9904.410:

8. On page 14209, first chart, regarding Business Unit N's allocation of the G&A expense pool, item 1., G.&A. expense pool, Cost of sales rate, Year 1979, the figure "375/2,500=.15" is corrected to read "375/2,500=.150".

9. On page 14209, first chart, regarding Business Unit N's allocation of the G&A expense pool, item 3., introductory line, is corrected to read "3. Inventory suspense account [1]".

10. On page 14209, first column, section 2.B., item (1), line 7, is corrected to read as follows: "Adjustment to G.&A. expense applicable to contracts subject to the".

11. On page 14209, first column, section 2.B., item (2), line 4, the word "claus" is corrected to read "clause".

12. On page 14209, first column, section 2.B., item (2), line 5, the figure "175.890" is corrected to read "175,890".

9904.414 [Corrected]

The following corrections are made to Appendix B to section 9904.414:

13. On page 14222, following Table IV, second line of text, the word "authorization" is corrected to read "amortization".

14. On page 14223, Table VII, second column, heading should read as follows: "Fixed-price CAS-covered contract".

9904.417-60 Illustrations.

15. On page 14236, second column, line 33 of section 9904.417-60(a), the figure "$17,448", is corrected to read "$17,558".

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 92-17925 Filed 7-31-92; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 950526-2185]

Marine Mammals; Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Final harvest estimates for subsistence fur seal harvest on the Pribilof Islands.

SUMMARY: Regulations governing the subsistence taking of northern fur seals require NMFS to publish a summary of the previous year's fur seal harvest and a projection of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. NMFS published that notice on May 28, 1992 (57 FR 22450). Following a 30-day public comment period, NMFS is publishing this final notice of the expected harvest levels for 1992 as follows: St. Paul Island: 1,645–2,000; St. George Island: 281–500.

EFFECTIVE DATES: The final notice of subsistence need estimates is effective upon July 29, 1992.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Zimmerman, (907) 586–7235, Mr. Michael Payne, (301) 713–2322, or Dr. Aleta A. Hohn, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of northern fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA) 16 U.S.C. 1316 *et seq.* (at 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilof Aleuts using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The purpose of the annual notice is to provide subsistence estimates for the current year's harvest for St. Paul and St. George Islands. The estimates are given as a range, the lower end of which can be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determines that the subsistence needs of the Pribilof Aleuts have not been satisfied. Conversely, the harvest can be terminated before the lower range of the estimate is reached if it is determined that the subsistence needs of the Pribilof Aleuts have been met or the harvest has been conducted in a wasteful manner.

NMFS published a proposed subsistence harvest estimate (proposed rule) that summarized the 1991 and previous year's harvests and proposed a range of subsistence need estimates for 1992 for the Pribilof Aleuts as follows: St. Paul Island: 1,645–2,000; St. George Island: 281–500 (57 FR 22450, May 28, 1992). Those estimates represented the results of household surveys conducted by the Aleut communities of St. Paul and St. George to estimate minimum subsistence need for the residents of the islands during 1992.

Subsistence Harvest Estimates for 1992

On the basis of the information NMFS has to consider at this time, the lower bound of the estimate of subsistence need on St. Paul Island in 1992 remains at 1,645 (the number of seals actually taken in 1991). If the Aleut residents of St. Paul reach the lower end of this harvest estimate, and have not met their subsistence needs, they may request an additional number of seals up to a harvest total of 2,000. On St. George Island, the lower bound of the estimate of subsistence need in 1992 remains at 281 (the number of seals actually taken in 1991). If the Aleut residents of St. George reach the lower end of this harvest estimate and have not met their subsistence needs, they may request an additional number of seals up to a harvest total of 500 (the upper bound estimated for the 1991 harvest).

From June 30 through August 8 of each year the Pribilovians may harvest up to the lower bound of the applicable estimate. At any time during the harvest season (June 30–August 8), once the lower bound for an island is reached, the harvest for that island must be suspended for no longer than 48 hours pursuant to 50 CFR 215.32(e)(1)(iii). This suspension allows time for an investigation to determine if the subsistence needs of the island residents have been met and the harvest has been conducted in a non-wasteful manner. Information relevant to this investigation will include information submitted by a representative of the island community in question and other available harvest data.

The Assistant Administrator expects that if the residents of St. Paul or St. George believe that their subsistence needs are not fulfilled, they will submit in writing, for consideration during the investigation, any information they have which they believe indicates that their subsistence needs are unfulfilled. This will include written documentation of any house-to-house survey which may have been taken, just a summary of survey results will not be sufficient. In

submitting any such information, the island representatives should take reasonable steps to protect the privacy of the Island's residents. If the Pribilof Aleuts substantiate an additional need for seals and there has been no indication of waste, the Assistant Administrator may authorize the take of additional seals up to the number required for subsistence purposes. The information should be submitted as quickly as possible after a request has been made for an additional number of seals, in order to assure that the required harvest suspension lasts no longer than 48 hours.

Obviously, if the Island's representatives elect to conduct household surveys to assess remaining subsistence need and the results from these surveys are to be submitted in writing to support a finding that more seals are needed, the managers of the harvest on each island will need to plan ahead and keep an accurate count of the number of requests they receive for seal meat. NMFS doesn't believe that this will burden the managers.

If additional information is not submitted by the Pribilof Aleuts, the Assistant Administrator will consider only the information in the record at the time of the suspension. It is very likely, under these circumstances, that the revised subsistence estimate will not exceed the lower end of the original estimate. If that is the case, no additional takings would be authorized.

Discussion

Traditionally, Aleut nutritional requirements for fur seal meat were met from animals taken in the commercial harvest when far more seals were killed than were needed for subsistence purposes. As a result, it was possible for subsistence needs to be filled using only the most prized parts of the seals. When the commercial fur seal harvest on the Pribilof Islands was phased out in 1984, little was known of the amount of seal meat or the number of seals needed to meet the dietary requirements of the Pribilof Aleuts, especially if, instead of taking only prized parts, additional parts of the animals were taken so that each animal was more fully utilized.

Regulations drafted to govern the subsistence harvest of fur seals specified that seals could be taken if the taking is "(a) For subsistence uses, and (b) Not accomplished in a wasteful manner" (50 CFR 215.31). The regulations require that the following specified set of "parts" be taken from the seals: "all hearts, livers, flippers, breasts, shoulders, and other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections" (51 FR 24832, July 9, 1986). This list was compiled from information provided by the Pribilof Aleuts when the regulations were being drafted and was re-affirmed by the Pribilof Aleuts at a workshop held to review the management regime for this subsistence harvest (Workshop) held November 5, 1991, in Anchorage. The regulations further require NMFS representatives to monitor the harvest each day and collect information on the number of seals taken and "the extent of utilization of the fur seals taken," the latter for use as an indicator of whether waste is occurring. Since 1985, information has been compiled on the subsistence harvest and removal of seal parts on St. Paul Island (summary at 57 FR 22450, May 28, 1992). Comparable information is not available for St. George Island, where less than 15 percent of the total number of fur seals harvested for Pribilof subsistence have been taken.

The principle standard for determining whether or not the harvest is being conducted in a wasteful manner is based upon the parts taken from the fur seal during butchering. The primary method used for monitoring compliance with this standard has been through direct observation by NMFS employees. A secondary method for monitoring compliance with this standard has been the calculation of the "percent-use" of a sample of harvested fur seals. Percent-use is the average percentage of meat and bone removed from the carcass, by weight, and may indirectly provide information on whether the required parts had been removed.

At the first subsistence harvests, in 1985 and 1986, NMFS representatives determined the approximate average percentage of each seal carcass taken for human consumption (Zimmerman and Letcher 1986). These studies indicated that, on average, the maximum percentage of a fur seal that potentially could be used for food is approximately 53.3 percent; this includes parts not traditionally eaten by the Pribilof Aleuts. The same studies showed that when fur seals are butchered in such a way that only the most prized portions are taken, about 30 percent of the carcass is used. Close to maximum percentage is taken when the seal is butchered using a technique called the whole cut; the lesser amount, approximating removal of only the prized portions, is taken with a technique called the butterfly cut. Less desirable portions of the seal carcass, including some bones, removed in whole cuts are not removed in butterfly cuts.

The dependence on percent-use as an indicator of waste has been controversial. If measures of percent-use are accurate and precise, represent removal of the required edible portions of the seals as defined in the regulations, and reflect the use of the parts taken rather than simply the removal of parts from the beach, then percent-use may provide an objective means of monitoring compliance with the requirement of a non-wasteful harvest. Potential inadequacies and difficulties associated with using percent-use as a standard for determining waste, however, were addressed at the Workshop. Workshop participants discussed numerous factors that might be responsible for the variability observed in percent-use, given that specific body parts are required to be taken. For example, field conditions may make it difficult to record percent-use accurately. In addition, there may be variation from animal to animal that would affect the percent-use results even if the same butchering techniques are used and the same parts taken from all animals sampled. NMFS has acknowledged (56 FR 36737, August 1, 1991) that the current measurements of percent-use should be examined to determine whether or not percent-use values actually indicate "waste" in the subsistence harvest. A study to address some of these uncertainties will be conducted during the 1992 harvest.

It was also determined at the Workshop that the existing percent-use data need to be analyzed to determine within- and between-year variation. Accordingly, NMFS has conducted a preliminary examination of the percent-use values taken from a systematic sample of northern fur seals harvested between 1986 and 1991 to determine trends in percent-use and to determine causes for the observed differences in percent-use values during each year of the harvest, specifically with regard to changes in the relative numbers of seals taken by butterfly and whole cuts. During the 1991 harvest, the type of cut was recorded along with the percent-use data. For previous years, the type of cut was not recorded and so has been inferred from the 1992 results.

The distribution of percent-use values from the samples of seals harvested between 1986 and 1991 on St. Paul Island is bimodal (from sampling data collected by NMFS during the harvest). The bimodal distribution reflects the two types of butchering techniques, whole and butterfly cuts, used in the harvest during each year. For 1991, when the type of cut was recorded, butterfly cuts removed 15 to 46 percent of the total weight of the animal

(average = 34 percent), and whole cuts removed between 37 and 64 percent of the meat (average = 54 percent). There was little overlap in the distribution of percent-use between the two types of cuts and a breakpoint between distributions occurred at about 45 percent. On the basis of these results, the data from 1985–1990 were stratified such that if use was <45 percent, that value was assigned to the butterfly cut stratum and if use was > 45 percent, that value was assigned to the whole cut stratum.

The data show that there has been a statistically significant decrease in the average, annual percent-use between 1986 and 1991 (Table 1) that can be attributed to an increased use of the butterfly cut. From 1986–1988, the butterfly cut was used from 39 to 56 percent of the time (Table 2). During the most recent 3 years of the subsistence harvest (1989–1991), the butterfly cut was used from 69 to 75 percent of the time (Table 2). The average annual percent-use values from using the butterfly cut ranged from 30.6 to 33.9 percent, close to the level that indicates that only preferred parts are being taken (30 percent, Zimmerman and Letcher 1986). The average annual recovery using whole cuts ranged from 53.4 to 56.2 percent.

The data also indicate a number of other trends. For one, there has been a small, but marginally significant ($p = 0.13$), increase in percent-use for seals harvested with the butterfly cut, from a low of 30.6 in 1987, to a high of 33.9 in 1991. In 1991, of the animals sampled for weights, 9.4 percent of those taken with the butterfly cut had a percent-use < 30. The values were similar in 1989 and 1990 (8.8 and 8.7 percent, respectively) but much higher in 1986 through 1988 (18.2, 25.4, and 20.7, respectively).

TABLE 1.—AVERAGE ANNUAL PERCENT-USE OF FUR SEALS DURING THE SUBSISTENCE HARVEST. A PERCENT-USE OF <45 INDICATES A BUTTERFLY CUT AND USE > 45 INDICATES A WHOLE CUT

Year	Percent-use category		Combined average
	<45%	>45%	
1986	31.9	56.2	46.6
1987	30.6	53.4	40.7
1988	32.1	53.7	43.4
1989	32.5	53.7	37.9
1990	33.8	53.5	39.6
1991	33.9	54.1	40.1

TABLE 2.—THE NUMBER OF FUR SEALS SAMPLED ANNUALLY FOR WEIGHTS DURING THE SUBSISTENCE HARVEST, STRATIFIED BY A PERCENT-USE OF <45 AND >45 (BUTTERFLY AND WHOLE CUTS, RESPECTIVELY). "PERCENT" IS THE WITHIN-YEAR PERCENTAGE OF SEALS TAKEN BY EACH METHOD

Year	Percent-use category				
	<45%		>45%		
	Number	Percent	Number	Percent	Total
1986	45	39	71	61	116
1987	131	56	104	44	235
1988	67	48	73	52	140
1989	112	75	38	25	150
1990	136	70	59	30	195
1991	223	69	98	31	321

NMFS recognizes that the failure to take certain parts from an individual animal may occur. When it does, use of the seal will be less than the minimum required as measured both in parts taken and percent recovery. These circumstances are expected to be rare and may occur, for example, when the seal is diseased or the meat is contaminated from bile or other internal fluids. During the 1992 harvest, the NMFS observer will record when and under what conditions < 30 percent of a seal is taken.

NMFS has and continues to encourage the highest possible utilization of fur seals and has expressed concern when the percent-use has fallen below certain levels. Despite the possible problems with percent-use as an indicator of waste, it is one method of monitoring used to help determine whether the harvest is being conducted in a wasteful manner. NMFS will continue to subsample the harvested seals to measure percent-use during the 1992 harvest. In addition, a study will be conducted during the 1992 harvest to attempt to better define the weights of usable parts of the seals. The Pribilof Aleuts are cooperating in the conduct of this study.

NMFS intends to continue to monitor the entire harvest on St. Paul and a portion of the harvest on St. George. NMFS reiterates that it expects the use of harvested animals to be non-wasteful and will continue its supervision and monitoring program during 1992.

As noted in the proposed rule, NMFS recently received a letter from the Bering Strait Economic Council (the Council) about the proposed use of fur seal skins from the subsistence harvest on the Pribilofs for the making of native Alaskan handicrafts. In that letter, the Council stated that it was working with the Shishmaref Tannery (operated by the Shishmaref Traditional Council) and the TDX corporation on St. Paul "to find a way that the IRA Councils of both entities would utilize the seal skins from the subsistence seal catch of the St. Paul Island each year." NMFS stresses that the estimated harvest levels must be based upon subsistence need and not be commercially motivated.

NMFS acknowledges that a more accurate method to determine the subsistence needs of the Pribilof Aleuts should be developed (56 FR 38735, Aug. 1, 1991). In addition to having conducted the workshop on the present fur seal management regime, NMFS will undertake a study of the subsistence

needs on the Pribilof Islands following the 1992 harvest.

Response to Comments

Comments and/or discussion received during the 30-day public comment period focused primarily on the following issues: Whether past harvests have been conducted in a "wasteful" manner; the method used for determining the subsistence needs of the Pribilof Aleuts in past years; the 48-hour harvest suspension; the proposed number of seals required for subsistence needs in 1992; heat stress in fur seals during the harvest; the proper disposition of bacula; and the commercial use of fur seal skins taken during the subsistence harvest.

Efficient Versus "Wasteful" Use

The issue of whether past harvests have been conducted in a "wasteful" manner was one of the most contentious points in the proposed estimates of subsistence need in 1992, as it was in 1991 (56 FR 36735, Aug. 1, 1991). One commenter indicated that the present method of determining "percent-use" from each carcass does not represent any indication of actual percent-use by the Pribilof community, but rather represents the average percentage of animals that are removed from the harvest fields, or "percent-recovery." The actual use of each seal by each household is not reflected in the current monitoring practices. The commenter endorsed a study that would distinguish between percent-use and percent-recovery to determine the amount of each fur seal actually consumed.

Another commenter maintained that NMFS has failed to ensure that the harvest be conducted in a non-wasteful manner. The center of the issue focused on whether or not the butterfly cut is considered a "wasteful" technique, as interpreted in the regulations. The relevant statutory mandate at 16 U.S.C. 1371(b)(3), and the regulations at 50 CFR 215.2, prohibit "taking of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal". NMFS utilizes a parts-based standard for evaluating waste, and considers the removal and consumption of "all hearts, livers, flippers, breasts, shoulders and other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections" to be necessary to comply with the requirement that the taking of seals not be accomplished in a wasteful manner (51 FR 24832, July 9, 1986). Some commenters argue that the requirement to take "a limited number of backbones, and some, but not necessarily all, rib sections" applies to every animal harvested, and that the butterfly butchering technique is wasteful. NMFS does not take the position that this requirement applies to individual animals harvested. NMFS recognizes that conditions and circumstances may vary depending on the animal harvested and other factors. However, NMFS also feels that the failure to take the required parts from individual animals should be explained and if the percent removed from an individual seal falls below certain levels that fact should be accounted for. The NMFS observer will monitor when and under what conditions less than 30 percent of an individual animal is taken. At this time, NMFS believes that a harvest that utilizes whole cuts for some seals and butterfly butchering techniques for other animals can satisfy the parts utilization standard. NMFS does not agree that the butterfly technique must be eliminated.

Commenters from the Pribilofs have continually maintained that no waste is occurring, and that they take only what they need throughout the year. Animals killed on St. George Island are generally taken as whole cuts due to a community "sharing" approach and the existence of a freezer that has the capability to handle the larger cuts. On St. Paul Island, community freezers have not been used recently.

Several commenters noted that they appreciate that the preference for butterfly cuts is a carry-over from the commercial harvest when the large number of animals taken allowed the Pribilof Aleuts to take only the most prized portions from each animal for subsistence. According to those commenters, with the cessation of the commercial harvest, this practice should no longer be employed because the animals are taken for subsistence use only and, therefore, are to be more fully utilized.

One commenter suggested that NMFS should make an effort to record data more precisely during future harvests, especially those animals whose percent-use value is considered low, to determine the cause of the variability in the data. During 1992, NMFS will continue to estimate percent-use by weighing carcasses. NMFS has calculated that the sample sizes necessary to have a 90-percent probability that the 95-percent confidence intervals around the mean percent-use values will be no greater than 2 percent, based on the variances associated with the 1991 samples, are 120 seals harvested using the butterfly cut, and 115 seals harvested using the whole cut technique. However, since NMFS observers do not know which cut a sample animal will receive when it is selected, NMFS will try to sample systematically 20 percent of the animals harvested.

NMFS has determined that an important aspect of this year's harvest monitoring should be to determine how much more edible meat is taken from a fur seal using the butterfly technique versus the whole cut. The whole cut includes bones and parts that contain very little meat (i.e., back bones) and may, therefore, provide only a small increase in edible parts. NMFS will measure the edible parts being taken in a whole cut to determine whether there is a significant difference in the amount of meat taken (minus the bones) between the two butchering techniques.

Close attention will also be paid to identifying body weight values (measurements taken in the field) that appear anomalous. However, it is important to realize that since percent-use cannot be calculated in the field, NMFS again may have some percent-use values that are not fully explainable. NMFS will document when at least a complete butterfly cut is not removed, and why. NMFS oversees the harvest on St. Paul Island to ensure that the mandated parts of the animals are harvested, and reiterates that the harvest must be conducted in a non-wasteful manner.

Commenters from the Pribilof Island communities extended to the Humane Society of the United States (HSUS) an invitation to observe the harvest and the use of the butchering techniques to demonstrate their efficiency. Commenters from the Pribilof Islands have also invited others to witness the harvest, to show interested parties that the seals are being harvested in a non-wasteful manner. HSUS has accepted the offer and will send an observer to the harvest.

Method for Setting Harvest Levels

NMFS acknowledged that a method of determining subsistence more accurately needs to be developed (56 FR 36737, Aug. 1, 1991). During 1991, NMFS used the previous year's harvest levels as a baseline estimate of need, which could be adjusted, provided that substantiated evidence of increased or decreased subsistence need was provided. The 1992 harvest estimate was based on the previous year's harvest level, and the results of a household survey conducted on each of the Pribilof Islands (57 FR 22450, May 28, 1992). One commenter has suggested that the estimates for 1991 and 1992 are unreasonably high, and that NMFS did

not substantiate the increased level of take during 1991 when the number of seals harvested on St. Paul Island increased to 1,645 from 1,077 in 1990. The commenter continued by stating that 1992 is the only year in which NMFS has unquestionably applied the previous year's harvest level (a level considered unsubstantiated by the commenter) as the subsistence estimate for the following year.

However, NMFS did not unquestionably apply the 1991 harvest level as the estimate of subsistence need for 1992. As discussed at the November 5, 1991, workshop on fur seal management, a household survey to determine the number of seals needed in 1992 was conducted by the Traditional Council on each island. The documentation of these surveys was used to estimate the number of seals required to meet the subsistence needs of the Pribilof Aleuts. Comments received from representatives of the Pribilof Island communities indicated that all of the meat taken in 1991 was consumed. They re-emphasize their statement that there has been no waste of fur seals during the harvests.

Harvest Technique

A commenter from the Pribilofs explained the process that each of the harvests in recent years has followed. The 1992 harvest will proceed in a manner comparable to the past few seasons. Harvests on St. George Island are generally conducted by volunteers after working hours, on non-working weekdays, or on weekends to accommodate the employment schedules of families that participate in the harvests. On St. Paul Island, harvests are usually conducted by volunteers during weekday morning hours to fill orders for people who are not present at the harvest.

48-Hour Suspension

One commenter was concerned that the harvest suspension required by the regulations would operate to the detriment of the Pribilof Aleuts. The regulations, at 50 CFR 215.32(e)(1)(iii), require a harvest to be suspended if the lower end of the range of harvest estimates is reached. The suspension is to last for no longer than 48 hours, during which time the Assistant Administrator re-evaluates the Aleuts' subsistence needs to determine if they have been satisfied. If the Assistant Administrator determines that subsistence needs have been met, then the taking of additional animals will be prohibited.

The commenter felt that the Federal Register notice announcing the proposed harvest estimates for 1992 misconstrued the language of these regulations. The commenter stated that the notice inappropriately placed an affirmative burden on the Pribilof Aleuts to prove that they have unsatisfied subsistence needs. According to the commenter, the Assistant Administrator must prove that no additional subsistence need exists, or the harvest automatically resumes after the 48-hour suspension period lapses.

NMFS acknowledges these comments, and will clarify its position regarding this issue. If the lower end of the harvest estimate is reached, the 48-hour suspension will ensue. At that time, the Assistant Administrator will review all harvest data and other relevant information available to him in order to determine whether subsistent needs have been met. It is the responsibility of the Pribilof Aleuts to provide the Assistant Administrator with any information they feel is relevant to this determination. If they provide no information demonstrating continued need, the Assistant Administrator may decide subsistence needs have been satisfied, and prohibit further harvest.

Heat Stress in Fur Seals

One commenter expressed concern that dates and times for the harvest are not chosen in a manner that protects seals from heat stress. The commenter pointed to data from the 1990 and 1991 harvests that indicate that seals suffered from heat stress on some harvest days. The commenter stated that harvests should be scheduled either early in the morning or late in the evening to minimize heat stress, and that harvest practices and techniques must be controlled for the same reason.

NMFS agrees with these comments, but also acknowledges that the Pribilof Aleuts can only harvest seals when volunteers are available; therefore, it is not always possible to conduct a harvest session early in the morning. NMFS employs a veterinary pathologist as a humane observer during all harvest activities. The humane observer carefully monitors seals for signs of heat stress, including checking the rectal temperatures of the seals taken. If signs of heat stress develop, every effort is made to either stop the herding procedures, or to move on to a different group of animals. Routine monitoring practices conducted during 1991 to ensure the "humaneness" of the harvest have been described in detail (56 FR 36735, Aug. 1, 1991). These practices will continue through the 1992 harvest.

Trade in Bacula

One commenter expressed concern over the potential for illegal trade in seal penis bones (bacula). The commenter is dissatisfied with NMFS investigation into the presence of foreign businessmen on the island during the 1988 and 1989 harvests, and NMFS methods of monitoring proper disposition of bacula. The commenter believes that harvesters should be required to remove all bacula from harvested seals, and turn them over to NMFS for disposal.

NMFS feels that such a requirement is burdensome and unnecessary. NMFS will continue to monitor the proper disposition of bacula and will take appropriate action, if necessary.

Commerce in Seal Skins

One final comment concerned the proposed use of fur seal skins from the subsistence harvest on the Pribilof Islands for the making of native Alaskan handicrafts. Representatives from the Pribilof Islands have stated that it is possible that some of the skins might be shipped from the island for use in making handicrafts. However, they have also stated that it is their intent to send some of the Pribilof community to a tannery to learn the techniques necessary for making handicrafts from the skins, then have some of the handicrafts made on the island.

NMFS notes that the estimated harvest levels must be based upon subsistence need, and not on commercial interests.

References

Zimmerman, S.T. and J.D. Letcher. 1986. The 1985 subsistence harvest of northern fur seals, *Callorhinus ursinus*, on St. Paul Island, Alaska. Mar. Fish. Rev. 48:10–14.

Dated: July 28, 1992.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 92–18306 Filed 7–29–92; 3:56 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412–2112

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, will open for 3 days on July 25–27, 1992, with a possession and landing limit of 44 coho salmon for the open period. The Director, Northwest Region, NMFS

(Regional Director), has determined that, following this fisher's first open period on July 20–21, 1992, the annual harvest guideline of 18,100 coho salmon for this fishery would be attained during a 3-day period with an adjusted possession and landing limit for coho salmon. These adjustments are intended to minimize disruption to commercial fishery without exceeding the ocean share allocated to the commercial Fishers in this subarea.

DATES: Effective at 0001 hours local time, July 25, 1992, through 2400 hours local time, July 27, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 17, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NW., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon, would open July 20 and continue through the earliest of August 31 or attainment of harvest quidelines of either 18,100 coho salmon or 4,400 chinook salmon. Preseason restrictions included a cycle of 2 days open and 3 days closed, a possession and landing limit of 30 coho salmon per opening, and gear limited to 6–inch plugs or larger and no more than 4 spreads per line.

Based on the best available information as of July 23, the coho salmon harvest guideline of 18,100 coho is projected to be reached for the subarea from the U.S.-Canada border to Cape Falcon. The commercial catch in the subarea, during the first open period of July 20–21, totaled about 4,500 coho salmon. The remainder of the coho salmon harvest guideline is projected to be harvested during a 3–day fishing period with an appropriate adjustment to the possession and landing limit. By providing an open period of 3 days, disruption to the commercial fishery is minimized. The fishery would otherwise harvest the remaining coho salmon during two open periods of 2 days or less. Therefore, the commercial fishery in the subarea from the U.S.-Canada border to Cape Falcon will open for 3 days, effective 0001 hours local time, July 25, through 2400 hours local time, July 27, 1992. Each vessel may possess, land and deliver not more than 44 coho salmon for this open period. Modifications of fishing seasons and limited retention regulations are authorized by regulations at § 661.21(b)(1) (i) and (ii). All other restrictions that apply to this fishery remain in effect as announced in this notice of 1992 management measures (57 FR 19388).

Following this 3-day open period, the commercial fishery in this subarea is closed for 3 days in accordance with the preseason regulations. During this closed period, catches will be evaluated to determine if sufficient fish remain to reopen this fishery on July 31, and August 1, as scheduled.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, July 25, 1992 by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these adjustments affecting the commercial fishery between the U.S.-Canada border and Cape Falcon. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 18, 1992.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18232 Filed 7–31–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 149
Monday, August 3, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560-AC54

1993 Feed Grain Program, Acreage Reduction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage for each of the 1993 feed grain crops. This action is required by section 105B of the Agricultural Act of 1949, as amended (the 1949 Act).

DATES: Comments must be received on or before September 17, 1992 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Dean Ethridge, Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3090–S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Director, Grains Analysis Division, USDA/ASCS, room 3742–S, P.O. Box 2415, Washington, DC 20013 or call 202–720–4417.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation is required by section 105B(o) of the 1949 Act to request comments with respect to the subject matter of this rule. A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular acreage reduction percentages considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The Commodity Credit Corporation thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Feed Grain Production Stabilization—10.055.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws; are not retroactive; and do not require the exhaustion of any administrative appeal remedies.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 105B of the 1949 Act, an acreage reduction program (ARP) is required to be implemented for the 1993 crops of corn, grain sorghum, or barley if it is determined that the total supply of each respective feed grain would otherwise be excessive.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of feed grains to desirable goals. A paid land diversion program is not considered because, given the allowed ARP percentages, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction to the respective feed grain acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce feed grains in excess of the respective permitted acreage for the farm plus any respective feed grain acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm. If an ARP program for the 1993 crop is in effect, the program must be announced no later than September 30, 1992. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of feed grains since the program was first announced. These adjustments must be made no later than November 15, 1992.

In accordance with section 105B of the 1949 Act, not less than 60 days before the program is announced for a crop of feed grains, proposals for public comment on various program options for the crop of feed grains are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option.

In determining the 1993 corn ARP, the Secretary will choose a specific ARP reduction percentage from within a range established by the estimated ending stocks-to-use ratio for the 1992 corn marketing year. If it is estimated that the 1992 ending stocks-to-use ratio in percentage terms (S/U) will be—

(i) More than 25 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(ii) Equal to or less than 25 percent, the ARP may not be more than 12.5 percent.

The S/U for the 1992 marketing year is estimated to be 20.8 percent. Based on this estimate, the 1993 ARP may be not more than 12.5 percent. In the case of sorghum and barley, the Secretary may choose a 1993 ARP percentage in the range from 0 to 20 percent. For oats, the 1993 ARP is statutorily mandated not to exceed 0 percent.

Section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1993 crops of corn, sorghum, and barley may not be less than 7.5 percent. This provision does not apply if the beginning stocks of soybeans for the 1991 marketing year are less than 325 million bushels or if the estimated corn S/U for the 1992 crop is less than 20 percent. Section 1302 of the Agricultural Reconciliation Act of 1990 also provides that minimum ARP requirements may be waived if an agreement resulting from the General Agreement on Tariffs and Trade (GATT) negotiations is not entered into by June 30, 1992.

Soybean stocks on September 1, 1991, were 329 million bushels, and the estimated S/U for the 192 corn crop is greater than 20 percent. Thus, the minimum 7.5-percent-ARP provision is applicable and an ARP less than 7.5 percentage for corn, sorghum or barley cannot be announced unless minimum ARP levels are waived.

ARP's lower than 7.5 percent for corn, sorghum, and barley will be included as options because: (1) A small change in supply and demand estimates would allow for consideration of an ARP below 7.5 percent and (2) A GATT agreement was not entered into by June 30.

Conversely, the final ARP decision process could consider higher ARP's than those included here. The law permits an ARP of between 10 and 20 percent if the S/U ratio exceeds 25 percent, and such an outcome is possible. The ARP options included in this analysis are the most likely possibilities, based on May 1992 data. If ending stocks increase, due to weaker demand or higher than expected yields, and raise the S/U ratio to 25 percent or higher, ARP levels between 12.5 and 20 percent may be considered before a final decision is made.

The 1993 ARP options considered are shown in Table 1.

TABLE 1.—PROPOSED 1993 FEED GRAIN ARP OPTIONS

Item	Option				
	1 Present budget	2	3	4	5
	Percent				
Corn	7.5	0	5	7.5	12.5
Sorghum	7.5	0	5	0	7.5
Barley	7.5	0	5	0	7.5
Oats	0	0	0	0	0

Two options (1 and 4) will be considered at the same ARP level (7.5 percent) for corn to show the impacts of offering lower ARP percentages for grain sorghum and barley.

For sorghum and barley, ARP percentages higher than 7.5 percent are not considered because expected sorghum and barley S/U's are low compared with historical levels. The 1992 sorghum S/U is forecast at 17.8, with the exception of 1991, the lowest level since 1976 (17.3 percent). The 1992 barley S/U is forecast at 25.6, with the exception of 1991, the lowest level since 1974 (24.7 percent). ARP levels above 7.5 percent would limit supplies of barley and sorghum to the point of not allowing export and domestic needs to be met. However, ARP levels above 7.5 percent will be considered when making the final ARP decision if feed grain supply and demand changes are large enough to warrant their consideration.

The estimated impacts of the ARP options are shown in Tables 2 through 4.

TABLE 2.—CORN SUPPLY AND DEMAND ESTIMATES

Item	1993 Program options				
	1	2	3	4	5
	Percent				
ARP	7.5	0	5	7.5	12.5
Participation	80	90	82	80	75
	Million Acres				
Planted acreage	75.4	78.5	76.7	75.5	73.5
	Million Bushels				
Production	8,250	8,590	8,395	8,265	8,035
Domestic use	6,725	6,790	6,755	6,725	6,660
Exports	1,600	1,625	1,615	1,600	1,575
Ending stocks, 8/31	1,606	1,856	1,706	1,621	1,481

TABLE 2.—CORN SUPPLY AND DEMAND ESTIMATES—Continued

Item	1993 Program options				
	1	2	3	4	5
	Dollars per Bushels				
Season average producer price	2.15	2.05	2.10	2.15	2.25
	Million Dollars				
Deficiency payments	3,515	4,775	3,930	3,515	2,620

TABLE 3.—GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES

Item	1993 Program options				
	1	2	3	4	5
	Percent				
ARP	7.5	0	5	0	7.5
Participation	75	85	77	85	75
	Million Acres				
Planted acreage	11.9	12.3	12.0	12.2	11.8
	Million Bushels				
Production	700	720	705	715	695
Domestic use	445	450	445	450	445
Exports	255	260	260	255	250
Ending stocks, 8/31	122	132	122	132	122
	Dollars per Bushels				
Season average producer price	2.00	1.90	1.95	2.00	2.10
	Million Dollars				
Deficiency payments	293	392	326	365	248

TABLE 4.—BARLEY SUPPLY AND DEMAND ESTIMATES

Item	1993 Program options				
	1	2	3	4	5
	Percent				
ARP	7.5	0	5	0	7.5
Participation	78	81	79	81	78
	Million Acres				
Planted acreage	8.1	8.5	8.2	8.5	8.1
	Million Bushels				
Production	415	430	420	430	415
Domestic use	355	350	355	355	355
Exports	110	115	110	115	110
Ending stocks, 5/31	100	110	100	105	100
	Dollars per Bushels				
Season average producer price	2.09	2.00	2.06	2.07	2.15
	Million Dollars				
Deficiency payments	142	190	160	169	129

Accordingly, comments are requested as to whether the 1993 acreage reduction percentage for: (1) Corn should be 0, 5, 7.5, or 12.5 percent or any percentage less than 12.5 percent; and (2) Sorghum and barley should be 0, 5, or 7.5 percent or any percentage less than 12.5 percent. the final determination of these percentages will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Wheat, Rice.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(2)(i) 1991 corn, grain sorghum, and barley, 7.5 percent;

(ii) 1992 corn, grain sorghum, and barley, 5 percent; 1992 oats, 0 percent: and

(iii) 1993 corn, sorghum, and barley shall be no more than 12.5 percent, as determined and announced by CCC; 1993 oats, 0 percent.

* * * * *

(d) Paid land diversion program payments:

(1) Shall not be made available to producers of the 1991 crops of wheat, feed grains, upland and ELS cotton, and rice;

(2) Shall not be made available to producers of the 1992 crops of wheat, feed grains, upland and ELS cotton, and rice; and

(3) Shall not be made available to producers of the 1993 crops of feed grains, as determined and announced by CCC.

* * * * *

Signed this 29th day of July 1992 at Washington, DC

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–18339 Filed 7–29–92; 8:45 am]

BILLING CODE 3410–05–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Regulatory Review

AGENCY: National Credit Union Administration.

ACTION: Request for comment.

SUMMARY: The National Credit Union Administration (NCUA) is soliciting public comment on which of the regulations affecting federally insured credit unions impose unnecessary or excessive costs or burdens and what changes can be made to reduce those costs or burdens. This action is being taken in light of the President's request that federal regulatory agencies evaluate existing regulations and identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden.

DATES: Comments must be received by October 2, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Associate General Counsel, (202) 682–9630, at the above address.

SUPPLEMENTARY INFORMATION: On January 28, 1992, the President issued a memorandum concerning the burden of government regulation. Although the memorandum does not specifically apply to the NCUA, it is the intention of the NCUA Board to comply with the spirit of the memorandum. The memorandum imposed a 90-day moratorium on most regulatory actions, as well as requested that agencies do a regulatory review of existing regulations for the purpose of revising those which are unnecessary or burdensome. The 90-day moratorium, which would have expired at the end of April, was extended by the President for an additional 120 days.

NCUA has not issued, and does not plan to issue, any proposed or final regulations during the moratorium period, unless such rules would ease regulatory burden or are determined to be essential to the safety and soundness of the credit union system. It should be noted that any regulation subject to a statutory or judicial deadline is not subject to the moratorium (e.g., truth-in-savings rules).

NCUA staff has completed an internal review of the NCUA Regulations for the purpose of recommending changes that would relieve regulatory burden. In furtherance of the President's regulatory review initiative, the NCUA is hereby requesting public comment on those of its regulations which impose unnecessary or excessive costs or burdens on the public, the credit union community, or the economy, and what changes can be made to reduce those costs or burdens. In his memorandum, the President asked that agencies work with the public to (i) identify regulations that impose a substantial cost on the economy and (ii) determine whether each such regulation adheres to the following standards:

(1) The expected benefits to society of any regulation should clearly outweigh the expected costs it imposes on society.

(3) Regulations should be fashioned to maximize net benefits to society.

(3) To the maximum extent possible, regulatory agencies should set performance standards instead of prescriptive command and control requirements, thereby allowing the regulated community to achieve regulatory goals at the lowest possible cost.

(4) Regulations should incorporate market mechanisms to the maximum extent possible.

(5) Regulations should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.

It is noted that section 221 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the Federal Financial Institutions Examination Council (FFIEC) to conduct a study on regulatory burden with respect to insured depository institutions. This study is to include all laws under the jurisdiction of the various federal banking agencies, as well as all laws affecting insured depository institutions under the jurisdiction of the Secretary of the Treasury (e.g., Regulations B, Z, and CC and the Bank Secrecy Act). Although the NCUA is a member of the FFIEC, neither the NCUA nor credit unions were included in this mandated study on regulatory burden. NCUA does, however, solicit public comment on any of its regulations, as well as any of the additional federal laws and regulations to which credit unions are subject and which are the subject of the FFIEC study. This will facilitate NCUA's participation in the FFIEC's study.

The NCUA requests that commenters: (1) Identify any regulation by name and section number; (2) provide specific explanations, with examples as appropriate, of the reasons why the regulation is unnecessarily costly or burdensome; and (3) provide specific

suggestions or recommendations as to how the regulation may be improved.

By the National Credit Union Administration Board on July 28, 1992.

Becky Baker,

Secretary of the Board.

[FR Doc. 92-18293 Filed 7-31-92; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing to amend its regulations on requirements for insurance to require federally insured credit unions whose assets exceed $100,000,000 as of March 31, 1992, $50,000,000 as of March 31, 1993, and $20,000,000 as of March 31, 1994, to file with NCUA a quarterly Financial and Statistical Report (the "call report"). All other credit unions will continue to be subject to the current requirement of filing a semiannual call report. The intended effect of this proposed amendment is to provide NCUA with timely and complete financial data from large credit unions.

DATES: Comments must be submitted by October 2, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Discussion

Currently, under § 741.13(a) of the NCUA Regulations, all federally insured credit unions must file with NCUA a semiannual Financial and Statistical Report ("call report"). The NCUA Board is issuing a proposed amendment to § 741.13 to require quarterly reporting, phased in over a three-year period, by credit unions with over $20,000,000 in assets. The current semiannual filing requirement would remain in effect for all other credit unions.

The reason for this amendment is to provide NCUA with timely and complete financial data. The NCUA Board believes the twice-yearly submission of financial and statistical data is too infrequent for large credit unions. NCUA may not become aware of problems that develop quickly until a significant amount of time has passed. In large credit unions, where the potential losses to the share insurance fund are great, more frequent reporting is clearly desirable. Quarterly reporting will enable NCUA to act quickly to prevent financial loss, both to credit union members and the National Credit Union Share Insurance Fund (NCUSIF).

To smooth the transition to quarterly reporting for large credit unions, as well as for NCUA, the NCUA Board is proposing a three-year transition period. Credit unions whose assets exceed $100,000,000 as of March 31, 1992, are already required to file a quarterly call report in accordance with Letter to Credit Unions No. 1 dated January 1992. (Section 741.13(b) of NCUA's Regulations states that "insured credit unions shall, upon written notice from the Board of Regional Director, file such other reports in accordance with instructions contained in such notice.") This proposed rule would incorporate the quarterly requirement contained in that Letter to Credit Unions and expand it to cover additional credit unions. As proposed, credit unions with assets in excess of $50,000,000 as of march 31, 1993, and credit unions with assets in excess of $20,000,000 as of March 31, 1994, would also be required to file a quarterly call report.

Paperwork Reduction Act

The proposed amendment contains a requirement for the collection and submission of additional information by federally insured credit unions with assets over $20,000,000 as of March 31, 1994. The paperwork requirements were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act. Written comments on these requirements should be forwarded directly to the OMB Desk Officer at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20530, Attn: Gary Waxman.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (Primarily those under $1 million in assets). The proposed amendment only affects credit unions whose assets exceed $20,000,000. Accordingly, the Board determines and certifies that this proposed amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This proposed amendment will enable NCUA and the NCUSIF to have sufficient information to ensure the safety and soundness of federally insured credit unions. The NCUA board believes that the protection of the NCUSIF warrants this increased reporting by large credit unions and that the increased reporting required will not unduly burden federally insured state-chartered credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that this proposed amendment may have an occasional direct effect on the states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 28, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790; Public Law 101-73.

2. Section 741.13(a) is revised to read as follows:

§ 741.13 Financial and statistical and other reports.

(a)(1) Each operating insured credit union, with assets in excess of $100,000,000 as of March 31, 1992, $50,000,000 as of March 31, 1993, and $20,000,000 as of March 31, 1994, shall file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30) and October 22 (as of the previous September 30) of each year. All other operating insured credit unions shall file with the NCUA on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

(2) NCUA Form 5300 may be obtained from the appropriate regional office.

* * * * *

[FR Doc. 92-18291 Filed 7-31-92; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[Intl-0001-92]

RIN 1545-AQ43

Applications of Section 904 to Income Subject to Separate Limitations and Section 864(e) Affiliated Group Expense Allocation and Apportionment Rules; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the section 864(e) (5) and (6) affiliated group interest and other expense allocation and apportionment rules and the section 904(d) foreign tax credit limitation.

DATES: The public hearing will be held on Thursday, September 24, 1992 beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, September 3, 1992.

ADDRESSES: The public hearing will be held in the NYU Classroom, Second Floor, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [INTL-0001-92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8543, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations that contain amendments to the Income Tax Regulations (26 CFR part 1) under section 864(e) of the Internal Revenue Code of 1986. These amendments are proposed to provide guidance on sections 1.861-8(h)(5), 1.861-11(d) (1), (2) and (6) and 1.861-14(d) (1) and (2), and under section 904 of the Internal Revenue Code of 1954. These proposed regulations appeared in the **Federal Register** for Thursday, May 14, 1992 (57 FR 20680).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, September 3, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-18196 Filed 7-31-92; 8:45 am]
BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-156, RM-8021]

Radio Broadcasting Services; Knob Noster, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bick Broadcasting Company proposing the substitution of Channel 289C2 for Channel 289C3 at Knob Noster, Missouri, and modification of the construction permit for Station KXKX(FM) to specify the new channel. The coordinates for Channel 289C2 are 38-46-28 and 93-37-34.

DATES: Comments must be filed on or before September 15, 1992, and reply comments on or before September 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: James E. Janes, President, Bick Broadcasting Company, 119 N. 3rd Street, P.O. Box 711, Hannibal, Missouri.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, MM Docket No. 92-156, adopted July 9, 1992, and released July 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18235 Filed 7-31-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-338, RM-7852]

Radio Broadcasting Services; Belen and Grants, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission denies the request of Don R. Davis to delete Channel 288C from Grants, New Mexico, and to reallot the channel, as a Class A, to Belen, New Mexico. *See* 56 FR 58531, November 20, 1991. An application for

use of Channel 288C at Grants has been filed by Margaret Everson (BPH-920113ME). With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-338, adopted July 9, 1992, and released July 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18234 Filed 7-31-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 94

[PR Docket No. 92-151; FCC 92-311]

Federal Access to Low Power 18 GHz Private Operational Fixed Microwave Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend § 94.17(a)(1) of the Rules to permit federal government users to be served by part 94 licensees operating 18 GHz low power systems licensed on digital termination system (DTS) channels on a for-profit, private carrier basis. At present, the federal government is not a part 94 eligible. The proposed rule would enable federal government to become an eligible end user of 18 GHz low power systems.

DATES: Comments must be filed on or before September 7, 1992, and reply comments must be filed on or before September 22, 1992.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-3443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in PR Docket No. 92-151, FCC 92-311, adopted July 1, 1992, and released July 17, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, Downtown Copying Center, 1114 21st St., NW., Washington, DC 20036, (202) 452-1422.

Summary of the Notice of Proposed Rulemaking

1. Under the current rules, licensees may operate multiple low power point-to-multipoint transmitters at sites anywhere within a 28 kilometer (17.5 mile) radius of the reference coordinates listed on the license. All private operational fixed licensees, including those with 18 GHz low power authorizations, may share their systems' excess capacity on a for-profit, private carrier basis under § 94.17(a) of the Rules. Customers of such private carriers, however, must themselves be eligible for licensing under part 94. See 47 CFR 94.5. The federal government is not a part 94 eligible.

2. On October 9, 1991, Motorola, Inc. filed a petition for rule making requesting modification of § 94.17(a)(1) of the Rules "to allow Federal Government entities to employ low power 18 GHz * * * spectrum as end users operating under licenses issued to private eligibles." Motorola currently markets to non-federal users an in-building wireless network (called "Altair") that operates, in most metropolitan areas, multiple low power transmitting devices on 18 GHz channels. Motorola's network provides local area networks ("LANs") that use radio, rather than hard wiring, to connect computing devices within an office, manufacturing or industrial complex. Motorola would like to extend this service to federal government end users under the shared use provisions of § 94.17(a).

3. Motorola, in its petition, sets forth the significant public interest benefits currently derived from the use of its wireless LANS by non-federal government eligibles. According to Motorola, the benefits Altair offers Part 94 eligibles are also applicable to the federal sector. We believe that the public interest would be served by adding the federal government as an eligible end user.

4. In a recent proceeding, the Commission amended the rules to allow Federal government entities to be eligible end users of Specialized Mobile Radio ("SMR") systems in the 800 and 900 MHz mobile bands. See Report and Order, PR Docket No. 86-404, 3 FCC Rcd 1838, 1849-40 (1988). We found that expanding end user eligible would increase communications options and enhance spectrum efficiency. *Id.* at 1842. We believe that analagous benefits would accrue from modifying the rules to allow the federal government to become an eligible end user of 18 GHz low power systems. We ask for comment on the rule change set forth below.

5. Authority for issuance of this Notice of Proposed Rulemaking is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). This is a non-restricted notice and comment rule making proceeding. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies.

Initial Regulatory Flexibility Analysis

A. Reason for Action

The Commission is proposing this rule change to enable private carriers using multiple low power point-to-multipoint transmitting devices on 18 GHz channels to operate wireless local area networks to offer their facilities or resell their excess capacity to federal government eligibles.

B. Legal Basis

Sections 4(i), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r).

C. Reporting, Recordkeeping, and Other Compliance Requirements

No new requirements will be imposed upon licensees because of this action.

D. Federal Rules Which Overlap, Duplicate, or Conflict With This Rule

None.

E. Description, Potential Impact, and Number of Small Entities Involved

Private carriers as well as resellers could offer 18 GHz channels for wireless local area networks to federal government eligibles. It is unknown how many small entities would develop wireless LANs using 18 GHz technology to serve federal eligibles. Allowing the federal government to become eligible for spectrum not currently available to it would allow private equipment

providers to meet in-building network needs with devices that are already commercially available instead of having to design equipment particularly for the federal sector.

F. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

None.

List of Subjects in 47 CFR Part 94

Radio.

Federal Communications Commission

Donna R. Searcy,

Secretary.

Proposed Rule

Part 94 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. §§154, 303, unless otherwise noted.

2. Section 94.17 is amended by revising paragraph (a)(1) to read as follows:

§ 94.17 Shared use of radio stations and the offering of private carrier communications service.

(a) * * *

(1) Persons or governmental entities licensed to operate radio systems on any of the frequencies set out in § 94.61(b) may share such systems with, or provide private carrier service to, any eligible for licensing under this part, regardless of individual eligibility restrictions enumerated in § 94.61(b), provided that the communications carried are permissible under § 94.9. In addition, persons or governmental entities licensed to operate low power systems under the provisions of § 94.88 may share such systems with, or provide private carrier services to, Federal Government entities, provided the communications carried are permissible under § 94.9.

* * * * *

[FR Doc. 92-18116 Filed 7-31-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819 and 1852

Changes to NASA FAR Supplement on Quarterly Submission of Summary Subcontract Report

ACTION: Notice of proposed rulemaking.

SUMMARY: NASA is considering an amendment to the NASA FAR Supplement (NFS) that provides for a contract clause requiring prime and subcontractors to submit the Standard Form 295, Summary Subcontract Report, on a quarterly basis. To ensure a flow of timely data for management, NASA proposes a NASA FAR Supplement clause that will be placed in all contracts and subcontracts containing subcontracting plans and will require quarterly submission of the form.

DATES: Comments are due not later than September 2, 1992.

ADDRESSES: Comments should be addressed to Mr. Kenneth Jeffries, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Kenneth Jeffries, Telephone: (202) 453-8253.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written comments. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned.

Background

NASA requires information on subcontract awards that is more timely than the currently available data. The fiscal year 1990 and 1991 NASA Appropriations Acts have established a goal for the agency to award 8% of its prime and subcontract dollars to small disadvantaged businesses, women-owned small businesses, and minority educational institutions. Fiscal year 1994 has been set as the target for meeting the goal. While agency reporting procedures capture prime contract data on awards to small disadvantaged and women-owned firms and minority educational institutions, summary information on subcontract awards to those firms is submitted only annually to the agency on the Standard Form (SF) 295, Summary Subcontract Report. Currently, contractors are required to submit information on subcontract awards to Historically Black Colleges and Universities (HBCU's) and other minority educational institutions only to DOD on the SF 295. This information is now also desired by NASA. NASA procurement management considers that monitoring progress towards the 8% goal and aligning resources to meet it require subcontract information on a quarterly basis. Other alternatives have been considered and rejected. For example, the SF 294, Subcontracting Report for Individual Contracts, which is required only semiannually, is submitted to the contracting officer and not directly to agency headquarters, thus adding an element of delay in the data-gathering process. Another alternative was to develop a NASA-peculiar form that would reflect the needed data and would be submitted quarterly except when the SF 295 was submitted. This was rejected as an unnecessary burden when contractors already have procedures in place for preparing the SF 295. To ensure a flow of timely data for management, NASA proposes a NASA FAR Supplement clause that will be placed in all contracts and subcontracts containing subcontracting plans and will require quarterly submission of the form.

Comment on Alternatives

Interested persons are invited to suggest other methods, in addition to, or in place of, the proposed strategy for obtaining the necessary management information.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Regulatory Flexibility Act

The proposed revision is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the contract clause will be inserted only in NASA prime and subcontracts that contain a small and small disadvantaged business subcontracting plan and such plans are not required of small business concerns (FAR 19.702(B)(1)).

Paperwork Reduction Act

An OMB clearance is being requested separately under the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1819 and 1852

Government procurement.

Don G. Bush,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1819 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1819.708–70 [Amended]

2. Section 1819.708–70 is revised as set forth below:

a. The section heading to 1819.708–70 is revised to read as follows:

1819.708–70 NASA solicitation provision an contract clause.

b. In section 1819.708–70, the existing paragraph is designated as paragraph "(a)", and a new paragraph "(b)" is added to read as follows:

* * * * *

(b) The contracting officer shall insert the clause at 1852.219–74, Small Business and Small Disadvantaged Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219–9.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Part 1852 is amended as set forth below:

1852.219–73 [Amended]

a. In section 1852.219–73, in the prescribing language for the clause and for the alternate, the citation "1819.708–70" is revised to read "1819.708–70(a)."

1852.219–74 [Amended]

b. Section 1852.219–75 is added to read as follows:

1852.219–75 Small Business and Small Disadvantaged Business Subcontracting Reporting.

As prescribed in 1819.708–70(b), insert the following contract clause:

Small Business and Small Disadvantaged Business Subcontracting Reporting (xxxx)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) quarterly for the reporting periods specified in block 1.A. of the form. Reports are due 30 days after the close of each reporting period.

(b) The Contractor shall also complete Item 15 (Subcontract awards to Historically Black Colleges and Universities/Minority Institutions) in accordance with the existing instructions applicable to DOD activities.

(c) All other provisions in the instructions paragraphs of the SF 295 remain in effect.

(d) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219–9.

[FR Doc. 92–18152 Filed 7–31–92; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Nile Crocodile From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify the Nile crocodile (Crocodylus niloticus) from endangered to threatened under the provisions of the Endangered Species Act (Act) of 1973. The Nile crocodile was listed as endangered on June 2, 1970 (35 FR 8945) throughout its range. The Zimbabwe population was reclassified to threatened on September 30, 1988 (53 FR 38415). This and other information on its status prompted the Service on October 29, 1990, to initiate a status review of the species soliciting comments and information on its current status (55 FR 43387). The result of this status review indicates that the Nile crocodile is believed not to be in danger of extinction in any significant portion of its existing range. It was placed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) on July 1, 1975. Subsequently, certain populations were transferred to Appendix II by agreement of the Parties to CITES. The controls on international trade under CITES and the Act help ensure that the Nile crocodile will not become endangered in the foreseeable future. A special rule is proposed that will allow for the importation of whole or partial skins, parts and finished products (but no live animals) into the United States in the course of a commercial activity.

DATES: Comments from all interested parties must be received by October 2, 1992. Public hearing requests must be received by September 17, 1992.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240. Fax number (703) 358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, or by phone at (703) 358–1708.

SUPPLEMENTARY INFORMATION:

Background

Historically, the Nile crocodile (Crocodylus niloticus) was widespread throughout Africa as far north as Syria. Presently, it is confined chiefly to the upstream regions of the Nile, tropical and southern Africa, and Madagascar, the extent of its range when originally listed as endangered in 1970. In the 1950's and 1960's, throughout much of the then existing range, populations were seriously reduced by habitat alteration, hunting for the hide industry, or killing to eliminate threats to humans, livestock and the fishing industry.

The Nile crocodile was listed as endangered in 1970 (35 FR 8495) and on appendix I of CITES in 1975 (when CITES came into force) because of the widespread decline of the species. Since that time, a number of African countries have recognized the value of the Nile crocodile for its ecological role and as a source of sustainable economic benefit under proper management, especially through ranching for a controlled harvest of skins.

Throughout its range today, most Nile crocodile populations are reported to be increasing or to have at least stabilized. In some areas, dams on rivers have increased available habitat through the creation of lakes. Of those countries that have started ranching operations, Zimbabwe appears to have the best information on wild crocodile populations. Other nations, particularly Botswana, Ethiopia, Kenya, Malawi, Mozambique, South Africa, Tanzania, Uganda, and Zambia, have expanded their national data bases on wild crocodile populations in order to met the CITES criteria for ranching operations.

Because Zimbabwe had a well-developed ranching scheme and considerable data on the status of its wild populations, its ranching proposal was the first one accepted by the CITES Parties (1983). Based on this and other information, in 1987, the Service reclassified ranched populations of the Nile crocodile in Zimbabwe to threatened (52 FR 23148), and in 1988, the Service reclassified the wild populations of the Nile crocodile in Zimbabwe from endangered to threatened (53 FR 38451).

In 1984, CITES officials met in Brussels, Belgium, to discuss CITES implementation in Africa. The transfer of the Nile crocodile to Appendix II and the difficulty of satisfying the Berne criteria were major issues of discussion. Not all African nations had ranching schemes at that time or intentions to develop them. It was recognized that an alternative procedure was needed to allow for utilization of wild populations while information was being gathered to satisfy the rigorous criteria of resolutions Conf. 1.2 (Berne criteria) or Conf. 3.15 (ranching). The outcome was a quota system adopted by the Parties in 1985 as resolution Conf. 5.21. Under this procedure, Nile crocodile populations of nine African countries (Cameroon, Congo, Kenya, Madagascar, Malawi, Mozambique, Sudan, Tanzania, and Zambia), were transferred from appendix I to appendix II, subject to export quotas established by agreement of the Parties. The population of Botswana was added in 1986 through a postal vote. In 1987, export quotas were renewed for Nile crocodiles from all ten countries, and the CITES Secretariat initiated the CITES Nile Crocodile Project in eastern and central Africa and Madagascar (Hutton 1989).

At the 1989 CITES Conference of Parties, additional populations of Nile crocodile were transferred from appendix I to appendix II, pursuant to resolution Conf. 3.15 on ranching. This decision affected populations in Botswana, Malawi, Mozambique, and Zambia. The Party nations also agreed in 1989 to continue export quotas for the Nile crocodile, pursuant to resolutions Conf. 5.21 (export quota system) and Conf. 7.14 (annual export quotas). However, export quotas for Cameroon, Congo, Madagascar, and Sudan populations were set at zero for the present with export of only captive-raised specimens allowed from Madagascar in 1991 and 1992. The Parties also approved the transfer of Nile crocodile populations in Ethiopia and Somalia from appendix I to appendix II pursuant to Conf. 5.21.

The appropriateness of the original endangered listing under the Act and appendix I listing under CITES has been the subject of much international debate. However, improvements in the status of Nile crocodile populations and their management have prompted the CITES Parties to transfer 11 national populations to appendix II, most of these under the ranching criteria of resolution Conf. 3.15.

Comments

The Service received eight comments in response to its October 29, 1990, Federal Register notice initiating a status review of the Nile crocodile: two from range states Management Authorities (South Africa and Zimbabwe), two representing the International Union for the Conservation of Nature Crocodile Specialist Group (CSG), one from the German Scientific Authority, one from the trade industry (Repte Madagascar), one from Traffic/USA and one from the Crocodile Farmers Association of Zimbabwe. All expressed the opinion that the Service should reclassify the Nile crocodile from endangered to threatened and rely on CITES controls between producing and consuming countries to ensure that illegal products do not enter the market.

The Zimbabwe Department of National Parks and Wildlife Management furnished extensive comments, especially concerning the Service's special rule (50 CFR 17.42(c)) limiting imports to whole raw skins of ranched specimens imported directly from Zimbabwe into the United States. Zimbabwe contended that this negates the whole purpose of the transfer from Appendix I to II under the ranching provisions (Conf. 3.15). Zimbabwe requested that tanned skins be allowed to enter the U.S. if they bear the original CITES tags; and that other products be admitted, especially if they use product marking which is part of the German system.

The Natal Parks Board (South Africa) suggested that the listing under the Act should be changed to bring it in line with CITES, and indicated that South Africa was submitting a proposal to transfer its Nile crocodile population from appendix I to II for consideration at the 8th CITES meeting of the Parties in Kyoto, Japan. Dr. James Perran Ross, Executive Officer of the Crocodile Specialist Group (CSG) also recommended that the South African Nile crocodile population be reclassified as threatened under the Act. He presented information indicating that the Natal population numbered at about 4,400 individuals above one meter (3.28 feet) in length.

Dr. J.M. Hutton, Vice Chairman for Africa, CSG, commented that the Nile crocodile is not and has never been in danger of extinction. With current CITES controls, and the encouragement of ranching over hunting, he stated that commercial utilization is not a threat to the species. Even where some individual populations are under pressure from poor management (such as Madagascar), Hutton reported that CITES regulations and current levels of enforcement are adequate to ensure that illegal skins do not enter world trade. Hutton recommended that commercial skins be permitted to enter the U.S. in processed form provided the original self-locking CITES tag remains intact on the skin; and that finished products be admitted from Europe and elsewhere.

Dr. Hutton also submitted additional comments as Executive Manager of the Crocodile Farmers Association of Zimbabwe. These comments were in the form of a petition requesting reclassification of the Nile crocodile from endangered to threatened throughout its range. The information provided included a population model for the Nile crocodile and simulation of different harvesting strategies; status and distribution information from the CITES Nile Crocodile Project (1987–1988) including surveys of Botswana, Kenya, Madagascar, Malawi, Mozambique, Tanzania, and Zambia; and the report of the coordinator of the CITES Nile Crocodile Project to the CITES Secretariat. Since this information was received during the open comment period for a Service status review of the species, the information was considered as a comment for the purposes of this proposed rulemaking and not a formal petition under the Act.

Dr. Dietrich Jelden, Germany Scientific Authority for CITES, recommended reclassifying the Nile crocodile for Ethiopia and Tanzania to threatened while retaining the population of Somalia as endangered. Jelden based his conclusions on the CITES Nile Crocodile Project. At the 1989 Conference of the Parties, transfer of populations from appendix I to appendix II pursuant to resolutions Conf. 5.21. and 7.14 (annual export quotas) was agreed for these three countries.

Ms. Ginette Hemley of TRAFFIC/USA submitted extensive comments concerning the reclassification of the Nile crocodile. She noted that since 1983, CITES has accommodated important utilization needs of African countries with healthy Nile crocodile populations by transferring those populations to Appendix II under special export quota criteria. She added that ranching management practices have improved markedly in many countries, particularly in southern Africa. Ms. Hemley recommended that the Service reclassify from endangered to threatened those populations that have been transferred to Appendix II under the ranching criteria, especially the populations of Botswana, Malawi, Mozambique, and Zambia. Because these countries have implemented

ranching programs that have met the requirements of CITES for such transfers, she observed that the information available qualifies these populations for "threatened" status according to Section 4(a)(1) of the Endangered Species Act.

This proposed rule, if made final, would reclassify the Nile crocodile throughout its range from endangered to threatened, and would revise 50 CFR 17.11(h) by designation all Nile crocodile populations (wild, ranched, and captive bred) as threatened. It would also amend the special rule found at 50 CFR 17.42 by amending paragraph (c) to allow for the importation of skins, parts, and finished products) of the Nile crocodile into the United States with specific marking requirements and trade controls as required by CITES.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations implementing the listing provision of the Act (50 CFR part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the Lists of Endangered and Threatened Wildlife and Plants. These factors and their applicability to populations of the Nile crocodile in Africa are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The Nile crocodile is widely distributed throughout Africa, south of the Sahara, and is chiefly confined to the upper Nile, tropical and southern Africa, and Madagascar. It is regarded as a dangerous pest species and each year, many attacks on humans are reported. In the 1950's and 1960's, Nile crocodile populations were seriously reduced throughout much of their range because of habitat alteration, hunting for the hide industry, and killing to eliminate a threat to humans, livestock, and the fishing industry.

Little is known about Nile crocodile distribution and abundance prior to the 1960's. Intensive surveys and management of the species did not begin until the 1980's. The CITES Nile Crocodile Project was initiated in 1987 and surveys were conducted in the following countries: Botswana, Kenya, Madagascar, Malawi, Mozambique, Tanzania, and Zambia. Crocodile populations are either stable or increasing in all of these countries except Madagascar (Hutton 1988), although crocodiles are still widely distributed on the island. Most African countries have now recognized the species as valuable in terms of its ecological role and as a source of sustainable economic benefit when properly managed, especially the ranching of animals for a controlled harvest of skins. Commercial ranching of the species has increased the management and conservation of the wild populations. In some areas, dams on rivers have increased available habitat through the creation of lakes and lagoons.

In 1987, the Southern African Development Coordination Conference (SADCC) held a workshop on crocodile management and utilization to improve conservation efforts. Over the years, the SADCC countries (Angola, Botswana, Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe) have taken an active role in the management of crocodiles. Intensive surveys have been conducted in several SADCC countries, and it is estimated that there are at least 43,000 crocodiles in the Zambezi River and lake system alone. The major rivers (4,064 km shoreline) and lakes (2,780 km shoreline) of Tanzania have about 76,000 animals. Zambia, with 6870 km of rivers and 5,776 km of lake shore, has over 150,000 crocodiles (Hutton et al. 1987). Nile crocodile populations in Southern Africa have recovered significantly and according to Hutton (1989), the species never was in danger of extinction.

B. Over-Utilization for Commercial, Recreational, Scientific, or Educational Purposes

The Nile crocodile has been persecuted as vermin, often with the aim of complete eradication. Harvest was accelerated in the 1950's and 1960's for the commercial export of hides. By the late 1960's, large-scale uncontrolled hunting had markedly declined in many countries, either because of legal protection or because it was no longer profitable to hunt crocodiles. In recognition of over-exploitation, the species was placed in appendix I of CITES in 1975. The subsequent recovery of most populations, even to nuisance levels, led to the need for a procedure to allow for controlled utilization of wild populations, so that there would be an economic incentive to conserve a species that was otherwise viewed as a threat.

Zimbabwe was the first African country to successfully use CITES procedures and criteria (Conf. 3.15 on ranching) to transfer its Nile crocodile population to Appendix II, thus allowing for regulated trade. Zimbabwe's ranching proposal was accepted in 1983. Following a meeting in 1984 at Brussels to discuss CITES implementation in Africa, an alternative procedure was adopted to allow for the utilization of wild populations while information was being gathered to satisfy the criteria of resolutions Conf. 1.2 or 3.15. In 1985, in accordance with resolution Conf. 5.21, Nile crocodile populations in nine African countries were transferred to Appendix II with export quotas. In 1986, the population of Botswana was added through the CITES postal procedure. In 1987, all ten African countries applied to continue their quotas. At the 1989 Meeting of the Conference of the Parties, ranching schemes (under Conf. 3.15) were approved for Botswana, Malawi, Mozambique, and Zambia. To date, 11 national populations of the Nile crocodile have been transferred to Appendix II either under the ranching criteria (Conf. 3.15) or the quota system (Conf. 5.21).

C. Disease or Predation

Disease and predation are not reported to be factors significantly affecting the status of Nile crocodile populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The Parties to CITES have adopted a series of resolutions to allow for trade of Nile crocodile skins. Presently 11 countries have Nile crocodile populations listed in appendix II, chiefly under the resolutions on ranching (Conf. 3.15) and quotas (Conf. 5.21). Throughout Africa, countries are seeking to increase tolerance for the species and encourage the maintenance of wetland habitats by insuring that sustainable use gives the wild populations of Nile crocodiles an economic value.

The high value of Nile crocodile products and the relative abundance of animals have prompted many range countries to develop, or begin to develop, sustained-use management programs. Virtually all of these programs have been endorsed by the Parties to CITES. In 1987, the CITES Secretariat funded the CITES Nile Crocodile Project, which surveyed populations in seven African countries. Governments of African countries now advocate conservation of the species through ranching, egg collecting, and trade.

The adoption of universal tagging requirements for all crocodilian skins is an important step in addressing illegal trade. At the 8th meeting of the CITES Conference of the Parties in Kyoto, Japan, a resolution was passed establishing requirements for a universal tagging system for the identification of crocodilian skins in international trade. This resolution had

been strongly supported by the IUCN/SSC Crodile Specialist Group.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

No other natural or manmade factors are considered to be significantly affecting the status of the Nile crocodile.

The Service has evaluated the best available biological and status information regarding past, present, and future threats faced by the Nile crocodile in proposing this rule. Criteria for reclassification of a threatened or an endangered species, found in 50 CFR 424.11(d); include extinction, recovery of the species, or error in the original data for reclassification. The proposed rule is based upon data that populations of the Nile crocodile have recovered sufficiently, threats have been significantly reduced, and therefore the species is not in danger of extinction. Identification of skins and products as to origin remains necessary to ensure that illegal skins do not enter into commercial trade.

Marking

International trade in certain crocodilian species has presented significant problems for the Parties to CITES; several resolutions have been adopted at previous meetings of the Parties to support management regimes for the conservation of particular species. The United States, in conjunction with Australia, submitted a resolution for consideration at the 1992 Meeting of the Conference of the Parties in Japan calling for a universal tagging system to identify crocodilian skins in international trade. This resolution was adopted by the Parties and the requirements are incorporated in this proposed rule. Adherence to the new marking requirements should minimize the potential for substitution of illegal skins and reduce the trade control problems associated with similarity in appearance of skins and products among different species of crocodiles.

Effects of This Rule

If this proposed rule is made final, it will reclassify all populations of the Nile crocodile from endangered to threatened under the Act. A special rule will amend 50 CFR 17.42 to allow for the importation of whole or partial skins, other parts and products of the Nile crocodile originating from CITIES appendix II populations in Africa under internationally agreed measures for the control of trade in CITES appendix II species. For all live specimens, not covered by these measures, the provisions of subpart D (17.31 and 17.32) remain in effect.

The special rule will require adherence to the CITES marking scheme for crocodilian skins and parts thereof. In addition, all requirements of CITES (50 CFR part 23), including proper export or re-export documents with respect to appendix II species, as well as laws of the countries of origin, must be met prior to allowing importation of specimens (live, partial or whole skins and finished products) into the United States. However, importation of skins or products will not be permitted from a country that has entered a reservation with respect to the Nile crocodile (a measure available to Parties to CITES that enables them not to observe the requirements of CITES for trade in the species in question). Presently, no country has entered a reservation on the Nile crocodile, although a Party might wish to do so at a future date.

Public Comments Solicited

The Service intends that any action resulting from this proposed rule is accurate and that it is as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning biological or commercial trade impacts on any Nile crocodile population, or other relevant data concerning any threat (or lack thereof) to wild populations of the Nile crocodile. Comments are also sought on the relevant listing of the Nile crocodile as threatened for similarity of appearance purposes only, since the primary purpose of this proposal is to declassify the Nile crocodile except for the need for the identification of skins and products as to origin to ensure that illegal skins do not enter into commercial trade.

Final rulemaking on the Nile crocodile will take into consideration all comments and any additional information received by the Service. Such communications may lead to adoption of final regulations that differ from those in the proposed rule.

The Endangered Species Act provides for a public hearing on this proposal, if requested. All requests must be filed within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Office of Scientific Authority (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Hutton, J.M., J.N.B. Mphande, A.D. Graham, and H.H. Roth. 1987. Crocodile management and utilization in the SADCC region of Africa. Proc. of the SADCC Workshop on Crocodile Management and Utilization. 194 pp. + Annex.

Hutton, J.M. 1989. CITES and the Nile crocodile in East/Central Africa and Madagascar. Coordinator's report to the CITES Secretariat. 51 pp.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11 by revising the current entry for the Nile crocodile under "Reptiles" on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific						
Crocodile, Nile	*Crocodylus niloticus*	Africa, Middle East	Entire	T	3,279,334, —	NA	17.42(c)

3. Amend Section 17.42 by revising paragraph (c) to read as follows.

§ 17.42 Special rules—reptiles.

* * * * *

(c) Nile crocodile (*Crocodylus niloticus*)—(1) Prohibitions. The following prohibitions apply to Nile crocodiles:

(i) Except as allowed in paragraphs (c)(1)(ii) and (c)(2) of this section, it shall be unlawful to import or export any such wildlife.

(ii) Import and export. (A) Nile crocodiles consisting of raw and processed skins and parts thereof which are tagged in accordance with paragraph (c)(1)(ii)(B) of this section, as evidence that the wildlife was taken in accordance with the laws of the country of origin and in compliance with the requirements of CITES for appendix II species (50 CFR part 23), may be imported into the United States without permits otherwise required by 50 CFR part 17. The same information as is given on the tags affixed to the wildlife must be given on the accompanying CITES permit or certificate documents. Importation into the United States must comply with the requirements of 50 CFR parts 14 and 23.

(B) Nile crocodiles consisting of raw and processed skins (salted, crusted, or tanned) and parts thereof must be marked with intact, non-reusable tags that include as a minimum the International Organization for Standardization code for country of origin, a unique serial identification number, species code, and year of production, and further, such tags shall have the following characteristics: a self-locking system, heat resistance, inert to chemical and mechanical processing, and information to be applied by permanent stamping.

(C) Manufactured products of Nile crocodiles that do not have affixed tags as a consequence of processing, may be imported or exported without permits otherwise required by 50 CFR part 17. The CITES export permits and/or certificates of reexport must contain the same information as is on the tags for wildlife from which the manufactured products or other parts were obtained, as specified in Paragraph (c)(1)(ii)(B) of this section. Import into, and reexport from, the United States must comply with the requirements of 50 CFR parts 13 and 23.

(iii) Unlawful importation. It shall be unlawful, in the course of a commercial activity, to deliver, receive, carry, transport, or ship in interstate or foreign commerce any Nile crocodiles imported unlawfully.

(iv) Commercial transactions. It shall be unlawful to sell or offer for sale in interstate or foreign commerce any Nile crocodiles imported unlawfully.

(2) Permits. For prohibited activities and types of specimens, including live specimens, not expressly included in Paragraph (c)(1)(ii) of this section, the permit requirements and other provisions of subpart D of 50 CFR part 17 remain in effect.

Dated: July 17, 1992.

Richard N. Smith,
Director.

[FR Doc. 92-18231 Filed 7-31-92; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Public Comment Period on Proposed Threatened Status for the Pacific Coast Population of the Western Snowy Plover (Charadrius Alexandrinus Nivosus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (the Act), gives notice that a public hearing will be held on the proposed threatened species status for the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*), and that the comment period is reopened and extended. The hearing and reopening and extension of the comment period will allow all interested parties to submit oral and written comments on the proposal. The proposed rule was published on January 14, 1992 (57 FR 1443).

DATES: The comment period on the proposal is reopened and extended until August 31, 1992. The public hearing will be held from 6 p.m. to 8 p.m. on August 18, 1992, in Newport, Oregon. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Hatfield Marine Science Center auditorium, south of the Newport Bridge off Highway 101, Southbeach, Oregon. Written comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen J. Miller, Sacramento Field Office (see **ADDRESSES**), at 916/978-4613.

SUPPLEMENTARY INFORMATION:

Background

The Pacific coast population of the western snowy plover breeds primarily on coastal beaches from southern Washington to southern Baja California, Mexico. Other less common nesting habitat includes salt pans, coastal dredge disposal sites, dry salt ponds, and salt pond levees. Historically, the Pacific coast population of the western snowy plover nested at over 80 locations on the cost of California, Oregon, and Washington. Today only 28 major nesting areas remain. In addition to loss of nesting areas, the size of the coastal population also has declined. Human activity on beaches (walking, jogging, walking pets, off-road vehicle use, horseback riding, etc.) during the plover breeding season, and encroachment of exotic European beachgrass (*Ammophila arenaria*) are primary factors in the observed decline of the western snowy plover on the Pacific coast. A proposed rule to list the Pacific coast population of the western snowy plover as a threatened species was published in the Federal Register on January 14, 1992 (57 FR 1443).

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On March 2, 1992, the Service received a written request for a public hearing from Mr. John Thomas, Jr., a private citizen residing in Monmouth, Oregon. As a result, the Service has scheduled a public hearing for August 18, 1992, from 6 p.m. to 8 p.m. at the Hatfield Marine Science Center auditorium, south of the Newport Bridge off Highway 101, Southbeach, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on August 31,

1992. Written comments should be submitted to the Service (see **ADDRESSES** section above).

Author

The primary author of this notice is Ms. Karen J. Miller, Sacramento Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 20, 1992.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–18382 Filed 7–31–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 218, and 222

[Docket No. 920106–2006]

RIN 0648–AD30

Approaching Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NMFS is proposing regulations to protect whales, dolphins and porpoise from activities associated with watching these animals and to provide greater protection by not allowing people, vessels and aircraft to approach them closer than a specified distance.

DATES: Comments on the proposed rule must be received by October 2, 1992. Requests for public hearing must be received on or before September 17, 1992.

ADDRESSES: Comments and requests for a public hearing and an Environmental Assessment should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, 301–427–2322; Douglas Beach, Northeast Region, 508–281–9254; James Lecky, Southwest Region, 213–514–6664; Eugene Nitta, Pacific Area Office, 808–955–8831; Charles Oravetz, Southeast Region, 813–893–3366; Brent Norberg, Northwest Region, 206–526–6110; or Steven Zimmerman, Alaska Region, 907–586–7233.

SUPPLEMENTARY INFORMATION:

Background

In November 1988, NMFS and the Center for Marine Conservation sponsored a workshop to evaluate whale watching programs and management needs. Because of the rapid growth of the whale watching industry, as well as an increasing interest in observing or approaching all marine mammals in the wild by the general boating public, those responsible for the management and protection of these animals were concerned that these activities were causing biological problems for the animals.

The workshop brought together knowledgeable representatives of the whale watching industry and of the conservation, management and scientific communities throughout the United States and Canada to review whale watching activities and available information on the effects of whale watching. The goal was to give direction to NMFS in carrying out its responsibilities to protect whales from potentially harmful activities associated with whale watching.

Although other threats to whales and their habitats were identified, most participants believed that better protection of whales could be achieved relatively easily if whale watching were better regulated. Workshop participants emphasized that regulations should be simple to understand, follow and enforce. Most of the participants agreed that minimum approach distances should be required although they were concerned about the difficulty of ensuring compliance by private boaters. Workshop participants concurred that new regulations needed to be combined with a vigorous public education effort.

The participants recommended that NMFS issue regulations that would prohibit people, vessels and aircraft from approaching whales closer than a specified distance. Also, the regulations should include restrictions on related activities such as feeding, swimming and diving with marine mammals; address behavior such as how to operate a vessel if a whale approaches the vessel; provide special prohibitions on areas such as feeding or calving grounds or on situations such as whale watching or mating pairs or cow/calf pairs; and prohibit activities that involve feeding wild populations of cetaceans.

NMFS addressed feeding marine mammals by amending the definition of "take" (50 CFR 216.3) to include feeding marine mammals in the wild. The final rule became effective April 19, 1991 (56 FR 11693).

NMFS believes the public can benefit from seeing marine mammals in their natural environment; however, the public must be aware that these animals, especially whales, are vulnerable to injury and disturbance by people, vessels and aircraft. Many whales are slow-moving, can escape only by diving, and in some regions are distributed in limited areas. Vessel traffic may subject whales to impacts ranging from displacing cow/calf pairs from nearshore waters to expending increased energy when feeding is disrupted or migratory paths rerouted.

Although whales were the focus of the workshop, NMFS and the workshop participants expressed concern about the effects of observing smaller cetaceans (dolphins and porpoise) and pinnipeds (seals and sea lions). While dolphins and porpoise may be more mobile than whales, NMFS believes there is a need to include these marine mammals in the proposed regulations.

Seals and sea lions are also vulnerable to disturbance, especially while using haul-out sites. Regulations are currently in effect that prohibit vessels from operating within buffer zones 3 nautical miles around the principal Steller sea lion rookeries in the Gulf of Alaska and the Aleutian Islands (55 FR 49204). Also, NMFS has determined that the Hawaiian monk seal would benefit from a regulated minimum approaching distance. However, other than for Hawaiian monk seals and Steller sea lions, NMFS does not believe there is a demonstrated need to regulate approach distances for these animals at this time. Therefore, NMFS is publishing draft guidelines, rather than proposing regulations, for approaching seals and sea lions. The guidelines are being published in the same issue of the **Federal Register** as this proposed rule.

NMFS is proposing these regulations under the authority of section 112(a) of the Marine Mammal Protection Act (MMPA) which authorizes NMFS to prescribe such regulations as are necessary and appropriate to carry out the purposes of the MMPA.

Under the MMPA, a "take" of marine mammals is prohibited unless an exception has been made. In 50 CFR 216.3, "take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: the

collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild."

Threatened or endangered marine mammals are protected further by the Endangered Species Act (ESA) which defines "take" as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Although NMFS has used several measures, with varying success, to protect marine mammals from activities associated with "watching" them, the Federal government, scientists, conservation groups, and industry representatives continue to be concerned about the effects these activities are having on marine mammals.

In 1979, NMFS issued a Notice of Interpretation of harassment for humpback whales in Hawaii and defined harassment as substantial disruption of whale behavior. Inclusion of distance limits was seen as a compromise for enforcement purposes. However, by 1985, the Notice was losing its effectiveness as an enforcement tool because harassment cases were difficult to prosecute. Enforcement agents had to document substantial disruption of normal whale behavior patterns. In response to the problem of enforcing the Notice, NMFS published an interim rule that includes a 100-yard minimum approach distance to humpback whales and a 300-yard minimum distance for areas that have been designated as cow/calf pair areas. The whale watching industry in Hawaii continues to grow, and NMFS has successfully prosecuted cases of harassment since the interim rule went into effect. Although the continued growth of the thrillcraft industry in an area where humpback whales breed is cause for concern, NMFS enforcement agents believe that several highly publicized cases (one involving an $11,000 civil penalty) has actually reduced the general level of harassment of humpback whales.

Effects of Approaching Marine Mammals

The cetaceans likely to be approached for observation in areas under the jurisdiction of the United States include the blue whale, right whale, humpback whale, gray whale, fin whale, killer whale, minke whale and a variety of dolphins and propoise. Of these, the following occur the most often in areas where there is whale watching activity.

Right Whales

The northern right whale is the only large whale species that is in danger of becoming extinct in the near future. Current estimates indicate that there are no more than 600 individuals left with 300 to 350 found in the North Atlantic Ocean and 250 to 300 in the North Pacific Ocean. The western North Atlantic stock is under severe habitat pressure from human activities. Direct competition with other species and from humans for space on the feeding grounds, disturbance from water-borne noise and mortalities from incidental take in commercial fisheries may be having an impact on recovery.

Northern right whales are the object of commercial whale watching mainly in two areas: Cape Cod Bay in late spring and the lower Bay of Fundy in the late summer and fall. The Draft National Recovery Plan for the Northern Right Whale recommends regulating whale watching activities directed at this species. Although whale watch captains generally have cooperated in following NMFS' guidelines and the recommendations of the recovery team, in 1986, when right whales were the only large whale species in the Gulf of Maine area, there were multiple whale watching vessels around the animals throughout the season.

Humpback Whales

Although the status of most humpback whale stocks is uncertain, the species has probably not recovered according to a 1984 report of the International Whaling Commission. The Western North Atlantic population is estimated at 5,505 animals. The Recovery Plan for the Humpback Whale states that the effects of disturbance and habitat displacement from human activities (e.g., vessel noise and interference) on humpback whales in the western North Atlantic may be affecting the stock's recovery.

The eastern North Pacific stock of humpback whales which migrates from Hawaii and Mexico to Alaska and California, respectively, is presently estimated at about 2,000 animals. However, habitat use patterns of nearshore waters by females and calves near Maui, Hawaii, have been altered, suggesting these animals are being displaced by increasing vessel and other human activities.

Commercial whale watching trips focusing on stocks of humpback whales are already significant tourist industries in Canada, the U.S. east coast from Maryland to Maine, the Virgin Islands, California, Hawaii and Alaska.

Gray Whales

The eastern North Pacific (California) stock or gray whales has recovered from commercial whaling. The present stock size (21,113) is at or above its initial 1846 stock size (15,000 to 20,000). The gray whale is the primary object of whale watching activities as it migrates between Mexico and Alaska along the coast of California. A large whale watching industry and a large concentration of private boats operate along the Southern California Bight which results in repeated exposure of the whales to various human activities. A much smaller whale watching industry operates around the San Francisco area.

Establishing a refuge where no vessel activity is allowed and regulating the number of vessels visiting the breeding lagoon of San Ignacio, Baja, California, may have been a key factor in maintaining the stability of the gray whale population. In the mid 1970s, 90 percent of all human activity in the lagoon was attributable to whale watching conducted from small skiffs launched from large excursion vessels, and there was concern that U.S.-based tourism was having a detrimental effect on the gray whales in their breeding lagoons. Mexico has designated this and two other areas as refuges for gray whales and enacted regulations to manage human activities during the winter whale/tourism season.

Fin Whales

Although the status of the stocks of fin whales is unknown, it is believed to be depleted relative to historic levels, but abundant relative to other large whale species. The total world population size is about 120,000. However, no similar population exists in U.S. waters. Fin whales are included in the species of large whales that are the object of whale watching activities on Stellwagen Bank in Massachusetts Bay. Avoidance behavior by fin whales, defined as erratic changes in course, speed, behavior or respiratory rhythm, has been shown to be associated with vessel activity in Cape Cod and Massachusetts Bay.

Killer Whales

Data on the estimated population of killer whales are incomplete. However, at the 1988 whale watching workshop, it was reported that resident killer whales have been subject to intensive field

study and, recently, to increased whale watching and harassment from private recreational boats in the inland marine waters of Washington State and southern British Columbia. Also, a reduction in sleep/rest behavior during daylight has been observed. Recommendations were made to enact management measures to minimize disturbance from vessels.

Bottlenose Dolphins

There is no estimate of the total world population of any species of dolphins although NMFS estimates that there are 14,000 to 23,000 bottlenose dolphins in the western North Atlantic Ocean. NMFS has proposed to designate the coastal-migratory stock of bottlenose dolphins along the U.S. mid-Atlantic coast as depleted under the MMPA because the stock declined by more than 50 percent as a result of a die-off that occurred during 1987–88.

While coastal populations of dolphins, especially bottlenose dolphins, are popular to observe by private boaters, they are not the primary object of most commercial whale watching cruises except in the southeastern United States. Along the Coastal States of Florida, South Carolina, and Texas, commercial cruises to observe marine species were combined with dolphin feeding tours until NMFS defined feeding any marine mammal under its jurisdiction as a form of "take" under the MMPA (50 CFR 216.3). This, in effect, prohibits feeding marine mammals in the wild. During the public hearings held on the feeding prohibition, many commenters reported not only observing dolphins from private boats, but feeding and swimming with them. Several commenters stated that they have actually witnessed dolphins being hit by boat propellers and chased down by high-powered motor boats. Members of NMFS stranding network have reported dead dolphins on beaches with wounds probably inflicted by boat propellers or the boat itself.

Hawaiian Monk Seals

This species is the most endangered seal in U.S. waters and is limited almost entirely to the 1,100-miles chain of small remote islets and atolls that make up the Northwestern Hawaiian Islands. NMFS estimates the population at slightly more than 1,000 animals. Although the monk seal is not known to be the object of any organized observation tours, NMFS has documents human disturbances at pupping and haulout beaches, and believes that regulations will reduce this disturbance.

Summary of Proposed Rule

The proposed rule would apply to all persons subject to the jurisdiction of the United States or any vessel or aircraft operating in water or lands under the jurisdiction of the United States. However, it would not apply to activities, such as commercial fishing and scientific research, that operate under a permit or an exemption issued under other sections of the MMPA or ESA. The regulations would apply to all cetaceans (whales, dolphins and porpoise) and one species of pinniped, the Hawaiian monk seal.

Definitions

Since several small whales such as killer whales are members of the dolphin family and the approach distances are different for the two groups, the terms whale, dolphin and porpoise are defined.

General Requirements

Vessels or aircraft that carry paying passengers for the purpose of observing whales, dolphins or porpoise are required to post on board a copy of the regulations and a copy of the diagram that illustrates how observing these animals should be conducted.

General Prohibitions

The proposed rule sets a minimum approach distance of 100 yards (91.4 meters) for all whales and 50 yards (45.7 meters) for dolphins and porpoise. Aircraft would be prohibited from operating within 1,000 feet (304.8 meters) of these animals.

Regional Prohibitions

The proposed rule would remove the interim rule for approaching humpback whales in Hawaii (50 CFR 222.31) that has been in effect since December 1987, and incorporate it into this rulemaking. In addition to the general minimum approach distance of 100 yards (91.4 meters) for whales, it would incorporate the 300-yard (274.2) minimum distance for approaching humpback whale cow/calf pairs. The description of cow/calf pair boundaries in the proposed rule is consistent with that used by the State of Hawaii in its Ocean Recreation Management Plan.

Also, the proposed rule would establish a minimum distance of 100 yards (91.4 meters) for approaching Hawaiian monk seals on land or in the water.

Vessel Operating Procedures

The proposed rule includes vessel operation procedures to protect whales, dolphins and porpoise and to reduce the likelihood of a "take" of these animals. They include precautions that should be taken by a vessel operator when approaching a whale, dolphin or porpoise or when an animal once approaches a vessel that is underway.

Scientific Research Permits

Under current NMFS guidelines for approaching marine mammals, research may be conducted without a research permit from any vessel as long as the guidelines are followed and harassment does not occur. The proposed regulations would not prohibit research conducted from whale, dolphin or porpoise watching vessels as long as the vessels follow the regulations and do not harass the animals. Research that may result in harassment or that involves approaches closer to the animals than the regulations allow would require a research permit. Also, it is NMFS' policy that research conducted under a permit may not take place in conjunction with commercial whale or dolphin watching because permit holders may be allowed to approach these animals closer than the regulations would allow the general public to approach.

Conclusion

It may be possible to approach some populations of whales, dolphins and porpoise closer than the minimum distances proposed in these regulations without harassing them. However, these distances are close enough to allow people to observe marine mammals while providing a measure of safety for these animals that is consistent with sound management practices required by the MMPA. Also, the minimum approach distances are easy to remember and are relatively easy to estimate due to their common use by many people (e.g., a football field equals 100 yards (91.4 meters)).

Regulations that are easy to understand, follow and enforce are the most effective tool NMFS has to reduce disturbances to marine mammals. The proposed regulations represent the recommendations, judgement and experience of wildlife biologists, managers, and enforcement agents. NMFS will consider amending the regulations should a final rule be issued and new information indicates that an approach distance should be more or less than the distances proposed or if there is a demonstrated need for other populations of seals and sea lions to be protected by minimum approach distances.

The interim regulations governing the approach of humpback whales in Hawaii that have been in effect since

1987 demonstrate that regulations can provide the legal framework for reducing harassment of whales without affecting the whale watching industry.

Classification

NMFS prepared an environmental assessment (EA) for this proposed rulemaking and concluded that there will be no significant impact on the human environment as a result of the rule. A copy of the EA is available on request (See ADDRESSES).

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. The proposed regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Although the rule would set limits on how marine mammals can be approached and from what distances, it would not prohibit cruises or other activities involving the observation of marine mammals.

This rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act. However, scientific research permits for marine mammals have been approved by the Office of Management and Budget for collection-of-information under CONTROL NO. 0648–0084. This rule does not contain policies with federalism implications sufficient to warrant preparing a federalism assessment under E.O. 12612.

List of Subjects

50 CFR Parts 216 and 222

Endangered and threatened wildlife, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 218

Endangered and threatened wildlife, Marine mammals.

Dated: July 28, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

For reasons set forth in the preamble, in title 50 CFR, a new part 218 is proposed to be added and parts 216 and 222 are proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.11, the introductory text is amended to read as follows:

§ 216.11 Prohibited taking.

Except as provided in subparts C, D, and I of this part or in parts 218, 228 or 229 of this chapter, it is unlawful for:

* * * * *

3. A new part 218 is added to read as follows:

PART 218—REGULATIONS GOVERNING APPROACHES TO MARINE MAMMALS

Sec.

218.1 Definitions.
218.2 General requirements.
218.3 General prohibitions.
218.4 Regional prohibitions.
218.5 Vessel operating procedures.

Authority: 16 U.S.C. 1361–1407 and 1531–1543.

§ 218.1 Definitions.

In addition to definitions contained in the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361–1407, Public Law 92–522, and unless the context otherwise requires, in this part 218:

Dolphin and *porpoise* mean all members of the families Delphinidae, Phocoenidae, Monodontidae and Physeteridae that are not listed in the definition of whale.

Whale means all baleen whales (Mysticeti) and toothed whales (Odontoceti) including sperm whale, beluga whale, killer whale, pilot whale, all beaked whales, and narwhal.

§ 218.2 General requirements.

A copy of the regulations in 50 CFR part 218 including Figure A, which illustrates how responsible observation of whales, dolphins and porpoise should be conducted, must be posted on any vessel or aircraft carrying paying passengers to observe these animals. The regulations and Figure A must be clearly visible to all passengers.

§ 218.3 General prohibitions.

Except as provided in §§ 216.24, 216.31, 222.28, and parts 228 and 229 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States, or any U.S. citizen on the high seas to commit, or attempt to commit, to solicit another to commit or to cause to be committed, any of the following acts with respect to any species of whale, dolphin or porpoise:

(a) Operate an aircraft within 1,000 feet (304.49 meters) of any whale, dolphin or porpoise or attempt to encircle any whale, dolphin, or porpoise with an aircraft;

(b) Approach a whale, dolphin or porpoise in a vessel or by any other means including, but not limited to, swimming or diving, or cause a vessel or other object to approach within 100 yards (91.44 meters) of whales or 50 yards (45.72 meters) of dolphins or porpoise; or

(c) Operate a vessel or aircraft or carry out an activity in a manner that disrupts the normal movement or behavior of a whale, dolphin or porpoise. A disruption of behavior may be manifested by, but is not restricted to, the following: A rapid change in direction or speed; escape tactics such as prolonged diving or fleeing into the water, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of feeding or migratory activities; aggressive postures or changes directed at intruders; attempts by a whale, dolphin or porpoise to shield a calf from a vessel or human observer; the abandonment of a previously frequented area; or other stress related behavior that may include vocalizing, finning, tail lobbing, tail raking, or breaching.

§ 218.4 Regional prohibitions.

Except as provided in §§ 216.24, 216.31, 222.28, and parts 228 and 229 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States, or any U.S. citizen on the high seas to commit, or attempt to commit, to solicit another to commit, or to cause to be committed, any of the following acts:

(a) In Hawaii, approach any humpback whale by any means within 300 yards (274.32 meters) or cause a vessel or other object to approach any humpback whale within 300 yards (274.32 meters) in areas designated as cow/calf waters in paragraph (c) of this section.

(b)(1) In the northwestern Hawaiian Islands, approach monk, seals, on land or in water, within 100 yards (91.4 meters) or pass between a mother an

pup monk seal, separate them or disturb them in any way.

(2) The following precautions should be taken in certain locations, such as French Frigate Shoals, Kure and Midway, where a 100-yard minimum (91.4 meters) approach distance from monk seals may not be possible to maintain:

(i) Walk near or behind the vegetation line or beach crest to pass monk seals hauled out on the beach near the water's edge. Follow the reverse procedure when passing monk seals hauled out high on the beach or into the vegetation and

(ii) Remain out of sight of monk seals when passing them.

(c) The following areas are designated as humpback whale cow/calf waters in Hawaii:

(1) Adjoining the Island of Lanai—all waters within 2 miles (1.2 kilometers) of the mean high-water line along the north and east coast between lines extending perpendicular from the coast between Kaena Point and Kamaiki Point; and

(2) Adjoining the Island of Maui—all waters inshore of the following boundary: Beginning at the shoreline of the southwestern tip of Puu Olai Point, then, by azimuth measured clockwise from true South, 082 degrees for a distance of 2 nautical miles; 141 degrees for a distance of 19 nautical miles; 164 degrees for a distance of 3 nautical miles; 184 degrees for a distance of 4.3 nautical miles; then 295 degrees to Hawea Point.

§ 218.5 Vessels operating procedures.

(a) When a whale, dolphin or porpoise approaches a vessel that is underway, the operator of that vessel should take precautions to minimize disturbance to the animal. These actions include maintaining speed and direction and avoiding low-speed maneuvering such as reversing direction, using bow thrusters, or suddenly changing propeller pitch.

(b) A whale, dolphin or porpoise should never be approached "head-on" by a vessel or aircraft from any distance.

BILLING CODE 3510-22-M

Figure A

NOAA Whale Watching Guidelines

(Includes dolphins and porpoise)

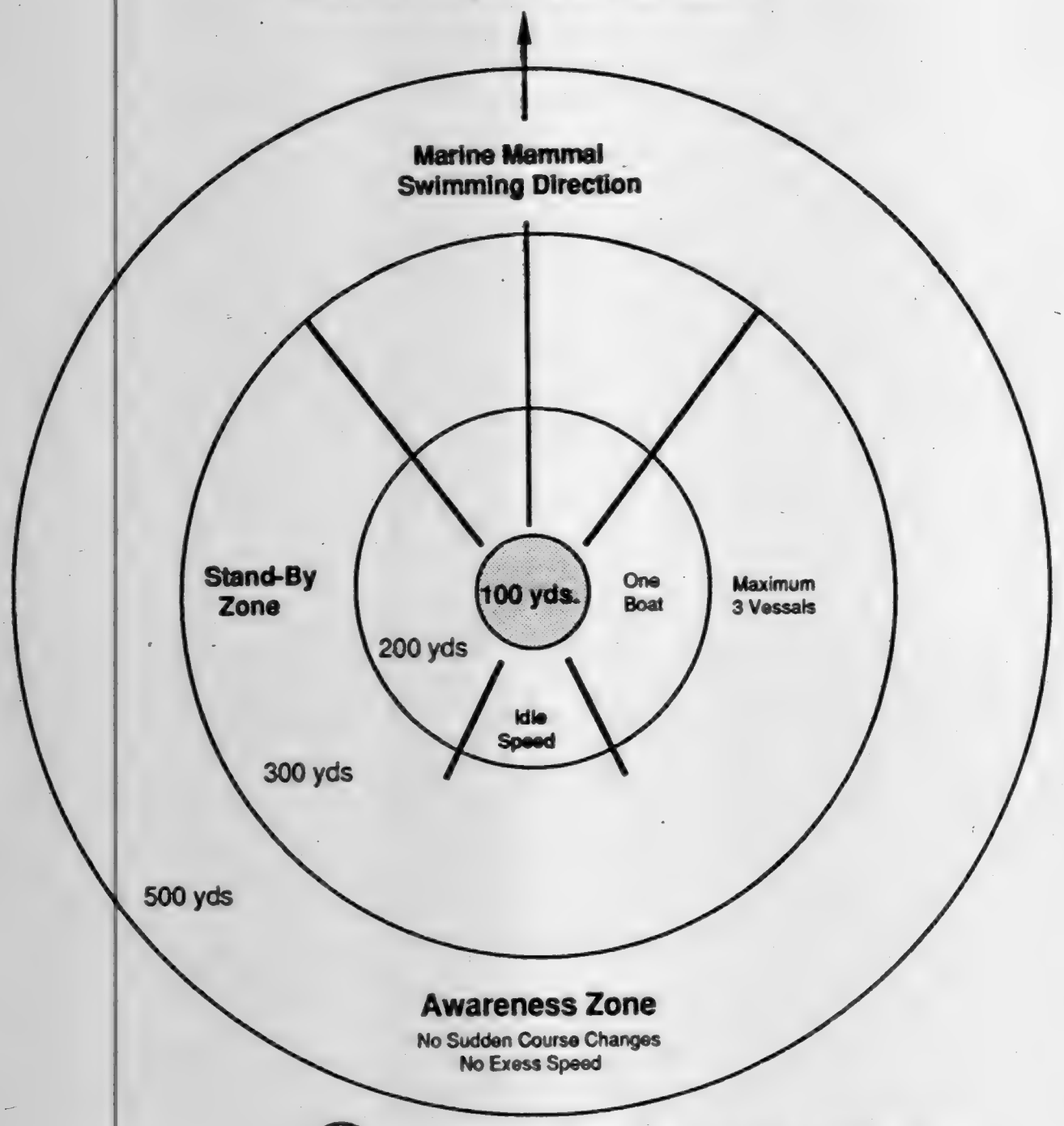

- Approaches closer than **100 yds** to whales and **50 yds** to dolphins are prohibited by Federal Law.

National Marine Fisheries Service
1335 East West Highway
Silver Spring, Maryland 20910

BILLING CODE 3510-22-C

PART 222—ENDANGERED FISH OR WILDLIFE

5. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

Subpart D—[Removed]

6. In subpart D, § 222.31 and the subpart heading are removed and subpart D is reserved.

[FR Doc. 92–18214 Filed 7–31–92; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 625

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of fishery management plan amendment and request for comment.

SUMMARY: NMFS issues this notice that the Mid-Atlantic Fishery Management Council (Council) has resubmitted a portion of Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) for Secretarial review and is requesting comments from the public.

DATES: Comments on the revised amendment should be submitted by August 21, 1992.

ADDRESSES: All comments may be sent to Mr. Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930–3799. Copies of the revised Amendment 2, and the environmental impact statement/regulatory impact review may be obtained from John C. Bryson, Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, (508) 282–9324.

SUPPLEMENTARY INFORMATION: Amendment 2 was prepared by the Council and submitted to the Secretary of Commerce (Secretary) for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove, or partially disapprove FMPs or amendments based upon a determination of consistency with the national standards and other applicable law. The Secretary has announced disapproval of one of the measures proposed in the notice of availability for Amendment 2 (57 FR 19874, May 8, 1992) and again in the proposed rule to implement Amendment 2 (57 FR 24577, June 10, 1992). The remaining measures were accepted for Agency and public review and are contained in the June 10, 1992, proposed rule.

To replace the disapproved measure, the Council adopted and submitted a revision to Amendment 2 for Secretarial review. The revised measure would prohibit Federally permitted vessels from landing in a state that has harvested its quota, as determined by the Director, Northeast Region, NMFS.

Regulations proposed by the Council to implement this amendment are scheduled to be published within 15 days.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: July 28, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18194 Filed 7–28–92; 2:34 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 149
Monday, August 3, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-065-1]

Advisory Committee on Foreign Animal and Poultry Diseases; Notice of Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) for a two-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. M.A. Mixson, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 29782, (301) 436-8073.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary regarding program operations and measures to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry diseases, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

Done in Washington, DC, this 22nd day of July 1, 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-18216 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-064-1]

National Animal Damage Control Advisory Committee; Notice of Renewal

AGENCY: U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the National Animal Damage Control Advisory Committee (Committee) for a two-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Bill Clay, Director, Operational Support Staff, ADC, APHIS, USDA, room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8281.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary concerning policies, program issues, and research needed to conduct the Animal Damage Control program. The Committee also serves as a public forum enabling those affected by the Animal Damage Control program to have a voice in the program's policies.

Done in Washington, DC, this 22nd day of July, 1992.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92-18217 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: September 10, 1992, 8:30 a.m.-5 p.m.; September 11, 1992, 8:30 a.m.-1 p.m.

Place: Room 215 Coffey Hall, Twin City Campus, 1420 Eckles Avenue, University of Minnesota, St. Paul, Minnesota 55108.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agricultural Experiment Stations.

Contact Person for Agenda and More Information: Dr. Chauncey Ching Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 346, Aerospace Building, Washington, DC 20250, Telephone: 202-401-6040.

Done at Washington, DC, this 22d day of July, 1992.

Clare I. Harris,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 92-18218 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-22-M

Federal Grain Inspection Service

Designation of the Fremont (NE) and Titus (IN) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Fremont Grain Inspection Department, Inc. (Fremont), and Titus Grain Inspection, Inc. (Titus) to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: September 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 2, 1992, **Federal Register** (57 FR 7360), FGIS announced that the designations of Fremont and Titus end on August 31, 1992, and asked persons

interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by April 1, 1992.

There were three applicants: Fremont applied for the entire area currently assigned to them, except for Juergens Produce and Seed, and Farmers Grain and Lumber Company, located in Carroll, Carroll County, Iowa (in Central Iowa Grain Inspection Service's, Inc. (Central Iowa) area); Central Iowa, a currently designated agency, applied for Juergens Produce and Seed, and Farmers Grain and Lumber Company, located in Carroll, Carroll County, Iowa; and Titus applied for the entire geographic area currently assigned to them. FGIS named and requested comments on the applicants for designation in the May 1, 1992, **Federal Register** (57 FR 18863). Comments were due by June 15, 1992. FGIS received one comment regarding the cost of the inspection services provided by Fremont. FGIS received no comments on Titus by the deadline.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Fremont, Central Iowa, and Titus are able to provide official services in the geographic areas for which they applied.

Effective September 1, 1992, and ending August 31, 1995, Fremont and Titus are designated to provide official inspection services in the geographic areas specified above. Effective September 1, 1992, and ending August 31, 1993, Central Iowa is designated to provide official inspection services at Juergens Produce and Seed, and Farmers Grain and Lumber Company, located in Carroll, Carroll County, Iowa, in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Fremont at 402–721–1270, Titus at 317–497–2202, and Central Iowa at 515–266–1101.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 14, 1992

E. James Williams

Acting Director, Compliance Division

[FR Doc. 92–17342 Filed 7–31–92; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the Farwell (TX) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Farwell Grain Inspection, Inc. (Farwell), will end January 31, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) by September 2, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Farwell, headquartered in Farwell, Texas, to provide official grain inspection services under the Act on February 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Farwell ends on January 31, 1993.

The geographic area presently assigned to Farwell, in the States of New Mexico and Texas, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In New Mexico: Bernalillo, Chaves, Curry, DeBaca, Eddy, Guadalupe, Lea, Quay, Roosevelt, San Miguel, Santa Fe, Torrance, and Union Counties; In Texas: Bailey, Deaf Smith (west of State Route 214), Lamb (south of U.S. Route 70 and west of FM 303), and Parmer Counties.

Interested persons, including Farwell, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning February 1, 1993, and ending January 31, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 14, 1992

E. James Williams

Acting Director, Compliance Division

[FR Doc. 92–17343 Filed 7–31–92; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Amarillo (TX) Agency, and the State of Wisconsin (WI)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to the Amarillo Grain Exchange, Inc. (Amarillo), and the Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by September 2, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–96454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier

(FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 1, 1992, **Federal Register** (57 FR 23075), FGIS asked persons interested in providing official services in the Amarillo and Wisconsin geographic areas to submit an application for designation. Applications were due by July 1, 1992. There were three applicants: Amarillo, Wisconsin, and Mid-Iowa Grain Inspection, Inc. (Mid-Iowa). Amarillo and Wisconsin each applied for designation to serve the entire area currently assigned to them. Mid-Iowa, a designated official agency adjacent to Wisconsin, applied for designation to serve the portion of the Wisconsin area bordered on the North by Interstate 90, on the East and South by Highway 27, and on the west by the Mississippi River, and would accept any portion of this area.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 14, 1992

E. James Williams

Acting Director, Compliance Division

[FR Doc. 92–17344 Filed 7–31–92; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Exemption of the Soldier Divide Timber Salvage Project, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Soldier Divide project area, Mountain Home Ranger District, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective on August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Williams, Timber Management Assistant, Mountain Home Ranger District, Boise National forest, 2180 American Legion Boulevard, Mountain Home, ID 83647, Telephone: 208–587–7961.

SUPPLEMENTAL INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir tussock moth, and bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Mountain Home Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damaged acres. The Forest Service has completed the Soldier Divide Timber Salvage Environmental Assessment (EA), identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Soldier Divide Timber Salvage EA is located 60 miles northeast of Mountain Home, Idaho. The Forest will salvage dead and dying trees scattered throughout the 21,800-acre project area and recover approximately 11–15 million board feet (MMbf). The Soldier Divide project will harvest only dead and dying trees using the helicopter logging system. Cutting areas average less than three acres in size and will not exceed 20 acres. Cutover areas greater than 10 acres will be replanted, and smaller areas may be replanted depending on accessibility. Natural regeneration will be used to reforest smaller areas.

There is no road construction or reconstruction proposed for the salvage operations. Helicopter landings will be constructed or reconstructed along existing roads. Management direction for the Soldier Divide project area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan (specifically Management Areas 3, 7, and 9) provides for the removal of salvage timber from lands within the project areas. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action for the Soldier Divide project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

The Soldier Divide project includes a 13,400-acre portion of the Lime Creek Roadless Area and a 4,300-acre portion of the South Boise/Yuba Roadless Area. The portions of both areas which are within the project area have been allocated to commercial timber production as well as other multiple uses by the Forest Plan. Approximately 8 MMbf would be harvested from the roadless areas using helicopter logging. Landings would be constructed adjacent to existing roads.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting and reforestation will not control the epidemic, these activities will: (1) Recover valuable timber that would otherwise deteriorate, and (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the timber salvage operations, breeding insects (principally bark beetles) can be removed in the logs and Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Soldier Divide project will be implemented after publication of this notice in the **Federal Register**. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a

loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $375,000 to $525,000. Of this, approximately $93,750 or more would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Soldier Mountain Salvage and Recovery Project, Mountain Home Ranger District, Boise National Forest, from appeal. The environmental assessment discloses the effects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: July 28, 1992.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 92-18267 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-11-M

[3410-11]

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal; Doublehead Ranger District, Modoc National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from the Timber Mountain Salvage analysis. This environmental analysis is being prepared in response to the severe timber mortality in the Timber Mountain Compartment on the Doublehead Ranger District, Modoc National Forest. The unusual mortality is being caused by drought, related insect infestation and fire.

There are currently higher than normal levels of tree mortality occurring on the Doublehead Ranger District as a result of five consecutive years of below normal precipitation. The Doublehead Ranger District is proposing tractor, shear and/or helicopter harvest of 1.0 million board feet (MMBF) over 3,000 acres in the Timber Mountain Salvage analysis. No new road construction is planned in any of the analysis area. There will be a minor amount of road reconstruction. The area is primarily within Management Area 64 (Mears), with a small portion within Management Area 63 (Tionesta), as delineated by the Modoc National Forest Land and Resource Management Plan.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by black pineleaf scale bark beetles and other endemic pathogens. Trees killed by insect attack deteriorate very rapidly.

Prompt removal of the dead and dying timber minimizes value and volume loss. Any unnecessary delays of the proposed salvage sales could delay harvesting until the 1993 logging season which could decrease the value by as much as $280,000. In addition, excessive number of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The increased threat of wildfire also increases the health and safety risks to private property owners living adjacent to the Timber Mountain Area, threatens over $3 million worth of electronic site equipment and Forest Service improvements.

The decisions for the proposed projects are scheduled to be issued in mid-August 1992. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15–20 days for discretionary review by the Chief of the Forest Service), it is likely that the projects could not be implemented this field season. This would result in the substantial monetary loss from timber values forgone. It would also continue the unacceptable threat to the health and safety of local property owners, as well as the potential loss of electronic site equipment and Forest Service improvements.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decisions relating to the harvest and restoration of lands affected by drought, pest infestation induced timber mortality, and wildfire in the Timber Mountain Compartment of the Doublehead Ranger District, Modoc National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

Revised 36 CFR part 217 appeal regulations are currently being proposed. Project decisions made after revised regulations become effective would be subject to those revised regulations. This would mean that there is the possibility that some of the proposed projects would require a new notice in the **Federal Register.**

EFFECTIVE DATE: This decision is effective August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2842, or to Diane K. Henderson, Acting Forest Supervisor, Modoc National Forest, 441 N. Main St., Alturas, CA 96101, (916) 233–5811.

ADDITIONAL INFORMATION: The environmental analyses for this proposal will be documented in the Timber Mountain Salvage environmental document. A public involvement notice was published in the Modoc Record on April 23, 1992 (Alturas, CA) and in the Herald and New (Klamath Falls, OR) on April 28, 1992 to determine the issues to be addressed in the environmental analyses. Additionally, letters were mailed to representatives of various environmental groups, timber industry, and the interested publics on the Doublehead Ranger District mailing lists in order to provide information on the projects and to generate public issues and concerns. Meetings have also been held with local property owners and interested Native American groups. The project files and related maps are available for public review at the Doublehead Ranger District, P.O. Box 369, Tulelake, CA 96134.

The mortality presently occurring in the Timber Mountain Compartment involves approximately 3,000 acres. An associated 1.0 MMBF, is presently being analyzed for the in one sale. The value to the Forest Service of the salvage volume is estimated at $280,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Modoc County will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for wildlife protection, erosion prevention and fuels reduction.

The proposals are not expected to adversely affect snag or old-growth dependent wildlife species. Initial review indicates that post-harvest snag numbers will approximate the Forest Plan Standard and Guideline of 1.5 snags per acre. No Wild and Scenic rivers, wetlands, wilderness areas, or roadless areas are within the proposed project areas.

Dated: July 27, 1992.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 92-18250 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-11-M

[3410-11]

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Tule River Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal any decision related to the harvest and restoration of lands affected by drought-induced timber mortality in the Middle Fork and North Fork of the Middle Fork of the Tule River watershed, and specifically the proposed Pocket Helicopter Insert Salvage Sale. A supplement to the 1990 Drought-Related Insect Salvage Sales Environmental Assessment is being prepared in response to continuing timber mortality in the Tule River watershed. The unusual mortality is being caused by drought and related insect infestation.

The proposed Pocket Helicopter Insect Salvage Timber Sale is within the Middle Fork and North Fork of the Middle Fork of the Tule River watershed and one mile north of the Camp Nelson community.

There are currently higher than normal levels of tree mortality, especially ponderosa and sugar pine, occurring throughout the Sequoia National Forest as a result of six consecutive years of below normal precipitation. The Tule River District is proposing helicopter and tractor harvest of 1,000 MBF on 2000 acres within the proposed Pocket Helicopter Insect Salvage Timber Sale. No new road construction or landing construction is required. Existing roads and landings will be used. All areas are within the General Forest Zone as delineated by the Sequoia National Forest Land and Resource Management Plan.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees killed by insect attack deteriorate very rapidly (species affected within the sale area are comprised of 85% pine and 15% fir).

Prompt removal of the dead and dying timber minimizes value and volume loss. Any delay of the harvest of the proposed salvage sale until the 1993 logging season could decrease the value by as much as $150,000. Prompt removal of the dead and dying timber minimizes losses due to deterioration. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The decision for the proposed project is scheduled to be issued in August 1992.

Purusant to 36 CFR 217.4(a)(11), I have determined that good cause exists to exempt from appeal any decision relating to the harvest and restoration of lands affected by drought-induced timber mortality in the Middle Fork and North Fork of the Middle Fork of the Tule River watershed. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2648; or to Sandra H. Key, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257, (209) 784-1500.

ADDITIONAL INFORMATION: The environmental analysis for this proposal will be documented in the Tule River District Drought Related Insect Salvage Sales environmental document, supplement I. Pursuant to 40 CFR 1501.7, scoping was conducted by the Tule River District Ranger to determine the issues and concerns to be addressed in the supplement. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners, and others known to be interested. Copies of the scoping letters and responses are on file at the District office. The environmental document and related map will be available for public review at the Tule River Ranger District Office, 32588 Highway 190, Springville, California 93265.

The catastrophic damage presently occurring in the proposed Pocket Helicopter Insect Salvage Timber Sale involves approximately 2,000 acres and 1.0 million board feet. The value to the Forest Service of the salvage volume is estimated at $150,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Tulare County will share in 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

The proposal is not expected to adversely affect snag-dependent wildlife species. Snag surveys indicate that post-harvest snag numbers will meet or exceed the Forest Plan Standard and Guidelines of 1.5 snags per acre and Regional Guidelines of three to four snags per acre in suitable owl habitat. No wild and scenic rivers, wetlands, wilderness areas, roadless areas, or threatened/endangered species are within the proposed project area.

Dated: July 27, 1992.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 92-18258 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-11-M

[3410-11]

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal; Greenhorn Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal any decision resulting from the proposed Alta Sierra Helicopter Insect Salvage Sale environmental analysis. The environmental analysis is being prepared in response to severe timber mortality in the Greenhorn Mountain area of the Sequoia National Forest. Unusual mortality is being caused by drought and related insect infestation. The proposed Alta Sierra Helicopter Insect Salvage analysis area is within the Ice House Creek, Shirley Creek, Tillie Creek, Cedar Creek, and Woodward Creek watersheds, and is adjacent to the community of Alta Sierra. The analysis area is approximately 30 miles east of Bakersfield, California.

There are currently higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of six consecutive years of below normal precipitation. The Forest is proposing to harvest approximately .75 million board feet (MMBF) utilizing helicopter yarding, on approximately 3,200 acres in the proposed Alta Sierra Helicopter Insect Salvage analysis area. No new road construction is planned. Some very minor road reconstruction may be required. There will be no harvest in any California spotted owl designated Spotted Owl Habitat (SOHA, however, a small portion of the analysis area is adjacent to the Sunday Peak, SOHA. The analysis area is within two separate emphasis areas as delineated by the Sequoia National Forest Land Management Plan. The two emphasis areas are developed recreation and

sawtimber. An important analysis feature is reducing the fire hazard to the private homes situated in the general vicinity of proposed project area.

The drought has caused a high degree of stress within the trees which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees killed by insect attack deteriorate very rapidly. This has been accelerated by the last six years of drought. The Greenhorn District has experience with trees deteriorating within six months after the tree has started to fade from insect infestation, rendering the tree unutilizable for sawtimber.

Prompt removal of the dead and dying timber minimizes value and volume loss. Excessive numbers of dead trees can lead to heavy fuel concentrations, making wildfire control extremely difficult, thereby resulting in an increased wildfire threat to the community of Alta Sierra and a monetary loss for the proposed Alta Sierra Helicopter Insect Salvage Sale.

The decision for the proposed project is expected to be used in August 1992.

Summary—Conclusion

Pursuant to 36 CFR 217.4(a)(11), I have determined that good cause exists to exempt from appeal any decision relating to the harvest and restoration following drought-induced timber mortality in the Ice House Creek, Shirley Creek, Tillie Creek, Cedar Creek, and Woodward Creek watersheds, Greenhorn Ranger District, Sequoia National Forest. An environmental document under preparation will address the effects of the proposed action on the environment, will doument public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective August 3, 1992.

Agency Contacts

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Sandra H. Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Potterville, CA 93257, (209) 784–1500.

Additional Information

The environmental analysis for this proposed salvage sale will be documented in the Alta Sierra Helicopter Insect Salvage Environmental Assessment. In June and July of 1992, pursuant to 40 CFR 1501.7, scoping will be conducted by the Greenhorn District Ranger to determine the issues to be addressed in the environmental analysis. Additionally, letters were mailed to over 200 local residents, representatives of various environmental groups, and the timber industry, to provide information on the project and to generate public issues and concerns. The Forest is expected to complete the environmental documentation in August 1992. The environmental document and related maps will be available for public review at the Greenhorn Ranger Station, 15701 Highway 178, Bakersfield, CA 93386, and at the Supervisors Office, Sequoia National Forest, 900 W. Grand Avenue, Poterville, CA 93257.

The catastrophic damage presently occurring in the Ice House Creek, Shirley Creek, Cedar Creek, Woodward Creek and Tillie Creek watersheds, covers over 3,200 acres of National Forest land on the Greenhorn Ranger District of the Sequoia National Forest. Within this area approximately 750 acres, with an associated .75 MMBF, is presently being analzyed for salvage because the percentages of dead and dying timber is highest in these areas. The value to the Forest Service of the salvage volume is estimated at $90,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Kern County will share 25% of the selling value for any timber that is salvaged in a commercial timber sale.

The proposal is not expected to adversely affect snag dependent wildlife species. Initial review indicates that post-harvest snag numbers will meet or exceed Forest Plan Standard and Guidelines of 1.5 snags per acre. Preliminary scoping for the Alta Sierra Helicopter Insect Salvage analysis indicates land owners and the local residents would like to see the dead and dying trees removed as soon as practical for fire hazard reduction purposes. Only trees which are dead or will be dead within six months will be harvested. There will be no harvest from this sale within any California Spotted Owl Habitat Areas (SOHA). No Wild and Scenic rivers, wetlands, wilderness areas, or threatened/endangered species are within the proposed project area.

Dated: July 27, 1992.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 92–18248 Filed 7–31–92; 8:45 am]

BILLING CODE 3410–11–M

Office of International Cooperation and Development

Nitrogen Fixing Tree Association; Agreement

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into an agreement with the Nitrogen Fixing Tree Association (NFTA) to support expenses for a workshop on "Erythrina in the New and Old Worlds."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal years 1992 and 1993 (FY 1992 and FY 1993) to enter into an agreement with NFTA to hare preparation, travel, per diem and publication expenses for a workshop on "Erythrina in the New and Old Worlds." This workshop will be held at the Centro Agronomico Tropical de Investigacion Y Ensenaza (CATIE) headquarters in Turrialba, Costa Rica, in October 1992. Approximately $25,000 will be made available to NFTA as partial support for the workshop.

Based on the above, this is not a formal request for application. As estimated $12,500 will be available in FY 1992 to support this work. It is anticipated that an additional $12,500 will be provided in FY 1993, subject to the availability of federally appropriated funds in FY 1993.

Information on proposed Agreement may be obtained from: USDA/OICD/Admin Services, 0324 South Bldg, Washington DC 20250–4300.

Dated: July 29, 1992.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 92–18295 Filed 7–31–92; 8:45 am]

BILLING CODE 09–3410–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Coastal Zone Management Program Administration Grants.

Agency Form Number: None.

OMB Number: 0648-0119.

Type of Request: Extension of a currently approved collection.

Burden: 4,333 hours.

Number of Respondents: 35 (11 responses per respondent).

Avg. Hours Per Response: 11.25 hours.

Needs and Uses: Coastal zone management grants provide funds to states and territories to implement federally-approved coastal zone management plans and develop assessment documents and multi-year strategies. Information is used to determine if activities achieve national coastal management and enhancement objectives and if states are adhering to their approved plans.

Affected Public: State or local governments.

Frequency: Quarterly, semi-annually, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395-3084.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Dated: July 28, 1992

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-18281 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-CW-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Commercial News USA Reader Survey.

Form numbers: Agency—ITA 4116P, OMB ____.

Type of request: New.

Burden: 3,000 Respondents; 1,500 reporting hours.

Average hours per respondent: 30 minutes.

Needs and uses: This collection allows the International Trade Administration to assist U.S. exporters by providing information about the audience reached by the publication Commercial News USA. Commercial News USA is a unique export promotion service for U.S. manufacturers, service firms, and publishers of trade and technical literature. This survey will collect information about the needs and interests of readers of Commercial News USA. The information will be used for program evaluation and as a source of demographic information about readers that will be made available to potential Commercial New USA participants.

Affected public: Businesses or other for-profit organizations; small, medium, and large businesses and organizations.

Frequency: Occasionally.

Respondent's obligation: Voluntary.

OMB desk officer: Gary Waxman, 202-395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503

Dated: July 28, 1992.

Edward Michals,

Departmental Clearance Officer, Office of Management & Organization.

[FR Doc. 92-18283 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 590]

Resolution and Order Approving the Application of the City and County of Denver, Colorado for Special-Purpose Subzone Status Storage Technology Corporation Plant (Electronic Information Storage and Printing Equipment) Boulder County, CO

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City and County of Denver, Colorado, grantee of FTZ 123, filed with the Foreign-Trade Zones Board (the Board) on June 12, 1991, and amended on January 24, 1992, requesting special-purpose subzone status at the electronic information storage and printing equipment manufacturing facilities (4 sites) of Storage Technology Corporation, in Boulder County, Colorado, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790-50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status; Storage Technology Corp., Boulder County, CO

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the City and County of Denver, Colorado, grantee of FTZ 123, has made application (6-12-91, FTZ Docket 35-91, 56 FR 28662, 6-25-91) to the Board for authority to establish a special-purpose subzone at the electronic information storage and printing equipment manufacturing facilities of Storage Technology Corporation, in Boulder County, Colorado;

Whereas, notice of said application has been given in the Federal Register and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone at Storage Technology Corporation's facilities (4 sites) in Boulder County, Colorado, designated

on the records of the Board as Foreign-Trade Subzone 123A, at the locations described in the application, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28

Signed at Washington, DC, this 23rd day of July 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–18256 Filed 7–31–92; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 25–92]

Foreign-Trade Zone 119—Minneapolis/St. Paul, MN, Application for Subzone, Wirsbo Company (Polyethylene Tubing Plant), Apple Valley, MN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign-Trade Zone Commission, grantee of FTZ 119, Minneapolis/St. Paul area, requesting special-purpose subzone status for the polyethylene tubing manufacturing plant of Wirsbo Company (Wirsbo) (a subsidiary of Uponor Group, Finland), located in Apply Valley, Minnesota. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 21, 1992.

The Wirsbo plant (10.5 acres/60,000 sq.ft/47 employees) is located at 5925 148th Street West in Apple Valley (Dakota County), approximately 15 miles south of Minneapolis. It is used to produce cross-linked polyethylene (PEX) tubing for floor-installed hydronic radiat residential/industrial heating systems. The production process involves mixing and heating powdered polyethylene resin with certain chemicals. The viscous compound is then extruded into tubing (HTSUS# 3917.32.0020–4; duty rate: 3.1 percent). Foreign-origin materials used in the process include polyethylene (HTSUS# 3901.10.00 and 3901.20.00; duty rate: 12.5%) and polyvinyl alcohol foil (HTSUS# 3921.19.00, 6.6%). According to the applicant, total U.S. value added is about 70 percent. Some 30 percent of the finished tubing is exported, and PEX tubing sold in the U.S. market will displace company imports. The plant will also be used as a distribution site for such other foreign heating system parts/materials as thermostats, brass fittings, and aluminum pipe.

Zone procedures would exempt Wirsbo from Customs duty payments on foreign materials used in products made for export. On its domestic sales, zone procedures would allow the company to choose the duty rate that applies to finished PEX tubing (3.1%) on the foreign material inputs noted above. On other foreign materials stored at the plant, Wirsbo would be able to defer duty payments. The application indicates that subzone status would help this new plant compete internationally.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 2, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 19, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 108 Federal Building, 110 S. Fourth Street, Minneapolis, MN 55401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: July 23, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–18257 Filed 7–31–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–055]

Acrylic Sheet From Japan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on acrylic sheet from Japan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1992.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8120.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1976, the Department of Treasury published an antidumping finding on acrylic sheet from Japan (41 FR 36497). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

No later than August 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92–18251 Filed 7–31–92; 8:45 am]

BILLING CODE 3510–DS–M

[A-588-035]

Cadmium From Japan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on cadmium from Japan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1992.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1972, the Department of Treasury published an antidumping finding on cadmium from Japan (37 FR 15700). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

No later than August 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 23, 1992

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18260 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-023]

Clear Sheet Glass From Taiwan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on clear sheet glass from Taiwan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1992.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1971, the Department of Treasury published an antidumping finding on clear sheet glass from Taiwan (36 FR 16508). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity To Object

No later than August 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18253 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-007]

High-Capacity Pagers From Japan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on high-capacity pagers from Japan. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1992.

EFFECTIVE DATE: July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Philip Marchal or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1983, the Department of Commerce (the Department) published an antidumping duty order on high-capacity pagers from Japan (48 FR 37056). The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. On August 1, 1991, we published an intent to revoke the antidumping duty order on high-capacity pagers from Japan in accordance with § 353.25(d)(4) of the Department's regulations (56 FR 36788). An interested party filed an objection to our intent to revoke on August 29, 1991. We hereby withdraw the intent to revoke published on August 1, 1991.

However, the Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

No later than August 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18252 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge From the USSR; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on titanium sponge from the USSR. Interested parties who object to this revocation must submit their comments in writing no later than August 31, 1992.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Department of Treasury published an antidumping finding on titanium sponge from the USSR (33 FR 12138). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity To Object

No later than August 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by August 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18255 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certification of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-5A017."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 88-00017, which was issued on May 26, 1989 (54 FR 24932, June 12, 1989). The Certificate was previously amended April 4, 1990 (55 FR 14100, April 16, 1990); January 3, 1991 (56 FR 843, January 9, 1991); and December 11, 1991 (56 FR 65467, December 17, 1991).

Summary of the Application

Applicant: Construction Industry Manufacturers Association ("CIMA"), 111 East Wisconsin Avenue, suite 940, Milwaukee, Wisconsin 53202.

Contact: J. William Peterson, Director of Government Affairs.

Telephone: (202) 479-2666.

Application No.: 88-5A017.

Date Deemed Submitted: July 23, 1992.

Request For Amended Certificate

CIMA seeks to amend its Certificate to:

1. Add Manufacturers Division of the American Mining Congress, an association, as a "Member" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2 (1));

2. Add the following companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Cincinnati Mine Machinery Co., Cincinnati, Ohio; Getman Corp., Bangor, Michigan; T. J. Gundlach Machine Company, Belleville, Illinois; Service Machine Co., Huntington, West Virginia; and Manitowoc Engineering Co., Manitowoc, Wisconsin;

3. Add Power, Distribution, and Specialty Transformers (SIC code 3612), Switchgear and Switchboard Apparatus (SIC code 3613), Relays and Controls (SIC code 3625), Electrical Industrial Apparatus, Not Elsewhere Classified (SIC code 3629), Lighting Equipment, Not Elsewhere Classified (SIC code 3648), and Communications Equipment, Not Elsewhere Classified (SIC code 3669) as products to be covered by the Certificate; and

4. Delete Barber-Greene Overseas, Inc. and Gehl Company as "Members" under the Certificate.

Dated: July 28, 1992

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-18282 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

[Docket No. 920651-2151]

State Technology Extension Program

AGENCY: National Institute of Standards and Technology (NIST), Technology Administration, Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The Director of the National Institute of Standards and Technology invites proposals from qualified organizations for funding for projects that accomplish any one of the following objectives. Each proposal should address only one objective. Qualified organizations may submit one proposal for each objective.

Objective 1. Program Planning—create a program plan for a state-wide, coordinated technology extension program where none currently exists, to enhance the competitiveness of small and medium-sized businesses through the application of new technology.

Objective 2. Program Development—develop new technology assistance and/or industrial modernization services to meet the competitiveness needs of small and medium-sized businesses through the application of new technology.

Objective 3. NIST MTC Extension—help businesses take advantage of the services and information offered by the NIST Regional Manufacturing Technology Centers (MTCs).

CLOSING DATE FOR PROPOSALS: Proposals will be accepted until 4 p.m. E.d.t. on September 17, 1992. It is the responsibility of applicants to ensure that their proposals are received at the State Technology Extension Program office by the time and date stated. Proposals received after the closing time and date will be disqualified and returned.

ADDRESSES: Applicants must submit one signed original plus six copies of the proposal along with Standard Form 424 to: State Technology Extension Program, Physics Building (Bldg. 221), room A-343, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899.

FOR FURTHER INFORMATION CONTACT: For clarification of the content of this notice telephone: Mr. Douglas Devereaux at (301) 975-4499. Copies of SF424 (Rev 4-88) and other required forms may be obtained from the NIST Grants Office (301) 975-6328.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), as amended, directs the Secretary of Commerce, through the Director of NIST, to "provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-sized businesses, to enhance their competitiveness through the application of science and technology." The NIST State Technology Extension Program (STEP) was created to work with State and local technology assistance providers to enhance and develop their capability to meet the competitiveness needs of local industry. Program efforts focus on stimulating cooperation and communication between and within state programs; collecting and disseminating information about successful technology assistance activities, such as best practices, model programs and common tools; and providing matching funds for development and coordination of technology assistance activities.

In August 1990, NIST STEP provided funding for projects that prompted innovative methods for increasing use of federal technology by businesses and for helping businesses take advantage of the NIST Regional Manufacturing Technology Centers. In September 1991, NIST STEP provided funding to state governments to plan for state-wide coordination of existing and/or newly developed state, local and federal technology assistance programs.

This year NIST STEP will provide funds to states for planning and/or developing coordinated technology assistance services and for providing linkage to the NIST Manufacturing Technology Centers. These awards will continue to promote increased coordination and communication within and between states as is consistent with the mission of the STEP.

Invitation for Proposals

Qualified organizations are invited to submit one proposal in one or more of the three following Objectives (maximum of three proposals). Each proposal should address only one objective.

Objective 1. Program Planning—create a program plan for a state-wide, coordinated technology extension program where none currently exists, in order to enhance the competitiveness of small and medium-sized businesses. The project will plan for development and coordination of new and/or existing services such as (but not limited to) federal industry assistance programs, federal laboratories, state industry assistance programs, community college training programs, university based industry assistance programs, basic and applied research programs, financial assistance programs, and business and management assistance programs, into a unified, state-wide program.

Objective 2. Program Development—develop new technology assistance and/or industrial modernization services to meet the competitiveness needs of small and medium-sized businesses. Proposed programs should provide new services and activities that effectively and efficiently assist small and medium sized-businesses overcome barriers of technology transfer and deployment. For example, proposals could include, but are not limited to, projects for industrial extension, technology transfer/deployment, workforce training, and/or quality improvement.

Objective 3. MTC Extension—help small and medium-sized businesses take advantage of the services and

information offered by the NIST Regional Manufacturing Technology Center(s) (MTCs). Proposed programs should help small and medium-sized business that are currently out of reach of an operational MTC take advantage of the services and activities offered by the MTC(s). Proposed programs should be organized to rely both on their own technical management resources and on the strength of the linkage with the host MTC(s). The MTC(s) identified in the proposal must be operational. Operational centers include: the Southeast Manufacturing Technology Center in Columbia, South Carolina, the Great Lakes Manufacturing Technology Center in Cleveland, Ohio, the Northeast Manufacturing Technology Center in Troy, New York, the Mid-America Manufacturing Technology Center in Overland Park, Kansas, and the Midwest Manufacturing Technology Center in Ann Arbor, Michigan.

Funding Available

Approximately $600,000 will be available to support cooperative agreements under this program. The maximum amount to be awarded for any proposal is $100,000. Although states are invited to submit one proposal in each of the three objectives, a maximum of $100,000 will be awarded to any state. States may submit proposals for less than $100,000 and may receive funding for more than one proposal, so long as the total funding to any state does not exceed $100,000. Agreements entered into under this program shall be available for one year. The Department of Commerce has no obligation to provide any additional future funding to applicants selected for funding under this program. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Definition

For the purposes of this notice, the following definition applies:

The term "State-wide, coordinated technology extension program" refers to programs that link the capabilities of state technology development and business assistance programs to assure the availability of a wide range of business and technical specialists; support training as a critical component of technology deployment; emphasize client-directed problem solving including assistance in identifying and adapting appropriate technology and know-how to individual clients' needs and markets; recognize businesses' needs for a variety of services; and emphasize the value of on-site personal field service in assisting firms.

Proposal Qualifications

Qualified Organizations

Eligible applicants under the program are any state government, either for itself or for a consortium of states. States may to propose to provide services directly or may arrange for the provision of any or all of the proposed services by institutions of higher education or other non-profit institutions or organizations. All applicants must submit a letter in the Basic Proposal from their Governor's office indicating that the applicant is the lead organization for that specific proposal objective, acknowledging that there is only one proposal from that state for that objective. Applicants submitting proposals for Objective 3, MTC Extension, must submit a letter in the Basic Proposals from the Director of the relevant MTC(s), agreeing to cooperate with the proposed activities. States that received funding from NIST STEP in August 1990 for helping businesses take advantage of the services and information offered by the NIST MTCs, are not eligible for funding for proposal Objective 3, MTC Extension. States that received funding from NIST STEP in September 1991 for program planning are not eligible for funding for proposal Objective 1, Program Planning. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Proposal Format

The Basic Proposal must not exceed 25 typewritten pages in length. The applicant may submit a separately bound document of appendices, or other relevant information, in support of the Basic Proposal. Appendices and other supplemental information must not exceed 20 pages. Excess pages in either the Basic Proposal (over the 25 page limit) or the supplemental appendices (over the 20 page limit) will not be considered in the evaluation.

Content of Basic Proposal

The Basic Proposal must at a minimum include the following:

A. Program description and information necessary for evaluation in accordance with the Evaluation and Selection Criteria section in this notice.

B. A budget for the project which identifies all sources of funds.

C. A description of the qualifications of key personnel assigned to work on the proposed project.

D. A Standard Form 424 (Rev 4–88). SF424 (Rev 4–88) will be considered part of the page count of the Basic Proposal. Other required forms may be submitted separately and will not be considered part of the page count of either the Basic Proposal or the supplemental appendices.

E. A letter from the Governor's office indicating that the applicant is the lead organization for that specific proposal objective, acknowledging that there is only one proposal from that state for that objective.

F. A letter from the Director of the relevant MTC(s), agreeing to cooperate with the proposed activities, if applicable (required for Objective 3, MTC extension, only).

Financial Information

A matching contribution from each state is required. NIST may provide financial support up to 50% of the total budget for the project, not to exceed $100,000, as the federal share. Applicant's share of the budget may include dollar contributions from state, county, industrial or other non-federal sources and in-kind contributions of personnel assigned to work on the project. For Proposal Objective 2, Program Development, and Objective 3, MTC Extension, one half of the match must be non-federal cash. The Department of Commerce has no obligation to cover pre-award costs, notwithstanding any verbal assurance an applicant may have received. Applicants that incur costs prior to an award being made, do so solely at their own risk of not being reimbursed by the Government.

Proposal Evaluation and Selection Criteria

Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review process. The first set of five evaluation and selection criteria apply only to Objective 1, Program Planning. The second set of five criteria apply only to Objective 2, Program Development and Objective 3, MTC Extension. Consideration will be given to geographic diversity in making awards.

Criteria for Objective 1. Program Planning

1. Coordination with Existing Resources

Proposed plan for interacting or coordinating with existing or newly formed federal, state or local technology/industrial assistance services to achieve economies of scale, avoid duplication or services and present a unified program of assistance to small and medium-sized businesses in the proposed service area. It is particularly important for the applicant

to show their strategy and methodology for involving existing, newly formed and planned federal, state and local industrial assistance services in the extension service planning process. (25 points)

2. Financial Plan

The relevancy and cost effectiveness of the applicant's financial plan for meeting the objectives of the proposal; the firmness and level of the applicant's total financial support for the project and the ability of the applicant to maintain the program after the cooperative agreement has expired. It is important for the applicant to show their strategy for seeking broad based financial support for creation of the newly coordinated program as planned in the proposed planning process. (20 points)

3. Needs Identification Methodology

Applicant's methodology for identifying and understanding the assistance needs (e.g., technology, training, information, quality improvement, management, etc.) of industry in that state and for obtaining broad based industrial support for the new coordination effort. (20 points)

4. Resource Identification Methodology

The applicant's methodology for collecting information about the number, size, technical sophistication, type and relevancy of existing industrial assistance activities that will be part of the coordination effort. (20 points)

5. Qualifications

Qualifications and experience of the project team and relevancy of the proposing organization for conducting this project. (15 points)

Criteria for Objective 2, Program Development and Objective 3, MTC Extension

1. Coordination with Existing Resources

Proposed plan for interacting or coordinating with existing or newly formed federal, state or local technology/industrial assistance services to achieve economies of scale, avoid duplication or services and present a unified program of assistance to small and medium-sized businesses in the proposed service area. It is important to show how the proposed program integrates with, and enhances, existing federal, state and local technology assistance and industrial modernization activities. (20 points)

2. Financial Plan

The relevancy and cost effectiveness of the applicant's financial plan for meeting the objectives of the proposal; the firmness and level of the applicant's total financial support for the project and the ability of the applicant to maintain the program after the cooperative agreement has expired. It is important to show a conceptual plan for continuing the program after the cooperative agreement has expired. (20 points)

3. User Needs

Identify and demonstrate understanding of relevant industry assistance needs in the proposed service region and show how the proposed program meets those needs. (30 points)

4. Program Management

Completeness and relevancy of the program management plan including effectiveness of the planned methodology of program management and qualifications of the project team and relevancy of the proposing organization(s) for conducting this project. (15 points)

5. Program Evaluation

Applicant's plan for evaluation of the effectiveness of the proposed program and for continuous improvement of program activities. (15 points)

Proposal Selection Process

The proposal evaluation and selection process will consist of three principal phases: Proposal qualification; Proposal review and selection of finalists; and Award determination.

a. *Proposal Qualification*

All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this notice. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

b. *Proposal Review and Selection of Finalists*

The Director of NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation and selection criteria set forth in this notice. From the qualified proposals a group of finalists will be selected based on this review. This review process should take approximately 30 days.

c. *Award Determination*

The Director of NIST, or his designee, shall select awardees based upon the rank order of applicants and the availability of funds. The maximum total amount of funds awarded to any one state will be $100,000. Upon the final award decision, a notification will be made to each of the proposing organizations.

Additional Requirements

Awards under this program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards. All applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension, and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants, as defined at 15 CFR 26.105, are subject to 15 CFR part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and the applicable section of the Form CD–511. Grantees, as defined at 15 CFR 26.605, are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the applicable section of the Form CD–511. Persons, as defined at 15 CFR 28.105, are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." The section of the Form CD–511 relating to lobbying applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Recipients shall require applicants for subgrants, contracts, subcontracts or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions and Lobbying" and Form SF–LLL, "Disclosure of Lobbying Activities." Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or sub-recipient should be forwarded in accordance with the instructions contained in the award document.

A false statement on any application for funding under the State Technology Extension Program may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Except where declared by law, no award of federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

—The delinquent account is paid in full,
—A negotiated repayment schedule is established and at least one payment has been received, or
—Other arrangements satisfactory to the Department of Commerce are made.

The grantee will administer the grant in accordance with title 15, part 24, of the code of Federal Regulations.

Classification

The State Technology Extension Program is being carried out under the authority of the Omnibus Trade and Competitiveness Act of 1988, as amended. The catalog number for this program in the Catalog of Federal Domestic Assistance is 11613. This document is consistent with Executive Order 12291. Executive Order 12372 is applicable to the extent permitted by law. This notice relating to public property, loans, grants, benefits, or contracts is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) including notice and opportunity for comment. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared for this notice for purposes of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). The program is not a major federal action requiring an environmental assessment under the National Environmental Policy Act. This notice does not contain policies with Federalism implication sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget (OMB Control Number 0693–0010).

Dated: July 23, 1992.

John W. Lyons,

Director.

[FR Doc. 92–17881 Filed 7–31–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[Docket No. 920384–2084]

RIN 0648–AE72

Process for the Management of Highly Migratory Species

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed process and request for comments; extension of the public comment period.

SUMMARY: NMFS published a notice of a proposed agency process on May 29, 1992, for implementing provisions of the Fishery Conservation Amendments of 1990 (Pub. L. 101–627) concerning the management of highly migratory species in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea (57 FR 22718). The notice proposes a process that NOAA will follow in preparing, amending, and implementing fishery management plans and identifies the opportunities for involvement by the public, the Regional Fishery Management Councils, and the U.S. Commissioners (and their advisors) to the International Convention for the Conservation of Atlantic Tunas. Public comments were invited through July 28, 1992. Based upon public requests for additional time for commenting on the proposed process, NMFS is extending the public comment through August 27, 1992.

DATES: Comments must be received on or before August 27, 1992.

ADDRESSES: Comments on the proposed process should be mailed to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910. Please mark the envelope "Highly Migratory Species Process—Comments."

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, Telephone: (301) 713–2334 or Davis A. Hays, Office of Fisheries Conservation Management, NMFS, Telephone: (301) 713–2343.

Dated: July 28, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–18226 Filed 7–28–92; 4:48 pm]

BILLING CODE 3510–22–M

[Docket No. 920107–2007]

Notice of Draft Guidelines for Approaching Seals and Sea Lions

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of draft guidelines.

SUMMARY: NMFS is issuing draft guidelines for approaching seals and sea lions that include a limit on how close these marine mammals should be approached by people, vessels, and aircraft. These approach limits allow people to observe seals and sea lions while providing a measure of safety for them that is consistent with sound management practices required by the Marine Mammal Protection Act (MMPA).

DATES: Comments on the draft guidelines must be received by October 2, 1992.

ADDRESSES: Comments should be submitted to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS, 301–427–2322; Douglas Beach, Northeast Region, 508–281–9254; James Lecky, Southwest Region, 213–514–6664; Eugene Nitta, Pacific Area Office, 808–955–8831; Charles Oravetz, Southeast Region, 813–893–3366; Brent Norberg, Northwest Region, 206–526–6110; and Steven Zimmerman, Alaska Region, 907–586–7233.

SUPPLEMENTARY INFORMATION:

Background

In a separate document published in the **Federal Register**, NMFS is proposing regulations that will provide greater protection to whales and dolphins by setting a minimum distance from which they can be approached by people, vessels and aircraft. NMFS has determined there is a need for regulating approaches to the endangered Hawaiian monk seal, and, the proposed regulations include a minimum approach distance for this species. Also, regulations are currently in effect that govern approaches to certain Steller sea lion rookeries in Alaska. However, until NMFS has information that a need exists to regulate approaches to other seals and sea lions, NMFS is issuing guidelines, rather than regulations, for approaching these animals.

Certain activities, such as commercial fishing and scientific research, that operate under a permit or an exemption issued under the Marine Mammal

Protection Act (MMPA) or the Endangered Species Act (ESA), may be specifically authorized to approach these animals closer than the minimum distances described in the guidelines.

An increasing interest in observing or approaching all marine mammals in the wild by the general boating public has made those responsible for the management and protection of these animals concerned that these activities may be causing biological problems for the animals. Although NMFS believes the public can benefit from an experience that allows them to observe seals and sea lions, the public needs to be aware that these animals are vulnerable to injury and disturbance by people, vessels and aircraft.

Seals and sea lions are most vulnerable to disturbance while using rookeries and places where they rest on land or structures such as docks and piers (haulout sites). These disturbances are particularly significant during breeding and pupping seasons because important patterns in their life cycles may be disrupted. Depending on the frequency and severity of disturbance at haulout sites and rookeries, breeding success may be affected, mothers and pups can be separated, or important breeding locations may be abandoned.

Although seals and sea lions are not usually the primary animals targeted by commercial sightseeing tours, there are conducted tours of seal and sea lion rookeries, and an increasing interest by private boaters and commercial tourboats in observing these animals. On the West Coast of the United States, large numbers of seals and sea lions congregate close to or on shore often in areas populated by humans. In some places such as Newport, Oregon and Monterey, California, seals and sea lions on the docks and piers are popular tourist attractions.

The MMPA prohibits taking marine mammals unless an exception has been made. In 50 CFR 216.3, "take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild." Threatened or endangered marine mammals are protected further by the Endangered Species Act. Although harassment of a marine mammal from any distance is defined as a *take*, and, therefore, prohibited, these guidelines reduce the opportunity and likelihood that seals and sea lions will be harassed.

Scientific Research Permits

Under the guidelines for approaching seals and sea lions, research may be conducted without a research permit from any vessel as long as the guidelines are followed and harassment does not occur. Research that may result in harassment requires a research permit. NMFS also recommends a research permit be obtained if an approach closer to the animals than the guidelines allow may occur during research activities. Also, it is NMFS' policy that research conducted under a permit may not take place in conjunction with commercial seal and sea lion watching because permit holders may be allowed to approach these animals closer than the distance the guidelines recommend should be maintained between the general public and the animals.

NMFS Guidelines for Approaching Seals and Sea Lions

Note: Any regulations in effect take precedence over these guidelines.

A. The following guidelines for approaching seals and sea lions apply to all persons subject to the jurisdiction of the United States or any vessel or aircraft operating in water, land or air under the jurisdiction of the United States:

1. Do not approach within 50 yards of a seal or sea lion in the water;

2. Do not approach within 100 yards of a seal or sea lion on land;

3. Do not approach within 50 feet of a seal or sea lion hauled out on a fixed structure. The term fixed structure includes a pier, wharf, dock, buoy or other similar structure, but does not include a jetty, breakwater or a structure similar to natural haulout areas favored by pinnipeds or any structure located in or adjacent to a breeding rookery;

4. Do not operate an aircraft within 1,000 feet of a seal or sea lion or attempt to encircle a seal or sea lion with an aircraft; and

5. Do not operate a vessel or aircraft or carry out an activity in a manner that disrupts the normal movement of a seal or sea lion. A disruption of behavior may be manifested by, but is not restricted to, the following: a rapid change in direction or speed; escape tactics such as prolonged diving or fleeing into the water from a haulout or rookery, evasive swimming patterns; interruptions of feeding or migratory activities; aggressive postures or changes directed at intruders; attempts by a seal or sea lion to shield a pup from a vessel or human observer; the abandonment of a previously frequented area; or other stress-related behavior.

B. The following vessel operating procedures should be observed to provide greater protection to seals and sea lions and to reduce the likelihood of a "take" of these animals:

(1) When a seal or sea lion approaches a vessel that is underway, the operator of that vessel should take precautions to minimize disturbance to the animal. These actions include maintaining speed and direction and avoiding low-speed maneuvering such as reversing direction, using bow thrusters, or sudden changes in propeller pitch.

(2) Never attempt a "head-on" approach of a seal or sea lion from any distance.

Dated: July 28, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-18215 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's (Council) Crab Interim Action Committee will meet on August 26, 1992, at the Federal Annex Building, 9109 Mendenhall Mall Rd., suite 5 (Bureau of Indian Affairs Conference Room), Juneau, AK. The meeting will begin at 9 a.m.

On June 30, 1992, the National Marine Fisheries Service Alaska Region received an appeal regarding the Alaska Board of Fisheries' decision to adopt regulations limiting the number of pots that may be carried aboard vessels in certain Bering Sea and Aleutian Islands King and Tanner crab fisheries.

The Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands authorizes this appeal and requires that the Crab Interim Action Committee of the North Pacific Fishery Management Council consider this appeal and forward the Council's recommendations to the Secretary of Commerce.

For more information contact Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: July 28, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Services.

[FR Doc. 92-18227 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Permit No. 793; Fish Passage Center, (P500A).

On May 12, 1992, notice was published in the **Federal Register** (57 FR 20246) that an application had been filed by the Fish Passage Center, 2501 SW First Ave., suite 230, Portland, OR 97201-4752, to take Snake River sockeye salmon (*Oncorhynchus nerka*) and Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) for the purposes of scientific research and enhancement. An emergency permit allowing the requested activities for research on, and the enhancement of, Snake River chinook and sockeye salmon was issued on May 29, 1992. This emergency permit was in effect pending full public and governmental review of the application and is now superseded by issuance of this permit.

Notice is hereby given that on July 29, 1992 as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Suite 7324, Silver Springs, MD 20910 (301/713-2289);
and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: July 29, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-18307 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; permits.

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Issuance of Permit; NMFS, Southwest Fisheries Science Center (P772#60).

On June 11, 1992, notice was published in the **Federal Register** (57 FR 24778) that an application had been filed by the Southwest Fisheries Science Center, National Marine Fisheries Service, La Jolla, CA 92038, to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Southwest Fisheries Science Center requested authorization to collect and import into the United States, tissue samples taken by projectile dart (biopsies) from various populations of bow-riding small cetaceans in the eastern tropical Pacific over a five-month period. The samples will be used in genetic analyses for the purpose of stock differentiation studies.

Notice is hereby given that on July 27, 1992 authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713-2289);
and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802-4213 (310/980-4016).

Dated: July 27, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-18213 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

[Docket No. 920782-2182]

Review of Patent and Trademark Office Appeal Procedures

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; request for public comments.

SUMMARY: The Commissioner is reviewing the structure and operation of the Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board. To ensure that any possible changes are considered with full appreciation of the views of the public and the patent and trademark user community, public comments are invited.

DATES: Written comments must be submitted by November 2, 1992. A public hearing will be held on November 4, 1992, at 9:30 a.m. Requests to present oral testimony should be received on or before November 2, 1992.

ADDRESSES: Submit written comments and requests to present oral testimony to Michael K. Kirk, Assistant Commissioner for External Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. The hearing will be held in room 912, on the ninth floor of Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the hearing will be available for public inspection in room 902 of Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Phone: (703) 305-9300.

SUPPLEMENTARY INFORMATION: The public is invited to submit written comments on the matters set forth below. Submissions may include appropriate supporting material where relevant, and must include the name and/or professional affiliation of the submitter.

Background

Suggestions have recently been made to the effect that possible changes in the

structure and operation of one of the statutory administrative tribunals (boards) within the PTO, namely, the Board of Patent Appeals and Interferences, may be desirable. Comments are invited in order to facilitate the Commissioner's review of these matters, not only with respect to the Board of Patent Appeals and Interferences but also with respect to the other statutory administrative tribunal, the Trademark Trial and Appeal Board. The following discussion will briefly describe the structure and operation of the boards from a historical perspective and provide some insight as to their present structure and operation.

I. The Board of Patent Appeals and Interferences

A. History

In 1836, Congress created for patent applicants a right of review of adverse patentability decisions entered by the Commissioner of Patents. Act of July 4, 1836, ch. 357, section 7, 5 Stat. 117.

In 1861, Congress restructured the review process by providing for a two level appeal *within* the Patent Office, the first level being an appeal from an examiner's decision twice rejecting the claims in an application to a board of three examiners-in-chief (EICs), and the second level being an appeal from a board's decision to the Commissioner of Patents. Act of March 2, 1861, ch. 88, section 2, 12 Stat. 246; see also William C. Robinson, *Law of Patents* Vol. 2, 185–87 (1890).

Congress again, in 1927, changed the system of appealing a Patent Office patentability decision within the Office by eliminating the old board of EICs and substituting therefor a board of appeals consisting of the Commissioner of Patents, the first assistant commissioner, the assistant commissioner, and EICs, to be appointed by the President, with the advice and consent of the Senate. See Act of March 2, 1927, ch. 273, section 3, 44 Stat. 1335; see also In re Wiechert, 370 F.2d 927, 953, 152, USPQ 247, 267 (CCPA 1967) (Smith, J., dissenting). Congress provided that appeals should be heard by at least three board members, to be designated by the Commissioner. Act of March 2, 1927, ch. 273, section 3, 44 Stat. 1335. In this act, Congress eliminated the right of further appeal to the Commissioner from an adverse board decision. *Id.* This scheme has substantially remained intact until the present.

Pursuant to an act of Congress in 1984, the Board of Appeals was merged with the Board of Patent Interferences to become the sole patent board of the Office, named the Board of Patent Appeals and Interferences (BPAI). Patent Law Amendments Act of 1984, Public Law No. 98–622, title II, section 201(a), 98 Stat. 3386.

B. Present Status

The BPAI is presently comprised of the Commissioner of Patents and Trademarks, the Deputy Commissioner, the Assistant Commissioners appointed under 35 U.S.C. 3, and EICs. 35 U.S.C. 7(a). Since 1975, EICs have been appointed, upon the nomination of the Commissioner, by the Secretary of Commerce, 35 U.S.C. 3(a), and to the competitive service, 35 U.S.C. 7(a). As of June 1, 1992, there were 45 EICs including the Chairman and Vice Chairman of BPAI.

The Commissioner has the responsibility to superintend and perform all duties required by law respecting the granting and issuing of patents. 35 U.S.C. 6(a). Those duties include establishing legal policy based on statutory and case law. The Commissioner has shaped legal policy in part through his participation as a member of the patent board of appeals and by designating the panel to consider particular cases.

From October 1, 1979, through April 30, 1992, BPAI issued 53,681 decisions in *ex parte* appeals. During this twelve and one-half year period, the Commissioner designated himself as a member of a panel in fewer than a fraction of a percent of these *ex parte* appeals. Of the ten known appeals in which the Commissioner participated as a member of the panel deciding the appeal, five were consolidated because they involved a common question of law. Also, in two of the ten appeal decisions, there was at least one EIC who was a member of the panel who dissented. In another appeal, and EIC wrote a concurring opinion.

The Commissioner lacks authority to seek judicial review of a decision of BPAI in the courts. The Commissioner can, however, reopen prosecution of an application following a decision of BPAI, either on petition of the applicant or *sua sponte*. 37 CFR 1.198. Also, an examiner can request reconsideration of an *ex parte* appeal decision. See *In re Schmidt*, 377 F.2d 639, 642, 153 USPQ 640, 642 (CCPA 1967).

C. Performance Requirements

As a result of the transition from Presidential appointment to appointment under the civil service, EICs became subject to performance plan requirements. 5 U.S.C. 4302. The work of the board, with respect to quality, timeliness and productivity, has an impact on patent pendency and on other aspects of the mission of PTO. It is, therefore, necessary to monitor the performance of the members of BPAI. The current performance appraisal plan for EICs was implemented in 1986. Informal performance requirements had existed previously, but were only applicable to EICs who were not Presidential appointees.

The current plan (applicable to EICs aside from the Chairman and Vice Chairman) includes four "weighted" elements. The elements and their respective weights are set forth below, followed by a brief explanation:

(1) *Performance of judicial duties when serving as the author of a majority decision* (up to 50% of total appraisal). Requirement: prepare timely and well-reasoned decisions in appeals from adverse decisions of examiners and/or in interferences.

(2) *Performance of judicial duties without primary decision-writing responsibility* (40% of total appraisal). Requirement: participate in conferences and hearings, timely and thoroughly review opinions prepared by co-panel members.

(3) *Participation in educational, scholarly and system improvement activities* (10% of total appraisal). Requirement: enhance the legal and technical skills of the EIC, the examiners, and members of the Bar.

(4) *Performance of interlocutory duties in interferences* (up to 50% of total appraisal). Requirement: control and decide interlocutory matters in interferences and other *inter partes* proceedings.

Elements (1) and (4) are weighted to total 50% of an EIC's performance appraisal. If an EIC is not assigned any interlocutory duties by the Chairman or Vice Chairman, that EIC's "weight" in element (4) would be 0%, with the weight in element (1) then being 50%. The weight given to element (1) is reduced form 50% by the amount of responsibility assigned to an EIC under element (4).

One of the factors used to arrive at a rating ("Outstanding," "Commendable," "Fully Successful," "Marginal," or "Unacceptable") for element (1) is the total number of decisions written by and EIC for the fiscal year under consideration. Productivity "ranges" are established for the EIC's by the Commissioner in consultation with the Chairman. The ranges vary according to the three technology disciplines, *i.e.*, chemical, electrical, and mechanical, and are based upon a five-year historical average of the number of decisions authored by the EICs in the relevant technology disciplines. The ranges for the chemical and electrical disciplines recently have been adjusted in recognition of the increased complexity of cases in these

technological fields. EICs may call to the attention of the Chairman or Vice Chairman any mitigating circumstance(s) which might have affected their productivity, such as, cases which are inordinately difficult; require consideration of an unusually large record; or require inordinately extensive legal or technical research.

In addition to productivity, the quality and timeliness of decisions written are also factors included in element (1). In many instances, ratings for EICs have been higher than they would have been if the productivity ranges were the sole criterion in element (1), *i.e.*, if other factors were not taken into consideration.

D. Compensation

The compensation for the EICs (aside from the Chairman and Vice Chairman) is determined pursuant to the Federal Employees Pay Comparability Act of 1990 and guidelines issued by the Department of Commerce. The rate currently ranges from $86,715 to $104,000 per annum. The salary may be increased not more than once a year, based on performance. The increase is limited to a maximum of 4%.

In addition to their salary, EICs may be awarded bonuses for their performance. For FY 1991, almost all of the EICs received such bonuses.

For comparison, the pay scale for Group Directors in the examining corps currently ranges from $90,000 to $108,300 per annum.

E. Statistics

Some exemplary statistics relating to the caseload of BPAI for the last thirteen years are set forth in the following table: [1]

[1] Statistics, unless otherwise stated, are taken from the Patent & Trademark Office, U.S. Dep't of Commerce, Commissioner of Patents and Trademarks Annual Reports.

Fiscal year	EICs [2]		Case disposed of		Cases pending at year end	
	Ex parte	Inter partes	Ex parte	Inter partes	Ex parte	Inter partes
1979	31	7	3,944	258	4,589	643
1980	28	7	3,437	301	4,563	588
1981	26	7	3,466	268	4,968	531
1982	26	7	3,683	242	4,781	482
1983	27	7	3,398	242	5,061	420
1984	26	7	3,716	245	5,896	367
1985 [3]	28	6	3,692	206	7,018	320
1986	28	7	3,761	184	6,237	302
1987 [4]	33	7	4,811	152	7,846	329
1988	40	7	5,809	182	6,307	343
1989	41	7	5,595	166	4,542	366
1990	37	7	5,210	222	2,688	347
1991	36	8	4,747	235	1,590	324

[2] From the records of BPAI.
[3] The Board of Appeals and the Board of Patent Interferences were merged on February 8, 1985, to become BPAI.
[4] First Full year in which EICs were subject to a criterion, in their performance appraisal plans, of number of opinions written.

II. The Trademark Trial and Appeal Board

A. History

Prior to 1958, applicants for the registration of trademarks sought registration in the first instance with a trademark examiner in the Trademark Division of the Patent Office and then, if denied registration, could appeal to the Commissioner of Patents.

In 1958, Congress, for *ex parte* examinations of applications, replaced the right to appeal to the Commissioner an examiner's decision refusing registration with the right to appeal to a panel of three members of the "Trademark Trial and Appeal Board" (TTAB). The TTAB was to be comprised of the Commissioner of Patents, The Assistant Commissioners, and appointed Patent Office employees, and panels were to be designated by the Commissioner. H.R. 8826, 72 Stat. 540; 15 U.S.C. 1067; See also 1958 U.S.C.C.A.N. 3331–37; Jerome Gilson, *Trademark Protection and Practice* 3.05(1)(a), 3–115–16 (1991). For *Inter partes* trademark proceedings, *i.e.* interferences, cancellation and opposition proceedings, Congress established a procedure in which the initial and only decision was made by a panel of three members of TTAB. 1958 U.S.C.C.A.N. 3331–37; 15 U.S.C. 1067.

B. Present Status

As presently constituted, TTAB is comprised of the Commissioner, the Deputy Commissioner, the Assistant Commissioners appointed under 35 U.S.C. 3, and additional members appointed by the Commissioner, which members must be competent in trademark law. 15 U.S.C. 1067. The Commissioner has authority to designate the members of TTAB for each case to be decided. *Id.* As of June 1, 1992, there were nine members of TTAB, including its Chairman.

The relationship between the Commissioner and TTAB and the structure and operation of TTAB are generally similar to the relationship between the Commissioner and BPAI and the structure and operation of BPAI, as set forth above.

C. Performance Requirements

As in the case of members of BPAI, 5 U.S.C. 4302 mandates yearly performance appraisals for TTAB members. Similarly, too, the work of TTAB, with respect to quality, timeliness and productivity, has an impact on trademark pendency and other aspects of the mission of PTO.

The current performance appraisal plan for TTAB members (aside from the Chairman) includes three "weighted" elements. The elements and their respective weights are set forth below, followed by a brief explanation:

(1) *Performance of duties as lead decision writer in adjudication panels* (65% of total appraisal). Requirement: prepare timely and well-reasoned decisions in cases requiring a final decision from TTAB.

(2) *Performance of duties as a member of adjudicative panels without decision-writing responsibilities* (25% of total appraisal). Requirement: timely and thoroughly review

opinions prepared by co-panel TTAB members.

(3) *Participation in educational, scholarly, public assistance, and system improvement activities in the trademark law field* (10% of total appraisal). Requirement: enhance the member's and the Bar's Understanding in trademark law and procedure generally).

One of the factors used to arrive at a rating for element (1) is the total number of decisions written by a TTAB member for the fiscal year under consideration. A productivity "range" is established for the members by the Commissioner in consultation with the Chairman. The range is based upon a five-year historical average of the number of decisions authored by the members. Further, any mitigating circumstance(s) brought to the attention of the Chairman are taken into consideration with respect to element (1). Examples include unusually difficult cases, *i.e.*, cases which are more than ordinarily complex, require an unusual amount of research, or involve an extensive evidentiary record.

In addition to productivity, the quality and timeliness of decisions written are also factors included in element (1). In many instances, ratings for members have been higher than they would have been if the productivity range were the sole criterion in element (1), *i.e.*, if other factors were not taken into consideration.

D. Compensation

Appointed members of TTAB are paid pursuant to the Federal Employees Pay Comparability Act of 1990 and guidelines issued by the Department of Commerce. The rate currently ranges from $77,080 to $98,600 per annum. As in the case of the BPAI, the salary may be increased not more than once a year, based on performance, and the increase is limited to a maximum of 4%.

In addition to their salaries, TTAB members may be awarded bonuses for their performance. For FY 1991, almost all of the members received such bonuses.

E. Statistics

Some exemplary statistics relating to the caseload of TTAB for the last thirteen years are set forth in the following table: [5]

[5] Statistics, unless otherwise stated, are taken from the Patent and Trademark Office, U.S. Dep't of Commerce, Commissioner of Patents and Trademarks Annual Reports.

Fiscal year	No. on TTAB [6]	Cases disposed of		Cases pending at year end	
		Ex parte	Inter partes	Ex parte	Inter partes
1979	4	198	1,919	229	2,393
1980	4	226	1,534	193	2,105
1981	5	177	1,417	256	2,688
1982	7	528	1,834	434	2,956
1983	8	990	2,028	353	3,225
1984	8	652	1,822	573	3,764
1985	7	569	2,221	778	4,938
1986	8	791	3,032	728	5,095
1987	8	522	2,784	836	4,670
1988	8	484	3,119	868	4,729
1989	8	490	3,152	939	4,653
1990	9	477	3,284	1,067	5,022
1991	9	543	3,212	1,167	5,670

[6] From the records of the TTAB.

Matters on Which Comments are Invited

Proposals have been made suggesting significant restructuring of the BPAI, and/or restructuring the relationship between the BPAI and the Commissioner.

In order to assist the Commissioner in his review of these matters and others, and to ensure that the views of the public and the patent and trademark user community are available for full consideration, comments as to the desirability of modifying or restructuring the boards and the review process are invited. Comments or suggestions relating to these matters should take into account and address at least the following questions:

1. The Commissioner has the responsibility to oversee policy and legal matters respecting the granting of patents and the registration of trademarks. What is the best organizational structure and relationship between the Commissioner and the boards through which the Commissioner may carry out that responsibility in the context of the functions which the boards serve?

2. Members of the PTO boards are currently held accountable for the quality and timeliness of their work, as well as their overall productivity. What is the best organizational structure and management arrangement for ensuring that board members effectively adhere to reasonable performance criteria in the context of any proposed modifications in the existing relationship between the boards and the Commissioner?

Dated: July 10, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-18122 Filed 7-31-92; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 1, 1992; Tuesday, September 8, 1992; Tuesday, September 15, 1992; Tuesday, September 22, 1992; and Tuesday, September 29, 1992, at 2 p.m. in Room 800, Hoffman Building #1, Alexander, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning

all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, the Pentagon, Washington, DC 20310.

Dated: July 29, 1992.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–18264 Filed 7–31–92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend three existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on September 2, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22871, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48878, Nov. 21, 1990
55 FR 53167, Dec. 27, 1991
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
55 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59217, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991
57 FR 2719, Jan. 23, 1992
57 FR 2726, Jan. 23, 1992
57 FR 2896, Jan. 24, 1992
57 FR 5430, Feb. 14, 1992
57 FR 9246, Mar. 17, 1992
57 FR 12914, Apr. 14, 1992
57 FR 14698, Apr. 22, 1992
57 FR 18472, Apr. 30, 1992
57 FR 26422, Jun. 10, 1992
57 FR 26821, Jun. 16, 1992
57 FR 28499, Jun. 25, 1992
57 FR 28502, Jun. 25, 1992
57 FR 31700, Jul. 17, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: July 29, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520–2

SYSTEM NAME:

Listing of Personnel-Sensitive Compartmented Information, (51 FR 18156, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Naval Research Laboratory, Washington, DC 20375–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations and Executive Order 9397."

* * * * *

STORAGE:

At end of entry, add "and floppy disks."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are maintained for as long as individual is authorized access. Records are updated as changes occur. Magnetic tape and floppy disks are erased as required."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Special Security Officer, Naval Research Laboratory, Washington, DC 20375–5000.

The written request should contain full name, Social Security Number, and affiliation with NRL, or visit the NRL Special Security Office with NRL pass as identification."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records

contained in this system of records should address written inquiries to the Special Security Officer, Naval Research Laboratory, Washington, DC 20375–5000.

The written request should contain full name, Social Security Number, and affiliation with NRL, or visit the NRL Special Security Office with NRL pass as identification."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "The individual and indoctrination documents."

* * * * *

N05520–2

SYSTEM NAME:

Listing of Personnel-Sensitive Compartmented Information.

SYSTEM LOCATION:

Naval Research Laboratory, Washington, DC 20375–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals within the Naval Research Laboratory (NRL) indoctrinated for access to Sensitive Compartmented Information (SCI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, affiliation with NRL, billet description, clearances authorized, clearances held, rank, Social Security Number, Background Investigation date, date of birth, place of birth, date of marriage, place of marriage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To record and monitor the Naval Research Laboratory (NRL) SCI billet structure (personnel authorized to be indoctrinated for SCI).

To control and monitor access to sensitive compartmented information facilities.

To maintain records of NRL personnel visiting other commands as well as personnel from other activities who visit NRL on SCI visits.

To maintain a listing of SCI materials signed out on sub-custody to division personnel for inventory control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and floppy disks.

RETRIEVABILITY:

Name, Social Security Number, affiliation with NRL, assigned billet number.

SAFEGUARDS:

Three combination security container and/or vault.

RETENTION AND DISPOSAL:

Records are maintained for as long as individual is authorized access. Records are updated as changes occur. Magnetic tape and floppy disks are erased as required.

SYSTEM MANAGER(S) AND ADDRESS:

Special Security Officer, Naval Research Laboratory, Washington, DC 20375–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Special Security Officer, Naval Research Laboratory, Washington, DC 20375–5000.

The written request should contain full name, Social Security Number, and affiliation with NRL, or visit the NRL Special Security Office with NRL pass as identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records contained in this system of records should address written inquiries to the Special Security Officer, Naval Research Laboratory, Washington, DC 20375–5000.

The written request should contain full name, Social Security Number, and affiliation with NRL, or visit the NRL Special Security Office with NRL pass as identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual and indoctrination documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06530–1

SYSTEM NAME:

Blood Donor Program Files, (51 FR 18193, May 16, 1986).

CHANGES:

SYSTEM NAME:

Delete the word "Program"

SYSTEM LOCATION:

Delete entry and replace with "Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Personnel donating blood or seeking replacement of blood."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Blood donation and blood replacement requirement records."

* * * * *

PURPOSE(S):

Delete entry and replace with "To record emergency blood requests by blood type, identify donors, replace blood provided to cover individuals, and to meet regulatory requirements imposed by the Food and Drug Administration."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete first paragraph.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Computerized and paper records."

RETRIEVABILITY:

Delete entry and replace with "Name and Social Security Number."

SAFEGUARDS:

Add second sentence which reads "Computerized information is password protected."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are retained for three years and then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official: Chief, Bureau of Medicine & Surgery, Washington, DC 20372–5120.

The system manager is the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records contained in this system of records should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N06530–1

SYSTEM NAME:

Blood Donor Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel donating blood or seeking replacement of blood.

CATEGORIES OF RECORDS IN THE SYSTEM:

Blood donation and blood replacement requirement records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 21 U.S.C. 600–799; and Executive Order 9397.

PURPOSE(S):

To record emergency blood requests by blood type, identify donors, replace blood provided to cover individuals, and to meet regulatory requirements imposed by the Food and Drug Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized and paper records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access provided on a need to know basis only. Computerized information is password protected and maintained is a locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are retained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief, Bureau of Medicine and Surgery, Washington, DC 20372–5120.

The system manager is the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records contained in this system of records should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

American Red Cross, blood donors, hospitals, persons seeking replacement of blood.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12950–3

SYSTEM NAME:

Payroll and Employee Benefits Records, (54 FR 45786, October 31, 1989).

CHANGES:

SYSTEM NAME:

Delete the words "Payroll and".

SYSTEM LOCATION:

Delete entry and replace with "Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 (for all Navy Exchanges)."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Civilian employees and former civilian employees with the Navy Exchange Service Command and Navy Exchanges located worldwide. Payroll and benefits information for current and former civilian employees of Coast Guard exchanges, clubs and messes."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Leave accrual reports; earnings records; insurance records and reports regarding property damage, personal injury or death, group life, disability, medical and retirement plan records."

* * * * *

PURPOSE(S):

Delete entry and replace with "To record contributions to benefit plans; to process all insurance claims; to calculate retirement benefits upon request of employees."

* * * * *

STORAGE:

Delete entry and replace with "The media in which these records are maintained vary, but include: Computer records (Local Area Network (LAN) File Server); card files; file folders; ledgers; microfiche; and printed reports."

RETRIEVABILITY:

Delete entry and replace with "Name and/or Social Security Number and employee payroll number."

SAFEGUARDS:

Delete entry and replace with "Locked file cabinets; safes; locked offices which are supervised by appropriate personnel, when open; and security guards."

RETENTION AND DISPOSAL:

Delete entry and replace with "Permanent."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official: Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Record Holder Manager: Risk Management and Workers Compensation Branch (TD2); Insurance/ Employee Benefits Branch (HRG4), Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097."

NOTIFICATION PROCEDURE:

Delete first paragraph and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station Staten Island, Staten Island, NY 10305–5097."

* * * * *

RECORD SOURCE CATEGORIES:

In line two, delete the words "payroll department;".

* * * * *

N12950–3

SYSTEM NAME:

Employee Benefits Records.

SYSTEM LOCATION:

Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097 (for all Navy Exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and former civilian employees with the Navy Exchange Service Command and Navy Exchanges located worldwide. Payroll and benefits information for current and former civilian employees of Coast Guard exchanges, clubs and messes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave accrual reports; earnings records; insurance records and reports regarding property damage, personal injury or death, group life, disability, medical and retirement plan records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To record contributions to benefit plans; to process all insurance claims; to calculate retirement benefits upon request of employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the insurance carriers and the U.S. Department of Labor, Bureau of Employees Compensation to process employee compensation claims.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: Computer records (Local Area Network (LAN) File Server); card files; file folders; ledgers; microfiche; and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number and employee payroll number.

SAFEGUARDS:

Locked file cabinets; safes; locked offices which are supervised by appropriate personnel, when open; and security guards.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

Record Holder Manager: Risk Management and Workers Compensation Branch (TD2); Insurance/ Employee Benefits Branch (HRG4), Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station New York, Staten Island, NY 10305–5097.

In the initial inquiry the requester must provide full name, Social Security Number, activity where last employed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, Naval Station Staten Island, Staten Island, NY 10305–5097.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The employee or former employee; the employee's supervisor and the employee's physician or insurance carrier's physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–18361 Filed 7–31–92; 8:45 am]
BILLING CODE 3810–01–F

DEPARTMENT OF EDUCATION

Advisory Committee on Testing in Chapter 1

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the

second meeting of the Advisory Committee on Testing in Chapter 1. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATES AND TIMES: August 11, 1992—9 a.m.–5 p.m. August 12, 1992—9 a.m.–3 p.m.

ADDRESSES: Capitol Holiday Inn, 550 C Street, SW, Washington, DC 20024; (202) 479–4000.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043, FOB–6), Washington, DC 20202–6132. Telephone: (202) 401–1682. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Testing in chapter 1 was established under section 442 of the General Education Provisions Act, as amended (20 U.S.C. 1233a). The Advisory Committee was established to advise the Secretary of Education on possible improvements or alternatives to the current testing procedures for measuring the academic achievement of chapter 1 students.

The meeting of the Committee is open to the public. The proposed agenda includes presentations from representatives of State educational agencies and test publishers on the need for improving current assessment procedures in Chapter 1 programs. There will also be deliberations on improving the appraisal of the delivery of educational services to Chapter 1 students by examining outcome measures.

Records of the Committee proceedings will be available in the office of the Advisory Committee on Testing in chapter 1, 400 Maryland Avenue, SW. (room 2043, FOB–6), Washington, DC 20202–7559, between 9 a.m. and 5 p.m., Eastern time.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–18243 Filed 7–31–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Metal Casting Competitiveness Research Program

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Amendment no. 1 solicitation for financial assistance: Metal casting competitiveness.

SUMMARY: The U.S. Department of Energy, Idaho Field Office, published a complete solicitation in the Federal Register (Vol. 57, No. 133, Page Numbers 30728 through 30731) on Friday, July 10, 1992. The solicitation requested applications on the basis of open competition, for cost-shared research and technology development in the U.S. metal casting industry. The purpose of Amendment No., 1 is to change the due date contained in Paragraph 2. a. Application Deadline (Page No. 30729). The deadline for receipt of applications is October 6, 1992 rather than September 21, 1992. Late applications will still be handled in accordance with 10 CFR 600.13.

ADDRESSES: Applications shall be submitted to:
(NUMBER DE–PS07–92ID13180)
J.O. Lee, Contracting Officer, Contracts Management Division, Financial Assistance Branch, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562.
Contact Point: Ginger Sandwina, (208) 526–8698.
Solicitation: DE–PS07–92ID13180.
Procurement Request Number: 07–92ID13180.

Dated: July 21, 1992.

J.O. Lee,

Acting Director, Contracts Management Division.

[FR Doc. 92–18310 Filed 7–31–92; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Cooperative Agreement Renewal; Financial Assistance Award to University of Utah

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance renewal applicaton for a cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(A) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a Cooperative Agreement to University of Utah, Office of Sponsored Projects, 309 Park Building, Salt Lake City, Utah 84112. The Cooperative Agreement will cover a twelve (12) month research project with an associated budget of approximately $785,000, including the total cost sharing by the Participant and other parties of approximately 7.5 percent.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4089, Procurement Request No. 21–92MC2628.502.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited renewal application for continuing work necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on the continuity or completion of the activity. The primary objective is to advance the technologies of the water-assisted and modified water-assisted, fluidized bed, fluidized-bed coupled heat-pipe combustor, sub and super critical solvent and rotary kiln bitumen extraction processes to the levels where evaluations of their respective commerical potentials are possible. In view of the previous federally sponsored research completed in this area, technical expertise of personnel, and ownership of patents on numerous recovery processes at the university of Utah, it has been determined that it is appropriate to award this Cooperative Agreement to the University of Utah on a noncompetitive basis.

Issued: July 27, 1992.

G. William Bolyard,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–18309 Filed 7–31–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RS92–65–000]

Kern River Gas Transmission Company; Conference

July 27, 1992.

Take notice that on Friday, August 14, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Kern River Gas Transmission Company's (Kern River) summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call James Moody at (202) 208-2050 or Marilyn Rand at (202) 208-0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18221 Filed 7-31-92; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RS92-7-000]

Michigan Gas Storage Company; Pre-Compliance Filing Conference

July 27, 1992.

Take notice that a pre-compliance filing conference has been scheduled in the above-captioned proceeding for 10 a.m. on September 1, 1992 at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

The purpose of this conference is to describe and discuss Michigan Gas Storage Company's compliance filing in response to Order No. 636.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call William M. Lange at (202) 293-5795.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18219 Filed 7-31-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-372-000, ER92-439-000, ER92-600-000, and ER92-602-000]

New England Power Company; Filing

July 28, 1992.

Take notice that on July 6, 1992, New England Power Company (NEP) tendered for filing its response to staff's concerns regarding the short-term unit power contracts filed in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secetary.

[FR Doc. 92-18222 Filed 7-31-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-137-000]

Transcontinental Gas Pipe Line Corporation; Technical Conference

July 27, 1992.

In the Commission's orders issued on April 9, 1992 and May 8, 1992, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, August 11, 1992, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18220 Filed 7-31-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-4191-4]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of complete enforceable commitments received.

SUMMARY: This notice provides a list of companies that have submitted "complete" enforceable commitments to the EPA under the Early Reductions Provisions (section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990. The list covers commitments determined by the EPA to be complete through the month of May 1992 and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. This is the second of a series of notices of this type. The first was published in the May 15, 1992, issue of the **Federal Register** (57 FR 20824) and covered the period through March 31, 1992. No enforceable commitments were determined to be complete during April 1992 and, therefore, no notice was published for that month. The EPA will publish additional lists of complete submittals on a monthly basis, as needed.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919-541-5421), Rick Colyer (telephone: 919-541-5262), or Mark Morris (telephone: 919-541-5416), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below.

Region I	—Janet Beloin	(617) 565-2734
Region II	—Umesh Dholakia, or Harish Patel	(212) 264-6676
Region III	—Jim Baker	(215) 597-3499
Region IV	—Anthony Toney	(404) 347-2864
Region V	—John Pavitt	(312) 886-6858
Region VI	—Tom Driscoll, or Tanya Murray	(214) 655-7549 (214) 655-7547
Region VII	—Donna Dees	(913) 551-7625
Region VIII	—Laura Lonowski	(303) 293-1761
Region IX	—Ken Bigos	(415) 744-1240
Region X	—Chris Hall	(206) 553-1949

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA), as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a 6-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. On June 13, 1991, the EPA published a proposed rule to implement this "Early Reductions" provision (56 FR 27338). A final rule will be issued shortly.

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emission reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing base year emission information, or if not required, may voluntarily submit such emission information to the EPA for approval. As stated in the proposed Early Reductions rule, the EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), the EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed rule contains a commitment by the EPA to give monthly public notice of submittals received which have been determined to be complete and which are about to undergo technical review within the EPA. Members of the public wishing to obtain more information on a specific submittal then may contact the appropriate EPA Regional Office representative listed above. Approximately sixty submittals have been received by the EPA, although only three have been determined to be complete to date. The first two were listed in the initial notice of this series which covered the period through March 31, 1992, and appeared in the May 15, 1992, issue of the **Federal Register**. No submittals were determined to be complete during April 1992 and no notice was published covering that period. The purpose of today's notice is to add Johnson and Johnson Medical, Inc. to the previously published list of companies that have submitted enforceable commitments determined complete by the EPA under the Early Reductions Program. As the remaining submittals are determined to be complete, they will appear in subsequent monthly notices.

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on the submittal added to the list by today's notice. To do this, the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

The table below lists those companies that have made complete enforceable commitments or base year emission submittals under the Early Reductions Program through May 31, 1992. These submittals are undergoing technical review within the EPA at this time.

TABLE 1 COMPLETE ENFORCEABLE COMMITMENTS AS OF MAY 31, 1992

Company	Location	EPA region
1. Kalama Chemical, Inc.	Kalama, Washington.	X
2. Amoco Chemical Co.	Texas City, Texas....	VI
3. Johnson & Johnson Medical, Inc.	Sherman, Texas	VI

Dated: July 27, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-18300 Filed 7-31-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4191-3]

Ozone Design Value Study of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Section 183(g) of title I of the Clean Air Act Amendments of 1990 requires the Administrator to conduct a study of whether the methodology in use by the Environmental Protection Agency (EPA) as of the date of enactment for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The EPA is directed to obtain input from States, local subdivisions thereof and others.

The focus of the Ozone Design Value Study is on EPA's ozone design value methodology. A design value may be viewed intuitively as a concentration value used to quantify by how much the level of an air quality standard has been exceeded. With the wording of the ozone standard the appropriate design value is the concentration with expected number of exceedances equal to 1. These ozone design values were used to classify areas as marginal, moderate, serious, severe, or extreme in accordance with the provisions of the 1990 Clean Air Act Amendments.

This notice announces EPA's intent to conduct a 1-day public meeting to receive public input on technical considerations, and implementation and policy issues to be addressed within the context of the ozone design value study. Written comments will be received prior to, or on the day of the meeting.

DATES: The public meeting will he held September 10, 1992 from 9 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the Marriott Crystal Gateway Hotel at 1700 Jefferson Davis Highway in Arlington, Virginia 22202 (Phone No. (703) 920-3230). To assist in developing the agenda for the public meeting, persons interested in making a brief oral presentation (up to 15 minutes) should contact Ms. Helen Hinton at (919) 541-5558, telefax (919) 541-2357, Mail Drop 14, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711 to give their name and affiliation. Registration closes on September 1, 1992. Written comments should be submitted to Ms. Hinton.

AVAILABILITY OF BACKGROUND PAPER: The paper "The Clean Air Act Ozone Design Value Study" by Dr. Thomas C. Curran provides background information on the nature and scope of the study. The paper was presented at the Air and Waste Management Association Tropospheric Ozone and the Environment II Conference on November 6, 1991 in Atlanta, Georgia. Single copies of the paper are available from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "The Clean Air Act Ozone Design Value Study".

FOR FURTHER INFORMATION CONTACT: Mr. Warren P. Freas at (919) 541-5558, Data Analysis Section, Monitoring and Reports Branch (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Dated: July 27, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-18299 Filed 7-31-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4190-9]

Subcommittee of State and Local Environment Committee, National Advisory Council for Environmental Policy and Technology (NACEPT); Open Meeting

Under Public Law 92-463 (The Federal Advisory Committee Act) the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of a subcommittee of the State and Local Environment Committee. The State and Local Environment Committee of NACEPT is seeking ways to enhance the effectiveness of the environmental management system in the United States and makes recommendations to the Administrator based on NACEPT's fact-finding and deliberative activities. The Pollution Prevention Clearinghouse Subcommittee will advise the Agency on the national role the Pollution Prevention Information Clearinghouse (PPIC) in information exchange to promote pollution prevention.

This is the first meeting of the Clearinghouse Subcommittee under NACEPT. This subcommittee will discuss the purpose and potential roles of a national clearinghouse on pollution prevention. Priority information needs for promoting pollution prevention in local and state arenas will be identified as well as the criteria that should be considered in establishing priorities for clearinghouse activities. This subcommittee consists of experts from State and local governments, other pollution prevention clearinghouses, academia, and industry.

The Pollution Prevention Information Clearinghouse (PPIC) was formally established by the Pollution Prevention Act of 1990. This Act required the establishment of a source reduction clearinghouse that would serve as a center of source reduction technology transfer, assist the states in education and outreach activities to further the adoption of source reduction technologies, and provide information to the public on pollution prevention.

The meeting is open to observation by the public and will take place in the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, VA. The meeting will be held for a day and a half: Thursday, August 20, 1992 from 9 am to 5 pm and Friday August 21, from 8:30 am to 1 pm. Further information on the meeting can be obtained by calling Beth Anderson at 202/260-2602, or by sending a fax request to 202/260-0178.

Members of the public wishing to provide written comments on issues associated with the collection and dissemination of pollution prevention information can provide written comments to the Subcommittee no later than September 17, 1992. Please send comments to Beth Anderson, US EPA MC7409, 401 M Street SW., Washington, DC 20460.

Dated: July 28, 1992.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 92-18296 Filed 7-31-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-950-DR]

Arkansas; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: July 24, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-950-DR), dated July 24, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 24, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe thunderstorms and high winds on June 14, 1992, through June 19, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland R. Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

The counties of Clark, Hempstead, Nevada, and Ouachita for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-18285 Filed 7-31-92; 8:45 am]

BILLING CODE 6718-02-M

Meeting; Federal Security Practices Board of Review

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting, portions of which may be closed:

NAME: FEMA Security Practices Board of Review.

DATE OF MEETING: Thursday, August 6, 1992.

PLACE: Federal Emergency Management Agency, John W. Macy, Jr. Conference Room, room 829, 500 C Street, SW., Washington, DC 20472.

TIMES: 9 a.m. to 12 p.m.

PROPOSED AGENDA: Review the transcript and tasks from the last meeting; hear and discuss certain briefings from FEMA personnel; and make preparations for the next meeting, including assignment of tasks.

SUPPLEMENTARY INFORMATION: The Review Board must complete its review and report by September 11, 1992. In view of this time limit and owing to the complex, sensitive, and urgent nature of FEMA security matters, less than 15 days' notice of the meeting is given, under 41 CFR 101-6.1015(b)(2).

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Director, Federal

Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3923 on or before August 4, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 and section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552(b)(c), because discussions may (1) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense, (2) relate solely to the internal personnel rules and practices of an agency, and (3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: July 28, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92–18276 Filed 7–31–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Regulatory Treatment of Deferred Tax Assets

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: Under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (referred to as the "agencies") are requesting comment on and considering various regulatory reporting and capital treatments for net deferred tax assets of federally supervised banks and savings associations ("depository institutions"). This request for comment is being issued in response to the adoption by the Financial Accounting Standards Board (FASB) of Statement No. 109, "Accounting for Income Taxes"("FASB 109"), in February 1992.

The alternatives under consideration by the agencies include: (1) Adopting all provisions of FASB 109 for purposes of reporting in the Consolidated Reports of Condition and Income (Call Reports) and Thrift Financial Report (TFR) and calculating regulatory capital, (2) adopting most provisions of FASB 109 for purposes of the Call Report and TFR, but prohibiting the reporting of that portion of net deferred tax assets that is not supported by the amount of taxes previously paid that are potentially recoverable through the carryback of net operating losses or tax credits, (3) adopting most provisions of FASB 109 for purposes of the Call Reports and TFR, but limiting the reporting of net deferred tax assets in a manner that is consistent with Accounting Principles Board Opinion No. 11, "Accounting for Income Taxes" ("APB 11"), and (4) adopting one of the above limitations on net deferred tax assets only for regulatory capital purposes rather than for both regulatory reporting and capital purposes. The agencies seek comment on whether, with respect to insured depository institutions, these approaches or any other approaches would be an appropriate supervisory response by the agencies to the new reporting guidance set forth in FASB Statement 109.

DATES: Comments must be received by September 2, 1990.

ADDRESSES: Comments should be directed to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: At the FRB: Gerald A. Edwards, Jr., Assistant Director (202) 452–2741, or Charles H. Holm, Supervisory Financial Analyst (202) 452–3502, Division of Banking Supervision and Regulation. At the FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision (202) 898–8906. At the OCC: Eugene W. Green, Deputy Chief Accountant, or Stephen P. Theobald, Professional Accounting Fellow, (202) 874–5180. At the OTS: David H. Martens, Chief Accountant (202) 906–5646.

SUPPLEMENTARY INFORMATION:

I. Background

National banks, state member banks, and federally insured state nonmember banks are required to file quarterly Call Reports with the OCC, FRB, and FDIC, respectively. Savings associations are required to file TFRs with the OTS. In addition, each federally supervised financial institution is subject to the minimum capital standards issued by its primary federal regulator.

Section 1006(c) of the Federal Financial Institutions Examination Council Act authorizes the FFIEC to develop uniform reporting standards for federally supervised financial institutions. Section 1006(b) of the FFIEC Act directs the FFIEC to make recommendations to its member agencies for uniformity in supervisory matters. Therefore this request for comment is being proposed under the auspices of the FFIEC.

In addition, section 121 of the FDIC Improvement Act (FDICIA) indicates that the agencies shall maintain uniform accounting standards. Section 121 of the FDICIA also indicates that the accounting principles of the agencies should:

(A) result in financial statements and reports of condition that accurately reflect the capital of the institution;

(B) facilitate effective supervision of the institution; and

(C) facilitate prompt corrective action to resolve the institution at the least cost to the insurance funds.

If the agencies determine that the application of generally accepted accounting principles (GAAP) is inconsistent with these objectives, FDICIA permits the agencies to prescribe an accounting principle that is no less stringent than GAAP.

II. Discussion and Concerns

Characteristics of Net Deferred Tax Assets

Net deferred tax assets may arise because of specific limitations under tax laws of different tax jurisdictions that require that certain net operating losses (i.e., when, for tax purposes, expenses exceed revenues) or tax credits be carried forward if they cannot be used to recover taxes previously paid.[1] These net operating loss or tax credit carryforwards are realized only if the institution generates sufficient future taxable income during the carryforward period.

Net deferred tax assets may also arise from the tax effects of certain events that have been recognized in one period for financial statement purposes but will

[1] The term "net" deferred tax assets is used herein because FASB 109 permits the netting of deffered tax liabilities and assets within a particular tax-paying component of an enterprise and within a particular tax jurisdiction. Netting of deferred tax assets and liabilities attributable to different tax-paying components of the enterprise or to different tax jurisdictions is not permitted. The agencies intend to permit netting to the same extent that netting is permitted by FASB 109.

result in deductible amounts in future periods for tax purposes, i.e., the tax effects of deductible temporary differences. For example, many depository institutions may report higher income to taxing authorities than they reflect in their regulatory reports because of differences between tax reporting and financial reporting with respect to the treatment of the allowance for loan and lease losses.

Deferred tax assets, arising from an institution's deductible temporary differences, may exceed the amount of taxes previously paid that the institution could recover if the difference fully reversed at the report date. Thus, similar to net operating loss and tax credit carryforwards, these deductible temporary differences will be realized only if there is sufficient future taxable income during the carryforward period.[2]

Current Regulatory Policies and Progression of GAAP

In 1985, the OCC and FDIC issued supervisory policies that limited the reporting of net deferred tax assets (charges) in the Call Reports filed by national and insured state nonmember banks, respectively. The FDIC's policy, set forth in Bank Letter BL–36–85, dated October 4, 1985, states:

> Banks are permitted to carry net deferred tax charges on their reports of condition to the extent that such tax charges do not exceed taxes previously paid which are potentially available through carryback of net operating losses (NOLs). A bank which is a member of a consolidated group for tax purposes (e.g., certain bank subsidiaries of holding companies) should generally calculate its NOL carryback potential based upon the assumption that it is filing a separate return. However, if the NOL carryback potential of the consolidated group is less than that of the banks (e.g., where other subsidiaries have experienced prior net operating losses), then the bank should further limit its net deferred tax charges to an amount which it could reasonably expect to have refunded by its parent. The OCC's policy, set forth in Banking Circular 202 dated July 2, 1985, includes language that is consistent with the FDIC policy. The OCC and FDIC adopted their supervisory policies because of concerns about the realizability of an institution's net deferred tax charges in excess of its net operating loss carryback potential.

With respect to the recognition of net operating loss carryforwards, the OCC's and FDIC's policies were generally consistent with APB 11, the GAAP standard in existence at the time these policies were issued. APB 11 did not allow the recognition of such benefits unless their realization was assured beyond any reasonable doubt. Furthermore, these two agencies' policies were generally consistent with FASB Statement No. 96, "Accounting for Income Taxes" ("FASB 96"), a GAAP standard issued in 1987, which some institutions subsequently adopted in lieu of APB 11.

The FRB and OTS did not issue policies explicitly addressing the recognition of net deferred tax assets. Consequently, state member banks and savings institutions were able to report net deferred tax assets in accordance with GAAP. Since the explicit guidelines issued by the OCC and FDIC were for the most part consistent with GAAP, the reporting criteria applicable to all depository institutions were similar.

In February 1992, the FASB issued Statement No. 109, which supersedes APB 11 and FASB 96. FASB 109 provides guidance on many aspects of accounting for income taxes, including the accounting for deferred tax assets. FASB 109 potentially allows some institutions to record significantly higher net deferred tax assets than previously permitted under GAAP. Statement 109 is effective for fiscal years beginning on or after December 15, 1992, but early adoption of this standard is encouraged by the FASB. The recording of additional net deferred tax assets in Call Reports and TFRs in accordance with FASB 109 would directly impact an institution's Tier 1 capital and earnings.

Contrary to the general practice under APB 11, FASB 96, and the policies off the OCC and FDIC, FASB 109 permits the reporting of deferred tax assets associated with net operating loss and tax credit carryforwards. Moreover, compared to these standards and policies, FASB 109 generally permits a more liberal recognition of net deferred tax assets arising from deductible temporary differences when the realization of deductible temporary differences is dependent upon taxable income during the carryforward period. However, FASB 109 requires the establishment of a valuation allowance that is intended to reduce the net deferred tax asset to an amount that is more likely than not (i.e., a greater than 50 percent likelihood) to be realized.

Arguments For and Against Regulatory Limitations on Net Deferred Tax Assets

Arguments can be made both for and against permitting institutions to recognize, in regulatory reports and for capital adequacy purposes, net deferred tax assets that are dependent upon future taxable income. On the one hand, institutions that are ultimately able to realize these net deferred tax assets will benefit from a reduction in the future tax payments that they otherwise would be obligated to make. For many healthy institutions, these benefits may eventually result in a realizable asset. Thus, from this perspective, it could be argued that some institutions should be able to report net deferred tax assets that are dependent upon future taxable income and increase their Tier 1 capital levels.

On the other hand, institutions that are unable to realize their net deferred tax assets may be more likely to pose a risk to the deposit insurance funds. Moreover, it may be difficult to accurately distinguish those institutions that will benefit from these assets from those that will not. The ultimate realization of a net deferred tax asset depends on the existence of taxable income during the carryback or carryforward period. The existence of taxable income and associated tax payments during the carryback period provides greater assurance that net deferred tax assets will be realized. In the absence of sufficient taxable income during the carryback period, realization of the net deferred tax asset depends on whether an institution has sufficient future taxable income during the carryforward period.

Since an institution that is in a net operating loss carryforward position is often experiencing financial difficulties, its prospects for generating sufficient taxable income in the future are at best uncertain. In addition, the condition of and future prospects for an institution often can and do change very rapidly in the environment in which depository institutions operate. This raises concerns about the realizability of net deferred tax assets that are dependent upon future taxable income, even when an institution appears on the surface to be sound and well-managed. Thus, for many institutions, such net deferred tax assets may not be realized and, for other institutions, there will be a high degree of subjectivity in determining the realizability of this asset.

In addition, as an institution's condition deteriorates, it is less likely that net deferred tax assets that are dependent upon future taxable income of the institution will be realized. Therefore, the institution would be expected under FASB 109 to reduce its net deferred tax assets through increases to the asset's valuation allowance. This reduces the institution's

[2] Net deferred tax assets that are associated with net operating loss or tax credit carryforwards and net deferred tax assets, arising from deductible temporary differences, that exceed the amount of taxes previously paid that the institution could recover if the differences fully reversed at the report date are hereafter referred to as "net deferred tax assets that are dependent upon future taxable income".

regulatory capital at precisely the time it needs capital support the most. Thus, the reporting of net deferred tax assets that are dependent upon future incomes raises, for safety and soundness reasons, a significant supervisory concern.

Moreover, net operating loss carryforwards of an acquired institution can be severely limited to the acquirer when an acquisition or change in control occurs. If an acquisition is structured as a taxable asset purchase, the net operating loss carryforwards are generally extinguished. In addition, if an acquisition or change in control qualifies as a tax-free reorganization, a strict limitation (Section 382 of the Internal Revenue Code) on the use of the acquired institution's NOL carryforwards generally applies. This limitation is based on the value of the acquired corporation at the time of its acquisition, and thus the potential value of a carryforward to a prospective purchaser tends to decline as the institution's financial condition weakens.

Because of these concerns, the agencies recently issued separate letters to the depository institutions under their supervision indicating that the institutions should not adopt FASB 109 or regulatory purposes until the appropriate regulatory reporting and capital treatment is determined.[3]

III. Alternative Approaches for Deferred Tax Assets

As part of their consideration of FASB 109, the agencies have determined to seek public comment on alternative treatments of net deferred tax assets for regulatory reporting and capital purposes. In general, the agencies believe that most provisions of FASB 109 are appropriate for supervisory purposes and can be adopted by the agencies for regulatory reporting purposes. However, the agencies are concerned about those provisions of FASB 109 that, as noted above, permit institutions to recognize net deferred tax assets that are dependent upon future taxable income. Therefore, the agencies are seeking public comment on the appropriate regulatory treatment for these assets. The alternatives under consideration by the agencies include:

1. Amending the Call Report and TFR instructions to adopt all aspects of FASB 109 for regulatory reporting (and capital adequacy) purposes. Because FASB 109 provides for a limitation on the recognition of net deferred tax assets through establishing a valuation allowance, it could be argued that the agencies might not need to provide for additional limitations on these assets. The reporting of this asset would be subject to review by examiners and, if applicable, an institution's external auditor. This approach has the advantage of maintaining consistency between GAAP and the regulatory reporting and capital treatment of net deferred tax assets. However, as noted above, the agencies are concerned that this alternative could result in an immediate and potentially significant reduction in capital at precisely the time the institution needs capital support the most.

A variation of this approach would be for the agencies to issue supervisory guidance on the determination of the amount of the valuation allowance needed for an institution's net deferred tax assets to supplement the guidance provided in FASB 109. Institutions exhibiting financial weaknesses are generally less likely to be able to realize this asset than institutions that are in a stronger financial condition. In order to provide greater protection to the deposit insurance funds and to provide more objectivity to the valuation process, this supervisory guidance would likely mandate valuation allowance levels for institutions experiencing financial difficulties. Thus, this supervisory guidance may not be entirely consistent with FASB 109. Furthermore, this approach does not necessarily alleviate the concern that capital would be reduced at the time the institution needs capital support the most.

2. Amending the Call Report and TFR instructions to adopt most aspects of FASB 109, but limiting the reporting of net deferred tax assets, net of their valuation allowance, to the amount of taxes previously paid that are potentially recoverable through the carryback of net operating losses or unrealized tax credits.[4] This approach would not be consistent with FASB 109. However, it would be consistent with the current supervisory policies of the FDIC and OCC. Furthermore, this approach would, for the most part, be consistent with the policies of the FRB and OTS, which permitted institutions to report net deferred tax assets in accordance with FASB 96 and APB 11. The agencies have long believed that such limitations on the reporting of net deferred tax assets are appropriate because of the concerns noted above with respect to the realization of this asset. While no final determination will be made until all comments are received, the agency staffs believe this approach would be the most appropriate course of action at this time because of the concerns noted above.[5]

3. Amending the Call Report and TFR instructions to adopt most aspects of FASB 109, but limiting the reporting of net deferred tax assets, net of their valuation allowance, in a manner that is consistent with APB 11. APB 11 generally does not permit the reporting of net deferred tax assets arising from net operating loss carryforwards. However, some accountants believe that APB 11 in some cases permits the reporting of net deferred tax assets arising from temporary differences (referred to as "timing differences" in APB 11) that are realizable only if there is sufficient future taxable income. By limiting the amount of such assets that could be reported under this approach, the Tier 1 capital of an institution would similarly be affected. This approach has the advantage of generally being consistent with the existing policies of the FRB and OTS, which permitted institutions to report net deferred tax assets under APB 11 (or alternatively, under FASB 96). On the other hand, this approach would maintain a reporting standard for net deferred tax assets that has been superseded by FASB 109 and

[3] OTS' letter indicated that savings associations could adopt the provisions of FASB 109, except that any net deferred tax asset could not exceed what was allowed to be reported under APB 11 or FASB 96.

[4] An institution that is a member of a consolidated group for tax purposes (e.g., certain depository institution subsidiaries of holding companies) would be instructed generally to calculate its carryback potential based upon the assumption that it is filing a separate return. However, if the carryback potential of the consolidated group is less than that of the institution (e.g., where other subsidiaries of the holding company have experienced prior net operating losses), then the institution would be instructed to further limit its net deferred tax asset to an amount that it could reasonably expect to have refunded by its parent.

[5] Although this proposed reporting instruction is, for the most part, consistent with GAAP prior to the adoption of FASB 109, some differences exist. For example, APB 11 did not require the automatic write-off of net deferred tax assets arising from deductible temporary differences (referred to as "timing differences" in APB 11) that are dependent on future taxable income. Since state member banks and savings associations previously followed GAAP for reporting net deferred tax assets, these institutions may have reported some net deferred tax asset amounts in excess of what they would be allowed under this approach. Therefore, state member banks and savings associations would be able to continue to report such excess net deferred tax assets, to the extent they remain unamortized, provided the assets are recorded prior to the adoption of a final rule. This provision would also be followed if another alternative were adopted that required a limitation on deferred tax assets that is stricter than the limitation under APB 11.

would be inconsistent with the current policies of the OCC and FDIC.

4. The above approaches could provide for a more stringent reporting limitation on net deferred tax assets than is required by FASB 109. Rather than adopting a more stringent limitation for reporting purposes, an alternative would be to adopt one of the above limitations only as an adjustment to regulatory capital calculations. Net deferred tax assets in excess of the prescribed limitation would be deducted in determining Tier 1 capital for risk-based, leverage, and tangible capital ratio purposes, and a depository institution would have the same regulatory capital ratios as if the same limitation had been adopted for regulatory reporting purposes. This approach has the advantage of maintaining consistency between regulatory reporting instructions and GAAP. However, unlike a reporting limitation, it would allow institutions to report earnings based on net deferred tax assets that may not be realized. Furthermore, since certain dividend restrictions (i.e., 12 U.S.C. 60 and similar state statutes) for banking institutions are based on reported earnings, it could allow such institutions to pay dividends based on the increased earnings arising from reporting such assets.

IV. Issues for Comment

The agencies seek comment on which, if any, of the above possible approaches for addressing net deferred tax assets is appropriate in light of the agencies' supervisory concerns about net deferred tax assets that are dependent upon future taxable income and the objectives that regulatory accounting principles must satisfy as set forth in FDICIA. Comment is also sought on whether any other approaches might be appropriate. In addition, specific comment is solicited on the following issues:

1. Whether there are certain deferred tax assets, associated with specific events or other factors, that possess characteristics that reduce or eliminate the agencies' concerns relative to the realization of net deferred tax assets.

2. What criteria could be used to distinguish institutions that are likely to be able to realize net deferred tax assets that are dependent upon future taxable income from those institutions that are not likely to realize these assets.

3. If an approach were adopted by the agencies that is more conservative with respect to net deferred tax assets than APB 11, whether the grandfathering provision for state member banks and savings associations that is discussed in footnote 5 should be adopted.

Dated: July 29, 1992.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutional Examination Council.

[FR Doc. 92-18245 Filed 7-31-92; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, August 19, 1992 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The primary topic of discussion will be the proposed Exposure Draft on "Accounting for Tangible Property Other than Long Term Fixed Assets Held by Agencies of the Federal Government." The status of other projects will be discussed. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: July 28, 1992.

Jimmie D. Brown,

Deputy Executive Director.

[FR Doc. 92-18302 Filed 7-31-92; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that

certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, NW., P.O. Box 770, Attalla, AL 35954–0770, 205–538–0012/800–247–3893

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–691–9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783, (formerly: Forensic Toxicology Laboraotry Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bellin Hospital—Toxicology Laboratory, 215 N. Webster Ave., Green Bay, WI 54301, 414–433–7485

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209–221–5655/800–448–7800

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Center for Human Toxicology, 417 Wakara Way, Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratories, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100, (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 306, Pompano Beach, FL 33062, 305–946–4324

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800

ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200, (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harris Medical Laboratory, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6060

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818–718–0115/800–331–8670 (outside CA)/800–464–7081 (inside CA), (name changed: formerly Laboratory Specialists, Inc., Abused Drug Laboratories)

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900, (name changed: formerly Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391 (outside VA)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050 (name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601–236–5900/800–237–7352

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600

Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211

Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–6378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5630
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205, (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southgate Medical Services, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/ 800–362–8813 (inside OH), (name changed: formerly Southgate Medical Laboratory)
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory voluntarily withdrew from the National Laboratory Certification Program:

Roche Biomedical Laboratory, 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, North Carolina 27709, has voluntarily withdrawn its name from the list of certified laboratories. Because of the recent acquisition of CompuChem Laboratories, all Forensic Drug Testing work performed at Roche Biomedical Laboratory, Research Triangle Park, is now performed at CompuChem Laboratories.

Richard A. Millstein,

Acting Director, National Institute on Drug Abuse.

[FR Doc. 92–18416 Filed 7–31–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

[Program Announcement 913]

Grants for Injury Control Research Centers and Injury Control Research Program Project Grants; Notice of Availability of Funds for Fiscal Year 1993; Amendment

A notice announcing the availability of Fiscal Year 1993 funds for grants to support Injury Control Research Centers and Injury Control Research Program Project Grants was published in the **Federal Register** on April 7, 1992, (57 FR 11722). The notice is amended as follows:

On page 11723, third column, in the information under the heading, "Evaluation Criteria," delete the first and second sentences in the paragraph and insert the following: "Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the heading, "Program Requirements," on page 11723, parts A and B, first, second and third columns. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation by reviewers from the Injury Research Grants Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process."

In the third sentence of the "Evaluation Criteria," page 11723, third column, delete the word "second" insert the word "primary."

All other information and requirements in the notice remain the same.

Dated: July 27, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–18286 Filed 7–31–92; 8:45 am]

BILLING CODE 4160–18–M

[Program Announcement 912]

Grants for Injury Prevention and Control Research; Availability of Funds for Fiscal Year 1993; Amendment

A notice announcing the availability of Fiscal Year 1993 funds for grants to support Injury Prevention and Control Research was published in the **Federal Register** on April 29, 1992, (57 FR 18154). The notice is amended as follows:

On page 18155, third column, in the information under the heading, "Evaluation Criteria," delete the first paragraph and insert the following: "Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the heading, "Program Requirements,' on page 18154, third column. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process."

Amend the first sentence of the second paragraph on page 18155 under the heading "Evaluation Criteria," by inserting the word "competitive" after the word "all" so that the sentence reads, "Review by the Injury Research Grants Review Committee (IRGRC) Peer review will be conducted on all competitive applications."

All other information and requirements in the notice remain the same.

Dated: July 27, 1992.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–18285 Filed 7–31–92; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1992:

Name: National Advisory Committee on Rural Health.

Date and Time: September 21–23, 1992; 8:30 a.m.

Place: The Sheraton Premiere, 8661 Leesburg Pike, Vienna, Virginia 22182, (703) 448–1234, FAX: (703) 893–8193.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to continue formulating health care reform recommendations and begin discussing other issues, such as maternal and child health, rural development, and school-based clinics. The Committee will continue shaping its agenda and refining recommendations to be included in the Fifth Report to the Secretary, Department of Health and Human Services.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (303) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: July 28, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–18193 Filed 7–31–92; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–4214–10; AZA 26586]

Proposed Withdrawal and Opportunity for a Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service (FS) has filed application AZA–26586, to withdraw 34.18 acres of the Bureau of Land Management (BLM) administered land from all forms of entry or disposal, including the mining but not the mineral leasing laws for the purpose of protecting the area and investment in the Clifton Ranger District Administrative Site. The withdrawal would be made subject to valid existing rights. Proposed improvements at the site would include administrative offices, maintenance shop, barn and corrals for the Clifton Ranger District, Apache National Forest. Temporary improvements with an approximate value of $316,000 presently occupy the site. Use is presently authorized under the right of way regulations. The FS desires this specific area due to its location the BLM, Safford District has concurred in the FS's use of the site.

This application is in compliance with the regulations found in 43 CFR 2310.1–2 and the Apache-Sitgreaves National Forest Plan.

Publication of this notice closes the land for up to 2 years from all other uses including location and entry under the United States mining and mineral leasing laws.

DATES: Comments and requests for a meeting should be receive on or before November 2, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, 0–02–640–5509.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, filed application AZA–26586 to withdraw the following described BLM administered land from all forms of entry, location and disposal under the public lands laws including the United States mining laws but not the mineral leasing laws. The withdrawal would be issued subject to valid existing rights.

Gila and Salt River Meridian; Sitgreaves National Forest

T. 6 S., R. 30 E.,
Sec. 1, Lot 14.

The area described contains approximately 34.18 acres in Greenlee County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice.

Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with regulations as set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

The temporary segregation on the land in conjunction with this application shall not affect the administrative jurisdiction over it.

John H. Stephenson,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92–18207 Filed 7–31–92; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–91–4320–13]

Las Vegas District Grazing Advisory Board Meeting; NV

Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Wednesday, August 26, 1992. The meeting will begin at 9 a.m. in the conference room of the Las Vegas District Office, 4765 W. Vegas Drive, and continue until 3 p.m.

The agenda is as follows:

1. Welcome and introductions.
2. Election of Chairperson and Vice Chairperson.
3. Range improvement program, status update, and proposals.
4. Ephemeral Reclassification update and direction.
5. Status of the grazing and desert tortoise research study.
6. Stateline RMP briefing.
7. Public comments.
8. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral comments to the board during the public comment period on the day of the meeting or they may file written

statements for the board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Colin P. Christensen,

Acting District Manager, Las Vegas.

[FR Doc. 92-18254 Filed 7-31-92; 8:45 am]

BILLING CODE 4310-HC-M

Montana; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior (MT-020-02-4322-02).

ACTION: Notice of meeting.

SUMMARY: The Miles City District Grazing Advisory Board will meet Tuesday, September 15, 1992, at 10 a.m. The meeting will be held in the District Office Conference Room on Garryowen Road west of Miles City, Montana.

The agenda will include:

F493 Range Improvement Projects Update on BLM 2015, including Proposed District Boundary Changes FY93 Budget, including Range, Wildlife & Weed Control.

The meeting is open to the public. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Chuck Frost, District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301 or phone (406) 232-4331.

Arnold E. Dougan,

Acting Associate District Manager.

[FR Doc. 92-18273 Filed 7-31-92; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-050-02-4212-14; AZA 25294]

Arizona: La Paz County Realty Action for the Noncompetitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management has determined that the following described lands are suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579, 90 Statute 2750; title 43, United States Code, section 1713), at not less than the estimated fair market value:

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 4, Lots 1, 2, 3, 4, S½N½, SW¼, N½ SE¼.

Containing 496.56 acres.

DATES: Comments regarding the proposed sale of the lands must be submitted by September 17, 1992 to Area Manager Michael A. Taylor, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this proposed realty action will become final.

The lands will not be offered for sale until October 2, 1992.

On August 3, 1992, the public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of the patent or April 30, 1992, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Area Manager Michael A. Taylor, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726-6300. Detailed information concerning this action is also available for review.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface and subsurface estates of the above-described lands to the town of Quartzsite. The land would be used for expansion of the 1,200-bed, medium security Federal prison site. The land would also provide a buffer zone between the town and the soon-to-be-built facility.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50 nonrefundable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following terms, conditions, and reservations:

1. Reservation to the United States of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, title 43, United States Code, section 945.

2. Subject to AZPHX 083964, Arizona State Highway Department, Arizona, Highway 95 right-of-way.

3. Cattle-proof the entire north, west, and south perimeters of the 496.56-acre area with barbed-wire fence to prevent livestock from roaming onto Arizona Highway 95. The fence should connect with the existing Arizona Highway 95 fence.

This Notice of Realty Action is issued under authority of title 43, Code of Federal Regulations, subpart 2711, § 1-2(c)

Dated: July 24, 1992.

Bill Watters,

Acting District Manager.

[FR Doc. 92-18205 Filed 7-31-92; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-02-4212-14; N-51554]

Realty Action; NV

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following land has been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Meridian

T. 47 N., R. 64 E.,
Sec. 1, Lot 19, 22.

The above-described land comprising 1.55 acres, more or less, is being offered as a direct sale to the Povah Family Trust, et al., adjoining land owners. A direct sale is being conducted to eliminate lands from public ownership that have a high potential for unauthorized use and are difficult and uneconomical to manage as public lands. The sale would assure land use compatibility with adjoining lands. The land ownership pattern coupled with the location of the adjacent highway right-of-way precludes any development other than in conjunction with the private lands located to the east of these parcels.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The proposal has been reviewed and approved by the Elko County Planning Commission.

The locatable and salable mineral estates have been determined to have no known value. The land is prospectively valuable for oil and gas and geothermal minerals. Therefore, the mineral interest, excluding oil and gas and geothermal minerals, would be conveyed simultaneously with the sale of the parcel. Acceptance of the direct sale offer will constitute an application to purchase the mineral estate having no known value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the timeframe specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

1. Oil and gas and geothermal minerals.
2. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (U.S.C. 945).

And will be subject to: Those rights for highway purposes granted to the Nevada State Highway Department, its successors or assigns by Permit Nos. CC-023091, Nev-08440, and Nev-042807 under the Act of November 9, 1921 (42 Stat. 212-216, 23 U.S.C. Sec. 18).

Upon publication of this notice of realty action in the **Federal Register**, the lands will be segregate from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws. The segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation or 270 days from publication, whichever occurs first.

The land will not be offered for sale any sooner than 60 days after the publication of this notice in the **Federal Register**. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager Elko District, at the Elko District Office, Bureau of Land Management, P.O. Box 831, 3900 East Idaho Street, Elko, Navada 89801. Any adverse comments will be evaluated by the Nevada State Director, who may sustain, vacate or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: July 21, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92-18206 Filed 7-31-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-092-4212-13; GP2-344; OR 45978]

Realty Action; Exchange of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in Lane County, Oregon.

SUMMARY: The following described public lands are being considered for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 18 S., R. 9 W.,
Sec. 7: SE¼SW¼;
Sec. 14: NW¼NE¼, NE¼NW¼;
Sec. 23: NE¼NW¼.
T. 18 S., R. 11 W.,
Sec. 7: NE¼NW¼;
Sec. 18: SE¼SE¼.
Containing 240.00 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from the John Hancock Mutual Life Insurance Company:

Willamette Meridian, Oregon

T. 16 S., R. 7 W., W.M.,
Sec. 6: Lots 1-5, NE¼SE¼, portions of Lot 6, SE¼SW¼, W½SE¼, SE¼SE¼ (Tax lots 16-07-06-00-100, 16-07-06-00-200, and 16-07-06-00-400);
Sec. 7: W½NW¼NE¼, portions of Lot 2, E½NE¼, SW¼NE¼, SE¼NW¼, NE¼SE¼ (Tax lots 16-07-07-00-300, 16-07-07-00-400, 16-07-07-00-600, and 16-07-07-00-800);
Sec. 8: NE¼NW¼, portions of N½NW¼, SE¼NW¼, E½SW¼ (Tax lots 16-07-08-00-300 and 16-07-08-00-800).
T. 17 S., R. 3 E., W.M.,
Sec. 4: Lot 8;
Sec. 9: Lot 6;
Sec. 10: SW¼NW¼ N½SW¼, SE¼SW¼, SE¼SE¼.
T. 17 S., R. 9 W., W.M.,
Sec. 2: Lot 3, S½NE¼, SE¼NW¼, E½SW¼.
T. 18 S., R. 1 E., W.M.,
Sec. 28: N½N½.
T. 18 S., R. 8 W., W.M.,
Sec. 28: W½W½;
Sec. 32: That portion of NE¼NE¼, S½NE¼, N½SW¼, SW¼SW¼ and N½SE¼ lying north of the south right-of-way line of BLM Road No. 18-8-21.
Containing 1692.59 acres, more or less, in Lane County.

The purpose of the exchange is to improve the resource management program of the Bureau of Land Management and the property management program of the John Hancock Mutual Life Insurance Company. The public lands to be exchanged are relatively isolated parcels, noncontiguous to other BLM lands and in some cases lacking legal access. The private lands being offered have important timber, fisheries, wildlife habitat and recreation values. These lands will be managed for multiple use along with the adjoining public lands. The public interest will be well served by making this exchange. The final determination on the exchange will await completion of an environmental assessment.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights are expected to be transferred with the surface.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

Publication of this notice in the **Federal Register** segregates the public lands, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of this publication, whichever occurs first.

DATES: Interested parties may submit comments to the Eugene District Manager at the address shown below.

ADDRESSES: Detailed information concerning this exchange is available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date of Issue: July 24, 1992.
C. Bradley Krueger,
Acting District Manager.
[FR Doc. 92-18274 Filed 7-31-92; 8:45 am]
BILLING CODE 4310-33-M

[OR-930-01-6350-06; GP2-347]

Draft Resource Management Plan/ Environmental Impact Statement; Availability:

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft resource management plan/ environmental impact statement for the Salem District, Oregon, on or about August 21, 1992.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a draft resource management plan/ environmental impact statement (RMP/ EIS) for the Salem District, Oregon, has been prepared and is available for review and comment. The draft RMP/ EIS describes and analyzes future options for managing approximately 393,600 acres of mostly forested public land and 27,800 acres of nonfederal surface ownership with federal mineral estate administered by the Bureau of Land Management in 12 counties in northwest Oregon.

Decisions generated during this planning process will supersede land use planning guidance presented in the Westside Salem and Eastside Salem management framework plans (MFPs).

Copies of the draft RMP/EIS and a summary of it may be obtained from the Salem District Office. Public reading copies will be available for review at local public libraries, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, Room 5647, 1849 C Street, NW, Washington, DC 20240
Public Room, Oregon State Office, 1300 N.E. 44th Avenue, Portland, Oregon 97208
Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306
Tillamook Resource Area Office, 4610 Third St., Tillamook, OR 97141.

All other BLM offices in western Oregon

Background information and maps used in developing the draft RMP/EIS are available for review at the Salem District Office.

Open houses with opportunities to discuss the draft EMP/EIS will be held at the Salem District Office and other locations within the district. Times and locations will be announced at a later date through the local media and in a separate mailer.

DATES: Written comments on the draft RMP/EIS must be submitted or postmarked no later than December 21, 1992.

ADDRESSES: Written comments should be addressed to Salem District Manager, Bureau of Land Management, 1717 Fabry Road S.E., Salem, Oregon 97306.

FOR FURTHER INFORMATION CONTACT: Bob Saunders, RMP Team Leader, Salem District Office; Phone (503) 375-5634/ 5646.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS describes and analyzes seven alternatives to resolve the following issues: (1) Timber production practices; (2) old-growth forests and habitat diversity; (3) threatened and endangered and other special status species habitat (including habitat for the northern spotted owl); (4) special areas; (5) visual resources; (6) stream, riparian, and water quality; (7) recreation resources; (8) wild and scenic rivers; (9) land tenure; and (10) rural interface areas.

In the BLM's preferred alternative, water quality would be maintained or improved primarily by a combination of best management practices and exclusion of selected areas from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other streams that carry fish.

Some 134,200 acres would be allocated and managed to maintain and strengthen a system of old-growth emphasis areas, which is expected to increase the amount of old-growth stands in the planning area from 32,500 acres to 54,200 acres over the next 100 years.

Some 100,300 acres would be allocated as general forest management areas (primarily timber production). Some 49,100 acres would be managed under substantial restrictions to protect or enhance other resource values. The annual allowable timber sale quantity would be 21.5 million cubic feet (136.5 million board feet). To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

The remaining 110,000 acres would be managed for a variety of values and uses including recreation sites/areas, special areas, riparian management areas, wilderness and T&E species sites.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, the BLM would manage habitats of federal candidate, state-listed, and bureau sensitive species to maintain their population at a level that would avoid contributing to listing of the species.

Management would provide for a wide variety of recreation opportunities, with particular emphasis on developed recreation sites areas and trails and outstanding natural areas.

Two river segments totaling 27.7 miles would be found suitable for designation by Congress under the Wild and Scenic Rivers Act. Some 39.4 other miles of river determined eligible for designation and studied by the BLM would be found not suitable for designation.

Most BLM-administered lands with potential for occurrence would remain available for mineral leasing and location of mining claims, but 6,200 acres would be closed to leasing for oil and gas resources, and 9,100 acres would be closed to location of claims.

The RMP/EIS proposes continuation of designation of 19 areas of critical environmental concern (ACEC) and designation of seven new ACECs. The preferred alternative would redesignate or designate the following ACECs with the noted restrictions:

Area name	Acres	Vegetable harvest	ORV use	Mineral leasing	Mining location	Rights-of-Way
Existing:						
Carolyn's Crown ACEC/RNA	261	P	P	R	P	P
Elk Creek ACEC	1,577	R	P	R	P	R
Grass Mtn. ACEC/RNA	762	P	P	R	P	P
High Peak/Moon Cr. ACEC/RNA	1,538	P	R	R	P	P
Little Grass Mtn. ACEC/ONA	45	P	P	R	P	P
Little Sink ACEC/RNA	81	P	P	R	P	P
Lost Prairie ACEC	58	P	P	R	P	P
Mary's Peak ACEC/ONA	104	P	R	R	P	P
Middle Santiam Terrace ACEC	108	P	P	R	P	P

Area name	Acres	Vegetable harvest	ORV use	Mineral leasing	Mining location	Rights-of-Way
Nestucca River ACEC	1,062	P	R	R	P	R
Rickreall Ridge ACEC	177	P	P	R	P	P
Saddleback Mtn. ACEC/RNA	151	P	P	R	P	P
Sandy River Gorge ACEC/ONA	400	P	P	R	P	P
Sheridan Peak ACEC	299	R	R	R	R	R
Soosap Meadows ACEC	343	P	P	R	P	P
The Butte ACEC/RNA	40	P	P	R	P	P
Valley of the Giants ACEC/ONA	51	P	P	R	P	P
Williams Lake ACEC	98	P	R	R	P	P
Yaquina Head ACEC/ONA	106	P	R	R	P	P
Potential:						
Shafer/Crabtree Cr. ACEC/RNA/ONA	961	P	R	R	P	P
Forest Peak ACEC/RNA	134	P	P	R	P	P
North Santiam ACEC	31	P	P	R	P	P
Walker Flat ACEC	39	P	R	R	P	P
White Rock Fen ACEC	51	P	P	R	P	P
Wilhoit Springs ACEC	170	P	R	R	P	P
Yampo ACEC	13	P	R	R	P	P

P—Use is prohibited.
R—Use is allowed but with restrictions.

There are three potential ACEC areas identified that meet the bureau ACEC criteria of relevance and importance but are not included in whole or in part in the preferred alternative described above. One existing ACEC would not be redesignated because it does not meet ACEC criteria. The primary values of these areas would be protected by other allocations.

This notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs and the requirements of the final revised Department of the Interior/ Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers FR Vol. 47, No. 173, pg. 39454).

Mark E. Lawrence, Jr.,

Acting Salem District Manager.

[FR Doc. 92–18283 Filed 7–31–92; 8:45 am]

BILLING CODE 4310-33-M

[ID–942–02–4730–12]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., July 24, 1992.

The plat, in 3 sheets, representing the corrective dependent resurvey of portions of the west boundary, subdivisional lines, and subdivision of sections 5 and 6, dependent resurvey of portions of the New South Boundary of the Fort Hall Indian Reservation, east and north boundaries, and subdivisional lines and the subdivision of certain sections, T. 5 S., R. 34 E., Boise Meridian, Idaho, Group No. 778, was accepted July 17, 1992.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and subdivision of section 6, T. 5 S., R. 35 E., Boise Meridian, Idaho, Group No. 819, was accepted July 17, 1992.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

All inquiries concerning the survey of the above described land just be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 24, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92–18275 Filed 7–31–92; 8:45 am]

BILLING CODE 4310-GG-M

[ID–943–4214–11; IDI–14896, et al]

Notice of Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, proposes that 9416.28 acres withdrawn for the Gooding, Minidoka, Boise, and Black Canyon Reclamation projects continue for the time periods indicated below. The lands are now being used for Reclamation project purposes. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3162.

The Bureau of Reclamation proposes that the existing land withdrawals made by various public land orders and secretarial orders be continued for the time periods indicated below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

Gooding/Minidoka Projects, I–14896, I–14897 I–15261. (42-year term)

T. 5 S., R. 15 E.,
  Sec. 2, S½NW¼ and NW¼SE¼;
  Sec. 3, SE¼NE¼, SE¼NW¼ and NW¼SE¼.
T. 6 S., R. 15 E.,
  Sec. 9, NE¼SE¼.
T. 4 S., R. 16 E.,
  Sec. 26, SE¼NW¼;
  Sec. 27, N½S½NW¼.
T. 6 S., R. 18 E.,
  Sec. 17, NW¼NE¼;
  Sec. 21, W½NE¼.
T. 7 S., R. 19 E.,
  Sec. 5, lot 4, SW¼NW¼ and W½SW¼;
  Sec. 6, SE¼SE¼;
  Sec. 7, E½E½;
  Sec. 18, E½NE¼, NE¼SE¼ and SE¼SE¼;
  Sec. 19, NE¼NE¼;
  Sec. 20, NW¼NW¼, S½NW¼ and E½SW¼;
  Sec. 29, N½NW¼ and SW¼NW¼;
  Sec. 30, S½NE¼ and SE¼;
  Sec. 31, W½E½ and SE¼SE¼;
  Sec. 32, S½SW¼.
T. 8 S., R. 19 E.,
  Sec. 2, NW¼SW¼ and S½SW¼;
  Sec. 3, S½;
  Sec. 4, SW¼ and S½SE¼;
  Sec. 5, lots 2 and 3, S½NE¼ and NE¼SE¼;
  Sec. 9, NW¼NE¼;
  Sec. 11, NE¼, N½NW¼ and NE¼SE¼;
  Sec. 12, S½N½, N½S½ and N½SE¼S W¼;
  Sec. 32, lot 6;

Sec. 33, lots 5 and 6 and Tract H.
T. 8 S., R. 20 E.,
Sec. 7, 3, 4, 5, 6 and 8 E½SW¼;
Sec. 18, lot 1 and 4 to 8, inclusive and E½W½;
Sec. 19, lots 4 to 8, inclusive and E½NW¼;
Sec. 30, kits 1, 4, 5, and 8;
Sec. 31, lot 1, W½NE¼, SE¼NE¼ and E½NW¼;
Sec. 32, SW¼NW¼, N½SW¼, N½SE¼SW¼, NW¼SE¼, N½SW¼SE¼ and SE¼SE¼.
T. 9 S., R. 20 E.,
Sec. 1, NE¼NE¼SE¼;
Sec. 3, N½SW¼SW¼, N½SW¼SW¼SW¼ and SE¼SW¼SW¼;
Sec. 4, lots 5, 6 and 8, N½N½SE¼ and SE¼NE¼SE¼;
Sec. 5, lots 5, 6, 9 and 10 and SE¼NE¼;
Sec. 10, lots 1, S½NE¼, NE¼NW¼, E½NE¼NW¼NW¼, N½SE¼NW¼, NW¼SE¼ and W½SW¼SE¼;
Sec. 11, lots 1 and 2 and NE¼SW¼;
Sec. 13, lots 1 to 5, inclusive;
Sec. 14, lots 3, 4, and 5 and NW¼NE¼.

Boise Project, I–4373. (20-year term)

T. 7 N., R. 5 W.,
Sec. 34, NW¼NW¼NW¼NW¼ and NW¼SW¼NW¼NW¼NW¼.

Black Canyon Project, I–15070 (58-year term)

T. 5 N., R. 2 W.,
Sec. 7, lot 3 and SE¼SW¼;
Sec. 17, S½NE¼ and SE¼NW¼;
Sec. 27, N½NE¼SE¼.
T. 5 N., R. 3 W.,
Sec. 2, W½NE¼SW¼ and SW¼SW¼;
Sec. 4, S½SW¼SW¼;
Sec. 8, SE¼SE¼SW¼.
T. 6 N., R. 3 W.,
Sec. 5, N½SW¼NE¼;
Sec. 22, W½SE¼SW¼;
Sec. 26, E½SW¼;
Sec. 32, E½E½NW¼NE¼.
T. 5 N., R. 4 W.,
Sec. 8, E½W½E½SE¼SW¼SW¼ and E½E½SE¼SW¼SW¼;
Sec. 11, E½SE¼SW¼NW¼ and SW¼SE¼NW¼;
Sec. 24, N½NW¼NE¼.
T. 6 N., R. 4 W.,
Sec. 2 N½ of lot 1;
Sec. 12, E½NE¼;
Sec. 25, SE¼NE¼NW¼.
T. 6 N., R. 5 W.,
Sec. 22, lot 2;
Sec. 35, SE¼SE¼SE¼.

Minidoka Project, I–15258. (50-year term)

T. 9 S., R. 26 E.,
Sec. 2, lots 1,2,3, and 4, S½N½ and S½;
Sec. 3, SE¼;
Sec. 7, lots 1 and 2, E½ and E½NW¼;
Sec. 8;
Sec. 9, W½;
Sec. 12, N½.
T. 9 S., R. 27 E.,
Sec. 5, lots 3 and 4 and S½NW¼.

Black Canyon Project, I–15079, I–15252. (58-year term)

T. 5 N., R. 3 W.,
Sec. 27, NE¼NE¼.
T. 6 S., R. 3 W.,
Sec. 15, SW¼NW¼ and NW¼SW¼;
Sec. 26, SW¼SW¼.
T. 6 N., R. 5 W.,
Sec. 35, N½S½SW¼NE¼.
T. 7 N., R. 5 W.,
Sec. 25, NW¼SW¼SW¼.

The areas described aggregate 9,416.28 acres in Canyon, Payette, Gem, Blaine, Jerome, Lincoln and Gooding counties.

The withdrawals are essential for protection of project developments for the Bureau of Reclamation. The withdrawals closed the land to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: July 22, 1992

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92–18204 Filed 7–31–92; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Plan of Operations and Environmental Assessment for Continuing Operation of the Sneed No. 2 Gas Well; Lake Meredith National Recreation Area, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Myriad Resources Corporation a Plan of Operations for continuing operation of the Sneed No. 2 Gas Well within Lake Meredith National Recreation Area, Hutchinson County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 211, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: July 22, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc 92–18241 Filed 7–31–92; 8:45 am]

BILLING CODE 4310–70–M

Yosemite Valley Housing Plan; Draft Plan and Supplemental Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service has prepared a Draft Yosemite Valley Housing Plan/Supplemental Environmental Impact Statement (EIS) to the 1980 Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Yosemite National Park, Tuolumne, Mariposa and Madera Counties, California.

The supplementary environmental impact statement examines the effects of five alternatives for housing National Park Service and concession employees who work in Yosemite Valley. The proposed action would provide primary housing for 952 employees at a new development site at Foresta. Alternative A would provide primary housing for 1,395 employees at Foresta. Alternative B would provide primary housing for 934 employees at El Portal. Alternative C would provide primary housing for 1,014 employees in Yosemite Valley and improve existing housing units. Alternative D, no-action, would continue to house 1,359 employees in Yosemite Valley's existing housing units. The proposal and alternatives were analyzed for impacts on biotic communities, sensitive species, the Merced River, air quality, scenic quality, cultural resources, socio/economic concerns, Yosemite Valley visitors, park and concession operations, and energy consumption.

SUPPLEMENTARY INFORMATION: Comments on the draft plan and supplemental EIS should be received no later than September 30, 1992 and should be addressed to: Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389. Requests for additional information and/or copies of the draft plan/supplemental EIS should be directed to this address or telephone number (209) 372–0202.

Copies of the draft plan/supplemental EIS are available at the park headquarters, at libraries in communities near the park and libraries in Los Angeles and San Francisco. Copies also are available for inspection at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., Suite 600, San Francisco, CA 94107–1372.

Dated: June 24, 1992.

Lewis Albert,

Regional Director, Western Region.

[FR Doc. 92–18242 Filed 7–31–92; 8:45 am]

BILLING CODE 4310–70–M

Delaware Water Gap National Recreation Area

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date for the next meeting of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of said meeting is required under the Federal Advisory Committee Act.

Date: September 12, 1992.

Time: 9 a.m.

Location: New Jersey District Office, Route 615, Walpack, New Jersey.

Date: October 24, 1992.

Time: 9 a.m.

Location: Northampton County Government Center, Easton, Pennsylvania.

AGENDA: The agenda will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. Opportunities for public comment to the Commission will be provided.

FOR FURTHER INFORMATION, CONTACT: Hal J. Grovert, Acting Superintendent; Delaware Water Gap National Recreation Area, Bushkill, PA 18324; 717–588–2435.

SUPPLEMENTARY INFORMATION:

The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

Dennis R. Reidenbach,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–18240 Filed 7–31–92; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 25, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 18, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Etowah County

Forrest Cemetery Chapel and Comfort Station, 1100 S. 15th Street., Gadsden, 92001069

Georgia

Fulton County

Atlanta Buggy Company and Ware—Hatcher Bros. Furniture Company, 530–544 Means St., Atlanta, 92001070

ILLINOIS

Cook County

Grant Park, (Chicago Park District MPS), Roughly, from the Chicago R. to E. McFetridge Dr. at Lake Michigan, Chicago, 92001075

MICHIGAN

Barry County

Carveth, John, House, 614 W. Main St., Middleville, 92001076

NEW YORK

Otsego County

Unadilla Village Historic District, (Unadilla Village MPS), Roughly, Main St. from Hopkins St. to Butternut Rd. and Bridge St. from Main to Watson St., Unadilla, 92001079

Unadilla Waterworks, (Village of Unadilla MPS), Jct. of Kilkenny Rd. and Clifton St. and jct. of Martin Brook Rd. and Rod & Gun Club Rd., Unadilla, 92001080

Rensselaer County

Melville, Herman, House, 2 144th St., Troy, 92001081

OHIO

Ashtabula County

Conneaut Light Station Keeper's Dwelling, (Light Stations of Ohio MPS), 1059 Harbor St., Conneaut, 92001078

Erie County

Mertz, John, House, 610 W. Washington, St., Sandusky, 92001077

TENNESSEE

Decatur County

Brooks, Dr. Beauregard Martin, House, TN 114 (Clifton Ferry Rd.) E of jct. with TN 69, Bath Springs, 92001074

Polk County

Center & Abernathy Store Building, (Tennessee Copper Basin MPS), 23–33 Ocoee St., Copperhill, 92001071

Central Headframe, (Tennessee Cooper Basin MPS), TN 68 S of jct. with US 64/74, Ducktown vicinity, 92001073

Kimsey Junior College (Tennessee Copper Basin MPS), 244 YN 68, Ducktown, 92001072

WASHINGTON

Pierce County

Tacoma Narrows Bridge Ruins, WA 16 over the Tacoma Narrows, Tacoma, 92001068

[FR Doc. 92–18286 Filed 7–31–92; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 31382, July 15, 1992) is amended to reflect the following changes in the Office of Extramural Research (HNA3) within the Office of the Director, National Institutes of Health (OD/NIH) (HNA): (1) Revise the functional statement of the Office of Extramural Programs (HNA32); and (2) establish the Office of Policy for Extramural Research Administration (HNA34), and the Office of Laboratory Animal Research

(HNA35). This reorganization will strengthen the NIH oversight and management of grants policy programs and the protection of laboratory animals used in medical research.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading Office of the Director, NIH (HNA), Office of Extramural Research (HNA3), Office of Extramural Programs (OEP) (HNA32), delete the OEP functional statement in its entirety and substitute the following:

Office of Extramural Programs (HNA32)

(1) Advises the Deputy Director for Extramural Research and the Assistant Director for Extramural Affairs on matters pertaining to the management of NIH extramural research programs;

(2) Develops and implements regulations, policies, and procedures governing scientific program management and reviews aspects of NIH extramural awards (grants, cooperative agreements and contracts);

(3) Establishes and maintains communication with the research institutes concerning policies and procedures dealing with the management of extramural programs; also acts to coordinate programs involving two or more institutes, as appropriate;

(4) Establishes and maintains communication between NIH and awardee and applicant institutions and investigators, e.g., reviews and clears for publication all proposed RFAs and PAs appearing in the Early Notification System to insure appropriate mechanisms are being selected;

(5) Develops and implements regulations, policies, and procedures regarding financial conflict of interest and promotion of research ethics and responsible conduct of research;

(6) Develops and implements regulations, policies, and procedures governing all aspects of extramural research training and development;

(7) Manages staff training activities for: (a) Health-related scientists in health science administration for the extramural programs of NIH/PHS; (b) NIH employees (Staff Training in Extramural Programs [STEP]); and (c) academic administrators, including those from minority and womens' institutions, to acquaint them with opportunities for NIH support of biomedical research and to enhance the research environment of these institutions;

(8) Fosters and maximizes competition in the awarding of research and development contracts throughout NIH; approving non-competitive contracts within established dollar thresholds;

(9) Manages the process of applicant appeals to the peer review and adverse post-award determinations of competing assistance applications;

(10) Oversees and coordinates the Small Business Innovation Research (SBIR), the Academic Research Enhancement Award (AREA), and the Small Instrumentation (SI) programs;

(11) Serves as the focal point for extramural research facility construction programs supported from the NIH Office of the Director (OD/NIH) appropriation; and

(12) Performs special studies relating to extramural issues.

(2) After the heading *Office of the Protection from Research Risks (HNA33)*, insert the following:

Office of Policy for Extramural Research Administration (HNA34)

(1) Assures effective grants administration policies and procedures to administer NIH extramural grant programs and provide stewardship of Federal funds;

(2) Maximizes research productivity, increases public accountability, enhances administrative integrity, and monitors fiscal stewardship in research administration systems;

(3) Ensures proper management of extramural resources at both the portfolio level (allocation issues), program level (strategic planning), and project level (cost analysis);

(4) Promotes the proper selection and effective use of assistance mechanisms by both NIH staff and the extramural community;

(5) Initiates new and modifies existing NIH grant administrative policies and procedures;

(6) Provides assistance to NIH extramural staff and grantee organizations regarding policies and procedures pertinent to the administration of NIH grants;

(7) Receives and maintains all documentation relating to extramural inventions made with the assistance of research grants or research and development contracts from NIH and ADAMHA;

(8) Establishes and maintains communication between NIH and awardee and applicant institutions and investigators; in particular, ensures the complete and timely publication of extramural policies and funding opportunities through the *NIH Guide for Grants and Contracts;* and

(9) Reviews for OMB clearance all application forms, proposed surveys, and questionnaires for information gathering activities conducted under research contracts as required by the Paperwork Reduction Act.

Office of Laboratory Animal Research (HNA35)

(1) Serves as principal advisor to the NIH Director (through the Deputy Director for Extramural Research [DDER]), on matters pertaining to animal research;

(2) Establishes policies for the appropriate handling of oral and written communications regarding animal research from the general public and Members of Congress;

(3) Responds to inquiries about animal research;

(4) Represents the NIH at national and international meetings of organizations and professional societies for the purpose of explaining NIH policies and initiatives on animal research;

(5) Establishes close working relationships with key scientists and officials of other Federal agencies, academia, the private sector, professional societies and voluntary health organizations on matters pertaining to animal research;

(6) Coordinates the activities of the PHS Coordinating Committee an Animal Research (CCAR); and

(7) Promotes interaction and information sharing on animal research issues.

Dated: July 15, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92–18313 Filed 7–31–92; 8:45 am]

BILLING CODE 4140–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31972]

Southern Electric Railroad Company—Construction—Plant Miller to Burlington Northern Railroad Near West Jefferson, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Availability of Environmental Assessment.

SUMMARY: By decision served March 17, 1992 in this proceeding, the Commission granted, subject to environmental review, Southern Electric Railroad Company's petition for exemption from the requirements of 49 U.S.C. 10901 for the construction of a 75 mile rail line in West Jefferson County, Alabama. The effective date of the decision was postponed until completion of the Commission's environmental review and further decision. The Commission has prepared its environmental assessment which concludes that subject to the

recommended mitigation conditions, the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comments to the environmental assessment before rendering a final decision in this proceeding.

DATES: Written comments must be filed by September 3, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 31972 to: (1) Section of Energy and Environment, room 3219, Interstate Commerce Commission, Washington, DC 20423, and one copy of the comments to: (2) Petitioner's representative: John Molm; Troutman Sanders; 600 Peachtree Street, NE; Suite 5200; Atlanta, GA 30308-2216.

FOR FURTHER INFORMATION CONTACT: John O'Connell (202) 927-6215 or Elaine K. Kaiser, Section Chief (202) 927-6248. (TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION:

Copies of the Environmental Assessment may be obtained from the Section of Energy and Environment, Office of Economics, room 3219, Interstate Commerce Commission, Washington, DC 20423, (202) 927-6215. Assistance for the hearing impaired is available through TDD Services at (202) 927-5721.

By the Commission, Howard K. Face, Director, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18279 Filed 7-31-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 23, 1992, a proposed Consent Decree in *United States of America* v. *Brimhall Sand, Rock and Building Material, Inc.* was lodged with the United States District Court for the District of Arizona.

The proposed Consent Decree resolves the United States' claims against Brimhall Sand, Rock and Building Materials, Inc. ("Defendant") under section 113(b)(3) of the Clean Air Act, 42 U.S.C. 7413(b)(3), as alleged in a complaint filed on February 25, 1992. The Complaint alleged that Defendant violated the New Source Performance Standards ("NSPS") for Hot Mix Asphalt Facilities, published at 40 CFR 60.90, *et seq.* Under the proposed Consent Decree the Defendant will pay a civil penalty to the United States of fifty-five thousand dollars and no cents ($55,000) and agrees to comply with a particulate matter management plan in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Brimhall Sand, Rock and Building Material, Inc.*, DOJ Ref. No. 90-5-2-1-1540.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Arizona, 4000 United States Courthouse, 230 First Avenue, Phoenix, Arizona, 85025, or at the Office of the Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94103. The proposed Consent Decree may be examined at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (Tel.: (202) 347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of five dollars and fifty cents ($5.50) (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-18270 Filed 7-31-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 16, 1992 a proposed Consent Decree in *United States* v. *Coleman Trucking Co., et al.*, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M. The Consent Decree requires Pearl Brook Co. to pay a civil penalty of $10,000 in full settlement of the claims against it set forth in the Complaint filed by the United States. The Consent Decree does not address the liability of other Defendants in this action. The Consent Decree further requires the Pearl Brook Co. to investigate the background of any asbestos contractors it hires.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Coleman Trucking Co., et al.*, D.J. Ref. No. 90-5-2-1-1378A.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114-1748 (contact Assistant United States Attorney James Bickett); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 (contact Assistant Regional Counsel Deborah Schmitt); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, room 1541, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20044, telephone (202) 347-7829. For a copy of the Consent Decree please enclose a check in the amount of $3.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-18272 Filed 7-31-92; 8:45 am]

BILLING CODE 4410-01-M

Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; National Gypsum Co. et al

Notice is hereby given that a proposed settlement agreement in In re National Gypsum Company, et al., Case Nos. 390-37213-SAF-11 and 390-37214-SAF-11, has been lodged with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. The United States' Proof of Claim, filed on

May 29, 1991, alleged liability and sought recovery of response costs for the cleanup of hazardous wastes and natural resource damages at a number of sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, against the Debtors, National Gypsum and Aancor Holdings, Inc. The proposed settlement agreement provides for the settlement of the United States' claims under CERCLA against the Debtors for the following sites: Operable Unit I of the Asbestos Dump Site in Millington, New Jersey; the City Industries Site in Orlando, Florida; the Yellow Water Road Site in Jacksonville, Florida; the Coakley Landfill in North Hampton, New Hampshire; the H.O.D. Landfill in Antioch, Illinois; and the Yeoman Creek Landfill in Waukegan, Illinois.

The proposed settlement agreement settles the United States' claims against the Debtors for the above sites in exchange for the allowance of an administrative claim in the amount of $2.65 million for the Operable Unit I of the Millington Site and the allowance of a general unsecured prepetition claim in the amount of $850,000 for the other five sites.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re National Gypsum Company, et al.*, DOJ Ref. #90–11–2–689.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Federal Building, 1100 Commerce Street, room 16 G 28, Dallas, Texas; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–18271 Filed 7–31–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—the SQL Access Group, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 984, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access group, Inc. ("the Group") on July 6, 1992; has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 1, 1990, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 1990 (55 FR 12750). On June 5, 1990, August 31, 1990, December 6, 1990, March 21, 1991, June 7, 1991, September 9, 1991, October 4, 1991, January 6, 1992, and April 6, 1992 the Group filed additional written notifications. The Department published a notice in the **Federal Register** in response to the additional notifications on July 18, 1990 (55 FR 29277), October 17, 1990 (55 FR 42081), January 7, 1991 (56 FR 536), April 25, 1991 (56 FR 19126), July 19, 1991 (56 FR 33308), October 8, 1991 (56 FR 50729), November 13, 1991 (56 FR 57665), March 24, 1992 (57 FR 10191) and May 11, 1992 (57 FR 20129), respectively. The following parties are no longer members of the Group: Honeywell, Inc., Minneapolis, MN; Infocentre Corporation, Saint-Laurent, Quebec, CANADA; Microelectronics and Computer Technology Corp. (MCC), Austin, TX; Sun Microsystems, Inc., Mountain View CA; and Uniface, Alameda, CA.

One member of the Group, NCR Corporation, San Diego, CA, purchased another member, Teradata Corporation, Los Angeles, CA. The resulting entity that is now the member of the Group is: NCR/Teradata, El Segundo, CA.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–18269 Filed 7–31–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 31, 1991, and published in the Federal Register on November 12, 1991, (56FR57533), Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alphacetylmethadol (9603)	I
Methadone (9250)	II

On December 10, 1991, Mallinckrodt Specialty Chemical Company, a currently registered manufacturer of methadone, filed objections and requested a hearing with respect to Orpharm's application to manufacture methadone. Accordingly, this matter was docketed by the Office of Administrative Law Judges as DEA Docket No. 92–47.

By stipluation filed with the Administrative Law Judge on May 20, 1992, the parties (DEA, Mallinckrodt and Orpharm) agreed to the withdrawal of Mallinckrodt's objection and the registration of Orpharm, Inc., as a manufacturer of methadone and LAAM. Pursuant to the stipulation, DEA will register Orpharm to manufacture methadone for conversion to LAAM only.

Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 27, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–18282 Filed 7–31–92; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk

manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 3, 1992, Research Biochemicals, Inc., One Strathmore Road, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed above:

Drug:	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Bufotenine (7433)	I
Dimethyltryptamine (7435)	I
Etorphine (except HCl) (9056)	I
Methylphenidate (1724)	II
Etorphine HCl (9059)	II
Metazocine (9240)	II
Methadone (9250)	II
Fentanyl (9801)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes or controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 23, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–18281 Filed 7–31–92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION. Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C 3303a(a).

DATES: Request for copies must be received in writing on or before September 17, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, International Trade Administration (N1–151–92–4). Records of the Japan United Overseas Development Assistance Program.

2. Department of Energy, Pittsburgh Naval Reactors Office (N1–434–91–8). On-site payroll, personnel, inspection and accountability records.

3. Department of Energy, Nevada Field Office (N1–434–92–4). On-site personnel and administrative records.

4. Department of Health and Human Services, Centers for Disease Control (N1–442–91–4). Inputs to the Family of HIV Surveys master file.

5. Department of Justice, Bureau of Prisons (N1–129–92–1). Student and course files of the Staff Training Academy.

6. Department of Labor, Pension and Welfare Benefits Administration (N1–317–92–1). Annual reports filed by administrators or sponsors of employee pension benefits plans.

7. Department of Transportation, U.S. Coast Guard (N1–26–92–1). Files relating to medium and minor oil and hazardous substance discharges. (Files concerning major discharges are permanent.)

8. Department of Veterans Affairs, Veterans Health Administration (N1–15–92–4). Medical Inspector's investigation records.

9. African Development Foundation, Office of the President (N1–487–91–3). Memoranda concerning economic assistance project grants. (Copies are also found in project files which are permanent.)

10. National Archives and Records Administration (N2–169–92–1). Routine and facilitative records segregated from Foreign Economic Administration records accessioned by the National Archives.

11. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research (N1–431–89–5). Experiment and test files whose technical value ceases upon project completion.

Dated: July 22, 1992.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 92–18202 Filed 7–31–92; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92–44]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: August 24, 1992, 1 p.m. to 5 p.m.; and August 25, 1992, 9 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, room 7002, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA FY 1993 Budget Status
—Cassini Restructuring and Small Planetary Mission Planning
—Council Study Tasks
—High-Speed Civil Transport
—Lunar Outpost Studies
—U.S./Soviet Relations in Space

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 27, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92–18259 Filed 7–31–92; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Fees Paid By Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: The National Credit Union Administration Board is considering a modification of the operating fee scale for Federal Credit Unions. The current scale contains 2 asset brackets which determine the fee rate to be applied: one for assets below $298,113,750 and one for assets above $298,113,750. The proposed modification would limit the fee assessment to the first $1 billion of each Federal credit union's assets.

DATES: Comments are due September 2, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Controller or David M. Marquis, Deputy Director of Examination and Insurance, at the above address, telephone (202) 682–9600.

SUPPLEMENTARY INFORMATION

Background

Prior to 1979, federal credit unions (FCU's) were charged separate chartering fees, examination fees, and supervision fees. The examination fees were based on the number of hours required for the examination and were collected at the conclusion of the examination, while the supervision fees were assessed annually based on each credit union's year-end assets. In 1979, section 105 of the Federal Credit Union Act (the Act) was amended to consolidate the three separate fees into a single operating fee.

Although the Act gives the NCUA Board the flexibility to determine the frequency, method and basis for the assessment, the operating fee has been collected on an annual basis since its inception in 1979, and has always been based on FCU assets. The Act requires that the NCUA Board, in setting the fee, give due consideration to the expenses of the agency and the ability of credit unions to pay.

Discussion

The replacement of the separate chartering, examination and supervision fees in 1979 with the single operating fee changed not only the mechanical aspects of NCUA's revenue collection process, but also the philosophical basis as well. Rather than various fees tied to specific services rendered, the operating fee is an overall assessments to fund NCUA's operations. The basic parameters are that the amount collected should be based on NCUA's expenses and that the assessment should be based on credit unions' ability to pay. In other words, it should be equitable.

In 1990 NCUA restructured the operating fee scale because it was felt that the scale did not give due consideration to the ability of credit unions to pay. The major ingredient of this restructuring was a consolidation of the scale from 14 rate brackets to 2 rate brackets. One rate, currently .000308262 is applied to each FCU's assets below $298,113,750, and the second rate, currently .0000898762, is applied to all assets above $298,113,750. The $298,113,750 dividing point between the two rates is adjusted or indexed each year based on FCU asset growth.

We believe that although the scale gives adequate consideration of the ability of FCU's to pay, it does not give adequate consideration to the costs incurred by the agency with regard to the largest FCU's. The amount of examination time and supervision time spent by NCUA is dependent on the size and condition of each FCU, and increases directly in relation to size. However, the amount of time we spend on the largest FCU's does not increase with asset size, and appears to be entirely dependent on the condition and circumstances of each particular credit union.

Our review of most recent data indicates that once the asset size of $1 billion is achieved, the examination and supervision time no longer correlates to assets. For example, during the past year, the examination and supervision time for those credit unions with assets exceeding $1 billion averaged 490 hours, however, only 576 hours was spent on the largest—with over $5 billion in assets, while 726 hours was spent on one credit union with assets of $1.4 billion. As of March 31, 1992, five FCU's reported assets in excess of $1 billion.

In keeping with the FCU Act requirement to consider our expenses in setting the operating fee, we believe that the assessment should not be applied to assets exceeding $1 billion in any FCU. We also believe that the $1 billion threshold should be indexed annually, as is the asset dividing point for the two rates.

Conclusion

We believe that the proposed modification of the operating fee scale would remove an inequity which currently exists in the fee scale and

would make the scale more in keeping with the requirements of the Federal Credit Union Act. Comment is requested on this proposed modification to the operating fee scale.

Paperwork Reduction Act, Regulatory Flexibility Act, and Executive Order 12612

The requirements of the Paperwork Reduction Act and the Regulatory Flexibility Act are not triggered by this request for comments since the request neither imposes paperwork collection requirements nor a significant economic impact on a substantial number of small credit unions. In addition, an analysis under Executive Order 12612, which requires NCUA to consider the effect of its actions on state interests, is not necessary since the request for comments only affects federally chartered credit unions.

By the National Credit Union Administration Board on July 28, 1992.

Becky Baker,

Secretary of the Board.

[FR Doc. 92-18292 Filed 7-31-92; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers/ National Services I Section) to the National Council on the Arts will be held on August 25, 1992 from 9 a.m.-6:30 p.m. and August 26 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 26 from 4 p.m.-5:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 25 from 9 a.m.-6:30 p.m. and August 26 from 9 a.m.-4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussion at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: July 24, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-18200 Filed 7-31-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers/ National Services II Section) to the National Council on the Arts will be held on August 27, 1992 from 9 a.m.-6:30 p.m. and August 28 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 28 from 4 p.m.-5:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting on August 27 from 9 a.m.-6:30 p.m. and August 28 from 9 a.m.-4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: July 24, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-18201 Filed 7-31-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences For First Quarter CY 1992 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the first quarter of CY 1992, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 15, No. 1 ("Report to Congress on Abnormal Occurrences: January-March 1992"). This report will be available at the NRC's Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555 about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

92–1 Medical Therapy Misadministration at St. John Medical Center in Tulsa, Oklahoma

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation can be considered an abnormal occurrence.

Date and Place: January 13–14, 1992; St. John Medical Center; Tulsa, Oklahoma.

Nature and Probable Consequences: On January 21, 1992, the licensee notified NRC Region IV that on January 20, 1992, a medical misadministration was discovered that involved two therapeutic radiation doses to a part of a patient's body that was not intended to be treated. The treatments were administered on January 13 and 14, 1992, by a cobalt-60 teletherapy unit.

The patient was scheduled to receive ten treatments of 300 rads each to the right scapula. After the second treatment was performed by the therapists, the oncologist reviewed the port film and noticed that 80 percent of the intended area had been missed. An investigation by the licensee determined that in simulating the treatment to be performed on the patient, the oncologist placed a mark on the patient's chest as indicated by the ceiling laser position. During treatment, however, the back pointer on the teletherapy unit was positioned on this mark. As the back pointer and ceiling laser result in different angles to the cobalt-60 radiation beam, the tissue volume treated was medial to the intended treatment site.

The oncologist amended the original prescription to include two additional treatment fractions to the appropriate area, bringing the total treatment dose to that area to the intended 3000 rads.

The patient was notified of the treatment error. The licensee stated that the misadministration should have no adverse effect on the patient.

Cause or Causes: There was a breakdown in communication between the oncologist and therapist during simulation. Either proper instruction was not given regarding patient positioning and which indicator to use, or it was not carried out correctly.

Actions Taken to Prevent Recurrence

Licensee: The licensee has reviewed this incident with all staff members and communicated by memo to all prescribing physicians explaining the different localization methods. In addition, the licensee's Quality Management Program was amended to require review of port films after the first treatment in a series; this would not have prevented a misadministration, but might have identified the error prior to the administration of the second treatment.

NRC: An inspection was conducted on February 13–14, 1992, to review the circumstances associated with the misadministration. The inspection report was forwarded to the licensee by letter dated April 6, 1992. Although no violations of NRC requirements were identified, the NRC was concerned that the misadministration was a result of a verbal miscommunication between the oncologist and the therapist. The licensee was requested to describe corrective actions taken to prevent such miscommunications among staff members.

* * * * *

92–2 Medical Therapy Misadministration at Harper Hospital in Detroit, Michigan

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation can be considered an abnormal occurrence.

Date and Place: February 24, 1992; Harper Hospital; Detroit, Michigan.

Nature and Probable Consequences: On March 16, 1992, the licensee notified NRC Region III that on February 24, 1992, a patient with cancer had received a therapeutic radiation dose to the incorrect side of the chest area. (In accordance with NRC requirements, the therapeutic misadministration should have been reported to the NRC on February 25, 1992, i.e., within 24 hours of the time of discovery on February 24, 1992. However, the licensee did not properly categorize the event as a therapeutic misadministration until March 16, 1992).

The patient was scheduled to receive 28 daily treatments of 180 rads each to the right collar bone area and 90 rads each to tangential areas of the right breast. The treatment began on February 12, 1992, and eight treatments were delivered as prescribed. On February 24, 1992, however, the radiation therapists erroneously treated the left collar bone area instead of the intended treatment area on the right. The therapists discovered the error as they prepared to treat the two tangential areas of the left breast. The therapist repositioned the patient to treat the prescribed right breast. The treatment plan was then continued until the balance of the prescribed 28 treatments was completed.

The treating physician stated that in her judgment the misadministration did not compromise the patient's treatment, either from an underdose to the prescribed site or from the inadvertent dose to the incorrect area.

Cause or Causes: The radiation therapy technologists stated that the error occurred because they confused a leveling tattoo on the left collar bone area with the treatment tattoo on the right collar bone area. They also did not follow the procedures for confirming the accuracy of the treatment site for agreement with the prescribed treatment site as specified in the licensee's Quality Management Program.

In regard to the lateness of reporting the event to the NRC, the misadministration had been promptly reported to hospital management. However, the person responsible for reviewing the incident to determine if an NRC report was required used an incorrect draft of the hospital's policy manual which contained an error in its definition of a misadministration. The incident was not determined to be a misadministration and was therefore not reported to the NRC until March 16, 1992.

Actions Taken to Prevent Recurrence

Licensee: The remaining treatments in the patient's treatment series were performed by three technologists to assure treatment accuracy. The licensee is now using different tattoos for the treatment area and for leveling.

The licensee had implemented a written Quality Management Program on January 27, 1992. The program requires that before a treatment is administered, the details of the treatment must be checked for agreement with the prescription and plan of treatment and the accuracy of the treatment site must also be confirmed.

Therapists were provided further instruction on appropriate policies and procedures. The incomplete policy manual has been updated, and personnel have been trained on NRC misadministration reporting requirements.

NRC—A special inspection was conducted on March 26–27, 1992, to review the circumstances associated with the misadministration. On April 22, 1992, the NRC issued a Notice of Violation. Two violations of NRC requirements were identified: (1) Failure to follow the instructions of the Quality Management Program, and (2) failure to report the misadministration no later

than the next day following its discovery.

* * * * *

92–3 Multiple Medical Therapy Misadministrations at G. Anthony Doener, M.D., Facility in Freehold, New Jersey

One of the AO reporting guidelines notes that a therapeutic misadministration affecting two or more patients at the same facility can be considered an abnormal occurrence.

Date and Place—July 1, 1990 to February 28, 1992; G. Anthony Doener, M.D., facility; Freehold, New Jersey.

Nature and Probable Consequences—On March 18, 1992, the current consulting teletherapy physicist for the licensee informed NRC Region I of numerous therapeutic misadministrations that occurred between July 1990 and February 28, 1992. The physicist reported that patients who had received external beam therapy from a Picker Corporation Model 6103 (C–1000) teletherapy unit may have been underdosed by about 15 to 40% of the intended doses.

The misadministrations appeared to have resulted from an error introduced by the licensee's previous consulting teletherapy physicist into tables of treatment times he generated for various field sizes and treatment depths. The erroneous treatment times were then used by the licensee in treating patients. According to the licensee, approximately 13 patients were involved. One patient was undergoing treatment when the error was identified on February 28, 1992, and this patient's treatment time was adjusted to correct for the error prior to completion of treatment.

On March 26, 1992, the NRC issued Confirmatory Action Letter (CAL) No. 92–004 to confirm the actions taken, or to be taken, by the licensee.

The previous teletherapy physicist was contacted by telephone on March 18, 1992 and interviewed by NRC Region I on April 2, 1992. On both occasions, the previous teletherapy physicist stated that he had discovered in late 1990 the error in the treatment time charts he had prepared for January through December 1991. He stated that he had mailed corrected time charts for 1991 along with a hand written note to the licensee the first week of January 1991. He did not recall what the note stated nor did he maintain a copy of the note. He did not send the charts via certified mail nor did he attempt to contact the licensee by telephone to inform the licensee of the error. He was not aware that a similar error had occurred in charts he provided to the licensee for the period July 1990 to December 1990. The authorized user and office manager stated that they had not received corrected time charts for either 1990 or 1991.

The licensee has submitted all required documentation/reports of the misadministrations to the NRC. Based on the licensee's review of patient treatment charts, two patients have received supplemental treatment. Three of the patients are deceased and the licensee reported that the remaining eight patients would not be adversely affected. According to the licensee, the patients were notified of the treatment error by phone and in writing.

Cause or Causes—The probable causes are (1) failure of the authorized user to identify the previous physicist's error on treatment time charts through independent verification, and (2) failure of the previous physicist to perform a secondary check of treatment times for charts prepared for July 1990 through December 1990.

Actions Taken to Prevent Recurrence

Licensee—Corrected treatment time charts were provided to the licensee by the current teletherapy physicist. These charts are currently being used by the licensee. The current teletherapy physicist will provide treatment time charts to the licensee on a bi-monthly basis.

Treatment times will be independently verified by the current teletherapy physicist on a weekly basis or when treatment times for a patient currently being treated are changed.

The licensee has submitted a Quality Management Plan to the NRC. The plan is being reviewed.

NRC—Inspections were conducted at the licensee's facility on March 19 and April 22, 1992. Activities authorized by the licenses were inspected. In addition, actions taken in response to the CAL were reviewed.

The inspector verified by calculation that the treatment time charts contained errors and that the error began on the July 1990 time chart. The average error determined by the inspector was 20%. The inspector was unable to verify that corrected treatment time charts had been provided to the licensee for 1991. The licensee learned on March 13, 1992, that the misadministrations had occurred, but did not report them to NRC Region I until March 18, 1992. Records of misadministrations required by 10 CFR part 35 were properly maintained by the licensee. Corrected treatment time charts provided by the current teletherapy physicist were checked by the inspector and found to contain accurate treatment times. The inspector reviewed treatment charts for patients currently being treated and found that corrected treatment times were being used.

The inspector found that seven of eight commitments listed in the CAL had been completed at the time of the inspection. The action not completed by the licensee was to have the teletherapy physicist independently review all patient charts from the date the misadministrations began through December 1991 to identify all patients subjected to a misadministration. A letter from the licensee dated May 1, 1992, stated that patient charts from July 1990 through December 1991 have been sent to the current teletherapy physicist for review. The CAL is considered closed and authorization was given to the licensee to resume patient treatments.

The misadministrations did not appear to be the result of violations of NRC requirements. However, the inspector identified a number of apparent violations of licensed activities, including: (1) Failure to perform a full calibration at intervals not to exceed one year; (2) failure to notify NRC Region I by telephone within 24 hours of a therapeutic misadministration; (3) failure of monthly spot checks to include a determination of timer on-off error and timer linearity over the range of use; (4) failure of the licensee to require the teletherapy physicist to review teletherapy spot check results within 15 days; (5) failure to perform an adequate accuracy test of the dose calibrator; and (6) failure to mathematically correct dose calibrator reading for a linearity error exceeding 10 percent. Items 3, 4, and 5 above are repeat violations. A Notice of Violation was issued.

The licensee's Quality Management Plan has been submitted to the NRC and is being reviewed.

The NRC medical consultant is currently reviewing the incident.

Dated at Rockville, MD this 28th day of July 1992.

For The Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–18288 Filed 7–31–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Computers in Nuclear Power Plant Operations; Meeting

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations will hold a meeting on August 20–21, 1992, in the Old Georgetown Room, at the Hyatt Regency, One Bethesda Metro Center, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, August 20, 1992—8:30 a.m. until the conclusion of business.

Friday, August 21, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of hardware and software issues for digital Instrumentation and Control (I&C) systems. National experts will discuss software design concepts including safety, reliability, fault-tolerance, formal methods, and verification and validation.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangments can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations from national experts in industry and government and from the NRC staff and its consultants. At the end of each day, following the presentations, a roundtable discussion will be held.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Herman Alderman (telephone 301/492–7750) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 27, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–18289 Filed 7–31–92; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Exemption

In the matter of Yankee Atomic Electric Company (Yankee Nuclear Power Station)

I.

The Yankee Atomic Electric Company (YAEC or the licensee), is the holder of Operating License No. DPR–3 which authorizes possession, operation and maintenance of the Yankee Nuclear Power Station (facility or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor, currently in the process of being decommissioned, and located at the licensee's site in Franklin County, Massachusetts. The plant is shut down and the reactor is defueled.

II.

In a letter dated February 27, 1992, from the licensee, we were informed that YAEC had permanently ceased power operations, removed the fuel from the reactor to the fuel pool and had begun to develop detailed plans to decommission the facility. The staff subsequently issued a Confirmatory Action Letter (CAL) dated April 7, 1992, which confirmed these commitments. By letter dated May 22, 1992, the licensee requested an exemption from certain requirements of 10 CFR 50–Appendix E, namely Sections IV.F.2 and IV.F.3, all in accordance with 10 CFR 50.12. A portion of the emergency preparedness exercise training requirements of 10 CFR 50–Appendix E is contained in Sections IV.F.2 and IV.F.3. Section IV.F.2 requires an annual exercise, scheduled next in November 1992. Section IV.F.3 requires biennial offsite exercises with applicable state and local governments. These training exercises would demonstrate the capability of the licensee and State and Local authorities to adequately implement their emergency plans.

III.

In the licensee's letter of May 22, 1992, the justification presented for the exemption request was that the reactor had been defueled and the fuel removed from the containment (Vapor Container) to the spent fuel storage pool (Fuel Pit) and subsequently could not be returned to the containment because of the NRC CAL of April 7, 1992. Therefore, YAEC compliance with 10 CFR part 50, appendix E, section IV.F.2 for the next scheduled exercise in November 1992 and section IV.F.3 on a permanent basis is no longer needed. However, the licensee will continue exercises, on an annual basis, that will reflect Fuel Pit accident scenarios only. This exercise will be part of a Defueled Emergency Plan that was received for review and approved by the NRC by letter dated July 2, 1992.

The Commission will not consider granting an exemption unless special circumstances are present. In the licensee's letter of May 22, 1992, these special circumstances were addressed as follows:

10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule.* * *"

Licensee's response: (Section IV.F.2) The degree of emergency planning and preparedness necessary to provide adequate protection of the public health and safety in a permanently shut down and defueled condition is significantly less than that provided by the existing YNPS Emergency Plan. Therefore, exercising the existing Plan would not serve the underlying purpose of the rule.

(Section IV.F.3) The purpose of this section is to test the integrated capability of licensee personnel and State and Local authorities to adequately assess and respond to an accident having offsite consequences. However, in a permanently shutdown and defueled condition, there are no design basis events that could result in offsite consequences. There is no potential for releases of radioactive materials beyond the protected area in quantities that would result in doses which exceed the EPA's Protective Action Guidelines. Therefore, the purpose of the rule would not be served by conducting biennial full or partial emergency preparedness exercises.

10 CFR 50.12(a)(2)(iii)—"Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted.* * *"

Licensee's response: (Section IV.F.2) Preparing and conducting the annual exercise scheduled in November 1992, will result in a misallocation of monetary and human resources. YAEC would apply these resources to timely development of and training on a plan that is representative of the substantially reduced risks associated with a permanently shutdown and defueled facility. If granted, the exemption would allow YAEC to apply its resources to revising the existing emergency plans to reflect the reduced potential risks.

(Section IV.F.3) Conducting a full or partial participation exercise would result in undue hardship and costs, and represent a misallocation of planning and training resources. A plan based on the permanently shutdown and defueled condition of YNPS translates into the preparation and testing of a smaller response organization, fewer response facilities, fewer controllers and observers, and a greatly reduced need for FEMA evaluators. YAEC proposes that monetary and human resources will be used best to revise the existing plans and procedures to reflect a permanently shutdown and defueled facility.

The licensee also stated that granting the exemption would not present an undue risk to the public health and safety because the potential risks associated with a permanently shutdown and defueled facility are substantially less than those of an operating facility.

IV.

The NRC staff has reviewed the licensee's accident analysis supporting the exemption request and has independently calculated the offsite doses resulting from the fuel handling accident which, by licensee analysis, is the limiting accident for current, defueled conditions. Both the licensee's and the staff's calculations show that offsite doses resulting from the postulated fuel handling accident are well below the EPA's Protective Action Guides at the exclusion area boundary. The staff, therefore, agrees with the licensee's analysis as presented in their letter, dated May 22, 1992, and concludes that sufficient bases have been presented for our approval of the exemption request. In addition, the staff finds that there are special circumstances presented that satisfy the requirements of 10 CFR 50.12(a)(2)(ii) and (iii). In the event that the licensee seeks to resume operation, this exemption will terminate.

V.

Based on the above evaluation, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to the requirements contained within 10 CFR part 50, appendix E, section IV.F.2, for the scheduled November 1992, exercise and to section IV.F.3, on a permanent basis, for the facility, provided, however, that this exemption will terminate in the event the licensee seeks to resume operating the facility.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (57 FR 30761).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 24th day of July 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18287 Filed 7-31-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of Client Satisfaction Survey Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a revision of an information collection, "Office of Personnel Management Client Satisfaction Survey." The purpose of this survey questionnaire is to determine how well the Office of Personnel Management has served Federal Civil Service annuitants.

The total number of annuitants sampled annually will be approximately 1,500, for a total annual public burden of approximately 450 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received by September 23, 1992.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Chief, Quality Assurance Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E. Street, NW., room 3453, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0823.

U.S. Office of Personnel Management.

Douglas A. Brock,

Acting Director.

[FR Doc. 92-18198 Filed 7-31-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

Proposed New Forms and Regulation:

Form SB-1—File No. 270-366
Form 10-SB—File No. 270-367
Form 10-KSB—File No. 270-368
Form 10-QSB—File No. 270-369
Proposed Regulation S-B—File No. 270-370

Proposed Amendments to:

Form S-2—File No. 270-60
Form S-3—File No. 270-61
Form S-4—File No. 270-287
Form S-8—File No. 270-66
Form 8-K—File No. 270-50
Regulation A—File No. 270-110
Regulation 14A—File No. 270-56
Regulation 14C—File No. 270-57
Industry Guide—File No. 270-69

Proposed Amendments Will Affect:

Form S-1—File No. 270-58
Form S-11—File No. 270-64
Form 10—File No. 270-51
Form 10-Q—File No. 270-49
Form 10-K—File No. 270-48
Regulation S-K—File No. 270-2
Regulation S-X—File No. 270-3

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities

and Exchange Commission ("Commission") has submitted for OMB approval the following proposed new forms:

Form SB–1 (1933 Act registration of securities offered by "small business issuers"). It is estimated that 384 forms will be filed annually and that each form will result in 925 burden hours.

Form 10–SB (1934 Act registration of a class of securities by a "small business issuer"). It is estimated that 60 forms will be filed annually and that each form will result in 95 burden hours.

Form 10–KSB (1934 Act annual report form for "small business issuers"). It is estimated that 3,225 forms will be filed annually and that each form will result in 1,271 burden hours.

Form 10–QSB (1934 Act quarterly report form for "small business issuers"). It is estimated that 9,708 forms will be filed annually and that each form will result in 131 burden hours.

Proposed Regulation S–B will be assigned one burden hour for administrative convenience since the burden hours that will be imposed by the regulation if adopted will be reflected in the burden hours for the forms listed above.

The Commission also has submitted for OMB approval proposed amendments to the following existing forms and regulations:

Form S–2 (1933 Act registration statement) would affect approximately 334 filers and result in 567 burden hours per form.

Form S–3 (1933 Act registration statement) would affect approximately 1,730 filers and result in 419 burden hours per form.

Form S–4 (1933 Act registration statement) would affect approximately 505 filers and result in 1257 burden hours per form.

Form S–8 (1933 Act registration statement for the registration of employee benefit plan securities) would affect approximately 2,854 filers and result in 47 burden hours per form.

Form 8–K (1934 Act form used for current reports required by Rule 13a–11 or Rule 15d–11 would affect approximately 11,850 filers and results in 5 burden hours per form.

Regulation A (General exemptions form registration under the Securities Act) would affect approximately 326 filers and result in 620 burden hours.

Regulation 14A (Rules governing the solicitation of proxies) would affect approximately 8,733 filers and result in 95 burden hours.

Regulation 14C (Rules governing the distribution of information pursuant to 1934 Act section 14C) would affect approximately 83 filers and results in 91 burden hours.

Industry Guide (disclosure requirements relating to mining companies). For administrative purposes the total annual burden for all industry guides as a whole is one hour.

The proposed amendments to existing forms and creation of new forms for use by small business issuers would result in decreased reliance on Form S–1 (1933 Act registration statement), Form S–11 (1933 Act registration statement for securities of certain real estate companies), Form 10 (1934 Act registration statement), Form 10–K (1934 Act annual report), Form 10–Q (1934 Act quarterly report), Regulation S–K (Standard instructions for filing forms under the 1933 Act, 1934 Act, and Energy Policy and Conservation Act of 1975), and Regulation S–X (Form and Content of and Requirements for Financial Statements, 1933 Act, 1934 Act, Public Utility Holding Company Act of 1935, Investment Company Act of 1940, and Energy Policy and Conservation Act of 1975).

The net effect of the creation of the proposed new forms and proposed revisions to existing forms is expected to be a significant decrease in the burden hours required for the collection of information from small business issuers.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, (PRA Project Nos. 3235–0057; 3235–0059; 3235–0060; 3235–0066; 3235–0069; 3235–0072; 3235–0073; 3235–0286; and 3235–0324), Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 23, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18277 Filed 7–31–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30961; File No. SR–NASD–92–16]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Trading Consolidated Quotation Service Securities in the SelectNet Service

July 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to enhance operation of the SelectNet service by adding Consolidated Quotation Service ("CQS") securities to those eligible for trading through SelectNet.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SelectNet is the screen-based trading system offered to members of the NASD to facilitate negotiation of transactions in securities through automated means, by-passing the need for telephone contact. SelectNet allows members to enter orders, direct orders to one or all market makers in a security, and negotiate the terms of the orders through counter-offers entered into the system. The NASD is proposing to enhance SelectNet to include the ability to trade CQS securities.

The proposed SelectNet modifications will provide the same efficient, cost-effective negotiation and execution capability as is now available for Nasdaq securities to members trading CQS securities. Currently, the SelectNet service offers many features to facilitate members' trading of Nasdaq securities:

- Order entry firms may preference one particular market maker registered in the issue, may broadcast an order to all market makers registered in the stock, or may preference one market maker for a limited time and then broadcast any unexpected portion of the order;
- Market makers using SelectNet on an order-entry basis may preference orders or may broadcast orders to all broker-dealer members;
- Broadcast orders may be entered anonymously, or my be identified as to the order entry firm;
- Orders may be timed to expire anywhere from three to 99 minutes, or may be entered as day orders or after-hours orders;
- Orders may be entered as "all or none," or sent in which a minimum acceptable size of execution specified; and
- Negotiation between two parties is possible through the service with offers and counter-offers.

In addition, SelectNet provides the ability for price improvement of agency or principal orders by permitting orders to be entered, negotiated and executed at prices between the best bids or offers as shown in the Nasdaq system. Members report that SelectNet is frequently used by order entry firms to broadcast orders priced between the spread to all market makers in the security and that the broadcasts often result in discernable price improvement for those orders. For orders in CQS issues, SelectNet will operate with all of these same features. In addition, the system will screen incoming order to ascertain that the market for the stock is open (that is, not subject to a regulatory trading halt), and that any preferenced market maker is registered as a CQS market maker in the stock. During the pendency of a regulatory trading halt, or if an order is directed to a market maker that is not registered in the stock, SelectNet will reject orders placed in the system.

Trading in the Nasdaq market utilizing the SelectNet service will not affect members' obligations under other regulations, such as the requirements associated with participation in the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). ITS/CAES market makers that are linked to the exchanges through the ITS linkage remain fully subject to the provisions of the ITS Plan.

Transactions in CQS securities executed during the hours of operation of the Consolidated Tape Association ("CTA") will be trade-reported immediately after execution to the processor for dissemination via the consolidated tape. The NASD is a participant in the CTA and as such is required to submit trade reports in eligible securities to the processor within 90 seconds after execution. Executions through the SelectNet service result in locked-in trades with trade reports generated automatically and instantaneously by the service, routed through the NASD's Automated Confirmation Transaction ("ACT") service for trade reporting and risk management calculations and delivered to the consolidated tape.

The SEC has recently approved operation of the SelectNet service for off-hours sessions.[1] These sessions will extend the hours of operation for SelectNet to include a one-half hour pre-opening session (*i.e.*, between 9 a.m. and 9:30 a.m. Eastern Time) and an after-hours session extending from market closing at 4 p.m. until 5:15 p.m. Eastern Time. Trade reports for executions taking place in the early morning session will be captured real-time as they occur, and sent to the CTA processor for disseminations as soon as the system begins trade reporting. Currently the processor begins dissemination of last sale trade reports at market opening, 9:30 a.m. Eastern Time, and if this time frame remains constant, any trades occurring during the SelectNet pre-opening session will be designated with a special indicator, or marked ".SLD" to distinguish these trades from transactions at the opening so as to avoid investor confusion if the reported prices are different from prices at the opening.

Trades occurring in CQS issues after the close of normal market hours will be trade reported to the CTZ processor as they occur. The processor is operational during this session, therefore dissemination of these trade reports will occur on a trade-by-trade basis as the transactions occur.

The NASD is aware that SelectNet participants that are also members of national securities exchanges may not be permitted, because of exchange rules, to utilize the SelectNet service to trade non-Rule 19c–3 securities as principal.[2] SelectNet is, however, available to those members: (1) Effecting transactions as an agent in non-Rule 19c–3 securities; and (2) trading Rule 19c–3 securities as principal as well as effecting transactions as an agent. Members of the NASD that are not members of an exchange with off-board trading restrictions may of course use SelectNet for the trading of all CQS securities.[3]

Making CQS securities eligible for trading through SelectNet responds to members' desires for automated means of trading CQS securities and will provide members with enhanced functionality and service for those transactions. The proposed modification to SelectNet provides NASD members with the benefits of enhanced execution and price improvement capability and cost effective locked-in trades for transactions in CQS securities. In addition, the NASD considers the SelectNet service an essential component for providing continuous communications capability during normal and emergency market conditions, and the addition of CQS securities will enhance that functionality.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) and 11A(a)(1) (B) and (C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Section 11A states that "new data processing and communications techniques create the opportunity for more efficient and effective market operations" and also that it is in the public interest to assure "economically efficient execution of securities transactions." SelectNet is a communications service designed to accommodate efficient and economic negotiations and executions, timely trade reporting, and locked-in trades.

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[1] Securities Exchange Act Release No. 30561 (April 14, 1992), 57 FR 14596.

[2] Rule 19c–3 under the Act provides that no exchange policy or practice shall prohibit any exchange member from effecting transactions off the exchange in a security that was not listed on an exchange as of April 26, 1979, and has not been continually listed thereafter.

[3] Increased utilization of Third Market trading systems underscores the importance of addressing the application of off-board trading restrictions outside of normal market hours. The NASD has recommended that this important competitive issue be reviewed in the framework of the Commission's upcoming "Market 2000" study.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18280 Filed 7–31–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1663]

Bureau of Diplomatic Security; Antiterrorism Assistance Training Program

In accordance with the requirements set forth in Office of Management and Budget Circular No. A–102 and A–110, the Department of State hereby gives advance public notice of the intention to establish a Cooperative Agreement for furthering the objectives of the Antiterrorism Assistance Program (22 U.S.C. 2349 aa, et seq). Under this authority, the Department of State provides assistance to foreign security and law enforcement personnel to enhance their abilities to deter the activities of international terrorists and terrorist groups.

The Department is currently developing technical specifications and a Statement of Work (SOW) to solicit responses from state and local governments and institutions of higher education. The SOW will identify training support requirements, to include:

—Professional law enforcement training services to instruct foreign national police/government officials in the methodology and techniques for deterring the activities of terrorists and terrorist organizations.
—Criteria for instructor personnel. Training expertise will require persons with a broad range of experience in law enforcement disciplines. In addition, specialized practical knowledge of the explosive devices and weapons used by terrorists and the methods of use of those items is required. Instructor personnel will be required to possess oral and written communications skills commensurate with the subject matter. Physical fitness of instructor personnel to perform assigned duties is a requirement.
—Deliverables
—Listing and description of labor categories
—Location of the training site
—Training schedule
—Labor hour level-of-effort

The Cooperative Agreement advertised herein is designed for a five year term; i.e., one base year plus four option years to be exercised at the discretion of the Government. The ordering of instructor services will be by delivery order, each such order specifying the functional requirements, labor category, deliverable product, and performance schedule. It is estimated that the minimum guaranteed effort will be 10,000 labor hours in any one year.

Training facilities and logistics support are not part of this advertised requirement. Training exercises will be conducted at the Louisiana State Police Academy, Baton Rouge, Louisiana, unless otherwise specified in delivery orders.

Course development is likewise not part of this advertised requirement. Instructional texts will be supplied by the Government. However, the provider under this proposed Cooperative Agreement shall be qualified and prepared to develop additional training materials as may be required for instructing participants. For example, subjects such as understanding explosives, recognizing improvised explosive devices, conducting explosive searches, implementing render-safe procedures, and related antiterrorism training subjects which might emerge as unplanned, but vital, course material.

It is estimated that the proposed Cooperative Agreement will be awarded as early as December 15, 1992. Award will be for one year. Option year renewal by the Government will be in one-year increments on a non-competitive basis.

State and local governments and educational institutions desiring to respond to this notice may request copies of the requirements package from: Rudy G. Hall, DS/OSA/ASD, P.O. Box 3590, Washington, DC 20007–0090.

Dated: July 21, 1992.

June E. Callahan,

Bureau of Diplomatic Security, Department of State.

[FR Doc. 92–18199 Filed 7–31–92; 8:45 am]

BILLING CODE 4710–43–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30960; File No. SR–NASD–92–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Simplified Arbitration Procedures Under the NASD Code of Arbitration Procedure

July 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")

the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to part III, section 13 of the Code of Arbitration Procedure. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

Code of Arbitration Procedure

* * * * *

Part III—Uniform Code of Arbitration

* * * * *

Simplified Arbitration

Sec. 13 (a) through (e) Unchanged.

(f) The dispute, claim, or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim, or controversy solely upon the pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) through (l) Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The NASD is proposing to codify its existing policy of appointing a public arbitrator as the single arbitrator in small claims cases involving public customers. The current language of section 13(f) to part III of the Code provides that the single arbitrator shall be knowledgeable in the securities industry, which leaves open the possibility that an individual with close industry ties might be selected as the sole arbitrator. The proposed rule change would add the word "public" in front of the word "arbitrator" in section 13(f). This amendment would conform section 13(f) with section 19(a) of the Code, which requires the appointment of a single public arbitrator where the amount in controversy does not exceed $30,000.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [1] in that the proposed rule change will facilitate the arbitration process in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18278 Filed 7–31–92; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78o–3(b)(6).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 24, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48259.
Date filed: July 20, 1992.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/375 dated July 8, 1992, Finally Adopted Resolutions R–1 To R–28, PAC/Meet/119 dated July 8, 1992—Minutes.
Proposed Effective Date: October 1, 1992.

Docket Number: 48260.
Date filed: July 20, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0524 dated July 10, 1992, Europe-Southeast Asia Expedited Resos, R–1–045b, R–2–055b, R–3–065b.
Proposed Effective Date: October 1, 1992.

Docket Number: 48261.
Date filed: July 20, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC23 MV/P 0184 dated May 6, 1992, Mail Vote 586—(Europe-Southeast Asia Fares) R–1 To R–3, TC23 MV/P 0186 dated June 22, 1992—Amendments, R–1–049B, R–2–059B, R–3–069B.

Proposed Effective Date: October 1, 1992.

Docket Number: 48262.

Date filed: July 20, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1431 dated June 16, 1992, TC12 Mid Atlantic-Middle East Resos R-1 to R-9, TC12 Meet/P 0504 dated July 7, 1992—Minutes, TC12 Fares 0385 dated July 10, 1992—Fares Tables.

Proposed Effective Date: October 1, 1992.

Docket Number: 48263.

Date filed: July 20, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1262 dated July 10, 1992, Within Europe Expedited Resos, R-1 To R-28.

Proposed Effective Date: September 1, 1992.

Docket Number: 48264.

Date filed: July 22, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0527 dated July 17, 1992, Europe-Japan/Korea Expedited Resos, R-1 To R-41.

Proposed Effective Date: September 1/November 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-18304 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 24, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48265.

Date filed: July 22, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 19, 1992.

Description: Application of LTE International Airways, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit for authority to engage in charter transportation between any point or points in Spain and any point or points in the United States.

Docket Number: 48270.

Date filed: July 24, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 1992.

Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the Act, requests certificate authority to operate scheduled combination service between points in the United States, on the one hand, and points in Egypt, on the other hand, via intermediate points including Tel Aviv, Israel.

Docket Number: 48272.

Date filed: July 24, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 1992.

Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity for authority to operate scheduled property and mail service between points in the United States and Hong Kong.

Docket Number: 45723.

Date filed: July 22, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 19, 1992.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations requests an amendment of its foreign air carrier permit to authorize it to engage in daily scheduled air transportation of persons, property and mail on the scheduled routes: (1) Zacatecas, Mexico, on the one hand, and Ontario, California, on the other hand; and (2) Leon (El Bajio), Mexico, on the one hand, and Laredo, Texas on the other hand, using large aircraft.

Docket Number: 48008.

Date filed: July 24, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 31, 1992.

Description: Amendment to the Application of United Air Lines, Inc., pursuant to Orders 92-6-44, and 92-7-14, to authorize service between a point or points in the United States and a point or points in Colombia. Section 3 of United's Application is amended, subject to conditions.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-18305 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Dodge and Steele Counties, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier I environmental impact statement (EIS) will be prepared for a proposed highway project in Crow Wing County, Minnesota. The Tier I EIS includes the analysis needed for a location decision.

FOR FURTHER INFORMATION CONTACT: Alan J. Friesen, Program Operations Engineer, Federal Highway Administration, Suite 490 Metro Square Building, 7th Place and Robert Street, St. Paul, MN 55101, Telephone: (612) 290-3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare a Tier I EIS on a proposal to relocate MN Trunk Highway 371 (TH 371) in Crow Wing County, Minnesota. The proposed improvement would involve the construction of approximately five miles of roadway on new alignment from 1.5 miles south of Barrows, Minnesota to the existing intersection of TH 210 and TH 371 in Baxter, Minnesota.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is a new crossing over the Mississippi River. The Scoping Study will analyze eight alternative alignments and six river crossings.

The following public agencies have already responded with written comments: Minnesota Pollution Control Agency, Minnesota Department of Natural Resources, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and Mississippi Headwaters Board.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 22, 1992.

Alan J. Friesen,

Program Operations Engineer FHWA Minnesota Division St. Paul, Minnesota.

[FR Doc. 92-18268 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 28, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1120.

Regulation ID Number: CO-69-87 Final and CO-68-87 Final.

Type of Review: Extension.

Title: Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-Change Attributes.

Description: The regulation requires recordkeeping by a corporation after it undergoes an "ownership change" under sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 75,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 247,500 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-18290 Filed 7-31-92; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[AC-38; OTS No. 1623]

First Federal Savings and Loan Association of Lima, Lima, OH; Final Action; Approval of Conversion Application

Notice is hereby given that on July 8, 1992, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Lima, Lima, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Office of Thrift Supervision, Central Regional Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: July 28, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-18228 Filed 7-31-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-37; OTS No. 6092]

Macomb Federal Savings Bank, St. Clair Shores, MI; Final Action; Approval of Conversion Application

Notice is hereby given that on June 30, 1992, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application for Macomb Federal Savings Bank, St. Clair Shores, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Office of Thrift Supervision, Indianapolis Area Office, 8250 Woodfield Crossing Blvd., Suite 305, Indianapolis, Indiana 46206.

Dated: July 28, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-18229 Filed 7-31-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-39; OTS No. 7497]

Rock Savings Bank, S.A., Beloit, WI; Approval of Conversion Application

Notice is hereby given that on July 17, 1992, the Deputy Director for Washington Operations, Office of the Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Rock Savings Bank, S.A., Beloit, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thirft Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: July 28, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-18230 Filed 7-31-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES TRADE REPRESENTATIVE

Intergovernmental Policy Advisory Committee Schedule

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Intergovernmental Policy Advisory Committee Meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting of the Intergovernmental Policy Advisory Committee is scheduled for August 4, 1992, from 1:30 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Scanticon Conference Center and Hotel, 100 College Road, East, Princeton, New Jersey, 08540.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-18448 Filed 7-30-92; 1:49 pm]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held October 27–29, 1992, at the Henley Park Hotel, 926 Massachusetts Avenue, NW., Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on October 27 from 9 a.m.–4:30 p.m.; October 28 from 9 a.m.–4:30 p.m.; and October 29 from 9 a.m.–12 noon. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535–7571) prior to October 1, 1992.

Dated: July 27, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–18311 Filed 7–31–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 149
Monday, August 3, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Wednesday, August 5, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, August 5, 1992, which is scheduled to commence at 2:00 p.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—Title: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92-9, RMs 7981 & 8004). Summary: The Commission will consider adoption of a *Further Notice of Proposed Rulemaking* concerning 2 GHz fixed microwave services.

2—Office of Engineering and Technology—Title: Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and 2483.5-2500 MHz bands for the Mobile-Satellite Service (MSS) including Non-geostationary Satellites. (ET Docket No. 92-28, RMs 7771, 7773, 7805 & 7806, PPs 29-33). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking and Tentative Decision* addressing allocation of the 1610-1626.5 MHz and 2483.5-2500 MHz bands for MSS use.

3—Private Radio—Title: Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems (PR Docket No. 92-79). Summary: The Commission will consider adoption of a *Report and Order.*

4—Common Carrier—Title: In re Application of Teleport Communications—New York for Transfer of Control of Stations WLU372, WLW316, and WLW317 in the Common Carrier Point-to-Point Microwave Radio Service from Merrill Lynch Group, Inc. to Cox Teleport, Inc. Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* regarding an application to transfer control of a common carrier to a firm whose affiliate provides video programming services in the same area as the transferee.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 29, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18387 Filed 7-30-92; 3:08 pm]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

Additional Item to be Considered at Open Meeting, Wednesday, August 5th

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 2:00 p.m., Wednesday, August 5, 1992 at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

5—Mass Media—Title: Revision of Radio Rules and Policies (MM Docket No. 91-140). Summary: The Commission will consider adoption of a Memorandum Opinion and Order on reconsideration of its decision to modify the broadcast radio ownership rules.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 29, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18388 Filed 7-30-92; 3:08 pm]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, August 5, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEM TO BE DISCUSSED: Oral Presentation—Paul Simon for President Inc.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92-18401 Filed 7-30-92; 3:09 pm]

BILLING CODE 6715-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94-409) (5 U.S.C. Sec. 552b)

I, Carol Pavilack Getty, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine-thirty a.m. on Tuesday, July 28, 1992 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about twelve-thirty p.m. The purpose of the meeting was to decide sixteen appeals from National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., Victor M.F. Reyes, and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 28, 1992.

Carol Pavilack Getty

Chairman, U.S. Parole Commission.

[FR Doc. 92-18742 Filed 7-30-92; 3:10 pm]

BILLING CODE 4410-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

August 13, 1992, 4:15 p.m. Closed Session

August 14, 1992, 9:00 a.m. Closed Session

August 14, 1992, 10:15 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW, Rm. 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public

Part of this meeting will be closed to the public

MATTERS TO BE CONSIDERED:

Thursday, August 13—Closed Session: 4:15 p.m.—5:15 p.m.

4:15 p.m.—1994 Budget

Friday, August 14—Closed Session: 9:00 a.m.—10:15 a.m.
9:00a—Minutes of May and June 1992 Meetings
9:05a—1994 Budget
10:00a—Grants & Contracts (Drs. Baker and Powell)
Friday, August 14—Open Session 10:15 a.m.—Noon

Swearing In Ceremony

10:15a—Chairman's Report
10:25a—Minutes of June 1992 Meeting
10:30a—Director's Report
11:00a—Presentation on Electromagnetic Spectrum Management
11:45a—Other Business

Marta Cehelsky,
Executive Officer.
[FR Doc. 92-18748 Filed 7-30-92; 3:50 pm]
BILLING CODE 7555-01-M

Corrections

Federal Register
Vol. 57, No. 149
Monday, August 3, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ACTION

Information Collection; Final Notice

Correction

In notice document 92-16968 beginning on page 32512 in the issue of Wednesday, July 22, 1992, on page 32515, in the first column, above **Program Accessibility: Suggestions for a Self-Evaluation**, insert "OMB No. 3001-0130".

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

4 CFR Ch. III

48 CFR Parts 9900, 9902, 9903, 9904

Cost Accounting Standards Board; Recodification of Cost Accounting Standards Board Rules and Regulations

Correction

In rule document 92-7992 beginning on page 14148 in the issue of Friday, April 17, 1992, make the following corrections:

1. On page 14148, in the first column, under **SUMMARY**, in the 7th line, "CFR parts 331" should read "4 CFR parts 331".

2. On the same page, in the 2d column, in the 3d paragraph, in the 17th line, "defect" should read "effect."

3. On page 14149, in the third column, in the last line, after "subcontractors" insert a comma.

4. On page 14150, in the first column, under "E. Public Comments," in the eighth line, after "professional" remove "and".

9903.201-1 [Corrected]

5. On page 14154, in the first column, in 9903.201-1(b)(12), in the sixth line, "Defence" was misspelled.

9903.201-4 [Corrected]

6. On page 14155, in the 3d column, in 9903.201-4, in paragraph (a)(1) of the contract clause, in the 10th line,"disclosed" was misspelled and in the 18th line,"Disclosed" was misspelled.

9903.202-1 [Corrected]

7. On page 14157, in the second column, in 9903.202-1(c), in the tenth line, after "only" insert "one".

8. On the same page, in the same column, in 9903.202-1(e), in the eighth line, "determines" was misspelled.

9903.307 [Corrected]

9. On page 14184, in the third column, in 9903.307, in the second line "Cost" was misspelled.

9904.401-63 [Corrected]

10. On page 14186, in the second column, the second section heading reading "9904.401-62" should read "9904.401-63".

9904.405-60 [Corrected]

11. On page 14194, in the 1st column, in 9904.405-60(a), in the 21st line, "material," was misspelled.

12. On the same page, in the 2d column, in 9904.405-60(d), in the 12th line, "allocations)" was misspelled.

13. On the same page, in the 3d column, in 9904.405-60(e), in the 13th line, "indirect-expense" was misspelled.

9904.406-40 [Corrected]

14. On page 14195, in the first column, in 9904.406-40(b), in the fourth line, "expense" was misspelled.

9904.407-60 [Corrected]

15. On page 14198, in the second column, in 9904.407-60(f)(3), in the second line, "$10,500," should read " $18,500".

9904.408-60 [Corrected]

16. On page 14199, in the third column, in 9904.408-60(a)(2), in the seventh line, " Jone" should read "John".

17. On the same page, in the same column, in 9904.408-60(b), in the second line, after "A's" insert a comma.

18. On page 14200, in the 2d column, in the same section, in the table, the 16th line should read "Suspense to be written off in".

9904.409-50 [Corrected]

19. On page 14202, in the 2d column, in 9904.409-50(e)(4), in the 16th line, "this" should read "his".

9904.410-63 [Corrected]

20. On page 14207, in the third column, "9940.410-63" should read "9904.410-63".

9904.411-20 [Corrected]

21. On page 14209, in the second column, in 9904.411-20(a), in the ninth line, the second "of" should read "to".

9904.413-60 [Corrected]

22. On page 14216, in the third column, in 9904.413-60(b), in the table, under the heading "Asset valuation method", the "Total" column should read "$7,650.00".

23. On page 14217, in the 2d column, in the same section, in paragraph (c)(4), in the 12th line, "those" should read "these".

Appendix A to Section 9904.414 [Corrected]

24. On page 14221, in the first column, in the fourth full paragraph, the first five lines should read, "The net book value of facilities capital items in this column shall represent the average balances outstanding during the cost accounting period. This applies both to items that are subject o periodic depreciation or".

Appendix B to Section 9904.414 [Corrected]

25. On page 14222, paragraph (a) appearing above "Table VI" should appear below the table heading and before the text of the table.

26. On page 14223, the undesignated paragraph appearing above "Table IX" should appear below the table heading and before the text of the table.

27. On page 14223, paragraph (a) appearing at the bottom of the page should appear on page 14224 in "Table X" below the table heading and before the text of the table.

28. On page 14424, in Table X, in paragraph (b), in the second line, "form" should read "from".

9904.415-50 [Corrected]

29. On page 14232, in the first column, in 9904.415-50(e)(7)(ii), the second line should read "employees or based on a uniform .

9904.416-50 [Corrected]

30. On page 14233, in the third column, in 9904.415-50(a)(1), in the first line, "trusted" should read "trusteed".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 750

[FHWA Docket No. 92-22]

RIN 2125-AC99

Removal of Nonconforming Signs

Correction

In proposed rule document 92-16768 beginning on page 31470 in the issue of Thursday, July 16, 1992, on page 31470, in the second column, under **SUMMARY**, in the sixth line, "23 U.S.C. 132" should read "23 U.S.C. 131".

BILLING CODE 1505-01-D

federal register

Monday
August 3, 1992

Part II

Department of Education

Educational Research Grant Program: Improved Assessments of K-12 Student Performance

DEPARTMENT OF EDUCATION

Educational Research Grant Program: Improved Assessments of K–12 Student Performance

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal years 1993 and 1994.

SUMMARY: Under the Educational Research Grant Program the Secretary proposes a priority for fiscal years 1993 and 1994 for projects to support research and development of new or improved assessments of student performance in kindergarten through grade 12 (K–12). The Secretary takes this action to focus financial assistance on research and development leading to new or improved assessment methods and practices. This action is part of an overall strategy to assist State efforts that can improve student achievement through the use of new or improved assessments linked with challenging standards and instructional reforms.

DATES: Comments must be received on or before September 2, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Dr. Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue NW., room 610, Washington, DC 20208–5573.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Conaty. Telephone: (202) 219–2079. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Educational Research Grant Program, authorized under 20 U.S.C. 1221e, supports scientific inquiry designed to advance educational theory and practice. The results of scientific inquiry will help move the Nation towards the achievement of the National Education Goals. One of the six National Education Goals calls for students to leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography. The President's AMERICA 2000 strategy for helping the Nation achieve the goals calls for the creation of world-class standards for student achievement and for a system of improved assessments tied to these standards. The Secretary believes this strategy should be expanded beyond the core subjects to include civics and the arts.

In its report of January 24, 1992, the National Council on Education Standards and Testing, a congressionally created group charged with investigating the desirability and feasibility of national standards and improved assessments, called for the development of these standards and the development of a first-rate system of assessments as urgently needed steps in reforming American education. Representatives of the President, the Secretary, and the Congress served as members of the council.

The council recommended a system of multiple assessments linked to the national standards that would have two major components: (1) Individual student assessments and (2) large-scale assessments of representative samples of students from which inferences about the quality of programs or educational systems could be made. The National Assessment of Educational Progress is an example of a large-scale assessment that is used to monitor educational systems.

This priority is directed primarily, although not exclusively, toward the first component of a system of multiple assessments: assessments of individual students, attending either public or private schools, that provide information to students, parents, and teachers about student progress toward achieving national standards. Unfortunately, existing assessments often fail to provide measures of student performance that are useful to parents, teachers, policy makers, and others interested in improving classroom practice and the performance of individual schools.

In order to assist with the development of high-quality assessments, the Secretary proposes to support research and development of a variety of new and improved assessments.

The feasibility of setting national standards and their effectiveness in encouraging State and local reform have been demonstrated by a number of national professional organizations. Recently, the National Council of Teachers of Mathematics developed national standards for what students should know and be able to do in mathematics. While there do not exist fully developed national standards for K–12 in English, science, history, geography, civics, and the arts, considerable work has been done by a variety of organizations toward development of these standards.

World-class standards that define what students should know and be able to do provide the foundation for systemic reform. State curriculum frameworks serve as the bridge between these standards and the classroom by providing guidelines for the content of the curriculum and for how that content should be organized and presented. They provide the guidelines for curriculum and course design at the district, school, and classroom levels. New or improved assessments of student performance would indicate how well students are doing relative to the standards and the curriculum frameworks.

Assessing what students in a State know and are able to do is a critical step in the process of ensuring that the State's students are prepared to meet world-class standards. Using information from research supported by the Department's Research and Development Center Program and other programs, States could develop student assessments that embody high standards and provide useful information to parents, teachers, schools, districts, and States. By proposing to support research and development of new or improved assessments, the Secretary seeks to enable more States to use student assessments to improve curriculum and classroom practice.

Under the proposed priority the Secretary proposes that States, or States in cooperation with other eligible applicants, may apply for funding to support the activities described in this notice. States must participate in the design, development, and demonstration of student assessments linked to challenging curriculum because States bear central responsibility in matters of education. States have the primary responsibility for coordinating efforts to raise general standards, disseminating curriculum frameworks, influencing new directions in teacher education and professional development, establishing appropriate criteria for teacher certification, and assessing student performance.

The legislative authority for the Educational Research Grant Programs expires at the end of fiscal year 1992. Congress is now considering reauthorization of this program. However, the Secretary is publishing this notice of proposed priority to demonstrate his strong support for research that would further the development of new assessments. The publication of the notice of final priorities will await the outcome of the reauthorization process.

The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice,

available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

New or Improved Assessments of Kindergarten through Grade 12 Student Performance

This proposed priority will support projects by States, or States working in cooperation with other eligible applicants, that—

- Are appropriate for selected grade levels, particularly grades four, eight, and twelve;
- Will contribute to the development of K–12 assessments linked to challenging standards and curriculum frameworks;
- Document the activities described in paragraphs (a) through (d) in a manner that will allow others to use the research results; and
- Include research and development activities related to one or more of the following:

(a) New or improved assessments linked to high standards and challenging curriculum in English, mathematics, science, history, geography, civics, or the arts.

(b) New or improved assessment items or tasks that are sensitive to student differences and that are reliable, valid, and fair for all students.

(c) New or improved assessments that include recent assessment innovations, such as portfolios and open-ended projects.

(d) New or improved assessments that could be used in national assessments, such as the National Assessment of Educational Progress conducted by the National Center for Education Statistics.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 610, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR part 700.

Program Authority: 20 U.S.C. 1221e.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research Grant Program)

Dated: May 26, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–18238 Filed 7–31–92; 8:45 am]

BILLING CODE 4000–01–M

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federal register

Monday
August 3, 1992

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 303 and 381

Exemption of Pizzas Containing Meat or Poultry Product; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 303 and 381

[Docket No. 91-041F]

RIN 0583-AB52

Exemption of Pizzas Containing Meat or Poultry Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal meat and poultry products inspection regulations to implement Public Law 102-237. This law amended the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to exempt from Federal inspection the preparation of pizzas topped with inspected and passed, cooked or cured, ready-to-eat meat food or poultry product under certain terms and conditions. This final rule also clarifies that such products containing poultry products are subject to the adulteration and misbranding provisions of the PPIA. The Federal meat inspection regulations already specify that any articles produced at businesses or operations that are exempted from Federal inspection must comply with the adulteration and misbranding provisions of the FMIA.

EFFECTIVE DATE: August 3, 1992. The incorporation by reference of certain definitions and provisions in the Food and Drug Administration's Food Service Sanitation Manual listed in the regulations is approved by the Director of the Federal Register as of August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick Clerkin, Acting Assistant Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-5604.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In analyzing the effect of this final rule, the Agency focused primarily on the school lunch market because it believes this market, as opposed to other public or private nonprofit institutions, will be the most affected by this rule. The final rule is not expected to have any net impact on the total consumption of pizza. FSIS anticipates increased competition in the school lunch market through this rule by making an alternative product more available. Generally, frozen pizzas are purchased for the school lunch market. In 1991, the National School Lunch Program (NSLP) served over 4 billion meals. For analytical purposes, FSIS estimated that 20 percent of the meals are pizza. The school lunch pizzas are packaged as individual servings ranging from 5 to 6 ounces. The Agency's analysis used an average serving size of 5.3 ounces based on a sample of serving sizes. Using these data and assumptions, the NSLP served approximately 808 million servings of pizza or 267.6 million pounds of pizza in 1991. An estimated 78 percent or 208.7 million pounds of this product was meat-topped pizza. These estimates show that the NSLP market represents a substantial share of the frozen pizza market.

FSIS expects this rule will result in some shift in sales in the school lunch market from frozen to fresh pizzas. The eventual magnitude of the shift will be determined by price, student preference, and availability; i.e., not all schools will have access to the alternative product. Based on the Agency's analysis, the likely shift in sales is estimated to be in the $36 to $48 million range.

A secondary impact of the final rule will be an increase in the demand for cheese versus cheese alternate. Assuming that fresh pizzas will contain only cheese, the Agency's analysis estimates that the shift in sales will be accompanied by an increase in the demand for cheese of 3 million pounds.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will exempt from Federal inspection the preparation of pizzas topped with inspected and passed, cooked or cured, ready-to-eat meat food or poultry product under certain terms and conditions.

States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing requirements with respect to premises, facilities, and operations of federally inspected meat or poultry products, and any marking, labeling, packaging, or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA. Under the FMIA and the PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected* products and establishments that are at least equal to those required under the FMIA or PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

If adopted, this rule will not have a retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. Those administrative procedures are set forth in the rules of practice governing procedures for the exemption of certain pizza operations at 9 CFR 303.1(e)(2) and 381.10(e)(2) under the FMIA and the PPIA, as amended by Public Law 102-237.

Effects on Small Entities

The Administrator, FSIS, has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will principally impact two industries that produce and market pizza. The fresh pizza industry is composed of establishments that prepare fresh pizza for immediate consumption either as a delivery service or as an eat-in restaurant or pizzeria or both. Under existing regulations, these businesses cannot sell meat-topped pizzas to schools for resale to students without operating under Federal inspection. The other industry is the frozen pizza industry that is synonymous with the federally inspected meat and poultry establishments that produce and package frozen pizza. These establishments may also produce a nonfrozen, refrigerated product that is distributed to retail stores, but is not the same product as fresh pizza.

The final rule will ease regulatory requirements for certain segments of the pizza industry which will, in turn, provide a positive impact on the affected industry. Such businesses will

be exempt from continuous, daily inspection, thus eliminating any costs associated with complying with related inspection requirements. However, this final rule will require exempted businesses to comply with certain provisions in regard to the facilities and operations of such businesses. Certain other requirements will also apply to such exempted businesses in order to maintain public health protection.

Because of the diversity of facilities and operations between large and small entities, and the variances existing within each such category of entities, FSIS cannot precisely measure the costs imposed by this final rule upon entities opting to operate under this exemption. However, because of the wide acceptance of FDA's Food Service Sanitation Manual's underlying food safety principles and their implementation through existing State and local codes, FSIS believes the costs for individual pizza facilities should be minimal. Decisions by individual businesses on whether to operate under such an exemption will be based on their conclusions that the benefits will outweigh the implementation costs.

Implementation Date

This final rule is effective upon the date of publication because it is "a substantive rule which grants or recognizes an exemption or relieves a restriction" (5 U.S.C. 553(d)(l)). Therefore, this final rule is exempted from the Administrative Procedure Act's 30-day delayed effective date requirement.

Background

Inspection Required of Certain Operations

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) require, among other things, inspection of a broad spectrum of operations and facilities involved in the preparation and processing of food derived from livestock (i.e., cattle, sheep, swine, goats, horses, mules, or other equines) and poultry. The FMIA provides that meat and meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishments must be prepared under Federal inspection unless the operations of the establishment are exempted (21 U.S.C. 603, 604, 606, 608, 610, and 623). The PPIA includes comparable inspection requirements for the processing of poultry products (21 U.S.C. 454, 455, 456, 458, and 459). Establishments preparing or processing product solely for distribution within a State may instead be subject to State inspection if the State develops and effectively enforces requirements that are at least equal to those under the FMIA or PPIA. Section 301(c) (1) and (3) of the FMIA (21 U.S.C. 661(c) (1) and (3)) and section 5(c) (1) and (3) of the PPIA (21 U.S.C. 454(c) (1) and (3)) provide, in relevant part, that the Secretary of Agriculture shall designate any State for Federal inspection (including organized territories) which does not have, or is not effectively enforcing, such requirements; and if a State is so designated, wholly intrastate operations also are subject to Federal inspection and other requirements of the FMIA and PPIA.

Pizza Operations Required To Be Under Inspection

Over the past several years, operators of pizza restaurants have attempted to increase their sales of pizza and meat topped pizzas to school lunch programs. This resulted in a higher level of public awareness of the requirement that some products produced for such sales be produced under Federal or State meat inspection. A restaurant chain proposed and FSIS approved the use of a "Sales Agency Agreement" whereby the restaurant chain could sell meat pizzas directly to students at the school without Federal meat inspection under the so-called "restaurant central kitchen" exemption to the statutory requirement of inspection. However, the National School Lunch Act (NSLA) prohibits a National School Lunch Program (NSLP) school from contracting with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price, and paid reimbursable meals to all eligible students. A reimbursable meal must meet prescribed meal pattern requirements and, in this case, would include more than a slice of pizza. If the restaurant chain chose to function as a Food Service Management Company and offer complete meals, then meals served through such an operation could be eligible for reimbursement. Further, under the NSLP regulations, no foods may be sold in a lunch room in competition with the NSLP unless all of the income from the sale accrues to the benefit of the school food service, the school, or student organizations approved by the school. An option available to the restaurant chain was to have meat pizzas inspected and passed under the FMIA in order to sell meat pizzas to schools as a vendor, which in turn, would sell to the children. In this case, the pizza could be sold by the schools, either as part of a NSLP meal and could be claimed for reimbursement by the schools, or a la carte. Federal inspection of this kind is currently conducted at many facilities producing pizzas. However, because the restaurants' customary operations are exempt from Federal inspection under the FMIA, the facilities may not be designed to meet the Federal meat inspection standards.

Operators of pizza restaurants and operators of school food services continued to question why the preparation of pizzas using meat or poultry toppings, which were produced as cooked and ready-to-eat under inspection, by businesses which were already subject to local health inspection, should require an additional Federal inspection. However, meat or poultry pizzas are "meat food products" or "poultry products" under the FMIA and PPIA, and their preparation for consumers have traditionally been subject to Federal inspection unless prepared in an exempted establishment. As discussed above, preparation of meat and meat food products, or poultry or poultry products must be done under Federal or State inspection unless the operations of the preparing establishment are exempted from inspection requirements. Existing exemptions covering operations of pizza restaurants do not extend to their production of meat or poultry pizza for wholesale transactions.

FMIA/PPIA Amended

On December 13, 1991, Public Law 102–237 was adopted. This law, in part, amended section 23 of the FMIA (21 U.S.C. 623) and section 15 of the PPIA (21 U.S.C. 464) to require that the Secretary, through regulation, exempt pizzas containing meat or poultry ingredients from the inspection requirements of the Acts, under such terms and conditions as might be necessary to ensure food safety and protect public health, such as special handling procedures, if: (a) The meat food or poultry product components of the pizzas have been prepared, inspected, and passed in a cured or cooked form as ready-to-eat in compliance with the requirements of this Act; and (b) the pizzas are to be served in public or private nonprofit institutions. The law provides that the Secretary may withdraw or modify any exemptions when he or she determines such action is necessary to ensure food safety and to protect public health. The law further provides that such regulation be issued as final no later than August 1, 1992, and that prior to issuance as a

final rule, at least one public hearing be held to examine the public health and food safety issues raised by the exemptions.

The law creates an exemption for products limited to those conforming to provisions for the use of specific types of inspected toppings, and limited to such products when sold for service in public or private nonprofit institutions. This clearly limited exemption is to be further limited by "such terms and conditions as the Secretary shall prescribe * * * that may be necessary to ensure food safety and protect public health, such as special handling procedures." The latter terms and conditions must be appropriate to health and safety concerns associated with these specific products and their distribution.

Other Exempt Activities

In considering what terms and conditions were appropriate to any such pizza exemption, FSIS examined current exempt activity.

The FMIA and PPIA both include provisions for exemption from inspection requirements for specific operations of certain businesses. The applicability of each exemption is determined, among other things, by the product, the characteristics of the operations of the business, the consumer involved, and the amount of product. Special conditions for manufacturing facilities or labeling under each exemption, if any, are established by law and regulation. These exemptions are set forth in 9 CFR part 303 and 9 CFR part 381, subpart C.

The operations judged by the Agency to be most similar to the exempt pizza operations are those conducted under the "restaurant central kitchen" exemption. Restaurants can only prepare foods for sale to consumers at their restaurant, or, in the case of restaurant central kitchens, to consumers at satellite restaurants or vending machines under their ownership or operation. The restaurant central kitchen exemption at 9 CFR 303.1(d)(2)(iv)(*c*) and 9 CFR 381.10(d)(2)(iv)(*c*) provides product and handling limitations. These limitations include: (a) shipment of fully cooked, ready-to-eat products only; (b) no intervening transfer or storage of products between the processing establishment and the site where meals are served to consumers; and (c) transportation only by employees of the processing firm to its satellite restaurants. The adulteration and misbranding provisions of the PPIA and regulations, other than the official inspection legend, apply to the exempted articles prepared in retail stores, restaurants, and similar retail-type establishments. The adulteration and misbranding provisions of the FMIA and regulations, other than the official inspection legend, apply to all exempted meat articles.

The restaurant central kitchen exemption was structured to include more complex processing operations than anticipated under the pizza exemption. The restaurant central kitchen operations are conducted in a similar environment to that presumed in the pizza exemption. In fact, the restaurant central kitchen exemption could apply to some operations at pizza restaurants. Under that exemption, a pizza restaurant could prepare any meat or poultry product in a cooked and ready-to-eat form for transportation by its employees to another restaurant under the same ownership or control, for service to consumers at that site, without any intervening transfer or storage. A pizza restaurant could produce a wide range of meat and poultry products for that limited distribution. The operating characteristics, which necessarily differentiate activity under the pizza exemption from the restaurant central kitchen activity, are that the exemption will only apply to pizzas conforming to provisions for the use of specific types of inspected toppings, and that such products will be sold for service in public or private nonprofit institutions, and not just in their own restaurants. There are additional features of the restaurant central kitchen exemption that are not contradictory to the provisions of the authorizing legislation for the pizza exemption. These include the requirement that the products be cooked and ready-to-eat when they leave the restaurant central kitchen, and the prohibition on intervening transfer or storage before delivery and service to consumers. The former feature is a legislated requirement of the restaurant central kitchen exemption; the latter was established through regulation.

No prior approval from FSIS is required to operate in this or any other exempt status. Adhering to the limitations on operations and sales peculiar to this exemption establishes the exemption. The regulatory conditions of this exemption from inspection requirements were developed with a recognition that the conditions should fit into an overall scheme of government regulations at the Federal, State, and local level. Existing inspection or regulatory authority and standards, already imposed on businesses and individuals by Federal, State or local governments, should be given full weight in establishing further regulatory conditions, such as those now developed by FSIS to implement the exemption provisions mandated by Public Law 102–237. It is recognized that FSIS, through its Compliance Program, monitors the distribution of meat and poultry products in exempted facilities and other operations outside federally inspected establishments.

FSIS exercises authority to detain products which the Agency believes are adulterated or misbranded, whether the products (a) are produced under Federal inspection, (b) conform to an exemption from Federal inspection, or (c) are not produced under Federal inspection and do not conform to an exemption from Federal inspection. FSIS can also seek judicial seizure and condemnation of such products.

State and local officials also inspect handling of food products within their jurisdictions. Officials of the Retail Food Protection Branch, Center for Food Safety and Applied Nutrition, Food and Drug Administration, have advised FSIS that State and local governments have inspection and sanitation ordinances which substantially conform to the model food service sanitation ordinance contained in the Food Service Sanitation Manual, DHEW Publication No. (FDA) 78–2081.[1] The Food Service Sanitation Manual encourages the food and beverage industry to develop and maintain food service sanitation programs that are based on uniform, nationally accepted public health principles and standards. The manual sets forth provisions on food handling and preparation, employee health, sanitation of equipment and utensils, sanitary facilities and controls, construction and maintenance of physical facilities, operation of mobile food units or pushcarts, operation of temporary food service establishments, and compliance procedures.

Proposal

On May 22, 1992, FSIS published a proposed rule in the **Federal Register** to amend the Federal meat and poultry products inspection regulations to implement Public Law 102–237 (57 FR 21858). As previously discussed, this law, in part, amended the FMIA and PPIA to exempt from Federal inspection the preparation of pizzas topped with inspected and passed, cooked or cured, ready-to-eat meat food or poultry product under certain terms and conditions. FSIS proposed that to qualify for the exemption: (1) The pizzas would

[1] A copy of this manual is available for public review in the FSIS Hearing Clerk's Office.

have to be served in public or private nonprofit institutions; (2) the pizzas would be ready-to-eat (i.e., no further cooking or other preparation is needed, except that they may be reheated prior to serving if chilled during transportation); (3) the pizzas would have to be transported directly to the receiving institution by employees of the preparing firm, receiving institution, or a food service management company contracted to conduct food service at the public or private nonprofit institution; and (4) there would be no intervening transfer or storage of the pizzas.

The proposed rule incorporated by reference the definitions at chapter 1, 1–102, and the provisions of chapters 2 through 9, except section 4–208, part IV, of the Food and Drug Administration's Food Service Sanitation Manual. The proposed rule made conformance to these provisions a condition for businesses and operations claiming this exemption.

In addition, the proposed rule defined "private nonprofit institution" and provided provisions allowing the Administrator to withdraw or modify the exemption of certain pizza operations when he or she determines that such action is necessary to ensure food safety and public health.

Discussion of Comments

On June 9, 1992, FSIS, pursuant to Public Law 102–237, conducted a public hearing in Washington, DC, to provide an opportunity for examination of the public health and food safety issues raised by the granting of the exemption of pizzas containing meat or poultry product. In addition to the oral comments received at this public hearing, the Agency also received written comments concerning its proposal.

FSIS received 43 total comments in response to the proposed rule. The commenters included: Seven local school food authorities, a State level child nutrition director, four pizza restaurant chains (one also represented a national restaurant association), two pizza restaurant operators, six consultants to the food industry who commented at the request of a national pizza restaurant chain (these included a former head of the Center for Food Safety and Applied Nutrition at FDA and three former heads of State food regulatory agencies), four frozen food businesses, a State association of meat food processors, a regional and seven national associations of frozen food and/or meat food product manufacturers, two consultants to the food industry who commented at the request of a national association of frozen food manufacturers (including one former Federal inspection official), two national consumer interest groups, two State level consumer interest groups, a food broker, a U.S. Congressman, a union official representing Federal meat and poultry inspectors, and a Federal agency. Commenters, among other things, addressed the general regulatory framework, pizza safety, the proposed provisions of the rule, and the small business impact.

1. General Regulatory Framework

Four commenters offered support for the FSIS proposed regulatory provisions in their totality. These commenters included a former head of FDA's Center for Food Safety and Applied Nutrition and a consultant to the food industry, both of whom commented at the request of a national pizza restaurant chain. They characterized FSIS's proposed rule as "reasonable and appropriate," and as providing "ample protection for the public," respectively. One pizza restaurant operator offered general support for the regulatory proposal. The U.S. Congressman who sponsored Public Law 102–237 stated, at the public hearing and in written comments, that the rule reflected the intent of Congress. Additionally, one commenter, a national association for the meat industry, stated that the proposal was reasonable in that it narrowly drew the exemption.

Other commenters addressed broader issues than the specific elements of the proposed rule. Some questioned whether any exemption from inspection requirements should be granted. A national consumer interest group suggested that no exemption should be granted until a congressionally mandated study of evaluation criteria for exemptions is completed. The food inspectors' union official stated that some form of daily inspection should be retained. A State association of meat food manufacturers and a national consumer interest group expressed the concern that this regulatory establishment of the exemption would set a precedent for exemptions of other meat and poultry products.

FSIS believes that the congressional intent was clear that this exemption must be implemented before completion of the cited exemption study. Congress established an August 1, 1992 deadline for the publication of a final rule implementing this particular exemption. The legislated due date for the study is not until December, 1993. FSIS does not consider any program of daily inspection to have been envisioned by Congress, and further believes that it would be excluded by the clear language of the amendment. Additionally, the Agency does not consider this exemption to be a precedent for other product exemptions. Congress clearly intended this to be a limited exemption.

Some commenters focused on the impact that this exemption would have on competition for school lunch sales of pizza. One consultant to the food industry, commenting at the request of a pizza restaurant chain, concluded in his analysis of the relative safety of pizza as a food, that the issue was not one of food safety but of whether fresh pizza would be allowed to compete with frozen pizza. One frozen food manufacturer and one national association of frozen food manufacturers stated that this exemption creates an unfair competitive situation in that operating costs are higher for businesses operating under Federal inspection. A congressman joined the latter commenters in asserting that the exemption should apply to frozen, as well as fresh, pizza.

FSIS believes that Congress fully intended to open the school lunch market to non-federally inspected producers of meat-topped pizza under certain conditions. Any manufacturers, including manufacturers of frozen pizza, who are willing to operate within the limits of the exemption can compete on the same basis.

Some commenters identified characteristics of a regulatory scheme they either wanted or did not want, without limiting their comments to the proposed rule. For example, five local school food authorities commented that State and local health inspections of meat-topped pizza preparation and service were adequate, and that a duplicate inspection of schools and restaurants by the Federal government was unnecessary and could be costly to schools and restaurants. One pizza restaurant wanted a simple, workable, and easy to understand final rule, without creating a bureaucracy of unnecessary inspections and reports. Another pizza chain official, also representing the views of a national restaurant association, stated that State and local authorities and regulations are sufficient, and that there is no need to add to the level of inspection at the local level. This commenter asserted that further inspections would be redundant, expensive, and burdensome, especially for small businesses. All restaurant chain commenters preferred that no standard be established beyond adhering to State and local laws and ordinances.

Other commenters took an opposing viewpoint. They suggested a comprehensive regime of registration, prior inspection, approval, and periodic Federal review. Some suggested that the Federal reviews be as often as quarterly. Two frozen food manufacturers suggested registration of exempt businesses and pre-operational review of their facilities. Two national consumer interest groups, two State level consumer interest groups, three national and one regional association of frozen food or meat processors, and two consultants to the food industry, commenting at the request of one of the national frozen food associations, suggested that FSIS implement a system of applications for exempt businesses, prior Federal inspection of facilities, and periodic Federal inspection. Two of the commenters suggested that FSIS require the exempt operators to register as meat or poultry handlers under 9 CFR 320.5. The union representing Federal meat and poultry inspectors suggested that there be a system of application for exemption, grant of exemption, and some form of daily inspection. Several of these commenters suggested that the FSIS proposal inappropriately relied on State and local food regulatory agencies to review these operations. One commenter suggested that State and local regulatory agencies might be unwilling to review the exempt operations. Another commenter stated that FSIS failed to adequately monitor businesses operating under other exemptions from inspection requirements. One commenter, a former Federal meat inspection official, stated that FSIS had available manpower to make the reviews cited. All of these commenters sought some system of Federal review and supervision of exempt businesses, citing a need for FSIS to know what businesses were operating under the exemption in order to monitor them. The consumer interest groups concluded that FSIS's proposed rule would have no positive public health consequences. These consumer interest groups and two others had submitted to FSIS a citizens' petition for rulemaking that would have established a regulatory framework requiring exempt operations to meet, at a minimum, all requirements of Federal meat and poultry regulations, excepting the provisions for daily inspection. One national association of frozen food manufacturers advocated the same regulatory approach.

FSIS concludes that this exemption should fit the general model of exemptions from inspection requirements. That is, that no prior approval to operate under an exempt status is required. Adhering to the limitations on operations and sales and to the standards articulated in the rule will establish the exemption. FSIS also concludes that it will not perform routine inspections of the facilities and exempt operations of these businesses, which would be redundant to inspections carried out by State and local food regulatory agencies. Also, contrary to comments by a former Federal meat inspection official, FSIS concludes that it does not have sufficient resources available to conduct such reviews and inspections. FSIS and State meat and poultry inspection programs in nondesignated States do monitor meat and poultry products in both intrastate and interstate commerce. They routinely determine if products in such commerce are inspected or conform to some exemption from inspection requirements. Both the States and FSIS exercise authority to detain products believed to be adulterated or misbranded and to seek seizure and condemnation of such products. FSIS also concludes that a Federal registration of these exempt businesses would not serve a practical purpose. These businesses are already required under State or local ordinances to have permits or licenses from the State or local food regulatory agency. Further, FSIS believes that because the Federal role with respect to inspection-exempted manufacturers focuses on monitoring of the exempted products in commerce, rather than on inspectional activities, no registration requirement is established. Finally, FSIS does not consider conformance to all the features of its meat and poultry regulations to be necessary to ensuring food safety and protecting public health for the specifically limited products and commerce covered by this exemption.

Some commenters stated that the Agency's proposed rule was deficient in that it did not establish recordkeeping requirements in the same manner as the restaurant central kitchen exemption regulations do. Three national associations of frozen food or meat food products manufacturers and one frozen food manufacturer stated that a lack of records of meat purchases and sales would hamper FSIS' regulatory review and actions.

FSIS concludes that the recordkeeping requirements at 9 CFR 320.1 through 9 CFR 320.4 apply to these inspection-exempted operations. The recordkeeping requirements for restaurant central kitchens were expressly stated in the regulations because their records pertain to internal transactions of the inspection-exempt operator which would not normally be subject to recordkeeping requirements. Because the transactions under this exemption involve a sale to a second party, the recordkeeping provisions apply.

2. Pizza Safety

Two national associations of frozen food processors, a consultant to the food industry commenting at the request of one of those associations, a national restaurant chain, two consultants to the food industry commenting at the request of that restaurant chain, and a national consumer interest group commented on the Center for Disease Control's (CDC) data on outbreaks of food borne illness in which pizza was implicated as a possible source. Each referenced the fact that CDC had identified 28 reports of illnesses between 1973 and 1988, 21 of which identified restaurants as the food source.

Due to the paucity of the data reported and the speculative character of the comments, FSIS did not find the reported CDC data or the comments offered to be very useful in drawing conclusions about the relative safety of pizza.

Three restaurant chains, five consultants to the food industry commenting at the request of one restaurant chain, two local school food authorities, a national association of frozen food manufacturers, and a consultant to the food industry commenting at the request of that association, offered detailed comments of their experience with pizza service or detailed information on risks associated with pizza products and their production. One restaurant chain reported that over the past four years, with current annual sales exceeding $240 million, it was unaware of any documented cases in which consumption of its pizza products had resulted in serious illness. Another restaurant chain reported that it has been selling pizza to schools since 1986, with current sales of approximately 1670 pizzas weekly, and that it has had no reported incidences of illness. This restaurant chain reported temperature data for its products. Its products are cooked at 560° to 580 °F for 7 minutes, maintained at 190 °F when out of the oven, transported at 160 °F, and served at 140°–145 °F. A third restaurant chain reported that it has provided 65 million servings of pizza in schools since 1989, with no reported incidence of illness. This restaurant chain also provided test data on the transport pouch that the restaurant is currently using. For five pizza types, out of oven temperatures

ranged from 175°–187 °F. After 30 minutes in the pouch, the temperature range for those products was 153°–161 °F. One commenter, the former director of FDA's Center for Food Safety and Applied Nutrition, commenting at the request of a restaurant chain, characterized pizza as a very safe product, due to the high temperature used in cooking. Two former heads of State food regulatory agencies, commenting at the request of a restaurant chain, citing their 16 and 20 year tenures in those positions, reported that there were no records of health related problems associated with fresh baked pizzas in their jurisdictions during their tenures. One reported that her survey of regulatory chiefs throughout New England did not yield any reports of significant food safety problems associated with the consumption of pizza; One local school food authority commented that pizza for its 43 thousand student system is purchased on a bid specification, which requires that the temperature at delivery be above 150 °F and that delivery be made 5 to 8 minutes before service. Another local school food authority with a student population of 30 thousand, commented that 522 pizzas, 4100 servings, are delivered daily to the schools 10 minutes before service. The pizzas are held at 180 °F. Deliveries are made from a dozen servicing restaurants and the schools have experienced no health-related or food safety problems with the pizza. Two consultants to the food industry commenting at the request of one restaurant chain, and a consultant to the food industry commenting at the request of a national frozen food manufacturers' association, offered detailed analyses of microbiological and related food safety concerns for meat-topped pizza. These experts agreed that the food safety strength of pizza is cooking at high temperatures that would be expected to inactivate vegetative cells of pathogenic microorganisms that contaminate toppings and ingredients. These experts also agreed that the greatest risk to food safety is post-baking contamination of the product. The primary difference in their approaches is that the consultant to the national association of frozen food manufacturers did not believe that restaurants would follow good manufacturing practices or develop proper procedures or practices for safe food production and handling.

FSIS found these comments useful in evaluating comments on the specific provisions of the proposal.

3. Proposed Provisions

A. Defining "Ready-To-Eat" Toppings

Comments

Six commenters directly addressed this provision. Two State level consumer interest groups supported the FSIS proposal because it limited further processing which might cause cross contamination of product. One national association for the meat industry supported the provision in tandem with the provision defining "ready-to-eat" pizza in that the provisions narrowly constructed the exemption. One national association of frozen food manufacturers and two consultants to the food industry commenting at their request also addressed this provision. The association rejected the provision stating that there was no effective enforcement mechanism to ensure that exempt businesses complied with the provision. One of the two consultants stated that while the provision helped, it did not go far enough since other regulatory provisions could not ensure the toppings would be handled in a sanitary manner. The other consultant stated that the regulation could not ensure that such toppings would not be mishandled, for example, frozen toppings might be applied without proper thawing. The consultant also pointed out that since the previously inspected toppings are not produced to a microbiological standard, there is a risk that the toppings could contaminate the product.

FSIS considers the provisions for food handling addressed later in this analysis to be sufficient from a regulatory standpoint to satisfy the concerns expressed regarding mishandling of product. FSIS also believes the condition and integrity of inspected toppings to be adequately controlled by its inspection program. The provision which defines "ready-to-eat" toppings will be adopted as proposed.

B. Defining "Ready-To-Eat" Pizza

Nine commenters directly addressed this provision. Two supported it as proposed. One national association for the meat industry supported it in tandem with the previous provision, as discussed. One consultant to the food industry, a microbiologist commenting at the request of a national pizza restaurant chain, noted that thermal treatment of microbiological pathogens, which is presumed under this proposed definition, made the risk associated with this product negligible.

Seven commenters did not endorse the provision. One frozen food manufacturer commented that this definition was not required by the law and that the reference to "chilled" raised questions about the form of transportation that would be used, the length of time the product might be held before use, and the inherent difference between chilled pizzas and frozen pizzas. One regional and two national associations of frozen food and meat processors, one consultant to the food industry, commenting at the request of one of those national associations, and two State level consumer interest groups also questioned the provision's reference to the chilling of the cooked pizza product. These commenters suggested that chilling posed a risk to food safety. The consultant to the food industry, citing a lack of adequate refrigeration equipment in the restaurant trade, suggested that chilling be prohibited. The regional association of meat food processors commented that permitting the refrigeration and chilling of product would make operations more like food processing operations than like food service operations. As such, they felt that traditional meat inspection styled standards and regulations would be more appropriate than those set forth in the FDA Food Service Sanitation Manual.

FSIS agrees that the definition of ready-to-eat pizza is not required by the law. However, it is an essential element of the Agency's proposal. In fact, FSIS considers this definition to be a linch pin to the regulatory framework proposed. The provision that the product require no further preparation at the stage that it is shipped ensures that the product will have received precisely the type of thermal treatment cited by one commenter. While chilling of the product does introduce an additional procedure, FSIS considers the fully prepared and cooked pizza to be essentially a safe product. Based on the descriptions of pizza service offered by commenters on this rule, we do not anticipate that many would opt to refrigerate or chill the cooked product. Where that option is elected, adherence to the cold storage and related provisions of the regulation would ensure the continued safety of the product. Businesses, such as restaurants, whose refrigeration equipment would not enable them to comply with the cold storage provisions would be limited to the shipment of product conforming to the hot storage provisions of the regulation. The provision which defines "ready-to-eat" pizza will be adopted as proposed.

C. Requires Direct Delivery To Institutions by Employees

Only one commenter addressed this provision directly. The commenter, a

national association of meat processors, suggested that the reference in the proposed rule to employees of food service management companies transporting pizzas to the receiving institution, raises the concern of public or private nonprofit institutions contracting with for-profit providers to conduct such services. The commenter questioned whether this type of arrangement would be contrary to the law.

FSIS considers the exemption to permit such arrangements. Many school food authorities utilize the services of food service management companies. The provision will be adopted as proposed.

D. Adherence To Definitions and Provisions of FDA's Food Service Sanitation Manual

Seventeen commenters, who were against adopting these provisions, cited the fact that nine States have not adopted this model code. These commenters included: three national restaurant chains, two frozen food manufacturers, a regional and six national associations of frozen food and/or meat processors, two consultants to the food industry commenting at the request of one of those national associations, two national consumer interest groups, and a Federal agency. The commenters believe that conflict or confusion could result because of variable standards. One consultant detailed some variances in State codes, such as one State not requiring that the joint between the wall and floor be sealed, and another State not requiring protective shields on lights.

Six local school food authorities stated that there should be no duplicate system of Federal inspection or variable standards from those applied by State or local food regulatory agencies. These commenters might be inferred to be in favor of this provision to the extent that these standards conform to standards of individual State and local agencies. Conversely, they could be inferred to be against the provision to the extent that this provision does not conform to individual State or local standards.

Two consultants to the food industry, commenting at the request of a national restaurant chain, both of whom formerly headed State food regulatory agencies in States which had not adopted the FDA's model provisions in their codes, characterized their codes and regulations as "pretty similar," in one case; and as being substantially equivalent, with more stringent sanitation provisions in place, and with administrative regulations on hot and cold storage conforming with the FDA model, in the other.

FSIS considers the significant features and underlying food safety principles of the FDA's Food Service Sanitation Manual to be in significant conformance with the ordinances and administrative regulations enforced by the nation's State and local food regulatory agencies. FSIS does not believe that adoption of its definitions and provisions will cause conflict and confusion.

One commenter, a consultant to the food industry, commenting at the request of a national restaurant chain, noted that many of the Food Service Sanitation Manual provisions proposed by FSIS did not apply to the preparation of meat-topped pizza, while others applied only marginally. Specifically, the commenter identified requirements for handling raw fruit, raw vegetables, nondairy products, and dispensing milk, cream, condiments and ice. The commenter also characterized the use of a 140 °F hot holding requirement for pizza as being without scientific reason.

FSIS concurs that some of the items proposed to be incorporated by reference do not apply to the preparation of pizza. Upon evaluation of the definitions and provisions contained in the proposal, FSIS has decided not to incorporate by reference all of the cited chapters. Rather, FSIS will incorporate by reference those definitions and provisions which have relevance to the preparation of pizza or to the environments in which it is prepared or held. The following definitions and provisions are not incorporated by reference in the final rule: 1–102(z), 2–102 (a) and (b), 2–302(d), 2–403(a), 2–403(c), 2–404, 2–405, 2–407, 2–502 through 2–506, 2–508, 2–509, 4–105, 4–201(c), 5–101(a), 5–202(c), 5–203, and 9–101 through 9–111. The balance of the proposed definitions and provisions are incorporated by reference, except for 5–103, 5–104, and 6–105. These provisions are now set forth in the body of the regulations as §§ 303.1(e)(3) and 381.10(e)(3) to ensure appropriate reference to current FDA regulations. FSIS did not delete provisions related to the handling of raw fruits and vegetables, believing they might be used as toppings on meat or poultry pizzas. The hot holding provision was also retained.

Fourteen commenters characterized the 1976 Food Service Sanitation Manual as "antiquated," or "outdated." Six commenters expressed a preference for the yet to be published "Unicode" for adoption in this rule. These commenters thought that the Unicode would be more up-to-date and should be adopted now or after it is published. Some suggested writing this rule so that the Unicode would have effect for this exemption on its final publication. One suggested that USDA's meat inspection regulations and standards should have effect until the Unicode is published.

Two commenters offered comprehensive critiques of the provisions of the FDA Food Service Sanitation Manual and the States' implementations of its provisions. They were a national association of frozen food manufacturers, and a consultant to the food industry commenting at the request of that national association. The former commented that the standards were not established for manufacturing operations, they included no effective controls over the risks of pizza manufacturing, they employed antiquated technologies, such as the use of bimetallic thermometers, they employed antiquated and dangerous cooling and holding requirements, and they failed to prevent food borne contaminants. The latter commenter reiterated those points and also cited concerns for consistency in application of standards and grading in State inspection systems. The commenter also suggested that under these standards a business with serious temperature abuse problems and handwashing problems could obtain a relatively high grade for compliance. The commenter concluded that the manual does not provide an adequate process control system and that it would be more appropriate to adopt a system based on hazard identification and controls (HACCP).

Several commenters recommended that USDA standards for custom exempt operators be used in lieu of this provision. They either directly stated the recommendation or endorsed a citizen's petition for rulemaking which included that as a feature of its regulatory framework. These commenters included a food broker, a regional and two national associations of frozen food and/or meat processors, two consultants to the food industry commenting at the request of one of those national associations, two national consumer interest groups, and two State level consumer interest groups. The citizens' petition, which was submitted by the two national consumer interest groups, and others, argued that in order to ensure food safety and protect public health, FSIS needed to apply, at a minimum, all standards articulated in the meat and poultry regulations of FSIS, excepting the requirement for daily inspection.

FSIS considers the wide acceptance of FDA's Food Service Sanitation Manual's

underlying food safety principles and their implementation through existing state and local codes to make a compelling case for adopting its standards. While the newer Unicode varies to a degree, it is based on the same food safety principles. Also, it has not been adopted or implemented. Adopting it, devising some new HACCP based system, or applying packing house standards for the purpose of implementing this exemption would create significant confusion and conflict. Also, FSIS submits that the prospective adoption of some future Unicode in this regulation would be contrary to the Administrative Procedure Act.

Three commenters, a national association of frozen food manufacturers, a consultant to the food industry commenting at the request of that national association, and a national consumer interest group, cited a 1975 General Accounting Office (GAO) report, titled "Federal Support For Restaurant Sanitation Found Largely Ineffective." Each highlighted GAO's projection that 90% of restaurants in tested metropolitan areas were in unsanitary condition. The same commenters also cited a 1986 FSIS report, titled, "The Oversight of Custom Exempt Activities." They highlighted a statement that FSIS reviews had shown that local health agency review of facilities had no more effect than chance on the sanitary conditions of the plant. Based on these reports, the commenters questioned whether restaurants were safe, and whether State and local standards and monitoring would ensure food safety. The consultant also pointed to FSIS' experience under the implementation of the Wholesome Meat Act. Under that Act, FSIS made assessments as to whether individual States' laws and implementation of meat inspection programs were at least "equal to" the Federal program. The commenter concluded that in some 25 States, which either did not or were deemed not to have established "equal to" programs, officials either would not or could not assume responsibilities for such programs when they had to meet uniform standards.

FSIS does not believe that the cited GAO report, which is based on data collected in the spring of 1974, can be relied on in assessing the efficacy of State and local programs for restaurant sanitation today. The FSIS report, as its name infers, relates not to food service facilities but to custom slaughter and processing facilities. As the preamble to the proposed rule discussed in great detail, operations of custom slaughter and processing are significantly different from food service operations. Facility, equipment, sanitation and operating standards, therefore, should be very different. That is why these elements are specifically addressed in regulations for custom exempt operations and are not addressed in regulations for retail and restaurant exempt operations. FSIS is finalizing its proposal to require adherence to definitions and provisions of FDA's Food Service Sanitation Manual, as amended and discussed above.

E. Withdrawal or Modification of Exemption

One commenter, a national association of frozen food manufacturers, was against this provision as proposed. Citing floor language from the House and Senate, it contended that Congress had intended that the exemption be withdrawn in cases where misbranding of product was demonstrated.

FSIS considers that the clear language of the law limits withdrawal or modification of the exemption to those cases where it is determined that such action is necessary to ensure food safety and to protect public health. Misbranding of product would not in itself, in all instances, warrant such a determination. The provision is adopted as proposed.

F. Adulteration and Misbranding

Ten commenters addressed this provision. These included two frozen food manufacturers, a State association of meat processors, a regional and four national associations of frozen food and/or meat processors, a consultant to the food industry, and a national consumer interest group.

One frozen food manufacturer, a regional and a national association of frozen food and/or meat processors, wanted the regulations to expressly state that the adulteration and misbranding provisions of the Act applied to these exempted operations.

As stated in the preamble to the proposed rule, the structure of the Federal meat inspection regulations is such that the current section 9 CFR 303.1(e) would apply to this exemption section. The applicability of the adulteration and misbranding provisions is clearly stated therein. The applicability of those provisions is expressly stated in the poultry regulations as was proposed.

One frozen food manufacturer, a regional association of meat processors and a consultant posed the question of how businesses claiming the exemption would become knowledgeable of their responsibilities under this provision.

FSIS considers this final rule to be constructive notice of businesses' responsibilities. Additionally, FSIS will make efforts to notify businesses of their responsibilities through trade associations and through food regulatory agencies.

A State association of meat processors and a national association of frozen food and/or meat processors questioned how this regulation would affect ingredient control and integrity, and whether the product would be subject to nutrition labeling requirements. One national consumer interest group also raised the nutrition labeling question.

Ingredient control is addressed at section 2–101 of the Food Service Sanitation Manual, which is incorporated in the FSIS final rule by reference. The applicability of nutrition labeling requirements to this product will be determined through that subject rulemaking.

Two national associations of frozen food manufacturers and/or meat processors, and a national consumer interest group stated that this provision should require prior label approval and prior approval of manufacturing processes. One characterized it as making labeling requirements consistent with those applied to inspected purveyors. FSIS does not consider the prior label approval requirements to apply to any inspection exempted operation or product.

One national association of frozen food manufacturers commented that it was opposed to this provision because it lacked an enforcement mechanism. FSIS considers enforcement of this provision to be subject to several overlapping jurisdictions, including its own Compliance Program. This provision is adopted as proposed.

G. Other Provisions

Commenters did not directly address the provisions relating to prohibiting intervening storage, prohibiting transfer of conveyance, or defining private nonprofit institutions. These provisions will be adopted as proposed.

4. Small Business Impact and Effect on the Economy

One school food authority suggested that the economic impact was underestimated. Also, comments from the Office of Chief Counsel for Advocacy, U.S. Small Business Administration (SBA), concluded that the proposed rule will have a significant positive economic impact on a substantial number of small entities and, therefore, the Agency was required to

conduct a regulatory flexibility analysis examining alternatives that would have further increased benefits to small businesses.

Analysis of the school food authority's comment showed that its conclusions were based on 100% of sales shifting to fresh pizza product. However, FSIS believes that such a situation would be unlikely. While FSIS agrees that school lunch pizzas represent a large market, the Agency has concluded that the rule will not have a significant positive economic impact on a substantial number of pizza operators. FSIS has estimated that the fresh pizza industry might capture up to 10 percent of the school lunch market within 4 to 5 years. Fresh and frozen pizzas have not historically competed in the same price range. The school food authority stated that its school district currently serves frozen pizzas at a cost of $.38 per serving and that fresh pizza would cost more, perhaps twice as much. Fresh cheese (or plain) pizzas are already available to the school lunch market, but have only an estimated one percent of the market.

The SBA comments appeared most concerned that FSIS did not consider alternatives to incorporation by reference of the FDA Food Service Sanitation Manual. The SBA suggested that pizza restaurants in States which have not adopted the FDA manual would be forbidden from selling pizza to schools. FSIS did consider alternatives. The preamble to the proposed rule discussed a range of requirements for different models of exemptions, such as custom exempt, retail, and central kitchens of restaurants. This full range of exemption possibilities was considered by FSIS in implementing this final rule. In deciding to propose referencing the FDA Food Service Sanitation Manual, the Agency weighed that decision against the alternative of not including any such reference, or of establishing criteria different from State or local food service sanitation regulatory norms. The final rule adopts the Agency's decision, based in response to comments, to include in regulation only those provisions of the FDA Food Service Sanitation Manual which directly affect the preparation of fresh pizza or to the environment in which it is prepared or held under safe and sanitary conditions. The only alternative considered which would entail significant costs to small entities would be that of establishing criteria different from food service sanitation norms. Forty-one States have adopted the FDA Food Service Sanitation Manual. As previously discussed, one other State's code and regulations have been characterized as being "pretty similar" and another as more stringent in the sanitation area. FSIS considers the significant features and underlying food safety principles of the FDA Food Service Sanitation Manual to be in significant conformance with the ordinances and administrative regulations enforced by the other State and local food regulatory agencies. FSIS has concluded that adoption of its definitions and provisions will not cause conflict or confusion and, therefore, will not exclude a substantial number of pizza operators.

Final Rule

In addition to revisions made to the proposed rule resulting from comments received, FSIS has reorganized proposed §§ 303.1(e) and 381.10(e).

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 303 and 381 of the Federal meat and poultry inspection regulations as follows:

List of Subjects

9 CFR Part 303

Incorporation by reference, Meat inspection.

9 CFR Part 381

Incorporation by reference, Poultry inspection.

PART 303—EXEMPTIONS

1. The authority citation for part 303 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 303.1 is amended by redesignating paragraphs (e) through (g) as (f) through (h), respectively, and adding a new paragraph (e) to read as follows:

§ 303.1 Exemptions

* * * * *

(e) (1) The requirements of the Act and the regulations in this subchapter for inspection of the preparation of products do not apply to meat pizzas containing meat food product ingredients which were prepared, inspected, and passed in a cured or cooked form as ready-to-eat (i.e., no further cooking or other preparation is needed) in compliance with the requirements of the Act and these regulations; and the meat pizzas are to be served in public or private nonprofit institutions, provided that the meat pizzas are ready-to-eat (i.e., no further cooking or other preparation is needed, except that they may be reheated prior to serving if chilled during transportation), transported directly to the receiving institution by employees of the preparing firm, receiving institution, or a food service management company contracted to conduct food service at the public or private nonprofit institution, without intervening transfer or storage.

(2) The definitions at Chapter 1, 1–102, except 1–102(z) and the provisions of Chapters 2 through 8, except sections 2–102(a) and (b), 2–302(d), 2–403(a), 2–403(c), 2–404, 2–405, 2–407, 2–502 through 2–506, 2–508, 2–509, 4–105, 4–201(c), 4–208, 5–101(a), 5–103, 5–104, 5–202(c), 5–203, and 6–105, part IV, of the Food and Drug Administration's Food Service Sanitation Manual (1976 Recommendations), DHEW Publication No. (FDA) 78–2081, which is incorporated by reference, shall apply to the facilities and operations of businesses claiming this exemption. (These materials are incorporated as they exist on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, suite 700, 800 North Capitol Street, NW., Washington, DC, or the FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.)

(3) Facilities and operations of businesses claiming this exemption shall also conform to the following requirements:

(i) *Manual cleaning and sanitizing.* (A) For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

(B) Drain boards or easily movable dish tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

(C) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(D) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:

(*1*) Sinks shall be cleaned prior to use.

(*2*) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.

(*3*) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.

(*4*) Equipment and utensils shall be sanitized in the third compartment according to one of the methods prescribed in paragraph (e)(3)(i)(E) (*1*) through (*4*) of this section.

(E) The food-contact surfaces of all equipment and utensils shall be sanitized by:

(*1*) Immersion for at least ½ minute in clean, hot water at a temperature of at least 170 °F; or

(*2*) Immersion for at least 1 minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 °F; or

(*3*) Immersion for at least 1 minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75 °F; or

(*4*) Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75 °F for 1 minute; or

(*5*) Treatment with steam free from materials or additives other than those specified in 21 CFR 173.310 in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(*6*) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under paragraph (e)(3)(i)(E)(*4*) of this section in the case of equipment too large to sanitize by immersion.

(F) When hot water is used for sanitizing, the following facilities shall be provided and used:

(*1*) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 °F; and

(*2*) A numerically scaled indicating thermometer, accurate to ±3 °F, convenient to the sink for frequent checks of water temperature; and

(*3*) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(G) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under 21 CFR 178.1010 and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(ii) *Mechanical cleaning and sanitizing.* (A) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair.

Machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.

(B) The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A ¼-inch IPS valve shall be provided immediately up stream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

(C) Machine or water line mounted numerically scaled indicating thermometers, accurate to ±3 °F, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(D) Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

(E) Drain boards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of soiled utensils or the use of easily movable dishtables for the storage of clean utensils following sanitization.

(F) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewashcycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

(G) Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used: *Provided, That,*

(*1*) The temperature of the wash water shall not be less than 120 °F.

(*2*) The wash water shall be kept clean.

(*3*) Chemicals added for sanitization purposes shall be automatically dispensed.

(*4*) Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration.

(*5*) The chemical sanitizing rinse water temperature shall be not less than 75 °F nor less than the temperature specified by the machine's manufacturer.

(*6*) Chemical sanitizers used shall meet the requirements of 21 CFR 178.1010.

(*7*) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(H) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained at not less than the following temperatures:

(*1*) Single-tank, stationary-rack, dual-temperature machine:

Wash temperature	150 °F
Final rinse temperature	180 °F

(*2*) Single-tank, stationary-rack, single-temperature machine:

Wash temperature	165 °F
Final rinse temperature	165 °F

(*3*) Single-tank, conveyor machine:

Wash temperature	160 °F

Final rinse temperature.....180 °F

(4) Multitank, conveyor machine:

Wash temperature.....150 °F
Pumped rinse temperature.....160 °F
Final rinse temperature.....180 °F

(5) Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):

Wash temperature.....140 °F
Final rinse temperature.....180 °F

(l) All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(iii) *Steam.* Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

(4) For purposes of this paragraph, the term "private nonprofit institution" means "a corporation, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

(5) The Administrator may withdraw or modify the exemption set forth in § 303.1(e)(1) for a particular establishment when he or she determines that such action is necessary to ensure food safety and public health. Before such action is taken, the owner or operator of the particular establishment shall be notified, in writing, of the reasons for the proposed action and shall be given an opportunity to respond, in writing, to the Administrator within 20 days after notification of the proposed action. The written notification shall be served on the owner or operator of the establishment in the manner prescribed in section 1.147(b) of the Department's Uniform Rules of Practice (7 CFR 1.147(b)). In those instances where there is conflict of any material fact, the owner or operator of the establishment, upon request, shall be afforded an opportunity for a hearing with respect to the disputed fact, in accordance with rules of practice which shall be adopted for the proceeding. However, such withdrawal or modification shall become effective pending final determination in the proceeding when the Administrator determines that an imminent threat to food safety or public health exists, and that such action is, therefore, necessary to protect the public health, interest or safety. Such withdrawal or modification shall be effective upon oral or written notification, whichever is earlier, to the owner or operator of the particular establishment as promptly as circumstances permit. In the event of oral notification, written confirmation shall be given to the owner or operator of the establishment as promptly as circumstances permit. This withdrawal or modification shall continue in effect ending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Administrator.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

4. Section 381.10 is amended by adding a new paragraph (e) to read as follows:

§ 381.10 Exemptions.

* * * * *

(e) (1) The requirements of the Act and the regulations in this subchapter for inspection of the preparation of products do not apply to poultry pizzas containing poultry product ingredients which were prepared, inspected, and passed in a cured or cooked form as ready-to-eat (i.e., no further cooking or other preparation is needed) in compliance with the requirements of the Act and these regulations; and the poultry pizzas are to be served in public or private nonprofit institutions, provided that the poultry pizzas are ready to eat (i.e., no further cooking or other preparation is needed, except that they may be reheated prior to serving if chilled during transportation), transported directly to the receiving institution by employees of the preparing firm, receiving institution, or a food service management company contracted to conduct food service at the public or private nonprofit institution, without intervening transfer or storage.

(2) The definitions at Chapter 1, 1–102, except 1–102(z) and the provisions of Chapters 2 through 8, except sections 2–102 (a) and (b), 2–302(d), 2–403(a), 2–403(c), 2–404, 2–405, 2–407, 2–502 through 2–506, 2–508, 2–509, 4–105, 4–201(c), 4–208, 5–101(a), 5–103, 5–104, 5–202(c), 5–203, and 6–105, Part IV, of the Food and Drug Administration's Food Service Sanitation Manual (1976 Recommendations), DHEW Publication No. (FDA) 78–2081, which is incorporated by reference, shall apply to the facilities and operations of businesses claiming this exemption. (These materials are incorporated as they exist on the date of approval. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Suite 700, 800 North Capitol Street, NW., Washington, DC, or the FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.)

(3) Facilities and operations of businesses claiming this exemption shall also conform to the following requirements:

(i) *Manual cleaning and sanitizing.* (A) For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

(B) Drain boards or easily movable dish tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

(C) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(D) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:

(*1*) Sinks shall be cleaned prior to use.

(*2*) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.

(*3*) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.

(*4*) Equipment and utensils shall be sanitized in the third compartment according to one of the methods prescribed in paragraph (e)(3)(i)(E) (*1*) through (*4*) of this section.

(E) The food-contact surfaces of all equipment and utensils shall be sanitized by:

(*1*) Immersion for at least ½ minute in clean, hot water at a temperature of at least 170 °F; or

(*2*) Immersion for at least 1 minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 °F; or

(*3*) Immersion for at least 1 minute in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75 °F; or

(*4*) Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75 °F for 1 minute; or

(*5*) Treatment with steam free from materials or additives other than those specified in 21 CFR 173.310 in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(*6*) Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under paragraph (e)(3)(i)(E)(*4*) of this section in the case of equipment too large to sanitize by immersion.

(F) When hot water is used for sanitizing, the following facilities shall be provided and used:

(*1*) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 °F; and

(*2*) A numerically scaled indicating thermometer, accurate to ±3°F, convenient to the sink for frequent checks of water temperature; and

(*3*) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(G) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under 21 CFR 178.1010 and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(ii) *Mechanical cleaning and sanitizing.* (A) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. Machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.

(B) The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A ¼-inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

(C) Machine or water line mounted numerically scaled indicating thermometers, accurate to ±3°F, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(D) Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

(E) Drain boards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of soiled utensils or the use of easily movable dishtables for the storage of clean utensils following sanitization.

(F) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewashcycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

(G) Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used: Provided, That,

(*1*) The temperature of the wash water shall not be less than 120 °F.

(*2*) The wash water shall be kept clean.

(*3*) Chemicals added for sanitization purposes shall be automatically dispensed.

(*4*) Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration.

(*5*) The chemical sanitizing rinse water temperature shall be not less than 75 °F nor less than the temperature specified by the machine's manufacturer.

(*6*) Chemical sanitizers used shall meet the requirements of 21 CFR 178.1010.

(*7*) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(H) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained at not less than the following temperatures:

(*1*) Single-tank, stationary-rack, dual-temperature machine:

Wash temperature	150 °F
Final rinse temperature	180 °F

(*2*) Single-tank, stationary-rack, single-temperature machine:

Wash temperature	165 °F
Final rinse temperature	165 °F

(*3*) Single-tank, conveyor machine:

Wash temperature	160 °F
Final rinse temperature	180 °F

(*4*) Multitank, conveyor machine:

Wash temperature	150 °F
Pumped rinse temperature	160 °F
Final rinse temperature	180 °F

(5) Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):

Wash temperature	140 °F
Final rinse temperature	180 °F

(l) All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(iii) *Steam.* Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

(4) For purposes of this paragraph, the term "private nonprofit institution" means "a corporation, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

(5) The Administrator may withdraw or modify the exemption set forth in § 381.10(e)(1) for a particular establishment when he or she determines that such action is necessary to ensure food safety and public health. Before such action is taken, the owner or operator of the particular establishment shall be notified, in writing, of the reasons for the proposed action and shall be given an opportunity to respond, in writing, to the Administrator within 20 days after notification of the proposed action. The written notification shall be served on the owner or operator of the establishment in the manner prescribed in section 1.147(b) of the Department's Uniform Rules of Practice (7 CFR 1.147(b)). In those instances where there is conflict of any material fact, the owner or operator of the establishment, upon request, shall be afforded an opportunity for a hearing with respect to the disputed fact, in accordance with rules of practice which shall be adopted for the proceeding. However, such withdrawal or modification shall become effective pending final determination in the proceeding when the Administrator determines that an imminent threat to food safety or public health exists, and that such action is, therefore, necessary to protect the public health, interest or safety. Such withdrawal or modification shall be effective upon oral or written notification, whichever is earlier, to the owner or operator of the particular establishment as promptly as circumstances permit. In the event of oral notification, written confirmation shall be given to the owner or operator of the establishment as promptly as circumstances permit. This withdrawal or modification shall continue in effect pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Administrator.

(6) The adulteration and misbranding provisions of the Act and the regulations apply to articles which are exempted from inspection under § 381.10(e).

Done at Washington, DC, on July 27, 1992.

Donald L. White,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 92-18203 Filed 7-31-92; 8:45 am]

BILLING CODE 3410-DM-M

federal register

Monday
August 3, 1992

Part IV

Department of Transportation

Coast Guard

46 CFR Part 28

Commercial Fishing Industry Vessel Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD–88–079b]

RIN 2115–AD12

Commercial Fishing Industry Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending the requirement, found in the final rule for Commercial Fishing Industry Vessels, to carry immersion suits for each individual on board undocumented commercial fishing industry vessels operating on coastal waters which are only seasonally cold; and documented commercial fishing industry vessels operating inside the Boundary Line on waters which are only seasonally cold. Coastal waters that are seasonally cold are defined as the U.S. waters of the Great Lakes, except for Lake Superior; the coastal waters on the entire east coast of the United States; and the coastal waters on the west coast of the United States, south of Point Reyes, CA. The Coast Guard solicited proposals from the Commercial Fishing Industry Vessel Advisory Committee concerning the carriage of immersion suits on vessels operating in seasonally cold waters at its meeting in May 1992. The Coast Guard is drafting a NPRM incorporating the Committee's proposals addressing the carriage of immersion suits on these vessels, to be published later in the year.

EFFECTIVE DATE: August 3, 1992.

ADDRESSES: Between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays, comments and the final rule are available for inspection and copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Tim Skuby, Office of Marine Safety, Security, and Environmental Protection (G–MVI–4), (202) 267–2307.

SUPPLEMENTARY INFORMATION: Public Law 100–424, known as the "Commercial Fishing Industry Vessel Safety Act of 1988" (the Act), required the Secretary of Transportation to prescribe regulations for certain safety equipment and vessel operating procedures for U.S. documented or state numbered uninspected fishing, fish processing, and fish tender vessels. In particular 46 U.S.C. 4502(a)(2) requires that all vessels have "at least one readily accessible life preserver or other lifesaving device for each individual on board". In addition, 46 U.S.C. 4502(b)(3) requires that all documented vessels that operate beyond the Boundary Line or that operate with more than 16 individuals on board, have "at least one readily accessible immersion suit for each individual on board that vessel when operating on the Atlantic Ocean north of 32 degrees North latitude or south of 32 degrees South latitude and in all other waters north of 35 degrees North latitude or south of 35 degrees South latitude". The Notice of Proposed Rulemaking (NPRM), which was published in the **Federal Register** on April 19, 1990 (55 FR 14924), proposed the requirement that there be an immersion suit for each individual on board all vessels operating either on the Ocean, beyond the Boundary Line and north of 32°N or south of 32°S; or on the Great Lakes. The proposed requirement did not include requiring immersion suits for each individual on board vessels operating on near shore, inland, or coastal waters that were also "cold waters". Additionally, the NPRM proposed that the 32°N and 32°S latitudes be adopted as the exemption lines for all waters, in lieu of using 32°N and 32°S for the Atlantic and 35°N and 35°S for all other waters.

In the preamble to the final rule, the Coast Guard stated its conclusion that immersion suits were of critical importance in cold waters where hypothermia could cause death in a matter of minutes. Additionally, it was the Coast Guard's opinion that the authority to extend the requirement for immersion suits for certain vessels was provided in section 4502(a)(2) of the Act. Therefore, the Coast Guard decided to require all commercial fishing industry vessels, documented and undocumented, to have immersion suits for each individual on board when operating on or beyond the following cold waters:

1. The territorial seas of the United States;
2. The U.S. waters of the Great Lakes (Lake Erie, Huron, Michigan, Ontario, and Superior); or
3. Those waters directly connected to the Great Lakes or territorial seas (i.e. bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds 2 nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to 2 miles, as shown on the current edition of the appropriate National Ocean Service chart used for navigation. Shorelines of islands or points of land present within a waterway are considered when determining the distance between opposite shorelines.

The final rule was published in the **Federal Register** on August 14, 1991 (56 FR 40364), and became effective September 15, 1991, except that vessels were not required to be in compliance with the immersion suit requirements until November 15, 1991.

In order to specify the safety/survival equipment carriage requirements for waters other than "oceans", the definition of coastal waters contained in 33 CFR 175.105 was utilized as it was in defining the requirements for distress signals. However, use of the coastal waters concept as a means of defining the waters where personal flotation devices and immersion suits are required was not presented in the NPRM and the public did not have the opportunity to comment on its use for that purpose. Similarly, the requirement to have immersion suits was tied to the definition of "cold water". This term not only serves to limit the geographic coverage of the term "coastal waters", it also provides for the seasonal application of the requirements. For example, a vessel operating in coastal waters that do not get "cold", as defined in § 28.50, is not required to have immersion suits. Since publication of the final rule, the Coast Guard has received comments indicating there is confusion concerning where and when vessels operating in certain inland waters are required to carry immersion suits and comments that the expense of carrying immersion suits is not justified for vessels operating close to shore, generally within the territorial sea. It appears that the rulemaking would have benefited from a more thorough consideration of when and where immersion suits should be required, other than for ocean areas, if the NPRM had specifically proposed a coverage requirement for these waters. Therefore, the Coast Guard is deleting the requirement for vessels to carry immersion suits for each individual on board undocumented commercial fishing industry vessels operating on coastal waters which are only seasonally cold, and documented commercial fishing industry vessels operating inside the Boundary Line on waters which are only seasonally cold. The Coast Guard will publish a NPRM specifically addressing the coverage requirement for immersion suits on vessels operating on inland and near shore waters that are seasonally cold. This action will reduce the burden on some vessel owners of having to purchase immersion suits now.

The Coast Guard is publishing this rulemaking without notice and the opportunity for comment. As discussed previously, the use of the coastal waters concept as a means of defining the waters where personal flotation devices and immersion suits are required was not presented in the NPRM preceding the final rule. Therefore, pursuant to 5 U.S.C. 553(b), the Coast Guard finds that notice and opportunity for comment on this rulemaking are unnecessary and contrary to the public interest. Further, since the effect of this rulemaking will be to relieve the public of a restriction that was not presented for comment in the NPRM, the Coast Guard finds good cause under 5 U.S.C. 553(d) for making this rulemaking effective in less than 30 days after publication in the **Federal Register**.

As a result of this action all documented commercial fishing industry vessels that operate:

(1) On the U.S waters of the Great Lakes, except for Lake Superior;

(2) Inside the Boundary Line on the entire east coast of the United States; or

(3) Inside the Boundary Line on the west coast of the United States, south of Point Reyes, CA., and all undocumented commercial fishing industry vessels that operate on:

(1) The U.S. waters of the Great Lakes, except for Lake Superior;

(2) Coastal waters along the entire east coast of the United States; or

(3) Coastal waters along the west coast of the United States, south of Point Reyes, CA., will not be required to carry immersion suits for each individual on board. In the interim, these vessels will be required to meet the personal flotation device requirements in 46 CFR 25.25. Documented and undocumented commercial fishing industry vessels operating on waters other than described above, at any time, are unaffected by this suspension. The waters of Lake Superior and the coastal waters along the west coast of the United States, north of Point Reyes CA have a monthly mean temperature below 59°F at all times. Since there appears to be little controversy concerning the need for immersion suits on vessels operating in these areas, they will continue to be required. However, comments are solicited as to whether this requirement should be rescinded for some or all of these waters pending publication of new proposals for vessels operating in coastal waters.

The Coast Guard solicited proposals concerning the carriage of immersion suits on vessels operating on coastal waters, from the Commercial Fishing Industry Vessel Safety Advisory Committee at its meeting in May 1992. The Coast Guard is drafting a NPRM incorporating the committee's proposals addressing the carriage of immersion suits on these vessels, to be published later in the year.

Regulatory Evaluation

The final rule was considered to be non-major under Executive Order 12291 on Federal Regulation and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation for the final rule was prepared and placed in the docket. It may be inspected and copied at the address listed under "**ADDRESSES**". This amendment of the final rule has a minimal economic impact, and will not significantly affect the conclusions of the final regulatory evaluation. This amendment of the final rule will reduce the immediate requirement for immersion suits on approximately 48,250 of the smaller fishing vessels at an estimated savings of $22.5 million. Considering that many of the vessel operators or individual crewmembers may elect to purchase immersion suits as a voluntary safety measure, the actual savings are anticipated to be $8.5 million. Therefore, this amendment is considered to be not major under the Executive Order and nonsignificant under the Department of Transportation regulatory policies and procedures.

Regulatory Flexibility Act

This amendment of the final rule is expected to have a minimal negative economic impact, which is also expected to be temporary. Immersion suit manufacturers and/or suppliers were expecting a large demand due to the requirements in the final rule. While the requirement for immersion suits is reduced, there will still be a continued demand for them. Many vessel owners and individual crewmembers purchased immersion suits as a voluntary safety measure before the final rule was published in August 1991, and with increased safety awareness in the commercial fishing industry, this should continue. Therefore, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

. It has been determined that the final rule is categorically excluded from detailed environmental evaluation due to the inconsequential affects these rules are expected to have on the environment. The Categorical Exclusion Determination for the original rulemaking is available in the docket for examination.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Deduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that the Interim final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This interim rule relieves commercial fishing industry vessels of a requirement to carry an item of safety equipment in certain waters. The authority to regulate concerning the carriage requirements of safety equipment aboard commercial fishing vessels operating in U.S. waters is committed to the Coast Guard by statute. Furthermore, since commercial fishing vessels tend to move from port to port in the national marketplace, carriage requirements for safety equipment is a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. Therefore, if this rule becomes final, the Coast Guard intends it to preempt State action addressing the same matter.

List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Incorporation by reference, Lifesaving equipment, Main and auxiliary machinery, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, Stability.

In consideration of the foregoing, the Coast Guard amends chapter I, title 46, Code of Federal Regulations, part 28 as follows:

PART 28—[AMENDED]

1. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 10603; 49 U.S.C. APP. 1804; 49 CFR 1.46.

2. Section 28.110 is amended by revising table 28.110 to read as follows:

§ 28.110 Life preservers or other personal flotation devices.

* * * * *

TABLE 28.110.—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS

Applicable waters	Vessel type	Devices required	Other regulations
Seaward of the Boundary Line and North of 32°N or South of 32°S; and Lake Superior.	Documented Vessel	Immersion suit or exposure suit.[1]	28.135; 25.25-9(a); 25.25-13; 25.25-15.
Coastal Waters on the West Coast of the United States north of Point Reyes, CA; Beyond Coastal Waters, cold water; and Lake Superior.	All vessels	....do[1]	Do.
All other waters (includes all Great Lakes except Lake Superior).	40 feet (12.2 meters) or more in length.	Type I, Type V commercial hybrid, immersion suit, or exposure suit.[2]	28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15.
	Less than 40 feet (12.2 meters) in length.	Type I, Type II, Type III, Type V commercial hybrid, immersion suit, or exposure suit.[2]	Do.

[1] Until September 1, 1995, individuals weighing less than 44 pounds (196 Newtons) may substitute an approved personal flotation device of the appropriate size for a required immersion suit or exposure suit.

[2] Certain Type V personal flotation devices are approved for substitution for Type I, II, or III personal flotation devices when used in accordance with the conditions stated in the Coast Guard approval table.

Dated: January 28, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environment Protection.

[FR Doc. 92-18140 Filed 7-31-92; 8:45 am]

BILLING CODE 4910-14-M

federal register

Monday
August 3, 1992

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Ergonomic Safety and Health Management; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-777]

RIN 1218-AB36

Ergonomic Safety and Health Management

AGENCY: Occupational Safety and Health Administration.

ACTION: Advance Notice of Proposed Rulemaking; Requests for comments and information.

SUMMARY: In recent years there has been a significant increase in the reported cases of ergonomic disorders in the workplace. The Bureau of Labor Statistics has reported that the number of "disorders associated with repeated trauma" has more than tripled since 1984. In response to this as well other available information, the Occupational Safety and Health Administration (OSHA) is announcing the initiation of rulemaking under section 6(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655, and requesting information relevant to preventing, eliminating, and reducing occupational exposure to ergonomic hazards. OSHA is considering the development of a safety and health management standard that would address ergonomic hazards in the workplace for general industry or specific industries or subsectors within general industry, as well as for maritime, construction, and agriculture industries.

This Advance Notice of Proposed Rulemaking (ANPR) briefly summarizes the ongoing activities in this area; describes information available to OSHA concerning ergonomic hazards, ergonomic disorders, and risk estimates; and requests information for consideration in the development of a standard. Interested parties are invited to submit data, comments, and other pertinent information regarding OSHA's development of a proposed standard addressing ergonomic hazards. Responses to questions are requested regarding the need for an ergonomic safety and health management standard, as well as the content, extent, and scope of the suggested components of such a standard.

As part of the initiation of rulemaking, OSHA is also considering the need to hold several informal public meetings in various locations throughout the United States to permit oral presentations of additional comments, information, and data concerning the development of a regulation addressing ergonomic hazards in the workplace.

DATES: Comments and information on this ANPR must be received by February 1, 1992.

ADDRESSES: Comments and information on this ANPR should be sent in quadruplicate to the OSHA Docket Office, Docket No. S-777, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Room N-2625, Washington, D.C. 20210. Comments and information on this ANPR may not be sent to OSHA by facsimile.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, 200 Constitution Ave., N.W., Room N-3647, Washington, D.C. 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

A substantial number of American workers may be at risk of developing some type of ergonomic disorder due to their exposure to ergonomic hazards in the workplace. In recent years there has been a significant increase in the number of occupational ergonomic disorders reported, including cumulative trauma disorders (CTDs) and other work-related disorders due to ergonomic hazards. Ergonomic disorders, ergonomic hazards and ergonomic stressors are defined, for the purposes of this ANPR and discussed further in Appendix A. In summary, OSHA is defining ergonomic disorders as disorders of the musculoskeletal and nervous systems occurring in either the upper or lower extremities, including backs. These may be caused or aggravated by repetitive motions, forceful exertions, vibration, sustained or awkward positioning or mechanical compression of the hand, wrist, arm, back, neck, shoulder, and leg over extended periods or from other ergonomic stressors. For the purpose of this ANPR ergonomic disorders include, among others, carpal tunnel syndrome, various tendon disorders, and lower back injuries.

Some of this increase in the number of reported cases of ergonomic disorders may be due to increased awareness by industry, labor, and government that ergonomic disorders have a connection to the workplace. Most ergonomic hazards and related disorders, however, appear to be due to changes in production processes and technologies, resulting in more specialized tasks with increased repetitions and higher assembly line speeds. In many cases these changes have not concomitantly included integration of ergonomic technologies. Other major factors contributing to ergonomic disorders are incentive or piecework systems and voluntary overtime work. These systems expose employees to an increase in the duration of repetitive motion as well as to an increase in other ergonomic stressors which may be present.

Ergonomic disorders are the most rapidly growing category of reported work-related illnesses. The Bureau of Labor Statistics (BLS) has reported that the number of "disorders associated with repeated trauma" has more than tripled since 1984 (Ex. 2-1). (BLS includes in this category conditions due to repeated motion, vibration, and pressure as well as chronic noise-induced hearing loss. This category, however, excludes all back cases (Ex. 2-27). Moreover, this category includes only new, rather than existing cases.) In 1989, these serious disorders, which may be crippling, approached nearly 147,000 cases and accounted for 52 percent of all recordable occupational illnesses reported to OSHA (Ex. 2-1). In 1981 and 1984, these disorders accounted for only 18 and 28 percent, respectively, of all recordable illnesses (Ex. 2-1).

The BLS data, however, may not fully account for all employees who may have developed ergonomic disorders. According to several studies, data compiled by BLS generally tend to underestimate the number of workplace illnesses and injuries (Ex. 2-22). A University of California study published in the January 1991 issue of American Journal of Public Health found that only 60 and 44 percent of all work- related injuries and illnesses, respectively, were reported (Ex. 2-2). The authors suggested that the illness incidence rate may be 130 percent higher than reported (Ex. 2-2).

A number of Health Hazard Evaluation (HHE) studies on CTDs conducted by National Institute for Occupational Safety and Health (NIOSH) also found that BLS statistics for relevant industries underestimated actual prevalence rates observed by NIOSH at company sites. NIOSH found in a vast majority of those studies that OSHA 200 logs, upon which the BLS statistics are based, underestimated the actual CTD prevalence rates NIOSH observed based in reviewing the company's dispensary logs, conducting medical examinations, and surveying employees (Exs. 2-3 *et seq.*). In 1989, NIOSH estimated that the exposed workforce may be as high as a quarter of all workers, or 8 to 9 million workers

(Ex. 2–4). However, since NIOSH's estimate was based on 1981–1983 data, it too may underestimate the current exposed working population.

Much of the suggested underestimation of ergonomic disorders in BLS statistics may be due to confusion by employers over how to record a particular disorder in a company's OSHA 200 logs. For example, a loss of hearing resulting from an explosion (an instantaneous event), should be classified as an occupational injury; the same condition arising from exposure to industrial noise over a period of time should be classified as an occupational illness. However, this may also be due to the fact that BLS does not include back cases in its classification of disease associated with repeated trauma (Ex. 2–27). Back disorders, as noted later, are the most frequently occurring workplace disorder.

Other studies and data indicate that in many industries, especially those that involve hand-intensive tasks, the number of reported ergonomic disorders has significantly increased (both in number and as a percentage of total reported occupational illnesses) and incidence rates are high (Ex. 2–1, p. 6). For example, recent NIOSH HHEs conducted at plants in a variety of industries document high incidence rates: 50 percent for supermarket cashiers, 41 percent for meatpackers, 40 percent for newspaper employees, 30 percent for specialty glass workers, and 20 percent for poultry workers (Ex. 2–3 *et seq.*). The number of reported cases of cumulative trauma disorders among postal workers rose by 75 percent between 1989 and 1990. According to Office of Workers' Compensation Programs data, postal workers reported 326 cases of cumulative trauma disorders in 1989 and payout on those cases totaled approximately $3.8 million (Ex. 2–5). In 1990, there were 572 cases reported by postal workers (Exs. 2–5, 2–19). It is estimated that musculoskeletal disorders, including other soft tissue injuries such as back injuries, carpal tunnel syndrome, sprains and strains, are responsible for 30 to 40 percent of all worker compensation claims (Ex. 2– 20).

The costs of ergonomic disorders to workers, business, and society have also grown dramatically. The American Academy of Orthopedic Surgeons estimated in 1984 that overall repetitive motion disorders cost $27 billion a year in lost earnings and medical expenses (Ex. 2–8). CTDs also account for an large and increasing percentage of worker compensation costs each year (Exs. 2–6, 2–10). For example, the National Safety Council reports that occupational back injuries, which NSC states are the most frequently occurring workplace disorder (380,000 cases and 22 percent of all reported cases in 12 states in 1985–1987), account for 32 percent of all worker compensation dollars paid in these states during that time period (Ex. 2–6). In 1986, it has been estimated that the total compensable cost for low back pain cases in the United States was $11.1 billion. (Ex. 2–7). Furthermore, the costs for low back pain cases appear to be rising at a faster rate than other types of compensable injuries (Ex. 2–7). It should be noted that not all back disorders are the result of repeated trauma.

Data on upper extremity CTDs compiled by Liberty Mutual, the largest writer of workers' compensation coverage in the United States, indicate that the increasing incidence of these cases is now exceeded by the increasing costs of these cases (Exs. 2–7, 2–10). Since 1987 the costs of upper extremity CTDs, as a percentage of all worker compensation costs for Liberty Mutual, have quadrupled (Ex. 2–10). Moreover, upper extremity CTD cases are more expensive than the average occupational injury or illness claim; that is, they represent a greater percentage of total compensation costs relative to the number of cases than do other illness and injury cases (Ex. 2–10).

Based on information available to OSHA, companies that have implemented ergonomic programs have reduced the number of ergonomic disorders, while achieving other benefits, such as improved product quality and employee morale. GE Medical Systems, a subsidiary of General Electric Corporation, established a pilot ergonomics program (Ex. 2–11) whose approach incorporated some of the program components of OSHA's "Safety and Health Program Management Guidelines" and "Ergonomics Program Management Guidelines for Meatpacking Plants." (These two guidelines are both discussed further below.) After implementation of the pilot program, GE Medical Systems reduced the number of cases or complaints related to ergonomic hazards from 35 to one in four months (Ex. 2–11). In addition, the GE Medical Systems safety manager reported that the quality of the product had been enhanced by the implementation of the ergonomics program (Ex. 2–11). Most solutions to the ergonomic hazards at the company were "relatively inexpensive," however, in cases where the company spent significant money to eliminate ergonomic hazards, the company said it has been "cost-justified" (Ex. 2–11). As a result, the company has expanded the program (Ex. 2–11).

The increasing number of ergonomic disorders affecting employees in a wide variety of industries and the significant costs of these disorders to employees, employers, and society suggest that a regulation to prevent, eliminate, and reduce ergonomic hazards in the workplace may be necessary. Therefore, OSHA is considering the development of an ergonomic safety and health management standard that would cover general, maritime, construction, and agriculture industries. OSHA is also considering whether this standard would need to cover not only processes, machines, and work methods that are common across industry, such as computer keyboards, but also those that are unique to particular industries, such as sewing machines in the garment industry.

If necessary, an ergonomics standard might include general components similar to those contained in the OSHA "Safety and Health Program Management Guidelines," published January 26, 1989 (Ex. 2–12). These components are 1) worksite analysis (which includes record assessment), 2) hazard prevention and control, 3) medical management, and 4) training and education. These components are recommendations by OSHA to all employers as a foundation for their safety and health programs and as a framework for their ergonomics programs. These components are defined and discussed further in Appendix A.

II. Ongoing Activities on Ergonomic Hazards in the Workplace

Although OSHA currently has no regulation to address ergonomic hazards, there are a number of actions OSHA has taken with regard to ergonomic hazards within the past few years.

First, the Safety and Health Program Management Guidelines discussed above have been applied to certain ergonomic hazards. In November 1988, OSHA received a petition from an employer in the meat packing industry requesting that OSHA develop a standard concerning ergonomic issues. In response to that petition, in August 1990, OSHA issued the Ergonomics Program Management Guidelines for Meatpacking Plants (Ex. 2– 13) which utilized the four program management components. The guidelines were based on the best available scientific evidence, advice from NIOSH, medical literature, and OSHA's experience in enforcement.

Second, at the time OSHA issued the meatpacking guidelines, the Agency also announced its intention to institute a national ergonomics special emphasis program for the red meat industry to foster better working conditions in that industry. Under the special emphasis program the guidelines were sent to each red meat plant in the United States and small employers were able to request training and other technical assistance from OSHA.

Along with the distribution of the guidelines, citations for ergonomics-related hazards have been issued to employers in the red meat industry. Under the authority of section 5(a)(1) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 654 (a)(1), which states that employers have a general duty to furnish each employee with employment and a place of employment which are free from "recognized hazards," regardless of whether such hazards are regulated by specific federal standards. Although recognition of ergonomic hazards and presence of ergonomic disorders have not been confined to the meatpacking industry, the high incidence and severity of CTDs and other ergonomically related disorders in this industry indicated that an effective comprehensive program should be implemented by employers in this industry to protect workers from these hazards.

Third, OSHA has also used its authority under section 5(a)(1) to pursue various enforcement actions in other industries addressing the presence of ergonomic hazards in the workplace. Some of these actions have resulted in corporate-wide agreements in the poultry processing and auto manufacturing industries to implement comprehensive ergonomic programs utilizing the program management components in the meatpacking guidelines. Comprehensive ergonomics programs also are being implemented in several apparel plants as a result of enforcement actions.

Fourth, the OSHA Training Institute in Des Plaines, IL, is offering a course on ergonomic hazards in the meatpacking industry for federal and state enforcement staff, as well as for state consultation staff. In addition, in August 1991, this course was presented in Washington, D.C., for meatpacking industry representatives.

Fifth, in order to give guidance to other industries, OSHA issued two publications in 1991 addressing ergonomic hazards, "Ergonomics: The Study of Work" (Ex. 2–14) and "Working Safely with Video Display Terminals" (Ex. 2–15).

Ergonomic hazards are also being addressed by others. For example, the American National Standards Institute has established a committee, ANSI Z365, with the National Safety Council as the secretariat, to develop a consensus standard on the control of cumulative trauma disorders. California OSHA is developing a proposed state ergonomics standard.

III. Petition for Emergency Temporary Standard

On July 31, 1991, the United Food and Commercial Workers Union (UCFW), along with the AFL-CIO and 29 other labor organizations, petitioned OSHA to take immediate action to reduce the risk to employees from exposure to ergonomic hazards (Ex. 2–16). They requested that OSHA issue an emergency temporary standard (ETS) on "Ergonomic Hazards to Protect Workers from Work-Related Musculoskeletal Disorders (Cumulative Trauma Disorders)" under section 6(c) of the Act. The petitioners also requested that within six months of the issuance of an emergency temporary standard OSHA promulgate a permanent standard to protect workers from cumulative trauma disorders in both general industry and construction.

On April 17, 1992, OSHA decided not to issue an ETS on ergonomic hazards (Ex. 2–28). OSHA agreed with the petitioners that available information, including the ETS petition and supporting documents, supported initiation of Section 6(b)(5) rulemaking to address ergonomic hazards. However, OSHA also concluded that, based on the statutory constraints and legal requirements governing issuance of an ETS, there was not sufficient basis for issuance of an ETS.

IV. Rulemaking Process

At the time OSHA issued the Ergonomic Program Management Guidelines for Meatpacking Plants, the Agency also indicated its intention to begin the rulemaking process by asking the public for information about ergonomic hazards across the country. The Agency indicated that this could be accomplished through a Request for Information or an Advance Notice of Proposed Rulemaking (ANPR) consistent with the Administration's Regulatory Program. Subsequently, OSHA formally placed an ergonomic rulemaking on the regulatory agenda (Ex. 2–17) and decided to issue an ANPR.

OSHA sent a draft copy of the proposed questions for comment on June 20, 1991, to 232 parties, such as labor organizations (including the petitioners), trade associations, occupational groups, and members of the ergonomic community (Ex. 2–18). OSHA requested comments on how the proposed questions should be posed by August 15, 1991. OSHA received 47 comments from those parties. In addition, OSHA met with the Chemical Manufacturers Association, Organization Resources Counselors, Inc., and the AFL-CIO and several member organizations, including the petitioners. OSHA reviewed the comments and submissions and incorporated relevant suggestions and comments into the ANPR.

V. Exhibits List

The following exhibits have been referenced in this ANPR and have been entered into the public docket at the address listed below.

2–1) U. S. Department of Labor. Bureau of Labor Statistics. 1991. "Occupational Injuries and Illnesses in the United States by Industry, 1989." Bureau of Labor Statistics Bulletin 2379. Washington, D.C.:U.S. Government Printing Office.

2–2) McCurdy, S., et al. 1991. "Reporting of Occupational Injury and Illness in the Semiconductor Industry," American Journal of Public Health. 81:85–89.

2–3) a. U.S. Department of Health and Human Services. Public Health Service Centers for Disease Control. National Institute for Occupational Safety and Health. (Hazard Evaluation Reports on Occupational Ergonomic Disorders.) 1976. Eastman Kodak Co., TA–76–93.

b. —. 1979. Blue Shield of California, TA 79–060–843.

c. —. 1979. Oakland Tribune, TA 79–061–844.

d. —. 1981. Dart Industries, Inc., TA 80–096–973.

e. —. 1981. Metalbestos Systems, Inc., TA 80–109–974.

f. —. 1983. The Baltimore Sun, HETA 80–127–1337.

g. —. 1982. Armco Composites, HETA 81–143–1041.

h. —. 1982. Miller Electric Co., HETA 81–217–1086.

i. —. 1985. McGraw Edison Co.-Electric Machinery, HETA 81–369–1591, HETA 81–466–1591.

j. —. 1983. KP Manufacturing Co., HETA 81–375–1277.

k. —. 1983. Donaldson Co., HETA 81–409–1290.

l. —. 1984. General Motors Corp., HETA 81–433–1452.

m. —. 1986. Carpet and Floorlayers, HETA 82–065–1664.

n. —. 1983. American Standard, Inc., HETA 82–229–1286.

o. —. 1985. Chef Francisco, Inc., HETA 83–053–1554.

p. —. 1984. ICI Americas, Inc., HETA 83–142–1431.

q. —. 1986. United Uniform Company of Memphis, HETA 83– 205–1702.

r. —. 1984. Pelton and Crane Co., HETA 83–233–1410.

s. ---. 1988. Point Adams Packing Co., HETA 83-251-1685.
t. ---. 1984. Environmental Protection Agency, HETA 83- 463-1462.
u. ---. 1986. Air Force Guidance and Metrology Center, HETA 84-082-1713.
v. ---. 1989. Standard Publishing Co., HETA 84-187-1966.
w. ---. 1988. Western Publishing Co., HETA 84-240-1902.
x. ---. 1986. Minneapolis Police Dept., HETA 84-417-1745.
y. ---. 1986. AT&T--Southern Bell and United Telephone, HETA 85-452-1698.
z. ---. 1987. Gentle Home Products, HETA 85-480-1771.
aa. ---. 1987. Indiana Army Ammunition Plant, HETA 85-534- 1855.
bb. ---. 1988. Longmont Turkey Processors, Inc., HETA 86- 505-1885.
cc. ---. 1987. Devil's Lake Sioux Manufacturing Corp., HETA 87-097-1820.
dd. ---. 1990. Harvard Industries, Inc.--Anchor Saw Division, HETA 87-428-2063.
ee. ---. 1989. John Morrell & Co., HETA 88-150-1958.
ff. ---. 1989. Eljer Plumbingware, HETA 88-237-L1960.
gg. ---. 1990. Accuride Corp., HETA 88-277-2069.
hh. ---. 1990. Louie Glass Factory, HETA 88-299-2028.
ii. ---. 1991. Shoprite Supermarkets, HETA 88-344-2092.
jj. ---. 1990. Kroger Co., HETA 88-345-2031.
kk. ---. 1990. Caldwell Manufacturing Co., HETA 88-361- 2091.
ll. ---. 1990. Yorktowne, Inc., HETA 88-384-2062.
mm. ---. 1990. Eagle Convex Glass Co., HETA 89-137-2005.
nn. ---. 1990. Bennett Industries, HETA 89-146-2049.
oo. ---. 1990. Newsday, Inc., HETA 89-250-2046.
pp. ---. 1989. Cargill Poultry Division, HETA 89-251-1997.
qq. ---. 1990. Perdue Farms, Inc., HETA 89-307-2009.
rr. ---. 1990. Harley-Davidson, Inc., HETA 90-134-2064.

2-4) U.S. Congress. House. Committee on Government Operations, Subcommittee on Employment and Housing. Hearings on Dramatic Rise in Repetitive Motion Injuries and OSHA's Response, June 6, 1989. Testimony of Dr. Lawrence J. Fine, Director of the Division of Surveillance, Hazard Evaluation and Field Studies, U.S. Department of Health and Human Service. National Institute for Occupational Safety and Health. 101st Cong., 1st Sess..

2-5) Occupational Safety and Health Reporter. 1991. "Postal Service Responsible for 60 Percent of Carpal Tunnel Syndrome in Federal Work Force," Bureau of National Affairs 21:183.

2-6) National Safety Council. 1990. "Accident Facts" p.38 Chicago:National Safety Council.

2-7) Webster, B. and S. Snook. 1990. "The Cost of Compensable Low Back Pain," Journal of Occupational Medicine 32:13.

2-8) Fletcher, M. 1990. "Cumulative Trauma Disorders: Repetitive Motion Cases Cost Billion Annually," Business Insurance 24:3-6.

2-9) Occupational Safety and Health Reporter. 1991. "Expert Cites Successful Programs to Curb Injuries in Poultry Plants," Bureau of National Affairs 20:1716.

2-10) Brogmus, G. and R. Marko. 1990. "Cumulative Trauma Disorders of the Upper Extremity, The Magnitude of the Problem in U.S. Industry." In *Human Factors in Design for Manufacturability and Process Planning*. Proceedings of the International Ergonomics Association, Hawaii. pp. 49-59. Santa Monica:Human Factors Society.

2-11) Collins, L. 1990. "Ergonomic Plans Producing Results," Business Insurance 24:18-19.

2-12) U.S. Department of Labor. Occupational Safety and Health Administration. 1989. "Safety and Health Program Management Guidelines," 54 FR 3904.

2-13) U.S. Department of Labor. Occupational Safety and Health Administration. 1990. OSHA 3123, "Ergonomic Program Management Guidelines for Meatpacking Plants." Washington, D.C.:U.S. Government Printing Office.

2-14) U.S. Department of Labor. Occupational Safety and Health Administration. 1991. OSHA 3125, "Ergonomics: The Study of Work." Washington, D.C.:U.S. Government Printing Office.

2-15) U.S. Department of Labor. Occupational Safety and Health Administration. 1991. OSHA 3092, "Working Safely with Video Display Terminals (Revised)." Washington, D.C.:U.S. Government Printing Office.

2-16) Wynn, William, International President, United Food and Commercial Workers Union, AFL-CIO & CLC. "Petition for Emergency Temporary Standard on Ergonomic Hazards to Protect Workers from Work-Related Musculoskeletal Disorders (Cumulative Trauma Disorders)." Letter to Secretary of Labor Lynn Martin, July 31, 1991.

2-17) U.S. Department of Labor. 1991. Semiannual Regulatory Agenda. 56 FR 53558, 53592.

2-18) Clark, Roger, Director, Directorate of Safety Standards Programs. Request for Informal Comment. Letter to Ergonomic Community, June 20, 1991.

2-19) Occupational Safety and Health Reporter. 1991. "Risk for CTDs, Lower Back Disorders 'Significant' in Letter Sorting Machine Jobs," Bureau of National Affairs 20:1576.

2-20) U.S. Congress. House. Committee on Government Operations, Subcommittee on Employment and Housing. Hearings on Dramatic Rise in Repetitive Motion Injuries and OSHA's Response, June 6, 1989. Testimony of Alan C. McMillan, Deputy Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 101st Cong., 1st sess..

2-21) Dainoff, M. 1989. "Repetitive Strain Injury (RSI), A Perspective," Center for Ergonomic Research, Miami (Ohio) University.

2-22) Fine, L. and B. Silverstein. 1986. "Detection of Cumulative Trauma Disorders of Upper Extremities in the Workplace," Journal of Occupational Medicine. 28:674.

2-23) U.S. Congress. House. Committee on Government Operations, Subcommittee on Employment and Housing. Hearings on Dramatic Rise in Repetitive Motion Injuries and OSHA's Response, June 6, 1989. Testimony of Dr. Testimony of Barbara A. Silverstein, Center for Ergonomics and School of Public Health, University of Michigan. 101st. Cong., 1st Sess.

2-24) U. S. Department of Health and Human Services. Public Health Service Centers for Disease Control. National Institute for Occupational Safety and Health. 1981. "Work Practice Guide for Manual Lifting," DHHS (NIOSH) Publication No. 81-122.

2-25) Snook, S. 1978. "The Design of Manual Handling Tasks," Ergonomics. 21:963-985.

2-26) University of Michigan. 1990. "2-D Static Strength Prediction Program," version 4.2 e. Ann Arbor:University of Michigan Software.

2-27) U.S. Department of Labor. Bureau of Labor Statistics. Recordkeeping Guidelines for Occupational Injuries and Illnesses, September 1986.

2-28) Martin, Lynn, Secretary, U.S. Department of Labor. Denial of Petition for Emergency Temporary Standard on Ergonomic Hazards to Protect Workers from Work-Related Musculoskeletal Disorders (Cumulative Trauma Disorders). Letter to William Wynn, International President, United Food and Commercial Workers Union, AFL-CIO & CLC, April 17, 1992.

2-29) *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).

VI. Request for Comments and Information

Through this ANPR, OSHA invites interested persons and organizations to provide comments relating to the nature and extent of ergonomic hazards and disorders in the workplace. OSHA requests comments and information on the need for, content, extent, and scope of an ergonomic safety and health management regulation. OSHA has also presented a Glossary in Appendix A on which comment is requested. In addition, OSHA requests the submission of supportive information which would be needed for a proposed rule and also invites commentors to raise any other issues which may be relevant.

OSHA also invites comment pertaining to any economic considerations relating to the development of an ergonomic safety and health management standard, as discussed in this ANPR. For example, OSHA requests information on benefits to be achieved, such as changes in medical expenses, absenteeism, worker turnover, worker compensation payments, insurance rates, productivity, quality and the level of safety in work practices and environment. OSHA also requests information on the costs of implementing an ergonomic safety and health management standard, such as

workstation redesign, medical oversight, and changes in productivity and insurance costs.

OSHA requests that any available injury or illness data related to ergonomic disorders be provided. OSHA also requests that interested parties submit any pertinent data and risk estimates on ergonomic disorders not discussed in this ANPR. Specifically, scientific and technical data, and expert opinion are sought on the number of cases of ergonomic disorders, incidence rates, causes of ergonomic disorders, and costs of ergonomic disorders to employees, businesses, and society in general. OSHA also requests information attempting to explain the rise in incidence rates of ergonomic disorders; including work process changes (e.g., increased repetition or force due to changes in process or production demands), increased awareness of ergonomic hazards, and/or reporting changes. For comparative purposes, OSHA requests submission of studies and data on incidence rates of ergonomic disorders in other countries.

OSHA is considering whether to hold informal public meetings to permit oral presentations of additional comments, information, and data prior to the development of a regulation addressing ergonomic hazards. These meetings would serve as a public forum for interested parties to present their views in the early stages of this rulemaking. OSHA is considering public meetings to be held in Washington, D.C., as well as in other locations throughout the United States. OSHA requests comment on whether and where informal public meetings should be held.

OSHA will gather, review, and analyze available information on case studies, anecdotal data, and statistical data in which ergonomic hazards have been identified and successful corrective actions have been taken. The basic information sought in each case includes the ergonomic problem that needed resolution, the control measures taken to resolve the problem, the costs of these control measures, and the benefits gained by employees, employers and society. OSHA will seek this information from the National Institute for Occupational Safety and Health (NIOSH) Health Hazard Evaluation Reports, OSHA ergonomic settlement agreement results, OSHA consultation programs, Voluntary Protection Program activities, ANPR comments, as well as a variety of other data sources.

A. General

1. In Appendix A, OSHA has defined "ergonomics", "ergonomic hazards", and "ergonomic disorders" for the purpose of this ANPR. OSHA requests comments on these definitions. Please address the following in your comment.

a.) What working definitions are used for these concepts in the workplace? Please discuss your working definitions.

b.) What is the nature and extent of ergonomic hazards and disorders in your company or industry?

2. If necessary, OSHA is considering development of a generic or industry specific ergonomic hazard control standard that may include the following general components: 1) Records assessment and surveillance, 2) systematic analysis, 3) prevention and control, 4) health management, and 5) training and education. OSHA requests comment on this approach. Please address the following in your response.

a.) Should these components should be included in an ergonomic standard? Is this approach towards addressing ergonomic hazards feasible? (For definition of "feasible", see *United Steelworkers of America v. Marshall*, 647 F.2d 1189, (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981) (Ex. 2–29); 54 FR 29142, 29144–50 (July 11, 1989). Is this approach effective?

b.) Are there other feasible approaches to addressing ergonomic hazards and disorders in the workplace? Are there other effective approaches? Please describe those approaches.

c.) What should be the scope, application, and content of an ergonomic safety and health management standard?

3. What criteria should be considered in determining whether an employer should be covered by a standard on ergonomic hazard control? For example, the following factors may be appropriate for initiating coverage under a standard include: Use of machines, tools, processes, etc., known to be ergonomic hazards; presence of recognized ergonomic stressors; incidence(s) of recorded disorders associated with repeated trauma; reports of signs or symptoms associated with ergonomic disorders. Please discuss these possible criteria and initiating mechanisms.

4. Should there be qualifications for individuals developing and/or implementing the various elements of an ergonomics program? Please discuss qualifications for each of the general components listed in question A.2.

a.) Should certain nationally recognized qualifications or training be required for such individuals?

b.) Should individuals developing and or implementing the elements of an ergonomics program be required to have specific training in ergonomic issues?

5. OSHA requests data and information on the prevalence, frequency, severity, and treatment of ergonomic symptoms and/or disorders in your occupation, company and/or industry. Please include numbers and cases in proportion to your employment population, if possible in your response to the following:

a.) In the last 5 years, how many and what percentage of employees have reported symptoms, such as pain or numbness, or have been diagnosed with an ergonomic disorder? If there has been an increase in reported symptoms, and or diagnosed cases, to what do you attribute the increase?

b.) What particular ergonomic disorders and/or symptoms have been reported?

c.) What portion of your company's recordable injuries or illnesses do the reported disorders comprise?

d.) In what jobs, work tasks, operations, work processes, and/or production methods (hereafter "jobs") in your company and/or industry do ergonomic hazards and stressors exist? What are the specific ergonomic hazards and/or stressors in each of these jobs? What symptoms or reported cases of ergonomic disorders have occurred in each of these jobs?

e.) What treatment or rehabilitation has been prescribed for those reported cases?

f.) In how many cases has treatment included surgery?

g.) In how many cases has surgery been effective in correcting or eliminating the ergonomic disorder?

h.) How many employees have undergone multiple and/or bilateral surgeries and have the ergonomic disorders been eliminated or corrected after multiple surgeries?

i.) What percentage of your employees have experienced more than a single type of symptom and/or ergonomic disorder?

j.) How many and what portion of these reported cases have resulted in permanent disabilities/conditions?

k.) How does your organization accommodate employees whose exposure to ergonomic hazards has resulted in permanent disability?

6. For employers who have initiated programs that address ergonomic hazards, please describe that program and who is included in developing and implementing the program (e.g., ergonomic team). Also, please provide written program material, if available. Please address the following in your response:

a.) How and by whom was the program developed and implemented, and what were their qualifications?

b.) What are the key components of your program?

c.) How many employees and what jobs are covered by your program?

d.) What factors contributed to the initiation of the program?

e.) Are employees who work in ergonomically hazardous jobs included in your ergonomics team?

f.) What results have been achieved utilizing an ergonomics team approach?

7. For employers who have implemented an ergonomics program, describe the benefits of this program? Wherever possible, please discuss those results in quantifiable terms such as: changes in the incidence of ergonomic disorders and employee complaints of pain and numbness, medical costs, absenteeism, insurance rates, employee turnover, worker compensation costs, lost-workday injuries, employee morale, productivity, quality, and earlier detection of ergonomic disorders.

8. Have the issues of quality and productivity levels been addressed under the program? Please provide data and examples to support your response.

a.) For employers who redesigned jobs and/or processes to prevent or eliminate ergonomic hazards, how has redesign affected productivity and/or quality?

b.) As a result of redesign has there been an increase in the number of employees able to perform a wider variety of job units (job enlargement) within the plant or company? Please explain your response.

c.) What benefits have been achieved through job enlargement?

9. What have the costs been of your ergonomics program? Wherever possible, please discuss those results in quantifiable terms such as: workstation redesign, medical oversight and changes in productivity, quality and insurance costs. Please address the following in your response:

a.) What have been the estimated cost of engineering and redesign measures, such as total redesign and workstation redesign, that have been implemented?

b.) For employers who have implemented job rotation, what costs have been associated with factors such as downtime to rotate, supervision, pay differentials, and administrative and medical oversight?

c.) For employers whose ergonomics program has included reduction of the number of repetitions or speed, what costs have been associated with this control measure?

10. For employers who utilize incentive pay or piecework systems, how are ergonomic issues addressed? Please describe your ergonomics program.

a.) Have the incentive pay or piecework operations been retained, redesigned, or altered under the ergonomics program? Please explain your response.

b.) Have the issues of productivity levels and quality under your operating system been addressed in implementing the ergonomics program? If so, how have these issues been addressed?

11. In developing an ergonomic safety and health management standard, are there any unique issues that must be considered when applying this regulation to maritime, agriculture, and construction industries?

12. In light of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), OSHA requests comment regarding the impact that an ergonomics regulation might have on small businesses, including but not limited to compliance costs. Please provide relevant data and information to support your response.

a.) What specific considerations should be explored regarding small businesses?

b.) Would it be appropriate for the standard to include alternate provisions or partial exemptions for small employers, either within a single industry or across industries? If so, how? If not, why not?

13. OSHA requests commentors to provide the following industry profile information:

a.) What is the primary industrial activity or Standard Industrial Classification (SIC) code for your establishment?

b.) What principal product(s) and/or services does your company offer?

c.) Please describe your establishment in terms of employment, assets, annual sales, and annual production.

14. OSHA may hold informal public meetings prior to issuing a proposed rule in order to solicit additional comments, information, and data concerning the development of a ergonomic safety and health regulation. If held, on what issues should OSHA focus informal public meetings? Where should informal public meetings be held?

B. Systematic Analysis; worksite analysis and surveillance

1. How are jobs involving ergonomic hazards and/or stressors identified in your company and/or industry? If a systematic worksite analysis is conducted, please describe the elements of that program and what the analysis involves. Also, please provide any written materials or checklists about your systematic analysis, if available. In addition, OSHA requests the following be addressed in your response:

a.) How and by whom has the hazard analysis program been developed, conducted, supervised and reviewed?

b.) What factors should be considered in determining the frequency and prerequisites for requiring a systematic analysis of ergonomic stressors. For example, the following factors might be included: A reported ergonomic disorder; an employee complaint; hiring new employees; installing new equipment or tools; changes in production process, workstation or job; increases in production rates; and/or new exposure of employees to recognized hazards?

2. Can ergonomic hazards and disorders, including their location, adequately be identified through assessment of an employer's medical, safety, and insurance records as well as the OSHA–200 logs? Please explain your response. Where adequate assessment is not possible solely from such records, what additional action information would enable the employer to improve identification of ergonomic hazards and disorders?

3. What are the available methodologies or analyses for conducting a systematic analysis of specific ergonomic hazards and stressors? That is, how are ergonomic hazards and stressors best identified and measured?

a.) What factors must be considered and what criteria are necessary to adequately identify conditions that put employees at risk of developing ergonomic disorders?

b.) Should a choice from a menu of adapted or modified methods of system safety engineering or industrial engineering be an option for use by a team, in lieu of a systematic analysis certified by a professional?

C. Hazard Prevention and Control

1. What successful control measures have been implemented to prevent, eliminate, and reduce employee exposure to ergonomic hazards and stressors in your company and/or industry? Please provide data and information on those control measures on a operation by operation basis. In addition, please address the following in your response:

a.) What procedures, such as type of systematic analysis or industrial hygiene/engineering survey, have been used to determine necessary control measures?

b.) Have control measures been retrofitted in response to the need for immediate hazard control or implemented during routine process and workstation redesign and/or equipment replacement?

c.) How have control measures been evaluated to determine whether the identified ergonomic hazards have been eliminated and no additional hazards have resulted?

2. What methods of preventing, eliminating, and/or reducing ergonomic hazards have proven to be effective?

a.) What control measures exist to prevent, eliminate, and/or reduce stressful force, as well as the duration of such force?

b.) What control measures exist to prevent, eliminate, and/or reduce stressful or awkward posture and positioning, as well as the duration of such posture and positioning?

c.) What control measures and techniques exist to reorganize work or enlarge work, so that excessive repetitions are reduced?

d.) What mechanical devices and/or automation exist to prevent, eliminate, and/or reduce ergonomic hazards?

e.) What control measures and technologies have been or have the potential to be successfully transferred and implemented within and across industries?

3. Under what circumstances should job rotation be used as a primary method of control? Please explain your response and address the following in your response:

a.) For employers who have used job rotation as part of their ergonomics program, OSHA requests comment on how the job rotation program has been implemented and what factors initiated job rotation. Please provide data and information on the number and percentage of employees included in the program, the frequency and duration of rotation, and results of job rotation.

b.) Has rotation prevented and eliminated ergonomic disorders?

c. Has rotation reduced the duration, frequency, and severity of ergonomic disorders?

d.) In what kind of jobs has rotation proven to be effective or ineffective?

e.) Are there certain jobs or industries in which job rotation should not be used as a primary control method?

f.) What factors must be considered in identifying jobs and/or restricted duty assignments for a job rotation program?

g.) What should trigger job rotation and how often should employees be rotated?

h.) In what manner should job rotation take place? For example, how will the employer ensure that employees are rotated into jobs with nonparallel stressors and should health management be required for all employees involved in job rotation?

4. Under what circumstances should slowing down production rates and reducing the number of repetitions be used as means of eliminating or reducing ergonomic hazards and stressors? Please explain your response.

5. Under what circumstances should rest breaks be used as a primary method of control of ergonomic hazards? Please explain your response and address the following in your response:

a.) How frequently should rest breaks be given in order to be an effective method of controlling ergonomic hazards?

b.) What duration is necessary for rest breaks to be an effective control measure?

c.) Have rest breaks prevented or eliminated ergonomic disorders?

d.) Have rest breaks reduced the duration, frequency, and severity of ergonomic disorders?

e.) In what jobs have rest breaks proven to be effective or ineffective as a control method?

6. What preventive maintenance measures exist to decrease ergonomic hazards and stressors and how frequently must maintenance be undertaken?

7. Please describe and discuss medical devices and/or equipment such as gloves, splints, back belts, and braces, that have been used in jobs where ergonomic hazards and stressors exist?

a.) Have medical devices and equipment prevented or eliminated ergonomic disorders?

b.) Please provide data and evidence to support the effectiveness of medical devices and equipment, such as gloves, splints, back belts, and braces, in addressing ergonomic issues. In what jobs have those devices been effective?

c.) Are there certain devices that should not be allowed as an acceptable control measure for dealing with ergonomic hazards and their component stressors? Please explain your response.

8. Are there particular control measures that have been successful in preventing, eliminating, or reducing ergonomic hazards or stressors in jobs requiring repeated manual lifting? Please provide data and evidence to support your response.

a.) What manual lifting guidelines, such as the NIOSH "Work Practices Guide for Manual Lifting" (Ex. 2–24), the University of Michigan's "2–D Static Strength Prediction Program" (Ex. 2–25), or the Liberty Mutual Guidelines (Ex. 2–26), have you used? Please explain how you implemented or used those guidelines in your organization and what benefits have been achieved.

9. What has been the experience of employers using vibration measurement guidelines for monitoring employees who use vibrating tools and equipment?

10. For employers who have built new facilities and/or redesigned work stations and production processes, how have ergonomic considerations been included in those designs to prevent, eliminate, or reduce ergonomic stressors and hazards and/or to prevent the creation of new ergonomic hazards?

11. What criteria should OSHA use to determine whether an employer has adequately implemented hazard prevention and control measures to prevent, eliminate, and reduce exposure to ergonomic hazards and stressors.

D. Health Management

1. For employers who have implemented an ergonomic health management component as part of an ergonomic program, please describe that program. OSHA also requests that employers address the following in their response.

a.) What elements, such as periodic health assessment are included in the health management program?

b.) What employees and jobs are included in the program and why?

c.) Who conducts, supervises, and reviews the health management program?

d.) When is the baseline health assessment done, such as pre-employment or pre-assignment, and what factors or medical protocols are a prerequisite for this assessment?

e.) How often are additional periodic health assessments administered and what factors initiate this assessment?

2. Has your company encouraged employees to report early signs and/or symptoms of ergonomic disorders? If so, what means were used to invite employees to do this?

3. For employers who have implemented an ergonomic health management program, what rehabilitation and/or treatment programs are being used for employees who have developed ergonomic disorders? Please explain your program.

a.) Does your program include follow-up assessments of employees to determine whether the situation has been resolved or requires further treatment? Please describe your procedures or program for follow-up assessments.

b.) What is the frequency for such follow-up assessment and how was that frequency determined?

c.) If job reassignment is part of your rehabilitation or treatment program, please describe what criteria is used in job selection.

4. As part of the health management program, should initial and periodic health assessment be provided and what should these assessments include? Please explain your response.

a.) Please discuss whether initial health assessment should include symptom survey and/or physical examination.

b.) What should be the frequency for periodic health assessments and what factors should be considered in determining that frequency?

5.) Should health management include a provision where employees experiencing signs or symptoms and/or ergonomic disorders are transferred from the job with the afflicting ergonomic hazards to a job that does not have the same ergonomic stressors? What factors, issues, and criteria should be considered in initiating such a provision?

E. Training and Education

1. For employers who have implemented ergonomic training and education, please describe the program and how it was developed or acquired. Please address the following in their response.

a.) How many and what employees and jobs are included in the program?

b.) When and how often do employees receive job-specific ergonomic training or general ergonomic education?

c.) What training methods are used, for example: Videotapes, classroom instruction, and health and safety committee meetings?

d.) Have any specific training methods proven to be particularly effective in dealing with ergonomic problems?

e.) What job-specific training do employees receive to reinforce good work practices?

f.) Who conducts and supervises the training?

2. What other training and education resources and materials are currently available regarding ergonomic hazards?

a.) What organizations or industry and labor groups have developed and/or made available ergonomic training materials and resources?

b.) To whom are these resources made available?

c.) Are there other sources for ergonomic training and education instruction materials and resources?

3.) What should be the frequency of ergonomic training and education?

a.) What frequency of training is necessary to provide adequate reinforcement?

b.) Should training be provided annually? Please explain your response.

Public Participation

Written Comments and Information

Interested persons are invited to submit data, views, and arguments with respect to this advance notice of proposed rulemaking. These comments must be received by [insert 180 days after ANPR is published in the Federal Register] and submitted in quadruplicate to the OSHA Docket Office, Docket No. S–777, Occupational Safety and Health Administration, 200 Constitution Ave., N.W., Room N–2625, Washington, D.C. 20210, (202) 523–7894. Comments on the ANPR may not be sent by facsimile. Comments and information will be available for inspection and copying from 10 a.m. to 4 p.m., Monday through Friday, at the OSHA Docket Office at the address above.

All submissions in response to this ANPR, as well as other information gathered by the Agency, will be considered by OSHA in the development of a proposed standard addressing ergonomic hazards in the workplace.

List of Subjects in 29 CFR Part 1910

Business and Industry, Health Records, Labor, Medical Research, Occupational Safety and Health, Science and Technology

Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

Signed at Washington, D.C. this 29th day of July, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

APPENDIX A--GLOSSARY OF TERMS

A wide variety of terms are currently used by employers, occupational safety and health professionals and others in describing ergonomic issues and problems. The following definitions are provided to clarify the terms by OSHA in this ANPR. OSHA requests comments on these definitions.

Ergonomics. Ergonomics is the study of the design of requirements of work in relation to the physical and psychological capabilities and limitations of people; that is, ergonomics seeks to fit the job to the person rather than the person to the job. The aim of the discipline is to prevent the development of occupational disorders and to reduce the potential for fatigue, error, or unsafe acts through the evaluation and design of facilities, environments, jobs, tasks, tools, equipment, processes, and training methods to match the capabilities of specific workers.

Ergonomic hazards. Ergonomic hazards refer to a combination of stressors or workplace conditions that may cause harm to the worker. Improperly designed workstations, tools, and equipment; improper work methods; and excessive tool or equipment vibration are examples of this type of hazard. Other examples stem from job and process design problems that include aspects of work flow, line speed, posture, force required, work/rest regimens, and repetition rates.

Ergonomic disorders. Ergonomic disorders (EDs) are the range of health disorders arising from repeated stress to the body due to exposures to ergonomic hazards. These disorders may affect the musculoskeletal, nervous, and neurovascular systems. EDs include the various occupationally induced cumulative trauma disorders, cumulative stress injuries, and repetitive motion disorders.

A main distinction between EDs and strain or sprain injuries is that the latter usually result from a single act, such as acute trauma. EDs, on the other hand, develop gradually over periods of weeks, months, and years and there are few if any distinctive or dramatic features surrounding their onset. EDs include damage to the tendons, tendon sheaths, synovial lubrication of the tendon sheaths, bones, muscles, and nerves of the hands, wrists, elbows, shoulders, necks, backs, and legs. Some of the more frequently occurring occupationally induced EDs include chronic back pain, carpal tunnel syndrome, DeQuervains disease, epicondylitis (tennis elbow), Raynaud's syndrome (white finger), synovitis, stenosing tenosynovitis crepitans (trigger finger), tendonitis, and tenosynovitis.

Ergonomic stressors. Ergonomic stressors are regarded as synergistic elements or functional subunits of ergonomic hazards, of which one or more can combine to constitute an ergonomic hazard. Exposure to jobs, operations, processes, or workstations that have multiple stressors decreases

the latency of the onset of ergonomic disorders, depending upon the relative intensity, duration, frequency, and combination of each stressor contributing to the ergonomic hazard. Examples of ergonomic stressors include repetitiveness of activity or motion; excessive or required force or grip in performing an activity; awkward, static, or prolonged positioning of the body; vibration; and lighting conditions.

Systematic approach or systems approach. A systems approach to safety and health management means a comprehensive program by the employer that addresses workplace processes, operations, and conditions as interdependent systems to identify, evaluate, prevent, eliminate, or reduce all types of hazards to employees. A comprehensive program to address complex problems, such as the presence of a variety of ergonomic stressors in the workplace, may require the integration of a combination of solutions.

Systematic analysis. Systematic analysis is a holistic, quantitative, and qualitative evaluation process for investigating ergonomic stressors and hazards in the workplace. This process describes and evaluates employee exposures to equipment, jobs, processes, workstations, and tasks, and determines the extent to which exposures are or may become hazardous. In ergonomics, this analysis focuses on the stressors that result from the relationship between employees, their jobs, and the work processes. Systematic analysis also includes determining a plan for controlling those hazards.

A systematic analysis of exposures to ergonomic stressors is initiated by identifying tasks that, based on an assessment of company records, employee surveys and/or surveillance; require further hazard characterization. Specific behaviors required of persons performing a task, job, process, or operation are then observed, described and evaluated. This analysis includes the examination of the relationship between the job in question and other job-units in the production process, so that, for example, alternate methods of production may be substituted for the hazardous one. The objective of this step-by-step analysis is to determine if and where the limits of human capability have been exceeded. Techniques of step-by-step analysis include those commonly used in industrial engineering and system safety engineering, such as fault tree analysis or job hazard analysis.

Ergonomic surveillance. Ergonomic surveillance is the ongoing systematic collection, assessment, and interpretation of health, incidence, and exposure data in the process of describing and monitoring the circumstances which may be related to ergonomic hazards or the presence thereof. Ergonomic surveillance data, augmented by other sources of information, can be used to assess the need for occupational safety and health action and to assist in planning, implementing, and evaluating ergonomic programs and early interventions.

Health management. Health management, often referred to as medical management, is a component of a managerial system approach to ensure early identification, evaluation, and treatment of signs and symptoms of ergonomic disorders and to aid in the prevention of ergonomic disorders or symptoms. Health management is broader in scope than medical surveillance provisions in other OSHA standards. While health management encompasses traditional medical surveillance, it also involves, among other things, the participation of trained health care providers in periodic workplace walk- throughs and follow-up assessments of workers who have developed signs and symptoms of ergonomic disorders.

[FR Doc. 92-18312 Filed 7-31-92; 8:45 am]
BILLING CODE 4510-26-F

Reader Aids

Federal Register

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Monday, August 3, 1992

INFORMATION AND ASSISTANCE

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CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 29, 1992

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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9 Parts:			
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10 Parts:			
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51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
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11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
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140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
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15 Parts:			
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300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
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200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
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150-279	(869-013-00058-7)	15.00	Apr. 1, 1991
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
*400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
*500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
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100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-013-00068-4)	17.00	Apr. 1, 1991
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300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
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300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-013-00078-1)	25.00	Apr. 1, 1991
*200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
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§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
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§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
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500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990

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600–End	(869–017–00101–5)	6.50	Apr. 1, 1992
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
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28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
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1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[7] July 1, 1989
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30 Parts:			
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200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
31 Parts:			
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200–End	(869–013–00118–4)	20.00	July 1, 1991
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33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–013–00127–3)	20.00	July 1, 1991
34 Parts:			
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36 Parts:			
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200–End	(869–013–00133–8)	26.00	July 1, 1991
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38 Parts:			
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86–99	(869–013–00143–5)	29.00	July 1, 1991
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150–189	(869–013–00145–1)	20.00	July 1, 1991
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260–299	(869–013–00147–8)	31.00	July 1, 1991
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400–424	(869–013–00149–4)	23.00	July 1, 1991
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790–End	(869–013–00152–4)	22.00	July 1, 1991

Title	Stock Number	Price	Revision Date
41 Chapters:			
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
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201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
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4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

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August 5	August 20	September 4	September 21	October 5	November 3
August 6	August 21	September 8	September 21	October 5	November 4
August 7	August 24	September 8	September 21	October 6	November 5
August 10	August 25	September 9	September 24	October 9	November 9
August 11	August 26	September 10	September 25	October 13	November 9
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August 26	September 10	September 25	October 13	October 26	November 24
August 27	September 11	September 28	October 13	October 26	November 25
August 28	September 14	September 28	October 13	October 27	November 27
August 31	September 15	September 30	October 15	October 30	November 30

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102d Congress, 2nd Session, 1992

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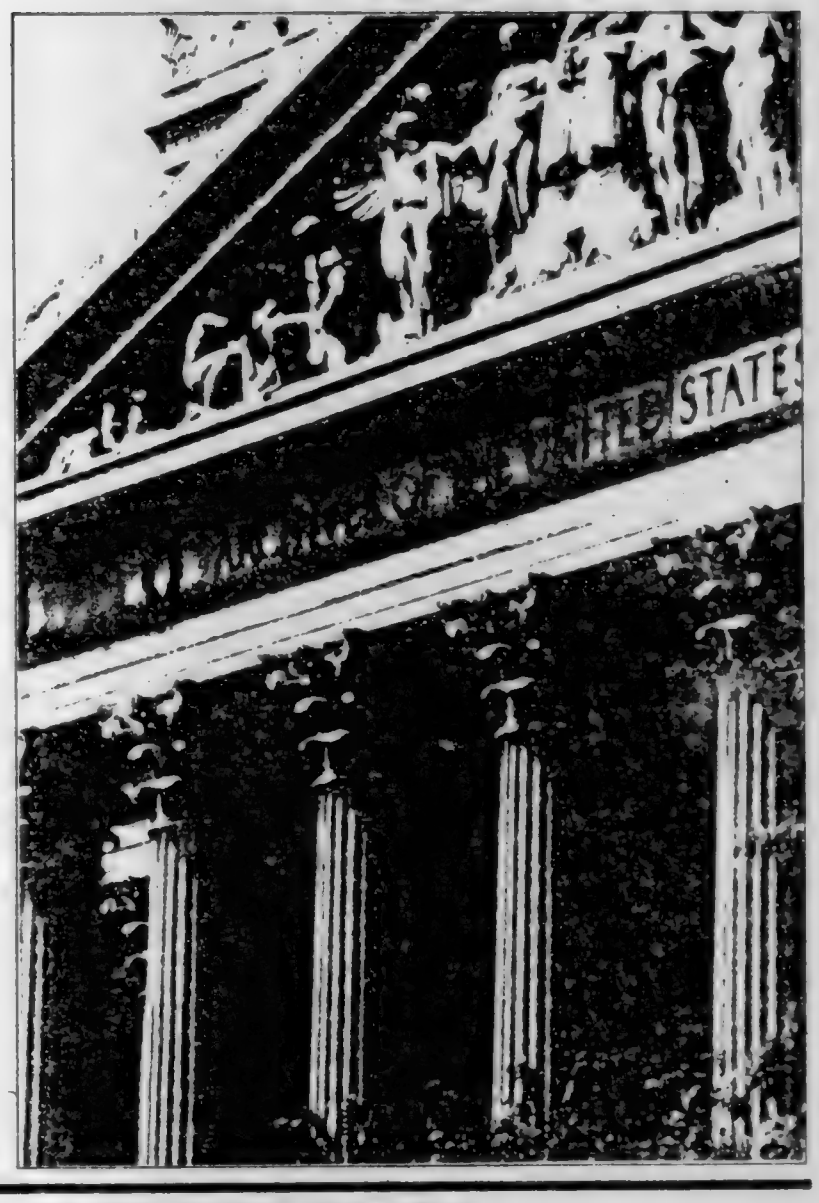

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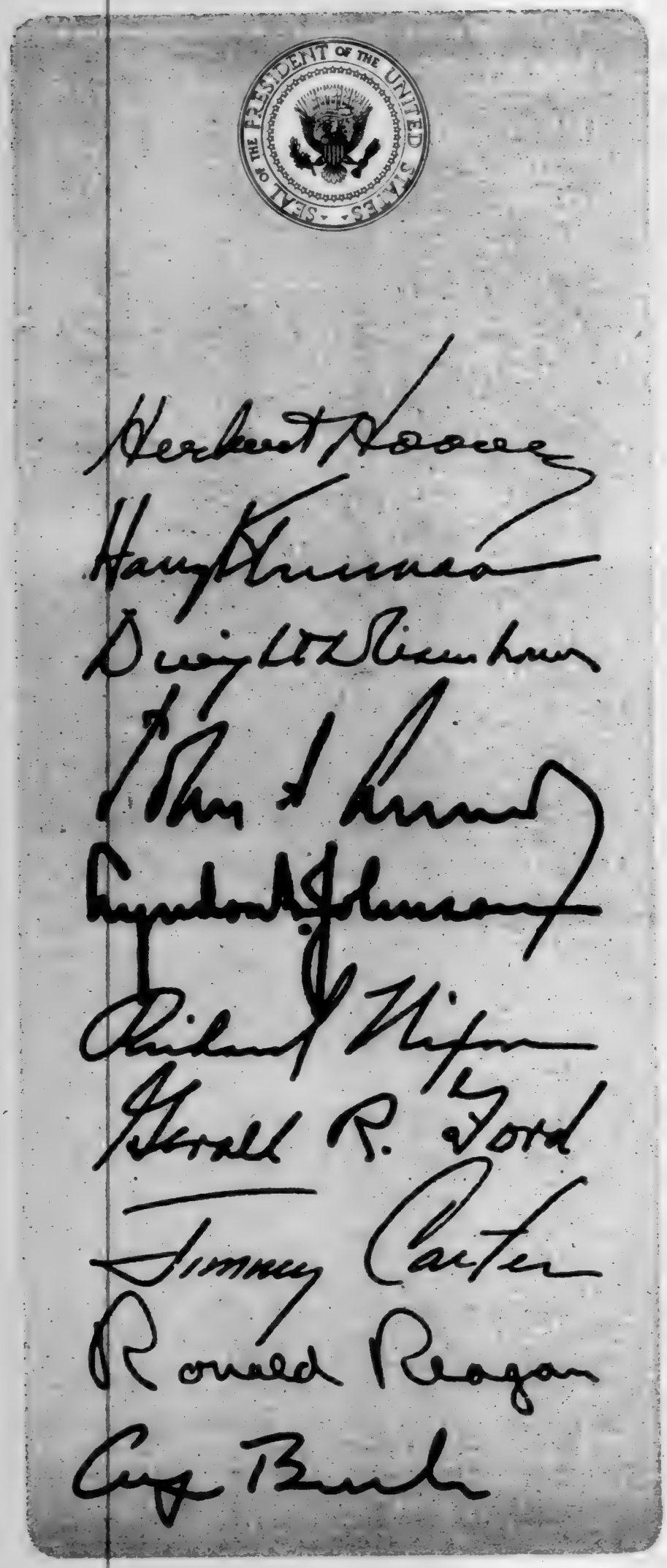

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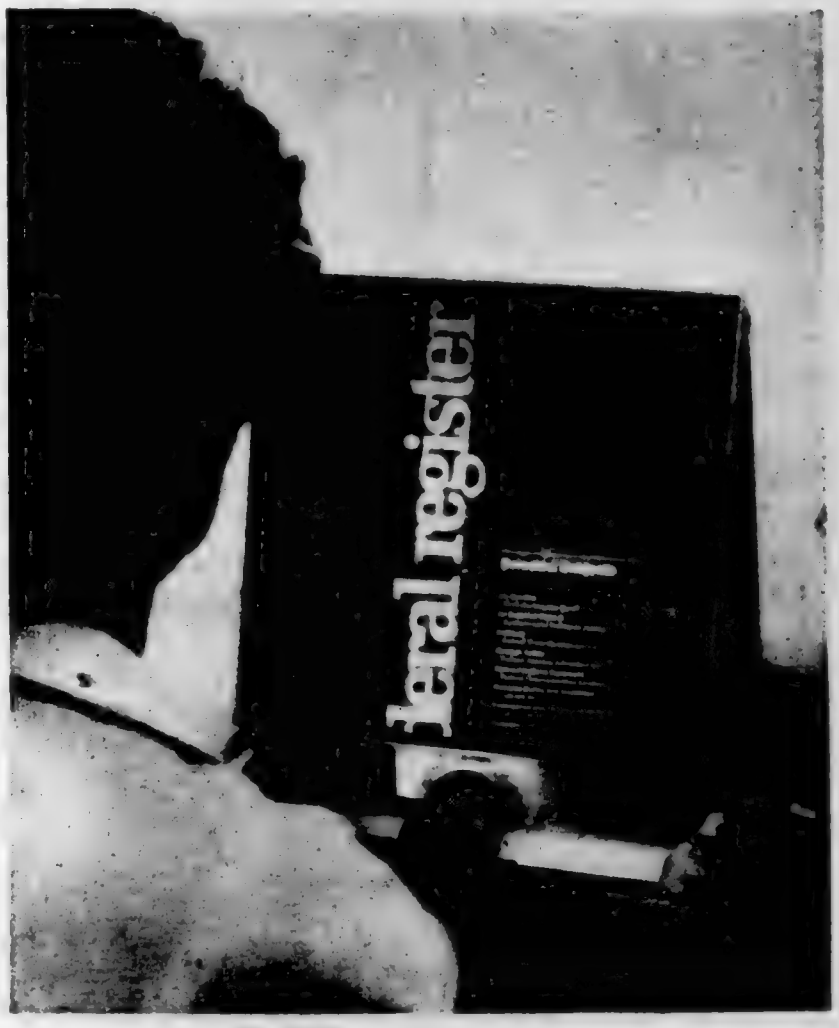

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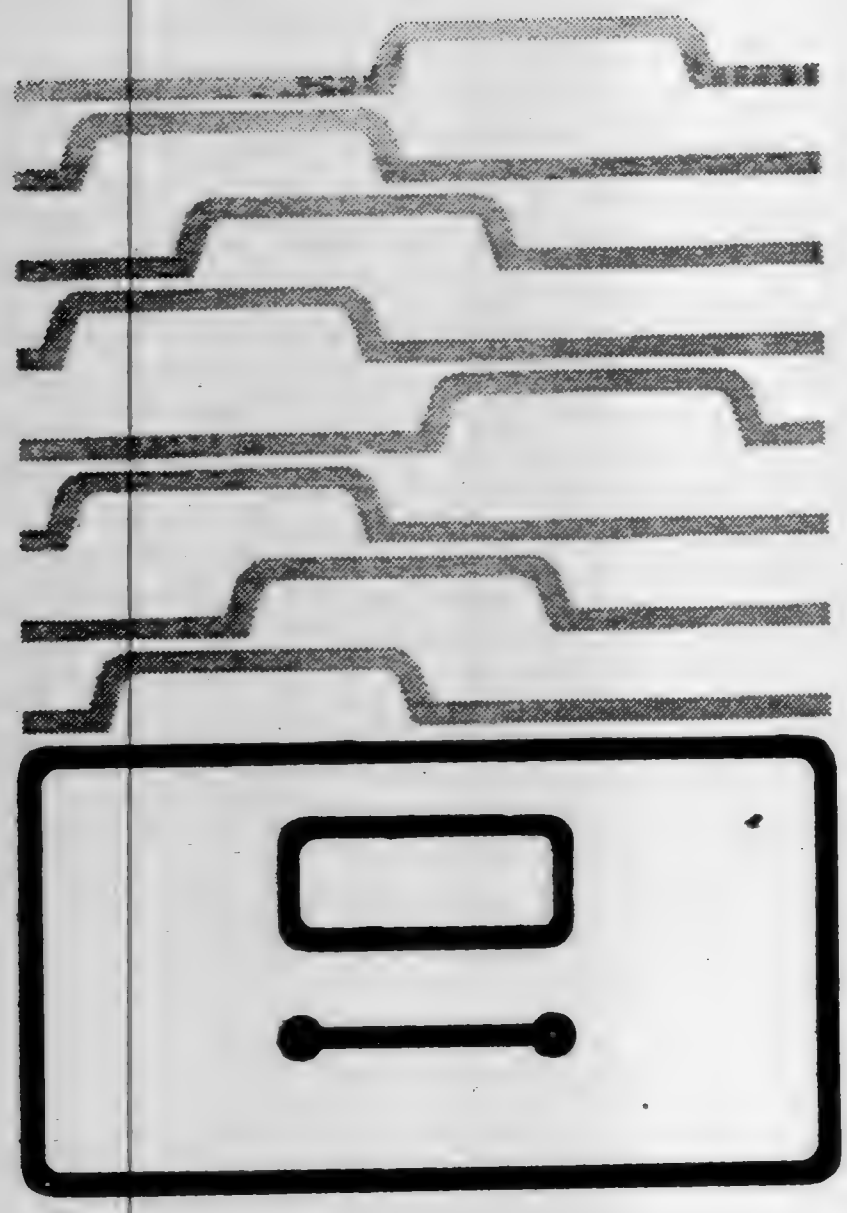

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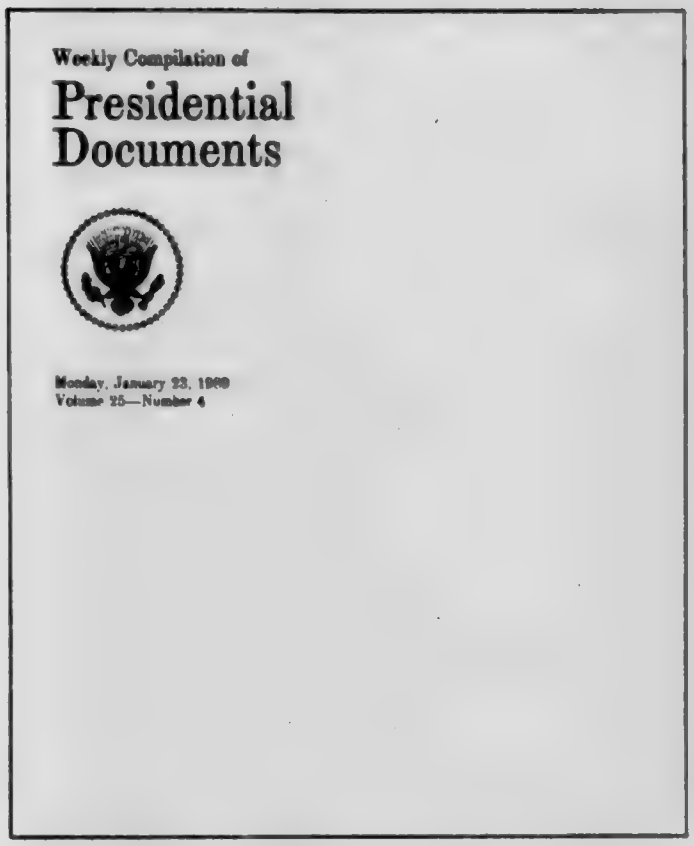

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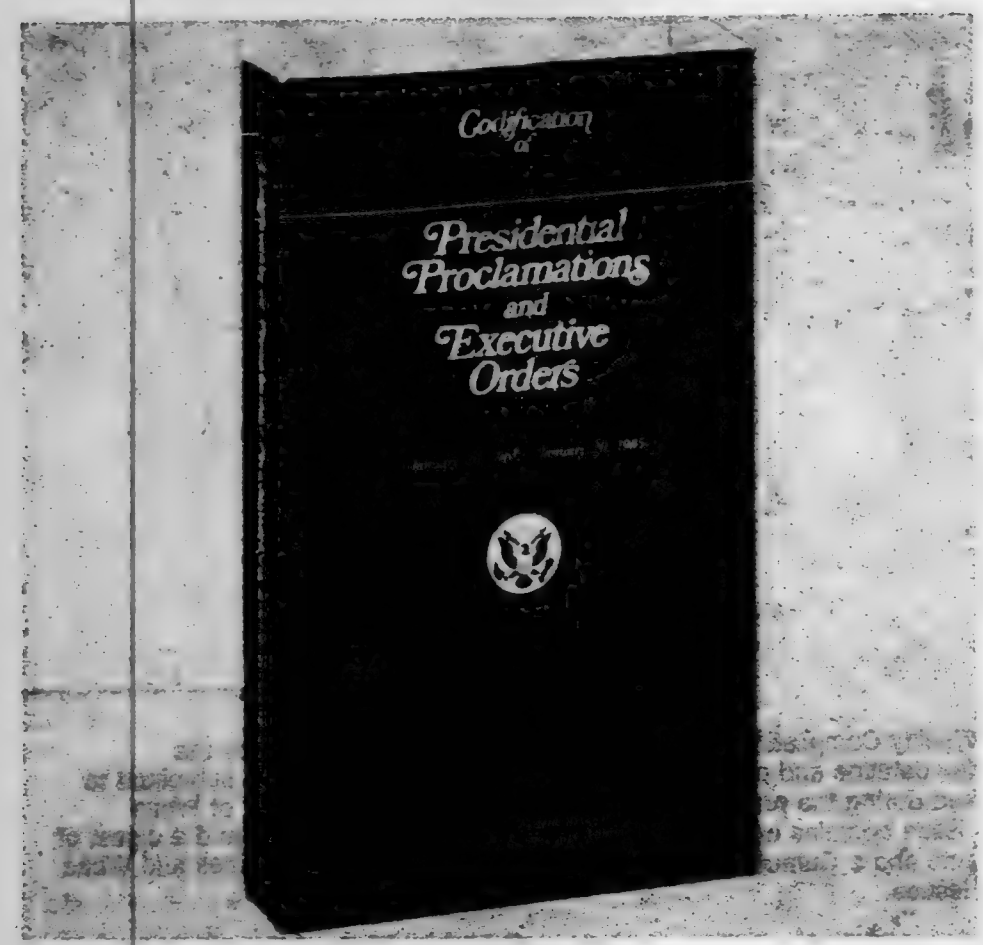

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Rules and Regulations

Federal Register
Vol. 57, No. 150
Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 718, 719, and 720

Commodity Credit Corporation

7 CFR Parts 1413 and 1414

RIN 0560-AC90

Food, Agriculture, Conservation, and Trade Act Amendments of 1991

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The statutory basis for the regulations set forth at 7 CFR parts 718, 719, 1413, an 1414, which relate to compliance, reconstitutions, feed grains, rice, upland and extra long staple cotton, wheat, integrated farm management, and related programs, were amended by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (the 1991 Act), which was enacted on December 13, 1991. An interim rule was published on April 20, 1992 (57 FR 14456) to set forth changes necessary to implement these provisions. Accordingly, this rule adopts the interim rule as final, and sets forth amendments to parts 719, 720, and 1413 to conform to the provisions of the 1991 Act; and to make technical corrections, and to delete references to obsolete provisions.

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce D. Hiatt, Agricultural Program Specialist, ASCS, P.O. Box 2415, Washington, DC 20013-2415, (202) 690-2798.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "nonmajor". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analyses were prepared with respect to the programs for the 1992 crops of wheat, feed grains, cotton, and rice. Copies of the analyses are available to the public from Deputy Administrator for Policy Analysis, Agricultural Stabilization and Conservation Service, USDA, room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are Cotton Production Stabilization-10.052; Feed Grain Production Stabilization-10.055; Wheat Production Stabilization-10.058; and Rice Production Program-10.065.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies at 7 CFR part 780 must be exhausted.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560-0004 and 0560-0092.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0004 and 0560-0092), Washington, DC 20503.

Discussion of Comments and Changes

In response to the interim rule published at 57 FR 14456 on April 20, 1992, 8 letters containing 14 comments were received. The respondents included the National Cotton Council, a Congressman, one commodity organization, bank trust officers, and farm managers.

The discussion that follows is organized in the same sequence as the provisions of the final rule.

Section 718.42 Skip Rows and Strip Crops

One comment was received on this section of the interim rule. The respondent suggested that the regulations which apply to the determination of whether rows of a certain width would be considered planted or skipped should be adjusted in accordance with the clear intent of Congress until such time as corrective legislation can be introduced, passed, and signed. The commentor did not provide additional clarification with

regard to an interpretation of the clear intent of Congress on this issue.

The interim rule which was published on April 20, 1992, provided in 7 CFR 718.42 that for skip rows and row crops the entire acreage of a field shall be considered devoted to the crops where the crop is planted in strips of two or more rows and the strips of idle land are less than 64 inches wide, except where cotton is planted in skip row patterns; (i) if the distance between the rows is 30 inches and the strips of idle land are less than 60 inches wide; or (ii) if the distance between the rows is 32 inches and the strips of idle land are at least 60 inches but less than 64 inches, the producer has the option to consider the crop as either solid planted or skip row.

Based upon a complete review of the legislative history on this issue, it is believed that the interim rule does conform with the intent of Congress. Accordingly, § 718.42 is adopted without change.

Section 719.2 Definitions

This part of the interim rule discussed an issued that had been raised concerning the treatment of spouses who reside in community property States or who jointly own property. The definition of owner was clarified to provide that each such spouse is considered an owner in his or her own right. In addition, the interim rule provided that one spouse could sign on behalf of the other spouse without the need for a signed power-of-attorney document. In the event a spouse did not desire to allow the other spouse to take such action, the interim rule provided that notification must be given to ASCS and CCC that a spouse cannot execute documents on behalf of the other spouse. The purposes of this provision are to simplify the administration of programs by ASCS and CCC, to establish a uniform treatment of spouses with respect to signature requirements throughout the nation without regard to State law, and to reduce the paperwork burden on producers.

Five comments were received on this section of the interim rule, all from the State of Illinois. The respondents, who were bank trust officers and farm managers, stated that they thought the definition of "producer" should be broadened to include agents of trustees and executors, since ASCS procedure prohibits trustees and executors from delegating discretionary authority to an agent unless authorized by State law.

ASCS has determined not to change the definition of "producer" as changing the definition would have a significant impact on payment limitation determinations and other program matters, however, to simplify program administration and reduce the paperwork burden for producers, we do agree that trustees and executors should be permitted to delegate their authority to execute documents necessary for enrollment in ASCS and CCC programs.

After reviewing the issue, it has been determined that the reference to signatures for married producers should be removed from 7 CFR part 719, and that 7 CFR part 720 should be revised to clearly specify that this provision applies to all ASCS-administered programs, including CCC programs. Accordingly, the amendment to the definition of "producer" in § 719.2 is reissued as it existed prior to the issuance of the interim rule and a new § 720.2 is added to incorporate the signature requirements for individuals (including spouses), trusts, estates, and business entities who enroll in ASCS-administered programs, including CCC programs.

Section 1413.6 Farm Program Payment Yields

One comment was received on this section of the interim rule. The respondent opposed the proposal to determine farm program payment yields using the farm's irrigated history in 1988 through 1990. The respondent stated that the producers in the West who must irrigate to grow crops could find themselves with low yields because their crop rotations did not include growing program crops in those 3 years.

The regulations provide for an appeal procedure that is intended to provide some flexibility in addressing cases that do not fit the provisions of the basic rule in which the producer believes that they have been unjustly affected. The appeal procedure that is in place will cover cases where a producer has a rotation practice of planting both program and nonprogram irrigated crops. It should be noted, however, that we do not believe that it was the intent of the managers of Food, Agriculture, Conservation and Trade Act of 1990 to use historical weighted yields that would exceed the levels of payment that could, or would have been, made available before 1991. Accordingly, § 1413.6 is adopted without change.

Section 1413.61 Eligible Land

Two comments were received on this section of the interim rule. The commentators strongly opposed the elimination of provisions providing the exceptions to minimum size and width requirements for land designated as ACR. It was suggested that the exceptions be reinstated, particularly for operations where irregular skips have been utilized in conservation compliance plans. The final rule published April 19, 1991, provided these exceptions for the 1991 crop year only, because of the lateness of the publication. The purpose of the 1991 change was to ensure the uniform application of acreage reduction requirements to all producers. Accordingly, § 1413.61 is adopted without change.

Section 1413.63 Approved Cover Crops and Practices

One comment was received on this section of the interim rule. The respondent urged the inclusion of the provisions of this section in the final rule as written. Accordingly, § 1413.63 is adopted without change.

Section 1413.72 Skip Rows

This section of the interim rule received one comment. The commentator urged the inclusion of the provisions of this section in the final rule as written. Accordingly, § 1413.72 is adopted without change.

Section 1413.79 Eligible CU for Payment Land

One comment was received on this section of the interim rule. The commentor opposed the provisions as unnecessarily restrictive and urged consideration be given to allowing an exception when the operation is utilizing irregular or narrow skips as part of an approved conservation plan. The commentor stated that these provisions would place a hardship on smaller farmers. The final rule published April 19, 1991, provided the exceptions to the minimum size and width for the 1991 crop year only, because of the lateness of the publication of the rule. As noted with respect to the similar provision at § 1413.61, it was the intent of the 1991 rule to insure uniform compliance by all producers with acreage reduction program requirements. Accordingly, this comment is not adopted, and § 1413.79 is adopted as written.

Section 1413.111 Division of Payments

This section of the interim rule receives two comments. One respondent opposed the proposed method for determining whether a lease providing for a combination payment of cash and/or a share of the crop will be considered a cash or share lease. The commentor also opposed the provision stating that if a cash lease landlord receives any part of the deficiency payments or loan is received on any production that belongs to the landlord it shall be considered a scheme or device. The respondent felt

that this reference to scheme and device is arbitrary, capricious, and without justification and should be withdrawn. The other respondent also opposed the statement referring to scheme and device. The respondent considered the term scheme and device a chilling term to use for program violations. The respondent also suggested that the provisions for combination leases departed from the rule previously in effect, that it is dependent on whether the cash lease payment is equal to or exceeds the normal cash lease established by the county committee, and also stated that the provision was published in the interim rule after most leases have been negotiated for the year. It was stated by the respondent that this is an inappropriate statement for long term leases that have been unchanged for the 1992 crop. The provisions for cash lease and share lease were published in the interim rule in order to ensure that creative financial arrangements were not used in order to circumvent statutory program limitation provisions. These changes were based upon prior year experiences and to not implement these changes in 1992 would allow producers to continue to avoid these statutory provisions. However, the provisions for combination leases and loan eligibility has been revised for clarification.

List of Subjects

7 CFR Part 719

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements.

7 CFR Part 720

Acreage Allotments, Marketing quotas.

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, the interim rule amending 7 CFR parts 718, 719, 1413, and 1414, published at 57 FR 14456 on April 20, 1992, is adopted as a final rule with the following changes:

PART 719—RECONSTITUTION OF FARMS, ALLOTMENTS, NORMAL CROP ACREAGE AND PRECEDING YEAR PLANTED ACREAGE

1. The authority citation for part 719 continues to read as follows:

Authority: 7 U.S.C. 1375, 1378, 1379, 1461–1469 and 1801 note.

2. Section 719.2 is amended by revising the definition of "producer" to read as follows:

§ 719.2 Definitions.

* * * * *

Producer means a person who, as owner, landlord, tenant, or sharecropper, is entitled to share in the crops available for marketing from the farm or in the proceeds thereof.

* * * * *

PART 720—GENERAL POLICY AND INTERPRETATIONS

3. The authority citation for part 720 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b and 714c.

4. Section 720.2 is added to read as follows:

§ 720.2 Signature requirements.

(a) The provisions of this section shall be effective on or after August 4, 1992. Such provisions apply to all Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC) programs administered by county ASCS offices and to related activities except as provided in paragraph (b) of this section.

(b) The provisions of paragraph (c) of this section are not applicable to:

(1) Program documents required to be executed in accordance with part 3 of this title and part 704 of this chapter;

(2) Easements entered into under the Wetlands Reserve and Conservation Reserve Programs;

(3) Form ASCS–211, Power of Attorney, and Form ASCS–211–1, Power of Attorney for Husband and Wife; and

(4) Such other program documents as determined by ASCS or CCC.

(c) When an ASCS or CCC program requires the signature of a producer; landowner; landlord; or tenant, a husband or wife may sign all such ASCS or CCC documents on behalf of the other spouse, unless such other spouse has provided written notification to ASCS and CCC that such action is not authorized. If such restriction relates to activities for a specific farm, the notification must be provided to the county ASCS office which administers ASCS and CCC programs with respect to such farm.

(d) An individual; duly authorized officer or director of a corporation; duly authorized partner of a partnership; executor or administrator of an estate; trustee of a trust; guardian; and conservator may delegate to another the authority to act on their behalf with respect to ASCS and CCC programs administered by county ASCS offices by execution of Form ASCS–211, Power of Attorney. ASCS and CCC may, at their discretion, allow the delegations of authority by other individuals through use of such a form or such other form as approved by ASCS or CCC.

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

5. The authority citation for part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469, 15 U.S.C. 714b and 714c.

6. Section 1413.111 is amended by revising paragraphs (b)(2) (iv) and (v) to read as follows:

§ 1413.111 Division of payments.

* * * * *

(b)(1) * * *

(2) * * *

(iv) If a lease provides for both a cash payment and/or a share of the crop or production the county committee will determine a normal cash lease amount by crop for the area. If the guaranteed production or cash lease payment is equal to or exceeds the normal cash lease established by the county committee for the area, then the lease shall be considered to be a cash lease.

(v) If the lease is determined to be a cash lease, the landlord is not eligible to receive disaster or deficiency payments in accordance with this part on such part of the crop.

* * * * *

Signed at Washington, DC, on July 29, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 92–18372 Filed 8–3–92; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket No. FV–91–430FR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Change in the Undershipment Carryover Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the undershipment carryover provisions of

the California-Arizona navel and Valencia orange marketing orders. This rule reduces from two weeks to one week the length of time that handlers may carryover undershipments of allotment when volume regulation is in effect. This action was recommended by the Navel and Valencia Orange Administrative Committees (Committees) at a joint meeting on August 27, 1991. The Committees locally administer the marketing orders covering navel and Valencia oranges grown in Arizona and designated parts of California.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges who are subject to regulation under the respective marketing orders and approximately 4,000 producers of navel oranges and 3,500 producers of Valencia oranges in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel and Valencia oranges may be classified as small entities.

This final rule changes the undershipment carryover provisions of the California-Arizona navel and Valencia orange marketing orders. This action reduces from two weeks to one week the length of time that handlers may carryover undershipments of allotment when volume regulation is in effect. This action was recommended by the Navel and Valencia Orange Administrative Committees at a joint meeting on August 27, 1991, by an eight to one vote of the Navel Orange Administrative Committee (NOAC) and a unanimous vote of the Valencia Orange Administrative Committee (VOAC).

Sections 907.52 and 908.52 of the California-Arizona navel and Valencia orange marketing orders, respectively, provide for weekly volume regulations for fresh oranges going to the fresh domestic market (the United States and Canada). Volume regulations may be implemented during a season as needed to help maintain orderly marketing conditions, avoid unreasonable fluctuations in supplies and prices, and ultimately improve returns to producers.

When the Committees believe that volume regulation may be needed during a season, they make such recommendations to the Department for review. The Department evaluates such recommendations in conjunction with information concerning crop, weather, and transportation conditions, as well as information contained in Market News reports, handler bulletins, and other pertinent publications. The Department carefully considers all such information and, if warranted, issues a volume regulation for a specified week. When volume regulation is in effective for a given week, the Committees calculate the quantity of oranges (allotment) which may be handled by each handler.

Sections 907.56 and 908.56 of the navel and Valencia orange orders, respectively, provide that if any person handles a quantity of oranges less than their allotment for a week when volume regulation is in effect, such person may handle, in addition to such person's allotment for the next two succeeding weeks only, a quantity of oranges equivalent to such undershipment. Those sections also provide authority for the Committees to recommend to the Secretary increases or decreases in the number of weeks that undershipments of allotment may be carried forward.

The Committees recommended decreasing the length of time that handlers may carry forward undershipments of allotment from two weeks to one week. The two-week carryover provisions were added to the orders in 1985 to provide handlers additional flexibility. However, the Committees have found that carrying forward undershipments for a period of two weeks makes it difficult to accurately determine overall industry shipment levels based on a given allotment level. For any given week when volume regulation is in effect, the Committees cannot be sure if the undershipments from the prior week will be utilized during the current week or the following week. This may result in conservative recommendations for volume regulations by the Committees, which could result in shorting the market of needed supplies.

The uncertainty with respect to when undershipments will be utilized may also affect the loan provisions of the orders. Under the orders, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotment. Handlers may be less

likely to offer allotment for loan in anticipation that they can utilize such allotment during the following two weeks. This uncertainty can result in handlers offering allotment for loan too late during a week, thereby causing an unnecessary loss in shipping opportunity. Finally, the two-week carryover provision also creates uncertainty among buyers, as they may not have an accurate picture of available supplies.

The Committees believe that this action will help them make better estimates of shipment levels and available supplies during periods of volume regulation. Thus, the Committees should be able to make recommendations for volume regulation based on improved information; thereby more effectively carrying out the intent of the orders and meeting the objectives of the Act. This action should also improve the loan functions of the orders by giving handlers a better estimate of shipping levels during a week of regulation. Handlers will then be able to make more timely decisions concerning allotment loans and avoid losses of shipping opportunity.

A proposed rule concerning this action was published in the December 13, 1991, issue of the **Federal Register** (56 FR 65023). Comments concerning this action were invited until January 13, 1992. Nine comments were received, four in support of the proposal and five against. The four supporting comments were submitted by the VOAC, Sunkist Growers, Inc. (Sunkist), Suntreat Growers & Shippers, Inc., and G.A. Wollenman. The five opposing comments were submitted by Farmers Alliance for Improved Regulation (FAIR), Dole Citrus (Dole), Rainbow Valley Orchards (Rainbow), Lemon Twist Ranch, and Sequoia Orange Company, Inc. (Sequoia).

The four commenters supporting this action all mentioned that they believe that the two week carryover period has allowed for distortions in calculating what is actually available to be shipped to the marketplace. In its comment, the VOAC reaffirmed its belief that without the knowledge of whether carryover of allotments would be shipped in the current week or in the following week, the Committees have tended to be conservative in their recommendations for volume regulation. The VOAC also expressed concerns that prorate violations may occur due to the confusion surrounding the current situation.

In his comment, G.A. Wollenman stated that the two week undershipment carryover provisions have proven to be a liability. He believes that these provisions result in the lack of availability of the actual amount of undershipments to be utilized in a given week, making it difficult for the Committees to be exact in their recommendations for weekly volume regulation.

The comment from Sunkist states that Sunkist approved of the current carryover provisions. However, after five years, it has found these provisions have not added flexibility, but have caused the Committees to be more cautious when recommending weekly levels of volume regulation. Because of the uncertainty of not knowing in which week the undershipments might be utilized, the Committees have been reluctant to set maximum levels of allotment. Sunkist believes that the orders' loan provisions have also been affected by the current carryover provisions, and that a one week carryover will allow the loan provisions to be used in a more effective and efficient manner.

The remaining commenters raised several issues opposing changing the undershipment carryover provisions from two weeks to one. Many of the comments are similar and will be discussed together. Each issue raised is addressed herein.

Several commenters who opposed the proposal contended that it would adversely affect growers and would result in a loss of flexibility. In their comments, both Sequoia and Rainbow expressed dissatisfaction with the prorate system. Sequoia stated that it is unlawful, and Rainbow commented that it would like to see it abolished. In lieu of the end of prorate, both stated that the existing system should be as flexible as possible, and that reducing the carryover time for undershipments would result in a loss of flexibility. Sequoia commented that if a change was to be made, it would like to see the carryover time increased.

Dole also believes that a reduction in carryover time would result in a loss of flexibility. In its comment, Dole stated that reducing carryover time to one week would leave growers more vulnerable to short-term changes in market conditions. Dole believes that if circumstances exist where growers are having difficulty picking fruit or prices are depressed, providing growers the flexibility to hold their fruit on the tree for another two weeks could result in growers getting a better price for that fruit.

In the comment received from Lemon Twist Ranch, the commenter expresses that prorate restrictions are already too burdensome, and to remove the two week carryover provision would result in even more interference in the industry.

In response to these concerns, the original intent of establishing the two week carryover provision was to provide the industry with additional flexibility. However, the Committees have found that the additional week for allowable undershipments has inherent problems. The two carryover period has made it difficult for the Committees to accurately estimate the level of undershipments to be utilized in a given week. Consequently, the accuracy of the Committees' recommendations has been adversely affected.

By reducing the carryover time to one week, the Committees will be able to more reliably estimate the carryover available each week. This will enable the Committees to adjust their recommendations for volume regulation to better reflect the marketing situation for the given week, creating a more stable market and improved grower revenues. The ability to make better recommendations will also allow the Committees to be more responsive to market and weather changes.

While this rule may result in somewhat less flexibility for some handlers individually, it will provide a benefit to the industry as a whole. The Committees believe that under the two week carryover provisions, they tended to make conservative recommendations for volume regulations, reducing the amount of allotment available to handlers. By allowing the Committees to make recommendations based on more reliable information, they may increase their levels of recommended allotments, giving handlers greater flexibility to market more fruit each week.

Additional flexibility could also be provided under the one week carryover period by the possible increased availability of allotment loans. The current undershipment provisions may cause uncertainty as to whether it would be better for a handler to hold any extra allotment to utilize it sometime in the two week carryover period or to offer it for loan. Consequently, indecision may cause handlers to offer allotment for loan too late in the regulatory week, resulting in a loss of shipping opportunity. The gains in efficiency of operation resulting from the increased certainty above available supplies and the willingness of handlers to offer allotment for loan are expected to more than offset any reduction in flexibility for handlers as compared with a two-week undershipment carryover period.

In response to Sequoia's comment that the carryover period should be increased, an increase would only serve

to exacerbate the problems which exist under the two week carryover period.

In the comment received from FAIR, the commenter claims that the burden of this change would fall primarily on small handlers who have come to depend on the added flexibility provided by the two week carryover. The commenter further states that allotments issued since 1985 are much higher than levels recommended during the five years preceding the change, and that grower revenue has been higher since the two week carryover was implemented.

FAIR's comments are highly speculative. There are many factors to consider besides the change in the carryover provisions when evaluating such historical information. One must consider the market conditions, weather, and many other factors which differentiate the individual seasons and impact shipment and price levels. As far as the claim that small handlers will be inequitably impacted by the change to a one week carryover period, the Department believes that all handlers will benefit from the advantages provided by this rule as mentioned above.

FAIR also commented that California-Arizona Valencia oranges have not been regulated for the past five years, and to make assumptions about the effects of a carryover change on the industry are highly speculative. However, should volume regulation be implemented for California-Arizona Valencia oranges in the future, the VOAC would also benefit from the better information available under a one week carryover period as mentioned above. This change will result in gains in efficiency of operations under the orders, and will affect both orders similarly.

Therefore, for the reasons stated, the above comments in opposition to the proposed rule, as well as the alternatives presented, are denied.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committees' recommendations, the comments received, and other available information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 907 and Part 908

Marketing agreements, Oranges, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 as amended as follows:

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.118 is added to read as follows:

§ 907.118 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 907.52, in an amount less than such person's allotment of oranges for such a week, such person may handle, in addition to such person's allotment for the next week only, a quantity of such oranges equivalent to such undershipment.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 908.118 is added to read as follows:

§ 908.118 Undershipments.

If any person handles during any week a quantity or oranges, covered by a regulation issued pursuant to § 908.52, in an amount less than such person's allotment of oranges for such a week, such person may handle, in addition to such person's allotment for the next week only, a quantity of such oranges equivalent to such undershipment.

Dated: July 30, 1992.

Robert C. Keeney,

Deupty Director, Fruit and Vegetable Division.

[FR Doc. 92–18373 Filed 8–3–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

7 CFR Part 989

[Docket No. FV–92–056IFR]

Raisins Produced From Grapes Grown in California

Monitoring of Raisins Produced From Grapes Grown Outside the State of California and Received by Handlers Inside the State; Continuation of Existing Monitoring System Which Expired July 31, 1992

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule continues indefinitely a surveillance system for monitoring raisins produced from grapes grown outside the State of California and received by handlers inside the state. The requirements to be continued without change are specified in § § 989.157 and 989.173. This action was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the marketing order. The monitoring system will provide information to help ensure that all non-California raisins are properly identified and are not being included in any programs implemented under the marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: August 1, 1992. Comments which are received by September 3, 1992 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This

interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(a) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

The raisin production area in the United States has historically been limited to the central San Joaquin Valley of California. In recent years, limited tonnage of raisins has also been produced from grapes grown in Southern California. All such raisins are currently regulated under the Federal raisin marketing order, which covers raisins produced from grapes grown within the production area of the State of California.

In 1989, the Committee learned that some California raisin handlers were receiving raisins produced from grapes grown in Arizona and Mexico. Since these raisins were produced outside of California, they were not regulated under the order. The Committee was concerned that such non-California raisins could be utilized in programs established under the marketing order for California raisins.

As a result, a temporary system, which expired on July 31, 1992, was established during the 1990–91 and 1991–92 crop years (August 1 through July 31) to monitor raisins produced from grapes grown outside the State of California and received by handlers within the state (55 FR 28019, July 9, 1990; 7 CFR 989.157 and 989.173). All non-California raisins received by handlers over the last two crop years were required to be identified, stored separately, reported to the Committee, and kept under surveillance until such raisins were disposed of by the handlers.

The data collected since the inception of the program indicates that 2,082 tons of non-California raisins were received by California raisin handlers during the 1990–91 crop year. Data for the yet to be completed 1991–92 crop year shows that 1,790 tons of non-California raisins were handled inside the state through February 1992. The movement of non-California raisins into the production area is expected to continue. While the tonnage listed above comprises less than one percent of the total annual California raisin production, the Committee feels that the temporary monitoring rule has provided the necessary means to ensure that non-California raisins are properly identified and are not being included in marketing order programs and that the system should be continued without interruption to prevent program abuses.

An Export Replacement Incentive Program is authorized under the order to promote the sale of California raisins in export markets. Under this program, handlers who ship free tonnage California raisins to approved foreign countries may receive prescribed amounts of reserve pool California raisins at a reduced price. Free tonnage raisins are raisins which may be shipped immediately to any market. Reserve raisins are held by handlers in a reserve pool for the account of the Committee. The Committee is concerned that handlers could ship non-California raisins rather than free tonnage California raisins under this export program. Only California raisins should be used in such programs established under the order.

This action, as with the temporary system, will require non-California raisins to be observed and marked with a RAC control card by a USDA (Federal) inspector once they are received on handler's premises.

The handler will notify the inspection service in writing at least one business day in advance of the time such handler plans to begin receiving non-California raisins, unless a shorter time period is acceptable to the inspection service. Handlers will not be permitted to unload non-California raisins unless a federal inspector is present to observe the unloading. If an inspector is not available, the raisins may be unloaded if the handler has a written statement from the inspection service that an inspector will not be available at that time. When an inspector becomes available at a later time, such raisins will be properly marked and identified. Handlers will continue to be required to store these marked non-California raisins separate and apart from California raisins. Storage of such raisins will be deemed "separate and apart" if the containers are properly marked as non-California raisins and placed so as to be readily and clearly identified. The inspection service will observe the processing and disposition of such non-California raisins. Non-California raisins will not be required to meet outgoing inspection standards established under the order for California raisins. In addition, handlers receiving non-California raisins will be required to pay the fees assessed by the inspection service to identify and maintain surveillance of such raisins. Fees are charged by the inspection service (7 CFR 52.42).

Authority for continuing this identification and surveillance system is provided in § 989.36(l) of the order. That section, which describes the Committee's specific duties, gives the Committee authority to establish, with the approval of the Secretary, rules and regulations necessary to administer its duties, as well as the provisions of the California raisin order.

The reporting by this action will require California raisin handlers to continue to file two existing reports with the Committee. The first report requires handlers to report the receipt of non-California raisins and will be filed by handlers on a monthly basis. This report helps the Committee determine the extent to which non-California raisins are being received by handlers, and contains the following information: (1)

The varietal type(s) of non-California raisins received; (2) the net weight (pounds) of such raisins categorized as natural condition or packed for the current month as well as a cumulative quantity from the previous August 1; and (3) the state or country where such raisins were produced. With each report, handlers are required to submit a copy of the door receipt, weight certificate, or such other document as required by the Committee that includes, but is not limited to, the name of the tenderer (equity holder) from whom such raisins were received, the varietal types of raisins, the net fruit weight, the number and type of containers in the lot, the date of delivery, and the address including state or country where such raisins were produced.

The second report indicates the disposition of non-California raisins and is filed by the handler with the Committee on or before the eighth day of each month. This report helps the Committee monitor the disposition of non-California raisins. This report contains similar information to that which is currently submitted on California raisin shipment reports: (1) The varietal type(s) of non-California raisins shipped; (2) the net weight (pounds) of such raisins shipped; (3) the destination (domestic, export, and other disposition such as distilleries, livestock feeders, or concentrate) of such shipments; and (4) the types of raisin packages (carton, bag, or bulk) shipped.

The monitoring system published in the July 9, 1990 **Federal Register** was effective for the 1990–91 and 1991–92 seasons. This action continues indefinitely that system unchanged.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection requirements that are being continued by this action have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581–0083.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action is a continuation of a temporary rule in effect since August 8, 1990; (2) this action was recommended at a public meeting; (3) it is desirable to have this action in place for the beginning of the 1992–93 crop year, August 1, 1992 (the temporary system expired on July 31, 1992); and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. For the reasons set forth above and under the authority of 7 U.S.C. 601–674, the regulations that appear in 7 CFR part 989, §§ 989.157 and 989.173 published on July 9, 1990 at 55 FR 28019, are continued in effect unchanged.

Dated: July 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–18375 Filed 8–3–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–88; Special Conditions No. 25–ANM–81]

Special Conditions; Canadair CL–600–2B19, Regional Jet Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Canadair CL–600–2B19, Regional Jet airplane. This airplane will have novel or unusual design features associated with a number of high technology avionic systems including cathode ray tube engine and flight information displays, digital engine control and electronically controlled braking. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Hank Jenkins, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1988, Transport Canada, on behalf of Canadair, applied for an amendment to Canadair's Type Certificate No. A21EA to include their new Model CL–600–2B19 Regional Jet for an increase in size and the addition of a Collins integrated avionics suite in their Model CL–600–2B19. The Model CL–600–2B19, which is a derivative of the Model CL–600–2B16 currently approved under Type Certificate No. A21EA, is a Regional Jet with a length of 88 ft. 5 inches, a wingspan of 70 ft. 4 inches, a passenger capacity of 50, a maximum takeoff weight of 51,000 lbs., and a range of 1400 nautical miles with two General Electric CF–34–3A1 engines. The Collins integrated avionics suite (essentially Proline IV) on the airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an Electronic Flight Instrument System (EFIS), engine and flight information displays, digital engine control and electronically controlled braking, which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Canadair must show that the Model CL–600–2B19 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21EA or the applicable regulations in effect on the date of application for the change to the Model CL–600–2B16. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis". The regulations incorporated by

reference in Type Certificate No. A21EA are as follows: Part 25 of the FAR dated February 1, 1965, including Amendments 25–1 through 25–37. The certification basis also includes certain later amended sections of part 25 and special conditions that are not relevant to these special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model CL–600–2B19 must also be shown to comply with the following:

The Collins integrated avionics suite installation for the Regional Jet would be required to comply with part 25, as amended by Amendment 25–1 through Amendment 25–62, except for §§ 25.832 and 25.1438; § 25.109, as amended by Amendment 25–41; § 25.773(b)(2) as amended by Amendment 25–72; and § 25.1401 as amended by Amendment 25–40. In addition, part 34 of the FAR, in effect at the time of awarding the type certificate, and part 36 of the FAR, in effect on the date the noise tests are performed, must be met. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model CL–600–2B19 with Collins integrated avionics suite, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state-of-the-art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model CL–600–2B19 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements of electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are herewith issued for the Model CL–600–2B19 Collins integrated avionics suite which would require that new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), engine and flight information displays, digital engine control, and electronically controlled braking, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke (Severe Strike—Component A, or Restrike—Component D).

This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. Multiple Stroke Flash (1/2 Component D).

A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of 1/2 magnitude of Component D (peak aptitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. Multiple Burst (Component H).

In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up to 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (1/2 Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (1/2 component D)	Multiple burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec $^{-1}$ =	11,354	22,708	22,708	187,191
b, sec $^{-1}$ =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak} =	200 KA	100 KA	50 KA	10 KA
and,				
(di/dt) $_{max}$ (amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. Minimum threat of 100 volts per meter peak electric field strength from 10KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10KHz–500KHz	60	60
500KHz–2MHz	60	60
2MHz–30MHz	200	200
30MHz–100MHz	33	33
100MHz–200MHz	150	33
200MHz–400MHz	56	33
400MHz–1GHz	4,020	935
1GHz–2GHz	7,850	1,750
2GHz–4GHz	6,000	1,150
4GHz–6GHz	6,800	310
6GHz–8GHz	3,600	666
8GHz–12GHz	5,100	1,270
12GHz–20GHz	3,500	551
20GHz–40GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–92–3–NM was published in the **Federal Register** on April 15, 1992 (57 FR 13058), for public comment. The following discussion summarizes the comments received and the FAA response to the comments.

Canadair (the manufacturer of the Regional Jet) does not agree that the term "novel and unique" as used in these special conditions, applies to avionics/electrical systems such as electronic flight instrument systems (EFIS), engine information displays, digital engine controls, and electronically controlled braking. Canadair points out that such systems have been in use for a number of years, and have proven themselves through high intensity radiated fields (HIRF) and lightning equipment qualification tests and satisfactory service history.

FAA Response: Canadair is correct in their position that these systems are mature and represent established technology for the Regional Jet avionics/electrical systems. However, relative to part 25 certification requirements, such avionics systems are still "novel and unique" because rulemaking to incorporate certification requirements lags avionics technology by several years. Even though requirements rulemaking is now in process, in the interim, the Regional Jet avionics/electrical systems must be considered "novel and unique" for purposes of applying special conditions in accordance with § 21.21(b).

Canadair notes that the proposed special conditions do not present a clear definition of which aircraft systems must be tested in the HIRF environment. Canadair proposes several systems in their comment which they believe should be tested to the HIRF requirements.

FAA Response: Canadair is correct. The HIRF special condition is purposely written to define the threat and provide acceptable performance standards leaving it up to the applicant to provide the certificating office, a list of systems to be tested, based on a hazard analysis which shows which systems perform critical functions and require testing. Procedures for such substantiation are given in an FAA Memorandum from AIR–100 to all FAA Directorates dated December 5, 1989. A copy of the memorandum was given to Canadair. The certificating office will review for concurrence, the list of proposed critical systems that must meet the HIRF special condition.

Canadair notes that the HIRF field defined in paragraph 2 of the special condition is less severe than the HIRF envelope defined in FAA Issue Paper SE–4, Radio Frequency (RF) Energy Protection, which is applicable to the Regional Jet. Canadair requests that the issue paper be revised to reflect the contents of the special conditions.

FAA Response: Canadair is correct. The HIRF requirements were revised downward since the issue paper (SE–4) was prepared. The FAA will close this issue paper based on the notice of proposed special condition taking precedence.

Conclusion: This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the intended type certification date for the CL–600–2B19 airplane is mid-August 1992, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Canadair Model CL–600–2B19 Regional Jet with Collins integrated avionics suite:

1. *Lightning Protection.* a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions

Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions

Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 92–18403 Filed 8–3–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 25

[Docket No. NM–60; Special Conditions No. 25–ANM–62]

Special Conditions; Embraer Model CBA–123 Airplane

In the matter of Aft fuselage design structural requirements to prevent propeller strike, Eight-pound bird strike protection for the aft fuselage mounted powerplant structural system and propellers, Propeller blade fire resistance, Propulsion system susceptibility to damage from loss of airplane components and shed ice, and Propeller ground clearance.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer Model CBA–123 airplane in order to establish structural design requirements to prevent propeller blade ground strike, provide eight-pound bird strike protection for the aft fuselage mounted powerplant system, provide propeller blade fire resistance, limit propulsion system susceptibility to damage from loss of airplane components and shed ice, and provide propeller blade ground clearance. Final special conditions have already been issued for this airplane to protect high-technology digital avionics from the effects of lightning and high-intensity radiated fields (HIRF). This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). These special conditions contain additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 25. Further special conditions will be developed at a later date on engine cowl retention.

EFFECTIVE DATE: September 7, 1992.

FOR FURTHER INFORMATION CONTACT: Henry Jenkins, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, Washington, 98055–4056, telephone (206) 227–2141.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1986, Embraer applied for a Type Certificate for their new Model CBA–123 airplane. This 19 passenger transport category airplane has a unique aft mounted turboprop propulsion system installation with pusher propellers. The propulsion system of the

CBA–123 incorporates two Garrett TPF351–20 turboprop engines and two Hartzell six-bladed propellers. The powerplant nacelles are pylon-mounted on the aft portion of the fuselage.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA–123 meets the applicable requirements of subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.17; and (3) Special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA–123 would be required to comply with part 25 as amended by Amendment 25–60. However, Embraer has elected to comply with §§ 25.571(e)(2) and 25.905(d) as amended by Amendment 25–72. Part 34 (formerly SFAR 27) and part 36 as amended by the time of awarding the type certificate must also be met.

These special conditions form an additional part of the type certification basis.

Discussion

The existing structural requirements in the FAR do not take into account aft fuselage structural strength requirements needed in the event of a dynamic, hard aft tail strike that could occur during takeoff or landing, to prevent deformation and/or failure and subsequent propeller ground strike for aft mounted turboprop propulsion systems with pusher propellers. Propeller ground strike could in turn cause propeller blades to break off and strike the rudder and elevator control surfaces causing loss of control authority.

Section 25.571(e) requires that the airplane must be capable of successfully completing a flight during which likely structural damage occurs as a result of impact with a 4-lb. bird with the exception of the empennage structure which must withstand an 8-lb. bird strike per § 25.631. For the Model CBA–123, the entire propulsion assembly is in close proximity to the empennage. Failure of the nacelles, pylons, and/or propellers due to bird strike could in turn cause catastrophic failure of the elevator and rudder controls causing loss of pitch and yaw authority. One possible scenario is a birdstrike on a pylon causing it to fail, allowing the engine and rotating propeller to fold back on the empennage and cut it up. Another possible scenario is a birdstrike on the nacelle causing it to detach, strike the propellers, which in turn detach and strike the empennage and cause loss of control.

The pusher mounted propeller and propeller hub design is susceptible to damage from engine fires. These special conditions ensure that a blade would not be released while the engine is still running, presenting an additional hazard.

The ingestion of foreign objects in flight, other than birds, is not a concern with conventional turbopropeller-powered airplanes because the propellers of such airplanes are not located behind any source of such foreign objects. Although there are sources of such objects located ahead of aft-mounted turbofan engine installations, current requirements of Parts 25 and 33 provide an adequate level of safety. Due to the larger diameter of the Model CBA–123 pusher propeller, it presents a much bigger target for lost components such as service doors, access panels and tire treads, and also for shed ice. Therefore, design precautions need to be taken to minimize the possibility of loss of airplane components and/or shed ice larger than those tested or otherwise accounted for during type certification of the propulsion unit.

In an airplane with conventionally mounted engines, a tail down attitude increases propeller tip ground clearance. In the CBA–123, a tail down attitude decreases ground clearance and special design considerations must be applied to prevent propeller blade strike in a tail down attitude combined with various other adverse conditions that could occur simultaneously and negate propeller ground clearance.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model CBA–123 because of a novel or unusual design feature, special conditions are prescribed under § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Embraer Model CBA–123 will incorporate the following novel or unusual design features:

1. Aft pylon mounted turbopropeller engines. This engine configuration has not previously been certified in the transport category.

2. Pusher propeller installation. This propeller configuration has not previously been certified in the transport category.

Discussion of Comments

Notice of proposed special conditions No. SC–91–8–NM for the Embraer Model CBA–123 airplane was published in the **Federal Register** on July 12, 1991 (56 FR 31879). One comment was received. The commenter supports the proposed special conditions. In addition, the commenter raises questions about the type and adequacy of ice protection to be used, i.e., what anti-ice or de-ice methods were incorporated into the design and whether ice protection would include the engine pylons. Although, as the commenter points out, ice protection is outside the scope of the proposed special conditions, the FAA is also sensitive to assuring adequacy of ice protection. In response to the concern expressed and questions raised by the commenter, the following information is provided on the Embraer CBA–123 ice protection systems. The engine plyons and inlets have anti-ice protection provided by bleed air. The wings, vertical stabilizer and horizontal stabilizer have pneumatic inflatable de-ice protection. The propellers have electrically heated anti-ice. It is the intention of Embraer to show compliance with § 25.1419, "Ice Protection," in the Federal Aviation Regulations.

Conclusion: This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator the following special conditions are issued as part of the type certification basis for the Embraer Model CBA–123 airplane:

1. Aft Fuselage Structural Strength Requirements

a. Embraer must determine whether it is possible for the airplane fuselage aft structure to strike the ground due to maximum possible pitch angles during takeoff and landing. For the landing condition, it must also establish whether it is possible for the aft structure to strike the ground before the main landing gear touches the ground, which would represent a worst case condition.

b. If an aft structure ground strike is possible, worst case structural loads must be established. For landing ground strike loads, a sink rate of 12 feet per second must be assumed.

c. If an aft structural ground strike is possible, adequate structural design and strength must be provided so that worst case loads from an aft structure ground strike will not cause deformation and/or failure such that a propeller ground strike can occur.

2. Eight-pound Bird Strike Protection for the Aft Fuselage Mounted Powerplant System

The nacelle, pylon, and propellers must be designed to assure capability of continued safe flight and landing of the airplane after impact with an 8 lb. bird when the velocity of the airplane (relative to the bird along the airplane's flight path) is equal to V_c at sea level, selected under § 25.335(a).

3. Propeller Blade Fire Resistance

The propeller blades and blade retention system of this pusher-mounted turbopropeller engine must be at least fire resistant or shielded so that they are capable of withstanding the effects of fire until an engine fire can be detected and the engine shut down.

4. Propulsion System Susceptibility to Damage from Loss of Airplane Components and Shed Ice

a. The airplane design must be such that it minimizes the possibility of the loss of components (e.g. access panels, tire treads, and landing gear components) forward of the powerplant installation which are larger and/or heavier than those accounted for during type certification.

b. There must no source of pieces of shed ice located ahead of the engine inlet plane which are larger than those tested or otherwise accounted for during the type certification of the engine and propeller in accordance with the provisions of part 33 and part 35.

5. Propeller Blade Ground Clearance

It must be shown by analysis or test that there will be a positive clearance between each propeller tip and the ground when the airplane:

a. Is loaded to the maximum ramp weight and,

b. Is pitched nose up to the point where the tail skid or aft fuselage is touching the ground and,

c. Is rolled along the lateral axis to the greatest extent expected during takeoff and landing and,

d. The main landing gear tire on the low wing side is fully deflated and,

e. The main landing gear strut on the low wing side is fully compressed and,

f. The propeller on the low wing side is in the most adverse pitch position.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18405 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 25

[Docket No. NM-73; Special Conditions No. 25-ANM-63]

Special Conditions: Modified Learjet Model 55 Airplane: High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Model 55 airplane modified by Kal-Aero, Inc., in Kalamazoo, Michigan. This airplane is equipped with high-technology digital avionic systems which perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 28, 1992. Comments must be received on or before September 18, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ATTN: Rules Docket (ANM-7), Docket No. NM-73, 1601 Lind Avenue SW, Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-73. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-73." The postcard will be date/time stamped, and returned to the commentor.

Background

On March 3, 1992, Kal-Aero Inc., applied for a Supplemental Type Certificate to modify the Learjet Model 55 airplane. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics consisting of a dual electronic flight instrument system (EFIS) which is vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subpart C of the FAR, Kal-Aero Inc., must show that the altered Learjet Model 55 airplane meets the applicable requirements as specified in § 21.101 (a) and (b); unless (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.101 (a) and (b); and (3) Special conditions are prescribed by the Administrator.

The requirements specified in § 21.101(a) are the regulations incorporated by reference in Type Certificate No. A10CE for the Learjet Model 55 airplanes. Those are: Part 25 effective February 1, 1965, as amended by Amendments 25-2 and 25-4. In

addition: Amendments 25–3, 25–7, 25–10, 25–12, 25–18, 25–21, and 25–30, plus § 25.955(b)(2) of Amendment 25–11; § 25.954 of Amendment 25–14; §§ 25.803(e), 25.811(f), 25–853(a), 25.853(b), and 25–855(a) of Amendment 25–15; § 25.1359 of Amendment 25–17; § 25.785(c) of Amendment 25–20; §§ 25.251(c), 25.251(d), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 26.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.093(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331, and 25.1585(c) of Amendment 25–23; §§ 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25–36; §§ 25.815, 25.1322, and 25.1403 of Amendment 25–38, and §§ 25.903(e), 25.939, and 25.943 of Amendment 25–40; § 25.255 of Amendment 25–42; § 25.1326 of Amendment 25–43; Part 36 effective December 1, 1969, as amended through Amendment 36–10 when modified according to ECR 1513; Special Federal Aviation Regulation (SFAR) 27 effective February 1, 1974, as amended through Amendment SFAR 27–2; and Special Conditions 25–99–CE–14; Special Conditions 25–ANM–2 dated June 24, 1983, when configured per ECR 2377A or modified per AAK 55–83–4. Compliance with structural provisions of § 25.801 (b) through (e) and 25.807(d) has not been shown.

Ice Protection

Section 25.1419, when ice protection system is installed per ECR 1906. These adopted special conditions are an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 requirements) do not contain adequate or appropriate safety standards for the modified Learjet Model 55 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to that established by the regulations. (In this context, "novel or unusual design feature" means novel or unusual with respect to the applicable standards of part 25. Such features may or may not be unusual as far as industry "state-of-the-art" is concerned.)

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.115(a).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that the new technology electrical and electronic systems, such as the Electronic Flight Instrument System (EFIS), be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with HIRF protection special conditions is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	60	60
500 KHz– 2 MHz	80	80
2 MHz– 30MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	150	33
200 MHz–400 MHz	56	33
400 MHz– 1GHz	4,020	935
1 GHz– 2 GHz	7,850	1,750
2 GHz– 4 GHz	6,000	1,150
4 GHz– 6 GHz	6,800	310
6 GHz– 8 GHz	3,600	666
8 GHz– 12 GHz	5,100	1,270
12 GHz– 18 GHz	3,500	551
18 GHz– 40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

AUTHORITY: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514, and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Learjet Model 55 airplane:

1. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Function whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 28, 1992.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18439 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-11-AD; Amendment 39-8310; AD 92-16-01]

Airworthiness Directives; Boeing Model 737-400 and 737-500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-400 and 737-500 series airplanes, that requires inspection of certain side-of-body floor panels, and repair or replacement, if necessary. This amendment is prompted by reports of disbonded one-piece inserts found in certain side-of-body floor panels. The actions specified by this AD are intended to prevent floor panels from breaking away from floor structure during a 9g forward load event.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2779; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 737-400 and 737-500 series airplanes was published in the **Federal Register** on March 4, 1992 (57 FR 7679). That action proposed to require inspection of certain side-of-body floor panels, and repair or replacement, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that the proposed compliance time of 18 months be extended to 36 months. A 36-month compliance time would allow operators to accomplish the requirements of the AD during regularly scheduled maintenance, without disrupting service and avoiding special scheduling for the inspections. The FAA concurs that the compliance time may be extended somewhat. Based on the information available to date, the FAA finds that approximately 40 percent of the panels installed fleetwide could need repair or replacement. Therefore, in light of this data and the lengthy time necessary for repair and replacement, the FAA has determined that the compliance time may be extended to 24 months so that the required actions can be accomplished during regularly scheduled maintenance at a location where special equipment and trained personnel are available. This extension of six additional months will not adversely impact safety. The final rule has been revised accordingly.

Two commenters question the number of work hours that would be needed to accomplish the proposed actions. Although the preamble to the notice indicated that seven work hours would be required, one of the commenters states that that number was underestimated by approximately ten hours. The FAA agrees that the number of work hours may need some adjustment. The FAA estimated the number of work hours based on the required inspection action only. However, the FAA was recently advised that approximately 40% of the panels currently in service will need to be repaired or replaced. In order to account for the time necessary for repair and replacement on what may be the majority of the affected fleet, the FAA has revised the work hour estimate in the cost impact paragraph, below, to indicate that 17 work hours will be necessary.

One commenter suggests a textual change with regard to the description of the unsafe condition. The commenter requests the inclusion of a more specific definition of the type of load event that could cause the floor panels to break away. The FAA concurs. The description of the unsafe condition has been defined in greater detail to indicate that the requirements of the rule are intended to prevent the panels from breaking away from floor structure during a 9g forward load event.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 231 Boeing Model 737-400 and 737-500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 71 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $66,385. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-01. Boeing: Amendment 39-8310. Docket 92-NM-11-AD.

Applicability: Model 737-400 and 737-500 series airplanes; as listed in Boeing Alert Service Bulletin 737-53A1152, Revision 1, dated October 24, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent floor panels with seats attached from breaking away from floor structure during a 9g forward load event, accomplish the following:

(a) Within 24 months after the effective date of this AD, inspect the side-of-body floor panels forward of Body Station 887 to determine if the panels were manufactured by Hexcel and the date of their manufacture; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1152, Revision 1, dated October 24, 1991.

(1) If the floor panels were not manufactured by Hexcel; or if the floor panels were manufactured by Hexcel on or after January 7, 1991; no further action is necessary.

(2) If the floor panels were manufactured by Hexcel before January 7, 1991, prior to further flight, either replace the floor panels or repair all one-piece inserts in the panels, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, repair, and replacement shall be done in accordance with Boeing Alert Service Bulletin 737-53A1152, Revision 1, dated October 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-16334 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-47-AD; Amendment 39-8302; AD 92-15-06]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model Mark 0100 series airplanes, that requires removing the normal maximum (second) detent of the reverse thrust control and installing an improved unit. This amendment is prompted by reports indicating that the override force for the normal maximum detent of the reverse thrust control is too low. This condition, if not corrected, can result in inadvertent selection of too high a thrust reverse level, which could lead to fatigue damage and subsequent reduced structural capability of the horizontal stabilizer attachment.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model Mark 0100 series airplanes was published in the **Federal Register** on April 23, 1992 (57 FR 14800). That action proposed to require removing the normal maximum (second) detent of the reverse thrust control and installing an improved unit.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $230 per airplane. Based on these figures, the total cost impact of the AD on is estimated to be $13,400, or $670 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-15-06, Fokker: Amendment 39-8302. Docket 92-NM-47-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11308, inclusive; 11310, and 11312 through 11314, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue damage and subsequent reduced structural capability of the horizontal stabilizer attachment, accomplish the following:

(a) Within 7 months after the effective date of this AD, remove the normal maximum (second) detent for the reverse thrust control and install a modified detent, in accordance with Fokker Service Bulletin SBF100-76-006, dated May 8, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and installment shall be done in accordance with Fokker Service Bulletin SBF100-76-006, dated May 8, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 29, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18331 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-01-M

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14 CFR Part 39

[Docket No. 92-NM-39-AD; Amendment 39-8299; AD 92-15-05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires removing currently installed engine fire detection wires and replacing them with ones that are fire resistant. This amendment is prompted by the discovery, during a design review, of incorrect insulation installed on the wiring. The actions specified by this AD are intended to prevent wire burnthrough or meltdown that could render the fire detection system ineffective in detecting fire in the engine.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 0100 series airplanes was published in the **Federal Register** on April 23, 1992 (57 FR 14799). That action proposed to require removing currently installed engine fire detection wires and replacing them with ones that are fire resistant.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The economic impact information, below, has been revised to indicate that the correct number of U.S.-registered airplanes affected by this AD action is 3, rather than 47.

After the careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $700 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $3,008. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-15-05, Fokker: Amendment 39-8299. Docket 92-NM-39-AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11340 through 11348 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire burnthrough or meltdown, that could render the fire detection system ineffective in detecting fire in the engine, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove existing engine fire detection wires and replace them with fire resistant ones, in accordance with Fokker Service Bulletin SBF100-26-004, dated August 23, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and replacement shall be done in accordance with Fokker Service Bulletin SBF100-26-004, dated August 23, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 24, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18333 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-54-AD; Amendment 39-8314; AD 92-16-05]

Airworthiness Directives; SAAB-SCANIA Model SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-SCANIA Model SAAB 340B series airplanes, that requires modification of the stabilizer de-icer boot system. This amendment is prompted by recent field experience, which has shown that malfunctioning of the stabilizer de-icer boot system could occur due to freezing of the control valve and the pressure switch located in the dorsal fin. The actions specified by this AD are intended to prevent the accumulation of ice and subsequent reduced controllability of the airplane.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB-SCANIA AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain SAAB-SCANIA Model SAAB 340B series airplanes was published in the Federal Register on April 20, 1992 (57 FR 14368). That action proposed to require modification of the stabilizer de-icer boot system. This amendment is prompted by recent field experience, which has shown that malfunctioning of the stabilizer de-icer boot system could occur due to freezing of the control valve and the pressure switch located in the dorsal fin.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD is estimated to be $5,280 or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-05. SAAB-SCANIA: Amendment 39-8314. Docket 92-NM-54-AD.

Applicability: Model SAAB 340B series airplanes; serial numbers 240 through 299, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of ice and subsequent reduced controllability of the airplane and stall margins, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the stabilizer de-icer boot system in accordance with SAAB-SCANIA Service Bulletin 340-30-039, dated December 16, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with SAAB-SCANIA Service Bulletin 340-30-039, dated December 16, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-SCANIA AB, Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 9, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18332 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-05-AD; Amendment 39-8287; AD 92-14-05]

Airworthiness Directives; Aerospatiale Model Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Aerospatiale Model Nord 262A series airplanes, that currently requires periodic inspection and treatment of the rudder hinge support tubes. This amendment requires a visual and X-ray inspection of the rudder hinge support assembly for corrosion, and replacement of one or both supports of the rudder hinge support assembly, if necessary. This amendment is prompted by findings of internal corrosion and/or corrosion penetrating through tube walls on in-service airplane rudder hinge support tubes. The actions specified by this AD are intended to prevent corrosion of the rudder hinge support assembly, which could lead to failure of the assembly and subsequent loss of rudder control.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 277-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 85-12-04, Amendment 39-5076 (50 FR 3919, May 28, 1985), which is applicable to Aerospatiale Model Nord 262A series airplanes, was published in the **Federal Register** on March 31, 1992 (57 FR 10838). The action proposed to require a visual and X-ray inspection of the rudder hinge support assembly for corrosion, and replacement of one or both supports of the rudder hinge support assembly, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Paragraph (f) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD. It will take approximately 9 work hours per airplane to accomplish the required inspections. (It should be noted that this number of work hours is no greater than the number of work hours necessary to complete the actions required by the existing AD.) To accomplish the optional modification will require an additional 4 work hours. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD is estimated to be $6,930 to accomplish the required inspections, or $495 per airplane. (This total cost figure assumes that no operator has yet accomplished the requirements of this AD.) The cost to U.S. operators who elect to accomplish the optional modification will be an additional $220 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8287 Docket 92-5076 (50 FR 3919, May 28, 1985), and by adding a new airworthiness directive (AD), amendment 39-8287, to read as follows:

92-14-05. Aerospatiale: Amendment 39-8287. Docket 92 NM-05-AD. Supersedes AD 85-12-04, Amendment 39-5076.

Applicability: Model Nord 262A airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the rudder hinge support assembly, that could lead to loss of rudder control, accomplish the following:

(a) Within 100 hours time-in-service or three months, whichever occurs first after July 5, 1985 (the effective date of AD 85-12-04, Amendment 39-5076), inspect and protect against corrosion, or replace components if necessary, in accordance with paragraph II, Accomplishment Instructions, of Aerospatiale N262 Fregate Service Bulletin No. 55-10, Revision 2, dated January 31, 1984. Repeat the inspection at intervals not to exceed 6 years.

(b) Within 6 years after the most recent inspection performed in accordance with paragraph (a) of this AD, perform a visual and X-ray inspection of the rudder hinge support assembly for corrosion and apply corrosion protection treatments, in accordance with Aerospatiale 262-Fregate Service Bulletin No. 55-10, Revision 3, dated May 25, 1991. Compliance with this paragraph constitutes terminating action for

the inspection requirements of paragraph (a) of this AD.

(c) As a result of the visual inspection required by paragraph (b) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD, as applicable:

(1) If no corrosion is detected, repeat the visual inspection at intervals not to exceed 6 years.

(2) If corrosion is detected, accomplish either paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable:

(i) If internal corrosion is penetrating tube walls, or if deformation or buckling is evidenced, or if external corrosion is outside the tolerance limits specified in Aerospatiale 262-Fregate Service Bulletin No. 55–10, Revision 3, dated May 25, 1991: Prior to further flight, replace corroded components in accordance with Aerospatiale 262-Fregate Service Bulletin No. 55–11, Revision 2, dated May 25, 1991. Thereafter, at intervals not to exceed 6 years, repeat the visual inspection of tubes not replaced, as well as tubes replaced as a result of accomplishing Modification 861 described in the Service Bulletin 55–11, Revision 2, dated May 25, 1991.

(ii) If internal corrosion is not penetrating tube walls, or if external corrosion is within the tolerance limits specified in Aerospatiale 262-Fregate Service Bulletin No. 55–10, Revision 3, dated May 25, 1991: Prior to further flight, apply external protective treatment in accordance with that Aerospatiale service bulletin. Thereafter, repeat the visual inspection at intervals not to exceed 6 years.

(d) As a result of the X-ray inspection required by paragraph (b) of this AD, accomplish either paragraph (d)(1) or (d)(2) of this AD, as applicable:

(1) If no corrosion or buckling is detected: Prior to further flight apply internal protective treatment, in accordance with Aerospatiale 262-Fregate Service Bulletin No. 55–10, Revision 3, dated May 25, 1991.

(2) If any corrosion is detected, accomplish either paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable:

(i) If corrosion is detected on both tubes of the upper support tube section, or on the lower support tube section, or on the support tube assembly: Prior to further flight, replace corroded components in accordance with Aerospatiale 262-Fregate Service Bulletin No. 55–10, Revision 3, dated May 25, 1991.

(ii) If corrosion is detected on only one tube of the upper or lower support tube sections: Within 3 months or 600 landings of the discovery of corrosion, whichever occurs first, replace corroded components in accordance with Aerospatiale 262-Fregate Service Bulletin No. 55–10, Revision 3, dated May 25, 1991.

(e) Accomplishment of Modification 866, in accordance with Aerospatiale 262-Fregate Service Bulletin No. 55–11, Revision 2, dated May 25, 1991, constitutes terminating action for the inspections required by this AD for the component replaced.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, corrosion protection treatments, and replacement shall be done in accordance with Aerospatiale N262 Fregate Service Bulletin No. 55–10, Revision 3, dated May 25, 1991; or Aerospatiale N262 Fregate Service Bulletin No. 55–10, Revision 2, dated January 31, 1984, which contains the following list of effective pages:

Page No.	Revision level	Date
1, 10–12	2	Jan. 31, 1984.
2–9, 13–18	1	Dec. 29, 1981.

The modification shall be done in accordance with Aerospatiale 262-Fregate Service Bulletin No. 55–11, Revision 2, dated May 25, 1991, which contains the following list of effective pages:

Page No.	Revision level	Date
1–6	2	May 25, 1991.
7–13	Original	Dec. 29, 1981.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on June 12, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–18426 Filed 8–3–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26929; Amdt. No. 1502]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal

Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 17, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective October 15, 1992

Lexington, MO, Lexington Muni, VOR RWY 22, Orig., Cancelled
Lexington, MO, Lexington Muni, VOR/DME RWY 22, Orig.
Atlantic City, NJ, Atlantic City Muni/Bader Fld, RNAV RWY 11, Amdt. 4, Cancelled
Falfurrias, TX, Brooks County, NDB RWY 35, Orig.
Falfurrias, TX, Brooks County, NDB–A, Amdt. 1, Cancelled

Effective September 17, 1992

Anniston, AL, Anniston Metropolitan, ILS RWY 5, Amdt. 1
Anniston, AL, Anniston Metropolitan, NDB, RWY 5, Amdt. 2
Columbus, OH, Rickenbacker, ILS 1 RWY 23L, Orig.
Selmer, TN, Robert Sibley, NDB RWY 17, Amdt. 5

Effective August 20, 1992

Fort Huachuca/Sierra Vista, AZ, Libby AAF/Sierra Vista Muni, ILS RWY 26, Orig.
San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Orig.
Denver, CO, Stapleton Intl, ILS/DME–1 RWY 8R, Amdt. 6
Denver, CO, Stapleton Intl, Converging ILS/DME–2 RWY 8R, Amdt. 3
Chicago, IL, Chicago O'Hare Intl, NDB RWY 32L, Amdt. 22
Chicago, IL, Chicago O'Hare Intl, ILS RWY 4R, Amdt. 6
Chicago, IL, Chicago O'Hare Intl, ILS RWY 22L, Amdt. 4
Chicago, IL, Chicago O'Hare Intl, ILS RWY 32L, Amdt. 1
Bozeman, MT, Gallatin Field, NDB RWY 12, Amdt. 5
New York, NY, John F. Kennedy Intl, ILS RWY 4L, Amdt. 7
New York, NY, John F. Kennedy Intl, ILS RWY 22R, Amdt. 7, Cancelled
New York, NY, John F. Kennedy Intl, ILS/DME RWY 22R, Orig.
New York, NY, John F. Kennedy Intl, ILS RWY 31L, Amdt. 8
Las Cruces, NM, Las Cruces Intl, NDB RWY 8, Orig.

Effective July 14, 1992

Jacksonville, FL, Craig Muni, ILS RWY 32, Amdt. 2

[FR Doc. 92–18414 Filed 8–3–92; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Substantial Hazard Reports; Revision to Interpretative Rule Governing Substantial Hazard Reporting

AGENCY: Consumer Product Safety Commission.

ACTION: Revision to rule.

SUMMARY: Because of changes in its statute, the Consumer Product Safety Commission revises its interpretative rules regarding the reporting of possible substantial product hazards. The Consumer Product Safety Improvement Act of 1990 amended section 15(b) of the Consumer Product Safety Act (CPSA) to

add provisions requiring that every manufacturer (including an importer), distributor, and retailer of a consumer product who obtains information which reasonably supports the conclusion that its product fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, or creates an unreasonable risk of serious injury or death, shall immediately inform the Commission of such failure to comply, or of such risk, unless the manufacturer, distributor or retailer has actual knowledge that the Commission has been adequately informed. Previously, section 15(b) of the CPSA required reports only when a product "fails to comply with an applicable consumer product safety rule" or "contains a defect which could create a substantial product hazard described in subsection (a)(2)." (These reports are still required.)

DATES: The revisions become effective September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION:

Background Information

The Consumer Product Safety Act, 15 U.S.C. 2051, *et seq.* (CPSA) was enacted on October 27, 1972. Among other things, that Act required that every manufacturer, distributor, and retailer of a consumer product distributed in commerce who

> obtains information which reasonably supports the conclusion that such product—(1) fails to comply with an applicable consumer product safety; or (2) contains a defect which could create a substantial product hazard * * * shall immediately inform the Commission of such failure to comply or of such defect, unless (they have) actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b).

The Commission published its interpretation of section 15(b) on August 7, 1978. 16 CFR part 1115. Each year, the Commission receives approximately 150 to 200 reports. Hundreds of these reports resulted in product recalls; other provided useful hazard information to the Commission.

For a long time, the Commission has been concerned that some firms have not been complying with the reporting obligations. Despite the publication of a statement of enforcement policy, 49 F.R. 13,820 (April 6, 1984), and numerous civil penalty cases against firms which failed to report or failed to report in a timely manner, the number of reports has remained relatively static and firms, with some exceptions, have tended to report relatively minor hazards rather than the more serious ones.

Since Congress shared the Commission's concern about the "inadequacy of the current level of product hazard reporting under section 15(b) of the CPSA," changes were enacted to section 15(b) that would "address this problem." Report of the House Committee on Energy and Commerce, H.R. Rep. No. 567, 101st Cong., 2nd Sess. 21–22 (1990). The Senate Committee on Commerce, Science, and Transportation, which drafted the new reporting language for section 15(b), noted that "the intention of section 15(b) was to encourage widespread reporting of potential hazards" but noted that "(m)anufacturers are reluctant to indicate that their products may contain a defect or do not believe their products to be defective, and so often do not supply the CPSC with notice under the law." Report of the Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 37, 101st Cong., 1st Sess. 10 (1990). Therefore, it enacted additional requirements to increase the number of reports.

The new reporting requirements in the Consumer Product Safety Improvement Act of 1990, Public Law 101–608, 104 Stat. 3110 (November 16, 1990) (Improvement Act) broadened the reporting obligations under section 15(b) of the CPSA by mandating two additional notification requirements. First, manufacturers, distributors, and retailers must notify the Commission about products that fail to comply with an applicable voluntary standard upon which the Commission has relied under section 9 of the CPSA. Section 15(b)(1) of the CPSA, 15 U.S.C. 2064(b)(1). Second, they must report products that create an unreasonable risk of serious injury or death. Section 15(b)(3) of the CPSA, 15 U.S.C. 2064(b)(3).

To implement the new statutory requirements, the Commission proposed changes in its interpretative rule governing substantial hazard reports, 16 CFR part 1115, on October 28, 1991. 56 FR 55530. Several trade associations, firms, individuals and consumer groups filed comments.

General Comments

A. Purpose of the Proposed Amendments

Several commenters urged the Commission to make clear in this notice that the amendments to the section 15(b) interpretation are intended to broaden the reporting obligation under section 15(b) of the CPSA.

Although the Commission in general agrees with this interpretation, it sees no reason to add any additional language to the preamble. The revisions set forth in this **Federal Register** notice are intended to add and implement the new reporting obligations. They do not otherwise alter or amend the agency's previous interpretations of section 15(b) in any way.

B. Enforcement of Section 15

One commenter expressed the opinion that the section 15(b) reporting requirements should be carefully and evenly enforced and alleged that the Commission had not enforced a particular voluntary standard in the past. Section 15 authorizes the Commission to initiate administrative proceedings for corrective action against firms whose products contain a defect that creates a substantial product hazard. In some cases, non-compliance with a voluntary standard may constitute a defect or defects that create a substantial product hazard, but a non-compliance with a voluntary standard is not *per se* a substantial product hazard. As explained in more detail below, firms must report if their product fails to comply with a voluntary standard if that voluntary standard was relied upon by the Commission under section 9, the non-compliance presents a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. The Commission intends to enforce vigorously these requirements.

Section by Section Analysis of Comments

Section 1115.2(c) *Reporting of Potential hazards.*

One commenter suggested amending this section, which recognizes that a section 15(b) report does not always indicate the presence of a substantial product hazard, to make it clear that Congress and the Commission expect firms to report *potential hazards.* Although the Commission agrees that firms should not await a conclusive hazard analysis before determining whether to report, it believes that this is already clear. The rule already explains at several points that firms have an obligation to report potential hazards. For example, 16 CFR 1115.12(a) states:

> Subject firms should not delay reporting in order to determine to a certainty the existence of a reportable noncompliance, defect or unreasonable risk. The obligation to report arises upon receipt of information from which one could reasonably conclude the

existence of a noncompliance, defect which could create a substantial product hazard, or unreasonable risk of serious injury or death. Thus an obligation to report may arise when a subject firm receives the first information regarding a potential hazard, noncompliance or risk.

Given the language of the regulations and the Commission's enforcement history, subject firms should be aware that they have an obligation to show due diligence in their handling of information about their products and to make reasonable decisions about reporting. Congress has increased the amount of penalties the Commission may seek against firms that fail to report or do not report in a timely manner.

Section 1115.5(a) *Voluntary Standards.*

This section requires firms to report non-compliance with voluntary standards relied upon by the Commission under section 9 of the CPSA since August 13, 1991. The Commission has identified portions of two standards that it relied upon during that time period. (See the appendix to this rule.) Several commenters challenged the Commission's decision to apply the reporting obligation to voluntary standards relied upon by the Commission before passage of the Improvement Act. Others supported the Commission's draft. Those who challenged the Commission's interpretation argued that the Commission is impermissibly applying this reporting provision "retroactively." The Commission does not agree that its interpretation has "retroactive effect" because the *obligation to* report arises after the passage of the Improvement Act. The reporting requirement does not change or affect conduct that occurred before its passage.

For example, this amendment does not ban non-conforming products already manufactured, subject them to recalls, or impose an automatic reporting requirement. It merely requires reports about products that were manufactured after the new reporting obligation existed that do not comply with a voluntary standard adopted prior to passage of the Improvement Act. A statute is not rendered retroactive merely because its action draws on antecedent facts for its operation. See, e.g., *Campbell* v. *United States*, 809 F.2d 563, 571, (9th Cir 1987); *Alexander* v. *Robinson*, 756 F.2d 1153, 1155 n. 5 (5th Cir. 1985).

While it can also be argued that the use of the term "has relied" in the amendment supports a retroactive application; the Commission does not believe that its interpretation is in fact "retroactive."

When reliance may take place. ANPRS. Several commenters suggest that for reporting purposes, the Commission may only "rely" upon a voluntary standard after it has issued an ANPR. Since it agrees with the commenters that it does not rely upon a voluntary standard in deciding not to publish an ANPR or denying a petition, the Commission has narrowed its interpretation.

The Commission agreed with the commenters who argued that reliance under section 9 can only occur after the Commission commences a rulemaking proceeding by publishing an ANPR. The Commission noted that the sole specific reference to reliance on a voluntary standard occurs in section 9(b)(2) which sets forth the procedures and criteria the Commission must follow in evaluating whether to rely upon a voluntary standard submitted in response to the ANPR. The Commission believed that it was logical to read the language in section 15 "upon which the Commission has relied under section 9" as applying only to stages of the rulemaking process that follow publication of the ANPR. The Commission has listed only two standards that it believes were relied upon in the past (see appendix); one that resulted from a lengthy rulemaking after publication of an ANPR and the other that resulted from withdrawal of an existing product safety rule.

To clarify its procedures for reliance upon voluntary standards, the Commission has modified § 1115.5(a) to indicate the procedures it will follow to publicize its actions and obtain public comment.

Reporting of noncompliance with other voluntary standards. One commenter expressed concern that this provision implies that failure to comply with a voluntary standard that has not been relied upon by the Commission would never require a section 15(b) report. The commenter recommended adding language to this discussion to emphasize that a firm may have an obligation to report noncompliance with a voluntary standard under sections 15(b)(1) or (3), the defect or unreasonable risk reporting clauses. The Commission agrees that a failure to comply with a voluntary standard may in many instances constitute a reportable defect or unreasonable risk. Voluntary standards often represent an industry consensus as to the minimum requirements for a particular product. A product that does not meet such industry norms may be defective or present an unreasonable risk of injury. However, the Commission believes the change is unnecessary since § 1115.5(b) already reminds firms of their obligations to evaluate whether noncompliance with a voluntary standard is reportable under those clauses.

Explicit reliance. The proposal required that the Commission must "explicitly" make the findings necessary for it to rely upon a voluntary standard. Some commenters said this language was too restrictive. The Commission disagrees. In reviewing past Commission actions, the Commission found that there have been numerous instances in the past where the Commission denied a petition, or otherwise chose not to proceed with a consumer product safety rule. In many such cases, the record indicates that the Commission decided not to proceed with a mandatory standard for legal and policy reasons having nothing to do with reliance on a voluntary standard.

The Commission is aware of the need to make clear decisions in this area. In the future, it will insure that the record clearly states whether it has made the requisite findings to rely on a voluntary standard.

Appendix. Several commenters stated that the Appendix to this section should be modified to add an additional standard to the list of voluntary standards relied upon by the Commission. In its consideration of what standards the Commission might have relied upon before November 17, 1990, the Commission examined the records of many previous proceedings. The Commission found that the records in previous Commission decisions were often unclear and determined that for section 15(b) reporting purposes, evidence of reliance had to be explicitly articulated in the form of a **Federal Register** notice.

On this basis, the Commission found that it has relied upon only the two voluntary standards listed in the Appendix. In one, the record showed Commission reliance at the time of termination of a rulemaking proceeding. In the other, the record demonstrated reliance in the context of withdrawal of an existing rule. After consideration of the comments and an examination of the record, the Commission sees no reason to change these determinations.

Section 1115.5(b) *Designation of the Provisions of a Voluntary Standard That are Relied Upon.*

Several commenters suggested that the Commission should designate the portions of a voluntary standard that it relies upon. The Commission has done so in the Appendix to this notice and intends to continue to do so in the future.

Changes to voluntary standards. The proposal stated that if the voluntary

standard relied upon by the Commission is modified after Commission reliance, firms must report non-compliance with new versions of the voluntary standard. It was the Commission's intent that firms would have to report only non-compliances in products manufactured after the effective date of the new version of the voluntary standard. Several commenters have objected to this approach and argued that it places a burden on firms to keep up with new versions of the voluntary standard. They suggest that only those modifications specifically approved by the Commission should be reportable. Other commenters supported the idea of requiring reports of violations of future versions of the voluntary standard but only if the provisions of the voluntary standard were not watered down to require a less stringent approach to safety.

The Commission has considered these comments and decided to modify this provision. To avoid confusion in the marketplace and pursuant to section 7(b)(2) of the CPSA, the Commission will monitor voluntary standards upon which it has relied. If the standard is changed, the Commission will determine whether it chooses to rely upon the change and notify the public of that decision. The Commission has also made provisions for situations where changes to a voluntary standard become effective before the Commission makes a decision about which version of the standard that are not substantive. Section 1115.5(b) has been amended to add this procedure.

Section 1115.6(a). *Reporting of Information About Unreasonable Risks of Serious Injury or Death.*

This provision suggests that firms should not await actual serious injuries or deaths before reporting and lists certain information that could trigger a report under this provision. Several commeters question whether a report could be triggered by, among other things, "reports from experts." (This issue is also raised in the context of § 1115.12(f), which sets forth information which should be studied and evaluated to determine whether a firm has an obligation to report.) They also question whether an article in a consumer magazine, or similar information, should trigger a report and argue that such information may be unreliable.

The Commission does not intend to require firms to report every time they receive negative information about their product. A firm, however, cannot escape an obligation to report merely by challenging the reliability of the source of the information. A reasonably diligent firm would approach such information in the light of all of its knowledge about its product. As one commenter noted, in some situations a single report or item of information such as an expert opinion may trigger a report because it reasonably supports a determination that the product presents an unreasonable risk of serious injury or death. In other cases, the firm may reasonably determine that the report or information does not reasonably support the conclusion that a reporting obligation exists. In all cases, the firm must exercise due care to evaluate such reports and information in the context of all of the information it has obtained about its product.

1115.6(b) *Lawsuits and Unreasonable risk.* This section describes the analysis a firm must make in determining whether a product presents a reportable unreasonable risk of injury. Several commenters agreed that section 15(b)(3) does not require firms to report every time a court or jury determines that the product presents an unreasonable risk or unreasonable danger in a product liability case involving serious injury or death. However, other commenters suggested that the Commission add language emphasizing the importance of product liability judgments to a firm's determination of whether it must report under section 15(b)(3) of the CPSA.

The Commission has considered these comments and added a provision to § 1115.6(a)(2) to clarify that, as a practical matter, the Commission will attach considerable significance to an adverse product liability judgment or settlement when it evaluates whether the firm complied with its reporting obligation, even though this does not trigger a per se reporting requirement.

An adverse product liability judgment is the kind of event that should cause a firm to carefully examine what it knows about its product and may lead the firm to conclude that a reportable defect or unreasonable risk of injury exists. The Court's decision that a product is defective or presents an unreasonable risk or danger merits careful consideration for reporting purposes under section 15(b). A firm must carefully consider whether the product in the liability case was unique and unlike the other products it distributed or whether the information it possesses about its product, including knowledge of the liability judgment, would cause a reasonable person to report. This provision is intended to encourage firms to make the kind of careful and reasonable analysis required by section 15(b)(3) of the CPSA.

State of the manufacturing or scientific art. One commenter objected to the statement that firms should evaluate "the state of the manufacturing or scientific art" as well as other factors when it examines whether a product presents an unreasonable risk under section 15(b)(3). The commenter argued that such new products are often "untested" and suggested that products should only be measured against "proven methods of design." The Commission disagrees. The legislative history of the Improvement Act suggests that the same kind of risk/utility analysis that assists in rulemaking decisions under section 7 is relevant to the term unreasonable risk under section 15(b)(3) of the CPSA. 135 *Cong. Rec.* S10,052 (1989) (Statement of Senator Bryant). The Commission considers the state of the manufacturing and scientific arts in rulemaking under section 7. The same factors are also considered by courts and juries in product liability cases throughout the country. Therefore, the Commission considers it appropriate for firms to evaluate the state of the manufacturing or scientific art, among other pertinent factors, in deciding whether to report.

One commenter objected to the language in this section which states that "[t]he Commission expects firms to report if a 'reasonable person could conclude given the information available' that a product creates an unreasonable risk of serious injury or death." The commenter believes that the use of the word "could" "would create an absurdly low threshold for manufacturers to report products to the Commission." The Commission believes that the commenter's concerns are unfounded.

The Commission used this language to reflect the legislative intent that a "reasonable person" standard applies to determination of "unreasonable risk of death or serious injury." This language was taken directly from the report of the Senate Committee on Commerce, Science and Transportation, S. Rep. No. 37, 101st Cong., 1st Sess. 11 (1989). The Committee intended that "manufacturers will be held to a 'reasonable person' standard regarding unreasonable risk of serious injury or death. The correct inquiry is whether *a reasonable person could conclude, given the information available* to the manufacturer, that the product creates such a risk." (Emphasis added.) The Commission interpretation retains this language.

Transferred Act Violations. The proposal states that a subject firm must report if it obtains information which

reasonably supports the conclusion that its product violates a standard or ban promulgated under the FHSA, FFA, PPPA or RSA, and the violation could result in serious injury or death. Several commenters objected, arguing that this is tantamount to a Commission interpretation equating such violations with "unreasonable risk" under section 15(b)(3). One commenter also argued against the use of the term "*could result* in serious injury or death." (Emphasis added.) Other commenters supported the Commission interpretation.

The Commission has considered the comment that had Congress intended the reporting of violations of transferred act rules, it could have mandated such an obligation explicitly as it did for violations of CPSA rules in section 15(b)(1), and agrees that it contains some merit on its face. Violation of a transferred act regulation is not *per se* reportable. The Commission's interpretation of this provision is that it may require reporting only if the violation of a regulation under a transferred act presents a risk of serious injury or death. Other commenters argued that whether the product violated a regulation under one of the transferred acts is just one of the factors that should be considered in a risk/utility analysis a firm makes before determining whether an unreasonable risk exists. Again, the Commission has found some merit in this assertion, and has modified its interpretation to assure the public that such a violation, by itself, does not pose a *per se* reporting obligation.

Before publishing its proposal, the Commission carefully considered the findings that it makes when it promulgates standards and bans under the FFA, FHSA, PPPA, and RSA. The Commission, has found that in many cases it, or its predecessor agencies, has made explicit or implicit findings that products violative of substantive regulations under these Acts present an unreasonable risk. Therefore, it has determined that such a violation may raise a presumption that such non-conforming products present an unreasonable risk. For these reasons, after considering the comments, the Commission has modified this provision to state that in its evaluation of whether a firm has complied with its reporting obligations under this provision, the Commission will attach considerable significance if the firm has obtained information which reasonably supports the conclusion that its product violates a standard or ban under one of the transferred acts.

The Commission notes that many of the products that fail to comply with a regulation under a transferred act and may, therefore, be reportable under section 15(b)(3) may also be reportable under section 15(b)(2). A non-compliance in a product will usually render a product defective because the non-compliance is a fault, flaw or irregularity in the product. A report is necessary if such a defect could create a substantial risk of injury. (See 16 CFR 1115.4 for a discussion of the meaning of the term "defect" and 16 CFR 1115.10 regarding reporting and the transferred acts.)

Several commenters misconstrued the meaning of the term "could result" in this provision, arguing that the Commission was broadening the obligation to report products that create an unreasonable risk of serious injury or death. The Commission included the language "could result" to convey the idea that actual injuries do not have to occur before the subject firm reports the unreasonable risk. If the unreasonable risk has not yet resulted in death or serious injury, but such a result is reasonably foreseeable, then firms should not wait for actual deaths or serious injuries to occur before reporting.

Retroactivity. One commenter questioned whether the new unreasonable risk language should be applied retroactively. It hypothesized a situation where a firm has previously determined that a product did not contain a defect which could create a substantial risk of injury. The commenter questioned whether it was not improper to require that firm to reevaluate that product to determine whether it presented an unreasonable risk of injury. By its terms, section 15(b) applies to a product "distributed in commerce" that "creates an unreasonable risk of serious injury or death." The Commission has taken the position that this language clearly expresses a Congressional intent that the reporting obligation applies to products distributed in commerce prior to the effective date of the Improvement Act. See In the Matter of Relco, CPSC Docket No. 74–4, Interim Initial Decision and Order (April 29, 1975). The legislative history indicates that Congress thought adding an unreasonable risk provision would encourage firms that had been reluctant to admit the existence of defects in their products to report. Report of the House Committee on Energy and Commerce, H.R. Rep. No. 567, 101st Cong., 2d Sess. 22 (1990). Therefore, the Commission interprets the reporting requirement to apply to products that have already been distributed in commerce. Thus, even if a firm has previously evaluated information it had obtained about its product and determined that the product did not contain a reportable defect, it must reevaluate information it has obtained about the product to determine if the product creates an unreasonable risk of serious injury or death. This does not mean that a firm necessarily should have reported such a product in accordance with section 15(b)(2), but, rather that a new, prospective, reporting requirement may be triggered in accordance with section 15(b)(3).

Section 1115.6(c). *Definition of Serious Injury.*

Several commenters contend that the definition of serious injury in the proposed rule was too broad, suggesting that not all injuries that receive medical attention or cause loss of school or work time are "serious." They argued either that the definition of "serious injury" should be the same as the definition of "grievous bodily injury," or at least that injuries should be more "serious" than those enumerated in the proposal. Other commenters believed that the definition of serious injury was too weak since it states that the examples "might" be serious injuries. They argued that the regulation should state that these "are" examples of serious injury.

Congress' choice of the term "serious injury" in section 15(b)(3), instead of the term "grievous bodily injury" used in section 37, demonstrates an intent to broaden the reporting provision beyond grievous injuries. The proposed rule attempted to reflect this intent, while providing some guideposts to distinguish serious from minor injuries. Nevertheless, after consideration of the comments, the Commission agrees that some of the examples given were too broad and imprecise. The Commission also agrees that the term "might" did not provide adequate guidance. As a result, it has amended this section. Subject firms should note that these are merely examples of situations in which the Commission shall presume that such a serious injury has occurred. Firms must evaluate all the information they have obtained about their products to determine whether the products create an unreasonable risk of serious injury.

Section 1115.7. *Relation to other Provisions.*

Several commenters were concerned about the relationship between reporting under section 15(b) and the provisions of new section 37. Some suggested that the Commission state an intent to investigate all section 37 reports to determine whether a report should have been filed under section 15(b). The Commission sees no reason to state

such an inflexible rule. As the Commission receives section 37 reports, it will certainly be aware of the reporting requirements under section 15(b) and will pursue such investigations as warranted.

Other commenters suggested that sections 15 and 37 might cause "double reporting" since the same problem reported under section 15(b) might result in settlements or judgments that would trigger a section 37 report. One commenter suggested eliminating the requirement for the section 37 report in such cases. The Commission believes that some overlap between these reporting requirements is possible. However, section 37 is intended to be a non-discretionary catch-all requirement. Since the staff ordinarily requests firms who have reported under section 15(b) to keep them informed about injuries and deaths, there is little additional burden in complying. Therefore, the Commission does not set forth any general exception to reporting under section 37 in such instances. The Commission may, as appropriate in individual cases, make exceptions to this general policy.

One commenter suggested that there is an inconsistency between section 15(b) and section 37 because section 15(b) may require a report if a product does not comply with a voluntary standard relied upon by the Commission. This commenter argues that this reporting obligation requires firms to make products that comply with the voluntary standard. The commenter believes it is incongruous that a firm may have to comply with a voluntary standard for 15(b) purposes, but still need to report settlements or judgments involving such products under section 37.

The Commission does not agree that the reporting obligation for products that fail to comply with a voluntary standard requires manufacturers to make products that comply with the standard. However, the Commission agrees that since Commission reliance was based upon a finding of substantial compliance with the voluntary standards, most firms will comply. The Commission is aware that the reporting requirement of section 37 is complementary to and not identical to the section 15 requirements and that this may result in some overlap between the provisions of these sections. The Commission, however, does not believe that this overlap will create an excessive burden on industry, nor does it see a practical way to limit reporting under section 37 that might not create important gaps in the product information garnered from such reports.

Sections 1115.10–1115.14.

Some commenters suggested minor changes to the language of these sections. Although technical changes were included in these sections to incorporate the 1990 amendments, they largely remained unaltered in substance. These provisions have been in effect since 1978. The Commission has addressed the primary substantive concerns about reporting in the discussions above and sees no need for further changes to these provisions.

EFFECTIVE DATE: This part becomes effective September 3, 1992.

Regulatory Flexibility Analysis

In accordance with section 3 of the Regulatory Flexibility Act, 5 U.S.C. 605, the Commission certifies that this regulation will not have a significant impact upon a substantial number of small entities. This final interpretative regulation simply clarifies the obligations imposed by section 15(b) of the CPSA upon manufacturers, distributors and retailers of consumer products. The final regulation will have no economic impact on small business beyond that which results from the statutory provision.

Environmental Considerations

The final rule below does not fall within any of the categories of Commission activities described in 16 CFR 1021.5(b) which have the potential for producing environmental effects. The Commission does not believe that the final rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the rule proposed below may produce such effects. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1115

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

In accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, the Commission amends part 1115 of title 16, chapter II, of the Code of Federal Regulations as follows:

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

1. The authority citation for part 1115 is revised to read as follows:

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2069, 2070, 2071, 2073, 2076, 2079 and 2084.

2. Sections 1115.2 (b) and (c) are revised to read as follows:

§ 1115.2 Scope and finding.

* * * * *

(b) Section 15(b) of the CPSA requires every manufacturer (including an importer), distributor, and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that the product fails to comply with an applicable consumer product safety rule, fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, contains a defect which could create a substantial product hazard described in subsection 15(a)(2) of the CPSA, or creates an unreasonable risk of serious injury or death, immediately to inform the Commission, unless the manufacturer (including an importer), distributor or retailer has actual knowledge that the Commission has been adequately informed of such failure to comply, defect, or risk. This provision indicates that a broad spectrum of safety related information should be reported under section 15(b) of the CPSA.

(c) Sections 15 (c) and (d) of the CPSA, (15 U.S.C. 2064 (c) and (d)), empower the Commission to order a manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce that presents a substantial product hazard to give various forms of notice to the public of the defect or the failure to comply and/or to order the subject firm to elect either to repair, to replace, or to refund the purchase price of such product. However, information which should be reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard, because what must be reported under section 15(b) are failures to comply with consumer product safety rules or voluntary standards upon which the Commission has relied under section 9, defects that could create a substantial product hazard, and products which create an unreasonable risk of serious injury or death. (See § 1115.12.)

* * * * *

3. Section 1115.3(c) is revised to read as follows:

§ 1115.3 Definitions.

* * * * *

(c) *Noncompliance* means the failure of a consumer product to comply with

an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA.

* * * * *

4. Sections 1115.5 through 1115.7 are added to read as follows:

§ 1115.5 Reporting of failures to comply with a voluntary consumer product safety standard relied upon by the Commission under section 9 of the CPSA.

(a) *General provision.* Under the CPSA, the Commission may rely on voluntary standards in lieu of developing mandatory ones. In recognition of the role of voluntary standards under the CPSA, section 15(b)(1) requires reports if a product fails to comply with a voluntary standard "upon which the Commission has relied under section 9" of the CPSA. The Commission has relied upon a voluntary consumer product safety standard under section 9 of the CPSA if, since August 13, 1981 it has terminated a rulemaking proceeding or withdrawn an existing consumer product safety rule because it explicitly determined that an existing voluntary standard, or portion(s) thereof, is likely to result in an adequate reduction of the risk of injury and it is likely there will be substantial compliance with that voluntary standard. (See Appendix to this part 1115 for a list of such voluntary standards.) This provision applies only when the Commission relies upon a voluntary standard in a rulemaking proceeding under section 9 of the CPSA, and does not apply when the Commission relies upon a voluntary standard in a rulemaking proceeding under another provision of the CPSA or one of the transferred acts. In evaluating whether or not to rely upon an existing voluntary standard, the Commission shall adhere to all the procedural safeguards currently required under the provisions of the CPSA, including publication in the **Federal Register** of the Commission's intent to rely upon a voluntary standard in order to provide the public with a fair opportunity to comment upon such proposed action.

(b) *Reporting requirement.* A firm must report under this section if it has distributed in commerce, subsequent to the effective date of the Consumer Product Safety Improvement Act of 1990 (November 16, 1990), a product that does not conform to a voluntary standard or portion(s) of a voluntary standard relied upon by the Commission since August 13, 1981. If the Commission relied upon only a portion(s) of a voluntary standard, a firm must report under this section only nonconformance with the portion(s) of the voluntary standard relied upon by the Commission. Pursuant to section 7(b)(2) of the CPSA, the Commission shall monitor any modifications of a voluntary standard upon which it has relied and determine, as a matter of policy, at the time any substantive safety related modification is adopted, whether it shall continue to rely upon the former standard or whether it shall rely, subsequently, upon the modified standard. The Commission shall publish such decisions in the **Federal Register**. Until the Commission makes such a decision, subject firms need not report under this provision a product which complies with either the original version of the voluntary standard relied upon by the Commission or the new version of the standard. A firm must continue to evaluate whether deviations from other portions of a voluntary standard, or other voluntary standards not relied upon by the Commission, either constitute a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

§ 1115.6 Reporting of unreasonable risk of serious injury or death.

(a) *General provision.* Every manufacturer, distributor, and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that its product creates an unreasonable risk of serious injury or death is required to notify the Commission immediately. 15 U.S.C. 2064(b)(3). The requirement that notification occur when a responsible party "obtains information which reasonably supports the conclusion that" its product creates an unreasonable risk of serious injury or death is intended to require firms to report even when no final determination of the risk is possible. Firms must carefully analyze the information they obtain to determine whether such information "reasonably supports" a determination that the product creates an unreasonable risk of serious injury or death. (See § 1115.12(f) for a discussion of the kinds of information that firms must study and evaluate to determine whether they have an obligation to report.) Firms that obtain information indicating that their products present an unreasonable risk of serious injury or death should not wait for such serious injury or death to actually occur before reporting. Such information can include reports from experts, test reports, product liability lawsuits or claims, consumer or customer complaints, quality control data, scientific or epidemiological studies, reports of injury, information from other firms or governmental entities, and other relevant information. While such information shall not trigger a *per se* reporting requirement, in its evaluation of whether a subject firm is required to file a report under the provisions of section 15 of the CPSA, the Commission shall attach considerable significance if such firm learns that a court or jury has determined that one of its products has caused a serious injury or death and a reasonable person could conclude based on the lawsuit and other information obtained by the firm that the product creates an unreasonable risk of serious injury or death.

(b) *Unreasonable risk.* The use of the term "unreasonable risk" suggests that the risk of injury presented by a product should be evaluated to determine if that risk is a reasonable one. In determining whether a product presents an unreasonable risk, the firm should examine the utility of the product, or the utility of the aspect of the product that causes the risk, the level of exposure of consumers to the risk, the nature and severity of the hazard presented, and the likelihood of resulting serious injury or death. In its analysis, the firm should also evaluate the state of the manufacturing or scientific art, the availability of alternative designs or products, and the feasibility of eliminating the risk. The Commission expects firms to report if a reasonable person could conclude given the information available that a product creates an unreasonable risk of serious injury or death. In its evaluation of whether a subject firm is required to file a report under the provisions of section 15 of the CPSA the Commission shall, as a practical matter, attach considerable significance if such firm obtains information which reasonably supports the conclusion that its product violates a standard or ban promulgated under the FHSA, FFA, PPPA or RSA and the violation could result in serious injury or death.

(c) *Serious injury or death.* The term "serious injury" is not defined in the CPSA. The Commission believes that the term includes not only the concept of "grievous bodily injury," defined at § 1115.12(d), but also any other significant injury. Injuries necessitating hospitalization which require actual medical or surgical treatment, fractures, lacerations requiring sutures, concussions, injuries to the eye, ear, or internal organs requiring medical treatment, and injuries necessitating absence from school or work of more than one day are examples of situations in which the Commission shall presume that such a serious injury has occurred. To determine whether an unreasonable risk of serious injury or death exists, the firm should evaluate chronic or long term health effects as well as immediate injuries.

§ 1115.7 Relation to other provisions.

The reporting requirements of section 37 of the CPSA (15 U.S.C. 2084) are in addition to the requirement in section 15 of the CPSA. Section 37 requires a product manufacturer to report certain kinds of lawsuit information. It is intended as a supplement to, not a substitute for, the requirements of section 15(b) of the CPSA. Whether or not a firm has an obligation to provide information under section 37, it must consider whether it has obtained information which reasonably supports the conclusion that its product violates a consumer product safety rule, does not comply with a voluntary safety standard upon which the Commission has relied under section 9, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. If a firm has obtained such information, it must report under section 15(b) of the CPSA, whether or not it is required to report under section 37. Further, in many cases the Commission would expect to receive reports under section 15(b) long before the obligation to report under section 37 arises since firms have frequently obtained reportable information before settlements or judgments in their product liability lawsuits.

5. In § 1115.10, remove the words "Product Defect Correction Division" and add, in their place, the words "Office of Compliance and Enforcement, Division of Corrective Actions" in paragraphs (a) and (b); redesignate paragraphs (c) and (d) as paragraphs (e) and (f); and add new paragraphs (c) and (d) to read as follows:

§ 1115.10 Persons who must report and where to report.

* * * * *

(c) Every manufacturer (including importer), distributor, and retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, shall immediately notify the Commission's Office of Compliance and Enforcement, Division of Corrective Actions or such other persons as may be designated.

(d) Every manufacturer (including importer), distributor, and retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product creates an unreasonable risk of serious injury or death shall immediately notify the Commission's Office of Compliance and Enforcement, Division of Corrective Actions or such other persons as may be designated. This obligation applies to manufacturers, distributors and retailers of consumer products subject to regulation by the Commission under the Flammable Fabrics Act, Federal Hazardous Substances Act, Poison Prevention Packaging Act, and Refrigerator Safety Act as well as products subject to regulation under the CPSA.

* * * * *

6. Section 1115.12 is amended by revising paragraphs (a) and (b), by redesignating paragraphs (c) through (f) as paragraphs (d) through (g), by adding new paragraph (c), and by revising newly redesignated paragraph (f) to read as follows:

§ 1115.12 Information which should be reported; evaluating substantial product hazard.

(a) *General.* Subject firms should not delay reporting in order to determine to a certainty the existence of a reportable noncompliance, defect or unreasonable risk. The obligation to report arises upon receipt of information from which one could reasonably conclude the existence of a reportable noncompliance, defect which could create a substantial product hazard, or unreasonable risk of serious injury or death. Thus, an obligation to report may arise when a subject firm received the first information regarding a potential hazard, noncompliance or risk. (See § 1115.14(c).) A subject firm in its report to the Commission need not admit, or may specifically deny, that the information it submits reasonably supports the conclusion that its consumer product is noncomplying, contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA, or creates an unreasonable risk of serious injury or death. After receiving the report, the staff may conduct further investigation and will preliminarily determine whether the product reported upon presents a substantial product hazard. This determination can be based on information supplied by a subject firm or from any other source. If the matter is adjudicated, the Commission will ultimately make the decision as to substantial product hazard or will seek to have a court make the decision as to imminent product hazard.

(b) *Failure to comply.* A subject firm must report information indicating that a consumer product which it has distributed in commerce does not comply with an applicable consumer product safety standard or ban issued under the CPSA, or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA.

(c) *Unreasonable risk of serious injury or death.* A subject firm must report when it obtains information indicating that a consumer product which it has distributed in commerce creates an unreasonable risk of serious injury or death.

* * * * *

(f) *Information which should be studied and evaluated.* Paragraphs (f)(1) through (7) of this section are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA. This information should be evaluated to determine whether it suggests the existence of a noncompliance, a defect, or an unreasonable risk of serious injury or death:

(1) Information about engineering, quality control, or production data.

(2) Information about safety-related production or design change(s).

(3) Product liability suits and/or claims for personal injury or damage.

(4) Information from an independent testing laboratory.

(5) Complaints from a consumer or consumer group.

(6) Information received from the Commission or other governmental agency.

(7) Information received from other firms, including requests to return a product or for replacement or credit. This includes both requests made by distributors and retailers to the manufacturer and requests from the manufacturer that products be returned.

* * * * *

7. Section 1115.13 is amended by removing the words "Product Defect Corrections Division" and adding in their place "Office of Compliance and Enforcement, Division of Corrective Actions" in paragraph (a) and by revising paragraphs (b), (c) introductory text, (c)(3), (d) introductory text, (d)(4), (d)(5), the first sentence of (d)(6), (d)(10) and (d)(11) to read as follows:

§ 1115.13 Content and Form of Reports; delegations of authority.

* * * * *

(b) *Distributors and retailers.* A distributor or retailer of a product (who is neither a manufacturer nor an importer of that product) satisfies the initial reporting requirements either by telephoning or writing the Office of Compliance and Enforcement, Division of Corrective Actions, Consumer Product Safety Commission, Washington, D.C. 20207, phone 301–504–0608; by sending a letter describing the

noncompliance, defect or risk of injury to the manufacturer (or importer) of the product and sending a copy of the letter to the Commission's Division of Corrective Actions; or by forwarding to the Commission's Division of Corrective Actions reportable information received from another firm. A distributor or retailer who receives reportable information from a manufacturer (or importer) shall report to the Commission unless the manufacturer (or importer) informs the distributor or retailer that a report has been made to the Commission. A report under this paragraph should contain the information detailed in paragraph (c) of this section insofar as it is known to the distributor or retailer. Unless further information is requested by the staff, this action will constitute a sufficient report insofar as the distributor or retailer is concerned.

(c) *Initial report.* Immediately after a subject firm has obtained information which reasonably supports the conclusion that a product fails to comply with an applicable consumer product safety rule or a voluntary standard, contains a defeat which could create a substantial risk of serious injury or death, the subject firm should provide the Division of Corrective Actions, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207 (telephone: 301–504–0608), with an initial report containing the information listed in paragraphs (c) (1) through (6) of this section. This initial report may be made by any means, but if it is not in writing, it should be confirmed in writing within 48 hours of the initial report. (See § 1115.14 for time computations.) The initial report should contain, insofar as is reasonably available and/or applicable:

* * * * *

(3) The nature and extent of the possible defect, the failure to comply, or the risk.

* * * * *

(d) *Full report.* Subject firms which file initial reports are required to file full reports in accordance with this paragraph. Retailers and distributors may satisfy their reporting obligations in accordance with § 1115.13(b). At any time after an initial report, the staff may modify the requirements detailed in this section with respect to any subject firm. If the staff preliminarily determines that there is no substantial product hazard, it may inform the firm that its reporting obligation has been fulfilled. However, a subject firm would be required to report if it later became aware of new information indicating a reportable defect, noncompliance, or risk, whether the new information related to the same or another consumer product. Unless modified by staff action, the following information, to the extent that it is reasonably available and/or applicable, constitutes a "full report," must be submitted to the staff, and must be supplemented or corrected as new or different information becomes known:

* * * * *

(4) A description of the nature of the defect, failure to comply, or risk. If technical drawings, test results, schematics, diagrams, blueprints, or other graphic depictions are available, attach copies.

(5) The nature of the injury or the possible injury associated with the product defect, failure to comply, or risk.

(6) The manner in which and the date when the information about the defect, noncompliance, or risk (e.g., complaints, reported injuries, quality control testing) was obtained.* * *

* * * * *

(10) An explanation of any changes (e.g., designs, adjustments, and additional parts, quality control, testing) that have been or will be effected to correct the defect, failure to comply, or risk and of the steps that have been or will be taken to prevent similar occurrences in the future together with the timetable for implementing such changes and steps.

(11) Information that has been or will be given to purchasers, including consumers, about the defect, noncompliance, or risk with a description of how this information has been or will be communicated. This shall include copies or drafts of any letters, press releases, warning labels, or other written information that has been or will be given to purchasers, including consumers.

* * * * *

8. Section 1115.14 is amended by revising the first sentence of paragraph (c) and paragraph (e) to read as follows:

§ 1115.14 Time computations.

* * * * *

(c) *Time when obligation to report arises.* The obligation to report under section 15(b) of the CPSA may arise upon receipt by a subject firm of the first information regarding a noncompliance, or a potential hazard presented by a product defect, or an unreasonable risk.

* * *

* * * * *

(e) *Time to report.* Immediately, that is, within 24 hours, after a subject firm has obtained information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard, contains a defect which could create a substantial risk of injury to the public, or creates an unreasonable risk of serious injury or death, the firm should report. (See § 1115.13.) If a firm elects to conduct an investigation in order to evaluate the existence of reportable information, the 24-hour period begins when the firm has information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard upon which the Commission has relied under section 9, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. Thus, a firm could report to the Commission before the conclusion of a reasonably expeditious investigation and evaluation if the reportable information becomes known during the course of the investigation. In lieu of the investigation, the firm may report the information immediately.

* * * * *

9. Part 1115 is amended by adding an Appendix to read as follows:

Appendix to Part 1115—Voluntary Standards on Which the Commission Has Relied Under Section 9 of the Consumer Product Safety Act

The following are the voluntary standards on which the Commission has relied under section 9 of the Consumer Product Safety Act:

1. American National Standard for Power Tools—Gasoline-Powered Chain Saws—Safety Regulations, ANSI B175.1–1985 sections 4.9.4, 4.12, 4.15, 7 and 8, or the current version: ANSI B175.1–1991 sections 5.9.4, 5.12, 5.15, 8 and 9.

2. American National Standard for Gas-Fired Room Heaters, Volume II, Unvented Room Heaters, ANSI Z21.11.2–1989 and addenda ANSI Z21.11.2 a and b- 1991), sections 1.8, 1.20.9, and 2.9.

Dated: July 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–18421 Filed 8–3–92; 8:45 am]

BILLING CODE 6355–01–M

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16 CFR Part 1116

Reporting Requirements Under Section 37 of the Consumer Product Safety Act; Final Interpretative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final interpretative rule.

SUMMARY: The Consumer Product Safety Commission (the "Commission") publishes an interpretative rule advising manufacturers subject to section 37 of the Consumer Product Safety Act (15 U.S.C. 2084) how to comply with the requirement that they report to the Commission certain information relating to settled civil actions and judgments in favor of plaintiffs. Since enactment of this provision of the law in November, 1990, the Commission has received a number of inquiries concerning the procedures for making such reports to the Commission and the Commission's interpretation of various provisions of section 37.

EFFECTIVE DATE: This rule becomes effective on September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Gidding, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207, (301) 504–0626.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed into law the Consumer Product Safety Improvement Act of 1990. In addition to amending several provisions of the existing Consumer Product Safety Act (CPSA), the statute created a new section 37 requiring a manufacturer of a consumer product to report to the Commission if (1) a particular model of the product is the subject of three or more civil actions filed in Federal or state court, (2) each such suit alleges the involvement of the model in death or grievous bodily injury (as defined in section 37(e)(1)), and (3) at least three of the actions result in a final settlement involving the manufacturer or in a judgment for the plaintiff within any one of the two year periods specified in section 37(b). A report must be filed within 30 days after the settlement or judgment in the third such civil action. Each subsequent final settlement or judgment in favor of a plaintiff in a civil action that alleges that the particular model was involved in death or grievous injury and that occurs during the same two year period must also be reported within 30 days after entry of that settlement or judgment.

Section 19(a)(11) of the CPSA (15 U.S.C. 2068(a)(11)) makes it a prohibited act to fail to report as required by section 37. Firms that violate the reporting requirement of section 37 are subject to a civil penalty of up to $5,000 for each product involved up to a maximum penalty of $1.25 million for a related series of violations. (15 U.S.C. 2069).

The reporting requirements of section 37 went into effect on January 1, 1991, the day on which the initial two year window for filing reports began. However, to notify the public of how the Commission intends to interpret and implement section 37, on October 28, 1991, the Commission published for public comment a proposed interpretative rule. Several trade associations, firms, individuals and consumer groups submitted comments on the proposed rule. Comments on specific parts of the proposed rule and the Commission's responses are discussed in the following paragraphs.

1. *General Comments:* The reporting requirements of section 37 and the defect reporting obligations imposed by section 15(b) of the CPSA are two of the most important tools the Commission employs to identify and remedy serious product hazards. One principal objective of the enactment of section 37 is to create an "automatic" system for manufacturers to report information concerning settled or adjudicated cases to the Commission without the necessity to perform the types of analyses of potential defects and risks of injury envisioned by section 15(b) of the CPSA, 15 U.S.C. 2064(b). However, analyzing and cataloging lawsuit information under the provisions of the statute often requires interpretation. For example, § 1116.8 of the proposed rule applies a "reasonable person" test to assist manufacturers in determining whether products involved in multiple lawsuits are the same "particular model" for reporting. Similarly, in analyzing whether an injury is "grievous bodily injury" under section 37(e)(1), the terms used in the statute, e.g., severe electric shock, severe burns, disfigurement, debilitating internal disorder, loss of important bodily function, and injuries likely to require extended hospitalization, are susceptible to varying interpretations.

After reviewing the comments, the Commission believes that the proposed rule, as drafted, creates uncertainty about the scope of the reporting obligation, both for manufacturers of products subject to the rule and for the enforcement staff of the Commission. Therefore, to provide clearer guidance as to which settled or litigated lawsuits are reportable under section 37, the Commission has clarified the "reasonable person" test in § 1116.8 of the rule for determining whether products are the same particular model, and is proposing for public comment examples of the types of injury that constitute "grievous bodily injury" in § 1116.2. These revisions are discussed in the responses to specific comments. The objective of the revisions is to facilitate reporting. This approach will, in turn, enhance the Commission's ability to enforce section 37 when seeking civil penalties for violations of the reporting requirements.

Of particular importance to the Commission's decision to modify the rule are the implications of the section 37 process for the obligation to report under section 15(b) of the CPSA and for the Commission's defect investigation program. One pervasive problem that the Commission has identified in administering section 15(b) is that many manufacturers lack centralized systems to synthesize information about potential product hazards. As a result, information about such hazards is often fragmented and located within a number of areas within a given company, thus detracting from the firm's ability to analyze the section 15 implications of the information. In contrast, to track and catalog product-related lawsuits under section 37, the Commission believes that prudent manufacturers will develop those types of information systems that are currently lacking. As new § 1116.7(h)(4) of the rule recognizes, once those systems are in place, manufacturers will be in a position to perform a two-fold analysis to determine whether the information collected is reportable under either section 15(b) or section 37. A manufacturer might conclude, for example, that differences between products that are the subject of different lawsuits make them different models or that the injuries alleged in one or more of the suits are not grievous. Based on this analysis, the manufacturer might also conclude that the suits are not reportable under section 37. However, a reporting obligation may exist if the same information supports the conclusion that the product(s) contain a defect which could create a substantial product hazard or create an unreasonable risk of death or serious injury.

In view of the foregoing, in its future section 15 defect investigations the Commission intends to explore thoroughly lawsuit data compiled for section 37 reporting purposes and, when appropriate, the reasons for a firm's failure to report, either under section 15(b) or section 37. In addition, the Commission is seeking to expand its access to Federal and state court product liability filings, judgments, and settlements to provide an extrinsic check on compliance with the section 37 reporting requirements. These measures should encourage manufacturers to take

those steps necessary to assure that they are in compliance with the reporting requirements of both sections of the law.

2. *Definitions:* The proposed rule incorporated *verbatim* several definitions contained in section 37, including that of the term "grievous bodily injury". Under section 37(e)(1), a "grievous bodily injury" includes mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to cause extended hospitalization.

a. *Clarification of the Term "Grievous Bodily Injury":* The proposed rule did not undertake to clarify the categories of injury enumerated in section 37(e)(1). However, each of these terms requires some degree of interpretation. For example, amputation could refer to soft tissue damage or to removal of bone or cartilage. The terms "severe burns" and "severe electrical shock" are susceptible to differing interpretations, as are "mutilation," "debilitating internal disorder," and "loss of important bodily functions". The term "disfigurement" raises issues of the extent of injury that must occur to meet the statutory threshold.

Since the ultimate objective of this interpretative rule is to provide manufacturers with clear guidance concerning the reporting requirements, the Commission intends to add to § 1116.2 of the final rule by proposing for public comment examples of the types of injury that fall within the categories enumerated in section 37(e)(1). This proposal is published elsewhere in this issue of the **Federal Register**. Because, however, these examples were not contained in the original proposed rule and thus were not the subject of public comment, the Commission is publishing the definition of "grievous bodily injury" in this final rule unchanged from that which was in the original proposed rule.

b. *Additional Comments:* One commenter suggested that the term "extended hospitalization" provides insufficient guidance to determine whether a particular lawsuit falls within the ambit of reportable lawsuits. The commenter recommended that the Commission specify a minimum 45 day period of in-patient care as "extended hospitalization," exclude from the definition health care provided on an out-patient basis, and place the burden of reporting the length of hospitalization on the plaintiff. The commenter contended that the latter requirement is needed because, absent extensive pre-settlement discovery, information about the nature and length of a plaintiff's hospitalization would not ordinarily be available to a manufacturer.

The Commission declines to adopt the express recommendations advanced by these comments. The commenter provided no objective basis for selecting 45 days as the minimum period which would be characteristic of grievous bodily injury. As is discussed in the proposed clarification to § 1116.2(b) of the interpretative rule, information provided by the insurance community, on the other hand, establishes reasonable minimum periods of in-patient care for acute treatment or rehabilitation which the Commission proposes to incorporate in the rule to clarify the definition of grievous bodily injury. The Commission notes that section 37 refers to injuries likely to require extended hospitalization, rather than injuries that actually require such hospitalization. Accordingly, a period of hospitalization much shorter than 30 days may be indicative of grievous bodily injury, if it is followed by prolonged out-patient treatment or rehabilitation therapy.

The suggestion that the burden of reporting the duration of hospitalization be placed on the injured plaintiff is neither authorized by statute nor workable. The statute places the burden of reporting on defendant manufacturers. Given the length of time that normally elapses between an accidental injury and the filing of a lawsuit, and the fact that settlement amounts are typically linked in part to a plaintiff's medical expenses, the Commission believes that a manufacturer will almost always be able to determine the duration of a plaintiff's hospital stay in assessing whether a lawsuit is reportable under section 37. A plaintiff, on the other hand, would not customarily have access to sufficient information about related lawsuits to determine whether or when a section 37 report would be appropriate.

3. *Allegations of Grievous Bodily Injury:* Section 1116.7 of the proposed rule provided that, when the original or amended complaint in a settled or adjudicated action alleges the involvement of a consumer product in death or grievous bodily injury, the lawsuit falls within the scope of section 37. This interpretation was based on section 37(c)(1) which requires that a manufacturer include in a section 37 report a statement as to whether a civil action that was the subject of a report alleged death or grievous bodily injury, and, in the case of an allegation of grievous bodily injury, the category of such injury. This provision itself is evidence of the Congressional intent that allegations of grievous bodily injury provide the basis for a report, regardless of whether a manufacturer agrees with the plaintiff's characterization of the nature of the injury.

While the Commission received comments supporting the rule as proposed, virtually every industry and trade association commenter objected to the requirement that allegations in complaints be reported. While the commenters advanced a variety of reasons for their objections, the common thread was a belief that plaintiffs often overstate the severity of their injuries. According to these comments, tying reporting to complaint allegations would ultimately require manufacturers to report "nuisance" lawsuits that involve less than grievous injury and that are settled for nominal amounts. To bolster their arguments, several commenters noted that it is common practice in "notice pleading" jurisdictions to use conclusory language in complaints alleging the occurrence of "grievous injury" without specifying the nature of the injury. Other commenters looked to the language of section 37(a) referring to civil actions "* * * for death or grievous bodily injury" as an indication that manufacturers should be permitted to consider the facts that are uncovered during litigation in determining whether a report is warranted.

To remedy this perceived problem, the commenters suggested a variety of options. The majority suggested that the reporting obligation be governed by facts as determined during discovery, rather than by the allegations of the complaint. Others suggested that the Commission adopt a "floor" for monetary damages under which a lawsuit would not be reportable. The estimates of the appropriate level for such a floor ranged between $2,000 and $100,000. Still other commenters suggested that a lawsuit not be reportable if the complaint is amended to allege less than grievous bodily injury.

a. *Allegations in Complaints:* Section 37(c)(1) requires that, if a civil lawsuit that is the subject of a section 37 report contains an allegation of grievous injury, the report must include a statement of the category of the alleged injury. Hence, the Commission concludes that a statement in a complaint alleging that a plaintiff has sustained "grievous bodily injury" without any further elaboration does not necessarily bring that lawsuit within the scope of section 37, since such a statement itself does not provide a basis for determining the category into which the injury falls. Accordingly, the Commission has revised § 1116.7 of the

interpretative rule to point out that the proper inquiry should focus on whether the injury claimed by the plaintiff meets the criteria for determining whether an injury constitutes "grievous bodily injury". As the commenters indicated, if the allegations in the complaint in a matter are not sufficiently clear, the process of discovery should routinely provide such information, as would pre-complaint investigation or informal settlement negotiation. The Commission notes, however, that the use of the term "grievous bodily injury" in a complaint raises a strong presumption that the injury claimed by the plaintiff meets the statutory definition.

Many commenters referred to basing reporting decisions on the facts "as determined by discovery". To the extent that this phraseology suggests that a defendant must agree with the plaintiff's characterization of the nature of the injury suffered to incur an obligation to report, the Commission rejects such an interpretation. Section 37(c)(1) clearly contemplates that *allegations* of grievous bodily injury, rather than consensus opinion about the nature and extent of the injury, be reported. Indeed, in the context of settlement, reporting allegations is the only viable alternative, since no adjudication takes place. The Commission recognizes that there may be a rare instance in which a litigated verdict in favor of a plaintiff who alleged the occurrence of grievous bodily injury contains express findings that the injury incurred was less than grievous. In such a case, the actual determination of the nature of the injury by the trier of fact would govern the decision whether the lawsuit was reportable, regardless of the allegations that formed the basis for the complaint.

b. *Nuisance Suits; Amended Complaints:* The Commission believes that the two measures outlined above—the proposed revisions to § 1116.2(b) of the rule providing examples of the types of injuries embraced in the term "grievous bodily injury," and focusing on plaintiffs' factual allegations of the nature of the injury—will resolve virtually all of the concerns voiced by the commenters. For example, the request that the Commission impose a monetary floor on reportable settlements and judgments derives from the belief that such small monetary amounts are indicative of the occurrence of minor injury. The revised regulation alleviates the need to consider the imposition of such a floor, since the future revisions are designed to winnow out lawsuits in which the categories of injury alleged do not meet the definition of grievous injury. Similarly, the issue of revising the rule to exclude reports when an amended complaint alleges less than grievous bodily injury becomes superfluous, since, regardless of the reason for the amendment, the actual nature of the injury claimed and its status under section 37 will be the basis for reporting.

In light of the foregoing, the Commission declines to adopt the recommendations of the commenters concerning monetary minimums for reporting and amended complaints. Moreover, the Commission notes that both of these suggestions contain inherent problems which mandate against their inclusion in the final rule. The minimum amounts suggested by the commenters ranged from $2,000 to $100,000, with one commenter recommending a variation based on the recovery of 8 percent of the amount of monetary damage claimed. The variation in ranges demonstrates that, unless the monetary amount as a minimum for reporting selected were so small as to be meaningless, any "floor" would, of necessity, capture some lawsuits involving less than grievous injury, and exclude others in which grievous injury occurred. Moreover, the imposition of a minimum dollar amount for reporting purposes could become an artificial standard around which settlement negotiations would revolve. The Commission believes that such a potential regulatory intrusion into the normal course of negotiation is neither appropriate nor in the public interest.

With respect to amendment of complaints to allege less than grievous injury, one possible ramification of revising the rule as the commenters requested could be an insistence on the part of some defendant manufacturers that, as condition of settlement, plaintiffs amend complaints to allege less than grievous bodily injury. The Commission believes that such a result would circumvent the reporting requirements, and would be contrary to the public interest and to the legislative intent of Congress to increase reporting. Therefore, the Commission declines to adopt the proposed revision to the rule.

4. *Common Source of Injury; Similar Events or Cause; Particular Model Defect:* Section 1116.8(c) of the proposed rule points out that section 37 expressly defines the reporting obligation in terms of the particular model of the product that is the subject of three or more lawsuits rather than the manner in which those products were involved in accidents. The rule therefore states that, as long as the same model is the subject of the requisite number of lawsuits for death or grievous bodily injury within one of the statutory two year periods, the manufacturer must report, even though the alleged category of injury and the alleged causal relationship of the product to the injury in each suit may differ.

Several commenters objected to this interpretation. They argued that, since the purpose of section 37 is to identify recurrent product defects, requiring the reporting of suits involving different injuries or causes of injury would not promote the objectives of the statute. The commenters suggested a number of more restrictive alternatives, including permitting manufacturers to group lawsuits on the basis of a common source of injury, similar product defects, and/or similar injuries in deciding whether to report.

The Commission declines to adopt any of the alternatives suggested by the commenters. At the outset, the Commission notes that section 37 was enacted to address what Congress perceived as a substantial level of under-reporting under section 15(b) of the CPSA. As the Senate Committee on Commerce, Science, and Transportation noted, "manufacturers are reluctant to indicate that their products may contain a defect, or do not believe their products are defective, and so often do not supply the CPSC with notice under the law." S. Rep. No. 37, 101st Cong., 1st Sess. 10 (1989). By making the section 37 reporting obligation automatic, Congress sought to eliminate the disincentives to reporting associated with the section 15 process of discretionary defect and causation analysis. In view of this statutory objective and the express wording of section 37, the Commission believes that the interpretation in the proposed rule implements both the letter and intent of the law. In contrast, two of the alternatives suggested by the commenters create precisely the same problems that the legislation seeks to avoid, especially in the case of settled lawsuits. Screening cases for section 37 purposes to determine whether a manufacturer agrees that each involves the same defect or causal elements would be essentially the same process that section 15(b) contemplates, albeit drawing on a much narrower data base than the typical section 15 analysis uses. In the absence of a formal adjudication, such a process would invite a manufacturer to draw distinctions between cases based on its litigation position in each case rather than on the statutory criteria established by Congress relating to the determination of whether the suits involve the same particular model of a product.

Grouping suits on the basis of the similarity of injuries is an equally flawed approach. A mechanical hazard associated with a specific product, for example, could result in mutilation, amputation, or disfigurement, depending on the circumstances of the incidents in which the product is involved. An electrical hazard in the same product can often manifest itself as either fire or shock, while a caustic chemical hazard could be characterized as causing severe burns or disfigurement. As a result, grouping lawsuits by similar categories of injury could exclude from the ambit of section 37 lawsuits involving the same product defect. The Commission therefore declines to modify the proposed rule in the manner suggested by the commenter.

5. *Components of Consumer Products:* Section 1116.8(b) of the proposed rule notes that, because the definition of the term "consumer product" contained in section 3(a) of the CPSA expressly includes components of such products, the reporting obligations of section 37 apply to component manufacturers. As long as the same particular model of a component is involved in three lawsuits that meet the criteria of section 37, the component manufacturer who is a party to those suits must report, even though the products into which the components are incorporated are different models or even product types. The same proposition applies when the category of the alleged injuries or the alleged causal relationship of the component to the injuries are different in one or more of the three lawsuits. The component manufacturer must still report under section 37.

A number of commenters contended that these requirements are unduly burdensome because components used in a variety of different products would be subject to the reporting requirements, even though the end-use products in which they were incorporated would not. Most of these commenters suggested that the Commission limit the obligation of component manufacturers to report to lawsuits involving the same particular model of the finished product into which the component was incorporated. Some, however, suggested permitting component manufacturers to differentiate between lawsuits involving different classes of products in analyzing their reporting obligations. Other commenters argued that, because lawsuits naming component manufacturers may be based on different types of injuries and/or causal scenarios, requiring reports of such lawsuits would not yield any benefit to the Commission's defect identification program. These commenters recommended revising the rule to require component manufacturers to report only when all three lawsuits involve the same category of injury or the same causal involvement of the component in the injuries.

The Commission declines to adopt the modifications to the rule recommended by the commenters. At the outset, a plain reading of the language of section 37(a) indicates that the law itself bases reporting solely on whether the same particular model of a product is involved in three or more lawsuits alleging death or grievous bodily injury. Given the express language of the statute and the legislative purpose to increase reporting, the Commission believes that adopting the suggestions of the commenters would inappropriately narrow the reporting obligation.

With respect to the merits of the commenters' various arguments, the Commission has experienced many cases in which the same defective components have given rise to substantial risks of injury involving multiple product models and product types. Sometimes, the defect in such components has manifested itself in the form of different types of injury. Modifying the rule as suggested would deprive the Commission of information required to identify and analyze such widespread hazards. With respect to issues of causation, the Commission believes that the discussion of this issue above is equally applicable to components.

In response to those comments that indicate that the proposed rule imposes a disparate burden on component manufacturers, the Commission notes that the rule places no greater or lesser obligation on such manufacturers than that which manufacturers of finished products will experience under the statute itself. Both classes have to track lawsuits to which they are parties. Both have to analyze lawsuit information to determine whether it is reportable. Indeed, by focusing only on whether the same particular model of a product is involved in lawsuits for death or grievous bodily injury, the proposed rule imposes less of an analytical burden than the alternatives suggested by the commenters. Moreover, given the ability of component defects to cause hazards ranging over a wide variety of products, the Commission believes that those provisions of the interpretative rule dealing with components are consistent with the public interest.

6. *Consumer Products Involved in Occupational Injuries:* Section 1116.7(f)(2) of the proposed rule notes that, since section 37 focuses on consumer products, it is the responsibility of the manufacturer of a product implicated in a civil action to determine whether the production or distribution of the product satisfies the statutory criteria of section 3(a) of the CPSA, 15 U.S.C. 2051(a), for determining whether a product is a consumer product. If the product involved in the lawsuit meets the definition, it falls within the scope of section 37, even though the injury may have occurred during use of the product during employment.

Three commenters objected to this provision of the rule, contending that only lawsuits brought by injured consumers should be subject to the section 37 reporting requirements. One hypothesized that injuries occurring during employment might be different from those arising during consumer use. Another erroneously characterized the provision as extending the Commission's oversight into the industrial area in excess of its regulatory authority.

a. *Occupational Injuries:* With one exception relating to asbestos litigation (discussed below), the Commission declines to limit the scope of section 37 to lawsuits involving consumer injury. In defining the scope of the Commission's authority, Congress recognized the risks associated with consumer exposure to industrial products. As the House Committee report on the original Consumer Product Safety Act notes: "If a manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion (from the definition of "consumer product") if a significant number of consumers are thereby exposed to hazards associated with the product." Report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1153, 92d Cong., 2d Sess. 27 (1972). The Commission's experience confirms that, when a product is produced or distributed for both consumer and occupational use with sufficient frequency to make it a "consumer product," product-related injuries that happen to either group are often indicative of those that can be expected to occur to the other. Accordingly, the Commission believes that the focus of the rule on whether the product involved in an injury was a consumer product, rather than on whether the victim was a consumer, is consistent with the letter and the intent of sections 3(a) and 37 of the CPSA, and is an appropriate vehicle to assess potential hazards to consumers. The

Commission also notes that, should a section 37 report based in whole or in part on lawsuits involving occupational injuries indicate that some form of action is required to correct a product hazard, that action would be limited to the remedies the CPSA prescribes to deal with the hazards to the public associated with consumer products.

b. *Asbestos Litigation:* The Commission received one comment on the proposed rule that suggests narrowing this interpretation to accommodate the unique circumstances surrounding asbestos litigation. The commenter, a not-for-profit corporation representing 19 member companies in asbestos personal injury litigation, noted that its members are defendants in approximately 80,000 pending court cases. In view of the number of cases, the passage of time between exposure and injury, and the difficulty associated in determining the nature or identity of the products involved in the injury, the commenter contended that the proposed rule would place a substantial burden on the asbestos industry to analyze and catalog lawsuit information for section 37 purposes. The commenter also argued that such an effort is unlikely to produce any information useful to the Commission because, in the vast majority of lawsuits, the products in question have already been banned by either the Commission or by the Environmental Protection Agency, thus alleviating the need for additional regulatory action.

The occurrence of asbestos-related injury is directly tied to the nature of the products involved, the levels of airborne asbestos encountered, and the duration of exposure to those levels. In the case of injury arising from complete or partial occupational exposure to asbestos, the levels of asbestos involved in the injuries and the duration of exposure almost always will be substantially higher and longer than those which would be encountered during consumer use, even if the products involved were technically consumer products. Hence, reporting information on lawsuits involving these types of exposure will be of limited value to assist the Commission in its analysis of remedial measures that could adequately reduce risks to consumers associated with specific product models. Moreover, the extended latency period between exposure to asbestos and the occurrence of injury severely hampers the ability of the Commission to take action against a model implicated in such injuries.

The Commission acknowledges that, in general lawsuits arising from death or grievous injury caused by exposure to asbestos-containing consumer products technically fall within the scope of section 37. However, given the unique circumstances associated with asbestos litigation and the burden of complying with section 37, the Commission believes that Congress may not have intended the statute to sweep so broadly, especially in those cases in which the levels of asbestos and duration of exposure are not characteristic of the levels and durations consumers would experience as a result of the purchase of a product for personal use. Accordingly, as a matter of agency discretion, the Commission has revised § 1116.7(f)(2) of the proposed rule to require manufacturers of asbestos-containing products to report only those lawsuits that allege the occurrence of death or grievous bodily injury to consumers as a result of exposure to asbestos from a particular model of a consumer product purchased for the personal use of a consumer.

The Commission notes that it will consider requests for exemption from the lawsuit reporting requirements for other products that present chronic hazards similar to the hazard presented by asbestos. However, any such request should be fully documented and establish that compliance with the reporting requirements would be unduly burdensome and unlikely to provide information which would assist the Commission in discharging its obligations under the statutes it administers.

7. *Particular Model of a Consumer Product:* Section 37 ties the reporting obligation to lawsuits involving the same particular model of consumer product. Section 37(e) (2) defines a particular model as "one that is distinctive in functional design, construction, warnings, or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance." 15 U.S.C. 2084(e)(2). Section 1116.6 of the proposed rule established a "reasonable person" test to determine whether a product that is the subject of an adjudicated or settled lawsuit is sufficiently different from other similar products in one or more of the factors listed in section 37(e)(2) to be regarded as a "particular model" under section 37. Under this test, a product would be considered a different particular model if, after an analysis of information relating to those statutory factors, a reasonable person would conclude that the difference between that product and other items of the same product class manufactured or imported by the same manufacturer is substantial and material. The test recognized that the difference between products in one factor alone could be sufficient to make them different particular models. The proposed rule did not, however, specify whether the application of the "reasonable person" test relies on the perspective of a consumer purchaser or on that of the manufacturer.

a. *The "reasonable person" test:* The "reasonable person" test elicited several disparate comments. Two commenters suggested that the statute is sufficiently clear to provide adequate guidance to manufacturers without further clarification and contended that imposition of the "reasonable person" test would exceed the Commission's statutory authority. Another group took the position that, even with the addition of the "reasonable person" standard, the rule provided insufficient guidance for manufacturers to determine their obligations under the law. Still others supported the test, although one commenter observed that the Commission should not second guess a manufacturer's good faith judgment as to whether a product was a "particular model" based on the application of the statutory factors in section 37. Two commenters focused on the definition of "particular model," rather than on the test, requesting that the Commission revise the definition to recognize that differences in features, components, or wiring that could have a direct effect on consumer safety could afford a basis for distinguishing between products. Another requested that the rule refer to a product's size, dimensions, or special features as providing such a basis.

At the outset, under sections 20(d) and 19(a)(11) of the CPSA, a "knowing" violation of section 37 can arise as a result of the knowledge presumed to be had by a reasonable person acting in the circumstances. The latter clause indicates a Congressional intent that, in determining whether civil penalties should be assessed for a failure to report under section 37, the conduct of a manufacturer should be reviewed in light of the conduct that would be expected of a reasonable manufacturer of similar products possessing the same degree of or ability to obtain knowledge about the products at issue. Hence, the application of the "reasonable person" test in the rule focuses on how a representative manufacturer of a given commodity would reasonably view the distinctions between products in that commodity class. In determining whether to seek civil penalties, the Commission intends to review conduct

of manufacturers in light of this standard.

b. *Application of the "reasonable person" test:* The Commission recognizes that a variety of evidentiary aids exist to assist manufacturers in evaluating whether a specific product is distinctive in one or more of the statutory factors. The proposed rule noted that information relevant to this determination includes the manufacturer's description of the features and uses of the product in question in instruction manuals, descriptive brochures, or marketing or promotional programs. The rule also noted that the differences or similarities between products in their observable physical characteristics and in components that are not readily observable and that are incorporated into those products for safety related purposes should also be analyzed. Other evidence might include expert evaluation or surveys of consumer users or a manufacturer's retail customers.

While all of these sources of information can be of value in evaluating products, the Commission also recognizes that, as a practical matter, conducting surveys or the solicitation of expert opinion can be onerous, especially for manufacturers with multiple product lines. By the same token, many industries, in accordance with long-standing commercial practices, memorialize model designations in documents such as promotional literature, catalogs, specification sheets, and product drawings. These documentary designations provide a reference point for applying the statutory criteria to determine whether a product listed or described therein is a different model from other listed products. The Commission believes that documentary evidence, in most instances, can have substantial probative value for model determinations, especially when product distinctions have been consistently described in such documents for a long period of time. Accordingly, the Commission believes that a manufacturer's inquiry should focus, in the first instance, on descriptions of product characteristics and uses contained in the types of literature and documents described above. The fact that two products are listed as different models or have separate descriptions in literature is not necessarily sufficient to support a determination that they are different models. Rather, the information in such literature must be evaluated in light of the factors identified in section 37 for analyzing models. If a manufacturer reasonably concludes, based on an analysis of information contained in documentary material, that the difference between two products in one or more of the enumerated factors is substantial and material, the products would be different models for reporting purposes.

The Commission notes, however, that a manufacturer's analysis of documentary material should take into account the customary practices of the trade of which the manufacturer is a member. For example, if an industry customarily engages in pre-market testing or certification of products by independent testing organizations, a number of products may be included under one certification report based on identical tests and evaluations. To the extent that those tests and evaluations focus on the factors enumerated in section 37 for model determination, inclusion of multiple products in one report may raise a strong presumption that the features of the products identified in the report are not regarded within the trade as being distinctive, notwithstanding the fact that each of the products may be designated as separate models in the manufacturer's literature. The latter point is especially relevant in those instances in which the only material difference between products is in size of calibration. While such product characteristics are relevant to the analysis, for example, of the functional design of two or more otherwise identical products, grouping such products under one listing or testing report tends to negate any conclusion that each product is a different particular model. The Commission has revised § 1116.8(a) of the proposed rule to reflect the changes discussed above.

c. *Response to Specific Comments:* Some commenters suggested that the difference in price between products should be given substantial weight in determining whether they are different models. To the extent that the prices of products reflect the types of differences enumerated in section 37(e)(2), a substantial difference in price between two or more products may be evidence that the products are distinctive from one another and thus are different particular models. However, price variations to accommodate different markets or vendors are not sufficient to draw such a distinction.

The Commission declines to adopt specific revisions to the proposed rule that would enumerate features, components, or wiring differences which could affect a product's safety related performance as a basis for distinguishing between products. The Commission also declines to specify that size, product dimensions, and special features also form the basis for such distinctions. Section 37 requires a manufacturer of products that are the subject of settled or adjudicated lawsuits to conduct a case-by-case analysis to determine whether the products involved in the suits are the same particular models. Whether any of the factors identified by the commenters provides a basis for making such a distinction depends on the nature of the product, its uses, and the customs of members of the trade which produce the product. While these factors might provide the requisite foundation to conclude reasonably that certain types of products are different models, the converse may be true for other products. The Commission therefore declines to modify the proposed rule in the manner suggested by the commenters.

The Commission cautions that section 37 centers on the distinctiveness of products that are the subject of lawsuits. A component part that is the subject of a lawsuit, for example, may be significantly different and thus a different "particular model" when compared to another part of the same type or class that is also the subject of a suit. However, such different components may be incorporated in the same model of a finished product that is the subject of multiple lawsuits. In such a case, the differences in the components may be insufficient to permit a manufacturer to draw distinctions between the finished products that are the subjects of the lawsuits. Hence, an analysis of a product in terms of size, special features, or components should focus on whether the differences between such elements are sufficiently great to cause a reasonable manufacturer to regard the finished products into which they are incorporated as different models. Therefore, § 1116.8(a)(7) of the final rule notes that the use of component parts that are interchangeable or that perform substantially the same function as comparable components in other units does not afford the basis for distinguishing between models of the products into which they are incorporated.

8. *Confidentiality:* Congress enacted section 37, it also enacted section 6(e) of the CPSA, 15 U.S.C. 2055(e), to impose stringent confidentiality requirements for information required to be submitted under section 37. With two exceptions related to disclosure of such information to specific Congressional committees and to the authentication of a section 37 report for the manufacturer who

submitted it, members of the Commission and officers and employees of both the Commission and the Department of Justice are barred from disclosing such information. By the express terms of law, however, the section 6(e) prohibition applies only to the information a manufacturer is required to submit under section 37(c)(1) and to statements provided under section 37(c)(2)(A) relating to the possibility or the existence of an appeal from a judgment adverse to the reporting manufacturer. Although section 37(c)(2)(B) expressly provides a reporting manufacturer with the opportunity to provide voluntarily additional information, the section 6(e) restrictions on disclosure do not reference such additional information.

In view of the structure of the statute, § 1116.9(b) of the proposed rule notes that the disclosure of such additional information is governed, not by section 6(e), but by sections 6 (a) and (b) of the CPSA, 15 U.S.C. 2055 (a) and (b). The former prohibits the disclosure of trade secret information. The latter requires the Commission to take reasonable steps, prior to the public disclosure of information about a product from which the identity of the manufacturer of the product can be readily ascertained, to assure that the information is accurate and that the disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers.

(a) *Additional Information Submitted Under Section 37(c)(2)(B):* Two commenters expressed concern that the confidentiality requirements of the proposed rule did not apply to additional information submitted by a reporting manufacturer, either of its own volition or in response to a request for supplemental information from the Commission. One argued that, since section 6(e) protects information that Congress compels manufacturers to provide to the Commission, the submission of additional information in response to a request by the Commission should be treated as a compulsory disclosure and thus afforded the same degree of confidentiality as a section 37 report. The second expresssed concern that the absence of protection for information voluntarily furnished under section 37(c)(2)(B) could have a chilling effect on the willingness of manufacturers to provide such information and would unfairly penalize those who choose to do so.

The Commission believes that the public interest is best served by encouraging manufacturers to make available all information required to assess potential hazards associated with specific products. Hence, the agency believes generally that maintaining the confidentiality of such information can further this objective. By the same token, however, the Commission's ability to withhold documents from public disclosure is constrained by the provisions of the statutes it administers and the Freedom of Information Act, 5 U.S.C. 552. Given the manner in which sections 37(c) and 6(e) of the CPSA are drafted, the Commission believes that little latitude exists to extend the penumbra of section 6(e) to additional information submitted voluntarily to the Commission either in response to a request by the agency or at the manufacturer's initiative. Interpretative regulations issued under section 6(b) of the Act, however, establish that disclosure of certain information may be barred if the disclosure would not be fair in the circumstances. 16 CFR 1101.33. As an example, the regulation states that the Commission will generally not disclose information furnished by a firm to facilitate prompt remedial action or settlement when the firm has a reasonable expectation that the Commission will maintain the information in confidence. 16 CFR 1101.33(b)(1).

The Commission believes that, given the gravity with which Congress viewed the disclosure of section 37 reports, issues of releasing additional information submitted pursuant to section 37 should be evaluated under the fairness provisions of section 6(b). Accordingly, should the Commission receive a request for such information or contemplate disclosure on its own initiative, the manufacturer will be given an opportunity to present arguments to the Commission why the information should not be disclosed, including, if appropriate, why disclosure of the information would be unfair in the circumstances. Among the factors the Commission will consider are the nature of the information, the fact that it is an adjunct to a Congressionally protected report, and whether the information in question supports the conclusion that a section 37 or 15(b), CPSA, report should have been filed earlier.

b. *Additional Comments on Confidentiality:* One commenter requested that the proposed rule be revised to point out explicitly that information obtained by the Commission independently of a section 37 report, e.g. from a third party source, does not enjoy the confidentiality protections of section 6(e). The Commission agrees with this comment and has amended the rule accordingly. See § 1116.9(c).

Another commenter objected generally that the statutory confidentiality requirements are inadequate, based on its erroneous belief that a section 37 report would be discoverable in private litigation, even though the Commission could not disclose it. In addition to the restrictions imposed on disclosure by the Commission, section 6(e)(2) provides that a report furnished under section 37(c)(1) or (c)(2)(A) shall be immune from legal process and shall not be subject to subpoena or discovery in any civil action in a State or Federal court or in any administrative proceeding. The only exception to these restrictions relates to actions seeking civil or criminal penalties or injunctive relief for violating section 19(a)(11) of the CPSA by failing to provide the information required by section 37. Hence, section 6(e) directly addresses the concerns expressed by this commenter.

A third commenter exhorted the Commission to develop strict procedures to maintain the confidentiality of section 37 reports so that they are not erroneously disclosed. The same commenter urged the Commission to review Congressional requests for section 37 reports to determine that they are from the chairman or the ranking minority member of one of the Committees referenced in section 6(e) and that they are for the use of those members. The commenter also requested that the Commission remind Congressional recipients that the information is confidential and should not be further disseminated, even to the other members or staff of those Committees.

The Commission has in place standard internal operating procedures to maintain the confidentiality both of trade secret information and of information submitted pursuant to section 37. Moreover, the Commission routinely apprises Congressional Committees authorized by statute to obtain specific information from the Commission of any statutory restrictions on further dissemination of that information. The concerns voiced by the commenter have therefore already been resolved. However, the Commission notes that, if it receives a Congressional request for a copy of a section 37 report that complies with the requirements of section 6(e)(4), it has no discretion to review or deny the request.

9. *Miscellaneous Comments:*

a. *Multiple Incidents:* One commenter suggested that the Commission clarify the rule to note that section 37 requires

reports of three civil actions only if each suit arises from a different incident. The commenter correctly noted that one incident alone could give rise to multiple lawsuits, but contended that the threshold requirement that three suits be settled or adjudicated for the reporting obligation to arise was intended to identify multiple occurrences which could identify a pattern of injury. A second commenter recommended that a class action lawsuit or any single action involving three or more people injured in three or more incidents involving a particular model of a product should not count as just one action for reporting purposes.

The Commission believes that the Congressional intent behind section 37 is to capture multiple incidents involving death or grievous bodily injury. The Commission has therefore revised § 1116.3 of the proposed rule to reflect this Congressional purpose. A multiple plaintiff law suit for grievous bodily injury or death is reportable if the suit involves three or more separate incidents. The reporting obligation arises when at least three plaintiffs have settled their claims or when a combination of settled claims and adjudications favorable to plaintiffs reaches three. Multiple lawsuits arising from one incident only count as one lawsuit for the purposes of section 37.

b. *Partial Judgments:* Section 1116.7(e) of the proposed rule points out that a plaintiff need not prevail completely for a litigated case to come within the scope of section 37. One commenter argued that, in comparative fault jurisdictions in which a plaintiff's award is reduced by the percentage of his or her fault, only those lawsuits in which a manufacturer is found to be more than 50% at fault should be reportable. The commenter took the position that a verdict in which the plaintiff is assigned more than half the fault is not a verdict in the plaintiff's favor.

The Commission declines to adopt this suggestion. In the Commission's view, a judgment awarding partial monetary compensation to an injured party is a judgment in favor of that party under the plain language of section 37.

c. *Multiple Reporting Periods:* One commenter contended that, under the clear language of section 37, manufacturers are only required to report if a particular model of a consumer product is the subject of civil actions that result in judgment or settlements in favor of the plaintiffs in each of three 24 month periods. Inasmuch as section 37(b), which defines the 24 month period(s) for reporting, establishes a continuing series of 24 month periods and contains no reference to the number three, the Commission believes that the commenter has misread the statute. If the commenter is suggesting that three reportable lawsuits must arise in every 24 month period for the reporting obligation to arise, the obligation would never attach, since every two years would initiate a new period. Such a result is obviously flatly inconsistent with the purposes of section 37.

d. *Multiple Penalties:* The knowing failure to report under either section 15(b) or section 37 is a violation of section 19 of the CPSA that can give rise to the imposition of civil penalties under section 20 of the Act. Recognizing that such cases are a subject for individual consideration based on the facts adduced in each, the proposed rule did not address the issue of whether the penalties could be imposed for violations of both sections of the Act relating to the same product. One commenter, however, argued that section 20 of the CPSA prohibits the multiple assessments of penalties for violating different provisions of section 19.

This comment is beyond the scope of the interpretative rule. Inasmuch as this issue is more appropriately resolved in the context of an enforcement action, no addition or revision to the rule is necessary.

e. *Violations of section 15(b):* Two commenters requested that the Commission revise section 1116.12 of the proposed rule to note expressly that the Commission will, as a general rule, investigate a section 37 report that has not been preceded by a section 15(b) report to determine whether the reporting manufacturer has violated section 15(b). The commenters believed that including such a statement will create an incentive for firms not to be dilatory in reporting, relying on the mistaken belief that a report under section 37 will absolve them of liability for the failure to report under section 15(b). The commenters also requested a revision to § 1116.6(b)(2) to encourage reporting manufacturers to submit voluntarily explanations why they have not submitted section 15(b) reports in advance of their section 37 reports. Section 1116.6(b)(2) identifies optional information a manufacturer may include with a section 37 report.

The Commission believes that it is in the public interest to include a statement in the rule alerting manufacturers that the Commission intends, in appropriate cases, to investigate whether a manufacturer reporting under section 37 has committed a knowing violation of section 15(b). However, the Commission receives many section 37 reports involving either products that are already the subject of some form of remedial action, product-related injuries already known to the Commission, or injuries that occur in the normal course of human interaction with products. Such cases require no further investigation. The revisions to § 1116.12 of the rule therefore stop short of establishing a general policy that all section 37 reports will be the subject of investigation for timely reporting under section 15(b). The Commission has, as requested, also revised § 1116.6(b)(2) of the rule to encourage manufacturers, when appropriate, to include voluntarily in their section 37 reports explanations why section 15(b) reports have not previously been filed.

f. *Double Reporting:* One commenter proposed that the rule be modified to specify that a section 37 report not be required when the manufacturer has already reported the same information under section 15(b). The commenter stated that such an action would reduce the reporting burden on manufacturers while providing the Commission with the information it needs. As stated before, the Commission believes that the primary burden associated with section 37 is the establishment and maintenance of information systems to capture and analyze lawsuit information, rather than the act of reporting. Accordingly, adopting the recommended revisions would do little to alleviate that burden. Moreover, information relating to lawsuits or other incidents discovered after a section 15 report has been filed often illuminates issues such as the scope of a product defect, the role human factors play in a specific type of accident, and the effectiveness of a corrective action plan, if one is in place. The Commission therefore declines to adopt a blanket policy of the type proposed by the commenter. The Commission recognizes, however, that there may be specific cases in which such additional reporting will be superfluous. Manufacturers who believe this is the case may raise the issue with the Commission's enforcement staff after the manufacturer's section 15 case is formally closed.

g. *Alleged Inconsistency Between Sections 15(b) and 37:* One commenter reasoned that the section 15(b) requirement to report non-compliance with a voluntary safety standard upon which the Commission has relied is, in effect, an order by the Commission to comply with that standard. The commenter then argued that, when taken in conjunction with section 37, this requirement creates the anomaly

that a manufacturer of a product that complied with the voluntary standard would have to report the complying product as "dangerous or unsafe based on lawsuit allegations." The Commission disagrees with the commenter's characterizations. The section 15(b) reporting requirement places no formal obligation on a manufacturer to comply with a voluntary standard upon which the Commission has relied. A report of non-conformity permits the Commission to assess the effectiveness of its reliance on such a standard, as well as the degree of compliance within the affected industry, and could, for example, warrant no remedial action or could only be the prelude to reopening a prospective rulemaking proceeding. Moreover, section 37 contains no requirement that a manufacturer designate the product that is the subject of a section 37 report as unsafe or dangerous. Indeed, in enacting section 37, Congress recognized that requiring firms to make such value judgments creates a deterrent to reporting. Hence, section 37 requires only the reporting of information concerning lawsuits without any such analysis.

h. The Commission has included minor technical revisions in the text of the final rule. In response to inquiries from manufacturers, the rule now contains § 1116.3(c) which notes that a law suit that otherwise meets the criteria of section 37(a) is reportable (1) if the manufacturer of the product named in the action is a party to the suit, or (2) if not a party, is involved in the defense of the action or has notice of the suit prior to the entry of a final order, and discharges any obligation owed to the plaintiff under the settlement of or in satisfaction of the judgment in the action. The manufacturer need not discharge such an obligation itself for a suit to be reportable. The suit is also reportable if, for example, the manufacturer's insurer, agent, or parent company satisfies the obligation. The rule also contains, in § 1116.6(b)(2), a statement that manufacturers may voluntarily report the dates on which final orders were entered in the lawsuits that are the subject of a section 37 report. Such information will assist the Commission staff in deciding whether to conduct additional investigation of a reported matter. The Commission has also inserted a heading in the rule, "Section 1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA", which was inadvertently omitted when the **Federal Register** notice containing the proposed rule was printed.

Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Section 37 implements Congress's concern and intention to enhance the Commission's ability to detect and remedy serious product hazards. This final interpretative regulation simply clarifies the obligations imposed by the law on manufacturers of consumer products that are the subject of civil lawsuits. The final regulation, however, will have no economic impact on small business, either beneficial or negative, beyond that which results from the statutory provisions.

Environmental Considerations

The final rule below does not fall within any of the categories of Commission activities described in 16 CFR 1021.5(b) which have the potential for producing environmental effects, and which, therefore, require environmental assessments, and, in some cases, environmental impact statementss. The Commission does not believe that the final rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the rule promulgated below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1116

Administrative practice and procedure, Business and industry, Confidential business information, Consumer protection, Reporting and recordkeeping requirements.

Conclusion

Therefore, in accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2052 *et seq.*, the Commission amends title 16, chapter II, of the Code of Federal Regulations by adding to subchapter B a new part 1116, to read as follows:

PART 1116—REPORTS SUBMITTED PURSUANT TO SECTION 37 OF THE CONSUMER PRODUCT SAFETY ACT

Sec.

1116.1 Purpose.
1116.2 Definitions.
1116.3 Persons who must report under section 37.
1116.4 Where to report.
1116.5 When must a report be made.
1116.6 Contents of section 37 reports.
1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA.
1116.8 Determination of particular model.
1116.9 Confidentiality of reports.
1116.10 Restrictions on use of reports.
1116.11 Reports of civil actions under section 37 not admissions.
1116.12 Commission response to section 37 reports.

Authority: 15 U.S.C. 2055(e), 2084.

§ 1116.1 Purpose.

The purpose of this part 1116 is to establish procedures for filing with the Consumer Product Safety Commission ("the Commission") reports required by section 37 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2084) and to set forth the Commission's interpretation of the provisions of section 37.

§ 1116.2 Definitions.

(a) A *24-month period(s)* means the 24-month period beginning on January 1, 1991, and each subsequent 24-month period beginning on January 1 of the calendar year that is two years following the beginning of the previous 24-month period. The first statutory two year period ends on December 31, 1992. The second begins on January 1, 1993 and ends on December 31, 1994, and so forth.

(b) *Grievous bodily injury* includes any of the following categories of injury:

(1) Mutilation.
(2) Amputation;
(3) Dismemberment;
(4) Disfigurement;
(5) Loss of important bodily functions;
(6) Debilitating internal disorder;
(7) Severe burn;
(8) Severe electric shock; and
(9) Injuries likely to require extended hospitalization.

(c) A *particular model* of a consumer product is one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance. (15 U.S.C. 2084(e)(2))

(1) The *functional design* of a product refers to those design features that directly affect the ability of the product to perform its intended use or purpose.

(2) The *construction* of a product refers to its finished assembly or fabrication, its materials, and its components.

(3) *Warnings or instructions related to safety* include statements of the

principal hazards associated with a product, and statements of precautionary or affirmative measures to take during the use, handling, or storage of a product, to the extent that a reasonable person would understand such statements to be related to the safety of the product. Warnings or instructions may be written or graphically depicted and may be attached to the product or appear on the product itself, in operating manuals, or in other literature that accompanies or describes the product.

(4) The *function* of a product refers to its intended use or purpose.

(5) *User population* refers to the group or class of people by whom a product is principally used. While the manufacturer's stated intent may be relevant to an inquiry concerning the nature of the user population, the method of distribution, the availability of the product to the public and to specific groups, and the identity of purchasers or users of the product should be considered.

(6) *Other characteristics which could affect a product's safety related performance* include safety features incorporated into the product to protect against foreseeable risks that might arise during the use, handling, or storage of a product.

(d) The term *manufacturer* means any person who manufactures or imports a consumer product. (15 U.S.C. 2052(a)(4)).

§ 1116.3. Persons who must report under section 37.

A manufacturer of a consumer product must report if:

(a) A particular model of the product is the subject of at least 3 civil actions filed in Federal or State Court;

(b) Each suit alleges the involvement of that particular model in death or grievous bodily injury;

(c) The manufacturer is—

(1) A party to, or

(2) Is involved in the defense of or has notice of each action prior to entry of a final order, and is involved in the discharge of any obligation owed to plaintiff under the settlement of or in satisfaction of the judgment after adjudication in each of the suits; and

(d) During one of the 24-month periods defined in § 1116.2(a), each of the three actions results in either a final settlement involving the manufacturer or in a court judgment in favor of the plaintiff.

For reporting purposes, a multiple plaintiff suit for death or grievous bodily injury is reportable if the suit involves three or more separate incidents of injury. The reporting obligation arises when at least three plaintiffs have settled their claims or when a combination of settled claims and adjudications favorable to plaintiffs reaches three. Multiple lawsuits arising from one incident involving the same product only count as one lawsuit for the purposes of section 37.

§ 1116.4 Where to report.

Reports must be sent in writing to the Commission's Office of Compliance and Enforcement, Division of Corrective Actions, Washington, DC 20207, telephone (301) 504–0608).

§ 1116.5 When must a report be made.

(a) A manufacturer must report to the Commission within 30 days after the final settlement or court judgment in the last of the three civil actions referenced in § 1116.3.

(b) If a manufacturer has filed a section 37 report within one of the 24-month periods defined in § 1116.2(a), the manufacturer must also report the information required by section 37(c)(1) for any subsequent settlement or judgment in a civil action that alleges that the same particular model of the product was involved in death or grievous bodily injury and that takes place during the same 24-month period. Each such supplemental report must be filed within 30 days of the settlement or final judgment in the reportable civil action.

§ 1116.6 Contents of section 37 reports.

(a) *Required information.* With respect to each of the civil actions that is the subject of a report under section 37, the report must contain the following information:

(1) The name and address of the manufacturer of the product that was the subject of each civil action;

(2) The model and model number or designation of the consumer product subject to each action;

(3) A statement as to whether the civil action alleged death or grievous bodily injury, and, in the case of an allegation of grievous bodily injury, a statement of the category of such injury;

(4) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff; and

(5) In the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned to the civil action, and the court in which the civil action was filed.

(b) *Optional information.* A manufacturer furnishing a report may include:

(1) A statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be appealed (section 15 U.S.C. 2084(c)(2)(A));

(2) Any other information that the manufacturer chooses to provide (15 U.S.C. 2084(c)(2)(B)), including the dates on which final orders were entered in the reported lawsuits, and, where appropriate, an explanation why the manufacturer has not previously filed a report under section 15(b) of the CPSA covering the same particular product model that is the subject of the section 37 report; and

(3) A specific denial that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

(c) *Statement of amount not required.* A manufacturer submitting a section 37 report is not required by section 37 or any other provision of the Consumer Product Safety Act to provide a statement of any amount paid in final settlement of any civil action that is the subject of the report.

(d) *Admission of liability not required.* A manufacturer reporting to the Commission under section 37 need not admit that the information it reports supports the conclusion that its consumer product caused a death or grievous bodily injury.

§ 1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA.

(a) According to the legislative history of the Consumer Product Safety Improvement Act of 1990, the purpose of section 37 is to increase the reporting of information to the Commission that will assist it in carrying out its responsibilities.

(b) Section 37(c)(1) requires a manufacturer or importer (hereinafter "manufacturer") to include in a section 37 report a statement as to whether a civil action that is the subject of the report alleged death or grievous bodily injury. Furthermore, under section 37(c)(2), a manufacturer may specifically deny that the information it submits pursuant to section 37 reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury, and may also include any additional information that it chooses to provide. In view of the foregoing, the reporting obligation is not limited to those cases in which a product has been adjudicated as the cause of death or grievous injury or to those settled or adjudicated cases in which the manufacturer has satisfied itself that the product was the cause of such trauma. Rather, when the specific injury alleged by the plaintiff meets the definition of "grievous bodily injury"

contained in § 1118.2(b) of this part, the lawsuit falls within the scope of section 37 after settlement or adjudication. The manufacturer's opinion as to the validity of the allegation is irrelevant for reporting purposes. The category of injury alleged may be clear from the face of an original or amended complaint in a case or may reasonably be determined during pre-complaint investigation, post-complaint discovery, or informal settlement negotiation. Conclusory language in a complaint that the plaintiff suffered grievous bodily injury without further elaboration raises a presumption that the injury falls within one of the statutory categories, but is insufficient in itself to bring the suit within the ambit of the statute, unless the defendant manufacturer elects to settle such a matter without any investigation of the underlying facts. A case alleging the occurrence of grievous bodily injury in which a litigated verdict contains express findings that the injury suffered by the plaintiff did not meet the statutory criteria is also not reportable. Should a manufacturer believe that its product is wrongly implicated in an action, the statute expressly incorporates the mechanism for the manufacturer to communicate that belief to the Commission by denying in the report the involvement of the product or that the injury in fact suffered by the plaintiff was not grievous bodily injury, despite the plaintiff's allegations to the contrary. In addition, the statute imposes stringent confidentiality requirements on the disclosure by the Commission or the Department of Justice of information submitted pursuant to sections 37(c)(1) and 37(c)(2)(A). Moreover, it specifies that the reporting of a civil action shall not constitute an admission of liability under any statute or common law or under the relevant provisions of the Consumer Product Safety Act. In view of these safeguards, the reporting of lawsuits alleging the occurrence of death or grievous injury should have little adverse effect on manufacturers.

(c) Section 37 applies to judgments and "final settlements". Accordingly, the date on which a civil action is filed or the date on which the product that is the subject of such an action was manufactured is irrelevant to the obligation to report. A settlement is final upon the entry by a court of an order disposing of a civil action with respect to the manufacturer of the product that is the subject of the action, even through the case may continue with respect to other defendants.

(d) A judgment becomes reportable upon the entry of a final order by the trial court disposing of the matter in favor of the plaintiff and from which an appeal lies. Because section 37(c)(2) specifies that a reporting manufacturer may include a statement that a judgment in favor of a plaintiff is under appeal or is expected to be appealed, Congress clearly intended section 37 to apply prior to the exhaustion of or even the initiation of action to seek appellate remedies.

(e) No language in section 37 limits the reporting obligation to those litigated cases in which the plaintiff prevails completely. Therefore, if a court enters a partial judgment in favor of the plaintiff, the judgment is reportable, unless it is unrelated to the product that is the subject of the suit. For example, if a manufacturer's product is exonerated during a suit, but liability is assessed against another defendant, the manufacturer need not report under section 37.

(f)(1) Section 37 applies to civil actions that allege the involvement of a particular model of a consumer product in death or grievous bodily injury. Section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) defines a "consumer product" as any article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. The term "consumer product" does not include any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer.

(2) Since section 37 focuses on consumer products, it is the responsibility of the manufacturer of a product implicated in a civil action to determine whether the production or distribution of the product satisfies the statutory criteria of section 3(a). If it does, the action falls within the ambit of section 37. True industrial products are beyond the scope of section 37. However, if a lawsuit is based on an allegation of injury involving a consumer product, that suit falls within the scope of section 37, even though the injury may have occurred during the use of the product in employment. By the same token, occupational injuries arising during the fabrication of a consumer product are not reportable if the entity involved in the injury is not a consumer product at the time the injury occurs. In determining whether a product meets the statutory definition, manufacturers may wish to consult the relevant case law and the advisory opinions issued by the Commission's Office of the General Counsel. The unique circumstances surrounding litigation involving asbestos-containing products warrant one exception to this analysis. The Commission, as a matter of agency discretion, will require manufacturers of such products to report under section 37 only those lawsuits that allege the occurrence of death or grievous bodily injury as the result of exposure to asbestos from a particular model of a consumer product purchased by a consumer for personal use. Such lawsuits would include not only injury to the purchaser, but also to other consumers including family, subsequent property owners, and visitors. The Commission may consider granting similar relief to manufacturers of other products that present a risk of chronic injury similar to that presented by asbestos. Any such request must contain documented evidence demonstrating that compliance with the reporting requirements will be unduly burdensome and will be unlikely to produce information that will assist the Commission in carrying out its obligations under the statutes it administers.

(g) The definition of "consumer product" also encompasses a variety of products that are subject to regulation under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*), the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Lawsuits involving such products are also subject to section 37, notwithstanding the fact that the products may be regulated or subject to regulation under one of the other statutes.

(h) Relationship of Section 37 to Section 15 of the CPSA.

(1) Section 37 plays a complementary role to the reporting requirements of section 15(b) of the CPSA (15 U.S.C. 2064(b)). Section 15(b) establishes a substantial obligation for firms to review information as it becomes available to determine whether an obligation to report exists. Accordingly, the responsibility to report under section 15(b) may arise long before enough lawsuits involving a product are resolved to create the obligation to report under section 37. The enactment of section 15(b)(3) in the Consumer Product Safety Improvement Act of 1990 reinforces this expectation. Under this amendment, manufacturers must report to the Commission when they obtain

information that reasonably supports the conclusion that a product creates an unreasonable risk of serious injury or death. Previously, the reporting obligation for unregulated products only arose when available information indicated that the product in question was defective and created a substantial product hazard because of the pattern of the defect, the severity of the risk of injury, the number of products distributed in commerce, etc. The effect of the 1990 amendment is discussed in detail in the Commission's interpretative rule relating to the reporting of substantial product hazards at 16 CFR part 1115.

(2) The new substantive reporting requirements of section 15(b)(3) support the conclusion that Congress intended section 37 to capture product-related accident information that has not been reported under section 15(b). Between the time a firm learns of an incident or problem involving a product that raises safety-related concerns and the time that a lawsuit involving that product is resolved by settlement or adjudication, the firm generally has numerous opportunities to evaluate whether a section 15 report is appropriate. Such evaluation might be appropriate, for example, after an analysis of product returns, the receipt of an insurance investigator's report, a physical examination of the product, the interview or deposition of an injured party or an eyewitness to the event that gave rise to the lawsuit, or even preparation of the firm's responses to plaintiff's discovery requests. Even if a manufacturer does not believe that a report is required prior to the resolution of a single lawsuit, an obligation to investigate whether a report is appropriate may arise if, for example, a verdict in favor of the plaintiff raises the issue of whether the product in question creates an unreasonable risk of death or serious injury.

(3) In contrast, the application of section 37 does not involve the discretionary judgment and subjective analyses of hazard and causation associated with section 15 reports. Once the statutory criteria of three settled or adjudicated civil actions alleging grievous injury or death in a two year period are met, the obligation to report under section 37 is automatic. For this reason, the Commission regards section 37 as a "safety net" to surface product hazards that remain unreported either intentionally or by inadvertence. The provisions in the law limiting such reports to cases in which three or more lawsuits alleging grievous injury or death are settled or adjudicated in favor of plaintiffs during a two year period provide assurance that the product involved presents a sufficiently grave risk of injury to warrant consideration by the Commission. Indeed, once the obligation to report under section 37 arises, the obligation to file a section 15 report concurrently may exist if the information available to the manufacturer meets the criteria established in section 15(b) for reporting.

(4) Section 37 contains no specific record keeping requirements. However, to track and catalog lawsuits to determine whether they are reportable, prudent manufacturers will develop and maintain information systems to index and retain lawsuit data. In the absence of a prior section 15 report, once such systems are in place, such manufacturers will be in a position to perform a two-fold analysis to determine whether the information contained in such systems is reportable under either section 15(b) or 37. A manufacturer might conclude, for example, that the differences between products that are the subject of different lawsuits make them different models or that the type of injury alleged in one or more of the suits is not grievous bodily injury. Based on this analysis, the manufacturer might also conclude that the suits are thus not reportable under section 37. However, a reporting obligation under section 15 may exist in any event if the same information reasonably supports the conclusion that the product(s) contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

§ 1116.8 Determination of particular model.

(a) The obligation rests with the manufacturer of a product to determine whether a reasonable basis exists to conclude that a product that is the subject of a settled or adjudicated lawsuit is sufficiently different from other similar products to be regarded as a "particular model" under section 37 because it is "distinctive." To determine whether a product is "distinctive", the proper inquiry should be directed toward the degree to which a product differs from other comparable products in one or more of the characteristics enumerated in section 37(e)(2) and § 1116.2(c) of this part. A product is "distinctive" if, after an analysis of information relating to one or more of the statutory characteristics, a manufacturer, acting in accordance with the customs and practices of the trade of which it is a member, could reasonably conclude that the difference between that product and other items of the same product class manufactured or imported by the same manufacturer is substantial and material. Information relevant to the determination of whether a product is a "particular model" includes:

(1) The description of the features and uses of the products in question in written material such as instruction manuals, description brochures, marketing or promotional programs, reports of certification of products, specification sheets, and product drawings.

(2) The differences or similarities between products in their observable physical characteristics and in components or features that are not readily observable and that are incorporated in those products for safety-related purposes;

(3) The customs and practices of the trade of which the manufacturer is a member in marketing, designating, or evaluating similar products.

(4) Information on how consumers use the products and on consumer need or demand for different products, such as products of different size. In analyzing whether products are different models, differences in size or calibration afford the basis for distinguishing between products only if those differences make the products distinctive in functional design or function.

(5) The history of the manufacturer's model identification and marketing of the products in question;

(6) Whether variations between products relate solely to appearance, ornamentation, color, or other cosmetic features; such variations are not ordinarily sufficient to differentiate between models.

(7) Whether component parts used in a product are interchangeable with or perform substantially the same function as comparable components in other units; if they are, the use of such components does not afford a basis for distinguishing between models.

(8) Retail price. Substantial variations in price arising directly from the characteristics enumerated in section 37(e)(2) for evaluating product models may be evidence that products are different models because their differences are distinctive. Price variations imposed to accommodate different markets or vendors are not sufficient to draw such a distinction.

(9) Manufacturer's designation, model number, or private label designation. These factors are not controlling in identifying "particular models".

(10) Expert evaluation of the characteristics of the products in

question, and surveys of consumer users or a manufacturer's retail customers.

(b) The definition of "consumer product" expressly applies to components of consumer products. Should a component manufacturer be joined in a civil action against a manufacturer of a consumer product, the section 37 reporting requirements may apply to that manufacturer after a combination of three judgments or settlements involving the same component model during a two year period, even though the manufacturer of the finished product is exempt from such reporting because the lawsuits do not involve the same particular model of the finished consumer product. The same proposition holds true for common components used in different consumer products. If the manufacturer of such a component is a defendant in three suits and the requisite statutory criteria are met, the reporting obligations apply.

(c) Section 37 expressly defines the reporting obligation in terms of the particular model of a product rather than the manner in which a product was involved in an accident. Accordingly, even if the characteristic of a product that caused or resulted in the deaths of grievous injuries alleged in three or more civil actions is the same in all of the suits, the requirement to report under section 37 would arise only if the same particular model was involved in at least three of the suits. However, the existence of such a pattern would strongly suggest that the obligation to file a report under section 15(b) (2) or (3) (15 U.S.C. 2064(b) (2) or (3)) exists because the information reasonably supports the conclusion that the product contains a defect that could present a substantial risk of injury to the public or creates an unreasonable risk of serious injury or death.

(d) Section 37 does not require that the same category of injury be involved in multiple lawsuits for the reporting obligation to arise. As long as a particular model of a consumer product is the subject of at least three civil actions that are settled or adjudicated in favor of the plaintiff in one of the statutory two year periods, the manufacturer must report, even though the alleged category of injury and the alleged causal relationship of the product to the injury in each suit may differ.

§ 1116.9 Confidentiality of reports.

(a) Pursuant to section 6(e) of the Consumer Product Safety Act (15 U.S.C. 2055(e)) no member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may publicly disclose information furnished to the Commission under section 37(c)(1) and section 37(c)(2)(A) of the Act, except that:

(1) An authenticated copy of a section 37 report furnished to the Commission by or on behalf of a manufacturer may, upon written request, be furnished to the manufacturer or its authorized agent after payment of the actual or estimated cost of searching the records and furnishing such copies; or

(2) Any information furnished to the Commission under section 37 shall, upon written request of the Chairman or Ranking Minority Member of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives or any subcommittee of such committee, be provided to the Chairman or Ranking Minority Member for purposes that are related to the jurisdiction of such committee or subcommittee.

(b) The prohibition contained in section 6(e) (15 U.S.C. 2055(e)) against the disclosure of information submitted pursuant to section 37 only applies to the specific items of information that a manufacturer is required to submit under section 37(c)(1) and to statements under section 37(c)(2)(A) relating to the possibility or existence of an appeal of a reported judgment adverse to a manufacturer. Section 6(e)(1) does not, by its terms, apply to information that the manufacturer voluntarily chooses to submit pursuant to section 37(c)(2)(B). Thus, disclosure of such information is governed by the other provisions of section 6 of the CPSA (15 U.S.C. 2055) and by the interpretative rules issued by the Commission (16 CFR parts 1101 and 1015). For example, if a manufacturer includes information otherwise reportable under section 15 as part of a section 37 report, the Commission will treat the information reported pursuant to section 15 as "additional information" submitted pursuant to section 37(c)(2)(B). Generally, any issue of the public disclosure of that information will be controlled by the relevant provisions of section 6(b), including section 6(b)(5) relating to the disclosure of substantial product hazard reports, and section 6(a) relating to the disclosure of confidential or trade secret information. However, to the extent the section 15 report reiterates or references information reported under section 37, the confidentiality provisions of section 6(e) still apply to the reiteration or reference. In addition, interpretative regulations issued under section 6(b) of the Act establish that disclosure of certain information may be barred if the disclosure would not be fair in the circumstances. 16 CFR 1101.33. Accordingly, issues of releasing additional information submitted pursuant to section 37 will also be evaluated under the fairness provisions of section 6(b). Should the Commission receive a request for such information or contemplate disclosure on its own initiative, the manufacturer will be given an opportunity to present arguments to the Commission why the information should not be disclosed, including, if appropriate, why disclosure of the information would be unfair in the circumstances. Among the factors the Commission will consider in evaluating the fairness of releasing the information are the nature of the information, the fact that it is an adjunct to a Congressional protected report, and whether the information in question supports the conclusion that a section 37 or 15(b), CPSA, report should have been filed earlier.

(c) Section 6(e) imposes no confidentiality requirements on information obtained by the Commission independently of a report pursuant to section 37. The provisions of section 6(b) govern the disclosure of such information.

§ 1116.10 Restrictions on use of reports.

No member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may use information provided to the Commission under section 37 for any purpose other than to carry out the responsibilities of the Commission.

§ 1116.11 Reports of civil actions under section 37 not admissions.

Pursuant to section 37(d), 15 U.S.C. 2084(d), the reporting of a civil action under section 37 shall not constitute an admission of—

(a) An unreasonable risk of injury;

(b) A defect in the consumer product which was the subject of the civil action;

(c) A substantial product hazard;

(d) An imminent hazard; or

(e) Any other liability under any statute or any common law.

§ 1116.12 Commission response to section 37 reports.

Upon receipt of a section 37 report, the Commission will evaluate the information contained in the report and any relevant information contained in its files or data bases to determine what, if any, follow-up or remedial action by the Commission is appropriate. If the Commission requires additional information, it will notify the manufacturer in writing of the specific information to provide. In addition, the

Commission will routinely review section 37 reports to determine whether the reporting manufacturers have fulfilled their obligations under both sections 37 and 15(b) in a timely manner. Such a review may also engender a request for additional information, including the dates on which final orders were entered in each of the lawsuits reported under section 37. The Commission will treat any subsequent submission of information by the manufacturer as a submission under section 37(c)(2)(B) subject to the restrictions on public disclosure contained in sections 6(a) and (b) of the Consumer Product Safety Act.

Dated: July 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-18419 Filed 8-3-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P-0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for canned green beans and canned wax beans to permit the optional use of glucono delta-lactone. Glucono delta-lactone will serve to lower the pH, reduce processing time and temperature, and thereby enhance the color, flavor, and texture of the product. This action will, to the extent practicable, provide greater flexibility in the processing of canned green beans and canned wax beans and will promote honesty and fair dealing in the interest of consumers.

DATES: Effective October 5, 1992, for all products initially introduced or initially delivered for introduction into interstate commerce on or after this date. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 of a certain publication in 21 CFR 155.120(b)(2)(i), effective October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4701.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of October 11, 1990 (55 FR 41346), FDA issued a proposal to amend the standard of identity for canned green beans and canned wax beans in § 155.120 (21 CFR 155.120). The proposal responded to a citizen petition submitted jointly by the Seymour Canning Co., Seymour, WI 54165, the American National Can Co., Chicago, IL 60631, and Finnsugar Biochemicals, Inc., Schaumburg, IL 60173. The petition requested that FDA amend the standard of identity for canned green beans and canned wax beans (§ 155.120) to permit the optional use of added glucono delta-lactone, either alone or in combination, with other acidulants permitted by the standard. According to the petition, glucono delta-lactone acts as a Ph control agent and serves to lower the equilibrium Ph to below 4.6, reduce the time and temperature parameters for thermal processing, and thereby enhance the color, texture, and flavor of canned green beans and canned wax beans.

On its own initiative, FDA proposed to update the method of analysis in § 155.120(b)(2)(i) to refer to the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 15th ed. (1990), as well as reference the new address of the AOAC office. Since development of the proposal, the address has been corrected in the existing regulation. Interested persons were given until December 10, 1990, to submit comments. No comments were received in response to the proposal.

II. Reproposed Rule

The petition submitted by the Seymour Canning Co., the American National Can Co., and Finnsugar Biochemicals, Inc., was filed under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)) which requires formal rulemaking in any action for the amendment of a food standard. However, on November 8, 1990, the Nutrition Labeling and Education Act (the 1990 amendments) was signed into law. The 1990 amendments removed food standards, except for the amendment or repeal of standards of identity for dairy products (21 CFR Parts 131, 133, and 135) and maple sirup (21 CFR 168.140), from the formal rulemaking procedures of 21 U.S.C. 371(e). Consequently, further action on the petition submitted by the Seymour Canning Co., the American National Can Co., and Finnsugar Biochemicals, Inc., is now subject to the informal rulemaking procedures (notice and comment rulemaking) of section 701(a) of the act (21 U.S.C. 371(a)). To reflect this change in the statutory authority and to ensure that no one is prejudiced by this change in procedure, FDA published a reproposed rule in the **Federal Register** of June 4, 1991 (56 FR 25385). Interested persons were given until July 5, 1991, to comment.

III. Comments

No comments were received in response to the reproposed rule.

The agency believes, as explained in the proposal, that it is reasonable to provide for the use of glucono delta-lactone as a Ph control agent in canned green beans and canned wax beans, and that such use will promote honesty and fair dealing in the interest of consumers. Therefore, in the absence of comments opposed to this action, the agency is amending the standard of identity for canned green beans and canned wax beans in § 155.120(a)(3) and (b)(2), as set forth below to permit the optional use of glucono delta-lactone. In addition, the agency is updating the method of analysis in § 155.120(b)(2)(i) to refer to the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th ed. (1990), vol. 2, p. xii, Table 1.

IV. Economic Impact

FDA has examined the economic implications of this final rule to amend 21 CFR Part 155 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. FDA noted in the reproposed rule that this amendment would permit increased flexibility in the processing of these foods to both large and small entities. Thus, FDA tentatively concluded that the regulation would have zero costs associated with it. FDA has received no new information or comments that would alter the tentative finding that it set out in the reproposed rule that there is no substantive economic issue in this rulemaking, and that this is not a major rule as determined by the Executive Order 12291 or the Regulatory Flexibility Act.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 155

Food grades and standards, Incorporation by reference, Vegetables.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 155 is amended as follows:

PART 155—CANNED VEGETABLES

1. The authority citation for 21 CFR part 155 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 155.120 is amended by redesignating paragraphs (a)(3)(xiii) and (a)(3)(xiv) as paragraphs (a)(3)(xiv) and (a)(3)(xv), respectively; by adding a new paragraph (a)(3)(xiii); and by revising paragraph (b)(2)(i) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *

(3) * * *

(xiii) Glucono delta-lactone.

* * * * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve with openings of 2.36 mm (0.0937 in), which has been previously weighed. The diameter of the sieve is 20.3 cm (8 in) if the quantity of contents of the container is less than 1.36 kg (3 lb) and 30.5 cm (12 in) if such quantity is 1.36 kg (3 lb) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications of such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th ed. (1990), vol. 2, p. xii, Table 1, "Nominal Dimensions of Standard Test Sieves (USA Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists, Inc., 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., Seventh Floor, suite 700, Washington, DC. Without shifting the material on the sieve, incline the sieve 17 to 20° to facilitate drainage. Two minutes after drainage begins, weigh the sieve and the drained material. Record in grams (ounces) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

Dated: July 15, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–18389 Filed 8–3–92; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 169

[Docket No. 91P–0149]

Mayonnaise; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for mayonnaise by deleting the term "mayonnaise dressing" as an alternative common or usual name for this standardized food. The amendment will simplify labeling requirements and make the term "mayonnaise dressing" available for use as the common or usual name for new products that resemble mayonnaise organoleptically but do not comply with the standard of identity (e.g., that contain less vegetable oil than required by the standard). The term "mayonnaise dressing" may be used in conjunction with a descriptive statement of how the new product differs from the standardized food to create names for alternative mayonnaise-type products. This action is based on an industry petition and will promote honesty and fair dealing in the interest of consumers.

EFFECTIVE DATE: October 5, 1992, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5108.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of October 25, 1991 (56 FR 55244), FDA issued a proposal to amend the standard of identity for mayonnaise (21 CFR 169.140) by deleting the term "mayonnaise dressing" from paragraph (a) and deleting "or 'Mayonnaise dressing'" from paragraph (e). This action is based on a petition submitted by the Association for Dressings and Sauces, 5775 Peachtree-Dunwoody Rd., Atlanta, GA 30342. The purpose of the proposed action is to make the term "mayonnaise dressing" available for use in the naming of alternative mayonnaise-type products.

II. Comments

The agency received 10 comments from manufacturers of mayonnaise and other types of dressings, 2 comments from trade groups representing the industry, and 1 comment from a foreign government. All comments supported the proposed amendment in its entirety. Many comments stated that this amendment will help eliminate confusion over the availability of the term "mayonnaise dressing" for naming alternative mayonnaise-type products. Several comments maintained that the term "mayonnaise dressing" is not currently used by manufacturers of mayonnaise products, and that this action will aid consumer recognition of mayonnaise and alternative products. In addition, one comment stated that this action will encourage free market competition for alternative mayonnaise-type products.

After considering the comments received, FDA concludes that revising the standard of identity for mayonnaise by deleting the term "mayonnaise dressing" will simplify labeling of alternative mayonnaise-type dressings and will promote honesty and fair dealing in the interest of consumers.

FDA advises that the general principles set forth in 21 CFR 102.5 continue to apply to the naming of nonstandardized foods. In the absence of a common or usual name for a substitute food, the food may be labeled with an appropriately descriptive term (21 CFR 101.3). Such name must be consistent with regulations set forth in 21 CFR Parts 101, 102, and 105. In addition, descriptive terms used to characterize the level of any nutrient in food will have to comply with the provisions of section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)), which was added by the Nutrition Labeling and Education Act of 1990, and with the regulations

promulgated to implement that section, after the effective date of that section and those regulations. The agency notes that in the **Federal Register** of November 27, 1991 (56 FR 60421), it proposed to define nutrient content claims that include the terms "low," "free," "reduced," and "lite" or "light."

III. Economic Impact

FDA has examined the economic implications of this final rule to amend 21 CFR Part 169 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. FDA noted in the proposal that labels would not need to be changed and that any reformulation would be unlikely. Thus, the agency tentatively concluded that the regulation would have zero costs associated with it. FDA has received no new information or comments that would alter the tentative finding that it set out in the proposal that there is no substantive economic issue in this rulemaking, and that this is not a major rule as defined by either Executive Order 12291 or the Regulatory Flexibility Act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 169

Food grades and standards, Oils and fats, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 169 is amended as follows:

PART 169—FOOD DRESSINGS AND FLAVORINGS

1. The authority citation for 21 CFR part 169 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 169.140 is amended by revising paragraphs (a) and (e) to read as follows:

§ 169.140 Mayonnaise.

(a) *Description.* Mayonnaise is the emulsified semisolid food prepared from vegetable oil(s), one or both of the acidifying ingredients specified in paragraph (b) of this section, and one or more of the egg yolk-containing ingredients specified in paragraph (c) of this section. One or more of the ingredients specified in paragraph (d) of this section may also be used. The vegetable oil(s) used may contain an optional crystallization inhibitor as specified in paragraph (d)(7) of this section. All the ingredients from which the food is fabricated shall be safe and suitable. Mayonnaise contains not less than 65 percent by weight of vegetable oil. Mayonnaise may be mixed and packed in an atmosphere in which air is replaced in whole or in part by carbon dioxide or nitrogen.

* * * * *

(e) *Nomenclature.* The name of the food is "Mayonnaise".

* * * * *

Dated: July 15, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18390 Filed 8-3-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 4

[Docket No. R-92-1491; FR-2805-F-02]

RIN 2501-AB02

Prohibition of Advance Disclosure of Funding Decisions; Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: On May 13, 1991 (56 FR 22088), the Department published a final rule, codified at 24 CFR part 4, implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989. Section 103 proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance by the Department. The purpose of section 103 is to avoid unfair competition, by controlling the flow and timing of information concerning the competition.

This interim rule amends part 4 to clarify certain of the non-disclosure requirements of section 103, and to further elaborate on the circumstances to which section 103 applies.

DATES: Effective Date: September 3, 1992. Comment Due Date: October 5, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 103 of the Department of Housing and Urban Development Reform Act (Pub. L. 101–235, approved December 15, 1989) (section 103) proscribes the communication of certain information by Department employees to persons not authorized to receive that information during the selection process for the award of assistance by the Department. The specific information with which section 103 is concerned is addressed in the Department's rule implementing section 103, codified at 24 CFR part 4. This information, referred to as "covered selection information" in part 4, is defined to mean "information: (1) That is required by statute, regulation, or order to be confidential; (2) that is contained in an application or request for assistance; and (3) that is otherwise used in arriving at the Secretary's decision to make assistance available, unless that information is generally available to the public." (See 24 CFR 4.5) The objective of section 103, and part 4, is to preclude any person from receiving or obtaining information from the Department that would give an applicant an unfair advantage over other applicants who are competing for financial assistance.

In issuing the part 4 final rule (published May 13, 1991, 56 FR 22088), the Department believed that the rule's provisions were sufficient to meet the objective of section 103 without inhibiting the exchange of information that serves the purpose of the individual HUD-funded program and the overall objective of the agency. However, during the Federal Fiscal Year 1991 funding cycle, questions about section

103 and the part 4 rule were raised that suggested that the language of part 4 could be misinterpreted to hinder HUD employees in providing or obtaining information necessary to the performance of their responsibilities during the selection process. Additionally, the Department's experience with implementation of certain provisions of part 4 revealed that some disclosures that were clearly intended to be prohibited by section 103 might be interpreted as being permitted. Accordingly, the purpose of this interim rule is to address these problems.

This interim rule amends part 4 to clarify that the non-disclosure provisions of section 103 apply to potential applicants for assistance before the deadline for submission of applications. Part 4 also is revised to clarify that providing technical assistance to HUD employees, and obtaining technical assistance from HUD employees, during the selection process are legitimate program functions. Additionally, the amendments made by this rule address two instances when certain restrictions of part 4 do not apply. The first involves the situation in which there is no competitive distribution of funds. The second involves the situation in which there is no competitive advantage to be gained from a disclosure of designated information after a certain stage in the selection process. The following provides a more detailed explanation of the amendments to part 4 made by this rule.

Amendments to Part 4

Definition of "Assistance" (Section 4.5)

The definition of "assistance" in 24 CFR 4.5 has been revised to except from the prohibitions of section 103 those situations in which there is no competition in one or more categories of a multi-level funding program. Certain HUD funded programs may award funds in stages, or on the basis of categories, which represent the order of funding priority. For example, a HUD program which provides assistance to cover emergency health and safety problems of a housing development, as well as assistance to cover non-emergency problems, may award funds to applicants with emergency problems before awarding funds to applicants with non-emergency problems. The Department has found that once a determination has been made that all technically eligible applicants in a certain category can be funded without competition (i.e., without any rating or ranking among eligible applicants), no applicant gains a competitive advantage by an announcement of the applicants that have been funded in that category. The Department also has found that the benefits to a successful applicant can diminish if the availability of funds is delayed until the selection process is completed for those categories of the program that are competitively funded.

The definition of "assistance" is therefore amended to emphasize that in a multi-level funding process, disclosure of covered selection information before a determination has been made that funding in one or more categories of the funded program can be made non-competitively is a violation of section 103, as is the disclosure of covered selection information concerning those categories that will be funded only after a competition.

Examples of Prohibited Disclosures (Section 4.100(b))

Section 4.100(b) of the part 4 rule (24 CFR 4.100(b)), which provides examples of prohibited disclosures, is revised to clarify that the number of applicants or the identity of a particular applicant may be disclosed after the deadline for the submission of applications has passed, but before the completion of the selection process. The Department has determined that there is no competitive advantage to be gained from the release of this information after the deadline for submission of applications has expired, and there is no lawful action an applicant or potential applicant could take based on possession of this information, that would affect the competitive funding process. Many persons, such as members of the Congress or representatives of research organizations, have a legitimate need to know this information.

Permissible Disclosures (Section 4.105(a))

Not every applicant chooses to avail itself of the informational services and material that the Department makes available to all applicants during the selection process, as provided in 24 CFR 4.105(a)(1). Accordingly, § 4.105(a)(1) has been revised to make it clear that it is the Department's act of making this information available to all applicants—not the applicants' acceptance of the opportunity to receive the information—that controls whether the information may be disclosed. In that regard, § 4.105(a)(1) also has been revised to clarify that the information described in this section must be made available on a uniform basis to potential applicants as well as to applicants.

Language also has been added to § 4.105(a)(1) to clarify that it is permissible to provide technical assistance to potential applicants in the preparation of their application packages, as long as this technical assistance is available to all potential applicants on a uniform basis. The part 4 rule contains examples of technical assistance that a HUD employee may and may not provide to a potential applicant without violating the nondisclosure provisions of section 103. The type of available technical assistance also may be described in a notice of funding availability (NOFA).

Technical Assistance Provided to HUD (Section § 4.105(a)(7))

Section 4.105(a)(7) has been revised to clarify that the Department may seek technical assistance in the review of applications from experts in a particular field or discipline who are regularly employed by other government agencies, but whose participation in the selection process may not have been reflected in the HUD program regulations. For example, a selection official for HUD's program concerning housing for persons with disabilities may find it beneficial in making funding decisions to obtain advice from an individual who is an expert in new methods of providing accessible accommodations to persons with disabilities. The Department believes that it should be able to obtain the advice of these types of experts who are employed by another governmental entity (other than an applicant), whether or not the existing program regulations anticipate the availability or benefit of that advice. However, the Department also believes that experts who are not HUD employees and who participate in the selection process should be subject to the non-disclosure requirements of section 103.

Accordingly, § 4.10(a), which addresses coverage of part 4, is revised to reflect that non-HUD employees who participate in the selection process at the invitation of the Department are covered by the provisions of part 4. Additionally, this rule revises § 4.105(a)(7)) to require these non-HUD employees to sign a certificate of compliance with the non-disclosure provisions of section 103 and the part 4 rule.

The amendments to § 4.10(a) and § 4.105(a)(7) reflect the Department's concern that it be able to obtain the broadest range of expert advice in making funding decisions for programs which require expertise in certain fields or disciplines, while also preserving the integrity of the non-disclosure provisions of section 103.

Disclosure of Disqualification (Section 4.105(b))

Once an applicant has been disqualified from the competitive funding process for the reasons described in § 4.105(b), which govern permissible disclosures, the individual or entity that applied for assistance, is technically no longer an "applicant." Further, as long as the ineligible applicant has been notified of the disqualification, *and* the deadline for submission of applications has passed, there is no competitive advantage to be gained from disclosure of the fact that the applicant has been disqualified, because disqualification of an applicant at a pre-award stage is based on technical reasons that cannot be rescinded.

As a practical matter, the Department receives inquiries from members of the Congress and others concerning disqualification decisions. If otherwise authorized by law, the Department should be permitted to acknowledge facts concerning an applicant's disqualification—facts about which these inquirer frequently already have unverified knowledge. However, it is the position of the Department that it will not publicize information identifying disqualified applicants, nor reveal information concerning the reasons for any applicant's disqualification where the selection process has not been completed and the reason or reasons for disqualification have not yet been communicated to the applicant.

Justification for Interim Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect, in accordance with its own rule on rulemaking, codified at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (*See* 24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without notice and prior public comment in that prior public procedure contrary to the public interest. The amendments made by this rule clarify certain provisions of the part 4 rule, which prohibit the disclosure of certain information concerning the selection process for the award of financial assistance by HUD. These clarifications are beneficial to both applicants for HUD assistance and HUD employees in connection with the administration and distribution of funds under HUD's financial assistance programs.

Although this rule is being published for immediate effect, the Department requests comments from the public on this rule. All public comments will be considered by the Department in the development of a final rule.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with the development of the part 4 final rule, which was published on May 13, 1991 (56 FR 22088). That Finding of No Significant Impact remains applicable to this rule which amends part 4, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it will not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and, in so doing, certifies that this rule will not have a significant economic impact on small entities. The focus of 24 CFR part 4, and of the amendments made to part 4 by this rule, is with the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD. Part 4 provides for the imposition of sanctions on HUD employees and applicants for HUD assistance determined to have engaged in prohibited conduct. These sanctions are not directed at small entities *per se*.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This rule is solely concerned with certain kinds of conduct by HUD employees and by applicants during the selection process for the award of financial assistance by HUD. No change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The focus of 24 CFR part 4, and of the amendments made to part 4 by this rule, is with the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD. The rule primarily will affect HUD employees.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 4

Administrative practice and procedure; Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 4 is amended to read as follows:

PART 4—PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

1. The authority citation for 24 CFR part 4 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3537a.

2. In § 4.5, the introductory text of the definition of "assistance," which precedes the list of programs that

accompanies this definition, is revised to read as follows:

§ 4.5 Definitions.

* * * * *

Assistance means any grant, loan, subsidy, guarantee, or other financial assistance under a program administered by the Department that provides by statute, regulation, or otherwise for the competitive distribution of assistance. The term does not include any mortgage insurance provided under a program administered by the Department or any contract (*e.g.*, a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). The term includes only those elements of the programs listed below that provide for the competitive distribution of assistance. If sufficient funds exist to fund all eligible applicants in one or more categories or phases of an otherwise competitive program, the requirements and prohibitions in this part will not apply to the non-competitive distribution of funds in those categories or phases. However, this part does apply to all categories or phases of a program for which there is competitive distribution of funds, and to that part of any selection process that occurs before a determination is made that sufficient funds exist to fund all eligible applicants non-competitively.

The list of programs included in this rule will be amended from time to time to reflect the addition of new competitive programs. Because a competitive assistance program may be established after June 12, 1991, the effective date of part 4, the list cannot be considered an exclusive one. However, the fact that a new competitive program has not yet been added to the list by a conforming amendment to the rule will *not* create the implication that the new program is outside the reach of the prohibitions on advance disclosure contained in this rule.

* * * * *

3. In § 4.10, paragraph (a) is revised to read as follows:

§ 4.10 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person who is an employee of the Department. In addition, the Department will require any other person who participates at the invitation of the Department in the selection process to sign a certification that he or she will be bound by the provisions of this part.

* * * * *

4. In § 4.100, paragraph (b) is revised to read as follows:

§ 4.100 Prohibition of advance disclosure of funding decisions.

* * * * *

(b) *Examples of prohibited disclosures.* There are many disclosures that will be prohibited by this section, but since they will be fact-specific to a particular program, they cannot be specified here.

(1) The following are examples of types of information, the disclosure of which, at any time during the selection process, shall be a violation of this section:

(i) Information regarding any applicant's relative standing;

(ii) The amount of assistance requested by any applicant;

(iii) Any information contained in an application;

(2) The following are examples of types of information, the disclosure of which, before the deadline for the submission of applications, shall be a violation of this section:

(i) The identity of any applicant; and

(ii) The number of applicants.

5. In § 4.105, paragraph (a)(1) and (a)(7) are revised, and a new paragraph (c) is added, to read as follows:

§ 4.105 Permissible disclosures.

(a) Notwithstanding the provisions of § 4.100, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements and the provision of technical assistance concerning program requirements, provided that the requirements or statements are disclosed on a uniform basis to any applicant or potential applicant. For purposes of this paragraph (a)(1), the term "technical assistance" includes such activities as explaining and responding to questions about program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in a NOFA. Before the deadline for the submission of applications, the term "technical assistance" may include identification of those parts of an application that need substantive improvement, but this term does not include advising the applicant how to make those improvements.

* * * * *

(7) Procedures that are required to be performed to process an application, *e.g.*, environmental or budget reviews, and technical assistance from experts in fields who are regularly employed by other government agencies, provided that the agency with which the expert is employed or associated is not an applicant for HUD assistance during the pending funding cycle.

(b) * * *

(c) Once an applicant has been notified, in accordance with paragraphs (b) (1) or (2) of this section, that its application has been rejected (but in no event before the deadline for the submission of applications), an employee may confirm the fact of the applicant's disqualification in response to inquiries from members of the public.

Dated: July 16, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92-18364 Filed 8-3-92; 8:45 am]

BILLING CODE 4210-24-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC1-1-5356; FRL-4155-4

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Non-CTG RACT for VOC Emissions From Engraving and Plate Printing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a municipal regulation as a revision to the District of Columbia's State Implementation Plan (SIP). This revision establishes and requires the use of reasonable available control technology (RACT) for the reduction of volatile organic compound (VOC) emissions from engraving and plate printing facilities, and is contained in section 710 of title 20 of the District of Columbia Municipal Regulations. The District submitted this revision to impose RACT on a source category of printing operations with potential emissions of 100 tons per year (TPY) or more of VOC for which EPA has not published a Control Technique Guideline (CTG). The intended effect of this action is to approve a RACT determination for non-CTG printing operations made by the District in accordance with commitments made in the ozone control portion of its State Implementation Plan (SIP). This action is being taken in accordance with section 110 and part D of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

EFFECTIVE DATE: This rule will become effective on September 3, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Lewis at (215) 597–6863, of the EPA Region III address above.

SUPPLEMENTARY INFORMATION: The District of Columbia committed in its 1982 Ozone SIP to develop RACT regulations for non-CTG VOC sources or sources categories located in the District, which have the potential to emit 100 TPY or more. One of the non-CTG source categories which the District identified was engraving and plate printing. The U.S. Bureau of Engraving and Printing (BEP) is the only source in the District nonattainment area which has been identified in this printing operations source category.

On June 21, 1985, the District of Columbia submitted as a proposed SIP revision a proposed RACT regulation that proposed among other things, to control VOC emissions from engraving and plate printing facilities as part of their ozone control strategy. On October 25, 1988 (52 FR 42977), EPA published a Notice of Proposed Rulemaking proposing approval of that regulation. On April 1, 1992, the District formally submitted additional information supplementing the June 21, 1985 submittal.

This approval addresses the District's non-CTG regulation for heat set intaglio, non-heatset paperwipe intaglio, non-heatset cylinder-wipe intaglio, offset lithography for both heatset and non-heatset, letterset and letterpress printing operations. The RACT requirements for these printing operations are contained in section 710 of title 20 of the District of Columbia Municipal Regulation, dated January 11, 1985. This regulation requires affected facilities to control fugitive press emissions by reducing the VOC content in ink solvents, wiping solutions and dampening solutions and to control emissions from the press dryer (stack emissions) by installing and operating afterburners. The recordkeeping requirements include weekly collection and testing of ink samples throughout the year. To determine compliance, the VOC content of these samples are analyzed using test method ASTMD–2369–81. Further details of the RACT requirements for engraving and plate printing facilities can be found in the Notice of Proposed Rulemaking (NPR) published on October 25, 1988 (52 FR 42977). Further details are also contained in the Technical Support Document (TSD) prepared to accompany this action, and will not be restated here. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA Evaluation: As stated in the NPR, EPA is approving the equivalency provision found at § 710.8 of the regulation as an available regulatory mechanism under this regulation whereby alternative controls may be requested and approved. However, EPA approval of this mechanism does not constitute pre-approval of any such alternative requirements. Before any such alternative requirements may be substituted, they must be approved by the District and submitted to EPA for approval as a SIP revision.

Public Comments: In response to the proposed rulemaking, comments were received, during the comment period, from the U.S. BEP. These comments are summarized below.

U.S. BEP Comment #1: Discrepancies in Table 1 of the Regulation. The data in Table 1 should be corrected to reflect the VOC content of ink limit, as 15 percent after December 31, 1986 and 15 percent after December 31, 1987 respectively, for non-heatset cylinder wipe intaglio inks.

U.S. EPA's Response #1: EPA agrees that Table 1 contained a typographical error. The appropriate corrections for the VOC content of ink limit, from 12 percent to 15 percent after December 31, 1986, and from 15 percent to 12 percent after December 31, 1987, have been made.

U.S. BEP Comment #2: Recordkeeping and Determination of Compliance. With regard to recordkeeping and determination of compliance, the BEP has an established program for obtaining and maintaining information necessary for determining compliance. The District has required that BEP, in addition to the collection and reporting of production and operating data, include collection and testing of ink samples weekly and collection and testing of dampening solutions weekly. This requirement is stipulated in all the BEP press operating permits.

In an effort to maintain current practices for determining compliance with EPA requirements, the BEP requested that the EPA proposal imposing daily collection and testing of ink samples, one month per quarter, be revised to correspond with the current BEP requirements for weekly collection and testing of inks throughout the year. The proposed sample collection requirements added to the current District requirements, would place an unreasonable burden on the BEP. BEP believes that the current method has proven to be reliable and effective in determining compliance and that this method also helps to alleviate and regulate manpower requirements.

U.S. EPA's Response #2: EPA has carefully reviewed BEP's request for weekly collection and testing of inks throughout the year, instead of the proposed daily collection and testing of ink samples, one month per quarter. EPA finds BEP's methods acceptable for determining compliance.

Final Action: EPA is approving Section 710, "Engraving and Plate Printing", title 20 of the District of Columbia Municipal Regulations dated January 11, 1985 and effective March 15, 1985, as a revision to the District of Columbia's federally approved SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical economic and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action, which approves a revision to the District of Columbia's SIP consisting of the addition of section 710, "Engraving and Plate Printing", of title 20 of the District of Columbia Municipal Regulations, has been classified as a Table 3 action under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), and is therefore delegated for the Regional Administrator decision and signoff. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 1992. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air Pollution Control, Hydrocarbons, Incorporation by reference,

Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 6, 1992.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Part 52 chapter I, title 40 of the Code of Federal Regulations is to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7641q.

Subject J—District of Columbia

2. Section 52.470 is amended by adding paragraph (c)(27) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

(27) Revisions to the State Implementation Plan submitted by the Mayor of the District of Columbia on June 21, 1985, which define and impose RACT to control volatile organic compound emissions from engraving and plate printing sources.

(i) Incorporation by reference.

(A) A letter from the Mayor of the District of Columbia dated June 21, 1985, submitting revision to the District of Columbia State Implementation Plan, and a letter from the District of Columbia Department of Consumer and Regulatory Affairs dated April 1, 1992, formally submitting additional information supplementing the June 21, 1985 submittal.

(B) Section 710 of title 20, submitted June 21, 1985 and effective March 15, 1985.

3. Section 52.472 is amended by adding paragraph (d) to read as follows:

§ 52.472 Approval status.

* * * * *

(d) Section 710 of title 20 of the District of Columbia Regulations is approved with the following condition: Any alternative controls or exemptions under section 710.8 approved or granted by the District of Columbia are subject to a public notice and public hearing requirements and must be submitted to EPA as SIP revisions. Such alternatives or exemptions are not effective until approved as SIP revisions by EPA.

[FR Doc. 92–18301 Filed 8–3–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[MS–017–5319; FRL–4151–5]

Approval and Promulgation of Implementation Plans; Mississippi: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Mississippi state implementation plan (SIP). These revisions were submitted to EPA by the State of Mississippi through the Department of Environmental Quality (MDEQ) on June 14, 1991, in response to the requirement that states either revise their SIP to include the Federal nitrogen dioxide (NO_2) increments for PSD or request delegation from EPA. The revisions being approved today incorporate the Federal NO_2 increments into the Mississippi PSD regulations.

DATES: This action will be effective on October 5, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Danny Orlando of EPA Region IV's Air Programs Branch (See EPA Region IV address below). Copies of the material submitted by the Mississippi Department of Environmental Quality may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Quality Division, Office of Pollution Control, Department of Environmental Quality, Post Office Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Danny Orlando of the EPA Region IV Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act (CAA) to prevent significant deterioration of air quality due to emission of nitrogen oxides. These regulations established the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above baseline concentration; these maximum allowable increases are called increments. The nitrogen dioxide (NO_2) increment regulations were promulgated in 40 CFR 51.166 and 52.21. The 40 CFR 51.166 regulations promulgated on October 17, 1988, specified the minimum rulemaking requirements for approvable SIP revisions. The 40 CFR 52.21 regulations promulgated on the above date specified the revisions that would eventually have been applied by delegation (or directly by EPA) to areas which have not, within a specified time, submitted SIP revisions to EPA pursuant to the 40 CFR 51.166 revisions. The revision to 40 CFR Part 51.166 became effective on October 17, 1989. However, the revision to 40 CFR Part 52.21 became effective on November 19, 1990.

On June 28, 1990, the Mississippi Commission on Environmental Quality adopted Regulation APC–S–5, "Regulations for the Prevention and Significant Deterioration of Air Quality." Regulation APC–S–5 essentially adopted by reference EPA's 40 CFR 52.21 regulations. The effective date of Regulation APC–S–5 was July 17, 1990. Since the effective date of Regulation APC–S–5 predated the effective date of the NO_2 increment revisions, EPA's approval of Mississippi's PSD regulation could not include the NO_2 increment revision. On October 15, 1990 (55 FR 41691), EPA approved the Mississippi PSD SIP except for the NO_2 increment program.

On April 25, 1991, the Mississippi Commission on Environmental Quality adopted a revision to Regulation APC–S–5, which changed the adoption by reference date. The revision involved a change to Paragraph 1 of Regulation APC–S–5 which updated the adoption-by-reference date. The phrase "as promulgated by" was substituted for the phrase "in effect on." The last sentence in Paragraph 1 now reads, "40 CFR 52.21 and 51.166 as used in this regulation refer to the Federal regulations as promulgated by the date of adoption of this regulation." The adoption date (April 25, 1991) now occurs after the effective date of the 40 CFR 52.21 NO_2 increment revisions. On June 14, 1991, the MDEQ submitted the revisions to the Mississippi SIP to EPA which became state effective on May 28, 1991.

In addition to the regulatory language changes, EPA issued guidance on August 17, 1990, which required several program element commitments to be submitted with the regulations as follows: (1) Analyses—Agencies must require NO_2 increment consumption analyses for all major new or modified sources, and nitrogen oxides (NO_x)

emissions from minor sources must be considered in those analyses, and (2) Increment consumption—Agencies must determine NO_2 increment consumption for the transition period between February 8, 1988, (major source NO_x baseline date) and the date the State program goes into effect, and conduct a periodic assessment of NO_2 increment status.

On March 8, 1991, the MDEQ submitted a letter committing to perform the above program element requirements including an initial increment consumption analyses report. The revisions being approved meet all of the requirements for incorporating the federal NO_2 increments into the Mississippi SIP.

Final Action

EPA is today approving the revision to the Mississippi PSD SIP listed above. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See 307(b)(2).]

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: June 16, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart Z—Mississippi

2. Section 52.1270 is amended by adding paragraph (c)(22) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(22) Prevention of Significant Deterioration regulation revision to include Nitrogen Dioxide increments for the State of Mississippi which was submitted by the Mississippi Department of Environmental Quality on June 14, 1991.

(i) Incorporation by reference.

(A) Revision to Regulation APC–S–5, Paragraph 1, Regulations for the Prevention of Significant Deterioration of Air Quality, which became State effective on May 28, 1991.

(ii) Other material.

(A) Letter of June 14, 1991 from the Mississippi Department of Environmental Quality.

(B) Letter of March 8, 1991, from the Mississippi Department of Environmental Quality regarding minimum program elements.

[FR Doc. 92–18294 Filed 8–3–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPPTS–50588B; FRL–4068–8]

Polyaromatic Urethane; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking the a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the above chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

EFFECTIVE DATE: The effective date of this rule is September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 6, 1990 (55 FR 46766), EPA issued a SNUR establishing significant new uses for polyaromatic urethane. Because of additional data EPA has received for this substance, EPA proposed to revoke this SNUR in the **Federal Register** of March 23, 1992 (57 FR 9995).

I. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50588 (P–89–998). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this revocation.

II. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of March 23, 1992 (57 FR 9995). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA

concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is revoking the SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2568 [Removed]

2. By removing § 721.2568.

[FR Doc. 92-18455 Filed 8-3-92; 8:45 am]

BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-45

[FPMR Amendment H-185]

Utilization and Disposal of Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation sets forth specific requirements for the sale of three- and four-wheeled all terrain vehicles (ATVs). The regulation is necessary to provide current policy on the sale of all terrain vehicles to ensure that uniform procedures are followed when offering the vehicles for public sale.

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: Lester D. Gray, Director, Property Management Division (703-305-7240).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

In 1988, the Consumer Product Safety Commission and various all terrain vehicle (ATV) distributors entered into a consent decree under which the distributors agreed not to distribute or sell three-wheeled ATVs. The distributors also agreed to certain requirements for the distribution or sale of four-wheeled ATVs. The requirements include such measures as warning notices and labels, owners' manual statements, a public advertising campaign, an information hotline for consumers, and a training program. Although the consent decreee is not applicable to sales of used ATVs, and while GSA has made no independent investigation regarding performance or safety of ATVs, GSA has determined that ATVs no longer needed by the Government will be disposed of in accordance with the procedures set forth in this amendment.

List of Subjects in 41 CFR Part 101-45

Government property management, Surplus Government property.

PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

1. The authority citation for part 101-45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-45.3—Sale of Personal Property

2. Section 101-45.309-13 is added to read as follows:

§ 101-45.309-13 All terrain vehicles.

(a) Three-wheeled all terrain vehicles (ATVs) may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

(b) Four-wheeled ATVs no longer needed by the Government can be exchanged with a dealer under the provisions of § 101-46.302. If the unit cannot be exchanged, four-wheeled ATVs may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

Dated: June 19, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-18392 Filed 8-3-92; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-35; FCC 92-275]

Operator Service Access and Pay Telephone Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order on Reconsideration.

SUMMARY: Five petitions for reconsideration or clarification were filed regarding Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 56 FR 40,793 (1991) (hereinafter Report and Order), in which the Commission adopted policies and

rules concerning consumer access to operator service providers (OSPs) and compensation for competitive public payphone owners for calls not utilizing their presubscribed OSPs. In response to the petitions, the Commission adopted an Order on Reconsideration (hereinafter Order) in which it reaffirmed that: (1) Call aggregators must allow consumers to use equal access ("10XXX") codes according to the schedule described in the original Report and Order, with certain clarifications; (2) all OSPs, except those exempted in the Order, must establish an 800 or 950 access number within six months of the effective date of the previously adopted rules; and (3) calls initiated with an 800 number that does not serve as an OSP's access code are not within the scope of the statutory provision that required the Commission to consider payphone compensation. In addition, the Commission granted the request to order local exchange carriers (LECs) to offer blocking and screening services designed to control potentially fraudulent 10XXX calling. The Commission deferred certain unblocking deadlines pending the deployment of the required LEC services.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Kurt A. Schroeder, Enforcement Division, Common Carrier Bureau, (202) 632–4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 91–35 (FCC 92–275), adopted June 23, 1992, and released July 10, 1992. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

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Summary of Order on Reconsideration

I. Background

1. Section 226(e) of the Communications Act of 1934, 47 U.S.C. 226(e), required the Commission to conduct a separate rule making proceeding to address operator service access and payphone compensation issues. Regarding access, the Commission was to determine whether: (a) Call aggregators should be required to allow consumers to use equal access ("10XXX") codes; or (b) all operator service providers ("OSPs") should be required to establish an 800 or 950 access number; or (c) both (a) and (b). As for compensation, Section 226(e) required the Commission to consider the need to prescribe compensation for competitive public payphone owners for "calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones."

2. After consideration of the extensive public comments on the proposals set out in the Notice of Proposed Rule Making that initiated this docket,[1] the Commission adopted rules requiring aggregators to unblock 10XXX access according to the type and capabilities of their equipment and the cost of modifying their equipment to process 10XXX dialing sequences selectively.[2] Specifically, aggregators who provide payphones were required to unblock 10XXX access within six months of the effective date of the new rules. Aggregators who use non-payphone equipment that can selectively process 10XXX dialing sequences [3] were required to unblock within six months or upon installation of such equipment, whichever is sooner. Aggregators who install equipment manufactured or imported on or after April 17, 1992, were required to unblock 10XXX access upon installation of such equipment. Those aggregators who can modify their equipment for no more than $15.00 per line to selectively process 10XXX access must unblock within eighteen months. Finally, all other aggregators must unblock 10XXX access no later than April 17, 1997. The Commission also required the establishment of 800 or 950 access numbers by all OSPs within six months so as to provide an access method for consumers at aggregator locations where 10XXX access either is temporarily unavailable during the unblocking period or is technologically impossible because the telephone is served by a central office that has not converted to equal access. In addition, the Commission determined that considerations of equity required it to prescribe compensation for competitive public payphone owners for access code calls.

3. Five petitions for reconsideration or clarification were filed following the release of the Report and Order. In addition, motions were filed requesting that the Commission partially stay the 10XXX unblocking requirements until it ruled on certain issues raised on reconsideration and requesting that the Commission stay the 800/950 requirement for a specified group of OSPs until it determined whether the requirement should be waived for such OSPs. The Commission granted the motions [4] and has addressed the related substantive issues in the reconsideration *Order*.

II. Discussion

A. 10XXX Access

1. Whether 10XXX Unblocking Should Be Required

4. The Commission declines to alter its threshold determination that 10XXX is an efficient form of access that consumers should be able to use when choosing their preferred OSPs. The ready availability of 10XXX access, along with 800 and 950 access, will allow consumers to use any of the

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[1] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91–35: Notice of Proposed Rule Making, 6 FCC Rcd 1448, 56 FR 11,136 (1991).

[2] See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91–35: Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 56 FR 40,792, 40,844 (1991) (hereinafter Report and Order).

[3] Aggregator equipment has "selective" 10XXX capabilities if it is technologically capable of identifying the dialing of a 10XXX code followed by any sequence of numbers that will result in billing to the originating telephone and is, at the same time, technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving 10XXX codes. See 47 CFR 64.704(c).

[4] *See* Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91–35: Order, 7 FCC Rcd 2146 (1992). This stay was to remain in effect until the Commission ruled on the related substantive issues, which it does in the Order on Reconsideration. Accordingly, the stay is lifted effective six months from the release of the Order on Reconsideration, subject to the unblocking schedule set forth therein.

established access methods when exercising their right of choice among OSPs. The Commission was aware, when it adopted the unblocking rules, that some aggregator equipment, as noted by two petitioners, would not be able to process 10XXX dialing sequences unless the equipment was modified or replaced by the aggregator. The Commission has sought to minimize any associated financial burden, however, by prescribing a cost limit for modification that it thinks is modest and reasonable, and by tying that cost limit to the phased unblocking schedule. While the total modification cost might be large, at $15.00 per line, for an aggregator with a system containing many lines, the actual per line cost would still be small enough to be recovered easily from the users of those lines. In addition, many aggregators may be able to unblock at a cost that is substantially less than the per line limit. Further, the Commission disagrees with the petitioners' claim that it has neglected its obligation under section 226(g) to take actions that will ensure that aggregators are not exposed to undue risk of fraud. The phased unblocking schedule has, as a basis, the fraud prevention capabilities of aggregator equipment. Only when an aggregator's equipment can reasonably be expected to have selective 10XXX capabilities that can screen potentially fraudulent 10XXX dialing sequences will the aggregator be expected to unblock.[5] The Commission also disagrees with the petitioners' assertion that the availability of 800 and 950 access makes 10XXX unblocking unnecessary. The stated intention in this proceeding is "to ensure that consumers have the opportunity to choose freely among the available interstate operator services." This being the paramount concern, the Commission thinks it essential that consumers have a reasonable amount of discretion to use whatever access methods they prefer, without limitations by aggregators.

5. One petitioner also challenges the Commission's conclusion that 10XXX access is efficient, stating that unblocking costs and toll fraud are inefficiencies related to 10XXX access. This argument fails, however, to address the efficiencies of 10XXX for the consumer that have been identified: the shorter dialing sequence, five digits, compared to other access methods, which have seven and eleven digits; and the ability of the consumer to dial the called number immediately after the 10XXX code without waiting for an additional prompt, as is necessary with 800 and 950 access.

6. Further, this petitioner has misconstrued the effect on the Commission's decision of the statutory requirement that new aggregator equipment have selective 10XXX capabilities. The Commission did not contend in the Report and Order that this statutory provision required 10XXX unblocking for existing aggregator equipment. On the contrary, the Commission acknowledged that Congress did not intend this provision to prejudge a decision on the 10XXX issue, but the Commission noted that the legislative history clearly indicated that 10XXX access should be universally available in the future. The Commission concluded that "during the period of transition to the eventual use of such [new] equipment by all aggregators, 10XXX access should be available to the extent possible." The Commission still views this conclusion as beneficial to consumers and as consistent with, though not required by, the statutory provision regarding the 10XXX capabilities of new equipment.

7. In addition, this petitioner argues that not all aggregators schedule their equipment replacement according to the Internal Revenue Service (IRS) five-year depreciation schedule [6] and that it is therefore unreasonable to base the unblocking requirements on that schedule. Given the IRS schedule, the Commission thinks it reasonable to conclude that most aggregators who do not fall into the other 10XXX unblocking categories will depreciate their equipment over the prescribed period and can then be expected to unblock without undue burden, even if equipment replacement is necessary. The long phased-in unblocking period that has been adopted affords aggregators, carriers, and equipment manufacturers considerable time to develop economical methods for unblocking 10XXX access that do not subject aggregators to undue risk of fraud. While the Commission accepts the contention that not all aggregators have incentives to follow the IRS schedule, the Commission cannot allow the judgments of individual aggregators to deter it from its primary goal and statutory duty in this proceeding: The protection of the consumer's right to choose among the available operator services. Further, any categorical exception to the unblocking provisions for non-profit aggregators, as requested by the petitioner, would require the Commission to determine, *inter alia*, the proper definition of "non-profit," whether the exception should apply to all or only some non-profit aggregators, and whether the revenues recovered by such aggregators from their phone systems should affect their unblocking obligations. The record currently before the Commission does not provide a sufficient basis for addressing such issues. The Commission also notes that it is now considering whether to adopt a "billed party preference" method of providing access to operator services.[7] If such a scheme were adopted, the Commission might be open to arguments that it should reconsider the balance it has struck in favor of requiring 10XXX unblocking within five years. In light of these considerations, the Commission declines at this time to alter its reliance on the IRS depreciation schedule as a basis for the final 10XXX unblocking deadline. The Commission is not averse, however, to entertaining additional arguments and evidence that are relevant to the issue of whether particular non-profit aggregators should be treated differently from other aggregators. The Commission also has the discretion to waive its unblocking rules where particular facts, such as undue hardship or low toll revenues, would make strict compliance inconsistent with the public interest.[8] In appropriate cases, therefore, the Commission is willing to consider requests from non-profit aggregators for waivers of the 10XXX unblocking requirements.

8. Finally, the Commission disagrees with the contention that the 10XXX unblocking requirements effect an unconstitutional "taking" without compensation under the Fifth Amendment of the United States Constitution. In scrutinizing government regulations under the Fifth Amendment, the Supreme Court has said that "several factors are particularly significant—the economic impact of the regulation, the extent to which it interferes with investment-backed expectations, and the character of the

[5] The Commission has explicitly allowed blocking of 10XXX dialing sequences that always result in billing to the originating phone. 47 CFR 64.704(c)(6). This provision does not, however, exempt payphones employing store-and-forward devices from the unblocking requirements, although these phones may allow operator service calls that are, in a sense, billed to the originating phone. The Commission has made a minor modification in § 64.704(c)(6) to clarify this obligation.

[6] See I.R.C. 168(e), (i).

[7] See Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77; Notice of Proposed Rule Making, 7 FCC Rcd 3027 (1992).

[8] WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C.Cir. 1969); *see also* Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C.Cir. 1990); 47 C.F.R. § 1.3 (must show "good cause" for waiver).

governmental action." [9] While a "'taking' may be more readily found" when the action can be characterized as a "physical invasion," the Court has "often upheld substantial regulation of an owner's use of his own property where deemed necessary to promote the public interest." [10] The Court has generally distinguished physical invasion of property from regulation that "merely restricts the use of property." [11] Applying these factors, the Commission finds that no unconstitutional taking occurs under the 10XXX unblocking requirements. The economic impact of compliance with the new rules will be modest because the Commission has set a cost limit of $15.00 per line for equipment modifications during the first eighteen months of the unblocking period. Any non-payphone aggregators who cannot unblock 10XXX access within this cost limit will be able to use their equipment for the applicable IRS depreciation period. This will enable aggregators to recover fully their capital and, thus, allow full satisfaction of their reasonable investment-backed expectations before more extensive modification or equipment replacement is required. Further, there is no question of a physical appropriation of property under these rules. Instead, these requirements merely restrict uses of aggregator equipment that Congress and the Commission have deemed to be contrary to the public interest. Acting pursuant to a statutory provision, the Commission has adopted rules that prevent aggregators from using their equipment to impair consumers' freedom of choice in the operator services marketplace. These requirements are "reasonably adapted" to promote the public interest and the purpose of the Act by ensuring that consumers can reach their OSPs of choice.[12] As for the argument that these requirements are for the private benefit of AT&T, the Commission notes the uncontested fact that several other OSPs also employ the 10XXX access method. In any event, the 10XXX unblocking requirements are intended to benefit consumers, with any benefits to OSPs being merely incidental.

[9] Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 432 (1982) (*Loretto*); *accord* Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124 (1978).

[10] *Loretto*, 458 U.S. at 426.

[11] *Id.* at 430.

[12] *See* Trinity Methodist Church, South v. Federal Radio Comm'n, 62 F.2d 850, 853 (D.C.Cir. 1932) (to be constitutional, requirements must be reasonably adapted to secure the purposes and objects of regulation); *see also Loretto*, 458 U.S. at 426 (regulation of property often upheld where deemed necessary to promote the public interest).

2. Local Exchange Carrier Blocking and Screening Services

9. Upon reconsideration of this issue, the Commission concludes that it should require local exchange carriers (LECs) to offer certain blocking and screening services. While it is still the Commission's view that both the plain language of section 226(g) and its legislative history leave the matter of mandatory LEC services wholly within its discretion, the Commission is now persuaded that the usefulness of these services in preventing 10XXX fraud outweighs any uncertainties associated with them. The Commission recognized the value of these services in its original decision but concluded that uncertainties regarding the cost and timing of the services' implementation, as well as the demand for them, counseled against requiring them. In the earlier portions of this proceeding, however, cost estimates and arguments regarding demand and timing were directed at proposals involving an interrelated and potentially complex menu of LEC services, such as the "split 1+" blocking feature developed for the LECs by AT&T, which blocked both domestic and international dialing sequences. As one petitioner points out, the arguments and data that the Commission initially examined were relevant to such complex proposals but not to a more limited array of services. The Commission therefore finds that its concerns about requiring blocking and screening services can be satisfied by limiting the scope of the mandatory services and by requiring services that, in certain jurisdictions, have already been implemented and are otherwise feasible. The record shows, for example, that LECs have implemented screening services on a wide basis. Further, blocking services limited to international calls have been economically implemented in several local exchange areas. The fact that these services are already available in some areas indicates that costs of implementation and uncertainties about demand are not major obstacles to their effective deployment. Hence, the Commission orders the LECs to offer, at a minimum, the limited blocking and screening services described herein. The availability of blocking and screening services will ensure that aggregators can provide consumers with complete access to all OSPs without increasing their exposure to fraudulent calling.

10. *Domestic blocking services.* Instead of requiring a combined domestic/international blocking feature such as AT&T's "split 1+," two petitioners propose that the Commission require LECs to offer separate, more flexible domestic and international blocking services. Under this proposal, one service would block domestic direct-dialed sequences (1+ and 10XXX–1+), and another service would block international direct-dialed sequences (011+ and 10XXX–011+). As contemplated by these petitioners, an aggregator could order these services either separately or together. The Commission believes that equipment-based selective processing, which may be accomplished through the reprogramming of PBXs or payphones or through the addition of adjunct devices, should be able to control domestic direct-dialed sequences. The record shows that the number of digits in the domestic sequences appears to be within the data handling capacities of much aggregator equipment or the adjunct devices that may be employed by aggregators. Because equipment-based selective processing may well be a desirable and practical option for many aggregators, significant questions still exist with regard to the demand for domestic blocking services provided at LEC central offices, which would duplicate the processing capabilities of much aggregator equipment. The Commission therefore declines to require domestic blocking services at this time.[13]

11. *International blocking services.* The Commission finds it appropriate, however, to require LECs to offer discrete, limited services that block only international direct-dialed sequences (011+ and 10XXX–011+). International blocking may pose a problem for aggregator equipment in some cases because the international direct-dialed sequences, such as 10XXX–011+, include a zero, as do the domestic operator-assisted sequences, such 10XXX–0+, which must be unblocked under the rules. Because of this similarity, equipment-based blocking mechanisms would have to distinguish the digits beyond the zero, which may exceed the data handling capacities of some aggregator equipment. Such limitations may make LEC international blocking services not only desirable to some aggregators, but essential. Moreover, fraudulent international

[13] The record shows that international toll fraud seems to be by far the major source of fraud for unblocked equipment. The measures adopted herein should allow aggregators to protect themselves against such fraud. The Commission will, however, continue to monitor fraud involving domestic calls. If domestic fraud resulting from 10XXX unblocking becomes a greater problem in the future, the Commission would consider taking further steps to help aggregators protect themselves against such fraud.

calling appears to be a problem of greater magnitude than fraudulent domestic calling. Hence, the level of demand for such services is likely to justify their implementation. Further, these services already appear to have been economically implemented in many local exchange areas, where they are offered to subscribers at a rate of $1.00 to $4.00 per month. Thus, judging from the record, neither cost nor demand appears to pose significant problems for implementing international blocking services, especially because such services will not have to be coupled with domestic blocking services. For the foregoing reasons, the Commission directs local exchange carriers to offer in locations where technically feasible, within six months, tariffed services that will block direct-dialed international calls.[14] Because these services will be limited to international blocking, which the record shows to be feasible, if not already implemented, in many local exchange areas, the Commission does not think it will be burdensome or prohibitively expensive to implement such services within the six-month period it has prescribed.[15]

12. *Screening services.* A petitioner has also requested that the Commission require the LECs to offer screening services. These services, such as originating line screening and billed number screening, would inform OSPs of any restrictions associated with the line to which a caller is attempting to bill a call. According to the petitioner, a caller can dial a 10XXX–0– sequence, wait for a live operator, and then ask that the call be billed to the originating line, which may not be a valid billing option for a caller at an aggregator phone. Without the availability of screening services, the OSP may have no way of determining what billing restrictions apply to that line. This situation could result in aggregators being fraudulently billed in some cases and in consumers being improperly denied access in other cases in which they do have proper billing authorization. The Commission believes that originating line screening and billed number screening could prevent this scenario from occurring. As already noted, many of the earlier concerns about requiring LEC services, as well as the parties' arguments and data, were directed at proposals for an interrelated menu of blocking services. Upon further consideration of this issue, the Commission concludes that requiring very specific screening services would not raise concerns about excessive cost or lack of demand. Screening services have, according to the record, been widely offered by LECs, thus indicating that cost and subscriber demand have favored the implementation of such services. Given that these services may provide a useful fraud control mechanism without posing problems associated with cost and demand, the Commission directs local exchange carriers to offer in locations where technically feasible, within six months, tariffed originating line and billed number screening services that indicate to operator service providers any billing restrictions on lines to which a caller may seek to bill a call. Because LECs already have extensive experience with these types of central office screening, the Commission finds the six-month implementation period to be adequate.

13. *Deferral of unblocking pending implementation.* In addition, a petitioner has requested that any required unblocking of 10XXX dialing be deferred until adequate LEC services are in place. The petitioner argues that because such services are essential to the prevention of fraudulent 10XXX calling, their implementation must be a precondition to any unblocking requirement. As already discussed, the Commission agrees that LEC services may play an important role in preventing toll fraud associated with the use of 10XXX dialing sequences. Because the toll fraud problems that can be prevented with the mandatory blocking and screening services may not be susceptible to control through other means available to aggregators, the Commission finds that it must defer the unblocking deadlines imposed by sections 64.704(c) (1), (2), and (3) of the rules,[16] which fall within the six-month deployment period for the LEC services. In the absence of such a deferral, aggregators could be exposed unduly to certain types of toll fraud while the mandatory LEC services are being implemented. Hence, the Commission views this deferral, like the requirement that LEC services be offered, as part of the statutory duty under 47 U.S.C. 226(g) to require "such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud."

14. Because the Commission believes it necessary that aggregators be able to take full advantage of the fraud prevention capabilities of the mandatory LEC services, the Commission is making the unblocking schedule dependent upon the actual implementation date of these LEC services. If the mandatory LEC services are now available, aggregators subject to Sections 64.704(c) (1), (2), and (3) shall be required to unblock 10XXX dialing sequences within thirty days of the release of the Order. The Commission believes this thirty-day period sufficient because aggregators will already have had six months since the rules became effective to plan for unblocking. If the mandatory LEC services are not now available but become available before the six-month deadline for their deployment, aggregators subject to sections 64.704(c) (1), (2), and (3) shall be required to unblock within thirty days of the deployment of the services. In all other cases, aggregators subject to sections 64.704(c) (1), (2), and (3) shall unblock 10XXX dialing sequences no later than six months from the release of the *Order*, by which time all mandatory LEC services must be deployed.

3. Relief from Liability for Fraudulent 10XXX Calls

15. Petitioners have also sought reconsideration of the Commission's decision not to address the issue of whether aggregators who subscribe to LEC blocking or screening services should be relieved of liability for fraudulent 10XXX calls. To answer the question of whether relief from toll fraud liability is properly before the Commission in this proceeding, it must determined if such an action would, as stated in section 226(g) of the Act, "ensure that aggregators are not exposed to undue risk of fraud." The Commission believes that the actions taken herein should ensure that aggregators are able to protect against exposure to undue risk of fraud when they unblock their equipment. The issue of which party should be held liable for costs associated with any fraud that does occur, however, is beyond the scope of this proceeding. The Commission thinks that the determinative statutory provision, section 226(g), refers to actions that would prevent fraud from occurring in the first place, such as selective processing of 10XXX dialing sequences.

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[14] LECs shall file tariffs for these services with this Commission.

[15] The Commission declines, however, to require the LECs to offer a "PIC-none" option, under which aggregators can indicate to the LEC that there is no presubscribed "primary interexchange carrier" that a caller can reach without dialing an access code. This option is apparently already available in some areas. Because the record in this proceeding contains virtually no discussion of PIC-none, the Commission cannot require this option.

[16] See 47 CFR 64.704(c) (1)–(3) (unblocking within six months of effective date of rules for payphones and for aggregator equipment that currently has selective 10XXX capabilities; unblocking immediately upon installation for aggregator equipment manufactured or imported on or after April 17, 1992). The original deadline for compliance with subsections (1) and (2) was March 16, 1992.

Further, the Commission may be required to examine relevant tariff provisions in order to resolve liability issues. Hence, any question of toll fraud liability would be more appropriately addressed in a section 208 complaint proceeding, in response to a petition for declaratory ruling, or in a more general proceeding focused on toll fraud liability issues.[17]

4. Payphone Unblocking Schedule

16. The Commission declines to revise its original determination that all payphones should be subject to a single unblocking schedule rather than the phased unblocking periods applicable to other aggregators.[18] In the Report and Order, the Commission determined that all payphones should be unblocked within a single six-month period, rather than within the potentially longer, phased time periods applicable to other aggragators, because payphone owners, unlike other appregators, "are primarily engaged in the business of providing telephone service." the petitioner has offered no new or persuasive evidence to support its contention that "many" payphone owners are not primarily engaged in the provision of telephone service. On the contrary, the Commission thinks it logical to conclude that most payphone owners, unlike other aggregators, have invested in their telephone equipment primarily to provide a source of revenue distinct from any other business in which they may be engaged. This being the case, these payphone owners will have an incentive to remain competitive by upgrading their equipment regularly, thus making modifications for 10XXX unblocking less burdensome. Further, which it is undoubtedly true that *some* payphone owners are primarily engaged in another business, it is not necessarily true that even these aggragators are earning insufficient revenue from their payphones to cover the costs of 10XXX unblocking. In addition, although the time between generations of equipment does not represent the useful life of the equipment, the Commission views the relatively short time between generations of payphone equipment as an indication that payphones will normally be replaced on a frequent basis. The record did not support a similar conclusion with regard to non-payphone aggregator equipment.

5. Proposed Aggregator Reports

17. One petitioner asks that the Commission revise its 10XXX unblocking rules to require aggregators to report their unblocking plans to the Commission. In the Report and Order, the Commission said that "[a]ggregators need not report to the Commission after making [their unblocking] determination but must simply unblock 10XXX access by the appropriate deadline." The Commission rejects the proposal that aggregators file unblocking reports because such reports would be an administrative burden to the Commission and a financial burden to aggregators, without any commensurate public benefit. There is no reason to conclude that in the absence of the proposed reports, the Commission's enforcement procedures will be unable to ensure compliance with the unblocking rules, which the Commission plans to enforce vigorously.

6. Matters Raised for Clarification

18. The parties have sought clarification of several matters, which will be addressed briefly. For the most part, there was little responsive comment on these issues.

19. First, a petitioner has asked whether, in calculating per line modification costs under the $15.00 per line cost threshold, lines to non-aggregator phones that are part of the same system should be included in the calculation.[19] The Commission thinks that non-aggregator lines should be excluded from this calculation. These rules concern only aggregator phones and, as such, non-aggregator lines are irrelevant to the required per line calculation.

20. Next, a petitioner asks whether in non-equal access areas of the country, where LEC switches cannot process 10XXX codes, aggregators must take steps to unblock 10XXX access. Because 10XXX access simply cannot be used in such areas, the Commission clarifies the 10XXX unblocking rules to exempt aggregators in non-equal access areas on a temporary basis. Aggregators in those areas, however, shall be held responsible for monitoring any future conversion to equal access. Once aggregators are notified of such a conversion by their LEC, the generic time periods of the original unblocking schedule will begin to run, and aggregators shall be required to comply with the appropriate deadline as measured from the notification date.[20]

21. A petitioner has also asked the Commission to clarify the standards that would apply to requests for waivers of the 10XXX unblocking rules. The petitioner suggests that the Commission grant an exemption to any aggregator who has received a waiver of comparable state regulations. The Commission declines to clarify its waiver standards as requested. As stated in the Report and Order, "the myriad types of aggregator equipment and the variable and numerous aggregator situations [pose] significant problems for the formulation of meaningful generalized waiver standards applicable to [the] 10XXX unblocking requirements." The Commission concluded that "the many permutations involving aggregators and their equipment" required it to consider waiver requests only on a case-by-case basis under the appropriate legal standards.[21] While the factors considered by a state commission could be presented to the Commission as the basis for a waiver request, the Commission will exercise its discretion independently in enforcing the rules, especially when the rules have a specific statutory basis.

22. Finally, a petitioner asks that the Commission clarify the 10XXX unblocking rules to allow payphones that currently lack selective 10XXX capabilities to translate a 10XXX dialing sequence into the appropriate carrier's 800 or 950 access number. Under this proposal, when a caller dials a carrier's 10XXX code, the payphone would apparently be programmed to re-dial and outpulse that carrier's 800 or 950 number automatically. The Commission rejects this proposal. As explained above and in the Report and Order, 10XXX access has advantages for the consumer that the consumer should, as a matter of individual judgment, be able to choose. Similarly, billing options may not be identical for all three access

[17] The Commission is well aware of the liability disputes that arise from fraudulent calling and is committed to moving forward with consumer education efforts, see Public Notice, "Consumer Alert: Telecommunications Toll Fraud," DA 92-728 (released June 9, 1992), as well as with proceedings to establish, in a clear and fair manner, responsibility for losses incurred through fraudulent calling.

[18] The schedule for payphone unblocking shall, however, be deferred until the deployment of mandatory LEC services, as described in section 2, *supra*.

[19] For example, a single private branch exchange ("PBX") could serve both aggregator phones, such as hotel room phones, and non-aggregator phones, such as those used only by hotel employees for business purposes.

[20] For example, payphone aggregators will be required to unlock 10XXX access within six months of the date on which they are notified that their local exchange area is being converted to equal access.

[21] Rules may be waived if there is "good cause" to do so. See 47 CFR 1.3. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C.Cir. 1969); *see also* Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C.Cir. 1990).

methods, and the consumer should be permitted to pursue the desired options associated with a particular access method. While the Commission is not unmindful of the financial aspects of 10XXX unblocking, the primary concern in this proceeding is to enhance consumer choice.

B. 800 and 950 Access

1. Whether 800 or 950 Access Must Be Established

23. A petitioner argues that the Commission should reconsider its decision to require all OSPs to establish an 800 or 950 access number. The petitioner, however, has offered no new arguments or evidence on this issue. The Commission therefore declines to eliminate the requirement that all OSPs establish an 800 or 950 access number. Nothing offered on reconsideration undermines the Commission's original conclusion that the establishment of 800 or 950 access by all OSPs is necessary to provide an access method for consumers at aggregator locations where 10XXX access is temporarily unavailable during the six-year transition to full unblocking.* * * Moreover, the use of 10XXX access is not technically possible in on-equal access areas of the country. If [the Commission] fail[s] to provide a means of access for consumers in either situation, [such] policies would leave a significant number of consumers without access to all OSPs. This result would clearly be inconsistent with the considerations underlying the [Act].

The petitioner has presented no persuasive basis for its argument that only a limited number of consumers will find themselves in either of the situations just described, where 10XXX access is unavailable. Regardless of the number of such consumers, however, the Commission does not view the proposed 0-transfer services as providing a broad solution to their access needs under the Act.[22] While such services may be useful in some situations, they do not appear to offer the potential for automated capabilities associated with the 800 and 950 access numbers currently offered by some OSPs. Further, the Commission has already given full consideration to virtually identical arguments regarding the alleged costs and service degradation associated with the 800 and 950 access methods. Even assuming the accuracy of the petitioner's predicted implementation and operating costs for a new 800 access method, the Commission thinks it likely that these costs will be recovered. The costs will, at least in part, be offset by the revenues derived from calls that would be blocked in the absence of such access. In addition, costs can be recovered from rates or charges gauged to the cost of providing the new access method. If this new access method actually proves to be more costly to operate, the petitioner can more vigorously market 10XXX access where it is available.[23]

2. The Scope of 800 or 950 Access

24. A petitioner also argues that if the Commission retains the 800/950 requirement, it should "delineate specifically what operator services must be offered through this form of access." The petitioner contends that callers will be confused if all billing options are not offered through each OSP's 800 or 950 number and that OSPs should be required to offer "all of their operator-assisted and operator-handled services to customers without regard to the form of access used by the end user to reach that OSP." The Commission concludes that the petitioner's proposal is beyond the scope of this proceeding. The purpose of this rule making proceeding was to carry out the requirements of section 226(e) of the Act. Nothing in that section or its legislative history suggests that the Commission should go beyond consideration of the access *methods* that are necessary.

3. Store-and-Forward Operator Service Providers

25. Petitions have been filed requesting waiver of the 800/950 number requirement for OSPs that provide operator services via "store-and-forward" (S&F) devices located within payphones. S&F devices perform operator assistance functions, such as the collection of billing information, inside the payphone itself, without the involvement of centralized operator service facilities at a different location. Because the 800/950 number requirement, 47 CFR 64.704(d), applies to "all providers of operator services," this rule would require S&F OSPs as well as facility-based OSPs to establish 800 or 950 access. One petitioner maintains that the purpose of the 800/950 requirement is to ensure that OSPs can be reached by their subscribers from any location. According to the petitioner, however, S&F devices are not equipped to handle calls originating outside the payphone where the device is installed. Further, consumers who use these services do not have preestablished accounts with such OSPs. These services are not represented to be available anywhere other than at the location of the payphone and do not employ access methods such as 10XXX.

26. Although this issue was raised in petitions for waiver, the Commission believes it is more appropriate to address this issue in the context of the current rule making proceeding. Accordingly, the Commission will reconsider the application of the 800/950 requirement to S&F OSPs on its own motion.[24] In the Report and Order, the Commission agreed "in principle that [S&F] OSPs should not have to establish 800 or 950 access." But the Commission said that it would be more appropriate to consider waiver requests so that the Commission could examine the individual circumstances of all S&F OSPs, such as hotels that employ this technology through their PBXs, and not simply payphones. Upon reconsideration, however, the Commission now concludes that this issue can be addressed most efficiently in a collective rather than individual context. The description contained in the petitions indicates that S&F OSPs form a discrete category among those entities providing operator services and can effectively be distinguished from those facility-based OSPs that offer service to callers not located on their premises. The Commission therefore applies conclusively its original opinion that S&F OSPs who offer operator services only where their S&F devices are physically located should not be required to establish 800 or 950 access numbers. The Commission has revised the text of § 64.704(d) as set out below.[25] In keeping with its earlier

[22] See 47 U.S.C. 2669(e)(1) (only 10XXX, 800, and 950 access methods are listed as potential solutions).

[23] It has come to the Commission's attention that AT&T has offered 800 access to its operator services through its general customer service 800 number, which contains a menu of other options in addition to a lengthy explanation of the operator service option. When § 64.704(d) was adopted, the Commission intended that each OSP implement an 800 or 950 access number that would serve consumers efficiently and promptly. The Commission is monitoring AT&T's 800 access method, as well as other 800 and 950 access numbers, to ensure that consumers are being served as intended. See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Phase II: Order, DA 92-722, paras. 3-4 (Com. Car. Bur. released June 5, 1992) (requiring certain OSPs to file, *inter alia*, information regarding 800 and 950 access methods). In any case in which they are not, the Commission shall consider whether to take further action to require changes in access methods.

[24] Hence, the Commission dismisses as moot the petitions that request such waivers.

[25] For OSPs who do not employ S&F technology, however, the Commission did not revise the deadline for compliance with this rule. Compliance was required no later than six months from the original effective date of the rule.

concerns, however, the Commission emphasizes that facility-based OSPs who provide operator services for callers who are not on their premises shall remain subject to § 64.704(d).[26] Further, all OSPs, including those employing S&F technology, must comply with all other applicable requirements imposed by the rules.

C. Compensation for "Subscriber 800" Calls

27. Finally, a petitioner asks the Commission to reconsider the determination that so-called "subscriber 800" calls are outside of the scope of the compensation scheme being considered in this proceeding. In the initial stages of this proceeding, the petitioner argued that all calls initiated via an 800 number should be compensable under any compensation plan that might be adopted, including calls that go directly to a subscriber that is not an OSP. The Commission disagreed, citing the legislative history that specified that it should "consider the need to prescribe compensation for independent payphone owners for calls made using a carrier-specific access code." The Commission said that an 800 call directly to a subscriber did not involve a "carrier-specific access code." The Commission determined that the 800 number in question is that of the end user or subscriber and not a carrier, and that such a call did not involve an "access code," as defined by the Act and the Commission's rules. Because of the clear legislative history underlying the statutory compensation provision, the Commission declines to revise the earlier determination. The petitioner fails to reconcile its arguments with the explicit statement of congressional intent that prescribed compensation should concern only those calls "made using a carrier-specific access code." Under the Act and the rules, an "access code" is a "sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence." [27] A subscriber 800 number does not connect the caller with an OSP. Instead, it connects the caller directly to the called subscriber.[28] Given this obvious inconsistency with the legislative history of the Act's compensation provision, the Commission cannot find that subscriber 800 calls fall within the scope of any compensation scheme that may be prescribed under the Act.

[26] As a petitioner has noted, consumer access to non-S&F OSPs will be unaffected by this ruling.

[27] 47 U.S.C. 226(a)(1); 47 CFR 64.708(a).

[28] Hence, the caller cannot choose among the available OSPs but must instead use whichever OSP the subscriber has chosen.

III. Conclusion

28. In the Order, the Commission has declined to reconsider its rules under which aggregators must, according to a specified schedule, allow 10XXX access to operator service providers. Some aspects of these rules have been clarified, however. To ensure that aggregators are not exposed to undue risk of fraud associated with 10XXX access, the Commission has reconsidered its earlier decision regarding LEC blocking and screening services and has decided to require LECs to offer specified services within six months. The Commission has deferred certain unblocking deadlines pending deployment of these services. The Commission has also declined to reconsider its original determination regarding mandatory 800 or 950 access numbers for all OSPs, except that it has exempted store-and-forward OSPs from this requirement. Finally, the Commission has reaffirmed its initial decision regarding compensation for subscriber 800 calls.

IV. Ordering Clauses

29. Accordingly, *It is ordered*, pursuant to sections 1, 4(i), 4(j), 201–205, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201–205, 226, that the petitions for reconsideration, partial reconsideration, and/or clarification filed in this proceeding by the American Council on Education and the National Association of College and University Business Officers, the American Public Communications Council, the American Telephone and Telegraph Co., the Association of College and University Telecommunications Administrators, and the North American Telecommunications Association *Are Denied*, except as provided herein.

30. *It is further ordered*, Pursuant to Sections 1, 4(i), 4(j), 201–205, and 226, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, that part 64 of the Commission's rules, 47 CFR Part 64, *Is Amended* as set forth in Rule Changes below, effective 30 days after publication in the **Federal Register**.

31. *It is further ordered* That the stay imposed in Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91–35: Order, 7 FCC Rcd 2146 (1992), is lifted effective six months from the release of the Order on Reconsideration, subject to the unblocking schedule set forth paragraph 14, *supra*.

32. *It is further ordered* That all local exchange carriers shall offer, in locations where technically feasible, within six months of the release of the Order on Reconsideration, tariffed services that block international direct-dialed calls as described herein. Local exchange carriers shall file with the Commission tariffs for these services on statutory notice, to be effective no later than six months from the release of the Order on Reconsideration.

33. *It is further ordered* That all local exchange carriers shall offer, in locations where technically feasible, within six months of the release of the Order on Reconsideration, tariffed services that indicate to operator service providers any billing restrictions on lines to which a caller may seek to bill a call.

34. *It is further ordered* That the petitions for waiver of 47 CFR 64.704(d) filed by the American Public Communications Council, Advanced Payphone Systems, Inc., Comtel Computer Corporation, Indiana Telcom Corporation, MIS Associates, Inc., and Public Communications Associates Ltd. *Are Dismissed.*

35. *It is further ordered* That the Conditional Request for Permission to Exceed Page Limit filed by the American Public Communications Council on November 27, 1991, *Is Granted.*

List of Subjects in 47 CFR Part 64

Communications Common Carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077, 47 U.S.C. 201, 218, 226, unless otherwise noted.

2. Section 64.704 is amended by revising paragraphs (c)(6) and (d) to read as follows:

§ 64.704 Call blocking prohibited.

* * * * *

(c) * * *

(6) This paragraph does not apply to the use by consumers of equal access code dialing sequences that result in billing to the originating telephone.

(d) All providers of operator services, except those employing a store-and-forward device that serves only consumers at the location of the device, shall establish an "800" or "950" access code number within six (6) months of the effective date of this paragraph.

[FR Doc. 92-18237 Filed 8-3-92; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 90-134; FCC 92-314]

Marine Services Rules; Revision of the General Exemption for Small Passenger Vessels Operated on Domestic Voyages

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This Memorandum Opinion and Order amends part 80 to establish a new category for general exemptions from radiotelegraph equipment carriage requirements of 100–200 nautical miles from the nearest land for certain U.S. passenger vessels of less than 100 gross tons. This action is in response to a request from the Offshore Marine Service Association. The new exemption category will ensure adequate safety communications are maintained and reduce the financial, legal and administrative burdens imposed on the maritime public by eliminating the need for many vessel operators to apply for individual radiotelegraph exemptions.

EFFECTIVE DATE: September 3, 1992.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 90-134, adopted July 7, 1992, and released July 21, 1992. The complete text of the Memorandum Opinion and Order, including Appendices, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary of Memorandum Opinion and Order

1. The Commission has amended its Maritime Service Rules (Part 80) to establish a general exemption category for certain U.S. passenger vessels of less than 100 gross tons that operate at distances of 100–200 nautical miles and more than 200 nautical miles from the nearest land. All U.S. passenger vessels navigated in the open sea that carry more than 12 passengers are required to be equipped with a manual Morse code radiotelegraph station. The law permits the Commission to exempt from this provision small passenger vessels not operating on international voyages. The general exemption previously had been limited to ships operating within 100 nautical miles of the nearest land.

2. The Report and Order in this proceeding added a new exemption category permitting small passenger vessels to operate beyond 100 nautical miles from land, provided they carry specified radio equipment. Although the rulemaking notice in this proceeding proposed adding two new exemption categories for vessels: one new category for vessels operated 100–200 nautical miles from land, and another for vessels operated 200–500 nautical miles from land, the Commission ultimately adopted the suggestion of commenters that a single exemption be made for all voyages beyond 100 nautical miles, with no mileage restrictions, provided the vessels are equipped with specific radio equipment. The Offshore Marine Service Association (OMSA) asked the Commission to reconsider its decision and adopt the equipment requirements and mileage limitations originally proposed.

3. The Commission agreed with OMSA that adequate safety communications capability can be ensured for the mileage category of 100–200 nautical miles without requiring all the equipment necessary for vessels operating on extended open ocean routes beyond 200 nautical miles from the nearest land. The Commission noted that the U.S. Coast Guard has regulations for vessels that only operate on voyages up to 200 nautical miles from the nearest land and did not oppose the creation of such a category.

Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), *see* 5 U.S.C. § 604, our final analysis is as follows:

Need for, and Objectives of, This Action

5. This action pertains to U.S. small passenger vessels operated on domestic voyages. For such vessels, the action establishes a general exemption category of 100–200 nautical miles from the nearest land contained in the general exemption from radiotelegraph requirements, thus the vessels may operate without first having to obtain formal individual exemptions from the Commission. This action establishes a tiered scheme of radiocommunications equipment requirements, with additional equipment required at greater distances from land. This action can ensure that the vessels carry adequate safety communications equipment, and can help avoid unnecessary administrative procedures for both licensees and the Commission.

Discussion of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

6. The commenters generally agree that a revised general exemption from the radiotelegraph equipment requirement is a reasonable way to eliminate an unnecessary and costly administrative burden on small passenger vessel operators. The Commission agrees, and we note that any impact of this action on small passenger vessel operators, some of whom are small entities, will be to lessen the cost of doing business. The equipment required of vessels under the revised general exemption will be the same as the equipment that would be required under individual exemptions.

Significant Alternatives Considered and Rejected

7. The Commission did not reject any alternative designed to minimize the economic impact of the amended rules on small entities.

Ordering Clauses

8. In view of the foregoing and pursuant to the authority contained in sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 405, and 1.429(i) of the Commission's Rules, 47 CFR 1.429(i). *It is ordered* That the Petition for Reconsideration filed by OMSA, and the Petition for Partial Reconsideration filed by the Coast Guard *Are granted* as indicated herein and *Are denied* in all other respects. *It is further ordered* That the Request for Stay filed by OMSA *Is dismissed as moot.*

9. *It is further ordered* That pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 80 of the Commission's Rules

Is Amended as set forth in the appendix below effective on September 3, 1992.

10. *It is further ordered* That a copy of this Memorandum Opinion and Order will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

11. *It is further ordered* That this proceeding *Is terminated.*

List of Subjects in 47 CFR Part 80

Communications equipment, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rule

Part 80 of chapter I of title 47 of Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. In § 80.905, paragraphs (a) (2) and (3) are revised, and new paragraph (a)(4) is added to read as follows:

§ 80.905 Vessel radio equipment.

(a) * * *

(2) Vessels operated beyond the 20 nautical mile limitation specified in paragraph (a)(1) of this section, but not more than 100 nautical miles from the nearest land, must be equipped with a medium frequency transmitter capable of transmitting J3E emission and a receiver capable of reception of J3E emission within the band 1710 to 2850 kHz, in addition to the VHF radiotelephone installation required by paragraph (a)(1) of this section. The medium frequency transmitter and receiver must be capable of operation on 2670 kHz.

(3) Vessels operated more than 100 nautical miles but not more than 200 nautical miles from the nearest land must:

(i) Be equipped with a VHF radiotelephone installation;

(ii) Be equipped with an MF radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section; and

(iii) Be equipped with either:

(A) a single sideband radiotelephone capable of operating on all distress and safety frequencies in the medium frequency and high frequency bands listed in §§ 80.369 (a) and (b), on all the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels (this requirement may be met by the addition of such frequencies to the radiotelephone installation required by paragraph (a)(2) of this section); or

(B) if operated in an area within the coverage of an INMARSAT maritime mobile geostationary satellite in which continuous alerting is available, an INMARSAT ship earth station meeting the equipment authorization rules of parts 2 and 80 of this chapter;

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919, and 80.921, and capable of powering the single sideband radiotelephone or the ship earth station (including associated peripheral equipment) required by paragraph (a)(3)(iii) of this section;

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13) and CCIR Recommendation 540;

(vi) Be equipped with a Category I, 406 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061; and,

(vii) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations (G–NRS–3/AMR), U.S. Coast Guard, Building 110, Box 26, Governor's Island, N.Y. 10004–5034, telephone number (212) 668–7764.

(4) Vessels operated more than 200 nautical miles from the nearest land must:

(i) Be equipped with two VHF radiotelephone installations;

(ii) Be equipped with an MF radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section;

(iii) Be equipped with either:

(A) an independent single sideband radiotelephone capable of operating on all distress and safety frequencies in the medium frequency and high frequency bands listed in §§ 80.369(a) and (b), on all of the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels; or

(B) If operated in an area within the coverage of an INMARSAT maritime mobile geostationary satellite in which continuous alerting is available, an INMARSAT ship earth station meeting the equipment authorization rules of Parts 2 and 80 of this Chapter;

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919, and 80.921, and capable of powering the single sideband radiotelephone or the ship earth station (including associated peripheral equipment) required by paragraph (a)(4)(iii) of this section;

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13) and CCIR Recommendation 540;

(vi) Be equipped with a Category I, 406 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061;

(vii) Be equipped with a radiotelephone distress frequency watch receiver meeting the requirements of § 80.269;

(viii) Be equipped with an automatic radiotelephone alarm signal generator meeting the requirements of § 80.221; and

(ix) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations (G–NRS–3/AMR), U.S. Coast Guard, Building 110, Box 26, Governor's Island, N.Y. 10004–5034, telephone number (212) 668–7764.

* * * * *

3. Section 80.909 paragraph (b) is revised to read as follows:

§ 80.909 Radiotelephone transmitter.

* * * * *

(b) The single sideband radiotelephone must be capable of operating on maritime frequencies in the band 1710 to 27500 kHz with a peak envelope output power of at least 120 watts for J3E emission and H3E emission on 2182 kHz and J3E emission on the distress and safety frequencies listed in § 80.369(b). Single sideband radios installed on or before February 2, 1992, may be used until February 2, 1997, provided such radios are capable of operating on the frequencies listed in §§ 80.369 (a) and (b), and at least half of the frequencies listed in § 80.369(d).

* * * * *

[FR Doc. 92-18117 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-58; RM-7947]

Radio Broadcasting Services; East Brewton, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 239A to East Brewton, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Escambia Creek Indian Broadcasting Company. See 57 FR 11458, April 3, 1992. Coordinates used for Channel 239A at East Brewton are 31-12-07 and 87-02-03. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process for Channel 239A at East Brewton should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-58, adopted July 15, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding East Brewton, Channel 239A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18461 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-406; RM-6745, RM-7255]

Radio Broadcasting Services; Grenada, Artesia and Okolona, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the request for reconsideration, filed by Tenn-Tom Broadcasting Corp., to delete Channel 289A from Okolona, Mississippi. *See* 57 FR 01651 (1992). The Commission denies Tenn-Tom's request to modify the reference coordinates for Channel 287C3 at Okolona to specify the coordinates stated in its application to upgrade Station WWZQ-FM. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 89-406, adopted July 13, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Okolona, Channel 289A.

Federal Communications Commission.

Douglas W. Webbink,

Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18459 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-614 and 91-312; RM-7439, RM-7686, RM-7687, RM-7583]

Radio Broadcasting Services; Big Spring, Coahoma, Sterling City and Midland, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Three Card Enterprises, substitutes Channel 236C3 for Channel 236A at Midland, Texas, and modifies the construction permit of Station KQRX-FM to specify the higher powered channel (RM-7583). The proposal filed by David W. Wrinkle seeking the substitution of Channel 239C3 for Channel 237A at Big Spring, Texas, is dismissed. See 56 FR 56182, November 1, 1991. At the request of Ballard Broadcasting Company of Oklahoma, Inc., we allot Channel 232C3 to Big Spring, Texas (RM-7439). To accommodate the allotment of Channel 232C3 at Big Spring, the Commission also substitutes Channel 288A for vacant and unapplied for Channel 232A at Coahoma, Texas. At the request of Mark C. Nolte, we allot Channel 243C2 to Sterling City, Texas (RM-7686). At the request of David W. Wrinkle, we substitute Channel 240C3 for Channel 237A at Big Spring, Texas, and modify the license of Station KBST-FM to specify the higher powered (RM-7687). See 55 FR 52186, December 20, 1990, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

DATES: Effective September 11, 1992. The window period for filing applications for Channel 243C2 at Sterling City, Texas, and Channel 232C3 at Big Spring, Texas, will open on September 14, 1992, and close on October 14, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-614 and MM Docket No. 91-312, adopted July 10, 1992, and released July 20, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy

Center, (202) 452-1422, 1990 M Street NW., Suite 640, Washington, DC 20036.

The following channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 232C3 can be allotted to Big Spring, Texas, without the imposition of a site restriction. The coordinates for Channel 232C3 at Big Spring are North Latitude 32-15-00 and West Longitude 101-28-24. The coordinates for Channel 288A at Coahoma are North Latitude 32-17-36 and West Longitude 101-18-18. Channel 240C3 can be substituted for Channel 237A at Big Spring with a site restriction of 3.1 kilometers (1.9 miles) northeast. The coordinates for Channel 240C3 at Big Spring are North Latitude 32-16-07 and West Longitude 101-26-57. Channel 236C3 can be allotted to Midland with a site restriction of 8.4 kilometers (5.2 miles) west to accommodate Three Card's desired transmitter site. The coordinates for Channel 236C3 at Midland are North Latitude 32-00-00 and West Longitude 102-10-00. Channel 243C2 can be allotted to Sterling City with a site restriction of 14.3 kilometers (8.9 miles) southwest to avoid a short-spacing to Station KXOX-FM, Channel 244A, Sweetwater, Texas. The coordinates for Channel 243C2 at Sterling City are North Latitude 31-44-08 and West Longitude 101-05-06. Mexican concurrence in each of the allotments has been received because all of the communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 237A and adding Channel 240C3 at Big Spring; by removing Channel 232A and adding Channel 288A at Coahoma; by removing Channel 236A and adding 236C3 at Midland; by adding Channel 232C3 at Big Spring, and by adding Sterling City, Channel 243C2.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-18480 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 920516-2174]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and interim final rule with request for comments.

SUMMARY: NMFS changes the directed-fishery and bycatch quotas for Atlantic swordfish, and the bycatch limits in the non-directed fisheries for Atlantic swordfish, in accordance with the framework procedure of the regulations under which the Atlantic swordfish fishery is managed. This rule establishes for Atlantic swordfish: (1) Directed-fishery quotas of 3.50 million pounds (1.59 million kg) for each of two semi-annual periods, each of which is divided into drift gillnet quotas of 47,583 pounds (21,584 kg) and longline and harpoon quotas of 3,452,417 pounds (1,566,066 kg), except that, for the semi-annual period July 1, 1992, through December 31, 1992, the directed-fishery quota for drift gillnets is adjusted to 62,866 pounds (28,516 kg); (2) an annual bycatch quota of 0.56 million pounds (0.25 million kg); and (3) a bycatch limit for vessels in the squid trawl fishery of five swordfish per trip. The adjusted directed-fishery quota for drift gillnets for July 1 through December 31, 1992, is issued as an interim final rule. The intent of this action is to protect the swordfish resource while allowing harvests of swordfish consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Effective August 4, 1992, except that § 630.24(i) is effective from August 4, 1992, through December 31, 1992. Written comments on the adjusted directed-fishery quota for drift gillnets for July 1 through December 31, 1992, contained in § 630.24(i), must be received on or before August 19, 1992.

ADDRESSES: Comments on the adjusted directed-fishery quota for drift gillnets for July 1 through December 31, 1992, should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

NMFS reevaluated and proposed changes in the annual total allowable catch (TAC), the annual directed-fishery quota, the annual bycatch quota, and the bycatch limits in the non-directed fishery in the Atlantic swordfish fishery in accordance with the factors and procedures specified in 50 CFR 630.24(d). NMFS also reevaluated the special set-aside for harpoon gear, but did not propose any changes. The background and specifics of the proposed changes were published May 22, 1992 (57 FR 21761) and are not repeated here.

Comments and Responses

A total of four written comments were received, including comments from a private citizen, a representative of a commercial fisheries organization, representatives of a swordfish net association, and a captain of a fishing vessel.

Comment: The essence of the private citizen's comments on the proposed rule was that the increase in TAC is unnecessary and contrary to reasonable conservation and management, given the status of the stock, and that it negated the opportunity to exert leadership in the international management arena.

The comments from the representative of the commercial fisheries organization and the fishing vessel captain were essentially the same. Their main concern was that consistently conservative assumptions were used in calculating the proposed TAC. These commenters also: (1) Requested that the procedure for calculating the 1992 TAC be submitted to the ICCAT as a proposed procedure for calculating quotas for all nations harvesting in the Atlantic; (2) recommended that the range of potential TAC levels that could be considered consistent with the ICCAT recommendations be included in all regulatory documents—specific language was suggested; and (3) supported the five-fish bycatch trip limit for squid trawls.

All three of these commenters addressed a number of issues that were beyond the scope of the proposed rule.

Response: NMFS disagrees with the commenters' concerns about the 1992 TAC. In accordance with the regulatory procedure for evaluating and adjusting

annual swordfish quotas, NMFS convened a scientific review panel to obtain recommendations on the appropriate adjustments. The panel recommended selecting the 1992 TAC from the most likely range of U.S. allowable yield consistent with the ICCAT agreements. After conferring on the appropriate methodology, including appropriate assumptions, the panel recommended the most likely range of allowable yield. NMFS concurred with the panel's recommendations and selected a TAC of 7.56 million pounds (3.43 million kg) for 1992 from within the range. This value represents the median from 2,000 estimates, adjusted for potential bias in the terminal year stock size and resulting from the application of both relatively optimistic and pessimistic assumptions about the effectiveness of 1991 U.S. regulations. Given the range of estimates, both more conservative and more liberal TAC values could be considered consistent with the ICCAT recommendations. However, the median value of 7.56 million pounds is central to the most likely estimates resulting from the mixture of the optimistic and pessimistic assumption distributions of estimates. NMFS believes that the 1992 TAC is consistent with the ICCAT recommendations and the best scientific information available and that it represents a responsible U.S. position in keeping with existing mandates.

In response to the other comments by the commercial fisheries representative and vessel captain on the proposed rule, NMFS will submit the document describing the method applied for calculating the 1992 U.S. TAC to ICCAT's Standing Committee on Research and Statistics for consideration by the swordfish working group in September. Regarding the full range of TACs considered, NMFS did not incorporate this information in the regulations; however, it is contained in the review panel report that is a part of the administrative record and is available upon request. The recommended language pertaining to the range of TACs was not adopted, because NMFS believes the language in the review panel report reflects most accurately the consensus of the review panel and the position with which NMFS has concurred. NMFS concurs with the support for the squid trawl bycatch trip limit.

The comments addressing issues not contained in the proposed rule are beyond the scope of the proposed rule and are not addressed in this document.

Comment: Two representatives of a swordfish net association commented in support of the proposed 7.56 million-pound (3.43 million kg) TAC. In addition, they objected to subdivision of the directed-fishery quota based on gear type; supported an experimental fishery; requested an annual drift gillnet quota rather than a semi-annual quota; and requested an increase in the drift gillnet quota based on new landings information.

Response: The comments related to an experimental fishery and the structuring of the quotas are beyond the scope of the proposed rule and are, therefore, not addressed in this document. The structure of the quotas was established in a previous rule, and experimental fisheries were not addressed in the proposed rule. NMFS concurs with the endorsement of the proposed TAC. NMFS will review all available data sources regarding historical drift gillnet landings. If additional landings are verified, that information will be considered during the annual procedure for reevaluating TAC and related quotas.

Changes From the Proposed Rule

Because the annual directed-fishery quotas are being revised almost at mid-year, adjustments are required to ensure that fishermen have an opportunity to harvest the 1992 TAC.

A directed-fishery quota for drift gillnets of 40,785 pounds (18,500 kg) was in effect from January 1 through June 30, 1992. That quota was projected to be reached on April 22, 1992, and the drift gillnet fishery was closed from April 23 through June 30, 1992 (57 FR 14361, April 20, 1992). Catch reports received since the closure indicate that actual catches by drift gillnets January 1 through April 22, 1992, totaled 32,300 pounds (14,651 kg). Accordingly, the entire annual drift gillnet quota implemented by this rule, 95,166 pounds (43,167 kg), less the amount caught prior to the closure, is established as the drift gillnet quota for the period July 1 through December 31, 1992, specifically, 62,866 pounds (28,516 kg) (95,166 minus 32,300 equals 62,866).

NMFS will adjust the longline and harpoon quota for the period July 1 through December 31, 1992, under § 630.24(e) after final catch reports for the first semi-annual period are received. That adjustment will be based on the difference between the January through June quota established in this rule and actual catches during that period.

Classification

This action is authorized by 50 CFR 630.24 (d) and (e).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. NMFS prepared a regulatory impact review on this action, the conclusions of which were published in the proposed rule and are not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

The Assistant Administrator, pursuant to section 553(d)(1) of the Administrative Procedure Act (APA), finds that, because this rule provides relief from the directed-fishery quotas and a non-directed-fishery bycatch limit currently in effect, the effective date of this final rule need not be delayed for 30 days.

In addition, the Assistant Administrator finds that a delay in making the necessary adjustment to increase the semi-annual directed-fishery quota for drift gillnets for the period July 1 through December 31, 1992, in effect delaying availability of the increased quota to fishermen, is impracticable, unnecessary, and contrary to the public interest. Accordingly, good cause exists under section 553(b)(B) of the APA to publish the adjustment to the semi-annual directed-fishery quota for drift gillnets applicable to the period July 1 through December 31, 1992, as an interim final rule, as specified in 50 CFR 630.24(h), without prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: July 29, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

§ 630.7 [Amended]

2. In § 630.7, in paragraph (s), the reference to "§ 630.25(b)" is revised to read "§ 630.25(c)"; in paragraph (t), the

reference to "§ 630.25(c)" is revised to read "§ 630.25(d)"; and in paragraph (u), the reference to "§ 630.25(d)" is revised to read "§ 630.25(e)".

3. In § 630.24, paragraph (b)(1) and (c) are revised, and paragraph (i) is temporarily added effective from August 4, 1992, through December 31, 1992, to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) The annual quota for the directed fishery for swordfish is 7.0 million pounds (3.18 million kg), dressed weight, divided into two semi-annual quotas as follows:

(i) For the semi-annual period January 1 through June 30—

(A) 47,583 pounds (21,584 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,452,417 pounds (1,566,066 kg), dressed weight, that may be harvested by longline and harpoon.

(ii) For the semi-annual period July 1 through December 31—

(A) 47,583 pounds (21,584 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,452,417 pounds (1,566,066 kg), dressed weight, that may be harvested by longline and harpoon.

* * * * *

(c) *Bycatch quota.* The annual bycatch quota for swordfish is 560,000 pounds (254,014 kg), dressed weight.

* * * * *

(i) *Directed-fishery quotas for July 1 through December 31, 1992.* The provisions of paragraph (b)(1)(ii)(A) of this section notwithstanding, the directed-fishery quota for the semi-annual period July 1 through December 31, 1992, that may be harvested by drift gillnet is 62,866 pounds (28,516 kg), dressed weight.

4. In § 630.25, in the first sentence of paragraph (a)(1), the reference to "§ 630.24(b)(1)" is revised to read "§ 630.24"; in the first sentence of paragraph (b), the parenthetical phrase "(9,766 kg)" is revised to read "(9,752 kg)"; and paragraph (d) is revised to read as follows:

§ 630.25 Closures and bycatch limits.

* * * * *

(d) *Bycatch limits in the non-directed fishery.* Aboard a vessel using or having aboard gear other than drift gillnet, harpoon, or longline, other than a vessel in the recreational fishery—

(1) A person may not fish for swordfish from the North Atlantic swordfish stock;

(2) Except as specified in paragraph (d)(3) of this section, no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 °N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state; and

(3) Aboard a vessel in the squid trawl fishery, no more than five swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 °N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. For the purposes of this paragraph (d)(3), a vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawl gear aboard and squid constitute not less than 75 percent by weight of the total fish aboard or off-loaded from the vessel.

* * * * *

[FR Doc. 92-18369 Filed 8-3-92; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 920109-2009]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, correction, and request for comments.

SUMMARY: NOAA announces reductions in vessel trip limits for yellowtail rockfish, widow rockfish, and thornyheads in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The trip limits are designed to keep the catch within the 1992 harvest guidelines for these species while extending the fisheries as long as possible during the year.

EFFECTIVE DATE: 0001 hours (local time) July 29, 1992, for yellowtail rockfish and thornyheads, and 0001 hours (local time) August 12, 1992, for widow rockfish, until modified, superseded, or rescinded. Comments will be accepted through August 19, 1992.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700—Bldg. 1, Seattle, Washington 98115; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802-4213.

SUPPLEMENTARY INFORMATION: The FMP (56 FR 736, January 8, 1991) provides for rapid changes to specific management measures that have been designated as "routine." Trip limits for yellowtail rockfish, widow rockfish, and thornyheads are among those management measures that have been designated as routine at 50 CFR 663.23(c)(1). At its July 1992 meeting, the Pacific Fishery Management Council (Council) reviewed the progress of the groundfish fishery and recommended the following changes to the current trip limits to the Secretary of Commerce (Secretary). The current trip limits were announced in a notice published on January 15, 192, at 57 FR 1654 ("1992 Management Measures").

Yellowtail Rockfish

In January 1992, the harvest guideline for yellowtail rockfish was divided into northern and southern components: 4,000 mt north of Cape Lookout, Oregon (including the U.S. portion of the Vancouver subarea and the northern part of the Columbia subarea) and 1,400 mt south of Cape Lookout (including all of the Eureka subarea and the southern part of the Columbia area). An 8,000-pound cumulative trip limit was applied to yellowtail rockfish caught north of Cape Lookout. Because landings data indicated that the 1,400-mt harvest guideline component would accommodate the fishery south of Cape Lookout without a need for additional restrictions, a trip limit for yellowtail rockfish was not imposed in this area other than the 50,000-pound cumulative trip limit for the *Sebastes* complex, which includes yellowtail rockfish. The cumulative trip limits apply to specified 2- and 4-week periods, which are defined under paragraph A of the 1992 Management Measures.

The best available information presented at the July 1992 Council meeting indicated that fishing patterns had changed and that both harvest guideline components for yellowtail rockfish were likely to be exceeded if landing rates were not further curtailed. Approximately 3,731 mt of yellowtail rockfish have been landed through June 27, 1992, 48 percent ahead of the rate in 1991. Most of this increase occurred south of Cape Lookout, an area that until January 1992 had been subject to a trip limit for yellowtail rockfish. Consequently, the Council recommended that the cumulative trip limit for yellowtail rockfish be reduced at the beginning of the next 2-week period (July 29) from 8,000 pounds to 6,000 pounds, and extended farther south to the north jetty at Coos Bay, Oregon, to cover the area where most of the increased harvest has occurred. The

50,000-pound coastwide cumulative trip limit for the *Sebastes* complex remains unchanged.

This notice also revises the application of the trip limits so that they conform with those implemented by the States of Oregon and Washington. The 1992 Management Measures provided that trip limits be applied based on the port of landing. It later became apparent that vessels were fishing for yellowtail in the northernmost area that should have been most restricted, and landing these fish in the southern ports where the more liberal trip limit was applied. The States of Oregon and Washington modified their regulations so that if any fishing occurs north of the "line," the more restrictive trip limit applies. This is consistent with past practice.

Widow Rockfish

The catch rate of widow rockfish has accelerated since the spring, resulting in landings of 4,269 mt of widow rockfish through June 27, 1992. The 7,000-mt harvest guideline is projected to be reached by September 27 if the rate of landings is not slowed. In the 1992 Management Measures, the Secretary announced that a 3,000-pound trip limit may be imposed later in the year to extend the fishery as long as possible. Consequently, the Council recommended that the 30,000-pound cumulative trip limit for widow rockfish (which applies to specified 4-week periods) be reduced to 3,000 pounds per fishing trip (no longer on a cumulative basis), effective after completion of the current 4-week period, which ends on August 11, 1992.

Thornyheads

The 7,000-mt harvest guideline for thronyheads includes two species (shortspine and longspine), and was designed to protect the less productive shortspine thornyheads. Because the two species of thornyheads are caught together, and are not identified separately on landing tickets, these species are managed together. Landings through June 27, 1992, were estimated at 4,913 mt, 70 percent above the rate in 1991, and the harvest guideline is projected to be reached by mid-October if landing rates are not reduced. Through May, the proportion of longspines was 80–90 percent in California and 65 percent in Oregon. Therefore, the catch of shortspine thronyheads is not yet approaching its overfishing level of 3,500 mt. However, in order to provide for a fall fishery, the Council recommended that the cumulative trip limit for thornyheads be reduced from 25,000 pounds to 20,000 pounds, effective at the beginning of the 2-week fishing period that begins July 29, 1992.

Thornyheads are a part of the deepwater complex, which also includes sablefish and Dover sole. The change in the cumulative trip limit for thornyheads does not change the current 55,000-pound cumulative trip limit for the deepwater complex, which applies to the same 2-week periods.

Secretarial Action

The Secretary concurs with the Council's recommendations and herein announces the following changes to the 1992 Management Measures announced at 57 FR 1654:

Widow Rockfish

Effective 0001 hours (local time) on August 12, 1992, no more than 3,000 pounds of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip. (This replaces the cumulative trip limit in paragraph B. of the 1992 Management Measures.)

Yellowtail Rockfish

Effective 0001 hours (local time) on July 29, 1992, no more than 50,000 pounds cumulative of the *Sebastes* complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Of this 50,000 pounds, no more than 6,000 pounds cumulative may be yellowtail rockfish taken and retained north of Coos Bay, and no more than 10,000 pounds cumulative may be bocaccio landed south of Cape Mendocino.

If any vessel is used to fish north of Coos Bay during a 2-week period, then that vessel is subject to the trip limit for yellowtail rockfish taken and retained north of Coos Bay, no matter where the fish are possessed or landed. Similarly, if a vessel is used to take and retain yellowtail rockfish south of Coos Bay and possesses or lands yellowtail rockfish north of Coos Bay, that vessel is subject to the northern trip limit.

Coos Bay means 43°21'34" N. latitude, the north jetty at Coos Bay, Oregon. (This modifies measures in paragraph C. of the 1992 Management Measures.)

Thornyheads

The 25,000-pound cumulative trip limit per 2-week period for thornyheads is reduced to 20,000 pounds. (This modifies the thronyhead trip limit in paragraph (4)(c) of the 1992 Management Measures.

Correction

This notice also corrects the typographical error in notice document 92–1065 beginning on page 1654 in the issue of Wednesday, January 15, 1992. The error at A.3. of "Secretarial Actions" on 57 FR 1660 mistakenly listed the ending date of the 4-week period beginning on July 15. The correct ending date is August 11. This affects only the widow rockfish fishery since it is the only species subject to a 4-week cumulative trip limit at this time.

Clarification

As in the past, it is unlawful to land more than the current legal trip limit. Therefore, as of the effective date and time that a trip limit is reduced, it is illegal to possess or land more than the current trip limit, even if those fish were caught when a higher trip limit was in effect. If in doubt, it is prudent to contact a local State or Federal enforcement agent.

Classification

These actions are made under the authority of and in accordance with the regulations at 50 CFR 663.23(c).

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with section 6.02c.3.(f) of the NOAA Administrative Order 216–6.

This action is in compliance with Executive Order 12291.

The public has had the opportunity to comment on this action. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in July 1992 that resulted in the recommendation to take this action. Public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18425 Filed 7–31–92; 11:33 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 150
Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-92-079PR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Proposed 1992-93 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1992-93 fiscal period (August 1-July 31) established under Marketing Order No. 906. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Texas Valley Citrus Committee (TVCC), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

DATES: Comments must be received by August 14, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-690-3670.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Texas citrus is subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable Texas oranges and grapefruit handled during the 1992-93 fiscal year (August 1-July 31). This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 135 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing order for Texas oranges and grapefruit, administered by the Department, requires that an annual budget of expenses be prepared by the TVCC and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the TVCC's expected expenses. The recommended budget and rate of assessment are usually acted upon by the TVCC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the TVCC will have funds to pay its expenses.

The TVCC met on June 3, 1992, and unanimously recommended a 1992–93 budget of $577,200 and an assessment rate of $0.15 per 7/10 bushel carton. In comparison, 1991–92 budgeted expenditures were $102,250. Due to a small crop caused by a severe freeze in December 1989, no assessment rate was established for the 1991–92 fiscal year. Assessment income for 1992–93 is estimated at $375,000 based on anticipated fresh domestic shipments of 2.5 million cartons of oranges and grapefruit. This, along with $10,000 in interest income, $46,200 in other income (spoon sales and fax machine rental) and $146,000 from the TVCC's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992–93 fiscal year, estimated at $235,105, would be within the maximum permitted by the order of one fiscal year's expenses.

Major budget categories for 1992–93 include $62,000 for administration of the marketing order and $356,700 for administration of TexaSweet Citrus Advertising, Inc. (TCAI). TCAI has carried out the TVCC's advertising and promotion program for the past several seasons. Other research projects include $10,000 for a tree census survey and $148,000 for a Mexican fruit fly support program.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, those costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is deemed appropriate for this action. Since TVCC expenses are incurred on a continuous basis during the entire fiscal period, approval of the proposed expenditure authorization must be expedited.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 906 be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS.

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 906.232 is added to read as follows:

§ 906.232 Expenses and assessment rate.

Expenses of $577,200 by the Texas Valley Citrus Committee are authorized, and an assessment rate of $0.15 per carton of assessable oranges and grapefruit is established for the 1992–93 fiscal period ending on July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: July 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–18376 Filed 8–3–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 948

[Docket No. FV–92–077]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 948 for the 1992–93 fiscal period (September 1, 1992, through August 31, 1993). Authorization of this budget would permit the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 14, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948 both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable potatoes handled during the 1992–93 fiscal period, beginning September 1, 1992, through August 31, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirement set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 118 handlers of Colorado Area II potatoes under this marketing order, and approximately 285 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $300,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses

The Committee met May 21, 1992, and unanimously recommended a 1992–93 budget of $57,250, $2,970 more than the previous year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Major increases include $1,275 for manager's salary, $635 for assistant's salary, and $500 for telephone. All promotion and advertising expenses are financed under the State order.

The Committee also unanimously recommended an assessment rate of $0.0036 per hunderdweight, $0,0004 less than last season's rate. This rate, when applied to anticipated shipments of 13,250,000 hundredweight, would yield $47,700 in assessment income. This, along with $9,540 from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1991–92 fiscal period, estimated at $63,781, were within the maximum permitted by the order of two fiscal periods' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on September 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Colorado Area II potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.209 is added to read as follows:

§ 948.209 Expenses and assessment rate.

Expenses of $57,240 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of $0.0036 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: July 30, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–18374 Filed 8–3–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–72; Notice No. SC–92–4–NM]

Special Conditions; Embraer Model CBA–123 Airplane, Engine Cowling and Nacelle Skin Retention

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model CBA–123 airplane. This is a new 19 passenger transport category airplane with a unique aft mounted turboprop propulsion system having pusher propellers. This is a novel and unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes in the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–72, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–72. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Henry Jenkins, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, Washington, 98055–4056, telephone (206) 227–2141.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-72." The postcard will be date/time stamped, and returned to the commentor.

Background

On July 31, 1986, Embraer applied for a type certificate for their new Model CBA-123 airplane. Unlike conventional transport-category airplanes with the engines and propellers mounted forward of the wing in a tractor configuration, this 19-passenger transport-category airplane has a unique aft-fuselage installation of engines and propellers mounted on pylons in a pusher configuration. Any lost engine cowling or nacelle skill could contact the propellers and empennage and cause catastrophic damage. These potential hazards are not adequately covered by existing regulations applicable to conventional transport category airplanes.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of Subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.17; and (3) Special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would be required to comply with part 25 through Amendment 25-80. However, Embraer has elected to comply with part 25 through Amendment 25-61 and §§ 25.571(e)(2) and 25.905(d) as amended through Amendment 25-72.

In addition to the applicable airworthiness regulations and special conditions, the Model CBA-123 must also comply with the noise certification requirements of part 36 and the engine emission requirements of part 34 (formerly Special Federal Aviation Regulation 27) in effect at the time the type certificate is issued.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model CBA-123 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). The special condition which may be developed as a result of this notice will form an additional part of the type certification basis.

Novel or Unusual Design Feature

Engine Cowling and Nacelle Skin Retention

Due to the aft pylon mounting of the engines and pusher propellers, any loss of engine cowling or nacelle skin could cause catastrophic damage directly by impact with empennage mounted control surfaces or indirectly by damaging propeller blades which in turn could separate and strike the empennage. Design precautions must be taken to minimize the possible failure modes that could cause loss of engine cowling or nacelle skin.

Conclusion: This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Embraer Model CBA-123 airplane:

Engine Cowling and Nacelle Skin Retention

a. Each airplane must be designed and constructed to—

(1) Preclude any inflight opening or loss of any cowling or nacelle skin which would, under any foreseeable conditions, prevent continued safe flight and landing; and

(2) Minimize the occurrence and hazardous effects of inflight opening or loss of any cowling or nacelle skin.

b. The retention system for each removable or openable cowling must—

(1) Keep the cowling closed and secured following any single failure or malfunction or probable combination of failures;

(2) Have readily accessible means of closing and securing the cowling which does not require excessive force or manual dexterity; and

(3) Have reliable provisions for effectively verifying that the cowling is secured prior to each takeoff. The provisions must address—

(i) Any effects of wear or improper adjustment; and

(ii) Any failure to properly close, latch, or lock the cowling.

c. If direct visual inspection means are used to comply with paragraph b, the provisions must be clearly evident during a preflight check using a flashlight or equivalent lighting source.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-18402 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AWA-20]

Proposed Establishment of the Kalamazoo/Battle Creek International Airport Radar Service Area, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 90-AWA-20, which was published in the **Federal Register** on October 23, 1991 (56 FR 55018). The Notice of Proposed Rulemaking offered for consideration the establishment of an Airport Radar Service Area (ARSA) at the Kalamazoo/

Battle Creek International Airport which is currently being served by a Terminal Radar Service Area (TRSA). A thorough review and analysis of the public comments and recommendations have been completed. The Federal Aviation Administration has determined that withdrawing the proposal at this time is warranted. This action will provide an opportunity to reexamine the traffic and operations in the airspace associated with Kalamazoo/Battle Creek Airport.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION: On October 23, 1991, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to establish an ARSA at Kalamazoo/Battle Creek International Airport (56 FR 55018). The criteria that the FAA uses for establishing ARSA's include a minimum of 75,000 annual instrument operations at the primary airport; or 100,000 annual instrument operations at the primary and secondary airports in the terminal area hub; or 250,000 passenger enplanements in one year. The figures for Kalamazoo/Battle Creek International Airport had reached 74,302 instrument operations and 249,108 enplanements in 1990 and were anticipated to increase.

A total of 134 written comments were received during the comment period. USAir, Air Transport Association, and Air Line Pilots Association submitted comments in support of establishing the proposed ARSA. The remaining commenters opposed this action asserting the following reasons:

1. General aviation (GA) traffic has decreased in recent years, GA industry is suffering in the worst business slump in aviation history, and this proposal coupled with the requirements for additional equipment to operate in the airspace would further reduce the GA segment of the airspace users.

2. Establishing the ARSA based on annual enplaned passenger count should not be a consideration in this proposal because much of the commuter aircraft operations no longer exist at the airport.

3. The only fixed-based operator, Kal-Aero, will be relocating to another airport in June 1992, which should result in reductions in the instrument operations at Kalamazoo.

4. The cost to taxpayers to establish the ARSA creates unnecessary Federal spending.

In light of the comments received, it was concluded that establishing the Kalamazoo ARSA would not be warranted at this time. Kalamazoo/Battle Creek Airport is an eligible candidate for establishing an ARSA under the 1991 instrument operations count; however, further consideration will be given to the rapid changes affecting the airport. The NPRM is being withdrawn to provide the FAA with the opportunity to collect and evaluate data reflecting the most recent conditions in the Kalamazoo area.

List of Subjects in 14 CFR Part 71

Airport radar service areas, Aviation safety, Incorporation by reference.

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 90-AWA-20, as published in the **Federal Register** on October 23, 1991 (56 FR 55018), is hereby withdrawn.

(**Authority**: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O.10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.)

Issued in Washington, DC, on July 23, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-18450 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M##

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1116

Reporting Requirements Under Section 37 of the Consumer Product Safety Act; Proposed Revision to Interpretative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed revision to interpretative rule.

SUMMARY: The Consumer Product Safety Commission (the "Commission") publishes a proposed revision to its interpretative rule advising manufacturers subject to section 37 of the Consumer Product Safety Act (CPSA) how to comply with the requirement that they report to the Commission certain information relating to settled civil actions and judgments in favor of plaintiffs who have alleged the involvement of a consumer product in death or grievous bodily injury. The proposed revision provides examples of the types of injuries that constitute "grievous bodily injury" under section 37(e)(1) of the Act.

DATES: Comments from the public are due no later than October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Gidding, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20297, (301) 504-0626.

SUPPLEMENTARY INFORMATION:

1. Background: Section 37 of the CPSA (15 U.S.C. 2084) requires manufacturers of consumer products that are the subject of lawsuits for death or grievous bodily injury to file reports with the Commission if the same particular model of a product is involved in three lawsuits that settle or are adjudicated in favor of the plaintiff in any one of the 24-month periods enumerated in section 37(b) of the Act. The reporting requirements of section 37 went into effect on January 1, 1991, the day on which the initial two year window for filing reports began. To notify the public of how the Commission intends to interpret and implement section 37, on October 28, 1991, the Commission published for public comment a proposed interpretative rule. On August 4, 1992, the Commission issued a final interpretative rule responding to the comments received.

The preamble to the final rule points out that the reporting requirements of sections 37 and the defect reporting obligations imposed by section 15(b) of the CPSA are two of the most important tools the Commission employs to identify and remedy serious product hazards. It also notes that one principal objective of the enactment of section 37 is to create an "automatic" system for manufacturers to report information concerning settled or adjudicated cases to the Commission without the necessity to perform the types of analyses of potential defects and risks of injury envisioned by section 15(b) of the CPSA, 15 U.S.C. 2064(b). However, analyzing and cataloging lawsuit information under the provisions of section 37 often requires interpretation. For example, in analyzing whether an injury is "grievous bodily injury" under section 37(e)(1), the terms used in the statute, e.g. severe electric shock, severe burns, disfigurement, debilitating internal disorder, loss of important bodily functions, and injuries likely to require extended hospitalization, are susceptible to varying interpretations.

After reviewing the comments on the proposed rule, the Commission believed that the rule, as drafted, created uncertainty about the scope of the

reporting obligation, both for manufacturers of products subject to the rule and for the enforcement staff of the Commission. Therefore, to provide clearer guidance as to which settled or litigated lawsuits are reportable under section 37, the Commission clarified the "reasonable person" test in § 1116.8 of the rule for determining whether products are the same particular model. The Commission also noted its intention to provide examples of the types of injury that constitute "grievous bodily injury" in § 1116.2(b). However, since the public had not had the opportunity to comment on the supplemental definitions at the time the proposed rule was published, the Commission elected to publish the examples for public comment prior to their incorporation in the final rule.

2. Supplemental Definitions: The rule incorporates *verbatim* several definitions contained in section 37, including that of the term "grievous bodily injury". Under section 37(e)(1), a "grievous bodily injury" includes mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to cause extended hospitalization. The final rule does not undertake to clarify these terms. However, each of the terms contained in section 37(e)(1) requires some degree of interpretation. For example, amputation could refer to soft tissue damage or to removal of bone or cartilage. The terms "severe burns" and "severe electrical shock" are susceptible to differing interpretations, as are "mutilation," "debilitating internal disorder," and "loss of important bodily functions". The term "disfigurement" raises issues of the extent of injury that must occur to meet the statutory threshold.

Since the Commission's objective is to provide manufacturers with clear guidance concerning the reporting requirements, the Commission is proposing to revise § 1116.2(b) the rule by including examples of the types of injury that constitute "grievous bodily injury". The proposed revision to the rule also makes clear that the term "grievous bodily injury" includes, but is not limited to, the examples listed in the final rule. To assure that the examples are consistent with standard commercial practice, the Commission obtained information from members of the insurance industry on the criteria taken into account in loss compensation and reinsurance in evaluating the severity of certain types of injuries.

For reinsurance purposes, certain types of injuries must be reported to reinsurers, regardless of defenses, liability limits, or insurance reserves. These include paraplegia, quadriplegia, amputation, brain or brain stem injury including coma and spinal cord injuries, blindness or serious impairment of vision, third degree burns over ten percent of the body or more, second degree burns over 60 percent of the body or more, and massive internal injuries. In addition, insurers generally consider the following types of traumatic injuries to be serious, recognizing that, unlike sections 15(b) and 37, the industry itself does not distinguish between "serious" and "grievous" injuries: Permanent paralysis or paresis, permanent brain injury to any degree or with any residual disorder, permanent loss, to any degree, of vision, hearing, sense of smell, touch, or taste, permanent facial disfigurement, non-facial scarring that results in permanent restriction of motion, permanent injury to a vital organ, to any degree, total loss or loss of use of any internal organ, injury, temporary or permanent, to more than one internal organ, multiple fractures, compound fracture of any long bone, allegations of traumatically induced disease, any back or neck injury requiring surgery, any injury requiring joint replacement or any form of prosthesis, any injury requiring 30 or more consecutive days of in-patient care in an acute care facility, and any injury requiring 60 or more consecutive days of in-patient care in a rehabilitation facility.

The Commission believes that all of the types of injuries above are examples of grievous bodily injury, and proposes to revise the rule accordingly. Based on its own expertise, the Commission has also included in the proposed revision to the rule ventricular fibrillation, neurological damage, or thermal damage to internal tissue as examples of severe electric shock. In addition, the Commission solicits public comment on any other types of injury that commenters believe may constitute "grievous bodily injury" within the meaning of section 37(e)(1).

Proposed Effective Date: The Commission proposes that this revision become effective 30 days after the date of publication of the revised final interpretative rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1116

Administrative practice and procedure, Business and industry, Confidential business information, Consumer protection, Reporting and recordkeeping requirements.

In accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2052 *et seq.*, the Commission proposes to amend part 1116 of title 16, Chapter II, of the Code of Federal Regulations as follows:

PART 1116—REPORTS SUBMITTED PURSUANT TO SECTION 37 OF THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for part 1116 continues to read as follows:

Authority: 5 U.S.C. 2055(e), 2084.

2. Section 1116.2(b) is revised to read as follows:

* * * * *

(b) *Grievous bodily injury* includes, but is not limited to, any of the following categories of injury:

(1) Mutilation or disfigurement. Disfigurement includes permanent facial disfigurement or non-facial scarring that results in permanent restriction of motion;

(2) Dismemberment or amputation, including the removal of a limb or other appendage of the body;

(3) The loss of important bodily functions or debilitating internal disorder. These terms include:

(i) Permanent injury to a vital organ, in any degree;

(ii) The total loss or loss of use of any internal organ,

(iii) Injury, temporary or permanent, to more than one internal organ;

(iv) Permanent brain injury to any degree or with any residual disorder (e.g. epilepsy), and brain or brain stem injury including coma and spinal cord injuries;

(v) Paraplegia, quadriplegia, or permanent paralysis or paresis, to any degree;

(vi) Blindness or permanent loss, to any degree, of vision, hearing, or sense of smell, touch, or taste;

(vii) Any back or neck injury requiring surgery, or any injury requiring joint replacement or any form of prosthesis, or;

(viii) Compound fracture of any long bone or multiple fractures;

(4) Injuries likely to require extended hospitalization, including any injury requiring 30 or more consecutive days of in-patient care in an acute care facility, or 60 or more consecutive days of in-patent care in a rehabilitation facility;

(5) Severe burns, including any third degree burn over ten percent of the body or more, or any second degree burn over thirty percent of the body or more;

(6) Severe electric shock, including ventricular fibrillation, neurological damage, or thermal damage to internal tissue caused by electric shock.

(7) Other grievous injuries, including any allegation of traumatically induced disease.

Manufacturers may wish to consult with the Commission staff to determine whether injuries not included in the examples above are regarded as grievous bodily injury.

Dated: July 29, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-18420 Filed 8-3-92; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Proposed Requirements for Products Containing Lidocaine or Dibucaine

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rules.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is proposing to require child-resistant packaging for products containing (1) more than 5.0 milligrams (mg) of lidocaine in a single package or (2) more than 0.5 mg of dibucaine in a single package. These requirements are proposed because the Commission has preliminarily determined that child-resistant packaging is required to protect children under five years of age from serious personal injury and serious illness resulting from ingesting such substances. Lidocaine and dibucaine are used in prescription drugs and over-the-counter drug products that are applied to the skin or mucous membranes to provide an anesthetic effect.

DATES: Comments on the proposal should be submitted not later than October 19, 1992.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 504-0800.

FOR ADDITIONAL INFORMATION CONTACT: Suzanne Barone, Project Manager for Poison Prevention, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0477.

SUPPLEMENTARY INFORMATION:

A. Background

Relevant statutes and regulations. The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations were issued requiring special packaging for a number of household products (§ 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section D of this notice. For the purposes of the PPPA, the amount of a substance "in a single package" that triggers the requirement to place the product in CR packaging refers to the total amount in a single retail unit of the substance.

One of the categories of products for which CR packaging is required is prescription drugs intended for oral administration to humans, with specified exemptions. 16 CFR 1700.14(a)(10). Drugs that are applied topically (for example, ointments, creams, sprays, suppositories, mouthwash, etc.) are not covered by the oral prescription drug standard. Where prescription drugs are subject to a special packaging standard, section 4(b) of the PPPA allows such products to be sold in non-CR packaging only when (1) directed by the prescribing medical practitioner or (2) requested by the purchaser. 15 U.S.C. 1473(b).

For nonprescription (over-the-counter, or "OTC") products subject to special packaging standards, section 4(a) of the PPPA allows the manufacturer or packer to package the product in non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging only if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

Previous Commission activities. (4) [1] In 1985, the Commission's staff reviewed ingestion data for topical prescription drugs to assess the need for CR packaging. Lidocaine, a local anesthetic, was identified as a topical drug that presented a potential ingestion hazard to young children. Local anesthetics are used to produce temporary loss of feeling to a limited area of the body by decreasing the transmission of nerve impulses in that area.

In 1985, many manufacturers of two-percent viscous prescription Lidocaine drugs were voluntarily using CR packaging on products intended to be dispensed directly to the consumer. The Commission directed the staff to pursue voluntary action to address the ingestion hazard presented by Lidocaine-containing drugs and to continue to monitor data on topical prescription drugs. In 1986, the staff sent letters to the known manufacturers of two-percent viscous prescription Lidocaine products requesting that the manufacturers (1) use CR packaging on all consumer-ready packages of two-percent viscous lidocaine products, and (2) label two-percent viscous lidocaine products intended to be repackaged by

[1] Numbers in brackets indicate the number of a relevant document as listed in appendix 1 to this notice. When a reference document that is cited in a document listed in appendix 1 is referred to, both the number of the appendix 1 document and the designation of the reference document as given in the appendix 1 document are given, *e.g.*, (1, Ref. A).

the pharmacist to advise the pharmacist to dispense the drug in CR packaging.

In 1990, the staff updated its review of the toxicity of lidocaine. The scope of the review was expanded to include other topical local anesthetics marketed for consumer use, and to include OTC products as well as prescription products. The review showed that two local anesthetics, lidocaine and dibucaine, have caused serious adverse effects, including death, following accidental ingestion by young children.

Industry practices. Lidocaine products are packaged in several different kinds of packaging. These are prescription bottles, squeeze bottles, aerosols, and tubes. Dibucaine products are packaged only in tubes.

Table I shows the number of units and market share of topical anesthetics containing lidocaine and dibucaine for each type of packaging. Estimates of unit costs to pharmaceutical manufacturers for CR packaging are included.

TABLE I.—ESTIMATED INCREMENTAL COST FOR CHILD-RESISTANT PACKAGING FOR TOPICAL ANESTHETICS CONTAINING LIDOCAINE OR DIBUCAINE (1989)

Type of packaging unit sales (percent of market)	Unit cost (dollars)	Description
Rx Bottles—0.8 million [1] (5 percent).	.01-.02	CR closure.
Aerosols—3.1 million (19 percent).	.015	CR overcap.
Squeeze Bottles—4.7 million (29 percent).	.015	CR closure with restricted orifice.
Rx and OTC Tubes—7.6 million (47 percent).	Unknown	CR closure for existing tube not on market.
Unknown—.04 million (<1 percent).		

[1] An estimated 90 percent of this market is now using CR closures.

Source: CPSC Directorate for Economic Analysis, and IMS America, Ltd.

An estimated 7.6 million collapsible tubes containing lidocaine or dibucaine cream or ointment were sold in 1989. About 85 percent contained one ounce or less. The remaining 15 percent were packaged in 1.2, 1.5, and 2.0 ounce tubes. Of the 7.6 million, 7.4 million were OTC and 0.2 million were dispensed by prescription. About 78 percent of OTC lidocaine and dibucaine creams and ointments are sold to pharmacies at $5 or less per unit, and about 93 percent of prescription lidocaine and dibucaine creams and ointments are sold to pharmacies for less than $10 each. Tube packaging represents about 32 percent of all lidocaine packaging and 100 percent of dibucaine packaging. As a result of reports of 10 cases of acute intoxication of children from oral ingestion of dibucaine-containing topical preparations over the period from 1951–1973, virtually all dibucaine preparations now contain a label warning that swallowing the product can be hazardous, particularly to children.

Lidocaine- and dibucaine-containing collapsible tubes currently in use protect the contents from contamination and moisture and enable the application of a controlled volume of medication to small areas. According to packaging industry spokespersons contacted by the Commission's Directorate for Economic Analysis, there are no known CR closures for the small (two ounces or less) pharmaceutical tubes now in use.

B. Lidocaine

Dosage and packaging. (1) The topical local anesthetic lidocaine is available in prescription and OTC preparations. The prescription formulation is a two-percent viscous solution of lidocaine that is used for anesthesia of irritated or inflamed mucous membranes of the mouth and throat. Care must be taken following the oral use of viscous lidocaine because swallowing may be impaired. It is recommended that food not be ingested for one hour following oral use because of the potential for aspiration. For adults, it is recommended for mouth pain that one 15 ml tablespoon be swished around the mouth and spit out; for throat pain, the same amount can be gargled and either spit out or swallowed. The maximum recommended single adult dose is 4.5 milligrams/kilogram (mg/kg), not to exceed 300 mg. (A kilogram weighs approximately 2.2 lb.)

For children under three years of age, it is recommended that ¼ teaspoonful be measured out and applied to the affected area with a cotton-tipped applicator. For children three years old and older, the dose is prescribed based on the weight and age of the child. The dose interval for children should be at least three hours, so as to not exceed four doses in a 12-hour period.

The OTC lidocaine products are topical first aid antiseptic/anesthetic preparations that are used to cleanse wounds and prevent infection, in addition to relieving the pain and itching due to insect bites, minor sunburn, minor cuts, and skin irritations. The OTC preparations are available in many different formulations, including creams, ointments, and liquids. The liquid preparations contain 1.5 to 2.5 percent lidocaine hydrochloride. The liquid preparations typically are packaged in 2.5 to 16 oz squeeze or pump bottles or aerosol sprays and are labeled for external use only. Creams and ointments contain 0.5 to 2.5 percent lidocaine and typically are packaged in tubes containing 1.25 oz or in 4 oz bottles (jars). These products are recommended for children two years of age and older.

Toxicity. (1) The toxicity of lidocaine has been demonstrated in animals and humans. Adverse effects have been observed in humans following both therapeutic usage and accidental overdosage. Lidocaine is readily absorbed through mucous membranes and abraded skin. The OTC preparations warn against using large quantities over raw or blistered areas or puncture wounds. The first-aid spray preparations warn against use near the mouth, eyes, ears, or other sensitive areas. Absorption of lidocaine results in systemic side effects occurring most commonly in the cardiovascular and central nervous systems. Adverse effects range from minor effects such as disorientation, dizziness, numbness, and drowsiness to major effects, including convulsions, coma, and respiratory arrest. The blood level of lidocaine that is associated with toxic effects is a concentration of over six micrograms/milliliter (μg/ml). Major adverse effects occur with blood levels over 10 μg/ml.

Animal toxicity studies were carried out with lidocaine using several different species and routes of exposure. Oral LD_{50} values for the rat and mouse are 317 mg/kg and 220 mg/kg, respectively (1, Ref. Y.) The median convulsive dose was calculated to be 75 percent of the lethal dose in one study. *Id.* The intravenous LD_{50} values were calculated to be 20–34 mg/kg in various mice studies and 25 mg/kg in the rat. *Id.* Although these animal data clearly demonstrate the high toxicity associated with lidocaine, the human experience data described below are more relevant for extrapolation to toxicity in children.

The staff is aware of nine deaths attributed to the accidental or intentional overdose of lidocaine:

- The CPSC Death Certificate file contains a report of a three-year-old child who died in 1980 after the accidental ingestion of lidocaine. The causes of death were listed as cardiac arrhythmia and degenerative brain effects. [1, Ref. AA.]
- A second death certificate reports the 1981 death of a two-year-old child after accidental overdose of a combination of two drugs, lidocaine and meperidine (a narcotic analgesic).

Additional information is not available on this case. [5a]

• The CPSC Reported Incident File contains the report of the death of an 11-month-old child, in 1984, from accidental ingestion of lidocaine. In this case, the child removed the CR closure from the product. [5b]

• The FDA Adverse Reaction Reporting System reports an accidental death, in 1979, of a 13-month-old girl who ingested a Canadian viscous lidocaine product. The blood lidocaine concentration was 20 ug/ml. [5c]

• A case reported in the literature describes the death, in 1986, of a 13-month-old body. The boy had blood lidocaine levels of 19.5 ug/ml, remained unconscious, and was mechanically ventilated for 54 days. The child had suffered respiratory arrest at home prior to hospitalization. [1, Ref. Z.]

• Two adult deaths due to intentional overdose of lidocaine are reported in the literature. In these two cases, the blood lidocaine levels were 40 ug/ml and 53 ug/ml, respectively. [1, Ref. S.]

• A case investigated by CPSC staff involved the death in 1990 of a 14-month-old girl who ingested an unknown amount of two-percent viscous lidocaine. Prior to the ingestion, the lidocaine had been applied to a diaper rash. The child had been playing with the capped bottle, and the child-resistant cap came off. The mother did not believe the drug was hazardous, because she had been told by the pediatrician to rub lidocaine on the child's gums to ease teething pain. The toxicology report revealed high levels of lidocaine in the blood (12 ug/ml) and liver.

• Another death in 1990 involved a 15-year-old girl who drank up to 480 ml of an OTC first-aid liquid containing 2.5 percent lidocaine. The cause of death was aspiration of gastric contents secondary to lidocaine intoxication. The serum lidocaine level was 18 ug/ml.

The following cases reported in the literature describe adverse effects observed in young children following therapeutic administration or accidental ingestion of lidocaine:

• A 22-month-old child, weighing 10 kg, ingested 20 to 25 ml (approximately 50 mg/kg) of two-percent viscous lidocaine. The child arrived at the hospital convulsing and not breathing. The child was successfully resuscitated, and the seizures were controlled. The child was discharged after two days with no long-term effects. [1, Ref. AA.]

• A 3½ year-old child was given one tablespoon of two-percent viscous lidocaine (approximately 21 mg/kg) for a sore throat. The dose was repeated four hours later. The child developed seizures and had a lidocaine blood level of 10.6 ug/ml. The child was transferred to Pediatric Intensive Care in respiratory distress. The child was alert approximately 10 hours following the initial seizure and was discharged the following day. [1, Ref. BB.]

• A 15-month-old boy developed seizures following the prescribed use of lidocaine. The child's lidocaine blood level was 4.9 ug/ml. [1, Ref. BB.]

• A mother used a finger to apply two-percent viscous lidocaine to an 11-month-old child's gums for teething pain, five or six times a day for a week. The child developed seizures and had a blood lidocaine level of 10 ug/ml. The child was treated in the intensive care unit and recovered after four days. [1, Ref. CC.]

The Food and Drug Administration's ("FDA's" Adverse Reaction Reporting System contains reports of two children (five months old and one year old) who developed seizures after being administered viscous lidocaine. [6] Many of the literature articles warn physicians about the hazards of prescribing lidocaine for teething pain and related symptoms in young children. In addition to the cases involving children, several cases of accidental lidocaine poisoning in adults are reported in the literature. The reported cases demonstrate extreme variability in the development of toxicity of lidocaine, with children appearing to be more sensitive to the central nervous system side effects of the drug.

For the period 1978 through April 1990, the CPSC's Children and Poisoning ("CAP") data base shows four ingestions of prescription viscous lidocaine and three ingestions of OTC lidocaine products by children under age five. [7] All seven children were treated in National Electronic Injury Surveillance System ("NEISS") hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered by the children is not available.

Data collected by the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 [8] show 176 accidental ingestions of OTC lidocaine products, 18 of which exhibited toxic symptoms. There are 28 ingestions of prescription viscous lidocaine products, with 10 showing toxic symptoms. Details of the amount of product ingested or specific toxic symptoms are not available. This data base was discontinued after 1984.

For 1990, the American Association of Poison Control Centers ("AAPCC") reported 771 ingestions of lidocaine-containing products, 43 of which produced symptoms.

Level for Regulation. The maximum level of lidocaine that does not produce serious side effects in children is not known. The recommended maximum single total dose of lidocaine for children is 5.0 mg/kg, which is approximately 50 mg in a 10-kilogram (kg) child. However, as noted above, toxic effects were reported at therapeutic dose levels. The staff lacks sufficient information to establish that the reported cases involving toxic effects at therapeutic doses involved situations where the drug was ingested by mouth (the route of administration most relevant to accidental ingestion) or that there is no possibility that the proper therapeutic dose was exceeded. It is possible, however, that a child who accidentally ingests a lidocaine preparation will already have received an intentional therapeutic dose of the preparation. In addition, the systemic toxicity of the drug is not the only hazard it presents; there is the risk of serious injury or illness caused by aspiration of substances that are swallowed while the mouth and throat are anesthetized by the drug. These considerations make it difficult to establish a package size that, if ingested by a small child, would not cause serious toxic effects.

Therefore, the staff recommended that the recommended maximum dose of lidocaine for a 10-kg child be reduced by a factor of 10 (referred to as an "uncertainty factor") in order to arrive at a level that would not cause serious injury or illness in young children. [1,4] If this is done, products containing more than 5.0 mg of lidocaine in a single package would be subject to CR packaging standards. The Commission solicits comments on whether this an appropriate level for regulating products containing lidocaine.

C. Dibucaine

Dosage and packaging. The topical local anesthetic dibucaine is available in several OTC preparations. The OTC products are creams and ointments, which are packaged in 1, 1½, and 2 oz tubes for external use only. The OTC formulations, which are used for temporary relief of painful sunburn, minor burns, scrapes, scratches, nonpoisonous insect bites, and external hemorrhoidal pain, contain 0.5 percent or 1.0 percent dibucaine. The recommended dose for adults is not to exceed one ounce (equivalent to no more than 300 mg of dibucaine) in 24 hours. The recommended dose for a child, two years of age or older, is not to exceed ¼ ounce (equivalent to no more than 80 mg of dibucaine) in 24 hours.

Toxicity. [1] Dibucaine is one of the most potent and toxic local anesthetics. Systemic toxicity of dibucaine includes serious effects on both the central nervous system and the cardiovascular system. Adverse effects can include convulsions, depression of the heart muscle, and death. Dibucaine is readily absorbed through the mucous membranes and should not be used around the eyes or mouth. Systemic absorption may occur following the application of large areas of abraded or damaged skin, or following rectal administration. The FDA disapproved the use of dibucaine in sore-throat and mouth medicines because of the possibility of systemic toxicity, combined with the ease with which dibucaine is absorbed through the mucous membranes of the mouth and throat.

The toxicity of dibucaine has been demonstrated in animals and humans. Animal studies indicate that dibucaine is lethal at three mg/kg in dogs, and one mg/kg in monkeys. The toxic dose of dibucaine in humans is not known; however, the suggested maximum adult dose is 25 mg of dibucaine.

The staff is aware of six deaths of young children resulting from ingestion of dibucaine local anesthetics and of one death resulting from the rectal use of a dibucaine ointment:

• During the 23-year period of 1951 through 1973, one manufacturer received reports of 11 cases of acute intoxications of young children from dibucaine topical preparations. [1, Refs. J, L.] Ten of the cases involved accidental ingestion; one case involved the rectal use of dibucaine ointment in a two-month-old infant. Four of the children who ingested the products, and the two-month-old infant, died. Additional details of the incidents were not provided.

• The CPSC Death Certificate File contains the report of a two-year-old child who died in 1987 after accidentally ingesting dibucaine cream. [5d] The child suffered from incoordination, was lethargic, had seizures, and could not be resuscitated from respiratory arrest. The child had a dibucaine blood level of 1.3 μg/ml.

• A second death certificate reports the death in 1988 of a 21-month-old child who accidentally ingested 22.5 grams of a dibucaine hemorrhoid ointment. [1, Ref. N; 5e] Cardiorespiratory arrest and convulsions developed. The child could not be resuscitated after suffering cardiac arrest.

Because of deaths reported from oral ingestion of dibucaine products, a warning was added to the labels of dibucaine products, stating:

• • • should not be swallowed. Swallowing can be hazardous, particularly to children. In the event of accidental ingestion, consult a physician or poison control center immediately.

In addition to the cases listed above, there are several documented incidents of unexpected death following the use of dibucaine as a spinal anesthetic. [1, Ref. G.]

For the period of 1978 through February 1990, the CPSC CAP data base shows two ingestions of dibucaine products by children under age five. [7] Both children were treated in NEISS hospital emergency rooms and released. Information on the amount of product ingested or adverse effects suffered is not available.

Data from the FDA National Clearinghouse for Poison Control Centers from 1980 through 1984 show 113 ingestions of dibucaine products, six of which exhibited toxic symptoms. [8] This data base was discontinued after 1984.

The AAPCC National Data Collection System reports general data on the ingestion of topical local anesthetics, but does not contain specific information on the identity of the individual compounds involved. Lidocaine and dibucaine creams and ointments comprise only about 0.1 percent of the topical local anesthetics market. For the five-year period 1984 through 1988, 10,330 cases of accidental ingestion of topical local anesthetics by children under age five were reported. [9] Of these cases, 883 exhibited minor-to-moderate symptoms and 10 were life-threatening or resulted in disability. The two cases that resulted in death were attributed to dibucaine, and are described above. For 1990, the Commission contracted with AAPCC to obtain data for the drugs lidocaine and dibucaine. AAPCC reported 141 ingestions of dibucaine, 3 of which involved symptoms.

A review of the literature revealed one case in which a 12-month-old infant ingested a combination of three gm of boric acid and 300 mg of dibucaine. The child developed seizures, and also vomited due to the effects of the boric acid. The child was hospitalized and recovered fully after aggressive and intensive treatment.

Level for Regulation: The high potency and toxicity of dibucaine are well known; however, an absolute level of safety for this drug is difficult to determine. Most cases of reported deaths contain little information about the concentration of the drug or the amount consumed. In the two cases where information is available, one child died after ingesting 22.5 gm of dibucaine ointment. This amount is equivalent to 225 mg of dibucaine, assuming that the more commonly used 1 percent preparation was involved. In the second case, a 10-kg child ingested 300 mg of dibucaine in combination with boric acid, which induces vomiting.

Ingestion of dibucaine results in the same types of toxicity as does ingestion of lidocaine. The differences between the two compounds are in the potency and duration of action. Less dibucaine than lidocaine is required to produce similar therapeutic or toxic effects. To arrive at an appropriate level for regulation of dibucaine, a correction factor of 10 was applied to the level for regulation derived for lidocaine. The Directorate for Health Sciences recommends that preparations containing more than 0.5 mg of dibucaine in a single package should be subject to CR packaging standards.

The Commission solicits comments on whether this is an appropriate level for regulation of products containing dibucaine.

D. Statutory Considerations

1. *Hazard to children.* Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission preliminarily finds that because of the toxic nature of lidocaine and dibucaine preparations, described above, and the accessibility of such preparations to children in the home, the degree and nature of the hazard to children in the availability of such substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances.

2. *Technical feasibility, practicability, and appropriateness.* [2] In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging conforming to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

A. *Technical feasibility.* Lidocaine and dibucaine prescription and OTC

products are presently packaged in tubes, spray containers, aerosols, and prescription containers. Aside from some lidocaine-based prescription drugs, most of the current packaging appears to be non-CR packaging. The manufacturers of most viscous lidocaine-based non-oral prescription drugs have voluntarily packaged these drugs in consumer-ready CR prescription containers, even though they are not now required to do so under the PPPA regulations. [2, Ref. 3.] For those manufacturers using non-CR packaging, various types and designs of CR packaging can be readily obtained.

CR packaging for OTC and prescription tubes can be accomplished by using commercially available bottle threads on plastic tubes. [2, Ref. 4.] This would allow the use of readily available CR continuous-threaded closures on the tube. The Commission's staff is aware of tubes now on the market that use bottle threads that could be outfitted with existing push-and-turn continuous-threaded CR closures; however, the staff does not know that such CR tubes are available in the sizes needed for lidocaine and dibucaine products. Therefore, it may be necessary for the manufacturers of products subject to the proposed rules to develop and test such packaging and incorporate such packaging into their production lines. For those manufacturers using metal tubes, a change to a plastic tube, with appropriate stability testing, may be necessary.

Another alternative for meeting a special packaging requirement with tubes is to use a commercially available CR single-use metal tube with a membrane over the opening that requires a tool to open the package. (A single-use container is one where the entire content of the container is intended to be used at one time. A unit-dose container, defined in XIV National Formulary, p. 16, is a single-use container.) In other cases, commercially available unit-dose dispensing CR pouch packaging (one application per pouch) may be used instead of a tube for applying the product.

The Commission solicits comment on the development of CR tubes and on the effects on industry and consumers if such tubes are not developed.

Technical feasibility for lidocaine prescription drug products and OTC spray containers that are presently in non-CR packaging is demonstrated by: (1) Some manufacturers are voluntarily using commercially available prescription drug CR packaging for Rx two-percent viscous lidocaine consumer-ready preparations. (2) CR packaging for OTC products that are dispensed by spraying is also commercially available.

There are numerous continuous-threaded special packaging designs that can replace the non-CR continuous-threaded closures presently being used with viscous lidocaine prescription medication and OTC spray packaging.

CR packaging for aerosols also can be readily obtained, and a number of commercially available designs could be used. Therefore, the Commission concludes preliminarily that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the forms of these products.

b. *Practicability.* Companies that are presently using CR packaging for viscous prescription drug products containing two-percent lidocaine have implemented assembly line and mass production techniques in their manufacturing processes. This shows that it is practicable to package two-percent viscous lidocaine-containing products in special packaging. No major problems from the manufacturing standpoint are anticipated in the change from non-CR to CR packaging, except for the multiple-dose tube-type packaging, which may require the use of a contract packager. As noted above, however, products currently packaged in non-CR tubes can be packaged in CR unit-dose tubes or CR unit-dose pouches.

The manufacturers of CR packaging don't anticipate any problems with supplying CR closures and containers. The major suppliers of CR packaging and materials indicate that they can supply more than the 15 million units estimated to be needed for lidocaine and dibucaine products. In most cases, manufacturers can incorporate CR packaging into their existing packaging lines. If there were any problems in modifying or obtaining new equipment, *i.e.*, capping, etc., a contract packager could be used in the interim to package lidocaine- and dibucaine-containing products. Because many existing designs suitable for use with the products that are the subject of the proposed regulation are currently being used in the packaging of other products, or can be readily developed, special packaging for this product seems practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these products or the manufacturers of CR closure and capping equipment.

c. *Appropriateness.* Information available to the staff indicates that the CR packaging of lidocaine- and dibucaine-containing products is appropriate. Some companies are presently voluntarily using special packaging for their viscous prescription drug products containing two-percent lidocaine. Other companies can utilize existing CR packaging designs and materials that are not detrimental to the integrity of the substance and do not interfere with its storage or use. Product shelf-life and integrity would not be expected to change, as it is anticipated that the same packaging materials could be used in contact with the product.

In the case of the multiple-dose CR tube packaging, however, it may be necessary, for example, to change from a metal tube to a plastic tube in order to provide a suitable mating surface for a CR cap. A major product manufacturer contacted by the Commission's staff indicated that it could find an appropriate multilayer plastic tube to replace the metal tube, but that the suitability of the new tube would have to be confirmed by protocol and product stability testing. A change from multiple-dose tubes to unit-dose CR tubes or pouches, also would require stability testing.

The Commission preliminarily concludes, therefore, that special packaging is appropriate because it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission preliminarily finds that special packaging is technically feasible, practicable, and appropriate.

3. *Reasonableness.* In establishing a special packaging standard, section 3(b) of the PPPA requires the Commission to consider the available data concerning whether the standard is reasonable. 15 U.S.C. 1472(b).

After considering the available data, the Commission concludes that there are no data that warrant a conclusion that the proposed rule is not reasonable.

4. *Other considerations.* Section 3(b) of the PPPA also requires the Commission, in establishing a special packaging standard, to consider:

a. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

b. The manufacturing practices of industries affected by the PPPA; and

c. The nature and use of the household substance. 15 U.S.C. 1472(b).

These items have been considered with respect to the various determinations made in this notice.

E. Effective date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. § 1471n. The Commission concludes that production of CR packaging can be fully implemented within a year from the publication of a final rule. Therefore, the final rule is proposed to become effective one year after publication of the final rule, as to all products subject to the rule that are packaged on or after that date.

This one-year effective date may not allow adequate time to modify or replace multiple-dose tubes if the initial design intended to be CR is found to be unsuitable. If this occurs, affected parties can apply to the Commission for a temporary exemption for the minimum period required to market their products in CR packaging. Applications for such exemptions should describe the efforts since the issuance of the final rule to implement complying package designs, explain why such efforts were diligent yet unsuccessful, and explain why additional efforts within a limited period should result in a complying package.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics prepared an Initial Regulatory Flexibility Act Analysis to examine the effect of the proposed rule on small entities. [3b] The findings of that analysis are repeated below.

Effects on manufacturers generally. [3a] Under the proposed PPPA requirement for topical preparations containing lidocaine or dibucaine, potential costs to manufacturers include: incremental costs for CR packaging, research and development costs for new designs if currently available CR packaging is unsuitable for some formulations, and costs associated with the need to obtain marketing approvals from other government agencies, *i.e.*, the Food and Drug Administration ("FDA"). Under certain circumstances, these costs may be passed on to the consumer in the form of higher prices.

Lidocaine and dibucaine are available in prescription (Rx) and over-the-counter (OTC) topical preparations packaged in prescription bottles, collapsible tubes, aerosol containers, and squeeze bottles. The effect of the PPPA requirement on small entities depends upon the dosage form of the preparation. The possible market effects for each category of packaging are discussed below. [3b]

Prescription bottles. Prescription preparations containing two-percent viscous lidocaine are shipped by manufacturers as "consumer ready" or in bulk. The CR closure requirement will affect those of the approximately 26 manufacturers/suppliers who are not now voluntarily using CR closures on preparations shipped consumer-ready. In 1986, manufactures/suppliers representing about 90 percent of the market for prescription products advised the Commission they used or would voluntarily adopt the use of CR packaging on consumer-ready preparations. Up to 55,000 independent and chain store pharmacies also would be affected if they are not now voluntarily using CR closures for preparations dispensed from bulk. The estimated incremental cost of a CR closure is about two cents per package. While the proposal to require special packaging for prescription two-percent viscous lidocaine preparations may affect many small entities, the magnitude of the impact on any individual entity is expected to be minimal.

Collapsible tubes. OTC and prescription creams and ointments in collapsible tubes represent about 47 percent of all lidocaine and dibucaine packaging. Packaging industry spokespersons contacted by the Commission's Directorate for Economic Analysis are unaware of existing appropriate types of CR closures for the small pharmaceutical tubes now in use. Manufacturers of lidocaine and dibucaine preparations may be able to adopt the use of other types and sizes of tubes which are now in use for other products and which accept available standard CR closures without adding materially to manufacturing costs. An estimated 7.4 million collapsible tubes containing lidocaine (4.1 million) or dibucaine (3.3 million) cream or ointment were sold OTC in 1989. The average retail price for these creams and ointments is about $4.50 per tube. About 0.2 million tubes containing prescription lidocaine were sold in 1989 with an average retail price of $16.00 to $50.00 (that latter price was for a lidocaine preparation in combination with another ingredient).

The OTC lidocaine preparations in tubes are produced by four manufacturers. Two of these manufacturers qualify as small manufacturers and account for about 93 percent of the sales. The effects of the CR closure requirements for these firms is unclear. However, the impact could be significant if the two large firms (with a seven percent market share) choose to expand their market share by delaying pushing forward to consumers any price increase associated with meeting the CR requirement. The less diversified small businesses, in contrast, would be more likely to find it necessary to implement the price increase immediately.

OTC dibucaine creams and ointments in tubes are produced by approximately 24 small manufacturers, who account for only four percent of sales. Their combined share of the OTC dibucaine tube market amounts to about 132,000 units, or an average of about 5,500 units each. Costs associated with the use of alternate packaging may be prohibitive, and, if so, may result in the dropping of these product lines by some small firms.

About 99 percent of prescription lidocaine in tubes is produced by one manufacturer; the remaining tubes are produced by an unknown number of other manufacturers. The impact on these manufacturers depends upon the nature of the change and on the nature of the difficulties encountered. If alternative packaging costs are prohibitive to small manufacturers (if any), they may drop this product line.

Aerosols and squeeze bottles. A PPPA requirement for topical preparations containing lidocaine or dibucaine would also affect manufacturers of about 3.1 million aerosol containers (1989 sales) and about 4.7 million squeeze bottles (1989 sales). Small firms account for about 19 percent of the annual production of aerosols and about two percent of the annual production of spray bottles. Incremental costs for CR closures are estimated at 1.5 cents per closure, or $46,000 and $70,500, respectively for aerosols and sprays.

These costs are likely to have minimal effect on small firms.

Effective date. An effective date of one year from the date the regulation is promulgated should provide an adequate period of time for manufacturers of aerosols and sprays to obtain suitable CR packaging and incorporate its use into their packaging lines. Additionally, pharmacists regularly use CR packaging on oral prescriptions dispensed from bulk and should have suitable CR packaging on hand for prescription two-percent viscous lidocaine dispensed from bulk. A one-year effective date may not allow manufacturers of creams and ointments in tubes sufficient time if unexpected difficulties are encountered in locating suitable CR packaging materials, conducting necessary testing, and obtaining FDA marketing approval. The amount of time needed depends on the nature of change from present packaging chosen by the manufacturer and the nature of the difficulties encountered. Because of this, the Commission proposes to consider requests from affected parties for temporary exemptions, where necessary.

Alternatives to the proposed rule. There are no significant alternatives to the proposed rule that would mitigate the impact (if any) on the 24 small manufacturers of OTC dibucaine creams and ointments and the two small manufacturers of OTC lidocaine preparations now packaged in tubes and still accomplish the objective of the rule. That objective is to protect children under age five from serious injury or illness arising from the accidental ingestion of lidocaine and dibucaine, about half of which is packaged in tubes.

Conclusion. For the reasons given above, the Commission concludes that the proposal to require special packaging for products containing lidocaine and dibucaine, if issued, will not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission assessed the possible environmental effects associated with the proposed PPPA packaging requirements for topical drug preparations containing lidocaine or dibucaine.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this proposed rule indicates that CR closures for lidocaine- and dibucaine-containing preparations will have no significant effects on the environment. This is because manufacturers of affected products will have time to use up existing closure inventories and will not need to dispose of them in bulk. The rule will not significantly increase the number of CR closures in use and, in any event, the manufacture, use, and potential disposal of the CR closures present the same potential environmental effects as do the currently used closures.

Therefore, because this proposed rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

H. Possible Future Changes to the PPPA Test Protocol

On October 5, 1990, the Commission proposed to amend its requirements under the PPPA. 55 FR 40856. For the purpose of determining whether a package is CR, the current regulations provide that a package must be capable of resisting opening by 85 percent of a panel of 200 children after a 5-minute test and by 80 percent of the panel after an additional 5-minute test. In order to determine that the package can be used by adults, the package must also be able to be opened and, if appropriate, properly closed with 5 minutes by 90 percent of a panel of 100 persons of ages from 18 to 45 years.

In its proposal, the Commission concluded that, if child-resistant packages were easier to use, more people would purchase and properly use CR packaging. Accordingly, the Commission proposed to substitute a panel of 100 older adults, of ages from 60 to 75 years for the panel of 18- to 45-year-olds. The Commission also proposed to reduce the time for the adults to open and, if appropriate, properly resecure the package to one minute, preceded by a 30-second period that the adults can use to become familiar with how the package operates. The Commission also solicited comment on allowing a 5-minute familiarization period in the adult test, during which the subject must open the package, before the 1-minute test. 56 FR 9181 (March 5, 1991). The Commission also stated that, if it concludes that it is not feasible to substitute a panel of 60–75-year-olds for the present panel of 18–45-year-olds, it proposed to reduce the time allowed for the adult test to 30 seconds, preceded by a 30-second familiarization period. Other amendments, intended to simplify the current child test procedures, add a procedure for determining whether the package was adequately resecured by the adults, and to ensure that the tests produced more consistent results, were also proposed.

In commenting on the current proposal, that lidocaine- and dibucaine-containing preparations be subject to CR packaging requirements, commenters are requested to inform the Commission about how the proposed changes to the PPPA test protocol would affect products containing lidocaine and dibucaine if a rule requiring these products to be in CR packaging is promulgated.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

I. Conclusion

For the reasons given above, the Commission proposes to amend 16 CFR Part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Public Law 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Public Law 93–573, sect. 30(a), 88 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14(a) is amended by adding new paragraphs (a)(20) and (a)(21), reading as follows (although unchanged, the introductory text of paragraph (a) is republished below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(2) *Lidocaine.* Products containing more than 5.0 mg of lidocaine in a single package (*i.e.*, retail unit) shall be packaged in accordance with the provisions of § 1700.15(a) and (b).

(21) *Dibucaine.* Products containing more than 0.5 mg of dibucaine in a single package (*i.e.*, retail unit) shall be

packaged in accordance with the provisions of § 1700.15 (a) and (b).

* * * * *

Dated: July 30, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of References

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Memorandum from CPSC's Directorate for Health Sciences, dated June 21, 1990 (toxicity).

2. Memorandum from CPSC's Directorate for Health Sciences, dated July 24, 1989 (technical feasibility, practicability, and appropriateness).

3. Memorandum from CPSC's Directorate for Economic Analysis, dated December 10, 1991 (a. economic information; b. regulatory flexibility analysis; and c. environmental assessment).

4. Memorandum from CPSC's Directorate for Health Sciences, dated December ——, 1991 (briefing paper, with attached memoranda).

5. Death Certificates:

a. CPSC Death Certificate File, 1981, lidocaine.

b. CPSC Injury or Potential Injury Incident File, 1984, lidocaine.

c. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base, 1979, lidocaine.

d. CPSC Death Certificate File, 1987, dibucaine.

e. CPSC Death Certificate File, 1988, dibucaine.

6. FDA Drugs and Biologics Adverse Reaction Reporting System Data Base.

7. CPSC National Electronic Injury Surveillance System Data Vase—1978 through April 1990.

8. National Clearinghouse for Poison Control Centers Data Base 1980–1984.

9. AAPCC National Data Collection System 1984–1988.

10. Memorandum from CPSC's Directorate for Economic Analysis, "Market Sketch: Topical Preparations Containing Lidocaine and Dibucaine," Oct. 2, 1990 (revised April 23, 1992).

12. Memorandum from CPSC's Directorate for Economic Analysis, "Supplemental Information on Lidocaine and Dibucaine," April 23, 1992.

13. Memorandum from CPSC's Directorate for Health Sciences, "The Amount of Lidocaine and Dibucaine in Marketed Products," April 27, 1992.

14. Memorandum from CPSC's Directorate for Economic Analysis, "Amended Economic Data: Proposal to Require Child-Resistant Packaging for Topical Preparations Containing Lidocaine or Dibucaine," dated April 27, 1992 (with revised preliminary economic assessment).

15. Memorandum from CPSC's Directorate for Health Sciences, "Additional Human Experience Data for Lidocaine and Dibucaine," April 27, 1992.

16. Memorandum from CPSC's Directorate for Health Sciences, "Supplemental Information on Lidocaine and Dibucaine," May 28, 1992.

[FR Doc. 92–18417 Filed 8–3–92; 8:45 am]

BILLING CODE 6355–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50592B; FRL–4063–7]

Heterocyclic Aldehyde Imine; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by October 5, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the new chemical substance covered in this SNUR is OPTS–50592B, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3949.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1991 (55 FR 32406), EPA issued a SNUR establishing significant new uses for heterocyclic aldehyde imine. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPTS–50592 (P–90–1624). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P–90–1624

Chemical name: Heterocyclic aldehyde imine (generic).
CAS Number: Not available.
Effective date of revocation of section 5(e) consent order: March 16, 1992.
Basis for revocation of section 5(e) consent order: The order was revoked based on the results of certain testing conducted by the PMN submitter as a requirement of the consent order. In its review of the PMN substance, EPA raised concerns for systemic toxicity, mutagenicity, and carcinogenicity for unprotected workers who could be exposed dermally to the PMN substance.

Two acute lethality and two 28–day repeated dose (subchronic) studies were conducted to help determine the potential health effects of P–90–1624. The test data demonstrate that the PMN substance, P–90–1624, does not act like nor hydrolyze into the analogue substance that was the basis of concern. The analogue substance is a known carcinogen and also produces certain systemic effects. The test data on P–90–1624 did, however, demonstrate that it is caustic and therefore, a dermotoxicant. Other effects were seen in the test

results but were attributed to testing procedure errors or as a nontoxic reaction to the dermotoxicity.

In the PMN, the submitter had stated that releases to water were not anticipated. The PMN submitter agreed to that restriction under the consent order. Three fish acute toxicity studies were submitted to address concerns for aquatic toxicity. Based on the fish test data, a new concentration of concern (COC) was established at 20 μg/L (ppb). This COC indicates a toxicity 35 times greater than the toxicity given by the original estimated COC of 700 ppb. The change to a lower COC is based on the fact that the toxicity of the hydrolysis product was not accounted for in the initial estimate. However, based on a probabilistic dilution model (PDM) estimate and an estimate of wastewater treatment removal efficiency, the Agency does not expect surface water concentrations of the PMN substance to exceed the COC more than 7 days per year. For this PMN substance, chronic toxicity is a concern only when the COC is exceeded by 20 days or more per year.

Based on the results of submitted test data, EPA can no longer support a determination that the manufacturing, processing, and use of the substance may present such an unreasonable risk to health or the environment to warrant continued regulation under section 5(e). Therefore, EPA is issuing this proposal to revoke the SNUR for P–90–1624.

CFR Citation: 40 CFR 721.1245.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.1245 [Removed]

2. By removing § 721.1245.

[FR Doc. 92–18453 Filed 8–3–92; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50580C; FRL–4063–9]

Coconut Oil Reaction Products With Tetrahydroxy Branched Alkane Esters of Trisubstituted Benzenepropanoic Acid; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by October 5, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the new chemical substance covered in this SNUR is OPPTS–50580C, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3949.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1990 (55 FR 26092), EPA issued a SNUR establishing significant new uses for coconut oil reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50580 (P–89–770). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P–89–770

Chemical name: Coconut oil reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid (generic).
CAS Number: Not available.
Effective date of revocation of section 5(e) consent order: March 6, 1992.
Basis for revocation of section 5(e) consent order: The order was revoked based on the results of specific test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health or the environment and concludes that further regulation under section 5(e) is not warranted at this time.
Toxicity testing results: An in vivo mouse micronucleus study by intraperitoneal (IP) route showed that the chemical substance is not a chromosome mutagen and an Ames assay showed that the chemical substance is not a gene mutagen. A 28–day repeated dose oral study in rats indicated that the chemical substance was slightly hepatotoxic, with a lowest-observed-adverse-effect-level of 1,000 mg/kg.
CFR Citation: 40 CFR 721.770.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.770 [Removed]

2. By removing § 721.770.

[FR Doc. 92–18454 Filed 8–3–92; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50583C; FRL–4063–8]

Phenol, 4,4'-(9*H*-Fluoren-9-ylidene)bis-; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by September 3, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the new chemical substance covered in this SNUR is OPTS–50583C, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV.

of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3949

SUPPLEMENTARY INFORMATION: In the Federal Register of August 9, 1990 (55 FR 32406), EPA issued a SNUR establishing significant new uses for phenol, 4,4'-(9*H*-fluoren-9-ylidene)bis-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking record

The record for the rule which EPA is proposing to revoke was established at OPTS–50583 (P–88–831). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name, CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P–88–831

Chemical name: Phenol, 4,4'-(9*H*-fluoren-9-ylidene)bis-.
CAS Number: 3236–71–3.
Effective date of revocation of section 5(e) consent order: January 15, 1991.
Basis for revocation of section 5(e) consent order: The consent order for the chemical substance designated as P–88–831 was revoked based on test data submitted pursuant to the terms of the order. Following the Agency's review and analysis of the submitted data, EPA determined, for purposes of section 5 of TSCA, that this substance will not present an unreasonable risk of injury to human health and that further regulation under section 5 is not warranted at this time.
Toxicity testing results: A 90–day subchronic dermal toxicity study in male and female rabbits showed that the PMN substance does not cause liver and kidney toxicity. Although pitted kidneys were observed in 2 of 10 animals at each dose level, no microscopic, clinical chemistry, or urinalysis data supported an assessment of compromised renal function.
CFR Citation: 721.1536.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, once the SNUR is revoked EPA will receive no SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 27, 1992.

Victor J. Kimm,
Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.1536 [Removed]

2. By removing § 721.1536.

[FR Doc. 92–18456 Filed 8–3–92; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–158, RM–8025]

Radio Broadcasting Services; Palmer, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pioneer Broadcasting Company, Inc., licensee of Station KWHL(FM), Anchorage, Alaska, seeking the substitution of Channel 238C1 for vacant Channel 239C1 at Palmer, Alaska, to accommodate the petitioner's pending modification application to retain its Class C status at Anchorage. (A new filing window will be opened for Channel 238C1 at Palmer upon the termination of this proceeding.) Coordinates used for Channel 238C1 at Palmer are 61–36–00 and 149–06–30.

DATES: Comments must be filed on or before September 18, 1992, and reply comments on or before October 5, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Paul J. Berman and Francis R. Hawkins, Jr., Esqs., Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–158, adopted July 14, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., Suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–18458 Filed 8–3–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–157, RM–7462]

Radio Broadcasting Services; Cleveland and Belzoni, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Larry G. Fuss, d/b/a Contemporary Communications, former licensee of Station WQAZ(FM) (now WDTL–FM), Cleveland, Mississippi, proposing the substitution of FM Channel 225C2 for Channel 224A at Cleveland, Mississippi and the modification of the license of Station WDTL–FM accordingly, and the substitution of Channel 292A for Channel 225A at Belzoni, Mississippi, and the modification of the construction permit for WJSJ(FM) accordingly. An assignment of license for Station WQAZ(FM) to Delta Radio, Inc. was consummated on March 18, 1992. Channel 225C2 can be allotted to Cleveland, Mississippi in compliance with the Commission's minimum distance separation requirements at the petitioner's present site (33–45–12 and 90–42–45). Channel 292A can be allotted to Belzoni, Mississippi, in compliance with the Commission's minimum distance separation requirements with a restriction of 8.4 kilometers (5.2 miles) southeast (33–08–06 and 90–24–58).

DATES: Comments must be filed on or before September 18, 1992, and reply comments on or before October 5, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel and Delta Radio, as follows: Barbara L. Waite, Venable, Baetjer, Howard & Civiletti, 1201 New York Ave., NW., suite 1000, Washington, DC 20005; Delta Radio, Inc., P.O. Box 159, Fayetteville, GA 30214.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–157, adopted July 13, 1992 and released July 28, 1992. Available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–18462 Filed 8–3–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 97

[PR Docket No. 92–154; FCC 92–323]

Amendment of the Amateur Service Rules to Include Novice Class Operator License Examinations in the Volunteer-Examiner Coordinator Examination System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the amateur service rules to include the preparation and administration of Novice Class operator license examinations under the volunteer-examiner coordinator (VEC) system. The proposed rules are necessary so that Novice examinations will be more efficient and lessen the chances of obtaining such licenses by fraudulent means. The effect of the proposed rules changes is to simplify and standardize the examination process.

DATES: Comments are due on or before October 9, 1992. Reply comments are due on or before November 9, 1992.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted July 13, 1992, and released July 23, 1992. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this *notice of proposed rulemaking*, including the proposed rule amendments, may also be purchased from the Commission's copy

contractor, Downtown Copy Center (DCC), (202) 452-1422, 1990 M Street, NW., suite 649, Washington, DC 20036.

Summary of Notice of Proposed Rulemaking

1. The Commission proposes to amend the amateur service rules to include the responsibility for the preparation and administration of Novice Class operator license examinations under the volunteer-examiner coordinator (VEC) examination system. Currently, there are two separate examination systems, the VEC system and the Novice system. The informal Novice system is inefficient and susceptible to various irregularities. The VEC system is the superior system.

2. It is proposed to bring all examinations under the VEC system The confusion that now exists because of the two different examination procedures will be avoided by having one standardized system. In addition, because of the safeguards that are employed in the VEC system, the potential for obtaining a license by fraudulent means would be minimized.

3. Under the proposal, all amateur operator license examinations given in the future would be administered in accordance with the rules and procedures applicable in the VEC system, including a small reimbursement fee for the cost of the examination, if the VECs and volunteer examiners (VEs) want to accept such fee. The proposed rules, however, if adopted, would not increase the Commission's cost.

4. The proposed rules are set forth at the end of the document.

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations of Novice Class operators would not be authorized to transmit any communications the purpose of which is to facilitate the business or commercial affairs of any party. See 47 CFR 97.113(a).

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1989, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burdens hours imposed on the public.

8. This *notice of proposed rulemaking* and the proposed rule amendments are issued under the authority of sections 4(f)(4) (A), (B), and (J), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (f)(4) (A), (B), and (J), 154(i), and 303(r).

9. A copy of the *notice of proposed rulemaking* will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Examinations, Radio, Volunteers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303.

Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

PART 97—[AMENDED]

2. Section 97.507(c) is revised, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d) to read as follows:

§ 97.507 Preparing an examination.

* * * * *

(c) Each telegraphy message and each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

* * * * *

3. Section 97.511 is revised to read as follows:

§ 97.511 Amateur operator license examination.

(a) Each session where an examination for an amateur operator license is administered must be coordinated by a VEC. Each administering VE must be accredited by the coordinating VEC.

(b) Each examination must be administered by 3 VEs, each of whom must hold an FCC-issued amateur operator license of the class specified below:

(1) For a Novice Class operator license examination, the administering VEs must hold Amateur Extra, Advanced, or General Class operator licenses;

(2) For a Technician Class operator license examination, the administering VEs must hold Amateur Extra or Advanced Class operator licenses;

(3) For a General, Advanced, or Amateur Extra Class operator license examination, the administering VEs must hold Amateur Extra Class operator licenses.

(c) The administering VEs must make a public announcement before administering an examination for an amateur operator license. The number of candidates at any examination may be limited.

(d) The administering VEs must issue A CSCE to an examinee who scores a passing grade on an examination element.

(e) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application to the Coordinating VEC. If telegraphy element credit is claimed under § 97.505(a)(5), the physician's certification and the patient's release on the license application, Form 610, must be completed.

§ 97.513 [Removed]

4. Section 97.513 is removed and reserved.

5. Section 97.521(c) is revised to read as follows:

§ 97.521 VEC qualifications.

* * * * *

(c) Agree to coordinate examinations for any class of amateur operator license;

* * * * *

6. Section 97.527 is amended by revising paragraph (a), by removing paragraph (c), and by redesignating paragraphs (d) through (g) as paragraphs (c) through (f) to read as follows.

§ 97.527 Reimbursement for expenses.

(a) VEs and VECs may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating an examination for an amateur operator license.

* * * * *

[FR Doc. 92-18224 Filed 8-3-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 150
Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-122-1]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS review and analysis of the environmental impacts associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-163-01 renewal of permit 91-205-01, issued on 10-22-91.	Calgene, Incorporated	July 8, 1992	Rapeseed plants genetically engineered to express an oil modification gene.	Yolo and Imperial Counties, California.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et. seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 30th day of July 1992

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-18428 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Plains Electric Generation and Transmission Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Plains Electric Generation and Transmission Cooperative, Inc. (Plains) to construct facilities to serve a cardboard recycling plant to be located on the Plains Escalante Generating Station (PEGS) site. The FONSI is based on a borrower's environmental report (BER) prepared by Plains and submitted to REA covering the proposed facilities. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the Plains BER as the environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The PEGS site is located approximately 2.0 miles northwest of Prewitt, New Mexico, in McKinley County. Plains plans to provide facilities to serve a proposed cardboard recycling plant on behalf of its member cooperative, Continental Divide Electric Cooperative, Inc. The recycling plant will receive scrap corrugated cardboard and convert into a new product to be used to make new cardboard boxes.

The following facilities and services will be provided as noted below:

(1) Plains will sell or lease 17.0 acres of land on the PEGS site for the recycling plant.

(2) Plains will construct approximately 25.0 acres of new treatment/evaporation ponds.

(3) Plains will provide approximately 13 MW of electricity and construct 4,000 feet of 13.8 kV distribution line and associated substation facilities.

(4) Plains will provide the steam requirement by constructing a reboiler heated by steam extracted from the PEGS turbine, a gas-fired package boiler for use when PEGS is down or service is otherwise interrupted and the necessary piping to deliver the steam to the recycling plant.

(5) Plains will provide approximately 350 acre feet/year of process water for the recyling plant.

(6) The owners of the recycling plant will construct up to seven buildings on the site.

(7) The owners of the recycling plant will construct approximately 2200 feet of railroad spur from the main spur line coming into the PEGS site to their proposed unloading facilities.

Alternatives considered to the project as proposed were no action and alternative means of providing services.

Based on analysis of the adopted BER, REA has concluded that the construction of the proposed facilities will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, cultural resources, or flora and fauna. In addition, REA has determined that the construction of the proposed facilities will have no effect on federally-listed threatened and endangered species or designated critical habitat or species proposed for listing or proposed critical habitat.

No other potential significant impact resulting from the construction of the proposed project has been identified.

Copies of the environmental assessment and finding of no significant impact are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Rick Precek, Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road, Albuquerque, New Mexico 87197.

Dated: July 28, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92-18427 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-15-F

Soil Conservation Service

Deadman-Bullard Watershed, OR

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Deadman-Bullard Watershed, Lake County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 SW. Third Avenue, room 1640, Portland, Oregon 97204, telephone (503) 326–2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack P. Kanalz, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Deadman-Bullard Watershed, Oregon; Notice of a Finding of No Significant Impact

The project concerns a plan for flood control.

The planned works of improvement include one flood retarding structure, six debris basins, one flood channel improvement with inlet structure, and five road crossings.

The notice of a finding of no significant impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack P. Kanalz.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: July 23, 1992.

Jack P. Kanalz,

State Conservationist.

[FR Doc. 92-18324 Filed 8-3-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[a-570-820]

Initiation of Antidumping Duty Investigation: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: James Maeder or Brian Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4929 or (202) 377–1766.

INITIATION OF INVESTIGATION:

The Petition

On July 8, 1992, we received a petition filed in proper from by the U.S. Waterworks Fittings Producers Council and its individual members, Clow Water Systems Company, Tyler Pipe Industries, Inc., and Union foundry Company (petitioners). The U.S. Waterworks Fittings Procedures Council is an *ad hoc* coalition representing U.S. producers of certain compact ductile iron waterworks (CDIW) fittings and accessories thereof. Petitioners submitted amendments to the petition on July 13, 17, 20, 22, and 24, 1992. In accordance with 19 CFR 353.12, the petitioners allege that certain CDIW fittings and accessories thereof from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and the petition is filed on behalf of the U.S. industry producing the products subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are (1) certain compact ductile iron waterworks (CDIW) fittings of 3 to 16 inches nominal diameter regardless of shape, including bends, tees, crosses, wyes, reducers, adapters, and other shapes, whether or not cement lined, and whether or not covered with bitumen or similar substance, conforming to AWWA/ANSI specification C153/A21.53, and rated for water working pressure of 350 PSI; and (2) certain CDIW fittings accessories which typically consist of a standard ductile iron gland, a styrene butadiene rubber (SBR) gasket, the requisite number of Cor-Ten steel or ductile iron T-head bolts, and hexagonal nuts, whether sold separately or together in kits (also called accessory packs), for fittings in sizes 3 to 16 inches, conforming to AWWI/ANSI specification C111/A21.11, and rated for water working pressure of 350 PSI.

The types of CDIW fittings covered by this investigation are compact ductile iron mechanical joint waterworks fittings and compact ductile iron push-on joint waterworks fittings, both of which are used for the same applications. CDIW fittings are used to join water main pressure pipes, valves, or hydrants in straight lines, and change, divert, divide, or direct the flow of raw and/or treated water in piping systems. CDIW fittings attach to the pipe, valve, or hydrant at a joint and are used principally for municipal water distribution systems.

CDIW fittings accessories are used to join mechanical joint CDIW fittings to pipes. The accessories ensure the completeness of the seal between the CDIW fitting and pipe. Mechanical joint fittings must be used with CDIW accessories. Push-on fittings do not require CDIW accessories.

CDIW fittings are classifiable under subheading 7307.19.30.00), of the Harmonized Tariff Schedule of the United States (HTSUS). Standard ductile iron glands are classifiable under HTS subheading 7325.99.10.00.3, styrene butadiene rubber gaskets are classifiable under HTS subheading 4016.93.00.00.3, T-head bolts of steel or ductile iron with hexagonal nuts are classifiable under HTS subheading 7318.15.20.90.2, T-head bolts of steel or ductile iron without hexagonal nuts are classifiable under HTS subheading 7318.16.00.80.1, and hexagonal nuts are classifiable under HTS subheading 7318.16.00.00.4.

Nonmalleable cast iron fittings and full-bodied ductile fittings are specifically excluded from the scope of this investigation. Nonmalleable cast iron fittings have little ductility and are generally rated only to 150 or 250 PSI. Full-bodied ductile fittings have a longer body design than a compact fitting because the straight section of the body is deleted to provide a more compact and less heavy fitting without reducing strength or flow characteristics. In addition, the full-bodied ductile fittings are thicker than the compact fittings. Full-bodied fittings are made of either gray iron or ductile iron, in sizes 3 inches to 48 inches, and conform to AWWA/ANSI specification C110/C21.10. In addition, compact ductile iron flanged fittings are excluded from the scope of this investigation.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

In this petition, petitioners provided two methodologies for calculating United States price (USP). Petitioners' primary methodology used a March 1992 price list of a U.S. importer of the subject merchandise as the basis for USP. In calculating USP, petitioners deducted 50 percent for U.S. value-added expenses which included speculative amounts for selling expenses. For purposes of this initiation, we have relied on petitioners' secondary methodology for calculating USP because petitioners' primary methodology may overestimate the amount of U.S. value-added expenses which should be properly deducted from USP. Petitioners' secondary methodology used IM–146 import statistics from January through April 1992, of subject merchandise from the PRC for calculating USP. No adjustments were made to petitioners' calculation using the IM–146 statistics. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review all of the bases for the petitioners' estimated dumping margins in determining BIA.

Petitioners contend that the foreign market value (FMV) of PRC-produced imports subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy (NME) countries. The PRC is presumed to be an NME within the meaning of section 771(18)(c) of the Act, and the Department has treated it as such in previous investigations (See, Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the PRC, 57 FR 29705 (July 6, 1992)). In the course of this investigation, parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the NME (see, Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty order: Chrome-Plated

Lug Nuts From the People's Republic of China, 57 FR 15052 (April 24, 1992)).

Because of the extent of central control in a NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters from the NME. Only if individual NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific rates. (See, Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, (May 6, 1991), for a discussion of the information the Department considers appropriate in this regard.)

In accordance with section 773(c) of the Act, FMV in NME cases in based on NME producers' factors of production (valued in a market economy country). Absent evidence that the PRC government determines which factories shall produce for export to the United States, for purposes of this investigation, we intend to base FMV only on those factories in the PRC which are known to produce CDIW fittings and accessories thereof for export to the United States.

Petitioners calculated FMV on the basis of the valuation of the factors of production. In valuing the factors of production, petitioners used India as a surrogate country. For purposes of this initiation, we have accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used one of the petitioners' factors for raw material inputs, energy, and labor for constructed value (CV). The raw material, energy and labor factors for producing certain CDIW fittings and accessories thereof are based on one of the petitioner's actual experience through December 1991. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by one of the petitioners.

In accordance with the hierarchy for preferred input values as set forth in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China (PRC), 57 FR 21058 (May 18, 1992) (Comment 4), petitioners first used Indian published, publicly available information to value the factors of production before resorting to unclassified information contained in U.S. government cables or to their own costs of production. Petitioners based the value of raw material costs for fluorite, limestone, silicon, and copper scrap on Indian published, publicly available information. Petitioners based the value of raw material costs for pig iron, coke, and ferrosilicon on cable information from the U.S. consulate in India.

Petitioners based raw material costs for ferrosilicon magnesium, cement lining, and bituminous coating on one of the petitioners' costs as of December 1991. Petitioners based the natural gas value on Indian published, publicly available information, labor and electricity values on cable information from the U.S. consulate in India, and the oxygen value on one of petitioners' costs of production.

Pursuant to section 773(c) of the Act, petitioners added to CV the statutory minima of 10 percent for general expenses and eight percent of profit, and a percentage of the cost of manufacture for packing expenses.

Less Than Fair Value Comparisons

As discussed in the "United States Price and Foreign Market Value" section of this notice, we have relied on petitioners' alternative methodology for calculating USP. Based on this methodology, we calculated a margin of 127.38 percent.

Initiation of Investigation

We have examined the petition on certain CDIW fittings and accessories thereof from the PRC and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain CDIW fittings and accessories thereof from the PRC are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by August 24, 1992, whether there is a reasonable indication that imports of certain CDIW fittings and accessories thereof from the PRC are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in this investigation being terminated; otherwise, this investigation will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 28, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-18337 Filed 8-3-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 10-11, 1992, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA., telephone: 508-774-6800. The meeting will begin at 10 a.m. on August 10, and reconvene at 9 a.m. on August 11.

The meeting will begin on August 10 with reports from the Council Chairman, Council Executive Director, National Marine Fisheries Service Regional Director, and Northeast Fisheries Science Center liaison, Mid-Atlantic Council liaison, and representatives from the Department of State, Coast Guard, Fish and Wildlife Service and Atlantic States Marine Fisheries Commission. Following these reports, the Herring Oversight Committee will report on a proposed management plan, including a control date. The Groundfish Oversight Committee will report on the progress of Amendment #5 to the Northeast Multispecies Plan. There will also be a report from the Monkfish Oversight Committee.

On August 11, there will be an election of officers. This will be followed by an overview of Individual Transferable Quota (ITQ) systems and possible application of an ITQ program to the scallop fishery presented by Dr. Jon Sutinen. The meeting will conclude with a report from the Scallop Oversight Committee.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: July 30, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18422 Filed 8-3-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT), and Enforcement Consultants (EC) will hold public meetings the week of August 10, 1992.

The EC meeting will convene on August 10, in the conference room of the Council office, 2000 SW. First Avenue, Suite 420, Portland OR. The EC meeting will begin at 9 a.m. The EC will then join the GMT on the afternoon of August 10 and the morning of August 11 for a joint session.

Except for a change in location on August 12, when the GMT will meet in the ODFW Director's conference room in that building, the GMT will meet in the conference room of the Pacific States Marine Fisheries Commission in the Oregon Department of Fish and Wildlife (ODFW) building, 2501 SW. . First Avenue, Suite 200, Portland, OR. The GMT meeting will begin on August 10 at 1 p.m. and adjourn at 4:30 p.m. on August 13.

The EC will begin its meeting by reviewing the draft individual quota (IQ) program and working on option packages related to enforcement issues. On the afternoon of August 10 and the morning of on August 11, the GMT will meet jointly with the EC regarding development of a proposed IQ program for the groundfish fishery. On August 11 at 1 p.m., the GMT will begin a review of stock assessment reports for several important groundfish species. This review may result in significant changes to the commercial fishing regulations in 1993. The GMT will also discuss regulations to limit by-catch of salmon in the 1993 Pacific whiting fisheries, allocation of the Pacific whiting resource among shore-based and at-sea fish processing sectors, proposed changes to trawl gear regulations, and a proposed data collection program.

Other issues of importance to the West Coast groundfish industry may also be discussed. The GMT will prepare recommendations on these issues for presentation to the Council at its upcoming September 16–18 meeting in Milbrae, CA.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 (503) 326–6352.

Dated: July 30, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18423 Filed 8–3–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX; FAR Case 91–85]

OMB Clearance Request for Service Contracting Solicitation Provision

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a new OMB clearance for Service Contracting Solicitation Provision "Identification of Uncompensated Overtime."

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Service Contracting/ Solicitation Provision "Identification of Uncompensated Overtime."

DATES: Comments may be submitted on or before October 5, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA), have agreed to revise Federal Acquisition Regulation (FAR) parts, 5, 10, 15, 16, 17, 37, 44, 46, and 52 to implement the Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting, as well as to make other revisions, primarily to part 37. One of the revisions implements the statutory requirements of section 834, Public Law 101–510, Governmentwide by adding language to FAR 15.608 concerning uncompensated overtime and a prescription at 37.105(e) for a new solicitation provision, "Identification of Uncompensated Overtime", at 52.237–XX. Although the statutory requirement applies only to DOD, both GSA and NASA have agreed the language is appropriate for Governmentwide use.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *18,200*; responses per respondent, *1*; total annual responses, *18,200*; preparation hours per response, *.50*; and total response burden hours, *9,100*.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications of justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 510–4755. Please cite OMB clearance for FAR case 91–85, Service Contracting/ Solicitation Provision "Identification of Uncompensated Overtime", in all correspondence.

Dated: July 22, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–18326 Filed 8–3–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0021]

OMB Clearance Request for Clean Air and Water Certification

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0021).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Report Control Number 9000–0021, Clean Air and Water Certification.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to improve environmental quality. Accordingly, Executive agencies must conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and the Clean Water Act (33 U.S.C. 1251, *et seq.*). The information required by the Clean Air and Water Certification is used to determine a contractor's compliance with these laws. A determination of noncompliance by the contracting officer requires notifying the agency head or designee who, in turn, notifies the Environmental Protection Agency (EPA) Administrator, or a designee, in writing. Government contracting offices use the information to determine a firm's eligibility for award of a contract and to provide information to the EPA.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 83,400; responses per respondent, 20; total annual responses, 1,668,000; preparation hours per response, .01666; and total response burden hours, 27,800.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0021, Clean Air and Water Certification, in all correspondence.

Dated: July 22, 1992.

Beverly Fayson,

Far Secretariat.

[FR Doc. 92–18327 Filed 8–3–92; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/CA(EU)–20, for the transfer of 193.5 kilograms of uranium metal, enriched to 19.95 percent in the isotope uranium–235 from the Federal Republic of Germany to Canada, for fabrication of fuel elements for the NRU reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 29, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92–18440 Filed 8–3–92; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award Intent To Award Two Cooperative Agreements Under the State Heating Oil Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make the following restricted eligibility assistance awards: DE–FC01–92EI23621, State of North Dakota; DE–FC01–92EI23623, State of Kansas.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7, it is making two (2) restricted eligibility financial assistance awards under the above listed Cooperative Agreements. The awards will total $8,850 (DOE's share is $4,423, and the recipients share is $4,427). The cooperative agreements will permit the involved states to complete and receive payment for conducting semi-monthly surveys to collect state level residential No. 2 heating oil and propane prices during the heating season. This data will provide Congress with information to be utilized in analyzing the heating fuel markets with respect to price versus cold weather spikes.

SCOPE: The objective of the proposed cooperative agreements is to analyze the heating fuel markets, during the heating season, in order to determine these States' specific program plans and individual needs for heating fuels statistics.

ELIGIBILITY: Out of a universe of 50 potentially eligible states, Congress has mandated that data be collected from only primary residential fuel consuming states. As a result of this mandate, 22 state heating oil and propane program (SHOPP) cooperative agreements were awarded in August 1991. Two (2) four-year SHOPP cooperative awards will be awarded in August 1992, one (1) to the State of North Dakota, and one (1) to Kansas. These States are identified as primary residential fuel consuming States. These States have unique qualifications and capabilities to provide the necessary information, based on their participation in this program in prior heating seasons and have established data collection relationships with heating oil distributors and refiners. Accordingly, it has been determined that the objectives of this program may only be achieved by the 22 States previously identified under U.S. DOE's Notice of Intent to Make Restricted Eligibility SHOPP Cooperative Agreement Awards (issued during July—August 1991 timeframe) and the two (2) Sates identified herein.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Nick Demer, PR–322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Operations Division "B", Office of Procurement, Assistance and Program Management.

[FR Doc. 92–18437 Filed 8–3–92; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Northwest Washington Transmission Project; Floodplain and Wetland Involvement Notification

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Floodplain and Wetland Involvement, Whatcom and Skagit Counties, WA.

SUMMARY: BPA and Puget Sound Power and Light (Puget Power) are jointly proposing to rebuild portions of their transmission systems in Northwest Washington. Under the proposal, BPA would replace its single-circuit 230,000 volt (230-kV) transmission line between the BPA Custer Substation, northwest of Bellingham, Washington, and Puget Power's Sedro Woolley Substation with a double-circuit 230-kV transmission line that may be built with a 500-kV capacity, but initially operated at 230

kV. Puget Power would replace the conductors on one 115-kV line from the BPA Bellingham Substation to the Puget Bellingham Substation, and two new 115-kV lines of approximately 1.3 miles would also be constructed from the BPA Bellingham Substation to a nearby existing 115-kV line. The rebuilt Custer-Sedro Woolley line would cross the floodplains of the Nooksack, Samish, and Skagit Rivers, as well as five other creeks, two small lakes, and associated wetlands. Several isolated wetlands would also be crossed, and wetlands are located at the Bellingham and Custer substations.

DATES: Any comments are due to the project address on or before August 31, 1992.

FOR FURTHER PROJECT INFORMATION CONTACT: John Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, (503) 230–4995.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS OR THE STATUS OF THE RELATED NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REVIEW, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The following table lists the floodplains that would be crossed, in order from north to south, along the Custer to Sedro Wooley rebuild portion of the project:

Name	Location	Tributary to	Approximate length of crossing
Nooksack River	T39N, R2E, S9	Bellingham Bay	4200'
Ten Mile Creek	T39N, R2E, S23	Nooksack River	300–500'
Squalicum Creek	T38N, R3E, S9	Bellingham Bay	250–400'
Carpenter Creek	T38N, R4E, S30	Lake Whatcom	300–400'
Olson Creek	T38N, R4E, S30	Lake Whatcom	300–400'
Mirror Lake	T37N, R5E, S30	Aqueduct	300–500'
Samish River	T36N, R5E, S7	Samish Bay	1000'
Cranberry Lake	T36N, R5E, S31	Swede Creek	1000'
Hansen Creek & Skagit River	T35N, R5E, S20	Skagit River Skagit Bay	3500'

In addition, an alternative route segment for this portion of the project would also cross the Samish River upstream of the crossing of the proposed route in T37N, R5E, section 31 and T36N, R5E, section 6. This crossing would be approximately 2000 feet in length. The other proposed actions would not involve floodplains.

The following table lists the wetlands that are within the existing corridor and the width of the existing corridor. Cowardin Classifications (USFW) are given to identify the wetland types. In general, most of the wetlands are either palustrine (P) with vegetation that is adapted to saturated conditions (EM) and are seasonally dry (C), or riverine systems/creeks (R) that are permanently flowing (H) or intermittent (C). Listed from north to south they are:

Cowardin classification	Location	Corridor width
PEMC/Custer SS	19, 20/35N–5E	Substation
PEMCd/	5/39N–2E	392.5
PEMCA/Nooksack Floodplain	9/39N–2E	*392.5
PEMCx	15/39N–2E	392.5
PEMCx/Tenmile Creek	23/39N–2E	392.5PEM
Cx/Deer Creek	24/39N–2E	392.5
PEMCx/IR Photo B–3	25/39N–E	392.5
PEMA/IR Photo B–3	31/39N–3E	392.5
POWH/IR Photo B–3	31/39N–3E	392.5
PSSC/IR Photo B–4	32/39N–3E	*392.4
PEMA/IR Photo B–5	5/38N–3E	*392.5
PEMC/IR Photo B–7	4/38N–3E	392.5
PEMA/IR Photo B–8	9/38N–3E	392.5
R3OWH/Squalicum Creek	9/38N–3E	392.5
PEMC/Pasture	9/38N–3E	400
PEMC/Bellingham Substation	10/38N–3E	*Substation
R3OBH/Outlet from Toad Lake	15/38N–3E	400
R4SBC/Squalicum Creek	24/38N–4E	400
R4SBC (X4) Olsen & Carpenter Creek	30/38N–4E	400
R4SB/Smith Creek	33/38N–4E	400
PFOC/Mirror Lake	30/37N–5E	400
R3UBH (x3)	31/37N–5E	262.5
R3UBH/Trib. to Samish River	6/36N–5E	262.5
PFOC/Samish River Floodplain	7/36N–5E	262.5
R3UBH (x2) Mill Creek	18/36N–5E	262.5
R3UBH (x2) Thunder Creek	19/36N–5E	275
PSSC/Cranberry Lake	6/35N–5E	262.5
PABF/Trib. to Hansen Creek	7/35N–5E	262.5
R3UBH (x3)/Brickyard & Hansen Creek	7/35N–5E	262.5
PEMCx/Brickyard Creek	18/35N–5E	262.5
PFOC/Hansen Creek	20/35N–5E	262.5

All of the wetlands along the corridor north of Bellingham were observed on infra-red photographs. Wetlands south of Bellingham were identified from National Wetland Inventory maps. Asterisks indicate the wetlands that will be physically impacted by the proposed activity.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain/wetlands assessment on this proposed action. This floodplain/wetlands assessment will be included in the Draft Environmental Impact Statement (EIS) and the Floodplain Statement of Findings will be included in the Final EIS to be prepared for the project. The Notice of Intent to prepare an EIS was published in the **Federal Register** on November 15, 1991, scoping meetings were held in February 1992, and the Draft EIS is scheduled to be circulated for public review and comment in March 1993. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on July 22, 1992.

John S. Robertson,

Deputy Administrator.

[FR Doc. 92-18436 Filed 8-3-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 11169-000 North Carolina]

H & H Properties; Notice of Availability of Environmental Assessment

July 28, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Avalon Dam Project located at the existing dam on the Mayo River, near Rockingham County, North Carolina, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18342 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-647-000]

Central Illinois Public Service Co., Notice of Filing

July 29, 1992.

Take notice that on July 21, 1992 Central Illinois Public Service Company (Central Illinois) tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18343 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-579-000]

Consolidated Edison Company of New York, Inc., Notice of Application for Blanket Certificate and Request Under Blanket Authorization

July 28, 1992

Take notice that on July 6, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) of Four Irving Place, New York, New York 10003, filed an application under Section 7 of the Natural Gas Act and Sections 157.23 and 284.224 of the Commission's Regulations (Regulations) for a blanket certificate of public convenience and necessity.

Con Edison requests authority: (1) to make sales in interstate commerce for resale of natural gas subject to the Commission's NGA jurisdiction without rate and source restrictions and (2) to sell, transport, and assign gas pursuant to Section 284.224 of the Regulations upon the same terms and conditions as apply to intrastate pipelines. Con Edison requests pregranted authority to abandon sales made pursuant to the first authorization, waiver of parts 154 and 271 of the Regulations and assurance that the requested authorizations will not impair Con Edison's NGA Section 1(c) exemption from the Commission's jurisdiction with respect to activities other than those conducted pursuant to the requested authorizations, all as more fully set forth in the application.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before August 11, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or petitions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Con Edison will not have appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18358 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-207-000]

Equitrans, Inc., Notice of Proposed Changes in FERC Gas Tariff

July 29, 1992

Take notice that Equitrans, Inc. ("Equitrans"), on July 27, 1992 filed the following tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 1
Second Revised Sheet No. 12
First Revised Sheet No. 177E
Original Sheet No. 177F

Equitrans states that the purpose of the filing is to reflect Tennessee Gas Pipeline Company's ("Tennessee") June 30, 1992 filing to recover new transition demand costs, effective July 1, 1992. Equitrans states that Tennessee's filing is the first upstream take-or-pay direct billing filing directed toward Equitrans.

Accordingly, Equitrans is submitting tariff sheets to implement "as-billed" flowthrough in accordance with Order Nos. 528 and 528-A. The total amount of

Tennessee billings to be recovered by Equitrans is $50,472 over a 24 month period. Equitrans requests an effective date of August 1, 1992, and further requests that any and all waivers necessary be granted to make the filing effective on August 1, 1992.

No additional filing to recover take-or-pay costs of upstream pipelines are anticipated by Equitrans.

Equitrans states that copies of this filing are being served upon Equitrans' customers as well as interested state commissions.

Any person desiring to be heard or protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18353 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

Docket No. RP88-259-056

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

July 29, 1992

Take notice that Northern Natural Gas Company (Northern), on July 24, 1992, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, proposed to be effective January 17, 1992:

Sub Thirty-Fifth	Revised Sheet No.	86
Sub Forty-Seventh	do	88
Sub Twenty-Fifth	do	94
Sub Twenty-First	do	95
Sub Twenty-Fourth	do	98
Sub Twenty-Seventh	do	99
Sub Twenty-Third	do	100
Sub Twentieth	do	105
Sub Fourteenth	do	105A
Sub Twentieth	do	110
Sub Eighteenth	do	111
Sub Nineteenth	do	112
Sub Twentieth	do	113
Sub Twentieth	do	114
Sub Fifteenth	do	123
Sub Fifth	do	126
Sub Fourth	do	127
Sub Fourth	do	128
Sub Third	do	129
Sub Sixth	do	130
Sub Sixth	do	131

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued July 10, 1992, in Docket No. RP88-259-052. Northern further states that copies of the filing have been mailed to each of its customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18355 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-85-008]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

July 29, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 27, 1992 tendered for filing the tariff sheets listed on appendix A attached to the filing, to its FERC Gas Tariff, Original Volume No. 1-A.

Panhandle proposes that the tariff sheets listed on appendix A become effective September 1, 1992.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled Village of Pawnee, Illinois, et al., vs. Panhandle Eastern Pipe Line Company, in the subject docket. Under the terms of the Agreement, certain small Customers as defined in article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. The tariff sheets listed on appendix A reflect these adjustments in the monthly base period for each Small Customer. These tariff sheets also reflect abandonments of firm sales service authorized by the Commission, as more fully described in the filing.

Panhandle states that copies of this filing have been forwarded to all customers subject to the tariff sheets and the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18345 Filed 8-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-162-001]

Superior Offshore Pipeline Co.; Notice of Compliance Filing

July 29, 1992.

Take notice that on July 24, 1992 Superior Offshore Pipeline Company ("SOPCO"), filed the following listed tariff sheets for inclusion in its First Revised Volume No. 1 of its FERC Gas Tariff in compliance with FERC "Order Accepting and Suspending Certain Tariff Sheets Subject To Refund And Conditions, Rejecting Certain Tariff Sheets, Requiring Refiling Of Tariff Sheets, And Denying Motion To Consolidate," dated June 26, 1992:

1. SOPCO states that all tariff sheets are revised to include in the pagination title the term "Original" on sheet to conform with the pagination on the electronic version of the tariff and to delete reference in the electronic version

the statement that the sheets were issued to comply with the Commission order in Docket No. RM91–11–000.

2. First Revised Sheet No. 2 Superseding Original Sheet No. 2.

3. First Revised Sheet Nos. 13, 25, and 26 Superseding the respective Original Sheets.

4. First Revised Sheet Nos. 14 and 15 Superseding the respective Original Sheets.

5. First Substitute Original Sheet No. 20 Superseding Original Sheet No. 20.

6. First Substitute Original Sheet No. 22 Superseding Original Sheet No. 22.

7. First Revised Sheet No. 35, Paragraph 2.2 and First Revised Sheet No. 36, Paragraph 3.2 Superseding the respective Original Sheets (and adding the respective extension sheets, 35a and 36a).

8. First Revised Sheet No. 47 superseding Original Sheet No. 47.

9. Sheet Nos. 53, 54, and part of Sheet No. 55 have been deleted and reserved for future use.

First Substitute Original Sheet No. 53 Superseding Original Sheet Nos. 53 and 54 has been inserted.

First Revised Sheet No. 55 is being submitted to reflect only Section 17 of the General Terms and Conditions.

10. First Revised Sheet Nos. 76 through 78 Superseding the respective Original Sheets are submitted (and Original Sheet Nos. 78a, 78b, 78c, 78d, and 78e have been added) to provide a complete list of Index of Purchasers as directed by appendix B of the June 26 Order.

SOPCO states that copies of the filing were served on SOPCO's customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18344 Filed 8–3–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–52–000]

Viking Gas Transmission Co.; Prefiling Conference

July 28, 1992.

Take notice that a prefiling conference will be convened in this proceeding on August 27, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, Hearing Room 1, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of the proposal submitted by Viking Gas Transmission Company to comply with Order No. 636.

All interested parties are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18359 Filed 8–3–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–39–NG]

CNG Trading Co., Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada, Mexico and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CNG Trading Company blanket authorization to import up to 200 Bcf and export up to 200 Bcf of natural gas from and to Canada, Mexico and other countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18443 Filed 8–3–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–38–NG]

CNG Producing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada, Mexico and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CNG Producing Company blanket authorization to import up to 200 Bcf and export up to 200 Bcf of natural gas from and to Canada, Mexico and other countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18444 Filed 8–3–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–52–NG]

Continental Energy Marketing, LTD.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Continental Energy Marketing Ltd. blanket authorization to export to Canada a total of 75 Bcf of natural gas over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.
Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Fuels.
[FR Doc. 92-18442 Filed 8-3-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 92-45-NG]

Cornerstone Natural Gas Co.; Order Granting Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cornerstone Natural Gas Company (Cornerstone) authorization to import up to 100 Bcf of natural gas and export up to 100 Bcf of natural gas from and to Canada and Mexico, over a two-year term beginning on the date of first delivery after October 4, 1992, the date Cornerstone's current authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 29, 1992.
Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
[FR Doc. 92-18445 Filed 8-3-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 92-42-NG]

Kimball Energy Corporation; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Kimball Energy Corporation blanket authorization to export to Mexico a total of 75 Bcf of natural gas over a two-year term beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1992.
Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
[FR Doc. 92-18441 Filed 8-3-92; 8:45 am]
BILLING CODE 6450-01-M

Western Area Power Administration

Floodplain/Wetlands Involvement Determination for the Casper Area Transmission Line Modifications Project: Natrona and Carbon Counties, WY

AGENCY: Western Area Power Administration, DOE.
ACTION: Statement of findings.

SUMMARY: The Western Area Power Administration (Western) proposes to remove several transmission line and telephone line segments located in Carbon and Natrona Counties, Wyoming. Many of the transmission lines were constructed to link the Seminoe, Kortes, and Alcova powerplants with the 115-kilovolt (kV) and 69-kV transmission line systems serving Casper, Wyoming, and surrounding areas. Currently, the powerplants, are linked to the power grid through a system of upgraded transmission lines built by Western in the late 1970's and early 1980's.

Western is now proposing to remove abandoned and obsolete segments of this system including about 48-miles of transmission line supported on wood-pole H-frame structures, and 30-miles of phone line supported on single wood poles. Approximately 1,090 structures would be removed, sixty-seven of which are located in the apparent 100-year floodplain of the North Platte River. According to 10 CFR 1022.3(b), DOE shall incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decision making processes. Executive Order 11988, "Floodplain Management," states that if an agency proposes to allow an action to be located in a floodplain, the agency is required to consider alternatives to avoid adverse effects in the floodplain. Therefore, Western prepared a Floodplain/Wetlands Assessment for the project. Executive Order 11990, "Protection of Wetlands," requires a finding (1) that there is no practicable alternative to such construction and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

The North Platte River supports riparian habitat along much of its length. At the transmission line crossings vegetation is comprised of a narrow band of willows and cottonwoods. Much of the historic floodplain is currently irrigated pastureland.

Access to most of the transmission lines and telephone lines is provided by existing construction and operational maintenance trails. Construction activity associated with pole removal involves passenger vehicles, cable winding equipment, and truck-trailers large enough to haul out the 65- to 75-foot poles. Construction would be timed and coordinated with local authorities to minimize impacts on local traffic.

It would not be necessary for equipment to cross the North Platte River except at existing roads and bridges. Therefore, adverse impacts such as sedimentation or channel bank destabilization, or destruction of wetlands or riparian habitat are not anticipated for this project.

No new trails or staging areas would be allowed unless the contractor obtains necessary permits from the Bureau of Land Management. Staging or access in or along floodplains, especially in areas containing riparian or wetland vegetation, would be prohibited. Construction would be coordinated with landowners to minimize impacts on irrigated land.

Given the proposed action and mitigation measures, alternative actions were not considered necessary or practical. The proposed action would have a positive or beneficial impact on visual resources and land use along the North Platte River.

The proposed action, removal of transmission line structures and conductor, and removal of telephone poles, would not affect existing drainage patterns or flood storage volume. No watercourses would be altered or relocated as a result of the project. Riparian and wetland vegetation associated with the North Platte River would not be affected.

The notice of floodplain/wetland involvement for the proposed action was published in the **Federal Register** on Thursday, March 12, 1992 (Vol. 57, No. 49, page 8751). No comments were received regarding the proposed action.

Prior to implementing the proposed action, Western will endeavor to allow at least 15 days of public review after the date of publication of this statement of findings.

FOR FURTHER INFORMATION OR COPIES OF THE FLOODPLAIN/WETLANDS ASSESSMENT CONTACT:

Mr. Robert H. Jones, Acting Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (303) 490–7200.

Mr. Bill Karsell, Director, Division of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1706.

Issued at Golden, Colorado, July 21, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92–18438 Filed 8–3–92; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 91-2; DA 92-1028]

Information on Application Filing Procedures for the Interactive Video and Data Service

Released: July 31, 1992.

On January 16, 1992, the Commission adopted a Report and Order (R&O) in GEN Docket No. 91–2 establishing an Interactive Video and Data Service (IVDS) under Part 95 of its Rules (47 CFR part 95). In the R&O the Commission stated that it would announce by Public Notice the date on which it would begin accepting applications for IVDS system licenses as well as other pertinent information concerning licensing IVDS systems. On July 17, 1992, the Commission released a Public Notice opening a filing window for service area #1. The purpose of this Public Notice is to establish an IVDS application filing window and explain the filing procedures necessary for filing application for an IVDS system license in service areas #2 (Los Angeles, CA), #3 (Chicago, IL), and #4 (Philadelphia, PA). For a description of the service areas see the Commission's January 24, 1992, Public Notice, Report No. 92–40.

Applications for an IVDS license for these three service areas must be received at the official filing location listed herein during the three-day filing period beginning September 1, 1992, and ending September 3, 1992. Applications received before September 1, or after September 3, 1992, will be dismissed as untimely filed. The back-up filing procedure and the extra day policy do not apply to IVDS applications.[1]

Note: Applicants may have an interest in only one application in each service area.

All applications must be filed on FCC Form 155 (a separate application is required for each service area) and each application must be accompanied by a separate check made out to the Federal Communications Commission or FCC in the amount of $1,400.00. Failed payment or postdated checks will result in the application being dismissed with prejudice. In Section I of Form 155, the "Applicant Name" block must include the applicant's name (either typed or printed) followed by the signature (original) of an individual authorized to sign the application. The mailing address should be the address to which the applicant wishes official correspondence sent. The number of the service area being applied for (either "002", "003", or "004") must be specified in the box labeled "Call Sign". The fee type code entered in Column (A) must be "PAI", the fee multiple in Column (B) must be "40", and the fee due in column (C) must be $1,400.00. Each individual application (Form 155) and accompanying check ($1.400.00) must be in an individually sealed envelope and properly addressed (see mail-in address). Multiple applications, properly packaged, may be delivered in one larger, properly addressed container.

The Commission's official filing location for these applications is Mellon Bank in Pittsburgh, PA. Applications may be delivered to Mellon Bank in one of two ways, either mailed in or walked in.

Mail-ins

Filings mailed in must be mailed to: Federal Communications Commission, Interactive Video and Data Service, P.O. Box 358365, Pittsburgh, PA 15251–5365. (This address must be used on the individually sealed envelopes.)

Walk-Ins

Pursuant to the provisions of 47 CFR 0.401(b)(2), applications may be hand-delivered. Applications hand-delivered must be in a sealed envelope with the mail-in address specified above on its face. A separate envelope is needed for each application and accompanying check. Hand-delivered applications must be delivered to One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA. 15258 anytime between 12:01 a.m. September 1, 1992, and 11:59 p.m. September 3, 1992.

The street entrance to the Window Filing location is on the Grant Street side of the building (across from the US Air ticket office). Signs will be posted in both One Mellon Bank Center and Three Mellon Bank Center indicating the Filing Window location. The "deliverer" should proceed directly to the street entrance described above and identify himself (herself) as having applications for the IVDS filing window. If a copy is proffered for stamping, one receipt only will be date stamped per application and returned.

CAUTION: The filing instructions incorporated in this Public Notice are only in effect for the purposes stated herein. These procedures override any other procedures that may be set forth in the Commission's Rules. Failure to follow the filing procedures specified herein will render an application unacceptable for filing. Such an application will be dismissed with prejudice.

After the filing window has closed the Commission will issue a Public Notice as soon as feasible listing the applications filed for these three service areas. In the event the Commission receives more than two acceptable applications for an IVDS system license for any of the service areas, all the applications for that particular service area will be considered mutually exclusive. The Commission will use a lottery conducted in accordance with 47 CFR 1.972 to choose among mutually exclusive applications. If a lottery is necessary, the Commission will announce by Public Notices (1) when a lottery will be held and (2) the lottery winners (tentative selectees). Tentative selectees will then have two business days from the date of the Public Notice announcing the winners to file an FCC Form 574 (plus required showings) amending their original application. The burden will be on the tentative selectees to provide all necessary information. If for some reason one or both of the tentative selectees' applications in a service area are dismissed, the Commission will open another filing window for that service area.

While the Commission intends to open all 734 service areas as quickly as possible, it will not issue system licenses until the first IVDS transmitter has been type accepted for operation in

[1] The back-up filing procedure enables certain applicants to file late if they follow certain procedures and if their applications are lost or delayed in transit to Pittsburgh, Pennsylvania. The extra day policy allows certain applicants to file one day after the filing deadline. These policies, however, only apply to time critical, feasible applications previously filed in Washington, DC, and IVDS applications, which are new, have never been filed in Washington. Thus, if an IVDS application is received in Pittsburgh on September 4, 1992, the day after the filing window closes, or thereafter (regardless of the reason for delay), the application will be dismissed as untimely filed.

this service. Moreover, it is important to remember that an applicant that has been awarded an IVDS system license must meet certain construction benchmarks or automatically lose the license. Further an IVDS system licensee is prohibited from transferring the license until the 5-year construction benchmark has been met.

For further information contract Consumer Assistance Branch, 717–337–1212.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18584 Filed 8–3–92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–011381.

Title: United Yacht Transport Joint Service Agreement.

Parties: Dock-Express Shipping B.V. Wijsumuller Transport Holding B.V.

Synopsis: The proposed Agreement will permit the parties to establish a joint service in the trade between all ports in the United States, including Puerto Rico and the U.S. Virgin Islands, and worldwide ports.

By Order of the Federal Maritime Commission.

Dated: July 29, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–18336 Filed 8–3–92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Memorandum to Administrative Law Judges of the Departmental Appeals Board; Delegation of Authority To Conduct Hearings and Render Decisions on Civil Monetary Penalty Cases Brought Under Section 1140 of the Social Security Act

I hereby delegate to any and all administrative law judges in, assigned to, or detailed to, the Departmental Appeals Board, my authority to conduct hearings and to render decisions with respect to the imposition of civil monetary penalties under section 1140 of the Social Security Act, 42 U.S.C. 1320b–10.

This delegation includes, but is not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and documents, to examine witnesses, to exclude or receive and give appropriate weight to materials and testimony offered as evidence, to make findings of fact and conclusions of law, and to determine whether civil monetary penalties should be imposed. The determinations by the administrative law judge are final unless reviewed by a member or members of the Departmental Appeals Board.

This delegation is effective upon date of signature.

Dated: July 24, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–18366 Filed 8–3–92; 8:45 am]

BILLING CODE 4110-60-M

Memorandum to Chair and Members of the Departmental Appeals Board; Delegation of Authority to Conduct Hearings and Render Decisions on Civil Monetary Penalty Cases Brought Under Section 1140 of the Social Security Act

I hereby delegate to the Chair and Members of the Departmental Appeals Board my authority to make final determinations with respect to the imposition of civil monetary penalties on review of, or by declining to review, initial decisions of administrative law judges relating to section 1140 of the Social Security Act, 42 U.S.C. 1320b–10.

This delegation is effective upon date of signature.

Dated: July 24, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–18367 Filed 8–3–92; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 92D–0276]

Formatting, Assembling, and Submitting New Animal Drug Applications; Draft Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a draft document entitled "Guideline for Formatting, Assembling, and Submitting New Animal Drug Applications," prepared by the Center for Veterinary Medicine (CVM). This draft guideline discusses the submission of new animal drug applications (NADA's) under the revised format included in FDA's proposed rule to revise the agency's NADA regulations.

DATES: Written comments by October 5, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: CVM is providing an opportunity for comment on a draft guideline entitled "Guideline for Formatting, Assembling, and Submitting New Animal Drug Applications." The draft guideline has been developed for use by sponsors of NADA's. It is intended to improve the quality of applications filed for approval of new animal drugs, and consequently, facilitate a more efficient review of the applications by the agency. The draft guideline tracks the format included in

FDA's proposed rule to revise its regulations governing the approval, disapproval, and withdrawal of approval for marketing of new animal drugs (56 FR 65544, December 17, 1991). Persons planning to submit an NADA, however, should be aware that neither this guideline nor the proposal will become effective unless and until the final rule has been published in the **Federal Register**.

For reasons of style, this draft guideline is written as if the proposed rule had been promulgated. FDA emphasizes, however, that this draft guideline does not indicate in any way that the proposed rule or a new rule governing the submission and review of NADA's will be promulgated. This draft guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits on or for any private person. Where the guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline. If in any way the guideline is inconsistent with the proposed rule or the preamble to the proposed rule, the text of the proposed rule or the preamble to it would govern.

Interested persons may submit written comments on the draft guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18391 Filed 8-3-92; 8:45 am]

BILLING CODE 4160-01-F

Public Health Service

Indian Health Service; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HG (Indian Health Service) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (52 FR 47053-67, December 11, 1987, as amended most recently at 57 FR 4051, February 3, 1992), is further amended to reflect the following changes in the organization and functions of the Indian Health Service (IHS). These changes in the IHS headquarters' offices will: (1) Establish an Office of Human Resources and (2) transfer the functions and staff from the Division of Personnel Management, Office of Administration and Management and the Division of Health Professions Recruitment and Training, Office of Health Programs to the Office of Human Resources within the Office of the Director, IHS.

The Office of Human Resources will recruit, develop and maintain a competent work force appropriately assigned to carry out the IHS mission. The changes will relocate major human resource components within a single organization that reports to the Director, IHS. The Office will provide leadership and accountability of agency personnel requirements, recruitment, management, and training and development objectives and activities to support the Agency's mission.

Under section HG.10. Organization, after the *Office of Information Resources Management (HGA8)*, insert the *Office of Human Resources (HGAB).*

Under Section HG. 20. Functions, amend the statement for the Indian Health Service (HG) as follows:

(1) After the statement for the *Division of Systems Management (HGA86)* add:

Office of Human Resources (HGAB)

The Office: (1) Advises the Director, IHS, on human resource goals, objectives, policies, and priorities of the agency and the human resources profession;

(2) Provides leadership, direction, and oversight of agency-wide human resource activities that support the IHS organization and programs;

(3) Develops and maintains strategic and operational human resource plans to ensure a current and future work force for management, program delivery, and administrative support systems;

(4) Furthers the agency's Indian Preference policy goals by ensuring qualified Indian candidates for positions in the IHS, including placement of Indian professionals supported by agency training programs;

(5) Develops, promulgates, and administers agency human resource policies, guidelines, and instructions in accordance with Office of Personnel Management, Department of Health and Human Services, and Public Health Service policies;

(6) Ensures consistency in recruitment, training, and development applications, approaches, and outcomes by administering an agency-wide human resource system of functional responsibility, authority, and accountability;

(7) Issues standards to monitor and evaluate all IHS training and development activities and ensures that expenditures for recruitment, training, and development support the agency's mission and goals;

(8) Provides agency-wide policy guidance, consultation, and technical assistance on all IHS human resources activities;

(9) Manages agency work force information and conducts analyses, including trends analysis and forecasting necessary for agency human resource planning, management, and evaluation;

(10) Administers an agency-wide information clearinghouse on human resources recruitment, training, and development that serves all IHS organizations and tribal health programs;

(11) Directs the agency-wide scholarship, loan repayment, professional recruitment and retention, training, and development systems;

(12) Directs personnel management operations and services for Headquarters organizational units;

(13) Ensures a safe, healthy, and productive work environment for IHS personnel to carry out their assigned duties and responsibilities, and that human resource factors are part of the agency's decision making processes;

(14) Establishes and maintains liaison and coordination with a variety of public and private organizations to provide the IHS with up-to-date human resource management, training, and development technologies;

(15) Ensures that organization and program changes involve assessments of appropriate human resource requirements, including work design, knowledge, skills, abilities, and work load;

(16) Prepares reports and studies reflecting IHS human resource activities in response to the Congress, other Federal agencies, and tribal governments.

(2) Under the heading *Office of Administration and Management (HGA2),* delete the statement and insert the following:

Office of Administration and Management (HGA2)

(1) Provides advice and support to the Director in management and policy formulation and execution;

(2) Provides IHS-wide administrative leadership, direction, and coordination of all phases of management;

(3) Directs IHS activities in the areas of administration and management policy including: Internal control reviews, records management, third party reimbursement, delegations of authority, procurement, personal property accountability and management, and administrative services;

(4) Directs the contract and grants management activities;

(5) Directs the resource management activities including the allocation and fiscal control of resources;

(6) Directs budget formulation activities and execution; and

(7) Manages the fiscal management activities.

(3) Under the heading *Office of Health Programs (HGA5)*, delete the statement and insert the following:

Office of Health Programs (HGA5)

(1) Advises the Director, IHS, on policy formulation on the operation and management of health programs;

(2) Provides Service-wide leadership in health programs in relation to IHS goals, objectives, policies, and priorities;

(3) Provides consultation and technical assistance to all operating and management levels of the IHS and Indian tribes in the design and implementation of health management and health delivery systems;

(4) Provides guidance and support to all field activities related to the day-to-day delivery of health care;

(5) Develops and implements contract health and Medicare and Medicaid functions into the comprehensive health program through setting medical priorities, quality care oversight, operations planning, and health program evaluations;

(6) Provides leadership and direction for quality assurance activities; and

(7) Represents IHS health programs to agencies outside IHS, including international health agencies.

Under Section HG. 30. Delegation of Authority, delete the statement and insert the following:

All delegations and redelegations of authority to the Associate Directors of the Offices of Administration and Management and Health Programs pertaining to the Divisions of Personnel Management and Health Professions Recruitment and Training, respectively are now vested in the new position of the Associate Director of the Office of Human Resources insofar as the delegations relate to functions assigned by this reorganization.

All other delegations and redelegations of authority which were in effect immediately prior to this reorganization and which are consistent with this reorganization shall continue in effect pending further redelegation.

Dated: July 24, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-18365 Filed 8-3-92; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-030-92-4350-08]

The Availability of the Uncompahgre Basin Resource Management Plan Amendment Environmental Assessment and Draft Finding of No Significant Impact (FONSI)

AGENCY: Bureau of Land Management, Interior.

ACTION: Pursuant to the National Environmental Policy Act of 1969 (40 CFR 1550.2) and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM), Montrose District, has prepared the Uncompahgre Basin Resource Management Plan Amendment Environmental Assessment. This document is now available to the public for a thirty (30) day protest period.

SUMMARY: An environmental assessment and draft FONSI for an amendment to the Uncompahgre Basin Resource Management Plan has been prepared and is now available to the public. This amendment will change the current land use plan and other related documents for managing BLM administered lands for the next 10 to 12 years. Located in west-central Colorado, the Uncompahgre Basin planning area (UBRA) encompasses 483,077 acres of federal surface estate and a total of 755,923 acres of federal subsurface mineral estate within Montrose and Delta Counties. Persons or organizations, who participated in this process and believe that approval of the amendment would be in error, may protest. Protests must be in writing and should be sent by certified mail, return receipt requested, to the Director (760), Bureau of Land Management, 1849 "C" Street, NW., Washington, DC 20240. At a minimum, the protest must contain the following:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the Uncompahgre Basin Resource Management Plan Amendment Environmental Assessment being protested. To the extent possible, this should be done in reference to specific pages, paragraphs, sections, tables, maps, etc., included in the document.

4. A copy of all documents addressing the issues that you submitted during the process or a reference to the date the issue or issues were discussed by you for the record. Only those persons or organizations who participated in this planning process leading to the amendment may protest.

5. A concise statement explaining why the Director's proposed decision to approve the plan amendment is believed to be incorrect. As much as possible, reference or cite the planning documents, environmental analysis documents, and/or available planning records (e.g., meeting minutes, correspondence, etc.). A protest that only expresses disagreement with the Director's proposed decision without any supporting data will not be considered.

DATE: Protests must be received in writing by September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Copies of the Environmental Assessment are available, upon request by writing, from Uncompahgre Basin Resource Area, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401 or by calling James Sazama, Supervisory Range conservationist, at (303) 249-6047.

SUPPLEMENTARY INFORMATION: Highlights of the Uncompahgre Basin Resource Plan Amendment Environmental Assessment are as follows:

1. All public land in the planning unit (483,077 acres) would be designated as suitable for having fire used as a management tool.

2. Prior to a prescribed burn being completed, a site specific environmental analysis would be completed and approved along with a Burn Plan.

3. Public input and involvement would be solicited on all burns as part of the environmental analysis.

4. A burning permit would also be obtained from the State of Colorado for each prescribed burn.

5. This amendment would not eliminate or reduce any of the planning, public notification, or analysis work currently required when a planned ignition is proposed.

Dated: July 23, 1992.

Alan L. Kesterke,

District Manager, Montrose.

[FR Doc. 92-18319 Filed 8-3-92; 8:45 am]

BILLING CODE 4310-JB-M

[UT-942-5101-12-J100; UTU 67829]

Record of Decision and the Issuance of a Right-of-Way Grant

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A Record of Decision (ROD) to grant a Right-of-Way (ROW) for the Northwest Pipeline Expansion Project was approved by the Utah State Director, Bureau of Land Management (BLM), on July 27, 1992. The ROW Grant was issued concurrently to Northwest Pipeline Corporation (Northwest) of Salt Lake City, Utah.

The ROD includes the acceptance of the Northwest Pipeline Expansion Project Final Environment Impact Statement (FEIS). The FEIS was prepared by the Federal Energy Regulatory Commission (FERC) and the Notice of Availability of the FEIS was published in the **Federal Register** on April 3, 1992. The BLM participated throughout the environmental process as a cooperating Federal agency.

The approved alignment for this pipeline, as certificated by the FERC, extends from the United States-Canadian border at Sumas, Washington, south and east through Washington, Oregon, Idaho, Utah, Wyoming, and Colorado. The proposed pipeline facilities will consist of a total of 378 miles of new pipeline or looped pipeline on Northwest's existing mainline and lateral systems. Private, County, State, Federal and Indian Trust lands are involved. The ROD covers the Federal lands administered by the BLM, Corps of Engineers (COE), Department of the Army (DOA), and Bureau of Reclamation (BR). The U.S. Forest Service (USFS) issued a ROD for their affected lands on May 28, 1992.

The ROW Grant is for the purpose of constructing, operating, maintaining and eventually terminating one 6-inch, one 16-inch, one 20-inch, several 24-inch, and one 30-inch natural gas transmission lines (pipelines) and related facilities, under the implementing regulations contained in 43 CFR part 2880. The committed mitigation measures and related monitoring and enforcement activities, developed through the environmental process, are described in the Grant. The Grant provides means to avoid or reduce environmental harm. The term of the ROW Grant will be for thirty (30) years; and it may be renewed, if appropriate. The Grant will include lands administered by the BLM, USFS, BR, DOA, and COE. The majority of the pipelines are adjacent to existing Northwest pipelines within established pipeline corridors.

On Federal land, the pipeline will be composed of combinations of single pipelines, looping of existing pipeline, a new compressor station, modification of two compressor stations, and a communication site. Approximately 502 acres of Federal land will be involved. The width of this ROW is fifty (50) feet for a single line and seventy (70) feet for looped lines. An additional temporary workspace of twenty-five (25) feet (forty-five [45] feet in Wyoming, where topsoil for the entire disturbed area will be stockpiled) is provided for at the time of construction. Additional temporary workspace, totaling 1.437 acres, for a demobilization area and six staging areas is also allowed.

The pipelines and facilities on Federal land administered by the BLM consist of 56.6 miles of new and/or looped pipeline on Northwest's existing mainline and lateral systems. Mainline expansion will include construction of 9.2 miles of new 24-inch pipeline and 14.2 miles of new looped 24-inch pipeline, one new compressor station, one modified compressor station, and one new communication site on Federal land. On Northwest's Klamath Falls (Oregon) Lateral, 3.6 miles of 6-inch replacement of an existing 4-inch pipeline is proposed on Federal land. On Northwest's Reno (Idaho) Lateral, 29.6 miles of new loop 16-inch pipeline and a modification of one compressor station are proposed on Federal land. In addition Northwest will construct on Federal land: A 30-inch looped pipeline on 4.5 miles on Fort Lewis, Washington, and 0.8 mile on Camp Bonneville, Washington, Military Reservations (DOA); 0.2 miles of looped 20-inch pipeline on USFS land in the Columbia River Gorge National Scenic Area; 0.5 miles of looped 24-inch pipeline on BR land; and 0.4 miles of looped 24-inch pipeline on the COE's John Day Project. Northwest will initiate construction of the pipeline and related facilities immediately.

FOR FURTHER INFORMATION CONTACT: J. Darwin Snell, Project Manager, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145-0155, (801) 539-5102.

James M. Parker,

State Director.

[FR Doc. 92-18321 Filed 8-3-92; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-02-4212-13; N-55815]

Realty Actions: Sales, Leases, etc.: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, N-55815.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 44 N., R. 60 E.,
- Sec. 11, S½N½N½, S½N½, S½;
- Sec. 12, S½N½N½, S½N½, S½;
- Sec. 13, S½, NW¼;
- Sec. 14, S½N½, S½;
- Sec. 19, Lot 4;
- Sec. 20, NE¼SE¼;
- Sec. 21, W½NW¼SW¼, SE¼SW¼, SW¼SE¼;
- Sec. 22, NE¼NE¼,NE¼, S½NE¼NE¼, SE¼SW¼NE¼, SE¼NE¼, SE¼SE¼SW¼, NE¼SE¼, NE¼NW¼SE¼, S½NW¼SE¼, S½SE¼;
- Sec. 23, All;
- Sec. 24, All;
- Sec. 25, N½, N½S½;
- Sec. 26, N½, NE¼SE¼;
- Sec. 27, N½NE¼, S½N½NW¼, NE¼NE¼NW¼, SE¼SE¼;
- Sec. 28, N½NE¼;
- Sec. 34, NE¼NE¼;
- Sec. 35, NW¼NE¼, N½NW¼;
- Sec. 36, NW¼NW¼;

T. 44 N., R. 61 E.,
- Sec. 7, Lots 2, 3, 4, 6, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
- Sec. 16, N½NE¼SW¼;
- Sec. 18, Lot 5, N½NE¼, NE¼NW¼, N½NE¼SW¼;
- Sec. 21, NW¼SE¼;
- Sec. 31, Lot 2, SE¼NW¼;

T. 45 N., R. 61 E.,
- Sec. 13, E½E½E½;
- Sec. 14, NW¼SW¼NW¼, S½SW¼NW¼, N½SW¼SW¼, SW¼NW¼SE¼, NW¼SE¼SE¼, S½SE¼SE¼;
- Sec. 15, SE¼NE¼, S½SW¼, SW¼SE¼, N½SE¼SE¼;
- Sec. 16, NW¼SW¼, SE¼SW¼, E½SW¼SW¼, SE¼;
- Sec. 23, NE¼SW¼NE¼, E½NE¼NW¼;
- Sec. 24, S½NW¼NE¼SE¼, SW¼NE¼SE¼, E½W½SE¼;
- Sec. 25, E½SE¼SE¼SE¼, NE¼NE¼SE¼SE¼, S½NE¼SE¼SE¼, SE¼NW¼SE¼SE¼, S½SE¼SE¼;

T. 45 N., R. 62 E.,
- Sec. 18, W½W½W½;
- Sec. 30, NE¼NW¼NW¼SW¼, SW¼NW¼SW¼, NW¼SW¼SW¼.

The areas described above aggregate 6872.945 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid existing rights, publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Dan and Sharon Niedringhaus or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever occurs first.

Further information concerning the exchange is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

For a period of 45 days from the date of first publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, at the above address. All objections will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action shall become the final determination of the Department of the Interior.

Dated: July 21, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92-18318 Filed 8-3-92 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-02-4212-13; N-55970]

Realty Actions; Sales, Leases, etc.: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, N-55970.

SUMMARY: The following described public lands administered by the Bureau of Land Management are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian

T. 30 N., R. 59 E.,
Sec. 11, E½, E½W½, W½SW¼;
Sec. 12, W½W½;
Sec. 13, N½, N½S½, SW¼SW¼;
Sec. 14, All;
Sec. 15, E½, E½W½;
Sec. 23, N½N½, SE¼NE¼;
Sec. 24, W½NW¼, NW¼SW¼.

T. 30 N., R. 60 E.,
Sec. 8, W½W½;
Sec. 18, E½SE¼, SW¼SE¼;
Sec. 19, NE¼, N½SE¼.

The areas described above aggregate 3080 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid existing rights, publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Ken Jones or his nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands, or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

For a period of 45 days from the date of first publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, at the above address. All objections will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action shall become the final determination of the Department of the Interior.

Dated: July 21, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92-18320 Filed 8-3-92; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-769414

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one pair of captive-born white-handed gibbons (*Hylobates lar)* to Seoul Grand Park Zoo, Korea, for purposes of captive breeding to enhance the propagation of the species.

PRT-769418

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one pair of captive-born siamangs (*Hylobates syndactylus*) to Seoul Grand Park Zoo, Korea, for purposes of captive breeding to enhance the propagation of the species.

PRT-770031

Applicant: The University of Wisconsin, Madison, WI 53706.

The applicant requests a permit to import from the Australian Museum, Sidney, Australia, liver and skeletal muscle tissues of Bulmer's fruit bat (*Aproteles bulmerae*) for scientific research.

PRT-769304

Applicant: J. A. Halstead, Clovis, CA.

The applicant requests a permit to live-trap and release Tipton kangaroo rats (*Dipodomys nitratoides nitratoides*) in Tulare County, California, to determine the presence and abundance of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: July 30, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-18424 Filed 8-3-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-529 (Final)]

Magnesium From Norway

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On July 15, 1992, the U.S. Department of Commerce made a negative final determination of sales at less than fair value on pure magnesium from Norway. Commerce also rescinded its investigation of alloy magnesium from Norway. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the Commission's antidumping investigation concerning magnesium from Norway (investigation No. 731–TA–529 (Final)) is terminated.

EFFECTIVE DATE: July 15, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

AUTHORITY: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: July 24, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–18329 Filed 8–3–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927–5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to Ed Clark, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the Form.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office—Office of Compliance and Consumer Assistance.

Title of Form—Owner-operator Annual Report Form.

OMB Form Number—3120–0061.

Agency Form Number—OCCA–143.

Frequency—Annually.

Respondents—Motor carriers of food products and certain agricultural supplies.

No. of Respondents—1045.

Total Burden Hours: 52.25 (estimated 3 minutes per response).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–18432 Filed 8–3–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32117]

Canadian National Railway Co.; Continuance in Control Exemption; St. Clair Tunnel Co.

Canadian National Railway Company (CN), has filed a verified notice of exemption for continuance in control of St. Clair Tunnel Company (SCTC), upon SCTC's becoming a carrier.[1]

SCTC, a noncarrier, has concurrently filed notices of exemption in Finance Docket No. 32115, *Grand Trunk Western Railroad Company—Trackage Rights Exemption—St. Clair Tunnel Company* and Finance Docket No. 32116, *St. Clair Tunnel Company—Acquisition Exemption—Grand Trunk Western Railroad Company*, seeking to acquire a 16.4 mile of railroad from Grand Trunk Western Railroad Company (GTW) and to grant trackage rights back to GTW over the line being acquired.

The transaction is filed under 49 CFR 1180.2(d)(3). CN indicates that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, NW., Suite 700, Washington, DC 20006.

Decided: July 28, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–18431 Filed 8–3–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32115]

Grand Trunk Western Railroad Co.; Trackage Rights Exemption; St. Clair Tunnel Co.

St. Clair Tunnel Company (SCTC) has agreed to grant trackage rights to Grand Trunk Western Railroad Company (GTW),[1] between milepost 39.2 at Pound Road, northeast of Richmond, MI and milepost 55.6 near Port Huron, MI, a distance of approximately 16.4 miles. The trackage rights were to become effective on July 24, 1992.

This grant of trackage rights is one of a series of transactions [2] that will facilitate the construction of a new tunnel to replace the existing railroad tunnel which crosses the St. Clair River, between Sarnia, Ontario and Port Huron, MI.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, NW., Suite 700, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C. 2d 799 (1990), *aff'd sub nom. Railway*

[1] CN owns Grand Trunk Corporation, a noncarrier, which in turn owns Grand Trunk Western Railroad Company, a rail carrier. SCTC is wholly owned by CN.

[1] GTW is wholly owned by Grand Trunk Corporation which in turn is owned by the Canadian National Railway Company (CN). SCTC is a wholly owned subsidiary of CN.

[2] Verified notices have been filed in Finance Docket No. 32116, *St. Clair Tunnel Company—Acquisition Exemption—Grand Trunk Western Railroad Company* to exempt SCTC's acquisition of a line of rail from GTW, and in Finance Docket No. 32117, *Canadian National Railway Company—Continuance in Control—St. Clair Tunnel Company*, to allow the control by CN of SCTC upon the latter becoming a rail carrier.

Labor Executives' Assn. v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Decided: July 29, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18434 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32116]

St. Clair Tunnel Co.; Acquisition Exemption; Grand Trunk Western Railroad Co.

St. Clair Tunnel Company (SCTC), a non-carrier, files a notice of exemption to acquire a 16.4 miles of rail line from Grand Trunk Western Railroad Company (GTW) between milepost 39.2 located at Pound Road, northeast of Richmond, MI and milepost 55.6, near Port Huron, MI.[1]

This transaction is the first in a series of transactions involving the relocation of the existing railroad tunnel across the St. Clair River, between Sarnia, Ontario and Port Huron, MI. Canadian law requires that SCTC be a rail carrier in order to acquire the existing tunnel. Verified notices of exemption seeking trackage rights and continuance in control have been filed in Finance Docket No. 32115, *Grand Trunk Western Railroad Company—Trackage Rights Exemption—St. Clair Tunnel Company* and Finance Docket No. 32117, *Canadian National Railway Company—Continuance in Control Exemption—St. Clair Tunnel Company*. The transaction was to have been consummated on or after July 24, 1992.[2]

Any comments must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, NW., Suite 700, Washington, DC 20006.

SCTC shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 29, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18435 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-301 (Sub-No. 8X)]

Southrail Corp.; Discontinuance of Trackage Rights Exemption; Mobile County, AL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to discontinue its overhead trackage rights on approximately 4.7 miles of rail line belonging to Illinois Central Railroad Company (Illinois Central), from approximately milepost 4.7 (near Whistler Station, AL) to approximately milepost 0.0 (near Mobile, AL). Illinois Central will continue its operations on the subject line.

Applicant has certified that: (1) It has handled no local traffic on the line for at least 2 years (applicant has never provided local service on the line because it only has overhead trackage rights); (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 3, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 14, 1992. Petitions to reopen must be filed by August 24, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Laurence R. Latourette, Preston Gates Ellis & Rouvelas Meeds, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006-4759.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: July 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18433 Filed 9-3-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32121]

The City of West Memphis, AR; Acquisition and Operation Exemption; Missouri Pacific Railroad Co.

The City of West Memphis, Arkansas, has filed a notice of exemption to acquire and operate approximately 2.25-miles (11,853 feet) of the Missouri Pacific Railroad Company rail line between mileposts 353.281 and 355.539 in West Memphis, Crittenden County, Arkansas.[1] The proposed transaction was scheduled to be consummated on or after the effective date, July 27, 1992.

Any comments must be filed with the Commission and served on: David C.

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[1] SCTC is a wholly owned subsidiary of Canadian National Railway Company (CN). GTW is wholly owned by Grand Trunk Corporation which in turn is owned by CN.

[2] The Railway Labor Executives' Association (RLEA) filed a routine request mistakenly identifying SCTC's notice as a request for exemption from 49 U.S.C. 11343-11347 and seeking the imposition of employee protective conditions under section 11347. However, section 10901, not 11343, governs this transaction. The Commission has determined that labor protective conditions will not be imposed on this class of transactions unless exceptional circumstances are shown. Ex Parte No. 392 (Sub-No. 1), *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 814 (1986), *aff'd sub nom. Illinois Commerce Commission* v. *I.C.C.*, 817 F.2d 145 (D.C. Cir. 1987). RLEA does not allege that exceptional circumstances are involved. Accordingly, labor protective conditions will not be imposed.

[1] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[1] Following consummation, the City will contract operations out to a third party rail carrier; it will reserve the right to resume operations in the future.

Peeples, West Memphis City Attorney, P.O. Box 1728, West Memphis, AR 72303.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 28, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-18430 Filed 8-3-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Waiver of Grounds of Excludability

(2) I-690, Immigration and Naturalization Service

(3) One-time.

(4) Individuals or households. I-690 information is used in considering eligibility for legalization under sections 210 and 245A of the I & N Act, during the processing of both the application for temporary resident status and the application for permanent resident status.

(5) 52,000 annual responses at .25 hour per response

(6) 13,000 annual burden hours

(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: July 29, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-18352 Filed 8-3-92; 8:45 am]

BILLING CODE 4410-10-M

Drug Enforcement Administration

Ray Lewis Frie, D.V.M.; Revocation of Registration

On Marcy 4, 1992, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued to Ray Lewis Frie, D.V.M., Route 7, Box 136, Jonesboro, Arkansas 72401, an Order to Show Cause proposing to revoke Dr. Frie's DEA Certificate of Registration, AF3070618, and to deny any pending applications for renewal of such registration. The Order to Show Cause was received by Dr. Frie on March 10, 1992.

More than thirty days have elapsed since the Order to Show Cause was received by Dr. Frie and the Drug Enforcement Administration has received no response thereto. Therefore, pursuant to the provisions of 21 CFR 1301.54(a) and 1301.54(d), Dr. Frie is deemed to have waived his opportunity for a hearing on any matters of law and fact involved herein. Accordingly, the Administrator now issues his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that the Arkansas Veterinary Medical Examining Board has advised the Drug Enforcement Administration that Dr. Frie is not authorized to prescribe, administer, dispense or possess controlled substances in the course of his professional practice. The Administrator further finds that the Board has requested that DEA neither issue Dr. Frie a registration nor renew his existing registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration if he finds that the registrant is no longer authorized to dispense controlled substances or that the suspension, revocation or denial of registration has been recommended by competent state authority. Additionally, 21 U.S.C. 823(f) authorizes the Administrator to deny registration to a practitioner upon consideration of the recommendation of the appropriate state licensing board. Accordingly, there are lawful bases for the revocation of Dr. Frie's registration and for the denial of any pending applications for renewal thereof.

This agency has consistently held that the lack of state authorization requires the revocation of the registrant's DEA Certificate of Registration. See *Lawrence R. Alexander, M.D.*, Docket No. 92-22, 57 FR 22256 (1992); *Bobby Watts, M.D.*, Docket No. 87-71, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, Docket No. 87-13, 52 FR 27070 (1987), and cases cited therein. There having been no evidence submitted on behalf of the registrant, the Administrator concludes that Dr. Frie's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AF3070618, previously issued to Ray Lewis Frie, D.V.M., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 4, 1992.

Dated: July 28, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-18340 Filed 8-3-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,300; Acme Electric Corp., Salt Lake City, UT

TA-W-27,331; Applied Machining Technology, Inc., (Formerly MHP Machines, Inc), Orchard Park, NY

TA-W-27,217; H.S. Automotive Longview Ave., Mansfield, OH

TA-W-27,225; H.R. Automotive, Rupp Road, Mansfield, OH

TA-W-27,261; Selas Corp., of America, Dresher, PA

TA-W-27,252; Kooshies Diapers International, Inc., Wills Point, TX

TA-W-27,256; Amax Specialty Copper Corp., Carteret, NJ

TA-W-27,232; Sea Farm Washington, Rochester, WA

TA-W-27,112; Crucible Specialty Metals Corp., Syracuse, NY

TA-W-27,111; General Electric Co., GE Appliance Control, Carroll, IA

TA-W-27,251; DAW Forest Products, Bend, OR

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,458; Restech, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA-W-27,118; Bethlehem Steel Corp., Bar, Rod & Wire Div., Johnston, PA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27,429; Wolf Energy Co., Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,167; AT&T Marketing Delivery Center, New Orleans, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,370; Colrick Trucking Co., Inc., Hillside, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,269; Saco Defense, Inc., Saco, ME

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,326; Southwestern Bell Telephone Co., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-27,273; John E. Chance & Associates, Inc., Lafayette, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-27,305, Oxford of Tifton, Tifton, GA

A certification was issued covering all workers separated on or after May 18, 1991.

TA-W-27,180; Volunteer Leather Co., Whitehall, MI

A certification was issued covering all workers separated on or after March 14, 1991.

TA-W-27,302; General Motors Corp., Inland Fisher Guide Div., Grand Rapids, MI

A certification was issued covering all workers separated on or after May 1, 1991.

TA-W-27,288; Wilner Wood Product, Norway, ME

A certification was issued covering all workers separated on or after April 30, 1991.

TA-W-27,404; General Semiconductors Industries, Inc., Tempe, AZ.

A certification was issued covering all workers separated on or after June 10, 1991.

TA-W-27,198; Sahlman Seafoods, Inc., Lakeland, FL

A certification was issued covering all workers separated on or after April 3, 1991.

TA-W-26,943; Maline Sewing Corp. of Pennsylvania, Philadelphia, PA

A certification was issued covering all workers separated on or after February 11, 1991.

TA-W-27,290; Enserch Exploration, Inc., Dallas, TX

A certification was issued covering all workers separated on or after May 12, 1991.

TA-W-27,291; Enserch Exploration, Inc., Midland, TX

A certification was issued covering all workers separated on or after May 15, 1991.

TA-W-27,144; Anro of Sarasota, Inc., Sarasota, FL

A certification was issued covering all workers separated on or after April 1, 1991.

TA-W-27,360, TA-W-27,361 & TA-W-27,262; The Anschutz Corp., Houston TX, Midland, TX and Oklahoma City, OK

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,115; Eastman Christensen, Lafayette, LA

A certification was issued covering all workers separated on or after April 3, 1991.

TA-W-27,284; A & A Manufacturing, Inc., Franklin Spring, GA

A certification was issued covering all workers separated on or after May 5, 1991.

TA-W-27,203; Crater Lake Lumber Co., Chiloquin, OR

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-27,230; Legris, Inc., Rochester, NY

A certification was issued covering all workers separated on or after February 1, 1992.

TA-W-27,210; Heidelberg Harris, Inc., Dover, NH

A certification was issued covering all production workers separated on or after April 15, 1991.

A certification was issued covering all salaried workers separated on or after May 25, 1992.

TA-W-27,211 & TA-W-27,212; Heidelberg Harris, Inc., Nashville, TN and Fort Worth, TX

A certification was issued covering all workers separated on or after April 15, 1991.

TA-W-27,342; Elf Exploration, Inc., Houston, TX

A certification was issued covering all workers separated on or after April 20, 1991.

TA-W-27,336; R & S Tong Service, Odessa, TX

A certification was issued covering all workers separated on or after May 20, 1991.

TA-W-27,295, TA-W-27,314, TA-W-27,315; Fuel Resources Development Corp. (Fulco), Denver, CO, Meeker, CO and Durango, CO

A certification was issued covering all workers separated on or after May 26, 1991.

TA-W-27,216; Chevron Exploration and Production Services Co., Party 5, Houston, TX and at Various Other Locations in the Following States: TA-W-27,216A; AL, B; CA, C; CO, D; LA, E; MS, F; MO, G; MT, H; NM, I; OR, J; TX, K; WY

A certification was issued covering all workers separated on or after February 24, 1991.

TA-W-27,329, TA-W-27,329A; Reading & Bates Drilling Co, Headquartered in Houston, TX and at Various Offshore Locations in the Gulf of Mexico

A certification was issued covering all workers separated on or after May 15, 1991.

TA-W-27,344; Chevron Exploration & Production Services Co., Exploration & Production Dept., Houston, TX

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,345; Chevron Exploration & Production Services Co., Technical Services Dept., Houston, TX

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,346 & TA-W-27,346A; Chevron Exploration & Production Services Co., Eastern Support Div., New Orleans, LA & Operating in the State of LA

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,347 & TA-W-27,347A; Chevron Exploration & Production Services Co., Western Support Div., San Ramon, CA & Operating in the State of CA

A certification was issued covering all workers separated on or after May 28, 1991.

TA-W-27,303; Automatic Injection Molding Co., Inc., Berkeley Heights, NJ

A certification was issued covering all workers separated on or after May 15, 1991 and before March 31, 1992.

TA-W-27,267; Chevron USA Production Co., Midland, TX & Operating in Other Locations in A; West Texas and B; New Mexico

A certification was issued covering all workers separated on or after May 5, 1991.

TA-W-27,308; Chevron USA Production Co., Western Production, Bakersfield, CA & Operating in Other Locations in A; CA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,310; Chevron USA Production Co., Central Production, Houston, TX & Operating in Other Locations in A; TX, B; OK, C; ND, D; MS, E; AL, F; KS, G; AR, H; LA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,311; Chevron USA Production Co., Gulf of Mexico, New Orleans, La & Operating at Other Locations in A; LA and B; TX

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,312; Chevron USA Production Co., Rocky Mtn. Production, Englewood, CO & Operating at Other Locations in A; CO, B; UT, C; WY, D; ND

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,313; Chevron USA Production Co., Natural Gas Production, Houston, TX & Operating at Other Locations in A; TX, B; LA, C; CA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,316; Chevron USA Production Co., Land Business Unit, Houston, TX & Operating at Other Locations in A; TX, B; CO, C; CA, D; LA, E; AK

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,317; Chevron USA Production Co., Exploration Business, Houston, TX & Operating at Other Locations in A; TX, B; CA, C; CO, D; LA, E; AK

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,318; Chevron USA Production Co., Finance Div., Concord, CA & Operating at Other Locations in A; CA

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,323; Weaver Services, Inc., Snyder, TX

A certification was issued covering all workers separated on or after May 13, 1991.

TA-W-27,247; Baron Handbag, New York, NY

A certification was issued covering all workers separated on or after May 11, 1991.

I hereby certify that the aforementioned determinations were issued during the month of July 1992. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 28, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18396 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 348]

Chevron Exploration and Production Services Co. Seismic Field Crew (Party 5) Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 8, 1992 in response to a worker petition which was filed on June 8, 1992 on behalf of workers at Chevron Exploration and Production Services Company, Seismic Field Crew (Party 5), Houston, Texas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–27, 216). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of July, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–18394 Filed 8–3–92; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–9069, et al.]

Proposed Exemptions; Spreitzer, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Truck Dispatch Service, Inc. Profit Sharing Plan and Trust (the Plan) Located in Fresno, California

[Application No. D–8984]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash purchase (the Purchase) of a certain promissory note and trust deed (the Note) by the Plan from Truck Dispatch Service, Inc., a California corporation, the sponsoring employer of the Plan (the Employer), and a party in interest with respect to the Plan, provided the Plan pays the lesser of either (1) the sum of $155,000, or (2) the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 13 participants and total assets of $949,197.29, as of December 31, 1991. One segregated individual account in the Plan with assets valued at $869,598.56, as of December 31, 1991, constitutes approximately 91.5 percent of the total assets in the Plan. The segregated, individual account is maintained by the Plan for Mr. James Kourafas. The trustees of the plan are Messrs. James Kourafas, Tom Kourafas, and Nick Kourafas (the Trustees), who in their capacity as the Trustees have investment discretion over the entire assets of the Plan.

2. The sponsor of the Plan is the Employer which is California corporation. The Employer serves as a transportation broker for intrastate and interstate shippers of general commodities which includes mostly agricultural products and machinery. The Employer is owned by Mr. James Kourafas, who is chairman of the board of directors of the Employer. Mr. Nick Kourafas, who is a brother of James Kourafas, is the secretary of the Employer. Mr. Tom Kourafas, the son of Mr. James Kourafas, is the president of the Employer.

3. The Note, dated March 28, 1991, is a 15 year installment promissory note for the principal sum of $241,000, with interest, at the rate of 10 percent per annum payable from April 29, 1991, on the unpaid principal. Annual payments of principal and interest are to be made on December 1 of each year beginning in 1992 in the sum of $29,657.24. In accordance with the terms of the Note, the sum of $29,483.02 was paid on December 1, 1991, leaving an outstanding principal balance owing in the sum of $225,778.90 to be paid with interest in installments over the remaining 14 years (as the Note originated in March 1991, only a partial year's interest was due). The Note is secured by a recorded first deed of trust on 49.09 acres of real property (the Vineyards) located in Fresno County, California, which was conveyed by Grant Deed, dated March 28, 1991, by

the Employer to Albert Medina and Virginia Medina (the Medinas). In turn, the Medinas tendered to the Employer the sum of $89,000 in cash and the Note for $241,000 for the Vineyards. The applicant represents that the Medinas are unrelated to the Plan or the Employer.

The Vineyards has been appraised by an independent appraiser, Mr. Lawrence D. Hopper, MAI, SRA, Fresno, California, who determined that the Vineyards fair market value was $356,000, as of March 17, 1992.

The Note was determined to have a fair market value of $155,000, as of May 1, 1992, by an independent appraiser, Mr. Richard E. Huber, GRI, CREA, CPR, and Probate Referee, Madera and Mariposa Counties, California.

4. It has been proposed by the applicant that the segregated individual account maintained by the Plan for Mr. James Kourafas, will purchase the Note from the Employer for the lesser of either (a) the sum of $155,000 or (b) the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase. The purchase price will not exceed 18 percent of the total assets in Mr. James Kourafas's segregated individual account.

The applicant represents that the Purchase is in the interest of the Plan and its segregated individual account. Also, the applicant represents that the Plan will diversify its assets and benefit from the long-term high yields produced by the Note; and in case of the unforeseeable default on the Note, the Plan would be amply protected by the pledged security. The applicant further represents that no expenses of any kind will be incurred by the Plan from the Purchase.

5. In summary, the applicant represents that the transaction satisfies the criteria for an exemption under section 408(a) of the Act because:

(a) The Purchase will be a one-time transaction for cash;

(b) The segregated individual account of the Plan will pay no more than the fair market value of the Note as determined by a qualified, independent appraiser on the date of the Purchase;

(c) No expenses of any kind will be incurred by the Plan from the Purchase;

(d) Less than 18 percent of the assets in the segregated individual account of Mr. James Kourafas will be affected by the transaction; and

(e) Mr. Kourafas, who is the only person whose interests will be affected by the transaction, desires that the transaction be consummated.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Since the individual account which is maintained for Mr. James Kourafas is the only account to be affected by the transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of date of publication in the **Federal Register** of this notice of proposed exemption.

For Further Information Contact

Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Spreitzer, Inc. Profit Sharing Trust (the Plan) Located in Cedar Rapids, Iowa

[Application No. D–9069]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1) (A) through (E) of the Code, shall not apply for a period of five years to loans of money from the Plan to Spreitzer, Inc. (the Employer), a party in interest with respect to the plan, and to a personal guarantee of the loans by a party in interest, provided that the following conditions are met:

1. The terms of the loans are at least as favorable as the Plan could obtain in arm's-length transactions with an unrelated party;

2. The loans in the aggregate, including loans outstanding, if any, under a previous exemption granted by the Department, do not at any time account for more than 25 percent of the assets of the Plan;

3. A fiduciary independent of the Employer will approve and monitor each loan on behalf of the Plan;

4. Each loan will have a maturity of 90 days or less;

5. The interest rate on each loan will be one percent above the rate for similar loans charged by Firstar Bank Cedar Rapids but in no event less than eight percent;

6. Each loan will be secured by a first lien on insured construction and mining equipment owned by the Employer, and such security will be maintained at no less than 200 percent of the outstanding loan balances; and

7. A shareholder of the Employer will personally guarantee each loan made by the plan to the Employer.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant. However, any loan made to the Employer pursuant to the proposed exemption may continue to its maturity date provided the loan was entered into during the five-year period.

Summary of Facts and Representations

1. The Employer is a corporation engaged in the business of selling, leasing and servicing construction and mining heavy equipment. J.E. Spreitzer (Spreitzer) is an officer and shareholder of the Employer. The Plan is a profit sharing plan which had 15 participants and total assets of approximately $1,500,000 as of December 31, 1991.

2. The Employer obtained a previous prohibited transaction exemption (PTE 87–79, 52 FR 29906, August 12, 1987) which permitted the Plan to make a series of loans to the Employer for a period of five years. The applicant represents that all the terms and conditions of PTE 87–79 were met and that all loan payments thereunder were received by the Plan timely and in full.

3. The applicant now requests another temporary exemption for a period of five years for the Plan to make a similar series of loans to the Employer, to be used for inventory of equipment and expanding rental business. The Plan will enter into a loan agreement (the Loan Agreement) with the Employer, whereby the Plan will periodically lend to the Employer amounts of money up to an aggregate at any time of no more than 25 percent of the assets of the Plan, including loans remaining, if any, under PTE 87–79. The loan balances will be monitored monthly to assure that the total loan amount remains within the 25 percent limit. Each individual loan will have a maturity of 90 days or less, and

principal and interest on the loans will be payable at maturity.

The interest rate on each loan will be one percent above the rate charged by Firstar Bank Cedar Rapids, N.A. (the Bank) for secured prime commercial loans of 90-day maturity, but will not be less than eight percent per annum. The applicant represents that the Bank is independent of the Employer except for serving as discretionary trustee of the Plan, and that the Employer accounts for less than one percent of the business of the Bank. The Bank stated by letter dated March 6, 1992, that it has previously extended credit to the Employer at the Bank's prime rate (for similar loans) plus one percent on a secured basis.

The Bank anticipates that it would continue to extend credit to the Employer on the same terms in the future. Each loan will be personally guaranteed by Spreitzer. In this regard, the applicant represents that Spreitzer has a net worth in excess of $1 million.

4. Each Loan made during the five-year period will be secured by a first lien on new and used construction and mining equipment (the Collateral). The Collateral is presently owned by the Employer and used to conduct the Employer's business operations. The Plan will have a perfected first security interest in the Collateral through the execution and filing by the Employer of security agreements on behalf of the Plan. The Employer will pay all costs associated with the maintenance of the Collateral, including but not limited to paying all taxes, insurance premiums, repairs and storage costs. The Employer will warrant to own throughout the terms of the loans all Collateral free from any adverse claims, security interests (other than security interests granted to the Plan) or encumbrances. The applicant represents that the Collateral is marketable and that its value is not expected to decrease appreciably over the five-year term of the Loan Agreement. The appraised market value of the Collateral will at all times during the term of the loans be not less than 200 percent of the amount of the outstanding loan balances. The fair market value of each piece of equipment comprising the Collateral will be determined by an independent appraiser to be selected by an independent fiduciary. Each appraisal will be updated annually to assure that the required value of the Collateral is maintained. If new equipment is used as collateral, its wholesale price will be deemed the appropriate value. The Collateral will be kept insured at the Employer's expense with the Plan designated as beneficiary of the insurance policy. The release of any Collateral from the Loan Agreement, such as in the event of sale or trade-in, shall require the prior approval of the independent fiduciary.

5. An independent attorney, Robert Hatala (Hatala) of the law firm of Crawford, Sullivan, Read, Roemerman & Brady, P.C. in Cedar Rapids, Iowa, has been appointed an independent fiduciary to approve, monitor and enforce the proposed loans of behalf of the Plan. Hatala represents that less than one percent of his firm's business originates from the Employer. Hatala is familiar with the duties of a fiduciary under the Act and assumes the liability related to the proposed transactions. He has reviewed the needs of the Plan and the transactions as proposed and has concluded that the proposed loans are in the best interests of the Plan. Hatala is authorized to approve or disapprove any of the loans made under the Loan Agreement. He will monitor all terms and conditions of the loans and will enforce collection on the loans in the event of a default. In the event of a default, Hatala will take whatever action is deemed appropriate, including moving on the Collateral if necessary. Hatala will monitor the value on the Collateral if necessary. Hatala will monitor the value of the Collateral so that at no time during the term of the loans will the value of the Collateral fall below 200 percent of the aggregate outstanding loan balances.

6. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(1) An independent fiduciary has determined that the proposed loans are in the best interests of the Plan;

(2) The independent fiduciary will approve and monitor each loan made under the Loan Agreement;

(3) The loans in the aggregate will account for no more than 25 percent of the assets of the Plan;

(4) The loans will be secured by fully insured Collateral which will at all times have a market value of at least 200 percent of the outstanding loan balances;

(5) Spreitzer will personally guarantee all the payments due on the loans to the Plan; and

(6) All loan payments due under PTE 87–79 were received by the Plan timely and in full.

For Further Information Contact

Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Inland Container Corporation Savings and Stock Purchase Plan for Salaried Employees (the Plan) Located in Indianapolis, Indiana

[Exemption Application No. D–9036]

Proposed Exemption

The Department is considered granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of credit to the Plan (the Advances) by Inland Container Corporation (Inland), a party in interest with respect to the Plan, relating to guaranteed investment contract #GA–CG0126303A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Advances (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) the Advances are made only in lieu of payments due from Executive Life with respect to the GIC, (c) the Repayments shall not exceed the Advances plus interest which may accrue on such amounts determined at the Amended Rate (as described below), (d) the Repayments of the Advances, including interest thereon, if any, shall be made only from, and shall not exceed, the amounts actually received by the Plan from Executive Life or any other source making payment with respect to the GIC (the Recoveries), and (e) the Repayments are waived to the extent the Advances exceed the Recoveries.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with approximately 1,782 participants as of January 31, 1992. Inland, a wholly–owned subsidiary of Temple-Inland Inc. (the Parent Corp.), is engaged in integrated manufacturing and production operations and is headquartered in Indianapolis, Indiana. The Plan is maintained on behalf of employees of Inland and four Inland subsidiaries: Anderson Box Company in Indianapolis, Indiana, Inland-Orange Inc. in Orange, Texas, Sabine River & Northern Railroad Company in Orange, Texas, and Inland-Rome Inc. in Rome,

Georgia. As of January 31, 1992, there were total assets of approximately $96,815,000 in the Plan. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. The trustee of the Plan is INB National Bank in Indianapolis, Indiana (the Trustee).

2. Participants may invest their Account balances in any of three different investment funds within the Plan, including Fund A, which invests in fixed income vehicles such as guaranteed investment contracts issued by insurance companies. As of January 31, 1992, Fund A held total assets of approximately $32,035,052.44, constituting about 33.1 percent of the total assets of the Plan. Discretion over the investment of assets in Fund A is exercised by an investment committee (the Committee), comprised of officers and/or directors of the Parent Corp. Accounts invested in Fund A earn interest at a rate (the Blended Rate) which is determined by "blending" the rates earned from all investment instruments held by Fund A.

3. Among the assets in Fund A is the GIC, which the Trustee purchased on behalf of the Plan at the Committee's direction on November 24, 1987, with an effective date of January 1, 1988. The terms of the GIC established a deposit limit of $7.3 million, a guaranteed interest rate of 9.50 percent (the Contract Rate), and a maturity date of December 31, 1992. The GIC is non-benefit-responsive, providing for payment only upon final maturity. Inland represents that as of April 30, 1991, the GIC had an accumulated book value of $9,588,221.55, representing total deposits plus accrued interest, and constituting approximately 10.6% percent of the total assets held by the Plan.

4. On April 11, 1991, Executive Life was placed into conservatorship by the insurance commissioner of the State of California.[1] As a result, Inland represents that maturity and other payments on Executive Life contracts, such as the GIC, have been suspended, and that under the prevailing circumstances it is uncertain whether, or to what extent, Executive Life will be able to make any payments of principal or interest due the Plan under the terms of the GIC upon maturity.

[1] The Department notes that the Committee's decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4, which may have arisen as a result of the acquisition and holding of the GIC.

In response to the adverse developments affecting the GIC, the Plan was amended, effective May 1, 1991 (the Amendment), to divide Fund A assets into two sub-accounts: one representing the portion of Fund A invested in the GIC (the E.L. Sub-account) and one representing the balance of Fund A assets (the General Sub-account). Inland represents that the allocation of Fund A between the Sub-accounts was based on the respective contract amounts of all guaranteed investment contracts held by Fund A as of April 30, 1991. Accordingly, each Plan participant whose Account was invested in Fund A on April 30, 1991, has an E.L. Sub-account and a General Sub-account based upon that participant's Fund A balance as of April 30, 1991. All contributions to Fund A on or after May 1, 1991, including any Plan assets transferred at a participant's direction from another Plan fund, have been allocated to the General Sub-accounts.

Pursuant to the Amendment, all E.L. Sub-accounts are treated as having no determinable value until a date (the Re-valuation Date) defined as the earlier of (a) the date any amount becomes recoverable under the GIC, or (b) the date on which the president on Inland determines that the E.L. Sub-accounts have a determinable value. Upon the Revaluation Date, the E.L. Sub-accounts are to be revalued (the Revaluation) based on their fair market value. The Amendment had the effect of freezing the E.L. Sub-accounts and preventing all distribution, withdrawals, loans, and transfers from the participants' E.L. Sub-accounts. With respect to the balances in their General Sub-accounts, participants have been able to continue to direct transfers and to apply for distributions, withdrawals and/or loans, at the time and in the same manner as normally permitted under the Plan. Since the Amendment, the "blended" rate of interest credited to General Sub-accounts has been revised to reflect the segregation and removal of the GIC from other Fund A assets.

In order to restore to the Plan participants the ability to direct transfers, to receive distributions, and to make loans and other withdrawals, with respect to amounts held in the E.L. Sub-accounts, and with the intention of protecting the interests of participants with respect to investments in the GIC, Inland proposes the Advances. An exception is requested by Inland for the Advances, and their potential Repayments, under the terms and conditions described herein.

5. The terms and conditions of the Advances and the Repayments will be embodied in a written agreement between Inland and the Trustee (the Agreement). Inland represents that their intention, expressed by the Agreement, is to guaranty (the Guaranty) that the Plan will recover, with respect to the GIC, an amount (the Guaranteed Amount) no less than the April 30, 1991 face value of the GIC (defined as total deposits plus accrued interest at the Contract Rate), plus interest thereon at an effective annual rate of 7 percent through the GIC's maturity date of December 31, 1992, and interest thereafter at a rate described in the Agreement as the Floating T-Bill Rate. The Agreement provides for the Guaranty and the Advances to be accomplished in the following manner:

(a) Within 30 days after the requested exemption, if granted, is published in the **Federal Register**, and a closing agreement is executed with the Internal Revenue Service, the Plan will be amended again (the Re-amendment). The Re-amendment will merge the E.L. Sub-account with the General Sub-account, thereby merging each participant's E.L. Sub-account with his or her General Sub-account. The Re-amendment will have the effect of lifting the freeze on distributions, withdrawals, loans, and fund transfers with respect to Account balances attributable to investments in the GIC. Upon the Re-amendment, the GIC will be valued at its accumulated book value as of April 30, 1991 (the Revalued GIC). However, the Revalued GIC would not continue to be credited with interest earnings at the Contract Rate. For all time periods commencing May 1, 1991, the Revalued GIC will earn a redefined rate of interest (the Amended Rate) on the amount by which the Revalued GIC exceeds total Advances under the Agreement plus total amounts recovered by the Plan (the GIC Proceeds) from Executive Life or other parties making payment on the GIC. The Amended Rate will be seven percent for the period beginning May 1, 1991 through the December 31, 1992 maturity date of the GIC, and for the period beginning January 1, 1993, the Amended Rate will be a variable rate equal to the average yield on reference five-year Treasury bonds less seventy-five basis points (.75 percent).

(b) To evidence the commitment to make the Advances up to the Guaranteed Amount, Inland will make an initial Advance (the Initial Advance) to the Plan of $3.5 million, on or before the later of (1) December 31, 1992, or (2) five days after the Re-amendment. Inland represents that the amount of the Initial Advance is calculated to be Inland' best estimate of the loss that the

Plan may incur with respect to the GIC, exclusive of any state guaranty recoveries, upon the final disposition of the Executive Life conservatorship.

(c) Simultaneously with the Initial Advance, Inland will enter into a credit arrangement (the Credit Facility) with the Trustee under which Inland will be obligated to make further Advances to the Plan, in addition to the Initial Advance. The Credit Facility will require Inland to make any additional Advances, up to the Guaranteed Amount, which are necessary for the Plan to honor requests for distributions, withdrawals, loans and fund transfers.

(d) A final Advance (the Final Advance) will be due the Plan within thirty days after the Plan administrator is able to determine the amount of the Plan's total recovery from Executive Life and any other sources making payment with respect to the GIC (the Recoveries), including any recoveries from state guaranty funds. Inland will make the Final Advance in an amount equal to the Revalued GIC, including interest at the Amended Rate through the date of the Final Advance, less the sum of all Recoveries and previous Advances. In the event the sum of all Recoveries plus previous Advances is greater than the Revalued GIC plus Amended Rate interest, the difference will be applied as Repayments of the Advances, up to the total amount of Advances plus interest thereon (the Repayment Interest).

The Repayments of the Advances, including Repayment Interest, cannot exceed the total Recoveries. Repayment Interest will accrue at a rate equal to the lesser of (1) the rate being credited to the Revalued GIC, or (2) the blended rate being earned on other Fund A assets. No Repayments of the Advances, including Repayment Interest, will be made until the Plan recovers the full Guaranteed Amount plus interest credited in accordance with the Agreement.

Inland represents that it proposes the provision of Repayment Interest on the Advances as a matter of "fundamental fairness" to Inland for its Guaranty of the Plan's investment in the GIC. Inland also notes that in the event the Recoveries received by the Plan exceed the Advances plus Repayment Interest thereon, the Plan will retain such additional amounts.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons:

(1) The Plan will be relieved of any further risk or uncertainty with respect to the maturity payment due from Executive Life under the GIC;

(2) The proposed transaction will enable Fund A to fully fund Account distributions, withdrawals, loans, and Account transfers to other Plan funds;

(3) The Plan will receive the full accumulated book value of the GIC as of April 30, 1991 together with interest thereafter at the Amended Rate;

(4) Repayments of the Advances, including interest thereon, will be restricted to the Recoveries and will be waived to the extent the Advances exceed the Recoveries; and

(5) No repayment of the Advances, or interest thereon, may be made until the Plan has recovered the full amount guaranteed, including interest, pursuant to the Agreement with Inland.

For Further Information Contact

Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Master Water Conditioning Corp. Money Purchase Pension Plan (the Plan) Located in Pottstown, Pennsylvania

[Application No. D–9090]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of certain vacant land (the Property) by the Plan to Master Water Conditioning Corp. (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Plan in this transaction will receive the greater of: (1) $60,000; or (2) the fair market value of the Property as determined at the time of sale by an independent, qualified appraiser plus $5,000, which represents a premium due to the adjacency factor described herein;

(b) The proposed sale will be a one-time cash transaction; and

(c) The Plan will pay no costs or commissions as a result of this transaction.

Summary of Facts and Representations

1. The Plan, effective June 15, 1979, is a defined contribution money purchase plan and trust, which as of December 31, 1991, had $1,999,019 in assets. The Plan has approximately 14 participants. The Plan's trustee is Maurice E. Kurtz, who is the president of the Employer and who also owns approximately 60% of the common shares of the Employer. The Employer is a Pennsylvania corporation which is in the business of assembling water conditioning, softening and filtration systems.

2. On April 25, 1975, the Plan acquired certain real estate (the Original Parcel) from Clow Corp., which was an unrelated party to the Plan and the Employer. The Plan paid $45,000 in cash for the Original Parcel. The Original Parcel consisted of 4.137 acres of land. It is represented that on July 17, 1979, approximately 2.65 acres of the Original Parcel were sold for $50,000 in cash to A & L Handles Corporation, which is independent of all parties involved in this transaction. The Property is what remains of the Original Parcel and consists of 1.482 acres of vacant land. The Property is adjacent to the real estate which is currently used by the Employer to conduct its business, however, it is represented that the Property has never been used by any party in interest. It is also represented that annual costs associated with the upkeep of the Property, primarily taxes, were paid by the Employer. As such, the Plan incurred no holding costs with respect to the Property.

3. The Employer is currently contemplating expanding its operations and desires to use the Property for this purpose. The Employer proposes to purchase the Property from the Plan in a one-time cash transaction. The Plan will pay no costs or commissions in connection with the sale. An appraisal of the Property was prepared on April 9, 1992, by Clyde M. Brumbach, C.R.B. (Mr. Brumbach), an independent, qualified appraiser with Brumbach Associates, Inc. Mr. Brumbach represents that the Property, which is located in Pottstown, Montgomery County, Pennsylvania, is triangular in shape and contains 1.482 acres of vacant land. Mr. Brumbach relied on the comparable sales appraisal approach and determined that as of April 9, 1992, the fair market value of the Property was $55,000. In a letter of June 8, 1992, Mr. Brumbach considered the applicability of a premium on the fair market value of the Property due to the fact that the Employer owns real estate which is adjacent to the Property, and concluded that the adjacency factor merits a premium of $5,000 above the current fair market value. As such, the Plan will receive at least $60,000 for the Property in this transaction.

4. It is represented that the transaction is desirable for the Plan as the sale will enable the Plan to divest itself of an asset which produces no

income and has limited appreciation potential. The transaction is protective and in the best interest of the Plan because the fair market value of the Property was determined by an independent, qualified appraiser, who also deemed that the adjacency factor merits a premium above the fair market value to the Plan in the proposed transaction.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Plan in this transaction will receive the greater of: (1) $60,000; or (2) the fair market value of the Property as determined at the time of sale by an independent, qualified appraiser plus a premium factor of $5,000 due to its adjacency to the Employer's property;

(b) The proposed sale will be a one-time cash transaction;

(c) The Plan will pay no costs or commissions as a result of this transaction;

(d) The proposed transaction will enable the Plan to divest of an asset which produces no income and has limited appreciation potential.

For Further Information Contact:

Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Visalia Medical Clinic Inc. Money Purchase Plan (the M/P Plan) and Visalia Medical Clinic Profit Sharing Plan (the P/S Plan; collectively, the Plans) Located in Visalia, California

[Application Nos. D–8886 and D–8887]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of $3,000,000 (the Loan) by the Plans to Visalia Medical Clinic Inc. (the Employer), the Plans' sponsor and a party in interest with respect to the Plans, provided the following conditions are satisfied:

(1) The terms of the Loan will be at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(2) The Loan will be structured such that each Plan will lend $1,500,000 to the Employer;

(3) The outstanding balance on the Loan will at no time exceed 25% of each of the Plan's net assets; [2]

(4) The outstanding balance on the Loan will at no time exceed 25% of the Plans' aggregate net assets;

(5) The proposed terms of the Loan were evaluated by an independent fiduciary who deemed the transaction to be in the best interest and protective of the Plans, and who will also monitor the terms of the Loan, including the value of the collateral (the Collateral),[3] over its duration;

(6) The independent fiduciary is independent of other parties involved in the transaction and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transaction described herein;

(7) The Plans will bear no costs or expenses with respect tot he proposed transaction;

(8) The Loan will be adequately secured by the collateral, the loan to value ratio of which will always remain at least 200% of the Loan amount for the duration of the Loan;

(9) If, at the time the Loan is entered into, or any time thereafter, the fair market value of the Accounts Receivable is below the 200% loan to value ratio, the Employer will always pledge additional CDs as Collateral in order to meet the 200% requirement; and

(10) A.U.C.C. financial statement will be filed with the State of California upon the Department's grant of the proposed exemption, which will perfect the Plan's first security interest in the Collateral.

Summary of Facts and Representations

1. The Plans were restated effective January 1, 1989. As of July 22, 1991, the M/P Plan had 226 participants and the P/S Plan had 224 participants. As of December 31, 1990, the M/P Plan had assets of $8,315,592 and the P/S Plan had assets of $9,836,655 for an aggregate of $18,152,247. The Employer has designated Security Pacific National Bank in San Francisco, California as the Plans' non-discretionary trustee. The Plans' administrator is Western States Administrators in Fresno, California. However, the Board of the Directors of the Employer has the ultimate responsibility for making investment decisions for the Plans. The Employer is a California corporation which consists of doctors and provides medical services to the public.

2. The applicant herein represents that prior to February 23, 1990, participant loans were permitted under both Plans. Thereafter, participant loans were permitted only under the P/S Plan. The Employer's administrator represents that to the best of his knowledge, all outstanding participant loans were made in compliance with section 408(b)(1) of the Act. As of the year 1991, the M/P Plan had an outstanding participant loan balance to the ESOs of $20,729.27 and the P/S Plan had an outstanding balance of $91,230.45. Therefore, as of 1991, the total amount owed by the ESOs to both Plans was $111,959.72.

3. Thirty seven out of thirty nine shareholders of the Employer have created a real estate partnership known as Akers West Associates (AWA) to own the real property located at 5400 W. Hillsdale Avenue, Visalia, California (the Building). The Building is leased to the Employer and operates as the Employer's primary place of business. The Building, which is the only property owned by AWA, contains 70,300 square feet and is located on 10.2 acres of land. The current monthly lease amount payable to AWA by the Employer, as of January 1, 1992, is $60,100. The Employer and AWA, are planning an expansion of the Building, hereby referred to as the Western Addition (the Western Addition). The Western Addition is projected to comprise approximately 25,290 square feet. The development will be done by Quiring Corporation which is located in Fresno, California, and is unrelated to the Plan and the Employer. It is represented that none of the partnerships, officers, directors or shareholders of AWA or the Employer have any relationship, professional or otherwise to Quiring Corporation.

4. It is proposed that the Employer be permitted to borrow $3,000,000 from the Plans in order to finance the Western Addition. The Loan will be used for permanent financing and will be structured such that each Plan will lend $1,500,000 to the Employer. Applying the concept of "net assets" which has been

[2] The term "net assets" for the purpose of this proposed exemption means, the Plans' assets from which the amount of outstanding participant loan balances made by the Plans to the Employer's shareholders and officers (ESOs) has been deducted.

[3] For purposes of this proposed exemption, Collateral includes accounts receivable (the Accounts Receivable) of the Employer and certificates of deposit (CDs) in certain banks.

previously defined herein,[4] the Loan will involve 18.1% of the M/P Plan and 15.4% of the P/S Plan, and the total Loan of $3,000,000 will involve 16.6% of the Plans' aggregate net assets. A Promissory Note (the Note) will be issued by the Employer to the Plans. The Loan will be secured by a first security interest in the Accounts Receivable of the Employer as well as by the CDs. The Collateral will equal at least 200% of the outstanding Loan balance throughout the term of the Loan.

5. The Note will have an interest rate (the Rate), which will be two percentage points greater than the prime rate quoted in the Wall Street Journal's (WSJ) western edition, a recognized, independent third party index (the Index). The Index is the WSJ prime rate as reported on a daily basis in the Money and Investing section of the WSJ. The prime rate is listed under "Money Rates" in the WSJ and is based on corporate loans posted by at least 75% of the U.S. 30 largest banks. The initial interest rate for the Note will be 10.5% per annum, with annual adjustments based on the Index. Such adjustments will not lower the Rate below 10.5% per annum. Mineral King National Bank (MKNB), which has been appointed to act as an independent fiduciary for the Plan in the proposed transaction, will examine the Index on each anniversary date of the Loan and will adjust the Rate to reflect changes in the Index.

6. The Note is amortized over a fifteen year period, but will be payable over a ten year period in 120 monthly payments of principal and interest. These payments for the first year of the Loan will be $32,980 per month. However, these payments will be subject to change pursuant to the changes in the Index and the Rate. The Note also provides for a final balloon payment (the Balloon Payment) due in 2002, currently estimated at $1,581,136. The Balloon Payment will consist of all principal and all accrued interest not yet paid. Under the terms of the Note, a default is deemed immediately upon the failure of the Employer to make a monthly payment on the due date. In the event the Employer decides to prepay the Note, the Employer will be charged a minimum prepayment fee without any additional charges or penalties. The terms of the Loan do not provide the Plan with any prepaid interest or loan origination fee at the beginning of the transaction as compensation for making the Loan. However, MKNB notes that a minimum interest rate of 10.5% on the Loan with appropriate adjustments based on the Index throughout the duration of the Loan will more than compensate for the lack of prepaid interest or fees being charged on the Loan.

7. A Security Agreement (the Security Agreement) will be entered into by the Employer and MKNB. This Security Agreement will grant MKNB on behalf of the Plans, a first security interest in the Collateral. The Security Agreement explicitly states that the Employer as the Grantor represents and warrants to the MKNB as independent fiduciary for the Plans as the Lender that it holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Security Agreement. The Security Agreement also states that except for inventory sold or accounts collected in the ordinary course of the Employer's business, the Employer shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. The Employer shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance or charge, other than the security interest provided for by this Agreement, without the prior consent of MKNB.

8. The Accounts Receivable of the Employer were audited by an accounting firm of Scott, Doyal & Travioli (SD&T), which is located in Visalia, California. The Accounts Receivable represent amounts due to the Employer from its customers for medical services rendered as well as for the occasional provision of contract services to other health care providers in the Visalia area. MKNB will be responsible for ensuring that the Collateral is re-evaluated by SD&T on an annual basis. SD&T has a de minimis relationship with the Employer due to the provision of medical treatment to some of the partners of SD&T and/or members of their families. SD&T represent that they are in the business of providing accounting, auditing, personal and business financial planning, and tax and management services.

9. Duane W. Scott (Mr. Scott), one of the partners of SD&T, will be in charge of evaluating the Collateral to be pledged as security for this Loan transaction. According to an audit performed by SD&T, the Accounts Receivable had a total value of $6,649,673 as of September 23, 1991. Mr. Scott represents that based on historical data and from reviewing the records of the Employer, "doubtful accounts" of the Employer (Accounts Receivable which prove to be uncollectible), average approximately 11.4% of the Accounts Receivable. As a result, the applicant represents that for purpose of complying with the exemptive condition requiring that the Collateral be maintained at 200% of the Loan balance, at the inception of the Loan and at each annual audit of the Collateral, the Accounts Receivable will be discounted for "doubtful accounts", and that this discount will be 11.4% of the amount of the Accounts Receivable at that time. As such, in establishing the value of Collateral for purposes of maintaining the 200% loan to value ratio, at the time the Loan is entered into and at subsequent annual audits of the Collateral, Mr. Scott will utilize the discounting method described herein with respect to the Accounts Receivable.

10. In terms of the overall collectibility of the Accounts Receivable, Mr. Scott states that emphasis must be given to the fact that much of the Accounts Receivable are billed to Medicare and/or private insurance companies. The amount and certainty of collection for these billings is known and assured. The timing of the collection, however, is controlled by the federal or state governments and insurance companies and not by the collection efforts of the Employer. Specifically, the Accounts Receivable of the Employer as of September 23, 1991, consist of the following:

Current	$1,500,737 (22.6%)
30–60 days	$1,254,180 (18.9%)
60–90 days	$667,721 (10%)
90–120 days	$612,814 (9.2%)
over 120 days	$2,614,221 (39.3%)
Total accounts	$6,649,673
Allowance for doubtful accounts	($755,000) (11.4%)
Net accounts receivable	$5,894,673

Accordingly, at the inception of the Loan, $5,894,673 of the Accounts Receivable will be the amount utilized for purposes of establishing compliance with the exemptive condition requiring 200% loan balance to collateral ratio. Furthermore, in order to achieve the 200% loan to value ratio at the inception of the Loan, CDs in the amount of $105,600 will also be pledged as Collateral. Prior to the consummation of the Loan transaction, another audit of the Accounts Receivable will be performed by SD&T, and at that time if the fair market value of the Accounts Receivable, after they have been discounted for "doubtful accounts", is still below the required 200% loan to value ratio, MKNB will make a determination regarding the pledge of additional CDs as Collateral. It is

[4] *Supra*, note 1. Specifically, after accounting for currently outstanding participant loan balances to ESOs, the M/P Plan has $8,294,863 in net assets, the P/S Plan has $9,745,425 in net assets and the Plans' aggregate net assets are $18,040,287.

represented that additional CDs will be pledged as Collateral at those times during the duration of the Loan when additional Collateral is required, and that these CDs will be held with MKNB.[5] Mr. Scott represents that future audits of the Collateral will include a review of CDs to ensure that CDs are not otherwise encumbered or used as collateral for any other purpose. A U.C.C. financial statement will be filed with the State of California upon the Department's approval of the pending exemption, which will perfect the Plan's first security interest in the Collateral, including the CDs.

11. MKNB is a bank located in Visalia, California and as mentioned above will serve in the independent fiduciary capacity with respect to the Loan transaction. MKNB represents that it is qualified to act in the independent fiduciary capacity. MKNB also represents that it has considerable experience in monitoring loans secured by accounts receivable. MKNB maintains that it understands its responsibilities as an ERISA fiduciary and that its income derived from the Employer or related parties, including serving in the independent fiduciary capacity for this transaction, will not exceed 1% of the MKNB's gross annual income for each fiscal year that it serves in such independent fiduciary capacity. The applicant represents that MKNB currently has 855,054 shares outstanding, of which 16,058 are owned by some of the shareholders of the Employer. MKNB, however, represents that this ownership relationship is de minimis. Specifically, in this regard, Dr. T.A. Aiken owns 4,055 shares, Dr. D.L. Heiges owns 4,275 shares, Dr. Benny C. Lee owns 3,927 shares and the estate of Dr. R.E. Phillips owns 3,801 shares. Also, Dr. Lee is a member of the Board of Directors of the Employer. However, it is represented that Dr. Lee has agreed to abstain from any discussion and/or casting a vote in any decision or agreement between the Employer and MKNB. MKNB represents that it does not control, is not controlled by, and is not under common control with the Employer and is not otherwise affiliated with the Employer. No shareholder of the Employer holds a position as director or senior management official of the MKNB.

12. In its capacity as independent fiduciary, MKNB will monitor compliance with the terms of the Loan. Specifically, MKNB has reviewed the interest rate, the loan terms and the Collateral for the proposed Loan and finds them to be fair and reasonable as well as commensurate with the interest rates, terms and collateral which would be required by an independent financial institution on a similar loan. MKNB also states that an investigation has been conducted regarding the Employer's payment history on other loans which are currently outstanding and therefore was able to determine that the Employer has made payments in a timely manner. MKNB represents that after reviewing a U.C.C. search they were able to conclude that there are no other lenders having any security interest in the Accounts Receivable. MKNB will monitor the Loan throughout its duration to assure that the Note and the Security Agreement terms are complied with, the payments are made when due, and that the loan to value ratio of the Collateral remains at least 200% of the Loan balance throughout its duration. MKNB also represents that they will review annual audits of the Collateral performed by SD&T and in the event the loan to value ratio of the Collateral falls below the required 200% at any time during the term of the Loan, they will contact the Employer to provide additional collateral. MKNB will also be responsible for enforcing collection of all payments in the event of default.

13. MKNB herein represents that it has conducted an independent survey of the current real estate market regarding loans to businesses for the purposes of improvements and/or expansion to real estate. MKNB has also reviewed the Plans' asset portfolio for the year 1990, and concluded that the Loan is a prudent investment which will provide further diversification of the Plans' assets. MKNB represents that the Loan by the Plans will provide an attractive rate of return, benefiting all participants in the Plans. Furthermore, it is represented that the Plans will not bear any costs with respect to this Loan transaction. The Loan provides for a minimum interest rate of 10.5% and is adequately secured, and the Employer has a record of meeting its financial commitments. As such, MKNB was able to conclude that the Loan is in the best interest and protective of the Plans. Investment portfolio of the Plans historically included balance equity and fixed income investments to provide diversification and limit risk. The Loan will provide a minimum return of approximately 2% per year greater than the present fixed income investments have generated for the Plans over the last several years. MKNB maintains that a complete review and examination of the Employer's financial condition has been conducted. Based on this review and the financial history of the Employer, MKNB has concluded that with respect to the Loan, the Employer should be able to make payments in a timely manner. Bank of Sierra, an independent financial institution, has also reviewed the Note and the Security Agreement, and confirmed that its terms and security are fair and commercially reasonable, as well as similar to those required by an independent financial institution when making a comparable loan, provided the borrower is creditworthy.

14. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) The terms of the Loan will be at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(2) The Loan will be structured such that each Plan will lend $1,500,000 to the Employer;

(3) The outstanding balance on the Loan will at no time exceed 25% of each of the Plan's net assets;

(4) The outstanding balance on the Loan will at no time exceed 25% of the Plans' aggregate net assets;

(5) The proposed terms of the Loan were evaluated by an independent fiduciary who deemed the transaction to be in the best interest and protective of the Plans, and who will also monitor the terms of the Loan, including the value of the Collateral, over its duration;

(6) The independent fiduciary is independent of other parties involved in the transaction and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transaction described herein;

(7) The Plans will bear no costs or expenses with respect to the proposed transaction;

(8) The Loan will be adequately secured by the Collateral, the loan to value ratio of which will always remain at least 200% of the Loan amount for the duration of the Loan;

[5] It is represented by MKNB that CDs will be issued by either First Interstate Bank, Wells Fargo Bank or the Bank of America, depending on the results of negotiations to obtain the most favorable interest rate.

Perfection of the security interest in CDs is obtained by MKNB's actual possession of the CDs. Possession will be obtained by MKNB in this situation if CDs are to be pledged as security for the Loan.

(9) If, at the time the loan is entered into, or at any time thereafter, the fair market value of the Accounts Receivable is below the 200% loan to value ratio, the Employer will always pledge additional CDs as Collateral in order to meet the 200% requirement; and

(10) A U.C.C. financial statement will be filed with the State of California upon the Department's approval of the pending exemption, which will perfect the Plan's first security interest in the Collateral.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July, 1992.

Ivan Strasfield,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–18192 Filed 7–30–92; 8:45 am]

BILLING CODE 4510–29–M

Employment and Training Administration

[TA–W–27, 421]

Marshall Exploration, Inc., Marshall, Texas; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 22, 1992 in response to a worker petition which was filed on June 9, 1992 on behalf of workers at Marshall Exploration, Incorporated, Marshall, Texas. This Company is a wholly owned subsidiary of Sonat Exploration Company, the subject of investigation TA–W–27, 358.

Marshall's operations and employees were merged with Sonat's in the summer of 1991 and are included in the data submitted by Sonat under investigation TA–W–27,358. A certification was issued to all Sonat workers (corporate-wide) in July 1992 and will remain in affect for two years. This determination covers the workers at the site of the subject investigation. Therefore, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–18937 Filed 8–3–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,068 Mustang Fuel Corporation, Oklahoma City, Oklahoma; TA–W–27,069 Mustang Transport Company, Okarche, Oklahoma]

Mustang Fuel Corp.; Notice of Revised Determination on Reconsideration

On July 10, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Mustang Fuel Corporation in Oklahoma City, Oklahoma. The notice will soon be published in the **Federal Register**.

New findings on reconsideration show that the Mustang Fuel Corporation is not a service company but is an integrated producer. Mustang Fuel owns wells and sells crude oil and natural gas to customers. Revenues from its exploration and production division account for a substantial portion of its revenues.

Other findings on reconsideration for Mustang Fuel Corporation show crude oil and natural gas sales, in quantity, decreasing in the first five months of 1992 compared to the same period in 1991 and in 1991 compared to 1990. Significant worker separations occurred in the first half of 1992.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in the period April 1991 through March 1992 as compared to the year earlier.

Other findings on reconsideration show major crude oil customers decreasing their purchases of crude oil from Mustang Fuel Corporation and increasing their import purchases, in quantity, in the first half of 1992 compared to the same period in 1991.

The Department's initial denial issued on June 3, 1992, for workers at Mustang Transport Company explained the very limited circumstances in which service workers are certified for trade adjustment assistance. Despite the certification of Mustang Transport's parent company, these conditions still are not met. New findings on reconsideration show that only a small and unimportant portion of the activities performed by the Mustang Transport Company are for the Mustang Fuel Corporation. The predominant portion of their transport services is for unaffiliated third parties.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Mustang Fuel Corporation workers in Oklahoma City, Oklahoma were adversely affected by increased imports of articles like or directly competitive with the crude oil produced at Mustang Fuel Corporation in Oklahoma City, Oklahoma. In accordance with the provisions of the Act, I make the following revised certification for workers of the Mustang Fuel Corporation in Oklahoma City, Oklahoma.

"All workers of Mustang Fuel Corporation in Oklahoma City, Oklahoma who became or partially separated from employment on or after January 1, 1992 are eligible to apply for

adjustment assistance under Section 223 of the Trade Act of 1972."

I further determine that the Department's initial denial for workers at the Mustang Transport Company, Okarche, Oklahoma be affirmed.

Signed at Washington, DC., this 24th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 92-18395 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26, 789]

SIA of America, Alliance, Ohio; Negative Determination Regarding Application for Reconsideration

By an application dated April 21, 1992, Local #411 of the International Chemical Workers Union (ICWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 14, 1992 and published in the **Federal Register** on April 27, 1992 (57 FR 15331).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that company imports of sandpaper increased until the plant was closed in February 1992 and sold to Sancap Abrasives who became a distributor of imported sandpaper.

Investigation findings show that Swiss Industrial Abrasives (SIA) owned the Alliance, Ohio plant. The sandpaper produced included over 30 different grades or types of industrial sandpaper—including sandpaper sheets, sandpaper belts and sandpaper discs.

Other findings show that company imports of sandpaper decreased substantially in 1991 compared to 1990. Further, company officials indicated that the articles imported from Switzerland were never produced at Alliance. Company officials stated that the plant was sold because it was a high cost plant.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the subject firm's major declining customers (in quantity) showed that none imported industrial sandpaper.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-18396 Filed 8-4-92; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., app. I) and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b), will convene on September 2, 1992, at 12:30 p.m., at the Stouffer Harbor Hotel, 202 East Pratt Street, Baltimore, Maryland, 21202. The meeting will adjourn on September 3, 1992, at approximately 12:30 p.m. The public is encouraged to attend.

The agenda is as follows:

I. Call to Order.

II. Discussion of the **Federal Register** notice, published June 24, 1992, to reopen the record of 29 CFR 1915, subpart B, "Explosive and Other Dangerous Atmospheres," (57 FR 28152).

PUBLIC PARTICIPATION: The Committee will consider oral presentations relating to the agenda item. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, August 25, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed. Disabled individuals wishing to attend should contact Mr. Thomas Hall to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 5 copies to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8617.

Signed at Washington, DC, this 29 day of July, 1992.

Dorothy L. Strunk

Acting Assistant Secretary of Labor.

[FR Doc. 92-18354 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. S-024]

Shipyard Employment Standards Advisory Committee; Renewal

AGENCY: Office of the Secretary, U.S. Department of Labor.

ACTION: Renewal of Shipyard Employment Standards Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. 1), and after consultation with the General Services Administration (GSA), I have determined that the renewal of the charter of the Shipyard Employment Standards Advisory Committee is necessary and is in the public interest.

The Committee will advise the Assistant Secretary for Occupational Safety and Health on the preparation of one comprehensive set of standards for the shipbuilding, ship repair, and shipbreaking industries by combining parts 1910 and 1915 standards, updating, reorganizing, clarifying, and simplifying those standards.

The Committee will consist of not more than 15 members and proportionately includes individuals appointed to represent the following affected interest: Labor organizations, industry, Federal safety and health officials, State health and safety officials, professional organizations, and national standards setting groups. Accordingly, its charter will be filed 15 days from the date of this notice.

Interested persons are invited to submit comments regarding the renewal

of the Shipyard Employment Standards Advisory Committee. Such comments should be addressed to: Mr. Tom Hall; OSHA Division of Consumer Affairs; room N 3637; U.S. Department of Labor; 200 Constitution Avenue, NW.; Washington, DC 20210.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Signed at Washington, DC, July 29, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-18447 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-29-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Health Care of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 12:30 p.m., Tuesday, September 8, 1992, in Suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

This Health Care Working Group was formed by the Advisory Council to study issues relating to Health Care for employee benefit plans covered by ERISA.

The purpose of the September 8 meeting is to evaluate testimony received from expert witnesses, other data and to discuss conclusions and recommendations to be made to the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before September 1, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-18347 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans, Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Investment Activity of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:00 a.m., Wednesday, September 9, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Pension Investment Activity Working Group was formed by the Advisory Council to study issues relating to Pension Investment Activity for employee benefit plans covered by ERISA.

The purpose of the September 9 meeting is discuss background materials and testimony related to economically targeted investments. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before September 1, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-18346 Filed 8-3-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SPACE COUNCIL

Meeting of the Space Industrial Base Capability Task Group

AGENCY: National Space Council.

ACTION: Notice of partial meeting closure.

SUMMARY: The Space Industrial Base Capability Task Group will meet in closed session from 10:30 a.m. to 12 Noon on August 7, 1992.

DATES: August 6 and 7, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, Suite 800, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Eva Czajkowski, (703) 685-3568, or Joe Scifers, National Space Council, Executive Office of the President, Washington, DC, (202) 395-6175.

SUPPLEMENTARY INFORMATION: As previously announced (57 FR 31743, July 17, 1992), the Space Industrial Base Capability Task Group will meet on August 6 and 7, 1992, at ANSER, Suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. The meeting times, however, have been changed; the group will meet between 8:00 a.m. and 5:15 p.m. on August 6, 1992, and between 8:30 a.m. and 12:00 Noon on August 7, 1992. This meeting will be closed to the public from 10:30 a.m. to 12:00 Noon on August 7, 1992, under exemption 4 (privileged or confidential commercial and financial information) of 5 USC 552b(c). All other portions will be in open session. Persons interested in attending should contact Eva Czajkowski, ANSER, (703) 685-3568.

Joe Scifers,

Committee Action Officer.

[FR Doc. 92-18393 Filed 8-3-92; 8:45 am]

BILLING CODE 3128-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-10 (50-282 & 50-306)]

Northern States Power Co.; Issuance of Environmental Assessment and Finding of No Significant Impact for the Prairie Island Independent Spent Fuel Storage Installation at the Prairie Island Nuclear Generating Plant

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a materials license under the requirements of title 10 of the Code of Federal Regulations, part 72 (10 CFR part 72), to Northern States Power Company (NSP or the Applicant), authorizing receipt and storage of spent fuel in an independent spent fuel storage installation (ISFSI) located onsite at its

Prairie Island Nuclear Generating Plant, Goodhue County, Minnesota. The Commission's Office of Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety has completed its environmental review in support of the issuance of a materials license. The "Environmental Assessment Related to Construction and Operation of the Prairie Island Independent Spent Fuel Storage Installation" has been issued in accordance with 10 CFR part 51.

Description of the Proposed Action

The proposed licensing action would authorize the Applicant to construct and operate a dry storage ISFSI. The function of the ISFSI is to provide interim storage for up to 1920 fuel assemblies from Prairie Island Units 1 & 2. Forty fuel assemblies are loaded into each cask within the Prairie Island reactor building, and subsequently transferred to the ISFSI. The license for an ISFSI under 10 CFR part 72 is issued for 20 years, but the licensee may seek to renew the license, if necessary, prior to its expiration.

Need for the Proposed Action

Discharged spent fuel assemblies from Prairie Island Units 1 and 2 are currently stored on-site in a spent fuel pool. The spent fuel pool provides for long-term storage of 1386 assemblies in high density storage racks. The spent fuel pool will lose capacity for discharge of a full core in 1993. Storage capacity will be exhausted completely in 1994. The capacity of the ISFSI will enable NSP to store an additional 1920 spent fuel assemblies in 48 casks, and will enable Units 1 and 2 to continue operation until expiration of their respective Operating Licenses in 2013 and 2014.

The staff recognizes that the Minnesota Public Utilities Commission announced its intention to approve the construction of only 17 casks rather than the 48 which were requested. This announcement is separate from the NRC's analysis and proposed action.

Environment Impacts of the Proposed Action

As discussed in the EA, no significant impacts from construction of the ISFSI are anticipated. Similarly, no significant impacts are expected from ISFSI operations. The activities will affect only about 10 acres of land. Potential impacts from fugitive dust, erosion and noise levels, which are typical for the planned construction activities, are minimal and with good construction practices will be controlled to insignificant levels.

The radiological impacts from liquid and gaseous effluent arising from cask loading and preparation are minimal. They fall within the scope of impacts evaluated for licensed reactor operations and are controlled by the existing Prairie Island reactor technical specifications. The primary radiological exposure pathway associated with ISFSI operation is direct irradiation of nearby residents and site workers. The highest dose to the nearest resident for any year is about 0.08 mrem, which is well within the 25 mrem/year maximum dose permitted by 10 CFR 72.104. The highest collective dose commitment for any year to the population within two miles of the ISFSI will not exceed 0.032 person-rem. Dose levels beyond this distance are insignificant. The radiological impacts from the postulated worst-case accident at the ISFSI are within the 5 rem criteria for whole body and organ doses to an individual, as specified in 10 CFR 72.106(b) and are less than the Environmental Protection Agency Protective Action Guides for individuals exposed to radiation as a result of accidents.

Alternatives to the Proposed Action

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG–0575, found that ISFSI's represent a major means of interim storage at a reactor site. While the environmental impacts of the dry storage IFSI option were not specifically addressed in the FGEIS, the use of alternative dry passive storage techniques for aged fuel appeared to be as feasible as wet storage and environmentally acceptable. However, environmental impacts need to be considered on a site-specific basis.

Several alternatives were discussed in the EA, but none were more protective of the environment nor was any alternative sufficient to meet the spent fuel storage requirements for the Prairie Island Nuclear Generating Plant. Because the Commission has concluded there are no significant environmental impacts associated with the proposed action, any alternative of equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The only resources committed irretrievably and not previously considered in environmental documents relating to the Prairie Island Nuclear Generating Plant are the steel, concrete, and other construction materials used in the ISFSI.

Agencies and Persons Contacted

Outside agencies that were contacted supporting documentation in connection with the preparation of the Environmental Assessment include: Minnesota Environmental Quality Board; American National Standards Institute/American Nuclear Society; Sandia National Laboratory; Environmental Protection Agency.

Finding of No Significant Impact

In summary, the ISFSI is located in a highly disturbed area within the confines of the Prairie Island Nuclear Generating Plant Exclusion area and will require only a minor commitment of land resources. The proposed action is not expected to cause any significant release of effluent, and there will be no significant increases in individual and collective radiation doses to either the public or onsite workers. Potential offsite impacts from a postulated worst-case credible accident are a small fraction of the regulatory limits of 10 CFR 72.106, and well below the Environmental Protection Agency's Protective Action Guides. Therefore, the proposed action will not significantly affect the quality of the human environment. Accordingly, pursuant to the requirements of 10 CFR 51.31 and 10 CFR 51.32, the Commission has determined that a finding of no significant impact is appropriate and that an environmental impact statement (EIS) need not be prepared for the issuance of a materials license for the Prairie Island ISFSI. The EA for the proposed action, on which this Finding of No Significant Impact is based, relied upon several environmental documents, with independent assessment of data, analyzes and results. The following documents were utilized:

(1) "Final Environmental Statement Related to the Prairie Island Nuclear Generating Plant," dated May 1973;

(2) "Prairie Island Independent Spent Fuel Storage Installation Environmental Report," Revision 1, Northern States Power, September 1991;

(3) "Final Environmental Impact Statement on the Prairie Island Independent Spent Fuel Storage Installation" Minnesota Environmental Quality Board, April 12, 1991;

(4) "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," U.S. Nuclear Regulatory Commission, 10 CFR part 51;

(5) Federal Guidance Report #11, Environmental Protection Agency, EPA 520, 1–88–020;

(6) "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG–0575, Volumes 1–3, August 1979.

The EA and other documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located in the Minneapolis Public Library, 300 Nicollett Mall, Minneapolis, MN 55401.

Dated at Rockville, Maryland, this 28th day of July 1992.

For The Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Source Containment and Devices Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92–18385 Filed 8–3–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on August 18, 1992, at the Holiday Inn, 8120 Wisconsin Avenue, in the Versailles IV Room, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information deemed proprietary to General Electric (GE) Nuclear Energy pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows: *Tuesday, August 18, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the GE Nuclear Energy's generic program supporting power uprates for boiling water reactor plants and the NRC staff's Safety Evaluation Report that supports the power uprate for the Enrico Fermi Nuclear Power Plant, Unit 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GE Nuclear Energy, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (E.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 28, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–18378 Filed 8–3–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on August 19, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, August 19, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss the General Electric (GE) Nuclear Energy's and the NRC staff's responses to the issues included in the April 13, 1992 ACRS letter to the NRC Executive Director for Operations (EDO) regarding the Draft Safety Evaluation Report for the GE Advanced Boiling Water Reactor design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GE Nuclear Energy, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (E.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 28, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–18377 Filed 8–3–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Joint Meeting of the Subcommittees on Plant License Renewal/Reliability and Quality; Meeting

The ACRS Subcommittees on Plant License Renewal and Reliability and Quality will hold a joint meeting on August 18, 1992, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, August 18, 1992—1 p.m. until the conclusion of business.*

The Subcommittees will review the proposed Branch Technical Position on Equipment Qualification for Plant License Renewal.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee

Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, nuclear industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (e.s.t). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 28, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–18370 Filed 8–3–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–237]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 2); Exemption

I.

Commonwealth Edison Company (CECo, the licensee) is the holder of Facility Operating License No. DPR–19 which authorizes operation of the Dresden Nuclear Power Station, Unit 2 (the facility) at a steady-state power level not in excess of 2527 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Grundy County, Illinois. This license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

By letter dated May 27, 1992, pursuant to 10 CFR 50.12(a), Commonwealth Edison requested a schedular exemption for Dresden Unit 2 from the 24-month test interval for Type B and C leak rate tests required by 10 CFR part 50, appendix J, Sections III.D.2(a) and III.D.3. The exemption is requested to support the Dresden Unit 2 refueling outage schedule and to avoid the potential for an earlier reactor shutdown.

Dresden Unit 2 entered into the Cycle 12 refueling outage (D2R12) on September 23, 1990. Type B and C local leak rate testing began on September 23, 1990 and continued through January 3, 1991. However, several unanticipated events caused an unusually long outage with startup not occurring until February 10, 1991. In addition, Dresden Unit 2 entered several maintenance outages during Cycle 13. This included a 111 day outage, while Unit 3 was in a refuel outage, to resolve problems relating to the 250 Volt station battery, divisional cable separation, and undervoltage concerns. As a result of these extended outages, complete fuel utilization will not be achieved by the originally scheduled refuel outage in September 1992. CECo is anticipating rescheduling the Dresden Unit 2 refuel outage from September 1992 to January 4, 1993, and has requested a maximum exemption of up to 122 days, for the most extreme case, from the 24-month Appendix J test interval for Type B and C testable volumes for the penetrations that can not be tested during operation.

III.

In its letter dated May 27, 1992, CECo requested a one-time exemption from the 24-month Type B and C test interval requirement of Appendix J for certain volumes (i.e., bellows, manway gasket seal, flanges, and isolation valves) identified in Attachments II and III to the submittal. CECo stated that these volumes can not be tested while the reactor is at power and provided the basis for this conclusion in Attachment IV of the submittal.

CECo has provided leakage test results and maintenance information on these volumes for the past two testing programs conducted in the 1988–1990 time frame. The current maximum pathway leakage rate for Dresden Unit 2 as determined through Type B and C leak rate testing, is 333.53 Standard Cubic Feet Per Hour (scfh). This value is approximately 68% of the Technical Specification limit of 488.45 scfh (0.6 L_a). As a result of additional maintenance being performed on various pathways during Cycle 13, the current leakage rate has been reduced from the D2R12 "As Left" leakage rate of 362.29 scfh. In addition, the D2R12 "As Left" total minimum pathway leakage rate for Type B and C testable penetrations was 126.69 scfh. The minimum pathway data from the last two Unit 2 refuel outages also indicates that on a minimum pathway basis, the quality of primary containment does not degrade excessively through the course of the fuel cycle. In addition, the D2R12, "As Left" Integrated Leak Rate Test, completed on December 18, 1990, indicated that the primary containment overall integrated leakage rate, which obtains the summation of all potential leakage paths including containment welds, valves, fittings, and penetrations, was 0.8128 wt%/day. This value is the sum of the 95% upper confidence limit calculated leak rate of 0.7428 wt%/day plus the leakage rate of all nonvented pathways and the leakage compensation for the change in the drywell sump levels. This value is approximately 67% of the limit specified in the Technical Specifications (1.2 wt%/day or 0.75 L_a).

In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, the Dresden Nuclear Power Station will impose an administrative limit for maximum pathway leakage of 85% of 0.6L_a for the remaining Unit 2 fuel cycle.

To reduce the number of volumes which need an exemption, CECo will test the volumes listed in Attachment V of its submittal during reactor operation. In addition, volumes listed in Attachment III of its submittal will be tested should a forced outage of suitable duration occur prior to January 4, 1993.

The staff has reviewed CECo's submittal regarding the Appendix J test interval exemption request. Based on the above discussion, the staff finds that for the components identified in Attachments II and III of the submittal, an exemption from the local leak rate (LLRT) test frequency specified in Appendix J should be granted based on the following.

1. Testing has shown low "as found" leakage during the past two outages. The ample margin between the measured leakage and the allowable leakage should accommodate any degradation likely to be experienced for these components during the extended period.

2. The intent of appendix J was that Type B and C testing be performed during a refueling outage. It is not the intent of appendix J to require a shutdown solely for LLRTS. The exemption would provide relief from the requirements of appendix J to allow a test interval extension for these components which only became necessary as a result of the unusually long Cycle 12 refueling outage.

3. Although a 122 day extension has been requested, many of the affected volumes will need an exemption for a much shorter time.

Based on the above, the staff concludes that the licensee's proposed extension of the test intervals for these components identified in its submittal are acceptable. This is a one-time exemption from the two-year Type B and Type C test interval requirements as prescribed in Appendix J, and is intended to be in effect until January 4, 1993. This approval is based on the assumption that all other tests will be conducted in accordance with the requirements of appendix J.

IV.

By letter dated May 27, 1992, CECo also identified special circumstances. As discussed above, the exemption request is for a short duration relative to the two year requirement. In addition, all testing that can be reasonably performed while the plant is operating will be completed and additional testing will be performed if an unscheduled outage of suitable duration should occur. This meets a criterion for a special circumstance per item (v) of 10 CFR 405.12(a)(2), i.e., "The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation."

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that (1) this exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest, and (2) the Exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants an exemption as described in section III above from 10 CFR 50, appendix J, sections III.D.2(a) and III.D.3 to the extent that the 24-month interval for performing Type B tests, except for air locks, and Type C tests may be extended for 122 days until January 4, 1993, on a one-time basis only, for Dresden Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (57 FR 32570).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of July 1992.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18383 Filed 8-3-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-446]

Texas Utilities Electric Co., et al. Comanche Peak Steam Electric Station, Unit 2; Order Extending Latest Construction Completion Date

The Texas Utilities Electric Company (TU Electric) is the holder of Construction Permit No. CPPR-127 issued by the Atomic Energy Commission on December 19, 1974, for construction of the Comanche Peak Steam Electric Station, Unit 2, a nuclear facility utilizing a Westinghouse Electric Corporation nuclear steam supply system, at the Applicant's site in Somervell County, Texas.

By letter dated February 3, 1992, as supplemented on March 16, 1992, TU Electric filed a request for extension of the latest construction completion date specified in Construction Permit No. CPPR-127 to August 1, 1995. In its justification for the extension request TU Electric stated that the estimated one-year suspension of Unit 2 construction, which began in April 1988, was necessary to allow TU Electric to concentrate its resources on the completion of Unit 1. The completion and startup of Unit 1 took longer than anticipated, forcing TU Electric to delay significant design activities on Unit 2 until June 1990, followed by the resumption of significant construction activity in January 1991.

As discussed more fully in the staff's evaluation of the requested extension, we have concluded good cause has been shown for the delay and that the requested extension is for a reasonable period. We have further concluded that the requested extension involves no significant hazards consideration, and therefore no prior public notice is required.

The NRC staff has prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on June 29, 1992 (57 FR 28885). The NRC staff has concluded that this action will not have a significant impact on the quality of the human environment, and therefore, no environmental impact statement need be prepared.

For further details with respect to this action, see the applicant's request for extension dated February 3, 1992, as supplemented by letter dated March 16, 1992, and the staff's evaluation of the request, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

It is hereby ordered That the latest construction completion date for CPPR-127 be extended to August 1, 1995.

Dated at Rockville, Maryland, this 28th day of July 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18384 Filed 8-3-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (ACM Government Securities Fund, Inc., Common Stock $.01 Par Value) File No. 1-9782

July 29, 1992

ACM Government Securities Fund, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, the Directors of the Fund approved the listing of the Common Stock on the PSE on a trial basis. Two years' experience with the Fund's PSE listing has indicated that the benefits expected to be derived from the listing, such as greater visibility, increased liquidity resulting from ninety minutes of extra auction trading each business day, and the services of two additional exchange specialists have not materialized, if only because the volume of trading of shares

of the Fund's Common Stock on the PSE has never assumed significant proportions. Therefore, the Board of Directors of the Fund has concluded that, although the expense of maintaining the listing is modest, the lack of benefit therefrom does not warrant the continuation of a listing on the PSE.

Any interested person may, on or before August 19, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-18356 Filed 8-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18867; File No. 812-7921]

Equitable Variable Life Insurance Company, et al.

July 27, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an Order of Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Equitable Variable Life Insurance Company ("Equitable Variable"), Separate Account FP of Equitable Variable Life Insurance Company (the "Account") and The Equitable Life Assurance Society of the United States ("Equitable") (Equitable Variable, the Account and Equitable are collectively referred to herein as "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(a)(3) of the 1940 Act and Rule 6e-3(T)(b)(13)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies (the "Contracts") that provide for both a sales charge of 3% on premium payments made in any contract year where such premium payments exceed one year's "target premium" and a sales charge higher than the 3% sales charge on other premium payments made pursuant to the Contracts.

FILING DATE: The application was filed on May 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 pm., on August 21, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC, 20549. Applicants: 787 Seventh Avenue, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, at (202) 272-5415 or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Equitable Variable, a wholly-owned subsidiary of Equitable, is a stock life insurance company organized under the laws of New York. Equitable Variable established the Account pursuant to the insurance laws of New York. The Account is a separate account within the meaning of the 1940 Act and is registered under the 1940 Act as a unit investment trust. For purposes of certain provisions of the 1940 Act, the Account is deemed to be an issuer of periodic payment plan certificates. Equitable Variable is the principal underwriter for the Contracts. As the parent of Equitable Variable, Equitable may also be deemed a principal underwriter of the Contracts. Both Equitable and Equitable Variable are registered as broker-dealers under the Securities Exchange Act of 1934.

2. Equitable Variable intends to offer the Contracts in reliance upon rules 6c-3 and 6e-3(T) under the 1940 Act and, with respect to each, has elected to be governed by rule 6e-3(T)(b)(13)(i)(A).

3. The Contracts include a front-end sales charge equal to: (a) 30% of all premiums paid in the first contract year up to one target premium and 3% of all premium payments paid during the first contract year in excess of the target premium (the "Additional Premiums"), plus (b) 7.5% of all premiums paid in each subsequent contract year up to one target premium and 3% of all Additional Premiums paid in each such contract year. The 7.5% charge referred to in clause (b) above will be reduced to 6% where the sum of the ages of the two insureds named in the Contract at issue exceeds 133 years. Applicants state that the target premium for determining the front-end sales charge will vary among insured persons depending upon the face amount of the Contract as well as the insured individual's gender, smoker/non-smoker status and issue age. Applicants represent, however, that the target premium will never exceed the guideline annual premium prescribed by rule 6e-3(T)(c)(8) under the 1940 Act.

4. Death proceeds under the Contracts are payable upon the death of the second of the two insureds named in the Contract, rather than upon the death of a single named insured.

Applicants' Legal Analysis

1. Section 27(a)(3) of the 1940 Act provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment and further provides that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. Rule 6e-3(T)(b)(13)(ii) provides a partial exemption from the prohibitions of section 27(a)(3) provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or reductions in sales loads for amounts transferred to a variable life insurance policy from another plan of insurance.

2. Applicants request an exemption from the requirements of section 27(a)(3) and rule 6e-3(T)(b)(13)(ii) because, under the Contracts' sales charge structure, if Additional Premiums are paid in any contract year, premiums paid in any subsequent contract year not in excess of one year's target premium will be

subject to a higher sales charge than were the Additional Premiums.

3. Applicants submit that the requested relief is necessary because a sales charge of 3% imposed on Additional Premiums is lower than the 7.5% sales charge that will apply to the first target premium paid in each contract year after the first. Applicants state that, had they chosen to impose the full 7.5% sales charge on all Additional Premiums rather than the lower sales charge of 3%, the Contracts would comply with all of the sales charge limitation of rule 6e-3(T) and would also qualify under the exemptive provisions of rule 6e-3(T)(b)(13)(ii).

4. Applicants state that the higher sales charge on the target premium paid under a Contract in any contract year, as compared with the sales charge imposed on Additional Premiums in the same contract year, reflects in part the lower overall distribution costs (*e.g.*, commissions paid to sales persons) that Equitable Variable will incur in connection with Additional Premiums over the life of the Contracts. To impose the full 7.5% sales charge on Additional Premiums would generate more revenue than Equitable Variable believes necessary to adequately defray its expenses.

Applicants submit that it would not be in the interest of contractowners to require the imposition of a sales charge on Additional Premiums where such charge is higher than Applicants deem necessary. Applicants further represent that contractowners will benefit from the sales charge structure and that the prospectus for the Contracts will contain disclosure informing contractowners how to minimize sales charge deductions from premiums paid.[1]

5. Applicants argue that section 27(a)(3) was designed to address the abuse of periodic payment plan certificates under which large amounts of front-end sales charges were deducted so early in the life of the plan that an investor redeeming in the early periods would recoup little of his retirement since only a small portion of the investor's early payments were actually invested. Applicants note, however, that by not imposing an additional 4.5% sales charge on Additional Premiums paid in any contract year, Equitable Variable will cause a greater proportion of the Contracts' sales charges to be deducted later than otherwise would be the case.

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

Conclusion

For the reasons stated above, Applicants submit that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18357 Filed 8-3-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25594]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 31, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 20, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company; (70-8038) EUA Power Corporation

The Connecticut Light and Power Company ("CL&P"), P.O. Box 270, Hartford, Connecticut 06037, an electric public-utility subsidiary company of Northeast Utilities, a registered holding company, and EUA Power Corporation ("EUA Power"), 40 Stark Street, P.O. Box 4326, Manchester, New Hampshire 03105, an electric public-utility subsidiary company of Eastern Utilities Associates, a registered holding company, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 50(a)(5) thereunder.

The proposed transactions relate to the financing of certain expenses of EUA Power, a debtor in possession under chapter 11 of the Bankruptcy Code, including its share of the costs relating to the operation of the Seabrook Nuclear Power Plant ("Seabrook"), a nuclear plant located in Seabrook, New Hampshire. EUA Power owns a 12.1324% joint interest in Seabrook.

By order dated September 26, 1991 (HCAR No. 25386), the Commission authorized certain financing pursuant to a Stipulation and Consent Order ("First Stipulation") among EUA Power, CL&P, The United Illuminating Company ("United"), an exempt public utility holding company, and the Official Committee of Bondholders ("Bondholders Committee") in the bankruptcy proceeding.[1] Under the terms of the First Stipulation, CL&P and United agreed to make monthly advances ("First Advances") to the disbursing agent for Seabrook in an aggregate amount not to exceed $15 million outstanding at any one time ("First Commitment"). As of July 1, 1992, the aggregate outstanding principal amount of First Advances was $9,545,752. CL&P's share of such First Advances was $3,818,301.

First Advances have been used to pay EUA Power's share of Seabrook expenses, and certain other related expenses, as needed to the extent not covered by EUA Power's revenues from energy or capacity sales, and to protect the investment of CL&P and United in Seabrook by insuring uninterrupted operation. By its terms, the First Stipulation expires on August 23, 1992, unless extended for an additional six-month period.[2]

EUA Power has entered into a July 1992 Stipulation and Consent Order ("Second Stipulation") with CL&P, United and the Bondholders Committee.

[1] The First Stipulation was approved by the United States Bankruptcy Court, District of New Hampshire ("Bankruptcy Court") on August 29, 1991.

[2] On or before August 23, 1992, CL&P and United expect to sell to Shearson Lehman Brothers, for an amount equal to the face value of First Advances plus accrued interest thereon, all of their rights with respect to First Advances made to EUA Power.

Under the Second Stipulation, CL&P and United, and, subject to further Commission authorization, additional joint owners of Seabrook ("Joint Owners") will make monthly advances ("Second Advances") to the Seabrook disbursing agent in an aggregate amount not to exceed $22 million outstanding at any one time ("Second commitment"). Initially, the participation of CL&P and United under the Second Stipulation will be 60% and 40%, respectively. The obligations of the Joint Owners under the Second Stipulation are several and will not exceed such Joint Owner's proportionate share of the aggregate Second Commitment.

The applicants request authorization through February 28, 1994, for: (1) CL&P to make Second Advances pursuant to the Second Stipulation in an aggregate amount not to exceed $13.2 million outstanding at any one time; and (2) EUA Power to be the beneficiary of Second Advances by United and CL&P in an aggregate amount not to exceed $22 million outstanding at any one time. The Second Stipulation will not become effective and no advances will be made thereunder until the Bankruptcy Court authorizes EUA Power to enter into a plan of reorganization financing facility ("POR Facility") and certain other events have occurred. Second Advances will be used by EUA Power to pay all outstanding First Advances, and to pay EUA Power's share of Seabrook expenses, and certain other related expenses, including expenses for documenting and securing approval for the Second Stipulation and for the POR facility, as needed to the extent not covered by EUA Power's revenues from energy or capacity sales, and to protect the investment of CL&P and United in Seabrook by insuring uninterrupted operation.

EUA Power will repay all Second Advances, interest, fees, expenses and other obligations under the Second Stipulation no later than 360 days after the date of the first Second Advance (unless such date is extended upon the written consent of all participating Joint Orders) or earlier upon the occurrence of certain events described in the Second Stipulation. All Second Advances will bear interest at a rate per annum equal to the sum of the base rate of the First National Bank of Boston, as in effect from time to time, plus 7 percent per annum ("Effective Interest Rate").

In the interim, the applicants request authorization through August 31, 1993: (1) For CL&P to make and EUA Power to receive advances ("Continued Advances"), subject to the terms of the First Stipulation, on a month-to-month basis; (2) for EUA Power to use proceeds of such Continued Advances to repay First Advances; and (3) to increase the First Commitment to $22,000,000 ("Increased Commitment"). CL&P's share of the Increased Commitment will be $8.8 million. CL&P and United may adjust their shares of the Increased Commitment to 60% and 40%, respectively. In such event, CL&P's share of the Increased Commitment would be $13,200,000. Once the Second Stipulation becomes effective, Continued Advances made on and after August 23, 1992 will be deemed to have been made pursuant to the Second Stipulation. EUA Power will repay all such Continued Advances, interest, fees, expenses and other obligations no later than the date upon which the Second Stipulation becomes effective, or earlier upon the occurrence of certain events described in the First Stipulation. All Continued Advances will also bear interest at the Effective Interest Rate.

Except as otherwise provided in the First Stipulation or Second Stipulation, the applicants anticipate that EUA Power's obligations to reimburse the advances and to pay interest, costs and expenses will be secured by a lien on all property of EUA Power's bankruptcy estate. The lien will rank prior to all other liens and, except as otherwise provided in the First Stipulation or Second Stipulation, will be given payment priority over any and all other claims, including administrative expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18586 Filed 7-31-92; 3:45 pm]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1666]

Working Groups on U.S. Input to International Telecommunication Union Regional Development Conference for the Arab States (AR-RDC); Meeting

The Department of State/CIP and the Department of Commerce/NTIA announce the initial meeting of the Working Group for the drafting of U.S. input to the International Telecommunication Union (ITU) Development Conference for the (AR-RDC) will be held on Monday, August 17, 1992, from 1:30 p.m. to 3 p.m. in room 5320, Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The ITU AR-RDC is scheduled for October 25-October 29, 1992, in Cairo, Egypt. The U.S. Working Group will address concerns and issues of the Conference's four main committees.

Committee 1—Role of telecommunications, policy, corporate strategy, plans and management issues.

Committee 2— Investment considerations, financial strategies, and international cooperation.

Committee 3—Network harmonization and new services.

Committee 4—Human resources management and development.

Any U.S. documents prepared for this Conference will be drafted by the Working Group. The purpose of this initial meeting will be to identify those persons interested in participating in the Working Group, to formulate the anticipated output from the Working Group, and to discuss other items on the pre-Conference agenda.

The meeting will be chaired by both the Bureau of International Communications and Information Policy (CIP), U.S. Department of State and the National Telecommunications and Information Administration (NTIA).

Members of the general public may attend the meeting and join the formation of the Working Group. In that regard, entrance to the Department of State building is controlled and individual passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Ms. Nedra Huggins-Williams, Room 5310-CIP, Department of State, Washington, DC 20520; telephone (202) 647-5230. Each attendee must provide their name, title, company name, social security number, and date of birth. All attendees must use the "C" street entrance to the building.

Dated: July 29, 1992.

Nedra Huggins-Williams,

Counselor, Bureau of International Communications and Information Policy

[FR Doc. 92-18379 Filed 8-3-92; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Type Certification—Fixed-Wing Gliders (Sailplanes), Including Powered Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning acceptable means of showing compliance with § 21.17(b) of part 21 of the Federal Aviation Regulations (FAR) for type certification of gliders and powered gliders.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."**

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 21.17–2A and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

On April 13, 1987, part 21 of the FAR was amended to provide procedures for the type certification and airworthiness certification of special classes of aircraft. Special classes of aircraft include gliders and powered gliders, airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate, but for which no airworthiness standards have as yet been established as a separate part of chapter 1, subchapter C, Code of Federal Regulations (CFR) 14. Airworthiness standards for these special classes of aircraft are designated in § 21.17(b). Accordingly, the FAA is proposing and requesting comments on AC 21.17–2A, which will provide an acceptable means of showing compliance with § 21.17(b) of part 21 of the FAR for type certification of gliders and powered gliders.

Issued in Kansas City, Missouri, July 27, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–18407 Filed 8–3–92; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular (AC) 25–9A, Smoke Detection, Penetration, and Evacuation Tests and Related Flight Manual Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Advisory Circular (AC) 25–9A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidelines for the conduct of certification tests relating to smoke detection, penetration, and evacuation, and evaluation of related Airplane Flight Manual (AFM) procedures. This notice is necessary to give all interested persons an opportunity to present their views on the proposed revised AC.

DATES: Comments must be received on or before December 4, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Regulations Branch, ANM–114, at the address above, telephone (206) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the revised draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

This AC addresses the following issues:

(a) Clarification of certain paragraphs as recommended by the National Academy of Sciences (NAS) study, 1986.

(b) Addition of Part 25, Amendment 25–72, § 25.869: Fire Protection: Systems, effective July 20, 1990.

(c) Addition of Part 25, Amendment 25–74, § 25.854: Lavatory Fire Protection, effective May 16, 1991.

(d) Addition of crew rest area smoke detection certification tests.

(e) Status of FAA research program on enhanced emergency smoke venting.

(f) Helium smoke generators as test equipment.

(g) Evacuation of continuously generated smoke in cockpits.

In lieu of the methods specified in this AC, the applicant may elect to follow an alternate method provided the alternate method is also found by the FAA to be an acceptable means of complying with the applicable portions of Parts 25 and 121 of the FAR.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 92–18406 Filed 8–3–92; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program, Cheyenne Airport, Cheyenne, WY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Airport Manager of the Cheyenne Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in

recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980).

On January 24, 1992, the FAA determined that the noise exposure maps submitted by the Airport Manager under part 150 were in compliance with applicable requirements. On July 6, 1992, the Assistant Administrator for Airports approved the Cheyenne Airport noise compatibility program. All of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Cheyenne Airport noise compatibility program is July 6, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Cheyenne Airport, effective July 6, 1992. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Denver, Colorado.

The Airport Manager of the Cheyenne Airport submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at the Cheyenne Airport. The Cheyenne Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 24, 1992. Notice of this determination was published in the **Federal Register** on February 4, 1992.

The Cheyenne Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 24, 1992 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective July 6, 1992. Outright approval was granted for all program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on July 6, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Cheyenne Airport.

Issued in Renton, Washington, on July 16, 1992.

Cecil C. Wagner,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92–18410 Filed 8–3–92; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Billings, Montana; Notice of Closing

Notice is hereby given that on or about August 21, 1992, the flight service station at Billings, Montana, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Great Falls, Montana. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on July 20, 1992.

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 92–18409 Filed 8–3–92; 8:45 am]

BILLING CODE 4910–13–M

Aviation Magnet Secondary School Grant Program; Solicitation

AGENCY: Federal Aviation Administration, DOT.

ACTION: This notice cancels and supersedes notice No. 131, notice of solicitation for Aviation Magnet Secondary School grant applications, published at 57 FR 30298 (July 8, 1992).

Summary

This solicitation announces the availability of federal financial assistance in the Federal Aviation Administration (FAA) Aviation Magnet Secondary School Grant Program, and invites applications for such assistance. The FAA is authorized by section 317 of the Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102–143, and Senate Report No. 102–148 to solicit competitive applications for aviation magnet school grants in favor of public secondary schools to assist aviation magnet activities. This is program No. 20.108 in the Catalog of Federal Domestic Assistance.

Applications must be submitted on behalf of aviation magnet secondary schools by a local educational agency (LEA) that is authorized under state and local law to apply for and accept federal financial assistance for such schools.

This program is intended to provide seed money to help develop and expand aviation education opportunities. The FAA expects to award grants in favor of a maximum of four (4) aviation magnet secondary schools in the United States, its territories, and possessions. A total of $80,000 is available for grant awards through September 30, 1992. Successful applicants will be required to provide funds to match federal financial assistance dollar for dollar. In no event shall the total federal share (from all federal sources) of any assisted activities exceed 50% of the total allowable cost.

Grant funds may be used only for the direct and indirect costs of acquiring equipment, books, and other instructional supplies to be used in the actual teaching of an aviation curriculum.

Applications will need to distinguish between current aviation magnet activities, and activities that would be added using FAA (and other federal, if any) grant funds together with local matching funds. A panel of federal officials will review, evaluate, and rank competitively each application against the evaluation criteria listed in this notice. The panel will make recommendations for grant awards to the FAA Administrator. The Administrator will make the final determination of grant awards in this discretion.

Any award may range from $10,000 to $80,000. The FAA does not necessarily intend to fund all proposed activities. FAA reserves the right to make no award if it deems all applications to be insufficiently meritorious.

Submit Application To: Phillip S. Woodruff, Director of Aviation Education, Federal Aviation Administration Headquarters, APA–100, room 907B, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3476.

Closing Date

FAA must receive an original and two copies of the application no later than 4 p.m. EDT on September 4, 1992, the closing date. Applications received after that time (except as provided in the following paragraph) will not be considered. Supplemental material received after the closing date will not be considered unless it has been requested by the FAA.

Applications Submitted by Mail

A mailed application must be sent to the address shown above. An application that is mailed by U.S. Postal Service certified or registered mail at least five (5) days before the closing date, or mailed by U.S. Postal Service express mail at least two (2) federal working days prior to the closing date, will be considered timely even if received after the closing date.

Applications Submitted by Messenger

A hand-delivered application must be carried to the Office of the Director of Aviation Education at the address shown above. This office will accept hand-delivered applications between the hours of 8 a.m. and 4 p.m. EDT, except on weekends and federal holidays.

A confirmation of receipt of each timely application will be sent to the applicant. Notice of rejection for lateness will be sent to late applicants.

Background

The FAA is engaged in a comprehensive program to modernize the Nation's air transportation system to meet the challenge of aviation growth in the coming decades. The modernization program takes advantage of current technological advances to increase the capacity of the Nation's air transportation system while reducing relative costs to the Nation's taxpayers. The FAA recognizes the increasing complexity of technical and managerial skills that will be needed to accommodate the technological advances in systems being planned and implemented throughout the aviation industry. FAA further recognizes that our educational system will play a critical role in preparing persons for careers in this advanced technological environment. For these reasons, FAA supports the development of aviation magnet secondary schools.

The FAA sponsors the Aviation Magnet Secondary School Grant Program to help assure that future aviation needs will be adequately met and to help assure that aviation education opportunities will be available to minority students at the secondary school level.

Aviation Magnet Secondary School Grant Program

Definitions

An LEA is:

(1) A public board of education or other public authority legally constituted within a State for the administrative control of or direction of, or to perform service functions for, public secondary schools in:

(a) A city, county, township, school district, or other political subdivision of a State; or

(b) A combination of school districts or counties a State recognizes as an administrative agency for its public secondary schools; or

(2) Any other public institution or agency that has administrative control and direction of a public secondary school.

A secondary school is a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Administrator may determine with respect to that State whether such education includes that beyond the twelfth grade.

A magnet secondary school is a secondary school that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds. An aviation magnet secondary school is a magnet secondary school offering a special curriculum in aviation.

Special curriculum means a course of study involving subject matter or a teaching methodology that is not generally offered in the LEA containing the magnet school, to students of the same age or grade level as the students to whom the special curriculum is offered in the magnet school. This term does not include a course of study or a part of a course study—

(1) That is designed solely to provide basic educational services to students who are handicapped or who have limited English-speaking ability;

(2) In which any student is unable to anticipate because of his or her limited

English-speaking ability or limited financial resources; or

(3) That fails to provide for a participating student's meeting the requirements for completing secondary education in the same period as other students enrolled in the LEA's schools.

Authority and Scope

Section 317 of the Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102–143, and Senate Report No. 102–148 authorize this grant program. This is Program No. 20.108 in the Catalog of Federal Domestic Assistance. A total of $80,000 is available for this program for grant awards through September 30, 1992. No funds have been authorized for subsequent awards. Grant funds may be used only for the allowable direct and indirect costs of acquiring equipment, books, and other instructional supplies to be used in actual teaching, to the extent that such items are in direct support of aviation magnet activities. The FAA expects to award grants in favor of a maximum of four (4) aviation magnet schools in the United States, its territories, and possessions. Individual awards may range from $10,000 to $80,000. In no event shall the total federal share of any program exceed 50% of the total allowable cost of the program.

Aviation magnet activities that are assisted by FAA grants will be subject to applicable federal regulations and directives, including but not limited to—

(1) Office of Management and Budget (OMB) Circulars:

(a) A–87, Cost Principles for State and Local Governments;

(b) A–102, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments; and

(c) A–128, Audits of State and Local Governments.

(2) Executive Order 12549 of February 18, 1986, Debarment and Suspension (3 CFR 189 (1987)); and

(3) Department of Transportation Regulations:

(a) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR part 18);

(b) Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964 (49 CFR part 21); and

(c) Governmentwide Debarment and Suspension (nonprocurement) and Government Requirements for Drug-Free Workplace (Grants) (49 CFR part 29).

Eligibility

Eligible schools must be aviation magnet schools that are accredited secondary schools in the Untied States, or its territories or possessions.

Application Format and Content

Applications must contain the following information in the following order:

1. Applicants

Applications must be submitted on behalf of aviation magnet secondary schools by the LEA that is authorized under state and local law to apply for and accept federal financial assistance for such schools.

The LEA should state whether grant payment should be made to the LEA, directly to the participating school, or to another public entity for the account of such school.

2. Cover Sheet

Type the title "Aviation Magnet Secondary School Grant Application" near the top of the cover sheet. Type the legal name, address, and IRS employer identification number of the LEA, of the participating school, and, if required, of any other public entity to which grant payments to be made for the account of the participating school should be directed. Type the name, title, telephone number, and FAX number of the official authorized to execute a grant agreement in favor of the proposed participating school in the lower left corner of the cover sheet. Also type, in the lower right corner of the cover sheet, the name, title, telephone number and FAX number of the authorized official at the participating school who will be responsible for managing the proposed grant-assisted activities at the school. This person should be referred to as the "activity director." The cover sheet of one copy of the application must bear the original signatures of the above individuals and the dates of those signatures. The signatures of those authorized individuals signify respective institutional endorsement of the application, cognizance of the eligibility requirements, and a commitment to provide specific support, including meeting fiscal obligations, for the proposed activities in the event that the grant is made.

3. Standard Form 424

Applicants must submit Standard Form 424 (Rev. 4–88), Application for Federal Assistance, with each grant application. This form may be obtained by telephoning or writing to the FAA Director of Aviation Education at the address listed above. Any application lacking this form will be rejected.

4. Table of Contents

Incldue a table of contents with page numbers.

5. Summary

Include a concise summary of the proposed activities to be funded with FAA grant funds (and other federal assistance, if any), and local matching funds. State the goals and objectives, and the long-range benefits of the program. State the associated costs including cost-sharing figures (see Budget Plan, below). The reader should be able to identify quickly the nature of the program and the requested funding level. The summary should not exceed two (2) double-spaced typewritten pages.

6. Narrative

The narrative should be clearly written and not exceed ten (10) double-spaced typewritten pages. It must contain the following:

(a) *Introduction.* Present a brief description of the school, including: historical background, full-time student enrollment, study body profile, type of location (rural, urban, etc.), fields of emphasis, and status as an aviation magnet secondary school.

(b) *Background.* Describe the evolution of the school's involvement as an aviation magnet school. Provide information and statistics on the occupational areas that aviation graduates are expected to be entering within the aviation industry and the FAA. Provide the following information in an easy-to-read chart format:

(1) Partnerships with government, education, industry: describe any financial and non-financial partnerships at the national, regional, state and local levels which support the school's aviation magnet activities.

(2) Describe the school's magnet activities other than aviation, if any, and discuss how they interact with the school's aviation magnet activities.

(3) Include an organization chart to show how the aviation activities and other magnet activities fit into the institutional structure.

(4) Describe school's activities to recruit aviation students, describing minority and female recruitment activities.

(5) Submit an official document showing the aviation courses offered in the 1992–92 academic year and to be offered in the 1992–93 academic year.

Applications lacking the above information will be rejected.

(c) *Strategic plan.* Present a five (5) year strategic plan for the school's aviation magnet activities. Discuss the components of the plan and how the school anticipates achieving the plan's goals and objectives. Justify the plan's feasibility in relation to the work force needs of the aviation industry and FAA, over-all direction of the school, fiscal concerns, etc.

(d) *Activity plan.* Applications will need to distinguish between current aviation magnet activities, and those that would be added with grant funds and matching funds.

Discuss in detail the proposed activity plan with stated goals and objectives. Relate the activity plan to the strategic plan. Applicants may submit photographs or other visual representations that would help the reviewing panel to assess the relative merits of the proposed activities.

(1) Explain how the activities will directly support the course in the required core (if any) and in the areas of concentration at the school.

(2) Explain how the activities will either enhance current aviation courses or support the development of new aviation courses.

(3) Explain how aviation students and other students will directly benefit from the activities.

(4) Present a detailed discussion, from program design to conclusion, of the components of the activity plan and the tasks necessary to bring the activity to a successful conclusion. The activity is considered completed when the measurements discussed under the evaluation plan described in paragraph (h), below, have been applied and analyzed. This should occur within twelve (12) months of the time when the equipment, books, and other supplies have become available to students following a grant award.

(5) Provide a milestone chart for the activity plan.

(6) Identify the sources of non-FAA federal, and non-federal funding. Document the availability of those funds. Provide a letter of commitment, signed by an authorized official, for funds which will be held available and accountable for meeting cost-sharing obligations. Applications lacking this letter will be rejected.

(7) Describe and explain the mechanism that will be used to manage and monitor the progress of the activities in terms of the milestones and budget expenditures.

(e) *Activity personnel plan.* (1) Identify and describe the relevant skills of those individuals who will have major responsibilities for the proposed activities. Indicate the amount of time each person will be required to devote to these activities.

(2) Discuss the role of the activity director. Provide information showing that the director has appropriate qualifications, well-defined responsibilities, sufficient time, and adequate academic and institutional authority and support to effectively manage the activities.

(3) Discuss the number and qualifications of faculty necessary to adequately carry out the funded activities. Demonstrate the institutional commitment to provide the necessary faculty positions. Indicate whether personnel are current faculty members or must be hired. If the latter, provide a discussion of planned activities to staff the position(s).

(f) *Budget plan.* The application must contain a budget plan that includes a detailed itemization of proposed expenditures associated with the program according to the following categories:

	Direct cost ($)	
Allowable Expenses		
(a) Equipment		
(b) Books		
(c) Other instructional Supplies.		
Direct Cost		
Indirect Cost		[1] @%
Total Cost	$	
Sources:		
(a) FAA Grant	$	
(b) Other Federal Assistance (identify sources).		
Total Federal Assistance.		[2] %
Local Share		%
Total Cost	$	100%

[1] If an indirect cost rate that is applicable to the school at which the proposed activities will be carried out has been negotiated for federal grant purposes by a federal agency and a local authority, enter this rate and attach a copy of the negotiated indirect cost rate agreement. Otherwise enter a proposed rate; it will be subject to adjustment pursuant to negotiation between FAA and the appropriate local authority.

[2] Shall not exceed 50%.

Equipment means tangible personal property having a useful life of more than one (1) year and an acquisition cost of $300 or more per unit, except that those organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two (2) years. An organization may use its own definition of equipment, provided that such definition would at least include all tangible personal property.

Personal property means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights). *Supplies* means all tangible personal property other than equipment.

Budgets that do not include an itemized list of allowable expenses will be rejected.

(g) *Financial Need.* Provide a detailed justification for the requested grant funding in terms of financial need.

(1) Discuss the consequences of not funding the proposed activities. Explain and identify the funding sources and levels which support the school's current aviation magnet activities.

(2) Indicate the amount of funds over the past three (3) years that have been dedicated to aviation magnet activities.

(3) Provide the same information for funds dedicated to the school's other magnet activities.

(h) *Evaluation plan.* Provide an activity evaluation plan. The plan must include a strategy and measurement component for each goal and objective of activities to be assisted by the grant. The actual evaluation may be performed by the school's staff or in collaboration with outside consultants within twelve (12) months of the time when equipment, books, and other supplies have become available to students following a grant award. The results of the completed evaluation will determine whether the goals and objectives of the activities have been achieved and the effect of the assisted activities upon the overall aviation magnet activities at the school. These results shall be submitted to the FAA as part of the final activity report.

(7) Local Review Statement

Attach a statement, signed by an appropriate official of the LEA, that contains:

(a) An endorsement of the proposed activities;

(b) A description of how the proposed activities support the school's long-range goals and objectives in aviation education; and

(c) A commitment to provide the resources necessary to meet cost-sharing obligations, complete the proposed activities, maintain facilities and equipment at an acceptable level, and provide continuing facilities, materials, and staff support for the aviation magnet program after the grant funds have been expended.

(8) Assurances

Provide assurances that the LEA and the participating school will:

(a) Use funds made available under this assistance program for the purposes specified in this notice;

(b) Employ teachers in the courses of instruction assisted under this assistance program who are certified or licensed by the State to teach the subject matter of the course of instruction;

(c) Not discriminate on the basis of race, religion, color, national origin, sex, or handicap in providing the benefits and services that this assistance program is designed to provide, including but not limited to:

(i) In the hiring, promoting, or assigning of employees of the LEA or other personnel for whom the LEA has any administrative responsibility;

(ii) In admitting to any school for which the LEA has administrative responsibility, or in mandatorily assigning students to such school or to courses of instruction within them, except to carry out an approved desegregation plan, if any; and

(iii) In designing or operating extracurricular activities for students; and

(d) Carry out a high quality education program that will encourage parental decision-making and involvement.

In addition to the assurances listed above, the LEA shall provide such other assurances as the Administrator may determine to be necessary to carry out the provisions of this program. All such assurances will be incorporated in the grant instrument for successful applicants.

(9) Certifications

Applicants are required to submit the following certifications. Certification forms will be provided when Standard Form 424 is requested.

(a) A certification regarding maintaining a drug-free workplace, as required by section 5153(a)(1) of the Drug-Free Workplace Act of 1988, Public Law 100–690, Nov. 18, 1988, 102 Stat. 4181, 4306, 41 U.S.C. 702, and the Department of Transportation Regulations, Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), Subpart F, Drug-Free Workplace Requirements (49 CFR part 29, subpart F). (The form of certification appears in appendix C to subpart F.)

(b) A certification required by Executive Order 12459, *supra*, and Department of Transportation Regulations, Governmentwide Debarment and Suspension (Nonprocurement and Government Requirements for Drug-Free Workplace (Grants), *supra*, regarding debarment and suspension. The form of certification appears at appendix A to 49 CFR part 29. In addition, a successful applicant will be required, under part 29, to provide to FAA similar certifications to be executed by vendors providing items to the participating school for grant-assisted activities. (The form of certification appears at appendix B to 49 CFR part 29.)

Reporting Requirements

Each participating school shall (a) provide oral project reports to the FAA upon request until the proposed activities have been completed, and (b) shall submit a written annual report to the FAA within ninety (90) days of the close of the school's fiscal year. Each report should include in a summary of activity progress, highlights and accomplishments, personnel changes, and a status report on expenditures and account balances for each of the line items presented in the budget plan.

In addition, a final activity report must be submitted to the FAA within ninety (90) days of the completion of activities. The report should cover accomplishments, results of the implemented evaluation plan, and actual expenditures under the budget plan. (FAA representatives may make site visits to any participating school during the period in which activities are assisted.)

Application Review

A panel of federal officials will review, evaluate, and rank against the evaluation criteria set forth below. The panel will make recommendations for grant awards to the FAA Administrator. The Administrator will make the final determination of grant awards in his discretion.

Any award may range from $10,000 to $80,000. The FAA does not necessarily intend to fund all proposed activities. FAA reserves the right to make no award if it deems all applications to be insufficiently meritorious.

Evaluation Criteria

The evaluation criteria are designed to enable the reviewing panel and FAA officials to evaluate effectively the relative merit of the applications submitted. The applications will be scored on a 100-point scale and will be evaluated according to the following factors:

1. *Institutional commitment* (15 points)

Each application will be evaluated as to the extent of the school's commitment to the proposed aviation magnet activities to be assisted by federal funds, in relation to the curriculum offerings and overall size of activities, as follows:

(a) Number of aviation specialty options.

(b) Number of students eligible to enroll in activities.

(c) Number of graduates anticipated in current year.

(d) Recruitment activities, including outreach programs for minority and female students.

(e) Projected growth of aviation magnet activities over the next five (5) years. Extent to which programmed growth is realistic in comparison to current enrollment figures and strategic plan.

(f) Amount of cost sharing funds provided toward the activities, by year.

(g) Demonstrated continuing support and growth of the school's aviation magnet activities.

(h) Quality of the Local Review Statement.

2. *Strategic Plan* (15 points)

The feasibility of the strategic plan will be evaluated in terms of the following:

(a) School's current aviation magnet activities.

(b) School's planned approach to meet future aviation work force needs.

(c) Potential resources, including fiscal, instructional, and administrative elements, necessary for achievement of planned goals.

3. *Program Plan* (20 points)

The program plan will be evaluated as follows:

(a) Appropriateness of the assisted activities in relation to the school's current aviation magnet activities.

(b) Relationship between the assisted activities and the strategic plan.

(c) Number of students to benefit in relation to the size of the school's overall magnet activities.

(d) Benefits to students.

(e) Evidence that the school has good understanding of activities and tasks required to bring activities to conclusion.

(f) Appropriateness of proposed equipment in terms of program goals and objectives.

(g) Extent to which milestones are realistic and attainable.

(h) Extent to which the LEA demonstrates that non-federal funds required for the activities are available.

(i) Extent of administration and technical direction of the activities.

4. *Program Personnel* (10 points)

The professional qualifications and experience of the school's personnel and any other key officials who will be

involved in the assisted activities will be evaluated as follows:

(a) Qualifications and experience of the Activity Director.

(b) Qualifications and experience of personnel in relation to the goals and objectives of the activities.

(c) How well the school has scheduled and allocated personnel time to perform duties associated with the activities.

(d) How well aviation magnet personnel responsibilities are defined.

(e) Adequacy of faculty on board to utilize facilities and/or equipment *or* institutional commitment to provide necessary positions and adequate staffing plan development.

5. *Budget Plan* (10 points)

The budget plan will be evaluated to verify that: (a) Proposed expenditures are itemized by budget category, and mathematical calculations are correct.

(b) Entries are detailed and consistent with the activity narrative.

(c) Budget figures are appropriate for the goods being procured.

6. *Institutional Need* (15 points)

Each application will be evaluated to determine the extent to which the LEA has demonstrated the following:

(a) An overall financial need for funding.

(b) Consequences to the beneficiary school's aviation magnet activities if FAA funding is not obtained.

7. *Evaluation/Assessment Plan* (15 points)

The evaluation/assessment plan will be evaluated to determine the extent to which it demonstrates the following:

(a) The plan is adequately tied to the goals and objectives of the activities.

(b) Strategy and measurement components are appropriate for the stated goals and objectives.

(c) Evaluation will produce information which would be useful to other secondary schools in implementing similar activities.

Issued in Washington, DC, on July 29, 1992.

Phillip S. Woodruff,

Director of Aviation Education, Federal Aviation Administration.

[FR Doc. 92-18413 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Tallahassee Regional Airport, Tallahassee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Tallahassee Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Wilson, Acting Director of Aviation, City of Tallahassee, at the following address: Aviation Department, 3300 Capital Circle SW. Suite 1, Tallahassee, FL 32310.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Tallahassee, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Maeda, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive Suite 130, Orlando, Florida 32827-5397. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Tallahassee Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 23, 1992, the FAA determined that the application to impose a PFC submitted by the City of Tallahassee was substantially complete within the requirements of § 158.25 of part 158. The FAA will improve or disapprove the application, in whole or in part, no later than November 12, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: January 1, 1993.
Proposed charge expiration date: April 30, 1999.
Total estimated PFC revenue: $9,645,542.00

Brief description of proposed project(s):
Overlay Runway 9/27 & Taxiway
Upgrade Runway 9/27 Taxiway Lighting
Construct Perimeter Security Fence
Construct Security Access System
Acquire Criswell Property (6.85 acres)
Update Airport Master Plan
Noise Compatibility Study
Construct Cover Walkway and Handicap Ramp
Various Terminal Public Area Projects/ Disability Act
Relocate ASR Radar Site
Purchase Quick Response Vehicle
Overlay Runway 18/36 and Taxiway and Associated Projects
Construct New 10,000 sq. ft.-ARFF Building
Construct Access and Service Road, East, South, & West of R/W 9/27
Overlay Old Terminal Ramp for GA
Purchase 3,000 gallons ARFF Vehicle
Construct ARFF Training Facility
Overlay South Apron
Construct Taxiway for T-Hanger Access
Install MLS/CAT II ILS
Expand Cargo Apron
Expansion of Airline Terminal Apron
Add parallel taxiway and connector to Runway 9/27 and Taxiway P, east of terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Tallahassee.

Issued in Atlanta, Georgia, on July 23, 1992.

Dell T. Jernigan,

Acting Manager, Airports Division, Southern Region.

[FR Doc. 92-18449 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended FEIS notice.

SUMMARY: The FHWA is issuing this Notice to advise the public that comments on the Final Environmental Impact Statement (EIS No. 920134) for CA-710/Long Beach Freeway Construction, I-10/San Bernardino Freeway to I-210/Foothill Freeway, will be accepted beyond the initially-announced due date. Public comments

on the FEIS will be accepted until after the Mitigation Advisory Committee submits their initial Status Report to FHWA. It is anticipated that this will take place by the end of the current calendar year, at which time additional notice will be given 30 days prior to the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. James Bednar, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915. Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: The Final EIS for Route 710 identifies the Meridian Variation Alignment as the preferred alternative. The FHWA approved the Final EIS as adequate for public disclosure of information on the preferred alternative regarding potential impacts and proposed mitigation as required by the National Environmental Policy Act (NEPA). However, because of the controversy surrounding the project and the magnitude of the impacts relating to potential community disruption, residential relocation, business dislocation, and harm to cultural resources, the FHWA has not approved the final project concept and location for the preferred alternative. The FHWA will not consider approving the project concept and location or issuing a Record of Decision until after the recommendations of the Mitigation Committee are developed and considered for the preferred alternative.

The Mitigation Committee is being established to develop more comprehensive mitigation and enhancement measures to reduce further the impacts of the project. It will focus its efforts on both the mitigation and enhancement measures mentioned in the Final EIS and on the identification and development of appropriate additional mitigation and enhancement opportunities which will minimize the facility's "footprint" through the environmentally and historically sensitive areas the project traverses.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 29, 1992.

Douglas Bennett,

Senior Area Engineer, Sacramento, California.

[FR Doc. 92-18368 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Support National Child Passenger Protection Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreement to support the National Child Passenger Safety Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of a discretionary cooperative agreement to support the national child passenger protection program in the area of program demonstration and technical support for pediatricians. This notice solicits applications from national, non-profit pediatric or pediatric practitioner associations that are interested in performing these program development and support activities.

DATES: Applications must be received at the office designated below on or before September 3, 1992.

ADDRESSES: Applications should reference procurement number DTNH22-92-Y-05362 and must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), 400 7th St., SW., room 5301, Washington, DC 20590, attention: Alberta Jones.

FOR FURTHER INFORMATION CONTACT: Questions related to this cooperative agreement should be directed to Ms. Susan Gorcowski, Chief, National Organizations Division, NHTSA, room 5118 (NTS-11), 400 7th St., SW., Washington, DC 20590. (202 366-2712).

SUPPLEMENTARY INFORMATION:

Background

NHTSA estimates that child safety seats, when correctly used, can reduce fatalities among children less than five years of age by 71 percent. This makes child safety seats one of the single most effective automobile safety innovations ever developed. As a result of improvements in the design of these seats, state child passenger protection laws, and public education, the use of child restraints has increased dramatically over the past decade. A survey of locations in 19 U.S. cities indicates that the use rate has increased from 22 percent in 1982 to 84 percent in 1991.

However, despite the apparent high rate of use, child safety seats are currently saving only about half of the lives that they could potentially save. Many children are still travelling unrestrained, and many who are using child safety seats are using them incorrectly. Recent surveys indicate that about one in four safety seats is being grossly misused, substantially reducing its effectiveness, and as many as three out of four seats are being misused to some extent.

Parents receive information and guidance concerning child passenger protection from many sources. One of the most effective sources for this communication is through the health care community and especially through local pediatricians. Pediatricians and pediatric practitioners have unique credibility and influence with parents of young children. The child passenger protection message benefits from being delivered in the context of a health care activity such as a visit to the pediatrician's office. To many parents, the pediatrician is viewed as the ultimate authority in child health care.

Further, pediatricians have traditionally been respected as a community advocate for the health and well-being of children. This community status enables the pediatrician to increase the awareness of child safety issues among other community leaders such as city government officials and law enforcement personnel. This influence can be of great benefit in community efforts to initiate child passenger protection efforts.

For these reasons, NHTSA intends to establish a cooperative agreement with a national non-profit pediatric or pediatric practitioner association for the purpose of supporting and initiating child passenger safety educational activity among pediatricians or practitioners nationwide.

Objectives

Specific objectives of this cooperative agreement are as follows:

1. To produce and distribute a quarterly publication to provide a technical update concerning issues related to the protection of child passengers. This publication will address technical issues pertaining to recent research in the field of child passenger protection. Specifically, the technical update will cover issues concerning the crash performance of various restraint options and conditions, new products and services pertaining to the protection of child passengers or to the promotion of child passenger protection, issues concerning child passenger safety legislation at the state and federal level, significant events involving the promotion of child passenger protection at the state and

federal level, and other issues which are within the interest of child passenger protection advocates across the country.

Each quarterly technical update will consist of at least eight pages of relevant information, with appropriate illustrations and photographs, printed in at least two colors on glossy eight and one-half by eleven inch paper. The update will be delivered to a national audience of approximately 5,000 child passenger protection advocates, including health care professionals, traffic safety professionals and others. This mailing shall include but not be limited to a list provided by NHTSA.

2. To develop, promote, demonstrate, monitor, and evaluate a number of concurrent community or state-based child passenger safety demonstration projects in locations across the country. These projects should go to the state and/or local affiliates of the organization and involve direct participation by pediatricians or pediatric practitioners, with the intent of demonstrating innovative or known effective programs for utilizing the community or state influence of the pediatrician or practitioner in improving the protection of child passengers.

NHTSA anticipates that this activity will require development and administration of a sub-grant program which is promoted among pediatricians or pediatric practitioners nationwide. The agency requires that at least fifteen such community or state programs be conducted and evaluated under this cooperative agreement. These programs should be conducted in a variety of community or state types with sufficient urban-rural, socio-economic, and geographic differences to produce useful demonstrations of generalizable child passenger protection programs.

Each of these state or community demonstration projects should involve substantial participation of pediatricians and/or practitioners in the promotion of child passenger safety through some combination of contact and consultation with parents, state or local law enforcement officials, legislators, media representatives and business or civic groups. The specific design, objectives and operation of these projects should be decided by the participating pediatricians or practitioners. However, each project should have a complete program plan, including predetermined and measurable objectives, labor and materials budgets, specific personnel plans with commitments from listed participants, and a monitoring and evaluation plan. States in which awards are made must demonstrate through written documentation that they have coordinated their project plan with the Governor's Highway Safety Office.

3. To produce and distribute an informative and promotional compendium of demonstration program results to be used to encourage and facilitate other pediatricians and pediatric practitioners in adopting similar projects. This compendium should accurately review the activities, accomplishments, and known community or state impact of each of the demonstration projects.

The compendium should address specific barriers which were encountered in these projects and strategies which were pursued to overcome these barriers. The compendium should be produced in an attractive format with appropriate layout, illustrations, photographs and other features to stimulate reader interest in these projects.

4. To promote widespread adoption of child passenger safety activities among pediatricians and pediatric practitioners by means of distributing the compendium of demonstration project results and by other methods. Examples of other methods to be considered include presentation at national meetings and nationwide media coverage.

Deliverables

A final list of required deliverables will be developed in accordance with the accepted proposal prior to award. For planning purposes, the agency anticipates that the required deliverables will include the following:

Deliverable	Date
Technical Update:	
Draft Copies	2 months, 5 months, 8 months, and 11 months after award.
Final Copies	3 months, 6 months, 9 months and 12 months after award.
Demonstration Projects:	
Project Proposals	2 months after award.
Demonstration Compendium.	10 months after award.
Demonstration Promotion Plan.	9 months after award.
Progress Reports	Quarterly.
Final Report	13 months after award.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

- Be a private, national non-profit organization;
- Have an established membership structure with state/local chapters or affiliates in all regions of the country;
- Have a membership consisting exclusively, or in large part, of pediatricians or pediatric practitioners,
- Have in place a schedule of annual regional/state conferences or conventions and a variety of communications mechanisms that are appropriate for motivating members and other constituents to become involved in the promotion of occupant protection at state and local levels;
- Demonstrate an understanding of the current and potential role of the membership in occupant protection efforts at the state and local levels; and,
- Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

NHTSA Role in Activities

The NHTSA Office of Occupant Protection (OOP) will be involved in all activities undertaken as part of this cooperative agreement program and will:

- Provide a project officer to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and OOP;
- Make available information and technical assistance from government sources, within resources available and as determined appropriate by the project officer; and,
- Provide liaison with other government and private agencies as appropriate.

Evaluation Criteria and Review Process

Proposals must demonstrate that the applicant meets all eligibility requirements listed above. Proposals will be evaluated based upon the following factors which are listed in descending order of importance:

1. What the organization proposes to accomplish and the potential of the proposed project to make a significant contribution to national efforts to increase the correct use of child safety seats.

2. The extent to which the project addresses foreseeable barriers to gaining widespread adoption of child passenger safety activities by pediatricians and/or pediatric practitioners. These barriers include awareness, motivation, instruction, and personnel and financial limitations.

3. The overall experience, capability and commitment of the organization to facilitate involvement of its membership in the promotion of child passenger protection.

4. The soundness and feasibility of the proposed approach or workplan,

including the evaluation to assess program outcomes.

5. How the organization will provide the administrative capability and staff expertise necessary to complete the proposed project.

6. The proposed coordination with and use of other available resources, such as existing or planned state and community occupant protection programs and other sources of financial support.

Upon receipt of applications by the agency, they will be screened to assure that all eligibility requirements have been met. Applications will be reviewed by NHTSA staff using the criteria outlined above. The results of this review will be recommendations to the agency management for Cooperative Agreement award.

Support, Terms and Conditions

Contingent on the availability of funds, satisfactory performance, and continued demonstrated need, this cooperative agreement may be awarded for a project period of up to three years. The application for the initial funding period (12 months) should address what is proposed and can be accomplished during that initial period. The proposal for the initial period should not include any continuation information, but should cover only the first 12 months of effort. To obtain funding after the initial 12-month period, a continuation application and approval will be required for any subsequent year. Continuation applications will not be subjected to competitive review, but must demonstrate that the continuation effort will effectively and efficiently fulfill program objectives.

Anticipated funding level for the FY 92 cooperative agreement is $99,000.00. Subsequent years may be funded pending the availability of funds, demonstrated need and satisfactory performance. Federal funds should be viewed as seed money to assist organizations in the development of traffic safety initiatives. Monies allocated in this cooperative agreement are not intended to cover all of the costs that will be incurred in completing the project. Applicants should demonstrate a commitment of financial and in-kind resources to the support of the proposed project.

The organization participating in this cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project, the development or purchase of direct program materials, direct program-related activities, or for travel related to the cooperative agreement.

The award recipient will be required to submit quarterly progress reports in a format and on a schedule to be determined after award. In addition, the recipient will be required to submit a detailed final summary report describing the project and its outcomes no later than 90 days after termination of the period of support.

Application Procedure

1. All applications must be covered by a signed copy of OMB Standard Form 424 (revised 4/88, including 424A and 424B) "Application for Federal Assistance" with the required information filled in and the certified assurances included. This form is available from the NHTSA Office of Contracts and Procurement (NAD-30), 400 Seventh St., SW., Washington, DC., 20590, (202) 366-0607).

2. Applications shall include a program narrative statement which addresses the following:

a. Goals and Objectives

(i) Demonstrates the need for the assistance and states the principle and subordinate objectives of the project. Supporting documentation from concerned interests other than the applicant can be used. Any relevant data based on planning studies should be included or footnoted.

(ii) Identifies the results and benefits to be derived.

b. Approach

(i) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. Include the reasons for taking this approach as opposed to other approaches.

(ii) Describes any unusual features, such as design or technological innovations and extraordinary social/community involvement.

(iii) Provides quantitative projections of the accomplishments to be achieved, if possible, or lists the activities in chronological order to show the schedule of accomplishments and their target dates.

(iv) Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results. Explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

(v) Lists each organization, corporation, consultant, or other individual who will work on the project along with a short description of the nature of their effort or contribution and relevant experience.

3. Applications must be typed on one side of the page only. The original and two copies of each application must be submitted. An applicant may submit an additional four copies to facilitate the review process, but there is no requirement or obligation to do so.

Administration of the Cooperative Agreement

During the effective period of the cooperative agreement awarded as a result of this notice, the agreements shall be subject to general administrative requirements of OMB Circular A-110 (or the "common rule", if effected prior to the award), the cost principles of OMB Circular A-21 or A-22, as applicable to the recipient, and the provisions of 49 CFR part 29, Governmentwide Debarment and Suspension (nonprocurement).

Michael B. Brownlee,

Associate Administrator, Traffic Safety Programs.

[FR Doc. 92-18418 Filed 8-3-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 195]

Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—
- Dennis I. Foreman, Deputy General Counsel, who shall serve as Chairperson;
- Russell L. Munk Assistant General Counsel (International Affairs);
- Kenneth R. Schmalzbach, Assistant General Counsel (Administrative & General Law);
- Robert M. McNamara, Jr., Assistant General Counsel (Enforcement);
- Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms; and
- Michael T. Schmitz, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—
- Chairperson, Deputy Chief Counsel, IRS; Deputy General Counsel; Two Associate Chief Counsel, IRS; and Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: July 28, 1992.

Dennis I. Foreman,

Acting General Counsel.

[FR Doc. 92-18341 Filed 8-3-92; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Application To Restrict Parallel Imports Bearing Genuine Trademarks

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of application to restrict parallel imports bearing genuine trademarks.

SUMMARY: This document seeks comments on an application submitted to prevent the importation of certain goods bearing genuine "Duracell" trademarks under the terms of a district court injunction requiring the U.S. Customs Service to provide protection to trademarks meeting certain criteria.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Barry P. Miller, Senior Attorney, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., room 2104, Washington, DC 20229 (202-927-0850).

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1992, The United States District Court for the District of Columbia issued an amended order in *Lever Brothers Co.* v. *United States*, No. 86-3151 (HHG), which enjoined the U.S. Customs Service from allowing the importation of foreign-made goods otherwise admissible under 19 CFR 133.21(c)(2) that bear a trademark identical to a valid United States trademark but which are materially physically different. As a result of this court action and pending further action by a court or final resolution of *Lever Bros. Co.* v. *United States*, Appeal No. 92-5185, owners of recorded trademarks that are under common ownership or control with foreign companies that use the trademark on foreign-made goods with material physical differences can now apply to Customs to stop the importation of those foreign-made goods.

In order to receive the protection as outlined by the court, applicants must first show that the trademark owner requesting the protection falls within the scope of § 133.21(c)(2) of the Customs Regulations, as opposed to § 133.21(c)(1). The District Court for the District of Columbia ordered Customs to provide protection only when goods would otherwise be admissible under § 133.21(c)(2), which applies to goods of a foreign trademark owner under common ownership or control with the U.S. trademark owner. Section (c)(1) applies to goods of a foreign trademark owner that also owns the U.S. trademark.

Applicants for protection under the terms of the court order must also show Customs that the foreign affiliate of the U.S. trademark owner uses the mark on goods with material physical differences. For this, applicants must show Customs that the goods are different, and also that the difference is "material". On June 26, 1992, by publication in the **Federal Register** (57 FR 28605), Customs invited trademark owners to notify Customs if they believe that the trademark owner and the goods bearing the trademark meet these criteria.

An application has been submitted pursuant to the June 26, 1992, **Federal Register** notice, for a restriction against the importation of goods bearing genuine "Duracell" trademarks. Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person opposing the application. Notice of the action taken in response to the application will also be published in the **Federal Register**.

Dated: July 27, 1992.

Barry P. Miller,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 92-18383 Filed 8-3-92; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Services

[Dept. Circ. 570, 1991 Rev., Supp. No. 27]

Surety Companies Acceptable on Federal Bonds, Suspension of Authority; Kentucky Central Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Kentucky Central Insurance Company of Lexington, Kentucky, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is hereby suspended effective July 1, 1992. This suspension will remain in effect until further notice.

The Company was last listed as an acceptable surety on Federal bonds at 56 FR 30150, July 1, 1991. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect this suspension.

With respect to any bonds currently in force with Kentucky Central Insurance Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 874-7116.

Dated: July 24, 1992.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 92-18317 Filed 8-3-92; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1991—Rev., Supp. No. 26]

Surety Companies Acceptable on Federal Lands, Termination of Authority; South Carolina Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to South Carolina Insurance Company, of Columbia, South Carolina, under the United States Code, title 31, §§ 9304-9308, to qualify as an acceptable surety on Federal bonds was terminated effective June 30, 1992.

The Company was last listed as an acceptable surety on Federal bonds at 56 FR 30162, July 1, 1992.

With respect to any bonds currently in force with South Carolina Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In additon, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (FTS/202) 874-7102.

Dated: July 24, 1992.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 92-18315 Filed 8-3-92; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of Public Law 98-164. USIA is requesting approval for a three-year extension of an information collection entitled "USIA-Supported Educational and Cultural Exchange Activities," under OMB control number 3116-0199. Estimated burden hours per response is forty-five minutes.

DATE: Comments are due on or before September 3, 1992.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average forty-five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: USIA-Supported Educational and Cultural Exchange Activities.

Form Number: None.

Abstract: In the interest of sound program management, USIA undertakes the collection of information about program effectiveness necessary to the management and evaluation of USIA-funded educational and cultural exchange programs. USIA seeks clearance for these information collection activities among grantees and alumni/ae of these programs.

Proposed Frequency of Responses:

No. of Respondents 2,000.
Recordkeeping Hours 350.
Total Annual Burden 1,850.

Dated: July 28, 1992.

Rose Royal,

Federal Register Liaison.

[FR Doc. 92-18323 Filed 8-3-92; 8:45 am]

BILLING CODE 8230-01-M

Group Projects for International Visitor Grantees

AGENCY: United States Information Agency.

ACTION: Notice; request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency (USIA) announces its intention to award ten grants of approximately $130,000 each to not-for-profit organizations arranging group projects for International Visitors traveling within the U.S.

DATES: Dates for the programs and deadlines for submission of each proposal are indicated in the individual program descriptions which follow. All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on the due date indicated. Faxed documents will not be accepted, nor will documents postmarked on the due date but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the deadline indicated. Grants should begin approximately four weeks prior to the project opening date.

ADDRESSES: The original and 20 copies of the proposal and budget (stapled, not bound), as well as five copies of the application and required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: International Visitor Group Projects, Office of Grants Management, E/XE, room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Mr. Jay Taylor, Chief, Group Projects Division (E/VP), room 255, 301 4th Street SW., Washington, DC 20547; telephone (202) 619-6285, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Overview

Programs are authorized under Public Law 87-256, the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), "to increase mutual understanding between the people of the United States and the people of other countries." Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs must conform to all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Guidelines

Subject to the availability of funds, USIA seeks separate proposals from non-profit organizations for programs for International Visitors traveling throughout the U.S. in seven Multi-Regional group projects, two Regional group projects and one Young African Leaders group project. Each is centered around a different theme. Participants in the projects will be foreign leaders or potential leaders selected by U.S. embassy committees abroad. Each group will consist of approximately 20 foreign visitors in addition to the three or four American escort officers who accompany them.

With the exception of the six-week Young African Leaders Project, each program will be 28 days in length. Most programs should begin in Washington, DC, with an orientation and overview of

the issues and a central examination of federal policies regarding these issues. They would then incorporate visits to at least five or six additional communities in at least three geographical regions. The programs should provide additional opportunities for participants to experience the diversity of American society and culture. At appropriate points in the project, participants may be divided into smaller, five- or six-member teams for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group. Home hospitality and homestays are encouraged. In cities where such councils exist, arrangements for community visits must be made through the National Council for International Visitors (NCIV) and the network of its constitutent councils throughout the U.S.

Proposed Budget

Proposals must include a comprehensive line item budget for which specific details are available in the application packet.

Application Procedures

To be eligible for consideration, organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project. Organizations with less then four years' experience in international exchange will not be eligible to compete for these grants. Experience in programming exchange visitors is desirable.

Interested organizations should write or call the Group Projects Division (address provided above) to request application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Following are the preliminary project summaries for each project:

Title: U.S. Foreign Policy in a New World.
Type: American Republics Regional [Spanish].
Dates: January 11–February 5, 1993.
Proposal Due: October 19, 1992.
Project Goals:
—To provide a historical perspective of U.S. foreign policy as it developed in the post World War II era;
—To examine the forces of global change that influence the formulation of our foreign policy;
—To highlight the domestic changes that create new opportunities for the change of previous foreign policies;
—To analyze selected current U.S./Latin American regional issues with emphasis on the decision-making process.

Participants: This project is intended for mid level government and elected officials engaged in the formation of foreign policies for their respective countries. It is also intended for analysts of long term trends and leaders of the business and scientific community. Journalists would not be appropriate participants.

Summary: The program will begin in Philadelphia, Pennsylvania, with presentations on the history of U.S. foreign policy, discussions of the federal structure and its impact on the formation of a national foreign policy, and meetings on the influences of commerce, finance, labor, education and the environment on the formation of foreign policies. As the group travels through the United States, they will focus on the changes that have occurred domestically. They will have several opportunities to make presentations of their views of the same types of changes in Latin America and their countries. These presentations will generate discussions with local leaders and among the group members.

The project will end in Washington, DC, where the visitors will discuss the formation of official foreign policy with representatives of the administration, the Congress and with outside analysts. Visitors will be able to discuss bi-lateral issues with officials in the appropriate departments. They will have the opportunity to present their findings and ideas to a round table of experts in the Latin American policy arena. They will have the opportunity to evaluate the project and critique the method of presentation. The participants will be able to take advantage of cultural opportunities in the cities that they visit. In a few locales, the participants will be offered home hospitality with local volunteers.

Title: University Administration in the U.S.
Type: Multi-Regional.
Dates: February 1–28, 1993.
Proposal Due: November 9, 1992.
Project Goals:
—To examine the American system of higher education, its structure, administration and support services;
—To explore the changing needs and responsibilities of higher education and its changing relationship with other elements of society;
—To facilitate discussions on topics of concern such as degree equivalencies, accreditation, student aid, admissions and counseling;
—To provide participants with the opportunity to discuss potential linkages with their U.S. counterparts and promote international cooperation in the field of higher education.

Participants: This project is intended for senior officials of colleges and universities who have institution-wide responsibilities for planning and management of institutions of higher learning.

Summary: This project will provide a comprehensive introduction to university administration at both state and private institutions. The program will begin in Washington, DC, with discussions covering major aspects of university planning and administration as well as the philosophy of U.S. higher education from an historical as well as a contemporary perspective. Meetings will include Department of Education officials and Congressional staff members to discuss the role of the federal government in the U.S. educational system. USIA's Office of Academic Programs as well as the Council on the International Exchange of Scholars (CIES) will also be a part of the Washington program. The agenda will include appointments with representatives of relevant private and professional organizations which may include the American Association for Higher Education, the Academy for Educational Development, the National Association of State Universities and Land Grant Colleges, the American Association of State Colleges and Universities, the American Association of Collegiate Registrars and Admissions Officers, and the American Council on Education. A visit to the Library of Congress will round out the Washington portion of the program.

Beyond Washington, the program will include small team visits to university campuses for a number of days with participants actually staying on or next to the campuses, incorporating meetings with students, administrators, faculty, in states with effective state higher education systems and a wide range of types of institutions of higher education. Host institutions will be asked to focus on a variety of issues related to university administration—e.g. financial support; the participation of faculty and students in university governance; student services (transport, food, dormitories); recruitment of students and faculties; development of work/study and student aid programs; cooperation between the University and the local business community. Visits to community colleges will be included to examine their growing importance in

higher education. Time will be set aside to address the specific concerns of the participants.

Social and cultural events as well as home hospitality will be included throughout the program.

Title: Ethnicity and Pluralism in American Policies.
Type: European Regional.
Dates: February 22–March 20, 1993.
Proposal Due: November 30, 1992.
Project Goals:
—To introduce participants to the rich diversity of American culture, including ethnic, religious, linguistic, and racial groups;
—To demonstrate the influence and essential role of various special interest groups in the American political process;
—To present a discussion of current issues evolving from the American struggle to address and accommodate the demands of a pluralistic and ethnically diverse society.
Participants: This project is intended for government officials, journalists, politicians, academics and others with a professional interest in and responsibility for issues of immigration, ethnicity and assimilation concerns, and the social welfare and political integration of minority groups.
Summary: For many countries in Europe, the ongoing international economic integration brings with it the need to accommodate the special needs and interests of newly-arrived immigrant groups and increasingly diversified populations. The solutions to be sought will affect such diverse areas as social welfare, the movement of labor across borders, national economics, investment, and political power shifts. Throughout its history, the U.S. has faced such challenges and continues to address the dilemma of incorporating into the social and political fabric of the country an ever increasing number of special interest groups. The strength and resilience of the American political system rests in its reliance on a pluralistic structure.

This project will explore the historical, political and cultural bases of American pluralism as well as current issues such as education, social welfare, political activism, and affirmative action. Participants will learn about the efforts of groups to pursue their particular economic, social and political agendas, while maintaining their cultural distinctiveness, and about the political environment that not only allows but encourages and even depends upon them to do so.

The program will open in Washington with an introduction to American politics, emphasizing the role played by a variety of interest groups in influencing domestic as well as foreign policy. The opening session will provide an academic perspective on American political thought and practice. A specialist in demographics will give an overview of historical immigration and current population trends in the U.S. and their significance in the political process. Participants will then meet with representatives of Congressional committees to discuss legislation such as the Immigration and Naturalization Control Act of 1990; with appropriate officials at the Departments of State, Health and Human Services, Justice and Labor; and with independent agencies such as the U.S. Commission on Civil Rights and the Equal Employment Opportunity Commission. They will also have the opportunity to discuss issues with association representatives, lobbyists and think tank scholars.

Outside Washington, the group's itinerary, reflecting regional balance, will take them to locations across the country in order to demonstrate the practical side of theoretical topics introduced in the nation's capital. They will have the chance to observe and discuss issues of political access and activism related to ethnic, religious, racial and linguistic affiliation. The program will address topics such as the bilingual education/multicultural curriculum debate, grassroots political organizing, the civil rights movement, and immigration and the ethnic composition of communities.

Title: Teaching English as a Second Language.
Type: Multi-Regional.
Dates: March 22–April 16, 1993.
Proposal Due: December 14, 1992.
Project Goals:
—To examine the organization and methodology of Teaching English as a Second Language programs in the United States, especially as they apply to large groups of students;
—To give teachers of English an opportunity to meet with American professional colleagues to discuss current trends and developments in the field;
—To develop a better understanding of the educational system in the U.S. and the linkages between educational institutions and community programs;
—To provide an exposure to the complexity of social, political, economic and demographic dynamics in the U.S.

Participants

This project is designed for government education officials, directors, and instructors of English language programs.

Summary

This project will expose participants to the organization and methodology of a wide variety of English teaching programs and teacher training programs in the U.S., including bi-lingual programs in elementary and secondary schools, English programs for refugees, college preparatory programs, vocational English as a second language, computer-assisted language learning, adult basic education, TEFL/TESOL programs and applied linguistics. A representative range of issues and institutions will be covered. Participants will observe classes and visit language laboratories. Issues such as curriculum and materials development, testing, innovative class techniques, teaching reading and writing, and English for Special Purposes (ESP) will be examined. In addition, the group will visit the English Language Programs Division at USIA, where a unique series of English-teaching video programs has recently been developed.

Following the Washington, DC, program, participants will travel to various geographic regions of the U.S. to examine well-established and nationally recognized TESOL programs, and meet with educators in communities with bi-lingual educational systems serving ethnically and culturally diverse populations. While the focus of the program will be primarily on TESOL activities, visitors will also be exposed to other elements of the education field in the U.S., including adult and continuing education, programs for special students (such as literacy training and cultural orientation programs for new immigrants), and vocational training programs for non-native speakers of English.

For a more individualized, small group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team and similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast how certain subject areas were addressed in these different locations. In addition, each visitor will have opportunities to meet with students in the classroom or with civic or professional groups to talk about their professions, their countries, and their perceptions of the U.S.

Home hospitality invitations with professional colleagues and ordinary Americans will provide informal settings for further discussions of legal and social issues and the American approaches to dealing with them.

The program will conclude in Atlanta, Georgia, with attendance at the 1993 International TESOL Convention, April 13–17, 1993.

Title: Environmental Protection Efforts in the U.S.
Type: Young African Leaders [French/English].
Dates: April 12–May 21, 1993.
Proposal Due: January 11, 1993.
Project Goals:
—To provide an overview of environmental issues in the U.S., including water pollution, air pollution, toxic waste disposal, acid rain, and wilderness management;
—To explore the rules of non-governmental organizations, industry, the academic and research community, private citizens, and government—federal, state, and local—in environmental protection efforts in the U.S.;
—To expose participants to American political culture through the study of environmental issues;
—To explore the relationships between environmental protection and conservation efforts and economic development, at local and national levels;
—To examine U.S.-sponsored efforts of global environmental protection.

Participants: The project is intended for emerging experts on environmental issues. Participants will include government officials, politicians, journalists, academicians, researchers, and industry representatives with a professional interest in environmental protection efforts at national, regional and local levels. Nominees should be between 25 and 35 years of age, and should not have had significant previous U.S. experience.

Summary: The project will be six weeks in length and will consist of six distinct program segments, including an initial week of orientation in Washington, DC; a week of team city visits; a week-long internship with professional counterparts around the country; a week-long university-based seminar; a second week of team city visits, and a final week of synthesis discussion and a final evaluation session.

The program will begin in Washington, DC., with an overview of environmental issue in the U.S. Participants will meet with representatives from government agencies, the World Bank and other international economic institutions, the Congress, non-governmental organizations, and academic institutions to discuss issues and various approaches to environmental policy formulation and implementation. Discussions will emphasize: The structure and functioning of the American political system including federalism, public/private sector dynamics, and grass-roots involvement; the growing role of the U.S. in global environmental issues and possible environmental solutions for developing countries; and the various scientific, political, economic, cultural, religious, and historical agenda with influence approaches to environmental issues.

The group will travel outside of Washington, DC, to a variety of geographic regions. Issues to be explored may include: The implementation of federal regulations by local jurisdictions; the activities and impact of grassroots organizations; on-site visits to industries; the relationship between energy consumption, life-style, and the environment; environmental protection efforts in the agricultural sector including the issue of pesticides. Environmental issues including global climate and atmospheric change, tropical deforestation, wildlife conservation, and hazardous waste dumping, and the emerging North-South dialogue will be examined. Possible solutions for sustainable development such as agro-forestry, debt-for-nature swaps, and various government incentive policies will also be explored. A visit to a national part or other American wilderness area will be included.

Title: American Studies: Ethnic and Social Diversity in a Democracy.
Type: Multi-Regional.
Dates: May 3–28, 1993.
Proposal Due: February 8, 1993.
Project Goals:
—To update and broaden participants' knowledge and understanding of the United States as a topic for study, writing and research;
—To discuss the latest developments in teaching methods, curriculum design and resources in American Studies in the U.S.;
—To expose participants to various regions of the U.S. and to allow them to observe and partake in America's ethnically and socially diverse culture and society firsthand;
—To provide participants opportunities to exchange information and ideas with each other and with their American professional counterparts.

Participants: This project is intended for professors and teachers of American Studies, and for commentators and writers interested and involved in the study and teaching of American society and culture.

Summary: This program will provide participants with an opportunity to increase their knowledge of the U.S. as a subject for writing, teaching, and research. As such, the program will include meetings on selected current issues, such as American politics, government and the economy. A special emphasis of these meetings will be on how the U.S. is incorporating its socially and ethnically diverse population in these sectors. through discussions with professional colleagues, the visitors will learn about the latest developments in curriculum design and examine the diversity of approaches to the teaching of American Studies at both private and publicly supported schools. These discussions will permit a productive exchange of views and will hopefully lead to the establishment of linkages between visiting individuals and institutions.

This project will open in Washington, DC, with discussions designed to introduce participants to American history, society, culture, literature, and educational system. Participants will meet with experts in USIA's Division for the Study of the United States, at area universities, the Smithsonian Institution, the Congressional Research Service, and relevant government agencies to discuss these issues, as well as the U.S. Constitution and roots of U.S. culture.

Beyond Washington, the group will travel to each of the major regions of the U.S. to develop an understanding of the cultural, regional and ethnic diversity of the U.S. Meetings with education officials, teachers, professors of American Studies, writers and publishers of American Studies resource materials, and curriculum designers will introduce participants to up-to-date American Studies teaching methods and resources, including those in the areas of African-American Studies and Women's Studies. Participants will visit several secondary schools and universities around the country to observe well-established programs in American Studies, where they will have opportunities to attend classes and meet with faculty, administrators and students. Through visits to state capitals, participants will be exposed to state and local government, issues, and politics.

Opportunities for participants to attend cultural and social events will be incorporated throughout the month. The program will also emphasize home hospitality in an effort to expose the

grantees to different kinds of American citizens in all regions of the country. Within the context of the program, there will also be an opportunity for each participant to spend two to three days at selected locations doing research in his/her area of specialization or to pursue special interests in other areas not already covered in the program. This aspect of the program will depend on the specific interests of each visitor.

Title: Entrepreneurship in the U.S.
Type: Multi-Regional
Dates: May 17–June 11, 1993
Proposal Due: March 1, 1993
Project Goals:

—To further understanding of the social, economic, and political factors which influence and encourage private enterprise;
—To present the U.S. economy as one developed through equitable access to economic opportunity;
—To provide examples of successful entrepreneurial efforts in the U.S.

Participants: This project is designed for government officials, private business organization or industry representatives, labor leaders, academics, community leaders, and journalists, with an interest in the American free enterprise system.

Summary: This program will enable participants to survey current US. economic conditions and factors which influence and encourage private enterprise such as current Administration policies, the influence of labor, immigration, and private/public cooperation, and to assess major controversial economic issues and the implications of those issues for small businesses.

This project should open in Washington DC, with an overview of the structure of American government, the history and philosophy of the American free market system, federal economic policies, and current issues in entrepreneurship and the creation of small businesses. Participants will meet with representatives from the Departments of Commerce and Treasury, Congress, the U.S. Chamber of Commerce, the National Federation of Independent Business, the Small Business Administration, trade associations, and think tanks, to learn about the growing importance of privatization in the U.S. economy. An academic specialist should give the group background on the most recent research on what individual psychological characteristics contribute to successful entrepreneurship and discuss current theories on how to achieve business success. Another specialist will be asked to illustrate the parallels between greater individual freedom in the market place and increased economic growth. The group should visit one of the many entrepreneurial firms that have sprouted in the suburban capital area during the last decade.

Beyond Washington, the group will observe examples of successful entrepreneurial efforts in various geographic regions, visiting at least one recipient of the 1992 Malcolm Baldridge Award for excellence in American business. Other discussions should explore critically the ways the U.S. federal, state, and local governments attempt to foster the growth of small business, including programs designed to assist women and minority group members getting started in business. The group will visit state-sponsored small business "incubators" to learn more about this example of public/private cooperation. They will discuss with the beneficiaries of such cooperation the growth-promoting state and local programs and tax incentives for small business development that are intended to abet individual entrepreneurial effort, as well as the impact of labor unions and immigration—both legal and illegal—on entrepreneurism.

Participants will observe how the rapid growth of high-tech electronic and biotech manufacturing as well as service industries, including consulting organizations, has created opportunities for entrepreneurial endeavor. Since many successful businesses are often an entrepreneurs's second, third, or fourth attempt, discussion of failed efforts will also be provided.

For a more individualized, small-group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team where similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast how certain subject areas were addressed in these different locations. In addition, all visitors will have opportunities to meet with secondary school students and civic or professional groups to talk about their professions, their countries, and their perceptions of the U.S.

In community visits, the group will observe the role the university plays in developing an infrastructure on which entrepreneurship can flourish, visiting campuses where entrepreneurship is taught. The project will include a regional financial center where participants will meet representatives of major financial organizations and venture capital firms to learn abut venture capital formation and financing alternatives available to entrepreneurs in the U.S. Home hospitality with professionals in the field and ordinary Americans will provide informal settings for further discussions about everyday life, social issues, and the American approaches in dealing with them.

Title: Radio Broadcasting in the U.S.
Type: Multi-Regional.
Dates: June 7–July 2, 1993.
Proposal Due: March 29, 1993.
Project Goals:

—To promote a better understanding of the history, structure and functions of radio broadcasting in the U.S.;
—To examine the role of radio communications in the U.S. in promoting community development and in protecting democratic institutions;
—To review the legal and philosophical commitments to the freedom of expression and the influence of these commitments on U.S. international communication policies.

Participants: This project is intended for mid-level radio producers, programmers, editors, writers, announcers and administrative personnel.

Summary: This project is designed to encourage responsible and independent journalism while providing an opportunity to upgrade technological training and journalistic skills. It will consist of visits to a wide variety of radio stations in the U.S., including commercial, public, religious, national, and local stations as well as an intensive skills workshop in an academic setting. Participants will hear discussions of broadcasting regulations and journalism ethics, observe programming, news gathering, interviewing and production techniques, and learn about the impact of technology on radio broadcasting in the U.S. Additional topics for discussion will include programming and production of news, current affairs and features programs, sports coverage, radio talk shows, cultural and music programs, religious programs, and programs for children. Round-table discussions throughout the program will allow participants to share reports on the status of radio broadcasting in their own countries with their colleagues and American counterparts.

The project will open in Washington, DC, with panel discussions by noted scholars and public officials on the function and responsibilities of the media in a democratic society, the U.S.

commitment to a free press, U.S. international communications policies, and the historic role of radio broadcasting in American society. Participants will meet with administrators and Washington correspondents of domestic and foreign radio organizations at the VOA, Radio Marti, the Foreign Press Center, Accuracy in Media, the Public Broadcasting Service, and the Washington bureaus of major radio stations. They will attend a State Department daily press briefing and visit the Congressional press gallery to observe coverage of those institutions by radio correspondents.

The program beyond Washington should include a three to four day academic program at an institution or university specializing in radio broadcasting for lectures and workshops on radio broadcasting as a business, liability to libel, professional standards in journalism, audience research, marketing and advertising, fund-raising for nonprofit radio stations, station management, minority broadcast ownership, the free flow of information and the impact of technology.

The project will also include team visits to medium and small cities and towns where participants will explore the role of radio broadcasting in community development, learn about the relationship between broadcasting and local government, and see the impact of radio in rural communities. In addition, all visitors will have opportunities to meet with journalism students in the classroom or with civic or professional groups to talk about their professions, their countries, and their perceptions of the U.S.

Home hospitality invitations with professional colleagues and ordinary Americans will provide informal settings for further discussions about everyday life, social issues, and the American approaches in dealing with them.

Title: The Administration of Courts in the U.S.
Type: Multi-Regional.
Dates: June 28–July 23, 1993.
Proposal Due: April 19, 1993.
Project Goals:

—To provide a better understanding of court management concepts and the applications of new technology to court operations;
—To enhance understanding of the dynamics of the U.S. judicial system;
—To review constitutional, legislative and legal protections for the rights of individuals;
—To familiarize participants with the principles of the American legal system, including the Constitution, separation of powers, the Supreme Court, the Federal Court system and the structure of state and municipal courts.

Participants: This project is intended for judges, law professors, lawyers, court administrators and justice officials who are interested in observing and discussing ways to make courts operate more efficiently.

Summary: This project will begin in Washington, DC, with an introduction to the American legal structure within the U.S. federal system. Participants will meet and hold discussions with representatives of the Executive, Judicial and Legislative Branches of Government. Highlights will include appointments at the Attorney General's Office, the Solicitor General's office, the Civil, Criminal and Civil Rights Divisions of the Department of Justice, the Federal Judicial Center, the U.S. Supreme Court, the U.S. District Court of Appeals, and the House and Senate Judiciary Committees. Participants will also observe the U.S. District Court in session.

Beyond Washington, DC, participants will disperse to cities and towns across the country to visit court systems of relevance to their situations at home and to gather first-hand information on the application of court management concepts, including jury management, budgeting and planning, caseflow management and delay reduction, personnel administration, appellate courts administration, space management and facilities planning, court security, the management of juvenile courts, and applications of new technology to court operations.

To better understand the machinery of the American system of justice and its application, participants will travel to various regions of the U.S. and have the opportunity to meet with the local court administrators, State Attorneys General, jurors and judges. By observing court proceedings, meeting with local law enforcement officials, attending classes at law schools, and meeting informally with law faculty and students, the visitors get a closer and more detailed look at a very complex system.

For a more individualized, small-group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team where similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast have certain subject areas were addressed in these different locations. In addition, all visitors will have opportunities to meet with law school students in the classroom or with civic or professional groups to talk about their professions, their countries and their perceptions of the U.S.

Home hospitality invitations with professional colleagues will provide informal settings for further discussions of legal and social issues and the American approaches in dealing with them.

Title: The Role of Volunteers and Community Service Groups.
Type: Multi-Regional.
Dates: July 19–August 13, 1993.
Proposal Due: May 10, 1993.
Project Goals:

—To illustrate how the values of fairness and equal opportunity underlie American society and contribute to a widespread commitment to volunteer service;
—To explore the role of voluntary service as a way of addressing the many social problems faced by a rapidly changing society;
—To provide information on planning, designing, managing and developing volunteer programs;
—To facilitate the exchange of ideas and experiences between volunteer organizations in the U.S. and those in participants' home countries.

Participants: This project is intended for government officials and community leaders who are active in volunteer work, administrators of volunteer programs, and scholars and professionals who are interested in research related to citizen participation in community development.

Summary: This project is designed to illustrate how strong ethical, social, and moral values form the basis for the vast array of human services offered in America through the efforts of unpaid individuals. Additionally, emphasis will be placed on the non-monetary benefits which these individuals realize through their volunteer efforts such as enhanced self esteem and greater social awareness.

The program will open in Washington, DC, with an overview of the American tradition of volunteerism, government and corporate efforts to promote voluntary service in community development, and the many types of private volunteer programs throughout the country. The overview will also provide background on the educational, political, economic and social systems of the U.S., with an emphasis on how

they encourage volunteer service. Appointments will be scheduled at Vista, the Peace Corps, and the President's Commission on Volunteerism, as well as possible visits to programs for the homeless or people with AIDS. A specialist in the field will describe how U.S. tax incentives stimulate charitable donations by both corporations and individuals and how laws encourage tax-exempt organizations to exist for the public benefit.

Beyond Washington, a one-day seminar organized by a volunteer center will cover issues involved in creating and administering volunteer programs. It also will explore the benefits which voluntary service contributes to both community and personal development, emphasizing the creation of community partnerships that cross racial, cultural and religious lines. Additionally, the seminar will outline the skills which individuals acquire in the areas of teamwork and goal-setting, skills which contribute directly to advancement in paid positions, especially for women and minorities. Another seminar session will provide participants an opportunity to share information on volunteer efforts in their home countries with their colleagues and American counterparts. Another panel will familiarize participants with the work of major university-based research programs that focus on the not-for-profit sector.

Programs in cities and small towns in different regions of the country will allow participants to work side-by-side with American volunteers in order to become familiar with the daily operation of volunteer organizations addressing social concerns ranging from human services to international and cross-cultural exchange. Examples of community/government/business cooperation in addressing these issues will be explored. Additionally, participants will learn about the role volunteer organizations such as Common Cause and the League of Women Voters play in providing avenues for citizen participation in the political process and in increasing governmental accountability. In a visit to a public action lobbying office, participants will discover the power of volunteerism in influencing public policy decisions.

For a more individualized, small group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team and similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast how certain subject areas are addressed in these different locations.

As the NCIV network is so fundamental to the USIA IV program, the importance of this organization will be highlighted as the project unfolds across the country. In addition, home hospitality invitations with professional colleagues and ordinary Americans will provide informal settings for further discussions of legal and social issues and the American approaches in dealing with them.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of expert USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of program idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agency and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet with program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Value to U.S.-Partner Country Relations:* Assessments by USIA's geographic area desks and overseas officers of the needs, potential impact and significance in the partner country(ies).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Track Record/Ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Greatest return on each grant dollar and degree of cost-sharing exhibited will be considered.

Notice

The terms and conditions published in this RPF are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process approximately six weeks prior to the project's opening date. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: July 28, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Education and Cultural Affairs.

[FR Doc. 92–18399 Filed 8–3–92; 8:45 am]

BILLING CODE 8230–01–M

Congress-Bundestag Youth Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces a competition for exchange organizations to administer

the post-secondary component of the Congress-Bundestag Youth Exchange Program (CBYX). Organizations will be competing for the (A) Young Professionals Component, (B) the Vocational School Graduates Component, and (C) the Agricultural Component. Organizations that are successful in this competition will be awarded grants in FY 1994 to administer the exchange for academic year 1994–95 and will also be eligible for grants in FY 1995 and 1996. One grant for each component will be awarded. Final determination of grant amounts is subject to the availability of funding and will be based on final budget submissions to be negotiated following preliminary selection decisions.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, September 25, 1992. Faxed documents will not be accepted, nor will documents postmarked on September 25 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin November 1, 1993.

Selection decisions will be made by December 31, 1992, and will be coordinated with the Government of Germany, which is simultaneously selecting the German counterpart organizations that will administer the program in Germany. Final budgets, based on guidance to be provided by the Agency, will be required from the selected organizations by August 31, 1993. Duration: The duration of the initial grants will be from November 1, 1993, to July 31, 1995. No grant funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Congress-Bundestag Program (CBYX), Office of Grants Management (E/XE), Room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Bettye Stennis, Youth Programs Division (E/VY), room 357, 301 4th Street SW., Washington, DC 20547; telephone 202–619–6299 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

The Congress-Bundestag Youth Exchange Program (CBYX), known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), is an official exchange program of the Congress of the United States, administered by the US Information Agency, and the German Bundestag. It provides a scholarship for an academic year experience of living and studying in the host country. Part of the exchange involves students aged 16–18, who live with host families, attend high school ("Gymnasium" in Germany), and participate in community life. This component is not subject to competition this year. Another component is dedicated to young professionals aged 18–24 who study at community colleges or universities and receive training. Additional components involve young farmers and vocational school graduates (described in more detail below). Each government provides funding through grant awards for the costs of recruiting, selecting, orienting, and debriefing of its nationals and their international airfair; and most hosting costs (specified below) for the duration of the foreign nationals' stay. Participants themselves pay domestic travel to the port of departure and provide their own funds for their daily needs. Grant proposals may include a provision for partially or fully covering this cost for financially needy participants.

The USIA health and accident insurance plan is used exclusively for all German participants, and its cost is covered by USIA; the German Government provides insurance for Americans while in Germany. American organizations that deem it necessary to carry liability insurance on the German participants are responsible for providing for this coverage at their own expense.

The actual number of participants selected each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. A final determination of exchange numbers for each academic year is made in the preceding December when representatives of both governments hold annual bilateral discussions. Participants are chosen according to procedures and criteria established by each government.

Guidelines

Grant awards will be made in the following categories:

A. *Young professionals component*—One organization will be awarded a grant to administer this component. The grantee will work in Germany with a partner organization that meets the qualifications for a grant from the Bundestag. The U.S. organization will be responsible for: the recruitment and selection of approximately 50 young U.S. men and women aged 18–24, who will study and participate in an internship in a field related to their career interest during the exchange year; their pre-departure orientation (approximately 3 days); international travel arrangements; and close coordination with its German partner to monitor the progress of the U.S. participants and resolve problems. The grantee will also be responsible for arranging and monitoring all activities relating to approximately 70 German young professionals aged 18–22 during their stay in the U.S. The German participants will be working professionals or recent graduates of technical or vocational schools. Many will have completed their apprenticeships in Germany, while others will have little on-the-job experience. The organization will: conduct a 3-day arrival orientation; arrange their placement in colleges and practicums (internships); recruit, screen, and orient host families; make arrangements for the group's visit to Washington for a 3-day cultural and educational program; provide supervision and counseling of the participants as needed; handle all administrative and logistical matters including in-country travel; and coordinate with USIA in administering its health and accident insurance plan. Any language training for Americans will be the responsibility of the German partner organization. Organizations may include other program elements in their proposals, bearing in mind that funding is limited.

Each German participant will be placed in a two- or four-year college for full-time study, a minimum of 12 credit hours, for one semester. The grantee may need to arrange for English classes for those participants whose English is inadequate. To save costs, the organization is encouraged to seek tuition waivers and cost-sharing with cooperating colleges. Each participant will have a full-time practicum or internship in his/her professional field for the second half of the program year. Each practicum should be based on a prospectus of the specific skills and

functions that will be mastered, and it should include a structured learning component that enables the participant to gain a perspective on the overall operation of the firm. A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but the stipend should be substantially reduced or eliminated during the second half of the program when the firms or agencies hosting the practicums provide an allowance for living expenses. Where possible, hosting arrangements should be found that do not require subsidization.

B. *Vocational School Graduates Component*—One grant will be awarded to an organization to administer the program component designed for 20 U.S. vocational school graduates. The grantee will work in Germany with a partner organization that meets the qualifications for a grant from the Bundestag. The American organization is responsible for recruiting and selecting 20 men and women aged 18–20 who will complete vocational school studies prior to departure for Germany. The grantee is encouraged to work with vocational educational offices at the state level in addition to administrators of secondary schools with vocational educational divisions in the selection process. In addition to the selection process, the grant pays, and the grantee arranges, international airfare from the port of departure to Frankfurt, an orientation program of up to 4 days in Washington, and a debriefing session (preferably in Washington) at the conclusion of the program. The grantee will work with its partner in Germany, which is responsible for the following (funded by the German Government): Arrival orientation, up to 2 months of language training, family and school placement, arrangements for a practicum in the participants' fields, counseling and support, excursions, and administration, including insurance.

C. *Agricultural Component*—One grant will be awarded to an organization to administer a small component for agricultural youth. The grantee will work in Germany with a partner organization that meets the qualifications for a grant from the Bundestag. Up to 12 Germans and 12 Americans will be chosen annually for a program that combines academic study and living on a farm. The Germans will be aged 18–24 and will spend one semester full-time at a community or technical college; the second semester is for practical experience on the host farm. As an alternative, a program may be arranged that includes part-time study and part-time farm activities for the year. Host farms should be selected to match the specific interests of the participants and should design a structured plan to enable the participant to learn about and practice a wide range of skills and tasks on the operation and function of the farm. The organization: identifies appropriate community or technical colleges and arranges for the German participants' admission, preferably securing tuition waivers or breaks; recruits, screens, selects and orients host families; conducts an orientation for the participants upon arrival; arranges a mid-year cultural activity appropriate to the group's interests; handles all in-country (US) travel and logistical arrangements; and provides supervision and counseling services.

The outbound Americans will be high school graduates, who will receive technical schooling in Germany and experience farm life with their host families. The grantee organization: recruits and selects the American students; provides pre-departure orientation to these participants; arranges their international travel; monitors their progress in conjunction with its German partner and engages in program evaluation upon their return to the U.S. and follow-up.

Proposed Budget—Organizations must submit a comprehensive line item budget for which specific details are available in the application packet. The estimated amount of funds likely to be available for each category is: (A) Young professionals $600,000; (B) Vocational school graduates $60,000; (C) Agricultural $85,000.

Eligibility requirements—To be eligible for consideration in this competition, an organization must:

1. be legally incorporated and have a legally incorporated affiliate in Germany that meets the Bundestag Administration's eligibility requirements;
2. have a not-for-profit status, as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit ("gemeinnutzige");
3. be financially solvent, have a demonstrated track record of responsible fiscal management and be able to meet the accounting and reporting requirements for Agency grants;
4. have four years' experience in conducting long-term exchange programs (of at least 9 months duration) between the United States and Germany; and
5. have well-established national volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, or difficulties concerning internships.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Ineligible proposals will not be considered for funding. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.
2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. *Value of U.S.-German relations:* Assessment of USIA's geographic area desk, USIS/Germany and the German Government of the potential impact and significance of the proposed projects.
6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
7. *Institution's Track Record/Ability:* Proposals should demonstrate a track record of successful programs, including

responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. *Evaluation Plans:* Proposals should provide a plan for evaluation by the grantee institution.

10. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or before January 31, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: July 27, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-18316 Filed 8-3-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 150
Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 6, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: July 30, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–18573 Filed 7–31–92; 2:42 pm]

BILLING CODE 6355–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–22]

TIME AND DATE: August 10, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. 701–TA–319–354 and 731–TA–573–620 (Preliminary) (Certain Flat-Rolled Carbon Steel Products)—briefing and vote.
6. Inv. 701–TA–309 and 731–TA–528 (Final) (Magnesium from Canada)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Dated: July 21, 1992

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–18549 Filed 7–31–92; 2:43 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–23]

TIME AND DATE: August 19, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–621 (Preliminary) (Compact Ductile Iron Waterworks Fittings and Parts Thereof from the People's Republic of China)—briefing and vote.
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Dated: July 30, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–18550 Filed 7–31–92; 2:43 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 3, 10, 17, and 24, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 3

Tuesday, August 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 7

10:30 a.m.
Discussion of Matters Related to Quality Management and Misadministration Rule (Closed—Ex. 5, 9B and 10)

Week of August 10—Tentative

Wednesday, August 12

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 17—Tentative

Tuesday, August 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 24—Tentative

Wednesday, August 26

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accrodance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no items has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: July 30, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92–18521 Filed 7–31–92 2:44 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 57, No. 150
Tuesday, August 4, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

RIN 0581-AA49

Procedures for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order and Rules of Practice Governing Proceedings on Petitions to Modify or to Be Exempted From Such Order

Correction

In rule document 92-17000 beginning on page 31948 in the issue of Monday, July 20, 1992, make the following corrections:

On page 31951, in the first column, in the 12th line, the last sentence in the paragraph should read: "Further, for the same reason, the phrase "on average" has been added to the definitions of "eligible producer" and "eligible importer," and, in the definition of "eligible producer," the term "lessor-lessee" has been changed to "landlord-tenant.".

§ 1209.301 [Corrected]

On page 31952, in the first column, in § 1209.301(g), the first sentence should read: "(g) *Eligible importer* means any person defined as an importer who imports, on average, over 500,000 pounds annually during the representative period.".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 88-143-1]

RIN 0579-AA12

Importation of Fruits and Vegetables

Correction

In proposed rule document 92-13994 beginning on page 26620 in the issue of Monday, June 15, 1992, make the following corrections:

1. On page 26624, in the table, in the 21st line, "(70˚- 70˚F)" should read "(70˚-79˚F)".

§ 319.56-2t [Corrected]

2. On page 26628, in the table, in the entry for "Guatemala" after "Tarragon", in the third column insert "Yam bean", in the fourth column insert "*Pachyrhizus tuberosus* or *P. erosus*", and in the fourth column insert "root". Also, in the entry for "Japan", under "Soybean", in the third column "*Clycine*" should read "*Glycine*".

3. On page 26629, in the table, in the first column, the seventh line should read "Bean, green and lima (pod) *Phaseolus velgaris* and *P. luntus*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-4214-10; IDI-29260]

Proposed Withdrawal and Opportunity for Public Meeting; ID

Correction

In notice document 92-15906 beginning on page 30228 in the issue of Wednesday, July 8, 1992, on page 30229, in the first column, in the fourth full paragraph beginning with "Thence:", in the fourth line, "S. 81˚" should read "N. 81˚".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-7122-10-6516; CA-30093]

Realty Action; Proposed Exchange of Public Lands in Imperial County, CA

Correction

In notice document 92-13176 beginning on page 24058 in the issue of Friday, June 5, 1992, make the following correction on page 24508, in the third column, under description "T.12 S., R.16 E.: Sec.10:," in the second line, "N½SE¼ ,NW¼" should read "N½SE¼NW¼".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 519, 522, 523, 524, 556, 558

Service; Approval of Class II and Class III Gaming Ordinances Under the Indian Gaming Regulatory Act

Correction

In proposed rule document 92-15879 beginning on page 30346, in the issue of Wednesday, July 8, 1992, make the following corrections:

1. On page 30346, in the third column, in the last line, "e"should read "ordinance".

§ 522.2 [Corrected]

2. On page 30350, in the first column, in § 522.2(a), in the first line, "81½" should read "8½".

§ 522.6 [Corrected]

3. On page 30350, in the third column, in § 522.6(b) in the first line "r" should read "or".

BILLING CODE 1505-01-D

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federal register

Tuesday
August 4, 1992

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 98 and 99

Child Care and Development Block Grant; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 98 and 99

RIN-0970-AA92

Child Care and Development Block Grant

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 5082 of the Omnibus Budget Reconciliation Act of 1990, entitled the "Child Care and Development Block Grant Act of 1990" (the Act). The purpose of this Block Grant is to increase the availability, affordability, and quality of child care. To accomplish this purpose, Federal funds are available to States, Indian Tribes and Territories to provide grants, contracts, and certificates for child care services for low-income families with a parent who is working or attending a training or educational program. Funding is also provided to improve the availability and quality of child care and for early childhood development and before- and after-school services. To afford parents a broad range of child care choices and services, the Act provides parents specific options regarding the selection of child care providers.

EFFECTIVE DATE: August 4, 1992. (For further information, please see "Program Implementation Dates.")

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Administration for Children and Families, Child Care Division, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401-9326.

SUPPLEMENTARY INFORMATION:

Background

The child care needs of low-income families are addressed by a number of programs administered by ACF. In the past four years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

In the Omnibus Budget Reconciliation Act of 1990, Congress established two new child care programs: the Child Care and Development Block Grant program; and the At-Risk child care program, which provides child care for low-income working families in need of such care and at risk of becoming eligible for Aid to Families with Dependent Children (AFDC).

The 101st Congress finalized the Child Care and Development Block Grant legislation after two years of protracted debate within Congress and between Congress and the Administration. The bill resulted from a new compromise between the House, the Senate, and the Administration. The bills which individually passed the House (H.R. 3) and the Senate (S. 5) were not the basis for crafting the compromise, as the Congressional leadership and the Administration agreed to start anew in crafting this legislation.

As a result, there is relatively little legislative history that is instructive in drafting regulations that reflect the clear intent of the law. The Department has carefully examined the legislation, the Conference Report (H.R. Rep. No. 964, 101 Cong., 2d Session 922, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2627; hereafter, the Conference Report), and the Congressional debate on final passage of the bill. We also have discussed the background and the developments that went into the drafting of the legislation with Congressional and Administration representatives in the effort to develop regulations that accurately reflect the program that was drafted with the bipartisan support of Congress and the President.

Comment: A few commenters believed that instructive legislative history does exist.

Response: Although other child care bills had been proposed in previous Congressional sessions, the Child Care and Development Block Grant Act was a new bill. While the Block Grant may share similar language with other bills, the intent of those previous Congresses is not dispositive of the intent of the Congress which passed the Block Grant legislation.

Throughout this preamble, we will refer to the Child Care and Development Block Grant as "the Block Grant." When we refer to "Indian Tribes" and "Tribal Grantees," we include Indian Tribes, Alaska Native organizations, and Tribal organizations, including Tribal consortia, unless otherwise specified. Similarly, when we refer to "State and local law," we include the appropriate level of Territorial and Tribal law. When we refer to "States" and "Grantees," we include States, Territories, and Indian Tribes, unless otherwise specified. We use the term "States" for ease of reference. Unless otherwise specified, all provisions of the regulations apply to Tribal and Territorial Grantees, as well as States. As described in §§ 98.50 and 98.51 and pursuant to the Act, the Block Grant is divided into two portions—75 percent generally for child care services and 25 percent for specified quality and availability improvements. We refer to these as the "75 percent" and "25 percent" portions. Additional definitions are included in § 98.2 of the regulations.

In drafting the final rule, we considered letters received in the mail and comments from numerous meetings held with representatives of State governments, Indian Tribes, Alaska Native organizations, child advocacy organizations, child care providers and organizations, and other interested parties. We carefully reviewed the 1,475 written comments which we received on various aspects of the regulations. These included comments from Members of Congress, States and Tribes, Representatives of State legislatures, private individuals, child care organizations and providers, resource and referral agencies, child advocacy groups, non-profit organizations, and unions. Further, we considered the testimony at both Congressional hearings held in the fall of 1991 to discuss the impact of the interim final rule, as well as subsequent Congressional comments and requests.

We include comments to the interim final rule throughout this preamble discussion, both generally and with specific responses. This final rule includes all provisions relating to the Block Grant, even those that have not been changed, and this preamble discusses all substantive changes to provisions of the regulations. We do not discuss minor wording changes made for clarity or to correct typographical errors in the interim final rule.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect the increased expenditures authorized for the Child Care and Development Block Grant to have an annual effect on the national economy

of over $100 million in the first five years of operation. We base the calculations for expenditures under the Act on the anticipation of increased expenditures in child care programs and related supportive services.

According to the Office of Management and Budget instructions for preparation of Regulatory Analyses (found in appendix V of the annual Regulatory Program), "expenditure rules" establishing terms or conditions of grant programs should ordinarily only "verify that the terms or conditions are the minimum necessary to achieve the purposes for which the funds were appropriated. They should not contain conditions in pursuit of goals that are not germane to the purpose for which the funds were authorized and appropriated * * *. Maximum discretion should be allowed in the use of Federal funds, particularly when the Grantee is a State or local government." The instructions do not create any regulatory burden other than that incident to prudent purchasing and management requirements.

With respect to these management requirements, we believe that we have imposed only the minimum conditions necessary to achieve statutory purposes. There are no non-germane conditions. However, there is an inherent tension between maximum flexibility for Grantees and the statutory goal of assuring maximum parental choice, which we analyze in the responses to comments and in the Federalism section below.

This regulation establishes procedures which allow Grantees to expend the monies authorized by the Act and provides Grantees with a great deal of flexibility and latitude in program design. Regulatory constraints on Grantees' administrative processes are minimal. Consistent with the Act and legislative history, however, we require Grantees to guarantee parental choice and to ensure that Grantees target resources according to statutory intent.

The regulation does not significantly restrict Grantees in designing and implementing Block Grant programs. Rather, our approach is sensitive to the need for flexibility in the design of programs and administrative processes. For example, we provide Grantees with a great deal of latitude in designing and operating certificate programs. Similarly, with regard to health and safety and registration requirements, we give Grantees substantial flexibility in providing for any necessary requirements. We establish no minimum standards. Additionally, we do not specify that programs be statewide. We expect substantial variation in Grantee programs. The major issues of concern to Grantees result from the requirements of the Act.

The regulation in and of itself imposes minimal additional administrative costs, although we anticipate that some Grantees might choose to undertake activities not required (but permitted) by the Block Grant that would entail significant administrative cost increases. At the Federal level, we anticipate total administrative costs of less than $3 million.

At the Grantee level, the regulation potentially requires additional administrative effort in five areas:

(1) Grantees must assure that all those who provide child care services funded by the Block Grant meet minimum health and safety requirements;

(2) Grantees must "register" providers that are not otherwise licensed or regulated by the State;

(3) Grantees must maintain a record of substantiated complaints and make such information available to the public on request;

(4) Grantees must make consumer information available to parents and the general public; and

(5) Grantees must allow parents to choose their child care provider through a certificate program.

We discuss health and safety and registration requirements in §§ 98.41 and 98.45 respectively. With regard to health and safety requirements, the regulation expressly states that Grantees are not required to impose additional health and safety requirements if existing State or local requirements meet the requirements of the Act and regulations; Grantees may maintain existing standards. Similarly, registration requirements apply only to providers which are not otherwise licensed or regulated by the Grantee. Moreover, registration requirements must be minimal and limited to those measures necessary to facilitate appropriate payment to providers and permit the Grantee to furnish information to providers.

Regarding maintenance of a record of substantiated complaints and providing consumer information, we understand that most Grantees already have these processes in place. Moreover, 20 percent of the 25 percent portion of the Block Grant is reserved for these and other quality activities. We thus anticipate that additional costs associated with these activities will either be minimal or will be accomplished as part of Grantees' programmatic expansion of quality activities under the 25 percent portion of the Block Grant.

We realize that requiring Grantees to allow parents to choose their child care provider will entail additional costs for some Grantees. The main cost associated with allowing parents to choose their child care provider (aside from the entry of new providers into the Grantee's licensing and regulatory system, at least to the extent that they must be registered and meet minimum health and safety standards described above) is the fact that Grantees must provide payment to providers which the Grantee would not otherwise pay for child care services. While we do not have a precise estimate of the additional administrative costs associated with a certificate program, we expect that the total cost of operating a certificate program would not be significantly greater than the administrative burden associated with grant and contract programs.

The regulations thus require that Grantees undertake additional administrative expense related to registering, monitoring, and paying providers which might not otherwise participate in a Grantee subsidized child care program. We anticipate that costs associated with these registration, monitoring, and reimbursement requirements will be less than 11.25 percent of the total Block Grant, and our expectation in this area was reflected in the limitation of non-service costs to a maximum of 15 percent of the 75 percent portion of the Block Grant. For funds available for FY 1991, we therefore anticipate $82 million in associated administrative costs. For FY 1992, we anticipate $93 million of associated administrative costs and, based upon the President's budget request, $96 million of associated administrative costs for FY 1993.

This is not to say that Grantees will not spend more than $82 million of FY 1991 funds on administration. We anticipate, however, that spending above this amount is associated with activities not required by the Block Grant. For example, Grantees might hire more licensing and regulatory personnel to monitor all child care; while this is an approvable Block Grant activity and expense, it is not required as a result of the Block Grant.

Currently Projected Costs and Benefits

We considered two broad alternatives regarding publication of this final rule:

Alternative 1

The Department could issue regulations similar to those for other block grant programs. Such regulations would provide greater latitude to Grantees with regard to the interpretation of statutory provisions.

Alternative 2

The Department could issue regulations which provide Grantees with more guidance than is typical for Departmental block grant programs. This additional guidance would: (1) Allow the Department to fulfill the substantial monitoring role required in the Act; (2) assist Grantees in striking a balance between competing principles embodied in the Act; and (3) clearly establish Federal policy with regard to the Child Care and Development Block Grant program at the program's outset. This alternative recognizes the basic historical difference between other block grant programs and the Child Care and Development Block Grant. Other block grant programs administered by the Department existed as programs before they were consolidated into block grants, providing an historical basis for policy and operational processes.

Consistent with the expenditure rules discussed in the Regulatory Impact Analysis Guidance (appendix V of the 1990 Regulatory Program) and quoted above, a full-blown benefit/cost analysis is not appropriate for this rule. For each of the two options detailed above, we believe that there will be minimal costs and benefits over and above the appropriated level.

This regulation will result in minimal costs above and beyond the appropriation level; fewer than 30,000 estimated annual burden hours are associated with the regulation. We anticipate administrative costs associated with Alternative 2 to be minimally more than those associated with Alternative 1. While we cannot quantify the difference, it will be somewhat less than 11.25 percent of the total Block Grant ($82 million in FY 1991; $93 million in FY 1992; and, based upon the President's budget request, $96 million in FY 1993). This additional cost is due to the fact that Alternative 2 will require Grantees to interact with more providers, and in some cases may necessitate that Grantees hire additional staff.

Regarding benefits, we have no way of quantifying the value of benefits of child care services and quality improvement activities. The benefits may be higher or lower than the $825 million, depending on the value of child care to the recipients. However, as discussed below, benefits under Alternative 2 will always be higher than under Alternative 1.

We assume that Alternative 2 will in all cases provide more benefits than Alternative 1 because Alternative 2 will contribute more to the increased availability and affordability of child care. Alternative 1 would have resulted in less diversity of child care options and less overall care. It also would have created situations in which parents in need of assistance would be denied care or compelled to use an arrangement that, to them, would have been less preferable and less valuable than the child care of their choice. Alternative 2 guarantees that parents have the flexibility to make child care choices.

Freedom of choice in and of itself entails an economic benefit known as "allocative efficiency." To use a simple example, consider the difference between giving a person five dollars in cash and giving him/her five dollars worth of apples. Most people would prefer the five dollars in cash, because the cash affords more flexibility. Even if someone wants apples, he/she might prefer a different type, or perhaps prefer a combination of other fruit or bread and apples to all apples. Moreover, some people do not like certain varieties of apples, and would therefore value the apples well below the five dollar cost of the product.

This concept of allocative efficiency applies to all goods and services, including child care. Due to allocative efficiency, a child care certificate to purchase a given dollar amount of child care has more value, i.e., produces more benefits, than a contract with a single provider to purchase the same dollar value of child care.

Moreover, unlike many other goods and services, child care is not a homogeneous service but rather a differentiated one. That is, unlike, say, apples, where one unit of Delicious apples is virtually indistinguishable from other units of Delicious apples, child care varies based upon setting, proximity, curriculum, personal relationship, and a myriad of other factors. Thus, although a child care provider may typically charge, for example, $100 per week for infant care, that care is not necessarily worth $100 to everyone with an infant needing child care. For some people, care provided by this particular provider may be worth less than $100 because the caregiver is inconveniently located, or because the parents' lack of familiarity with the caregiver causes increased family stress and the need for more frequent visits and calls. If this caregiver is the only option, some people who value the care at less than the $100 cost will take the care despite the fact that they (the parents) do not receive a full $100 worth of benefits, as they would receive with another more convenient or familiar caregiver. Given the legislative mandate to provide for child care services, ACF has maximized the utility to the recipient by assuring the widest range of choices possible through the certificate program.

In a certificate program, however each dollar of the certificate is worth a full dollar of child care. Parents have the choice of using many providers, including the ones with which the Grantee might otherwise choose to contract. Thus, benefits under Alternative 2 will always exceed the benefits that would accrue under Alternative 1.

There may be increased administrative costs for State lead agencies due to the expansion of child care programs and related support systems. Lead agency decisions concerning child care programs and supportive services will affect administrative costs. As discussed above, however, these costs will generally be covered by the funds from the Block Grant and are minimally increased by the requirement of a certificate program. We believe that the benefits gained by the requirement of a certificate program will far outweigh the costs required by such a program.

National spending on child care was approximately $24 billion in 1990 and is growing each year. Some of the spending on this program will inevitably displace spending which would have come from other sources. Therefore, the overall economic impact of this program on the child care market will not significantly affect the size of the market. Additionally, there is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely as a result of these regulations.

The nature of the Block Grant does raise possible concerns of vertical and horizontal equity. With regard to the Block Grant, however, these potential inequities arise only to the extent that they are inherent in non-entitlement programs that have income cut-offs and target groups.

Issues of horizontal equity (i.e., the fact that people in similar circumstances will be treated differently) may arise only in response to Grantee priorities. Since the Block Grant is not an entitlement and there is no requirement that the Block Grant benefits be uniformly distributed throughout the State, persons in different parts of the area served by the Grantee may be treated differently, even if their family and income circumstances are identical. Such a difference in practice would result not from Block Grant policy or regulation, but rather from the Grantee's

administrative decisions to target certain areas.

Additionally, based upon reviews of initial Grantee Plans, it appears that most Grantees will operate "statewide" programs, providing service first to those who apply first. To the extent Grantees use such practices to ration services, those persons with better access to information will be relatively advantaged. This effect will be ameliorated by the general availability of other subsidized child care programs (e.g., child care funded with title XX, or with other State or local funds, as well as the availability of tax credits).

Vertical inequities will also occur. Due to the nature of the Block Grant, indeed, due to the nature of any program with income limits, the potential for a "notch" effect exists; that is, people just above the income cut-off for eligibility receive no benefits at all, while people who are just inside the cut-off may receive a substantial benefit. With regard to the Block Grant, however, the fact that services must be subject to a sliding fee scale minimizes this effect by gradually phasing out the subsidy as family income increases.

Again, initial Plan reviews indicate that many Grantees intend to allocate services primarily to priority groups (i.e., children with special needs or from families with very low incomes). Thus, the existence of vertical inequities in part reflects successful targeting of resources to those groups most in need.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. section 605(b), enacted by Public Law 96–354, the Regulatory Flexibility Act, that this rule will not result in a significant impact on a substantial number of small entities because the rule primarily affects State governments, which are not "small entities" within the meaning of that Act.

Child care providers such as child care centers, family child care providers, and other providers are considered "small entities" within the context of Executive Order 12291 and the Regulatory Flexibility Act. Because these regulations provide parents with great authority in their use of child care certificates and choice of providers, and States with flexibility to prescribe standards for child care providers funded under the Act, they do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on future State decisions.

For instance, section 658E(c)(2)(E) of the Act requires States to assure that all providers of child care services for which assistance is provided comply with all licensing or regulatory requirements applicable under State and local law. Section 658E(c)(2)(F) of the Act requires that States assure basic requirements are in place to protect the health and safety of children who receive services under the Block Grant. This rule allows Grantees great flexibility with regard to such requirements and, in fact, anticipates that in many circumstances no additional requirements need to be put in place because requirements (e.g., local fire and safety codes) are already in place. Although child care providers may be affected by the provisions of the Act, the effect is not due to the rules implementing the Act. Variables such as the nature and extent of current State licensing and regulatory requirements, the mix of providers that participate in child care services under the Block Grant, the extent of any new health and safety requirements imposed by a Grantee, and the types of care chosen by parents will influence the extent of the effects of the Act on providers.

In addition, the parental choice provisions discussed below provide substantial assurance that State decisions will not adversely affect whole classes of providers. For these reasons, we conclude that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

Certain sections of this rule contain information collection requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The titles, descriptions, and respondent descriptions for the required information collection are shown below with estimates of the annual reporting and recordkeeping burdens. Included in the estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Titles: (1) Block Grant Application, (2) Block Grant Plan, (3) Financial report, (4) Annual report.

Descriptions: The Act establishes four recordkeeping and reporting requirements. First, an Application, including the Block Grant Plan, must be submitted as a prerequisite to receiving Federal funds to administer a Child Care and Development Block Grant. The Application must be submitted annually; however, the initial Plan for the States and Territories is valid for a three-year program period. Subsequent Plans are valid for a two-year period. All Plans for Tribal applicants are valid for a two-year period. The Application and Plan require Grantees to describe how they will implement the provisions contained in section 658E of the Act. Such information is necessary to determine whether an Application should be approved and if the program will be properly administered.

Next, the Act establishes a financial reporting requirement. Grantees must use the OMB approved Standard Form (Form 269 or 269A) to report total expenditures, unliquidated obligations, and program income, if any. This information is necessary to determine that the allowable statutory and regulatory timeframes for obligation and expenditure of funds are met.

Finally, section 658K of the Act mandates the collection of information to prepare an annual report to Congress. In designing the reporting form, we are considering comparability with reporting requirements for other child care programs administered by ACF.

Description of Respondents: States, Indian Tribes, and Territories.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 98.13	255	1	30 hours	7,650
45 CFR 98.16	255	[1].5	50 hours	6,375
45 CFR 98.64	255	1	1 hour	255
45 CFR 98.70 & 98.71	255	1	50 hours	12,750

[1] Subsequent Plans will be submitted biennially (45 CFR 98.16).

Total Existing Burden Hours: 0
Total Proposed Burden Hours: 27,030
Total Difference: +27,030

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF submitted a copy of the regulation to OMB for its review of these requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Child Care Division, Administration for Children and Families (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Federalism and Family Effects

Following is an assessment of this rule using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12606 on the Family

The Block Grant program is expected to have an overall beneficial impact on the family. We believe that all provisions of the Act, and these regulations, support parents' rights to educate, nurture, and supervise their children.

The objective of this program is to increase the availability, affordability, and quality of child care services. Such activities will enable families to maintain or achieve self- sufficiency through employment and training and to increase their earnings. For child care under the Block Grant, parents will be provided information about providers and will have access to their children while in care. Federal funding of this program will permit parents to choose from a broad range of child care providers, including child care centers, family child care providers, sectarian organizations, relatives, friends and neighbors.

This rule emphasizes the importance of parental choice in decisions regarding the type and location of child care providers. This emphasis sends a message of parental responsibility and authority.

The Block Grant does not substitute governmental activity for any of the functions of the family. Services will be made available by means of Federal funding to non-Federal levels of government, i.e., States and localities. For these reasons, this rule meets both the letter and spirit of E.O. 12606 on the Family.

Analysis Required by Executive Order 12612 on Federalism

We have determined that this rule will not have a substantial economic impact on States, Tribes or Territories, nor will it have a substantial impact on the relationship between the Federal government and these entities. It will not have a substantial effect on the distribution of power and responsibilities among the various levels of government (e.g., State and local governments). For these reasons, an in-depth analysis of the effect of this rule relative to the principles of Federalism is not required.

Nevertheless, an explanation of our regulatory approach is appropriate. Other block grant programs administered by the Department of Health and Human Services provide greater latitude to Grantees with regard to the interpretation of statutory provisions. In fact, most statutory provisions are not included in the regulations for these other programs. Grantees are responsible for interpreting statutory language; the Federal government intervenes only where the Grantee's interpretation of a statutory provision is "clearly erroneous."

We believe that there are a number of compelling reasons for the Department to adopt a different approach for the purpose of the Child Care and Development Block Grant. The first two reasons are based on the language of the Act.

First, Congress has required a substantial Federal role in monitoring the program, as evidenced by the provisions in section 658I(b) of the Act. The Secretary is required to monitor against the provisions of the Plan, as well as the Act. Substantial penalties, including suspension from further funding under the Block Grant, are specified. This monitoring requirement led us to conclude that Plan provisions should be set forth in regulation, in order to ensure that there would be a basis for Federal oversight.

Second, we believe that providing additional policy guidance through Federal regulations would be helpful in striking an appropriate balance between the competing principles of family and Federalism embodied in the Act. See *Chevron, U.S.A., Inc.*, v. *Natural Resources Defense Council*, 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing or ambiguous). Although the Act allows broad State discretion, such authority may not be exercised at the expense of parental choice. Based on prior experience, we were concerned that some jurisdictions might consider regulations which would effectively eliminate most or all in-home care, family child care, relative or sectarian care.

Comment: A few commenters said that we were incorrect in suggesting that the Act creates competition between competing principles—State flexibility and parental choice—and that the safeguard on parental choice at § 98.30(g) should be deleted. These commenters believe that States have, in a sense, absolute authority to set health and safety requirements, as well as other standards, and that parental choice of providers is limited to only those providers which meet such requirements.

Response: We do not agree with this view. Clearly, both principles are embodied in the Act. Grantee programs must provide for parental choice of providers, but Grantees retain a great deal of flexibility in establishing requirements and standards. The Department is responsible for monitoring and oversight of this program, and we would be remiss if we failed to provide guidance through the regulation in an area which might become troublesome in implementation.

Giving Grantees unlimited authority to set standards for the Block Grant, as suggested by these comments, could undermine or effectively eliminate parents' flexibility to choose child care providers which satisfy family needs. Certificates which cannot be used because most providers do not meet Grantee requirements would nullify the requirement. In addition, it would be contrary to another objective of the program—to increase the availability of child care. Our approach does not prevent Grantees from establishing reasonable requirements or standards. However, it attempts to ensure that one requirement of the Act is not used, even inadvertently, to undo another. Grantees should adopt reasonable requirements, including currently-existing requirements, for providers which participate in the program.

Under the Block Grant program, some States with existing voucher programs might interpret the statutory requirements relating to the certificate program and parental choice in such a way as to limit a parent's ability to choose from a broad range of child care providers. For example, some States might seek to permit parents to choose only from those providers under contract with, or who are currently licensed by, the State. Our review of State Plans for implementation of the Block Grant indicates that this would

have been the case in many State programs. However, Congress intended to give parents the greatest flexibility in choosing among providers by requiring a certificate program that is available as an alternative to contracted care.

In addition, there is a basic historical difference between other block grant programs and the Child Care and Development Block Grant. The other block grant programs administered by the Department existed as programs before they were consolidated into block grants. There was, therefore, an historical basis for policy and operational processes. The Child Care and Development Block Grant, on the other hand, is a new program. We therefore believe that it is important and appropriate to clearly establish Federal policy with regard to the program at the outset.

Finally, because Grantees had such a limited amount of time available to develop their first Plans, we believed it would be helpful to provide them with specific guidance and incorporate all statutory requirements in the regulations so that they would only have to refer to one document to determine Federal requirements.

Several commenters disagreed with our regulatory approach. In particular, many States believed that certain regulatory provisions severely restrict State flexibility—specifically the limit on administrative costs and quality and availability improvements under the 75 percent portion of the Block Grant. As described in the appropriate sections below, we made many changes in direct response to comments, often providing additional flexibility in program design and administration.

Nevertheless, we continue to believe that the program is better served by a clear set of requirements to guide program implementation at the outset, rather than an attempt to do so after implementation. For example, limits initially set on administrative costs ensure that Grantees satisfy Congressional intent that the preponderance of funds under the 75 percent portion of the Block Grant be used for child care services, with a minimum amount for other activities. Attempting to establish such limits after Grantees have already planned programs and spent funds would have been impracticable. Clear guidance at the outset eliminates years of debate over the meaning of these requirements.

We are sensitive to the need for flexibility in the design of programs and administrative processes; in this rule we have attempted to balance the principles of Federalism and the family in such a way as to provide Grantees with flexibility, yet protect the rights of parents. We allow most definitions and processes to be set by Grantees, and we have focused on outcomes. For example, we provide that in the certificate program the Grantee must permit a parent to send his or her child to a provider which he or she selects. Options include child care centers and family child care providers under contract with the Grantee, or neighbors, relatives, or sectarian organizations which accept certificates, so long as the provider meets the requirements of the Act. We do not, however, require any particular certificate form or process.

Similarly, with regard to health and safety and registration requirements, Grantees have substantial flexibility in establishing any necessary requirements. We set no minimum standards.

With regard to administration of the funds, the Block Grant program is subject to the regulations contained in 45 CFR parts 98 and 99 and any other regulations cited therein. While the Act and the regulations establish certain restrictions on the use of Block Grant funds, in many instances the requirements in parts 98 and 99 still allow Grantees to manage their grants according to their own State or local laws and procedures.

We believe that this overall approach does not substantially restrict States in designing and implementing this program. While States must meet all statutory requirements, which the Department intends to monitor, we fully expect substantial variation in Grantee programs. We do not specify that programs be statewide, nor do we provide definitions of all terms. We allow flexibility in setting sliding fee scales, in setting payment rates, in establishing additional eligibility conditions, and in targeting specific populations.

The States will serve as laboratories for testing unique solutions to the needs of families targeted by this program. ACF hopes to serve as the focal point for knowledge regarding these solutions, and to expedite the transfer of such solutions around the country.

General Analysis of Comments

Of the 1,475 comments received, 908 commenters (62 percent) generally supported the interim final rule as published; 216 commenters (15 percent) generally agreed with our regulatory positions, but cited specific suggestions for change; 286 commenters (19 percent) disagreed with portions of the regulations; and a few commenters (44, or 3 percent) voiced strong opposition to most of the regulatory provisions. Most of those who supported the regulation (69 percent, consisting of 766 individuals or organizations with sectarian affiliation and 259 other respondents) agreed with the regulatory provisions which emphasize parents' choice of child care providers, while 170 others (12 percent) believed that the regulations put too much emphasis on parental choice (for further discussion, please see "Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities").

Two hundred ninety-one of those who commented (20 percent) asked that requirements for health and safety be strengthened, and 103 commenters (7 percent) were in favor of more stringent registration requirements for providers. Other commenters requested that we give examples of more stringent health and safety requirements in the preamble. On the other hand, 152 commenters (10 percent) urged us to prohibit or minimize health and safety requirements. Over half of the respondents (54 percent) thought that stringent health and safety requirements and additional regulatory requirements could have the effect of eliminating small family child care providers and relatives from the program. In order to permit additional emphasis on quality, 381 commenters (26 percent) requested an increase of the percentage of funding for availability and quality improvement activities in the 75 percent "services" portion of the Block Grant. Many of these commenters specified that this portion of the Block Grant should be targeted at quality, rather than administrative activities. Some believed that there should not be any regulatory limits on the amount of funds that could be spent on quality activities. One hundred twenty-nine of those who commented thought the allowance was sufficient and should not be changed, and four commenters wanted a decrease in the administrative allowance.

Although a few commenters (3 percent) expressed support for the level of flexibility given to States, 20 percent of the commenters (295) were dissatisfied with what they saw as a lack of State flexibility and authority over the Block Grant funds. Of particular concern to some commenters, including 28 States and State Legislators, were the constraints on the use of the 75 percent portion of the Block Grant funds. The comments are discussed in the applicable regulatory sections.

Use of Interim Final Rule

The Administrative Procedure Act provides that an agency can issue an

interim final rule "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)). ACF found that a Notice of Proposed Rulemaking (NPRM) would have been impracticable for the Block Grant, due to the time constraints involved and the need for Grantees to have complete approved Plans before implementing their programs. Congress allowed only ten months between the passage of the Act and the availability of the appropriation, and thus the start of the program. Grantees needed much of that time to develop their Plans, to hold public hearings, and to submit their Plans to ACF with sufficient lead time for approval. The remaining time was insufficient to determine Federal administration of the program, draft an NPRM, allow review of the NPRM by applicable Federal entities, publish the NPRM, allow for a comment period, consider comments, revise the NPRM and publish a final rule. In addition, we believe there was a need for a rule before Plans were submitted in order to establish the funding formulas for the Territorial and Tribal Grantees.

Comment: Several commenters objected to the use of an interim final rule because they believed it limited the opportunity for Grantees to comment on the rule. In particular, one commenter complained that in the past Federal agencies have kept interim final rules in effect for substantial periods, thereby avoiding consideration of comments.

Response: For the reasons given above and explained more fully in the preamble to the interim final rule, we believed that use of an NPRM was impracticable for the Child Care and Development Block Grant regulation. Although we decided an interim final rule was necessary, we still invited and expected comment on the rule. We have carefully considered and responded to those comments in drafting this final rule.

Comment: One commenter stated that Grantees should be allowed to submit revisions to their Plans to reflect the final rule.

Response: Grantees may amend their Plans at any time, in accordance with the procedures described in § 98.18. If amendments to a Grantee's Plan are necessary or desired due to requirements of this final rule, Grantees must use that procedure to amend their Plans. Any changes required by these regulations will require changes to the Block Grant Plan. We will give Grantees a reasonable amount of time to submit and make changes.

Introduction

The following purposes guided the development of this rule:

- To include in the regulation all information necessary to allow the reader to understand all statutory and regulatory requirements;
- To provide the basis for applicants (States, Territories, and Indian Tribes) to prepare Child Care and Development Block Grant Applications and Plans;
- To establish the foundation for Federal oversight and administration of the Block Grant;
- To ensure that Grantees meet statutory objectives as they design and implement child care and related programs;
- To provide broad flexibility to Grantees in designing and administering programs under the Block Grant, within the constraints of the Act; and
- To reflect comments from concerned and interested parties who participated in the regulatory process.

By its very nature, a block grant provides great flexibility in program design. Although ACF does not expect uniformity in programs from State to State, we are concerned that the outcomes specified in the legislation (listed below) be achieved in all programs funded under the Child Care and Development Block Grant. In this rule, we have attempted to achieve a balance between providing Grantees broad flexibility in program administration and ensuring that these outcomes are achieved. While we do not expect that all interested parties will agree with every provision of this regulation, in reviewing this package, readers should bear in mind the many compromises and competing goals embodied in the legislation.

Programs funded under the Child Care and Development Block Grant should seek to achieve a balance among the numerous outcomes specified in the legislation. These include:

- Maximizing parental choice through the use of both certificates and contracted child care services, to include a broad range of child care providers, including center-based care, family child care, inhome care, and care provided by relatives and sectarian organizations;
- Providing quality child care that meets applicable State and local requirements;
- Coordinating planning and delivery of services at Federal, State and local levels;
- Providing flexibility of program design to ensure that recipient needs are met;
- Ensuring that the preponderance of funds is used to provide child care services, and therefore minimizing non-service expenditures;
- Increasing the availability of child care services, including early childhood development and before- and after-school care;
- Assuring responsible program administration, through which statutory requirements are met and adequate information regarding the use of public funds is provided; and
- Maximizing the impact of the additional funding available under the Block Grant by assuring that funding supplements, not supplants, funding for existing services.

In addition, we believe that programs should, to the maximum extent possible, provide seamless services to the families and providers which participate. To the extent permitted by applicable statute, a family should be able to retain the same provider regardless of the source of funding (e.g., title IV–A or XX of the Social Security Act, or under this Block Grant) and that providers should be able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

Subpart A—Purposes and Definitions

Purposes (Section 98.1 of the Regulations)

This section of the regulations lists the purposes of the Block Grant and is based on the purposes given in the Conference Report. In addition, this section also lists the specific purposes of these regulations, as described in the introduction to this preamble.

Comment: One organization noted that the rule seems to treat sectarian providers as a separate category, when the organization thought they were merely a subset of center-based providers. The organization believed this creates the impression that the Government favors sectarian child care providers, rather than just identifying sectarian providers as a separate category of care. It suggested changing the reference to sectarian providers in the purpose section to read: "a broad range of child care providers, including center-based (nonsectarian and sectarian), family child-care, and in-home care and care provided by relatives."

Response: Sectarian organizations are not a category of care in the regulation; rather, like relatives, sectarian providers are a type of provider in many categories of care. Group home and family child care providers, as well as

center-based providers, can be sectarian. The reason for specifically discussing sectarian organizations as child care providers is that the Conference Report specifically mentions them as one of the types of providers which should be available to parents. In addition, section 658N(b) specifically provides that no provision of State law shall prevent the expenditure of Federal Child Care Block Grant funds in or by a sectarian organization. The regulations do not advantage sectarian organizations as child care providers, but merely make it clear they are to be included as one of the types of providers available to parents. Our emphasis is to ensure that such providers are an option for parents, particularly in areas where sectarian organizations had not previously provided care through subsidized child care programs.

Definitions (Section 98.2 of the Regulations)

To simplify understanding, we will use the following terms frequently in the discussion of the regulations:

—*The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 as codified at 42 U.S.C. 9858;
—*ACF* means the Administration for Children and Families;
—*The Application* is the request from a potential Grantee for funding under the Block Grant. It includes the amount of funding requested and the projected budget for the program;
—*The Assistant Secretary* is the Assistant Secretary for Children and Families;
—*The Block Grant* will be used as shorthand for the Child Care and Development Block Grant;
—*Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B), as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;
—*Child care services*, for purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;
—*The Department* means the Department of Health and Human Services;
—*Grantee* means the State, Territorial or Tribal governmental entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;
—*The Lead Agency* is the agency designated as responsible for administering the Block Grant for the State, Territory, Tribe, or Tribal organization;
—*The Plan* means the Plan for the implementation of programs under the Block Grant;
—*The regulation* refers to the actual regulatory text contained in parts 98 and 99;
—*The Secretary* is the Secretary of the Department of Health and Human Services;

We have included these definitions in the regulation at § 98.2.

Section 658P of the Act provides definitions for the following terms: Caregiver, child care certificate, elementary school, eligible child, eligible child care provider, family child care provider, Indian Tribe, parent, secondary school, sliding fee scale, State, and Tribal organization. We have included these definitions in this section of the regulation.

Although not included in the Act, we have added definitions of "program period," "obligation period," and "liquidation period" to help clarify responsibilities of Grantees regarding expenditure of funds and reporting.

Types of Assistance

The regulation specifically recognizes the distinction between types of assistance under the Act. The Act distinguishes between certificates, on the one hand, and grants, contracts, and loans on the other. Both types of aid are considered assistance provided under the Block Grant. However, the Act's terminology and structure reflect a distinction between certificates, which are deemed to be assistance to parents, and grants, contracts, and loans, which are treated as assistance to providers. Thus, for example, sections 658E(c)(2)(E) and (F) of the Act require Grantees to provide assurances concerning any applicable licensing and regulatory requirements and concerning health and safety requirements applicable to child care providers who provide services for which assistance is made available under the Act. This formulation was used to ensure that such requirements were triggered, not only by assistance to providers, i.e., grants, contracts and loans, but also by assistance to parents, i.e., certificates. By contrast, the provisions of section 658N of the Act relating to nondiscrimination in employment and admissions on the basis of religion apply for the most part to "[a] child care provider * * * that receives assistance under this subchapter." Thus, such requirements are only triggered by assistance to the provider in the form of grants, contracts, and loans.

The above distinction, which we have followed in the structure and terminology of the regulations, reflects the compromise embodied in the Act between licensing and regulatory requirements and health and safety requirements, on the one hand, and religious nondiscrimination and nonsectarian use requirements, on the other. Although the Act requires all providers to comply with the former, providers which accept only certificates need comply with the latter only when 80 percent or more of their operating budget is governmental, as discussed in §§ 98.46 and 98.47. This distinction follows the Act by providing parental choice of sectarian providers and by protecting the religious autonomy of such providers.

Comment: Some groups stated that there is no basis in the statute for the separate provisions which define certificates as assistance to the parent and grants and contracts as assistance to child care providers. These groups believe certificates, grants and contracts are all assistance to parents.

Response: Although all assistance under the Block Grant indirectly benefits both parents and providers, the Act's terminology and structure reflect a distinction between certificates and grants, contracts and loans. For example, as stated in the Introduction, sections 658E(c)(2)(E) and (F) of the Act require Grantees to provide assurances concerning any applicable licensing and regulatory requirements and concerning health and safety requirements applicable to child care providers that "provide services for which assistance is made available under this subchapter." This formulation was used to ensure that such requirements were triggered not only by assistance to providers, i.e., grants and contracts, but also by assistance to parents, i.e., certificates. By contrast, the provisions of section 658N of the Act relating to nondiscrimination in employment and admissions on the basis of religion apply for the most part to "[a] child care provider * * * that receives assistance under this subchapter." Thus, such requirements are only triggered by assistance to the provider in the form of grants, contracts, or loans.

Providers

To clarify the child care providers that may provide child care services, the regulations include definitions for center-based child care provider, group

home child care provider, family child care provider, and in-home provider. Consistent with the definition in the Act for "family child care provider," we use broad, generally-accepted definitions for these terms. We also define categories of care (i.e., center-based, group home, family child care and in-home) and types of providers (e.g., non-profit, for profit, sectarian and care by relatives). These definitions are also consistent with the definitions used in other ACF child care programs.

We distinguish between "caregiver," which is defined in the Act, and "provider." The Act defines "caregiver" as the individual actually providing child care services to a child, while we define "provider" as the entity providing child care services. An individual may be both the caregiver and the provider (i.e., in the case of a family child care provider or an in-home child care provider). Group home child care providers and center-based child care providers may employ a number of caregivers.

We have also included definitions for early childhood development programs and before- and after-school programs. For purposes of the Block Grant, these programs are defined as those which meet the regulatory requirements in § 98.51.

Comment: One group wanted relative care to be added as a fifth category of care with a separate market rate to determine payment. They thought that States should be free to establish payment rates based on a market rate or other proven methodology.

Response: Our definition of categories of care is based on the physical setting in which care occurs, not on the type of provider. A relative can provide center-based care, group home child care, family child care or in-home child care. We require that rates be based upon the setting (category) of care and not on the type of provider. However, as discussed in more detail in § 98.44, we have revised the regulation regarding payment rates to allow different rates within categories of care if Grantees can show that the different rates are based on actual market conditions.

Comment: Several groups proposed revisions to the definition of relative. One proposed adding "and adult siblings"; another suggested the addition of emancipated siblings. A third group believed that the definition of relative child care provider should be left open for the Grantee to define.

Response: The limitation on the definition of the term relative in § 98.2(q) to grandparents, aunts, and uncles is statutory and relates only to those relatives who may be exempted from health and safety standards. It does not define which relatives can provide care. Any provider, relative or non-relative, who meets the health and safety requirements and any applicable standards is an eligible provider. For the purposes of the Block Grant, relatives other than those included in the definition at § 98.2(q) are treated as any other eligible provider in that category of care. For example, a child's cousin who cares for a child in the cousin's home would be a family child care provider and would need to meet any requirements for that category of care. As previously discussed, it is only for the purposes of meeting health and safety standards that certain relatives are treated differently. The Act and regulations allow Grantees the option to exempt grandparents, aunts and uncles from health and safety requirements.

Comment: One State noted that a minimum caregiver age of 18 is cited only for grandparents, aunts or uncles. That State further noted that there is no age requirement cited for title IV–A child care programs. It recommended that the minimum age for child care providers should be 18, or that States should have the discretion to define a minimum age requirement.

Response: The Act specifies a minimum age of 18 for grandparents, aunts and uncles, but only in terms related to exempting such relatives from health and safety requirements. Grantees have the discretion to set age limits for all providers, including relatives, as part of their health and safety requirements or their licensing and regulatory requirements.

Comment: Several groups commented on the definition of "family child care provider." One State believes that the definition should be based on the number of children in care rather than the number of caregivers providing care for children; it proposed deferring to the Grantee for the definition of family child care provider. One commenter suggested that the maximum number of children in care should be specified by the Grantee, according to local regulations. A few commenters thought the phrase "as sole caregiver" in the definition of family child care provider was unnecessarily narrow in scope and should be removed. One State noted that it allows substitutes to be identified as family day care providers and thus may allow more than "one individual" to provide care. Another State requires assistant caregivers under certain circumstances.

Response: The definition of family child care provider is statutory. We interpret the phrase "sole caregiver" to mean the number of caregivers at one time. It is not intended to preclude a substitute in the absence of the regular caregiver. As the statutory definition does not specify the number of children in care, this is up to the Grantee. However, in cases where the Grantee requires a second caregiver, for purposes of the Child Care Block Grant, the category of care would be group home child care provider.

Comment: Two States requested that the phrase "for fewer than 24 hours per day" be deleted from the definition. One State cited instances when child care would be required for more than 24 hours a day but the situation would not be appropriate for foster care or institutionalization of any type. The other State requested that time parameters be determined by State and local requirements. Several Tribes requested clarification on the meaning of the phrase.

Response: The reference to "for fewer than 24 hours per day" is part of the statutory definition for family child care provider. However, we believe that the purpose of the phrase is to distinguish child care from foster care or institutional care. Thus, we give Grantees the option to allow providers to care for children for more than 24 consecutive hours due to the nature of the parent's work, as long as such care is actually child care, not "institutional" services. Examples of such work, as given by commenters, include fire fighters on a 48-hour shift, nurses on duty 36 hours, or Alaskan natives who are away fishing for two weeks. To pay for more than 24 hours of care, the child care must be for a known, temporary period as required by the nature of the parent's work. We have amended the provider definitions accordingly.

Comment: One State recommended the deletion of the phrase "in a private residence other than the child's residence." In this State, State law allows for such care to be provided in the child's home, as well as other private residences.

Response: For purposes of the Block Grant, the definition of family child care provider includes only care in a private residence other than the child's residence. Care can occur in the child's residence, but then the setting is defined as in-home care. However, Grantee requirements and payment rates for in-home care might be the same as for other care, such as family child care.

Comment: One group recommended that the definition of family child care provider be amended to include care given in a child's home when other children are also in care.

Response: As discussed in more detail in § 98.20, we do not believe that the Block Grant allows for payment to parents to care for their own children.

Comment: Another group recommended that the definition of in-home child care provider be restricted to caregivers providing care only to children who reside in the home.

Response: The situation above appears to relate to parents providing care for their own children, as well as other children. Block Grant funds are not available for parents caring for their own children. The care would be considered family child care for the other children.

Comment: One group thought that the maximum number of children in care with a group home child care provider should be determined by the Grantee, according to local regulations.

Response: The Grantee determines the maximum number of children permitted in care with a group home child care provider.

Comment: One State thought that the provision of two adults to care for children in group home care constituted a standard as opposed to a definition. The State suggested that if there is a need to include the number of caregivers in the definition, it should be phrased "usually two or more individuals."

Response: We do not believe we have created a standard; rather, we have used the number of caregivers to distinguish between family child care and group home child care. We consider one caregiver in a private residence to be a family child care provider and more than one caregiver in a private residence to be a group home child care provider. The number of caregivers necessary to meet any applicable child-staff requirements is determined by the Grantee.

Comment: One State said that it did not distinguish between family and group home child care settings, only between family child care and center-based child care. By setting definitions that would be applicable across all States, the regulations may create confusion or establish parameters that are incompatible with State practices. This policy would lead to the distortion of State compliance issues, in some instances. Another State found our requirement for group home child care provider as "two or more individuals who provide child care services" to be inconsistent with the Grantee's current requirements.

Response: The definitions of categories of care serve to provide a basis for distinguishing between child care settings, as required, in establishing payment rates pursuant to section 658E(c)(4) of the Act. However, Grantee payment rates and requirements might be the same for one category as for another; for example, requirements and payment rates might be the same for group home care and family child care.

Indian Tribe and Tribal Organization

Our definitions for "Indian Tribe" and "Tribal organization" correct the citations given in the Act for the Indian Self-Determination and Education Assistance Act. The correct citation for "Indian Tribe" is section 4(e) of the Indian Self- Determination and Educational Assistance Act (25 U.S.C. 450b(e)). Also, the reference for "Tribal organization" is corrected as section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). Additionally, we have added language to the definition of Tribal organization to explicitly include consortia as Tribal organizations. We believe that this is consistent with the intent of the definition found at 25 U.S.C. 450b(l).

Sectarian Organization

The definitions also clarify that a "sectarian organization" or "sectarian child care provider" means religious organizations and providers generally, not merely those of a specific religious character. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content. As we understand it, the term "sectarian organization" as used in the Act was not based upon, or limited by, the concept of "pervasively sectarian" settings found in some judicial decisions.

Comment: Many commenters suggested changes to the definition of sectarian organization or sectarian child care provider. One organization was concerned that there was ambiguity in the definition of a sectarian organization which would allow for a broad interpretation. This group wanted the definition to be narrowed to ensure that payment is made only to "bona-fide churches." Others thought that limiting sectarian organizations to those which are tax-exempt would help the lead agency determine eligible sectarian organizations. One group recommended we use language similar to that used by the U.S. Department of Justice in the recent final rule for the The Americans With Disabilities Act at 28 CFR 36.104 defining a religious entity as "a religious organization, including a place of worship." Another group noted that the definition in the interim final rule was interreligiously insensitive since it references non-affiliation with a church or synagogue, which applies mainly to Christians and Jews but would not apply to other religions.

Response: As stated in the preamble to the interim final rule, we believe that "sectarian organizations" as used in the Act was not based upon, or limited by, the concept of "pervasively sectarian" found in some judicial decisions. We believe the term was meant broadly, and we reflected this in the definition. We therefore have not narrowed it. We considered the definition used by the Department of Justice for the Americans with Disabilities Act, but we found that it did not sufficiently describe a religious organization for the purposes of the Block Grant. We agree with the commenter who suggested our definition was interreligiously insensitive and have revised it to eliminate the reference to church or synagogue.

Administration

Comment: One organization suggested that we define State administrative costs.

Response: Administration is discussed in § 98.52(b). We have not provided a specific definition because this might unnecessarily limit expenditures. The limitation under the 75 percent portion of the Block Grant includes funding for all activities (including administration and quality and availability improvements) other than direct child care services, which we have now defined. Thus, the limitation on administration under this portion of the Block Grant does not require a specific definition to distinguish it from quality and availability activities.

Certificates

Comment: One group thought that the definition of certificates should be clarified as follows: "may be a check or other disbursement or issuance with value."

Response: Child care certificate is defined in section 658P(2) of the Act. We believe the use of "check or other disbursement," which comes from the Act, is sufficiently broad to include "issuance with value" and therefore have not revised the regulation.

Comment: Another group recommended that all references to certificates should stress the idea of handing over a document (e.g., voucher, or restricted redeemable coupon) with a dollar value directly to parents, who in turn use it in making an independent

and individual choice of a provider of care for their children. This suggestion would distinguish certificates from contracts and minimize direct State/provider relationships, preserve the free and independent choice of parents, and avoid constitutional issues.

Response: As discussed in § 98.30 of this preamble, we have given Grantees maximum flexibility in defining the form and content of "certificates," provided that the program meets statutory and regulatory requirements. Factors including ease of administration, prevention of fraud and abuse, parental discretion, and provider acceptance must be considered, so long as the form and content ensures that the certificate is considered assistance to the parent and not the provider. Giving cash or a check directly to a parent is not the only way to ensure maximum parental choice. Moreover, reimbursing the provider, after verification that care was provided, helps prevent fraud and abuse. Each Grantee is in the best position to determine how such factors should be balanced in establishing a certificate and payment system.

Eligible Child

Comment: A number of commenters thought that parents of foster children should be considered parents for purposes of the Block Grant. One organization noted that in some States when a child is placed in foster care, the foster parent is considered neither the legal guardian nor someone who is acting *in loco parentis*. Rather, it is the State, instead of the foster parent, that is considered to be *in loco parentis*. In such States, the narrow meaning given to *in loco parentis* would preclude the foster parent from establishing eligibility for a child placed in his or her care. This organization suggested we clarify that foster parents may be considered *in loco parentis* for purposes of establishing eligibility.

Response: A State can define "or other person standing *in loco parentis*" to include foster parents. This definition of *in loco parentis* can be specific to the Block Grant. There is no basis for a regulatory definition that specifically requires the inclusion of foster parents.

We note here that for purposes of this program, there is a basic distinction between protective services cases and foster care cases. In the former cases, the child continues to live with the parent(s). In the latter cases, a court has placed the child in the custody of someone other than the natural parent(s).

In protective services cases, eligibility is based on the fact that the family is receiving, or needs to receive, some type of protective service, such as counseling. The parent need not be working, or in training or education. In foster care cases, the foster parent must be working or in education or training for the family to qualify for child care services. Other factors, such as counting income for foster care and protective services cases, are discussed in the appropriate sections of this preamble.

Effect on State Law (Section 98.3 of the Regulations)

Section 658N(b) of the Act contains language relating to the effect of the Act on State law, as well as the effect of State law on expenditures under the Block Grant. We have included this language in § 98.3 of the regulations.

This section provides that nothing in the Act supersedes or modifies any provision of a State constitution or State law prohibiting the expenditure of public funds in or by sectarian institutions, except as provided below. We have included language which similarly restricts the effect of the regulations.

In some States, provisions of the State constitution or State law prohibit expenditure of public funds in or by sectarian institutions. Under the Block Grant, States are not required to provide matching funds, and the costs of State administration are an allowable expenditure. Thus, all activities under the Block Grant can be carried out using only Federal funds. Because no State funds are required to operate the Block Grant, under the Act, provisions of a State constitution or State law that would preclude a State from participating in the Block Grant program (or from complying with its requirements) because State funds would be used in or by sectarian institutions do not apply.

Thus, section 658N(b) of the Act makes clear that no provision of a State constitution or State law can be construed to define "public funds" to include Federal funds provided under the Block Grant. Therefore, provisions of State constitutions or State laws that preclude expenditure of public funds in or by sectarian institutions do not apply to Block Grant funds and may not be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under the Act. This provision requires States to segregate State and Federal funds, if necessary, to ensure that a State constitution or law does not prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation.

Comment: We received six comments that referred specifically to this section of the interim final rule. Three commenters were supportive of the language of this section. One of these commenters reported that, in the past, State officials had argued that Federal funds administered by the State are subject to State rules precluding access to public funds by religious providers. Other commenters, including an organization representing State legislators, expressed concern that this provision violates State constitutions. A number of other commenters did not specifically reference this section of the regulation, yet expressed the opinion that it was not appropriate to use public funds for sectarian purposes.

Response: It is clear that this statutory provision was included to ensure that the situation described above (i.e., precluding funds received through certificates from being used with and by sectarian providers) would not occur. Congressional intent is clear on this issue—Block Grant funds must be made available to a broad range of providers, including sectarian organizations, regardless of State rules that preclude the use of State funds for such purposes.

The language of the regulation at § 98.3 very closely follows the applicable statutory language. Disagreement regarding the result (that States must permit expenditure of Block Grant funds for care from sectarian providers) is not a regulatory issue. The additional language of the regulation suggesting that States segregate funds, if necessary, was added to allow for a method of assuring that the intent of the Act is met, even if State law or constitution would otherwise preclude this from occurring.

As with the other provisions of the regulations, unless otherwise specified, these provisions apply to Indian Tribes and Territories.

Subpart B—General Application Procedures

Lead Agency Responsibilities (section 98.10 of the Regulations)

The regulations follow the statutory language at section 658D(b) of the Act in setting out specific responsibilities of the lead agency. First, they require that the chief executive officer of the State designate an appropriate State agency as the lead agency. Second, they require that the lead agency administer Block Grant funds, submit the Plan, hold at least one public hearing and coordinate Block Grant services with other child care and development programs.

In addition, the regulations elaborate on the statutory provisions in clarifying that:

(1) In the case of programs to be operated by Tribal Grantees, the appropriate Tribal leader (rather than the chief executive officer of the State) would designate the lead agency;

(2) The lead agency must submit the Application for funding required under § 98.13, as well as the Plan; and

(3) The lead agency must coordinate with programs for the benefit of Indian children as well as other Federal, State or local programs.

The Act and regulations also allow the lead agency to share administrative responsibilities with other State agencies. However, as provided in § 98.11, the lead agency must maintain overall responsibility for the program. If other State and local agencies share administration of the program (or individual program activities), they must operate according to rules established by the lead agency. As specified in § 98.11, such rules must include the policies, the types of activities or services to be provided, and all rules and regulations governing the administration of the program.

In addition, the lead agency has the flexibility to contract with local public or private agencies to implement the Block Grant program. As with the sharing of administrative responsibility with other State agencies, the lead agency must maintain overall administrative responsibility for the program pursuant to § 98.11. We believe the authority to share implementation will facilitate coordination with other child care and development programs, which may be locally implemented or community based, and will enable Grantees to utilize the most effective and efficient administrative structures available.

Comment: One State pointed out that the State legislature has designated a single State agency, which is headed by a separate publicly-elected official, to administer all child care programs. As a consequence, the lead agency is independent of the chief executive officer of the State. The State requests that the regulations be revised to recognize this situation.

Response: While we recognize the State's concern, the situation is not one that can be resolved by Federal regulation. The requirements for the chief executive officer of the State, in the situation described by the commenter, remain unchanged, namely to make the Application for funding and to designate a lead agency, whether by his/her independent decision or by legislative mandate. The responsibilities of the lead agency remain unchanged, namely to implement the Block Grant program in compliance with the regulations and the Act.

Comment: One organization pointed out that the intent of holding public hearings is to allow for public participation in the development of the Plan and suggested that § 98.10(d) be amended to read "Hold at least one public hearing a year during the first three years of operation in order to incorporate community recommendations into the evolving program."

Response: We do not believe the regulations should require the lead agency to hold additional hearings. The regulation parallels the statutory language, which requires that the lead agency hold at least one public hearing in conjunction with the development of the Plan. The initial Plan submitted by States and Territories will cover a period of three years and the initial Tribal Plans will cover a period of two years (see § 98.17). The public is therefore afforded the opportunity to participate in the development of the Plan. However, neither the Act nor the regulation precludes the lead agency from holding more frequent public hearings. We encourage Grantees to hold a number of hearings sufficient to allow affected individuals the opportunity to make meaningful comment.

Administration Under Contracts and Agreements (Section 98.11 of the Regulations)

Grantees are given broad administrative flexibility under the regulations at § 98.10(a). However, this flexibility could make it more difficult to maintain accountability for the expenditure of funds and for meeting the requirements of the program. It could also greatly complicate the ability of both the Grantee and ACF to meet their respective oversight responsibilities. To protect against these risks, we are setting certain minimal requirements for the sharing of administrative or implementation responsibilities by the lead agency. Thus, we require that when administration of the Block Grant program is shared by other State agencies, or the implementation is shared with local public or private agencies, the process must be governed by written agreements or contracts which specify the roles and responsibilities of the respective agencies. We believe it would be impossible for the lead agency to satisfy the assurances in the Plan without such written agreements.

We require that the lead agency retain overall responsibility for the administration of the program and serve as the single point of contact in resolving program issues related to the Grantee's Block Grant program. Under these requirements, the lead agency must retain responsibility not only for conducting the activities specified in paragraphs (b), (c), (d) and (e) of § 98.10, but also for such functions as: (1) determining the basic usage and priorities for the expenditure of Block Grant funds; (2) promulgating all rules and regulations which govern the administration of the Plan; (3) submitting all reports required by the Secretary; (4) ensuring that the program complies with the approved Plan and all Federal requirements; (5) overseeing the expenditure of funds by subgrantees and contractors; (6) monitoring programs and services; and (7) fulfilling the Grantee's responsibilities in any disallowance under subpart G; complaint, compliance or hearing action under subpart J; or hearing and appeal action under part 99. We have added language regarding disallowance to the final rule.

We have added a section (b)(8) which specifies that any agency or contractor which shares administrative responsibility for the program must operate according to the rules established for the program. For example, a local resource and referral agency responsible for administering the program at a local level must satisfy all regulatory requirements, such as providing consumer education, and is subject to restrictions against use of funds for lobbying.

Comment: One State requested that the regulation be amended to clarify that the laws and regulations governing the relationship between a State-supervised and locally administered agency meet the definition of written agreement for purposes of this section.

Response: An acceptable written agreement is any written document which establishes that the lead agency retains overall responsibility for the administration of the program, delineates the roles and responsibilities of the agencies involved, and specifies the rules under which the program must be operated. Such written agreement could take the form of a memorandum of understanding or a contract. The laws and regulations which govern a State-supervised/locally administered agency could provide the detail for an acceptable written agreement, if they specifically delineate the roles and responsibilities of the agencies involved and if they specify rules for program operation. These laws and regulations could therefore be incorporated by reference into a letter or other written

document between the agencies agreeing to share administration. Thus, we believe the regulation is broad enough to cover this particular situation and therefore have not amended it.

Comment: One agency stated that the regulation provided important clarification about how States can administer Block Grant programs, in coordination with other programs, and recommended that this section remain unchanged. However, another agency recommended that the phrase in paragraph (b)(2) "which are in effect on a statewide basis" be deleted because the overall coordinating responsibility of the lead agency must be sustained even when it contractually shares responsibilities for program implementation with other agencies.

Response: We have amended the language in paragraph (b)(2) of this section.

Comment: One agency recommended that to conform with the intent of Congress and to avoid potential conflicts of interest, the second sentence in § 98.11(a) should be amended to read: "In addition, the lead agency can share implementation of the program with other public or private not-for-profit agencies."

Response: We do not believe that it is necessary to preclude agencies other than public or private not-for-profit agencies from participating in local administration of Block Grant programs. Reasonable caution and oversight should be exercised when giving administrative responsibilities to non-governmental agencies, including private not-for-profit agencies.

Coordination and Consultation (Section 98.12 of the Regulation)

Pursuant to section 658D(b)(1)(D) of the Act, the lead agency must coordinate the provision of Block Grant services with other Federal, State and local child care and early childhood development programs. As required in § 98.14, the lead agency must also consult with appropriate representatives of units of general purpose local government in developing the Plan. Such consultations may include, but are not limited to, consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this part can be used effectively to address local shortages.

We believe that coordination in planning and delivery of services is essential in order to prevent duplication, to ensure that child care services are available to the maximum number of eligible families, and to provide a viable range of child care options for parents. In designing programs, administrators should also consider existing service delivery networks. Coordinating with existing child welfare services, early childhood development programs, educational systems, and others will help ensure that the varying needs of children and families are met.

As indicated in the Introduction, one goal of a coordinated service delivery system is to create seamless service. Seamless service means providing eligible parents access to and payment for child care services and programs which respond to the parents' child care needs, even as eligibility changes over time; services are provided without the necessity of changing the child care provider. In addition, such a coordinated service delivery system could create a complete day of service for an eligible child when programs do not last for the entire day (e.g., child care services before and after a Head Start class).

A fully coordinated service delivery system would include, to the extent possible, common payment rates, common definitions of sliding fee structures, common contracting methods, and common payment, with other child care services funded under title IV–A and other funding sources. (Child care programs under title IV–A of the Social Security Act include Transitional Child Care, At-Risk Child Care and AFDC Child Care offered to working AFDC recipients and participants in JOBS or other approved education and training.) Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State, local and Tribal organizations. The delivery system should also enable smooth transitions for families as their situations change over time.

This section also addresses the coordination required between States and Tribal Grantees. Section 658O(c)(2)(A) of the Act requires that Tribal applicants coordinate to the maximum extent feasible with the lead agency in the State or States in which the applicant will carry out the Block Grant. We have added a complementary State requirement. We believe that this requirement is necessary to ensure State/Tribal coordination of services. We believe that such coordination is also necessitated by the statutory requirement at section 658O(c)(5) of the Act and § 98.80(d) which provides that Indian children have dual eligibility for State and Tribal programs. Specifically, we expect States and Tribes to share information regarding eligibility requirements relative to family income. These eligibility requirements apply to Indian children, as discussed in the preamble at § 98.80.

Finally, since Grantees are required to review their budgets and submit Applications annually (or less frequently, as specified by the Secretary; see § 98.13(b)), we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

Comment: One agency commended the regulation for encouraging interagency coordination that would achieve the goal of families receiving seamless service. However, another agency, while agreeing that interagency coordination should be pursued, cautioned that the State's efforts to coordinate services should not result in the establishment of new child care bureaucracies. The commenter further stated that the coordination effort should not serve as a basis for establishing family resource centers on the premises of public schools.

Response: There is no basis for precluding Grantees from establishing whatever administrative structure is determined appropriate to meet Grantee needs, both at the State and local level. However, Grantee expenditures for program administration are subject to the expenditure limitations in § 98.50.

Application Content and Procedures (Section 98.13 of the Regulations)

In accordance with section 658E of the Act, we require those wishing to obtain Block Grant funds to submit an Application and a Plan.

The Application will include the following:

(1) The program period, as defined in § 98.2(cc), for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and the regulations;

(4) Pursuant to 45 CFR part 93, Standard Form LLL (SF-LLL) which assures that the funds will not be used for lobbying purposes (Tribal applicants are not required to submit this form);

(5) Pursuant to 45 CFR 76.600, an assurance (including any required forms) that the Grantee provides a drug-free workplace;

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50 including a list of activities to improve the availability and quality

of child care and administrative costs the Grantee anticipates will be necessary to carry out § 98.50;

(ii) A detailed explanation, including appropriate documentation, of expenditures for operation of the certificate program and related consumer education which equal or exceed ten percent of the funds under § 98.50, if the Grantee requests approval to expend funds for non-service activities in excess of ten percent, pursuant to § 98.50(d)(3); and

(iii) A break-out of program activities under § 98.51 including administrative costs which the Grantee anticipates will be necessary to carry out § 98.51;

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8) The amounts of Federal, State, and local public funds expended for the support of child care and related programs during a base period (for the initial Application or first application after publication of this final rule), such expenditures for subsequent periods (in subsequent Applications), and, if applicable, information regarding the nature, extent, and the basis for reductions in Federal expenditures for programs other than the Block Grant, pursuant to § 98.53. If applicable, Tribal Grantees should include the basis for reductions in State expenditures for programs other than the Block Grant, pursuant to § 98.53. The amended requirement for separate aggregates by level of government is discussed at § 98.53 of the preamble;

(9) Assurances that the Grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended). These assurances are required by those regulations for all applicants for Federal financial assistance;

(10) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(11) Such other information as specified by the Secretary.

We do not believe that providing the Application information will be unduly burdensome. We believe that Grantees, in setting the goals and objectives of the program and in determining how to achieve them, must consider allocation of funds, as well as the program and administrative activities that will be undertaken. Moreover, pursuant to section 658K(a)(1) of the Act, Grantees must provide information on the use and distribution of funds at the end of the program period. The information we require will not only be used to monitor the program but can also be used in reports to Congressional committees and to provide models for other Grantees. Because we know that budget data are preliminary, we are not requiring their inclusion in the Block Grant Plan; thus, the budget data will not be subject to the compliance process.

The requirements on lobbying, drug-free workplace, and debarment of principals which we included are not cited in the Act but are required under other Federal laws and regulations. Likewise, the requirements regarding nondiscrimination on the basis of race, color, national origin, sex, age and disability are required under other Federal laws and regulations, as listed in (a)(9) of this section. Under those regulations it is clear that grants, contracts and loans are Federal financial assistance. We have requested information on the issue of certificates as Federal assistance from relevant sources and will provide guidance to Grantees in the near future. We will include the nondiscrimination assurance forms with the Application information for FY 1992 grants.

We also required other information which we believe is essential in our administration of the program (e.g., the amount of funds requested and current expenditures for child care and related services). Finally, we added language requiring Grantees to comply with the regulations, as well as with the Act.

The Block Grant Plan must accompany the initial Application. Thereafter, the Block Grant Plan need only accompany the Application if a new Plan is required, pursuant to § 98.17.

Although we did not receive any comments on the interim final rule requirement of annual Application submittals, we have reconsidered this requirement. It is possible that at some time in the future, we may require Applications to be submitted only at such time as the Block Grant Plan is submitted. However, for the present, we will continue to require annual submittals in order to more closely monitor program activities and to provide the data in timely reports to Congress. We have added language to § 98.13(b) to allow for changes in this requirement in the future.

There is no requirement that an Application for or approval of FY 1991 funding is necessary for subsequent funding. That is, a State, Territory or Tribe which did not apply for FY 1991 funding would nevertheless be potentially eligible for Block Grant funds in future fiscal years. It is expected that Applications for FY 1992 funding will be required in August, 1992. Procedures for submitting Applications will be specified in future guidance.

Comment: One commenter requested clarification of the role of the lead agency and the chief executive officer. The commenter found § 98.10, which requires the lead agency to submit the Application for funding, and § 98.13(a), that indicates the application is to be made by the chief executive officer, to be confusing. A State agency suggested that § 98.13(a) be amended by inserting "or by the lead agency when designated by the CEO to make application" at the end of the first sentence.

Response: The regulation follows the language of the Act, which requires the chief executive officer of the State (or the appropriate Tribal leader or applicant) to make the Application for Block Grant funding naming the lead agency and the lead agency to develop and submit the Block Grant Plan. We interpret this to mean that an Application, designating the lead agency, must be signed by the CEO (or the appropriate Tribal leader or applicant) and that the lead agency will submit both the Application and the Block Grant Plan. Unless the designation of the lead agency is changed, the signature of the CEO (or appropriate Tribal leader or applicant) is not required on subsequent Block Grant Applications. It is not appropriate for the lead agency to apply for funding and at the same time designate itself as lead agency.

The Application must accompany the Block Grant Plan whenever a Plan is submitted. In those years not requiring the submittal of a Plan, the Application, with the appropriate signature, should be submitted by the lead agency.

Comment: One commenter suggested that § 98.13(a)(5) be amended to read "Pursuant to 45 CFR 76.600, an assurance that the Grantee provides a drug-free workplace or a statement that such an assurance has already been submitted for all HHS grants." It was pointed out that without such a statement, it would not be known if the lead agency overlooked the requirement or had already submitted the assurance.

Response: We agree and have amended the section.

We received other comments on this section of the regulation relative to requiring criminal background checks, the need for providing specific data on administrative costs, and changing the

data collected for the base period (supplantation). These comments are discussed in sections of the regulation which concern these specific issues, i.e., §§ 98.45, 98.52 and 98.53.

Plan Process (Section 98.14 of the Regulations)

In developing the Plan, section 658D(b) of the Act requires the lead agency to:

(1) Coordinate the provision of services with Federal, State and local child care and early childhood development programs;

(2) Consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing child care and early childhood development services and the methods by which Block Grant funds can be used to effectively address local child care shortages; and

(3) Hold at least one hearing to provide an opportunity for the public to comment on the provision of child care services.

Although the Act does not expressly require States to coordinate with Tribal child care and early childhood development programs, we believe that Congress clearly intended for such coordination to occur in States with Tribal programs. We have, therefore, specifically required the lead agency in the State to coordinate its program with programs which provide services which benefit Indian children.

The purpose of the Block Grant is to increase the availability, affordability and quality of child care. To achieve that purpose, we believe it is imperative that the public be afforded the opportunity to comment on the provision of child care services. It is expected that the Grantee will submit the Plan, including descriptions of the intended uses of the Block Grant funds, for public comment. We have included the provision that the potential Grantee must provide adequate notice of the hearing to ensure the greatest attendance possible. Although the Act only requires the lead agency to hold one public hearing, the lead agency may, of course, hold additional public hearings. The opportunity for public comment must be offered before the Plan will be considered complete.

We believe that the coordination and consultation processes and the public hearing are vital to the design of a successful program. Consequently, these activities must be undertaken each time a Plan is to be submitted.

Several comments received on this section of the regulation relate to public hearings and coordination, and are discussed in §§ 98.10 and 98.12.

Assurances (Section 98.15 of the Regulations)

This section lists all of the Plan assurances required by the Act. We have added one additional assurance—that the Grantee must comply with the provisions of the approved Plan. We believe that this assurance is necessary because section 658I(b)(1) of the Act requires the Secretary to monitor Grantee compliance with its Plan.

Comment: One organization stated that assurances (e) and (o) should be amended to conform to the statutory language.

Response: We agree and have made the minor language changes necessary for these assurances to conform to the statutory language. In addition, we amended assurance (g) to conform with the language in § 98.33 and added assurance (p) in order to conform to the list of assurances contained in the preprint.

We received other comments on this section of the regulation related to specific issues covered by an assurance. These comments are discussed in the appropriate preamble sections.

Plan Provisions (Section 98.16 of the Regulations)

Section 98.16 lists the information we require in the Plan. Grantees are required to provide more information and greater detail than has generally been requested in block grant programs. Authority to do so is contained in section 658E(a) of the Act, which requires a Grantee to submit an Application, which includes the Plan, "at such time and in such manner, and containing such information as the Secretary shall by rule require."

It is clear from reading the Conference Report that Congress intends Grantees to provide explicit information as to the use and distribution of the Block Grant funds (H.R. Rep. 964 at 924, reprinted in 1990 U.S. Code Cong. & Admin. News at 2629). The Conference Report indicates that, to receive funds, an applicant must submit a Plan that includes:

(1) Local consultation regarding development of the Plan;

(2) Coordination with existing programs;

(3) Use of funds for child care services, including early childhood education and before- and after-school care, and for activities related to quality and availability;

(4) Priority for very low income children and children with special needs; and

(5) Use of a sliding fee scale.

The Report makes it clear that Congress expects Grantees to include in the Plan all the necessary information to enable the Secretary to assess the program and to determine if the stated purposes of the Block Grant will be achieved.

Consequently, we have required Grantees to include information necessary to assist the Secretary in assessing the program. Grantees are required to provide descriptive statements of those elements that we believe are:

(1) Essential for program success; and

(2) Necessary to provide a basis for ACF to monitor the program, as required in section 658I(b)(1) of the Act.

(Section 98.16 of the regulations contains a list of the items to be included in the Plan. Each of the items is discussed in detail in the appropriate preamble section.)

We have developed a preprint (Form ACF–118) which must be used when submitting Block Grant plans. The preprint elicits all of the information required in this section in a standardized format. The standardized format:

(1) Provides complete program information;

(2) Provides usable information needed to compile and compare program data; and

(3) Expedites timely review.

In addition, the preprint will assist and guide Grantees and potential Grantees in submitting the Plan.

Comment: One commenter suggested § 98.16(a) (7)(ii) and (8)(ii) should be amended to read "* * * if such services and activities are not available throughout the entire service area" as this could encompass Tribal areas as well as States.

Response: We agree and have amended these sections.

Comment: One State agency pointed out that to ask for anticipated or expected changes in Block Grant Plans is meaningless, particularly since substantial changes require plan amendments.

Response: Based on our review of Grantee Plans, as well as this comment, we agree and have deleted that provision.

Based on our review of Grantee Plans, the comments received, and changes to the regulations, we have clarified the language in several of the requirements and added several requirements to this section. In addition, we have deleted one requirement. The following is a list of those changes:

(1) In paragraph (a)(6), we have clarified that protective services should

be defined only when applicable, and *in loco parentis* has been added;

(2) The language in paragraphs (a)(7)(iv) and (a)(8)(iii) has been amended to clarify that the given percentages of funds refer to the overall Block Grant funds;

(3) The language in (a)(7)(vi) and (a)(8)(v) has been amended to clarify Grantees may establish eligibility criteria and priority rules for the receipt of all grants and contracts;

(4) Grantees must specify any conditions which limit access to in-home care;

(5) Grantees must include payment rates and the market-cost basis for payment rates if they do not include differences based on the setting, age of the child and additional costs of providing care for children with special needs in the payment rate schedule;

(6) For payment rates which differentiate payments within categories of care, Grantees must include the market-cost basis and a description of the operation of a single system of child care delivery pursuant to § 98.43(e)(2);

(7) Grantees are no longer required to address anticipated changes in services, activities, or other provisions that are expected over the life of the Plan;

(8) Tribal programs are not subject to paragraph (a)(6)(viii) and prioritization under paragraph (a)(8)(iii) of this section; and

(9) Tribes specified at § 98.83(f) are not subject to the requirements in paragraphs (a)(7)(iv), (a)(8)(iii), and (a)(11) of this section unless the Tribe chooses to include such services, and therefore the associated requirements, in its programs.

Discussion of these specific changes can be found in the appropriate preamble sections. As a consequence of these changes, it was necessary to revise the numbering of this section. We also added a new section (a)(17) which specifies that the Secretary may require additional information in the Plan.

Period Covered by Plan (Section 98.17 of the Regulations)

Section 658E(b) of the Act specifies that the initial Block Grant Plans submitted by States shall cover a period of three years and all subsequent ones shall cover a period of two years. Section 658O(c)(4) provides that the grants or contracts for Block Grant programs under Tribal Plans shall be for periods not to exceed three years. As a specific period was not provided in the Act, we determined that Tribal Grantees must submit their Plans every two years, just as States are required to do after their initial submittals. Timeframes for submittal of new Plans will be provided in future written instructions.

Comment: One commenter proposed that the initial Block Grant Plans of States and Territories be limited to two years, as are Tribal Plans, so that the programmatic review and evaluation will be completed earlier.

Response: We are unable to change the length of time that the initial Plans, submitted by States and Territories, must cover. This time period is specified in the Act.

Approval and Disapproval of Plans and Plan Amendments (Section 98.18 of the Regulations)

The Act does not specify a Plan approval or disapproval process. However, it is clear that an approval process is needed, as section 658E(d) requires the Secretary to approve the Plan. The Act also does not mention Plan amendments. However, because Block Grant Plans will be in effect for a multi-year period, it is reasonable to assume that some facets of the Plan may change. Although Grantees have great flexibility in designing their programs, the Act requires Grantees to comply with the statutory provisions and the Plan and provides for the imposition of penalties and sanctions in certain circumstances. Because we will monitor against the Plan, it is necessary that the Grantee have an opportunity to amend the Plan, notify the Department about changes, and receive necessary approvals.

We believe it would be unreasonable to require a Grantee to submit a Plan amendment for all of the changes that occur in the program. We are, therefore, requiring amendments only when a substantial change occurs, e.g., the Grantee adds a significant additional program activity, eliminates a significant program activity, or changes its basic plan for the allocation of funds.

We did not specifically address the form upon which to submit Plan amendments in the interim final rule, nor did we receive any comments on this process. We are taking this opportunity to specify the form. Until we have either devised a transmittal notice or revised the Transmittal and Notice of State Plan Material (Form FSA 4596–U4), State and Territorial Grantees must use Form 4596–U4, and Tribal Grantees must use Form ACF–117, to transmit Plan amendments and indicate that the amendment is for the Child Care and Development Block Grant. (The distinction between a "plan amendment as a new plan" and a "plan amendment" on these forms is not relevant to the Block Grant Program.) The forms are available from each ACF Regional Office. The chief executive officer of the State, Territory or Tribe, or his/her designee, must review and approve any amendment.

We fashioned the appeals process for Plan and Plan amendment disapprovals after similar processes used in other ACF-administered programs.

Comment: An agency suggested that § 98.18(b) should be changed so that Plan amendments would be submitted prior to the effective date of any change and that the change could not be effective until after the change has been approved.

Response: We do not agree that the Grantee should not be permitted to make a change to the Block Grant program until such time as the change has been approved. If the Block Grant program is to be responsive to the needs of the community, the Grantee must be able to act and react quickly. We, therefore, provide that a Plan amendment must be submitted within sixty days of a change. However, we emphasize that Grantees make changes prior to approval at their own risk. We therefore advise Grantees to submit Plan amendments in advance, particularly if they address provisions or proposals that are not clearly within the scope of the program or are central to program operation. For example, we advise Grantees which have not yet implemented a certificate program to submit relevant Plan sections in advance of the required October 1, 1992, implementation date.

Subpart C—Eligibility for Services

A Child's Eligibility for Child Care Services (Section 98.20 of the Regulations)

The statutory requirements for eligibility for basic child care services (i.e., those services described under § 98.50(b)) are found in section 658P(4) of the Act, under the definition for an "eligible child." These requirements limit eligibility to children:

(1) who are under 13 years of age;

(2) who come from families whose incomes do not exceed 75 percent of the State median income for families of the same size; and

(3) who either reside with a parent or parents who are working or attending a job training or education program, or are receiving, or need to receive, protective services. Under § 98.20(a), we include these statutory requirements, with a reference to the definition of parent at § 98.2(aa). This definition, based on section 658P(9) of the Act, encompasses legal guardians or other individuals standing *in loco parentis*. Thus, the

program will allow child care in certain limited cases where a child does not reside with his or her parents.

The Act does not provide a specific exception to the age limitation for special needs children. Although it did not create a specific exception, Congress indicated its interest in giving special consideration to special needs children under the Block Grant by giving them priority for services under this section. The other child care programs administered by ACF do allow an exception to the age limit for cases where the child has a medically documented physical or mental disability which prevents the child from caring for himself or herself and for children subject to court supervision. In these programs, the upper age limit for these special needs children is up to age 18 or 19, depending on the State's definition of "dependent child" under title IV-A of the Social Security Act. We believe it is consistent with Congressional intent to extend eligibility under the Block Grant for these children on a similar basis. This policy was supported in comments from members of Congress. Thus, the regulation at § 98.20(a)(1)(ii) provides Grantees with an option to serve these special needs children to age 18 or 19, consistent with the exception provided in the other ACF programs. This option will help Grantees create a system of coordinated services.

In keeping with the nature of a block grant program, we have not specified documentation requirements for such children. We are, however, concerned that Grantees verify that such children are in fact incapable of caring for themselves. We will monitor this area, and if there is evidence of abuse, we may impose specific regulatory verification requirements.

The Act also does not provide a specific income exception for children receiving, or in need of, protective services. However, the need for child care in this situation arises from a unique basis that differs from the need of parents who are working or in education or training. The need for care is determined in coordination with a protective services worker as part of a range of supportive services being provided to and/or required of the parent to help ensure the protection of the child. Parents may be uncooperative and may be required to participate in the program. Given this unique and distinct aspect of protective services cases, we have clarified the regulation to provide that, at Grantee option, the protective services worker may waive the income eligibility requirement and fee on a case-by-case basis.

We are not regulating Grantee determinations of State median income, definitions of family structure or income, definitions of "special needs child," "physical or mental incapacity," if applicable, "very low income," "residing with," "working," "attending," "job training," "educational programs," "protective services," or "*in loco parentis*." Thus, Grantees will be able to develop their own definitions of these terms.

Under § 98.20(b) we explicitly provide that Grantees or other administering agencies have the authority to set additional conditions of eligibility or priority rules, as long as these conditions do not undermine the other policies or requirements of the Act. Specifically such conditions or rules may not discriminate against children, or limit parental choice or other parental rights.

As points of clarification:

(1) Grantees may show preference toward children with disabilities, pursuant to § 98.44, but they may not discriminate against such children;

(2) providers may show preference for certain children, pursuant to § 98.46; and

(3) Tribal programs are specifically intended for the benefit of Indian children. The regulations do not preclude eligibility restrictions based on age, since we believe it would be reasonable for program administrators, as a matter of priority, to target the available services to particular age groups of children. Administrators may also target resources by setting more stringent income-eligibility rules or by limiting services to one group of those eligible, such as children whose parent(s) are working or in education or training. The regulations do specifically preclude basing eligibility or priority for services on a parent's preference for a particular category of care, type of provider, or choice of a child care certificate. Finally, such rules or conditions may not violate provisions of the regulations or Plan.

The regulations allow discretion by administering agencies in determining how best to target their services. This discretion could result in different eligibility rules in effect in different parts of the area served by the Grantee, as there is no "statewideness" requirement in the Act. However, any such rules must be consistent with the provisions of the Plan and the requirements of paragraph (a) of this section regarding Federal eligibility limitations, the anti-discrimination clauses in paragraph (b) of this section, and the priority rules at § 98.44. Grantees must specify any additional eligibility criteria or priority rules they establish pursuant to this paragraph in their Plan.

Comment: One commenter suggested that "homelessness" and "seeking employment" should be added as eligibility criteria.

Response: Grantees are free to add additional eligibility criteria, as a method of targeting their programs, as long as the Federal eligibility criteria are met (e.g., family income is under the income limit, parent(s) are working or in a training or education program). Thus, homelessness could be added as an eligibility criterion.

Regarding the second suggestion, "seeking employment," Grantees have flexibility to define "employed" to include families seeking employment.

Comment: A few commenters recommended that special needs children should be allowed a different income eligibility limit.

Response: Grantees have the flexibility, under § 98.16(a)(6)(i), to define special needs in the Block Grant Plan. Grantees are required, under § 98.44(b), to give priority for service to children with special needs, and, under § 98.20(b), may not discriminate against children with disabilities if they establish additional conditions or priority rules. Within the 75 percent of State median income limitation, nothing in the Act or regulation precludes Grantees from setting different income eligibility limits for special needs children. As an alternative, Grantees could make allowances for special needs children in counting income by disregarding a portion of family income if the family includes a special needs child, or by disregarding medical expenses.

Comment: Some commenters suggested that children who are receiving, or in need of, protective services should be allowed to receive respite child care under the Block Grant program.

Response: Grantees have the flexibility to allow a child receiving, or in need of, protective services, to receive respite child care.

Comment: Several commenters requested that Grantees have the flexibility to exempt children receiving, or in need of, protective services from income eligibility limits. Similarly, some commenters suggested that such families not be required to pay a fee for child care services.

Response: As discussed in the preamble above, we have given Grantees the option to waive the fee and income requirements for cases in which children are receiving, or need,

protective services. We base this approach on the distinct nature of these cases, in which the parent may be uncooperative and may be required to participate in the program to help ensure the protection of their child(ren).

Because the need for child care services for protective services children should reflect the individual discretion of protective services workers, it is appropriate that the protective services workers have similar discretion regarding application of the income and fee requirements. The regulation at § 98.20(a)(3)(ii) has been revised to reflect this authority.

Grantees should establish specific criteria for waiving these income requirements in individual cases. We caution Grantees not to treat eligibility for child care services in protective services cases as an entitlement. Rather, Grantees should view it as a supportive service to be used in conjunction with other needed services provided in protective services cases. We also caution Grantees to coordinate provision of child care services in protective services cases, through the continuing involvement of the protective services worker, in order to ensure that care is necessary and appropriate. Merely referring such families to a child care agency would be inappropriate in many protective services cases.

Additionally, Grantees have the flexibility to establish separate fee schedules and income limits for families receiving, or in need of, protective services.

Comment: One commenter requested that we clarify the issue of parental choice in selecting child care providers for cases in which children are receiving, or are in need of, protective services. Would the choice of providers be left to parents or to child protective services (CPS) workers?

Response: Nothing in this regulation should be interpreted to restrict the ability of CPS caseworkers to determine the appropriateness of child care placements. Parents should be allowed to exercise their choice of child care providers, unless the CPS case worker, or a Block Grant worker in consultation with a CPS worker, determines it is not in the best interest of the child. (See additional discussion at § 98.30.)

Comment: Several commenters suggested that eligibility for child care services for children in foster care should not be based on the income of the foster parents.

Response: Consistent with the treatment of foster care children for other programs, Grantees have the flexibility to consider a child in foster care as a family of one, for purposes of determining income eligibility under § 98.20.

Comment: Some commenters suggested that children in foster care should be allowed to receive respite care under the Block Grant.

Response: There is no special provision for respite care for children in foster care. Although the foster parents' income does not have to be considered in determining eligibility, the general eligibility criteria (e.g., that the foster parent(s) is working or attending a job training or educational program) would need to be met for child care to be available under the Block Grant program.

Comment: One commenter recommended that child care services should be available to children over the age of 12 whose safety or well-being requires adult supervision during parents' absences (e.g., when parents work night shifts).

Response: The regulations allow Grantees to provide child care services to children between the ages of 13 and 18 (or 19, in some States) who are physically or mentally incapable of self-care or are under court supervision. Although we believe that Congressional intent provides a basis for extending the age requirement for these children, we do not believe there is a basis for including other children.

Comment: One commenter recommended that we require Grantees to permit families with income up to 75 percent of the State median income, adjusted for family size, to participate in the program and not allow Grantees to set a lower ceiling.

Response: We do not agree with the commenter's recommendation. Section 658E(c)(3)(B)(i) of the statute indicates that priority is to be given "for services provided to children of families with very low family income (taking into consideration family size) and to children with special needs." We believe that Grantees are in the best position to know the child care resources and needs of their communities and should have the authority to target resources by setting a lower eligibility ceiling than that established under the law.

Comment: One commenter recommended that the program allow eligible families to continue to be income-eligible until their income equals or exceeds 100 percent of the State median income.

Response: The statute at section 658P(4)(B) provides funding for child care services only for families whose incomes do not exceed 75 percent of the State median income for a family of that size. There is no authority to permit families with income over the 75 percent ceiling to retain eligibility. However, to protect families with a modest increase in income from immediate loss of eligibility, a Grantee could set the initial eligibility limit at a lower limit. For example, if the Grantee sets the initial eligibility limit at 50 percent of the State median income for a family of that size, the Grantee could allow a continuation of eligibility until the family income exceeded 75 percent of the State median income.

Comment: Many commenters suggested that children in "traditional" families with two parents in the home, where one parent works and the other stays home to care for the children, should also be eligible for the program. These commenters suggested that the parent who stayed home to care for the child should be paid for that care.

Response: The statute, at section 658P(4), defines an "eligible" child as "an individual * * * who resides with a parent or parents who are working or attending a job training or educational program. * * *" The use of the plural "parents" indicates Congressional intent that, in two-parent families, both parents must meet the eligibility factor. Other requirements of the program also indicate that Congress intended only to pay for care when provided by someone other than the child's own parent. The requirement that providers must meet applicable standards, or register, is illogical if the provider is the parent. In addition, it would seem that Congress would have included parents in the group of close relatives who may be exempt from health and safety standards, if they had intended parents to be paid as providers.

Therefore, parents cannot be paid for the care given to their own children, and in most situations involving children in a two-parent family, both parents must be working or in a job training or educational program for the family to be eligible.

However, we give Grantees the flexibility to determine, on a case-by-case basis, if a two-parent family, which otherwise meets the eligibility criteria (e.g., income limitations) would be eligible for the program, under exceptional circumstances, even if only one of the parents works or attends a job training or educational program. An example of such an exceptional circumstance would be that where one parent is working and the second parent is bedridden and unable to provide care for the child(ren). This flexibility is consistent with similar provisions of the title IV-A child care program.

A Child's Eligibility for Early Childhood Development and Before- and After-School Care Services (Section 98.21 of the Regulations)

The regulations require that if a Grantee subsidizes, through grants or contracts pursuant to section 658H of the Act and § 98.51 of the regulations, early childhood development or before- and after-school care services for individual children, those children must meet the eligibility conditions in § 98.20(a). This means that if a Grantee uses Block Grant funds under § 98.51 to purchase after-school services, or slots, from a provider, then a child receiving such services must be under age 13 and meet the other statutory eligibility conditions in § 98.20(a).

The regulations also provide that Grantees may set additional conditions of eligibility for individuals to receive early childhood development and before- and after-school care services funded under § 98.51. Such conditions of eligibility would be subject to limitations similar to those which apply to child care services under § 98.50 regarding discrimination and consistency with the Plan and the regulations; they would also have to be specified in the Plan. However, such additional conditions need not be the same as any additional conditions under § 98.50.

We received comments regarding the application of eligibility requirements when Grantees purchase slots with funds under § 98.51. These comments are addressed in that section.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Parental Choice (Section 98.30 of the Regulations)

Section 658E(c)(2)(A) of the Act requires States to provide assurances that parents are given the option of (1) enrolling their children with a provider who has a grant or contract for the provision of services, or (2) receiving a child care certificate for use with the provider of their choice. The Act also requires that, when a parent selects contracted care, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

Parental Choice Safeguard

Congress clearly intended for the Block Grant to give parents a variety of options in addressing family child care needs. Thus, the regulation specifies that parents electing to use certificates must be permitted to choose among a range of child care options, including: center-based child care, group home child care, family child care, and in-home care (see definitions in § 98.2). Grantees, therefore, may not explicitly or effectively limit parents' access to any category of care or type of provider from Block Grant funding. Nor may a local agency administering the program under contract limit parents' access to eligible providers. Such agencies have the same responsibility as the lead agency to adhere to Federal and State program requirements, pursuant to § 98.11(b)(8). For example, the local agency may not use Block Grant funds for lobbying, pursuant to § 98.13(a)(4), and must inform eligible families of the full range of child care choices, pursuant to § 98.33.

As discussed, Congress intended for the Block Grant to give parents the widest possible variety of child care options. On the other hand, Congress included several provisions in the Act which invoke Federalism by allowing States flexibility. Thus, the Act embodies principles both of Federalism and of parental choice. In such circumstances, it is the responsibility of the agency administering the Act to strike a reasonable balance between the competing statutory principles.

The regulations reflect our balancing of these competing principles. See *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing or ambiguous). Thus, although Grantees enjoy great flexibility in program administration, the regulation requires that such discretion may not be exercised at the expense of parental choice. The balancing focuses on four aspects of Grantee administration: State and local regulatory requirements (§ 98.40), health and safety requirements (§ 98.41), payment rates (§ 98.43) and registration requirements (§ 98.45). In each of these areas, excessive and ill-designed requirements or procedures could prejudice parental choice.

In striking an appropriate balance between the competing principles in the Act, parental choice was central to our thinking. The Conference Report indicates that Congress intended that a variety of child care arrangements be available, "including care by relatives, churches, synagogues, family providers, centers, schools, and employers," (H.R. Rep. 964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628).

In addition, specific provisions of the Act, as well as the Act's overall structure, express the importance of providing parents the choice of a full range of child care options, such as the required availability of certificates, the requirement for parental access, the inclusion of consumer education, the specific inclusion of sectarian providers, and the registration of providers for payment.

Finally, we considered the fact that a primary purpose of the Act is to increase the availability of child care. Any Grantee rules or requirements for the purpose of providing child care under the Block Grant which cause a reduction in the availability of care would be contrary to Congressional intent. Thus, the regulation reflects our balancing of the competing principles of Federalism and parental choice.

Therefore, the regulation provides that Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for the purposes of the Block Grant significantly restrict parental choice. First, such requirements cannot expressly exclude or have the effect of excluding any category of care or type of provider, or any type of provider within a category of care. Second, such requirements must not have the effect of limiting parental access to or choice from among such categories of care or types of providers. Third, such requirements must not exclude a significant number of providers of any type or in any category of care.

Thus, State or local rules, requirements, policies and procedures promulgated for the purposes of the Block Grant cannot either explicitly, or operationally, result in significant restrictions in the range of child care options. For example, a State requirement for the Block Grant that family day care homes have automatic sprinkler systems would likely have the effect of excluding this category of care under the Block Grant, and if so, would be unacceptable under the regulation.

A rule which did not eliminate a type of provider, but which significantly restricted the ability of a type of provider to participate in the program, would also be contrary to the regulation. For instance, a requirement that only a small percentage of potential Block Grant providers of a certain type could meet, even though all were otherwise legally providing child care services, would be unacceptable.

We would like to note that we will employ an effects test to ensure parental choice. We will not determine in advance whether particular procedures or requirements affect parental choice. Instead, we will examine the effects during a program review, or in response

to a complaint. For example, we might receive a complaint from a family or provider that the standards the State has set for family child care under the Block Grant prevent a significant number of such providers from participating, thus limiting parental choice. We will examine the evidence and give the State the opportunity to respond. We will base our determination on the facts of the specific case, as well as information regarding the availability of other providers of the same type or in the same category. We will look at such evidence as the mix of providers in the community at large, the mix of providers participating under the Block Grant, and the number of providers which appear to be affected by the requirement.

If we find that a State's requirements for the Block Grant program have the effect of severely limiting parental choice, we will give the State a reasonable amount of time to make changes. If the State refuses to change the requirements, we will initiate a compliance action pursuant to § 98.91.

Comment: One commenter stated that the parental choice language was too broad for protective services cases. This commenter suggested a revision which would permit parents in protective services cases to select from providers authorized to care for protective services children.

Response: As discussed at § 98.20, even in protective services cases, the presumption should be that the parent is in the best position to choose a child care provider. With appropriate counseling and consumer education, Grantees should offer such parents the same range of choices as other cases. However, Grantees can set additional requirements for their CPS workers to ensure that a particular child care arrangement is in the child's best interest. For example, Grantees could implement internal procedures requiring child care case workers to notify CPS workers of the provider selected by the protective services families; Grantees could also require CPS workers to visit the selected child care providers.

As always, Grantees should exercise care and judgment in determining the need for and the appropriateness of child care in protective services situations. If the CPS worker believes the child care arrangement places the child at risk of maltreatment, Grantees could revoke eligibility (since this care is not an entitlement), or suggest or require other arrangements.

Comment: A number of commenters suggested that allowing in-home care as an option presented a number of problems, including payment rates that might be substantially higher than the rates for other types of child care. Other problems related to establishing health and safety requirements and tax issues.

Response: In order to ensure that parents have the widest range of choices of child care arrangements, we believe that it is appropriate to require that Block Grant programs include in-home care as an option for parents. As a consequence, appropriate health and safety requirements must be developed.

However, because the rate for such care may be substantially higher than the rate for care in other settings if the provider must be paid the minimum wage, we have amended the regulation at § 98.30(f)(1)(iv) to permit Grantees to limit in-home care to those situations where payment for such care is reasonably similar to the payments for other categories of care. This provision does not mean that a Grantee could eliminate in-home care as an option. Rather, the Grantee could determine that, because the payment rate for in-home care was, for example, double the rate for other categories, certain limits would apply. In this example, the Grantee could limit in-home care to families in which two or more children require care. The payment to the in-home provider would then be similar to the payment for providing child care for the two children in other settings. This ability to limit in-home care allows Grantees to recognize the same cost restraints that families whose care is unsubsidized must recognize. We distinguish in-home care from other categories of care for the purpose of this exception because the cost of in-home care is generally not directly related to the number of children in care. We have also added language to the regulation at § 98.16(a)(7)(ii) which requires Grantees to specify the conditions (i.e., differences in payment rates) limiting availability of in-home care.

Comment: Although a large number of commenters supported the parental choice safeguard as stated at § 98.30(g), a significant number of commenters opposed it. Those opposing the safeguard asserted that it emphasized parental choice at the expense of ensuring adequate protection for children in care. Many commenters thought it limited a Grantee's ability to regulate child care. Some commenters argued that the parental choice safeguard contravenes the intent of the Act by minimizing regulatory protection for children in care. Others believed that the safeguard discouraged quality child care.

Response: Misunderstanding of § 98.30(g) is widespread. This provision in the Block Grant rule has been repeatedly confused with provisions in the proposed regulations for the title IV-A and At-Risk Child Care programs (45 CFR Parts 255 and 257).

Both the Act and the Block Grant regulation establish parental choice as the ability of parents to choose from among eligible providers, i.e., providers which meet State, local, or Tribal licensing or regulatory requirements and/or health and safety requirements. States, localities and Tribes have the authority to establish licensing and regulatory requirements as well as health and safety standards. Thus, Grantees can set standards of care that respond to their community's demands, needs and circumstances.

The limitation imposed in the rule at § 98.30(g) is that "State or local rules, procedures or other requirements promulgated for the purpose of the Block Grant" may not significantly restrict parental choice. Thus, rules, procedures, or other requirements which apply generally to all child care providers are not affected by this rule. Similarly, the rules a Grantee may set which apply to all publicly-funded child care are also not affected by this rule. Further, if a rule which applies only to providers funded under the Block Grant does not have the effect of "significantly" restricting parental choice, we would take no action.

We believe that Grantees have the ability within the safeguard to ensure the safety of children in care and to encourage quality care, and therefore, we have not changed § 98.30(g).

Comment: Several commenters asked how we plan to determine the "effect" of rules, procedures and other requirements promulgated for the purpose of the Block Grant. Others sought a definition of "significantly restricts parental choice." One group proposed amending the final rule to require that Grantees inform HHS of any regulations imposed on child care providers receiving Federal funds which are more stringent than the regulations applying to nonsubsidized child care.

Response: We have revised the preamble to discuss the application of the parental choice safeguard. Since the test looks at the effect of requirements created for and imposed on Block Grant providers, we intend to consider this issue during program monitoring and, of course, in response to complaints. At that time, we would consider whether requirements significantly restrict parental choice by explicitly or effectively excluding a category of care or a type of provider. We would base any determination of compliance on a review of program data. For example,

we would not consider a requirement which effectively discouraged a few individual family providers from providing child care for parents receiving Block Grant funds as significantly restricting parental choice.

Comment: One commenter suggested deleting § 98.30(g)(2). The commenter suggested that this test merely reiterates the tests at § 98.30(g)(1) and (3).

Response: Paragraphs (g)(1) and (g)(3) of this section look at the effect of the requirements at a programmatic, or macro, level. Paragraph (g)(2) looks at requirements at the recipient, or micro, level. Therefore, we have not deleted it.

Comment: One commenter suggested adding the word "significantly" to the test in § 98.30(g)(2).

Response: Since the initial language of (g) already includes the word "significantly," it would be redundant to add it to (g)(2).

Certificates

While Grantees must offer parents their choice of services provided with Block Grant funds, they must provide parents with certificates only for services funded under § 98.50.

When a parent decides to enroll an eligible child with a provider that has a grant or contract for child care services with the Grantee, the Grantee must honor the parent's choice of provider to the maximum extent practicable. We expect that Grantees will have in place a mechanism for informing parents about providers which are receiving grants or contracts for services, as well as a means of assessing the availability of those child care slots. Further, we interpret parental choice to mean that a parent may choose to use child care certificates with a provider whose grant or contract slots are filled (if the provider has space otherwise available) or with any other provider a parent may choose.

Many parents will want to use child care providers which do not have a grant or contract with the Grantee. Child care certificates offer parents greater control and flexibility in the selection of a provider. Grantees must inform all parents to whom they offer Block Grant services that certificates are an option available to them and that such certificates can be used with the full range of providers. We have added language to the regulation specifying this requirement. As previously discussed, Congress expected that child care certificates would enable parents to choose from a wide range of child care arrangements including care by relatives, churches, synagogues, family providers, centers, schools, and employers. Child care certificates must be made available to any parents offered services under § 98.50.

While certificates offer great flexibility in selecting a child care provider, the provider must meet the eligibility requirements described in subpart E. As long as the provider is, or may become, eligible to receive payment, a parent has full discretion in selecting and arranging for the purchase of child care services with a certificate. For example, a parent may choose to designate a neighbor or relative as the provider, even if that provider is not registered with the Grantee, so long as the provider registers before payment is made. Implementation of the Block Grant by the Grantee must not impede providers from meeting basic eligibility requirements; rather, we expect Grantees to assist all providers in meeting these requirements.

To ensure broad parental choice, Grantees must issue certificates for child care services directly to the parents. For the purpose of purchasing child care services, Grantees must implement certificate programs which allow certificates to be used as flexibly as cash between the parent and eligible providers. Grantees will determine the actual form, or forms, of the certificate (e.g., check, coupon, debit card). Additionally, child care certificates must carry a value commensurate with the value of the child care services purchased under a grant or contract. Although the regulations provide Grantees great flexibility in defining the form of certificates and the process for providing them, it is essential that the certificate program provide parents with the maximum choice possible and give them the discretion to choose from a wide range of child care arrangements. As required at § 98.16(a)(11), Grantees must describe the form and operation of their certificate program in the Plan. In monitoring programs under the Block Grant as required under section 658I(b)(1) of the Act, ACF will particularly focus on whether a certificate program achieves these outcomes.

Parents may elect to use child care certificates with a sectarian child care provider. The payments associated with the certificates and such certificates may be expended for any sectarian purpose or activity which is part of the child care services, including sectarian worship and instruction. Pursuant to section 658M(a) of the Act and the regulation at § 98.54(d), however, Block Grant funds received through grants or contracts may not be expended for such sectarian purposes or activities. Funds received via certificates are not considered grants or contracts with the Grantee but are assistance to the parent, pursuant to the definition in section 658P(2) of the Act and § 98.2(j) of the regulation, and thus, as noted above, are not covered by this restriction. Therefore, the Act does not, and Grantees may not, preclude funds made available through the certificate mechanism from being used for sectarian purposes. Moreover, this restriction does not apply to providers' activities that do not involve the use of funds received under the Block Grant.

While Grantees must provide certificates directly to the parent, the Act does not address whether Grantees must also provide the payment associated with a child care certificate directly to the parent, or whether Grantees must make the payment in advance of the provision of services. We believe that Grantees have the flexibility to establish procedures which meet their individual needs, so long as these procedures ensure timely payment. For example, a State might provide a certificate to the parent, who gives it to the provider, who is then reimbursed by the Grantee. Alternatively, Grantees might use a two-party check that both the parent and provider would endorse before the provider could cash the check.

Grantees have until October 1, 1992, to begin operating a child care certificate program. In order to offer parents maximum flexibility with Block-Grant-funded assistance, we encourage Grantees to develop a certificate program or an interim program as soon as possible. In developing child care certificate programs, Grantees should give full consideration to factors which both support maximum parental choice (e.g., procedures for prompt issuance of certificates and speedy payment for services) and promote efficient service delivery (e.g., through appropriate use of automation). Certificate programs should also include measures to ensure the accuracy of payment (e.g., the correct amount, to the correct provider).

The regulations provide flexibility to establish payment procedures which meet Grantees' individual needs; however, they should include measures to prevent fraud and abuse, such as verification that child care is necessary or that care provided is actually received by the child for whom services are funded.

Pursuant to paragraph (e) of this section, a child care certificate must be made available to any parents offered services under § 98.50. We interpret the option described in section 658E(c)(2)(A), offering parents a choice in the method of financial assistance, to

mean that any time a parent is offered services under § 98.50, certificates must be an actual option for that parent. Whenever parents are offered child care services under the Block Grant, parents who choose certificates must receive them rather than being placed on a waiting list for certificates or discovering that certificate funds are exhausted. For example, if a Grantee's program includes grants or contracts for child care services, whenever contract slots are open (i.e., not filled by a particular child), Grantees must offer parents a choice of enrolling a child in the slot or of using a child care certificate. Therefore, in planning for the use of Block Grant funds, a Grantee should keep in mind that its Plan must provide for the continued availability of certificates as an alternative to contracted services.

Comment: Several commenters disagreed with the approach to parental choice in § 98.30(a) and § 98.30(e), while another large group of commenters supported this approach. Those disagreeing argued that the Act mandates Grantees to provide parents a choice of either enrollment with a provider receiving grants or contracts for child care services or child care certificates, yet the regulation emphasizes certificates. In their view, the regulation fails to treat contract-based and certificate-based child care assistance equitably. Some commenters further asserted that preamble language concerning the availability of certificates throughout the program year, or whenever § 98.50 services are offered, effectively limits parental choice by encouraging Grantees to offer only certificates. These commenters contend that the regulation makes it difficult for Grantees to enter into grants or contracts for child care services, and thus, eliminates child care purchased under grants or contracts as a choice for parents.

Response: We believe that Congress intended for the Block Grant to give parents a variety of child care options. Section 98.30(a) parallels section 658E(c)(2)(A) of the Act in saying that parents must be offered the option of enrolling the child with a child care provider who has a grant or contract for child care services or receiving a child care certificate. The regulation goes on to require that the choice between grant/contract child care or a child care certificate must be available anytime child care services are offered under § 98.50. The option to select child care certificates is further supported by § 98.30(e).

Child care certificates offer parents maximum control and flexibility in selecting a provider. Certificates may be used with a child care provider who also has a grant or contract for child care services with the Grantee, as well as with a provider who does not. While a Grantee may use Block Grant funds to support both grant/contacts and certificates, we believe that the offer of a certificate alone meets the intent of the Act, since a certificate can be used with any provider, including one who also offers contracted slots.

Further, by allowing a phase-in period for implementation of certificate programs, Congress created a distinction between contract and certificate programs. For States which generally offer contracted care, a year was given to implement a certificate program. No such period was given for contracts. The Conference Report specifies that "parents must be given the option of a certificate" (H.R. Rep. 964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). There is no similar language regarding contracts or grants. Rather, parents must be offered a choice of enrolling their child with "a child care provider that has a grant or contract for the provision of such services" if the State has such grants/contracts, but nothing in the Act or Conference Report requires the State to enter into such contracts. We therefore believe that Congress did not intend to require Grantees to provide contracted care; such care can be offered as an option. We have amended the language at § 98.30(a)(1) to clarify this point.

Accordingly, we have not changed the policy in § 98.30(a) or § 98.30(e) in the belief that certificates must be available to afford parents the widest choice of child care providers.

Comment: A number of commenters suggested deleting the requirement that child care certificates must be made available to any parent offered services under § 98.50. The preamble language to the interim final rule indicated that certificates must be available "throughout the year" and waiting lists could not be used. One commenter asked why this rule applied only to certificates. Many cited the difficulty of budgeting for child care service grants or contracts while maintaining sufficient funds for child care certificates. This budgeting challenge, in their view, is of such magnitude that it undermines Grantees' ability to contract for child care services. Other commenters pointed to the need to create a stable child care supply for special populations (e.g., inner city, special needs, protective services) through grants or contracts. These commenters saw the certificate requirement as impinging on the parental choice of these populations by eliminating grants or contracts to providers that serve them.

Response: There appears to be some confusion about the provision at § 98.30(e) and the associated preamble language in the interim final rule. We have attempted to clarify the preamble in the final rule; however, we have retained the language in the regulation because it ensures that parents are permitted to select the child care provider.

As previously discussed, Congress expected that child care certificates would enable parents to choose from a wide range of child care arrangements including care by relatives, churches, synagogues, family providers, centers, schools and employers. Clearly, to give meaning to this requirement, parents must have the flexibility which certificates offer to select their own child care provider. Thus, we retain the rule that certificates must be available whenever new services under § 98.50 are offered.

This provision does not preclude Grantees from entering into grants or contracts for child care services. Depending on a Grantee's circumstances and needs, grants and contracts may be necessary to provide stable child care for particular populations or certain communities. However, the parents in these special groups should also have the choice of selecting their own provider through a child care certificate.

Certificates should be an actual option to parents whenever § 98.50 services are offered. Thus, if a Grantee has grants or contracts for child care services, parents must be able to choose between contracted slots and certificates. The choice of a certificate should not delay the provision of child care because funds set aside for certificates have been exhausted while contract slots remain open. If child care slots are open (i.e., not designated for a specific child), then a parent who is offered child care services must have the choice of enrolling a child in a slot or using a child care certificate.

In some circumstances, however, the choice might be a certificate or a waiting list; for example, if all contracted slots are filled, child care certificates may be the only choice. Likewise if certificate funds are fully reserved for specific children, and no contract slots are available (either filled or not part of the Grantee's program), it may be necessary to begin a waiting list for certificates.

It should be clarified that it is not necessary to offer certificates any time

§ 98.50 services are being used; rather, certificates must be offered whenever § 98.50 services are offered. For example, if all available funds in an area are "reserved" for specific children in contracted and certificate-funded slots, the Grantee is not offering services and need not offer additional certificates. Thus, a program may not offer new child care during some portion of the program year because all available funds have been assigned to specific children and are being used or "reserved" for those specific children. We have amended the language of § 98.30(a) to clarify this point.

Comment: One commenter asked if it would violate the requirements if a Grantee allocated a portion of its child care services funds for grants and contracts at the beginning of the year, and only the remainder was available for certificates.

Response: As indicated earlier, a Grantee may set aside funds for or enter into grants and contracts for child care services. However, parents must be offered a choice of a certificate whenever a contracted slot is offered. A Grantee could not obligate a large portion of the § 98.50 funds to a child care contract, commit the remainder to a few certificates, then have no certificates available as a choice when contracted slots are offered.

ACF hopes to provide technical assistance regarding an appropriate mix of certificates and contracts in child care programs. We are interested in receiving comments on Grantees' experience with this aspect of the program.

Comment: Several commenters were concerned about measuring compliance with § 98.30(e). One association suggested using a good faith effort as a standard for assessing compliance with this provision and requiring a Plan revision stating a methodology.

Response: We indicate in subpart J that we will monitor Grantee programs for substantial compliance with the regulatory requirements. There may be some circumstances in which a certificate would not be available while the Grantee's program was still offering § 98.50 services, and yet we would not consider the lack of certificate availability a substantial failure of the Grantee's program. For example, a Grantee may allocate funds by county in the State. Child care certificates may be available in one county of the State even though certificates are unavailable elsewhere because all available funds are "reserved." Failure to offer certificates for a substantial number of families, or for a substantial portion of the program year would, however, trigger a compliance action.

Comment: Questions were raised by several commenters about § 98.30(c)(4), which permits providers to expend funds received through certificates for sectarian purposes. Some objected to the indirect use of Federal funds for sectarian purposes and urged deletion of this provision. Others suggested clarifying the definition of sectarian. In addition, we received a large number of comments supporting this provision.

Response: Parents may elect to use child care certificates with a sectarian child care provider. The payments associated with the certificates may be expended for any sectarian purpose or activity which is part of the child care services, including sectarian worship and instruction. Block Grant funds received through grants or contracts, however, may not be expended for sectarian purposes or activities. This conclusion is based on language at section 658M of the Act, which precludes providers from using funds from grants or contracts for sectarian activities. The Act is explicit in referring to funds from grants and contracts. We conclude, therefore, that funds from certificates can be used for sectarian activities which are part of the child care services purchased with the certificate.

Comment: A few commenters requested clarification of the requirement that certificates must be of a value commensurate with the subsidy value of the child care services purchased under a grant or contract.

Response: We interpret this to mean that a certificate should have a value which permits a parent to purchase child care comparable to that provided under grant or contract in the same category of care. As discussed under payment rates, Grantees should pay the actual cost of care up to the payment rate maximum for a category of care.

Comment: At § 98.30(c)(5) we describe certificates as "assistance to the parent." Several commenters suggested adding language to clarify the impact of such "assistance" on other Federal means-tested programs, e.g., Aid to Families with Dependent Children, Food Stamps, and Child Nutrition Programs.

Response: The Act does not specifically exclude Block Grant assistance to parents from income calculations in determining eligibility for Federal means-tested programs. Further, Grantees should not assume that child care assistance to the provider (grants and contracts) would be treated differently than assistance to the parent (certificates) for these other programs. We have requested opinions from the Federal agencies administering these programs (i.e., the Department of Housing and Urban Development, the Food and Nutrition Service of the Department of Agriculture, the Social Security Administration, and the Health Care Financing Administration) and will issue guidance in the near future.

Summary of Sections (Sections 98.31, 98.32, 98.33 of the Regulation)

The Act clearly reflects Congress' belief that well-informed parents are in the best position to make decisions about their children's care. Parental choice, as described in § 98.30, affirms this reliance on parental judgment. The Act and the regulations also provide for parental access (§ 98.31), parental complaint procedures (§ 98.32) and consumer education (§ 98.33) which afford parents opportunities to gain information about child care services and child care providers in order to make sound decisions. Together, these three provisions serve to support and enhance parental choice.

Parental Access (Section 98.31 of the Regulation)

Section 658E(c)(2)(B) of the Act requires States to provide assurances that they have procedures which ensure parents unlimited access to both their children and the child care provider during normal working hours and whenever the children are in the care of such providers.

Congress viewed such unlimited parental access to children within the care setting as enhancing parental choice and involvement. Parents are concerned about health, safety, and the quality of care their children receive; unlimited parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

Information about the right to parental access should be included in States' consumer education programs (§ 98.33).

Comment: A few States indicated that they could not ensure parental access in child care facilities which do not fall within their regulatory jurisdiction. Another commenter suggested limiting the requirement to family child care providers. In addition, some States commented in support of this provision.

Response: A critical feature of parental choice is parents' unlimited access to their children and the provider. Parents must be able to monitor the care their children receive. States must therefore ensure that they have the authority, either directly or indirectly, to require that child care

providers receiving Block Grant funds permit unlimited parental access. For example, Grantees could do this through State statute, as part of a service agreement, or as a health and safety requirement.

Parental Complaints (Section 98.32 of the Regulation)

Section 658E(c)(2)(C) of the Act requires each State to provide assurances that it maintains a record of substantiated parental complaints and that it makes information regarding such complaints available to the public on request.

Maintaining complaint records on providers and making this information available on request enhances parental involvement and parental choice. Grantees have the flexibility to set guidelines for the types of parental complaints handled by their system.

The Act specifies that States maintain a record of "substantiated" complaints. This language implies a system for receiving complaints and making a determination of whether the complaints are substantiated or unsubstantiated. In establishing a complaint system or augmenting an existing one, Grantees should consider developing policies on treatment of anonymous complaints, maintaining records, recording rebuttals or updates by providers, and providing confidentiality for the complainant.

Grantees should agree on interagency roles and responsibilities to ensure that all reports concerning the immediate health and safety of children in care receive a quick response. Clear agency roles are also needed to ensure that adequate and accurate records are maintained.

Comment: One State suggested that they should not be required to maintain records of substantiated parental complaints concerning unregulated providers since they are not subject to State regulatory jurisdiction.

Response: We believe that Grantees have the authority, as well as the obligation, to investigate parental complaints about child care providers regardless of the setting. Grantees have this authority in their criminal codes, from child protection statutes, as well as the authority they grant themselves through health and safety requirements. If there are circumstances in which a Grantee does not have authority to investigate complaints, then it must create the appropriate authority.

Current procedures may be sufficient to adequately address the need for satisfactory investigation. Of course, the various agencies involved should coordinate the investigations they conduct. Grantees could have agreements with agencies responsible for the safety of children concerning interagency roles and responsibilities. In addition, Grantees could have procedures which ensure that all reports concerning immediate threats to the health and safety of children in care receive a quick response. Agencies involved with protecting children should also agree on methods for maintaining adequate and accurate records.

Comment: Several Grantees asked about the impact of State confidentiality laws on the requirement that information regarding parental complaints be made available to the public on request.

Response: Although States are not required to make the specific content of a complaint available to the public in situations in which State confidentiality rules prohibit the disclosure of specific information, States must inform parents who inquire about a provider that there is a substantiated complaint against the provider. Moreover, Block Grant regulations require that Grantees not pay providers which do not meet health and safety requirements.

Consumer Education (Section 98.33 of the Regulations)

Section 658E(c)(2)(D) of the Act requires States to provide assurances that consumer education information about child care services is available to parents and the general public. Such consumer education must provide information about applicable licensing and regulatory requirements, complaint procedures, and policies and practices concerning child care services within the State.

We included express language on parental options in the interim final rule to ensure that Grantees fully apprise parents of their options for receiving child care services under the Block Grant. We clarified this language in the final rule. Grantees must provide consumers with information about the options of contracted care and child care certificates, as well as health and safety requirements, parents' right to unlimited access to their children while in the care of a child care provider, and the procedures for parental complaints.

We encourage Grantees to provide information to parents on how to recognize indicators of child abuse and how to obtain help if they suspect maltreatment of their children. Information is available from: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, telephone (703) 821-2086.

The requirements specified in the regulation do not limit Grantees; they can provide other consumer information. For example, we encourage Grantees to provide information which acquaints parents with all the options for child care services available within the State, tells them how to avail themselves of these options, and advises them on how to identify quality child care.

Comment: Several commenters suggested adding specific topics for consumer education to the regulatory language, such as child abuse information or indicators of quality care.

Response: We believe that the regulation and preamble encourage Grantees to provide a range of information about child care. Grantees can design their consumer education program to fit their circumstances. Thus, we have not added new language to the regulation.

Comment: A number of commenters requested that ACF issue a brochure about parental choice options.

Response: ACF plans to undertake a variety of technical assistance projects as the Block Grant is implemented. We will include this as a topic for publication. We encourage others to suggest publications which would be useful to Grantees.

Parental Rights and Responsibilities (Section 98.34 of the Regulations)

Section 658Q of the Act requires that nothing in the Act shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents.

We believe that Congress intended for this section to reinforce parents' right to choose the type of child care services their children receive. It also highlights parents' responsibility to use available information (e.g., through consumer education) to make informed choices about child care services and to monitor the quality of the care received (e.g., visit the provider while their child is in care). Congress clearly believed that Grantees and other agencies are not in a position to substitute their judgment for that of parents, especially in matters relating to child care.

We did not receive any comments on this section of the regulation.

Subpart E—Program Operations (Child Care Services) State and Provider Requirements

Compliance With Applicable State and Local Regulatory Requirements (Section 98.40 of the Regulations)

Based on our review of the numerous comments regarding provider requirements, it is clear that there was a great deal of confusion regarding the

interplay between existing licensing and regulatory standards, including existing health and safety requirements, and the new requirements of the Block Grant. The great variation between States with regard to such requirements and procedures, and the associated variation in the meaning of terms, increase the difficulty of explaining the new Block Grant requirements because the effects of these new requirements will also vary greatly from State to State.

To summarize, the interim final rule policy, which remains unchanged in this final rule, requires that a provider must meet existing applicable State or local licensing or regulatory requirements in order to receive Block Grant funds. Providers not subject to such requirements must register with the State, as explained at § 98.45. The Federal registration requirement described at § 98.45 is a required alternative only for those providers not otherwise licensed or regulated by the Grantee. It is also a simple process for making the provider known to the Grantee for the purpose of making payment and dispensing information to the provider. As required by the Act and these regulations, registration is a process, not a set of requirements.

Notwithstanding the above, all care under the Block Grant must meet health and safety requirements established by the Grantee in certain specified areas. These requirements need not apply, however, to grandparents, aunts, and uncles. Moreover, if existing applicable standards include health and safety requirements in the areas specified for all categories and types of providers, then no additional requirements are necessary.

If certain providers were previously exempt from such requirements, then the Grantee must impose some requirements. Such requirements need not be the same as licensing or regulatory standards but could incorporate existing requirements, such as local fire codes. If the Grantee does not have the authority to impose such requirements on certain providers, it must create authority appropriate to enforce any requirements it establishes. Providers which do not meet applicable health and safety requirements are not eligible to receive Block Grant funds. Such providers should be given the opportunity, and appropriate assistance, to meet these requirements. We describe these provisions in § 98.41.

Adding further to the confusion regarding these issues was the publication by ACF of the Notice of Proposed Rulemaking (NPRM) for the At-Risk Child Care Program. This proposed regulation included language defining "applicable standards" for the title IV-A child care programs as those standards which apply to all providers within a category, not just those who are subsidized. Under this proposed rule, States would be required, if a parent so requested, to pay for care which did not meet standards other than those which are generally applicable to child care providers. This proposal, which has been confused with the Block Grant requirements, has been widely misunderstood as precluding States from setting standards, or as requiring universal standards. Neither is true. The issue of applicable standards for title IV-A is discussed in more detail in the final rule for the At-Risk Child Care program, published under separate cover.

For the purposes of the Block Grant, States retain a great deal of authority and flexibility to establish standards and requirements. Congress made this point explicit by providing that States could set more stringent standards under the Block Grant than are imposed on other child care providers.

Section 658E(c)(2)(E) of the Act uses the term registration in two different contexts. In paragraph (i), it requires an assurance that providers of child care services for which assistance is provided under the Block Grant meet all applicable State and local "licensing or regulatory requirements (including registration)." This language suggests that registration requirements are a subset of licensing and regulatory requirements. In paragraph (ii), on the other hand, the Act requires Grantees to assure that providers which are not required to be licensed or regulated by the State or local government for the purpose of providing child care be registered prior to any payment of Block Grant funds.

To avoid confusion about the meaning of registration in these regulations, we leave out the term "registration" when we refer to licensing and regulatory requirements, such as the regulation at paragraph (a)(1) of this section. Instead, in the definition section of the regulation at § 98.2(x), we define licensing and regulatory requirements to cover registration requirements which are established under State and local law. Thus, we distinguish between regulatory requirements established under State and local licensing laws and regulations and the registration requirements established pursuant to section 658E(c)(2)(E)(ii) of the Act. As used in these regulations, the term registration refers to the basic procedures, pursuant to § 98.45, which Grantees must establish to facilitate payment and to permit the provision of information to providers not licensed or regulated by the State or local government for the purpose of providing child care. Additional discussion about registration appears in § 98.45 of the preamble.

We believe that compliance with any applicable licensing or regulatory requirements pursuant to section 658E(c)(2)(E)(i) of the Act and registration requirements pursuant to section 658E(c)(2)(E)(ii) of the Act apply to child care services offered under §§ 98.50 and 98.51. Section 98.40 of the regulations therefore requires that child care providers (e.g., center-based, group, family, before- and after-school, and early childhood development) must meet applicable State and local licensing or regulatory requirements or registration requirements in order to receive Block Grant funds. (See § 98.83 regarding licensing and regulatory requirements for Tribal programs.)

Comment: We received many comments regarding the licensing and regulatory requirements that State and local governments establish. Some commenters requested that we not discourage States from imposing reasonable licensing and regulatory requirements; other commenters suggested that we should not require States to impose unnecessary requirements; others requested that we prohibit States from imposing restrictions on family providers; and some commenters suggested that we require all child care providers to be licensed.

Response: Consistent with the intent of the Act, these regulations neither establish minimum regulatory standards nor preclude State and local governments from establishing licensing and regulatory requirements. Under these regulations, States and local governments retain authority to establish the licensing or regulatory requirements which child care providers must meet.

Comment: One commenter thought that religious organizations should be subject to applicable State and local laws and regulations pertaining to child care.

Response: Under the Act and regulations, it is up to the Grantee to determine what laws and regulations should exist regarding child care and to whom they should apply. If the Grantee chooses to require sectarian organizations to meet child care standards, then a sectarian provider must meet such standards in order to be eligible for payment under the Block Grant. However, the Act does not require that the Grantee set licensing

standards for any category of care or type of provider.

Section 658E(c)(2)(E) of the Act not only requires that Block Grant providers must meet all applicable standards, but it also states that it shall not be construed to prohibit Grantees from imposing more stringent standards for providers receiving Block Grant funds. However, as previously discussed in § 98.30, additional requirements imposed solely on providers receiving Block Grant funds are subject to the parental choice safeguards in § 98.30(g). We believe that both principles, i.e, Grantee authority to impose more stringent standards on Block Grant providers and the right of parents to choose their child care provider, are appropriately accommodated by requiring that State licensing or regulatory requirements or other standards promulgated for the purposes of the Block Grant are consistent with the safeguards for parental choice in § 98.30.

State or local regulations or policies promulgated for the purposes of the Block Grant regarding, for example, credentialing, schooling or training, space, and staffing ratios cannot significantly limit a parent's choice from among categories of care or types of providers.

We expect that, when a parent selects a provider that does not meet applicable standards, the Grantee will give the provider the opportunity to come into compliance. In fact, section 658G(2) of the Act makes funds available in the form of grants and loans to assist providers in meeting applicable State or local standards.

In addition, we are aware that as part of a process that States variously call "registration," "certification," or "licensing," some States have established procedures which require the provider to prove or confirm that certain requirements have been met. For example, a provider might have to submit to or otherwise confirm a building inspection, health department certification, or a criminal records check. In some States, this confirmation can be completed in a few days or weeks; in other States, it may take as long as six months. We are also aware that some States do not pay providers until such confirmation is obtained, while other States pay pending completion of the process, particularly when obtaining such confirmation is time-consuming. Grantees' procedures should either allow a provider to obtain confirmation of meeting such requirements within a reasonable timeframe, or permit payment to providers pending completion of the process so that providers are not effectively precluded from accepting Block Grant cases on a timely basis.

We require that a description of the process for meeting these requirements, or obtaining confirmation, and the timeframes be included in the Plan, pursuant to § 98.16(a)(14). We will closely monitor such Grantee procedures, with a particular emphasis on timeliness. Grantees should note that Block Grant funds are available to assist Grantees in improving or shortening the process for determining if providers meet requirements.

Grantees are required to describe any existing standards and applicable health and safety requirements annually and to present the findings of a one-time review of any existing State licensing and regulatory requirements, pursuant to § 98.71 of the regulations. We will carefully review the effects of requirements and standards applicable only to providers receiving Block Grant funds to ensure that they do not limit parental choice.

Health and Safety Requirements (Section 98.41 of the Regulations)

Section 658E(c)(2)(F) of the Act requires that each Grantee must provide assurances that there are in effect, under State or local law, requirements designed to protect the health and safety of children applicable to child care providers of services for which assistance is provided under the Block Grant. Paragraph (e) of this section provides that the health and safety requirements listed in paragraph (a) must apply to all providers of child care services offered under both §§ 98.50 and 98.51, except for certain relatives as specified in paragraph (g). Grantees must assure that procedures are in place for:

(1) The prevention and control of infectious diseases (including immunization);

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

Comment: Some commenters requested that the regulations clarify that existing State standards may be sufficient to constitute minimum standards for unregulated care. Other commenters stated that States should be allowed to maintain existing standards.

Response: Section 658E(c)(2)(F) of the Act specifically notes that it does not require the establishment of new or additional health and safety requirements if existing State or local requirements comply with the Act. States may maintain existing standards.

Minimum health and safety training appropriate to the provider setting could mean, in some instances, Grantee's furnishing information concerning fire and health codes. For certain provider settings—such as home care settings—supplying information regarding applicable public health and safety codes to all registered providers through routine informational mailings, videotapes, or other media could be sufficient to meet the statutory requirement.

Along similar lines, some States exempt churches from child care regulation. It would not be necessary to eliminate these exemptions. While the Act requires that all providers, including those currently exempt from State standards, meet some minimum health and safety standards, States may determine what these minimum standards are. Standards to be met by currently exempt providers may differ from those to be met by non-exempt providers. For example, current building and fire codes which govern the safe operation of the building itself and other measures which States or localities have in place could be sufficient to meet the requirement.

Comment: Many commenters stated that the final rule should "strengthen" the health and safety examples noted in the preamble to the interim final rule. Some of these commenters suggested that we include specific requirements, such as criminal record checks, smoke detectors, and first aid training.

Response: Congress chose not to establish minimum Federal health and safety standards but to specify the categories in which Grantees must establish such standards. We likewise choose to leave the establishment of specific standards to the Grantee. We recommend that States, at a minimum, consider the use of appropriate existing health guidelines, building and fire codes, mechanisms to provide immunization and other such services currently in place in the State.

Grantees may impose more stringent health and safety standards than the examples suggested above. Grantees could, for example, establish health and safety requirements which mandate criminal records checks or attendance at certain types of training. States could also require that providers submit proof of immunization for children in their care or that providers' premises be inspected for safety. We caution, however, that such requirements and their associated processes and timeframes, promulgated for the purposes of the Block Grant, must not have the effect of limiting parental

choice pursuant to § 98.30(g). In addition, if the process of meeting such requirements is lengthy, we encourage Grantees to make payment before the process is complete. Such payment will ensure that Grantee requirements do not discourage providers from participating in the program.

We also reaffirm our commitment to provide copies of, or references to, appropriate studies and other resources in this area. We reiterate our interim final rule suggestion that Tribal Grantees enlist the assistance of the Indian Health Service (IHS), where applicable, in undertaking efforts to prevent and control infectious diseases.

As stated in §§ 98.30 and 98.40, Grantees retain authority to set licensing and regulatory standards for child care. Regarding health and safety, the Act and the regulations require that: (1) health and safety requirements applicable to all Block Grant child care providers are in place; and (2) parents have discretion to choose from a wide range of child care arrangements.

Consistent with the express Congressional intent in the Conference Report, the regulations compel Grantees to have health and safety standards and to ensure parental choice; both, not either, are required (H.R. Rep. 964 at 923–24, reprinted in 1990 U.S. Code Cong. & Admin News at 2628–29).

Comment: Many commenters suggested that the regulations should prohibit State regulation of such matters as curriculum, physical punishment, staffing ratios, and credential requirements for sectarian providers and relatives.

Response: Congress has required that each Grantee assure in the Plan that minimum health and safety requirements apply to providers of child care services for which assistance is provided under the Block Grant. Congress has also required that Grantees provide maximum parental choice. As discussed in § 98.30, we have attempted to strike the balance that Congress intended by requiring that health and safety requirements promulgated for the purposes of the Block Grant must be consistent with the safeguards for parental choice in § 98.30.

Comment: Some commenters suggested that we should not leave health and safety standards to the States because some States exempt certain types and categories of care from licensing and regulatory requirements.

Response: Although States may exempt certain providers from licensing requirements, the Act and the regulations require that all Block Grant providers must meet minimum health and safety standards; only certain relatives—grandparents, aunts, and uncles—are exempt from this requirement.

Comment: Some commenters suggested that it is impossible to monitor unregulated providers.

Response: Although we understand that it may be difficult for some Grantees to monitor providers that they do not otherwise license or regulate, the Act and the regulations are clear in their intent that all providers must meet minimum health and safety requirements and that Grantees must have procedures to ensure compliance. We also point out that Block Grant funds are available to assist in and improve the monitoring of compliance with health and safety requirements for providers which are otherwise not licensed or regulated.

Comment: Some commenters requested that we not allow States to impose additional health and safety requirements. Others suggested that States should help providers meet existing standards rather than imposing new ones. Also, some commenters suggested that we minimize or prohibit health and safety standards which limit parental choice, with a few commenters suggesting that we should expressly preclude Grantees from conducting criminal records checks.

Response: While the Act does state that Grantees are not required to establish additional health and safety requirements for child care providers which are subject to such requirements, it does not prohibit Grantees from establishing additional health and safety requirements for providers. Therefore, we do not specify what requirements a Grantee may or may not impose but rather will look at the effects of such requirements. As discussed in § 98.30, the regulations limit Grantees in the establishment of requirements promulgated for the purposes of the Block Grant if the additional requirements have the effect of significantly limiting parental choice within a category of care or to a type of provider.

ACF will monitor Grantee programs and review reports required under § 98.70 to be sure that a wide range of caregivers are providing child care services under the Block Grant. For the reasons discussed in § 98.30, if evidence suggests that access to certain categories of care or types of providers, as defined in § 98.2, is limited due to State or local licensing or health and safety requirements for the Block Grant, the Department will take corrective action.

Comment: Some commenters suggested that States should not be required to pay for care that is not safe.

Response: Under the Act and the regulations, States retain authority to license and regulate child care or to set health and safety requirements. Nothing in the Act or regulations prevents a State from establishing requirements to ensure care that is safe and to deny payment for care which does not meet those requirements.

Comment: Some commenters suggested that unregulated providers should not be eligible to receive Federal funds.

Response: The Act clearly intended that parents have the greatest choice possible in selecting child care for their children, including the choice of providers that are not generally regulated in some States. The fact that section 658E(c)(2)(E) of the Act requires unlicensed providers to register before payment indicates that Congress intended such providers to be eligible for payment under the Block Grant.

Comment: One commenter suggested that States should be allowed to set health and safety standards for all license-exempt providers.

Response: Grantees are required both to ensure that health and safety requirements are in effect for all Block Grant providers and that parents have the greatest choice possible from all types and categories of care. The regulations thus not only allow but require Grantees to have in effect health and safety requirements for license-exempt providers, who are not otherwise subject to such requirements.

Comment: Many commenters suggested that sectarian care providers already voluntarily meet health and safety requirements and stated that such care is of equal or superior quality to other, regulated providers.

Response: It was unclear whether the purpose of these comments was to encourage regulatory exemption of sectarian providers from health and safety requirements or to merely respond to assertions that non-regulated care does not meet health and safety standards. Although the Act does not exempt sectarian care from health and safety standards, we do believe that Congress clearly intended that parents have the opportunity to choose from a wide variety of care, including sectarian care.

Comment: One commenter stated that the regulations contain no provision for compliance with health and safety requirements.

Response: Section 98.16(a)(10) of the regulations requires Grantees to include

a description of the minimum health and safety requirements in the Plan. Also, pursuant to section 658E(c)(2)(G) of the Act, paragraph (f) of this section requires Grantees to assure that there are procedures in effect to ensure that Block Grant child care providers comply with all applicable health and safety requirements described in paragraph (a) of this section.

Compliance issues relating to individual providers are the responsibility of the Grantee. Any complaints regarding providers which do not meet applicable requirements must be investigated by the Grantee pursuant to § 98.32.

Comment: One commenter suggested that we should include nutritional training as an integral part of health and safety training pursuant to Congressional intent.

Response: Although Grantees could include nutritional training as part of health and safety training, we do not agree that the Act clearly intended to require nutritional training. It only mentions nutritional training as an optional quality activity under section 658G.

Comment: Some commenters stated that relatives should not be exempt from health and safety requirements.

Response: Based on the statutory definition of "eligible child care provider" in section 658P(5) of the Act, certain relatives need not be subject to health and safety requirements; however, such relatives must meet "any State requirements that govern child care covered by the relative involved" which could include health and safety requirements. Paragraph (g) of this section specifies that grandparents, aunts, and uncles are not considered child care providers subject to health and safety requirements. Grantees should note that such relatives must nevertheless be registered, pursuant to § 98.45.

Comment: Many commenters suggested that we prohibit Grantees from imposing additional health and safety requirements on relatives and neighbors, or that we prevent Grantees from imposing additional training requirements on relatives and family care providers.

Response: We believe that the statutory construction at section 658P(5) was intended to give Grantees the option to exempt certain relatives, i.e., grandparents, aunts, and uncles, from the health and safety requirements that all other Block Grant child care providers must meet. There is no statutory authority to extend this exemption to other types or categories of providers.

In meeting the requirements of this section, we expect Grantees to consider the provider setting. We will neither require Grantees to establish specific standards nor will we otherwise constrain the health and safety requirements established by Grantees so long as those requirements are consistent with parental choice of providers.

Comment: Some commenters suggested that requirements for child care should be consistent throughout Federal programs.

Response: We have attempted where possible to give Grantees the flexibility to create uniform child care requirements. Indeed, it is our hope and intention that Grantees will design programs which will allow persons receiving child care services under the Block Grant, or under any other ACF-administered program, to avail themselves of seamless child care services.

Our responsibility remains, however, to write regulations that conform to the intent and requirements of each statute. For example, the section of P.L. 101–508 which created the Block Grant specifically requires Grantees to establish health and safety requirements for all Block Grant providers; the section of P.L. 101–508 which established the At-Risk child care program contains no such language. While we recognize the advantage of consistent standards for child care, we have no authority to require such action.

Paragraph (c) of this section also requires Grantees to inform the Secretary, via the annual report, if they reduce the level of standards applicable to child care services provided in the State after November 5, 1990. The Grantee must include in the report its rationale for reducing existing standards.

Finally, section 658E(c)(2)(I) of the Act and the regulation at paragraph (d) of this section require that, not later than 18 months after submitting its initial Application, each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State. Grantees are exempt from this requirement if they have reviewed such law, requirements and policies between November 5, 1987 and November 5, 1990.

Sliding Fee Scales (Section 98.42 of the Regulations)

Pursuant to section 658E(c)(5) of the Act, the regulations require Grantees to establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by families who receive Block Grant services under §§ 98.50 and 98.51. We require States to base this sliding fee scale on income and the size of the family. We give Grantees explicit authority to waive contributions from families whose income is at or below the poverty level (H.R. Rep. 101–964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Alternatively, Grantees may require a minimum contribution from all participants.

In order to provide flexibility, we have chosen not to define "periodically," thus allowing each Grantee to determine the most appropriate intervals for reviewing and revising the sliding fee scale. Additionally, Grantees have the authority to consider factors other than income and family size (e.g., family composition, special needs children) in establishing sliding fee scales.

Pursuant to § 98.42(d), although we require Grantees to apply a sliding fee scale to services provided to specific children under § 98.51, the fee scale need not be the same as the fee scale applied to services under § 98.50. As discussed in §§ 98.21 and 98.51, we have determined that the statutory eligibility requirements of § 98.20 also apply to services provided under § 98.51. Requiring Grantees to apply a sliding fee scale to Block Grant services provided under § 98.51(b)(1) conforms to Congress' express intention that the Block Grant generally should provide financial assistance to low-income working families to help them find and afford quality child care services for their children. It is also consistent with requirements in the Act and regulations that Grantees give highest priority for services under § 98.51 to geographic areas with high concentrations of low-income children eligible under chapter I of the Elementary and Secondary Education Act, and then to other areas with concentrations of poverty and areas with very high or very low population densities.

The Act and the implementing regulation at § 98.42 require Grantees to base fee scales on family income and the size of the family. Our review of Grantee Plans revealed a number of misunderstandings. Some fee scales did not actually reflect variations in family size and income. After reviewing applicable statutory language, we believe that Congress intended that fee scales must reflect these factors. We therefore require that Grantee fee scales reflect family size and income; some Grantee Plans must therefore be amended.

The fee must vary to some extent as family size increases. Although altering the fee based on the number of children in care is permissible, it does not satisfy the statutory requirement. Similarly, income eligibility limits that vary based on family size satisfy the requirement that eligibility be limited to 75 percent of State median income for a family of the same size; they do not satisfy the family size requirement for the sliding fee scale.

Our review of Grantee Plans also revealed fee scales that have the effect of varying the fee based on the category of care selected by the parent. For example, two families with the same income and family characteristics choose providers in different categories. Even though the providers' charge is the same, the families' fees are different. This policy is not permissible. While Grantees may take into account the cost of care in establishing a fee scale (e.g., the family pays a percentage of the cost of care), the Grantee may not vary the fee scale based on the category of care or the type of provider.

The fee scale may also take into consideration other factors. One such factor is the number of children in care. The fee for additional children need not be a multiple of the fee for one child. In fact, in terms of affordability, Grantees should consider a reduced fee when additional children are in child care.

Comment: Many commenters suggested that we should include language that would require Grantees to establish sliding fee scales that are "affordable" or that we should give guidance in establishing fees that are affordable.

Response: We considered requiring Grantees to establish affordable sliding fee scales. We ultimately determined, however, not to establish and enforce a universally applicable standard of "affordability." We believe that such a standard would:

(1) Unnecessarily undermine Grantees' flexibility to establish service priorities;

(2) Be administratively difficult to monitor and enforce; and

(3) Preclude variation, which is inherent in the nature of block grants.

Regarding guidance, we intend to provide Grantees with technical assistance in a number of areas. Through our central and regional offices, we will serve as a clearinghouse for Grantees who desire information on practices used by others to increase the availability, affordability, and quality of child care.

Comment: One commenter suggested that we should allow States to waive the sliding fee scale for protective services cases.

Response: As discussed in § 98.20, the final rule clarifies that Grantees have the option of waiving income eligibility and fees in protective services cases on a case-by-case basis due to the unique nature of those cases.

Comment: One commenter suggested that foster parents should be exempt from the fees charged under the sliding fee scale.

Response: As we discuss in the preamble to § 98.2, for the purposes of the Block Grant program there is a basic distinction between protective services and foster care cases. Unlike protective services cases, there is no basis for waiving the fee requirement in foster care cases. However, because Grantees have flexibility, as discussed in § 98.20, to treat the foster child as a family of one for the purposes of determining income for eligibility and fees, Grantees could effectively reduce or eliminate fees in most foster care cases.

Payment Rates (Section 98.43 of the Regulations)

Section 658E(c)(4)(A) of the Act requires that payment rates for Block Grant services are sufficient to ensure that eligible children have equal access to comparable child care services. That is, Block Grant payment rates must allow children receiving Block Grant services equal access to comparable child care services provided to children whose parents are not eligible to receive child care assistance subsidized with Federal or State funds.

The Act also requires that payment rates consider variations in the costs of providing child care between different categories, as defined in § 98.2(h), and to children of different age groups, as well as the additional costs of providing child care for children with special needs. Therefore, Grantees must differentiate between center-based, group home, family, and in-home child care providers.

Comment: One commenter objected to the provision which states that nothing in this section shall be construed to create a private right of action.

Response: Section 658E(c)(4)(B) of the Act specifies that the assurance by the Grantee that the payment rates for child care under this program are sufficient to ensure that eligible children have equal access to child care services comparable to those provided to non-subsidized children does not create a private right of action. This requirement is statutory. Thus, no suit may be brought by a private individual or group to enforce this section. A person who believes the Grantee is violating § 98.43(a) can file a complaint, as described in § 98.93, concerning the failure of the Grantee to comply with its Plan.

We also wish to clarify that payment rates should reflect the maximum, not minimum, reimbursement that Grantees will make to a provider. In no case, however, should Grantees pay providers more than the provider's standard charge.

Comment: Many commenters suggested that we should change our definition of categories of care to include separate categories for relatives and other unregulated types of care.

Response: As discussed in § 98.2, we determined that the distinction between categories of care, defined by the setting in which the child care takes place, and types of care, or the nature of the caregiver, is not only useful but also generally accepted practice. We have therefore retained our definition.

Comment: Even given the distinction between categories and types of care, many commenters strongly suggested that Grantees be permitted to differentiate within categories of care based upon the licensing and regulatory requirements placed upon a type of caregiver or based upon the "quality" of care provided. Many of these commenters stated that without such distinction, no incentive existed for providers to become licensed. On the other hand, a large number of commenters expressed support for the provision requiring equal payment rates for licensed and unlicensed providers.

Response: The requirement that payment rates must not differentiate within a category of care has been one of the most controversial issues of the interim final rule. On the one hand, we continue to believe that payment rates should not be based on the type of provider. We believe that care provided by non-licensed providers often entails similar ongoing costs to other types of care provided within the same category, regardless of the level of regulation. As stated above and at § 98.2, we have determined that such types of care would not be considered separate categories. For the purpose of determining rates, we therefore concluded in the preamble to the interim final rule that those providers must be reimbursed at the same rate as other providers in the same category. Thus, a relative taking care of a child in the relative's own home would receive the family child care rate; a relative taking care of a child in the child's own home would receive the in-home rate.

However, we are aware that payment rates for other child care programs allow Grantees to differentiate within

categories of care. In fact, differing levels of reimbursement within categories are currently permitted for other ACF-administered child care programs, including the At-Risk Child Care Program. To provide Grantees with the necessary flexibility to coordinate payment practices between programs, we now allow Grantees to establish different payment rates within a category of care. However, pursuant to the new regulatory language at paragraph (e) of this section, differential payment rates are permissible only in the following circumstances. First, Grantees must base any variations in payment rates within categories on actual differences in market costs. Grantees desiring to establish differential rates within a category of care must establish these rates using a methodologically sound system for determining market costs. Grantees must describe this system in their Plan. Second, differential rates are permissible under the Block Grant only when the Grantee is implementing a child care program in which services provided through the title IV–A child care programs and the Block Grant are delivered through a single, "seamless" system. Attributes of such a system must include: the same payment rates for all programs, the same sliding fee schedules, and the same mechanisms for selection of and payment to providers. The latter means that the same certificate process and range of provider choices must be available in all programs. The payment rate differential may not exceed 10 percent. We established this limit based on our review of Grantee payment rates under the Block Grant and the title IV–A child care programs. We may amend the regulation if information becomes available which leads us to conclude that this limit is inappropriate. The regulation at § 98.43(e) reflects these requirements and the limitation. We have also amended Plan requirements at § 98.16(a)(12) accordingly.

In providing Grantees the flexibility to use differential payment rates, we nevertheless wanted to ensure that such rates did not inappropriately disadvantage certain types of providers. For example, in a State where sectarian child care centers are license-exempt, the State might otherwise have categorized unlicensed centers with all other unlicensed providers and paid them at a rate far below their actual charges. The requirement that differential payment rates be based on a methodologically sound system for determining market costs and which sets payment rates based on the category of care will prevent this problem from occurring. Grantees may not simply establish a lower rate for unlicensed care based on the premise that such care should be reimbursed at a lower rate. Any differentials must reflect differences in market costs and must distinguish between categories of care. We believe that this approach provides Grantees with the option to reflect real market-driven differences and to create a seamless child care system, yet prevents providers from being inappropriately disadvantaged. In addition, payment rate schedules which differentiate within categories are subject to parental choice requirements at § 98.30(g).

For example, if a Grantee conducted a market survey which distinguished between licensed and unlicensed group home day care providers and found a significant difference in rates, the payment rate schedule could reflect this difference. The Plan would reflect the basis for making this distinction. A Grantee could not simply indicate that it had no basis for determining the rate for unlicensed care and then set a payment rate that was an arbitrarily-set percentage of the rate for licensed care. We intend to issue additional guidance regarding establishing payment rates for all ACF programs in the future.

We are aware that some States preclude the use of public funds in or by sectarian institutions. For such States, differential payment rates may still be an option because funding through certificates is assistance to the parent, not the provider. Thus, a State could determine that State funds, which must be included as a match for child care provided under title IV–A, would be assistance to the parent and could be used with the same range of providers required under the Block Grant. Upon making this determination, such a State could then apply to implement differential payment rates.

Grantees should note that if they wish to create incentives for providers to become licensed, they can do so as a quality improvement activity under the Block Grant. For example, the Grantee could reimburse providers for costs incurred in meeting licensing requirements.

Comment: One commenter stated that previously unregulated providers should be reimbursed for the cost of meeting regulatory requirements.

Response: As discussed above, Grantees have the ability to provide such reimbursement as a quality improvement activity under the Block Grant. It would not be appropriate to use the payment rate to provide this reimbursement.

Comment: We received many comments regarding equal access to comparable care. Many commenters agreed with our decision regarding the interpretation of equal access. One commenter suggested that equal access to comparable care should mean access to equal quality care for all children.

Response: As discussed in the interim final rule, the regulations require Grantees to assure that payment rates ensure access to all categories of care. Because the Act does not expressly define "equal access," we were required to consider potential definitions. Broadly interpreted, equal access to comparable child care services could mean that Grantees must assure that those receiving Block Grant services must have access to any child care services available in the area served by the Grantee, regardless of cost. Such an interpretation could present significant restrictions on a Grantee's ability to target resources. We believe the better interpretation is that "comparable" does not mean "identical," and, although care of the same category must be available, access to every provider in that category is not required.

We believe that Congress clearly intended that the Block Grant should: (1) Allow access to quality child care for a broad range of low-income families, rather than unlimited access to the most expensive care available to a few eligible families; and (2) allow parents discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, neighbors, family providers, centers, schools, and employers. We therefore interpret equal access to comparable child care services to mean that Grantees must ensure that payment rates are sufficient to provide access to categories of care "comparable" to child care services available to children receiving unsubsidized care. That is, the payment rate(s) must be sufficient to provide for a choice of center-based, group home, family, and in-home child care. (In-home care may be limited in certain circumstances, as discussed in the preamble at § 98.30.)

We thus require that payment rates provide for access to a broad range of providers. At a minimum, and analogous to regulations at §§ 98.40, 98.41 and 98.45, we require Grantees to assure that their payment rates are consistent with the safeguards for parental choice in § 98.30. Within this constraint, Grantees have flexibility to limit payments for child care services.

In keeping with our philosophy of providing flexibility to Grantees, we do not require Grantees to set limits on payment rates for child care services, nor do we require a single methodology in determining payment rates. Grantees may use any methodologically sound system, including the use of local market rates established pursuant to 45 CFR 255.4 for title IV–A child care, that meets the requirements outlined above. In order to promote program consistency, we suggest that Grantees consider the methodology and payment rates set for other programs.

A description of the methodology for setting payment rates must be included in the Plan, pursuant to § 98.16(a)(12) of the regulations.

Comment: Two commenters thought that payment rates were limited to the 75th percentile.

Response: Payment rates for the Block Grant are not limited to the 75th percentile. Grantees can use any methodologically sound system for determining rates.

Many commenters supported the flexibility given to Grantees to pay for child care at rates above the 75th percentile. As discussed in § 98.50 of the preamble, however, if Grantees are using Block Grant funds to subsidize title IV–A child care rates, Grantees may not use Block Grant funds to subsidize those rates to a level above the local market rate (the 75th percentile).

We note here that there is a great deal of misunderstanding regarding the meaning and effect of defining the local market rate at the 75th percentile for the title IV–A child care programs. This definition is necessary to give meaning to the statutory limit on payment in those programs—the local market rate. For those programs, States must survey providers in different categories of care, and, taking into account factors such as the age of the child and charges for special needs children, establish a local market rate, or maximum, for each. This rate is set at the 75th percentile of charges within a category.

The methodology for establishing the 75th percentile is as follows: Rates within categories are arranged from the lowest to highest. The 75th percentile is that rate at or below which 75 percent of the providers in the category charge. That is, if there are 100 providers surveyed in a category, the 75th percentile is the rate separating the 75 providers with the lowest rates from the 25 who are most expensive; thus, only 25 of the 100 providers surveyed would charge more. This issue is discussed in more detail in the title IV–A At-Risk final rule.

Comment: One commenter suggested that we should ensure that the market rate is paid for child care.

Response: We agree that payment rates should reflect market rates for child care, and we believe that is, in part, what Congress intended by using the phrase "equal access." Also, we have listed in paragraph (b) of this section the factors that Grantees must consider, at a minimum, when establishing their child care rates. We expect Grantees to establish payment rates that reflect actual market rates, including differentials related to the child care setting (category of care), the ages of children to whom care is given, and special needs.

Based on a review of Block Grant Plans, we have determined that some Grantees' payment rates do not vary based on the category of care, age of the child, or special needs. However, since it is possible that there is not a meaningful variation in costs in a particular market based on one or more of these variables, this lack of variation may be permissible. We require that the absence of such variation(s) be explained in the Plan. In addition, rates which do not reflect all factors are not approvable unless the basis for their absence is due to market conditions. We have revised the regulations at § 98.16(a)(12) to reflect this requirement. We intend to issue guidance in the near future regarding these rate-setting issues for both the Block Grant and the title IV–A child care programs.

In the interim final rule at paragraph (e) of this section, we required that Grantees make payment rates available upon request to the Secretary. Our review of the Plans indicated that there is a need to review payment rates to ensure that statutory and regulatory requirements are met. We have therefore added language at § 98.16(a)(12)(i) which requires that Grantees include payment rates in their Plans.

Priority for Child Care Services (Section 98.44 of the Regulations)

This section of the regulation implements section 658E(c)(3)(B)(i), which requires States to give priority for services provided under § 98.50 to children of families with very low incomes and to children with special needs. It also requires Grantees to consider family size when determining low-income levels.

Under these regulations, Grantees have discretion in defining "very low income" and "special needs." Grantees must include a description of the plan for prioritization in the Block Grant Plan, pursuant to § 98.16(a)(7).

Comment: One commenter agreed with the flexibility we gave Grantees to define special needs.

Response: Grantees should note that the flexibility for defining "special needs" relates primarily to the purposes of establishing priority for service or establishing differential sliding fee scales or payment rates. This flexibility does not permit Grantees to extend the age of eligibility for any child other than a child physically or mentally incapable of caring for himself or herself, as provided at § 98.20(a)(1).

We note here that there is some confusion regarding the different references to children with special needs. The term "special needs" is used in three contexts—for targeting resources, for establishing eligibility, and for setting payment rates. For example, some Grantees have defined special needs more broadly (e.g., homeless, non-English speaking) for the purpose of targeting the 75 percent portion while using the more standard definition (children with mental or physical disabilities) for eligibility or payment rates. We caution Grantees to ensure that Plans and instructions to eligibility workers clearly distinguish between the different uses of the term "special needs," if applicable.

Registration (Section 98.45 of the Regulations)

Under section 658E(c)(2)(E)(ii) of the Act, Grantees must provide assurances that child care providers which are not required to be licensed or regulated under State or local law are required to register before receiving any payment under the Block Grant. They must design registration procedures to: facilitate appropriate payment to providers; permit the Grantee to furnish information to providers; and allow providers to register after their selection by the parents of eligible children, but prior to payment.

Registration applies only to child care providers which are not otherwise required to be licensed or regulated under State or local laws. Generally, registration will pertain to providers, such as a neighbor or a relative caring for an eligible child, who are not licensed or regulated under State or local law for the purpose of providing child care.

Many States already have procedures called "registration." The regulation at § 98.45 speaks only to registration necessary under the Block Grant. As discussed in § 98.40, we distinguish between registration required under State or local law and registration

required for the purposes of the Block Grant.

The regulations give Grantees flexibility in establishing a registration process. As previously discussed in § 98.30, however, the registration process established by Grantees must be consistent with the safeguards for parental choice in § 98.30. This requirement is included in paragraph (d) of this section. Registration should facilitate, not impede, parental choice.

As described at § 98.45(b), payment must be timely so that providers are not discouraged from offering child care services. Although we are not regulating a timeframe between request for registration and payment, Grantees must ensure that it is a reasonable period. If we find that timeframes are longer than providers should reasonably expect, we may regulate further in this area. As specified at § 98.16(a)(13) of the regulations, a Grantee's Plan must also include a description of the registration requirements and the timeframes.

Comment: Many commenters stated that the registration requirements imposed by the Block Grant should be more stringent, with some stating that the parental choice safeguards will also deter States from imposing more stringent registration requirements. Other commenters suggested that the regulations provided conflicting direction about registration, suggested that providers with substandard facilities not be permitted to register, or supported the minimal registration process provided that adequate health and safety requirements are in place.

Response: The fact that there are two separate and distinct requirements for Block Grant providers which are not otherwise licensed or regulated by the Grantee seems to cause confusion. Providers which are not otherwise licensed or regulated must: (1) Meet health and safety requirements as detailed at § 98.41; and (2) be registered prior to receiving payment. The regulations require that registration of providers under the Block Grant must be a simple process, such as giving the Grantee the provider's name and mailing address, although Grantees may also require providers to supply additional information at the initial contact, such as birth date or other identifying data. Grantees might also collect other information, such as the standard charge for the care, the number of children served, and types and ages of children served. This additional information could facilitate the provision of appropriate training or information, add to the Grantees' knowledge of the community or serve as a basis for future referrals. Regarding the statutorily mandated registration process, Grantees should collect only the information that is needed to facilitate appropriate payment to the provider and to permit the Grantee to furnish the provider with information on training, technical assistance, and any relevant information concerning health and safety requirements.

We believe that the Act clearly intended to distinguish the registration process from other requirements for otherwise unregulated providers. We therefore caution that registration should not be a burdensome process which discourages potential providers from offering child care services.

However, in addition to registration, Grantees must also assure that procedures are in place to ensure that registered providers comply with the health and safety requirements pursuant to § 98.41. Grantees should note that, although registration is a process and requirements are limited to those expressly delineated in the regulation, they retain authority to impose relevant additional standards, e.g., criminal records checks, under their authority to establish health and safety standards for all providers. Such requirements are not viewed, for these purposes, as registration requirements, but rather as health and safety requirements.

Comment: One commenter expressed support for allowing sectarian providers to register.

Response: Section 658E(c)(2)(E) of the Act requires that all providers which are not otherwise licensed or regulated must be registered prior to receiving payment under the Block Grant.

Comment: Some commenters questioned whether providers should be allowed to care for children before the provider meets all health and safety standards.

Response: Section 658E(c)(2)(E)(ii) of the Act expressly states that all child care providers must be registered prior to receiving payment under the Block Grant. Section 658E(c)(2)(G) of the Act similarly requires that all Block Grant child care providers must comply with all applicable State or local health and safety requirements. Since the Act does not require that such requirements must be met prior to payment being made, where such requirements are time-consuming, we advise Grantees to authorize registered providers to begin caring for an eligible child pending completion of applicable requirements; such authorization will avert delays in the provision of child care services. In order to ensure informed parental choice, we recommend that States establish a process through which parents in such circumstances are fully informed that the provider in question has not yet been determined to meet all applicable requirements (additional discussion of reasonable timeframes in meeting standards or requirements can be found in the preamble at § 98.40).

Nondiscrimination in Admissions on the Basis of Religion (Section 98.46 of the Regulations)

Section 658N of the Act contains a number of provisions related to nondiscrimination on the basis of religion. As discussed in the preamble to the definitions in § 98.2 and in the response to comments on this section, these provisions distinguish between certificates, which generally do not trigger these requirements, and grants, contracts and loans, which do trigger the requirements. Under section 658N(a)(2) of the Act, child care providers, other than family child care providers, that receive assistance in the form of grants, contracts or loans under the Block Grant shall not discriminate in admissions decisions against any child on the basis of religion. This does not prohibit such a provider from selecting a child for a child care slot who individually, or whose family, regularly participates in other activities of the organization that owns or operates the provider, as long as the slot is not funded directly, i.e., by grant or contract, through the Block Grant.

Notwithstanding these provisions, section 658N(a)(4) of the Act specifies that, if assistance provided through grants, contracts, loans or certificates under the Block Grant, or through other Federal or State funds, amounts to 80 percent or more of the provider's operating budget, that provider may not receive further Block Grant funds through grants, contracts, or certificates unless its grant, contract or admissions policy specifies that it will not discriminate, on the basis of religion, in admitting any child.

We interpret section 658N(a)(2) to generally prohibit religious discrimination in admissions against children by providers receiving assistance under the Block Grant. We therefore note in the regulation that this provision refers to providers receiving assistance for child care services funded through grants, contracts, or loans under both §§ 98.50 and 98.51. We also note that family child care providers, as defined at § 98.2(r), are exempted from this provision, as are providers receiving only certificates under the Block Grant.

Under paragraph (b) of this section, for slots that are not directly funded under the Block Grant, a sectarian organization, as well as any other

provider, can select children on the basis of a family's participation on a regular basis in other activities of the organization. For slots covered by a grant or contract, providers may not exercise such preference policies.

However, if the combined assistance from Federal and State programs, including the direct and indirect assistance from the Block Grant, amounts to 80 percent or more of the provider's operating budget, the exceptions mentioned above do not apply. We interpret assistance to include all Block Grant assistance, i.e., grants, contracts, loans, and certificates. The Grantee must not permit Block Grant funds to be paid to such a provider until either the provider's grant or contract, or its admissions policy, includes language assuring that it does not discriminate on the basis of religion in admitting children.

Paragraph (c) of this section places responsibility for this requirement on the Grantee, since the Grantee or its designee is responsible for grants and contracts, as well as services provided through certificates.

Comment: Several commenters stated that in applying the religious nondiscrimination provisions, no distinction should be made between providers receiving grants, contracts and loans, and providers receiving certificates.

Response: The application of the religious nondiscrimination provisions only to providers which receive contracts, grants or loans, rather than those who receive certificates, is based on the language of the Act.

In all sections of the Act, except section 658N which deals with nondiscrimination, the Act refers to providers of child care services "for which assistance is provided under this subchapter." Section 658N refers specifically to providers "who receive assistance under this subchapter." Thus, the regulation distinguishes between two types of assistance—grants, contracts and loans which are assistance to providers and certificates which are assistance to parents. This distinction helps to ensure the constitutionality of the use of certificates for child care by a sectarian provider. The language concerning services "for which assistance is provided under this subchapter" would include both types of assistance: assistance to the provider through grants, contracts and loans and assistance to the parents through certificates.

In contrast, the language concerning providers "who receive assistance under this subchapter" would include only grants, contracts and loans. We believe that in using this different language, the Congressional intent was to limit these nondiscrimination provisions only to those providers which receive assistance, that is, to providers which receive grants, contracts and loans.

Comment: Several commenters stated that the protection from nondiscrimination in this section should apply generally to child care services, not just to admissions.

Response: The statutory language prohibiting discrimination "in providing child care services" can arguably be interpreted to mean either access to services (admissions), or more broadly, the content of services after admission. We believe these nondiscrimination provisions apply only to the admissions of children because the other reading makes provisions of the Act unnecessary and illogical.

If section 658N(a)(2)(A) is read more broadly, to prohibit providers receiving grants and contracts from discriminating in services, then section 658M(a) would be unnecessary. Providers which receive grants and contracts would already be prohibited from using them for sectarian activities by 658N(a)(2)(A).

In addition, the broader reading would make the provisions of section 658N(a)(4) illogical. This section imposes specific requirements on providers which receive 80 percent or more of their budget from public funds (including certificates under the Block Grant) regarding discrimination in admission and hiring. It would be illogical for Congress to prohibit discrimination broadly in services, when a provider receives a grant or contract in any amount, but then only be concerned with admissions when a provider receives 80 percent or more of this funding from public funds. Therefore, we read sections 658N (a)(2)(A) and (a)(4) as applying only to admissions. Section 658N(a)(2) applies only to funds received under grant or contract. Section 658N(a)(4) includes providers which receive certificates when 80 percent or more of their budget is from public funds.

Nondiscrimination in Employment on the Basis of Religion (Section 98.47 of the Regulations)

Section 658N of the Act also includes a number of provisions related to nondiscrimination in employment on the basis of religion. Section 658N(a)(1)(A) provides that, in general, the provisions of any other Federal law or regulation relating to discrimination in employment on the basis of religion apply. Section 658N(a)(1)(B) creates an exception to this by allowing a sectarian organization to require that employees adhere to the religious tenets and teachings of the organization and to require that employees adhere to rules forbidding the use of drugs or alcohol.

The Act further provides, in section 658N(a)(3), that, with the exception of sectarian organizations, child care providers receiving assistance under the Block Grant in the form of grants, contracts and loans shall not discriminate in employment on the basis of religion if the employee's primary responsibility is or will be working directly with children in the provision of child care services, i.e., a caregiver as defined at § 98.2(g). However, a provider is not prohibited from hiring for any position, from qualified applicants for the position, an individual who is a member of, or who participates in, other activities of the organization that owns or operates the provider. The provisions of section 658N(a)(3) apply only to employees hired after the date of enactment of the Block Grant, November 5, 1990.

Finally, section 658N(a)(4) provides that notwithstanding any provision above, if 80 percent or more of the operating budget of the child care provider comes from grants, contracts, or certificates under the Block Grant or through other Federal or State funds, the provider may not receive further Block Grant assistance unless the grant or contract, or the employment policies of the provider, specifically provide that no person working for the provider will discriminate, on the basis of religion, in the hiring of caregivers.

We interpret section 658N to prohibit nonsectarian child care providers from discriminating on the basis of religion in hiring caregivers. However, from among qualified applicants for any such positions, a child care provider is not prohibited from hiring an individual who is already participating in other activities of the organization which owns or operates the provider.

Sectarian organizations, and the child care providers which are owned or operated by them, are exempt from the general rule and may require all employees, including caregivers, to adhere to the religious tenets and teachings of the organization and may require employees to adhere to rules forbidding the use of drugs or alcohol.

By stating that a sectarian organization may require its employees to adhere to its religious tenets and teachings, section 658N(a)(1)(B) of the Act contemplates that religious organizations may require more than outward conformity with prescribed standards of conduct while an employee

is at work. Section 658N(a)(1)(B) also permits religious organizations to require that employees adhere to rules forbidding the use of drugs or alcohol. Religious organizations may require that employees adhere both on and off the job to rules of the organization forbidding drug or alcohol use.

However, if 80 percent of the operating budget of a provider, including a provider operated by a sectarian organization, is derived from direct or indirect assistance under the Block Grant, i.e., grants, contracts, loans, and certificates, and from other Federal and State funds, there are two possible consequences. First, if the provider is operated by a sectarian organization, that provider loses the religious discrimination exception for caregivers. Second, for all providers, no further Block Grant funds are available to the provider, unless all grants or contracts under the Block Grant, or the employment policies of the provider, specifically provide that no person with responsibilities in operating the child care program, project, or activity, will discriminate, on the basis of religion in employment of caregivers. As with the nondiscrimination in admissions policies, paragraph (c) of this section places responsibility for these requirements on the Grantee.

Comment: As with § 98.46, nondiscrimination in child care services, several commenters stated that in applying the religious nondiscrimination employment provisions, no distinction should be made between providers receiving grants, contracts and loans, and providers receiving certificates.

Response: As discussed more fully in the response to the question in § 98.46, we believe the language of the Act requires the distinction between certificates and grants, contracts and loans.

Comment: We received a large number of comments supporting the ability of sectarian providers to hire employees who adhere to the provider's religious beliefs. However, one commenter stated that it would be hard to enforce "off-the-job" adherence to the religious tenets and teachings of the provider, including rules about drugs or alcohol.

Response: We believe that the ability to require employees to adhere to the religious tenets and teachings of the provider implies that the provider has the option to ensure itself that the adherence is real and thus extends beyond the hours the employee is on the job. However, it is up to the provider to determine if it will have off-the-job requirements and, if so, how it will enforce them.

Comment: A few commenters stated that the final rule should deal with other types of nondiscrimination, i.e., the issue of whether contracts, grants, loans and certificates constituted Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, all as amended.

Response: As noted in the preamble and regulation at § 98.13, we have revised the Application to require applicable assurances of nondiscrimination by Grantees pursuant to the implementing regulations for the above programs. Under those regulations it is clear that grants, contracts and loans are Federal financial assistance. We have requested information on the issue of certificates as Federal assistance from relevant sources and will provide guidance to Grantees in the near future.

Comment: A few commenters wanted the regulation to specifically prohibit States from imposing employment policies which would force providers to hire individuals with AIDS.

Response: There is no basis for the Department to preclude Grantees from implementing employment standards as they see fit. In addition, we have requested guidance from relevant sources on the possible application of the Americans with Disabilities Act of 1990 to this issue.

Subpart F—Use of Block Grant Funds

Child Care Services (Section 98.50 of the Regulations)

Under section 658E(c)(3)(A) of the Act, Grantees must allocate their Block Grant funds for specific purposes, according to percentages specified in subsequent paragraphs of the Act. We discuss the allocation requirements in this section and § 98.51. We require a description of the Grantee's use of the funds, based on those allocation requirements, in the Block Grant Plan as specified at § 98.16 (a)(7) and (a)(8).

Pursuant to section 658E(c)(3)(B) of the Act, Grantees must use funds that are not required to be reserved under § 98.51 for: (1) Child care services provided to eligible children on a sliding fee scale basis, either as a contracted service or through a certificate program; and (2) activities designed to improve the availability and quality of care. Because Grantees must reserve 25 percent for the purposes specified in § 98.51, by inference, Grantees must use the remaining 75 percent of their Block Grant funds on services and activities authorized under this section.

Child Care Services

As specified in the new regulatory language at § 98.2(l), for the purposes of section § 98.50, child care services are defined as the care given to an eligible child by an eligible child care provider. Pursuant to section 658E(c)(3)(B)(i) of the Act, the services authorized under this section must be provided to children who are eligible under the conditions specified in § 98.20(a), and they must be provided on the basis of a sliding fee scale. Further, the services must be provided through the funding methods under § 98.30 (i.e., under grants or contracts or through certificates). Grantees are not required to contract with any particular provider. In fact, section 658F(a)(2) of the Act indicates that Grantees have authority to impose additional limitations or conditions on contracts or grants, as opposed to certificates.

Grantees must give priority to children of families with very low income (taking into consideration family size) and to children with special needs pursuant to § 98.44. We discuss these priority rules in more detail under the preamble for § 98.20. We cover the requirements for a sliding fee scale under § 98.42.

Grantees may not use Block Grant funds to subsidize the rates for child care provided under title IV–A of the Social Security Act above the local market rate (i.e., the 75th percentile). The statute for the title IV–A programs provides that Federal matching funds are only available up to the local market rate. Using Block Grant funds to contravene the funding limits in the IV–A programs would violate Federal appropriations law, including the axiom that an agency cannot do indirectly what it is not permitted to do directly.

Grantees can subsidize payment rates between the statewide limit and the 75th percentile. However, if Grantees use Block Grant funds to supplement title IV–A child care payments in this manner, all the Block Grant requirements apply to such care. For example, care would have to meet all health and safety requirements, and providers would have to be registered if they were not licensed or regulated by the Grantee.

Comment: Several commenters asked what was meant by child care services. Several also stated that child care services should be defined to include such activities as eligibility determinations, training, and resource and referral.

Response: We have revised the regulation to include a definition of child

care services at § 98.2(l). We limit the definition to the care of eligible children by eligible child care providers, as we believe this was the intent of Congress. Congress set aside other funds for such activities as resource and referral and training.

Comment: A few commenters requested that we clarify whether early childhood development and before- and after-school programs were child care services under § 98.50.

Response: Grantees have flexibility to specify the types of child care which they include as "child care services." As both early childhood development and before- and after-school programs can provide care for children, they can be child care services under § 98.50. Because child care certificates must be available as an option whenever services under § 98.50 are offered, certificates could be used for early childhood development and before- and after-school programs, in this example.

Comment: One State asked whether respite care for children with disabilities could be funded as child care services.

Response: Although respite care for children with disabilities is a type of child care service, it cannot be funded under the Block Grant unless the family meets the eligibility requirements of § 98.20. Under § 98.20, care subsidized by the Block Grant must be needed by the parent because the parent is working or in education and training, or the child must be receiving or in need of protective services. Respite care is provided to give parents time off from parenting, not because a parent is working or in training. The Block Grant could fund respite care for a child with a disability only if the child also needed or received protective services.

Comment: Several commenters stated that the regulations should allow Block Grant funds to supplement other child care rates. Two commenters stated that supplementing rates for title IV–A child care should include supplementing above the 75th percentile, the basis for setting local market rates for the title IV–A child care program.

Response: We have rewritten the preamble language on supplementing other child care rates to clarify that States may generally supplement such rates. For title IV–A child care, States may only supplement rates between the statewide limit and the 75th percentile. As discussed above, supplementing above the 75th percentile would violate Federal appropriation law.

It has come to our attention that, for title IV–A child care, some States are paying an amount that is less than the 75th percentile, but not through the use of a statewide limit. In those cases, States are out of compliance with title IV–A rules which require payment of actual costs up to the lower of the statewide limit or the 75th percentile. States may not use Block Grant funds to correct this violation of the title IV–A rules.

As noted above, if a Grantee chooses to supplement the rates of other child care programs, all the requirements of the Block Grant apply to that care.

Other Authorized Activities

Other authorized activities include the costs of administration and activities to improve the availability and quality of child care services. Although the Act does not specifically authorize administrative expenses, we will permit limited use of Block Grant funds to cover such costs as necessary expenses of operating the program.

The Act does not directly define what constitutes activities to improve the availability and quality of services for the purpose of this 75 percent set-aside. However, for the purpose of the 25 percent set-aside (which is discussed in the following section), the Act lists five activities for improving the quality of care (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training, and staff compensation) and identifies two areas for activities to increase availability of child care (i.e., early childhood development and before- and after-school services).

Grantees have broad flexibility to define allowable activities for improving availability and quality of care under this section. Grantees can include activities authorized under § 98.51 as well as any other activity which would improve the availability and quality of child care. Grantees are not required to fund any particular activities and may, in fact, choose to use all the funds for child care services instead.

Comment: One commenter requested clarification on the availability activities which could be funded under § 98.50.

Response: We have clarified the preamble language to reflect that the Grantee can fund the same type of availability activities as are authorized under § 98.51 but is not limited to these.

Limits on Other Authorized Activities

In the Conference Report, Congress indicated its intent that a "preponderance" of the 75 percent funds "be spent on child care services and a minimum amount on other authorized activities" (H.R. Rep. 101–964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Based on this language, in paragraph (d) of this section, we have included a requirement that Grantees spend a preponderance of funds on services and a minimum amount on the other activities authorized in this section. We have also specified that, to meet this requirement, Grantees must spend at least 90 percent of the funds for child care services, with no more than 10 percent of the funds under this section available for other authorized activities, including activities to improve the availability and quality of child care and administrative costs. However, we allow Grantees to expend up to 15 percent for administration and other authorized activities in the limited circumstances described below.

While the "preponderance" language alone in the Conference Report would not seem to require that Grantees spend the substantial majority of these funds on services, in using the words "minimum amount" the managers clearly indicate that they want the least possible amount spent on other authorized activities. We categorize other authorized activities as activities to improve availability and quality, as well as administrative costs.

We believe the 10 percent limit is reasonable. First, Congress called the section governing the 75 percent set-aside "child care services;" the use of this title indicates that Congress, in fact, considered the purpose of this section to be services, not other activities. Moreover, the Conference Report states, "it is the conferees' intent that a preponderance" of the 75 percent funds "be spent on child care services." We took this as a clear indication that between 51% and 100% of the funds allotted under this section must be spent on child care services.

The Conference Report also states that it is the conferees' intent that "a minimum amount" be spent "on other authorized activities." We looked to the Act for an indication of what Congress intended by the word "minimum." The Act reserves twenty-five percent of the total Block Grant for activities to improve the quality of child care and for activities to increase the availability of early childhood development and before- and after-school services. Within this twenty-five percent reserve, twenty percent is reserved for quality activities. We did not think that Congress would characterize either of these amounts (i.e., twenty-five percent or twenty percent) as minimal. Thus, we determined that by "minimum" Congress meant an amount less than twenty percent.

We therefore determined that Congress, by using not only the word "preponderance" in relation to child

care services but also the word "minimum" in relation to other authorized activities, intended us to require that the amount spent on services must be closer to 100% than to 50%.

Secondly, Congress provided elsewhere for expenditures on improvements in availability and quality. Further, it is essential that Grantees spend a substantial amount on services under this section in order to ensure that parents have sufficient opportunity to exercise parental choice. Finally, the Act does not even specifically provide for administrative costs; therefore, such costs should be held to a minimum.

In the interim final rule, we permitted Grantees to expend up to 15 percent of funds under the services portion of the Block Grant for administration and other authorized activities for two years to acknowledge start-up costs for the program. Based on information provided during the comment period, we believe that in some cases the costs of administering a well run certificate program may justify administrative expenditures which alone could approach ten percent. For this reason, upon petition to the Department in the annual Application, we permit Grantees to expend up to 15 percent for administration and other authorized activities on an ongoing basis, but only if the Grantee can show that the expenditures for operating the certificate program and related consumer education equal or exceed ten percent of the funds available under this section. This requirement will permit Grantees to use some funds for other authorized activities, yet follows the guidance in the Conference Report. We have changed the regulation at § 98.50(d) and § 98.13(a)(6) (the application process) accordingly.

In § 98.16(a)(7)(i), we require a Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6), to submit a proposed budget for expenditures over the program period, including a breakout of the estimated costs for administration and services under this section.

Comment: We received a large number of comments on the limit on expenditures under the 75 percent specified in the interim final rule. While most commenters expressed approval of limiting other authorized activities so that a majority of the funding was spent on child care services, very few supported the 90/10 split in the interim final rule.

From the commenters suggesting some type of change, we received numerous proposals. While a few commenters suggested eliminating the limit entirely, a majority supported requiring some kind of limit on other authorized activities, particularly administration. However, commenters disagreed on the amount and form of the limitation. A few commenters believed the interim final limit was too high and that administrative expenses should be separately limited to some smaller amount. A few proposed a higher limit for administration. Most commenters thought the limit in the interim final rule was sufficient for administrative costs, but that there should be a separate limit for availability and quality services or that the overall limit should be raised to allow for availability and quality services.

Response: In keeping with the intent of Congress that a "preponderance" of funds be spent on child care services and a "minimum" on other authorized activities, we believe it is reasonable to limit these other activities, and the majority of commenters agreed.

We considered setting separate limits for administration and activities to improve the availability and quality of child care. We are particularly concerned, as were a number of commenters, that administrative costs be kept to a minimum so that Block Grant funds go to child care services and activities. However, we decided that separate limits were not administratively feasible. Although a few activities can be clearly classified as administrative, for most activities, arguments can be made on both sides for classifying them as either administrative or as quality and availability improvements. For example, many of the quality activities specified by Congress, such as training, or monitoring providers for compliance with licensing and health and safety requirements, could also, and would usually, be considered administrative activities.

To help ensure that excessive amounts are not used for clearly administrative activities, Grantees are required to break-out expenditures under § 98.50 in their annual Application. We will examine those break-outs, and we encourage interested groups within the Grantee's service area to request copies of the Application and to comment on its division of funds. In the future, if we notice problems with excessive administrative expenses, we may regulate further in this area.

Comment: A few commenters stated that all of the 75 percent funds should be used for direct child care services.

Response: The Act specifically provides that some portion of the 75 percent funds can be spent on activities to improve the availability and quality of child care.

Comment: One commenter suggested that Grantees should be able to request a waiver of the limit.

Response: We are not providing for a waiver of any of the program's requirements, as the Act does not include any waiver authority.

Comment: One commenter stated that the Act did not expressly limit funding on other authorized activities.

Response: Although the Act does not limit funding for other authorized activities, we believe the Conference Report clearly expresses Congressional intent that such funding be limited by specifying a minimum amount should be spent on them. In addition, such expenditures must be limited if Grantees are to spend a preponderance of the funds on child care services.

Tribal Grantees

As discussed in more detail in § 98.83, the requirements and limitations on the division of funds for Tribal Grantees vary. First, for all Tribal Grantees, the allocation formula includes a base amount, plus an additional amount per child. The purpose of the base amount is to ensure that Tribal Grantees have enough funding to operate a viable program. Therefore, the base amount may be expended for any costs consistent with the purposes of the Block Grant, including child care services, quality and availability activities and administration. Thus, the requirements in §§ 98.50 and 98.51 regarding the allotment of funds would apply only to the per-child amount.

Second, Tribes with grants less than $225,000 (or such amount as set by the Secretary) are not required to set aside 25 percent of Block Grant funds for quality improvements, early childhood development, or before- and after-school programs. These Grantees must nevertheless expend a minimum of 63.75 percent of the per-child amount on direct child care services (the equivalent of 85 percent of 75 percent).

Activities to Improve the Quality of Child Care and to Increase the Availability of Early Childhood Development and Before- and After-School Care Services (Section 98.51 of the Regulations)

This section of the regulation addresses the requirements at sections 658E(c)(3)(C), 658G, and 658H of the Act regarding how 25 percent of the total Block Grant funding must be spent. At

least 18.75 percent of the total Block Grant amount (i.e., 75 percent of the 25 percent) must be spent for early childhood development and/or before- and after-school services (in the interest of brevity, these will be referred to as section 658H services). At least 5 percent of the Block Grant funding (i.e., 20 percent of the 25 percent) must be spent on improvements in the quality of child care services. The Act does not address the use of the remaining 1.25 percent. Thus, the regulations provide that this remaining amount may be used either for the quality activities or for the early childhood development and/or before- and after-school services. We have revised the language in paragraph (f) of this section to clarify that expenditures on administrative activities associated with each type of activity will be included with program expenditures to determine if the percentage requirements have been met.

Activities for Improving the Quality of Child Care

Section 658G of the Act lists five possible activities for improving the quality of child care. We incorporated this list (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training and staff compensation) in paragraph (b)(2) of this section of the regulation.

With the exception of grants or loans to assist providers in meeting requirements (section 658G(2) of the Act), the Act and regulations do not specify the form in which funds related to quality improvements are to be provided. Thus, Grantees may use grants, contracts, or other forms of assistance which they deem appropriate. (We discuss loan programs which Grantees establish to assist providers in meeting applicable requirements in greater detail in the preamble and the regulations at § 98.60 (h) and (i).) Grantees may set additional limitations or conditions on the receipt of grants or contracts, pursuant to section 658F(a)(2) of the Act.

Comment: A majority of commenters expressed support for State flexibility for designing programs under § 98.51 designed to meet the quality needs of the Grantee. However, some commenters thought the regulation should emphasize the importance of training and staff compensation as tools for achieving quality child care.

Response: While we recognize that training and staff compensation are two important indicators of quality child care, the decision on whether to fund such activities and at what level is appropriately left to the Grantee. In fact, the purpose for the public hearing required by § 98.10 is to allow a specific opportunity for individuals and groups to inform the lead agency of their views on how the program should be designed. Individuals with ideas in this area should contact their lead agency.

Comment: Several commenters noted that consumer education should be included as a quality activity.

Response: The Act lists the five activities which are considered quality activities for the purposes of § 98.51 funding. Monitoring compliance with standards and health and safety requirements is one of the five activities specified in the Act. In our view, providing parents with the consumer education to recognize quality care, e.g., determining whether health and safety requirements are met, can be a component of the monitoring process. Thus, consumer education can be included as monitoring, an allowable quality activity under this section.

Comment: One State asked for ideas on additional quality activities that could be funded under § 98.51.

Response: Because of the statutory language, § 98.51 limits quality activities to the five types of activities specified in section 658G of the Act and listed at § 98.51(b)(2) of the regulation. Grantees must fund quality improvements which do not fit into those five areas under § 98.50 (see additional discussion in that section).

Comment: Several commenters wanted us to clarify that the regulations do not prohibit funding to sectarian organizations for training, staff compensation, the purchase of equipment or minor remodeling to meet health and safety requirements.

Response: Nothing in the regulation would prohibit a Grantee from choosing to fund sectarian organizations through grants and contracts for such purposes.

Section 658H Activities

Under section 658H of the Act, Grantees must fund activities to establish or expand and conduct early childhood development or before- and after-school programs, or both. Grantees are not required to use these funds on the direct provision of services. Rather, they may use funds for any activities which help to "establish or expand and conduct" such programs. For example, Grantees may provide funds to institutions and other organizations for items such as minor remodeling and equipment, as well as for additional slots; they could also issue grants to help an organization set up a program of home-based, early childhood development services.

We have not provided Federal definitions of early childhood development programs, before- and after-school programs, or academic programs but have allowed Grantees to define them. For example, such programs could be full- or part-day. However, pursuant to § 98.54, funds must not be used for tuition or any services which supplant or duplicate the academic program of any public or private school.

If a Grantee is funding slots with the funds under this section, a child must meet the eligibility requirements specified under § 98.20(a) in order to be selected to fill one of those slots. In addition, as explained in § 98.21(b), we allow Grantees to establish additional eligibility and priority rules. Such rules may be similar to, or different than, the eligibility criteria established for child care services under § 98.50. As discussed in § 98.42, the Grantee must also apply a sliding fee scale to such slots. This sliding fee scale may also be similar to, or different than, the sliding fee scale established for child care services under § 98.50.

The Act establishes priority for grants for section 658H services based upon geographic areas rather than the individual basis used to establish service priority under § 98.50 (the geographic priorities are found in paragraph (c)(2) of this section). Under the Act, Grantees must give the highest priority to geographic areas that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act. Thus, organizations that provide services to children in local school districts which have high concentrations of low-income children eligible for Chapter I basic grants receive first priority for section 658H services. As provided in section 1006, districts are considered to have high concentrations if they have 6500 such children, or if such children make up at least 15 percent of all children in the district. Grantees must give secondary priority for grants or contracts for section 658H services to other areas of poverty and areas of high and low population density. We allow Grantees to define what constitutes poverty and high and low population density.

The Act and the regulations are both clear that Grantees may fund section 658H services only through grants and contracts. As discussed previously in the section on quality improvement activities, Grantees may set additional limitations or conditions on the receipt of grants or contracts by providers, pursuant to section 658F(a)(2) of the Act.

Similar to our policies on the funding of registered providers, Grantees may fund programs which do not currently meet applicable State or local regulatory requirements but are expected to meet such requirements; they are not limited to funding of currently licensed or regulated providers. It would be difficult for Grantees to establish new programs if they were limited to funding currently licensed or regulated providers.

In § 98.16(a)(8)(i), we require the Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6)(i), to submit a proposed budget for expenditures over the program period, including a breakout of the costs for administration and activities under this section.

Comment: Several commenters asked when the eligibility requirements of § 98.21 and the sliding fee scale under § 98.42 applied to early childhood development and before- and after-school programs.

Response: We have clarified the language in the preamble to specify that eligibility requirements and the sliding fee scale apply when the Grantee is purchasing slots. If the Grantee is funding parts of the program which cannot be associated with particular children, such as purchasing start-up equipment or paying part of the rent, application of the eligibility requirements and sliding fee scale is not mandatory. Grantees would, of course, have the option of applying them to all children in the center.

Comment: Several commenters thought that Grantees should be required to fund early childhood development and before- and after-school programs under § 98.51 with certificates as well as grants and contracts.

Response: The Act and regulations are clear that programs funded under § 98.51 must be funded with grants and contracts. Certificates are an option only for services under § 98.50. However, as discussed more fully in the preamble to § 98.50, certificates under § 98.50 could be used for early childhood development and before- and after-school programs, including those which receive grants or contracts under § 98.51.

Comment: Several commenters asked about the requirements for before- and after-school programs funded under § 98.51. In particular, they questioned whether such programs must run during the summer. Some commenters also asked whether before-school services must be offered since no need existed for such services in their locality. One commenter noted religious considerations may preclude some providers from providing after-school services at certain times. For example, the Jewish Sabbath begins at sunset; during the winter months the early sunset would preclude the operation of an after-school program on Fridays.

Response: The Act requires that such services be provided "Monday through Friday, including school holidays and vacation periods other than legal public holidays * * * during such time of the day and on such days that regular instructional services are not in session." We believe Grantees have the flexibility to define before- and after-school services based on the statutory language. Thus, a program may or may not include summers, based on the Grantee's definition. Grantees also have flexibility to determine what time of day such services are to be available. Services which do not meet the State's definition of before- and after-school services for the purposes of funding under § 98.51, e.g., summer-only school-age child care programs in a State which requires year-round before- and after-school programs, can still be funded as child care services under § 98.50.

Comment: A few commenters asked whether a before- and after-school program which is conducted at the school during the school year and at an alternative site in the summer could be funded under § 98.51.

Response: There are no Federal requirements which mandate that the site of a before- and after-school program be the same in the summer as during the school year.

Tribal Grantees

As discussed in more detail in § 98.83, we do not require Tribes with grants less than $225,000 (or such amount as set by the Secretary) to set aside 25 percent of their per-child amount for quality improvements, early childhood development, or before- and after-school programs. However, these Grantees must expend at least 63.75 percent of the per-child amount on direct child care services (the equivalent of 85 percent of 75 percent). They may expend the remaining per-child amount for any costs consistent with the purposes of the Act including child care services, activities to improve the availability and quality of child care and administrative costs.

Administrative Activities (Section 98.52 of the Regulations)

The Act does not address the use of Block Grant funds for administering the program. However, since administrative costs are necessary expenses of operating the program, we will permit the limited use of Block Grant funds to cover such costs. We are concerned, however, that using more than the "minimum amount" identified in the Conference Report for administrative costs will limit a Grantee's ability to achieve the purposes of the program (i.e., to increase the availability, affordability, and quality of child care services). Therefore, under § 98.50(d)(2), we establish a limit on administrative and quality and availability improvement activities for the 75 percent portion of the Block Grant. In this section, we address specific allowable administrative costs.

We considered providing an exclusive list of administrative activities for which Block Grant funds could be used. However, we decided to allow Grantees flexibility in defining such costs.

In order to ensure that Grantees spend their Block Grant funds on activities that satisfy the purposes of the program, the regulations require Grantees to submit a dollar estimate for each program period of the amount of funds they plan to spend on administrative activities. They must submit this estimate with their Application, as provided in § 98.13(a)(6). This requirement will enable us, the Grantee, and the public to examine the amount of such expenditures to prevent excessive administrative costs. As noted in the preamble to § 98.13, this amount is an estimate, and it is not subject to the compliance process.

The estimate must represent the aggregate of costs associated with administrative activities, examples of which are included in the regulation at paragraph (b) of this section. As noted above, the list of activities in the regulation is not exclusive; Grantees may specify other activities of a similar nature. The Application must also include a list of administrative activities that the Grantee plans to conduct with Block Grant funds.

Grantees must include costs for administration and implementation of the program at both the State and local level in their estimate. Because they may find it difficult to estimate administrative costs at all levels, we suggest that they set percentage limits for the administrative costs of agencies administering the program at the local or subgrantee level. Total expenditures for administrative activities must be limited as specified in § 98.50(d).

In the annual report to the Secretary, as provided in § 98.71(a), Grantees must include the actual amount of funds spent on administrative activities at the State and local level. As clarified below, we

require an aggregate amount to be reported for State and local expenditures on administration, not a separate amount for each.

Comment: Many Grantees and interest groups criticized the limitation in the interim final rule on administrative and quality and availability improvement activities under § 98.50. In general, commenters agreed with the concept of a limit on administrative costs but urged us to increase the limit.

Response: In the final rule, we retain the general limitation policy but have allowed an exception if the Grantee demonstrates that the costs for operation of the certificate program and the related consumer education equal or exceed 10 percent of the funds available under § 98.50. We discuss the limit more fully at § 98.50(d).

Comment: Several commenters did not agree with our description of administrative activities at § 98.52(b) and asked that we either revise the description to include fewer activities or allow Grantees to define these activities. The primary criticism of our description was that it was too broad and included activities that the commenters would classify as program, not administrative, activities. For example, some commenters asserted that activities such as the determination of eligibility, consumer education, and child care referral, which we include in our description of administrative activities, are services given to families to support them in the provision of child care and therefore represent program costs.

Response: We have not changed our description of administrative activities at § 98.52(b). We continue to describe administrative activities as we did in the interim final rule because of our concern that the preponderance of the funds set aside for activities under § 98.50 be spent on direct child care services. We have, however, adjusted the limit under § 98.50(d)(2)(ii) that we had previously placed on administrative and quality and availability improvement activities.

While we specify the determination of eligibility as an administrative activity at § 98.52(b), we want to clarify that we do not include consumer education and resource and referral in the description. Nevertheless, these activities are still subject to the limit on administrative and quality and availability improvement activities. While consumer education and resource and referral are related to the provision of child care, these activities are not child care services as defined at § 98.2(l) so they may not be considered expenditures under the 90 percent reserved for services.

Distinguishing between administrative activities and quality and availability improvements is neither useful nor practicable. The overall purpose and effect of the limitation is to ensure that Grantees maximize direct child care services. Thus, regardless of whether an activity is defined as an administrative activity or a quality or availability improvement, it is still subject to the overall limitation under § 98.50(d) (see preamble at § 98.50 for further discussion).

Comment: One commenter objected to the inclusion of program planning, coordinating, and monitoring activities as administrative activities and recommended that we delete them from our description of administrative activities at § 98.52(b)(1).

Response: We do not agree with this comment and have not changed our description of administrative activities. The activities listed by the commenter are activities associated with administering the Block Grant program.

Comment: There were several comments about counting local administrative costs under the administrative and improvement activity limit. Some commenters wanted us to continue to require Grantees to break out their administrative costs between the Grantee and subgrantee level in their annual Applications. Other commenters wanted us to require an aggregate or total administrative cost figure.

Response: We are not changing the policy stated in the interim final rule. However, since commenters demonstrated some confusion about the policy requirements, we believe clarification is needed.

In the interim final rule, we required that Grantees include an estimate of their administrative costs, including their subgrantees' administrative costs, in their annual Application. We do not require Grantees to break out their own administrative costs from their subgrantees' administrative costs. Grantees should include just one figure in their Application that estimates how much of their 75 percent portion will be spent on administrative activities.

Comment: One commenter asked that we not count subgrantees' administrative costs under the limit, but that we treat these costs as under § 98.51(f) which states that administrative costs associated with activities funded by the 25 percent portion are considered amounts expended for program activities.

Response: As discussed in § 98.51, we have revised the language to clarify that such administrative costs will be included with program costs in determining if the required percentages are met, rather than considering them program costs. We treat administrative costs differently under § 98.51 than we do at § 98.50 because of the difficulty in categorizing activities under § 98.51 as administrative or programmatic and because the Act and Conference Report are silent regarding proportional limits on these funds.

At § 98.50(d), however, our concern is that the preponderance of the funds under § 98.50 be expended on direct child care services. Thus, any costs that are not for direct child care services are subject to the limit discussed at the beginning of this section. Subgrantee or contractor costs must therefore distinguish between child care services and other authorized activities in order to determine whether the Grantee is expending a sufficient portion on child care services.

If the contract is solely for direct child care services as defined at § 98.2(l), Grantees do not need to distinguish administrative costs from child care service costs. In such cases, all contractor costs are considered child care service costs.

Supplementation (Section 98.53 of the Regulations)

Section 658E(c)(2)(J) of the Act requires an assurance that funds under the Block Grant will be used to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs. This requirement means that Block Grant funds must provide additional, or enhanced, services. Block Grant funds may not be used to replace existing expenditures.

Expenditures Included in the Non-Supplantation Amount

In order for ACF to determine that this requirement is met, the regulation requires the lead agency to establish dollar values for expenditures on child care services and related programs on the Federal, State and local levels for an initial twelve-month base period and for each subsequent twelve-month period. We will compare expenditures during each subsequent period with expenditures during the base period to determine whether supplantation has occurred. Grantees must report the expenditure amounts in their Application pursuant to § 98.13. Such amounts should include non-Block Grant Federal, State and local funding for child care services and related programs

which will be provided through the Block Grant, in whole or in part. The requirement is limited to public funds.

Comment: Several commenters suggested that the lead agency should only be responsible if supplantation of funds under its control occurs. They stated that the requirement should not include local and/or Federal funds. One commenter suggested that instead of including local funds in the total, States should be allowed to use non-supplantation assurances in its own contracts with local entities.

Response: The Act requires that Federal and local expenditures for child care and related services be included for non- supplantation purposes. Therefore, Grantees must include both in their non-supplantation amounts. In addition, Grantees must include the local expenditures, rather than just getting an assurance from the locality, in order to provide sufficient information for us, when monitoring, to determine that the requirement has been met.

Comment: One State suggested that any local "voluntary" match of State funding for child care and related services should not be included in the non-supplantation amount.

Response: The purpose of the non-supplantation provision is to ensure that Grantees use Block Grant funds to increase services rather than to replace existing funding. It would be inconsistent with this purpose to allow the exclusion of "voluntary" funding. Grantees must include all local funding, including any "voluntary" match in the non-supplantation amount.

Comment: One commenter asked that we further explain what is meant by "related services."

Response: When a Grantee computes the non-supplantation amounts, it includes expenditures for child care and related services. Included in the "related services" are those services related to child care which the Grantee will be funding, in whole or in part, through the Block Grant. For example, if a Grantee will be funding resource and referral, as part of its § 98.51 activities, it would include Federal, State and local expenditures for resource and referral, as a related activity, in its non-supplantation amounts. Conversely, if a Grantee is not funding such activities under the Block Grant, it would not include public expenditures on such activities in its non-supplantation amounts, since resource and referral is not a related activity for that Grantee.

Comment: One commenter stated that all spending in the State on child care and related services, even those types of child care or kinds of services not included in the Block Grant, should be included in the non-supplantation amounts.

Response: The purpose of the non-supplantation provision is to ensure that Block Grant funds are not used to replace funding that was otherwise being spent on child care and related services. Therefore, we believe that Grantees should include only those services which could be replaced with Block Grant funds in the non-supplantation amounts. Thus, child care and related services include only those types of activities and services which Grantees will actually be funding under their Block Grant program. However, as Grantees may need to amend their non-supplantation amounts in later years due to changes in program activities under the Block Grant, we would suggest that Grantees ascertain expenditures for all possible Block Grant activities for the base year.

Comment: A few States suggested that Grantees should be allowed to amend their non-supplantation amounts.

Response: Grantees should amend their non-supplantation amounts to reflect more accurate data and to reflect changes in the Block Grant program. For example, if a State received more accurate local data on child care expenditures, it should amend the local non-supplantation amount. Similarly, if the State did not include training originally in its Block Grant Plan, but at a later date funds such training as a related child care activity under § 98.51, it should amend its base non-supplantation amount to include funds expended for training. We have added a new subsection (b)(5) to the regulation to reflect this clarification.

Comment: One State objected to including Head Start expenditures in its non-supplantation amount.

Response: Head Start is an early childhood development activity. If a Grantee is funding early childhood development activities under § 98.51 or is paying for early childhood development services as child care services under § 98.50, it must include funding for Head Start in its Federal non-supplantation amount.

Comment: One commenter stated that private funds should not be included in the non-supplantation amount.

Response: As stated in the preamble, because of statutory language, only public funds are included in the non-supplantation amounts. Private funds are not included.

Comment: One State proposed that the amount be based on appropriations rather than expenditures.

Response: As the Act specifically refers to "funds otherwise expended," we believe the use of expenditures for determining the non-supplantation amounts is appropriate.

Comment: One Tribe questioned whether the revenue from a Tribal business, which is expended for child care, should be considered public funds.

Response: We believe that revenue from a business run by the Tribe, as a governing entity, is public funds for the purposes of the non-supplantation amount. When such funds are expended for child care and related services, Tribes must include them in the Tribal non-supplantation amount. These funds are no different from the revenue which a State or local government may receive from a non-tax source, such as an enterprise it runs. For example, if a State runs a lottery and uses funds from that lottery for child care, those are public funds to be included in its non-supplantation amount.

The Base Period

We define the base period as a period of twelve consecutive months which includes the month one year prior to the month for which the initial Application is made. We consider an Application for funding to be made as of the month that Federal funding becomes available, even if the Grantee starts actual implementation of its program at a later date. For example, for FY 1991, Federal funding became available on September 7, 1991. Thus, for Grantees whose initial Application was for FY 1991 funds, the month for which application is made is September 1991. The base year would include September 1990, the month one year prior to the month for which the initial application is made.

For a Grantee with a fiscal year that runs from October through September, the base period for an Application for FY 1991 funds could be the fiscal year that started in October of 1989 and ended in September of 1990. It could also be the 1990 calendar year. For Grantees whose first Application for funding is for FY 1992 funds, the base year would include September 1991, as Federal funds become available September 30, 1992.

We established the base period above so that the first subsequent period would include a period during which Block Grant funds are available. We provide flexibility in setting the base period by allowing the period to be any twelve-month period which includes the appropriate month as described above. This policy allows for Grantee fiscal years which do not coincide with the Federal fiscal year or for another twelve-month period of the Grantee's choice.

Comment: The majority of commenters supported the non-supplantation provisions in the regulation and the base year concept. However, one State criticized the use of the base year. The State commented that by using each previous funding year as the base, any increase in State child care funding would become a permanent appropriation. A few other States commented that they should be able to leave expenditures for one-time child care initiatives out of their non-supplantation amounts.

Response: The States' concerns are based on the misconception that the base year changes each year. However, a Grantee establishes a base year and corresponding non-supplantation base amounts the first time it applies for Block Grant funds. Those same amounts are used for comparison with expenditures in each subsequent period. For example, a Grantee first applies for funding for FY 1991. It chooses calendar year 1990 as its base year and reports aggregate State expenditures of $1,000,000. When the Grantee applies for FY 1992 funds, it gives its State expenditures for calendar year 1991 (the next subsequent 12 month period) which were $1,350,000. This amount includes expenditures for an increase in payment rates of $100,000 and a one-time initiative for recruiting and training providers for special needs children of $250,000. The $1,350,000 is compared with the expenditures for the 1990 base year of $1,000,000. When the Grantee applies for FY 1993 funds, it gives its State expenditures for calendar year 1992, the next succeeding twelve month period, as $1,100,000. This amount would again be compared with the expenditures for the 1990 base year of $1,000,000. The Grantee does not have to maintain the 1991 level of funding in 1992, as 1991 is not the base year.

In addition, as discussed more fully in the next section, Grantees should remember that comparisons are of expenditures aggregated by level of government—Federal, State and local. Thus, expenditures in one type of program, or from one source, can decrease if expenditures in another type of program, or from another source, increase.

Aggregation of Expenditures

In the interim final rule, we required Grantees to establish a single aggregate of expenditures for child care and related programs on the Federal, State and local levels. A number of commenters were concerned that this methodology would have permitted Grantees to supplant funding at one level of government when funds increased at another level. For example, if Head Start funding increased, State and local funding could decrease. We believe that this is not in keeping with the intent of this provision. For this reason, we have amended the methodology in the final rule to require separate aggregates for each level of government. This requirement allows Grantees some flexibility in shifting funding among programs but prevents funding increases at one level of government from supplanting funding at another level. We have also amended the application process at § 98.13 to reflect this change.

We expect that determining the required level of expenditure will be difficult. However, we also expect that such information would be necessary as part of the process of determining the need for services and related activities in designing a Block Grant program. Given Congress' strong interest in expanding services and not displacing existing Federal, State, and local funding for services, these expenditures will be closely monitored and reviewed as a basis for continued Block Grant funding.

In determining the level of expenditures during the base period and subsequent periods, the lead agency must consider Federal, State, and local programs, as appropriate. Differing fiscal or program years may add to the level of difficulty in establishing the amount of expenditures. To facilitate administration of this provision, a Grantee may use different base periods for establishing the aggregate levels of expenditures. Section 98.53(b)(1) of the regulation provides the flexibility to use different base periods on a program-by-program basis (e.g., for a specific early childhood development program), on a level-of-government basis (e.g., Federal, State and local), or on some other basis that provides for fiscal accountability. However, even if different base periods are used, each must include the month referred to in paragraph (b)(1) of this section.

Grantees must include the levels of expenditures in each yearly Block Grant Application, pursuant to § 98.13(a)(8). In determining whether a Grantee has met the supplementation requirement, we will compare the aggregate level of expenditures for each level of government for the base period with the aggregate amount of expenditures during subsequent periods.

Reductions in expenditures for some services or programs included in the level of expenditure computation will not necessarily mean that this requirement is not met. The statutory language at section 658E(c)(2)(J) uses the term "amount of * * * funds" in describing this limitation. We interpret this to mean that it is the aggregate level of expenditures for each level of government which is of concern, rather than individual expenditures within the aggregate. This approach provides flexibility in meeting families' needs, maintains the integrity of the provision, and meets the purpose of providing funding for new and enhanced child care and development services.

Reduction in Federal Expenditures

We will consider reductions in Federal expenditures resulting from actions outside the discretion of the Grantee in determining whether a Grantee has met this requirement. In such cases, Grantees should include information regarding the nature, extent and basis for the reductions in their Applications.

Comment: A few commenters requested that, in addition to considering reductions in Federal funds, the non-supplantation provision should allow for consideration of across-the-board reductions in State and local funds. Another commenter stated that State budget problems should be considered in monitoring the non-supplantation provision.

Response: We take Federal reductions into consideration because they are beyond State control. However, when a State or locality makes reductions in its own budget, it has discretion and control over how and where those cuts are made. Therefore, we have not changed the regulation.

When we monitor this requirement, we will consider the facts of each situation to determine if substantial non-compliance has occurred. For example, in the case where a State could not meet the requirement because a locality had supplanted funds, we would consider the actions taken by the State in regard to the locality and the amount of the decrease in determining whether substantial non-compliance had occurred.

Comment: Several Tribes asked about the treatment of reductions in State grants to the Tribe which are outside the Tribe's control.

Response: We will treat reductions in State funding to Tribes in the same manner that we treat Federal reductions. In such cases, a Tribe should include information on the nature, extent and basis for the reductions in its Application. We include this clarification in the regulation at paragraph (b)(6).

Restrictions on the Use of Funds (Section 98.54 of the Regulations)

This section of the regulations includes specific restrictions on the use of Block Grant funds, as contained in the Act. We have also added a general restriction which provides that costs which violate a Grantee's own laws and procedures must not be charged to the program.

Construction

Section 658F(b) of the Act prohibits the use of Block Grant funds for the purchase or improvement of land or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility. We interpret this prohibition to apply to all activities of the program, both administrative and programmatic.

Funds may be expended for only minor remodeling costs. We permit Grantees to define "minor remodeling," but encourage them to set specific dollar limits.

Section 658F(b)(2) of the Act also prohibits sectarian agencies and organizations from using Block Grant funds for the purchase or improvement of land or for the purchase, construction or permanent improvement (other than minor remodeling) of any building or facility; in addition, such an organization may receive funds for renovation and repair involving minor remodeling only where necessary to bring a facility into compliance with the health and safety requirements established pursuant to section 658E(c)(2)(F) of the Act.

We note that these restrictions regarding construction costs apply to all Block Grant funds including funds under section 658G(2) of the Act which permits Grantees to use Block Grant funds to assist providers in meeting applicable State and local child care standards, which may include health and safety requirements.

Paragraph (b)(1) of this section provides that costs of minor remodeling may include, but are not limited to, costs related to bringing a facility into compliance with child care standards, including applicable health and safety requirements.

Tuition

Section 658M(b) of the Act establishes restrictions on the use of Block Grant funds for tuition provided to students in grades 1 through 12. The regulation at § 98.54(c) implements these restrictions.

Sectarian Purposes and Activities

The regulation at § 98.54(d) implements section 658M(a) of the Act. It provides that Block Grant funds shall not be used under any grant or contract for any sectarian purpose or activity, including sectarian worship and instruction. This prohibition covers all child care services provided under grant or contract, including child care services under § 98.50, as well as early childhood development and before- and after-school care services. This prohibition also covers other activities funded through grant or contract under §§ 98.50 and 98.51. However, where services are provided through child care certificates, as defined in the regulation at § 98.2(j), sectarian activities which are part of the child care services may be conducted, and costs related to such services are eligible for funding under the Block Grant program. Sectarian providers may carry out any sectarian activities without restricting their eligibility for certificates under the Block Grant program.

Comment: A few commenters recommended making § 98.54(d) consistent with § 98.2(j) by replacing the phrase, "all such sectarian purposes or activities," with "sectarian child care services." Others suggested that child care providers which receive certificates should not be able to include any sectarian activities or worship. A third group of commenters supported allowing parents and sectarian providers to use their child care certificates or funds received via child care certificates without restriction.

Response: The referenced language at § 98.2(j) is intended to make it clear that certificates can be expended for care provided by a sectarian organization or sectarian child care provider. Section 98.54(d) restricts funds under grant or contract from being used for sectarian purposes. Although related, these provisions serve different purposes.

Section 658M of the Act states that care provided under grant or contract may not include sectarian worship or instruction. This clearly implies that care provided via certificate may include sectarian activities. We have clarified the regulation at § 98.54(d) so it is clear that child care paid for by funds provided through child care certificates may include sectarian activities or worship.

In addition, as discussed at § 98.51, Grantees may contract with or provide grants to sectarian organizations or sectarian child care providers. However, such providers could not use the funds provided under a grant or contract for sectarian purposes. Section 98.54(d) clearly states this limitation.

Comment: A few commenters asked that we clarify that sectarian providers which receive a grant or contract under the Block Grant are prohibited from providing sectarian worship and instruction even when the same provider accepts Block Grant child care certificates.

Response: Under the Act and regulation, funds received under grant and contract may not be used for sectarian purposes, including worship. However, nothing in the Act or regulation prevents a sectarian organization from using other funds, including funds from certificates, for sectarian activities.

Other Restriction

In addition, Grantees may not use Block Grant funds as the required match for other Federal grant programs since the Block Grant's authorizing legislation gives no such authority. In the interim final rule, we stated this policy, but apparently our discussion was not sufficiently clear, so we have added the regulation at § 98.54(e).

Cost Allocation (Section 98.55 of the Regulations)

To ensure that Grantees use Block Grant funds only for the purposes of this program, and that Block Grant funds supplement, not supplant, other funds, we require that Grantees and subgrantees prepare and keep on file amended cost allocation plans or indirect cost agreements, as appropriate, to include Block Grant costs. Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

The regulations do not require Federal approval of cost allocation plans or indirect cost agreements of Grantees and subgrantees. However, where Block Grant costs are included in a cost allocation plan or indirect cost agreement requiring Federal cognizant agency approval, such plans or agreements continue to be subject to Federal approval requirements established through other applicable Federal regulations. All cost allocation plans and indirect cost agreements are subject to review by auditors and Federal reviewers.

Like other administrative costs, indirect costs are subject to the limitation on non-service expenditures at § 98.50(d). Grantees using indirect cost agreements to assign indirect costs should consult with their cognizant agency if they have questions with respect to their indirect cost agreements.

Comment: A few commenters wanted us to provide more guidance regarding Tribal indirect cost rates. The commenters were particularly

concerned that they be able to recover all indirect costs.

Response: For most Tribes, their annual allotment includes sufficient funds to recover all indirect costs. Tribal allotments contain all funds which the Tribe is eligible to receive. Because funds are limited by a Tribe's annual allotment, Tribal Grantees must carefully plan their programs and consider all costs. There are no additional funds available.

For example, if certain activities entail relatively high direct costs, then there may be insufficient funds to cover all indirect costs. The Tribe should consider altering the mix of services in its program to ensure the full recovery of their indirect costs.

Finally, we have provided each Tribal Grantee with a base amount of funds which may be used to cover administrative expenditures, including indirect costs. A primary reason we provided a base amount to Tribal Grantees was to ensure that Tribes would have sufficient funds to manage the Block Grant program.

Comment: Several commenters asked how a Tribe recovers indirect costs when the Tribe itself is the child care provider.

Response: The payment rate for child care services established by the Tribe should include indirect costs of a Tribal-run child care facility. In other words, the Tribal center's indirect costs would be assigned to the Block Grant through the child care payment rate. Activities or costs (e.g., space, personnel and accounting services, etc.) included in the indirect cost rate should not also be claimed as a specific item in the computation of these payment rates. Otherwise, the Tribe would be double-charging for these types of costs.

Subpart G—Financial Management

Availability of Funds (Section 98.60 of the Regulations)

Grant Awards

Section 658J(a) of the Act provides that the Secretary will award Block Grant funds subject to the availability of appropriations. The regulations in this section provide that awards will be made in accordance with the apportionment by OMB. Since the timeframes were short in FY 1991, we issued the funds apportioned by OMB through grant awards to Grantees that had approved Plans and those that applied for funds, but did not have approved Plans. Grantees that did not have approved Plans, however, were not able to "draw down" funds until we approved their Plans. In future years, we expect to issue grant awards only to Grantees that have approved Applications and Plans as described in §§ 98.13 and 98.16.

If possible, grants will be issued to Grantees in advance. However, the Secretary reserves the right to issue grants by way of reimbursement, as provided in the Act. The Block Grant program does not require matching funds from Grantees.

We have added language at paragraph (a) of this section to provide that we may reserve up to one-quarter of one percent of each fiscal year's appropriation for the purpose of providing technical assistance. We discuss this provision in the section entitled "Technical Assistance." This provision does not affect FY 1991 allotments.

Under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991 (Pub. L. 101–517), FY 1991 funds became available on September 7, 1991. Because funds did not become available until the last month of FY 1991, all Grantees received their entire FY 1991 allotment in one grant award, issued before September 30, 1991, the end of FY 1991. We will continue this practice in FY 1992 since FY 1992 funds do not become available until September 30, 1992, and in subsequent years when availability of the appropriations occurs in the fourth quarter of the fiscal year.

Obligation Period/Liquidation Period/ Program Period

Under the Dire Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991 (Pub. L. 102–27), Congress revised the provision of the Act at section 658J(c) governing the period of time over which State and Territorial Grantees could expend funds. Under the original language, State and Territorial Grantees had to expend their allotments in the fiscal year in which they were received, or in the succeeding fiscal year. Under the amendment, State and Territorial Grantees must only obligate their funds during this period. The Act, as amended, is silent regarding the period of time State and Territorial Grantees would have to liquidate their unliquidated obligations. Under paragraph (d) of this section, we allow one additional year for the liquidation of obligations. The one-year liquidation period should give State and Territorial Grantees sufficient flexibility in administering the program and sufficient opportunity to process payments to contractors for services and activities. The one-year liquidation period is comparable to, or longer than, the liquidation period provided under other programs administered by ACF. It also is compatible with the schedule the Act establishes for submitting annual reports on Block Grant expenditures, as discussed in subpart H.

As discussed above, FY 1991 Block Grant funds became available during the last month of FY 1991 and the same will occur in FY 1992. For these and any other fiscal year's funds that do not become available until late in the fiscal year, the obligation period is actually less than two years. The later the availability of the funds, the less time State and Territorial Grantees have to obligate them. For example, in FY 1991, Grantees received grant awards after September 7, 1991, and thus had approximately three weeks in FY 1991 plus 52 weeks in FY 1992 during which to obligate their funds.

However, if Block Grant funds become available at the beginning of the fiscal year, State and Territorial Grantees have that entire fiscal year and the succeeding fiscal year (i.e., 104 weeks) in which to obligate their grants. In the succeeding fiscal year, State and Territorial Grantees would receive additional funds which, likewise, must be obligated during that fiscal year and the succeeding fiscal year.

Unliquidated obligations as of the last day of the obligation period must be liquidated in the following one-year liquidation period. We use the term program period to describe the period in which a fiscal year's grant must be expended, i.e., the obligation period and the following one-year liquidation period.

In the final rule, we no longer require that Tribal Grantees obligate their funds by the end of the second fiscal year. Instead, we are allow Tribal Grantees the entire program period in which to both obligate and liquidate their grants. We made this change because we believe the two fiscal year obligation period required in the interim final rule was too restrictive since Tribal Grantees have fewer options than State and Territorial Grantees for using their funds and are more likely to provide child care services directly (e.g., Tribal-run child care centers).

Having the entire program period in which to obligate and liquidate their allotments means Tribal Grantees may obligate and liquidate their funds during the fiscal year in which they receive their allotments and during the succeeding two fiscal years. Any funds that remain unexpended by the end of

the third fiscal year will revert to the Federal government. This three fiscal year period is consistent with the statutory language at section 658O(c)(4) of the Act that limits grants to Tribes to periods not to exceed three years.

For example, Tribal Grantees have until the end of FY 1993 to obligate and liquidate their FY 1991 grant funds. They are not required to obligate their funds before the end of FY 1992, but must liquidate all obligations before the end of FY 1993. Any unexpended funds as of the last day of FY 1993 will revert to the Federal government.

Obligations

We define obligation to include subgrants or contracts which will require the payment of funds from the State or Territorial Grantee to a third party (e.g., subgrantee or contractor). For this purpose, the following are not considered third party subgrantees or contractors: (1) a local office of the lead agency; (2) another entity at the same level of government as the lead agency; or (3) a local office of another entity at the same level of government as the lead agency. For example, if a State Grantee transferred a portion of its funds to the State Department of Education, we would not consider those funds to be obligated. The State Department of Education would have to obligate the funds for Block Grant administration, services, or activities in order for the funds to be considered obligated. This policy is based on the definition of Grantee, which includes the entire legal entity, even if a particular component of the entity is designated in the grant award document.

For purposes of the Block Grant, child care certificates obligate funds if they indicate in writing (1) the amount of funds that will be paid to a child care provider or family for child care services and (2) the specific length of time covered by the certificate. The amount of funds obligated by the child care certificate is the amount for which the issuer (Grantee or subgrantee) has an obligation to pay, subject to the actual delivery of child care services. The length of time covered by the certificate begins once the certificate is issued and covers the time period during which the issuer is obligated to pay, subject to the actual provision of child care services and the dollar limit on the certificate. This time period may not extend beyond the date when the family's eligibility for the Block Grant program must be redetermined, if required. In no case may funds be obligated beyond the end of the liquidation period.

For example, if the Grantee or subgrantee requires a family's eligibility to be redetermined every six months, only the funds necessary to provide up to six months of child care services would be considered obligated. Even if the Grantee or subgrantee intends to provide child care services to the family for 12 months and has encumbered or otherwise reserved the funds necessary to provide 12 months of child care services for the family, only the funds necessary to provide up to six months of services would be considered obligated if the family's eligibility for child care services under the Block Grant is redetermined every six months.

Like all obligations, child care certificates must be liquidated by the last day of the liquidation period. Therefore, the length of time covered by the certificate cannot extend beyond the last day of the liquidation period, subject to possible adjustments as discussed below. Likewise, if the Grantee or subgrantee that issues child care certificates does not require a family's eligibility to be redetermined, the length of time for which a certificate may be issued cannot extend beyond the last day of the liquidation period.

We alert Grantees that in order to ensure the liquidation of child care certificates, they must allow sufficient time for the last payment under the certificate to be recorded as a liquidation before the end of the liquidation period. For example, if the Grantee requires 30 days to process payment under the certificate, a certificate obligating FY 1991 funds should expire no later than August 31, 1993 (i.e., 30 days prior to the deadline for liquidating obligations of FY 1991 funds).

It is possible that a family may cease to be eligible during the period for which the certificate is issued. We recommend that Grantees or subgrantees indicate on their certificates that the certificate is valid only as long as the family continues to be eligible to receive child care services. Funds obligated to families that become ineligible to receive Block Grant child care services during the period of the certificate should be deobligated by cancelling the certificate and may be reobligated in accordance with paragraph (h) of this section. A family that is no longer eligible to receive child care services under the Block Grant, but continues to have its child care provided through its child care certificate is subject to the fraud provisions at paragraph (j) of this section.

The requirement that State and Territorial Grantees obligate their funds by the end of the fiscal year that follows the fiscal year in which the grant is awarded applies only to the State or Territorial Grantee. The requirement does not extend to the Grantee's subgrantees or contractors unless State or local laws or procedures require obligation in the same fiscal year.

Grant funds that remain unobligated by the State or Territorial Grantee at the end of the obligation period will revert to the Federal government. Obligated grant funds that remain unliquidated by the State or Territorial Grantee after the last day of the program period will also revert to the Federal government. Although this policy was stated in the preamble to the interim final rule, it was not stated in the regulation. Therefore, we have added it to the final rule at paragraph (d) of this section.

Comment: One commenter suggested that we give Grantees 24 months to obligate funds regardless of when the grant award is issued.

Response: Section 658J(c) of the Act, as amended by Congress, specifies that Grantees have the fiscal year in which the funds are awarded and the succeeding fiscal year during which to obligate the funds. Grantees would have two years to obligate Block Grant funds if funds were made available at the beginning of the fiscal year for which the funds were appropriated. Congress, however, has chosen so far to delay the availability of the funds which has resulted in obligation periods of less than 24 months.

Comment: Many commenters asked whether governmental entities at the local level, such as county-administered social services districts, are eligible subgrantees for the purpose of determining what constitutes an obligation.

Response: We have received numerous questions regarding the definition of an obligation for purposes of the Block Grant program. As stated above, a "local office of the lead agency or a local office of another entity at the same level of government as the lead agency" is not considered a subgrantee for this purpose. If county-administered social service districts are not local offices of the lead agency and are not local offices of another office that is at the same level of government as the lead agency, grants issued to such districts are considered obligations.

This definition is more restrictive than the definition of "obligation" at 45 CFR 92.3 which provides that "obligations" include "contracts and subgrants awarded" and may be more restrictive than definitions in State or local law. However, since Block Grant obligations may not include a subgrant or contract with (1) a local office of the lead agency, (2) another entity at the same level of

government as the lead agency, or (3) a local office of another entity at the same level of government as the lead agency, these restrictions are incorporated in the regulation at paragraph (d)(2) of this section. Thus, State or local law pertaining to "obligations" applies only insofar as the laws do not conflict with paragraph (d)(2) of this section. If there is no State or local law, the definition at § 92.3 applies, but again, only insofar as the definition does not conflict with paragraph (d)(2) of this section.

Comment: A few commenters wanted us to clarify at what governmental level an obligation had to be liquidated in order for a Grantee to meet the liquidation period requirements.

Response: Grantees must liquidate all obligations on or before the last day of the appropriate liquidation period. While this responsibility lies with the Grantee, the effect of this requirement is that subgrantees may be required to liquidate obligations by the end of the liquidation period applicable to the Grantee in order for the Grantee to meet the liquidation deadline.

Comment: A few commenters asked that we permit Grantees to expend funds carried over from a previous fiscal year before expending that fiscal year's award.

Response: We permit Grantees to expend the previous year's funds before expending the next fiscal year's grant. In fact, we advise and encourage Grantees to manage their programs in this manner. However, the time during which two obligation periods overlap is very short, since Block Grant funding becomes available near the end of the fiscal year.

For example, the obligation period for FY 1991 grant funds ends on September 30, 1992, and FY 1992 funds become available on that same date. Therefore, on September 30, 1992, Grantee may obligate or expend either its FY 1991 or FY 1992 grants. The regulation allows Grantees to obligate or expend the FY 1991 grant before the FY 1992 grant.

The term "carryover" means that funds granted in one fiscal year may be added to a succeeding fiscal year's grant. Other ACF programs such as the Low Income Home Energy Assistance Program (LIHEAP) and the Social Services Block Grant (SSBG/Title XX) permit the carryover of funds. There are, however, no such carryover provisions under the Block Grant since the Act did not provide for the carryover of funds past a grant's obligation period.

Advance funding. To ensure that Grantees expend Block Grant funds in accordance with sound cash management principles, paragraph (f) of this section requires them to adhere to the procedures established in 31 CFR part 205. These regulations establish principles to ensure that the timing and amount of cash advances are as close as is administratively feasible to the actual disbursement of program funds. Departmental regulations and procedures provide various remedies for Grantees, subgrantees, and contractors that fail to adhere to Federal cash management principles. These remedies include paying the Grantee on a reimbursement basis.

Comment: One commenter stated that limiting advance funding to immediate cash needs conflicts with the program's intended purposes of providing loans and development funds. The commenter recommended that we issue the 25 percent portion of funds in a lump sum to Grantees as we do for the Dependent Care Planning and Development Grants.

Response: We disagree that limiting advance funding to immediate cash needs is in conflict with the purposes of the Block Grant and do not believe a change is warranted. We continue to require Grantees to follow U.S. Treasury rules for financial management. We do not agree with the commenter that the nature of the activities funded under the 25 percent portion is sufficiently different from those under the 75 percent portion to warrant different rules for administering those funds. In addition, with the implementation of electronic transfer, we do not believe the rule impedes the Grantee from carrying out the purposes of the program. Since the entire Grantee allotment is issued in one grant, as opposed to quarterly, Grantees can draw down sufficient funds as needed to provide cash for loans and development funds. The Dependent Care Planning and Development program cited by the commenter is a small program (approximately $13 million appropriated in FYs 1991 and 1992) that grants funds to States to support activities related to dependent care (including child care, elder care, and care for disabled individuals), resource and referral systems and activities related to school-age child care services. While this program is for similar purposes as the 25 percent portion (§ 98.51), (e.g., resource and referral development and the planning, development, establishment, or expansion of school-age child care services), it is funded at one-fourteenth the level of this portion of the Block Grant. Because the amount of funds involved under the Block Grant is so much greater, we do not believe it would be responsible financial management to issue funds for the 25 percent portion of a Grantee's allotment in a single sum.

Pre-award costs. Block Grant funds are available for use by the Grantee only after the funds for a fiscal year are made available by the Congress for Federal obligation. No pre-award costs, i.e., costs incurred by a Grantee during a fiscal year before that fiscal year's funds become available, are allowed unless the costs are incurred for planning activities related to the submission of an initial Block Grant Application and Plan. Such planning activities must occur after November 5, 1990, if Block Grant funds are to be used, but are not required to have been incurred during the same fiscal year in which the funds are awarded. For example, FY 1992 funds which become available on September 30, 1992, may be used by a Grantee who is preparing an initial Block Grant Application and Plan for costs associated with the planning and development of such an Application and Plan if the costs were incurred after November 5, 1990. Furthermore, we recognize that the use of the word "obligation" in paragraph (g) of this section in the interim final rule did not express this intent. Therefore, we have replaced it with the word "use."

Comment: Several commenters asked that we permit Grantees to use Block Grant funds prior to the date when funds for a fiscal year become available.

Response: By making Block Grant funds available in the last month of a fiscal year, Congress expressly limited the time period during which the funds are available to Grantees (e.g., one year and a day in FY 1992) and, in effect, provided that a fiscal year's funds primarily be used in the following fiscal year. For example, FY 1992 funds are to be used for FY 1993 costs. Thus, given the Congressional intent behind the availability of Block Grant funding, we do not permit Grantees to use Block Grant funds prior to the date when funds for a fiscal year become available.

As the Federal government may only obligate funds after they become available, pursuant to the Anti-Deficiency Act, 31 U.S.C. 1341, Federal obligation of funds for all costs, including pre-award costs, is subject to the actual availability of the appropriation.

Funds Returned to the Grantee or Subgrantee and Program Income

Examples of funds returned to the Grantee or subgrantee include loan repayments, contracts terminated through default or for convenience, funds deobligated by cancellation of a child care certificate issued to a family when the family becomes ineligible for child care services, and unused

subgrantee grants returned to the Grantee. Program income includes contributions by families under the sliding fee scale made directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the child care provider, and any other program income the Grantee or subgrantee collects while carrying out its Plan. For purposes of determining whether the child care provider receives 80 percent or more of its operating budget from Federal or State funds, pursuant to §§ 98.46 and 98.47, family contributions are not considered funds provided under the Block Grant or any other Federal or State program.

If a subgrantee or contractor returns all or part of its funds to a Grantee, or a contractor returns all or part of its funds to a subgrantee, during the program period for which the funds were allotted, the Grantee or subgrantee may use those funds, but only for activities specified in the Grantee's Plan.

If the funds are returned during the obligation period, they must be obligated by the end of the obligation period. If they are returned during the liquidation period, the funds may not be obligated unless State or local laws or procedures permit. If permitted, the obligations must be liquidated by the end of the liquidation period.

If a subgrantee or contractor returns funds to the Grantee, or a contractor returns funds to a subgrantee, after the end of the program period for which those funds were allotted, the Grantee or subgrantee may use those funds for activities specified in the Grantee's Plan, if State or local laws or procedures governing the use of such funds allow their use. If there are no State or local laws or procedures, Federal law will apply, and thus the funds shall be returned to the Federal government.

Loan Repayment

Funds used for loans to child care providers, pursuant to § 98.51(b)(2)(ii), may be repaid in cash or in services provided in-kind. The services provided in-kind must be of equivalent value to the amount of the loan and based on fair market value. All loans must be repaid in full.

Recovery of Child Care Payments

We received a comment about child care payments made as the result of fraud or error (see § 98.92) and believe clarification of the policy regarding recovery of such payments is necessary. The Grantee must recover child care payments which are the result of fraud committed by child care providers or parents. Payments made as the result of fraud committed by a child care provider must be recovered from the child care provider. Likewise, payments made as the result of fraud committed by a parent must be recovered from the parents. We have added this provision at § 98.60(i).

Any child care payments not made in accordance with the Act, the implementing regulations, or the Grantee's approved Plan may not be charged to the Block Grant program and will be disallowed pursuant to § 98.66. Recovery from child care providers or parents of child care payments made in error is at the Grantee's discretion.

Allotments for States (Section 98.61 of the Regulations)

Section 658O(b) (1) through (4) of the Act establishes the formula for determining the size of the allotment for State Grantees. For the purpose of this section and § 98.63, the term "States" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The amount of funds available to States is equal to the full appropriation less the amounts reserved for Territorial and Tribal Grantees and technical assistance.

Because of the many comments received on redistributing the funds reserved for Territorial and Tribal Grantees to State Grantees, we have revised the regulation to provide that these funds will be distributed only to those groups respectively. We will distribute the funds reserved for Territorial Grantees only to Territorial Grantees. Likewise, we will distribute the funds reserved for Tribal Grantees only to Tribal Grantees. None of these funds will be distributed to State Grantees.

State Allotment Formula

The formula we are using to allot Block Grant funds to States is specified in section 658O(b) (1) through (4) of the Act. There are three factors: a Young Child factor, a School Lunch factor, and an Allotment Proportion factor.

A State's Young Child factor (YCF) is the ratio of the number of children under the age of five in the State to the number of such children in all States..

A State's School Lunch factor (SLF) is the ratio of the number of children in the State who are receiving free or reduced price school lunches under the National School Lunch Act to the number of such children in all States.

As required by the Act, we will use the most recent population data from the Bureau of the Census in computing State Young Child factors and the most recent data from the U.S. Department of Agriculture to compute State School Lunch factors.

For FY 1991 allotments, we used 1989 Census population estimates for the 50 States and the District of Columbia to determine the number of children under the age of five in each State. No such estimates existed for Puerto Rico, so we used the most recent available data, the 1980 Census data. We will use 1990 Census data when they become available for use in the State allotment calculation. For the School Lunch factor, we used school lunch participation figures for FY 1990.

The third factor in the formula is the Allotment Proportion factor (APF). The Act refers to this factor as the Allotment Percentage. A State's APF is determined by dividing the three-year average per capita income of all individuals in all the States by the three-year average per capita income of all individuals in the State. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the State's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. The APF will be determined every two years and applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year. As required by section 658O(b)(4)(C)(iii) of the Act, we will use the best data available from the U.S. Department of Commerce. For FY 1991 allotments, we used per capita income data for FYs 1987, 1988, and 1989.

While the U.S. per capita personal income figure usually includes the District of Columbia, it does not typically include Puerto Rico. Since Puerto Rico is considered a State for purposes of this section, we have added Puerto Rico to the per capita personal income figure for the U.S., and the allotments are calculated using this figure.

Mathematical Equation for Determining State Allotments

A State's allotment is the sum of the following two products:

$$1.\ \frac{YCF_s \times APF_s}{\Sigma(YCF_s \times APF_s)} \times \frac{\text{total amount available for States}}{2}$$

(where YCF_s is equal to the State's Young Child factor and APF_s is equal to the State's Allotment Proportion factor); and

$$2\,\frac{SLF_s \times APF_s}{\Sigma(SLF_s \times APF_s)} \times \frac{\text{total amount available for States}}{2}$$

(where SLF_s is equal to the State's School Lunch factor and APF_s is equal to the State's Allotment Proportion factor). Each State's share of the total allotment will change from year to year based on changes in the available data.

Explanation of State allotment formula

A State's allotment is determined in a two-step process. First, part of a State's allotment is determined by:

(1) Multiplying the individual State's Young Child factor (YCF) by the State's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all States' YCF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the Young Child factor Allotment.

The second part of a State's allotment is determined by:

(1) Multiplying the individual State's School Lunch factor (SLF) by the State's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all States' SLF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the School Lunch factor Allotment.

A State's allotment is the sum of its Young Child factor Allotment and its School Lunch factor Allotment.

We have not included a description of the State Allotment formula in the regulation because it is clearly delineated in the Act.

Allotments for Territories and Tribes (Section 98.62 of the Regulations)

Territories

Section 658O(a)(1) of the Act provides that not more than one-half of one percent of the Block Grant funds may be reserved by the Secretary for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau). The Commonwealth of Puerto Rico is treated as a State for purposes of the Block Grant allotment, pursuant to § 98.61(a) and 658O(f) of the Act.

The Secretary exercised his administrative discretion and reserved, for FY 1991 funds, the full one-half of one (0.5) percent of funds for the Territories as Congress authorized up to one-half of one percent, and there was no reason for a lesser amount in FY 1991.

Territorial Allotment Formula

The Act does not specify an allotment formula for Territories. The formula we are using to allot Block Grant funds to Territories is similar to the formula specified for States in the Act. However, in place of the three-factor State formula discussed in the preamble to § 98.61 (i.e., a Young Child factor, a School Lunch factor, and an Allotment Proportion factor), the Territorial allotment formula has just two factors—a Young Child factor and an Allotment Proportion factor.

A Territory's Young Child Factor (YCF) is the ratio of the number of children under the age of five in the Territory to the number of such children in all Territories. We chose not to include a school lunch factor in the Territorial formula because some of the Territories no longer participate in the National School Lunch program and others are phasing out their programs.

For FY 1991 allotments, we used 1980 Census data to determine the number of children under the age of five in each Territory, as they were the best available data. We will use 1990 Census data as they become available to determine Territorial allotments in subsequent years.

The second part of the Territorial formula is the Allotment Proportion factor (APF). A Territory's APF is determined by dividing the three-year average per capita income of all individuals in all the Territories by the three-year average per capita income of all individuals in the Territory. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the Territory's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. This adjustment parallels the process applied to State Allotment Proportion factors. The regulations at (a)(1)(ii) (A) and (B) of this section provide that the APF will be determined every two years, and will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

For FY 1991 Territorial allotments, we used per capita income data for FYs 1987, 1988, and 1989 from the Bureau of Economic Analysis in the Department of Commerce. The per capita income for all individuals in all Territories reflects only the five Territories listed in paragraph (a) of this section. Puerto Rico's per capita income was excluded since Puerto Rico is considered a State for allotment purposes.

In FYs 1987, 1988, and 1989, per capita income data did not exist separately for Palau, the only component of the Trust Territory of the Pacific Islands since 1988. Instead, the data reflected the combined per capita income of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands. Micronesia and the Marshall Islands are the two components that, along with Palau, comprised the Trust Territory of the Pacific Islands prior to 1988.

We do not believe that using the data that includes Micronesia and the Marshall Islands affects Territorial allotments. When these data were used in the calculation, the APF for the Trust Territory of the Pacific Islands is over five percent. Since limits on the APF specify that it must be between 0.8 and 1.2, the Trust Territory's APF is adjusted downward to 1.2.

We believe that even if data on per capita income for Palau alone were available, the APF for the Trust Territory of the Pacific Islands would still have to be adjusted downward and thus would be the same. For example, if the APF were higher than 5 percent, it would still be limited to 1.2. On the other hand, it is unlikely that the APF would be lower than 1.2 given the economic conditions of the Trust Territory in general compared to other Territories.

In future years, should per capita income data representing Palau as the only remaining component of the Trust Territory of the Pacific Islands be available, we will use it in the Territorial allotment calculation.

Mathematical Equation for Determining Territorial Allotments

The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\Sigma(YCF_t \times APF_t)} \times \text{amount reserved for Territories at paragraph (a) of this section}$$

(where YCF_t is equal to the Territory's Young Child factor and APF_t is equal to the Territory's Allotment Proportion factor).

Explanation of Territorial Allotment Formula

A Territory's allotment is determined by:

(1) Multiplying the individual Territory's Young Child factor (YCF) by the Territory's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all Territories'

YCF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by the amount of funds reserved for the Territories.

The resulting product in #3 is the Territory's allotment.

Tribes

Section 658O(a)(2) of the Act provides that not more than three percent may be reserved by the Secretary for Indian Tribes and Tribal organizations. Only Tribes and Tribal organizations that are recognized in section 4(e) and section 4(l), respectively, of the Indian Self-Determination and Education Assistance Act are eligible for Block Grant funds. (See § 98.80 (b) and (c) for a complete discussion of Tribes and Tribal organizations which are eligible for Block Grant funds.) The Secretary exercised his administrative discretion and reserved the full three percent of FY 1991 funds for Tribes, as Congress authorized up to three percent, and there was no reason for a lesser amount in FY 1991.

The regulation provides that Tribes must have 50 or more children under age 13 (or such similar age as determined by the Secretary from the best available data) in order to receive funding under the Block Grant. (See § 98.80 for a full discussion of this requirement and comments.) Tribes with fewer than 50 children under age 13 may apply for funds as members of a consortium. Consortia must have 50 or more children under age 13 in order to receive funding. Individual Tribes with 50 or more children under age 13 may apply individually or as part of a consortium.

In FY 1991, we defined the number of Indian children for the purposes of Tribal eligibility for funding and for calculating FY 1991 Tribal grant awards, as the number under the age of 16. We included the number of children under the age of 16 because the best available data did not include a breakdown of the population under age 16. Use of the under-16 data for allotment purposes does not extend the age of eligibility for an Indian child. We still require Indian children to be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribe or Tribal organization provides child care services for eligible older children in their Plan (i.e., children with mental or physical disabilities).

Our data sources for FY 1991 allotments were: (1) the 1989 Indian Service Population and Labor Force Estimates Report produced by the Bureau of Indian Affairs (BIA); and (2) 1990 census data provided by the State of Alaska. The 1989 BIA Labor Force Estimates Report represented the best data available on Tribes, with the exception of data for Alaska Native Villages. We used 1990 Census data for Tribal Grantees located in Alaska because the BIA Labor Force Estimates Report contained data for Alaska by five BIA regions only, not for each Alaska Native Village individually. In order to treat each Tribal Grantee equitably, we adjusted the 1990 census data to be comparable to the 1989 BIA data.

In future years, we will continue to investigate data sources and to use the best data available. The Secretary will make the final decision on the data to be used to determine allotments. Depending upon the data used, we might adjust the age of the children we include in future years down to a minimum age of 13 if lower age categories are available in the data used. To the extent possible, we will use data from the same source for all Tribal Grantees so that all Tribes are treated similarly.

Comment: There were many comments expressing support for changing the rule so that a full three percent of the Block Grant appropriation would be set aside for Tribal Grantees every year.

Response: It is too early to conclude that Tribal Grantees will need the full three percent of funds each year. Thus, we have decided to leave discretion for the size of the Tribal set-aside with the Secretary. In FY 1991, we set aside three percent, the maximum amount allowable in the Act for Tribal Grantees, and, in FY 1992, we will set aside the full three percent again. In future years, we will take into consideration the number of Tribal Grantees and the scope of their programs.

Tribal Allotment Formula

We allot each individually-eligible Tribe a base amount of funds as determined by the Secretary plus an additional amount of funds per child living on or near the Tribal Grantee's reservation or other appropriate area served by the Tribal Grantee.

This formula is similar to one considered by BIA for the Prevention of the Breakup and Reunification of Indian Families program. The formula is based on information provided by BIA as a result of recommendations they received from 12 workgroups—one from each of the 12 national BIA Regions/Areas in the country. These workgroups, which were made up of Tribal leaders from small and large Tribes, recommended the concept used in the formula, a minimum base amount with additional per capita funding. The underlying goal was to give Tribal Grantees sufficient funds to enable them to operate viable programs. For this reason, as discussed at § 98.83(e), the base amount is not subject to percentage limitations on expenditures and may be expended for any program purpose.

Each year, we will issue estimates for the upcoming fiscal year and provide guidance on what the next year's base and estimated per-child amounts will be. In FY 1991, a Tribe's allotment was equal to a base amount of $20,000 plus approximately $52 per child under the age of 16. As stated above, use of the under-16 data for allotment purposes did not extend the age of eligibility for an Indian child. We still require Indian children to be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribal Grantee provided for child care services for eligible older children in their Plan (e.g., children with mental or physical disabilities).

For FY 1991 we set the base amount at $20,000, because we believed this amount provided sufficient resources for a Tribal Grantee to operate a viable program, including the costs of administering the program and providing program services.

After a base amount is set aside for each eligible Tribe, we divide the remainder of the funds by the total number of Indian children, represented by the Tribes which have applied, to determine the per capita amount to be granted. In FY 1991, the per capita amount for each Indian child under the age of 16 was approximately $52. As the Block Grant appropriation and/or the number of Indian children changes, the per capita amount may likewise change. We expect to keep the base amount at $20,000 for the next few years.

Tribes that are not individually eligible to apply (i.e., Tribes with fewer than 50 children) may apply as part of a consortium and will receive a portion of the base amount that is equivalent to the ratio of the number of children in the Tribe to 50, plus the additional per capita amount of funds per child in the Tribe living on or near the reservation or other appropriate area served by the Tribal Grantee.

For example, in FY 1991 when a Tribe with 49 children joined a consortium, the Tribe's contribution to the consortium grant equalled 49/50ths of $20,000, or $19,600 plus 49 × $52.70, or $2,582.30. The total amount, $22,182.30, plus the amount for each other Tribe in the consortium, was included in the grant to the consortium.

We considered using a simple per capita formula to allot Block Grant funds to Tribal Grantees, but we did not

think the amount of such funds provided under this formula was sufficient to enable smaller Tribal Grantees to operate a satisfactory program. We also considered a formula that was similar to the State and Territorial formulas which would have compared economic conditions, as measured by per capita income, among Tribal Grantees. However, after examining per capita income data for Tribes, we did not believe there was sufficient variation to justify comparing one Tribe to another in the way we compare States or Territories to each other. This option was also rejected because of a lack of acceptable data.

We considered a third option, which would have linked Tribal Grantees more closely with the economic conditions (using per capita income) of the State in which a Tribal Grantee was located. We rejected this option because we believed geography was not a compelling reason to tie Tribal Grantees to States. In addition, we do not believe the economic conditions of the State in which a Tribal Grantee is located necessarily reflect the economic conditions of the Tribe.

Allotments to Tribal Consortia

The allotment for a Tribal consortium is equal to the sum of the individual allotments of the Tribes in the consortium.

Comment: Several commenters expressed support for the concept of a base amount of funds in the Tribal funding formula. A few commenters, however, were also concerned that the policy of giving Tribal consortia the sum total of their member Tribe base amounts unfairly skewed too much of the funds towards Tribal consortia. These commenters recommended capping the amount of base funding a Tribal consortium could receive.

Response: We decided not to cap the amount of base funds that Tribal consortia may receive because the base amount was intended to help a Tribe cover administrative costs of each constituent Tribe or Village. We do not believe the administrative costs of operating a Block Grant program significantly decrease for Tribal consortia. We require that Tribal consortia have Block Grant services available on each of their member Tribes' reservations or Villages and believe it will cost consortia approximately the same amount as it would if the member Tribes operated separate programs. Secondly, we did not want to encourage or discourage Tribes from applying as part of a consortium based on the funding level.

Data Sources

In determining the number of children in the Territory or Tribe, we will use the most current comparable data available.

Comment: We had many comments on our use of the 1989 BIA Indian Service Population and Labor Force Estimates report. All those commenting objected to the use of the 1989 BIA report, and all had different suggestions about what alternative data sources we should use instead. Some also suggested self-reporting by Tribes as an alternative.

Response: We continue to look for a good data source for determining the number of children in each Tribe. In addition to the BIA report, that we ultimately used, we considered Bureau of Census and Indian Health Service data. We have also considered allowing Tribes to independently report (self-report) the number of children in their Tribe.

Each of the data sources mentioned, including the BIA report, has inherent problems. For the majority of Tribal Grantees, we used the BIA report for allotting FY 1991 funds because it seemed to be the least problematic of all the available options, and it most closely mirrored the information we needed. The exceptions were the Villages in Alaska and those Tribes for which the BIA report did not have data. For these Tribal Grantees we used Bureau of Census data, which we adjusted to make comparable to the BIA data.

In searching for the best available data, we were looking for a source that was uniform for all Tribes. We preferred a source that also included children who live near the Tribe's reservation in its count. And finally, we preferred a data source that would be periodically updated. None of the known available data met all of these criteria, but the BIA report came the closest.

While Census data appear to be a good option because the same methodology is used to collect data for all Tribes, Census data are unsuitable because there is great variation among Tribes that have a reservation versus those that do not, with the result that Tribes without reservations are advantaged. A second problem is that the Census counts only those children that actually live within the geographical boundaries of the reservation or other statistical area. A third problem is that Census data are only updated every 10 years. The Census Bureau does not estimate Tribal population in the intervening years between the decennial census.

As for IHS data, they are collected by IHS service delivery area and by county, not by Tribe, so there is no way to determine the number of children in each individual Tribe.

Finally, we do not believe that independent self-reporting is a viable option because there is no way to ensure consistency among Tribes. The data in the BIA Labor Force Report are initially self-reported by Tribes, but BIA reviews the data for accuracy so the data are not entirely independently self-reported.

The regulatory language allows the Secretary to use the most appropriate data. We will continue to monitor available data in order to ensure equitable treatment of all Tribes.

Remaining Funds to Territories and Tribes

The funds reserved in a fiscal year for the Territories and Tribes will all be respectively allotted to those Territories and Tribes which apply for funding in that fiscal year. We will distribute the funds reserved for Territorial Grantees only to Territorial Grantees. Likewise, we will distribute the funds reserved for Tribal Grantees only to Tribal Grantees. None of these funds will be distributed to State Grantees.

Comment: Many commenters requested that once the Tribal set-aside is determined that those funds be distributed among Tribal Grantees alone. If all eligible Tribes do not apply, the remaining funds should be distributed to those Tribes that are receiving grants and not to non-Tribal Grantees.

Response: We have adopted the commenters' suggestion, extended it to Territorial Grantees and revised the regulations at § 98.62(c) to reflect these changes. We will distribute the funds that the Secretary sets aside for Territorial allotments in full to Territorial Grantees and those funds set aside for Tribal allotments in full to Tribal Grantees. We will not allot any of the Territorial set-aside to non-Territorial Grantees, or any of the Tribal set-aside to non-Tribal Grantees.

Comment: One commenter requested that we allow Tribal Grantees to carry over funds past the obligation period.

Response: The commenter's request seeks additional flexibility in the use of Block Grant funds by Tribal Grantees. We believe that this need has been addressed by the revision to the regulation at § 98.60(e) which provides that Tribal Grantees are no longer required to adhere to the obligation period requirement. Instead, Tribal Grantees have three fiscal years to expend their grants (see preamble to § 98.60 for further discussion).

Comment: Several commenters suggested that we either adjust or eliminate the requirement that Tribal Grantees expend 75 percent of their funds on activities specified under § 98.50 and 25 percent on activities specified under § 98.51. Other commenters recommended that we give more flexibility with regard to the amount allowed for administrative costs.

Response: We have adopted the commenters' suggestion and changed the 75/25 requirement as it applies to Tribal Grantees. For Tribal Grantees receiving grants of greater than $225,000, the 75/25 requirement for the per capita portion of its grant still applies. However, for Tribal Grantees receiving less than $225,000, the 75/25 requirement no longer applies. Instead, Tribal Grantees must spend at least 63.75 percent of the per-child amount of their grants on child care services, and no more than 36.25 percent for administration and other Block Grant activities. The base amount of $20,000 is still available for any costs allowable under the Block Grant, including administrative costs. (See § 98.83 for further explanation of these provisions.)

The changes outlined at § 98.83 give Tribes greater flexibility in operating the Block Grant program.

Reallotment (Section 98.63 of the Regulations)

Under section 658O(e)(1) of the Act, any portion of a State's allotment that is not required to carry out its Plan in the period for which the allotment is made available shall be reallotted, in proportion to the original allotments, to the other States. For purposes of this section and § 98.61, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, pursuant to section 658O(f) of the Act.

The Act requires the Secretary to determine the portion of a State's allotment which is not required to carry out the State's Plan. We will make such determinations based upon reports submitted by the States, pursuant to paragraph (a)(1) of this section. Each State must submit a report to the Secretary indicating either the amount of funds from the previous year's grant it will be unable to obligate during the remainder of the obligation period, or that all funds will be obligated prior to the end of the obligation period. These reallotment reports, which must be submitted by April 1 of each year, may be in the form of a letter. We chose the April 1st deadline to allow the Secretary the necessary time to reallot the funds and to allow States the necessary time to obligate such funds before the end of the obligation period.

We will reallot funds that States indicate are available for reallotment in proportion to each State's allotment, pursuant to § 98.61(b), for the applicable fiscal year, if the total amount available for reallotment is $25,000 or more. If the total amount is less than $25,000, we will not reallot these funds; instead, they will revert to the Federal government. We decided not to reallot funds if the total amount available for reallotment is less than $25,000 because the amount of reallotment per State would be so small that it would do little to enhance a State's program. Moreover, it is administratively impractical for the Department to issue such awards. In addition, the Secretary will not award any reallotted funds to a State if its individual grant award is less than $500, as it is administratively impractical to do so. No FY 1991 funds were available for reallotment.

If a State does not submit a reallotment report by the deadline for report submittal, we will determine that the Grantee does not have any funds available for purposes of the reallotment. If a State report is postmarked after April 1, we will not reallot the amount of funds reported to be available for reallotment; instead, they will revert to the Federal government. As previously discussed, late reports do not allow the Secretary the necessary time to reallot the funds nor do they allow the States the necessary time to obligate such funds before the end of the program period. By May 1, we anticipate the Secretary will reallot funds made available for reallotment.

Reallotted funds must meet the same programmatic and financial requirements as funds initially allotted to States; they must be obligated by the last day of the obligation period (see § 98.60 for discussion on obligating funds) and any unliquidated obligations must be expended by the last day of the program period.

In the interim final rules, we stated that the Secretary would determine which States needed the funds and how much they needed. In the final rule, we have revised the policy for distributing funds made available for reallotment. The funds will be distributed to States in proportion to their original allotment. (See discussion below.)

Comment: One commenter wanted to know how the Secretary will determine if States need any of the reallotted funds, on what basis the Secretary's decision will be made, and the recourse a State has if it disagrees with the Secretary's decision.

Response: As stated above, we have reconsidered our earlier policy. Under the final rule we will assume that all States need and want additional Block Grant funds that are made available for reallotment, and we will distribute the funds in the same proportion as the original allotments unless a State informs us that it does not want its share of the funds. If a State refuses its share or fails to obligate the funds before the end of the obligation period, the funds will be returned to the Federal government.

Comment: One commenter recommended that States, not the Secretary, should decide whether a State needs any of the reallotted funds.

Response: As discussed above, we have changed the regulation and now allow States to decide whether they need their share of reallotted funds.

Unlike allotments to State Grantees, once we make allotments to Territorial and Tribal Grantees, there is no reallotment of funds. While the Act provided for reallotment of funds for State Grantees, it made no such provisions for Territorial and Tribal allotments. Therefore, we have not provided for the reallotment of these funds.

Comment: One commenter suggested that Tribal and Territorial Grantees be eligible to receive reallotted State funds.

Response: Territories and Tribes are not eligible to receive reallotted State funds. The Act states that funds made available for reallotment are available for distribution to "States," and in section 658O where the reallotment provisions are discussed, "State" is defined as the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Thus, it is clear from the Act that Territories and Tribes are not eligible to receive funds made available for reallotment.

Financial Reporting (Section 98.64 of the Regulations)

Section 658J(c) of the Act, as amended by Pub. L. 102–27, provides that Block Grant funds awarded to State and Territorial Grantees must be obligated by the end of the fiscal year following the fiscal year in which they are awarded. Our regulations allow an additional year for liquidation of these obligations. In order to ensure that State and Territorial Grantees obligate and liquidate their Block Grant funds within the allowable timeframes, we require them to submit annual financial reports. The expenditure and obligation information included on these reports must be adequate to establish that the State or Territorial Grantee made its

expenditures and obligations in accordance with statutory and regulatory requirements, as well as the Grantee's Plan. State and Territorial Grantees should not submit documentation with their financial reports. Instead, they should retain the supporting documentation and, upon request, make it available to ACF.

Section 658O(c)(2)(C) of the Act provides that Tribal Grantees will submit such reports as the Secretary requires. We require Tribal Grantees to submit annual financial reports. Pursuant to § 98.60(e), Tribal Grantees have three fiscal years to expend their funds and are not required to obligate their funds by the end of the fiscal year following the fiscal year in which they are awarded. However, we still require Tribal Grantees to complete an annual financial report.

We believe that the financial reports are necessary both for the Department and for the Grantee to verify the financial status of Block Grant funds. They will also enhance the Department's ability to ensure the fiscal accountability of these funds. As Grantees must already have a financial management system for accounting and audit purposes, we do not believe that the requirement for these financial reports will be a significant burden on Grantees.

Within 90 days after the end of each fiscal year, State and Territorial Grantees shall submit a financial report to the Secretary on expenditures and unliquidated obligations. Within 90 days after the end of the liquidation period, they shall submit a final financial report to the Secretary showing final expenditures and the final balance of unliquidated obligations, if any. Expenditures and obligations reported must reflect the status of grant funds for the fiscal year for which funds were awarded. Unobligated funds as of the last day of the obligation period and unliquidated obligations as of the last day of the liquidation period will revert to the Federal government.

Within 90 days after the end of each fiscal year, Tribal Grantees shall submit a financial report to the Secretary on their expenditures and unliquidated obligations. As stated above, Tribal Grantees have three years in which to expend their grant. Thus, reporting unliquidated obligations is for informational purposes and will not result in any unobligated funds reverting to the Federal government (as it does with State and Territorial Grantees).

Within 90 days after the end of a program period, Tribal Grantees shall submit a financial report to the Secretary on final expenditures and the balance of unexpended funds, if any. Expenditures reported by Tribal Grantees must reflect the status of grant funds for the program period that just ended. Unexpended funds will revert to the Federal government.

Unless Grantees or subgrantees receive program income, Grantees have the option of reporting their expenditures on either the long or short forms of the standard OMB Financial Status Report (i.e., Standard Form 269 or 269A). If Grantees or subgrantees receive program income, they must submit Standard Form 269.

An example of program income is provided in paragraph (c) of this section. The regulations at paragraph (d) provide methods for reporting funds returned to the Grantee or subgrantee.

Under paragraph (b) of this section, the Secretary may require these reports less frequently. For example, we did not require a financial report within 90 days of the end of FY 1991 for expenditures of the FY 1991 grant since such a report would cover less than two months of expenditures. Rather, for the FY 1991 grants, State and Territorial Grantees must submit financial reports within 90 days of the end of FY 1992, the end of the obligation period, and FY 1993, the end of the liquidation period. For FY 1991 grants, Tribal Grantees must also submit financial reports within 90 days of the end of FYs 1992 and 1993. All reports filed within 90 days of the end of FY 1993 are the final expenditure reports for FY 1991 grants. We will convey changes in the schedule of reporting in future guidance.

FY 1992 grants will not be issued until September 30, 1992. The first financial reports for FY 1992 grants for all Grantees are not required until 90 days after the end of FY 1993.

Comment: One commenter was concerned about how closely its expenditure report would have to match the budget which it included in its Application. The commenter wanted to know what would happen if, for example, of its 75 percent portion, it spent the limit on administrative and improvement activities, but did not spend all of the remainder on child care services so that some of the funds were returned to the Federal government. Would we, in that example, disallow costs on its administrative and quality and availability improvement activities?

Similarly, the commenter wanted to know if its expenditure under § 98.51 met its planned, budgeted expenditure and its expenditure under § 98.50 did not, would it face penalties because its expenditures under § 98.51 exceeded 25 percent of the expended portion of its allotment?

Response: As stated in the preamble to § 98.13, we will not hold Grantees to the budget estimates in their Applications. Furthermore, we will determine compliance with the 75/25 split and the limitation within the 75 percent portion based the Grantee's total allotment as explained below, not its total expenditures. A Grantee's actual expenditures will help us determine whether the Grantee is in compliance, but as long as the Grantee complies with the requirements of the Act and regulations in relation to their total allotment, the Grantee will not be subject to any penalty.

We will apply the program restrictions (e.g., the 75/25 split and the limit on administrative costs and quality and availability improvement activities) to the Grantee's total allotment to determine the appropriate levels of expenditure. For example, if a Grantee receives $1,000,000, the Grantee may spend no more than $112,500 on administration and quality and availability improvements under the 75 percent portion of the Block Grant (i.e., 15 percent of $750,000). If a Grantee falls below this maximum, there is no problem. However, if a Grantee exceeds this maximum, then the Grantee is subject to possible sanction. Also, in all cases, if the Grantee expends less than the appropriate amount for direct child care services (in this case, $637,500), the unexpended funds must be returned to the Federal government. Otherwise, the Grantee would exceed the limit on administrative costs and quality and availability improvement activities.

Comment: One commenter recommended that we require Grantee reports of expenditures to be broken out between program and administrative costs.

Response: Under § 98.71, we require that Grantees report their program and administrative expenditures in their annual report; we do not believe that it is necessary to require the same information in the financial report.

Audits (Section 98.65 of the Regulations)

Section 658K(b)(1) of the Act provides that State and Territorial Grantees must have an audit conducted after the close of the program period. Section 658K(b)(2) of the Act provides that Grantee audits shall be conducted by an entity that is independent of any agency administering activities that receive Block Grant funds and in accordance with generally accepted auditing principles. In order to meet this requirement, Grantees must conduct audits in accordance with the provisions of OMB Circular A-128 (Audits of State

and Local Governments), as required in paragraph (a) of this section.

Since the program period for the Block Grant is three fiscal years, during the first few years of program implementation it is likely that an A–128 audit will include the Block Grant program before the end of a Block Grant program period. This is permissible. However, for purposes of the Block Grant, we require Grantees to conduct an audit only after the close of the program period.

Audits should cover expenditures made during the program period. In other words, expenditures made during the program period should be audited. It does not mean the audit must be conducted on the Federal fiscal year. Audits may be conducted on the Grantee's fiscal year.

The Act does not specify Tribal audit requirements, but provides in section 658O(c)(2)(C) that the Secretary may require Tribal Grantees to conduct audits of their programs. Therefore, similar to State and Territorial Grantees, we require Tribal Grantees to conduct an audit in accordance with OMB Circular A–128 after the close of the program period.

We also require Grantees to ensure that subgrantees meet the appropriate audit requirements. The appropriate audits for subgrantees that are local governments are the audit requirements of OMB Circular A–128. The appropriate audit requirements for non-profit institutions and institutions of higher education are those of OMB Circular A–133.

Funds awarded under procurement contracts, such as to a child care center for the provision of child care services, are not subject to these requirements. They are, however, subject to the terms and conditions of the contract.

Section 658K(b)(3) of the Act provide that Grantees must submit a copy of the audit report to the legislature of the State or Territory and to the HHS Inspector General for Audit Services not later than 30 days after its completion. Grantees located in Regions I through VIII should submit audit reports to the HHS Office of the Inspector General, Office of Audit Services in Kansas City, MO. Grantees located in Regions IX and X should submit audit reports to the HHS Regional Inspector General for Audit Services in Sacramento, CA.

Pursuant to section 658K(b)(4) of the Act, Grantees must repay to the Federal government any amounts determined through an audit not to have been expended in accordance with the statutory and regulatory provisions of the program, or with the Plan, and which are subsequently disallowed by the Department, or the Secretary will offset such amounts against Block Grant funds to which the Grantee is or may be entitled.

We require that Tribal Grantees also adhere to these audit provisions. They should submit a copy of the audit report to: (1) Their Tribal Council(s); (2) The HHS Office of the Inspector General, Office of Audit Services in Kansas City, MO or, if the Tribal Grantee is located in Regions IX or X, to the Regional Inspector General for Audit Services in Sacramento, CA; and

(3) The head of the cognizant agency, if different than HHS.

Grantees must provide Federal agencies access to appropriate books, documents, papers, and records. These records must adequately identify the application of Block Grant funds.

Grantees should be aware that additional Federal audits and reviews may be conducted. However, these audits or reviews will build upon work performed under prior audits, if such audits meet applicable standards. See subpart J for additional information on monitoring and compliance reviews.

If a Grantee fails to submit an audit report within the timeframe specified in paragraph (c) of this section, the Secretary may determine the Grantee has failed to comply with the regulations. The Secretary will notify the Grantee of such a determination, and the non-compliance procedures described in § 98.91 will be followed.

Comment: One commenter asked that we clarify the regulation at § 98.65(a) by changing it to read "[e]ach Grantee must have an audit conducted after the close of each fiscal year grant program period in accordance with OMB Circular A–128."

Response: We do not agree that adding the phrase "fiscal year grant" makes the regulation clearer. If anything, the suggested language would make the regulation more confusing because it introduces a new term that we do not use anywhere else in the regulation. In the definition of "program period" at § 98.2(cc), we clearly state that a program period is the time period during which a fiscal year's grant must be obligated and liquidated; adding the suggested language would be redundant. For the Block Grant program, the program period is, at a maximum, a two-year obligation period plus a one-year liquidation period.

It is possible that the commenter wanted us to clarify that the audits could be conducted on the Grantee's fiscal year, not the Federal fiscal year implied by the reference to the program period. We did not intend to imply that audits must be conducted on the Federal fiscal year. The regulation at § 98.65(a) simply means the audit for a given Federal fiscal year's funds must be conducted after the close of that fiscal year's program period, not that the audit must cover the exact same time period as the program period. As stated earlier, audits may be conducted on a Grantee's fiscal year.

Comment: A few commenters pointed out that, in the interim final rule at § 98.65(a), we stated that OMB Circular A–128 applied, but then in the preamble indicated that the Block Grant is a major Federal assistance program for all Grantees. Since most Tribal grants are less than $300,000, the threshold for major Federal programs as defined in OMB Circular A–128, the statements were inconsistent. Therefore, the commenters asked for clarification of which of these two statements apply to Tribal Grantees.

Response: We did not intend to rewrite the definition in OMB Circular A–128 for a major program, and we have deleted that statement in the preamble. Tribal Grantees that receive grants that are less than the threshold for a major Federal program ($300,000 or 3 percent of their total Federal assistance expenditures, whichever is larger) should conduct their audits as required under OMB Circular A–128 for a non-major program. We do not require such Grantees to conduct the audit as if the Block Grant were a major program.

Disallowance Procedures (Section 98.66 of the Regulations)

We have added a general statement in the final rule that Block Grant expenditures must be made in accordance with the Act, the implementing regulations, and the Grantee's approved Plan, or the expenditures will be subject to disallowance. This statement does not represent a change in policy but rather an explicit statement of a policy that was implied in the interim final rule.

The Agency may take a disallowance action against a Grantee as the result of an audit or a review which finds that the Grantee has improperly spent Block Grant funds. The Agency will notify the Grantee of its decision to disallow expenditures in writing.

If the Grantee agrees with the decision that the funds were not expended in accordance with the Act, these regulations, or its Plan, the Grantee shall repay any amounts improperly expended.

If the Grantee disagrees with a disallowance decision, the Grantee may appeal the decision. However, the Grantee may not appeal the

determination of award amounts or the disposition of unexpended balances.

The Grantee may request a reconsideration of a decision to disallow by appealing to the Assistant Secretary. The appeal letter must be postmarked no later than 30 days after the receipt of the disallowance notice and must be accompanied by the notice and the Grantee's reasons for believing that the disallowance was incorrect.

The Grantee may also appeal a disallowance decision directly to the Departmental Appeals Board. We specify the contents of the appeal and other instructions in 45 CFR part 16.

If the Grantee has appealed a decision to the Assistant Secretary, and the decision is not in the Grantee's favor, the Grantee may then appeal the decision of the Assistant Secretary to the Departmental Appeals Board.

The Grantee's repayment of the disallowed funds must follow a final decision to disallow. If the Grantee refuses to repay the funds, the amount of the disallowance will be withheld from future grants.

We will charge interest on disallowed expenditures of the Block Grant program in accordance with 45 CFR part 30. Interest will begin to accrue from the date of notification of disallowance to the Grantee.

There were no comments on this section of the rule.

Fiscal Requirements (Section 98.67 of the Regulations)

In the interim final rule, this section of the regulations addressed the fiscal requirements for contracts and agreements with the use of Block Grant funds and provided that a Grantee was required to have accounting procedures that adequately established the propriety of grant expenditures. The preamble included the requirement that expenditures of Block Grant funds are subject to the same laws and procedures as expenditures of the Grantee's own funds, but this provision was omitted from the regulation. This requirement has been added to the regulation at § 98.67(a). The section has been retitled "Fiscal Requirements."

The Act does not directly discuss general fiscal requirements and contracting authority or limitations, but we believe these regulatory provisions are consistent with the intent of the Act. We specify that Block Grant funds are subject to the same laws and procedures as expenditures of the Grantee's own funds. This applies for expenditures incurred by the Grantee and for contracts involving the use of grant funds. Contracts entered into by the lead agency or other State agencies administering the program would be subject to State procurement rules and procedures; contracts entered into by local agencies who serve as subgrantees would be subject to applicable local rules and procedures. In addition, Grantees may impose additional procurement requirements on subgrantees. We also require that fiscal and accounting procedures be adequate for reporting purposes and to establish the propriety of grant expenditures.

There were no comments on this section of the rule.

Subpart H—Program Reporting Requirements

Annual Report Requirement (Section 98.70 of the Regulations)

Section 658K(a) of the Act requires each State receiving Block Grant funds to submit an annual report to the Secretary in the manner specified by the Secretary. The first report must be submitted by December 31, 1992.

We added the statement "in the manner specified by the Secretary" in the final rule in order to allow the systematic collection of data. Such a systematic collection is necessary in order for the Secretary to fulfill the requirement at section 658L of the Act. Section 658L requires the Secretary to summarize annually for Congress the data and information required at section 658K of the Act and § 98.71 of the regulation.

While the Act does not designate the reporting period, we have chosen to have the reporting period coincide with the program period, which is defined at § 98.2(cc) as the period during which the designated fiscal year's Block Grant funds must be expended. The first program period—for FY 1991 funds—does not end until September 30, 1993. The report for that period will be due December 31, 1993. Therefore, the report due on December 31, 1992, will be an interim report (covering the expenditures through the end of FY 1992 for activities undertaken with FY 1991 dollars (i.e., from November 5, 1990 through September 30, 1992)). Subsequent reports (i.e., reports in 1994 and thereafter) will cover Block Grant activities during the program period for each successive fiscal year's funding.

Although Grantees may expend funds from two or three different fiscal year allotments in the course of a year, annual reports will cover expenditures from a single year's allotment. This policy is similar to the policy for financial reports discussed in § 98.64 and is necessary to ensure that Grantees meet the requirements of the Act regarding the use of funds.

Section 658O(c)(2)(C) of the Act specifies that Tribes will report on programs and activities under the Block Grant. Based on this provision and because Tribes are subject to requirements for a Plan and necessary assurances, we also require Tribal Grantees to submit an annual report.

As with other provisions, the Territories are considered States for this purpose.

There were no comments on this section of the rule.

Content of Report (Section 98.71 of the Regulations)

Consistent with the requirements of section 658K of the Act, we require States to submit specific information in their annual report to the Secretary. Furthermore, as discussed in § 98.70, we are requiring the same information from Territories and Indian Tribes.

A Grantee's report to the Secretary must include: uses for which the program period's Block Grant funds were expended during that program period and the amount expended for such uses; the extent to which affordability and availability of child care increased; results of the review of licensing and regulatory requirements and policies pursuant to § 98.41(d); an explanation of any reduction in standards pursuant to § 98.41(c); a description of standards in the area served by the Grantee; and a description of any Grantee actions to improve quality. For the purpose of this report, the term "standards" refers to the State and local licensing and regulatory requirements described in §§ 98.40(a) and 98.2(x). Since we may need other information in order for the Secretary to fulfill his responsibilities under sections 658I and 658L of the Act, paragraph (g) of this section allows the Secretary to establish additional reporting requirements.

To the extent data is reasonably available to the Grantee from any source, the Grantee must also report: The number of children assisted with Block Grant funds; the number of children assisted under other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel in the area served by the Grantee; salaries and other compensation for full-time and part-time child care staff; and activities to encourage public and private partnerships. Available data sources, in addition to the Grantee's records, may include reporting from child care programs authorized under titles IV–A and XX of the Social Security Act, Head

Start, and Department of Education child care services. We also encourage Grantees to use data available from studies conducted within their jurisdictions using established methodologies, even if the Grantee did not fund the studies.

In the interim final rule, we required Grantees to specify the uses for which Block Grant funds were expended and the amount expended for such uses in relation to the budget submitted each year with their Application for Block Grant funds. We have deleted this requirement in the final rule to be consistent with changes made to the Application requirement in § 98.13. Section 98.13 now allows Applications to be submitted annually, or less frequently as specified by the Secretary.

We will send more information to Grantees concerning specific reporting requirements. We will issue more detailed instructions in the future, including data definitions and reporting format. Before we issue such instructions, however, we would solicit comments and secure necessary OMB approval. Among other issues, we are considering the issue of compatibility with reporting requirements for the other child care programs administered by ACF.

Comments: Several commenters urged development of comparable reporting requirements and common data definitions across ACF child care programs.

Response: To the extent possible, we will coordinate Block Grant reporting requirements with other ACF programs. As we develop data definitions and a reporting format, we will solicit the advice and assistance of Grantees.

Comment: One commenter expressed concern about the lack of information systems among Grantees to meet the reporting requirements for all ACF child care programs.

Response: We are aware of the importance of information systems to child care reporting, as well as child care program operations. Our Office of Information Systems Management will soon issue guidance on developing automated child care information systems.

Comment: Another commenter suggested a separate reporting requirement regarding the status of certificate program implementation.

Response: This is a program requirement and will be addressed through monitoring, as described in the preamble section entitled "Monitoring" below.

Subpart I—Indian Tribes

General Procedures and Requirements (Section 98.80 of the Regulations)

Section 658O(c)(1) of the Act provides that the Secretary may make grants to or enter into contracts with Indian Tribes for the planning and execution of Block Grant programs. Section 658P(7) of the Act defines eligible Indian Tribes according to the definition provided in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)). The term Indian Tribe includes Alaska Native Villages or regional or Village corporations pursuant to the Alaska Native Claims Settlement Act (42 U.S.C. 1601–1641). Section 658P(14) of the Act defines eligible Tribal organizations according to the definition provided in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). The regulation at § 98.2(oo) explicitly includes consortia, as noted in the discussion at § 98.2 of the preamble. In other words, eligible Tribal Grantees must be Federally-recognized Indian Tribes or must be groups of Federally-recognized Indian Tribes. Readers should note that we corrected the statutory citations from those given in the Act based on amendments in 1988 to the Indian Self-Determination and Education Assistance Act by section 103 of Public Law 100–472.

With limited exceptions, the interim final rule required all Tribal Grantees to comply with all regulations under parts 98 and 99. As discussed in § 98.83, we have provided most Tribal Grantees with additional flexibility in the final rule. However, the final rule provides that all Tribal Grantees are subject to all the regulations under parts 98 and 99, unless otherwise expressly indicated in this subpart.

The regulations in this section also provide that an Indian Tribe or a consortium applying for or receiving Block Grant funds must have at least 50 children under age 13. The regulations also provide that we may base this determination on an alternate but similar age limit based on the availability of data.

For purposes of determining whether a Tribe has 50 or more children, we will include children who live on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

Comment: We received a few comments which objected to the requirement that Tribes have at least 50 children to be individually eligible to apply for the program.

Response: For the reasons discussed in the preamble to § 98.62, we believe a minimum of 50 children is a reasonable requirement. Tribes must be able to demonstrate their ability to administer a Block Grant program; a Tribe must be of some minimum size in order to have all the components that are necessary to operate a program. In other Federal programs, such as grants to Tribes for supportive and nutrition services to older Indians (part of the Older Americans Act of 1965), a 50-person minimum is used, as specified by Congress.

Comment: One commenter requested a waiver of the minimum 50-child requirement for Tribal eligibility due to geographic disparity between members of the consortium through which the commenting Tribe applied for Block Grant funds.

Response: We understand that the very nature of any minimum population requirement will potentially preclude some Tribes from operating a Block Grant program without joining a consortium. However, we believe a minimum population is necessary and have set the threshold number for Tribal Block Grant programs at 50 children. We believe that the legitimacy of this requirement is underscored by the few comments we received on this issue and the fact that over 160 Tribal Grantees applied to operate a Block Grant program.

Section 658O(c)(3)(B) of the Act requires that, in determining whether to approve an Application from a Tribe, the Secretary must consider its ability to carry out its proposed programs satisfactorily. We include this requirement in paragraph (b)(2) of this section. A Tribal applicant must include information to demonstrate its capability to carry out a program, pursuant to § 98.13(c).

Additionally, we have provided that Tribes may enter into consortium arrangements in order to operate a Block Grant program. We believe that this provision will allow Tribes to take advantage of economies of scale and other benefits associated with larger programs. Moreover, it will allow those Tribes with fewer than 50 children under age 13 to participate in the program.

Paragraph (c)(4) of this section requires that consortia demonstrate sufficient managerial, technical, and administrative ability to administer government funds properly, manage a Block Grant program, and comply with the provisions of the Act and the regulations. Similarly, an Application from a consortium must include

information to demonstrate management ability and the appropriate authorization, pursuant to § 98.13(c) and paragraph (c)(1) of this section.

Comment: Although we did not receive any formal comments regarding the requirement that consortia and Alaska Native Corporations obtain and submit resolutions from each participating Tribe, we did receive comments from consortia and Native Corporations during our Application and Plan review process. Several commenters, especially the Alaska Native Corporations for whom distance and travel are particular problems, protested our requirement for a resolution from each participating Tribe. Many of the comments noted that the Alaska Native Corporations are individually eligible to apply for Block Grant funds on behalf of their constituent Villages.

Response: Our rationale for requiring a resolution was our desire for verification that each individual Tribe or Village in a consortium had actually agreed to give the consortium the authority to apply for Block Grant funds on their behalf. In the final rule, we have decided that we will not require a formal resolution from each Tribe or Village, but we will require the lead agency of a consortium to "demonstrate" that all Tribes or Villages agree to participate in the consortium arrangement for the purpose of applying for and receiving Block Grant funds.

Consortia could demonstrate members' agreement to participate in a number of ways. Obviously, a resolution would be acceptable. We would also accept an agreement signed by the Tribal Leader or evidence that a Tribal Leader participated in a vote adopting such an agreement. We would not accept a vote on behalf of an unrepresented Tribe or Village, however.

In the special case of Alaska Native Corporations, which are individually eligible to apply on behalf of their constituent Villages, the Corporation would need to demonstrate agreement from member Villages in order to receive the base amount associated with each constituent Village. In the absence of such demonstration of agreement from a constituent Village (and assuming the Village did not apply to operate its own Block Grant program), the Corporation would only receive the per-child amount associated with that Village.

We wish to emphasize that we require services to be available for each Tribe for which a consortium receives funds (or, in the special case of Alaska Native Corporations described above, for each Village for which the consortium receives both the base and per-child amounts). By "available services," we mean services must be offered to parents in each participating Tribe or Village. It is not permissible to apply for funds on behalf of a Tribe or Village and not make services available in that Tribe's service area.

We also require that all participating consortium members be geographically proximate to one another, although we have provided an exception for those consortia with pre-existing arrangements. By requiring proximity, we have attempted to ensure that consortia form to best serve the needs of Tribal members. We specifically permit consortia to operate in more than one State. We will assess geographic proximity on a case-by-case basis.

Pursuant to section 658O(c)(5) of the Act, the awarding of a grant to a Tribal Grantee shall not affect the eligibility of any Indian child to receive Block Grant services provided by a State Grantee. For non-Tribal Block Grant programs, Indian children are subject to the same eligibility requirements, detailed in §§ 98.20 and 98.21, as all other children. We have decided to give Tribal Grantees the option to require that Indian children must be from a family whose income does not exceed either: (1) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee; or, alternatively, (2) 75 percent of the appropriate State median income. A Tribe must signify which option it has chosen in its Plan. We determined that Tribal Grantees should have this option in order to permit the flexibility to coordinate with State programs and to prevent Tribal children from being disadvantaged.

We considered exempting Tribal Grantees from this income requirement entirely, but we realized that such an exemption entailed the possibility of making a child eligible for a Tribal program when that same child would be ineligible for the State program. Aside from creating confusion, this discrepancy could also allow Tribes to ignore the program's purpose of serving low-income children and thus deprive children of Block Grant services.

Ultimately, we decided to give Tribal Grantees the option described above. We believe that this option provides Tribal Grantees with additional latitude to concentrate Block Grant services. We also believe that this option is consistent with the statutory provision for dual eligibility.

Application and Plan (Section 98.81 of the Regulations)

Indian Tribes are required to submit an Application and a Plan in accordance with requirements at §§ 98.13 and 98.16. Additionally, section 658O(c)(2) of the Act requires that Indian Tribes submit an Application which provides that: (1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out the Block Grant program; and (2) Tribal Block Grant programs and activities will be carried out on the Indian reservation (except for programs located in Alaska, California, or Oklahoma) and for the benefit of Indian children.

As discussed in § 98.20, the requirement that Tribal Grantees operate their programs on the Indian reservation for the benefit of Indian children establishes the authority of the Tribal Grantee to serve only Indian children.

Comment: One commenter proposed that we change §§ 98.81(a)(2) and 98.83(b) to include the language "on or near an Indian reservation." This change would accommodate Tribes wishing to offer services to parents commuting to work or school off the reservation.

Response: Tribal Grantees have the flexibility to define services and activities for the purposes of these provisions. For example, "activities" could be defined as only including administrative activities, such as issuing a child care certificate, or it could be defined to include both administrative activities and child care services. Thus, while some services/activities must be conducted on the reservation, all services and activities need not be. Similarly, Tribes must decide whom they will serve. Tribal Grantees have flexibility to define reservation to include the geographic boundaries of the reservation only, on or near the reservation, or some other definition, depending on Tribal needs and circumstances. Thus, Grantees may serve only families residing on the reservation, or may serve those who reside on or near the reservation. We realize the diversity and unique circumstances of Tribal Grantees and wish to allow maximum flexibility to design programs to meet Tribal needs.

We require Tribal Grantees to submit their initial Plan for a period of two years. Section 658O(c)(4) of the Act permits the Secretary to authorize Tribal grants for periods of up to three years; section 658E(b)(1) requires that the initial Plan from States be for a period of

three years. We determined, however, that because most Tribal programs will be relatively small, requiring Plans every two years will not be overly burdensome. In addition, ACF will be able to review Tribal Plans on a more timely basis since, after 1991, they will not generally be processed at the same time as Plans from States. As specified in § 98.13(b), all Grantees, including Tribal Grantees, must apply for Block Grant funds annually (or less frequently if specified by the Secretary).

Coordination (Section 98.82 of the Regulations)

Section 658O(c)(2)(A) of the Act requires Tribal applicants to coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program. We cover this requirement in paragraph (a) of this section.

We require Tribal applicants to comply with the provision at section 658D(b)(1)(D) of the Act (and § 98.12 of the regulations), regarding coordination with other Federal, State and local child care and development programs. We included language requiring coordination with other Tribal programs, as well. We also require States to coordinate with Tribes at § 98.12(c).

Since Tribes must submit Applications annually (or less frequently as specified by the Secretary), we expect the coordination specified in this section to be carried out on an ongoing, rather than one-time, basis.

There were no comments on this section of the rule.

Requirements for Tribal Programs (Section 98.83 of the Regulations)

As stated in the preamble at § 98.80, Tribal Grantees are subject to all the regulatory requirements of parts 98 and 99, unless otherwise indicated. This section of the regulation includes requirements for Tribal programs.

The Act is generally silent regarding which provisions should be applied to Tribal Grantees. In the interim final rule, we required all Tribal Grantees to meet the same requirements that all other Grantees must meet. Based on recommendations that we received, both through the comment process and our experience reviewing Tribal Plans, we have exempted most Tribal Grantees from a number of the Block Grant requirements. The final rule does not require Tribes with grants less than a figure set by the Secretary based on the smallest amount which could be allotted to a State or Territorial Grantee (set at $225,000 currently) to: (1) set aside 25 percent of Block Grant funds for quality improvements, early childhood development, or before- and after-school programs; or (2) establish certificate programs.

All Tribal Grantees must nevertheless expend a minimum of 63.75 percent of their per-child amount on direct child care services. We established this amount based on the service percentage that applies to other Grantees. Non-Tribal Grantees must spend 85 percent of 75 percent of their total Block Grant on child care services ($0.85 \times 0.75 = 0.6375$, or 63.75 percent). Consistent with this, we require Tribal Grantees to expend at least 63.75 percent of their per-child allocation on child care services. The remaining 36.25 percent may be used for child care services, early childhood development, before- and after-school care, or other activities required to implement the Block Grant program, including administration. Such services, activities, and costs must be consistent with the purposes and requirements of the Block Grant. For example, Tribal Grantees may not use Block Grant funds to extend or replace the regular academic program.

For Tribal Grantees, this percentage only applies to the per-child portion of their total allocation, pursuant to § 98.83(e). As described in the interim final rule, the purpose of a base amount for each Tribal Grantee is to provide flexibility to cover the administrative costs of implementing a child care program. Thus, these base funds are available for any activity consistent with the purposes and requirements of the Block Grant program. This flexibility has been clarified in paragraph (e) of this section of the regulation.

We decided to set the cut-off for not meeting all State and Territorial Block Grant requirements at an amount which approximates that least amount which could be allotted to any State or Territory, which is currently $225,000. As the Act requires States and Territories to meet all requirements with a grant of that size, we require Tribal Grantees to do so also. In addition, this amount is sufficient to ensure that the individual subdivisions of the amount as required by the Act (e.g., five percent of the total Block Grant for quality activities pursuant to § 98.51) will be of a sufficient magnitude.

In looking at whether Tribal Grantees should be subject to all requirements to which States are subject, we also considered other options. We considered keeping the requirement of the interim final rule that all Grantees meet all requirements. However, based on the relative size of most of the Tribal Grants (for FY 1991 more than 45 percent are under $50,000 and more than 70 percent are under $100,000) and our experience in reviewing Tribal Plans, we believe the set-aside requirements at §§ 98.50 and 98.51 are impracticable. We also believe that the unique characteristics of many reservations and Tribal service areas and the small amounts of the Tribal Grants make requiring a certificate program, which requires substantial administrative cost, impracticable.

We also considered exempting all Tribal Grantees from the provisions specified above. We did not choose this option because some Tribal Grantees have very large allotments, in some cases even larger than State allotments. We therefore determined that such a blanket exclusion would be inappropriate, and that Tribal Grantees with allotments equal to or greater than the smallest potential Territorial or State allotment should meet the same requirements that States and Territories must meet.

Finally, we considered basing the cut-off amount only on the per-child allocation of a Tribal Grantee, or at amounts other than $225,000. We decided against either option because it seems logical to require those Tribal Grantees with total funds equal to the smallest potential State or Territorial grant to meet all the requirements that all State and Territorial Grantees must meet. We also believe that those consortia with large percentages of their allotment from aggregated base amounts have sufficient flexibility and resources to operate a full program.

Tribal Grantees, like States, must designate a lead agency to administer the Block Grant program. As with States, we feel that it is important to have a single point of contact for Tribal Block Grant programs.

Section 658O(c)(2)(B) of the Act requires that, except for Grantees located in Alaska, California, or Oklahoma, Block Grant programs must be carried out on the Indian reservation for the benefit of Indian children.

We anticipate that, in the case of consortia, licensing and regulatory requirements will vary from Tribe to Tribe. This variation is not unlike situations in States, where licensing and regulatory requirements vary from county to county and city to city. In cases where licensing and regulatory requirements do vary among consortium members, we considered requiring the consortium to accept and apply a single set of licensing and regulatory requirements within the consortium. We

decided, however, to simply require the consortium to specify in written agreements variations in the application of licensing and regulatory requirements. For example, a consortium having Tribal members with different licensing and regulatory requirements must have in place written agreements between the consortium and each member specifying the licensing and regulatory requirements that apply for each consortium member.

Tribal Grantees that are consortia, like State Grantees, must ensure that providers meet the applicable licensing, regulatory, and health and safety requirements of each jurisdiction within which the consortium operates a Block Grant program. Thus, child care provided through the Block Grant program must meet applicable State or Tribal standards. In the absence of Tribal standards, State standards will apply unless Tribes are excepted under State law. If Tribes are excepted from State health and safety requirements for the purposes of providing child care, Tribal Grantees must develop requirements pursuant to § 98.41.

Similarly, if there are variations in the implementation of the requirements of the Act or these regulations, the variations must be specified in the written agreements.

Comment: Most of the Tribal commenters requested greater flexibility for Tribal Grantees. Many of these comments cited the limited availability of most Tribal programs, due both to the relatively modest size of most Tribal allotments and the distinctive nature of child care on or near reservations. Some comments suggested that Tribal Grantees should be exempt from the assurance at § 98.15(b)—the requirement to always have child care certificates as an option for parents offered Block Grant services. Other comments suggested that Tribes needed greater flexibility regarding spending on non-service activities, such as quality and availability activities and administration.

Response: As discussed above, based upon Application and Plan reviews and discussions with various Tribal Leaders, we have decided to exempt most Tribal Grantees from certain regulatory requirements. Section 98.83(f) of the regulation states that Tribal Grantees with total allotments less than such sum as set by the Secretary that approximates the least amount which could be allotted to any individual State or Territory (currently $225,000), are exempt from the assurance at § 98.15(b), the requirements at § 98.30 regarding certificates and the requirements for reserving funds at §§ 98.50 and 98.51. Tribes with allotments greater than $225,000 (or such other amount as set by the Secretary), remain subject to those sections of the regulation. Section 98.83(g) of the regulation requires that Tribal Grantees exempt from the requirements at §§ 98.50 and 98.51 must spend at least 63.75 percent of their per-child amount on services while the remaining 36.25 percent plus the base amount may be spent on child care services or on activities to improve the availability and quality of child care and all other non-service expenditures.

Comment: Although we received no written comments from Tribes on the requirement in § 98.44 that Grantees prioritize services to families with very low family income and children with special needs, we did receive several verbal comments during our Plan review process. These commenters were specifically concerned with the prioritization of families with very low family income, indicating that such a distinction on reservations where incomes are typically very low is difficult to make and often inappropriate. Similarly, we have received comments regarding the requirements at § 98.51(c)(2), which require Grantees to prioritize funds to geographic areas eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965 and then to any other areas with concentrations of poverty and areas with very high or very low population densities. These commenters stated that Tribal service areas are generally homogenous in income and population density.

Response: Based on these comments, we have eliminated the requirement that Tribal Grantees prioritize services to families with very low family income. We have also eliminated the requirement that Tribal Grantees prioritize funds granted or contracted under § 98.51 to geographic areas eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965 and then to any other areas with concentrations of poverty and areas with very high or very low population densities. Tribal Grantees continue to be subject to the prioritization requirements in § 98.44(b) regarding special needs children.

Comment: We received one written comment and several verbal comments regarding the applicability of sliding fee scales to Tribal programs. One commenter requested flexibility in establishing sliding fee scales, including setting one minimum fee for everyone regardless of income.

Response: The requirement for establishing sliding fee scales continues to apply to Tribes. We wish to emphasize, however, that Grantees have considerable flexibility in setting the fee schedules. Tribes wishing to set low fees with little variation between income levels have the flexibility to do so pursuant to § 98.42.

Comment: One commenter proposed that we change §§ 98.81(a)(2) and 98.83(b) to include the language "on or near an Indian reservation." This change would accommodate Tribes wishing to offer services to parents commuting to work or school off the reservation.

Response: As discussed at § 98.81, Tribal Grantees have the flexibility to define reservation to include those areas which are "on or near." Therefore, it is not necessary to change the regulatory language.

Subpart J—Monitoring, Non-compliance and Complaints

Monitoring (Section 98.90 of the Regulations)

Section 658I(b)(1) of the Act requires the Secretary to monitor programs funded under the Block Grant for compliance with the provisions of the Block Grant Plan, as well as the provisions of the Act. We have added language at paragraph (a)(2) of this section which makes it clear that Grantees are also required to comply with the requirements of these regulations. In addition, we have included language at § 98.90(b) which provides for monitoring entities providing services under contract or agreement with the Grantee. We included this language to ensure that all services follow the provisions of the Plan and the Act, regardless of how the services are provided. We will provide additional information regarding the nature and extent of monitoring activities in the future.

If a review or investigation uncovers evidence that a Grantee has failed to comply substantially with the Plan or with one or more of the provisions of the Act or implementing regulations, we will notify the Grantee. We will then give the Grantee 60 days to provide additional information before we make a formal determination of failure to comply.

We have also included language in paragraph (c) of this section which requires that Grantees make available appropriate books, documents, papers, manuals, instructions, and records, upon reasonable request, when the Department is monitoring a Grantee program.

Paragraph (d) of this section requires Grantees and subgrantees to retain

records as described in paragraph (c) of this section. These records are necessary to support the accuracy of the information reported on the Financial Status Report (Standard Form 269 or 269A) and in the annual report, to permit audits and to establish the Grantee's compliance with the Block Grant requirements. Grantees and subgrantees are also required to have their contractors retain and permit access to records which are directly pertinent to that specific contract. Grantees and subgrantees may accomplish this by writing such provisions into all their contracts.

Paragraph (e) of this section requires Grantees to retain their records for three years from the day they submit their final Financial Status Report (Standard Form 269 or 269A) at the end of the program period. If an issue arises before the expiration of the period, records must be retained until the issue is resolved or the end of the three year period, whichever is later.

Information which leads us to believe that there may be a failure to comply may come from monitoring activities, from the annual reports required under § 98.70, from complaints received and processed under § 98.93, or from any other source.

There were no comments on this section of the rule.

Non-Compliance (Section 98.91 of the Regulations)

After providing the notice described in § 98.90(b), we will determine whether the evidence supports a finding of a failure to comply substantially with the Block Grant Plan, the Act or implementing regulations. We will provide the Grantee a written decision regarding non-compliance within 60 days of the preliminary notification described in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later.

The final notice of non-compliance will include any penalties and/or sanctions to be imposed, pursuant to § 98.92. We will give the Grantee the opportunity for a hearing under part 99. Issues at the hearing will include the finding of non-compliance, as well as the penalties and/or sanctions to be applied.

There were no comments on this section of the rule.

Penalties and Sanctions (Section 98.92 of the Regulations)

Section 658I(b)(2) of the Act provides specific penalties and sanctions to be applied if it is determined that the Grantee has failed to comply substantially with any provision of the Block Grant Plan, the Act or implementing regulations. We include these penalties in the regulation at paragraphs (a) and (c) of this section.

The penalty may be the cessation of all payments under the Block Grant, or, in the case of non-compliance in the operation of a specific program or activity, we may make no further payments to the Grantee with respect to that program or activity. For example, if we determine that a Grantee has not implemented a certificate program by October 1, 1992, as required in section 658E(c)(A)(iii) of the Act, we could terminate all funding under 658E(c)(3)(B). Penalties will continue until we are satisfied that there is no longer any such failure to comply or that the Grantee will promptly correct the non-compliance.

In addition to imposing the penalties described above, the Act provides that the Secretary may impose other appropriate sanctions, including recoupment of funds improperly expended for purposes prohibited or not authorized by the Act. The Secretary may also disqualify the Grantee from receipt of any further funding under the Block Grant.

We may informally contact the Grantee for more information regarding potential non-compliance in an effort to resolve the issue without invoking the formal process. In addition, the issue may be resolved at any point in the process through the introduction of new information that resolves the question, or through the Grantee's agreement to come into compliance with the Plan and/or the Act. Nevertheless, we may apply penalties and/or sanctions, even if the issue is resolved informally. We include these provisions in paragraph (e) of this section.

Comment: One commenter suggested adding language to § 98.92 which clearly states that, except in cases of provider or parent fraud, providers and parents are not responsible for repayment of child care assistance.

Response: At § 98.60, we have clarified our policy regarding child care payments which are the result of fraud and those that are made in error.

Comment: One commenter suggested that the regulations, either at § 98.30 or § 98.92, should provide that, upon a finding that a procedure or requirement violates the parental choice requirements of § 98.30, the State shall be provided a reasonable period of time to cease the impermissible practice and enter into compliance. The State should not have fiscal sanctions or other penalties imposed unless the State refuses to cease the impermissible practice after a decision by the Assistant Secretary under § 99.3 that the State has violated the parental choice requirements.

Response: The regulatory language at §§ 98.91 and 98.92 is applicable to all program activities and provisions of the Act. As discussed more fully in § 98.30, if we find a Grantee's procedure or requirements to have the effect of severely limiting parental choice, we will give the Grantee a reasonable amount of time to make changes. If the Grantee refuses to change the procedures or requirements, we would initiate a compliance action.

Complaints (Section 98.93 of the Regulations)

Section 658I(b)(3) of the Act requires the Secretary to establish rules for processing complaints concerning any failure to comply with the Act or the Plan. We provide such procedures in this section of the regulations.

This section addresses complaints that a Grantee has failed to comply with the terms of the Act, implementing regulations, or the Plan. We add that the Secretary is not required to consider a complaint unless it is submitted as required by this section. Paragraph (b) of this section includes the address of the Assistant Secretary and requires that the complainant identify the basis for the complaint and provide all relevant information known to the person submitting it.

We will furnish a copy of any complaint to the affected Grantee. We will consider any comments received from the Grantee within 60 days (or a longer period if agreed to by the Grantee and the Department) in responding to the complainant.

We will provide a written response to complaints within 180 days after receipt. If we do not resolve the issue with the Grantee, we will pursue the complaint through the process described in § 98.90.

Comment: One commenter suggested that Grantees should have responsibility for establishing a complaint process for resolution of disputes or complaints regarding Grantee policies or practices. The role of the Assistant Secretary should only be to respond to appeals from interested parties where final resolution was not achieved through the Grantee complaint process.

Response: The Act at section 658(b)(3) specifically requires the Secretary to establish rules for processing complaints concerning any failure to comply with the Act or the Plan. The Secretary has delegated this responsibility to the Assistant Secretary for ACF.

As provided in this section of the regulations, we will give the Grantee the opportunity to resolve complaints before any action is taken by the Department. Grantees are free to establish a process for handling programmatic complaints received directly from complainants or those forwarded by the Department.

Part 99—Procedure for Hearings for the Child Care and Development Block Grant

In the interim final rule, we added a new part to the Code of Federal Regulations (CFR) which provides an administrative hearings process required for processing appeals of Block Grant Plan disapprovals, pursuant to § 98.18, and the compliance process, pursuant to subpart J. Although there are other regulations in the CFR that address the hearing process for similar programs, the unique characteristics of the Block Grant disapproval and compliance processes justified inclusion of a separate hearings regulation. In addition, one objective of this regulation was to create a stand-alone document which would, to the extent possible, contain all Federal rules necessary for administering the Block Grant program.

Rather than amend existing regulations relating to other hearing processes, we felt that the best approach was to include a process specific to the Block Grant. The process is not substantially different from similar provisions for other programs. In fact, we used the regulation at 45 CFR part 213 as the model for part 99.

The regulation is self-explanatory. It contains information related to the conduct of hearings for the Block Grant. When an applicant or Grantee wishes to appeal an adverse decision regarding a Block Grant Plan or Plan amendment, the hearings process in part 99 will be followed. Similarly, should the Department determine that a Grantee has failed to comply with a provision of the Act, part 98 of the regulation, or its Plan, we will follow the hearings process in part 99 in processing the appeal.

Subpart A of the regulations provides the scope of the rules and specifies the rules regarding the record of the proceedings and the filing and service of papers; subpart B provides the rules governing the issuance of notices, the scheduling of the hearing, the issues to be included and who can participate in the hearing; subpart C specifies who presides at the hearing, the duties and responsibilities of the presiding officer, the rights of all the parties, and the rules governing the evidence to be presented; and subpart D specifies the posthearing procedures and decisions.

Only one agency commented on this part of the regulations. We discuss its comments below.

Issues at Hearings (Section 99.14 of the Regulations)

Comment: The commenter recommended that § 99.14(b) be amended to provide that if new or modified issues are presented, such issues must be published in the **Federal Register**.

Response: We agree and have added the necessary language to the regulation.

Discovery (Section 99.23 of the Regulations)

Comment: The same commenter recommended that § 99.23 be amended to provide that discovery rights are available to individuals or groups granted party status under § 99.15.

Response: We agree that all persons or groups who are granted party status should have the right to conduct discovery against opposing parties. We have, therefore, amended the regulation.

Additional Information

Coordination in Planning and Service Delivery

The Block Grant is but one of many programs designed to help low-income families meet their child care needs. This section of the preamble provides general information on a number of programs which Grantees may consider as they implement Block Grant programs and in developing programs which provide "seamless services" to recipients and providers. In order to make maximum use of the existing and increased resources of the programs described below, as well as other programs at the Federal, State, and local level, Grantees should coordinate planning and service delivery with these programs.

ACF-Administered Child Care Programs

Other Federal programs specifically support child care services. In fact, ACF administers programs which constitute a continuum of child care services for families in various stages of need, by supporting families' efforts to remain or become self-sufficient. In addition to the Block Grant, ACF administers the following programs which specifically provide child care necessary for parents to work or participate in job training and education programs:

—*At-Risk Child Care*—funds ($300 million appropriated in FY 1992) provide child care assistance to families who are not receiving AFDC, need child care in order to work, and would be at risk of becoming eligible for AFDC if they did not receive child care assistance.

—*Transitional Child Care*—funds ($83 million appropriated for FY 1992) provide up to 12 months of transitional child care for recipients who leave AFDC due to increased income from employment.

—*Child Care for AFDC Recipients*—funds ($350 million appropriated for FY 1992) support current AFDC recipients' efforts to participate in JOBS or other approved education and training activities to help them become self-sufficient and leave welfare. These funds are also available to AFDC recipients in families who need child care in order to accept or maintain employment.

—*AFDC Child Care Disregards*—(Approximately $10 million in FY 1992) support AFDC recipients' efforts to work by providing offsets against income from work for a portion of recipients' child care costs.

The Block Grant provides Grantees a great deal of flexibility in program design, in defining eligibility conditions, and in targeting. Grantees will be able to use many of the definitions and eligibility rules from other programs to achieve consistency among these programs.

In addition to the programs listed above which are specifically targeted at providing child care, ACF administers a number of other programs which may provide child care, at the option of the State, or which provide services related to child care. The most extensive of these is the Head Start program.

Head Start

Head Start provides comprehensive services to enhance the development of low-income preschool children. Since its inception in 1965, Head Start has provided educational, medical, dental, nutrition, mental health, and social services to over 12 million children and their families.

Currently, about half of all Head Start parents work full- or part-time. Block Grant programs can develop mutually beneficial arrangements to provide extended-day child care for that subpopulation of Head Start children who need such care due to their parents' work or training schedules or to provide Block Grant recipients with a Head Start experience. We encourage Head Start Grantees to participate in planning and coordinating design and implementation of Block Grant programs.

Agencies administering the Block Grant that wish to pursue agreements with Head Start should contact our

Regional Office in their area as well as their State's Head Start association.

We are particularly interested in ensuring that families are able to take advantage of the Head Start experience. One way to ensure that families can participate is to arrange child care to cover hours before and after the Head Start day for families in need of such care. Convenient child care locations make it easier for parents to work a full day while their children are in care and will both enhance Head Start programs and promote self-sufficiency.

Other Related Programs

The following ACF programs may also be of interest to Grantees in coordinating child care services:

—*Social Services Block Grant*—In FY 1990, forty-five States reported they provided child care services under the Social Services Block Grant (title XX of the Social Security Act).

—*Child Welfare Services*—Title IV–B of the Social Security Act allows States the option to provide child care and to assist child care centers in meeting State and local licensing requirements. Expenditures for child care services necessary solely for employment and training are limited to the funding level that was available in FY 1979.

—*Dependent Care Planning and Development*—Grants are made to States to support activities related to dependent care (including child care, elder care, and care for disabled individuals) resource and referral systems and activities related to school-age child care services. States may use funds to support 75 percent of the costs of projects associated with the planning, development, establishment, operation, expansion, or improvement of such services. They may not use their grants for direct payments to intended recipients of dependent care services, nor for construction or renovation.

—*Child Development Associate (CDA) Scholarship Program*—States and areas receiving grants under the Social Services Block Grant are eligible to apply for funds to use as scholarships to income-eligible candidates for the CDA credential.

Child Support Enforcement

Child Support Enforcement (CSE) is an important component of ACF's efforts to foster the financial stability of families. The CSE program was developed to ensure that, whenever possible, children are supported by their parents.

State CSE agencies provide services to both AFDC and non-AFDC families. The services offered include: locating the non-custodial parent; establishing paternity; establishing a child support order; enforcing the order; and collecting the support that is due. Grantees are encouraged to collaborate with their State CSE agency on methods for providing child support information and referral services to their clients.

Other Federal programs also provide benefits which relate to child care. In particular, the Earned Income Tax Credit (EITC) and Child Care Food Program may be of interest to Grantees in coordinating services.

Earned Income Tax Credit

Three new and expanded provisions of the EITC provide enhanced refundable tax credits to low-income, working families. This refundable credit can equal up to 36 percent of the earned income of eligible families.

EITC is targeted to families with 1992 adjusted gross incomes less than $22,000 (roughly twice the poverty level for a family of three). The new EITC provisions:

(1) Increase the basic EITC and adjust it for family size;

(2) Provide a new supplemental child or "wee tot" credit; and

(3) Add another credit for health insurance.

Tax credits reduce families' Federal income tax liabilities. Because EITC is refundable and low-income families have little, if any, income tax liability, EITC results in a payment to them. In any case, EITC affords maximum parental choice by providing parents with more income to use as they see fit to care for their children.

Child Care Food Program

The Department of Agriculture provides Federal funds to initiate, maintain, and expand non-profit food service for children in non-residential settings which provide child care. The Child Care Food Program enables child care providers to integrate a nutritious food service with organized care services.

Child Abuse and Neglect

The most recent incidence study estimates that more than one million children nationwide experienced demonstrable harm as a result of maltreatment in 1986. Child care providers are generally required to report suspected child abuse or neglect. For providers to meet this responsibility, many will need training to understand the conditions under which abuse and neglect occur, to know how to recognize the pertinent indicators, and to know how to help when they suspect abuse or neglect. One source of information is a publication of the National Center on Child Abuse and Neglect, *Child Abuse and Neglect: A Shared Community Concern*. For this publication, a bibliography of materials related to child maltreatment (publication number 07–91175, $3.00), or a free catalogue of other available publications, Grantees may contact: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, D.C. 20013, telephone (703) 385–7565 or 1–800–394–3366.

Health Care

We suggest that States consider developing contacts with local Block Grant administrators and local health officials to ensure that providers are able to comply with State requirements relating to health and safety, pursuant to § 98.41 of the Block Grant. Local health officials can offer providers with practical information on health matters such as preventing the spread of communicable diseases, first aid, and immunization schedules. If a Grantee desires further assistance in the establishment of health and safety standards related to immunization, ACF will provide references to, or copies of, appropriate studies in this area. For example, the Center for Disease Control (CDC) of the Department provides project grant support to assist State and local health agencies in planning, developing, and conducting childhood immunization programs.

With the recent resurgence of measles, childhood immunization is receiving renewed attention. Low immunization coverage, particularly among minority groups, appears to be a primary cause. Through linkages with local health agencies, Grantees can seek ways to improve the immunization coverage among young children. For example, local administrators could establish a process for providers to refer parents to local health officials in order to meet the immunization requirements established by the State.

CDC believes appropriate administration of safe and effective vaccines remains the most cost-effective method of preventing human suffering and reducing economic costs resulting from vaccine-preventable diseases. For example, CDC research shows that savings from each dollar spent on the measles-mumps-rubella vaccine range from $10 to $14 in future medical costs.

Immunization would also support the National Health Promotion and Disease Prevention Objectives included in "Healthy People 2000." Two specific objectives for the Year 2000 are: (1) To

increase basic immunization levels among children under age two to at least 90 percent (from a baseline of 70–80 percent in 1989); and (2) to maintain basic immunization levels of 95 percent of children in licensed child-care facilities and children in kindergarten through post-secondary institutions. Since 1981, 95 percent or more of elementary students have been adequately immunized.

Unfortunately, vaccine use for preschool children has not been as extensive. In some inner-city populations, immunization levels for children under age two are less than 50 percent. This low immunization coverage, particularly among minority groups, appears to be the primary cause of the recent resurgence of measles. In 1990, over 26,000 measles cases and 97 suspected measles-related deaths were reported. Recent investigations of outbreaks by the CDC indicate that many unvaccinated children with measles were enrolled in one or more public assistance programs, particularly WIC or AFDC.

Because of this low immunization coverage, CDC plans to increase its immunization effort and target children under two years of age—particularly inner-city minority children. CDC proposes to use $8.7 million to better coordinate immunization services with other low-income assistance programs and to improve outreach. An additional $20 million in incentive grants will be used to reward States and cities which show the most improvement in the previous year in rates of immunization among low-income two-year-olds.

Grantees should be aware of recent publications by a number of organizations which address issues such as infectious disease control, nutrition, injury prevention, and environmental quality. Information regarding such publications is available from ACF. Also, Grantees should be aware that they may use Block Grant funds to pay for immunization outreach efforts. For example, States may use non-service funds under § 98.50 or quality and availability funds under § 98.51 to pay the cost of having a public health nurse immunize children in child care. Information regarding immunization is available from the Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333.

Monitoring

ACF will implement a monitoring plan in the near future. The purpose of this process is to determine technical assistance needs, gather information on best practices and program characteristics, identify implementation and operational issues, and ensure that Grantee programs meet applicable statutory and regulatory requirements. For example, we will gather information on well-designed and efficient certificate programs in order to assist other Grantees encountering operational difficulties with this requirement.

Technical Assistance

ACF plans to provide technical assistance to Grantees, as required by section 658I(a)(3) of the Act. This section of the Act also gives the Secretary the authority to provide technical assistance on a reimbursable basis. We received a number of comments requesting technical assistance in specific areas, such as requests for publications and assistance for Tribes in developing child care programs. One commenter suggested that we require Grantees to send staff to technical assistance workshops, because otherwise no funds would be made available by the Grantee for such purposes.

In implementing this provision, we have determined to withhold a percentage of overall Block Grant funds for the purpose of providing technical assistance to Grantees. We will limit the amount to one-quarter of one percent for any fiscal year, beginning no earlier than FY 1992.

We considered requiring Grantees to make payment for technical assistance after it was provided, but rejected this option. First, it would be administratively cumbersome for Grantees and for ACF to process such payments. Second, it would be difficult to plan technical assistance activities with no indication of the amount of funds that would be available. Third, because of the number and diversity of Grantees, a broad range of technical assistance activities will be necessary, resulting in substantial costs. In order for ACF to meet such needs, a substantial and regular funding source is necessary. Setting aside a portion of overall funding will resolve these concerns.

We set the level at one-quarter of one percent because this amount is sufficient to provide meaningful technical assistance to Grantees but will not cause substantial changes or restrictions for Grantee programs. This amount is less than the smallest set-aside in the Act—one-half of one percent for the Territories. We have amended the regulation at § 98.60(a) to include language providing for withholding of funds for technical assistance. If the Secretary determines to withhold less than one-quarter of one percent, the balance will be made available to Grantees.

We will also serve as a clearinghouse to disseminate information to Grantees. For example, as we note in the preamble to § 98.41, ACF will make available copies of or references to appropriate studies regarding health and safety standards, including information related to immunization. We will also make available information developed by States under their Child Care Improvement Grants. Such information will include management improvements for licensing and monitoring and provider training packages related to licensure such as health and safety and fire safety.

ACF has already held a number of forums and workshops for State and Tribal Grantees in order to provide information regarding effective program implementation. We will continue to elicit comments and recommendations regarding implementation issues. One example of technical assistance is preparation and dissemination of a prototype brochure for parents which explains parental rights and options in selecting a child care provider. Another example is advice regarding managing the various child care funding streams, which can be administratively demanding both for program administrators and providers.

We believe that identifying such issues, and sharing workable solutions based on State experience with the operations of child care programs, will form one basis for technical assistance to be provided by ACF. We are therefore interested in the types of and content of such implementation issues, as well as suggested solutions. We would also like to receive suggestions regarding the nature of any other technical assistance which ACF might provide.

Automation

We encourage Grantees to consider their long-range approach to automation as they develop automated systems to support the delivery of child care services under the Block Grant. We urge systems development efforts which focus on the effective delivery of child care services; Grantees should not simply build automated systems which center solely on satisfying reporting requirements.

Automated systems will be needed to support some requirements under the Block Grant. Some examples where the application of automated systems may support Block Grant requirements could include: providing a certificate program which may be used as flexibly as cash,

managing the availability of certificates throughout the program period, providing a simple and timely registration process, and ensuring speedy payment of providers. In addition, Grantees will need to manage and track the use of the Block Grant funds, pursuant to §§ 98.50 and 98.51. Therefore, accounting and reporting functions will also be needed.

One of the challenges facing Grantees in their approach to automation is ensuring coordination with other child care programs. Managing the various funding streams in a way which affords individual families "seamless service" will be critical to both service delivery and Grantees' approach to systems development. ACF was consolidated in part to facilitate this very outcome. Approaches to automation should optimize this "seamless service" concept.

To realize the goal of seamless child care service delivery at the State level, ACF intends to provide States with the flexibility and opportunity to coordinate or consolidate information among State agencies administering child care for the AFDC program, the Transitional Child Care program (TCC), At-Risk Child Care Program (ARCC), the Block Grant, and child care services provided through title XX. Automated systems which support child care service delivery to AFDC applicants and recipients, including JOBS participants (e.g., Family Assistance Management Information Systems [FAMIS] and JOBS Automated Systems [JAS]), can be used as the infrastructure for efficient and effective seamless service delivery of the TCC, ARCC, and Block Grant programs. For additional information contact: Director, Division of State System Approvals, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9361.

Although Block Grant funds can be used for systems, we believe that Congress intended the Block Grant funds to be used primarily for child care services. In considering approaches to automation, we encourage Grantees to look for ways to apply technology across the continuum of child care programs, minimize disparate system development efforts, and integrate their child care service delivery through automation.

Program Implementation

The Act does not contain language regarding the effective date of program implementation. However, since funding became available in September of 1991, we expected that most States, Territories, and Tribal applicants would request funding in FY 1991, and that has been our experience. As a consequence, we observed the following timeline in implementing the program at the Federal level.

As described below under § 98.16, ACF issued a preprinted Plan with approval by OMB, to be included with an Application for FY 1991 funding under the Block Grant. As required by section 658D(b)(1)(C) of the Act, the lead agency must hold at least one hearing in conjunction with the development of the Plan. Applications were generally approved within 45 days of submission, unless additional information was needed from the lead agency.

Funding for State expenditures for planning was available for the period from November 5, 1990, the date of enactment of the legislation, for Applications for FY 1991 funds. More information concerning funding is included above.

This rule is effective upon publication. However, changes necessitated by revisions in the regulation may require time for implementation. We will allow a reasonable period of time for such changes.

Of course, Grantees may make changes which result from the additional flexibility permitted by these regulations at any time. (If a Plan amendment is necessary, the amendment must be submitted to ACF within 60 days of the intended change. This requirement is discussed in § 98.18 of the preamble).

Program Implementation Dates: The following is a list of important deadlines for the Block Grant:

—January 1, 1992: Plans for FY 1992 must have been postmarked;
—April 1, 1992: States must have notified ACF if they will be using their entire FY 1991 allotment;
—August, 1992: Applications for FY 1992 allotments, including Plans for new Grantees, are due. The Department will send an Action Transmittal to announce the exact date and provide further information;
—September 30, 1992: All FY 1992 funds are available for Federal obligation;
—September 30, 1992: FY 1991 funds must be obligated by State and Territorial Grantees;
—October 1, 1992: Certificate systems must be in effect.
—December 31, 1992: Grantees must submit an interim financial report and an interim program report for FY 1991 funds.

(Catalog of Federal Domestic Assistance Programs: 93.037, Child Care and Development Block Grant)

List of Subjects

45 CFR Part 98

Child Care, Grant program—social programs, Parental Choice, Reporting and recordkeeping requirements.

45 CFR Part 99

Administrative practice and procedure, Child care, Grant program—social programs.

Dated: July 20, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: July 23, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, parts 98 and 99 of subtitle A of title 45 of the Code of Federal Regulations are revised to read as follows:

PART 98—CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—Purposes and Definitions

Sec.
98.1 Purposes.
98.2 Definitions.
98.3 Effect on State law.

Subpart B—General Application Procedures

98.10 Lead agency responsibilities.
98.11 Administration under contracts and agreements.
98.12 Coordination and consultation.
98.13 Application content and procedures.
98.14 Plan process.
98.15 Assurances.
98.16 Plan provisions.
98.17 Period covered by Plan.
98.18 Approval and disapproval of Plans and Plan amendments.

Subpart C—Eligibility for Services

98.20 A child's eligibility for child care services.
98.21 A child's eligibility for early childhood development and before- and after-school care services.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

98.30 Parental choice.
98.31 Parental access.
98.32 Parental complaints.
98.33 Consumer education.
98.34 Parental rights and responsibilities.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

98.40 Compliance with applicable State and local regulatory requirements.
98.41 Health and safety requirements.
98.42 Sliding fee scales.
98.43 Payment rates.

98.44 Priority for child care services.
98.45 Registration.
98.46 Nondiscrimination in admissions on the basis of religion.
98.47 Nondiscrimination in employment on the basis of religion.

Subpart F—Use of Block Grant Funds

98.50 Child care services.
98.51 Activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school care services.
98.52 Administrative activities.
98.53 Supplementation.
98.54 Restrictions on the use of funds.
98.55 Cost allocation.

Subpart G—Financial Management

98.60 Availability of funds.
98.61 Allotments for States.
98.62 Allotments for Territories and Tribes.
98.63 Reallotment.
98.64 Financial reporting.
98.65 Audits.
98.66 Disallowance procedures.
98.67 Fiscal requirements.

Subpart H—Program Reporting Requirements

98.70 Annual report requirement.
98.71 Content of report.

Subpart I—Indian Tribes

98.80 General procedures and requirements.
98.81 Application and Plan.
98.82 Coordination.
98.83 Requirements for Tribal programs.

Subpart J—Monitoring, Non-Compliance and Complaints

98.90 Monitoring.
98.91 Non-compliance.
98.92 Penalties and sanctions.
98.93 Complaints.

Authority: 42 U.S.C. 9858.

Subpart A—Purposes and Definitions

§ 98.1 Purposes.

(a) The purpose of the Child Care and Development Block Grant is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and Tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the Block Grant;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(b) The purpose of these regulations is to provide the basis for administration of the Block Grant. These regulations provide that Grantees:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable State and local requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs which provide for the changing needs of recipient families;

(6) Administer the Block Grant responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Maximize the impact of the additional funding available under the Block Grant by ensuring that Federal funds are used to supplement, not supplant, existing services, and ensuring that administrative costs are minimized; and

(8) Design programs which provide uninterrupted service to families and providers, to the extent statutorily possible.

§ 98.2 Definitions.

For the purpose of this part and part 99:

(a) *The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, as codified at 42 U.S.C. 9858;

(b) *ACF* means the Administration for Children and Families;

(c) *The Application* is the request from a potential Grantee for funding under the Block Grant and includes such information as the amount of funding requested and the projected budget for the program, pursuant to § 98.13;

(d) *Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services;

(e) *Before- and after-school services* means services which meet the requirements of § 98.51(e);

(f) *The Block Grant* means the Child Care and Development Block Grant; *Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B) of the Act, as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;

(g) *Caregiver* means an individual who provides child care services directly to an eligible child on a person-to-person basis;

(h) *Categories of care* means center-based child care, group home child care, family child care and in-home care;

(i) *Center-based child care provider* means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(j) *Child care certificate* means a certificate (that may be a check or other disbursement) that is issued by a Grantee directly to a parent who may use such certificate only as payment for child care services, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

(k) *Child care provider that receives assistance* means a child care provider that receives Federal funds under the Block Grant pursuant to grants, contracts or loans, but does not include a child care provider to whom Federal funds under the Block Grant are directed only through the operation of a certificate program;

(l) *Child care services*, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

(m) *The Department* means the Department of Health and Human Services;

(n) *Early childhood development program* means a program that meets the requirements of § 98.51(d);

(o) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(p) *Eligible child* means an individual who meets the requirements of § 98.20;

(q) *Eligible child care provider* means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40 or, if exempt from such requirements, is registered before

receipt of payment as described in § 98.45; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, niece, or nephew of such provider, if such provider is registered before receipt of payment and complies with any State requirements that govern child care provided by the relative involved.

(r) *Family child care provider* means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(s) *Grantee* means the State, Territorial or Tribal governmental entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

(t) *Group home child care provider* means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(u) *Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(v) *In-home child care provider* means an individual who provides child care services in the child's own home;

(w) *Lead agency* means the agency designated under §§ 98.10 and 98.16(a)(1);

(x) *Licensing or regulatory requirements* means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or Tribal law other than those required pursuant to § 98.45;

(y) *Liquidation period* means the one-year period following the obligation period, and pertains only to State and Territorial Grantees;

(z) *Obligation period* means the time period during which a fiscal year's grant must be obligated, and pertains only to State and Territorial Grantees;

(aa) *Parent* means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis*;

(bb) *The Plan* means the Plan for the implementation of programs under the Block Grant;

(cc) *Program period* means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

(dd) *Programs* will be used generically to describe all activities under the Block Grant, including child care services and other activities pursuant to § 98.50 as well as quality and availability improvements pursuant to § 98.51;

(ee) *Provider* means the entity providing child care services;

(ff) *The regulation* refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

(gg) *Secondary school* means a day or residential school which provides secondary education, as determined under State law;

(hh) *Secretary* means the Secretary of the Department of Health and Human Services;

(ii) *Sectarian organization or sectarian child care provider* means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

(jj) *Sectarian purposes and activities* means any religious purpose or activity, including but not limited to religious worship or instruction;

(kk) *Services for which assistance is provided* means all child care services funded under the Block Grant, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

(ll) *Sliding fee scale* means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

(mm) *State* means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau), and includes Tribes unless otherwise specified;

(nn) *Tribe and Tribal Grantee* refer to Indian Tribes and Tribal organizations as defined at paragraphs (u) and (oo) of this section;

(oo) *Tribal organization* means the recognized governing body of any Indian tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

(pp) *Types of providers* means the different classes of providers under each category of care. For the purposes of the Block Grant, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation, then States must segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead agency responsibilities.

The lead agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the Block Grant program, directly or through other State agencies, in accordance with § 98.11;

(b) Submit an Application for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in

developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate Block Grant services with other Federal, State and local child care and early childhood development programs, including such programs for the benefit of Indian children, pursuant to § 98.12.

§ 98.11 Administration under contracts and agreements.

(a) The lead agency has broad authority to share responsibilities for the administration of the program with other State agencies. In addition, the lead agency can share implementation of the program with other public or private local agencies; however:

(1) The lead agency must retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The lead agency shall serve as the single point of contact for issues involving the administration of the Grantee's Block Grant program; and

(3) The sharing of administrative and implementation responsibilities must be governed by written agreements which specify the mutual roles and responsibilities of the lead agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the lead agency must:

(1) Determine the basic usage and priorities for the expenditure of Block Grant funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of the Grantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local agencies with whom it shares administrative responsibilities, including agencies and contractors which determine individual eligibility, operate according to the rules established for the program.

§ 98.12 Coordination and consultation.

The lead agency must:

(a) Coordinate the provision of services for which assistance is provided under this part with other Federal, State, and local child care and early childhood development programs, and before- and after-school programs as provided under § 98.10(e).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State submitting Applications in accordance with subpart I of this part.

§ 98.13 Application content and procedures.

(a) An Application for Block Grant funds must be made by the chief executive officer of a State. The Application must contain:

(1) The program period, as defined in § 98.2(cc), for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and this part;

(4) Pursuant to 45 CFR part 93, a lobbying certification which assures that the funds will not be used for the purpose of influencing, and, if necessary, a Standard Form LLL (SF–LLL) which discloses lobbying payments (Tribal applicants are not required to submit either the certification or form);

(5) Pursuant to 45 CFR 76.600, an assurance that the Grantee provides a drug-free workplace or a statement that such an assurance has already been submitted for all HHS grants;

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50, including a list of activities to improve the availability and quality of child care, and administrative costs, as described in § 98.52(b), the Grantee anticipates will be necessary to carry out the stated purposes of the program;

(ii) A detailed explanation, pursuant to § 98.50(d)(3), including appropriate documentation for the budget expenditures, if not consistent with the limitation at § 98.50(d)(2); and

(iii) A break-out of program activities under § 98.51 including administrative costs, as described in § 98.52(b), which the Grantee anticipates will be necessary to carry out the stated purpose of the program.

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8)(i) For the initial Application, or first Application after publication of the final rule implementing the Block Grant, the amounts of Federal, State, and local public funds expended for the support of child care and related programs during the base period, pursuant to § 98.53(b);

(ii) For subsequent Applications, the amounts of such funds expended during the applicable subsequent period; and,

(iii) If applicable, information regarding the nature, extent and basis for any reduction in Federal expenditures, and, for Tribal Grantees, in State expenditures, for programs other than the Block Grant, for the subsequent period;

(9) Assurances that the Grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended);

(10) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(11) Such other information as specified by the Secretary.

(b) Applications must be submitted annually or less frequently, as specified by the Secretary, at such time and in such manner as prescribed by the Secretary.

(c) In its initial Application, an Indian Tribe must provide a description of current service delivery skills, personnel, resources, community support, and other necessary components that will enable it to satisfactorily carry out the proposed Plan. Initial Applications submitted by consortia must also contain the additional information required under § 98.80 (c)(1) and (c)(4).

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the lead agency shall:

(a) Coordinate the provision of Block Grant services with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children;

(b) Consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing

child care and early childhood development services, and the methods by which Block Grant funds can be used to effectively address local child care shortages; and

(c) Hold at least one hearing, with adequate notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

§ 98.15 Assurances.

The Block Grant Plan must include assurances that:

(a) Upon approval, the Grantee will have in effect a program which complies with the provisions of the Plan;

(b) The parent(s) of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under § 98.50 is given the option either:

(1) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(2) To receive a child care certificate as defined in § 98.2(j);

(c) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(d) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(e) The Grantee, in accordance with § 98.31, has procedures in place to ensure that providers of child care services for which assistance is provided under the Block Grant, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(f) The Grantee, as required by § 98.32, maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public, on request;

(g) Consumer education information will be made available to parents and the general public within the State (or other area served by the Grantee) concerning licensing and regulatory requirements, complaint procedures, the options available to parents through certificates, and policies and practices relative to child care services within the State (or other area served by the Grantee), as required by § 98.33;

(h) In accordance with § 98.40, all providers of child care services for which assistance is provided under the Block Grant will comply with all licensing and regulatory requirements applicable under State or local law;

(i) Providers of child care services for which assistance is provided under the Block Grant that are not licensed or regulated for the purpose of providing child care under State or local law are required to be registered with the Grantee prior to payment being made and that such providers shall be permitted to register with the Grantee after selection by the parents of eligible children and before such payment is made, as required by § 98.45;

(j) There are in effect within the State (or other area served by the Grantee), under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the Block Grant, pursuant to § 98.41;

(k) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the Block Grant comply with all applicable State or local health and safety requirements;

(l) If the State reduces the level of standards applicable to child care services provided in the State (or other area served by the Grantee) after November 5, 1990, the Grantee shall inform the Secretary of the rationale for such reduction in the annual report of the Grantee;

(m) The Grantee will, not later than 18 months after submission of the first Application, complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State (or other area served by the Grantee) unless the Grantee has reviewed such law, requirements, and policies in the three-year period ending on November 5, 1990;

(n) Pursuant to § 98.53, funds received through the Block Grant will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs within the State (or other area served by the Grantee);

(o) Payment rates for the provision of child care services, in accordance with § 98.43, will be sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs; and

(p) With respect to State and local regulatory requirements, health and safety requirements, payment rates, and registration requirements, State or local rules, procedures or other requirements promulgated for the purpose of the Block Grant will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(g).

§ 98.16 Plan provisions.

(a) A Block Grant Plan must contain the following:

(1) Specification of the lead agency whose duties and responsibilities are delineated in § 98.10;

(2) The assurances listed under § 98.15;

(3) A description of how the Block Grant program will be administered and implemented, if the lead agency does not directly administer and implement the program;

(4) A description of the coordination and consultation processes involved in the development of the Plan, pursuant to § 98.14 (a) and (b);

(5) A description of the public hearing process, pursuant to § 98.14(c);

(6) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

(i) Special needs child;

(ii) Physical or mental incapacity (if applicable);

(iii) Attending (a job training or educational program);

(iv) Job training and educational program;

(v) Residing with;

(vi) Working;

(vii) Protective services (if applicable);

(viii) Very low income; and

(ix) *in loco parentis.*

(7) For child care services and activities to improve the availability and quality of child care, pursuant to § 98.50:

(i) A description of such services and activities;

(ii) Specification of the conditions under which availability of in-home care is limited (i.e., differences in payment rates);

(iii) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(iv) Provision for the reservation of 75 percent of overall Block Grant funds for such purposes, together with a plan for the allocation of, and prioritization of,

such funds for such services and activities;

(v) Any additional eligibility criteria or priority rules (with appropriate definitions) established pursuant to § 98.20(b); and

(vi) Any eligibility criteria or priority rules for the receipt of grants and contracts;

(8) For activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school care services, pursuant to § 98.51:

(i) A description of such activities;

(ii) A list of political subdivisions in which such activities are offered, if such activities are not available throughout the entire service area;

(iii) Provision for the reservation of 25 percent of overall Block Grant funds for such purposes, together with a plan for allocation of, and prioritization of, such funds for such services and activities;

(iv) Any additional eligibility criteria or priority rules for children receiving such services established pursuant to § 98.21(b), with appropriate definitions; and

(v) A description of any eligibility criteria or priority rules for the receipt of grants and contracts, in addition to those in § 98.51(c)(2);

(9) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the Block Grant for child care services under § 98.50 and § 98.51, pursuant to § 98.42, if applicable;

(10) A description of the minimum health and safety requirements, applicable to all providers of child care services for which assistance is provided under the Block Grant, in effect pursuant to § 98.41;

(11) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(12)(i) Payment rates and a description of the methodology used to establish such rates for reimbursement of child care services pursuant to § 98.43; and, if applicable,

(ii) Based on a methodologically sound system for determining market-costs:

(A) Justification of the Grantee's decision not to provide for differences in payment based on the setting (categories of care), age of the child or additional costs of providing care for children with special needs; or

(B) Justification for setting differential rates(s) within particular categories of care, including a description of the single system for providing child care pursuant to § 98.43(e)(2);

(13) A description of the registration process, including the timeframes within which payment will be made, pursuant to § 98.45;

(14) If the Grantee does not permit the expenditure of State funds for child care services unless it is first verified that certain requirements are met (e.g., a certification process), a description of the applicable process and timeframes;

(15) A description of activities that are planned to encourage public-private partnerships which promote business involvement in meeting child care needs, pursuant to § 98.71(b)(4);

(16) A description of the methodology used to establish the level of effort, if the Grantee chooses to use other than a level of government basis, pursuant to § 98.53(b)(1);

(17) Such other information as specified by the Secretary; and

(b) For Indian Tribes:

(1) The Plan must include the basis for determining family eligibility pursuant to § 98.80(f).

(2) Tribal programs are not subject to paragraph (a)(6)(viii) and prioritization under paragraph (a)(8)(iii) of this section.

(3) Plans for those Tribes specified at § 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in paragraphs (a)(7)(iv), (a)(8)(iii), and (a)(11) of this section, unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

§ 98.17 Period covered by plan.

(a) For States and Territories, the initial Plan must cover a period of three years, and all subsequent Plans must cover a period of two years.

(b) For Indian Tribes, the initial Plan and any subsequent Plans must cover a period of two years.

(c) The lead agency must submit a new Plan prior to the expiration of the time period specified in paragraphs (a) and (b) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of plans and plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) *Plan amendments.* Approved Plans must be amended whenever a substantial change in the program occurs. A Plan amendment must be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(c) *Appeal of disapproval of a Plan or Plan amendment.* (1) An applicant or Grantee dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Grantee of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Grantee, unless the Assistant Secretary and the applicant or Grantee agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child must:

(1)(i) Be under 13 years of age; or

(ii) At Grantee option, be under age 18 (or 19, if the State so provides in its definition of dependent child in its plan under title IV–A of the Social Security Act) and be physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 75 percent of

the State's median income for a family of the same size; and

(3)(i) Reside with a parent or parents (as defined in § 98.2(aa)) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2(aa)) other than the parent(s) described in paragraph (a)(3)(i) of this section. At Grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(b) Pursuant to § 98.16(a)(7)(v), a Grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

§ 98.21 A child's eligibility for early childhood development and before- and after-school care services.

(a) If a Grantee subsidizes, through grants or contracts under § 98.51, early childhood development services or before- and after-school care services for an individual child, the child must meet the eligibility conditions under § 98.20(a).

(b) Grantees may set additional conditions of eligibility or priority rules for children or families receiving such services funded under § 98.51, so long as such conditions do not violate the provisions of § 98.51(c)(2), or the Plan, and do not discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services under § 98.50 must be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in § 98.2(j).

Such choice must be offered any time that child care services under § 98.50 are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Must be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(4) May be expended by providers for any sectarian purpose or activity which is part of the child care services, including sectarian worship or instruction; and

(5) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificate programs under paragraph (a)(2) of this section must be in operation by October 1, 1992.

(e) Child care certificates must be made available to any parents offered services under § 98.50.

(f)(1) For services provided under § 98.50, certificates under paragraph (a)(2) of this section must permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Group home child care;

(iii) Family child care; and

(iv) In-home child care, as limited, pursuant to 98.16(a)(7)(ii);

Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Grantees must provide information regarding the range of provider options under paragraph (f)(1) of this section, including care by sectarian providers and relatives, to families offered services under § 98.50.

(g) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, payment rates under § 98.43, and registration requirements under § 98.45, Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for purposes of the Block Grant significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

§ 98.31 Parental access.

Grantees must have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 98.32 Parental complaints.

Grantees must:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding such parental complaints available to the public on request.

§ 98.33 Consumer education.

Grantees must make available to parents and the general public consumer education information about all parental options, including the options available through child care certificates, pursuant to § 98.30(f), and other policies and practices which relate to child care services, including any applicable licensing and regulatory requirements and complaint procedures.

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Grantees must provide assurances that:

(1) Within the area served by the Grantee, all providers of child care

services for which assistance is provided under this part comply with any licensing or regulatory requirements, as defined in § 98.2(x), applicable under State, local, and Tribal law; and

(2) Providers that are not required to be licensed or regulated under State, local, or Tribal law are required to be registered, as described in § 98.45(a), with the Grantee prior to any payment being made under the Block Grant.

(b)(1) This section does not prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the Block Grant than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Grantee must provide assurances that there are in effect, within the State (or other area served by the Grantee), under State, local or Tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunization);

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Grantees may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(g).

(c) If the Grantee reduces the level of standards applicable to any child care services provided in the State after November 5, 1990, the Grantee must inform the Secretary of the rationale for such reduction in its annual report, pursuant to § 98.71(e).

(d) Not later than eighteen months after submission of its initial Application in accordance with § 98.13, each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the area served by the Grantee, unless the Grantee has reviewed such law, requirements and policies between November 5, 1987, and November 5, 1990. The findings of this review are to be included in either the first or second annual report pursuant to § 98.71(d).

(e) The requirements in paragraph (a) of this section must apply to all providers of child care services for which assistance is provided under this part, within the area served by the Grantee, except the relatives specified in paragraph (g) of this section.

(f) Each Grantee shall assure that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Grantee, comply with all applicable State or local health and safety requirements described in paragraph (a) of this section.

(g) For the purposes of this section, the term child care providers does not include grandparents, aunts, or uncles, pursuant to § 98.2(q)(2).

§ 98.42 Sliding fee scales.

(a) Grantees shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive Block Grant child care services under §§ 98.50 and 98.51.

(b) Sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Grantees may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

(d) The Grantee may apply different sliding fee scales to services under §§ 98.50 and 98.51.

§ 98.43 Payment rates.

(a) The Grantee must assure that the payment rates for the provision of child care under this part are sufficient to ensure equal access, in the area served by the Grantee, for eligible children to comparable child care services provided to children whose parents are not eligible to receive Block Grant assistance or child care assistance under any other Federal, State, or Tribal programs.

(b) In establishing payment rates, Grantees must take into account:

(1) Variations in the cost of providing child care:

(i) Between different categories (i.e., center-based, group home, family, in-home); and

(ii) To children of different age groups; and

(2) The additional costs of providing child care for children with special needs.

(c) Payment rates under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

(d) Nothing in this section shall be construed to create a private right of action.

(e) Upon petition to the Department through the Plan demonstrating the need for an alternative rate schedule, and subject to affirmative demonstration that the rate schedule will not result in discriminatory payments to providers within categories of care, a Grantee may set a payment rate schedule which includes variation in the payment rate within a category of not more than 10 percent only if:

(1) Such variation is based on a methodologically sound system for determining provider rates, as described in the Plan, pursuant to § 98.16(a)(12)(ii); and

(2) The Grantee is operating a child care program which includes child care funded under title IV–A of the Social Security Act and the Block Grant as a single system. To be considered a single system for the purposes of this section, a Grantee must operate with:

(i) The same payment rates;

(ii) The same sliding fee schedules, to the extent permissible under applicable statutes and regulations; and

(iii) The same mechanisms for selection of and payment to providers, including a certificate program, pursuant to § 98.30(a)(2).

(f) A Grantee may establish a payment schedule which does not reflect differences in provider rates based on the setting (categories of care), age of the child or the additional costs of providing care for children with special needs, but only if such payment rate schedule is based on a methodologically sound system for determining provider rates, as described in the Plan, pursuant to § 98.16(a)(12)(ii).

§ 98.44 Priority for child care services.

Grantees must give priority for services provided under § 98.50(a)(1) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 Registration.

(a) Grantees must assure that providers of child care services for which assistance is provided under the Block Grant who are not licensed or regulated under State or local law for the purpose of providing child care are

registered with the Grantee prior to receiving payment under the Block Grant.

(b) Grantee registration procedures:

(1) Should facilitate appropriate and prompt payment to providers described in paragraph (a) of this section;

(2) Should permit the Grantee to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to applicable regulatory requirements; and

(3) Must allow providers to register with the Grantee after selection by the parent(s) of eligible children and before the payment described in paragraph (a) of this section is made.

(c) Registration under the Block Grant must be a simple, timely process through which the Grantee authorizes the provider to receive payment for child care services.

(d) Both the registration requirements and the registration process under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.46 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2(r)) that receive assistance through grants and contracts under the Block Grant shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the Block Grant because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the Block Grant, the Grantee must assure that before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

§ 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the Block Grant shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2(g).

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the Block Grant, the Grantee must assure that, before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2(g).

Subpart F—Use of Block Grant Funds

§ 98.50 Child care services.

(a) After reserving 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in § 98.51, the remaining funds shall be expended for:

(1) Child care services which are provided in accordance with the provisions of paragraph (b) of this section;

(2) Activities to improve the availability and quality of child care, as described under paragraph (c) of this section; and

(3) Administrative costs under this section.

(b) Child care services must be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c)(1) Activities designed to improve the availability and quality of child care include but are not limited to the activities specified in § 98.51(b) (1) and (2).

(2) Pursuant to § 98.16(a)(7)(i), the Plan must specify the activities which the Grantee will fund under this paragraph.

(d)(1) States must spend a preponderance of the remaining funds under paragraph (a) of this section for services which they provide pursuant to paragraph (a)(1) of this section. They should spend a minimum amount on activities authorized under paragraphs (a)(2) and (a)(3).

(2) Except as provided in paragraph (d)(3) of this section, to meet the requirements of paragraph (d)(1) of this section:

(i) At least 90 percent of the funds reserved for assistance under this section must be expended for services pursuant to paragraph (a)(1) of this section, and

(ii) Not more than 10 percent of the funds may be expended for activities as described in paragraphs (a)(2) and (a)(3) of this section.

(3) Upon petition to the Department in its annual Application, a Grantee may expend an additional five percent of the funds reserved for assistance under this section for activities as described in paragraphs (a)(2) and (a)(3) of this section if, in the application required pursuant to § 98.13, the Grantee demonstrates that the expenditures for operation of the certificate program and related consumer education, as required in this part, equal or exceed 10 percent of the funds available under this section.

§ 98.51 Activities to improve the quality of child care and to increase the availability of early childhood development programs and before- and after-school care services.

(a) The Grantee shall reserve 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in this section.

(b) Each Grantee receiving funds to operate a program under this part shall use not less than:

(1) 18.75 percent of the total amount of a fiscal year's Block Grant funds to establish or expand and conduct, through the provision of grants or contracts:

(i) Early childhood development programs, operated in accordance with the provisions of paragraph (d) of this section;

(ii) Before- and after-school child care programs, operated in accordance with the provisions of paragraph (e) of this section; or

(iii) Both; and

(2) Five percent of the total amount of a fiscal year's Block Grant funds on one or more of the following activities to improve the quality of care:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and Tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and Tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs; and

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part.

An additional one and one-quarter percent of the total funds received under the Block Grant may be used at the discretion of the Grantee for any of the purposes allowed in paragraph (b)(1) or (b)(2) of this section.

(c) For programs described in paragraph (b)(1) of this section, Grantees must:

(1) Provide funding through grants and contracts; and

(2)(i) Give highest priority to geographic areas within the area served by the Grantee that are eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965; and

(ii) Then give priority to any other areas with concentrations of poverty, and any areas with very high or very low population densities.

(d) Early childhood development programs funded under this section:

(1) Must consist of services that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

(2) Are not intended to serve as a substitute for compulsory academic programs.

(e) Before- and after-school programs funded under this section:

(1) Must be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that the regular instructional services are not in session; and

(2) Are not intended to extend or replace the regular academic program.

(f) Administrative costs associated with activities funded under paragraphs (a), (b)(1), and (b)(2) of this section are to be included with amounts expended for program activities in determining whether Grantees have met the requirements of those respective paragraphs.

(g) Pursuant to § 98.16(a)(8)(i), the Plan must specify the activities which the Grantee will fund under this section.

§ 98.52 Administrative activities.

(a) Block Grant funds may be used for administrative activities, as limited by § 98.50(d).

(b) As part of its Application, as provided in § 98.13(a)(6), a Grantee must provide an estimate of total funds that will be used for administrative activities by both the Grantee and subgrantees during the program period. A list of all administrative activities on which the estimate is based must also be provided with the estimate. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the lead agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation includes the following types of activities:

(i) Determining eligibility for child care services;

(ii) Planning, developing, and designing the Block Grant program;

(iii) Establishing and operating a certificate program;

(iv) Providing local officials and citizens with information about the program, including the conduct of public hearings;

(v) Preparing the Grantee's Application and Plan;

(vi) Developing systems, including automated information management systems;

(vii) Developing agreements with administering agencies in order to carry out program activities;

(viii) Monitoring program activities for compliance with program requirements;

(ix) Preparing reports and other documents related to the program for submission to the Secretary;

(x) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(xi) Coordinating the provision of Block Grant services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(xii) Coordinating the resolution of audit and monitoring findings;

(xiii) Evaluating program results; and

(xiv) Managing or supervising persons with responsibilities described in paragraphs (b)(1) (i) through (xiii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by Grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55.

(c) Expenditures on any administrative activities related to the services under § 98.50 are subject to the requirements and limitation under paragraph (d) of § 98.50, and together with expenditures for quality and availability, must not exceed the limitation under § 98.50(d)(2), except as provided under § 98.50(d)(3).

§ 98.53 Supplementation.

(a) Grantees must provide assurances that funds received under the Block Grant will be used only to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs.

(b) The Grantee must determine separate total amounts of Federal, State, and local funds expended for such services during an initial base period (as defined in paragraph (b)(1) of this section) and during subsequent periods for child care services and related programs. The Grantee must assure that the amounts of funding for such services from these other sources for each subsequent period are maintained at least at the levels of effort established for the base period.

(1) The base period will be a twelve-month period (e.g., the State fiscal year), which includes the month one year prior to the first month for which the initial Application for Block Grant funds is made. Subsequent periods are each twelve-month period following the preceding period. Grantees may establish base periods and associated levels of effort on:

(i) A level of government basis (e.g., Federal, State and local);

(ii) A program-by-program basis; or

(iii) An alternative basis that provides for fiscal accountability.

(2) Should a Grantee choose to establish base-period levels of effort on a basis other than a level of government basis, that basis will be reflected in the Plan, pursuant to § 98.16(a)(16).

(3) For purposes of this section, child care services and related programs are those services and programs which are included by the Grantee for funding under its Block Grant Plan.

(4) Amounts established for the base period will be included in the initial Application, or first subsequent Application pursuant to § 98.13(a)(8)(i); amounts expended for subsequent periods will be included in subsequent Applications, pursuant to § 98.13(a)(8)(ii).

(5) Grantees must amend the amounts determined in paragraph (b) of this section, when necessary, to reflect more accurate data or program changes.

(6) Reductions in Federal funding for programs included in the base period computation will be taken into consideration in determining whether a Grantee has met this requirement. For Tribal Grantees, reductions in State funding will be similarly considered. Information regarding the nature, extent, and basis for the reduction must be included in the Grantee's Application, pursuant to § 98.13(a)(8)(iii).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Block Grant funds may not be expended for any activity not authorized in these regulations, or which does not meet the additional restrictions and limitations in paragraphs (b) through (d) of this section.

(2) Funds must be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services which supplant or duplicate the academic program of any public or private school.

(d) *Sectarian Purposes and Activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2(j), assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) Block Grant funds may not be used as the non-Federal share for other Federal grant programs.

§ 98.55 Cost allocation.

(a) Grantees and subgrantees must keep on file cost allocation plans or indirect cost agreements, as appropriate, which have been amended to include costs allocated to the Block Grant.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) In accordance with the apportionment of funds from the Office of Management and Budget, and subject to the availability of appropriations, the Secretary:

(1) May withhold no more than one-quarter of one percent of the funds made available for a fiscal year for the provision of technical assistance; and

(2) Will award the remaining Block Grant funds to Grantees that have an approved Application and Plan.

(b) The Block Grant program does not require State or local match.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d)(1) State and Territorial Grantees must obligate their allotments in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year must be liquidated within one year. Except for paragraph (d)(2) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(2) Obligations may include subgrants or contracts which require the payment of funds from the Grantee to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the lead agency;

(ii) Another entity at the same level of government as the lead agency; or

(iii) A local office of another entity at the same level of government as the lead agency.

(3) For purposes of the Block Grant, funds for child care services provided through a child care certificate will be considered obligated when a Grantee or subgrantee issues to a family in writing a child care certificate that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but must be no

later than the end of the liquidation period.

(4) Any funds not obligated during the obligation period specified in paragraph (d)(1) of this section will revert to the Federal government. Any funds not liquidated by the end of the liquidation period specified in paragraph (d)(1) of this section will also revert to the Federal government.

(e) Tribal Grantees are not subject to the requirements in paragraph (d) of this section. Such Grantees must obligate and liquidate their allotments by the end of the second fiscal year following the fiscal year for which the grant is awarded. Any funds that remain unliquidated by the end of such period will revert to the Federal government.

(f) Cash advances to Grantees or by Grantees to subgrantees or contractors shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the Grantee, subgrantee, or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g)(1) Block Grant funds are available for use by the Grantee only after the funds are made available by Congress for Federal obligation unless:

(i) Costs are incurred for planning activities related to the submission of an initial Block Grant Application and Plan and

(ii) The planning activities occur after November 5, 1990.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (g)(1) of this section is subject to the actual availability of the appropriation.

(h) Funds that are returned to Grantees and subgrantees (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the child care provider) shall:

(1) If received by the Grantee or subgrantee during the obligation period specified in paragraph (d)(1) of this section, be used for activities specified in the Grantee's approved Plan and must be obligated by the end of the obligation period; or

(2) If received by the Grantee or subgrantee during the liquidation period specified in paragraph (d)(1) of this section:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures permit such use. These funds must be expended by the end of the liquidation period; or

(ii) If State or local laws or procedures do not permit such use, be returned to the Federal government; or

(3) If received by the Grantee or subgrantee after the liquidation period specified in paragraph (d)(1) of this section:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures permit such use; or

(ii) If State or local laws or procedures do not permit such use, be returned to the Federal government; or

(i) Repayment of loans made by Grantees and subgrantees, pursuant to § 98.51(b)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind must be based on fair market value. All loans must be fully repaid.

(j) Grantees must recover child care payments which are the result of fraud. These payments must be recovered from the part(ies) responsible for committing the fraud.

§ 98.61 Allotments for States.

(a) An amount equal to the funds appropriated for the Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to §§ 98.60(a) and 98.62 (a) and (b), shall be allotted to States. For purposes of this section and § 98.63, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) Funds will be allotted to States based upon the formula specified in section 6580(b) of the Act.

§ 98.62 Allotments for Territories and Tribes.

(a) An amount up to one-half of one percent of the amount appropriated for the Block Grant shall be reserved for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau).

(1) Funds shall be allotted to Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (a)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (a)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

(i)

$$\frac{YCF_t \times APF_t}{\Sigma\,(YCF_t \times APF_t)} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term "YCF_t" means the Territory's Young Child factor as defined at paragraph (a)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term "APF_t" means the Territory's Allotment Proportion factor as defined at paragraph (a)(1)(ii) of this section.

(b) An amount up to three percent of the amount appropriated for the Block Grant shall be reserved for Indian Tribes and Tribal organizations.

(1) Except as specified in paragraph (b)(2) of this section, grants to individual Tribal Grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (b)(1)(i) of this section, by the number of all Indian children living on or near Tribal reservations or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children which apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (b)(1)(i) of this

section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (b)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(c) All funds reserved for Territorial Grantees at paragraph (a) of this section will be allotted to Territorial Grantees, and all funds reserved for Tribal Grantees at paragraph (b) of this section will be allotted to Tribal Grantees. Any such funds that are returned after they have been allotted will revert to the Federal government.

§ 98.63 Reallotment.

(a) Any portion of a State's allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other State Grantees in proportion to the original allotments. For purposes of this section and § 98.61, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Reallotment does not apply to Territorial or Tribal allotments, and Territorial and Tribal Grantees may not receive reallotted State funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant which it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report must be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot Block Grant funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to § 98.61(b).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment award to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(iv) If a State does not accept its share of the reallotted funds, those funds will be returned to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that State does not have any funds available for reallotment; or

(ii) In the case of a report received after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(b) States receiving reallotted funds must obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

§ 98.64 Financial reporting.

(a) Beginning 90 days after the end of fiscal year 1992, and within 90 days after the end of each succeeding fiscal year, all Grantees must submit to the Secretary a Standard Form 269 or 269A, Financial Status Report, to report the status of each fiscal year's grant. Final reports for a fiscal year will be due after the end of the program period.

(b) The Secretary reserves the right to require financial reports less frequently than specified in paragraph (a) of this section.

(c) If a Grantee or subgrantee earns program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care, pursuant to § 98.42(a)), this income must be reported.

(d) Funds returned to a Grantee or subgrantee, pursuant to § 98.60(h), shall be reported as follows:

(1) If the funds are returned before the close of the period covered by the financial report, they should be included as a net adjustment to total expenditures in the report; or

(2) If the funds are returned after submission of the final financial report, they should be reported on a revised report for the same period and be included as a net adjustment to total expenditures.

§ 98.65 Audits.

(a) Each Grantee must have an audit conducted after the close of each program period in accordance with OMB Circular A–128.

(b) Grantees are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Grantees must submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Grantees must also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and which are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other Block Grant funds to which the Grantee is or may be entitled.

(e) Grantees must provide access to appropriate books, documents, papers and records to allow the Secretary to verify that Block Grant funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

§ 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the Grantee's approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures by a Grantee should be disallowed, the Department will notify the Grantee of this decision in writing.

(c)(1) If the Grantee agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Grantee shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Grantee may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Grantee may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Grantee may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A Grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Grantee's request for reconsideration in paragraph (c)(2)(i) of this section must be postmarked no later than 30 days after the receipt of the disallowance notice. A Grantee may request an extension within the 30-day timeframe. The request for reconsideration, pursuant to paragraph (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Grantee's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)(1) Upon receipt of a request for reconsideration, pursuant to paragraph (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Grantee that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Grantee and any other necessary materials.

(3) If the reconsideration decision is adverse to the Grantee's position, the response will include a notification of the Grantee's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Grantee refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Grantee.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.91(b), the findings of which have been appealed by the Grantee.

(j) Disallowances under the Block Grant program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements.

(a) Grantees must expend and account for Block Grant funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts which entail the expenditure of Block Grant funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures must be sufficient to permit:

(1) preparation of reports required under § 98.64 and under subpart H; and

(2) the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H—Program Reporting Requirements

§ 98.70 Annual report requirement.

(a) Grantees that receive assistance under the Block Grant shall prepare and submit to the Secretary an annual report. The report will be submitted in the manner specified by the Secretary by December 31 and will cover the most recent program period which ended on September 30 of that year.

(b) The first such report shall be an interim report, covering expenditures through September 30, 1992, and shall be submitted no later than December 31, 1992.

(c) Annual reports to the Secretary shall include the information listed in § 98.71.

§ 98.71 Content of report.

At a minimum, a Grantee's report to the Secretary, as required in § 98.70, shall:

(a) Specify the uses for which the Grantee expended funds under §§ 98.50 through 98.52 and the amount of funds expended for such uses, pursuant to § 98.13(a)(6)); and

(b) To the extent data are reasonably available, contain available data on the manner in which the child care needs of families in the area served by the Grantee are being fulfilled, including information concerning:

(1) The number of children being assisted with funds provided under the Block Grant, and under other Federal child care and pre-school programs;

(2) The type and number of child care programs, child care providers, caregivers, and support personnel located in the area served by the Grantee;

(3) Salaries and other compensation paid to full- and part-time staff who provide child care services; and

(4) Activities to encourage public-private partnerships that promote business involvement in meeting child care needs;

(c) Describe the extent to which the affordability and availability of child care services has increased;

(d) If applicable, describe, in either the first or second annual report, the findings of the Grantee's review of its licensing and regulatory requirements and policies, pursuant to § 98.41(d), including a description of actions taken by the Grantee in response to such reviews;

(e) Contain, if applicable, an explanation of any Grantee action which reduces the level of child care standards, as required in § 98.41(c);

(f) Describe the standards and health and safety requirements applicable to child care providers in the State or other area served by the Grantee, including a description of Grantee efforts to improve the quality of child care; and

(g) Any additional information that the Secretary shall require.

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or Tribal organization (as defined at §§ 98.2(u) and 98.2(oo)) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving Block Grant funds shall be subject to all the requirements under this part, unless otherwise indicated.

(b) An Indian Tribe applying for or receiving Block Grant funds must:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a Block Grant program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium which receives Block Grant funds; and

(2) Demonstrate that it has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive Block Grant funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive Block Grant funds on behalf of each Tribe or Tribal organization in the consortium; and

(2) The consortium consists of Tribes which each meet the eligibility requirements for the Block Grant program as defined in this part, or which would otherwise meet the eligibility requirements if the Tribe or Tribal organization had at least 50 children under 13 years of age; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds properly, manage a Block Grant program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive Block Grant services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the Block Grant, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, will include Indian children living on or near reservations, with the exception of

Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.50(a)(1), a Tribal program may use either:

(1) 75 percent of the State median income for a family of the same size; or

(2) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee.

§ 98.81 Application and plan.

(a) In order to receive Block Grant funds, Indian Tribes (as defined at § 98.2(u)) must submit an Application (as defined at § 98.13) which provides that:

(1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out Block Grant programs or activities; and

(2) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, Block Grant programs and activities will be carried out on an Indian reservation for the benefit of Indian children.

(b) The initial Application under paragraph (a) of this section must include a Plan which meets the provisions of this part and shall be for a two-year period, pursuant to § 98.17(b).

§ 98.82 Coordination.

Tribal applicants will coordinate:

(a) To the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program; and

(b) With other Federal, State, local, and Tribal child care and childhood development programs.

§ 98.83 Requirements for tribal programs.

(a) The Grantee must designate an agency, department, or unit to act as the lead agency to administer the Block Grant program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities must be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a Tribal Grantee which is a consortium, variations in Block Grant programs or requirements and in child care licensing, regulatory and health and safety requirements must be specified in written agreements between the consortium and the Tribe.

(d) Tribal Grantees shall not be subject to the requirements at §§ 98.44(a) and 98.51(c)(2).

(e) The base amount of any Tribal grant is not subject to the expenditure requirements at § 98.50(a), the requirement to reserve funds under § 98.51(a), or the percentage requirement for child care services at paragraph (g) of this section. The base amount may be expended for any costs consistent with the purposes and requirements of the Block Grant.

(f) Tribal Grantees whose total allotment pursuant to § 98.62(b) is less than an amount established by the Secretary which approximates the least amount which could be allotted to any individual State or Territory pursuant to §§ 98.61(a) and 98.62(a) shall not be subject to the following requirements:

(1) The assurance at § 98.15(b);

(2) The requirement for certificates at § 98.30(a) and § 98.30(e);

(3) The requirements for allocation of funds at § 98.50 (a) and (d); and

(4) The requirements for allocation of funds at § 98.51 (a) and (b).

(g) Tribal Grantees described in paragraph (f) of this section must reserve at least 63.75 percent of that portion of their total per-child amount, as allotted pursuant to § 98.62(b)(1)(ii) for Tribes or § 98.62(b)(2)(ii) for consortia, for direct child care services as defined at § 98.2(l). The services are to be provided to:

(1) Eligible children, as described in § 98.20; and

(2) Using a sliding fee scale, as described in § 98.42.

(h) Tribal Grantees described in paragraph (f) of this section may use the remaining 36.25 percent of that portion of their total per-child amount as allotted pursuant to § 98.62(b)(1)(ii) for Tribes or § 98.62(b)(2)(ii) for consortia, for child care services or for activities to improve the availability and quality of child care and for administrative costs. Such services, activities and costs must be consistent with the purposes and requirements of the Block Grant.

(i) Administrative costs associated with child care services funded under paragraph (g) of this section must be included as costs under paragraph (h) of this section or as costs under the base amount.

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the Block Grant for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the Block Grant Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Grantee, or an entity providing services under contract or agreement with the Grantee, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Grantee of possible non-compliance. The Secretary shall consider comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Grantee shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d) (1) Grantees and subgrantees must retain all Block Grant records, as specified in paragraph (c) of this section, and any other records of Grantees and subgrantees which are needed to substantiate compliance with Block Grant requirements, for the period of time specified in paragraph (e) of this section.

(2) Grantees and subgrantees must provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(e) *Length of retention period.* (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section must be retained for three years from the day the Grantee or subgrantee submits to the Secretary its final Financial Status Report (Standard Form 269 or 269A) for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Grantee, pursuant to §§ 98.90 or 98.93, a final determination is made that:

(1) There has been a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.18; or

(2) If in the operation of any program for which funding is provided under the Block Grant, there is a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Grantee a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Grantee has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) No further payments under the Block Grant will be made to such Grantee; or,

(2) In the case of noncompliance in the operation of a program or activity, no further payments to the Grantee will be made with respect to such program or activity.

(b) The penalty provided under paragraph (a) of this section will continue until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(c) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by the Act or the implementing regulations and disqualification of the Grantee from the receipt of further funding under the Block Grant.

(d) If a Grantee is subject to additional sanctions as provided under paragraph (c) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(e) Nothing in this section, or in §§ 98.90 or 98.91, will preclude the Grantee and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (c) of this section, may nevertheless be applied, even though the issue is resolved informally.

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Grantee has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the Block Grant must be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. The complaint must identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Grantee. Any comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints which are not satisfactorily resolved through communication with the Grantee will be pursued through the process described in § 98.90.

PART 99—PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—General

Sec.

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Authority: 42 U.S.C. 9858.

Subpart A—General

§ 99.1 Scope of rules.

(a) The rules of procedure in this section govern the practice for hearings afforded by the Department to Grantees pursuant to §§ 98.18(c) or 98.91, and the practice relating to the decisions of such hearings.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the Grantee, whether before, during, or after the hearing, to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing and are not governed by the rules in this part, except as expressly provided herein.

§ 99.2 Presiding officer.

(a) (1) The presiding officer at a hearing shall be the Assistant Secretary or the Assistant Secretary's designee.

(2) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

(b) The presiding officer, for all hearings, shall be bound by all applicable laws and regulations.

§ 99.3 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Assistant Secretary. Inquiries may be made at the Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

§ 99.4 Suspension of rules.

With notice to all parties, the Assistant Secretary for Children and Families or the presiding officer, with respect to pending matters, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 99.5 Filing and service of papers.

(a) An original and two copies of all papers in the proceedings shall be filed with the presiding officer. For exhibits and transcripts of testimony, only the originals need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by certified mail. Service on the party's designated attorney will be deemed service on the party.

Subpart B—Preliminary Matters—Notice and Parties

§ 99.11 Notice of hearing or opportunity for hearing.

Proceedings commence when the Assistant Secretary mails a notice of hearing or opportunity for hearing to the Grantee. The notice shall state the time and place for the hearing, and the issues which will be considered. A copy of the notice shall be published in the **Federal Register.**

§ 99.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 90 days after the date of the notice of the hearing furnished to the applicant or Grantee, unless otherwise agreed to, in writing, by the parties.

§ 99.13 Place.

The hearing shall be held in the city in which the regional office of the Department responsible for oversight of the Grantee is located or in such other place as the Assistant Secretary determines, considering both the circumstances of the case and the convenience and necessity of the parties or their representatives.

§ 99.14 Issues at hearing.

(a) The Assistant Secretary may, prior to a hearing under § 98.91 of this part, notify the Grantee in writing of additional issues which will be considered at the hearing. Such notice shall be published in the **Federal Register.** If such notice is received by the Grantee less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Grantee or any other party. The hearing shall be held on a date 20 days after such notice was received, or on such later date as agreed to by the Assistant Secretary.

(b) If, as a result of negotiations between the Department and the Grantee, the submittal of a Plan amendment, a change in the Grantee program, or other action by the Grantee, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Assistant Secretary, the hearing shall proceed on such new or modified issues. A notice of such new or modified issues shall be published in the **Federal Register.** If such notice is received by the Grantee less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Grantee or any other party. The hearing shall be held on a date 20 days after such notice was received, or on such later date as agreed to by the Assistant Secretary.

(c) (1) If, at any time, the Assistant Secretary finds that the Grantee has come into compliance with Federal statutes and regulations on any issue, in whole or in part, the Assistant Secretary shall remove such issue from the proceedings, in whole or in part, as may be appropriate. If all issues are removed, the Assistant Secretary shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Assistant Secretary shall provide all parties other than the Department and the Grantee (see § 99.15(b)) with written notice of the intention, and the reasons for it. Such notice shall include a copy of the proposed Block Grant Plan provision on which the Grantee and Assistant Secretary have settled. The parties shall have 15 days from the receipt of such notice to file their views or any information on the merits of the proposed Plan provision and the merits of the Assistant Secretary's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the Grantee is notified, as provided in paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section; they shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 99.15 Request to participate in hearing.

(a) The Department and the Grantee are parties to the hearing without making a specific request to participate.

(b) (1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have directly caused them injury and their interest is immediately within the zone of interests to be protected by the governing Federal statute and regulations.

(2) Any individual or group wishing to participate as a party shall file a petition with the presiding officer within 15 days after notice of the hearing has been published in the **Federal Register** and shall serve a copy on each party of record at that time, in accordance with § 99.5(b). Such petition shall concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues on which petitioner wishes to participate; and

(iv) Whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments on it.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, at the presiding officer's discretion, the presiding officer may request that all such petitioners designate a single representative or may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on the petition, and if the petition is denied, the presiding officer shall briefly state the grounds for denial. If the petition is denied, the presiding officer may recognize the petitioner as an amicus curiae.

(c) (1) Any interested person or organization wishing to participate as an amicus curiae shall file a petition with the presiding officer before the commencement of the hearing. Such petition shall concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner; and

(iii) The issues on which petitioner intends to present argument.

An amicus curiae is not a party but may participate as provided in this paragraph.

(2) The presiding officer may grant the petition upon finding that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and it may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. The amicus curiae

may submit a written statement of position to the presiding officer prior to the beginning of a hearing and shall serve a copy on each party. The amicus curiae may also submit a brief or written statement at such time as the parties submit briefs and shall serve a copy on each party.

Subpart C—Hearing Procedures

§ 99.21 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. The presiding officer shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This authority includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Regulate participation of parties and *amici curiae* and require parties and *amici curiae* to state their position with respect to the various issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on all pending motions and other procedural items including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude or limit evidence or discovery;

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending;

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is not the Assistant Secretary, certify the entire record including the recommended findings and proposed decision to the Assistant Secretary; and

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

§ 99.22 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations as to facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing; and

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 99.23 Discovery.

The Department, the Grantee, and any individuals or groups recognized as parties shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, at the presiding officer's discretion, issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 99.24 Evidentiary purpose.

The purpose of the hearing is to receive factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

§ 99.25 Evidence.

(a) Testimony. Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) Stipulations and exhibits. Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) Rules of evidence. Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 99.26 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters at issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 99.27 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 99.28 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 99.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may

contain proposed findings of fact and conclusions of law. The presiding officer shall also fix the time for reply briefs, if permitted.

§ 99.32 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, the Assistant Secretary shall issue the decision within 60 days after the time for submission of posthearing briefs has expired.

(b) (1) If the presiding officer is not the Assistant Secretary, the presiding officer shall certify the entire record, including the recommended findings and proposed decision, to the Assistant Secretary within 60 days after the time for submission of posthearing briefs has expired. The Assistant Secretary shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days of receipt of the recommended findings and proposed decision, file exceptions and a supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall thereupon review the recommended decision and, within 45 days after the receipt of the exceptions to the recommended findings and proposed decision, issue the decision.

(c) The decision of the Assistant Secretary under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704. The Assistant Secretary's decision shall be promptly served on all parties, and amici, if any.

§ 99.33 Effective date of Assistant Secretary's decision.

If, in the case of a hearing pursuant to § 98.18(b) of this chapter, the Assistant Secretary concludes that a Plan amendment does not comply with the Federal statutes and regulations, the decision that further payments will not be made to the Grantee, or payments will be limited to categories under other parts of the Block Grant Plan not affected, shall specify the effective date for the withholding of Federal funds.

[FR Doc. 92-17750 Filed 8-3-92; 8:45 am]
BILLING CODE 4150-04-M

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Tuesday
August 4, 1992

Part III

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 255 and 257

Aid to Families With Dependent Children At-Risk Care Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 255 and 257

RIN 0970–AA90

Aid to Families With Dependent Children At-Risk Child Care Program

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 5081 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), which adds section 402(i) to the Social Security Act (the Act) to create a child care program for low-income, working families who are not receiving Aid to Families with Dependent Children (AFDC).

This optional program permits States to provide child care to low-income families who are not receiving AFDC, need child care in order to work, and would otherwise be at risk of becoming eligible for AFDC.

These regulations also amend § 255.4(c) to clarify the definition of applicable standards of State and local law for the purpose of child care provided under section 402(g) of the Act (including Transitional Child Care).

EFFECTIVE DATE: August 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Ann Higgins, Administration for Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9294.

SUPPLEMENTARY INFORMATION:

Background

The Administration for Children and Families administers a number of programs that address the child care needs of low-income families. In the past three years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

Child care needs were first addressed for working families who receive AFDC benefits. A portion of the child care expenses was deducted from the family's earnings when calculating the amount of the family's AFDC grant. Later, the Family Support Act of 1988 guaranteed necessary child care for working AFDC recipients and for AFDC recipients in approved education or training activities (including the Job Opportunities and Basic Skills Training (JOBS) Program). In addition to recognizing the need for child care during training activities to obtain employment, the Family Support Act of 1988 addressed the need for child care during a 12-month transition period following the end of eligibility for AFDC. These child care measures were primarily designed for families already dependent on welfare.

In OBRA 90, Congress established two new child care programs: child care for low-income working families in need of such care and otherwise at risk of becoming eligible for AFDC (the At-Risk Child Care program) and the Child Care and Development Block Grant. Congress also amended the Earned Income Credit to assist the working poor in caring for their children.

At-Risk Child Care

In enacting the At-Risk Child Care program, Congress recognized that providing child care to low-income working families could enable such families to avoid welfare dependency. A State can also use the At-Risk Child Care program for former AFDC families whose eligibility for Transitional Child Care (TCC) under the Family Support Act ends but who continue to need assistance with child care. States can also use the program for some categories of needy families who are not eligible for TCC. States can provide care directly, by use of purchase of service contracts or vouchers, by providing cash or vouchers directly to the family, by reimbursing the family, or using other arrangements that the State agency deems appropriate.

The President signed OBRA 90 into law on November 5, 1990. However, the provisions regarding the At-Risk Child Care program were effective October 1, 1990. The Family Support Administration, predecessor of ACF, issued guidance (Action Transmittal CC–FSA–AT–90–1 dated December 19, 1990) to States on how to apply to operate an At-Risk Child Care program prior to the issuance of final regulations. We published a Notice of Proposed Rulemaking (NPRM) on June 25, 1991. The FY 1992 Appropriations bill for the Department provided $300 million for this program. We have approved a total of 47 States for the At-Risk Child Care program.

Child Care and Development Block Grant

The other child care program authorized by OBRA 90, the Child Care and Development Block Grant (CCDBG), is intended to provide child care services for low-income families and to increase the availability, affordability, and quality of child care and development services. A total of $2.5 billion is authorized for CCDBG for fiscal years 1991–1993, and such sums as may be necessary for fiscal years 1994 and 1995. Funding for FY 1992 in the amount of $825 million becomes available as of September 30, 1992.

Earned Income Credit

Although ACF does not administer the Earned Income Credit (EIC) program, it is an additional program to assist the working poor achieve family self-sufficiency. Congress created it in 1975 and greatly expanded it in OBRA 90. The EIC is a refundable tax credit provided to a low-income family with children in which a parent works. For example, in 1991, a family was eligible if its income was below $20,264, an amount that is indexed to inflation each year. Even a family earning too little to pay taxes receives the credit if it files a federal income tax return. The EIC can serve as an important resource for a family that receives public assistance while working at a low-wage job. Changes to the EIC enacted in OBRA 90 guarantee that EIC benefits will not count as income when eligibility and benefit levels are determined for many other federally supported programs.

The EIC can help a family make the transition from welfare to work by increasing its work-related income. A family can also receive EIC throughout the year in their regular paychecks by filing a W–5 form with their employer. In this way, families can use the money to meet ongoing needs of their children. For a family who has worked its way off welfare, the EIC can make the family's take-home pay compare more favorably with the welfare check it once received.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect the increased expenditures authorized for the At-Risk Child Care program to have an annual effect on the

national economy of over $100 million in the first five years of operation. We based the calculations for expenditures under the Act on the anticipation of increased expenditures in child care services.

According to the Office of Management and Budget instructions for preparation of Regulatory Analyses (found in appendix V of the annual Regulatory Program), "expenditure rules" establishing terms or conditions of financial assistance programs should ordinarily only "verify that the terms or conditions are the minimum necessary to achieve the purposes for which the funds were appropriated. They should not contain conditions in pursuit of goals that are not germane to the purpose for which the funds were authorized and appropriated * * *. Maximum discretion should be allowed in the use of Federal funds, particularly when the Grantee is a State or local government." The instructions recognize that most expenditure rules do not create any regulatory burden other than that incident to prudent purchasing and management requirements.

With respect to these management requirements, we believe that we have imposed only the minimum conditions necessary to achieve the statutory purposes and to maintain consistency with existing regulations for child care provided under the Social Security Act. There are no non-germane conditions.

This regulation establishes procedures which allow States to expend the monies authorized by the Act and provides States with a great deal of flexibility and latitude in program design. Regulatory constraints on States' administrative processes are minimal. Consistent with existing regulations for child care provided under the Social Security Act, however, we require States to guarantee parental choice by establishing at least one method by which self-arranged child care can be paid.

The regulation does not significantly restrict States in designing and implementing the At-Risk Child Care program. Rather, our approach is sensitive to the need for flexibility in the design of the program and administrative process. For example, we provide States with a great deal of latitude in defining the low-income and "at risk" eligibility criteria. Similarly, with regard to health and safety and registration requirements, we give States substantial flexibility in providing for any necessary requirements. We establish no minimum standards. Additionally, we do not specify that the program be statewide. We expect substantial variation in State programs.

The regulation in and of itself imposes only minimal additional administrative costs. At the State level, the regulation potentially requires additional administrative effort in only one area—the State must establish at least one method by which self-arranged care can be paid.

We realize that requiring States to establish at least one method by which self-arranged care can be paid may entail some additional costs for some States. The main cost associated with establishing a method for paying for self-arranged care (aside from the entry of new providers into the State's licensing and regulatory system, at least to the extent that they must be registered or meet minimum health and safety standards) is the fact that States must provide payment to providers whom the State would not otherwise pay for child care services. While we do not have a precise estimate of the additional administrative cost associated with this, we expect that the total cost of the requirement will be minimal as States must already have a method for paying for self-arranged care provided under section 402(g) of the Act.

Currently Projected Costs and Benefits

Consistent with the expenditure rules discussed in the Regulatory Impact Analysis Guidance (Appendix V of the 1990 Regulatory Program) and quoted above, a full-blown benefit cost analysis is not appropriate for this rule. We believe that there will be minimal costs associated with this rule and that the benefits will be over and above the appropriated level.

This regulation will result in minimal costs; fewer than 4,300 estimated annual burden hours are associated with the regulation. The regulation may require States to interact with more providers, and in some cases may necessitate that States hire additional staff.

We have no way of quantifying the value of benefits of child care services. The benefits may be higher or lower than the $300 million appropriated for the program, depending on the value of child care to the recipients.

In assessing the benefits of requiring the State to establish at least one method for paying for self-arranged care (to ensure a family's choice of provider), we refer to the economic concept of "allocative efficiency." To use a mundane example, consider the difference between giving a person five dollars in cash and giving him/her five dollars worth of apples. Most people would prefer the five dollars in cash, because the cash affords more flexibility. Even if someone wants apples, he/she might prefer a different type of apple, or perhaps prefer an assortment of other fruit or a combination of bread and apples rather than a single option of apples only. Moreover, some people do not like certain varieties of apples, and would therefore value the apples well below the five dollar cost of the product.

This concept of allocative efficiency applies to all goods and services, including child care. In terms of allocative efficiency, a method of paying for the self-arranged care of the parents' choice is of more value to the family (i.e., produces more benefits) than, for example, a contract with a single provider to purchase child care, even when the dollar value of the care is the same.

Moreover, unlike many other goods and services, child care is not a homogenous service but rather a differentiated one. That is, unlike, say, apples, where one unit of Delicious apples is virtually indistinguishable from other units of Delicious apples, child care varies based upon setting, proximity, curriculum, personal relationship, and myriad other factors. Thus, although a child care provider may typically charge, for example, $100 per week for infant care, that care is not necessarily worth $100 to everyone with an infant needing child care. For some people, care provided by this particular provider may be worth less than $100 because the caregiver is inconveniently located, or because the parents' lack of familiarity with the caregiver causes increased family stress and the need for more frequent visits and calls. If this caregiver is the only option, some people who value the care at less than the $100 cost will take the care despite the fact that they (the parents) do not receive a full $100 worth of benefits, as they would receive with another more convenient or familiar caregiver. Given the legislative mandate to provide for child care services, ACF has maximized the utility to families by assuring the widest range of provider choices possible.

In providing for at least one method whereby self-arranged care can be paid, families receive what is to them the full dollar value of child care. For example, parents have the choice of using many providers, including ones with which the State might otherwise choose not to contract.

There may be increased administrative costs for States due to the expansion of child care services. These costs will generally be covered by the funds from the At-Risk Child Care program and are minimally increased by the requirement for establishing at least

one method of paying for self-arranged care. We believe that the benefits gained by this requirement will far outweigh any costs associated with it.

National spending on child care was approximately $24 billion in 1990 and is growing by billions each year. Some of the spending on this program will inevitably displace spending which would have come from other sources. Therefore, the overall economic impact of this program on the child care market will not significantly affect the size of the market. Additionally, there is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely as a result of these regulations.

The nature of the At-Risk Child Care program does raise possible concerns of vertical and horizontal equity. With regard to the program, however, these potential inequities arise only to the extent that they are inherent in non-entitlement programs that have income cut-offs and allow States to establish priorities for services.

Issues of horizontal equity (i.e., the fact that people in similar circumstances will be treated differently) may arise only in response to State priorities. Since At-Risk Child Care is not an entitlement and there is no "statewideness" requirement, persons in different parts of the State may be treated differently even if their family and income circumstances are identical. Such a difference in practice would not result from the At-Risk policy or regulation, but rather result from the State's administrative decisions to provide services in only certain areas.

Additionally, based upon reviews of initial State applications, it appears that most States will operate "statewide" programs, providing service first to those who apply first. To the extent that States use such practices to ration services, those persons with better access to information will be relatively advantaged. This effect will be ameliorated by the general availability of other subsidized child care programs (e.g., child care funded with title XX, or with other State or local funds, as well as the availability of tax credits).

Vertical inequities will also occur. Due to the nature of the At-Risk Child Care program, indeed, due to the nature of any program with income limits, the potential for a "notch" effect exists; that is, people just above the income cut-off for eligibility receive no benefits at all, while people who are just inside the cut-off may receive some benefit. With regard to the At-Risk Child Care program, however, the fact that services must be subject to a sliding fee scale minimizes this effect by gradually phasing out the benefit as income increases.

Again, review of initial applications indicates that many States intend to allocate services primarily to priority groups (i.e., families whose eligibility for Transitional Child Care has expired, or families with very low incomes). Thus, the existence of vertical inequities in part reflects successful targeting of resources to those groups most in need.

Paperwork Reduction Act

Certain sections of these regulations contain information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Description of Respondents: State agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 257.21				
Existing	xxx	xxx	xxx	xxx
Proposed	54	.5	50	1350
45 CFR 257.50				
Existing	xxx	xxx	xxx	xxx
Proposed	54	1	50	2700
45 CFR 257.66				
Existing	xxx	xxx	xxx	xxx
Proposed	54	4	1.125	243

Total Existing Burden Hours is xxx.
Total Proposed Burden Hours is 4293.
Total Difference is +4293.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF has submitted a copy of the regulation to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspect of the information collection requirements, including suggestions for reducing the burdens, should direct them to the Administration for Children and Families, Office of Family Assistance (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Public Law 96–354, the Regulatory Flexibility Act, that these regulations will not result in a significant impact on a substantial number of small entities because it primarily affects State governments, which are not "small entities" within the meaning of that Act.

Child care providers such as child care centers, family child care providers, and other providers are considered "small entities" within the context of Executive Order 12291 and the Regulatory Flexibility Act. Because these regulations provide parents with great authority in their choice of child care providers, and States already have considerable flexibility in determining standards for child care providers, the regulations do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on State decisions.

Therefore, we have concluded, and the Secretary has certified, that a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required. These regulations are issued

under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of States to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

Section 5081 of OBRA 90 provides States with the option of providing a program of child care for low income working families who are at risk of becoming eligible for AFDC. The final regulations give States broad flexibility in defining who is eligible for the program, in choosing methods of providing care, and in establishing sliding fee scales.

Child care provided under section 402(i) of the Act must meet applicable standards of State and local law. This language is the same as in section 402(g) of the Act which provides child care for AFDC recipients who are working or in approved training or education and former recipients eligible for Transitional Child Care. In these regulations we have modified the policy that was published in the Notice of Proposed Rulemaking (NPRM) on June 25, 1991. We have retained the definition of applicable standards as licensing or regulatory requirements that are generally applicable to care of a particular category regardless of the source of funding for the care. However, the final regulations provide that for child care under title IV–A, a State may deny payment for care that does not meet requirements designed to protect the health and safety of children that are applicable to other Federal or State child care programs. A complete discussion of this provision is contained in the preamble to § 257.41.

This policy does not decrease a State's ability to set standards for child care in general. It does not prevent State from enforcing minimum health and safety requirements. It does not set national standards. The final regulation does limit a State's ability to deny a parent's choice of provider if that provider does not meet standards, other than health and safety requirements, that are only applicable to subsidized care. We do not believe that this overall approach restricts States in designing and implementing At-Risk Child Care programs. While States must meet all statutory provisions, we fully expect substantial variation in State programs.

Therefore, on balance, we do not believe these regulations have a significant federalism effect.

Analysis Required by Executive Order 12606 on the Family

The At-Risk Child Care Program is expected to have an overall beneficial impact on families. This analysis discusses that impact in terms of the criteria in Executive Order 12606.

(a) The objective of the At-Risk Child Care Program is to provide child care to low-income families who are not currently AFDC recipients, who need care to accept or maintain employment, and who are at risk of becoming AFDC-eligible. The goals of economic independence and prevention of welfare dependency are promoted through continued employment resulting in more secure families.

The At-Risk Child Care program may provide financial aid to both single parent and two-parent families, if such care is necessary for employment. Increasing self-sufficiency will help strengthen families and ameliorate the erosive effects of poverty.

(b) The At-Risk Child Care program provides significant support for parents' authority and right to nurture and supervise their children. The access the program provides to affordable child care settings will enable parents to continue to work to achieve self-sufficiency. Parents will continue to have maximum control and supervision of their children as any working family not receiving benefits would have. Parents choose the child care providers. Non-related providers are subject to State or local requirements for registration, certification, or licensing. However, this will not affect parents' ability to choose the kind of care with which they are most comfortable.

(c) The At-Risk Child Care program does not substitute governmental activity for any of the functions of the family. Parental responsibility for the support of children is fostered by the At-Risk Child Care program because the program assures parental choice of caregivers and the parents' ability to work and provide for the family. Furthermore, the family will contribute to the cost of care based on the family's ability to pay, in accordance with a sliding fee scale formula established by the State IV–A agency. States may waive the contribution from any family at or below the poverty level.

(d) The At-Risk Child Care program is not specifically designed to increase or decrease the family's earnings. However, since child care provided with At-Risk Child Care funds will permit families to accept or maintain employment, we expect the overall effect will be to increase family earnings by increasing employment opportunities.

(e) The At-Risk Child Care program is available through non-Federal levels of government, i.e., States and localities. The Federal government will not intrude upon family autonomy or decisions.

(f) The At-Risk Child Care program reinforces the notion that the strength of the American family is important to the Nation's economy. Targeting families who would otherwise be at risk of becoming welfare dependent sends the message that assisting families to maintain economic independence is a goal for all levels of government.

(g) The emphasis on self-sufficiency in the At-Risk Child Care program will send a positive message to young people. The message is that those striving to maintain economic independence from welfare can get help from society to do so.

General Analysis of Comments

We received 677 comments on the NPRM. Forty-nine percent of the comments came from one State and commented solely on the proposed definition of applicable standards which all the commenters opposed. Eight percent were from another State and commented solely in support of stricter standards for child care providers. Another eight percent (consisting of individuals or organizations with sectarian affiliations) commented solely in support of the provisions for parental choice in the proposed rule. Of the remaining 229 comments, the breakdown of the nature of the commenters was as follows: unaffiliated individuals (thirty-one percent), child care providers (twenty-one percent), Federal, State, and locally-elected officials (fourteen percent), children's advocates (twelve percent), State, county and local government officials (ten percent), educational institutions (five percent), public and private charities (four percent), and legal associations (three percent).

By far the largest number, 559, commented on applicable standards. Of these, 90 percent opposed the provisions in the NPRM with 28 percent offering suggestions for change.

Twenty-five percent of the respondents commented on registration requirements. Seventy-four percent opposed the provision that registration procedures had to be simple and not include minimum health and safety requirements; seventeen percent proposed amendments. Seventeen

percent of the respondents commented on the definition of local market rate. Ninety-three percent of the commenters opposed the definition as too low; many suggested the existing regulations for AFDC child care and TCC that define local market rate should be amended as well. Fourteen percent of the comments addressed the requirement that States define "at-risk of becoming eligible for AFDC." All of the commenters opposed the provision with the majority saying that being low-income alone ought to be sufficient and that any additional definition was just an administrative burden. Fifty-two responses commented on sliding fee scales. All commenters opposed the requirement that the family make at least a minimum contribution.

Approximately 17 percent of the commenters addressed methods of providing child care with 83 percent in favor of the requirement that States have a method of payment that accommodates a parent's choice of child care provider. Indeed, many commenters who opposed the definition of applicable standards expressed support for the general principle of parental choice enunciated in the proposed regulations. Many commenters also expressed support for the flexibility in delivering services that the proposed regulations permitted.

No other subject area was addressed in more than five percent of the comments. A complete discussion of the comments is contained in the preamble to the various regulatory provisions.

Order of Preamble and Regulations

The preamble discussion generally follows the sequence of the regulations, with the exception that the description of changes to the existing regulations at 45 CFR part 255 is last, whereas the changes to the regulation itself precede the At-Risk Child Care sections of the final rule at 45 CFR part 257.

Part 257—At-Risk Child Care Program

Purpose (Section 257.1 of the Final Regulations)

This section describes the purposes of the At-Risk Child Care program. States may provide child care to low income families in accordance with the regulations in this part to allow such families to work and thereby avoid receiving AFDC.

There were no comments on this section of the regulations.

State IV–A Agency Administration (Section 257.10 of the Final Regulations)

Section 5081 of OBRA 90 amends the Act to add the At-Risk Child Care program at section 402(i). As part of title IV–A of the Act, the "State agency" referred to in section 402(i) is the single State agency as provided at section 402(a)(3) of the Act. Under longstanding Federal policy regarding the concept of "single State agency," the State IV–A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in overall administration or supervision of the program (see 45 CFR 205.100).

For child care provided under section 402(g) of the Act, this language on administration has meant that, operationally, a State IV–A agency could have another entity perform such non-discretionary functions as providing information to individuals seeking child care, issuing the payment to the child care provider, and collecting fees in accordance with the sliding fee schedule established by the State IV–A agency.

However, eligibility determinations must be made by the IV–A agency. Child care under section 402(g) of the Act is guaranteed to those meeting the statutory requirements, i.e., to employed AFDC recipients, to AFDC recipients in approved education or training programs, and to former AFDC recipients who are working. Therefore, because such care is guaranteed and eligibility for child care under section 402(g) is inextricably linked to either current or past receipt of AFDC, the determination of eligibility for child care under section 402(g) remains a discretionary decision with the State IV–A agency.

One of the goals of child care provided under section 402(i) is to prevent families from needing AFDC by providing child care so that they can work. Child care is not guaranteed, and eligible families will not be AFDC recipients, although it is possible that they might be former recipients. Therefore, questions have arisen about whether the State IV–A agency could have another entity determine eligibility for At-Risk Child Care.

The final regulation at § 257.10(c) allows the State IV–A agency to enter into contracts or agreements with other entities to perform administrative functions, including the determination of eligibility, and provide services under the At-Risk Child Care program.

We believe that there are significant differences in child care provided under section 402(i) which distinguish it from the other programs under title IV–A. First, as cited above, eligible individuals are not AFDC recipients by definition. Therefore, there is not an immediate connection to the State IV–A agency. In fact, many eligible individuals might not avail themselves of child care services under section 402(i) if it meant going to the welfare office. If preventing the need for welfare is one of the goals of this program, requiring a family to go to the welfare office to obtain services might be counterproductive. Second, At-Risk Child Care is not guaranteed, and, therefore, the protections that must be afforded by the State IV–A agency do not apply. Third, it is consistent with the statement of the OBRA 90 conferees that "States will have maximum flexibility in determining how these new grant funds are used." H.R. Rep. No. 964, 101st Cong., 2nd Sess. 922, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2627.

In allowing the State IV–A agency to contract or enter into an agreement with another entity for certain functions related to the At-Risk Child Care Program, we do not relieve the State IV–A agency of its overall responsibility for administering the program. Therefore, the regulation at § 257.10(b) enumerates the functions that the State IV–A agency must perform. Chief among these is the issuance of all policies, rules, and regulations, including the criteria for eligibility, governing the program. An entity performing functions related to the At-Risk Child Care program must do so in accordance with the policies, rules, and regulations issued by the State IV–A agency.

We believe that when the State IV–A agency carries out the At-Risk Child Care program through other public or private agencies, the process must be governed by written agreements or contracts which specify the roles and responsibilities of the respective agencies. It would be difficult for the State IV–A agency to satisfy the assurances in the At-Risk Child Care plan (see § 257.21) without such written agreements or contracts. Therefore, we have modified § 257.10(c) to reflect this requirement for written agreements and contracts. This requirement is consistent with the regulations for the Child Care and Development Block Grant which also require written agreements.

A principal purpose of the single State agency provision is to assure that there is a central point of responsibility in the State, i.e., the State IV–A agency, with adequate legal authority to which the Federal government can look to account for the expenditure of Federal funds under the program. Therefore, while State IV–A agencies have been granted broad contracting authority in carrying out the At-Risk Child Care program, it should be clear that ACF will hold State IV–A agencies responsible for the proper and efficient administration of

the program and will take any necessary compliance or disallowance actions against State IV–A agencies.

Comment: One commenter suggested that the requirement at § 257.10(c) that allows States to use contracts or other arrangements to carry out the At-Risk Child Care program be modified to restrict the use of private organizations to those which are private not-for-profit organizations.

Response: We do not believe that Congress intended to limit State flexibility in selecting the mechanism for delivery of this program. However, State rules on procurement must be observed. State rules on conflict of interest in the procurement process should provide adequate protection for proper and efficient administration of the program.

Comment: Most commenters supported the provision allowing States to enter into contracts with other entities to perform administrative functions, including the determination of eligibility for the At-Risk Child Care program. One commenter wanted to extend this provision to child care authorized by the Family Support Act (care provided under section 402(g) of the Social Security Act).

Response: We do not agree. In contrast to the At-Risk Child Care program, the guarantee of child care under section 402(g) of the Act requires the protections that must be afforded by the State IV–A agency, as explained above.

Comment: One commenter, while supporting the use of contracts and agreements, felt that the State's At-Risk Child Care plan should specifically state that the State IV–A agency retains responsibility and control over the program. Another commenter asked whether such contracts and agreements had to be in writing.

Response: We believe that the regulation at § 257.10(b), which enumerates the functions the IV–A agency must perform, along with the provision at § 257.10(c) that the judgement of the State IV–A agency may not be substituted for another's adequately reflects the IV–A agency's responsibility and control over the program. However, we also believe that it would be difficult for the State IV–A agency to satisfy the assurances in the At-Risk Child Care plan without written agreements or contracts. We have modified § 257.10(c) to reflect this requirement for written contracts or agreements.

Comment: Some commenters requested that § 257.10 be clarified to include hearings among the responsibilities that the State IV–A agency retains. One group recommended that the notice and hearing requirements for section 402(g) child care be incorporated in the At-Risk Child Care program.

Response: We decided not to regulate in this area. Because At-Risk Child Care is not guaranteed like child care under section 402(g) of the Act, we do not believe it necessary to federally regulate specific notice and hearings requirements.

While we have not regulated specific notice and hearings requirements, States may adopt the notice and appeals process used for section 402(g) child care, adopt the processes they may already have in place for State-funded child care, or develop new processes to achieve consistency among child care programs in the State.

Requirement for a State At-Risk Child Care Plan (Section 257.20 of the Final Regulations)

The At-Risk Child Care program is authorized under a new section of the Social Security Act, 402(i), and therefore is not part of the title IV–A (AFDC) plan which is covered in section 402(a) of the Act. Although section 402(i) does not specify whether a plan is needed for the At-Risk Child Care program, we require that At-Risk Child Care be covered by a plan for two reasons. First, Federal funds for child care are available under section 403 of the Act, which provides that payments are made to States under approved plans. Second, we do not believe the Secretary could fulfill his statutory obligations unless we required a State plan which specified how the State would meet the requirements of section 402(i) of the Act. Authority to require a plan is found at section 1102 of the Act. This section requires that the Secretary establish rules "necessary to the efficient administration of the functions" with which the Secretary is charged under the Act.

Section 257.20(b) requires States to submit the At-Risk Child Care plan as an amendment to the State Supportive Services plan under parts 255 and 256. We believe that this approach will minimize the administrative burden on States for several reasons. Under its Supportive Services plan, a State provides supportive services for JOBS participants and child care for employed AFDC recipients, for participants in approved education and training activities (including JOBS), and for individuals who lose eligibility for AFDC due to employment (i.e., Transitional Child Care). The State IV–A agency is responsible for administering child care provided under both sections 402(g) and 402(i) of the Act and is, therefore, responsible for submitting any State plan material associated with either section of the Act. Several of the provisions in these two sections of the Act are the same. These include the methods of payment that States may adopt, and the requirements to establish local market rates, define sliding fee scales, and coordinate with other child care programs.

We have modified the State Supportive Services plan preprint to address the requirements for the At-Risk Child Care program. As appropriate, we have revised the existing State Supportive Services plan preprint pages to reflect the addition of At-Risk Child Care. Where necessary, we have added new preprint pages. These additions and revisions have been approved by the Office of Management and Budget.

By considering the At-Risk Child Care program to be part of the State Supportive Services plan, there will be some additional burden on the States. This burden arises from the requirement that States must submit biennial updates of the State Supportive Services plan to HHS. However, we believe that this slight burden is justified for two reasons. First, States must update local market rates under the provisions of § 255.1(i). This will result in updating local market rates for child care under section 402(i) also since we have defined local market rates at § 257.63 the same as we did under § 255.4. The revised plan will provide a vehicle for doing this. Second, after an initial three-year plan, State plans under CCDBG must also be submitted biennially. Thus, beginning in FY 1995, State Supportive Services plans and CCDBG plans will be on the same schedule for submission to HHS. Incorporating the provisions of At-Risk Child Care into the existing State Supportive Services plan so that all plans are revised and submitted simultaneously will thus facilitate coordination of child care within States.

Comment: Several commenters have asked that we define the At-Risk Child Care plan as a substantial change to the Supportive Services plan; that is, one that requires the plan be made available for public review and comment.

Response: 45 CFR 250.20(f) which governs the submission of amendments to a State's JOBS or Supportive Services plan contains no requirement that amendments be made available for public review and comment. Therefore, we decline to require that the At-Risk Child Care plan be made available for public review and comment other than when it becomes subject to the biennial update requirements for review and comment at 45 CFR § 250.20(e).

We believe that the commenters may have confused the provision at 45 CFR 250.20(d) with the applicable provision at 45 CFR 250.20(f). 45 CFR 250.20(d) applied only to the situation in which a State had implemented its JOBS Program prior to the issuance of the final regulations for that program on October 13, 1989. Section 250.20(d) required such States to submit a JOBS plan that conformed to the final regulations on a preprint supplied by HHS. If the plan to be submitted contained substantial changes to the interim plan under which the State had been operating, the State had to submit the plan for a 30-day period of public review and comment.

Submission of the At-Risk Child Care Plan

The At-Risk Child Care program provisions under section 5081 were effective October 1, 1990. In order to provide initial guidance to States so that they could begin to provide At-Risk Child Care promptly if they so chose, we issued a Child Care Action Transmittal CC–FSA–AT–90–1 (dated December 19, 1990) describing how States could apply for FY 1991 funds. We issued instructions for applying for FY 1992 funds in Child Care Action Transmittal CC–ACF–AT–91–3 (dated October 11, 1991). Applications for FY 1991 and 1992 funds are approved on an interim basis pending issuance of these final regulations. An approved interim application will remain in effect until the Secretary acts on a State's plan that is submitted on the approved preprint.

At § 257.20(c) we require States operating an At-Risk Child Care program under an approved interim application to submit an amendment during the quarter following the quarter in which the preprint is issued. We recognize that States may have to make some operational modifications as a result of the final regulations and are giving States some flexibility as to exactly when they submit the plan to conform to the final regulations.

Since we are considering the At-Risk Child Care plan to be an amendment to the State Supportive Services plan, the effective date of the amendment may not be earlier than the first day of the quarter in which it is submitted. A State which is not operating an At-Risk Child Care program at the time of publication of these regulations may submit an amendment to the State Supportive Services plan at any time to implement a program. As an amendment to the State Supportive Services plan, the effective date may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted. Regardless of the quarter in which a State implements an At-Risk Child Care program, the State is entitled to its "maximum grant" (as defined at § 257.60(c)) for the year. For example, suppose a State's limitation for FY 1992 is $1 million, and for FY 1993 is $1.5 million. It submits a plan on March 1, 1993, to begin operating an At-Risk Child Care program. The effective date of the plan may not be earlier than January 1, 1993. The State is entitled to its maximum grant of $2.5 million dollars upon approval of the plan; however, it may not claim expenditures for any period prior to January 1, 1993.

Comment: One State suggested that the preprint should allow a State to cross-reference, rather than resubmit, information already included in other portions of its Supportive Services plan. Another asked if the same local market rates and sliding fee scale found currently in the State Supportive Services plan may be referenced in the amendment and updated at the time of the biennial update.

Response: We do not wish to put an undue administrative burden on the States in the submission of an amendment to the State Supportive Services plan. In developing the preprint for the At-Risk Child Care program, we looked at ways to cross-reference sections of the Supportive Services plan relative to child care. However, cross-referencing does not always work. For example, it should be noted that the provision at § 257.21(i) requires States to submit actual local market rates rather than the methodology to calculate them as required under § 255.1(i). We decided to require submission of actual local market rates because we found that requiring the methodology alone did not provide sufficient information for ACF to carry out its oversight functions.

Since the regulations do not require States to submit the At-Risk Child Care plan until the quarter after the quarter in which the preprint is issued, we do not expect any plans under the final regulations to be submitted prior to the submittal of the biennial update for JOBS. Interim At-Risk Child Care plans will remain in effect until the effective date of the preprint submittal in accordance with § 257.20(c).

Comment: One commenter asked whether an amendment to the State's Supportive Services plan which includes the local market rate survey methodology and sliding fee scale for the At-Risk Child Care program automatically revises other similar sections of the Supportive Services plan (for example, the Transitional Child Care sliding fee scale).

Response: As explained above, the preprint includes appropriate cross-references. A State's submission will have to clearly identify what sections are being amended. Of course, in the case of local market rate survey methodology, any amendment will affect local market rates for all child care under title IV–A, since the local market rate is defined identically for all title IV-A child care. However, as explained above, the At-Risk Child Care plan requires submission of local market rates.

State Plan Content (Section 257.21 of the Final Regulations)

The regulation at § 257.21 lists the information that is required in the At-Risk Child Care plan, which is part of the State Supportive Services plan, as described at § 257.20. We will provide preprint pages that will become part of the State Supportive Services plan preprint. The preprint will include pages which will guide States in submitting the At-Risk Child Care plan and will expedite review. It will also provide a basis for comparison of State programs.

In general, the content of the At-Risk Child Care plan reflects provisions that are described in other parts of the final regulations and, therefore, it is generally unnecessary to describe them here. For example, paragraph (b)(2) of this section of the final regulations requires the State to define "low income." This requirement is described in the regulations at § 257.30(a)(1) and discussed in the preamble to that section. However, there are some provisions that we elaborate on here. In addition, we describe the addition and deletion of certain provisions based on the comments we received.

The first provision is the requirement at § 257.21(f) that a State list the political subdivisions in which the At-Risk Child Care program is offered, if not available statewide. Unlike the provisions of sections 402(a) and 402(g) of the Act, which must be applicable statewide, the At-Risk Child Care program under section 402(i) of the Act is optional. It allows the State to set priorities for services and is subject to a cap on the amount of Federal funds available to reimburse the State for its expenditures. We, therefore, believe that a State need not offer the program statewide. However, the State must list in its State plan where the At-Risk Child Care program is available.

Second, we amended the final regulation at § 257.21(b)(3) to enable States to develop their own definitions of "physically or mentally incapable" as provided at § 257.30(b)(2)(i). A complete

discussion about this change is contained in the preamble to § 257.30.

Third, we added language at § 257.21(h) to require States to specify which relatives are exempt from registration requirements because they are providing care for members of their family in accordance with § 257.41(b).

Fourth, we added language at § 257.21(n) to require States to describe the health and safety requirements (if any) applicable to providers under this part for the prevention and control of infectious diseases, building and physical premises safety, and minimum health and safety training appropriate to the provider setting in accordance with § 257.41(a)(2). This addition results from the revision in the final regulations to allow States to deny payment to child care providers under this part who do not meet health and safety requirements. A complete discussion of this State option is contained in the preamble to § 257.41.

Comment: One commenter objected to the requirement that the State include "a description of the State's priorities" in the State At-Risk Child Care plan, suggesting that the statutory language does not require a State to get approval of its priorities, only that it report on them in the Annual Report.

Response: Although we still believe that a State cannot report on its priorities in the Annual Report if it has not previously established such priorities, we have decided to delete this provision from the At-Risk Child Care plan. Instead, as discussed in the preamble at § 257.50, States will have to submit priorities as part of the Annual Report. This change will ensure that we get annual updates on State priorities allowing our report to Congress to accurately reflect how States are using At-Risk Child Care funds.

Comment: Several commenters suggested that the regulations at § 257.21(n) should state whether the amount established for the base period expenditures is a single aggregate amount or separate totals for Federal and State expenditures.

Response: We have modified the provision to report "the separate amounts of Federal and State public funds expended for child care services during the base period." The preamble to § 257.64 contains additional discussion about calculating expenditures for the base period. We have also renumbered this provision: it is now § 257.21(d).

Comment: One commenter observed that § 257.21(a)(3) implies that all child care providers in the State must either be licensed, regulated, or registered and expressed concern that a State may be required to develop a new set of regulations for registering all unlicensed providers.

Response: The language at § 257.21(a)(3) is consistent with the language at section 402(i)(5)(C) of the Act which states that providers, other than providers caring for members of their family, must be licensed, regulated, or registered. Thus, a State may have to establish a registration process for providers who are otherwise unregulated. However, as described more completely in the preamble to § 257.41, registration must be a simple process which facilitates appropriate and prompt payment.

Comment: One commenter suggested that the terminology at § 257.21(b)(1) be changed to "at risk of becoming eligible for AFDC" to be consistent with the statutory language on eligibility.

Response: We agree and have changed the regulatory provision accordingly.

Eligibility (Section 257.30 of the Final Regulations)

Section 402(i)(1) of the Act provides, "Each State agency may, to the extent that it determines that resources are available, provide child care * * * to any low-income family that the State determines is not receiving aid under the State plan approved under this part; needs such care in order to work; and would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided."

Low Income

The regulation at § 257.30(a)(1) gives States the flexibility to define the low-income requirement of the program. States may wish to consider developing (or adopting) an income test that not only allows for variations in family size or the number of children in the family needing care, but also serves as a common standard for other child care services the State provides.

A number of Federal programs, including the Community Services Block Grant and Head Start, use the HHS poverty income guidelines, or a percentage of them, as eligibility criteria. As the guidelines are commonly understood indicators of low income, States may wish to consider using them for the At-Risk Child Care program.

The 1992 poverty income guideline for the 50 States and the District of Columbia for a family of 2 is $9,190; for each additional member, it adds $2,380. The 1992 poverty guideline for Alaska for a family of 2 is $11,480; for each additional member, it adds $2,980. The 1992 poverty guideline for Hawaii for a family of 2 is $10,570; for each additional member, it adds $2,740. These guidelines were published in the Federal Register on February 14, 1992 (57 FR 5456), and States are referred to the Federal Register for additional information about the guidelines.

Another possibility is to adopt the standard for eligible families established by the State for the Child Care and Development Block Grant. Section 658P(4)(B) of the Child Care and Development Block Grant Act of 1990 provides that the State's standard for income of an eligible family cannot exceed 75 percent of the State median income for a family of the same size.

A State's definition of low income must be provided in its At-Risk Child Care plan, as required at § 257.21(b)(2).

At Risk of Becoming Eligible for AFDC

The construction of section 402(i)(1) of the Act appears to consider being "at risk" of becoming AFDC-eligible as separate from merely being low-income. However, neither section 402(i) of the Act nor the Conference Report elaborates on the term. In the absence of such guidance, and in response to comments discussed below, we have decided to allow States to define "at risk" in terms of low income alone. States still have the option of using other definitions of being at risk of becoming eligible for AFDC to establish eligibility or priorities for child care. The final regulation at § 257.21(b) requires the State to incorporate its definition of "at risk," whether the State uses low income or some other definition, in the State's At-Risk Child Care plan.

Additional definitions of "at risk" that States may want to consider include: (1) A family not eligible for Transitional Child Care because it did not receive AFDC in three of the previous six months; (2) a family whose eligibility for Transitional Child Care has expired because of the 12-month limit; (3) a family not receiving AFDC because the State has a time-limited Unemployed Parent (AFDC–UP) program and the family obtains employment during the period of non-receipt of aid; or (4) a family who is eligible for, but elects not to receive AFDC because its earnings would have resulted in only a minimum payment.

We have not required States to limit eligibility for At-Risk Child Care to only those families who otherwise would qualify for AFDC, but for the receipt of At-Risk Child Care. In doing so, we considered whether there were any factors that were so fundamental to receiving AFDC that a family could not be "at risk" of receiving AFDC if it did

not meet them. For example, we considered whether there would have to be a child who meets the definition of "dependent child" in section 406 of the Act. In keeping with our goal of State flexibility, while there clearly must be a child in the family who needs care, we allow the State to decide if it will require that the child meet the definition of "dependent child."

Thus, a State may adopt or modify any or all of the eligibility criteria for AFDC if it so specifies in its State At-Risk Child Care plan. For example, it could require that there be at least one "dependent child," or it could require a family to meet the limits on resources.

Comment: Most commenters felt that low income should be the sole test for eligibility for At-Risk Child Care. Some commenters stated that adding additional eligibility requirements to determine whether the family is at risk of AFDC dependency and thus potentially eligible for At-Risk Child Care, would be administratively burdensome and may impede some families' access to care.

Response: Based on the comments, we agree that low income alone as defined by the States is a good predictor of a family's being "at risk." We have, therefore, clarified the regulations to permit States to define at risk in terms of low income alone. Even so, low income is not the sole eligibility criterion for the At-Risk Child Care program. Families must not be receiving AFDC and also must need such care in order to work; these requirements are discussed below.

Need Such Care

Section 402(i)(1)(B) of the Act requires that the State determine that a family "needs such care" in order to work, as a condition of eligibility for At-Risk Child Care.

Comment: One commenter maintained that the Act does not define child care to exclude parental care and, therefore, At-Risk Child Care payments should be made directly to two-parent families, where only one parent works and the other remains at home to provide care to his or her own children.

Response: There are several reasons why we do not believe Congress intended to make At-Risk Child Care available in this situation. First, Congress placed the At-Risk Child Care program under title IV–A of the Act. The existing regulation at § 255.4(f) prohibits FFP for payments made for care pursuant to section 402(g) of the Act when that care is provided by parents or legal guardians. These persons have a legal responsibility to care for their children.

Second, the Act requires that payments be made based on a local market rate and that families contribute to the cost of care. This suggests that care is provided by someone other than a parent. In addition, the fact that the Act also requires providers to be licensed, regulated, or registered, and that they must allow parental access, further supports this understanding of Congress's intent that the care would be provided by someone other than a parent.

Third, the Earned Income Credit (EIC), which was greatly expanded by OBRA 90, is available to two-parent families where only one parent works. Even families earning too little to pay taxes receive the credit if they file a federal income tax return. It is through the EIC, rather than the At-Risk Child Care program, that we believe Congress intended to address the needs of low-income working families where one parent chooses to remain in the home to provide care.

While a parent or legal guardian may not receive payment for providing care to his/her own child(ren), States have the flexibility to determine on a case-by-case basis if a two parent family which otherwise meets the eligibility criteria would be eligible for At-Risk Child Care services under exceptional circumstances, even if only one of the parents works. An example of such an exceptional circumstance would be where one parent works but the second parent is bedridden and unable to provide care for the child(ren). This flexibility is consistent with existing policy for other title IV-A child care.

Comment: One commenter questioned whether cooperation with the Child Support Enforcement Program was a requirement of eligibility for the At-Risk Child Care program.

Response: States have the flexibility to develop the eligibility criteria for the At-Risk Child Care program, including a requirement for seeking child support. We strongly encourage States to promote the benefits of child support as an important aspect of achieving self-sufficiency and avoiding welfare dependence.

In Order To Work

We define "in order to work" as "to accept employment or remain employed" at § 257.30(a)(4). This definition is consistent with section 402(g)(1)(A)(i)(I) of the Act and the implementing regulations at § 255.2. It clarifies that child care under section 402(i) is related to actual employment and not to education or training activities that would be necessary in order for an individual to work at some future point in time. In contrast, section 658P(4) of the Child Care and Development Block Grant Act of 1990 specifically provides that child care is available so that a parent or parents can work or attend a job training or educational program.

Comment: Several commenters wanted us to broaden our interpretation of "in order to work" to include education, training and job search activities which might result in future employment.

Response: The final regulation retains the definition contained in the proposed rule. That is, we do not define education, training, or job search as activities for which At-Risk Child Care is available.

In the Family Support Act of 1988, Congress amended the Social Security Act to provide child care under title IV–A to families on AFDC and specified the two situations for which child care was available: (1) when the care is necessary for an individual to accept or maintain employment; or (2) when an individual is in an approved education or training activity including JOBS. Similarly, in CCDBG (authorized at the same time as the At-Risk Child Care program) Congress was explicit in identifying "working" and "attending a job training or educational program" as distinctly separate activities for which child care is provided. We believe, therefore, that the "in order to work" language of section 402(i) clearly refers to accepting or maintaining employment.

Age of an Eligible Child

Under the regulation at § 257.30(b) the State may provide care to any child who is under the age of 13. The State may also provide care to a child who is age 13 or above and is physically or mentally incapable of self-care or who is under court supervision. The age 13 limit is consistent with the limits for child care under section 402(g) of the Act as established in the regulations at § 255.2 and § 256.2. It is also consistent with the limit established for the Dependent Care Tax Credit, as amended by section 703(a) of the Family Support Act and the limit for child care under section 658P of the Child Care and Development Block Grant Act of 1990.

For children who are eligible for At-Risk Child Care because they are physically or mentally incapable of caring for themselves or are under court supervision, the regulations at § 257.30(b) adopts the upper age limit for a dependent child as defined at section 2.2B of the State IV–A plan (i.e., under age 18 or up to age 19 at State option). This limit is also consistent with the

upper age limit for child care provided under section 402(g), because eligibility for child care under section 402(g) is limited to dependent children requiring such care, or in the case of Transitional Child Care, children who, if needy, would be dependent.

Comment: One commenter suggested that we extend services to children over age 13 whose safety or well-being requires adult supervision during the parent's absence. The commenter cited as examples situations where children over age 13 live in gang-controlled neighborhoods, are temporarily ill but do not require professional nursing care, or whose parents work nights or at a job that takes them out of town overnight.

Response: The regulation at § 257.30(b)(2) provides an exception for children over age 13 who have an officially recognized need for special supervision. We do not feel that an exception is justified for all those over age 13 needing supervision. Such an exception would be too broad and too difficult to define; in some States, it would obviate the age 13 limit. Finally, we maintain that limiting services to those under age 13 (excepting children with disabilities or under court supervision) reflects widely-held views on appropriate governmental participation in expenditures for child care services.

Comment: Several organizations objected to our limiting disability determinations to those made by physicians or licensed/certified psychologists. They suggested that a child's disability could be verified by a trained social worker or other qualified health professional such as a nurse practitioner or occupational therapist.

Response: We originally proposed to limit the determination of disability to physicians and licensed/certified psychologists to be consistent with the existing regulations for child care provided under section 402(g) of the Act. When the regulations for child care under section 402(g) were written, we were cognizant of the fact that section 402(g) child care was brand new and guaranteed to those who were eligible. We, therefore, put in limitations such as who could determine disability.

In contrast, At-Risk Child Care is not guaranteed. The State has an option on whether to serve this group and to what extent. Therefore, we have amended the regulation at § 257.30(b)(2)(i) to remove the restriction on who may make the disability determination. Instead, we have added a requirement at § 257.21(b)(3) that the State define "physically or mentally incapable." Of course, a State may still limit who can make the determination of incapacity as it deems appropriate. We believe that this change will ease administration while continuing to ensure that eligibility is properly documented. Asking for the State's definition of "physically or mentally incapable" is also consistent with the regulations for CCDBG.

Providing At-Risk Child Care During Gaps in Employment

Although section 402(i) of the Act does not directly address the issue of providing care before employment begins or during gaps in employment, the final regulation at § 257.30(c) allows States the option of providing child care for up to two weeks before employment is scheduled to begin when an individual has a bona fide job offer and the child care arrangements would otherwise be lost.

Additionally, States may continue to provide care for up to one month when an individual is between jobs and child care arrangements would be otherwise lost. For example, if an individual accepts a new job and there is a break between the end of the previous employment and the beginning of the subsequent job, and child care arrangements would be lost if the child were taken out during this break, the State may pay for care for up to one month. We included these provisions to ensure that child care is not lost, and continuity of care is provided, so that a family can continue to be self-sufficient. The State must describe its policies on providing care before and during gaps in employment in its State At-Risk Child Care plan, as provided at § 257.21(1).

Comment: Those who commented on this provision endorsed our position allowing for care in advance of employment and during gaps in employment. However, the commenters suggested alternative time frames ranging from unspecified "reasonable" amounts of time, up to 90 days, allowing States to set time limits, to having different time frames for families who previously received At-Risk Child Care services.

Response: We retained the originally-proposed time frames which provide States with sufficient flexibility and at the same time introduce a measure of fiscal restraint. Our experience with child care under section 402(g) as well as a lack of substantive justification for accepting any of the proposed alternatives, leads us to conclude that the time frames for providing these optional services as described at § 257.30(c) are reasonable. States are reminded that they may have limits of shorter duration than those stated at § 257.30(c), or States may choose not to provide services before employment begins or during gaps between employment.

Comment: Several commenters interpreted the proposed regulation which provided for child care for up to one month when an individual was between jobs as allowing for job search. They felt this was too short a period to find a new job. One commenter understood that the up to two weeks of care allowed before an individual begins working also allows for job search, and suggested that it be expanded to one month.

Response: We believe that the comments may indicate a misunderstanding of the proposed regulations. First, the optional two-week period of child care discussed at § 257.30(c)(1) is available only if the individual has a bona fide job offer and the child care arrangements would be lost if not entered into during that time. This was not intended to allow for child care while an individual is looking for work. This is consistent with our interpretation of "in order to work." The wording of the final regulation has been modified to remove any ambiguity.

Second, the proposed rule provided that the optional one month period described at § 257.30(c)(2) mirror the existing policy for child care under section 402(g). That is, care would be available only when an individual leaves one job for another, but the second job does not begin immediately *and* the child care arrangements would be lost if not continued during that time.

In response to the comments, we carefully considered whether to provide for job search as an allowable activity under the At-Risk Child Care program. While we understand that job search may be necessary to getting a job, we were concerned that if the limited resources available under the At-Risk Child Care program were used for job search, an unemployed job seeker could receive child care while a low-income working family is denied critically-needed child care. Such a result would run counter to the purpose of the program. Therefore, the final regulation at § 257.30(c)(2) remains unchanged.

Fee Requirement (Section 257.31 of the Final Regulations)

Section 402(i)(3)(A) of the Act requires the State agency to establish a sliding fee formula for the purpose of calculating a family's contribution for At-Risk Child Care. The regulation at § 257.31 provides States with flexibility in determining the formula for calculating these fees.

For example, because the same statutory language is used to describe the sliding fee scale for Transitional Child Care under section 402(g) of the Act and the sliding fee scale for At-Risk Child Care under section 402(i) (i.e., that the sliding fee scale be "based on the family's ability to pay"), States may elect to adopt existing Transitional Child Care scales.

In order to further compatibility with other programs, we have eliminated the proposed regulation requiring every family to contribute to the cost of care. As discussed below, the final regulation at § 257.31 gives States the flexibility to waive contributions from families whose income is at or below the poverty level. Thus, States have the flexibility to adopt the existing sliding fee scale used under other programs such as the Social Service Block Grant or the CCDBG.

Section 402(i)(4) of the Act provides that "the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986." However, contributions made by a family toward the cost of care pursuant to the State's sliding fee scale may be eligible for the Dependent Care Tax Credit under section 21 of the Internal Revenue Code of 1986.

Comment: Numerous commenters suggested that the regulations afford States the option of waiving fees for the lowest income families.

Response: We have revised the regulation at § 257.31 to allow States to waive fees for those families whose income is at or below the poverty level. We did this for several reasons. First, by definition, At-Risk Child Care program—eligible families are only one step away from actual receipt of AFDC. These families could actually have income that is no more than that of a family on AFDC. States are prohibited from charging AFDC families receiving child care under section 402(g)(1)(A)(i) of the Act a fee for child care services. Therefore, we believe that it is appropriate to give States the option to treat At-Risk families similarly. In this sense, we are also complying with Congressional intent, as stated in the Conference Report, that fee schedules remain the same as in the current law.

While we allow States the flexibility to decide whether to waive fees for families at or below the poverty level, we encourage States to consider the effect of this decision, as well as the design of their sliding fee scale in general, on the families served. We believe that families may not be well served if, after some period of having fees waived, they are suddenly faced with paying for the entire or a substantial part of the cost of care.

Comment: Several commenters requested further clarification or guidelines for determining a family's ability to pay the required contribution for At-Risk Child Care. One commenter suggested that a family's contribution be expressed as a percentage of its income, rather than a set amount.

Response: We have not provided specific guidelines or requirements for determining a family's contribution. We recognize that States currently use a variety of fee scales, and they may also be in the process of revising these scales to address the wider range of potentially eligible families. Introducing additional requirements for sliding fee scales in the midst of other changes occasioned by this and the CCDBG would deny States the flexibility to manage and coordinate child care programs efficiently. Although we leave the design of sliding fee scales to the States, we encourage them to ensure that sliding fee scales accommodate parental choice and do not result in a unintentional "cliff effect" wherein a family's contribution rises more rapidly than its income, sometimes making a family ineligible for services before they have achieved self-sufficiency.

Comment: Some commenters felt that allowing fees to vary according to the category of care impermissibly restricts parental choice.

Response: Section 402(i)(3)(A) of the Act indicates that families must contribute to the cost of care in accordance with a sliding fee formula based on the family's ability to pay. We believe that a family's ability to pay is based on the family's size and income, not the category of care they select. Therefore, to vary the sliding fee according to the category of care selected is not permissible. We have added § 257.31(b) to clarify that sliding fee scales may not vary according to the category of care.

Comment: Some organizations requested additional regulatory language to ensure that families are not required to pay an "unofficial" double copayment—paying the required fee based on the sliding fee scale and paying the difference between the amount the State reimburses the provider and the actual cost of the care.

Response: It is unclear what solution the commenters would recommend as it is only in those instances when a family chooses care where the cost exceeds the local market rate that the family may have to make an additional "unofficial" copayment. The statute prohibits FFP for payments above the local market rate so there is no option to pay above the local market rate. The alternative is to prohibit the parent from selecting such a provider. However, we do not want to limit the access of such families to that care if the family chooses to pay the additional cost. Therefore, we have not revised the regulation.

Methods of Providing Child Care (Section 257.40 of the Final Regulations)

Section 402(i)(2) of the Act provides States with a number of methods to provide child care. These methods are identical to those described in section 402(g) of the Act for child care for AFDC recipients and former AFDC recipients eligible for Transitional Child Care. Specifically, the State IV-A agency may:

(1) Provide the care itself;

(2) Arrange care through public or private providers by use of purchase of service contracts or vouchers;

(3) Provide cash or vouchers in advance to the caretaker relative;

(4) Reimburse the caretaker relative for child care expenses incurred; or

(5) Adopt such other arrangements as the State IV-A agency deems appropriate.

We discuss the fundamental right of the parent to choose appropriate child care in the preamble to the regulations at § 257.41 concerning applicable standards of State and local law.

To insure that each parent does have choice, the regulation at § 257.40(b) requires that the State have at least one method of payment by which self-arranged child care can be paid. This requirement is consistent with requirements under parts 255 and 256. Of the four methods specified in § 257.40(a) we believe that two—providing the parents with cash or vouchers in advance or reimbursing the parents for child care expenses—can most effectively be used to ensure parental choice. We strongly urge that States adopt at least one of these methods, as discussed below.

Vouchers

Many States use some form of a voucher/certificate system for child care. Such systems can encourage parental choice regarding the selection of a provider, while ensuring that the selected provider receives the child care payment from the State IV-A agency (or its agent). In the case of Transitional Child Care or At-Risk Child Care, the parent's contribution (fee) must still be paid by the parent. Vouchers/certificates can increase parents' responsibility and choice compared to

methods in which the State IV-A agency (or its agent) makes payments directly to the child care provider through purchase-of-service or contractual arrangements. In order for the voucher/certificate method to afford such choice, it must be possible for the parent to easily obtain it, for the provider to receive timely payment for services rendered, and for the parent to use it with any provider.

By October 1, 1992, any State which receives CCDBG funds must have procedures in place to provide parents with certificates with which they can arrange for child care. We expect that States will actively explore ways in which a certificate system could be used for At-Risk Child Care as well.

Direct Payments to the Family

The State IV-A agency (or its agent) may pay the family directly either by providing payment in advance or through reimbursement. This method of payment maximizes parental choice and responsibility for child care.

Comment: A few commenters asked for definitions of terms such as "purchase-of-service contracts/vouchers," "vouchers," and "certificates."

Response: We have elected not to define these terms in the final regulations to insure that States have maximum flexibility in establishing the methods by which they provide child care under section 402(i). However, we believe that it may be useful to briefly discuss the various methods here.

The term "purchase-of-service contract" generally refers to contracts that State or local governments have with child care providers to furnish services to children of low income families. The contract usually specifies the number of spaces or "slots" to be subsidized and the reimbursement rate. At the time the contract is established, such slots are not usually associated with specific children.

The term "voucher" generally refers to a document that can be redeemed for services, in this case child care. We have chosen not to define voucher in the regulations so as not to limit the State's options on how to use vouchers. Vouchers could take the form of a check, coupon, or debit card given directly to the parent or a two-party check that both the parent and the provider would endorse before the provider could cash the check.

We have deleted the phrase "so that the child care costs may be prepaid" in the discussion of vouchers at § 257.40(a)(3). We do so to make the language consistent with the Act and § 255.3(a)(3) concerning the methods of providing child care under section 402(g) of the Act. In addition, we were concerned that the "prepaid" language might suggest a State's flexibility as to the form of its vouchers was limited by implying that the voucher had to be the equivalent of cash. Although we are concerned with the outcome of any voucher system (i.e., that it facilitate parental choice by making the voucher easy to obtain and usable with any legal provider, and providing prompt payment to providers), we do not want to limit the State's flexibility in developing the form of the voucher and the State's child care delivery system.

As we noted before, the Child Care and Development Block Grant Act of 1990 requires all States that provide child care services with CCDBG funds to have a child care certificate system in place by October 1, 1992. The regulations for CCDBG also provide Grantees with broad flexibility as to how they design and implement a certificate program. We expect and strongly encourage State IV–A agencies and lead agencies under CCDBG (when they are not the same entity) to coordinate their methods of payment for the various funding sources for child care to foster the concept of seamless service.

Comment: One commenter suggested that States should be encouraged to maintain existing contracts with child care centers in "hard-to-serve" communities, because some centers may be forced to close without a stable funding base.

Response: The regulations give States broad flexibility in choosing methods of providing child care. They do not prohibit States from maintaining existing contracts.

However, as provided at § 257.40(c)(2), a State IV-A agency must establish at least one method by which self-arranged child care can be paid. We believe that providers (whether center-based or otherwise) which are located where there is a demand for service and which provide care that parents want will succeed.

Comment: Numerous commenters liked the fact that the regulations allowed a self-arranged method of child care in which the parent is able to choose child care which is family, community and culturally oriented. Several commenters urged that programs be mounted for consumer education about child care options available to parents under § 257.40(b).

Response: The At-Risk Child Care program provisions under section 402(i) of the Act, unlike the Child Care Development Block Grant Act, do not specifically require consumer education. Therefore, we have not incorporated consumer education into the regulations. However, a State IV-A agency may provide information to acquaint eligible parents with the options for child care services available under the program, including information on how to select appropriate child care. We encourage States to provide information which enhances parental involvement and parental choice. Providing such information is an allowable expenditure under the At-Risk Child Care program.

Comment: A few commenters claimed that providing child care through the use of vouchers would lessen protection for children.

Response: Section 402(i)(2) (B) and (C) of the Act provides for vouchers as one of the payment methods that a State may use. However, child care paid by voucher is subject to the same requirements as care provided by any other method. It must meet applicable standards of State and local law in accordance with § 257.41(a) and any provider receiving a voucher (other than a provider caring solely for members of his or her family) must be licensed, regulated, or registered in accordance with § 257.41(b). Therefore, we do not believe that vouchers are any different from any other method of providing care in the area of protecting the health and safety of children.

Comment: One commenter said that self-arranged child care is not contemplated under the statute.

Response: The provision that States must have a method to pay for self-arranged care was first applied to child care authorized by the Family Support Act of 1988. Such child care is guaranteed for employed AFDC recipients, for AFDC recipients in approved education and training activities (including JOBS) and for former AFDC recipients who terminate cash assistance due to employment. The child care guarantee in section 402(g) child care would be undermined if an individual were not permitted to arrange child care appropriate to the family's needs. As we said in the preamble to the final regulations at § 255.3(d) (54 Fed. Reg. 42225, October 13, 1989), an individual's choice must not be constrained by the methods of payment for child care which the State IV-A agency has elected under its Supportive Services plan.

The language regarding methods of provision of child care in section 402(i)(2) concerning At-Risk Child Care is virtually the same as in section 402(g) which led us to believe that Congress wanted the same provisions for child care to apply. The regulation at

§ 257.40(c)(2) is consistent with the language at § 255.3(d)(2) and the requirements at part 256. The requirement that States have a method to pay for self-arranged care has expanded child care options for parents in the more than two years that it has been in existence.

Comment: Several commenters wished to include the option to reimburse the cost of child care to either the family or to providers, with advance payment provisions, as an alternate method. Some urged vouchers or direct advance payment to parents because providers usually require advance payment.

Response: The Act at section 402(i)(2) provides for advance payment and reimbursement methods to the family but does not specifically extend it to providers. However, a State may select from a variety of specified methods to provide child care and may adopt such other arrangements as the agency deems appropriate as provided at section 402(i)(2)(E) of the Act and at § 257.40(a)(5) of the regulations.

Comment: Several commenters said that the regulations should spell out a family's entitlement to use vouchers for the varieties of informal care in homes or by caregivers in the neighborhood.

Response: The State retains the flexibility to determine methods of payment. Therefore, a State is not required to use vouchers as a method of payment. However, at § 257.40(c)(2) we do require States to establish at least one method by which self-arranged child care can be paid, thus enabling a family to use the varieties of informal home or neighborhood care.

Comment: Numerous commenters stated that parents should be allowed to use child care vouchers with sectarian providers even if religious instruction and worship are part of its child care activities.

Response: The parent has the right to select child care which provides religious instruction. Payment mechanisms employed by a State must accommodate parental choice while avoiding any conflict with the Constitutional requirement for separation of church and State. As a consequence we caution States against arrangements that could give the appearance of direct funding of religious activities. In addition, it is advisable for a State to adopt a method for funding child care services which will not require it to define either "religious instruction" or to identify child care providers as having a "religious affiliation." Recent Supreme Court decisions suggest that payment mechanisms such as vouchers or reimbursement to parents avoid conflict with the requirements of the First Amendment.

Consistent with Constitutional requirements to avoid any system of payment which appears to have been designed primarily as a means for aiding religious institutions, a State should not develop separate payment mechanisms exclusively for those parents who wish to purchase child care from religiously-affiliated institutions. States have final authority regarding the method of payment.

Comment: One commenter recommended that the word "category" be substituted for "type" and the reference be made to "family child care" in § 257.40(b).

Response: We agree. Throughout the final regulations, including § 257.40(b), we will use the term "category of care" to refer to center-based child care, group home child care, family child care and in-home care. We have added the phrase "in-home child care" to the list of categories of child care at § 257.40(b). This addition conforms this provision to § 255.3(c) regarding child care under section 402(g). We also use the term "family child care" to be consistent with terminology in section 402(i)(6)(B)(i) of the Act.

Comment: Some commenters pointed out that "caretaker relative" is a term which has a particular meaning as used in sections 402(a) and 402(g) of the Act. A few commenters suggested that the words at § 257.40 (a) and (b) be changed from "caretaker relative" to "parent" or "family" to reflect statutory language.

Response: We agree. In the final regulations we have deleted the term "caretaker relative" at § 257.40 (a) and (b) and have used the word "family" to be consistent with the Act at sections 402(i)(2) (C) and (D).

Coordination

Section 5081(d) of OBRA 1990 amends section 402(g) of the Act to provide that activities under section 402(i) must be coordinated with existing early childhood education programs in the State, including Head Start programs and preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

We believe that coordination in planning and delivery of services is essential to prevent duplication, to assure that child care services are available to the maximum number of eligible families, and to provide a viable range of child care options for parents.

Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State and local organizations. They should also enable smooth transitions for families as their situations change over time.

Since States will be required to submit biennial updates of their plans, we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

The regulation at § 257.40(d) contains the requirement to coordinate. In addition to the agencies listed in section 402(g) of the Act, we have added existing child care resource and referral agencies based on the regulations at § 255.3(h). We believe that, as with AFDC child care and Transitional Child Care, this addition will assist the State IV–A agency to identify potential resources and minimize duplication of effort.

Comment: Some commenters believed that the regulations should include language at § 257.40(d) strongly encouraging coordination on programmatic, financial and facility issues between the At-Risk Child Care program and other child care programs to ensure continuity of care and allow funding for activities such as wrap-around services.

Response: We agree with the commenters that coordination is critical to insuring effective and efficient services. However we believe that both the requirement to coordinate at § 257.40(d) and the requirement to describe such coordination in the State At-Risk Child Care plan at § 257.21(m) are sufficient. Therefore we have not added any language to the final regulations. We believe that the State IV–A agency should have the flexibility to identify the most effective operational means to coordinate their child care activities consistent with the requirements at section 402(g) of the Act and at § 257.40(d). In designing programs, administrators must consider existing service delivery programs and coordinate with existing child welfare networks.

Comment: One commenter requested that we include the Social Services Block Grant in the list of programs at § 257.40(d) with which the title IV–A agency must coordinate.

Response: We agree and have amended the final regulation at § 257.40(d) to include the Social Services Block Grant, as provided in sections 2001 and 2002 of the Act. In order to

make maximum use of existing and increased resources States are required to coordinate among the many programs designed to help low income parents meet their child care needs. We have added the words "if applicable" because we recognize that some States do not use Social Services Block Grant funds for child care. In the final regulations at § 257.40(d) we have also added CCDBG to the list of programs with which the IV–A agency must coordinate.

Child Care Standards (Section 257.41 of the Final Regulations)

Section 402(i)(5)(B) of the Act provides that Federal financial participation (FFP) is only available for child care that meets applicable standards of State and local law. In the final regulation at § 257.41(a), we have added Tribal law because child care may be provided on an Indian reservation, and if Tribal standards exist, they are the applicable standards. In the absence of Tribal standards, State standards would apply unless Tribal areas are excepted under law.

Applicable Standards

In the NPRM we defined "applicable standards" as "licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care." The provision was widely misunderstood as preventing States from having any standards, as requiring States to reduce existing standards, and as jeopardizing a State's eligibility for At-Risk Child Care funding if it had standards in place that only applied to subsidized care. The provision did not have any of the suggested consequences. It required that if a parent eligible for At-Risk Child Care selected a provider that did not meet a standard that only applied to subsidized care, the State could not deny payment to the parent for that care. It did not in any way preclude a State from giving parents information about selecting providers, from advising parents about licensing or regulatory requirements, or from notifying a parent that a provider did not meet licensing or regulatory requirements. It did not require States to eliminate or reduce existing standards in order to be eligible for At-Risk Child Care funding.

Nevertheless, this provision of the NPRM generated the most comments. The majority of the commenters objected to the provision, with most citing its incompatibility with the provisions of the Child Care and Development Block Grant Act of 1990, passed at the same time. Others believed it went beyond the regulatory authority of the Secretary, that it interfered with the historic principle that gives States the authority to regulate in the area of subsidized child care, and that it jeopardized the health and safety of children in care.

As we said in the NPRM, we believe that "parental choice" must be a paramount consideration. Just as it is crucial for JOBS participants who attend mandatory work and training activities and former recipients who are eligible for Transitional Child Care to have choice and control over who will take care of their children when the parents must be away from them, it is crucial for families eligible for the At-Risk Child Care program to have choice. By definition, these families need the care in order to work, or otherwise they would likely become dependent on AFDC. Therefore, it is appropriate that they have the same access to the provider of their choice as families receiving child care under section 402(g) of the Act. Furthermore, it would be antithetical to our overall goal of supporting the family in its quest to remain independent and self-sufficient to interfere in so personal and critical a decision as who will take care of one's children.

However, we recognize that in enacting the Child Care and Development Block Grant Act of 1990, Congress acknowledged the importance of the health and safety aspects in the provision of child care and required States to have minimum health and safety requirements for all providers funded with CCDBG funds. Specifically, Congress identified three areas for health and safety requirements: prevention and control of infectious diseases, building and physical premises safety, and minimum health and safety training appropriate to the provider setting. At the same time, it is clear that Congress intended for the Block Grant to give parents a variety of options in addressing family child care needs. The implementing regulations for that program seek to achieve a balance between the authority of the States to establish requirements and the rights of parents to select the provider of their choice.

After considering the comments we received and the provisions of CCDBG, we have added an exception to the general definition of "applicable standards," which is at § 257.41(a)(1). We believe that this exception achieves a balance between concerns for health and safety and the rights of parents to select the provider of their choice. Section 257.41(a)(2) now provides that, at State option, a State may deny payment for care which fails to meet requirements designed to protect the health and safety of children that are applicable to child care providers under other Federal or State programs. These requirements can be in the areas of: the prevention and control of infectious diseases; building and physical premises safety; and minimum health and safety training appropriate to the provider setting. As discussed later, we have made corresponding changes to § 255.4 of this chapter.

In looking at the issue, we considered several alternatives. One alternative was to retain the regulation as proposed, but provide additional clarification about its meaning since it was widely misinterpreted. There was support from commenters for the principle that parents getting subsidized care should have the same ability to choose a provider that a parent paying for the care has. This principle was the basis for the proposed regulation. However, there were a substantial number of comments that our regulations made "seamless service" impossible. The commenters pointed out that the requirement in the Block Grant—i.e., the State have minimum health and safety requirements that apply to all Block Grant providers except grandparents, aunts and uncles—meant that States could not pay a provider chosen by a parent under CCDBG who did not meet such requirements, but that they must pay the same provider chosen by a parent under title IV–A, if the requirements applied only to subsidized care. Commenters argued that the one way that has been suggested to insure seamless service—to implement generally applicable standards for all subsidized and unsubsidized care—is impracticable at this time.

A second alternative we considered was to not define applicable standards at all. Some commenters said the statute was clear on its face. We disagree. In fact, the very first questions about the meaning of the phrase came to ACF from various States. Since the Conference Report shed no light on how Congress intended the phrase to be interpreted, we believe that it is appropriate for ACF to interpret the phrase in light of the goals of the program. Giving parents a broad range of choices in child care best furthers the goal of maintaining and increasing self-sufficiency by allowing the parent to exercise his/her right and responsibility to choose the best care for his/her child. Thus, if standards imposed by the State significantly limit a parent's choice, they will undermine the goals of the program.

The third alternative is the one that we have adopted. Under this provision, a State has the option of denying payment for care that does not meet certain requirements designed to protect the health and safety of children. We base the distinction we have made between health and safety requirements and other types of standards on the fact that Congress specifically recognized the importance of these requirements by mandating that States set minimum health and safety requirements for all categories of care under CCDBG in three areas: the prevention and control of infectious diseases; building and physical premises safety; and minimum health and safety training appropriate to the provider setting. We believe that this modification in the final regulations will foster coordination among child care programs administered by States, but will still allow parents a choice of providers.

Child care standards that are generally applicable to a category of care are unaffected by this modification in the final regulations. Child care provided under section 402(i) is subject to any standard mandated in any law or regulation of the State or locality that generally applies to a category of care in the State or locality, e.g. center care, group family day care, family day care, and in-home care. For example, all States have child care licensure laws that include standards which address health and safety conditions and other aspects of care provided at child care centers. Since these are standards that have general applicability, they apply to title IV–A child care.

If a State has standards or regulations that apply only to subsidized care, there are several possible effects of the modification. The State could elect not to exercise its option under § 257.41(a)(2). This would mean that, for the purposes of title IV–A child care, any care chosen by the parent that does not violate a generally-applicable standard for a category of care is legal care for which the State must pay and would receive FFP.

As an alternative, the State could elect to limit payment for title IV–A child care to care meeting one or more of the health and safety requirements that are applicable to a category of care under other Federal or State programs. For example, if a State requires providers of other subsidized care to pass a criminal records or child abuse registry check, then the State could deny payment under title IV–A to a provider who fails the clearance process.

Finally, a State could limit payments for title IV–A child care to care meeting all of the health and safety requirements applicable to a category of care provided under other Federal or State programs.

If a State has standards in areas which are not covered by the exception for health and safety requirements that we have just described, the following policies would apply. First, if those standards are generally applicable to all care in a particular category, then they apply to care provided under title IV–A. Thus, if a State sets standards for curriculum for center-based care and such standards are applicable to all center-based care in the State whether subsidized or not, then they are also applicable to IV–A-funded care.

By contrast, if standards (not covered by the exception for health and safety requirements), such as curriculum standards, only apply to subsidized care, the State may not deny payment for care selected by the parent if the provider does not meet these additional standards. For example, if a State has standards for curriculum only for family child care providers who receive State funds, such standards cannot serve as the basis for denying payments under title IV–A. If a parent eligible for title IV–A funds selects a provider who does not meet those standards, the State must pay for that care. The State is not required to eliminate the standards described above to be eligible for Federal funding under title IV–A; the State may not, however, use such standards as the basis for denying payments under IV–A.

While we have added an exception for health and safety requirements to the general definition of "applicable standards," we remain concerned that excessive health and safety requirements could have the effect of severely limiting parental choice. For example, a State requirement that family child care homes receiving subsidized funding have automatic sprinkler systems would likely have the effect of excluding this category of care. Or if the minimum health and safety training requirements were not appropriate to the provider setting, such requirements could have the effect of excluding a category of care. In the case of minimum health and safety training, we believe that for certain provider settings—such as home care settings—supplying information regarding applicable public health and safety codes to all registered providers through routine informational mailings, videotapes, or other media would be appropriate for the provider setting. Other, more rigorous requirements may affect parental choice.

Thus, State or local requirements regarding health and safety that the State applies to child care under title IV–A cannot either, explicitly, or operationally, result in significant restrictions in the range of child care options. Therefore, we have added a provision at § 257.41(a)(3) that requirements applied pursuant to the exception in paragraph (a)(2) must not exclude or have the effect of excluding any categories of child care providers. This language is the same as that in the provision at § 257.41(b)(2)(v) which provides that registration requirements for the At-Risk Child Care program must not exclude or have the effect of excluding any categories of child care providers.

It should be noted that these provisions constitute an effects test. We will not predict in advance whether a particular health or safety requirement or registration procedure affects parental choice. Rather, if necessary, we would examine the actual effects of a particular requirement or procedure, giving the State an opportunity to respond, to determine if parental choice has been limited.

Registration

Under section 402(i)(5)(C) of the Act, FFP is available for payments made to a provider (other than an individual caring for members of his/her own family) only if the child care provider is licensed, regulated, or registered. The regulations at § 257.41(a), as discussed previously, address child care licensing and regulatory requirements. Section 257.41(b) of the final regulations addresses the requirement for registration.

Although there is no discussion in the legislative history, we think Congress intended the At-Risk Child Care registration requirement to be an alternative to child care licensing and regulatory standards, not another form of them. To interpret the provision otherwise would mean Congress was mandating that States set licensing and regulatory standards for all child care. It is unlikely Congress would do this without an explicit provision. We see the registration requirement as being similar to the registration requirement in section 658E(c)(2)(E) of the Child Care and Development Block Grant Act of 1990. In that provision, the requirement is intended to provide the State with basic information about unlicensed providers so that the State can pay the provider and can furnish the provider with information on training, technical assistance, regulatory requirements, and other topics.

Therefore, the regulation at § 257.41(b)(2) requires that registration

procedures must (1) only collect information necessary for the State to pay providers or furnish information to providers; (2) facilitate appropriate and prompt payment to providers; (3) allow providers to register with the State or locality after selection by the parent; (4) be simple and timely; and (5) not exclude or have the effect of excluding any categories of child care providers.

In keeping with our goal of State flexibility, we have not defined exactly what constitutes registration. We expect registration of providers for the At-Risk Child Care program to be a simple process, such as giving the State or locality the provider's name and mailing address. States or localities may also require providers to supply additional information, such as birth date or other identifying data needed to facilitate appropriate payment to the provider, and to allow the State or locality to disseminate information to the provider.

If States wish to require providers to meet standards, such standards must be set as part of the State's licensing and regulatory standards rather than as part of an At-Risk Child Care registration process which is intended only for information exchange with unlicensed and unregulated providers. Some States already have "registration" procedures, either on a mandatory or a voluntary basis. Such procedures may meet the requirements for registration that apply to At-Risk Child Care as described in § 257.41(b) if they are designed only to collect or exchange basic information. However, if a State's registration requirements include standards, they are considered licensing and regulatory requirements, and they do not meet the requirements of § 257.41(b). States have the option to extend such State requirements to all providers (so that all providers are licensed or regulated and do not need to register as defined in this section) or to adopt registration procedures for unlicensed or unregulated care provided in § 257.41(b)(1).

Section 257.41(b)(1) requires registration for unlicensed or unregulated providers before a State makes any payment under the At-Risk Child Care program. This language makes registration under the At-Risk Child Care program consistent with the registration requirement in the Child Care and Development Block Grant of 1990 and allows States to design compatible procedures. As previously discussed, we expect registration of providers to be a simple process which will facilitate appropriate and prompt payments. Payments must be timely so that providers are not effectively discouraged from offering child care services. Although we are not regulating a time frame between request for registration and payment, States must ensure that it is a reasonable period. Section 257.21(h) requires States to specify this time frame as part of the description of their registration procedures in their At-Risk Child Care plans.

Comment: We received a substantial number of comments which suggested an array of additional activities, such as fingerprinting, health screening or conducting criminal records checks on providers, that should be allowed as part of the registration process for the At-Risk Child Care program.

Response: We believe that many of these comments were related to the proposed definition of "applicable standards." It appeared that the commenters were suggesting that the registration process be used to allow for health and safety standards which would not have been broadly applicable and would, therefore, not have been allowed under the proposed definition of applicable standards.

We have revised our policy on "applicable standards" as addressed in the preceding discussion, and we have given States the flexibility to deny payments for care that does not meet health and safety requirements which are applicable to other Federal or State child care programs. In allowing States to enforce health and safety requirements that are applicable to other Federal or State child care programs to child care provided under title IV–A of the Act, we believe that States will be able to undertake such activities as fingerprinting, health screening, and criminal records checks of providers.

Therefore, the registration process for the At-Risk Child Care program remains limited to those activities expressly delineated in the regulation at § 257.41(b)(2). Registration for the At-Risk Child Care program remains a simple process designed solely to facilitate payment or the furnishing of information to the provider.

Comment: One State requested clarification as to the degree of relationship that must exist for a provider to be exempted from the registration requirement.

Response: We have given the States the flexibility to establish the degree of relationship which defines "members of the family of the individual" who are exempted from the registration requirement at § 257.41(b). States may use existing definitions, adopt the statutory provisions from the CCDBG, or develop other definitions.

We have added a provision that States must identify which relatives, if any, are exempted from registration. States must include this information in the description of their registration process in the State's At-Risk Child Care plan, as required at § 257.21(h).

Comment: A number of commenters suggested that providers who were previously exempted from licensing or regulations, such as sectarian providers, but who received vouchers in the past, should be exempted from the registration requirement at § 257.41(b).

Response: Section 402(i)(5)(C)(i) of the Act specifically requires that providers must be licensed, regulated or registered. The Act recognizes only one exception to this requirement— "an individual that provides such care solely to members of the family of the individual." As there is no statutory basis for extending the exemption to the registration requirement beyond family members, providers who heretofore have been exempted from State licensing or regulation must be registered in order to provide services under the At-Risk Child Care program. This requirement includes previously excepted sectarian providers.

Comment: One commenter asserted that requiring States to develop a new set of regulations for registering all unlicensed providers seemed contrary to the overall intent of the program.

Response: We do not agree. The regulation follows the language of the Act which requires (with one exception) all providers to be licensed, regulated or registered. The final regulation retains the originally proposed simple registration process which will facilitate appropriate and prompt payments.

As we stated above, the construction of the statute suggests that registration is an alternative to existing licensing and regulatory standards. Therefore, we do not expect that it would be as extensive as the State's licensing or regulatory requirements.

Comment: Several commenters felt that the regulation ignored existing State administrative and regulatory policies relating to registration. Others assumed that existing registration schemes would have to be discarded.

Response: We do not agree. Existing State registration requirements that are part of the generally applicable licensing or regulatory activities remain unaffected by § 257.41. The registration activities described at § 257.41(b) apply only to those providers whom the State does not already require to be licensed or regulated. Generally, registration for

the At-Risk Child Care program will pertain mainly to neighbors, friends and those relatives not excepted because they provide care solely to members of their family. Where these providers are already registered as part of existing licensing or regulatory activities, no additional registration or change to the existing registration process is needed.

Parental Access

Section 402(i)(5)(C)(ii) of the Act provides that FFP is only available for amounts paid for child care to the extent that the provider of the care allows parental access. This provision is incorporated in the final regulations at § 257.41(c).

We believe that parental access to children within the care setting enhances parental choice and involvement. Parents are concerned about health, safety, and quality of care their children receive; parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

Comment: One commenter felt that we should distinguish between regulated and unregulated providers on the issue of parental access. The commenter understood that the regulation required States to have procedures in place to give parents unlimited access and maintained that the State could not enforce access in those care settings which are outside of its regulatory jurisdiction.

Response: The regulation reflects the language of the Act at section 402(i)(5)(C) in that it does not distinguish between regulated and unregulated providers on the requirement to allow parental access. It applies to all providers. Therefore, the regulation remains unchanged.

The State may use its licensing, regulatory or registration processes to notify providers that they must allow parental access. The State must not pay for care where the provider does not afford parents unlimited access to their child(ren). States should also inform parents of their rights to access while their children are in the provider's care.

Comment: One commenter questioned why the proposed At-Risk Child Care regulations extended parental access to the provider's written records, while the Child Care and Development Block Grant and other title IV–A child care programs do not.

Response: We have deleted the reference to the provider's written records from § 257.41(c). This revision will enable States to have consistent parental access policies for all ACF-administered child care programs.

Reporting Requirements (Section 257.50 of the Final Regulations)

Section 402(i)(6) of the Act requires that, beginning with fiscal year (FY) 1993, each State prepare and transmit to the Secretary an annual report on the activities of the State carried out with funds made available under section 403(n) of the Act. Section 402(i)(6)(B) describes the content of the report. It is to contain information on: (1) the number of children who received services and the average cost of such services; (2) the State's licensing and regulatory (including registration) requirements; and, (3) its enforcement policies and practices in effect which apply to child care providers. Section 257.50(a) of the final regulations contains the annual reporting requirements.

Section 402(i)(6)(B)(ii) of the Act requires information about sliding fee schedules. However, as described in the preamble to § 257.21, we will collect this information as part of the State At-Risk Child Care plan that the State submits in order to provide services. We believe that such information is so fundamental to the way in which the State operates its program that it should be contained in the State plan. Since we will require such information in the State plan, we will not collect it again in the annual report submitted by the State. This will not affect the ability of the Secretary to report to Congress because the ACF will have copies of the approved State plans from which to gather the information. Furthermore, it will not affect public review of the information or requests for such information by any interested public agency, because the State At-Risk Child Care plan is also a public document which can be accessed. We further believe that such an approach is consistent with the statutory provision at section 402(i)(6)(C) of the Act that the Secretary ensure that compliance with the reporting requirements not be unduly burdensome on the States.

Section 402(i)(6)(B)(ii) also requires collection of information about the criteria applied in determining eligibility or priority for receiving services. In the NPRM, we had proposed to collect such information in the State At-Risk Child Care plan. However, based on the comments we received, we have decided not to have the State put it in the State plan, but to submit it in the annual report. We have added this provision at § 257.50(a)(4). Further discussion of this change is contained in the preamble to § 257.21.

Section 402(i)(6)(A)(iii) of the Act requires that the Secretary annually compile and submit to Congress the State reports. In order for the Secretary to comply with this provision, we will require States to submit their reports to the Secretary no later than 90 days after the end of the Federal fiscal year for which they are reporting. This provision is contained in § 257.50(b).

Section 402(i)(6)(A)(ii) of the Act requires that the State make available for public inspection within the State copies of each report and provide a copy of each report, on request, to any interested public agency. This provision is contained at § 257.50(c).

Section 402(i)(6)(C) of the Act requires the Secretary to issue uniform reporting requirements within twelve months after the date of the enactment of the subsection for use by States in preparing the information required. We issued Action Transmittal CC–ACF–AT–92–1 on April 6, 1992 which provides guidance on collecting data on all child care provided under title IV–A except child care for JOBS participants. Information on child care for JOBS participants is reported through the JOBS reporting system described at § 250.80 of this chapter. We will issue additional guidance on submission of the other elements of the annual report in an Action Transmittal.

We have added a reporting requirement to the annual report to capture information necessary to determine that a State has not supplanted Federal or State expenditures for child care in accordance with § 257.64(b) (1) and (4).

Additional discussion of this provision is contained in the preamble to § 257.64.

Comment: One commenter expressed concern that the annual report appears to duplicate material required in quarterly reports.

Response: The only report required under § 257.50(a) is an annual report; there are no required quarterly program reports for the At-Risk Child Care program. We will continue to require quarterly financial reports as provided at § 257.66 of the final regulations.

Comment: One commenter requested that the types of information that a State is expected to report on its enforcement policies, especially those which apply to registered providers, be clarified in light of the provisions under § 257.41. The commenter recommended that the final regulation define which enforcement policies may be applied to registered providers and specify the types of enforcement policy information which a State is expected to report.

Response: We assume that the comment was prompted by concerns that the proposed definition of

applicable standards would prevent States from enforcing policies that exist in the State. The clarification of our policy concerning applicable standards at § 257.41(b) should make it clear that States will have the option to enforce certain health and safety requirements. We will issue additional guidance by Action Transmittal on how States are to submit their annual reports.

Comment: One commenter recommended that we reexamine our approach to reporting. The commenter believed that States should only be required to report the actual number of children and the aggregate average cost of child care (a single figure for all child care).

Response: Section 402(i)(6)(B)(i) of the Act requires that the annual report identify the number of children and the average cost of care: "Each report prepared and transmitted by a State under subparagraph (A) shall set forth with respect to child care services provided under this subsection—(i) showing separately for center-based child care services, group home child care services, family child care services, and relative care services, the number of children who received such services and the average cost of such services."

With respect to counts of children served, we expect to require States to report the annual average of the monthly number of children served. We believe that this approach is flexible enough to permit States to provide us with the information we must have to make our mandatory annual report to Congress while avoiding an unnecessary data collection burden on States. The Act does not allow for aggregating average costs.

Comment: A few commenters noted that the reporting requirements do not include separate full- and part-time categories for States to report either the number of children served or the cost of services. They suggested that, in order to get a clear picture of services provided and costs incurred, annual reports to HHS should include information on full-time/part-time usage and cost of child care.

Response: Section 402(i)(6)(B)(i) of the Act specifies States' reporting responsibilities for the At-Risk Child Care program.

There is no statutory provision for requiring State reports to be broken down by full- or part-time status nor is this information required under section 403(e) of the Act, the uniform reporting requirements that pertain to child care under section 402(g) of the Act (AFDC Child Care and Transitional Child Care). Therefore, requiring this information would be an unjustifiable administrative burden on States. However, States have the option to require additional reporting requirements for their own information and monitoring purposes.

Comment: One commenter recommended that the final regulations provide that, once a State initially submits its licensing and regulatory requirements and its enforcement policies, any subsequent annual report must include only those changes, if any, made to such requirements and/or policies during the year covered by that annual report.

Response: The regulations stipulate, as required by section 402(i)(6)(B)(iii) and (iv) of the Act, that a State must report annually on its "current child care licensing and regulatory (including registration) requirements" and its "enforcement policies . . . which apply to licensed and regulated child care providers (including providers required to register)." We will issue additional guidance on reporting requirements in an Action Transmittal. We will try to keep the burden on States to a minimum while still being able to fulfill the statutory requirement to report to Congress each year.

Comment: One commenter suggested that when determining reporting requirements, HHS should consider the achievable level of automation within a State.

Response: We recognize that States have differing levels of automation. We anticipate issuing an Action Transmittal shortly that will provide guidance on systems development for child care. Additionally, since reporting requirements under the At-Risk Child Care program conform with those in other child care programs under title IV–A, we do not expect them to be unduly burdensome.

Comment: A number of commenters recommended that these regulations should aim for consistency in reporting requirements among CCDBG, At-Risk Child Care, and AFDC Child Care programs. The principal problem noted was the possible administrative burden on States when programs vary in their reporting requirements.

Response: The data elements to be reported for the At-Risk Child Care program are the same as for the other programs under title IV–A (the AFDC and Transitional Child Care programs) but are collected annually rather than quarterly. Section 658(K) of the Child Care and Development Block Grant Act of 1990 also requires only an annual report, although the informational elements for CCDBG are somewhat different. ACF will issue additional guidance on the specific reporting requirements for CCDBG by Action Transmittal.

Availability of Funding (Section 257.60 of the Final Regulations)

Section 403(n)(2)(B) of the Act establishes an annual limitation on the amount of funds appropriated for title IV–A that may be paid to States for expenditures made under the At-Risk Child Care program. The term expenditures, which we define as actual cash disbursements, has the same meaning and application as for child care expenditures made under Parts 255 and 256. States receive funds for expenditures only.

The 50 States and the District of Columbia may operate an At-Risk Child Care program. Puerto Rico, the Virgin Islands, Guam and American Samoa may also operate a program, but funds for the Territories are subject to the limitations in section 1108 of the Social Security Act, which were not increased when the At-Risk Child Care program was authorized. We have added a specific provision at § 257.60(b) that clarifies that funding under section 403(n) is subject to the funding restrictions established under section 1108 of the Act. In addition, because American Samoa does not have an AFDC program, families cannot be at risk of becoming AFDC dependent. Therefore, in the case of American Samoa, implementation of an AFDC program must occur prior to or simultaneous with implementation of the At-Risk Child Care program.

State's Limitation

For purposes of clarification, we will use the term "limitation" to mean a State's portion of funds based on the formula provided in section 403(n)(2) (A) and (B) of the Act.

Section 403(n)(2)(A) of the Act provides that a State's limitation is equal to a percentage of the total available funds for a fiscal year (as provided in section 403(n)(2)(B) of the Act) that represents the ratio of children in the State to the national total number of children. As specified at § 257.60(c) (formerly § 257.60(b)), we will use the number of children under age 13 as the basis for calculating each State's limitation. We believe this is a reasonable approach since it is consistent with the age limits on eligibility established at § 257.30.

The Act provides that the data on the number of children used to determine each year's limitation shall be based on data available for the second preceding fiscal year, i.e., FY 1989 data was used in determining the limitations for FY

1991. For determining FY 1991 limitations, the numbers of children under 13 for the 50 States and the District of Columbia were taken from the Bureau of the Census estimates for 1989. Annual estimates for Puerto Rico, the Virgin Islands, Guam and American Samoa are not published by the Bureau of the Census. Thus, actual numbers of children under 13 from the previous decennial census report were used. These data were the best available data for FY 1991. In future years, we will continue to use the best available data for determining fiscal year limitations.

Comment: Several commenters expressed support for basing allotments on the relative number of children under age 13 in each State. However, a few of the commenters, in addition to supporting the use of number of children under 13, had some suggestions. One commenter suggested that we include the number of special needs children under the age of 18 in the calculation. Another suggested that we factor in the cost of child care in each State so that States where child care is more expensive would receive a bigger allotment.

Response: Section 403(n)(2)(A) of the Act requires that allotments be based on the relative number of children residing in each State, but did not specify a cut-off for the age of the children. We selected age 13 to be consistent with the age of an eligible child under this program. While special needs children under the age of 18 (or 19) are eligible to receive child care services under the At-Risk Child Care program, we chose not to include these children in the allotment formula because the data are not readily available, the definition of special needs varies from State to State, and assuming special needs children are evenly distributed, it would not have a significant impact on State limitations. Furthermore, the number of children over 13 with special needs to be counted would be small relative to the total number of children under age 13.

The Act has no provision for taking the cost of child care in each State into consideration in the funding formula. Therefore, as prescribed in the Act, the relative number of children in each State is the only basis for determining limitations.

Maximum Grant

Section 403(n)(2)(C) of the Act provides that the amount not paid to a State in a fiscal year, i.e., the amount representing the difference between the limitation for that year and the total of grant awards made to the State in that year, may be added to a State's limitation for the next fiscal year. For purposes of clarification, the amount available for a fiscal year that represents the State's limitation for that year plus the unpaid amount added from the prior year will be referred to as a State's "maximum grant." An unpaid amount from one year may be added only to the State's limitation for the next successive fiscal year; it cannot be added to any subsequent fiscal year.

For example:

State A's limitation for year 1 is $100. It may request grant awards for the fiscal year which in total do not exceed $100. The State, however, requests a total of $80 for year 1. Prior to the beginning of year 2, State A is informed that its limitation for that year is $110. For year 2, the State's maximum grant is $130, i.e., $110 plus the $20 not paid from the previous year. If the total amount paid in year 2 is less than $110, the difference between the amount paid in year 2 and $110 (the year 2 limitation) will be added to the State's year 3 limitation to determine the maximum grant for the third year. If the total amount paid in year 2 is more than $110, no amount from year 2 can be added to the State's year 3 limitation.

In the proposed rule at § 257.60(c) (now § 257.60(d)), there was a typographical error. The word "not" was inadvertently added to the regulation. The policy, however, was explained correctly in the preamble to the proposed regulation. Therefore, in the final regulation, we have corrected the regulatory language at § 257.60(d) to be consistent with the policy as described above.

Comment: Several commenters objected to the proposed policy for determining a State's maximum grant. While there was general support for allowing States to add funds from a previous year's grant to the succeeding year's grant, the commenters did not agree with the provision that States can only carry excess funds into the immediately succeeding fiscal year's grant. These commenters stated that our proposed policy did not comport with the intent of the Act. They recommended instead that States be allowed to use excess funds from any previous fiscal year in any subsequent fiscal year.

Response: Section 403(n)(2)(C) of the Act does not support such an interpretation. "Excess" only exists when the amount paid to a State in a fiscal year is less than the State's "limitation" for that fiscal year and "excess" can only be added to the immediate succeeding fiscal year.

The first clause of paragraph (n)(2)(C) is the key. It modifies and limits the provision that adds "excess" from one year to the immediately succeeding fiscal year. The first clause specifically provides that the "excess" is added only when the "limitation" determined under subparagraph (A) for a fiscal year exceeds the amount paid to the State for the same fiscal year. Subparagraph (A) is the formula for allocating funds among the States each fiscal year and defines a State's "limitation" as its share of the amount available based on the number of children residing in the State as a percent of the total residing in the United States.

Using the previous example, we can illustrate the provision of the law. In that example, the State's limitation for year 2 was $110. The State's maximum grant for year 2 was $130 ($110 from the limitation and $20 not paid in year 1). Applying this fact situation to paragraph (n)(2)(C) produces the following: "If the limitation determined under subparagraph (A) with respect to a State for a fiscal year ($110 for year 2) exceeds the amount paid to the State under this subsection, the limitation determined under this paragraph with respect to the State for the immediately succeeding fiscal year (year 3) shall be increased by the amount of such excess." Thus, if the State is only paid $100 in year 2, $10 may be added to its year 3 limitation. However, if the State were paid any amount above $110, there would be no excess funds to add to the year 3 limitation.

Grant Awards (Section 257.61 of the Final Regulations)

We considered several methods of awarding grants for At-Risk Child Care. For ease of operation, we have decided to follow the grant process in effect for child care under parts 255 and 256, with some modification to reflect statutory differences in funding.

Prior to the beginning of a fiscal year (year 1), we will inform a State of its limitation. We require the State to supply an estimate of expenditures for each quarter as we will issue funds through quarterly grant awards. The State will report actual expenditures on the quarterly expenditure report. We will adjust subsequent quarters' grant awards to reflect over- or under-estimates in prior quarters' expenditures.

Prior to the beginning of the following fiscal year (year 2), we will inform the State of its limitation for year 2. The amount unpaid for year 1 and the limitation for year 2 will constitute the maximum grant for year 2 in accordance with § 257.60(d). Quarterly estimates and grant awards for year 2 may not exceed the maximum grant for year 2.

The regulations applicable to title IV–A regarding the availability of funds,

e.g., the timely filing requirements at part 95, subpart A, and the method for submitting estimates and making adjustments at § 201.5 apply to the At-Risk Child Care program.

There were no comments on this section of the regulations.

Matching Requirements (Section 257.62 of the Final Regulations)

Section 403(n)(1)(A) of the Act provides that expenditures made under the program are available for matching at the Federal Medical Assistance Percentage (FMAP) rate. This provision pertains to both child care service payments and administrative expenditures made in providing these services.

We have clarified the regulation at § 257.62(b) to provide that expenditures "claimed" in a fiscal year will be matched at the FMAP rate in effect for that fiscal year. The proposed regulation provided that expenditures "made" in a fiscal year would be matched at the FMAP rate. At-Risk Child Care expenditures are still matchable at the FMAP rate, but the applicable FMAP rate is the rate in effect for the fiscal year in which the expenditures are claimed regardless of when the expenditures were made. For example, if a State made an expenditure in FY 1991, but does not claim it until FY 1992, the FMAP rate at which the State's expenditures will be matched is the State's FY 1992 FMAP rate. We made this change because a State cannot make a late claim against a past fiscal year's grant since the funds that remained unclaimed at the end of the fiscal year will have already been added to the succeeding fiscal year's limitation as described at § 257.60(d). In addition, we remind States that they are still subject to the timely filing requirements at 45 CFR part 95, subpart A of this title, as stated in § 257.61(c).

Use of Donated Funds as Match

Current ACF policy provides that, for the purposes of the AFDC and JOBS programs, donated funds may be used as the State share of expenditures. Regulations at § 235.66 and § 250.73 specify the conditions under which donated funds may be used as the State share of expenditures for AFDC training activities and JOBS program activities, respectively. Section G–4000 of Part V of the Handbook of Public Assistance provides that donated funds may be recognized as State funds subject to Federal financial participation (FFP) in administrative expenditures under the State IV–A plan.

At § 257.62(c), we permit public and private funds to be used as a State's share of matching costs subject to certain conditions. For public funds, the funds must be appropriated directly to the State or local IV–A agency, or transferred from another public agency (including Indian tribes) to the State or local IV–A agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP. They must not be used to match other Federal funds and must not be Federal funds, unless such funds are authorized by Federal law to be used to match other Federal funds.

For private funds, the funds must be transferred to the State or local IV–A agency and under its administrative control. They must be donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions, and they must not revert to the donor's facility or use.

Finally, § 257.62(c)(3) provides that any funds received by the State which do not meet the conditions set forth in the regulation but which are used for allowable expenditures of the program must be deducted from the State's total expenditure claims subject to FFP. This policy is consistent with current policy for other title IV–A programs.

Overall, commenters supported the provisions at § 257.62 that permit States to count otherwise unmatched, public funds and private, donated funds as the State share of funds available for Federal match. However, several others made additional comments.

Comment: One commenter asked what we meant about private donated funds not reverting to the donor's facility or use directly or indirectly at § 257.62(c)(2)(iii) since this language is different from the language at § 235.66(b)(3) and § 250.73(d)(2)(iii) that also deal with donated funds.

Response: We have deleted the words "directly and indirectly" from the regulation so the policy on donated funds at § 257.62 is consistent with the policy stated at § 235.66(b)(3) and § 250.73(d)(2)(iii).

Comment: One commenter recommended replacing the donated funds provisions at § 257.62(c)(2) with a policy that permits States to include private, in-kind donations as part of its State match. Other commenters also recommended that we permit States to use in-kind contributions as the State share, but not to the exclusion of private cash donations.

Response: In-kind contributions (the term used by the Department which we believe is identical to the commenters' "in-kind" donations) are property and services that may be used by a State in meeting its matching requirement under certain Federal assistance programs. These contributions cannot be used as the State share under the At-Risk program because there is no provision for in-kind contributions in section 403(n) of the Act. Since the Act does not address the use of in-kind contributions as the non-Federal share of expenditures, we believe that the policy applicable to child care programs under parts 255 and 256 should apply. This policy has also been longstanding policy under title IV–A through the AFDC program.

We wish to further clarify that the prohibition on the use of in-kind contributions for use as the State share of expenditures applies to State in-kind as well as third-party in-kind contributions. The words "third-party" have been deleted from the regulation.

Private cash donations may be used as the State share as provided in the regulations at § 257.62(c)(2). Commenters generally favored these provisions. Therefore, while States are not permitted to use in-kind contributions as the State share of At-Risk Child Care expenditures, we will continue to permit States to use private cash donations as long as the provisions of § 257.62(c)(2) are met.

Waiver for Insular Areas

The regulation at § 257.62(d) provides that the waiver provision of 48 U.S.C. 1469a(d) applies to the matching requirement for the Territories of Guam, the Virgin Islands, and American Samoa. Under this provision, the first $200,000 in the State's share of At-Risk Child Care expenditures is waived each fiscal year. We considered applying the $200,000 waiver in matching requirements to title IV–A expenditures in the aggregate, including At-Risk Child Care expenditures. However, since Congress did not increase the ceilings for Territories as set forth in section 1108 of the Act when it created the At-Risk Child Care program, we decided to apply the $200,000 waiver to the At-Risk Child Care program separately.

Allowable Expenditures (Section 257.63 of the Final Regulations)

Federal financial participation (FFP) is available only for allowable expenditures of the program. Section 402(i)(3)(B) of the Act provides that the payment for child care shall be in "an amount that is the lesser of (i) the actual cost of such care; and (ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)."

Applicable Local Market Rates

Section 257.93(a) makes the regulations at § 255.4 (a)(2) and (a)(3) on local market rates applicable to the At-Risk Child Care program. Under these regulations, the following basic principles apply. Each State IV–A agency must establish local market rates based on a representative sample of providers, obtained in a survey by the State IV–A agency or other entity. Local market rates must be set at the 75th percentile of the rate for the category of care. Finally, local market rates must be determined by the category of care such as center care, group family child care, family child care, and in-home care. Rates should be differentiated by cost of care for infants, toddlers, preschool, and school-age children and by different rates for full-time and part-time care, if applicable.

We believe that adopting the same provisions for the At-Risk Child Care program that apply to child care provided under section 402(g) of the Act is appropriate for several reasons. It reduces the administrative burden on the State since it has already established local market rates for AFDC and Transitional Child Care. Further, we believe that, since the terminology used in sections 402(g) and 402(i) is exactly the same, it was Congress' intent that the rates be the same. This is also supported by the Conference Report agreeing to follow the Senate amendment which provides that rules relating to Federal matching rates, reimbursement, standards, and fee schedules would remain the same as in current law. H.R. Rep. No. 964, 101 Cong., 2nd Session 921, as reprinted in 1990 U.S. Code Cong. and Admin. News 2374, 2628. Finally, we continue to believe that the 75th percentile represents a reasonable definition of market rate and a reasonable balance between concerns about fiscal accountability and access to child care.

Comment: Many commenters objected to setting the local market rate at the 75th percentile. Some commenters recommended that it be eliminated for all title IV–A care. Others suggested that States be allowed to set local market rates at whatever level they choose so as to allow those who receive At-Risk Child Care equal access to care. A few commenters felt that limiting the local market rate to the 75th percentile relegates children who receive At-Risk Child Care to substandard care or creates a two-tier system of care.

Response: We are aware that there are a number of misunderstandings regarding our policy that the local market rate is to be set at the 75th percentile. When we first considered the requirement in connection with title IV–A child care, it seemed obvious that if actual cost was to be paid only up to the local market rate, the actual costs charged for some child care would be more than the local market rate. Otherwise, the statutory provision has no meaning. It also seemed logical that in referring to a "market rate," Congress intended to maintain fiscal responsibility and limit payments to amounts generally charged in the marketplace. This is the common understanding of a "market rate." Thus, in defining the local market rate, it was necessary to develop a method for distinguishing between amounts generally charged for child care and amounts which exceeded what was generally charged. In other words, we wanted to develop a method which would allow States to pay the amount generally charged for child care, so that most caregivers would be included, without allowing or requiring States to pay for care which was much more expensive.

In developing this method, we first considered using the average cost of child care in an area. However, the average cost, by definition, would be in the "middle" of what is charged which approximates the 50th percentile. Because it is in the "middle," we realized that setting the local market rate at the average cost could have eliminated many child care providers, possibly even up to half of those in an area, including many who charged only slightly more than the average cost. We did not want to restrict the supply of providers in this fashion. We also wished to allow States more flexibility as to whom they could pay and give parents a real choice in providers. We decided to set the "local market rate" at the 75th percentile as it would include most providers in any given area, but would prevent the inefficient use of public funds by limiting payment to those providers charging more expensive or excessive amounts.

We believe that local market rates set at the 75th percentile provide broad access within each category of care, though not necessarily access to the very highest priced care. Most care, especially when there is little variation in the costs of individual providers within the same category, is available to those eligible for At-Risk Child Care. We believe that, by adopting the same statutory language relating to local market rates as used for care under section 402(g), Congress intended access to care for a broad range of low income working families, rather than unlimited access to the most expensive care for a few eligible families.

Furthermore, we do not agree that a local market rate set at the 75th percentile relegates children to substandard care. While the very highest cost care may not be fully reimbursable with Federal funds, it does not follow that the care which is allowed is substandard.

Comment: We received many comments that indicated that the commenters did not fully understand how we applied the concept of percentiles. Many commenters thought that the regulations meant that for all care FFP would only be available for 75 percent of the actual cost of care (i.e., if the care cost $100, FFP would only be available for $75). Other commenters thought that it meant the percent of an average (or highest) market rate.

Response: Because of the confusion, we have decided that it would be helpful to explain how the 75th percentile is derived.

Percentiles are derived from ranked data and separate the lowest values from the highest values, based on a percentage point cutoff. A common use of percentiles is in standardized educational tests, where a percentile score is typically given to indicate what percent of students are below the score reported. In the case of child care rates, a percentile score would identify the percentage of child care providers (or slots) in the sample whose rates were lower.

To determine the 75th percentile for a sample of a particular category of child care, it is first necessary to rank all of the sample child care rates from lowest to highest. The number separating the 75 percent of providers (or slots) with the lowest rates from the 25 percent who are most expensive is the 75th percentile. Following is an example. In a local market area, a State develops a representative sample of weekly child care rates for center-based care in a local market and ranks them from lowest to highest: $95, $100, $110, $120, $120, $125, $135, and $150. Here, $125 is the sixth value in a list of eight rates, and it represents the 75th percentile. Therefore, the local market rate would be established at $125.

One additional step must be taken if the size of the sample is not a multiple of four because, in those cases, a State may not be able to precisely determine the 75th percentile. Modifying the earlier example, suppose rates of $130 and $140 were also included in the sample. Here, the ranked rates would be as follows: $95, $100, $110, $120, $120, $125, $130, $135, $140 and $150. In this case, $130

represents the 70th percentile (i.e., 70 percent of the rates are at or below $130), and $135 represents the 80th percentile. Thus, any rate of $130 or less is clearly within the 75th percentile, and any rate of $135 or more is clearly above the 75th percentile. The State has discretion as to how to treat rates between $130 and $135; an obvious option would be to consider $132.50 to be the 75th percentile because it is halfway between the 70th and 80th percentile figures.

The use of the 75th percentile does not necessarily mean that 25 percent of providers are excluded. In a freely operating market, we expect costs to have a normal distribution, that is, we expect most costs to be relatively close, with some very high and very low costs as well. In such instances, the 75th percentile would not operate to exclude a quarter of the providers. The effect depends on the variation between the cost of providers as well as the number of providers charging similar rates. When costs are normally distributed, a properly constructed and well executed local market survey should not result in the exclusion of an inordinate number of providers. For example, if actual costs for 10 providers were: $95, $105, $110, $110, $115, $100, $105, $115, $115, and $120, the 75th percentile market rate would be $115. Only 1 provider out of the 10 would be above the 75th percentile.

In addition, it should be noted that local market rates must be set by category of care. Thus, a local market rate for center-based care may be higher than the local market rate for group family child care. Differences in local market rates among categories of care reflect many factors including differences in the costs of doing business (rent, insurance, utilities, etc.).

Comment: Many commenters asked that States be allowed to pay above the 75th percentile local market rate. Some of these commenters also requested that FFP be available to the State when it pays for care that costs more than the local market rate.

Response: States may pay for care that costs more than the local market rate. However, section 402(i)(3)(B) of the Act limits Federal payments for child care to "the lesser of (i) the actual cost of such care; and (ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)." Thus FFP is not available for payments above the local market rate.

Comment: One commenter felt that local market rates should be set through an independent analysis by a financial analyst.

Response: In keeping with our philosophy of State flexibility, we have not imposed any requirements regarding sources of local market rates. Nor have we imposed any statistical formula to be used uniformly. However, in § 255.4(a)(2), we set minimum requirements which must be met in establishing these rates. Local market rates set according to these requirements, whether established by an independent analyst, the State IV–A agency, or another entity are acceptable.

Comment: Citing the argument that lower-cost care produces greater risks, one commenter maintained that providers' insurance premiums would rise without stricter regulations, frequent monitoring and aggressive enforcement.

Response: Even though the commenter did not substantiate that lower cost care is somehow "riskier," these regulations do not preclude States and localities from establishing licensing or regulatory requirements, or monitoring and enforcing them. Under these regulations States and localities retain full authority to establish the licensing or regulatory requirements.

It is important to remember that even if insurance premiums rise, they would be reflected in the providers' charges because they are a cost of doing business. These charges would, in turn, be reflected in the local market rate.

Statewide Limit

Section 402(i) of the Act does not require the State to establish a statewide limit as section 402(g)(1)(C) of the Act does for child care under the Family Support Act. The regulation at § 257.63(b) gives States the option to adopt a statewide limit (or limits) for At-Risk Child Care. We believe that giving States this flexibility is consistent with Congressional intent as reflected in the Conference Report referenced above. It gives States budgetary and planning control in an optional program with limited funding. It also allows States to achieve consistency in title IV–A child care programs.

The statewide limit may be the same as the limit(s) established by the State for AFDC and Transitional Child Care. It may be differentiated based on age or special needs. There actually could be as many as three statewide limits since there could be different limits for children two years of age and older, those under age two, and those with special needs. We have added the requirement at § 257.63(b)(1) that the statewide limit may not be lower than the disregard level at § 233.20(a)(11)(i). This limitation conforms with the requirements for a statewide limit at § 255.4(a)(1).

States electing to set a statewide limit(s) for child care under the At-Risk Child Care program must describe the limit(s) in the At-Risk Child Care plan, as described at § 257.21(j).

Comment: Some commenters expressed concern that the statewide limit could be set at any level, that there was no "floor" below which the statewide limit could not be set.

Response: We have changed the language at § 257.63(b)(1) to clarify that States may not set a statewide limit which is lower than the AFDC disregard amount at § 233.20(a)(11)(i).

Comment: Many commenters objected to the use of a statewide limit maintaining that section 402(i) does not specifically address the use of a statewide limit.

Response: We agree that section 402(i) is silent on the issue of a statewide limit, and for this reason we have allowed the States the option whether to set a statewide limit. We have not required States to set a statewide limit.

Local Market Rates, Statewide Limit, and Payment Rates Under CCDBG

Finally, we wish to clarify the relationship between the local market rates, statewide limits, and payment rates under CCDBG. In reviewing State applications and plans for CCDBG, we found some which indicated that States intended to use CCDBG funds either to supplement payments for title IV–A child care above the 75th percentile or to raise title IV–A child care rates "up to the 75th percentile."

States may not use CCDBG funds to subsidize the rates for title IV–A child care above the local market rate (i.e., the 75th percentile). Sections 402(g) and 402(i) of the Act provide that Federal matching funds are only available for the actual cost of care up to the local market rate. Using CCDBG funds to contravene the funding limits in the IV–A programs would violate Federal appropriations law, including the axiom that an agency cannot do indirectly what it is not permitted to do directly.

Nonetheless, States may use CCDBG funds to raise title IV–A payments in certain circumstances. If the statewide limit is less than the local market rate, then CCDBG funds can be used to increase title IV–A child care payments between the statewide limit and the local market rate. For example, if the statewide limit is $200, and the local market rate is $300, up to $100 in CCDBG funds could be used to supplement the IV–A payment up to the actual cost of the care. However, if

States use CCDBG funds in this manner, all CCDBG requirements apply to such care. For example, care would have to meet all health and safety requirements, providers would have to be registered if they were not licensed or regulated by the State, and parents would have to be offered the choice of a child care certificate.

It appears that some States misunderstood the 75th percentile to be a maximum rate, i.e., that States could set a lower reimbursement rate if the lower rate applied to an entire category of care. For example, one State had set payment rates which were as low as the 10th percentile for some categories of care in some areas of the State. For child care under title IV–A, States are required to pay the actual cost of care or the local market rate, whichever is less, subject to the statewide limit (which is optional for the At-Risk Child Care program). States which are not following this policy are out of compliance with title IV–A regulations. We intend to issue further guidance on setting rates for all child care programs administered by ACF in the near future.

This requirement does not preclude a State from negotiating a lower rate with an individual provider. A negotiated rate that a provider accepts becomes, in effect, the actual cost of that care.

An example may be useful. Assume that the local market rate (the 75th percentile) for center-based care in a local area is $400. The statewide limit is also $400 so it does not affect the example. A State cannot set its reimbursement rate for center-based care in that area at either a lower percentile (such as the 50th percentile) or a lower amount (such as $300). A parent eligible for title IV–A child care chooses a center-based provider which charges non-subsidized families $350. In this case, the State will pay the actual cost of care, as it is less than the local market rate. Moreover, there is nothing to preclude a State from negotiating with the provider on the actual cost of care. If the parties agree to $325, that becomes the actual cost of care for which the State will receive FFP. Federal regulations prohibit the State from using CCDBG funds to supplement IV–A funds up to the $325. However, if the statewide limit were $200 (instead of $400), $125 of CCDBG funds could be used toward the cost of care.

Administrative Costs

FFP is also available for the general supervision and management of the program. It is clear from the language of the Act that the purpose of the program is to provide child care services to those low-income families who are at risk of becoming dependent on AFDC unless child care is made available, permitting the parent(s) to work. Although there is no restriction regarding the amount of funds available for administrative expenditures, there must be a correlation between the child care services payments claimed and the administrative expenditures claimed. Such administrative expenditures claimed must be reasonable and necessary expenditures of the program. It would be improper for a State to use all or most of the funds available for a fiscal year to cover administrative expenditures. We will monitor States' performance in this area.

For child care under parts 255 and 256, FFP is not available for expenditures related to the recruitment and training of child care providers, resource development, and licensing activities. The regulation at § 257.63(c) applies the same restrictions to the At-Risk Child Care program. We believe that expenditures for these activities should not be funded through this program because funding for these activities is provided through the Child Care and Development Block Grant, authorized by the Omnibus Budget Reconciliation Act of 1990, and other Federal programs.

Comment: While some commenters expressed support for monitoring States for reasonable expenditures on administration of the program, other commenters suggested putting a percentage limitation on administrative costs. The suggested percentage limitations ranged from 10 to 20 percent.

Response: There are no limits on administrative costs under title IV–A, including the AFDC program or the other child care programs under section 402(g), and we have decided to maintain consistency under title IV–A. We will, however, monitor States to ensure that they keep their administrative costs at a reasonable level.

In addition, unlike CCDBG, there was no background information in the Conference Report to indicate Congressional intent for a limit on administrative costs. Absent such guidance, we did not regulate such a limit.

Unallowable Expenditures

Comment: One commenter pointed out that we did not address the recovery of erroneous payments in the proposed rule and suggested that we allow recovered funds to be used by the program for ongoing program expenses.

Response: Expenditures not made in accordance with the Act, the regulations, or the approved plan are not eligible for FFP. Thus, child care overpayments are not eligible for FFP. If a State has claimed FFP for a payment which is later determined to be erroneous, the overpayment must be recovered.

As with other programs under title IV–A, the Federal share of any overpayments must be returned to the Federal government. Thus, only the State share of recovered overpayments may be used for ongoing program expenses.

Non-Supplantation (Section 257.64 of the Final Regulations)

Section 402(i)(5)(D) of the Act provides that amounts paid by the State IV–A agency for child care cannot "be used to supplant any other Federal or State funds used for child care services." Although there is no explanation of this provision in the legislative history, we assume that Congress intended to ensure that the new Federal funds being made available for child care are not simply used to replace existing expenditures, but are used to increase the availability of services. We note that a similar (though not identical) provision is contained in the Child Care and Development Block Grant Act of 1990, which was passed at the same time.

Since the provision prohibits supplantation for child care services generally, a State cannot replace current Federal or State funding for child care services with section 402(i) grant funds. However, it is possible for a State to use current funding (including continuation funding) as the State match for section 402(i) care. The following example may help clarify this principle.

If a State had been spending $1 million in Social Services Block Grant funds, $4 million in IV–A funds and $6 million in State funds ($4 million in IV–A match and $2 million in supplemental State funds) on child care services, this level of funding must continue from non-section 402(i) sources to avoid supplantation. The State could not reduce its State spending to $5 million and use $1 million to match $1 million in section 402(i) funds to achieve the previous level since it would be replacing State funds with section 402(i) funds in violation of the provision. However, the State could use the $2 million in current supplemental State funds as its match for the section 402(i) funds, and thus increase child care services by $2 million without having to increase State funding.

Expenditures Included in the Non-Supplantation Amount

In order for ACF to determine that the requirement of non-supplantation is met,

the final regulation at § 257.64(b) requires the State to establish a dollar value separately for Federal and State expenditures for child care services for a base period and for each subsequent twelve-month period. We will compare expenditures during each subsequent period with separate Federal and State expenditures during the base period to determine whether supplantation has occurred. The State will report the amount of Federal and State expenditures separately for each subsequent period in the annual report that the State must submit to the Secretary in accordance with section 402(i)(6) of the Act. We have added §§ 257.50(a)(4) and 257.64(b)(4) to the final regulations to reflect this requirement. The reported amounts of Federal and State expenditures for child care services should exclude expenditures under the At-Risk Child Care program. The requirement is limited to public funds.

Comment: One commenter said that, to be consistent with CCDBG, local expenditures should be included in the calculation of expenditures for the base period for the At- Risk Child Care program.

Response: Section 402(i)(5)(D) of the Act specifies "other Federal or State funds used for child care services." We note that Congress did not insert the word "local" in section 402(i)(5)(D), while it did use the word "local" in section 658E(c)(2)(J) of the Child Care and Development Block Grant Act of 1990, the comparable provision on non-supplantation. Therefore, we conclude that local funds are not generally included in determining the base period for the At-Risk Child Care program.

There is one exception, however. Section 403 of the Act provides that Federal funds are available to States for various activities to be conducted under title IV–A. Funds representing the non-Federal share are commonly referred to as the State share and sometimes include both State and local funds. For example, the regulation at § 257.62(c) refers to a "State's share of expenditures" eligible for FFP. This provision further explains how public funds can be used as the State's share, including public funds appropriated directly to the State or local IV–A agency or transferred from another public agency to the State or local IV–A agency. We, therefore, believe that when local funds are included within the general definition of State funds, it is appropriate to include local funds as State funds for the purpose of determining that supplantation has not occurred, in accordance with § 257.64(a). Thus, local funds used as the State share of other title IV–A child care expenditures, whether through direct appropriation, transfer, or certification, must be included in the base period amount and in the calculation of expenditures for each subsequent period. We have added language clarifying this to § 257.64(b).

Comment: One State proposed that the amount be based on appropriations rather than expenditures.

Response: The Act refers to other Federal or State funds "used" for child care services. While this is an indefinite term, it seems clear that the purpose of the non-supplantation language in the Act is to increase the availability of child care services. Funds appropriated (e.g., by a State legislature), but not expended, have not been "used" for child care, and, therefore, cannot be supplanted. We have retained the language at § 257.64 that it is Federal and State expenditures during the base period that must be calculated.

Comment: One commenter asked whether expenditures for Head Start should be included in a State's calculation for the base period.

Response: Head Start is an early childhood development activity. Child care services are generally considered to be distinct from early childhood development activities, as can be seen in the definitions of these terms contained in the Child Care and Development Grant Act of 1990. Therefore, Head Start and other early childhood development activities would not be included in a State's calculation for the base period.

Comment: Several commenters questioned whether use of the term "total amount" meant that the State only had to determine a single aggregate amount of Federal and State expenditures. These commenters were concerned that the use of a single total of Federal and State expenditures would allow the State to supplant funding at one level of government when funding increased at another level.

Other commenters asked that they be given the same flexibility to have different base periods for different expenditures that is provided in the CCDBG regulations.

Response: We agree with the commenters' concern that the use of a single total of Federal and State expenditures could permit supplantation at one level of government when funding increased at another level. We believe that this is not in keeping with the intent of the Act. For this reason we require separate amounts for Federal and State expenditures in the final rule.

A State may use different base periods for different levels of government and submit separate expenditures for each. In determining whether supplantation has occurred, we will compare the separate Federal and State amounts reported for each subsequent period with the respective amounts reported for the base period.

We did not originally provide for different base periods because we did not believe that calculating expenditures for child care services would be as difficult as long as we gave States the flexibility in defining the base period. However, based on the comments, we are adding a provision at § 257.64(b)(2) that allows States to have different base periods for different expenditures. Section 257.64(b)(2) provides for different base periods on either a level-of-government basis (e.g. Federal or State) or some other basis that provides for fiscal accountability. We have not provided for different base periods on a program-by-program basis (as the CCDBG regulations do) because the provisions of section 402(i)(5)(d) only apply to child care services, and we would not expect there to be different "programs."

Base Period

We define the base period to be a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month for which the State has either an approved interim or final plan for the At-Risk Child Care program. For example, States which have approved interim plans that were effective October 1, 1990, must include the month of October 1989 in their base period. These States might use calendar year 1989 or a State fiscal year beginning July 1, 1989.

We established the base period above so that the first subsequent period would include a period during which At-Risk Child Care funds were available to the State. We provide flexibility in setting the base period by allowing the period to be any twelve-month period which includes the appropriate month described above. This policy allows for State fiscal years which do not coincide with the Federal fiscal year, or for other twelve-month periods of the State's choice.

Comment: Several commenters questioned the example given in the preamble to the NPRM on how to determine what month must be included in the base year. The preamble said that the month of September 1989 would have to be included in a State's base year if it began its At-Risk Child Care program in October 1990. The

commenters believed it should have been October 1989.

Response: The commenters are correct. The example has been corrected in the preamble to the final regulation.

Comment: Several commenters asked for clarification of the terminology in § 257.64(b)(2) "the first month in which the State implements the At-Risk Child Care program" because a State may not actually have provided services in the first month for which it had an approved plan.

Response: We consider a State to have implemented the At-Risk Child Care program as of the first month for which it has either an approved interim application (prior to publication of these rules) or an approved final plan. We have revised the language at § 257.64(b)(2) to clarify the definition of the base period.

Comment: One commenter said that States which began their At-Risk Child Care program during FY 91 should be held harmless if it turns out that they supplanted in FY 91 since the final regulations defining non-supplantation were not issued prior to their implementation of the program.

Response: We do not agree. Non-supplantation is a statutory requirement, not a regulatory requirement that the State could not anticipate. The requirement not to supplant exists even without Federal regulations. Furthermore, since the States have flexibility in defining the base period, we do not see how our definition of the base period could disadvantage a State.

General Administrative Requirements (Section 257.65 of the Final Regulations)

OMB Circular A–102, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," is currently incorporated in the Department's regulations at 45 CFR parts 74 and 92. The child care programs under parts 255 and 256 are subject to the regulations at part 74 because they are funded under section 403 of the Act which is an open-ended appropriation. While there is a limitation on total funds available for Federal obligation each fiscal year for At-Risk Child Care, the program is funded under the section 403 appropriation. For that reason, and for administrative simplicity, we believe that the At-Risk Child Care program should be subject to the requirements of part 74, instead of part 92. Therefore, the regulation at § 257.65 applies part 74 to the program. However, subparts G (Matching and Cost Sharing) and I (Financial Reporting Requirements) of part 74 are not applicable to the At-Risk Child Care program pursuant to the regulation at 45 CFR 201.5(e) which provides that these subparts do not apply to title IV–A. Rather, the specific requirements of this part at §§ 257.62, 257.66 and 257.67 apply.

We received no comments on this section.

Financial Reporting (Section 257.66 of the Final Regulations)

The regulation at § 257.66 establishes the financial reporting requirements for the At-Risk Child Care program. States must report estimates and expenditures in the same manner that they report estimates and expenditures for child care under parts 255 and 256. We have added a new section to the ACF–231 (formerly the FSA–231), the financial reporting form used for estimates and expenditures made under title IV–A, for estimates and expenditures made under the At-Risk Child Care program.

Financial reports are distinct from the annual report required by section 402(i)(6)(A)(i) of the Act. Section 1102 of the Act, which permits the Secretary to establish rules that are necessary for the efficient administration of the program, provides our authority to require financial reports.

Section 257.31 requires a family receiving At-Risk Child Care to make a contribution toward the cost of the care based on a sliding fee scale set by the State IV–A agency. We consider a contribution paid directly to the State IV–A agency which has made a full payment to the provider to be program income. Consistent with longstanding policy, the regulation at § 257.66(b) provides that State IV–A agency must use the deduction alternative at § 74.42(c) when reporting such income. Thus, we will use such contributions to offset expenditures when States claim FFP for child care services payments.

Comment: One commenter suggested that the financial report require separate totals for Federal and State funds.

Response: On the ACF–231, we require States to report total expenditures for the At-Risk Child Care program and to separately report the Federal share of those expenditures. We will not require States to report the State share; by subtracting the Federal share from the total expenditures, we will be able to determine the State's share.

Comment: One commenter wanted clarification about when to report the contribution made by the family to the cost of care as program income.

Response: When the family makes its contribution directly to the State IV–A agency after the State has paid the provider the full cost of care, the State must report the contribution as program income. When a State subtracts the contribution from the full cost of care, it should not report the contribution as program income since then it should be claiming expenditures representing the difference between the full cost of care and the contribution. We do not consider a family's contribution to be program income if the family pays the contribution either directly to the child care provider or to an agent acting on behalf of the IV–A agency (such as a resource and referral agency) if the provider or agent charges the State the difference between the full cost of care and the amount of the contribution.

Cost Allocation (Section 257.67 of the Final Regulations)

In accordance with the cost allocation requirements of Part 95, Subpart E, the regulation requires a State to amend its cost allocation plan to account for expenditures made under the At-Risk Child Care program. The regulation at § 95.519 provides that if a State has failed to submit an amended cost allocation plan, the costs claimed will be disallowed.

There were no comments on this section of the regulations.

Disallowance Procedures (Section 257.68 of the Final Regulations)

FFP improperly claimed for child care services and administration is subject to disallowance in accordance with Part 201. The regulation provides that the deferral and disallowance provisions at § 201.15 are applicable to the At-Risk Child Care program. In addition, the procedures for taking disallowances and managing appeals applicable to the AFDC program and child care programs at parts 255 and 256 are applicable to this program. This policy is consistent with our intent to administer these programs in a similar manner.

There were no comments on this section of the regulations.

Part 255—Child Care and Other Work-Related Supportive Services During Participation in Employment, Education and Training

Applicable Standards (Section 255.4(c)(2) of the Final Regulations)

We have amended § 255.4(c)(2) to clarify that applicable standards of State and local law are standards which are generally applicable to care of a particular type in the State or local jurisdiction regardless of the source of payment for the care. However, we have added an exception at § 255.4(c)(2)(ii) which provides that, at State option, a State may deny payment for care which fails to meet requirements designed to

protect the health and safety of children that are applicable to child care providers under other Federal or State programs. These requirements can be in the areas of: the prevention and control of infectious diseases; building and physical premises safety; and health and safety training appropriate to the provider setting.

Background

Under the Family Support Act of 1988, States must guarantee child care to AFDC families when needed for employment or to enable participation in approved education and training activities (including participation in JOBS). This provision was effective in each State on the date of JOBS implementation, but not later than October 1, 1990. Effective April 1, 1990, States must guarantee child care for up to 12 months for former AFDC recipients who lose AFDC eligibility for an employment-related reason and need child care to accept or maintain employment. We published final regulations implementing these provisions on October 13, 1989. (54 FR 42148) Section 255.4(c)(2), which provides that child care must meet applicable standards of State and local law, applies to all child care provided under the Family Support Act (including TCC under part 256).

Applicable Standards

Following publication of the final regulations, questions arose about the meaning of the term "applicable standards." We, therefore, published an NPRM on June 25, 1991 in which we proposed to define "applicable standards" as "licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care." The NPRM proposed to apply the same definition of "applicable standards" to all child care provided under title IV–A of the Social Security Act. For child care under section 402(g), the proposed regulation was at § 255.4(c)(2); for child care under section 402(i), the proposed regulation was at § 257.41(a)(2).

These provisions produced the largest number of comments on the proposed regulations. Commenters did not generally distinguish between the provisions when they commented. Therefore, the discussion on the comments and the revisions we made in the final regulations that is contained in the preamble to § 257.41 also applies to this section, and we do not repeat it here. We have amended § 255.4(c)(2) to incorporate the exception described in the preamble to § 257.41.

States that opt to enforce health and safety requirements for child care under parts 255 and 256 must describe those health and safety requirements in the State's Supportive Services plan. We will provide preprint pages on which a State can describe the requirements when we issue the preprint for the At-Risk Child Care program. If a State does not operate an At-Risk Child Care program, it should submit the appropriate preprint pages in the quarter following the quarter in which the Secretary issues the preprint. This schedule is set out in more detail at § 257.20(c).

(Catalog of Federal Domestic Assistance Programs: 93.021 Job Opportunities and Basic Skills Training; 93.036 At-Risk Child Care)

List of Subjects

45 CFR Part 255

Aid to Families with Dependent Children, Grant programs— social programs, Employment, Education and training, Day care.

45 CFR Part 257

Day Care, Grant programs—social programs, Reporting and recordkeeping requirements.

Dated: July 20, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: July 23, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. The authority citation for part 255 continues to read as follows:

Authority: 42 U.S.C. 602, 603 and 1302.

2. Section 255.4 is amended by revising paragraph (c)(2) to read as follows:

§ 255.4 Allowable costs and matching rates.

* * * * *

(c) * * *

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable.

(i) Applicable standards are licensing or regulatory requirements which apply to a category of care in the State, local area, or Indian reservation regardless of the source of payment for the care, except as provided in paragraph (c)(2)(ii) of this section.

(ii) At State option, the State may deny payment under this part for care that does not meet requirements designed to protect the health and safety of children that are applicable to child care providers under other Federal or State programs in the following areas (as described in the State's Supportive Services plan):

(A) The prevention and control of infectious diseases (including immunization);

(B) Building and physical premises safety; and

(C) Minimum health and safety training appropriate to the provider setting.

(iii) Requirements applied pursuant to paragraph (c)(2)(ii) of this section must not exclude or have the effect of excluding any categories of child care providers.

* * * * *

3. A new part 257 is added to read as follows:

PART 257— AT-RISK CHILD CARE PROGRAM

Sec.

257.1 Purpose.
257.10 State IV–A agency administration.
257.20 Requirement for a State At-Risk Child Care plan.
257.21 State plan content.
257.30 Eligibility.
257.31 Fee requirement.
257.40 Methods of providing child care.
257.41 Child care standards.
257.50 Reporting requirements.
257.60 Availability of funding.
257.61 Grant awards.
257.62 Matching requirements.
257.63 Allowable expenditures.
257.64 Non-supplantation.
257.65 General administrative requirements.
257.66 Financial reporting.
257.67 Cost allocation.
257.68 Disallowance procedures.

Authority: 42 U.S.C. 602, 603, and 1302.

§ 257.1 Purpose.

This part pertains to the At-Risk Child Care program which permits States to provide assistance to low-income working families who need child care in order to work and are otherwise at risk of becoming eligible for AFDC.

§ 257.10 State IV–A agency administration.

(a) The State agency responsible for administering or supervising the State's title IV–A Plan is responsible for administering the At-Risk Child Care program.

(b) The following functions must be performed by the State IV–A agency:

(1) Planning for and design of the At-Risk Child Care program, including submission of the State Plan to the Secretary;

(2) Establishing eligibility criteria;

(3) Setting local market rates and the sliding fee scale;

(4) Issuing policies, rules, and regulations governing the program;

(5) Submitting reports required by the Secretary as specified at § 257.50;

(6) Submitting quarterly estimates and expenditure reports pursuant to § 257.61; and

(7) Submitting Standard Form LLL (SF-LLL) which assures that funds will not be used for political lobbying purposes, pursuant to part 93 of this title, prior to the beginning of each fiscal year.

(c) Except for functions described in paragraph (b) of this section, the State IV–A agency may carry out the At- Risk Child Care program through written arrangements or contracts with other State or local administrative entities, or other public or private organizations.

(1) In doing so, the entity or organization must follow the policies, rules, and regulations of the State IV–A agency and must not have the authority to review, change, or disapprove any State IV–A agency administrative decision. Neither shall the entity or organization substitute its judgment for that of the State IV–A agency in the application of policies, rules and regulations promulgated by the State IV–A agency.

(2) Other entities or organizations may determine individual eligibility for the At-Risk Child Care program in accordance with rules established by the State IV–A agency.

§ 257.20 Requirement for a State At-Risk Child Care plan.

(a) The State IV–A agency must submit the At-Risk Child Care plan to the Secretary for approval.

(b)(1) The At-Risk Child Care plan shall be submitted as an amendment to the State Supportive Services plan which is defined at § 255.1 of this chapter.

(2) An At-Risk Child Care plan may be submitted at any time during the quarter in which the State intends it to be effective. Upon its approval, the plan will be effective not earlier than the first day of the calendar quarter in which it is submitted.

(3) A State shall be entitled to its maximum grant, as defined at § 257.60(d), for any fiscal year in which it has an approved At-Risk Child Care plan; however, it may not claim expenditures for any period prior to the effective date of the State At-Risk Child Care plan.

(c)(1) A State operating an At-Risk Child Care program under an interim application approved prior to the issuance of At-Risk Child Care preprints shall submit a new At-Risk Child Care plan as an amendment to its Supportive Services plan to the Secretary for approval after issuance of the preprint.

(2) The amendment required under paragraph (c)(1) of this section must be submitted in the quarter following the quarter in which the preprint is issued, to be effective not earlier than the first date of the calendar quarter in which it is submitted.

(3) A State with an approved interim application with a start date of October 1, 1990, may claim Federal matching funds for expenditures for the period beginning October 1, 1990.

(d) A State that submits a plan to provide for At-Risk Child Care that is not approvable will be given the opportunity to make revisions before final disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213 of this chapter.

§ 257.21 State plan content.

A State's At-Risk Child Care plan must include the following:

(a) Assurances that:

(1) The State IV–A agency will, upon approval of the plan, administer the At-Risk Child Care program in accordance with the requirements of sections 402(i) and 403(n) of the Social Security Act and the regulations under this part;

(2) Child care meets applicable standards of State and local law in accordance with § 257.41;

(3) All child care providers, except those giving care solely to members of their family, are licensed, regulated, or registered by the State or locality in which the care is provided in accordance with § 257.41;

(4) Any provider of child care must allow parental access, in accordance with § 257.41;

(5) Amounts expended by the State for child care under this part do not supplant any other Federal or State funds used for child care services;

(6) Child care provided or claimed for reimbursement is reasonably related to the hours of employment;

(7) Individuals are not discriminated against on the basis of race, sex, national origin, religion, or handicapping condition in access to the At-Risk Child Care program.

(b) Definitions of the following terms:

(1) At-Risk of becoming eligible for AFDC (if any other than low income);

(2) Low income, as it will be used to determine eligibility for the program;

(3) Physically or mentally incapable of caring for himself or herself, pursuant to § 257.30; and

(c) Any other eligibility criteria that the State adopts, pursuant to § 257.30;

(d) The base period(s) and the separate amounts of Federal and State public funds expended for the child care services during the base period, as provided in § 257.64;

(e) A description of the administrative structure, identifying any entities with which the State IV–A agency has entered into written contracts or agreements, and specifying any entities that determine eligibility, as provided in § 257.10;

(f) If not provided statewide, a list of political subdivisions where the At-Risk Child Care program is offered;

(g) Methods the State agency will use to provide child care in accordance with § 257.40;

(h) A description of the State's registration process for unlicensed and uncertified providers including time frames for payment, in accordance with § 257.41(b), and which relatives, if any, are exempt from the registration requirement at § 257.41(b);

(i) Local market rates, in accordance with § 257.63(a) and § 255.4(a) of this chapter;

(j) The statewide limit(s), if any, in accordance with § 257.63(b);

(k) The sliding fee scale under which families will contribute to the cost of care, in accordance with § 257.31. This includes the income rules used to calculate the family's contribution to the cost of care, in accordance with § 257.31;

(l) A description of the State's policy on providing child care during gaps in employment, in accordance with § 257.30(c);

(m) A description of the coordination of the At-Risk Child Care program with existing IV–A child care programs, with other Federally-funded child care programs, and with child care provided through other State, public, and private agencies; and

(n) A description of the health and safety requirements, if any, for the prevention and control of infectious diseases (including immunization), building and physical premises safety, and minimum health and safety training appropriate to the provider setting, in accordance with § 255.4(c)(2)(ii) of this chapter and § 257.41(a)(2).

§ 257.30 Eligibility.

(a) A family is eligible for child care under this part provided the family:

(1) Is low income, as defined in the approved State At-Risk Child Care plan;

(2) Is not receiving AFDC;
(3) Is at risk of becoming eligible for AFDC, as defined in the approved At-Risk Child Care plan;
(4) Needs such child care in order to accept employment or remain employed; and
(5) Meets such other conditions as the State may describe in its approved At-Risk Child Care plan.
(b) The State may provide child care for any child in the family who needs such care and who:
(1) Is under age 13; or
(2) Is under age 18 (or under age 19, if the State so provides in its definition of dependent child in its State IV–A plan), and
(i) Is physically or mentally incapable of caring for himself or herself, as defined in the State's At-Risk Child Care plan, or
(ii) Is under court supervision.
(c) A State IV–A agency may provide child care if child care arrangements would otherwise be lost:
(1) For up to two weeks prior to the scheduled start of employment; or
(2) For up to one month during a break in employment if subsequent employment is scheduled to begin within that period.

§ 257.31 Fee requirement.

(a) The State IV–A agency shall establish a sliding fee formula based on the family's ability to pay that provides for contributions from each family towards the cost of care provided under this part.
(b) Contributions may not be based on the category of care the family selects.
(c) The State IV–A agency may waive the contribution from a family whose income is at or below the poverty level for a family of the same size.
(d) The State IV–A agency may vary the period of collection for different fee levels.
(e) The State IV–A agency may establish whether fees are paid to the providers or to the State agency.

§ 257.40 Methods of providing child care.

(a) A State may use any of the following methods:
(1) Providing the care directly;
(2) Arranging the care through public or private providers by use of purchase of service contracts or vouchers;
(3) Providing cash or vouchers in advance to the family;
(4) Reimbursing the family for child care expenses incurred; or
(5) Adopting such other arrangements as the agency deems appropriate, including certificates.
(b) If more than one category of child care is available, e.g., center-based child care, group home child care, family child care or in-home child care, the family must be provided an opportunity to choose the arrangement.
(c)(1) The State IV–A agency may select the method of payment under paragraph (a) of this section.
(2) The State IV–A agency must establish at least one method by which self-arranged child care can be paid.
(d) The State IV–A agency must coordinate its child care activities under this part with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Child Care and Development Block Grant, the Social Services Block Grant, if appropriate, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for disabled children).

§ 257.41 Child care standards.

(a) Child care provided with funds under this part must meet applicable standards of State and local law, and/or Tribal law.
(1) Applicable standards are licensing or regulatory requirements which apply to care of a particular type in the State, local area, or Indian reservation, regardless of the source of payment for the care, except as provided in paragraph (a)(2) of this section.
(2) At State option, the State may deny payment under this part for care that does not meet requirements designed to protect the health and safety of children that are applicable to child care providers under other Federal or State programs in the following areas:
(i) The prevention and control of infectious diseases (including immunization);
(ii) Building and physical premises safety; and
(iii) Minimum health and safety training appropriate to the provider setting.
(3) Requirements applied pursuant to paragraph (a)(2) of this section must not exclude or have the effect of excluding any categories of child care providers.
(b)(1) All providers of care who are not required to meet applicable standards as provided in paragraph (a) of this section and who are not individuals providing care solely to members of the individual's family, must be registered by the State or locality in which the care is provided prior to receiving payment.
(2) Registration procedures must:
(i) Collect only such information about providers required to register, pursuant to paragraph (b)(1) of this section as is necessary for the State to make payment to the provider or furnish information to the provider;
(ii) Facilitate appropriate and prompt payments;
(iii) Allow providers to register with the State or locality after selection by the parent(s);
(iv) Be simple and timely; and
(v) Not exclude or have the effect of excluding any categories of child care providers.
(c) Child care providers receiving At-Risk Child Care funding must afford parents unlimited access to their children, and to providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 257.50 Reporting requirements.

(a) Beginning with FY 1993, the State IV–A agency shall prepare and submit an annual report to the Secretary that contains the following:
(1) The number of children receiving services and the average cost of such services separately by category of care, including center-based child care, group home child care, family child care, and relative care;
(2) The child care licensing and regulatory (including registration) requirements in effect in the State with respect to each category of care;
(3) The enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register);
(4) The State's criteria applied in determining eligibility or priority for receiving services;
(5) The separate amounts of Federal and State expenditures for each subsequent period, in accordance with § 257.64(b)(4); and
(6) Any other information that the Secretary determines necessary.
(b) The State IV–A agency shall submit its report to the Secretary no later than 90 days after the end of the federal fiscal year.
(c) The State IV–A agency shall make the report available for public inspection within the State and shall provide a copy of each report, on request, to any interested public agency.

§ 257.60 Availability of funding.

(a) A State agency is entitled to payments if it has an approved State At-Risk Child Care plan. The payments are available only for the allowable expenditures of the program.

(b) For American Samoa, Guam, Puerto Rico, and the Virgin Islands, funding under this part is subject to the funding restrictions established under section 1108 of the Social Security Act.

(c)(1) A State's limitation is the State's share of the national total of available funds for a fiscal year based on the same ratio as the number of children under 13 residing in the State is to the national total of children under 13.

(2) The number of children under 13 for the States is derived from the best data available to the Secretary for the second preceding fiscal year, or for the Territories, if data is not available from the second preceding fiscal year, the best data available for the closest fiscal year prior to the second preceding fiscal year.

(d) The difference between the amount paid to a State in a fiscal year and the State's limitation as defined in paragraph (c) of this section for that same fiscal year may be added to a State's limitation for the following fiscal year. The total amount available in a fiscal year is referred to as a State's maximum grant for that year.

§ 257.61 Grant awards.

(a) States are required to submit estimates and report expenditures on a quarterly basis. Adjustments in subsequent quarters' grant awards will be made to reflect over- and under-estimates in prior quarters' expenditures.

(b) The total amount paid to a State in a fiscal year may not exceed the State's limitation or maximum grant for the fiscal year, whichever is appropriate.

(c) The regulations pertaining to State estimates and expenditures at § 201.5 of this chapter and the timely filing of claims at part 95, subpart A of this title apply to expenditures under this part.

§ 257.62 Matching requirements.

(a) Federal financial participation (FFP) is available at the Federal Medical Assistance Percentage (FMAP) rate for expenditures made in providing child care services and in administering the At-Risk Child Care program.

(b) Expenditures for the program will be matched at the FMAP rate applicable for the fiscal year in which the expenditures are claimed.

(c) A State's share of expenditures must be in cash and may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local IV–A agency, or transferred from another public agency (including Indian tribes) to the State or local IV–A agency and under its administrative control or certified by the contributing public agency as representing expenditures eligible for FFP;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds:

(i) Are transferred to the State or local IV–A agency and under its administrative control;

(ii) Are donated without any restriction which would require their use for assisting a particular individual or organization or at particular facilities or institutions; and

(iii) Do not revert to the donor's facility or use.

(3) An amount equal to any funds received which do not meet the conditions of paragraphs (c) (1) and (2) of this section must be deducted from the State's expenditure claims subject to Federal matching.

(4) In-kind contributions may not be used.

(d) For American Samoa, Guam, and the Virgin Islands, the first $200,000 in the Territory's share of expenditures in a fiscal year is waived.

§ 257.63 Allowable expenditures.

(a)(1) FFP is available for the actual cost of child care, but not for more than the applicable local market rate.

(2) The applicable local market rate must be determined in accordance with the provisions of § 255.4(a)(2) and (a)(3) of this chapter.

(b) The State agency may establish a statewide limit.

(1) The statewide limit may be the same as the statewide limit(s) established at § 255.4(a)(1) of this chapter or may be a higher or lower amount, but shall not be lower than the amount of the child care disregard at § 233.20(a)(11)(i) of this chapter.

(2) The State may specify a higher statewide limit for children with special needs.

(c) FFP is available for expenditures made in administering the provision of child care services under this part. FFP is not available for costs associated with the recruitment or training of child care providers, resource development, or licensing activities.

§ 257.64 Non-supplantation.

(a) Amounts expended by the State IV–A agency for child care under this part shall not be used to supplant any other Federal or State funds used for child care services.

(b)(1) The State must determine the separate amounts of Federal and State (including local funds used as the State share of other title IV–A child care expenditures) funds expended during a base period (as defined in paragraph (b)(2) of this section) and during subsequent periods for child care services. States must assure that the amount of funding from other sources for each subsequent period is maintained at the level of effort established for the base period.

(2) The base period is a twelve-month period (e.g., the State fiscal year) which includes the month one year prior to the first month for which the State has either an approved interim application or approved final plan for the At-Risk Child Care program. Subsequent periods are each twelve- month period following the preceding period. States may establish base period(s) and associated levels of effort on:

(i) A level of government basis (e.g., Federal or State); or

(ii) An alternative basis that provides for fiscal accountability.

(3) The separate amounts of Federal and State expenditures established for the base period must be included in the State's At-Risk Child Care plan, in accordance with § 257.21(d).

(4) The separate amounts of Federal and State expenditures for each subsequent period shall be reported to the Secretary in the State's annual report, in accordance with § 257.50(a)(5).

§ 257.65 General administrative requirements.

The provisions of part 74 of this title (with the exception of subpart G, Matching and Cost Sharing, and subpart I, Financial Reporting Requirement) establishing uniform administrative requirements and cost principles shall apply to the At-Risk Child Care program.

§ 257.66 Financial reporting.

(a) State estimates and expenditures will be reported on the financial reporting form for expenditures made under title IV–A.

(b) Contributions made by families for the cost of care where the State has made a full payment to the provider will be reported as program income and will be used to offset expenditures claimed as child care services payments. The requirements at § 74.42(c), subpart F of this title apply.

§ 257.67 Cost allocation.

A State agency shall amend its cost allocation plan to include the costs of the At-Risk Child Care program, in accordance with the regulations at part 95, subpart E of this title.

§ 257.68 Disallowance procedures.

(a) Federal financial participation (FFP) improperly claimed for child care services or administration are subject to disallowance.

(b) The deferral and disallowances regulation at § 201.15 of this chapter shall apply to this program. If the State IV–A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV–A procedures, including review of the Departmental Appeals Board, in accordance with the regulations at part 16 of this title.

[FR Doc. 92–17751 Filed 8–3–92; 8:45 am]
BILLING CODE 4150–04–M

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Tuesday
August 4, 1992

Part IV

General Accounting Office

Study of Payment Protections for Subcontractors and Suppliers on Federal Projects; Notice

GENERAL ACCOUNTING OFFICE

Study of Payment Protections for Subcontractors and Suppliers on Federal Projects

AGENCY: General Accounting Office.

ACTION: Notice of solicitation of information from subcontractors.

SUMMARY: The General Accounting Office (GAO) has developed a questionnaire to:

(1) Identify delayed payment problems experienced by subcontractors, suppliers or materialmen working on subcontracts funded by Federal contracts and

(2) Obtain opinions on the desirability of various proposals to improve the timeliness of payments due to subcontractors working on projects funded by Federal contracts. (See Part E of the questionnaire that is shown below for the specific proposals.) GAO invites any subcontractor to complete and return the questionnaire if a subcontract payment was delayed in fiscal year 1991 beyond a period which was either specified in the subcontract or accepted as normal for these types of subcontracts. All questionnaires submitted will be used for statistical purposes only, and not for purposes of identifying individual contractors, subcontractors or subcontractor complaints. Information provided in the questionnaire will be treated as confidential by GAO. The questionnaire appears at the end of this Notice. Reproductions of the questionnaire made on photocopy machines are acceptable.

DATES: Completed questionnaires must be submitted by September 15, 1992.

ADDRESSES: Completed questionnaires should be returned to Mr. Ralph Dawn, United States General Accounting Office, 441 G Street NW., room 5015, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Dawn or Ms. Edna Thea Falk at (202) 275-8465.

SUPPLEMENTARY INFORMATION:

Background. Some payment protections for subcontractors currently exist in Federal contracting. Federal regulations for Federal construction contracts, for example, require prime contractors working on construction projects to:

(1) Include in their subcontracts a payment term requiring payment within seven days after receiving payment from the Federal Government and

(2) Certify to the Federal Government that their subcontractors have been and will be paid in a timely manner.

Congress held hearings on subcontractor payment issues in April 1991. Subsequently, Congress included the requirement for GAO to conduct a study in section 806 (e) of Public Law 102-190, the National Defense Authorization Act for Fiscal Years 1992 and 1993. The study requests GAO to evaluate the feasibility and desirability of several proposed payment provisions listed in section 806. GAO is required to submit a report to Congress by February 1, 1993.

Contacting Subcontractors. GAO is soliciting information from subcontractors through the **Federal Register** because a complete database on subcontractors working on Federal projects does not exist. GAO also has asked various trade organizations to distribute the questionnaire in order to obtain information from their constituents. This method of data collection will not allow GAO to specify the extent of payment problems experienced by subcontractors working on Federal contracts. Although you may have received several copies of the questionnaire from different sources, you are requested to complete only one copy for your firm.

Confidentiality. Information provided in response to GAO's questionnaire will be treated as confidential. Study results will be reported in statistical summaries in which the responses of individual business firms cannot be identified.

Effect on CFR. This Notice is not a proposed change in current regulations.

The questionnaire follows:

Paul F. Math,

Director, Research, Development, Acquisition and Procurement Issues, National Security and International Affairs Division.

BILLING CODE 1610-01-M

REQUEST FOR INFORMATION ABOUT DELAYED PAYMENT PROBLEMS FOR SUBCONTRACTORS UNDER FEDERAL CONTRACTS IN 1991

The United States General Accounting Office (GAO), an agency of the Congress, is studying subcontractor payment procedures as part of a congressional assessment of federal contracting legislation. Part of our study concerns delays which subcontractors have experienced in receiving payments from contractors on work funded by federal contracts. If you have had a *delayed payment*, as defined below, we encourage you to complete this questionnaire. Information provided in the questionnaire will be treated as confidential by GAO. Study results will only be reported in statistical summaries in which the information from individual firms can not be identified.

Completed questionnaires should be returned to:

Mr. Ralph Dawn
US General Accounting Office
Room 5015
441 G Street NW
Washington, D.C. 20548

Any inquiries about the study should be directed to Mr. Ralph Dawn or Ms. Edna Falk (202-275-8465).

DEFINITION OF *DELAYED PAYMENTS* WHICH ARE ELIGIBLE FOR THIS STUDY (8-10)

Return this questionnaire ONLY if you answer "YES" to these three questions. *(Mark the correct answers)*	Eligible (1)	Not eligible (2)
a. Were you a subcontractor, supplier, or materialman in Fiscal Year 1991 (your firm's FY-91) on at least one subcontract that is funded by a federal contract?	○ Yes	○ No
b. Were you owed payments at any time in FY-91 on such a contract?	○ Yes	○ No
c. Was the payment on at least one such subcontract delayed beyond a period which was either specified in your subcontract, identified as your due date or accepted as normal for these types of contracts?	○ Yes	○ No

DEFINITION OF TERMS:

Accrued revenue: revenue earned in a period without regard to the timing of related cash receipts.
Subcontractor: This includes suppliers and materialmen as well as other subcontractors.
Small Disadvantaged Business Concern: a firm which is eligible for the Small Business Administration's 8(a) program established by Section 8(a) of the Small Business Act, 15 U.S.C. 637(a) and defined in Federal Acquisition Regulation (FAR) 19.001.
Small Business Concern: a Small Business Concern as defined in 13 CFR Part 121, incorporated in FAR 19.102.
Commercial product: an item, material, component, subsystem, or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (FAR 11.001).

PART A: BACKGROUND ON YOUR FIRM

1 What is the complete name of your organization? (If you are reporting for only a part of a larger company, please also specify the division name.)

_____

2 Whom should we contact if we have further questions or need to request supporting documentation?
Name: _____
Position: _____
Telephone: ( ) _____
Date: _____

3 Was most of your firm's FY-91 income from work classified as construction? *(Mark the correct answer.)* (11)
1 ○ Yes
2 ○ No

4 How is your firm classified by federal regulations? [NOTE: Terms are defined at the beginning of the questionnaire] (12)
1 ○ Small, Disadvantaged Business (Section 8a)
2 ○ Other Small Business Concern
3 ○ Other business (large)

PART B: FINANCIAL DATA FOR YOUR FISCAL YEAR 1991

(Use your firm's Fiscal Year 1991 in this questionnaire. Accrued revenue is defined above.) (13-32)

5 Divide your total FY-91 revenue between amounts:
$ _____ Accrued as prime contractor on federal contracts
$ _____ Accrued as a subcontractor on federal contracts
$ _____ All other sources
$ _____ TOTAL (FY-91 Total gross revenue)

6 Please divide the total value of the *delayed payments* (i.e. aging receivables) for income accrued in FY-91 as a subcontractor on federal contracts between the following: (53-72)

$_____ Aged receivables--payment still NOT received

$_____ Aged receivables--payment received

7 Approximately how much of your Total Gross Revenue in FY-91 was from sales of "commercial products" on federal contracts or subcontracts? (Enter "0" if none) [NOTE: "Commercial product" is defined at the beginning of the questionnaire.] (73-82)

$_____

8 Please check (✓) all of the following actions, if any, which your firm has ever taken to obtain any of your FY-91 *delayed payments* on a subcontract supported by a federal contract. (Check ✓ all that apply) (8-17)

__ Formally notified your contractor in writing that the payment was overdue (e.g. sent past-due notice)
__ Requested federal agency officer to assist in obtaining payment from your contractor
__ Filed a notice under the Miller Act (Construction only)
__ Filed a suit in court
__ Sought resolution through arbitration or mediation
__ Stopped work with contractual authority
__ Stopped work without contractual authority
__ Collected interest under the terms of your subcontract
__ Other (Please describe) _____
__ Not taken any action

PART C: MOST SEVERE SUBCONTRACTOR *DELAYED PAYMENT* PROBLEM IN FY-91

NOTE: This section concerns ONLY the single FY-91 *delayed payment* subcontract which had the greatest financial impact on your firm in FY-91 and was funded by a federal contract.

9 What was the award date for the single subcontract (funded by a federal contract) with the *delayed payment* problem which had the greatest financial impact on your firm in FY-91? (18-23)

____ ____ ____
(Month) (Day) (Year)

10 What was your position on this subcontract in relation to the federal prime contractor? (24)

1 ◯ 1st tier subcontractor
2 ◯ Other tier (Specify) _____
3 ◯ Not known

11 Is this subcontract supporting a single federal contract, multiple federal contracts, both federal and non-federal contracts, or don't you know? (25)

1 ◯ Single federal contract ⇒ What is the federal government prime contract number (if known)?
_____
2 ◯ Multiple federal contracts
3 ◯ Both federal and non-federal contracts
4 ◯ Not known

12 Was the major federal prime contract in the previous question classified as a construction contract? (26)

1 ◯ Yes
2 ◯ No
3 ◯ Don't know

13 What is the complete name of the firm to which you were a subcontractor for this work (i.e. Question #9 subcontract)? (If it is a part of a larger company, please specify the company and division name.)

_____

14 How is the firm in the previous question classified by federal regulations? [Terms are defined on page 1.] (27)

1 ◯ Small, Disadvantaged Business (Section 8a)
2 ◯ Other Small Business Concern
3 ◯ Other business (large)

15 Please divide all invoices/requisitions submitted during this subcontract (from start date of contract through end of FY-91) by payment status. (Approximate values are adequate)

PAYMENT RECEIVED: (28-47)

$_____ Delayed (received after due date)
$_____ Not delayed (received by due date)

PAYMENT NOT RECEIVED: (48-77)

$_____ Delayed (not received by due date)
$_____ Not delayed (not yet reached due date)
_____ TOTAL (ALL invoices submitted from beginning of contract to end of FY-91)

PART D: CHRONOLOGY FOR A SINGLE DELAYED PAYMENT

NOTE: This section concerns ONLY the single most important *delayed payment* (i.e. SINGLE invoice or requisition) under the subcontract (i.e. Question #9 subcontract) which had the greatest financial impact on your firm in FY-91.

16 Provide the following dates for the single most important *delayed payment* (i.e. single invoice or requisition) under this subcontract (i.e. Question #9 subcontract) *(Check "Do not know" if date is not known.)*		Date			Do not know (✓)
		Month	Day	Year	
a. Submission of your invoice/requisition (8-14)				19__	
[Answer Question "b." if you are a 2nd tier or lower subcontractor ⇒]	b. Payment received by your immediate contractor (Approximate date. If unknown check ✓ "Do not know".) (15-21)			19__	
c. Date from which you considered the payment to be *delayed* (i.e. beginning of *delayed payment* period) (22-28)				19__	
d. Payment received by you (If not received, write "outstanding".) (29-35)				19__	

17 Was the date from which you considered the payment to be delayed in Question 16.c determined by... (36-39)	*(Check correct answer)*	
a. Payment terms specified in your subcontract	1 ○ Yes	2 ○ No
b. Payment terms specified on your invoice/purchase order	1 ○ Yes	2 ○ No
c. Customary practices in your industry	1 ○ Yes	2 ○ No
d. Other (Describe) _____	1 ○ Yes	2 ○ No

18 At the time of the delay, was your request for payment challenged by your contractor? (40)
1 ○ Yes
2 ○ No

19 Has the prime contractor received payment from the federal government for that single invoice/requisition?
1 ○ Yes⇒ Approximately when did the prime contractor receive payment (if known)? _____ (Month/Day/Year) (41-47)
2 ○ No
3 ○ Do not know

20 To what extent, if at all, was a delay by the government in paying the prime contractor responsible for your payment being delayed? (48)
1 ○ totally
2 ○ almost totally
3 ○ partially
4 ○ slightly
5 ○ not at all

PART E: EVALUATIONS OF PROPOSED PROVISIONS CONCERNING SUBCONTRACTOR RELATIONSHIPS

DIRECTIONS: Please answer Questions 21 and 22 for each of the possible payment protection provisions described below.

Possible payment protection provisions which GAO was asked by the Congress to evaluate.	QUESTION 21 Would this have prevented or resolved the *delayed payment* problem described in Question 16?			QUESTION 22 Would you favor, conditionally favor or oppose applying this provision to your contracts and subcontracts? *(If "Conditionally favor": Please describe conditions)*			
PART I: QUESTIONS FOR ALL	(1)	(2)	(3)	(1)	(2)	(3)	(4)
i. ***For periodic and progress payment contracts:*** the prime contractor must establish an escrow account and require disbursements by the escrow agent to subcontractors of amounts certified by the prime contractor in invoices to the federal government as being payable to such subcontractors (49-50)	○ Yes	○ No	○ Not known	○ Favor	○ Conditionally favor (Describe)	○ Oppose	○ Not know
ii. ***For periodic and progress payment contracts, if a government contracting officer determines the prime is repeatedly not making timely payments:*** a method must be established for direct disbursements to subcontractors of amounts certified by the prime contractor in invoices to the federal government as being payable to such subcontractors (51-52)	○ Yes	○ No	○ Not known	○ Favor	○ Conditionally favor (Describe)	○ Oppose	○ Not know
iii. Prime contractor must furnish or provide payment bonds to ensure **TIMELY** and ultimate payment to subcontractors (53-54)	○ Yes	○ No	○ Not known	○ Favor	○ Conditionally favor (Describe)	○ Oppose	○ Not know
iv. Prime contractor may substitute letters of credit in instances in which payment bonds are required (55-56)	○ Yes	○ No	○ Not known	○ Favor	○ Conditionally favor (describe)	○ Oppose	○ Not know
PART II: QUESTIONS FOR PERIODIC OR PROGRESS PAYMENT, NON-CONSTRUCTION CONTRACTS							
v. Prime contractor must: (i)include a clause in subcontracts requiring payment to subcontractors within a fixed time period after receiving payment from the government, and (2) certify with each invoice to the government that past payments have been made to the subcontractor on time and that payments under this invoice will be on time (57-58)	○ Yes	○ No	○ Not known	○ Favor	○ Conditionally favor (Describe)	○ Oppose	○ Not know
PREPAYMENT REQUIRED vi. Prime contractor must have paid and submitted proof of payments to subcontractors before invoicing the government for those payments (59-60)	○ Yes	○ No	○ Not known	○ Favor	○ Conditionally favor (Describe)	○ Oppose	○ Not know
PART III: QUESTION FOR CONSTRUCTION CONTRACTS							
vii. ***If payment bonds are now required under the Miller Act:*** a prime contractor must increase the bond to 100% of the amount of the contract (61-62)	○ Yes	○ No	○ Not known	○ Favor	○ Conditionally favor (Describe)	○ Oppose	○ Not know

[FR Doc. 92-18380 Filed 8-3-92; 8:45 am]
BILLING CODE 1610-01-C

federal register

Tuesday,
August 4, 1992

Part V

Department of Education

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Notice

DEPARTMENT OF EDUCATION

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1993.

SUMMARY: The Secretary proposes priorities for fiscal year 1993 under the program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to expand or improve vocational rehabilitation services for individuals with severe handicaps.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Ann Queen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3038, Switzer Building, Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 732–1396. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: Grants under the program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps are authorized by section 311(a)(1) of title III of the Rehabilitation Act of 1973, as amended. The purpose of this program is to award grants for special projects and demonstrations that hold promise of expanding or otherwise improving rehabilitation services to individuals with severe handicaps.

This document contains four proposed priorities designed to further the purpose of the program. The reasons for the Secretary's choice of these priorities for funding in fiscal year 1993 are discussed in the respective background sections of each priority.

This program supports AMERICA 2000, the President's strategy for helping the Nation move toward achievement of the National Education Goals as well as the President's National Drug Control Strategy. By encouraging the development of vocational rehabilitation strategies designed to increase the vocational potential of individuals with disabilities, these priorities support National Education Goal five. This goal calls for every adult American to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final priorities in a notice in the Federal Register. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the Federal Register concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to given an absolute preference to applications that meet one or more of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one or more of these absolute priorities:

Proposed Priority 1—Model Systems of Collaboration To Assist in the Training and Employment of Individuals Who Are Disabled Due to the Abuse or Drugs Other Than Alcohol

Background

According to the National Institute on Drug Abuse, about six percent of the population use drugs. Several studies suggest that the rate of drug abuse among individuals with disabilities is approximately twice that of the general population ("Adapting the Vocational Evaluation Process for Clients with a Substance Abuse History," Journal of Applied Rehabilitation Counseling, Volume 21, Number 3, 1990). As the number of individuals abusing drugs has grown, so has the number of these individuals both served and rehabilitated by State vocational rehabilitation (VR) agencies.

Available research studies suggest that substance abuse poses significant and unique challenges to rehabilitation practitioners due to the individual's denial of the impact of the abuse; the lack of available comprehensive support mechanisms thought necessary for any lasting rehabilitation; the need for collaboration among the diverse agencies involved with the individual; the diminished motivation and capacity of the individual to participate in a rehabilitation program; and the reluctance of employers to hire these individuals ("Job Placement Strategies with Substance Abusers," Journal of Job Placement, Volume 6, Number 2, 1990).

In addition, many rehabilitation practitioners who lack extensive experience in working with individuals who abuse drugs may not recognize the subtle, yet important, signs connected with the disability, thus impairing any rehabilitation effort ("Dual Diagnosis: Psychiatric Disorder and Substance Abuse," Journal of Applied Rehabilitation Counseling, Volume 19, Number 2). One effort to enhance the skills of rehabilitation practitioners is published in the *Rehabilitation Continuing Education Program Consortium (RCEP) Vocational Rehabilitation of Drug-Free Youths (14–18): A State/Federal Rehabilitation Services Administration and Juvenile Justice Training Initiative—Twelve Training Modules for Rehabilitation Service Providers* (George Washington Regional Rehabilitation Continuing Education Program, January 1992). The training modules were developed by the RCEPs as a product of collaboration between the Rehabilitation Services Administration of the U.S. Department of Education and the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice.

To prepare for the anticipated continued increase of referrals to State VR agencies of individuals who have abused drugs, it is necessary to identify effective rehabilitation interventions that can be used by rehabilitation practitioners in working with this increasing and challenging population. The Secretary is particularly interested in projects that incorporate widely accepted service delivery approaches such as: (a) Traditional 12-step programs or other strong on-going support strategies such as mentoring; (b) involvement of family, friends, volunteers, co-workers, or service providers as natural supports throughout the rehabilitation process; (c) collaboration among relevant agencies, such as rehabilitation service providers, law enforcement agencies, and drug treatment programs in the formulation, implementation, and evaluation of rehabilitation programming; (d) training in social effectiveness, decision-making skills, self-esteem, and assertiveness;

and (e) crisis intervention mechanisms that can be employed swiftly and effectively during periods of relapse.

Because of the particular issues involved in serving individuals who abuse drugs, the Secretary is especially interested in projects that focus on drug abuse other than alcoholism.

Priority

Projects must demonstrate service delivery interventions that will assist individuals who have abused drugs (other than alcohol) and who have, as a result of that abuse, a substantial handicap to employment in preparing for, obtaining, and maintaining suitable employment consistent with their capacities and abilities. These strategies must be implemented after successful completion of the acute treatment phase of the recovery process.

Each project must show evidence of coordination with appropriate community resources serving individuals who abuse drugs other than alcohol. Each project must disseminate widely the practices and materials it develops to facilitate the capacity of other agencies and facilities to provide improved services to individuals who are disabled due to the abuse of drugs other than alcohol.

Proposed Priority 2—Functional Assessment of Individuals With Cognitive Disabilities

Background

Within the past decade there has been a dramatic increase in the number of individuals with severe cognitive disabilities, such as learning disabilities, traumatic brain injury, mental retardation, and severe mental illness, who are seeking vocational rehabilitation services. Because cognitive disabilities are often hidden, the manifestations of these disabilities and their impact on employment are difficult to ascertain and to quantify.

Traditional assessments, such as neuropsychological assessments, are effective in identifying the broad range of deficits that may result from a cognitive disability. However, these assessments do not show how the individual's deficits might interact with task and environmental demands and, thus, impact on the individual's ability to function in employment and employment-related situations ("Neuropsychological Rehabilitation: Treatment of Errors in Everyday Functioning," The Neuropsychology of Everyday Life: Issues in Development and Rehabilitation, 1990).

Functional assessment differs from more traditional assessments by focusing on how individual limitations and strengths interact with the demands of living, working, and learning environments ("Rehabilitation Programming with Adults Who Have Specific Learning Disabilities," unpublished paper, National Institute on Disability Rehabilitation Research State of the Art Conference on Rehabilitation Services to Persons with Specific Learning Disabilities, 1987). Situational work assessments and job site evaluations, for example, are effective in determining how an individual's strengths and limitations match with job tasks and with varying environmental demands, such as the level of distractions, type and nature of supervision, job structure, and the type and amount of job-related interactions with others.

Functional assessment used systematically throughout the vocational rehabilitation process generates more useful and vocationally relevant information, leading to improved vocational outcomes for individuals with cognitive disabilities.

The Secretary also proposes to fund a Rehabilitation Short-Term Training project in FY 1993 that will train rehabilitation professionals and pre-service educators on functional assessment for individuals with cognitive disabilities. The Secretary will coordinate the oversight and administration of these projects to assure that rehabilitation professionals, educators, and related agencies and organizations derive the maximum benefits from these efforts to improve functional assessment of individuals with cognitive disabilities.

Priority

To improve vocational outcomes for individuals with cognitive disabilities, projects must—

(a) Use functional assessment to determine functional capacities in response to specific tasks and environmental demands related to those tasks; and

(b) Use the results of functional assessment throughout the vocational rehabilitation process from determinations of eligibility and severity of handicap through job placement and follow-up.

Each project must show evidence of coordination with appropriate community resources serving individuals with cognitive disabilities. Each project must disseminate widely the practices and materials it develops to facilitate the capacity of other agencies and facilities to provide improved functional assessments of individuals with cognitive disabilities.

Proposed Priority 3—Linkages Between State Vocational Rehabilitation Agencies and Consumer-Run Programs for Individuals With Severe Mental Illness

Background

Consumer-run programs for persons with severe mental illness are an outgrowth of the self-help movement and are based on the belief that consumers know best what their needs are and that persons who have experienced difficulties firsthand can offer effective support and assistance. Evaluation data that are available suggest that these consumer-run programs are effective alternatives for the provision of a wide array of services, including self-help and support services, crisis intervention, educational and vocational services, advocacy, and linkages with other service providers (Models of Community Support Services: Approaches to Helping Persons with Long-Term Mental Illness; Stroul, B., 1986).

Consumer-run programs for persons with severe mental illness may be uniquely suited for providing special services that facilitate successful employment outcomes. Examples of these services include: (a) Assisting consumers in developing the skills and knowledge necessary to manage their mental illness; (b) providing peer support and case management services; (c) assisting consumers in accessing services, such as supported housing; and (d) providing training for expanded employment options that reflect consumer preference.

Because consumer-run programs are playing an increasing role in the rehabilitation of persons with severe mental illness, they are an emerging resource that could be an asset to State VR agencies in achieving successful employment outcomes for this disability population. However, there are few examples of linkages between these consumer-run programs and State VR agencies.

There is a need for projects to improve linkages between consumer-run programs and State VR agencies and to integrate the services provided by consumer-run programs into the planning and provision of VR services provided by State agencies. Projects could be administered either by consumer-run programs or State VR agencies and could establish linkages in a variety of ways such as, but not limited to, joint project development, the establishment of cooperative agreements, or the development of memoranda of understanding.

Priority

Projects must demonstrate service models that will—

(a) Improve the linkages between State VR agencies and consumer-run programs for individuals with severe mental illness; and

(b) Develop strategies for integrating the services provided by consumer-run programs into the planning and provision of vocational rehabilitation and support services, including employment options that reflect consumer preference.

For purposes of this priority, a consumer is defined as an individual with a history of severe mental illness. A consumer-run program is defined as a program in which the major decision-making positions are held by individuals with severe mental illness.

Each project must show evidence of coordination with appropriate community resources serving individuals with a history of severe mental illness. Each project must disseminate widely the practices and materials it develops to facilitate the capacity of other agencies and facilities to provide improved services to individuals with severe mental illness.

Proposed Priority 4—Low-Functioning Adults Who are Deaf or Hard of Hearing

Background

The Commission on Education of the Deaf (February, 1988) identified low-functioning adults who are deaf or hard of hearing as an unserved sub-group within the population of persons who are deaf or hard of hearing. Due to communication barriers, low-functioning persons who are deaf are usually not able to benefit from conventional rehabilitation training programs and supported employment. Language limitations may preclude the use of interpreters for service and training program access. Even if interpreters can be used, the cost resulting from extended service needs tends to discourage the provision of these services.

Priority

Projects must provide vocational rehabilitation and other rehabilitation services, not adequately available in the geographic area proposed to be served, to maximize the vocational potential of low-functioning adults who are deaf or hard of hearing.

For the purposes of this priority, low-functioning refers to an individual (1) who is deaf or hard of hearing, and who may also have other disabilities; (2) whose functional level is substantially below that required for admission to postsecondary education or training programs; (3) whose language and communication skills are extremely limited; (4) who is not ready for employment; and (5) who does not have marketable work skills or a history of successful employment.

Projects must meet all of the following requirements:

(a) Coordinate with other public and nonprofit private agencies and organizations to address the postsecondary education, counseling, vocational training, work transition, supported employment, job placement, follow-up, and community outreach needs of low-functioning adults who are deaf or hard of hearing.

(b) Develop working relationships with existing vocational and educational programs for adult persons who are deaf, such as the Regional Postsecondary Education Programs for the Deaf (RPEPD) supported by the Department of Education.

(c) Coordinate with the Rehabilitation Research and Training Center on Traditionally Underserved Persons Who Are Deaf at Northern Illinois University and the Research and Training Center on Deafness at the University of Arkansas, and make available to these research and training centers for dissemination the results of the projects funded under this priority.

(d) Establish relationships with potential employers from the public and private sector and have access to community-based resources serving adults who are deaf (e.g., organizations of persons who are deaf, groups providing special activities for persons who are deaf, and employment settings where there are workers who are deaf).

(e) Involve individuals who are deaf and representatives of RPEPDs or other appropriate service programs for individuals who are deaf in the planning, implementation, operation, and evaluation of the project and dissemination of the project results.

(f) Provide technical assistance to facilities and agencies in areas such as outreach, using a coordinated approach to the delivery of services, and on-site training and workshops. The technical assistance must be designed to facilitate the wide dissemination of practices and materials developed by the project and to facilitate the capacity of agencies and facilities to provide improved services to deaf or hard of hearing adults who are low-functioning.

In meeting the requirements of the selection criterion for quality of key personnel under this program (34 CFR 373.30(b)), the project staff under this priority must be experienced in the delivery of services, such as vocational evaluation, peer counseling, personal adjustment, job coaching, community-based instruction, and placement, to low-functioning adults who are deaf or hard of hearing. The staff must also be experienced in communicating with adult persons who are deaf and who have minimal language skills.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3315, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m., and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 369 and 373.

Program Authority: 29 U.S.C. 777a(a)(1) and 777a(a)(4).

(Catalog of Federal Domestic Assistance Number 84.235 Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps)

Dated: July 29, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc–92–18350 Filed 8–3–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday,
August 4, 1992

Part VI

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Professional Development Program in Mathematics or Science for Elementary and Middle School Teachers, Notice

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Professional Development Program in Mathematics or Science for Elementary and Middle School Teachers

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal years 1993 and 1994.

SUMMARY: The Secretary proposes a priority for fiscal years 1993 and 1994 under the Dwight D. Eisenhower National Program for Mathematics and Science Education. The Secretary proposes this priority to prepare elementary and middle school teachers to teach coherent, nonrepetitive curricula in mathematics or science. The Secretary takes this action to focus Federal financial assistance on models for the professional development of teachers so that they can enable students to enter secondary schools motivated and prepared to take challenging courses in mathematics and science.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Paul Gagnon, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Mary Sivertsen or Becky Wilt, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Dwight D. Eisenhower National Program for Mathematics and Science Education supports projects of national significance in mathematics and science instruction at the elementary and secondary levels. The program is authorized under Title II, Subpart 1, section 2012 of the Elementary and Secondary Education Act, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297.

The proposed priority in this notice supports one of the six National Education Goals which calls for U.S. students to be first in the world in mathematics and science achievement by the year 2000. The President's AMERICA 2000 strategy for helping the Nation achieve the goals calls for the creation of world-class standards for student achievement in the five core subjects, including mathematics and science, and for a system of improved assessments tied to the standards.

The National Council for Educational Standards and Testing (NCEST), a congressionally created group of 32 individuals charged with investigating the desirability and feasibility of standards and improved assessments, issued its report in January 1992. The report called for the development of national standards and a national system of voluntary assessments as an urgently needed first step in reforming American education.

NCEST's Task Force on Standards reported that some States are aligning challenging standards with appropriate curricula and assessment methods. However, most of these efforts are very recent, and most do not yet tie the professional development of teachers to the more demanding curriculum and assessment strategies. The task force further reported that most public school teachers do not have the necessary level of understanding of subject matter required to teach curricula and courses tied to world-class standards, and that if world-class standards are to spur improved teaching and learning, the teachers will need reinforcement by extensive and carefully developed professional development activities. The Secretary believes that all teachers and administrators in a given school must be involved in these professional development activities to facilitate genuine and lasting school-level reform.

The Committee on Education and Human Resources of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) has established teacher preparation and enhancement as its first priority at the precollege level. This priority is part of a larger FCCSET strategy to emphasize intensive teacher training efforts tied to world-class standards for mathematics and science.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrently with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Model Professional Development Program in Mathematics or Science for Elementary and Middle School Teachers

The Secretary will fund projects in which experienced teachers of mathematics or science will provide professional development to prepare elementary and middle school teachers to teach a coherent, nonrepetitive curriculum in mathematics or science, or a combination of these disciplines. The curriculum must incorporate world-class standards and build student knowledge and skills, grade-by-grade, in stages appropriate to each grade level so that students enter secondary school motivated and prepared to take challenging courses in mathematics and science.

Each project must carry out all of the following activities:

(a) Establish a team of experienced mathematics or science teachers, or both, from one or more public or private schools within the geographic area of a school district.

(b) Include both scholars and educators from neighboring colleges and universities to work collaboratively with the team of experienced classroom teachers in planning and executing the project.

(c) Provide professional development at two or more public or private schools within the geographic area of a single school district (if that district has more than one such school) enrolling students of different backgrounds and different academic achievement.

(d) Provide professional development to all teachers and administrators involved in mathematics and science instruction in the given schools.

(e) Provide the equivalent of at least 20 full days of inservice education for each participant during the school year

including during the school day, after school, or on weekends.

(f) Provide to the Secretary a copy of the evaluation conducted under 34 CFR 75.590. Each project must participate in the evaluation of the program the Secretary plans to conduct.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Part 755.

Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Dated: July 29, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-18349 Filed 8-3-92; 8:45 am]

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federal register

Tuesday
August 4, 1992

Part VII

Department of Education

Proposed Funding Priorities for Fiscal Year 1993-94 Rehabilitation Engineering Centers; Notice

DEPARTMENT OF EDUCATION

Proposed Funding Priorities for Fiscal Year 1993–94 Rehabilitation Engineering Centers

AGENCY: Department of Education.

ACTION: National Institute on Disability and Rehabilitation Research—Notice of proposed funding priorities for fiscal years 1993–94 for Rehabilitation Engineering Centers.

SUMMARY: The Secretary of Education proposes funding priorities for new Rehabilitation Engineering Centers (RECs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–94. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Richard K. Johnson, Department of Education, 400 Maryland Avenue SW., room 3415, Switzer Building, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: Richard K. Johnson. Telephone: (202) 732–1203. Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services or use the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: This notice contains 10 proposed priorities under the Rehabilitation Engineering Center (REC) program; each priority is for a separate Center to be established to meet the objectives stated in the priority. NIDRR has recently published one notice of proposed priorities for Rehabilitation Research and Training Centers and intends to propose additional priorities for fiscal years 1993–94 at a later date.

Authority for the REC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). NIDRR regulations authorize the Secretary to establish priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

Under the REC program the Secretary makes awards to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research programs that promote technological solutions to problems confronting individuals with disabilities, develop systems for the exchange of technical and engineering information, and improve the distribution of assistive devices and equipment to individuals with disabilities. The statute provides that each REC must be located in a clinical setting. NIDRR encourages RECs to collaborate with institutions of higher education in the conduct of a program of research, scientific evaluation, and training that advances the state of the art in technology and its application.

In addition, NIDRR requires each REC to provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families. Each REC must ensure that all training materials developed by the Center are presented in formats that will be accessible to individuals with various types of impairments.

Each Center shall participate in the evaluation of its own products and those of other Centers and develop cooperative arrangements with the private sector to produce and distribute its products. Any Center funded under these priorities shall coordinate activities and share information with other NIDRR-funded Centers and shall work closely with the Center on Technology Evaluation and Transfer, proposed in this notice.

Each REC shall involve individuals with disabilities—and, if appropriate, their family members—in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center. NIDRR encourages all Centers to involve individuals with disabilities and minorities in research training, as well as in clinical training.

Each REC shall conduct coordinated programs of research and development that will contribute to the desired outcomes specified in the priority. Within that priority area applicants have considerable latitude in proposing specific research approaches. However, the selection criteria in the regulations (34 CFR 353.31) require applicants to justify their choice of projects in terms of relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in assuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Applicants are rated according to how they plan to evaluate their performance under the grant. Not later than three years after the establishment of any REC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities. These goals are: (1) Full integration into the community, (2) full employment, (3) independence and empowerment, (4) maximum human functioning and health, (5) improved vocational rehabilitation services, and (6) the translation of new knowledge and technology into practice. The priorities proposed in this notice emerged from the long-range planning process and are the most important approaches to achieving one or more of these six outcomes.

These proposed priorities support National Education Goal five that calls for every adult American to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The proposed priorities also support the AMERICA 2000 agenda for transforming America into "a Nation of students."

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one

of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priority 1—Adaptive Computers and Information Systems

Background

Knowledge production and information processing are accelerating at a rapid rate paralleling the advances in microcomputers and telecommunications. There is a danger that, in the future, information and knowledge will be exchanged at such a high volume and speed that individuals with disabilities will be handicapped on the job and in daily activities by the inaccessibility of computers and other electronic information processing devices. The purpose of the proposed Center is to assure that individuals with disabilities will have adequate accessible technology and technology interfaces to assist them to participate fully in the communication and rapid exchange of information that will be integral to the economy and lifestyle of the future.

Electronic information technology may be either an obstacle or a facilitator for individuals with a variety of disabilities, including those caused by sensory impairments, mobility impairments, communications impairments, and cognitive impairments. The specific adaptations needed vary by the type of disability, the residual function, and the characteristics and lifestyle of the individual.

Rehabilitation engineering knowledge can be applied to the development of such needed devices as: Adaptable electronic interfaces, both hardware and software; adaptable operator interfaces for facsimile (FAX) systems, TDDs, and photocopiers; devices to increase access by individuals with various types of disabilities to voicemail, interactive compact discs, videocamera recording and playback devices, and other radio and television electronic equipment currently on the market; hardware or software adaptations for electronic technology to allow persons with disabilities access to an increased number of independent activities in self-management and leisure; and computer-based speech recognition interface to accommodate speech variations for persons with disabilities.

Priority

The REC in adaptive electronics shall develop and evaluate new technologies, and, if appropriate, develop adaptations of existing technologies, that will—

- Assist individuals with various types of disabilities to manage their own lives and perform activities of daily living independently;
- Enhance the capacities of individuals with various types of disabilities to produce and access information and to perform competitive work in the high technology environment of the future; and
- Increase the availability of affordable adaptations to commercial electronic information devices.

In addition, the REC shall develop strategies to increase the awareness of electronic adaptations on the part of employers and vocational rehabilitation service providers.

Proposed Priority 2—Augmentative and Alternative Communication Devices

Background

Augmentative and alternative communication (AAC) refers to all communication devices that supplement, augment, or substitute for speech. Just as typical communicators rely on augmentative and alternative expressive communication techniques, so do persons with communication disabilities. However, most individuals with speech and language impairments also have physical, sensory, or cognitive disabilities that may compromise their ability to use other augmentative communication strategies such as writing, gesture, and facial expression (Blackstone, 1986).

There are five major obstacles to achieving effective communication through AAC devices. These are: (1) Technical problems such as speed of message preparation and delivery, restricted lexicons (vocabularies), unique output modes such as synthesized speech, and difficulty of use; (2) gaps in the education and knowledge of professional service providers, researchers, manufacturers, consumers, their families, and communication partners; (3) attitudinal barriers that may inhibit augmentative communication users from fully participating in community life more than their actual impairments do (Beukelman, 1986); (4) environmental barriers that inhibit a free flow of information between communication partners (Blackstone, 1991); and (5) a dearth of communicative precedents, a history of expressive failure, and insufficient investigation of linguistic structure, use, and function due to gaps in research (Kraat, 1982).

Priority

The REC in AAC shall develop appropriate technology, and, if appropriate, modify existing technology, to improve the communication abilities of children and adults with communicative disabilities and facilitate the transfer of appropriate devices into commercial production by conducting research that will—

- Increase understanding of the strengths and needs of individuals with communication disabilities through improved human factor and ergonomic information;
- Enhance capacity for daily communication in the work environment and the community;
- Enable individuals to develop, enhance, or regain language skills;
- Increase the availability of appropriate AAC devices; and
- Reduce environmental and societal barriers to effective interactive communication.

Proposed Priority 3—Hearing Enhancement and Assistive Devices

Background

According to the National Institute on Deafness and Other Communication Disorders, approximately 28 million Americans have some degree of hearing loss. Of this number, two million have no usable hearing and the remaining 90 percent have hearing impairments that range from mild to profound. In addition to persons with reduced hearing acuity and deafness, there is a rapidly increasing population of older individuals with impairments in sound discrimination and hearing that limit their performance in a wide variety of everyday tasks. Complicating factors include the increasing numbers of persons with other, often visual, impairments combined with auditory impairments, and the rising incidence of premature infants at risk for hearing impairment.

Although progress has been made in developing technology to enhance hearing, including advances in communication, educational and vocational aids, captioned television, auditory amplifiers, and improved functional hearing assessment, there is more to be done to make rapidly changing technologies accessible to deaf individuals.

The Commission on Education of the Deaf (1988) emphasized the need to improve the capability for early detection of hearing loss in infants. While there has been research in this area, technology for this purpose is primitive, and more research is necessary to identify and validate appropriate technology for early detection of hearing loss in infants.

Among adults, there are persistent and frequent objections to the high cost of hearing aids. The Nation's economy and the growing aging population dictate the need for cost-effective assistive devices and services to improve hearing. Simplified auditory evaluation of individual hearing loss and the selection and fitting of hearing aids are necessary, as are better and less costly hearing aids.

An REC in hearing enhancement and assistive devices can improve human functioning, community integration, employment, and empowerment by developing and refining technology for hearing evaluation; improving programming and fitting techniques; improving hearing aid manufacturing processes.

Priority

The REC in hearing enhancement and assistive devices shall develop and evaluate effective technology to—

- Improve early detection of hearing loss in infants, and perfect a prototype system for this purpose;
- Improve the assessment of progressive aural disorders associated with aging;
- Improve communication functioning in older persons with hearing loss;
- Improve the capacity of hearing aids for filtering, amplification, and discrimination, matching them to both the underlying impairment and the environment;
- Improve access to modern telecommunications for individuals who are deaf or hard-of-hearing;
- Develop and evaluate—in the potential user's environment, including worksites—specialized technology for job-site modifications for individuals with hearing impairments;
- Improve education and rehabilitation for individuals who have both severe hearing impairment and severe vision impairment;
- Improve assistive devices to amplify or visualize auditory signals in the community and in the work environment, so as to assist employers and other entities covered by the ADA to accommodate the needs of workers and others with hearing impairments;
- Increase the availability of cost-effective technological devices and services for individuals with hearing impairments; and
- Improve audiological measurement technology to enhance fitting of digital hearing aids.

In addition, the REC shall develop at least one commercially viable hearing aid systems package (e.g., diagnosis unit, personal aid, software, and training manuals) that advances the state of the art.

Proposed Priority 4—Technology To Improve Wheelchair Mobility

Background

An estimated 1.2 million individuals are classified as paralyzed and a probable one million of these use wheelchairs to achieve mobility (National Center for Medical Rehabilitation Research, 1991). The most significantly limited individuals are those with spinal cord injuries (SCI) who are paralyzed from the C5–C6 level. Kraus (1986) estimated that of the 250,000 spinal cord injured persons in the nation at that time, about 100,000 were classified as C5–C6 or higher quadriplegic. Of the 8,000 to 10,000 SCIs that occur each year, 4,000 to 5,000 are at the level of C5–C6 or higher. This population must use powered mobility devices that are far more complex, costly, and cumbersome than conventional manual wheelchairs.

Despite the many recent improvements in wheelchairs, there remain several major deficits in the design and construction of wheelchair systems that can seriously compromise the mobility, safety, and integration into the workplace and community of those who depend on these systems, particularly persons with high-level quadriplegia. These major deficits are in the reliability of the power systems, the safety of the vehicular interfaces and securement systems, availability of interfaces with other mobility devices and environmental controls, and adequacy of seating and postural supports (Ragnarsson, 1990; Brubaker, *et al.*, 1991).

Wheelchair power systems—batteries of various types and control devices—remain inefficient, unreliable, expensive, and difficult to transport and maintain. Deficient seating systems—including cushions, postural supports, and restraints—may further compromise a wheelchair user's health or exacerbate the impairment, thus limiting the usability of the wheelchair. Appropriate seating systems can assist the individual to avoid musculoskeletal deterioration, pain, and decubitus ulcers, and enable him or her to use the chair to participate in time-intensive activities such as work, school, travel, or activities of daily living.

Increasingly, individuals who use wheelchairs expect to employ them in a wide range of daily activities, including independent living, parenting, and self-care. For individuals with high-level quadriplegia, there must be more attention to adapting wheelchairs to the users' real-life needs, such as shopping, child care, work, recreation, personal hygiene, and housekeeping. Powered wheelchair controls could interface with other environmental controls to enable individuals with even high levels of quadriplegia to be more independent in their homes or workplaces.

Another equally serious problem limiting the true mobility of individuals who use wheelchairs is the absence of safe and reliable tie-down devices to secure wheelchairs in public or private vehicles. Although it is unsafe, wheelchair users, including children using school buses, do ride in public and private transportation with either no securement or inadequate securement. The Americans with Disabilities Act requires that all public and private transportation systems be made accessible; this should lead to an increase in the demand for safe transportation for wheelchair riders. The absence of standards for securement devices contributes to difficulties in protecting safety or establishing liability (National Highway Transportation Safety Administration, 1991).

While an REC cannot establish standards for an industry, it can conduct research and development activities and work closely with manufacturers, as well as wheelchair users, to evaluate products, to encourage industry to make new products available, and to provide improved technical understanding of factors contributing to wheelchair safety.

Priority

The REC in wheelchair mobility shall develop technologies to—

- Improve the mobility of individuals using power wheelchairs by developing more efficient, reliable, and maintainable wheelchair power systems;
- Improve the mobility of wheelchair users by developing wheelchairs that are stronger, lighter in weight, and easier to manufacture and maintain;
- Enhance the safety and mobility of wheelchair users by developing safe vehicle securement systems for various types of chairs and various types of vehicles, especially those used in mass transit; and
- Enhance the functioning of wheelchair users by developing improved seating systems and interfaces with environmental controls and other devices for daily living activities.

In addition, the REC shall identify criteria and standards for wheelchair performance and vehicle securement systems, in coordination with the Department of Transportation and the

Architectural and Transportation Barriers Compliance Board (ATBCB), and disseminate this information to potentially affected parties including consumers.

Proposed Priority 5—Worksite Modifications and Accommodations

Background

The Rehabilitation Act of 1973, as amended, specifies that NIDRR research shall have a special focus on the needs of individuals with the most severe disabilities. The passage of the Americans with Disabilities Act creates a new imperative for American employers and rehabilitation service providers to find cost-effective job modifications that will accommodate individuals with disabilities, including severe disabilities. Employers will be required to make "reasonable accommodations" that are not unduly burdensome to the business, to analyze jobs and hire people for them according to their ability to perform only the "essential functions" of the job, and to restructure jobs to accommodate workers with disabilities if this can be accomplished without undue hardship.

Rehabilitation engineering can contribute solutions such as modifications to the worksite or to other employer-provided facilities and adaptive devices to enhance individual functional capabilities. Techniques of engineering investigation can also be applied to analyze the functional abilities required by the "essential functions" of a job, to assess the potential of individuals with disabilities to meet those essential job requirements, and to design job restructuring patterns that would accommodate the needs of individuals with severe disabilities while not compromising the ability of the employer to meet the demands of his or her customers.

The REC in worksite modifications can assist in increasing the opportunities of persons with severe disabilities to obtain and maintain employment by developing technologies to eliminate physical barriers on the job and enhance the abilities of persons with disabilities to perform competitive work in industrial worksites of the future.

Priority

The REC in worksite modifications and accommodations, consistent with the regulations and policy guidance promulgated by the Equal Employment Opportunity Commission, shall develop—

- Modifications to current industrial equipment and innovative software to provide (1) interface capability with new industrial technological devices, and (2) new models of workstations to accommodate individuals with severe disabilities;
- Systems to identify "essential functions" of a job and methods to assess the capability of an individual with a severe disability to perform those essential functions;
- Job restructuring designs and other modifications to the components of the job that will constitute reasonable accommodations for individuals with severe disabilities;
- Techniques to accommodate or supplant an individual's need for personal assistance or other human supports while at the worksite;
- Techniques to assist vocational rehabilitation counselors to meet the needs of individuals with severe disabilities for worksite accommodations;
- Models of closer collaboration with school-to-work transition programs to ensure efficient application of available technology for facilitating employment for youth with severe disabilities; and
- On-site demonstrations of the efficacy of these techniques through cooperative relationships with one or more employers.

Proposed Priority 6—Employability for Persons With Low Back Pain

Background

The successful rehabilitation of persons with low back pain (LBP) is of major medical and socioeconomic importance. LBP, the most common musculoskeletal disorder, is also the single greatest trigger of workers' compensation payments and the second most common cause of work loss (Kelsey, *et al.*, 1980; Andersson, 1991). Epidemiologic studies demonstrate that more than 60 percent of all individuals will experience functional limitations from low back pain during their lives (Frymoyer, 1983).

The prevalence of low back pain is increasing, as is attendant disability. According to the National Center for Health Statistics, while back or spine problems (excluding spinal cord injury) are the third leading cause of impairment in the U.S. (affecting 11.7 million persons) they are the primary cause of disability, with 5.3 million of those impairments resulting in disability. Of the individuals with low back impairments, 79 percent are in the age group 17–64, the peak of productive, wage-earning years. The cost of LBP in the U.S. is estimated to exceed $16 billion per year and is rising rapidly (Frymoyer *et al.*, 1983).

A relatively small subset of people with LBP—the 10 to 15 percent whose symptoms persist for more than three months—accounts for more than 80 percent of the costs associated with low back pain and injury. Frymoyer *et al.*, (1983) estimated the costs in lost earnings alone to be $11 billion per year for males aged 18–55. In addition to the financial burden to individuals and society, low back impairment and disability severely restrict personal productivity and quality of life.

One of the single greatest problems in the rehabilitation of people with LBP is the absence of precisely defined objective etiologic and diagnostic criteria. Because accurate diagnosis is elusive, it is not surprising that treatment programs and rehabilitation efforts for those with LBP often fail, and the condition becomes chronic. Studies attest to the high failure rate in rehabilitation when disability extends more than six months. Those with long-term low back pain account for 80 to 85 percent of the work-loss costs and compensation payments (Frymoyer, *et al.*, 1983).

Modern treatment programs take a comprehensive approach to chronic, disabling LBP, emphasizing restoration of muscle strength and aerobic capacity, vocational assessments and short-term psychological intervention and support (Mayer, *et al.*, 1985). Mayer and co-workers reported that, one year after intervention, 86 percent of the individuals treated in a comprehensive program and 40 percent of the untreated individuals were working. A comparable successful return to work rate following a similar comprehensive rehabilitation program has been reported by others.

According to Wiesal (1982), once an individual has LBP, especially chronic LBP, the most important step is restoration of function and return to work. Thus, early return to work is the prime focus of this priority. If those at high risk for acquiring disability can be identified early in the course of their LBP episodes and can be maintained on the job or quickly returned to work, a chronic condition, with associated high costs in money and self-esteem, can be prevented, and the downward spiral leading to chronic unemployment can be reversed. Work-based interventions—with the employer, individual client, medical practitioner, and counselor sharing responsibility—show promise of success.

While there are many physical therapy and medical rehabilitation interventions, there has been far less

attention to technological factors in the work place that make return to work feasible for the worker who may suffer some painful limitation. Rehabilitation engineering can be applied to improve human functioning that will enable the individual to work and participate in regular community life. At the same time, the application of technology by an employer in adapting the work place to the individual needs of a returning employee can materially hasten the return to work and increase the likelihood of job retention in a number of different industries.

Priority

The REC to improve employment outcomes for individuals with functional limitations due to LBP shall—

- Develop and test assistive devices that will enhance human functioning to permit persons with LBP to maintain employment in various occupations;
- Develop and test technological systems and workplace adaptations for various specific occupations that will enable individuals with disabilities due to LBP to obtain and retain the level of employment sustained prior to the injury;
- Develop preventative measures, tailored to various occupations, to minimizing the risk of further aggravating LBP at the worksite;
- Develop and test models for effective technological applications and rehabilitation at the workplace, in partnership with cooperating employers; and
- Disseminate findings to State vocational rehabilitation agencies, Regional Disability and Business Technical Assistance Centers, and other service providers and employers, as well as individuals with low back impairments.

Proposed Priority 7—Prosthetics and Orthotics

Background

The National Health Interview Surveys of 1983–1985 reported that 28,000 Americans had upper extremity amputations, 142,000 had lower extremity amputations, and 63,000 had lost fingers, toes, or feet. Approximately two-thirds of the individuals in each category were over 45 years of age. Of the total amputees reported, 8,000 were children under 18. These numbers are relatively small compared to the total national population, and this low prevalence results in neglect by the private sector, necessitating Federal support of research, development, training, and distribution systems that serve amputees in America.

Some of these needs can be addressed by building additional capacity for scientific research and professional service provision in the field of prosthetics and orthotics (P&O). The practice of P&O has become much more complex as the number of components involved has expanded greatly in variety and function. Components are produced in six or seven different nations. Computer Aided Design/Computer Aided Manufacture (CAD/CAM) and Computer Assisted Engineering (CAE) are increasingly common technology that is reforming the P&O practice. As the profession becomes more specialized, practitioners need to become expert at fitting upper-limb myoelectrically controlled prostheses, at CAD/CAM, at fitting children, at fitting below-knee and above-knee prostheses, and at dealing with special areas of orthotics related to a particular kind of neuromuscular deficit.

While the discussion in this background section has focused on the problems of the practitioners, it is the amputee who suffers from inadequate care, prescription and fitting of devices, or quality of devices. Among examples of the needs for improved services are those related to prosthetic feet, above-knee sockets, and orthotic devices. While there is now a plethora of "energy-storing" feet on the market, there is no scientific base to evaluate these feet in normal walking. Similarly, there has been a substantial change of practice in the prescription of above-knee sockets from the quadrilateral sockets used for more than 40 years to the so-called "ischial containment" sockets. This change appears to be almost entirely arbitrary, since there is no documentation as to which types of sockets are most beneficial to the recipients. The area of orthotics, perhaps even more than limb prosthetics, lacks a scientific and engineering base to support improvements in devices for individuals. The wide diversity of orthotic fittings for many different muscular, neuromuscular, and skeletal problems, including the introduction of so-called "tone-reducing" orthoses, adds to the complexity of this field and supports the need for further research.

Priority

The REC in prosthetics and orthotics shall conduct research and development activities that will result in—

- Increased understanding of human locomotion, primarily walking, and of the role of physiological and prosthetic limbs and joints in ambulation;
- Improved prescriptions and fitting techniques for prosthetic devices;
- Improved interface devices and other components and methods to evaluate those devices;
- Devices using stronger and lighter new materials—derived largely from "space-age technology"—and documentation of the efficacy of those devices;
- Applications of techniques of CAD/CAM and CAE to improve the accuracy, speed, and efficiency of the design, manufacturing, and fitting of prostheses and orthoses; and
- Increased capacity on the part of prosthetists, orthotists, related health care providers, rehabilitation counselors, manufacturers, and individuals with disabilities to use better prescriptive and diagnostic techniques and to select and use the most appropriate prosthetic and orthotic devices to enhance human functioning.

Proposed Priority 8—Robotics to Enhance the Functioning of Individuals With Disabilities

Background

At present, at least eight million Americans require assistance to perform routine daily activities such as eating, bathing, preparing meals, and other tasks of self-care and home-care (La Plante, 1988). Much of this assistance is provided by so-called personal attendants, who may be family members or friends or persons employed for that purpose.

Personal assistance is often necessary and may create positive interpersonal relationships. However, it has several deficits as a means to facilitate independence. It requires dependence on another person; it is costly and often difficult to arrange; and it does not necessarily contribute to the development of increased functional capacity for the individual with a disability.

In many instances, robotics and other state-of-the-art technologies can supplant the need for assistance from another person, thus enhancing the capacity of the individual with a disability to function independently at home and in society and the workplace. The benefits of using robotic devices could be particularly significant for individuals who have high-level quadriplegia and individuals who are missing limbs.

In the past three decades there has been considerable productive research in the fields of robotics and remote manipulation in industrial and defense applications. Robots are now available

to distribute mail, supplies, and food in industries and institutions and to assemble a variety of products from automobiles to computers. While this technology is potentially applicable to individuals with disabilities, reliable and cost-effective robots and robotic systems are not generally available for this purpose.

The technology of robotic systems is similar to that used in remote manipulators and externally powered prostheses and orthoses. While there has been ongoing research to develop this technology for upper extremities amputees, there has been no substantial development of powered orthoses and robotics suitable for persons with paralyzed upper extremities. For a new assistive device to contribute to increased human functioning and independence, it must provide a real and significant increase in function so that it will be used voluntarily by the person with disability for the purposes intended. This requires consumer involvement in developing and testing the devices. In order to merit purchase by third-party payers, the assistive device also must be demonstrably safe, cost-effective, maintainable, and widely available (Preising, B., Hsia, T.C., and Mittelstadt, B., 1991; Foulds, R., ed., 1990).

Priority

The REC in robotics to enhance the functioning of individuals with disabilities shall develop and evaluate—

- Safe, reliable, and cost-effective robotic systems that will enable a paralyzed person to be more independent;
- Safe, reliable, and cost-effective powered controls for upper extremity prostheses and orthoses that will provide individuals with upper extremities paralysis with the capability to perform many additional functions independently; and
- Prototype systems to be evaluated for technology transfer and commercialization.

Proposed Priority 9—Quantification of Physical Performance

Background

Human physical function is characterized mainly by purposeful movement of the extremities as in walking and arm activities, with other body muscles usually involved to provide stability, support, and reaction forces. Lifting and carrying objects involves many body muscles, as do most sport and exercise activities.

The measurement and quantification of muscle action and resulting forces and movements plays a vital role in rehabilitative diagnosis, therapy, and evaluation of progress and outcomes. Quantification of function is necessary to determine eligibility for income support and the need for specific worksite accommodations.

Measurements of physical function are of three general types. First are the static and dynamic measurements of location and movement of points on the body—including position, velocity, time, acceleration (kinesiologic), force, and pressure (dynamic)—that can be related to a defined body action. Second are the concomitant electrical and chemical measurements associated with muscle and nerve activity related to a defined body action. Third are the work related energy measurements of capacity and efficiency in functional activity (Powell, D. and Mann, R.W., 1989).

Much progress has been made in applying sophisticated technology to measurement and recording of movement variables and neuromusculature or electrochemical variables. For example: (1) there are many gait laboratories where the three-dimensional kinesiologic variables associated with walking are recorded using camera arrays while electrical activity of muscles is telemetered to central computers, and energy consumption is measured through chemical analysis of expired gasses; (2) computer programs have been developed to quantify muscle coordination and cognitive reaction times in stroke, head injury, and mental dysfunction; and (3) new measurement devices have been designed to quantify the functional ability of a worker to undertake a specific type of job or, alternatively, to provide guidance in modifying a job location to permit access and operation.

The rehabilitation field has a very sophisticated ability to measure and record variables associated with human function, but there has been no corresponding progress in interpretation of those data and the use of interpretations to influence rehabilitation outcomes. There is a need for research to refine measurements, to define relatively simple values based on measurements that can be understood and used by physicians and allied health persons to optimize treatment and outcomes, and to share this information widely.

There is an associated need for researchers and practitioners in the field to agree on and accept an increasing number of measures and values that have demonstrated usefulness and reliability in the treatment and assessment of specific disabilities. There is a need to quantify functional limitation resulting from work-related injury to better correlate compensation with the true degree of limitation.

Priority

The REC in quantification of physical performance shall conduct research and development to—

- Improve instrumentation used for the quantification of function such as balance, walking, upper extremity coordination, range of motion, strength, and other performance indicators for individuals with functional loss due to various conditions—including low back injury, developmental disability, trauma, disease, aging, congenital deformity, and others; and
- Validate the new instruments for applicability to needs of diagnosticians, service providers, and third-party payers in authorizing treatment, device procurement, and reimbursement.

In addition, the REC shall (1) provide technical assistance to those Rehabilitation Research and Training Centers and RECs that employ quantitative measures of physical function in their activities, and (2) disseminate outcomes of research and development widely, especially to practitioners and providers.

Proposed Priority 10—Technology Evaluation and Transfer

Background

In 1982, the Office of Technology Assessment (OTA) of the United States Congress stated that "a coherent, adequately funded, and well-focused program of evaluation is necessary at all levels of technology diffusion and adoption. Such a program does not currently exist in the disability-related technology sector" (OTA, Technology and Handicapped People, 1982). Today, 10 years later, the same statement can be made with equal accuracy and relevance.

Technical devices that enhance the physical and sensory functions of persons with disabilities are, with rare exception, "orphan" products developed by individual entrepreneurs and small companies with little or no capital or capacity for evaluation. Investors of venture capital require market surveys that are often beyond the capabilities of these inventors, especially as the potential market is limited and difficult to define. As a result, many inventors and product designers cannot move their technology into production.

Evaluation is critical to the diffusion of technology in two important ways. First, the purchase of a limited number

of prototypes for evaluation can provide for an entrepreneur a much needed portion of the "start-up" capital for initial tooling and production design. Second, evaluation will answer questions of safety, utility, cost-effectiveness and conditions under which the new product may be expected to perform better than any existing one. This is critical information without which no manufacturer will commit substantial funding.

There are three major components of assistive technology evaluation:

Internal Evaluation, which is part of the iterative process of design and development in which early trials illuminate design faults and lead to a continuing process of redesign and retesting. These indispensable trials are centered and directed in the developer's facility, with access to a clinical or home site. Internal evaluations usually involve only a few subjects in order to get immediate feedback. They do not constitute truly objective user trials.

Technical Evaluation, which requires scientific testing or expert analysis of the mechanical, electrical, and material factors that relate to technical performance, safety, and failure modes of a device. This evaluation is done in a testing facility with appropriate equipment and trained personnel.

User Trials, which are conducted independently in a clinical setting or in the community, require the design and administration of objective protocols, and must involve enough devices and subjects to be statistically meaningful.

To justify further investment, a device must meet the needs of enough persons to permit quantity production and distribution. A device must be compatible with an individual's lifestyle and be more cost-effective than any other solution if it is to be accepted and authorized for third-party payment. And, above all, the device must be safe and reliable. Evaluation is the only way to obtain a meaningful measure of the likelihood of success of a new device.

NIDRR has a statutory mandate to "improve the distribution of technological devices and equipment for individuals with handicaps by providing financial support for the development and distribution of such devices and equipment" (sec. 203 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760(3)). Evaluation of any device in a study that meets rigorous criteria is expensive and time consuming. But effective evaluation is the only way to determine the reality of market prognosis—the truth of a new device's potential to benefit enough persons with disabilities at a cost that is commensurate to the benefit.

Priority

The REC in technology evaluation and transfer shall have as its primary goal to facilitate the transfer of promising technology arising from individual entrepreneurs and small businesses into manufacture and distribution. To carry out this goal, the REC shall—

- Initiate, conduct, or coordinate the evaluation of selected promising devices and promulgate resulting information to consumers, providers, and others who could benefit from this information.
- Solicit and screen promising technology to determine those devices that are most likely to succeed, that are intended to meet a high priority need, and for which the capability for manufacture and distribution exists;
- Develop an equitable system to select products for evaluation and transfer so that those products with the greatest potential for practical benefit will be evaluated first;
- Design and manage evaluation protocols for technical evaluations and user trials;
- Reimburse developers for all or part of the cost to produce a sufficient number of pre-production prototype devices for evaluation;
- Arrange, coordinate, and financially support all or part of the cost of a comprehensive technical evaluation and user trials of the selected devices;
- Develop a viable policy whereby a prototype device under evaluation may, if appropriate, become the property of the user involved in the evaluation;
- Document the process used by the REC and disseminate the model process and related policies and documents to appropriate entities that may be interested in replication;
- Develop and implement a dissemination process that makes the results of all evaluations available to individuals with disabilities and to the practitioners and providers that serve them; and
- Develop a process whereby commercially successful ventures contribute some funding to enable the center to become self-sustaining at the end of the grant period.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3415, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Centers)

Dated: May 7, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–18348 Filed 8–3–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
August 4, 1992

Part VIII

Department of Education

34 CFR Part 555

Bilingual Education; Evaluation Assistance Centers Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 555

RIN 1885-AA19

Bilingual Education; Evaluation Assistance Centers Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to issue regulations implementing section 7034 of the Bilingual Education Act—the Evaluation Assistance Centers Program. The proposed regulations would provide for the establishment of at least two Evaluation Assistance Centers (EACs) through competitive grants.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James H. Lockhart, U.S. Department of Education, 400 Maryland Avenue, SW., room 5625, Switzer Building, Washington, DC 20202-6641.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: James H. Lockhart. Telephone: (202) 205-5426. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement section 7034 of the Bilingual Education Act, title VII of the Elementary and Secondary Education Act of 1965 (the Act).

Prior to fiscal year (FY) 1991, the Secretary awarded funds to EACs through competitive contracts. When the contracts for the previous EACs expired at the end of FY 1991, the Secretary changed the funding mechanism to competitive grants, as allowed by the Act. For the first competition, in the absence of implementing regulations, and in order to ensure timely awards, the Secretary evaluated applications for these grants on the basis of the selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210. These proposed regulations have been written specifically for the Evaluation Assistance Centers Program.

The proposed regulations would require EACs to provide technical assistance to (1) local educational agencies (LEAs) in conducting evaluations and using them to improve instructional services for limited English proficient (LEP) students; and (2) State educational agencies (SEAs) in developing and administering instruments and procedures to assess the educational needs and competencies of LEP persons.

The Evaluation Assistance Centers Program supports AMERICA 2000, the President's education strategy for helping the Nation move itself toward the National Education Goals, by helping LEAs and SEAs identify the educational needs and competencies of LEP persons and improve instructional services for those students. National Education Goal 3 specifically calls for all students to demonstrate competency in challenging subject matters. The Evaluation Assistance Centers Program is also an important part of the Department's efforts to evaluate the effectiveness of programs assisted under the Act.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are institutions of higher education (IHEs) receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the IHEs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 555.21, 555.31, 555.41, and 555.42 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

IHEs are eligible to apply for grants under this program. The Department needs and uses the information collected in the application to make grants. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 81.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden per respondent is estimated to range between 30 and 120 hours. This variance depends on the nature of the grant application, with new applications requiring extensive narratives addressing the selection criteria, and continuation applications requiring brief narratives describing progress toward objectives. Approximately 10 respondents are expected to submit new applications once every three years. Two respondents are expected to submit annual continuation applications in the intervening years.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 5629, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that

is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 555

Bilingual education, Elementary and secondary education, Grant programs—education, Postsecondary education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: 84.003H Bilingual Education: Evaluation Assistance Centers Program)

Dated: July 28, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 555 to read as follows:

PART 555—EVALUATION ASSISTANCE CENTERS PROGRAM

Subpart A—General

Sec

555.1 What is the Evaluation Assistance Centers Program?
555.2 Who is eligible for an award?
555.3 What geographic regions do the EACs serve?
555.4 What regulations apply?
555.5 What definitions apply?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

555.10 What kinds of activities do the EACs carry out in assisting local educational agencies?
555.11 What kinds of activities do the EACs carry out in assisting State educational agencies?

Subpart C—How Does One Apply for an Award?

555.20 What requirements pertain to establishing an EAC advisory board?
555.21 What assurances must an applicant make?

Subpart D—How Does the Secretary Make an Award?

555.30 How does the Secretary evaluate an application?
555.31 What selection criteria does the Secretary use?
555.32 What is the length of the project period?
555.33 What requirements pertain to all grantees?

Subpart E—What Conditions Must Be Met After an Award?

555.40 Must the EAC have a director?
555.41 What reports must the EAC submit to the Secretary?
555.42 What conditions must an EAC meet in coordinating services throughout its region?

Authority: 20 U.S.C. 3304, unless otherwise noted.

Subpart A—General

§ 555.1 What is the Evaluation Assistance Centers Program?

This program provides Federal financial assistance to establish and operate at least two regional Evaluation Assistance Centers (EACs). These centers provide, upon the request of State or local educational agencies, technical assistance regarding methods and techniques for identifying the educational needs and competencies of limited English proficient (LEP) persons and assessing the educational progress achieved through programs such as those assisted under the Bilingual Education Act of 1988. The EACs' activities are an important part of the Department's efforts to evaluate the operation and effectiveness of programs assisted under the Act.

(Authority: 20 U.S.C. 3301, 3304)

§ 555.2 Who is eligible for an award?

An institution of higher education (IHE), including a junior or community college, is eligible for an award under this program.

(Authority: 20 U.S.C. 3304)

§ 555.3 What geographic regions do the EACs serve?

The Secretary announces, in a notice published in the **Federal Register**, the geographic service area of each EAC.

(Authority: 20 U.S.C. 3304)

§ 555.4 What regulations apply?

The following regulations apply to the Evaluation Assistance Centers Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 555.

(Authority: 20 U.S.C. 3304)

§ 555.5 What definitions apply?

(a) The definitions in 34 CFR 500.4 apply to the Evaluation Assistance Centers Program.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Budget
Grant
Project period

(c) *Other definitions.* The following definition also applies to this part:

Evaluation Assistance Center means an administrative unit of an institution of higher education that engages in the activities specified in 34 CFR 555.10–555.12.

(Authority: 20 U.S.C. 3281, 3283, 3304)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 555.10 What kinds of activities do the EACs carry out in assisting local educational agencies?

The EACs shall assist local educational agencies (LEAs) to—

(a) Comply with the evaluation requirements in 34 CFR 500.50–500.52;

(b) Ensure that program evaluations are used effectively to improve instructional services for LEP persons;

(c) Ensure that parents and practitioners, such as directors, teachers, principals, paraprofessionals, and teacher aides, become directly involved with evaluators in the program evaluation process; and

(d) Ensure that evaluation reports are written in clear, non-technical language and provide superintendents and board members with useful information and data for improving instructional services for LEP persons in their districts.

(Authority: 20 U.S.C. 3303, 3304)

§ 555.11 What kinds of activities do the EACs carry out in assisting State educational agencies?

The EACs shall assist State educational agencies (SEAs) to—

(a) Review and evaluate programs of bilingual education, including bilingual education programs that are not funded under the Act, as specified in 34 CFR 548.11(a)(2); and

(b) Develop and administer instruments and procedures for the assessment of the educational needs and competencies of LEP persons, as specified in 34 CFR 548.11(a)(4).

(Authority: 20 U.S.C. 3304)

Subpart C—How Does One Apply for an Award?

§ 555.20 What requirements pertain to establishing an EAC advisory board?

(a) An applicant shall establish an advisory board, composed of no fewer than five members, to assist in the development of the application and provide continuing guidance during the project period.

(b) The board membership must include representatives of the SEAs, LEAs, and IHEs within the geographic service area of the applicant. At least two-thirds of the board membership must be representatives of SEAs and LEAs.

(Authority: 20 U.S.C. 3304)

§ 555.21 What assurances must an applicant make?

In its application for an award for an EAC, an applicant shall include assurances that it will—

(a) Provide to the Secretary monthly schedules of workshops and activities and disseminate the schedules;

(b) Ensure that technical assistance materials developed as a result of grant activities are appropriately disseminated;

(c) Administer and maintain control of funds provided under this program; and

(d) Supervise the employment of personnel specified in § 555.31(b) and not commingle funds provided for this employment with State or local funds.

(Authority: 20 U.S.C. 3304)

Subpart D—How Does the Secretary Make an Award?

§ 555.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 555.31.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points.

(c) Subject to the distribution of the reserved points, the maximum possible score for each complete criterion is indicated in parentheses.

(d) The Secretary distributes an additional 15 points among these criteria. For each competition, as announced through a notice in the **Federal Register**, the Secretary indicates how these 15 points are distributed.

(Authority: 20 U.S.C. 3304)

§ 555.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Understanding of regional needs.* (5 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has assessed the needs of its region; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Quality of key personnel.* (25 points) The Secretary reviews each application to determine—

(1) The extent to which the staffing plan for the EAC provides evidence that the project director and other key personnel (including a principal investigator, if applicable) have appropriate graduate training and experience in the areas of evaluation and assessment required to conduct the proposed activities, such as—

(i) Methodology in bilingual education, such as found in—

(A) Programs of transitional bilingual education authorized under section 7021(a)(1) of the Act;

(B) Programs of developmental bilingual education authorized under section 7021(a)(2) of the Act; and

(C) Special alternative instructional programs authorized under section 7021(a)(3) of the Act;

(ii) Educational practices at various levels from preschool to graduate school;

(iii) Technology-based instruction; and

(iv) Experience with educational entities, such as LEAs, SEAs, and IHEs;

(2) The extent to which each person referred to in paragraph (b)(1) of this section has other training and experience related to the objectives of the project;

(3) The time that each person referred to in paragraph (b)(1) of this section will commit to the project;

(4) Any other bilingual education skills, if appropriate, that the persons referred to in paragraph (b)(1) of this section may bring to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(c) *Coordination with other evaluation activities.* (5 points) The Secretary reviews each application to determine—

(1) The degree to which the applicant has coordinated with State and regional organizations administering evaluation programs in developing the application;

(2) The adequacy of the applicant's plans for coordination with State, regional, and national evaluation activities; and

(3) The adequacy of the applicant's plans to coordinate with other EACs funded under this part to achieve an equitable distribution of assistance.

(d) *Center advisory board.* (5 points) The Secretary reviews each application to determine—

(1) The extent to which representatives of the geographic service area of the EAC and representatives of the SEAs, LEAs, and IHEs within the service area have agreed to serve in an advisory capacity;

(2) The professional evaluation background of the representatives selected for board membership; and

(3) The adequacy of the applicant's plans to invoive the advisory board in the activities of the proposed EAC.

(e) *Quality of the organization and management.* (15 points) The Secretary reviews each application to determine the quality of the organization and management capabilities for operating the EAC, including—

(1) The past performance and accomplishments of the applicant, indicating the ability to complete successfuly the proposed project plan;

(2) The manner in which the applicant contributes IHE personnel resources, such as professional and non-professional staff, to achieve its objectives;

(3) The manner in which the applicant proposes to utilize its resources, such as libraries and other centers, to achieve its objectives;

(4) The extent to which the facilities, equipment, and other resources to be used are adequate and are accessible to persons with disabilities; and

(5) Proposed use of technology in the EAC and coordination between the EAC and other units of the IHE that will maximize services to clients.

(f) *Plan of Operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the EAC, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable; and

(iv) Include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable.

(h) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 3304)

§ 555.32 What is the length of the project period?

The Secretary approves a project period of three years.

(Authority: 20 U.S.C. 3304)

§ 555.33 What requirements pertain to all grantees?

A grantee shall assure the Secretary that it will—

(a) Work closely with its EAC advisory board in carrying out project activities;

(b) Coordinate project activities with other Federal programs that are related to the purposes of the Evaluation Assistance Centers Program; and

(c) Assist grantees funded under Part A of the Act in the implementation of the evaluation requirements specified in 34 CFR 500.50–500.52.

(Authority: 20 U.S.C. 3303–3304)

Subpart E—What Conditions Must Be Met After an Award?

§ 555.40 Must the EAC have a director?

An EAC must have a full-time director.

(Authority: 20 U.S.C. 3304)

§ 555.41 What reports must the EAC submit to the Secretary?

(a) An EAC must submit to the Secretary the following reports:

(1) The monthly schedules specified in § 555.21(a).

(2) An annual evaluation report.

(b) The EAC may submit the reports and schedules specified in paragraph (a) of this section in hard copy or diskette form.

(Authority: 20 U.S.C. 3304)

§ 555.42 What conditions must an EAC meet in coordinating services throughout its region?

In carrying out its general responsibilities under the Act, each EAC must—

(a) Inform SEAs, LEAs and IHEs about the range of services offered by the EAC;

(b) Establish an EAC advisory board, as specified in § 555.20;

(c) Achieve an equitable distribution of assistance throughout its service area;

(d) Work cooperatively and coordinate efforts with the Multifunctional Resource Centers, the National Clearinghouse for Bilingual Education, and other programs funded under the Act; and

(e) Work cooperatively with the other EAC or EACs funded under the Act by sharing materials, books, information, and other resources.

(Authority: 20 U.S.C. 3304)

[FR Doc. 92–18351 Filed 8–3–92; 8:45 am]

BILLING CODE 4000–01–M

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Tuesday
August 4, 1992

Part IX

Federal Reserve System

Applications, Hearings, Determinations, etc.: Wabasha Holding Co. and Meridian Bancorp, Inc., et al.; Notices

FEDERAL RESERVE SYSTEM

Wabasha Holding Company; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Wabasha Holding Company, Wabasha, Minnesota; to acquire First State Insurance of Wabasha, Inc., Wabasha, Minnesota, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18381 Filed 8-3-92; 8:45 am]

BILLING CODE 6210-01-F

Meridian Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 26, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Meridian Bancorp, Inc., Reading, Pennsylvania; to merge with Peoples Bancorp, Inc., Lebanon, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. United Bankshares, Inc., Charleston, West Virginia; to merge with Liberty Bancshares, Inc., Montgomery, West Virginia, and thereby indirectly acquire The Montgomery National Bank, Montgomery, West Virginia.

2. United Bankshares, Inc., Charleston, West Virginia; to merge with Summit Holding Corporation, Beckley, West Virginia, and thereby indirectly acquire Raleigh County National Bank, Beckley, West Virginia.

Board of Governors of the Federal Reserve System, July 29, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18382 Filed 8-3-92; 8:45 am]

BILLING CODE 6210-01-F

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federal register

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federal register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Vol. 57, No. 151
Wednesday, August 5, 1992

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-92-001]

RIN 0581-AA64

Revisions of User Fees for Cotton Classification, Testing and Standards; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule which was published Tuesday, June 23, 1992 (57 FR 27889). The final rule relates to the user fees charged for cotton classification, testing and cotton standards.

EFFECTIVE DATE: August 5, 1992.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202-720-3193.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections affect members of the public who use the cotton classification services, cotton testing services and cotton standards provided by the Cotton Division of the Agricultural Marketing Service, U.S. Department of Agriculture. These services are provided under the Cotton Statistics and Estimates Act (7 U.S.C. 471-476) in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102-237, and the United States Cotton Standards Act (7 U.S.C. 51-65). The fees charged for the services provided were increased by the final rule, effective July 1, 1992.

Need for Correction

As published, the paragraph supporting the need for the final rule to be effective less than thirty days following publication in the **Federal Register** was inadvertently omitted. In addition, a typographical error was made in a table contained in the **SUPPLEMENTARY INFORMATION.**

Correction of Publication

Accordingly, the publication on June 23, 1992 of the final regulations, which were the subject of CN-92-001, is corrected as follows:

1. Under **SUPPLEMENTARY INFORMATION,** on page 27891, in the third column, item 13.1b, the current fee is $78.00.

2. Also under **SUPPLEMENTARY INFORMATION,** on page 27892, in the first column, the following paragraph is inserted prior to the **List of Subjects in 7 CFR Part 28.**

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the **Federal Register** because the effective date for the new fees is intended to coincide with the beginning of the harvest of new crop cotton. Accordingly, this rule is made effective July 1, 1992.

Dated: July 28, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-18429 Filed 8-4-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 28

RIN 0581-AA68

[CN-91-010]

Grade Standards for American Upland Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the classification of cotton to provide for the separation of grade into its chief components of color and leaf. Each component will stand on its own so that its effect on end use value or processing capability can be fully and separately evaluated. The Advisory Committee on Universal Cotton Grade Standards met June 11 and 12, 1993, unanimously recommended this change in the application of the cotton grade standards. This final rule also eliminates the descriptive standards for Light Gray, Gray, and Plus grades, because they are no longer needed to describe special color and leaf combinations. For the same reason, the averaging rule is eliminated. No changes are being made in the fifteen (15) physical standards for grade of American Upland cotton. Fourteen of the twenty-nine (29) descriptive standards are eliminated, resulting in a cost savings. The Agency's ability to provide useful and cost-effective classification, standardization and market news services is enhanced by this final rule.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn (202) 720-3193.

SUPPLEMENTARY INFORMATION: A proposed rule detailing this change in the application of the cotton grade standards was published on May 20, 1992 in the **Federal Register** (57 FR 21358). A thirty-day comment period was provided for interested persons to respond to the proposed rule, and only one written comment, in support of the action, was received. The Advisory Committee on Universal Cotton Standards met during June 11 and 12 to consider the proposal in Memphis Tennessee, and the members voted unanimously to recommend that USDA adopt the proposal without any modifications. Therefore, this rule is being finalized as proposed.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act

(5 U.S.C. 601 *et seq.*). The changes do not impose any significant additional costs or duties upon users of the service or any other segment of the cotton industry and therefore do not have the requisite economic impact. Further, the standards are applied equally to all size entities by employees of the Department.

There are no information collection requirements contained in this final rule.

Pursuant to the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*), any standard or change or replacement to the standards shall become effective not less than one year after the date promulgated. It is important that the changes in this final rule become effective with the beginning of the 1993 crop year on July 1, 1993, so that classification of the entire 1993 crop can be based upon the same application of the standards.

Background

Pursuant to the authority contained in the United States Cotton Standards Act, the Secretary of Agriculture maintains official cotton standards of the United States for the grades of American Upland cotton. These standards are used for the classification of American Upland cotton and provide a basis for the determination of value for commercial purposes.

The existing official cotton standards for the grades of American Upland cotton are listed and described in the regulations at (7 CFR 28.402–28.475). There are 15 physical standards represented by practical forms, and 29 descriptive standards for which practical forms are not made. Six of the descriptive standards describe the poorest quality cotton which make up the Below Grade classification (7 CFR 28.475).

The first grade standards for American Upland cotton were formally promulgated by USDA in 1914. They have been revised several times since, mainly because of changing varietal characteristics and advances in harvesting and ginning practices. The last complete revision of the standards became effective in 1987 (51 FR 23037).

Need for Revising Standards

The Secretary's Advisory Committee on Universal Cotton Standards unanimously recommended that the two major components of grade—color and leaf—be determined and recorded separately, beginning with the 1993 crop. Each component will stand clearly on its own so that its effect on end use value or processing capability can be fully and separately evaluated. Manufacturers will be able to decide the utility value of each component, and can send clear signals to producers by means of premiums and discounts.

The current grading system combines color and trash into composite grades, complicating the individual evaluation of these components. The separation of the composite grade into its chief components of color and leaf enhances USDA's ability to provide useful and cost-effective cotton classification, standardization, and market news services.

Revisions

The existing official cotton standards for the grades of American Upland cotton listed and described in the regulations at (7 CFR 28.402–28.480) are replaced by these standards.

There are 30 official cotton standards established by this final rule for color grades of American Upland cotton. Of these 30 standards, 15 are physical standards represented by the currently existing practical forms and 15 are descriptive standards for which practical forms are not made. The 15 physical standards for color grades each have the same color ranges as are currently maintained in the corresponding physical standards for the grades of American Upland Cotton for Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, Good Ordinary, Strict Middling Spotted, Middling Spotted, Strict Low Middling Spotted, Low Middling Spotted, Strict Good Ordinary Spotted, Middling Tinged, Strict Low Middling Tinged, and Low Middling Tinged described at 7 CFR 28.402, 28.403, 28.405, 28.407, 28.409, 28.411, 28.413, 28.431, 28.432, 28.433, 28.434, 28.435, 28.442, 28.443, and 28.444. Ten of the descriptive color standards for which practical forms will not be made have the same color ranges as currently described in the standards for the grades of American Upland cotton for Good Middling Light Spotted, Strict Middling Light Spotted, Middling Light Spotted, Strict Low Middling Light Spotted, Low Middling Light Spotted, Strict Good Ordinary Light Spotted, Good Middling Spotted, Strict Middling Tinged, Strict Middling Yellow Stained, and Middling Yellow Stained described at 7 CFR 28.420, 28.421, 28.422, 28.423, 28.424, 28.425, 28.430, 28.441, 28.451, and 28.452. The remaining five descriptive color standards for which practical forms are not made describe the poorest quality cotton and make up the Below Color Grade Standards. These below color grade standards are Below Good Ordinary Color, Below Strict Good Ordinary Light Spotted Color, Below Strict Good Ordinary Spotted Color, Below Low Middling Tinged Color, and Below Middling Yellow Stained Color.

Eight official cotton standards are established by this final rule for leaf grades of American Upland cotton. Of these, seven are physical standards represented by currently existing practical forms and one is a descriptive standard to describe the poorest quality cotton for which practical forms are not made. These seven physical standards for leaf grades each have the same leaf content ranges as currently maintained in the corresponding physical standards for the white grades of American Upland Cotton for Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary described at 7 CFR 28.402, 28.403, 28.405, 28.407, 28.409, 28.411, and 28.413. The descriptive Below Leaf Grade Standard is described as containing more leaf than Leaf Grade Standard 7.

For practical considerations, the white color standards and the leaf standards established by this final rule are represented by the same set of samples. There is one container for the Good Middling color that has leaf content of Leaf Grade 1, one container for Strict Middling color that has Leaf Grade 2, one container for Middling color that has Leaf Grade 3, one container for Strict Low Middling color that has Leaf Grade 4, one container for Low Middling color that has Leaf Grade 5, one container for Strict Good Ordinary color that has Leaf Grade 6, and one container for Good Ordinary color that has Leaf Grade 7.

Additionally, the containers for the physical standards for the Spotted color and the Tinged color standards established by this final rule shall have leaf content equivalent to that of the corresponding white standards. There will be one container for the Strict Middling Spotted color that has Leaf Grade 2, one container for Middling Spotted color that has Leaf Grade 3, one container for Strict Low Middling Spotted color that has Leaf Grade 4, one container for Low Middling Spotted color that has Leaf Grade 5, one container for Strict Good Ordinary Spotted color that has Leaf Grade 6, one container for Middling Tinged color that has Leaf Grade 3, one container for Strict Low Middling Tinged color that has Leaf Grade 4, and one container for Low Middling Tinged color that has Leaf Grade 5.

The table of symbols and code numbers used in lieu of cotton grade names in 7 CFR 28.525 are revised to reflect these changes.

In addition, authority citations are revised as appropriate.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

For the reasons set out in the preamble, this final rule amends title 7, chapter I, part 28, subpart C, of the Code of Federal Regulations as follows:

1. The Table of Contents for § § 28.401 to 28.480 and the undesignated centerheads for those sections, as revised and added, now read as follows:

PART 28—[AMENDED]

Subpart C—Standards

* * * * *

Official Cotton Standards of the United States for the Color Grade of American Upland Cotton

White Cotton

28.401 Good Middling Color.
28.402 Strict Middling Color.
28.403 Middling Color.
28.404 Strict Middling Color.
28.405 Low Middling Color.
28.406 Strict Good Ordinary Color.
28.407 Good Ordinary Color.

Light Spotted Cotton

28.411 Good Middling Light Spotted Color.
28.412 Strict Middling Light Spotted Color.
28.413 Middling Light Spotted Color.
28.414 Strict Low Middling Light Spotted Color.
28.415 Low Middling Light Spotted Color.
28.416 Strict Good Ordinary Light Spotted Color.

Spotted Cotton

28.421 Good Middling Spotted Color.
28.422 Strict Middling Spotted Color.
28.423 Middling Spotted Color.
28.424 Strict Low Middling Spotted Color.
28.425 Low Middling Spotted Color.
28.426 Strict Good Ordinary Spotted Color.

Tinged Cotton

28.431 Strict Middling Tinged Color.
28.432 Middling Tinged Color.
28.433 Strict Low Middling Tinged Color.
28.434 Low Middling Tinged Color.

Yellow Stained Cotton

28.441 Strict Middling Yellow Stained Color.
28.442 Middling Yellow Stained Color.

Below Color Grade Cotton

28.451 Below Color Grade Cotton.

Leaf Grades

28.461 Leaf Grade 1.
28.462 Leaf Grade 2.
28.463 Leaf Grade 3.
28.464 Leaf Grade 4.
28.465 Leaf Grade 5.
28.466 Leaf Grade 6.
28.467 Leaf Grade 7.

Below Leaf Grade Cotton

28.471 Below Leaf Grade Cotton.

General

28.480 General.

* * * * *

2. The undesignated centerheading following § 28.307 is revised to read as follows:

Official Cotton Standards of the United States for the Color Grade of American Upland Cotton

3. The authority citation for part 28, subpart C, Official Cotton Standards of the United States for the Color Grade of American Upland Cotton, is revised to read as follows:

Authority: Section 28.401 to 28.451 issued under Sec. 10, 42 Stat. 1519; (7 U.S.C. 61). Interpret or apply Sec. 6, 42 Stat. 1518, as amended; (7 U.S.C. 56), unless otherwise noted.

4. Sections 28.408, 28.409, and 28.410 are removed; § 28.401 is added immediately following the undesignated centerheading "White Cotton"; and §§ 28.402, 28.403, 28.404, 28.405, 28.406, and 28.407 are revised to read as follows:

White Cotton

§ 28.401 Good Middling Color.

Good Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Good Middling, effective July 1, 1987."

§ 28.402 Strict Middling Color.

Strict Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Middling, effective July 1, 1987."

§ 28.403 Middling Color.

Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling, effective July 1, 1987."

§ 28.404 Strict Low Middling Color.

Strict Low Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling, effective July 1, 1987."

§ 28.405 Low Middling Color.

Low Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling, effective July 1, 1987."

§ 28.406 Strict Good Ordinary Color.

Strict Good Ordinary Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary, effective July 1, 1987."

§ 28.407 Good Ordinary Color.

Good Ordinary Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Good Ordinary, effective July 1, 1987."

5. Sections 28.411, 28.412, and 28.413 are revised; §§ 28.414, 28.415, and 28.416 are added; and an undesignated centerhead is added immediately preceding § 28.411 to read as follows:

Light Spotted Cotton

§ 28.411 Good Middling Light Spotted Color.

Good Middling Light Spotted Color is color which in spot or color, or both, is between Good Middling Color and Good Middling Spotted Color.

§ 28.412 Strict Middling Light Spotted Color.

Strict Middling Light Spotted Color is color which in spot or color, or both, is between Strict Middling Color and Strict Middling Spotted Color.

§ 28.413 Middling Light Spotted Color.

Middling Light Spotted Color is color which in spot or color, or both, is between Middling Color and Middling Spotted Color.

§ 28.414 Strict Low Middling Light Spotted Color.

Strict Low Middling Light Spotted Color is color which in spot or color, or both, is between Strict Low Middling Color and Strict Low Middling Spotted Color.

§ 28.415 Low Middling Light Spotted Color.

Low Middling Light Spotted Color is color which in spot or color, or both, is between Low Middling Color and Low Middling Spotted Color.

§ 28.416 Strict Good Ordinary Light Spotted Color.

Strict Good Ordinary Light Spotted Color is color which in spot or color, or both, is between Strict Good Ordinary Color and Strict Good Ordinary Spotted Color.

6. The undesignated centerheading preceding § 28.420 is revised; § 28.420 is removed; §§ 28.421, 28.422, 28.423, 28.424, and 28.425 are revised; and § 28.426 is added, to read as follows:

Spotted Cotton

§ 28.421 Good Middling Spotted Color.

Good Middling Spotted Color is color which is better than Strict Middling Spotted Color.

§ 28.422 Strict Middling Spotted Color.

Strict Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Middling Spotted, effective July 1, 1987."

§ 28.423 Middling Spotted Color.

Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling Spotted, effective July 1, 1987."

§ 28.424 Strict Low Middling Spotted Color.

Strict Low Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling Spotted, effective July 1, 1987."

§ 28.425 Low Middling Spotted Color.

Low Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling Spotted, effective July 1, 1987."

§ 28.426 Strict Good Ordinary Spotted Color.

Strict Good Ordinary Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary Spotted, effective July 1, 1987."

7. The undesignated centerhead preceding § 28.430 is revised; §§ 28.430 and 28.435 are removed; §§ 28.431, 28.432, 28.433, and 28.434 are revised to read as follows:

Tinged Cotton

§ 28.431 Strict Middling Tinged Color.

Strict Middling Tinged Color is color which is better than Middling Tinged Color.

§ 28.432 Middling Tinged Color.

Middling Tinged Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling Tinged, effective July 1, 1987."

§ 28.433 Strict Low Middling Tinged Color.

Strict Low Middling Tinged Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling Tinged, effective July 1, 1987."

§ 28.434 Low Middling Tinged Color.

Low Middling Tinged Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling Tinged, effective July 1, 1987."

8. The undesignated centerhead preceding § 28.441 is revised; §§ 28.441 and 28.442 are revised; and §§ 28.443 and 28.444 are removed to read as follows:

Yellow Stained Cotton

§ 28.441 Strict Middling Yellow Stained Color.

Strict Middling Yellow Stained Color is color which is deeper than that of Strict Middling Tinged Color.

§ 28.442 Middling Yellow Stained Color.

Middling Yellow Stained Color is American Upland cotton which in color is deeper than Middling Tinged Color.

9. The undesignated centerhead preceding § 28.451 is revised; § 28.451 is revised; and § 28.452 is removed to read as follows:

Below Color Grade Cotton

§ 28.451 Below Color Grade Cotton.

Below color grade cotton is American Upland cotton which is lower in color grade than Good Ordinary, or Strict Good Ordinary Light Spotted, or Strict Good Ordinary Spotted, or Low Middling Tinged, or Middling Yellow Stained. In cotton classification, the official designation for such cotton is Below Color Grade. The term Below Good Ordinary Color, or Below Strict Good Ordinary Light Spotted Color, or Below Strict Good Ordinary Spotted Color, or Below Low Middling Tinged Color, or Below Middling Yellow Stained Color and other additional explanatory terms considered necessary to describe adequately the condition of the cotton may be entered on classification memorandums or certificates.

10. An undesignated centerheading following § 28.451 is added to read as follows:

Official Cotton Standards of the United States for the Leaf Grade of American Upland Cotton

11. The authority citation for part 28, subpart C, Official Cotton Standards of the United States for the Leaf Grade of American Upland Cotton, is added, and the authority citation following § 28.482 is removed, to read as follows:

Authority: Sections 28.461 to 28.482 issued under Sec. 10, 42 Stat. 1519; (7 U.S.C. 61). Section 28.482 also issued under Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c) and 90 Stat. 1841–1846 as amended (7 U.S.C. 15b). Interpret or apply Sec. 6, 42 Stat. 1518, as amended; (7 U.S.C. 56), unless otherwise noted.

12. The undesignated centerheading immediately preceding § 28.460 is revised; § 28.460 is removed; §§ 28.461, 28.462, and 28.463 are revised; and §§ 28.464, 28.465, 28.466, and 28.467 are added to read as follows:

Leaf Grades

§ 28.461 Leaf Grade 1.

Leaf Grade 1 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States,

American Upland, Good Middling, effective July 1, 1987."

§ 28.462 Leaf Grade 2.

Leaf Grade 2 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Middling, effective July 1, 1987."

§ 28.463 Leaf Grade 3.

Leaf Grade 3 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling, effective July 1, 1987."

§ 28.464 Leaf Grade 4.

Leaf Grade 4 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling, effective July 1, 1987."

§ 28.465 Leaf Grade 5.

Leaf Grade 5 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling, effective July 1, 1987."

§ 28.466 Leaf Grade 6.

Leaf Grade 6 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary, effective July 1, 1987."

§ 28.467 Leaf Grade 7.

Leaf Grade 7 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Good Ordinary, effective July 1, 1987."

13. The undesignated centerheading preceding § 28.470 is revised; § 28.470 is removed; § 28.471 is revised; and § 28.472, § 28.473, the undesignated centerheading immediately preceding § 28.475, and § 28.475 are removed to read as follows:

Below Leaf Grade Cotton

§ 28.471 Below Leaf Grade Cotton.

Below leaf grade cotton is American Upland cotton which is lower in leaf grade than Leaf Grade 7. In cotton classification, the official designation for such cotton is Below Leaf Grade. Other additional explanatory terms considered necessary to describe adequately the condition of the cotton may be entered on classification memorandums or certificates.

14. Section 28.480 is revised to read as follows:

General

§ 28.480 General.

(a) American Upland cotton which in color is within the range of the color standards established in this part shall be designated according to the color standard irrespective of the leaf content. American Upland cotton which in leaf is within the leaf standards established in this part shall be designated according to the leaf standard irrespective of the color.

(b) The term preparation is used to describe the degree of smoothness or roughness with which cotton is ginned and the relative neppiness or nappiness of the ginned lint. Normal preparation for any color grade of American Upland cotton for which there is a physical color standard shall be that found in the physical color standard. Normal preparation for any color grade of American Upland cotton for which there is a descriptive color standard shall be that found in the physical standards for color used to define the descriptive color grade. Explanatory terms considered necessary to adequately describe the preparation of cotton may be entered on classification memorandums or certificates.

15. The authority citation for part 28, subpart C, Official Cotton Standards of the United States for the Grade of American Pima Cotton, is revised to read as follows:

Authority: Secs. 28.501 to 28.510 issued under Sec. 10, 42 Stat. 1519 (7 U.S.C. 61). Interpret or apply Sec. 6, 42 Stat. 1518, as amended (7 U.S.C. 56.)

Symbols and Code Numbers Used in Recording Cotton Classification

16. The authority citation for part 28, subpart C, Symbols and Code Numbers Used in Recording Cotton Classification, is added to read as follows:

Authority: Sec. 28.525 issued under Sec. 10, 42 Stat. 1519 (7 U.S.C. 61). Interpret or apply Sec. 6, 42 Stat. 1518, as amended (7 U.S.C. 56).

17. In § 28.525, paragraph (a) is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 28.525 Symbols and code numbers.

* * * * *

(a) *Symbols and Code numbers used for Color Grades of American Upland Cotton.*

Color grade	Symbol	Code No.
Good Middling	GM	11
Strict Middling	SM	21
Middling	Mid	31
Strict Low Middling	SLM	41
Low Middling	LM	51
Strict Good Ordinary	SGO	61
Good Ordinary	GO	71
Good Middling Light Spotted.	GM Lt SP	12
Strict Middling Light Spotted.	SM Lt Sp	22
Middling Light Spotted	Mid Lt Sp	32
Strict Low Middling Light Spotted.	SLM Lt Sp	42
Low Middling Light Spotted.	LM Lt Sp	52
Stict Good Ordinary Light Spotted.	SGO Lt Sp	62
Good Middling Spotted	GM Sp	13
Strict Middling Spotted	SM Sp	23
Middling Spotted	Mid Sp	33
Strict Low Middling Spotted.	SLM Sp	43
Low Middling Spotted	LM Sp	53
Strict Good Ordinary Spotted.	SGO Sp	63
Strict Middling Tinged	SM Tg	24
Middling Tinged	Mid Tg	34
Strict Low Middling Tinged.	SLM Tg	44
Low Middling Tinged	LM Tg	54
Strict Middling Yellow Stained.	SM YS	25
Middling Yellow Stained	Mid YS	35
Below Grade—(Below Good Ordinary).	BG	81
Below Grade—(Below Strict Good Ordinary Light Spotted).	BG	82
Below Grade—(Below Strict Good Ordinary Spotted).	BG	83
Below Grade—(Below Low Middling Tinged).	BG	84
Below Grade—(Below Middling Yellow Stained).	BG	85

(b) Symbols and Code Numbers used for Leaf Grades of American Upland Cotton.

Leaf grade	Symbol	Code No.
Leaf Grade 1	LG1	1
Leaf Grade 2	LG2	2
Leaf Grade 3	LG3	3
Leaf Grade 4	LG4	4
Leaf Grade 5	LG5	5
Leaf Grade 6	LG6	6
Leaf Grade 7	LG7	7
Below Leaf Grade	BLG	8

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Dated: July 31, 1992.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 92-18621 Filed 8-4-92; 8:45 am]
BILLING CODE 3410-09-M

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): Participation and Homeless Individuals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends an interim regulation, published December 14, 1989, governing the Special Supplemental Food Program for Women, Infants and Children (WIC), implementing the mandates of section 212 of the Hunger Prevention Act of 1988 (Pub. L. 100-435), enacted on September 19, 1988. The purpose of this rulemaking is to facilitate participation of otherwise eligible homeless persons in WIC. In accordance with the Act, this rulemaking defines "homeless individual" and specifically identifies WIC as a supplement to food assistance which may be provided by soup kitchens, shelters, and other forms of emergency food assistance. The definition of "homeless individual" specifies types of overnight facilities whose otherwise eligible residents must be granted access to WIC when caseload is available if such facilities meet conditions insuring that the individuals, not the facility, benefits from the program. The rulemaking also affords State agencies the option to extend WIC benefits to persons associated with other residential facilities, called "institutions," provided that the same conditions are met. Also pursuant to legislative mandates, the rule requires State agencies to include in their State plans a description of how they will provide Program benefits to, and meet the special nutritional and nutrition education needs of, homeless individuals; a plan for disseminating information about program availability and eligibility to organizations serving the homeless; and a plan to establish a homeless facility's or an institution's compliance with the three mandatory conditions.

These regulations further require that competent professional authorities take into account the special needs and problems of homeless individuals when prescribing supplemental foods. Finally, States may, under the final rule, request permission from the Food and Nutrition Service (FNS) to make substitutions for foods required in the food packages in order to accommodate the circumstances of the homeless.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia, 22302, (703) 305-2746.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed by the Assistant Secretary for Food and Consumer Services under Executive Order 12291, and has been determined to be not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

A number of reporting and recordkeeping burdens were included in the interim rule, published December 14, 1989, for Sections 246.4, 246.7(i), and 246.10. Those burdens were approved by OMB, under control number 0584-0332, for use through December 31, 1992. No changes in the reporting/recordkeeping burden have been incorporated into the final rule.

Executive Order 12372

The Special Supplemental Food Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 (June 24, 1983)).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "**EFFECTIVE DATE**" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In this WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Background

There have never been specific, direct regulatory barriers to the participation of homeless persons in the WIC Program, such as the need for a fixed address or a durational residency requirement. State agencies could, within the parameters of the regulations, accommodate the special needs of the homeless, e.g., by tailoring homeless participants' food packages to include, for example, ultra-high temperature (UHT) milk, which does not have to be refrigerated, or smaller, single-serving packages of cereal or juice. Current regulations also permit adaptations of food delivery systems, such as issuing more food instruments for smaller quantities of food to homeless participants, so that storage is not necessary.

Given the considerable latitude already available to States regarding service to the homeless, the enactment of Public Law 100-435 did not radically alter existing WIC Program operations. The statutory definition of "homeless individual" found at section 212(a) of Public Law 100-435 (Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) specifies the types of overnight

facilities in which homeless persons may stay and still be assured of eligibility for the WIC Program if they meet program requirements. Section 212(b) strengthens the long-held principle that WIC is to be a "supplemental" program by amending section 17(c) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(c)(1)) to provide that WIC "shall be supplementary to—(A) the food stamp program; (B) any program under which foods are distributed to needy families in lieu of food stamps; and (C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance." Taken in conjunction, the Department interpreted those amendments as a mandate that WIC is supplemental to the receipt of food assistance through specific types of overnight facilities generally designed to offer some degree of room, board, and services to homeless persons on a temporary basis. Thus, these regulations continue to provide that otherwise eligible homeless persons in specified types of facilities must be admitted to the WIC Program, to the extent that caseload is available at the local agency where they apply.

Pursuant to these legislative mandates, the Department published an interim rule (54 FR 51289) on December 14, 1989. The interim rule established definitions in § 246.2 for two basic types of facilities: (1) "Homeless facilities," whose otherwise eligible residents must be considered eligible for WIC, and (2) other types of residential accommodations, called "institutions," whose residents the State agency may serve, at its discretion. "Homeless facilities" are defined based on the legislative definition of "homeless individuals" specified in the Hunger Prevention Act of 1988. "Institutions" include more traditional types of residential, long-term accommodations such as rehabilitative or correctional facilities. In addition, § 246.7(m) of the interim rule required that both types of accommodations meet specific conditions in order for their residents to be served in WIC. Because the regulatory prohibition in § 246.12(o) against issuance of supplemental foods for use in institutions that serve meals was frequently misinterpreted, it was stricken by the interim rule. In its place, and consistent with the mandates and intent of Pub. L. 100–435, the interim rule incorporated into the Program regulations at § 247.7(m) the conditions from FNS Instruction 803–13 which ensure that WIC benefits are in fact supplemental for the participant: That the participant, rather than the "homeless facility" or "institution," gains from the program.

The interim rule provided for a 120-day comment period, which ended on April 13, 1990. During that period, a total of 38 comments were received from a variety of sources, including State and local WIC agencies, other State and local agency staff members, homeless shelter staff, and professional organizations. The Department would like to thank all of the commenters who responded to the interim rule. Their comments proved particularly helpful in formulating this final rule.

The remainder of this preamble discusses the major concerns expressed by commenters regarding each provision of the interim rule and explains the reasoning behind the decisions embodied in this final rule. Provisions on which no comments were received and no changes were made are not addressed in the preamble and remain as published in the interim rule.

1. Definitions

a. *Homeless facility.* As indicated above, the interim rulemaking established conditions (§ 246.7(m)(1)(i)) which residential accommodations with meal service must meet in order for their residents to be served in WIC. These conditions were intended to ensure that program benefits accrue to the WIC participant and not to the homeless facility or institution. There was no need to apply these conditions to private residences or to residential accommodations without meal service since these living arrangements would not generally preclude a participant from receipt of benefits under the same terms and conditions as any other participants.

The accommodations to which the conditions of § 246.7(m)(1)(i) do apply are those where there is inherent risk that Program participants would not receive the benefits to which they are entitled. Such accommodations are divisible into those whose residents must, in keeping with the mandates of Public Law 100–435, be served if they meet program eligibility requirements and caseload is available ("homeless facilities"), and those whose residents may, at the State's discretion, be served ("institutions"). The regulatory definition of "homeless facility" (§ 246.2) derives from the statutory definition of "homeless individual" found at section 212(a) of Public Law 100–435 and means any of the following facilities which provide meal service: A supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This definition includes all of the facility types referenced under the legislative definition of "homeless individual" except "a temporary accommodation in the residence of another individual." This latter category was excluded in the interim rule because, as explained above, the conditions of § 246.7(m)(1)(i) do not need to be applied to private residences. Persons in these situations receive WIC benefits under the same terms and conditions as any other applicant; that is, there is minimal or no inherent likelihood that the participant living in this situation would not benefit directly from WIC, whereas such a possibility is likely in an institutional or homeless facility setting.

Three commenters indicated that additional clarification was needed regarding the definition of "homeless facility" relative to the exclusion of the statutory reference to private residences. All three commenters observed that temporary accommodation in other people's homes is a common method of obtaining shelter for homeless individuals, and asked that the final rule specifically address the treatment of such individuals as potentially eligible WIC participants. However, this living arrangement does not in and of itself have a bearing on program eligibility. Income eligibility in WIC is based on income and economic relationships of people residing together. Public Law 100–435 did not establish different income eligibility standards for homeless persons.

These same commenters also expressed concern about the absence of a definition of "temporary" in the context of a private residence. Again, since persons who stay in private residences participate in WIC under the same terms and conditions as all others, the issues of how long or how temporary their stay will be are not at all relevant to their receipt of WIC benefits. Thus, there is no need for the Department to define "temporary" in this context.

One commenter requested that the definition of "homeless facility" be clarified by the inclusion of a definition of "meal service." The Department was asked to specify a minimum number of meals which a facility must provide in order to be considered as providing a legitimate meal service. The real issue underlying the concept of meal services for residents of homeless facilities/institutions is whether that facility or

institution is providing foods in a manner which could result in the institution or nonparticipants benefiting from the WIC foods regardless of the frequency or quantity of food services offered. It is impracticable to list every possible type of meal service in order to determine whether the requirements of § 246.7(m)(1)(i) should be applied to a given facility. State agencies will have to decide, on a case by case basis, whether or not there is potential for nonparticipants to gain access to WIC foods, or for the facility or institution to benefit from WIC at the expense of the participant. Therefore, "meal service" is not defined in the final rule.

Finally, one commenter requested that the phrases, "a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings," and "a facility that provides a temporary residence for individuals intended to be institutionalized," be clarified in the final rule by providing examples. For purposes of clarification, some of the many types of situations that would fall under this category of homeless facilities are identified in this preamble. The following are offered as illustrations of places not designed for, or ordinarily used as, regular sleeping accommodations for human beings and include, but are by no means limited to, stairwells, park benches, deserted (often condemned) buildings, and automobiles. In regard to facilities providing a temporary residence for individuals intended to be institutionalized, many of the more structured institutions, such as rehabilitation centers or correctional facilities (prisons), as well as some homeless facilities (welfare hotels or battered women's shelters) do not serve people on a simple walk-in basis. In order to accommodate such individuals until all of the necessary paperwork can be completed or until a vacancy occurs, a number of intermediate facilities have been established. As with "regular" homeless facilities and institutions, these intermediate facilities may vary widely in terms of the services provided and the length of time someone may stay there. Definitions of the above phrases are not added to the final rule because the Department could not possibly capture all such situations.

For reasons discussed above, the definition of "homeless facility" is adopted as final without change.

b. *Other Definitions.* The definitions of "institution," "family," and "homeless individual" set forth in the interim rule were not addressed by any commenters. Therefore, all these definitions are adopted as final without change.

2. State Plan Amendments (Section 246.4(a))

The interim rule established several additional requirements for the annual State Plan, which are summarized as follows: (1) A description of how the State agency will provide program benefits to, and meet the special nutrition education needs of, homeless participants; (2) a plan for the annual public announcement and distribution of information on the availability of program benefits to organizations and agencies serving homeless individuals; (3) a description of the State's plans (if any) to adapt methods of delivering benefits to accommodate the special needs and problems of homeless individuals; and (4) a description of the process by which the State agency will ensure that homeless facilities and, if the State opts to include them, institutions serving otherwise eligible WIC applicants can satisfy the conditions established in § 246.7(m)(1)(i).

The first three of the required State plan amendments are mandated by Section 212(c) of Pub. L. 100-435. None of the comments received on the interim rulemaking addressed the first two of them specifically. Therefore, those two requirements found at §§ 246.4(a)(6) and (a)(4) are adopted as final without change.

Three commenters did object, however, to the requirement (§ 246.4(a)(19)) for a description of the State agency's plan to ensure compliance with the conditions stipulated for homeless facilities/institutions in § 246.7(m)(1)(i). All three indicated that the term "ensure" implies an onerous enforcement burden for State agencies. They also pointed out that compliance with the conditions is entirely voluntary on the part of the homeless facility or institution, which does not directly benefit from compliance.

The Department did not intend that State agencies conduct exhaustive on-site compliance reviews of such facilities. Rather, States should take appropriate compliance measures, based on the number and location of such facilities, demands on their administrative resources, food service arrangements, and other variables. State agency efforts in this area will be subject to Federal review as part of the Management Evaluation process. In recognition of the fact that different procedures and levels of effort will be appropriate depending upon the circumstances, the State Plan requirement will be modified to mandate that the State agency describe the process by which it will establish, to the extent practicable, that homeless facilities, and institutions if it chooses to make the program available to them, meet the three conditions established in § 246.7(m)(1)(i).

Finally, as to the fourth requirement concerning modification of benefit delivery systems to meet the needs of homeless persons, one commenter proposed that States be required to describe in their procedure manuals any new policies on food delivery procedures or on tailoring food packages implemented to meet the special needs and circumstances of the homeless, in addition to including such policies and procedures elsewhere in the State Plan. While the Department concurs that the procedure manual is a logical place to include this information, it is not necessary to regulate a step which should be taken as a matter of course, in order for a State agency to implement these provisions effectively at the local level. Therefore, the final regulation remains as stated in the interim rule.

3. Conditions Applicable to Homeless Facilities and Institutions (Section 246.7(m)(1)(i))

a. Implementation. The interim rule established in § 246.7(m)(1)(i) the following conditions, which must be met by homeless facilities and institutions that have any type of food service in order for their residents to participate in WIC:

(1) The accommodation does not accrue financial or in-kind benefit from a person's participation in the program;

(2) Foods provided by WIC are not subsumed into a communal food service, but are available exclusively to the WIC participant for whom they were issued;

(3) Institutional proxies do not, as a standard procedure, pick up food instruments for all program participants in their accommodations or transact the food instruments in bulk; and

(4) The accommodation places no constraints on the ability of the participant to partake of the supplemental foods and nutrition education available under the program.

Of the 38 comments received addressing the interim rule on participation of homeless individuals in WIC, 25 perceived these conditions as a barrier to Program participation and as creating an environment for inequitable treatment. In spite of the preponderance of comments to this effect, the Department still believes that regulatory conditions must be established to ensure, as mandated by Public Law 100-435, that WIC benefits supplement the participant's diet rather than replace

food which a homeless facility or an institution would otherwise provide, and that a homeless person's ability to participate fully in WIC is protected. Not only is this mandated by Pub. L. 100-435, it is a basic tenet of WIC Program design.

The Department must emphasize that the conditions are, and have always been, intended for the protection of the WIC participant residing in a homeless facility or in an institution. The WIC food package is intended for exclusive consumption by the participant; subsuming the WIC foods into the facility's general food service would afford the participant no discernible dietary advantage, because the WIC foods intended to improve that individual's health or nutritional condition would be dispersed among the facility's residents. Thus, the facility and its non-WIC residents would gain at the expense of the WIC participant for whom the foods were intended. Rather than erecting a barrier to program participation, the conditions ensure that the program retains its full potential to make a positive difference in the lives of individual participants in institutional settings. Instead of creating an environment for unequal treatment, these conditions ensure an environment for equal treatment. The conditions permit WIC participants in homeless facilities and institutions to have the same opportunity as other program participants to benefit fully from WIC participation. Finally, the conditions ensure that benefits are directed only to eligible persons as intended.

Comments also identified ambiguity in the third condition stipulating that "Institutional proxies do not, as a standard procedure, pick up food instruments for all program participants in their respective homeless facilities or transact the food instruments in bulk" § 246.7(m)(1)(i)(C)). In response to public comments, the Department has reexamined all four conditions in order to be sure that they do in fact protect WIC participants without creating barriers to participation in the Program. Upon reconsideration, it has been determined that the condition regarding the use of institutional proxies may create an unnecessary obstacle. Therefore, this condition has been deleted from the final rule, and 246.7(m)(1)(i) has been amended accordingly. State agencies should be careful, however, to ensure that adult participants are allowed to participate in the process of picking up and transacting their food instruments to the greatest extent possible, within the institutional framework, so that they are aware of the foods prescribed for them as well as the intended benefits of such foods.

b. Establishing compliance. Perception of the conditions as barriers to participation may have been influenced by an overestimation of the difficulty homeless facilities and institutions would encounter in complying with the conditions. Four commenters voiced the concern that homeless facilities and institutions might be reluctant or unable to change their mode of operations in order to be in compliance with the conditions. When establishing compliance with these conditions, State and local agencies should be aware that the facility or institution does not have to alter its standard procedures for all residents in order to be in compliance.

Rather, the facility can vary from its usual practices so as to meet the three conditions with respect only to residents who are also WIC participants or applicants. Sections 246.7 (m)(1)(i) and (m)(2) are amended in the final rule to provide this clarification. The Department expects that most homeless facilities or institutions will be willing to make certain exceptions to their standing rules or procedures in order to accommodate WIC participants.

Homeless facilities/institutions must meet the three requirements of § 246.7(m)(1)(i) (as amended in this final rule) in order for WIC participants to receive full benefits of the program. However, the homeless facilities/institutions themselves do not receive any program funds or provide program services. Further, they do not stand to benefit directly from the WIC participation of their residents, nor are they subject to any legal liability for failure to comply with the conditions. Thus, unlike the relationship between the State agency and its vendors and local agencies, the State's relationship with homeless facilities/institutions is informal rather than contractual. It does not entail an application process or appeal procedure, nor does it carry with it any specific monitoring requirements. Consistent with this attitude, problems encountered with individual homeless shelters or institutions may be resolved with as little formality as possible, e.g., through a telephone call as opposed to a structured review.

However, the State or local agency must develop a reasonable way of determining that a homeless facility or institution meets the requisite conditions. As indicated earlier in this preamble, the Department does not anticipate an excessive amount of difficulty in this area, and expects that facilities not meeting the conditions or not willing to change to make the necessary exceptions for WIC participants will be more the exception than the general rule.

Twenty-two commenters expressed concern over the difficulty and administrative inconvenience State and local agencies may experience in determining compliance by a homeless facility or an institution. To address these concerns, the Department has amended the regulatory language pertaining to homeless facility/institutional compliance. Specifically, rather than stating that the State or local agency must "confirm" compliance, as stipulated in § 246.7(m)(1)(i) of the interim rulemaking, this final rule requires that the State or local agency "establish, to the extent practicable," compliance with the three conditions. Additionally, whereas §246.7(m)(1)(iii) of the interim rule required a homeless facility or institution to advise the State or local agency of its lack of compliance with the conditions in § 246.7(m)(1)(iii) of the final rule, facilities and institutions are requested to provide such notification. This change is made in acknowledgment of the fact that the relationship between the State or local agency and the homeless facility or institution is informal rather than contractual. The procedure of securing a written statement of compliance from the homeless facility/institution described in the preamble to the interim rule was provided as an example, not as a mandatory implementation procedure. State or local agencies may choose to determine compliance through means that do not include such a statement.

4. Short-Term Certificate Option (Section 246.7(m)(4))

In an effort to further facilitate timely access to WIC for homeless persons, the interim rule provided for short-term certifications prior to the State's establishing that the homeless facilities or institutions in which they reside met the conditions of § 246.7(m)(1)(i). Under § 246.7(m)(4) of the interim rule, the State agency could authorize or require its local agencies to certify, for a period of up to 60 days, persons residing in homeless facilities or institutions whose compliance with any of the conditions had not yet been determined. During this period, the State or local agency was expected to determine if the homeless facility/institution was willing and able to meet the conditions for its WIC-eligible residents. If compliance was established within the 60-day period of short-term certification, the person's certification period was extended to the

standard length for other persons in the same category, i.e., pregnant women, infants, etc. In the event that the homeless facility/institution did not meet the conditions, the State or local agency was expected to provide timely information to the participant about any other accommodations for the homeless in the area which met the conditions. The participant was then either disqualified or required to relocate to a compliant accommodation.

If a homeless facility or institution proved not to be in compliance with the conditions, or if it became known that such an accommodation initially determined to be compliant no longer met these conditions, § 246.7(i)(6) of the interim rule required that all WIC participants residing in it receive 30 days' notice of the need to sever connection with the homeless facility or institution in order to continue participating in WIC. Section 246.7(m)(4) of the interim rule provided special consideration to persons who became homeless during their certification periods and took up residence in noncompliant homeless facilities or institutions. Unlike persons who were homeless at the time of WIC certifications, these persons were permitted to participate to the end of their certification periods.

Fourteen commenters addressed the short-term certification option; all of them opposed it. The commenters contended that homeless participants whose shelters are not willing to comply with the Department's conditions are unfairly penalized for circumstances beyond their control. Eleven comments focused on the discrepant treatment of WIC participants who were homeless at the time of application and those who became homeless after their certification periods had begun. Another five comments addressed the administrative burdens imposed on local agencies by requiring them to disqualify residents of noncompliant facilities and/or institutions at the end of 60 days.

The Department believes that provision of WIC foods for a resident of a homeless facility or an institution which does not or cannot assure that the WIC foods will not be subsumed into the general meal service provided by the facility (or meet the other two conditions) would be of little or no benefit to the participant, whereas these foods could otherwise make a significant difference in the health and nutritional status of a participant not residing in a noncompliant accommodation. If the participant in the homeless facility does not receive any more food than s/he would if s/he were not a WIC participant, then the food benefit of the WIC Program has been misused. On the other hand, the Department acknowledges that WIC is not just a food supplement for low-income women, infants, and children. Participants also benefit from nutrition education and health care referrals.

The Department believes that noncompliant facilities will generally prove to be the exception rather than the rule. State and local agencies are encouraged to contact such facilities directly in an effort to determine whether some sort of accommodation can be made for the WIC participants who are staying there, keeping in mind that the purpose behind the conditions is primarily to ensure that WIC benefits are issued responsibly to those most in need of them, and that participants have full and free access to such benefits. For purposes of clarification, § 246.7(m)(3) has been modified to delineate the specific circumstances under which homeless persons shall be certified to receive WIC benefits for a full certification period; and new §§ 246.7(m) (4)–(6) have been added to delineate the conditions under which persons applying for continued benefits may be subsequently certified.

The Department acknowledges, however, that instances may occur when a noncompliant facility is the only option available to a homeless applicant. Rather than place the applicant in the untenable situation of having to choose between a place to sleep and receiving WIC benefits, the Department has amended § 246.7(m)(3) in the final rule to stipulate that persons in homeless facilities or institutions whose compliance with the three conditions had not been determined prior to their date of certification shall be enrolled for one full certification period. This revision should also eliminate the "double standard" for persons who are homeless at the time of certification and those who become homeless after their certification period has begun.

The participant should, during the course of that initial certification period, be alerted to the need for alternative arrangements before subsequent certifications can be made. A new § 246.7(m)(4) has been added to provide that if such arrangements are not possible by that time, no further WIC food benefits—except infant formula—may be issued to that participant for subsequent certifications (unless the participant vacates the homeless facility or institution or it subsequently becomes compliant). Thus, at the State agency's discretion, persons living in facilities/institutions found to be noncompliant may continue to receive nutrition education and referral services even if they choose not to relocate.

Infant formula is exempted from the prohibition against further food issuance because it is not among the foods characteristically purchased by homeless facilities and institutions, can easily be stored separately from other foods, and does not lend itself to use in communal meal service. Therefore, it is likely to be used exclusively by the participant regardless of the institution's meal service procedures, and not likely to have been supplied by the institution in the absence of WIC.

It should further be noted that this provision would ease the administrative burden on local agencies which would otherwise have to disqualify such participants if their accommodation were found to be noncompliant with the three conditions. However, under existing regulations, such persons do have the right to appeal the discontinuation of food benefits. For consistency, § 246.7(i)(6) is revised in the final rule by deleting the 30-day advance notice provision for residents of noncompliant homeless facilities/institutions.

5. State Option to Serve Persons in "Institutions" (Section 246.7(m)(2))

Only one comment was received related to the State option to serve otherwise eligible persons residing in "institutions." The commenter expressed concern that State agencies would be unduly pressured into serving residents of institutions, who generally have access to regular meal services, thereby diminishing the availability of WIC benefits to those most in need, i.e., regular participants and otherwise eligible residents of homeless facilities. The Department believes that individual State agencies are in the best position to make the decision on whether or not to serve otherwise eligible residents of institutions such as correctional facilities or residential drug/alcohol rehabilitation centers. Therefore, no change is made to this provision in the final rule.

6. Food Package Adaptations for Homeless Participants (Section 246.10(e))

The interim rule amended § 246.10(e) not only to allow (and even encourage) State agencies to explore creative approaches to food package adaptations for homeless participants within the existing parameters of the regulations, but also to allow States to submit plans, which may include elimination or

substitution of specific foods, for food packages intended to address the specific needs of individual homeless participants. The Department will approve alternatives for homeless persons only if fully justified and directed only to homeless individuals in special circumstances, such as those without consistent access to facilities for sanitary food storage, preparation, and service, and only after all alternatives within existing food package regulations have been exhaustively explored.

A total of six comments addressed the adaptations to the regular WIC food package which may be needed by homeless participants. Two commenters suggested that the current process for obtaining FNS approval to adapt the food packages could be costly as well as burdensome, and as such, might act as a deterrent to States which might otherwise consider making such adaptations; two commenters were concerned about the potential for increasing WIC food package costs through the use of foods such as UHT milk or single-serving containers of cereal or juice; and the remaining two comments were in support of the provision as written.

The Department does not believe that the requirement to obtain FNS approval prior to eliminating or substituting specific foods in order to tailor WIC food packages more directly to the special needs and circumstances of homeless participants is an excessively burdensome one. Given the latitude and variety already existent in the food package design, current WIC food packages should be sufficiently flexible in most instances to meet the special needs of homeless persons. As in the case of adaptations to accommodate cultural eating patterns, however, there may be instances in which still greater flexibility in food packages may be warranted and the only feasible substitution is not currently allowed. Adaptations which involve substitution or elimination of specific foods beyond the latitude already provided in WIC regulations would have to be approved by FNS. Requests for approval should describe the substitution or elimination proposed, the special circumstances which lead the State to believe the substitution or elimination to be advisable, and the avenues already explored, within the parameters of WIC food package regulations, which have proved to be infeasible or ineffectual in meeting the needs of participants in the specified circumstances. The approval process now affords States even greater latitude in providing foods in forms which will be most beneficial to their participants. The approval requirement simply entails submitting to FNS information and analysis which the State agency would already have gathered and completed in the process of determining what substitutions or eliminations are best suited to the needs of its homeless participants. Furthermore, FNS is committed to the timely consideration of all such requests. Therefore, no change in the requirement to obtain FNS approval for substitutions and eliminations of foods which cannot be accomplished within the parameters of the current WIC regulations has been made in the final rulemaking.

Section 246.10(e)(1) of the interim rule inadvertently referred only to food package adaptations made to accommodate homeless persons, i.e., residents of homeless facilities. Similar adaptations may also be appropriate for residents of institutions, in the event that the State agency has opted to make WIC benefits available to such institutions. To correct this technical oversight, § 246.10(e)(1) is amended in the final rule to include residents of institutions, at the State's discretions, as well as homeless individuals for whom adaptations may be made to accommodate special storage or other logistical problems.

In regard to the concerns expressed over the significantly higher costs of food items selected to meet the needs of homeless participants, the Department is aware that ready-to-feed infant formula, smaller packages of juice or cereal, and UHT milk are more expensive than the items normally provided in a WIC food package. However, the Department has always emphasized the importance of tailoring food packages to meet the particular needs of each participant, and allowing the purchase of special formulas when medically warranted. While the basic food packages have been designed to meet the nutritional needs of most participants, they are not always appropriate for all participants. Congress recognized that homeless participants have particular needs and problems which are more frequently beyond their control: lack of sanitation, storage, food preparation facilities, and inability to protect and maintain their belongings, to name a few. Therefore, single-serving containers of cereal and juice, for example, may be the most appropriate method of providing benefits to some homeless participants. Furthermore, the number of homeless participants expected to be served in any one State is not likely to be so great as to impact significantly on the State agency's available funds. State agencies are encouraged to accept attendant increases in food package costs rather than to diminish the potential benefits of program participation for the homeless.

One commenter was concerned that the stipulation in § 246.10(e)(2)(iii) of the interim regulations, to the effect that the cost of a substitute food must not exceed the cost of the item it is intended to replace, applies to adaptations as well as to substitutions. Adaptations such as ready-to-feed infant formula, UHT milk, or single-serving boxes of cereal, which can be made within existing food package guidelines, are not affected by this stipulation, i.e., may be made for WIC food packages issued to homeless participants even if the cost of the adaptation is higher than the item it replaces. The cost-neutrality issue of this provision is still intended to apply to foods which are substituted for other foods in the WIC food package. However, when the same food (or type of food), such as milk, is being provided in a different package, e.g., UHT instead of its usual more perishable form, the fact that UHT milk is more expensive than refrigerated milk should not keep a local agency from making such an adaptation to accommodate a homeless participant who does not have access to refrigerator facilities. Therefore, no change is made to this provision in the final rule.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and Child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, the interim rule which was published at 54 FR 51289–51296 on December 14, 1989, is adopted as a final rule with the following changes:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101–147, 103 Stat. 877 (49 U.S.C. 1751); sec. 3201, Pub. L. 100–690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100–460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 99–35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 96–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.4, paragraph (a)(19) is revised to read as follows:

§ 246.4 State plan.

(a) * * *

(19) The State agency's plan to establish, to the extent practicable, that homeless facilities, and institutions if it chooses to make the Program available to them, meet the conditions established in § 246.7(m)(1)(i) of this part, if residents of such accommodations are to be eligible to receive WIC Program benefits.

* * * * *

3. In § 246.7:

a. The first sentence of paragraph (i)(6) is revised;

b. The introductory text of paragraph (m)(1)(i) is revised;

c. Paragraph (m)(1)(i)(C) is removed;

d. Paragraph (m)(1)(i)(D) is redesignated as paragraph (m)(1)(i)(C);

e. Paragraph (m)(1)(iii) is revised;

f. Paragraph (m)(2) is revised;

g. Paragraph (m)(3) is removed;

h. Paragraph (m)(4) is redesignated as paragraph (m)(3) and revised; and

i. Paragraphs (m)(4)–(m)(6) are added.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(i) * * *

(6) A person who is about to be disqualified from Program participation at any time during the certification period shall be advised in writing not less than 15 days before the disqualification. * * *

* * * * *

(m) * * *

(1) * * *

(i) Establish, to the extent practicable, that the homeless facility meets the following conditions with respect to resident WIC participants:

* * * * *

(iii) Request the homeless facility to notify the State or local agency if it ceases to meet any of these conditions.

(2) The State agency may authorize or require local agencies to make the Program available to applicants who meet the requirements of paragraph (b) of this section, but who reside in institutions which meet the conditions of paragraphs (m)(1)(i)(A)–(C) of this section with respect to resident WIC participants.

(3) The State or local agency shall attempt to establish to the best of its ability,whether a homeless facility or institution complies with the conditions of paragraph (m)(1)(i) (A)–(C) of this section with respect to WIC participants. If caseload slots are available, full certification periods shall be provided to the following:

(i) Participants who are residents of a homeless facility or institution which has been found to be in compliance with the conditions of paragraph (m)(1)(i)(A)–(C) of this section;

(ii) Participants who are residents of a homeless facility or institution whose compliance with the conditions of paragraph (m)(1)(i)(A)–(C) of this section has not yet been established; and

(iii) Participants for whom no other shelter alternative is available in the local agency's service delivery area.

(4) If a homeless facility or institution has been determined to be noncompliant during the course of a participant's initial certification period, participants applying for continued benefits may be certified again, but the State agency shall discontinue issuance of WIC foods, except infant formula, to the participant in such accommodation until the accommodation's compliance is achieved or alternative shelter arrangements are made. If certified, such participants shall continue to be eligible to receive all other WIC benefits, such as nutrition education and health care referral services.

(5) The State agency shall continue to the end of their certification periods the participation of residents of a homeless facility or institution which ceases to comply with the conditions of paragraph (m)(1)(i)(A)–(C) of this section.

(6) As soon as the State or local agency determines that a homeless facility/institution does not meet the conditions of paragraph (m)(1)(i) (A)–(C) of this section, it shall refer all participants using such accommodation to any other accommodations in the area which meet these conditions.

4. In § 246.10, paragraph (e)(1) is amended by revising the first sentence to read as follows:

§ 246.10 Supplemental foods.

* * * * *

(e) *Plans for substitutions or eliminations.* (1) The State agency may submit to FNS a plan for substitution of food(s) acceptable for use in the Program to allow for different cultural eating patterns and substitution or elimination of a category of foods to accommodate the special needs of homeless persons, and/or residents of institutions if the State agency chooses to serve such persons under § 246.7(m)(2) of this part. * * *

* * * * *

Dated: July 24, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92–18518 Filed 8–4–92; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 240

[INS No. 1443–92; AG Order No. 1609–92]

RIN 1115–AC96

Waiver of Fees; Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule redesignates § 240.48 of 8 CFR part 240 as § 240.20, and revises certain provisions of the interim rule concerning the procedures to request waivers of fees for applications for Temporary Protected Status (TPS) filed with district directors and service center directors. This rule is necessary to set forth the test to be used to establish inability to pay and to standardize the documentation which may be requested by adjudicating officers in making a determination on fee waiver requests for TPS. This rule also amends § 103.7 of 8 CFR part 103 to reflect that waivers of fees for applications for Temporary Protected Status may be granted pursuant to 8 CFR 240.20.

EFFECTIVE DATE: August 5, 1992.

FOR FURTHER INFORMATION CONTACT: Janet M. Thomas, TPS Coordinator, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone number (202) 514–5014.

Background

The Immigration and Naturalization Service ("the Service" or "INS") published an interim rule with request for comments at 56 FR 32500 on July 17, 1991. In drafting the final rule, the INS considered more than 35 comments representing the views of alien advocacy organizations, attorneys, and individuals.

Many commenters requested that the Service use the Public Welfare, Poverty Guidelines (federal poverty guidelines) as an equitable and well-established standard in determining inability to pay. After reviewing the comments, the Service has elected to determine inability to pay when essential expenditures equal or exceed gross income, unless the applicant has assets from which to pay the fee without substantial hardship. This formula is a more sensitive, and therefore a more

accurate, indication of whether an applicant does in fact have the ability to pay the required fee. Unlike the federal poverty guidelines standard, such test may allow an applicant whose income is above the federal poverty guidelines to be eligible for a fee waiver if the applicant has essential extraordinary expenditures due, for example, to a medical condition. The Service believes that the income/assets minus essential expenditures test will benefit some applicants in situations that merit a waiver but would not be covered by the federal poverty guidelines. Moreover, the Service notes that fee-paying applicants subsidize the costs of fee-waived applications; therefore, it is fair to require that all applicants who are reasonably able to pay the fee should do so.

Other commenters expressed the need to expand the definition of "essential extraordinary expenditures." After a review of the comments, the Service has expanded the definition of "essential extraordinary expenditures." However, the list provided in the rule is not exhaustive, and the adjudicating officer may determine that other expenses also constitute "essential extraordinary expenditures."

Several commenters also stated that under the interim rule, the Service was unable to grant a fee waiver if an applicant had income barely in excess of essential expenses but insufficient to cover the TPS fees. The Service has modified the interim rule to provide for a fee waiver if the income in excess of essential expenditures is less than the TPS fees for registration and employment authorization. Some commenters were also concerned with the possibility that adjudicators would consider as a factor in denying fee waivers the cost to the INS of administering the TPS program. The final rule specifically prohibits consideration of the cost of administering the TPS program as a justification for the denial of a fee waiver to an otherwise qualified applicant.

Some commenters stated that the documents required to prove inability to pay are burdensome. The Service's position is that if the affidavit submitted in support of the fee waiver includes the necessary information, and if the adjudicating officer finds it credible and sufficient, no other documents will be required. Moreover, the rule takes into account the fact that the applicant may not have the requested documents and provides for the use of an affidavit when the applicant declares under oath that such documents are unavailable.

Another issue raised by commenters was the possible identification of relatives in unlawful status who do not apply for TPS but who reside with a TPS fee waiver applicant. Unlike the Legalization Program, in which information obtained from the application could only be used to adjudicate the application and to prosecute for fraud, neither the TPS statute nor the regulation prohibits or restricts the use of the information in the TPS application to commence administrative deportation or exclusion proceedings against persons not entitled to temporary protected status.

The interim rule had designated a new § 240.48 of 8 CFR part 240 for fee waiver requests. This final rule redesignates § 240.48 as § 240.20 of 8 CFR part 240 so that it becomes part of the General Provisions of the TPS regulation. While no comments were received concerning the placement of the new section of the regulation, the Service is placing the new section within the General Provisions of the regulation to emphasize that the provision for fee waivers applies to citizens from all countries that are designated for TPS.

Summary of the Regulation

The amendment to 8 CFR part 240 specifies the standards to be applied and the necessary information to be contained in an applicant's affidavit to establish his or her inability to pay the required TPS fee. The applicant has the burden of proof in establishing his or her inability to pay. The adjudicating officer has discretion to decide whether that burden has been met. Even if the applicant declares that his or her gross income for the three months prior to the filing of the fee waiver request is less than his or her essential expenditures for such period, and that he or she does not have sufficient assets from which to pay the fee, the adjudicating officer may request additional information if he or she is not satisfied with the accuracy of the information or if the income or essential expenditures have not been adequately detailed. Fees for other applications, petitions, appeals, motions, or requests may be waived pursuant to the provisions of 8 CFR 103.7(c). Fee waiver requests addressed to immigration judges, or to the Board of Immigration Appeals, are considered under 8 CFR part 3.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 240

Administrative practice and procedure, Immigration.

Accordingly, parts 103 and 240 of title 8 of the Code of Federal Regulations are amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended].

2. In § 103.7, paragraph (c)(4) is amended by revising the reference to "8 CFR 240.48" to read: "8 CFR 240.20".

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

3. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

§ 240.48 [Redesignated as § 240.20]

4. Section 240.48 is redesignated as § 240.20 and revised to read as follows:

§ 240.20 Waiver of Fees.

(a) Any of the fees prescribed in 8 CFR 103.7(b) which relate to applications to the district director or service center director for Temporary Protected Status may be waived if the applicant establishes that he or she is unable to pay the prescribed fee. The applicant will have established his or her inability to pay when the adjudicating officer concludes, on the basis of the requisite affidavit and of any other information submitted, that it is more probable than not that:

(1) The applicant's gross income from all sources for the three-month period

prior to the filing of the fee waiver request, including income received or earned by any dependent in the United States, was equaled or exceeded by essential expenditures for such three-month period; and

(2) The applicant does not own, possess, or control assets sufficient to pay the fee without substantial hardship.

(b) For purposes of this section, essential expenditures are limited to reasonable expenditures for rent, utilities, food, transportation to and from employment, and any essential extraordinary expenditures, such as essential medical expenses, or expenses for clothing, laundry, and child care, to the extent that the applicant can show that those expenditures made during the three-month period prior to the filing of the fee waiver request were reasonable and essential to his or her physical well-being or to earning a livelihood.

(c) For purposes of this section, the TPS registration fee (including the fee for employment authorization, if applicable) shall be considered an essential expenditure. A fee waiver will be granted if the sum of the fees for TPS registration and employment authorization equals or exceeds income and assets that remain after deducting other essential expenditures.

(d) If an adjudicating officer is satisfied that an applicant has established inability to pay, he or she shall not deny a fee waiver due to the cost of administering the TPS program.

(e) For purposes of this section, the following documentation shall be required:

(1) The applicant seeking a fee waiver must submit an affidavit, under penalty of perjury, setting forth information to establish that he or she satisfies the requirements of this section. The affidavit shall individually list:

(i) The applicant's monthly gross income from each source for each of the three months prior to the filing of the fee waiver request;

(ii) All assets owned, possessed, or controlled by the applicant or by his or her dependents;

(iii) The applicant's essential monthly expenditures, itemized for each of the three months prior to the filing of the fee waiver request, including essential extraordinary expenditures; and

(iv) The applicant's dependents in the United States, his or her relationship to those dependents, the dependents' ages, any income earned or received by those dependents, and the street address of each dependent's place of residence.

(2) The applicant may also submit other documentation tending to substantiate his or her inability to pay.

(f) If the adjudicating officer concludes based upon the totality of their circumstances that the information presented in the affidavit and in any other additional documentation is inaccurate or insufficient, the adjudicating officer may require that the applicant submit the following additional documents prior to the adjudication of a fee waiver:

(1) The applicant's employment records, pay stubs, W–2 forms, letter(s) from employer(s), and proof of filing of a local, state, or federal income tax return. The same documents may also be required from the applicant's dependents in the United States.

(2) The applicant's rent receipts, bills for essential utilities (for example, gas, electricity, telephone, water), food, medical expenses, and receipts for other essential expenditures.

(3) Documentation to show all assets owned, possessed, or controlled by the applicant or by dependents of the applicant.

(4) Evidence of the applicant's living arrangements in the United States (living with relative, living in his or her own house or apartment, etc.), and evidence of whether his or her spouse, children, or other dependents are residing in his or her household in the United States.

(5) Evidence of the applicant's essential extraordinary expenditures or those of his or her dependents residing in the United States.

(g) The adjudicating officer must consider the totality of the information submitted in each case before requiring additional information or rendering a final decision.

(h) All documents submitted by the applicant or required by the adjudicating officer in support of a fee waiver request are subject to verification by the Service.

(i) In requiring additional information, the adjudicating officer should consider that some applicants may have little or no documentation to substantiate their claims. An adjudicating officer may accept other evidence, such as an affidavit from a member of the community of good moral character, but only if the applicant provides an affidavit stating that more direct documentary evidence in unavailable.

Dated: July 27, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–18490 Filed 8–4–92; 8:45 am]

BILLING CODE 4410–10–M#

FEDERAL ELECTION COMMISSION

11 CFR Part 200

[Notice 1992–12]

Administrative Regulations

AGENCY: Federal Election Commission.

ACTION: Final Rule.

SUMMARY: The Commission is creating a new subchapter B in chapter I of 11 CFR titled "Administrative Regulations." This subchapter will contain Commission regulations concerning administrative practice and procedure. The Commission is also publishing final rules on petitions for Rulemaking, the first part in subchapter B, to be found in 11 CFR part 200. These regulations provide the public with easy access to the procedures for filing rulemaking petitions with the Commission. In addition, the regulations delineate the process and agency considerations used for the disposition of petitions filed with the Commission. Finally, the regulations define what constitutes the agency record for the petition process. Further information is provided in the supplementary information which follows.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 553(e) of the Administrative Procedure Act ("APA") provides: "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. 553(e). Although the APA does not prescribe procedures for petitions made pursuant to section 553(e), the Attorney General's Manual on the APA states that every agency with rulemaking powers "should establish * * * procedural rules governing the receipt, consideration, and disposition of petitions filed." U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act at 38 (1947).

The Commission endorsed a procedure for consideration of rulemaking petitions in April 1980 upon receipt of its first petition. In response to that petition, the Commission adopted internal guidelines to govern the petition process. See, Democratic National Committee and Democratic Senatorial Campaign Committee Petition for Rulemaking (Commission Memorandum No. 845 (4/9/80)).

Since the adoption of its procedures for the receipt and consideration of petitions, the Commission has received periodic requests for a description of those procedures. In an effort to make information on the petition process more readily available to the regulated public, the Commission on May 13, 1992, published a Notice of Proposed Rulemaking ("NPRM"), seeking comments on a proposal that these procedures be codified as part of title 11 of the Code of Federal Regulations. 57 FR 20430. No comments were received in response to this Notice.

The Commission's main purpose in adopting these rules is to aid the public by advising prospective petitioners what is necessary to activate Commission consideration of a petition for rulemaking and what the process will be upon receipt. By prescribing uniform format guidelines for the submission of petitions, the new rules will also help ensure that the Commission obtains from the outset the type of information needed for an informed decision on a rulemaking petition.

Statement of Basis and Purpose

Section 200.1. Purpose and Scope

This section summarizes the contents of this new part.

Section 200.2. Procedural Requirements

This section contains format and content requirements for the submission of petitions to the Commission pursuant to any of the Commission's governing statutes. It also allows the Commission to consider suggestions for rulemaking contained in an advisory opinion request or complaint without following the procedures of this part. The section offers petitioners the opportunity to submit proposals in draft regulatory form, but does not require this.

Section 200.3. Processing of Petitions

This section sets forth the procedures for consideration of rulemaking petitions.

Upon receipt of a petition, the Commission, upon recommendation of the Office of General Counsel, will publish a Notice of Availability in the **Federal Register**. The Notice of Availability will state that a petition has been filed with the Commission, that it is available for public inspection, and that comments are being solicited. The Notice of Availability will not take any position on the merits of the petition—the merits will not be considered until at least the expiration of the comment period on the Notice of Availability.

Depending upon the nature of the petition, the Commission has in the past determined that additional procedures may contribute to its decision on whether to commence a rulemaking proceeding. These regulations retain the practice of initiating a Notice of Inquiry, an Advance Notice of Proposed Rulemaking, a public hearing or other procedures should the Commission deem this appropriate in connection with a particular rulemaking. The flexibility of these additional procedures permits the Commission to receive comments and additional information on other issues related to or raised by the petition.

Section 200.4. Disposition of Petitions

This section describes the Commission's actions after a decision whether to initiate a rulemaking has been made. If the Commission decides to initiate a rulemaking based on the petition, it will publish a Notice of Inquiry, an Advance Notice of Proposed Rulemaking ("ANPRM") or a Notice of Proposed Rulemaking, as appropriate, in the **Federal Register**. If the Commission decides not to initiate a rulemaking, it will publish a Notice of Disposition, include in that Notice a brief statement of the basis for the decision not to proceed, and notify the petitioner of this action.

The proposed rule would have provided for publication of a Notice of Disposition regardless of whether the Commission decided to initiate a rulemaking based on the petition. The NPRM requested comments on whether this should be necessary when the Commission has decided to proceed with a rulemaking. The Commission has decided that a Notice of Disposition need not be published unless it declines to act on a petition.

If the Commission denies a rulemaking petition, the Notice of Disposition provides the only opportunity to publicly state the reasons for the denial. If the Commission decides to open a rulemaking, its reasoning will be explained in other rulemaking documents. Publishing a separate Notice of Disposition is unnecessary under these circumstances.

This section also authorizes the Commission to reconsider a petition for rulemaking it has previously denied, if the petitioner submits a written request for reconsideration within 30 calendar days after the date of the denial and if, upon the motion of a Commissioner who voted with the majority that originally denied the petition, the Commission adopts the motion to reconsider by the affirmative vote of four members. This procedure is similar to that currently used for reconsideration of advisory opinions. See, 11 CFR 112.6.

Section 200.5. Agency Considerations

This section lists several factors that the Commission will consider in making its decision whether to initiate a rulemaking proceeding. These factors include the Commission's statutory authority; policy considerations; the desirability of proceeding on a case-by-case basis; and available agency resources. The list is not exhaustive, but suggests factors that can be taken into account in particular cases.

Section 200.6. Administrative Record

This section defines the exclusive agency record upon which the Commission bases its decision on the petition. Its purpose is to explain to the public what constitutes the official agency file on a rulemaking petition, as well as to help to identify the documents upon which the Commission relied in reaching its decision on the petition, for purposes of judicial review.

The NPRM requested comments on a proposal to include in the administrative record only comments received within the prescribed comment period. Under this proposal, anyone wishing to submit comments after the comment period had ended would have had to request an extension for good cause from the Commission. If granted, the comment period would have been formally extended for all prospective commenters, and a notice to that effect published in the **Federal Register**. However, the Commission has decided to follow its usual practice in dealing with comments received after the due date: While it is not obligated to consider them, it will do so at its discretion.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the regulations concern only internal agency procedures.

List of Subjects in 11 CFR Part 200

Administrative practice and procedure.

For the reasons set out in the preamble, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

1. By adding the heading "Administrative Regulations" to reserved subchapter B.

2. By adding new part 200 to subchapter B as follows:

SUBCHAPTER B—ADMINISTRATIVE REGULATIONS

PART 200—PETITIONS FOR RULEMAKING

Sec.
200.1 Purpose of scope.
200.2 Procedural requirements.
200.3 Processing of petitions.
200.4 Disposition of petitions.
200.5 Agency considerations.
200.6 Administrative record.

Authority: 2 U.S.C. 437d(a)(8), 2 U.S.C. 438(a)(8), 5 U.S.C. 553(e).

§ 200.1 Purpose and scope.

This part prescribed the procedures for the submission, consideration, and disposition of petitions filed with the Federal Election Commission. It establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

§ 200.2 Procedural requirements.

(a) Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of a rule implementing any of the following statutes:

(1) The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.;*

(2) The Presidential Election Campaign Fund Act, as amended, 26 U.S.C. 9001 *et seq.;*

(3) The Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. 9031 *et seq.;*

(4) The Freedom of Information Act, 5 U.S.C. 552; or

(5) Any other law that the Commission is required to implement and administer.

(b) The petition shall—

(1) Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;

(2) Identify itself as a petition for the issuance, amendment, or repeal of a rule;

(3) Identify the specific section(s) of the regulations to be affected;

(4) Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and

(5) Be addressed and submitted to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(c) The petition may include draft regulatory language that would effectuate the petitioner's proposal.

(d) The Commission may, in its discretion, treat a document that fails to conform to the format requirements of paragraph (b) of this section as a basis for a sua sponte rulemaking. For example, the Commission may consider whether to initiate a rulemaking project addressing issues raised in an advisory opinion request submitted under 11 CFR 112.1 or in a complaint filed under 11 CFR 111.4. However, the Commission need not follow the procedures of 11 CFR 200.3 in these instances.

§ 200.3 Processing of petitions.

(a) If a document qualifies as a petition under 11 CFR 200.2, the Commission, upon the recommendation of the Office of General Counsel, will—

(1) Publish a Notice of Availability in the **Federal Register**, stating that the petition is available for public inspection in the Commission's Public Records Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the notice;

(2) Send a letter to the Commissioner of Internal Revenue, pursuant to 2 U.S.C. 438(f), seeking the IRS's comments on the petition; and

(3) Send a letter to the petitioner, acknowledging receipt of the petition and informing the petitioner of the above actions.

(b) If the petition does not comply with the requirements of 11 CFR 200.2(b), the Office of General Counsel may notify the petitioner of the nature of any discrepancies.

(c) If the Commission decides that a Notice of Inquiry, Advance Notice of Proposed Rulemaking, or a public hearing on the petition would contribute to its determination whether to commence a rulemaking proceeding, it will publish an appropriate notice in the **Federal Register**, to advise interested persons and to invite their participation.

(d) The Commission will not consider the merits of the petition before the expiration of the comment period on the Notice of Availability.

(e) The Commission will consider all comments filed within the comment period prescribed in the relevant **Federal Register** notice. The Commission may, at its discretion, consider comments received after the close of the comment period.

§ 200.4 Disposition of petitions.

(a) After considering the comments that have been filed within the comment period(s) and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate a rulemaking based on the filed petition.

(b) If the Commission decides not to initiate a rulemaking, it will give notice of this action by publishing a Notice of Disposition in the **Federal Register** and sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision, except in an action affirming a prior denial.

(c) The Commission may reconsider a petition for rulemaking previously denied if the petitioner submits a written request for reconsideration within 30 calendar days after the date of the denial and if, upon the motion of a Commissioner who voted with the majority that originally denied the petition, the Commission adopts the motion to reconsider by the affirmative vote of four members.

§ 200.5 Agency considerations.

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations—

(a) The Commission's statutory authority;

(b) Policy considerations;

(c) The desirability of proceeding on a case-by-case-basis;

(d) The necessity or desirability of statutory revision;

(e) Available agency resources.

§ 200.6 Administrative record.

(a) The agency record for the petition process consists of the following:

(1) The petition, including all attachments on which it relies, filed by the petitioner.

(2) Written comments on the petition which have been circulated to and considered by the Commission, including attachments submitted as a part of the comments.

(3) Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process.

(4) All notices published in the **Federal Register**, including the Notice of Availability and Notice of Disposition. If a Notice of Inquiry or Advance Notice of Proposed Rulemaking was published it will also be included.

(5) The transcripts or audio tapes of any public hearing(s) on the petition.

(6) All correspondence between the Commission and the petitioner, other commentators and state or federal agencies pertaining to Commission consideration of the petition.

(7) The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.

(b) The administrative record specified in paragraph (a) of this section

is the exclusive record for the Commission's decision.

Dated: July 30, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-18473 Filed 8-4-92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Investigative and Enforcement Procedures; Notification of Lapsed Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of lapsed program.

SUMMARY: This document notifies all persons that have received a Notice of Proposed Civil Penalty under the Civil Penalty Assessment Demonstration Program that the program will lapse as of August 1, 1992.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Vicki S. Leemon, Manager, Adjudications Branch, Litigation Division, Office of the Chief Counsel [AGC-430], 701 Pennsylvania Avenue, NW., Washington, DC 20004; telephone (202) 376-6441.

SUPPLEMENTARY INFORMATION: The authority of the Administrator of the Federal Aviation Administration to assess civil penalties under the Civil Penalty Assessment Demonstration Program (49 U.S.C. app. 1475) for violations arising under the Federal Aviation Act of 1958 will lapse as of August 1, 1992. All persons that have received a Notice of Proposed Civil Penalty need not comply with time limits or other procedural requirements in 14 CFR part 13 until further notice. Attached is a notice from the Administrator advising all persons of the status of this program.

Issued in Washington, DC, on July 31, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Notice

To All Persons Who Have Received a Notice of Proposed Civil Penalty

The authority of the Administrator of the Federal Aviation Administration (FAA) to assess civil penalties for violations arising under the Federal Aviation Act of 1958, as amended, will lapse on August 1st, 1992. Congress is expected to act on a bill to renew that authority in the next few weeks. During the interim, no further action will be taken on your case. Effective August 1, 1992, and until further notice:

1. No informal conferences or adjudicatory hearings will be held;

2. No decisions on cases will be issued by the Administrator;

3. You are not required to comply with time limits or other procedural requirements in 14 CFR part 13.

This notice does not apply to cases arising under the Hazardous Materials Transportation Act.

If you have any questions about your case, you or your attorney may contact the FAA attorney handling your case. You will be notified if the processing of your case will be resumed. Please inform the FAA attorney handling your case if you change your address during this interim period.

Issued this 29th day of July, 1992.

Thomas C. Richards,

Administrator, Federal Aviation Administration.

[FR Doc. 92-18517 Filed 7-31-92; 11:38 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 25

[Docket No. NM-68; Special Conditions No. 25-ANM-60]

Special Conditions: McDonnell Douglas Model MD-90 Series Airplanes; High Intensity Radiated Fields (HIRF) Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This special condition is issued for the McDonnell Douglas Model MD-90 series airplanes. These airplanes are equipped with high technology digital avionic systems which will perform critical functions. Examples of these systems are the Full Authority Digital Engine Control (FADEC) system, and the Inertial Reference System (IRS). The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of High Intensity Radiated Fields (HIRF). This special condition contains an additional safety standard which the Administrator considers necessary to ensure that the critical functions that these systems perform are maintained when these airplanes are exposed to HIRF.

EFFECTIVE DATE: September 7, 1992.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, FAA Flight Test and Systems Branch, ANM-11, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, Washington 98055-4056, telephone (206) 227-2135.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1989, McDonnell Douglas applied for an amendment to Type Certificate No. A6WE to include the new Model MD-90. The Model MD-90 is a re-engine derivative of the currently certified Model MD-80. It will be powered by two high bypass turbofan International Aero Engines (IAE) V2500 series engines. The fuel, hydraulic, environmental, pneumatic, anti-ice and electrical systems will be modified as necessary for compatibility with the V2500 engines. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, FADEC, and IRS, etc.

Proposed Type Certification Basis

Under the provisions of § 21.101, McDonnell Douglas must show that the Model MD-90 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certification No. A6WE are as follows:

1. Part 25 of the FAR as amended by Amendment 25-70, except for § 25.1309 as amended by Amendment 25-22 (or 25-41 for certain specified equipment and equipment installations), and certain other exceptions that are not relevant to this special condition.

2. Existing Special Condition No. 25-ANM-15, dated October 19, 1987, "Lightning Protection for New Electronic Systems," and other special conditions and an exemption that are not relevant to this special condition.

3. The emission and noise standards of Parts 34 and 36 of the FAR, respectively.

Special Conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certifications basis in accordance with § 21.101(b)(2).

Discussion

Airplane designs which utilize metal skins and mechanical means to command and control the airplane and engines have traditionally been shown to be immune to the effects of HIRF from ground based transmitters. With the trend toward increased HIRF levels from these sources, plus the advent of space and satellite communications,

coupled with digital electronic command and control of the airplane systems, the airplane's immunity to HIRF is in question.

The MD-90 is being designed and built with the propulsion systems using FADEC, and the IRS outputs interfacing with a number of different systems. These systems can be susceptible to disruption of both the command/response signals and the operational mode logic as a result of HIRF interference. To ensure that a level of safety is achieved equivalent to that of existing airplanes, a special condition is issued which requires that the components providing critical functions be designed and installed to preclude component damage and interruption of function due to HIRF.

It is not possible to precisely define the HIRF environment to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10KHz to 18GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system test and/or analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	60	60
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	150	33
200 MHz–400 MHz	56	33
400 MHz–1 GHz	4,020	935
1 GHz–2 GHz	7,850	1,750
2 GHz–4 GHz	6,000	1,150
4 GHz–6 GHz	6,800	310
6 GHz–8 GHz	3,600	666
8 GHz–12 GHz	5,100	1,270
12 GHz–18 GHz	3,500	551
18 GHz–40 GHz	2,400	750

The envelope given in Paragraph 2 above is revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R Subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Discussion of Comments

Notice of proposed special conditions No. SC–92–2–NM was published in the **Federal Register** on April 15, 1992 (57 FR 13061), for public comment. The following discussion summarizes the comments received and the FAA response to the comments.

Two commenters point out that the EFIS to be used in the MD–90 is unchanged from those used in MD–80 airplanes; therefore, HIRF certification of these systems is not planned. In addition, the ACS hazard analysis determined that there are no critical functions being provided, which means that HIRF certification is not required for this system.

The FAA concurs with these comments. Reference to the EFIS and ACS is removed from the special condition preamble.

One commenter requests that the section in the notice of proposed special conditions which discusses compliance with the special condition be changed to read "test and/or analysis" rather than "test and analysis."

The FAA concurs that test, analysis, or a combination thereof is acceptable in showing compliance with the special condition; therefore, the text is changed as requested.

One commenter requested confirmation that the functional criticality designation of "critical" may be equated to "catastrophic" per FAA Advisory Circular (AC) 25.1309–1A.

The FAA confirms that this interpretation is correct.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the McDonnell Douglas Model MD–90 series airplanes:

Protection From Unwanted Effects of High Intensity Radiated Fields (HIRF)

Each new or significantly modified electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to High Intensity Radiated Fields.

The following definition applies to this special condition:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service, ANM–100.

[FR Doc. 92–18404 Filed 8–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26928; Amdt. No. 1501]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 17, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

Effective	State	City	Airport	FDC No.	SIAP
07/09/92	LA	Winnfield	David G. Joyce	FDC 2/3920	NDB RWY 8 AMDT2...
07/13/92	AR	Lake Village	Lake Village Muni	FDC 2/3996	VOR-A AMDT 6...
07/13/92	AR	Lake Village	Lake Village Muni	FDC 2/3997	VOR/DME-B AMDT 4...
07/13/92	CA	Camarillo	Camarillo	FDC 2/3993	VOR RWY 26 AMDT 3...
07/13/92	KS	Wichita	Cessna Aircraft Field	FDC 2/3998	VOR-C ORIG...
07/13/92	OR	Medford	Medford-Jackson County	FDC 2/3995	VOR/DME RWY 14 AMDT 1...
07/13/92	TX	El Paso	El Paso Intl	FDC 2/3990	NDB RWY 22 AMDT 26...

Effective	State	City	Airport	FDC No.	SIAP
07/13/92	TX	El Paso	El Paso Intl	FDC 2/3960	NDB RWY 22 AMDT 28...
07/14/92	AK	Nome	Nome	FDC 2/4023	NDB/DME RWY 2 ORIG...
07/14/92	KS	Newton	Newton-City County	FDC 2/4024	VOR/DME-A ORIG...
07/15/92	LA	Marksville	Marksville Municipal	FDC 2/4046	NDB RWY 4 AMDT 1...
07/15/92	PA	Dubois	Dubois-Jefferson County	FDC 2/4014	VOR/DME RWY 7 AMDT 3...

NFDC Transmittal Letter Attachment

Nome

Nome
Alaska
NDB/DME RWY 2 ORIG . . .
Effective: 07/14/92
FDC 2/4023/OME/ FI/P Nome, Nome, AK, NDB/DME RWY 2 ORIG . . . Delete note . . . Use OYN DME ON Final. Delete 14 DME ARC CW R–088 TO R–221. This is NDB/DME RWY 2 AMDT 1.

Lake Village

Lake Village Muni
Arkansas
VOR–A AMDT 6 . . .
Effective: 07/13/92
FDC 2/3996/M32/ FI/P Lake Village Muni, Lake Village, AR. VOR–A AMDT 6 . . .
CAT D MDA 700/HAA 555, VIS 2. This becomes VOR–A AMDT 6A.

Lake Village

Lake Village Muni
Arkansas
VOR/DME–B AMDT 4 . . .
Effective: 07/13/92
FDC 2/3997/M32/ FI/P Lake Village Muni, Lake Village, AR. VOR/DME–B AMDT 4 . . .CAT D MDA 700/HAA 575, VIS 2. This becomes VOR/DME–B AMDT 4A.

Camarillo

Camarillo
California
VOR RWY 26 AMDT 3 . . .
Effective: 07/13/92
FDC 2/3993/CMA/ FI/P Camarillo, Camarillo, CA, VOR RWY 26 AMDT 3 . . . S–26 MDA 720/HAT 645 ALL CATS. VIS CAT A/B 1, CAT C 1–3/4. This is VOR RWY 26 AMDT 3A.

New Haven

Tweed-New Haven
Connecticut
VOR–A AMDT 1 . . .
Effective: 06/29/92
This Corrects NOTAM IN TL 92–15.
FDC 2/3670/HVN/FI/P Tweed-New Haven, New Haven, CT. VOR–A AMDT 1 . . . Change Note to Read "When CTLZ not in effect use ISLIP ALSTG MIN." Change ALTN MIN . . . NA When CTLZ not in effect. THIS IS VOR–A AMDT 1A.

Wichita

Cessna Aircraft Field
Kansas
VOR–C ORIG . . .
Effective: 07/13/92
FDC 2/3986/CEA/ FI/P Cessna Aircraft Field, Wichita, KS. VOR–C ORIG . . . PROC NA at night. Delete note . . .Activate MIRL RWY 17L–35R—122.7. This is VOR–C ORIG A.

Newton

Newton-City County
Kansas
VOR/DME–A ORIG . . .
Effective: 07/14/92
FDC 2/4024/EWK/ FI/P Newton-City County, Newton, KS. VOR/DME–A ORIG . . . Delete note . . . Activate MALS RWY 17, REIL and VASI RWY 35–CTAF. Change ALT note to read . . . IF LCL ALSTG not received, use Wichita ALSTG and increase all MDAS 100 FT. This is VOR/DME–A ORIG A.

Bunkie

Bunkie Municipal
Louisiana
VOR/DME–A–AMDT 4 . . .
Effective: 07/09/92
FDC 2/3918/2R6/ FI/P Bunkie Municipal, Bunkie, LA. VOR/DME–A AMDT 4 . . . Amend note to read . . . Use Alexandria Esler Regional ALSTG, when not received, PROC NA. THIS IS VOR/DME–A AMDT 4A.

Winnfield

David G Joyce
Louisiana
NDB RWY 8 AMDT 2 . . .
Effective: 07/09/92
FDC 2/3920/0R5 FI/P David G Joyce, Winnfield, LA. NDB RWY 8 AMDT 2 . . . Amend note to read . . . Obtain Alexandria Esler Regional ALSTG from Houston Center, if not received, PROC NA. This is NDB RWY 8 AMDT 2A.

Marksville

Marksville Municipal
Louisiana
VOR/DME–A AMDT 2 . . .
Effective: 07/09/92
FDC 2/3922/LA26/ FI/P Marksville Municipal, Marksville, LA. VOR/DME–A AMDT 2 . . . Amend note to read . . . Use Alexandria Esler Regional ALSTG, When not received, PROC NA. This is VOR/DME–A AMDT 2A.

Natchitoches

Natchitoches Regional
Louisiana
NDB RWY 34 AMDT 2 . . .
Effective: 07/09/92
FDC 2/3923/3R8/ FI/P Natchitoches Regional, Natchitoches, LA. NDB RWY 34 AMDT 2 . . . Amend note to read . . . if LCL ALSTG not received, PROC NA. This is NDB RWY 34 AMDT 2A.

Natchitoches

Natchitoches Regional
Louisiana
LOC RWY 34 AMDT 1 . . .
Effective: 07/09/92
FDC 2/3926/3R8/ FI/P Natchitoches Regional, Natchitoches, LA. LOC RWY 34 AMDT 1 . . . Delete note . . . if LCL ALSTG . . . thru . . . 160 Ft. add note . . .if LCL ALSTG not received, PROC NA. This is LOC RWY 34 AMDT 1A.

Alexandria

Alexandria Esler Regional
Louisiana
VOR RWY 32 AMDT 13A . . .
Effective: 07/09/92
FDC 2/3927/ESF/ FI/P Alexandria Esler Regional, Alexandria, LA. VOR RWY 32 AMDT 13A . . . Delete note . . . WEHN LCL ALSTG . . . thru . . . 40 Ft. add note . . .if LCL ALSTG not received—except for operators with approved weather reporting service—PROC NA.

Alexandria

Alexandria Esler Regional
Louisiana
ILS RWY 26 AMDT 11A . . .
Effective: 07/09/92
FDC 2/3928/ESF/ FI/P Alexandria Esler Regional, Alexandria, LA. ILS RWY 26 AMDT 11A . . . Delete note . . . when LCL ALSTG . . . thru . . . MDAS 40 Ft. add note . . . if LCL ALSTG not received—except for operators with approved weather reporting service—PROC NA.

Alexandria

Alexandria Esler Regional
Louisiana
LOC BC RWY 8 AMDT 8A . . .
Effective: 07/09/92
FDC 2/3929/ESF/ FI/P Alexandria Esler Regional, Alexandria, LA. LOC BC RWY 8 AMDT 8A . . . Delete note . . .

when LCL ALSTG . . . thru . . . 40 Ft. add note . . . if LCL ALSTG not received—except for operators with approved weather reporting service—PROC NA.

Alexandria

Alexandria Esler Regional
Louisiana
NDB RWY 26 AMDT 7A . . .
Effective: 07/09/92

FDC 2/3930/ESF/ FI/P Alexandria Esler Regional, Alexandria, LA. NDB RWY 26 AMDT 7A . . . Delete note . . . when LCL ALSTG . . . thru . . . 40 Ft. add note . . . if LCL ALSTG not received—except for operators with approved weather reporting service—PROC NA. This is NDB RWY 26 AMDT 7B.

Marksville

Marksville Municipal
Louisiana
NDB RWY 4 AMDT 1 . . .
Effective: 07/15/92

FDC 2/4046/LA26/FI/P Marksville Municipal, Marksville, LA. NDB RWY 4 AMDT 1 . . . Amend note to read . . . use Alexandria Esler Regional Alstg. when not received, PROC NA. This is NDB RWY 4 AMDT 1A.

Warroad

Warroad Intl-Swede Carlson Field
Minnesota
NDB RWY 31 AMDT 6 . . .
Effective: 07/07/92

FDC 2/3869/RAD/ FI/P Warroad Intl-Swede Carlson Field, Warroad, MN. NDB RWY 31 AMDT 6 . . . Notes—Delete Note . . . obtain local altimeter setting on CTAF. When not received use Roseau altimeter setting. Increase all MDAS 60 feet and all visibilities ¼ mile. When neither are received PROC NA . . . add note . . . if local altimeter setting not received use Roseau altimeter setting and increase all MDAS 60 FEET. This is NDB RWY 31 AMDT 6A.

Warroad

Warroad Intl-Swede Carlson Field
Minnesota
VOR/DME RNAV RWY 31 AMDT 2 . . .
Effective: 07/07/92

FDC 2/3871/RAD/ FI/P Warroad Intl-Swede Carlson Field, Warroad, MN. VOR/DME RNAV RWY 31 AMDT 2 . . . Minimums delete Roseau altimeter setting minimums. Notes—Delete note . . . Obtain local altimeter setting on CTAF . . . When not received, use Roseau altimeter setting. When neither are received PROC NA . . . add note . . . if local altimeter setting not received use Roseau altimeter setting and increase all MDAS 60 feet. This is VOR/DME RNAV RWY 31 AMDT 2A.

Manchester

Manchester
New Hampshire
VOR/DME–3 RWY 17 ORIG . . .
Effective: 07/06/92

FDC 2/3848/MHT/ FI/P Manchester, Manchester, NH. VOR/DME–3 RWY 17 ORIG . . . Change S–17 MIN TO . . . MDA 720, HAT 491 all CATS, VIS CATS A/B 1, C 1 ¼, D 1 ½. Change Concord ALSTG S–17 MIN TO . . . MDA 780, HAT 551 all CATS, VIS A/B 1, C 1 ½, D 1 ¾. This is VOR/DME–3 RWY 17 ORIG A.

Manchester

Manchester
New Hampshire
VOR/DME RWY 17 AMDT 9 . . .
Effective: 07/06/92

FDC 2/3854/MHT/ FI/P Manchester, Manchester, NH. VOR/DME RWY 17 AMDT 9 . . . Delete notes . . . activate HIRLS 17–35, 6–24, and MALSR RWY 35–121.3. This is VOR/DME RWY 17 AMDT 9A.

Manchester

Manchester
New Hampshire
ILS RWY 35 AMDT 16 . . .
Effective: 07/07/92

FDC 2/3916/MHT/ FI/P Manchester, Manchester, NH. ILS RWY 35 AMDT 16 . . . Delete note . . . INOP TABLE . . thru . . MALSR. Add note . . . S–ILS INOP table does not apply to MALSR. This is ILS RWY 35 AMDT 16A.

Medford

Medford-Jackson County
Oregon
VOR/DME RWY 14 AMDT 1 . . .
Effective: 07/13/92

FDC 2/3995/MFR/ FI/P Medford-Jackson County, Medford, OR. VOR/DME RWY 14 AMDT 1 . . . Change Planview missed APCH holding pattern . . . HOLD NW, RT, 153 inbound. Delete note . . . Activate MALSR RWY 14—CTAF. This is VOR/DME RWY 14 AMDT 1A.

Dubois

Dubois-Jefferson County
Pennsylvania
VOR/DME RWY 7 AMDT 3 . . .
Effective: 07/15/92

FDC 2/4014/DUJ/ FI/P Dubois-Jefferson County, DUBOIS, PA. VOR/DME RWY 7 AMDT 3 . . . Change JUSTS CIP to 9DME VS 19 DME. This corrects U.S. TRML PROC N.E VOL 2 OF 3 dated 25 JUN 92 page 76.

El Paso

El Paso Intl
Texas
NDB RWY 22 AMDT 28 . . .
Effective: 07/13/92

FDC 2/3960/ELP/FI/P El Paso Intl, El Paso, TX. NDB RWY 22 AMDT 28 . . . Add to Additional Flight data chart . . . R–5107A, R–5103A. Add note . . . radar required when R–5103 in use. This becomes NDB RWY 22 AMDT 28A.

El Paso

El Paso Intl
Texas
NDB RWY 22 AMDT 28 . . .
Effective: 07/13/92

FDC 2/3960/ELP/FI/P El Paso Intl, El Paso, TX. NDB RWY 22 AMDT 28 . . . Add to Additional Flight data chart . . . R–5107A, R–5103A. Add note . . . radar required when R–5103 in use. This becomes NDB RWY 22 AMDT 28A.

Norfolk

Norfolk Intl
Virginia
ILS RWY 23 AMDT 6A . . .
Effective: 07/01/92

FDC 2/3731/ORF/ FI/P Norfolk Intl, Norfolk, VA. ILS RWY 23 AMDT 6A . . . Delete note . . . Autopilot coupled APCH NA below 450'. This becomes ILS RWY 23 AMDT 6B.

Wise

Lonesome Pine
Virginia
SDF/DME RWY 24 AMDT 2 . . .
Effective: 07/08/92

FDC 2/3901/LNP FI/P Lonesome Pine, Wise, VA. SDF/DME RWY 24 AMDT 2 . . . Missed approach . . . climbing right turn to 4500 VIA I–OWN LDA NE Course to STRYP INT and hold. This becomes SDF/DME RWY 24 AMDT 2A.

[FR Doc. 92–18415 Filed 8–4–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole and Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for the use of separately

approved fenbendazole and lincomycin Type A medicated articles to make Type C medicated swine feeds. The Type C feeds are used as an anthelmintic, for increased rate of weight gain in growing-finishing swine, for treatment and control of swine dysentery, and for reduction in the severity of swine mycoplasmal pneumonia.

EFFECTIVE DATE: August 5, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Vaughn, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8643.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Rte. 202-206 North, Somerville, NJ 08876-1258, filed NADA 140-954 providing for combining separately approved fenbendazole and lincomycin Type A medicated articles to make Type C medicated swine feeds. Fenbendazole is indicated for the removal of adult stage lungworms (*Metastrongylus apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, intestinal forms) large roundworms (*Ascaris suum*); adult stage nodular worms (*Oesophagostomum dentatum, O. quadrispinulatum*); small stomach worms (*Hyostrongylus rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*Trichuris suis*); adult and larvae kidney worms (*Stephanurus dentatus*). Lincomycin is indicated for increased rate of weight gain in growing-finishing swine; for control of swine dysentery in animals on premises with a history of swine dysentery, but where symptoms have not yet occurred; for treatment and control of swine dysentery; and for reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae*.

The NADA is approved, and the regulations are amended in 21 CFR 558.258by revising paragraphs (a) and (c)(1)(i); by redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as paragraphs (c)(1)(i)(A) and (c)(1)(i)(B), respectively; and by adding new paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), and (c)(1)(v); and in 21 CFR 558.325 by adding new paragraph (c)(4)(ii) to reflect the approval. The basis for the approval is discussed in the freedom of information summary.

These are new animal drugs used in Type A medicated articles to make Type C medicated feeds. Fenbendazole is a Category II drug and lincomycin at 100 or 200 grams per ton is a Category II drug which, as provided in § 558.3 (21 CFR 558.3), require an approved Form FDA 1900 for making a Type C medicated feed from Category II Type A medicated articles. Therefore, an approved Form FDA 1900 is required for making a Type C medicated feed containing fenbendazole in combination with lincomycin as in the approved subject NADA and in §§ 558.258 and 558.325 as amended.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

This approval qualifies for 3 years of marketing exclusivity beginning August 5, 1992, because the criteria for such exclusivity under the Generic Animal Drug and Patent Term Restoration Act of 1988 and section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)) have been met.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.258 is amended by revising paragraphs (a) and (c)(1)(i); by redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as paragraphs (c)(1)(i)(A) and (c)(1)(i)(B), respectively; and by adding new paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), and (c)(1)(v) to read as follows:

§ 558.258 Fenbendazole.

(a) *Approvals.* Type A medicated articles: 4 percent (18.1 grams per pound), 8 percent (36.2 grams per pound), and 20 percent (90.7 grams per pound) fenbendazole and all combinations provided for in this section to 012799 in § 510.600(c) of this chapter.

* * * * *

(c) * * *

(1) * * *

(i) *Amount.* Fenbendazole, 10 to 80 grams per ton (to provide 9 milligrams per kilogram of body weight) given over a 3- to 12-day period.

* * * * *

(ii) *Amount.* Fenbendazole 10 to 80 grams per ton (to provide 9 milligrams per kilogram body weight) and lincomycin 20 grams per ton.

(A) *Indications for use.* As an anthelmintic (as provided in paragraph (c)(1)(i)(A) of this section) and for increased rate of gain in growing-finishing swine.

(B) *Limitations.* Feed as sole ration. Do not feed to swine that weigh more than 250 pounds; as lincomycin provided by 000009 in § 510.600(c) of this chapter.

(iii) *Amount.* Fenbendazole 10 to 80 grams per ton (to provide 9 milligrams per kilogram body weight) and lincomycin 40 grams per ton.

(A) *Indications for use.* As an anthelmintic (as provided in paragraph (c)(1)(i)(A) of this section) and for control of swine dysentery in animals on premises with a history of swine dysentery, but where symptoms have not yet occurred.

(B) *Limitations.* Feed as sole ration. Do not feed to swine that weigh more than 250 pounds; as lincomycin provided by 000009 in § 510.600(c) of this chapter.

(iv) *Amount.* Fenbendazole 10 to 80 grams per ton (to provide 9 milligrams per kilogram body weight) and lincomycin 100 grams per ton.

(A) *Indications for use.* As an anthelmintic (as provided in paragraph (c)(1)(i)(A) of this section) and for the treatment of swine dysentery.

(B) *Limitations.* Feed as sole ration. Do not use within 6 days of slaughter. Do not feed to swine that weigh more than 250 pounds; as lincomycin provided by 000009 in § 510.600(c) of this chapter.

(v) *Amount.* Fenbendazole 10 to 80 grams per ton (to provide 9 milligrams per kilogram body weight) and lincomycin 200 grams per ton.

(A) *Indications for use.* As an anthelmintic (as provided in paragraph (c)(1)(i)(A) of this section) and for reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae*.

(B) *Limitations.* Feed as sole ration. Do not use within 6 days of slaughter. Do not feed to swine that weigh more

than 250 pounds; as lincomycin provided by 000009 in § 510.600(c) of this chapter.

* * * * *

3. Section 558.325 is amended by adding new paragraph (c)(4)(ii) to read as follows:

§ 558.325 Lincomycin.

* * * * *

(c) * * *

(4) * * *

(ii) Fenbendazole as provided in § 558.258.

Dated: July 29, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-18469 Filed 8-4-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Dependency and Indemnity Compensation

CFR Correction

In title 38 of the Code of Federal Regulations, parts 0-17, revised as of July 1, 1991, on page 166, in §3.5, paragraph (b)(3) was inadvertently omitted and should be included to read as follows:

§3.5 Dependency and indemnity compensation.

* * * * *

(b)* * *

(3) Death occurred on or after May 1, 1957, and before January 1, 1972, and the claimant had been ineligible to receive dependency and indemnity compensation because of the exception in subparagraph (1) of this paragraph. In such case dependency and indemnity compensation is payable upon election. (38 U.S.C. 410, 416, 417, Public Law 92-197, 85 Stat. 660)

* * * * *

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0E3898 and 0E3908/R1155; FRL-4073-7]

RIN 2070-AB78

Pesticide Tolerances for Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide oxyfluorfen and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities cocoa beans and garbanzo beans. This regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective August 5, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3898 and 0E3908/R1155], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 27, 1992 (57 FR 22202), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions 0E3898 and 0E3908 to EPA on behalf of the named Agricultural Experiment Stations.

These petitions requested that the Administrator, purusant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of tolerances for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage at 0.05 part per million (ppm) in or on certain raw agricultural commodities as follows:

1. *PP 0E3898.* Petition submitted on behalf of the Hawaii Agricultural Experiment Station proposing a tolerance for cocoa beans.

2. *PP 0E3908.* Petition submitted on behalf of the California Agricultural Experiment Station proposing a tolerance for garbanzo beans. The petitioner proposed that use of oxyfluorfen on garbanzo beans be limited to California based on the geographical representation of the residuc data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.381, paragraph (a) is amended by adding and alphabetically inserting the raw agricultural commodity cocoa beans, and paragraph (b) is amended by adding and alphabetically inserting the raw agricultural commodity garbanzo beans, to read as follows:

§ 180.381 Oxyfluorfen; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cocoa beans	0.05
* * * * *	

(b) * * *

Commodity	Parts per million
Beans, garbanzo	0.05
* * * * *	

[FR Doc. 92-18452 Filed 8-4-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-30072I; FRL 4046-8]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 4.2 percent increase in pay for civilian Federal General Schedule (GS) employees in 1992.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Ken Wetzel, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 700-F, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-305-5128).

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible. The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on February 7, 1991 (56 FR 4946) and became effective on March 11, 1991. At that time the fees were increased 4.1 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale ***. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule.

The pay raise in 1992 for Federal General Schedule employees is 4.2 percent; therefore, the tolerance petition fees are being increased 4.2 percent. The entire fee schedule, § 180.33, is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Fees, Pesticides and pests, Reporting and Recordkeeping requirements.

Dated: July 16, 1992,

Douglas D. Campt.

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $54,175, plus $1,350 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $12,400 plus $850 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $9,975.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $21,650 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,075.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $10,800 plus $850 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $6,775. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,350 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,350 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,700.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $27,050 to cover the costs of the advisory committee. Further advance deposits of $27,050 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR–4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (H7505C), Washington, DC 20460. A fee of $1,350 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (H7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 92–18578 Filed 8–4–92; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 281

[FRL–4191–1]

Louisiana; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Louisiana's application for final approval.

SUMMARY: The State of Louisiana has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed Louisiana's application and has reached a final determination that Louisiana's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to Louisiana to operate its program.

EFFECTIVE DATE: Final approval for Louisiana shall be effective at 1 p.m. on September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Samuel Coleman, Manager, Office of Underground Storage Tanks, U.S. EPA, 1445 Ross Avenue, Mail code 6H–A, Dallas, Texas, 75202–2733, (214) 655–6755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables the Environmental Protection Agency to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank program. To qualify for final authorization, a State's program must: (1) be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (Sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(a) and 6991c(b)).

On October 15, 1991, Louisiana submitted an official application to obtain final approval to administer the underground storage tank program. The application contained the following elements: State Statutes (Subtitle II of Title 30 of the Louisiana Revised Statutes, 1990), State Regulations (Title 33, Part XI, 1991), Attorney General's Statement, Memorandum of Agreement, and Program Description. EPA's review and approval of these elements provides the basis for EPA's authorization of Louisiana's program.

On June 12, 1992, EPA published a tentative decision announcing its intent

to grant Louisiana final approval pending minor changes to Louisiana's Underground Storage Tank Regulations to satisfy the requirement that the Louisiana Regulations be no less stringent than the Federal Regulations.

These changes were documented in a Memorandum of Agreement between the State of Louisiana and EPA dated May 14, 1992. Further background on the tentative decision to grant approval appears at 57 FR 25003, June 12, 1992.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. No public comments were received at the hearing and no written public comments were received regarding EPA's approval of Louisiana's underground storage tank program.

The regulation changes agreed upon by the State of Louisiana and EPA were effective July 20, 1992, and satisfy the requirement that Louisiana regulations are no less stringent than the Federal regulations.

The Louisiana program regulates underground storage tanks containing petroleum or hazardous substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980. This does not include RCRA hazardous wastes.

The State of Louisiana is not authorized to operate the UST program on Indian lands. This authority will remain with EPA.

B. Decision

After reviewing the changes the State has made to its regulations since the tentative decision, I conclude that the State of Louisiana's application for final approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Louisiana is granted final approval to operate its underground storage tank program in lieu of the Federal program. Louisiana now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. Louisiana also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative Practice and Procedure, Hazardous Materials, State Program Approval and Underground Storage Tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: July 24, 1992.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 92-18297 Filed 8-4-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6938

[AK-932-4214-10; AA-66901]

Partial Revocation of Public Land Order No. 5554, as Amended, for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 1,141.43 acres of National Forest System land withdrawn for selection by the Natives of Kodiak, Inc., and opens the land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: August 5, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 22(h)(4) of the Alaska Native Claims Settlement Act 43 U.S.C. 1621(h)(4) (1988), it is ordered as follows:

1. Public Land Order No. 5554, as amended, is hereby revoked insofar as it affects the following described land:

Seward Meridian

T. 22 S., R. 18 W.,
Sec. 36, lot 2.
T. 23 S., R. 18 W.,
Sec. 1, lot 1;
Sec. 12, lot 1;
Sec. 13, lots 1, 2, and 3;
Secs. 24 and 25.

The areas described aggregate 1,141.43 acres.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. The State of Alaska application for selection made pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of the Chugach National Forest reservation and any other withdrawal of record.

Dated: July 22, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-18493 Filed 8-4-92; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[DA 92-968]

Reporting Requirements for International Traffic Data Under § 43.61 of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Notice; revised manual.

SUMMARY: The Common Carrier Bureau adopted a filing manual for international traffic data in order to implement revised § 43.61 filing requirements. Both facilities-based and pure resale carriers must use this manual to report message counts, minute counts, gross revenues,

international settlements amounts, and retained revenues for international communications services. This manual replaces the filing manual adopted in 1989. The revised manual eliminates obsolete reporting requirements, streamlines requirements for pure resellers, and provides a new data format to speed processing.

DATES: Effective date July 22, 1992. Traffic data for the prior calendar year must be filed by July 31, 1992.

ADDRESSES: The transmittal letter must be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Traffic data must be filed with the FCC Common Carrier Bureau, Industry Analysis Division, 1250 23rd Street, NW., room 10, Washington, DC 20554 and with Downtown Copy Center, 1919 M Street, NW., room 246, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Linda Blake or Jim Lande, Common Carrier Bureau, Industry Analysis Division, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

FCC Report 43.61

Approved by OMB, 3060-0106, Expires 8/1/93. Estimated Average Burden Hours Per Response: 9 Hours.

Manual for Filing § 43.61 Data in Accordance With the FCC's Rules and Regulations, July 1992—Notice to Individuals

Section 43.61 of the Commission's Rules compels all carriers providing international service to provide traffic and revenue data. The collection of § 43.61 traffic data stems from the Commission's authority under the Communications Act of 1934. Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply sections 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

The foregoing Notice is required by the Privacy Act of 1974, Public Law 93.579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980. Public Law 96-511, section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 9 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction project (3060-0106), Washington, DC 20503.

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Introduction

All common carriers that provide international communications service must file an annual report of service provided during the previous calendar year.[1] The reports contain traffic and revenue information for service between the United States and international points. The data collected pursuant to § 43.61 of the FCC's Rules are presented in FCC statistical reports, are used to monitor the development and competitiveness of international telecommunications markets and are used in the facilities planning process. In addition, the FCC uses this information to develop and support United States positions in discussions with foreign governments and international standards organizations, such as the International Telecommunications Union.

On December 24, 1991, the Commission adopted a Report and Order simplifying the reporting requirements for international traffic and revenues.[2] To simplify and improve reporting, the Commission removed the detailed reporting requirements from Section 43.61 of the Rules and Regulations and directed the Chief of the Common Carrier Bureau to adopt a revised filing manual after notice and comment.[3]

Section 43.61(a) of the FCC's Rules requires that each common carrier providing international telecommunications service between any U.S. point and any non U.S. point must file traffic and revenue data. Section 43.61(b) mandates that carriers provide traffic and revenue data for each and every international service. Section 43.61(d) specifies that the traffic and revenue data must be furnished in accordance with this manual.

This manual defines the traffic and revenue statistics for international telecommunications services that must be reported. Traffic measures vary by service. Depending on which service is being reported, carriers must provide minutes, messages, words, or number of leased circuits. Revenue statistics include billed carrier revenue, settlement payments to foreign correspondents, settlement receipts from foreign correspondents, and net revenue to the carrier.

The manual details reporting requirements for two categories of carriers. Facilities-based carriers own or lease international telecommunications facilities in order to provide international service. Facilities-based carriers must provide detailed data for the services that they provide. Pure resale carriers do not own or lease facilities, and provide switched service by reselling the switched services of other carriers. Carriers may provide more limited data for pure resale traffic. Other resellers, i.e., those that provide international telecommunications services by means of leased private line or other non-switched service must provide data on their international services in accordance with the reporting requirements established for facilities-based carriers.

Facilities-based carriers must provide country-by-country data for international message telephone service, international message telegraph service, telex service, and six classes of private

[1] 47 CFR Section 43.61.

[2] *Report and Order, Amendment of Section 43.61 of the Commission's Rules*, 7 FCC Rcd 1379 (1992).

[3] Section 43.61(d) of the FCC's Rules and Regulations provides that international traffic and revenue data be filed "* * * in conformance with the instructions and reporting requirements prepared under the direction of the Chief, Common Carrier Bureau, prepared and published as a manual."

line service. Facilities-based carriers must provide summary data for all other international services. Other international services include facsimile service,[4] cablephoto service, radiophoto service, photo transmission service, addressed press service, packet switched data service, switched private line service and virtual private line service. Facilities-based carriers must report pure resale service separately from facilities-based switched services, but may do so on a world total basis.

International points are grouped into 10 world regions. In addition to providing world totals, facilities-based carriers must provide subtotals by region for each facilities-based international service that they provide.

Carriers are required to provide world total data for each pure-resale international service that they provide, but are not required to report data on a country-by-country basis or subtotals by world region. Carriers providing pure-resale international message telephone service must also list the countries to which they actually provide pure-resale service during the calendar year for which data is reported.

This manual contains several significant changes from prior manuals. The definition of reportable international traffic has changed. Annual reports must now include information on service with Canada, Saint Pierre and Miquelon, and Mexico. In prior years carriers were not required to include information on service with these international points.

The Report and Order discontinued the circuit traffic (CT) schedule. In the past, Section 43.61 required two schedules each for international message telephone service, international message telegraph, and telex service. The message traffic (MT) schedule reported service for each overseas point of destination and origin, including service that transited the United States. The circuit traffic (CT) schedule reported traffic volumes and revenues by circuit (irrespective of origin or destination) for countries with which the U.S. carrier had direct service. The Commission determined that it no longer requires data from the CT schedules. This manual requires that carriers file data that is similar to the former MT schedules.

This manual defines three categories of traffic: billed in the United States (U.S. Billed); billed in a foreign country (Foreign Billed); and, traffic that transits the United States (Transiting).[5] Minutes, messages, carrier revenues, and settlement amounts will be reported for each of these traffic categories, except that carriers may omit message counts for transiting traffic.

This manual includes two additional categories for reporting private line service data. Carriers must now separately report voice circuits and circuits providing capacity greater than 120 Megabits per second or 72 Megahertz of bandwidth.

This manual greatly reduces the amount of information that must be provided by pure resellers. Pure resellers are carriers that provide international services without owning or leasing transmission facilities. The FCC Rules formerly required that pure resellers file the same country-by-country information required of facilities-based carriers. This manual allows pure resellers to file world total traffic and revenue data by service. Pure resellers providing message telephone service must also provide a list of the countries that they actually served. Table 5 of International Points is a checklist that can be used for this purpose.

The public reporting burden for the revised manual is estimated to average 9 hours including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The 9 hours is a weighted average response time based on 80 hours for 10 facilities-based carriers and 1 hour for 100 pure resellers. These figures represent the incremental reporting burden, and do not include the time that carriers spend maintaining data for other purposes. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction project (3060–0106), Washington, DC 20503.

This manual consists of two sections. Section 1 defines international telecommunications service, explains the service categories, defines the data requirements, and contains filing instructions. Section 2 defines a computerized format, and explains specialized codes that facilities-based carriers must use for reporting data. The manual incorporates by reference the Common Carrier Bureau Industry Analysis Division report titled International Points.[6] International Points lists world points that originate or receive international telecommunications traffic. The report contains the country and region codes that must be used to file § 43.61 data. The report is published periodically and shows various classification schemes for world points. Revisions to International Points will reflect changes in political boundaries and the extent and operation of international telecommunications networks.

Section 1—Definitions and General Information

A. The Distinction Between International and Domestic Telecommunications Services

International traffic and revenue data must be reported in accordance with § 43.61 of the Rules. Section 43.61(a) states that "[e]ach common carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and offshore U.S. points and any country or point outside that area must file a report with the Commission not later than July 31 of each year from service actually provided in the preceding calendar year." Telecommunications services allow the public to communicate by means of electronic signals transmitted by wire, radio, visual or other electromagnetic systems and can entail the carriage of traffic or the provision of dedicated communications channels. A service channel or circuit is a path for electronic transmission of information between two or more points.

[4] Most people associate the word facsimile with the use of terminal equipment that sends and receives images of a page. The electronic image is transmitted over the public switched network. Carriers should not separate this type of traffic from other types of international message telephone traffic. Our rules previously required detailed data reporting for several services that are obsolete, including one then called facsimile service. The older facsimile service was a private line service. The facsimile lines accommodated analog equipment that transmitted images at a rate of 3 to 6 pages per hour. Digital equipment was introduced in the late 1960's. Customers stopped using dedicated facsimile lines in the 1970's with the development of facsimile equipment that could utilize the public switched telephone network. See *Robert and Order*, note 16. Any remaining dedicated facsimile lines should be reported as private lines using the appropriate private line category.

[5] The previous manual used the categories: traffic that originated in the United States and terminated in a foreign country; traffic that terminated in the United States and originated in a foreign country; and traffic that originated in a foreign country, transited the United States, and terminated in a foreign country. Transiting traffic also has been referred to as indirect service.

[6] The full title is International Points Used for FCC Reporting Purposes, released May 1992.

This manual defines three categories of geographic points. Domestic U.S. points are the 50 states, the District of Columbia, and Puerto Rico. Off-shore U.S. points include U.S. possessions such as American Samoa, Guam, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, the Northern Mariana Islands, Palmyra Atoll, the U.S. Virgin Islands, and Wake Island. The Domestic U.S. and Off-shore U.S. points are collectively referred to herein as the United States. All other points of the world, including ships operating in international waters, are Foreign points.[7] Canada, Saint Pierre and Miquelon, and Mexico are foreign points. United States and foreign points are identified in the publication International Points, produced by the Industry Analysis Division of the Common Carrier Bureau.

The geographic categories Domestic U.S., Off-shore U.S. and Foreign shall be used to determine which data must be reported. Service that both originates and terminates in Domestic U.S. points is considered to be domestic and need not be reported under § 43.61 of the Rules.[8] All other traffic for a United States point must be reported.

The following table illustrates the classification of traffic for various pairs of points:

Service originating and terminating points	Categorized	Reporting status
Alaska and Hawaii.	Domestic U.S. and Domestic U.S.	Domestic Traffic: not reported.
Alaska and Guam.	Domestic U.S. and Off-shore U.S.	U.S. International Traffic: Reported.
Alaska and Japan.	Domestic U.S. and Foreign.	U.S. International Traffic: Reported.
Guam and Japan.	Off-shore U.S. and Foreign.	U.S. International Traffic: Reported.
Guam and Wake Island.	Off-shore U.S. and Off-shore U.S.	U.S. International Traffic: Reported.
Japan and Italy via Hawaii.	Foreign and Foreign (U.S. transiting).	U.S. International Traffic: Reported.
Japan and Italy via Guam.	Foreign and Foreign (U.S. transiting).	U.S. International Traffic: Reported.
Japan and Italy direct.	Foreign and Foreign.	Foreign Traffic: not reported.

The distinction between domestic and international traffic may prove burdensome in some instances. For example, there may be instances where customers obtain international service while using a domestic telecommunications service. A domestic cellular service might be usable just outside U.S. territorial waters. The cellular carrier may have no way of knowing if its service is being used to complete an international call. If the carrier bills such a customer at domestic rates, the traffic should be considered incidental to domestic service, and need not be included in § 43.61 reports. The opposite situation might occur where a customer uses an international maritime service while in U.S. territorial waters. Such a call to a domestic point would be a domestic call. It could be difficult for the carrier to identify and remove such traffic from its international reports. Such traffic is incidental to international service, and may be included in § 43.61 reports as international traffic. Carriers should footnote entries that might contain a significant amount of such traffic.

B. Service Categories Used for Reporting Data

Section 43.61(b) of the FCC's Rules requires carriers to provide traffic and revenue information for each and every international common carrier service that they provide to the public.[9] The reports must separately show data for the following service categories:

International Message Telephone Service—International message telephone service involves the transmission and reception of speech over the public switched network for which a charge is collected on a minimum charge per call or measured time basis. Per call prices are typically calculated based on the number of minutes. Service features, such as operator assistance or credit card billing, may be offered as part of the service and may give rise to additional charges. Through use of modems and other specialized equipment, the customer can use ordinary telephone calls for the transmission of data, video and facsimile [10] messages. International message telephone services have been tariffed on a "through" basis from the United States to a particular foreign point. Traditionally, service is provided jointly by a U.S. international message telephone service carrier and its foreign correspondent carrier under a "joint operating agreement". Such agreements typically specify the responsibility of each correspondent, the accounting rate per unit of international message telephone service traffic, the basis for settling traffic balances, and arrangements such as "proportionate return" which govern the routing of traffic.[11] Carriers offer many types of switched network services with different access and billing arrangements. International message telephone service includes service with dedicated access if the calls are routed through the public switched network. Accordingly, for international reporting purposes, the International message telephone service category includes traditional international message telephone service, WATS, 800 type services, custom network services, conference services, country direct service, and similar services. The International message telephone service category can also include switched digital services that utilize ISDN interfaces.

International Message Telegraph Service—International message telegraph service involves the transmission and reception of record matter for which the transmission is not directly controlled by the sender and for which a charge is collected on a per word basis.[12]

Telex Service—Telex service involves the transmission and reception of record matter, including messages, facsimile and data, charged for on a per-call basis for which the transmission is directly controlled by the user. Messages may be transmitted via carrier facilities on either a direct dial or on a store and forward basis. The telex network provides for the transmission of communications alternately in either direction, but not in both directions simultaneously. Such services are also

[7] The term "Foreign point" replaces the term "Overseas point" which did not include Canada, Mexico or Saint Pierre and Miquelon.

[8] At one time the § 43.61 reporting requirements excluded traffic between the United States and Canada, Mexico, and Saint Pierre and Miquelon. In addition, the previous Manual did not require reporting of traffic between U.S. points and Off-shore U.S. points.

[9] Enhanced services as defined by Section 64.702 of the Rules are exempt from part 43.61 reporting requirements.

[10] See footnote 4 above.

[11] International Message Telephone Service can also be provided by resale. Regulation of International Accounting Rates, 7 FCC Rcd 559 (1991) (First Report and Order).

[12] At one time carriers were required to provide separate data for message telegraph services offered to the public, to governments, and to press entities. Carriers should report 43.61 data that represents totals for all types of customers.

referred to as teleprinter exchange services.

Private Line Service—Private line service is the leasing of a dedicated channel of communications (leased circuit) for specified periods of time for the customer's use. Leased private line circuits are typically priced by bandwidth or capacity and other features such as conditioning. International private line service does not include private circuits within the Untied States. The international portion of the service typically begins at a point within the United States, the terminates at a connection point halfway between the United States and the destination country.[13] Revenues reported for international private line services must exclude the revenue derived from private lines that originate and terminate within the United States. Switched and virtual private line services should be reported separately as Other International Services.[14] There are six categories of private line service for reporting purposes:

1. Voice Circuits [15]
2. up to 1200 bits per second (bps)
3. 1201 bps to 9600 bps
4. 9601 bps to 30 Million bps (Mbps) or .01 Megahertz to 16 Megahertz
5. greater than 30 Mbps to 120 Mbps or 16 Megahertz to 72 Megahertz
6. greater than 120 Mbps or greater than 72 Megahertz

Other International Service—The final service category includes all services that are not listed above. The category includes cablephoto service, radiophoto service, photo transmission service and addressed press service.[16] The category also includes packet switched transmission service, switched and virtual private line services and some other forms of switched digital service. The category also includes any new service that differs from services listed above.

[13] The remaining half of the international private line from the theoretical midpoint to the foreign destination is provided by the U.S. carrier's foreign correspondent carrier. Each carrier bills the customer separately for its half of the service. In actuality, although the service is priced on the basis of a theoretical midpoint, the international circuitry is usually provided by the U.S. and foreign carrier jointly, with each carrier owning an undivided half-interest in the circuits.

[14] These services are considered to be private lines services, but are often priced on a basis other than that described in this definition. Consequently, the reporting of revenues for such services cannot easily conform to the format specified for the private line categories contained herein.

[15] This category includes individual circuits that are usable for voice traffic. This category does not include large capacity circuits provided as multiple voice grade equivalent channels.

[16] Section 43.61 of the rules formerly required detailed country-by-country data submissions for these services.

C. Data To Be Reported

Facilities-based traffic must be reported separately from pure resale traffic. A facilities-based carries uses one or more international channels of communications to provide international telecommunications service. An international channel is a wire or radio link that facilitates electronic communications between a United States point and another world point. A facilities-based carrier may own or lease international channels. By contrast, pure resale traffic is not provided to the public over the reseller's international channels of communications, but instead are provided by the resale of a switched communications service provided by another international carrier. Any other type of resale traffic is considered to be the same as facilities-based traffic for reporting purposes.

Carriers must file separate data schedules for each United States point to which they provide facilities-based service. For larger U.S. points, facilities-based carriers must provide country-by-country data for each service that they provide. This data must be provided on computer disk. Carriers may not consolidate facilities-based data for two United States points without obtaining a waiver from the FCC.

For smaller U.S. points, and for pure resale traffic, all carriers must report world total traffic data. Carriers may not consolidate pure resale data for an off-shore U.S. point and a domestic U.S. point, or for two off-shore U.S. points, without obtaining a waiver from the FCC. However, carriers may consolidate pure resale traffic for domestic U.S. points (the Conterminous United States, Alaska, Hawaii, and Puerto Rico).

REPORTING REQUIREMENTS FOR FACILITIES-BASED SERVICE

Country-by-country data (computer file required)	World total data* (computer file optional)
Alaska	American Samoa.
Conterminous U.S.	Baker Island.
Guam	Howland Island.
Hawaii	Jarvis Island.
Puerto Rico	Johnston Atoll.
U.S. Virgin Islands	Kingman Reef.
	Midway Atoll.
	Navassa Island.
	Northern Mariana Islands.
	Palmyra Atoll.
	Wake Island.

*Many points on this list are not served by U.S. carriers at this time. Carriers need not file data for points that they do not serve.

Attachment 1 contains a sample report for a facilities-based service. Attachment 2 contains a sample report for pure resale service.

1. Classification of Traffic Based on Billing Information

Facilities-based international traffic should be reported in three categories—billed to the United States point served, billed to an international point, and transiting the United States point served. Pure resale traffic should be reported to the pure resale billing category.[17] The categories for facilities-based services are described below:

U.S. Billed Traffic—Traffic billed to the United States point that is served has traditionally been referred to as originating or outbound traffic. Most calls billed to the United States are placed from within the United States. However, collect calls and calls using services such as country direct service are made from outside the United States to a telephone inside the United States and are also billed to the United States.[18]

Foreign Billed Traffic—Traffic billed to an international point has traditionally been referred to as terminating or inbound traffic. For example, a carrier serving Hawaii will report sent paid traffic from the U.S. Virgin Islands as foreign billed traffic—U.S. Virgin Islands.[19] Most traffic that will be reported as foreign billed will have terminated in the carrier's service area, and will have originated from another international point. However, collect calls that are made from the United States point served to an international point are also billed to that international point. Thus, a collect call from the United States to Japan must be reported as a foreign billed call.

Transiting Traffic—Transiting traffic originates from an international point, is routed through the United States point served, terminates at an international point, and is billed to an international point. Transiting traffic must be reported by the U.S. carrier according to the country in which the service is billed. Typically, this will be the country where the call originated. For example, sent

[17] Although pure resale traffic could be classified as U.S. billed, this manual provides a separate pure resale billing code.

[18] A customer can now originate a call in a foreign country, have it routed through a U.S. point to a second foreign country, and have the call billed to the U.S. point. Such calls are not transiting traffic, and must be classified as U.S. Billed Traffic. Each call is treated as two calls for settlement purposes. Accordingly, such calls should be reported as U.S. Billed Traffic to both the country of origin and the country of destination. The billed revenue for the call should be divided in proportion to component charges or charges that would be billed if two calls had been made.

[19] The phrase "foreign billed" means that the traffic is billed to another international point. The international point can be a United States or a foreign point.

paid traffic originating in Japan, routed through Guam, and terminated in Austria would be reported by the carrier serving Guam as transiting traffic from Japan. A collect call from Wake Island to Hawaii that is routed through Guam would be reported by the Guam carrier as transiting traffic billed to Hawaii.[20]

The foreign billed and transiting categories may not exist for some services. For example, carriers may provide private line service that is billed in the United States, or billed in a foreign country, but would not offer "transiting" private lines. Similarly, a carrier may not have foreign billed service for some international points. Carriers need not report service data for billing categories that are not provided or for international points that are not served.

2. Filing Data on a Country-by-Country Basis

U.S. carriers potentially provide service between U.S. points and all of the world points listed in the FCC publication International Points. Facilities-based carriers must file country-by-country data for facilities-based international message telephone, international message telegraph, Telex, and six categories of private line services. Carriers must file separate data for each of the listed world points that they serve with two exceptions:

(a) Carriers may omit points that would represent domestic traffic. For example, a report for Alaska need not show traffic to Hawaii.

(b) Carriers may consolidate traffic as indicated by the summary code shown in International Points. For example, world point Scotland has international point code 280 and summary code 326. The summary code is the international point code for the United Kingdom. Traffic between a U.S. point and Scotland may be reported to country code 280 or to country code 326.[21] The same traffic, however, may not be reported to more than one country code.

There are no miscellaneous country codes. All traffic must be reported to a code associated with one of the points listed in International Points. Contact the Industry Analysis Division if traffic exists for an international point that is not currently listed. The Industry Analysis Division will assign a code for that point.

As noted above, international points have been grouped into ten world regions. These regions and the reporting codes for providing subtotals are listed in section 2–F below. Carriers must file world totals and subtotals by region for each facilities-based service that they provide. Carriers may omit countries or regions of the world that are not served.

3. Measurement of Traffic and Revenues

This section provides guidance for measuring traffic and revenues. Each service has unique characteristics that create special concerns. For example, a customer who places a telephone call to a foreign country may not be aware that the call originates in a Local Access Transport Area (LATA), crosses a Point of Presence (POP) to the interexchange network of an interlata carrier, is switched through international facilities to a foreign carrier, and is then terminated in a foreign local exchange. The customer need not consider the various arrangements under which several carriers share the revenue from the call. The private line customer, on the other hand, leases a specific amount of capacity between two specified points. The customer may use a variety of arrangements to get traffic to and from the leased circuit, and may use the circuit for several types of communications. The customer is concerned with the charges for each specific link in its network.

These and other differences between message and private line services lead to differences in the ways that carriers should measure traffic and revenues. The following sections cover message and private line services. The guidelines should be used for other international services as appropriate.

a. *Message services.* For each message service (telephone, telegraph and telex) carriers must report data on three types of traffic (U.S. billed, foreign billed, and transiting). For each of these three types of traffic, carriers must report traffic and revenue data on a calendar year basis.[22] Message counts, minute counts, word counts, bill revenues, settlement receipts due, settlement payments owed, and retained revenues should be based on traffic actually carried during the year. The amounts reported should not reflect prior year adjustments.[23] Accordingly, carriers cannot legitimately report negative amounts in the message, minute, revenue, or settlement data fields.

i. *Message service traffic measures.* Carriers must report the number of billed messages for international message telephone, international message telegraph and telex services, except that messages may be omitted for transiting traffic.

Carriers must report the number of minutes for international message telephone and telex services. For facilities-based service, carriers should report the number of minutes upon which settlements will be calculated.[24] The settlement process is used by U.S. and foreign carriers to compensate each other for handling traffic for each other. The compensation is based on conversation minutes. Settlement minutes averaged 5% to 6% less than billed minutes for traffic billed in the United States for 1988 through 1990. Since carriers do not make settlement payments for their pure resale traffic, the number of minutes should be based on billing information.

Word counts must be reported for international message telegraph service. Carriers should report the number of words used for settlement purposes.

All message data must be reported on a message or end-to-end basis. This means that calls should be reported based on the billing location and the ultimate points of origin or terminus.[25]

ii. Message service revenues and settlement information. Carriers must report the billed revenues, settlement receipts due, settlement payments owed, and revenues retained for each message service. Billed revenues are equal to the amounts that carriers billed to customers for service at tariffed rates.

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[20] In this example, the carrier serving Wake Island would include the call with world total foreign billed traffic. The carrier serving Hawaii would include the call with U.S. billed traffic—Wake Island. The carrier serving Guam would include the call with Transiting traffic—Hawaii. The same call would be included in three § 43.61 data schedules.

[21] Scotland is part of Great Britain, which is a part of the United Kingdom. Great Britain is included in International Points with country code 117. A carrier could aggregate Scotland data with Great Britain traffic, but it may not report the same traffic to both Scotland and Great Britain.

[22] Section 43.61(a) of the Rules.

[23] The data must reflect traffic for the calendar year being reported. Settlement disputes have prevented carriers from reporting foreign billed traffic for significant periods of time. A carrier may receive settlement data for a period greater than a whole year. The carrier should identify the amounts relevant to the reporting year and use footnotes to report amounts that should be attributed to prior year reports. The calendar year data may not include prior period adjustments or corrections.

[24] A single conversation minute can result in two settlement minutes. For example, arrangements exist so that a call may originate in Saudi Arabia, be routed to the United States and then directed to Germany. The call is billed in the United States as a single call. The U.S. carrier settles with both Saudi and German telephone companies based on conversation minutes. Thus, two settlement minutes would be associated with each conversation minute.

[25] At one time carriers were required to report the same traffic on two schedules. The circuit traffic (CT) schedule showed all traffic that went to or from a particular country, including traffic that transited to a different country. The message traffic (MT) schedule only included traffic that originated or terminated in a particular country. The current requirements are most similar to the MT schedule.

The bill revenues should not be adjusted to reflect non tariffed discounts or discounts that result when international minutes are factored into total usage discounts, unless the international tariff specifies the precise calculation of the international portion of the discount. Billed revenues should not be reduced to reflect uncollectible or transit fees expenses.

U.S. carriers have contractual relationships with foreign carriers so that telephone calls can be made between local exchanges in the United States and local exchanges in foreign countries. The foreign carrier in the relationships is usually called the foreign correspondent. Accounting rate agreements specify the amounts that carriers pay to their foreign correspondents on a per minute or similar basis. When the U.S. carrier bills for an international call, it owes a settlement amount to the foreign correspondent. Where the foreign correspondent bills an international call, the U.S. carrier is owed a settlement amount. The carriers usually balance the amounts due and make net payments. The amounts due to U.S. carriers, including separate transit fees, if any, are referred to herein as settlement receipts. The amounts owed by U.S. carriers to foreign correspondents, including separate transit fees, if any, are referred to herein as settlement payments. Settlement payments do not include the amounts that pure-resale carriers pay to underlying U.S. carriers. The U.S. carrier retained revenue is equal to billed revenue plus settlement receipts minus settlement payments.

U.S. carriers should not have billed revenue for foreign billed or transiting traffic. U.S. carriers should not have settlement receipts for U.S. billed traffic. U.S. carriers may owe settlement payments for U.S. billed and transiting traffic.

Accounting agreements may be denominated in dollars, foreign currency units, or other monetary measures. All revenue and settlement payment information must be stated in U.S. dollars regardless of the terms of the accounting agreements or industry practices.

b. *Private line services.* This section provides guidance for reporting private line circuit counts and revenues on a country-by-country basis.

i. Number of leased circuits. A leased circuit is a single leased channel of communications that links two specific points. Leased circuits should be categorized according to the six private line categories shown on page 18. Circuits are not categorized according to how the customer actually uses them. Counts of leased circuits should be provided as of December 31 of the year for which data is being reported. Carriers should not attempt to convert part day into equivalent full day circuits.

ii. Leased circuit revenue. Private line and leased circuit service revenues should include only the revenue derived from the international portion of the communications used to provide service, and should not include revenue for circuits that originate and terminate within the United States. Private line revenues do not include billings made on behalf of domestic or foreign carriers for service provided by those carriers. Private line revenues should include revenue billed by a foreign carrier on behalf of the U.S. carrier for service provided by the U.S. carrier. Carriers must report the total private line revenues for the calendar year for which data is being reported.

4. Data Requirements by Service.

The following table summarizes the § 43.61 data filing requirements by service category:

	Facilities-based service	Pure resale service
International message telephone service.	By country and billing type: Messages, minutes, carrier revenues, settlement payments, retained revenue	Countries served. World totals by billing type: Messages, minutes, carrier revenues, settlement payments, retained revenue.
International message telegraph service.	By country and billing type: Messages, words, carrier revenues, settlement payments, retained revenue	World totals by billing type: Messages, words, carrier revenues, settlement payments, retained revenue.
Telex service	By country and billing type: Messages, words, carrier revenues, settlement payments, retained revenue	World total by billing type: Messages, words, carrier revenues, settlement payments, retained revenue.
Private line	By country and service category: leased circuits, revenues	
Each other international services	Region totals by billing type: Messages, minutes, words, leased circuits, carrier revenues, settlement payments, retained revenue as appropriate	World total by billing type: Messages, minutes, words, carrier revenues, settlement payments, retained revenue as appropriate.

D. Filing Procedures

Section 43.61(a) directs carriers to file reports by July 31, reporting service actually provided in the preceding calendar year. Section 43.61(c) provides that carriers shall submit a revised report by October 31 identifying and correcting errors in the July 31 filing. Carriers do not need to file revised data where corrected figures are within five percent of the figures filed in the July 31 filing. Carriers must refile a corrected version of each data record on which one or more data elements was found to be in error by more than five percent. The five percent guideline covers fluctuations in traffic or revenue totals due to corrections and true-ups that occur during the billing and settlement process. This exception is not intended to cover instances where carriers discover that they have filed erroneous data due to procedural mistakes made while preparing § 43.61 reports.

The following schedule details the number of copies required and the location to which those copies should be delivered. This schedule applies to the July 31 and October 31 filings. Carriers that provide only pure resale international services are not required to file data on diskette.

	Transmittal letter	Paper copies	Diskette
FCC Secretary, 1919 M Street, N.W., Room 222, Washington, D.C. 20554	1	—	—
FCC Common Carrier Bureau, Industry Analysis Division, 1250 23rd Street, N.W., Room 10, Washington, D.C. 20554	1	2	*1
Downtown Copy Center, 1919 M Street, N.W., Room 246, Washington, D.C. 20036	1	1	*1

* Pure resale traffic, and summary data for smaller U.S. points need not be filed on diskette. See page 20.

Paper copies must contain data that are identical to the data filed on disk. Page headings must clearly indicate the filing entity, the United States point covered, and the service being reported. Column headings must describe the data contained in each column.

The carrier must include footnote text to explain the specific circumstances of any data for the current period which differs materially from that for the previous period if the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report. The paper copies of the 43.61 data must include the text of the footnote. A data field is provided in the diskette record format to indicate that a footnote has been included in the paper copies. The paper copies should also contain any additional data or information that the carrier deems relevant or necessary to understanding the data it is required to file.

Carriers must certify the accuracy of the data submitted in FCC Report 43.61 by including a signed certification statement as the last page of the paper report. The text of the certification statement is included below:

Certification

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

Printed Name _____
Position _____
Signature _____
Date _____

Section 2—Diskette Format and Coding Instructions

A. Media and File Name for Traffic Data Filed on Disk

Data may be provided on 5¼" or 3½" floppy disks formatted for IBM or IBM compatible personal computers. Carriers serving more than one United States point should provide one file for each point served. All files may be included on the same disk. The record files should be named according to the following convention:

aaaaaaYY.436

where:

aaaaaa are 3 to 6 alpha characters that identify the filing entity and U.S. point
YY is the last two digits of the calendar year for which data is begin filed
.436 is the file extension, (short for 43.61)

For example—

ATTVI91.436 might signify AT&T's Virgin Islands data for 1991
GRPHNT91.436 might signify Graphnet's complete filing for 1991

B. Record Formats

The data files may contain comment records and data records. A comment record has a blank space (ASCII character 32 or " ") in the first position in the line, contains less than 132 characters, and ends with a carriage return. Comment records can be used to provide headings, formatting, and footnotes in the data file. Attachment 2 illustrates how a listing of the data file can be used as the paper copy of the data for filing purposes.

All data records must be provided using the record format set forth herein. Each record shall consist of a string of ASCII characters. Alpha fields should be left justified within the stated field boundary and may contain the ASCII characters "A" through "Z", "a" though "z", "'", ".", "*", "—", "+", "/", "&", "#", "**", "!", ":" ";", "0" through "9", and blank spaces (ASCII character 32). Integer fields should be right justified within the field boundary, and may contain the ASCII characters "—", "0" through "9" and leading blank spaces, but no commas or other characters. The character "—" signifies a negative value and should appear in the field to the left of the value. Negative values are only possible for retained revenue, where the settlement payout owed exceeded the billed revenue for a switched service.

Each data record should contain the following fields:

Field	Data type	Justification within field	Field size	Record positions
1. Filing Carrier Name	Alpha	Left	15	1–15
2. Year of data	Integer	Right	2	16–17
3. U.S. Point served	Integer	Right	5	18–22
4. International Point or region	Integer	Right	5	23–27
5. Service code	Integer	Right	3	28–30
6. Footnote indicator	Alpha	Right	3	31–33
7. Description	Alpha	Left	36	34–69
8. Billing Type Code	Integer	Right	2	70–71
9. Data field #1	Integer	Right	12	72–83
10. Data field #2	Integer	Right	12	84–95
11. Data field #3	Integer	Right	12	96–107
12. Data field #4	Integer	Right	12	108–119
13. Data field #5	Integer	Right	12	120–131

The data fields are further described in Section 2–K below.

Data files can be created using standard editors, word processors spreadsheet programs, data base programs and custom programs. For example, to create a data file using a spreadsheet:

—Set the column widths to equal the field size shown above. Thus, the first column would be 15 characters wide.
—Enter alpha fields as labels, enter integers as numbers.
—Specify a generic or character oriented printer {the lotus 3.1 sequence would be </> <P>rint <P>rinter <O>ptions <A>dvanded <D>evice <N> ame}
—Set the left and top margins to 0, set the right margin to 132, and set the bottom margin as high as possible.
—Print to a file, rather than to the actual hardware device.

C. Filing Carrier Name Field

The filing carrier name should be between 3 and 15 characters. The name field should appear on all data records filed by the carrier, and should be identical for all records filed by the carrier.

D. Year of Data Field

This field should contain the last two digits of the year for which data is being filed. For example, the July 31, 1992 filing will contain data for 1991. Therefore, the year of data field would be "91". This would appear on every data record in the file.

E. U.S. Point Served Field

The U.S. Point served country code is used to indicate which United States

point is covered by the data record. The codes for United States points are in the range 1001 to 1999, and are the country codes shown in International Points. Contact the Industry Analysis Division if data should be filed for an Off-shore U.S. point that is not included in the report. The Industry Analysis Division will assign a country code for such points. All records in a file must have the same U.S. point code.

F. International Point or Region Field

Where records contain data for traffic between a U.S. point and a specific international point, the code for that international point should be taken from International Points and entered in the International Point field.[26] For example, the code 1 in the international point field would indicate that the record reports traffic between a United States point and Abu Dhabi. The international point code for region subtotal and world total summary records should be as follows:

International point code (record field #4)	Description (record field #7)
9001	Western Europe.
9002	Africa.
9003	Middle East.
9004	Caribbean.
9005	North and Central America.
9006	South America.
9007	Asia.
9008	Oceania.
9009	Eastern Europe.
9010	Other regions.
9999	World Total.

Note: Code 9010—Other regions, covers Antarctica and Maritime traffic.

Section 1–C–2 of this manual explains which data must be filed on a country-by-country basis, and which data need only be filed on a summary basis. Facilities-based carriers must file regional and world total traffic and revenue subtotals for each service that they provide.[27] Carriers must file separate world total traffic and revenue by U.S. point for the pure resale traffic that they provide.[28]

The international point code 9999 should be used if the record contains world total data for a service. International point code 9999 is not a miscellaneous or "all other" code. This code represents a total for all international traffic between a United States point and the rest of the world. Where country-by-country data is filed, records with international point code 9999 contain the totals of records with the same U.S. region, service, and billing codes, and with international point codes between 1 and 1999. Country-by-country records would only be excluded from the total if they contained domestic traffic, e.g. traffic between two domestic U.S. points..

G. Service Code Field

The following service codes should be used:

1. International message telephone service
2. International message telegraph service
3. Telex Service
4. Private Line—Voice
5. Private Line—up to 1200 bits per second (bps)
6. Private Line—1201 bps to 9600 bps
7. Private Line—9601 bps to 30 Million bps (Mbps) or .01 Megahertz to 18 Megahertz
8. Private Line—greater than 30 Mbps to 120 Mbps or 18 Megahertz to 72 Megahertz
9. Private Line—greater than 120 Mbps or greater than 72 megahertz

99. New, Miscellaneous and Other Services

H. Footnote Code Field

The footnote code field should be used to indicate that the paper copy of the 43.61 data contains a footnote concerning the data record. The carrier must include footnote text to explain the specific circumstances if any data for the current period differs materially from that filed for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report. The paper copies of the 43.61 data must include the text of the footnote. These footnotes should be labeled sequentially from 1 to 999, and the footnote should be included in the footnote code field in the data record. Alpha numeric codes may be used only if the carrier needs to provide more than 999 footnotes in the report.

Footnotes and other comments may be included in the data file as comment records. Any record with a blank space (" ") in the first position will be treated as a comment record.

I. Description Field

For service codes 1 through 9, this field should contain the name of the international point or world region. The name should be identical to the international point name published in International Points. Region names are shown in section 2–F above.

For service code 99, this field should be used to identify the service provided.[29] This field is critical because the carrier may use service code 99 for several different types of service. Records with service code 99 will not be accepted unless there are at least 10 characters other than blank spaces in the service description field. All records pertaining to the same Other International Service should have identical service descriptions in this field.

J. Billing Type Code Field

The billing type code indicates whether the record contains facilities-based traffic and revenue information (codes 1 through 3), or whether the record simply indicates that the international point is served (code 4), or whether the record contains traffic and revenue data for a pure resale service (code 5).[30] The following billing type codes should be used:

1. *U.S. Billed*—Indicates that facilities-based service was billed to the United States point served. The United States point is indicated by the U.S. Region Code. The service could be a message service or a private line service
2. *Foreign Billed*—Indicates that facilities-based traffic was billed to the international point. The international point is identified by the international point code. The international point may be another U.S. point
3. *Transiting*—Indicates that facilities-based traffic was billed to the international point identified by the international point code. Transiting traffic does not originate or terminate in the United States point indicated by the U.S. region, but passes through that point
4. *Non-traffic record*—Is used by carriers who must list international points served, but who are not required to file traffic or revenue data on a country-by-country basis. Records with billing code 4 may be used to list countries served by pure resale carriers, and need not show any traffic or revenue data in fields 9 through 13
5. *Pure resale*—Pure resale traffic, provided by reselling the U.S. billed traffic of another carrier

Facilities-based carriers will typically file more than one record for each service for each international point served. One record will contain the U.S. billed traffic, one will contain the foreign billed traffic, and one will contain the transiting traffic. Records for

[26] There is no miscellaneous or "all other" country code. All traffic must be reported to a specific point. Country-by-country traffic and revenue data for points in a region should total to the amount reported for that region using region codes. Settlement and traffic adjustments which cannot be tied to specific points should be allocated to all appropriate points.

[27] Country-by-Country and region totals are not required for smaller international points. See page 20.

[28] Carriers may consolidate pure resale traffic for all domestic U.S. points that they serve. These points consist of Alaska, Hawaii, the conterminous U.S. and Puerto Rico.

[29] The service should be fully described in the paper copy of the § 43.61 filing.

[30] Carriers are not obligated to file data for pure resale services on diskette. The code is included in the manual to facilitate filing by those who wish to make diskette filings.

private line and other services will typically use billing code 1. Pure resale carriers may file one record with billing code 4 for each point served for each service provided. Pure resale carriers may provide total international traffic and revenue by service using international point code 9999, and billing code 5.

K. Data Elements Number 1 Through No. 5 (Traffic, Circuits, Revenue and Settlements Information)

There are five data element fields, each of which is 12 characters wide. These fields should contain right justified integer values with no commas, periods, or other punctuation marks. Data should be rounded to the nearest dollar. The contents of the data field will vary depending on the type of service. Section 1–C–3 describes the precise types of information that must be provided.

Service code	Data field #1	Data field #2	Data field #3	Data field #4	Data field #5
1 [1]	Messages [2]	Minutes	Billed and settlement revenue [3].	Settlement payments	Retained revenue.
2 [1]	Messages [2]	Words	Billed and settlement revenue [3].	Settlement payments	Retained revenue.
3 [1]	Messages [2]	Minutes	Billed and settlement revenue [3].	Settlement payments	Retained revenue.
4–9	Leased circuits	(No data)	Revenue	(No data)	(No data)
99	Volume measures [4]	Volume measure [4]	Billed and settlement revenue [3].	Settlement payments if appropriate.	Retained revenue.

[1] Records with Billing Type Code 4 (used by pure resale carriers to show international points served) can omit data fields #1 through #5.
[2] Messages can be omitted for transiting traffic.
[3] Records for U.S. Billed traffic will contain billed revenue. Records for Foreign Billed and Transiting traffic will contain settlement amounts due from foreign correspondents.
[4] For Other International Services (Service Code 99), use the volume and revenue measures that are appropriate. For example, the appropriate volume measures might be messages, leased circuits, minutes or some other type of data. The paper copy of data must indicate the volume and revenue measures provided.

List of Subjects in 47 CFR Part 43

Communications common carriers, International traffic reporting requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18113 Filed 8–4–92; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 57, No. 151
Wednesday, August 5, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AEA-20]

Proposed Establishment of Transition Area; Myerstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to establish a 700 foot Transition Area at Myerstown, PA, to support the development of a new standard instrument approach procedure (SIAP) to the Deck Airport, Myerstown, PA. The additional airspace would provide greater segregation between aircraft operating under instrument flight rules from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Send comments on the rule in triplicate to: George Dodelin, Manager, System Management Branch, AEA-530, Docket No. 91-AEA-20, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AEA-20". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot Transition Area at Myerstown, PA. Transition area descriptions are published in FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. A description of the proposed transition area would subsequently be published in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is proposed to be amended as follows:

Section 71.181 Designation

* * * * *

AEA PA TA Myerstown, PA
Decks Airport (lat. 40°21'08"N., long. 76°19'52"W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Decks Airport.

* * * * *

Issued in Jamaica, New York, on June 9, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-18411 Filed 8-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AEA-03]

Proposed Change of Operating Hours for Control Zone; Hagerstown, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to modify the operating hours of the Hagerstown, MD, Control Zone to coincide with the established operating hours of the air traffic control tower located at the Washington County Regional Airport, Hagerstown, MD. This is due to seasonal changes concerning the operating hours of the control tower. The effective hours of operation will be carried in future editions of the Airport/Facility Directory, or by the issuance of a Notice to Airmen (NOTAM).

DATES: Comments must be received on or before August 31, 1992.

ADDRESSES: Send comments on the rule in triplicate to: George Dodelin, Manager, System Management Branch, AEA-530, Docket No. 92-AEA-03, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AEA-03". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to change the operating hours of the Hagerstown, MD, Control Zone. Control zone descriptions are published in FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. A description of the control zone as amended would be published in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a 'significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is proposed to be amended as follows:

Section 71.171 Designation

* * * * *

AEA MD CZ Hagerstown, MD
Washington County Regional Airport, Hagerstown, MD. (lat. 39°42'28"N., long. 77°43'47"W.)
Hagerstown VOR (lat. 39°41'52"N., long. 77°51'22"W.)
Washington County Regional Airport ILS Runway 27 Localizer (lat. 39°42'22"N., long. 77°44'42"W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.1-mile radius of Washington County Regional Airport and within 2.7 miles each side of the Hagerstown VOR 239° radial and 059° radial extending from 7.4 miles southwest of the VOR to 1.6 miles northeast of the VOR and within 2.7 miles each side of

the Hagerstown VOR 086° radial extending from the 4.1-mile radius to the VOR and within 4 miles each side of the Washington County Regional Airport ILS Runway 27 localizer course extending from the localizer to 11.8 miles east of the localizer. This control zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on June 9, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-18412 Filed 8-4-92; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Parts 19, 23, and 245

Request for Comments Concerning the Guides for the Jewelry Industry, the Guides for the Watch Industry and the Guides for the Metallic Watch Band Industry

SUMMARY: The Commission has extended for 30 days the time period within which written comments will be received on the changes proposed by the Jewelers Vigilance Committee Inc. to the Guides for the Jewelry Industry, the Watch Industry and the Metallic Watch Band Industry. The extension also applies to comments on the questions posed by the Commission about the costs and benefits of the guides. The original request for comment was announced in the **Federal Register** on June 12, 1992 (57 FR 24998).

DATE: Comments will be accepted for the record until September 25, 1992.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Washington, DC 20580. Copies of the June 12, 1992 **Federal Register** notice, the petition, the current guides and a document comparing the two are on the public record and can be viewed in or obtained from the Public Reference Section, room 130, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Susanne S. Patch, Attorney, Federal Trade Commission, room S-4631, 601 Pennsylvania Ave. NW., Washington, DC 20580. Telephone: 202/326/2981.

SUPPLEMENTARY INFORMATION: The Commission has received a request for a 30-day extension of the comment period from the American Watch Association to allow it time to take formal action to review, evaluate and respond to the proposed revisions.

The Commission has determined to grant the extension. Accordingly, comments from any interested party will be accepted until September 25, 1992.

Authority: 15 U.S.C. 41-58.

List of Subjects in 16 CFR Parts 19, 23, and 245

Advertising, Labeling, Trade practices, Watches, Watch bands and jewelry.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-18537 Filed 8-4-92; 8:45 am]

BILLING CODE 6750-01-M AND

16 CFR Part 453

Trade Regulation Rule: Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Second request for public comment on petition by New York State for statewide exemption from trade regulation rule.

SUMMARY: The Federal Trade Commission seeks additional public comment on the request by New York State for exemption from the Trade Regulation Rule concerning Funeral Industry Practices, 16 CFR part 453. If the petition is granted the FTC Funeral Rule will not be in effect in New York, to the extent specified by the Commission, for as long as the state administers and enforces effectively the state requirements. A request for public comment on the petition was published in the **Federal Register** on March 18, 1991. The comment period closed on June 17, 1991. Since the close of the previous comment period, the Commission has received additional information concerning cuts in the budget and staffing for the state agency that administers and enforces state law and regulations pertaining to the funeral services industry. Therefore, the Commission is now requesting comment on the question of what effect these cuts have had on the ability of the state to effective administer and enforce the state requirements.

DATES: Public comments will be accepted until September 4, 1992.

ADDRESSES: Comments should be captioned: "New York Petition for Statewide Exemption from the Funeral Rule," FTC File No. 215-46, and should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580.

Copies of the petition can be obtained from the Public Reference Room, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2222.

A copy of the petition is also available for inspection at the FTC New York Regional Office, 150 William Street, suite 1300, New York, New York 10038.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-3010.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 5, 1990, the New York State Department of Health filed a petition for exemption for New York State from the FTC's Funeral Rule, 16 CFR part 453.[1]

Section 453.9 of the Funeral Rule provides:

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the state administers and enforces effectively the state requirement.

A prior request for public comment on the New York petition was published in the **Federal Register** on March 18, 1991.[2] The 90-day comment period closed on June 17, 1991. Only one comment was filed.[3] Additional information concerning the interpretation of New York law and the enforcement of that law was provided by the New York Department of Health by letters dated July 2, 1991, December 19, 1991, January 30, 1992, and February 20, 1992.[4]

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[1] The New York petition has been placed on the public record as Document No. XXIII-22, FTC File No. 215-46.

[2] 56 FR 11381.

[3] Document No. XXIV-62, FTC File No. 215-46. The commenting party was William C. Klein, of Rochester, New York, a consumer representative on the New York State Funeral Directing Advisory Board. He urged that the petition be granted.

[4] These documents have been placed on the public record as Document Nos. XXIII-30, 31, 32, 33, FTC File No. 215-46.

Recently the Commission has received information from the New York Department of Health showing that since the petition for exemption was filed, there have been substantial cuts in the budget and staffing of the Bureau of Funeral Directing.[5] (The Bureau of Funeral Directing, located within the Division of Public Health Protection of the Department of Health, has responsibility for enforcement of the laws and regulations governing funeral directing.) In addition to providing updated information concerning budget and staffing, the letter from the Department of Health describes measures that have been taken by the Bureau of Funeral Directing to attempt to compensate for the cuts in available resources. In conclusion, the letter reiterates the request that the Commission grant the New York petition for exemption from the Funeral Rule.

This second Commission request for public comment on the New York petition for exemption from the Funeral Rule is limited to the question of whether the cuts in budget and staffing for the Bureau of Funeral Directing have adversely affected the ability of the state to administer and enforce its laws and regulations effectively.

II. New Information Concerning the Administration and Enforcement of State Law

The January 1990 petition indicated that the Bureau of Funeral Directing had 11.5 staff positions, including a director, an assistant director, six field investigators, and 3.5 clerical positions. Currently, however, there are six staff positions filled in the Bureau. These six positions include a director, a supervisory investigator, a project director, and three clerical positions.[6] Thus, the Bureau has been reduced by 5.5 positions, including 5 field investigators and a half-time clerical position.

The budget for the fiscal year ending March 31, 1989 (the most recent year indicated in the petition) was $445,300. The budget for the fiscal year that ended March 31, 1992 was $307,396. During the intervening years, the budget was $303,878 (year ended March 31, 1990) and $275,127 (year ended March 31, 1990). Thus the budget has been cut by about 31 percent from the level indicated in the petition for exemption.

The petition stated that routine inspections of funeral firms were conducted on a triennial basis. However, the information recently received from the Department of Health is that during 1991 the Bureau of Funeral Directing staff completed 251 funeral firm inspections. The petitions indicated that there are 2,199 registered funeral firms in New York State. Therefore, it is clear that routine inspections have been greatly reduced and can no longer be performed every three years.

The letter from the Department of Health describes various measures taken by the Bureau of Funeral Directing to ensure compliance with the law despite the diminution of enforcement resources. To some extent, investigators from other bureaus within the Department of Health have been used by the Bureau of Funeral Directing. For example, the letter states that in July 1990, seven investigators from other bureaus were assigned to the Bureau of Funeral Directing to complete investigations in the New York metropolitan area. In addition, an investigator from the Bureau of Controlled Substances provides continuing assistance in the inspection of new funeral firms and in conducting complaint investigations.

Procedures used by the Bureau have been changed in response to the staffing cuts. The Bureau now requires that all funeral firms requesting registration,[7] or amending their registration, submit copies of the general price list and itemization statement form. These documents are audited at the Bureau so that field investigator time can be used for complaint investigations. Inspections conducted pursuant to complaint investigations receive priority over routine inspections. In addition, the letter states that more investigations are concluded by stipulated settlements rather than through time-consuming litigated hearings.

The letter further states that all complaints are investigated and that all investigations include an inspection of the funeral home. In 1991, the Bureau received 52 complaints, all of which resulted in an investigation. During that same year, 27 agreed stipulations and orders were entered. The civil penalties assessed in these 27 matters totalled $33,200.[8] In addition, during 1991, three funeral firms were sent warning letters, and 12 investigations were closed.

The Department of Health is considering proposing to the state legislature the establishment of a special revenue fund, to be derived from funeral firm registration fees, to support the activities of the Bureau of Funeral Directing. If such a fund were approved by the legislature, it might enable the Bureau to return to its previous staffing level. However, it does not appear that any such proposal has yet been submitted to the legislature, and the outcome of such a proposal cannot be predicted at this time.

III. Questions for Public Comment

1. What has been the impact of budget and staffing cuts upon the enforcement program of the New York Department of Health's Bureau of Funeral Directing?

2. Are the New York laws and regulations governing funeral transactions administered and enforced effectively at the present time?

3. Should the Federal Trade Commission grant the petition by the State of New York for statewide exemption from the Funeral Rule, notwithstanding the budget and staffing cuts that have taken place in New York's Bureau of Funeral Directing?

List of Subjects in 16 CFR Part 453

Funerals, Funeral homes, Price disclosures, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-18536 Filed 8-4-92; 8:45 am]

BILLING CODE 6750-01-M

[5] This information is contained in letters dated May 5, 1992 and May 14, 1992. These documents have been placed on the public record as Document Nos. XXIII-36, and 37, FTC File No. 215-46. The FTC request for this information is Document No. XXIII-34, FTC File No. 215-46.

[6] Information concerning the nature of the six staff positions was communicated to FTC staff by telephone by the Director of the Bureau of Funeral Directing.

[7] According to the petition, New York funeral firms must register with the state on a biennial basis.

[8] In 1989, there were 31 stipulations and orders with civil penalties of $27,100. In 1990, there were 32 stipulations and orders with civil penalties totaling $74,100.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Application and Closing Out of Offsetting Long and Short Positions; Exception

AGENCY: Commodity Future Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend rule 1.46, 17 CFR 1.46, by providing an additional exception to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity

futures or option positions in a customer account. This additional exception would apply to purchases and sales of commodity futures or option contracts for the separate accounts of a customer by a commodity trading advisor trading pursuant to separate "trading programs."

In addition, the Commission is proposing to delete Commission rule 1.46(e)(2), which requires an FCM to provide the customer with a quarterly consolidated account statement where the customer's trading in at least one separate account is directed by the FCM and offsetting long and short positions are being held open. The Commission is requesting comment specifically on these proposed rule amendments, as well as general issues regarding the continued efficacy of rule 1.46.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Comments should be sent to Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, and should make reference to "Revision to Rule 1.46."

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-8980 or (202) 254-8955, respectively.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission rule 1.46(a) generally requires that an FCM close out a customer's previously-held short or long commodity futures or option position if an offsetting purchase or sale is made for the customer's account, and that an FCM furnish promptly to the customer a purchase-and-sale statement showing the financial result of the transactions. Rule 1.46(b) generally provides that if the short or long position held in the account is greater than the quantity purchased or sold, the FCM must apply the offsetting purchase or sale to the oldest portion of the previously-held short or long position, unless the customer or option customer specifically instructs otherwise.

There are currently seven exceptions to rule 1.46, and the Commission has requested comment on a petition for rulemaking proposing an eighth exception for error accounts.[1]

Commission staff and a commenter, in connection with the Commission's ongoing general review of its rules, has suggested that the Commission create an additional exception from the rule for positions traded on behalf of a customer by a commodity trading advisor ("CTA") trading "separate and independent systems." To the extent that they were marketed, the "trading systems" would have to be marketed as separate. The commenter suggests that:

> There are trading advisors who have separate and independent systems which are marketed as such. Customers may trade money with several systems at the same time by establishing one or more accounts with one or more FCMs. ([I]f both accounts are with the same FCM that FCM must close out the [offsetting] position in [the] account * * * . However, if the accounts are with two FCMs the position need not be closed out. Such a result makes no sense. Nor does it make sense to claim that failure to close out the position leads to misleading open contracts statistics. Since both of the positions were opened for a valid economic reason pursuant to separate trading systems and backed by separate margin requirements, they should not be required to be offset.

In addition, the commenter suggested that Commission rule 1.46(e)(2), 17 CFR 1.46(e)(2), be deleted. Commission rule 1.46 requires that an FMC provide the customer with a quarterly consolidated account statement where the customer's trading in at least one separate account is directed by the FCM, or an associated person of the FCM, and offsetting long and short positions are being held open.[2] This quarterly report includes the same information furnished to a customer on a required monthly statement. See, 17 CFR 1.33(a) (1992). The commenter suggested that although the quarterly consolidated report provided no new information to the customer, it nevertheless constituted an "administrative burden on FCMs."

II. The Proposed Revisions

The Commission believes that there may be merit to the suggested rule amendments. Accordingly, the Commission is proposing to add an exception to the requirements of Commission rule 1.46 for trading done on behalf of a customer by a CTA trading separate systems in separate accounts and to delete the requirement that an FCM which directs trading for a customer in a separate account and holds open offsetting positions provide the customer a consolidated quarterly report.

The primary effect of this proposed exception from the general provision of rule 1.46 will be to permit CTAs to trade for their customers separate trading systems through the same FCM. Currently, this type of trading would have to be effectuated through more than one FCM. As proposed, the Commission is not specifically defining "separate systems." However, the Commission is proposing to require that to the extent that the trading programs are marketed, they be marketed as separate systems.

The Commission, based upon its experience with the current rule, has reevaluated the need for the currently required quarterly report. Although as the Commission previously noted, the consolidated quarterly statement might have provided a ready tabulation of the accounts' position, as a whole,[3] all of that information nevertheless is available to the customer on the customer's monthly statement. Accordingly, deleting this requirement will result in the reduction of an administrative and paperwork burden on FCMs while not reducing the information provided to the customer with which the customer can calculate the account balance. Accordingly, the rule, as proposed to be amended, should still provide customers with adequate protections through the disclosure requirement and the monthly report, which are being retained.

III. General Issues for Comment

As discussed above, there are currently seven exceptions to the rule. The Commission is proposing an

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[1] See, 57 FR 20801 (June 16, 1992). The seven types of transactions that currently are exempt include: (1) Purchases or sales of commodity options held by commercial interests in the underlying commodity that are economically appropriate to the reduction of risks for the conduct and management of a commercial enterprise; (2) purchases or sales constitution "bona fide hedging transactions" as defined in Commission rule 1.3(z); (3) sales during the period for, and for the purpose of, making delivery on a futures contract; (4) purchases or sales made in the separate accounts of a commodity pool directed by two or more unaffiliated commodity trading advisors acting independently; (5) purchases or sales made by a leverage transaction merchant constituting cover of its obligations; (6) purchases or sales made in the separate accounts owned by a futures or option customer where the persons directing the trading are unaffiliated with, and act independently of, each other person directing trading for a separate account; and (7) purchases or sales made in the separate accounts of a person granted an exemption under Commission rule 150.3.

[2] Commission rule 1.46(e) also requires that the FCM furnish to the customer a written statement disclosing that offsetting long and short positions held open in separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although the positions will result in no additional market gain or loss.

[3] 51 FR 37198, 37199 (October 20, 1986).

additional two, one in this notice. In light of the increasing number of exceptions to the rule, the Commission believes that it is appropriate to consider whether the rule, as a whole, remains efficacious. That is, is the rule continuing to meet its intended objective, or have the increasing number of exceptions undercut the rationale for maintaining the rule? More fundamentally, the Commission is reviewing whether the benefit resulting from the rule continues to justify its costs, or whether there are alternatives that would be superior.

Commission Rule 1.46, first promulgated by the Commodity Exchange Authority in 1948, apparently serves two regulatory purposes. Explicitly, it was promulgated "in aid of the prohibition against wash sales and fictitious sales." Thus, it serves to address market integrity, helping to ensure the accuracy of market information including actual open interest. Implicitly, it also provides some customer protection, offering prophylactic protection that offsetting customer positions, generally in a discretionary account, are held open only for bona fide purposes, and not for such improper purposes as wrongful allocation of trades, or unnecessary commission-fee generation. It may also protect against the inadvertent holding of offsetting positions into the delivery period.

To the extent that the rule results in a more accurate indication of actual open interest, providing a guide to the relative liquidity of the market and thereby enhancing the value of the prices generated by the futures and options market, its benefit is a generalized one, available to all those trading in the market or who rely on the futures and options markets for pricing. In addition, the rule may provide a benefit to customers in the form of customer protection from certain potentially abusive practices relating to the holding open of offsetting positions for other than bona fide reasons. The cost of the rule, however, is borne by market professionals and participants. This cost may be in the form of less flexibility and in the direct cost of tracking individual accounts for compliance with the rule and with its exceptions.

In order better to consider these issues, the Commission requests that commenters address the following questions:

1. Do the benefits to customers of the prophylactic protections against possible abuse of accounts outweigh the customer's cost in terms of flexibility in choosing trading programs? To what degree does the consolidated quarterly account statement provide customers with a clearer picture of the over-all performance of trading in the account?

2. Would deletion of the rule diminish the reliability and accuracy of the open interest information, and if so, how serious is this expected loss?

3. Would a requirement that offsetting positions which were held open be closed only through a pit transaction, exchange of futures for physicals or delivery, address adequately concerns over the accuracy of open interest information? Assuming that the offset of such positions through one of these types of transactions must not run afoul of prohibitions on wash trading, this would require traders to assume market risk in closing out such positions.

4. Would maintenance of the general rule but replacement of the current list of exceptions with a provision permitting any customer, in writing, to voluntarily opt out of the rule's protections generally reduce an FCM's costs or raise those costs and what effect would this provision have on the accuracy of the information generated by the market?

5. Would deletion of the current rule increase any costs to an FCM?

a. Does the prophylactic nature of the rule serve to reduce the costs of FCMs by establishing an industry-wide standard for the treatment of offsetting position?

b. Would greater discretion in the treatment of customer accounts increase the probability of related types of individual malfeasance, and hence, result in increased supervisory costs?

c. Would the greater availability of "hold open" accounts result in increased costs to the industry by complicating further the bulk transfer of accounts by a firm in financial distress?

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "FCMs" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules modify the requirements under which FCMs must close out offsetting positions and issue a consolidated purchase-and-sale statement. The proposed amendment does not impose any additional burdens, but rather, alleviates already existing obligations. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe that the promulgation of these proposed rule amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. There are no information collection requirements under the provisions of the PRA contained in Rule 1.46 and the Commission has determined that this proposed amendment has no burden.

List of Subjects in 17 CFR Part 1

Offsetting positions, Close-out requirements, Commodity trading advisors, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4g, 5 and 8a of the Act, 7 U.S.C. 6g, 7 and 12a (1988), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 8a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a–1, 13a–2, 16, 19, 21, 23 and 24; 5 U.S.C. 552 and 552b, unless otherwise noted.

2. Section 1.46 is proposed to be amended by adding new paragraph (d)(9), by revising paragraph (e)(1) and by removing and reserving paragraph (e)(2), to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) *Exceptions.* The provision of this section shall not apply to:

(1) * * *

(9) Purchases or sales held in separate accounts for the same customer by a commodity trading advisor trading separate trading systems which have

been marketed separately, *provided that:*

(i) The purchases and sales for such accounts are executed in open and competitive means on or subject to the rules of a contract market; and

(ii) No position held for or on behalf of separate accounts traded in accordance with this paragraph may be closed out by transferring such an open position from one of the separate accounts to another of such accounts.

(e) * * *

(1) The futures commission merchant must first furnish the customer or option customer with a written statement disclosing that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss. Such written statement shall be attached to the risk disclosure statement required to be provided to a customer or option customer under § 1.55 of this part.

(2) [reserved].

Issued in Washington, DC, this 30th day of July, 1992, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-18475 Filed 8-4-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF84

Direct Service Connection (Post-traumatic Stress Disorder)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to establish the extent of evidence required to establish service connection for post-traumatic stress disorder (PTSD). This regulation is necessary because, although VA has issued procedural guidelines on this subject, it is a substantive issue which should be addressed by regulation. The intended effect of this amendment is to establish a regulatory basis for current VA policy.

DATES: Comments must be received on or before September 4, 1992. Comments will be available for public inspection until September 14, 1992. The amendment is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until September 14, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In a precedent opinion dated March 17, 1992 (O.G.C. Prec. 7-92), VA's General Counsel held that certain provisions of the Adjudication Procedural Manual, M21-1, Part I, regarding the development of evidence in claims involving PTSD constitute substantive rules which were not promulgated in accordance with the rulemaking procedures prescribed by 5 U.S.C. 552(a)(1), 553 and 38 CFR 1.12. The purpose of this rulemaking is to correct that deficiency.

PTSD is an anxiety disorder resulting from a traumatic event outside the range of usual human experience which is characterized by recurrent episodes of reexperiencing the traumatic event, numbing of emotional responsiveness, and increased restlessness. In order to establish service connection for PTSD, VA must have medical evidence supporting a clear diagnosis of the condition, credible evidence that the claimed inservice stressor actually occurred, and medical evidence establishing a link between the current symptomatology and the claimed inservice stressor.

Under the provisions of 38 U.S.C. 501(a), the Secretary of Veterans Affairs has authority to prescribe regulations with respect to the nature and extent of proof and evidence required in order to establish entitlement to benefits. The Secretary has determined that for cases of PTSD certain types of evidence are sufficient to substantiate the occurrence of the claimed inservice stressor under specific circumstances were events can never be fully documented. Combat, for example, is inherently life-threatening, and the brutal and horrific events associated with active armed combat are indisputably the types of stressful events that could produce PTSD. The chaotic circumstances of combat, however, preclude the maintenance of detailed records. Consequently, the Secretary has determined that when service department records indicate that the veteran engaged in combat or was awarded a combat citation and the claimed stressor is related to the combat experience, further development to document the occurrence of the claimed stressor in unnecessary.

Similarly, when a veteran is considered a former prisoner-of-war under the provisions of 38 CFR 3.1(y), the Secretary has determined that no additional evidence is necessary to verify the occurrence of an inservice stressor. Typically, former prisoners-of-war were forcibly detained or interned under circumstances that included physical or psychological hardships or abuse, malnutrition, and unsanitary conditions. The prolonged and chronic stress of exposure to such conditions plus the uncertainty of not knowing how long one must endure them are types of overwhelming stress that could certainly produce PTSD.

When VA has the types of evidence discussed above, additional development would only serve to delay the authorization of benefits to which the claimants are entitled. We propose to implement this decision by amending 38 CFR 3.304.

This amendment is proposed to be effective the date of publication of the final rule. The Secretary finds good cause for doing so since this amendment will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: June 19, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.304, add new paragraph (f) and its authority citation to read as follows:

§ 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) Post-traumatic stress disorder.

Service connection for post-traumatic stress disorder requires medical evidenced establishing a clear diagnosis of the condition, credible supporting evidence that the claimed inservice stressor actually occurred, and a link, established by medical evidence, between current symptomatology and the claimed inservice stressor. If the claimed stressor is related to combat, service department evidence that the veteran engaged in combat or that the veteran was awarded the Purple Heart, Combat Infantry Badge, or similar citation will be accepted, in the absence of evidence to the contrary, as conclusive evidence of the claimed inservice stressor. Additionally, prisoner-of-war experience which satisfies the requirements of § 3.1(y) of this part will be accepted as conclusive evidence of an inservice stressor.

(Authority: 38 U.S.C. 1154(b))

[FR Doc. 92-18503 Filed 8-4-92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300257; FRL-4075-9]

RIN 2070-AC18

Certain Polymers and Copolymers; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of 1,6-hexanediol dimethacrylate polymer, ethylene glycol dimethyacrylate-lauryl methacrylate copolymer, ethylene glycol dimethacrylate polymer, lauryl methacrylate-1,6-hexanediol dimethyacrylate copolymer, stearyl methacrylate-1,6-hexanediol dimethacrylate copolymer, and 1,12-dodecanediol dimethacrylate polymer when used as inert ingredients (release rate regulators) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. This proposed regulation was requested by Agrisense.

DATES: Comments, identified by the document control number [OPP-300257], must be received on or before September 4, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: At the request of Agrisense, 4230 West Swift Ave., Suite 106, Fresno, CA 93722, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of 1,6-hexanediol dimethacrylate polymer, ethylene glycol dimethyacrylate-lauryl methacrylate copolymer, ethylene glycol dimethacrylate polymer, lauryl methacrylate-1,6-hexanediol dimethyacrylate copolymer, stearyl methacrylate-1,6-hexanediol dimethacrylate copolymer, and 1,12-dodecanediol dimethacrylate polymer when used as inert ingredients (release rate regulators) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for the above-mentioned polymers and copolymers will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers" the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude from this low risk group, polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. The above-mentioned polymers and copolymers conform to the definition of a polymer in 40 CFR 723.250(b)(11) and meet the following criteria which are used to identify low-risk polymers:

1. The minimum average molecular weight of the above-mentioned polymers and or copolymers is greater than 100,000, with some approaching 1,000,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned polymers and copolymers are not cationic, nor are they reasonably anticipated to become such.

3. The above-mentioned polymers and copolymers contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned polymers and copolymers contain as an integral part of their composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned polymers and copolymers do not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned polymers and copolymers are not biopolymers, a synthetic equivalent of a biopolymer, or derivatives or modifications of a biopolymer that is substantially intact.

7. The above-mentioned polymers and copolymers are not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned polymers and copolymers do not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned polymers and copolymers are not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300257]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, agricultural commodities, pesticides and pests, recording and recordkeeping requirements.

Dated: July 27, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001(c), by adding and alphabetically inserting the following new entries, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * *		
1,12-Dodecanediol dimethyacrylate polymer	Minimum molecular weight 100,000	Release rate regulator in pheromone formulation
* * * * * *		
Ethylene glycol dimethacrylate-lauryl methacrylate copolymer.	Minimum molecular weight 100,000	Release rate regulator in pheromone formulation
Ethylene glycol dimethacrylate polymer	Minimum molecular weight 100,000	Release rate regulator in pheromone formulation
* * * * * *		
1,6-Hexanediol dimethacrylate polymer	Minimum molecular weight 100,000	Release rate regulator in pheromone formulation
* * * * * *		
Lauryl methacrylate-1,6-hexanediol dimethyacrylate copolymer.	Minimum molecular weight 100,000	Release rate regulator in pheromone formulation
* * * * * *		
Stearyl methacrylate-1,6-hexanediol dimethacrylate copolymer.	Minimum molecular weight 100,000	Release rate regulator in pheromone formulation
* * * * * *		

* * * * *

[FR Doc. 92-18576 Filed 8-4-92; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 76]

RIN 2127-AE44

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to give the manufacturers of certain trucks and multipurpose passenger vehicles manufactured to be driven by wheelchair occupants the option of not complying with existing requirements in Standard No. 208, Occupant Crash Protection, for the dynamic testing of the manual safety belts they currently install in front outboard seating positions. It would also give them the option of installing non-dynamically tested manual safety belts instead of complying with requirements that have been issued, but are not yet effective, for the installation and dynamic testing of automatic restraints in those positions.

Because of the special modifications which must be made to these vehicles, final stage manufacturers and alterers who produce these vehicles have been unable to certify compliance with these requirements by passing through the certification of the chassis manufacturer. In addition, the final stage manufacturers and alterers are small businesses who individually cannot afford to independently certify compliance with the dynamic test requirements for these vehicles.

This amendment would allow persons with disabilities to continue to purchase vehicles for their own operation.

DATES: Comments must be received by October 5, 1992. If adopted, the proposed amendments would become effective 30 days following the publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION:

On November 23, 1987, NHTSA published a final rule amending Standard No. 208, Occupant Crash Protection, to require the dynamic crash testing of the lap/shoulder safety belts installed in the front outboard seating positions of trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less (referred to below as "light trucks") (52 FR 44898). This amendment became effective on September 1, 1991.

On November 4, 1991, the Recreation Vehicle Industry Association (RVIA) petitioned the agency "to amend Standard No. 208 to eliminate requirements that inadvertently discriminate against individuals with disabilities including individuals who use wheelchairs." RVIA is a national trade association representing over 500 manufacturers of recreation vehicles and their related suppliers. RVIA's membership also includes more than 114 van converters who manufacture approximately 80 percent of the van conversions produced in the United States. The RVIA petition alleged that its "member manufacturers and van converters are small business entities that do not have the necessary technical or other resources to 'crash test' vehicles. As a result of (the new dynamic testing) requirement, they are no longer able to provide employers and others with 'customized' vans, van conversions and light trucks that are specially designed or equipped to be driven by or used to transport persons with disabilities." On January 9, 1992, the agency granted this petition.

In the preamble to the 1987 final rule, the agency discussed how final stage manufacturers and alterers who could not afford to do the necessary testing or engineering analysis could certify compliance with the new dynamic testing requirements. The agency stated that "(t)he manufacturers of the truck or van chassis used by final stage manufacturers are required to provide information on what center of gravity, weight, and other limitations must be followed for the vehicle to remain in compliance with all the agency's safety standards. Final stage manufacturers and converters can stay within the limitations prescribed by the original chassis manufacturer and thus the final vehicle will continue to comply." (52 FR 44898, 44907) Therefore, RVIA's assertions appear to have already been addressed in the preamble to the final rule.

However, while the agency was reviewing this petition, NHTSA also received a letter from the Braun Corporation, a mobility products manufacturer. This letter explained that, when manufacturing a van to be driven by a person with a disability, the roof over the front seating positions must be raised to provide sufficient headroom for a person in a wheelchair. The letter explained that the information provided by the manufacturer of the van stated that the roof area forward of the B pillar (the post between the side cargo door and the front passenger door) cannot be cut if the final stage manufacturer wishes to pass through the incomplete vehicle manufacturer's certification of compliance with Standard No. 208. Because many of the final stage manufacturers and alterers are small businesses, they cannot individually afford to independently certify compliance with the new dynamic testing requirements of Standard No. 208. In addition, because vehicles manufactured for persons with disabilities are often unique, it would be difficult for the manufacturer to utilize other analytical techniques to evaluate the compliance of different vehicles. Therefore, RVIA's concern that the new dynamic testing requirements of Standard No. 208 makes manufacture of vehicles for persons with disabilities cost prohibitive appears valid.

The RVIA petition also claimed that, by making the manufacture of vehicles "specially designed or equipped to be driven by or used to transport persons with disabilities" cost prohibitive, the new dynamic testing requirements violate the Americans with Disabilities Act [ADA] of 1990 (Pub. L. 101-336, 42 U.S.C. 12101, *et seq*). The ADA requires newly purchased or leased or remanufactured vehicles used in bus systems operated by public entities to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. The ADA also requires that designated public transportation, provided by private entities, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The agency disagrees that the new dynamic testing requirements of Standard No. 208 violate the ADA. The issues raised by the RVIA petition concern modification of vans for operation by persons in wheelchairs.

The agency believes that these vehicles are primarily, if not wholly personal or private vehicles, and not vehicles used in public transportation. Even if some of these vans were intended for public transportation purposes, the only seats that appear to present a problem are seats forward of the B pillar, especially the driver's seat. Accessible vehicles used in public transportation are designed to carry individuals in wheelchairs as passengers, at seating positions which are located rearward of the B pillar.

While not required by the ADA to take action in response to the petition, the agency is concerned that the dynamic testing requirements for manual safety belts in light trucks may severely limit the personal mobility of drivers with disabilities. Although the petition did not address the automatic restraint requirements not yet in effect for light trucks, the agency has similar concerns about those requirements. While the agency believes that all individuals are entitled to an equivalent level of occupant crash protection, the agency believes that that goal must be balanced with the goal of providing mobility for all Americans. The agency encourages the vehicle manufacturers to work with those who modify and alter light trucks for persons with disabilities to develop appropriate mobility arrangements, adaptive devices, and other hardware that will work harmoniously with the occupant crash protection requirements of Standard No. 208.

Since this is not yet possible, the agency is proposing to add light trucks manufactured to be operated by wheelchair occupants to the list of vehicles which may be equipped with non-dynamically tested manual belts instead of being equipped with dynamically tested manual belts or automatic restraints. The agency emphasizes that the manual safety belts in these light trucks would offer significant occupant crash protection. These vehicles would be required to have, at a minimum, a Type 2 seat belt assembly installed at each outboard seating position and a Type 1 seat belt assembly installed at all other seating positions.

Since the agency does not have any information that seating positions rearward of the B pillar cannot comply with the current requirements, the agency does not believe there is a need to apply the amendments to vehicles with conventional driver's seating positions, but designed to carry passengers in wheelchairs in the rear seating area. To ensure that the amendments are limited to vehicles manufactured to be driven by a wheelchair occupant, the agency would refer to those vehicles by the term "vehicles manufactured for operation by persons with disabilities" and define that term as follows:

Vehicles that incorporate a level change device (e.g., a wheelchair lift or a ramp) for onloading or offloading an occupant in a wheelchair, at least one adaptive control to enable persons who have limited use of their arms or legs to operate a vehicle, and an interior element of design intended to provide the vertical clearance necessary to permit a person in a wheelchair to move between the level change device and the driver's position or to occupy that position.

This definition covers all vehicles with these attributes, instead of only those vehicles manufactured in two or more stages and altered vehicles. The agency is not aware of any single stage vehicles that are being manufactured with the attributes necessary to qualify for this exclusion. If a commenter believes that vehicles manufactured in a single stage should not qualify for this exclusion, the agency requests comments on how to objectively make that distinction based on attributes of the vehicles instead of the nature of the manufacturing process. The agency also requests comment on all other aspects of this definition.

As noted above, the agency is not proposing to extend the proposed exclusion to vehicles in which only the right front seating position is designed for a person in a wheelchair because such a passenger would be able to use rear seating positions. It is the agency's belief that this exclusion to the dynamic testing requirements should be no broader than necessary to accommodate the mobility needs of persons with disabilities. The agency requests comments on any need to extend the exclusion to vehicles in which only the right front seating position is modified.

The agency specifically seeks public comments on whether prospective purchasers should be provided with information that the vehicles subject to this rulemaking are not required to be dynamically tested. If commenters believe such notification is necessary, they are requested to provide reasons thereof and what form the notification should take.

Because this proposal would remove a restriction on the manufacture of light trucks for operation by persons with disabilities, the agency is proposing that this amendment would become effective 30 days after publication of a final rule. In addition, in response to inquiries from a member of Congress and the public, NHTSA has previously stated that it will not conduct any Standard No. 208 compliance tests of vehicles that would be covered by the proposed amendment that are manufactured while this rulemaking is pending.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendment are so minimal that a full regulatory evaluation is not required.

The agency estimates that there would be 1,000 vehicles produced annually that would qualify for the proposed exclusion. Assuming that each of these vehicles is unique, the manufacturer would have to separately test each model, requiring manufacture of two vehicles, one to be tested and one to be sold. Testing costs for a Standard No. 208 test are $13,500. The agency estimates that the total cost of the second vehicle would be $25,000. Based on these figures, the agency estimates that the proposed amendment will avoid $38.5 million in costs annually.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated

the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic effect on a substantial number of small entities. Manufacturers of vehicles affected by this proposal are primarily small businesses. However, as stated above, the agency does not expect a significant cost impact as a result of this proposal. Since there will not be a significant cost impact, the price of new vehicles will not be affected sufficiently to affect the purchase of new vehicles by small organizations and governmental jurisdictions. In addition, this amendment would permit small businesses to produce vehicles that they would not otherwise be able to produce.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 571.208 would be amended by revising the heading and adding a new first sentence in S4.2, and by revising the heading and the first sentence in paragraphs S4.2.2, S4.2.5.1.1, S4.2.5.2.1, S4.2.5.3.1, and S4.2.6 and the heading, paragraph (a) and the 1st sentence of paragraph (b) to S4.2.5.4 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.2. *Trucks and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less.* As used in this section, *vehicles manufactured for operation by persons with disabilities* means vehicles that incorporate a level change device (e.g., a wheelchair lift or a ramp) for onloading or offloading an occupant in a wheelchair, at least one adaptive control to enable persons who have limited use of their arms or legs to operate a vehicle, and an interior element of design intended to provide the vertical clearance necessary to permit a person in a wheelchair to move between the lift or ramp and the driver's position or to occupy that position.

* * * * *

S4.2.2 *Trucks and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997.* Except as provided in S4.2.4, each truck and multipurpose passenger vehicle, with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, vehicles carrying chassis-mount campers, and vehicles manufactured for operation by persons with disabilities may instead meet the requirements of S4.2.1.1 or S4.2.1.2. * * *

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S4.2.5 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994, and before September 1, 1997.*

S4.2.5.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994, and before September 1, 1995.*

S4.2.5.1.1 Subject to S4.2.5.1.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars).

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S4.2.5.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an*

unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1995, and before September 1, 1996.

S4.2.5.2.1 Subject to S4.2.5.2.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 and before September 1, 1996, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars).

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S4.2.5.3 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1996, and before September 1, 1997.*

S4.2.5.3.1 Subject to S4.2.5.3.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1996 and before September 1, 1997, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars).

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S4.2.5.4 *Alternative phase-in schedule.* * * *

(a) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars).

(b) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard. * * *

* * * * *

S4.2.5 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997.* Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard, except that walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles manufactured for operation by persons with disabilities may instead meet the requirements of S4.2.1.1 or S4.2.1.2. * * *

Issued on July 29, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-18328 Filed 8-4-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

49 CAR Part 172

[Docket No. HM-206; Notice No. 92-6]

RIN 2137-AB75

Improvements to Hazardous Materials Identification Systems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); extension of comment period.

SUMMARY: On June 9, 1992, RSPA published an advance notice of proposed rulemaking (ANPRM) in the Federal Register inviting public comment in regard to methods for improving the current placarding system, establishing a centralized reporting system and computerized data center and requiring carriers to establish continually monitored emergency response telephone systems. RSPA has received several requests from petitioners seeking an extension of the comment period in order to have more time to evaluate questions contained in the ANPRM. RSPA concurs, in part, with these requests and is extending the comment period 60 days from August 10, 1992 until October 9, 1992.

DATES: The closing date for filing comments is extended from August 10, 1992, to October 9, 1992.

ADDRESSES: Address comments to Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5 p.m. Monday through Friday, except public holidays.

FOR FURTHER INFORMATION CONTACT: John Potter, Office of Hazardous Materials Standards, RSPA, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590. (202) 366-4488.

SUPPLEMENTARY INFORMATION: On June 9, 1992, RSPA published an advance notice of proposed rulemaking (ANPRM) in the Federal Register inviting public comment in regard to methods for improving the current placarding system, establishing a centralized reporting system and computerized data center, and requiring carriers to establish continually monitored emergency response telephone systems (Docket HM-206, Notice 92-6, 57 FR 24532). RSPA has received petitions from the Hazardous Materials Advisory Council (HMAC) and the American Trucking Associations (ATA) and the American Petroleum Institute (API). HMAC requested a 120-day extension. ATA requested an extension either to November 10, 1992, or of 30 days following the availability of a National Academy of Science (NAS) report regarding the feasibility and necessity of implementing a centralized reporting and data system (scheduled for completion and submission to Congress and the Secretary of Transportation in November 1992). API also requested an extension until 30 days following availability of the NAS study. The petitioners said an extension of the comment period would allow sufficient time to address "the extensiveness and complexity of the 63 questions." In addition, HMAC asserted that since the NAS study regarding computerized tracking systems is still in progress, "a delay in the comments would provide the possibility of an open forum for discussion of the points raised in the

ANPRM and of points raised in the NAS final report."

RSPA agrees that additional time should be provided to evaluate and respond to the questions posed in the ANPRM. However, RSPA believes that completion of the NAS study need not precede submission of comments to the ANPRM or their evaluation by RSPA. Extending the comment period to some date following completion of the NAS report would unduly delay consideration of the issues raised in the ANPRM. Therefore, RSPA is extending the comment period for 60 days, from August 10, 1992 until October 9, 1992, rather than for the longer periods requested by petitioners.

Issued in Washington, DC, on July 31, 1992 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-18506 Filed 8-4-92; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 57, No. 151
Wednesday, August 5, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Under the Paperwork Reduction Act (44 U.S.C., chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

ADDRESSES: Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525, (202) 606–5245.

Send comments to both: Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Ofc. Bldg., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patricia A. E. Rodgers, 202/606–4845.

SUPPLEMENTARY INFORMATION:

Office of Action Issuing Proposal: Office of Domestic and Anti-Poverty Operations/Volunteers In Service to America (VISTA).

Title of Forms: Request for VISTA Information Postcard.

Need and Use: For approximately the past seven years, ACTION has provided these postcards for its recruitment and information dissemination activities.

Type of Request: Revision of a currently approved postcard.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: On Occasion.

Estimated Number of Responses: 6,000.

Average Burden Hours Per Response: 2 Minutes.

Estimated Annual Reporting or Disclosure Burden: 200 Hours.

Regulatory Authority: 42 U.S.C. 4951, Public Law 93–113, Title I.

Dated: July 30, 1992.

Mary Jane Maddox,

Acting Director, ACTION.

[FR Doc. 92–18523 Filed 8–4–92; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 31, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Forest Service
Collection and Analysis of Timber Purchases' Cost and Sales Data
Annually
Businesses or other for-profit; 60 responses; 100 hours
John A. Combes, (202) 205–0862

Extension

• Food and Nutrition Service
Food Stamp Mail Issuance Report
Form FNS–259
Quarterly
State or local governments; 10,060 responses; 3,139 hours
David Walters, (703) 305–2385

• Food and Nutrition Service
Annual Report for the Nutrition Education and Training Program (FNS–42)
Form FNS–42
Annually
State or local governments; 56 responses; 1008 hours
Martha A. Poolton, (703) 305–2554

• Animal and Plant Health Inspection Service
Endangered Species Regulations and Forfeiture Procedures
PPQ Forms 621, 623, 625, and 626
Recordkeeping; On occasion
Business or other for-profit; Small businesses or organizations; 16115 responses; 3186 hours;
Don Thompson, (301) 436–8645

• Forest Service
Recreation Fee Permit Envelope
FS–2300–26, –26a
On occasion
Individuals or households; 2,000,000 responses; 60,000 hours
Bob Cron, (202) 205–1408

• Animal and Plant Health Inspection Service
Report of Violation (PPQ Form 518)
PPQ Form 518
On occasion
Individuals or households; Farms: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 600 responses; 102 hours
Andrea M. Elston, (301) 436–4478

New Collection

• Food and Nutrition Service
Participation in the Child Support Enforcement Program Among Non-AFDC Food Stamp Households
Single Time
Individuals or households; 2,949 responses; 450 hours
Diana Perez, (703) 305–2133

Reinstatement

• Food and Nutrition Service
Employment and Training (E&T) Program Report
FNS 583
Quarterly
Individuals or households; State or local governments; 3,521,065 responses; 258,416 hours
Ellen Henigan, (703) 305–2762.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 92–18552 Filed 8–4–92; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Market Promotion Program, Fiscal Year 1993

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Market Promotion Program for Fiscal Year 1993.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, room 4932–S, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000, Telephone: (202) 720–5521.

SUPPLEMENTARY INFORMATION: Section 203 of the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), directs the Commodity Credit Corporation (CCC) to "carry out a program to encourage the development, maintenance and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations that implement a foreign market development program". It further requires the Secretary to provide assistance under the Market Promotion Program (MPP) on a priority basis to those commodities which have been affected by an "unfair trade practice". Assistance under this program may be provided in the form of funds of, or commodities owned by, the CCC, as determined appropriate by the Secretary.

The MPP will be implemented in accordance with the regulations set forth in 7 CFR part 1485, subpart B, (56 F.R. 40745), 8/16/91. The Administrator of the Foreign Agricultural Service, who is Vice President of CCC, is authorized to enter into agreements with nonprofit commodity specific trade associations, regional associations of state departments of agriculture, state groups, and U.S. private firms and cooperatives to provide cost-share assistance to carry-out approved export promotion activities. Eligibility for promotional support will be limited to those agricultural commodities or products which are at least 50 percent U.S. origin by weight, excluding added water. Promotional activities will be undertaken which offer the greatest potential in terms of creating, maintaining or expanding export markets for U.S. agricultural commodities. Assistance may be provided for brand promotion activities when such activities are determined by the Administrator, FAS, to be an effective means of carrying out the purposes of the MPP.

To be considered by CCC, applicants must fully comply with the procedures specified in 7 CFR 1485.12(b)(2), 7 CFR 1485.13(c), and 7 CFR 1485.14(e)(2). Criteria for the allocation of CCC resources in the MPP are set forth at 7 CFR 1485.15.

The applicant must provide the information required by the regulations and may include any other factors the applicant deems appropriate. All applications must be received by 5 p.m. eastern time, October 7, 1992 at the following address: Marketing Operations Staff, room 4932–S, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000.

For more detailed information regarding application procedures, revised strategic plan formats, and other aspects of the Market Promotion Program, contact the Marketing Operations Staff, Foreign Agricultural Service, at the address above or telephone (202) 720–5521. Comments regarding the conduct of the MPP Program may be directed to the same address.

Signed at Washington, DC July 31, 1992.

Stephen L. Censky,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 92–18554 Filed 8–4–92; 8:45 am]

BILLING CODE 3410-10-M

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Council meeting:

Date and Time: September 16–18, 1992, 9 a.m.

Place: Ramada Hotel Old Town, The Fairfax Room, 901 N. Fairfax Street, Alexandria, Virginia 22314.

Purpose of Meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The agenda items will include a wide range of matters concerning these two programs.

Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the pubic may file written statements with the Council before or after the meeting.

Persons wishing to file written statements or to obtain additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

Dated: July 30, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92–18519 Filed 8–4–92; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Boone Fork Creek Watershed, KY

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Boone Fork Creek Watershed, Letcher County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Billy W. Milliken, State Conservationist, Soil Conservation Service, Suite 110, 771 Corporate Drive, Lexington, Kentucky 40503–5479, telephone: 606–224–7360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy W. Milliken, state conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection, flood control, and rural water supply. The planned action consists of installing an 8,500 ft. lined flood control channel, a rural water supply structure, and a forestland land treatment program that includes an education-information component.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties, a limited number of copies of the FONSI are available to fill single copy requests. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy W. Milliken, state conservationist, Suite 110, 771 Corporate Drive, Lexington, Kentucky 40503–5479.

No administrative action on implementation of the proposal will be taken until 30 days after September 4, 1992.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Frank Scudder,

Deputy State Conservationist.

[FR Doc. 92–18470 Filed 8–4–92; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee to the Commission will be held from 6 p.m. until 9 p.m. on Thursday, August 27, 1992, at the Hyatt on Printers Row, 500 So. Dearborn Street, Chicago, Illinois. The purpose of this meeting is to receive a briefing on unequal police protection and to discuss civil rights issues.

Persons desiring additional information should contact Faye M. Lyon, Committee Chairperson at (815) 965–9595 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 29, 1992.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–18504 Filed 8–4–92; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Illinois Advisory Committee to the Commission will be held from 8:30 a.m. until 6 p.m. on Friday, August 28, 1992, at the Ralph Metcalf Building, 77 West Jackson Street, room 331, Chicago, Illinois. The purpose of this meeting is to examine unequal police protection of the African American community in Chicago.

Persons desiring additional information should contact Faye M. Lyon, Committee Chairperson at (815) 965–9595 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 29, 1992.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–18505 Filed 8–4–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. OEE–3–92; OEE–4–92]

Reza Panjtan Amiri and Mohammad Danesh; Appellants; Decision and Order

On November 12, 1991, the Acting Assistant Secretary for Export Enforcement issued an Order temporarily denying the export priviliges of Appellants. The Order was published in the **Federal Register** on November 20, 1991 (56 FR 58553). After notice, an extension until May 29, 1992, was issued on May 8, 1992 (57 FR 21057). Following notice and objection, further extension of the Temporary Denial Order was made on May 29, 1992, and published in the **Federal Register** on June 8, 1992. (57 FR 24242).

The Appellant has now appealed this extension of the Temporary Denial Order. He argues that the Order fails to accord any probative value to facts which contradict the likelihood of an imminent violation and that a temporary denial order should not be based solely on past violations. In the Recommended Decision of the Administrative Law Judge (ALJ), the ALJ finds that there is sufficient showing on the record for continuing the Temporary Denial Order. Based on my review of the record, I agree with that finding.

The ALJ, however, goes on the state that based on his opinion in Dockets OEE–1–92 and OEE–2–92, July 22, 1992, there is no longer statutory authority for issuing Temporary Denial Orders because of the expiration of the Export Administration Act of 1979. I disagree with the ALJ's conclusion in this matter for the reasons I have given in rendering my decision in In the Matter of Iran Air, (Docket Number 0120–01). I hereby vacate that portion of the Recommended Decision in this case that suggests that there is no legal basis to issue or continue a temporary denial order.

Order

Based on my review of the complete record, Appellants' request to vacate the Temporary Denial Order is denied. This constitutes final agency action.

Dated: July 30, 1992.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Recommended Decision

[Docket Number OEE–3–92; OEE–4–92]

In the Matter of: Reza Panjtan Amiri [1] also known as Ray Amiri individually & doing business as Ray Amiri Computer Consultants and Mohammad Danesh also known as Don Danesh, Appellants.

Appearance for Appellants: John R. Liebman, Esq., Brown, Winfield & Canzoneri, Inc., 300 South Grand Avenue, suite 1500, Los Angeles, California 90071–3125.

Appearance for Agency: Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room H–3839, Washington, DC 20230.

Background

On November 12, 1991, at the request of the Deputy Chief Counsel for Enforcement and Litigation, the Acting

[1] The Temporary Denial Order involved the above Appellant and Mohammad Danesh. Mr. Danesh has not appealed.

Assistant Secretary for Export Enforcement issued an Order temporarily denying the export privileges of Appellant and others. That Order was published in the **Federal Register** on November 20, 1991, at 56 FR 58553. After due notice a brief extension, until May 29, 1992, was issued on May 8, 1992 (57 FR 21057). Following notice and objections, further extension for 180 days was executed on May 29, 1992, and published in the **Federal Register** on June 8, 1992, at 57 FR 24242. An appeal and written submissions have been received on behalf of the parties and the matter is ready for disposition in this short-term appeal proceeding.

Facts

Counts Fourteen Through Seventeen

[18 U.S.C. 1001, 2(b)]

On or about the following dates, in Orange County and elsewhere, within the Central District of California, defendants Reza Amiri and Mohammad Danesh knowingly and willfully made, and caused to be made, false, fictitious and fraudulent statements and representations as to material facts within the jurisdiction of the United States Department of Commerce and the United States Customs Service, both agencies of the United States, in that defendants prepared and filed, and caused to be prepared and filed, with the United States Department of Commerce and the United States Customs Service, Shipper's Export Declarations ("SED") which falsely: (a) Declared that the commodities listed below were authorized for export to Iran as general license designation "GLV", and (b) understated the dollar value for the commodities; whereas in truth and fact, as defendants well knew, each of the exported commodities required an Individual Validated License for export from the United States to Iran and none was authorized for export as "GLV", and the value of each commodity was significantly greater than that which was declared:

Count	Commodity	SED date	Declared export designation and value	Actual value
Fourteen	1 Data I/0 29B30800 Universal Programming System	8/3/89	GLV 1565A, $4852.00	$10,900
Fifteen	1 Hewlett Packard 8112A Pulse Generator	12/29/89	GLV 1529A, $3937.00	6,049
Sixteen	1 Tektronix 446 Oscilloscope	3/27/90	GLV 1529 $3795.00	4,995
Seventeen	1 Hewlett Packard 54504A Digitizing Oscilloscope	8/1/90	GLV 1529 D. Control $4772.00	6,450

The above are the counts of a first superseding indictment to which Appellant entered a plea of guilty in the United States District Court for the Central District of California. Additional assertions of possible other violations are also made in the record but they do not appear to be substantiated.

Appellant's Points

Counsel for Mr. Amiri contends that the temporary denial order fails to accord any probative value to highly relevant facts which strongly contradict the likelihood of an imminent violation and that a temporary denial order should not be based solely on past violations.

Discussion

Counsel errs. A person engaged in commercial activity is obliged to know and conform to the rules of the regulated business in which he engages. This cannot be overstated, particularly for those involved in international export of materials and products. The guilty plea to the five counts as set forth above was sufficient to warrant prompt action in light of the activities involved. Appellant may not now renege on the implications of that plea. Continued participation in foreign trade (through Canada) and travel to Iran to conduct "business activities" certainly support an extension until the investigation could be completed and the charging letter issued. Appellant's relocation of his business and use of another entity that has been granted an exception do not support an extension.

I find that, on the record before me, there was a sufficient showing for continuing the temporary denial order.

So much for the facts.

Compliance with the law is another matter. In Dockets OEE–1–92 and OEE–2–92, July 22, 1992, the effect of the lapse of the Export Administration Act on September 30, 1990, is discussed. There is no longer statutory authority for issuing Temporary Denial Orders. The reservations expressed there apply here as well.[2] I find no legal authority for the issuance of Temporary Denial Orders.

For the reasons stated in OEE–1–92 and OEE–2–92 cited above, the temporary denial order should be withdrawn for it lacks a legal basis.

Dated: July 23, 1992.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 92–18463 Filed 8–4–92; 8:45 am]

BILLING CODE 3510–DT–M

[2] That concern encompasses the search warrant alluded to on page 3 of the Statement in Support of Appeal. If the warrant was of the administrative variety, or was based on the lapsed Export Administration Act, then *Bivens* (as discussed in Dockets OEE–1–92 and OEE–2–92) may have applied here.

Action Affecting Export Privileges; Kenneth K. Gimm; Order Denying Permission To Apply for or Use Export Licenses

In the matter of: Kenneth K. Gimm, 14 Fairway Drive, Princeton, New Jersey 08540.

On July 15, 1991, Kenneth K. Gimm (hereinafter referred to as Gimm) was convicted in the U.S. District Court for the District of New Jersey of one count of violating the Export Administration Act of 1979, as amended (EAA).[1] The conviction followed Gimm's plea of guilty to a one-count criminal information charging him with exporting certain articles from the United States while he was subject to an order issued by the United States Department of Commerce that denied all of his export privileges. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 *Fed. Reg.* 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license previously issued to such a person. Having received notice of Gimm's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Gimm permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on July 15, 2001. I have also decided to revoke all export licenses issued pursuant to the EAA in which Gimm had an interest at the time of his conviction.

Accordingly, *it is hereby Ordered*

I. All outstanding individual validated licenses in which Gimm appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Gimm's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until July 15, 2001, Kenneth K. Gimm, 14 Fairway Drive, Princeton, New Jersey 08540, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Gimm by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until told.

VI. A copy of this Order shall be delivered to Gimm. This order shall be published in the **Federal Register**.

Dated: July 28, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92–18501 Filed 8–4–92; 8:45 am]

BILLING CODE 3510-DT-M

Action Affecting Export Privileges; Susan Y. Gimm; Order Denying Permission To Apply for or Use Export Licenses

In the matter of: Susan Y. Gimm, 14 Fairway Drive, Princeton, New Jersey 08540.

On July 15, 1991, Susan Y. Gimm (hereinafter referred to as Gimm) was convicted in the U.S. District Court for the District of New Jersey of one-count of violating the Export Administration Act of 1979, as amended (EAA).[1] The conviction followed Gimm's pleas of guilty to a one-count criminal information charging her with aiding and abetting her husband, Kenneth K. Gimm, to export certain articles from the United States during a period of time while her husband, Kenneth K. Gimm, was subject to an order issued by the United States Department of Commerce that denied all of his export privileges. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Gimm's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Gimm permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of her conviction. The 10-year period ends on July 15, 2001. I have also decided to revoke all export licenses issued pursuant to the EAA in which Gimm had an interest at the time of her conviction.

Accordingly, *it is hereby Ordered*

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[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 *Fed. Reg.* 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the EAA.

I. All outstanding individual validated licenses in which Gimm appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Gimm's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until July 15, 2001, Susan Y. Gimm, 14 Fairway Drive, Princeton, New Jersey 08540, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or suing any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Gimm by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.19(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until July 15, 2001.

VI. A copy of this Order shall be delivered to Gimm. This Order shall be published in the **Federal Register**.

Dated: July 28, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-18502 Filed 8-4-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of the Final Affirmative Injury Determination made by the U.S. International Trade Commission respecting Softwood Lumber from Canada, filed by the Government of Canada, the Governments of Alberta, British Columbia, Ontario and Quebec, the Canadian Forest Industries Council and affiliated companies and the Quebec Lumber Manufacturers' Association and its individual member companies with the United States Section of the Binational Secretariat on July 24, 1992.

SUMMARY: On July 24, 1992, the Government of Canada, the Governments of Alberta, British Columbia, Ontario and Quebec, the Canadian Forest Industries Council and affiliated companies and the Quebec Lumber Manufacturers' Association and its individual member companies filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Affirmative Injury Determination made by the U.S. International Trade Commission respecting Softwood Lumber from Canada, USITC File Number 701-TA-312 (Final) and published in the **Federal Register** on July 15, 1992 (57 FR 31389). The Binational Secretariat has assigned Case Number USA-92-1904-02 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules.

Rules 35(2) requires the Secretary of the responsible Section of the Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 24, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in

accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 24, 1992);

(b) A Party, investigation authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 8, 1992); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 29, 1992.

James R. Holbein,

United States Secretary, Binational Secretariat.

[FR Doc. 92-18514 Filed 8-4-92; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

[Docket No. 920791-2191b]

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition by the NFPA Committee as the Technical Committee Report. Each person who has submitted a written proposal will receive a copy of the report.

Dated: July 30, 1992.

Sam Kramer,

Acting Director.

NFPA No.	Title	Proposal closing date
NFPA 13A-1987	Inspection, Testing and Maintenance of Sprinkler Systems	9/18/92
NFPA 13E-1989	Fire Department Operations in Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems	7/16/93
NFPA 14A-1989	Testing, Inspection and Maintenance of Standpipe and Hose Systems	9/18/92
NFPA 30B-1990	Aerosol Products	9/15/92
NFPA 32-1990	Drycleaning Plants	7/16/93
NFPA 70E-1988	Electrical Safety Requirements for Employee Workplaces	1/15/93
NFPA 85C-1991	Furnace Explosions/Implosions in Multiple Burner Boiler Furnaces	1/15/93
NFPA 86-1990	Ovens and Furnaces	1/15/93
NFPA 91-1992	Exhaust Systems for Air Conveying of Materials	5/31/93
NFPA 122-1990	Flammable and Combustible Liquids Within Underground Metal and Nonmetal Mines (Other than Coal)	7/16/93
NFPA 123-1990	Underground Bituminous Coal Mines	7/16/93
NFPA 124-1988	Diesel Fuel and Diesel Equipment in Underground Mines	7/16/93
NFPA 150-1991	Firesafety in Racetrack Stables	7/16/93
NFPA 221*Proposed	Fire Walls	1/15/93
NFPA 231D-1989	Storage of Rubber Tires	1/15/93
NFPA 253-1990	Critical Radiant Flux of Floor Covering Systems Using Radiant Heat Energy Source	9/18/92
NFPA 298-1989	Foam Chemicals and Wildland Fire Control	1/15/93
NFPA 321-1991	Classification of Flammable and Combustible Liquids	9/15/92
NFPA 385-1990	Tank Vehicles for Flammable and Combustible Liquids	7/16/93
NFPA 386-1990	Portable Shipping Tanks for Flammable & Combustible Liquids	7/16/93
NFPA 408-1989	Aircraft Hand Fire Extinguishers	10/30/92
NFPA 410-1989	Aircraft Maintenance	1/15/93
NFPA 422M-1989	Aircraft Fire and Explosion Investigators	10/30/92
NFPA 423-1989	Aircraft Engine Test Facilities	1/15/93
NFPA 497M-1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/15/93
NFPA 921-1992	Fire and Explosion Investigations	7/16/93

NFPA No.	Title	Proposal closing date
NFPA 1201–1989	Developing Fire Protection Services for the Public	7/16/93
NFPA 1404–1989	Fire Department Self-Contained Breathing Apparatus Program	7/16/93
NFPA 1922*Proposed	Self-Contained Pumping Units	9/18/92
NFPA 1975–1990	Station/Work Uniforms for Fire Fighters	10/1/92
NFPA 1991–1990	Vapor-Protective Suits for Hazardous Chemical Emergencies	10/1/92
NFPA 1992–1990	Liquid Splash Protective Suits for Hazardous Chemical Emergencies	10/1/92
NFPA 1993–1990	Support Function Protective Garments for Hazardous Chemical Operations	10/1/92
NFPA 2002*Proposed	Selection of Fire Protection Systems	1/15/93

[FR Doc. 92–18467 Filed 8–4–92; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 920791–2191a]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1993 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty-three reports are published in the 1993 Annual Meeting Technical Committee Reports and will be available on August 7, 1992. Comments received on or before October 16, 1992 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1993 Annual Technical Committee Reports are available from NFPA, Publication Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards, Standards Council, NFPA 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 16, 1992, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by April 2, 1993, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each person who comments. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 24–27, 1993 in Orlando, Florida by NFPA members.

Dated: July 30, 1992.

Sam Kramer,

Acting Director.

1993 Annual Meeting Technical Committee Reports

Document No.	Title	Action
NFPA 20	Installation of Centrifugal Fire Pumps	P
NFPA 30	Flammable and Combustible Liquids Code	P
NFPA 30A	Automotive and Marine Service Station Code	P
NFPA 43C	Gaseous Oxidizing Materials	W
NFPA 65	Processing and Finishing of Aluminum	P
NFPA 72	Protective Signaling Systems (Combines NFPA 71, 72, 72E, 72G, 72H and 74)	F
NFPA 77	Static Electricity	P
NFPA 82A	Smoke Control Systems	P
NFPA 105	Smoke Control Door Assemblies	P
NFPA 130	Fixed Guideway Transit Systems	P
NFPA 241	Safeguarding Construction, Alteration, and Demolition Operations	P
NFPA 326	Safe Entry into Tanks Containing Flammable or Combustible Liquids (Formerly NFPA 327A)	N
NFPA 327	Cleaning or Safeguarding Small Tanks and Containers	P
NFPA 395	Flammable and Combustible Liquids on Farms and Isolated Construction Projects	P
NFPA 403	Aircraft Rescue and Fire Fighting Services at Airports	C
NFPA 412	Aircraft Rescue and Fire Fighting Foam Equipment	P
NFPA 416	Airport Terminal Buildings	C
NFPA 480	Magnesium	C

Document No.	Title	Action
NFPA 651	Aluminum and Magnesium Powder	P
NFPA 655	Sulfur Fires and Explosions	P
NFPA 664	Wood Processing and Woodworking Facilities	P
NFPA 906	Fire Incident Field Notes (Formerly NFPA 906M)	R
NFPA 912	Fire Protection in Places of Worship	C
NFPA 1002	Fire Apparatus Driver/Operator Professional Qualifications	P
NFPA 1021	Fire Officer Professional Qualifications	C
NFPA 1031	Fire Inspector Professional Qualifications	C
NFPA 1221	Public Fire Service Communication Systems	P
NFPA 1231	Water Supplies for Suburban and Rural Fire Fighting	C
NFPA 1420	Pre-Incident Planning for Warehouse Occupancies	N
NFPA 1973	Gloves for Structural Fire Fighting	C
NFPA 1977	Protective Clothing and Equipment for Wildland Fire Fighting	N
NFPA 1982	Personal Alert Safety Systems (PASS) for Fire Fighters	P
NFPA 8504	Combustion Hazards in Atmospheric Fluidized Bed Combustion System Boilers (Formerly NFPA 85H)	C

P=Partial revision.
W=Withdrawal.
R=Reconfirmation.
N=New.
C=Complete Revision.

[FR Doc. 92-18466 Filed 8-4-92; 8:45 am]
BILLING CODE 3510-13-M

National Institute of Standards and Technology

Senior Executive Service: Membership of General and Limited Performance Review Boards

The General Performance Review Board (GPRB) reviews performance agreements, appraisals, ratings, and recommended actions pertaining to employees in the Senior Executive Service and makes appropriate recommendations to the Director of NIST concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives. The GPRB performs its review functions for all NIST senior executives except those who are members of the NIST Executive Board and those who are members of the GPRB.

The Limited Performance Review Board (LPRB) performs its review functions for all NIST senior executives who are members of the NIST Executive Board (except the NIST Deputy Director) and those senior executives who are members of the NIST GPRB.

Individuals who have been newly appointed by the Director of NIST to membership on the GPRB and LPRB or have had their term of membership extended are listed below:

GPRB

Dr. Brian C. Belanger (Chair), Deputy Director, Advanced Technology Program, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/94

Mr. F. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/94

Dr. Harry I. McHenry, Chief, Materials Reliability Division, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Boulder, CO 80303
Appointment expires: 12/31/94

Dr. Willie E. May, Chief, Organic Analytical Research Division, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/92

LPRB

Mr. Karl E. Bell, Deputy Director Office of the Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/93

The full membership and expiration dates of the GPRB and LPRB are listed below:

GPRB

Dr. Brian C. Belanger (Chair), Deputy Director, Advanced Technology Program, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/94

Mr. E. Larry Heacock, Director, Office of Satellite Operations, National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, Washington, DC 20233
Appointment expires: 12/31/92

Dr. Willie E. May, Chief, Organic Analytical Research Division, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/92

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Institute of Standards and Technology, Boulder, CO 80303
Appointment expires: 12/31/92

Mr. Robert Scace, Director, Office of Microelectronics Programs, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/92

Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/92

Dr. Harry I. McHenry, Chief, Materials Reliability Division, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Boulder, CO 80303
Appointment expires: 12/31/92

LPRB

Dr. George Sinnott (Chair), Director for International and Academic Affairs, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899
Appointment expires: 12/31/92

Mr. J. Michael St. Clair, Chief, Engineering Division, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910
Appointment expires: 12/31/92

Mr. Karl E. Bell, Deputy Director, Office of the Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899

Appointment expires: 12/31/92

For further information contact Mrs. Ellen M. Dowd, Chief, Office of Personnel and Civil Rights, National Institute of Standards and Technology, Gaithersburg, telephone 301–975–3000.

Dated: July 24, 1992.

John W. Lyons,

Director.

[FR Doc. 92–18465 Filed 8–4–92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, DOC.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Florida Coastal Management Program (FCMP) and the Weeks Bay National Estuarine Research Reserve (WBNERR) in Alabama. Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires a continuing review of the performance of states with respect to coastal management and the operation and management of national estuarine reserves.

The State of Florida was found to be not fully adhering to the Federally-approved FCMP, the underlying requirements of the CZMA and its implementing regulations (15 CFR part 923), or the terms of its financial assistance awards. The state must take several necessary actions to bring the FCMP back into compliance with Federal requirements.

The State of Alabama was found to be generally adhering to Federal program goals, the Federally-approved WBNERR management plan, and the terms of its financial assistance awards. Several necessary actions and program suggestions were recommended to improve the WBNERR program.

Copies of these findings may be obtained upon request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 606–4100.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 27, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92–18500 Filed 8–4–92; 8:45 am]

BILLING CODE 3510-08-M

[Docket No. 920662–2162]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of removal of secondary embargoes.

SUMMARY: NMFS issues a notice to importers that the secondary embargoes placed into effect against yellowfin tuna and yellowfin tuna products from the intermediary nations of Ecuador, Indonesia, the Republic of Korea, the Republic of the Marshall Islands, Panama, Taiwan, Thailand, Trinidad & Tobago and Venezuela at 12:01 a.m. on January 31, 1992, have been lifted.

ADDRESSES: E.C. Fullerton, Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS at 310/980–4001 or FTS 795–4001.

SUPPLEMENTARY INFORMATION: On Friday, January 10, 1992, the U.S. District Court for the Northern District of California ordered the Administration to broaden the scope of the intermediary nation embargo to include all yellowfin tuna exported to the United States from all nations also importing yellowfin tuna, unless the intermediary nation has certified and provided reasonable proof that it has acted to ban the importation of yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) by harvesting nations embargoed by the United States (currently Mexico, Venezuela and Colombia). This embargo replaced those previously imposed as a result of Federal court orders issued by the U.S. District Court for the Northern District of California and described in an announcement on March 25, 1991 (56 FR 12367). That announcement specified that NMFS would adhere to the terms of the February 1991 and March 1991 court-ordered embargoes with respect to any embargoes applied to intermediary nations, and would limit any intermediary nation embargoes to yellowfin tuna or products derived from yellowfin tuna harvested with purse seines in the ETP by the embargoed harvesting nations.

NMFS has found that the following nations have provided acceptable documentation to show that (a) they are not intermediary nations; or (b) acceptable certification and reasonable proof, as required by the court order, that they have acted to ban the import into that nation of yellowfin tuna and tuna products containing yellowfin tuna that are banned from direct export to the United States; and (c) that the legal action to prohibit the import of tuna is enforceable by that nation.

Nation	Date lifted
Marshall Islands	February 26, 1992.
Ecuador	February 26, 1992.
Taiwan	February 26, 1992.
Thailand	March 10, 1992.
Panama	April 24, 1992.
Trinidad & Tobago	April 24, 1992.
Venezuela	April 24, 1992
Korea, Rep. of	May 7, 1992.
Indonesia	June 9, 1992.

Secondary embargoes on all yellowfin tuna and yellowfin tuna products from the countries of Canada, Colombia, Cost Rica, France, Italy, Japan, Malaysia, the Netherlands Antilles, Singapore, Spain, and the United Kingdom remain in place.

Dated: July 30, 1992.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 92–18482 Filed 8–4–92; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 920669–2169]

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed List of Fisheries to be effective in calendar year 1993 and request for comments thereon.

SUMMARY: NMFS proposes that the List of Fisheries for 1992, associated with the Interim Exemption for Commercial Fisheries under section 114 of the Marine Mammal Protection Act of 1972 (MMPA) be effective for 1993. NMFS is requesting comments on this proposal.

DATES: Comments must be received on or before September 3, 1992.

ADDRESSES: Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-

West Highway, room 8258, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Office of Protected Resources, Protected Species Management Division, NMFS, at 301/427-2322.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA established an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish a List of Fisheries, along with the marine mammals and number of vessels or persons involved in each such fishery in three categories as follows:

(I) A frequent incidental taking of marine mammals;
(II) An occasional incidental taking of marine mammals; or
(III) A remote likelihood, or no known incidental taking, of marine mammals.

Based on congressional guidance, NMFS' interpretation of the 1988 amendments to the MMPA, public comment and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils and other interested parties, NMFS published the original List of Fisheries on April 20, 1989 (54 FR 16072). The list for 1991 was published on February 7, 1991 (56 FR 5138) and the list for 1992 was published on May 12, 1992 (57 FR 20328).

An interim rule governing the taking of marine mammals incidental to commercial fishing operations was published on May 19, 1989 (54 21910), and a final rule governing reporting the take of marine mammals incidental to commercial fishing operations was published on December 15, 1989 (54 FR 51718). All determinations concerning issuing and maintaining the List of Fisheries were made in the process of promulgating the interim rule.

The following criteria were used in classifying fisheries in the List of Fisheries for 1992:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an indicental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Section 114(b)(1)(C) of the MMPA as implemented by 50 CFR 229.3(a)(1) requires the Assistant Administrator for Fisheries, NOAA, to annually publish and request comments on proposed revisions to the List of Fisheries to be effective for the next calendar year. Accordingly, NMFS proposes that the List of Fisheries for 1992 be effective for 1993 and requests comments on this proposal.

NMPS will continue to monitor fisheries, collect observer data, and analyze this information along with vessel owner log information. All information will be used as appropriate for further classification of fisheries.

Dated: July 29, 1992.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 92-18483 Filed 8-4-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in Pakistan

July 30, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging illegal transshipments to 1992 limits.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on May 7, 1992 (57 FR 19609), CITA announced that, based on investigations conducted by U.S. Customs Service, consultations would be held with the Government of Pakistan concerning illegal transshipments of textile products produced in Pakistan and exported to the United States. As a result of the consultations, CITA has determined that textile products in Categories 360 and 361 were transshipped during 1990 and 1991 in circumvention of the U.S.-Pakistan Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended. The U.S. Government informed the Government of Pakistan, in a letter dated April 22, 1992, of the charges to be made to the 1992 quotas. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1992 quota levels for the categories listed below:

Category	Amount to be charged
360	189,620 numbers.
361	1,121,545 numbers.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in Pakistan and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to the U.S. letter dated April 22, 1992, the U.S.-Pakistan bilateral textile agreement, effected by exchange of notes dated January 23, 1992 and March 12, 1992, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on

December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986 and July 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14563, published on April 21, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 30, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, betwen the Governments of the United States and Pakistan, I request that, effective on August 6, 1992, you charge the following amounts to the following categories for 1992 (see directive dated April 15 1992):

Category	Amount to be charged
360	189,620 numbers.
361	1,121,545 numbers.

This letter will be published in the **Federal Register**.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-18513 Filed 8-4-92; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of a Request for Bilateral Textile Consultations on Certain Wool Textile Products Produced or Manufactured in Hong Kong

July 29, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 14, 1992, the Government of the United States requested consultations with the Government of Hong Kong regarding imports of men's and boys' suit-type coats in Category 433, produced or manufactured in Hong Kong. This request was made on the basis of the current bilateral agreement between the Governments of the United States and Hong Kong.

The United States reserves the right to control imports at the level under paragraph 7 of the agreement. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Hong Kong, further notice will be published in the **Federal Register**.

Anyone wishing to comment or provide data or information regarding the treatment of Category 433, under the agreement with the Government of Hong Kong, or in any aspect thereof, or to comment on domestic production or availability of products included in Category 433, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Hong Kong.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-18464 Filed 8-4-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DoD.

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Wednesday, August 26, 1992 from 9 a.m. to 3:30 p.m. at the Mitre-Hayes Building, 7525 Colshire Drive, McLean, VA 27006. The agenda is as follows:

—Administrative Remarks
—Operations Working Group
—Plans Working Group
—Funding and Regulatory Working Group
—Energy Task Force
—Network Security Standards Oversight Group
—Wireless Services Task Force
—Enhanced Call Compliance Ad Hoc Group
—New Business

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692-9274 or write the Manager, National Communications Systems, 701 S. Court House Road, Arlington, VA 22204-2198.

Dated: July 31, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-18511 Filed 8-04-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Commerce.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, Part 235, Research and Development Contracting, and the clauses at 252.235; Forms DD 2222 and 2222–2; OMB Control Number 0704–0262.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 1.93 hours.

Responses Per Respondent: 1.

Number of Respondents: 751.

Annual Burden Hours: 1451.

Annual Responses: 751.

Needs and Uses: This information collection requirement concerns information related to Research and Development contracting including Short Form Research Contracts.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 31, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–18510 Filed 8–4–92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology to Support Force Projection: Global Reach—Global Power will meet on 22 August 1992 from 8 a.m. to 12 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting will be to brief the results of the 1992 Summer Study to the Air Force Chief of Staff. This meeting will involve discussions of classified defense matters in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–18551 Filed 8–4–92; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 12, 1992. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Reidy Room at the Shawnee Inn, Shawnee-on-Delaware, Pennsylvania.

An informal conference session among the Commissioners and staff will be open for public observation at 9:30 a.m. in the Pearsall Room at Shawnee Inn and will include discussion of golf course irrigators' status of compliance, cogeneration policy issues, the upper Delaware ice jam project and amendment of Compact Section 15.1(b) to fund the Francis E. Walter Reservoir project.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Jim Thorpe Municipal Authority D–81–71–CP RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 14.1 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1 and 4. Commission approval on May 27, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 14.1 mg/30 days. The project is located in Jim Thorpe Borough, Carbon County, Pennsylvania.

2. *Town of Milton D–83–22 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 10 mg/30 days of water to the applicant's distribution system from Well Nos. 2, 3, 4 and 5. Commission approval on September 22, 1987 was limited to five year and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 10 mg/30 days. The project is located in the Town of Milton, Sussex County, Delaware.

3. *Pennsylvania Department of Corrections D–84–41 CP (Revised).* An application for approval of a revision of the Graterford Correction Institute Sewage Treatment Plant (STP) upgrade and expansion project by addition of phosphorus removal facilities. The project will complete a proposed upgrade and expansion that will include new biological secondary treatment facilities. The STP will operate at up to 1.5 million gallons per day (mgd) and discharge to an unnamed tributary of Perkiomen Creek and/or to spray irrigation fields situated on the Institute's property, located near the STP, approximately one mile east of the Village of Graterford in Skippack Township, Montgomery County, Pennsylvania.

4. *Coastal Eagle Point Oil Company D–86–15 RENEWAL.* An application for the renewal of a ground water withdrawal of up to 4.32 and 0.144 mg/30 days of water from the applicant's abatement Well Nos. RW–1 and 147–2, respectively. Commission approval on August 5, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 232 mg/30 days. The project is located in West Deptford Township, Gloucester County, New Jersey.

5. *Town of Middletown—Arkville Water District D–86–77 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 4.5 mg/30 days of water to the applicant's distribution system from Well Nos. 3 and 4. Commission approval on May 27, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 4.5 mg/30 days. The project is located in the Town of Middletown, Delaware County, New York.

6. *Country Place Water Company, Inc. D–87–33 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 4.32 and 6.48 mg/30 days of water to the applicant's distribution system from Well Nos. 3 and 4, respectively. Commission approval on June 24, 1987 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 13.5 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

7. *Schuylkill County Municipal Authority D–90–49 CP (Revised).* An out-of-basin diversion project which entails the transfer of 0.34 mgd from the applicant's Mount Laurel Reservoir to a

proposed State Correctional Institution (SCI) located in the applicant's Mahanoy Township service area in the Delaware River Basin. However, the SCI will discharge to the Mahanoy City Sewerage Authority's STP located in the Susquehanna River Basin. The project is all within Schuylkill County, Pennsylvania, and the Mount Laurel Reservoir is located on Mud Run in New Castle Township. No increase in the total allocation of 0.6 mgd from Mount Laurel Resevoir is proposed.

8. *New Jersey-American Water Company—Northern Division D–90–89 CP.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's Belvidere System from new Well Nos. 1 and 2, and to limit the withdrawal from all wells to 15 mg/30 days. The project is located in White Township, Warren County, New Jersey.

9. *Village of Hobart D–91–63 CP.* A sewage treatment plant (STP) upgrade and expansion project to replace the existing village of Hobart STP. The existing STP was designed to provide 0.075 mgd of secondary wastewater treatment to serve the Village of Hobart. The new plant will provide 0.16 mgd of secondary treatment with tertiary filtration and the existing plant will be dismantled when the new plant is operational. The treated effluent will continue to discharge to the West Branch Delaware River in Water Quality Zone WI, located just south of Hobart in the Town of Stamford, Delaware County, New York.

10. *Grasso Foods, Inc. D–91–68.* An industrial wastewater treatment project that entails modifications to an existing pepper processing wastewater treatment facility. The applicant proposes to modify its on-site lagoon system to provide aerobic biological treatment and continue to discharge 0.1 mgd to ground water via infiltration/percolation basin #3. The treatment facility is located just south of the corporate boundary of the Borough of Swedesboro in Woolwich Township, Cloucester County, New Jersey.

11. *Philadelphia Suburban Water Company D–91–88 CP.* An application for the renewal of six ground water withdrawal projects and to limit the total withdrawal from all wells supplying water to the applicant's Great Valley Division distribution system. Commission approval of Docket Nos. D–78–95 CP RENEWAL, D–80–88 CP RENEWAL, D–81–74 CP Revised RENEWAL, D–83–28 CP RENEWAL, D–84–30 CP, and D–85–19 CP is limited to five years and will expire unless renewed. This docket combines all wells of the Great Valley Division into one consolidated docket, subject to a consolidated allocation of ground water. The applicant requests that the total withdrawal from all wells be limited to 74.76 mg/30 days. The projects are located in East Goshen, West Goshen, Westtown, Birmingham, West Whiteland and East Bradford Townships, Chester County, in the Southeastern Pennsylvania Ground Water Protected Area.

12. *Walnut Bank Water Company D–91–96 CP.* A ground water withdrawal project to serve as a standby source of supply for the applicant's Walnut Bank Farm Development. Currently the project is served by Well No. 2, approved by Docket No. D–88–69 on January 25, 1989. The applicant requests that the withdrawal from standby Well No. 3 be limited to 5.16 mg/30 days, and that the total withdrawal from all wells remain limited to 5.16 mg/30 days. The project is located in Richland Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

13. *Township of Buckingham D–92–2 CP.* An application for approval of a ground water withdrawal project to supply up to 3.14 mg/30 days of water to the applicant's distribution systems from new Well Nos. BV–1 and BV–2, and to include recently acquired Well Nos. CS–1, CS–2 and CS–3 for a total withdrawal from all wells of 11.0 mg/30 days. Well Nos. CS–1 and CS–2 were most recently approved as Fieldstone Place Well Nos. 1 and 2 for Windridge Inc. by DRBC Docket D–81–70 PA RENEWAL. Well No. CS–3 was most recently approved as the Nanlyn Farm Wells No. 1 for Herbert Barness by DRBC Docket D–86–66. The project is located in Buckingham Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

14. *Woodstown Sewerage Authority D–92–19 CP.* A sewage treatment plant (STP) upgrade and expansion project that proposes to replace the existing trickling filter secondary level STP by constructing an extended aeration activated sludge STP with tertiary filtration facilities. The existing STP has a design treatment capacity of 0.30 mgd and the proposed STP will have a maximum monthly design capacity of 0.50 mgd. The STP will continue to serve Woodstown Borough and small portions of Pilesgrove and Mannington Townships and discharge to the Salem River just west of the STP located between West Avenue and Spring Garden Street and Woodstown Borough, Salem County, New Jersey.

15. *City of Wilmington D–92–29 CP.* An application for approval of the transfer of up to 10 mgd of treated water via an interconnection proposed near the City of Wilmington's Porter Filter Plant. The interconnection will enable the City of Wilmington to transfer the treated water to the Wilmington Suburban Water Corporation which serves portions of New Castle County. The interconnection will be located near the Augustine Cut-Off and Route 202 just north of the City of Wilmington in New Castle County, Delaware.

16. *Harcros Pigments Inc. D–92–38.* An application for a rerating of an existing 0.95 mgd industrial wastewater treatment plant (IWTP) to increase its allowable treatment capacity to 1.29 mgd. The IWTP treats process wastewaters generated by the applicant's pigment manufacturing operation. No new facilities are proposed. The applicant has also requested a new determination of the allowable Total Dissolved Solids limits. The applicant also requires an approval of its existing surface water withdrawal from Bushkill Creek of up to 2.61 mgd. The IWTP will continue to discharge to Bushkill Creek located just northeast of the plant site in the City of Easton, Northampton County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 28, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–18499 Filed 8–4–92; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Determination To Establish the Secretary of Energy Advisory Board Task Force on Space Nuclear Systems

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), and in accordance with 41 CFR part 101–6, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board Task Force on Space Nuclear System has been established.

The Task Force will provide advice to the Secretary of Energy on priorities and program balance for the research and development responsibilities, activities, and operations of the DOE's Deputy

Assistant Secretary for Space and Defense Power Systems in the Office of Nuclear Energy, the Office of Energy Research and the Office of Space in space nuclear related activities.

The membership of the Task Force shall include approximately 6 to 8 individuals, selected on the basis of their professional experience and competence in areas related to space nuclear power and propulsion systems as well as present and future space related activities. Appointments will be made for up to two years. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The establishment of the Secretary of Energy Advisory Board Task Force on Space Nuclear Systems has been determined necessary and in the public interest in connection with the performance of duties imposed upon the DOE by law. The Task Force will operate in accordance with the provisions of FACA, the DOE Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Scott Gray, the Designated Federal Officer, at (202) 586–0023.

Issued in Washington, DC on July 31, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92–18582 Filed 8–4–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2529–006 Maine]

Central Maine Power Co., Availability of Environmental Assessment

July 29, 1992

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486 , 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for nonproject use of project lands (timber harvest) at the Bonny Eagle Project, on the Saco River, York and Cumberland Counties, Maine. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed actions. In the EA, the staff concludes that approval of the timber harvest would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18479 Filed 8–4–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2413–017 Georgia]

Georgia Power Co.; Availability of Environmental Assessment

July 29, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for license amendment at the Wallace Dam Project, Lake Oconee and Lake Gregory, Putnam County, Georgia. The application is for permission to breech an earthen dam separating Lake Gregory from Lake Oconee. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18478 Filed 8–4–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–7154–001, et al.]

Chevron U.S.A. Inc.; Applications for Termination or Amendment of Certificates [1]

July 30, 1992.

Chevron U.S.A. Inc. filed applications under section 7 of the Natural Gas Act for authorization to terminate or amend certificates or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open for public inspection.

To be heard or to protest these applications a person must file a protest or a motion to intervene on or before August 13, 1992. A person filing a protest or a motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All motions to intervene or protests must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a petition to intervene.

Under the procedure provided for here, unless otherwise advised, Chevron will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the matters covered herein.

Docket No. and Date filed	Applicant	Purchaser and location	Description
G–7154–001, D, 5–22–92	Chevron U.S.A. Inc., 1301 McKinney, Houston, TX 77010.	Texas Eastern Transmission Corporation, Ameckeville Field, Dewitt County, Texas.	Assigned 7–10–91 to Marwell Petroleum, Inc.
G–7156–002, D, 5–18–92	Chevron U.S.A. Inc	El Paso Natural Gas Company, Waddell Gas Processing, Plant, Crane County, Texas.	Assigned 1–7–92 to Torch Energy Advisors, Incorporated.
G–9885–002, D, 5–22–92	Chevron U.S.A. Inc	Texas Eastern Transmission Corporation, Ameckeville Field, Dewitt County, Texas.	Assigned 7–10–91 to Marwell Petroleum, Inc.

Docket No. and Date filed	Applicant	Purchaser and location	Description
G-13445-001, D, 5-18-92	Chevron U.S.A. Inc	El Paso Natural Gas Company, Waddell Gas Processing, Plant, Crane County, Texas.	Assigned 1-7-92 to Torch Energy Advisors, Incorporated.
CI61-1711-000, D, 5-18-92	Chevron U.S.A. Inc	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	Assigned 11-12-91 to Capmac, Inc.
CI92-47-000 (CI65-792), D, 5-18-92.	Chevron U.S.A. Inc	Lone Star Gas Company, North Dibble Field, McClain County, Oklahoma.	Assigned 10-1-91 to BHP Petroleum (Americas) Inc.
CI92-48-000, (CI78-1091), D, 5-18-92.	Chevron U.S.A. Inc	Texas Eastern Transmission Corporation, Bethany—Longstreet Field, Caddo and DeSoto Parishes, Louisiana.	Assigned 12-17-90 to WHW, Inc.
CI92-49-000 (CI79-291), D, 5-18-92.	Chevron U.S.A. Inc	Texas Eastern Transmission Corporation, Bethany—Longstreet Field, Caddo and DeSoto Parishes, Louisiana.	Assigned 12-17-90 to WHW, Inc.
CI92-50-000 (G-5720), D, 5-18-92.	Chevron U.S.A. Inc	Texas Eastern Transmission Corporation, Hico-Knowles Field, Lincoln, Parish; Tremont Field, Ouachita, Parish, Louisiana.	Assigned 12-17-90 to WHW, Inc.
CI92-52-000 (CI70-904), D, 5-22-92.	Chevron U.S.A. Inc	High Plains Natural Gas Company, West Reydon Field, Rogers Mills County, Oklahoma.	Assigned 7-9-91 to Kaiser-Francis Oil Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 92-18583 Filed 8-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-208-000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

July 30, 1992.

Take notice that on July 28, 1992, Florida Gas Transmission Company ("FGT") hereby petitions the Federal Energy Regulatory Commission ("Commission") for a limited waiver of Commission policy and FGT's FERC Gas Tariff, to the extent necessary, to allow FGT to add an additional delivery point to an existing agreement for interruptible transportation service under Rate Schedule ITS-1 for Okaloosa County Gas District ("Okaloosa"), while permitting Okaloosa to maintain its existing priority date under such agreement.

FGT states that good cause exists for granting the requested waiver in that (i) FGT will continue to serve the same customer, Okaloosa; (ii) the delivery point is in the same geographic location as Okaloosa's traditional service area; and (iii) the additional delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 6, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18580 Filed 8-04-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-41-000]

Midwestern Gas Transmission Co.; Conference

July 29, 1992.

Take notice that on August 25, 1992, a conference will be convened in the above-captioned docket to discuss Midwestern Gas Transmission Company's (Midwestern) summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Hearing room 1, Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18477 Filed 8-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RS92-23-000, RP91-203-000, and RP92-132-000, (Consolidated, in part)]

Tennessee Gas Pipeline Co.; Conference

July 30, 1992.

Take notice that on August 13, 1992, beginning at 10 a.m., a conference will be convened in the above-captioned restructuring docket. The conference will be held in the first floor Auditorium at the Department of Health and Human Services, 330 Independence Ave., SW., Washington, DC.

This conference is being held so that Tennessee Gas Pipeline Company (Tennessee) can explain to the Staff of the Federal Energy Regulatory Commission and the intervenors in this proceeding Tennessee's Order No. 636 Restructuring Proposal. Tennessee provided all parties to the proceeding a Summary of its Restructuring Proposal on July 7, 1992.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Sharon Dameron at (202) 208-2017.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18582 Filed 8-4-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GT92-30-000]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

July 30, 1992.

Take notice that on July 1, 1992,

Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing its Report of Refunds pursuant to sections 29, and 32 through 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Third Revised Volume No. 1. The refunds arise from the Fixed and Commodity Producer Settlement Payment (PSP) charges during the annual recovery period of May 1, 1991 through April 30, 1992, and the Litigant Producer Settlement Payment (LPSP) charges during the annual period June 1, 1991 through May 31, 1992. The refund amounts represent the difference between the PSP and LPSP charges collected during the respective annual recovery periods and the Fixed and Commodity PSP and LPSP charges which Transco would have collected based on actual quarterly interest rates in effect during such periods.

Transco states that on June 30, 1992, it issued all applicable refunds totalling $2,470,659.55, including interest, to its sales and transportation customers, in accordance with its Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 6, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18579 Filed 8-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-90-000]

Wyoming Interstate Company, Ltd.; Conference

July 30, 1992.

Take notice that on August 11, 1992, a conference will be convened in the above-captioned docket to discuss Wyoming Interstate Company, Ltd.'s summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Hearing room 7, Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Whit Holden at (202) 208-1118.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18581 Filed 8-4-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-049]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver From the Furnace Test Procedure to Rheem Manufacturing Co.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-049) granting a Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Rheem its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GVG series of gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Rheem has been granted a Waiver for its GVG series of gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, July 30, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Rheem filed a "Petition for Waiver," dated February 12, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on April 28, 1992, Rheem's petition and solicited comments, data and information respecting the petition. 57 FR 17903. Rheem also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 17, 1992. 57 FR 17903, April 28, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Trade Commission (FTC) concerning the Rheem Petition. The FTC did not have any objections to the issuance of the waiver to Rheem.

Assertions and Determinations

Rheem's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Rheem requests the allowance to test using a 30-second blower time delay when testing its GVG series of gas furnaces. Rheem states that since the 30-second delay is indicative of how those models actually operate and since such a delay results in an improvement in efficiency of approximately 2.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times or less than the prescribed 1.5-minute delay. Rheem indicates that it is unable to take advantage of any of these exceptions for its GVG series of gas furnaces.

Since the blower controls incorporated on the Rheem furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Rheem GVG series of gas furnaces. Accordingly, with regard to testing the GVG series of gas furnaces, today's Decision and Order exempts Rheem from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Rheem Manufacturing Company (Case No. F–049) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR part 430, Subpart B, Rheem Manufacturing Company shall be permitted to test its GVG series of gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below.

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Rheem Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GVG series of gas furnaces manufactured by Rheem Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective July 30, 1992, this Waiver supersedes the Interim Waiver granted The Rheem Manufacturing Company on April 17, 1992. 57 FR 17903, April 28, 1992 (Case No. F–049).

Issued in Washington, DC, July 30, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92–18565 Filed 8–04–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 92–51–NG]

MG Natural Gas Corp.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting MG Natural Gas Corp. blanket authorization to export up to 50 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18564 Filed 8–4–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Cooperative Agreement: Financial Assistance Award to Navajo Fish and Wildlife Department, Navajo Nation, Window Rock, AZ

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1), the Western Area Power Administration

(Western) gives notice of its plans to award an 18-month Cooperative Agreement to the Navajo Nation, Navajo Fish and Wildlife Department (NFWD), in the amount of approximately $38,000. The pending award is based on an unsolicited proposal submitted by NFWD to conduct a study on desert bighorn sheep in an area of the Navajo Nation surrounding a Western microwave communications facility. The population of desert bighorn sheep is an apparently recent natural reintroduction of the species to the area.

The NFWD is concerned that activities associated with the microwave communications facility may adversely affect the desert bighorn sheep. The study would obtain information about the size, seasonal movements of the population, and other factors. NFWD would use the results of the study to manage the population of desert bighorn sheep to ensure its continued viability. Western would use the information gained from the study to conduct routine maintenance of its microwave communications facility in such a manner as to minimize effects on the desert bighorn sheep.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-7709, Purchase Requisition Number LL-PR-03817.

Issued at Golden, Colorado, July 21, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-18563 Filed 8-4-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4191-8]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to AFG Industries, Inc. (EPA Project Number SE 86-02)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on September 26, 1989, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to AFG Industries, Inc. to increase the NO_x emissions limit and change the hourly averaging time from 3 to 24 hours. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x, 200 lbs/hr, 24-hour average, SO_2, 15 lbs/hour, 3-hour average.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to:

Linda Barajas (A-5-1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1244, FTS (415) 744-1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: A dry scrubber for control of SO_2 emissions and an ammonia injection system for the control of NO_x emissions.

DATES: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed on or before October 5, 1992.

Dated: July 24, 1992.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

[FR Doc. 92-18566 Filed 8-4-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4191-6]

Chesapeake Bay Program Office, Public Meeting; Chesapeake Bay Executive Council

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Chesapeake Bay Program's Executive Council will announce a new initiative to expand the Bay restoration effort into the Bay's rivers and tributaries. The meeting is open to the public.

DATES: The meeting will be held on August 12, 1992, from 10:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at Alumni Hall, U.S. Naval Academy, Annapolis, Maryland.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Chesapeake Bay Executive Council meeting should contact Lori Mackey, Chesapeake Bay Program Office, U.S. EPA (3CB10) 410 Severan Avenue, Suite 109, Annapolis, Maryland, 21403, (410) 267-0061.

Dated: July 27, 1992.

Lori Mackey,

Designated Federal Official.

[FR Doc. 92-18568 Filed 8-4-92; 8:45 am]

BILLING CODE 6560-50-M

[PP 6G3350/T628; FRL 4074-2]

Carbon Disulfide; Amendment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amendment to a temporary tolerance for residues of the nematicide carbon disulfide in or on the raw agricultural commodity prunes at 0.1 part per million (ppm), resulting from soil applications of the nematicide sodium tetrathiocarbonate.

DATES: This temporary tolerance expires December 15, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-5540.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received an amendment for pesticide petition (PP) 6G3350, which previously published in the **Federal Register** of May 27, 1992 (57 FR 22232), stating that temporary tolerances had been renewed for residues of the nematicide carbon disulfide in or on the raw agricultural commodities almonds, almond hulls, apricots, grapes, grapefruit, lemons, oranges, peaches, plum (fresh prunes) and tomatoes at 0.1 ppm, resulting from soil applications of the nematicide sodium tetrathiocarbonate.

Unocal Agriproducts, 3960 Industrial Blvd., Suite 600-B, West Sacramento, CA 95691, has requested an amendment to (PP) 6G3350 the establish a temporary tolerance for residues of the nematicide carbon disulfide in or on the raw agricultural commodity prunes at 0.1 ppm, resulting from soil applications of the nematicide sodium tetrathiocarbonate. This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 612-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the

condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Unocal Agriproducts must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 15, 1993. Residues not in excess of this amount reamaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96 354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Dated: July 14, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–18457 Filed 8–4–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100113; FRL–4079–1]

Labat-Anderson; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Labat-Anderson has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Labat-Anderson consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2) and will enable Labat-Anderson to fulfill the obligations of the contract.

DATES: Labat-Anderson will be given access to this information no sooner than August 10, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W9–0052, work order No. 271, Labat-Anderson will assist the Field Operations Division in collecting confidential statements of formula for canceled 2,4,5-T and silvex products from registration files. The formula information will be used to ensure a safe disposal methodology. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by Labat-Anderson to information on 2,4,5-T and silvex formulas is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Labat-Anderson prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Labat-Anderson is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Labat-Anderson by EPA for use in connection with this contract will be returned to EPA when Labat-Anderson has completed its work.

Dated: July 23, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 92–18130 Filed 8–4–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–240099; FRL–4076–4]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 28 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**. This document contains notice of two disapproved registrations.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Edith Minor, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Rm. 786, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5978.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in March through April of 1992. Receipts-of-State registrations will

be published periodically. Of the following registrations, 14 involve a changed-use pattern (CUP). The term "changed use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 92 0001. ICI Americas, Inc. Registration is for Fonofos to be used on sweet potatoes to control beetle larvae. March 25, 1992.

EPA SLN No. AL 92 0002. ICI Americas, Inc. Registration is for Fonofos to be used on sweet potatoes to control beetle larvae. March 25, 1992.

EPA SLN No. AL 92 0003. Environmental Solution, Inc. Registration is for Ecobrite 1 to be used on lumber to control mold stains. March 25, 1992.

EPA SLN No. AL 92 0004. Environmental Solution, Inc. Registration is for Ecobrite 3 to be used on lumber to control mold stains. March 25, 1992.

Arizona

EPA SLN No. AZ 92 0001. AgChem Division/Atochim North America. Registration is for Maneb Plus Zinc F4 to be used on cabbage and cauliflower to control alternaria leaf spot. March 25, 1992.

EPA SLN No. AZ 92 0002. Sunbelt Transplant. Registration is for Iprodione to be used on dry bulb onions to control botrytis leaf blight. March 25, 1992.

Arkansas

EPA SLN No. AR 92 0001. Gowan Co. Registration is for Phosmet to be used on blueberries to control maggot and fruitworm. March 6, 1992.

EPA SLN No. AR 92 0002. E. I. Du Pont DeNemours and Co., Inc. Registration is for Cyanazine to be used on cotton to control grass and weeds. April 14, 1992.

EPA SLN No. AR 92 0003. Rhone-Poulenc AG Co. Registration is for 2,4-D to be used on rice to control grass and broadleaf weeds. April 14, 1992.

EPA SLN No. AR 92 0004. Rhone-Poulenc AG Co. Registration is for 2,4-D to be used on rice to control grass and broadleaf weeds. April 14, 1992.

EPA SLN No. AR 92 0005. Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control grasses and aquatic weeds. April 28, 1992.

California

EPA SLN No. CA 92 0001. The Jojoba Association. Registration is for Bifenthrin to be used on jojoba to control loopers, cutworms, and spider mites. March 24, 1992.

EPA SLN No. CA 92 0003. Agro-Fibers, Inc. Registration is for Malathion to be used on kenaf to control lygus bugs. March 5, 1992.

EPA SLN No. CA 92 0004. Sunworld International, Inc. Registration is for Oxyfluorfen to be used on mango trees to control weeds and grasses. March 26, 1992.

EPA SLN No. CA 92 0005. BASF Corp. Registration is for Sethoxydim to be used on grass grown for seed to control annual rye grass. March 24, 1992.

EPA SLN No. CA 92 0006. ICI Americas, Inc. Registration is for Paraquat Dichloride to be used on jojoboa to control jojoboa seedlings. April 16, 1992.

Delaware

EPA SLN No. DE 92 0001. FMC Corp. Registration is for Carbofuran to be used on potatoes to control beetles and aphids. March 2, 1992.

Florida

EPA SLN No. FL 92 0001. Griffin Corp. Registration is for Copper Hydroxide to be used on tropical fruits to control red algae and anthracnose. April 22, 1992.

EPA SLN No. FL 92 0002. Sandoz Crop Protection Corp. Registration is for Prodiamine to be used on leatherleaf fern to control bedweeds. April 28, 1992.

Georgia

EPA SLN No. GA 92 0001. Gowan Co. Registration is for Phosmet to be used on blueberries to control cranberry fruit worms. April 22, 1992.

Hawaii

EPA SLN No. HI 92 0001. Miles, Inc. Registration is for Fenamiphos to be used on banana to control burrowing and rootknot nematodes. April 20, 1992.

EPA SLN No. HI 92 0002. Miles, Inc. Registration is for Fenamiphos to be used on bananas to control nematodes and rootknot nematodes. April 20, 1992.

EPA SLN No. HI 92 0004. E. I. Du Pont DeNemours and Co., Inc. Registration is for Benomyl to be used on ginger roots to control fusarium yellow disease. March 2, 1992.

EPA SLN No. HI 92 0005. Ciba-Geigy Corp. Registration is for Fenoxycarb to be used on nonbearing coffee plants to control bigheaded and fire ants. April 15, 1992.

Idaho

EPA SLN No. ID 92 0002. FMC Corp. Registration is for Carbofuran to be used on sugarbeets to control sugarbeet rot and maggot. April 9, 1992.

EPA SLN No. ID 92 0003. Liphatech, Inc. Registration is for Chlorophacinone to be used in orchards and on ditch banks to control ground squirrels. April 9, 1992.

EPA SLN No. ID 92 0004. Helena Chemical Co. Registration is for Dimethoate to be used on lentils to control aphids and lygus bugs. April 14, 1992.

EPA SLN No. ID 92 0005. Gowan Co. Registration is for Methyl Parathion to be used on canola and rapeseed to control insects. April 24, 1992.

EPA SLN No. ID 92 0006. Helena Chemical Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control weevils. April 24, 1992.

EPA SLN No. ID 92 0007. Wilbur Ellis Co. Registration is for Methyl Parathion to be used on rapeseed and canola to control insects. April 28, 1992.

Indiana

EPA SLN No. IN 92 0002. FMC Corp. Registration is for Clomazone to be used on tobacco to control grasses and broadleaf weeds. March 31, 1992.

Louisiana

EPA SLN No. LA 92 0002. AgChem Division/Atochim North America. Registration is for Endothall to be used on cotton and rice to control weeds. March 25, 1992.

EPA SLN No. LA 92 0003. E. I. Du Pont DeNemours & Co., Inc. Registration is for Cyanazine to be used on cotton and chickweed to control ryegrass. March 26, 1992.

EPA SLN No. LA 92 0004. Ciba-Geigy Corp. Registration is for Metalaxyl to be used on water-seeded rice to control pythium. April 9, 1992.

EPA SLN No. LA 92 0005. Ciba-Geigy Corp. Registration is for Primisulfuron-Methyl to be used on field corn to control weeds. April 30, 1992.

EPA SLN No. LA 92 0006. Griffin Corp. Registration is for Mancozeb to be used on cotton to control seedling blight. April 30, 1992.

Mississippi

EPA SLN No. MS 92 0001. E. I. Du Pont DeNemours & Co., Inc. Registration is for Cyanazine to be used on cotton to control grass and broadleaf weeds. March 16, 1992.

EPA SLN No. MS 92 0002. Rhone-Poulenc AG Co. Registration is for 2,4-D to be used on rice to control weeds. April 6, 1992.

EPA SLN No. MS 92 0003. Rhone-Poulenc AG Co. Registration is for 2,4-D to be used on rice to control weeds. April 6, 1992.

EPA SLN No. MS 92 0004. Ciba-Geigy Corp. Registration is for Primisulfuron-Methyl to be used on field corn to control weeds. April 9, 1992.

EPA SLN No. MS 92 0005. E. I. Du Pont DeNemours & Co., Inc. Registration is for Nicosulfuron to be used on popcorn and field corn to control weeds. April 14, 1992.

EPA SLN No. MS 92 0006. Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control annual and aquatic weeds. April 22, 1992.

Nebraska

EPA SLN No. NE 92 0003. E. I. Du Pont DeNemours & Co., Inc. Registration is for Nicosulfuron to be used field corn and popcorn to control grasses and weeds. April 6, 1992.

Nevada

EPA SLN No. NV 92 0002. Liphatech, Inc. Registration is for Chlorophacinone to be used on cabbage bait to control ground squirrels. March 24, 1992.

EPA SLN No. NV 92 0004. American Cyanamid Co. Registration is for Pendimethalin to be used on alfalfa to control weeds. April 22, 1992.

New Hampshire

EPA SLN No. NH 92 0001. ICI Americas, Inc. Registration is for Paraquat Dichloride to be used on squash, melons, and eggplants to control weeds. March 5, 1992.

New Jersey

EPA SLN No. NJ 92 0002. FMC Corp. Registration is for Carbofuran to be used on strawberries to control root weevils. March 13, 1992.

EPA SLN No. NJ 92 0003. Old Bridge Chemical Co. Registration is for Copper Sulfate Penta to be used on lakes, ponds, and reservoirs to control algae. April 27, 1992.

EPA SLN No. NJ 92 0004. FMC Corp. Registration is for Carbofuran to be used on alfalfa to control potato leafhopper. April 16, 1992.

North Carolina

EPA SLN No. NC 92 0003. FMC Corp. Registration is for Clomazone to be used on burley tobacco to control broadleaf weeds. March 4, 1992.

EPA SLN No. NC 92 0004. Ciba-Geigy Corp. Registration is for Metolachlor to be used on cotton to control weeds. April 15, 1992.

EPA SLN No. NC 92 0005. Ciba-Geigy Corp. Registration is for Metolachlor to be used on cotton to control yellow nutsedge weed. April 15, 1992.

EPA SLN No. NC 92 0006. E. I. Du Pont DeNemours & Co., Inc. Registration is for Nicosulfuron to be used on field corn and popcorn to control grass. April 15, 1992.

Oklahoma

EPA SLN No. OK 92 0004. E. I. Du Pont DeNemours & Co., Inc. Registration is for Nicosulfuron to be used on field corn and popcorn to control weeds. March 13, 1992.

EPA SLN No. OK 92 0005. Sostram Corp. Registration is for Atrazine to be used on CRP range grasses to control weeds. March 13, 1992.

EPA SLN No. OK 92 0006. Sostram Corp. Registration is for Atrazine to be used on CRP range grasses to control weeds. March 13, 1992.

EPA SLN No. OK 92 0007. Ciba-Geigy Corp. Registration is for Atrazine to be used on bermudagrass to control annual weeds. March 19, 1992.

EPA SLN No. OK 92 0008. Ciba-Geigy Corp. Registration is for Atrazine to be used on bermudagrass to control weeds. March 25, 1992.

EPA SLN No. OK 92 0009. E. I. Du Pont DeNemours & Co., Inc. Registration is for Terbacil to be used on alfalfa to control pigweed and crabgrass. March 19, 1992.

Pennsylvania

EPA SLN No. PA 92 0001. FMC Corp. Registration is for Clomazone to be used on tobacco to control broadleaf weeds and grass. April 14, 1992.

Puerto Rico

EPA SLN No. PR 92 0001. Miles, Inc. Registration is for Methamidophos to be used on tomato-fresh market to control insects. April 15, 1992.

South Carolina

EPA SLN No. SC 92 0001. ICI Americas, Inc. Registration is for Captan to be used on strawberries to control botrytis and antracnose. March 2, 1992.

EPA SLN No. SC 92 0003. FMC Corp. Registration is for Clomazone to be used on tobacco to control purslane and foxtail. April 2, 1992.

South Dakota

EPA SLN No. SD 92 0002. State Dept. of Agriculture, Wildlife Services Fund. Registration is for Zinc Phosphide to be used in prairie dog burrows to control prairie dogs. April 9, 1992.

Texas

EPA SLN No. TX 92 0003. Gustafson, Inc. Registration is for Thiophanate Methyl to be used on peanut seeds to control sclerotinia blight. March 5, 1992.

EPA SLN No. TX 92 0004. Ciba-Geigy Corp. Registration is for Atrazine to be used on grain sorghum to control broadleaf weeds. March 2, 1992.

EPA SLN No. TX 92 0005. Ciba-Geigy Corp. Registration is for Atrazine to be used on grain sorghum to control broadleaf weeds. March 2, 1992.

EPA SLN No. TX 92 0006. Ciba-Geigy Corp. Registration is for Atrazine to be used on grain sorghum to control broadleaf weeds. March 2, 1992.

EPA SLN No. TX 92 0007. Ciba-Geigy Corp. Registration is for Primisulfuron-Methyl to be used on field corn to control weeds. March 18, 1992.

EPA SLN No. TX 92 0008. E. I. Du Pont DeNemours & Co., Inc. Registration is for Nicosulfuron to be used field corn, popcorn, and corn grown for seed to control annual grasses. March 18, 1992.

EPA SLN No. TX 92 0009. Hoechst Celanese Corp. Registration is for Diclofop-Methyl to be used on bermudagrass turf to control goosegrass. April 24, 1992.

Utah

EPA SLN No. UT 92 0001. Nor-Am Chemical Co. Registration is for Formetanate Hydrochloride to be used on greenhouse plants to control western flower thrip. March 23, 1992.

EPA SLN No. UT 92 0002. Gowan Co. Registration is for Dimethoate to be used on sweet cherries and tart cherry to control fruit flies. March 25, 1992.

Virginia

EPA SLN No. VA 92 0003. Valent U.S.A. Corp. Registration is for Acephate to be used in-furrow on peanuts to control thrips. April 10 1992.

EPA SLN No. VA 92 0004. Ciba-Geigy Corp. Registration is for Metolachlor to be used on cotton to control weeds. April 10, 1992.

EPA SLN No. VA 92 0005. Ciba-Geigy Corp. Registration is for Metolachlor to be used on cotton to control weeds. April 14, 1992.

Washington

EPA SLN No. WA 89 0033. Miles, Inc. Registration is for Metasystox-R to be used on nursery stock to control aphids and leafminer. April 30, 1992.

EPA SLN No. WA 92 0001. Miles, Inc. Registration is for Metasystox-R S.C. to be used on apples to control aphids. April 22, 1992.

EPA SLN No. WA 92 0005. Riverside/Terra Corp. Registration is for Phorate to be used on potatoes to control wireworms and psyllids. March 16, 1992.

EPA SLN No. WA 92 0006. Uniroyal Chemical Co., Inc. Registration is for Triflumizole to be used on woody ornamentals to control cylindrocladium. April 22, 1992.

EPA SLN No. WA 92 0007. ICI Americas, Inc. Registration is for Napropamide to be used on iris and daffodil bulb to control annual weeds. March 31, 1992.

EPA SLN No. WA 92 0008. Novo Nordisk A/S. Registration is for Foray 48B to be used on vegetation to control gypsy moth. April 7, 1992.

EPA SLN No. WA 92 0009. Platte Chemical Co. Registration is for Ethalfluralin to be used on summer and winter squash to control weeds. April 21, 1992.

EPA SLN No. WA 92 0010. Miles, Inc. Registration is for Metasystox-R (ODM) to be used on apples to control aphids. April 22, 1992.

Wisconsin

EPA SLN No. WI 92 0003. Southern Mill Creek Products. Registration is for Miocarb to be used in ginseng gardens to control snails and slugs. March 10, 1992.

EPA SLN No. WI 92 0004. Haco, Inc. Registration is for Mesurol to be used in ginseng gardens to control snails and slugs. March 10, 1992.

EPA SLN No. WI 92 0005. Platte Chemical Co. Registration is for Diazinon to be used on cranberries to control cranberry girdler. April 9, 1992.

Wyoming

EPA SLN No. WY 92 0003. Haco, Inc. Registration is for Zinc Phosphide to be used on rangeland and timber to control prairie dogs and ground squirrels. April 24, 1992.

Disapprovals

The following State registrations of pesticides inder section 24(c) of FIFRA were disapproved by the Administrator:

Oklahoma

EPA SLN No. OK 92 0003. Ciba-Geigy Corp. Registration is for Primisulfuron Methyl to be used on field corn to control weeds. Disapproved April 27, 1992.

Texas

EPA SLN No. TX 92 0003. Gustafson, Inc. Registration is for Thiophanate Methyl to be used on peanut seeds to control sclerotinia blight. Disapproved May 21, 1992

Authority: Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: July 22, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-18577 Filed 8-4-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4192-3]

Program To Identify Suppliers of Recycled Halons

The U.S. Environmental Protection Agency is seeking recommendations on how to match potential suppliers of recycled halon to customers currently without alternatives and is seeking immediate sources of recycled Halon 1301 for such uses.

On February 21, 1992, the U.S. EPA announced that it would cooperate with industry, environmental groups, and an academic institution to allow Alaska North Slope oil and gas companies to shift to the use of recycled halons for explosion and fire protection. Halons, fire extinguishing agents that deplete the stratospheric ozone layer, are scheduled to be phased out of production by December 1995. The companies (ARCO Alaska Inc. and BP Exploration (Alaska) Inc.) will endeavor to procure recycled halon 1301 in preference to newly produced halon. This action, supported by EPA, the Center for Global Change at the University of Maryland, the Natural Resources Defense Council, and Friends of the Earth-USA, will help evaluate the feasibility of accelerating the phaseout of new halon production. More recently, the Boeing Company has also agreed to join in this program to shift to the use of recycled halon.

Halon is used for fire protection under extreme operating conditions where no alternatives are currently available. The use of recycled halons by these companies will be helped by the establishment of a nationwide halon banking program which removes halon from service in non-essential applications, creates a supply of recycled halon allowing an earlier halt to production, and stores any surplus halon until it is either used in an essential use or is safely destroyed. To facilitate these activities, EPA by the end of this year will develop a clearinghouse and procedures to encourage non-essential users of halon to turn in their stocks for recycling and will work to identify brokeraging and halon banking strategies.

Potential suppliers and other sources of recycled halon 1301 are invited to contact EPA and provide information on the quantity, delivery, and other terms for the recycled material. The available halon 1301 must be suitable for purification to practical standards of quantity. The information should be submitted as soon as possible, but preferably no later than September 30, 1992, to Bella Maranion, Technology Transfer & Industry Programs, Global Change Division (6202]), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For further information contact Bella Maranion at (202).233-9138.

Dated: July 22, 1992.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 92-18570 Filed 8-4-92; 8:45 am]

BILLING CODE 6560-50-M

[EPA-530-R-92-010; FRL-4192-2]

Solid Waste Disposal; Toxicity Reduction; Lead and Cadmium Substitutes

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of report on potential substitutes for lead and cadmium in products in municipal solid waste.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of a report entitled "Preliminary Use and Substitutes Analysis for Lead and Cadmium in Products in Municipal Solid Waste." This report identifies lead- and cadmium-containing products that are disposed of in municipal solid waste and provides information regarding potential substitutes for the lead- and/or cadmium-containing components of these products. The EPA intends to use this document to further voluntary efforts to reduce toxics in municipal solid waste. The identification of technically feasible substitutes for lead and cadmium in products found in municipal solid waste can be an important preliminary step towards pollution prevention. The analysis of substitutes in this report does not quantitatively assess economic factors that affect substitution or the effect of potential substitutes on end products.

ADDRESSES: The report is available for review at all EPA libraries and in the EPA RCRA docket, which is located in room 2427 of the U.S. EPA Headquarters. The docket number for the report is F-92-SCLA-FFFFF. The docket is open for viewing from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays; telephone (202) 260-9327. The Public may copy a

maximum of 100 pages of material from any one regulatory docket at no cost. Additional copies cost 15 cents per page.

The document is also available through the National Technical Information Service (NTIS), 5258 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. The complete report is available by Order No. PB–92–162–551.

FOR FURTHER INFORMATION CONTACT: For general information call the EPA RCRA Hotline at (703) 920–9810 or toll free at (800) 424–9346 outside the Washington, DC metropolitan area. For technical information on the report, contact Ohad Jehassi, Office of Pollution Prevention and Toxics (202) 260–6911, TS–779, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In January 1989, EPA issued a report entitled "Characterization of Products Containing Lead and Cadmium in Municipal Solid Waste in the United States, 1970–2000" (EPA/530–SW–89–015, NTIS Order No. PB89–151039; Notice of Availability in FR 25166, Vol. 54, No. 112, June 13, 1989). The report characterized the products contributing 1 percent or more of the lead and cadmium disposed of in municipal solid waste over the time period 1970 to 1986, with projections to the year 2000. As a follow-up to this characterization of sources of lead and cadmium in the waste stream, EPA commissioned a study to identify and characterize technologically feasible substitutes for these sources. The availability of the study of possible substitutes is being announced today.

These studies on lead and cadmium are a part of EPA's overall effort to promote toxics reduction in the municipal solid waste stream. EPA has identified source reduction as the preferred management option in its hierarchy of waste management methods. Source reduction is an approach to reduce the toxicity and/or amount of materials or products before they enter the waste stream. Recycling (including composting) is considered the next best management option, followed by combustion and/or landfilling.

To inform future source reduction efforts, EPA requests information on issues or activities related to the material in this report (e.g., the efficacy of substitutes for particular applications). The Agency also seeks information on specific case studies which address viable substitutes for lead and cadmium found in consumer products. Send any relevant information to the contact listed above. The Agency is interested in initiating a dialogue with interested organizations, including any commentors on this report, in an effort to promote voluntary source reduction efforts and to gather additional information.

Dated: July 28, 1992.

Mark Greenwood,

Director, Office of Toxic Substances.

Sylvia K. Lowrance,

Director, Office of Solid Waste.

[FR Doc. 92–18571 Filed 8–4–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4191–7]

Proposed Administrative Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into an administrative settlement agreement under section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622. The proposed agreement would provide for the release of the Superfund Lien covering the J.K. Drum Site in the City of New London, Waupaca County, Wisconsin.

DATES: Comments must be provided on or before September 4, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, IL 60604, and should refer to: J.K. Drum Site, City of New London, Waupaca County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Terry Branigan (CS–3T), U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–4737.

SUPPLEMENTARY INFORMATION:

Notice of Settlement

In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement agreement concerning the J.K. Drum Site in the City of New London, Waupaca County, Wisconsin.

In response to the release or threat of release of hazardous substances, U.S. EPA undertook a removal action at the site pursuant to section 104 of CERCLA, 42 U.S.C. 9604. U.S. EPA filed a Notice of Federal Lien in accordance with section 107(1)(3) of CERCLA with the Register's Office of Waupaca County, WI to perfect the lien created by section 107(1)(1) of CERCLA in favor of the United States for the response costs and damages for which the owners of the property are liable pursuant to section 107(a) of CERCLA.

The proposed agreement was issued to the following parties ("settlors"): River Properties Partnership, Kenneth Dern, Bart Kellnhauser, Leslie Green, Stanley F. Staples, Alvin T. Stolen.

The proposed agreement requires the Agency, in exchange for recouping a portion of response costs incurred by U.S. EPA during its response action, to release the Superfund Lien on any portion of the site property that is sold to a third party. Payment to U.S. EPA equals an amount which is stated as a percentage of the proceeds for the sale.

In releasing the lien, U.S. EPA makes no warranties or representations to any party regarding environmental contamination at the site. In addition, the agreement states that it is not to be construed as a release or a covenant not to sue for any claim or cause of action which the U.S. EPA or the United States may have against any of the settlors. U.S. EPA specifically reserves all rights against settlors. The agreement does not compromise or settle any claim within the meaning of section 122(h)(1).

The U.S. Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the U.S. Environmental Protection Agency's Region V Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: July 17, 1992.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 92–18567 Filed 8–4–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

Dated: July 28, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., Suite 640, Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0228.

Title: Section 80.59, Compulsory ship stations.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 200 responses, 2 hours average burden per response; 400 hours total annual burden.

Needs and Uses: The requirement contained in Section 80.59 is necessary to implement the provisions of section 362(b) of the Communications Act of 1934, as amended, which permits the Commission to waive the required annual inspection of certain oceangoing ships for up to 30 days beyond the expiration date of a vessel's radio safety certificate, upon a finding that the public interest would be served. The information is used by the Engineer in Charge of FCC Field Offices to determine the eligibility of a vessel for a waiver of the required annual radio station inspection. If the collection were not conducted, the Commission would be unable to grant eligible vessels waivers and such ships would be unable to sail until an inspection was performed. This, in turn, would require an increased expenditure for agency travel funds and/or additional personnel, as well as additional operating costs for vessels required to remain in port until an inspection could be completed.

OMB Number: 3060–0285.

Title: Section 80.868, Card of instructions.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 3,000 recordkeepers; 0.1 hours average burden per recordkeeper, 300 hours total annual burden.

Needs and Uses: The recordkeeping requirement contained in Section 80.868 is necessary to insure that radiotelephone distress procedures are readily available to the radio operator on board certain vessels (300–1600 gross tons) required by the Communications Act or the International Convention for Safety of Life at Sea to be equipped with a radiotelephone station. The information is used by a vessel radio operator during an emergency situation, and is designed to assist the radio operator to utilize proper distress procedures during a time when he or she may be subject to considerable stress or confusion.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18529 Filed 8–4–92; 8:45 am]

BILLING CODE 6712–01–M

[DA 92–979]

Meeting

Dated: July 27, 1992.

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

August 25, 1992, 10:30 a.m., Commission Meeting Room (room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Minutes of Last Meeting.
3. Report of Working Party 1.
4. Report of Working Party 2 Transition Scenarios.
5. Scheduling of Final Report Submissions.
6. General Discussion.
7. Other Business.
8. Date and Location of Next Meeting.
9. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairs.

Any questions regarding this meeting should be directed to George Vradenburg III at (310) 203–1334, Dr. James J. Tietjen at (609) 734–2237, or Gina Harrison at (202) 632–7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18528 Filed 8–4–92; 8:45 am]

BILLING CODE 6712–01–M

[DA 92–1010]

Comments Invited on San Antonio Area Public Safety Plan

Dated: July 28, 1992.

The Commission has received the public safety radio communications plan for the San Antonio area (Region 53).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 53 consists of the following counties: Val Verde, Edwards, Kerr, Gillespie, Real, Bandera, Kendall, Kinney, Uvalde, Medina, Bexar, Comal, Guadalupe, Gonzales, Lavaca, De Witt, Karnes, Wilson, Atascosa, Frio, Zavala, Maverick, Dimmit, La Salle, McMullen, Live Oak, Bee, Goliad, Victoria, Jackson, Calhoun, Refugio, Aransas, San Patricio, Nueces, Jim Wells, Duval, Webb, Kleberg, Kenedy, Brooks, Jim Hogg, Zapata, Starr, Hidalgo, Willacy and Cameron. (General Docket No. 87–112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before September 4, 1992 and reply comments on or before September 21, 1992. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92–169 San Antonio Area—Public Safety Region 53.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 832–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18527 Filed 8–4–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-948-DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–948–DR), dated July 2, 1992, and related determinations.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, dated July 2, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1992:

The countries of Kingsbury, Miner, and Moody for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–18528 Filed 8–4–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Guaranty Development Company, et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 28, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Guaranty Development Company, Livingston, Montana; to acquire 100 percent of the voting shares of InterWest Bank of Bozeman, Bozeman, Montana, through InterWest Acquisition, a state-chartered non-member phantom bank.

Board of Governors of the Federal Reserve System, July 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–18508 Filed 8–4–92; 8:45 am]

BILLING CODE 6210–01–F

Mellon Bank Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; and Credit Commercial de France, S.A., Paris, France; to engage *de novo* through their subsidiary, CCF-Mellon Partners, a Pennsylvania general partnership, Pittsburgh, Pennsylvania, in acting as investment or financial adviser pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Sleepy Eye Bancorporation, Inc., Sioux Falls, South Dakota; to engage *de novo*, in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–18507 Filed 8–4–92; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection, 3090–0003, Sale of Government Property. This Information Collection provides terms and conditions under which Government owned personal property is offered for sale, and provides the format whereby bids are submitted.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to

Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

ANNUAL REPORTING BURDEN:
Respondents: 85,000; annual responses: 1; average hours per response: .33; burden hours: 28,050.

FOR FURTHER INFORMATION CONTACT: Ed Hochard, (703) 557–0814. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: July 28, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92–18498 Filed 8–4–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 226]

Research Program for Exposure Characterization

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement program to develop a research program for exposure characterization for the purpose of evaluating exposures to widely varying contaminant concentrations, exposure frequencies, and exposure durations, with widely varying emission characteristic and decay rates that could be found at Department of Energy (DOE) Sites.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-lead national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized by Sections 104(i) (5), (9) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i) (5), (9) and (15)].

Eligibility

Eligible applicants are states and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, American Samoa, and political subdivisions thereof, including federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $400,000 is available in FY 1992 to fund 2 awards. It is expected that the average award will be $200,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for 12-month budget periods with a proposed project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested. However, the grantee, as the direct and primary recipient of PHS cooperative agreement funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. The acquisition of equipment may be authorized upon acceptance of a jurisdiction identifying: (1) Need for the equipment, (2) intended use of the equipment, and (3) the advantages/disadvantages of leasing versus purchase of the equipment.

Purpose

The purpose of these awards is to support the agency's toxicological research program and to augment the agency's preparation of public health assessments. The Research Program for Exposure Characterization will develop methods which will allow much more accurate and meaningful assessment of exposure to hazardous substances commonly found at DOE facilities and National Priorities List (NPL) sites. In addition, this research could serve as a mechanism to underwrite graduate and post-graduate research projects, and thus foster the development of professionals trained in this much needed area of research.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop and implement research methods to characterize chemical/radionuclide exposures typically associated with DOE sites.

2. Identify and pursue emerging technical advances in the assessment of exposure to hazardous chemicals/radionuclides typically associated with DOE facilities, to encompass both alteration of the genome and alterations in genome expression. These advances should include assessment of early biological effects (e.g., recorder effects such as somatic mutation) as a means to bridge the gap between internalized dose (exposure) and subtle alterations in structure/function (disease).

3. Develop these novel exposure characterization methods to the point where they can be adapted to hazard characterization and hazard communication efforts.

4. Communicate advances in the above areas to all relevant communities including other Federal agencies, state and local governments and the public.

B. ATSDR Activities

1. Assist in the development of plausible exposure scenarios and criteria for the selection and use of models and define appropriate assumptions.

2. Collaborate with recipient organizations to identify and pursue emerging disciplines related to advances in assessment of exposure to hazardous chemicals/radionuclides typically associated with DOE facilities.

3. Collaborate with recipient organizations to extend the appropriate use of novel exposure characterization protocols to hazard characterization and communication efforts.

4. Assist in communicating advances in the above areas to all relevant communities including other Federal agencies, state and local governments, and the public.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Application

a. *Proposed Program* (50%): The extent to which the applicant's proposal addresses (1) the scientific merit of the proposed project, including the originality and feasibility of the approach, adequacy, and rationale of the design; (2) the technical merit of the proposed project, including the degree to which the project can be expected to yield or demonstrate results that meet the program objective as described in the "PURPOSE" section of this announcement; and (3) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured.

b. *Program Personnel* (30%): The extent to which the proposal has described (1) the qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership; and (2) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project.

c. *Applicant Capability* (20%): Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

d. *Program budget* (NOT SCORED): The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

2. Continuation Awards Within the Project Period Will Be Made on the Basis of the Following Criteria

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Other Requirements

A. *Technical Review:* All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA Section 104(i)(13).

B. *Protection of Human Subjects:* If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to an initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

C. *Cost Recovery:* The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is a litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

D. *Animal Welfare:* If the proposal project involves research on animal subjects, the applicant must comply with the "PHS Policy Statement on Humane Care on Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

Executive Order 12372 Review

Applications are not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Application Submission Deadline

The original and two copies of the application PHS form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before September 1, 1992. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 226. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (Telephone: (404) 842–6797). Programmatic Technical Assistance may be obtained from Dennis E. Jones, Senior Toxicologist, Office of the Associate Administrator for Science, Agency for Toxic Substances and Disease Registry, Mailstop E–28, 1600 Clifton Road NE., Atlanta, Georgia 30333, (Telephone: (404) 639–0708).

Please Refer to Announcement Number 226 When Requesting Information and Submitting an Application

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402–9325, (Telephone: (202) 783–3238).

Dated: July 28, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92–18512 Filed 8–4–92; 8:45 am]

BILLING CODE 4160–70–M

Health Resources and Services and Administration

Program Announcement, Funding Priorities, Proposed Funding Preference and Grant Orientation Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration (HRSA) announces that application for fiscal year (FY) 1993 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act, as amended by Public Law 100–607.

Comments are invited on the proposed funding preference stated below.

Section 787 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. The assistance authorized by the section may be used to: Identify, recruit, and select individuals from disadvantaged backgrounds for education and training in a health profession; facilitate the entry and retention of such individuals in health and allied health professions schools; and to provide counseling and advice on financial aid to assist such individuals to complete successfully their education at such schools.

This program announcement is subject to the reauthorization of this legislative authority and to the appropriation of funds.

The Administration's FY 1993 budget request for this program is $30.2 million. Of this amount, $9.9 million will be used to continue support of 70 multi-year projects funded in previous years. Approximately 137 competitive awards will be made at an average of $147,000 each. There is, however, no assurance of HCOP funding for FY 1993 at the level of the budget request or any other level.

Applicants are advised that this application announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for an even distribution of funds throughout the fiscal year.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1991, HRSA reviewed 205 applications for HCOP Grants. Of those applications, 82 percent were approved and 18 percent were not recommended for further consideration. Forty projects; or 23 percent of the approved applications, were funded. In FY 1990, HRSA reviewed 280 applications for HCOP Grants. Of those applications, 87 percent were approved and 13 percent were not recommended for further consideration. Ninety-seven projects; or 40 percent of the approved applications, were funded.

To receive support, applicants must meet the requirements of the program regulations which are located at 42 CFR part 57, subpart S. The period of Federal support will not exceed 3 years.

The statute requires that, of the amounts appropriated for any fiscal year, 20 percent must be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of allopathic medicine, osteopathic medicine, or dentistry, 10 percent must be obligated to community-based programs and 70 percent must be obligated for grants or contracts to institutions of higher education. Not more than five percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

National Health Objectives For The Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Health Careers Opportunity Program is related to the priority area of Education and Community-Based programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget; and

(f) The potential of the project to continue without further support under this program.

In addition, the following mechanisms will be applied in determining the funding of applications:

1. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

2. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

The following funding priorities will be used in the distribution of grant awards in FY 1993.

Statutory Funding Priorities

Public Law 100–607 requires the Secretary to give priority in funding to the following schools:

1. A school which previously received an HCOP grant and increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 by the end of 3 years from the date of the award of the HCOP grant; and

2. A school which had not previously received an HCOP grant that increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in

the base year 1987, over any period of time.

Established Funding Priority

The following funding priority was established in fiscal year 1990 after public comment and is being continued in FY 1993, with the exception that wording related to alternative means of documenting enrollment in terms of increases and retention rates for disadvantaged students have been deleted. Progress in these areas is considered as a part of the merit review process for this program and applicants will be informed of relevant benchmarks in application materials.

A funding priority will be given to HCOP applications from health professions schools and from allied health training centers for baccalaureate or higher level programs in physical therapy, physician assisting, respiratory therapy, medical technology or occupational therapy that have a disadvantaged student enrollment of 35 percent or more.

Similarly, a previously established funding priority for educational institutions that can document that at least 60 percent of the disadvantaged prehealth professions students from their school who applied over the past 3 years to health or allied health professions schools were enrolled in such schools has also been deleted. Progress in this area will be requested and considered as part of the merit review of applications.

Proposed Funding Preference for FY 1993

The following funding preference is proposed for FY 1993:

A funding preference will be given to competing continuation applications for postbaccalaureate programs funded under the fiscal year 1990 HCOP Funding Preferences (as defined in the **Federal Register** notice of March 27, 1990, 55 FR 11264) which score in the upper 50th percentile of all applications, and which can evidence the following:

1. Disadvantaged students were recruited into the postbaccalaureate program at a level at least equal to the number of students originally projected in FY 1990; and

2. The cohort of first year disadvantaged students entering the health or allied health professions school in September 1992 exceeds the number of disadvantaged students enrolled in the first year class in September 1991 by a number equal to at least 50 percent of the postbaccalauareate participants projected for enrollment in 1992.

Based on progress reports from the first cycle and enrollees from the cohort in first year classes, indications are that per year, as many as 90 previously rejected applicants will gain admission to health and allied health professions schools. The postbaccalaureate programs have the potential for significantly increasing the enrollment of disadvantaged students in the health professions. This funding preference is intended to direct assistance to quality postbaccalaureate programs that have documented sustained or increased accomplishments under this program.

It is not required that applicants request consideration for a funding factor. Applicants which do not request consideration of funding factors will be reviewed and given full consideration for funding.

In addition, consideration will be given to an equitable geographic distribution of projects, and the assurance that a combination of all funded projects represents a reasonable proportion of the health professions specified in the legislation.

Interested persons are invited to comment on the proposed funding preference. All comments received on or before September 4, 1992, will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preference will be applied.

Written comments should be addressed to: Clay E. Simpson, Jr., Ph.D., Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The applicant must indicate on the upper right-hand corner of the face page of the application the funding priority and/or preference for which the applicant wishes consideration. However, the final determination of the category of funding priority or preference will be based on a staff assessment of the contents of the proposal. An applicant may only be given credit for one funding priority.

Definitions

As used in this notice:

"Community-based Program" means a program with organizational headquarters located in and which primarily serves: A Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated nonmetropolitan economic area or a county; or Indian tribe(s) as defined in 42 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

"Health professions schools" means schools of allopathic medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, or graduate programs in clinical psychology and health administration, as defined in Section 701(4) of the Public Health Service Act and as accredited in Section 701(5) of the Act.

"Individual from a disadvantaged background" means an individual who: (a) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or; (b) comes from a family with an annual income below a level based on low-income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low-income family for purposes of these Health Careers Opportunity Program grants for fiscal year 1993:

Size of parents' family [1]	Income level [2]
1	$9,100
2	$11,800
3	$14,100
4	$18,000
5	$21,300
6 or more	$23,900

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1991, rounded to $100.

"Training center for allied health professions" means a junior college, or college, or university, as defined in section 795 of the Public Health Service Act, which:

(a) Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Master's Degree: Biostatistician, Nutritionist, Social Worker, Speech Pathologist/Audiologist

Bachelor's Degree: Biomedical Engineer, Blood Bank Technologist, Community Health Educator, Corrective Therapist, Cytogenetic Counselor, Dental Hygienist, Dietitian, Health Physicist, Health Services Administrator, Medical Illustrator, Medical Records Administrator, Medical Technologist, Microbiology Technologist, Occupational Therapist, Physical Therapist, Primary Care Physician Assistant, Recreational Therapist, Rehabilitation Counselor, Sanitarian (Environmental Health).

Associate Degree: Clinical Dietetic Technician, Cytotechnologist, Dental Assistant, Dental Hygienist, Dental Laboratory Technician, EKG/EEG Technologist, Medical Assistant, Medical Laboratory Technician, Medical Records Technician, Occupational Therapy Assistant, Ophthalmic Medical Assistant, Ophthalmic Technologist, Optometric Technician, Orthopedic Technologist, Physical Therapy Assistant, Radiologic Technologist, Respiratory Therapy Technologist, Sanitarian Technician, Surgical Technologist.

(b) Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

(c) Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Additional Information

Requests for grant application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray, Grants Management Specialist (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the Grants Management Office at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is November 9, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program will also be provided through three program technical assistance conferences. The conferences, scheduled for September 1992, are for the benefit of potential applicants and current grantees.

The three conferences will be held as follows:

September 10–11, 1992—Columbia Inn, HCOP Technical Assistance Mtg I, Wincopin Circle, Columbia, Maryland, (301) 730–3900.

September 14–15, 1992—Columbia Inn, HCOP Technical Assistance Mtg II, Wincopin Circle, Columbia, Maryland, (301) 730–3900.

September 17–18, 1992—The Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202, (703) 892–4100, (800) 848–7000.

Attendees must make their own lodging arrangements. Those attending technical assistance meetings at the Columbia Inn, must indicate which session they will attend when contacting the hotel for arrangements (i.e., HCOP Technical Assistance Meeting I). Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: Application Preparation (Competing and Noncompeting) and Grants Management Policies and Procedures. Special attention will be given to the development of the three page grant proposal summary, which is prepared by the applicant and is critical to the objective review process.

Participation in the technical assistance meetings does not assure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Ms. Cynthia Amis, Acting Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–4493.

This program is listed at 93.822 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 16, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–18515 Filed 8–4–92; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Boards. The publication of these appointments is required by Section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, telephone Number: 208–6761.

U.S. Department of the Interior SES Performance Review Boards (PRB)—FY 1992

Assistant Secretary—Fish and Wildlife and Parks

Joseph E. Doddridge (CA), Chairperson
Joseph S. Marler (CA)
James Spagnole (NC)
June Whelan (NC)

Edward Davis (CA)
Don Castleberry (CA)
Jay L. Gerst (CA)

Assistant Secretary—Indian Affairs

William D. Bettenberg (CA), Chairperson
Patrick Hayes (CA)
Stanley M. Speaks (CA)
Philip Hogen (NC)
James D. Cain (CA)

Assistant Secretary—Land and Minerals Management

Richard Roldan (NC), Chairperson
Susan Recce-Lamson (NC)
Ray Brubaker (CA)
Ann L. Chapman (CA)
Robert E. Brown (CA)

Office of the Secretary and Assistant Secretary—Policy, Management and Budget

Mary Ann Lawler (CA), Chairperson
Jeffrey Arnold (NC)
Willie R. Taylor (CA)
Gabriele Paone (CA)
Hazel Elbert (CA)
Marvin Pierce (CA)
Patricia Hastings (CA)
Joyce Fleischman (CA
Maryanne Bach (NC)

Office of the Solicitor

Lisa S. Farringer (NC), Chairperson
James T. Hemphill (NC)
Lawrence E. Cox (CA)
David A. Watts (CA)
Thomas E. Robinson (CA)
Gina Guy (CA)

Assistant Secretary—Water and Science

David Brown, (CA), Chairperson
Peter Bermel (CA)
Margaret Carpenter (CA)
John Fisher (CA)
Joseph Hunter (NC)
Lawrence Hancock (CA)
John Murphy (CA)
Margaret Sibley (CA)
J. Neil Stessman (CA)
Gene Thorely (CA)

Departmental Performance Review Board

Selma Sierra (NC), Chairperson
Morris A. Simms (CA)
Doyle G. Frederick (CA)
Jean Baines (CA)
Ruth VanCleve (CA)
J. Austin Burke (CA)
Denise Meridith (CA)
Thomas Sheehan (CA,
Donald J. Senese (NC)

Dated: July 29, 1992.

Approved for the Executive Resources Board

John E. Schrote,

Assistant Secretary-Policy, Management and Budget

[FR Doc. 92-18480 Filed 8-4-92; 8:45 am]

BILLING CODE 4310-01-M

Bureau of Land Management

[CA-060-02-5440-10-B026]

Realty Action; Proposed Exchange of Public Lands in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management proposes to exchange approximately 1832 acres of public land in order to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. All or part of the following described federal lands are being considered for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

San Bernardino Base & Meridian, Imperial County, California

T.13 S., R.19 E.:
Section 8:SE¼
Section 15:N½,SW¼
Section 17:S½SE¼, NW¼NW¼NE¼
Section 18:E½W½, Lots 1-4
Section 19:E½W½, Lots 1-4
Section 20:All
Section 21:All
Section 22:NW¼NW¼
Tract 38:All

Final determination on disposal will await completion of an environmental analysis. The proposed exchange is consistent with the Bureau's land use planning objectives. Lands being proposed for exchange will be conveyed from the United States subject to the following reservations, terms and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights of record.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregation of the above-described land shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, El Centro Resource Area Office, 333 South Waterman Avenue, El Centro, California 92243. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action.

Dated: July 23, 1992.

G. Ben Koski,

Area Manager.

[FR Doc. 92-18496 Filed 8-4-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-030-92-4212-14; OR-39431]

Realty Action; Direct Sale of Public Lands; Malheur County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Malheur County, Oregon.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719:

Willamette Meridian

T. 32., R. 40 E.,
Sec. 18: Lots 5 (0.67 acres) and 7 (2.91 acres).
The above lands aggregate 3.58 acres

The Bureau of Land Management proposes to sell the surface and subsurface estate except oil & gas to Margarette Eckstein to resolve an Occupancy Unauthorized Use (OR-42936) case which involves a small portion of a rural service center complex.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interest being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The proposed direct sale would be made at fair market value.

The proposed sale is consistent with the Southern Malheur Management Framework Plan. Due to the difficulty in managing these lands, private

ownership is believed to be in the best interests of the public. Private ownership will allow the current owner to work with county, state, and federal agencies to bring the service center facilities into compliance, and the owner will be able to secure any needed financial grant assistance to upgrade the facilities.

The patent, when issued will contain the following reservations to the United States:

1. A right of way there on for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Reservation of Oil and Gas Mineral Estate.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever occurs first.

For a period 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections this proposed realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Sheldon E. Saxton, Realty Specialist, or Jerry L. Taylor, Area Manager, Bureau of Land Management, Jordan Resource Area, 100 Oregon Street, Vale, Oregon 97918, (503) 473–3144.

Dated: July 27, 1992.

James E. May,

District Manager.

[FR Doc. 92–18495 Filed 8–4–92; 8:45 am]

BILLING CODE 4310–33–M

[CA–940–92–4730–12]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Humboldt Meridian, California

T. 4N., R. 7E.,—Dependent resurvey, and subdivision of sections 21, 23, 24, 26, 27, 29 and 30, (Group 1005) accepted May 12, 1992, to meet certain administrative needs of the U.S. Forest Service, Shasta-Trinity National Forest.

Mount Diablo Meridian, California

T. 3S., R. 6W.,—Dependent resurvey, and metes-and-bounds survey, (Group 1020) accepted May 4, 1992, to meet certain administrative needs of the National Park Service, Golden Gate National Recreation Area.

T. 21N., R. 14E.,—Survey of lot 2, section 29, (Group 1098) accepted May 12, 1992, to meet certain administrative needs of the U.S. Forest Service, Tahoe National Forest.

T. 16N., R. 7W.,—Dependent resurvey, and subdivision of section 6, (Group 883) accepted May 12, 1992, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 9N., R. 10E.,—Supplemental plat of the SE¼ of section 12, accepted May 14, 1992, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

San Bernardino Meridian, California

T. 9N., R. 2W.,—Supplemental plat of section 15 and SE¼ of section 10, accepted May 26, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 9N., R. 2W.,—Supplemental plat of section 31, accepted May 26, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 9N., R. 3W.,—Supplemental plat of NW¼ of section 3, accepted May 26, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 8N., R. 3W.,—Supplemental plat of sections 2 and 3, accepted May 26, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

T. 7N., R. 3W.,—Supplemental plat of the W½ of section 6, accepted May 26, 1992, to meet certain administrative needs of the BLM, California Desert District, Barstow Resource Area.

All of the above listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Dated: July 27, 1992.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 92–18494 Filed 8–4–92; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of the Agency Draft Pondberry Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of an agency draft recovery plan for pondberry. This species is known from both publicly and privately owned sites in Arkansas, Georgia, Mississippi, Missouri, North Caroline, and South Carolina. The species is believed to have been extirpated from Florida, Louisiana, and Alabama. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 25, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the address shown above or telephone 704/665–1195, Ext. 224.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a pulbic notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The agency draft recovery plan for pondberry outlines a mechanism that provides for the recovery and eventual delisting of this federally endangered species. Pondberry was listed as an endangered species primarily because of alteration or destruction of its habitat through land-clearing, drainage modification, or timber-harvesting. The plan requires that the Service and other cooperators in the recovery of this species determine the biological requirements of the species, determine the number of individuals that constitutes a viable population, and determine and implement the management actions needed to ensure the continued existence of 25 self-sustaining populations. This agency draft recovery plan was preceded by a technical review draft that was reviewed by species experts and by experts in the protection of rare plants. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 27, 1992.

Brian P. Cole,

Field Supervisor,

[FR Doc. 92-18497 Filed 8-4-92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0034); Washington, DC 20503, telephone (202) 395-7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street, Herndon, Virginia 22070-4817.

Title: Notice of Processing of Geological and Geophysical Information and Data, 30 CFR 251.11 and 251.12.

OMB approval number: 1010-0034.

Abstract: Respondents conducting exploration for oil or gas provide the Minerals Management Service with geological and geophysical information and data, processed and analyzed information, and interpretations which are used to properly evaluate Federal Outer Continental Shelf (OCS) resources and environmental conditions as required by the OCS Lands Act.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Federal OCS permittees.

Estimated completion time: 3 hours.

Annual responses: 400.

Annual burden hours: 1,200.

Bureau Clearance Officer: Dorothy Christopher, (703) 787-1238.

Dated: June 23, 1992.

Richard Roldan,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 92-18491 Filed 8-4-92; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-0031); Washington, DC 20503, telephone (202) 395-7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Reimbursement to Permittees for Certain Geological and Geophysical Information and Data, 30 CFR 251.13.

OMB approval number: 1010-0031.

Abstract: Section 26 of the Outer Continental Shelf (OCS) Lands Act requires that certain costs be reimbursed to the parties submitting required geological and geophysical (G&G) information and data requested by the Minerals Management Service (MMS). Under the law, permittees can be reimbursed for the costs of reproducing any G&G data required to be submitted. In order for the Government to determine the propriety and level of reimbursement, permittees are required to send a request for reimbursement to the Director, MMS, where it will be reviewed and evaluated. Reimbursement will be made according to appropriate criteria.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Federal OCS oil and gas permittes.

Estimated completion time: 7 hours.

Annual responses: 300

Annual burden hours: 2,100.

Bureau Clearance Officer: Dorothy Christopher, (703) 787-1238.

Dated: June 18, 1992.

Richard Roldan,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 92-18492 Filed 8-4-92; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Withdrawal

By Notice dated April 28, 1992, and published in the **Federal Register** on May 6, 1992, (57 FR 19443), Lab, Inc., 700 Grand Avenue, Ridgefield, New Jersey 07857, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II.
Codine (9050)	II.
Oxycodone (9143)	II.
Hydrocodone (9193)	II.
Levorphanol (9220)	II.
Meperidine (9230)	II.
Morphine (9300)	II.
Oxymorphone (9652)	II.
Fentanyl (9801)	II.

On May 26, 1992, Lab, Inc., 700 Grand Avenue, Ridgefield, New Jersey 07657, requested that their application for registration as an importer be withdrawn, therefore the application submitted by Lab, Inc., is hereby withdrawn.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: July 29, 1992.

[FR Doc. 92-18538 Filed 8-4-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Coverage and Adequacy of the Advisory Council on Employee Welfare Pension Benefit Plans will be held at 1 p.m., Wednesday, September 9, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Pension Coverage and Adequacy Working Group was formed by the Advisory Council to study issues relating to Pension Coverage and Adequacy for employee benefit plans covered by ERISA.

The purpose of the September 9 meeting is to discuss the preliminary findings of the Group and to commence the preparation of a final report regarding the trend in decline in participation in defined contribution plans, and the effect of this trend on pension coverage and adequacy. The Working Group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before September 1, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1, 1992.

Signed at Washington, DC this 30th day of July, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-18487 Filed 8-4-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: August 12, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, National Science Foundation (NSF), 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Kishan Baheti, Program Director, Division of Electrical and Communications Systems, NSF, 1800 G Street, NW., room 1151, Washington, DC 20550. Telephone: (202) 357-9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Systems Theory Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) the Government in the Sunshine Act.

Reason for Late Notice: Meeting was scheduled late due to a backlog of proposals to be reviewed.

Dated: July 31, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-18560 Filed 8-4-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or

proposed to be issued from July 13, 1992 through July 24, 1992. The last biweekly notice was published on July 22, 1992 (57 FR 32571).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 4, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: March 10, 1992, as revised May 11, 1992, and July 10, 1992. The March 10, 1992, submittal was noticed on April 15, 1992 (57 FR 13128).

Description of amendment request: The proposed Technical Specification (TS) changes will (1) increase the boron concentration in the refueling water storage tank (RWST) and safety injection system accumulators from 2000-2200 ppmB to 2400-2600 ppmB, (2) increase the specified volume of NaOH in the spray additive tank (SAT) from 2736-2912 gallons to 3268-3984 gallons and add the level range of 92-96 percent, (3) change the level of boric acid in the boric acid tank (BAT) from 60 percent (21,400 gallons) to 74 percent (24,150 gallons) in Modes 1-4, and from 17 percent (7100 gallons) to 21 percent (6650 gallons) in Modes 5-6, and (4) reference the Core Operating Limits Report (COLR) for determining the necessary RCS and refueling canal boron concentrations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

T3(a) Increase in Boron Concentration in the RWST and Safety Injection Accumulators: The higher boron concentration does not increase the accident initiation probability for any of the Final Safety Analysis Report (FSAR) events. CP&L has determined that a) the higher boron concentration in the RWST, SI System, and RCS will have no adverse effect on the stainless steel container materials, despite a slightly lower pH at 2800 ppmB than at 2200 ppmB; b) there is no danger of boron precipitation; and c) corrosion of carbon steel by leakage of the more highly borated water will not be increased significantly because the pH change is small and still in the range where corrosion rates are nearly independent of pH. Therefore, the probability of an accident is not increased by the higher boron concentration.

The higher boron concentration in the RCS causes a very small increase in tritium production rate in the coolant for a short period near the beginning of cycle. This does not contribute significantly to off-site doses or to personnel doses. All radionuclide source terms used in the FSAR off-site dose calculations remain unchanged because tritium is not currently modeled in the FSAR Chapter 15 off-site dose calculations. The post-LOCA hydrogen production may increase by about 3.5 percent (due to containment spray reacting with zinc) because of the higher boron concentration. This increase is considered insignificant. To ensure that the containment spray retains its capability of removing iodine from the containment atmosphere following a LOCA, and to ensure that the sump solution will retain the iodine, it is proposed to increase the NaOH volume in the Spray Additive Tank to maintain spray and sump pH between 8.5 and 11.0. Therefore, there will be no increase in the consequences of an accident previously evaluated due to the higher boron concentration.

T3(b) Increase in NaOH Volume: Neither the Spray Additive Tank (SAT), the NaOH solution, nor failure of the tank contributes to the initiation of any FSAR Chapter 15 event. The proposed increase in NaOH volume does not increase any of the accident initiation probabilities. Therefore, the probability of an accident is not increased by the larger NaOH volume.

The increase in NaOH volume compensates for the higher boron concentration so that pH in the containment spray and sump remains between 8.5 and 11.0 for effective iodine absorption by the containment spray and iodine retention in the sump. Thus, the proposed amendment does not involve a significant increase in the consequences of any accidents due to the increase in boron concentration when the NaOH volume is also increased.

T3(c) Change in Minimum Level of Boric Acid in the Boric Acid Tank:

Neither the Boric Acid Tank, the boric acid, nor failure of the tank contributes to the initiation of any FSAR Chapter 15 event. The proposed change in minimum level does not increase any of the accident initiation probabilities. Therefore, the probability of each accident previously evaluated in the FSAR is not increased by the proposed minimum boric acid level.

The proposed change in minimum BAT volume is necessary to satisfy shutdown margin criteria via boration control due to the reduction and eventual elimination of the WABAs [wet annular burnable absorbers] and reduction of the other burnable poisons. Shutdown margins are verified each cycle in the Reload Safety Evaluation. The BAT does not contribute to the consequences of any FSAR Chapter 15 accident. Thus, the consequences of each accident previously evaluated in the FSAR is not significantly increased by the proposed minimum boric acid volume.

T3(d) Core Operating Limits Report: Boron concentration during refueling does not contribute to the initiation of any FSAR Chapter 15 event. The proposed change does not increase any of the accident initiation probabilities. It is concluded that the probability of each accident previously evaluated in the FSAR is not increased by the higher boron concentration.

The purpose of this proposed Technical Specification change is to ensure adequate shutdown during refueling. The consequences of the accidents previously evaluated in the FSAR are not increased by changing the Technical Specifications to refer to the COLR for a potentially more restrictive refueling boron concentration.2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(a) Increase in Boron Concentration in the RWST and Safety Injection Accumulators: The proposed changes do not change normal plant operations except as required to maintain the modified boron, lithium, and pH control program. No changes are made to system functional requirements and no new accident scenarios have been identified. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(b) Increase in NaOH Volume: The proposed change does not change plant design or operation except to fill and maintain the SAT at the new level range. No new accidents have been identified.

Therefore, the proposed increase in NaOH volume does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(c) Change in Minimum Level of Boric Acid in the Boric Acid Tank: The proposed change does not change plant design or operation except to maintain the proposed new minimum level. Therefore, the proposed increase in minimum boric acid level does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(d) Core Operating Limits Report: The proposed change does not change plant design or refueling operations except to require a boron concentration of [greater than] 2000 ppmB or as specified in the Core Operating Limits Report (COLR), which ever is more limiting (higher). No new or different accident scenario has been identified. Therefore, the proposed increase in minimum boron concentration does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

(a) Increase in Boron Concentration in the RWST and Safety Injection Accumulators: The inadvertent boron dilution event in Modes 3, 4 and 5 were [sic] reanalyzed, and Technical Specification Figure 3.1-1 will be revised to ensure that all shutdown margin criteria satisfy all Bases despite the higher boron concentration. The current analysis results for the inadvertent boron dilution event in Modes 1, 2 and 6 remains [sic] valid since the analysis assumptions with respect to boron concentrations delineated in FSAR Section 15.4.6 are unchanged due to the increase in boron concentration. Furthermore, an inadvertent boron dilution event in Mode 6 is precluded by administrative procedures. All acceptance criteria in the Bases of Technical Specifications are satisfied without revision.

The higher boron concentration together with the proposed proposed revision to Figure 3.1-1 ensures that the Limiting Conditions for Operation are retained. The Reload Safety Evaluation will confirm that all applicable criteria are satisfied with no reduction in margins of safety. Therefore, the higher boron concentration does not involve a significant reduction in the margin of safety.

(b) Increase in NaOH Volume: The permissible range of the proposed NaOH volume is larger than before; thus margins to the maximum and minimum Technical Specification limits will be easier to maintain. Since the structural and seismic analyses were based on the tank filled to capacity and the proposed volume will be about 50 percent of capacity, these analyses continue to have sufficient margin. The calculated containment spray and sump pH transients show ample margin within the required pH range, 8.5-11.0, for solutions of 28-30 percent NaOH. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

(c) Change in Minimum Level of Boric Acid in the Boric Acid Tank: The margins of safety of interest are the shutdown margin criteria specified in the Technical Specification Bases 3/4.1.2. Those criteria are verified for the final fuel design and final core loading pattern [for] each cycle in the Reload Safety Evaluation. The proposed minimum level, based on the Cycle 5 design, will provide adequate margin for future cycles. Therefore, the proposed minimum boric acid level does not involve a significant reduction in the margin of safety.

(d) Core Operating Limits Report: The margins of safety of interest are the shutdown margin criteria specified in the Technical Specification Bases 3/4.9.1. and requires that k_{eff} [less than] 0.95. Since this criterion is not measurable, it is proposed to specify the boron concentration necessary to achieve this criterion in the COLR for each reload. The Technical Specification will require the more restrictive of either the value in the COLR or 2000 ppmB. This change ensures that the shutdown margin specified in the Technical Specification Bases is satisfied. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: June 17, 1992

Description of amendment request: The amendment request proposes an administrative change to the Technical Specifications. The proposed change would remove the list of primary containment conductor overcurrent protective devices from the Technical Specifications and place it in a controlled procedure. The limiting conditions for operation, action statements, and surveillance requirements of the overcurrent protective devices would remain unchanged.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a) the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The evaluation was measured against the criteria used to establish safety limits, the limiting safety system settings, and the limiting conditions for operations. The results of the evaluation determined that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

This is an administrative change to control the list of Primary Containment Penetration Overcurrent Protective devices outside the LaSalle Unit 1 and Unit 2 Technical Specifications. Removal of this component list does not change the probability of any accident initiators or change any other relevant accident initial assumptions. The administrative controls provided to maintain this component list assure that the design and operation of the plant will continue to be in accordance with the UFSAR, Facility License and the associated Technical Specifications. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created. Finally, because the change is purely administrative in nature, no margin of safety is affected.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 9, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 2.2-1 Reactor Protective Instrumentation Trip Setpoint Limits and TS Table 3.3-4 Engineered Safety Feature Actuation System (ESFAS) Instrumentation Trip

Values, to allow for the replacement of the narrow range containment building pressure transmitters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The containment building pressure parameter is used to mitigate the effects of an accident that causes a release of energy into the containment building such as a secondary line break (Main Steam line or Main Feedwater line) or a primary loss of coolant (LOCA). The purpose of the containment building narrow range pressure transmitters is to provide an input signal to the Containment Pressure - High trip bistable in the RPS [reactor protection system] and to the Containment Pressure - High and High-High trip bistables in the ESFAS. The generation of the RPS trip function and the ESFAS functions (SIAS, CIAS, CCAS, and CSAS) [(safety injection actuation signal, containment isolation actuation signal, containment cooling actuation signal, containment spray actuation signal)] is dependent upon the setpoint values for the High and/or High-High containment building pressure bistables. The setpoints are revised to account for the slightly larger calculated instrument loop errors associated with the replacement tranamitters. Currently accepted loop error methodology and calculation assumptions were used and resulted in the larger instrument loop errors. In addition, the Allowable Values associated with these functions are being revised to account for the effect of the loop errors upon the PTE [periodic test errors] and the lowered setpoints. The reduction of the setpoint values maintains the analytical limits used in determining the existing trip/actuation values.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

This change deals with changing the Containment Pressure High and High-High setpoints and allowable values for the associated functions of the RPS and ESFAS due to the replacement of the existing containment building pressure transmitters. No modifications to the instrument loop configurations will be made, and no additional electrical or physical interfaces with equipment whose malfunction or failure could initiate an accident will be created. The purpose of the instrument loops to provide input to the systems used to mitigate the consequences of previously evaluated accidents is unchanged. The existing evaluations and failure analyses in the ANO-2 SAR [safety analysis report] are unchanged.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety

The safety functions of the RPS and ESFAS setpoints associated with containment building pressure are not altered as a result of the setpoint and allowable value changes. The setpoints and allowable values are revised to account for slightly larger calculated instrument loop errors associated with the replacement transmitters. Currently accepted loop error methodology and calculation assumptions were used and resulted in the larger instrument loop errors. The existing analytical limits used in determining the trip/actuation values are maintained with the new setpoint values.

The measurement channel information and actions listed in TS Table 3.3-1 Reactor Protective Instrumentation are not affected by this change. In addition, the response times listed in TS Table 3.3-2 Reactor Protective Instrumentation Response Times and TS Table 3.3-5 Engineered Safety Features Response Times will remain unchanged as the response times for the new pressure transmitters are equal to the response times for the existing pressure transmitters.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 9, 1992

Description of amendment request: The amendment revises Technical Specification (TS) Figure 3.6-1, "Containment Internal Pressure vs. Containment Average Air Temperature," to incorporate values consistent with the emergency core cooling system (ECCS) analysis assumptions and increases the allowable upper limits based on recent containment design-basis accident (DBA) analysis. Additionally, the amendment reduces the allowable peak linear heat rate (PLHR) limit of TS Figure 3.2-1 to maintain a large-break loss of coolant accident (LBLOCA) peak clad temperature (PCT) within the 10 CFR 50.46 limit of 2200 F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve A Significant Increase in the Probability or Consequences of An Accident Previously Evaluated.

Containment internal pressure, average air temperature, humidity or PLHR are not event initiators of any accidents analyzed in the ANO-2 Safety Analysis Report (SAR) and do not effect [sic] the probability of occurrence of any event previously analyzed. Therefore, this change does not increase the probability of any accident previously evaluated.

The proposed change in the Region of Acceptable Operation of ANO-2 TS Figure 3.6-1 revises the limits on containment internal pressure and average air temperature to those now assumed in the SAR LBLOCA ECCS analysis. These limits, along the with PLHR limit proposed, result in a limiting PCT of 2086 F which is slightly greater than the present ANO-2 SAR value of 2078 F; but well within the 10CFR50.46 limit of 2200 F.

The proposed changes to the upper region of TS Figure 3.6-1 still ensure that the peak containment pressure following the containment DBA is less than the 54 psig design pressure of the containment.

The proposed change to the PLHR limit of ANO-2 TS 3.2.1 Figure 3.2-1 decreases the limit from 13.5 kW/ft to 12.1 kW/ft. When the hot rod calculation is performed using the proposed limit, the resulting PCT is 2086 F, which is well within the 10CFR50.46 limit of 2200 F. Hence, there is no significant increase in the consequences of a previously evaluated accident.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not involve any design changes, or plant modifications. The proposed changes in the Region of Acceptable Operation of ANO-2 TS Figure 3.6-1 and the PLHR limit of ANO-2 TS 3.2.1 Figure 3.2-1 have been evaluated and shown to result in peak containment pressures within the design pressure and a PCT which is bounded by 10CFR50.46 requirements.

Additionally, both the proposed PLHR limit and the new lower limit for containment temperature and pressure represent more restrictive limitations imposed by the present Technical Specifications and constitute a conservative change in plant operation.

Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change in the PLHR limit of ANO-2 TS 3.2.1 Figure 3.2-1 and the Region of Acceptable Operation of ANO-2 TS 3.6-1 have [sic] been evaluated and shown to result in a peak clad temperature which is well within the guidance provided by 10CFR50.46. A small increase in the Cycle 1 PCT of 2078 F to 2086 F has been calculated with the proposed changes. This value is still below the 2200 F limit and the 8 F increase in PCT is less than the 50 F significant change criteria given in 10CFR50.46. Additionally, the Region of Acceptable Operation of ANO-2 TS 3.6.1.4 has been evaluated and shown to result in peak containment pressures within the design pressure as was the case with the original analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 9, 1991

Description of amendment request: The proposed amendment would modify the Three Mile Island, Unit 1 Technical Specifications to reflect the Babcock and Wilcox reevaluations of the generic Loss of Coolant Accident (LOCA) linear heat generation rate allowable limits, and to administratively revise the Bases discussion for minimum borated water storage tank (BWST) volumes to ensure adequate shutdown margin. Peak clad temperature and Emergency Core Cooling System (ECCS) acceptance criteria would be preserved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed change to Technical Specification Figure 3.5-2M incorporates allowable LOCA linear heat rate limits which continue to preserve peak clad temperature and ECCS acceptance criteria. The revised linear heat rate limits are more restrictive than the existing limits at the 6-foot elevation beginning-of-cycle and at end-of-life for all core elevations. The proposed BWST Technical Specification Bases changes are administrative in nature. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change to Technical Specification Figure 3.5-2M incorporates conservative adjustments to existing analyses. Peak clad temperature and ECCS acceptance criteria are preserved. The proposed BWST Technical Specification Bases change is administrative in nature. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed change incorporates LOCA linear heat rate limits which preserve the peak clad temperature and ECCS acceptance criteria using approved methodologies. The proposed borated water storage Technical Specification Bases change is administrative in nature. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 19, 1992

Description of amendment request: This request is to remove reactor coolant pump (RCP) snubber RC-U-003 from the operability requirements applicable to safety related snubbers. Due to minor leakage in the hydraulic supply line used for filling the snubber cavity, the snubber could become inoperable during the present operating cycle. The plant would have to be shut down to repair the leak. This amendment would preclude the need for an unnecessary plant shutdown in the event operability of the snubber becomes questionable. The licensee has presented justification for this temporary change on the basis of an engineering analysis of pipe stresses during a design seismic event. The snubber will be repaired during the next plant outage of sufficient duration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.The inoperability of Snubber RC-U-003 does not involve a significant increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the [Safety Analysis Report] SAR. The accident or malfunction related to this change is the occurrence of the maximum hypothetical earthquake or the design basis [loss-of-coolant accident] LOCA. Inoperability of these snubbers is unrelated to the possibility of occurrence of these postulated design basis events. Seismic design and mounting of these snubbers ensures that other safety related equipment will not be adversely effected. The structural analysis referenced above, which considers original design basis criteria as well as ASME 1986 Code criteria, demonstrates that the consequences of the postulated maximum hypothetical earthquake or design basis LOCA, and applicable loading combinations are not increased.

2. The inoperability of Snubber RC-U-003 does not create a possibility for an accident or malfunction of a different type than any previously identified in the SAR. Under normal operating conditions including heatup and cooldown thermal transients, these snubbers do not perform a safety-related function. The structural analysis referenced above, which considers original design basis criteria as well as ASME 1986 Code criteria, demonstrates that the [reactor coolant system] RCS components and [reactor coolant pressure boundary] RCPB functional integrity is maintained during a maximum hypothetical earthquake and that the integrity of the remainder of the RCPB is maintained during design basis LOCA loads such that a secondary break of the RCPB would not occur. The snubbers are seismically designed and mounted which precludes interaction with other safety related equipment.

3. The inoperability of Snubber RC-U-003 does not involve a significant reduction in the margin of safety. Technical Specification Section 3.16 and 4.17 apply to all safety-related snubbers and requires each snubber to be operable whenever the system protected by the snubber is required to be operable. The intent of this Technical Specification, as defined in Technical Specification 3.16 Bases, is to ensure that the probability of structural damage to piping as a result of dynamic loads occurring from an earthquake or severe transient, or thermal motion, is not increased. The structural analysis referenced above demonstrates that the reactor coolant pumps and piping in this particular portion of TMI-1's system are capable of withstanding maximum hypothetical earthquake loads, design basis LOCA loads, and applicable loading

combinations, without Snubber RC-U-003 operability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 17, 1992

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) for Hatch Units 1 and 2 as follows:

Proposed Change 1:

This proposed change will revise the definition of Core Alteration in TS 1.c for Unit 1 and 1.0 for Unit 2.

Proposed Change 2:

This proposed change will revise the definitions of Cold Shutdown Condition and Refuel Mode in Unit 1 TS Section 1.0, and the Operational Conditions in Unit 2 TS Table 1.2.

Proposed Change 3:

This proposed change will revise the Action statement for the residual heat removal service water (RHRSW) system shutdown cooling mode in Unit 2 TS 3.7.1.1.

Proposed Change 4:

This proposed change will alter the wording of Unit 2 TS 3.9.3. This TS currently requires all control rods to be fully inserted during Core Alterations. The proposed change will require all control rods to be fully inserted when moving fuel assemblies or startup sources in the core, rather than during all Core Alterations.

This proposed change will also revise the wording of the Bases for TS 3.9.3. The phrase "during CORE ALTERATIONS" is being replaced with the phrase "during fuel or startup source movement."

Proposed Change 5:

This proposed change will add new Unit 1 TS 3.10.E.3, "Requirements for Withdrawal of a Control Rod in the Cold Shutdown Condition," and newUnit 2 TS 3.10.5, "Single Control Rod Withdrawal - Cold Shutdown," which will permit the withdrawal of a single control rod for testing while in Cold Shutdown (Unit 2 Mode 4) by imposing certain restrictions.

In addition, this proposed change will add Bases for these new TSs for both units and will include a reference to the new Unit 2 TS 3.10.5 and its Bases in the Unit 2 index. The current Unit 2 TS 3.10.5, "High Pressure Coolant Injection System," is being deleted along with its listing in the index. Also, the title of Unit 2 TS 3/4 10.2 was changed by Amendment 121 from "Rod Sequence Control System" to "Rod Worth Minimizer," but the corresponding index listing was not changed. This listing is now being corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PROPOSED CHANGE 1:

1.A) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

* * * * *

The movement of incore instruments does not apply to either of these analyses [discussed in the July 17, 1992, submittal] because the amount of fissile material contained in the detectors is so small their movement does not result in any significant change in core reactivity. Therefore, removal of incore instruments from the definition does not involve an increase in the probability of occurrence or consequences of an inadvertent criticality accident.

* * * * *

1.B) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The amount of fissile material contained in incore instruments is so small, their movement does not result in any significant change in core reactivity. Therefore, this type operation could not cause an inadvertent criticality.

* * * * *

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

1.C) The proposed amendment does not involve a significant reduction in the margin of safety.

Since the definition of Core Alteration has no impact on any safety limit or limiting safety system setting, this change has no effect on the margin of safety. Therefore, this change does not involve a significant reduction in the margin of safety.

PROPOSED CHANGE 2:

2.A)The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Specifying the reactor mode based on the condition of the vessel head closure bolts only serves to clarify exactly when certain modes are entered. This change will prevent confusion as to the applicability of certain requirements. This change will have no effect on the probability of occurrence or consequences of any type of accident.

* * * * *

Therefore, allowing the mode switch to be in Shutdown position while in the Refuel mode will provide for conditions which are at least as conservative as the conditions assumed in the accident analyses concerning the possibility of inadvertent criticality during refueling. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2.B) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing operational mode definitions will only serve to clarify requirements and avoid confusion during mode changes. This change will not affect existing operations or create any new modes of operation of any safety systems. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

2.C) The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes to the operational mode definitions will only enhance clarity. It will be easier for the TS user to determine when the reactor mode changes and which set of operability requirements are in effect. Some of these operability requirements concern limiting safety systems and therefore, safety limits. By simplifying identification of the current reactor mode, the TS user will be able to more easily determine limiting safety system operability requirements. Therefore, it is more likely the appropriate equipment will be operable and capable of fulfilling its safety function to prevent exceeding any safety limits. Therefore, this change does not involve a significant reduction in the margin of safety.13.*A) PROPOSED CHANGE 3:*

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the [residual heat removal service water] RHRSW system is to remove decay heat from the [residual heat removal] RHR system which may be operating in one of several different modes. The mode of concern for Unit 2 Specification 3.7.1.1.b is the shutdown cooling mode in which the RHR and RHRSW systems remove decay heat from the primary coolant to reduce and maintain the coolant temperature below 212 degrees F. Unit 2 Specification 3.9.12 convers operability requirements for RHR in the shutdown cooling mode. The proposed requirements for RHRSW in the shutdown

cooling mode will ensure operability of an RHRSW subsystem capable of supporting operation of the RHR subsystem which satisfies the requirements of Specification 3.9.12. Since the RHR shutdown cooling specification serves to preclude a loss of shutdown cooling, and the proposed RHRSW specification will serve to ensure RHR is capable of performing this function, then the proposed change will not involve a significant increase in the probability of an accident previously evaluated. The shutdown cooling mode of RHR has no effect on the consequences of any type accident.

3.B) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the RHR system performs the shutdown cooling function and the RHRSW system supports the RHR system. This change will ensure the availability of the RHRSW system to perform this support function. This change will introduce no new operational modes of the RHR or RHRSW systems. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3.C) The proposed amendment does not involve a significant reduction in the margin of safety.

No safety limits or limiting safety system settings are affected by the shutdown cooling function of the RHR system or the supporting function of the RHRSW system. Therefore, this change does not involve a significant reduction in the margin of safety.

PROPOSED CHANGE 4:

4.A) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This specification is being reworded to eliminate the self-contradictory nature of literal compliance with its present wording. This new wording will not change the intent of the specification with is preclusion of an inadvertent criticality during refueling. Unit 2 [Final Safety Analysis Report] FSAR section 15.1.14 discusses a fuel assembly insertion error during refueling. This event involves loading a fuel assembly in an incorrect location with all control rods fully inserted and concludes no inadvertent criticality will occur.

* * * * *

Since the proposed specification will continue to ensure the FSAR accident analysis assumptions are valid, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

4.B) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not affect the intent of the specification. No new modes of operation will result. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

4.C) The proposed amendment does not involve a significant reduction in the margin of safety.

No safety limits or limiting safety system settings are affected by Core Alterations or any other refueling activities. Therefore, this change does not involve a significant reduction in the margin of safety.

PROPOSED CHANGE 5:

5.A) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

With the reactor mode switch in the Refuel position, the analyses for control rod withdrawal during refueling are applicable and, provided the assumptions of these analyses are satisfied in Cold Shutdown, these analyses will bound the consequences of an accident. Explicit safety analyses in the FSAR (Section 15.1.13) demonstrate the functioning of the refueling interlocks and adequate Shutdown Margin (SDM) will preclude unacceptable reactivity excursions.

* * * * *

Deletion of the current Specification 3.10.5, "High Pressure Coolant Injection System," will have no impact whatsoever because it is stated within the specification that it is for use during a one time test and is only applicable from June 2-9, 1980. Since this time period has elapsed, this specification is no longer applicable. Therefore, deletion of this specification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The correction of the title of Unit 2 Specification 3/4 10.2 in the index is strictly an editorial correction. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

5.B) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of one control rod and/or the associated control rod drive mechanism from the reactor pressure vessel is currently allowed in the Refuel mode by Unit 2 Specification 3.9.11.1. The proposed specification will allow the same operation in the Cold Shutdown mode provided the same protection is provided against inadvertent criticality which normally exists in the Refuel mode. Therefore, the proposed specification does not involve any new modes of operation, just performance of an existing operation in a different operational mode. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

* * * * *

The correction of the title of Unit 2 Specification 3/4 10.2 in the index is strictly an editorial correction. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

5.C) The proposed amendment does not involve a significant reduction in the margin of safety.

This specification does involve limiting safety system settings (LSSSs). The LSSSs which are normally required to be operable in the Refuel mode are also required to be operable in the Cold Shutdown mode while performing operations per the proposed specification. These requirements are intended to afford the same protection against inadvertent criticality as normally exist in the Refuel mode. By maintaining this level of protection, the margin of safety will be maintained at the same level which exists when this operation is being performed in the Refuel mode. Therefore, this change does not involve a significant reduction in the margin of safety.

* * * * *

The correction of the title of Unit 2 Specification 3/4 10.2 in the index is strictly an editorial correction. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513 Attorney for the licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 18, 1991, as supplemented March 2, 1992. Additional changes requested by the licensee's submittal are outside the scope of this notice.

Description of amendment request: The proposed amendments wouldrevise the Technical Specification (TS) 3.4.9.3, "Cold Overpressure Protection Systems," to relocate the depressurizing of the reactor coolant system (RCS) through a RCS vent from statement c. of the limiting condition for operation (LCO) to the initial LCO statement, which is an editorial change. A new action statement c. will allow the combination of one residual heat removal (RHR) suction relief valve (SRV) and one power-operated relief valve (PORV) to be used for cold overpressure protection. An action statement is proposed for Modes 5 and 6 that decreases the allowed out-of-service time (AOT) from 7 days to 24 hours with only one valve available to provide cold overpressure protection.

Specifically:

(1) TS 3.4.9.3, in the LCO statement, change "At least one of the following Cold Overpressure Protection Systems shall be OPERABLE" to "At least one of the following groups of Cold Overpressure Protection Devices shall be OPERABLE when the reactor coolant system (RCS) is not depressurized through a vent path capable of relieving at least 670 gpm water flow at 470 psig." This constitutes an editorial change since the statement for the vent path was relocated from LCO statement c.;

(2) TS 3.4.9.3, the LCO statement c., change "The Reactor Coolant System (RCS) depressurized with an RCS vent capable of relieving at least 670 gpm water flow at 470 psig" to "One RHR SRV and one PORV with setpoints as described above.";

(3) TS 3.4.9.3a, the action statement, change "With one PORV and one RHR suction relief valve inoperable, either restore two PORVs or two RHR suction relief valves to OPERABLE status within 7 days or depressurize and vent the RCS as specified in Specification 3.4.9.3.c above, within the next 8 hours." to "In Mode 4, with only one PORV or one RHR SRV OPERABLE, restore one additional valve to OPERABLE status within the next 7 days or depressurize and vent the RCS, as specified in 3.4.9.3 above, within the next 8 hours.";

(4) TS 3.4.9.3b, add a new action statement b. which states, "In MODES 5 and 6, with only one PORV or one RHR SRV OPERABLE, restore one additional valve to OPERABLE status within the next 24 hours or depressurize and vent the RCS, as specified in 3.4.9.3 above, within the next 8 hours.";

(5) TS 3.4.9.3c, move the current action statement b. to action statement c. Change "With both PORVs and both RHR suction relief valves inoperable, depressurize and vent the RCS as specified in Specification 3.4.9.3.c, above, within 8 hours." to "In MODES 4, 5, or 6 with none of the PORVs or RHR SRVs OPERABLE, depressurize and vent the RCS as specified in 3.4.9.3 above, within the next 8 hours.";

(6) TS 3.4.9.3d, change action statement c. to action statement d. and change "In the event either the PORVs, the RHR suction relief valves, or the RCS vent(s) are used" to "In the event that the PORVs and/or RHR SRVs, or the RCS vent(s) are used>; and

(7) TS 3.4.9.3e, change action statement d. to action statement e.

Additionally, TS Bases for the cold overpressure protection systems on page B 3/4 4-16 is being changed by replacing the first paragraph with the following:

The OPERABILITY of two PORVs, two RHR suction relief valves, a PORV and RHR SRV, or an RCS vent capable of relieving at least 670 gpm water flow at 470 psig ensures that the RCS will be protected from pressure transients which could exceed the limits of Appendix G to 10 CFR part 50 when one or more of the RCS cold legs are less than or equal to 350 [degrees] F. The PORVs have adequate relieving capability to protect the RCS from overpressurization when the transient is limited to either: (1) the start of an idle RCP with the secondary water temperature of the steam generator less than or equal to 50 [degrees] F above the RCS cold leg temperatures, or (2) the start of all three charging pumps and subsequent injection into a water-solid RCS. The RHR SRVs have adequate relieving capability to protect the RCS from overpressurization when the transient is limited to either: (1) the start of an idle RCP with the secondary to primary water temperature difference of the steam generator less than or equal to 25 [degrees] F at an RCS temperature of 350 [degrees] F and varies linearly to 50 [degrees] F at an RCS temperature of 200 [degrees] F or less, or (2) the start of all three charging pumps and subsequent injection into a water-solid RCS. A combination of a PORV and a RHR SRV also provides overpressure protection for the RCS.

The second paragraph of the Bases is also being revised by changing "Operation with a PORV setpoint less than or equal to the maximum setpoint ensures that the nominal 16 EFPY Appendix G reactor vessel NDT limits" to "Operation with a PORV setpoint less than or equal to the maximum setpoint ensures that the nominal 13 EFPY for Unit 1 and 16 EFPY for Unit 2 Appendix G reactor vessel NDT limits."

Basis for proposed no significant hazards consideration determination: On June 25, 1990, the NRC staff, issued Generic Letter 90-06, "Resolution of Generic Issue 70, Power-Operated Relief Valve and Block Valve Reliability, and Generic Issue 94, Additional Low-Temperature Overpressure Protection for Light-Water Reactors, Pursuant to 10 CFR 50.54(f)." Changes requested by the licensee submittal related to Generic Issue 70 are outside the scope of this notice.

Generic Issue 94, "Additional Low-Temperature Overpressure Protection for Light-Water Reactors", involves the evaluation of the safety significance of low-temperature overpressure transients. The staff determined that LTOP protection systems unavailability is the dominant contributor to risk from low-temperature overpressure transients. Based on its studies, the staff proposed and required that all affected facilities implement TS improvements to increase the availability of LTOP systems. In response to GL 90-06, the licensee has proposed TS changes to its facilities to include a requirement to reduce the allowed out-of-service time (AOT) for a single LTOP channel from 7 days to 24 hours when the plant is operating in MODES 5 or 6.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because it will continue to provide redundant channels of LTOP protection and allows the additional use of one RHR SRV and one PORV for cold overpressure protection. The allowed out-of-service time in Modes 5 and 6 is reduced to 24 hours from 7 days when only one channel is available. These changes do not affect the probability of any initiating event. Therefore, the probability of any previously evaluated accident is not affected. Furthermore, cold overpressure protection will continue to be maintained in accordance with 10 CFR 50, Appendix G. Therefore, there is no effect on the consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because cold overpressure protection is maintained. No new modes of operation are involved, and no new failure modes will be created by the proposed change.

3.The proposed changes do not involve a significant reduction in the margin of safety because the limits of 10 CFR 50, Appendix G will continue to be met, as before, under the existing requirements. The allowed out-of-service time for the case where only one PORV or RHR SRV is available will be more restrictive under the proposed change, requiring corrective action or compensatory measures in 24 hours rather than 7 days. Therefore, there will be no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30303-1810.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 18, 1991, as supplemented March 2, 1992. Additional changes requested by the licensee's submittal are outside the scope of this notice.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) 3/4.4.4, "Relief Valves," to include a requirement to maintain power to the associated block valves when closed, and to place the power-operated relief valves (PORV) in manual control when the block valves are not operable.

Specifically:

(1) TS 3.4.4, in the limiting condition for operation (LCO) statement, change "All power-operated relief valves (PORVs)" to "Both power-operated relief valves;>

(2) TS 3.4.4a, the action statement, change "With one or more PORV(s) inoperable" to "With one or both PORV(s) inoperable." Additionally, in action statement a., change "or close the associated block valve(s);" to "or close the associated block valve(s) with power maintained to block valve(s);"

(3) TS 3.4.4b, the action statement, change "With one or more PORV(s) inoperable to "With one or both PORV(s) inoperable;>

(4) TS 3.4.4b.2, the action statement, change "With no PORVs OPERABLE" to "With both PORVs inoperable;" and

(5) TS 3.4.4c, the action statement, replace the previous statement with the following: "With one or both block valve(s) inoperable, within 1 hour restore the block valve(s) to OPERABLE status or place its associated PORV(s) in manual control. Restore at least one block valve to OPERABLE status within the next hour if both block valves are inoperable; restore any remaining inoperable block valve to OPERABLE status within 72 hours; otherwise, be in at least HOT STANDBY within the next 6 hours and in HOT SHUTDOWN within the following 6 hours."

Additionally, TS Bases 3/4.4.4 would be revised to include the following: "The PORV(s) are equipped with automatic actuation circuitry and manual control capability. No credit is taken for accident mitigation by automatic PORV operation in the analyses for MODE 1, 2, and 3 transients. The PORV(s) are considered OPERABLE in either the manual or automatic mode. The automatic mode is the preferred configuration since pressure relieving capability is provided without reliance on operator action."

Basis for proposed no significant hazards consideration determination: On June 25, 1990, the NRC staff issued Generic Letter (GL) 90-06, "Resolution of Generic Issue 70, Power-Operated Relief Valve and Block Valve Reliability, and Generic Issue 94, Additional Low-Temperature Overpressure Protection for Light-Water Reactors, Pursuant to 10 CFR 50.54(f)." Changes requested by the licensee submittal related to Generic Issue 94 are outside the scope of this notice.

Generic Issue 70 involves the evaluation of the reliability of PORV(s) and block valves, and their safety significance in PWR plants. The generic letter discussed how PORVs are increasingly being relied on to perform safety-related functions and the corresponding need to improve the reliability of both PORVs and their associated block valves. Based on its studies, the NRC staff proposed and required that all affected facilities implement TS improvements to increase the reliability of these components and provide assurance they will function as required. In response to the GL 90-06, the licensee has proposed TS changes to its facilities to include a requirement to maintain power to closed block valves, and to place the power-operated relief valves in manual control when the block valves are not operable.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because maintaining power to the block valve is already allowed by the Technical Specifications and placing the PORVs in the manual mode will prevent opening of the PORV, which is equivalent to the action currently allowed by the Technical Specifications. This makes it easier for the operator to establish feed and bleed operations if necessary. The remainder of the changes are editorial.

2. The proposed Technical Specification does not create the possibility of a new or different kind of accident from any accident previously evaluated because there are no changes or modifications to the design of the plant. The only changes are operational in nature; e.g., keeping power maintained to the block valve, therefore, the types of accidents previously evaluated have not changed, and no new types of transients or accidents are introduced.

3. The proposed change does not involve a significant reduction in a margin of safety because the revised actions are equivalent or more restrictive than currently allowed by the Technical Specifications. Studies have shown that operating in accordance with the proposed Technical Specifications will result in a reduction in the probability of core melt, thus improving the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30303-1810.

NRC Project Director: David B. Matthews

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: June 30, 1992

Description of amendment request: The proposed change adds a statement, Technical Specification 4.13.A.2, that Northeast Nuclear Energy Company's (NNECO's) Inservice Inspection (ISI) Program shall be performed in accordance with the staff positions contained in Generic Letter (GL) 88-01 or its supplement. In addition, the proposed change deletes all references pertaining to hydrogen water chemistry (HWC) testing, since NNECO has discontinued hydrogen injection at Millstone Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes described above and has concluded that they do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability of an accident previously evaluated.

The proposed change numbers the existing surveillance requirement as 4.13.A.1 and adds a statement (as 4.13.A.2) that NNECO's ISI Program shall be performed in accordance with the Staff positions contained in GL 88-01 or Supplement 1. There are no physical plant modifications associated with this change and approval is not being sought to reduce existing inspection requirements. Therefore, this change is administrative in nature and has no impact on the initiation or

consequences of an accident previously evaluated. Additionally, the aforementioned change does not increase the probability or consequences of a design basis accident nor does it affect the performance or failure probability or consequences of any safety systems. The addition of Surveillance Requirement 4.13.A.2 establishes a stronger administrative control of the existing Millstone Unit No. 1 [Intergranular Stress Corrosion Cracking] IGSCC Program. As such, this change has no affect on the initiation, probability, or consequences of any previously evaluated accident scenarios.

Additionally, since HWC testing has been discontinued and hydrogen injection will not be performed at Millstone Unit No. 1, the proposed change pertaining to HWC will delete all references to the allowance for increasing the trip setpoint of main steam line and steam tunnel radiation monitors prior to HWC testing. As such, this change maintains the existing setpoints and does not increase the probability or consequences of any design basis event previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change regarding GL 88-01 recommendations does not result in physical modifications of the plant response or operator response to an accident, and no new failure modes are associated with the change. Therefore, there is no change in plant response to any design basis event previously analyzed nor is a different kind of accident created.

With respect to the proposed change regarding HWC, maintaining the main steam line and steam tunnel radiation monitors at their existing setpoint (while deleting the allowance for increasing the trip setpoints prior to the HWC testing) will not create the possibility of a new or different kind of accident nor does this change impact plant response to any design bases accident previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change regarding GL 88-01 recommendations does not impact the consequences of an accident, no safety limits for the protective boundaries are impacted, and the basis for any technical specification is not changed since the proposed change would add a stronger administrative control than currently exists. Therefore, there is no reduction in the margin of safety associated with these changes.

The proposed change regarding HWC will remove trip setpoint allowances for the main steam line and steam tunnel radiation monitors which were allowed prior to hydrogen injection testing. The result is that the existing setpoints are maintained. Thus, there is no reduction in the margin of safety. In fact, the overall result is that the change is conservative since increasing the trip setpoints of the radiation monitors will no longer be allowed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: July 13, 1992

Description of amendment request: The proposed amendment would (1) clarify the requirements of Technical Specification (TS) 3.6.A.1.a such that containment closure requirements during refueling are applicable only to lines which do not exit the containment into areas protected by operable automatic safeguards ventilation systems which actuate on high radiation and filter all releases to the environment through charcoal filters. The current wording of Specification 3.6.A.1.a is also confusing with respect to the requirements for automatic isolation valve operability and closure. Therefore, the wording of Specification 3.6.A.1.a would be also revised to be consistent with the guidance provided in the Standard Technical Specifications. Proposed change (2) to TS Sections 3.6 and 4.1 would clarify the requirements for operability and load testing of the fuel handling cranes. The location of the fuel crane load test requirements in Section 3.6.B leads to confusion with respect to how the requirements apply to the containment manipulator crane during core alterations. The proposed changes to Section 3.6 will provide specific operability requirements for both the spent fuel pool fuel handling crane and the manipulator crane. Additionally, the fuel handling crane load test requirements would be relocated to Table TS.4.1-2A. Specific load test surveillance requirements, with time limitations for the validity of the testing, would be specified for the spent fuel pool fuel handling crane and for the manipulator crane.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Change (1)

a. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requirements of Technical Specification 3.6.A.1.a are only intended to mitigate the consequences of an accident. Therefore, the proposed changes, which clarify the requirements for operability and closure of isolation valves during core alterations, have no impact on the probability of an accident.

Technical Specification 3.6.A.1.a is intended to mitigate the consequences of a fuel handling accident in the containment. The analysis of a fuel handling accident in containment, described in the Prairie Island Updated Safety Analysis Report, assumes the fission product release is transmitted untreated to the environment via a high capacity purge system. The proposed clarification of the requirements of Specification 3.6.A.1.a would allow fission product releases to the Auxiliary Building Special Ventilation Zone or Shield Building Annulus not allowed by the present interpretation of the Specification.

However, provided the associated safeguards ventilation systems are operable, any releases to the Auxiliary Building Special Ventilation Zone or Shield Building Annulus would be filtered prior to release to the environment and would result in offsite exposures that would be a small fraction of those resulting from the design basis fuel handling accident described in the Updated Safety Analysis Report.

Therefore, for the reasons discussed above, the proposed changes will not significantly affect the probability or consequences of an accident previously evaluated.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification of plant equipment or any changes in operational limits. The proposed changes only modify and clarify a specification designed to mitigate the consequences of a fuel handling accident in the containment. The proposed clarification may affect the release path for fission products released during a fuel handling accident in containment, but no new or different kind of accident will result.

Therefore, for the reasons discussed above, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

c. The proposed amendment will not involve a significant reduction in the margin of safety.

Technical Specification 3.6.A.1.a is intended to mitigate the consequences of a fuel handling accident in the containment. The analysis of a fuel handling accident in containment, described in the Prairie Island Updated Safety Analysis Report, assumes the fission product release is transmitted

untreated to the environment via a high capacity purge system. The proposed clarification of the requirements of Specification 3.8.A.1.a would allow fission product releases to the Auxiliary Building Special Ventilation Zone or Shield Building Annulus not allowed by the present interpretation of the Specification.

However, provided the associated safeguards ventilation systems are operable, any releases to the Auxiliary Building Special Ventilation Zone or the Shield Building Annulus would be filtered prior to release to the environment and would result in offsite exposures that would be a small fraction of those resulting from the design basis fuel handling accident described in the Updated Safety Analysis Report. The margin of safety for the fuel handling accident in containment, as described in the Updated Safety Analysis Report, would be unaffected.

Therefore, for the reasons discussed above, the proposed changes will not result in any reduction in the plant's margin of safety.

Change (2)

a. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Prairie Island Technical Specifications are associated with the testing and operability of the cranes used for handling fuel. The incorporation of operability requirements for the subject cranes will help ensure that the cranes are capable of safely handling fuel and will reduce the risk of a fuel handling accident. As discussed above the proposed time limitations for the crane testing will balance the risk of operating the crane with an inoperable component with the risks associated with excessive testing and the probability of a fuel handling accident should not be significantly affected.

The analysis of a fuel handling accident inside containment, described in Section 14.5.1.4 of the Prairie Island Updated Safety Analysis Report, assumes the rupture of an entire fuel assembly. The resulting whole body and thyroid doses are well below the requirements of 10 CFR part 100. Even if the proposed changes were to result in the failure of a fuel handling crane and the dropping of a fuel assembly, the conservative fuel handling accident analysis will remain bounding. There will be no effect on the consequences of the fuel handling accident evaluated in the Updated Safety Analysis Report.

Therefore, the proposed changes will not significantly affect the probability or consequences of an accident previously evaluated.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification in operational limits.

The analysis of a fuel handling accident inside containment, described in Section 14.5.1.4 of the Prairie Island Updated Safety Analysis Report, assumes the rupture of an entire fuel assembly. Even if the proposed changes result in the failure of a fuel handling crane and the dropping of a fuel assembly, the conservative fuel handling accident analysis in the Updated Safety Analysis Report will remain bounding. No fuel handling accident not already addressed by the Updated Safety Analysis Report will result.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

c. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes to the Prairie Island Technical Specifications are associated with the testing and operability of the cranes used for handling fuel. The incorporation of operability requirements for the subject cranes will help ensure that the cranes capable of safely handling fuel and will reduce the risk of a fuel handling accident, thus increasing the plants margin of safety.

As discussed above the proposed time limitations for the crane testing will balance the risk of operating the crane with an inoperable component with the risks associated with excessive testing and the probability of a fuel handling accident, and thus the margin of safety, should not be significantly affected.

The analysis of a fuel handling accident inside containment, described in Section 14.5.1.4 of the Prairie Island Updated Safety Analysis Report, assumes the rupture of an entire fuel assembly. The resulting whole body and thyroid doses are well below the requirements of 10 CFR part 100. Even if the proposed changes were to result in the failure of a fuel handling crane and the dropping of a fuel assembly, the conservative fuel handling accident analysis will remain bounding. There will be no effect on the consequences of the fuel handling accident evaluated in the Updated Safety Analysis Report.

Therefore, the proposed changes will not result in any reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: July 7, 1992

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to add new isolation valves to the table of primary containment isolation valves that must be operable and to delete the presently designated valves on the same lines. Limerick, Unit 2, is scheduled to shutdown for the second refueling outage on January 23, 1993. During the refueling outage, the licensee plans to install eight new check valves (four pairs of valves) on the control rod drive (CRD) supply headers to the hydraulic control units (HCUs). These new valves will constitute a new isolation boundary for the Integrated Leak Rate Test (ILRT), replacing the existing HCU isolation boundary valves. The proposed changes to the TS are to include the new valves in Table 3.6.3-1, "Part A - Primary Containment Isolation Valves" and to remove the current valve numbers for HCU boundaries. The same change was approved for Limerick, Unit 1, by Amendment Number 42, dated August 16, 1990.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The piping to be included within the new isolation boundary complies with the same standards and specifications as the original boundary. The number of active components making up the boundary will be reduced from approximately 1300 to four (4). Therefore, there will be no increase in the probability that the isolation boundary will be breached.

The current CRD isolation boundary includes the insert and withdraw lines, the scram discharge volume and the HCUs. The relocation of the boundary will add some of the supply header piping but will not affect the existing equipment. The added piping is small diameter (i.e., 2 inches or less) comparable to the previously analyzed scram discharge drain line. The consequences of a pipe failure inside the isolation boundary remain within the envelope analyzed in NUREG-0803. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of

accident from any accident previously evaluated.

The proposed TS changes are intended to take credit for the newly installed isolation valves on the CRD common headers. These valves and associated piping are designed and installed in compliance with all applicable criteria. In addition, they will meet all performance requirements currently existing for the approximately 1300 HCU isolation boundaries. In effect, the only change will be to reduce the testable penetrations from 1300 to four (4). The proposed TS changes substitute one isolation boundary for another and therefore, cannot create a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

As discussed in items 1 and 2 above, the newly installed valves and associated piping meet all applicable design requirements.

In addition, the consequences of a pipe failure inside the isolation boundary remain within the envelope analyzed in NUREG-0803. The valves will be tested to ensure compliance with the existing performance requirements for isolation boundaries. Further, the performance of the CRD system with the added pressure drop is well within the system capability for normal operation, and control rod scram performance is unaffected. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 21, 1992

Description of amendment request: The proposed changes affect the expiration date of the Peach Bottom Atomic Power Station (PBAPS) Operating Licenses. Currently Peach Bottom Units 2 and 3 are licensed for operation for 40 years commencing with the January 31, 1968 issuance of their construction permits. Thus, both Operating Licenses will expire on January 31, 2008. Current NRC policy is to issue operating licenses for a 40 year period commencing with the date of issuance of the Operating Licenses.

Peach Bottom Unit 2 was issued a low power Operating License on August 8, 1973, with an expiration date of January 31, 2008. Accounting for the 5 years 6 months required for construction, this represents an effective operating period of approximately 34 years 6 months. Peach Bottom Unit 3 was issued a full power Operating License on July 2, 1974, with an expiration date of January 31, 2008. Accounting for the 6 years 5 months required for construction, this represents an effective operating period of approximately 33 years 7 months.

For Peach Bottom Units 2 and 3 the proposed amendment will change the Operating License expiration dates to provide for a full 40 years of operation for which the plants were designed. Accordingly, it is proposed that the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3 Operating Licenses be amended to change the expiration dates to reflect a 40-year license period that commences with the issuance of the Operating License rather than a 40-year license period that commences with the issuance of the Construction Permit. The amended expiration dates will then become August 8, 2013 for Unit 2 and July 2, 2014 for Unit 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This determination is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices that are implemented in accordance with the Code of Federal Regulations, ASME standards and the facility Technical Specifications ensure that PBAPS Units 2 and 3 will continue to operate as designed. In addition, these programs provide assurance that unexpected degradation in plant equipment will be identified and corrected. The reactor vessel and its internals were designed for forty (40) years of operation at full power with an 80% capacity factor (32 effective full power years). The reactor vessel surveillance capsules program provides a means of monitoring the radiation induced changes in the mechanical and impact properties of vessel materials in accordance with 10 CFR 50 Appendix H. This program provides additional assurance that adverse cumulative effects of power operation can be monitored and detected.

Aging analyses and Environmental Qualifications (EQ) have been performed for all electrical equipment important to safety in accordance with the requirements of Environmental Qualification Rule 10 CFR 50.49. This program included identification of qualified lifetimes for the required equipment and incorporation of maintenance requirements into appropriate plant procedures to maintain the qualification of the required equipment for the life of the plant. This qualification program provides assurance that electrical equipment important to safety will function as required if called upon to mitigate design basis events, regardless of the term of the license.

Safety-related mechanical equipment has been specifically addressed through the use of the Inservice Inspection (ISI) and Inservice Testing (IST) Programs. The ISI and IST programs, in conjunction with the above referenced programs, assure that mechanical equipment will be properly maintained throughout the life of the plant.

In summary, the requested amendment to the Operating Licenses is administrative in nature and will neither increase or decrease the probability or consequences of an accident previously evaluated. The accident analyses have been performed on the basis of a 40 year plant operating life. The probability and consequences of the accidents previously evaluated are not affected by this proposed license extension since the assumptions used for the accident analysis do not change. The interrelated programs at PBAPS, like those discussed previously, further assure that the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

ii) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment involves only a change in the expiration date of the Operating Licenses. No safety analyses are affected. No new or different accident type is created.

iii) The proposed changes do not involve a significant reduction in a margin of safety.

The proposed amendment involves only a change in the expiration dates of the Operating Licenses. As discussed above, inspection, maintenance and surveillance practices of the PBAPS ISI, IST, EQ and maintenance programs ensure that structures, systems, and components will be refurbished and/or replaced, as necessary, to maintain the margins of safety required by the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 28, 1992; modified July 14, 1992 (TS 92-06)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.2.3.4 to reflect a restructuring of the Nuclear Power organization by changing the title of the manager to whom the Independent Safety Engineering personnel report from the Manager of Nuclear Managers Review Group to Manager, Nuclear Experience Review/ Independent Safety Engineering. By letter dated May 28, 1992, the licensee had proposed similar TS changes which were noticed in the Federal Register on July 8, 1992 (57 FR 30262). A proposed change to TS 6.3 would replace the references to the fact that the facility staff qualifications are specified in ANSI N18.1-1971, the March 28, 1980 NRC letter, and Regulatory Guide 1.8, with reference to TVA's Nuclear Qualification Assurance Plan. A similar change is proposed to TS 6.4 that would replace the retraining and replacement training program references to ANSI N18.1-1971, Appendix A of 10 CFR part 55, and the March 28, 1980 NRC letter, with reference to TVA's Nuclear Quality Assurance Plan. Another proposed change would replace the title of the Quality Engineering and Monitoring Supervisor PORC member to Quality Audit and Monitoring Manager in TS 6.5.1.2. In addition, TS 6.10.2.i would change the title of the Nuclear Quality Assurance Manual to Nuclear Quality Assurance Plan.

Basis for proposed no significant hazards consideration determination: Asrequired by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed title change of the corporate official to whom Independent Safety Engineering (ISE) makes recommendations has no effect on the safe operation of SQN. This change is administrative in nature and serves to reflect recent organizational changes within TVA's Nuclear Power program. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. Since the proposed amendment will not result in any changes to hardware, operating procedures, or accident analyses, the probability or consequences of an accident previously evaluated have not been increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed change to Specification 6.2.3.4 provides a change in the title of the corporate official to whom ISE makes recommendations. This change is an administrative change that reflects realignment of the management structure within TVA's Nuclear Power organization. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. The proposed amendment does not involve a physical change to the facility; therefore, no new or different kind of accident is created.

(3) Involve a significant reduction in a margin of safety. The proposed revision to administrative Specification 6.2.3.4 reflects recent restructuring within TVA's Nuclear Power organization. This change in no way affects the physical facility design or safe operation of SQN. The function of ISE continues to conform with NUREG-0737 guidance for performing independent review of plant activities. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. Because compliance with the regulatory requirements has not been compromised and because these changes did not alter the facility or its design, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 27, 1992, as supplemented by letter dated July, 9, 1992.

Description of amendment request: This amendment would revise the Technical Specifications (TS) in Section 3.1.b, "Heatup and Cooldown Limit Curves for Normal Operation," and would revise Figures TS 3.1-1 and TS 3.1-2. The proposed amendment would include new heatup and cooldown limit curves for the Kewaunee Nuclear Power Plant (KNPP). Administrative changes are also being proposed dealing with format, typographical and other inconsistencies in both the TS and the TS bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant hazards consideration because operation of the KNPP in accordance with this change would not significantly increase the probability or consequences of an accident previously evaluated. The revised heatup and cooldown limit curves were prepared using methods derived from the ASME Boiler and Pressure Vessel Code and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. Utilization of the revised heatup and cooldown limit curves ensures adequate fracture toughness requirements for ferritic materials of the pressure-retaining components of the reactor coolant boundary. These limit curves provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests. Radiological off-site exposures from normal operation and operational transients, and faults of moderate frequency do not exceed the guidelines of 10 CFR 100. With the preparation of the limit curves in accordance with the latest criteria and guidance, there is no significant hazards concern for any postulated change in the probability or consequences of an accident previously evaluated in the Kewaunee USAR.

2. The proposed change will not create the possibility of a new or different type of accident from any previously analyzed. The revised heatup and cooldown curves do not create the possibility of a new different type of accident. The curves were prepared in

accordance with regulatory requirements and require plant operation within more limiting requirements to allow operation to 20 EFPY instead of 15 EFPY. Thus, no new or different type of accident has been created.

3. The proposed change will not significantly reduce the margin of safety as defined in the basis for any Technical Specification. The revised heatup and cooldown limit curves were prepared using methods derived from the ASME Boiler and Pressure Vessel Code, NRC Regulatory Guide 1.99, Revision 2. The safety factors and margins used in the development of the limit curves meet the criteria set forth by these documents. The bias which was applied to the neutron exposure projections accounts for differences observed between cycle specification calculations and the results of neutron dosimetry obtained from removed surveillance capsules from the Kewaunee reactor vessel. Application of low leakage core designs decreases the rate of shift in transition temperature from ductile to nonductile behavior. The affect of the updated copper and nickel content is more conservative than that used to develop the current limit curves. The revised limit curves provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests. Radiological off-site exposures from normal operation and operational transients, and faults of moderate frequency do not exceed the guidelines of 10 CFR 100. With the preparation of the limit curves in accordance with the latest criteria and guidance, there is not a significant reduction in the margin of safety.

The proposed amendment includes administrative changes as a result of the conversion of Section 3.1 to Word Perfect format, and are necessary to correct minor typographical errors and format inconsistencies. They do not change the intent of the Technical Specifications or decrease WPSC's management support or involvement in activities at the Kewaunee Plant.

Therefore, the proposed changes pose no significant hazards for the following reasons:

1. The proposed changes will not result in a significant increase in the probability of occurrence or consequences of an accident.

2. The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes will not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 11, 1992

Description of amendment request: The proposed amendment of Technical Specification 4.8.1.1.2 removes the numerical value of 1352 kW associated with the verification of the emergency diesel generators capability to reject the largest single load, the Essential Service Water Pump Motor, while maintaining required voltage and frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Position C.5 of Regulatory Guide 1.9, Revision 1, states that during recovery from transients caused by disconnection of the largest single load, the speed of the diesel generator unit should not exceed the nominal speed plus 75 percent of the difference between nominal speed and the overspeed trip setpoint or 115 percent of nominal whichever is lower. The numerical value for the largest single load (for Wolf Creek Generating Station this is the Essential Service Water (ESW) pump motors) is not needed to comply with this requirement and was conservatively generated during the time when the diesel generators were being selected. The actual load for the ESW pump motors is less than the 1352 kW load listed in the Technical Specifications. As discussed in Regulatory Guide 1.9, after the operating license stage of review the consideration of a somewhat less conservative approach is permitted, such as operation with safety loads within the short-time rating of the diesel generator unit.

Since no new design requirements are being imposed and the change only clarifies how Wolf Creek Nuclear Operating Corporation complies with Regulatory Guide 1.9, Revision 1, the proposed changes do not significantly increase the probability of any accident or equipment malfunction previously evaluated, and there will be no significant increase in the consequences of an accident or equipment malfunction previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

As stated above, the proposed change does not involve any design changes, hardware modifications, or change to the intended manner of plant operation. Thus this proposed change does not create the possibility for an accident or malfunction of a new or different type than any previously evaluated in the USAR [Updated Safety Analysis Report].

3. The proposed change does not involve a significant reduction in the margin of safety.

The Bases for Technical Specification 3/4.8.1 refer to Regulatory Guides 1.9 and 1.108 with regard to surveillance requirements. The requirements to test for the loss of the single largest load will continue to be satisfied given the approval of this amendment request. No safety limits or limiting safety system settings are being changed. Therefore, this proposed change does not involve a significant reduction in the margin of safety as defined in the Bases for 3/4.8.1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 11, 1992

Description of amendment request: The purpose of the proposed Technical Specification changes is to revise Section 4.4 in accordance with recommendations of Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The placement of this schedule in the technical specifications duplicate the controls on changes to this schedule that have been established in Section II.B.3 of

Appendix H to 10 CFR part 50. Therefore, removal of this schedule from the technical specifications does not decrease control of the schedule or affect plant equipment.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes do not involve any change to the installed plant systems or the overall operating philosophy of WCGS [Wolf Creek Generating Station].

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. This is based on the fact that the reactor vessel surveillance specimen withdrawal schedule is controlled by the requirements of 10 CFR 50, Appendix H. The removal of Table 4.4-5 and associated references from the technical specifications is purely administrative and does not impact any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 19, 1992

Description of amendment request: The purpose of the proposed Technical Specification changes is to revise Section 6.8 to clarify the approval process for plant procedures. An editorial correction to Section 3.3 and a position title change in Section 6.5.1.2 are also being proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The clarification of the wording for the approval process for plant procedures does not change the method of approval or the intent of the process. Therefore approval of plant procedures continues to be given by cognizant individuals and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changes to a technical specification to reflect the relocation of the RETS [Radiological Effluent Technical Specifications] to the ODCM [Offsite Dose Calculation Manual] does not change requirements or reduce the clarity of the specification.

The information is readily available in the ODCM and the placement of this information in the ODCM has already been approved by the U.S. Nuclear Regulatory Commission in License Amendment 42.

The change to one of the position titles listed in Section 6.5.1.2 does not involve any change in the current membership of the Plant Safety Review Committee. This title change reflects a restructuring of the engineering support function to provide increased emphasis on engineering support for issues related to plant operation and maintenance.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

These changes do not involve any change to the installed plant systems or the operating procedures of WCGS [Wolf Creek Generating Station]. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Clarifying the intent of the approval process for plant procedures does not change the method of approval or the process by which they are reviewed to ensure the safety of the public and the plant. The editorial correction to Section 3.3 and the change to a position title in Section 6.5.1.2 are administrative in nature and do not impact any margin of safety. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: Suzanne C. Black

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YNPS), Franklin County, Massachusetts

Date of amendment request: July 8, 1992

Description of amendment request: The proposed amendment would revise the Administrative Controls Technical Specifications regarding staff qualifications, Plant Operations Review Committee, and reporting requirements in order to reflect the permanently shutdown and defueled condition of the facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

These changes are administrative in nature and are necessary to reflect organizational changes at YNPS as it transitions into decommissioning. The changes described above will provide for the realignment of management resources for improved supervisory control of plant activities and improve the clarity and readability of the Technical Specifications. As such, these changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The administrative nature of the changes will not affect safety-related systems or components and, therefore, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. The changes described in this proposed change do not modify any plant systems or components and will not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. This proposed change contains staffing and organizational changes that are consistent with existing personnel qualifications and staffing practices and will not involve a significant reduction in a margin of safety.

Based on the above considerations contained herein, it is concluded that there is reasonable assurance that maintenance of YNPS in a permanently shutdown and defueled condition, consistent with the proposed change, will not endanger the health and safety of the public. This proposed change has been reviewed by the PORC and the Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Seymour H. Weiss

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, York County, South Carolina

Date of amendment request: April 13, 1992, as supplemented July 8, 1992

Description of amendment request: The proposed amendments would change the Technical Specifications for the Unit 1 Cycle 7 reload. Date of publication of individual notice in **Federal Register**: July 21, 1992 (57 FR 32240)

Expiration date of individual notice: August 20, 1992

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of application for amendment: December 20, 1991

Brief description of amendment: The amendment allows the use of 80 fuel rods clad with advanced zirconium - based alloys other than Zircaloy-4 in two fuel assemblies during Cycles 4, 5, and 6 for in-reactor performance evaluation.

Date of issuance: July 20, 1992

Effective date: July 20, 1992

Amendment No.: 35

Facility Operating License No. NPF-74: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 19, 1992 (57 FR 6034)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: March 25, 1992, as supplemented on May 28, 1992.

Brief description of amendments: The amendments revise the Calvert Cliffs Technical Specifications (TS) for both units to provide conditions under which the steam generator inspection intervals may be extended to 30 months in accordance with the guidance provided in Generic Letter (GL) 91-04. In addition, a one-time variance (Unit 2 only) is granted to allow an inspection of 15 percent of the steam generator tubes in lieu of the required 20 percent with results in the C-1 Category when extending the inspection frequency beyond 24 months. This variance is only applicable for the remainder of cycle 9 operation of Unit 2 which is scheduled to end in the spring of 1993.

Date of issuance: July 13, 1992

Effective date: July 13, 1992

Amendment Nos.: 173 and 150

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18170)The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated July 13, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: April 8, 1992

Brief description of amendment: This amendment revises the surveillance interval for local leak rate testing of main steam isolation valves and personnel air lock door seals.

Date of issuance: July 15, 1992

Effective date: July 15, 1992

Amendment No.: 142

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1991 (57 FR 20509)The Commission's related evaluation of the

amendment is contained in a Safety Evaluation dated July 15, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 7, 1991, as supplemented April 16, 1992, and June 4, 1992

Brief description of amendment: The amendment modifies the Technical Specifications (TS) having cycle-specific parameter limits by replacing the value of those limits with a reference to a Core Operating Limits Report (COLR) containing the values of those limits. The amendment also changes the TS to include the COLR in the Definitions section and the reporting requirements in the Administrative Controls section.

Date of issuance: July 15, 1992

Effective date: July 15, 1992

Amendment No. 141

Facility Operating License No. DPR-23. Amendment revises the TS.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6868)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1992.The April 16, 1992, and June 4, 1992, submittals contained clarifying information and updated TS pages to reflect recent amendments and did notchange the initial no significant hazards consideration published in the **FEDERAL REGISTER**.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: January 30, 1992

Brief description of amendment: The requested changes would increase the frequency of monitoring reports issued by the National Weather Service and the National Hurricane Center upon receipt of Hurricane Warnings for the mid-Atlantic coast of the United States. The changes would also delete the requirement to be in the hot shutdown condition within 4 hours of receipt of a Hurricane Warning for a hurricane with winds in excess of 87 knots within 320 nautical miles of the facility with a Hurricane Warning in effect for any coastal area south of Indian Point or any coastal area east of Indian Point, as far east as New Haven, Connecticut.

Date of issuance: July 15, 1992

Effective date: July 15, 1992

Amendment No.: 156

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9440) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: February 3, 1992

Brief description of amendment: This amendment revises the Palisades Technical Specifications (TS) to delete a surveillance test requirement which is no longer appropriate following modifications to the Reactor Protection System (RPS). Additionally, format and editorial changes were made to Section 2.0 of the TS to enhance clarity. A revised Basis was also submitted to correct an error and clarify the discussions dealing with three pump operation.

Date of issuance: July 15, 1992

Effective date: July 15, 1992

Amendment No.: 150

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9441)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 13, 1991, as supplemented November 6, 1991.

Brief description of amendment: This amendment replaces TS 3.6.2.2 for the spray additive system with a new TS 3.6.2.2 for the containment emergency sump pH control system.

Date of issuance: July 23, 1992

Effective date: As of the start of the Cycle 9 mid-cycle outage

Amendment No.: July 23, 1992

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1991 (56 FR 33955).The November 6, 1991 letter provided supplemental information which did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 13, 1992

Brief description of amendment: This amendment changes the upper limit for boron concentration in the borated water storage tank from 2,450 ppm to 3,000 ppm. The lower limit remains unchanged.

Date of issuance: July 23, 1992

Effective date: As of the start of the Cycle 9 mid-cycle outage

Amendment No.: 146

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11109)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: December 17, 1991

Brief description of amendment: This amendment revises Technical Specification Section 3.1.1.4.c., "Moderator Temperature Coefficient" (MTC) by changing the MTC value from -27 pcm/oF to -30 pcm/oF.

Date of issuance: July 15, 1992

Effective date: July 15, 1992

Amendment No.: 56

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4487)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: April 21, 1992

Brief description of amendments: These amendments remove reference to a continuous hydrogen monitor that is not part of the plant design, and add a requirement for determining the hydrogen concentration by gas partitioner grab sample. These changes apply to Technical Specifications Section 3/4.11.2.5, Explosive Gas Mixture.

Date of issuance: July 23, 1992

Effective date: July 23, 1992

Amendment Nos.: 116 and 57

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22263) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: December 20, 1991

Brief description of amendment: The amendment revised the Technical Specifications (TS) in accordance with the requirements of Generic Letter 89-01 by: (1) incorporating programmatic controls in the Administrative Controls section of the Technical Specifications that satisfy the requirements of 10 CFR 20.106, 40 CFR part 190, 10 CFR 50.36a, and Appendix I to 10 CFR part 50; (2) relocating from the TS to the Offsite Dose Assessment Manual (ODAM) procedural details or specific requirements in the current Technical Specifications involving radioactive effluent monitoring instrumentation, the control of liquid and gaseous effluents, equipment requirements for liquid and gaseous effluents, radiological environmental monitoring, and radiological reporting details; (3) relocating from the TS to the Process Control Program (PCP) procedural details or specific requirements on solid radioactive wastes; (4) simplifying the associated reporting requirements; (5) simplifying the administrative controls for changes to the ODAM and PCP; (6) adding record retention requirements for changes to the ODAM and PCP; and (7) updating the definitions of the ODAM and PCP consistent with these changes.

Date of issuance: July 22, 1992

Effective date: July 22, 1992

Amendment No.: 184

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 15, 1992 (57 FR4488)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: April 3, 1992, as supplemented on May 18, 1992.

Brief description of amendment: This amendment deletes a condition of the Facility Operating License that has been satisfied, and revises a previous License amendment by removing "740-acre" from the site description.

Date of issuance: July 21, 1992

Effective date: July 21, 1992

Amendment No.: 131

Facility Operating License No. DPR-36: Amendment revised the Operating License.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20513)The Commission's related evaluation of the amendment is contained in a Safety Evaluation, dated July 21, 1992 and Environmental Assessment and Finding of No Significant Impact, dated July 17, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 30, 1992

Brief description of amendment: The amendment changes the Technical Specification by deleting the surveillance requirement (Section 4.5.2.C.1) associated with the Shutdown Cooling System (SDCS) auto closure interlock (ACI) concurrent with the deletion of ACI circuitry.

Date of issuance: July 24, 1992

Effective date: July 24, 1992

Amendment No.: 161

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1992 (57 FR 9446)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50-263, Monticello NuclearGenerating Plant, Wright County, Minnesota

Date of application for amendment: April 15, 1992

Brief description of amendment: This amendment consists of changes to the Technical Specifications (TS) in response to your application dated April 15, 1992. The amendment revises the TS to reflect the "line item" improvements of Generic Letter 90-09 relating to snubber visual inspection intervals.

Date of issuance: July 15, 1992

Effective date: July 15, 1992

Amendment No.: 82

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20514) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: October 4, 1991, as supplemented December 16, 1991.

Brief description of amendments: The amendments revise Technical Specification Sections 3.8.B and its associated Bases to remove the restriction related to cask handling; add a new Section 4.19 and associated Bases which establish surveillance requirements for the Auxiliary Building crane lifting devices; and revise Section 5.6 to remove references to the spent fuel cask drop analysis and mitigation design features, and incorporate a new paragraph which states that spent fuel casks will be handled by a single-failure-proof handling system.

The amendments also make several changes of an administrative nature in Technical Specification Sections 3.8.B, 5.6 and in Table TS 4.1-2B in order to accommodate the Prairie Island Independent Spent Fuel Storage Installations (ISFSI) and to discuss the Bases for spent fuel boron requirements to maintain the boron concentration level, provide an action statement if boron concentration falls below required levels, and require a weekly verification of the boron concentration.

Date of issuance: July 9, 1992
Effective date: July 9, 1992
Amendment Nos.: 99 and 92
Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 27, 1991 (56 FR 60118).The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: May 21, 1992

Brief description of amendment: This amendment would make changes to the Unit 1 Technical Specifications to correct the flow dependent MCPR Operating Limits to be consistent with the licensee's NRC-approved methodology.

Date of issuance: July 14, 1992
Effective date: July 14, 1992
Amendment No.: 122
Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24675)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 21, 1992

Brief description of amendment: The amendment to the James A. FitzPatrick Technical Specifications (TS) reflects changes to Table 4.2-1 entitled, "Minimum Test and Calibration Frequency for Primary Containment Isolation Systems (PCIS)," which resulted from a plant modification which deactivated the reactor vessel head spray mode of the Residual Heat Removal (RHR) system. This modification involved the elimination of the reactor vessel head spray function by removing and capping portions of the head spray piping and associated valves. The head spray is an optional capability and credit is not taken for it in the accident analysis.

Date of issuance: July 13, 1992
Effective date: July 13, 1992
Amendment No.: 182
Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24676)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 10, 1992

Brief description of amendment: The amendment revised Environmental Technical Specifications, Part II, Section 2.7 (Radiological Environmental Monitoring Program) and Section 3.7 (Radiological Environmental Monitoring Program Surveillance Requirements). These sections were revised to specify lower limits of detection (LLD) and reporting requirements for iodine-131 in environmental samples of non-drinking water. In addition, the amendment corrected an administrative error in Section 3.7 and Tables 2.7-2 and 3.7-1 have been reformatted for consistency.

Date of issuance: July 9, 1992
Effective date: July 9, 1992
Amendment No.: 123
Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22265) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 1992No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 11, 1990, as supplemented June 18, 1991, and February 11, 1992.

Brief description of amendment: The amendment extends the expiration date of the facility operating license from August 13, 2009, to December 12, 2015.

Date of issuance: July 15, 1992
Effective date: July 15, 1992
Amendment No.: 124
Facility Operating License No. DPR-64: Amendment revised the operating license.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28482) The June 18, 1991, February 11, 1992, and May 13, 1992, submittals provided additional clarifying information which did not change our initial proposed no significant hazards considerations determination. The Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on July 7, 1992 (57 FR 29904). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: November 27, 1991

Brief description of amendment: The amendment revises TS Table 6.2-1 to permit an individual with a valid Senior Reactor Operator (>SRO") license and who is qualified as a Shift Technical Advisor (>STA") to assume the control room command function during and absence of the Shift Supervisor (>SS") from the control room.

Date of issuance: July 17, 1992

Effective date: July 17, 1992

Amendment No.: 71

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 4, 1992 (57 FR 7816)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 27, 1991

Brief description of amendment: This amendment reinstates the surveillance frequency required for testing the automatic closure of primary containment isolation valves.

Date of issuance: July 21, 1992

Effective date: July 21, 1992

Amendment No. 134

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 22, 1992 (57 FR 2603)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: May 15, 1992

Brief description of amendment: Replaces the 10 CFR part 55 licensed operator program with an NRC approved Certified Fuel Handler Training Program.

Date of issuance: July 22, 1992

Effective date: July 22, 1992

Amendment No.: 141

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.Date of initial notice in **Federal Register**: June 10, 1992, (57 FR 24680). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 28th day of July 1992.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 92-18386 Filed 8-4-92; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 50-346]

Toledo Edison Co., et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3 issued to Toledo Edison Company, Centerior Service Company, and the Cleveland Electric Illuminating Company (the licensee) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

The proposed amendment would revise Technical Specification (TS) 3/4.1.3.1, "Group Height—Safety and Regulating Rod Groups," and TS 3/4.1.3.3, "Position Indicator Channels." The revision would make administrative changes to the TS 3/4.1.3.1 Action statement to clarify the proper progression of the Action statement. TS 3/4.1.3.3 would be revised to clarify the applicability of the Action statement, and to allow startup or power operation to continue provided the absolute position indicator channels are operable for the affected control rods.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy of 1954, as amended (the Act) and the Commission's regulations.

By September 4, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent to the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the

first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the basis of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–800 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a detemination by the Commission, the presiding officer or the Atomic Safety and Licensing board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 30, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at The University of Toledo Library, Document Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 28th day of July 1992.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18525 Filed 8–4–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Grants and Cooperative Agreements With State and Local Governments

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Proposed revision to OMB Circular A–102.

SUMMARY: This Notice offers interested parties an opportunity to comment on four proposed changes to Office of Management and Budget (OMB) Circular A–102, "Grants and Cooperative Agreements with State and Local Governments," dated March 3, 1988. The Circular contains guidance to the Federal agencies on grants management issues.

DATE: Comments must be in writing and must be received by [60 days]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Management and Budget, 10235 New Executive Office Building, Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993.

SUPPLEMENTARY INFORMATION: The President's Council on Management Improvement (PCMI) established an interagency task force to review existing guidance for managing Federal assistance programs. On March 12, 1987, the President directed OMB to revise OMB Circular A–102, "Grants and Cooperative Agreements with State and Local Governments," and all affected Federal agencies to adopt a common rule that would provide uniform governmentwide grants management terms and conditions, except where inconsistent with statutory requirements. The proposed, revised Circular and common rule were published for public comment on June 9, 1987 (52 FR 21816–21852). On March 11, 1988, both the revised Circular (issued March 3, 1988) and the final common rule were published (53 FR 8027–8103). The Circular was immediately effective; the common rule did not become effective until October 1, 1988.

Concurrent with the revision of OMB Circular A–102, the PCMI directed a similar revision of OMB Circular A–110, "Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." In the November 4, 1988, **Federal Register** it was proposed to merge the Circular A–110 requirements with the Circular A–102 requirements and to expand the common rule that initially only applied to governmental grantees to encompass both governmental and nongovernmental grantees. Based on the comments received OMB and the Federal agencies decided neither to merge these two Circulars nor to expand the common rule. Therefore, this proposal only includes updates to Circular A–102.

Summary of Proposed Changes

The proposed changes reference three statutory provisions enacted and an

Executive Order (EO) issued since March 1988. These changes include:

- A requirement that encourages recipients of federally-funded grants and cooperative agreements to use the metric system of measurement in their assistance programs.
- A reference to the Department of the Treasury's regulations to implement the Cash Management Improvement Act of 1990.
- A requirement that State and local governments comply with section 6002 of the Resource Conservation and Recovery Act (RCRA).
- A requirement that Federal agencies comply with Executive Order 12803 "Infrastructure Privatization."

Proposed Changes

Under section 6, *Pre-Award Policies,*

- Add a paragraph j. to read: j. *Metric System of Measurement.* The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), states a policy preference for the use of the metric system of measurement, except where the use of that system is impractical or likely to cause significant inefficiencies in the accomplishments of federally-funded activities. Accordingly, it is national policy to encourage recipients and subrecipients of federally-funded grants and cooperative agreements to use the metric system of measurement in their grant activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

Under section 7, *Post Award Policies,*

- Amend paragraph a. *Cash Management,* subparagraph (1) to read: Such transfers shall be made consistent with program purpose, applicable law and Treasury regulations contained in 31 CFR part 205, Federal Funds Transfer Procedures.
- Add paragraph h. to read: h. *Resource Conservation and Recovery Act.* Agencies shall implement the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002 of the Act. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA). Current guidelines are contained in 40 CFR 247–254. State and local recipients of grants, loans, cooperative agreements or other instruments funded by appropriated Federal funds shall give preference in procurement programs to the purchase of recycled products pursuant to the EPA guidelines.
- Add a paragraph g. to read: g. *Infrastructure Privatization.* Agencies shall perform those actions as provided in section 3 of Executive Order 12803 "Infrastructure Privatization." These actions include reviewing and modifying procedures affecting the management and disposition of federally financed infrastructure assets owned by State and local governments, assisting State and local governments, and approving State and local governments' requests to privatize infrastructure assets, consistent with the criteria in section 4 of the Order.

Additionally, by February 28, 1993, agencies shall submit a report to OMB on those privatization activities performed during the preceding year.

James Murr,

Associate Director for Legislative Reference and Administration.

[FR Doc. 92–18486 Filed 8–4–92; 8:45 am]

BILLING CODE 3110–01–M

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

SUMMARY: The Presidential Commission on the Assignment of Women in the Armed Forces will hear testimony in Los Angeles on August 6th through 8th. Presentations will be made by experts on sociological and cultural issues, theologians, and representatives from the Army, Navy, Marines, and Coast Guard on policies pertaining to the assignment of women in the military. Prospective witnesses also include entertainers and advocates who have an interest in military issues. Additionally, two panels of the Commission's four Fact Finding Panels will meet in Los Angeles to discuss women's roles in the Armed Forces.

LOCATION: Century Plaza Hotel and Towers, Pacific Palisades Room/ California Level, 2025 Avenue of the Stars, Century City, Los Angeles, CA 90067, (301) 277–2000.

DATES: Wednesday, August 5th, 1 p.m. to 5 p.m., Panel 3 meeting, Senators Board Room/Mezzanine Level.

Thursday, August 6th & Friday, August 7th, 8 a.m. to 6:15 p.m./General Session.

Saturday, August 8th, 8 a.m. to 12 p.m./General Session, Panels 1, 3, & 4 [Rooms to be announced].

NOTE: In addition to the Los Angeles hearing, The Presidential Commission on the Assignment of Women in the Armed Forces has scheduled the next regional hearing: Dallas, August 27th–29th, Fairmont Hotel at the Dallas Arts District, 1717 N. Akard Street, Dallas, Texas 75201, (214) 720–5223.

STATUS: Open to Public.

CONTACT: Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin Kirk, (202) 376–6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102–190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W. S. Orr,

Staff Director.

[FR Doc. 92–18575 Filed 8–4–92; 8:45 am]

BILLING CODE 6820–CD–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Sick Pay and Miscellaneous Payments Report.

(2) *Form(s) submitted:* BA–10.

(3) *OMB Number:* 3220–0175.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* Annually.

(7) *Respondents:* Businesses or other for-profit; Small businesses or organizations.

(8) *Estimated annual number of respondents:* See justification (Item 13).

(9) *Total annual responses:* 182.

(10) *Average time per response:* .92 hours.

(11) *Total annual reporting hours:* 167.

(12) *Collection description:* The Railroad Retirement Solvency Act of 1983 added Sec. 1(h)(8) to the RRA expanding the definition of

compensation for purposes of computing the Tier I portion of an annuity to include sickness payments and certain other payments to other than sick pay which are considered compensation within the meaning of Sec. 1(h)(8). Collection obtains the sick pay and other types of payments considered compensation within the meaning of Sec. 1(h)(8).

ADDITIONAL INFORMATION OR CONTACT: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–18488 Filed 8–4–92; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Procurement Requests.

(2) *Form(s) submitted:* SF–33.

(3) *OMB Number:* 3220–0139.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Business or other for-profit; non-profit institutions; small businesses or organizations.

(8) *Estimated annual number of respondents:* 49.

(9) *Total annual responses:* 64.

(10) *Average time per response:* 1.00 hours.

(11) *Total annual reporting hours:* 100.

(12) *Collection description:* The collection obtains the information needed from bidders to award contracts for services or equipment.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–18489 Filed 8–4–92; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30970; File No. SR–PHILADEP–92–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Depository Trust Company Relating to Fee Revision

July 30, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 29, 1992, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP proposes to increase its fees to participants for certain deposits and transfers in order to better recover the out-of-pocket costs for these services provided by the Corporation. The changes are to take effect on June 29, 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

PHILADEP seeks to revise its certificate fee for deposits and transfers to recover its out-of-pocket costs paid to transfer agents. The fee revision is based on one central premise. For certain non-NYSE issues, transfer agents charge certificate fees when new certificates are issued. Historically, PHILADEP has assessed a flat $5.00 fee for recovering its costs for both deposits and transfers. However, transfer agents have been increasing individual certificate charges and PHILADEP seeks to recover its out-of-pocket expenses. Careful review of these service fees discloses that PHILADEP continues to provide specific services at cost effective rates as compared to its competitor's fees.

By instituting and revising the new fee schedule, PHILADEP can continue to provide cost effective services.

The proposed rule change is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

A forthcoming SCCP/PHILADEP Member Bulletin will advise members where they may direct questions regarding the new fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily

[1] 15 U.S.C. 78s(b)(1).

abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at PHILADEP. All submissions should refer to file number SR–PHILADEP–92–01 and should be submitted by August 26, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18545 Filed 8–4–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18873; No. 811–5322]

Colonial/Hancock Liberty Separate Account

July 29, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Colonial/Hancock Liberty Separate Account ("Applicant" or "Colonial/Hancock").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on March 9, 1992. Amended and restated applications were filed on June 15, 1992 and July 20, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, John Hancock Mutual Life Insurance Company, John Hancock Place, 200 Clarendon Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney, at (202) 272–272–2676, or Wendell Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Colonial/Hancock is a separate account of John Hancock Mutual Life Insurance Company ("John Hancock"). Colonial/Hancock was organized under the laws of Massachusetts on May 11, 1987 for the purpose of supporting certain deferred variable annuity contracts.

2. Colonial/Hancock is registered under the 1940 Act as a unit investment trust. On September 9, 1987, Colonial/Hancock filed a Notification of Registration as an investment company on Form N–8A (File No. 811–5322) and a registration statement under the Securities Act of 1933 and the 1940 Act on Form N–4 (File No. 33–17127). The registration statement became effective on April 29, 1988, the date on which the initial public offering of flexible premium variable annuity contracts ("Contracts") commenced.

3. Colonial/Hancock has seven sub-accounts (each labelled on the basis of its investment objective): (1) Money Market; (2) Investment Grade Income; (3) Aggressive Income; (4) Asset Allocation; (5) Growth and Income; (6) Aggressive Growth; and (7) Inflation Hedge (collectively, "Sub-Accounts"). The Sub-Accounts were invested in corresponding portfolios of Colonial/Hancock Liberty Trust ("Trust"), an open-end diversified management investment company organized by Colonial Management Associates, Inc. ("Colonial") under the laws of Massachusetts on August 25, 1987. Shares of beneficial interest in the Trust were sold only to Colonial/Hancock in connection with the funding of Contracts issued by John Hancock. No sales load was imposed by the Contracts on annuity considerations received or on withdrawals or surrenders.

4. Colonial/Hancock has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Colonial/Hancock.

5. The volume of Contracts sold after commencement of the public offering did not meet Colonial/Hancock's and John Hancock's expectations. As a result, the assets under management did not increase significantly and the Contracts became less advantageous to the Contractowners from the viewpoint of both investment return and expenses.

Accordingly, Colonial/Hancock and John Hancock determined in May of 1991 that continued efforts to effect new sales of the Contracts were not in the best interest of the Contractowners, the Trust or Colonial/Hancock. New sales were suspended on May 15, 1991, and shortly thereafter the Contractowners were notified in writing that it would be to their advantage to surrender their Contracts or effect a so-called "Section 1035 tax-free exchange." Colonial/Hancock thereafter processed exchanges and surrenders at net asset value, there being no withdrawal or surrender charges, until February 17, 1992, when all Contractowners had elected one of the alternatives. After each sub-account of Colonial/Hancock was devoid of any Contractowner interests, Colonial/Hancock or John Hancock, as the case may be, withdrew its seed money from the sub-account. This procedure was completed on February 20, 1992.

6. Colonial/Hancock has no assets and does not intend to acquire any assets in the future. Colonial/Hancock has no security holders and no known debts or outstanding liabilities. Further, Colonial/Hancock is not a party to any litigation or administrative proceedings, and is not now engaged, nor does it propose to engage in any business

[2] 17 CFR 200.30–3(a)(12).

activities, other than to wind up its business affairs.

7. All expenses incurred in connection with the liquidation of Applicant and its deregistration have been or will be borne by John Hancock. Colonial/Hancock is current in all of its required filings under the 1940 Act and its reports on Form N–SAR have been made and will continue to be made until an order has been entered declaring that Colonial/Hancock has ceased to be an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18546 Filed 8–4–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–18870; 812–7936]

Connecticut General Life Insurance Company, et al.

July 28, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Connecticut General Life Insurance Company ("Connecticut General"), CG Variable Annuity Separate Account (the "Variable Account"), and CIGNA Securities ("CSI").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account funding individual and group flexible premium deferred annuity contracts (the "Contracts").

FILING DATE: The application was filed on June 1, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on August 24, 1992, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Connecticut General Life Insurance Company, 900 Cottage Grove Road, Bloomfield, Connecticut 06002. Copies to Frederick R. Bellamy, Esq., Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, at (202) 272–2060, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Connecticut General is a Connecticut domiciled stock life insurance company chartered by a special Act of the Connecticut General Assembly in 1865.

2. CSI will serve as the distributor and principal underwriter of the Contracts. CSI is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

3. The Variable Account has filed with the Commission a Registration Statement on Form N–4 on June 1, 1992.

4. The Variable Account was established by Connecticut General as a separate account under the laws of the state of Connecticut on May 15, 1992 to fund flexible premium deferred annuity contracts. The Contracts are combination fixed and variable flexible premium annuities which can be purchased on a non-tax qualified basis or with the proceeds from certain plans qualifying for favorable federal income tax treatment. Contracts may be issued on both an individual and a group basis.

5. The Variable Account will invest in shares of one or more of the investment portfolios of the AIM VA Series Fund (the "Series Fund"). The Series Fund is a diversified, open-end management investment company which has a number of investment portfolios.

6. The Contract Owner may allocate purchase payments to one or more Sub-Accounts of the Variable Account, to one or more Sub-Accounts of the Fixed Account which guarantee a minimum fixed return, or to a combination of Fixed and Variable Accounts. The Annuity Account Value of each Contract is the sum of the portions of the Contract allocated to the Variable Account and that portion allocated to the Fixed Account.

7. The Contracts also provide for death benefits. In the event that a Contract Owner dies prior to the annuity Date, Connecticut General will pay a death benefit to the Beneficiary. The Contract Owner chooses a death benefit option from any one of the several death benefit options available in the Contract.

8. Connecticut General will deduct an annual policy administration fee, currently $35 per Contract per year. This fee will be deducted on a pro rata basis from all of a Contract Owner's Sub-Accounts each year on the Contract Anniversary and the annuity date and upon full surrender of the Contract. After the annuity date the fee will be deducted in installments from the annuity payments. Connecticut General also deducts a daily administrative expense charge from the assets of each Sub-Account of the Variable Account currently at an effective rate of 0.10% of the average net assets of the Variable Account. Connecticut General will deduct the administrative charges in reliance upon, and in compliance with, Rule 26a–1 under the 1940 Act. Connecticut General does not anticipate any profit from these charges.

9. A withdrawal charge (contingent deferred sales charge) may be assessed by Connecticut General if any part of the Contract Owner's Annuity Account is withdrawn. The withdrawal charge starts at 7 percent during the first contract year and is reduced by 1 percent each contract year thereafter so that no withdrawal charge applies after seven years. For purposes of computing the withdrawal charge, amounts are deemed to be withdrawn in the order in which they were received by Connecticut General (*i.e.*, oldest premium payment first). Connecticut General guarantees that in no event will the withdrawal charge exceed 8.5% of the total amount of a Contract Owner's premium payments accepted by Connecticut General prior to the withdrawal. Partial withdrawals and full surrenders from the Fixed Account are subject to a Market Value Adjustment.

10. The Contracts also provide for a yearly Ten Percent Free withdrawal amount. A Contract Owner may withdraw up to 10% of the Contract Owner's Annuity Account which has been allocated to the Fixed Account and up to 10% of the Contract Owner's Annuity Account which has been allocated to the Variable Account each Contract Year without the imposition of

a withdrawal charge or Market Value Adjustment.

11. Connecticut General may incur premium taxes relating to the Contracts. Connecticut General will deduct any premium taxes related to a particular Contract upon surrender, withdrawal, annuitization or payment of death benefits.

12. Connecticut General imposes a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge will be at an annual rate of 1.25% of the value of the net assets in the Variable Account. Of that amount, approximately 0.75% is estimated to be attributable to mortality risks, and approximately 0.50% is estimated to be attributable to expense risks. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Connecticut General. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to Connecticut General. Connecticut General currently anticipates a profit from this charge.

13. The mortality risk borne by Connecticut General arises from its contractual obligation to make annuity payments regardless of how long all Annuitants or any individual Annuitant may live. Connecticut General also incurs a risk in connection with the payment of death benefits. The death benefit paid by Connecticut General may exceed the Contract Owner's Annuity Account Value at the time of death.

14. The expense risk assumed by Connecticut General is the risk that administrative charges assessed under the Contracts may be insufficient to cover the actual total administration expenses incurred by Connecticut General.

15. Connecticut General does not anticipate that withdrawal charges will generate sufficient funds to pay the cost of distributing the Contracts. If these charges are insufficient to cover the expenses, the deficiency will be met from Connecticut General's general account funds, which may include amounts derived from the charge for mortality and expense risks.

Applicants' Legal Analysis and Conditions

1. Applicants seek an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the issuance and sale of the Contracts providing for the deduction of a mortality and expense risk charge. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1) of the 1940 Act, and are held by such trustee or custodian under an agreement containing substantially the provisions required by sections 26(a)(2) and 26(a)(3) of the 1940 Act.

2. Connecticut General represents that the 1.25% charge for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. Connecticut General has reviewed publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees and guaranteed annuity rates. Connecticut General will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

3. Applicants acknowledge that the proceeds from the withdrawal charge may be insufficient to cover all costs relating to the distribution of the Contracts. If a profit is realized from the mortality and expense risk charge, all or a portion of that profit may be viewed by the Commission as being an offset by distribution expenses not reimbursed by the withdrawal charge. Connecticut General has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Connecticut General at its administrative offices and will be available to the Commission.

4. Connecticut General also represents that the Variable Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any such plan under 12b-1 rule.

Conclusion

Applicants submit that for the reasons stated above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act for the deduction of a mortality and expense risk charge meet the standards in section 6(c) of the 1940 Act. Accordingly, Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18547 Filed 8-4-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18872; 811-6480]

The Turkish Growth Fund, Inc.; Notice of Application

July 28, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Turkish Growth Fund, Inc. ("Applicant").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on July 8, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1 Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On November 20, 1991, applicant filed a Notification of Registration pursuant to section 8(a) of the Act on Form N–8A. Applicant did not file a registration statement pursuant to section 8(b) of the Act. Applicant has never made a public offering of its securities.

2. Applicant has no shareholders, assets of liabilities. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant has not commenced, and does not intend to commence, operations. Applicant will not engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18548 Filed 8–4–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1664]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting August 26, 1992 in the Meeting Room of the National Radio Astronomy Observatory, Greenbank, West Virginia commencing at 9:30 a.m.

Study Group 7 deals with matters relating to the space research systems and standard frequency and time systems. The purpose of the meeting is to review 1992 work plans for each of the Working Parties in Study Group 7, clarify work required on the Resolutions and Recommendations of WARC–92 requesting CCIR studies and review liaison activities with Study Groups 1, 4, 8 and 9. A tour of Greenbank facilities will take place upon the conclusion of the meeting.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Those planning to attend the meeting should contact Mr. Tom Gergely (202) 357–9696 or Mr. Dick Thompson (804) 296–0285 for accommodations and arrival times.

Dated: July 20, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92–18471 Filed 8–4–92; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for McClellan–Palomar Airport, Carlsbad, CA

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the County of San Diego under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On December 20, 1991 the FAA determined that the noise exposure maps submitted by the County of San Diego, under Part 150 were in compliance with applicable requirements. On June 16, 1992 the Administrator approved the McClellan-Palomar Airport noise compatibility program. Fifteen of the twenty-four recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the McClellan-Palomar Airport noise compatibility program is June 16, 1992.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Airport Planner, Airports Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90261. Telephone (310) 297–1621. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the McClellan-Palomar Airport, effective June 16, 1992. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delinated in

FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The County of San Diego submitted to the FAA on October 12, 1990 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 27, 1988 through October 1, 1991. The McClellan-Palomar Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on December 20, 1991. Notice of this determination was published in the **Federal Register** on January 6, 1992.

The McClellan-Palomar Airport study contains a proposed noise compatility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2007. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 20, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eighteen noise abatement measures and six noise mitigation measures. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective June 16, 1992.

Outright approval was granted for 15 of the 24 specific program elements. Noise abatement measures approved include visual departure procedures, noise monitoring testing, use of Runway 24 for all aircraft during calm wind conditions, discouraging jet training operations, implementing a voluntary stage 2 departure curfew, installation and operation of a noise monitoring system, designate a noise abatement officer, continue operation of a noise abatement committee, map noise sensitive areas, amend county land use plan for the airport, amend the noise element of the General Plan of the county, and city of Carlsbad, rezone uncompatible land use, require avigation easements from noise sensitive developments within the 65+CNEL, and encourage full disclosure statements for all properties within the 65+CNEL.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on June 16, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the County of San Diego.

Issued in Hawthorne, California on July 21, 1992.

Ellsworth L. Chan,

Acting Manager, Airports Division.

[FR Doc. 92-18520 Filed 8-4-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Protection Agency; Memorandum of Understanding

AGENCY: Federal Highway Administration (FHWA), DOT and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The FHWA and the EPA today publish for public information the text of the Memorandum of Understanding (MOU) signed by the FHWA and the EPA to increase cooperation in a number of high priority areas for an environmentally-sound transportation system in the United States.

DATES: The MOU was signed on April 22, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Skaer, Office of Environment and Planning, Federal Highway Administration, 400 7th Street SW., Washington, DC 20509, 202-366-2065 or Mark Joyce, Office of the Administrator, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202-260-4728. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

Authority: (23 U.S.C. 315; 49 CFR 1.48.)

Henry Habicht,

Deputy EPA Administrator, Environmental Protection Agency.

Thomas D. Larson,

FHWA Administrator, Federal Highway Administration.

Memorandum of Understanding Between the U.S. Environmental Protection Agency and the Federal Highway Administration

I. Purpose

Because environmental and transportation policy can and should be complementary, the Environmental Protection Agency and the Federal Highway Administration seek to work together for a more efficient and environmental-sound transportation system in the United States. The recent passage of the Intermodal Surface Transportation Efficiency Act presents a special opportunity for cooperation. Each agency sees a need and an opportunity to work together on the following (non-exclusive) areas:

- Congestion and air quality management;
- Education and outreach;
- Enhancement of environmentally sound transportation-related activities;
- Environmental impact assessment;
- Habitat protection and enhancement;
- Hazardous waste remediation, transport, and disposal;
- Innovative financing alternatives and public-private partnerships;
- Pollution prevention, control, and abatements;
- Recycling;
- Regional, State, and local partnerships;
- Research and development;
- Water quality and water use efficiency; and
- Wetlands preservation, restoration, and improvement.

The purpose of this agreement is to continue policies and administrative procedures for a working relationship between the Environmental Protection Agency and the Federal Highway Administration in support of work in these and other areas toward common objectives, interests, and statutory requirements.

Additional agreements are being and may be developed to outline activities by and between individual work units as needed for specific tasks. Such agreements will provide for the use of facilities, personnel, reimbursement for personal expenses, cooperative projects, transfer of funds, and other activities as appropriate and will be subject to the

laws and regulations pertaining to the respective agency. This agreement is a complement to, but does not supersede, any more specific work until level agreements.

II. Authorities

Nothing in this agreement alters the statutory authorities of the Environmental Protection Agency or the Federal Highway Administration. This agreement is intended to facilitate the fulfillment of statutory requirements and cooperative efforts, including mandates for consultation on policy matters and the mutual provision of research and technical assistance by both agencies, and the conduct of programs affecting the quality of the environment and the provision of transportation-related services. The Environmental Protection Agency has regulatory responsibility for the prevention, control, and abatement of pollution in areas of air, water, soils, solid waste, pesticides, noise, radiation, and toxic substances. This includes setting and enforcing environmental standards; conducting research on the causes, effects, and control of environmental problems; and assisting state and local entities.

The Federal Highway Administration has statutory responsibility for financially and technically assisting the states and local governments in providing highway and surface transportation services, and for assisting federal, state, and local agencies in planning, designing, and constructing highways on federally-owned land, as requested. This includes overseeing the federally-assisted work of the states and local governments to assure compliance with federal environmental and other program requirements, providing highway-related services to federal land management agencies, and conducting a program of research and development to advance the state of surface transportation technology.

The agencies share an interest in encouraging responsible and efficient management of the nation's transportation system in an environmentally sound manner. The actions carried out under this agreement will strengthen coordination, increase understanding and action on issues concerning transportation and the environment, and reduce the duplicative use of resources and expertise.

III. Provisions

The Environmental Protection Agency agrees:

To provide environmental expertise on environment-related transportation matters by providing the Federal Highway Administration with technical reviews, advice, consultation, and technical assistance in the planning and reviewing of national programs, training, research, and demonstrations;

To establish processes which encourage, guide, and facilitate the Federal Highway Administration's working arrangements with the Environmental Protection Agency, its regional offices, research laboratories, and cooperating entities;

To encourage and direct, as feasible, programs and activities conducted or supported by the Federal Highway Administration and its cooperators toward improving the nation's transportation system and its environment.

The Federal Highway Administration agrees:

To provide transportation expertise on transportation-related environmental matters by providing the Environmental Protection Agency with technical reviews, advice, consultation, and technical assistance in the planning and reviewing of national programs, training, research, and demonstrations;

To establish processes which encourage, guide, and facilitate and Environmental Protection Agency's working arrangements with the Federal Highway Administration, its regional offices, research laboratories, and cooperating entities;

To encourage and direct, as feasible, programs and activities conducted or supported by the Environmental Protection Agency and its cooperators toward improving the quality of the nation's transportation system and its environment.

It is mutually agreed:

To exchange, on a temporary detail basis, personnel so that each agency may better learn the public policies of the other and so that each can efficiently use the mechanisms and expertise of the other agency;

To the extent possible, support each other on budget, policy, and especially research matters related to the implementation of this agreement;

To establish an Environmental Protection Agency/Federal Highway Administration Action Team with representatives assigned by the Administrator of each agency. This team will prepare an action plan identifying specifics for implementing this agreement, and function as an ongoing forum for the discussion of issues affecting each agency.

IV. Project Officers

The project officers for this agreement are: Mark Joyce, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202–260–4728, and Fred Skaer, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590, 202–366–2065.

V. Duration of the Agreement

This agreement becomes effective on the date of signature by both parties, and continues until modified by mutual consent or terminated by either party in writing with 90 days advance notice of intent. The action plan will be reviewed at least annually and revised as needed.

Dated: April 22, 1992.

Henry Habicht,

Deputy Administrator, Environmental Protection Agency.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 92–18555 Filed 8–4–92; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Denial of Petition for Import Eligibility Determination

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration ("NHTSA") under section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act ("the Act"), 15 U.S.C. 1397(c)(3)(C)(i)(I), and 49 CFR part 593. The petition, which was submitted by G&K Automotive Conversion, Inc. of Anaheim, California ("G&K"), a Registered Importer of motor vehicles, requested NHTSA to determine that a 1990 Mercedes Benz 300SL–24 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to the version of the 1990 Mercedes Benz 300SL–24 that was originally manufactured for importation into and sale in the United States and that was certified by its original manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

NHTSA published a notice in the Federal Register on September 9, 1991 (56 FR 46034) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to this notice, from Mercedes-Benz of North America, Inc. ("MBNA"), the U.S. subsidiary of Daimler-Benz AG, the vehicle's original manufacturer.

In its comment, MBNA contended, among other things, that G&K did not demonstrate that the subject vehicle is capable of being readily modified to conform to Standard No. 208, *Occupant Crash Protection.* That standard requires that passenger cars manufactured on or after September 1, 1989 be equipped with automatic restraints at each front outboard seating position. Under the terms of the standard, as it applies to vehicles built prior to September 1, 1993, if the driver is adequately protected by an air bag, then the outboard front seat passenger need only be protected by a manually operated lap/shoulder belt.

In its petition, G&K claimed that the non-U.S. certified version of the 1990 Mercedes Benz 300SL–24 is equipped with airbags that meet the automatic restraint requirements of Standard No. 208. In response to this claim, MBNA asserted that the vehicle is equipped with a European supplemental restraint system that is significantly different from the U.S. version of this system, and does not meet the automatic restraint requirements of Standard No. 208. Moreover, MBNA contended that the structural and component modifications necessary to conform the non-U.S. certified version of the 1990 Mercedes Benz 300SL–24 to those requirements would be so significant that they disqualify the vehicle from importation.

NHTSA accorded G&K an opportunity to respond to MBNA's comments. In its response, G&K failed to supply any evidence that the automatic restraint system on the non-U.S. certified version of the 1990 Mercedes Benz 300SL–24 is identical to that on its U.S.-certified counterpart, or any engineering data to support its claim that the subject vehicle could be readily modified to conform to the automatic restraint requirements of Standard No. 208. This has compelled NHTSA to conclude, from the state of the record, that the petition does not clearly demonstrate that the non-U.S. certified version of the 1990 Mercedes Benz 300SL–24 is eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with section 108(c)(3)(C)(ii) of the Act, 15 U.S.C. 1397(c)(3)(C)(ii), and 49 CFR 593.7(e), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 31, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–18558 Filed 8–4–92; 8:45 am]

BILLING CODE 4910–59–M

Office of the Secretary

Privacy Act of 1974: Systems of Records; Civil Aviation Security

The Department of Transportation herewith publishes a notice proposing to amend the existing system of records, DOT/FAA 813, Civil Aviation Security, by expanding the categories of individuals and records, and by changing the equipment configuration by adding computer systems hardware and software.

Any person or agency may submit written comments on the proposed amendment of the system to the Privacy Act Officer (M–34), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Comments to be considered must be received by August 29, 1992.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, July 29, 1992.

Melissa J. Allen,

Deputy Assistant Secretary for Administration.

DOT/FAA 813

SYSTEM NAME:

Civil Aviation Security, DOT/FAA 813.

SYSTEM LOCATION:

These records are maintained at the Civil Aviation Security Office of Policy and Planning, Planning Division, in Washington, DC; the FAA Regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; and the Civil Aviation Security Staff at the FAA Technical Center, Atlantic City, New Jersey.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information regarding persons who have been involved or might be involved in crimes against civil aviation or air piracy/sabotage threats, data regarding K–9 handlers, and information regarding Federal Air Marshals (FAM).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information concerning hijacking or attempted hijacking incidents at airports or aboard civil aviation aircraft; other civil aviation criminal acts; information of K–9 assignments to airports, K–9 handler evaluations; and information necessary to manage the FAM program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- Source of data by which to inform airport and air carrier security officials and officers regarding air piracy/civil aviation sabotage threats.
- Source of data for preparation of alerts, bulletins, and summaries of incidents regarding threats to civil aviation for distribution to authorized government and aviation recipients for use in affecting appropriate changes/modifications to civil aviation security.
- Source of data from which to prepare summaries, reports, and policy statements for development/change of security procedures in civil aviation which will be distributed to appropriate government and aviation-oriented organizations which have direct civil aviation security responsibilities.
- See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in approved security files and containers and in computer processable ADP storage media.

RETRIEVABILITY:

These records are retrieved by name or other personal identifying symbol.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access and use. This record management principle is reinforced by appropriate physical, technical, and administrative safeguards as prescribed by FAA security directives applicable to both manual and automated record systems.

RETENTION AND DISPOSAL:

These records are destroyed or retired to the area Federal Records Center and then destroyed in accordance with the current issue of FAA Order 1350.15, Records Organization, Transfer and Destruction Standards. The retention and destruction period for each record varies depending on the type of record, category of investigation, or significance

of the information contained in the record. All records are destroyed by approved methods.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Policy and Planning, Planning Division, ACP–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system of records contains a record pertaining to him or her by addressing a written request to the System Manager identified above. The request should include enough information to allow for accurate identification of the record. For example, full name, date and place of birth, social security number of the requester, and any available information regarding the type of record involved should be provided.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to such systems of records should contact the System Manager. However, classified data and investigative data compiled for law enforcement purposes may be exempt from the access provision pursuant to 5 U.S.C. 552a(k)(2).

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator or his delegate at: 800 Independence Avenue, SW., Washington, DC 20591.

RECORD SOURCE CATEGORIES:

Information contained in this system comes from FAA records; Federal, State, or local agencies; foreign sources; public record sources; first party; and third parties.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from certain subsections of the Privacy Act. Investigatory material and records in this system compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2), are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H) and (I) (Notice Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a. National security information and records consisting of information properly classified, in accordance with 5 U.S.C. 552(b)(1), are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H) and (I) (Notice Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a. The purposes of these exemptions are to prevent the disclosure of material authorized to be kept secret in the interest of national defense or foreign policy, in accordance with 5 U.S.C. 552(b)(1) and 552a(k)(1), and to protect investigatory materials compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2). Disclosure of such material would hamper law enforcement by prematurely disclosing the knowledge of illegal activity and the evidentiary basis for possible enforcement actions.

Narrative Statement for the Department of Transportation, Federal Aviation Administration

Explanation of change: The Federal Aviation Administration (FAA) proposes to amend the existing system of records, DOT/FAA 813, Civil Aviation Security System, by expanding the categories of individuals and records to include data regarding K–9 handlers and information regarding Federal Air Marshals, and by expanding the equipment configuration by adding computer system hardware and software. "Storage" is amended to add ADP storage media.

Purpose of System: This system of records contains information regarding persons who have been or might have been involved in air piracy/sabotage threats, K–9 handlers, and Federal Air Marshals. The system is used for preparing alerts, bulletins, summaries, reports, and policy statements of incidents affecting civil aviation security.

Authority under which the system is maintained: FAA Act of 1958, as amended, Section 316.

Effect on individual rights: The information in this system of records is used only in accordance with the purpose for which it was collected and in accordance with the stated routine uses. Since we are limiting the intrusion into individual privacy to what is necessary to achieve the purposes stated and referenced herein, this amendment is not expected to have an unduly harmful effect on individual privacy or property rights.

Relationship to government agencies: This information will be distributed to appropriate government and aviation organizations for the limited purpose of responding to incidents affecting civil aviation security and/or airport/air carrier safety, and for Federal and state law enforcement purposes.

Security: Access to and use of these records are limited to those persons whose official duties require such access. This record management principle is reinforced by appropriate physical, technical, and administrative safeguards as prescribed by FAA security directives applicable to both manual and automated record systems.

Compatability of routine uses with the purposes for which the records were collected: The routine uses are compatible with the purposes for which the information was collected.

OMB Control Numbers: None.

[FR Doc. 92–18484 Filed 8–4–92; 8:45 am]

BILLING CODE 4910–62–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Italian Renaissance and Baroque Drawings from the Biblioteca Reale di Torino" (see list) [1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about September 27, 1992, to on or about January 3, 1993.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: July 30, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–18559 Filed 8–4–92; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of General Counsel of USIA. The telephone number is 202/619–5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 151
Wednesday, August 5, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 10, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18640 Filed 8-3-92; 10:39 am]

BILLING CODE 6210-01-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., August 31, 1992.

PLACE: On board MV *Mississippi* at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 92-18643 Filed 8-3-92; 8:45am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 1, 1992.

PLACE: On board MV *Mississippi* at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 92-18644 Filed 8-3-92; 10:53 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 3:30 p.m., September 2, 1992.

PLACE: On board MV *Mississippi* at City Front, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 92-18645 Filed 8-3-92; 10:53 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 4, 1992.

PLACE: On board MV *Mississippi* at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting;

(2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and

(3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 92-18646 Filed 8-3-92; 10:53 am]

BILLING CODE 3710-GX-M

Corrections

Federal Register
Vol. 57, No. 151
Wednesday, August 5, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ACTION

Information Collection; Final Notice

Correction

In notice document 92-16968 beginning on page 32512 in the issue of Wednesday, July 22, 1992, make the following corrections:

1. On page 32514, in the second column, in the fourth paragraph, in the seventh line, "not" should read "now".

2. On the same page, in the same column, in the fifth paragraph, in the ninth line, insert "only does it define specific elements which determine" following "Not".

3. On page 32515, in the first column, in the fifth line from the bottom, insert, "OMB No. 3001–0130" following "(TDD)."

4. On the same page, in the second column, in the eighth line, "programs" should read "program".

5. On page 32516, in the third column, following the second complete paragraph, "Building and Site Acessibility-General Information" should have appeared as a heading in boldface type.

6. On page 32517, in the first column, above the table, insert the heading "Yes No N/A"

7. On the same page, in the second column, above the last entry, delete the heading "Yes No N/A" the third time it appears.

8. On page 32519, in the first column, in the last line, "knew" should read "knee".

9. On the same page, in the second column, in the last paragraph, in the third line, "to" should read "or".

10. On the same page, in the same column, in the same paragraph, in the last line, insert "OMB No. 3001-0128".

BILLING CODE 1505-01-D

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federal register

Wednesday
August 5, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26886; Amendment No. 91-229]

RIN 2120-AE27

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is rescinding the Mode S transponder requirement for aircraft operating under part 91 of the Federal Aviation Regulations. The Mode S ground sensors, the bulwark of the Model S system, are not expected to be fully operational until late 1995. Therefore, requiring all aircraft to have Mode S transponders at this time is not essential for a safe and efficient National Airspace System. Until the installation of the Mode S ground sensors and studies of their effectiveness are completed, the FAA has determined that it is not in the public interest to require that any transponder newly installed in a general aviation aircraft after July 1, 1992, be a Mode S transponder.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron I. Boxer, Air Traffic Rules Branch, ATP-230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION: The two kinds of aircraft equipment addressed by this rulemaking are the Mode A and the Mode S transponders.

The Mode A transponder consists of a radio transceiver that responds to radar pulses from radar ground sensors. It forms one component of the radar system used in air traffic control. The Mode A transponder can be set to transmit one of 4,096 distinct radar codes in response to a radar pulse sent by a radar ground sensor. The ground sensor receives the distinct transmission and an amplified return indicates the aircraft's position on the controller's radar scope.

The Mode S transponder is an advanced version of the Mode A transponder. In addition to providing the reliability of solid state circuitry, Mode S transponders can transmit a discrete set of radio pulses (codes) from each aircraft. In conjunction with Mode S ground sensors, a system of nearly interference-free radar transmission and reception will exist. The Mode S transponder is completely interoperative and compatible with existing ground sensors. The Mode A transponder is similarly compatible with Mode S ground sensors.

History

In 1982 the FAA announced a comprehensive plan to modernize and improve air traffic control and airway facilities. One part of the comprehensive plan included introducing the Mode S system. In an advanced notice of proposed rulemaking (48 FR 48364, October 18, 1983), the FAA stated that improved surveillance reliability and accuracy would be a central objective of the Mode S system. Mode S transponders were considered an integral link in the system, furnishing accurate, reliable and positive air traffic control information on aircraft identity, position, and altitude. At that time, the first 137 Mode S ground sensors were expected to be on-line by 1991. Therefore, the Mode S transponder requirement was promulgated with a final rule published February 3, 1987 (Amendment No. 91-198; 52 FR 3380). This final rule required that any transponder newly installed in a general aviation aircraft before January 1, 1992, could be a Mode A or Mode S transponder, provided the transponder was manufactured prior to January 1, 1990. Under Amendment 91-198, only Mode S transponders could be newly installed in general aviation aircraft after January 1, 1992.

Due to difficulties in manufacturing Mode S transponders, the FAA amended the installation and manufacturing cutoff dates to July 1, 1992, and January 1, 1991, respectively (Amendment 91-210; 54 FR 25681, June 16, 1989). On January 4, 1991, the FAA removed the manufacturing cutoff date associated with the Mode S transponder requirement in response to inventory shortfalls reported by transponder manufacturers (Amendment 91-221; 56 FR 467). The testing and installation schedule of Mode S ground sensors was also experiencing delays.

Amendment 91-221, which was codified in § 91.215(a) of the Federal Aviation Regulations (14 CFR), provided, in pertinent part, that any transponder installed in a U.S.-registered civil general aviation aircraft up to and including July 1, 1992, must meet the performance and environmental requirements of any class of the following technical standard orders (TSOs): TSO-C74b (Mode A) or TSO-C74c (Mode A with altitude reporting capability), as appropriate, or the appropriate class of TSO-C112 (Mode S). Amendment 91-221 required any transponder newly installed in an aircraft after July 1, 1992, to meet the standards of the appropriate class of TSO-C112 (Mode S).

The Mode S System

The Mode S system is designed to alleviate deficiencies in the current radar system. The deficiencies include synchronous garble, loss of target and altitude integrity, and the availability of discrete beacon codes approaching the limitations of the existing technology. Of the two components in the Mode S system (i.e., the ground sensor and the transponder), the ground sensor is more critical in alleviating these deficiencies.

Synchronous garble occurs when the ground sensor interrogating two aircraft near one another cannot distinguish between their respective signals. The system then does not display information, or displays erroneous information, on the air traffic controller radar scope. This condition is most likely to hamper air traffic services in areas of high density aircraft activity such as Terminal Control Areas and Airport Radar Service Areas. The latest studies do not indicate to what degree this problem will be eliminated by Mode S ground sensors alone as compared to Mode S ground sensors combined with Mode S transponders. The FAA will analyze results from a study of the first operational Mode S ground sensor to determine, in a system environment, the improvements attributable solely to the new sensor in surveillance integrity and controller workload.

Target and altitude integrity expresses the ability of the radar system to distinguish between transmissions received from two different aircraft. The radar system transmits interrogation signals, and all transponder-equipped aircraft receiving the signal reply with a distinct code and, if so equipped, report the aircraft's altitude. As described earlier, the ability of the current system to distinguish between two signals is affected by the proximity of the aircraft to each other. Terrain, signal strength of the aircraft transponder equipment, and environmental factors can also derogate the ability of the ground sensor to determine the position and altitude of an aircraft. A 1977 FAA sponsored study determined that the existing radar ground sensors provided an overall target and altitude integrity of 82 to 87 percent. The same study indicated that, due to a narrower, more focused interrogation signal, use of Mode S

ground sensors with Mode A transponder equipment could improve integrity to 96 percent.

A homogeneous Mode S system, consisting of both Mode S ground sensors and transponders, will vastly improve accuracy in the surveillance of aircraft position and reduce interference in identity reports transmitted to air traffic controllers. The range accuracy of existing sensors is 729 feet between targets. In other words, when two aircraft are on the same bearing from an existing sensor and are less than 729 feet apart, one of the targets might not be displayed on the controller's radar scope. When the Mode S system is fully implemented, the targets of those aircraft can be expected to be displayed separately on the controller's radar scope even when those aircraft are only 25 feet apart.

Similarly, azimuth accuracy will improve with the Mode S system. To illustrate, when two aircraft are equal distances from a sensor in the existing system, they must be at least .23 degrees of azimuth apart before both targets are displayed. With the Mode S system, those same aircraft need only be apart by .06 degrees of azimuth to be displayed. The 1976 study postulated that a homogeneous Mode S environment (Mode S ground sensors and transponders) would increase integrity to more than 99 percent. Recent FAA tests of the Mode S ground sensors have verified these figures. The study to be performed following installation of the first ground sensor will confirm the degree of integrity and accuracy of Mode S ground sensors in an on-line system environment of Mode A and Mode S transponders.

As the number of aircraft being handled in the National Airspace System increases, the number of codes needed will eventually exceed the current limit of 4,096 discrete codes. The controllers assign radar codes, used to track aircraft position and altitude, to aircraft receiving air traffic services. The Mode S transponder is not limited to 4,096 possible codes. A Mode S transponder allows air traffic control to assign, transmit, and receive a radar code for each individual aircraft. Since commercial aircraft, requiring approximately 75 percent of the discrete codes assigned, are already installing Mode S transponders, the strain on the current transponder technology limits will be mitigated when the individually assigned radar code feature of Mode S is utilized for those aircraft.

The FAA has contracted to buy 137 Mode S ground sensors, which are crucial elements of the Mode S system. Because the sensors are not expected to be fully operational until late 1995 or early 1996, the more costly Mode S transponder equipment is not yet necessary for general aviation aircraft. As the Mode S ground sensors become operational and the vast majority of the commercial fleet becomes equipped with Mode S transponders, the need for general aviation aircraft to use Mode S transponders may be further diminished. Future testing, as Mode S ground sensors come on-line, will confirm the extent of this need.

The FAA has also received recommendations for further study of the Mode S transponder requirement. On January 22, 1991, the Aviation Rulemaking Advisory Committee (ARAC) was established (56 FR 2190). The ARAC consists of 59 aviation related organizations brought together to advise the FAA on various regulatory issues. The FAA asked the Air Traffic Subcommittee, an element of the ARAC, to examine the current Mode S requirements for aircraft operating under part 91. The Air Traffic Subcommittee recommended that the FAA: (1) Change the requirements of § 91.215 of the FAR to require installation of Mode S transponders on newly manufactured, type certificated aircraft after July 1, 1996; (2) exempt balloons, gliders, and other aircraft with electrical limitations from the rule; (3) conduct a study of the first Mode S ground sensor installed to determine the extent of benefits derived from the ground sensor alone; (4) publish a progress report within six months after the commissioning of the ground sensor, giving an expected completion date of the study; and (5) examine the costs and benefits of requiring Mode S transponder equipage in specific airspace areas needing such treatment.

The FAA agrees with the ARAC's suggestion that the requirement to install Mode S transponders in general aviation aircraft after July 1, 1992, exceeds the minimum requirements of the present and immediate future for a safe and efficient National Airspace System. While areas of high density aircraft activity might benefit from the improved target and altitude integrity of the Mode S system, many portions of airspace over the country might not require a homogeneous Mode S environment for several years. The recommended study, which the FAA is about to undertake, will show whether the problems that would be solved by a homogeneous Mode S environment are significant enough to warrant mandatory general aviation equipage for operation in all airspace.

Discussion of Comments

Notice 92-6, proposing to rescind the Mode S requirement, was published in the **Federal Register** on May 29, 1992 (57 FR 23038). The NPRM comment period expired June 29, 1992. A total of 15 comments were received. There are 13 comments in favor of the proposal, consisting of five individuals, Piper Aircraft Corporation, the Air Traffic Control Association, Gulfstream Aerospace Corporation, Allied-Signal Aerospace Company, Air Logistics, the National Business Aircraft Association, the General Aviation Manufacturers Association, and the Experimental Aircraft Association.

The Air Line Pilots Association (ALPA) and the Air Transport Association (ATA) submitted the only comments in opposition. ALPA suggest, "The Mode S transponder requirement for aircraft operating under part 91 of the FARS should be retained and a delayed implementation date established." ATA makes the same suggestion. The FAA has not established that the safe and efficient management of the nation's airspace requires equipage of Mode S transponders on general aviation aircraft. The specific needs and benefits of Mode S equipage on commercial aircraft operations include not only increased surveillance, but also interface with collision avoidance systems on board these aircraft. If there is a benefit to the system to be gained by requiring Mode S transponder equipage on general aviation aircraft, it will be realized in dense air traffic areas, where radar surveillance is imperative to safe operations. The FAA has committed to study the need for universal equipage in areas of high aircraft activity and may take additional regulatory action regarding Mode S transponder equipage requirements for general aviation aircraft in response to that study.

ATA asserts that the notice proposing to rescind the Mode S requirement did not adequately recognize the benefits of Mode S equipage prior to completion of the corresponding ground sensors. It also questions the FAA's calculation of the anticipated economic benefits of this rescission. The ATA comments that benefits could be gained as each ground site becomes operational. The FAA does not disagree with that generalization, but has determined that requiring all general aviation operators to install Mode S transponders is not warranted when, for the next several years, few will enter airspace within a ground sensor's coverage. The ATA also contends that the notice is "largely

silent" on the relationship between Mode S transponders and the Traffic Alert and Collision Avoidance Systems (TCAS) that air carriers have been required to install. As the ATA points out, Mode S transponders would improve the interaction with TCAS by reducing garble, interference, and the frequency of interrogation transmissions. Appreciable benefits would only be gained, however, in areas of relatively dense air traffic, such as in Terminal Control Areas (TCA's) and Airport Radar Service Areas (ARSA's). Mode C transponders are already required for all aircraft, including general aviation, operating within 30 miles of a TCA primary airport, and most general aviation aircraft have been equipping with Mode C transponders as a result. The degree to which safety would be further enhanced by a Mode S requirement for general aviation has not yet been established as sufficient, in this respect alone, to justify the requirement.

ATA questions the FAA's economic evaluation. It views the cost estimate for Mode A transponders as too low and Mode S as too high, but it provides no alternative figures that it deems accurate. The FAA obtained the cost data used for the economic evaluation from transponder manufacturers and industry representatives and has no reason to question their validity.

Two commenters agree with the proposal but assert that it does not go far enough. The commenters believe that the FAA should also rescind the Mode S transponder installation requirement for aircraft operating under Part 135 of the FAR. They state that the Mode S transponder requirement places an undue financial burden on businesses operating under Part 135. Although the FAA recognizes this financial burden, it did not propose to withdraw the Mode S requirement for part 135 operators because of the need for the enhanced Mode S integrity in connection with air carrier operations in relatively dense traffic areas. The FAA anticipates however, examining this issue further.

Another commenter recommends enhancing the TSO classifications in the rule with parenthetical descriptions. The FAA accepts this recommendation and has modified the text of the rule accordingly.

The Rule

Until the FAA completes the study to reevaluate the specific need and benefit of Mode S transponder equipage on general aviation aircraft, it is rescinding the Mode S transponder requirement for aircraft operating under part 91 of the Federal Aviation Regulations.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this final rule. This summary and the evaluation quantify, to the extent practicable, the estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this final rule is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule, has not been prepared. Instead, the Agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a regulatory flexibility determination required by the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) and an international trade impact assessment. For more detailed economic information than this summary contains, the reader should consult the regulatory evaluation contained in the docket.

Benefits

The rule will generate benefits in the form of cost relief to part 91 operators who would be required to install Mode S transponders in their aircraft after July 1, 1992. These benefits are estimated to range from $31 million to $63 million (discounted, 1991 dollars). The methodology used to derive this range of potential benefits is discussed below.

This evaluation employed two steps to derive the potential benefits of the rule. First, it was necessary to determine the number of general aviation aircraft operators who would be impacted and the extent they would be impacted. This information was obtained by contacting a number of industry representatives (i.e., transponder manufacturers, fixed based operators (FBOs), and trade associations). The General Aviation Manufacturers Association (GAMA) was contacted for information related to the number of transponders purchased annually by general aviation operators (namely, those operators with small, single-engine, piston aircraft). Based largely on information provided by GAMA, the FAA estimates that sales of transponders (such as ATCRBS) to general aviation operators averaged about 4,000 per year between 1983 and 1987.

From 1988 to 1991, transponder sales to general aviation aircraft operators averaged approximately 7,700 per year. Sales of these transponders peaked at approximately 8,900 units in 1989. For the purpose of this evaluation, sales of these transponders only up to 4,000 between 1988 and 1991 will be counted to exclude sales attributable solely to the requirement, effective July 1, 1989, to install altitude encoding transponders in aircraft operating within 30 miles of any TCA primary airport (Mode C rule). The number of transponders sold between 1983 and 1987 is considered to be more indicative of normal sales. Therefore, the estimate of slightly less than 4,000 has been used as a means of projecting the number of annual transponders sales between 1992 and 2006. This estimate represents the number of new transponders installed annually by general aviation aircraft operators.

Over the next 15 years, an estimated 58,000 transponders could be purchased primarily by small general aviation aircraft operators. However, not all of these transponders would be purchased by general aviation operators after July 1, 1992. The FAA contends that at least half of these general aviation operators would elect to have their existing transponders repaired for under $500 rather than pay five or six times this price for a newly installed Mode S transponder. The Mode S requirement only impacts general aviation operators planning to install any type of new transponder after July 1, 1992.

Because of the lack of precision associated with this assessment, the FAA estimates that 29,000 of 58,000 Mode S transponder purchases would be affected by the installation requirement over the next 15 years.

The low end of this range represents a scenario that assumes demand for Mode S transponders would drop by at least 50 percent after July 1, 1992. This assessment is based largely on

information received from GAMA and conversations with general aviation pilots, who were asked, "In view of the fact that Mode S ground sensor sites will not be in place before late 1995 or early 1996, coupled with the fact that the Mode S rule for general aviation operators takes effect on July 1, 1992, what would be the impact on the annual sales of transponders?" All respondents indicated that the demand for Mode S transponders would drop by 50 to 75 percent for those reasons stated earlier. The high end of this range represents a scenario that assumes demand for transponders would not change from the historical annual sales average of 4,000 units.

The next step in deriving an estimate of potential benefits involved contacting a number of Mode S transponder manufacturers and FBOs. These industry representatives were contacted for the purpose of obtaining cost estimates of acquiring and installing Mode S transponders (without data link capability). According to these industry representatives, the average price (including installation) of a panel mounted Mode S transponder (without data link capability) for a small general aviation aircraft is $3,500 compared to $1,300 to $1,800 for a Mode A or Mode C transponder (in 1991 dollars). The average difference between a Mode S and a Mode A or C transponder is estimated to be $2,000. The representatives also indicated that the cost for biennial maintenance for a Mode S transponder is estimated to be the same as that for a Mode A transponder (ATCRBS), about $60.

Since general aviation aircraft operators are expected to purchase an estimated 4,000 ATCRBS transponders (with and without Mode C capability) annually, over the next 15 years, at an estimated average price of $1,500, the incremental cost of compliance with the Mode S requirement would be $2,000 ($3,500 less $1,500). This evaluation assumes that general aviation aircraft operators would purchase these ATCRBS transponders in the absence of any Mode S requirement. Therefore, rescinding the Mode S requirement for part 91 operators would save them an estimated $2,000 each time they replace their existing ATCRBS transponder with a new one.

From July 1, 1992, to December 30, 2006, the rule is expected to generate potential cost relief benefits ranging from estimates of $58 million (29,000 × $2,000) to $116 million (58,000 × $2,000). Discounted over this 15-year period (using an interest rate of 10 percent), benefits could range from an estimated $31 million to $63 million.

Costs

The rule is not expected to impose any costs (monetary or safety) on either Mode S transponder manufacturers or society. This assessment is based on the rationale contained in the following sections.

Cost Impact on Mode S Transponder Manufacturers

The rule rescinds the Mode S rule requirements for part 91 operators only, and it does not impose any future requirements or costs on manufacturers of panel mounted Mode S transponders. However, some of these manufacturers have incurred costs for developing panel mounted Mode S transponders in response to the Mode S requirement. Such costs, which range from $2 million to $4 million (undiscounted), are sunk. Once an investment is made and cannot be altered, it is referred to as sunk costs. In rulemaking, the economic evaluation considers only future costs as opposed to sunk costs (or passed costs). Even though some manufacturers of panel mounted Mode S transponders cannot recover their development costs, the FAA has determined that the net benefit of the rule is in the interest of the public.

Cost Impact on Society

The rule will not impose societal costs in the form of an unacceptable decrease in aviation safety. An integral part of the Mode S requirement was the ground sensor. These sensors, when combined with aircraft equipped with Mode S transponders, better enable Air Traffic Control to track aircraft positions and provide more interference-free identity reports of targets. This situation would enhance aviation safety by reducing the likelihood of mid-air collisions as the result of having more accurate target information. Since the first phase of 137 ground sensors will not be operational until either late 1995 or early 1996, the full potential benefits of Mode S transponders will not be realized before then. Mode S transponders do, however, complement the TCAS in a manner similar to Mode A transponders. However, without the ground sensors in place, Mode S transponders provide no more benefits than advanced solid state Mode A transponders. Thus, the rule does not effect an unacceptable reduction in aviation safety. In fact, in some instances, the rule enhances aviation safety by allowing the equipage of Mode C transponders rather than the equipage of Mode S transponder with only a Mode A transponder (lacking altitude encoding) capability.

Once the radar ground sensors are in place, aviation safety is expected to be improved by approximately 10 percent over the current radar sensor system. This assessment is based on a 1977 FAA sponsored study which determined that the current radar ground sensors provide an overall target and altitude integrity of 82 to 87 percent. The study also indicated that with Mode S ground sensors and current aircraft transponder equipment (namely, either Mode A or Mode C transponders), integrity would improve to 96 percent. The study went on to postulate that with a homogeneous Mode S environment, consisting of Mode S ground sensors and transponders, integrity would exceed 99 percent. Thus, Mode S transponders would add another 3 percent of improvement to aviation safety.

The final rules for TCAS and Mode C transponders have already achieved much of the improvement in aviation safety expected from the Mode S transponder requirement in the form of lowering the likelihood of mid-air collisions between low and high performance aircraft. The need for part 91 operators to use Mode S transponders will be confirmed in a separate study when installation of the Mode S ground sensors begins.

Comparision of Costs and Benefits

Thus, in view of the estimated zero cost of compliance and the estimated cost relief benefits between $31 million and $63 million (discounted), the FAA has determined that the rule is cost-beneficial.

International Trade Impact Statement

The rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of United States products or services in foreign countries. This is because the rule neither imposes costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." As discussed in the costs section of this evaluation, the rule will not impose costs. Therefore, the rule will not have any significant economic

impact on a substantial number of small entities.

Federalism Implications

This final rule will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule rescinds an agency regulation and does not change any reporting requirements. Therefore, no Paperwork Reduction Act review or approval is required.

Conclusion

For the reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not "major" under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered "significant" under DOT Regulatory Policies and Procedures (44 FR 111034; February 26, 1979). A regulatory evaluation of the regulation, including a regulatory flexibility determination, and international trade impact analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

The public interest demands that this rule become effective immediately upon issuance. This rule relieves the restriction and financial burden of having to install Mode S transponders in general aviation aircraft after July 1, 1992. The FAA thus finds good cause pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days to avoid the disparate impact that would result from having a requirement come into effect only for the duration of the waiting period until its rescission can become effective.

List of Subjects in 14 CFR Part 91

Air traffic control, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration is amending part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.215 is amended by revising paragraph (a) to read as follows:

§ 91.215 ATC transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under part 121, 127 or 135 of this chapter, ATC transponder equipment installed must meet the performance and environmental requirements of any class of TSO–C74b (Mode A) or any class of TSO–C74c (Mode A with altitude reporting capability) as appropriate, or the appropriate class of TSO–C112 (Mode S).

* * * * *

Issued in Washington, DC, on July 30, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92–18516 Filed 7–31–92; 12:49 pm]

BILLING CODE 4910–13–M

federal register

Wednesday
August 5, 1992

Part III

Department of Education

34 CFR Parts 316, 318 and 319

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training, Parent Training and Information Centers, and Grants to State Educational Agencies and Institutions of Higher Education; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 316, 318, and 319

RIN 1820-AA25

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training, Parent Training and Information Centers, and Grants to State Educational Agencies and Institutions of Higher Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations for the Training Personnel for the Education of Individuals With Disabilities program authority as reauthorized in the Individuals With Disabilities Education Act Amendments of 1991 (1991 Amendments), Public Law 102-119. The regulations conform existing regulations to statutory provisions enacted in the 1991 Amendments; add additional priorities, including priorities pertaining to AMERICA 2000 (the President's strategy for moving the Nation toward the National Education Goals); and include modifications to certain existing regulations.

DATES: Comments must be received on or before September 4, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Max Mueller, DPP, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-2651. Telephone: (202) 732-1554. Deaf and hearing-impaired individuals may call (202) 732-1100 for TDD services.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Max Mueller, DPP, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-2651. Telephone: (202) 732-1554. Deaf and hearing-impaired individuals may call (202) 732-1100 for TDD services.

SUPPLEMENTARY INFORMATION: The major purposes of the proposed regulations are: (1) To incorporate requirements and new program authorities set forth in the 1991 Amendments to the Individuals With Disabilities Education Act (IDEA); (2) to add new priorities; and (3) to make a number of changes to modify the existing regulations and conform them to the 1991 Amendments. The proposed changes are as follows:

Training Personnel for the Education of Individuals With Disabilities—Parent Training and Information Centers—Section 631(d) of IDEA

The regulations have been reorganized to more closely follow the Department's standard format for regulations and the requirements in IDEA dealing with the description of the program, eligible recipients, application requirements, and activities required after an award. In addition, provisions for awards for experimental urban and rural centers and technical assistance to parent programs have been added. Both of these activities are included in IDEA but were previously not incorporated in the regulations. The proposed regulations would establish specific activities, selection criteria, and other requirements for these projects. (The authorization to the Secretary to provide technical assistance has been in the statute for several years; the experimental urban and rural program was added in 1990 by Public Law 101-476).

Experimental urban and rural centers:

• Eligibility for awards is not specified in IDEA. The proposed regulations would limit eligibility to parent organizations. Under the Act, parent organizations are the only eligible recipients of awards for nonexperimental parent centers, and the Secretary believes that the requirements related to parent organizations are appropriate for experimental centers. The broad range of expertise and interests present in parent organizations is needed to address the needs of parents served by experimental centers. (Proposed 34 CFR 316.2).

• Section 631(d)(9) of IDEA requires that experimental urban centers must serve large numbers of parents of children with disabilities located in high density areas, and experimental rural centers must serve large numbers of parents of children with disabilities located in rural areas. Proposed 34 CFR 316.10(b) merely restates this requirement.

• Guidance not specified in IDEA is provided for a number of activities:

—Nonexperimental parent centers under section 631(d)(1) of IDEA are required to assist parents in six specific areas. These areas are listed in section 631(d)(5) of IDEA and are reflected in proposed 34 CFR 316.10(a). The proposed regulations indicate that experimental centers may focus on particular aspects of parent training and information services, including but not limited to those activities required for nonexperimental centers. This is done in order to provide maximum flexibility to the experimental centers in addressing parent needs. Because the experimental centers may require planning and development activities beyond those of nonexperimental centers, the regulations also clarify that experimental centers may include a planning and development phase. (Proposed 34 CFR 316.10(b)).

—To emphasize the flexibility in the approaches that experimental urban centers may take in providing services, the proposed regulations indicate that these centers may concentrate on neighborhoods within a city or serve an entire city, focus on specific unserved groups, or concentrate on a specific area or ethnic group within a city. (Proposed 34 CFR 316.10(b)(1)).

—To focus on the unique problems of rural areas, experimental rural centers are required to serve a large, sparsely settled area and identify specific methods, including the use of technology and telecommunications, to reach parents in these areas. (Proposed 34 CFR 316.10(b)(2)).

• Section 631(d)(2)(C) of IDEA requires that, with regard to nonexperimental centers, parent organizations demonstrate the capacity and expertise to effectively conduct authorized training and information activities, and to network with clearinghouses and other organizations. The proposed regulations extend these requirements to experimental centers because they are equally relevant to and necessary for experimental centers. (Proposed 34 CFR 316.20(a)).

• Because of the great flexibility that experimental urban centers have in determining who they serve, the proposed regulations would require applicants for these awards to provide a rationale for their project, and demonstrate a capability to serve the parents they have identified and targeted for services. (Proposed 34 CFR 316.20(c)).

• Selection criteria for experimental centers are not specified in IDEA. The Secretary believes that the criteria for nonexperimental centers are appropriate for experimental centers as well, and proposes to use those criteria in making awards. (Proposed 34 CFR 316.22).

Technical assistance to parent programs:

• Eligibility for awards is not specified in IDEA. The proposed regulations would limit eligibility to parent organizations. Under the Act,

parent organizations are the only eligible recipients of awards for nonexperimental parent centers, and the Secretary believes that the requirements related to parent organizations are equally critical for the technical assistance provider. The parent organizations receiving technical assistance services would be reluctant to accept an "outside" entity in this role. (Proposed 34 CFR 316.2).

• Several requirements for technical assistance are included in the proposed regulations that are not specified in IDEA. The Act specifies only that the Secretary provide technical assistance for "establishing, developing, and coordinating parent training and information programs." These functions are reflected in proposed 34 CFR 316.10(c). The detailed activities set forth in the proposed regulations are based on the Department's extensive experience in determining activities that are important in carrying out these functions. The proposed regulations state that technical assistance activities must include, but are not limited to:

—Determining national needs and identifying unserved regions and populations. (Proposed 34 CFR 316.10(c)(1)). Because of the national scope of the technical assistance, it is necessary to identify national level needs. In order to identify areas for the establishment of parent programs, it is necessary to identify unserved regions and populations.

—Identifying the specific technical assistance needs of individual centers. (Proposed 34 CFR 316.10(c)(2)). The Secretary believes that to be responsive to the technical assistance needs of parent centers, the technical assistance provided under the program must be responsive to the individual needs of centers.

—Developing programs in unserved areas. (Proposed 34 CFR 316.10(c)(3)). Having identified unserved areas under proposed 34 CFR 316.10(c)(1), it is important to assist in establishing programs in these areas.

—Conducting annual meetings at the national and regional levels. (Proposed 34 CFR 316.10(c)(4)). The Secretary believes that annual meetings are necessary for the development of effective technical assistance tools and efficient dissemination of information.

—Identifying and coordinating national activities to serve parents of children with disabilities. This may include conferences, publications, and maintenance of documents and data relevant to parent programs. (Proposed 34 CFR 316.10(c)(5)). The Secretary believes that it is necessary for the technical assistance provider to identify national activities to serve parents of children with disabilities as part of the process of coordinating these activities, as required by IDEA. Means of identifying and coordinating activities are also mentioned.

—Dissemination of information through media, newsletters, computers, and written documentation. (Proposed 34 CFR 316.10(c)(6)). Dissemination is a major aspect of both developing optimal services and coordinating technical assistance activities. Several means of disseminating information are specified because of their importance in the dissemination process.

—Cooperative activities with other projects and organizations on common goals. (Proposed 34 CFR 316.10(c)(7)). The Secretary believes that cooperative activities should be considered a part of the coordination required by IDEA.

—Evaluation, including determination of the impact of technical assistance activities, and evaluation assistance to centers. (Proposed 34 CFR 316.10(c)(8)). Details are provided regarding the type of evaluation required to ensure that critical areas are addressed.

—Management assistance to centers. (Proposed 34 CFR 316.10(c)(9)). Management assistance is of particular importance in establishing and developing programs. Management assistance to centers is specified to clarify its inclusion in the scope of the technical assistance to be provided.

—Involvement of parent programs and the Department in identifying one or more substantive specialization areas. (Proposed 34 CFR 316.10(c)(10)). The Secretary believes that it is important that both the Department and recipients of technical assistance be involved in identifying specialization areas that address issues and problems that require special attention.

—Acting as a resource to parent training programs in identified specialization areas such as transition, supported employment, early childhood, integration, and technology. (Proposed 34 CFR 316.10(c)(11)). The proposed regulation requires that the technical assistance provider address the specific areas jointly identified by the Department and recipients of technical assistance under proposed 34 CFR 316.10(c)(10).

• Selection criteria for technical assistance projects are not specified in IDEA. The proposed criteria are based on those developed for other technical assistance activities managed by the Office of Special Education Programs. (Proposed 34 CFR 316.23).

Other changes include:

• The words "the Education of" are added to the title of the program to make it consistent with other personnel development programs funded under Part D of the Individuals with Disabilities Education Act.

• The wording for the description of the purpose of the program has been changed to reflect what the program is intended to do (i.e. train parents) as opposed to how it would do it (i.e. support grants). (Proposed 34 CFR 316.1)

• Under applicable regulations, references to EDGAR parts 80 and 86 are deleted because they deal with entities that are not eligible to receive funds under this program. (Proposed 34 CFR 316.4).

• The definition of "children with disabilities" has been deleted. The definition of "children with disabilities" as used in IDEA appears in section 602(a)(1) of the Act. (Proposed 34 CFR 316.5).

• A selection criteria related to how applicants address the needs of parents of minority children with disabilities has been added to help ensure that the needs of these often underserved groups are addressed. (Proposed 34 CFR 316.22(c)(5)). This specific criterion is related to the requirements in this area in proposed 34 CFR 316.20 (a) and (b).

• A selection criterion related to how well the applicants methods of evaluation provide data required for the annual report to Congress has been added to help ensure that data is provided to meet the reporting requirements in section 634 (a)(3) and (b) of IDEA. (Proposed 34 CFR 316.22(d)(3)).

• Additional reporting requirements have been added based on the IDEA amendments in 1991 (see section 631(d)(11)(G) of IDEA). (Proposed 34 CFR 316.32).

• Funding requirements for services to parents of children from birth through age 5 have been added, as required by section 631(d)(10) as amended by the IDEA amendments of 1991. While the amendments relate only to nonexperimental centers, the proposed regulations extend these requirements to experimental centers because of the importance of addressing the needs of children from birth through age 5. (Proposed 34 CFR 316.33).

Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training—Section 631(a)–(c) of IDEA

The regulations have been revised to provide for awards for professional development partnerships and technical assistance to recipients of awards for professional development partnerships. These awards are authorized by the IDEA amendments of 1991 (see section 631(c) of IDEA). The proposed regulations would establish specific activities, selection criteria, and other requirements for these projects. The regulations have also been reorganized to reduce duplication, clarify requirements, and correspond to standard Departmental formats for regulations.

Changes include:

• The program description has been changed to reflect what the program is intended to do (i.e. train personnel) as opposed to how it would do it (i.e. support certain types of training). (Proposed 34 CFR 318.1).

• Eligible applicants for professional development partnerships and technical assistance to recipients of awards for professional development partnerships are incorporated in the proposed regulation consistent with section 631(c)(1) and (3) of IDEA. (Proposed 34 CFR 318.2).

• Several priorities have been added or substantially modified. These priorities are summarized below.

—*Preparation of leadership personnel.* (Proposed 34 CFR 318.11(a)(4)). Training of researchers is no longer required to be at the doctoral or post-doctoral level. The new language parallels section 631(a)(1)(D) of IDEA.

—*Professional development partnerships.* (Proposed 34 CFR 318.11(a)(6)). A priority has been added for professional development partnerships, as authorized under the IDEA amendments of 1991. The language in the proposed priority parallels the language in section 631(d) of IDEA.

—*Technical assistance to professional development partnerships.* A priority has been added for technical assistance to professional development partnerships, as authorized under the IDEA amendments of 1991. Detail activities for technical assistance to professional development partnerships is not specified in IDEA. The proposed regulations state that activities must include, but are not limited to, the following:

—Identifying the specific technical assistance needs of individual projects. (Proposed 34 CFR 318.11(a)(7)(i)). The Secretary believes that identification of needs is a critical step in providing technical assistance.

—Conducting annual meetings at the national level. (Proposed 34 CFR 318.11(a)(7)(ii)). The Secretary believes that annual meetings at the national level are necessary for the development of effective technical assistance tools and the efficient dissemination of information.

—Identifying other projects under the Act related to professional development for the purpose of coordinating professional development projects. Coordination activities may include conferences, publications, and maintenance of documents and data relevant to the activities of the professional development projects. (Proposed 34 CFR 318.11(a)(7)(iii)). The technical assistance provider is required to coordinate with other professional development projects in order to avoid duplication of effort, access the latest information on best practices, and focus resources on areas of greatest need.

—Disseminating information through media, newsletters, computers, and written documentation. (Proposed 34 CFR 318.11(a)(7)(v)). Dissemination is a major aspect of both developing optimal services and coordinating technical assistance activities. Several means of disseminating information are specified because of their importance in the dissemination process.

—Cooperating with other projects and organizations on common goals. (Proposed 34 CFR 318.11(a)(7)(iv)). The Secretary believes that cooperative activities will enhance the effectiveness of the assistance provided.

—Evaluating center activities, including impact determination, and evaluation assistance to projects. (Proposed 34 CFR 318.11(a)(7)(vi)). Details are provided regarding the type of evaluation required to ensure that critical areas are addressed.

—*Training personnel to serve low incidence disabilities.* (Proposed 34 CFR 318.11(a)(10)). Serious emotional disturbance is deleted because it is not low incidence. Autism and traumatic brain injury are added because they are now specifically referenced in IDEA and are low incidence.

—*Minority institutions.* (Proposed 34 CFR 318.11(a)(16)). The priority has been changed to make it consistent with the areas covered by section 631(a)(7) of IDEA.

—*Preparing personnel to meet the National Education Goals.* (Proposed 34 CFR 318.11(a)(17)). This new priority is funded as an invitational priority in 1992. This area represents a major initiative of the Department, and provides a vehicle for assuring attention to this initiative in the Preparation of Personnel for Individuals with Disabilities program.

—*Interpreter training.* (Proposed 34 CFR 318.11(a)(18)). This new priority is funded as an invitational priority in 1992.

—A new section is added that allows the Secretary to target resources under any of the 19 priorities to children with particular disabilities and in particular States or geographic areas. This proposed provision is added to give the Secretary increased ability to target resources on areas of need. (Proposed 34 CFR 318.11(b))

• Applicants for special projects are no longer required to provide information on needs identified in comprehensive systems of personnel development, strategies for recruiting and training minorities, and certain special training techniques. (Proposed 34 CFR 318.20). The current regulations in § 318.20 (a), (b), and (d), 56 FR 57202 (November 7, 1991), require applicants for special projects to provide information in these areas. Under the proposed regulation only § 318.20(c) (demonstration of how the applicant will address the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds) continues to be applicable to special projects. Paragraphs (a), (b), and (d), are relevant to the delivery of personnel training, but are not appropriate requirements for applicants for special projects, that develop and demonstrate ways for training personnel.

• Selection criteria for technical assistance projects are not found in IDEA. The proposed criteria are based on those developed for other technical assistance activities managed by the Office of Special Education Programs. (Proposed 34 CFR 318.24).

• Eligibility for student financial assistance is extended to students who provide evidence from the U.S. Immigration and Naturalization Service that they are permanent residents of the U.S. or are in the U.S. for other than temporary purposes with the intention of becoming citizens or permanent residents. This extension is consistent with regulations implementing the student financial assistance provisions of the Higher Education Act. See 34 CFR 668.7(a)(4) and 20 U.S.C. 1091. In addition, eligibility has been extended

to permanent residents of the Commonwealth of the Northern Mariana Islands to the extent that they are not deemed to be United States citizens by virtue of section 301 of Pub. L. 94–241 (1976), and to permanent residents of Palau, who are not citizens or nationals of the United States. These additions have been made because both the Commonwealth of the Northern Mariana Islands and Palau are considered States under IDEA. (Proposed 34 CFR 318.32).

Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education—Section 632 of IDEA

The regulations have been reorganized to more closely follow the Department's standard format for regulations, including retitling section descriptions and reorganizing information dealing with eligible recipients, application requirements, and activities required after an award. In addition, provisions for awards for technical assistance to recipients of grants to State educational agencies and institutions of higher education have been added. This activity is specifically authorized under IDEA (added by the 1990 amendments), but was previously not incorporated in regulations. The proposed regulations would establish specific activities, selection criteria, and other requirements for these projects.

Technical assistance:

• Eligible applicants are not specified in IDEA. The Secretary has proposed that both profit and nonprofit organizations and agencies be eligible recipients in order to obtain the highest quality technical assistance. (Proposed 34 CFR 319.2(c)).

• IDEA authorizes the Secretary to provide technical assistance to State educational agencies in the implementation of the requirements of section 613(a)(3) of IDEA, which addresses comprehensive systems of personnel development (CSPD). However, IDEA does not provide detailed activities related to this technical assistance. Specific required activities have been added in the proposed regulations based on the Office of Special Education Programs' experience with other technical assistance projects. These activities have been adjusted for specific issues involving CSPDs. The proposed regulations state that activities must include, but are not limited to, the following:

—Monitoring personnel needs in the States. (Proposed 34 CFR 319.3(c)(1)(i)). The technical assistance provider must be familiar with personnel needs data in order to provide appropriate technical assistance.

—Analyzing strategies to determine needs for preparation of professionals so as to meet the needs of children with disabilities. (Proposed 34 CFR 319.3(c)(1)(ii)). The technical assistance provider needs to analyze strategies for determining professional development needs in each State in order to assist States in addressing those needs.

—Identifying, designing, adapting, testing, and disseminating new professional preparation strategies. (Proposed 34 CFR 319.3(c)(1)(iii)). The Secretary believes that, in order to be most effective, the technical assistance provider needs to engage in developing professional development strategies that will meet the needs of the States.

—Providing technical assistance in the personnel development, recruitment, and retention areas. (Proposed 34 CFR 319.3(c)(1)(iv)). The Department has identified personnel development, recruitment, and retention as primary areas where the States require technical assistance.

—Determining national needs and identifying unserved regions and populations. (Proposed 34 CFR 319.3(c)(2)(i)). The Secretary believes that an overview of national needs is necessary for the technical assistance provider to direct efforts to the most critical areas.

—Identifying the specific technical assistance needs of individual States related to professional preparation. (Proposed 34 CFR 319.3(c)(2)(ii)). The technical assistance provider must be able to tailor its activities to the varying needs for assistance among the States.

—Conducting annual meetings at national and regional levels. (Proposed 34 CFR 319.3(c)(2)(iii)). The Secretary believes that annual meetings at the national and regional levels are necessary for the development of effective technical assistance tools and the efficient dissemination of information.

—Dissemination of information through media, newsletters, computers, and written documentation. (Proposed 34 CFR 319.3(c)(2)(iv)). Dissemination is a major aspect of both developing optimal services and coordinating technical assistance activities. Several means of disseminating information are specified because of their importance in the dissemination process.

—Cooperative activities among personnel development projects and organizations on common goals. (Proposed 34 CFR 319.3(c)(2)(v)). The technical assistance provider is required to cooperate with other personnel development projects and organizations in order to avoid duplication of effort, access the latest information on best practices, and focus resources on areas of greatest need.

—Evaluation, including impact determination, and evaluation assistance to other personnel development projects. (Proposed 34 CFR 319.3(c)(2)(vi)). Details are provided regarding the type of evaluation required to ensure that critical areas are addressed.

• Selection criteria for technical assistance projects are not specified in IDEA. The proposed criteria are based on those developed for other technical assistance activities managed by the Office of Special Education Programs. (Proposed 34 CFR 319.24).

Other changes include:

• The wording for the description of the program has been changed to reflect more closely the purpose stated in section 632 of IDEA, rather than the types of projects that are funded. (Proposed 34 CFR 319.1).

• A competitive grant focus on "particularly high priority issues with potential for broad generalizability" has been added. This requirement is added to increase the potential impact of these awards. (Proposed 34 CFR 319.3).

• The formula for distributing funds for basic State grants has been revised to raise the minimum allocation and give the Secretary some flexibility in determining the exact amount of the minimum allocation. Section 632(a) of IDEA requires the Secretary to make grants of sufficient size and scope to address needs. The proposed regulations increase the Secretary's discretion to determine what constitutes sufficient size and scope based on changes in circumstances. The proposed regulations also provide for increases for all States above the minimum funding level. The current regulations distribute funds first based on the number of children served in each State. States below the minimum funding level are then raised to that level. Under this formula, many States receive only minimum allocations and are not affected by changes in overall funding for the basic State grants. The proposed regulations would first provide a minimum amount to each State and then distribute additional funds based on the number of children served in each State.

Under this method, funding for each State would rise or fall with the total funding for the program. (Proposed 34 CFR 319.21).

• Eligibility for student financial assistance is extended to students who provide evidence from the U.S. Immigration and Naturalization Service that they are permanent residents of the U.S. or are in the U.S. for other than temporary purposes with the intention of becoming citizens or permanent residents. This extension is consistent with regulations implementing the student financial assistance provisions of the Higher Education Act. See 34 CFR 668.7(a)(4) and 20 U.S.C. 1091. In addition, eligibility has been extended to permanent residents of the Commonwealth of the Northern Mariana Islands to the extent that they are not deemed to be United States citizens by virtue of section 301 of Public Law 94–241 (1976), and to permanent residents of Palau, who are not citizens or nationals of the United States. These additions have been made because both the Commonwealth of the Northern Mariana Islands and Palau are considered States under IDEA. (Proposed 34 CFR 319.31).

These programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, these programs support AMERICA 2000's call for creating better and more accountable schools. They also seek to provide assistance to help students with disabilities reach the high levels of academic achievement called for in AMERICA 2000.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are small nonprofit agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on these organizations because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 316.20, 316.22, 316.21, 316.31, 316.32, 318.20, 318.22, 318.23, 318.24, 318.34, 319.10, 319.23, 319.24, and 319.33 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect States, private nonprofit entities, and institutions of higher education that are eligible to receive awards under this program. The Department needs and uses the information to evaluate the applications and select the entities that will receive awards.

Annual public reporting and recordkeeping burden for this collection of information is expected to average 40 hours per response for 1,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3072, Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly invites comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 316

Act, Children with disabilities, Parents, Parent organizations, Reporting and recordkeeping requirements.

34 CFR Part 318

Education, Education of individuals with disabilities, Education—training, Grant programs—education, Student aid, Teachers, Reporting and recordkeeping requirements. 34 CFR Part 319

Education, Education of individuals with disabilities, Education—training, Grant programs—education, Student aid, Teachers.

Dated: April 10, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.029—Training Personnel for the Education of Individuals with Disabilities)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising parts 316, 318, and 319 to read as follows:

PART 316—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—PARENT TRAINING AND INFORMATION CENTERS

Subpart A—General

Sec.

316.1 What is the Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers program?
316.2 Who is eligible for an award?
316.3 What kinds of projects may the Secretary fund?
316.4 What regulations apply to this program?
316.5 What definitions apply to this program?

Subpart B—What Activities Does the Secretary Assist Under This Program?

316.10 What activities may the Secretary fund?

Subpart C—How Does the Secretary Make an Award?

316.20 What are the requirements for applicants?
316.21 How does the Secretary evaluate an application?
316.22 What selection criteria does the Secretary use to evaluate applications for parent centers and experimental centers?
316.23 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?
316.24 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a Grantee Meet?

316.30 What types of services are required?
316.31 What are the duties of the board of directors or special governing committee of a parent organization?
316.32 What are the reporting requirements under this program?
316.33 What other conditions must be met by grantees under this program?

Authority: 20 U.S.C. 1431(d) and 1434, unless otherwise noted.

Subpart A—General

§ 316.1 What is the Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers Program?

(a) This program provides training and information to parents of children (infants, toddlers, children, and youth) with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

(b) Parent training and information programs may, at a grantee's discretion, include participation of State or local educational agency personnel if that participation will further an objective of the program assisted by the grant.

(Authority: 20 U.S.C. 1431(d))

§ 316.2 Who is eligible for an award?

Only parent organizations are eligible to receive awards under this program.

(Authority: 20 U.S.C. 1431(d))

§ 316.3 What kinds of projects may the Secretary fund?

The Secretary funds three kinds of projects under this program:

(a) Parent training and information centers.

(b) Experimental urban and rural parent training and information centers.

(c) Technical assistance for establishing, developing, and coordinating parent training and information programs.

(Authority: 20 U.S.C. 1431(d))

§ 316.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of Title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions That Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 81 (General Education Provisions Act—Enforcement).

(6) Part 82 (New Restrictions on Lobbying).

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this Part 316.

(Authority: 20 U.S.C. 1431(d); 20 U.S.C 3474(a))

§ 316.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Local educational agency
Nonprofit
Private
Project
Secretary
State
State educational agency

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300:

Individualized education program
Parent
Related services
Special education

(c) *Other definitions specific to 34 CFR part 316.* The following terms used in this part are defined as follows:

Act means the Individuals with Disabilities Education Act (IDEA).

Parent organization means a private nonprofit organization that is governed by a board of directors of which a majority of the members are parents of children with disabilities—particularly minority parents—that includes members who are professionals—especially minority professionals—in the fields of special education, early intervention, and related services, and individuals with disabilities. If the private nonprofit organization does not have such a board, the organization must have a membership that represents the interests of individuals with disabilities, and must establish a special governing committee of which a majority of the members are parents of children with disabilities—particularly parents of minority children—and that includes members who are professionals—especially minority professionals—in the fields of special education, early intervention, and related services. Parent and professional membership of these boards or special governing committees must be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services.

(Authority: 20 U.S.C. 1431(d))

Subpart B—What Activities Does the Secretary Assist Under This Program?

§ 316.10 What activities may the Secretary fund?

(a) Parent training and information centers assisted under § 316.3(a) must assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decisionmaking processes, including the development of the individualized education program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities, and their families; and

(6) Understand the provisions for educating children with disabilities under the Act.

(b) Experimental urban centers under § 316.3(b) must serve large numbers of parents of children with disabilities located in high density areas, and experimental rural centers under § 316.3(b) must serve large numbers of parents of children with disabilities, located in rural areas. The centers may

focus on particular aspects of parent training and information services, including but not limited to those activities required under § 316.10(a). Experimental projects may include a planning and development phase.

(1) Experimental urban centers may concentrate on neighborhoods within a city or focus on specific unserved groups. They may serve an entire city or concentrate on a specific area or ethnic group within a city.

(2) Experimental rural centers must serve a large, sparsely settled area. Projects must identify specific methods, including use of technology and telecommunications, to reach these parents.

(c) The technical assistance to parent programs under § 316.3(c) includes technical assistance for establishing, developing, and coordinating parent training and information programs. Activities must include, but are not limited to the following:

(1) Determining national needs and identifying unserved regions and populations.

(2) Identifying the specific technical assistance needs of individual centers.

(3) Developing programs in unserved areas.

(4) Conducting annual meetings at national and regional levels.

(5) Identifying and coordinating national activities to serve parents of children with disabilities. This may include conferences, publications, and maintenance of documents and data relevant to parent programs.

(6) Dissemination of information through media, newsletters, computers, and written documentation.

(7) Cooperative activities with other projects and organizations on common goals.

(8) Evaluation, including determination of the impact of technical assistance activities, and evaluation assistance to centers.

(9) Management assistance to centers.

(10) Involvement of parent programs and the Department in identifying one or more substantive specialization areas.

(11) Acting as a resource to parent training programs in identified specialization areas such as transition, supported employment, early childhood, integration, and technology.

(Authority: 20 U.S.C. 1431(d))

Subpart C—How Does the Secretary Make an Award?

§ 316.20 What are the requirements for applicants?

(a) Applicants for awards for parent centers and experimental centers under § 316.3 (a) and (b) must demonstrate the capacity and expertise to conduct the authorized training and information activities effectively, and to network with clearinghouses, including those authorized under section 633 of the Act, other organizations and agencies, and other established national, State, and local parent groups representing the full range of parents of children with disabilities—especially parents of minority children.

(b) In order to assure that awards for parent centers under § 316.3(a) serve parents of minority children with disabilities (including parents served pursuant to § 316.33) "representative to the proportion of the minority population in the areas being served", applicants for awards must identify with specificity the special efforts that will be undertaken to involve those parents, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available. Applicants must also specify budgetary items earmarked to accomplish these efforts.

(c) Applicants for awards for experimental urban centers must provide a rationale for their project and demonstrate a capability to serve the parents they have identified and targeted for services.

(Authority: 20 U.S.C. 1431(d))

§ 316.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 316.22 and 316.23.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431(d))

§ 316.22 What selection criteria does the Secretary use to evaluate applications for parent centers and experimental centers?

The Secretary uses the following criteria to evaluate applications for parent centers and experimental centers:

(a) *Extent of present and projected need.* (15 points) The Secretary reviews each application to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(1) The present and projected needs in the applicant's geographic area for trained parents;

(2) The present and projected training and information needs for personnel to work with parents of children with disabilities; and

(3) Parents of minority infants, toddlers, children, and youth with disabilities.

(b) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decisionmaking processes, including the development of the individualized educational program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(6) Understand the provisions for educating children with disabilities under the Act.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective management plan that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) How the applicant addresses the needs of parents of minority infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.); and

(3) Provide the data required for the annual report to Congress.

(See 20 U.S.C. 1434 (a)(3) and (b))

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used on the project;

(3) The time each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the applicant's past experience in the fields relating to the objectives of the project.

(f) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431(d))

§ 316.23 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities:

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to assist parents of infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by this program;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information; and

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the key personnel's past experience and training in fields related to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431(d))

§ 316.24 What additional factors does the Secretary consider?

In addition to the criteria in § 316.22, the Secretary considers the following factors in making an award:

(a) *Geographic distribution.* In selecting projects for awards for parent centers under § 316.3(a), the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children with disabilities in both urban and rural areas.

(b) *Unserved areas.* In selecting projects for parent centers under § 316.3(a) and experimental centers under § 316.3(b), the Secretary gives priority to applications that propose to serve unserved areas.

(Authority: 20 U.S.C. 1431(d))

Subpart D—What Conditions Must a Grantee Meet?

§ 316.30 What types of services are required?

(a) Parent centers and experimental centers must be designed to meet the unique training and information needs of parents of children with disabilities who live in the areas to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) Parent centers and experimental centers must consult and network with appropriate national, State, regional, and local agencies and organizations that serve or assist children with disabilities and their families in the geographic areas served by the project.

(Authority: 20 U.S.C. 1431(d))

§ 316.31 What are the duties of the board of directors or special governing committee of a parent organization?

A recipient's board of directors or special governing committee as described in § 316.5 must meet at least once in each calendar quarter to review the parent training and information activities under the award. Whenever a private nonprofit organization requests a renewal of a award under this part,

the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(Authority: 20 U.S.C. 1431(d))

§ 318.32 What are the reporting requirements under this program?

(a) Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of these procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Reserve Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under Parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(b) The recipient shall provide data for every year of the project on—

(1) The number of parents provided information and training by disability category of their children;

(2) The types and modes of information or training provided;

(3) Strategies used to reach and serve parents of minority children with disabilities;

(4) The number of parents served as a result of activities described under paragraph (b)(3) of this section;

(5) Activities to network with other information clearinghouses and parent groups as required by § 316.20(a);

(6) The number of agencies and organizations consulted with at the national, State, regional, and local levels; and

(7) The number of parents served who are parents of children with disabilities birth through age five.

(Authority: 20 U.S.C. 1409(g); 20 U.S.C. 1434(a)(3))

§ 318.33 What other conditions must be met by grantees under this program?

(a) In the case of a grant for parent centers under § 318.3(a) and experimental centers under § 316.3(b) to a private nonprofit organization for fiscal year 1993 or 1994, the organization, in expending the amounts described in paragraph (b) of this section, shall give priority to providing services to parents of children with disabilities birth through age five.

(b) With respect to a grant for a parent center or an experimental center to a private nonprofit organization for fiscal year 1993 or 1994, the amounts referred to in paragraph (a) of this section are any amounts provided in the grant in excess of the amount of any grant under this program provided to the organization for fiscal year 1992.

(c) Recipients of awards for parent centers and experimental centers must serve parents of children representing the full range of disabling conditions.

(Authority: 20 U.S.C. 1431(d))

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING

Subpart A—General

Sec.

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Authority: 20 U.S.C. 1431(a)-(c) and 1434, unless otherwise noted.

Subpart A—General

§ 318.1 What is the purpose of the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program?

This program serves to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

(Authority: 20 U.S.C. 1431(a)-(c))

§ 318.2 Who is eligible for an award?

The following are eligible for assistance under this part:

(a) Institutions of higher education and appropriate nonprofit agencies are eligible under § 318.10(a)(1) and (2).

(b) Institutions of higher education, State agencies, and other appropriate nonprofit agencies are eligible under § 318.10(a)(3).

(c) States or other entities are eligible under § 318.10(a)(4) and (5). An entity may not receive financial assistance for a professional development partnership project and a technical assistance project during the same period.

(Authority: 20 U.S.C. 1431(a)-(c))

§ 318.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of Title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions that Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 318.

(Authority: 20 U.S.C. 1431(a)–(c); 20 U.S.C. 3474(a))

§ 318.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR part 300.* The following terms used in this part are defined in 34 CFR part 300:

Deafness
Deaf-blindness
Other health impairments
Related services
Special education

(c) *Definitions specific to 34 CFR part 318.* The following terms used in this part are defined as follows:

Act means the Individuals with Disabilities Education Act (IDEA).

Infants and toddlers with disabilities. (1) The term means individuals from birth through age two who need early intervention services because they—

(i) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: cognitive development, physical development, including vision and hearing, language and speech development, psychosocial development, or self-help skills; or

(ii) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) The term also includes children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1401; 20 U.S.C. 1431(a)–(c); 20 U.S.C. 1472)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 318.10 What activities may the Secretary fund?

(a) The Secretary supports training programs in the following five areas:

(1) Preservice training of personnel for careers in special education, related services, and early intervention, including careers in—

(i) Special education teaching, including speech-language pathology, audiology, adapted physical education, and instructional and assistive technology;

(ii) Related services for children with disabilities in educational and other settings; and

(iii) Early intervention and preschool services.

(2) Leadership training, including—(i) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(ii) Research at the doctoral and post-doctoral levels; and

(iii) Personnel preparation at the doctoral and post-doctoral levels.

(3) Special projects designed to include—(i) Development, evaluation, and distribution of innovative approaches, curricula, and materials for personnel development; and

(ii) Other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(4) The formation of professional development programs consisting of consortia or partnerships of public and private entities.

(5) Technical assistance to the entities in paragraph (a)(4) of this section.

(b) Projects for preservice training, leadership training, and professional development programs must—

(1) Develop new programs to establish expanded capacity for quality preservice training; or

(2) Improve existing programs designed to increase the capacity and quality of preservice training.

(c) Projects supported under this program may provide training for degree, nondegree, certified, and noncertified personnel at associate degree through post-doctoral levels of preparation.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.11 What priorities may the Secretary establish?

(a) The Secretary may select annually one or more of the following priority areas for funding:

(1) *Preparation of personnel for careers in special education.* This priority supports preservice preparation of personnel for careers in special education. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. Under this priority, "personnel" includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists.

(2) *Preparation of related services personnel.* This priority supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists, occupational therapists, school psychologists, counselors (including rehabilitation counselors), interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel.

(i) Projects to train personnel identified as special education personnel in the regulations in this part are not appropriate, even if those personnel may be considered related services personnel in other settings.

(ii) This priority is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy (OT) might support a special component on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings.

(3) *Training early intervention and preschool personnel.* This priority supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth through five, and must include consideration of family involvement in early intervention and preschool services. Training programs under this priority must have a significant interdisciplinary focus.

(4) *Preparation of leadership personnel.* This priority supports projects that are designed to provide preservice professional preparation of leadership personnel in special

education, related services, and early intervention. Leadership training is considered to be preparation in—

(i) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(ii) Research; and

(iii) Personnel preparation at the doctoral and postdoctoral levels.

(5) *Special projects.* This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(i) Appropriate areas of interest include—

(A) Preservice training programs to prepare regular educators to work with children and youth with disabilities and their families;

(B) Training teachers to work in community and school settings with children and youth with disabilities and their families;

(C) Inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families;

(D) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(E) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(F) Recruitment and retention of special education, related services, and early intervention personnel.

(ii) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators.

(6) *Professional development partnerships.* This priority, listed in § 318.10(a)(4), supports the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement or competency-based training, including but not limited to certificate- or degree-granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. Activities authorized under this priority include, but are not limited to, the following:

(i) Establishing a program with colleges and universities to develop creative new programs and coursework options or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

(ii) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and voluntary sector workers who have demonstrated a commitment to working in these fields and who are enrolled in higher education institution programs relating to these fields.

(iii) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in these fields.

(iv) Identifying existing public agency, private agency, and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time and tuition reimbursement.

(7) *Technical assistance to professional development partnerships.* This priority, listed in § 318.10(a)(5), supports technical assistance to States or entities receiving awards under professional development partnership projects. Activities must include, but are not limited to, the following:

(i) Identifying the specific technical assistance needs of individual projects.

(ii) Conducting annual meetings at the national level.

(iii) Identifying other projects under the Act related to professional development for the purpose of coordinating professional development projects. Coordination activities may include conferences, publications, and maintenance of documents and data relevant to the activities of the professional development projects.

(iv) Cooperating with other projects and organizations on common goals.

(v) Disseminating information through media, newsletters, computers, and written documentation.

(vi) Evaluating center activities, including impact determination, and evaluation assistance to centers.

(8) *Utilizing innovative recruitment and retention strategies.* This priority supports projects to develop emerging and creative sources of supply of personnel with degrees and certification in appropriate disciplines, and innovative strategies related to recruitment and retention of personnel.

(9) *Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities.* This priority supports projects designed specifically to train personnel who are working with less than full certification or outside their field of specialization, to assist them in becoming fully qualified. The following are appropriate under this priority: student incentives; extension, summer, and evening programs; internships; alternative certification plans; and other innovative practices.

(10) *Training personnel to serve low incidence disabilities.* This priority supports projects to train teachers of children with visual impairments including blindness, hearing impairments including deafness, orthopedic impairments, other health impairments, autism, traumatic brain injury, and severe and multiple disabilities.

(11) *Training personnel to work in rural areas.* This priority supports projects to train personnel to serve infants, toddlers, children, and youth with disabilities in rural areas. Projects, including curricula, procedures, practica, and innovative use of technology, must be designed to provide training to assist personnel to work with parents, teachers, and administrators in these special environments. Special strategies must be designed to recruit personnel from rural areas who will most likely return to those areas.

(12) *Training personnel to provide transition assistance from school to adult roles.* This priority supports projects for preparation of personnel who assist youth with disabilities in their transition from school to adult roles. Personnel may be prepared to provide short-term transition services, long-term structured employment services, or instruction in community and school settings with secondary school students. It is especially important that preparation of transition personnel include training in instructional and assistive technology.

(13) *Preparation of paraprofessionals.* This priority supports projects for the preparation of paraprofessionals. This includes programs to train teacher aids, job coaches, interpreters, therapy assistants, and other personnel who provide support to professional staff in delivery of services to infants, toddlers, children, and youth with disabilities.

(14) *Improving services for minorities.* This priority supports projects to prepare personnel to serve infants,

toddlers, children, and youth with disabilities who, because of their minority status, require that personnel obtain professional competencies in addition to those needed to teach other children with similar disabilities. Projects funded under this priority must focus on specific minority populations, determine the additional competencies that are needed by professionals serving those populations, and develop those competencies.

(15) *Training minorities and individuals with disabilities.* This priority supports projects to recruit and prepare minority individuals and individuals with disabilities for careers in special education, related services, and early intervention.

(16) *Minority institutions.* This priority supports awards to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Awards may provide training of personnel in all areas noted in § 318.10(a)(1) and (2), and must be designed to increase the capabilities of the institution in appropriate training areas.

(17) *Preparing personnel to meet the National Education Goals.* This priority supports projects that develop or expand innovative preservice and inservice training programs that are designed to provide personnel serving children with disabilities with skills that are needed to help schools meet the National Education Goals. These programs must promote the following:

(i) Increased collaboration among providers of special education, regular education, bilingual education, migrant education, and vocational education, and among public and private agencies and institutions.

(ii) Improved coordination of services among health and social services agencies and within communities regarding services for children with disabilities and their families.

(iii) Increased systematic parental involvement in the education of their children with disabilities.

(iv) Inclusion of children with disabilities in all aspects of education and society.

(v) Training that is designed to enable special education teachers to teach, as appropriate, to world class standards (such as those developed by the National Council on Teachers of Mathematics) as those standards are developed.

(18) *Interpreter training.* This priority supports projects to train educational interpreters. Support is limited to projects that demonstrate recruitment strategies, specifically adapted curricula, and incentives designed to increase the probability that program graduates will function productively as interpreters in instructional settings. These projects must be concentrated on student support, rather than on basic institutional support.

(19) *Attention deficit disorders.* This priority supports projects to devise new inservice and preservice training strategies for special education and regular classroom teachers and administrators that would address the needs of children with attention deficit disorders (ADD). The purpose is not to develop distinct categorical programs for training personnel to teach children with ADD, but rather to enhance the skills of general and special education teachers and administrators to better serve this population of students. These strategies must be infused into personnel preparation programs of national organizations serving regular and special education personnel.

(b) Under paragraph (a) of this section, the Secretary may identify an amount of funds to be set aside for projects to address the needs of children with particular disabilities and in particular States or geographic areas.

(Authority: 20 U.S.C. 1431(a)–(c))

Subpart C—How Does the Secretary Make an Award?

§ 318.20 What are the requirements for applicants?

(a) An applicant under § 318.11(a) (1) or (2) shall demonstrate that the proposed project is consistent with the needs for personnel, including personnel to provide special education services to children with limited English proficiency, identified by the comprehensive systems of personnel development of the State or States typically employing program graduates.

(b) A project under § 318.10(a) (1) or (2) must include—

(1) Training techniques and procedures designed to foster collaboration among special education teachers, regular teachers, administrators, related service personnel, early intervention personnel, and parents;

(2) Training techniques, procedures, and practica designed to demonstrate the delivery of services in an array of regular, special education, and community settings; and

(3) Interdisciplinary preparation of trainees.

(c) An applicant shall demonstrate how it will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

(d) An applicant under § 318.10(a) (1) or (2) shall present a detailed description of strategies for recruitment and training of members of minority groups and persons with disabilities.

(e) For technical assistance to professional development partnership projects under § 318.10(a)(5), an applicant must demonstrate capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancements.

(f) An applicant under § 318.10(a) (1) or (2) shall demonstrate that it meets State and professionally recognized standards for the training of personnel, as evidenced by appropriate State and professional accreditation, unless the award is for the purpose of assisting the applicant to meet those standards.

(Authority: 20 U.S.C. 1410; 20 U.S.C. 1431(a)–(c))

§ 318.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 318.22, 318.23, and 318.24.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.22 What selection criteria does the Secretary use to evaluate applications for preservice training, leadership training, and professional development programs?

The Secretary uses the following criteria to evaluate all applications for preservice training under § 318.10(a)(1), leadership training under § 318.10(a)(2), and professional development projects under § 318.10(a)(4).

(a) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(1) The significance of the personnel needs to be addressed to the provision of special education, related services, and early intervention. Significance of need identified by the applicant may be shown by—

(i) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted specialty or geographic areas, as demonstrated by data from the State comprehensive systems of personnel development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(ii) Evidence showing significant need for improvement in the quality of personnel providing special education, related services, and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(2) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(i) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(ii) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(iii) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(b) *Capacity of the applicant.* (25 points) The Secretary reviews each application to determine the capacity of the applicant to train qualified personnel, including consideration of—

(1) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(2) The amount of time each key person plans to commit to the project;

(3) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability;

(4) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(5) The quality of the practicum training settings, including evidence that they are sufficiently available; apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(6) The capacity of the applicant to recruit well-qualified students;

(7) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(8) The extent to which the applicant cooperates with the State educational agency, the State-designated lead agency under Part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(c) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(6) The extent to which substantive content and organization of the program—

(i) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(7) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and

(3) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant presents appropriate plans for the institutionalization of federally supported activities into basic program operations.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.23 What selection criteria does the Secretary use to evaluate applications for special projects?

The Secretary uses the following criteria to evaluate special projects under § 318.10(a)(3):

(a) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related services, or early intervention services personnel development.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for replication and effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the project—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants,

toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Evidence of the key personnel's past experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431(a)-(c))

§ 318.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities under § 318.10(a)(5):

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential for effectiveness, and the quality of its plan for dissemination of the results of the project; and

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by this program;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information;

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations; and

(6) Capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancements.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project; and

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 318.25 What additional factors does the Secretary consider?

To the extent feasible, the Secretary ensures that projects for professional development partnerships under

§ 318.10(a)(4) are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1431(a)–(c))

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 What are the priorities for award of student fellowships and traineeships?

A grantee shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

(Authority: 20 U.S.C. 1431(a)–(c))

§ 311.31 Is student financial assistance authorized?

The sum of the assistance provided to a student under this part and any other assistance provided the student may not exceed the student's cost of attendance as follows:

(a) "Cost of attendance" is defined as—

(1) Tuition and fees normally assessed a student carrying the same academic workload (as determined by the institution) including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) An allowance (as determined by the institution) for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis;

(3) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(i) Is not less than $1,500 for students without dependents residing at home with parents;

(ii) Is the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(iii) Is based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(4) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (a)(7) of this section);

(5) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(7) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction may be made with respect to the mode of instruction in determining costs, but this paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087*ll*)

§ 318.32 What are the student financial assistance criteria?

Direct financial assistance may only be paid to a student in a preservice program, and only if the student—

(a) Is qualified for admission to the program of study;

(b) Maintains satisfactory progress in a course of study as defined in 34 CFR 668.7; and

(c)(1) Is a citizen or national of the United States;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Has a permanent or lasting, as distinguished from temporary, principal, actual dwelling place in fact, without regard to intent, in Palau or the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1091)

§ 318.33 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other eligible students during the grant period.

(Authority: 20 U.S.C. 1087*ll*)

§ 318.34 What are the reporting requirements under this program?

Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under Parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.

319.1 What is the Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education program?
319.2 Who is eligible for an award?
319.3 What activities may the Secretary fund?
319.4 What regulations apply to this program?
319.5 What definitions apply to this program?

Subpart B—How Does One Apply for an Award?

319.10 What are the application requirements under this program?

Subpart C—How Does the Secretary Make an Award?

319.20 How does the Secretary evaluate an application?

319.21 How does the Secretary determine the amount of a basic State award?
319.22 How does the Secretary determine the amount available for the competitive award program?
319.23 What selection criteria does the Secretary use in the basic State award and competitive award programs?
319.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

Subpart D—What Conditions Must Be Met After an Award?

319.30 Is student financial assistance authorized?
319.31 What are the student financial assistance criteria?
319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?
319.33 What are the reporting requirements under this program?

Authority: 20 U.S.C. 1432, unless otherwise noted.

Subpart A—General

§ 319.1 What is the Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education Program?

This program assists States in establishing and maintaining preservice and inservice programs to prepare special and regular education, related services, and early intervention personnel and their supervisors to meet the needs of infants, toddlers, children, and youth with disabilities. These programs must be consistent with the personnel needs identified in the State's comprehensive systems of personnel development under sections 613 and 676(b)(8) of the Individuals with Disabilities Education Act (IDEA). The program also assists States in developing and maintaining their comprehensive systems of personnel development and conducting recruitment and retention activities.

(Authority: 20 U.S.C. 1432)

§ 319.2 Who is eligible for an award?

(a) Each State educational agency (SEA) is eligible to receive an award under the basic State award program described in § 319.3(a). If an SEA does not apply for an award, institutions of higher education (IHEs) within the State may apply for the award for that State. If an SEA chooses not to apply for the basic State award, the SEA shall notify all IHEs within the State at least 30 days prior to the Department's closing date for applications.

(b) Only State educational agencies are eligible for a competitive award described in § 319.3(b).

(c) Profit and nonprofit organizations and agencies are eligible for technical assistance awards described in § 319.3(c).

(Authority: 20 U.S.C. 1432)

§ 319.3 What activities may the Secretary fund?

The Secretary funds basic State awards and may fund competitive grant awards and provide technical assistance to States in developing and maintaining their comprehensive systems of personnel development.

(a) *Basic State awards.* Under this program, the Secretary makes an award to each State for the purposes described in § 319.1.

(b) *Competitive award program.* Under this program, the Secretary may make competitive awards for the purposes described in § 319.1. These awards must address particularly high priority issues with potential for broad generalizability.

(c) *Technical assistance.* The Secretary may provide technical assistance to State educational agencies on matters pertaining to the effective implementation of section 613(a)(3) of the IDEA.

(1) This activity includes, but is not limited to, the following:

(i) Monitoring personnel needs in the State.

(ii) Analyzing strategies to determine needs for professional preparation to meet the needs of children with disabilities.

(iii) Identifying, designing, adapting, testing, and disseminating new professional preparation strategies.

(iv) Providing technical assistance in the personnel development, recruitment, and retention areas.

(2) Operational activities must include, but are not limited to, the following:

(i) Determining national needs and identifying unserved regions and populations.

(ii) Identifying the specific technical assistance needs of individual States related to professional preparation.

(iii) Conducting annual meetings at national and regional levels.

(iv) Dissemination of information through media, newsletters, computers, and written documentation.

(v) Cooperative activities with other personnel development projects and organizations on common goals.

(vi) Evaluation, including impact determination, and evaluation assistance to other personnel development projects.

(Authority: 20 U.S.C. 1432)

§ 319.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions that Apply to Department Regulations).

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 319.

(Authority: 20 U.S.C. 1432; 20 U.S.C. 3474(a))

§ 319.5 What definitions apply to this program?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Preschool
Project
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1432)

Subpart B—How Does One Apply for an Award?

§ 319.10 What are the application requirements under this program?

An IHE that applies for an award under § 319.3(a) shall demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the award is

for the purpose of assisting the applicant to meet those standards.

(Authority: 20 U.S.C. 1432)

Subpart C—How Does the Secretary Make an Award?

§ 319.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 319.23 and 319.24.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1432)

§ 319.21 How does the Secretary determine the amount of a basic State award?

The Secretary determines the amount of an award under § 319.3(a) as follows:

(a) The Secretary distributes no less than 80 percent of the funds available for these awards as follows:

(1) Each State receives a base amount to be determined by the Secretary, but not less than $85,000.

(2) From the funds remaining, the Secretary provides an additional amount to each State based on the State's proportion of the national child count provided under Part B of the IDEA and Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(b) After determining a State's award under paragraph (a) of this section, the Secretary determines annually the additional amount of funds to be awarded for the quality of the application based on the criteria set forth in § 319.23.

(Authority: 20 U.S.C. 1432)

§ 319.22 How does the Secretary determine the amount available for the competitive award program?

In any fiscal year, the Secretary may not expend for the competitive program under § 319.3(b) an amount more than 10 percent of the amount expended under section 632 of the IDEA in the preceding fiscal year.

(Authority: 20 U.S.C. 1432)

§ 319.23 What selection criteria does the Secretary use in the basic State award and competitive award programs?

The Secretary uses the following criteria to evaluate an application for a basic State award (SEA or IHE applicant) and for a competitive award.

(a) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(1) The extent to which the project identifies and selects priority needs from the range of personnel needs identified in the State comprehensive systems of personnel development;

(2) The extent to which the project addresses the personnel needs selected by the applicant under paragraph (a)(1) of this section; and

(3) If appropriate, how the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required under section 618 of the IDEA.

(b) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(1)(i) Competencies are identified that will be acquired by each trainee, (ii) there is a description of how the competencies will be evaluated;

(2) Substantive content of the training to be provided is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational or early intervention services to infants, toddlers, children, and youth with disabilities;

(3) Benefits to be gained by the number of trainees expected to be graduated or otherwise to complete training and employed over the next five years are described;

(4) Appropriate methods, procedures, techniques, and instructional media or materials will be used in the preparation of trainees who serve infants, toddlers, children, and youth with disabilities;

(5) If relevant, appropriate practicum facilities are accessible to the applicant agency and trainees and will be used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope and length;

(6) If relevant, practicum facilities for model programs will provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment; and

(7) Program philosophy, program objectives, and activities to be implemented to attain program objectives are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired, and the number of trainees who complete short-term in-service or pre-service training programs. (See 34 CFR 75.590, Evaluation by the grantee).

(e) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(5) Experience and training in fields related to the objectives of the project.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1432)

§ 319.24 What selection criteria does the Secretary use to evaluate applications for technical assistance activities?

The Secretary uses the following criteria to evaluate applications for technical assistance activities:

(a) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design;

(2) The effectiveness of the management plan in ensuring proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Program content.* (20 points) The Secretary reviews each application to determine—

(1) The project's potential for national significance, its potential effectiveness, and the quality of its plan for dissemination of the results of the project;

(2) The extent to which substantive content and organization of the program—

(i) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational and early intervention services to infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of relevant methods, procedures, techniques, technology, and instructional media or materials that can be used in the development of a model to prepare personnel to serve infants, toddlers, children, and youth with disabilities; and

(3) The extent to which program philosophy, objectives, and activities are related to the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(c) *Applicant experience and ability.* (15 points) The Secretary looks for information that shows the applicant's—

(1) Experience and training in fields related to the objectives of the project;

(2) National experience relevant to performance of the functions supported by this program;

(3) Ability to conduct the proposed project;

(4) Ability to communicate with intended consumers of information; and

(5) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations.

(d) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project; and

(4) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1432)

Subpart D—What Conditions Must Be Met After an Award?

§ 319.30 Is student financial assistance authorized?

A grantee may use grant funds under § 319.2 (a) and (b) to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student may not exceed the student's cost of attendance as follows:

(a) *Cost of attendance* is defined as—

(1) Tuition and fees normally assessed a student carrying the same academic workload (as determined by the institution) including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) An allowance (as determined by the institution) for books, supplies, transportation, miscellaneous and personal expenses for a student attending the institution on at least a half-time basis;

(3) An allowance (as determined by the institution) for room and board costs incurred by the student that—

(i) Is not less than $1,500 for students without dependents residing at home with parents;

(ii) Is the standard amount that the institution normally assesses its residents for room and board for students without dependents residing in institutionally owned or operated housing; and

(iii) Is based for all other students on the expenses reasonably incurred for room and board outside the institution, except that the amount may not be less than $2,500;

(4) For less than half-time students (as determined by the institution), tuition and fees and an allowance for books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (a)(7) of this section);

(5) For a student engaged in a program of study by correspondence, only tuition and fees; and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with the study as determined by the institution;

(7) For a student with one or more dependents, an allowance, as determined by the institution, based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance, as determined by the institution, for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

(b) For a student receiving all or part of his or her instruction by means of telecommunication technology, no distinction may be made with respect to the mode of instruction in determining costs. This paragraph may not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1087*ll*)

§ 319.31 What are the student financial assistance criteria?

Direct financial assistance under § 319.2 (a) and (b) may only be paid to students in preservice programs and only if the student—

(a) Is qualified for admission to the program of study;

(b) Maintains satisfactory progress in a course of study as provided in 34 CFR 668.16(e); and

(c)(1) Is a citizen or national of the United States;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Has a permanent or lasting, as distinguished from temporary, principal, actual dwelling place in fact, without regard to intent, in Palau or the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1091)

§ 319.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for financial assistance to other eligible students during the grant period.

(Authority: 20 U.S.C. 1087*ll*)

§ 319.33 What are the reporting requirements under this program?

Recipients shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under Parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

[FR Doc. 92-18485 Filed 8-4-92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
August 5, 1992

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92

Home Investment Partnerships Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R-92-1608; FR-3242-P-01]

RIN 2501-AB42

Home Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is intended to implement recent statutory amendments concerning insular areas participating in the HOME Investment Partnerships Program. The rule would provide the formula for determining allocations to insular areas (Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa). It would also provide other requirements for the insular area component of the Program.

DATES: Comments must be submitted on or before September 4, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this rule, for the most part, have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been approved under OMB control number 2501-0013. The Department has revised or added information collection requirements in §§ 92.61 and 92.66, and has submitted a request for OMB approval of these requirements.

The annual public reporting burden of these requirements, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is stated in the chart below. Send comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, room 3001, Office of Management and Budget, Washington, DC 20503, Attention: Jennifer Main, Desk Officer for HUD. The Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collections.

The following are the Paperwork requirements that apply to the new provisions contained in the HOME Insular Area Program at subpart B of 24 CFR part 92.

ANNUAL REPORTING AND RECORDKEEPING BURDEN

Reg section	Paperwork requirements	Record-keeping hours	Reporting hours	Number of jurisdiction	Total hours
92.61	Program description and housing strategy	0	10	4	40
92.66	Reallocation	0	3	4	12

Total Participant Costs:

Recordkeeping Hours 0×$15=$ 0
Reporting hours 52×$15=$780
Total: $780

II. Background

Sections 1 and 2 of Public Law 102-230, 105 Stat. 1720, approved December 12, 1991, amended the National Affordable Housing Act (NAHA) to provide for reserving a portion of HOME funds for grants to insular areas. Section 104 of NAHA, as amended, defines "insular area" to mean Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

Section 217(a)(3) of NAHA, as added by section 1 of Public Law 102-230, contains the following provision concerning the reservation of HOME funds for insular areas:

(3) Insular areas.—

(A) In general.—For each fiscal year, of any amount approved in an appropriations Act to carry out this title, the Secretary shall reserve for grants to the insular areas an amount that reflects—

(i) their share of the total population of eligible jurisdictions; and

(ii) any adjustments that the Secretary determines are reasonable in light of available data that are related to factors set forth in subsection (b)(1)(B). [The statutory factors for the basic formula allocation to States and to units of general local government that are metropolitan areas, urban counties, and consortia.]

(B) Specific Criteria.—The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas in accordance with specific criteria to be set forth in a regulation promulgated by the Secretary after notice and public comment.

(C) Transitional provisions.—For fiscal year 1992, the reservation for insular areas specified in subparagraph (A) shall be made from any funds which become available for reallocation in accordance with the provisions of section 216(6)(A). [That section provides for the reallocation of funds when a State does not become a participating jurisdiction.]

Section 217 of NAHA was also amended by Public Law 102-229, 105 Stat. 1701, 1709, approved December 12, 1991. This amendment also added a new section 217(a)(3). It provided for a reservation of HOME funds for insular areas in each fiscal year equal to the greater of $750,000 or 0.5 percent of the amounts appropriated for the HOME Program. This proposed rule would implement only Public Law 102-230 because it is the later enactment and implicitly repeals the earlier inconsistent provision.

The Department has decided to base the formula for determining the amount to be allocated for the insular areas both on the section 217(a)(3)(A)(i) insular areas share of total United States population and on the insular areas share of occupied rental units in the United States. The amount of HOME funds allocated for the insular areas is equal to the average of these two factors

multiplied by the total HOME funds available for allocation after reserving HOME funds for Indian tribes and for education and organization support and coordinated federal support activities. In this average, share of population and share of occupied rental units are equally weighted.

The Department has used share of occupied rental housing as a measure of need based on rental occupancy data. Four of the six formula allocation factors used in determining relative need (see 24 CFR 92.50) are measures of subsets of occupied rental housing. The Department's experience indicates that there is a reasonably close correspondence between the relative need determined by using these factors, and the relative need determined by using share of occupied rental household.

The formula for determining the total insular areas allocation would be added to § 92.50. Section 92.60 sets forth the basis for determining the allocation amount for each insular area. The initial allocation is based on the insular area's population and occupied rental units. The HUD Field Office may reduce this amount based upon the insular area's performance and other criteria. No allocation may be made if the insular area has an outstanding audit finding or monetary obligation to HUD unless the HUD Field Office Manager finds that the insular area has made a good faith effort to clear the finding or has arranged for repayment to HUD. The allocation amount to an insular area may be increased (if funds are available due to decreases in allocations to other insular areas that have had funds reduced or recaptured) based on its HOME performance. While the Department may include the amounts of the insular area allocations in the formula allocation notice that is published in the Federal Register in accordance with § 92.52, insular areas will receive written notice of their allocation from HUD (see § 92.60).

The deadline for an insular area to submit a program description would be 60 days from when HUD transmits the written allocation notice. The program description has been revised to reflect the fact that insular areas are not participating jurisdictions and are not subject to certain statutory requirements directed at participating jurisdictions, including the matching contributions requirement and the prohibition against using HOME funds for administrative costs, and to require more specific information concerning projects and activities.

Section 92.64 states the applicability of the general HOME Program requirements to insular areas. Section 92.65 provides simpler procedural requirements when sanctions are applied. These proposed requirements are comparable to those that apply to the insular area component of the Community Development Block Grant Program. Finally, under proposed § 92.66, HOME funds that are reduced or recaptured from an insular area and are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 would be reallocated to the states as if they had been initially allocated to states.

The comment period for this proposed rule is limited to 30 days rather than the 60 day comment period usually afforded for public comment. The Department has determined, in accordance with 24 CFR 10.1, that it would be in the public interest to omit public comment on this rule because a formula allocation for insular areas must be in place by the time of the 1993 Fiscal Year (FY) appropriation for the HOME Program, since the amount allocated to insular areas would affect the total amount remaining available for other participating jurisdictions. However, it is not necessary to omit a comment period altogether in order to promulgate a final rule in time for FY 1993. To give interested parties an opportunity to comment before putting a final rule into effect, a comment period of 30 days is being afforded, rather than entirely omitting the comment period. In addition, those parties most affected by this rule, the four insular areas as defined in the rule, will be given individual notice of this rulemaking at the time of its transmittal for Federal Register publication to assure that they have adequate and timely notice and opportunity to comment.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because only the four statutorily defined "insular areas" are affected by this rule.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have federalism implications concerning the division of local, state, and federal responsibilities. The rule affects the four Federal territories included within the term "insular areas."

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects in 24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend part 92 of title 24 of the Code of Federal Regulations as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. In part 92, the authority citation would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.2, the newly defined term *insular areas* would be added and the definition of *unit of general local government* would be revised, to read as follows:

§ 92.2 Definitions.

* * * * *

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

* * * * *

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a state; an insular area or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Investment Partnerships Program.

* * * * *

3. The heading for subpart B would be revised and an undesignated heading would be added immediately after the heading for subpart B, to read as follows:

Subpart B—Allocation Formula and Insular Areas Program Allocation Formula

4. In § 92.50, paragraph (b) would be revised to read as follows:

§ 92.50 Formula allocation.

* * * * *

(b) *Amounts available for allocation; state and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving:

(1) For grants to Indian tribes, one percent (or such other percentage or amount, as authorized by Congress) of the total funds appropriated;

(2) Up to such amounts as may be authorized by law for housing education and organization support and for coordinated federal support activities; and

(3) For allocations to insular areas, (after reserving the amounts described in paragraphs (b)(1) and (b)(2) of this section) an amount multiplied by a factor that is one half the sum of the insular areas' population divided by total United States population, including the insular areas, and the insular areas' occupied rental units divided by total United States occupied rental units, including the insular areas.

* * * * *

5. At the end of subpart B, an undesignated heading and new §§ 92.60 through 92.66 would be added, to read as follows:

Insular Areas Program

§ 92.60 Allocation amounts for insular areas.

(a) *Initial allocation amount for each insular area.* The initial allocation amount for each insular area is determined based upon the insular area's population and occupied rental units compared to all insular areas.

(b) *Threshold requirements.* The responsible HUD Field Office shall review each insular area's progress on outstanding allocations made under this section, based on the insular area's performance report, the timeliness of close-outs, and compliance with fund management requirements and pertinent regulations, taking into consideration the size of the allocation and the degree and complexity of the program. If HUD determines from this review that the insular area does not have the capacity to administer effectively a new allocation, or a portion of a new allocation, in addition to allocations currently under administration, HUD may reduce the insular area's initial allocation amount.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not make an allocation to an insular area that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established and agreed to. This restriction does not apply if the Field Office manager finds that the insular area has made a good faith effort to clear the audit and, when there is an outstanding monetary obligation to HUD, the insular area has made a satisfactory arrangement for repayment of the funds due HUD and payments are current.

(d) *Increases to the initial allocation amount.* If funds reserved for the insular areas are available because HUD has decreased the amount for one or more insular area in accordance with paragraphs (b) or (c) of this section, or for any other reason, HUD may increase the allocation amount for one or more of the remaining insular areas based upon the insular area's performance in committing HOME funds within the 24 month deadline, producing housing units described in its program description, and meeting HOME program requirements. Funds that become available but which are not used to increase the allocation amount for one or more of the remaining insular areas will be reallocated to the states as provided in accordance with the requirements in subpart J for reallocating funds initially allocated to a state.

(e) *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation that HUD has determined for the insular area in accordance with this section.

§ 92.61 Program description and housing strategy.

(a) *Submission requirement.* Not later than 60 days after HUD notifies the insular area of the amount of its allocation, the insular area must submit a program description to HUD containing the information described in paragraph (b) of this section.

(b) *Content of program description.* The program description must provide the following information:

(1) An executed Standard Form 424;

(2) The estimated use of HOME funds (consistent with needs identified in its approved housing strategy) and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, households assisted;

(3) A timetable for the implementation of the projects or eligible activities;

(4) If the insular area intends to use HOME funds for first-time homebuyers, the guidelines for resale, as required in § 92.254(a)(4);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.211;

(6) If an insular area intends to use other forms of investment not described

in § 92.205(b), a description of the other forms of investment;

(7) A statement of the policy and procedures to be followed by the insular area to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under §§ 92.350 and 92.351, respectively.

(c) The following certifications must accompany the program description:

(1) A certification that, before committing funds to a project, the insular area will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance that is necessary to provide affordable housing;

(2) If the insular area intends to provide tenant-based assistance, the certification required by § 92.211;

(3) A certification that the submission of the program description is authorized under applicable law and the insular area possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(4) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(5) A certification that the insular area will use HOME funds pursuant to the insular area's approved housing strategy and in compliance with all requirements of this part;

(6) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(7) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

(8) A certification that the insular area agrees to assist HUD to comply with 24 CFR part 50 and shall:

(i) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by part 50;

(ii) Carry out mitigating measures required by HUD or select alternate eligible property; and

(iii) Not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such program activities with respect to any eligible property, until HUD approval is received.

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless it is not consistent with the insular area's approved housing strategy, or if the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the information submitted is not consistent with the approved housing strategy, or the insular area has not submitted information on § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period.* The HUD Field Office will notify the insular area if its program description is not consistent with its approved housing strategy, or determinations cannot be made under § 92.61 (b)(4), (b)(6), or (b)(7), or if the proposed projects or activities are beyond currently demonstrated capability, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the proposed projects or activities in its program description.

(c) *HOME Investment Partnership Agreement.* After Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the insular area. The funds are obligated on the date HUD notifies the insular area of HUD's execution of the agreement in accordance with this section and § 92.501.

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes during the fiscal year and must document any other changes in its file. A substantial change involves a change in the guidelines for resale (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)), or a change in tenure type of the project or activities, or a funding increase to a project or activity of $100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program description, as amended, is not consistent with its approved housing strategy, or determinations cannot be made under § 92.61 (b)(4), (b)(6), or (b)(7), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the proposed projects or activities in its program description.

§ 92.64 Applicability of requirements to insular areas.

(a) Insular areas are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following:

(1) Subpart E (Program Requirements): Sections 92.208 through 210 do not apply. The prohibition, in § 92.214(a) against using HOME funds to defray administrative cost does not apply, and in addition to the costs listed in § 92.206, administrative costs of an insular area not to exceed 15 percent of the HOME funds provided to the insular area are eligible costs. The matching contribution requirements in §§ 92.218 through 92.221 do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. A local account must be established for repayment, interest and other return of investment of HOME funds. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which the funds were deposited in the account;

(B) Any funds that are not expended within five years after the last day of the month in which the funds were deposited in the account; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Cash and Management Information System) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and compliance with Treasury Circular No. 1075 (31 CFR part 205) is required.

(iii) Section 92.503 (Repayment of investment) applies, except that repayments, interest and other return on investment of HOME funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; monitoring) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(6) Subpart L (Performance Reviews and Sanctions): Section 92.522 does not apply. Instead, § 92.65 applies.

(b) The requirements in subpart H (Other Federal Requirements) of this part apply, except that insular areas must comply with affirmative marketing, flood insurance, labor and lead-based paint requirements applicable to participating jurisdictions. In addition, an insular area must advise HUD when it proposes specific properties to be utilized in its program, and HUD will perform an environmental review with respect to those properties in accordance with 24 CFR part 50. The insular area will supply HUD with available, relevant information necessary for that review, will carry out mitigating measures required by HUD or select alternate eligible property, and will not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to these program activities with respect to any eligible property, until HUD approval is received.

(c) Subpart B (Allocation Formula), subpart C (Participating Jurisdiction: Designation and Revocation of Designation—Consortia), subpart D (Program Description), and subpart G (Community Housing Development Organizations) of this part do not apply.

§ 92.65 Funding sanctions.

Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under § 92.551 fail to remedy a recipient's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

§ 92.66 Reallocation.

HUD will reallocate to the states any HOME funds reduced or recaptured from an insular area, and which are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 of this part, in accordance with the requirements in subpart J for reallocating funds initially allocated to a state.

Dated: June 22, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92–16596 Filed 8–4–92; 8:45 am]

BILLING CODE 4210–32–M

federal register

Wednesday
August 5, 1992

Part V

Department of Education

34 CFR Part 8

Demands for Testimony or Records in Legal Proceedings; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 8

RIN: 1880-AA45

Demands for Testimony or Records in Legal Proceedings

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education (Secretary) adds a new part 8 to title 34 of the Code of Federal Regulations establishing a procedure for departmental response to subpoenas or other demands for departmental employees to testify about, or produce records concerning, departmental matters in private litigation or other proceedings in which the United States is not a party. These regulations are intended to minimize the disruption of official duties caused by compliance with those demands, to maintain departmental control over the release of official information, and otherwise to protect the interests of the United States. They prohibit Department of Education employees from complying with those demands without the Secretary's permission.

EFFECTIVE DATE: These regulations take effect on August 5, 1992, with the exception of § 8.3(a). Section 8.3(a) will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of § 8.3(a), call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Rob Wexler, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW., room 4083, FOB-6, Washington, DC 20202-2243, (202) 401-3690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The regulations provide that, in response to subpoenas or other demands for testimony or records concerning departmental matters in private litigation or other proceedings in which the United States is not a party, Department of Education employees may testify or produce records only if the Secretary or the Secretary's delegate authorizes compliance with the demand. In making this determination, the Secretary or his or her delegate will consider whether compliance is in accordance with applicable laws, rules, and regulations and would not be contrary to the interests of the United States. The regulations provide for the handling of all other demands for records by treating them as requests for records under the Freedom of Information Act (5 U.S.C. 552).

The courts have recognized the authority of federal agencies to limit compliance with those demands in this manner. See *United States ex. rel. Touhy* v. *Ragan*, 340 U.S. 462 (1951). Moreover, subpoenas by State courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution, and a federal regulation regarding compliance with those subpoenas reinforces this principle. See *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *U.S.* v. *McLeod*, 385 F.2d 734 (5th Cir. 1967).

These regulations do not apply to situations in which the United States is a party in a lawsuit. They also do not apply to instances in which an employee is requested to appear in adjudicative, legislative, or administrative proceedings unrelated to information concerning Federal activities or the employee's duties at the Department. Finally, the regulations do not apply to subpoenas or requests for information submitted by either House of Congress or by a congressional committee or subcommittee with jurisdiction over the matter for which the testimony or information is requested.

Executive Order 12600

These regulations would not supersede the procedures followed pursuant to Executive Order 12600 in responding to requests for information under the Freedom of Information Act (FOIA). Should a request for information under the FOIA involve "confidential commercial information," the provisions of Executive Order 12600 would apply.

Paperwork Reduction Act of 1980

Section 8.3(a) contains an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

The collection requirement affects organizations and individuals submitting subpoenas or other demands to the Department in legislative or administrative proceedings or in litigation in which the United States is not a party. It requires summarizing the testimony or records being sought and is needed to determine whether to authorize an employee to comply with the demand.

It is estimated that there will be approximately 25 respondents each year, that a respondent will have to meet the collection requirement once annually, and that the responses will take an average of one hour to complete. Therefore, the estimated annual reporting burden of this collection requirement is 25 hours. It also is estimated that there will not be any recordkeeping burden.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Waiver of Proposed Rulemaking

The Secretary has determined, under 5 U.S.C. 553(a)(2), that these regulations do not require public notice and comment because they are rules regarding a matter relating to agency management and personnel.

List of Subjects in 34 CFR Part 8

Administrative practice and procedure, Availability of information, Education Department, Freedom of Information Act.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: July 31, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 8 to read as follows:

PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

Sec.

8.1 What is the scope and applicability of this part?
8.2 What definitions apply?
8.3 What are the requirements for submitting a demand for testimony or records?
8.4 What procedures are followed in response to a demand for testimony?
8.5 What procedures are followed in response to a demand for records?

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

§ 8.1 What is the scope and applicability of this part?

(a) Except as provided in paragraph (c) of this section, this part establishes

the procedures to be followed if the Department or any departmental employee receives a demand for—

(1) Testimony by an employee concerning—

(i) Records contained in the files of the Department;

(ii) Information relating to records contained in the files of the Department; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status; or

(2) The production or disclosure of any information or records referred to in paragraph (a)(1) of this section.

(b) This part does not create any right or benefit, substantive or procedural, enforceable by any person against the Department.

(c) This part does not apply to—

(1) Any proceeding in which the United States is a party before an adjudicative authority;

(2) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(3) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the mission or functions of the Department.

(Authority: 5 U.S.C. 301; 20 U.S.C. 3474)

§ 8.2 What definitions apply?

The following definitions apply to this part:

Adjudicative authority includes, but is not limited to—

(1) A court of law or other judicial forums; and

(2) Mediation, arbitration, or other forums for dispute resolution.

Demand includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

Department means the U.S. Department of Education.

Employee means a current employee or official of the Department or of an advisory committee of the Department, including a special government employee, unless specifically provided otherwise in this part.

Legal proceeding means—

(1) A proceeding before an adjudicative authority;

(2) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress, to the extent of matter within the committee's or subcommittee's jurisdiction; or

(3) An administrative proceeding.

Secretary means the Secretary of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Testimony means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

United States means the Federal Government of the United States and any of its agencies or instrumentalities.

(Authority: 5 U.S.C. 301; 20 U.S.C. 3474)

§ 8.3 What are the requirements for submitting a demand for testimony or records?

(a) A demand for testimony of an employee or former employee, or a demand for records issued pursuant to the rules governing the legal proceeding in which the demand arises—

(1) Must be in writing; and

(2) Must state the nature of the requested testimony or records and why the information sought is unavailable by any other means.

(b) Service of a demand for testimony of an employee or former employee must be made on the employee or former employee whose testimony is demanded, with a copy simultaneously delivered to the General Counsel, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW., room 4083, FOB–6, Washington, DC 20202–2100.

(c) Service of a demand for records, as described in § 8.5(a)(1), must be made on an employee or former employee who has custody of the records, with a copy simultaneously delivered to the General Counsel at the address listed in paragraph (b) of this section. For assistance in identifying the custodian of the specific records demanded, contact the Records Management Branch Chief, Office of Information Resources Management, U.S. Department of Education, 7th and D Streets, SW., ROB–3, Washington, DC 20202–4753.

(Authority: 5 U.S.C. 301; 20 U.S.C. 3474)

§ 8.4 What procedures are followed in response to a demand for testimony?

(a) After an employee receives a demand for testimony, the employee shall immediately notify the Secretary and request instructions.

(b) An employee may not give testimony without the prior written authorization of the Secretary.

(c)(1) The Secretary may allow an employee to testify if the Secretary determines that the demand satisfies the requirements of § 8.3 and that granting permission—

(i) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, rules, and regulations; and

(ii) Would not be contrary to an interest of the United States, which includes furthering a public interest of the Department and protecting the human and financial resources of the United States.

(2) The Secretary may establish conditions under which the employee may testify.

(d) If a response to a demand for testimony is required before the Secretary determines whether to allow an employee to testify, the employee or counsel for the employee shall—

(1) Inform the court or other authority of the regulations in this part; and

(2) Request that the demand be stayed pending the employee's receipt of the Secretary's instructions.

(e) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the Secretary's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), and the regulations in this part.

(Authority: 5 U.S.C. 301; 20 U.S.C. 3474)

§ 8.5 What procedures are followed in response to a demand for records?

(a)(1) After an employee receives a demand for records issued pursuant to the rules governing the legal proceeding in which the demand arises, the employee shall immediately notify the Secretary and request instructions.

(2) If an employee receives any other demand for records, the Department—

(i) Considers the demand to be a request for records under the Freedom of Information Act; and

(ii) Handles the demand under rules governing public disclosure, as established in 34 CFR part 5.

(b) An employee may not produce records in response to a demand as described in paragraph (a)(1) of this section without the prior written authorization of the Secretary.

(c) The Secretary may make these records available if the Secretary determines that the demand satisfies the requirements of § 8.3 and that disclosure—

(1) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, rules, and regulations; and

(2) Would not be contrary to an interest of the United States, which includes furthering a public interest of the Department and protecting the human and financial resources of the United States.

(d) If a response to a demand for records as described in paragraph (a)(1) of this section is required before the Secretary determines whether to allow an employee to produce those records, the employee or counsel for the employee shall—

(1) Inform the court or other authority of the regulations in this part; and

(2) Request that the demand be stayed pending the employee's receipt of the Secretary's instructions.

(e) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the Secretary's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), and the regulations in this part.

(Authority: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474)

[FR Doc. 92-18620 Filed 8-4-92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
August 5, 1992

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Payments Made Through Financial Institutions by the Automated Clearing House Method; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510-AA20

Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking proposes revision to 31 CFR 210.6(c) to clarify three points: (1) The Federal Reserve Banks deliver Government ACH payment transactions either directly or through other Federal Reserve Banks; (2) the Federal Reserve Banks may determine the media for delivery; and (3) the Federal Reserve Banks make the payment information available before the opening of business on the payment date.

This notice of proposed rulemaking announces that it is the policy of the Department of the Treasury (Treasury) that the benefits of all-electronic ACH should extend to financial institutions that are Government only receivers (GORs) of ACH transactions, as well as to the recipients of Government ACH payments through GORs. Treasury will direct the Federal Reserve Banks to implement this policy in their capacity as fiscal agents of the United States. New GORs will be encouraged to receive their Government ACH transactions by establishing electronic access with their servicing Federal Reserve Bank.

The Federal Reserve Board (56 FR 28157, June 19, 1991) mandated that all depository institutions that originate or receive commercial ACH transactions through Federal Reserve Banks establish electronic access to the Federal Reserve for ACH services by July 1, 1993.

Treasury seeks comment on its proposal that GORs establish electronic access to the Federal Reserve by July 1, 1994. Implementation would require that, by July 1, 1993, GORs receiving ACH transactions by nonelectronic means inform their servicing Federal Reserve Bank of their plans to establish electronic access with their Federal Reserve Bank, or of their plans to receive their Government ACH transfers through a correspondent that has electronic access to the Federal Reserve.

All-electronic Government ACH will improve the efficiency of the ACH mechanism by promoting timely posting of ACH debits and credits to customer accounts, and will enhance the integrity of the ACH mechanism by providing a higher level of security and improving contingency and disaster recovery capabilities.

DATES: Comments on this proposed rule must be received by October 5, 1992.

ADDRESSES: Comments may be mailed to the Financial Innovation Division, Financial Management Service, U.S. Department of the Treasury, room 514, Liberty Center, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Janelle W. Edgar, Electronic Initiatives Branch, (202) 874-6644.

SUPPLEMENTARY INFORMATION:

Background

The ACH is a value dated electronic payments mechanism that supports both debit and credit payments. Recipients of Federal benefit, payroll, retirement, vendor and other payments may elect to receive such payments through the ACH system.

As of March 1992, the Federal Reserve Banks delivered ACH transactions to approximately 9,500 receiving points. Approximately 7,800 of these are eligible to receive commercial and Government ACH transactions. These are required, by the June 1991, Federal Reserve Board policy, to establish electronic access to Federal Reserve Banks, for ACH services, by July 1, 1993. The remainder of the approximately 1,700 receiving points receive only Government ACH transactions. About 90 of these are connected electronically to a Federal Reserve Bank. The remaining GOR endpoints receive ACH transactions by nonelectronic means, using magnetic tape, diskette, or paper media. The majority of these nonelectronic endpoints receive paper listings. While some nonelectronic endpoints use messengers to deposit and pickup ACH output, most receive ACH output by Federal Reserve Courier or by mail.

The additional time required to deliver ACH output to nonelectronic endpoints means that information necessary to update customer accounts may not be available to some GORs until after the opening of business on the settlement date. Moreover, the level of security and disaster recovery capability associated with nonelectronic receipt and delivery of ACH payments are lower than those associated with electronic transmission.

Treasury supports the Federal Reserve plan of action to make significant improvements to its commercial ACH service by requiring that all participants access the ACH service electronically for the origination and receipt of commercial ACH transactions. It is Treasury's policy to extend these improvements in ACH service to Government receivers. The establishment of an all-electronic ACH for GORs would provide benefits to the Government, the receiving financial institutions and to recipients of Government ACH payments.

Benefits of an All-Electronic ACH

An all-electronic ACH will increase the speed with which Government ACH payments are delivered, reduce the number of erroneous payments, provide a higher level of security and improve disaster recovery and contingent processing capabilities. Regulations, at 31 CFR 210.7(d), require the financial institution to make the amount of the payment available for withdrawal no later than the opening of business on the payment date. The increased speed of delivery of Government ACH payments will ensure that all GORs, regardless of payment volume or location, would receive ACH output on a timely and consistent basis. Consistent with the objectives of the Expedited Funds Availability Act of 1987 and ACH rules, timely delivery of Government ACH payments enables receiving institutions to post the payments to their customers' accounts sooner and to provide prompter availability of funds. Currently, some institutions that receive ACH output by mail do not have sufficient time to process the payments and update accounts by the settlement date. Even with courier delivery, transportation delays may cause untimely posting of accounts. Electronic delivery of payment information to GORs would aid the receiving financial institutions, by ensuring time for the prompt posting of accounts.

All-electronic ACH will benefit both payment receivers and Government agencies by reducing the number of erroneous payments made to program recipients for whom an agency received a notice of death after payment was initiated. In 1991 Federal agencies had to request over 380,000 reclamations for such erroneous payments. The all-electronic ACH will reduce reclamations by shortening the interval between agency initiation of a payment and its receipt by a financial institution. The time saved will be made possible by a reduction of the time required by the Federal Reserve Bank to ensure timely delivery of ACH files. Consequently, agency program data from which payments are determined will be up to several days more current. SSA, for example, will be able to reduce reclamations by 2,400 for each additional day available to SSA to

prepare the monthly list of payments to recipients. SSA and financial institutions will save the cost of processing these reclamations.

An all-electronic ACH network will result in a higher level of security for Government payments. The Federal Reserve Banks currently offer data encryption and other security procedures to electronic endpoints to ensure confidentiality of ACH transactions and the authenticity of the sender. This provides a significantly higher level of security than nonelectronic delivery of ACH information.

Finally, an all-electronic ACH will improve disaster recovery and contingency processing capabilities. Over the past few years, occurrences at several Federal Reserve Banks have highlighted the need for reliable contingency processing and disaster recovery procedures for payment services. In a contingency processing or disaster recovery situation, electronic access for delivery of Government ACH transactions would eliminate delays associated with transporting nonelectronic input and output media to and from remote sites.

Proposal To Implement an All-Electronic ACH for GORs

During June 1991, the Federal Reserve Board approved a policy whereby, beginning July 1, 1993, Federal Reserve Banks will cease to provide commercial ACH services to depository institutions that have not established an electronic access for ACH services. Treasury now proposes that, beginning July 1, 1994 (one year after the commercial deadline), the Federal Reserve Banks not provide ACH services to GORs unless they have established electronic access for ACH services. The July 1994, date would provide reasonable time for GORs to establish electronic access and ensure that these financial institutions may continue to provide depository services to Government ACH payment recipients. Treasury further proposes that GORs inform their Federal Reserve Banks, by July 1, 1993, as to whether they intend to establish electronic access directly with the Federal Reserve Bank, or indirectly through a service provider or correspondent bank. This one year advance notice will allow the Government adequate time to arrange alternative methods of delivering payments to the customers of those GORs that choose not to participate in the all-electronic ACH system.

Beginning immediately, new GOR endpoints will be encouraged to have electronic access with their Federal Reserve Banks.

The Federal Reserve Banks have developed electronic access alternatives and are devoting additional resources to the electronic conversion effort.

Electronic Access Alternatives

The Federal Reserve currently offers financial institutions several alternatives to facilitate electronic access to the Reserve Banks for a variety of services, including the receipt of Government ACH payments. Recognizing differences in transaction volume, electronic access alternatives are available to meet the needs of financial institutions.

Financial institutions receiving a low to medium volume of ACH items (between 1,000 and 10,000 items per month) may use an intelligent terminal system (Fedline) developed and certified by the Federal Reserve. The Fedline software fully supports the ACH service, as well as other Federal Reserve services. Financial institutions may also use vendor supplied software approved by the Federal Reserve.

The Federal Reserve Banks also offer an intelligent terminal software product (FLASH-Light) for low volume (less than 1,000 items per month) financial institutions. FLASH-Light is a receive-only system that enables Federal Reserve Banks to transmit ACH output electronically in a format that allows financial institutions to print the ACH payment information.[1]

Federal Reserve Banks will assist financial institutions in identifying sources that offer equipment that is compatible with Federal Reserve supplied software. Vendors also offer, or are developing, electronic access products that conform to the Federal Reserve's network protocol and data security standards.

In lieu of establishing direct electronic access, GORs may access ACH services through correspondent institutions or other service providers that do have electronic access. When a correspondent or other service provider acts as the receiving point for a financial institution, it is deemed an agent for the institution. To achieve the full benefits of an all-electronic ACH service for GORs, financial institutions that choose to receive ACH payments through a correspondent or other service provider are encouraged to arrange for delivery of the payments in a manner that ensures timely receipt by the GOR.

From time to time, financial institutions need to originate return items or Notification of Change (NOC) transactions. To enable low volume institutions using FLASH-Light, or institutions that receive transactions through a correspondent, or other ACH service provider, to originate return or NOC transactions, all Federal Reserve Banks will offer a database service with telephone voice response by year-end 1992. This service will create a return item or NOC transaction from the information about the original transaction that is stored in a database, and information that the financial institution keys in using a touchtone phone. The Federal Reserve Banks will continue to receive paper return items or NOCs for processing where technical problems prevent the electronic transmission of data. Examples of these problems include where missing forward transaction information precludes the use of the database to generate the return of NOC transaction; where touchtone service is not available; or, where the NOC requires extensive alpha characters.

Converting to electronic access using Federal Reserve supplied software will entail one time installation and retraining and an encryption board, which are expected to cost approximately $1,000 for each receiving point. The total cost for converting all of the estimated non-electronic receiving points of Government-only payments is estimated at $1.6 million. Institutions which elect vendor supplied software also will incur a Federal Reserve software certification fee. There are no other costs of converting to electronic access, since GORs are not assessed monthly electronic connection or transaction fees.

Treasury recognizes that this proposal will require an initial investment for some financial institutions. However, the benefits of all-electronic ACH for GORs justifies the associated costs.

Government ACH Payments

Part 210 of Title 31 of the Code of Federal Regulations sets forth the rights and liabilities of the Government, the financial institutions and the payment recipient where a recipient of Federal payments authorizes Direct Deposit of the payments and the payments are made by the ACH method. The regulations in this part were

[1] Financial institutions with medium to high volume of ACH transactions (greater than 10,000 items per month) may use one of two computer interface alternatives with dedicated leased line communication links. The Federal Reserve Banks can provide transmission (bulk data) software that enables financial institutions to interface with the Banks. Alternatively, financial institutions or their vendors may develop software using the Federal Reserve's Computer Interface Protocol Specifications (CIPS) to customize their ACH processing to meet the needs of their operating environment. Few, if any, GOR financial institutions would require this type of electronic access.

promulgated in 1975 and revised in 1976, 1984, 1987 and 1989.

Treasury proposes revision of Part 210 to clarify that the Federal Reserve Banks may prescribe the medium over which they deliver Government ACH payments. This revision will facilitate implementation of an all-electronic ACH program with GORs.

The proposed revision also uses more general language in stating how a Federal Reserve Bank routes ACH transactions. This revision reflects the current ACH operating environment and anticipates the consolidation of ACH processing by the Federal Reserve Banks.

Further, the proposed revision states that the payment instruction be delivered not later than the opening of business on the payment date. Regulations currently require the Federal Reserve to deliver the ACH payments not later than the close of business for the financial institution on the business day prior to the payment date. The current wording fails to reflect that some financial institutions may establish an early close for their business day, or may be closed on the business day prior to the payment date.

Request for Comments

Comments on all aspects of this notice are requested. Treasury specifically requests comments on the following:

1. Would existing nonelectronic GOR receiving points encounter any significant obstacles that would prevent them from converting to electronic receipt of ACH payments by July 1994?

2. Are there any incentives that would facilitate GOR conversion to an all-electronic ACH by July 1994?

3. Would all-electronic ACH of Government ACH payments cause GOR financial institutions to stop participating in the ACH?

4. Would the requirement to convert to an electronic access prompt GOR financial institutions that currently receive ACH output directly from the Federal Reserve to seek ACH services through a correspondent institution or service bureau?

5. Does the July 1993 date for GORs to schedule a conversion to electronic receipt provide sufficient time for financial institutions to make final determinations on whether to continue participating in the Government ACH system?

It has been determined that this proposed rulemaking document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The document makes technical corrections to previously published regulations and clarifies existing practice. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The proposed rule clarifies existing practice. The included proposal is expected to result in improvements to the ACH process, with advantages to institutions and recipients. The provisions of the Paperwork Reduction Act do not apply to this proposed rulemaking because no requirement to collect information is proposed.

List of Subjects in 31 CFR Part 210

Banks, Banking, Electronic funds transfer, Federal Reserve System.

Accordingly, Title 31, Part 210 of the Code of Federal Regulations, is proposed to be amended by revising § 210.6(c) as follows:

PART 210—FEDERAL PAYMENTS THROUGH FINANCIAL INSTITUTIONS BY THE AUTOMATED CLEARING HOUSE METHOD

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321; and other provisions of law.

§ 210.6 [Amended]

2. Paragraph (c) of § 210.6 is revised to read as follows:

* * * * * * *

(c) Upon receipt of a payment instruction, a Federal Reserve Bank, either directly or through another Federal Reserve Bank, shall deliver or make available to the financial institution identified in the payment instruction the information contained in the payment instruction not later than the opening of business on the payment date on a medium as prescribed by the Federal Reserve Bank.

* * * * * * *

Michael T. Smokovich,

Acting Commissioner.

[FR Doc. 92-18539 Filed 8-4-92; 8:45 am]

BILLING CODE 4810-35-M

federal register

Wednesday
August 5, 1992

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming: Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710 of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Wisconsin Winnebago Tribe and State of Wisconsin Gaming Compact of 1992 executed on June 11, 1992.

DATE: This action is effective August 5, 1992.

ADDRESS: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: July 30, 1992.

William D. Bettenberg,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 92–18542 Filed 8–4–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 5, 1992

Part VIII

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Fall Protection in the Construction Industry; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-206A]

Safety Standard for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; limited reopening of rulemaking record.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening its record on the proposed safety standard for fall protection in the construction industry, (51 FR 42718, November 25, 1986). The purpose of the limited reopening of the record is to consider new information regarding the appropriate fall protection needs of employees engaged in precast concrete construction. The new information and evidence received as a result of this action will be considered by the Agency in developing its final rule for fall protection in the construction industry.

DATES: Comments on this proposal must be postmarked by November 3, 1992.

ADDRESSES: Comments are to be sent to the Docket Office, Docket No. S-206A, U.S. Department of Labor, room N2625, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 1986, OSHA proposed to revise the fall protection requirements for construction and to consolidate those provisions in subpart M of part 1926 (51 FR 42718). The Agency held informal public hearings regarding proposed subpart M on March 22-23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearings, Judge Williams set posthearing comment periods which ended on May 9, 1988. On August 11, 1989, the Administrative Law Judge certified the hearing record.

Based on its review of the rulemaking record, OSHA has determined that the Agency needs to consider additional information regarding the appropriate means by which employees engaged in precast concrete construction work can be protected from fall hazards. Therefore, OSHA decided that it is in the public interest for the Agency to consider the information that has been developed regarding this issue and to allow the public an opportunity to comment on that information. Accordingly, OSHA is reopening the record for the limited purpose of soliciting comment on fall protection for employees engaged in precast concrete construction work.

In the preamble to the proposed fall protection rule (51 FR 42721), OSHA acknowledged that there are precast concrete erection operations at the leading edge where the use of conventional fall protection systems would be infeasible. In particular, in discussing proposed § 1926.501(b)(2) Leading edges, OSHA acknowledged that erecting guardrails along a leading edge would not be feasible since the guardrail would have to be removed and relocated within a few minutes of its being erected to allow another structural member to be placed. Further, OSHA stated the following:

> OSHA also believes that a requirement to erect safety nets often is not feasible because of insufficient room to rig a safety net and because the net would have to be constantly moved. In addition, OSHA believes that body belts and harnesses are not always appropriate means of fall protection along leading edges as they limit an employees' freedom of movement which can hinder job performance as well as impair an employee's ability to avoid a misdirected incoming piece of concrete or other structural member used on the leading edge. 51 FR at 42721.

Therefore, OSHA proposed that, under certain circumstances, employees could work at the leading edge without positive fall protection as long as those employees were under the observation of a safety monitor who would warn them as they approached danger.

Also, in Issue #2 of the subpart M NPRM, OSHA asked:

> 2. Are there areas or operations in addition to those already identified in proposed § 1926.501, which have unique fall protection requirements not addressed by the proposed standards? Examples of such areas and operations might include carpenters erecting roof trusses during house construction; steel erectors working on other than tiered buildings * * * or connectors erecting wood, precast concrete, and structural members made of other materials. 51 FR at 42729.

The Agency received several comments from the Precast/Prestressed Concrete Institute (PCI) (Exs. 2-44, 2-106 and 2-107) regarding the need for separate fall protection standards for workers engaged in precast concrete erection.

The Agency discussed those comments in the January 26, 1988, Notice of Hearing on subparts L, M, and X (53 FR 2048). Specifically, in Hearing Issue M-2, OSHA stated (53 FR 2054) the following:

> The (Precast/)Prestressed Concrete Institute (PCI) (Ex. 2-44) has commented that fall protection for employees erecting precast concrete components is "not appropriately covered by the proposed regulations" in Subpart M, because, according to the PCI, concrete erectors, like steel erectors, need more freedom of movement than proposed Subpart M would permit. Therefore, the PCI suggested that OSHA revise proposed Subpart M so that precast concrete erection would be regulated under subpart R, Steel Erection. At the August 4, 1987, ACCSH meeting, a PCI representative reiterated the view that connectors of precast concrete members should be provided the same considerations as connectors of steel members saying (Tr. 212): "We feel that the erection procedures and exemptions for steel are basically the same as those for precast concrete * * * Basically, the fall protection of the steel connector, again, would be the same as that for the precast connector." The PCI subsequently submitted comments (Ex. 2-106 an 2-107) which requested that OSHA exempt concrete erectors from proposed leading edge protection requirements in Subpart M and that OSHA exempt hollow core slab erectors from perimeter protection provisions, except for those in proposed § 1926.502(h), Safety monitoring systems.

Hearing Notice Issue M-2 solicited testimony and other information on the concerns raised by PCI. In response, PCI testified at the public hearing (Exs. 6A-9 and 9, and Tr. 53-82, March 22, 1988) and submitted post-hearing comments (Exs. 17 and 19).

Subsequent to the end of the posthearing comment period, OSHA received additional correspondence on behalf of the PCI (Exs. 25-1 and 25-2). In that correspondence PCI (Ex. 25-1) stated that OSHA's "* * * lack of understanding of our unique erection problems will result in the promulgation of rules that will result in endless litigation and not serve the safety needs of the workers." In October 1989, OSHA informed PCI (Ex. 25-3) that the rulemaking record had closed and that, in any event, the late comments simply repeated submissions that had already been included in the record.

On February 12, 1990, PCI again wrote to OSHA (Ex. 25-4) reasserting that compliance with proposed subpart M was not appropriate to protect employees engaged in precast concrete erection. PCI again suggested that OSHA either regulate precast concrete under its own industry specific standard or under subpart R—Steel Erection, because either alternative would be

more applicable than the generic subpart M standard. That submission also contained a detailed discussion of precast concrete erection procedures, including fall protection procedures. OSHA responded (Ex. 25–5) that it would review the information presented in the letter and would reopen the record if significant issues were raised that had not previously been included in the record.

On May 30, 1990, PCI again wrote to OSHA (Ex. 25–6) and expressed concern, "* * * relative to OSHA's work to revise the construction industry safety standards addressing fall protection in both 29 CFR part 1926 subparts M and R (Steel Erection)."

On June 15, 1990, OSHA informed PCI that the information presented in their letters was under review and a decision on further action would be made at the completion of that review.

Based on a careful review of the material submitted in PCI's submissions of February 12, May 30, 1990, OSHA now believes that the new materials submitted by PCI indicate that precast concrete construction entails unique work conditions which should be specifically addressed by the construction standards. As noted above, OSHA believes that it is appropriate to reopen the subpart M rulemaking record for the limited purpose of including the late submissions from PCI and receiving comments on those submissions before a final rule is issued setting forth fall protection requirements for precast concrete construction work.

The submissions noted above are available for copying and inspection in the OSHA Docket Office (Docket S–206A). The PCI submissions which led the Agency to reopen the rulemaking record are summarized below, to assist the public in preparing comments on the issues raised in this notice.

[Exhibit 25–4] PCI's February 12, 1990 Letter

In this exhibit, PCI submitted background information and specific fall protection recommendations for incorporating a new paragraph (b)(11), which would address the unique conditions to be considered in determining how to provide adequate fall protection during a particular precast concrete erection task.

In particular, PCI suggested that OSHA revise proposed subpart M to require that precast concrete erection employers implement a "safety erection plan" (SEP). Under this approach, fall protection would be an integral element of the planning for precast concrete erection projects. OSHA notes that the PCI-suggested SEP addresses matters other than fall protection. While OSHA acknowledges that a SEP could facilitate the precast concrete erection process, the Agency has determined that the erection of structures and such matters as guying and bracing are outside the scope of proposed subpart M. Therefore, this notice will address only those elements of the suggested SEP that relate to fall protection.

In addition, the PCI submission suggested that OSHA require training that would enable employees performing precast concrete erection to recognize fall hazards and to know and follow the proper fall protection procedures. PCI recommended training in the following specific areas, as appropriate:

(a) The identification of fall hazards in the work area.

(b) The use and operation of safety monitoring systems, guardrail systems, safety railing systems, body belt/harness systems, warning line systems, control zones and other protection to be used.

(c) The correct procedure for erecting, maintaining, disassembling and inspecting the system(s) to be used.

(d) The role of each employee in the safety monitoring system and how this system is used.

(e) The existing fall protection standards and regulation.

OSHA notes that the training requirements suggested by PCI are consistent with the provisions of proposed § 1926.503.

PCI also suggested that "(a)ll concrete erection work subject to special fall protection requirements shall be conducted under the supervision of a competent person * * *" In particular, PCI recommended that the competent person perform the following tasks:

(a) Determine and document those erection tasks which when performed in compliance with the current regulatory fall protection requirements create a greater hazard.

(b) Make individual determinations as to the experience, skills, special training received (apprenticeship program or equivalent course for the erection of precast concrete recognized by the Department of Labor's Bureau of Apprenticeship and Training), and knowledge of the employees as they relate to the employee's ability to perform designated activities. Only employees authorized by the employer shall be designated erectors and be allowed to perform activities deemed to create a greater hazard. Designated erectors shall receive instructions pertaining to designated activities as contained in the safety erection plan.

(c) Provide distinctive means to easily enable identification of the designated erectors when performing designated activities.

(d) Supervise implementation of the safety erection plan.

In addition, the February 12, 1990 letter detailed PCI's views as to how each of three typical precast concrete operations should be regulated with regard to fall protection. In particular, PCI set forth suggested fall protection provisions for (1) erecting precast concrete cladding; (2) erecting floor and roof deck members; and (3) erecting "total precast" structures. For each type of operation, PCI described the operation, outlined how fall protection should be provided for each task and specified the responsibilities of the competent person. Highlights of PCI's submission for each of the three operations are presented below.

Erecting Precast Concrete Cladding

Typically, according to PCI, when precast concrete is utilized strictly as a cladding member, it is attached to a reinforced concrete or structural steel frame provided by other contractors. Installation work for concrete cladding is usually performed from finished working surfaces, with structural frame erection running well ahead of actual installation of the exterior wall components. PCI then recommended:

All layout work for precast concrete cladding shall be performed with the perimeter protection in place or with the use of proper fall protection. The perimeter protection may be removed as the cladding is being installed. Removal of perimeter protection, usually performed by the precast concrete erection crew, should be performed on a bay to bay basis, just ahead of precast concrete erection, to minimize temporarily unprotected floor edges and openings. Those workers receiving, positioning, and making initial connections of the precast concrete cladding shall (1) work behind perimeter protection; (2) be tied off; or (3) be supervised by a safety monitor, specifically training to perform these duties.

Erection of Floor and Roof Deck Members

PCI described the setting for this operation as follows:

* * * The work deck continuously increases in area as more and more units are being erected. Thus, the unprotected floor/roof perimeter is constantly modified with the leading edge changing location as each member is installed. The workers (precast erectors—connectors, welders, detailers and/or grouters) are experienced employees and knowledgeable about the work deck, its edges and openings.

PCI recommended, based on its assessment of the situation, that:

> Fall protection of workers at the leading edge shall be assured by properly constructed and maintained control zone lines supplemented by a safety monitoring system to ensure the safety of all precast concrete erectors working within the area defined by the control zone lines.

They further recommended that the "control zone lines shall be kept as much as sixty (60) feet away from the leading edge and reinstalled from time to time as the leading edge changes locations." PCI based this suggestion on the observations that (1) a member may be as long as 120 feet and that, (2) if it is necessary to rotate the member, clearance of at least half its length, 60 feet, is necessary to avoid having the member become entangled in the control zone lines. OSHA is considering if, based on the considerations raised by PCI, the Agency should revise proposed § 1926.502(g)(1) (criteria for control zone systems) to allow the control zone line to be erected more than 25 feet back from the leading edge in such situations.

PCI also stated that "workers welding, bolting, cutting and/or grouting floor/roof deck members outside the limits of the control zone but more than 6 feet from the edge as defined by a warning line do not require fall protection." OSHA notes that its enforcement policy does not currently permit the issuance of citations in those situations where employees are 6 feet or more back from the perimeter of a floor or roof or other walking/working surface since the employee essentially "has no exposure" to the fall hazard. PCI recommends that workers who are performing tasks outside the limits of the control zone and less than 6 feet from the edge be protected by one of the following methods: (1) Tied off; (2) safety monitoring system; or (3) safety railing system.

Erecting "Total Precast" Structures

PCI described the setting for this work as follows:

> The erection of a structure utilizing precast/prestressed concrete members involves the sequential placement of columns, beams, wall panels, and floor and roof members which are positioned by a crane in conjunction with a specialized crew and then welded, bolted and/or grouted together.
>
> In accordance with the erection drawings, the structural frame made up of columns, walls and beams shall be installed and connected to create a stabilized support system for the floor and/or roof members.

PCI recommended that OSHA require precast concrete erector employers engaged in such operations to protect their employees from fall hazards as follows:

> Employees engaged in initial connecting, point to point movement, guying and bracing of the precast concrete frame members shall be designated by the competent person supervising the project as having received special training and possessing experience, skill and knowledge to work at the point of erection.
>
> Initial beam to column and/or wall connections and required point to point movement shall be made from ladders, scaffolds, mechanical work platforms, vehicle mounted elevated and rotating work platforms or similar type equipment except from those *documented* (emphasis added) erection tasks which, when performed in compliance with the fall protection requirements of subpart M create a greater hazard.

PCI also suggested that OSHA require the training of employees in the proper use and inspection of any body belt/harness systems they are required to use. Again, OSHA notes that the training suggested by the PCI is very similar to that required in proposed § 1926.503.

[Exhibit 25–6] PCI's May 30, 1990 letter

PCI again suggested that precast concrete erection either be included in subpart R along with steel erection or be covered by a separate section within subpart M. PCI also suggested that the one cable safety railing currently permitted in steel erection (§ 1926.751(b)(1)(iii)) also be allowed for precast concrete erection, explaining that "* * * slinging a cable across a column is quite easy to do" and that "* * * the safety railing previously installed by the steel erector and left in place would be sufficient protection for the precast concrete erection crew to proceed with actual product installation * * *" They also requested that OSHA permit safety monitoring systems to be used for all employees actually constructing the floor, including welders and grouters working outside the control zone.

Request for Comments

The PCI submissions indicate that precast concrete construction work involves a wide range of operations and tasks and that the general requirements in the proposed subpart M standard to use guardrail systems, body belt/harness systems, or safety net systems may not be appropriate to some precast operations. Just as OSHA has recognized the need to set forth industry-specific requirements for overhand bricklaying and roofing operations in proposed subpart M, the Agency acknowledges that it may be necessary to promulgate similar provisions which specifically address fall protection for employees performing precast concrete construction.

The PCI submissions contain detailed guidance regarding fall protection. OSHA solicits detailed comments, with supporting information and rationale, as to whether OSHA should adopt the approach to fall protection set forth by PCI as the appropriate regulatory approach for precast concrete construction. The Agency anticipates that any final rule provision that focuses on precast concrete construction work will set criteria for the use of a fall protection plan. For example, OSHA would set criteria that precast concrete construction employers would use to choose the fall protection system that is appropriate in a particular situation. The Agency expects that the employers would consider factors such as the nature and location of the work being done and the extent to which the use of guardrail systems (or safety monitoring systems) would pose hazards. In addition, OSHA would set criteria that precast concrete construction employers would use to determine if it is appropriate to install control zone lines blocking access to the leading edge.

Based on the PCI submissions, OSHA is considering if the Agency should require a precast concrete erection employer whose operations would not appropriately be covered by conventional fall protection or by the leading edge provision, to demonstrate that fact, and to undertake the burden of planning and documenting the alternative means by which their employees will be protected from fall hazards. In particular, OSHA is considering the extent to which PCI's submissions could serve as models for precast concrete erection employers in the development and implementation of fall protection plans which are appropriate for their operations.

OSHA solicits comments, with supporting information, regarding the following issues:

Issue 1

Are there situations where OSHA should allow precast concrete construction employers to protect their employees from fall hazards by means other than conventional fall protection systems (guardrail systems, personal fall arrest systems, or safety net system)? Under what circumstances, if any, would the implementation of safety monitoring or controlled access zone systems, in conjunction with a "fall protection plan," provide fall protection that is equivalent, or superior, to that

provided through the use of conventional systems?

Issue 2

OSHA is considering what information it should require from precast concrete construction employers who seek to establish that the use of conventional fall protection is infeasible or would pose a greater hazard to employees. Therefore, OSHA solicits input, with supporting information, regarding the following questions:

(a) To what extent is it more dangerous for precast concrete construction employees to erect and dismantle a conventional fall protection system than it is to perform a particular operation (such as grouting)? What factors should employers consider in evaluating the relative hazards? For example, employees who are grouting precast concrete members may need to come within two feet of a floor or roof edge for a few seconds, or, at most, a few minutes. The PCI submission (Ex. 25–4) states that the use of a safety monitoring system is more appropriate than the use of a conventional fall protection system during grouting operations, because employees would spend far more time exposed to fall hazards while erecting and dismantling a conventional system than they would if they simply proceeded to grout while observed by a safety monitor.

(b) What criteria should OSHA set for a precast concrete construction employer who seeks to establish that it is infeasible to use conventional fall protection systems? How should the Agency require such employers to document the factors (such as the absence of structural members to which conventional systems could be attached) that would preclude the use of conventional fall protection?

Issue 3

The Agency solicits comment on the criteria to be met by the precast concrete construction employers who would use a fall protection plan. Based on the PCI submission of February 12, 1990 (Ex. 25–4), discussed above, OSHA raises the following questions:

(a) Should the fall protection plan be prepared by a "qualified" person, as defined in 29 CFR 1926.32(1)? OSHA notes that "qualified" means, in short, one who "has successfully demonstrated his ability to solve or resolve problems relating to the subject, the work, or the project."

(b) Should any changes to a fall protection plan be approved by a qualified person?

(c) Should a copy of the fall protection plan, with all approved changes, be maintained at the job site?

(d) Should the implementation of the plan be under the supervision of a "competent person"? OSHA notes that PCI states in their submission that "competent person" is used "as defined in applicable federal regulations." Under 29 CFR 1926.32(f) of OSHA's construction standards, a "competent person" is "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employee, and who has authorization to take prompt corrective measures to eliminate them."

(e) Should the documentation of the reasons why the use of conventional fall protection systems is infeasible or why their use would pose greater hazards be performed by a competent person?

(f) Should OSHA require that the employer inform all affected employees of any special safety measures a precast concrete construction employer has included in a fall protection plan?

(g) Should OSHA require the employer to provide training that addresses the particular circumstances of precast concrete construction operations which affect employee fall protection?

Issue 4

OSHA notes that the February 12, 1990, PCI submission (Ex. 25–4) provides for the use of "control zone lines" to separate employees installing precast concrete at the leading edge from employees performing other tasks. This approach is very similar to that taken by OSHA in existing 29 CFR 1926.500(g) (guarding of low-pitched roof perimeters during the performance of built-up roofing work) and proposed 29 CFR 1926.501(b)(2) and 29 CFR 1926.502(g). Proposed 29 CFR 1926.501(b)(2) addressed the circumstances in which OSHA would allow employers to control exposure to fall hazards through a controlled access zone. Proposed 29 CFR 1926.502(g) set criteria for employers to follow if control zones were used. Under the proposed criteria, for example, control zones would have to be marked clearly by the use of ropes, wires, tapes, or equivalent materials, attached to supporting stanchions to form control zone lines. In addition, each line would have to be flagged or otherwise clearly marked at not more than 6-foot (1.8 m) intervals with high-visibility material and each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than 39 inches (1 m) from the walking/working surface and its highest point is not more than 45 inches (1.3m). Finally, each line would have to have a minimum tensile strength of 200 pounds (91 kg). OSHA solicits comments, with supporting information, on the extent to which the control zones systems currently used by the precast concrete construction industry would comply with proposed 29 CFR 1926.502(g). In addition, if such control zone systems do not comply with proposed 29 CFR 1926.502(g), OSHA requests information as to whether and how such systems provide protection equivalent to that provided by systems that comply with proposed 29 CFR 1926.502(g).

Issue 5

What would be the impact on the precast concrete construction industry if OSHA allowed precast concrete construction employers to implement fall protection plans, under which an employer could, where appropriate, use controlled access zones and safety monitoring systems, in lieu of conventional systems? To assist the Agency in evaluating this issue, OSHA solicits responses to the following questions:

(a) What types of fall protection are now being used by the precast concrete construction industry?

(b) What fall protection is currently provided to employees who are performing particular precast concrete construction tasks?

(c) To what extent does the size of a precast concrete construction company (e.g., the number of employees or the dollar value of operations) determine the ability to provide conventional fall protection or to implement a fall protection plan?

(d) To what extent do precast concrete construction employers provide 100 percent fall protection for their employees? What are the costs or other impacts of providing such protection? What measures can be taken to control costs without reducing safety?

(e) How many multi-story structures are built with precast concrete each year? What are the average number of workers, length of time, and contract value involved with a precast concrete construction project? To what extent are such "average" numbers representative of all precast concrete construction operations? Insofar as commenters believe that "averages" would not be representative, OSHA requests that they submit project data which would enable the Agency to characterize industry operations accurately.

(f) What percentage of the employees on a precast concrete construction

project work more than six feet above ground level?

(g) To what extent do precast concrete construction employers presently develop fall protection plans for each worksite? What is the cost of developing and implementing such a plan?

(h) To what extent do precast concrete construction employers restrict access to areas which pose potential fall hazards? What means are used to restrict access? Do those employers currently use controlled access zones with lines and stanchions, such as provided in proposed 29 CFR 1926.502(g)? What are the costs of implementing access restrictions?

Issue 6

OSHA notes that the term "precast concrete" is now defined in subpart Q (Concrete and Masonry Construction) of the construction standards to mean concrete members (such as walls, panels, slabs, columns, and beams) which have been formed, cast, and cured prior to final placement in a structure. OSHA believes that it may also be necessary to define this term in subpart M, perhaps with additional examples of precast concrete members, if the Agency promulgates fall protection requirements specifically directed at precast concrete construction.

It may also be appropriate to make the subpart M definition of "precast concrete" different from that in subpart Q, so that it reflects the industry nomenclature for tasks or operations related to precast concrete construction work. OSHA solicits comments and suggestions, with supporting information regarding the need to revise the definition of "precast concrete."

In addition, are there other terms that would be used in the final rule for subpart M to address precast concrete construction which OSHA should define? If so, what definitions should OSHA provide for those terms?

III. Public Participation

Comments

Written comments regarding the issues raised in this notice must be postmarked by (90 days from date of publication in the Federal Register). Four copies of these comments must be submitted to the Docket Office, Docket No. S–260A, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for the subpart M rulemaking regarding the issues set forth in this notice need not be resubmitted.

IV. Authority

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of July 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–18569 Filed 8–4–92; 8:45 am]

BILLING CODE 4510–26–M

federal register

Wednesday
August 5, 1992

Part IX

Department of Justice

Bureau of Prisons

28 CFR Parts 524 and 571

Control, Custody, Care, Treatment and Instruction of Inmates: Classification and Program Review; Petition for Commutation of Sentence; Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

Control, Custody, Care, Treatment and Instruction of Inmates; Classification and Program Review

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on Classification and Program Review to specify that a psychology services representative is also ordinarily a member of each classification (unit) team. The intended effect of this amendment is to allow for the continued efficient use of Bureau personnel while continuing to ensure that inmates are classified to the most appropriate level of custody and programming both on admission and upon review of status.

EFFECTIVE DATE: August 5, 1992.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Classification and Program Review. A final rule on this subject was published in the **Federal Register** on July 3, 1991 (56 FR 30676).

The classification (unit) team is responsible for ensuring that inmates are classified to the most appropriate level of custody and programming. Current regulations specify that in institutions with unit management the classification (unit) team shall include, at a minimum, the unit manager, a case manager, a counselor, and, ordinarily, an educational advisor. This amendment specifies that a psychological services representative is also ordinarily a member of the team.

Because this amendment pertains to agency management (specifically the allocation of Bureau staff) and does not impose further restrictions upon inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau Prisons has determined that E.O. 12291 does not apply to this rule because the rule pertains to agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 524

Prisoners.

Dated: July 29, 1992.

Thomas R. Kane,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 524 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Title V, Pub. L. 91–452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95–0.99.

2. In § 524.11, paragraph (a) is amended by revising the second sentence to read as follows:

§ 524.11 Classification team.

* * * * *

(a) * * * An education advisor and a psychology services representative are also ordinarily members of the team. * * *

* * * * *

[FR Doc. 92–18534 Filed 8–4–92; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

Control, Custody, Care, Treatment and Instruction of Inmates; Petition for Commutation of Sentence

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on Petition for Commutation of Sentence. This amendment updates the procedures to be followed with regard to placement on the appropriate parole docket following the granting of a petition which may involve parole eligibility. The intended effect of this amendment is to ensure the continued efficient operation of the Bureau.

EFFECTIVE DATE: September 4, 1992.

ADDRESSES: Office of General Counsel, Bureau of Prisons, room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Petition for Commutation of Sentence. A final rule on this subject was published in the **Federal Register** of March 5, 1982 (47 FR 9756). This amendment revises the procedures to be followed in paragraph (c) of § 571.41 with regard to placement on the parole docket following the granting of a petition which may involve parole eligibility. Former paragraph (c)(2) of § 571.41 is redesignated as paragraph (c)(1), and former paragraph (c)(1) is redesignated as paragraph (c)(2) and revised to specify that if the commutation grants parole eligibility, the inmate is to be placed on the appropriate parole docket. New paragraph (c)(2) of § 571.41 covers more completely the range of parole eligibility available to the inmate and allows for appropriate agency processing. This amendment also revises the heading of the subpart to read "Subpart E—Petition for Commutation of Sentence".

Because this amendment places no greater restrictions on inmates and deals with agency procedure, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and opportunity for public comment. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. The Bureau of Prisons has determined that E.O. 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–

354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 571

Prisoners.

Dated: July 29, 1992.

Thomas R. Kane,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter D of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565 and 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3621, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

2. The heading of subpart E is revised to read as follows:

Subpart E—Petition for Commutation of Sentence

3. In § 571.41, paragraphs (c) (1) and (2) are revised to read as follows:

§ 571.41 Procedures.

* * * * *

(c) * * *

(1) If a petition for commutation of sentence is granted, institutional staff shall recalculate the inmate's sentence in accordance with the terms of the commutation order.

(2) If the commutation grants parole eligibility, the inmate is to be placed on the appropriate parole docket.

* * * * *

[FR Doc. 92–18535 Filed 8–4–92; 8:45 am]

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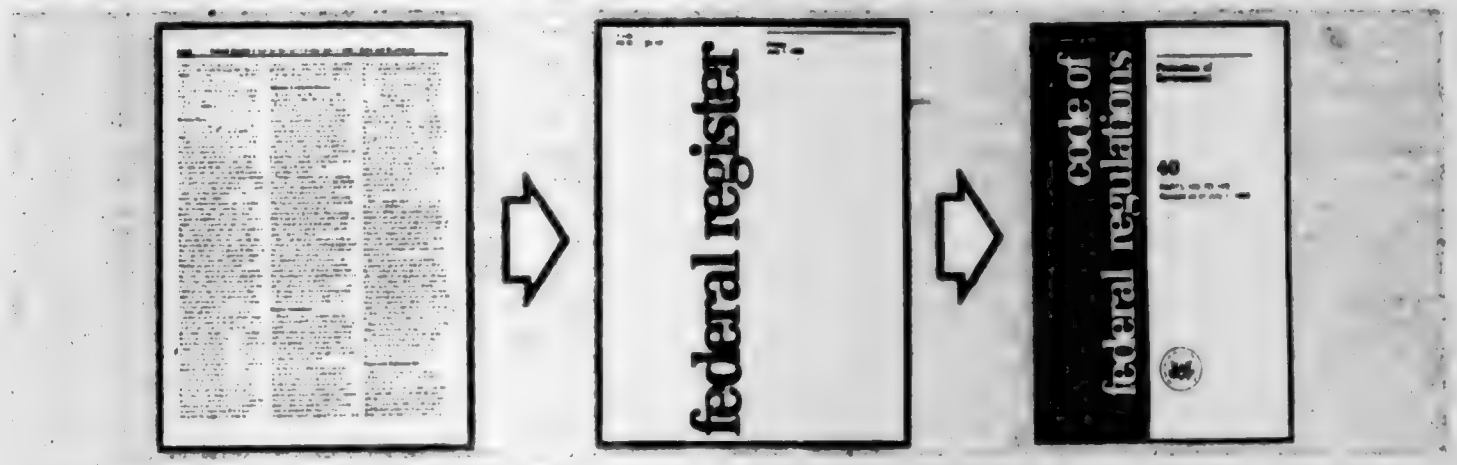

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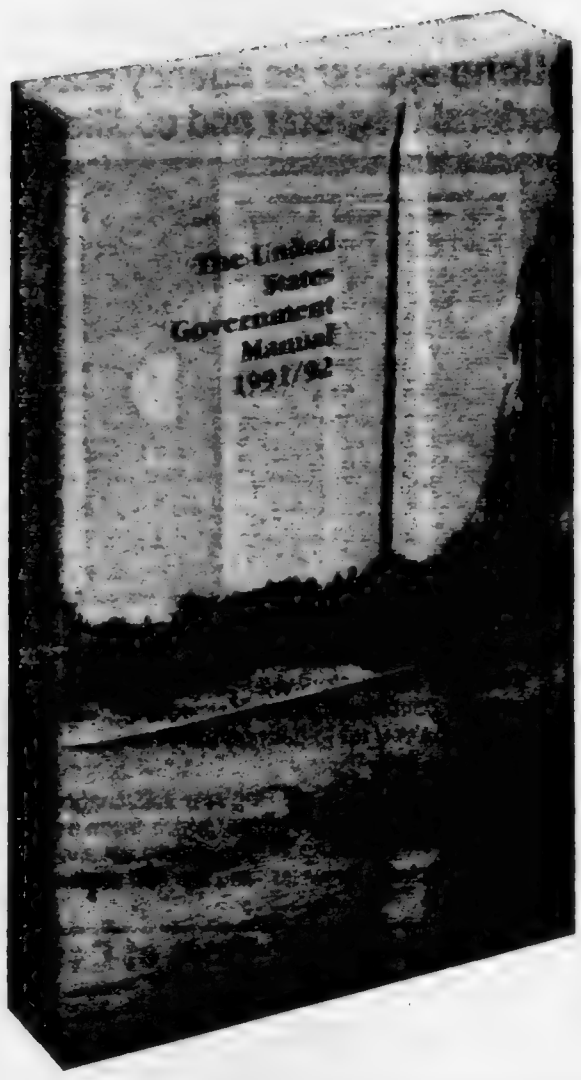

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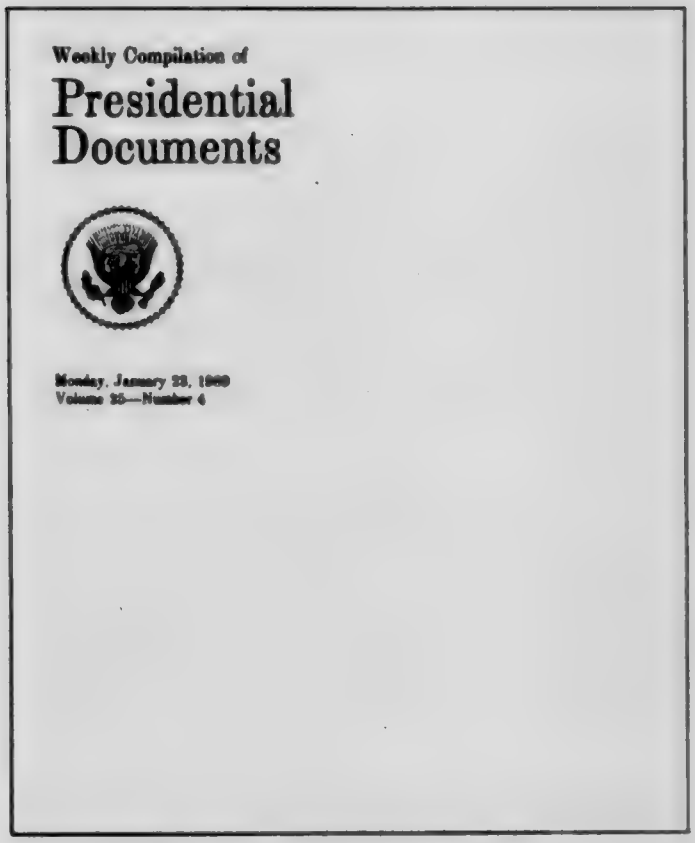

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 0294-S]

General Administrative Regulations; Standards for Approval; Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends 7 CFR part 400, subpart L, Standards for Approval; Standard Reinsurance Agreement (Agreement), effective for the 1993 and subsequent reinsurance years, to reduce the amount of premium surplus the company reinsured under an Agreement must retain to write a given premium volume of multiple peril crop insurance (MPCI). The intended effect of this rule is to increase the total volume of premium a company may write under the Agreement.

DATES: This final rule is effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains unchanged.

FCIC has determined that this rule relates to internal agency management and is not subject to the notice and comment provisions of 5 U.S.C. 553. The rule shall therefor be effective upon publication in the **Federal Register**.

Further, since this action relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291.

This action is also exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these final regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

Background

The current "Standards for Approval", as published in the Code of Federal Regulations (CFR) are too restrictive and impose unnecessary limitations on the amount of premium volume which reinsured companies must have in order to write a maximum value of multiple peril crop insurance (MPCI).

Section 400.161, *Definitions*, contained in 7 CFR part 400, subpart L, Reinsurance Agreement—Standards for Approval for the 1988 and Subsequent Crop Years currently defines "MPUL" in subsection (i) as follows:

MPUL means the maximum probable underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

Although FCIC's current definition of "MPUL" refers to maximum probable as opposed to maximum possible, maximum possible is preferred. MPUL is the amount of loss the company may accumulate at a gross loss ratio which FCIC uses to determine the maximum premium which FCIC will allow a company to write. The amount of "probable" underwriting loss that a company may sustain at a given premium level is, of necessity, an estimate. The amount of "possible" underwriting loss a company may sustain at a given premium level is simply a mathematical computation. By computing MPUL on the possible loss, FCIC uses a more certain number and has adjusted its formula to factor in the greater loss factor resulting from the definition changes. Therefore, the definition for "MPUL" has been changed to refer to "maximum possible underwriting loss."

The surplus is a financial cushion or buffer protecting the company against shocks in the marketplace. The larger the cushion relative to a company's liabilities the stronger the firm. The insurer's surplus limits established by these regulations limit the amount of new business the company can write. Adequate surplus is needed by a company to absorb unforeseen underwriting losses or operating costs, absorb declines in the value of the investment portfolio, allow adequate loss reserves, and finance future growth in written premiums.

For the 1992 reinsurance year, FCIC used retained premium in each state and fund to determine whether or not a company possessed adequate surplus to secure "potential" liability at a 400 loss ratio for the ultimate net premium volume retained even though the 1992 Agreement allowed a non-proportional sharing of underwriting losses to a 500 loss ratio.

Effective for the 1993 reinsurance year, FCIC intends to provide for risk sharing to a 500 loss ratio or the revised MPUL which will ensure adequate surplus is required for any level of risk sharing assumed under the Agreement.

Section 400.170, *General qualifications*, provides a mechanism for determining the amount of surplus that an insurer must have in order to qualify for and to receive an Agreement with FCIC. Section 400.170(c) currently states:

> Have surplus, as reported in its most recent financial statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured times the appropriate Minimum Surplus Factor, found in the Minimum Surplus Table. For the purposes of the

Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 2 and one-half percent (2½) of all its reinsured gross premium is written in that state:

MINIMUM SURPLUS TABLE

Number of States in which a company issues FCIC-reinsured policies:	Minimum surplus factor (multiply by underwriting loss at a 400 loss ratio:)
1	8
2 through 10	5
11 or more	4

FCIC herein changes § 400.170(c) to address the issue of whether the state MPUL factors consider retained premium in each fund and each state which currently inflates the premium surplus requirements by using two factors for the MPUL, eliminating the current factors of 4, 5, or 8, depending on the number of states in which the company currently writes. The Minimum Surplus Table in § 400.170(c) is changed to read as follows:

MINIMUM SURPLUS TABLE

Number of States in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiply by MPUL)
1 through 10	2.5
11 or more	2.0

This change will apply to the 1993, and subsequent Agreements, effective on or after July 1, 1992, and only affects companies under an Agreement.

The Standards for Approval for the Agreement are for the protection of FCIC. The changes proposed herein have the effect of reducing the surplus required and do not increase the requirements for approval for any company.

For these reasons, FCIC has determined that this rule relates to internal agency management and is not subject to the notice and comment provisions of 5 U.S.C. 553. The rule shall therefore be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 400

Crop Insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations—Standards for Approval; Standard Reinsurance Agreement (7 CFR part 400, subpart L), effective for the 1993 and succeeding reinsurance years, in the following instances:

1. **Authority:** The authority citation for 7 CFR part 400, subpart L, continues to read as follows:

Authority: 7 U.S.C. 1501–1520.

2. 7 CFR 400.161(i) is revised to read as follows:

§ 400.161 Definitions.

* * * * *

(i) *MPUL* means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

* * * * *

3. 7 CFR 400.170(c) is revised to read as follows:

§ 400.170 General Qualifications

* * * * *

(c) Have surplus, as reported in its most recent financial statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured times the appropriate Minimum Surplus Factor, found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 2 and one-half percent (2½%) of all its reinsured gross premium is written in that state.

MINIMUM SURPLUS TABLE

Number of States in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiply by MPUL)
1 through 10	2.5
11 or more	2.0

* * * * *

Done in Washington, DC on May 22, 1992.

Jane A. Wittmeyer,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-18593 Filed 8-5-92; 8:45 am]

BILLING CODE 3410-08-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD05

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to incorporate by reference the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section XI, Division 1, of the ASME Code. The final rule imposes an augmented examination of reactor vessel shell welds and separates the requirements for inservice testing from those for inservice inspection by placing the requirements for inservice testing in a separate paragraph. The ASME Code addenda and edition incorporated by reference provide updated rules for the construction of components of light-water-cooled nuclear power plants, and for the inservice inspection and inservice testing of those components. This final rule permits the use of improved methods for construction, inservice inspection, and inservice testing of nuclear power plant components; requires expedited implementation of the expanded reactor vessel shell weld examinations specified in the 1989 Edition of Section XI; and more clearly distinguishes in the regulations the requirements for inservice testing from those for inservice inspection.

EFFECTIVE DATE: September 8, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Office of the Director of the Office of the Federal Register as of September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. G.C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3848.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1991 (56 FR 3796), the Nuclear Regulatory Commission published in the **Federal Register** a proposed amendment to its regulation, 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," to update the reference to editions and addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). This proposed amendment would revise § 50.55a to incorporate by reference the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section III, Division 1, of the ASME Code, and the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section

XI, Division 1, of the ASME Code, with a specified modification. The modification would require implementation of certain requirements for containment isolation valve (CIV) testing that appear in Section XI Subsection IWV prior to the 1988 Addenda, but which do not appear in the later addenda. The amendment would impose an augmented examination of reactor vessel shell welds, and separate in the regulations the requirements for inservice testing from those for inservice inspection by placing the requirements for inservice testing in a separate paragraph.

Summary of Comments

Interested parties were invited to submit written comments for consideration in connection with the proposed amendment by April 16, 1991. Comments were received from 29 separate sources. These sources consisted of 23 utilities, one service organization representing four nuclear power plants, the Nuclear Management and Resources Council (NUMARC), one owners group (BWR Owners Group (BWROG)), one state entity (Illinois Department of Nuclear Safety (IDNS)), one public citizens group (Ohio Citizens for Responsible Energy (OCRE)), and one independent consultant.

The submitted comments generally addressed one of the following subject areas: (1) The incorporation by reference of the specified later addenda and edition of Section III, Division 1, and Section XI, Division 1, of the ASME Code into § 50.55a; (2) the endorsement of comments submitted by NUMARC; (3) the proposed modification to Section XI Subsection IWV rules for CIV testing; (4) the proposed augmented reactor vessel examination; (5) the separation of the rules for inservice inspection and inservice testing; (6) the existing scope of § 50.55a for pump and valve testing; and (7) the potential endorsement in § 50.55a of ASME/ANSI OM part 4 on snubbers.

Those who commented on the updating of existing references to Section III and Section XI of the ASME Code in § 50.55a generally noted their approval. One commentor, however, expressed significant concern with the new provision initially specified in the Section XI 1986 Addenda which expands the existing requirement to examine one circumferential and one longitudinal reactor vessel shell weld during the 2nd and subsequent inspection intervals to essentially 100 percent of all reactor vessel shell weld during those intervals. Volumetric examination of all reactor vessel shell welds during the first inspection interval has been a requirement in Section XI since the 1975 Addenda. The commentor believes that the expanded examination is unnecessary and that examination efforts should focus on the beltline welds or welds that exceed a specified fluence level. The NRC agrees with the ASME action to expand the reactor vessel examination on the basis that the importance of the reactor vessel, and previous unexpected cracking of primary coolant pressure boundary components, requires that the expanded examinations be performed to ensure the integrity of the reactor vessel. The importance of reactor vessel integrity in protecting the public health and safety demands that periodic, comprehensive inservice examinations of the reactor vessel be made to ensure that structural degradation, if it occurs, does not go undetected. Although the beltline welds do receive the highest radiation, there is simply no assurance that service induced cracking would be limited to those welds. An examination once every ten years of essentially 100 percent of all reactor vessel shell welds is both reasonable and necessary.

The comments submitted by NUMARC relate to: (1) The proposed endorsement of a later edition and addenda of the ASME Code, which NUMARC considers to be a positive step; (2) the proposed modification to Section XI Subsection IWV (i.e., the reference to part 10 of ASME/ANSI OMa–1988 Addenda to ASME/ANSI OM–1987 (OM Part 10)), which NUMARC considers to be inappropriate and unnecessary on the basis that 10 CFR part 50, Appendix J testing is adequate; (3) the proposed augmented reactor vessel examination, which NUMARC recognizes to be important, but suggests that more flexibility be incorporated into the implementation provisions; and (4) the scope of § 50.55a which NUMARC believes should not be influenced by Generic Letter 89–04. Approximately one-half of the utility commentors specifically endorsed the comments by NUMARC. In general, comments from the other utilities were consistent with one or more of the comments from NUMARC. The comments from NUMARC are discussed below, along with comments from others on the same subject.

Most of the comments addressed, in part, the proposed modification to Section XI Subsection IWV rules for containment isolation valve testing. Utility comments supported the NUMARC comment, which expressed the belief that the current Appendix J containment leakage testing program already provides an adequate basis for assessing and controlling containment leakage and that the modification could result in a valve having to be declared inoperable immediately, in spite of the fact that the total containment leakage may be substantially less than allowable. NUMARC suggested that, in lieu of reinstating requirements for specific valves, NRC recommend to the ASME Operations & Maintenance (O&M) Committee that it perform a comprehensive review of the testing requirements for containment isolation valves and acceptance standards for those tests. IDNS agreed with the NRC position that the requirements for leakage rate analysis and provisions for corrective action should be maintained, but believed that it would be less confusing for licensees if those requirements were incorporated into the existing requirements for Type C testing in Appendix J. OCRE strongly supported the action by NRC to modify the Section XI rules for CIV testing.

The NRC concern that resulted in the proposed modification to Section XI Subsection IWV stems from the findings of two reviews and a follow-on study of Appendix J leak test results. The overall findings show that valve leakage is the primary contributor to occurrences of containment unavailability and that such occurrences generally involve small, rather than large, leaks. Risk to the public from small leakage events is very low, but the NRC is concerned that eliminating the existing Section XI requirement to analyze leakage rates and to take corrective action in the event of abnormally high leakage rates for those CIVs that do not provide a reactor coolant system pressure isolation function could reduce the ability to detect degrading valves and, thereby, could permit an unacceptable reduction in the present safety margin associated with the leak tight integrity of those CIVs and, thereby, the containment.

It was specifically noted in the proposed rule that the NRC was interested in receiving comments on the discussed basis for and content of the proposed modification, and was particularly interested in receiving comments that would provide insight and justification, based upon plant experiences, relative to the need for revising or possibly eliminating the proposed modification. Many comments were received that express concern with the proposed modification. However, these comments, which generally state the opinion that Appendix J requirements are adequate and sufficient with regard to ensuring containment integrity, are of a qualitative nature and no specific plant

data or operational experiences were provided or referenced that updated the results of the earlier studies. No additional substantive information was provided for the NRC to consider relative to the need for revising or possibly eliminating the proposed modification. It has not been demonstrated, by analysis of more recent and comprehensive containment leakage test data, that containment leakage integrity can be maintained at an acceptable level without continued implementation of the existing Appendix J valve leak rate test program in conjunction with the Section XI requirement for analysis of leak rates.

Consistent with the comment by NUMARC, the NRC staff discussed the basis for OM part 10 CIV testing requirements with representatives from the ASME O&M Committee. Based on these discussions and in concert with the O&M Committee organization, the O&M Committee has initiated action to (1) perform a comprehensive review of OM part 10 CIV testing requirements and acceptance standards and (2) develop a basis document that would provide, as a minimum, a documented basis for not including the requirements for analysis of leakage rates and corrective actions in OM part 10 for those CIVs that do not provide a reactor coolant system pressure isolation function. The NRC will reevaluate the need for the modification to Section XI Subsection IWV, following review of this basis document. It is anticipated that this will occur as part of a future rulemaking proceeding that will address the incorporation by reference of the ASME O&M Code into § 50.55a.

In the meantime, this final rule incorporates by reference the 1988 Addenda and 1989 Edition of Section XI, Division 1, with a specified modification for CIV testing that is provided in a new § 50.55a(b)(2)(vii). The modification substantially preserves the existing requirements for analysis of leakage rates and corrective actions that exist in Subsection IWV prior to the 1988 Addenda. Specifically, the modification requires that licensees implement the requirements of Paragraph 4.2.2.3(e), "Analysis of Leakage Rates," of part 10 and Paragraph 4.2.2.3(f), "Corrective Action," of part 10, in addition to the requirements of Paragraph 4.2.2.2 of part 10, for all Category A valves that are CIVs, regardless of whether or not they provide a reactor coolant system pressure isolation function. Because paragraph 4.2.2.3(e) of part 10 is specified in the modification rather than the existing IWV–3426, the existing Section XI requirement is somewhat relaxed by permitting valve combinations rather than specific valves to be analyzed. This recognizes that, in the past, requests for relief have been granted where design constraints necessitate testing combinations of valves with permissible leak rate limits applied to valve groups. The specified modification does not require the present practice of trending NPS 6 and larger valves because that requirement has not been carried from IWV–3427(b) to OM part 10.

Section XI Subsection IWV (1988 Addenda and 1989 Edition), Subsection IWP (1988 Addenda and 1989 Edition), and Subsection IWF (1987 Addenda, 1988 Addenda, and 1989 Edition) reference ASME/ANSI OM part 10, ASME/ANSI OM part 6, and ASME/ANSI OM part 4, respectively. During preparation of this final rule, it was recognized that Table IWA–1600–1 in the applicable Section XI addenda and edition specifies a nonexistent revision for OM part 10 and part 6, and does not specifically identify the applicable revision for OM part 4. The Section XI Subcommittee on Inservice Inspection has taken action to correct the revision reference, which, for these standards, should be the ANSI/ASME OMa–1988 Addenda to the ASME/ANSI OM–1987 Edition. To ensure that licensees are aware of the correct revision reference to the OM standards, an additional modification, § 50.55a(b)(2)(viii), has been added to specify that the OMa–1988 Addenda is the applicable revision to the OM–1987 Edition for OM part 4, part 6, and part 10 when using the noted Section XI addenda and edition.

The NUMARC comment relative to the proposed augmented examination of the reactor vessel indicates an understanding of the NRC position on the need for this examination, but notes concern with the specifics of the proposed implementation. Specifically, NUMARC expresses concern that: (1) Better utilization of available inspection resources could be accomplished by limiting application of the augmented inspection program to the reactor vessel beltline shell welds, or by limiting implementation of the augmented examination to reactor vessel shell welds that exceed a specific neutron flux exposure (this comment differs from the one utility comment noted above relative to updating later edition and addenda of Section XI in that it only refers to the augmented examination); (2) tooling for the older Boiling Water Reactors (BWRs) may generally not be available in the time-frame needed; (3) only those reliefs which address the scope and extent of shell weld examinations should be revoked, and they should be revoked on a plant specific basis; and (4) the NRC should state its willingness to accept requests for specific new exemptions, based on the availability of suitable equipment and technology at the time of the scheduled inspection and the appropriate technical justification.

Other comments on the augmented examination include those from: BWROG, which noted concern for those plants close to the end of the current interval that could not practically incorporate the augmented examination into the current interval and would have to perform that examination during the first period of the next interval (**Note:** The deferred augmented examination may be used as a substitute for the reactor vessel shell weld examination normally scheduled for the interval in which the deferred examination was performed (§ 50.55a(g)(6)(ii)(A)*(3)*, therefore, the impact of deferring the augmented examination will be reduced); IDNS, which strongly supports the NRC position regarding the augmented examination of the reactor vessel; and OCRE, which also strongly supports the augmented examination and notes that the examination will not only provide an additional assurance of safety, but will aid in understanding aging degradation phenomena which will assist licensees that wish to pursue license renewal.

The NRC position with regard to the augmented examination of the reactor vessel, as previously stated in the Supplementary Information to the proposed rule, is that degradation of reactor vessel materials has become more of a concern recently, because: (1) Results from irradiation surveillance material tests show that certain reactor vessel materials undergo greater radiation damage than previously expected, (2) indications from operational data show that stress corrosion cracking of BWR reactor vessels is more probable than was thought several years ago, and (3) significant service induced cracking has occurred in large vessels (i.e., pressurizer, steam generators) designed and fabricated to the ASME Code. It is the judgment of the NRC that, because of new information and previous limited examinations of reactor vessels, there may exist a substantially greater potential for reactor vessel degradation, in all areas of the reactor vessel, than previously considered and that maintenance of the level of protection presumed by the regulations requires more than compliance to existing regulatory requirements. The NRC has

determined that the augmented examination of reactor vessels will result in a substantial increase in the overall protection of the public health and safety, and that the costs of implementation are justified in view of the increased protection. The backfit analysis required by § 50.109, "Backfitting," is provided as part of the regulatory analysis that supports this final rule.

However, the NRC agrees with comments that additional flexibility and specificity will improve implementation of the augmented examination of reactor vessel examination. To this end, the augmented examination of reactor vessel shell welds specified in this final rule includes the following new provisions and clarifications: (1) The revocation of previously granted reliefs is limited to those reliefs that deal with the extent of volumetric examination of reactor vessel shell welds; (2) the augmented examination will be performed in accordance with the section XI edition and addenda applicable to the inspection interval in which the examination is actually performed; (3) "essentially 100%" as used in § 50.55a(g)(6)(ii)(A) means "more than 90 percent of the examination volume of each weld, where the reduction in examination volume is due to interference from another component, or part geometry;" (4) licensees that defer the augmented examination to the next interval are permitted to retain all existing approved reliefs for the current interval; (5) licensees with fewer than 40 months remaining in the inspection interval in effect when the rule becomes effective are permitted to extend the interval in accordance with the provisions of section XI (1989 Edition) IWA–2430(d); (6) licensees that are unable to satisfy completely the requirements for the augmented examination may request to perform alternate examinations in accordance with § 50.55a(g)(6)(ii)(A)(*5*). These items are addressed individually in the discussion below regarding provisions of the augmented reactor vessel shell weld examination.

Section 50.55a(g)(6)(ii) addresses augmented inservice inspection programs for those systems and components for which the Commission determines that added assurance of structural reliability is necessary. For that purpose, and consisent with the discussion in this final rule, § 50.55a(g)(6)(ii)(A) has been added to require expedited implementation of the reactor vessel shell weld examinations specified in the 1989 Edition of section XI, Division 1, in item B1.10, "Shell Welds," of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table 2500–1 of subsection IWB, "Requirements for Class 1 Components of Light-Water Cooled Power Plants."

In order to ensure the applicability of the new augmented examination to all licensees, § 50.55a(g)(6)(ii)(A)(*1*) revokes all previously granted reliefs relating to the extent of volumetric examination of the reactor vessel shell welds that apply to examinations for the inservice inspection interval that is in effect when the rule becomes effective subject to a specified modification. Limiting the revocation of previously granted reliefs to those that deal with the extent of the volumetric examination permits the retention of those approved reliefs that deal with issues such as specification of calibration blocks. Licensees that choose to defer the augmented examination to the next interval in accordance with § 50.55a(g)(6)(ii)(A)(*3*) should note that paragraph (*iv*) of that section modifies the revocation of approved reliefs to permit retention of previously approved reliefs for the current interval when the augmented examination in deferred. This provision recognizes that plants that previously received relief from the section XI reactor vessel shell weld examination and satisfy the condition to defer the augmented examination may find it impractical to implement the section XI examination during the current inspection interval.

Section 50.55a(g)(6)(ii)(A)(*2*) requires all licensees to implement the specified augmented examination of reactor vessels during the inspection interval in effect when this rule becomes effective, subject to conditions specified in § 50.55a(g)(6)(ii)(A)(*3*) and (*4*). Section 50.55a(g)(6)(ii)(A)(*2*) specifically permits the use of the augmented examination, when not deferred, as a substitute for the reactor vessel shell weld examinations scheduled for the inspection interval in effect when the rule becomes effective, and specifies that, for the purpose of this rule, "essentially 100 percent" as used in Table IWB–2500–1 means "more than 90 percent of the examination volume of each weld, where the reduced examination volume is due to interference from another component, or part geometry." This is consistent with section XI Code Case N–460, which previously has been approved for use in Regulatory Guide 1.147. It is recognized that it may be necessary to implement a combination of internal and external diameter examinations to achieve "essentially 100%" examination volume coverage for each weld. A clarification has been included in this section to note that the augmented examination may be used as a substitute for the reactor vessel shell weld examination in the interval in effect when the rule becomes effective when the augmented examination is not deferred. This is a reinforcement of § 50.55a(g)(6)(ii)(A)(*3*), as it appears in both the proposed and final rule, which specifies that the deferred examination may not be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect when the rule becomes effective.

The NRC recognizes that plants with fewer than 40 months remaining in the inspection interval when this rule becomes effective may find it impractical to implement the augmented examination of the reactor vessel during that inspection interval. Therefore, § 50.55a(g)(6)(ii)(A)(*3*) permits plants with fewer than 40 months remaining in the inspection interval when this rule becomes effective to defer the augmented examination until the first period of the next inspection interval. However, this same paragraph specifically prohibits the use of the deferred augmented examination as a substitute for reactor vessel shell weld examinations scheduled for the inspection interval in effect when the rule becomes effective. The intent is to ensure that the examinations are deferred only when necessary and not to have the rule encourage a 40-month delay in reactor vessel shell weld examinations. Further, § 50.55a(g)(6)(ii)(A)(*3*) permits using the deferred examination, with a condition, as a substitute for reactor vessel shell weld examinations scheduled for the inspection interval in which the deferred examinations are performed. The condition is that subsequent reactor vessel shell weld examinations for successive inspection intervals be performed in the first period of the inspection interval. This condition is necessary to prevent a potential 160-month gap between reactor vessel shell weld examinations. This gap would occur if a plant used the deferred examination performed in the first period as a substitute for the scheduled examination and then deferred the examination for the next inspection interval to the end of that interval as permitted by section XI. In addition, this section specifies that licensees with fewer than 40 months remaining in the inservice inspection interval in effect when the rule becomes effective may extend that interval in accordance with

the provisions of section XI (1989 Edition) IWA-2430(d) to permit implementation of the augmented examination during the current interval. It is not the intent of the NRC to permit licensees in the second period of an inspection interval to reduce the interval length for the purpose of "being within 40 months of the end of the interval" and, thereby, deferring the augmented examination to the first period of the subsequent interval.

Section 50.55a(g)(6)(ii)(A)(*4*) specifies that a licensee that has either completed or has scheduled an inspection of essentially 100 percent of the length of all Examination Category B-A shell welds during the inservice inspection interval in effect when the rule becomes effective does not have to implement the required augmented examination of the reactor vessel shell welds. Primarily, this paragraph is intended to permit licensees who are in the first inspection interval to use the essentially 100 percent reactor vessel shell weld examination required for that interval by section XI to satisfy the requirement for the augmented examination of the reactor vessel. The technical objective of the augmented examination will be accomplished under these conditions. These licensees will continue to apply the current requirements of § 50.55a(g)(4) until the next inspection interval when future examinations will be performed based on ASME section XI, 1989 Edition, or later Code edition and addenda specified in § 50.55a(b).

The augmented examination specified in § 50.55a(g)(6)(ii)(A) is not an ASME Code requirement. It is a requirement specifically developed and additionally imposed by the Commission. Therefore, except for the specific provisions in § 50.55a(g)(6)(ii)(A)(*2*) and (*3*) that permit using the augmented examination as a substitute for section XI required reactor vessel shell weld examinations, the closing out of an inservice inspection interval is not dependent on completion of the augmented examination. In the specific instance where the augmented examination is deferred to the first period of the next inspection interval, the current inspection interval could be closed out relative to reactor vessel shell weld examinations by implementing the regularly scheduled reactor vessel shell weld examinations as modified by previously approved applicable relief requests for that interval.

The NRC recognizes that, as noted by commentors, there may exist conditions that prevent licensees from completely satisfying the requirements for the augmented reactor vessel shell weld examination as specified in § 50.55a(g)(6)(ii)(A). For this reason, § 50.55a(g)(6)(ii)(A)(*5*) has been added to permit licensees that make a determination that they are unable to completely satisfy the specified augmented examination to propose and use alternatives that have been authorized by the NRC's Director of the Office of Nuclear Reactor Regulation.

This final rule amends § 50.55a to separate the requirements for inservice testing from those for inservice inspection by moving the requirements for inservice testing to a separate paragraph. Previously, § 50.55a(g), "Inservice inspection requirements," specified the requirements for (1) preservice and inservice examinations for Class 1, Class 2, and Class 3 components and their supports, (2) system pressure tests for Class 1, Class 2, and Class 3 components, and (3) inservice testing of Class 1, Class 2, and Class 3 pumps and valves. In order to emphasize the importance of inservice testing and to distinguish more clearly its requirements from those of inservice inspection, this final rule moves the requirement for inservice testing from § 50.55a(g), "Inservice inspection requirements," to a separate (previously reserved) § 50.55a(f), which is titled "Inservice testing requirements." All existing requirements for inservice examination and system pressure testing are retained in § 50.55a(g).

There is overall favorable acceptance of the separation of the requirements in the regulation for inservice testing and for inservice inspection. It is generally believed by the commentors, as it is believed by the NRC, that the separation serves to clarify and emphasize the requirements for inservice testing. Two administrative changes were made in the development of § 50.55a(f) relative to existing § 50.55a(g). First, § 50.55a(f)(6)(ii) has been added to indicate the Commission's intent to impose an augmented inservice testing program if added assurance of operational readiness is deemed necessary. This paragraph only indicates intent and does not impose a specific requirement. It does parallel the existing § 50.55a(g)(6)(ii) which specifies that the Commission may require an augmented inservice inspection program for systems and components for which it deems that added assurance of structural reliability is necessary. One utility commentor expressed concern that the addition of § 50.55a(f)(6)(ii) would permit the Commission to impose an augmented inservice testing program without further justification. This is not the case. Any program for augmented inservice testing will be fully justified with a documented regulatory analysis that includes the appropriate backfit analysis. The intent of the NRC to perform the necessary backfit analysis is clearly demonstrated by the backfit analysis that was performed to require the augmented examination of the reactor vessel that is specified in § 50.55a(g)(6)(ii)(A) of this final rule.

Second, this final rule includes the addition of introductory text to § 50.55a(g) which states that the requirements for inservice testing of Class 1, Class 2, and Class 3 pumps and valves are located in § 50.55a(f). This change is necessary because the placement of inservice testing requirements into a separate § 50.55a(f), as included in the proposed rule, would have caused administrative inconsistencies with regard to existing references to § 50.55a(g) for inservice testing in documents such as technical specifications, safety analysis reports, procedures, and records. With this change, existing references to § 50.55a(g) for inservice testing will refer the user to § 50.55a(f), where the specific requirements for inservice testing are located. The NRC recommends that as the governing documents are updated, the direct reference to § 50.55a(f) be incorporated, as appropriate.

Two editorial revisions, relative to the previous § 50.55a(g), are included in the new § 50.55a(f). These editorial revisions: (1) Reserve § 50.55a(f)(3) (i) and (ii) so that the structure of § 50.55a(f) will parallel that of § 50.55a(g) for the purpose of promoting easier cross-referencing between the two paragraphs; and (2) modify the reference to 120-month inspection interval in § 50.55a(g) to 120-month interval in § 50.55a(f), because the term "inspection interval," as used in Section XI, is used only in the context of inservice inspection. (The term "test interval" was not used because, unlike inspection interval, the 120-month time frame does not designate a period of required actions for the testing program. The 120-month interval used in § 50.55a(f) and the 120-month inspection interval used in § 50.55a(g) are considered by the staff to be coincident for the purpose of 120-month updating requirements.)

A number of comments were received regarding the scope of § 50.55a as applied to pump and valve testing. These comments ranged from recommending that the scope of § 50.55a be expanded to be consistent with the scopes of OM part 6 and part 10, which go beyond Class 1, Class 2, and Class 3 components, to recommending that the

scope of § 50.55a be limited to ASME Code classified components. One commentor expressed concern that the Supplementary Information in the proposed rulemaking addressed Generic Letter 89–04 in a way that seemed to include the letter in the rulemaking. That was not intended. To the contrary, the intent of this rulemaking is to maintain the existing scope of § 50.55a for pump and valve testing. For plants whose construction permits were issued on or after January 1, 1971, that scope constitutes Code classified components as specified in existing § 50.55a(g) (2) and (3) (i.e., § 50.55a(f) (2) and (3) by this rulemaking). For those plants whose construction permits were issued prior to January 1, 1971, that scope constitutes components of the reactor coolant pressure boundary which must meet the requirements applicable to components that are classified as ASME Code Class 1, and other safety-related pumps and valves which must meet the requirements applicable to components that are classified as ASME Code Class 2 or Class 3, as specified in existing § 50.55a(g)(1) (i.e., § 50.55a(f)(1) by this rulemaking). The reference to the generic letter has not been included in the final rule.

A number of comments were received with regard to snubber testing which is outside the scope of this rulemaking. Commentors generally suggested that ASME OM part 4, "Examination and Performance Testing of Nuclear Power Plant Dynamic Restraints (Snubbers)," which is referenced in Subsection IWF in the 1987 Addenda, 1988 Addenda and 1989 Edition of Section XI, be incorporated by reference into § 50.55a. Subsection IWF, "Component Supports," provides rules for the examination of component supports, and the testing of snubbers. Prior to the 1987 Addenda, Subsection IWF provided self-contained rules for the testing of snubbers. Section 50.55a does not specify requirements for the testing of snubbers. This was clarified by the separation of requirements for inservice testing and inservice inspection. Inservice testing requirements specified in § 50.55a(f) apply only to pumps and valves. The testing requirements specified in OM part 4 and referenced in Section XI Subsection IWF article IWF–5000 are not incorporated by reference into § 50.55a. Requirements for the testing of snubbers are generally governed by plant technical specifications. NRC is in the process of initiating a proposed rulemaking that would, among other things, address the incorporation by reference of the ASME OM Code, which contains rules for pump, valve, and snubber testing, into § 50.55a(f). The NRC will as a part of this future rulemaking determine the need for and acceptability of endorsing the ASME OM Code rules for snubber testing. However, in accordance with requirements for examination of component supports specified in § 50.55a(g), licensees are required to implement the rules for examination of snubbers that are provided in OM part 4 as referenced in Subsection IWF Article IWF–5000 in the applicable Section XI addenda and edition of this final rule.

Section 50.55a(g) provides requirements for selecting the ASME Code edition and addenda of Section XI to be complied with during the preservice inspection (§ 50.55a(g)(3), for plants whose construction permit was issued on or after July 1, 1974); the initial 10-year inspection interval (§ 50.55a(g)(4)(i)); and successive 10-year inspection intervals (§ 50.55a(g)(4)(ii)). As noted in the final rule codifying the most recent amendment to § 50.55a (May 5, 1988; 53 FR 16051), paragraph IWA–2400 of Section XI (as revised by the Winter 1983 Addenda) incorporated rules for selecting the applicable edition and addenda of Section XI during the preservice inspection (IWA–2411), the initial 10-year inspection interval (IWA–2412), and successive 10-year inspection intervals (IWA–2413). The criteria provided in the regulations and Section XI are effectively the same for the preservice inspection and the successive 10-year inspection intervals, but differ for the initial 10-year inspection interval. In general, use of the Commission requirements will result in the selection of a more recent edition and addenda than will use of the Section XI rules. Satisfying the requirements of § 50.55a(g)(4)(i) for the initial 10-year inspection interval will, in general, also satisfy the rules of Section XI. Although the Section XI requirements for selecting editions and addenda remain unchanged in the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition, the Commission is reaffirming its intent that in all cases the existing requirements in § 50.55a(g) be the basis for selecting the edition and addenda of Section XI to be complied with during the preservice inspection, the initial 10-year inspection interval, and the successive 10-year inspection intervals.

This final rule makes a number of editorial changes to § 50.55a for the purpose of adopting a standard convention for imposing an obligation or expressing a prohibition. In this convention "shall" is used to impose an obligation on an individual or legal entity capable of performing the required action, "must" is used as the mandatory form when the subject of the sentence is an inanimate object, and "may not" is used to impose a prohibition. The following paragraphs are amended solely to be consistent with this convention: The introductory paragraph to the section; paragraphs (a)(1), (a)(3), (b)(2)(iii), (b)(2)(iv), (g)(1), (g)(3)(ii), (g)(3)(iii), (g)(3)(iv), introductory paragraph to (g)(4), (g)(4)(i), (g)(4)(ii), (g)(5)(i), (g)(5)(iv), (g)(6)(i), (h), and footnote 6. Other paragraphs are amended for the same editorial reason, but they also contain technical revisions relevant to other parts of this final rule. Section 50.55a(f) has been developed consistent with the noted convention.

Subsection IWE, "Requirements for Class MC Components of Light-Water-Cooled Power Plants," was added to Section XI, Division 1, in the Winter 1991 Addenda. Since § 50.55a does not currently address the inservice inspection of containments and the scope of § 50.55a is not affected by this final rule, the requirements of Subsection IWE are not imposed upon Commission licensees by this amendment. The incorporation by reference of Subsection IWE into § 50.55a is presently the subject of a separate rulemaking action. Section 50.55a(b)(2)(vi) is reserved for that action.

The NRC previously alerted all holders of operating licenses or construction permits for nuclear power reactors, through NRC Information Notice No. 88–95 (IN 88–95), "Inadequate Procurement Requirements Imposed by Licensees on Vendors," to the potential that inadequate licensee procurement requirements or implementation by vendors in supplying components under the ASME Code could result in failure by these vendors to fully implement 10 CFR part 50, Appendix B (Quality Assurance Criteria). The problem, which was revealed during routine NRC inspections of vendors, resulted from the belief by some vendors that if an item was exempted by the ASME Code from Code requirements, the item was exempt from all other regulatory requirements. The apparent belief of some vendors was that since NRC endorses the ASME Code in its regulations and has accepted the various exemptions, there are, therefore, no other applicable regulatory requirements. This belief is not consistent with the NRC position. The NRC reaffirms its position which, as previously put forth in IN 88–95, states that all safety-related items, even those exempted from ASME Code requirements, are required to be

manufactured under a quality assurance program that meets the requirements of 10 CFR part 50, appendix B.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action that significantly affects the quality of the human environment and therefore an environmental impact statement is not required.

This final rule is one part of a regulatory framework directed to ensuring pressure vessel integrity, and the operational readiness of pumps and valves. Therefore, in the general sense, this rule will have a positive impact on the environment. This rule incorporates by reference into the NRC regulations improved rules contained in the ASME Code for the construction, inservice inspection, and inservice testing of components used in nuclear power plants. In addition, this rule requires an augmented examination of reactor vessel shell welds to further ensure the structural integrity of the reactor vessel. The occupational exposures attributable to the expanded reactor vessel examinations contained in the ASME Code and the augmented examination are not expected to be significant because exposures will be limited by the use of remote examination equipment. Occupational exposures associated with the augmented reactor vessel examination will be further limited by provisions in the final rule that permit, under certain conditions, the licensee to satisfy the requirement for the augmented examination by previously scheduled or implemented reactor vessel examinations, or by deferring the examination to the next interval and using the deferred examination as a replacement for the previously scheduled examination for that interval. The actions required by applicants and licensees to implement the final rule are of an established nature that should not increase the potential for a negative environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Gilbert C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3848.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0011.

The public reporting burden for this collection of information is estimated to average 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this amendment to the regulations. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mr. G.C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3848.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Backfit Analysis

The final rule incorporates by reference a later edition and addenda to Section III, Division 1, and, with both a technical and nontechnical modification, Section XI, Division 1, of the ASME Code; imposes an augmented examination on reactor vessels; and separates the requirements for inservice inspection from those for inservice testing.

The incorporation by reference into the regulations of later editions and addenda of Section III and Section XI of the ASME Code is not a backfit because Section III requirements apply only to new construction, except as voluntarily implemented by licensees, and because updated Section XI requirements are an integral part of the longstanding § 50.55a(g)(4)(ii) requirement to update inservice inspection and inservice testing programs to reflect the requirements of the latest edition and addenda of Section XI incorporated by reference in § 50.55a(b) 12 months prior to the start of the 120-month inspection interval, subject to specified limitations and modifications. The technical modification to part 10 of ASME/ANSI OMa–1988 Addenda to ASME/ANSI OM–1987 specified in § 50.55a(b)(2)(vii) is not a backfit because it simply retains an existing Section XI requirement for containment isolation valve testing that licensees now are required to implement in accordance with § 50.55a(g). The nontechnical modification specified in § 50.55a(b)(2)(viii) is not a backfit because it only serves to properly identify an incorrectly referenced standard in Section XI.

The NRC has concluded, based on the analysis required by § 50.109(a)(3) which is provided in the regulatory analysis, that the backfit that will be imposed by the augmented reactor vessel examination specified in § 50.55a(g)(6)(ii)(A) will result in a substantial increase in the overall protection of the public health and safety, and that the direct and indirect costs of implementation are justified in view of the increased protection.

The separation in the regulation of the inservice inspection and inservice testing requirements is an administrative reorganization of § 50.55a that has no impact on existing technical requirements and, therefore, has no effect on backfitting.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear

power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under Sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (1)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.55a, the introductory text, paragraphs (a), (b)(1), the introductory text of (b)(2), (b)(2)(iii), (b)(2)(iv)(A), (g)(1), (g)(2), (g)(3) introductory text, (g)(3)(i), (g)(3)(ii), (g)(4), (g)(5)(i), (g)(5)(iv), (h), and footnote 8 are revised; paragraphs (g)(3)(iii) and (g)(3)(iv) are removed and reserved; paragraph (b)(2)(vi) is added and reserved; and paragraphs (b)(2)(vii), (b)(2)(viii), (f), introductory text to (g), and (g)(6)(ii)(A) are added to read as follows:

§ 50.55a Codes and standards.

Each operating license for a boiling or pressurized water-cooled nuclear power facility is subject to the conditions in paragraphs (f) and (g) of this section and each construction permit for a utilization facility is subject to the following conditions in addition to those specified in § 50.55.

(a)(1) Structures, systems, and components must be designed, fabricated, erected, constructed, tested, and inspected to quality standards commensurate with the importance of the safety function to be performed.

(2) Systems and components of boiling and pressurized water-cooled nuclear power reactors must meet the requirements of the ASME Boiler and Pressure Vessel Code specified in paragraphs (b), (c), (d), (e), (f), and (g) of this section. Protection systems of nuclear power reactors of all types must meet the requirements specified in paragraph (h) of this section.

(3) Proposed alternatives to the requirements of paragraphs (c), (d), (e), (f), (g), and (h) of this section or portions thereof may be used when authorized by the Director of the Office of Nuclear Reactor Regulation. The applicant shall demonstrate that:

(i) The proposed alternatives would provide an acceptable level of quality and safety, or

(ii) Compliance with the specified requirements of this section would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition, subject to the following limitations and modifications:

* * * * *

(iii) *Steam generator tubing (modifies Article IWB–2000).* If the technical specifications of a nuclear power plant include surveillance requirements for steam generators different than those in Article IWB–2000, the inservice inspection program for steam generator tubing is governed by the requirements in the technical specifications.

(iv) *Pressure-retaining welds in ASME Code Class 2 piping (applies to Tables IWC–2520 or IWC–2520–1, Category C–F).* (A) Appropriate Code Class 2 pipe welds in Residual Heat Removal Systems, Emergency Core Cooling Systems, and Containment Heat Removal Systems, must be examined. When applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI of the ASME Code, the extent of examination for these systems must be determined by the requirements of paragraph IWC–1220, Table IWC–2520 Category C–F and C–G, and paragraph IWC–2411 in the 1974 Edition and Addenda through the Summer 1975 Addenda.

* * * * *

(vi) [Reserved]

(vii) *Inservice testing of containment isolation valves.* When using Subsection IWV in the 1988 Addenda or the 1989 Edition of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, leakage rates for Category A containment isolation valves that do not provide a reactor coolant system pressure isolation function must be analyzed in accordance with paragraph 4.2.2.3(e) of part 10, and corrective actions for these valves must be made in accordance with paragraph 4.2.2.3(f) of part 10 of ASME/ANSI OMa–1988 Addenda to ASME/ANSI OM–1987.

(viii) *Section XI References to OM Part 4, OM Part 6 and OM Part 10 (Table IWA–1600–1).* When using Table IWA–1600–1, "Referenced Standards and Specifications" in the Section XI, Division 1, 1987 Addenda, 1988 Addenda, or 1989 Edition, the specified "Revision Date or Indicator" for ASME/ANSI OM Part 4, ASME/ANSI part 6, and ASME/ANSI part 10 shall be the OMa–1988 Addenda to the OM–1987 Edition.

* * * * *

(f) *Inservice testing requirements.* (1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, pumps and valves must meet the test requirement of paragraphs (f) (4) and (5) of this section to the extent practical. Pumps and valves which are part of the reactor coolant pressure boundary must meet the requirements applicable to components which are classified as ASME Code Class 1. Other safety-related pumps and valves must meet the requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda [6] in effect 6 months prior to the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed therein.

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

(i) [Reserved]

(ii) [Reserved]

(iii) Pumps and valves which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(iv) Pumps and valves which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(v) All pumps and valves may meet the test requirements set forth in subsequent editions of codes and addenda or portions thereof which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section.

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the inservice test requirements, except design and access provisions, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (f)(2) and (f)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of such components.

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months prior to the date of issuance of the operating license, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(iii) [Reserved]

(iv) Inservice tests of pumps and valves may meet the requirements set forth in subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section, and subject to Commission approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(5)(i) The inservice test program for a boiling or pressurized water-cooled nuclear power facility must be revised by the licensee, as necessary, to meet the requirements of paragraph (f)(4) of this section.

(ii) If a revised inservice test program for a facility conflicts with the technical specification for the facility, the licensee shall apply to the Commission for amendment of the technical specifications to conform the technical specification to the revised program. The licensee shall submit this application, as specified in § 50.4, at least 6 months before the start of the period during which the provisions become applicable, as determined by paragraph (f)(4) of this section.

(iii) If the licensee has determined that conformance with certain code requirements is impractical for its facility, the licensee shall notify the Commission and submit, as specified in § 50.4, information to support the determination.

(iv) Where a pump or valve test requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice test program as permitted by paragraph (f)(4) of this section, the basis for this determination must be demonstrated to the satisfaction of the Commission not later than 12 months after the expiration of the initial 120-month period of operation from start of facility commercial operation and each subsequent 120-month period of operation during which the test is determined to be impractical.

(6)(i) The Commission will evaluate determinations under paragraph (f)(5) of this section that code requirements are impractical. The Commission may grant relief and may impose such alternative requirements as it determines is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest giving due consideration to the burden upon the licensee that could result if the requirements were imposed on the facility.

(ii) The Commission may require the licensee to follow an augmented inservice test program for pumps and valves for which the Commission deems that added assurance of operational readiness is necessary.

(g) *Inservice inspection requirements.* Requirements for inservice testing of Class 1, Class 2, and Class 3 pumps and valves are located in § 50.55a(f).

(1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, components (including supports) must meet the requirements of paragraphs (g) (4) and (5) of this section to the extent practical. Components which are part of the reactor coolant pressure boundary and their supports must meet the requirements applicable to components which are classified as ASME Code Class 1. Other safety-related pressure vessels, piping, pumps and valves must meet the requirements

[6] ASME Code cases that have been determined suitable for use by the Commission staff are listed in NRC Regulatory Guide 1.84, "Design and Code Case Acceptability—ASME Section III Division 1," NRC Regulatory Guide 1.85, "Materials Code Case Acceptability—ASME Section III Division 1," and NRC Regulatory Guide 1.147 "Inservice Inspection Code Case Acceptability—ASME Section XI Division 1." The use of other Code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3).

applicable to components which are classified as ASME Code Class 2 or Class 3.

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda [6] in effect six months prior to the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section.

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

(i) Components which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular component.

(iii) [Reserved]

(iv) [Reserved]

* * * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2 and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

(i) Inservice examinations of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months prior to the date of issuance of the operating license, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month inspection interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month inspection interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(iii) [Reserved]

(iv) Inservice examination of components and system pressure tests may meet the requirements set forth in subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section, and subject to Commission approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(5)(i) The inservice inspection program for a boiling or pressurized water-cooled nuclear power facility must be revised by the licensee, as necessary, to meet the requirements of paragraph (g)(4) of this section.

* * * * *

(iv) Where an examination requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice inspection program as permitted by paragraph (g)(4) of this section, the basis for this determination must be demonstrated to the satisfaction of the Commission not later than 12 months after the expiration of the initial 120-month period of operation from start of facility commercial operation and each subsequent 120-month period of operation during which the examination is determined to be impractical.

(6) * * *

(ii) * * *

(A) Augmented examination of reactor vessel.

(1) All previously granted reliefs under § 50.55a to licensees for the extent of volumetric examination of reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB in applicable edition and addenda of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, during the inservice inspection interval in effect on September 8, 1992 are hereby revoked, subject to the specific modification in § 50.55a(g)(6)(ii)(A)*(3)(iv)* for licensees that defer the augmented examination in accordance with § 50.55a(g)(6)(ii)(A)*(3)*.

(2) All licensees shall augment their reactor vessel examination by implementing once, as part of the inservice inspection interval in effect on September 8, 1992, the examination requirements for reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB of the 1989 Edition of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, subject to the conditions specified in § 50.55a(g)(6)(ii)(A)*(3)* and *(4)*. The augmented examination, when not deferred in accordance with the provisions of § 50.55a(g)(6)(ii)A*(3)*, shall be performed in accordance with the related procedures specified in the Section XI edition and addenda applicable to the inservice inspection interval in effect on September 8, 1992, and may be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect on September 8, 1992. For the purpose of this augmented examination, "essentially 100% as used in Table IWB–2500–1 means more than 90 percent of the examination volume of each weld, where the reduction in coverage is due

to interference by another component, or part geometry.

(3) Licensees with fewer than 40 months remaining in the inservice inspection interval in effect on September 8, 1992 may defer the augmented reactor vessel examination specified in § 50.55a(g)(6)(ii)(A)(2) to the first period of the next inspection interval under the following conditions:

(i) The deferred augmented examination may not be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect on September 8, 1992.

(ii) The deferred augmented examination may be used as a substitute for the reactor vessel shell weld examination normally scheduled for the inspection interval in which the deferred examination is performed.

(iii) If the deferred augmented examination is used as a substitute for the normally scheduled reactor vessel shell weld examination, subsequent reactor vessel shell weld examinations must be performed during the first period of successive inspection intervals.

(iv) Licensees that defer the augmented examination, as permitted herein, may retain all previously granted reliefs that otherwise would be revoked by § 50.55a(g)(6)(ii)(A)(1) for the inservice inspection interval in effect on September 8, 1992.

(v) Licensees with fewer than 40 months remaining in the inservice inspection interval in effect on September 8, 1992 may extend that interval in accordance with the provisions of Section XI (1989 Edition) IWA-2430(d) for the purpose of implementing the augmented examination during that interval.

(vi) The deferred augmented examination shall be performed in accordance with the related procedures specified in the Section XI edition and addenda applicable to the inspection interval in which the augmented examination is performed.

(4) The requirement for augmented examination of the reactor vessel may be satisfied by an examination of essentially 100 percent of the reactor vessel shell welds specified in § 50.55a(g)(6)(ii)(A)(2) that has been completed, or is scheduled for implementation with a written commitment, or is required by § 50.55a(g)(4)(i), during the inservice inspection interval in effect on September 8, 1992.

(5) Licensees that make a determination that they are unable to completely satisfy the requirements for the augmented reactor vessel shell weld examination specified in § 50.55a(g)(6)(ii)(A) shall submit information to the Commission to support the determination and shall propose an alternative to the examination requirements that would provide an acceptable level of quality and safety. The licensee may use the proposed alternative when authorized by the Director of the Office of Nuclear Reactor Regulation.

(h) *Protection systems.* For construction permits issued after January 1, 1971, protection systems must meet the requirements set forth in editions or revisions of the Institute of Electrical and Electronics Engineers Standard: "Criteria for Protection Systems for Nuclear Power Generating Stations," (IEEE-279) in effect [7] on the formal docket date [8] of the application for a construction permit. Protection systems may meet the requirements set forth in subsequent editions or revisions of IEEE-279 which become effective.

* * * * *

Dated at Rockville, Maryland, this 15th day of July 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-18481 Filed 8-5-92; 8:45 am]

BILLING CODE 7590-01-M

[7] For purposes of this regulation the proposed IEEE 279 became "in effect" on August 30, 1968, and the revised issue IEEE 279—1971 became "in effect" on June 3, 1971. Copies may be obtained from the Institute of Electrical and Electronics Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017. Copies are available for inspection at the Commission's Technical Library, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

[8] Where an application for a construction permit is submitted in four parts pursuant to the provisions of § 2.101(a-1) and Subpart F of Part 2 of this chapter, "the formal docket date of the application for a construction permit" for purposes of this section is the date of docketing of the information required by § 2.101(a-1), (2), or (3), whichever is later.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0743]

Truth in Lending; Home Equity Disclosure Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Z (Truth in Lending) to provide that depository institutions may retain the right to demand payment of a home equity line of credit extended to their own executive officers when required by federal law; and not changing the rules in Regulation Z that set forth the way creditors disclose discounted initial rates and certain payment examples for home equity lines. The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling, and places certain substantive limitations on the way in which those lines may be structured. With regard to the amendment, depository institutions that currently include such a provision in their executive officer's contracts will not be affected by this amendment. The approach adopted by the Board for disclosure of the discounted initial rate and certain payment examples has been examined by the U.S. Court of Appeals for the District of Columbia Circuit in recent litigation, and remanded to the Board for further consideration. After such reconsideration and analysis of the comment letters, the Board has decided to retain the existing rules.

EFFECTIVE DATE: July 29, 1992, but compliance optional until October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation.[1] The U.S. District Court for

[1] Among other issues, Consumer Union challenged the provision in the regulation permitting creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenged the part of the regulation permitting creditors to give disclosures about any "repayment" period—that is, when advances are no longer made and the consumer is paying off the amount borrowed—at the time the repayment period begins, rather than at the time of application. In March 1990

Continued

the District of Columbia issued a decision in favor of the Board on several aspects of the lawsuit in May 1990. *Consumers Union* v. *Federal Reserve Board* (736 F. Supp. 337). Consumers Union appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit. In July 1991, the Court of Appeals issued its opinion, deciding in favor of the Board on four of the issues presented on appeal, and remanding to the Board for further consideration two other issues. *Consumers Union* v. *Federal Reserve Board* (938 F.2d 266). The two issues deal with how creditors disclose a "teaser" or initial discounted rate, and the payment examples that must be provided in the preapplication disclosures. On December 30, 1991, the Board published a proposed rule seeking comment on whether the regulation should be amended (56 FR 67233). The Board also requested comment on a third issue, unrelated to the litigation, concerning the conflict between section 22 of the Federal Reserve Act, which regulates member bank loans to executive officers, and the substantive rules contained in the home equity statute.

The Board received 84 comments on the proposal. Based on a review of the comments and further analysis the Board is revising the regulation relating to credit extended to executive officers, but is leaving unchanged the provisions dealing with discounted rates and the payment examples.

Section 105(d) of the Truth in Lending Act provides that amendments to Regulation Z shall have an effective date of October 1, and must be promulgated at least six months before that date. Thus, in the present case the Board believes an October 1, 1993 effective date is required by the statute.

(2) Amendments to Regulation Z

(i) *Teaser rate provision.* The home equity statute provides that creditors must state any initial "teaser" or discounted rate in the preapplication disclosures. Specifically, the statute states [I]f an initial annual percentage rate is offered which is not based on an index—

(i) A statement of such rate and the period of time such initial rate will be in effect.

In the final regulations implementing the statute, the Board did not require that the exact amount of the discounted rate be stated. Instead, creditors were required to disclose the fact that the initial rate is discounted, state the period of time the rate will be in effect, and alert consumers to "ask about" the current discounted rate. In its briefs to the District Court and the Court of Appeals, the Board stated that the regulation diverged from the statutory language in reliance on the Board's "exception" authority.

The Truth in Lending Act grants the Board broad authority in implementing the statute. Section 105 of the act provides that implementing regulations may contain such classifications, differentiations, or other provisions, and *may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper* to effectuate the purposes of [the Truth in Lending Act], to prevent circumvention or evasion thereof, or to facilitate compliance therewith. (Emphasis added.)

The Court of Appeals noted that the issue of the Board's exception authority had been raised for the first time during the course of the litigation, and had not been passed upon in the first instance by the Board itself. The Court thus remanded this portion of the regulation to the Board, to allow it to identify the scope of its exception authority under the Truth in Lending Act, to decide how broad the "class of transactions" can be that is exempted, and to decide whether an exception was necessary or appropriate in the case of the teaser rate provision.

In December 1991, the Board solicited comment on the teaser rate disclosure and whether the regulation should be amended to require disclosure of the exact teaser rate in the early disclosures. The Board also requested comment on whether an exception is necessary or appropriate in the case of the discounted initial rate disclosure. The Board asked commenters to explain why stating the amount of time any discount is in effect (which is required by the regulation) does not raise the same problems as requiring the amount of the discount to be stated. The Board also solicited comment on whether the use of ranges to state the discount would be desirable.

Of the sixty-seven commenters who discussed the discount issue, fifty-seven stated the Board should not change the rules dealing with initial discounted rates. A number of commenters stated that if creditors were required to state the exact amount of the discount in the early disclosures they might discontinue offering such a feature, due to the need to frequently update forms. Several commenters stated that reprinting disclosures every time a discount changed would impose significant costs, substantially increase the potential for errors in printing and distributing new forms, and raise additional liability risks.

Several commenters noted that in a rapidly changing rate environment creditors would have to update the preprinted forms on a frequent basis, imposing significant printing, administrative, and distribution costs that would be passed on to consumers. Commenters stated that these increased costs greatly outweighed any benefits consumers might derive from receiving the specific discount. Commenters also noted practical problems that would arise if the exact amount of the discount had to be stated. Commenters stated that it could take months to prepare the preprinted disclosures and, if the discount had to be preprinted, the institution might want to change the discount by the time the new forms were ready for distribution.

Ten commenters stated that the Board should change its rule, and require creditors to state the exact amount of the discount in the preapplication disclosures. In general, these commenters felt consumers needed to know the precise amount of the discount at this early stage to be able to accurately compare accounts. These commenters stated that without this figure consumers could not determine which of two (or more) plans offers the better deal.

Based on a review of the comment letters and further analysis the Board is retaining the current rule in the regulation dealing with initial discounted rates. The Board believes the current approach provides the information that is most useful to consumers about discounted rates (that is, the fact that the initial rate is discounted, the temporary nature of the discount, and a reminder to ask for current rates). The Board believes this approach fulfills Congress' intent to ensure that applicants know the most important features of home equity lines, and is an appropriate case for making an adjustment to the statutory provision. The Board believes that requiring creditors to state the exact amount of any initial discounted rate in the preapplication disclosures could cause consumers to suffer adverse consequences.

The Board believes if creditors were required to state the exact amount of the discount, many creditors might eliminate this feature from their plans, thus

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the Board published a proposed rule to amend the regulation relating to the rate cap and delayed timing issues. (55 FR 10465, March 21, 1990) In September 1990 the Board adopted a final rule (55 FR 38310, September 18, 1990) (correction notice at 55 FR 39538, September 27, 1990) on these two issues.

reducing choices (particularly lower-cost alternatives) available to consumers. For those that continued to offer discounted plans, the Board believes the costs incurred in complying (which would ultimately be paid by the consumer) would vastly exceed the benefits consumers derive from the disclosure.

The Board notes that the regulation requires creditors to inform consumers that the rate is temporary and the length of time it is in effect with the early preprinted disclosures. In addition, creditors must disclose to consumers the exact amount of any discounted initial rate with other information given prior to consummation, under § 226.6 of the regulation. Finally, lenders have an incentive to let the consumer know the amount of the discount since the purpose of a discounted rate program is to encourage consumers to open a home equity line.

As mentioned earlier, the Board asked commenters to explain why stating the amount of the discount raised a problem when creditors must state the time a discount is in effect. Several commenters stated that providing the time a discount is in effect was not a problem since programs are typically offered for a standard period of time, such as six months or one year. Commenters distinguished this requirement from stating the exact discount since the latter figure could and often did change frequently.

The Board also solicited comment on whether consumers would benefit by having the discount stated as a range. Commenters stated that providing a range for a discount might be more workable for creditors than stating the exact amount of the discount, but would be of little benefit to the consumer, since the consumer would have to contact the creditor anyway to find out the exact amount of the discount. The Board believes this approach would provide limited value to consumers, and is not adopting it.

(ii) *Payment examples issue.* The statute requires three types of payment examples to be provided for home equity plans: (1) An example showing the minimum periodic payment and amount of time needed to repay the line, based on a $10,000 balance and a recent annual percentage rate (the "minimum payment" example); (2) a statement of the minimum periodic payment based on a $10,000 balance when the maximum annual percentage rate is in effect (the "worst case" example); and (3) an historical table, based on a $10,000 extension of credit, showing how annual percentage rates and payments would have been affected by index value changes over the most recent 15 year period (the "historical example"). The statute provides that the worst case example and the historical example must be stated for "each repayment option" under the plan.

In implementing the statute, the Board chose to allow creditors to provide representative examples of the various payment options offered, rather than requiring separate examples for each payment option. (See comments 5b(d)(5)(iii)–(2), 5b(d)(12)(x)–1, and 5b(d)(12)(xi)–7 of the Official Staff Commentary.) Under this rule, no matter how many payment options were offered, creditors would never have to disclose more than three minimum payment examples, three worst case examples, and three historical examples. In its briefs to the District Court and Court of Appeals the Board noted that requiring a worst case example and historical example for every payment option offered would result in "information overload" and would likely lead lenders to reduce the options offered to consumers. The briefs argued that the Board adopted its rule pursuant to its exception authority. Again, the Court of Appeals remanded this issue to the Board because the issue of the Board's exception authority under the Truth in Lending Act had not been developed in the rulemaking record, but was raised only in litigation.

In its December 1991 proposal, the Board solicited comment on whether the payment example rule should be revised to require an example for each payment option. Sixty-four commenters addressed this issue. Sixty of them stated that Board should *not* amend the regulation to require payment examples for all payment options offered. Four commenters stated that the Board should require such examples and argued that consumers needed such information to make informed decisions about home equity plans.

Based on a review of comment letters and further analysis, the Board is retaining the payment example rules as written. The Board believes the approach adopted provides consumers with the information needed to compare accounts. The use of representative examples, when coupled with a complete description of the minimum payment requirements and other disclosures, provides consumers with the most useful information.

The Board believes if creditors were required to provide a 15-year historical example and "worst case" example for every payment option offered, many creditors would eliminate choices of payment plans provided to consumers. A number of commenters stated that they would reduce options available if they had to provide a 15-year historical example, minimum payment example and worst case example for every option, due to the expense, risk of error, and potential liability involved in providing such information. For example, one commenter stated it permits consumers to make payments of interest and a fixed amount of principal—with the consumer deciding how much principal to pay. If this creditor had to provide three payment examples for each option given to the consumer, this could require hundreds of examples.

For those creditors that choose to provide numerous payment choices, the Board believes providing three examples for each option would produce an overwhelming amount of information. Several commenters pointed out this fact. The Board believes in such cases consumers may be overwhelmed with the sheer amount of information, and not read the disclosures, or not read the most important pieces of information, such as the index used to make rate adjustments. Such a result would be antithetical to the Congress' purpose in enacting the law. Therefore, the Board believes this is an appropriate case for the exercise of its authority to make an exception to the statufory requirements.

The Board recognizes that examples, by their nature, cannot capture precisely what a particular consumer's payments under a particular plan will be. The examples are based on an assumed $10,000 extension of credit. Obviously, if a consumer's line of credit is greater than that, the payment examples will not reflect his or her actual payments, regardless of how many examples are provided. Examples are illustrative, and providing a huge number of examples will not necessarily assist consumers in choosing a plan.

The Board also notes that the regulation requires creditors to narratively describe every payment option given to consumers, and this ensures that consumers have a full description of the choices offered. This information describing the payment provisions is given a second time to consumers before they open the plan. (See § 226.6(e)(2).)

(iii) *Use of Exception Authority.* As mentioned earlier, section 105 of the Truth in Lending Act grants the Board broad authority in implementing the statute. The Supreme Court has recognized this broad delegation of authority to the Board. The Court has stated: "[b]ecause of their complexity and variety * * * credit transactions defy exhaustive regulation by a single

statute. Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit."[2]

The Board is using its "exception authority" to address three circumstances: disclosure of information about an initial discounted rate, disclosure of a historical example for payment options, and disclosure of the "worst case" example for payment options. The Board believes these exceptions are necessary and proper to accomplish the purposes of the act and facilitate compliance and fall within the limits on its authority to make exceptions.

The Board believes that, while its authority to make exceptions is broad, the authority does have limits. The Board does not take the view that it is permitted to radically undermine the Congress' purpose in enacting key elements of a statutory scheme, even if the Board strongly disagreed with the wisdom of the Congress' decision. The Board does believe it is authorized to fashion rules that are faithful to the essential purposes of the law and that take account of the needs and capacity of both consumers and creditors.

The home equity statute and implementing regulation require creditors to provide a significant amount of information to consumers about the home equity line offered by the creditor. Depending on the type of features of a specific creditor's plan (such as multiple payment options and variable rate provisions) over 50 facts may be required to be disclosed to consumers (in addition to a 15-year historical example which shows index values, annual percentage rates and payments).

The Board believes that use of its exception authority is warranted in the case of the discount issue for several reasons. First, if the exact discount were required to be disclosed, the Board believes many creditors would stop offering discounted plans. Due to the critical compliance problems—the inability to provide updated rate information with the preprinted disclosures to respond to market and competitive conditions—a result of such a requirement would likely be fewer choices to consumers and, in particular, the loss to consumers of lower rate alternatives. The Board believes some creditors would eliminate this option from their plans due to the increased risk of error and liability. Second, consumers might be misled if they rely on a discounted rate that turned out to be effective for only a short time after the disclosures were provided.[3] If an exact figure were given, a consumer would receive information that is accurate when provided, but the discount could change if the consumer did not apply for the plan soon after receiving the disclosures.[4]

Third, the Board believes the key information the consumer needs is not the initial rate, but the fact that it is only temporary. Placing too much emphasis on the initial rate could diminish the fact that such a rate cannot be relied on for the long term. Finally, costs of complying with such a rule would be significant. Forms might have to be frequently changed at great expense to creditors. For those that continued to offer such plans the Board believes the costs of complying with such rules would greatly exceed any consumer benefits.

With regard to the rule dealing with payment examples, the Board is making an adjustment for two categories of payment options.[5] For that class of transactions that permit payment of a fixed percentage or fixed fraction of the outstanding balance, the Board is not requiring a 15-year historical example and worst case example for every possible payment choice within that category, but just one representative example. Similarly, for that class of transactions that permit payment of, for example, a specified dollar amount plus accrued finance charges, the Board is not requiring a 15-year historical example and worst case example for every possible payment choice within that category.

The Board believes use of its exception authority is warranted in the case of the 15-year historical example and worst case example for several reasons. First, the Board believes that if creditors were required to provide these examples for every payment option offered, the result would be that many lenders would reduce the payment choices provided to consumers. Due to the complexity and costs in complying, and the increased risk of error and liability, many creditors would eliminate choices currently offered to consumers. Second, the Board believes providing a multitude of examples would likely obscure important information, such as the index used for the plan, and for those creditors that choose to continue offering multiple payment options, consumers might not read the voluminous disclosures or might miss the most important terms of the plan. The Board believes providing multiple payment examples, beyond those already required by the regulation, would overload the consumer with information.[6] Third, the Board believes the costs of complying with such a rule would be tremendous and greatly exceed any consumer benefits. This is especially true since the examples are not intended to demonstrate the exact payment that will be made by the consumer under the plan, but rather to provide a general sense of the impact of rate changes on the minimum payments.

(iv) *Home equity lines and executive offices.* The home equity statute provides that a creditor may not terminate and demand payment of a line of credit except in three specified circumstances: Fraud, failure of the consumer to make payments, and action by the consumer that impairs the security for the plan. The regulation implementing this provision provides that a creditor may not include in its contract a provision permitting it to terminate and accelerate the balance due except for these situations. (See § 226.5b(f)(2) and the accompanying Official Staff Commentary.)

Section 22(g) of the Federal Reserve Act establishes rules relating to loans to executive officers by member banks. The law provides that a member bank may extend credit to its own executive officers provided "it is on condition that it shall become due and payable on demand of the bank" any time the person is indebted to any other bank in

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[2] *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 559-60 (1980). The Court also noted that: "[t]he concept of 'meaningful disclosure' that animates TILA * * * cannot be applied in the abstract. Meaningful disclosure does not mean more disclosure. Rather, it describes a balance between 'competing consideration of complete disclosure * * * and the need to avoid * * * [information overload].' " *Id.* at 568 (emphasis in original).

[3] While disclosures must be accurate when provided, creditors are not required to guarantee any terms for the plan, as is reflected by the disclosure in § 226.5b(d)(2)(i) concerning terms subject to change.

[4] In this case, consumers would likely have to call the institution to ensure that the rate is still available. Alternatively, an institution could be required to guarantee the rate and include a date identifying how long it is available. Since discounted rates are a function of competitive and other factors, however, it might be very difficult for an institution to accurately predict how long a rate will be made available to the public. This could lead institutions to commit to only a short time period, in order to retain the option of offering a less favorable discount in light of competitive or market conditions. Consumers would derive little benefit from having a discounted rate disclosed if they ultimately had to call institutions to verify the current rate anyway.

[5] The Board is not exempting that class of payment plans that permit payment of only accrued finance charges ("interest-only" transactions).

[6] It is worth noting that the information required by Regulation Z is in addition to information a creditor includes in its contract with the consumer, the deed accompanying the transaction, any state law-mandated disclosures, and other federal disclosures.

an amount in excess of that prescribed by the appropriate federal banking agency. Shortly after the Board considered the current proposal (but prior to publication in the **Federal Register**), the Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991 was enacted. Section 306 of FDICIA provides that the provisions in section 22(g) of the Federal Reserve Act apply to savings associations and nonmember insured banks. Thus, member banks, savings associations and nonmember insured banks that extend credit to their executive officers must retain the ability to call the loan in the circumstances set out in section 22(g) of the Federal Reserve Act.[7]

Regulation O (12 CFR part 215), which implements the Federal Reserve Act, provides that a member bank making loans to any of its executive officers shall retain the right to call the loan any time the officer is indebted to any other bank in excess of 2.5% of the member bank's capital and unimpaired surplus or $25,000 (whichever is higher), but in all cases any amount over $100,000.[8] The statute and implementing regulation are intended to limit the risks of insider lending and to implement important safety and soundness policies.

If the home equity statute and section 22(g) of the Federal Reserve Act (and section 306 of FDICIA) were given full effect, they could be read as effectively prohibiting home equity lines by member banks, savings associations and insured nonmember banks to their executive officers. The home equity statute prohibits calling a loan except in the circumstances specifically set forth in the statute. Section 22(g) of the Federal Reserve Act (and section 306 of FDICIA) prohibits member banks, savings associations and insured nonmember banks from making loans to executive officers unless the institutions retain the ability to demand payment of the loan in certain circumstances. The home equity statute does not recognize the condition as a permissible reason to call a line of credit. Thus, if both laws were given full effect, member banks and savings associations could not offer home equity lines to their executive officers.

The Board requested comment on whether the home equity regulation should be amended to permit banks to include a call feature in their contracts for home equity lines for executive officers, and exercise that feature as provided in section 22 of the Federal Reserve Act and implementing Regulation O. Based on a review of the comment letters and further analysis, the Board is modifying the regulation to permit depository institutions to include a demand provision in home equity lines to executive officers, as provided in the Federal Reserve Act and FDICIA. The Board believes that the Congress, in enacting the home equity statute, did not intend to override the provisions in the Federal Reserve Act dealing with demand provisions in loans made to executive officers. This idea is buttressed by the fact that the Congress recently enacted FDICIA which extended the important safety and soundness policies contained in section 22(g) of the Federal Reserve Act to savings associations and insured nonmember banks. There is no suggestion in the legislative history of the home equity statute that the Congress intended to repeal section 22(g) of the Federal Reserve Act and prohibit banks from offering home equity lines to their executive officers. Indeed, enactment of section 306 of the FDICIA supports the idea that the Congress intended for this provision to continue in full force in spite of enactment of the home equity statute.

A number of persons commented on whether the home equity provisions should override the policies contained in section 22(g) of the Federal Reserve Act. All commenters but one believed the policies in the Federal Reserve Act, dealing with safety and soundness, should take precedence over the home equity protections. Those commenters stated that they favored a narrow exception to the home equity rules for executive officers, and that an exception was necessary and appropriate to effectuate the policies of the Federal Reserve Act. The one commenter opposing the Board's action stated that this was an inappropriate action to be taken by the Board, and that the Congress itself should make this determination.

The Board is modifying the home equity rules to provide that member banks, savings institutions and insured nonmember banks can include a provisions in their credit contracts with executive officers granting the right to call a home equity line of credit to the extent required by section 22 of the Federal Reserve Act and section 306 of FDICIA. The final regulation permits, as did the proposal, all depository institutions, and not solely member banks, to use the exception regarding a demand feature. While current federal law (in the Federal Reserve Act and FDICIA) is limited to member banks, savings associations and insured nonmember banks, the Board has used the broader category of depository institutions for ease of reference, and in the event any other federal law or regulation is enacted that requires other institutions to retain the ability to call credit extended to executive officers. The home equity rules will ensure that the same rules apply equally to all depository institutions.

The creation of an exception to the home equity rules accommodates the express terms of section 22(g) of the Federal Reserve Act and section 306 of FDICIA. This approach gives effect to the policies contained in the Federal Reserve Act, and at the same time creates a very limited exception to the home equity statute. The Board also believes its exception authority under the Truth in Lending Act is consistent with this modification of the home equity rules to permit depository institutions to include a demand feature in lines of credit made to executive officers. Without this modification, the Board believes some institutions may not make lines available to their executive officers. By clarifying that institutions may make such lines available to their executive officers, the Board believes it is ensuring some consumers access to such credit, which may not have been offered previously to them.

The regulation reflects the fact that institutions that wish to offer home equity lines to their executive officers must include such a provision in their home equity agreements with those officers. The Board has added specific language to the regulation to expressly require this condition in the credit contract.[9] Of course, an institution may only have a demand feature as broad as that required by the Federal Reserve Act, FDICIA and their implementing regulations in its home equity lines with executive officers. A broader demand

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[7] On March 4, 1992, the Federal Deposit Insurance Corporation amended its rules to provide that, with certain exceptions, the rules in Regulation O apply to insured nonmember banks (57 FR 7847). On April 9, 1992, the Office of Thrift Supervision proposed a rule to implement the provision in FDICIA dealing with loans to executive officers of savings associations (57 FR 12232).

[8] Subsequent to publication of the proposal to amend Regulation Z, the Board proposed to amend Regulation O to implement amendments to FDICIA. On May 28, 1992, the Board published a final rule amending Regulation O. (57 FR 22417.) Among other changes, a technical revision was made to § 215.5(d)(4) to clarify that member banks must "in writing" provide for the ability to call a loan to an executive officer.

[9] While Regulation O requires that this provision must be "in writing," in order to implement provisions in the Home Equity Loan Consumer Protection Act that prohibit "unilateral" changes to a home equity plan, the Board believes that institutions must include such a provision in the home equity agreement entered into by the executive officer.

provision is prohibited under Regulation Z.

The Board solicited comment on whether a specific disclosure should be provided to executive officers if the home equity rules were interpreted to permit inclusion of this demand provision. The Board requested comment on whether a contractual provision setting forth this provision would provide adequate information if the provision is not also specifically disclosed in the preapplication disclosures. After reviewing the comment letters and for the reasons set forth below, the Board is requiring only that this provision be in the home equity contract, rather than requiring it to be separately disclosed with the preapplication disclosures.

The vast majority of commenters opposed requiring a separate disclosure referencing this call provision. Commenters stated that including this provision in the contract with the executive officer was sufficient to notify the person of the right of the institution. Commenters also noted that executive officers are already likely to be aware of the limitations contained in Regulation O. The Board believes inclusion of this provision in the contract will notify executive officers of this condition.

Commenters stated that including such a notice on disclosure forms given to all consumers would be very confusing to consumers, since the provision would be inapplicable to the vast majority of consumers. Many commenters also stated that having a separate disclosure form solely for executive officers, or requiring the use of an insert or attachment highlighting this feature would be unnecessary, and would increase the likelihood of error (in distributing the wrong form).

The Board also will be permissive on whether this condition is separately disclosed under § 226.6(e)(1) of the regulation. (Section 226.6(e) generally requires creditors to provide again to consumers many of the preapplication disclosures at the time the account is opened.) The Board believes that the inclusion of this feature in the home equity agreement provides sufficient notice to executive officers of this feature. In addition, since these later disclosures are generally combined with contractual provisions, the Board believes that requiring a specific disclosure of such a feature, in most cases, would not provide the borrower with any additional information. Furthermore, requiring a disclosure under § 226.6(e), but not requiring a disclosure under § 226.5b(d)(4), would likely create a more complicated rule and could increase compliance problems, with little, if any, additional benefit provided to the executive officer.

Commenters requested that the Board address how this call feature relates to the closed-end disclosure rules. Specifically, commenters asked whether a demand disclosure is required under §§ 226.18(i) and 226.19(b)(2)(xi), if a closed-end loan to an executive officer contains a call provision. The Board believes that when an institution has a narrow demand feature in its closed-end credit agreement to the extend required by section 22(g) of the Federal Reserve Act and 306 of FDICIA, institutions should be permitted to provide or not to provide demand disclosures. For consistency and to minimize compliance burdens, the Board believes it is important to treat these features similarly under the disclosure rules for open-end and closed-end credit. Of course, if an institution has a demand feature in its closed-end agreement that is broader than that required by the Federal Reserve Act and FDICIA, such a feature would have to be disclosed under § 226.18(i) and, in the case of variable-rate mortgages, § 226.19(b).

The Board expects to propose technical conforming amendments to the official staff commentary in the fall, under the normal schedule for commentary revisions, reflecting these positions concerning §§ 226.5b(d)(4), 226.6(e)(1), 226.18(i), and 226.19(b)(2)(xi).

(3) Economic Impact Statement

The change to the regulation is likely to have an insignificant impact on creditors' costs, including those of small entities.

(4) Text of Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z, 12 CFR part 226, by modifying §§ 226.5b(f)(2)(ii) and 226.5b(f)(2)(iii) and by adding § 226.5b(f)(2)(iv).

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set out in the preamble, 12 CFR part 226 is amended as follows:

PART 226—[AMENDED]

1. The authority citation for part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204(c), Competitive Equality Banking Act, 12 U.S.C. 3806.

Subpart B—Open-End Credit

2. 12 CFR 226.5b is amended by revising paragraphs (f)(2)(ii) and (f)(2)(iii), and by adding paragraph (f)(2)(iv) to read as follows:

§ 226.5b Requirements for home equity plans.

* * * * *

(f) * * *

(2) * * *

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 30, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-18468 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

[Docket No. 26530, Amendment Nos. 25-76, 121-228 and 135-43]

RIN 2120-AC46

Improved Access to Type III Exits

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In the May 4, 1992, issue of the **Federal Register** (57 FR 19220), the FAA published a final rule amending its regulations to require improved access to Type III emergency exits (typically smaller overwing exits) in transport category airplanes with 60 or more passengers. Those changes affect air carriers and commercial operators of transport category airplanes operating under the provisions of part 121 of the Federal Aviation Regulations (FAR) and air taxi and commercial operators of such airplanes under the provisions of part 135 of the FAR. This document corrects an error in that final rule.

EFFECTIVE DATE: June 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, FAA, Regulations Branch (ANM-114), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2114.

SUPPLEMENTARY INFORMATION: As amended, § 121.310(f)(3)(iii) requires part 121 operators to comply with the new standards after December 3, 1992. It was intended that part 135 operators would have to comply at the same time; however, the compliance time was inadvertently omitted from § 135.178(f)(3). In the absence of a specific compliance time, compliance for part 135 operators would be required as of June 3, 1992, the effective date of Amendment 135-43. This document serves to correct that omission.

Correction of the Amendment

In consideration of the foregoing, § 135.178(f)(3) is corrected to read as follows:

§ 135.178 Additional emergency equipment.

* * * * *

(f) * * *

(3) There must be access from the main aisle to each Type III and Type IV exit. The access from the aisle to these exits must not be obstructed by seats, berths, or other protrusions in a manner that would reduce the effectiveness of the exit. In addition, for a transport category airplane type certificated after January 1, 1958, there must be placards installed in accordance with § 25.813(c)(3) of this chapter for each Type III exit after December 3, 1992.

* * * * *

Issued in Renton, Washington, on July 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-18408 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices (MLPs) prescribed under title I of the Natural Gas Policy Act (NGPA) for the months of August, September, October 1992. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the MLPs before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix, (202) 208-0622.

SUPPLEMENTARY INFORMATION:

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

(Issued July 31, 1992)

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires the Commission to compute and make available maximum lawful prices (MLPs) and inflation adjustments prescribed in title I of the NGPA prior to the month the figures apply to.

Pursuant to this requirement and the authority delegated in § 375.307(c)(1) of the Commission's regulations, the Director of the Office of Pipeline and Producer Regulation is publishing MLPs and inflation adjustment factors for August, September and October 1992. MLPs and inflation adjustment factors for periods before August 1992 are contained in Tables in §§ 271.101 and 271.102 of the Commission's regulations. Table I of § 271.101(a) specifies the MLPs for gas under NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the MLPs for gas under sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors.

The quarterly percentage change in the gross domestic product (GDP) implicit price deflator published on July 30, 1992, was used in computing the MLPs and inflation adjustment factors for August, September and October 1992. The gross national product (GNP) specified in the NGPA wasn't used since the Department of Commerce states the next change in the GNP won't be published until September 1992. When the GNP is published, revised prices and inflation factors for August, September and October 1992 will be published, if necessary.

The Director notes that no changes to the MLPs and inflation adjustment factors for May, June and July 1992, which were computed with the GDP implicit price deflator, are necessary. After the GNP was published, it was found that MLPs and inflation factors for May, June and July 1992, computed using the GNP, were identical to those computed using the GDP.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

1. The authority citation for part 271 is revised to read as follows:

Authority: 15 U.S.C. 717-717w; 15 U.S.C. 3301-3432; 42 U.S.C. 7101-7352.

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September and October 1992, in Tables I and II.

TABLE I.—NATURAL GAS CEILING PRICES

[Other Than NGPA Sections 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			Aug. 1992	Sept. 1992	Oct. 1992
B	102	New natural gas, certain OCS gas [1]	$6.723	$6.754	$6.785
C	103(b)(1)	New onshore production wells [2]	3.861	3.866	3.871
E	105(b)(3)	Intrastate existing contracts	6.267	6.291	6.315
F	106(b)(1)(B)	Alternative Maximum lawful price for certain intra-state rollover gas [3]	2.209	2.212	2.215
G	107(c)(5)	Gas produced from tight formations [4]	7.722	7.732	7.742
H	108	Stripper gas	7.203	7.236	7.269

TABLE I.—NATURAL GAS CEILING PRICES—Continued

[Other Than NGPA Sections 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			Aug. 1992	Sept. 1992	Oct. 1992
I	109	Not otherwise covered	3.195	3.199	3.203

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section102(c) was deregulated. (See part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price of 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission Order No. 519–A. (See § 271.703 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Aug. 1992	Sept. 1992	Oct. 1992
Post-1974 gas: [3]			
All producers	$3.195	$3.199	$3.203
1973–1974 Biennium gas:			
Small producer	2.693	2.697	2.701
Large producer	2.068	2.071	2.074
Interstate rollover gas:			
All Poducers	1.185	1.187	1.189
Replacement contract gas or recompletion gas:			
Small producer	1.517	1.519	1.521
Large producer	1.161	1.163	1.165
Flowing gas:			
Small producer	0.763	0.764	0.765
Large producer	0.647	0.648	0.649
Certain Permian Basin gas:			
Small producer	0.900	0.901	0.902
Large producer	0.800	0.801	0.802
Certain Rocky Mountain gas:			
Small producer	0.900	0.901	0.902
Large producer	0.763	0.764	0.765
Certain Appalachian Basin gas:			
North subarea contracts dated after 10–7–69	0.728	0.729	0.730
Other contracts	0.676	0.677	0.678
Minimum rate gas: [1]			
All producers	0.398	0.399	0.400

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[3] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of August, September and October 1992, in Table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery	Factor by which price in preceding month is multiplied
August 1992	1.00132
September 1992	1.00132
October 1992	1.00132

[FR Doc. 92–18606 Filed 8–5–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70 and 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Delay of effective date of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is delaying the effective date of the Agency's final rule revising safety standards for ventilation of underground coal mines.

EFFECTIVE DATE: The effective date of August 16, 1992 for the May 15, 1992 final rule is delayed to November 16, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 15, 1992, MSHA published a final rule (57 FR 20868) to revise its safety standards for ventilation of underground coal mines. The final rule was a comprehensive revision of the existing standards. Due to problems encountered with distribution of the final rule some affected parties did not receive timely notice which has hindered their ability to understand and comply with the rule. MSHA has held 17 informational

meetings across the country to brief the mining public on the provisions of the rule. From these meetings, MSHA has learned that many mine operators have not had time to sufficiently acquaint their managers with the new regulations; this will preclude them from orderly implementation of the rule by August 16. Under these circumstances MSHA's enforcement of the regulations could result in confusion rather than enhanced miner safety. The Agency has also learned that mining equipment manufacturers have not had sufficient notice of revised requirements to adequately adjust their production levels to provide equipment and materials necessary for compliance with the rule by all mines. MSHA has therefore concluded that additional time is needed to ensure that mine operators can effectively plan and implement the necessary changes. Although MSHA has trained its inspectors on the rule, the Agency will use this additional time to better assist the mining community with training their personnel. For these reasons, MSHA is delaying the effective date to November 16, 1992.

In view of the imminence of the deadline and of the circumstances described above, the Agency has determined under section 553(b)(B) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)(B)) that for good cause it would be both impracticable and contrary to the public interest to provide advance notice and an opportunity for public comment on the delay of the rule's effective date. Pursuant to 5 U.S.C. 553(d)(3) and for good cause based upon these same reasons, this action is excepted from the 30-day delayed effective date of the APA.

Dated: July 31, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92-18622 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 312 and 317

Federal Savings and Loan Associations and Federal Credit Unions as Fiscal Agents of the United States and Agencies for Issue of United States Savings Bonds

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This document is being published to set forth the changes which would permit Federal credit unions that are in good standing to sell and issue United States Savings Bonds to other than their own members. It has been determined that the granting of unqualified issuing agent status to such Federal credit unions would be in the best interests of the public and place such credit unions in a more equitable competitive position with respect to other financial institutions which serve as savings bond issuing and paying agents.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV 26106-1328, (304) 420-6505.

SUPPLEMENTARY INFORMATION: 31 CFR part 312, also referred to as Department of the Treasury Circular No. 568, contains the regulations which permit Federal savings and loan associations and Federal credit unions to act as fiscal agents of the United States. This part is amended by changing the beginning note to permit Federal credit unions in good standing to take applications, forward remittances, and make delivery of United States Savings Bonds for nonmembers as well as members.

31 CFR part 317, also referred to as Department of the Treasury Circular, Public Debt Series No. 4-67, as revised, contains the regulations governing agents authorized to sell and issue Series EE United States Savings Bonds. Section 317.2(a) is amended by adding Federal credit unions in good standing to the list of organizations eligible to apply for qualification and to serve as savings bond issuing agents. There are currently no restrictions on credit unions with respect to redemption of savings bonds. It is, therefore, unnecessary to amend the regulations governing the redemption of savings bonds set forth in 31 CFR part 321, also referred to as Department of the Treasury Circular No. 750, (as revised).

Procedural Requirements

This notice is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

The notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects

31 CFR Part 312

Federal savings and loan associations, Federal credit unions, Government securities.

31 CFR Part 317

Banks and banking, Federal Reserve System, Government securities.

Dated: July 30, 1992.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR parts 312 and 317 are amended as follows:

PART 312—FEDERAL SAVINGS AND LOAN ASSOCIATIONS AND FEDERAL CREDIT UNIONS AS FISCAL AGENTS OF THE UNITED STATES

1. The authority for part 312 continues to read as follows:

Authority: Sec 5(k), 17 48 Stat. 646, 1222; 12 U.S.C. 1464(k), 1767.

2. The beginning note to part 312 is amended by adding a new paragraph at the end to read as follows:

Note: * * *

Pursuant to these same regulations, the Fiscal Assistant Secretary has now designated for employment, as fiscal agents of the United States, for the purpose of taking applications from nonmembers, as well as their own members, and forwarding remittances for, and making delivery of United States Savings Bonds, all Federal credit unions in good standing.

* * * * *

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority for part 317 continues to read as follows:

Authority: 31 U.S.C. 3105, 2 U.S.C. 901, 5 U.S.C. 301.

2. Section 317.2 is amended by adding "Federal credit unions in good standing," to the list of organizations described in paragraph (a), after the word "Banks,".

[FR Doc. 92-18446 Filed 8-5-92; 8:45 am]

BILLING CODE 4810-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6941

[UT-942-4214-10; UT-65685]

Withdrawal of Public Land for the Bonneville Salt Flats; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 30,203.56 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the unique geologic, recreational, and visual resources of the Bonneville Salt Flats. An additional 3,200.24 acres of non-Federal land, if acquired by the United States, would also be withdrawn by this order. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bonneville Salt Flats:

Salt Lake Meridian

T. 1 N., R. 16 W.,
- Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, and E½SW¼.

T. 2 N., R. 16 W.,
- Sec. 20;
- Sec. 21;
- Sec. 28;
- Sec. 29;
- Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 33, NW¼.

T. 1 N., R. 17 W.,
- Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 1 and 2, S½NE¼, and S½;
- Sec. 8, E½ and SW¼;
- Sec. 9;
- Sec. 10;
- Sec. 11;
- Sec. 12;
- Sec. 13, W½;
- Sec. 14;
- Sec. 15;
- Sec. 17;
- Sec. 18, lots 3 and 4, E½, and E½SW¼;
- Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 20;
- Sec. 21;
- Sec. 22;
- Sec. 23;
- Sec. 26, W½;
- Sec. 27;
- Sec. 28;
- Sec. 29;
- Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 33;
- Sec. 34;
- Sec. 35, W½.

T. 2 N., R. 17 W.,
- Sec. 25;
- Sec. 26, SE¼;
- Sec. 34, SE¼;
- Sec. 35.

T. 1 N., R. 18 W.,
- Sec. 24, E½ and SW¼;
- Sec. 25;
- Sec. 26, E½ and SW¼;
- Sec. 34, E½ and SW¼;
- Sec. 35.

T. 1 S., R. 17 W.,
- Sec. 3, lots 3 and 4, S½NW¼, and SW¼;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 5, lots 1 to 4 inclusive, S½N½, and S½;
- Sec. 6 lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 7, lots 1 and 2 NE¼, and E½NW¼;
- Sec. 8, N½;
- Sec. 9, N½.

T. 1 S., R. 18 W.
- Sec. 1, lots 1 and 2, E½SW¼NE¼, SE¼NE¼, NE¼SE¼, and E½SE¼SE¼;
- Sec. 3, lots 1 to 4 inclusive, SW¼NE¼, W½SE¼NE¼, S½NW¼, NE¼SW¼, W½SW¼, and W½NW¼SE¼;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 5, SE½;
- Sec. 6;
- Sec. 9, N½NE¼, W½SW¼NE¼, NW¼, W½NE¼SW¼, NW¼SW¼, and W½SW¼SW¼.

The area described contains 30,203.56 acres in Tooele County.

2. The following described non-Federal land (3,200.24 acres) is within the exterior boundary of the Bonneville Salt Flats withdrawal made by this order. If the United States subsequently acquires this land, the land will be subject to the terms and conditions of this withdrawal:

Salt Lake Meridian

T. 1 N., R. 17 W.,
- Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 16;
- Sec. 32.

T. 1 N., R. 18 W.,
- Sec. 36.

T. 2 N., R. 17 W.,
- Sec. 36.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 30, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-18662 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-DQ-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7544]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the fourth column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction of acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Conversions				
Region I				
Massachusetts: Amesbury, town of Essex County	250075	August 7, 1975, Emerg.; June 18, 1980, Reg.; August 3, 1992, susp.	August 3, 1992	August 3, 1992.
Region II				
New Jersey:				
Fairfield, township of Cumberland County	340168	June 23, 1972, Emerg.; November 19, 1982, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.
Greenwich, township of Cumberland County	340169	September 29, 1975, Emerg.; March 11, 1983, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.
Region III				
Pennsylvania: Bethel, township of Schuylkill County	421999	September 15, 1975, Emerg.; November 16, 1990, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.

State and location	Community No.	Effective date of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VI				
Louisiana: St. Mary Parish, unincorporated areas	220192	April 6, 1973, Emerg.; September 3, 1980, Reg.; August 3, 1992, Susp.	August 3, 1992	Do.
Region II				
New Jersey:				
Hopewell, township of, Cumberland County	340248	February 22, 1974, Emerg.; February 15, 1980, Reg.; August 18, 1992, Susp.	August 18, 1992	August 18, 1992.
Lawrence, township of, Cumberland County	340171	July 21, 1975, Emerg.; November 16, 1982, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
New York: Rutland, town of, Jefferson County	360350	August 11, 1975, Emerg.; June 5, 1985, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region III				
West Virginia:				
Lewis County, unincorporated areas	540085	January 25, 1977; Emerg.; July 1, 1987, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Weston, city of, Lewis County	540087	November 1, 1974, Emerg.; April 15, 1982, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Pennsylvania: Ambler, borough of, Montgomery County	420947	December 6, 1973, Emerg.; November 2, 1977, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region IV				
Georgia: Kennesaw, city of Cobb County	130055	July 25, 1975, Emerg.; August 1, 1980, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Tennessee:				
Cocke County, unincorporated areas	470033	March 14, 1978, Emerg.; January 6, 1988, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Newport, city of, Cocke County	475440	February 12, 1971, Emerg.; September 3, 1971, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region V				
Minnesota:				
Aitkin County, unincorporated areas	280417	April 28, 1988, Emerg.; July 16, 1990, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Dayton, city of, Hennepin County	270158	September 25, 1973; Emerg.; February 1, 1978, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
McLeod County, unincorporated areas	270616	March 4, 1974, Emerg.; February 4, 1981, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Greenfield, city of, Hennepin County	270673	December 26, 1974, Emerg.; April 15, 1981, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Rockford, city of, Hennepin/Wright Counties	270182	February 5, 1975, Emerg.; November 1, 1979, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Watertown, city of, Carver County	270056	March 14, 1975, Emerg.; November 1, 1978, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Region VI				
Louisiana: Gonzales, City of, Ascension Parish	220015	April 6, 1973, Emerg.; August 16, 1982, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.
Texas: Galveston County, unincorporated areas	485470	April 8, 1971, Emerg.; April 9, 1971, Reg.; August 18, 1992, Susp.	August 18, 1992	Do.

[1] Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 28, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-18284 Filed 8-5-92; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA-7545]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the forth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federal implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Utah:			
Cleveland, Town of Emery County	490196	June 11, 1992	July 12, 1977.
Reinstatements—Regular Program			
West Virginia:			
Thomas, City of Tecker County	540261	Oct. 16, 1975; Emerg.; Sept. 10, 1984, Reg.; Aug. 15, 1990, Susp.; Dec. 26, 1990, Rein.; June 2, 1992, Susp.; June 17, 1992, Rein.	June 2, 1992.
New York:			
Lenox, Town of Madison County	360404	Aug. 18, 1975, Emerg.; March 18, 1987, Reg.; March 18, 1987, Susp.; June 22, 1992, Rein.	June 3, 1988.
Putnam, Town of Washington County	361236	May 5, 1976, Emerg.; Aug. 19, 1986, Reg.; Aug. 19, 1986, Susp.; June 22, 1992, Rein.	Aug. 19, 1986.
Michigan:			
Portland, Township of Ionia County	260831	Sept. 5, 1975, Emerg.; May 1, 1984, Reg.; June 16, 1992, Susp.; June 19, 1992, Rein.	June 16, 1992.
Pennsylvania:			
Dreher, Township of Wayne County	422164	May 14, 1975, Emerg.; March 4, 1988, Reg.; April 15, 1992, Susp.; June 23, 1992, Rein.	Mar. 4, 1991.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Texas:			
Midland County, Unincorporated Areas	481239	March 8, 1978, Emerg.; Sept. 27, 1991, Reg.; Sept. 27, 1991, Susp.; June 23, 1992, Rein.	Sept. 27, 1991
Tennessee:			
McNairy County, Unincorporated Areas	470127	June 16, 1986, Emerg.; July 1, 1988, Reg.; April 2, 1991, Susp.; June 23, 1992, Rein.	April 2, 1991.
Colorado:			
Las Animas County, Unincorporated Areas	080105	Oct. 15, 1971, Emerg.; Sept. 1, 1977, Reg.; Nov. 2, 1990, Susp.; June 29, 1992, Rein.	April 3, 1984.
Regular Conversions			
Region III:			
West Virginia:			
Davis, Town of Tucker County	540260	June 2, 1992, Suspension withdrawn	June 2, 1992.
Hambleton, Town of Tucker County	540192	do	June 2, 1992.
Hendricks, Town of Tucker County	540193	do	June 2, 1992.
Tucker County, Unincorporated Areas	540191	do	June 2, 1992.
Region VI:			
Louisiana:			
St. Charles Parish, Unincorporated Areas	220160	June 16, 1992, Suspension Withdrawn	June 16, 1992.
Region IX:			
California:			
Fort Bragg, City of Mendocino County	060184	do	June 16, 1992.
Mendocino County, Unincorporated Areas	060183	do	June 16, 1992.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension, Rein.-Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 29, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-18541 Filed 8-5-92; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 272

[Docket No. R-144]

RIN 2133-AA96

Administering Maintenance and Repair Subsidy; Audit Requirements and Procedures

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking amends the regulations of the Maritime Administration (MARAD) with respect to MARAD's internal procedure for verifying the expenses incurred by subsidized operators receiving maintenance and repair (M&R) subsidy. One amendment relieves the operator from the automatic disallowance of otherwise subsidizable expenses included in a repair summary or supplement that was not submitted in a specified time period to MARAD. The other amendment recognizes that, pursuant to agreement between MARAD and the Inspector General, Department of Transportation, the required audit of an operator's M&R costs shall be performed for MARAD by the Office of Inspector General (OIG).

DATES: This final rule is effective August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Seelinger, Chief, Division of Ship Maintenance and Repair, 400 7th Street, SW., Washington, DC 20590. Tel. (202) 366-5776.

SUPPLEMENTARY INFORMATION: Title VI of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1171, *et seq.*) provides authority to the Secretary of Transportation, acting through the Maritime Subsidy Board of the Maritime Administration, to enter into contracts for the award of ODS to U.S. citizens for the operation of a vessel or vessels which are to be used in an essential service in the foreign commerce of the United States. The purpose of ODS is to compensate the operators of such vessels for excess operating costs associated with documentation of the vessels under the laws of the United States, including crew wage costs and, when appropriate, the cost of M&R not covered by insurance (46 App. U.S.C. 1173). MARAD's regulation at 46 CFR 272.42 provides that MARAD shall audit the operator's M&R costs, as necessary, and shall notify the operator of the audit results.

Section 272.24(a) of the existing regulations requires that the operators of a vessel receiving M&R subsidy submit to the appropriate MARAD regional Ship Operations Office a Subsidy Repair Summary (Form MA-140) not later than 120 days after termination of a single voyage or multiple voyages. Section 272.23(d) provides that if an operator fails to file the repair summary or supplement within this time, any expense included therein shall be ineligible for subsidy unless the operator can prove the delay in filing was due to circumstances beyond the operator's control. The procedures set forth in MARAD's regulations governing the calculation of subsidy rates for liner vessels (46 CFR part 282), beginning with the calendar year 1985, makes use of a relationship of M&R subsidy to wage subsidy for a three-year period commencing five years prior to the year for which the rate is being calculated. For example, approved and audited expenses for the years 1987-89 are used to calculate the 1992 M&R subsidy that the operator receives. The procedure for determining M&R subsidy for bulk vessels (46 CFR part 252) also utilizes a historical period of M&R costs, i.e., the historical period between a subsidized vessel's latest two routine dry dockings prior to the subsidized year.

Under both the liner and bulk procedures, M&R subsidy is determined as a per diem amount payable for subsidized voyage days in the calendar year for which they are applicable. The MA-140 submissions within the 120 day period are no longer necessary to assure the timely payment of subsidy. For this reason, there is no longer a need to disallow claims on the basis of their untimely submission. The provision in 46 CFR 272.23 which provides for the disallowance of claims that are not submitted within 120 days was inadvertently left in the regulation when it was amended in 1990. Accordingly, MARAD is removing this provision. The

existing regulation is inconsistent with the actual audit procedure that was effected by a 1981 agreement between MARAD and the Inspector General, Department of Transportation, and subsequent agreements in 1984, which agreements implement provisions in section 4 of the Inspector General Act (IGA) of 1978, as amended, Pub. L. 92–463 (published at 5 U.S.C. App.). The IGA includes within the duties and responsibilities of each Inspector General an obligation to "conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Department within which his office is established." In 1981, in recognition of these audit responsibilities, the Maritime Administrator and the Inspector General, Department of Transportation, entered into a Memorandum of Agreement, stating that the OIG will perform the necessary audit for MARAD and providing further for the transfer of the MARAD audit function and personnel to the OIG. Further agreements between MARAD and the OIG with respect to audit requirements for various MARAD programs and modifications to MARAD audit policy are reflected in memoranda exchanged in 1984 by the former MARAD Associate Administrator for Policy and Administration and the former Assistant Inspector General for Policy Planning and Resources.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). It announces a policy change to remove a burden on subsidized operators receiving M&R and clarifies responsibilities for performing audits of M&R expenses claimed. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

The amendments to 46 CFR part 272 remove a general statement of policy to relieve an unnecessary burden on subsidized operators receiving M&R subsidy and clarify a matter of agency practice and procedure, namely that the required audit of M&R costs will be performed for MARAD by the OIG and that MARAD will notify the operator of the results of the audit performed by the OIG. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), requirements for notice and opportunity for public comment are not applicable. Since MARAD does not anticipate that publication for comment would result in the receipt of useful information, such publication is not required under DOT Regulatory Policies and Procedures. Because the rule is deregulatory and clarifying in nature, MARAD finds that good cause exists pursuant to 5 U.S.C. 553(d)(C3) for making it effective in publication. This rule is not subject to the requirements of E.O. 12291.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environment Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133–0006). OMB approved the latest changes to the information collection requirements in revised part 221 as contained in the final rule published July 3, 1992, (57 FR 23470). However, the revision of forms referenced in this rule will be submitted to OMB for review and approval. Therefore, use of present Maritime Administration forms will be continued, pending review and approval of the forms, as revised.

List of Subjects in 46 CFR Part 272

Cargo vessels, grant programs.

Accordingly, MARAD hereby amends 46 CFR part 272 as follows:

1. The authority citation for 46 CFR part 272 is revised to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1173, 1176; 49 CFR 1.66.

§ 272.23 [Amended]

2. In § 272.23, paragraph (d) is removed and paragraphs (e) through (t) are redesignated as paragraphs (d) through (s).

3. Section 272.42 is revised to read as follows:

§ 272.42 Audit requirements and procedures.

(a) *Required audit.* In connection with the audit of the Operator's subsidizable expenses, the Office of the Inspector General, Department of Transportation, shall audit for MARAD the Operator's M&R costs, as necessary, for the determination of final subsidy rates. The Operator shall substantiate those costs recorded on the books of account which have been approved by the Administration.

(b) *Notification of audit results.* Upon completion of the audit by the Office of Inspector General, the MARAD Office of Financial Approvals shall notify the Operator of the audit results, including any items disallowed and the reasons for such disallowance.

By Order of the Maritime Administrator.
Dated: July 30, 1992.

James E. Saari,
Secretary.

[FR Doc. 92–18556 Filed 8–5–92; 8:45 am]
BILLING CODE 4910–81–M

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46 CFR Part 298

[Docket No. R–145]

RIN 2133–AA97

Obligation Guarantees

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: Title XI of the Merchant Marine Act, 1936, as amended (Act), authorizes the Secretary of Transportation to provide guarantees of debt (obligation guarantees) issued to finance the construction, reconstruction or reconditioning of vessels built in United States shipyards and owned by citizens of the United States. Applications for obligation guarantees are made to the Maritime

Administration acting under authority delegated by the Secretary to the Maritime Administrator. MARAD is revising in its regulations implementing Title XI of the Merchant Marine Act, 1936, as amended (Act), a requirement for the computation of the Internal Rate of Return (IRR) of an applicant's proposed project by shifting the burden for computation of the IRR from the applicant to MARAD. The existing requirement is contained in a regulation that prescribes the terms, conditions and procedures for applying for and administering Federal ship financing assistance in the form of obligation guarantees. The revised regulation is a result of the review of existing regulations mandated by the President on January 28, 1992. It will streamline procedures for processing applications for assistance under Title XI of the Act and provide substantial paperwork relief to applicants for Title XI obligation guarantees.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mitchell D. Lax, Director Office of Ship Financing, Maritime Administration, Washington, DC 20590, Telephone No. (202) 366–5744.

SUPPLEMENTARY INFORMATION: 46 CFR part 298 implements authority of the Maritime Administrator, as delegated by the Secretary of Transportation, to issue obligation guarantees. Section 298.14 of the existing regulations for obligation guarantees provides that no letter of commitment for an obligation guarantee will be issued by MARAD without a finding that the proposed project will be economically sound. An "obligation guarantee" is a pledge of the full faith and credit of the United States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in the Act. In the presentation to establish economic soundness, applicants are required to provide an IRR of at least ten percent. An IRR analysis is intended to demonstrate the projected profitability of a proposed project, and whether the security for the guarantee will be used economically and efficiently.

The procedures set forth in the rule for calculating the IRR are extensive and complex, and it is MARAD's experience that applicants have found these procedures to be burdensome. The revision of the rule to shift the computation of the IRR to MARAD would provide substantial paperwork relief for Title XI applicants while still requiring them to submit the underlying financial information necessary for MARAD to calculate the IRR as appropriate.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). It eliminates a requirement that an applicant for MARAD financial assistance make a detailed financial computation to be submitted with the application. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

This rulemaking relates to amendment of existing regulations that prescribe conditions and procedures for applying for Federal ship financing assistance in the form of obligation guarantees. Accordingly, it is a matter of agency practice and procedure. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), requirements for notice and opportunity for public comment are not applicable. Since MARAD does not anticipate that publication for comment would result in the receipt of useful information, such publication is also not required under DOT's Regulatory Policies and Procedures. Since the rule relieves an economic burden on applicants it is being made effective on publication for good cause pursuant to 5 U.S.C. 553(d)(3). This rule is not subject to the requirements of E.O. 12291.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environment Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133–0008). OMB approved the latest changes to the information collection requirements in revised part 221 as contained in the final rule published June 3, 1992, (57 FR 23470). However, the revision of forms referenced in this rule will be submitted to OMB for review and approval. Therefore, use of present Maritime Administration forms will be continued, pending review and approval of the forms, as revised.

This rulemaking relates to amendment of existing regulations that prescribe conditions and procedures for applying for Federal ship financing assistance in the form of obligation guarantees.

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs—Transportation, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of accounts.

Accordingly, 46 CFR part 298 is amended as follows:

PART 298—[AMENDED]

1. The authority citation for part 298 is revised to read as follows:

Authority: 46 App. U.S.C. 1114(b), 49 CFR 1.66.

§ 298.14 [Amended]

2. Section 298.14 is amended as follows:

(a) In paragraph (b)(3), by substituting a period for the second comma and deleting thereafter the phrase "and in accordance with paragraph (b)(4) of this section."

(b) By removing paragraph (b)(4) in its entirety.

Dated: July 30, 1992.

By order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92–18557 Filed 8–5–92; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-342; RM-6976; FCC 92-335]

Television Broadcasting Services; Ardmore, OK, and Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 12 from Ardmore, Oklahoma to Sherman, Texas, and modifies the license of Station KXII (TV) to reflect Channel 12 at Sherman, as proposed in the Notice of Proposed Rule Making in this proceeding. See 56 FR 63704, December 5, 1991. Channel 12 can be allotted to Sherman, Texas, in compliance with the Commission's minimum distance separation requirements at the current transmitter site for Station KXII (TV). The coordinates for Channel 12 at Sherman, Texas are North Latitude 34-01-58 and West Longitude 96-48-00.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-342, adopted July 17, 1992, and released July 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., Suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Oklahoma, is amended by removing Channel "12-" from Ardmore.

3. Section 73.606(b), the Table of Television Allotments under Texas, is amended by adding Channel "12-" at Sherman.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18524 Filed 8-5-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 91-322; FCC 92-321]

Private Land Mobile Radio Services; Secondary Fixed Operations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These rule changes relax existing restrictions on secondary fixed signaling and alarm operations by all types of private land mobile radio systems that are licensed for exclusive use. This action is taken to remove an unnecessary regulatory burden on these licensees. These new rules will provide increased capability for licensees of exclusive-use private land mobile radio systems to meet their communication needs.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Rules Branch, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91-322, FCC 92-321, adopted July 10, 1992, and released July 22, 1992. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

1. 47 CFR 90.235 provides that private radio land mobile licensees authorized under part 90 of the Commission's Rules may conduct secondary fixed signaling and alarm operations above 25 MHz provided certain terms and conditions are met. These provisions, essentially technical, relate primarily to protection of co-channel users from interference on shared channels. In 1986, we amended 47 CFR 90.637(c) to allow trunked Specialized Mobile Radio (SMR) systems and their end users to conduct such operations on a less restricted basis without complying with 47 CFR 90.235. This action was taken because the restrictions had been intended to reduce interference potential to mobile operations in a shared spectrum environment and thus were unnecessary for trunked SMR systems, which operate on exclusive frequency assignments.

2. On October 22, 1991, we adopted a Notice of Proposed Rule Making (Notice) to consider rules relaxing restrictions on secondary fixed signaling and alarm operations by all types of private land mobile radio systems that are licensed for exclusive use. The action we took in 1986 permitting trunked SMR systems to conduct secondary operations without meeting the § 90.235 restrictions formed the basis for the action proposed in the Notice. Trunked SMR systems are not the only private land mobile radio systems that operate in an exclusive-use environment. The same rationale exists for removing the § 90.235 restrictions from other systems operating on exclusive-use assignments. Therefore, we adopt the rules as proposed in the Notice. This will allow additional operations on existing spectrum allocations—clearly an efficient use of the spectrum.

3. To ensure that harmful interference does not occur, we adopt our proposed rules to limit output power to 30 watts and require that an automatic means be available to deactivate remote transmitters in the event the carrier remains on for a period in excess of three minutes. We also adopt rules to preserve the land mobile nature of the part 90 services.

Final Regulatory Flexibility Analysis

Need and purpose of this action:

4. The Commission is adopting this Report and Order to provide increased capability for licensees of exclusive-use private land mobile radio systems to meet their communications needs. The action taken herein will permit licensees of exclusive-use private land mobile radio systems to make greater use of secondary fixed signaling and alarm operations on already licensed spectrum to further address their own communications requirements.

Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

5. No comments addressed our Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected:

6. None.

List of Subjects in 47 CFR Part 90

Exclusive-use land mobile systems, Private land mobile radio services, Radio, Secondary fixed signaling and alarm operations.

Amendatory Text

47 CFR part 90, is amended as follows:

1. The authority citation for part 90 is revised to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.235 is amended by adding a new paragraph (l) at the end to read as follows:

§ 90.235 Secondary fixed signaling operations.

* * * * *

(l) Secondary fixed signaling operations conducted in accordance with the provisions of §§ 90.317(a) or 90.637(c) of this part are exempt from the foregoing provisions of this section.

3. A new § 90.317 is added to read as follows:

§ 90.317 Fixed ancillary signaling and data transmissions.

(a) Licensees of systems that have exclusive-use status in their respective geographic areas may engage in fixed ancillary signaling and data transmissions, subject to the following requirements:

(1) All such ancillary operations must be on a secondary, non-interference basis to the primary mobile operation of any other licensee.

(2) The output power at the remote site shall not exceed 30 watts.

(3) Any fixed transmitters will not count toward meeting the mobile loading requirements nor be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(4) Automatic means must be provided to deactivate the remote transmitter in the event the carrier remains on for a period in excess of three minutes.

(5) Operational fixed stations authorized pursuant to the provisions of this paragraph are exempt from the requirements of §§ 90.425 and 90.429.

(6) If the system is licensed on 470–512 MHz conventional frequencies, and exclusivity has been achieved through the aggregate loading of more than a single co-channel licensee, then a licensee must obtain the concurrence of other co-channel licensees prior to commencing such ancillary operations.

(b) Licensees of systems that do not have exclusive-use status in their respective geographic areas may conduct fixed ancillary signaling and data transmissions only in accordance with the provisions of § 90.235 of this part.

4. Section 90.637 is amended by revising paragraph (c) and adding new paragraph (d) to read as follows:

§ 90.637 Restrictions on operational fixed stations.

* * * * *

(c) Trunked and conventional systems that have exclusive-use status in their respective geographic areas may conduct fixed ancillary signaling and data transmissions subject to the following requirements:

(1) All operations must be on a secondary, non-interference basis to the primary mobile operation of any other licensee.

(2) The output power at the remote site must not exceed 30 watts.

(3) Any fixed transmitters will not count toward meeting the mobile loading requirements nor be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(4) Automatic means must be provided to deactivate the remote transmitter in the event the carrier remains on for a period in excess of three minutes.

(5) Operational fixed stations authorized pursuant to the provisions of paragraphs (c) and (d) of this Section are exempt from the requirements of §§ 90.425 and 90.429.

(d) Conventional systems that do not have exclusive-use status in their respective geographic areas may conduct fixed ancillary signaling and data transmissions only in accordance with all the provisions of § 90.235.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18236 Filed 8–5–92; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO-368-A21, AO-380-A11; DA-92-07]

Milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposed changes in the Pacific Northwest and Southwestern Idaho-Eastern Oregon Federal milk marketing orders. The proposals concern the amendment of the orders: (1) To provide multiple component pricing plans for milk used in Class II and Class III products in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas; (2) To revise the location adjustment for plants in Yakima County, Washington, in the Pacific Northwest order; (3) To amend the delivery requirements for qualification as a supply plant in the Pacific Northwest Order; and (4) To grant the Washington State Department of Corrections dairy plant exempt status under the Pacific Northwest order. The multiple component pricing proposal for the Pacific Northwest order would be on a solids nonfat basis while for the Southwestern Idaho-Eastern Oregon order it would be based on protein.

DATES: The hearing will convene at 9 a.m. on September 9, 1992.

ADDRESSES: The hearing will be held at The Sheraton Portland Airport Hotel, 8235 Northeast Airport Way Portland, Oregon 97220, (503) 281-2500.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at The Sheraton Portland Airport Hotel, 8235 Northeast Airport Way Portland, Oregon 97220, (503) 281-2500 beginning at 9 a.m. local time, on September 9, 1992, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Southwestern Idaho-Eastern Oregon marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendment to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

TheAct provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1124 and 1135

Milk marketing orders.

The authority citation for 7 CFR parts 1124 and 1135 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Darigold Farms

Proposal No. 1

Amend the following provisions of the Pacific Northwest order to read as follows:

Section 1124.9 Handler

* * * * *

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for

delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the Market Administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat and nonfat milk solids tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

* * * * *

Add a new § 1124.21 to read as follows:

Section 1124.21 Producer Price Differential

Producer price differential means the price per hundredweight of milk to be paid producers which represents their pro rata share of the Class I, Class II and Class III–A differentials, and other payments and adjustments under the order, computed pursuant to §§ 1124.60 and 1124.61.

Section 1124.30 Reports of Receipts and Utilization

(a) * * *

(1) * * *

(i) Milk received directly from producers (including such handler's own production) and the amount of nonfat milk solids contained therein.

(ii) Milk received from a cooperative association pursuant to 1124.9(c) and the amount of nonfat milk solids.

* * * * *

(c) * * *

(1) The quantities of skim milk and butterfat received from producers and the amount of nonfat milk solids contained therein;

(2) The utilization of skim milk and butterfat and the amount of nonfat milk solids for which it is the handler pursuant to § 1124.9(b); and

* * * * *

Section 1124.31 Payroll Reports

* * * * *

(a) * * *

(1) The total pounds of milk received from each producer, the pounds of butterfat and the pounds of nonfat milk solids contained in such milk, and the number of days on which milk was delivered by such producer in such month;

* * * * *

(b) * * *

(1) The total pounds of milk, butterfat content and nonfat milk solids thereof received from each dairy farmer.

* * * * *

Section 1124.43 General Classification and Accounting Rules

* * * * *

(d) Each person qualified as a handler pursuant to § 1124.9 (a), (b), or (c) shall determine and maintain records of the nonfat milk solids content of milk and fluid milk products received and disposed of as are necessary to submit reports to the Market Administrator pursuant to §§ 1124.30 and 1124.31, and shall retain and make available such records in the same manner as is required for records of butterfat and skim milk pursuant to § 1000.5 of the general provisions included in § 1124.1.

(e) The Market Administrator shall verify or establish the accuracy of data reported for nonfat milk solids pursuant to this part through audit of books and records of handlers, and by such other means as are necessary and commonly employed in the verification of data concerning the receipts and utilization of skim milk and butterfat.

Section 1124.50 Class Prices and Component Prices

* * * * *

(e) Skim milk price. The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to § 1124.74 by 35.

(f) Butterfat price. The butterfat price per pound shall be the total of: (1) The skim milk value per hundredweight for the month divided by 100; and (2) the butterfat differential for the month, computed pursuant to § 1124.74, multiplied by 10.

(g) Nonfat milk solids price. The price per pound for nonfat milk solids shall be computed by subtracting from the basic formula price, the butterfat price multiplied by 3.5 and dividing the result by the average percentage of nonfat milk solids in all producers for such month.

Section 1124.53 Announcement of Class Prices

* * * * *

(a) The 5th day after the end of each month, the basic formula price and the prices for skim milk and and butterfat computed pursuant to §§ 1124.50(e) and 1124.50(f) respectively; and

(b) The 14th day after the end of each month, the handler nonfat milk solids price computed pursuant to § 1124.50(g).

Section 1124.60 Computation of Handlers Obligation to Producer Differential Pool

Handler's value of milk for computing uniform prices. The Market Administrator shall compute each month for each handler defined in § 1124.9(a) with respect to each of such handler's pool plants and for each handler defined in § 1124.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of milk received from a cooperative association as a handler pursuant to § 1124.9(c) and allocated to Class I pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) and the pounds of producer milk in Class I as determined pursuant to § 1124.44, both multiplied by the difference between the Class I price (adjusted pursuant to § 1124.52) and the Class III price;

(b) The pounds of milk received from a cooperative association as a handler pursuant to § 1124.9(c) and allocated to Class II pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) and the pounds of producer milk in Class II as determined pursuant to § 1124.44, both multiplied by the difference between the Class II price and Class III price;

(c) For producer milk is Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

(d) The value of the product pounds, skim milk and butterfat in overage assigned to each class pursuant to § 1124.44(a)(15) and the value of the corresponding pounds of nonfat milk solids associated with the skim milk subtracted from Class II and Class III pursuant to § 1124.44(a)(15), by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1124.44(a)(15) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to

§ 1124.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) multiplied by the difference between the Class II price and the Class III price, plus the pounds of nonfat milk solids in skim milk subtracted from Class II pursuant to § 1124.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1124.44(b) multiplied by the butterfat price;

(3) The pounds of nonfat milk solids in skim milk overage subtracted from Class III pursuant to § 1124.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1124.44(b) multiplied by the butterfat price;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I or Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b), and value of the pounds of nonfat milk solids associated with the skim milk subtracted from Class II pursuant to § 1124.44(a)(10), computed by multiplying the skim milk pounds so subtracted by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the previous month as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b) at the current month's Class II-Class III price difference and the current month's nonfat milk solids and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv), and the corresponding step of § 1124.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant and the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(8) (v) and (vi) and the corresponding step of § 1124.44(b) applicable at the location of the transferor plant at the current month's Class I-Class III price difference;

(h) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(12) and the corresponding step of § 1124.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal Order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(i) The pounds of skim milk received from a cooperative association as a handler pursuant to § 1124.9(c) and allocated to Class I pursuant to § 1124.44(a)(15), and the pounds of producer milk in CLass I as determined pursuant to § 1124.44, both multiplied by the skim milk price for the month computed pursuant to § 1124.50(e).

(j) The pounds of nonfat milk solids in skim milk in receipts allocated to Class II and Class III pursuant to § 1124.44(a)(15) and producer milk classified as Class II and Class III pursuant to § 1124.44, computed by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month for each report filed separately, the result to be multiplied by the nonfat milk solids price for the month computed pursuant to § 1124.50(g).

Section 1124.61 Computation of Producer Price Differential

For each month the Market Administrator shall compute a "producer price differential" as follows:

(a) The "producer price differential" shall be the result of the following computations:

(1) Combine into one metal:

(i) The value computed pursuant to § 1124.60(a) through (h) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month:

(ii) An amount equal to the total value of the location differentials computed pursuant to § 1124.75;

(iii)An amount equal to not less than one-half of the unobligated balance in the producer settlement fund.

(2) Divide the total value calculated under paragraph (a)(1) of this section by the sum of the following for all handlers:

(i) The total hundredweight of producer milk pursuant to § 1124.13 represented by the value established pursuant to (1)(i) of this paragraph; and

(ii) The total hundredweight for which a value is computed pursuant to § 1124.60(h).

(3) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "producer price differential."

Section 1124.62 Computation of Producer Nonfat Milk Solids Price

The "producer nonfat milk solids price" to be paid to all producers for the pounds of nonfat milk solids contained in their milk shall be computed by the Market Administrator each month as follows:

(1) Combine into one total the values computed pursuant to § 1124.60 (i) and (j) for all handlers who made reports pursuant to § 1124.30 and who made payments pursuant to § 1124.71 for the preceding month:

(2) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(3) Round to the nearest whole cent. The result is the "producer nonfat milk solids price".

Section 1124.63 Announcement of the Producer Price Differential, Producer Nonfat Milk Solids and an Estimated Uniform Price

The Market Administrator shall announce on or before the 14th day after the end of each month, the following prices for such month:

(a) The producer price differential;

(b) The producer nonfat milk solids price; and

(c) An estimated uniform price per hundredweight of milk computed by adding the producer price differential to the basic formula price.

Section 1124.71 Payment to the Producer Settlement Fund

(a) On or before the sixteenth day after the end of the month each handler shall pay to the Market Administrator the amount, if any, by which its obligation specified in paragraph (a)(1) of this section exceeds the amount specified for such handler in paragraph (a)(2) of this section;

(1) The sum of:

(i) The total obligation of the handler for such month as determined pursuant to § 1124.60; and

(ii) for a cooperative association handler, the amount due from other handlers pursuant to § 1124.73(d).

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable prices pursuant to § 1124.73(a)(2) (i), (ii), and (iii).

(ii) The amount to be paid by such handler to cooperative associations pursuant to § 1124.73(d); and

(iii) The value at the producer price differential adjusted for the location of the plant(s) at which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed for such handler pursuant to § 1124.60(g); and

* * * * *

Section 1124.73 Payments to Producers and to Cooperative Associations.

(a) Each handler shall make payment to each producer for producer milk received from such producer as provided in subparagraphs (1), (2), and (3) hereof or paragraph (b) of this section:

(1) On or before the last day of the month to each producer who did not discontinue shipping milk to such handler before the eighteenth day of the month, not less than the Class III price for the preceding month per hundredweight of milk received from the producer during the first fifteen days of the month, subject to adjustment for proper deductions authorized in writing by the producer; and

(2) On or before the nineteenth day after the end of each month for such milk received from the producer during the month an amount computed as follows:

(i) The butterfat price for the month multiplied by the total pounds of butterfat in milk received from the producer; plus

(ii) The nonfat milk solids price for the month multiplied by the total pounds of nonfat milk solids in the milk received from the producer; plus

(iii) The total hundredweight of milk received from the producer multiplied by the producer price differential for the month as adjusted pursuant to § 1124.75(a); less

(iv) Payments made to the producer pursuant to paragraph (a)(1) of this section; less

(v) Proper deductions authorized in writing by the producer; and less

(vi) Any deduction required pursuant to statute.

(3) If by the date specified in paragraph (a)(2) hereof a handler has not received full payment from the Market Administrator pursuant to § 1124.72, the payments to producers required in such paragraph may be reduced uniformly as a percentage of the amount due each producer by a total sum not in excess of the remainder due from the Market Administrator and the handler shall pay the balance due producers on or before the date for making payments pursuant to such paragraph next following receipt of the full payment for the Market Administrator.

(b) The payments required in paragraph (a) of this section shall upon the request of a cooperative association qualified under § 1124.18 be made to the association or its duly authorized agent for milk received from each producer who has given such association authorization by contract or other written instrument to collect the proceeds from the sale of producer's milk. All payments required pursuant to this paragraph shall be made on or before the second day prior to the dates specified for such payment in paragraph (a)(2) of this section.

(c) Each handler shall pay to each cooperative association which operates a pool plant or its duly authorized agent for butterfat and nonfat milk solids received from such plant in the form of fluid milk products:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section for butterfat and nonfat milk solids received during the first fifteen days of the month at not less than the butterfat and nonfat milk solids prices respectively for the preceding month; and

(2) On or before the fifteenth day after the end of such month an amount of money determined in accordance with computations made on the same basis as those specified in § 1124.73(a)(2) (i) through (iii), minus any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler qualified pursuant to § 1124.9(a) that received milk for which a cooperative association was the handler pursuant to § 1124.9(c) shall pay the cooperative association for such milk:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section for milk received during the first fifteen days of the month at not less than the Class III price for the preceding month; and

(2) On or before the seventeenth day after the end of each month of milk received during the month an amount of money determined for such milk in accordance with the computations specified in § 1124.73(a)(2) (i) through (iii), minus any payment made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler shall provide each producer, on or before the 19th day of each month with a supporting statement for producer milk received from the producer during the previous month in such form that it may be retained by the producer, which shall show:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer, the pounds of butterfat and nonfat milk solids contained therein and, unless previously provided, the pounds of milk in each delivery;

(3) The minimum rates at which payment to the producer is required under the provisions of this section;

(4) The rate and amount of any premiums or of payments made in excess of the minimums required under this order;

(5) The amount or rate of each deduction claimed by the handler, together with an explanation of each such deduction; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler shall, upon request provide the cooperative association, with respect to each producer for whom such payment is made, any or all of the information specified in paragraph (f) of this section.

Section 1124.75 Plant Location Adjustments for Producers and on Nonpool Milk

* * * * *

(c) For purposes of the computations pursuant to § § 1124.71(a) 1124.72, the producer price differential for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted producer price differential shall not be less than zero.

Section 1124.76 Payments by a Handler Operating a Partially Regulated Distributing Plant

Amend § 1124.76 by changing the term "uniform price" to read "estimated uniform price" wherever contained therein.

Proposed by Darigold Farms and Western Dairymen Cooperative, Inc.

Proposal No. 2

Amend the following provisions of the Southwestern Idaho-Eastern Oregon order to read as follows:

Section 1135.9 Handler

* * * * *

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk on the basis of weights determined from its measurement at the farm and butterfat and protein tests determined from farm bulk tank samples;

* * * * *

Add a new § 1135.21 to read as follows:

Section 1135.21 Producer Price Differential

Producer price differential means the price per hundredweight of milk to be paid producers which represents their prorata share of the Class I and Class II differentials and other payments and adjustments under the order computed pursuant to §§ 1135.60 and 1135.61.

In § 1135.30, paragraphs (b) and (d) are redesignated as paragraphs (d) and (e) and the introductory text and paragraphs (a) through (c) are added to read as follows:

Section 1135.30 Reports of Receipts and Utilization

On or before the ninth day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator the following information for such month as follows:

(a) Each handler qualified pursuant to § 1135.9(a) shall report for each pool plant operated by the handler the quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk received at such plants or diverted by the handler to other plants and the protein content of such milk;

(2) Producer milk received at such plants from handlers qualified pursuant to § 1135.9 (c) and (d) and the protein content of such milk; and

(3) Fluid milk products and bulk fluid cream products from other pool plants and other source milk received at such plants, and the quantities of skim milk contained in or represented by such products;

(b) Each handler qualified pursuant to § 1135.9(b), (c) or (d) shall report the quantities of producer milk received and the butterfat and protein thereof.

(c) Each handler submitting reports pursuant to paragraphs (a) and (b) hereof shall report the utilization or disposition of all milk, filled milk and milk products required to be reported, and inventories on hand at the beginning and end of each month in the form of the fluid milk products specified in § 1135.40(b)(1).

Section 1135.31 Payroll Reports

(a) on or before the 22nd day after the end of the month, each handler described in § 1135.9(a), (b), (c) and (d), shall report to the market administrator in the detail prescribed by the market administrator the following information showing for each producer for such month;

(1) * * *

(2) * * *

(3) * * *

(4) The average butterfat and protein content of his/her milk;

* * * * *

Section 1135.43 General Classification and Accounting Rules

* * * * *

(d) Each person qualified as a handler pursuant to § 1135.9 (a), (b), (c), or (d) shall determine and maintain records of the protein content of milk and fluid milk products received and disposed of as are necessary to submit reports to the market administrator pursuant to §§ 1135.30 and 1135.31, and shall retain and make available such records in the same manner as is required for records of butterfat and skim milk pursuant to § 1000.5 of the general provisions included in § 1135.1.

(e) The market administrator shall verify or establish the accuracy of the data reported for milk protein pursuant to this part through audit of the books and records of handlers, and by such other means as are necessary and commonly employed in the verification of data concerning the receipts and utilization of skim milk and butterfat.

Section 1135.50 Class Prices

* * * * *

(d) Skim milk price. The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to § 1135.74 to 35.

(e) Butterfat price. The butterfat price per pound shall be the total of: (1) the skim milk value per hundredweight for the month divided by 100: and (2) the butterfat differential for the month, computed pursuant to section 1135.74 multiplied by 10.

(f) Handler protein price. The price per pound for protein shall be computed by subtracting from the basic formula price, the butterfat price multiplied by 3.5 and dividing the result by the average percentage of protein in all producer for such month.

Section 1135.53 Announcement of Class and Component Prices

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the Class II price for the following month;

(c) The 5th day after the end of each month, the basic formula price and the prices for skim milk and butterfat computed pursuant to § 1135.50 (d) and (e) respectively; and

(d) The 14th day after the end of each month the handler protein price computed pursuant to § 1135.50(f) for such month.

Section 1135.60 Computation of Handlers' Obligations to Producer Price Differential Pool

For the purpose of computing the producer price differential the market administrator shall compute each month a differential value for each handler for each of the handler's pool plants and for each handler qualified pursuant to § 1135.9 (b), (c), or (d) by combining the amounts computed as follows:

(a) Multiply the hundredweight of producer milk assigned to Class I milk pursuant to § 1135.44(c), plus any overage assigned to that Class pursuant to § 1135.44(a)(14) and the corresponding step of § 1135.44(b) by the difference between the Class I price, and the basic formula price;

(b) Multiply the hundredweight of producer milk assigned to Class II milk pursuant to § 1135.44(c), plus any overage assigned to that Class pursuant to § 1135.44(a)(14) and the corresponding step of § 1135.44(b) by the difference between the Class II price and the basic formula price;

(c) Multiply the total pounds of butterfat assigned to overage pursuant to § 1135.44(b)(14) by the butterfat price;

(d) Combine the amounts computed with respect to skim milk overages computed pursuant to § 1135.44(a)(14) as follows:

(i) Multiply the hundredweight of skim milk overage assigned to Class I by the skim milk price; and

(ii) Multiply the hundredweight of skim milk overage assigned to Class II and Class III by the average protein content of the skim milk remaining after § 1135.44(a)(14), and multiply the resulting figure by the handler protein price.

(e) Multiply the difference between the basic formula price for the preceding month and the Class I price, or the Class II price for the current month, by the hundredweight of skim milk and butterfat subtracted respectively from Class I and Class II pursuant to § 1135.44(a)(9) and the corresponding step of § 1135.44(b);

(f) Multiply the difference between the Class I price and the basic formula price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7) (i) through (iv) and the corresponding step of § 1135.44(b), after excluding receipts of bulk fluid cream products from an other order plant;

(g) Multiply the difference between the Class I price and the basic formula price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7) (v) and (vi) and the corresponding step of § 1135.44(b);

(h) Multiply the difference between the Class I price and the basic formula price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and the corresponding step of § 1135.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from unregulated supply plants to the extent an equivalent quantity of skim milk and butterfat disposed of to any such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(i) Multiply the skim milk price by the hundredweight of skim milk assigned to Class I milk pursuant to § 1135.44(a); and

(j) Multiply the handler protein price by the pounds of protein in producer skim milk assigned to Class II and Class III milk pursuant to § 1135.44(a), to be computed by multiplying the hundredweight of skim milk so assigned by the average percentage of protein in all producer skim milk received by the handler during the month.

Section 1135.61 Computation of Producer Price Differential

For each month the market administrator shall compute a producer price differential value for all milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (a) through (h) for all handlers who filed reports pursuant to § 1135.30 for the month, and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum of the following for all handlers in these computations:

(1) The total hundredweight of their producer milk receipts;

(2) The total hundredweight for which values were computed pursuant to § 1135.60(h); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk included under paragraph (c) of this section. The result shall be the "producer price differential".

Section 1135.62 Computation of Producer Protein Price

For each month the market administrator shall compute the producer protein price per pound to be paid producers for protein in milk marketed as producer milk as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 (i) and (j) for all handlers who made reports pursuant to § 1135.30 and who made payments pursuant to § 1135.71 for the preceding month:

(b) Divide the amount computed pursuant to paragraph (a) hereof by the total pounds or protein contained in the producer milk of the handlers on which the computations are based; and

(c) Round to the nearest whole cent. The result shall be the "Producer protein price".

Section 1135.63 Announcement of the Producer Price Differential, the Producer Protein Price and an Estimated Uniform Price

The market administrator shall announce on or before the 14th day after the end of each month the following prices for such month:

(a) The producer price differential;

(b) The producer protein price; and

(c) An estimated uniform price per hundredweight of milk computed by adding the producer price differential to the basic formula price.

Section 1135.71 Payment to the Producer-Settlement Fund

On or before the 16th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the amount as specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total differential value computed for the handler pursuant to § 1135.60.

(b) The sum of:

(1) The value computed by multiplying the producer price differential by the hundredweight of producer milk received from handlers qualified pursuant to § 1135.9(c) and from producers during the month;

(2) The value computed for the protein contained in the producer milk included under (1) hereof at the producer protein price; and

(3) The value at the producer price differential of the hundredweight of skim milk and butterfat for which a value is computed pursuant to § 1135.60(h).

Section 1135.72 Payments From the Producer-Settlement Fund

On or before the 18th day after the end of the month the market administrator shall pay to each handler the amount, if any, by which the amount computed for such handler pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If at such time the balance in the producer-settlement fund is insufficient to make all the market administrator payments pursuant to this section, the market administrator shall reduce uniformly such payment and shall complete such payment as soon as the necessary funds become available.

Section 1135.73 Payments to Producers and to Cooperative Associations

* * * * *

(b) On or before the 19th day after the end of each month each handler shall pay to each producer from whom producer milk was received during the month for such milk a sum computed as follows:

(1) The butterfat price for the month multiplied by the total pounds of butterfat in such milk; less

(2) The producer protein price for the month multiplied by the total pounds of protein in such milk; plus

(3) The producer price differential for the month multiplied by the hundredweight of such milk; less

(4) Payments made to the producer pursuant to paragraph (a) of this section; less

(5) Deductions for marketing services pursuant to § 1135.86; and less

(6) Other proper deductions authorized in writing by such producer.

* * * * *

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 19th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) The total pounds of milk received from the producer and the pounds of butterfat and protein contained therein;

(1) * * *

(2) * * *

(3) The minimum rates at which payment is required pursuant to this section;

(4) The rates used in making payment, if such rates are other than the required applicable minimums;

(5) The amount (or rate per hundredweight) of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with an explanation of each deduction; and

(6) The net amount of the payment to the producer.

Section 1135.78 Payments by a Handler Operating a Partially Regulated Distributing Plant

Amend § 1135.76 by changing the term "uniform price" to read "estimated uniform price" wherever contained therein.

Proposed by Darigold Farms

Proposal No. 3

Amend the following provisions of the Pacific Northwest order to read as follows:

Section 1124.52 Plant Location Adjustments for Handlers

(a) * * *

(1) * * *

(2) Zone 2 shall include the Washington counties of Whatcom and Yakima.

(3) * * *

(4) Zone 4 shall include:

(i) The Idaho counties of Lewis and Nez Perce;

(ii) The Oregon counties of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Morrow, Sherman, Umatilla, Wallowa, Wasco and Wheeler;

(iii) The Washington counties of Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Franklin, Garfield, Grant, Jefferson, Kittitas, Klickitat, Okanogan, San Juan and Walla Walla.

* * * * *

Proposed by Tillamook County Creamery Association

Proposal No. 4

Amend the following provision of the Pacific Northwest order to read as follows:

Section 1124.7 Pool Plant

* * * * *

(b) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; Provided, That:

* * * * *

Proposed by Washington State Department of Corrections

Proposal No. 5

Amend the following provisions of the Pacific Northwest order to read as follows:

Section 1124.8 Nonpool Plant

* * * * *

(e) Exempt distributing plant means:

(1) A plant, other than a pool supply plant or a regulated plant under another Federal order that meets all the requirements for status as a pool plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1124.3(a); or

(2) A plant owned and operated by a State institution or establishment which processes or packages fluid milk products.

Section 1124.10 Producer-Handler

Producer-handler means a person, other than a State institution or establishment, who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreements and orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator, Jerry L. Colburn, USDA—AMS—Dairy Division, 16 West Harrison Street, Seattle, WA 98119, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington office only)

Office of the Market Administrator, Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: July 31, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-18614 Filed 8-5-92; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 270, and 274

[Release Nos. 33-6948, 34-30967, IC-18869, File No. S7-27-92]

RIN 3235-AF50

Periodic Repurchases by Closed-End Management Investment Companies; Redemptions by Open-End Management Investment Companies and Registered Separate Accounts at Periodic Intervals or With Extended Payment

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules, amendments to rules, and requests for comment.

SUMMARY: The Commission is proposing for public comment new rules and amendments to rules under the Investment Company Act of 1940 (the "Act") to provide that closed-end management investment companies may repurchase their common stock at periodic intervals at net asset value, and that open-end management investment companies and certain insurance company separate accounts may take up to thirty-one days to pay redemption proceeds; the thirty-one day redemption period would begin with the date of tender for open-end funds making rolling redemptions ("extended payment funds"), and with specified redemption deadlines for open-end funds redeeming at periodic intervals ("interval funds") (collectively, extended payment funds and interval funds are referred to as "limited redemption funds"). The Commission also is proposing for public comment a rule and amendments to certain rules under the Securities Exchange Act of 1934 that apply to repurchases by closed-end companies.

The proposals would permit investment companies to offer shareholders intermediate degrees of liquidity that are not currently available to shareholders of closed-end and open-end companies. The proposed rules are intended to facilitate greater investment in less liquid securities than is permitted for open-end companies, including venture capital investments, securities issued by small businesses, and less liquid securities issued by foreign issuers, and to permit insurance companies to use investment vehicles that are more consistent with the long-term nature of variable insurance contracts.

DATES: Comments must be received on or before November 4, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-27-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Special Counsel, (202) 272-3042, or Karen L. Skidmore, Assistant Director, (202) 272-2048, Office of Regulatory Policy; Courtney S. Thornton, Attorney, (202) 272-2107, Office of Disclosure and Investment Adviser Regulation (for disclosure issues); or Patrice M. Pitts, Attorney, (202) 272-3040, Office of Insurance Products and Legal Compliance (for registered separate account issues); Division of Investment Management; David Hebner, Branch Chief, (202) 272-2880, Office of Legal Policy and Trading Practices, Division of Market Regulation (for questions about rules 10b-6, 10b-13, and 13e-4); Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rules 22e-3, 23c-3, and 27c-2 under the Investment Company Act of 1940 (15 U.S.C. § 80a) (the "Act"). Proposed rules 22e-3 and 23c-3 would implement the recommendations made in the recently issued report by the Division of Investment Management ("Division"), Protecting Investors: A Half Century of Investment Company Regulation,[1] in Chapter 11, *Repurchases and Redemptions of Investment Company Shares*. Proposed rule 27c-2 would permit registered separate accounts to rely on proposed rule 22e-3. The Commission also is proposing amendments to rules 0-1(e) (17 CFR 270.0-1(e)) and 22c-1 (17 CFR 270.22c-1). In addition, the Commission is proposing amendments to rules 10b-6 (17 CFR 240.10b-6) and 13e-4 (17 CFR 240.13e-4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78*ll*) (the "Exchange Act") to provide exemptions from those rules for repurchases pursuant to rule 23c-3, and new rule 14e-6 [2] thereunder, which would exempt closed-end periodic repurchases pursuant to new rule 23c-3 from rules 14e-1, and 14e-2 (17 CFR 240.14e-1 and .14e-2). The Commission also is publishing for comment draft Guidelines to Forms N-1A, N-2, N-3, and N-4 under the Act (17 CFR 274.11A, 11a-1, 11b, and 11c).

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[1] Division of Investment Management, SEC, *Repurchases and Redemptions of Investment Company Shares*, Protecting Investors: A Half Century of Investment Company Regulation (1992) (hereinafter the Protecting Investors report). This report concluded a two-year examination of the regulation of investment companies and certain other pooled vehicles. The Repurchases and Redemptions chapter discusses the Division's recommendations in greater detail. Many of the Division's recommendations were based on suggestions made by commenters responding to a Commission release requesting comment on the regulation of investment companies. Request for Comment on Reform of the Regulation of Investment Companies, Investment Company Act Release No. 17534 (June 15, 1990), 55 FR 25322 (hereinafter Study Release).

[2] This rule would be numbered 14e-6, rather than 14e-5, because the Division of Market Regulation already is preparing for Commission consideration a new rule 14e-5. *See* Regulatory Flexibility Agenda and Rules Scheduled for Review, Securities Act Release No. 6935 (Apr. 24, 1992), 57 FR 18421, 18427.

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Executive Summary

The rules and rule amendments proposed in this release would create intermediate procedures for the repurchase and redemption of investment companies shares that lie between the traditional practices of closed-end and open-end companies. Proposed rule 23c-3 would provide for periodic repurchases from closed-end fund shareholders at net asset value. Proposed rule 22e-3 would permit open-end funds to effect redemptions on a more limited basis than permitted under section 22(e) of the Act.[3] Rule 22c-1 [4] would be amended to refer to the special redemption provisions of proposed rule 22e-3.

Proposed rule 23c-3 would permit closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value. Funds could make such offers every three, six, twelve, twenty-four or thirty-six months. The rule would require funds making such offers to send shareholders a notification containing specified information at least twenty business days in advance of each periodic deadline for submitting repurchase requests; funds would not be required to send such a notification if they adopted a fundamental policy of making all repurchase offers for the same amount of shares. Funds must pay repurchase proceeds using the net asset value on the next business day after a repurchase deadline and must make payment within seven days after the deadline. The dates of those deadlines and the frequency of such offers must be matters of fundamental policy, changeable only by shareholder vote.

Proposed rule 14e-6 and the proposed amendment to Exchange Act rule 13e-4 [5] would exempt periodic repurchases under rule 23c-3 from certain tender offer provisions, including the filing requirements of rule 13e-4. Another proposed amendment would exempt such repurchases from rule 10b-6,[6] which generally prohibits persons involved in a securities distribution from bidding for or purchasing those shares and certain related securities until after their participation in the distribution is complete.

Section 22(e) provides, subject to certain exceptions, that registered open-end companies may not suspend the right of redemption, and must pay redemption proceeds within seven days. Rule 22c-1 requires open-end companies to compute net asset value daily and requires shares to be redeemed "at a price based on the current net asset value of such securities which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security".

Proposed rule 22e-3 would provide an exemption from the prohibition in section 22(e) of the Act on suspending the right of redemption of redeemable securities or postponing the payment of redemption proceeds for more than seven days after the tender of securities for redemption. Open-end management investment companies and certain insurance company separate accounts would be able to take up to thirty-one days to pay redemption proceeds; the thirty-one day redemption period would begin with the date of tender for open-end funds making rolling redemptions ("extended payment funds"), and with specified redemption deadlines for open-end funds redeeming at periodic intervals ("interval funds"). Certain corresponding changes to the rules governing registered separate accounts would permit the use of rule 22e-3 by registered separate accounts, whether organized as open-end management companies or as unit investment trusts.

In addition, the Commission is publishing for comment new Guidelines to Forms N-1A, N-2, N-3, and N-4. These guides would indicate to registrants where specific disclosure may be needed concerning the proposed repurchase and redemption procedures.

[3] 15 U.S.C. 80a-22(e).
[4] 17 CFR 270.22c-1.
[5] 17 CFR 240.13e-4.
[6] 17 CFR 240.10b-6.

I. Background

A. Differences Between Resales of Shares of Open-End and Closed-End Companies

Traditionally, shareholders of open-end and closed-end management investment companies have disposed of their shares in different ways, although open-end and closed-end management investment companies are subject to many of the same provisions under the Investment Company Act. These differences have resulted from both the legal distinctions between the two categories of management company and from differences in historical practice.

The key legal distinction is that section 5(a) of the Investment Company Act defines an open-end company as a management company that issues or has outstanding any "redeemable security." [7] All other management companies are closed-end. A redeemable security entitles the holder to receive, upon presentation to the issuer, the holder's approximate proportionate share of the issuer's current net assets, or the cash such share represents.[8] Open-end and closed-end companies are subject to many of the same core provisions of the Act,[9] but because open-end shareholders have redemption rights and closed-end shareholders do not, there are some significant differences in the regulatory treatment of open-end and closed-end companies.

Foremost among those differences is how shareholders of open-end and closed-end companies may dispose of their shares. Shareholders of open-end companies are entitled to redeem their shares from the issuer at net asset value, while closed-end shares usually are traded in secondary markets, either on exchanges or over the counter. Open-end shares are not traded in secondary markets.[10]

[7] 15 U.S.C. 80a-5(a).
[8] Investment Company Act section 2(a)(32), 15 U.S.C. 80a-2(a)(32), defines a redeemable security as:

any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

[9] Those provisions include the prohibitions on affiliated transactions in section 17, requirements for a written advisory contract approved by shareholders in section 15, requirements attending the composition and operations of the board of directors in sections 10 and 16, and the anti-pyramiding and investment restrictions in section 12(d). 15 U.S.C. 80a-17, -15, -10, -16, -12(d).
[10] This difference stems from section 22(d) of the Act, which in effect fixes the prices at which

Continued

In practice, open-end and closed-end companies also have sold or "distributed" their shares quite differently. Because shareholders may decide to redeem their shares at any time, open-end companies generally offer and sell new shares to the public on a continuous basis to replenish the monies withdrawn. Closed-end companies generally do not offer their shares to the public on a continuous basis; instead, they typically engage in traditional underwritten offerings of a fixed number of shares. These differences in the distribution and resale practices of open-end and closed-end investment companies predated the Investment Company Act and were codified in sections 22 and 23,[11] which added certain requirements to curb abuses that the Commission had observed in its study that predated the Act.[12]

Section 22 regulates the pricing, distribution, and redemption of open-end company securities. Paragraph (c) of section 22 gives the Commission broad power to regulate the pricing of redeemable securities, including the power to prescribe by rule methods for computing the price a shareholder will receive upon redemption.[13] Rule 22c–1 makes backward pricing illegal for open-end companies by instituting a requirement of "forward pricing" based on a daily computation of net asset value.[14] This provision is intended to prevent dilution and assure that prices bear an appropriate relation to the current net asset value of the shares.[15]

Paragraph (e) provides that registered open-end companies may not suspend the right of redemption, and must pay redemption proceeds within seven days. That subsection provides exceptions for certain emergencies or for such periods as the Commission may by order permit.

The limitations in section 22(e) were enacted in response to abusive practices of early open-end companies that claimed that their securities were redeemable, but then instituted barriers to redemption. Redemptions typically were suspended because a company was redeeming more shares than it was selling and wanted to stop net redemptions from further diminishing assets and decreasing management fees; some companies apparently suspended redemptions to prevent shareholders from switching into other funds.[16] Companies often suspended redemptions based on provisions contained in charter documents that shareholders never saw and that never were disclosed to investors.[17] Even if there could be no suspension without a shareholder vote, management typically controlled the proxy machinery and could persuade shareholders to vote for suspension by offering a plausible explanation of why suspension was necessary.[18]

Section 23 imposes requirements on the pricing, sale, and repurchase of shares of closed-end investment companies. These differ from the requirements that section 22 imposes on comparable activities by open-end companies. With respect to repurchases, section 23(c) limits a closed-end company's repurchase of its shares to purchases (1) on a national securities exchange or other market designated by the Commission (after written notice to all shareholders); (2) pursuant to tenders open to all security holders; or (3) in such other circumstances as the Commission permits by rule or order. Under section 23(c)(1), closed-end companies may purchase their shares on a securities exchange and such other open markets as the Commission by rule designates, provided that the company has notified stockholders of its intention within the preceding six months (if such securities are stock). Rule 23c–1 permits purchases on other open markets subject to a number of additional provisions designed to protect shareholders.[19] Rule 23c–2 permits closed-end companies to call or redeem securities according to their terms, under certain conditions.[20]

Offers to repurchases shares made to shareholders pursuant to section 23(c)(2) have been viewed as issuer tender offers and currently must comply with the requirements of the tender offer rules under the Securities Exchange Act,[21] including rules 13e–4[22] and 14e–1.[23] To the extent that a closed-end company making a repurchase offer is also engaged in an offering of its shares, it must obtain relief from rule 10b–6 under the Exchange Act, which generally prohibits participants in a distribution from contemporaneously buying securities of the class being distributed unless it ceases the offering.

The requirements of section 23(c) addressed abuses during the 1920's and 1930's in extensive repurchase operations by closed-end companies.[24] Before the crash of 1929, it was not unusual for sponsors of closed-end companies to instigate market repurchases for the purpose of influencing the market to aid in the distribution of new shares.[25] Such repurchases also could enhance the value of the sponsors' own holdings.[26]

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redeemable securities, including open-end shares, are sold. 15 U.S.C. 80a–22(d). The result is a system of retail price maintenance that precludes dealers from making a secondary market in open-end shares. For a detailed discussion of the effects of this system of retail price maintenance on mutual fund distribution, see Protecting Investors, supra note 1, Chapter 8. The Commission has, however, granted an exemption from section 22(d) to permit exchange trading of a redeemable security. *See* SuperTrust Trust for Capital Market Fund, Inc. Shares, Investment Company Act Release Nos. 17613 (Jul. 25, 1990), 55 FR 31281 (Notice of Application) and 17809 (Oct. 19, 1990), 47 SEC Docket 1098 (Order).

[11] 15 U.S.C. 80a–22, –23.

[12] SEC, Investment Trusts and Investment Companies, pt. 3, H.R. Doc. No. 279, 76th Cong., 1st Sess. (1939) at 954 (hereinafter Investment Trust Study, pt. 3).

[13] Section 22(c) gives the Commission powers similar to those given to registered securities associations under sections 22(a) and (b) in connection with the promulgation of rules governing member activities with respect to the pricing and distribution of redeemable securities. Section 22(c) specifically provides that Commission rules preempt any conflicting rules adopted by securities associations.

[14] 17 CFR § 270.22c–1. Specifically, rule 22c–1 provides that open-end securities may not be sold, redeemed, or repurchased "except at a price based on the current net asset value of such securities which is *next computed after receipt* of a tender of such security for redemption or of an order to purchase or sell such security" *(emphasis added)*.

[15] See Adoption of Rule 22c–1 under the Investment Company Act of 1940 and Amendment of Rule 17a–3(a)(7) under the Securities Exchange Act of 1934, Investment Company Act Release No. 5519 (Oct. 16, 1968), 33 FR 16331.

[16] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 291–92 (1940) (statement of David Schenker, Chief Counsel, SEC Investment Trust Study).

[17] *See id.* at 291.

[18] *See id.* at 292.

[19] 17 CFR 270.23c–1. Among other things, the rule generally requires that purchases of junior shares not disturb the asset coverage requirements of section 18 (discussed *infra*), that purchases not be from affiliated persons of the issuer, and that purchases be made at a price not exceeding the lower of the market value, if any, or the net asset value of the security at the time of purchase.

[20] 17 CFR 270.23c–2. Rule 23c–2(a) generally permits a registered closed-end company to call or redeem its shares in accordance with the terms of such securities or the company's charter; this rule has been interpreted as permitting calls and redemptions solely at the issuer's option and without any choice on the part of the shareholder. Dimensional Fund Advisors, Inc. (pub. avail. Nov. 21, 1988).

[21] Securities Exchange Act of 1934, 15 U.S.C. 78a–78ll.

[22] 17 CFR 240.13e–4.

[23] 17 CFR 240.14e–1.

[24] Investment Trust Study, pt. 3, *supra* note 12, at 954. From 1927 through 1935, closed-end companies and their affiliated holding companies repurchased a net amount of $472 million of their securities, or about 12% of the securities issued and sold by closed-end companies during that period. *Id.* at 953–54.

[25] *Id.* at 956–57.

[26] *Id.* at 960–61.

After the crash, as the price of closed-end shares fell to a discount from net asset value, repurchases at a discount became a source of book profits for closed-end companies. Selling shareholders had no way of knowing the extent of the discount because closed-end companies did not disclose the net asset value of their shares.[27] In addition, because some companies made purchases on the open market without informing investors, investors could not determine the extent to which the market was being driven by the company's management.[28]

Other abuses occurred. Some closed-end companies would repurchase securities from insiders in private purchases, sometimes at a premium or in blocks that could not have been sold at the prevailing market price because of the size of the purchase.[29] Some companies would repurchase from certain shareholders to establish control or remove opposition to management.[30]

Because open-end securities are redeemable, and closed-end are not, section 18 of the Act (15 U.S.C. 80a-18) limits the use of leverage by closed-end and open-end investment companies in different ways. Closed-end companies may borrow from banks and private sources and may issue one class of senior debt, subject to a 300% asset coverage requirement, and also may issue one class of preferred stock, subject to a 200% asset coverage requirement.[31] Among other restrictions, a leveraged closed-end company may not pay dividends or other distributions, or purchase any of its capital stock, unless the prescribed asset coverage will be in place after the transaction. Provision also must be made to give senior security holders certain rights if the asset coverage falls below the prescribed amounts.[32] Because shareholders of open-end companies can redeem their shares, any senior securities of open-end companies would be vulnerable to insufficient asset coverage in the event of net redemptions. Accordingly, open-end companies have much less freedom to use leverage. They may not issue preferred stock or senior debt, except that they may borrow from banks, maintaining a minimum of 300% asset coverage for all amounts borrowed.[33]

The difference in redeemability also leads to different requirements for the liquidity of open-end and closed-end company assets. Because open-end companies must redeem their shares at any time and pay redemption proceeds within seven days, their portfolios should contain enough readily marketable securities to enable them to raise sufficient cash to meet redemptions in a timely manner.[34] Accordingly, the Commission has stated that open-end companies should maintain a high degree of liquidity by holding at least eighty-five percent of their assets in assets that can be sold in seven days at approximately the price used in determining net asset value (the "seven day standard").[35] This requirement should permit portfolio securities to be sold and the proceeds used to meet redemptions in a timely manner. Closed-end companies are not subject to a liquidity standard.

Various assets have been viewed as illiquid under the seven day standard. The Commission has stated that privately placed or other restricted securities are illiquid.[36] Securities offered pursuant to rule 144A under the Securities Act, however, might satisfy the standard, depending on various factors.[37] In addition, investment company registrants have been cautioned that some high yield securities might be illiquid,[38] as may be municipal lease securities, depending on certain factors relating to the market for such assets.[39] Many foreign securities may be considered illiquid because of the thinness of their market; in addition, securities transactions in foreign countries may be subject to slower settlement procedures than those in the United States, or currency restrictions may limit a fund's ability to convert cash into United States dollars.[40] Other assets that do not satisfy the open-end liquidity standard might include loans and loan participation interests;[41] certain warrants and options; certain instruments or transactions not maturing in seven days or less, including certain repurchase agreements; and venture capital or small business investments. Because the liquidity of a security is related to the accuracy of its valuation by an investment company,[42] an open-

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[27] *Id.* at 966–67.

[28] *Id.*

[29] *Id.* at 977–78. Repurchases at a premium to market price were particularly troublesome because they diluted the company's assets for the benefit of the insider seller.

[30] *Id.* at 987.

[31] Paragraph (h) of section 18 defines asset coverage. For example, a closed-end company with $100 million in assets and no other outstanding indebtedness may issue senior debt of up to $50 million. The ratio of the total assets after the borrowings ($150 million) to the amount of debt outstanding ($50 million) would be 300%. The same company also may issue preferred stock having a liquidation preference of $50 million. The ratio of the total assets of the company after the issuance ($200 million) to the aggregate of borrowings and preferred stock ($100 million) would be 200%.

[32] Investment Company Act section 18(a).

[33] Investment Company Act section 18(f)(1).

[34] Even before the passage of the Investment Company Act, open-end companies invested predominantly in highly liquid, exchange listed securities. Investment Trust Study, pt. 3, *supra* note 12, at 807.

[35] *See* Guide 4 to Form N-1A, Revision of Guidelines to Form N-1A, Investment Company Act Release No. 16812 (March 12, 1992), 57 FR 9828. *See also* Interpretative Releases Relating to the Investment Company Act of 1940 and Rules and Regulations Thereunder: Restricted Securities, Investment Company Act Release No. 5847 (Oct. 21, 1969), 35 FR 19989 (interpretive release regarding investment by investment companies in restricted securities); Resale of Restricted Securities; Changes to Methods of Determining Holding Period of Restricted Securities under Rules 144 and 145, Securities Act Release No. 6862 (Apr. 23, 1990), 55 FR 17933 (adopting rule 144A).

[36] *See* Inv. Co. Act Rel. 5847, *supra* note 35.

[37] *See* Sec. Act Rel. 6862, *supra* note 35. The Commission stated that the board of directors of a fund "should consider the unregistered nature of a Rule 144A security as one of the factors that it evaluates in determining whether or not a security is illiquid." *Id.* 55 FR at 17940. The Commission also cited the following factors as relevant, although not necessarily conclusive in determining whether a rule 144A security is liquid:

(1) The frequency of trades and quotes for the security; (2) the number of dealers willing to purchase or sell the security and the number of other potential purchasers; (3) dealer undertakings to make a market in the security; and (4) the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

Id.

[38] Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants at 4–5 (Oct. 3, 1989).

[39] *See* Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Catherine L. Heron, Vice President, Investment Company Institute (June 21, 1991), recognizing that in certain circumstances municipal lease obligations may be viewed as liquid. Factors relevant to determining the liquidity and value of municipal lease obligations include the factors cited by the Commission as appropriate to consider in evaluating the liquidity of rule 144A securities (*see supra* note 37), as well as certain factors specifically relevant to municipal lease securities. Previously the Division had viewed municipal lease securities as always being illiquid. *See* Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants at 5 (Jan. 11, 1990) (the Division considered municipal lease securities to be illiquid because of the inefficiency and thinness of the market in which they are traded).

[40] *See* Sec. Act Rel. 6862, *supra* note 35, 55 FR 17940 n.60.

[41] Christopher Donnelly, *Financial Alchemy*, Investment Dealers' Dig., June 3, 1991, 18 (discussing lack of liquidity of loan participation market).

[42] The definition of "value" in section 2(a)(41) of the Act in effect requires valuations of a fund's portfolio assets to be based upon market quotations when such quotations are readily available. 15 U.S.C. 80a-2(a)(41). When market quotations are not readily available, portfolio securities must be valued at "fair value as determined in good faith by the board of directors." Market quotations typically are not available for many less liquid securities.

end company that does not satisfy the seven day standard may violate the pricing requirements of section 22(c) and rule 22c–1.[43]

B. Recent Developments

Some recent developments have indicated that investors may not be able to satisfy their investment objectives with the traditional procedures for redeeming open-end shares and reselling closed-end shares. The requirements that open-end companies pay redemption proceeds within seven days and have a correspondingly liquid portfolio prevent the offering of open-end companies that invest substantially in assets not satisfying the applicable liquidity standard.

Such companies must instead register as closed-end funds. For example, so-called "country funds" [44] often hold a large percentage of securities that are thinly traded or are considered to be illiquid for other reasons. One reason may be that the size of the fund is relatively large in relation to the overall capitalization of an emerging market and significant in proportion to the daily trading volume.

Closed-end companies may be perceived as offering certain advantages over open-end companies in portfolio management. While open-end companies may need to maintain a certain amount of cash or highly liquid investments to meet daily redemptions, closed-end companies may keep their assets fully invested according to their investment objectives.[45] The absence of the need to meet constant redemptions and the ability to be fully invested also allow closed-end companies to control portfolio turnover and transaction expenses. Because closed-end companies may use a greater degree of leverage than open-end companies, they may provide investors with the opportunity for greater returns (as well as greater risks).[46]

Closed-end funds, however, attract much less investment than open-end funds.[47] In part, this lack of interest may be due to the lack of established procedures for reselling shares to a fund, and to the recurring tendency of closed-end shares to trade at a discount to net asset value. In general, discounts appear shortly after initial public offerings and affect all types of publicly traded closed-end companies, although to varying degrees.[48] Commentators have advanced several theories to explain closed-end discounts, but no definitive consensus has emerged.[49]

Sponsors have considered and tried various techniques for responding to discounts or attempting to forestall them. Some companies borrow cash equal to the underwriting discount paid to brokers and invest that amount in the company. The theory behind this practice is that discounts result from the initial deduction of the underwriter's spread (or sales load) from the investors' initial investment.[50] Some companies offer dividend reinvestment plans, under which the company reinvests shareholder dividends and distributions in additional shares. Other companies engage in rights offerings, which are strictly limited by the Act.[51] While these practices appear to counteract the tendency toward discounts, dilution occurs when shareholders exercise rights or purchase new shares at prices less than net asset value. This eventually may cause a corresponding downward adjustment in market prices.

One method of ending discounts is to convert from closed-end to open-end status, but this approach has significant drawbacks.[52] Even the potential for elimination of discounts upon conversion can affect a closed-end company. Discounts attract arbitrageurs who gamble on swings in the discount and "raiders" or others who attempt to take over the company, sometimes forcing proxy contests to cause a company to convert from closed-end to open-end status.[53] Some potential targets have adopted supermajority voting provisions that make it nearly impossible for conversions to succeed.[54] In addition, to pre-empt the threat of forced takeovers, sponsors have organized closed-end companies that automatically will seek to convert to open-end status under certain circumstances, or after a fixed period of

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[43] During 1991, the Commission brought two cases against funds that invested primarily in municipal leases, which were relatively illiquid; the Commission alleged that the illiquidity of these funds' portfolio assets caused the funds to compute net asset value improperly and in one case to fail to pay redemptions within seven days as required by section 22(e). *SEC v. Alpine Mutual Fund Trust*, Litigation Release No. 13101 (Nov. 21, 1991) (consent order against mutual fund and other defendants; complaint alleged, *inter alia*, that defendants had failed to compute net asset value accurately, had failed to redeem shares within seven days after tender); *SEC v. Municipal Lease Securities Fund, Inc.*, Litigation Release No. 12938 (Aug. 8, 1991) (consent order against investment adviser and other defendants; complaint alleged, *inter alia*, that defendants had sold and redeemed shares of fund at prices not based on net asset value, had falsely stated in documents filed with the Commission that prices were based on net asset value).

[44] Some of these companies invest in a number of countries; others invest only in a particular geographical region or in a single country.

[45] *See, e.g.*, Study Release, *supra* note 1. *See also* Letter from General American Investors Company, Inc. to Jonathan G. Katz, Secretary, SEC 4 (Oct. 3, 1990), File No. S7–11–90; and Letter from Baker, Fentress & Company to Jonathan G. Katz, Secretary, SEC 2 (Oct. 9, 1990), File No. S7–11–90.

[46] Many, if not most, closed-end companies do not issue significant amounts of senior securities, however. Currently, the issuance of senior securities is most common among closed-end bond funds, particularly municipal bond funds. Edward A. Wyatt, *On Borrowed Time? Leveraged Funds' Promise—and Perils*, Barron's, Nov. 11, 1991, at M16. Some investors may view these senior securities as a higher income alternative to investing in a tax-exempt money market fund. *See* James E. Lebherz, *Mutual Funds' Preferred Shares Offer an Alternative to Investors*, Wash. Post, Aug. 25, 1991, at H10.

[47] As of the end of 1991, closed-end funds had total assets of $72.76 billion. Lipper Analytical Securities Corp., Lipper Closed-End Performance Analysis Service, Jan. 31, 1992, at 44. Open-end assets at the end of 1991 were approximately $1.3 trillion. Investment Company Institute News Release, ICI–92–09 (Jan. 29, 1992).

[48] A 1989 study by the Commission's Office of Economic Analysis of the post-offering price performance of closed-end companies found that, on average, closed-end companies lost significant value during the first 120 trading days following their initial public offerings. After twenty-four weeks, the average discount for closed-end United States equity funds was 10.019%. For closed-end foreign stock funds, the discount was 11.424%. The average discount for closed-end bond funds was much lower, only 0.012%. *See* Office of Economic Analysis, SEC, The Post-Offering Price Performance of Closed-end Funds (July 21, 1989) (hereinafter The Post-Offering Price Performance of Closed-end Funds).

[49] *See Protecting Investors*, *supra* note 1, at 435–36.

[50] Proposed revisions to Form N–2, the registration form used by closed-end companies, would re-label underwriting discount as "sales load" in the net proceeds table on the cover of the prospectus and the per share table to increase investors' understanding of this charge. Registration Form for Closed-end Management Investment Companies, Investment Company Act Release No. 17091 (July 28, 1989), 54 FR 32993 (proposed amendments to Form N–2 and guidelines).

[51] Under section 23, closed-end companies may issue warrants or rights at less than net asset value only as provided by section 18(d), which requires that warrants and rights be issued exclusively to existing shareholders and expire within 120 days of their issuance.

[52] Those drawbacks may include changes in investment strategy, expenses, capital structure, pricing, and distribution as well as the complications of adopting redemption procedures.

[53] Section 13(a)(1) of the Act requires a majority of a company's outstanding voting securities to authorize a change in subclassification from closed-end to open-end. 15 U.S.C. 80a–13(a)(1). Upon conversion to open-end status, all shareholders may redeem shares at net asset value. Thus, raiders would instantly realize any profit on the difference between the discount prices they paid for the closed-end shares and the net asset value they are entitled to receive for the open-end shares. *See, e.g.*, Carole Gould, *Hunting the Closed-End Conversion*, *N.Y. Times*, Aug. 20, 1990, at 18F; Richard Phalon, *Duck Shoot*, *Forbes*, Sept. 3, 1990 at 165.

[54] A typical supermajority voting provision requires at least a two-thirds (but usually not over three-fourths) vote in favor of conversion. *See* Mary Joan Hoene, *Closed End Funds—Discount and Takeover Issues*, 1990 Mutual Funds and Investment Management Conference at IX–95.

time.[55] While these provisions are intended primarily as anti-takeover tactics, they may minimize discounts, particularly as a shareholder vote approaches.[56]

Certain closed-end companies have avoided discounts entirely while still remaining closed-end by making periodic tender offers at net asset value under section 23(c)(2). With one exception, these companies' shares have not been traded in secondary markets,[57] and the companies have provided shareholder liquidity solely through quarterly tender offers. The first closed-end companies to use this procedure were five loan participation or "prime rate" funds.[58] These funds registered as closed-end companies but adopted much of the traditional practices of open-end companies, offering shares continuously and providing the sole source of liquidity for their shareholders. As of December 31, 1991, the loan participation funds had total assets of almost $6 billion and accounted for approximately eight percent of the total assets held by closed-end companies.[59]

By the end of 1991, two other closed-end companies had followed the lead of the loan participation funds and indicated that they periodically would consider making tender offers to their shareholders.[60]

Although issuer tender offers and redemptions by open-end companies both are effected at net asset value, tender offers differ from redemptions in several ways. Tender offers generally are made for finite amounts of shares and, if more shares are tendered than the company is prepared to buy, the company is required only to accept them on a pro rata basis. A company also is not obligated to make a tender offer.[61]

Closed-end company repurchase offers also are subject to a number of restrictions. Because of the requirements applicable to issuer tender offers, direct repurchase offers have been a relatively cumbersome and limited way for closed-end companies to provide for shareholder liquidity. They involve costs such as producing offering materials, notifying shareholders, and paying registration and filing fees. Open-end companies are not subject to similar requirements when redeeming their shares.

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Accordingly, in order to provide investors with greater investment flexibility and the option to invest in less liquid securities, including venture capital and small business securities, the Commission is proposing new rules and rule changes to provide shareholders an intermediate degree of liquidity between the traditional open-end and closed-end procedures. Thus, the Commission is proposing new rule 23c–3, which would provide a safe harbor for closed-end funds to make periodic repurchases of their shares at net asset value; the funds would set the terms of each offer, including the amount of shares to be repurchased. The Commission also is proposing new rule 22e–3, which would provide an exemption from the prohibition in section 22(e) against taking longer than seven days to pay redemption proceeds for open-end funds using one of two procedures prescribed in the rule: *interval funds* would redeem shares at periodic intervals and could take up to one month (thirty-one days) after specified periodic deadlines to pay redemptions; *extended payment funds* could take up to one month to pay redemptions after receiving a redemption request. The Commission also is proposing new rules and rule changes to allow registered separate accounts funding variable insurance contracts to rely on proposed rule 22e–3. Because variable insurance contracts are long-term contracts, they are well suited for investing in funds with less liquid portfolios and more limited redemption procedures than are currently permitted under the Act.

Previously, the Commission has granted exemptions from section 22(e),[62] and a small number of closed-end funds have made periodic repurchase offers using the issuer tender offer rules under the Exchange Act. Nevertheless, these proposals explore largely uncharted territory in the regulation and operation of investment companies. The Commission recognizes that these proposals would introduce complexity by permitting the creation of what might be viewed as three new types of investment company. Accordingly, as noted below periodically, the Commission requests comment on all aspects of these proposals.

II. Proposed Rules and Revisions to Rules to Provide for Periodic Repurchases by Closed-End Funds

The current regulation of repurchases under the rules for issuer tender offers

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[55] The conversion is contingent, of course, on obtaining the necessary shareholder approval required by section 13(a) of the Act. The shareholder vote usually may take place only several years after the fund's inception, and may hinge on a specific level of discount appearing or continuing for a specified period of time. *See, e.g., id.* at IX–98.

[56] *See* Greggory A. Brauer, *'Open-Ending' Closed-End Funds*, 13 J. Fin. Econ. 491, 506–07 (1984) (examining the effect on secondary market prices of closed-end companies' announcements of proposed conversions to open-end status). *But see The Post-Offering Price Performance of Closed-End Funds, supra note* 48, at 18–19, 36 (an examination of a sample of 64 closed-end companies 24 weeks after their initial public offering showed that there was a statistically insignificant difference in the discount or premium between companies with anti-takeover provisions and those without, and that the results did not change when the sample was broken down by type of fund).

[57] As a condition to relief from rule 10b–6 under the Exchange Act (17 CFR 240.10b–6), closed-end companies that intend to make such repurchases and continue to sell their shares may not list their shares on a securities exchange or have their shares quoted on the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). *See, e.g.*, Pilgrim Prime Rate Trust (Aug. 23, 1988).

[58] The five registrants are Allstate Prime Income Trust, Eaton Vance Prime Rate Reserves, Merrill Lynch Prime Fund, Pilgrim Prime Rate Trust, and Van Kampen Merritt Prime Rate Income Trust. These companies, first introduced in 1988, invest primarily in illiquid assets consisting of interests in senior, secured corporate loans that have floating interest rates. The interest rates float or reset at a margin above a generally recognized base lending rate such as the prime rate quoted by a designated United States bank, the London InterBank Offered Rate, the average secondary market rate for large certificates of deposit, or other base lending rates used by commercial lenders.

[59] Lipper Analytical Securities Corp., Lipper Closed-End Performance Analysis Service, Jan. 31, 1992, at 44 (assets of $5.80 billion out of total closed-end fund assets of $72.78 billion). *Cf.* Randall W. Forsyth, *Not Necessarily Prime Time, Barron's*, Oct. 21, 1991, at 47 (indicating that investors had tendered their shares at significant levels beginning in mid–1991 as interest rates dropped).

[60] The two are Merrill Lynch High Income Municipal Bond Fund, Inc., and Emerging Markets Growth Fund, Inc. The latter, however, has not made a tender offer since January, 1991.

[61] The Division has stated that committing in advance to make periodic tender offers might result in directors breaching their fiduciary duties to shareholders, since investors could not be certain when or if their shares would actually be repurchased by the company. *See* Guide 2 to proposed amendments to Form N–2, Inv. Co. Act Rel. 17091, *supra* note 50. Accordingly, these companies' prospectuses represent that each quarter the board of directors will consider whether to make a tender offer for outstanding shares but caution that tender offers may not take place every quarter.

[62] The Commission has previously granted exemptions from section 22(e) to permit issuers investing in less liquid securities to pay redemption proceeds on an intermittent basis or in longer than seven days. *See, e.g.*, American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust, Investment Company Act Release Nos. 10650 (Mar. 30, 1979) (Notice of Application), 44 FR 21094, and 10674 (Apr. 26, 1979) (Order) (redemptions only during period preceding quarterly valuation dates of commingled trust fund investing in loans to union built housing); Mutual Investment Fund of Connecticut, Inc., Investment Company Act Release Nos. 2457 (Dec. 12, 1958) (Notice of Application), and 2485 (Dec. 31, 1956) (Order) (investment fund for Connecticut savings banks might limit redemptions on any one day, and by-laws provided for seven business days to pay redemptions); Savings Bank Investment Fund, 24 S.E.C. 531 (1946) (Order) (mutual investment fund for Massachusetts savings banks invested in mortgages and other assets and might take ten days to pay redemption requests).

involves requirements that were not designed with periodic repurchases by closed-end funds in mind and that create certain complexities that may be unnecessary. Moreover, although those rules have permitted repurchase offers at net asset value, the rules do not require such repurchases to be made at net asset value.

Proposed rule 23c–3 and the accompanying proposed Exchange Act rule changes would simplify direct repurchase offers by closed-end funds [63] and would give shareholders a mechanism for bypassing any discount in secondary market trading. By providing a safe harbor for periodic repurchases at net asset value under a fundamental policy that is clearly disclosed, rule 23c–3 would give shareholders of closed-end funds greater certainty that repurchases would occur.[64] It would no longer be necessary for directors to determine *whether* each offer would take place, or for funds to caution that there can be no assurance that offers will take place. The Commission requests comment whether rule 23c–3 should also apply to closed-end fund repurchases that are not made on a periodic basis as a matter of fundamental policy.

Closed-end funds relying on rule 23c–3 (in contrast to the traditional practice of most closed-end funds) probably would need to sell shares continuously in order to counter the effect of periodic repurchases on the size of the portfolio. These funds also may elect not to seek a secondary market for their shares and may provide the sole source of shareholder liquidity through the repurchase process. As proposed, however, rule 23c–3 does not prohibit closed-end funds relying on the rule from having their shares listed on an exchange or quoted on a system such as NASDAQ.

The proposed revisions to the tender offer rules would exempt rule 23c–3 repurchase offers from certain tender offer requirements; instead of providing detailed disclosure pursuant to Schedule 13E–4 and paying the associated filing fees, with certain exceptions closed-end funds would send shareholders a brief notification stating key information about each repurchase offer. The proposed amendment to Exchange Act rule 10b–6 would exempt closed-end fund repurchase offers relying on rule 23c–3 from rule 10b–6 because closed-end fund repurchases relying on rule 23c–3 would not involve the harms that rule 10b–6 is designed to address.

Rule 23c–3 would establish certain general requirements for the terms of closed-end repurchase offers at periodic intervals, including safeguards to protect the interests of shareholders. In addition, it would require closed-end funds relying on the rule to comply with limitations on senior securities similar to those that apply to open-end funds, to maintain a sufficiently liquid portfolio to meet their repurchase obligations, and to have a majority of independent directors, who would be self-nominating.

A. Terms of Repurchase Offers

Rule 23c–3 would permit a closed-end fund to repurchase its securities through periodic repurchase offers to all security holders [65] pursuant to a fundamental policy specifying the terms of the fund's repurchase offers. Those terms would include: the intervals between repurchase offers (which under the rule could be three, six, twelve, twenty-four, or thirty-six months); the scheduled repurchase deadline dates; the maximum and minimum amounts that a fund may offer to repurchase in any offer. Each repurchase offer could only be a partial offer for a specified amount of securities no less than five nor greater than twenty-five percent of the outstanding securities; if an offer were oversubscribed, a fund would be required to prorate the repurchase of tendered securities, subject to limited exceptions. A fund would have seven days to pay shareholders and would determine the net asset value applicable to repurchases on the business day following the repurchase deadline.

1. Fundamental Policy Regarding Repurchase Offers

Paragraph (b)(2) of proposed rule 23c–3 would require a closed-end company making periodic repurchase offers thereunder to adopt a fundamental policy, changeable only by vote of a majority of the outstanding voting securities,[66] specifying that the company will make repurchase offers and the terms of such offers. The terms specified in the policy would include the intervals between repurchase offers, the scheduled dates of the repurchase deadlines, and the minimum and maximum repurchase amounts. An existing closed-end fund would need a majority vote adopting such a policy in order to begin making periodic repurchase offers under rule 23c–3. Such a vote also would be required to cease making repurchase offers or to change their terms. The existence of a fundamental policy on these issues is intended to provide shareholders with maximum certainty that repurchase offers will take place and with a degree of certainty of the amount of securities that a fund will offer to repurchase in an offer.[67]

The Commission requests comment on the terms of the proposed fundamental policy requirement. In particular, comment is requested as to whether the date of the repurchase deadline should be a matter of fundamental policy, as proposed, or whether the company's directors should have some leeway to adjust the date without the expense of obtaining a shareholder vote in light of market conditions. If so, at what point would moving the date be inconsistent with the fundamental policy on the length of periodic intervals?

Paragraph (b)(3) provides that a closed-end company may suspend or postpone a scheduled repurchase offer in limited circumstances when repurchases would have severe consequences for shareholders or the fund. Subparagraphs (ii) to (iv) are based upon the clauses in section 22(e) of the Act providing when issuers of redeemable securities may suspend redemption or postpone payment upon redemption. In addition, subparagraph (i) would provide an exception if a repurchase could affect a fund's tax status as a regulated investment company under Subchapter M of the Internal Revenue Code.[68] Such

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[63] Rule 23c–3 also provides for repurchases by business development companies (BDCs). For convenience, and because BDCs are organized as closed-end companies (*see* section Investment Company Act section 2(a)(48) (15 U.S.C. 2(a)(48))), this release uses the terms closed-end company and closed-end fund to encompass BDCs.

[64] The position of the Division that a commitment to make such offers might be inconsistent with the fiduciary duties of directors of the funds would not apply to repurchase offers relying on rule 23c–3. That position was stated in Guide 2 to Form N–2, Inv. Co. Act Rel. 17061, *supra* note 50.

[65] As used in rules 23c–3 and 22e–3, the term holder would encompass both record and beneficial holders.

[66] Section 2(a)(42) (15 U.S.C. 80a–2(a)(42)), the definition of the term "voting security," defines a majority of the outstanding voting securities of a company to mean "the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less."

[67] *See supra* note 50 and accompanying text. Currently, closed-end companies do not make any commitment that they will hold repurchase offers because of the Division's position regarding directors' fiduciary duties. Because rule 23c–3 would require funds to offer to repurchase the minimum repurchase amount, directors would not determine *whether* to make each repurchase offer, and cautionary prospectus disclosure now in use might not be necessary or appropriate.

[68] 26 U.S.C. 851–860.

circumstances currently are disclosed in prospectuses where tender offers are contemplated and in issuer tender offer documents.[69] The Commission requests comment on whether the rule should provide additional exceptions, and on whether all of the proposed exceptions are necessary or in the interests of investors.

2. Repurchase Offers to All Security Holders

Rule 23c–3 would require that repurchase offers be made to all holders of the class of securities to be purchased. This requirement, together with the requirement of pricing at net asset value, which would ensure that all repurchases are made at the same price, would protect against unfair discrimination.[70] Thus, all security holders would have the opportunity to tender their shares for repurchase; this requirement should preclude the recurrence of certain abuses noted in the Investment Trust Study, where some companies repurchased securities from insiders or other favored security holders.[71] This provision also would be consistent with the regulation of issuer tender offers under the Exchange Act; the "best price" rule requires that "the consideration paid to any security holder pursuant to the tender offer [be] the highest consideration paid to any security holder during such tender offer."[72]

The rule would not establish a record date defining which security holders would be eligible to tender their shares. Instead, the rule would provide that the offer would be open to all holders up until the repurchase deadline—the date by which a fund must receive repurchase requests. In this respect, the rule would adopt the requirement of the existing "all holders" rule that a tender offer be open to all security holders of the class of securities subject to the tender offer.[73] Accordingly, the repurchase offers would also be open to any person who becomes a shareholder after a fund sends out the notification to shareholders discussed in section II.A.6, below.

3. Amount of Repurchase Offers

Each repurchase offer under the rule would be an offer for a specified, finite amount of securities, rather than an offer for all outstanding securities. The limitation on the amount of securities to be repurchased is among the factors that would distinguish closed-end repurchase offers from redemptions by open-end interval companies discussed below. The proposed limitation has three aspects. First, the rule itself imposes a floor and a ceiling on the amount of each offer. A fund may not offer to purchase less than five percent or more than twenty-five percent of the shares outstanding. Second, each fund would be required to specify, as a fundamental policy, its minimum and maximum repurchase amounts—the minimum and maximum amounts that the fund might offer to repurchase in any offer, expressed as percentages of the amount of securities outstanding on the repurchase deadline. Third, in making each offer, a fund must specify the amount it actually is offering to repurchase in that offer within the range of the fund's fundamental policy.

a. *Maximum and minimum repurchase amounts.* Each repurchase offer would be required to be for an amount of securities no greater than the fund's maximum repurchase amount and no less than the minimum. Under paragraph (b)(2), those limits would be matters of fundamental policy, changeable only by a vote of a majority of the outstanding voting securities.[74] The establishment of a maximum repurchase amount results from the Act's definition of a closed-end company as a company that does not issue redeemable securities.[75] The proposed limit of twenty-five percent on maximum repurchase amounts is intended to ensure that a fund does not adopt a policy guaranteeing that it will repurchase in each offer all shares that might be tendered at net asset value, because such a policy would be tantamount to making the fund's shares redeemable securities. Conversely, the proposed limit of five percent on minimum repurchase amounts is intended to ensure a minimum degree of certainty that a fund will repurchase some of its securities in each offer. The figures of twenty-five and five percent are based upon the history of those funds that have made periodic repurchase offers: in many instances, the amounts tendered were in the range of four to seven percent, but the amount has run over thirty percent. Thus, the proposed percentages should ensure that in most circumstances a fund would repurchase all shares that shareholders might tender, but provide that in extreme circumstances a fund would repurchase less than all shares tendered. Establishing a maximum repurchase amount also would assist portfolio managers in judging the company's liquidity needs, while a minimum would assure shareholders that the company will in fact make large enough repurchase offers to accommodate ordinary shareholder liquidity needs.

The minimum and maximum repurchase amounts, like the amount of each repurchase offer discussed below, would be expressed as percentages of the securities outstanding on a repurchase deadline. The use of percentages, rather than numbers of shares, would differ from the typical practice in issuer tender offers, in which an issuer offers to purchase a stated number of shares. With periodic repurchases, using numbers of shares would not be feasible, because the number of shares outstanding would vary depending upon the numbers of shares repurchased and the number of shares sold. The use of percentages would provide greater clarity and certainty both to shareholders and to portfolio managers.

The Commission requests comment on the appropriateness of the proposed requirement that a closed-end fund establish minimum and maximum repurchase amounts as a matter of fundamental policy. Would the rule sufficiently distinguish closed-end repurchases from open-end redemptions, and redeemable from non-redeemable securities, if the rule only provided that a fund had the authority to determine the amount of each repurchase offer? Alternatively, would the rule provide a sufficient distinction if, instead of requiring the separate establishment of maximum and minimum repurchase amounts, it simply provided that each repurchase offer amount must be between five and twenty-five percent? The Commission also requests comment on the appropriateness of the twenty-five and five percent limits respectively imposed by the rule on the maximum and minimum repurchase amounts,

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[69] *See, e.g.*, Pilgrim Prime Rate Trust, Offer to Purchase at 5–6 (Aug. 2, 1991), *reprinted in* Pilgrim Prime Rate Trust, Schedule 13E–4, Exhibit (a)(1)(ii) (Aug. 2, 1991); Merrill Lynch Prime Fund, Inc., Offer to Purchase at 5–6 (Aug. 19, 1991), *reprinted in* Merrill Lynch Prime Fund, Inc., Schedule 13E–4, Exhibit (a)(1)(ii) (Aug. 19, 1991).

[70] Section 23(c)(3) of the Act (the provision under which rule 23c–3 is proposed) permits repurchases "under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased."

[71] *See supra* notes 29, 30, and accompanying text.

[72] Rule 13e–4(f)(8) (17 CFR 270.13e–4(f)(8)).

[73] The Division of Investment Management has interpreted this provision to prohibit the specifying of a record date. *See* Guide 2 to Form N–2, Inv. Co. Act Rel. 17091, *supra* note 50 (proposing amendments to Form N–2).

[74] Section 2(a)(42) (15 U.S.C. 80a–2(a)(42)) defines a majority of the outstanding voting securities of a company. *See supra* note 66.

[75] *See* Protecting Investors, *supra* note 1, at 466–70.

particularly in light of the different lengths of the permitted intervals between repurchase offers. The Commission also requests comment on whether, given the liquidity and other requirements in rule 23c–3, there might be any circumstances in which a closed-end fund relying on rule 23c–3 should be exempted by the rule from the maximum repurchase amount requirement without being required to register as an open-end fund.

b. *Repurchase offer amount.* Proposed paragraph (a)(5), the definition of "repurchase offer amount," would provide that a fund shall determine the amount of securities to be repurchased in a given repurchase offer. The fund may delegate this determination to the fund's investment adviser. No separate determination, however, would be required at the time of each offer if a fund's repurchase policy specified that all repurchase offers would be for the same amount, that is, that the maximum repurchase amount was equal to the minimum repurchase amount. Pursuant to their fiduciary obligations to shareholders, the directors would have the responsibility to monitor the repurchase process; and they would serve as a check on proposals by the investment adviser limiting the amount of repurchase offers and maximizing the level of assets under management on which advisory fees would be paid. For that reason, as discussed below, proposed paragraph (b)(8) would require funds making rule 23c–3 repurchase offers to have a majority of independent directors. The Commission requests comment on whether the directors should determine each repurchase offer amount, and on what role the directors, including the independent directors, should play if they do not make that determination.

c. *Amount of securities repurchased.* Because each repurchase offer would be a partial offer, security holders might tender a greater amount than the repurchase offer amount. The proposed rule would require a fund to repurchase securities on a pro rata basis if the amount tendered exceeded the repurchase offer amount. Proposed paragraph (b)(5), however, would give a fund some flexibility to avoid pro rata repurchases through two options for responding to an oversubscribed repurchase offer.

One option, paragraph (b)(5), would permit a fund to repurchase additional securities not exceeding two percent of the amount outstanding on the repurchase deadline. This provision is based on rule 13e–4, under which an issuer may purchase "an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer;" beyond that point, the issuer must extend the tender offer for a specified period.[76] The investment adviser would make this determination pursuant to guidelines established by the board of directors. The total amount repurchased could not in any event exceed the maximum repurchase amount, with one exception: If the fund's policy is to make all offers for the same amount (that is, if the maximum repurchase amount equals the minimum repurchase amount), the fund could purchase an additional two percent, but not more than twenty-five percent. The fund would not have the option of extending or amending the repurchase offer, as issuers may do under rule 13e–4. Under a regime of periodic repurchase offers, such changes to a repurchase offer would not be appropriate because they would conflict with the fundamental policy regarding the length of periodic intervals. Moreover, shareholders would have the assurance that a fund would make other offers at the scheduled intervals. The Commission requests comment on whether the two percent margin should be increased or decreased, or eliminated altogether. The prospect of future repurchase offers may make such latitude less necessary than in a one-time tender offer.

The second option, subparagraphs (b)(5) (i) and (ii), would give a fund two exceptions to the proration requirement.[77] One exception would permit a fund, before prorating other tenders, to accept all securities tendered by holders of less than one hundred shares who tender all of their securities. The other exception would permit security holders to tender securities subject to the condition that the fund repurchase all or none, or at least a designated minimum amount, of the securities tendered after accepting all other tenders on a pro rata basis. The Commission requests comment on whether the exceptions to the proration requirement are necessary, and on whether the rule should provide additional exceptions. The Commission also requests comment on whether the odd lot exception is appropriate for closed-end funds or whether some other exception might be more appropriate in light of typical patterns of closed-end shareholders' holdings.

[76] Rule 13e–4(f). Rule 14e–1(b) has a comparable provision.

[77] The pro rata provision, including the exceptions, is based upon paragraph (f)(3) of rule 13e–4.

4. Periodic Intervals

Under proposed paragraph (b), a registered closed-end company may repurchase its securities at "periodic intervals." Paragraph (a)(2) defines the term "periodic interval" as an interval of three, six, twelve, twenty-four, or thirty-six months. Paragraph (b)(2) requires that a closed-end company operating under the rule select the periodic interval at which it will make repurchases as a matter of fundamental policy. These requirements are intended to ensure that the intervals between any company's repurchases should be regular and easily ascertained in order to reduce the potential for investor confusion and allow investors to plan. The permitted intervals should ensure that repurchases take place on a regular schedule. The Commission requests comment whether the rule should permit other intervals.

The rule does not require that all funds making repurchases at the same periodic intervals schedule their repurchases in the same calendar months. One company making quarterly repurchases might make its repurchases in January, April, July, and October, while another company on a quarterly cycle might repurchase in different months. Thus, sponsors and investors would have maximum flexibility to select the repurchase schedule that best suits the needs of investors, any distinctive characteristics of portfolio assets, or a fund's fiscal year. Funds relying on rule 23c–3 would be expected to provide clear prospectus disclosure concerning the schedule of repurchases, including a statement of the frequency of repurchase offers on the cover page of the prospectus.[78]

This flexibility is intended to reduce the likelihood that closed-end companies making periodic repurchases will concentrate their repurchases, and hence their portfolio transactions, during the same brief periods. Avoiding concentration should reduce disruption to the market for portfolio assets and reduce adverse effects on the fund. The Commission and requests comment whether the rule should include any other requirements to avoid market disruption.

5. Timing of Repurchase Offers

Paragraph (b)(1) would require a closed-end fund relying on rule 23c–3 to pay repurchase proceeds to shareholders within seven days after a repurchase deadline. This requirement would parallel the procedure currently

[78] *See* draft staff Guide 10 to Form N–2.

followed by issuer tender offers, which are subject to a requirement of "prompt" payment following the termination of the tender offer. The Commission generally has interpreted the term "prompt" as requiring payment within five business days.[79] Since rule 23c–3 would provide that closed-end funds determine the amount of each repurchase offer, the funds would have some ability to plan portfolio and cash management in advance and thus have sufficient cash available already by each repurchase deadline. The Commission requests comment whether the rule should provide funds a longer period to pay repurchase proceeds. For example, should closed-end funds relying on rule 23c–3 have the same period of up to thirty-one days that limited redemption funds would have under rule 22e–3?

Paragraph (a)(3), the definition of "repurchase deadline," provides that the repurchase deadline shall be one of the following days of the calendar month: The first calendar or business day; the last calendar or business day; or the fifteenth calendar day or the next business day. The provision is intended to provide some consistency among the practices of different funds relying on the rule. The Commission requests comment whether this required uniformity may lead to concentration of portfolio transactions in very short periods, and on whether such concentration might adversely affect trading in less liquid securities. The Commission requests comment whether rule 23c–3—like rule 22e–3—should permit less uniformity in the scheduling of repurchases by different funds using the same periodic interval.

Proposed paragraph (b)(6) would require funds to permit security holders to revoke or withdraw their repurchase requests until the repurchase deadline but not to permit revocation thereafter. This requirement parallels the issuer tender offer regulations, which permit shareholders to withdraw securities previously tendered while the tender offer remains open.[80]

6. Notification to Shareholders

At present, closed-end funds that make repurchase tender offers must provide the Commission and shareholders with the disclosure required by rule 13e–4 under the Exchange Act and Schedule 13E–4. Schedule 13E–4 requires disclosure of the source and amount of the consideration to be paid, the purpose of the tender offer, transactions in the issuer's securities by certain related persons, any arrangements relating to the tender offer, and financial information about the issuer.

Proposed rule 23c–3 would recognize that much of the current tender offer disclosure requirements would not be relevant to periodic repurchase offers by closed-end companies under rule 23c–3. Shareholders would already know the basic outlines of each fund's repurchase procedures from prospectus disclosure. Paragraph (b)(4) would require that a closed-end fund send shareholders a notification disclosing the existence and timing of the repurchase offer, the repurchase amount, any repurchase fees, the procedures for tendering shares, provisions for repurchases on a pro rata basis, the net asset value as of the date of the repurchase offer and information about means for shareholders to learn net asset value at subsequent points (such as references to newspaper publication or any telephone information systems), and market price information, if any. Funds should be able to express this information concisely in a brief letter or statement. The Commission requests comment whether the notification should contain other information than that prescribed in the proposed rule.

The rule would provide an exception from the notification requirement for any fund whose repurchase policy provides for the fund to make all repurchase offers for the same amount of securities, that is, whose maximum repurchase amount equals its minimum repurchase amount. Because shareholders would already know the amount of each repurchase offer from the fund's prospectus and any sales materials, the need for disclosure of each repurchase offer would be less. The Commission requests comment on the appropriateness of this exception.

Rule 13e–4(f) requires that an issuer tender offer remain open for "(i) at least twenty business days from its commencement; and (ii) at least ten business days from the date" of notice of certain changes in the offer.[81] Proposed paragraph (b)(4) likewise would require a fund to send the notification to shareholders at least twenty business days before each repurchase deadline. This period is intended to ensure that shareholders receive notice far enough in advance to decide whether they want to tender their shares and to be able to return their repurchase requests to the company by the date of the termination of the repurchase offer. The Commission requests comment whether this period should be longer or shorter, and whether the rule should also impose a maximum limit; for example, the rule might prohibit funds from sending such notification more than thirty business days before a repurchase deadline.

Subparagraph (b)(4)(ii) would require funds to file a copy of each notification with the Commission within three business days after sending the notification to shareholders. The Commission staff would not review each notification before its distribution to shareholders but might review notifications to check a fund's compliance with rule 23c–3 and with its fundamental policy on repurchases. Unlike rule 13–4, under which issuers must amend a Schedule 13E–4 within ten business days after the termination of an offer in order to disclose, among other things, the results of the tender offer, proposed rule 23c–3 would not require any separate follow-up filing to disclose the amount of securities actually repurchased. Closed-end funds already are required to provide such information under Item 28 of Form N–SAR.[82]

Subparagraph (b)(4)(iii) requires a fund to take certain steps to ensure that notification of repurchase offers actually reaches beneficial owners. It refers to the shareholder communication procedures in rule 14a–13 under the Exchange Act.[83] The shareholder communication obligations under the Shareholder Communications Improvement Act of 1990 require the cooperation of members of securities exchanges, brokers, dealers, banks or similar financial institutions with respect to proxies, consents, authorizations, or information statements of registered investment

[79] *See* Tender Offers, Exchange Act Release No. 16384 at n.36 (Nov. 29, 1979), 44 FR 70326, 70337 (quoting memorandum of the Division of Corporation Finance). The Commission also has stated that there is not a single standard for what constitutes prompt payment under rules 14e–1 and 13e–4: The Commission recognizes that the operation of this standard will be affected by the practices of the financial community and the following factors: Current settlement, handling and delivery procedures relating to tenders made by guaranteed deliveries by appropriate institutions; procedures to cure technical defects in tenders; and the application of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 and the rules promulgated thereunder.

Id. at text accompanying notes 34–35.

[80] Rule 13e–4(f)(2) (17 CFR 240.13e–4(f)(2)). That rule also provides that shareholders may withdraw shares "if not yet accepted for payment, after the expiration of forty business days from the commencement of the issuer tender offer." That latter provision has no parallel in proposed rule 23c–3.

[81] *See also* rule 14e–1(a), (b).

[82] 17 CFR 274.101.

[83] 17 CFR 240.14a–13.

companies.[84] To the extent that a notification does not constitute a proxy, consent, authorization or information statement, record holders would not be subject to those requirements. Nevertheless, the Commission believes that closed-end companies making repurchase offers under rule 23c–3 can expect cooperation from such record holders, in part because of the obligations of broker-dealers under the NASD's Rules of Fair Practice,[85] and because record holders generally find it in their own interest to cooperate in transmitting such information to shareholders. The Commission requests comment on whether it is reasonable to expect such cooperation, or whether rule 23c–3 should impose other requirements to ensure that beneficial owners do receive notifications.

7. Net Asset Value

Section 23(c) of the Act (15 U.S.C. 80a–23(c)) does not set any requirement for the price at which a closed-end fund purchases its shares. Before the enactment of the Act, as noted above, some investment companies repurchased their shares in the market at discounts from net asset value, while other companies repurchased shares from insiders or other selected shareholders at a premium to net asset value.[86] Currently, the practice of closed-end funds that make periodic tender offers is to repurchase at a price based on net asset value.[87]

Rule 23c–3 would require the use of forward pricing at net asset value for all repurchases or sales of shares by closed-end funds relying on the rule. Paragraph (b)(1) would require all repurchases pursuant to the rule to be made at the net asset value of the securities on the business day after the repurchase deadline. Use of net asset value would preclude the recurrence of the abuses that were noted in the Investment Trust Study.[88]

Section 23 does not prescribe a procedure for determining current net asset value. While rule 22c–1 requires open-end funds to determine net asset value every business day, closed-end funds are not required to price their shares more often than quarterly. Many closed-end funds, however, voluntarily calculate and publish net asset values weekly.[89]

Paragraph (b)(7) would require closed-end funds that rely on the rule to determine their net asset values at least weekly, on a day and at a time or times determined by the funds' board of directors. A repurchase pricing date might fall on a day other than the normal day for determining net asset value in that week. In setting the policy for the day and time of computing net asset value, the directors of a closed-end fund may provide that in any week which includes a repurchase pricing date, the fund shall compute net asset value on the repurchase pricing date and shall not be required to compute net asset value on the day on which it otherwise would do so. The Commission requests comment whether closed-end funds under the rule should be required to determine net asset value more frequently than weekly, especially during the period immediately preceding each repurchase deadline, and, if so, what would be the costs of more frequent determinations of net asset value.

Proposed paragraph (b)(1) would permit closed-end funds making repurchase offers to impose only a charge no greater than two percent of the repurchase proceeds. This fee would be intended to compensate the investment company for expenses directly related to the repurchase, such as any costs incurred in disposing of portfolio securities[90] or in borrowing to make payment for repurchased shares.

B. Issuance of Senior Securities

Under section 18 of the Act, closed-end funds may issue senior securities in the form of both equity and debt. Senior securities representing indebtedness must have asset coverage of at least 300% after the issuance of such securities; and senior securities in the form of stock must have asset coverage of at least 200%.[91]

Section 18(a) of the Act requires that the terms of senior securities issued by closed-end funds prohibit repurchases of common stock if the repurchases would reduce the asset coverage below the required level. This prohibition responds to closed-end fund practices in the 1920's and 1930's, when funds sometimes issued senior securities to the public, then repurchased common shares, reducing the assets available to satisfy obligations to holders of senior securities.[92] If a scheduled repurchase would reduce the fund's asset coverage below that required, the repurchase cannot occur unless the fund takes other steps, such as retiring senior securities or selling additional common stock.

Rule 23c–3 is intended in part to provide holders of the common stock of a closed-end fund with a degree of certainty that repurchase offers will occur. That certainty ought not to be compromised through the issuance of senior securities whose terms might prohibit the repurchase of common stock. Accordingly, proposed paragraph (b)(9) would limit closed-end funds making periodic repurchases to borrowing under a standard similar to that for open-end funds; unlike the open-end standard, however, this provision would permit closed-end funds relying on rule 23c–3 to borrow from other lenders as well as banks.[93] This requirement is intended to ensure that a fund could make the maximum permitted repurchase offer without running afoul of the requirements of section 18(a). The Commission requests comment whether other restrictions on the use of senior securities would serve the same objectives.

C. Portfolio Liquidity

The portfolios of closed-end funds currently are not subject to any liquidity standard because historically such funds have not repurchased their

[84] *See* sections 14(b)(1) and (c) of the Exchange Act (15 U.S.C. 78n(b)(1), (c)).

[85] *See* Interpretation of the Board of Governors on Forwarding of Proxy and Other Materials, NASD Manual (CCH) ¶ 2151.05 ("a member has an inherent duty (under Article III, Section 1) * * * to forward all proxy material, annual reports, information statements and other material sent to stockholders, which are properly furnished to it by the issuer of the securities to each beneficial owner of shares of that issue which are held by the member for the beneficial owner thereof").

[86] *See supra* notes 12–30 and accompanying text.

[87] *See, e.g.*, Pilgrim Prime Rate Trust, Offer to Purchase, at 1 (Aug. 2, 1991), *reprinted in* Pilgrim Prime Rate Trust, Schedule 13E–4, Exhibit (a)(1)(ii) (Aug. 2, 1991). The use of net asset value has departed from traditional practice in other issuer tender offers. First, tender offers generally must state a fixed dollar amount for the price offered because schedule 13E–4 in Item 1(b) requires the issuer to state "the exact amount of such securities being sought and the consideration being offered therefor." For most portfolios, stating a dollar amount would not be possible if the offer is to be made at net asset value. *But see, e.g.*, Baldwin Securities Corporation (pub. avail. Dec. 24, 1986) (exemption granted for tender offer by closed-end company where consideration would be adjusted net asset value).

[88] *Id.*

[89] Net asset values compiled by Lipper Analytical Services and the Investment Company Institute appear each week in *Barron's*. Weekly listings also appear in the *Wall Street Journal* every Monday.

[90] Open-end companies may impose similar redemption fees. *See* Offers of Exchange Involving Registered Open-End Companies, Investment Company Act Release No. 17097, at n.37 (Aug. 3, 1989), 54 FR 35177 (adopting rule 11a–3).

[91] *See supra* note 31 (discussing asset coverage).

[92] Investment Trust Study, pt. 3, *supra* note 12, at 1001.

[93] Section 18(f)(1) limits open-end funds to bank borrowing with 300% asset coverage. 15 U.S.C. 80a–18(f)(1). This approach follows the provisions of the exemptive order in Wisconsin Investment Company, 10 S.E.C. 555 (1941), permitting a closed-end fund, which continuously offered its shares, to make periodic repurchases without complying with the predecessor of rule 23c–1, provided the fund complied with provisions of the Act that apply only to open-end funds.

securities on a regular basis. Proposed paragraph (b)(10) would impose a portfolio liquidity requirement on closed-end funds that make periodic repurchases pursuant to rule 23c–3.[94] This requirement is intended to ensure that a fund is able to live up to its fundamental policy of repurchasing its securities. The proposed standard has two parts both adapting the mutual fund seven day standard. First, at all times a portion of the portfolio equal to at least 150% of the minimum repurchase amount would have to consist of assets that can be sold in the ordinary course of business within seven days at approximately the value that the fund uses in valuing its investments. Second, at the time a fund sends out a notification of a repurchase offer, the fund would need assets satisfying the seven day standard in an amount equal to 150% of the repurchase offer amount. The first part is intended to ensure that the fund has sufficient liquid assets to comply with its fundamental policy on the minimum repurchase amount. The second part is intended to ensure that when a fund makes a repurchase offer it is in a position to carry out the offer. The 150% requirement is intended to allow the fund to respond to fluctuations in value of different portfolio securities and to leave the portfolio manager discretion as to which assets to sell.

The Commission requests comment whether the rule should provide a different liquidity standard. If so, what should that other liquidity standard be? In particular, the Commission requests portfolio managers and securities traders to discuss what kinds of assets might be held by closed-end funds making periodic repurchase offers, what factors might influence the degree of liquidity of such assets, and what kinds of standards would ensure that a closed-end fund can sell assets to meet periodic repurchase requests without a significant effect on the market for those assets.

The ultimate responsibility for the liquidity of portfolio assets would lie with the board of directors. The board could delegate day-to-day responsibility for evaluating liquidity of specific assets to a fund's investment adviser but would continue to be responsible for monitoring the adviser's performance of its duties and the composition of the portfolio.[95] Subparagraph (ii) would require the directors of a fund relying on rule 22e–3 to establish written procedures for ensuring the liquidity of the portfolio and to review those procedures at least annually, as well as on any other occasions when market developments call into question the liquidity of portfolio assets. Because a fund must satisfy the liquidity standard at any point at which it determines net asset value, it is necessary to evaluate the liquidity of portfolio assets, not just at the time of their acquisition, but also continuously as long as they are present in the portfolio. In evaluating liquidity, the following factors are relevant, although not necessarily determinative:

(1) The frequency of trades and quotes for the security; (2) the number of dealers willing to purchase or sell the security and the number of other potential purchasers; (3) dealer undertakings to make a market in the security; and (4) the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).[96]

Other pertinent factors might include the size of the fund's holdings of a given security in relation to the total amount outstanding of such security or to the average trading volume for the security. If changes impair the liquidity of an asset, the adviser and the board should review the advisability of retaining that asset in the portfolio; and if, as a result of market changes, the portfolio fails to satisfy the liquidity requirements of paragraph (b)(10)(i), the fund must promptly take appropriate actions to bring itself into compliance.

Securities that are less liquid may raise special concerns regarding their valuation.[97] The board of directors of an investment company is responsible for the determination of the value of securities for which market quotations are not readily available.[98] Thus, the boards of directors of closed-end funds using rule 23c–3 should pay special attention to their responsibilities for the determination of the value of less liquid assets.

D. Independent Directors

Proposed paragraph (b)(8) would require that any closed-end company making periodic repurchases under rule 23c–3 have a board with a majority of directors who are not interested persons of the fund.[99] This requirement is intended to ensure that the board of directors provides independent scrutiny of actions or decisions by the fund or its adviser in areas where there may be a conflict of interest between the adviser and shareholders. For example, the determination of each repurchase offer amount may involve a conflict between the adviser's interest in keeping assets under management as high as possible and the shareholders' interest in tendering shares for repurchase. Paragraph (b)(8) also would require that the independent directors be self-nominating, as is currently required under rule 12b–1.[100]

E. Offerings of Securities by Companies Making Periodic Repurchases

Closed-end funds that make periodic repurchases may seek to offer additional shares on an ongoing basis in order to counter reductions in net assets caused by repurchases or to increase assets under management. The Protecting Investors report recommended [101] that the Commission amend rule 415 [102] to permit intermittent, as well as continuous, offerings by closed-end funds, or, in the alternative, that the Commission adopt a post-effective amendment procedure for closed-end funds comparable to that available to open-end funds under rule 485.[103] Because the proposed exemption from rule 10b–6 for closed-end funds making periodic repurchases under rule 23c–3 may remove a regulatory need for closed-end funds to interrupt their continuous offerings, the Commission is not proposing any amendment to rule 415 or any new post-effective amendment procedure comparable to rule 485. The Commission requests comment, however, whether other circumstances still make such new procedures necessary or desirable. The

[94] We disagree with the contention of the Investment Company Institute that advance notice of a repurchase request "would eliminate the need for SEC-imposed liquidity standards for these funds." Letter from Investment Company Institute to Jonathan G. Katz, Secretary, SEC 40 (Oct. 5, 1990), File No. S7–11–90.

[95] *Cf.* Sec. Act Rel. 6882, *supra* note 35, at n.61 (if board determines that rule 144A securities are liquid, such securities may be excepted from general position that restricted securities are illiquid).

[96] Sec. Act Rel. 6882, supra note 35, 55 FR at 17940.

[97] Of course, significant valuation issues also can arise with respect to securities that generally are regarded as liquid, notably securities (such as many debt securities) that are not traded on any exchange or other centralized market.

[98] Investment Company Act section 2(a)(41). *See supra* note 42 and accompanying text.

[99] Section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)) defines the term "interested person."

[100] 17 CFR 270.12b–1. These provisions are consistent with the general investment company governance recommendations in the Protecting Investors report. Protecting Investors, *supra* note 1, at 288–88.

[101] Protecting Investors, *supra* note 1, at 453.

[102] 17 CFR 230.415.

[103] 17 CFR 230.485. Rule 485 provides the procedures for filing and effectiveness of post-effective amendments to the registration statements of open-end investment companies. It provides in effect the mechanism for the continuous effectiveness of open-end registration statements.

Commission also requests comment whether the rule should require funds that offer their shares continuously to compute net asset value daily.

Such funds may be more likely to promote and advertise their shares than has traditionally been the case with most closed-end companies, which generally do not sell additional shares after the initial offering. Accordingly, paragraph (b)(11) would require funds relying on the rule to comply, as if they were open-end funds, with section 24(b),[104] which requires investment companies except closed-end funds to file copies of advertisements and other sales literature with the Commission.

F. Disclosure of Periodic Repurchases

Closed-end funds use Form N–2 (17 CFR 274.11a–1) to register as investment companies and to register the securities they offer. The Commission has published a staff guide (Guide 2) for funds repurchasing their securities under current rules.[105] If proposed rule 23c–3 is adopted, closed-end funds relying on the rule will be expected to include in registration statements on Form N–2 additional information that would be material to investors concerning the periodic repurchases of their securities.

The Commission is publishing for comment a new staff guide that details the types of prospectus disclosure that closed-end funds making periodic repurchases of their securities under the rule would be expected to make. In addition, the Commission requests comment on whether, if proposed rule 23c–3 is adopted, Form N–2 should be amended to incorporate all or a portion of the draft guide. Comment is also requested on whether funds making periodic repurchases under proposed rule 23c–3 should be either permitted or required to provide total return information in their financial highlights based only on net asset values rather than on the market price of the fund's shares. A net asset value-based calculation may better reflect shareholder experience because of the regular availability of repurchases at net asset value.

G. Proposed Amendment to Rule 10b–6

If a closed-end fund offers shares continuously, it may not conduct tender offers without exemptive relief from rule 10b–6 under the Exchange Act (17 CFR 240.10b–6). Rule 10b–6 generally prohibits persons involved in a distribution of securities from bidding for or purchasing those securities and certain related securities until after their participation in the distribution is complete.[106] The purpose of rule 10b–6 is to prevent persons interested in the distribution from "artificially conditioning the market for the securities in order to facilitate the distribution."[107] Each closed-end fund that makes periodic repurchases has obtained an exemption from rule 10b–6. These exemptions are subject to requirements designed to prevent manipulation, including a requirement that there be no secondary market for the company's shares.[108]

The Commission is proposing to exempt closed-end fund repurchase offers relying on rule 23c–3 from rule 10b–6. These repurchases would not appear to involve any potential for "artificially conditioning the market for the securities"—the primary abuse that rule 10b–6 was intended to prevent.[109] The Commission has stated that rule 10b–6 was "designed to protect the integrity of the securities trading market as an independent pricing mechanism * * *."[110] For investment companies, however, net asset value provides an independent pricing mechanism that distinguishes investment companies from all other issuers. This mechanism is based upon the values of the underlying portfolio assets and should not be affected by the terms of a repurchase offer or of a distribution by an investment company. Accordingly, sales and repurchases at net asset value, properly computed, do not necessarily implicate the concerns of rule 10b–6, as evidenced by the rule's express exemption for redeemable securities issued by open-end companies. The policies that underlie the exemption of open-end shares also support the exemption of closed-end periodic repurchases at a price based on net asset value.[111]

Because the proposed amendment to rule 10b–6 would exempt only repurchases pursuant to rule 23c–3, the exemption in new paragraph (h) would not apply to repurchases made outside rule 23c–3.[112] Thus, the closed-end exemption would be narrower than the exemption from rule 10b–6 for open-end companies, which exempts the securities of open-end companies. The Commission requests comment whether the exemption for closed-end funds should be as broad as the exemption for open-end funds.

Because of the minimal potential for abuse, the Commission is not proposing to prohibit funds from having such securities listed on an exchange or quoted on a system such as NASDAQ, or proposing to require that such funds suspend any offering of their securities during the repurchase offers. The Commission requests comment whether rule 23c–3 should incorporate either of those requirements or some modification thereof; any comment supporting the inclusion of such a provision should describe the harms that would result from failure to include such a provision.

H. Proposed Amendments to Tender Offer Rules

Closed-end companies that make periodic repurchases do so via tender offers subject to the rules under sections 13 and 14 of the Exchange Act.[113] Rule 13e–4 would be amended to exempt closed-end company periodic repurchases under rule 23c–3. As noted above, rule 23c–3 incorporates certain requirements of rule 13e–4 that are pertinent to the investor protection concerns raised by closed-end company repurchase offers. By virtue of the exemption from rule 13e–4, rule 23c–3 repurchase offers would not be required to pay tender offer filing fees pursuant to section 13(e)(3) of the Exchange Act, because funds making those offers would not be filing a statement required pursuant to section 13(e)(1). The Commission is also proposing new rule 14e–6, which would exempt closed-end repurchase offers under rule 23c–3 from rule 14e–1, which prohibits certain tender offer practices, and rule 14e–2, which requires an issuer to disclose to security holders the issuer's opinion, if any, regarding a tender offer.

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[104] 15 U.S.C. 80a–24(b).

[105] *See* Inv. Co. Act Rel. 17091, *supra* note 50 (proposing amendments to Form N–2).

[106] The provisions of rule 10b–6 do not apply to redeemable securities issued by an open-end investment company. *See* rule 10b–6(d).

[107] Prohibition Against Trading by Persons Interested in a Distribution, Exchange Act Release No. 24003, section I (Jan. 16, 1987), 52 FR 2994 (adopting amendments to rule 10b–6).

[108] Pilgrim Prime Rate Trust (Aug. 23, 1988), Eaton Vance Prime Rate Reserves (July 14, 1989), Van Kampen Merritt Prime Rate Income Trust (Sept. 27, 1989), Merrill Lynch Prime Fund (Oct. 24, 1989), and Allstate Prime Income Trust (Nov. 21, 1989). *See also* Emerging Markets Growth Fund, Inc. (Aug. 13, 1991), and Merrill Lynch High Income Municipal Bond Fund, Inc. (Oct. 26, 1990).

[109] Exch. Act Rel. 24003, *supra* note 107.

[110] *Id.*, 52 FR at 2994.

[111] To the extent that there is secondary market trading in shares of closed-end funds using rule 23c–3, the market price may be influenced by the prospect of periodic repurchases at net asset value or the availability of new shares at net asset value. Thus, any market discount or premium to net asset value should remain within a confined range.

[112] In addition, the Commission is not proposing an exemption from Exchange Act rule 10b–13, which prohibits a person making a tender offer or exchange offer from purchasing securities outside of that offer during the offer period. 17 CFR 240.10b–13

[113] 15 U.S.C. 78m, 78n.

These exceptions from the tender offer rules would apply only to repurchase offers at periodic intervals pursuant to proposed rule 23c–3. Any other repurchase or tender offers by a closed-end fund outside of rule 23c–3 would continue to be subject to the Exchange Act tender offer rules. Repurchase offers *within* rule 23c–3 would continue to be subject to other tender offer rules, including rules 14e–3 and 14e–4.

III. Proposed Rules and Revisions to Rules To Provide for Limited Redemptions by Open-End Companies

The requirements in section 22(e) for constant redeemability and the concomitant liquidity standards for mutual funds mean that investors cannot invest in open-end investment companies that offer securities with redemptions other than on a daily basis or that may invest in less liquid assets. Proposed rule 22e–3 would exempt a registered open-end investment company [114] or registered separate account [115] other than a money market fund [116] from the provisions of section 22(e) of the Act prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security.[117] The exemption would be available to either open-end companies offering redemption at periodic intervals ("interval funds") or open-end companies offering redemption with extended payment ("extended payment funds") as provided in subparagraphs (b)(1) and (b)(2) of the rule, and to registered separate accounts organized as, or holding the securities of, such open-end companies.

Both types of funds would be able to take up to one month (thirty-one days) to pay redemption proceeds. Rule 22c–1 would be revised to address the use by these funds of pricing procedures adapted to the different redemption rights of their securities. These procedures would permit funds to offer redeemable securities while investing in less liquid assets that do not meet the liquidity standard currently applicable to open-end companies. Thus, these limited redemption funds could invest in venture capital investments and small business securities, as well as certain privately placed or restricted securities, less liquid foreign securities, and other securities traditionally viewed as not falling within the seven day standard. While these funds would be designed for investing in these types of less-liquid assets, the rule does not specify a minimum degree of *illiquidity* for funds relying on the rule. The Commission requests comment whether the rule should impose such a standard. These procedures also might be appropriate for funds with shareholders not needing constant redeemability, such as employee benefit plan investment vehicles.

For these limited redemption companies to sell and redeem their shares with the same ease as open-end funds do today, certain conforming changes may be needed outside of the federal securities laws. For example, these new redemption procedures would not fit within the specifications of the National Securities Clearing Corporation's Fund/SERV automated system. Moreover, to the extent that certain states' laws or regulations restrict the holding of restricted or other illiquid securities by open-end investment companies, limited redemption funds holding such securities might not be permitted to offer their securities within those states. The Commission, while not requesting comment on these points, invites the securities industry and bar to consider what changes may be needed in these areas.

A. Fundamental Policy

Under subparagraphs (b)(1)(i) and (b)(2), both interval funds and extended payment funds would be required to adopt fundamental policies specifying their redemption procedures, including the timing of the key dates of the redemption procedures. As with the fundamental policies of closed-end funds making periodic repurchases, these policies would be changeable only upon a shareholder vote. Thus, a fund could not switch from full redeemability as provided in section 22(e) to limited redeemability under rule 22e–3, or vice versa,[118] without a majority vote of its outstanding voting securities.[119] This requirement is intended to prevent the occurrence of the sorts of abuses at which section 22(e) was aimed, such as the suspension of redemption rights without consulting shareholders or the issuance of securities whose terms did not guarantee redeemability.[120] This requirement also is consistent with the intent of the prohibition in section 13(a)(1) (15 U.S.C. 80a–13(a)(1)) against changing subclassification from open-end to closed-end or vice versa without a vote of a majority of the outstanding voting securities. In light of the reference in section 2(a)(32) to the "terms" of a redeemable security specifying its right of redemption, the Commission requests comment whether the rule also should require interval funds and extended payment funds to take any additional steps specifying their redemption procedures, such as detailing those procedures in their organizational documents.

B. Timing of Redemptions and Redemption Pricing

Both interval funds and extended payment funds could take up to one month (thirty-one days) to pay redemption proceeds: For interval funds that period would begin with each periodic redemption deadline, and interval funds would make payment by scheduled redemption payment dates; for extended payment funds the period would begin with the receipt of each redemption request, and there would be rolling deadlines for payment. The thirty-one day period between the redemption deadline and the redemption payment date is a maximum: funds would be free to select different lengths, depending on factors such as the liquidity of their portfolios or the frequency of redemptions.

Funds would calculate the net asset value applicable to a redemption request on the next redemption pricing date, which would occur seven days before the redemption payment date. Thus, the redemption pricing date could fall as much as twenty-four days after the date of a redemption deadline (in an

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[114] In the case of an open-end company with more than one portfolio or series, as with other provisions of the Act and the rules thereunder, the reference to an open-end company would apply separately to each series. Thus, for example, a single registrant could include one or more interval funds, one or more extended payment funds, and one or more conventional mutual funds. The same treatment would hold true for registered separate accounts.

[115] A more complete discussion of the implications of the proposed rules and rule revisions for registered separate accounts is presented below in section III.G.

[116] Money market funds generally have the most liquid portfolios of any mutual fund (as well as offering shareholders liquidity features such as check writing privileges). Accordingly, the exemption from section 22(e) provided by the proposed rule would not appear to be appropriate for such issuers.

[117] The exemption provided by proposed rule 22e–3 would be available only to open-end management companies satisfying the requirements of the rule and to registered separate accounts, whether organized as unit investment trusts or as open-end management investment companies. Except for separate accounts organized as unit investment trusts, the rule would not apply to unit investment trusts, which also issue redeemable securities. Issuers not excepted by the rule would continue to be subject to the requirements of section 22(e).

[118] Likewise, an interval fund could not change to an extended payment fund, or vice versa, without a similar vote.

[119] Section 2(a)(42) (15 U.S.C. 80a–2(a)(42)) defines a majority of the outstanding voting securities of a company. *See supra* note 66.

[120] *See supra* notes 16–18 and accompanying text.

interval fund) or after the date of receipt of a redemption request (in an extended payment fund).

That twenty-four day delay is intended to address issues that may arise if a fund holds relatively illiquid securities yet needs to dispose of portfolio securities to pay shareholders for securities tendered for redemption. This period is intended to provide portfolio managers with enough time to sell securities and adjust the portfolio without depressing the value of portfolio securities before computing the net asset value used in calculating redemption proceeds. Of course, funds often may use other sources of money to pay redemption proceeds, including the sales of new shares, cash realized from prior sales of assets, borrowing, or some combination of the foregoing. The proposed rule, however, is intended to address the investor protection concerns that arise to the extent that a fund may not have sufficient cash on hand and need to sell assets to meet redemptions. This schedule should provide a relatively accurate match between the price paid for redeemed shares and amounts realized upon disposition of portfolio securities sold to pay redemption proceeds.

Absent such a delay in pricing, remaining shareholders' holdings would be diluted if it turned out that the assets sold did not garner the proceeds predicted for them at the time of pricing. The prevention of any dilution in pricing is fundamental under section 22; sections 22(a) and 22(c) mandate that pricing procedures be prescribed "for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of such company or any other result of such purchase, redemption or sale which is unfair to holders of such other outstanding securities * * *."

Shares that are tendered would participate proportionally in the company's gains and losses during the payout period. While the pricing requirement should minimize any dilution of shares that are not redeemed, the delay between the redemption deadline and pricing does subject redeeming shareholders to the risk that net asset value may fluctuate significantly between the time an investor decides to redeem and the time the investor receives payment. Thus, shareholders who tender their shares for redemption would bear the risk of market changes for the period after they have tendered their shares. Investment companies relying on rule 22e–3 would be expected to disclose this risk clearly in their prospectus.[121] The Commission requests comment whether to require funds to disclose this risk in other communications with shareholders, including redemption request forms, or messages on automated telephone systems.

The Commission requests comment on the appropriateness and adequacy of the proposed timing of the redemption pricing date and of the thirty-one day overall limit proposed here. Would that period be long enough to ensure the fair computation of net asset value for both shareholders who tender and those who do not? Some commenters cited in the Protecting Investors report had suggested a range of intervals, generally between thirty and sixty days, although they did not discuss any specific basis for their suggestions.[122] The Commission requests portfolio managers and traders to comment on the question whether a one-month period would provide them sufficient time to sell assets, particularly less liquid instruments, in order to pay redemption proceeds. Commenters also are asked to address the issue whether companies would in fact be likely to rely upon selling assets during that period in order to raise cash, or whether they would use other means. The Commission requests commenters who advocate alternative pricing procedures to provide specific operational information about existing alternative procedures that might provide an appropriate model; such procedures might include redemption or repurchase procedures used by other collective investment vehicles such as private investment funds, bank collective funds, real estate investment vehicles, or foreign investment companies. The Commission also requests comment whether, instead of requiring that the redemption pricing date occur seven days before the redemption deadline, the rule should permit funds to schedule their own redemption pricing dates.[123] If fund management should have this discretion, how should the rule ensure that pricing is equitable to redeeming and remaining shareholders, given the risks of investing in less liquid assets, and how can the rule prevent investor confusion?

[121] *See* draft Guide 34 to Form N–1A, draft Guide 36 to Form N–3, and draft Guide 13 to Form N–4.

[122] *See* Protecting Investors, *supra* note 1, at 449 n.101.

[123] This was the suggestion of the Investment Company Institute. Memorandum accompanying Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 3–4 (Aug. 8, 1991), File No. S7–11–90.

1. Interval Fund Issues

Open-end interval funds would redeem at periodic intervals, just as closed-end funds under rule 23c–3 would make repurchases at periodic intervals. Paragraph (a)(1) provides that the permissible periodic intervals for open-end redemptions at intervals would be intervals of one, two, or three months. While an interval longer than three months might not be inconsistent with the definition of a redeemable security in section 2(a)(32) of the Act, the rule would not permit redemptions less frequently than quarterly.[124] The Commission requests comment whether the rule should permit other intervals or should define the permissible intervals differently. For example, would it be appropriate to permit redemptions at shorter intervals such as every two weeks, or twice monthly? Alternately, should interval funds be permitted to redeem at longer intervals, such as every six or twelve months? In particular, the Commission requests comment on the appropriateness of such longer intervals in the absence of an exemption from section 22(d) to permit market trading of the shares of limited redemption funds. The Commission also requests comment whether the rule should exempt some or all interval funds from section 22(d) and should *require* exchange listing of fund shares or quotation of fund shares on an automated quotation system in order to provide shareholders with secondary market liquidity during the intervals, especially the longer intervals.

Because proposed rule 22e–3 would permit interval funds to offer quarterly redemptions, there would be an overlap with proposed rule 23c–3, which would allow closed-end funds to make repurchases as often as quarterly. The Commission requests comment whether that overlap would lead to investor confusion between closed-end funds and open-end interval funds, or whether the fact that the overlap is restricted to quarterly transactions is sufficient to minimize investor confusion in the context of clear disclosure of a fund's redemption or repurchase procedures, especially given the fundamental distinction that an open-end fund must redeem all shares tendered, while a closed-end fund has no comparable obligation.

Unlike the definition of repurchase deadline in rule 23c–3, paragraph (a)(2),

[124] The Protecting Investors report concluded that the securities of open-end companies with limited redemptions would be redeemable securities within section 2(a)(32). Protecting Investors, *supra* note 1, at 466–69.

the definition of redemption deadline, would not require the redemption deadline to be expressed as one of certain specified days of the calendar month. This provision is intended to avoid requiring uniformity among the redemption policies of different funds in order to minimize concentration of redemption deadlines, and hence of portfolio transactions, at certain times of the month, because such concentration might disrupt the market for portfolio assets, particularly less liquid assets. Requiring uniformity in redemption deadlines might run a greater risk of market disruption than the comparable requirement in rule 23c–3 may, because limited redemption funds, unlike funds relying on rule 23c–3, may not limit the amount they redeem. The Commission requests comment whether in this respect rule 22e–3 should more closely match rule 23c–3 by requiring greater uniformity in the permissible days for redemption deadlines. The Commission also requests comment whether the rule should impose other requirements in order to minimize any market disruption. Limited redemption funds would be expected to include clear prospectus disclosure of their redemption deadlines.[125]

Paragraph (b)(1)(ii) would provide that interval fund redemption requests would be revocable until the redemption deadline but not thereafter. The Commission requests comment whether the rule should also require or permit companies to provide that shareholders may revoke their redemption requests for some period between the redemption deadline and the day before the redemption pricing date. Revocability between the redemption deadline and the redemption pricing date would allow security holders who have already tendered to respond to unanticipated market developments in the interim and thus would reduce the market risk to those holders. Revocability after the redemption deadline, however, would disrupt the work of portfolio managers and might increase fund expenses or harm investment performance. The Commission requests portfolio managers to comment on the effects of permitting revocability. In disposing of portfolio securities, how would portfolio managers take potential revocations into account? Would they only sell a certain percentage of the total requests and then sell more liquid securities upon the pricing date if fewer requests were revoked than anticipated?

The Commission requests comment whether rule 22e–3 should impose any restrictions (beyond a majority shareholder vote) upon conversions of existing open-end funds to interval funds. Should the interval fund provisions be available only to newly organized funds and not to existing funds? Should the rule require interval funds to list their securities on an exchange in order to provide shareholders with market liquidity during the intervals? Or should the rule require an existing open-end fund that converts to an interval fund to offer shareholders some opt-out mechanism?

C. Rule 22c–1 and Pricing for Redemptions and Sales of Limited Redemption Fund Shares

The redemption pricing date requirement in proposed paragraphs (b)(1)(i) and (b)(2) is an exception to the requirements of rule 22c–1, which requires issuers of redeemable securities to compute net asset value at least daily (on business days), and to price sales and redemptions of such securities at the next net asset value computed after the receipt of an order to purchase or redeem.[126] Instead, interval funds would price their redemptions on the next pricing date after the redemption deadline. The proposed new paragraph (d) of rule 22c–1 would provide an exception to that rule for interval fund redemptions priced as provided in rule 22e–3.

Rule 22c–1 would not be amended to modify the pricing of sales of interval fund shares. For purposes of sales of shares, the current requirements of rule 22c–1 would continue to apply to limited redemption funds. They would continue to be required to compute net asset value at least daily as provided in rule 22c–1, and would be required to sell securities at the net asset value next computed after receipt of an order to purchase. Industry representatives, however, have commented that some companies may prefer to forego offering new shares continuously to avoid the burden of daily pricing.[127]

The Commission requests comment on the requirement of daily pricing for sales of limited redemption funds. Should the rule require either type or both types of funds to price only at least weekly? Should the rule expressly provide procedures for interval funds to sell their securities only during certain periods? If so, what should those periods be, and what relationship, if any, should they bear to the redemption schedule? The Commission also requests comment whether rule 22c–1 should require interval funds to establish an appropriate mechanism for handling orders to purchase shares between pricing dates such as escrow accounts or temporary investment in affiliated money market funds if weekly pricing is permitted. Would such mechanisms increase administrative costs, and hence shareholder expenses?

D. Portfolio Liquidity

Open-end companies are required to maintain at least eighty-five percent of their assets in assets that can be sold in seven days at approximately the price used in determining net asset value.[128] Proposed paragraph (c) would impose a different liquidity requirement on interval funds and extended payment funds. At least eighty-five percent of the assets of an interval fund would have to satisfy either of two requirements: a fund must reasonably believe that an asset can be sold at approximately the price used in computing the fund's net asset value in a period equal to the fund's period for paying redemption proceeds (the period between an interval fund's redemption deadline and its redemption payment date, or the period between tender and the redemption payment date for an extended payment fund); or an asset must mature before the next redemption payment date.

The first part of that standard is adapted to reflect the difference between the seven days in which traditional open-end companies must pay redemption requests and the longer periods that rule 22e–3 would allow to interval and extended payment funds. Although this standard differs from the seven day standard for mutual funds, portfolio liquidity remains vitally important for limited redemption funds, because they will need to meet redemption requests. While in most cases funds may be able to anticipate redemption requests and will not need to sell portfolio assets to meet requests, a liquidity standard is necessary to ensure that, if a fund must sell securities to meet redemptions, shareholders will receive payment within the period within which the fund's fundamental policy requires payment. In some respects, liquidity may be even more

[125] *See* draft Guide 34 to Form N–1A.

[126] Rule 22c–1(b) requires issuers of redeemable securities to calculate net asset value daily (excluding weekends and holidays) except on (i) days on which changes in the value of the investment company's portfolio securities will not materially affect the current net asset value of the investment company's redeemable securities; or (ii) days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company.

[127] *See* ICI Aug. 8, 1991 Study Comment, *supra* note 123.

[128] *See* Guide 4 to Form N–1A, Inv. Co. Act Rel. 18612, *supra* note 35.

critical for interval funds, which may face more concentrated redemption requests during a given period than would a mutual fund. The second part of that standard would permit a fund to hold debt securities with a relatively short remaining maturity; this provision should be useful primarily to interval funds, which could acquire securities with a remaining maturity coinciding with the funds' redemption payment periods.

Because the liquidity of portfolio securities is critically related to the price used in computing a fund's net asset value, limited redemption funds must pay special attention to the valuation of portfolio assets. In particular, in determining the fair value of assets for which market quotations are not readily available, funds should use valuation methods that are realistic with a view to the potential need to sell assets within a one month period, or any shorter period set by their fundamental policy on the payment of redemption proceeds.

The Commission requests comment whether to modify the proposed liquidity standards. It may be appropriate to require that some portion of a fund's assets consists of assets that satisfy the current seven day standard for mutual funds in order to provide reinforcement for a fund's ability to pay redemptions in the event a fund faces higher redemptions than expected and it is difficult or inadvisable to sell less liquid assets. For example, a requirement that twenty or twenty-five percent of a fund's assets satisfy the seven day standard might provide some margin of comfort without unduly restricting a fund's portfolio management. The Commission requests portfolio managers and securities traders to discuss the kinds of assets that might be held by limited redemption funds, the factors that influence the degree of liquidity of such assets, and the kinds of standards for such assets that would ensure that a limited redemption fund can sell assets to meet redemption requests without a significant effect on the market for those assets. Those and other commenters should also address the extent to which funds might meet redemptions from other sources, including borrowings and cash on hand.

The Commission also requests comment on whether, in addition to the proposed liquidity standard, the rule should require some degree of diversification in limited redemption fund portfolios. Holding a portfolio of less liquid securities may make it difficult for limited redemption funds to pay redemption requests, even within the period of up to one month permitted by proposed rule 22e–3. If, in addition to holding less liquid securities, funds were to hold concentrated blocks of such securities, the reliability of net asset value computations and their ability to pay redemptions might be further impaired. Commenters should address whether risk disclosure or other provisions of rule 22e–3 provide investors with sufficient protection against these incremental risks.

As noted above, the board of directors of an investment company has the responsibility for determining the liquidity of portfolio assets; valuation of portfolio assets is critically important with limited redemption companies and may be especially complicated to the extent that they invest in less liquid assets. The Commission requests comment as to whether it should specify valuation procedures for assets for which market quotations may not be available.

E. Disclosure Regarding Limited Redemption Procedures

Because proposed rule 22e–3 would permit a substantial change in redemption procedures for open-end funds, it is crucial that investors understand that many of the typical rights that attach to ownership of shares of a traditional open-end fund will not attach to ownership of shares in a limited redemption company. Sponsors and underwriters of limited redemption companies will have a special duty and obligation to make sure that investors do not confuse limited redemption companies with typical mutual funds.

Both types of limited redemption companies would be open-end management companies and would file their registration statements on Form N–1A.[129] The changes contemplated by proposed rule 22e–3 would require substantially different disclosure in many respects from that now required of other open-end funds. Eventually, the Commission may propose amendments to Form N–1A, or develop a new registration form, designed specifically for limited redemption funds. At this time, the Commission is publishing for comment a new draft staff guide to Form N–1A, which focuses on critical areas of disclosure that would have to be made by limited redemption funds filing on Form N–1A.

Similarly, because registered separate accounts funding variable insurance contracts also may rely on proposed rule 22e–3, sponsors of those accounts must disclose to contract owners the redemption procedures followed by the accounts, and the risks of owning contracts of an open-end management separate account that has adopted a limited redemption policy, or of a UIT separate account that invests in an open-end company that has adopted a limited redemption policy. At this time, the Commission is publishing for comment proposed staff Guide 38 to Form N–3 (regarding prospectus disclosure by open-end management separate accounts organized as limited redemption funds), and proposed staff Guide 13 to Form N–4 (regarding prospectus disclosure by UIT separate accounts that invest in limited redemption funds).

F. Prohibition on Funds Holding Themselves Out as Mutual Funds

Paragraph (e) would prohibit interval and extended payment funds from holding themselves out as mutual funds. This prohibition is intended to prevent investor confusion between limited redemption funds and traditional open-end companies which have redeemed their securities continuously and paid redemption proceeds within seven days.[130]

It may also be appropriate to require limited redemption funds to identify themselves affirmatively in a way that distinguishes them from mutual funds. For example, a fund could indicate its limited redemption status in the fund's name or in a legend on the cover page of its prospectus. The Commission requests comment on whether such a requirement would be appropriate.

G. Use of Limited Redemptions Funds by Registered Separate Accounts

Proposed rule 22e–3 would allow registered separate accounts funding variable insurance contracts [131] to rely on its provisions. The rule would apply to registered separate accounts whether they are organized as open-end companies or unit investment trusts ("UITs"). In the case of the UIT separate account, however, proposed rule 22e–3 would apply only to the extent the account invests in an open-end company that itself is relying on the rule. The

[129] 17 CFR 274.11A.

[130] *See* Protecting Investors, *supra* note 1, at 482 (regarding the history of the term "mutual fund"); *see also* Walter N. Durst, Analysis and Handbook of Investment Trusts 28–29 (1932) (discussing "'mutual' investment trusts"). The Investment Company Institute has supported such restrictions on the use of the term "mutual fund." Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 38 (Oct. 5, 1990), File No. S7–11–90.

[131] The term "variable insurance contracts" includes both variable annuity and variable life insurance contracts.

long-term nature of variable insurance contracts makes the separate account funding them well-suited for use with an interval or extended payment fund.

Variable insurance contracts are regulated as periodic payment plan certificates under the Investment Company Act and must, therefore, be redeemable.[132] Mainly for this reason, the separate account funding the contracts is registered under the Act as an open-end company or a UIT, rather than a closed-end company.[133] As an open-end company, the separate account operates like a mutual fund except that investment in the account is available only through the purchase of a variable insurance contract. As a UIT, the separate account serves as the medium for investing variable insurance premiums in an open-end company.[134] Most variable insurance separate accounts are registered currently as UITs.

Variable insurance contracts are, by nature, long-term contracts. The variable annuity is offered principally as a retirement planning vehicle in both the tax-qualified and non tax-qualified markets, and generally is regarded as being most beneficial to investors if held for the long term.[135] The variable life insurance contract is essentially a whole life insurance contract that is funded, not by guarantees provided by the issuing insurance company, but mainly by the owner's investment experience in a separate account.[136] Significant tax penalties apply or other adverse tax consequences usually result when a variable insurance contract is surrendered within a few years of purchase. For example, a surrendering contract owner may lose the benefit of tax deferral on earnings for amounts accumulated under such contracts, and generally is required to pay an early withdrawal tax penalty as well.[137] A contract owner, therefore, is discouraged from terminating his or her contract early. In addition, the fee structure of variable contracts, particularly the use of substantial withdrawal charges when a contract is terminated within a few years of purchase, provides further incentives not to surrender early.[138]

Because of their long-term nature, variable insurance contracts, like most insurance contracts, are well-suited for investing in funds with less liquid portfolios than are currently required under the Investment Company Act. The typical life insurance company's general account portfolio [139] consists of significant holdings of mortgages, bonds, and other long-term investments.[140] In order to hold such assets, however, an insurance company is permitted by state law to include a contract provision that allows it to defer paying redemption proceeds for up to six months after a request for surrender.[141] Proposed rule 22e–3 would allow companies offering variable contracts to adapt better to typical insurance business practices, at a possible cost savings to variable contract owners. Further cost savings may be realized if, as proposed, the rule facilitates the use of fixed contract administrative systems with variable contracts. The Commission is requesting comment on the extent to which insurance companies offering variable contracts may benefit in this way from the proposed rule.

1. Reliance on Proposed Rule 22e–3 by Registered Separate Accounts Organized as UITs

As noted, proposed rule 22e–3 will apply to both open-end separate accounts and to UIT separate accounts. As applied to open-end management separate accounts, proposed rule 22e–3 raises no unique issues; all of the considerations discussed previously for regular open-end companies appear equally relevant here. For UIT separate accounts, however, certain technical considerations arise.

Paragraph (d) of proposed rule 22e–3 would permit a UIT separate account to rely on rule 22e–3, but only to the extent it invests in an interval or extended payment fund. The Commission deems it appropriate to extend the provisions of this rule to a UIT separate account because a participant in such an account, for purposes of the Investment Company Act, has rights that are virtually identical to those of a direct investor in the underlying fund. Each subaccount of the separate account has investment objectives and policies that mirror those of the related underlying portfolio. By selecting a particular subaccount in which to invest premium

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[132] Investment Company Act section 27(c)(1), 15 U.S.C. 80a–27(c)(1). A periodic payment plan certificate is, essentially, a contract for purchasing investment company shares by installment. *See* Investment Company Act section 2(a)(27), 15 U.S.C. 80a–2(a)(27).

[133] An open-end management separate account and the variable annuity contract it issues (or the units of participation under such contracts) are registered simultaneously under the Investment Company Act and the Securities Act on Form N–3. A UIT separate account and the variable annuity contract it issues (or the units of participation under such contracts) are registered simultaneously under the Investment Company Act and the Securities Act on Form N–4. A UIT separate account and the variable life insurance contracts it issues are registered separately under the Investment Company Act and the Securities Act on Forms N–8B–2 and S–6, respectively. Currently, no separate account offering variable life contracts is registered as an open-end management company.

[134] Under federal law, an open-end management separate account or the underlying fund for a UIT separate account may generally be used only by purchasers of variable insurance contracts. *See* Rev. Rul. 81–225, 1981–2 C.B. 12; 26 CFR 1.817–5 (1989). These provisions are intended to ensure that the favorable tax treatment generally accorded to purchasers of insurance contracts will remain available only to such persons and not to the general investing public.

[135] *See, e.g.*, Ellen E. Schultz, "Variable Annuities' Returns Can Glitter, But Unwary Investors May Feel Trapped," Wall St. J., July 10, 1992, at C1, col. 1 (commenting that variable annuity investors "should be" long-term investors); Eric S. Hardy, "How Well Did Your Annuity Do?" Forbes 134, 136 (Apr. 13, 1992) (noting that annuities can be a wise investment if you "keep your expenses low, and * * * can hang in long enough for the tax deferral to amount to something—usually about ten years"); Manuel Schiffres, "Winning Big With Variable Annuities," Kiplinger's Personal Finance Magazine 49, 50–52 (Apr. 1992) (advising that "[t]he longer you allow your assets to grow on a tax-deferred basis, the more advantageous the variable annuity becomes"); Schultz, "Big Fees Can Tarnish Variable Annuities," Wall St. J., Mar. 20, 1991, at C1, col. 2 (noting that "[a]nnuities are more appropriate as long term investments * * * because the fees in an annuity can offset the advantage of tax deferral for years, even when those fees are low").

[136] Recent tax law changes assure that most variable life insurance contracts will be paid for over a minimum period of seven years. *See* 26 U.S.C. 7702A (defining modified endowment contract).

[137] *See, e.g.*, 26 U.S.C. 72(q) (prescribing ten percent penalty for premature distributions from annuity contracts).

[138] Most variable insurance contracts provide for the deduction of substantial contingent deferred sales charges if a contract is surrendered during the first seven to ten contract years. It should be noted, however, that a contract owner may transfer money among the various subaccounts of a separate account without paying a tax penalty or incurring heavy contract charges. In this sense, a variable insurance contract may not necessarily be "long term" with respect to the length of time premiums remain invested in a particular subaccount. In addition, a variable insurance contract may be exchanged for another insurance contract tax-free if the exchange meets the requirements of section 1035 of the Internal Revenue Code. In such cases, however, contract charges such as contingent deferred sales charges, still may apply.

[139] An insurance company's general account serves as the medium for funding obligations under its fixed insurance contracts. By contrast, a registered separate account serves as the medium for funding a company's variable insurance obligations.

[140] On December 31, 1990, approximately forty-one percent (41%) of the assets of all United States life insurance companies was held in the form of corporate bonds, and twenty-two percent (22%) in the form of mortgages and real estate. *See*, American Council of Life Insurance, 1991 Life Insurance Fact Book Update.

[141] *See* Kenneth Black, Jr. & Harold Skipper, Jr., Life Insurance, 137 (11th ed. 1987) (a company's contractual right to delay payment of cash value for up to six months is intended to protect the company against "runs," where investments might have to be liquidated under adverse circumstances). The authors observe, however, that this is a seldom used contractual provision that has been invoked only once in the last several decades.

payments, therefore, a participant in a UIT separate account effectively elects to participate in the investment experience of the related underlying portfolio.[142] In addition, while the insurance company is the owner of underlying fund shares held by a UIT separate account, it must vote such shares on fund matters only as instructed by a participant in the separate account.[143]

As contemplated, proposed rule 22e–3 would require a UIT separate account and the interval or extended payment fund in which it invests to have identical redemption policies. Such a conclusion would seem to follow logically from the identity in investment policies and objectives for both entities. The Commission requests comment, however, on whether the redemption policies for both entities should always be identical, or whether a UIT separate account may have a more or less limited redemption policy than that for the underlying fund in which it invests.

Rule 22e–3 provides, among other things, that redemption policies for interval and extended payment funds are changeable only by a "majority vote of the outstanding voting securities of the company * * *." Because a participant in a UIT separate account is a virtual investor in the underlying fund, and in order to maintain consistency in treatment of variable insurance separate accounts,[144] paragraph (d) of proposed rule 22e–3 would require pass-through voting (which, as used herein, includes "mirror" or "echo" voting and "proportionate" voting)[145] on changes in redemption policies by an interval or extended payment fund. As defined in subparagraph (a)(5) of the rule, therefore, "majority vote of the outstanding voting securities of the company" means the majority vote achieved when shares of the open-end company in which the separate account invests are voted in accordance with instructions received from contract owners or participants in the separate account, and all other shares held by the separate account are voted in proportion to those shares for which contract owner instructions have been received.

2. Exemption from Sections 27(c)(1) and 27(d) of the Act

As noted previously, variable insurance contracts are periodic payment certificates under the Investment Company Act and are, therefore, subject to the provisions of section 27 of the Act. Under section 27(c)(1), a variable insurance contract must be a redeemable security. Under section 27(d), the owner of a variable annuity contract with an excess-sales load design, *i.e.*, one that permits the issuer to deduct more than nine percent (9%) of purchase payments when made or in early contract years, may surrender the contract at any time during the first eighteen contract months and receive a certain refund of sales load. In addition, for variable life insurance contracts with excess sales load design(s), the provisions of section 27(d) have been modified to permit a contract owner to surrender the contract at any time during the first twenty-four contract months and receive a certain refund of sales load.[146]

Proposed rule 27c–2 would exempt a registered separate account relying on proposed rule 22e–3 from the redemption requirements of sections 27(c)(1) and 27(d); exemption from section 27(d) would be granted only to the extent necessary to permit compliance with the provisions of proposed rule 22e–3. As contemplated, therefore, proposed rule 27c–2 would merely relax the requirement of section 27(d) that "at any time" within a limited time period a variable contract may be surrendered and its owner receive a certain refund of sales load. Proposed rule 27c–2 would not otherwise affect the requirements of section 27(d) or the provisions of subparagraphs (b)(13)(v)(A) of rules 6e–2 and 6e–3(T).

3. Pricing of Variable Life Contracts Under Proposed Rule 22c–1(d)

Rules 6e–2(b)(12) and 6e–3(T)(b)(12)[147] permit pricing policies for separate accounts funding variable life insurance contracts and flexible premium variable life insurance contracts, respectively, that differ from the requirements of proposed rule 22c–1(d). Under subparagraphs (b)(12)(i) of rules 6e–2 and 6e–3(T), the cash value under a variable life policy need only be capable of computation; an actual computation is required only where "necessary for the operation of a particular contract." Similarly, under subparagraph (b)(12)(ii) of these rules, a variable life policy's death benefit need not be computed daily; instead, a calculation is necessary only on designated days when the "investment experience of the separate account would affect the death benefit." In the absence of evidence that the participants in such separate accounts would be adversely affected if the existing pricing policies were continued for separate accounts relying on rule 22e–3, the proposed rule would permit variable life separate accounts to continue to follow the policies set forth in rules 6e–2(b)(12) and 6e–3(T)(b)(12).

4. Conforming Amendments to Rule 0–1(e)

In addition to the specific proposals set forth above, the Commission is proposing related technical amendments to rule 0–1(e) (17 CFR 270.0–1(e)) of its General Rules and Regulations under the Act. The amendment is necessary to extend the conditions specified in rule 0–1(e) to a separate account that relies on proposed rule 22e–3 and serves as the funding medium for variable annuity contracts.

IV. Cost/Benefit of Proposed Action

Proposed rule 22e–3 would not impose any additional costs on existing open-end companies. Instead, it would permit open-end investment companies operating under the rule to invest a greater portion of their assets in less liquid assets than open-end companies currently are permitted to do. Accordingly, the rule is intended to allow shareholders to invest to a greater extent in less liquid assets including venture capital and small business securities. This change would obviate the need for sponsors to spend unproductive time attempting to fit these

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[142] In the two-tier structure, the fundamental distinction between the UIT separate account and the underlying fund in which it invests relates to the activities occurring at each level. At the top tier (the UIT separate account level), all insurance-related administrative duties are performed, usually by the sponsoring insurance company. At the bottom tier (the fund level), the investment-related activities are handled, in most cases by the fund's investment adviser.

[143] *See* rules 6e–2(b)(10), (15), (17 CFR 270.6e–2(b)(10), (15)), and 6e–3(T)(b)(10), (15) (17 CFR 270.6e–3(T)(b)(10), (15)) (regarding separate accounts funding variable life insurance contracts and flexible premium variable life insurance contracts, respectively). The two contracts differ fundamentally in an owner's ability to vary the timing and/or amount of premium payments under the contracts, and the level of death benefit desired. The Commission construes section 48(a) (15 U.S.C. 80a–47(a)) to require pass-through voting on fund matters when a registered separate account is organized as a UIT. *See* Investment Company Act Release No. 15651 (March 30, 1987), 52 FR 11167 (adopting amendments to rule 6e–3(T)).

[144] *See supra* note 143.

[145] "Mirror" or "echo" voting is the voting of underlying fund shares for which contract owner or participant instructions have not been received in proportion to shares for which contract owner or participant instructions have been received. "Proportionate" voting is the voting of shares that relate to an insurance company's investment in the separate account in proportion to shares for which contract owner or participant instructions have been received.

[146] *See* rules 6e–2(b)(13)(v)(A), 6e–3(T)(b)(13)(v)(A), 17 CFR 270.6e–2(b)(13)(v)(A), 6e–3(T)(b)(13)(v)(A).

[147] 17 CFR 270.6e–2(b)(12), 6e–3(T)(b)(12).

arrangements within the current confines of the open-end and closed-end categories.

Proposed rule 23c–3 would facilitate periodic repurchases by closed-end investment companies and thus should may attract greater investment in closed-end companies, which may invest in less liquid assets, including venture capital and small business investments. Repurchase offers under the proposed rule would be exempted from certain tender offer rules under the Securities Exchange Act and thus would not be subject to the filing fees imposed on issuer tender offers under rule 13e–4; this exemption would reduce the filing costs, as well as legal costs, currently incurred by closed-end funds making issuer tender offers. Closed-end funds making periodic repurchases under rule 23c–3 would be exempted from the requirements to provide certain disclosure to shareholders and to the Commission pursuant to rule 13e–4. The rule would replace that requirement with a requirement to provide certain information to shareholders and to file copies of that disclosure with the Commission except for funds with a fundamental policy of making all repurchase offers for the same amount of securities; the Commission believes that the disclosure and filing required under rule 23c–3 should be less burdensome than the current requirements under rule 13e–4.

Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed rules and rule changes. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 22e–3, 23c–3, and 27c–2 under the Investment Company Act of 1940 (the "Act"), proposed amendments to rules 0–1(e), and 22c–1 under the Act, proposed rule 14e–6 under the Securities Exchange Act of 1934 (the "Exchange Act"), and proposed amendments to rules 10b–6 and 13e–4 under the Exchange Act. The Analysis explains that the proposals are intended to permit investment companies to offer shareholders intermediate degrees of liquidity that are not currently available to shareholders of closed-end and open-end companies. The proposed rules also are intended to facilitate greater investment in investment companies that might hold less liquid securities than is permitted for open-end companies, including venture capital investments, securities issued by small businesses, and less liquid securities of foreign issuers. The Analysis describes the present regulatory framework, under which open-end companies which issue only redeemable securities must maintain a high degree of liquidity and closed-end funds may offer shareholders liquidity only through the cumbersome and costly mechanism of issuer tender offers. The Analysis states that several significant alternatives to the rules were considered, including imposing fewer requirements for small entities, but concludes that by making minimal changes to existing operational requirements for closed-end and open-end companies, the proposed rules provide flexibility and investor protection in a way that should minimize any impact on, or cost to, small businesses. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Robert G. Bagnall, at Mail Stop 10–4, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing rules 22e–3 and 27c–2 pursuant to sections 6(c), 34(b), and 38(a) (15 U.S.C. 80a–6(c), 33(b), –37(a)) of the Act; rule 23c–3 pursuant to sections 6(c), 23(c), and 38(a) (15 U.S.C. 80a–6(c), –23(c), –37(a)) of the Act; amendments to rule 22c–1 pursuant to sections 22(c) and 38(a) of the Investment Company Act; amendments to rule 0–1(e) pursuant to sections 6(c) and 38(a) of the Act (15 U.S.C. 80a–6(c), –37(a)); amendment to rule 10b–6 pursuant to sections 2, 9(a)(6), 10(b), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78i(a), 78j(b), 78(w)); amendment to rule 13e–4 pursuant to sections 9(a)(6), 13(e), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(a), 78m(e), 78w(a)); rule 14e–6 pursuant to sections 14(d), 14(e), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78n(d), –(e), 78w(a)). The authority citations for these actions precede the text of the actions.

List of Subjects In 17 CFR Parts 239, 240, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

VII. Text of Proposed Rules and Rule Amendments

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.10b–6 is amended by redesignating paragraph (h) as paragraph (i) and adding new paragraph (h) to read as follows:

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(h) The provisions of this section shall not apply to repurchases of equity securities pursuant to § 270.23c–3 by a closed-end investment company registered under the Investment Company Act. Any terms used in this paragraph (h) which are defined in the Investment Company Act of 1940 shall have the meanings specified in such Act.

* * * * *

3. Section 240.13e–4 is amended by removing the word "or" following the semicolon at the end of paragraph (h)(6), redesignating paragraph (h)(7) as paragraph (h)(8), and adding new paragraph (h)(7) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) * * *

(7) Offers by closed-end companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a] to repurchase securities pursuant to Rule 23c–3 thereunder (17 CFR 270.23c–3); or

* * * * *

4. By adding § 240.14e–6 to read as follows:

§ 240.14e–6 Repurchase offers by certain closed-end registered investment companies.

Sections 240.14e–1 and 14e–2 shall not apply to any offer by a closed-end company registered under the Investment Company Act of 1940 (15 U.S.C. § 80a) to repurchase securities of which it is the issuer pursuant to § 270.23c–3.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for part 270 is amended by adding the following citation:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted:

* * * * *

Section 270.22e–3 also issued under 15 U.S.C. 80a–6(c), 80a–33(b);

Section 270.23c–3 also issued under 15 U.S.C. 80a–23(c).

6. Section 270.0–1 is amended by revising the introductory text of paragraph (e) and paragraph (e)(2) to read as follows:

§ 270.0–1 Definition of terms used in this part.

* * * * *

(e) **Definition of separate account and conditions for availability of exemption under §§ 270.6c–6, 270.6c–7, 270.6c–8, 270.11a–2, 270.14a–2, 270.15a–3, 270.16a–1, 270.22c–1, 270.22d–3, 270.22e–1, 270.22e–3, 270.26a–1, 270.26a–2, 270.27a–1, 270.27a–2, 270.27a–3, 270.27c–1, 270.27c–2, and 270.32a–2 of this part.**

* * * * *

(2) As conditions to the availability of exemptive Rules 6c–6, 6c–7, 6c–8, 11a–2, 14a–2, 15a–3, 16a–1, 22c–1, 22d–3, 22e–1, 22e–3, 26a–1, 26a–2, 270a–1, 27a–2, 27a–3, 27c–1, 27c–2, and 32a–2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

7. Section 270.22c–1 is amended by adding paragraph (d) to read as follows:

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

* * * * *

(d) Notwithstanding the provisions above, except as provided in §§ 270.6e–2 and 6e–3(T), no registered open-end company or registered separate account that is exempt from section 22(e) pursuant to § 270.22e–3 shall redeem or repurchase any redeemable security of which it is the issuer except at a net asset value computed as provided in § 270.22e–3.

8. By adding § 270.22e–3 to read as follows:

§ 270.22e–3 Exemption from section 22(e) for certain open-end companies.

(a) *Definitions.* For purposes of this section:

(1) *Periodic interval* shall mean an interval of one, two, or three months.

(2) *Redemption deadline* with respect to a tender of securities shall mean the date by which an investment company must receive tenders by security holders for redemption. A redemption deadline shall be expressed as a specified calendar day of the month or the next business day.

(3) *Redemption payment date* with respect to a tender of securities shall mean the date by which an investment company must pay securities holders for any securities redeemed. A redemption payment date shall occur not more than thirty-one days after the later of the preceding redemption deadline, if any, and the tender of a security for redemption.

(4) *Redemption pricing date* with respect to a tender of securities shall mean the date on which an investment company determines the net asset value applicable to the redemption of such securities. A redemption pricing date shall occur seven days before the next redemption payment date.

(5) In the case of a registered separate account organized as a unit investment trust, *majority vote of the outstanding voting securities of the company* shall mean the majority vote achieved, under section 2(a)(42) (15 U.S.C. § 80a–2(a)(42)), when shares of a company in which the registered separate account is invested are voted in the following manner:

(i) Shares that relate to a variable contract owner's units of participation in the registered separate account are voted pursuant to instructions received from such contract owner;

(ii) Shares that relate to units of participation by a contract owner who has not given instructions are voted in proportion to the shares for which instructions have been received; and

(iii) Shares that relate to an insurance company's seed money invested in the unit investment trust are voted in proportion to shares for which instructions were received.

(b) A registered open-end company other than a company holding itself out as a money market fund shall be exempt from the provisions of section 22(e) (15 U.S.C. § 80a–22(e)) prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, *Provided* that such company redeems its securities as provided in either paragraph (b)(1) or paragraph (b)(2) of this section.

(1) A company may redeem securities of which it is the issuer at periodic intervals, *Provided* that:

(i) The company shall redeem the securities at the net asset value determined on the next redemption pricing date following a tender of securities pursuant to a policy, changeable only by a majority vote of the outstanding voting securities of the company, stating the circumstances in which the company will redeem shares pursuant to this section, including:

(A) The numbers of days between a redemption deadline and the next redemption pricing date and redemption payment date;

(B) The frequency of the periodic intervals at which the company will redeem its shares; and

(C) The means of determining those dates; and

(ii) The company shall permit tenders of securities to be withdrawn at any time until the next redemption deadline following such tenders but shall not permit tenders to be withdrawn thereafter.

(2) A company may make payment upon redemption of securities of which it is the issuer up to thirty-one days after the tender of such securities, *Provided* that the company shall redeem securities at the net asset value determined on the next redemption pricing date following the tender of such securities pursuant to a policy, changeable only by a majority vote of the outstanding voting securities of the company, stating the circumstances in which the company will redeem shares pursuant to this section, including the numbers of days between a tender of securities and the next redemption pricing date and redemption payment date.

(c)(1) At least eighty-five percent of the assets of the company shall consist of assets:

(i) That the company reasonably believes may be sold or disposed of in the ordinary course of business, at approximately the price used in computing the company's net asset value, within the following period: for a company relying on paragraph (b)(1) of this section, the period between a redemption deadline and the next redemption payment date; for a company relying on paragraph (b)(2) of this section, the period between a tender of securities and the next redemption payment date; or

(ii) That mature by the next redemption payment date.

(2) In the event that such assets fail to comply with the requirements of paragraph (c)(1) of this section, the board of directors shall cause the company to take such action as it deems

appropriate to ensure compliance with those requirements.

(3) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall establish written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on redemptions, and comply with the requirements of paragraph (c)(1) of this section. The board of directors shall review the procedures and the overall composition of the portfolio at least annually and on such other occasions as may be necessary in light of changes in the markets for the company's portfolio assets.

(d) A registered separate account organized as a unit investment trust that invests in an open-end company relying on paragraph (b) of this section shall be exempt from the provisions of section 22(e) (15 U.S.C. 80a-22(e)) prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, *Provided* that such separate account:

(1) Redeems securities on the same basis as such open-end company; and

(2) Votes shares of such open-end company as provided in paragraph (a)(5) of this section.

(e) It shall be an untrue statement of material fact within the meaning of section 34(b) (15 U.S.C. 80a-33(b)) for a registered open-end company or registered separate account that is exempt from section 22(e) pursuant to this section, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) (15 U.S.C. 80a-24(b)) to hold itself out to investors as, or adopt a name which suggests that it is, a mutual fund or the equivalent of a mutual fund, or, in the case of a registered separate account organized as a unit investment trust, to represent in any such document that it is investing in a mutual fund.

9. By adding § 270.23c-3 to read as follows:

§ 270.23c-3 Periodic Repurchases of Securities by Closed-End Companies.

(a) *Definitions.* For purposes of this section:

(1) *Maximum repurchase amount* and "minimum repurchase amount" shall mean respectively the maximum and minimum amounts of a class of securities that an investment company may offer to repurchase pursuant to this section. The maximum and minimum repurchase amounts shall be expressed as percentages of the securities of such class outstanding on the repurchase deadline. The maximum repurchase amount shall not be greater than twenty-five percent. The minimum repurchase amount shall not be less than five percent.

(2) *Periodic interval* shall mean an interval of three, six, twelve, twenty-four, or thirty-six months.

(3) *Repurchase deadline* with respect to a repurchase offer shall mean the date by which an investment company must receive repurchase requests submitted by security holders in response to that offer or withdraw previously submitted repurchase requests. A repurchase deadline shall be the first calendar or business day, the last calendar or business day, or the fifteenth calendar day or the next business day, of the month.

(4) *Repurchase offer* shall mean an offer pursuant to this section by a closed-end company to repurchase securities of which it is the issuer.

(5) *Repurchase offer amount* shall mean the amount of the class of securities that is the subject of a repurchase offer, expressed as a percentage of such securities outstanding on the repurchase deadline, that an investment company offers to repurchase in a repurchase offer. The repurchase offer amount shall not be greater than the maximum repurchase amount nor less than the minimum repurchase amount. Before each repurchase offer, the repurchase offer amount for that repurchase offer shall be determined by the company or its investment adviser; *provided, however,* that if a company specifies a maximum repurchase amount equal to the minimum repurchase amount, no such determination shall be necessary.

(6) *Repurchase request* shall mean the tender of a security in response to a repurchase offer.

(b) A registered closed-end company or a business development company may repurchase a security of which it is the issuer from the holders of the security at periodic intervals, pursuant to repurchase offers made to all holders of the security, *Provided* that:

(1) The company shall repurchase the security for cash at the net asset value determined on the business day following the next repurchase deadline and shall pay the holders of the security within seven days after the repurchase deadline except for any period specified in paragraphs (b)(3) (ii) through (iv) of this section. The company may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase.

(2) The company shall repurchase the security pursuant to a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company ("repurchase policy"), stating:

(i) That the company will make repurchase offers at periodic intervals pursuant to this section, as this section may be amended from time to time;

(ii) The periodic intervals between repurchase offers;

(iii) The dates of repurchase deadlines or the means of determining the repurchase deadlines; and

(iv) The maximum and minimum repurchase amounts.

(3) The company shall not suspend or postpone a repurchase offer scheduled in accordance with its repurchase policy except pursuant to a vote of a majority of the directors, including a majority of the directors who are not interested persons of the company, and only:

(i) If the repurchase would cause the company to lose its status as a regulated investment company under Subchapter M of the Internal Revenue Code (26 U.S.C. 851–860);

(ii) For any period during which the New York Stock Exchange or any other exchange on which the securities owned by the company are principally traded is closed, other than customary week-end and holiday closings, or during which trading on such exchange is restricted;

(iii) For any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the value of its net assets; or

(iv) For such other periods as the Commission may by order permit for the protection of security holders of the company.

(4)(i) No less than twenty business days before each repurchase deadline, the company shall send to each holder of record and to each beneficial owner of the securities that are the subject of the repurchase offer a notification providing the following information:

(A) A statement that the company is offering to repurchase its securities from security holders at net asset value;

(B) Any fees applicable to such repurchase;

(C) The repurchase offer amount;

(D) The date of the repurchase deadline;

(E) The procedures for security holders to tender their securities;

(F) The procedures under which the company may repurchase such securities on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) The net asset value of the securities as of the date of the notification and the means by which security holders may ascertain the net asset value thereafter; and

(H) The market price, if any, of the securities as of the date of the notification, and the means by which security holders may ascertain the market price thereafter.

(ii) The company shall file copies of the notification with the Commission within three business days after sending the notification to security holders. The notification shall bear the caption "Notification of Repurchase Offer under Rule 23c–3" and shall show the file number of the company's registration under the Act. Three copies of the notification shall be filed, at least one of which shall be manually signed. The other copies may have facsimile or typed signatures. The format of the copies shall comply with the requirements for registration statements and reports under § 270.8b–12.

(iii) For purposes of sending a notification to a beneficial owner pursuant to paragraph (b)(4)(i) of this section, where the company has knowledge that securities that are the subject of a repurchase offer are held of record by a broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting materials to beneficial owners of securities that are set forth in § 240.14a–13 of this chapter.

(5) If security holders tender more than the repurchase offer amount, the company may repurchase an additional amount of securities not to exceed two percent of the securities of such class outstanding on the repurchase deadline, but the total amount repurchased shall not in any event exceed the maximum repurchase amount; *provided, however,* that if a company specifies a maximum repurchase amount equal to the minimum repurchase amount, the total amount repurchased may exceed the maximum repurchase amount but shall not exceed twenty-five percent of the securities outstanding on the repurchase deadline. If the company determines not to repurchase more than the repurchase offer amount, or if security holders tender securities in an amount exceeding the repurchase offer amount plus two percent of the securities outstanding on the repurchase deadline, the company shall repurchase the securities tendered on a pro rata basis; *Provided, however,* that this provision shall not prohibit the company from:

(i) Accepting all securities tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares and who tender all of their securities, before prorating securities tendered by others; or

(ii) Accepting by lot securities tendered by security holders who tender all securities held by them and who, when tendering their securities, elect to have either all or none or at least a minimum amount or none accepted, if the company first accepts all securities tendered by security holders who do not so elect.

(6) The company shall permit tenders of securities for repurchase to be withdrawn at any time until the repurchase deadline but shall not permit tenders to be withdrawn thereafter.

(7) The current net asset value of the company's securities shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of directors of the company shall set. For purposes of section 23(b), the current net asset value applicable to a sale of common stock by the company shall be the net asset value next determined after receipt of an order to purchase such stock.

(8) A majority of the directors of the company shall be directors who are not interested persons of the company, and the selection and nomination of those directors shall be committed to the discretion of those directors.

(9) The company shall not issue any class of senior security or sell any senior security of which it is the issuer, except that the company shall be permitted to borrow, *provided* that immediately after any such borrowing there shall be an asset coverage of at least 300 per cent for all borrowings of the company; and *provided further* that in the event that such asset coverage shall at any time fall below 300 per cent the company shall, within three days thereafter (not including Sundays and holidays), reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least 300 per cent.

(10)(i) A percentage of the company's assets equal to at least 150 per cent of the minimum repurchase amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment. When a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section, a percentage of the company's assets equal to 150 per cent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment. In the event that the company's assets fail to comply with the requirements in the preceding sentences of this subparagraph, the board of directors shall cause the fund to take such action as it deems appropriate to ensure compliance.

(ii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall establish written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the procedures and the overall composition of the portfolio at least annually and on such other occasions as may be necessary in light of changes in the markets for the company's portfolio assets.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) (15 U.S.C. 80a–24(b)) and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

10. By adding § 270.27c–2 to read as follows:

§ 270.27c–2 Exemption from section 27(c)(1) for registered separate accounts exempt under § 270.22e–3.

(a) A registered separate account that is exempt from section 22(e) (15 U.S.C. § 80a–22(e)) pursuant to § 270.22e–3, and any depositor of or underwriter for such account, shall be exempt from section 27(c)(1) (15 U.S.C. 80a–27(c)(1)) with respect to any variable annuity or variable life insurance contract participating in such account.

(b) A registered separate account that is exempt from section 22(e) pursuant to § 270.22e–3, and any depositor of or underwriter for such account, shall be exempt from section 27(d) (15 U.S.C. 80a–27(d)) with respect to any variable annuity contract participating in such account to the extent necessary to permit compliance with the provisions of § 270.22e–3.

(c) Notwithstanding the provisions of paragraphs (b)(13)(v)(A) of §§ 270.6e–2 and 6e–3(T), a registered separate account that is exempt from section 22(e) pursuant to § 270.22e–3, and any depositor of or underwriter for such account, shall be exempt from Section 27(d) with respect to any variable life insurance contract participating in such account to the extent necessary to permit compliance with the provisions of § 270.22e–3.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933 PART 274–FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

11. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a *et seq.*, unless otherwise noted.

12. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

Note: The Guides to Forms N–1A, N–2, N–3, and N–4 are not codified in the Code of Federal Regulations.

13. Adding Guide 34 to Form N–1A to read as follows:

Guide 34. Limited Redemption Funds.

A registrant that has adopted a fundamental policy permitting redemption of its shares at periodic intervals, or taking longer than seven days to pay redemption proceeds, must fully and prominently disclose this fact in its prospectus. This disclosure should include a prominent legend on the cover page of the prospectus stating that the registrant has adopted a limited redemption policy; that its shares, in the case of an interval fund, cannot be redeemed daily, or, in the case of an extended payment policy, that the proceeds of a redemption will be delayed and, as a result, that investment in the shares of the registrant may be unsuitable for certain investors. This legend should contain a cross-reference to the section in the prospectus in which these risks are discussed in greater detail.

The registrant should discuss fully in its prospectus the details of its limited redemption policy, including the fact that this policy may be changed only by a majority vote of its outstanding voting securities. This discussion should disclose all details of the procedures to be followed in redeeming shares, including the specific dates of, and intervals between, redemption, pricing and repayment, the revocability of redemption requests, and any fees or range of fees that may be charged in connection with the redemption of shares.

The registrant should highlight the factors that distinguish it from a mutual fund; in this regard, the registrant should discuss, if applicable, the risks of investing in less liquid securities, including the effects on pricing its shares for sales or redemptions. Under no circumstances should a registrant make any statements that could lead an investor to believe that the registrant is a mutual fund.

The registrant must disclose fully in its prospectus the principal speculative or risk factors associated with an investment in its shares. These factors should include matters such as: The market risk to which an investor may be subject as a result of the delay between the tender of shares and their pricing; the possible decrease in share value as a result of currency fluctuations between the date of tender and the redemption date if the registrant has invested all or a portion of its portfolio in foreign markets; the reduced liquidity of the registrant's shares and that they may be unsuitable for certain investors; and any other matters that bear on an investor's exposure to risk of loss.

Finally, if the registrant intends to invest in thinly traded, less liquid securities, including securities traded in less-developed foreign markets, the registrant should disclose as a special risk factor the impact on those markets and the concomitant impact on the registrant if it should experience substantial redemptions. These risks include the possibility that the registrant might not be able to liquidate portfolio securities in an orderly manner and would be required to accept drastically reduced prices or might not be able to sell securities at all, in which case the registrant would have to borrow to honor redemptions or may not be able to honor redemptions. Such registrants also should explain that because of the nature of the portfolio and, in the case of an interval fund, periodically concentrated redemption demands, this may be a greater risk than that posed by an investment in a regular mutual fund.

14. Adding Guide 10 to Form N–2 to read as follows:

Guide 10. Periodic Repurchases by Closed-End Funds

If a registrant intends to make periodic repurchases of its securities in accordance with the provisions of rule 23c–3,[1] the registrant should make full disclosure of this policy in its prospectus. In response to Item 1.1.b, the cover page of the prospectus should state that the registrant is a closed-end investment company that will make periodic repurchase offers for its securities, subject to certain conditions, and specify the anticipated frequency of such offers. This response should include a cross reference to those sections of the prospectus that discuss the registrant's repurchase policies and the risks attendant thereto.

[1] *See* Guide 2 for a discussion of regulatory and disclosure issues related to share repurchases that are not subject to rule 23c–3.

The fee table required by Item 3.1 should state, as a specific caption under shareholder transaction expenses, the amount of any fees to be charged to shareholders in connection with the repurchase of their shares by the registrant.

In response to Item 8.2.c, the registrant should provide a detailed description of its fundamental policy related to share repurchases. The description of the repurchase policy should be distinct from the registrant's description of its other fundamental policies so that investors appreciate its significance. The description of the registrant's fundamental repurchase policy should include the following:

a.–That it is a fundamental policy that can be changed only by majority vote;

b. The intervals between repurchase offers, and the scheduled dates of the repurchases (i.e., whether repurchase offers will be made every three, six, twelve, twenty-four, or thirty-six months, and the dates of the repurchase deadlines);

c. The maximum and minimum amount of each repurchase offer;

d. Any circumstances in which the fund may postpone or fail to make a repurchase offer; and

e. The means by which the fund anticipates that repurchases will be funded, including whether the registrant will incur any debt to repurchase shares.

The registrant should provide a detailed description of the procedures that will be used in connection with periodic repurchase offers. This description should include the mechanics of the repurchase offer (*i.e.*, time periods between offer and repurchase, pricing mechanics and other matters related to the expected timing of and procedures associated with such repurchases); the way, if any, in which shareholders will be notified of repurchase offers; the tender procedures (including any special procedures that may be required where shares are held in street name); the revocability of repurchase requests; the means of determining the number of shares to be repurchased; the procedures to be followed in the event a repurchase offer is oversubscribed; the procedures for calculating the repurchase price; whether and how shareholders may readily ascertain the net asset value per share during the period preceding the "repurchase deadline" (the date by which investors must submit shares or revoke tenders previously made); [2] and the minimum and maximum percentage of shares that may be repurchased. Registrants are encouraged to use graphic presentations (such as a time line or calendar) so that investors can readily understand the time periods used by the funds and the significance of the repurchase deadline, the repurchase pricing date and the repurchase payment date.

In response to Item 8.3.a, the registrant should fully disclose all risks associated with

[2] Under rule 23c–3, the registrant must repurchase its shares at their net asset value determined on the next business day after the next repurchase deadline. Thus, the net asset value of a registrant's shares prior to the repurchase deadline will be material information to investors in determining whether or not to tender shares.

the registrant's intention to make periodic repurchases of its securities, including:

- The risk that, in the event of the oversubscription of a repurchase offer, shareholders may be unable to liquidate their entire investment in the registrant at net asset value during that repurchase offer;
- The possibility that periodic repurchase offers may not eliminate any discount at which the registrant's shares trade;
- The effect of repurchase offers and related liquidity requirements on portfolio management and on the ability of the registrant to achieve its investment objectives, including the possibility that diminution in the size of the fund could result from repurchases in the absence of sufficient new sales of the fund's shares, and that this may decrease the fund's investment opportunities; and
- The effect that share repurchases and related financings might have on expense ratios and on portfolio turnover.

The means by which share repurchases will be funded generally would be material, and thus these means and any risks inherent in the policies relating to funding should be disclosed. If the registrant intends to incur debt to finance a share repurchase, the registrant should disclose the maximum amount of debt that may be incurred for that purpose, the restrictions imposed by the Investment Company Act and by rule 23c–3 on leverage, and the attendant risks of leveraging.[3] If the registrant believes that share repurchases will be funded with the proceeds of sales of portfolio securities, it should disclose that fact and the risk that the need to sell securities to fund repurchase offers may affect the market for the portfolio securities being sold, which may, in turn, diminish the value of an investment in the fund.

The effect that repurchases may have on the ability of the registrant to qualify as a regulated investment company under the Internal Revenue Code in the event that share repurchases have to be funded with proceeds from the liquidation of portfolio securities should also be discussed. Finally, registrants should discuss the potential tax consequences to investors and the registrant of share repurchases and related portfolio security sales in response to Items 10.4 or 22, as appropriate.

15. By adding Guide 38 to Form N–3 to read as follows:

Guide 38. Limited Redemption Funds

A registrant that has adopted a fundamental policy permitting redemption of its variable insurance contracts at periodic intervals, or taking more than seven days to pay redemption proceeds, must fully and prominently disclose this fact in its prospectus. This disclosure should include a prominent legend on the cover page of the prospectus stating that the registrant has adopted a limited redemption policy; that its variable insurance contracts, in the case of an interval fund, cannot be redeemed daily, or, in the case of an extended payment fund, that the proceeds of a redemption will be delayed. The legend should contain a cross-reference to the sections in the prospectus in which the redemption procedures followed by the registrant, and the risks of owning variable insurance contracts of an open-end management separate account that has adopted a limited redemption policy, are discussed in greater detail.

The registrant should discuss fully in its prospectus the details of its limited redemption policy, including the fact that this policy may be changed only by a majority vote of its outstanding voting securities. This discussion should disclose all details of the procedures to be followed in redeeming the registrant's variable insurance contracts, including: The specific dates of, and intervals between, redemption, pricing and payment; the revocability of redemption requests in interval funds; and any fees or range of fees that may be charged in connection with the redemption of the variable insurance contracts. The registrant also should highlight the factors that distinguish it from an open-end management separate account subject to the requirements of section 22(e). In this regard, the registrant should discuss the risks of investing in less liquid securities, including the effects on the pricing of sales of its variable insurance contracts. Under no circumstances should a registrant make any statements that could lead a contract owner to believe that the registrant operates like a traditional open-end management separate account.

The registrant must disclose fully in its prospectus the principal speculative or risk factors associated with owning a variable insurance contract of an open-end management separate account with a limited redemption or an extended payment policy. These factors should include matters such as: The less liquid nature if any of the registrant's portfolio; the market risk to which a contract owner may be subject as a result of the delay between the tender and the pricing of the registrant's variable insurance contracts; the possible decrease in the value of the registrant's variable insurance contracts as a result of currency fluctuations between the date of tender and the redemption date if the registrant has invested all or a portion of its portfolio in overseas markets; and any other matters that could adversely affect a contract owner's exposure to risk of loss.

Finally, if the registrant intends to invest in thinly traded, less liquid securities, including securities traded in less-developed foreign markets, the registrant should disclose as a special risk factor, the impact on those markets and the concomitant impact on the registrant if the registrant should experience substantial redemptions. These risks include the possibility that the registrant might not be able to liquidate portfolio securities in an orderly manner and would be required to accept drastically reduced prices or might not be able to sell securities at all, in which case the registrant would have to borrow to honor redemptions or would have to suspend redemptions. The registrant should explain that because of the nature of the portfolio and, in the case of an open-end management separate account with a limited redemption policy, periodically concentrated redemption demands, owning a variable insurance contract issued by the registrant may pose a greater risk than that posed by owning a variable insurance contract of a traditional open-end management separate account.

16. By adding Guide 13 to Form N–4 to read as follows:

Guide 13. Investment in Limited Redemption Funds

A registrant that has adopted a fundamental policy allowing it to invest in open-end companies that permit redemption of their shares at periodic intervals or that take longer than seven days to pay redemption proceeds must fully and prominently disclose this fact in its prospectus. The cover page of the prospectus should include a prominent legend that indicates: (i) The number, if any, of the registrant's subaccounts that are invested in interval funds and the timing of redemption, pricing and repayment of the registrant's variable insurance contracts; as well as (ii) the number, if any, of the registrant's subaccounts that are invested in extended payment funds and the amount of time which the registrant may take to pay redemption proceeds to owners of the variable insurance contracts of invested in those open-end companies. In addition, the legend should contain a cross-reference to the section in the prospectus that discusses redemption procedures followed by the registrant, and the risks of owning variable insurance contracts of a UIT separate account that has invested in an interval fund or extended payment fund

The registrant should discuss fully in its prospectus the details and implications of its investment in open-end companies with limited redemption policies, including the fact that such policies may be changed only by a majority vote of its outstanding voting securities, as defined in rule 22e–3(a)(5) under the 1940 Act. This discussion should identify each of the registrant's subaccounts that invest in limited redemption funds and disclose all details of the procedures to be followed in redeeming the registrant's variable insurance contracts invested in such open-end companies, including: The specific dates of, and intervals between, redemption, pricing and payment, the revocability of redemption requests, and any fees or range of fees that may be charged in connection with the redemption of the variable insurance contracts. The registrant also should highlight the factors that distinguish variable insurance contracts invested in limited redemption funds from variable insurance contracts invested in open-end funds subject to the requirements section 22(e) of the 1940 Act. In this regard, the registrant should discuss the risks of investing in less liquid securities, including the effects on the pricing of sales of its variable insurance contracts. Under no circumstances should a registrant make any statements that could lead a contract owner to believe that variable insurance contracts invested in limited redemption funds are indistinguishable from variable insurance

[3] *See* paragraph (b)(9) of rule 23c–3 and Guide 6 to Form N–2. Guide 6 contains a detailed discussion of the Division's views on the risks associated with leverage. 148.

contracts invested in traditional open-end management companies.

The registrant must disclose fully in its prospectus the principal speculative or risk factors associated with owning a variable insurance contract of a UIT separate account investing in open-end companies with limited redemption policies. These factors should include matters such as: The less liquid nature if any of the portfolio of an open-end company following a limited redemption or extended payment policy fund, and consequently, the variable insurance contract of a UIT separate account invested in that open-end company; the market risk to which a contract owner may be subject as a result of the delay between the tender and pricing of the registrant's variable insurance contracts; the possible decrease in the value of the registrant's variable insurance contract as a result of currency fluctuations between the date of tender and the redemption date if the underlying fund has invested all or a portion of its portfolio in overseas markets; and any other matters that could adversely affect a contract owner's exposure to risk of loss.

Finally, if the registrant intends to invest in underlying open-end companies with limited redemption policies that invest in thinly traded, less liquid securities, including securities traded in less-developed foreign markets, the registrant should disclose as a special risk factor, the impact on those markets and the concomitant impact on the registrant if the registrant should experience substantial redemptions. These risks include the possibility that the underlying fund might not be able to liquidate portfolio securities in an orderly manner and would be required to accept drastically reduced prices or might not be able to sell securities at all, in which case the registrant would have to borrow to honor redemptions or would have to suspend redemptions. The registrant should explain that because of the nature of the portfolio of the underlying fund, and given the periodically concentrated redemption demands made of a UIT separate account investing in an open-end company with a limited redemption policy, owning a variable insurance contract issued by a UIT separate account investing in an open-end fund with a limited redemption policy may pose a greater risk than that posed by owning a variable insurance contract of a UIT separate account invested in an open-end company subject to section 22(e).

Dated: July 28, 1992.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-18400 Filed 8-5-92; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-18868, File No. S7-26-92]

RIN 3235-AF01

Investment Company General Partners Not Deemed Interested Persons; Investment Company Limited Partners Not Deemed Affiliated Persons

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and requests for comment.

SUMMARY: The Commission is proposing for public comment a new rule under the Investment Company Act of 1940 that would exempt general partners of registered management companies and business development companies organized as limited partnerships ("limited partnership investment companies") from the definition of "interested person" under the Act. The proposed rule would give the director general partners of limited partnership investment companies meeting the requirements of the rule the same treatment afforded directors of corporations under the interested person definition. The Commission is also proposing a new rule that would exempt limited partners of a limited partnership investment company from the definition of "affiliated person" under the Act. The proposed rule would give limited partners the same treatment afforded shareholders of corporations under the affiliated person definition. The proposed rules, which are based on numerous orders granted by the Commission, are intended to obviate the need for limited partnership investment companies to seek exemptive orders from the Commission, thereby making it easier for investment companies desiring to use the limited partnership form to do so.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-26-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Edward J. Rubenstein, Attorney, Diane C. Blizzard, Deputy Chief of Office, or Karen L. Skidmore, Assistant Director, all at (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rules 2a19-2 and 2a3-1 under the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*) (the "Act").

I. Background

A. Proposed Rule 2a19-2

1. The Statutory Problem

For tax and other reasons, some registered management companies and business development companies ("BDCs") [1] have sought to organize in limited partnership form.[2] These investment companies have not been able to use the limited partnership form, however, without obtaining a "start up" exemption from the Commission for certain of their general partners from the Act's definition of "interested person."

Relief is necessary because the Act requires that a certain percentage of the directors of an investment company not be "interested persons." [3] The

[1] A BDC is a venture capital fund that (i) is closed-end, (ii) makes certain specified investments, (iii) makes available significant managerial assistance to the businesses in which it invests, and (iv) elects to be regulated under the Act as a BDC. *See* section 2(a)(48) (15 U.S.C. 80a-2(a)(48)) (definition of a BDC). *See also* sections 6(f) and 54 through 65 (15 U.S.C. 80a-6(f), 80a-53 through 80a-64). BDCs were created as part of the Small Business Incentive Act of 1980, Pub. L. 96-477, 94 Stat. 2275 (codified at 15 U.S.C. 80a-2, -3, -25, -46, -53 through 64; 80b-2 to -9 (supp. IV 1980)) (the "1980 Amendments"), in order to remove some of the "burdens on venture capital activities that might create unnecessary disincentives to the legitimate provision of capital to small businesses." H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21-22 (1980) (hereinafter "1980 House Report").

[2] Applicants have stated that the limited partnership form has the benefit of offering "pass through" income tax treatment typically available to corporations and business trusts under Subchapter M of the Internal Revenue Code while affording greater investment flexibility. *See, e.g.*, Panther Partners, L.P., Investment Company Act Release Nos. 18213 (June 24, 1991) (Notice of Application) and 18248 (July 24, 1991) (Order) (closed-end, non-BDC); The Multiple Advisers Fund, L.P., Investment Company Act Release Nos. 17403 (Mar. 28, 1990) (Notice of Application) and 17476 (May 8, 1990) (Order) (open-end, non-BDC). In addition to tax reasons, BDCs seem to favor the limited partnership as a more appropriate investment vehicle than a corporation or a business trust for a closed-end entity of limited duration that makes a limited number of investments. *See, e.g.*, Equitable Capital Partners II, L.P., Investment Company Act Release Nos. 17784 (Oct. 9, 1990) (Notice of Application) and 17843 (Nov. 6, 1990) (Order) (BDC).

[3] "Interested person" is defined in section 2(a)(19) (15 U.S.C. 80a-2(a)(19)). Section 10(a) (15 U.S.C. 80a-10(a)) provides that at least forty percent of the board of directors of a registered investment company must be independent. Section 56(a) requires that a majority of the directors or general partners of a BDC be independent. Other provisions requiring directors who are independent include

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independent director provisions supply an independent check on management and provide a means of shareholder representation.[4]

At the same time that the Act requires independent directors, however, the Act defines "interested person" and "affiliated person" in a way that precludes a limited partnership investment company from having independent directors. That is because directors of limited partnerships are general partners,[5] and the Act defines the term "partner" in such a way as to make all partners affiliated persons of the investment companies with which they are associated.[6] The Act further provides that an affiliated person of an investment company is an interested person of the company.[7] So, a general partner is a "partner" and thus an affiliated person of the limited partnership investment company and, as such, is an interested person of the company. In addition, by virtue of being "copartners" of the investment adviser and/or principal underwriter,[8] the director general partners are also interested persons of these entities and of the investment company.[9]

The Act also defines a director as an affiliated person (and thus an interested person) of an investment company.[10] The Act, however, provides that, notwithstanding the other provisions, no person shall be deemed to be an interested person of an investment company *solely* because that person is a director of the investment company.[11] This exemption permits corporate directors with no other ties to the investment company to qualify as independent directors. Director general partners do not enjoy an analogous exemption, since they qualify for the exemption as *directors*, but not as *partners* and *copartners*. In other words, corporate directors are eligible for the exemption because they are interested persons *solely* because they are directors, but director general partners are partners as well as directors, and therefore are not eligible for the exemption.[12]

2. Administrative Actions

For years, an investment company's ability to organize as a limited partnership was severely hampered by state limited partnership laws that in effect prevented limited partners from voting. The Act requires that all shares issued by an investment company be voting shares and have equal voting rights with all other outstanding shares.[13]

As state laws changed, the Commission began considering exemptive applications under section 2(a)(19) and, since 1976,[14] has granted approximately forty such exemptions.[15] In issuing the exemptive orders, the Commission sought to assure that the limited partnership form of organization did not lead to a diminution of investor protection. For example, while the partnership's investment adviser typically serves as a general partner for purposes of contributing and holding a percentage interest necessary to qualify the partnership for federal tax purposes, the adviser has been required by the Commission to be exclusively a non-managing general partner because of concerns over the appropriateness of entities that are not natural persons serving as directors under the Act. In addition, to eliminate the possibility of economic "blackmail" by the investment adviser holding the participation interest necessary to assure partnership tax treatment, the Commission has limited the ability of the adviser general partner to withdraw from the partnership until a successor has been appointed.[16]

The Commission has sought to assure that director general partners are accountable to the limited partnership investment company and its investors to the same degree as corporate directors. For example, the Commission has required that director general partners be natural persons, assume all of the responsibilities and obligations imposed by the Act on directors, exclusively manage the affairs of the partnership, be

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section 15(c) (15 U.S.C. 80a-15(c)), which provides that the investment advisory and principal underwriting contracts must be approved by a majority of the directors who are not interested persons of the investment adviser or principal underwriter, and section 32(a) (15 U.S.C. 80a-31(a)), which provides that a majority of the independent directors must select the investment company's accountant. *See also* sections 57(f), (j) and (n) (requiring independent directors of a BDC to approve certain transactions); and rules 12b-1(b)(2) (17 CFR 270.12b-1(b)(2)) (distribution plan of an open-end investment company must be approved by independent directors), and 17a-7(e) (17 CFR 270.17a-7(e)) (certain affiliated transactions permitted if approved by a majority of investment company's independent directors).

[4] *See, e.g.*, S. Rep. No. 184, 91st Cong., 1st Sess. 31, 33 (1969) (hereinafter "1970 Senate Report").

[5] Section 2(a)(12) (15 U.S.C. 2(a)(12)) defines "director" as "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust." A general partner of a limited partnership who functions as a director meets this definition. *See, e.g.*, Murphy Favre Properties, Inc. (pub. avail. May 29, 1987), and Integrated Resources, Inc. (pub. avail. June 1, 1979). *See also* 1980 House Report, *supra* note 1, at 44, n.9 (general partners of business development companies are to be treated as directors under all provisions of the Act except where specified otherwise).

In addition to the individual general partners who manage the company and function as directors, a typical limited partnership investment company may have an entity general partner that serves as the investment adviser, and limited partners who are passive investors in the company. Affiliates of the adviser frequently serve as principal underwriter and perform administrative functions for the limited partnership investment company. *See, e.g.*, Prudential-Bache Special Situations Fund, L.P., Investment Company Act Release Nos. 17168 (Oct. 16, 1989) (Notice of Application) and 17212 (Nov. 13, 1989) (Order) (closed-end, non-BDC).

[6] Section 2(a)(3)(D) (15 U.S.C. 80a-2(a)(3)(D)) provides that "'affiliated person' of another person means * * * (D) any officer, director, partner, copartner, or employee of such other person."

[7] Section 2(a)(19)(A)(i) provides that "interested person" of an investment company means any affiliated person of such company

[8] This assumes that, as is often the case, the investment adviser and/or the principal underwriter are general partners of the limited partnership investment company. *See supra* note.

[9] First, as copartners of the investment adviser and/or principal underwriter, the director general partners are affiliated persons of the investment adviser and/or principal underwriter under section 2(a)(3)(D) and thus are interested persons of the *investment adviser and/or the principal underwriter* under section 2(a)(19)(B)(i). Second, as interested persons of the investment adviser and/or principal underwriter, the director general partners are also interested persons of the *investment company* under section 2(a)(19)(A)(iii).

[10] *See* section 2(a)(3)(D).

[11] Section 2(a)(19)(A)(aa).

[12] There is nothing explicit in the legislative history of section 2(a)(19) that sheds light on why there is no analogous exemption for partners. *But see infra* note 28 (discussing the legislative history of the 1980 Amendments).

[13] Section 18(i) (15 U.S.C. 80a-18(i)). *See, e.g.*, The Commonwealth Fund (pub. avail. June 15, 1971) (also suggesting that the voting requirements would cause the partnership to lose the tax advantages of a limited partnership).

[14] The first exemption was granted in 1976 to Vance, Sanders Exchange Fund, an open-end investment company organized as a limited partnership in order to offer investors federal tax benefits that would not be available if the company were organized as a corporation. *See* Vance, Sanders Exchange Fund, Investment Company Act Release Nos. 9075 (Dec. 8, 1975) (Notice of Application) and 9111 (Jan. 5, 1976) (Order) (open-end, non-BDC). The company was organized in California, whose limited partnership law permitted limited partners to exercise the voting rights specified in section 18(i) without losing their limited liability.

[15] *See* Vance, Sanders Municipal Bond Fund, Ltd., Investment Company Act Release Nos. 10123 (Feb. 17, 1978) (Notice of Application) and 10158 (Mar. 15, 1978) (Order) (open-end, non-BDC); Fidelity Government Securities Fund, Ltd., Investment Company Act Release Nos. 10561 (Jan. 16, 1979) (Notice of Application) and 10589 (Feb. 12, 1979) (Order) (open-end, non-BDC). *See also* Prudential Bache Special Situations Fund, L.P., *supra* note 5, and Dean Witter Capital Partners, L.P., Investment Company Act Release Nos. 17741 (Sept. 14, 1990) (Notice of Application) and 17798 (Oct. 15, 1990) (Order) (BDC).

[16] *See, e.g.*, orders cited *supra* notes 2, 5, 14, and 15

elected by the limited partners, and act only as a group, not individually.[17]

The Commission also has imposed conditions and required representations designed to assure that limited partners have the same degree of protection that they would have were they corporate shareholders. Thus, the Commission has required that the limited partners have all of the rights of shareholders under the Act, and that if a limited partner transfers its interest, the general partners take all necessary action to assure that the transferee becomes a substituted limited partner with voting rights. The Commission has also restricted the ability of the general partners to cause a dissolution of the partnership or a loss of its favorable tax status, and restricted the adviser general partner's ability to bind or act on behalf of the partnership outside its capacity as investment adviser.[18] Finally, the Commission has imposed conditions designed to assure that a partnership does not inadvertently violate the Act. For example, it has required that there be no priorities on liquidation or otherwise that would give rise to a senior security under section 18.[19]

B. Proposed Rule 2a3–1

A slightly different problem exists for the limited partners of a limited partnership investment company. Shareholders of an investment company organized as a corporation or business trust are affiliated persons of the investment company if they own, control, or hold five percent or more of the voting securities of the investment company [20] (or have some other statutory affiliation). In contrast, *all* partners—including all limited partners—are affiliated persons of the investment company, *regardless* of the amount of securities they own.[21] Furthermore, as copartners, limited partners also are affiliated persons of all other limited and general partners of the investment company. Because section 17(a) (15 U.S.C. 80a–17(a)) generally prohibits investment company principal transactions with affiliated persons, and affiliated persons of affiliated persons, this creates enormous problems for limited partnership investment companies, their limited partners, and affiliated persons of their limited partners.[22] For example, if a bank or securities dealer is a limited partner in a limited partnership investment company, it is an affiliated person of the company under section 2(a)(3)(D) and may not engage in principal transactions with the company, even if it owns less than five percent of the partnership interests. This would not be true if the investment company were organized as a corporation. Thus, virtually all limited partnership investment companies have sought to have their limited partners exempted from section 2(a)(3)(D).[23]

There appears to be no reason to treat limited partners and shareholders of an investment company differently under the affiliated transactions provisions of the Act. Limited partners, like shareholders, are passive investors in the investment company, and where neither type of investor owns more than five percent of the voting securities, there is little, if any, potential for overreaching. Accordingly, the Commission has routinely exempted limited partners from the definition of "affiliated person," where they do not own, control, or hold with the power to vote five percent or more of the outstanding voting securities of the partnership.[24]

C. Need for the Rules

In amending the Act to add the definition of "interested person," [25] Congress recognized that situations might arise where persons "involuntarily" would become interested persons. It fully expected the Commission to use its exemptive authority under section 6(c) (15 U.S.C. 80a–6(c)) to administer the amendments in a flexible manner to exempt persons who were, in fact, able to act independently on behalf of investment company shareholders.[26]

The number and breadth of conditions imposed in past exemptive orders reflect the Commission's initial caution in permitting a form of organization for investment companies that was not used in 1940.[27] While the Act does not prescribe a particular organizational form, many of the Act's provisions assume a corporate form, and limited partnership investment companies must conform to these provisions. In addition, in the absence of protective conditions, there are certain risks inherent in the partnership form that are not present with corporations.[28]

Given the number and similarity of orders issued under sections 2(a)(19) and 2(a)(3), it is now appropriate to propose exemptive rules. Proposed rule 2a19–2 would codify four key requirements of past orders for the protection of shareholders of limited partnership investment companies. The Commission believes many of the other conditions imposed in past exemptive orders may be omitted as unnecessary for the protection of investors.

II. Discussion

A. Proposed Rule 2a19–2

Proposed rule 2a19–2 would exempt certain general partners of limited partnership investment companies from the definition of "interested person" in section 2(a)(19) in a manner similar to the exemption provided for other directors in section 2(a)(19)(A)(aa), provided that four key requirements are met. First, only general partners who are natural persons could serve as directors of the limited partnership investment company. Second, no general partner could act individually on behalf of the limited partnership investment company, with these exceptions: an

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[17] *Id.*

[18] *Id.* Other required conditions and representations have included requiring opinions of counsel that the voting rights afforded the limited partners under the Act will not subject them to liability as general partners, and that the partnership qualifies as a partnership for federal income tax purposes; requiring that the partnership indemnify and/or obtain insurance to make whole any limited partner that becomes liable for the partnership's liabilities; and requiring that all material contracts contain a provision limiting the claims of creditors to the assets of the partnership.

[19] *Id.*

[20] Section 2(a)(3)(A) provides that "'affiliated person' of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person."

[21] *See* section 2(a)(3)(D).

[22] Similarly, section 17(d) and rule 17d–1 thereunder (17 CFR 270.17d–1) generally prohibit "joint transactions" between a registered investment company and its affiliated persons, or affiliated persons of its affiliated persons.

[23] *See, e.g.*, Equitable Capital Partners, L.P., *supra* note 2; and Prudential-Bache Special Situations Fund, L.P., *supra* note 5.

[24] *See, e.g.*, applications and orders cited *supra* notes 2, 5. *See also* Chestnut Street Exchange Fund and the Sandridge Corporation, Investment Company Act Release Nos. 9439 (Sept. 14, 1976) (Notice of Application) and 9516 (Nov. 9, 1976) (Order) (open-end, non-BDC).

[25] Investment Company Amendments Act of 1970 (the "1970 Amendments"), Pub. L. No. 91–547, 84 Stat. 1413 (1970).

[26] 1970 Senate Report, *supra* note 4, at 33.

[27] The Act arguably has always envisioned partnerships, including the modern limited partnership. *See infra* note 52 and accompanying text.

[28] In adopting the 1980 Amendments, Congress recognized that general partners of a BDC organized as a limited partnership investment company would need to apply for exemptive relief under section 2(a)(19). 1980 House Report, *supra* note 1, at 44, n.9. Instead of amending that section, Congress decided to maintain the status quo because the Commission believed that the corporate form provided more certain rights and remedies to investors in a publicly-held investor pool and that, accordingly, orders permitting partnership form might need to be based on a compelling need. *Id.* at 34, n.5. Thus, in 1980, the Commission viewed the limited partnership form with some caution.

investment adviser, principal underwriter, or administrator could act in its capacity as such; a general partner could act within the scope of his or her authority as delegated by the board of directors; and a general partner could act to continue the business of the limited partnership investment company when no director general partners remain. Third, the limited partnership investment company and its director general partners must take whatever steps are necessary to assure that the limited partners' transferees are able to exercise all of the rights of shareholders under the Act. Fourth, a general partner could not withdraw from the partnership or reduce its partnership interest, if such withdrawal or reduction would cause the limited partnership investment company to lose its partnership tax classification, except on one year's notice, or unless such partner were the company's investment adviser and the company had terminated the advisory contract.

These requirements are intended to assure that general partners who receive the benefit of the rule's exemption are accountable to the limited partnership investment company and its investors to the same degree as are corporate directors. In addition, the requirements should assure that limited partners have essentially the same protection that they would have were they shareholders of a corporation.[29]

1. Scope of the Proposed Rule

a. *Other provisions of act still apply.* The Preliminary Note to the proposed rule provides that reliance on the rule does not exempt an investment company from any other requirement of the Act, or exempt a general partner that is an interested person under any other provision. The purpose of the Preliminary Note is twofold. First, past exemptive orders under section 2(a)(19) contained a number of requirements intended primarily to alert applicants to various provisions of the Act so that the applicants would not inadvertently violate these provisions or believe they were exempt from them.[30] The proposed rule has not incorporated most of these requirements, but the Preliminary Note is intended to remind companies and their sponsors of the Act's other requirements. Second, the Note is intended to make plain that the other provisions of section 2(a)(19) still apply, and thus a director general partner cannot rely on the rule if he or she is "interested" other than by being a partner or copartner.[31]

b. *Scope of exemption for director general partners.* The introductory paragraph of the proposed rule provides that a general partner serving as a director of a limited partnership investment company would not be deemed an "interested person" of the company, or of its investment adviser, or principal underwriter,[32] solely because of the director general partner's status as (i) a general partner of the company, or (ii) a copartner in the company with the adviser or underwriter, if four conditions are met. Because the proposed rule is intended to allow those general partners who serve as "directors" of the limited partnership investment company to be deemed independent, the exemption is only available to general partners who in fact function as directors. In addition, typically director general partners are interested persons of the limited partnership investment company not only because of their status as general partners, but also because they are copartners with the investment adviser and/or principal underwriter general partners.[33] The proposed rule does not exempt a director general partner who independently is an interested person by virtue of being a copartner of the investment adviser or underwriter general partners in a separate venture.

c. *Application to BDCs and registered Management companies.* Paragraph (b)(3) of the proposed rule defines the term "Limited Partnership Investment Company" to mean "a registered management company or a business development company that is organized as a limited partnership under state law and for federal income tax purposes." The rule would apply to both BDCs and registered management companies; the Commission has received and granted requests for relief from section 2(a)(19) from both types of investment companies.[34]

2. Director General Partners Must Be Natural Persons

Paragraph (a)(1) of the proposed rule provides that only general partners who are natural persons shall serve as directors of limited partnership investment companies. General partners that are not natural persons (such as the investment adviser, principal underwriter, or administrator) may not serve as directors; otherwise, directors could use shell corporations to insulate themselves from liability.[35] In addition, directors of a corporation must be natural persons. Since the proposed rule creates an exemption for general partners who function like directors of a corporation, the director general partners should also be natural persons.

Some have argued that the potential liability of general partners to creditors discourages many qualified individuals from serving as directors.[36] The Commission requests comment on whether corporations or other entities should be permitted to serve as directors of limited partnership investment companies, and how the issue of insulation from fiduciary obligations may be addressed.

Proposed paragraph (a)(1) also requires general partners qualifying for the exemption to function as directors and assume all of the responsibilities

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[29] Many investment companies have organized as business trusts. Business trusts, like limited partnerships, generally are not required by state law to provide investors with all of the rights that corporate shareholders have. For example, typically trustees can terminate the business trust without shareholder approval, shareholders do not enjoy statutory limited liability, and annual meetings are not required. *See generally,* Sheldon A. Jones, *The Massachusetts Business Trust and Registered Investment Companies, 13* Del. J. Corp. L. 421, 453, and 458 (1988). In order to satisfy the requirements of the Act, and attract investors, however, business trusts have voluntarily adopted many attributes of corporations.

[30] *See* note 19 *supra* and accompanying text.

[31] For example, if a director general partner also were an employee of the investment adviser, he or she would not be exempt under the proposed rule because of his or her status as an affiliated person, and thus an interested person, of the investment adviser.

[32] Section 15(c) requires that a majority of directors who are not interested persons of the investment adviser or underwriter must approve the advisory and underwriting agreements. Since every general partner of a limited partnership investment company is an interested person of the investment company's investment adviser and underwriter (assuming, as is usually the case, that they are also general partners of the limited partnership investment company), the advisory and underwriting agreements could not be approved without an exemption.

[33] *See sections 2(a)(3)(D), 2(a)(19)(B)(i), and 2(a)(19)(A)(iii). See also supra* note 9.

[34] Since 1988, seventeen of twenty exemptive orders under section 2(a)(19) have been for BDCs.

[35] In addition, the Division has indicated that, since a corporation can only act through natural persons, it cannot perform the functions of a director. Rather, those persons who perform the director functions for the corporation—its directors—would be deemed to be the true directors. *See* Murphy Favre, *supra* note 5. This, in turn, would cause a violation of section 16(a) of the Act (15 U.S.C. 80a–16(a)), which prohibits any person from serving as a director of a registered investment company unless elected by the shareholders of the investment company, since the "real" directors—the directors of the corporation—would not have been so elected. *See* Integrated Resources, *supra* note 5.

[36] Nevertheless, many limited partnerships have registered or elected to be investment companies under the Act. Perhaps individuals are not dissuaded from serving as directors because, compared to industrial, manufacturing, or retail concerns, an investment company has fewer debts. The greatest creditor concern in the investment company context may be liability for law suits.

and obligations imposed by the Act on directors who are not interested persons. In effect, paragraph (a)(1) requires that the director general partners act only as a board of directors, and not individually. Thus, each director general partner will have only one vote, and the company must act by majority vote of all the directors, at a meeting or by written consent, except as the Act otherwise provides.[37]

Finally, paragraph (a)(1) would not allow limited partners to serve as directors. Limited partners generally enjoy limited liability under state law, just like corporate shareholders, unless they exercise "control" over the limited partnership.[38]

3. A General Partner May Not Act Individually to Bind the Partnership Except in Limited Circumstances

Paragraph (a)(2) would prohibit any general partner from acting individually on behalf of, or binding, the limited partnership investment company, except in the circumstances enumerated in the proposed rule. The reason for circumscribing the authority of any general partner—which includes director general partners, other general partners who are natural persons but not directors, and general partners who are not natural persons—to bind the limited partnership investment company is that under many partnership laws, absent a contrary provision in the partnership agreement, each general partner has the actual authority to bind the partnership.[39] This, of course, may add a risk for investors in limited partnerships that is not present in the case of corporations, where the directors may act only as a group. The proposed rule would reduce this risk by requiring that the partnership agreement contain a provision removing the general partners' actual authority to bind the partnership.

Paragraph (a)(2) provides three exceptions to this limitation. First, in their capacity as an investment adviser, principal underwriter, or administrator,[40] general partners may bind, and act on behalf of the limited partnership investment company, to the extent provided in their agreements with the company, and in the ordinary course of business.

Second, a general partner could act within the scope of his or her authority as delegated by the board of directors. This exception is intended to permit the board to delegate to a general partner duties that typically would be performed by the officers of corporations, such as negotiating and executing lease agreements.

Third, where no director general partners remain, the remaining general partners need to have the authority to call a meeting of the limited partners to determine whether to continue the business of the partnership. If the business of the partnership is to be continued, they must be able to arrange for the election of new director general partners, and carry on the business of the limited partnership investment company to the same extent as director general partners until new director general partners are elected. In this situation, the general partners may act on behalf of the limited partnership investment company, but only for such limited time as the Act permits to fill director vacancies. For a registered management company, this would be a maximum of sixty days;[41] for a BDC, this would be a maximum of ninety days.[42]

4. Rights of Transferees of Limited Partnership Interests

Paragraph (a)(3) requires that the limited partnership investment company take whatever steps are necessary so that transferees of limited partnership interests have all of the rights, including the voting rights, of limited partners. In contrast to the situation when a shareholder of a corporation transfers its interest, a transferee of a limited partnership interest does not necessarily or automatically assume or succeed to all of the voting rights of the transferor. Many states provide that a transferee of a limited partnership interest only becomes a limited partner if the partnership agreement so provides or all the partners consent.[43] The rule expressly requires that the partnership agreement contain such provisions.

Prior exemptive orders have imposed a number of other requirements that are not incorporated in the proposed rule. For example, in the past the Commission has required that the partnership obtain an opinion of counsel that the Act's shareholder voting rights, when exercised by the limited partners, would not subject the limited partners to liability as general partners under state law.[44] This requirement does not appear to be necessary. Clearly, sponsors have ample incentive and opportunity to organize and operate partnerships so that the Act is not violated and limited liability is preserved. In addition, potential shareholder liability, however remote as a practical matter, would be a matter for disclosure if material.[45] Moreover, the proposed rule would not preclude a limited partnership investment company from voluntarily obtaining an opinion of counsel.

The proposed rule also does not require, as past orders have, that the partnership indemnify any limited partner that is sued to satisfy an obligation of the partnership, and/or include in all material contracts with third parties a provision that claims of creditors are limited to assets of the limited partnership investment company.[46] These requirements were designed to protect the limited partners in the event that they should be deemed to have lost their limited liability under state law because of the exercise of the rights conferred on them by the Act. The Commission does not believe that these requirements need to be included in the proposed rule. The Commission, however, observes that it is customary practice for business trusts to include a provision in all material contracts limiting the liability of the investors.[47] Accordingly, the Commission specifically requests comment on whether it should require limited partnership investment companies to indemnify limited partners that lose their limited liability, and/or include in all material contracts a provision restricting claims of creditors to assets of the partnership.

5. Tax Considerations

Many, if not most, limited partnership investment companies seek ruling requests from the Internal Revenue Service (the "IRS") that they will be classified as a partnership for federal

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[37] *See, e.g.*, Vance, Sanders Exchange Fund, *supra* note 14. *See also* Vance, Sanders Municipal Bond Fund, Ltd., and Fidelity Government Securities Fund, Ltd., *supra* note 15.

[38] *E.g.*, Del. Code Ann. tit. 6, section 17-303(a) (1990) ("A limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business.").

[39] *See, e.g.*, Cal. Corp. Code, section 15009(1) (West 1991), and Cal. Corp. Code, §§ 15618, 15643(a) (West 1991).

[40] As used in the rule, "administrator" refers to any separate entity performing administrative services for the limited partnership investment company; typically, the investment adviser, or an affiliate of the adviser, provides these services.

[41] Section 16(a).

[42] Section 56(b).

[43] *See, e.g.*, Cal. Corp. Code, section 15674 (West 1991); Del. Code Ann. tit. 6, section 17-704 (1990).

[44] *See, e.g.*, Panther Partners, L.P., *supra* note 2.

[45] *See* sections 11, 12, and 17 of the Securities Act of 1933 (15 U.S.C. 77k, 77l, 77q) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and rule 10b-5 thereunder (17 CFR 240.10b-5).

[46] *See, e.g.*, Vance, Sanders Municipal Bond Fund, Ltd., and Fidelity Government Securities Fund, Ltd., *supra* note 15.

[47] *See, e.g.*, Jones, *supra* note 29, at 443.

income tax purposes. In order for the IRS to consider such a ruling request, however, the general partnership as a group must hold at least one percent (or lesser amounts if total partnership interests exceed $50 million) of the interests, including limited partnership interests, in each material item of partnership income, gain, loss, deduction, or credit (the "Federal Tax Status Contribution" or "Contribution") at all times during the existence of the partnership, and the partnership agreement must expressly so provide.[48]

Typically, the investment adviser general partner holds all or most of the Federal Tax Status Contribution, but other general partners may contribute as well. (The general partners that hold all or part of the Federal Tax Status Contribution are referred to herein as "Contributing" general partners.) A Contributing investment adviser general partner may have great influence over a limited partnership investment company because its withdrawal from the general partnership or reduction of its Federal Tax Status Contribution could jeopardize the company's partnership tax classification. Of course, any Contributing general partner, in theory, has a degree of influence over the company.

Paragraph (a)(4) would not allow a Contributing general partner to withdraw or reduce its Contribution, without giving one year's prior written notice to the Limited Partnership Investment Company, if so doing would cause the company to lose its partnership tax classification. Paragraph (a)(4) would not prohibit a Contributing general partner from withdrawing if the partner's Contribution obligation were assumed by one of the remaining general partners or by a successor general partner. In addition, the prohibition would not apply where the Contributing general partner is the company's investment adviser and the company terminates its advisory agreement with such general partner. These provisions are intended to allow Contributing general partners to withdraw from the partnership under circumstances that will not harm investors.

The Commission requests comment on whether the proposed rule should restrict the ability of a Contributing general partner to reduce its Contribution or to withdraw. The Commission also specifically requests comment on whether paragraph (a)(4) of the proposed rule should be narrowed to include only general partners who have an advisory relationship with the company on the theory that the investment adviser is likely the only general partner with an incentive to exert influence through its Federal Tax Status Contribution. Finally, the Commission requests comment on whether paragraph (a)(4) of the rule should, as proposed, permit Contributing general partners to withdraw as general partners or reduce their contribution upon one year's written notice, or some other period of time, in the event that such Contributing general partners cannot find a general partner or partners to assume their Federal Tax Status Contributions.

The proposed rule does not incorporate other tax-related requirements of past exemptive orders. For example, the Commission has required that applicants provide a compelling tax or other justification for needing the limited partnership form.[49] This has been, in part, because the Commission believed that the corporate form provided more certain rights for investors than the limited partnership form.[50] Accordingly, the Commission only permitted investment companies to organize as limited partnerships if they could make a strong case that investors would receive benefits not otherwise available *and* complied with various other requirements imposed for the protection of investors.

Proposed rule 2a19–2 does not require limited partnership investment companies to justify their organization as limited partnerships. The requirements that the Commission has imposed over the years in granting relief from section 2(a)(19)—the essential ones having been retained in the proposed rule—have provided appropriate safeguards. Furthermore, Congress clearly contemplated that BDCs would organize in limited partnership form,[51] and there are other provisions suggesting that Congress also envisioned non-BDC investment companies in partnership form.[52] Nonetheless, the Commission requests that commenters address whether the limited partnership form should be used only by investment companies that have a tax or other business need, and what today might induce an investment company to organize in limited partnership form. In addition, the Commission requests comment on whether adoption of the rule will result in an increase in the number of funds operating as limited partnerships.

Finally, the definition of "Limited Partnership Investment Company" in paragraph (b)(2) of the proposed rule requires that a company be "organized as a limited partnership * * * for federal income tax purposes." The Commission requests comment on whether the proposed rule should further require that a Limited Partnership Investment Company actually be classified as a partnership for federal income tax purposes for the exemption to be available.[53]

6. Dissolution of the Limited Partnership

Under many partnership laws, the withdrawal of a general partner can cause dissolution of a limited partnership unless: (i) At least one other general partner remains, the partnership agreement permits the remaining general

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[48] IRS Rev. Proc. 89–12, section 4.

[49] *See also* 1980 House Report, *supra* note 1, at 34, n.5 ("(t)he Committee understands that the Commission, presently, does not favor the issuance of such orders unless an applicant can make a compelling case that limited partnership status is essential to its proposed operations.").

[50] *See* 1980 House Report, *supra* note 1, at 34, n.5 ("the Commission apparently believes the corporate form provides more certain rights and remedies to investors * * *.").

[51] *See, e.g.*, section 56(a) which refers to a "business development company's directors *or general partners* * * *." (emphasis supplied). *See also* 1980 House Report, *supra* note 1, at 34, n.5 ("this legislation (the 1980 Amendments) explicitly recognizes the possibility that a business development company could be organized as a limited partnership.").

[52] *See, e.g.*, section 2(a)(3)(D) (defining "affiliated person" to include partners and copartners); section 2(a)(8) (15 U.S.C. 80a–2(a)(8)) (defining "company" to include a "partnership"). *See also* SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 33 (1966) (hereinafter PPI Report) (stating that the "range of possible legal forms (of an investment company under the Act) includes partnerships"), and PPI Report at 33 n.4 (comparing business trusts, partnerships, and corporations).

[53] The proposed rule does not require, as past section 2(a)(19) orders have, that the limited partnership obtain an opinion of counsel or an IRS ruling, stating that the investment company will be taxed as a partnership for federal income tax purposes. *See* applications and orders cited *supra* notes 2, 5, 14, and 15.

In addition, some past orders have required that if the partnership is or becomes authorized to make in-kind distributions of portfolio securities to its partners, no such in-kind distributions will be made until such time as the partnership has obtained a no-action letter from the staff of the Commission or, alternatively, has obtained an order pursuant to section 206A of the Advisers Act (15 U.S.C. 80b–6a) permitting such distribution, *see, e.g.*, The Multiple Advisers Fund, L.P., *supra* note 2. Also, some orders have required the partnership to obtain an opinion of counsel that the distributions and allocations provided for in the partnership agreement are permissible under section 205 (15 U.S.C. 80b–5) and rule 205–3 of the Advisers Act (17 CFR 275.205–3) and section 15(a) of the Act. *See, e.g.*, Panther Partners, L.P., *supra* note 2. The Commission has not included these requirements.

partner to carry on the business of the partnership, and the remaining general partner does so; or (ii) all the partners agree to continue the partnership.[54] In most limited partnership investment companies, obtaining the consent of all the partners would be extremely burdensome. Thus, if the partnership agreement does not permit the remaining general partners to carry on the business, withdrawal of a general partner could cause dissolution. The Commission requests comment on whether rule 2a19–2 should require that partnership agreements provide that the remaining general partners shall continue the business of the limited partnership, or restrict the ability of the general partners to withdraw if doing so would effect a dissolution.

B. Proposed Rule 2a3–1

Proposed rule 2a3–1 would codify the orders that the Commission has issued to exempt from the definition of "affiliated person" in section 2(a)(3) investors that are "affiliated persons" under section 2(a)(3)(D) solely because of their status as limited partners of a limited partnership investment company. The rule would treat limited partners like shareholders and permit a limited partnership investment company to engage in transactions with its limited partners and their affiliated persons, to the same extent as if the investment company were organized as a corporation. Thus, registered management companies and BDCs organized as limited partnerships would no longer need to obtain exemptive orders.

As the Preliminary Note to the proposed rule states, reliance on the rule would not exempt a limited partner that is an affiliated person by virtue of any other provision of the Act. Thus, for example, if a limited partner directly or indirectly owns, controls, or holds with the power to vote, five percent or more of the outstanding voting securities of the limited partnership investment company, the investment adviser, or the principal underwriter, the limited partner would be an affiliated person of such person under section 2(a)(3)(A), notwithstanding this proposed rule. This is consistent with the treatment afforded shareholders.

III. Cost/Benefit of Proposed Action

Proposed rules 2a19–2 and 2a3–1 would not impose any significant burdens on investment companies. These rules would benefit investment companies desiring to organize as limited partnerships by reducing the costs and delays that they would otherwise incur by virtually eliminating the need to file exemptive applications. Additionally, the Commission would benefit because its staff would need to review very few applications for exemptive relief. Comment is requested, however, on these matters and on the costs or benefits of any other aspect of the proposed actions. Commenters should submit estimates of any costs and benefits perceived, together with any supporting empirical evidence available.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 2a19–2 and 2a3–1. The Analysis explains that proposed rules 2a19–2 and 2a3–1 would permit registered management companies and BDCs satisfying the requirements of the proposed rules to organize and operate under the Act as limited partnerships, without needing to obtain exemptive relief. It states that the proposed rules are intended to reduce significantly the number of exemptive applications filed with the Commission in this area, and continue to maintain the highest level of investor protection. It also states that the proposed rules contain no reporting or recordkeeping requirements. To the extent that the proposed rules would eliminate the need for limited partnership investment companies to file applications seeking exemptions from sections 2(a)(19) and 2(a)(3)(D) of the Act, they will reduce the costs incurred by smaller entities in preparing and filing exemptive applications. The Commission considered a number of significant alternatives to the proposed rules, including imposing fewer requirements for small entities, but prefers the proposed approach because it eliminates unnecessary burdens while preserving adequate investor protection. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Edward J. Rubenstein, Esq. or Diane C. Blizzard, Esq., both at Mail Stop 10–4, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

V. Statutory Authority

The Commission is proposing rules 2a19–2 and 2a3–1 under the exemptive and rulemaking authority set forth in sections 6(c) and 38(a) (15 U.S.C. 80a–6(c), –37(a)) of the Investment Company Act of 1940. The authority citations for these actions precede the text of the actions.

List of Subjects in 17 CFR Part 270

Investment Companies, Reporting and Recordkeeping Requirements, Securities

VI. Text of Proposed Rules

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

2. By adding § 270.2a3–1 to read as follows:

§ 270.2a3–1 Investment Company Limited Partners Not Deemed Affiliated Persons.

Preliminary Note to § 270.2a3–1: This § 270.2a3–1 exempts from the definition of affiliated person in section 2(a)(3) (15 U.S.C. 80a–2(a)(3)) those limited partners of investment companies organized in limited partnership form that are affiliated persons solely because they are partners under section 2(a)(3)(D) (15 U.S.C. 80a–2(a)(3)(D)). Reliance on this § 270.2a3–1 does not exempt a limited partner that is an affiliated person by virtue of any other provision.

No limited partner of a registered management company or a business development company, organized as a limited partnership and relying on § 270.2a19–2, shall be deemed to be an affiliated person of such company, or any other partner of such company, solely by reason of being a limited partner of such company.

3. By adding § 270.2a19–2 to read as follows:

§ 270.2a19–2 Investment company general partners not deemed interested persons.

Preliminary Note to § 270.2a19–2: This § 270.2a19–2 conditionally exempts from the definition of interested person in section 2(a)(19) (15 U.S.C. 80a-2(a)(19)) general partners of investment companies organized in limited partnership form. Compliance with the conditions of this § 270.2a19–2 does not relieve an investment company of any other requirement of this Act, or exempt a general partner that is an interested person by virtue of any other provision.

(a) *Director general partners not deemed interested persons.* A general partner serving as a director of a Limited Partnership Investment Company shall not be deemed to be an interested person of such company, or any investment adviser of, or principal underwriter for, such company, solely by reason of being a partner of the Limited Partnership Investment

[54] *See, e.g.*, Del. Code Ann. tit. 6, §§ 17–801, 17–402 (1990).

Company, or a copartner in the Limited Partnership Investment Company with any investment adviser of, or principal underwriter for, the company, *provided that* the Limited Partnership Agreement contains in substance the following:

(1) Only general partners who are natural persons shall serve as, and perform the functions of, directors of the Limited Partnership Investment Company.

(2) A general partner shall not have the authority to act individually on behalf of, or to bind, the Limited Partnership Investment Company, except:

(i) In such person's capacity as investment adviser, principal underwriter, or administrator;

(ii) Within the scope of such person's authority as delegated by the board of directors; or

(iii) In the event that no director of the company remains, to the extent necessary to continue the Limited Partnership Investment Company, but only for such limited periods as permitted under the Act to fill director vacancies.

(3) The assignees, transferees, and successors of the limited partners of the Limited Partnership Investment Company shall have all of the rights afforded shareholders under the Act.

(4) A general partner shall not withdraw from the Limited Partnership Investment Company or reduce its Federal Tax Status Contribution without giving one year's prior written notice to the Limited Partnership Investment Company, if such withdrawal or reduction would cause the company to lose its partnership tax classification. This paragraph (a)(4) shall not apply where the general partner is an investment adviser and the company terminates its advisory agreement with such general partner.

(b) *Definitions.*—(1) *Federal Tax Status Contribution* shall mean the interest (including limited partnership interest) in each material item of partnership income, gain, loss, deduction, or credit, as used in section 4 of the Internal Revenue Service's Revenue Procedure 89–12, or any successor provisions thereto.

(2) *Limited Partnership Investment Company* shall mean a registered management company or a business development company that is organized as a limited partnership under state law and for federal income tax purposes.

(3) *Partnership Agreement* shall mean the agreement of the partners of the Limited Partnership Investment Company as to the affairs of the limited partnership and the conduct of its business.

Dated: July 28, 1992.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18360 Filed 8–5–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 91N–0323]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Bronchodilator Drug Products; Request for Additional Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; request for additional comment; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 5, 1992, the comment period for the notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) bronchodilator drug products to modify the wording of the drug interaction precaution statement required in the labeling of OTC bronchodilator drug products containing sympathomimetic amines (57 FR 27662, June 19, 1992). This action is being taken because the agency would like additional comments on a possible addition to the proposed drug interaction precaution statement. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 5, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 19, 1992 (57 FR 27662), FDA published a notice of proposed rulemaking to amend the final monograph for OTC bronchodilator drug products to revise the drug interaction precaution statement for OTC bronchodilator drug products containing sympathomimetic amines to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The closing date for comments on the proposal is August 18, 1992.

In the notice of proposed rulemaking, the agency discussed the history of the required drug interaction precaution statement and the reasons for revising its wording. The agency mentioned that there has been a resurgence in the use of MAOI drugs after a period of decline in the 1970's, and there is evidence that MAOI drugs are also being used to treat a wider variety of conditions, such as bulimia, panic disorders, phobic disorders, anxiety, and obsessive compulsive disorder (57 FR 27662). However, the use of MAOI drugs in hypertension has essentially ceased.

There are at least two types of monoamine oxidase (MAO) enzymes: the A form and B form. The two forms are characterized by differential substrate profiles, sensitivity to inhibition by clorgeline, and anatomical locations. MAO A preferentially deaminates norepinephrine and serotonin (5-hydroxytryptamine [5–HT]) and is sensitive to inhibition by clorgeline. MAO A is the unique form located in intestinal mucosa and placenta and predominates in peripheral nerve terminals. In contrast, MAO B preferentially deaminates phenethylamine and benzylamine, is inhibited by selegiline but not clorgeline, and is the unique form located in platelets. Both MAO A and MAO B are found in approximately equal proportions in the liver and brain.

The MAOI drugs marketed in the United States for psychiatric indications are nonspecific. They irreversibly inhibit both MAO A and MAO B. Selegiline is a relatively selective MAO B inhibitor indicated for use in Parkinson's disease treatment. At doses greater than 10 milligrams per day and, perhaps, at lower doses in some people, selegiline's selectivity decreases. Other, apparently more specific, MAO B inhibitors are now under development.

The agency did not address selegiline or MAO B inhibitors in the earlier proposal. The agency has not received

any reports of an interaction between selegiline and sympathomimetic amines. The agency invites any interested person with knowledge of such an interaction having occurred to provide that information to the agency.

Because of the relative nature of the selectivity of selegiline, the lack of knowledge about the precise mechanism of the MAOI-sympathomimetic amine interaction, and a lack of data on the effects of MAO B inhibitors on the pharmacokinetics and dynamics of sympathomimetic amines, the agency believes there is a need to consider whether the drug interaction precaution statement should be expanded to include MAO B drugs such as selegiline. If the warning statement were to be expanded, it would be revised to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

The agency is inviting specific additional comments on whether, from a public health perspective, it would be appropriate to expand the bronchodilator drug interaction precaution as indicated above. In order to fully consider this aspect of the proposed labeling, the agency is extending the comment period for this notice of proposed rulemaking an additional 60 days.

Interested persons may, on or before October 5, 1992, submit to the Dockets Management Branch (address above) written comments on the possible expansion of the drug interaction precaution statement proposed for OTC bronchodilator drug products containing sympathomimetic amines. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18618 Filed 8-5-92; 8:45 a.m.]

BILLING CODE 4160-01-F

21 CFR Part 341

[Docket No. 76N-052N]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Tentative Final Monograph for OTC Nasal Decongestant Drug Products; Request for Additional Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; request for additional comment; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 5, 1992, the comment period for the notice of proposed rulemaking amending the tentative final monograph for over-the-counter (OTC) nasal decongestant drug products to modify the drug interaction precaution statement proposed in the labeling of OTC oral nasal decongestant drug products containing sympathomimetic amines (57 FR 27658, June 19, 1992). This action is being taken because the agency would like additional comments on a possible addition to the proposed drug interaction precaution statement. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 5, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 19, 1992 (57 FR 27658), FDA published a notice of proposed rulemaking to amend the tentative final monograph for OTC nasal decongestant drug products to include the following drug interaction precaution statement for OTC oral nasal decongestant drug products containing sympathomimetic amines to read: "Do not take this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The closing date for comments on the proposal is August 18, 1992. In the **Federal Register** of July 30, 1992 (57 FR 33663), FDA published a correction that changes the wording of the first sentence of the statement to read, "*Drug interaction precaution.* Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor * * *."

In the notice of proposed rulemaking, the agency discussed the history of the drug interaction precaution statement and the reasons for revising its wording. The agency mentioned that there has been a resurgence in the use of MAOI drugs after a period of decline in the 1970's, and there is evidence that MAOI drugs are also being used to treat a wider variety of conditions, such as bulimia, panic disorders, phobic disorders, anxiety, and obsessive compulsive disorder (57 FR 27658). However, the use of MAOI drugs in hypertension has essentially ceased.

There are at least two types of monoamine oxidase (MAO) enzymes: the A form and B form. The two forms are characterized by differential substrate profiles, sensitivity to inhibition by clorgeline, and anatomical locations. MAO A preferentially deaminates norepinephrine and serotonin (5-hydroxytryptamine [5-HT]) and is sensitive to inhibition by clorgeline. MAO A is the unique form located in intestinal mucosa and placenta and predominates in peripheral nerve terminals. In contrast, MAO B preferentially deaminates phenethylamine and benzylamine, is inhibited by selegiline but not clorgeline, and is the unique form located in platelets. Both MAO A and MAO B are found in approximately equal proportions in the liver and brain.

The MAOI drugs marketed in the United States for psychiatric indications are nonspecific. They irreversibly inhibit both MAO A and MAO B. Selegiline is a relatively selective MAO B inhibitor indicated for use in Parkinson's disease treatment. At doses greater than 10 milligrams per day and, perhaps, at lower doses in some people, selegiline's selectivity decreases. Other, apparently more specific, MAO B inhibitors are now under development.

The agency did not address selegiline or MAO B inhibitors in the earlier proposal. The agency has not received any reports of an interaction between selegiline and sympathomimetic amines. The agency invites any interested person with knowledge of such an

interaction having occurred to provide that information to the agency.

Because of the relative nature of the selectivity of selegiline, the lack of knowledge about the precise mechanism of the MAOI-sympathomimetic amine drug interaction, and a lack of data on the effects of MAO B inhibitors on the pharmacokinetics and dynamics of sympathomimetic amine drugs, the agency believes there is a need to consider whether the drug interaction precaution statement should be expanded to include MAO B drugs such as selegiline. If the warning statement were to be expanded, it would be revised to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

The agency is inviting specific additional comments on whether, from a public health perspective, it would be appropriate to expand the nasal decongestant drug interaction precaution as indicated above. In order to fully consider this aspect of the proposed labeling, the agency is extending the comment period for this notice of proposed rulemaking an additional 60 days.

Interested persons may, on or before October 5, 1992, submit to the Dockets Management Branch (address above) written comments on the possible expansion of the drug interaction precaution statement proposed for OTC nasal decongestant drug products containing sympathomimetic amines. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18625 Filed 8-5-92; 8:45 a.m.]

BILLING CODE 4160-01-F

21 CFR Part 341

[Docket No. 90N-0420]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC Antitussive Drug Products; Request for Additional Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; request for additional comment; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 5, 1992, the comment period for the notice of proposed rulemaking amending the final monograph for over-the-counter (OTC) antitussive drug products to require a drug interaction precaution statement in the labeling of OTC antitussive (relieves cough) drug products containing dextromethorphan or dextromethorphan hydrobromide (57 FR 27666, June 19, 1992). This action is being taken because the agency would like additional comments on a possible addition to the proposed drug interaction precaution statement. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 5, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 19, 1992 (57 FR 27666), FDA published a notice of proposed rulemaking to amend the final monograph for OTC antitussive drug products to include the following drug interaction precaution statement for OTC antitussive drug products containing dextromethorphan or dextromethorphan hydrobromide: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression or psychiatric or emotional conditions), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product." The closing date for comments on the proposal is August 18, 1992.

In the notice of proposed rulemaking, the agency discussed reports of adverse reactions, including fatalities, following the ingestion of prescription MAOI drugs and OTC drug products containing the ingredient dextromethorphan or dextromethorphan hydrobromide (referred to generally as dextromethorphan). The agency mentioned that there has been a resurgence in the use of MAOI drugs after a period of decline in the 1970's, and there is evidence that MAOI drugs are also being used to treat a wider variety of conditions, such as bulimia, panic disorders, phobic disorders, anxiety, and obsessive compulsive disorder (57 FR 27666 at 27668). However, the use of MAOI drugs in hypertension has essentially ceased.

There are at least two types of monoamine oxidase (MAO) enzymes: the A form and B form. The two forms are characterized by differential substrate profiles, sensitivity to inhibition by clorgeline, and anatomical locations. MAO A preferentially deaminates norepinephrine and serotonin (5-hydroxytryptamine [5-HT]) and is sensitive to inhibition by clorgeline. MAO A is the unique form located in intestinal mucosa and placenta and predominates in peripheral nerve terminals. In contrast, MAO B preferentially deaminates phenethylamine and benzylamine, is inhibited by selegiline but not clorgeline, and is the unique form located in platelets. Both MAO A and MAO B are found in approximately equal proportions in the liver and brain.

The MAOI drugs marketed in the United States for psychiatric indications are nonspecific. They irreversibly inhibit both MAO A and MAO B. Selegiline is a relatively selective MAO B inhibitor indicated for use in Parkinson's disease treatment. At doses greater than 10 milligrams per day and, perhaps, at lower doses in some people, selegiline's selectivity decreases. Other, apparently more specific, MAO B inhibitors are now under development.

The agency did not address selegiline or MAO B inhibitors in the earlier proposal. The agency has not received any reports of an interaction between selegiline and dextromethorphan or dextromethorphan hydrobromide. The agency invites any interested person with knowledge of such an interaction having occurred to provide that information to the agency.

Because of the relative nature of the selectivity of selegiline, the lack of knowledge about the precise mechanism of the MAOI-dextromethorphan interaction, and a lack of data on the effects of MAO B inhibitors on dextromethorphan's pharmacokinetics and dynamics, the agency believes there is a need to consider whether the drug interaction precaution statement should be expanded to include MAO B drugs such as selegiline. If the warning statement were to be expanded, it would be revised to read: "Do not use this product if you are taking a prescription drug containing a monoamine oxidase inhibitor (MAOI) (certain drugs for depression, psychiatric or emotional conditions, or Parkinson's disease), without first consulting your doctor. If you are uncertain whether your prescription drug contains an MAOI, consult a health professional before taking this product."

The agency is inviting specific additional comments on whether, from a public health perspective, it would be appropriate to expand the dextromethorphan drug interaction precaution as indicated above. In order to fully consider this aspect of the proposed labeling, the agency is extending the comment period for this notice of proposed rulemaking an additional 60 days.

Interested persons may, on or before October 5, 1992, submit to the Dockets Management Branch (address above) written comments on the possible expansion of the drug interaction precaution statement proposed for OTC antitussive drug products containing dextromethorphan or dextromethorphan hydrobromide. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18619 Filed 8-5-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5h

[CO-88-90]

RIN 1545-AQ60

Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title 11 Case

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The document contains proposed regulations which provide guidance on determining the value of a loss corporation following an ownership change to which section 382(l)(6) of the Internal Revenue Code of 1986 (the "Code") applies. Under sections 382 and 383, the value of the loss corporation, together with certain other factors, determines the rate at which certain pre-change tax attributes may be used to offset post-change income and tax liability. The proposed regulations are needed to provide guidance to taxpayers concerning compliance with sections 382 and 383.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing scheduled for October 29, 1992, must be received by October 8, 1992. See notice of public hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, Attn: CC:CORP:T:R (CO-88-90), room 5228, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit, (202) 622-8452 (not a toll-free number). Concerning the regulation: Victor Penico of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:CORP:T:R) or telephone (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in this regulation are in §§ 1.382-3(i) and 1.382-3(p) (ii). This information serves as evidence of an election to apply section 382(l)(6) of the Code in lieu of section 382(l)(5) and an election to apply the provisions of the proposed regulations retroactively. It is required by the Internal Revenue Service to assure that the proper amount of carryover attributes are used by a loss corporation following specified types of ownership changes.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

The following estimates are for the § 1.382-3(1) election:

Estimated total reporting burden: 63 hours.

The estimated burden per respondent varies from 5 to 30 minutes, with an estimated average of 15 minutes.

Estimated number of respondents: 250.

Estimated annual frequency of responses: Once.

The following estimates are for the § 1.382-3(p)(ii) election:

Estimated total reporting burden: 750 hours.

The estimated burden per respondent varies from 5 to 30 minutes, with an estimated average of 15 minutes.

Estimated number of respondents: 3000.

Estimated annual frequency of responses: Once.

Background

This document contains a notice of proposed rulemaking that proposes additions to part 1 of title 26 of the Code of Federal Regulations (CFR) under section 382 of the Internal Revenue Code (Code). The proposed regulations provide guidance under sections 382 and 383 relating to the use of pre-change corporate tax attributes following an ownership change to which section 382(l)(6) applies. Sections 382 and 383

were amended by section 621 of the Tax Reform Act of 1986 (the "1986 Act") (Pub. L. 99–154; 100 Stat. 2085). Section 382 was further amended by section 10225 of the Revenue Act of 1987 (Pub. L. 100–203; 101 Stat. 1330–413), sections 1006, 4012, and 5077 of the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") (Pub. L. 100–647; 102 Stat. 3393, 3656, and 3683), and sections 7205, 7304, 7811, 7815, and 7841 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239; 103 Stat. 2335, 2352, 2406, 2414, and 2427). For ownership changes occurring after final regulations are published, the final regulations will supersede related portions of 26 CFR 5h.5, which provide temporary regulations on the time and manner of making various elections under the Tax Reform Act of 1986.

Explanation of Provisions

Overview of Relevant Statutory Provisions

Under section 382(a) of the Code, if an ownership change (within the meaning of section 382(g)(1)) occurs with respect to a loss corporation (within the meaning of section 382(k)(1)), the amount of the loss corporation's taxable income for a post-change year that may be offset by the pre-change losses of the loss corporation cannot exceed the section 382 limitation. Under section 382(b), the section 382 limitation for a post-change year generally is the value of the loss corporation multiplied by the applicable long-term tax-exempt rate published periodically in the Internal Revenue Bulletin. Under section 383, the amount of the loss corporation's tax liability that may be offset by certain pre-change credits is also limited based on the section 382 limitation.

Section 382(e) of the Code generally provides that the value of the loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change. This value is modified when a redemption or other corporate contraction occurs in connection with an ownership change (section 382(e)(2)), when the loss corporation contributions are made with a principal purpose of avoiding or increasing the section 382 limitation (section 382(l)(1)), and when the loss corporation has substantial nonbusiness assets (section 382(l)(4)).

Sections 382(l)(5) and (l)(6) of the Code set forth two special rules for ownership changes of loss corporations under the jurisdiction of a court in a title 11 or similar case.

Section 382(l)(5) generally provides that the section 382 limitation does not apply to a loss corporation that has such an ownership change if the loss corporation's pre-change shareholders and qualified creditors (determined immediately before the ownership change) own at least 50 percent of the value and voting power of the loss corporation's stock immediately after the ownership change and as a result of being pre-change shareholders or qualified creditors. As originally enacted in the 1986 Act, section 382(l)(6) provided that, if section 382(l)(5) did not apply to any reorganization described in section 368(a)(1)(G) or any exchange of debt for stock in a title 11 case, the value of the loss corporation under section 382(e) was the value of the loss corporation immediately after the ownership change. The 1988 Act amended section 382(l)(6) to provide that, in the requisite circumstances, the value of the loss corporation under section 382(e) is increased to reflect the increase (if any) in value of the loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

The Proposed Regulations

General Rules

The purpose of the 1988 Act amendment is to allow an increase in the value of the loss corporation's stock under section 382(l)(6) of the Code to the extent attributable to a conversion of debt into stock, but to deny an increase in such value attributable to the infusion of fresh capital. The relevant question, therefore, in applying section 382(l)(6) to a bankruptcy reorganization is whether an increase in the value of the loss corporation's stock is attributable to the conversion of debt into stock or the infusion of fresh capital.

In a bankruptcy reorganization, debt may be converted into stock through the direct issuance of stock for debt. Alternatively, such a conversion may be effected indirectly. For example, stock may be issued for cash and the cash proceeds distributed to creditors in satisfaction of the debt. In either case, the economic result to the loss corporation is the same: debt is converted into stock. Accordingly, the proposed regulations make the benefits of section 382(l)(6) of the Code available to a loss corporation in either case.

The proposed regulations implement these principles by providing that, when section 382(l)(6) of the Code applies, the value of the loss corporation for section 382 purposes generally is the lesser of (1) the value of the stock of the loss corporation immediately after the ownership change (the "stock value test") and (2) the value of the loss corporation's assets (determined without regard to liabilities) immediately before the ownership change (the "asset value test"). Thus, the proposed regulations generally treat all increases in the value of the loss corporation resulting from a bankruptcy reorganization as attributable to the conversion of debt into stock (the stock value test). However, if the value of the loss corporation's stock exceeds the value that would have resulted if the loss corporation's creditors had exchanged all of their debt for stock, the excess cannot be from the direct or indirect conversion of debt into stock. In such circumstances, the value of the loss corporation is limited to a value which approximates the value of the loss corporation's stock if the loss corporation's creditors had exchanged all of their debt for stock (the asset value test).

Interaction With the Stock-for-Debt Exception

The proposed regulations apply solely for purposes of section 382(l)(6) of the Code and do not apply for purposes of applying the common law stock-for-debt exception (that a debtor does not realize income from discharge of indebtedness when it issues stock in satisfaction of indebtedness). Accordingly, the proposed regulations do not alter the principle that the stock-for-debt exception does not apply when an insolvent debtor or a debtor in a title 11 case issues its stock for cash and uses that cash to satisfy its indebtedness for less than the amount owing on such indebtedness. See Rev. Rule. 92–52, 1992–27 I.R.B. 6 (stock-for-debt exchange is not aggregated with another exchange not involving stock to apply the stock-for-debt exception to the other exchange).

Interaction With Other Code Provisions Modifying the Value of the Loss Corporation

Section 382(l)(6) of the Code does not supersede the rules of sections 382(e)(2) (relating to redemptions or other corporate contractions), 382(e)(3) (relating to foreign corporations), 382(l)(1) (relating to capital contributions), and 382 (l)(4) (relating to substantial nonbusiness assets). Thus, as a general matter, the proposed regulations provide that those rules continue to apply when section 382(l)(6) applies to an ownership change of a loss corporation. The proposed regulations, however, coordinate the application of those rules with the general section 382(l)(6) rules described above so that

they operate consistently with each other.

To coordinate the application of section 382(e)(2) of the Code, the proposed regulations provide that the amount of any post-change redemption or corporate contraction to which section 382(e)(2) applies reduces the amount determined under the stock value test. The proposed regulations do not provide a similar reduction for the amount determined under the asset value test.

To coordinate the application of section 382(e)(3) of the Code, the proposed regulations provide that, in determining the value of the stock of any loss corporation that is a foreign corporation, only items connected with the conduct of a trade or business in the United States are taken into account. Similarly, in determining the value of the pre-change assets of any loss corporation that is a foreign corporation, only assets connected with the conduct of a trade or business in the United States are taken into account.

To coordinate the application of section 382(l)(1) of the Code, the proposed regulations provide that, when the loss corporation receives a capital contribution as part of a plan a principal purpose of which is to avoid or increase the section 382 limitation, the amount determined under the asset value test is reduced by the amount of such capital contribution. For this purpose, the proposed regulations treat the receipt of cash or property by the loss corporation in exchange for the issuance of indebtedness as a capital contribution if it is part of a plan a principal purpose of which is to increase the value of the loss corporation under the rules of section 382(l)(6). No reduction in the amount determined under the stock value test is required on account of these capital contributions.

To coordinate the application of section 382(l)(4) of the Code, the proposed regulations provide that, when the loss corporation has substantial nonbusiness assets, the amount determined under the stock value test is reduced by the excess of the fair market value of nonbusiness assets over the nonbusiness assets' share of indebtedness. The proposed regulations provide that in these circumstances the amount determined under the asset value test is reduced by the fair market value of the nonbusiness assets.

Anti-abuse Rule for Stock not Subject to Entrepreneurial Risks of Corporate Operations

The proposed regulations contain an anti-abuse rule designed to prevent deliberate artificial increases in the value of the loss corporation attributable to stock that is not subject to risks of corporate business operations. Under the rule, the amount determined under the stock value test is reduced by the value of stock that is issued with a principal purpose of increasing the section 382 limitation without subjecting the investment to the entrepreneurial risks of corporate business operations.

Special Limitation on Stock Value

The proposed regulations provide that the value of stock of a loss corporation issued in connection with an ownership change in a title 11 or similar case cannot exceed the amount of cash plus the value of any property (including indebtedness of the loss corporation) received by the loss corporation in consideration for the issuance of that stock. The rule is designed to avoid valuation disputes that otherwise might arise when taxpayers take the position that the "intrinsic" value of the stock is more than the amount paid for it (for example, because the stock trades at a higher price at some later date when trading stabilizes).

Second Ownership Change Within Two Years

Except as provided in regulations, section 382(l)(1) of the Code removes any capital contributions made within the two-year period immediately preceding an ownership change of a loss corporation from the value of that corporation for purposes of determining the section 392 limitation. If the value of a loss corporation in an ownership change was determined under section 382(l)(6) and a second ownership change occurred within the two-year period immediately following the first ownership change, section 382(l)(1) would reduce the value of the loss corporation with respect to the second ownership change by the amount of debt converted into stock that was previously taken into account under section 382(l)(6) with respect to the first ownership change. This could reduce the section 382 limitation with respect to the second ownership change as applied even to losses incurred or accrued prior to the first ownership change, a result that would frustrate the purposes of section 382(l)(6). Accordingly, the proposed regulations provide that section 382(l)(1) does not apply to any increase in value of the loss corporation previously taken into account under section 382(l)(6).

Election Under Section 382(l)(5)(H)

Section 382(l)(5)(H) of the Code provides that a loss corporation may elect not to have the provisions of section 382(l)(5) apply. The proposed regulations provide that the election is irrevocable and require that the election be made on the return of the loss corporation for the taxable year including or ending with the change date. These rules allow considerable time for a loss corporation that qualifies under section 382(l)(5) to determine that it wishes to forego the benefits of that section. In addition, these rules help prevent loss corporations from using the election to avoid the effect of section 382(l)(5)(D) (which imposes a section 382 limitation of zero if an ownership change occurs in the two-year period immediately following an ownership change to which section 382(l)(5) applies), either by making the election after a second ownership change or by making a protective election that is revoked after the expiration of the two-year period.

Effective Dates

The proposed regulations generally apply to any ownership change occurring after the date final regulations are published in the **Federal Register**. However, a loss corporation may elect to apply the rules in the final regulations in their entirety to any ownership change occurring on or before that date including ownership changes to which section 382(l)(5) of the Code applied.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request To Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Written comments, requests to appear, and

outlines of oral comments to be presented at a public hearing scheduled for October 29, 1992, must be received by October 8, 1992. See notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Victor Penico, Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.381(a)–1 through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5h

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR, chapter I, parts 1 and 5h are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part and is amended by adding the citation for § 1.382–3(n)(2) to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.382–3 also issued under 26 U.S.C. 382(m). Section 1.382–3(n)(2) also issued under 26 U.S.C. 382(l)(1)(B). * * *

Par. 2. Section 1.382–3 is amended by adding paragraphs (i) through (l), (m)(2), (n) and (p) to read as follows:

§ 1.382–3 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

* * * * *

(i) *Election not to apply section 382(l)(5).* Under section 382(l)(5)(H), a loss corporation may elect not to have the provisions of section 382(l)(5) apply to an ownership change in a title 11 or similar case. This election is irrevocable and must be made by the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date. The election is to be made by attaching the following statement to the tax return of the loss corporation for that taxable year: This is an election under § 1.382–3(i) not to apply the provisions of section 382(l)(5) to the ownership change occurring pursuant to a plan of reorganization confirmed by the court on [insert confirmation date]."

(j) *Value of the loss corporation in an ownership change to which section 382(l)(6) applies.* Section 382(l)(6) applies to any ownership change occurring pursuant to a plant of reorganization in a title 11 or similar case to which section 382(l)(5) does not apply. In such case, the value of the loss corporation under section 382(e) is equal to the lesser of—

(1) The value of the stock of the loss corporation immediately after the ownership change (determined under the rules of paragraph (k) of this section); or

(2) The value of this loss corporation's pre-change assets (determined under the rules of paragraph (l) of this section).

(k) *Rules for determining the value of the stock of the loss corporation*—(1) *Certain ownership interests treated as stock.* For purposes of paragraph (j)(1) of this section—

(i) Stock includes stock described in section 1504(a)(4) and any stock that is not treated as stock under § 1.382–2T(f)(18)(ii) for purposes of determining whether a loss corporation has an ownership change; and

(ii) Stock does not include an ownership interest that is treated as stock under § 1.382–2T(f)(18)(iii) for purposes of determining whether a loss corporation has an ownership change.

(2) *Coordination with section 382(e)(2).* In the case of a redemption or other corporate contraction occurring after and in connection with the ownership change, the value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced under section 382(e)(2).

(3) *Coordination with section 382(e)(3).* If the loss corporation is a foreign corporation, in determining the value of the stock under paragraph (j)(1) of this section, only items treated as connected with the conduct of a trade or business in the United States are taken into account.

(4) *Coordination with section 382(l)(1).* Section 382(l)(1) does not apply in determining the value of the stock of the loss corporation under paragraph (j)(1) of this section.

(5) *Coordination with section 382(l)(4).* If, immediately after the ownership change, the loss corporation has substantial nonbusiness assets (as determined under section 382(l)(4)(B) taking into account only those assets the loss corporation held immediately before the ownership change), the value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced by the excess of the value of such nonbusiness assets over those assets' share of the loss corporation's indebtedness (determined under section 382(l)(4)(D) taking into account the loss corporation's assets and liabilities immediately after the ownership change).

(6) *Special rule for stock not subject to the risk of corporate business operations*—(i) *In general.* The value of the stock of the loss corporation under paragraph (j)(1) of this section is reduced by the value of stock that is issued with a principal purpose of increasing the section 382 limitation without subjecting the investment to the entrepreneurial risks of corporate business operations.

(ii) *Coordination of this paragraph (k)(6) and other rules affecting value.* If the value of the loss corporation is modified under another rule affecting value, appropriate adjustments are to be made so that such modification is not duplicated under this paragraph (k)(6).

(7) *Limitation on value of stock.* For purposes of paragraph (j)(1) of this section, the value of stock of the loss corporation issued in connection with the ownership change cannot exceed the cash and the value of any property (including indebtedness of the loss corporation) received by the loss corporation in consideration for the issuance of that stock.

(l) *Rules for determining the value of the loss corporation's pre-change assets*—(1) *In general.* Except as otherwise provided in this paragraph (l), the value of the loss corporation's pre-change assets is the value of its assets (determined without regard to liabilities) immediately before the ownership change.

(2) *Coordination with section 382(e)(2).* Section 382(e)(2) does not apply in determining the value of the pre-change assets of the loss corporation under paragraph (j)(2) of this section.

(3) *Coordination with section 382(e)(3).* If the loss corporation is a foreign corporation, in determining the value of the pre-change assets under paragraph (j)(2) of this section, only assets treated as connected with the conduct of a trade or business in the United States are taken into account.

(4) *Coordination with section 382(l)(1).* The value of the pre-change assets of the loss corporation under paragraph (j)(2) of this section is reduced by the amount of any capital contribution to which section 382(l)(1) applies. For purposes of applying this paragraph (l)(4), the receipt of cash or property by the loss corporation in exchange for the

issuance of indebtedness is considered a capital contribution if it is part of a plan a principal purpose of which is to increase the value of the loss corporation under paragraph (j) of this section.

(5) *Coordination with section 382(l)(4).* If, immediately after the ownership change, the loss corporation has substantial nonbusiness assets (as determined under section 382(l)(4)(B) taking into account only those assets the loss corporation held immediately before the ownership change), the value of the loss corporation's pre-change assets is reduced by the value of the nonbusiness assets.

(m) *Continuity of business requirement* * * *

(2) *Under section 382(l)(6).* If section 382(l)(6) applies to an ownership change of a loss corporation, section 382(c) applies to the ownership change.

(n) *Ownership change in a title 11 or similar case succeeded by another ownership change within two years*—(1) *Section 382(l)(5) applies to the first ownership change.* If section 382(l)(5) applies to an ownership change and, within the two-year period immediately following such ownership change, a second ownership change occurs, section 382(l)(5) cannot apply to the second ownership change and the section 382(a) limitation with respect to the second ownership change is zero.

(2) *Section 382(l)(6) applies to the first ownership change.* If the value of a loss corporation in an ownership change was determined under section 382(l)(6) and a second ownership change occurs within the two-year period immediately following the first ownership change, the value of the loss corporation under section 382(e) with respect to the second ownership change is not reduced under section 382(l)(1) for any increase in value of the loss corporation previously taken into account under section 382(l)(6) with respect to the first ownership change.

* * * * *

(p) *Effective date for rules relating to section 382(l)(6)*—(1) *In general.* Paragraphs (i), (j), (k), (l), (m)(2), and (n)(2) of this section apply to any ownership change occurring after [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].

(2) *Ownership change to which section 382(l)(6) applies occurring on or before* [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. In the case of an ownership change occurring on or before [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER], the loss corporation may elect to apply the rules of paragraphs (j), (k), (l), (m)(2), and (n)(2) of § 1.382–3 in their entirety. The election must be made by the later of the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date or the date that the loss corporation files its first tax return after [INSERT DATE THAT IS 60 DAYS AFTER FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].

The election is made by attaching the following statement to the return: "This is an election to apply §§ 1.382–3 (j), (k), (l), (m)(2), and (n)(2) of the income tax regulations to the ownership change occurring pursuant to a plan of reorganization confirmed by the court on [INSERT CONFIRMATION DATE]." In connection with making this election, on the same return the loss corporation may also elect not to apply section 382(l)(5) to the ownership under paragraph (i) of this section (if the loss corporation has not already done so pursuant to § 5h.5(a) (2) and (3) of this chapter). If, under the applicable statute of limitations, the loss corporation may file amended returns for the year of the ownership change and all subsequent years (an "open year"), an electing loss corporation must file an amended return for each prior affected year to reflect the elections. If, under the applicable statute of limitations, the loss corporation may not file an amended return for the year of the ownership change or any subsequent year (a "closed year"), an electing loss corporation must file an amended return for each affected open year to reflect the elections and the section 382 limitation resulting from the ownership change must be appropriately adjusted for the earliest open year (or years) to reflect the difference between the amount of pre-change losses actually used in closed years and the amount of pre-change losses that would have been used in such years applying the rules of paragraphs (j), (k), (l), (m)(2), (n)(2) of this section to the ownership change.

PART 5h—TEMPORARY REGULATIONS—ELECTIONS UNDER VARIOUS PUBLIC LAWS

Par. 3. The authority citation for part 5h continues to read in part and is amended by removing "382(l)(5)(H)," in the citation for § 5h.5 to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 4. Effective on [INSERT DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER], § 5h.5 is amended as follows:

1. The table in paragraph (a)(1) is amended by removing the entry for "621(a)".

2. The table in paragraph (a)(4)(ii) is amended by removing the entry for "621(a)".

2. The table in paragraph (a)(4)(ii) is amended by removing the entry for "621(a)".

George O'Hanlon,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–18322 Filed 8–5–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 5h

[CO–88–90]

RIN 1545–AQ60

Limitation on Net Operating Loss Carryfowards and Certain Built-In Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title II Case; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations which provide guidance on determining the value of a loss corporation following an ownership change to which section 382(1)(6) of the Internal Revenue Code of 1986 applies.

DATES: The public hearing will be held on Thursday, October 29, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, October 8, 1992.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO–88–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–8452 or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 382 of the Internal Revenue Code. The proposed

regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, October 8, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-18474 Filed 8-5-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD14 92-05]

RIN 2115

Safety Zone; Pacific Missile Range Facility (PMRF), Barking Sands, Island of Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone in the waters near the Pacific Missile Range Facility (PMRF), Barking Sands, Kauai, Hawaii. The rulemaking is needed to protect the public and property from the hazards related to the launching of Strategic Target System vehicles at PMRF. The safety zone is intended to ensure that all persons and vessels remain clear of the down-range area during launches of Strategic Target System vehicles.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Comments may be mailed to Coast Guard Marine Safety Office, Honolulu, 433 Ala Moana Boulevard, Honolulu, Hawaii, 96813-4909, or may be delivered to the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is (808) 541-2068.

The Coast Guard Marine Safety Office, Honolulu, Hawaii maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the foregoing address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) A. C. Curry, Port Safety and Security Branch, Marine Safety Office, Honolulu, Hawaii, (808) 541-2068.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD14 92-05) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Captain of the Port, Honolulu, Hawaii, at the address under "**ADDRESSES.**" If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Lieutenant (junior grade) A.C. Curry, Project Officer, Marine Safety Office Honolulu, and Lieutenant Commander H. A. Black, Project Attorney, Fourteenth Coast Guard District Legal Office.

Background and Purpose

This safety zone has been requested by the PMRF and the U.S. Army Strategic Defense Command for the launching of Strategic Target System (STARS) vehicles from PMRF on the island of Kauai, Hawaii. The Strategic Defense Command intends to launch the first of its STARS vehicles in late August, 1992. The program will involve approximately four launches per year over a ten year period. The launches involve rocket operations, the potential hazards to any vessels or persons along the launch ground path due to rocket blast and the possibility of falling debris.

Implementation of a permanent safety zone will enhance safe navigation off the Island of Kauai, Hawaii, by defining an established, consistent area that must be kept clear during STARS launches. The permanently defined area will eliminate the need to create quarterly safety zones and will provide clear, consistent notice to all mariners of the affected danger areas.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of information. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under "**ADDRESSES**."

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new section 165.1406 is added to read as follows:

§ 165.1406 Safety Zone: Pacific Missile Range Facility (PMRF), Barking Sands, Island of Kauai, Hawaii.

(a) *Location.* The following area is established as a safety zone during launch operations at PMRF, Kauai, Hawaii: The waters bounded by the following coordinates: (22°01.2'N, 159°47.3'W), (22°01.2'N, 159°50.7'W), (22°06.3'N, 159°50.7'W), (22°06.3'N,159°44.8'W).

(b) *Activitation.* The above safety zone will be activated during launch operations at PMRF, Kauai, Hawaii. The Coast Guard will provide notice that the safety zone will be activated through published and broadcast local notice to mariners prior to scheduled launch dates.

(c) *Regulation.* The area described in paragraph (a) of this section will be closed to all vessels and persons, except those vessels and persons authorized by the Commander, Fourteenth Coast Guard District, or the Captain of the Port (COTP) Honolulu, Hawaii, whenever Strategic Target System (STARS) vehicles are to be launched by the United States Government from the PMRF, Barking Sands, Kauai, Hawaii.

(d) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: July 21, 1992.

Richard C. Vlasin,

Captain, U.S. Coast Guard Captain of the Port, Honolulu, Hawaii.

[FR Doc. 92–18691 Filed 8–5–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 300 and 308

[Docket No. 115CCR; FRL–3825–4]

Recovery of Costs for CERCLA Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is authorized to recover from responsible parties under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the costs it has incurred for response actions taken for releases or threats of releases of hazardous substances. This proposal clarifies for purposes of response actions taken by EPA: What costs are recoverable, including direct costs, indirect costs, and interest; how these costs are determined; what information will support EPA's cost recovery efforts by describing the response action taken and providing an accurate accounting of all costs incurred; and, certain terms in the CERCLA statute of limitations for cost recovery actions.

The proposed regulation would amend certain provisions and establish new regulations on CERCLA Cost Recovery. The proposed regulation is intended to clarify certain aspects of the cost recovery process and thereby avoid unnecessary costs and delays involved in that process whether they occur during settlement negotiations or administrative or judicial proceedings.

DATES: Comments on this proposal must be received on or before October 5, 1992.

ADDRESSES: Interested persons may participate in this rulemaking by submitting comments to Francis J. Biros, CERCLA Enforcement Division (OS–510W), Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

DOCKET: Copies of materials relevant to this rulemaking are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 115CCR). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding federal holidays. Appointments to review the docket may be made by calling 202–260–3046.

FOR FURTHER INFORMATION CONTACT: Sally Martiny, U.S. Environmental Protection Agency (OS–510W), at 703–308–8454, or the RCRA/CERCLA Hotline 1–800–424–9346 (703–920–9810 in the Washington, DC metro area).

SUPPLEMENTARY INFORMATION:

The preamble is organized as follows:

I. Introduction
  A. Authority
  B. Background
  C. Statutory Provisions
II. Issues Addressed by the Proposed Rule
  A. Costs Recoverable Under CERCLA
  B. Determining Costs
  1. Direct Costs
  2. Indirect Costs
  3. Interest
  C. Documenting Response Actions and Costs
  D. CERCLA Statute of Limitations
  E. Public Comment
III. Section-by-Section Summary
IV. Summary of Supporting Analyses

I. Introduction

A. Authority

Today's proposed rule will amend 40 CFR part 300 and establish a new 40 CFR part 308, CERCLA Cost Recovery. The authority to amend 40 CFR part 300 is cited in this regulation. The authority to issue 40 CFR part 308 is found in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), (42 U.S.C. 9601 *et seq.*), referred to as CERCLA. Section 115 of CERCLA authorizes the President to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of title I of CERCLA. These duties and powers have been delegated to the U.S. Environmental Protection Agency (EPA) pursuant to Executive Order 12580 (52 FR 2923).

B. Background

CERCLA gives the United States broad authority to respond directly to releases or threats of releases of hazardous substances into the environment or releases or threats of releases into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. In addition to authorizing direct federal response, CERCLA authorizes the federal government to compel responsible parties to take response actions at their own expense. CERCLA establishes a Trust Fund, known as the Hazardous Substance Superfund (Superfund), to pay for federal government response actions. It is financed primarily with a tax on crude

oil and certain chemicals. Executive Order 12580 delegates to EPA primary responsibility for implementing the Superfund program.

In 1980, CERCLA established a five-year, $1.6 billion Trust Fund. In 1986, amendments to CERCLA reauthorized the Superfund program for five years and increased the size of the Trust Fund by $8.5 billion. In 1990, Congress reauthorized the Superfund program for three additional years to 1994 and extended the taxing provisions for four years to 1995. This extension will add $5.1 billion to the Trust Fund. The Congress has appropriated, and EPA has obligated approximately $8.5 billion by the end of fiscal year (FY) 1991 in the implementation of the Superfund program. Disbursements at the end of FY 1991 were approximately $6.0 billion.

CERCLA authorizes the federal government, states, and Indian tribes, as well as private parties, to recover their response action costs from those responsible for releases or threats of releases of hazardous substances. CERCLA's legislative history reflects Congress' concern that the objectives of the statute would not be met without a highly successful enforcement program achieving privately funded cleanups and recovering government response costs (see e.g., 132 Cong. Rec. S14903, remarks of Sen. Stafford (October 3, 1986)). Both avenues are needed because EPA, by itself, could not secure the financial and human resources necessary to address the problems associated with the nation's uncontrolled hazardous waste sites.

This proposed rule focuses on the cost recovery aspect of CERCLA. Cost recovery actions under CERCLA potentially involve billions of dollars and complex litigation. The time and costs incurred by the United States and responsible parties in preparing for, negotiating, and litigating these cases have been and will continue to be substantial.

This proposed rule is designed to reduce some of that time and cost burden, by clarifying some of the major issues related to cost recovery.

C. Statutory Provisions

Section 107(a) of CERCLA authorizes the United States to recover, "all costs of removal or remedial action incurred by the United States * * * not inconsistent with the national contingency plan." Pursuant to section 107(a), the following parties are liable:

> (1) the owner and operator of a vessel or a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person,
> * * *

These persons are referred to as responsible parties. Courts have interpreted CERCLA's liability standard to provide for joint and several, as well as strict, liability for these responsible parties.

Section 104 of CERCLA authorizes EPA to take a "removal" or "remedial" action or any other response action consistent with the national contingency plan, which EPA deems necessary to protect public health and the environment, whenever there is a release or a substantial threat of release of a hazardous substance into the environment, or whenever there is a release or substantial threat of release of any pollutant or contaminant into the environment that may present an imminent and substantial danger to public health or welfare. These actions are authorized to be taken to protect the public health, or welfare, or the environment.

Section 101(23) of CERCLA defines "remove" or "removal" to include short-term responses to clean up or remove releases or threats of releases of hazardous substances from the environment. These so-called "traditional" physical removals may include installing security fencing, removing and disposing drums or spills of chemicals or containing and treating contaminated soils or sludges on- or off-site. In order for EPA to undertake these removal actions and pay for them out of the Superfund, the action must cost less than $2 million and last less than one year, unless a waiver is granted pursuant to section 104(c)(1) of CERCLA. This statutory limitation does not apply to removal actions taken by responsible parties.

In addition to these "traditional" physical removals, CERCLA's definition of removal also includes certain other activities, including studies and investigations of releases and threats of releases to determine their nature and extent, and other actions taken to plan and direct response actions pursuant to section 104(b) of CERCLA. Removal activities prior to a remedial action refer to preliminary assessments (PAs), site investigations (SIs), remedial investigations/feasibility studies (RI/FSs), a record of decision (ROD) that describes the remedy selected for the site, and remedial design (RD).

Section 101(24) of CERCLA defines "remedy" or "remedial" generally to include long-term efforts to mitigate or permanently remedy problems at a site. They may be taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate or otherwise cause substantial danger to present or future public health or welfare or the environment. There is no statutory dollar limit to these response actions. According to the national contingency plan, 40 CFR part 300, EPA will not expend Superfund monies for a remedial action at a site unless it is on the NPL. This NPL-limitation does not apply to remedial actions undertaken by responsible parties or to removal actions.

CERCLA and the national contingency plan include within the definitions of removal and remedial actions related enforcement activities such as cost recovery activities under section 107(a). Both removals and remedials are considered to be "response" actions. "Response" actions are defined in section 101(25) of CERCLA as "remove, removal, remedy, and remedial action, all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto."

EPA ranks hazardous sites according to the severity of the problem at the site and places those deserving priority attention on its National Priorities List (NPL). Information upon which a site's ranking is based is collected as part of the PA and SI. As of July 29, 1991, the NPL included 1,186 sites, including 116 federal facility sites, with an additional 23 sites proposed for inclusion on the NPL. Final and proposed sites now total 1211. 56 FR 35840 (1991).

II. Issues Addressed by the Proposed Rule

A. Costs Recoverable Under CERCLA

CERCLA section 107(a) provides authority to federal agencies to bring an action against responsible parties for recovery of all costs incurred for removal or remedial action not inconsistent with the national contingency plan. The proposed rule would define the scope of costs that are recoverable by EPA in enforcement actions filed under section 107(a). First, the proposed rule in § 308.20, would

codify the liability standard in CERCLA section 107(a)(4)(A) which states that responsible parties are liable for federal costs of response actions incurred not inconsistent with the national contingency plan. Second, in § 308.25, the rule would make clear that "all costs of removal of remedial action incurred," referenced in section 107(a), include the categories of direct costs, indirect costs, and interest. These costs are incurred by EPA in performing all the Superfund response activities authorized by CERCLA and governed by the national contingency plan. Direct costs are expenditures which are made for site-specific response action and which are identified in individual site accounts in EPA's financial management system. Indirect costs are operation and management costs, comparable to overhead, which support site response actions and the Superfund program in general, but which cannot be directly accounted for on an individual site basis. Interest on federal expenditures is specifically recoverable under section 107(a) of CERCLA. As discussed below in section B. Determining Costs, of this preamble, the proposed rule would further define and describe the method for determining direct costs, indirect costs, and interest.

The proposed rule would clarify two significant and related issues concerning the costs recoverable by the United States under section 107(a): First, that indirect costs are recoverable; and second, that defendants in section 107(a) cost recovery actions, in addressing the issue of whether costs are incurred in a manner not inconsistent with the national contingency plan, cannot avoid payment of United States' costs on the grounds that such costs are "unnecessary" or "unreasonable." The proposed rule is consistent with and supported by current federal case law addressing CERCLA issues in cost recovery actions.

The clear weight of federal court case law supports recovery of the United States' indirect costs. See, for example, *United States* v. *Ottati & Goss*, 900 F.2d 429 (1st Cir. April 4, 1990); *United States* v. *R.W. Meyer, Inc.*, 889 F.2d 1497 (6th Cir. November 20, 1989); *United States* v. *Bell Petroleum Services, Inc.*, 734 F. Supp. 771 (W.D. Tex. March 8, 1990); and *United States* v. *Northeastern Pharmaceutical and Chemical Co.* ("*NEPACCO*"), 579 F. Supp. 823, 850 (W.D. Mo. 1984), *aff'd in part and rev'd in part on other grounds*, 810 F.2d 726 (8th Cir. 1986), *cert. den.*, 108 S. Ct. 146 (1987). The United States is entitled to recover its proportionate overhead expenses, which comprise a large portion of Superfund expenditures, this is clearly consistent with Congressional intent, reflected in section 107(a), that the United States recover "all costs of removal or remedial action incurred." Recovery of indirect costs in recovery actions is also consistent with standard business practices in the private sector with respect to allocation of costs.

Case law has also established that responsible parties in section 107(a) actions cannot avoid payment of costs on the grounds that such costs are "unnecessary" or "unreasonable." Section 107(a)(4)(A) does not qualify the term "all costs." Attempts by responsible parties to impose additional restrictions on the United States' right to recover costs, such as arguments that the United States cannot recover "unnecessary," "unreasonable," or "excessive" costs, or the costs of "inefficient response actions, have been rejected by the courts, which have concluded that the express terms of the statute preclude such limitations. See *NEPACCO*, 579 F. Supp. at 851, 810 F.2d at 748.

This interpretation of CERCLA is consistent with Congress' intent that private parties take the lead in cleaning up Superfund sites. As Congress envisioned the process, responsible parties would be encouraged by the standards of strict, joint and several liability, and the United States' right under section 107 to recover "every dollar" expended at sites, to undertake cleanups voluntarily. 132 Cong. Rec. S14935, remarks of Sen. Durenberger (October 3, 1986). Thus, more resources would be "spent on necessary and effective cleanup of Superfund sites, and less on convoluted litigation * * *" 132 Cong. Rec. S14922, remarks of Sen. Simpson (October 3, 1986). It was Congress' intent that responsible parties have an incentive to conduct voluntary cleanups, rather than wait perhaps years to conduct lengthy, resource-intensive litigation over the wisdom shown by EPA personnel when implementing valid Superfund response actions.

Case law has clarified the burden of proof which the United States must meet to recover its actual costs in cost recovery actions, and the burden which defendants must meet once the United States has established in *prima facie* case. See *NEPACCO*, 579 F. Supp. at 850, 810 F. 2d at 747. The United States must prove that the defendants in a section 107 action are liable. Then, the United States must demonstrate that it conducted a removal or remedial action and establish the costs which were incurred for that action.

When the United States has met its burden of proof under section 107(a), the burden shifts to the defendants to show that costs were incurred inconsistent with the national contingency plan. If defendants fail to meet this burden of proof, the United States is entitled to recover all of its response costs.

The proposed regulation does not address the issue of recoverability of costs in the circumstance where a court rules that the United States, in conducting a removal or remedial action, failed to comply with a requirement of the national contingency plan. EPA solicits public comment on whether the regulation should include further clarification of the CERCLA section 107(a)(4)(A) liability standard in this respect. EPA is considering adopting the standard developed by the court in *O'Neil* v. *Picillo*, 682 F. Supp. 706 (D.R.I. 1988), *aff'd* 883 F.2d 176 (1st Cir. 1989). The clarification would state that where the Agency does not materially comply with the applicable requirements of the national contingency plan, and as a result, incurs costs demonstrably in excess of those costs that would have been incurred in the absence of such material noncompliance with the national contingency plan, recoverable costs (i.e. the "costs of removal or remedial action incurred by the United States * * * not inconsistent with the national contingency plan," 42 U.S.C. 9607(a)(4)(A)), would not include the demonstrably excess costs incurred as a direct result of the noncompliance with the national contingency plan. The clarification would further state that where material noncompliance with the national contingency plan does not result in demonstrably excess costs, all costs of response action are recoverable costs.

B. Determining Costs

EPA incurs costs, including direct and indirect costs, in taking response actions. Other federal agencies, states, and Indian tribes also may incur costs for response actions. As mentioned previously, these entities have independent authority under CERCLA section 107(a) to recover their response action expenditures. However, while states or other federal agencies, as well as EPA, may be the lead agency for response actions as provided in the national contingency plan, EPA is generally the lead agency for recovery under CERCLA section 107 of most response action expenditures. Accordingly, the provisions of this proposed rule apply to cost recovery actions initiated by EPA and are not

binding on other federal agencies, states, or Indian tribes.

States receiving funds under Superfund cooperative agreements, however, are required to comply with the uniform administrative requirements for grants and cooperative agreements to states and local governments at 40 CFR part 31, and the administrative requirements specifically related to cooperative agreements and state contracts for Superfund response actions at subpart O of 40 CFR part 35. These regulations include requirements for the completion and maintenance of certain documentation and information necessary for the administration of grants and cooperative agreements.

With respect to federal agencies, where EPA incurs costs by reimbursing other federal agencies for work performed under interagency agreements, and plans to include these costs as part of a cost recovery action, EPA will request, pursuant to terms of interagency agreements, that such other federal agencies maintain documentation and information regarding response actions and costs consistent with the documentation and information provisions in this proposed rule.

1. Direct Costs

The proposed rule would define direct costs as disbursements (also known as "outlays" or "expenditures") recorded in individual site accounts in EPA's financial management system. The terms "disbursement" and "financial management system" are used in this rule in accordance with standard and established federal government practice discussed below.

Direct costs are expenditures which are made for the execution of a site response action and are identified in the individual site accounts in the Agency's financial management system. They include EPA employee salaries and benefits, travel costs, EPA payments for goods and services furnished by organizations other than EPA under contracts (with private companies), interagency agreements (with other federal agencies), cooperative agreements (with states pursuant to section 104(d) of CERCLA), grants to groups of individuals (Technical Assistance Grants), preauthorized response claims made by responsible parties performing response actions under a "mixed funding" settlement agreement pursuant to section 122 of CERCLA, reimbursements made pursuant to section 106(b) of CERCLA, and indemnification claims under section 119 of CERCLA. They include any other site-specific response costs, including oversight costs, incurred by the Agency under authority of CERCLA and the national contingency plan.

The Agency's direct costs include all costs of other organizations performing site-specific response actions under Superfund contracts, cooperative agreements, interagency agreements, and grants. For example, in contracts with private companies performing site-specific work, the contractors' overhead and profit, along with direct labor and material costs, is part of the costs to EPA of those contracts. Overhead and profit is included in company invoices for site work at those sites and is charged in EPA's financial management system as a direct cost to EPA. Similarly, EPA's payments to federal agencies and states through interagency agreements and cooperative agreements, respectively, for site-specific work includes their indirect costs.

The federal government's recognition and recording of disbursements is in accordance with Office of Management and Budget (OMB) Circular A-34 "Instructions on Budget Execution" and title 2 of the General Accounting Office (GAO) Policies and Procedures Manual for Guidance of Federal Agencies. Title 2 was promulgated pursuant to 31 U.S.C. 3511, which grants the Comptroller General of the United States authority to prescribe accounting principles, standards, and requirements for each executive agency.

EPA's financial management system consists of the total of: (1) Agency financial systems, both manual and automated, for planning, budget formulation and execution, program and administrative accounting, and audit; and, (2) all other systems for recording and classifying financial data and reporting financial information, including purchasing, property, inventory, etc. This description is based on the definition of financial management system from OMB Circular A-127 "Financial Management Systems."

EPA's accounting policies and procedures are based on the laws, regulations, and policies cited above and other applicable authorities discussed below. In recording direct costs in the individual site accounts, EPA employs a variety of systems, methods, and techniques. As required by title 7, chapter 6 of GAO's Policies and Procedures Manual for Guidance of Federal Agencies, EPA reviews and approves basic payment documents before any disbursements are made. Superfund direct costs are based on records such as timecards, timesheets, vouchers, invoices and electronic transfers. In addition, some direct costs are recorded through journal entries and journal voucher transfers from other accounts.

EPA's financial management system incorporates numerous accounting and internal controls in accordance with 31 U.S.C. 3512. These controls ensure that obligations and costs comply with applicable law and that the revenues and expenditures applicable to Agency operations are recorded and accounted for properly. The controls also ensure that accounts and reliable financial and statistical reports are prepared.

The foregoing discussion has focused on EPA's accounting of costs. Under 31 U.S.C. 3512, other federal agencies are subject to the same controls and regulations as EPA and consequently follow similar, though not necessarily identical, internal procedures implementing these controls and regulations. As explained above, EPA's direct costs include payments to other federal agencies pursuant to interagency agreements. Under Agency policies and procedures, EPA does not account for these payments as direct costs until the other federal agency has incurred the costs and submitted an invoice for reimbursement to EPA. In turn, other federal agencies are subject to the same controls and regulations regarding the recording of disbursements discussed above, as apply to EPA. Both EPA and government-wide policies require recipient federal agencies to maintain adequate internal controls and support for all charges to interagency accounts. Consequently, all payments to other federal agencies have been subject to extensive review and control by the time the charges are recorded as direct costs in EPA's financial management systems.

2. Indirect Costs

The proposed rule would define indirect costs as disbursements from the Superfund for the operation and management of the Superfund program that are not direct costs. It also would provide a methodology for determining the indirect cost pool and indirect cost rate. Since the purpose of appropriations from the Superfund is to support CERCLA goals and objectives, any charge to the Trust Fund supports the clean-up process at Superfund sites. Accordingly, EPA believes that any cost to Superfund not charged to a specific site should be included in the indirect cost pool. This definition, together with that for direct costs, would make all disbursements from the Superfund potentially eligible for cost recovery.

Indirect costs are support costs, comparable to a private company's

overhead, which support site response actions, or the Superfund program in general, but which cannot be directly accounted for on an individual site basis. EPA's indirect costs may include payments for non-site-specific activities under contracts, grants, and interagency agreements. Indirect costs include:

1. Administrative management (e.g., facilities, personnel, finance budget, procurement, and other support services);

2. Enforcement, legal, and audit services (e.g., non-site-specific costs from EPA's Offices of General and Regional Counsels, Inspector General, and Enforcement);

3. Program management (all non-site-specific costs for EPA's program offices and 10 regional hazardous waste management divisions for such functions as management, and policy direction and formulation);

4. Initial site analysis costs (preliminary assessments and site investigations of potential Superfund sites); and,

5. Research and development (R&D) costs.

EPA excludes, and will continue to exclude from its indirect cost pool certain other response action costs, which are accounted for on a site-specific basis, and their associated indirect costs. These costs include:

(1) Unrecovered response action costs expended on sites where less than 100% of total expenditures are recovered through settlements with responsible parties and no further cost recovery at the site is pursued;

(2) Response costs at sites where there are no financially viable responsible parties (orphan sites), at sites where no responsible parties have been identified, and at sites where response costs are not pursued; and

(3) Costs associated with federal facilities sites.

EPA also has not sought other indirect costs, such as the total of all indirect costs incurred in fiscal years 1981 and 1982. Under EPA's Superfund financial management policy, these costs were applied to the startup of the Superfund program.

From 1983 to date, EPA's accounting methodology has resulted in a limited amount of indirect costs being allocated to sites for cost recovery. This is a result of two major factors relating to EPA's current allocation methodology. The first factor involves the composition of the indirect cost pool. Certain sub-categories of the first three types of indirect costs listed above (for example, equipment costs and related depreciation expense) were omitted from the cost recovery process. Initial site analysis costs and R&D were excluded in their entirety.

The second factor limiting EPA's allocation of indirect costs to sites for cost recovery involves the methodology by which the indirect cost pool is currently distributed. In this process, EPA divides the total of its indirect cost pool by the total of site-specific and non-site-specific employee hours to compute an hourly indirect cost rate. However, EPA's indirect cost rate is applied only to site-specific employee hours when computing a site's share of indirect costs. Since these site-specific employee hours have amounted to approximately 35% of the total Superfund employee hours, only this portion of the indirect cost pool is distributed to sites for potential cost recovery. The remaining 65% of the indirect cost pool is not allocated to sites in any manner and is therefore excluded from potential cost recovery.

The Agency is fully aware that this combination of factors significantly limits recovery of certain indirect costs. The General Accounting Office, in its report, Superfund: A More Vigorous and Better Managed Enforcement Program Is Needed, December 1989, estimated that all of these practices have had the effect of excluding a total of $800 million in indirect costs through fiscal year 1988 from potential cost recovery.

Selection of this indirect cost allocation methodology was not based on the premise that certain indirect costs were not recoverable, but instead was based on a consideration of efficient administration of this methodology by the Agency's then current financial management system. Generally accepted accounting principles would permit the allocation of all of the costs of the Superfund program to sites. This has been recently supported by a federal district court awarding EPA indirect costs in a CERCLA cost recovery action. See *United States* v. *Royal N. Hardage, et al.* ("Hardage"), Civ. No. 86–1401P, slip op. at 103 (W.D. Okla. August 9, 1990). The court in *Hardage* found that EPA's current system of cost distribution allocates 35% of Superfund non-site-specific costs and that under generally accepted accounting principles, allocation of 100% would be appropriate. Accordingly, today's proposed rule would revise EPA's indirect cost methodology to ensure implementation of a full cost accounting approach which allocates all costs of the Superfund program to sites.

EPA's current indirect cost allocation methodology is a cost-based approach and includes certain non-Superfund costs in the indirect cost pool. This approach was adopted by EPA from recommendations made by Ernst & Young, inc., EPA's CPA consultant, in its report, Evaluation of Existing EPA Cost Accounting Principles and Procedures and Recommendations for a Cost Allocation Process and Methodology for Superfund Sites, August, 1983. Expenditures from appropriations other than Superfund were included because the Superfund program received certain benefits and support from other Agency appropriations, primarily the Salaries and Expenses appropriation. The proposed rule would change the current procedures by limiting indirect costs to disbursements from the Superfund appropriation. This change is consistent with EPA's current financial management policy to bridge the cost allocation and budgetary accounting systems in the Superfund program.

The proposed rule would also provide the methodology for allocating indirect costs to specific sites. The proposed methodology would divide the indirect cost pool by site-specific employee hours in determining an indirect cost rate. Therefore, all indirect costs would be recoverable if full cost recovery at every site were pursued. However, full cost recovery at every site will not always be pursued. For example, certain sites have no viable responsible parties for a cost recovery action. Indirect costs allocated to the site would not be reallocated to other sites and would not be pursued. EPA specifically requests public comment on the indirect cost allocation methodology described in today's proposed rule and also requests comment from the public on alternative allocation methodologies for Superfund indirect costs.

The first step in determining an hourly indirect cost rate would be to divide the indirect cost pool into two categories. The first major category would include indirect costs that support the Superfund program on a national basis.

National indirect costs consist of two components. The first component consists of EPA headquarters indirect costs described as follows.

- Superfund program management costs are Superfund dollars that headquarters expends for the Office of Solid Waste and Emergency Response to maintain program support, such as Regional coordinators and national policy and guidance. The funds expended in headquarters program management offices benefit all sites. This program management includes payments to site response contractors for effort which supports the Superfund program as a whole rather than individual sites. It also includes costs

incurred by EPA under reimbursable interagency agreements with other federal agencies, for example, the National Institute of Environmental Health Sciences. The amount of such general support effort is determined from reports submitted annually by the site response contractors. All site response contractors are subject to this process. For FY 1991, the headquarters program management costs were approximately $180 million in Superfund expenditures. For the period of FY 1981 through FY 1991, these costs are estimated to be approximately $725 million. The estimated expenditure consists of actual disbursements for the period FY 1981 through FY 1991. The expenditures reported for the other six categories of indirect costs, described below, were also derived in the same manner.

• Superfund headquarters management and support costs are Superfund costs incurred by EPA primary and subordinate headquarters offices which provide administrative, legal, and management support. These primary offices during FY-1990 consist of the Office of the EPA Administrator; the Office of General Counsel; the Office of Administration and Resources Management; the Office of Enforcement; the Office of Policy, Planning and Evaluation; the Office of the Inspector General; and, the Office of International Activities. Superfund costs incurred include those for offices subordinate to these primary offices. For FY 1991, the headquarters management and support costs were approximately $90 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $450 million in total Superfund expenditures.

The Agency's organization and office structure has changed over time and could change in the future. As an example, the Office of Administration and Resources Management and the Office of Policy, Planning and Evaluation were once the single Office of Planning and Management. Also, the Office of Enforcement and Compliance Monitoring was recently reorganized to the Office of Enforcement. The management and support offices listed above represent the current Agency structure. Any future office reorganization may result in the incorporation of a new office(s) in this functional category.

• Other EPA headquarters program office indirect costs are Superfund expenditures in program offices other than those listed above to support the Superfund program. These offices, include the Office of Water, the Office of Air, and the Office of Pesticides and Toxic Substances. For example, the costs of policy work conducted in the office of Pesticides and Toxic Substances may support regulatory work in the Superfund program. These costs are the costs of providing Superfund support on an as-needed basis for areas in which the program office has expertise. For FY 1991, the other program office costs were approximately $5 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $25 million in total Superfund expenditures.

• Equipment/depreciation costs are Superfund expenditures incurred by EPA for Superfund for non-site-specific capital equipment, namely, equipment with a unit prices exceeding $5,000. Examples include electronic data processing equipment and photocopying machines. Generally accepted accounting principles require that the expense recognition for equipment be through depreciation. Effective with the final rule, depreciation will be computed and form the basis for inclusion as the indirect costs. This depreciation is predominantly a headquarters cost although there is some depreciation in EPA's regional accounts. For FY 1991, equipment and depreciation costs were approximately $10 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $75 million in total Superfund expenditures.

• Research and development costs are Superfund expenditures for scientific studies including innovative technology studies, health effects studies and procedures, and research on the use of scientific techniques in Superfund. The innovative technology studies refers to the Superfund Innovative Technology Evaluation (SITE) Program. This program evaluates the feasibility of an innovative technology before it becomes generally available and used. This cost category supports the Superfund program in general. EPA was considering alternative methods for determining the appropriate allocation (direct costing or indirect costing) of the research costs to sites, considering the benefits provided by this research. EPA has now determined that such research is properly allocated as indirect costs based on the long-term benefits of such costs and the prevalent private sector practice of charging such costs as indirect in accordance with generally accepted accounting principles. However, the costs of implementing innovative technology at a site where such technology is selected by EPA as the remedy at the site are direct costs. For FY 1991, the research and development costs were approximately $75 million in Superfund expenditures. Through FY 1991, these costs are estimated to be approximately $250 million in total Superfund expenditures.

• Initial site analysis costs are generally for preliminary assessments and site investigations of potential Superfund sites. These costs represent Superfund expenditures on potential Superfund sites before any decision is made regarding the need for further EPA action, including removal response action and listing on the NPL. Given the nature of these activities, EPA proposes to account for these expenditures as indirect costs.

Initial site analysis costs represent a cost to the Agency for operating and managing the Superfund programs. When a concerned party provides EPA with information on a potential Superfund site, the Agency responds by evaluating the site to determine if any federal action is necessary. To date, EPA has performed preliminary assessments on over 30,000 such potential Superfund sites. EPA's proposed policy to account for initial site analysis costs as indirect costs is consistent with generally accepted accounting principles for treating costs of this nature, i.e. initial or "up-front" costs, as indirect or overhead costs. For example, many private businesses' initial, "up-front" costs include costs associated with providing estimates or bids on the costs of their services to potential clients. Some of these bids will be successfully and result in acceptance by a client, and other bids will not. The recovery of these initial estimating costs occurs through billings to all clients. A portion of the price billed to clients will generally include a *pro rata* share of all estimating costs as indirect costs.

A specific example involves the bid and proposal costs incurred by prospective federal government contractors. The Federal Acquisition Regulations (48 CFR 31.205–18) permit contractors to include bid and proposal costs as part of the indirect costs charged to the federal government. These costs are allowable regardless of whether the bid was successful (resulting in the award of a contract), or unsuccessful (resulting in no award).

Under this proposed regulation, EPA's indirect cost pool will include all initial site analysis costs. The recovery of these costs will occur through the application of the indirect cost rate to all sites. For FY 1991, these initial site analysis costs were approximately $60 million in Superfund expenditures.

Through FY 1991, these costs are estimated to be approximately $350 million in total Superfund expenditures.

The second component of national indirect costs consists of costs incurred by other federal agencies, under allocation transfer interagency agreements, in support of the national Superfund program. Currently, only health effects research conducted by the Agency for Toxic Substances and Disease Registry pursuant to section 104(i)(5) of CERCLA is included. Unlike the work of other federal agencies, which is charged as direct costs to the Superfund, these health effects studies will not be conducted for specific sites and cannot be charged reasonable as direct costs.

Pursuant to section 104(i)(5)(D) of CERCLA, the costs for health effects research are to be borne by manufactures and processors under the Toxic Substances Control Act, registrants under the Federal Insecticide, Fungicide, and Rodenticide Act and responsible parties under CERCLA. This proposed rule would consider costs of health effects research which cannot be allocated to these manufacturers, processors and registrants as indirect costs in EPA's indirect cost pool. Generally, health effects research included in EPA's indirect cost pool will cover those hazardous substances that are no longer manufactured or used as pesticides or which are chemicals (or mixtures of chemicals) that are disposed of at hazardous waste sites and cannot be linked with any such manufacturer, processor or registrant.

The second major category of indirect costs consists of Superfund program and administrative management incurred in each of EPA's ten regional offices. These costs are incurred for region-specific activities which apply to all sites in the respective region. Examples include planning and directing Superfund response activities within the region and regional financial and personnel services. For FY 1991, the indirect costs for EPA's regions were approximately $125 million in Superfund expenditures. Through FY 1991, these indirect costs are estimated to be approximately $600 million in total Superfund expenditures.

After determining the indirect cost pool from the national and regional indirect costs expenditures, the next step in determining the indirect cost rate would be to identify each region's total direct and indirect Superfund employee hours. A region's direct Superfund employee hours are employee hours charged to individual Sueprfund sites (resulting in salaries being charged as direct costs). Indirect Superfund employees hours are hours charged in a region to the Superfund program but not to individual Superfund sites.

Once the national indirect costs, regional indirect costs, and regional Superfund employee hours are determined, indirect costs rates can be calculated. First, national indirect costs are distributed to each region by multiplying the total national indirect costs by the percentage (ratio) of each region's total Superfund hours (direct and indirect) to the combined total of all regions' total Superfund hours (direct and indirect). The proposed rule refers to this percentage as a region's "allocation percentage."

Next, each region's indirect cost pool would be calculated by adding a region's distribution of the national indirect costs, as calculated above, to its own indirect costs which support the Superfund program.

To compute the regional indirect cost rate, the total regional indirect cost pool is divided by regional Superfund site hours. To identify indirect costs for a specific site, the regional indirect cost rate is multiplied by regional Superfund site hours charged to the site.

The nature of the indirect cost allocation process results in the establishment of provisional or interim indirect cost rates. The establishment of provisional indirect cost rates is a generally accepted cost accounting concept and accepted business practice. The indirect cost allocation process can result in three or more separate indirect cost rates for a particular fiscal year until a final, audited rate is established after the end of the fiscal year. The first rate would be established at the beginning of the fiscal year based on the best available information. In most cases, this provisional rate would be based on the prior fiscal year's indirect cost rate. After completion of the current fiscal year, the indirect cost rate would be recalculated based on actual fiscal year disbursements. This may result in a revised provisional indirect cost rate. There may be additional revisions to the provisional indirect cost rate based on accounting adjustments such as reclassification of costs. Finally, EPA's indirect costs undergo audit by EPA's Office of Inspector General. Upon completion of the audit, EPA would determine the final indirect cost rates.

The proposed rule contains provisional indirect cost rates for each EPA region for fiscal years 1983–1988. These rates were determined using the proposed methodology.

After promulgation of the proposed rule, the provisional and final indirect cost rates for past and future fiscal years would also be published in the **Federal Register** with public comment requested. The last published rate for any fiscal year would be in effect for purposes of calculating indirect costs in EPA cost recovery actions until a new rate is published. Resolved cost recovery actions would not be affected by the publication of a new rate.

Thus, the FY 1988 rates would apply to cost distributions made in FY 1989 through FY 1993 until new rates for these years are published. In addition, indirect cost rates for prior fiscal years may be recalculated and new rates published. Any such recalculations would occur, as described above, if new information becomes available based on recommendations from Agency internal audits (e.g. Office of Inspector General audits) or from accounting adjustments made pursuant to Agency financial management policy.

The indirect cost rates for fiscal years 1981 and 1982 were not calculated. In the past, EPA has not sought recovery of indirect costs for those years and believes that it is inappropriate to change that policy at this time. At the inception of the Superfund program, the Agency made the decision that indirect costs for these fiscal years would be applied to startup of the Superfund program and would not be recovered.

As a matter of enforcement discretion, after the effective date of the final rule, EPA will apply the new indirect cost rates to all cost recovery actions that have not been finally resolved. EPA will apply discretion with respect to application of the new indirect cost rates in cases where a demand for indirect costs has been made, based on the prior rates, and the settlement negotiations and/or litigation have proceeded to a point where EPA believes application of the new rates would have an adverse impact on the settlement negotiations and/or litigation.

The docket to today's proposed rule contains the complete calculations and information describing the methodology and specific calculations used to determine the EPA regional hourly indirect cost rates from FY–1983 to FY–1988 included in § 308.50.

3. Interest

Section 107(a) of CERCLA states:

> [t]he amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under

this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954.

Prior to enactment in 1986 of this provision for charging interest in CERCLA, EPA had the authority to collect pre-judgment interest on recoverable costs under Superfund. See *NEPACCO*, 579 F. Supp. at 852. Accordingly EPA charges responsible parties with interest on recoverable costs in all cost recovery actions.

The intent of today's rule is to clarify certain terms in CERCLA relating to charging of interest, and to clarify the interest rate and method of calculating interest in cost recovery actions. The proposed rule would establish the "date of expenditure," under section 107(a), as the date identified in EPA's financial management system for the expenditure event involved. The event date established depends on the type of transaction or method of payment.

For transactions where EPA arranges for a check payment by the U.S. Department of Treasury, the date of expenditure is the date of the check. Examples of this type of transaction include payments to contractors and vendors and to EPA employees reimbursing travel expenditures. For payroll transactions, EPA uses a bi-weekly pay period ending on alternate Saturdays. Any payroll date of expenditure is the second Tuesday following the Saturday ending a pay period. This date may be either the date of checks to employees receiving checks or the effective date of electronic transfers for those employees paid by electronic fund transfer to their bank accounts.

There are other transactions involving electronic fund transfers such as EPA reimbursements to other federal agencies (e.g. the U.S. Coast Guard), performing work under interagency agreements. Another example is a state cooperative agreement where payments are made by EPA to a state under a letter-of-credit arrangement. In these cases, the date of expenditure is the date EPA is notified of the electronic fund transfer by the U.S. Department of Treasury.

There are some transactions where the direct, site-specific disbursement is charged by means of a journal voucher transfer from another account to which the disbursement was originally charged. In these instances, the date of expenditure is determined by EPA as the date applicable to the original charge.

The date of expenditure for indirect costs would be the same as the date of expenditure of the related Superfund regional employee site-specific payroll costs. As explained previously in this preamble, the indirect costs for a site are determined by application of the indirect cost rate to direct Superfund employee site-specific hours expended.

The proposed rule would also clarify the date of written demand as the earlier of the date of mailing of a special notice letter, demand letter, or other correspondence which demands past costs and which may include an estimate of future costs. Alternately, the date of written demand is the date of filling of a section 107(a) cost recovery action in federal district court by the Department of Justice.

Special notice letters are issued by EPA pursuant to CERCLA section 122(e). They inform responsible parties of their potential liability for response costs, mark the start of a statutory moratorium period on certain EPA actions, and initiate the process of formal negotiations for responsible party conduct of response action at a site.

In accordance with EPA policy, special notice letters may include a demand, pursuant to section 107(a), that responsible parties reimburse EPA for the costs the Agency has incurred in conducting response activities at the site; identify the actions EPA has undertaken and the cost of conducting the actions; indicate that the Agency anticipates expending additional funds on activities at the site; estimate future costs for these activities; and, demand payment of interest for past and future response costs incurred by EPA.

A demand letter is a request that responsible parties reimburse the Superfund for a specified amount associated with one or more response activities. Prior to filing a cost recovery lawsuit, as a matter of policy, EPA sends a written demand letter to responsible parties pursuant to section 107(a). Demand letters may be issued for each separate response activity conducted at a site and may include estimates of future costs, where appropriate. Response activities at Superfund sites may include individual or multiple operable units of removals, remedial investigations and feasibility studies (RI/FSs), remedial designs (RDs), and remedial actions (RAs).

EPA believes that interest begins to accrue for those costs already expended from the date of written demand unless there was a prior written demand, in which case, interest would accrue from the date of the prior written demand. Interest begins to accrue for subsequent expenditures, i.e. future costs, upon the date of expenditure. Specified sums in special notice letters, demand letters, and other correspondence demanding costs issued by the Agency are not an indication of EPA's willingness to settle for those amounts in any case.

The proposed rule would also establish a procedure for assessing interest which is consistent with the manner in which the U.S. Department of Treasury earns interest on the investment of Superfund tax revenues. The U.S. Department of Treasury compounds interest annually on Superfund tax revenues. The procedure proposed in today's rule would compound interest for cost recovery purposes, by adding at the end of the fiscal year, unpaid principal to unpaid accrued interest to determine new unpaid principal. Interest then accrues on the new unpaid principal for the new fiscal year.

In defining certain terms and methodologies for determining interest, today's proposed regulation is not intended to affect or preclude EPA's recovery of interest under any legal or equitable authority or principles. This view is consistent with the court's opinion in *United States* v. *Bell Petroleum Services, Inc.*, 734 F. Supp. 771 (W.D. Tex. March 8, 1990) which construed the statutory language regarding interest in CERCLA section 107 as a guideline for the court to follow in determining interest, not as a strict requirement which could bar recovery of interest.

C. Documenting Response Actions and Costs

Today's proposed rule amends 40 CFR 300.160 to specify the documents and information that EPA will complete and maintain to support CERCLA cost recovery actions. EPA proposes that the documents and information specified meet the requirements of the national contingency plan to describe the response action taken and provide an accurate accounting of costs incurred for that action by the Agency for purposes of CERCLA section 107(a) cost recovery actions. This section of the proposed rule would not apply to documentation requirements that the Agency may issue by policy or regulation relating to claims against the Superfund pursuant to CERCLA sections 111 and 112; petitions for reimbursement pursuant to CERCLA section 106(b); and, reimbursements to local governments pursuant to CERCLA section 123.

This part in the proposed rule would apply prospectively to cost information assembled and response action documented by EPA on or after the effective date of the promulgation of the final regulation. It is EPA's intent,

however, to adopt the documentation process defined in the proposed amendment to 40 CFR 300.160 as an interim policy which would apply to current cost recovery actions, where appropriate.

The detailed process for completion and maintenance of documents and information in § 300.160(a)(3) and (4) of the proposed rule would not directly apply to other federal agencies, states, and Indian tribes. As stated previously in this preamble, it is EPA's intent to require that federal agencies, under terms of Superfund interagency agreements, complete and maintain documents and information to support cost recovery actions consistent with the requirements of the proposed rule.

Certain parts of the proposed rule, however, particularly § 308.50, EPA Indirect Costs, of the new 40 CFR part 308 will apply, when final, to cost recovery actions under section 107 of CERCLA which have not been finally resolved. The remaining provisions of part 308 would apply to cost recovery actions initiated after the effective date of the final rule.

The proposed rule would clarify that documentation sufficient to describe what the costs of the response action were incurred for would be provided in two categories. The first category, documentation that covers the actual response action taken, would be work initiation documents that EPA issues to contractors and lead agencies describing the work to be undertaken to implement the selected response action. Documents issued to contractors by EPA in this category would be work assignments and other technical directive documents. If the lead agency implementing the response action is not EPA, but rather is a state, or federal agency, documentation in this category would be the appropriate cooperative agreement or interagency agreement that is issued by EPA when it initiates the implementation of response action. If the response action includes a technical assistance grant to a group of individuals, the documentation would be the appropriate grant issued by EPA. Amendments to all these documents would also be provided.

The second category would be documents that describe the technical aspects of the implementation of the response action taken. In general, these documents would be deliverables, i.e., periodic, interim, and/or final project reports, that may be required under EPA's work initiation orders. These documents would be reports prepared by EPA officials, or reports prepared by contractors, states, local governments, federal agencies, or groups of individuals for submission to EPA officials which are completed pursuant to requirements in work initiation documents and which describe the actual response actions that have been taken. These documents would be reports prepared describing progress of implementation of the response action and final reports describing the completion of response action.

The proposed rule than clarifies EPA's approach to account for costs incurred for site-specific response actions. Certain information would be completed and maintained concerning the costs incurred by the Agency. For direct costs this information would be the site identification code and name; names, salary (including benefits amounts), and hours charged for all EPA employees providing site-specific work; names of payees, amounts and dates paid for purchases and contract charges incurred for site activities by EPA vendors, and as applicable, identification of related contracts, purchase orders, or invoices, as well as related journal vouchers.

The identification of site-specific costs incurred by EPA vendors may result from two different types of accounting transactions. EPA vendors submit an invoice for their services on a site-specific basis. Costs for these services can be identified by the invoice. However, there are also situations where contract costs, originally billed as non-site-specific costs are reclassified to direct site-specific accounts. This reclassification, in certain cases permits more accurate cost accounting. The reclassified non-site-specific contract costs represent contract specific administrative costs that are best allocated to the sites for which the contractor expended the costs.

There may be other situations for which costs are reclassified from non-site-specific accounts to site-specific accounts such as the reclassification of pre-FY 1986 contract disbursements based on special reports submitted by the contractors. The document accounting for these transactions is a journal voucher. Therefore, depending on the type of transaction, an invoice or a journal voucher, provides the appropriate information for the contract disbursements.

For cooperative agreements with state and local governments and interagency agreements with federal agencies, this information would be the names of recipient entities (e.g. departments, agencies, etc.), amounts and dates paid, and agreement identification numbers for all costs incurred.

In addition, this information would include employee name, amounts and dates paid, destination, and travel authorization number for all site-specific travel by EPA employees.

For indirect costs, the information completed and maintained by EPA would be the applicable annual regional hourly indirect cost rate, the identification of the Superfund employee site-specific hours upon which the hourly rate is applied, and the corresponding indirect cost totals for each government fiscal year involved. For interest charges, the information would include the amounts and dates paid of costs on which the interest is calculated and the total of interest charges for the site.

Up to the present, this information has been provided in extensive and voluminous documents to responsible parties and courts in cost recovery actions. This has resulted in enormous transaction costs to EPA and responsible parties and has frequently delayed the outcome of administrative and judicial cost recovery proceedings. The procedure proposed in this rule would substantially streamline the cost accounting associated with EPA's cost recovery actions by shifting Agency practice to cost accounting by means of manual and automated reports.

Recent changes in the conduct and practice of governmental and private business financial transactions form the basis for EPA's decision to adopt the approach in the proposed rule for accounting for federal costs incurred in the Superfund program. With advances in business technology, government and private financial transactions are moving away from use of documentation paper (hardcopy), to the transmission, recording and storage of electronic impulses in computerized financial management systems. For example, U.S. Department of Treasury confirmation of expenditures pursuant to approved EPA vouchers is currently received electronically. EPA does not receive hardcopy documentation of these expenditures. The Agency believes that government and other business transactions increasingly will be conducted electronically in the future. The proposed rule reflects this inevitable trend in utilization of advanced technology by providing that the Agency will furnish certain information that would account for federal costs expended in the Superfund program. The information would include the significant data elements that would be sufficient to meet the Agency's obligations under the national contingency plan to establish Superfund expenditures. The information would be provided in the form of automated or manual reports listing the detailed

information stated in the proposed amendment, 40 CFR 300.160(a)(4). Example documents containing the financial information required by the proposed rule are included in the docket to today's proposed rule.

The documentation and information specified in the proposed rule would in all cases be sufficient to form the basis for EPA's cost recovery action and satisfy the requirements of § 300.160(a)(1) of the national contingency plan. There may be instances, however, where certain documents and information may not be available because of the urgency of the response action or other circumstances beyond the control of EPA. For example, progress reports describing the response action taken may not be produced in every case by EPA contractors, or states under cooperative agreements. In cases where certain documentation and information specified in today's rule are not available, EPA will identify other documentation and information which describes the response action taken and provides an accurate accounting of costs as required by the national contingency plan.

In clarifying the scope of § 300.160(a)(1), the proposed rule excludes documentation and information which do not describe the response action taken or provide an accurate accounting of costs incurred. For example, "pre-award" documentation associated with the procurement of contracts for response action work does not relate to, and would not be part of the documentation and information to be completed and maintained by EPA to support a cost recovery action. These documents do not provide information on the selection or implementation of the response action taken at any site that relates to the nature and extent of costs incurred, since these pre-award documents are prepared prior to performance of any actual work under the contract. Similarly, national or regional EPA contracts (e.g. those providing for general advisory and assistance services to the Agency), would not be part of the documentation and information produced for cost recovery actions because they do not contain descriptions of site-specific response action and do not contain information related to costs incurred with respect to any Superfund site.

Other documents which would not be among the documents produced under § 300.160(a)(1) in a specific cost recovery action include general audit reports or audit work papers that do not relate to a particular site. Such general audit reports, however, that are used as a basis for calculation of provisional or final indirect cost rates would be made available when EPA publishes these rates in the **Federal Register**, in accordance with procedures proposed in this rule.

EPA also believes that preliminary, interim, or draft documents, or portions of these documents are not necessary to meet the documentation and information requirements of today's proposed rule in cost recovery actions under CERCLA. Accordingly, EPA does not intend to produce these preliminary, interim, or draft documents pursuant to the procedures for cost recovery actions proposed in today's proposed rule. Final, or "last draft" documents would meet the provisions in the proposed § 300.160(a)(2) of the rule to support a cost recovery action.

In summary, EPA believes that the proposed documentation and information amendments to 40 CFR 300.160 will contribute to the swift resolution of cost recovery actions under section 107(a) of CERCLA.

D. CERCLA Statute of Limitations

Section 113(g)(2) of CERCLA states:

> An initial action for recovery of costs referred to in section 107 must be commenced:
>
> (A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action;
>
> (B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.
>
> In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have incurred.

Because of the complexity of the Superfund program and the many types of activities that are involved in removal and remedial actions, the Agency believes it would be helpful in cost recovery actions if definitions of certain terms in section 113(g)(2) were available in the context of EPA's response action procedures. Accordingly, to provide more clarity, the proposed rule would define certain of the terms used in section 113(g)(2).

As indicated above, the proposed rule applies to EPA cost recovery actions. The proposed rule's definition of certain statute of limitations terms are based on administrative events that occur in EPA's Superfund response action procedures. The administrative events that may occur in the Superfund program activities of other governmental entities and parties may significantly differ from those that occur in EPA. The definitions of statute of limitations events, therefore, do not apply to cost recovery actions taken by other governmental entities or parties.

The proposed rule would define "completion of removal action" only in the circumstances where remedial actions are also undertaken at the site. Superfund remedial actions are always preceded by certain removal actions. The removal actions may include traditional physical removals (those taken to prevent, mitigate, and cleanup releases or threat of releases of hazardous substances), as well as studies or investigations conducted under section 104(b) of CERCLA (as clarified by the national contingency plan). Examples of studies and investigations include remedial investigations and feasibility studies (40 CFR 300.430), and remedial design activities (40 CFR 300.435). Because of the complexity of the response process and the fact that several of these removal actions may be taken simultaneously or in sequence at a site, the completion of the removal action for purposes of cost recovery may be difficult to ascertain. The proposed rule would define all pre-remedial response actions as removal actions and define the "completion of the removal action" for cost recovery purposes as the date of the last remedial design report prepared by EPA preparatory to implementation of remedial construction activities at the site.

The term "completion of removal action" at sites where only traditional physical removal actions addressing releases or threat of releases of hazardous substances are undertaken would not be defined by the proposed rule.

The term "physical on-site construction" for remedial actions would be defined by the proposed rule to be limited to actions that occur after completion and approval of the remedial design and the issuance by EPA, the lead agency, or prime contractor of a

notice to begin remedial action ("notice to proceed") by authorized personnel. A notice to proceed is a written communication issued to the contractor conducting the response action once work plans and other contract documents have been reviewed and approved by the lead agency or prime contractor official. In every case, the date of initiation of physical onsite construction would occur after the last remedial design report has been approved and the notice to proceed has been issued. In effect, the rule proposes that only construction following approval of the last remedial design report and issuance of the notice to proceed is construction within the meaning of CERCLA section 113(g)(2)(B).

Under the provisions of section 113(g)(2)(B), where a declaratory judgment on liability has been entered by a court, the statutory limitation period for a subsequent action is extended to three years after "completion of all response action." The declaratory judgment is binding on all subsequent actions to recovery response costs or damages. Subsequent actions under section 107(a) by the Agency, however, must be commenced no later than three years after completion of all response action. Under the proposed rule, the term "all response action" as used in CERCLA section 113(g)(2)(B) would include, but would not be limited to, all response actions that occur before the date on which the Superfund Site Close-Out Report is signed by an EPA Regional Administrator. The Close-Out Report is issued following a final inspection of the site by EPA staff. A description of a Close-Out Report can be found in "Procedures for Completion and Deletion of Sites From the National Priorities List" (OSWER Directive 9320.2–03a, April, 1989, amended by OSWER Directive 9320.2–03b, December, 1989). Since a Close-Out Report is prepared for each operable unit at a site, the Close-Out Report for the last operable unit would be used for purposes of identifying the completion of "all response action". The Close-Out Report date was selected because it is a definable date included in a document developed at every site which provides the overall technical justification for response action completion.

EPA considered other options for defining "all response action" including administrative completion of federal funding of restoration activities as provided in 40 CFR 300.435. The Close-Out Report, however, is a definable administrative event, which would occur for all Superfund sites, at a time when all federal funding will have been concluded. EPA specifically requests public comment on this definition of the "all response action" event.

E. Public Comment

EPA requests public comment on all aspects of today's rule. However, the preamble discussion identifies certain issues addressed in today's rule on which EPA specifically requests public comment. These issues include the following.

1. Further clarification of the CERCLA section 107 (a)(4)(A) liability standard in the circumstance where a court rules that the United States, in conducting a removal or remedial action, failed to comply with a requirement of the national contingency plan.

2. The indirect cost allocation methodology proposed in today's rule and alternative allocation methodologies for Superfund indirect costs.

3. The definition of "all response action" as that term is used in section 113(g)(2)(B) addressing the circumstance where a declaratory judgment on liability having been entered by a court, the statutory limitation period for a subsequent action is extended to three years after "completion of all response action."

Comments on this proposed rule must be received within sixty days of publication in the **Federal Register**.

III. Section-by-Section Summary

40 CFR Part 300 National Oil and Hazardous Substances Pollution Contingency Plan

Section 300.160 of the national contingency plan establishes requirements for the lead agency to complete and maintain certain documentation to support all actions under the national contingency plan and to form the basis for cost recovery. Section 300.160(a)(1), which describes the general categories of documentation, would not be changed by the proposed rule.

However, four new subparagraphs to paragraph (a) would be added. These subparagraphs would set forth EPA's obligations under § 300.160(a)(1) specifically with respect to cost recovery actions. Subparagraph (2) would make it clear that documentation and information specified in the succeeding two subparagraphs would apply to EPA and would satisfy the terms of § 300.160(a)(1) of the national contingency plan with respect to cost recovery actions. Subparagraph (3) would define what documentation is sufficient to describe the response action taken. Subparagraph (4) would define what information is sufficient to accurately account for federal costs incurred for each site-specific response action. Subparagraph (5) would make it clear that in those cases where all of the documentation and information specified in subparagraphs (3) and (4) are not available, EPA would identify other documentation and information which describes the response action taken and provides an accurate accounting of costs which would meet the requirements of § 300.160(a)(1) of the national contingency plan, and would be sufficient to form the basis for a cost recovery action. This Part of the proposed rule would apply prospectively to cost information assembled and removal or remedial actions documented for cost recovery actions instituted by EPA on or after the effective date of the final rule.

40 CFR Part 308 CERCLA Cost Recovery

This part would be new. It would consist of three subparts: Subpart A—General—, §§ 308.10 and 308.12; Subpart B—Actions for Recovery of Costs under CERCLA—, §§ 308.20 through 308.30; and Subpart C—Categories of Costs—, §§ 308.40 through 308.60.

Section 308.10 would describe the scope and applicability of part 308. Part 308 would specify what costs are recoverable in cost recovery actions under section 107(a)(1)–(4) (A) and (D) of CERCLA for recovery of costs incurred by EPA. Part 308 would also clarify certain response action events that relate to the statute of limitations applicable to cost recovery actions under section 107, that are expressed CERCLA section 113(g)(2). In addition to costs incurred by EPA, costs incurred by other federal agencies would be EPA costs if incurred for response actions funded by EPA through interagency agreements. Costs incurred by states or local governments would be EPA costs if incurred for response actions funded by EPA through a CERCLA section 104(d)(1) cooperative agreement.

Section 308.12 would define the terms used in part 308 as they are defined in section 101 of CERCLA or 40 CFR part 300, unless otherwise stated.

Section 308.20 would codify responsible party liability for federal costs under section 107(a)(4) (A) and (D) of CERCLA. Subject to defenses in section 107(b) of CERCLA, responsible parties under section 107(a) of CERCLA are liable for all costs of response actions incurred by the United States not inconsistent with the national contingency plan and for the costs of any health assessment or health effects study carried out under section 104(i)(5)

of CERCLA. Section 308.25 would define recoverable costs as all costs including direct and indirect costs, and interest on those costs.

Section 308.30 would explain the terms "completion of removal action," "physical on-site construction," and "all response action" for Superfund response action events as those terms are used in section 113(g)(2) of CERCLA in determining when cost recovery actions must be initiated.

Section 308.40 would explain that EPA direct costs are disbursements recorded in individual Superfund site accounts in EPA's financial management system.

Section 308.50(a) would explain that EPA indirect costs are all disbursements from Superfund for the operation and management of the Superfund program that are not direct costs. Section 308.50(b) would provide the method of determining an hourly indirect cost rate for each EPA region that would be used to determine the indirect costs for a specific response action. Section 308.50(b) would also clarify that health effects research costs conducted by the Agency for Toxic Substances and Disease Registry pursuant to section 104(i)(5) of CERCLA would be recovered as indirect costs. Section 308.50(c) would contain a table of provisional indirect cost rates for each of EPA's ten regions for fiscal years 1983 through 1988. The proposed rule states that provisional and final rates would be published, for subsequent years after the completion of the fiscal year. The last published rate would remain in effect until a new provisional or final rate was published for the relevant year.

Section 308.60 would clarify "date of expenditure" and "date of demand" as those terms are used in section 107(a) of CERCLA for determining interest. It also explains the "date of expenditure" for purposes of interest accrual prior to the enactment of the CERCLA amendments of 1986. This section would also clarify how interest is calculated.

IV. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or,

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking would not affect the economy by $100 million annually because the regulation would not increase the liability of responsible parties and would not increase the response costs at Superfund sites. The costs for which responsible parties are liable would not be affected by this rulemaking. Because the proposed regulation provides for full cost accounting for indirect costs, it is possible that the regulation may result in a small increase in the costs recovered from responsible parties, but any such increase would be only an incremental addition to the costs recovered without this rule. The rulemaking would not directly increase costs or prices for consumers, industries, or federal, state, or local government. The regulation would not contain any new standards, criteria, or performance levels to be achieved by the regulated community. Furthermore, the rulemaking would not have adverse affects on competition, employment, investment, productivity, or innovation because the regulation seeks only to expedite cost recovery actions and reduce the Agency's resource burden in documenting response costs.

This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organization, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. The proposed rule imposes no new economic burdens on small entities. The proposed rule also does not affect any liability that small entities may have as responsible parties under CERCLA. Therefore, I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act

This regulation is not subject to the provisions of the Paperwork Reduction Act. Any collection of information in this regulation is required in the course of an enforcement action against a specific party or parties and, therefore, is exempt from coverage under the Act.

List of Subjects

40 CFR Part 300

Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Superfund.

40 CFR Part 308

Administrative practice and procedure, Claims, Freedom of information, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Superfund.

Dated: July 28, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR ch. I is proposed to be amended as follows.

PART 300 NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Section 300.160 is amended by redesignating paragraphs (a)(2) and (a)(3) as (a)(6) and (a)(7), and by adding paragraphs (a)(2) through (a)(5) to read as follows:

§ 300.160 Documentation and cost recovery.

(a) * * *

(2) The documentation and information specified in paragraphs (a)(3) and (a)(4) of this section shall be sufficient to form the basis for an EPA cost recovery action.

(3) Documentation that describes the site-specific response action taken referred to in paragraph (a)(1) of this section, specifically:

(i) Contractual, grant, cooperative agreement, or interagency agreement documents that describe the response action to be taken; and,

(ii) Progress reports and final reports by EPA officials, or by contractors, states, other federal agencies, or groups of individuals to EPA officials that

describe the implementation of the response action taken.

(4) Information that provides an accurate accounting of federal costs incurred for each site-specific response action referred to in paragraph (a)(1), of this section, specifically:

(i) For direct costs, as described in § 308.40 of this chapter:

(A) Site identification code number and name(s);

(B) Names, hours charged, and salary (including benefits amounts) paid to EPA employees who provided site-specific work;

(C) The names of vendors or payees, amounts paid, dates paid, and as applicable, the identification of related invoices, contracts, or purchase orders, as well as all related journal vouchers, for purchases and contract charges associated with the site;

(D) The names of recipient(s), amounts and dates paid, and grant and agreement number(s) for all costs involving cooperative agreements with any state or local governments, technical assistance grants awarded to groups of individuals, and interagency agreements with other federal agencies; and,

(E) The employee name, amounts and date paid, destination, and travel authorization number for all site-specific travel by EPA employees.

(ii) For indirect costs, as described in § 308.50 of this chapter, for each fiscal year involved:

(A) The applicable regional indirect cost rates;

(B) The site-specific Superfund employee hours upon which the rates are applied; and,

(C) The indirect cost totals.

(iii) For interest charges, as described in § 308.60 of this chapter:

(A) The amounts and the dates upon which interest is calculated; and,

(B) The amounts and the total interest charges for the site.

(5) Where certain documentation and information described in paragraphs (a)(3) and (4) of this section are not available, EPA shall identify other documentation and/or information which describes the response action taken and provides an accurate accounting of costs incurred.

* * * * *

3. Part 308 is added to read as follows:

PART 308—CERCLA COST RECOVERY

Subpart A—General

Sec.
308.10 Scope and applicability.
308.12 Definitions.

Subpart B—Actions for Recovery of Costs under CERCLA

308.20 Liability.
308.25 Recoverable costs.
308.30 Definitions of events affecting limitations of actions to recover costs.

Subpart C—Categories of Costs

308.40 EPA direct costs.
308.50 EPA indirect costs.
308.60 Interest.

Authority: 42 U.S.C. 9601–9657; E.O. 12580, 52 FR 2923.

Subpart A—General

§ 308.10 Scope and applicability.

(a) This part specifies the cost that are recoverable under section 107(a)(4)(A) and (D) of CERCLA, and defines certain events that determine the period in which actions under section 107 for recovery of costs may be brought pursuant to section 113(g)(2) of CERCLA.

(b) This Part does not apply to costs incurred by other federal agencies, states, or Indian tribes. With respect to these entities, this part applies where the EPA in an action under section 107 of CERCLA is seeking recovery of its costs expended in a response action under an interagency agreement, cooperative agreement, or grant.

§ 308.12 Definitions.

Terms in this part shall have the meaning set forth in section 101 of CERCLA as amended and the national contingency plan at 40 CFR part 300.

Subpart B—Actions for Recovery of Costs under CERCLA

§ 308.20 Liability.

Subject to the defenses provided in section 107(b) of CERCLA, persons identified in section 107(a) of CERCLA are liable to the United States for all costs of response actions incurred by the United States Government not inconsistent with the national contingency plan, 40 CFR part 300, including, as indirect costs, the costs of any health assessment or health effects study carried out under section 104(i)(5) of CERCLA.

§ 308.25 Recoverable costs.

Costs recoverable under § 308.20 of this subpart include direct and indirect costs and interest on those costs. These cost categories are described in subpart C of this part.

§ 308.30 Definitions of events affecting limitations of actions to recover costs.

For purposes of defining certain events that determine the statutory limitation periods applicable to cost-recovery actions pursuant to section 113(g)(2) of CERCLA, the following applies:

(a) The term "completion of the removal action" for sites where remedial actions are taken means the date of the final remedial design prepared in connection with the final remedial action at the site.

(b) The term "physical on-site construction" for remedial actions is limited to actions that occur after completion of the remedial design and issuance of the Notice to Proceed on which remedial action personnel are authorized to begin remedial construction activities.

(c) The term "all response action" in Section 113(g)(2)(B) of CERCLA includes, but is not limited to, all response actions that occur before the Superfund Site Close-Out Report is signed by EPA's Regional Administrator.

Subpart C—Categories of Costs

§ 308.40 EPA direct costs.

EPA Direct costs consist of disbursements which are recorded in individual Superfund site accounts in EPA's financial management system.

§ 308.50 EPA indirect costs.

(a) EPA indirect costs are disbursements from Superfund for the operation and management of the Superfund program which are not direct costs under § 308.40 of this subpart.

(b) EPA indirect costs for a site-specific response are determined on a fiscal year basis as follows:

(1) Indirect costs are divided into two exclusive categories:

(i) *National.* Those indirect costs, including health effects research conducted by the Agency for Toxic Substances and Disease Registry pursuant to section 104(i)(5) of CERCLA, which support the Superfund program on a national basis.

(ii) *Regional.* Those indirect costs which support the Superfund program in EPA's regional offices.

(2) Total Superfund regional employee hours, which are hours charged by employees of EPA's regional offices to the Superfund through EPA's timekeeping and payroll system are determined by summing the two categories of hours:

(i) Hours charged to individual Superfund sites, resulting in associated salaries being charged as direct costs; and,

(ii) Hours charged to Superfund, but not to individual Superfund sites.

(3) For each of EPA's regions, an allocation percentage is determined by dividing each region's total Superfund

hours (defined by paragraph (b)(2) of this section) by the total Superfund hours of all regions combined.

(4) National indirect costs are distributed to the EPA regions by multiplying the total national indirect costs by each region's allocation percentage as determined in paragraph (b)(3) of this section.

(5) A regional indirect cost pool for each of the EPA regions is the total of the amount determined in paragraph (b)(1)(ii) of this section and the region's share of national indirect costs determined in paragraph (b)(4) of this section.

(6) For each region, the indirect cost rate is the regional indirect cost pool determined in paragraph (b)(5) of this section divided by the direct Superfund hours in the region determined in paragraph (b)(2)(i) of this section.

(7) The indirect costs for a specific site are determined by multiplying the regional indirect cost rate from paragraph (b)(6) of this section by the direct Superfund hours charged to the site from paragraph (b)(2)(i) of this section.

(c) Indirect Cost Rates.

(1) Indirect cost rates shall be determined using the procedures in paragraphs (b)(1) through (b)(6) of this section.

(2) The regional indirect cost rates for fiscal years 1983 through 1988 are as follows:

	Fiscal year					
	1983	1984	1985	1986	1987	1988
Region 1	$237	$192	$188	$255	$244	$303
Region 2	245	232	220	256	240	361
Region 3	228	212	217	347	318	376
Region 4	289	286	270	330	296	374
Region 5	171	199	180	239	251	331
Region 6	200	187	208	271	269	320
Region 7	185	184	157	198	197	333
Region 8	383	162	161	176	178	295
Region 9	148	145	138	206	211	326
Region 10	177	178	229	308	270	269

(3) Public notice of indirect cost rates. EPA will publish the indirect cost rate for each region in the **Federal Register** after the completion of the fiscal year. The last published rate remains in effect until a new rate is published.

§ 308.60 Interest.

(a) For the recovery of interest for costs incurred not inconsistent with the national contingency plan, the following applies:

(1) The date of demand for payment of a specified amount in writing by EPA is the earliest of the date of mailing of a:

(i) Special notice letter;

(ii) Demand letter; or,

(iii) Other correspondence including a demand for a specified amount in writing for response costs; or,

(iv) The date of filing of a cost recovery action under section 107 of CERCLA by the Department of Justice on behalf of the EPA.

(2) The date of expenditure shall be the date identified in the EPA's financial management system for the type of transaction or method of payment on which interest will be calculated.

(b) The interest rate applicable on any unpaid principal balances during a fiscal year shall be the same as the yield on the annual investment of Superfund trust balances. The yield on the annual investment of Superfund trust balances is determined by the U.S. Department of Treasury.

(c) At the end of each fiscal year, EPA will add unpaid accrued interest for that year to the unpaid principal balance. The total is the new fiscal year's unpaid principal balance.

[FR Doc. 92-18572 Filed 8-5-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

RIN 1090-AA34

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises a rule published by the Department in the September 9, 1991, issue of the **Federal Register** (56 FR 45897). The rule implemented Government-wide requirements established by the Office of Management and Budget (OMB) under OMB circulars for the administration of assistance agreements.

This revision will implement, for grants and cooperative agreements, the Secretarial Outreach Issue Paper Decision—Issue 4—Endorsement of Commercial Products or Services. The Secretary determined that as a matter of Departmental Policy, there should be a provision in all contracts (exceeding $25,000), assistance agreements, and Memoranda of Understanding/Agreement (MOAs) which would prevent the nongovernmental party from using the arrangement to imply Government endorsement of a product, service or position which the recipient represents in its commercial advertising.

DATES: Comments must be received by September 8, 1992.

ADDRESSES: Comments should be mailed to Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 1849 C St., NW., Mail Stop 5512, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208-6431.

SUPPLEMENTARY INFORMATION: Bureaus and offices within the Department are entering into a variety of partnership agreements with profit, as well as non-profit organizations, through which the Bureaus receive support of various kinds. This may include dissemination of information about programs, promotion of activities of mutual interest which further those programs, and generation of financial and other types of support, where authorized. These types of agreements are consistent with a Departmental and an Administration emphasis on partnerships and cooperative efforts to accomplish public purposes, and therefore are encouraged. However, under these agreements, there is risk that certain promotional material produced under the agreement, such as publications, advertisements in newspapers, magazines and on television, might improperly infer agency endorsement of a product, service or position which the recipient represents. Such endorsements violate the provisions of Executive Order 12731, October 17, 1990, which states: "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order." Those standards include:

(1) Performing official duties impartially and not giving preferential treatment to any organization or individual; (2) Avoiding the use of public office for private gain; and (3) Making no unauthorized commitments or promises of any kind purporting to bind the Government.

The provision that prohibits the use of public office for private gain has been interpreted by the Office of Government Ethics to mean the private gain of anyone, including Federal officials, contractors, cooperators, partners, etc.

As a result, the Department of the Interior's regulations on Employee Responsibilities and Conduct, at 43 CFR 20.735-17(f) implement the Executive Order by stating: "Endorsements. Employees are prohibited from endorsing in an official capacity the proprietary products or processes of

manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. Use of materials, products, or services by the Department does not constitute official endorsement."

Following the consideration of several alternative policies and procedures to ensure compliance with these directives in various types of contracts and agreements, the Secretary decided to adopt the policy of including a provision in all contracts (exceeding $25,000), assistance agreements, and Memoranda of Understanding/Agreement.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the Addresses section of this preamble. Comments must be received on or before September 8, 1992.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities, since this rule merely implements a Secretarial decision concerning the prohibition of recipients to use the Department's use of services and products provided as an endorsement. This proposed revision to the rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants Administration, Grant program.

It is proposed that title 43 of the Code of Federal Regulations be amended as set forth below:

Dated: July 9, 1992.

John Schrote,

Assistant Secretary—Policy, Management and Budget.

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: E.O. 12731; E.O. 12549; sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

Subpart A—Administrative and Audit Requirements and Cost Principles for Assistance Programs

2. Subpart A is amended as set forth below.

a. Section 12.2 is amended by adding paragraph (d) to read as follows:

§ 12.2 Policy.

* * * * *

(d)(1) The Department of the Interior's regulations on Employee Responsibilities and Conduct at 43 CFR 20.735–17(f), implement Executive Order 12731, "Principles of Ethical Conduct for Government Offices and Employees," by prohibiting employees from endorsing in an official capacity the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. The regulations also specify that use of materials, products, or services by the Department does not constitute official endorsement.

(2) In the event that a grant/cooperative agreement awarded to a recipient, other than a State or local government, including Federally-recognized Indian tribal governments, authorizes joint dissemination of information and promotion of activities being supported, the following provision shall be made a term and condition of the award:

(i) For non-research awards:

Recipient shall not publicize or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies Governmental, Departmental, Bureau, or government employee endorsement of a product, service, or position which the recipient represents. No release of information relating to this award may state or imply that the Government approves of the recipient's work products, or considers the recipient's work product to be superior to other products or services.

Recipient must obtain prior Government approval for any public information releases concerning this award which refer to the Department of the Interior or any Bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.

A recipient further agrees to include this provision in a subaward to any subrecipient, except for a subaward to a State, local government, or to a Federally-recognized Indian tribal government.

(ii) for research awards:

All manuscripts submitted for publication or other public releases of information regarding this project shall carry the following disclaimer: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government."

A recipient further agrees to include this provision in a subaward to any subrecipient, except for a subaward to a State, local government, or to a Federally-recognized Indian tribal government, awarded as a result of the agreement.

(3) Recipient requests for clearance of public releases will be coordinated with the cognizant Ethics Officer in all cases, except for public releases related to research awards.

[FR Doc. 92–18590 Filed 8–5–92; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR–4, Notice No. 5]

Railroad Accident Reporting, Open Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of open meeting.

SUMMARY: In order to explore matters related to the accident/incident reporting system, FRA will hold an informal open meeting on Tuesday, August 18, 1992, in Washington, DC with members of the Association of American Railroads (AAR) Uniformity Committee. The meeting will be open to any interested person who wishes to attend as an observer. FRA may schedule additional informal meetings to the extent that interest is expressed by other parties.

DATES: The open meeting will be held on Tuesday, August 18, 1992, at 10 a.m.

ADDRESSES: The open meeting will be held in rooms 6200 and 6202, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Stan Ellis, Office of Safety, FRA, Washington, DC 20590. Telephone: (202) 366–6299 (FTS 366–6299).

Principal Attorney: Sarah Landise, Office of the Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366–0635 (FTS 366–0635).

SUPPLEMENTARY INFORMATION: On March 14, 1990, FRA issued an advance notice of proposed rulemaking (ANPRM) soliciting comments and suggestions from the public regarding methods of improving all aspects of FRA's injury and accident reporting system and its governing regulations (49 CFR part 225). 55 FR 9469. Interested parties were invited to participate in a public hearing on May 17, 1990, and to file written comments prior to May 25, 1990.

The written comments received by FRA provided additional information and raised further issues related to the matters discussed in the ANPRM. In addition, FRA has received significant oral comments on same subject. Representatives of the railroads participating in the AAR Uniformity Committee expressed an interest in exploring possibilities concerning the format in which accident/incident data is gathered pursuant to the FRA Guide for Preparing Accident/Incident Reports. Since these issues bore on regulatory obligations and may touch on issues within the scope of the advance notice, FRA determined that the meeting should be open to any interested person who wishes to observe.

Consequently, FRA has scheduled the open meeting for Tuesday, August 18, 1992, beginning at 10 a.m. in rooms 6200 and 6202 of the Nassif Building, 400 Seventh Street NW, Washington, DC.

The meeting will be open to any interested person who wishes to attend as an observer. FRA may schedule additional informal meetings to the extent that interest is expressed by other parties.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 92–18626 Filed 8–5–92; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Extension of comment period for an amendment to a fishery management plan.

SUMMARY: NMFS announces the extension of the comment period for Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan (FMP) from August 4 to August 21, 1992.

DATES: Comments on Amendment 6 must be received on or before August 21, 1992.

ADDRESSES: Comments on Amendment 6 should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 6 with its Draft Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Suite 420, Portland OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140; Rodney McInnis at (310) 980–4040; or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: On June 10, 1992, NMFS published a notice of availability for Amendment 6 to the FMP (57 FR 24589) that provided the opportunity for public comments through August 4, 1992. Amendment 6, if approved, would establish a license limitation limited entry program for trawl, longline, and trap (or pot) gear in the Pacific Coast groundfish fishery off Washington, Oregon, and California. The public has requested an extension of the comment period for Amendment 6 to enable affected persons to study Amendment 6 and its proposed implementing regulations together. The comment period for the proposed implementing regulations (57 FR 32499, July 22, 1992), which contain information integral to Amendment 6, is July 17 to August 31, 1992. Consequently, the public comment period for Amendment 6 is extended to August 21, 1992, providing interested persons adequate time to review and provide comments on the two documents simultaneously.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18629 Filed 8–5–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of 6319 Salvage Timber Sale Project From Appeal

AGENCY: USDA, Forest Service, Northern Region.

ACTION: Notification that a fire recovery and salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In 1990, 58 acres of timber adjacent to the Clinton Creek Timber Sale were killed as a result of an escaped prescribed burn. In 1990, the Wallace Ranger District proposed a timber sale to salvage and rehabilitate the burned area. The District Ranger determined through an environmental analysis documented in the 6319 Salvage Timber Sale Environmental Assessment (EA) that there is good cause to expedite these actions in order to rehabilitate National Forest system lands and recover damaged resources. Salvage of commercial sawtimber within the fire area must be accomplished within the summer of 1992 to avoid further deterioration of sawtimber.

EFFECTIVE DATE: Effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Williams, District Ranger, Wallace Ranger District, Idaho Panhandle National Forests; Box 14; Silverton, Idaho 83867.

SUPPLEMENTARY INFORMATION: The Clinton Creek Timber Sale was logged between 1977 and 1990. The units adjacent to the proposed salvage areas were treated with a prescribed burn in the fall of 1990. Approximately 58 acres of timber outside the harvest units were burned by an escaped fire. The fire-killed timber is within Management Areas 1 and 6 as designated by the Idaho Panhandle Forests Plan, August 1987. Management Area 1 includes lands designated for timber production. Management Area 6 includes lands designated for timber production within big game summer range. In December 1990, the Wallace District Ranger proposed the salvage of fire killed trees. This proposal was designed to meet the following needs, (a) salvage merchantable timber products, (b) provide for long-term growth and production of commercially valuable wood products, (c) provide snag dependent species habitat and elk security, and (d) contribute to watershed recovery through application of management practices designed to minimize erosion and sedimentation potential. An interdisciplinary team was convened, and scoping began in 1990. Seven issues were identified and were the basis for the analysis of the environmental consequences discussed in the EA.

The interdisciplinary team developed two alternatives, the No Action alternative and the Proposed Action (Salvage) alternative. The environmental consequences associated with these alternatives are disclosed in the EA which was prepared for the proposal.

The selected alternative (Proposed Action) would salvage 185 MBF of dead timber on 58 acres. No new road construction or reconstruction is planned for this sale. All salvage areas are accessible from existing roads.

The sale and accompanying rehabilitation work is designed to accomplish the objectives as quickly as possible, minimize salvage volume lost, reduce risk of injury to naturally regenerating seedlings, facilitate prompt reforestation of burned areas, initiate watershed and fisheries habitat recovery projects, and restore and maintain elk security. To expedite implementation of this decision, procedures outlined in 36 CFR part 217(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

"Decisions related to rehabilitation of National Forest System lands and recovery of forest resources from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exist to exempt such decisions from review under this part."

Based on the environmental analysis documented in the 6319 Salvage Timber Sale EA and the District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 30, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region.

[FR Doc. 92-18631 Filed 8-5-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Arbo Creek Fire Salvage Project From Appeal

AGENCY: Forest Service, Northern Region, USDA.

ACTION: Notification that a fire recovery and timber salvage sale project is exempt from appeals under provisions of 36 CFR part 217.

SUMMARY: In October 1991, the Arbo Creek burned approximately 2,980 acres on the Kootenai National Forest. Lands within the burn area were treated to stabilize slopes and prevent damage to watersheds and other resources. The Three Rivers District Deputy Ranger determined these initial efforts were not sufficient to meet long-term objectives of the Kootenai National Forest Plan (Forest Plan). In May 1992, the Deputy District Ranger proposed a timber recovery and vegetative rehabilitation project consisting of four major actions: (1) salvage timber damaged by fire and windthrow on 317 acres; (2) construct 0.2 miles of specified, 0.2 miles of temporary and 18.4 miles of reconstructed roads to facilitate removal of timber (all temporary roads would be recontoured, revegetated, and closed after harvest operations); (3) reforest and revegetate by planting tree and shrub species on 1,319 acres of burned and salvaged areas; and (4) conduct fuel reductions on 317 acres of burned and salvaged areas.

The Deputy District Ranger has determined, through an environmental analysis documented in the Arbo Creek Fire Salvage Environmental Assessment (EA), that there is good cause to expedite these actions for rehabilitation of National Forest System Lands and recovery of damaged resources. Salvage of commercial sawtimber within the fire

area must be accomplished quickly to avoid further deterioration of sawtimber.

This is notification that the decision to implement the Arbo Creek Fire Salvage on the Kootenai National Forest is exempted from appeal. This conforms with the provisions of 36 CFR 217(a)(11).

EFFECTIVE DATE: Effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Charles E. Harris, Deputy District Ranger, Three Rivers Ranger District, Kootenai National Forest, 1437 North Highway 2, Troy, Montana 59935.

SUPPLEMENTARY INFORMATION: In October 1991, the Arbo Creek Fire burned and blew down timber on 2,980 acres of the Kootenai National Forest. Approximately 800 acres of the affected timber is within Management Areas that are considered suitable for timber production under the Forest Plan. A fire rehabilitation team surveyed the fire area and assessed damage to forest resources. Wildlife habitats were altered by reducing effective cover and security areas when vegetation was removed by the fire. Fishery habitats and riparian areas were altered when stabilizing woody material in stream channels were partly or completely removed by the fire. In other areas, blowdown has blocked fisheries movement upstream and lowered water quality.

In October and November 1991, the most severely burned and disturbed areas were hand seeded. Additional acres in isolated areas of the fire were seeded and fertilized by helicopter; however, winter weather precluded extensive seeding operations.

In December 1991, the Three Rivers Deputy District Ranger proposed projects to recover damaged timber and rehabilitate areas affected by the fire. The proposal was designed to meet the following needs: (1) recover merchantable timber products; (2) rehabilitate stands damaged by fire and windthrow to expedite the establishment of wildlife hiding cover, promote watershed stabilization, and enhance future timber production; and (3) provide for the recovery of conditions essential to sustain ecological systems in the area by promoting species diversity.

An interdisciplinary team of resource specialists was formed to analyze opportunities to accomplish the identified purpose and need. An environmental analysis of these actions was started in December 1991. Public input was solicited through newspaper, mailings, and an open house. In addition, contacts were made with other interested State and Federal agencies. As a result, three environmental issues were identified and formed the foundation for the analysis of environmental effects disclosed in the EA.

The EA discloses the analysis of five alternatives, including a "no action" alternative. Alternatives analyzed recovery actions ranging from treatment of 317 acres, 183 acres, 168 acres, and no treatments. Estimated recovery of timber salvage material ranges from a high of 4.0 MMBF to no salvage operations.

The selected alternative (Alternative 5) includes four major actions. The first is to harvest approximately 317 acres of killed or damaged timber within the analysis area. Harvest in all cases is limited to removal of dead, blowdown, and trees damaged beyond recovery. Second, an estimated 0.2 miles of specified, 0.2 miles of temporary, and 18.4 miles of reconstructed roads will be needed to facilitate removal of timber. All temporary roads will be recontoured, revegetated, and closed after timber harvest operations are completed. Third, reforestation and revegetation of 1,319 acres would be accomplished by planting a mixture of coniferous species and shrubs. The objectives for these planting include: (1) reforestation of lands suitable for timber production as soon as possible; (2) establishment of wildlife hiding cover and winter forage for moose at a faster rate than natural conditions would allow; and (3) increased diversity of plant species as the area recovers. Fourth, treatment of fuels on burned and salvaged areas would be accomplished by broadcast burn and grapple piling. The objectives for these treatments include: (1) reduce fuel loadings to lower the potential of a secondary wildfire and reburn, (2) break up continuous fuels to assist in future wildfire containment; and (3) break up fuel concentrations that would prohibit wildlife movement in travel corridors.

Further delay in removal of the dead and damaged trees will render them unmerchantable as sawtimber; a lack of reforestation and revegetation treatments will result in unacceptable delays affecting long-term timber yields, effectiveness of wildlife and fisheries habitat, and failure to treat unacceptable amounts of down fuel loadings increases the potential for future catastrophic wildfire. Due to the length of time required to develop an acceptable project and evaluate its environmental effects, the time remaining for accomplishment has become critical. Additional delays will result in further damage to presently undamaged resources and would decrease the ability to recover timber and other resources affected by the 1991 Arbo Creek Fire.

To expedite this recovery of salvage timber and associated rehabilitation work, procedures outlined in 36 CFR part 217 are being followed. Under this Regulation the following may be exempt from appeal.

> Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as, wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Arbo Creek Fire Salvage EA and the Deputy District Ranger's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 30, 1992.

John M. Hughes,

Deputy Regional Forester, Northern Region

[FR Doc. 92-18632 Filed 8-5-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(28a3)-1-92]

Foreign-Trade Subzone 146C, Fedders North America, Inc., Effingham, IL; Request for Expansion of Manufacturing Authority; Room Air Conditioners

The Foreign-Trade Zones Board (the Board) has been notified pursuant to § 400.28(a)(3) of the Board's regulations by the Bi-State Authority, grantee of FTZ 146, Lawrence County, Illinois, with additional information as to the sourcing of foreign components for activity under FTZ procedures at the Fedders North America, Inc., room air conditioner manufacturing plant in Effingham, Illinois (FTZ Subzone 146C).

The Board authorized subzone status for the Fedders plant in March, 1992 (Board Order 561, 57 FR 9103, 3-16-92). Manufacturing authority involves the production of room air conditioners for the U.S. market and for export using certain materials and components sourced from abroad, which account for

some 20 percent of finished product material value.

The original application listed certain components being sourced from aboard. The Board has now been notified that certain components were inadvertently omitted. The FTZ Staff has reviewed the list and concluded that public comment should be invited on the following items which are subject to inverted tariffs based on the 2.2 percent duty rate for finished air conditioners: compressors (HTSUSA# 8414.30, duty rate: 3.4%), overloads and start assists (8414.90.20402, 3.4%), power cords (8544.60.200009, 5.3%), reversing valves (8481.20.00007, 3.7%), insulation (8548.00.00002, 3.9%), heating coils (8516.29.00908, 3.7%), grooved copper tubing (7407.10.10000, 6.3%), and aluminum (7607.11.00006, 5.3%). The manufacturing activity otherwise remains unchanged.

Zone procedures would exempt Fedders from Customs duty payments on the foreign components used in production for export. On domestic sales, the firm would be able to choose the duty rate for finished air conditioners (2.2%) to apply to foreign-origin components (average duty rate 4.3%).

Public comment is invited from interested parties. Submission (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 26, 1992. A copy of the request will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 30, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-18695 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-017]

Pads for Woodwind Instrument Keys From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, Prestini Musical Instruments, the Department of Commerce has conducted an administrative review of the antidumping duty order on pads for woodwind instrument keys from Italy. This review covers Pads Manufacturer SRL, a manufacturer/exporter of this merchandise to the United States, and the period September 1, 1990 through August 31, 1991. We have preliminarily determined that there were no shipments during the review period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Jospeh A. Fargo or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On September 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 47457) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on pads for woodwind instrument keys from Italy. On September 18, 1991, the petitioner, the Prestini Musical Instruments, requested an administrative review of Pads Manufacturer SRL (Pads), a manufacturer/exporter of this merchandise to the United States. We initiated the review, covering September 1, 1990 through August 31, 1991, on October 18, 1991 (56 FR 52254). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Act). The final results of the last administrative review in this case were published in the **Federal Register** on April 22, 1987 (52 FR 13285).

Scope of the Review

Imports covered by the review are shipments of pads for woodwind instrument keys from Italy, classifiable under item number 9209.99.40 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Italian pads for woodwind instrument keys, Pads, and the period September 1, 1990 through August 31, 1991.

Preliminary Results of the Review

Because there were no shipments during the period September 1, 1990 through August 31, 1991, we based the cash deposit rate on the last margin found for Pads. We preliminarily determine that the cash deposit rate for Pads shall continue to be 1.03 percent.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pads for woodwind instrument keys from Italy, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period (3) if the exporter is not a firm covered in this review, previous reviews, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "All Others" rate established in the final results of this administrative review. These deposit requirements when imposed shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 24, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-18610 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-061]

Precipitated Barium Carbonate From Germany; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Determination Not To revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on Precipitated Barium Carbonate from Germany.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation (19 CFR 353.25(d)(4)(1991)). We had not received a request to conduct an administrative review of the antidumping duty order on precipitated barium carbonate from Germany (46 FR 20438, June 25, 1981) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the duty order and served written notice of the intent to revoke to each interested party on the Department's service list.

On June 10, 1992, Chemical Products Corporation, an interested party, objected to our intent to revoke this duty order. Therefore, because an interested party objects to the revocation, we no longer intend to revoke this duty order.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18612 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-062]

Sugar From Germany; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination Not To revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on sugar from Germany.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on sugar from Germany (44 FR 33878, June 13, 1979) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of the intent to revoke to each interested party on the Department's service list.

On June 10, 1992, certain interested parties (the American Sugar Cane League, the American Sugarbeet Growers Association, the Florida Sugar Cane League/Rio Grande Valley Sugar Growers, the Hawaiian Sugar Planter's Association, the Sugar Cane Growers Cooperative of Florida, the U.S. Beet Sugar Association, and the U.S. Cane Sugar Refiners' Association) objected to our intent to revoke the finding. Additionally, on June 30, 1992, the Florida Sugar Marketing and Terminal Association, Inc., an interested party, objected to our intent to revoke the finding. Therefore, because several interested parties objected to the revocation, we no longer intend to revoke this finding.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18609 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-078]

Sugar From France; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on sugar from France.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on sugar from France (44 FR 33878, June 13, 1979) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of intent to revoke to each interested party on the Department's service list.

On June 10, 1992, certain interested parties (the American Sugar Cane League, the American Sugarbeet Growers Association, the Florida Sugar Cane League/Rio Grande Valley Sugar Growers, the Hawaiian Sugar Planters' Association, the Sugar Cane Growers Cooperative of Florida, the U.S. Beet Sugar Association, and the U.S. Cane Sugar Refiners' Association) objected to our intent to revoke the finding.

Additionally, on June 30, 1992, the Florida Sugar Marketing and Terminal Association, Inc., an interested party, objected to our intent to revoke the finding. Therefore, because several interested parties objected to the revocation, we no longer intend to revoke this finding.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18611 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-077]

Sugar From Belgium; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on sugar from Belgium.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on sugar from Belgium (44 FR 33878, June 13, 1979) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding and served written notice of the intent to revoke to each interested party on the Department's service list.

On June 10, 1992, certain interested parties (the American Sugar Cane League, the American Sugarbeet Growers Association, the Florida Sugar Cane League/Rio Grande Valley Sugar Growers, the Hawaiian Sugar Planters' Association, the Sugar Cane Growers Cooperative of Florida, the U.S. Beet Sugar Association, and the U.S. Cane Sugar Refiners' Association) objected to our intent to revoke the finding. Additionally, on June 30, 1992, the Florida Sugar Marketing and Terminal Association, Inc., an interested party, objected to our intent to revoke the finding. Therefore, because several interested parties objected to the revocation, we no longer intend to revoke this finding.

Dated: July 23, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-18610 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00010." A summary of the application follows.

Summary of the Application

Applicant: Pacific Roller Die Co., Inc., d.b.a. PRD Company, Inc. ("PRD"), 1321 West Winton Avenue, Hayward, California 94545. Contact: Matthew P. Mitchell, Attorney, telephone: (510) 845-2528.

Application No.: 92-00010.

Date Deemed Submitted: July 29, 1992.

Members (in addition to applicant): None.

Export Trade

1. Products

Spiral lock-seam pipe mills and ancillary equipment and related spare and replacement parts.

2. Services

Sales and field service including demonstration of Products; training of customers in use of Products; set-up and repair relating to Products; and furnishing of manuals, specifications, drawings and layouts.

e. Technology Rights

Technology rights, including, but not limited to, patents, know-how and trademarks that relate to Products and Services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, The Commonwealth of the Northern Marina Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, PRD seeks to:

1. Investigate and assess export sales opportunities.

2. Consult with manufacturer on customer requirements including Products, Services and Technology Rights required, timing of delivery, and special features and, in that connection, may

(a) Disclose to manufacturer PRD's plans and specifications for Products to be manufactured by manufacturer for PRD; and

(b) Consult with manufacturer with respect to the status of its production capacity relative to desired Products and delivery dates.

3. Negotiate purchase prices, delivery and payment terms of Products, Services, and Technology Rights with manufacturer.

4. Negotiate sales prices, delivery and payment terms of Products, Services, and Technology Rights with export customers.

5. Acquire Products, (including renovation and rebuilding of used Products), Services and Technology Rights exclusively from manufacturer for resale in Export Markets.

6. Act as manufacturer's exclusive distributor of Products, Services, and Technology Rights in Export Markets.

7. Periodically negotiate changes in prices to be paid to manufacturer for Products on the basis of manufacturer's costs and the exchange rate between United States and Canadian currency and may, in that connection, discuss manufacturer's costs with manufacturer.

8. Furnish manuals, drawings, layouts, and other documentation and engineering assistance to customers for both PRD designs and manufacturer's designs.

9. Perform field service on Products, including startup, training, warranty service and out-of-warranty troubleshooting and repair, and call upon manufacturer to perform field service tasks at PRD's discretion.

10. Compensate manufacturer for field service provided by manufacturer's employees, and, in that connection, discuss the direct payroll, fringe benefits and out-of-pocket costs of manufacturer's field service representatives with manufacturer.

11. Claim compensation from manufacturer for warranty repair work done by PRD's employees, and, in that connection, discuss the direct payroll, fringe benefits and out-of-pocket costs of PRD's field service representatives with manufacturer.

12. Permit manufacturer a right of first refusal to renovate or rebuild used Products acquired by PRD for resale in Export Markets at a price (including both-way freight) no higher than PRD's cost of performing the same work, and may, in that connection, discuss with manufacturer PRD's cost of performing that work.

13. Manufacture itself, or acquire from other sources, Products that PRD is able to sell but that manufacturer is unable to manufacture.

Definition

"Manufacturer" means IMW Industries, Ltd. a company incorporated under the laws of British Columbia, Canada.

Dated: July 31, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-18696 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications: Raleigh/Durham/TRIAD, North Carolina; Correction

Dated: July 31, 1992.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice; Correction.

SUMMARY: FR Doc. 92-14717 was published on page 27963 in the Federal Register of Tuesday, June 23, 1992.

Certain corrections are necessary due to the fact that the geographic service area omitted TRIAD and the mailing address for submission of RFA responses has changed. The corrections are:

(1) In the first paragraph of the Summary, the last sentence read, "The MBDC will operate in the Raleigh/Durham, North Carolina geographic service area." It should read, The MBDC will operate in the Raleigh/Durham/TRIAD, North Carolina geographic service area.

(2) The closing date for submitting an application is changed from July 24, 1992 to September 8, 1992.

(3) The mailing address for submission of RFA responses is corrected to: U.S. Department of Commerce, Washington Regional Office, Minority Business Development Agency, 1255 22nd Street, NW., 7th floor, suite 701, Washington, DC 20037.

Sunny L. Guider,

Chief, Business Development.

[FR Doc. 92-18692 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of permit modification (P77#39).

On June 11, 1992, notice was published in the Federal Register (57 FR 24777) that an application had been filed by the NMFS, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038, to modify Scientific Research Permit No. 704 to: (1) Replace the term "unspecified numbers" in the original permit with the following to indicate the numbers of animals which could be harassed during previously authorized aerial survey activities: 86,000 northern elephant seals (*Mirounga angustirostris*), 143,000 California sea lions (*Zalophus californianus*), and 46,000 harbor seals (*Phoca vitulina*), (2) inadvertently harass up to 69,000 Steller sea lions (*Eumetopias jubatus*) during aerial photographic census, and (3) approach elephant seals for body measurements.

Notice is hereby given that on July 27, 1992, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that the Permit: (1) Was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with and is subject to parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and modification are available for review, by appointment, in the Permit Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713-2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4015);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4015);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526-6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, Suite 6, Juneau, AK 99802 (907/586-7221).

Dated: July 27, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-18594 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,058,602 (Serial No. 5-712,854), titled "Synthesis, Structure and Antitumor Activity of 5, 6-Dihydro-5-Azacytidine," to Cancer Therapy and Research Foundation of South Texas, having a place of business in San Antonio, TX. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The compound 5,6-dihydro-5-azacytidine, 5 AC[H], and non-toxic acid addition salts such as the hydrochloride, together with its preparation form 5-azacytidine (5-AC) by reduction of the 5,6-double bond of 5-AC with an alkali metal borohydride such as sodium borohydride. Additionally, 5,6-dihydro-5-azacytidine, 5AC[H], has antitumor activity for murine leukemia systems L1210 and P388 as an injectable. With respect to the parent compound, 5-AC, the antitumor activity of 5AC[H] is comparable and exhibits a more favorable therapeutic index. It also has better solution stability over a broad pH range.

The availability of Patent No. 4,058,602 for licensing was published in the **Federal Register**, Vol. 42, No. 71, p. 19369 (April 13, 1977). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-18659 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,053,776 (Serial No. 5-689,757) titled "Sub-Micron Particle Detector," to Niagara Scientific, Inc., having a place of business in E. Syracuse, NY. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The sub-micron particle detector is an instrument to detect submicron particles by charge-transfer attachment. The instrument is made up of a charging chamber with two concentric cylindrical electrodes, a remote third collector electrode, and a pump to force ambient air through the charging chamber and into the collection electrode. The innermost electrode of the charging chamber is supplied with a radioactive material having a gold foil covering. This material can create a small bipolar region symmetrical to the inner electrode where primary ionization takes place. Positive ions created in this region move to the larger outside unipolar region to attach themselves to sub-micron particles. These charged particles are then forced from the charged chamber at which time they may either impinge on the collection electrode to create a measurable axial current or the particles may enter a size discrimination chamber. Should they enter this discrimination chamber, particles of a given mobility or size are collected by two additional concentric cylindrical electrodes.

The availability of Patent No. 4,053,776 for licensing was published in the **Federal Register**, Vol. 56, No. 145, p. 35851 (July 29, 1991). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 to $3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-18658 Filed 8-5-92; 8:45 am]

BILLING CODE 3510-04-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92-2-91SCD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1991 Satellite Carrier Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal directs all claimants to the royalty fees paid by satellite carriers for secondary transmissions to home dish owners during 1991 to file with the Tribunal a notice of intent to participate in the distribution of these funds by August 24, 1992.

In response to the Tribunal's July 1, 1992 inquiry, joint comments were received from Program Suppliers, Joint Sports, Broadcast Claimants, Public Broadcasting Claimants, American Society of Composers, Authors and Publishers, SESAC, Inc., Broadcast Music, Inc., CBS, Inc., National Broadcast Company, Inc., Capital

Cities/ABC, Inc. and Devotional Claimants. These parties indicated that the 1989, 1990 and 1991 Satellite Carrier Royalty Distribution Proceeding should be combined into a single consolidated proceeding. The Tribunal directs that any other interested parties comment by September 15, 1992 regarding such consolidation.

The Tribunal further directs that all interested parties submit comments by September 15, 1992 advising as to the status of settlement negotiations and whether a controversy exists with regard to the 1991 satellite carrier royalty fees and if a declaration of controversy is requested, the proposed recommendations concerning the scheduling and conduct of such proceedings.

DATES: August 24, 1992 and September 15, 1992.

ADDRESSES: An original and five copies of the comments should be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, Commissioner, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009 (202–606–4400).

Dated: August 3, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92–18690 Filed 8–5–92; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On June 29, 1992 the Secretary of the Air Force determined that the World War II service of a group known as "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division), Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945" shall be considered "active duty" under the provisions of Public Law 95–202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs (VA).

To receive recognition, each applicant must establish they:

1. Were employed by Consolidated Vultree Aircraft Corporation (Consairway Divsion) as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator or

2. Were employed by Consolidated Vultree Aircaft Corporation (Consairway Division) as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and

3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF passes to leave the limits of an overseas base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4745.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–18589 Filed 8–5–92; 8:45 am]

BILLING CODE 3910–01–M

Active Duty Service Determinations for Civilian or Contractual Groups

On July 16, 1992, the Secretary of the Air Force determined that the World War II service of a group known as "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Pan American World Airways and Its Subsidiaries and Affiliates, Who Served Overseas as a Result of Pan American's Contract With the Air Transport Command and Naval Air Transport Service During the Period December 14, 1941 through August 14, 1945" shall be considered "active duty" under the provisions of Public Law 95–202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs (VA).

To be eligible for VA benefits, each member of the group must establish they:

1. Were employed by Pan American World Airways or one of its subsidiaries and affiliates under contract to Air Transport Command or Naval Air Transport Service: Pan American Airways—Africa Ltd., American Export Air, Pan Am Air Ferries, Pan Air Africa, Panagra (Pan American-Grace Airlines), and China National Aviation Corporation.

2. Were employed by Pan American World Airways (per criterion 1) as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator) or

3. Were employed by Pan American World Airways (per criterion 1) as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and

4. Served outside the continental United States in direct support of Air Transport Command or Naval Air Transport Service-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any employment records from Pan American headquarters. Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC or NATS performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF

passes to leave the limits of an overseas base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4745.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–18588 Filed 8–5–92; 8:45 am]

BILLING CODE 3910–01–M

Active Duty Service Determinations for Civilian or Contractual Groups

On June 29, 1992, the Secretary of the Air Force determined that the World War II service of a group known as "Honorably Discharged Members of the American Volunteer Guard, Eritrea Service Command During the Period June 21, 1942 to March 31, 1943" would be considered "active duty" under the provisions of Public Law 95–202 and be eligible for benefits according to all laws administered by the Department of Veterans Affairs.

To be eligible for VA benefits, each member of the group must establish they:

1. Served honorably with the AVG, Eritrea during the period beginning June 21, 1942 to March 31, 1943 as evidenced by:

a. An AVG, Eritrea discharge certificate or letter

or

b. Identification as an Honorably discharged AVG, Eritrea member in other credible publications or documents.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: U.S. Army Reserve Personnel Center (DARP-VSE-N), 9700 Page Blvd., St. Louis, MO 63132-5200.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any records from the Eritrea Service Command or those items listed in the eligibility criteria.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4745.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–18587 Filed 8–5–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Intent to Prepare an Environmental Impact Statement for an Updated Master Plan for Prado Basin

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army hereby announces its intention to prepare an Environmental Impact Statement to assess the environmental effects of updating a Project Master Plan for the Prado Flood Control Reservoir.

SCOPING: The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the Environmental Impact Statement. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the Statement, and potential mitigation measures associated with the proposed action.

A public scoping meeting will be held on Wednesday, 19 August 1992 from 6:30 p.m. till 9 p.m. at the El Prado Golf Course Club House, 6555 Pine Avenue, Chino, California. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic concerns and the Environmental Impact Statement scoping by attending the public scoping meeting, or by writing to the address listed below.

FOR FURTHER INFORMATION CONTACT: Comments and suggestions on the scoping process, and requests to be placed on the mailing list for announcements should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RN, P.O. Box 2711, Los Angeles, CA 90053.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers intends to prepare an Environmental Impact Statement to assess the environmental effects associated with updating the Master Plan for the Prado Flood Control Reservoir. The public will have the opportunity to comment on this Statement before any action is taken to implement the updated master plan.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–18660 Filed 8–5–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.129U]

Rehabilitation Continuing Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities. The Rehabilitation Continuing Education Programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to increase the availability of qualified personnel for the vocational rehabilitation and independent living rehabilitation of individuals with handicaps. National Education Goal five calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including institutions of higher education.

Deadline for Transmittal of Applications: 10/01/92.

Deadline for Intergovernmental Review: 12/02/92.

Applications Available: 08/14/92.

Available Funds: $3,084,694.

Estimated Range of Awards: $326,000–$540,000.

Estimated Average Size of Awards: $440,670.

Estimated Number of Awards: 7.

Note: Applications are invited for the provision of training for Department of Education Regions II, III, VI, VII, VIII, IX, and X only. The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85,

and 86: and (b) The regulations for this program in 34 CFR Parts 385 and 389.

For Applications: Telephone (202) 205–8327; individuals who are hearing impaired or others who use a TDD may call the Federal Dual Party Relay Service on 1–800–877–8339 (in the Washington, DC area (202) telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–9481.

Program Authority: 29 U.S.C. 774.

Dated: July 30, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–18623 Filed 8–5–92; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.254]

State Literacy Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide Federal financial assistance to assist State and local public and private nonprofit efforts to eliminate illiteracy through a program of State literacy resource centers grants. Accordingly, this program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal 5 calls for all Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: States are eligible to receive grants under this Program.

Deadline For Transmittal of Applications: September 30, 1992.

Deadline For Intergovernmental Review: November 29, 1992.

Applications Available: Application materials have been sent to Governors in the States.

Available Funds: $5,000,000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 Parts 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 460 and 464.

For Information Contact: Joan Seamon, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 4428, Mary E. Switzer Building), Washington, DC 20202–7240. Telephone: (202) 205–8270. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1208aa.

Dated: July 31, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 92–18624 Filed 8–5–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF86–517–001, et al.]

Oswego Hydro Partners L.P., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Oswego Hydro Partners L.P.

[Docket No. QF86–517–001]

July 27, 1992.

On July 20, 1992, Oswego Hydro Partners L.P., tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure and amends the length of the transmission line component of the facility.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Gordonsville Energy, L.P. (Unit II)

[Docket No. QF92–167–000]

July 27, 1992.

On July 21, 1992, Gordonsville Energy, L.P. (Applicant) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the ownership of the facility and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Ridge Generating Station, L.P.

[Docket No. QF92–158–000]

July 27, 1992.

On July 21, 1992, Ridge Generating Station, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure of the facility.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Crockett Cogeneration, A California Limited Partnership

[Docket No. QF84–429–001]

July 28, 1992.

On July 24, 1992, Crockett Cogeneration, a California Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the computations of the operating and efficiency values under various operating scenarios. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Indiantown Cogeneration, L.P.

[Docket No. QF90–214–001]

July 8, 1992.

On July 28, 1992, Indiantown Cogeneration, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to ownership structure of the facility.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Co.

[Docket No. ER92–728–000]

July 29, 1992.

Take notice that The Detroit Edison Company (Detroit Edison) on July 17, 1992, tendered for filing (1) Original Sheet Nos. 10b, 10c, 22c, 22d, 22e, and 22f to Detroit Edison's FERC Electric Tariff, Volume No. 1 which is a rate schedule which provides for the sale of experimental seasonal peaking capacity and energy, and (2) an executed service agreement between Detroit Edison and Wolverine Power Supply Cooperative for the sale of such capacity and energy.

Detroit Edison states that pursuant to the rate schedule, it will make available, on an experimental basis, up to an aggregate total of 100 MW of seasonal peaking capacity and energy during the months of October through March to eligible wholesale for resale customers

who execute a service agreement and submit a seasonal capacity reservation.

Detroit Edison requests an effective date of October 1, 1992 for both the service proposed under the rate schedule and the service agreement executed by Wolverine Power Supply Cooperative.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Hampshire

[Docket No. ER92-634-000]

July 29, 1992.

Take notice that Public Service Company of New Hampshire (PSNH), on July 17, 1992, tendered for filing a Public Service Company of New Hampshire Service Agreement for Non-Firm Transmission Service between PSNH and Littleton Municipal Light Department (Littleton) as an amendment to its June 11, 1992 filing in this docket.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER92-739-000]

July 29, 1992.

Take notice that on July 21, 1992, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), tendered for filing Amendment No. 1 dated July 20, 1992, to Service Schedule EP of the Interchange Contract between Jacksonville Electric Authority and Southern Companies. The Amendment extends the term and includes other modifications to Schedule EP.

Southern Company Services, Inc. requests expedited review of the Amendment so that transactions may occur as soon as possible.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Co.

[Docket No. ER92-738-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Second Supplement, dated as of July 2, 1992 (Second Supplemental Agreement) to the Capacity Credit Sales Agreement, dated June 5, 1991, between PP&L and Baltimore Gas and Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 105. The Second Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on Baltimore Gas and Electric Company, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Co.

[Docket No. ER92-727-000]

July 29, 1992.

Take notice that on July 16, 1992, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing two Capacity Sales Agreements for the sales to Vermont Electric Generation and Transmission Cooperative, Inc. (VEG&T) and the city of Westfield Gas and Electric Light Department (Westfield) of unit capacity and energy from CL&P.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective March 1, 1992 and March 28, 1992.

NUSCO states that copies of these rate schedules have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Co.

[Docket No. ER92-730-000]

July 29, 1992.

Take notice that on July 20, 1992, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing an Interruptible Power Supply Service Agreement between CL&P and Wallingford Electric Division (Wallingford).

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective July 27, 1992.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties and to the Connecticut Department of Public Utility Control.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Hartwell Energy Limited Partnership

[Docket No ER92-521-000]

July 29, 1992.

Take notice that on July 22, 1992, Hartwell Energy Limited Partnership tendered for filing an amendment to its filing filed on May 4, 1992 in this docket.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas Gas and Electric Co.

[Docket No. ER92-732-000]

July 29, 1992.

Take notice that on July 21, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing proposed changes to the following full requirement customers:

FERC No.	Other party
171	Blue Mound, KS.
174	Bronson, KS.
170	Elsmore, KS.
176	Haven, KS.
169	LaHarpe, KS.
179	Mindenmines, KS.
172	Moran, KS.
177	Mount Hope, KS.
175	Savonburg, KS.

KG&E states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 24, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Central Power and Light Co.

[Docket No. ER92-610-000]

July 29, 1992.

Take notice that on July 20, 1992, Central Power and Light Company (CPL) made a supplemental filing in the above referenced matter in response to a Staff request for additional information.

Comment date: August 12, 1992, in accordance with Standard Pargaragph E at the end of this notice.

15. Pennsylvania Power & Light Co.

[Docket No. ER92-736-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Supplement (Fourth Supplemental Agreement), to the Capacity and Energy Sales Agreement (Agreement), dated January 28, 1988, as supplemented by a First Supplemental Agreement dated August 10, 1988, and by a Second Supplemental Agreement dated May 31, 1989, between PP&L and Baltimore Gas and Electric Company (BG&E), and by a Third Supplemental Agreement dated May 24, 1991, which is on file with the Commission as PP&L's Rate Schedule FERC No. 92. The Fourth Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement, which was accepted for filing by the Commission on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act ad § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on Baltimore Gas and Electric Company, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Co.

[Docket No. ER92-512-000]

July 29, 1992.

Take notice that New England Power Company (NEP), on July 22, 1992, tendered for filing supplemental information to its filing in this docket which NEP had originally submitted on April 30, 1992. According to NEP, the supplemental information provides additional and explanatory information about its termination of transmission agreements for entitlements in the Rowe Nuclear Plant.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Indiana & Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Co.

[Docket Nos. EL88-1-003, ER88-31-002, ER88-32-002, ER90-270-003, and ER90-271-003]

July 29, 1992.

Take notice that on July 15, 1992, Indiana Michigan Power Company (I&M) tendered its compliance filing in the above-referenced dockets, in compliance with the Commission's June 3, 1992 Opinion and Order on Initial Decision.

Copies of the filing were served upon Richmond Power & Light, the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas Gas and Electric Co.

[Docket No. ER92-733-000]

July 29, 1992.

Take notice that on July 21, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing proposed changes to the following partial requirements municipalities:

FERC No.	Other party
134	Augusta, KS.
144	Burlington, KS.
181	Chanute, KS.
149	Coffeyville, KS.
161	Fredonia, KS.
166	Iola, KS.
154	Mulvane, KS.
153	Neodesha, KS.
162	Oxford, KS.
156	Wellington, KS.
155	Winfield, KS.

KG&E states that the purpose of the changes is to extend the term of the existing contracts for an additional ten years. The changes are proposed to become effective September 24, 1992.

Copies of the filing were served upon the cities and the Kansas Corporation Commission.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Power & Light Co.

[Docket No. ER92-735-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Supplement, dated as of July 1, 1992 (Second Supplemental Agreement), to the Capacity Credit Sales Agreement, dated February 15, 1991, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 102. The Second Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Regulatory Commissioners.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Co.

[Docket No. ER92-729-000]

July 29, 1992.

Take notice that on July 20, 1992, Florida Power & Light Company (FPL) tendered for filing the Letter Agreement Extending the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and Tampa Electric Company (Letter Agreement). FPL requests that the Letter Agreement be made effective June 27, 1992.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power & Light Co.

[Docket No. ER92-734-000]

July 29, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 21, 1992, tendered for filing a Second Supplement, dated as of July 6, 1992 (Second Supplemental Agreement), to the Capacity Credit Sales Agreement (Agreement), dated May 28, 1991 between PP&L and Atlantic City Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 106. The Second Supplemental Agreement revises the Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement. The revised rate was accepted for filing by the Commission

on May 28, 1992 in Docket No. ER92-411-000.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1992.

PP&L states that a copy of its filing was served on Atlantic City Electric Company, the Pennsylvania Public Utility Commission, and the New Jersey Board of Regulatory Commissioners.

Comment date: August 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Gordonsville Energy, L.P. (Unit I)

[Docket No. QF92-166-000]

July 30, 1992.

On July 21, 1992, Gordonsville Energy, L.P. (Unit I) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the ownership of the facility and clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Co.

[Docket No. ER92-705-000]

July 30, 1992.

Take notice that on July 10, 1992, Portland General Electric Co. (Portland) tendered for filing a Notice of Cancellation of FERC Rate Schedules Nos. 3, 17, 19, 22, 24, 25, 29, 30, 34, 39, 40, 44, 60, 74 and 76.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corp.

[Docket No. ER92-741-000]

July 30, 1992.

Take notice that on July 23, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing, as a rate schedule, a supplement amendment between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Consolidated Edison) dated July 10, 1992.

Niagara presently has on file an agreement with Consolidated Edison dated April 1, 1979 last amended December 20, 1992. The original agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) to Consolidated Edison. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Rate Schedule FERC No. 113. This new amendment is being transmitted as a supplement to the existing agreement and supersedes and amends Supplement No. 13.

The July 10, 1992 amendment, which is a supplement to the original agreement, revises the transmission rates. Niagara requests a waiver of the Commission's prior notice requirements in order to allow the July 10, 1992 amendment to become effective April 1, 1992. Niagara Mohawk states that the proposed changes are in accordance with Rate Schedule No. 113.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Interstate Power Co.

[Docket No. ER92-743-000]

July 30, 1992.

Take notice that on July 24, 1992, Interstate Power Company (IPW) tendered for filing Amendment Nos. 2, 4 and 5 to the Electric Service Agreement between the City of Blue Earth and Company. These amendments revise the contract term, firm power commitment and transmission loss factors.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Cop.

[Docket No. ER92-742-000]

July 30, 1992.

Take notice that on July 23, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an amendment sent by Niagara Mohawk to Consolidated Edison Company of New York, Inc. (Con Ed) dated July 10, 1992, providing for certain transmission services to Con Ed. This amendment is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This new amendment is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed. Paragraph 2.3 of Rate Schedule No. 90, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1992.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Interstate Power Co.

[Docket No. ER92-744-000]

July 30, 1992.

Take notice that on July 24, 1992, Interstate Power Company (IPW) tendered for filing Amendment Nos. 1 and 2 to the Electric Service Agreement between the City of Strawberry Point and Company. These amendments revise the firm power commitment and transmission loss factors.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. The Montana Power Co.

[Docket No. ER92-745-000]

July 30, 1992.

Take notice that on July 24, 1992, The Montana Power Company (Montana), tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate has an effective date of November 1, 1991, and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Ocean State Power

[Docket No. ER92-748-000]

July 30, 1992.

Take notice that on July 27, 1992, Ocean State Power (Ocean State) tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplement No. 13 to Rate Schedule FERC No. 1

Supplement No. 10 to Rate Schedule FERC No. 2
Supplement No. 9 to Rate Schedule FERC No. 3
Supplement No. 10 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning on April 28, 1992, the requested effective date of the Supplements, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1993. Ocean State is filing the Supplements pursuant to § 7.5 of each of Ocean State's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, and the Commission's orders in Ocean State Power, 36 FERC ¶ 61,140 at 61,380 (1987) and 44 FERC ¶ 61,261 at 61,985 (1988), and in Ocean State Power II, 59 FERC ¶ 61,360 (1992). The Supplements constitute a rate decrease.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: August 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18669 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10440-001 Alaska]

Alaska Power & Telephone Co.; Availability of Environmental Assessment

July 31, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Black Bear Lake Project, to be located on Black Bear Lake in the First Judicial District on Prince of Wales Island, Alaska, near the communities of Craig and Klawock, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92- 18670 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10900-000 New Hampshire]

Thomas Hodgson & Sons, Inc.; Availability of Environmental Assessment

July 31, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the existing China Mill Project located on the Suncook River in the towns of Allenstown and Pembroke, Merrimack County, New Hampshire, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18671 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-608-000, et al.]

Granite State Gas Transmission, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Granite State Gas Transmission, Inc.

[Docket No. CP92-608-000]

July 27, 1992.

Take notice that on July 23, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP92-608-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to add a new delivery point in Portsmouth, New Hampshire, for the delivery of natural gas to its affiliated distribution company customer, Northern Utilities, Inc. (Northern Utilities), under the certificate issued to Granite State in Docket No. CP82-515-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Granite State requests authorization to establish a new delivery point for deliveries to Northern Utilities at a point on the former Pease Air Force Base, in Portsmouth, New Hampshire, where Granite State has existing meter and regulator facilities for measuring the deliveries of gas to a central heating plant on the base property. Granite State contends that the base has been leased to a publicly owned development agency, Pease Development Authority, and plans for its redevelopment to non-military uses are in a preliminary stage. Granite State further contends that the Development Authority plans to lease hangers and other buildings on the base to non-military tenants for commercial purposes. It is stated that the newly leased buildings will require natural gas for space heating during the forthcoming winter. It is also stated that Granite State can construct a meter and regulator at an existing meter location on the base as an interim arrangement to deliver gas to Northern Utilities and

Northern Utilities, in turn, can construct the necessary lateral and service lines on the base to provide space heating service in the buildings and hangers that will be leased by the Development Authority.

It is stated that during the forthcoming winter, the maximum daily requirements are estimated to be 240 dekatherms with an annual requirement of 24,000 dekatherms. It is further stated that the potential maximum daily requirement, if as many as 20 buildings are converted to commercial use, is 1,000 dekatherms with an annual requirement of 96,000 dekatherms.

Comment date: September 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP92-591-000]

July 29, 1992.

Take notice that on July 2, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-591-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add delivery points to two existing sales customers, Kokomo Gas and Fuel Company (Kokomo) and Northern Indiana Public Service Company (NIPSCO), under its blanket certificate issued in Docket No. CP83-83-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that NIPSCO recently acquired the assets of Kokomo and has requested additional contract flexibility by adding Kokomo's delivery point to its own contract and by adding NIPSCO's three delivery points to Kokomo's contract. Panhandle indicates that the maximum volume of gas to be delivered at the delivery points would not exceed the proposed maximum daily delivery obligation. Panhandle also states that the addition of the delivery points to the contracts would have no impact on Panhandle's peak day or annual deliveries.

Comment date: September 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. American Central Gas Companies, Inc.

[Docket No. CI87-386-002]

July 30, 1992.

Take notice that on July 20, 1992, American Central Gas Companies, Inc. (American Central) of Suite 3260, 5847 San Felipe Street, Houston, Texas 77057, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) to amend the blanket certificate issued to American Central Gas Pipeline Company (American Pipeline).

American Central requests authorization to make sales in interstate commerce for resale of all natural gas subject to the Commission's NGA jurisdiction, including imported natural gas, which is purchased from any supplier. American Central also requests redesignation of the name of the certificate holder from American Pipeline to American Central. American Central's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

4. Westcoast Energy Marketing Ltd.

[Docket No. CI92-64-000]

July 30, 1992.

Take notice that on July 20, 1992, Westcoast Energy Marketing Ltd. (WEML) of 1333 West Georgia Street, Vancouver, British Columbia, Canada V6E 3K9, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. WEML's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

5. Norcen Marketing Inc.

[Docket No. C192-65-000]

July 30, 1992.

Take notice that on July 21, 1992, Norcen Marketing Inc. (NMI) of 715-5th Avenue, SW., Calgary, Alberta, Canada T2P 2X7, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas, without source or market restriction. NMI's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

6. Louisiana Gas Marketing Company

[Docket No. C192-66-000]

July 30, 1992.

Take notice that on July 27, 1992, Louisiana Gas Marketing Company (LGM) of P.O. Box 3102, Tulsa, Oklahoma 74101, filed an application under section 7 of the Natural Gas Act (NGA) for a blanket certificate of public convenience and necessity authorizing sales in interstate commerce for resale, with pregranted abandonment, of all categories of natural gas subject to the Commission's jurisdiction. LGM requests that the certificate cover its sales and others selling gas to LGM and others selling gas through LGM acting as agent on their behalf with blanket limited-term abandonment authority for producers or other suppliers of such gas to LGM to the extent such gas is released by interstate, intrastate or Hinshaw pipelines or other purchasers to such producers or suppliers for sale by LGM or by such producers or suppliers through LGM acting as their agent. LGM's application is on file with the Commission and open for public inspection.

Comment date: August 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP86-578-035]

July 30, 1992.

Take notice that on July 20, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing revised tariff sheets to comply with the Commission's order issued June 18, 1992.[1]

Northwest states its filing responds to requirements of the June 18, 1992 order that Northwest file revised tariff sheets to correct Northwest's sales commodity rates commencing with the effective date of Northwest's GIC tariff provisions and that Northwest submit statements concerning the time period that would be applicable for any continued recovery of carrying costs related to past gas prepayments in light of the pending abandonment of sales service to most of Northwest's sales customers in Docket No. CP92-79.

Northwest states that in compliance with the Commission's order, Northwest is resubmitting applicable substitute

[1] 59 FERC ¶ 61,331.

tariff sheets to correct the past deficiency in revenues which resulted from the Commission's previously ordered adjustment to base sales commodity rates concerning gas prepayments in connection with implementation of a GIC, so that corrected substitute tariff sheets may be made effective for the period commencing January 1, 1991.

Northwest states that copies of the filing were mailed to each party in the above-referenced docket and to all affected customers and regulatory commissions.

Comment date: August 6, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-687-006]

July 30, 1992.

Take notice that on July 22, 1992, Transcontinental Gas Pipe Line Company ("Transco"), Post Office Box 1396, Houston, Texas 77251, filed pursuant to sections 7(b) and 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity granted by the commission by orders issued January 17, 1991 [2] and June 11, 1991 [3] in Docket Nos. CP90-687-000, CP90-687-001, CP90-687-002 and CP90-687-003, to (1) reallocate authorized firm transportation capacity to certain shippers to be effective November 1, 1992, (2) add Piedmont Natural Gas Company, Inc. as a shipper under this project commencing November 1, 1993, (3) partially abandon effective November 1, 1993 a part of the firm transportation capacity authorized for Public Service Electric and Gas Company, (4) partially vacate the firm transportation service authorized for North Atlantic Utilities Inc., and (5) vacate the respective firm transportation services authorized for Indeck Energy Services of Yonkers, Inc. and Long Lake Cogeneration Corporation ("Long Lake"), all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

There is no reallocation proposed on Long Lake's firm capacity of 31,355 Mcf per day. The authorization sought in the application comprises a relocation among twelve shippers of the remaining 250,000 Mcf per day of firm transportation capacity certificated by the Commission. No new facilities are required.

Comment date: August 20, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Florida Gas Transmission Company

[Docket No. CP92-614-000]

July 30, 1992.

Take notice that on July 27, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a prior notice request with the the Commission in Docket No. CP92-614-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add an existing delivery point to two existing sales service agreements under which FGT is currently serving Okaloosa County Gas District (Okaloosa), under FGT's blanket certificate issued in Docket No. RP89-50 *et al.*, all as more fully described in the request which is open to public inspection.

FGT proposes to add the existing Five Flags delivery point in Santa Rosa County, Florida, to Okaloosa's firm sales and preferred sales service agreements under FGT's FERC Rate Schedules G and I, respectively. FGT states that it would charge rates and abide by the terms and conditions of Rate Schedules G and I. FGT would deliver 12,020 MMBtu of natural gas per peak day and 2,877,842 MMBtu of natural gas annually to Okaloosa at the Five Flags delivery point for residential and commerciel end-users. FGT further states that the total gas volumes to be delivered at the Five Flags delivery point would not exceed Okaloosa's currently authorized entitlements under the G and I Service Agreements.

Comment date: September 14, 1992, in accordance with Standard paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to

[2] Preliminary Determination and Order Issuing Certificates and Terminating Dockets, 54 FERC ¶ 61,032.

[3] Order Granting Certificate and Granting In Part and Denying in Part Requests for Clarification and Rehearing, 55 FERC ¶ 61,415.

intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18607 Filed 8-5-92; 8:45am]

BILLING CODE 6717-01-M

[Docket No. JD92-07974T Montana-7]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 31, 1992.

Take notice that on July 28, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Greenhorn and Phillips members of the Greenhorn Formation in Phillips County, Montana, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as:

Section 36, Township 32 North, Range 31 East: All
Section 31, Township 32 North, Range 32 East: S/2

The notice of determination also contains BLM's findings that the referenced portion of the Greenhorn and Phillips members of the Greenhorn Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18672 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07999T New Mexico-34]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 31, 1992.

Take notice that on July 22, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Dakota Formation in Rio Arriba and San Juan Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains BLM and the New Mexico Department of Energy, Minerals and Natural Resources' findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Rio Arriba and San Juan Counties, New Mexico

Township 27N, Range 7W
Sections 7-1-12: All, 15: W/2, 16-21: All, 22: W/2, 27: NW/4, 28: N/2, 29-30: All.
Township 28N, Range 7W
Sections 7-36: All.
Township 27N, Range 8W
Sections 1-36: All.
Township 28N, Range 8W
Sections 7-36: All.
Township 29N, Range 8W
Sections 7-36: All.
Township 25N, Range 9W
Sections 4-9: All, 17: W/2, 18: All.
Township 26N, Range 9W
Sections 5-9: All, 15-23: All, 26-35: All.
Township 27N, Range 9W
Section 31 All.
Township 28N, Range 9W
Sections 7-36: All.
Township 29N, Range 9W
Sections 3-36: All.
Township 30N, Range 9W
Sections 31-34: All.
Township 25N, Range 10W
Sections 1-6: All, 11-13: All.
Township 26N, Range 10W
Sections 1-36: All.
Township 27N, Range 10W
Sections 1-36: All.
Township 28N, Range 10W
Sections 7-36: All.
Township 29N, Range 10W
Sections 1-36: All.
Township 30N, Range 10W
Sections 19-23: All, 25-36 All.

The area of application contains 245,900 acres, more or less, of Federal, State, Fee and Indian lands.

[FR Doc. 92-18673 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07975T Texas-65]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 31, 1992.

Take notice that on July 27, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lower Wilcox (Matthew) Formation underlying a portion of DeWitt and Lavaca Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area includes parts of the John Garelli Survey, A-198 (approximately the S/2); the James A. Moody Survey, A-333 (small portion of the SE/4) and the John Garelli Survey, A-199 (approximately the S/2).

The notice of determination also contains Texas' findings that the referenced portion of the Lower Wilcox (Matthew) Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and

275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18674 Filed 8–5–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI92–67–000]

AIG Trading Corp.; Application for Blanket Certificate With Pregranted Abandonment

July 31, 1992.

Take notice that on July 28, 1992, AIG Trading Corporation (AID) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction, without rate restrictions. AIG's application is on file with the Commission and open for public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before August 21, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, AIG will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18675 Filed 8–5–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA92–1–32–004]

Colorado Interstate Gas Co.; Compliance Filing

July 31, 1992.

Take notice that on March 6, 1992, Colorado Interstate Gas Company (CIG), tendered for filing Fifth Revised Sheet No. 55 of CIG's FERC Tariff, Original Volume No. 1, which reflect revised tariff language in compliance with the Commission's February 6, 1992 order.

CIG states that copies of the filing were served upon the active parties to this proceeding based on the Commission's service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18676 Filed 8–5–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–187–000, CP91–2448–000 (Consolidated), and FA91–23–001 (Not Consolidated)]

Florida Gas Transmission Co.; Informal Settlement Conference

July 31, 1992.

Take notice that an informal settlement conference will be convened in these proceedings on September 2, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purposes of exploring the possible settlement of the issues in Docket Nos. RP91–187–000 and CP91–2448–000, which relate to cost of service, incentive rates, throughput and bidding procedures for interruptible capacity as well as the issues related to accounting for linepack gas in Docket No. FA91–23–001.

As party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208–2091 or Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18677 Filed 8–5–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–18–000]

Kentucky West Virginia Gas Co.; Prefiling Conference

July 31, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 2, 1992, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of the conference is to address Kentucky West Virginia Gas Company's summary of its proposal to comply with Order No. 636.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Carmen Gastilo at (202) 208–2182.

Lois D. Cashell,

Secretary.

[FR Doc. 92–18678 Filed 8–5–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–136–024]

National Fuel Gas Supply Corp.; Refund Report

July 31, 1992.

Take notice that on July 27, 1992, National Fuel Gas Supply Corporation ("National") filed a report of refunds pursuant to Section V of the Settlement approved by the Commission in the above-captioned proceedings.

National states that it has distributed all applicable refunds to its customers on July 24, 1992, in accordance with § 154.67 of the Commission's Regulations. Also, copies of the Refund Report and associated workpapers were served upon both National's customers and upon all interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18679 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-129-004]

Panhandle Eastern Pipe Line Co.; Compliance Filing

July 31, 1992.

Take notice that on July 28, 1992, in compliance with the Commission's order of June 29, 1992, in the above-referenced proceeding, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the tariff sheets listed on Appendix A attached to filing, to its FERC Gas Tariff, Original Volume Nos. 1 and 2.

Panhandle states that the June 29, 1992 Order accepted Panhandle's April 29, 1992, compliance filing in the above-referenced proceeding, but directed Panhandle to file revised tariff sheets to reflect two modifications to the bases utilized in developing the rates submitted in the April 29, 1992 compliance filing. First, the Commission directed Panhandle to file revised tariff sheets in which the rates are based on net plant adjusted for depreciation calculated at the applicable rate for gathering plant through the end of the test period. Panhandle states that the tariff sheets reflect this revision. Second, the Commission directed Panhandle to file revised tariff sheets reflecting either the functionalization of the Wattenberg system adopted in Docket No. CP90-1050-000 or a functionalization which places all of the Wattenberg system in the gathering function. Panhandle states since the Commission has not acted in Docket No. CP90-1050-000, it is submitting tariff sheets which reflect the functionalization of the Wattenberg system as gathering except for minor amounts of communications equipment and general plant.

Panhandle states that copies of the filing are being mailed to the customers, interested state regulatory agencies, and parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18680 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-019]

Transwestern Pipeline Co.; Report of Refunds

July 31, 1992.

Take notice that on June 26, 1992, Transwestern Pipeline Company (Transwestern) tendered a Report of Refunds in the captioned docket. It states that under the settlement filed March 3, 1992, in Docket No. RP89-48-000, requiring it to make refunds to its customers for the period October 1990 through March 1992, it made refunds on May 29, 1992 (with additional adjusting refunds made June 24, 1992), as required by the settlement.

Transwestern further states that the refunds, totalling $10,120,295.33, including interest, were based on the difference between the rates paid by each shipper and the interim rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18681 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-50-000]

Valero Interstate Transmission Co.; Conference

July 31, 1992.

Take notice that on Tuesday, August 11, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Valero Interstate Transmission Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Richard White at (202) 208-0491 or Robert Steinberg at (202) 208-1032.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18682 Filed 8-5-92; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Phoenix Area Projects Proposed Rate Adjustments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rescheduling of public comment forums and consultation and comment periods for the Phoenix Area Projects Proposed Rate Adjustments.

SUMMARY: Western Area Power Administration (Western) is announcing a rescheduling of public comment forums and consultation and comment periods for the rate adjustments for the Parker-Davis Project (P-DP), Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie), and Boulder Canyon Project (BCP). These public comment forums were originally announced in the following Federal Registers:

May 8, 1992, 57 FR 19903-19904, AC Intertie

May 8, 1992, 57 FR 19904-19906, P-DP

June 10, 1992, 57 FR 24641-24643, BCP

This action is taken in response to public comment that additional time is needed for comments on some unresolved issues relative to these rate adjustments.

PROCEDURES: A revised power repayment study for each project will be made available during the consultation and comment period.

Following the close of each consultation and comment period, Western will prepare, if necessary, another power repayment study for each of the projects which will include any changes due to consideration of public comments. Western will recommend the results of those studies as the final proposed rates to the Assistant Secretary for Conservation and Renewable Energy to be placed in effect on an interim basis as provisional rates and submitted to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

EFFECTIVE DATES: The consultation and comment period for the P–DP, AC Intertie, and BCP rate adjustments will now end on September 28, 1992.

Western will also receive oral and written comments at the following public comment forums:

Boulder Canyon Project, September 10, 1992, 10 a.m., Gila Room, Omni Adams Hotel, 111 North Central Avenue, Phoenix, AZ

Parker-Davis Project, September 11, 1992, 9 a.m.–Noon, Gila Room, Omni Adams Hotel, 111 North Central Avenue, Phoenix, AZ

Pacific Northwest-Pacific Southwest Intertie Project, September 11, 1992, 1:30 p.m., Gila Room, Omni Adams Hotel, 111 North Central Avenue, Phoenix, AZ

The forums will be transcribed by a court reporter. Written comments should be received by the end of the consultation and comment period to be assured consideration. Comments may be sent to: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005.

A copy of the written comments should also be sent to: Ms. Marilyn Eiler, Assistant Area Manager for Power Marketing, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P–DP, AC Intertie, and BCP are established pursuant to the various laws cited for each of the projects in their respective initial **Federal Register** notices as listed above.

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of DOE delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

The procedures for public participation in rate adjustments for power and transmission serviced marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Issued at Golden, Colorado, July 29, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92–18686 Filed 8–5–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34032; FRL–4076–1]

Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 4, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete on or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 11 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 4, 1992 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Delete From Label
000004–00196	Benomyl 50% WP	Post harvest uses on apples and pears
000572–00254	Benomyl Fungicide	Post harvest use on cherries, ornamentals, roses
000707–00201	Kelthane 4F Flowable Agricultural Miticide	Beans (dry), grapefruit, kumquats, lemons, limes, oranges, tangelos, tangerines, cotton, hops
031910–00002	Aquatreat DMN-30	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910–00007	Aquatreat DN-30	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910–00011	Aquatreat DMN-9	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910–00012	Aquatreat DMN-360	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910–00016	Aquatreat DMN-25E	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
031910–00018	Aquatreat DMN-25L	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS— Continued

Registration No.	Product Name	Delete From Label
031910–00020	Aquatreat DMN-80	Sugarbeet flume water, leather, leather processing liquids, metalworking cutting fluids, ornamental plants, forest trees
059639–00015	Dibrom 8 Emulsive	Tobacco

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000572	Rockland Corp., 686 Passaic Ave., P.O. Box 809, west Caldwell, NJ 07007.
000707	Rohm and Haas Co., Agri. Chemical Registration Regulatory Affairs, Independence Mall West, Philadelphia, PA 19105.
031910	Alco Chemical Division, National Starch Chemical Co., 909 Mueller Dr., P.O. Box 5401, Chattanooga, TN 37406.
059639	Valent U.S.A. Corp., 1333 N. California Blvd., P.O. Box 5401, Walnut Creek, CA 94596.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: July 23, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 92–18129 Filed 8–5–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 27, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW, Suite 640, Washington, DC 20036, (202) 452–1422. for further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513, Persons wishing to comment on this information collection should contact Jonas Neihadt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–169.

Title: Section 43.51 and 43.53—Reports and Records of Communications Common Carriers and Certain Affiliates.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 374 responses; 16.12 hours average burden per response; 6,029 hours total annual burden.

Needs and Uses: The reports required by §§ 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. In CC Docket No. 90–337, Regulation of International Accounting Rates, the Commission, among other things, amended § 43.51(a) and added a new § 43.51(d). See OMB control number 3060–0454 for OMB-approved modifications. Also, the Order on Reconsideration issued in CC Docket No. 85–204, clarified the distinction between indirect and true transit traffic and restored to rules § 43.53(a) the exemption from filing requirements of true transit traffic. The action taken in the proceeding produces no significant burden impact. The information contained in these reports is used by FCC to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in charge. If this information was not reported, the FCC would not be able to ascertain the impact of these activities on the just and reasonable rates as required by the Communications Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18530 Filed 8–5–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Tampa Port Authority/Eller & Company, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003079–013.
Title: Tampa Port Authority/Eller & Company, Inc. Terminal Lease Agreement.
Parties:
The Tampa Port Authority ("Authority") Eller & Company, Inc.
Synopsis:
The Agreement sets forth payment schedules wherein Eller will reimburse the Authority for monies due as provided for in the Agreement.

Agreement No.: 224–010825–007.
Title: Los Angeles/Evergreen Marine Terminal Agreement.
Parties:
City of Los Angeles ("Port") Evergreen Marine Corporation (Taiwan), Ltd. ("Evergreen").
Synopsis: The amendment reflects a change in Evergreen's corporate address and an adjustment in the boundary line of property Evergreen leases from the Port. This adjustment does not change the amount of land leased or the compensation due.

Dated: July 31, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92–18598 Filed 8–5–92; 8:45 am]
BILLING CODE 6730–01–M

Tampa Port Authority/Harborside Refrigerated Services, Inc.; Agreement(s) filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 244–002810–008.
Title: Tampa Port Authority/Harborside Refrigerated Services, Inc. Terminal Agreement.
Parties: Tampa Port Authority ("TPA"), Harborside Refrigerated Services, Inc., ("Harborside").
Filing Party: Harold E. Welch, Tampa Port Authority, P.O. Box 2192, Tampa, Florida 33601.
Synopsis: This modification provides for payment schedules wherein Harborside will reimburse TPA for funds due under the lease agreement.

Dated: July 31, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92–18599 Filed 8–5–92; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 31, 1992.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATE: Comments are welcome and should be submitted on or before September 8, 1992.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)
OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202–395–7340)

Request for OMB approval to extend, without revision, the following report:

1. *Report title:* Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks.
Agency form number: FFIEC 004.
OMB Docket number: 7100–0034.
Frequency: Annually (for the report), quarterly and on occasion (for recordkeeping and disclosure requirements).
Reporters: Executive officers and principal shareholders of member banks.
Annual reporting hours: 6,255.
Estimated average hours per response: 1.27 hours (1 hour of reporting burden, 2.35 hours of recordkeeping burden)
Number of respondents: 4,925 (3,940 executive officers and principal shareholders filing the report, 985 state member banks fulfilling the recordkeeping burden)
Small businesses are affected.
General description of report: This information collection is mandatory [12 U.S.C. 1972(2)(G); and 12 U.S.C. 375(a)(6) and (10), and § 375(b)(7)] and is given confidential treatment [12 CFR 215.22(d); and 5 U.S.C. 552(b)(4) and (6)].
Abstract: Executive officers and principal shareholders of member banks who are indebted to correspondent banks must file the FFIEC 004 report on such indebtedness to them or their related interests. State member banks are required to retain these reports for a period of three years.

Board of Governors of the Federal Reserve System, July 31, 1992.
William W. Wiles,
Secretary of the Board.
[FR Doc. 92–18636 Filed 8–5–92; 8:45 am]
BILLING CODE 6210–01–M

Credit Commercial de France, S.A.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Credit Commercial de France, S.A., Paris, France; to engage *de novo* through its subsidiary, CCF - Mellon Partners, Pittsburgh, Pennsylvania, in acting as an investment or financial adviser pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted worldwide.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Central Banking Group, Inc., Oklahoma City, Oklahoma; to engage *de novo* through its subsidiary, Central Financial Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and credit disability insurance which is directly related to extensions of credit by the credit extending affiliates of Central Banking Group, Inc. pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18637 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-F

First Bank System, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 31, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; and Central Bancorporation, Inc., Denver, Colorado; to acquire Western Capital Investment Corporation, Denver, Colorado, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in the State of Colorado.

Board of Governors of the Federal Reserve System, July 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18638 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-F

Southwest Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Southwest Bancshares, Inc., Trumann, Arkansas; to acquire 100 percent of the voting shares of Caraway Bancshares, Inc., Caraway, Arkansas, and thereby indirectly acquire Caraway Bank, Caraway, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Worthington Bancshares, Inc., Worthington, Minnesota, and thereby indirectly acquire First National Bank in Worthington, Worthington, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Western Bancshares, Inc., Van Horn, Texas; to acquire 74.63 percent of the voting shares of Coahoma State Bank, Coahoma, Texas.

Board of Governors of the Federal Reserve System, July 31, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-18639 Filed 8-5-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Proposed Border Station, Located East of Calexico, CA; Intent To Prepare an Environmental Impact Statement

The General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the proposed border station, located east of Calexico, California. The EIS will evaluate the proposed project, the no-action alternative, and expansion of the existing port of entry in Calexico. Scoping will be accomplished by correspondence and through a public scoping meeting with interested persons, organizations, and federal, state and local agencies.

Written comments on the scope of alternatives and potential impacts should be addressed to the GSA's EIS contractor, Environmental Science Associates, Inc., at the following address: 4221 Wilshire Blvd., suite 480, Los Angeles, California 90010–3512.

Written comments should be sent to Environmental Science Associates by August 19, 1992. Comments will also be accepted at a public scoping meeting to be held on August 12, 1992, at the location indicated below.

Comments and suggestions will be solicited at a public scoping meeting to be held at: El Centro Community Center, 375 South First Street, El Centro, California 92243.

The meeting will be held on August 12, 1992, in two sessions: from 2 p.m. to 4 p.m., and from 7 p.m. to 9 p.m., during which time interested parties can discuss and comment on the proposed project. All comments received during the meeting will be made part of the administrative record for the EIS and will be evaluated as part of the scoping process.

For further information contact Mr. Al Liu, General Services Administration, Public Buildings Service, Planning Staff (9PL), 525 Market Street, San Francisco, California 94105 (415) 744–5252.

GSA will prepare an EIS on a proposal to design and construct a new border station to be located approximately six miles east of the city of Calexico, California. The scoping process will determine the scope of issues to be addressed in the EIS and to identify the significant issues related to the proposed project. Scoping will be conducted in a manner consistent with NEPA guidelines. GSA will serve as lead agency for the preparation of the EIS.

GSA invites interested individuals, organizations, and federal, state and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS and in identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments can be made verbally at the public scoping meeting or in writing as mentioned above. During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by a prior environmental review. Scoping should be limited to commenting on alternatives and not commenting on preferences. There will be an opportunity to comment on preferences after the Draft EIS is completed.

If you wish to be placed on the mailing list to receive further information during the EIS process, please contact Environmental Science Associates or GSA at the address listed above.

The project purpose is to design and construct a new border station in the vicinity of Calexico, California to accommodate the increasing traffic flows at the existing commercial import and export facility and border station in downtown Calexico.

The project is a coordinated effort between the governments of U.S. and Mexico to help facilitate trade and commerce between the two countries. In response to an initial site proposal from Mexico, an interagency team was formed in 1989 by GSA, U.S. Customs Service, Immigration and Naturalization Service, U.S. Department of Agriculture, International Boundary and Water Commission, and assisted by the California Department of Transportation, to investigate potential sites for a new border station in the area east of Calexico. The survey identified four broad areas which appeared to be feasible and the results were provided to Mexico. In 1991, Mexico proposed a site in Mexicali, opposite an area called Zone Four in the U.S. survey, that was approximately six miles east of the city of Calexico. The U.S. and Mexican government exchanged diplomatic notes to establish the initial site agreement.

GSA proposes to construct the new border station on an 83-acre site bordered on the south by the All American Canal and on the east by the South Alamo Canal. The proposed design includes 12 primary lanes, 36 secondary inspection spaces, a 100-truck dock, five buildings totalling 75,000 square feet, 185,000 square feet of primary and secondary commercial and noncommercial inspection canopies, and the construction of a clear span bridge across the All American Canal. The site plan provides for future expansion of the facilities.

GSA will evaluate all significant environmental, social, and economic impacts of the alternatives to be analyzed in the EIS. Impacts anticipated include, but are not limited to, changes in land use, induced growth, changes in traffic patterns, changes to the natural environment, noise, historic resources, and air quality. The impacts will be evaluated and measures to mitigate significant adverse impacts will be addressed.

The Draft EIS will be prepared based upon the scoping efforts. After its publication, the Draft EIS will be available for public and agency review and comment. A Final EIS will be prepared that addresses the comments on the Draft EIS.

Dated: July 30, 1992.

Edwin W. Thomas,

Regional Administrator (9A).

[FR Doc. 92–18661 Filed 8–5–92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development.

[Docket No. N–92–3369; FR–3180–N–03]

Notice of Deadline Extension; FY 1991 and 1992 Fund Availability; Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning Development, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending the application deadline for the Community

Development Block Grant Program for Indian Tribes and Alaskan Native Villages (ICDBG), for Fiscal Years 1991 and 1992, for those applicants who were adversely affected in their application preparation as a result of floods that took place in Supai Canyon in Arizona following the heavy rainfall of July 24–25, 1992. Today's document extends the deadline to August 13, 1991.

DATES: For qualified applicants, the application deadline is extended to August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen M. Rhodeside, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of HUD, room 7184, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1322. To provide service for persons who are hearing or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: on April 7, 1992, HUD published a Notice of Fund Availability announcing the availability of funds for the ICDBG Program for Indian Tribes and Alaskan Native Villages for Fiscal Years 1991 and 1992 (57 FR 11852). In today's notice, HUD is extending the application deadline, but solely for those applicants who were adversely affected in their preparation of applications as a result of the flood that took place in Supai Canyon in Arizona following the heavy rainfall of July 24–25, 1992. For those applicants who qualify, the application deadline is being extended to August 13, 1992. No additional extensions of time for applications for the ICDBG program are anticipated. An applicant may qualify for an extension of the application deadline if:

(a) The applicant submits a signed statement with its application, describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the signed statement adequately demonstrates that the applicants ability to prepare or submit the ICDBG application was substantially impaired as a result of the floods that took place in Supai Canyon in Arizona following the heavy rainfall of July 24–25, 1992.

If HUD approves the certification, the application will be accepted for review. A qualified applicant may submit such an application, or may revise and resubmit a previously submitted application, as long as the application is postmarked by no later than midnight August 13, 1992 or received by the Office of Indian Programs, Region IX, CPD Division, Two Arizona Center, suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361, by August 13, 1992. All submission requirements other than the date by which the applications must be received remain unaffected by this Notice.

Dated: August 3, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92–18688 Filed 8–5–92; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N–92–3440; FR–3294–C–02]

Announcement of Allocations for Housing Opportunities for Persons With AIDS; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice; correction.

SUMMARY: This notice corrects the list of eligible metropolitan areas (EMAs) contained in the announcement of availability of funding for the Housing Opportunities for Persons with AIDS program. The list of EMAs listed the Community Development Block Grant communities within each eligible metropolitan area that may participate in selecting the community to be the designated "applicant" for the area. For the San Juan, Puerto Rico metropolitan area, one community was inadvertently omitted from the list. This correction does not affect the amount of the allocations listed for that EMA or for the Commonwealth of Puerto Rico.

Accordingly, in FR Doc. 92–16790, published in the **Federal Register** on July 20, 1992 (57 FR 32124), the Department corrects the chart on page 32128 by adding, after the line beginning "Trujillo Alto Municipio", a line that reads:

Vega Baja Municipio.....	55,987	.....

Dated: July 30, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92–18604 Filed 8–5–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–92–4333–11]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Notice.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands during the official running of two competitive off-road vehicle events. This action is being taken to provide for public safety and protect adjacent resources. The following events are included in this notice.

September 6, 1992 Valley Off-Road Racing Association
Yerington 250—Permit Number NV–03516–92–05

October 3, 1992—High Sierra Motorcycle Club
Carson Valley Qualifier—Permit Number NV–03516–92–15

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Specific information on each event is as follows:

Spectators shall remain in safe locations as directed by event officials and BLM personnel during the conduct of both events. All vehicles not participating in the event shall maintain a maximum speed of 10 MPH within designated spectator and pit areas.

1. Valley Off-Road Racing Association Yerington 250 Off-Road Race—Permit Number NV–03516–92–05. This event is located on roads and washes near Yerington, Nevada in Douglas and Lyon Counties, within T12N R24E; T13N R24E; T14N R24E; T13N R25E. Bureau Lands to be closed include existing roads and washes identified on the ground as the 1992 Yerington 250 Off-Road Race and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 6 a.m. until midnight on September 6, 1992.

2. High Sierra Motorcycle Club Carson Valley Qualifier—Permit Number NV-03516-92-15. This event is located on roads and trails near Gardnerville, Carson City and Dayton, Nevada in Douglas, Carson City and Lyon Counties within T13N R20E; T13N R21E; T14N R20E; T14N R21E; T14N R22E; T15N R20E; T15N R21E; T15N R22E; T16N R21E; T16N R22E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1992 Carson Valley Qualifier (Brunswick Canyon Road will be closed to through traffic, Sunrise Pass Road will have traffic regulated) and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 7 a.m. until 8 p.m October 3, 1992.

Dated: July 22, 1992.

James W. Elliott,

District Manager.

[FR Doc. 92-18694 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-02-4212-11; AZA-24652]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification, Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, recreation and public purpose lease/conveyance.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Golden Valley Chamber of Commerce under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Golden Valley Chamber of Commerce proposes to use the lands for Chamber of Commerce headquarters.

Gila and Salt River Base and Meridian, Mohave County, Arizona

Township 21 North, Range 18 West
Sec. 8, S½SE¼SE¼NE¼NE¼.
Comprising 1.25 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purpose Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Those rights for road purposes granted to the Mohave County Board of Supervisors by Permit No. AZA-17931 for Verde Road.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms or appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: July 28, 1992.

David J. Miller,

Associate District Manager.

[FR Doc. 92-18665 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-32-M

[UT-040-02-4212-14; UTU-67778]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice..

SUMMARY: The Bureau of Land Management is proposing to sell, under section 203 of the Federal Land Policy and Management Act of 1976, public land described as Salt Lake Meridian, T. 29 S., R. 7 W., sec. 5, SE¼SE¼SE¼, containing 10 acres located in Beaver County, Utah. Because of the location in relation to other private land and the past history of use, the land will be sold by direct sale to Frank and Freida H. Harris at the appraised fair market value of $2,500. The purpose of the sale is to dispose of land which, because of its location and other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

DATES: Comments must be submitted on or before September 21, 1992. The sale will be conducted no sooner than October 5, 1992.

ADDRESSES: All comments concerning this proposed sale should be addressed to Gordon Staker, District Manager, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Area Manager, at 365 South Main, Cedar City, Utah 84720 (801) 586-2458.

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or on May 3, 1993, whichever occurs first. Only the surface estate will be sold. The patent, when issued will contain a reservation for all minerals to the United States, together with the right to prospect for, mine and remove the minerals. There will also be reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: July 23, 1992.

Ron Montagna,

Associate District Manager.

[FR Doc. 92-18663 Filed 8-5-92; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-110-4310-33-6350-08; G2-331]

Notice of Availability; Draft RMP/EIS; Medford District, OR

AGENCY: Bureau of Land Management, Medford District Office, Interior.

ACTION: Notice of Availability of Draft Resource Management Plan/Environmental Impact Statement for the Medford District, Oregon.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a Draft Resource Management Plan/Environmental Impact Statement (DRMP/EIS) for the Medford District, Oregon, has been prepared and is available for review and comment. The Draft RMP/EIS describes and analyzes future options for managing approximately 866,300 acres of mostly forested public land and 4,670 acres of nonfederal surface ownership with federal mineral estate administered by the Bureau of Land Management (BLM)

in Jackson, Josephine, Douglas, Curry, and Coos counties in southwestern Oregon.

Decisions generated during this planning process will supersede land use planning guidance presented in the Josephine and Jackson/Klamath Management Framework Plans (MFPs) as amended.

Copies of the Draft RMP/EIS or a summary of it may be obtained from the Medford District Office. Public reading copies will be available for review at the public libraries in Applegate, Ashland, Central Point, Coos Bay, Eagle Point, Jacksonville, Phoenix, Rogue Community College, Rogue River, Ruch, Shady Cove, Southern Oregon State College, Talent, and White City and at the Jackson, Josephine, Douglas, Curry, and Coos counties office buildings, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC.
Public Room, Oregon State Office, 1300 N.E. 44th Avenue, Portland, Oregon 97208.
Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.
All other BLM offices in western Oregon.

Open houses with opportunities to discuss the Draft RMP/EIS will be held at the Medford District Office and other locations in southwestern Oregon. The dates, times, and locations will be announced in a separate mailer as well as in the local news media.

DATES: Written comments on the Draft RMP/EIS must be submitted or postmarked no later than December 21, 1992.

ADDRESSES: Written comments should be addressed to Dave Jones, District Manager, Bureau of Land Management, Medford District, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Gretchen Lloyd, RMP Team Leader, Medford District Office; Phone (503) 770–2200.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS describes and analyzes seven alternatives to address the following issues: (1) Timber production practices; (2 & 3) Old growth forests and habitat diversity; (4) Threatened and endangered (and other special status) species habitat (including habitat for the northern spotted owl); (5) Special areas; (6) Visual resources; (7 & 8) Stream/riparian/water quality; (9) Recreation resources; (9a) Wild and scenic rivers; (10) Land tenure; and (11) Rural interface area management.

In BLM's Preferred Alternative, water quality would be maintained or improved primarily by a combination of best management practices and exclusion of selected areas from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other streams that sustain fish.

Approximately 207,000 acres would be managed to maintain and strengthen a system of old growth emphasis areas, which is expected to increase the amount of old growth stands in the planning area from 102,000 acres to 194,000 acres over the next 100 years.

About 125,300 acres would be managed for timber production, including 256,400 acres managed under substantial restrictions to protect or enhance other resource values. The annual allowable timber sale quantity would be 18 million cubic feet (105 mmbf). To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, BLM would manage habitats of federal candidate, state listed, and Bureau-sensitive species to maintain their populations at a level that would help prevent listing of the species.

Management would provide for a wide variety of recreation opportunities with particular emphasis on enhancement of opportunities for water-based recreation.

Five stretches of river covering about 24 miles would be found suitable for designation under the Wild and Scenic River Act. Approximately 100 other miles of river found eligible for designation and studied by BLM would be found not suitable for designation.

Most BLM-administered lands would remain available for leasing of oil and gas and geothermal resources. Only about 22,300 acres would be closed to leasing. Most BLM-administered lands would also remain available for location of mining claims, with only 37,600 acres closed.

The RMP/EIS proposes continuing the designation of all five existing areas of critical environmental concern (ACEC), three existing environmental education areas (EEAs), and designation of 22 new ACECs and one new EEA. The Preferred Alternative would designate or redesignate the following ACECs with the noted restrictions.

ACEC	Restrictions				
	Rights-of-way	Timber harvest	ORV use	Mineral leasings	Mining location
Existing: ACECs					
Eight Dollar Mountain	R	P	R	R	R
King Mountain Rock Garden	R	P	P	R	R
Table Rocks	P	P	P	R	P
Brewer Spruce	P	P	P	R	P
Woodcock Bog	P	P	P	R	P
New: ACECs					
Bobby Creek	R	P	R	R	R
Crooks Creek	R	P	R	R	R
Franch Flat	R	P	R	R	R
Hole-In-The Rock	R	P	R	R	R
Hoxie Creek	R	P	R	R	R
Iron Creek	R	P	R	R	R
Jenny Creek	R	P	R	R	R
Moon Prairie	R	P	R	R	R
Pilot Rock	R	P	R	R	R
Poverty Flat	R	P	R	R	R
Sterling Mine Ditch	R	P	R	R	R
Tin Cup	R	P	R	R	R
Brewer Spruce Enlargement	P	P	P	R	P
Grayback Glade	P	P	P	R	P
Holton Creek	P	P	P	R	P

ACEC	Restrictions				
	Rights-of-way	Timber harvest	ORV use	Mineral leasings	Mining location
Lost Lake	P	P	P	R	P
North Fork Silver Creek	P	P	P	R	P
Old Baldy	P	P	P	R	P
Oregon Gulch	P	P	P	R	P
Pipe Fork	P	P	P	R	P
Round Top Butte	P	P	P	R	P
Scotch Creek	P	P	P	R	P

R=Use allowed with restrictions.
P=Use prohibited.

There were 12 potential ACEC areas identified that met the BLM's ACEC criteria of relevance and importance that are not included in the Preferred Alternative. They include: Bill Creek, Cedars of Beaver Creek, Dakubetede, Enchanted Forest, Flounce Rock (which was designated an EEA), Larkspur, Little Hyatt, Pacific Crest Trail, Rock Creek, Rogue River, Siskiyou Mountain Natural Area, and Williams Watershed. Two other areas (Section Six and Slide Creek) nominated for potential ACEC designation did not meet the relevance and importance criteria.

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs and the requirements of the final revised Department of the Interior/ Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, pg. 39454).

Dated July 31, 1992.

David A. Jones,

Medford District Manager.

[FR Doc. 92–18693 Filed 8–5–92; 8:45 am]

BILLING CODE 4310-33-M

[NV-940–02–4212–22]

Filing of Plat of Survey; Nevada

Dated: July 24, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on July 13, 1992.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 720–785–6543.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on July 13, 1992:

Mount Diablo Meridian, Nevada

T. 40 N., R 55 E.—Supplemental Plat of Section 36.
T. 42 N., R 60 E.—Supplemental Plat of Section 5.
T. 32 N., R 61 E.—Supplemental Plat of Section 18.
T. 33 N., R 62 E.—Supplemental Plat of Section 7.

These surveys were accepted June 23, 1992, and were executed to meet certain administrative needs of the Bureau of Land Management.

The above-listed surveys are now basic record for describing the lands for all authorized purposes. This survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Roberts G. Steele,

Deputy State Director, Nevada.

[FR Doc. 92–18592 Filed 8–5–92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-940–02–4212–22]

Filing of Plat of Survey; Nevada

Dated: July 24, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on July 16, 1992.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6543.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on July 16, 1992:

Mount Diablo Meridian, Nevada

T. 42 N., R. 62 E.—Supplemental Plat of Section 34.

This survey was accepted July 1, 1992, and was executed to meet certain administrative needs of the Bureau of Land Management.

The above-listed survey is now the basic record for describing the lands for all authorized purposes. This survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Robert G. Steele,

Deputy State Director, Nevada.

[FR Doc. 92–18591 Filed 8–5–92; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(f)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 9, 1992, Red River Foods, Inc., 7400 Beaufont Springs Drive, Suite 550, Richmond, Virginia 23225, made application to the Drug

Enforcement Administration to be registered as an importer of marijuana (7360) a basic class of controlled substance in Schedule I. This application is exclusively for the importation of marijuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 8, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 31, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–18664 Filed 8–5–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,337]

Cebcor Service Corporation Dallas, TX; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 1, 1992 in response to a worker petition which was filed on June 1, 1992 on behalf of workers at CEBCOR Service Corporation, Dallas, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–27, 336). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 30th day of July, 1992

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–18641 Filed 8–5–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,334]

Gemini Mining Corporation, Stoystown, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Gemini Mining Corporation, Stoystown, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,334; Gemini Mining Corporated Stoystown, Pennsylvania (July 29, 1992).

Signed at Washington, DC this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–18648 Filed 8–5–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,002]

Komatsu Dresser Co., Libertyville, IL; Negative Determination Regarding Application for Reconsideration

By an application dated May 29, 1992, Local #1643 of the United Automobile Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 11, 1992 and published in the **Federal Register** on May 28, 1992 (57 FR 22492).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact the increased import criterion and the "contributed importantly" test of the Worker Group Requirements of the Trade Act of 1974 were not met in the period relevant to the worker petition.

Its claimed that the domestic labor content of construction machinery produced at Libertyville has declined from 70 percent in 1978 to about 30 percent in 1992. The union further states that production has been transferred from Libertyville to Korea and Poland.

Investigation findings show that the domestic labor content of construction machinery produced at Libertyville has not changed in the period relevant to the petition. The base period to measure changes in imports on the subject petition is 1990. Accordingly, worker separations resulting from a reduced domestic labor content in construction machinery produced at Libertyville or the transfer of production to foreign sources and their subsequent importation prior to March 4, 1991 would not be coverable. Section 223(b)(1) of the Trade Act does not permit the certification of workers separated more than one year prior to the date of the petition.

Investigation findings also show that company imports of construction machinery, which include imports from Korea, decreased in 1991 compared to 1990. Company officials have indicated that there has been no transfer or production to foreign sources in the period applicable to the petition.

Other investigation findings show that the demand for construction machinery has been weak for the past two years because of the recession and the lack of new construction projects.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of July 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92–18649 Filed 8–5–92; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-26,979 et al.]

Mobil Exploration and Producing U.S. Inc., et al.; Amendment Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the amended certification on petition TA-W-26,979 et al. which was published in the Federal Register on July 24, 1992 (57 FR 33015) in FR Document 92-17527.

The impact date on line 17 in the second column on page 33015 should read "January 1, 1992" instead of "January 1, 1991". The Department inadvertently set the impact date as January 1, 1991.

Signed in Washington, DC, this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18650 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,978]

Mobil Research & Development Corporation (MRDC) Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Mobil Exploration and Producing Services, Incorporated (MEPSI), a/k/a Mobil Exploration & Production Technical Center, Headquartered in Dallas, TX and Operating at Other Sites in the Following States: TA-W-26,978A, California, TA-W-26,978B, Colorado, TA-W-26,978C, Kansas, TA-W-26,978D, Louisiana, TA-W-26,978E, New Mexico, TA-W-26,978F, Oklahoma, TA-W-26,978G, Texas and TA-W-26,978H.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 1992 applicable to all workers of MEPSI at the locations indicated above. The notice was published in the Federal Register on May 19, 1992 (57 FR 21304).

New findings from the company show that workers at the Mobil Research and Development Corporation (MRDC) were integrated into production with Mobil Exploration & Producing, U.S. (MEPUS) whose workers are certified under TA-W-26965; 26,966; 26,970; 26,977; 26,979 and 26,983. In 1992, MRDC experienced a decline from MEPUS for their services. As a result of the decline for MRDC services, MRDC was combined with MEPSI to form a new entity called Mobil Exploration Technical Center (MEPTECH) headquartered in Dallas, Texas.

The amended notice applicable to TA-W-26,978 is hereby issued as follows:

All workers of Mobil Exploration and Producing Services, Inc., (MEPSI) headquartered in Dallas, Texas and operating at various locations in California, Colorado, Kansas, Louisiana, New Mexico, Oklahoma and Texas and all workers of the Mobil Research & Development Corporation, Dallas, Texas (MRDC) and together with MEPSI also known as Mobil Exploration & Production Technical Center, (MEPTECH), Dallas, Texas who became totally or partially separated from employment on or after January 1, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18651 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 050]

Murphy Exploration and Production Company New Orleans, LA and Diamond M-Odeco Drilling, Inc., Houston, TX and Operating in the States of Texas (TA-W-27, 050A) and Louisiana (TA-W-27, 050B); Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1992, applicable to all workers of Murphy Exploration and Production Company, New Orleans, Louisiana. The notice was published in the Federal Register on June 12, 1992 (57 FR 25080).

New information from the company shows that the Diamond M Corporation purchased the drilling division of Murphy Oil (Odeco) on January 31, 1992 and changed its name to Diamond M-Odeco Drilling, Inc. The Diamond M-Corporation was a contract driller for unaffiliated firms engaged in the production of crude oil or natural gas. The Diamond M Corporation experienced decreased revenues and employment in 1991 compared to 1990. Diamond M-Odeco Drilling, Inc., meets all the requirements for a successor-in-interest firm to the drilling division of Murphy Exploration and Production Company.

The intent of the Department's certification is to include all workers of Murphy Exploration and Production Company and its successors who were adversely affected by increased imports.

The amended notice applicable to TA-W-27,050 is hereby issued as follows:

All workers of Murphy Exploration and Production Company, New Orleans, Louisiana and its drilling division successor, Diamond M-Odeco Drilling, Inc., Houston, Texas and operating at other locations in the States of Texas and Louisiana who became totally or partially separated from employment on or after March 3, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-18652 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

Advisory Panel for the Dictionary of Occupational Titles (APDOT); Renewal

In accordance with the provisions of the Federal Advisory Committee Act, after consultation with the General Services Administration, the Secretary of Labor has determined that the renewal of the Advisory Panel for the Dictionary of Occupational Titles (APDOT) is in the public interest.

The committee will provide advice to the Assistant Secretary for Employment and Training on the technical feasibility, advisability and practicality of methodologies, techniques, and systems for producing, publishing, and disseminating a new edition of the Dictionary of Occupational Titles (DOT). The committee will provide the Assistant Secretary with recommendations on these matters following its scheduled meetings.

The APDOT shall be comprised of representatives of the user community and interested entities who reflect the points of view of users including Government, vocational training, education, private sector including employers and academic communities. The members shall not be compensated and shall not be deemed to be employees of the United States by virtue of their membership in the APDOT.

The APDOT will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act.

Interested persons are invited to submit comments regarding the renewal of the Advisory Panel for the Dictionary of Occupational Titles (APDOT). Such comments should be addressed to: Mr.

Robert J. Litman, Acting Director, U.S. Employment Services, Employment and Training Administration, U.S. Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 535-0157.

Signed at Washington, DC this 31st day of July, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-18647 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

This notice also amends a petition for modification in the **Federal Register**, dated June 29, 1992 (57 FR 28882) of application of mandatory safety standard to correct the company address as follows:

1. Red Oak Mining Company; Amendment

[Docket Nos. M-92-62-C and M-92-63-C]

Red Oak Mining Company, P.O. Box 210, Westover, Pennsylvania 16692 has filed petitions to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) and 30 CFR 75.326 (aircourses and belt haulage entries) for its South Mine (I.D. No. 36-07810) located in Cambria County, Pennsylvania. The petitioner proposes to use belt air at the faces on all present and future belt installations and states that the proposed method will provide no less than the same measure of protection as the standard.

2. The Pittsburgh & Midway Coal Mining Company

[Docket No. M-92-78-C]

The Pittsburgh & Midway Coal Mining Company, 8400 South Fiddler's Green Circle, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its North River No. 1 Mine (I.D. No. 01-00759) located in Fayette County, Alabama. The petitioner proposes to use high-voltage cables to power longwall mining equipment. The petitioner states that the proposed method will guarantee no less than the same measure of protection as would the mandatory standard.

3. Laurel Run Mining Company

[Docket No. M-92-79-C]

Laurel Run Mining company, Star Route Box 425, Mt. Storm, WV 26739 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Portal No. 2 Mine (I.D. No. 46-04190) located in Grant County, Kentucky. The petitioner proposes to use belt air to ventilate the working face and to remove restrictions on the velocity of air in the belt entries and use a low-level carbon monoxide detection system to monitor the air in the belt entries. The petitioner states that the proposed method will provide the same measure of protection as would the mandatory standard.

4. Leeco, Inc.

[Docket No. M-92-80-C]

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741-8799 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Mine No. 63 (I.D. No. 15-16413) located in Perry County, Kentucky. The petitioner proposes to establish boundary lines 200 feet from adjacent abandoned mine workings, and 50 feet from abandoned areas in the mine with the coal lying between the boundary lines and the abandoned workings designated as the drill zone and horizontal test holes shall be drilled into the coal seam in advance of working faces within the drill zone. The petitioner states that the proposed method will provide a higher degree of safety to the miners than the would the mandatory standard.

5. Quemahoning Collieries

[Docket No. M-92-81-C]

Quemahoning Collieries, R. D. 1, Hooversville, Pennsylvania 15936 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 1 (I.D. No. 36-07446) located in Somerset County, Pennsylvania. The petitioner proposes to use belt air to ventilate the working face and install low-level carbon monoxide detection system in all belt entries. The petitioner states that the proposed method will provide no less than the same measure of protection than would the mandatory standard.

6. Quemahoning Collieries

[Docket No. M-92-82-C]

Quemahoning Collieries, R. D. 1, Hooversville, Pennsylvania 15936 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatice fire sensor and warning device systems; minimum requirements; general) to its Mine No. 1 (I.D. No. 36-07446) located in Somerset County, Pennsylvania. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries where a monitoring system identifies a sensor location instead of at each belt flight. The petitioner states that the proposed method will provide no less than the same measure of protection as would the mandatory standard.

7. Consolidation Coal Company

[Docket No. M-92-83-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, the petitioner proposes to establish check points to test for methane and the quantity of air in the Old 8 West-Return to the Statler air shaft instead of traveling the affected area in its entirety. The petitioner states that the proposed method will at all times guarantee no less than the same measure of protection to the miners of Osage No. 3 mine as would the mandatory standard.

8. Big Dog Coal Company, Inc.

[Docket No. M-92-84-C]

Big Dog Coal Company, Inc., P.O. Box 913, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas; adjacent Mines; drilling of boreholes) to its Mine No. 4 (I.D. No. 44-06638) located in Lee County, Virginia. The petitioner proposes to drill five holes in the face of the entry spaced at 5 feet intervals with one hole in each corner of the entry and 3 holes in the face of the entry and all will be drilled to a depth of 30 feet.

9. Westmoreland Coal Company

[Docket No. M-92-85-C]

Westmoreland Coal Company, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petitioner requests that several provisions in MSHA's Decision and Order issued on October 30, 1990, for docket number M-89-114-C be amended.

10. Perchinski Coal Company

[Docket No. M-92-86-C]

Perchinski Coal Company, 1118 Brock Street, Ashland, Pennsylvania has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Perchinski Slope No. 2 Mine (I.D. No. 36-08302 located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) with an increased rope strength/safety factor and secondary safety rope connection to transport persons instead of using safety catches or other no less effective devices.

11. Hecla Mining Company

[Docket No. M-92-08-C]

Hecla Mining Company, Box C-8000, Coeur d'Alene, Idaho 83814-1931 has filed a petition to modify the application of 30 CFR 57.12013 (splices and repairs of power cables) to its Lucky Friday Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petitioner proposes to use 120 volt terminations on its pull bottles and use a nonconductive fastener such as a wire nut connector to troubleshoot and replace pull bottles when they breakdown. The petitioner states that the proposed provision of the mandatory standard will guarantee no less than the measure of protection as the standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 8, 1992. Copies of these petitions are available for inspection at that address.

Dated: July 30, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-18653 Filed 8-5-92; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 8, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202)-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93-95 Theater Program: Support to Individuals Application Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals.

Use: Guideline instructions and applications elicit relevant information from individuals that apply for funding under the Theater Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 445.

Average Burden hours Per Response: 14.2.

Total Estimated Burden: 6,360.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-18613 Filed 8-5-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NEA.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 31, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 25, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 Theater Program: Support to Organizations Application Guidelines.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit arts organizations that apply for funding under the Theater Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 507.

Average Burden Hours per Response: 40.3.

Total Estimated Burden: 20,436.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-18615 Filed 8-5-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: August 25, 1992; 8:30 a.m. to 5 p.m.

Place: Room 540B, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Devendra P. Garg, Program Director, 1800 G Street, NW., rm. 1108, Washington, DC, 20550. Telephone: (202) 357-9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR proposals submitted to the Dynamic Systems and Control Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 3, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-18654 Filed 8-5-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974; Minor Revisions to Systems of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision of systems of records.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Privacy Act Systems of Records to divide NRC-18, "Investigative Offices Index, Files, and Associated Records—NRC," into two separate systems of records. One system of records will retain the former number, NRC-18, and will be entitled "Office of the Inspector General Index File and Associated Records—NRC." The second system of records, NRC-23 will be entitled "Office of Investigations Indices, Files, and Associated Records—NRC." This action is being taken to distinguish the functions of each office and the types of records found in each system of records, and to adopt the National Archives and Records Administration (NARA) requirements for the retention and disposal of each office's records.

EFFECTIVE DATE: The revised systems of records will become effective without further notice on September 8, 1992, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments may be examined at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sarah N. Wigginton, Acting Chief, Freedom of Information/LPDR Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: 301-492-8133 or toll free 800-368-5642.

SUPPLEMENTARY INFORMATION: The Inspector General Act, originally passed in 1978, was amended in 1988 (Pub. L. 100-504) to add five new Inspectors General (IG) to selected Federal agencies. The NRC was one of the five agencies designated to receive a statutory IG. The responsibilities of the former NRC Office of Inspector and Auditor (OIA) were transferred to the new OIG.

The need to separate the dual system was identified in order to distinguish the functions of each office and the types of records found in each system of records, and to reflect NARA retention and disposition schedules for IG and OI records. NRC-18 and NRC-23 retain the (k)(1), (k)(2), and (k)(6) exemptions that were approved when NRC-18 was published as a duel system on September 18, 1986 (51 FR 33150 and 33158) and retained when the entire systems of records were republished on August 20, 1990 (55 FR 33970).

1. NRC-18, Office of the Inspector General Index File and Associated Records—NRC, supersedes the former NRC-18, Investigative Offices Index, Files, and Associated Records—NRC, and is being revised to read as follows:

NRC-18

SYSTEM NAME:

Office of the Inspector General Index File and Associated Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, 4350 East West Highway, Bethesda, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual cases and matters of concern to the Office of the Inspector General and correspondents on subjects directed or referred to the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEMS:

The system consists of an alphabetical index file bearing individual names. The index provides access to associated records that are arranged by subject matter, title, or identifying number(s) or letter(s). The system incorporates the records of all Office of the Inspector General correspondence, cases, matters, memoranda, and materials, including, but not limited to, audit reports, investigative reports, inspection reports, correspondence to and from the Office of the Inspector General, memoranda, legal papers, evidence, exhibits, audit data, investigative data, and work papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, Pub. L. 100-504 (1988); 42 U.S.C. 2035(c), 2201(c), and 5841(f)(1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency

or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of the Inspector General that has been referred for audit, inspection, or investigation may be disclosed as a routine use to the referring agency, group, organization, or individual of the status of the case or matter or of any decisions or determinations that have been made.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

f. A record in the system of records in the nature of an audit, inspection, or investigation report relating to the integrity and efficiency of the Commission's operation and management may be disseminated outside the Commission as part of the Commission's responsibility to inform the Congress and the public about Commission operations.

g. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from index cards or indices by the name or identifier of the individual or entity and from the jackets or files by number(s) and/or letter(s) assigned and appearing on the index cards or indices.

SAFEGUARDS:

The index is maintained in approved security containers and lockable filing cabinets; and the indices, associated records, disks, tapes, etc., are located in lockable metal filing cabinets, safes, storages rooms, or similar secure facilities. All records under visual control during duty hours and available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

a. *Investigative Case Files.*

a. Files containing information or allegations that are of an investigative nature but do not related to a specific investigation—Destroy when 5 years old.

2. All other investigative files, except those that are usually significant—Place in inactive file when case is closed. Cut off inactive file at end of fiscal year. Destroy 10 years after a cutoff.

3. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

b. *Audit and Related Case Files.* Cut off at end of fiscal year in which case is closed. Destroy 8 years after cutoff.

c. *Index/Indices.* Destroy or delete with the related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality, Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517), and other procedures concerning confidentiality as determined by the Inspector General and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to; NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). .

2. NRC–23, Office of Investigations Indices, Files, and Associated Records—NRC, contains OI information formerly contained in the superseded former NRC–18, and is being added to read as follows:

NRC–23

SYSTEM NAME:

Office of Investigations Indices, Files, and Associated Records—NRC.

SYSTEM LOCATION:

Primary system—Office of Investigations, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2. .

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in potential or actual cases and matters of concern to the Office of Investigations and correspondents on subjects directed or referred to the Office of Investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical and numerical index files bearing individual names and identifiers, and a numerical index of case numbers. These indices provide access to associated records that are arranged by subject matter, title, or identifying number(s) or letter(s). The system incorporates the records of all office of Investigations correspondence, cases, memoranda, materials including, but not limited to, investigative reports, confidential source information, correspondence to and from the Office of Investigations, memoranda, fiscal data, legal papers, evidence, exhibits, technical data, investigative data, work papers, and management information data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2035(c), 2201(c), and 5841(f) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization if the disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of Investigations may be disclosed as a routine use to the referring agency, group, organization, or individual of the status of the case of matter or of any decisions or determinations that have been made.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after a conviction, may be disclosed as a routine use to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

f. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is manually stored on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from indices by the name or identifier of the individual or entity, and from the files by number(s) and/or letter(s) assigned and appearing in the indices.

SAFEGUARDS:

The index is maintained in approved security containers and lockable filing cabinets; and the indices, associated records, disks, tapes, etc., are located in lockable metal filing cabinets, safes, storage rooms, or similar secure facilities. All records are under visual control during duty hours and are available only to authorized personnel who have a need to know and whose duties require access to the information.

RETENTION AND DISPOSAL:

a. Inquiry case files—Retain closed inquiry case files in office for 2 years, then retire to the office of Information Resources Management. Destroy 10 years after cases are closed.

b. Investigation Case Files:

1. Significant headquarters official case files (received media attention, were of significant interest to Congress, involved extensive litigation, etc.) are retained by the government permanently. Hold in office for 2 years after closing, then retire to the Office of Information Resources Management. Transfer closed case files in 10-year blocks to the National Archives.

2. Other headquarters official case files—Hold in office 2 years after closing, then retire to the Office of Information Resources Management. Destroy 10 years after cases are closed.

3. Regional office or investigator working files—Retained in regional files for 6 months. At the end of 6 months, they are forwarded to headquarters and combined with the headquarters files.

c. Index/Indices—Destroy or delete with related records or sooner if no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality, Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517), and the procedures covering confidentiality in Chapter 7 of the Office of Investigations Procedures Manual and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, NRC officials and employees; Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

Dated at Rockville, MD, this 24th day of July 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-18657 Filed 8-5-92; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.34, "Monitoring Criteria and Methods To Calculate Occupational Radiation Doses," provides criteria acceptable to the NRC staff that may be used by licensees to determine when monitoring is required. The guide also describes methods acceptable to the NRC staff for calculating occupational radiation doses when the intake is known.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the

current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23d day of July 1992.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 92–18656 Filed 8–5–92; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.36, "Radiation Dose to the Embryo/Fetus," provides guidance on methods acceptable to the NRC staff for calculating radiation dose to an embryo/fetus.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price.

Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23d day of July 1992.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 92–18655 Filed 8–5–92; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Open Yucca Mountain Tour

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Public Law 100–203), the Board will be taking a bus tour of the Yucca Mountain site on Friday, October 16, 1992. The tour, which is open to the public, will be conducted by the U.S. Department of Energy (DOE). The purpose of the tour is to update Board members on site-characterization activities being performed by the DOE and its contractors at Yucca Mountain. The tour will begin at the Valley Bank Center, 101 Convention Center Drive, Las Vegas, Nevada, at 7 a.m. and return to the Valley Bank Center at approximately 6 p.m.

All who wish to join the tour must provide the following information to Paula Alford, (703) 235–4473 or FAX (703) 235–4495.

1. Full name (e.g.-Frank B. Randall, Jr.).
2. Social security number.
3. Date of birth (month, day, and year).
4. Place of birth (city and state, or country if non-U.S.).
5. Country of citizenship (indicate U.S. or actual country).

U.S. citizens must call or fax their data to Ms. Alford by September 30, 1992. Non-U.S. citizens must call or fax their data to Ms. Alford by September 16, 1992.

Absolutely no one will be registered for the tour after the applicable cutoff dates.

Those who attend the tour must provide their own lunch and beverage. The DOE will provide ice chests and water during the tour. Recommended clothing for the tour includes a jacket or raingear, sturdy walking shoes, a hat, and sunscreen lotion.

The Nuclear Waste Technical Review Board was created by Congress in the NWPAA to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for that waste.

For further information, contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: August 3, 1992.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 92–18634 Filed 8–5–92; 8:45 am]

BILLING CODE 6820–AM–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final wildlife amendments to the Columbia River Basin Fish and Wildlife Program (Bonneville, The Dalles, John Day and McNary Dams).

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then. In 1989, the Council amended the program to establish wildlife mitigation goals and a process for adopting wildlife loss estimates developed by wildlife agencies and Indian tribes as starting points for wildlife mitigation measures. To be used as starting points, loss estimates must first be amended into the Council's program.

On March 10, 1991, the Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act to consider amending the program to include wildlife loss estimates for the

Bonneville, The Dalles, John Day and McNary hydroelectric projects. Comments were received through November 7, 1991, and hearings were held in Idaho, Montana, Oregon, and Washington.

FINAL ACTION: The Council adopted the proposed amendments at its February 11, 1992 meeting.

FOR FURTHER INFORMATION CONTACT: The final amendments and a response to public comments are available on request (request document number 92–11). In addition, the Council's wildlife mitigation process is explained in a document called "Wildlife Mitigation Rule and Response to Comments," document number 89–35. The loss estimates, entitled "Wildlife Impact Assessment, Bonneville, McNary, The Dalles, and John Day Projects" are also available upon request. Those wishing to receive copies of any of these papers should contact the public affairs division in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, telephone 503–222–5161, or toll free in Idaho, Montana, Oregon and Washington 800–222–3355.

Edward Sheets,

Executive Director.

[FR Doc. 92–18666 Filed 8–5–92; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Affairs, Washington, DC 20549.

Revision

Regulation 14A File No. 270–56

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval proposed revisions to Regulations 14A which sets forth rules governing the solicitation of proxies. Regulation 14A, as revised, would affect approximately 8,733 filers and cause filers to incur an average estimated burden of 92 hours per response.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, (PRA Project No. 3235–0059), Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 28, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18608 Filed 8–5–92; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash, (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Affairs, Washington, DC 20549

Extensions

Regulation S, File No. 270–315
Form 144, File No. 270–112
Form N–2, File No. 270–21

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval extensions on the following:

Form 144 affects approximately 31,136 filers and results in 62,672 total annual burden hours.

Regulation S is assigned one burden hour for administrative convenience since the regulation does not impose any burden with respect to the collection of information.

Form N–2 affects approximately 120 filers and results in 195,600 total annual burden hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, (PRA Project Nos. 3235–0101, 3235–0357 and 3235–0026), Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1992.

Margaret H. McFarland,

Deputy Director.

[FR Doc. 92–18667 Filed 8–5–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18874; 812–7772]

Daily Money Fund, et al.; Application

July 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund; Daily Money Fund II, Daily Tax-Exempt Money Fund; Fidelity Special Situations Fund; Fidelity Beacon Street Trust; Fidelity Broad Street Trust; Fidelity California Municipal Trust; Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Commonwealth Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Recovery Fund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Court Street Trust II; Fidelity Delaware Trust; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Diversified Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Franklin Street Trust; Fidelity Fund; Fidelity Government Securities Fund; Fidelity Income Fund; Fidelity Income Trust; Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Institutional Trust; Fidelity Institutional Investors Trust; Fidelity Investment Series; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust; Fidelity Money Market Trust; Fidelity Money Market Trust II; Fidelity Mt. Vernon Street Trust; Fidelity Municipal Trust; Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Oliver Street Trust; Fidelity

Puritan Trust; Fidelity Securities Fund; Fidelity Securities Trust; Fidelity Select Portfolios; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Fidelity U.S. Investments-Bond Fund, L.P.; Fidelity U.S. Investments-Government Securities Fund; L.P.; Fidelity Yen Performance Portfolio, L.P.; Spartan U.S. Treasury Money Market Fund; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Zero Coupon Bond Fund (each of the foregoing investment companies are collectively referred to herein as the "Trusts"); each series of a Trust; and all other investment companies or series thereof for which Fidelity Management & Research Company ("FMR"); Fidelity Distributors Corporation ("FDC"); National Financial Services Corporation ("NFSC"), or their subsidiaries or affiliates, act or will in the future act as investment adviser or principal underwriter;[1] FMR; FDC; and NFSC.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) of the Act to permit the issuance and sale of an unlimited number of classes of securities by the Funds. These classes would be identical in all respects except for differences related to expenses incurred solely by a particular class of Fund shares, voting rights, certain exchange privileges, and class designation.

FILING DATES: The application was filed on August 12, 1991 and was amended on November 25, 1991, April 28, 1992, and July 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicants seek a conditional order under section 6(c) of the Act on behalf of each Trust and each of its series and all other investment companies or series thereof for which FMR, FDC, or NFSC, or their subsidiaries or affiliates, act or will in the future act as investment adviser or principal underwriter (said Trusts and series thereof, and said other investment companies and series thereof are collectively referred to herein as "Funds" and individually as a "Fund").

2. Certain of the Trusts currently are organized as business trusts under the laws of either the Commonwealth of Massachusetts or the State of Delaware. Each such Trust that is organized in Massachusetts is registered under the Act. It is expected that each such Trust that is organized as a Delaware business trust will be registered under the Act in the near future.[2] Most of the Trusts are series companies and may issue one or more series.

3. FMR, a registered investment adviser, acts as each Fund's investment manager and provides the Funds with administrative services. FMR is a wholly owned subsidiary of FMR Corp., a holding company. FDC, a direct subsidiary of FMR Corp., acts as the distributor of all the Funds, other than the three Funds for which NFSC, an indirect subsidiary of FMR Corp., serves as distributor.

4. The Funds currently are offered and sold to customers consisting of the general public, as well as institutional investors. Shares of beneficial interest ("Shares") of some of the Funds are sold with an initial sales charge with scheduled variations in accordance with applicable provisions of rule 22d–1 under the Act. In addition, some Funds have adopted a rule 12b–1 plan under the Act providing for the use of up to .65 of 1% of their respective net assets annually to aid in the distribution of Fund Shares. These currently issued and outstanding Shares are hereinafter referred to as the "Existing Shares."

5. As a result of increased segmentation of the market for mutual funds, applicants believe that it is imperative that the Funds be able to tailor their services and expenses, to the extent possible, to the needs of the particular investor. To accomplish this, and to expand their marketing alternatives, the Funds are contemplating the creation of new shares.

6. Each Fund may create and offer an unlimited number of different classes of Shares ("New Shares") in connection with (a) a distribution plan adopted pursuant to rule 12b–1 under the Act ("12b–1 Plan"); and/or (b) a non-rule 12b–1 Shareholder services plan ("Shareholder Services Plan"); or (c) no 126–1 Plan or Shareholder Services Plan. The New Shares offered subject to the 12b–1 Plan and the Shareholder Services Plan are hereinafter referred to as the "12b–1 Shares" and the "Shareholder Services Plan Shares," respectively. The 12b–1 Plan and the Shareholder Services Plan are sometimes collectively referred to herein as "Plans." All classes of Shares issued by the Funds in connection with any order granted in response to the application will comply with all representations and conditions contained therein.

7. Under each type of Plan, the Fund would enter into servicing agreements ("Service Agreements") with banks, brokerdealers, or other institutions ("Service Organizations") under which the Service Organizations would provide certain account administration services to their customers who from time to time beneficially own Shares offered in connection with a particular Plan or Plans.

8. The personal and account maintenance services to be provided by Service Organizations to their customers under a Shareholder Services Plan may include, but are not limited to, the following: Acting as the sole shareholder of record and nominee for all shareholders; maintaining account records for each shareholder who beneficially owns Shareholder Services Plan Shares; opening and closing accounts; answering questions and handling correspondence from shareholders about their accounts;

[1] Certain existing Trusts do not presently intend to rely on the requested relief and have not signed the application. In the future, such Trusts may rely on any order granted pursuant to the application if they determine to create multiple classes of shares in accordance with the representations and conditions in the application.

[2] In addition, certain of the Trusts are organized as limited partnerships. It is intended that the requested order apply to these Trusts, and any similar partnership organized in the future, in anticipation of their future reorganization into either business trust or corporate forms.

processing shareholder orders to purchase, redeem, and exchange Shareholder Services Plan Shares; posting interest; handling the transmission of funds representing the purchase price or redemption proceeds; issuing confirmations for transactions in Shareholder Services Plan Shares by shareholders; distributing current copies of prospectuses and shareholder reports; assisting customers in completing application forms, selecting dividend and other account options, and opening custody accounts with the Service Organization; providing account maintenance and accounting support for all transactions; and similar personal services and/or shareholder account maintenance services as may be agreed to by the Service Organization in the future (collectively, the "Shareholder Services Plan Services").

9. The distribution-related services to be provided by Service Organizations to the Funds and/or their customers under the 12b–1 Plan of a Fund may include, but are not limited to, the following: advertising the availability of services and products; designing material to send to customers and developing methods of making such materials accessible to customers; providing information about the product needs of customers; providing facilities to solicit Fund sales and to answer questions from prospective and existing investors about the Fund; receiving and answering correspondence from prospective investors, including requests for sales literature, prospectuses, and statements of additional information; displaying and making sales literature and prospectuses available on the Service Organization's premises; acting as liaison between shareholders and the Fund, including obtaining information from the Fund, and providing performance and other information about the Fund; and providing additional personal services and/or shareholder account maintenance services like those listed above as Shareholder Services Plan Services or additional distribution-related services as may be agreed to by the Service Organization in the future (collectively, the "12b–1 Plan Services"). The Service Agreement would further provide for compensation to broker-dealers for their efforts to sell the 12b–1 Plan Shares to their brokerage customers and prospective customers.

10. The provision of Shareholder Services Plan Services and 12b–1 Plan Services under the Plans would augment (and not be duplicative of) the services to be provided to each fund by its investment adviser and distributor and by the party which provides custody and recordkeeping services to each particular Fund. In addition, in the event that a Fund adopts both a Shareholder Services Plan and a 12b–1 Plan, the Trustees will assure that, to the extent that the Plans may be deemed to overlap in some respects, compensation shall not be duplicative as the result of the use of both Plans.

11. Under each type of Plan, the Funds would pay a Service Organization for its services and assistance in accordance with the terms of the Plan and the particular Service Agreement. Such payments are hereinafter referred to as "Service Payments." The expense of such payments would be borne entirely by the beneficial owners of the class of New Shares of the fund to which the Service Agreement relates.

12. Service Payments paid to a Service Organization pursuant to a 12b–1 Plan would not exceed the amount permitted under applicable regulations of the National Association of Securities Dealers, Inc. ("NASD"). Currently the amount of Service Payments under a 12b–1 Plan is expected to be up to .65% per annum of the average daily net asset value of the 12b–1 Plan Shares. The level of payments permitted under the 12b–1 Plan shall be changed only pursuant to approval by the shareholders of the affected class of a Fund. Service Payments pursuant to a Shareholder Services Plan would not exceed the amount permitted under applicable NASD regulations. Currently, such Service Payments are expected to be up to .25% per annum of the average daily net asset value of those shares beneficially owned by customers of the bank, trust company, or other financial institution with respect to which personal and account maintenance services are performed under a Shareholder Service Plan. The Service Payments would not be increased over the above limits unless the Commission in the future approves regulations promulgated by the NASD authorizing higher payments.

13. Each New Share or Existing Share in a particular Fund would represent, regardless of class, an interest in the same portfolio of investments of the Fund and would have identical voting, dividend, liquidation, and other terms and conditions, except that: (a) Each class of New Shares would have a different class designation; (b) each class of New Shares offered in connection with a Plan would bear the expense of the Service Payments that would be made under the Service Agreements that have been entered into with respect to such class; (c) each class of New Shares also could bear certain other expenses that are directly attributable only to the class, including (i) transfer agent fees identified by applicants as being attributable to a specific class of Shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholders reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of Shares; (iv) SEC registration fees incurred by a class of Shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) trustees' fees or expenses incurred as a result of issues relating to one class of Shares; and (vii) accounting expenses relating solely to one class of Shares (collectively referred to herein as "Class Expenses"); (d) only the holders of the New Shares of the class or classes involved would be entitled to vote on matters pertaining to a Plan and any related agreements relating to such class or classes; [3] and (e) each class would have different exchange privileges. No Class Expenses other than those enumerated above would be charged without obtaining an amendment of the exemptive order requested in the application.

14. The gross income of all Funds will be allocated among the classes of Shares on the basis of the relative applicable net asset values. Expenses of the Trusts that have established multiple portfolios that cannot be attributed directly to any one Fund ("Trust Expenses") generally will be allocated to each Fund based on the relative net assets of such Fund.[4] Certain expenses may be attributable to a particular Fund, but not a particular class ("Fund Expenses"). All such Fund Expenses incurred by a Fund would be borne on the basis of the relative net asset values of the classes of that Fund, except for the Service Payments that are made under a Plan that has been adopted in connection with a class of Shares and except for Class Expenses. Finally, Class Expenses may be attributable to a

[3] Shares offered in connection with the Shareholder Services Plan will not necessarily be accorded the voting rights specified in rule 12b-1, although the trustees may approve a Shareholder Services Plan with such rights. If an issue relating to a Plan, or a Service Agreement related thereto, is submitted to a vote of shareholders, only the holders of the Shares of the class or classes affected by the Plan or Service Agreement would be entitled to vote.

[4] From time to time, the Trusts may allocate expenses among Funds using alternative methods, including allocation based on the number of shareholders of each Fund.

particular class of Shares of a Fund. All Class Expenses incurred by a class of Shares would be borne on a *pro rata* basis by the outstanding Shares of such class.

15. Because of the Service Payments and Class Expenses that may be borne by each class of Shares, the net income of (and dividends payable to) each class may be different than the net income of (and dividends payable to) the other classes of Shares in the same Fund. Dividends paid to each class of Shares in a Fund would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expenses of Service Payments and Class Expenses, would be determined in the same manner and paid in the same amounts. In the case of each of the Funds that are not money market funds, which do not maintain a constant net asset value per share, and do not declare dividends on a daily basis, the net asset value per share of the classes of Shares of the Fund will vary.

16. Except as noted below, each class of Shares may be exchanged only for Shares of the same class in another Fund within the same "group of investment companies" as that term is defined in rule 11a-3(a) under the Act. Shares of each Fund within the same group of investment companies will be exchangeable for shares of each of the other Funds within that group with the same characteristics. This privilege would apply irrespective of whether the shares in question are newly created 12b-1 Plan Shares or Shareholder Services Plan Shares, or Existing Shares with those characteristics. Accordingly, for example, Existing Shares subject to a rule 12b-1 plan of one Fund would be exchangeable for newly-created 12b-1 Plan Shares of another Fund. Notwithstanding the foregoing, exchanges will be permitted among different classes should a shareholder cease to be eligible to purchase Shares of the original class by reason of a change in the shareholder's status.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the Act because the proposed issuance and sale of New Shares might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. The creation of the New Shares may result in Shares of a class having "priority over [another] class as to * * * payment of dividends" and having unequal voting rights because, under the proposed arrangement, certain classes of Shares in the same Fund would bear the expense of Service Payments and Class Expenses and would enjoy exclusive voting rights with respect to matters concerning the Plans.

2. Applicants believe that the proposed allocation of expenses and voting rights relating to the Plans is equitable, and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan would bear the costs associated with the related services, they would also enjoy the benefits of those services and, in the case of Rule 12b-1 Plan Shares, exclusive shareholder voting rights with respect to matters affecting such Plan. Conversely, investors purchasing Shares that are not covered by such Plan would not be burdened with such expenses, or enjoy such voting rights.

3. Applicants believe that by offering New Shares in connection with Plans as described above, and also by creating and offering Shares independently of Plans, the Funds may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. If New Shares are created and Plans adopted as described, the Funds will be able to address more precisely the needs of the particular investors and cause the associated expenses to be borne by such investors. Applicants acknowledge that this objective might be achieved through the organization of new investment portfolios, but believe that it would be inefficient and economically unfeasible to organize a separate investment portfolio for each class of Shares created. Applicants assert that not only would unnecessary accounting, bookkeeping, and legal costs be incurred in organizing and operating such new portfolios, but the management of the new portfolios, as well as any existing portfolios, might be hampered. For these reasons, the Funds seek to create new classes of Shares, rather than new portfolios.

4. Applicants maintain that the proposed arrangement does not involve borrowing, and does not affect the Funds' existing assets or reserves. Nor would the proposed arrangement increase the speculative character of the Shares of a Fund, since all Shares of a Fund will participate in all of the Fund's appreciation, income, and all of the Fund's expenses (with the exception of the proposed Service Payments and Class Expenses) on the basis of the relative applicable net assets of the classes.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Each class of Shares of a Fund will represent interests in the same portfolio of investments, and be identical in all aspects, except as set forth below. The only differences between the classes of Shares of a Fund will relate solely to one or more of the following: (a) The method of financing certain Class Expenses, which are limited to any or all of the following (i) transfer agent fees identified by applicants as being attributable to a specific class of Shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of Shares; (iv) Commission registration fees incurred by a class of Shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) trustees' fees or expenses incurred as a result of issues relating solely to one class of Shares; and (vii) accounting expenses relating to one class of Shares; (b) expenses assessed to a class pursuant to a Shareholder Services Plan and/or 12b-1 Plan with respect to a class; (c) the fact that the classes will vote separately with respect to the Fund's Shareholder Services Plan and/or 12b-1 Plan; (d) the different exchange privileges of the classes of Shares; and (e) the designation of each class of Shares of a Fund. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of Shares shall not be so allocated until approved by the Commission pursuant to an amended order.

2. The trustees of the Trusts, including a majority of the independent trustees, will approve the offering of different classes of Shares (the "Multi-Class System") prior to the implementation of that system by a particular Fund. The minutes of the meetings of the trustees of the Trusts regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interest of both the Funds and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to

a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the boards of trustees of the Trusts including a majority of the trustees who are not interested persons of the Trusts. Any person authorized to direct the allocation and disposition of monies paid or payable by the Funds to meet Class Expenses shall provide to the boards of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of the Trusts pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts among the interests of the classes of Shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's distributor and advisor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Fund's distributor and advisor at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any 12b-1 Plan adopted or amended to permit the assessment of a rule 12b-1 fee on any class of Shares which has not had its rule 12b-1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of Shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective, or within such other period as required by the Commission staff via undertaking in the registration statement relating to such class, or, if applicable, in the amendment to the registration statement offering such class.

6. The distributor of each Fund will adopt compliance standards as to when each class of Shares may be sold to particular investors. Applicants will require all persons selling Shares of the Funds to agree to conform to such standards.

7. The Shareholder Services Plans will be adopted and operated in accordance with the procedures set forth in rule 12b-1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1. In evaluating the Shareholder Services Plans, the trustees will specifically consider whether (a) such Plans are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Shareholders Services Plans are required for the operation of the applicable classes, (c) the Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Funds, providing similar services, and (d) the fees for such services are fair and reasonable in the light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

8. Each Service Agreement entered into pursuant to a Shareholder Services Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of customers' assets in the Funds (a) will be disclosed by it to the customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Service Organization.

9. Each Service Agreement entered into pursuant to a Shareholder Services Plan will provide that, in the event an issue pertaining to a Shareholder Services Plan is submitted for shareholder approval, the Service Organization will vote any Shares held of its own account in the same proportion as the vote of those Shares held for its customers' accounts.

10. The trustees will receive quarterly and annual statements concerning the amounts expended under the Shareholder Services Plans and 12b-1 Plans and the related Service Agreements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of Shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

11. Dividends paid by a Fund with respect to each class of its Shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Service Payments made by a class under a Plan and any Class Expenses will be borne exclusively by that class.

12. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

13. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of Shares and the proper allocation of expenses among the classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition (12) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition

(12) above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

14. The prospectuses of each class of Shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund Shares may receive different compensation with respect to one particular class of Shares over another in the Funds.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Trusts with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the trustees.

16. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of Shares in every prospectus, regardless of whether all classes of Shares are offered through each prospectus. The Funds will disclose the respective expenses and performance data applicable to all classes of Shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of Shares, it will also disclose the respective expenses and/or performance data applicable to all classes of Shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds's net asset value or public offering price will present each class of Shares separately.

17. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization of or acquiescence in any particular level of payments that any Fund may make pursuant to its Rule 12b-1 Plan or Shareholder Services Plan in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18668 Filed 8-5-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1665]

Shipping Coordinating Committee; Maritime Safety Committee and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, December 2, 1992, in room 2415, at US Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations, including the discussion of papers received and draft U.S. positions, for the 61st Session of the Maritime Safety Committee (MSC) and associated bodies of the International Maritime Organization (IMO) which is scheduled for December 7-11, 1992, at IMO Headquarters in London. In addition, the SHC will discuss draft U.S. positions for the IMO working group on strategy for port interface which is scheduled to meet December 14-16, 1992, at IMO headquarters.

Among other issues, items of particular interest are:

—Consideration and adoption of amendments to Safety of Life at Sea '74 and related codes.

—Reports of Technical Sub-Committees.

—Flag State compliance.

—Role of the human element in maritime casualties.

—Construction and safety aspects of oil tankers and bulkers

—Marine transport of radioactive materials.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Gene F. Hammel, U.S. Coast Guard (G-CI), room 2114, 2100 Second Street, SW., Washington, DC 20593 or by calling (202) 267-2280.

Dated: July 6, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-18585 Filed 8-5-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 92-36; Notice 2]

Koito Manufacturing Co., Ltd.; Receipt of Petition for Determination of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correction.

SUMMARY: On July 29, 1992, NHTSA published in the **Federal Register** a notice of receipt of a petition from Koito Manufacturing Co., Ltd. for determination of Inconsequential Noncompliance with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment," Federal Motor Vehicle Safety Standard (FMVSS) No. 108. (57 FR 33543) This notice corrects the docket number to read "[Docket No. 92-36; Notice 1];" the July 29, 1992, notice had read "[Docket No. 92-35; Notice 1]."

Issued on: July 31, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-18627 Filed 8-5-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-16; Notice 2]

Determination That Nonconforming 1989 Mitsubishi Galant Super Salon Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1989 Mitsubishi Galant Super Salon passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1989 Mitsubishi Galant Super Salon passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1989 Mitsubishi Galant), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective on August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009), petitioned NHTSA to determine whether 1989 Mitsubishi Galant Super Salon passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 3, 1992 (57 FR 13780), to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 13 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Mitsubishi Galant Super Salon is substantially similar to a 1989 Mitsubishi Galant originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 31, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–18535 Filed 8–5–92; 8:45 am]

BILLING CODE 4910–59–M

Denial of Motor Vehicle Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

The Center for Auto Safety (CAS) petitioned the agency on April 1, 1992, to order owner notification and remedy of 1985 and later Coachmen motorhomes "that have the hot exhaust pipe extending directly out from under the (fuel) filler pipe." CAS suggested that during the filling of the fuel tank, fuel could spill onto the hot pipe and vaporize, creating a fire hazard, if an ignition source is present. CAS first petitioned the agency to order the recall of these vehicles in July 1985.

In 1985, the agency denied the CAS petition for the following reasons:

1. Past testing indicated that gasoline will not ignite when spilled on a hot surface such as a tailpipe.
2. Motor vehicles should not be refueled with the engine running.
3. Several hundred thousand vehicles produced by Chrysler, Ford, and General Motors had been produced over a number of years prior to 1985, with the fuel filter located above the tailpipe. Agency files failed to identify motorhomes or vans which experienced a fire caused by gasoline dripping onto tailpipes.

CAS filed this current petition, based on the following NHTSA statement, that appeared in the Comments of the National Highway Traffic Safety Administration Regarding The September 26, 1991 Statement of Clarence M. Ditlow, Director, Center for Auto Safety, Before the U.S. Environmental Protection Agency, October 25, 1991. The tests referred to below are the tests mentioned in reason number 1 above.

The tests referred to by CAS were conducted over 15 years ago. The test temperatures were much lower than those experienced in late model vehicles that have to comply with much more stringent emission standards. The criteria used in 1985 is not sufficient for the basis of decisions made today, given what is now known about operating conditions and temperatures of modern engines and exhaust systems * * *. Exhaust system temperatures have been measured over the last 5 years and are now often 600 to 700 degrees hotter than common exhaust temperatures of 10 years ago.

The petitioner noted that Coachmen was building motorhomes with the tailpipe exiting under the fuel filler after 1985, and that more stringent EPA regulations have been in effect with regard to motorhome conversion vans since 1985. Therefore, the petitioner speculated that gasoline may be dripping onto tailpipes with temperatures in the 1,200 to 1,400 degree Fahrenheit (F) temperature range, thereby presenting a risk of fire. The facts, as discussed below, demonstrate that this is not the case.

A motor vehicle exhaust system is composed of five basic components: the exhaust manifold, the exhaust pipe, the catalytic converter, the muffler, and the tailpipe. The *exhaust pipe* is the section of tubing of the exhaust system that runs from the engine exhaust manifold to the entrance into the muffler or catalytic converter. It is this section of a modern exhaust system, along with the exterior surface of the catalytic converter, where the highest temperatures occur. The section of tubing that runs from the muffler to the rear of the vehicle is the *tailpipe*. This is the section of an exhaust system where the lowest temperatures exist. The highest temperatures in the tailpipe occur as a "hot spot" at a bend in the tailpipe, e.g., where the pipe goes over the rear axle, not near the exit end of the tailpipe. In situations where temperatures of the exhaust pipe or catalytic converter approach 1,200 degree F, the temperatures at the exit end of the tailpipe, according to testing conducted

by the U.S. Forest Service and General Motors, do not exceed 600 degrees F. The Forest Service tests, which were conducted with the cooperation of NHTSA, determined that exhaust system surface temperatures were usually the highest at the first bend of the exhaust pipe (where the general direction of the exhaust gas flow first becomes horizontal in the exhaust pipe) and at the outlet of the catalytic converter. The temperatures usually remain high from the first bend to the outlet area of the catalytic converter. Temperatures then decrease along the exhaust system until the area where the tailpipe "kicks up" over the rear axle. The Forest Service tests also indicated that the exit end of the tailpipe cools very rapidly as soon as the engine returns to idle or is stopped.

Both the National Advisory Committee for Aeronautics and the American Petroleum Institute have completed studies and published reports concerning the ignition risk of gasoline on hot surfaces in open air. With regard to unleaded automotive gasoline (including 100 octane), when tested for auto-ignition by heated steel, iron, copper, or nickel surfaces (in open air or shrouded to simulate a vehicle's underhood condition) the minimum temperatures required for auto-ignition exceed 1,000 degrees F.

The petitioner inaccurately describes the location of the "hot" exhaust pipe in these vehicles. The Coachmen motorhomes *do not* "* * * have the hot exhaust pipe extending directly out from under the filler pipe." It is the exit end of the tailpipe, a much cooler component than an exhaust pipe, that extends outward below the filler pipe opening. Based on available test results, the temperature of this area of the tailpipe does not approach the minimum temperature necessary for auto-ignition of gasoline, under any operation conditions.

CAS, in their original petition dated July 9, 1985, also asserted that if gasoline spilled onto the tailpipe, even if auto-ignition does not occur, a vapor cloud might be formed that could result in a "hazardous ball of fire, * * * if there is any kind of ignition source." NHTSA is aware that, *in the presence of an ignition source*, fuel spillage while refueling will likely result in a fire because the vapor that forms above the spilled gasoline will ignite. When gasoline is spilled on any warm surface, such as asphalt, concrete, or warm body sheet metal, vaporization will occur much quicker.

NHTSA is concerned with the formation of vapor clouds. Vapor clouds that form from evaporative emission systems have resulted in safety problems and vehicle safety recalls. In such instances, the vapor can collect in the underhood areas where the hottest sections of the exhaust system, such as the exhaust pipe and catalytic converter, are located. Such vapor clouds could remain in such locations and become safety hazards while the vehicle is either moving or stationary. The formation of gasoline vapor clouds coupled with the presence of ignition sources which can occur in the motor vehicle operating environment are of concern to the agency and is precisely why NHTSA has safety concerns associated with on-board vapor recovery systems.

In contrast, ignition of vapors from fuel spilling on tailpipes or other surfaces during refueling does not appear to be a real-world problem. Any vapor cloud that might form due to fuel spillage on a tailpipe during refueling will dissipate very quickly in the open environment of a refueling station, particularly once the vehicle departs, and could not migrate into underhood or underbody areas near hotter exhaust system components.

Thus, these vapors would not be exposed to surfaces of such temperatures that ignition could occur. Further, because the vapors dissipate quickly upon vehicle movement, they would not be exposed to ignition sources associated with motor vehicle crashes. As pointed out in NHTSA's denial of the original CAS petition in 1985, "Several hundred thousand vehicles produced by Chrysler, Ford, and General Motors over a period of many years have been built with the gasoline filler location above the tailpipe." NHTSA was not aware in 1985, nor is NHTSA now aware, of any fires either caused or intensified by such a configuration. NHTSA is aware of only two fires involving any Coachmen motorhouses, and neither of these fires were the result of fuel spilling on the tailpipe.

Coachmen has reported that they are not aware of any reports of fire resulting from gasoline spilling on a tailpipe from any source, including vehicle owners and CAS. This includes all the incidents of fuel expulsion, which would cause gasoline to fall on the tailpipe as would happen in refueling overflows. It should be noted that fuel expulsion is a safety concern. Coachmen conducted a safety recall of certain vehicles in 1985 for this problem, as described below.

Coachmen has taken several actions since 1985 that are relevant to this discussion.

1. In August 1985, Coachmen safety recall 85V106. This recall was to prevent fuel expulsion when the fuel filler cap was removed. The recall included a new two-stage pressure release cap requiring a second 90 degree rotation after the initial release of pressure. A permanent exterior warning label was also installed immediately over the fuel fuller opening, instructing individuals refueling the vehicle not to turn the cap the final 90 degrees until all pressure has been released.

2. In July 1987, General Motors developed a vent kit to vent fuel vapors from the fuel tank to the rear of the vehicle away from any potential ignition source, when the internal tank pressure exceeded approximately 1 psi (less than ½ the pressure required to open the vent in the fuel filler cap). Coachmen put this kit into production in July 1987 and furnished kits to dealers to retrofit all 1985 through 1987 vehicles.

3. In July 1987, Coachmen began moving the mufflers on some of their new models forward and exiting the tailpipes in front of the rear wheels, in order to reduce heat around the rear-mounted fuel tank. Additional models were included in September 1987 and the remaining models in December 1987.

In summary, a review of all the pertinent information leads to the following conclusion:

1. The tailpipe that extends under the Coachmen fuel filler opening is not subject to the elevated temperatures referred to by NHTSA in the document cited by CAS in their petition. The temperatures in this area of the tailpipe are below the minimum temperatures required for auto-ignition of gasoline on a hot surface.

2. From 1985 through December 1987, Coachmen produced approximately 14,000 motorhomes with the fuel filler opening located above the exit of the tailpipe. In spite of the fact that these vehicles have been on the road for at least 4 years, NHTSA is not aware of a single fire that was caused or aggravated by fuel spilling on the tailpipe as suggested by CAS. Thus, a review of the available information revealed no indication of safety risk in 1985 through 1987 Coachmen motorhomes regarding fuel spillage on the tailpipe.

3. The petitioner has provided no information indicating that fires have occurred, or will occur, due to the location of the fuel filler opening above the tailpipe.

4. Coachmen has taken several actions, including a safety recall, to minimize the likelihood of fuel spilling on the tailpipe.

5. Fuel vapors due to gasoline spilling on a tailpipe during refueling do not

create the safety concern associated with fuel vapors stored on a vehicle. Refueling vapors such as these that might result from fuel spilling on a tailpipe dissipate quickly and, compared to stored vapors, are not exposed to ignition sources associated with the overall motor vehicle environment.

In consideration of the available information, it is concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether a safety-related defect trend exists does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Public Law 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 31, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–18689 Filed 8–5–92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 31, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0014.
Form Number: None.
Type of Review: Extension.
Title: Request to Convert From a Mutual Institution to a Stock Institution—Form AC (Application for Conversion), and Exhibits (Form PS—Proxy Statement, and Form OC-Offering Circular).
Description: 12 CFR 563b states that no mutual association shall convert to a stock association without the prior written consent of the Office of Thrift Supervision.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 70.
Estimated Burden Hours Per Respondent: 500 hours.
Frequency of Response: Other (only required when converting to stock form).
Estimated Total Reporting Burden: 35,000 hours.
Clearance Officer: Colleen Devine, (202) 906–6025, Office of Thrift Supervision, 2d Floor, 1700 G Street NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–18685 Filed 8–5–92; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 29, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0123.
Form Number: IRS Form 1120, Schedule D (Form 1120), Schedule H (Form 1120), Schedule PH (Form 1120).
Type of Review: Resubmission.
Title: U.S. Corporation Income Tax Return (1120), Capital Gains and Losses (Schedule D), U.S. Personal Holding Company (PHC) Tax (Schedule H), Section 280H Limitations for a Personal Service Corporation (PSC) (Schedule PH).
Description: Form 1120 is used by corporations to compute their taxable income and tax liability, Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 2,462,931.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1120	Schedule D	Schedule H	Schedule PH
Recordkeeping	68 hours 38 minutes	6 hours 56 minutes	5 hours 59 minutes	15 hours 19 minutes.
Learning about the law or the form	27 hours 49 minutes	2 hours 29 minutes	34 minutes	5 hours 10 minutes.
Preparing the form	52 hours 14 minutes	4 hours 56 minutes	39 minutes	6 hours 52 minutes.
Copying, assembling, and sending the form to the IRS.	8 hours 2 minutes	48 minutes		4 hours 32 minutes

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 469,458,657 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–18600 Filed 8–5–92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 29, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC. 20220.

Office of Thrift Supervision

OMB Number: 1550–0023.
Form Number: OTS Form 1313, Monthly Cost of Funds Survey Systems Worksheet, Officer Certification.
Type of Review: Revision.
Title: Thrift Financial Report (TFR).
Description: OTS collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of the personal savings of general public. The OTS monitors trends in financial positions so that adverse conditions can be reminded promptly. These respondents are primarily savings associations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 21 hrs., 32 min.
Frequency of Response: Monthly, Quarterly, Annually.
Estimated Total Reporting/ Recordkeeping Burden: 551,040 hours.
Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision 2d Floor, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–18601 Filed 8–5–92; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0055.
Form Number: IRS Form 1001.
Type of Review: Extension.
Title: Ownership, Exemption, or Reduced Rate Certificate.
Description: This form is used by owners of certain types of income to report to a withholding agent, both the ownership and any reduced or exempt tax rate under tax conventions or treaties, and, if appropriate, to claim a release of tax withheld at source. The withholding agent uses the information to determine the appropriate withholding.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 100,000.
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—4 hours, 32 minutes. Learning about the law or the form—1 hour. Preparing and sending the form to the IRS—1 hour, 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 665,000 hours.
OMB Number: 1545–0823.
Regulation ID Numbers: FI–221–83 NPRM and FI–100–83 TEMP.
Type of Review: Extension.
Title: Indian Tribal Governments Treated As States For Certain Purposes.
Description: The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indian tribal government or subdivision thereof for purposes of sections 7701(a)(4) and 7871, it may apply for a ruling from the IRS.
Respondents: Other: Indian Tribal Governments and Their Subdivisions.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (once).
Estimated Total Reporting Burden: 25 hours.
OMB Number: 1545–1059.
Form Number: IRS Forms 7018 and 7018–A.
Type of Review: Extension.
Title: Employer's Order Blank for Forms (7018) Employer's Order Blank for 1993 Information Returns (7018–A).
Description: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,473,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 73,650 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3000, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–18602 Filed 8–5–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0125.
Form Number: None.
Type of Review: Extension.
Title: Section 2.18 and 2.23 of a Revised 31 CFR part 2, National Security

Information. Mandatory Declassification Review and Access by Historical Researchers and Former Presidential Appointees.

Description: Information is used to substantiate the status as a U.S. citizen or permanent resident alien with respect to requests for mandatory declassification review under Executive Order 12356 and to ensure payment of fees incident to such requests and for service provided to historical researchers and former Presidential appointees.

Respondents: Individuals or households, State or local governments.

Estimated Number of Respondents: 3.

Estimated Burden Hours Per Response: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–18603 Filed 8–5–92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This Document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Buyers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: July 30, 1992.

By direction of the Secretary.

J. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Veterans Mortgage Life Insurance—Change of Address Statement, VA Form 29–0563.

2. The form is used by VA to request information needed for determining continued entitlement to Veterans Mortgage Life Insurance.

3. Individuals or households.

4. 20 hours.

5. 5 minutes.

6. On occasion.

7. 240 respondents.

[FR Doc. 92–18698 Filed 8–5–92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not sent requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Records Management Service.

Extension

1. Obtaining Supplemental Information from Hospital or Doctor, VA Form Letter 29–551B.

2. The form letter is used to request medical evidence from the insured's attending physician or hospital regarding the continuation of disability insurance.

3. Individuals or households.

4. 61 hours.

5. 15 minutes.

6. On occasion.

7. 244 respondents.

[FR Doc. 92–18699 Filed 8–5–92; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Medical Information for Reinstatement, VA Form Letter 29–762.
2. The form letter is used by veterans' attending physicians to supply medical information that is required to determine eligibility for reinstatement of insurance and/or total disability income provisions.
3. Individuals or households.
4. 240 hours.
5. 30 minutes.
6. On occasion.
7. 480 respondents.

[FR Doc. 92–18700 Filed 8–5–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Person Claiming to Have Stood in Relation of Parent, VA Form 21–524.
2. This form is used to gather information about the relationship of the claimant to the veteran in claims for Pension Dependency and Indemnity Compensation.
3. Individuals or households.
4. 4,000 hours.
5. 2 hours.
6. On occasion.
7. 2,000 respondents.

[FR Doc. 92–18701 Filed 8–5–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Departments of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information (1) The title of the information collection, and the Department form number(s), if applicable (2) a description of the need and its use; (3) who will be required or asked to respond (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response, and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 8, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Request for Information Concerning Medical, Legal or Other Expenses, VA Form 21–8416.
2. This form is used by a claimant to report medical, legal, or other expenses paid in connection with claims for income-based benefits.
3. Individuals or households.
4. 32,133 hours.
5. 20 minutes.
6. On occasion.
7. 96,400 respondents.

[FR Doc. 92–18702 Filed 8–5–92; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Readjustment of Vietnam and Other War Veterans Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Readjustment of Vietnam and Other War Veterans will be held September 10 and 11, 1992. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting will be held at Techworld in room 1105 located at 801 I Street, NW, Washington, DC. The meetings on September 10 and 11 will both begin at 8:30 a.m. and conclude at 4:30 p.m. The agenda for September 10 will consist of presentation, discussion and update of VA services and activities regarding women veterans experiencing psychological difficulties related to exposure to traumatic sexual abuse and/or assault while in the military. The first day's agenda will also cover a review of findings and recommendations regarding the Readjustment Counseling Service Vet Centers.

On September 11 the Committee will review issues, recommendations and objectives regarding services to homeless veterans and will conduct a planning meeting to identify topics and objectives for the coming year. The second day's agenda will also consist of a review and discussion of VA activities regarding the celebration commemorating the tenth anniversary of the Vietnam Veterans Memorial.

Both day's meeting will be open to the public up to the seating capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202–535–7554).

Dated: July 30, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–18997 Filed 8–5–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 11, 1992.

PLACE: 2033 K St., N.W., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Applications of the Commodity Exchange, Inc. for contract designation in Platinum futures and options
—Application of the Commodity Exchange, Inc. for contract designation in Palladium futures
—Applications of the Chicago Board of Trade for contract designation in International Commodity Index futures and options

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–18818 Filed 8–4–92; 3:15 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, August 11, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–18819 Filed 8–4–92; 3:15 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 25, 1992.

PLACE: 2033 K St., N.W., Washington, DC Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Board of Trade for contract designation in Agricultural Index futures
—Application of the Chicago Board of Trade for contract designation in Barge Freight Rate Index futures

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–18820 Filed 8–4–92; 3:15 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, August 25, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-18821 Filed 8-4-92; 3:15 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, August 25, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92–18822 Filed 8–4–92; 3:15 pm]
BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92–18197.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 6, 1992, 10:00 a.m.
Meeting Open to the Public.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Gephardt for President Committee, Inc. Request for Extension to Make Repayment to United States Treasury (LRA #328) (Continued from meeting of July 30, 1992)
Jack Kemp for President Committee, Inc. Request for Extension to Make Repayment (Continued from meeting of July 30, 1992)
Advisory Opinion 1992–20: Mr. Frederick T. Spahr of the American Speech-Language-Hearing Association ("ASHA") and ASHA PAC ("ASHA–PAC"). (Continued from meeting of July 30, 1992)
Advisory Opinion 1992–23: Mr. Thomas N. Edmonds on behalf of Mr. James Jay Baker. (Continued from meeting of July 30, 1992)
Transfers of Funds from State to Federal Campaigns Final Rule. (Continued from meeting of July 30, 1992)
Notice of Proposed Rulemaking on Transfers Between Federal Candidate Committees. (Continued from meeting of July 30, 1992)

DATE AND TIME: Tuesday, August 11, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, August 13, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992–24: Mr. Reed F. Bilbray of Pilzer for Congress
Advisory Opinion 1992–27: Mr. Jan Baran on behalf of the National Republican Senatorial Committee ("NRSC")
Advisory Opinion 1992–28: Mr. Stevenson H. Waltien, Jr. of Leahy for U.S. Senator Committee
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,
Administrative Assistant.
[FR Doc. 92–18835 Filed 8–4–92; 3:49 pm]
BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., August 5, 1992.

PLACE: Room 12126, 1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 91–30—*Sea-Land Dominicana, S.A. and Sea-Land of Puerto Rico, Inc. v. Sea-Land Service, Inc.*—Consideration of the Record.

2. Docket No. 91–10—*Orient Overseas Container Line, Inc. v. Espee Trading Corporation*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92–18731 Filed 8–3–92; 4:29 pm]

BILLING CODE 6730-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Hearing

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability and hearing on personal assistance services. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94–409).

DATES:

Quarterly Meeting

September 10, 1992, 9:00 a.m. to 12:00 noon
September 11, 1992, 9:00 a.m. to 12:00 noon

Hearing on Personal Assistance Services

September 10, 1992, 1:00 p.m. to 5:00 p.m.

LOCATION: Boston Marriott Hotel Long Wharf, 296 State Street, Boston, Massachusetts 02109, (617) 227–0800.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98–221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The quarterly meeting of the National Council and the hearing on personal assistance services shall be open to the Public. The proposed agenda includes:

Hearing on Personal Assistance Services
Report from Chairperson and Executive Committee
Update on the Reauthorization of the Rehabilitation Act Amendments of 1992
Update on NIDRR
Update on ADA Watch
Update on public policy studies: education; technology; and, health insurance
Committee Meetings/Committee Reports
Unfinished Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on August 3, 1992.

Ethel D. Briggs,

Executive Director.

[FR Doc. 92–18733 Filed 8–4–92; 9:20 am]

BILLING CODE 6820-09-M

POSTAL RATE COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, August 12, 1992.

PLACE: Commission Conference room, 1333 H Street, NW, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1993.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 92–18729 Filed 8–3–92; 4:28 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 152
Thursday, August 6, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Project I.D. No. 06-10-93001-01]

Business Development Center Applications: Oklahoma City MBDC

Correction

In notice document 92-16979 appearing on page 32003 in the issue of Monday, July 20, 1992, make the following correction in the third column, in the **SUMMARY** paragraph, in the last line "August 4, 1992" should read "August 14, 1992".:

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-720-000, et al]

Century Power Corp., et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92-17701 beginning on page 33335 in the issue of Tuesday, July 28, 1992, on page 33336, in the first column, under "8. Pacific Gas and Electric Co.", "[Docket No. ER89-34-004]" should read "[Docket No. EL89-34-004]".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Golden-Cheeked Warbler for Review and Comment

Correction

In notice document 92-16907 beginning on page 31733 in the issue of Friday, July 17, 1992, make the following correction on page 31733, in the first column, in the **DATES:** paragraph, "August 3, 1992" should read "August 31, 1992".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 515

Privacy Act Procedures

Correction

In proposed rule document 92-15880 beginning on page 30353 in the issue of Wednesday, July 8, 1992, make the following correction:

On page 30357, in the second column, in the last line, "happens" should read "appears".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 571 and 577

Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act

Correction

In proposed rule document 92-15877 beginning on page 30584 in the issue of Thursday, July 9, 1992, make the following corrections:

1. On page 30584, in the first column, under **Background**, in the first paragraph, in the second line, "24 U.S.C. 2701" should read "25 U.S.C. 2701".

2. On the same page, in the second column, in the first full paragraph, in the tenth line, "propose rule" should read "propose rules".

§ 571.8 [Corrected]

3. On page 30589, in the second column, in § 571.8, in the fourth line, "matter" was misspelled.

§ 577.1 [Corrected]

4. On page 30591, in the third column, in § 577.1(a)(1), in the third line, "closures;" should read "closure;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AGL-7]

Proposed Transition Area Establishment; Cottage Grove, WI

Correction

In proposed rule document 92-15678 beginning on page 30178, in the issue of Wednesday, July 8, 1992, make the following correction:

§ 71.1 [Corrected]

On page 30179, in the first column in § 71.1, in the fifth line "December" should read "November".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Customs Field Organization—Portland, ME

Correction

In proposed rule document 92-17758 appearing on page 33461 in the issue of Wednesday, July 29, 1992, make the following correction:

In the first column, in the **DATES** paragraph, in the second line, "September 28, 1993" should read "September 28, 1992".

BILLING CODE 1505-01-D

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federal register

Thursday
August 6, 1992

PART II

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans: Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612-931]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, Alaskan Natives and Native American Pacific Islanders for social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1993 funds for social and economic development projects. Financial assistance provided by ANA is designed to promote the goal of self-sufficiency for Native American tribes and organizations through support of locally determined social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are October 9, 1992, February 5, 1993 and May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 690–7727 or Hank Aguirre, (202) 690–7714, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., 344F, Washington, DC. 20201–0001.

SUPPLEMENTARY INFORMATION

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1993 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders through social and economic development (SEDS) strategies. Native American Pacific Islanders are defined as American Samoan Natives and indigenous peoples of Guam, the Commonwealth of the Northern Marianas, and the Republic of Palau. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement. A Native American community is self-sufficient when it can generate and control the resources which are necessary to meet the needs of its members and to meet its own social and economic goals.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaskan Native villages, and in the leadership of Native American groups. Progress toward the goal of self-sufficiency requires active development with regard to the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and economic well-being of individuals, families and communities. Progress toward self-sufficiency is based on the community's ability to develop a social and economic development strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals.

The Administration for Native Americans bases its program and policy on three interrelated goals:

(1) *Governance*: To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development*: To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports tribal and village governments, and other Native American organizations, to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities. The ANA SEDS approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes such self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economic, governance, and social development are interrelated, and development in one area should be balanced with development in the others in order to move toward self-sufficiency. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to develop self-sufficient communities.

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health and economic well-being are maintained within the community and that support governance and economic goals.

Without a careful balance between all of these, a community's development efforts could be jeopardized. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services. Conversely, inadequate social support services and training could seriously impede productivity and local economic development. Additionally, the governmental infrastructures must be put in place to support or institute social and economic development and growth.

B. Proposed Projects To Be Funded

The fundamental task which Native American communities face is to develop those social and economic strategies (SEDS) that support their local goals, resources, and cultural values. The Administration for Native Americans assists local communities to undertake one-to-three year development projects that are a part of long-range comprehensive plans to move toward social and economic self-sufficiency. The Administration for Native Americans expects its applicants to have undertaken a long-range planning process to address the community's development. Such long-range planning must consider the maximum use of all available resources,

directing those resources to development opportunities, and addressing how to overcome the local issues that hinder social and economic growth in the community. The Administration for Native Americans encourages applicants to design project strategies to achieve their specific but interrelated governance, and social and economic objectives and to use available human, natural, financial, and physical resources to which the applicant has access. Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund, such as construction, will be financed through other sources. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but supported by funds other than ANA's. The Administration for Native Americans does not fund programs which operate indefinitely or would have a need for ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. "Core administration" is defined as those functions which provide the ongoing management and administrative support to an organization. The management and administrative functions needed to carry out an ANA approved project are not considered "core administration." However, ANA does fund the salaries of approved staff for time to implement a funded ANA project. The Administration for Native Americans does not provide funds for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Goal 1: Governance Development. Effective governance is a necessary foundation and condition for the social and economic development of Indian tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the governmental, judicial and/or administrative infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States. Under its governance development goal, ANA strongly encourages tribal and village councils, and other governing bodies, to strengthen and streamline their established administrative and management procedures that influence their institutional management systems. The purpose of this capacity is to develop and implement effective social and economic development strategies and their comprehensive community long term goals and to improve their day-to-day governmental management. By improving governance and management capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Applications in this area are generally under the following categories:

- Status clarification
- Tribal recognition
- Amendments to tribal constitutions; court procedures and functions; by-laws or codes; council or executive branch duties and functions;
- Improvements in administration and management of tribes/villages.

Goal 2: Economic Development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and economic well-being of individuals and families, and preserve the values, language, and culture of the community.

Social and Economic Development Strategies (SEDS)

Building on developing the foundation for strong local governance, ANA supports tribal and village governments' and other Native American organizations' corollary plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies and their objectives should describe in detail how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, SEDS strategies that combine balanced social and economic and governance goals should also address how to obtain independent sources of revenue for the community or how the venture supports the long-term goals.

C. Eligible Applicants

Current ANA grantees whose project period terminates in fiscal year 1993 (October 1, 1992—September 30, 1993) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA grantees, the following organizations are eligible to apply:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Public and nonprofit private agencies serving Native Hawaiians;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States.
- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects; and

• Nonprofit Alaskan Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

Under section 803 of the Native American Programs Act of 1974, as amended, colleges and universities are not eligible applicants unless they serve Native Hawaiians or the other Native American Pacific Islanders.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

Note: A separate program announcement for fiscal year 1993 funding will also be published specifically for Alaskan Native applicants (Program Announcement 93612–932). In fiscal year 1993, Alaskan Native entities are eligible to submit an application under either announcement, but are limited to a single application for each closing date.

An Alaskan Native applicant may apply for the:

(1) October 9, 1992 closing date of Program Announcement 93612–931; and

(2) February 5, 1993 closing date for Program Announcement 93612–931 OR for Program Announcement 93612–932; and

(3) May 14, 1993 closing date for Program Announcement 93612–931 OR for Program Announcement 93612–932.

Those Alaskan Native organizations who want to develop social and economic development strategies (SEDS) for other applicant groups under this program announcement (93612–931) are now able to compete for project money that does not have a specific project funding amount limit.

D. Available Funds

Approximately $14 million of financial assistance is anticipated to be available under this program announcement for American Indian, Alaskan Native, Native Hawaiian, and Native American Pacific Islander projects. This program announcement is being issued in anticipation of the appropriation of funds for FY 1993, and is contingent upon final appropriations.

Each tribe, Native American organization, or other eligible applicant can receive only one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should understand that a multi-year project is a project on a single theme that requires more than 12 months to complete. The project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Funding after the first 12 month budget period of an approved multi-year project is non-competitive.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved Objective Work Plan (OWP), the availability of Federal funds, and compliance with the applicable statutory, regulatory and grant requirements, including timely objective progress reports (OPRs).

F. Grantee Share of Project

Grantees, with the exception of organizations in the Native American Pacific Islands, must provide at lest 20 percent of the total approved cost of the project, which may be cash or in-kind contributions.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) which requires HHS to waive any requirement for local matching funds under $200,000 (including in-kind contributions). Applications from groups in the United States serving Native American Pacific Islanders in the United States are required to provide a 20 percent match or apply for a waiver under 45 CFR 1336.50(b)(3) of the Native American Program Regulations. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the ANA Application Kit. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, room 344F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: Earldine Glover, Phone: (202) 690–7727.

Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201-0001, Attention: ANA 93612–931.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement. The following points should be taken into consideration by all applicants:

• Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.

• Complete applications that conform to all the requirements of this program announcement are subject to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with Native American Tribes, communities and organizations evaluates each application against the published criteria in this announcement. The review will result in a numerical score attributed to each application. The results of this review assist the

Commissioner to make final funding decisions.

• The Commissioner's funding decision also takes into account the analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.

• The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.

• After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria.

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine:

• That the applicant is eligible in accordance with the Eligible Applicants Section of this announcement.

• That the application narrative, forms and materials submitted are adequate to allow the review panel to undertake an indepth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the five evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purpose of this announcement), include a social and economic development strategy, and address the specific developmental steps toward self-sufficiency that the specific tribe or Native American community is undertaking. The five programmatic and management criteria are closely related to each other. They are considered as a whole also in judging the overall quality of an application. Points are awarded only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development strategy.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all of ANA applicants.

(2) *Organizational Capabilities and Qualifications.* (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve of the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) *Project Objectives, Approach and Activities.* (45 points)

The application proposes specific project objective work plans with activities related to the SEDS strategy and the overall long-term goals. The objective work plan(s) in the application include(s) project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

• are measurable and/or quantifiable in terms of results or outcomes;

• are based on the fully described and locally determined balanced SEDS strategy narrative for governance or social and economic development;

• clearly relate to the community's long-range goals which the project addresses;

• can be accomplished with the available or expected resources during the proposed project period;

• indicate when the objective, and major activities under each objective, will be accomplished;

• specify who will conduct the activities under each to achieve the objective; and,

• support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the community meet its goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

There is a detailed budget provided for each budget period requested. The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement). Sufficient cost and other detail is included and explained to facilitate the determination

of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable profit within a future specified time frame.

I. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) *Program Guidance.*

• The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development leading to its self-sufficiency. The Administration for Native Americans does not fund on the basis of need alone.

• In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these and/or progress to date, as well as the size of the population to be served. The appropriateness and potential of the proposed project in strengthening and promoting the goal of the self-sufficiency of a community will be determined by reviewers.

• An application should describe a clear relationship between the proposed project, the SEDS strategy, and the community's long-rang goals or plan.

• The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact on the community that the project will have.

• Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and the commitment of other resources to implement or conduct the proposed project.

In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

• Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or to start a business if the applicant includes a business plan that clearly describes its feasibility and the plan for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these as a guide to its development of an economic development project or business that is part of the application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.

• A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, the delivery of human services such as health, day care, counseling, education, and training.

(2) *Technical Guidance.*

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• There is no maximum or minimum amount of Federal funds that may be requested.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Federally recognized tribe or an organization serving members of a Federally recognized tribe must be from the governing body of the tribe.

• An application from a Native American organization must be from the governing body of the applicant.

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR parts 74 and 92.)

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year

and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

(3) *Projects or activities that generally will not meet the purposes of this announcement.*

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS strategy long-range development plan. The Administration for Native Americans is not interested in funding 'wish lists' of business possibilities. The Administration for Native Americans expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies on the potential success to the business prior to the submission of the application.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.

• Project goals which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, Social Development).

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

• Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch. 3, § E).

• Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 9, 1992, February 5, 1993 and May 14, 1993.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines. Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in Section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: June 8, 1992.

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

[FR Doc. 92–18595 Filed 8–5–92; 8:45 am]

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Part III

International Trade Commission

19 CFR Part 207

U.S.-Canada Free-Trade Agreement; Amended Interim Rules and Request for Comments

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Implementing Regulations for the U.S.-Canada Free-Trade Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice of amended interim rules and request for comments.

SUMMARY: The Commission is amending with a request for comments subpart G of part 207 of its Rules to conform the Commission's regulations with amendments to the U.S.—Canada Free-Trade Agreement Implementation Act of 1988 (FTA Implementation Act) contained in section 134 of the Customs and Trade Act of 1990 (hereinafter "technical amendments"). The Commission's amendments modify the Commission's regulations that were issued to conform with the FTA Implementation Act.

The substantive amendments to subpart G delegate authority to the Secretary of the Commission to issue protective orders, set forth what information is available to authorized persons, redefine "authorized persons," add filing requirements paralleling those in the Article 1904 Binational Panel Rules (Article 1904 Rules), and expand what action constitutes a violation.

DATES: Effective date: August 6, 1992. Comments on the interim rules will be considered if received on or before September 21, 1992.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter addressed to Paul R. Bardos, Acting Secretary, should be sent to the U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Abigail A. Shaine, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3094. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD Terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On Friday, December 30, 1988 the Commission published in the **Federal Register**, the interim rules with a request for comments, 53 FR 53248 (December 30, 1988), which rules were amended at 54 FR 36289 (September 1, 1989). These rules govern procedures for filing a Notice of Intent to Commence Judicial Review (§ 207.92) and procedures for granting access to proprietary information (§ 207.93), for governing any access to privileged information (§ 207.94) and for the imposition of sanctions for violations of the administrative protective orders (APO) (§§ 207.100 through 207.120.) No comments were received from the public on these rules.

On August 20, 1990, technical amendments were made by section 134 of the Customs and Trade Act of 1990 (Pub. L. 101–382) (August 20, 1990), to the FTA Implementation Act (Pub. L. 101–449) (September 28, 1988). The U.S. and Canadian Governments also have amended the Rules of Procedure for Article 1904 Rules). The Commission's amended interim rules bring its regulations into compliance with the amendments to the statute and the Article 1904 Rules.

Paragraph 134(4)(A) of the technical amendments amends the type of information that will be made available to authorized persons. The provision, codified at 19 U.S.C. 1677f(f)(1)(A), clarifies that the Commission will make proprietary information available to authorized persons and privileged information available to those persons specifically designated by the panel. To administer this access, a new § 207.93(a) provides authority to the Secretary of the Commission to issue protective orders for information released under 19 U.S.C. 1677f(f)(1)(A). In addition, amendments to § 207.93 (b) through (g) reflect this statutory clarification and the delegation of authority to the Secretary.

Paragraph 134(4)(B)(iv) of the technical amendments modifies section 403 of the FTA Implementation Act, codified at 19 U.S.C. 1677f(d)(1)(B), defining "authorized persons." The amendment adds to that definition officers or employees of the Government of Canada designated by an authorized agency of Canada to whom disclosure is necessary in order to make decisions regarding the convening of Extraordinary Challenge Committees (ECCs) under Chapter 19 of the U.S.-Canada Free-Trade Agreement (FTA). Changes to § 207.93 of the Commission's rules reflect the authority of the Commission to grant the Canadian interagency group access to proprietary information under APO.

Section 134(4)(D) of the technical amendments broadens the definition of a prohibited act to include as sanctionable the knowing receipt of information, the receipt of which constitutes a violation of any provision of a protective order. Section 207.100(c) of the Commission's rules clarifies what type of activity is prohibited by this provision. For ease of reading, "prohibited act" has been made a defined term and inserted, where appropriate, in §§ 207.100 through 207.120.

In addition, the Article 1904 Rules have been modified by the United States and Canada. Among other changes, the amended Article 1904 Rules now provide that the members of a binational panel, assistants to panelists, court reporters, and translators shall file their protective order applications with the responsible Secretary, who will then file these applications with the Commission. Under the Article 1904 Rules, as revised, any amendments, modifications, or revocations of a protective order must be filed with the responsible Secretariat. These amended interim rules reflect this additional notification requirement.

In preparing these amended interim rules, the Commission edited them by eliminating unnecessary repetition and by conforming terminology with that used in 19 CFR part 207, subparts A through C. In addition, three new definitions have been added: "Prohibited act," "service address," and "service list."

The Commission is reissuing interim rules, rather than proposed final rules because of the possibility of an appeal to a binational panel of impending Commission determinations involving goods from Canada. To ensure that the Commission's rules are consistent with the statute and consonant with the revised Article 1904 Rules and to avoid having the Commissions's rules change in the middle of a panel review, these regulations are effective upon publication in the **Federal Register**. After considering any comments the Commission will finalize the rules as soon as practicable.

These interim rules are exempt from the requirements of Section 553 of the Administrative Procedure Act (5 U.S.C. 553) because they are integral to the implementation of chapter 19 of the FTA and thus relates to a foreign affairs function of the United States.

The Commission has determined that these rules do not constitute a major rule for the purposes of Executive Order ("EO") 12291 (46 FR 13193, Feb. 17, 1981) because it does not meet the criteria described in section 1(b) of the EO. Moreover, because this rule concerns a foreign affairs function of the United States, it is not a rule within the meaning of section 2(a) of the EO.

The Regulatory Flexibility Act is inapplicable to this rule because it does not affect a large number of small

entities and because the rule was not required by section 553 of the Administrative Procedure Act ("APA") or by any other law to be promulgated as a proposed rule before its issuance as a final rule.

Explanation of Changes to Amended Interim Rules

Throughout these rules, in keeping with general Commission practice, all gender-specific pronouns have been replaced by specific nouns if possible; if not possible, both masculine and feminine pronouns are used.

Section 207.90

There is no substantive difference between the revised interim rule and the original interim rule.

Section 207.91 Definitions

Except as noted, all limitations as to the applicability of defined terms have been eliminated to indicate that the defined terms apply throughout the rules.

Administrative Law Judge

The citation to the section of the statute governing APA hearings is changed from sections 556 and 557 to section 554, because the latter provision includes by reference sections 556 and 557.

Agreement

There is no substantive difference between the revised interim rule and the enacted interim rule.

Article 1904 Rules

Because the Article 1904 Rules were recently amended, the Commission's amended interim rules reference those rules, as amended.

Canadian Secretary

There is no substantive difference between the revised interim rule and the enacted interim rule.

Charged Party

The revised definition incorporates the new definition of the term "prohibited act."

Clerical Person

There is no substantive difference between the revised interim rule and the enacted interim rule.

Final Determination

There is no substantive difference between the revised interim rule and the enacted interim rule.

Investigative Attorney

There is no substantive difference between the revised interim rule and the enacted interim rule.

Party

The revised definition clarifies that, for the purposes of sanctions proceedings, as distinguished from the definition of Party in the Article 1904 Rules, the word "party," in the singular, refers to the parties in the sanctions proceedings, that is, the investigative attorney or the charged party.

Privileged Information

The revised definition incorporates the criterion for privileged information subject to release under protective order provided for in the amended 19 U.S.C. 1677(f)(1)(A).

Prohibited Act

Incorporating a "violation of a protective order, inducing a violation of a protective order, and the knowing receipt of information, the receipt of which constitutes the violation of a protective order" into a single defined term, mirror the statutory definition of prohibited act, incorporate changes effected by the technical amendments and make the sanctions provisions easier to read.

Service Address

This new definition sets forth the place where a person can be served when these rules require service.

Service List

This new definition mirrors the definition of service list in the Article 1904 Rules and clarifies who is to be served with particular documents throughout these rules.

Section 207.93

Section 207.93(a)

Section 403 of the FTA Implementation Act, codified in part at 19 U.S.C. 1677f(f)(1)(A), provides for the Commission, to release under defined circumstances, proprietary information and privileged information under protective order. In particular, section 403 clarifies that documents which the Commission claims are privileged will be released only upon direction from the panel and only to persons specifically identified by the panel.

As a result of the clarification of what information is to be released and to whom, a new paragraph 207.93(a) has been added. In the new paragraph the Commission delegates to the Secretary of the Commission the authority to administer APOs covering proprietary information during binational panel review. Amendments to other paragraphs reflect the Secretary's increased responsibility for the primary supervision of such APOs. For instance, the Commission Secretary will adopt the APO forms and impose the conditions for access (§ 207.93(c)(2)(E)); the Commission Secretary will determine at which point, other than the completion of panel review, proprietary information must be returned or destroyed and the notification of such action will be served on the Commission Secretary (§ 207.93(c)(2)(ii)(C)); applications for APO will be served on the Commission Secretary (§ 207.93(c)(3)); all updates will be served on the Commission Secretary (§ 207.93(c)(6)); and the Commission Secretary will be responsible for granting or denying applications for APOs (§ 207.93(d) & 207.93(e)). The full Commission, however, retains the responsibility for modifying or revoking APOs due to changed circumstances (§ 207.93(h)).

Because of the addition of § 207.93(a), § 207.93 (a) and (b) are redesignated as § 207.93 (b) and (c).

Paragraph 207.93(b)

Paragraph (b) lists those persons authorized to receive proprietary information as prescribed by statute (hereinafter authorized persons). 19 U.S.C. 1677(f)(1). The order in which authorized persons are listed has been changed to parallel the Article 1904 Panel Rules. A citation to the *U.S. Steel Corp.* v. *United States*, 730 F.2d 1465 (Fed. Cir. 1984) is added to paragraph (b)(2) concerning counsel and professionals, to clarify which persons are excluded from gaining access to proprietary information because of their decision-making responsibilities. The amended interim rule parallels the Commission's title VII rules. Neither of these changes reflects any substantive changes to these amended interim rules.

In addition to these changes, the new paragraph (b)(6) reflects the addition to the list of authorized persons by the technical amendments. "Authorized persons" now include designated officials of the Canadian Government to whom release is necessary in order that Canada may evaluate whether to request an Extraordinary Challenge Committee (hereinafter "ECC"). Such persons must submit an application for an APO and will be subject to provisions under U.S. and Canadian law for violation of the APO.

Paragraph 207.93(c)

This paragraph sets forth the procedures for obtaining an APO.

Amendments to the Article 1904 Rules permit certain authorized persons to file their APO applications through the Binational Secretariat. To parallel the Article 1904 Rules, the requirement that the applicant file the original and six (6) copies of the APO application with the Commission Secretary is deleted from paragraph (c)(1) and replaced elsewhere by more specific instructions.

Paragraph (c)(2) lists the provisions included in protective order applications, including the conditions to which the applicant must agree. The first of the two substantive changes to paragraph (c)(2) concerns the return of proprietary information. Paragraph (c)(2)(ii)(C) requires the return or destruction of proprietary information at the completion of panel review. The amended interim rule clarifies the language and authorizes the U.S. Secretary to retain a single copy for the Secretariat's file. These rules authorize only the U.S. Secretary to retain a single copy of proprietary information because, in panel reviews involving proprietary information from the Commission, the U.S. Secretary will always be the responsible Secretary.

The second substantive change reflects the inclusion of the Canadian interagency group in the list of "authorized persons." Paragraph 207.93(c)(2)(ii)(E) requires the applicant to acknowledge that he or she will become subject to the applicable U.S. or Canadian law in the event of a violation of a protective order. In the rules as originally enacted, members of the U.S. "inter-agency group" did not have to acknowledge that they could be liable under Canadian law. The law has been amended to permit disclosure to designated Canadian officials. The regulation now properly indicates that Canadian and U.S. officials both become subject to the law of either country.

Paragraph (c)(3) sets out the timing requirements for the filing of protective order applications. To conform with the Article 1904 Rules, the amended interim rules establish separate timing requirements for the different categories of applicants. Panelists, assistants to panelists, ECC members, assistants to an ECC member, court reporters, translators, counsel, and professionals may submit applications for APO at any time after a request for panel review has been made. Both the U.S. Secretary and the Canadian Secretary and every member of their staffs must file an APO application as soon as they begin working at the Binational Secretariat. Applications of the U.S. or Canadian "inter-agency group" can be filed when the United States Trade Representative or Canadian Minister of Trade, as appropriate, informs the Commission that the group requires access to proprietary information.

Paragraph (c)(4) establishes the filing and service requirements for applications for APO. Because the amended Article 1904 Rules direct some persons to file their APO applications through the Binational Secretariat and others to file directly with the Commission, these amended Commission interim rules differentiate the filing and service requirements for each category of applicants.

Rule 49 of the amended Article 1904 Rules provide that panelists, assistants to panelists, court reporters, and translators, before taking up their duties, must file an APO application with the responsible Secretary. The rules governing ECC proceedings contain similar provisions. Reflecting these rules, the revised paragraph (c)(4)(i) directs panelists, assistants to panelists, ECC members, assistants to ECC members, translators, and court reporters to file their applications with the responsible Secretary, and provides the address of the U.S. section of the Binational Secretariat. Reelecting rule 49 of the Article 1904 Rules, these amended interim rules now require the U.S. Secretary to file the original and six copies of the applications provided by the panelists, assistants to panelists, court reporters and translators with the Commission Secretary. In addition, the amended interim rules eliminate the requirement that these persons serve their applications on the participants. Such a requirement exists neither in the Rule of Procedure for the U.S. Court of International Trade nor in the Article 1904 Rules.

Paragraph (c)(4)(ii) requires that counsel and professionals file the original and six copies of their application directly with the Commission Secretary. In addition, reflecting the filing requirements in the Article 1904 Rules, the revised paragraph directs counsel and professionals to file four copies of their application with the U.S. Secretary. The service requirements are not substantively changed from the earlier interim rules.

Paragraph (c)(4)(iii) governs the Binational Secretariats. The revised paragraph instructs both Secretaries and each member of their staffs to file their applications for protective order directly with the Commission Secretary.

Revised paragraph (c)(4)(iv) directs members of the United States inter-agency group to file the original and six (6) copies of their application for protective order with the Commission Secretary. Again, the Commission's amended interim rules reflect the Article 1904 Rules' filing requirement and also direct the inter-agency group to file four (4) copies of their applications with the U.S. Secretary.

Members of the Canadian inter-agency group, by contrast, are instructed by revised paragraph (c)(4)(v) to file a single copy of their application with the Canadian Secretary. The Canadian Secretary in turn is required to file the original and size (6) copies of the applications with the Commission Secretary. Grouping the applications in this manner will ensure that the Commission Secretary knows why these applicants are seeking access and hence ensure expeditious consideration.

The amended interim rules delete as unnecessary paragraph (c)(5) concerning release of proprietary information to clericals. The terms and conditions under which clericals may be granted access to proprietary information are described in paragraph (c)(3) governing persons authorized to receive proprietary information.

The provisions governing persons who retain access to proprietary information from the administrative proceeding during the panel review are substantively unchanged. The requirement to file and serve updates or amendments to the person's APO application has been eliminated from paragraph (c)(5) as unnecessary. A general obligation to file and serve such amendments appears in paragraph (f), as well as in the protective order and the Article 1904 Panel Rules.

Paragraph 207.93(d)

Revised paragraph (d) consolidates paragraphs (c) and (d) of the previously enacted interim rules and governs the issuance of a protective order to all applicants. Paragraph (d)(1) governs issuance of a protective order to panelists and their assistants, ECC members and their assistants, translators, court reporters, both Binational Secretaries and their staffs, and both the U.S. and Canadian inter-agency groups (*i.e.*, everyone but counsel and professionals). The previously enacted interim rules provided that the Secretary would rule on any application within thirty days without distinguishing among the different categories of applicants. Those rules governing APOs for counsel and professionals included a schedule allowing for objections to such persons receiving access. By contrast, the Article 1904 Rules do not provide for objections to any category of applicant receiving

access to proprietary information other than counsel under an APO. Consequently, although the Commission may take thirty days if needed, the presumption is now that the Commission Secretary will issue an APO once the Commission Secretary is satisfied that the terms for access are met and approves the application. In addition, the language requiring panelists to file a signed copy of the protective order with the Commission and requiring the other applicants to file a copy of the protective order with the U.S. Secretary is redrafted with no substantive changes.

Paragraph (d)(2) governs issuance of protective orders to counsel and professionals. The enacted rules provided an opportunity for a person to file an objection to another person's application. These amended interim rules have added a requirement that a reply to an objection must be served on the person who filed the objection and on all other persons on whom the objection was filed. Such reply will be considered only if it is filed and served prior to the time that the Commission Secretary renders a decision.

In addition, because paragraph 207.93(a) delegates to the Commission Secretary the authority to grant or deny access to proprietary information under an APO, paragraph 20.793(d)(2)(iii) permits an appeal from a denial of access by the Secretary to the Commission. Revised paragraph 207.93(d)(2)(iii) provides that if the Commission Secretary denies an application, a letter informing the applicants of the rejection must be sent within fourteen (14) days of the receipt of the application. Notification to the applicant of a denial will include notification that the applicant may appeal the denial to the Commission within five (5) days of the date of service of the denial. These time limits are imposed in order to insure that the Commission has adequate time to consider the appeal and issue its decision within the thirty days mandated by the Article 1904 Rules.

Paragraph 207.93(d)(2)(iv) sets forth the address to which an appeal should be sent and requires that the appeal be served on all the persons on the service list or on all participants, depending upon when the appeal is filed, in accordance with paragraph (c)(4)(ii)(B). The new provision also restates the requirement that the Commission must reach a decision within thirty (30) days.

Paragraph 207.93(f)

Paragraph (f) governs the filing of amendments to protective order applications. Mirroring the filing requirements contained in the Article 1904 Rules, revised paragraph (f) requires that amendments to APO applications of panelists, ECC members, assistants to panelists or ECC members, court reporters, and translators be filed with the U.S. Secretary, who must then file the original and six copies with the Commission Secretary. Counsel and professionals must file the original and six copies of any amendments with the Commission Secretary and four copies with the U.S. Secretary. All other persons are required only to file the original and six copies directly with the Commission Secretary.

Paragraph 207.93(g)

Paragraph (g) governs the modification and revocation of protective orders. The language in this paragraph has been reorganized for greater clarity. There are two substantive changes to this interim rule. One is the deletion of the language contained in paragraph (g)(2) concerning provisional action by the Commission. Because the Commission has the authority to revoke or modify a protective order at any time, this language is superfluous. The other ensures that the Binational Secretariat is aware of any changes to a protective order by amending the interim rules to add a requirement that the Commission Secretary notify the U.S. Secretary in writing if it revokes or modifies a protective order.

Section 207.94

The technical amendments amended the portion of section 403(c) of the FTA Implementing Act, codified at 19 U.S.C. 1677f(f)(1)(A), to provide that the Commission may restrict access to a document, or portion thereof, which it has claimed as privileged but for which the panel has determined that disclosure is required under U.S. law. The statute further provides that such access will be limited to only those authorized persons who the panel has determined require access. Because the statute clarifies that privileged information will be released by the Commission only pursuant to a decision from the panel and only to those persons identified by the panel and in light of the denial of the two requests for access to privileged information made in panel reviews, elaborate procedures for requesting the Commission for access are unnecessary. Therefore, the general delegation of authority in paragraph 207.93(a) replaces the specific procedures set out in section 207.94 of the enacted interim final rules. The revised section indicates that a protective order for information shall contain requirements similar to those contained in an APO for proprietary information.

Because the release of privileged information would be an exceptional event, the new § 207.94 further provides that the Commission Secretary will not automatically release privileged information but must inform the Commission twenty-four hours prior to any such release.

Section 207.100

Paragraph 207.100(a) sets forth sanctions the Commission can impose for committing a prohibited act under 19 U.S.C. 1677f(f)(3). The technical amendments expanded the list of prohibited acts to include the knowing receipt of proprietary information or privileged information, the receipt of which constitutes a violation of an APO issued under this subpart. As noted above, the new defined term "prohibited act" incorporates any action concerning APOs that is prohibited under the statute. This definition is therefore incorporated into this section.

In addition, the sanctions to which persons other than the individual who actually committed the prohibited act may be liable, imposed by paragraph (b) in the enacted rules, have now been limited to disbarment from practice before the Commission and integrated into paragraph (a)(1). This structure parallels the Commission's title VII regulations. In addition, so as not to deprive an individual of any due process rights, paragraph (b) ensures that any such person is entitled to all the administrative rights set forth in this subpart, such as an APA hearing and the right to an attorney.

Paragraph (c) explains that the statute's addition of knowing receipt of information, the receipt of which constitutes a violation of a protective order, intends to reach, *inter alia*, those persons who read or improperly disseminate a document containing proprietary information when they know, or should know, that they are not authorized to read or disseminate that document.

Section 207.101

The amended interim rule incorporates the new defined term "prohibited act." There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.102

The amended interim rule incorporates the new defined term "prohibited act." In addition, revised paragraph (c) now provides that if the

Commission determines that it is appropriate to initiate sanctions proceedings, the Commission shall appoint an administrative law judge (ALJ) and the Commission Secretary shall initiate such proceedings. The rules as enacted provided that the Office of Unfair Import Investigations could request that an ALJ be assigned to the preliminary investigation to assist in the determination whether there is a reasonable cause to believe that a prohibited act had been committed. There was no provision for appointing (or reappointing) on ALJ during the actual sanctions proceedings although the rules refer to decisions made by the ALJ. Under the revised paragraph, the Commission shall appoint an ALJ when the charging letter is sent to the charged party.

Section 207.103

The amended interim rule incorporates the new defined term "prohibited act." There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.105

The amended interim rule incorporates the new defined term "prohibited act." There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.106

Revised paragraph (a) permits anyone to make a motion to have the administrative law judge issue a recommended determination to take appropriate interim measures.

Revised paragraph (b) conforms this paragraph to paragraph (a) of this section, and permits a party opposing the imposition of appropriate interim measures to oppose them, whether they are the result of a motion or of the administrative law judge's own initiative.

Revised paragraph (d) indicates that the administrative law judge has the authority to recommend modification as well as revocation of interim measures.

In addition, in conformity with provisions in section 207.93 and in the Article 1904 rules concerning notification of changes to an APO, revised paragraph (e) requires the Commission Secretary to notify the U.S. Secretary if the Commission revokes or modifies a protective order following a sanctions proceeding. There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.107

This section, which governs the filing of motions, initially contained a provision that if an ALJ had not yet been assigned, all motions should be addressed to the Chief Administrative Law Judge. In light of the new provision in § 207.102(c) requiring the appointment of an ALJ when the charging letter is issued, this provision is deleted. There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.108

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.109

The language contained in paragraph (b) of this section listing sanctions for failing to comply with discovery was previously part of paragraph (a), but is now set off as a separate paragraph. Paragraph (b) of the original section is redesignated paragraph (c). In addition, the revised interim rule indicates that any person who wants to depose an official of the Commission, or any other U.S. or Canadian government official "shall" file a written motion. The original language stated that a person "may" file such a request.

Section 207.110

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.111

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.112

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.113

There are no substantive differences between the amended interim rule and the enacted interim rule.

Section 207.114

The amended interim rule incorporates the new defined term "prohibited act." In addition, paragraph (a) of this section initially provided that in complicated cases, the Commission could make its decision in 120 days, rather than the stipulated ninety days. Because the provision already provides that the Commission may change any time frames it chooses, the 120 day option is deleted. In paragraph (c) the separate burden of proof required by the ALJ for imposing sanctions is deleted. Sanctions are imposed by the Commission not by the ALJ. In addition, the burden of proof applies to the finding of a violation, and the imposition of sanctions is within the Commission's discretion.

There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.115

The amended interim rule incorporates the new defined term "prohibited act." The rule has also been revised to make explicit that the administrative law judge will make determinations as to whether access to proprietary information by counsel for a charged party is reasonably necessary to the defense, and that the Commission will deem to be abandoned any issue not raised in a petition for review in whatever procedure it considers such petition.

There are no other substantive differences between the amended interim rule and the enacted interim rule.

Section 207.116

There are no substantive differences between the revised interim rule and the enacted interim rule.

Section 207.117

There are no substantive differences between the revised interim rule and the enacted interim rule.

Section 207.118

The language in this section is reworded to clarify that, if the General Counsel or any other attorney in the General Counsel's office participated in the panel review during which a party committed the prohibited act under review, the General Counsel and those attorneys shall not advise the Commission on proceedings concerning sanctions under this subpart. In such cases, the Assistant General Counsel for 337 Investigations shall serve as the Acting General Counsel.

Section 207.119

To avoid confusion between review of an initial determination and reconsideration of the Commission's decision under this paragraph, the amended interim rule refers to a motion for reconsideration rather than to a petition for reconsideration.

Section 207.120

The revised interim rule incorporates the new term "prohibited act."

There are no other substantive differences between the amended interim rule and the enacted interim rule.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Antidumping, Canada, Countervailing Duties, Imports, Trade agreements.

For the reasons set forth in the preamble, 19 CFR part 207, subpart G is amended as follows:

PART 207—[AMENDED]

1. The authority citation for part 207, subpart G, continues to read as follows:

Authority: Sec. 777 of the Tariff Act of 1930, as amended; secs. 403, 405(d) of the United States-Canada Free-Trade Implementation Act of 1988 (102 Stat. 1851, Pub. L. No. 100–449, Sept. 28, 1988; 19 U.S.C. 1335.

2. Section 207.90 is revised to read as follows:

§ 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Article 1904 of the United States-Canada Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 1516a and 1677f). These regulations are authorized by section 405(d) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 1677f(f)(2)) and 19 U.S.C. 1335.

3. Section 207.91 is revised to read as follows:

§ 207.91 Definitions.

As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under section 3105 of title 5 of the United States Code to conduct proceedings under this part in accordance with section 554 of the United States Code;

Agreement means the Free-Trade Agreement between Canada and the United States of America entered into between the Government of Canada and the Government of the United States of America, which took effect on January 1, 1989;

Article 1904 Rules means the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America and Canada pursuant to the Agreement, as amended;

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Charged party means a person who is charged by the Commission with committing a prohibited act under 19 U.S.C. 1677f(f)(3);

Clerical person means a person such as a paralegal, secretary, or law clerk who is employed or retained by and under the direction and control of an authorized applicant;

Commission means the United States International Trade Commission;

Commission Secretary means the Secretary to the Commission;

Complaint means the complaint referred to in the Article 1904 Rules;

Counsel means persons described in the definition of "counsel of record" in Rule 3 of the Article 1904 Rules, and counsel for an interested person who plans to file a timely complaint or Notice of Appearance in the panel review.

Date of Service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, but if a deadline falls on a weekend or on a United States federal holiday it shall be extended to the next working day;

Extraordinary challenge committee means the committee established pursuant to Annex 1904.13 of the Agreement and section 407 of the FTA Act to review decisions of a panel or conduct of a panelist;

Final determination means "final determination" under Article 1911 of the agreement;

FTA Act means the United States-Canada Free-Trade Implementation Act of 1988, Public Law No. 100–449 (Sept. 28, 1988);

Investigative attorney means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under 19 CFR 207.100 *et seq.*;

Notice of Appearance means the notice of appearance provided for by Rule 40 in the Article 1904 Rules;

Panel Review means review of a final determination pursuant to chapter 19 of the Agreement, including review by an extraordinary challenge committee;

Party means, for the purposes of §§ 207.100–207.120, either the investigative attorney(ies) or the charged party(ies);

Persons means, for the purposes of §§ 207.100–207.120, an individual, partnership, corporation, association, organization, or other entity;

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A);

Professional means an accountant, economist, engineer, or other non-legal specialist employed by, or under the direction and control, of a counsel;

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order;

Proprietary information means confidential business information as defined in 19 CFR 201.6(a);

Protective Order means an administrative protective order issued by the Commission;

Secretariat means the Secretariat established pursuant to Article 1909 of the Agreement and includes the Secretariat sections located in both Canada and the United States;

Service address means the facsimile number, if any, and address set out by a person as the address of the person's attorney where the person may be served, or when the person is not represented by an attorney, the facsimile number, if any, and address of the person;

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review;

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf.

Except as otherwise provided in this subpart, the definitions set forth in the Article 1904 Rules are applicable to this subpart and to any protective orders issued pursuant to this subpart.

4. Section 207.93 is revised to read as follows:

§ 207.93 Protection of proprietary information during panel and committee proceedings.

(a) *Requests for protective orders.* A request for access to proprietary information pursuant to 19 U.S.C. 1677f(f)(1) shall be made to the Secretary of the Commission.

(b) *Persons authorized to received proprietary information under protective order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or extraordinary challenge committee, any assistant to a member, court reporters and translators; (2) Counsel and professionals, provided that the counsel or professional does not participate in competitive decision-making, as defined in *US Steel Corp.* v. *United States*, 730 F.2d 1465 (Fed. Cir.

1984), for the person represented or for any person who would gain a competitive advantage through knowledge of the proprietary information sought; (3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraphs (b)(1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) Are not involve in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person who would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(4) The Secretaries of the U.S. and Canadian sections the Secretariat and members of the their staffs;

(5) Any officer or employee of the United States Government who the United States Trade Representative informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committee; and

(6) Any officer or employee of the Government of Canada who the Canadian Minister of Trade informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees.

(c) *Procedures for obtaining access to proprietary information under protective order*—(1) *Persons who must file an application for release under Protective Order.* To be permitted access to proprietary information in the administrative record of a final determination under panel review, all persons described in paragraphs (b)(1), (2), (4), (5) or (6) of this section, unless described in paragraph (c)(5)(i) of this section, shall file an application for a protective order.

(2) *Contents of applications for release under protective order.*

(i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this rule. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b)(1), (4), (5), and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW., Washington, DC 20436.

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than

(1) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(2) The person from whom the information was obtained,

(3) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(4) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b) (1), (2), (5), or (6) of this section who has been issued a protective order if such clerical person and has signed and dated an agreement to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her.

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary, return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The U.S. Secretary may retain a single file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and (E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as section 77.26 of Canada's Special Import Measures Act, as amended.

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. An application for a person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the U.S. or Canadian Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United States Trade Representative or the Canadian Minister of Trade has notified the Commission Secretary that such person requires access.

(4) *Filing and service of applications*—(i) *Applications of persons described in paragraph (b)(1) of this section.* A person described in paragraph (b)(1) of this section shall submit the completed original of the form to the United States Secretary, FTA Binational Secretariat, room 2061, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus six (6) copies of the application with the Commission Secretary.

(ii) *Applications of persons described in paragraph (b)(2) of this section*—(A) *Filing.* A person described in paragraph (b)(2) of this section shall file the completed original of the form and six (6) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) *Service.* If an applicant files before the deadline for filing notices of appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accord with Rules 48 and 24 of the Article 1904 Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

(iii) *Applications of persons described in paragraph (b)(4) of this section.* A person described in paragraph (b)(4) of this section shall file the original and six (6) copies of the protective order application with the Commission Secretary.

(iv) *Applications of persons described in paragraph (b)(5) of this section.* A person described in paragraph (b)(5) of this section shall file the original and six (6) copies with the Commission Secretary and four (4) copies of the application with the United States Secretary.

(v) *Applications of persons described in paragraph (b)(6) of this section.* A

person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the Canadian Secretary. The Canadian Secretary in turn, shall file the original and six (6) copies with the Commission Secretary.

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceeding.*—(i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, becomes immediately subject to the terms and conditions of protective orders issued pursuant to this subpart, including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File four (4) copies of the original application, of all existing updates to that application, and of the protective order with the United States Secretary; and

(B) File seven (7) copies of the protective order and of all existing updates with the Commission Secretary.

(d) *Issuance of protective orders*—(1) *Applicants described in paragraph (b)(1), (4), (5) and (6) of this section.* Upon approval of an application of persons described in paragraph (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel to whom the Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

(2) *Applicants described in paragraph (b)(2) of this section.* (i) The Commission Secretary shall not rule on any application filed by a person described in paragraph (b)(2) of this section until ten (10) days after the request is filed unless there is a compelling need to rule more expeditiously. Any person may file an objection to the application within seven (7) days of the application's filing date, stating the specific reasons why the Commission should not grant the application. One (1) copy of the objection shall be served on the applicant and on all persons who were served with the application. Any reply to an objection will be considered if it is filed and served before the Commission Secretary renders a decision. Service of objections and replies shall be made in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Approval of the application.* If appropriate, the Commission shall, within thirty (30) days of the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

(iii) *Denial of the application.* If the Secretary denies an application, he or she shall, within fourteen (14) days of the receipt of the application, serve a letter notifying the applicant of the decision and the reasons therefor. The letter shall advise the applicant of the right to appeal to the Commission. Any appeal must be made within five (5) days of the service of the Commission Secretary's letter.

(iv) *Appeal from denial of an application.* An appeal from a denial of a request must be addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Such appeal must be served in accordance with paragraph (c)(4)(ii)(B) of this section. The Commission shall make a final decision granting or denying the appeal within thirty (30) days from the day on which the application was filed with the Commission Secretary.

(v) *Filing of protective orders.* If a protective order is issued to a person described in paragraph (b)(2) of this section, the person shall immediately file one (1) copy of the protective order with the United States Secretary.

(e) *Retention of protective orders.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance with paragraph (b)(6)(ii) of this section.

(f) *Filing of amendments to granted applications.* Any person who has been issued a protective order under this section shall:

(1) If a person described in paragraph (b)(1) of this section, submit any amendments to the application for a protective order to the United States Secretary, who shall file the original and six (6) copies with the Commission Secretary;

(2) If a person described in paragraph (b)(2) of this section, file the original and six (6) copies of any amendments to the application with the Commission Secretary and four (4) copies with the United States Secretary; or

(3) If any other person, file the original and six (6) copies of any amendments to the application with the Commission Secretary.

(g) *Modification or revocation of protective orders.* (1) Any person may file with the Commission Secretary a request that a protective order issued under this section be modified or revoked because of changed conditions of fact or law, or on grounds of the public interest. The request shall state the changes desired and include any supporting materials and arguments. The person filing the request shall serve a copy of the request upon the person to whom the protective order was issued.

(2) Any person may file a response to the request within twenty (20) days after it is filed, unless the Commission issues a notice indicating otherwise. After consideration of the request and any responses thereto, the Commission shall take such action as it deems appropriate.

(3) If a request filed under this paragraph alleges that a person is violating the terms of a protective order, the Commission may treat the request as a report of violation under § 207.101 of this subpart.

(4) The Commission may also modify or revoke a protective order on its own initiative.

(5) If the Commission revokes or modifies a person's protective order, it shall notify the person and the United States Secretary in writing.

5. Section 207.94 is revised to read as follows:

§ 207.94 Protection of privileged information during panel and committee proceedings.

If a panel decides that the Commission is to grant access to privileged information pursuant to protective order, the Commission shall issue a protective order, with terms and conditions equivalent to those described in § 207.93(c)(2), to those persons who the panel has designated as requiring access. Twenty-four hours prior to release of information for which the Commission has claimed a privilege, the Secretary shall certify to the Commission that a Panel has directed the Commission to release such information to specified persons pursuant to 19 U.S.C. 1677f(f)(1).

6. Section 207.100 is revised to read as follows:

§ 207.100 Sanctions.

(a) A person who is determined under this subpart to have committed a prohibited act may be subject to one or more of the following sanctions:

(1) A civil penalty not to exceed $100,000 for each violation, each day of a continuing violation constituting a separate violation;

(2) Disbarment from practice in any capacity before the Commission, which disbarment may, in appropriate circumstances, include such person's partners, associates, employer and employees, for a designated time period following publication of a determination that the protective order has been breached;

(3) Denial of further access to proprietary or privileged information covered by the relevant protective order or to proprietary information in future Commission proceedings;

(4) An official reprimand by the Commission;

(5) In the case of an attorney, accountant, or other professional, referral of the facts underlying the prohibited act to the ethics panel or other disciplinary body of the appropriate professional association or licensing authority;

(6) When appropriate, referral of the facts underlying the prohibited act to the United States Trade Representative, or his or her designees, or to another government agency; and

(7) Any other administrative sanctions as the Commission determines to be appropriate.

(b) Each partner, associate, employer, and employee described in paragraph (a)(2) of this section is entitled to all the administrative rights sets forth in this subpart.

(c) For the purposes of this subpart, the knowing receipt of information the receipt of which constitutes a violation of a protective order includes, but is not limited to, the reading or unauthorized dissemination of the information covered by a protective order by person who knows or should reasonably believe that he or she is not authorized to read or disseminate such information.

7. Section 207.101 is revised to read as follows:

§ 207.101 Reporting of prohibited act and commencement of investigation.

(a) Any person who has information indicating that a prohibited act has been committed shall immediately report all pertinent facts relating thereto to the Commission Secretary.

(b) Upon receipt, the Commission Secretary shall record the information, assign an investigation number, and forward all information he or she has received to the Office of Unfair Import Investigations.

(c) As expeditiously as possible, the Office of Unfair Import Investigations shall conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have committed a prohibited act. At any time, the Office of Unfair Import Investigations may request that the Commission assign an administrative law judge to oversee the inquiry.

(d) At the conclusion of the inquiry, the Office of Unfair Import Investigations shall assess whether the available information is sufficient to provide reasonable cause to believe that a person or persons have committed a prohibited act.

8. Section 207.102 is amended by revising paragraphs (a)(1) introductory text and (2) introductory text, (c), (d), (e) and (g) to read as follows:

§ 207.102 Initiation of proceedings.

(a) * * *

(1) If the Office of Unfair Import Investigations concludes that there is not reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall

* * * * *

(2) If the Office of Unfair Import Investigations concludes that there is reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall

* * * * *

(c) If the Commission determines that it is appropriate to issue a charging letter, the Commission shall appoint an administrative law judge to oversee the proceeding and the Commission Secretary shall initiate a proceeding under this subpart by issuing a charging letter as set forth in § 207.103.

(d) If the Commission determines that it is appropriate to initiate proceedings, but that the party to be charged is beyond the jurisdiction of the Commission and within the jurisdiction of Canada, or that for other reasons an authorized agency of Canada would be the more appropriate forum for initiation of a proceeding, the Commission shall take the necessary steps for issuance of a letter requesting the authorized agency of Canada to initiate proceedings under Canadian law on the basis of an alleged prohibited act.

(e) The Commission may make any determination regarding notification about the alleged prohibited act and the relevant underlying facts to the person who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the compromised party is appropriate.

* * * * *

(g) Except as deemed reasonably necessary by the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, all aspects of the inquiry shall remain confidential, unless otherwise ordered by the Commission. Except as the Commission may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of a prohibited act for which no proceeding is initiated one year after the file is closed.

9. Section 207.103 is amended by revising paragraphs (a) (1), (2), (4), (5), and (d) to read as follows:

§ 207.103 Charging letter.

(a) * * *

(1) Allegations concerning a prohibited act;

(2) A citation to § 207.100 of this subpart, for a listing of sanctions of a listing of sanctions that may be imposed for a prohibited act;

* * * * *

(4) A statement that the requested party or his attorney may request the issuance of an appropriate administrative protective order to obtain access to the information upon which the charge is based;

(5) A statement that the charged party has a right to retain an attorney at the charged party's own expense for purposes of representation; and

* * * * *

(d) *Amendment of charging letter.* (1) At any time after proceedings have been initiated, the investigative attorney may move for leave to amend or withdraw the charging letter.

(2) If the administrative law judge determines that the charging letter should be amended to include additional parties, the judge shall issue a recommended determination to that effect. The Commission shall review the recommended determination and issue a determination granting or denying the motion to amend the charging letter to include additional parties.

(3) Upon motion, the administrative law judge may grant leave to amend the charging letter for good cause shown upon such conditions as are necessary

to avoid prejudicing the public interest and the rights of the parties already charged.

(4) Any amended charging letter shall be served upon all charged parties as provided in paragraphs (a) and (b) of this section.

10. Section 207.105 is revised to read as follows:

§ 207.105 Confidentiality.

(a) *Protection of proprietary and privileged information.* As the administrative law judge deems reasonably necessary for the preparation of the defense of a charged party, the attorney for the charged party may be granted access in these proceedings to the proprietary information or to the privileged information, the disclosure of which is the subject of the proceedings. Any such access shall be under protective order consistent with the provisions of this subpart.

(b) *Confidentiality of proceedings.* Upon the request of any charged party pursuant to § 207.106 of this subpart, the administrative law judge will issue an appropriate confidentiality order. This order will provide for the confidentiality, to the extent practicable and permitted by law, of information relating to allegations concerning the commitment of a prohibited act, consistent with public policy considerations and the needs of the parties in conducting the sanctions proceedings. The order will provide what all proceedings under this provision shall be kept confidential within the terms of the order except to the extent incorporated into a published final decision of the Commission. Any confidential information not disclosed in such decision will remain protected.

11. Section 207.106 is amended in paragraph (a) by removing the words "by the investigative attorney" and by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 207.106 Interim measures.

* * * * *

(b) Before issuing a determination recommending interim sanctions, the administrative law judge shall afford a party against whom such measures are proposed the opportunity to oppose them. The administrative law judge shall ordinarily decide any motion under this section no more than twenty (20) days after it is filed.

(c) The Commission shall review any recommended determination regarding the imposition of interim measures within twenty (20) days from its issuance or such other time as it may order. The Commission may impose any appropriate interim sanctions.

(d) The administrative law judge may at any time recommend to the Commission that interim measures be modified or revoked. The Commission shall rule on such recommendation within ten (10) days after its issuance, of any such recommendation, or such other time as it may order.

(e) The Commission Secretary shall immediately notify the Secretariat of any interim measures that revoke or modify an outstanding protective order in an ongoing panel review. The Commission Secretary shall also immediately notify the Secretariat of any revocation or modification of an interim measure.

12. Section 207.107 is amended by revising paragraphs (a)(1) and (d) to read as follows:

§ 207.107 Motions.

(a) *Presentation and disposition.*

(1) After issuance of the charging letter and while part of the proceeding is pending before the administrative law judge, all motions relating to that part of the proceeding shall be addressed to the administrative law judge.

* * * * *

(d) *Service.* All motions, responses, replies, briefs, petitions, and other documents filed in sanctions proceedings under this subpart shall be served by the party filing the document upon each other party. Service shall be made upon the attorney for the party unless the administrative law judge or the Commission orders otherwise.

13. Section 207.108 is revised to read as follows:

§ 207.108 Preliminary conference.

As soon as practicable after the response to the charging letter is filed, unless the administrative law judge determines that such a conference is not necessary, the administrative law judge shall direct the attorney or other representative for a party to meet with him or her at a preliminary conference. At the conference, the administrative law judge shall consider the issuance of such orders as the administrative law judge deems necessary for the conduct of the proceedings. Such orders may include, as appropriate under these regulations, the establishment of a discovery schedule or the issuance of an order, if requested, to provide for maintaining the confidentiality of the proceedings pursuant to § 207.105(b) of this subpart.

14. Section 207.109 is revised to read as follows:

§ 207.109 Discovery.

(a) *Discovery methods.* All parties may obtain discovery under such terms and limitations as the administrative law judge may order. Discovery may be by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things for inspection and other purposes; and

(4) Requests for admissions.

(b) *Sanctions.* If a party or its representative fails to comply with a discovery order, the administrative law judge may take such action as he or she deems reasonable and appropriate, including the issuance of evidentiary sanctions or deeming the respondent to be in default.

(c) *Depositions of nonparty officers or employees of the United States or Canadian governments*—(1) *Depositions of Commission officers or employees.* A party desiring to take the deposition of an officer or employee of the Commission (other than a member of the Office of Unfair Import Investigations or of the Office of the Administrative Law Judges), or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission direct that officer or employee to testify or produce the requested materials.

(2) *Depositions of officers or employees of other United States agencies, or of the Canadian government.* A party desiring to take the deposition of an officer or employee of another agency, or of the Canadian government, or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission seek the testimony or production of requested material from the officer or employee.

§ 207.110 [Amended]

15. Section 207.110 is amended in paragraph (a) by changing the reference from "§ 207.109(b)" to read "§ 207.109(c)".

16. Section 207.111 is amended by revising the introductory text to read as follows:

§ 207.111 Prehearing conference.

The administrative law judge may direct the attorney or other representatives for the parties to meet

with him or her to consider any or all of the following:

* * * * *

17. Section 207.112 is amended by revising paragraphs (a) and (b) to read as follows:

§ 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each proceeding initiated under section 207.102 of this subpart. The purpose of such hearing shall be to receive evidence and hear argument in order to determine whether a charged party has committed a prohibited act and, if so, what sanctions are appropriate. Hearings shall proceed with all reasonable expedition and, insofar as practicable, shall be held at one place, continuing until completed, unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* The administrative law judge may order joinder or consolidation of proceedings initiated under § 207.102 of this subpart at the administrative law judge's discretion.

* * * * *

18. Section 207.113 is amended by revising paragraph (a)(1) to read as follows:

§ 207.113 The record.

(a) *Definition of the record.* * * *

(1) The charging letter and response, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;

* * * * *

19. Section 207.114 is amended by revising paragraphs (a) through (c) to read as follows:

§ 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has committed a prohibited act, and as to appropriate sanctions.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following:

(1) An opinion making all necessary findings of fact and conclusions of law and the reasons therefor, and

(2) A statement that the initial determination shall become the determination of the Commission unless a party files a petition for review of the determination pursuant to § 207.115 or the Commission pursuant to § 207.116, orders on its own motion a review of the initial determination or certain issues therein.

(c) *Burden of proof.* A finding that a charged party committed a prohibited act shall be supported by clear and convincing evidence.

* * * * *

20. Section 207.115 is amended by revising paragraphs (a)(2), (a)(3)(ii), and (a)(4) to read as follows:

§ 207.115 Petition for review.

(a) * * *

(2) Any charged party who wishes to obtain judicial review pursuant to 19 U.S.C. 1677f(f)(5) must first seek review by the Commission in accordance with the procedures set forth in this regulation governing petitions for review.

(3) * * *

(ii) Specify the issues upon which review is sought, including a statement as to whether review is sought of the initial determination regarding the commitment of a prohibited act, or of the initial determination regarding sanctions;

(4) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission.

* * * * *

21. Section 207.116 is revised to read as follows:

§ 207.116 Commission review on its own motion.

Within forty-five (45) days of the date of service of the initial determination, the Commission on its own initiative shall order review of an initial determination or certain issues therein upon request of any Commissioner.

22. Section 207.117 is amended by revising the first 2 sentences into 1 sentence to read as follows:

§ 207.117 Review by Commission.

On review, the parties may not present argument on any issue that is not set forth in the notice of review; and the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge.

* * * * *

23. Section 207.118 is revised to read as follows:

§ 207.118 Role of the General Counsel in advising the Commission.

The Assistant General Counsel for Section 337 Investigations shall serve as Acting General Counsel for the purpose of advising the Commission on proceedings brought under this subpart if the prohibited act described in the charging letter involves a protective order issued in connection with a panel review that was pending when the letter was issued, and the General Counsel participated in the panel review. No other Commission attorney shall advise the Commission on proceedings under this subpart concerning a protective order issued during a panel review in which the attorney participated.

24. Section 207.119 is revised to read as follows:

§ 207.119 Reconsideration.

(a) *Motion for reconsideration.* Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a motion for reconsideration, setting forth the relief desired and the grounds in support thereof. Any motion filed under this paragraph must be confined to new questions raised by the determination or to action ordered to be taken thereunder and upon which the moving party had no opportunity to submit arguments.

(b) *Disposition of motion for reconsideration.* The Commission shall grant or deny the motion for reconsideration. No response to a motion for reconsideration will be received unless requested by the Commission, but a motion for reconsideration will not be granted in the absence of such a request. If the motion to reconsider is granted, the Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

25. Section 207.120 is revised to read as follows:

§ 207.120 Public notice of sanctions.

If the final Commission decision is that there has been a prohibited act, and that public sanctions are to be imposed, notice of the decision will be published in the **Federal Register** and forwarded to the Secretariat. Such publication will occur no sooner than fourteen (14) days after the issuance of a final decision or after any motion for reconsideration has been denied. The Commission Secretary shall also serve notice of the Commission decision upon such departments and agencies of the United

States and Canadian governments as the Commission deems appropriate.

Issued: July 31, 1992.

By Order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-18628 Filed 8-5-92; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Parts 290 and 886

Management and Disposition of HUD-Owned Multifamily Projects and Certain Multifamily Projects Subject to HUD-Held Mortgages; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 290 and 886

[Docket No. R-92-1585; FR-2158-P-01]

RIN 2502-AD43

Management and Disposition of HUD-Owned Multifamily Projects and Certain Multifamily Projects Subject to HUD-Held Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would amend the Department's multifamily property disposition regulations to incorporate statutory amendments affecting the disposition of HUD-owned properties and also the management and disposition of properties with delinquent HUD-held mortgages. This rule would expand the scope of the regulations to include rental housing projects subject to HUD-held mortgages that either are delinquent, under workout agreements, or being foreclosed by HUD. The rule would also give local governments and State housing finance agencies the right of first refusal to purchase HUD-owned rental housing projects after HUD has established its disposition program for the projects.

DATES: Comment due date: October 5, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Acting Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, room 6282, 451 7th Street, SW., Washington, DC 20410–8000. Telephone (202) 708–3555; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Part 290 of title 24 CFR currently prescribes the requirements governing the management and disposition of HUD-owned multifamily housing projects. Part 290 implements HUD's statutory authority, contained in section 207(k) and (*l*) of the National Housing Act and in section 203 of the Housing and Community Development Amendments of 1978, to handle and dispose of such real property.

Section 203 was substantially revised by section 181 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) (1987 Act). Section 203 was further amended by section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988) (1988 Act), and by section 579 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA). This proposed rule would implement these revisions.

These statutory amendments, which are discussed in more detail later in this preamble, specified the type of assistance to be provided when the Department determines to preserve units as affordable low- and moderate-income housing, and included certain projects with HUD-held mortgages within the scope of section 203. The Department has been carrying out its multifamily property disposition program and its servicing of delinquent HUD-held multifamily mortgages on a project-by-project basis in conformity with the requirements of section 203, as amended.

This rule would revise 24 CFR part 290 (currently HUD's multifamily property disposition regulations) to conform it to section 203, as amended, and, in addition, to cover rental housing projects that are subject to a HUD-held mortgage that is either delinquent, under workout agreement, or being foreclosed upon. The rule would also make conforming revisions to 24 CFR part 886, subpart C.

Under Section I of this preamble, the Department summarizes the changes made to section 203 by the 1987 Act, the 1988 Act, and by the NAHA. All provisions apply to both foreclosures and disposition of HUD-owned properties, unless specifically noted. Section II of the preamble outlines the procedures set forth in the proposed rule for the foreclosure of a HUD-held mortgage and the disposition of a HUD-owned property.

I. Statutory Amendments

Section 181(a) of the 1987 Act, section 1010(a) of the 1988 Act, and section 579(a) of the NAHA, revised section 203(a), which contains the goals for managing and disposing of HUD-owned multifamily housing projects. Section 203(a), as so amended, reads as follows (amendments made by section 181(a) of the 1987 Act, section 1010(a) of the 1988 Act, and section 579(a) of the NAHA [1] are shown in italics):

(a) The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall manage and dispose of multifamily housing projects that are owned by the Secretary, or that are subject to a mortgage held by the Secretary that is either delinquent, under workout agreement, or being foreclosed upon by the Secretary, in a manner that is consistent with the National Housing Act and this section and that will, in the least costly fashion among the reasonable alternatives available, further the goals of—

(1) preserving so that they are available to and affordable by low- and moderate-income persons—

(A) all units in multifamily housing projects that are subsidized projects or formerly subsidized projects;

(B) in other multifamily housing projects owned by the Secretary, at least the units that are occupied by low- and moderate-income persons; and

(C) in all other multifamily housing projects, at least the units that are occupied by low- and moderate-income persons on the date of assignment or foreclosure (whichever is greater);

(2) preserving and revitalizing residential neighborhood;

[1] The effect of section 579(a) of the NAHA was to remove the reference to vacant units previously added to section 203(a)(1)(B) by section 181(a) of the 1987 Act. As a result of this amendment, vacant units in unsubsidized or formerly unsubsidized projects acquired by HUD are not required to be preserved for occupancy by low- and moderate-income persons.

(3) maintaining the existing housing stock in decent safe and sanitary condition;

(4) minimizing the involuntary displacement of tenants;

(5) minimizing the need to demolish projects; and

(6) maintaining the project for the purpose of providing rental or cooperative housing.

The Secretary, in determining the manner by which a project shall be managed or disposed of, may balance competing goals relating to individual projects in a manner which will further the achievement of the overall purpose of this section.

The above provision expands the coverage of section 203 to include not only HUD-owned multifamily housing projects, but also certain categories of projects with HUD-held mortgages, namely, mortgages that are either delinquent, under workout agreement, or being foreclosed upon by the Secretary.

The amendments also provide greater specificity than was previously provided concerning the number of units in a given project which should be preserved as affordable for low- and moderate-income persons. The goal now is to preserve: all units in subsidized or formerly subsidized rental housing projects; at least the units in HUD-owned unsubsidized rental housing projects that are occupied by low- and moderate-income persons; and at least the units in all other projects covered by section 203 that are occupied by low- and moderate-income persons on the date of assignment or the date of foreclosure (whichever is greater).

Section 290.5, Management and disposition purpose and goals, conforms to these statutory amendments.

Sections 203(i) (2) and (3), as added by section 181(h)(2) of the 1987 Act and amended by section 1010(d) of the 1988 Act, contain the following definitions of "subsidized project" and "formerly subsidized project," respectively (amendments made by section 1010(d) of the 1988 Act are shown in italics):

(2) For the purpose of this section, the term subsidized project' means a multifamily housing project receiving any of the following assistance immediately prior to the assignment of the mortgage on such project to, or the acquisition of such mortgage by, the Secretary:

(A) below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act;

(B) interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act;

(C) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(D) direct loans at below market interest rates, made under section 202 of the Housing Act of 1959 or to a multifamily housing project under section 312 of the 1964; or

(E) housing assistance payments made under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975) or section 8 of the United States Housing Act of 1937 *(excluding payments made for certificates under subsection (b)(1) or vouchers under subsection (o)), if (except for purposes of paragraphs (1) and (2) of subsection (h) and section 183(c) of the Housing and Community Development Act of 1987) such housing assistance payments are made to more than 50 percent of the units in the project.*

Section 290.3 contains the definitions used in part 290. "Multifamily project" would be defined to mean a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act (other than under section 220(d)(3)(A)) or is or was subject to a loan under section 202 of the Housing Act of 1959 or section 312 of the Housing Act of 1964. (Although section 220(d)(3)(A) authorizes the insurance of mortgages covering one- to eleven-family dwellings, those mortgages are insured under the single family home mortgage programs, and are not covered by part 290.) The term also would include a manufactured home court or park, hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities. Hence, the term, "multifamily project" would cover every type of project that is subject to part 290, including those projects that are not subject to section 203.

"Rental housing project," on the other hand, would exclude multifamily projects that are hospitals, intermediate care facilities, nursing homes, group practice facilities, or board and care homes, but would include retirement service centers. Under the proposed rule, a manufactured home court or park would be considered a "rental housing project." Moreover, if HUD forecloses on or acquires five or more manufactured homes along with the manufactured home court or park itself, the Department proposes to carry out its foreclosure or disposition of the project in accordance with the unit preservation goal set forth in section 203(a)(1). The Department specifically invites comments on whether the application of section 203 to manufactured home courts or parks in this manner is appropriate. Vacant land would not be a "rental housing project," regardless of which mortgage insurance program or loan program it was financed under. In addition, eligible property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere programs ("HOPE") is not a "rental housing project," in accordance with the exemption of such property by section 427 of the NAHA. The term "rental housing project" would cover all projects that fall within the scope of section 203.

There are four types of rental housing projects: Subsidized, formerly subsidized, unsubsidized, and formerly unsubsidized. The definitions of "formerly subsidized" and "formerly unsubsidized" rental housing projects specify that if HUD has acquired the project more than once, its status is determined as of HUD's most recent acquisition. For example, if HUD acquires a subsidized project, which it subsequently sells without subsidy, but later reacquires the same project, HUD would designate the project a "formerly unsubsidized" project.

The rule would also define "low- and moderate-income person" to mean a person whose annual income does not exceed 80 percent of the median income for the area. Section 203 does not define "low- and moderate-income person," and the term has been used in various contexts in related statutes. The term has been used with respect to certain unsubsidized mortgage insurance programs that have no income eligibility limits (see section 221(d)(2) and (d)(4) of the National Housing Act). With respect to the below market interest rate program under section 221(d)(3) of the National Housing Act (another program that was intended for low- and moderate-income persons), HUD has established 95 percent of median income as the income eligibility limit. Section 133 of the Housing and Community Development Act of 1987 and section 229 of the NAHA also define 95 percent of median income as the upper limit for "moderate income" for purposes of the Emergency Low Income Housing Preservation Act of 1987, and for the Low Income Housing Preservation and Resident Homeownership Act of 1990 respectively.

Nonetheless, the Department believes that 80 percent of median income is the appropriate definition of the upper limit of "low- and moderate-income for purposes of section 203. Using this definition means that the Department will be making its preservation decisions with a standard that is the same as the statutory income eligibility limit generally applicable to the section 8 Housing Assistance Payments program, which is the Department's primary means of ensuring the preservation for low- and moderate-income persons of projects disposed of under part 290. Indeed, in section 203(f) Congress used "low- and moderate-

income" as an equivalent to "lower income" as that term is used in the section 8 program. Section 203(f)(2) provides that tenants who will be displaced as a result of the disposition or repair of a project shall have the right, "*except for tenants of above-moderate income*, to obtain housing assistance under the United States Housing Act of 1937" (emphasis added).

Section 181(b) of the 1987 Act revised section 203(b)(2), which concerns management services. This provision reads as follows (amendments made by section 181(b) of the 1987 Act are shown in italics):

(b) The Secretary is authorized, in carrying out this section—

(2)(A) to contract for management services for a multifamily housing project, *subject to subsection (a) that is owned by the Secretary (or for which the Secretary is mortgagee in possession)* on a negotiated, competitive bid, or other basis at a price determined by the Secretary to be reasonable, with a manager the Secretary has determined is capable of (i) implementing a sound financial and physical management program, (ii) responding to the needs of the tenants and working cooperatively with resident organizations, (iii) providing adequate organizational, staff, and other resources to implement a management program determined by the Secretary, and (iv) meeting such other requirements as the Secretary may determine; and

(B) to require the owner of a multifamily housing project subject to subsection (a) that is not owned by the Secretary (and for which the Secretary is not mortgagee in possession), to contract for management services for the project in the manner described in subparagraph (A).

The effect of this amendment is to apply the same management services provisions, which previously applied only to the Secretary with respect to a Secretary-owned project, to the Secretary when the Secretary is mortgagee-in-possession of a covered project. It also applied these management services provisions to an owner of a covered project if the mortgage is either delinquent, under workout agreement, or being foreclosed on by the Secretary, but the Secretary is not mortgagee-in-possession. Section 290.51(b)(1) and (b)(2) would implement these provisions. HUD, under § 290.51(b)(2), can direct the owner to contract for management services with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program determined by HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

Section 181(c) of the 1987 Act amended section 203(c), which concerns maintaining projects, to read as follows:

(c)(1) In the case of multifamily housing projects subject to subsection (a) that are owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall—

(A) to the greatest extent possible, maintain all such occupied projects in decent, safe, and sanitary condition;

(B) to the greatest extent possible, maintain full occupancy in all such projects; and

(C) maintain all such projects for purposes of providing rental or cooperative housing for the longest feasible period.

(2) In the case of any multifamily housing project subject to subsection (a) that is not owned by the Secretary (and for which the Secretary is not mortgagee in possession), the Secretary shall require the owner of the project to carry out the requirements of paragraph (1).

The principal effect of section 181(c), like section 181(b), is to expand the scope of the pertinent section 203 requirements to the Secretary when the Secretary is mortgagee-in-possession of a covered project and to the owner of a covered project if the mortgage is either delinquent, under workout agreement, or being foreclosed on by the Secretary, but the Secretary is not mortgagee-in-possession. These provisions are set out in § 290.51(a)(3).

Section 181(d) of the 1987 Act added a new subsection (d) to section 203, which concerns the provision of financial assistance when a rental housing project is acquired at foreclosure by a purchaser other than the Secretary or after sale by the Secretary. Section 203(d), which was further amended by section 1010(b) of the 1988 Act and section 579(b) of the NAHA, currently reads as follows (amendments made by section 1010(b) of the 1988 Act and by section 579(b) of the NAHA are shown in italics):

(d) In carrying out the goals specified in subsection (a)(1) the Secretary shall take not less than one of the following actions:

(1) Enter into contracts under section 8 of the United States Housing Act of 1937, to the extent budget authority is available for such section 8, with owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary. Such contracts shall provide assistance to the project involved for a period of not less than 15 years. *Such contracts shall be sufficient to assist (A) all units in multifamily housing projects that are subsidized or formerly subsidized projects; (B) in other multifamily housing projects owned by the Secretary, the units that, on the date title to the projects is acquired by the Secretary, are occupied by lower income families eligible for assistance under such section 8; and (C) in all other multifamily housing projects, the units that are occupied by lower income families eligible for assistance under such section 8 on the date of assignment or foreclosure (whichever is greater).* In order to make available to families any units in subsidized or formerly subsidized projects that are occupied by persons not eligible for assistance under such section 8, but subsequently become vacant, the contract shall also provide that when any such vacancy occurs the owner shall lease the available unit to a family eligible for assistance under such section 8. The Secretary shall provide such contracts at contract rents that, consistent with subsection (a), provide for the rehabilitation of such project and do not exceed the most recently adjusted fair market rents for substantially rehabilitated units published by the Secretary in the Federal Register.

(2) *In the case of multifamily projects (other than subsidized or formerly subsidized projects) that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, enter into annual contribution contracts with public housing agencies to provide vouchers or certificates under section 8 of the United States Housing Act of 1937 to all low-income families who are eligible for such assistance on the date that the project is acquired by the purchaser. The Secretary shall take action under this paragraph only after making a determination that the requirements under subsection (e) have been complied with and there is available in the area an adequate supply of habitable affordable housing for low-income families.*

(3) In accordance with the authority provided under the National Housing Act, provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owners of multifamily housing projects that are acquired by a purchaser other than the Secretary, on terms that will ensure that, for a period of not less than 15 years (A) the project will remain available to and affordable by low- and moderate-income persons; and (B) such persons shall pay not more than the amount payable as rent under section 3(a) of the United States Housing Act of 1937.

Section 290.105 is the primary regulatory provision that would implement these provisions. Paragraph (d) of that section identifies the limited circumstances in which HUD may appropriately determine to dispose of a HUD-owned rental housing project, or to foreclose a HUD-held mortgage on rental housing project, without ensuring its continued availability as affordable rental or cooperative housing for low- or moderate-income families.[3]

[3] Section 290.105(d) is consistent with the legislative history of section 203 of the Housing and Community Development Act of 1987, which recognized that there are circumstances in which units should not be preserved as affordable housing (see Conference Report, H. Rept. No. 100-426, 100th Cong., 1st Sess. 188 (1987) and H. Rept. No. 100-122, 100th Cong., 1st Sess. 39 (1987)).

Section 579(b) of the NAHA amended the requirements for the provision of financial assistance under section 203(d) in two ways: (1) It removed the language previously added by section 181(d) of the 1987 Act concerning HUD's provision of section 8 assistance on behalf of vacant units in unsubsidized or formerly unsubsidized projects; and (2) it authorized the use of section 8 vouchers or certificates to all low-income families who are eligible for such assistance on the date that an unsubsidized or formerly unsubsidized project is acquired by a purchaser other than HUD at foreclosure, or after sale by HUD. These tenant-based subsidies may be provided only after HUD determines that the requirements under § 290.109 (concerning a right of first refusal to State and local government agencies) have been complied with, and that there is available in the area an adequate supply of habitable affordable housing for low-income families.

Local housing markets having an adequate supply of standard quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation.

In making a determination with regard to the supply of rental housing, HUD would consider information that demonstrates that:

(1) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market. Typically, a rental housing vacancy rate below four percent would be considered low unless the housing market area is not growing and, as a result, is experiencing low levels of demand. The analysis of vacancy data should also consider the direction the market is moving. For example, a significant increase in rental housing production or a decline in population growth could cause a tight market to become soft in a short period of time.

(2) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households. Or, in the tight markets where there has been no growth, or little growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth.

(3) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing.

(4) A significant number, or proportion, of the households holding certificates or vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time is required to find units.

The Department proposes to rely on the HUD field office with jurisdiction over the project to define the market area for the project based on the field office's knowledge of the local real estate market and HUD's project underwriting experience. In large, complex metropolitan areas, delineation of submarkets may be required. HUD would make this determination in accordance with established market analysis techniques.

In unusual circumstances, the Department would consider using vouchers and certificates in an area with a vacancy rate lower than four percent, if it can be demonstrated that there is an adequate supply of affordable housing for low-income families. Examples of low vacancy situations where use of tenant-based assistance might be appropriate are areas where there is limited demand because of limited population growth or a declining population. PHA data showing that holders of vouchers and certificates are successful with little difficulty in finding acceptable units may be indicative that there is an adequate supply of rental housing despite the existence of low vacancy rate.

The public is invited to comment on this approach, contained in § 290.105(d)(7) of the proposed rule, to implementing section 579(b) of the NAHA, as it amended section 203 by adding a new subsection (d)(2). HUD will consider all comments and alternate approaches in drafting the final rule.

HUD notes that it continues to have the authority under section 203(d)(3), in accordance with the authority provided by section 297(*1*) of the National Housing Act, to provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owner of a rental housing project acquired by a purchaser other than the Secretary. However, section 203(d)(3) requires that such assistance be provided on terms that ensure that, for a period of at least 15 years, the project remains available to and affordable by low- and moderate-income persons, and the rent to be paid by such persons does not exceed the amount payable under section 3(a) of the U.S. Housing Act of 1937 (as implemented by HUD regulations in 24 CFR part 813).

The Department is aware that, when it determines to sell a project with the financial assistance contemplated by section 203(d)(3) but without the benefit of section 8 assistance (see § 290.105(f) of the proposed rule), it may be difficult for an owner to comply with the affordability restrictions and still maintain an economically viable project. However, HUD also recognizes that there may be times when a disposition under section 203(d)(3) is unavoidable. For example, each year HUD requests sufficient section 8 funds to provide rental assistance for projects acquired by purchasers of HUD-owned projects or by purchasers other than the Secretary at foreclosure sales. If sufficient funds are not appropriated, HUD has the authority under section 203(d)(3) to provide financial assistance instead of section 8 rental assistance, with certain restrictions.

HUD is not prepared nor is it charged with a duty to continue to manage properties for extended periods awaiting sufficient appropriations for section 8 funds. Rather, HUD believes it has a duty to continue to foreclose and sell projects, even when section 8 funds are not available. In addition, there may be situations where, even though sufficient section 8 funds are available, HUD determines that a project should be sold under the provisions of section 203(d)(3) without section 8 assistance. Such situations, which would be determined on a case-by-case basis, would most likely occur in projects where there are only a small number of units occupied by eligible families, and the rents from the remainder of the project will support the assisted units.

In a project sold under the standard of section 203(d)(3), HUD would first determine the annual cash needs of the project at a level sufficient solely to cover monthly debt service needed to amortize the cost of rehabilitation to be performed by the purchaser; operating expenses determined by HUD as sufficient to assure that the project will be maintained as decent, safe, and sanitary housing; funds for reasonable reserves; and, if the purchaser is profit-motivated, a reasonable return. HUD would then establish monthly unit rents by size and amenities, based on those annual cash needs plus the amount of income expected to be generated by

rents. The expected rental income would take into consideration the number of units that may be occupied by low- and moderate-income persons paying income-based rents under 24 CFR part 813. Depending on the number of units to be preserved for low- and moderate-income persons and the annual cash needs of the project, HUD may, where determined essential for the economic viability of the project, permit the owner to restrict occupancy in the units to be preserved to persons who meet a minimum income level (*e.g.*, 50 percent of median income) but do not exceed the maximum income level for low- and moderate-income persons.

The Department is cognizant of its responsibility under section 203(a)(1) to preserve projects so that they are available to and affordable by low- and moderate-income persons. Section 203(a) also lists other goals to be considered in the management and disposition of projects, and the last paragraph of that section authorizes the Secretary to balance competing goals relating to individual projects. In meeting the Department's total responsibility to the goals in section 203(a), it may be necessary, on rare situations, to limit occupancy based on income. The Department invites the public to comment on this proposal and to offer feasible alternatives to implementing the strict standards contained in section 203(d)(3).

Section 203(e), which concerns the right of first refusal to be given to States and units of local government, was added by section 181(e) of the 1987 Act and was amended by section 1010(c) of the 1988 Act. It currently reads as follows:

(e)(1) Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop a disposition plan for the project that specifies the minimum terms and conditions of the Secretary for disposition of the project, including the initial sales price that is acceptable to the Secretary and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with Subsections (a) and (d). The initial sales price shall reflect the value of the project as housing affordable to low- and moderate-income persons for the period required in subsection (d).

(2) Upon approval of a disposition plan for a project, the Secretary shall notify the local government and the State housing finance agency (or other agency or agencies designated by the Governor) of the terms and conditions of the disposition plan. The local government and the designated State agency shall have 90 days to make an offer to purchase the project.

(3) The Secretary shall accept an offer that complies with the terms and conditions of the disposition plan. The Secretary may accept an offer that does not comply with the terms and conditions of the disposition plan if the Secretary determines that the offer will further the preservation objectives of subsection (a) by action that include extension of the duration of low- and moderate-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low- and moderate-income persons. The Secretary shall, in particular, have discretion to reduce the initial sales price in exchange for the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1). If the Secretary and the local government or designated State agency cannot reach agreement within 90 days, the Secretary may offer the project for sale to the general public.

(4) The Secretary shall prohibit any local government or designated State agency from transferring projects acquired under a right of first refusal under this subsection to a private entity, unless the local government or designated State agency solicits proposals from such entities through a public process. The solicitation of proposals shall be based on prescribed criteria, which shall include the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1).

(5) Notwithstanding any other provision of law to the contrary, a local government (including a public housing agency) or designated State agency may purchase a subsidized or formerly subsidized project in accordance with this subsection.

Section 290.109 of this rule implements these provisions by providing units of local government and State housing finance agencies the right of first refusal to purchase a HUD-owned project on the terms and conditions specified in the disposition program, or on other terms that will further the preservation objectives of § 290.5.

This proposed rule would retain (in § 290.102(c)) provision for early notification to State and local government agencies that may have an interest in acquiring a HUD-owned rental housing project. This notification can facilitate negotiated sales of these projects to State and local governments. The legislative history makes clear that the enactment of the right of first refusal requirement was not intended to preclude HUD from negotiating a sale with State and local governments (see Conference Report, H. Rept. No. 100-428, 100th Cong., 1st Sess. 188 (1987)).

HUD will also request in the notice to State and local government agencies under § 290.102(c) that these entities contact any nonprofit organizations in their jurisdiction that may have an interest in acquiring a project. In this manner, HUD hopes to encourage the early involvement of nonprofit organizations.

Section 290.7, *Displacement, relocation, and acquisition*, would revise the provisions of the current § 290.45, Notice of displacement, and § 290.47, Displacement benefits. Effective April 2, 1989, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) was amended to expand significantly coverage under HUD-assisted programs. All persons (families, individuals, businesses, and nonprofit organizations) moving on or after April 2, 1989 as a direct result of rehabilitation, demolition or acquisition (publicly or privately undertaken) for a HUD-assisted project are entitled to relocation payments and other relocation assistance at URA levels as described at 49 CFR part 24 and in HUD Handbook 1378, *Tenant Assistance, Relocation and Real Property Acquisition.*

Therefore, whenever assistance under 24 CFR part 886, subpart C (or other Federal financial assistance) is provided in connection with the disposition of a multifamily project, the transaction is part of a federally assisted project and any displacement that results directly from acquisition, demolition, or rehabilitation for the federally assisted project is subject to the URA implementing regulations at 49 CFR part 24, HUD Handbook 1378, and 24 CFR 290.7. Users are urged to consult HUD Handbook 1378 for a more detailed description of, and guidance for, their relocation responsibilities.

Section 290.7(c) would continue HUD's current policies for providing relocation assistance to displaced persons when URA requirements are not triggered, and § 290.7(e) would continue HUD's current policies concerning assistance for residential tenants who are temporarily relocated.

On July 19, 1988, the Department published a final rule providing that for projects acquired by HUD on or after September 19, 1988 (the effective date of that rule), HUD will set rents as if the rent-setting requirements that governed rents before the project was acquired still applied. Projects that were acquired before that date continue to have their rents established essentially as they had been set under part 290 immediately before September 19, 1988. Section 203.55, *Rental rates during ownership by HUD*, retains the current policies contained in the July 19, 1988 rule.

II. Procedures for the Foreclosure of a HUD-Held Mortgage and the Disposition of a HUD-Owned Property

Foreclosure of a HUD-Held Mortgage

After HUD has decided to foreclose on a HUD-held mortgage on a multifamily housing project under § 290.103 of the proposed rule, HUD would develop a Foreclosure Package. The Package would set forth the terms and conditions that it will impose on a purchaser at a foreclosure sale for the future use and operation of the project to further the purpose and goals set forth in § 290.5. It should be noted that this Package does not concern HUD's decision to foreclose, but rather concerns the future operation of the project should HUD be out-bid at the foreclosure sale.

In developing this Package, HUD would undertake a financial and physical analysis in accordance with procedures established by the Department. In addition, HUD would assess: The number of occupants in the project who might be temporarily relocated or displaced as a result of the manner of disposition; whether the project is a subsidized project; the occupancy rate and income levels of the tenants in the project; and other data relevant to establishing the terms and conditions HUD will impose on a purchaser at a foreclosure sale.

Under section 202 of the Housing and Community Development Amendments of 1978 (section 202), the Department has a statutory obligation to provide tenants residing in HUD-owned rental housing projects with notice and an opportunity to comment on HUD's disposition recommendation under § 290.103.

While section 202 does not require HUD to provide tenants residing in rental projects with HUD-held mortgages with notice or an opportunity to comment, the Department recognizes that these tenants have many of the same concerns as tenants residing in HUD-owned rental housing projects. In this proposed rule, HUD has attempted to strike a balance between its need to foreclose expeditiously upon properties that are subject to a HUD-held mortgage and its strong commitment to encouraging tenant participation in all HUD rental housing projects.

Toward this end, the Department has included a provision at § 290.100 of the proposed rule which requires that each tenant in a project with a HUD-held mortgage be notified of a pending foreclosure. The notice would provide tenants with general information concerning the terms and conditions that HUD proposes to impose on a purchaser at a foreclosure sale for the future use and operation of the project. This notice, which solicits tenant comments, is intended to facilitate the early involvement of tenants who might be interested in acquiring the property at the foreclosure sale.

However, HUD has decided for a number of reasons not to provide a second opportunity for tenant notice and comment on the Foreclosure Package under § 290.103. The principal reason underlying this decision is that the Department must foreclose quickly upon projects with HUD-held mortgages in order to preserve the physical integrity of the structures so that decent, safe and sanitary living conditions can be maintained on behalf of tenants living in these projects. Furthermore, expeditious action by HUD is required to minimize costs to the Federal government. HUD views its actions at foreclosure as part of an overall foreclosure and disposition program. HUD's general goal is to sell projects at foreclosure sales to third parties; however, HUD may decide to attempt to acquire a project at a foreclosure sale for purposes of meeting a Departmental goal or other public purpose. Therefore, HUD believes it is essential to notify tenants of a pending foreclosure to provide tenants an opportunity to indicate their interest in the potential conversion of the property to resident-controlled ownership.

Disposition of HUD-Owned Property

When HUD acquires a multifamily housing project, either through a foreclosure sale or otherwise, the types of notices it would issue would depend upon whether HUD has completed its disposition analysis and recommendation under § 290.107 within 30 days after acquiring the project.

If HUD has developed its disposition analysis and recommendation within 30 days of its acquisition of a project, the Department would not issue the preliminary notices described below, but would proceed directly to issue a notice of the disposition recommendation under § 290.102(d) to each of the project tenants.

If HUD has not developed its disposition analysis and recommendation within 30 days of its acquisition of a project, the Department would issue an initial notice to the tenants in accordance with § 290.102(b). This notice would indicate, among other things, that HUD owns the project and is in the process of developing a disposition plan. The notice would also invite tenant comments, which would be considered by HUD in developing its disposition recommendation. Tenants would be especially encouraged to submit to HUD any proposals for converting the project to a cooperative or other form of resident-controlled ownership.

At the same time that HUD would provide this notice to project tenants, it would also send an advance notice under § 290.102(c) to State and local government agencies that may have an interest in acquiring the rental housing project. HUD would also include in this notice a request that the State and local government agencies contact any nonprofit organizations in their jurisdictions that might have an interest in acquiring the project. The notice would also solicit comments from such agencies.

Depending upon the types of notices that HUD issued under § 290.102, the Department would then review the comments submitted by project tenants, State and local government agencies, and nonprofit organizations on the disposition analysis and recommendation, and would use these comments in developing its disposition plan for the project under § 290.107.

The disposition plan determines the manner of disposition of the HUD-owned project, including whether the multifamily project will be disposed of on a sealed bid, auction, request for proposals, negotiated, or other basis. The plan also establishes the number of units in a project that must be maintained as low- and moderate-income housing, the required level of repairs for the project, and other factors pertaining to the disposition.

Upon approval of the disposition plan for the HUD-owned rental housing project, except in the case of a negotiated sale to a State or local government, HUD would notify the unit of general local government in which the project is located, as well as the State housing finance agency, of their right under section 203(e) to purchase the project on the terms and conditions specified in the disposition program (see § 290.109).

Except under the circumstances specified at § 290.104(b), HUD generally will seek to maximize competition in its disposition of multifamily projects through the use of public offerings. The exceptions include:

(1) When a unit of local government or a State housing finance agency (or other agency or agencies designated by the Governor of the State) exercises its statutory right of first refusal under § 290.109;

(2) When a resident organization wishing to convert the project to a nonprofit or limited equity cooperative meets criteria set by HUD;

(3) When a cooperative (e.g., nonprofit, limited equity, consumer, mutual housing association) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing and which can, at the time the final disposition plan is authorized, meets criteria set by HUD;

(4) When a nonprofit entity that will continue to operate the project as low- to moderate-income rental housing, and whose governing board is composed of project residents, meets criteria set by HUD;

(5) When a State or local governmental entity with demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- to moderate-income residents meets criteria set by HUD;

(6) When a State or local governmental or nonprofit entity with demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families, meets criteria set by HUD.

It is HUD's intent to enter into negotiated sales only with nonprofit entities that can competently discharge the responsibilities of owning and operating multifamily projects.

HUD may also authorize a sale soliciting purchase proposals rather than bids. This process would be used where there are several entities interested in purchasing a formerly subsidized project and the purchaser's organization, plan of operation, resident involvement, and other priorities of HUD would be more important considerations than price in the selection of a purchaser. Although requests for proposals will generally involve formerly subsidized projects, they may also be used for formerly unsubsidized projects as well.

III. Other Information

Any assistance made available to a purchaser under this rule, whether rental or other financial assistance, will be subject to scrutiny under section 102(d) of the HUD Reform Act, insofar as that statutory provision has been implemented by guidelines issued by the Office of Housing under 24 CFR part 12, subpart D (see, e.g., a Federal Register Notice published April 9, 1991 (56 FR 14436) entitled "Administrative Guidelines; Limitations on Combining Other Government Assistance with HUD Housing Assistance").

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the above address.

This rule would constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it may have an annual effect on the economy of $100 million or more. The Department will prepare a regulatory impact analysis, and will publish if for 30 days public comment, before the publication of the final rule.

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it would not have a significant economic impact on a substantial number of small entities. These revisions to the policies governing the management and disposition of HUD-owned multifamily housing projects should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

HUD has determined, in accordance with Executive Order 12612, Federalism, that this rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. While the rule would impose terms and conditions on States that acquire projects under this rule, that is clearly the intent of section 203(e) of the Housing and Community Development Amendments of 1978, and therefore no further review is necessary or appropriate.

HUD has determined that this rule would not be likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that are subject to this rulemaking.

The information collection requirements contained §§ 290.55(b)(2) and 886.316(a)(8) of this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. The following table discloses the Department's estimated burden for each of the collections of information on this rule:

Description	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Income certification (§ 290.55(b)(2)	15,000	1	15,000	1	15,000
Profit and loss statements (§ 886.316(d)	553	1	553	1	553
Total annual burden hours					15,553

This rule was listed as Sequence Number 1151 in the Department's Semiannual Agenda of Regulations published on April 27, 1992, (57 FR 16804, 16825) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program [Section 8].

List of Subjects

24 CFR Part 290

Low and moderate-income housing, Mortgage insurance.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the preamble, part 290 of chapter II and part 886 of chapter VIII of title 24 of the Code of Federal Regulations would be amended as follows:

1. Part 290 would be revised, to read as follows:

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS AND CERTAIN MULTIFAMILY PROJECTS SUBJECT TO HUD-HELD MORTGAGES

Subpart A—General Provisions

Sec.
290.1 Applicability.
290.3 Definitions.
290.5 Management and disposition purpose and goals.
290.7 Displacement, relocation, and acquisition.
290.11 Waivers.

Subpart B—Management Provisions

290.51 Management.
290.53 Occupancy.
290.55 Rental rates during ownership by HUD.

Subpart C—Disposition Provisions

290.100 Foreclosure notice.
290.102 Notices for HUD-owned rental housing projects.
290.103 Factors considered in determining the terms and conditions in foreclosures and dispositions.
290.104 Methods of disposition.
290.105 Manner of disposition and terms and conditions of sale.
290.107 Analysis, recommendation, and determination for foreclosure sales and sales of HUD-owned projects.
290.109 Right of first refusal to local government and State housing finance agency.
290.111 Occupancy in projects acquired from HUD.

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 290.1 Applicability.

This part applies to HUD-owned multifamily housing projects and to rental housing projects that are subject to mortgages held by HUD that are either delinquent, under workout agreements, or being foreclosed by HUD. Specific provisions, as noted in the rule text, apply only to "rental housing projects" as defined in § 290.3, including a HUD-owned rental housing project.

§ 290.3 Definitions.

Cooperative means a nonprofit, limited equity, consumer, mutual housing association.

Displacement means the permanent and involuntary move from the real property, or the permanent and involuntary move of personal property from the real property, of any person (family, individual, business, or nonprofit organization) as a direct result of acquisition, rehabilitation, or demolition for a federally assisted project.

Eligible tenant means a tenant (1) who is a low- or moderate-income family, or (2) who is or (immediately prior to HUD's acquisition of the project) was receiving HUD rental assistance under section 23 (as in effect prior to January 1, 1975), section 8, Rent Supplement, or Rental Assistance Payments.

Formerly subsidized rental housing project means a HUD-owned rental housing project that was a subsidized rental housing project immediately before HUD acquired the project. If HUD has acquired the project more than once, its status as a subsidized rental housing project is determined as of HUD's most recent acquisition.

Formerly unsubsidized rental housing project means a HUD-owned rental housing project that was not a subsidized rental housing project immediately before HUD acquired the project. If HUD has acquired the project more than once, its status as an unsubsidized rental housing project is determined as of HUD's most recent acquisition.

HUD-owned project means a multifamily project that has been acquired by HUD.

Low- and moderate-income person means a person or family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustment for smaller and larger families, except that HUD may establish income limits higher or lower than 80 percent of the median for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs, unusually high or low family incomes, or other factors.

Multifamily project means a project consisting of five or more units that has or had a mortgage (even if subordinate to other mortgages) insured under the National Housing Act (other than under section 220(d)(3)(A)) or is or was subject to a loan under section 202 of the Housing Act of 1959 or section 312 of the Housing Act of 1964. The term also includes a manufactured home court or park, hospital, intermediate care facility, nursing home, group practice facility, or board and care facility that has or had a mortgage insured, or is or was subject to a loan under, these authorities.

Nonprofit organization means a corporation or association organized for purposes other than making a profit or gain for itself.

Rental housing project means a multifamily project other than a multifamily project that is a hospital, intermediate care facility, nursing home, group practice facility, or board and care home. A retirement service center is a "rental housing project." A manufactured home court or park is a "rental housing project." Furthermore, the unit preservation goal set forth in § 290.5(a) of this part shall be applicable if HUD forecloses on or acquires five or more manufactured homes as part of its foreclosure of the mortgage on the project. Vacant land is not a "rental housing project," regardless of which mortgage insurance program or loan program it was financed under. In addition, eligible property covered by a homeownership program approved under the Homeownership and Opportunity for People Everywhere ("HOPE") program is not a rental housing project.

Subsidized rental housing project means a rental housing project in which tenants are receiving the benefits of any of the following programs:

(1) Below market interest mortgage under section 221(d)(3) of the National Housing Act;

(2) Interest reduction payments made in connection with a mortgage insured under section 236 of the National Housing Act;

(3) Rent supplement assistance payments under section 101 of the Housing and Urban Development Act of 1965;

(4) Direct loans at below market interest rates made under section 202 of the Housing Act of 1959, sections 401 and 404(b)(3) of the Housing Act of 1950, section 312 of the Housing Act of 1964;

(5) Housing assistance payments under section 23 of the United States Housing Act of 1937 in effect before January 1, 1975, or section 8 of the United States Housing Act of 1937, if more than 50 percent of the units in the project are receiving such assistance. Housing assistance payments under the Section 8 Certificate program, 24 CFR part 882, subparts A, B, C, and F, and the Section 8 Housing Voucher program, 24 CFR part 887, are excluded in determining whether a project is a subsidized rental housing project.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655).

§ 290.5 Management and disposition purpose and goals.

(a) *Purpose and goals.* The purpose of this part is to manage and dispose of HUD-owned multifamily projects, and rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or being foreclosed by HUD, in a manner that is consistent with the National Housing Act, section 203 of the

Housing and Community Development amendments of 1978, and other relevant statutes, and that will, in the least costly fashion among other reasonable alternatives available, further the goals of:

(1) Preserving so that they are available to and affordable by low- and moderate-income persons:

(i) In subsidized and formerly subsidized rental housing projects, all units;

(ii) In HUD-owned formerly unsubsidized rental housing projects, at least the units that are occupied by low- and moderate-income persons;

(iii) In unsubsidized rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or being foreclosed by HUD, at least the greater of the number of units occupied by low- and moderate-income persons on the date of assignment or foreclosure;

(2) Preserving and revitalizing residential neighborhoods;

(3) Maintaining the existing housing stock in a decent, safe, and sanitary condition;

(4) Minimizing the involuntary displacement of tenants;

(5) Minimizing the need to demolish multifamily projects; and

(6) Maintaining the rental housing project for the purpose of providing rental or cooperative housing.

(b) *Competing goals.* In determining the manner by which a project shall be managed and disposed of, HUD may balance competing goals relating to individual projects in a manner that will further the achievement of the overall purpose of this part.

§ 290.7 Displacement, relocation, and acquisition.

(a) *Scope of section.* This section applies to all HUD-owned multifamily projects and all rental housing projects subject to HUD-held mortgages that are either delinquent, under workout agreements, or in foreclosure by HUD. When HUD is not the mortgagee-in-possession or owner, HUD will require the owner of the project to comply with this section.

(b) *Minimizing displacement.* Consistent with the other goals and objectives of this part, all reasonable steps shall be taken to minimize the displacement of persons (families, individuals, businesses, and nonprofit organizations) for a project covered by this part. If displacement or temporary relocation will occur in connection with the disposition of a project, HUD may require the purchaser of the project to provide assistance in accordance with this section.

(c) *Relocation assistance at non-URA levels.* Whenever the displacement of a residential tenant (family or individual) occurs in connection with the management or disposition of a multifamily project, but is not subject to paragraph (d) of this section (*e.g.*, occurs as a direct result of HUD repair or demolition of all or a part of a HUD-owned multifamily project or as a direct result of the foreclosure of a HUD-held mortgage on a rental housing project or sale of a HUD-owned project without Federal financial assistance), the displaced tenant shall be eligible for the following relocation assistance:

(1) Advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling, referrals to suitable, decent, safe, and sanitary replacement housing, and fair housing-related advisory services;

(3) Payment for actual reasonable moving expenses, as determined by HUD;

(4) For displaced eligible families and individuals—

(i) The opportunity to relocate to a suitable, decent, safe, and sanitary dwelling unit in a HUD-owned multifamily project, in a public housing project, or in another HUD subsidized rental housing project, or

(ii) Assistance under the Section 8 Certificate program (see § 882.209(a)(4)(ii)(B) of this title) or the Housing Voucher program (see § 887.155(c) of this title), if the assistance is available; and

(5) Such other Federal, State or local assistance as may be available.

(d) *Relocation assistance at URA levels—(1) General.* Whenever assistance under 24 CFR part 886, subpart C (or other Federal financial assistance, as defined in 49 CFR 24.2(j)) is provided in connection with the purchase by a third party of a multifamily property, any resulting displacement is paragraph (d) of this section. A displaced person (defined in paragraph (d)(3) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(2) *Definition of "initiation of negotiations".* For purposes of determining the method for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the transfer of title to the purchaser.

(3) *Definition of displaced person.* (i) The term "displaced person" means any person (family, individual, business, or nonprofit organization) that moves from the real property, or moves personal property from the real property, permanently, as a direct result of acquisition, rehabilitation or demolition for a federally assisted project. This includes any permanent, involuntary move from the real property, including any permanent move that is made:

(A) After notice by the purchaser to move permanently from the property, if the move occurs on or after the date of the transfer of title to the purchaser; or

(B) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after the transfer of title to the purchaser and the move occurs before the tenant is provided notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions. Such terms and conditions shall include a monthly rent, including estimated average monthly utility costs, that does not exceed the greater of the tenant's monthly rent before transfer of title to the purchaser and estimated average monthly utility costs, or thirty percent of gross household income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either: The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex, and either the tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) A person does not qualify as a "displaced person," however, if:

(A) The person has been evicted for a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of

applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person is ineligible under 49 CFR 24.2(g)(2); or

(C) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project.

(e) *Temporary relocation (URA and non-URA relocation assistance).* Residential tenants, who will not be required to move permanently, but who must relocate temporarily (*e.g.*, to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent or utility costs. The party responsible for this requirement may, at its option, perform the services involved in temporarily relocating the tenants or pay for such services directly; and

(2) Appropriate advisory services, including reasonable advance written notice of, the date and approximate duration of the temporary relocation; the suitable decent, safe, and sanitary housing to be made available for the temporary period; the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and the right to financial assistant provided under paragraph (e)(1) of this section.

(f) *Appeals.* If a person disagrees with a purchaser's determination concerning the person's eligibility for, or the amount of relocation assistance for which the person is eligible, the person may file a written appeal of that determination with the owner or purchaser. A person who is dissatisfied with the purchaser's determination on his or her appeal may submit a written request for review of that decision to the HUD Field Office responsible for administering the URA in the area.

§ 290.11 Waivers.

Upon completion of a determination and finding of good cause, the Assistant Secretary for Housing may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons which formed the basis for the waiver. HUD will publish a Federal Register notice informing the public of all waivers granted under this section and containing all relevant information concerning the waiver.

Subpart B—Management Provisions

§ 290.51 Management.

(a) (1) With respect to any HUD-owned rental housing project and any rental housing project where HUD is mortgagee-in-possession, HUD shall manage the project in accordance with the requirements of paragraph (a)(3) of this section.

(2) With respect to any rental housing project subject to a HUD-held mortgage that is either delinquent, under a workout agreement, or being foreclosed by HUD, but HUD is not mortgagee-in-possession, the owner shall manage the project in accordance with the requirements of paragraph (a)(3) of this section.

(3) HUD or the owner, as appropriate, shall in the least costly fashion among reasonable alternatives available:

(i) To the greatest extent possible, provide the level of services necessary to maintain occupied housing in decent, safe, and sanitary condition;

(ii) Minimize the involuntary displacement of tenants to the greatest extent possible, consistent with sound management practices;

(iii) Maintain all vacant buildings and land in a way that eliminates health and safety hazards to the public and ensures the proper security of the property;

(iv) To the greatest extent possible, maintain full occupancy;

(v) Maintain all such projects for purposes of providing rental or cooperative housing for the longest feasible period (for projects being sold at foreclosure sales or HUD-owned property sales, this period generally shall be 20 years); and

(vi) Respond to the needs of the tenants and work cooperatively with resident organizations.

(b) (1) HUD, in accordance with the Federal Acquisition Regulations, 48 CFR chapter 1 and the HUD Acquisition Regulations, 48 CFR chapter 24, may contract for management services for a HUD-owned multifamily project or a rental housing project where HUD is mortgagee-in-possession with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program determined by HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

(2) With respect to a rental housing project subject to a mortgage that is either delinquent, under a workout agreement, or being foreclosed by HUD, but for which HUD is not mortgagee-in-possession, HUD may require the owner to contract for management services with a manager determined by HUD to be capable of implementing a sound financial and physical management program; responding to the needs of tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and other resources to implement a management program acceptable to HUD; and meeting such other requirements as HUD may determine to be necessary or appropriate.

(c) Projects shall be managed in accordance with the management objectives contained in paragraph (a)(3) this section, the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, which prohibit discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, which prohibit discrimination against handicapped individuals; and Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

(d) HUD shall conduct outreach efforts to minority-owned and female-owned businesses to become managers of the projects covered by this section, in accordance with Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 39 (Minority Business Enterprises), Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development), and Executive Order 12138 (3 CFR, 1979 Comp., p. 393) (National Women's Business Enterprise Policy).

§ 290.53 Occupancy.

(a) *HUD-owned multifamily project or project where HUD is mortgagee-in-possession.* Except as provided in paragraph (b) of this section, occupancy in a HUD-owned multifamily project or in a rental housing project where HUD is mortgagee-in-possession shall be available on a basis that is comparable to the occupancy requirements that

applied to the project immediately before HUD acquired the project or became mortgagee-in-possession, except that preference shall be given to tenants of other HUD-owned multifamily projects who are eligible for assistance in accordance with § 290.7 of this part.

(b) *Formerly unsubsidized project.* In a formerly unsubsidized project, at least the number of units that received rental assistance before acquisition by HUD shall be rented to eligible tenants.

(c) *Evictions.* Eviction from a HUD-owned multifamily project is governed by 24 CFR part 247, subpart B.

(d) *Threat to health and safety.* Whenever HUD determines that there is an immediate threat to the health and safety of the tenants, HUD may require the tenants to vacate the premises and shall provide temporary relocation benefits as provided in § 290.7 of this part to tenants required to vacate the premises.

§ 290.55 Rental rates during ownership by HUD.

(a) *Determining a schedule of maximum rental rates.* As soon as practicable, but no later than 30 days after HUD assumes management responsibility, HUD shall establish a schedule of maximum rental rates for each unit in a HUD-owned multifamily project that is comparable to the rates charged in similar multifamily projects, based on unit size, location, condition, services, and amenities provided, and is conducive to attracting high occupancy without impacting adversely on the viability of other multifamily projects and other housing projects in the area. HUD shall review and update the maximum rental rate schedule periodically to maintain current comparability.

(b) *Rents in projects acquired on or after September 19, 1988.* Except as modified by this section, HUD shall set rents in a multifamily project acquired by HUD on or after September 19, 1988, as if the rent setting requirements that governed rents before the project was acquired still applied.

(1) For families residing in a subsidized project when HUD becomes mortgagee in possession or when HUD acquires the project, as appropriate, HUD shall request an income certification from each family. This certification shall be conducted as soon as practicable after HUD becomes the owner or mortgagee-in-possession, unless the family's income has been examined by the owner or by HUD not more than four months before such action. If a tenant does not certify income as required by this paragraph (b)(1), the tenant must pay the unit rent as determined under paragraph (a) of this section.

(2) (i) For families applying for admission to subsidized or formerly subsidized project, HUD shall request an income certification from each family (and, thereafter, at each annual recertification) to determine the family's eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent, in accordance with part 813 of this title. This information is also used in HUD's foreclosure or disposition analysis.

(ii) For families applying for admission to an unsubsidized or formerly unsubsidized project, HUD shall request sufficient information for income verification to determine the family's ability to pay the unit rent. If necessary for use in HUD's foreclosure or disposition analysis, HUD may request an income certification from families who are not paying a subsidized rent.

(3) HUD shall determine rent, for a unit in a multifamily project that, at the time of acquisition by HUD, had a market-based rent, from the schedule of maximum established under paragraph (a) of this section. HUD, however, may set a lower rent if necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(c) *Rents in projects acquired before September 19, 1988.* Each tenant (other than an eligible tenant in a formerly subsidized project) in a HUD-owned multifamily project acquired by HUD before September 19, 1988, shall be charged a rent based on the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent, if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy. Each eligible tenant in a formerly subsidized project acquired by HUD before September 18, 1988 shall be charged the lesser of an amount equal to the tenant rent that would be payable by the eligible tenant under part 813 of this title, or the rent established for the unit under paragraph (a) of this section.

(d) *Utility allowance.* For a tenant in a HUD-owned rental housing project, or project where HUD is mortgagee-in-possession, whose rent is based on a percentage of adjusted income, if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD shall deduct from the rent to be paid by the tenant to HUD a utility allowance, which is an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment. If the utility allowance exceeds the percentage of the tenant's adjusted income payable as rent, HUD will pay the difference between the amount payable as rent and the utility allowance to the tenant or, with the consent of the tenant and the utility company, either jointly to the tenant and the utility company or directly to the utility company.

(e) *Notice of rent changes.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project or project where HUD is mortgagee-in-possession, HUD shall provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants of its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous locations around the project.

(f) *Disclosure and verification of Social Security Numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this title.

(g) *Signing of consent forms for income verification.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the signing and submitting or consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 200, subpart V, of this title.

Subpart C—Disposition Provisions

§ 290.100 Foreclosure notice.

(a) *Content of notice.* HUD shall issue a notice to each tenant of the general terms and conditions that HUD proposes to impose on a purchaser other than HUD concerning the sale and future use and operation of a rental housing project through the foreclosure of a HUD-held mortgage on the project. The notice shall contain an invitation to tenants to submit written comments thereon during a period of not less than 30 days following the date of the notice. The notice shall state:

(1) HUD's interest in learning of tenant plans and capacity for the acquisition of the project for use as rental or cooperative housing;

(2) In brief, the proposed manner of disposition of the project, including general conditions upon the sale, length of restrictions, or future use and operation of the project as may be required, and the general extent of any repairs that may be required to be performed by a purchaser other than HUD after disposition;

(3) The extent to which, and the eligibility requirements for, rental assistance that may be provided;

(4) The extent to which, and the eligibility requirements, for temporary relocation or displacement if it is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, the nature of temporary relocation or displacement assistance to be provided under § 290.7 of this part;

(5) That HUD's final determination of the terms and conditions to be imposed on the foreclosure of HUD-held mortgage will not be made until after HUD considers the comments received from tenants within the specified comment period.

(b) *Delivering or mailing notices to tenants.* The notice required to be issued to tenants under paragraph (a) of this section must be delivered to each unit in the project, or sent to each unit by first class mail. Where HUD is mortgagee-in-possession of a project, the notice also must be posted in the project office.

§ 290.102 Notices for HUD-owned rental housing projects.

(a) *Required notices.* (1) If HUD develops a disposition recommendation within 30 days after acquiring a rental housing project, it shall issue to tenants only the notice of disposition recommendation set forth in paragraph (d) of this section;

(2) If HUD develops a disposition recommendation after 30 days of acquiring a rental housing project, it shall issue to tenants both the predisposition recommendation notice specified by paragraph (b) of this section, and the notice of disposition recommendation specified by paragraph (d) of this section. In addition, HUD shall issue to State and local government agencies the notice set forth in paragraph (c) of this section.

(b) *Pre-disposition recommendation notice.* Where required by paragraph (a)(2) of this section, HUD shall issue to tenants a pre-disposition recommendation notice stating that:

(1) HUD owns the project;

(2) HUD is developing its disposition plan; that HUD normally seeks to sell HUD-owned projects as rapidly as possible and will require the purchaser to undertake any needed repairs not completed by HUD; and that during HUD's ownership or during its status as mortgagee-in-possession, HUD will, to the extent feasible, assure that the project is maintained in a decent, safe, and sanitary condition pursuant to standards established by HUD;

(3) If HUD sells the project with a project-based subsidy, tenants who do not qualify for the subsidy will not be required to move due to the imposition of subsidy;

(4) If it appears that tenants may be temporarily relocated or permanently displaced by the management or disposition of the project, an explanation of the temporary relocation and displacement benefits that will be available; and

(5) Tenants are invited to submit proposals to HUD (*e.g.*, expressions of interest to convert the project to a cooperative or other form of resident-controlled ownership, or other resident initiative), comments, and facts, which will be considered by HUD in making its property disposition determination; the length of time within which tenants may submit such proposals, which shall be at least 30 days following the date of HUD's notice; and that tenants may submit proposals to HUD at any time during the specified time period.

(c) *Notice to State and local government agencies.* The notice to State and local government agencies required by paragraph (a)(2) of this section shall be sent to such agencies that may have an interest in acquiring the rental housing project. The notice shall include information on the availability of the project for purchase; request the State and local government agencies to notify nonprofit organizations in their jurisdiction that may have an interest in acquiring the rental housing project to submit to HUD any comments or expressions of interest concerning the proposed disposition; and request a written reply within 30 days.

(d) *Notice of disposition recommendation.* The disposition recommendation notice required by paragraphs (a) (1) and (2) of this section shall contain an invitation to tenants to submit written comments thereon during a period of not less than 30 days following the date of such notice, and shall state:

(1) In brief, the proposed manner of disposition of the project, including such conditions upon the sale and future use and operation of the project as may be contemplated and the extent of any repairs that may be required to be performed by the purchaser after disposition;

(2) The extent to which rental assistance may be provided and the eligibility requirements therefor;

(3) The extent to which temporary relocation or displacement is anticipated as a result of repairs or the proposed disposition, including any anticipated conversion of use, the nature of temporary relocation or permanent displacement assistance to be provided under § 290.7 of this part, and the eligibility requirements therefor;

(4) That the full disposition recommendation and analysis and other supporting information will be available for inspection and copying at the HUD field office and for inspection at the project office; and

(5) That HUD's final determination of the manner by which the project is to be disposed of will not be made until after HUD considers the comments received from tenants, and from State and local government agencies and nonprofit entities within the specified comment period.

(e) *Delivering or mailing notices to tenants.* Any notice required to be issued to tenants under this section must be delivered to each unit in the project or sent to each unit by first class mail. The notice also must be posted in the project office.

(f) *Section 8 notice.* If the project will be sold with Section 8 assistance under 24 CFR part 886, subpart C, a notice must be sent to the local government in which the project is located in accordance with 24 CFR 886.306.

§ 290.103 Factors considered in determining the terms and conditions in foreclosures and dispositions.

In determining the terms and conditions to impose on the foreclosure of a mortgage or the disposition of a multifamily project, in accordance with § 290.5:

(a) *Multifamily project.* HUD shall consider with respect to any multifamily project:

(1) The results of a financial analysis of the project in accordance with procedures established by the Department;

(2) The results of a physical analysis of the project in accordance with procedures established by the Department;

(3) The number of occupants in the multifamily project that might be temporarily relocated or permanently displaced as a result of the manner of disposition;

(4) Environmental reviews in accordance with HUD requirements implementing the National Environmental Policy Act of 1969 in 24 CFR part 50 and the other statutes, executive orders, and HUD standards cited in § 50.4 of this title that apply to the disposition of the project; and

(5) For buildings located within a Special Flood Hazard Area (SFHA), the estimated cost of annual flood insurance coverage required by section 102(a) of the Flood Disaster Protection Act (FDPA), which is a condition of HUD approval of insured financing or other financial assistance. HUD also may not approve insured financing for a building located within an SFHA if the property is located in a community that is suspended for, or otherwise not participating in, the National Flood insurance program.

(b) *Rental housing projects.* If the multifamily project is a rental housing project, HUD also shall consider (among other factors):

(1) Whether the project is a subsidized or formerly subsidized rental housing project;

(2) The occupancy rate and income levels of the occupants of the rental housing project at a time reasonably proximate to the time of the disposition analysis and—

(i) For a rental housing project subject to a HUD-held mortgage that HUD is foreclosing, HUD shall consider the number of low- and moderate-income persons occupying units in the project at the date of assignment or the date of the foreclosure sale, whichever is greater. In the event there is no information available on the number of low- and moderate-income persons occupying units on the date of assignment, then the number of such persons on the date of the foreclosure sale will be considered; or

(ii) For a HUD-owned rental housing project, the number of low- and moderate-income persons occupying units in the project at the time of its acquisition by HUD or the date of the sale, whichever is greater;

(3) Characteristics, including rental levels, of comparable housing;

(4) Feasibility of converting the rental housing project to cooperative ownership, including the degree of interest and support from present residents;

(5) The comments, proposals, and facts submitted by the residents; and

(6) The availability of Section 8 assistance, purchase money mortgage, or other financial assistance that could be used in the disposition.

§ 290.104 Methods of disposition.

(a) *Multifamily Mortgage Foreclosure Act.* Foreclosure sales will be conducted, at HUD's discretion, in accordance with the Multifamily Mortgage Foreclosure Act, or other Federal or State foreclosure laws.

(b) *Methods of disposition.* HUD may dispose of a HUD-owned multifamily project on a sealed bid, auction, request for proposals, negotiated, or other basis, on such terms as HUD considers appropriate to furthering the purpose stated in § 290.5. The specific methods of disposition include:

(1) *Negotiated sales.* A negotiated sale involves the disposition of a project to a person or entity without a public offering. When HUD determines that a purchaser can demonstrate the capacity to own and operate a project in accordance with standards set by HUD and a competitive offering will not generate offers of equal merit from qualified purchasers, HUD may approve a negotiated sale to:

(i) A resident organization wishing to convert the project to a nonprofit or limited equity cooperative;

(ii) A cooperative (*e.g.*, nonprofit limited equity, consumer cooperative, mutual housing organization) with demonstrated experience in the operation of nonprofit (and preferably low- to moderate-income) housing;

(iii) A nonprofit entity that will continue to operate the project as low- to moderate-income rental housing and whose governing board is composed of project residents;

(iv) A State or local governmental entity with the demonstrated capacity to acquire, manage, and maintain the project as rental or cooperative housing available to and affordable by low- to moderate-income residents;

(v) A State or local governmental or nonprofit entity with the demonstrated capacity to acquire, manage, and maintain the project as a shelter for the homeless or other public purpose, generally when the project is vacant or has minimal occupancy and is not needed in the area for continued use as rental housing for the elderly or families; or

(vi) Other nonprofit organizations.

(2) *Request for Proposals (RFPs).* If HUD determines that a competitive disposition process is appropriate, but price is not the determining criterion for a sale, HUD may authorize a sale through a Request for Proposals when HUD determines that:

(i) A cooperative conversion is the best future use for the project, and two or more nonprofit entities with demonstrated successful experience in providing affordable rental or cooperative housing are or may be interested in acquiring the project and converting it to a low- and moderate-income cooperative within a time frame acceptable to HUD;

(ii) Two or more nonprofit entities with demonstrated successful experience are or may be interested in acquiring the project and maintaining it as rental housing affordable by low- and moderate-income families for a period of time longer than 20 years; or

(iii) Such other circumstances approved by the Assistant Secretary for Housing or designee.

(3) *Competitive sealed bids.* A disposition by competitive sealed bid involves a public offering of the project, whereby the project is sold to the highest bidder who also meets the qualifications stated in the bid kit. This process may be used where the terms and conditions of sale are established by HUD, and the determining factors in the selection of a purchaser are price and evidence that the purchaser can meet HUD standards.

(4) *Auctions.* Projects for which price is the determinative factor may also be sold at auction. In an auction, oral bids are solicited and bidders must meet qualifications set forth by HUD. This process may be used where the terms and conditions of sale are established by HUD, and the determining factors in the selection of a purchaser are price and evidence that the purchaser can meet HUD standards.

(C) *Equity restrictions.* In the sale of any project where there is no competition on the sales price, HUD will impose limitations on return on equity and the resale or refinancing of the project. Such limitations shall provide that, during the period of any affordability restrictions imposed as a condition of the sale, HUD shall be entitled to receive all or any portion of the sales or refinancing proceeds, as determined by HUD and provided for in HUD's sales documents.

§ 290.105 Manner of disposition and terms and conditions of sale.

(a) *Disposition objectives.* HUD shall seek to dispose of all projects in a manner that is the least costly among the reasonable alternatives available to further the goals of § 290.5.

(b) *Preservation of units.* Except as provided in paragraph (d) of this section, HUD shall maintain the following units as affordable to low- and moderate-income persons for at least 15 years:

(1) In a subsidized or formerly subsidized rental housing project, all units;

(2) In an unsubsidized or formerly unsubsidized rental housing project:

(i) For projects owned by the Secretary, those units occupied by low- or moderate-income persons at the time of acquisition or sale, whichever number is greater; or

(ii) For all other projects, those units occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever number is greater.

(c) *Maintenance of projects.* Except as provided in paragraph (d) of this section, HUD shall maintain a rental housing project for the purpose of providing rental or cooperative housing for the longest feasible period.

(d) *Determination not to preserve units.* HUD may determine to dispose of, or demolish, a HUD-owned rental housing project or to foreclose a HUD-held mortgage on a rental housing project, or any portion thereof, without ensuring its continued availability as affordable rental or cooperative housing for low- and moderate-income families only if one or more of the following factors exist:

(1) The costs of rehabilitation are such that the monthly debt service needed to amortize the cost of rehabilitation, operating expenses, and a reasonable return to the purchaser cannot be provided with rents that are, for subsidized and formerly subsidized projects, within the most recently published Section 8 Fair Market Rents for new construction and substantial rehabilitation (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market;

(2) Construction is substantially incomplete and completing the project will cost more than constructing new housing;

(3) The project is uninhabitable because of environmental factors that cannot be mitigated by HUD or the purchaser, *e.g.*, the project is located on a site that cannot be made to comply with Section 8 Site and Neighborhood standards in 24 CFR 886.307(k). Factors that adversely affect the health, safety, and general welfare of residents, and cannot be mitigated by HUD, may include air pollution, smoke, mud slides, fire or explosion hazards, chemical contamination, significantly deteriorated surrounding neighborhood conditions with inadequate police or fire protection, high crime rates, drug infestation, and lack of public community services needed to support a safe and healthy living environment for residents;

(4) The project does not meet state and local codes, and the costs to bring the project into compliance with the codes will cost more than constructing new housing, or the monthly rental income needed to amortize the cost of bringing the project into compliance with the codes, meet operating expenses, and provide a reasonable return to the purchaser cannot be obtained from rents that are, for subsidized and formerly subsidized projects, within the most recently published Section 8 Fair Market Rents for new construction and substantial rehabilitation (24 CFR part 888, subpart A) or, for unsubsidized and formerly unsubsidized projects, within rents obtainable in the market;

(5) A reduction in the number of units in the project will enhance long-term project viability, such as for demolition for a building to provide space for a playground, open space, conversion of rental units to common space for community activities for residents, combining one-bedroom units to create larger units for families, or other uses of the units that benefit the residents;

(6) Continued preservation of the project as rental or cooperative housing is not compatible with State or local land use plans for the area in which the project is located;

(7) In the case of unsubsidized or formerly unsubsidized projects, HUD determines that there is available in the area an adequate supply of habitable affordable housing for low-income families. In making this determination, HUD will rely on the field office with jurisdiction over the project to define the market area for the project based on the field office's knowledge of the local real estate market and HUD's project underwriting experience. Submarkets may be used in large, complex metropolitan areas. Local housing markets having an adequate supply of standard quality rental housing would include housing markets in which the supply of rental housing available and in production is adequate to meet the anticipated demand (*e.g.*, the housing market is balanced), as well as those in which there is an excess supply of rental housing (*e.g.*, the housing market is soft). Rental markets that do not have an adequate supply (*e.g.*, tight markets) are characterized by low rental vacancy rates, low levels of production and turnover of rental housing, and, usually, by high levels of rent inflation. HUD will make the determination using established market analysis techniques, and will consider information that demonstrates:

(i) The rental housing vacancy rate is at a low level relative to the rate required for a balanced market, typically a four percent vacancy rate; except that a rate lower than four percent may be considered in unusual circumstances if it can be demonstrated that there is an adequate supply of affordable housing for low-income families;

(ii) The number of rental housing units being produced on an annual basis is not large enough to satisfy demand arising from the increase in households, or, in markets where there is little or no growth, evidence that the number of additional rental units being supplied is not sufficient to meet the demand arising from net losses to the available inventory and the inadequate supply of rental housing has inhibited growth;

(iii) The shortage of housing is resulting in rent increases that exceed normal increases commensurate with the costs of operating rental housing;

(iv) A significant number, or proportion, of the households holding Section 8 certificates or housing vouchers are unable to find adequate housing because of the shortage of rental housing, including PHA data showing a lower than average percentage of units under lease and a longer than average time required to find units.

(e) *Relocation assistance.* If HUD decides not to preserve an occupied rental housing project at a foreclosure sale or sale of a HUD-owned project, HUD will provide relocation assistance to all tenants and tenant-based rental assistance to all eligible tenants (see § 290.7 of this part).

(f) *Provision of financial assistance to ensure affordability.* Whenever HUD determines to dispose of a HUD-owned rental housing project, or to impose terms and conditions on the foreclosure of a HUD-held mortgage on a rental housing project, in a manner that ensures continued affordable housing for low- and moderate-income families for at least those units specified in § 290.5(a) of this part, HUD shall, in the least costly fashion, do one or more of the following that achieves this objective:

(1) Impose income eligibility and rent limitations on some or all of the units in the project;

(2) To the extent budget authority is available, enter into contracts under section 8 and 24 CFR part 886, subpart C, with purchasers of rental housing projects, which contracts shall include any units in a subsidized or formerly subsidized project that are occupied by persons not eligible for assistance under section 8, but that subsequently become vacant and are required to be leased by the owner to eligible tenants; and which provide for the operation, rehabilitation, and distributions of surplus cash (when applicable) for such projects, and are not in excess of the most recently adjusted fair market rents for substantially rehabilitated units published by HUD in the Federal Register;

(3) Provide other Federal project-based rent subsidy for some or all of the units;

(4) In the case of an unsubsidized or formerly unsubsidized rental housing project that is acquired by a purchaser other than HUD at foreclosure, or after sale by HUD, enter into annual contribution contracts with public housing agencies to provide vouchers or certificates under section 8 to all low-income families who are eligible for such assistance on the date that the project is acquired by the purchaser;

(5) (i) Provide purchase-money mortgages, reduce the selling price, or provide other financial assistance to the owners of rental housing projects that are acquired by a purchaser other than HUD at foreclosure, or after sale by the Secretary, on terms that will ensure that, for a period of not less than 15 years:

(A) The project will remain available to and affordable by low- and moderate-income persons (in the case of unsubsidized or formerly unsubsidized projects, this affordability restriction shall apply only to those units required to be preserved under § 290.105(b)(2)); and

(B) Such low- and moderate-income persons shall pay no more for rent than the amount established under part 813 of this title.

(ii) *Combined assistance.* Whenever HUD provides both section 8 assistance under paragraph (f)(2) of this section and financial assistance under paragraph (f)(5) of this section, the section 8 contract may cover fewer than the total number of units identified under § 290.5(a), so long as all of the requirements of paragraph (f)(5)(i) (A) and (B) of this section are met;

(6) Condition the disposition on the provision of State or local project-based rent subsidy for some or all of the units; or

(7) Provide such other forms of assistance as may be available to HUD.

(g) *Conditioning the sale and future use of projects.* HUD may impose such conditions upon the sale and the future use and operation of a HUD-owned rental housing project and upon the foreclosure and future use of a rental housing project subject to a HUD-held mortgage, that HUD considers necessary or appropriate to furthering the purpose stated in § 290.5. Such conditions may include, but are not limited to, the following:

(1) HUD shall, unless clearly inappropriate, require that repairs be performed to a rental housing project by the purchaser after disposition in order to return the project to decent, safe, and sanitary condition, and may provide such conditions or arrangements as HUD considers appropriate in order to ensure full and timely performance of the repair requirements it imposes. A disposition program which provides for repairs to be performed by the purchaser or other conditions of sale may not be approved by HUD unless it provides for rescission of the sale or reconveyance of the project to HUD if the repairs, which are a requirement of the sale, are not carried out in a timely manner. The right of rescission or reconveyance shall expire six months after the repairs have been inspected and accepted by HUD as being completed. In the event the purchaser fails to complete required repairs within the time established by HUD, if there is a lender involved, the lender will be provided a reasonable time to complete the repairs;

(2) HUD may require the inclusion of appropriate covenants running with the land in the instrument effecting or recording the transfer of a multifamily project if HUD considers it necessary or appropriate in order to ensure compliance with the obligations imposed under the disposition.

(h) *Minimum purchaser qualifications.* (1) Each purchaser of a project that HUD requires to be continued in use as a rental housing project must be determined by HUD to be capable of satisfying the conditions of the disposition; implementing a sound financial and physical management program; responding to the needs of the tenants and working cooperatively with resident organizations; providing adequate organizational, staff, and financial resources to the project; and meeting any other requirements as HUD may determine; and

(2) In the disposition of all HUD-owned projects and as long as any HUD assistance under the terms of the property disposition remains in effect, any purchaser, except a Federal, State, or local government agency, must be approved by HUD under the Previous Participation Review and Clearance procedures in 24 CFR part 200, subpart H.

§ 290.107 Analysis, recommendation, and determination for foreclosure sales and sales of HUD-owned projects.

(a) *Analysis and recommendation.* HUD shall analyze each project being foreclosed or sold (if HUD-owned) as required by § 290.103 of this part, and subsequently prepare a recommendation, which includes, but is not necessarily limited to:

(1) The use and any restrictions, including occupancy or rent restrictions, needed to maintain that use;

(2) The type, amount, term, and source of any subsidy or financial assistance;

(3) The method to be used to obtain a purchaser;

(4) The extent and estimated cost of repairs to be completed by the purchaser, HUD, or both;

(5) If applicable, the number of tenants that would be temporarily relocated or displaced as a result of the recommended disposition, and if applicable, a description of the temporary relocation or displacement assistance to be provided and its estimated cost;

(6) The minimum sales price; and

(7) The type, amount, and terms of any financing to be provided or insured.

(b) *Final foreclosure package and disposition program.* After completing the analysis and preparing a recommendation under § 290.107(a), including considering any comments received in response to the notice provided tenants, HUD shall make a final determination of the terms and conditions HUD will impose on the foreclosure and future use of a rental housing project subject to a HUD-held mortgage or of the disposition program for a HUD-owned rental housing project.

(c) *Applicability of the Fair Housing Act.* HUD shall administer all aspects of the foreclosure or disposition of multifamily projects under this part in accordance with Executive Order 11063 and the Fair Housing Act (42 U.S.C. 3601–20), which Act prohibits discrimination in the sale or rental of housing and in related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status, and all regulations issued pursuant to these authorities.

§ 290.109 Right of first refusal to local government and State housing finance agency.

(a) *Notice of right to purchase.* Except in the case of a negotiated sale to a State or local government, upon approval of the disposition program for a HUD-owned rental housing project, HUD shall notify the unit of general local government in which the project is located and the State housing finance agency (or other agency or agencies designated by the Governor) of their respective right to purchase the project on the terms and conditions specified in the disposition program. The notice shall contain those terms and conditions, including the sales price, the amount of subsidy, if any, HUD proposes to provide, any use restrictions, and other applicable information.

(b) *Submission of offers.* The local government and the State housing finance agency shall have 90 days from the date of HUD's notice in which to make an offer to purchase the project. If HUD and the local government or designated State agency cannot reach agreement within 90 days after the date of HUD's notification, HUD may offer the project for sale to the general public.

(c) *HUD acceptance of offer.* HUD shall accept an offer that complies with the terms and conditions of the disposition plan. HUD may accept an offer that does not comply with the terms and conditions of the disposition plan if HUD determines that the offer will further the preservation objectives of § 290.5 by actions that include extension of the duration of low- and moderate-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low- and moderate-income persons.

(d) *Restrictions on transfer of property.* A local government or State housing finance agency that has acquired a project under a right of first refusal under this section may not transfer such project to a private entity, unless the local government or State housing finance agency solicits proposals from such entities through a public process. The solicitation of proposals shall be based upon prescribed criteria, which shall include the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to § 290.105(f).

§ 290.111 Occupancy in projects acquired from HUD.

The purchaser of any rental housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the section 8 Fair Market Rent for a comparable unit in the area, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

2. The authority citation for 24 CFR part 886 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d).

3. Section 886.301 would be revised to read as follows:

§ 886.301 Purpose.

The purpose of this subpart is to provide for the use of section 8 housing assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects (as defined in 24 CFR 290.5).

4. Section 886.302 would be amended by removing the definitions of the terms *Moderate Rehabilitation* and *Substantial Rehabilitation*, and by revising the definitions of the terms *Eligible project or project*, *Fair market rent*, and *Owner*, to read as follows:

§ 886.302 Definitions.

* * * * *

Eligible project or project. A HUD-owned multifamily rental housing project or a rental housing project subject to a HUD-held mortgage that was purchased through a foreclosure sale (see 24 CFR part 290) or HUD-owned home properties together having five or more dwelling units: (1) For which the final disposition program developed in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families, and (2) the units of which are decent, safe, and sanitary.

* * * * *

Fair market rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services required to be paid to lease a unit in the appropriate Section 8 program, not to exceed the most recently adjusted fair market rents for substantially rehabilitated units published by the Secretary in the **Federal Register** in accordance with part 888 of this chapter.

* * * * *

Owner. The purchaser, under this subpart, of a HUD-owned project, including a cooperative entity, or the purchaser through a foreclosure sale of a project that was subject to a HUD-held mortgage.

* * * * *

5. Section 886.310 would be revised to read as follows:

§ 886.310 Initial contract rents.

Initial contract rents for units in projects covered by this subpart shall be determined in accordance with 24 CFR 290.105(f)(2).

6. Section 886.318 would be amended by adding a new paragraph (d), to read as follows:

§ 886.318 Responsibilities of the owner.

* * * * *

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

Dated: July 10, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92-18667 Filed 8-5-92; 8:45 am]

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Thursday, August 6, 1992

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102d Congress, 2nd Session, 1992

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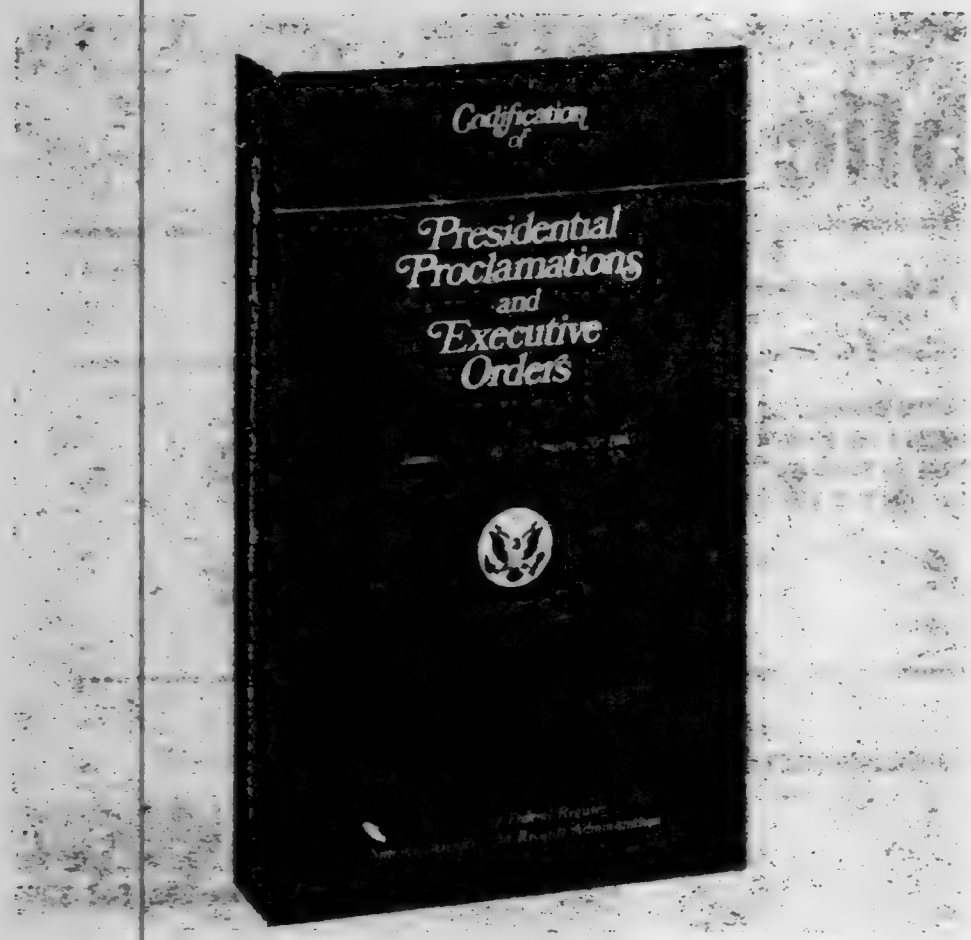

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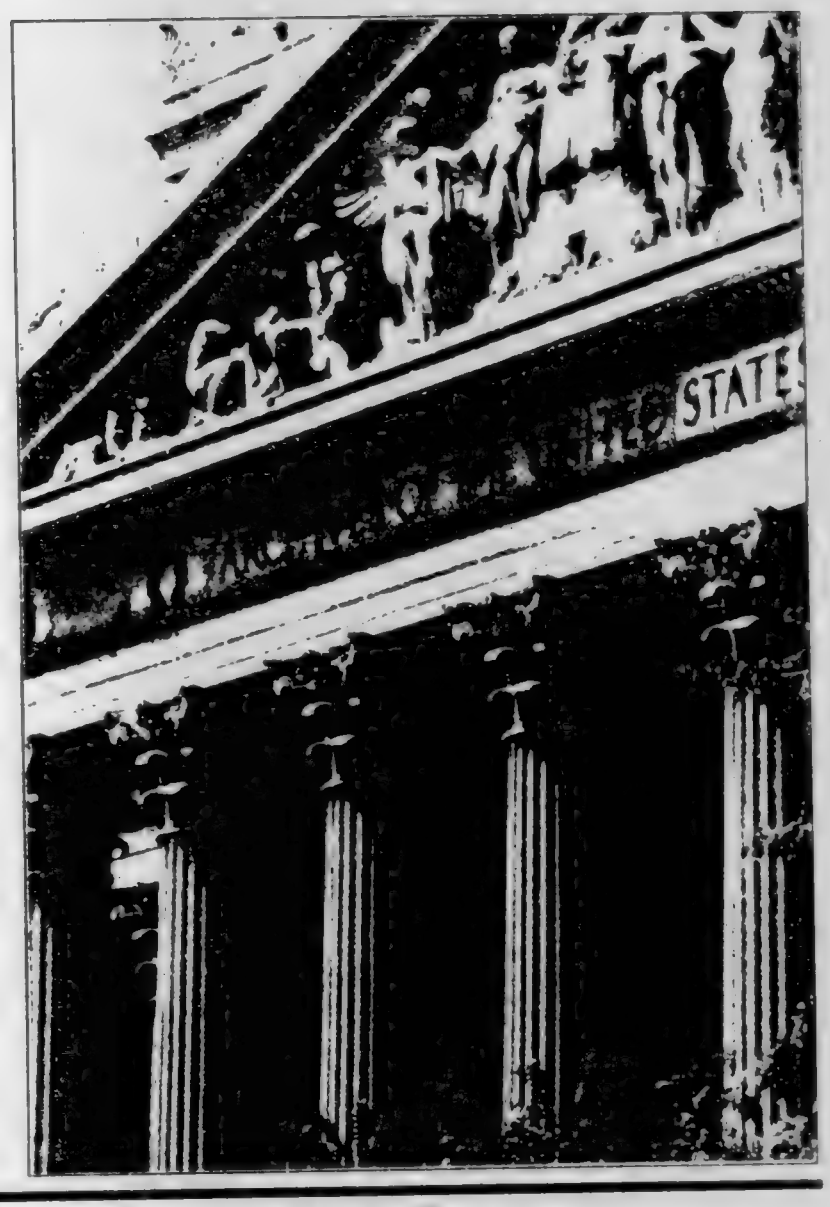

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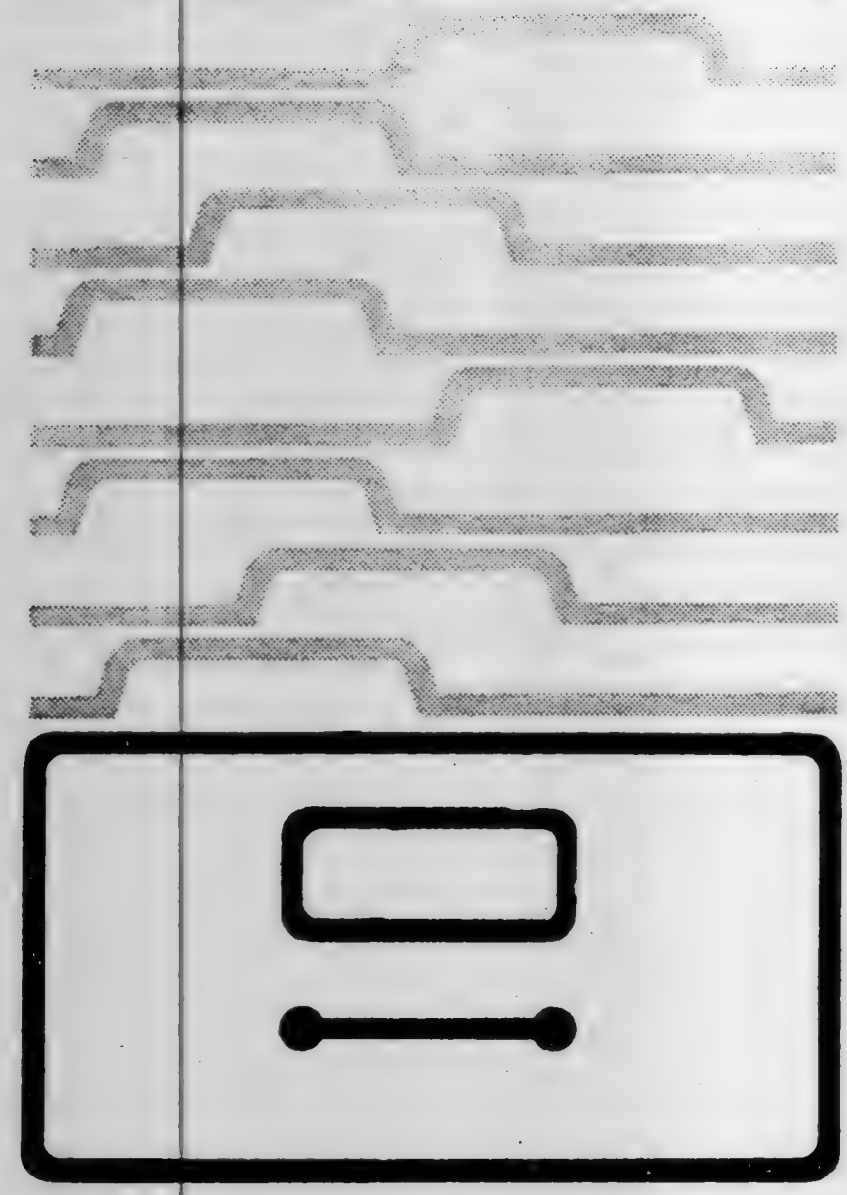

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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Pages 34851-35454

federal register

Friday
August 7, 1992

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Presidential Documents

Title 3—

The President

Executive Order 12813 of August 4, 1992

President's Commission on Management of the Agency for International Development (AID) Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), an advisory commission on the management of the Agency for International Development (AID) programs, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the "President's Commission on Management of the Agency for International Development (AID) Programs" ("Commission"). The Commission shall comprise five members from the private sector appointed by the President. The President shall designate the Chairman of the Commission from among its members.

Sec. 2. *Functions.* The Commission shall advise the Administrator of AID in the review and implementation of recommendations provided in the report to the President issued by the previous commission on management of AID programs (which was established by Public Law 101–513 and which terminated on May 16, 1992). The Commission shall also report to the Deputy Secretary of State on the progress made in implementing the recommendations.

Sec. 3. *Administration.* (a) To the extent permitted by law, the Administrator of AID shall provide funding for the Commission.

(b) Members of the Commission shall serve without any compensation for their work on the Commission. While engaged in the work of the Commission, they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) The Administrator of AID shall provide on a reimbursable basis such administrative services as the Chairman of the Commission may request and the Administrator of AID deems appropriate.

(d) To the extent permitted by law, the Chairman may, through the Administrator of AID, procure temporary and intermittent services.

Sec. 4. *General Provisions.* (a) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, that are applicable to the Commission, shall be performed by the Administrator of AID in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate not later than September 30, 1992.

George Bush

THE WHITE HOUSE,
August 4, 1992.

[FR Doc. 92–19026
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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Exemption for Commodity Pool Operators With Respect to Offerings to Qualified Eligible Participants; Exemption for Commodity Trading Advisors With Respect to Qualified Eligible Clients

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On January 28, 1992, the Commodity Futures Trading Commission ("Commission") published for comment proposed Rule 4.7 ("the proposal") [1] which would make available a simplified regulatory framework for commodity pool operators ("CPOs") privately offering commodity pools to certain highly accredited investors, termed "qualified eligible participants" ("QEPs"), and for commodity trading advisors ("CTAs") providing commodity interest trading advice to highly accredited investors, termed "qualified eligible clients" ("QECs").[2] The comment period ended March 30, 1992. The Commission has carefully considered the comments received and, based upon its review of the comments and its own reconsideration of the proposed rule, has determined to adopt Rule 4.7 in modified form, as discussed herein. Most notably, the revisions to the proposed rule extend the relief which can be claimed under Rule 4.7 to a larger group of pools and accounts by substantially reducing the investment portfolio requirement applicable to certain investors and broadening the categories of investments includable in these investors' portfolios.

The revisions also facilitate multi-jurisdictional offerings by making clear that relief will be available for offerings exempt from the registration requirements of the Securities Act of 1933 ("Securities Act") pursuant to Regulation S under that Act ("Regulation S"), and by including certain foreign persons in the QEP definition. In addition, the Commission has added a provision similar to that of Rule 508 of Regulation D under the Securities Act ("Regulation D") to make explicit that good faith administrative errors in complying with Rule 4.7 will not necessarily result in the loss of the exemption. Finally, in view of certain comments received on proposed Rule 4.7, the Commission is adopting new Rule 4.8 permitting CPOs of certain pools offered or sold in offerings exempt from the registration requirements of the Securities Act pursuant to Rule 505 or 506 of Regulation D, promulgated by the Securities and Exchange Commission ("SEC"), to receive funds from prospective participants in such pools upon filing with the Commission and providing to such pools' prospective participants the Disclosure Document for such pools. Rule 4.8 thus eliminates the current twenty-one-day waiting period for such offerings.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Chief Counsel, or France M.T. Maca, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Rule 4.7

Section 4m(1) of the Commodity Exchange Act (the "Act"), as amended, requires each person who comes within the definition of the term "commodity pool operator" in section 2(a)(1)(A) of the Act [3] to register with the Commission as a CPO or to satisfy the requirements for an exemption from such registration. In addition, each person who comes within the definition of "commodity trading advisor" in section 2(a)(1)(A) of the Act [4] is required to register as such with the Commission or to satisfy the requirements for an exemption from such registration. CPOs and CTAs registered and required to register are subject to, among other things, the requirements contained in Part 4 of the Commission's regulations. These include requirements as to disclosure and recordkeeping for CPOs and CTAs (Rules 4.21 and 4.23 and Rules 4.31 and 4.32, respectively) and reporting requirements for CPOs (Rule 4.22).

The Disclosure Document for commodity pools [5] must contain certain specified information including business and disciplinary information with respect to the CPO and CTA(s), and each principal thereof; the pool's investment objectives and its past performance record; conflicts of interest with respect to the pool; a Risk Disclosure Statement; and other prescribed information. CTAs are also

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[1] 57 FR 3148.

[2] Advisory No. 21–92, published April 27, 1992, gives notice that, subject to certain conditions necessitated by the status of this rulemaking, the Division of Trading and Markets would extend relief as provided in proposed Rule 4.7 pending final action thereon to each CTA and CPO who files a notice of claim for interim relief containing the representations required in proposed Rule 4.7. CPOs and CTAs who have claimed such relief must file the notice of claim required under Rule 4.7 as adopted within 30 days following the effective date of Rule 4.7. Relief thus claimed will supersede the relief granted under the Advisory.

[3] Section 2(a)(1)(A) of the Act, 7 U.S.C. 2 (1988), defines a "commodity pool operator" as any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

Rule 4.13 provides an exemption from CPO registration for the operators of essentially family, club or small pools. See 44 FR 1918 at 1919 (Jan. 8, 1979). Commission rules referred to herein are found at 17 CFR Ch. I (1992).

[4] Section 2(a)(1)(A) of the Act defines a "commodity trading advisor" as any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, or who, for compensation or profit, and as a part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing.

Section 4m(1) of the Act, 7 U.S.C. 6m(1) (1988), and Rule 4.14 provide an exemption from CTA registration for certain persons as specified therein.

[5] Rule 4.21.

required to deliver a Disclosure Document prior to or at the time of solicitation or entering into an agreement to direct or guide the commodity interest account of a prospective client.[6] In addition, CPOs are required to distribute to each participant periodic financial reports and a certified annual report,[7] and CPOs and CTAs are required to maintain and make available for inspection specified books and records.[8]

Proposed Rule 4.7 was developed as part of the Commission's ongoing program for review of its rules and in furtherance of its objectives of reducing unnecessary regulatory burdens and coordinating its rules with those of other regulators while maintaining effective customer protection.[9] The Commission received twenty-eight comment letters on the proposed rulemaking. The commenters included persons registered as CPOs and CTAs, government agencies, trade associations and law firms representing Commission registrants, bar associations, banks, one commodity exchange and one self-regulatory organization. All commenters strongly supported this rulemaking but in general advocated changes to the proposed rule such that the relief provided would have broader availability.

The Commission believes that Rules 4.7 and 4.8, as adopted, are not only responsive to the concerns of the commenters but also meet the regulatory objectives of this rulemaking. As adopted and subject to the terms and conditions stated therein, Rule 4.7 provides an exemption from certain disclosure, reporting and recordkeeping requirements for registered CPOs in connection with the offering and operation of commodity pools offered and sold exclusively to QEPs in offerings which qualify for exemption from registration under section 4(2) or Regulation S of the Securities Act. The exemption provides relief from all of the specific disclosures required by Rule 4.21 and streamlines relevant reporting and recordkeeping requirements.

CPOs offering pools for which they have claimed Rule 4.7 relief ("exempt pools") would remain subject to all other applicable requirements of the Act and the Commission's regulations thereunder. For example, they remain subject to the antifraud provisions of sections 4b and 4*o* of the Act, 7 U.S.C. 6b and 6*o* (1988),[10] the prohibited activities and advertising provisions applicable to CPOs in Rules 4.20[11] and 4.41,[12] respectively, the reporting requirements for traders set forth in parts 15, 18, and 19 of the Commission's regulations and other relevant regulations. Moreover, any representations made in connection with the sale of participations in exempt pools are required to include all disclosures necessary to make such representations, in the context in which they are made, not misleading. Rule 4.7 provides similar relief from the specific disclosure and recordkeeping requirements of Rules 4.31 and 4.32 to the CTAs of QECs.

The following discussion focuses principally on the changes or clarifications to the Proposal made in the final rule. Additional background on these final rules may be found in the Federal Register release setting forth the Proposal.

II. Discussion

A. Definitions

The Proposal contained a single definition of the term "qualified eligible participant" to designate the participants which would qualify to invest in an exempt pool and the types of clients of a CTA for whose accounts the CTA could claim an exemption under Rule 4.7. The rule as adopted contains separate definitions to better distinguish qualified offerings and qualified accounts. A "qualified eligible participant" is defined in paragraph (a)(1)(ii) as one which may participate in an exempt pool and a "qualified eligible client" is defined in paragraph (b)(1)(ii) as one whose account ("exempt account") may be traded by a CTA pursuant to a Rule 4.7 exemption. This change enables the Commission to better apply its qualifying criteria to the different situations of commodity pools and managed accounts as relevant to Rule 4.7 and provides greater ease of reference. As stated in the Proposal, the Commission intended to define QEP status by means of "objective criteria that such persons possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals, or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investments." [13]

1. Investment Professional Category

Numerous commenters suggested that the professional investor category was too narrow in regard to commodity professionals. Paragraph (a)(1)(ii)(A) of the rule, as adopted, sets forth categories of investment professionals defined in QEPs. The Commission has modified the definition of qualifying CPOs and CTAs to reduce to $5,000,000 from $10,000,000 the minimum assets of pools operated by CPOs and of accounts

[6] Rule 4.31. The Disclosure Document for CTAs must contain, among other matters, the name and business background of the CTA and each principal thereof; a description of the trading program; the types of commodity interests the CTA intends to trade; the performance record of the CTA and its principals; a description of any conflict of interest regarding the trading program; disclosure with respect to material actions against the CTA, the FCM or their principals; and a Risk Disclosure Statement.

[7] Rule 4.22.

[8] Rules 4.23 and 4.32, respectively. A CPOs records must include: (1) internal trading and operational reports, general accounting and financial records with respect to the pool and the CPO's and its principals' own accounts; and (2) participant information, confirmations from carrying FCMs, sales literature and the signed statements of prospective participants acknowledging receipt of the Disclosure Document with respect to the pool. (Rule 4.23). A CTA must maintain records similar to those required for a CPO with respect to its clients, its trading program and its own account. (Rule 4.32).

[9] Rule 4.7 constitutes the first phase of a broader review of Part 4, which will also include consideration of the appropriateness of permitting the use of a two-part Disclosure Document. The first part, a summary Disclosure Document, provided to all prospective pool participants, would contain the information necessary for prospective participants to decide whether to participate in the pool; the second part, which would be made available upon request, would contain additional and more detailed information of interest to some investors. The Commission will address this issue in a separate release. In the interim, in Advisory No. 27–92 dated June 3, 1992, the Division of Trading and Markets gave notice that it has no objection to the use of a two-part Disclosure Document format if, among other things, both parts of the document are delivered at the same time and the first part contains all of the disclosures required by Rule 4.21 except for the disclosures required by Rule 4.21(a)(5) with respect to the performance record of the pool's CTA(s), which must be included in the second part.

[10] Generally, Section 4b of the Act prohibits fraud in connection with the offer or sale of a commodity for future delivery. Section 4*o* of the Act prohibits CPOs, CTAs and their associated persons from employing any device, scheme, or artifice to defraud a pool participant or prospective pool participant or from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon such participant. In addition, CPOs, CTAs and their associated persons are precluded from representing or implying that they have been sponsored, recommended or approved by the United States or by any agency or officer thereof.

[11] Pursuant to Rule 4.20, a CPO is required to "operate its pool as an entity cognizable as a legal entity separate from that of the pool operator" and is prohibited from commingling the property of a pool it operates with the property of any other person.

[12] Rule 4.41 prohibits the use of any deceptive or fraudulent advertising and prescribes a specific statement that must accompany any simulated or hypothetical performance information.

[13] 57 FR 3148 at 3151.

managed by CTAs necessary for such CPOs and CTAs to be QEPs.[14] Separately, the Commission has expanded the categories of qualifying CPOs and CTAs to include CPOs and CTAs registered and active as such for two years. The requirement that such registrants have been active for at least two years will be satisfied if they have actively operated a pool or directed a client account at all times during the past two years. The Commission has also expanded the definition of QEP to include the CTA of the exempt pool it advises. Since CTAs as well as CPOs may take an interest in a pool being offered, absent adjustment of the definition, this may result in the pool losing its qualified status as a CTA client by virtue of such participation. The inclusion of this provision avoids the discrepancy that would otherwise exist.

2. Persons Subject to the "Portfolio Requirement"

The second category of QEPs is comprised of persons who the commodity pool operator reasonably believes, at the time of a sale to that person of a pool participation in the exempt pool, meet a portfolio requirement and who come within specified categories of "accredited investors" as defined in Rule 501 of Regulation D.[15] As proposed, the portfolio requirement had two components: (1) $5,000,000 in securities or (2) $1,000,000 deposited as initial margin and options premiums with a futures commission merchant ("FCM") for commodity interest trading.[16] Most commenters objected to the size and restricted nature of the required portfolio as unduly limiting measures of sophistication. Commenters suggested a wide array of changes to that provision, including eliminating any portfolio requirement and using only the criteria set forth for "accredited investors" in Rule 501 of Regulation D, establishing alternative tests, reducing the portfolio size and expanding the range of investments included in the portfolio.

The Commission believes that investors who will not receive the specific disclosures required by Rule 4.21 should satisfy objective criteria that indicate a relatively high degree of investment acumen and resources. Therefore, the Commission has determined to maintain a portfolio requirement. However, upon further consideration, the Commission has determined to modify the portfolio requirement to broaden the availability of the relief granted by the rule and to introduce greater flexibility into the rule by recognizing an alternative to the portfolio requirement. In particular, the Commission has determined to reduce the proposed portfolio requirement to $2 million in securities (including pool participations) and to permit investments other than securities to be included in the first component of the portfolio calculation. Accordingly, the portfolio calculation may include property, other than securities, held for investment purposes. Thus, for example, a checking account or a vacation home would not qualify as portfolio assets, but the fair market value of assets such as interests in a real estate investment partnership and real property owned for investment purposes would be includable. In addition, the alternative futures margin and option portfolio requirement will be satisfied if a participant had, at any time during the six-month period preceding the sale of an exempt pool participation to the participant, at least $200,000 in exchange-specified initial futures margin and commodity option premiums on deposit with an FCM.[17] With respect to granted options, the value of the option premium paid by the purchaser may be included in the second component of the portfolio.

As discussed in the Proposal, the portfolio requirement may be met with a combination of (1) securities and other investments and (2) commodity interests, provided that the amounts of securities and other investments held, together with futures margin and option premiums deposited, expressed as a percentage of the minimum amounts required for each component, equal at least one hundred percent. For example, to be a QEP, a person listed in Rule 4.7(a)(1)(ii)(B) with a mixed portfolio who owned and invested $500,000 in securities and other investments, which is 25% of the required securities and other investments amount, would have to have deposited at least 75%—$150,000—of the futures margin and option premiums required to meet the total portfolio requirement. Of course, securities deposited as margin or option premiums with an FCM for commodity interest trading and counted in the margin and option premium component of a mixed portfolio could not also be counted in the securities and other investments component of the portfolio.[18]

In addition, in order to facilitate the concurrent use of an exemption from registration under the Securities Act pursuant to section 4(2) of that Act and of the Rule 4.7 exemption, the Commission has conformed the level of total assets required for corporations, trusts and other business enterprises to those for accredited investors in Regulation D, thus completely harmonizing this requirement with that of the Securities and Exchange Commission. Based on the comments received, the Commission determined that applying the portfolio test to these entities was sufficient additional measure of sophistication without altering the asset test developed and tested over time under the securities laws. Under Rule 4.7, as thus modified, registered investment companies and business development companies have no net worth requirement, and corporations, partnerships and pools have a required net worth of $5,000,000. The required net worth for insurance company separate accounts and bank collective trusts was likewise reduced to $5,000,000 from $10,000,000.

In the Proposal, the Commission requested comment as to whether the inclusion of business development companies and exclusion of small business investment companies in the definition of QEP was appropriate notwithstanding that both types of entities constitute "accredited investors" under Regulation D. The only commenter who addressed this question agreed that small business investment companies should remain outside the QEP definition. Accordingly, no other change was made to the QEP definition with respect to these entities.

As provided in the Proposal, the participation of a pool, trust, insurance company separate account or bank collective trust in an exempt pool must

[14] This modification is consistent with a decrease in the required asset levels for corporations, trusts and other business enterprises discussed *infra*.

[15] As noted in the Proposal, the portfolio must be a *bona fide* portfolio of a size customary for the participant. A portfolio created specifically to obtain QEP status would not comply with the intent of Rule 4.7. In addition, the CPO's belief, at the time of a sale to that person of a pool participation in the exempt pool, that the participant meets the requirements for QEP must be reasonable and in good faith.

[16] This requirement could be met with a portfolio containing a combination of securities and commodity interests.

[17] Account equity in excess of the minimum necessary for margin or option premiums is not includable because it has no necessary correlation with actual commodity interest transactions.

[18] For example, the Chicago Mercantile Exchange ("CME") currently permits its clearing members to accept certain equity securities as margin from their customers (CME Rule 827.B). Equity (or other) securities posted with an FCM to margin a futures position could be calculated as part of the securities and other investments component of the portfolio or of the futures margin component, but could not be counted twice.

be directed by a QEP. In addition, unless all equity owners of such entities are QEPs, no more than ten percent of the fair market value of their assets can be used to purchase participations in an exempt pool. This limitation is imposed because participants in such entities may not be QEPs and thus could not invest in an exempt pool based on their own financial qualifications and investment sophistication.

The Commission has made a number of conforming changes to the QEC definition (Rule 4.7(b)(1)(ii)). In addition, the Commission has deleted pools, other than exempt pools, from the QEC definition to ensure that pools generally, that is pools whose participants are not all QEPs, continue to receive a Disclosure Document from their CTAs as well as their CPOs. Consistent with this change, the rule, as adopted, requires unit owners or participants, other than the CTA claiming relief, of certain other pooled investment vehicles listed in paragraph (b)(1)(ii)(B) (*i.e.*, trusts, insurance company separate accounts and bank collective trusts) to be QECs. The QEC definition has also been modified to include as a QEC an entity as to which relief has been claimed and which is operated pursuant to Rule 4.5, which makes available an exclusion from the definition of the term "commodity pool operator" for certain otherwise regulated persons such as registered investment companies, bank collective trusts and insurance company separate accounts, that are operated in accordance with specified criteria. In addition, Paragraph (b)(1)(ii)(D), which includes within the QEC definition an entity in which all participants are QECs, has been modified to allow CTA investments in the entity without disqualifying it as a QEC.

3. Foreign Persons

A number of commenters suggested that the Commission broaden the availability of the Rule 4.7 relief to facilitate multijurisdictional offerings consistent with existing securities law by according QEP status to foreign participants. In particular, several commenters suggested that relief be provided to CPOs and CTAs with respect to foreign entities that are comparable in legal structure and purpose to those entities described in the Proposal except that they would not be subject to regulation under United States law. Other commenters suggested including non-United States persons in the QEP definition. Based upon these comments, reconsideration of the regulatory concerns applicable in the context of foreign participants and the objective of making the Rule 4.7 exemption available to multi-jurisdictional offerings, the Commission has determined that non-United States persons may be included in an exempt offering without causing it to lose its exemption under Rule 4.7. This has been done by including such persons in the definition of QEP.

Paragraph (a)(1)(ii)(C) now includes as QEPs persons who are not United States persons and incorporates a definition of persons who are not considered to be United States persons for such purposes. This provision is adapted from the definition of "United States person" used by the Division of Trading and Markets ("Division") in exemptive letters granting relief from certain disclosure, reporting and recordkeeping requirements in connection with offshore commodity pools offered and sold to investors who are not United States persons.[19] Under that definition, as modified for purposes of Rule 4.7, natural persons who are not residents of the United States, certain passive investment entities that have less than ten percent United States ownership, estates or trusts not subject to United States income tax, pension plans for the employees, officers or principals of an entity with its principal place of business outside the United States, and other entities organized under the laws of and with their principal place of business in a foreign jurisdiction are QEPs. This definition of "United States person" as set forth in Paragraph (a)(1)(ii)(C) is adopted solely for purposes of Rule 4.7. The Commission anticipates further review and refinement of this definition as experience with the rule is gained.[20]

United States persons that are QEPs would not be counted as United States persons for the purpose of computing the United States ownership of a passive investment entity. Thus, a passive investment entity is a QEP even if it has more than ten percent United States beneficial ownership provided that fewer than ten percent of its participants are United States persons that are not QEPs. Non-United States persons are accorded QEP status without regard to whether they would satisfy a portfolio or net worth requirement. This provision permits the CPO of a United States exempt pool to sell units of participation in the pool to non-United States persons without affecting the availability of the Rule 4.7 exemption.[21] Of course, where sales are to non-United States persons, CPOs must also take into account the laws of the jurisdiction where such persons are located.

B. Eligible Pool Offerings

As noted above, several commenters discussed the application of Rule 4.7 to foreign and cross-border offerings. In addition to the inclusion of non-United States persons in the QEP definition, discussed above, one commenter suggested that the Commission extend relief under Rule 4.7 to CPOs of pools offered and sold in an offering exempt from registration under the Securities Act pursuant to Regulation S under such Act.[22] The commenter noted that, were Rule 4.7 adopted as proposed, a CPO would be exempted from most regulatory requirements with respect to a pool sold wholly to United States investors that are QEPs and, provided it had obtained exemptive relief, with respect to a second pool that is offshore and sold wholly to non-United States investors,[23] but would be subject to the full Part 4 requirements with respect to a third pool sold both to the identical United States QEPs, in a section 4(2) offering, and to non-United States investors, in a Regulation S offering. The Commission agrees that such a result was not intended and has modified Rule 4.7 accordingly. In addition to the expansion of QEP status to non-United States persons, the Commission has modified the rule to extend relief to include pools offered and sold to QEPs in offerings exempt from registration under the Securities Act pursuant to Regulation S as qualifying offerings along with offerings under section 4(2) of the Securities Act. These changes should streamline the offering process for most offshore pools.

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[19] See, *e.g.*, Division of Trading and Markets Interpretative Letter No. 92-3 [Current Transfer Binder]. Comm. Fut. L. Rep. (CCH) ¶ 25,221 (Jan. 29, 1992).

[20] The scope of relief available for wholly offshore pools would not be diminished by Rule 4.7

[21] The Commission has determined at this time to not include non-United States persons as QECs. The 4.7 exemption for CTAs provides relief which would not be generally available to investment advisers under the securities laws with respect to QECs or accredited investors; thus investment advisers advising QECs would be obligated to deliver a brochure to such clients. The Commission believes that inclusion of non-United States persons as QECs without regard to other qualifying criteria should await further experience with the QEC concept.

[22] Regulation S generally provides that the registration requirements of the Securities Act do not apply to offers and sales of securities that occur outside the United States and provides two safe harbors from those requirements for specified offerings where no "directed selling efforts" are made in the United States. "Directed selling efforts" are activities undertaken for the purpose of, or that could reasonably be expected to result in, conditioning of the market in the United States for the securities being offered. See 55 FR 18306 at 18307 (May 2, 1990).

[23] See n. 19 *supra* and accompanying text.

The Commission has also determined to expand the class of eligible pool offerings to include bank collective trusts. Pursuant to Rule 4.5, a bank subject to regulation by any State or the United States may be excluded from registration as a commodity pool operator with respect to its activities in connection with "the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment authority" by filing a notice of eligibility. Rule 4.6(a)(2) excludes from the CTA definition a person who is excluded from the CPO definition under Rule 4.5. Thus, under Rule 4.5, a bank may claim exclusion from the CPO definition and, under Rule 4.6(a)(2), it may claim exclusion from the CTA definition in connection with the collective trust fund for which it has filed a Rule 4.5 notice. Certain banks, however, have registered as CPOs and upon request, the Division has granted exemptions from certain Part 4 requirements to banks that are registered as CPOs in connection with their operation of collective trust funds.[24] Consistent with these letters, the Commission has determined to extend relief under Rule 4.7, as suggested, to banks that are registered CPOs in connection with their operation of collective trust funds whose securities are exempt from registration under the Securities Act pursuant to section 3(a)(2) of that Act and are offered or sold only to QEPs. To qualify for relief under Rule 4.7, however, such offerings would be required to be conducted without marketing to the public. Interests in bank collective trusts could therefore be offered pursuant to the exemption in section 3(a)(2) of the Securities Act but would have to be offered in a manner consistent with the initial marketing limitations applicable to a private offering under section 4(2) of the Securities Act.[25]

Under the Proposal, a CTA could not claim relief from disclosure or recordkeeping with respect to a qualified eligible pool unless the CPO for such pool had claimed the corresponding relief from disclosure and recordkeeping. The Commission sought comment on whether relief should be available for the CTA of a qualifying pool without regard to whether the CPO has claimed the corresponding relief for such pool. The four commenters who addressed this issue argued that the CTA of an investment vehicle operated under Rule 4.5 should not be precluded from claiming relief under Rule 4.7 if such investment vehicle qualifies for 4.7 relief but for the fact that its operator elects to avail itself of the broader relief provided under Rule 4.5 and does not claim relief under Rule 4.7. The commenters contended that a CTA's relief under Rule 4.7 should be dependent upon whether the investment vehicle qualifies for 4.7 relief, without regard to whether the operator actually claims such relief. The Commission agrees with this view and has modified the rule to permit CTAs to claim relief under Rule 4.7 for a pool or investment vehicle account regardless of whether the pool's CPO has elected to claim the corresponding relief.

c. Relief

Few commenters addressed the substance of the relief provided under the Proposal.[26] Except as noted below, such relief is adopted substantially as proposed.

1. Relief from Disclosure

Pursuant to Rule 4.7(a)(2)(i), a registered CPO who offers or sells participations in an exempt pool may claim relief from the specific disclosure requirements of Rule 4.21 with respect to that pool by filing a notice of claim for exemption containing certain representations. Essentially, under Rule 4.7 registered CPOs operating qualifying pools and registered CTAs who anticipate providing commodity interest trading advice to qualified eligible clients (including pools) who file the requisite notice are exempted from providing the Disclosure Document otherwise required to prospective pool participants and to prospective CTA clients and from filing such document with the Commission. If an offering memorandum or a brochure is distributed to prospective participants or clients, such offering memorandum or brochure is not required to comply with the specific content requirements of Rule 4.21.[27] However, any offering memorandum or brochure distributed to prospective pool participants or CTA clients is required to include all information necessary to make such offering memorandum or brochure not misleading and to prominently display on its cover page the legend prescribed in the Rule notifying such investors that the offering memorandum was not filed with the Commission and that the Commission did not review or approve it. At the suggestion of a commenter, the Commission has revised the legend to specify that the exemption is available in connection with pools offered to QEPs or accounts of QECs. In addition, as suggested by one commenter, if no written offering memorandum is delivered, Rule 4.7, as adopted, requires setting forth the legend above the signature line of the subscription agreement signed by a prospective pool participant or of the account agreement executed by a prospective CTA client.

Rule 4.7 is premised, in part, on the belief that QEPs are able to identify and obtain the information they deem necessary to evaluate the investment offered and thus that prescriptive rules imposing specific disclosure requirements are not essential on this context. Rule 4.7 does not preclude participants in an exempt pool from obtaining the information they require or excuse CPOs or CTAs from making such information available. Thus, the Commission contemplates, for example, that a participant in an exempt pool, including another pool, will obtain information with regard to the exempt pool sufficient to evaluate the investment opportunity offered and to satisfy its own disclosure and other duties. For example, the CPO of a pool ("investor pool") that purchases an interest in an exempt pool must comply with all part 4 requirements [28] and thus make all required disclosures to its participants concerning the underlying exempt pool notwithstanding that the exempt pool is not required to provide a Disclosure Document in compliance with Rule 4.21 to the operator of the investor pool. Further, requirements under other regulatory structures may apply to investor pools or their principals and thus require the CPO of an investor pool to make disclosure to such participants. One commenter noted that the CPO of a pool ("plan") operated pursuant to the provisions of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") is

[24] See, *e.g.*, Division of Trading and Markets Interpretative Letter No. 86-12 [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,054 (May 6, 1986).

[25] See Regulation D, a safe harbor provision for section 4(2), prohibiting, in Rule 502(c), the offer or sale of securities in certain Regulation D offerings by any form of solicitation or general advertising.

[26] Two commenters urged the Commission to eliminate the requirement that CPOs and CTAs claiming relief under Rule 4.7 be registered with the Commission. The Commission believes, however, that the requirement of registration serves regulatory objectives, *e.g.*, assuring an appropriate standard of fitness for commodity professionals, that are not addressed by eligibility criteria applicable to pool participants and managed account clients.

[27] See n. 5 *supra* and accompanying text.

[28] But see CFTC Advisory 41-92 concerning relief made available by the Division of Trading and Markets with respect to CTA and invest pool disclosure.

subject to fiduciary responsibilities under ERISA including requirements to "analyze information concerning a potential investment and evaluate the investment to determine whether it is suitable for the plan," to "monitor the investment to determine whether it continues to be a prudent and suitable investment for the plan" and to avoid engaging in prohibited transactions with parties related to the plan. As noted above, the QEP definition is designed to assure that exempt offerings are made only to investors with sufficient sophistication and expertise to assess the appropriateness of the investment for their purposes and to obtain all the information they need to evaluate and monitor the contemplated investment. CTAs and CPOs should be prepared to provide information useful to such investors in evaluating their investment. Thus, the Rule 4.7 exemption, like the SEC's Regulation D exemption, should create no impediment to the discharge of fiduciary responsibilities under ERISA or any other duties under other regulatory frameworks.

As discussed in the Commission's prior release, the exemptions provided by Rule 4.7 do not affect the liabilities of CPOs or CTAs under the statutory prohibitions set forth in sections 4b and 4*o* of the Act (7 U.S.C. 6*b* and 6*o* (1988)).[29] We note that sections 4b and 4*o* of the Act require disclosure of all material information.[30]

2. Performance Disclosure

In the Proposal, the Commission requested comment as to whether Rule 4.7 should relieve CPOs and CTAs from disclosing in the Disclosure Document for non-exempt pools and clients their performance records with respect to exempt pools and exempt clients. The Proposal contemplated that if such relief were granted, the performance of exempt pools and clients could not be selectively disclosed. CPOs and CTAs who elected to disclose their performance records with respect to exempt pools and clients would be required to do so as to all of their exempt pools and clients, as prescribed by Rules 4.21 and 4.31, respectively, and to maintain the records necessary to substantiate their performance computations. In addition, CPOs and CTAs electing not to make such disclosures would be required to include in the Disclosure Documents for other pools and clients a statement indicating that they operate or have operated exempt pools or that they advise or have advised exempt clients and that their Disclosure Document does not include the performance record with respect to such exempt pools or clients.

Four commenters addressed this issue. All stated that relief from disclosure of the performance of exempt pools and clients should be available. Three of these commenters, however, contended that relief should not necessarily be on an "all or none basis." They suggested that the performance of exempt pools and clients may be material to the non-exempt pool or managed account being offered. In the view of two commenters, for example, there may be circumstances in which a CPO for which a particular CTA has directed an exempt pool may wish to retain that CTA to direct trading in a non-exempt pool. In such a case, they believed that the performance of the CTA with respect to the exempt pool may be material information and thus must be disclosed to potential participants in that public pool. These commenters suggested that the performance of other exempt pools operated by the CPO but managed by a different CTA would not be relevant and should not be required. The Commission has determined to revise the proposal to incorporate a materiality standard for disclosure of the performance of exempt pools and exempt accounts. Paragraphs (a)(2)(i)(B) and (b)(2)(i)(B) of Rule 4.7, as modified, provide an exemption from disclosure of the performance of exempt pools and exempt accounts except to the extent that such performance is material to the pool or managed account being offered. The Commission notes that where a CPO or CTA determines that such past performance is material, the required disclosure may not be made in a manner that is misleading. Disclosure of past performance that is atypical or not representative of overall performance results for comparable pools or accounts may in context be misleading. As under the Proposal, where the CPO or CTA does not disclose part performance of an exempt pool or account, the Disclosure Document must indicate that such performance record has not been included.

3. Reporting and Recordkeeping

With respect to reporting, a registered CPO who offers or sells participations in a qualified eligible pool may claim relief from the specific periodic reporting requirements of Rule 4.22(a). The CPO is required, in lieu of compliance with Rule 4.22(a), to distribute no less than quarterly to each participant in a pool for which Rule 4.7 periodic reporting relief has been claimed, an abbreviated account statement, signed and affirmed as required by paragraph Rule 4.22(h). This abbreviated account statement must indicate at a minimum the net asset value of the pool as of the end of the reporting period; the change in net asset value from the end of the last reporting period; and the net asset value per outstanding unit of participation in the pool as of the end of the reporting period. The CPO may also claim relief from the specific annual report requirements of paragraph 4.22(c) with respect to the exempt pool, provided that an abbreviated annual report is filed with the Commission and the NFA within 90 calendar days after the end of the pool's fiscal year. Such annual report must contain, at a minimum, a Statement of Financial Condition as of the close of the pool's fiscal year, a Statement of Income (Loss) for that year, appropriate footnote disclosure and other material information. These statements must be prepared according to generally accepted accounting principles but they are not required to be certified by an independent public accountant.[31] If the CPO has claimed exemption from the reporting requirements of Rule 4.22, it must make a statement to that effect on the cover page of each annual report. If the annual report is not certified by an independent public accountant, the CPO must also disclose that fact on the annual report's cover page and that a certified audit will be provided upon the request of the holders of a majority of the units of participation in the pool who are unaffiliated with the CPO.

CPOs and CTAs may also claim relief from the specific recordkeeping requirements of Rules 4.23 and 4.32, respectively. They remain required to make and keep all books and records made in the normal course of their business as CPOs or CTAs. These records would include, with respect to CPOs, the account statements and annual reports that they provide to pool participants, and, with respect to both CPOs and CTAs, records relevant to their determinations as to QEP and QEC eligibility. CPOs and CTAs remain required to make these books and

[29] This provision is consistent with the exemption from disclosure provided to certain offerings made pursuant to Regulation D and the fact that such offerings are subject to the antifraud, civil liability, and other provisions of the federal securities laws. See Rule 10b–5, 17 CFR 240.10b–5 (1992).

[30] See, *e.g.*, *Kearney* v. *Prudential-Bache Securities, Inc.*, F.Supp. 416 (S.D.N.Y. 1988); *Woods* v. *Reno Commodities, Inc.*, 600 F.Supp. 574 (D. Nev. 1984); and *Herman* v. *T&S Commodities, Inc.*, 592 F.Supp. 1406 (S.D.N.Y. 1984).

[31] Of course, if the annual report were certified by an independent public accountant, it would have to be certified in accordance with Rule 1.16.

records available to the Commission, the NFA and the U.S. Department of Justice in accordance with Rule 1.31.[32]

D. Notice of a Claim for Exemption

To claim the relief available under Rule 4.7, CPOs and CTAs are required to file a notice of claim for exemption. In the Proposal, the Commission invited comment as to whether the provision requiring the notice of claim for exemption to represent that neither the claimant nor any of its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) [33] of the Act should be maintained. The two commenters who addressed this question suggested that this requirement is unnecessary in view of the fact that CPOs and CTAs who are subject to disqualifications should not be registered as such unless the Commission or the NFA has determined that their registration poses no substantial risk to the public. One of these commenters urged that, at a minimum, the Commission should provide a mechanism whereby it could grant exceptions from the general prohibition in this regard upon a showing of good cause. The Commission agrees that a CPO or CTA subject to a statutory disqualification generally should not be registered unless the Commission or the NFA has determined that their registration poses no substantial risk to the public and has clarified the rule in this respect. Existing rules provide a mechanism for exemption from this provisions.[34]

In general, the CPO must file a notice of claim for exemption under Rule 4.7 for each pool. However, to claim exemption for single-investor pools, a CPO may file a single notice in anticipation of its operating such pools and such notice need not name each single-investor pool.[35] Similarly, a CTA may file a single notice stating that the CTA anticipates providing commodity interest trading advice to qualified eligible clients which need not be named in the notice. As proposed, the notice of a claim for exemption required by Rule 4.7 is effective upon receipt by the Commission, provided that it includes all required information, except in cases in which at the time of the Commission's receipt of the notice an enforcement proceeding brought by the Commission under the Act or the regulations thereunder is pending against the CPO or CTA. In the latter circumstances, the exemption will not become effective until twenty-one calendar days after receipt of the notice and may be denied or made subject to such conditions as the Commission may impose.

As proposed, a CPO's notice of claim for relief would have been required to be received by the Commission prior to any offer or sale of any participation in the pool for which it was filed if relief from disclosure is claimed and in other cases, before the date the pool entered into any commodity interest transaction. At the suggestion of some commenters, the Commission has added a provision to permit a CPO to claim exemption under Rule 4.7 for a pool that has commenced trading. The claim is subject to the condition that the commodity pool operator has notified the pool participants that, absent objection from the holders of a majority of pool participations who are unaffiliated with the commodity pool operator within twenty-one days of the notification, it will file a notice of claim for exemption under Rule 4.7, and such majority holders have not so objected.[36] A CPO that files a notice of claim for relief under these circumstances must either provide those participants who objected to the filing with the disclosures and reports required by Rules 4.21 and 4.22 or allow them to redeem their units of participation in the pool within three months of the date of such filing. This provision allows the CPO of a pool sold only to qualified eligible participants to change the status of the pool to that of an exempt pool, absent objection from the majority of unit holders while providing a mechanism to address concerns of the objecting minority by either continuing to provide them all information about the pool that would have been made available to them had the pool not become an exempt pool or permitting them to redeem their interests in the pool. As noted in the rule, conversion of a non-exempt pool to an exempt pool must be consistent with the obligations of the commodity pool operator and the rights of the pool participants, as codified in the agreement of limited partnership, subscription agreement, or otherwise.

E. Insignificant Deviations from a Term, Condition or Requirement of Rule 4.7

At the suggestion of certain commenters, the Commission has added a provision to make clear that an unintentional and insubstantial failure to comply with a term or condition of Rule 4.7 will not necessarily result in the loss of the exemption with respect to a particular pool or client.[37] This provision is intended to address situations where the failure does not significantly affect the particular qualified eligible participant or client. For example, a good faith typographical error in the NFA number provided by the CPO or in the identification of the pool named in the notice of claim for exemption would not invalidate such claim.

F. Rule 4.8

As noted above, several commenters advocated using the definition of accredited investor provided in SEC Regulation D of the Securities Act as the basis for Rule 4.7 CPO and CTA relief. Some commenters noted that one adverse effect of the use of a more restrictive exemption contained in Rule 4.7 than in SEC Regulation D is that Regulation D offerings may be delayed due to the requirement of Rule 4.21(g) to file the Disclosure Document for a pool no less than twenty-one calendar days prior to the date the CPO intends to deliver the Disclosure Document to a prospective participant in the pool. As stated *supra*, the Commission has declined to use the accredited investor definition as a basis for Rule 4.7. However, the Commission has determined to adopt a new rule to address the potential for delay caused by the twenty-one-day filing requirement.

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[32] Among other things, Rule 1.31 requires that books and records required by the Act and the Commission's regulations be kept for five years from the date of their making and be readily accessible during the first two years of the five-year period.

[33] Sections 8a(2) and 8a(3) of the Act authorize the Commission to, among other things, refuse to register, register conditionally or suspend or place restrictions upon the registration of persons subject to the statutory disqualifications listed in those sections. Persons subject to statutory disqualifications include persons who have had a prior registration suspended, revoked or refused, persons who are subject to an injunction from revoked or refused, persons who are subject to an injunction from involvement in, or have been convicted of a felony involving, certain investment—related statutes and regulations.

[34] A CPO or CTA subject to statutory disqualification may apply for an exemption from the statutory disqualification provision under Rule 4.12(a), which allows the Commission to exempt persons from any of the Part 4 requirements if it finds that the exemption is not contrary to the public interest or the purposes of the provision from which exemption is sought.

[35] The Commission notes that a single-investor investment vehicle, to constitute a bona fide pool, must have sufficient funds in excess of exchange minimum margin and premium requirements available to meet margin calls over a sustained period of time and must otherwise be operated such that actions of the FCM carrying the account are consistent with Rule 1.56.

[36] Similarly, paragraph (b)(2) makes it clear that CTAs must obtain consent from a QEC prior to treating that QEC's account as an exempt account under Rule 4.7.

[37] Rule 508 of the Securities Act contains a similar provision with respect to exemptions from Securities Act registration under Regulation D.

New Rule 4.8, which the Commission is adopting in conjunction with Rule 4.7, will allow the registered CPOs of pools offered or sold solely to "accredited investors", as defined in Rule 501 of Regulation D, in offerings exempt from the registration requirements of the Securities Act pursuant to Rule 505 or 506 of Regulation D to solicit, accept and receive funds for such pools upon filing with the Commission and providing to the prospective participants in such pools the Disclosure Document required under part 4. Pools operated in accordance with Rule 4.12(b) ("Rule 4.12(b) pools") [38] and offered in a Rule 505 or 506 offering are not required to be sold only to accredited investors in order for Rule 4.8 relief to be available. Several commenters urged the Commission to grant Rule 4.12(b) pools special treatment in view of their being primarily securities investment vehicles.[39] While the Commission declined to take such action, it determined to grant special consideration to Rule 4.12(b) pools by expediting their Disclosure Document filing process without regard to whether they are sold also to the limited number of non-accredited investors permitted by the SEC under Rules 505 and 506.[40] The CPOs will be able to commence the offering without waiting for the twenty-one day period and any additional period necessary to respond to staff comments to elapse. As under current practice, the Commission will review such documents on a sample basis. As the Commission does not pass on the adequacy or accuracy of Disclosure Documents,[41] whether or not they are reviewed, Rule 4.8 will not modify the CPO's duties or liabilities with respect to such documents.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. Proposed Rule 4.7 will affect registered CPOs and CTAs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[42] The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.[43] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs should be considered to be small entities and, if so, the economic impact on them of any rule.[44]

Rules 4.7 and 4.8 amend the Commission's rules currently applicable to CPOs and CTAs so as to reduce rather than increase those rule requirements. The exemptive relief provided is available, in the case of Rule 4.7, to all CPOs and CTAs, regardless of size, with respect to qualified eligible participants and clients, and, in the case of Rule 4.8 to all CPOs, regardless of size, with respect to qualifying offerings under Regulation D promulgated pursuant to the Securities Act of 1933. Rule 4.7 reduces the disclosure, reporting and recordkeeping requirements applicable to the specified offerings. Rule 4.8 eliminates the "pre-filing" requirement of Rule 4.21 with respect to qualifying offerings. The Commission believes that these rules do not have a significant economic impact on small entities. No comment was received with respect to RFA implications of Rule 4.7.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that these rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has previously submitted these rules in proposed form and their associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules on April 23, 1992. The burden associated with this entire collection, including Rules 4.7 and 4.8 is as follows:

Average Burden Hours per Response; 29.10
Number of Respondents; 2,822
Frequency of Response; On Occasion

The burden associated with these specific rules, is as follows:

Average Burden Hours per Response; .50
Number of Respondents; 125.00
Frequency of Response; On Occasion

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395-7340.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23, the Commission is amending part 4 of chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—General Provisions, Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.7 is added to read as follows:

§ 4.7 Exemption from Certain Part 4 Requirements With Respect to Pools Whose Participants Are Limited to Qualified Eligible Participants and With Respect to Commodity Trading Advisors' Accounts for Clients That Are Qualified Eligible Clients.

(a) *Relief for commodity pool operators*—

(1) *Definitions.* For the purposes of this section:

(i) An *exempt pool* means a pool that is operated pursuant to an effective claim for exemption under § 4.7.

(ii) The term *qualified eligible participant* means:

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[38] Rule 4.12(b) provides relief from certain Part 4 requirements for the registered CPOs of certain securities investment trading vehicles which, among other things, commit no more than ten percent of their assets to establish commodity interest positions and trade commodity interests in a manner incidental to their securities trading.

[39] Commenters suggested various relief for Rule 4.12(b) pools, including that rule 4.7 relief be available for them if they are offered or sold to accredited investors, rather than QEPs and that the portfolio requirement should not be applicable to them.

[40] Sales of securities under Rule 505 and 506 of the Securities Act may be made to accredited investors and to no more than thirty-five purchasers who are not accredited investors.

[41] See Rules 4.21(a)(18) and 4.31(a)(g).

[42] 47 FR 18618–18621 (April 30, 1982).

[43] 47 FR 18619–18620.

[44] 47 FR 18618, 18620 (April 30, 1982).

(A) Any person, acting for its own account or for the account of a qualified eligible participant, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, is:

(*1*) A futures commission merchant registered pursuant to section 4d of the Act;

(*2*) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;

(*3*) A registered commodity pool operator who has been registered and active as such for two years or who operates pools which, in the aggregate, have total assets in excess of $5,000,000;

(*4*) A registered commodity trading advisor who has been registered and active as such for two years or who provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more futures commission merchants; or

(*5*) The commodity pool operator and the commodity trading advisor of the exempt pool offered or sold.

(B) Any person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool:

(*1*)(*i*) Owns securities (including pool participations) of issuers not affiliated with such participant and other investments with an aggregate market value of at least $2,000,000;

(*ii*) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date of sale to that person of a pool participation in the exempt pool, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(*iii*) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(ii)(B)(*1*)(*i*) and (*ii*) of this section in which the sum of the funds or property includable under paragraph (a)(1)(ii)(B)(*1*)(*i*), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under paragraph (a)(1)(ii)(B)(*1*)(*ii*), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(ii)(B)(*1*)(*iii*) would consist of $1,000,000 in securities and other property [50% of paragraph (a)(1)(ii)(B)(*1*)(*i*)] and $100,000 in exchange-specified initial margin and option premiums [50% of paragraph (a)(1)(ii)(B)(*1*)(*ii*)];

(*2*) and is:

(*i*) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of investing in the exempt pool;

(*ii*) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(*iii*) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(*iv*) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(*v*) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, *Provided*, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible participants;

(*vi*) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(*vii*) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of $5,000,000;

(*viii*) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of participating in the exempt pool;

(*ix*) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase in the exempt pool exceeds $1,000,000;

(*x*) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(*xi*) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of participating in the exempt pool, and whose participation in the exempt pool is directed by a qualified eligible participant; *Provided*, That except where the pool, trust, insurance company separate account or bank collective trust would constitute a qualified eligible participant under paragraph (a)(1)(ii)(D) of this section, no more than 10 percent of the fair market value of the assets of such entity are used to purchase units in exempt pools; or

(*xii*) Except as provided for the governmental entities referenced in paragraph (a)(1)(ii)(B)(*2*)(*iv*) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing;

(C) A person that is not a United States person for purposes of this Rule 4.7. For the purposes of this paragraph, the term "United States" means the United States, its states, territories or possessions, or an enclave of the United States government, its agencies or instrumentalities, and the following persons are not considered to be "United States persons":

(*1*) A natural person who is not a resident of the United States;

(*2*) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal places of business in a foreign jurisdiction;

(*3*) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(*4*) An entity organized principally for passive investment such as a pool, investment company or other similar entity *Provided*, That units of participation in the entity held by United States persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by United States persons in a pool with respect to which the operator is exempt from certain requirements of part 4 of the Commission's regulations by virtue of its participants being non-United States persons;

(*5*) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States; and

(D) An entity in which all of the unit owners or participants are persons listed in paragraphs (a)(1)(ii)(A) or (a)(1)(ii)(B) of this section.

(2) *Relief.* Subject to the conditions specified in paragraph (a)(3) of this section, any registered commodity pool operator who offers or sells participations in a pool solely to qualified eligible participants in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act or pursuant to Regulation S, 17 CFR 230.901 *et. seq.*, and any bank registered as a commodity pool operator in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to qualified eligible participants, may claim any or all of the following relief with respect to such pool by filing the notice required by paragraph (a)(3) of this section.

(i) *Disclosure.* (A) Exemption from the specific requirements of § 4.21 with respect to each exempt pool; *Provided,* That if an offering memorandum is distributed in connection with soliciting prospective participants in the exempt pool, such offering memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently disclosed on the cover page of the offering memorandum, or, if none is provided, immediately above the signature line on the subscription agreement or other document that the prospective participant must execute to become a participant in the pool: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH POOLS WHOSE PARTICIPANTS ARE LIMITED TO QUALIFIED ELIGIBLE PARTICIPANTS, AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR ANY OFFERING MEMORANDUM FOR THIS POOL".

(B) Exemption from disclosing the past performance of exempt pools in the Disclosure Document of non-exempt pools except to the extent that such past performance is material to the non-exempt pool being offered; *Provided, however,* That a pool operator that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document of non-exempt pools shall state in a footnote to the performance disclosure therein that the operator is operating or has operated exempt pools whose performance is not disclosed in this Disclosure Document.

(ii) *Periodic reporting.* Exemption from the specific requirements of § 4.22(a) and (b); *Provided,* That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(A) The net asset value of the exempt pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(iii) *Annual report.* (A) Exemption from the specific requirements of §§ 4.22(c) and (d); *Provided,* That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those section, an annual report for the exempt pool, signed and affirmed in accordance with § 4.22(h) which contains, at a minimum:

(*1*) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(*2*) A Statement of Income (Loss) for that year; and

(*3*) Appropriate footnote disclosure and any other material information.

(B) Such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(C) *Legend.* (*1*) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

(*2*) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report and state that a certified audit will be provided upon the request of the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator.

(iv) *Recordkeeping.* Exemption from the specific requirements of § 4.23; *Provided,* That the commodity pool operator must maintain the reports referred to in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible participants and substantiating any performance representations) at his main business address and must make such reports and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(3) *Notice of claim for exemption.* (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator identification number of the person claiming the exemption;

(C) Provide the name(s) of the pool(s) for which the request is made; *Provided,* That a single notice representing that the commodity pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(D) Contain representations that (*1*) neither the commodity pool operator nor any of his principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph; (*2*) the commodity pool operator will comply with the applicable requirements of § 4.7; and (*3*) the exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(E) Specify the relief claimed under this § 4.7;

(F) State the closing date of the offering or that the offering will be continuous.

(G) Be signed by the pool operator, as follows:

If the pool operator is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(H) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(I)(*1*) Except as provided in paragraph (a)(3)(i)(C) of this section with respect to single-investor pools and in paragraph (a)(3)(i)(I)(*2*) of this section, be received by the Commission (*i*) before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (a)(2) (ii), (iii) and (iv) of this section; or (*ii*) prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under § 4.7(a)(2)(i).

(2) Where participations in a pool have been offered or sold in full compliance with Part 4, the notice of a claim for exemption may be filed with the Commission at any time, *Provided*, That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under Rule 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (a)(3)(i)(I)(*2*) shall either provide disclosure and reporting in accordance with the requirements of Part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(ii) The notice will be effective upon receipt by the Commission with respect to each pool for which it was made, *Provided*, That any notice which does not include all the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective with respect to a particular pool upon any change which would cause the commodity pool operator for the pool to be ineligible for the relief claimed with respect to such pool. The commodity pool operator must promptly file a notice advising the Commission of such change.

(4) Any exemption from the requirements of §§ 4.21, 4.22 or 4.23 of this part with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of part 4, the Act and the Commission's rules and regulations, with respect to the pool and with respect to any other pool such pool operator operates or intends to operate.

(b) *Relief for commodity trading advisors*—(1) *Definitions.* For the purposes of this section:

(i) An *exempt account* means the account of a qualified eligible client that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under § 4.7.

(ii) The term *qualified eligible client* means:

(A) Any person acting, for its own account or for the account of a qualified eligible client, who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor, is a person described in paragraphs (a)(1)(ii)(A) (*1*) through (*4*) above;

(B) Any person who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor;

(*1*)(*i*) Owns securities (including pool participations) of issuers not affiliated with such client and other investments with an aggregate market value of at least $2,000,000;

(*ii*) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date that person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(*iii*) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (b)(1)(ii)(B)(*1*) (*i*) and (*ii*) of this section in which the sum of the funds or property includable under paragraph (b)(1)(ii)(B)(*1*)(*i*), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable in paragraph (b)(1)(ii)(B)(*1*)(*ii*), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (b)(1)(ii)(B)(*1*)(*iii*) would consist of $1,000,000 in securities and other property (50% of paragraph (b)(1)(ii)(B)(*1*)(*i*)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (b)(1)(ii)(B)(*1*)(*ii*)):

(*2*) and is:

(*i*) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(*ii*) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(*iii*) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(*iv*) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(*v*) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, *Provided*, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible clients;

(*vi*) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(*vii*) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of $5,000,000;

(*viii*) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(*ix*) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time that person opens an exempt account exceeds $1,000,000;

(*x*) A natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has reasonable expectation of reaching the same income level in the current year;

(*xi*) A trust, insurance company separate account or bank collective trust, with total assets in excess of $500,000,000, not formed for the specific purpose of opening an exempt account with the commodity trading advisor, whose investment in the exempt account is directed by a qualified eligible client or participant and in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants;

(*xii*) Except as otherwise provided in paragraph (b)(1)(ii)(B)(*2*)(*iv*) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing;

(C) An exempt pool as defined in paragraph (a)(1)(i) of this section;

(D) An entity in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are persons listed in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(C) of this section; and

(E) Notwithstanding paragraph (b)(1)(B) of this section, an entity as to which a notice of eligibility has been filed pursuant to Rule 4.5 which is operated in accordance with such rule and in which all unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants.

(2) *Relief.* Subject to the conditions specified in paragraph (b)(3) of this section and upon filing the notice required by paragraph (b)(3) of this section, any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible clients will be exempt as follows with respect to the accounts of qualified eligible clients who have given due consent to their account being an exempt account under Rule 4.7.

(i) *Disclosure.* (a) Exemption from the specific requirements of § 4.31; *Provided,* That if the commodity trading advisor delivers a brochure or other disclosure statement to such qualified eligible clients, such brochure or statement shall include all additional disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently displayed on the cover page of the brochure or statement or, if none is provided, immediately above the signature line of the agreement that the client must execute before it opens an account with the commodity trading advisor:

"PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE CLIENTS, THIS BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OF ACCOUNT DOCUMENT".

(B) Exemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered; *Provided, however,* That a commodity trading advisor that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document for non-exempt accounts shall state in a footnote to the performance disclosure therein that the advisor is advising or has advised exempt accounts for qualified eligible clients whose performance is not disclosed in this Disclosure Document.

(ii) *Recordkeeping.* Exemption from the specific requirements of § 4.32; *Provided,* That the commodity trading advisor must maintain, at its main business office, all books and records prepared in connection with his activities as the commodity trading advisor of the qualified eligible clients (including, without limitation, records relating to the qualifications of such qualified eligible clients and substantiating any performance representations) and must make such records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(3) *Notice of claim for exemption.* (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone number and the National Futures Association commodity trading advisor identification number of the person claiming the exemption;

(C) Contain a representation that the commodity trading advisor anticipates providing commodity interest trading advice to qualified eligible clients and that it will comply with the applicable requirements of § 4.7 with respect to accounts of such clients;

(D) Contain a representation that neither the commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph;

(E) Specify the relief claimed under § 4.7;

(F) Be signed by the commodity trading advisor, as follows:

If the commodity trading advisor is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(G) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(H) Be received by the Commission before the date the commodity trading

advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible client pursuant to § 4.7.

(ii) The notice will be effective upon receipt by the Commission, *Provided*, That any notice which does not include all of the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity trading advisor to be ineligible for the relief claimed. The commodity trading advisor must promptly file a notice advising the Commission of such change.

(4) Any exemption from the requirements of § 4.31 or 4.32 made hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible client and with respect to any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(c) *Insignificant deviations from a term, condition or requirement of Rule 4.7.* (1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible participant or client; and

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular qualified eligible client of the commodity trading advisor; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (c)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

3. Section 4.8 is added to read as follows:

§ 4.8 Exemption from Certain Requirements of Rules 4.21 with Respect to Pools Offered or Sold in Certain Offerings Exempt from Registration under the Securities Act.

(a) Notwithstanding paragraph (g) of § 4.21 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to "accredited investors" as defined in 17 CFR 230.501 in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(a) Notwithstanding paragraph (g) of § 4.21 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by, § 4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(c) The relief provided under § 4.8 is not available if an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals or if the commodity pool operator or any of its principals is subject to any statutory disqualification under §§ 8a(2) or 8a(3) of the Act.

Issued in Washington, DC on August 3, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-18642 Filed 8-6-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 90F-0413]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive, prior to the sheet forming operation, to prevent scale buildup in the manufacture of paper and paperboard intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective August 7, 1992; written objections and requests for a hearing by September 8, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1990 (55 FR 52099), FDA announced that a food additive petition (FAP 1B4234) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of the ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive, prior to the sheet forming operation, to prevent scale buildup in the manufacture of paper and paperboard intended for use in contact with food.

Maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, is listed in 21 CFR 176.170(a)(5) with a Chemical Abstract Service (CAS) Reg. No. 110392-51-3. The listed number has been changed to CAS Reg. No. 113221-69-5. The attached order reflects this change in the registry number.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive itself and the starting materials used to manufacture the additive. This additive has not been found to cause cancer. However, it has been found to contain minute amounts of unreacted ethyl acrylate, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethyl acrylate, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 (the amendment) is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney clause of the amendment (section 409(c)(3)(A) of the act) (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even though minor amounts of a carcinogenic chemical, even the additive as a whole has not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, will result in levels of exposure to the additive no greater than 22 parts per billion in the daily diet.

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies, subchronic studies, and teratological studies on the additive. No adverse effects were reported in these studies.

Because ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, which contain ethyl acrylate, have not been shown to cause cancer, the Delaney clause does not apply to them.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemical, ethyl acrylate, that may be present as an impurity in the additive.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity, ethyl acrylate, has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Ethyl Acrylate

Based on the fraction of the daily diet that may be in contact with paper food-contact surfaces containing ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, and on the level of ethyl acrylate that may be present in the additive, FDA estimated the hypothetical worst-case exposure to ethyl acrylate from the petitioned use of the additive in the manufacture of paper and paperboard contacting aqueous and fatty foods to be 0.18 microgram (μg) per person per day (Ref. 3). The agency used data from the National Toxicology Program report (No. 259:1986) bioassay on ethyl acrylate to estimate the upper-bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed (Ref. 4). The results of the bioassay on ethyl acrylate demonstrated that the material was carcinogenic for rats and mice under the conditions of the study. The test material induced squamous cell neoplasms in both sexes of F344/N rats and $B6C3F_1$ mice when administered by gavage in corn oil.

FDA used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with male rats (the most sensitive animals) to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of 0.18 μg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to ethyl acrylate from the use of ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, is less than 1.4×10^{-8}, or 1.4

in 100 million (Ref. 5). Because of the numerous conservatisms in the exposure estimate, actual lifetime averaged individual exposure to ethyl acrylate is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to ethyl acrylate that might result from the proposed use of ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of ethyl acrylate impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which ethyl acrylate may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 1.4 in 100 million.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed uses for the additive in paper and paperboard products in contact with aqueous and fatty foods are safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect and therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M. "Carcinogen Testing Program," in *Food Safety: Where Are We?* Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J.K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum from the Food and Color Additives Review Section to Indirect Additives Branch, concerning "FAP 1B4234—Ciba-Geigy Corp.—exposure to the additive and its components," dated February 25, 1991.

4. "Carcinogenesis Studies of Ethyl Acrylate (CAS Reg. No. 140–88–5) in F–344/N Rats and B6C3F$_1$ Mice" (Gavage Studies), National Toxicology Program, Technical Report Series, No. 259, December 1986.

5. Memorandum from the Quantitative Risk Assessment Committee, concerning ethyl acrylate, dated November 25, 1991.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 8, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 408, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376)

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Maleic anhydride * * *" under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

Lists of substances	Limitations
* * *	* * *
Maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed (CAS Reg. No. 113221–69–5) and/or its ammonium, potassium, and sodium salts.	For use only as a deposit control additive prior to the sheet forming operation to prevent scale buildup in the manufacture of paper and paperboard in contact with food, at a level not to exceed 0.075 percent (as the acid) by weight of the dry paper and paperboard.
* * *	* * *

* * * * *

Dated: August 1, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–18752 Filed 8–6–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-92-09]

Drawbridge Operation Regulations; Pearl River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on U.S. 90, across the Pearl River, mile 8.8, in St. Tammany Parish, Louisiana, near Pearlington, Mississippi, by requiring at least four hours advance notice for an opening of the draw from 7 p.m. to 7 a.m. The draw will continue to open on signal from 7 a.m. to 7 p.m. The present regulation requires at least four hours notice for an opening of the draw between the hours of 9 p.m. and 5 a.m.

This action will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On April 7, 1992, the Coast Guard published a proposed rule (57 FR 11702) concerning this amendment. The Commander, Eighth Coast Guard District also published the proposal as a Public Notice dated April 20, 1992. In each notice interested parties were given until May 22, 1992, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

One letter was received in response to Public Notice CGD8-5-92 issued on April 20, 1992. The National Marine Fisheries Service offered no objection to the proposed regulations. Since there were no objections to the proposed rule the Coast Guard is publishing this Final Rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11304: February 26, 1979).

The economic impact of this action is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the regulated period there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and giving the bridge owner advance notice or scheduling their arrivals to avoid the regulated period, should involve little or no additional expense to them. Since the economic impact of this action is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.488 is revised to read as follows:

§ 117.488 Pearl River.

(a) The draw of the railroad bridge, mile 1.0 near English Lookout, shall open on signal; except that, from 9 p.m. to 5 a.m. the draw shall open on signal if at least four hours notice is given.

(b) The draw of the US 90 highway bridge, mile 8.8 near Pearlington, shall open on signal; except that, from 7 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given.

Dated: July 8, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92-18791 Filed 8-6-92; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 361

[RIN 3067-AB74]

National Earthquake Hazards Reduction Assistance to State and Local Governments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule implements the State and Local Government Assistance portion of the National Earthquake Hazards Reduction Program Reauthorization Act of 1990. The rule will govern State and local government assistance programs in fiscal year 1991 and thereafter. It provides for phased State matching shares, restructures the requirements of State dedication of funds to earthquake hazard mitigation activities, and specifies other administrative requirements for participation in the program.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Earthquakes and Natural Hazards Programs Division, Office of Earthquakes and Natural Hazards, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3662.

SUPPLEMENTARY INFORMATION: Following enactment of the National Earthquake Hazards Reduction Program Reauthorization Act of 1990, Public Law 101-614, amending the Earthquake Hazards Reduction Act (the "Act"), 42 U.S.C. 7701 *et seq.*, on July 16, 1991, the Federal Emergency Management Agency (FEMA) published at 56 FR 32490 an interim rule to implement the mandates of the Act. There were no public comments submitted to be considered in the adoption of the final rule.

Section 361.4(e) of the Interim Rule addressed cost-sharing requirements for States receiving funds through Public Law 101-130, the Fiscal Year 1990 Dire Emergency Supplemental to Meet the Needs of Natural Disasters of National

Significance. This section has been removed as this was a one-time appropriation and the funds are no longer available.

The amendments to the Act make several changes to the program which have been incorporated into this regulation.

The State matching requirements now provide a three-year phase-in period before States must make a 50 percent cash contribution. A State is not required to make a matching contribution the first year of receiving Federal funds. In the second year the match requirement calls for a 25 percent in-kind contribution; and in the third year, a 35 percent in-kind contribution. For the fourth and continuing years a State must provide a 50 percent cash contribution.

In order to qualify for and to receive assistance, a State must demonstrate that the assistance will result in enhanced seismic safety in the State.

States must demonstrate that actions are being taken to ensure their ability to meet the 50 percent cash contribution commitment either on an ongoing basis or for new States by the fourth year of funding.

The Act also includes a statement requiring that States "meet such other requirements as the Director of the Agency shall prescribe" in order to qualify for assistance. The ultimate goal of this program is to assist States in mitigating against the loss of lives and property in the event of an earthquake. To facilitate this, the requirement that States dedicate 15 percent of funds to mitigation activities is restructured in this regulation. The mitigation requirement for fiscal year 1991 shall remain at 15 percent. However, at FEMA's discretion the percentage may be raised by as much as 5 percent within a one-year period. The amount of time a State has participated in the program will be considered in determining the increase. This is to encourage States to work toward expending the majority of effort, and ultimately funds, to enhance seismic safety in the State.

Additional requirements "as the Director of the Agency shall prescribe" include the prorated award of funds to States based on the amount of time remaining in the performance period after the statement of work is negotiated and approved; and the possible return of funds by the end of the third quarter if a State fails to perform in accordance with the approved statement of work.

In this program FEMA maintained a position of prohibiting States from purchasing computer equipment with Federal funds. This program experienced limited funding in the early stages. In order to achieve the maximum benefit of the funds, the emphasis was placed on projects. Experience showed that the policy of prohibiting purchase of computer equipment with Federal funds may have created some inconvenience for States in performing their activities. To alleviate this situation, FEMA is providing an exception to this for first-year States which may expend a limited amount of Federal funds on personal computer equipment as stated in § 361.7(b)(5). This exception applies only to first-year States as the previously participating States may purchase equipment with the State cash match.

Information Collection Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* OMB Control Number 3067-0170 has been assigned to the statement of work requirements for funding under FEMA's Comprehensive Cooperative Agreement (CCA).

Public reporting burden is estimated to average 26.5 hours per State to meet CCA application and quarterly reporting requirements. The burden estimate includes the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the application, statement of work, and quarterly reports. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

National Environmental Policy Act

This action is categorically excluded from the requirements of 44 CFR 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, dated February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform.

List of Subjects in 44 CFR Part 361

Grant programs, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 361 is revised to read as follows:

PART 361—NATIONAL EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subpart A—Earthquake Hazards Reduction Assistance Program

Sec.
361.1 Purpose.
361.2 Definitions
361.3 Project description.
361.4 Matching contributions.
361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.
361.6 Documentation of matching contributions.
361.7 General eligible expenditures.
361.8 Ineligible expenditures.

Subpart B—[Reserved]

Authority: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12381, 47 FR 39795, 3 CFR, 1982 Comp., p. 207.

Subpart A—Earthquake Hazards Reduction Assistance Program

§ 361.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA) and States in the administration of FEMA's earthquake hazards reduction assistance program, and establishes the criteria for cost-sharing.

§ 361.2 Definitions.

Cash Contribution means the State cash outlay (expenditure), including the outlay of money contributed to the State by other public agencies and institutions, and private organizations and individuals. All expenditures must be listed in the project's approved budget.

Certification represents the Governor's written assurance describing the steps State agencies will take toward meeting the 50 percent cash contribution required following the third year of program funding. The letter of certification is intended to assist the State maintain a commitment to and

plan for securing the future cash match with the long-range goal of developing an ongoing, rather than a short-term, State program.

Cost Sharing and *Matching* represent that portion of project costs not borne by the Federal Government.

Eligible Activities are activities for which FEMA may provide funding to States under this section. They include specific activities or projects related to earthquake hazards reduction which fall into one or more of the following categories: Preparedness and response planning; mitigation planning and implementation, including inventories preparation, seismic safety inspections of critical structures and lifelines, updating building and zoning codes and ordinances to enhance seismic safety; and public awareness and education. The activities that will actually be funded shall be determined through individual negotiations between FEMA and the States (see criteria in § 361.3(3)).

In-kind contributions represent the value of non-cash contributions provided by the States and other non-Federal parties. In-kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services directly benefiting and specifically identifiable to the States' earthquake hazards reduction projects.

Project means the complete set of approved earthquake hazards reduction activities undertaken by a State, or other jurisdiction, on a cost-shared basis with FEMA in a given Federal fiscal year.

Project Period is the duration of time over which an earthquake hazards reduction project is implemented.

State refers to the States of the United States of America, individually or collectively, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Mariana Islands, and any other territory or possession of the United States. It also means local units of government or substate areas that include a number of local government jurisdictions.

State Assistance means the funding provided under this subpart by FEMA through the National Earthquake Hazards Reduction Program (NEHRP) to States to develop State programs specifically related to earthquake hazards reduction. The term also includes assistance to local units of government or substate areas, such as a group of several counties.

Target Allocation is the maximum amount of FEMA earthquake program funds presumably available to an eligible State in a fiscal year. It is based primarily upon the total amount of State assistance funds available to FEMA annually, the number of eligible States, and a nationally standardized comparison of these States' seismic hazard and population-at-risk. The target allocation is not necessarily the amount of funding that a State will actually receive from FEMA. Rather, it represents a planning basis of negotiations between the State and its FEMA Regional Office which will ultimately determine the actual amount of earthquake State assistance to be provided by FEMA.

§ 361.3 Project description.

(a) An objective of the Earthquake Hazards Reduction Act is to develop, in areas of seismic risk, improved understanding of and capability with respect to earthquake-related issues, including methods of mitigating earthquake damage, planning to prevent or minimize earthquake damage, disseminating warnings of earthquakes, organizing emergency services, and planning for post-earthquake recovery. To achieve this objective, FEMA has implemented an earthquake hazards reduction assistance program for State and local governments in seismic risk areas.

(b) This assistance program provides funding for earthquake hazards reduction activities which are eligible according to the definition in § 361.2. The categories, or program elements, listed therein comprise a comprehensive earthquake hazards reduction project for any given seismic hazard area. Key aspects of each of these elements are as follows:

(1) *Mitigation* involves developing and implementing strategies for reducing losses from earthquakes by incorporating principles of seismic safety into public and private decisions regarding the siting, design, and construction of structures (i.e., updating building and zoning codes and ordinances to enhance seismic safety), and regarding buildings' nonstructural elements, contents and furnishings. Mitigation includes preparing inventories of and conducting seismic safety inspections of critical structures and lifelines, and developing plans for identifying and retrofitting existing structures that pose threats to life or would suffer major damage in the event of a serious earthquake.

(2) *Preparedness/response planning* are closely related and usually considered as one comprehensive activity. They do differ, however, in that preparedness planning involves those efforts undertaken before an earthquake to prepare for or improve capability to respond to the event, while response planning can be defined as the planning necessary to implement an effective response once the earthquake has occurred. Preparedness/response planning usually considers functions related to the following:

(i) Rescue and fire services;
(ii) Medical services;
(iii) Damage assessments;
(iv) Communications;
(v) Security;
(vi) Restoration of lifeline and utility services;
(vii) Transportation;
(viii) Sheltering, food and water supplies;
(ix) Public health and information services;
(x) Post-disaster recovery and the return of economic stability;
(xi) Secondary impacts, such as dam failures, toxic releases, etc.; and
(xii) Organization and management.

(3) *Public awareness/earthquake education* activities are designed to increase public awareness of earthquakes and their associated risks, and to stimulate behavioral changes to foster a self-help approach to earthquake preparedness, response, and mitigation. Audiences that may be targeted for such efforts include:

(i) The general public;
(ii) School populations (administrators, teachers, students, and parents);
(iii) Special needs groups (e.g., elderly, disabled, non-English speaking);
(iv) Business and industry;
(v) Engineers, architects, builders;
(vi) The media; and
(vii) Public officials.

(4) *Other Activities* in support of those listed in § 361.3(b)(1), (b)(2), and (b)(3) may include, but are not limited to, State seismic advisory boards which provide State and local officials responsible for implementing earthquake hazards reduction projects with expert advice in a variety of fields; hazard identification which defines the potential for earthquakes and their related geological hazards in a particular area; and vulnerability assessments, also known as loss estimation studies, which provide information on the impacts and consequences of an earthquake on an area's resources, as well as opportunities for earthquake hazards mitigation.

(c) State eligibility for financial assistance to States under this section is determined by FEMA based on a combination of the following criteria:

(1) Seismic hazard, including the historic occurrence of damaging

earthquakes, as well as probable seismic activity;

(2) Total population and major urban concentrations exposed to such risk; and

(3) Other factors, the loss, damage, or disruption of which by a severe earthquake would have serious national impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

(d) Each fiscal year, FEMA will establish a target allocation of earthquake program funds for each eligible State.

(e) The specific activities, and the distribution of funds among them, that will be undertaken with this assistance will be determined during the annual Comprehensive Cooperative Agreement (CCA) negotiations between FEMA and the State, and will be based upon the following:

(1) The availability of information regarding identification of seismic hazards and vulnerability to those hazards;

(2) Earthquake hazards reduction accomplishments of the State to date;

(3) State and Federal priorities for needed earthquake hazards reduction activities; and

(4) State and local capabilities with respect to staffing, professional expertise, and funding.

(f) As a condition of receiving FEMA funding, a percentage of the amount of the total State project (FEMA State assistance, combined with the State match) must be spent for activities under the Mitigation Planning element. The percentage, to be determined by FEMA, may be increased by no more than 5 percent annually, beginning at 15 percent in fiscal year 1991 with a limit of 50 percent of the total State project. The increase will take into account the amount of time a State has been participating in the program. States may expend more than the required percentage of funding on eligible mitigation activities.

(g) The State match may be distributed among the eligible activities in any manner that is mutually agreed upon by FEMA and the State in the CCA negotiations.

(h) Negotiations between FEMA and the State regarding the scope of work and the determination of the amount of State assistance to be awarded shall consider earthquake hazards reduction activities previously accomplished by the State, as well as the quality of their performance.

§ 361.4 Matching contributions.

(a) All State assistance will be cost shared after the first year of funding. States which received a grant before October 1, 1990, which included the 50 percent non-Federal contribution to the State program, will continue to match the Federal funds on a 50 percent cash match basis.

(b) States which did not receive a grant before October 1, 1990, will assume cost sharing on a phased-in basis over a period of four years with the full cost sharing requirements being implemented in the fourth year. The sequence is as follows:

(1) For the first fiscal year, cost sharing will be voluntary. FEMA will provide State assistance without requiring a State match. Those States that are able to cost-share are encouraged to do so (on either a cash or in-kind basis).

(2) For the second fiscal year, the minimum acceptable non-Federal contribution is 25 percent of the total project cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(3) For the third fiscal year, the minimum acceptable non-Federal contribution is 35 percent of the total project cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(4) For the fourth and subsequent fiscal years, full cost sharing will be implemented, requiring a minimum of a 50 percent non-Federal contribution to a State program, with this share required to be cash. In-kind matching will no longer be acceptable. Thus, every dollar FEMA provides to a State must be matched by one dollar from the State. States that can contribute an amount greater than that required by the match are permitted and encouraged to do so. However, State assistance will not exceed the established target allocation.

(c) The State contribution need not be applied at the exact time of the obligation of the Federal funds. However, the State full matching share must be obligated by the end of the project period for which the State assistance has been made available for obligation under an approved program or budget.

(d) In the event a State interrupts its participation in this program, if it later elects to participate again, the nature and amount of that State's cost sharing shall be determined by the regulations then in effect, taking into account the number of years in which the State previously participated.

§ 361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.

(a) In order to qualify for assistance, a State must:

(1) Demonstrate that the assistance will result in enhanced seismic safety in the State;

(2) Provide a share of the costs of the activities for which assistance is being given, in accordance with § 361.4; and

(3) Demonstrate that it is taking actions to ensure its ability to meet the 50 percent cash contribution commitment either on an ongoing basis or for new States, by the fourth year of funding.

(i) The Governor of newly participating State must certify to the FEMA Regional Director the State will take steps to meet the 50 percent cash contribution requirement after the third year of funding. The specific steps to be taken will be outlined in the certification which must be submitted prior to the State receiving program funds.

(ii) The Governor must certify the State's continued commitment in the second and third years of funding. The certification will describe the progress made on the steps contained in the previous year's certification and steps to be taken in the future. The certification must be submitted to the Regional Director before the State will receive program funds.

(iii) If a State encounters difficulties meeting the 50 percent cash contribution requirement for the target allocation following the fourth year of funding, the Regional Director may require the Governor to continue certifying the State is working to resolve the difficulty.

(iv) A State will not receive Federal funds if it cannot provide the required cash contribution.

(b) The value of any resources accepted as a matching share under one Federal agreement or program cannot be counted again as a contribution under another.

(c) The State seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost-effective and efficient administration of the project, allocable solely thereto, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from the recipient State's records;

(3) Not allocable to or included as a cost of any other Federally financed program in either the current or a prior period;

(4) Authorized under State law;

(5) Consistent with any limitations or exclusions set forth in these regulations, Federal laws or other governing limitations as to types of cost items;

(6) Accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(7) Provided for in the approved budget/workplan of the State; and

(8) Consistent with OMB Circular A–87, "Cost Principles for State and Local Governments," and with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(d) A State must submit and FEMA must approve a statement of work before the State receives any grant funds. The statement of work and target allocation of funds are based on a 12-month performance period. Except under extenuating circumstances, the funds initially obligated to the State will be based on the amount of time remaining in the performance period at the time the statement of work is approved. (Approved by the Office of Management and Budget under OMB control number 3067–0170.)

(e) States are expected to perform activities and therefore expend funds on a quarterly basis in accordance with the approved statement of work. At the end of the third quarter, State and FEMA regional office staff will review the State's accomplishments to date. Funds not expended in accordance with the approved statement of work by the end of the third quarter of the performance period will not be made available to the State unless the State can demonstrate, and FEMA approves, its ability to perform activities adequately resulting in the expenditure of the funds by the end of the performance period.

§ 361.6 Documentation of matching contributions.

(a) The statement of work provided by the State to FEMA describing the specific activities comprising its earthquake hazards reduction project, including the project budget, shall reflect a level of effort commensurate with the total of the State and FEMA contributions.

(b) The basis by which the State determines the value of an in-kind match must be documented and a copy retained as part of the official record.

(c) The State shall maintain all records pertaining to matching contributions for a three-year period after the date of submission of the final financial report required by the CCA, or date of audit, whichever date comes first.

§ 361.7 General eligible expenditures.

(a) Expenditures must be for activities described in the statement of work mutually agreed to by FEMA and the State during the annual negotiation process, or for activities that the State agrees to perform as a result of subsequent modifications to that statement of work. These activities shall be consistent with the definition of eligible activities in § 361.2.

(b) The following is a list of eligible expenditures. When items do not appear on the list they will be considered on a case-by-case basis for policy determinations, based on criteria set forth in § 361.5. All costs must be reasonable, and consistent with OMB Circular A–87.

(1) Direct and indirect salaries or wages (including overtime) of employees hired specifically for carrying out earthquake hazards reduction activities are eligible when engaged in the performance of eligible work.

(2) Reasonable costs for work performed by private contractors on eligible projects contracted for by the State.

(3) Travel costs and per diem costs of State employees not to exceed the actual subsistence expense basis for the permanent or temporary activity, as determined by the State's cost principles governing travel.

(4) Non-expendable personal property, office supplies, and supplies for workshops; exhibits.

(5) A maximum of $8,000 or 10 percent of the total project allocation, whichever is less, may be expended for personal computer equipment in the first year of program funding. A full-time earthquake staff person must be employed and the equipment must be dedicated entirely to the earthquake project.

(6) Meetings and conferences, when the primary purpose is dissemination of information relating to the earthquake hazards reduction project.

(7) Training which directly benefits the conduct of earthquake hazards reduction activities.

§ 361.8 Ineligible expenditures.

(a) Expenditures for anything defined as an unallowable cost by OMB Circular A–87.

(b) Federal funds may not be used for the purchase or rental of any equipment such as radio/telephone communications equipment, warning systems, and computers and other related information processing equipment, except as stated in § 361.7(b)(5). If a State wishes to use its matching funds for this purpose, it must:

(1) Document during the annual negotiation process with FEMA how this equipment will support the earthquake hazards reduction activities in its scope of work (see § 361.7(a)); and

(2) Claim as credit for its match, if the equipment is to be used for purposes in addition to support of earthquake hazards reduction activities, only that proportion of costs directly related to its earthquake hazards reduction project.

Subpart B—[Reserved]

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–18768 Filed 8–6–92; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–347; FCC 92–328]

Processing Procedures for Commercial FM Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission liberalized its rules governing the acceptance and amendment of applications to construct commercial band FM broadcast stations. This change is possible as a result of recent changes in the quality and quantity of FM applications received, and other Commission actions that deter speculation in broadcast proceedings. The intended effect of the action is to provide applicants in the commercial FM band with a greater opportunity to correct inadvertent errors. A summary of the Notice of Proposed Rule Making initiating this proceeding may be found at 56 FR 65721 (December 18, 1991).

EFFECTIVE DATE: August 7, 1992.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Audio Services Division, Mass Media Bureau, (202) 632–6485.

SUPPLEMENTARY INFORMATION:

Report and Order

Adopted: July 16, 1992.
Released: July 27, 1992.

By the Commission:

1. By this Report and Order, the Commission modifies the strict "hard look" approach used to process applications for the construction of commercial FM radio stations. The modification will apply to applications in the commercial FM band filed on or after August 7, 1992.[1]

As the result of this modification, applicants whose filings would otherwise be dismissed for defects in essential information will have the opportunity to avoid dismissal by correcting all such defects. This more lenient approach, which received enthusiastic support from the commenters in this proceeding, is possible due to recent changes in the quality and quantity of commercial FM applications and the Commission's adoption of other measures to discourage speculation in broadcast proceedings.

Background

2. The Commission first implemented the "hard look" approach in 1985.[2] At that time, the Commission was receiving a high percentage of carelessly prepared and speculative applications and the staff's acceptance of curative amendments was causing significant delays in processing. The Commission needed to address these problems if the staff was to handle with reasonable speed a dramatic increase in the number of FM applications expected from the allotment of 689 new FM channels in Docket 80–90.[3] Accordingly, the Commission adopted the "hard look" approach, imposing a rigorous standard for acceptable applications and providing extremely limited opportunity for curative amendment of defects. Under the "hard look," an application must contain specific types of information by the close of the applicable filing periods or our staff will return it to the applicant without any opportunity for corrective amendment.

3. The "hard look" worked well to achieve its intended purposes of encouraging complete applications, reducing processing delays, and weeding out the hastily prepared applications of speculators. The "hard look" was criticized, however, for its harshness on applicants. An oversight, such as failure to check a box on the application form, could result in dismissal of an application without a chance to amend. The Commission recognized at the outset this disadvantage of the "hard look" system, but concluded that the system's benefits at the time outweighed the associated costs. See Hard Look Order, appendix D, 50 FR at 19945.

4. By late 1991, however, circumstances had changed. The volume of new FM applications received had decreased substantially and the backlog of pending applications was the lowest in almost 15 years. Application quality was greatly improved, with the Commission returning approximately 5% as defective, as opposed to 40% returned prior to the "hard look." Moreover, the Commission had, in other proceedings, addressed the problem of speculation through other more direct actions.[4] Given these changes, we concluded that it might be possible to return to a more flexible FM processing system without introducing significant processing delays or unduly burdening the staff. Accordingly, the Commission adopted a Notice of Proposed Rule Making in this proceeding, proposing more lenient standards for amendment and acceptance of defective commercial FM applications. Notice of Proposed Rule Making, Processing Procedures for Commercial FM Broadcast Applications, MM Docket No. 91–347, 6 FCC Rcd 7265 (1991) (Notice). In response to the Notice, the Commission received 11 comments and 6 reply comments from communications trade associations, legal and engineering counsel, and individual applicants. A list of parties participating in this proceeding and the acronyms we use to identify them appears in appendix A. We discuss below the commenters' views and our conclusions.

Discussion

5. All of the commenters in this proceeding support the overall objective of our proposal, agreeing that the time has come for a return to more lenient acceptance and amendment standards for commercial FM applications.[5] They say that the "hard look" made it necessary for legal and engineering counsel who prepare FM applications to add more layers of pre-filing review to avoid even the smallest mistake. See Comments of Glaser at 5. They believe that this raised the cost of applying for commercial FM stations beyond the reach of smaller applicants. *Id.* at 4–5. Commenters also maintain that more lenient processing procedures will serve the public interest by including in the comparative process all qualified applicants, especially those sincere in their desire to serve a particular community but without the expertise to detect highly technical errors. See Comments of CDE at 2; Comments of FCBA at 3–4. Finally, they point out that many "hard look" errors are easily correctable. Upon our consideration of the comments, and given that changes in the quality and quantity of commercial FM applications now make it administratively possible to accommodate some degree of error or omission in these applications, we believe that the benefits of retaining the current "hard look" system no longer

[1] Today's action will apply to non-commercial educational entities only to the extent that they apply for channels in the commercial FM band. It will not affect non-commercial educational applicants in the "reserved" (non-commercial) FM band because that band has never been subject to "hard look" requirements. Our action in this proceeding is not intended to reflect a change in our licensing policies for other services. See, e.g., Selection of Mutually Exclusive Competing Cellular Applications, CC Docket No. 83–1096, 50 FR 20760 (May 20, 1985) (cellular "letter perfect" standard).

[2] See Report and Order, MM Docket No. 84–750, 50 FR 19936 (May 13, 1985) (Hard Look Order), *recon. denied* 50 FR 43157 (October 24, 1985), *aff'd without opinion sub nom., Hilding* v. *FCC*, 835 F.2d 1435 (9th Cir. 1987). The Hard Look Order is reprinted at 58 RR 2d 776 (1985). Appendix D to the Hard Look Order, which was also issued separately as a Public Notice, is reprinted at 58 RR 2d 168 (1985).

[3] See Report and Order, BC Docket No. 80–90, 94 FCC 2d 152 (1983) implemented in First Report and Order, MM Docket No. 84–231, 50 FR 3514 (January 25, 1985).

[4] For example, the Commission limited monetary settlements, required early payment of substantial hearing fees, and required additional information related to applicants' financial qualifications. See Report and Order, Settlement Agreements, MM Docket No. 90–263, 6 FCC Rcd 85 (1990), modified in part, Memorandum Opinion and Order, MM Docket 90–263, 6 FCC Rcd 2901 (1991); Report and Order, Proposals to Reform the Commission's Comparative Hearing Process, GEN Docket No. 90–264, 6 FCC Rcd 157 (1990), recon. granted in part and denied in part, Memorandum Opinion and Order, GEN Docket No. 90–264, 56 FR 25635 (June 5, 1991); Report and Order, Revision of Application for Construction Permit, GEN Docket No. 88–328, 4 FCC Rcd 3853 (1989), recon. denied, Memorandum Opinion and Order, GEN Docket 88–328, 5 FCC Rcd 7287 (1990).

[5] Several commenters supportive of our objective contend that the "hard look" was promulgated and/or applied in an arbitrary manner and that this should form the basis for any modification. We reject this notion. We will not use this proceeding to revisit Commission and court decisions finding the "hard look" valid or to rule on the appeals of individual applicants dismissed for failure to comply with "hard look" criteria.

justify its costs.[6] Accordingly we shall modify the "hard look" system.[7]

Processing Procedures

6. The Notice made clear that the Commission does not by this proceeding intend to change the overall filing procedures and policies applicable to the commercial FM service but only the manner in which we handle defective FM applications.[8] The Notice set forth for public comment several alternative procedures that would be more tolerant of defects than our current system. We then tentatively narrowed the field of options down to two that are similar in many respects. Both options would retain the Commission's current criteria for determining an FM application's "tenderability" (*i.e.*, substantial completeness)[9] and "acceptability" (*i.e.*, compliance with core legal and engineering requirements).[10] Unlike current procedures, however, the new options would enable applicants to avoid dismissal by giving them a limited opportunity, outside of established amendment of right periods, to correct otherwise fatal defects in tender and acceptance information. Option 1 would give applicants one opportunity to amend defects at the tender stage and one opportunity to amend at the acceptance stage. Option 2 would combine these two stages of review and give the applicant one overall opportunity for corrective amendment in response to a staff deficiency letter. Applicants failing to correct all tender and acceptance defects within the limited opportunity proposed would be dismissed without further opportunity to amend.

7. Of the commenters addressing a specific option, most favor Option 2.[11] They believe that Option 2's combined opportunity to correct tender and acceptance defects would streamline our commercial FM processing system. They also maintain that separate tender and acceptance stages of review would no longer be necessary if applicants are given the opportunity for corrective amendment. Comments of Glaser at 6; Comments of FCBA at 6. Finally, they support Option 2 because its opportunity for corrective amendment closes prior to designation of competing applications for hearing, in contrast to Option 1 which proposed correction of "acceptance" defects after hearing designation. The commenters believe that competing applicants should not have to split their efforts between evaluating corrective amendments and making hearing plans. Comments of Mullaney at 2.

8. We believe that Option 1 and Option 2 are both viable alternatives. Both would give applicants an opportunity to correct defects, where there had previously been none. Neither option would be so lenient as to cause a return of FM application quality to its poor pre-"hard look" levels. We select Option 2 as our preferred option, however, because its combination of tender and acceptability review will streamline our procedures, helping to offset some of the extra work that consideration of corrective amendments will present for our staff. In addition, Option 2 will generally narrow the time frame in which competing applicants need to evaluate corrective amendments. Accordingly, we conclude that of the alternatives proposed in the Notice, Option 2 strikes the best balance between the needs of applicants and of the Commission. We shall adopt this option, as modified herein, as the framework for our modified processing approach.

9. Under the option adopted, we will continue to require applicants to meet existing "tender" and "acceptance" criteria, but will give applicants additional opportunities to correct deficiencies. Specifically, there will be three distinct stages during which an applicant may amend tender and acceptance information after the close of a filing window.[12] The first stage is a 30-day amendment-as-of-right period triggered by the issuance of a "Notice of Tender" listing the application.[13] At this stage, the applicant will be able to make any amendments that it wishes as long as the resulting changes are "minor," *i.e.*, not changing the original community or channel, and if the amendment does not alter the proposed facility's coverage area so as to produce a conflict which did not previously exist. See 47 CFR

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[6] Two commenters point out that the Association of Federal Communications Consulting Engineers (AFCCE) filed a Petition for Rule Making in April 1989 suggesting that the time was then ripe to relax the "hard look" processing system. Comments of AFCCE; Comments of duTreil. The Commission did not act upon AFCCE's Petition in 1989 because circumstances had not yet changed sufficiently to reduce the need for the "hard look." Although the filing windows for Docket 80-90 channels had closed by that time, the backlog of pending applications and demands on our processing staff were still very high. Furthermore, the Commission had not yet implemented other methods to curb speculation. As we did not formally dismiss AFCCE's Petition at the time it was filed, and as our action today renders that Petition moot, we shall dismiss it herein. We note, however, that AFCCE resubmits its Petition as a comment in this processing and we shall consider it as such.

[7] The National Association of Broadcasters (NAB) requests that we withhold any action in this proceeding pending consideration of its February 10, 1992 Petition for Rule Making. While NAB generally supports our proposal to modify the "hard look," it believes that the Commission should undertake a much broader review of FM allotment policies. We do not believe that consideration of NAB's Petition justifies a delay of action in the present proceeding. Should the Commission find merit to NAB's proposals, we can take appropriate action separately.

[8] Notice, 6 FCC Rcd at 7270, n. 11. For example, we noted that our "window" filing and first come, first served policies have worked well and will be retained. For an in-depth discussion of current commercial FM processing procedures see Notice, 6 FCC Rcd at 7265. See also 47 CFR 73.3564(d) and 73.3573.

[9] "Tender" requirements include such factors as the applicant's name and address, channel number and community of license, certifications of compliance with alien ownership restrictions, local public notice provisions, financial ability to construct and operate, and site availability; listing of other interests in broadcast facilities; engineering data such as geographic coordinates, transmitter site map, power levels, and antenna height; and the applicant's signature. See Hard Look Order, appendix D, 50 FR 19945, reprinted at 58 RR 2d 166 (1985). Although we are making no changes to the criteria specified in appendix D, we are reprinting it in its entirety as appendix D to this Report and Order to make it more accessible to applicants and other interested parties.

[10] "Acceptance" criteria include such factors as the application's compliance with international treaties and adherence to Commission rules involving power, height, and spacing. See Public Notice, Patently Defective AM and FM Construction Permit Applications, 49 FR 47331 (December 3, 1984). Compliance with policies on alien ownership and control have also been deemed "acceptance" criteria. See PrimeMedia Broadcasting, Inc., 3 FCC Rcd 4293 (1988).

[11] While two commenters favor Option 1, they do not identify any perceived advantages of that system or any perceived disadvantages is of Option 2. Comments of CDE; Comments of AFCCE.

[12] We note that an amendment filed during any of these stages may create a conflict between the application, as amended, and an earlier filed petition for rule making seeking to amend the FM Table of Allotments. In a concurrent action, we adopted cut-off rules protecting applications from conflicting rule making petitions as of the date that the application is protected from competing applications. See Report and Order, MM Docket 91-348, 7 FCC Rcd _____ (adopted July 16, 1992). We also stated, however, that if an application is amended in a manner that creates a conflict with a rule making petition already on file, then the application, as amended, should not be able to take advantage of its original cut-off date from rule making petitions. Rather, the amended application will be considered as if filed on the date of the amendment for purposes of applying the cut-off rule. We note that this approach parallels our treatment of application amendments that conflict with earlier filed applications. Such amendments generally are not governed by the original application filing priority if they conflict with an application filed before the amendment. See 47 CFR 73.3522(a)(6).

[13] A "Notice of Tender" will no longer signify, however, that the applications included on that Notice meet all "tender" criteria. Rather it will indicate that the listed applications have satisfied the new minimum filing requirements which we adopt today and discuss below. See paras. 10-16 *infra*. With a single exception, the minimum filing requirements are simply a substantially reduced subset of our existing tender criteria. The staff will also continue to issue "Notices of Acceptance." These Notices will not indicate compliance with our acceptance criteria, but will continue to serve as the mechanism for permitting petitions to deny.

73.3522(a)(6) and 73.3573(a). Amendments filed during this first stage can be purely voluntary and need not correct a defect. Immediately following the amendment of right period a second stage will begin. This second stage will continue until the end of a 30-day period specified in a staff deficiency letter.[14] Amendments during this second stage will be limited to two types. First, applicants will be able to amend upon a traditional showing of good cause or as otherwise provided in our rules. See 47 CFR 1.65, 73.3522(a)(6), and 73.3514; see generally Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 143 (1970) (good cause criteria). In addition, for this limited period, the staff will also treat as good cause amendments those that successfully and directly [15] correct tender or acceptance defects.[16] Applicants will be able to submit one or more such corrective amendments during this second stage.[17] Upon the end of the period for corrective amendment specified in the deficiency letter, a third stage will begin. At this third stage there will be no further opportunity for amendment without a traditional showing of good cause or as otherwise provided in our rules. Applications with uncorrected tender or acceptance defects remaining at this stage will be dismissed.

Minimum Filing Requirements

10. The Notice expressed concern with the quality of applications that would be filed under more lenient processing rules. To discourage a significant decrease in application quality and to minimize the increased burden on our processing staff, we proposed to adopt minimum filing requirements. Applications meeting such minimum requirements might contain less information than necessary for the staff to process an application but would nevertheless demonstrate that the applicant made a reasonable effort to provide us with basic information. We stated that applications not meeting minimum requirements would be returned without an opportunity for amendment. We requested public comment on whether to adopt minimum requirements and, if so, what information should be necessary.

11. Several commenters address the issues of application quality and minimum filing requirements. The FCBA believes that application quality will not decrease significantly under our new system. It argues that our system provides a strong incentive for applicants to use extreme care in initial preparation. Comments of FCBA at 6–7. In contrast, Mullaney believes that application quality may deteriorate to the point where "nearly blank" applications are submitted unless we adopt minimum filing requirements. Mullaney suggests that, at a minimum, applications should include the applicant's name, address, and the engineering and legal sections of the application with "no more than one item missing from each section." Comments of Mullaney at 1–3. AFCCE takes a mid-ground position, proposing that applications should contain certain elements that it believes are particularly crucial for staff processing, but without concluding that inclusion of these elements will affect overall application quality. According to AFCCE an application should contain a "majority" of the following engineering entries: channel number, community, coordinates, power, radiation center, and height above mean sea level.[18] Comments of AFCCE at 6.

12. We conclude that minimum filing requirements are important to the integrity and success of our new FM approach.[19] As AFCCE points out, there is an administrative necessity that all applications contain certain essential information when filed. Also, as Mullaney notes, we need to prevent the submission of applications so deficient as to abuse our processes. We are convinced that a minimum filing requirement is essential to address these concerns. Accordingly, we are adopting a two-tiered minimum filing requirement for applicants applying for commercial FM frequencies. The minimum filing requirement is based on, but is more lenient than, our tender requirements. In this regard, we wish to be clear that the new minimum requirement in no way permits the same level of processing as our tender and acceptance criteria, nor does it replace those criteria. The minimum filing requirement is simply an easier threshold that, given the current FM environment, we have decided to apply at the initial stage. Applications that do not meet the threshold are so deficient that they do not merit the expenditure of further resources to allow them the opportunity to bring their applications into compliance with the current tender and acceptance criteria.

13. Under the first tier of our minimum filing requirement, we will require applications to contain six specific items that are absolutely essential to the staff at the initial stage: (1) Applicant's name and address; (2) applicant's original signature [20]; (3) principal community; (4) channel or frequency; (5) class of station; [21] and (6) transmitter site coordinates. Without this information the staff could not perform even the most basic of functions such as contacting the applicant, being sure that

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[14] In the event that a deficiency letter never issues prior to designation of an application for hearing and a tender or acceptance defect is discovered at the hearing stage, the Administrative Law Judge will provide the applicant one opportunity to correct all tender and acceptance defects.

[15] For example, an applicant seeking to correct an error in power must do so by changing its power—not by changing its site—unless some involuntary circumstance, such as loss of site, would independently establish a traditional showing of good cause. Amendments that do not directly and successfully correct tender and acceptance defects will be returned.

[16] Any changes made after the amendment of right period will be considered under our current policies which do not permit the applicant to gain additional comparative credit at the hearing stage from such amendments. See Women's Broadcasting Coalition, Inc., 59 RR2d 730, 732–33 (1986) *aff'd by judgment sub nom.*, Plantation Broadcasting Corp. v. FCC, 812 F.2d 1443 (D.C. Cir. 1987).

[17] This procedure varies slightly from our original proposal. We had proposed to limit applicants to only one opportunity for corrective amendment within the 30-day period following issuance of a deficiency letter. However, we also proposed to permit applicants to correct, on their own, deficiencies that the applicant discovers prior to the staff's issuance of a deficiency letter. The procedure adopted herein extends the number of permissible corrective amendments in the 30-day period, to allow for the possibility that deficiency letters and applicant-initiated amendments might cross in the mail.

[18] Another commenter, duTreil, suggests that applications for new facilities should not have to include any engineering information, arguing that technical issues rarely draw meaningful distinctions between applicants in the comparative process. Comments of duTreil at 2–3. The Commission issued a separate Notice seeking comments on possible changes to the comparative hearing process. Notice of Proposed Rule Making, Comparative Broadcast Hearings, 7 FCC Rcd 2664 (1992). Arguments of the nature raised by duTreil would be more appropriately considered in that proceeding and we have, therefore, incorporated duTreil's comments in that proceeding.

[19] As we said in the Notice, should the number of defective applications rise to a point where we are returning more than 15% of the applications received, we would not have the resources to continue a lenient approach and might have to consider reimplementing tougher procedures. See Notice, 6 FCC Rcd at 7268.

[20] As we have stated, under the FM "hard look," an application must contain an original signature as filed. See Mary Ann Salvatoriello, 6 FCC Rcd 4705 (1991). The rules adopted today continue to require original signatures and to reject facsimile signatures on commercial FM applications.

[21] While all other items in our minimum filing requirement are also included in our existing tender criteria, class of station is a new requirement added in this proceeding. It was not an original tender requirement because, at the time of the Hard Look Order, facility downgrades could be made only by means of a petition for rule making. Now that facility downgrades can also be accomplished by application, a station's class has become more important. The information is included in the basic data base entry, used to group mutually exclusive applications, and used to determine spacing.

the applicant authorized the filing, grouping mutually exclusive applications together, or entering basic information into a data base. Applications omitting any of these six items will be returned to the applicant with no opportunity for corrective amendment.

14. We also believe that an additional safeguard is needed because an application could contain each of the six items described above yet still be seriously deficient overall. Consideration of applications falling so far short of our "tender" requirements for substantial completeness could well result in the abuse of our processes whereby applicants submit skeletal applications and amend these submissions with information copied from their competitors. To prevent abuse of our processes, we will incorporate a second tier into our minimum filing requirement. We will return without opportunity for amendment applications that omit more than three of the second tier items listed in appendix C of this Report and Order.[22] In our experience, it is unusual for applications to contain more than two such omissions under the current "hard look" approach. Therefore, setting a limit at three omissions appears both reasonable and fair.

15. In sum, we establish as a minimum filing requirement that all commercial FM applications must: (1) Contain the six specific items identified above, *and* (2) omit no more than 3 of the second tier items listed in Appendix C.[23] We will require applications to meet these minimum filing requirements prior to close of the filing window in window proceedings and as initially filed in first come, first served proceedings. See generally 47 CFR 73.3573(g). Applications not satisfying either tier of our minimum filing requirement within the required time period will be returned to the applicant with no opportunity for corrective amendment. We believe that this minimum filing requirement will provide the staff with the most essential information and limit the potential for abuse, while still giving applicants considerably more leeway than they have under the current "hard look" approach.

16. Our establishment of the above minimum filing requirement does not alter the fact that under our rules and policies certain defects related to the filing of broadcast applications are uncorrectable.[24] For example, an applicant cannot cure through amendment the problems of premature or late filing, inconsistent applications, or failure to pay the required application fee. See 47 CFR 1.1107, 73.3564(d), 73.3518. Applications which are patently not in accordance with our substantive rules will be considered defective and will not be accepted for filing unless accompanied by an appropriate waiver request. See 47 CFR 73.3566.

Deficiency Letters

17. The Notice proposed that the staff would notify applicants of defects by deficiency letter and that an applicant's opportunity for corrective amendment would attach upon issuance of that letter. Several commenters suggest that the Commission notify applicants of defects via telephone instead. Comments of Mullaney at 3; Comments of HBP at 6. Another argues that we should replace our current deficiency letter with two letters: one for "deficiencies" and one for "discrepancies." Comments of CDE at 3. We believe that the deficiency letter proposed in the Notice is preferable to either of these suggestions because our proposed letter would be simpler to administer, would establish a record of our actions, and would set a more definite deadline for applicant response. Accordingly, we shall use deficiency letters to notify applicants of defects in their commercial FM applications.

18. We also wish to clarify our statement in the Notice that an applicant must correct all tender and acceptance defects within its limited opportunity for amendment, including any such defects that, for whatever reason, the deficiency letter does not identify. One commenter perceives this as an indication that our staff will stop processing at the first defect with no attempt to identify other defects. Comments of HBP at 4–5. That is not our intention. The staff will make a reasonable effort to identify all defects. Recognizing, however, that the staff may not identify every problem present, we wish to make very clear that the ultimate burden of ensuring a complete and acceptable application continues to rest with the applicant and not with the Commission. Failure of our staff to identify a particular defect, for whatever reason, will not be grounds for appeal. Therefore, prudent applicants will conduct their own review of their applications, examining these applications for any errors that may be present and reviewing their corrective amendments to make certain that they have not created any new inconsistencies.

Universe of Applications Affected

19. Modification Applications. The Notice proposed to apply our modified standards to all applications for commercial FM frequencies. We noted, however, the effect that this change would have on applications proposing to modify existing facilities. Under current policies, when faced with conflicting modification applications, we grant the first non-detective application received. Applying our new approach to modification applications, however, a previously filed defective application could, by corrective amendment, prevail over a later filed non-defective application.

20. The commenters addressing this issue do not view this change as a problem and support the inclusion of modification applications in our new approach. They argue that modification applications are too important to the success of existing stations to justify retention of current "hard look" standards for these applications. Comments of FCBA at 7–8. They also state that if the Commission intends to permit applicants to correct defects, then it is logical to retain the applicant's place in the processing line. Comments of HBP at 7.

21. Upon our review of this matter, we conclude that FM modification applications are not sufficiently different from applications for new facilities to warrant different treatment with respect to defects. Accordingly, we will apply our new rules to all commercial FM applications, including modification applications. This will establish uniform commercial FM rules concerning defects and enable all applicants to benefit from our more lenient procedures.

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[22] We will not consider critical data to be "omitted" for purposes of this determination if that same data is clearly available elsewhere in the application. We emphasize that missing data will not be excused in this context if the staff would be required to derive that information rather than simply look elsewhere in the application to find it.

[23] In examining an application for minimum filing criteria our staff will limit its examination to the presence or omission of information. Applications meeting our minimum requirement may well be unprocessable if, for example, they contain inconsistencies in the information supplied. Accordingly, it will be necessary for the staff to examine applications for tender and acceptance defects at a later stage of review and to request corrective amendment of applications containing tender and/or acceptance defects.

[24] For example, an applicant omitting its financial qualifications could meet our minimum filing requirement. However, as we require applicants to be financially qualified as of the time of application, an applicant seeking to correct the underlying problem would have to submit an amendment showing that it was financially qualified at the time of application. See Report and Order, Gen. Docket No. 88–328, 4 FCC Rcd 3853, 3859 (1989). An amendment based on financial qualifications acquired subsequent to initial filing would not cure the defect.

22. Waiver Requests. Our Notice proposed that an applicant will not be able to cure defects resulting from the denial of a waiver request. We reasoned that an applicant's decision to file a waiver request is not an error but a conscious choice, unlike tender and acceptance defects which are usually inadvertent.[25] No commenter addresses the issue of waiver requests. Based on the reasoning in the Notice, we will not permit corrective amendment of defects that result from staff denial of a waiver request. We also have decided not to consider alternatives to waiver requests supplied in the event of denial of the waiver. The Notice originally proposed that the staff might consider such alternatives if they contain all information necessary to render the application tenderable and acceptable for filing. Upon further consideration, however, we find that our original proposal would, in effect, require the staff to process denied waiver applications twice—once to consider the waiver request and once to consider the alternative. Additionally, it is likely that such a policy would encourage a significant number of applicants to request waivers because an applicant would have nothing to lose if the waiver were denied. Because consideration of waiver requests generally requires significantly more effort than the processing of routine applications, an increase in the number of waiver requests would lead to disproportionate delays in the processing of other applications. In the interest of efficient use of our limited staff resources, applicants submitting waiver requests will not be given an opportunity to cure defects resulting from denial of their waiver requests, even if the original application contains the curative information as an alternative.

23. Effective Date. The Notice proposed that our modified "hard look" approach would apply to applications received after implementation of the new rules. Although we also considered giving applicants with pending applications and appeals an opportunity for corrective amendment, we tentatively decided that this would not be efficient for our staff and might unduly delay initiation of FM service to the public.

24. The commenters addressing this issue are split in their views. Commenters suggesting that we apply our modified rules to pending applications argue that the "hard look" is no longer needed and that allowing an opportunity for amendment would eliminate litigation delays. Comments of Goodale and Leland at 4–5; Comments of Glaser at 7. The remaining commenters addressing this issue agree with the Commission's reasoning in the Notice. They maintain that reinstatement of previously dismissed applicants now on appeal would disrupt the orderly processes of the Commission by causing a flood of additional pleadings, disruption of comparative hearings, expense, and delay. Reply Comments of Moran at 4; Comments of Lacy at 4. They also urge the Commission to consider fairness to mutually exclusive applicants who complied with our "hard look" requirements. Comments of Foothills at 4; Comments of Golden Corners at 1–2.

25. We stand by our tentative decision not to apply our modified "hard look" rules to applications already on file. The main advantage presented for applying the rules to applications already on file is that it would end time consuming appeals of staff dismissals. Inclusion of previously dismissed applicants in the Commission's comparative hearing process would, however, be time consuming and disruptive in and of itself, especially for proceedings that would have to be reopened or interrupted at a late date. The Commission's comparative hearing process would be unacceptably disrupted by the volume of additional hearing participants that would result from an across-the-board application of today's modifications to pending applications and appeals. Our decision to process applications under the rules in effect on their date of receipt would avoid undue disruption of our processes and the consequent harm of delayed initiation of service. This decision would also be fair and equitable to all applicants. See generally Oxnard Broadcasting, Inc., 7 FCC Rcd 2178 (1992) (waiver of "hard look" requirements for one applicant unfair to competing applicants who complied with "hard look" requirements). Accordingly, the modifications adopted today will apply only to applications received on or after August 7, 1992.

[25] In response to this language in our Notice, one commenter suggests that we require all applicants making corrective amendments to certify that their original errors were inadvertent. Comments of Mullaney at 4. We do not wish to prolong our processes by opening the door to disputes about the applicant's state of mind in submitting a defective application. Furthermore, we do not believe that the proposed certification is necessary because our application procedures include sufficient safeguards to prevent prejudice due to errors that are not inadvertent.

Final Regulatory Flexibility Analysis

26. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

The purpose of the Commission's action is to give commercial FM applicants an opportunity to correct what would otherwise be fatal errors in their applications without causing a significant increase in the burden on our processing staff. Our action is possible as the result of recent changes in the quality and quantity of commercial FM applications.

II. Public comments in response to the Initial Regulatory Flexibility Analysis:

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered and rejected:

We considered and rejected a number of other approaches described in the Notice, including adoption of existing processing systems used in the AM and TV services and use of hybrid option giving FM applicants one opportunity to amend at the tender stage and one opportunity to amend at the acceptance stage. We concluded that the procedures adopted herein are preferable because they are more tailored to the commercial FM service and would be more efficient for our staff.

Paperwork Reduction Act Statement

27. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements and will not increase burden hours imposed on the public.

Ordering Clauses

28. Accordingly, it is ordered that pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, part 73 of the Commission's rules is amended as set forth in the Final Rules below. These rules are effective August 7, 1992. Because the rule changes established herein relieve a restriction, they are exempt from the effective date requirement established in the Administrative Procedure Act. See 5 U.S.C. 553(d)(1).

29. It is further ordered that the Petition for Rule Making filed on April 27, 1989 by the Association of Federal Communications Consulting Engineers is dismissed as moot.

30. It is further ordered that this proceeding is terminated.

31. For further information, contact Irene Bleiweiss at (202) 632–6485.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Final Rules

Title 47 of the Code of Federal Regulations, part 73, is amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. 47 CFR 73.3522 is amended by revising the first 3 sentences in paragraph (a)(6) to read as follows:

§ 73.3522 Amendment of applications.

(a) * * *

(6) Subject to the provisions of § 73.3525, 73.3573, and 73.3580, applications for non-reserved band FM stations (other than Class D stations) may be amended as a matter of right during the appropriate window filing period pursuant to § 73.3564(d). For a period of 30 days following the FCC's issuance of a Public Notice announcing the tender of the application, minor amendments may be filed as a matter of right. For applications received on or after August 7, 1992, an applicant whose application is found to meet minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff. [For minimum filing requirements see § 73.3564(a). Examples of tender defects appear at 50 FR 19936 at 19945–46 (May 13, 1985), reprinted as appendix D, Report and Order, MM Docket No. 91–347, FCC 92–328, 7 FCC Rcd—(adopted July 16, 1992). For examples of acceptance defects, see 49 FR 47331.] Prior to the end of the period specified in the deficiency letter, a submission seeking to correct a tender and/or acceptance defect in an application meeting minimum filing requirements will be treated as an amendment for good cause if it would successfully and directly correct the defect. Other amendments prior to designation for hearing or grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514.* * *

* * * * *

3. 47 CFR 73.3564 is amended by revising paragraph (a) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV, TV translator, TV booster, and non-reserved band FM (except for Class D) applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing or correct information. Applications that are not substantially complete will be returned to the applicant. In the case of non-reserved band FM applications received on or after August 7, 1992, applications will be placed on public notice if they meet the following two-tiered minimum filing requirement prior to close of the filing window in window proceedings and as initially filed in first come/first served proceedings:

(1) The application must include:
(i) Applicant's name and address,
(ii) Applicant's original signature,
(iii) Principal community,
(iv) Channel or frequency,
(v) Class of station, and
(vi) Transmitter site coordinates; and
(2) The application must not omit more than 3 of the second tier items specified in appendix C, Report and Order, MM Docket No. 91–347, FCC 92–328, 7 FCC Rcd—(adopted July 16, 1992). Applicants found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements but that contain deficiencies in tender and/or acceptance information shall be given an opportunity for corrective amendment pursuant to § 73.3522. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment. In the case of low power TV, TV translator and TV booster applications, those found to be complete and sufficient will be accepted for filing and given file numbers. Low power TV, TV translator, and TV booster applications that are not complete and sufficient will be returned to the applicant.

Note: For non-reserved band FM applications received prior to August 7, 1992 applications with deficiencies in tender and/or acceptance information will be returned to the applicant without an opportunity for corrective amendment. See 50 FR 19936 (May 13, 1985).

* * * * *

[The following Appendices A, C and D will not appear in the Code of Federal Regulations.]

Appendix A

Comments:
Association of Federal Communications Consulting Engineers ("AFCCE")
Cohen, Dippell & Everist ("CDE")
duTreil, Lundin, & Rackley ("duTreil")
Michael L. Glaser ("Glaser")
Golden Corners Broadcasting, Inc. *et al.* ("Golden Corners")
R. Donnie Goodale ("Goodale")
Haley, Bader & Potts ("HBP")
Caren Lacy ("Lacy")
Leland Broadcasting Group ("Leland")
Mullaney Engineering ("Mullaney")
Late-filed Comments:
Federal Communications Bar Association ("FCBA")
Reply Comments:
Foothills Broadcasting, Inc. ("Foothills")
R. Donnie Goodale ("Goodale")
Hara Broadcasting Group ("Hara")
Leland Broadcasting Group ("Leland")
Sharon M. Moran ("Moran")
National Association of Broadcaster ("NAB")

Appendix B, as submitted in the report and order before the Commission, is the rules text of this document.

Appendix C—Minimum Filing Requirement

This Appendix details the elements of our two-tiered minimum filing requirement, their origin, and the places that these elements appear on the February 1992 edition of our Form 301 Application. In several instances where these elements will be numbered differently on the August 1992 edition of the Form 301, we have so noted. References to "Appendix D" are to appendix D of the Hard Look Order, 50 FR 19936 (May 13, 1985) which, for the convenience of readers, is republished without change as appendix D in this proceeding.

Applications must meet both tiers of the minimum filing requirement herein prior to close of the filing window in window proceedings and as initially filed in first come, first served proceedings. Applications that do not meet our minimum filing requirement within the relevant time period will be returned to the applicant with no opportunity for corrective amendment.

Tier 1 Requirements: Applications must contain all of the following:

1. Applicant's name and address. FCC Form 301, February 1992 edition, Section I, Question 1. See Hard Look Order, Appendix D, requirement (1)(a).

2. Applicant's original signature. FCC Form 301, February 1992 edition, Section VII. See Hard Look Order, appendix D.

3. Principal community. FCC Form 301, February 1992 edition, Section I Question

3(b) or Section V–B, Question 1. See Hard Look Order, appendix D, requirement (4)(c).

4. Channel or frequency. FCC Form 301, February 1992 edition, Section I, Question 3(a) or Section V–B, Question 1. See Hard Look Order, appendix D, requirement (4)(c).

5. Class of station. FCC Form 301, February 1992 edition, Section V–B, Question 1. New requirement important for basic data base entry, grouping mutually exclusive applications together, and determining spacing. See Report and Order, MM Docket No. 91–347, FCC 92–328, 7 FCC Rcd (adopted July 16, 1992). See also Third Report and Order, MM Docket No. 86–144, 4 FCC Rcd 3557 (1989).

6. Transmitter site coordinates. FCC Form 301, February 1992 edition, Section V–B, Question 2(b). See Hard Look Order, appendix D, requirement (4)(a).

Tier 2 Requirements: Applications meeting Tier 1 above must, in addition, not omit more than three (3) of the following. One or more omissions in any one numbered element listed below will be counted as a single omission.

1. Applicant's interests in other broadcast stations and applications. FCC Form 301, February 1992 edition, Section II, Question 8(a) [expected to be renumbered as Section II, Question 11(a) in the August 1992 edition]. See Hard Look Order, appendix D, requirement (3).

2. Applicant's relatives and their interests in other broadcast stations and applications. FCC Form 301, February 1992 edition, Section II, Questions 9(a) and 9(b) [expected to be renumbered as Section II, Questions 12(a) and 12(b) in the August 1992 edition]. See Hard Look Order, appendix D, requirement (3).

3. Certification of compliance with 47 U.S.C. 310(b) regarding interests of aliens and foreign governments. FCC Form 301, February 1992 edition, Section II, Question 12(a) [expected to be renumbered as Section II, Question 15(a) in the August 1992 edition]. See Hard Look Order, appendix D, requirement (2)(a).

4. Certification of financial ability to construct and operate. FCC Form 301, February 1992 edition, Section III, Question 1. See Hard Look Order, Appendix D, requirement (2)(b) as modified in Report and Order, GEN Docket No. 88–328, 4 FCC Rcd 3853, 3859 (1989).

5. Tower and antenna heights. FCC Form 301, February 1992 edition, Section V–B, Questions 7(a)(1) through 7(a)(3) and Questions 7(b)(1) through 7(b)(3). See Hard Look Order, Appendix D, requirement (4)(e).

6. Effective radiated power. FCC Form 301, February 1992 edition, Section V–B, Question 9(a). See Hard Look Order, Appendix D, requirement (4)(d).

7. Antenna (directional or non-directional). Applicant must respond to the directional antenna question. If directional, an exhibit containing all data required by 47 CFR 73.316 must be included. FCC Form 301, February 1992 edition, Section V–B, Question 10. See Hard Look Order, Appendix D, requirement (4)(f).

8. Contour Protection for Short-Spaced Assignments. If filing pursuant to 47 CFR 73.215, an exhibit demonstrating compliance must be included. FCC Form 301, February 1992 edition, Section V–B, Question 13(e). See Report and Order, MM Docket No. 87–121, 4 FCC Rcd 1681, 1686 (1989).

9. Transmitter site map meeting all requirements. FCC Form 301, February 1992 edition, Section V–B, Question 15. See Hard Look Order, appendix D, requirement (4)(b); Public Notice of April 5, 1985, 51 FR 45945 (December 23, 1986).

10. Coverage map meeting all requirements. FCC Form 301, February 1992 edition, Section V–B, Questions 16(a) through 16(c). See Hard Look Order, appendix D, requirement (4)(h).

11. Tower sketch. FCC Form 301, February 1992 edition, Section V–B, Question 8. See Hard Look Order, appendix D, requirement (4)(h).

12. Certification of compliance with local public notice requirements of 47 CFR 73.3580. FCC Form 301, February 1992 edition, Section VII, Question 1. See Hard Look Order, appendix D, requirement (2)(c).

13. Certification of site availability. FCC Form 301, February 1992 edition, Section VII, Question 2. See Hard Look Order, appendix D, requirement (2)(d).

Appendix D

For the reader's convenience, we republish below without change the text of appendix D to the 1985 Hard Look Order. This information was originally published at 50 FR 19936, 19945–46 (May 13, 1985) and issued as a Commission Public Notice as well.

Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete or Are Otherwise Defective

As part of our effort to expedite applications in conjunction with the implementation of the new "window" and "first come, first serve" processing procedures (*Report and Order* in MM Docket 84–750, Adopted March 14, 1985), we are adopting a new policy with respect to the definition and treatment of applications that are defective or not substantially complete when filed.[1]

Expedition of processing in the face of the possibility of a large increase in commercial FM applications compels us to shift to the beginning of the process some of the application checks previously made later in the process. This shift may well result in a loss of filing status for a returned application that it otherwise would have retained under the previous processing procedures. Such an outcome cannot be avoided if we are to achieve the benefits of the new window and first come, first serve processing procedures.

At the time an application for a commercial FM station or for a modification to an existing commercial FM station is tendered and before an application reference number is assigned, the application will be given a thorough initial review to determine if it is substantially complete. Although all applicable elements of Form 301 are examined by the Commission staff in the course of processing a construction-permit application, certain items are much more critical than others. Without them, processing simply cannot commence. A substantially complete application, one that the Commission deems in condition or sufficient for tender, must meet all of the following requirements.

1. The applicant's name and address must be provided. Failure of an applicant to do so renders it impossible for the processing staff:

a. to communicate with the applicant concerning the contents of the application, and

b. to discern and resolve issues relating to the applicant's identity, e.g., multiple-ownership and alien-interest questions.

2. In recent years, the Commission has reduced the amount of information required to be provided in applying for a construction permit and has accordingly simplified Form 301. Applicants are now permitted to make certifications of various types instead of having to provide evidentiary showings. Having relieved applicants of the need to make such showings, the Commission attaches considerable importance to the certifications that take their place. Accordingly, certifications in the following areas are crucial in the absence of full showings.

a. Compliance with 47 U.S.C. 310(b). An application which violates the alien-interest provisions of the Communications Act is statutorily ungrantable. Failure to respond to the question by which certification of compliance is invited renders the application so fundamentally defective that further processing is unwarranted.

b. Financial ability to construct. The Commission authorizes new or changed facilities with the expectation that such will be built quickly and that service will be expeditiously provided via those facilities to the public. It is pointless to grant an authorization of facilities that cannot be built. It is likewise pointless to process an application where a response to certification of financial ability to construct is not provided.

c. Compliance with the local public notice provisions of 47 CFR 73.3580. It is important that local public notice occur. An informed local populace can bring to the Commission's attention information about the applicant or the facility proposal that might otherwise remain undetected. Thus, where local public notice is required, an applicant who fails to respond to the appropriate item of Form 301 will have its application returned as not sufficient for tender.

d. Site availability. The Commission does not require of applicants absolute certainty of site availability, but rather reasonable assurance. An application specifying an unavailable site *per se* frustrates the Commission's stated goal of expeditious introduction of service. Such a filing requires an amendment specifying a site change before grant or a further application for construction-permit modification after grant. To avoid vacuous and sequential filings, the Commission has imposed a requirement of site-availability certification which includes

[1] This policy applies only to commercial FM applicants. AM applicants and non-commercial FM applicants are still subject to the policy set out in our *Public Notice* of August 2, 1984. TV applicants remain subject to applicable case law.

the name and address of the site owner or his agent. Failure of an applicant to provide the requisite certification in the form set forth in appendix B of the Report and Order in Docket 84–750, *supra*, will result in the application being deemed not substantially complete.

3. Questions 6 and 8 of Section II, Form 301 deal with matters crucial to multiple-ownership determinations. In response to these questions, applicants are to indicate whether or not they or their relatives (immediate family) have any other pending applications or broadcast interests. If the answer to either question is positive, explanatory exhibits must be provided. Leaving these questions unanswered, as a practical matter, makes it impossible for the processing staff to begin a multiple-ownership analysis. In light of our expressed policy dealing with the filing of multiple applications (see Second Report and Order in Docket 84–231, FCC 85–124, Adopted March 14, 1985 and Released April 12, 1985), failure to respond prevents the staff from beginning its ownership analysis and thus renders the applicant's filing not substantially complete.

4. Compliance with the Commission's technical rules is evaluated in the course of an acceptability study. Certain engineering data must be present forsuch a technical acceptability study to be made. The absence of one or more elements of those data, listed below, prevents a determination of acceptability and thus renders the application not substantially complete.

a. The geographic coordinates, to the nearest, second, of the proposed transmitter site must be provided. Absence of these data makes it impossible to determine the distance from the proposed site to others proposed or existing broadcast facilities and to the community of license. In the commercial FM service, spacing determines acceptability of an application where mutual exclusivity exists with respect to a given allocation, see Trend Broadcasting, Inc., 18 FCC 2d 749 (1969), and determines when mutual exclusivity exists between applicants for or permittees of different allocations. The geographic location also determines whether protection must be afforded to Commission monitoring facilities and to radio quiet zones (see 47 CFR 73.1030), marks the center of the "blanketing" area (see 47 CFR 73.315), and is fundamental to analysis of a proposal's environmental effects and electromagnetic effects on other, nearby communications facilities.

b. A transmitter site map as described in Form 301, Section V–B, Item 13, and in our Public Notice, Mimeo 3893, released April 5, 1985. Such a map allows the staff to verify the coordinates of the proposed site, the presence of other, nearby communications facilities and of obstructing terrain features (see 47 CFR 73.315), and the ground elevation of the transmitter site. The last parameter has a key influence on important features of the antenna installation—radiation—center heights above ground and mean sea level, from which, with other data, antenna height above average terrain (HAAT) is derived.

c. The channel number and community of the allocation must be supplied. Since the Commercial FM allocation system is organized on the basis of a Table comprising numbered channels and targeted communities, any evaluation of an application must consider these fundamental items.

d. Effective Radiated Power must be specified. Our technical rules prescribe minimum and maximum permissible power levels. Application processing includes a determination that proposed operating power falls within the range defined for the particular class of station occupying or intended to occupy the allocation. Certain allocations have limitations imposed on ERP, as to some stations authorized prior to implementation of the Table Method of Allocations. International agreements also influence permissible ERP levels in border areas. The operating power is so basic a parameter of a broadcast facility that it simply must be specified. Accordingly, its absence will render an application not substantially complete.

e. Also necessary are the antenna heights above average terrain, above ground level, and above mean sea level. These three are interrelated and must be specified consistently, as is the case with all other crucial engineering parameters. Antenna height is as elemental a facility parameter as is ERP. It also is subject to permissible-range values as a function of station class and, with ERP, determines the coverage area of a facility for a given signal strength. Antenna height is also limited in certain cases by international treaty or by allocation constraints. Antenna height and ERP are also used to determine adverse potential to radio quiet zones, adjacent and co-channel "grandfathered" stations, and to FCC monitoring facilities. Antenna height above ground affects the environmental and aerial-navigation aspects of a facility proposal. Clearly, the various antenna heights are employed in a number of processing evaluations by the staff. Their absence, or the absence of any one of them, renders the application not substantially complete.

f. An answer to Item 7, Section V–B must be provided, as whether or not a directional antenna is proposed is a fundamental issue. If a positive response is given, all data specified in 47 CFR 73.316(d) must be included in an accompanying engineering exhibit. Without this information, the processing staff cannot determine the proper location of signal-strength contours, whether city-grade coverage is provided as required, whether adequate protection to short-spaced stations is to be given, and whether or not the proposed directional response complies with our technical rules and appears to be stable.

g. A map of maps satisfying the requirements of Item 10, Section V–B and clearly and legibly showing the proposed 60 and 70 dBu contours and the legal boundaries of the community of license must be provided. Such maps permit ascertainment of compliance with city-grade requirements and permit verification of signal-strength contour predictions. They are also employed in determining comparative levels of proposed service.

h. Section V–G must be provided as part of any Form 301 application proposing construction of a new facility or any change in transmitter site or antenna-structure height to existing facilities. In accord with our existing procedure, for side-mounting proposals involving an existing support structure, Section V–G shall show the application's purpose as, "Alteration of existing antenna structure." The "Facilities Requested" portion shall contain a description of the side-mounting proposal. Section V–G will be accompanied by a tower-sketch exhibit as required by Item 6.

Further, because of the critical importance of the applicant's certification of the correctness of the data contained in the application as of the date of filing, unsigned applications will not be accepted for tender.

If any of the above information is missing, the application will be returned as not sufficient for tender. If any of the above information is present but, on the face of the application, visibly incorrect or inconsistent, the application will be treated in accordance with the following guidelines. If the needed information can be derived or the discrepancy resolved, confidently and reliably, drawing on the application as a whole, such defect will not render the application not sufficient for tender. However, if the critical data cannot be derived or the inconsistency resolved within the confines of the application and with a high degree of confidence, the presence of the clearly void data will be treated as functionally equivalent to the absence of such data. In such instances, the defective application will be deemed not sufficient for tender. If the application is returned during the initial check as not sufficient for tender, we will not permit the applicant to remedy the defect and have its resubmitted application accepted *nunc pro tunc* in order to be grouped with other applications filed by a window closing date or in order to be considered first filed when a window does not apply.

Where an application is timely filed within and in response to a filing window, at the initial screening we will consider the application as originally filed, together with any amendments filed within the window period. Where "first come, first serve" processing rules apply, the application only as originally filed will be considered. If an applicant discovers that its "first come" application is not sufficient for tender, it must file a new, corrected application (and request return of its earlier application) to cure the tenderability defect. *Nunc pro tunc* treatment will not be afforded in such cases.

If any of the defects listed above are overlooked during the initial review and are found later in the process, the application will be returned as inadvertently accepted for tender and, if resubmitted, will not be accepted *nunc pro tunc*. Return of the application will void the application reference number inadvertently assigned and whatever rights of tender might have been associated with it.

An application found to be sufficient for tender will be studied to determine its acceptability for filing, that is, to determine whether it is in compliance with applicable Commission rules. If it is found acceptable for filing, it will be included in a Public

Notice of Acceptance. If found to be unacceptable for filing, it will be returned and will not be accepted later on a *nunc pro tunc* basis.

If an application is accepted for filing but is subsequently found not to be grantable, the applicant, if not mutually exclusive with other applicants, will be given one opportunity to correct the application. If the acceptable but not grantable application is mutually exclusive, an appropriate issue will be specified in the Hearing Designation Order, or a post-designation amendment, if appropriate, will be required.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-18717 Filed 8-6-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL SCIENCE FOUNDATION

48 CFR Part 2509

Federal Acquisition Regulations System

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: The National Science Foundation (NSF) is amending its Acquisition Regulation, 48 CFR chapter 25, by adding a new subchapter B—Acquisition Planning, new part 2509—Contractor Qualifications, and new subpart 2509.4—Debarment, Suspension, and Ineligibility. The new provisions establish procedures implementing the policies and procedures regarding debarment, suspension, and ineligibility contained in subpart 9.4 of the Federal Acquisition Regulation (FAR, 48 CFR 9.4).

DATES: This addition is effective August 7, 1992. Comments, however, are welcome and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: John Chester, Assistant General Counsel, Office of the General Counsel, room 501, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: John Chester at (202) 357-9435 (voice) or (202) 357-7521 (facsimile)—those are not toll-free numbers—or by electronic mail as jchester@nsf through BITNET or jchester@nsf.gov through INTERNET.

SUPPLEMENTARY INFORMATION: The National Science Foundation's implementing and supplementary regulations for the Federal Acquisition Regulation are in chapter 25 of title 48 of the Code of Federal Regulations. New subpart 2509.4 describes NSF procedures for handling debarment, suspension, and ineligibility matters that arise in NSF procurements. The numbering of the sections within the new subpart parallels that in FAR subpart 9.4 to help contractors integrate these provisions with those in the FAR. Because it merely describes internal agency procedures and responsibilities for implementing FAR subpart 9.4 and does not affect the substantive rights of contractors, which are controlled by the FAR provisions, public comments were not obtained before making this regulation effective.

Determinations

I have determined, under the criteria set forth in Executive Order 12291, that this rule is not a "major rule" requiring a regulatory impact analysis. I also certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, that this rule will not have a significant economic impact on any substantial number of small entities. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 48 CFR Part 2509

Government procurement, Debarment and suspension.

Dated: August 3, 1992.

National Science Foundation.

Charles H. Herz,

General Counsel.

For the reasons set out in the preamble, title 48, chapter 25 of the Code of Federal Regulations, is amended by adding Subchapter B as set forth below.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2509—CONTRACTOR QUALIFICATIONS

Subpart 2509.4—Debarment, Suspension, and Ineligibility

Sec.

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2509.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
2509.410 Appeals.

Authority: Sec. 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

Subpart 2509.4—Debarment, Suspension, and Ineligibility

2509.400 Scope of subpart.

This subpart supplements subpart 9.4 of the Federal Acquisition Regulation by prescribing NSF policies and procedures and assigning responsibility for making debarment and suspension decisions. Nothing in this subpart is intended to alter the effect of subpart 9.4.

2509.403 Definitions.

The NSF Deputy Director is the "debarring official" and "suspending official" for the Foundation. All duties assigned to the NSF Deputy Director by this regulation or by subpart 9.4 of the Federal Acquisition Regulation may be delegated by him or her to any officer or employee of the Foundation.

2509.405 Effect of listing.

2509.405-1 Continuation of current contracts.

(a) The NSF Deputy Director will decide whether to continue NSF contracts or subcontracts in existence at the time a contractor is debarred, suspended, or proposed for debarment.

(b) The NSF Deputy Director will decide whether to renew or otherwise extend the duration of NSF contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment. He or she will prepare a written statement of the compelling reasons for renewal and extension.

2509.405-2 Restrictions on subcontracting.

The NSF Deputy Director may authorize a contracting officer to consent to a subcontract with a contractor debarred, suspended, or proposed for debarment. Her or she will prepare a written statement of the compelling reasons for such approval.

2509.406 Debarment.

2509.406-1 General.

(c) The NSF Deputy Director will decide whether to enter into a contract with a contractor that is debarred or proposed for debarment. He or she will prepare a written statement of the compelling reasons justifying continued business dealings between the Foundation and the contractor.

2509.406-3 Procedures.

(a) Any NSF employee who becomes aware of circumstances that may serve as the basis for debarment of a contractor will promptly report them to the NSF Office of Inspector General (OIG) and the debarring official. OIG

will investigate the circumstances and, if it determines appropriate, prepare a written referral of the matter to the debarring official.

(b) Upon receipt of a referral from the NSF Office of Inspector General, the debarring official will determine, in consultation as appropriate with OIG, the NSF Office of the General Counsel, the NSF Procurement Executive, and program officials, what additional steps are necessary and appropriate to make a decision in accordance with the requirements of 48 CFR 9.406–3.

2509.407 Suspension.

2509.407–1 General.

(d) The NSF Deputy Director will decide whether to enter into a contract with a suspended contractor. He or she will prepare a written statement of the compelling reasons justifying continued business dealings between the Foundation and the contractor.

2509.407–3 Procedures.

(a) Any NSF employee who becomes aware of circumstances that may serve as the basis for suspension of a contractor will promptly report them to the NSF Office of Inspector General (OIG) and the suspending official. OIG will investigate the circumstances and, if it determines appropriate, prepare a written referral of the matter to the suspending official.

(b) Upon receipt of a referral from the NSF Office of Inspector General, the suspending official will determine, in consultation as appropriate with OIG, the NSF Office of the General Counsel, the NSF Procurement Executive, and program officials, what additional steps are necessary and appropriate to make a decision in accordance with the requirements of 48 CFR 9.407–3.

2509.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2) NSF contracting officers will notify the Office of Inspector General and the Deputy Director whenever information submitted by offerors in compliance with the Certifications Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters provisions in solicitations indicates the existence of an indictment, charge, conviction, or civil judgment.

2509.410 Appeals.

(a) A debarred or suspended contractor may appeal to the Director in writing within 30 days after receiving notice of the debarring or suspending official's decision in accordance with 48 CFR 9.406–3(e) or § 9.407–3(d)(4). The debarring or suspending official's decision becomes a final administrative action if not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

[FR Doc. 92–18883 Filed 8–6–92; 8:45 am]

BILLING CODE 7555–01–M

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48 CFR Part 2527

Federal Acquisition Regulations System

AGENCY: National Science Foundation.

ACTION: Final rule with a request for comments.

SUMMARY: This regulation revises information on NSF patent policies and procedures contained in the Foundation's supplement to the Federal Acquisition Regulation to conform it to the revised regulation on this subject published in the Federal Register on Tuesday, April 28, 1992.

DATES: This revision is effective August 7, 1992. Comments, however, are welcome and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: NSF Patent Assistant, Office of the General Counsel, room 501, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: April C. Bennett, NSF Patent Assistant, at (202) 357–9435 (voice) or (202) 357–7521 (facsimile)—those are not toll-free numbers—or by electronic mail as patents@nsf through BITNET or patents@nsf.gov through INTERNET.

SUPPLEMENTARY INFORMATION:

This amendment revises the general information and statement of NSF Patent Policy in the Foundation's FAR supplement to conform it to the revised regulation published in the Tuesday, April 28, 1992 Federal Register. No change in NSF policy or procedures is made by this revision.

Determinations

I have determined, under the criteria set forth in Executive Order 12291 , that this rule is not a "major rule" requiring a regulatory impact analysis. I also certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, that this rule will not have a significant economic impact on any substantial number of small entities. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 48 CFR Part 2527

Government procurement; Grant programs—science and technology; Inventions and patents; Nonprofit organizations; Small businesses.

Dated: August 3, 1992.

National Science Foundation.

Charles H. Herz,

General Counsel.

Accordingly, title 48, part 2527, of the Code of Federal Regulations is amended as follows:

PART 2527—PATENTS, DATA, AND COPYRIGHTS

1. The authority citation for part 2527 continues to read as follows:

Authority: 35 U.S.C. 200 et seq., commonly called the Bayh-Dole Act, as implemented by OMB Circular A–124; secs. 11(e) and 12(a) of the National Science Foundation Act, as amended (42 U.S.C. 1870(e) and 1871(a)); and the Presidential Memorandum entitled "Government Patent Policy," issued Feb. 18, 1983.

2. Sections 2527.7001 and 2527.7002 are revised to read as follows:

2527.7001 General.

National Science Foundation policies, procedures, and clauses governing allocation of rights to inventions made under NSF contracts, grants, and cooperative agreements were published in the Federal Register on Tuesday, April 28, 1992, at 57 FR 18052 and will be codified as part 650 of title 45 of the Code of Federal Regulations.

2527.7002 NSF patent policy.

As authorized by the National Science Board at its 230th meeting, October 15–16, 1981, the Director of the National Science Foundation has adopted the following statement of NSF patent policy.

(a) In accordance with by the Bayh-Dole Act and the Presidential Memorandum entitled "Government Patent Policy" issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Department of Commerce in all its funding agreements for the performance of experimental, developmental, or research work, including awards made to foreign entities, unless the Foundation

determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.

(c) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee, or the inventor's employer if other than the awardee, shows that it would be harmed by that action.

(d) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

[FR Doc. 92-18684 Filed 8-6-92; 8:45 am]
BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, will open for 3 days on July 31 through August 2, 1992, with a possession and landing limit of 44 coho salmon for the open period. The Director, Northwest Region, NMFS (Regional Director), has determined that, following this fishery's second open period on July 25–27, 1992, this fishery should proceed with a 3-day open period and an adjusted possession and landing limit for coho salmon. These adjustments are intended to minimize disruption to the commercial fishery without exceeding the ocean share allocated to the commercial fishery in this subarea.

DATES: Effective at 0001 hours local time, July 31, 1992, through 2400 hours local time, August 2, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 19, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery between the U.S.–Canada border and Cape Falcon, Oregon, would open July 20 and continue through the earliest of August 31 or attainment of harvest guidelines of either 16,000 coho salmon or 4,400 chinook salmon. According to the management measures mentioned above (57 FR 19388, May 6, 1992), this fishery will follow a cycle of 2 days open and 3 days closed, a possession and landing limit of 30 coho salmon per opening, and gear limited to 6-inch plugs or larger and no more than four spreads per line. A previous inseason adjustment announced this fishery's second open period, which was for 3 days on July 25–27 with a possession and landing limit of 44 coho salmon for the open period (57 FR 34085, August 3, 1992).

Based on the best available information on July 29, 1992, the commercial catch in the subarea from the U.S.-Canada border to Cape Falcon during the 2 open periods totaled about 8,900 coho salmon, and the remainder of the coho salmon harvest guideline is projected to be harvested during a 3-day fishing period with an appropriate adjustment to the possession and landing limit. By providing another open period of 3 days, disruption to the commercial fishery is minimized. The fishery would otherwise harvest the remaining coho salmon during 2 open periods of 2 days or less. Therefore, the commercial fishery in the subarea from the U.S.–Canada border to Cape Falcon will open for 3 days, effective 0001 hours local time July 31 through 2400 hours local time, August 2, 1992. Each vessel may possess, land and deliver not more than 44 coho salmon for this open period. Modifications of fishing seasons and limited retention regulations are authorized by regulations at 50 CFR 661.21(b)(1)(i) and (ii). All other restrictions that apply to this fishery remain in effect as announced in the notice of 1992 management measures (57 FR 19388, May 6, 1992).

Following this 3-day open period, the commercial fishery in this subarea is closed for 3 days, August 3–5, in accordance with the 1992 management measures (57 FR 19388, May 6, 1992). During this closed period, catches will be evaluated to determine if sufficient fish remain to reopen this fishery as scheduled.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, July 31, 1992, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these adjustments affecting the commercial fishery between the U.S.-Canada border and Cape Falcon. The States of Washington and Oregon will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 19, 1992.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18767 Filed 8-4-92; 3:00 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date and request for comments.

SUMMARY: NOAA promulgated an emergency interim rule May 1, 1992, under authority of the Magnuson Act Fishery Conservation and Management Act (Magnuson Act), for the Fishery Management Plan for the Commercial and Recreational Fisheries off the Coasts of Washington, Oregon, and California (FMP) at the request of Pacific Regional Fishery Management Council. The emergency rule is effective through August 4, 1992, and provides for deviations from the FMP and its implementing framework regulations by: (1) establishing an overall target ocean harvest rate for Klamath River fall chinook of 8 percent of the ocean population (2 percent for fisheries during September and October during 1991 and 6 percent for fisheries in 1992 through August 31)—a rate representing a 50 percent reduction from the target harvest rate in 1991 and one that will not likely allow attainment of the Klamath fall chinook spawning escapement floor of 35,000 naturally spawning adults established by the FMP; and (2) reducing the annual ocean harvest rate for Oregon coastal natural (OCN) coho from 47 percent established by the FMP to 40 percent in 1992 and a transfer of 5,000 coho from the recreational fishery allocation to commercial fishery allocation south of Cape Falcon, Oregon. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days, through November 2, 1992. This action is necessary because the conditions justifying the emergency action remain unchanged. These regulations are intended to prevent overfishing and to apportion the ocean salmon harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries. These regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for treaty Indian and non-treaty inside fisheries and spawning escapement.

DATES: *Effective:* The emergency amendments to part 661 published at 57 FR 19404 (May 6, 1992) are effective from 0001 hours Pacific Daylight Time (P.D.T.) August 5, 1992, until 2400 hours P.D.T., November 2, 1992. *Comments:* Comments on the extension of the effective date of the emergency interim rule will be accepted until August 20, 1992.

ADDRESSES: Comments on the extension of the effective date of the emergency interim rule may be submitted to, and copies of the environmental assessment may be obtained from, Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700—Bldg. 1, Seattle, WA 98115-0070; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140 or Rodney R. McInnis at (310) 980-4030.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Act, the Secretary promulgated an emergency interim rule effective May 1, 1992 (published with the notice of the 1992 fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California at 57 FR 19388, May 6, 1992). The emergency rule provided for two deviations from the FMP's management measures and implementing framework regulations that required implementation through an emergency rule effective for a 90 day period (May 1 to August 4, 1992). The council voted at its meeting of July 8-10, 1992, to recommend extension of the emergency rule unchanged for another 90 days. The Secretary has considered the Council's request and concurs with its finding that the fishery conditions warranting emergency action remain unchanged. Accordingly, the Secretary extends the emergency interim rule for an additional 90 days under section 305(c)(3)(B) of the Magnuson Act. The 90-day extension will allow continuation of the management regime for the ocean salmon fisheries through the end of the 1992 fishing season. All provisions of the emergency interim rule remain in effect through November 2, 1992. The emergency rule, first published at 57 FR 19404, modifies regulations at 50 CFR part 661 for the emergency period.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order and was reported to the Director of the Office of Management and Budget with an explanation of why following procedures of that order are not possible.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: August 3, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-18769 Filed 8-4-92; 3:00 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2016]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Pacific Ocean perch (POP) in the Eastern Regulatory Area in the Gulf of Alaska (EGOA) and is requiring that catches of POP be treated in the same manner as prohibited species and discarded. This action is necessary because the total allowable catch (TAC) for POP in the EGOA has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 3, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the Gulf of Alaska exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The 1992 TAC for POP in the EGOA was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 2,169 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for POP

in the EGOA has been reached. Therefore, NMFS is declaring that POP will be treated as prohibited species. Under § 672.20(e), NMFS is prohibiting retention of POP in the EGOA effective from 12 noon, A.l.t., August 3, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 3, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18705 Filed 8-3-92; 3:19 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 153
Friday, August 7, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Review of Reactor Licensee Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment. Extension of comment period.

SUMMARY: On June 19, 1992 (57 FR 27394), the U.S. Nuclear Regulatory Commission (NRC) published a request for public comment in connection with a review of the reporting requirements for power reactor licensees appearing in title 10 of the Code of Federal Regulations (10 CFR), Chapter I—Nuclear Regulatory Commission, NRC guidance documents (NUREGs, Regulatory Guides, or generic letters) that interpret the reporting requirements contained in the regulations, and reporting requirements for power reactor licensees contained in license documents such as Technical Specifications. The notice indicated that comments must be received from interested parties on or before August 18, 1992. However, in consideration of a request from the nuclear power industry that more time be allowed to prepare an effective response, the NRC is extending the comment period to September 30, 1992.

DATES: New comment period expires September 30, 1992.

ADDRESSES: Mail comments to: David L. Meyer, Chief, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand delivered to room P–223, 7920 Norfolk Avenue, Bethesda, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: James Shapaker, Division of Operational Events Assessment, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–1151.

Dated at Rockville, Maryland, this 30th day of July 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18788 Filed 8–6–92; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–23–92]

RIN 1545–AQ66

Voluntary Employees' Beneficiary Association Qualification—Geographic Locale Restriction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations about the qualification of voluntary employees' beneficiary associations (VEBAs) under section 501(c)(9) of the Internal Revenue Code (Code). The proposed regulations supplement the existing regulations with rules for determining whether the membership of an organization consists of employees of employers engaged in the same line of business in the same geographic locale. The proposed regulations will provide the public with guidance necessary to comply with the law in the case of an organization that does not consist exclusively of the employees of a single employer or the members of a single labor union. They will affect entities seeking to sponsor VEBAs covering the employees of more than one unrelated employer, as well as those employees.

DATES: Written comments must be received by October 6, 1992. Requests to speak (with outlines of oral comments) at a public hearing scheduled for December 3, 1992, at 1 p.m. must be received by November 12, 1992.

ADDRESSES: Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–23–92) Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Michael J. Roach at 202–622–6060 concerning the regulations; Carol Savage at 202–622–8452 concerning the hearing (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The existing regulations at § 1.501(c)(9)–2(a)(1) contain general rules for determining when an association qualifies as a voluntary employees' association (VEBA) eligible for exemption from income tax under section 501(c)(9) of the Internal Revenue Code. Under those regulations, the members of the association must share an employment-related common bond. The members are deemed to share an employment-related common bond if membership in the association is open only to persons whose eligibility for membership is based on employment by a single employer or affiliated group of employers, or is based on membership in one or more locals of a national or international labor union, or is based on coverage under one or more collective bargaining agreements. In addition, under the existing regulations, employees of one or more employers engaged in the same geographic locale are considered to share an employment-related common bond.

Questions have arisen about the geographic extent of a single "geographic locale." In its report on the Deficit Reduction Act of 1984, Public Law No. 98–369, 98 Stat. 494, the House Ways and Means Committee described the effect of the geographic locale restriction affecting VEBAs as follows:

> Under the standards prescribed in the regulations, for example, a group of car dealers in the same city or other similarly restricted geographical locale could form a VEBA to provide permissible benefits to their employees.

H.R. Rep. No. 432, Part II, 98th Cong., 2d Sess. 1285.

Administratively, the Internal Revenue Service has treated employers located in any one state as located in the same geographic locale. The Service has also treated a single standard metropolitan statistical area (SMSA), as defined by the Bureau of the Census, as a single geographic locale, even though

the boundaries of some SMSAs include portions of more than one state.

In 1986, the United States Court of Appeals for the Seventh Circuit held the geographic local restriction invalid in *Water Quality Association Employees' Benefit Corp.* v. *United States*, 795 F.2d 1303 (7th Cir. 1986). The court agreed with the Government's argument that the existence of an employment-related common bond is the essential factor that distinguishes a tax-exempt VEBA from a taxable insurance company, but concluded that restricting VEBAs covering employees of unrelated employers to those employers located in the same geographic locale did not enhance the employement-related bond of the employees participating in the organization.

The preamble to the final regulations published as T.D. 7750, 1981–1 C.B. 338 (46 FR 1719 (January 7, 1981)), explains the reason why the Secretary decided to retain the geographic locale restriction despite comments from the public requesting its deletion from the final regulations. In relevant part, the preamble states:

> First, section 501(c)(9) provides for the exemption of associations of employees who enjoy some employment related bond. Allowing section 501(c)(9) to be used as a tax-exempt vehicle for offering insurance products to unrelated individuals scattered throughout the country would undermine those provisions of the Internal Revenue Code that prescribe the income tax treatment of insurance companies. Second, it is the position of the Internal Revenue Service that where an organization such as a national trade association or business league exempt from taxation under section 501(c)(6) operates a group insurance program for its members, the organization is engaged in an unrelated trade or business. *See* Rev. Rul. 66–151, 1966–1 C.B. 152; Rev. Rul. 73–386, 1973–2 C.B. 191; Rev. Rul. 78–52, 1978–1 C.B. 166. To allow trade associations to provide insurance benefits through a trust exempt under section 501(c)(9) would simply facilitate circumvention of the unrelated trade or business income tax otherwise applicable to such organizations.

These restrictions are consistent with the history of section 501(c)(9) of the Code. As Kenneth W. Gideon, then Assistant Secretary of the Treasury for Tax Policy, said in testimony before the Subcommittee on Taxation of the Senate Finance Committee on September 10, 1991, the VEBA tax exemption was originally intended to benefit associations formed and managed by employees or a single employer, or of small local groups of employers, to provide certain welfare benefits to their members in situations where such benefits would not otherwise have been available. Tax Simplification Bills: Hearings on S. 1384, S. 1394, and H.R. 2777 Before the Subcommittee on Taxation of the Senate Committee on Finance, 102d Cong., 1st Sess., 260–261. In 1928, when the predecessor of section 501(c)(9) of the Code was enacted as section 103(16) of the Revenue Act of 1928, 45 Stat. 791, ch. 852, the prevalent form of "mutual benefit association" that provided welfare benefits to employees was an organization providing benefits to the employees of a single establishment, such as an industrial plant. National Industrial Conference Board, The Present Status of Mutual Benefit Associations, 1–2, 50–51 (1931). At the time, there was concern that, although these organizations performed valuable social functions, they might not be able to continue to exist without a tax exemption. By contrast, larger associations covering employees of unrelated employers in different geographic areas are more likely to be viable without a tax exemption, and the benefits they provide are more likely to be available through commercial insurance. Tax Simplification bills, *supra*, at 260. In general, when Congress exempts a class of organizations from income tax, it is deemed to have referred to the existing organizations of that class at the time the exemption was adopted. *United States* v. *Cambridge Loan and Building Co.*, 278 U.S. 55, 58 (1928). Thus, the absence of large regional or national organizations among the class of organizations known as VEBAs or "mutual benefit associations" that were dedicated to providing welfare benefits to employees in 1928 is relevant in determining the proper scope of the exemption granted by section 501(c)(9) of the Code.

The factors cited in the preamble to the 1981 regulations for imposing a geographic locale restriction on the membership of VEBAs that include employees of unrelated employers are matters of continuing concern today. Because of these factors and the history of section 502(c)(9), the proposed regulations limit the geographic region within which unrelated employers must be engaged in the same line of business in order for employees of those lines of business to participate in a single VEBA to the minimum area that is consistent with enabling all employees of employers engaged in a particular line of business to participate in an economically feasible VEBA. If VEBA participation were always limited to employees of employers located in the same state or SMSA, however, the diversity of regional population density and employment patterns in the United States could make it infeasible in many cases for benefits to be provided through a VEBA. Accordingly, the proposed regulations afford a safe harbor that treats any three contiguous states as a single geographic locale, and they authorize the Commissioner of Internal Revenue to recognize larger areas as a single geographic locale on a case-by-case basis upon application by an organization seeking recognition as a VEBA. Thus, the Commissioner may recognize an organization as a VEBA under section 501(c)(9), even though its members are employed by unrelated employers engaged in the same line of business located in any number of states, whether or not contiguous. To obtain recognition as a VEBA under this discretionary authority, the applicant must show (1) that it would not be economically feasible to cover employees of employers engaged in that line of business in the states to be included in the proposed VEBA under two or more separate VEBAs, and (2) either that the states to be included are all contiguous or that there are legitimate reasons supporting the inclusion of those particular states.

During the drafting of these proposed regulations consideration was given to a rule that would allow an area to be treated as a single geographic locale even though it included areas outside the United States. It is not clear, however, whether it is necessary or desirable to include such a rule. Comments are invited about the extent, if any, to which the regulations should allow the inclusion of areas outside the United States in a single geographic locale.

Proposed Effective Date

These regulations are proposed to be effective on August 7, 1992; however, taxpayers may treat the rules as applicable to prior years.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Thursday, December 3, 1992, at 1:00 p.m. in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW. Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply to the public hearing.

Persons who have submitted written comments by October 6, 1992, and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than November 12, 1992, a request to speak and an outline of the oral comments to be presented at the hearing stating the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 12:45 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Michael J. Roach, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.501(a)–1 through 1.505(c)–1T

Income taxes, Nonprofit organizations, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, the proposed amendment to 26 CFR part 1 is as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.501(c)(9)–2, paragraph (a)(1) is amended by adding a sentence between the fourth and fifth sentences, and a new paragraph (d) is added, to read as follows:

§ 1.501(c)(9)–2 Membership in a voluntary employees' beneficiary association; employees; voluntary association of employees.

(a) * * *

(1) *In general.* * * * (See paragraph (d) of this section for the meaning of geographic locale.) * * *

* * * * *

(d) *Meaning of geographic locale*—(1) *Three-state safe harbor.* An area is a single geographic locale for purposes of paragraph (a)(1) of this section if it does not exceed the boundaries of three contiguous states, *i.e.*, three states each of which shares a land or river border with at least one of the others. For this purpose, Alaska and Hawaii are deemed to be contiguous with each other and with each of the following states: Washington, Oregon, and California.

(2) *Discretionary authority to recognize larger areas as geographic locales.* In determining whether an organization covering employees of employers engaged in the same line of business is a voluntary employees' beneficiary association (VEBA) described in section 501(c)(9), the Commissioner may recognize an area that does not satisfy the three-state safe harbor in paragraph (d)(1) of this section as a single geographic locale if—

(i) It would not be economically feasible to cover employees of employers engaged in that line of business in that area under two or more separate VEBAs each extending over fewer states; and

(ii) Employment characteristics in that line of business, population characteristics, or other regional factors support the particular states included. This paragraph (d)(2)(ii) is deemed satisfied if the states included are contiguous.

(3) *Examples.* The following examples illustrate this paragraph (d).

Example 1. The membership of the W Association is made up of employers whose business consists of the distribution of produce in Virginia, North Carolina, and South Carolina. Because Virginia and South Carolina each share a land border with North Carolina, the three states are contiguous states and form a single geographic locale.

Example 2. The membership of the X Association is made up of employers whose business consists of the retail sale of computer software in Montana, Wyoming, North Dakota, South Dakota, and Nebraska, which are contiguous states. X establishes the X Trust to provide life, sick, accident, or other benefits for the employees of its members. The X Trust applies for recognition of exemption as a VEBA, stating that it intends to permit employees of any employer that is a member of X to join the proposed VEBA. In its application, the X Trust provides summaries of employer data and economic analyses showing that no division of the region into smaller groups of states would enable X to establish two or more separate VEBAs each with enough members to make the formation of those separate VEBAs economically feasible. Furthermore, although some possible divisions of the region into three-state or four-state areas could form an economically feasible VEBA, any such division of the five-state region covered by X would leave employees of X's employer-members located in at least one state without a VEBA. The Commissioner may, as a matter of administrative discretion, recognize the X Trust as a VEBA described in section 501(c)(9) based on its showing that the limited number of employees in each state would make any division of the region into two or more VEBAs economically infeasible.

Example 3. The membership of the Y Association is made up of employers whose business consists of shipping freight by barge on the Mississippi and Ohio Rivers. Some of the members of Y conduct their business out of ports in Louisiana, while others operate out of ports in Arkansas, Missouri, and Ohio. Y establishes the Y Trust to provide life, sick, accident, or other benefits to the employees of its members. The Y Trust applies for recognition of exemption as a VEBA, stating that it intends to permit the employees of any employer that is a member of Y to join the proposed VEBA. In its application, the Y Trust sets forth facts tending to show that there are so few members of Y in each of the four states that any division of those states into two or more separate regions would result in creating VEBAs that would be too small to be economically feasible, that all of the members of Y are engaged in river shipping between inland and Gulf ports that are united by the existence of a natural waterway, and that the labor force engaged in providing transportation by river barge is distinct from that engaged in providing other means of transportation. Even though Ohio, Louisiana, Arkansas, and Missouri are not contiguous, because Ohio does not share a land or river border with any of the other three states, the Commissioner may, as a matter of administrative discretion, recognize the Y Trust as a VEBA described in section 501(c)(9) based on its showing that the establishment of separate VEBAs would not be economically feasible and that the characteristics of the river shipping business justify permitting a VEBA to cover the scattered concentrations of employees in that

business located in Louisiana, Arkansas, Missouri, and Ohio.

Example 4. The membership of the Z Association is made up of employers whose business consists of the retail sale of agricultural implements in the states west of the Mississippi River except California, Alaska, and Hawaii. There are 21 states in the region covered by Z. Z establishes the Z1 Trust, the Z2 Trust, and the Z3 Trust to provide life, sick, accident or other benefits to the employees of its members. The trusts cover different subregions which were formed by dividing the Z region into three areas each consisting of seven contiguous states. Each trust applies for recognition of exemption as a VEBA, stating that it intends to permit the employees of any employer that is a member of Z located within its subregion to join its proposed VEBA. Each trust sets forth facts in its application tending to show that four states within its particular subregion would be needed to create a VEBA large enough to be economically feasible, so that any further division of its seven-state subregion would leave employees of at least some of Z's employer-members located in the subregion in an area too small to support an economically feasible VEBA. The applications contain no justification for the choice of three seven-state subregions. Since the applicants have not shown that it would not be economically feasible to divide the Z region into smaller subregions (*e.g.*, four containing four states and one containing five states), the applicants have not satisfied paragraph (d)(2)(i) of this section, and the Commissioner does not have the discretion to recognize the Z1, Z2, and Z3 Trusts as VEBAs described in section 501(c)(9).

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-18532 Filed 8-6-92; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 22, 23, and 25

[Docket No. 92-160; FCC 92-336]

Collection of Data for Reporting of Station Frequency and Technical Parameters by the Commission to International Frequency Registration Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to collect data which the Commission is required to report to the International Frequency Registration Board (IFRB), in a computer readable format. The proposed collection entails reporting requirements for common carrier applicants, permittees and licensees in the Domestic Public Fixed Radio, Public Mobile, International Fixed Public Radiocommunication, and Satellite Communications Services under parts 21, 22, 23, and 25, respectively, of the Commission's rules. The proposed requirements are necessary to enable the Commission to create a computer database in order to implement efficiently interference management of the common carrier spectrum. The intended effect is to provide automated capability that will significantly improve protection of domestic common carriers from harmful interference from foreign radio stations, reporting of frequency assignments to the IFRB, and coordination with foreign governments.

DATES: Comments must be received by September 28, 1992; and reply comments, by October 28, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier Bureau, at 202-632-6450.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The following collections of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. 44 U.S.C. 3504(h). Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, the Commission's duplicating contractor, at its office, 1114 21st Street, NW., Washington, DC 20036, (202)-452-1422. Persons wishing to comment on this collection of information should direct their comments to: Jonas Neihardt, room 3235, NEOB, Washington, DC 20503, (202)-395-4814. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project, Washington, DC 20554. For further information contact: Judy Boley, (202)-632-7513.

Title: Amendment of parts 21, 22, 23, and 25 of the Commission's Rules to Require Reporting of Station Frequency and Technical Parameters for Registration by the Commission with the International Frequency Registration Board.

OMB Number: None

Action: Proposed New Collections.

Respondents: Businesses or other for Profit, including small businesses.

Frequency of response: On occasion.

Proposed Reports/ Sections	Est. Average Hrs Per Response	Est. Annual Responses
FCC Report 21-01/Sec. 21.14.	2.5 Hrs.	2,000
FCC Report 22-01/Sec. 22.6(f).	2 Hrs.	1,045
FCC Report 25-01/Sec. 23.20 & 25.115.	12 Hrs.	71,280
FCC Report 25-02/Sec. 25.111.	48 Hrs.	2,880

Estimated annual burden: 77,205 Hours.

Needs and uses: The Notice of Proposed Rulemaking (NPRM) solicits public comment on FCC's proposal to create an automated database that will provide FCC with capability of protecting domestic licensees at risk of harmful electrical interference to and from foreign carriers and improving the reporting of frequency assignments to the International Frequency Registration Board. Applicants, permittees and licensees filing under 47 CFR parts 21, 22, 23, and 25 may be subject to the reporting requirements.

Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's initial regulatory flexibility analysis follows:

Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding the information that the Commission believes is necessary to require applicants, permittees and licensees to report to the Commission for efficient automated registration of licensed frequencies of domestic common carriers with the International Frequency Registration Board.

Objectives

The Commission seeks to evaluate the amount and type of information it proposes to require of licensees under parts 21, 22, 23, and 25 of its rules in order to ensure that it effectively reports all necessary information to the International Frequency Registration Board and yet minimizes the additional reporting burden. The Commission also seeks to establish a data base with sufficient, updated frequency assignment and other pertinent operating information on applicants, permittees and licensees to protect them from interference from foreign stations.

Legal Basis

The proposed action is authorized under sections 4(i), 4(j), 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as

amended, 47 U.S.C. Sections 154(i), 154(j), 301, 303(i), 303(r), 313 and 314.

Reporting, Recordkeeping and Other Compliance Requirements

Additional reporting of information relating to operations of stations on an updated basis after the proposed rule becomes effective is required in the form of a magnetic diskette. Other than reporting information, there are no compliance requirements.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

Any rule changes in this proceeding would affect only domestic common carrier and non-common carrier applicants, permittees and licensees under parts 21, 22, 23, and 25 of the Commission rules that are within the proposed areas defined herein. This could include a number of small entitles. We anticipate that the effect of the proposed reporting requirement could be greater on small entities than on large ones. Small entities might have to contract with engineering consultants to input the information on the diskettes. Nevertheless, after evaluating the comments in this proceeding, the Commission will further examine the impact of the proposed rule change on small entities and set forth our finding in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Notice solicits comment on alternatives that may affect the impact on small entities. We request written comments on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq* (1981).

The Commission is also serving the following government agencies with copies of this Notice of Proposed Rule Making: National Telecommunications and Information Administration and Office of Management and Budget.

Summary of the Notice of Proposed Rule Making

The following is a summary of the Commission's notice of proposed rulemaking in CC Docket 92–160, adopted July 20, 1992 and released July 30, 1992. The full texts of all Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC 20036.

1. Recent growth in the use of common carrier spectrum for domestic, international, and satellite communications demonstrates the need for regulations that ensure timely, accurate reporting of frequency assignments by the Commission to the IFRB, efficient coordination of common carrier spectrum use with foreign governments, and improved interference protection for domestic licensees. Current Commission rules do not require the submission of data for the Commission to meet these objectives. The need to achieve them is increasingly evident in areas of the continental United States near Mexico, Canada, the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and territories such as Guam and the U.S. Virgin Islands.

2. The Commission needs to generate a new computer database to meet the above objectives. Currently, the databases to which the Bureau has access contain insufficient and inaccurate data. In addition, these data are not in a format that permits the development and use of a readily accessible database. To compile such a database, the Commission needs to assemble from applicants, permittees and licensees all data elements regarding frequency assignments that the Commission must report to the IFRB. Additional data is also needed to fulfill the functions of monitoring, reporting, and coordinating information on frequency assignments with common carriers, foreign governments, and the Office of Engineering and Technology.

3. To assemble the above data, the Commission needs a medium that will facilitate entry of information into and development of the database. The medium must also reduce the administrative burden on Commission staff to retrieve and recollate relevant data. The Commission believes that requiring domestic common carriers to submit their reports solely in magnetic form will satisfy these criteria. Therefore, the Commission is proposing that the required information be submitted on 3½ inch magnetic diskette. The attachments following the proposed rules section of the NPRM set forth the specific data elements and format to be submitted. Further, we believe that the magnetic diskette medium will minimize the burden of the reporting requirements on common carriers. The adoption of this NPRM will impact all common carrier applicants, permittees, and licensees that are within the zones at risk of interference.

4. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

5. Pursuant to applicable procedures set forth in section 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 28, 1992 and reply comments on or before October 28, 1992. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Participants should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Parts 21, 22, 23, and 25

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 92–18808 Filed 8–6–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 27)]

Rail General Exemption Authority: Transportation Equipment

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served July 9, 1992 (57 FR 30709, July 10, 1992), the Commission sought public comment by August 10, 1992, on whether to exempt from regulation the rail transportation of transportation equipment. By motion filed July 28, 1992, Shippers Committee, OT–5 (SCOT 5) requests a 90-day extension to file comments. SCOT 5 states additional time is needed because many SCOT–5 delegates and potential witnesses have pre-existing vacation plans and SCOT–5 cannot schedule meetings of its members until after Labor Day. The request is reasonable and will be granted.

DATES: Initial comments are due on November 9, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 27) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar: (202) 972–5660 [TDD for the hearing impaired: (202) 927–5721].

Decided: July 31, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–18779 Filed 8–6–92; 8:45 am]

BILLING CODE 7035–01–M

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49 CFR Part 1141

[Ex Parte No. 507]

Procedures To Calculate Interest Rates

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its regulations pertaining to the computation of interest when reparations are awarded. Specifically, consideration is being given to: the use of the 13 week Treasury Bill coupon equivalent yield in both investigation and complaint cases; the use of quarterly compounding of interest in those cases where the time period between the initial complaint or start of investigation and the final decision exceeds three months; and the use of floating interest rates in complaint cases where extended time periods are involved. These proposed regulations would more accurately reflect the actual interest rate use in investigation and complaint cases. Comments are solicited from interested parties.

DATES: Comments must be submitted by September 7, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 507 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 927–6187 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: The proposed revisions are set forth below. Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Interstate Commerce Commission, room 2215, Washington, DC 20423. Telephone: (202) 927–7428. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1141

Administrative practice and procedure.

Decided: July 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1141 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

1. The authority citation for part 1141 continues to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 553.

2. Section 1141.1 is proposed to be amended by revising the introductory text and paragraph (b), and adding a new paragraph (c) to read as follows:

§ 1141.1 Procedures to calculate interest rates.

Interest rates to be computed following a Commission decision in a complaint or investigation proceeding shall be the coupon equivalent yield (investment rate) of marketable securities of the United States Government having a duration of 91 days (3 months). The coupon equivalent yield to be used shall be the coupon equivalent yield of the most recent issue date prior to the filing of the complaint or commencement of the investigation, except, if the complaint is filed or the investigation is commenced on the date of issue, that coupon equivalent rate shall be used. The interest rate level shall be determined by:

* * * * *

(b) The Date the first unlawful charge is paid, for complaint proceedings, or

(c) Compounding on a quarterly basis with the interest rate updated on a quarterly basis (except in investigations, where the rate is set by statute as of the date the statement is filed), to reflect the coupon equivalent yield as of the issue date 13 weeks subsequent to the prior issue date used. Updating will continue until the Commission serves a decision containing its final determination.

[FR Doc. 92–18778 Filed 8–6–92; 8:45 am]

BILLING CODE 7035–01–M

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49 CFR part 1180

[Ex Parte No. 282 (Sub-No. 18)]

Railroad Consolidation Procedures: Class Exemption for Transactions Within a Corporate Family

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to modify the corporate family class exemption applicable to rail carrier transactions, by making it applicable to all transactions within a corporate family that do not result in adverse changes in service levels. Regulation of such transactions does not appear to be necessary to carry out the rail transportation policy. Furthermore, such transactions appear to be of limited scope, and the application of the Interstate Commerce Act to such transactions appears not to be needed to protect shippers from the abuse of market power.

DATES: Comments must be submitted by September 8, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 18) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 [TDD for Hearing Impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428.

(Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant impact on a substantial number of small entities. We invite public comments on the issue of the economic impact of our proposal on small entities.

List of Subjects in 49 CFR Part 1180

Railroads.

Decided: July 30, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for Part 1180 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, and 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. In § 1180.2, paragraph (d)(3) is proposed to be revised to read as follows:

§ 1180.2 Types of transactions.

* * * * *

(d) * * *

(3) Transactions within a corporate family that do not result in adverse changes in service levels.

* * * * *

[FR Doc. 92–18780 Filed 8–6–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AA95

Endangered and Threatened Wildlife and Plants; Revised Proposed Determination of Critical Habitat for the Least Bell's Vireo (Vireo bellii pusillus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) originally proposed designation of critical habitat for the least Bell's vireo (*Vireo bellii pusillus*) on May 3, 1985. The Service hereby revises its proposed designation of critical habitat for this federally listed endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). The proposed designation encompasses portions of Los Angeles, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura counties in California. This proposed critical habitat designation would result in additional protection requirements under section 7 of the Act for activities that are funded, authorized, or carried out by a Federal agency. Section 4 of the Act requires the Service to consider economic and other relevant impacts prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal, including additional information on the economic impacts (costs and benefits) of the designation, methods of evaluating costs and benefits accruing from the designation, and why any particular lands (regardless of ownership) should or should not be designated as critical habitat.

DATES: Comments from all interested parties must be received by November 5, 1992. In anticipation of a request, the Service intends to conduct two public hearings. Information on the public hearings will be published in the **Federal Register** at a later date.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Southern California Field Station, 2730 Loker Avenue West, Carlsbad, California 92008. The complete file for this rule, including comments and materials received, will be available for inspection, by appointment, during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Larry Salata, Fish and Wildlife Biologist (see **ADDRESSES** above) at 619/431–9440.

SUPPLEMENTARY INFORMATION:

Background

Ecological Considerations

The least Bell's vireo is a small gray migratory songbird that has declined dramatically in both numbers and distribution. This subspecies was once widespread and abundant throughout the Central Valley and other low elevation riverine areas of California. Least Bell's vireos historically bred in riparian woodlands from the interior of northern California (near Red Bluff, Tehama County) to northwestern Baja California, Mexico. Its current breeding distribution is restricted to a few localities in southern California and northwestern Baja California, Mexico (Franzreb 1989).

Least Bell's vireos nest primarily in willows (*Salix* spp.) but also use a variety of other shrub and tree species for nest placement (Gray and Greaves 1984, Salata 1987). Least Bell's vireos forage in riparian and adjoining upland habitats (Salata 1983, Kus and Miner 1987). Preliminary studies of vireo foraging behavior along the Santa Ynez River and within the Mono Creek Basin (Santa Barbara County) indicated that a large percentage of their foraging may occur in the adjacent chaparral community up to 300 or more yards from the nest (Tom Keeney, biologist, U.S. Army Corps of Engineers, *in litt.*, July 31, 1985).

The reduction of least Bell's vireo numbers and distribution is associated with widespread loss of riparian habitats and brood parasitism by the brown-headed cowbird (*Molothrus ater*). Destruction or significant alteration of riparian woodlands may have rendered the least Bell's vireo population incapable of withstanding the increase in brown-headed cowbird numbers that began in the 1920's (Grinnell and Miller 1944, Gaines 1974).

The population decline of the vireo has been well documented. In 1973, no least Bell's vireos were found during an intensive search in nearly all remaining riparian habitat between Red Bluff, Tehama County, and Stockton, San Joaquin County (Gaines 1974). In 1977, the U.S. Fish and Wildlife Service reviewed the literature, examined museum material, and contacted numerous National Audubon Society chapters and knowledgeable field observers for information on the status of the least Bell's vireo (Wilbur 1980). Since then, several intensive surveys of

virtually all potential breeding habitat in California have been conducted (Gaines 1977, Goldwasser 1978, Goldwasser *et al.* 1980, RECON 1989, unpublished data on file with the Fish and Wildlife Service). Least Bell's vireos remain at only about 40 of over 150 historically occupied sites (some localities cover many miles of a water course) surveyed in the United States from 1977 through 1991. Most of these locations contain fewer than five pairs of vireos. About 76 percent of the U.S. population is found at just five localities. The current breeding population of the least Bell's vireo in California consists of approximately 500 pairs. Less than several hundred pairs are estimated to occur in Mexico.

Previous Federal Actions

On November 8, 1979, the Service received a petition from James M. Greaves to list the Arizona *V. b. arizonae)* and least Bell's vireos as endangered. A notice of acceptance of the petition and status review was published on February 6, 1980 (45 FR 8030). Based on the best scientific and commercial data available and comments submitted during the status review, the Service found that the petitioned action was warranted for the least Bell's vireo on October 13, 1983 (49 FR 2485, January 20, 1984); however, a listing action was precluded by other pending listing actions, in accordance with section 4(b)(3)(C)(i) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.).* Section 4(b)(3)(C)(i) recycles such petitions, resulting in a new finding deadline of October 13, 1984. A finding was made on October 12, 1984, that this action was still warranted but precluded. The Service published a proposed rule to determine the least Bell's vireo to be an endangered species, and to designate critical habitat for the species on May 3, 1985 (50 FR 18968). This proposed rule constituted the next finding required under section 4(b)(3)(B)(ii) of the Act. A correction to some of the legal descriptions of the proposed critical habitat was published in the June 4, 1985, Federal Register (50 FR 23458). Rather than delay protected status for the vireo while the economic analysis that must accompany the final rule designating critical habitat was being prepared, the Service decided to make final only the listing portion of the rule so that immediate protection of the least Bell's vireo would be possible. Section 4(b)(6)(c)(ii) of the Act allows the Service to postpone designation of critical habitat for up to 12 months. On May 2, 1986, the vireo was listed as endangered and the comment period on proposed designation of critical habitat was reopened for an additional 90 days (51 FR 16483). A further extension of the comment period to January 1, 1987, was published on July 31, 1986 (51 FR 27429). Several administrative delays have resulted in lack of a final decision regarding designation of critical habitat for the least Bell's vireo. Much of the information has been updated, but due to the length of these delays, and in order to allow for the fullest possible consideration of public comment on the economic and other relevant impacts of designation, the Service is publishing this revised proposed rule. Public comments on this revised proposed rule will be accepted until November 5, 1992.

Relationship to Recovery

Section 2(c)(1) of the Act declares that all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act. Section 3(3) of the Act defines conservation to include all measures needed to recover the species and justify its removal from the list of endangered and threatened wildlife and plants. The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of designated critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits and conservation planning on State and private lands); section 6 (cooperative State and Federal grants); land acquisition; and research.

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of these activities and promotes a species' conservation and eventual delisting. Recovery plans provides guidance, which may include population goals and identification of areas in need of protection or special management, so that a species can be removed from the list of endangered and threatened wildlife and plants. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Service considers the conservation of a species in its designation of critical habitat. The designation of critical habitat will not, in itself, lead to the recovery of the species, but is one of several measures available to contribute to the conservation of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) that require special management. The protection given critical habitat under section 7 also immediately increases the protection given to these primary constituent elements and essential areas and preserves options for the long-term conservation of the species. The protection of these areas may also shorten the time needed to achieve recovery.

Designating critical habitat does not create a management plan; it does not establish numerical population goals; it does not proscribe specific management actions (inside or outside of critical habitat); and it has no direct effect on areas not designated. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans and in section 7 consultation. Areas outside of critical habitat also have an important role in the conservation of a listed species that is not addressed through designation of critical habitat.

The designation of critical habitat may be reevaluated and revised at any time that new information indicates that changes are warranted. The Service will reassess proposals for designation of critical habitat if land management plans, recovery plans, or other conservation strategies are developed and fully implemented that may reduce the need for the additional protection provided by any critical habitat designation.

Critical Habitat

Definition

Critical habitat is defined in section 3(5)(A) of the Act as: (i) the specific areas within the geographical area occupied by a species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species.

The term "conservation," as defined in section 3(3) of the Act, means to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

The Service believes that the definition of critical habitat, while

explicitly mentioning the features essential to conservation of a species, implicitly requires that the areas themselves be essential to the species' survival and recovery. Not all areas containing those features of a listed species' habitat are necessarily essential to its conservation. Conversely, areas not currently containing all of the essential features, but with the capability to do so in the future, may be proposed as critical habitat. However, areas not included in critical habitat that contain one or more of the essential features are also important to the species' conservation and would be addressed under other facets of the Act and other conservation laws and regulations.

Primary Constituent Elements

The Service is required to base critical habitat proposals upon the best scientific data available (50 CFR 424.12). In determining what areas are to be proposed as critical habitat, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements, as stated in 50 CFR 424.12, include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, rearing of offspring; and generally;
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) that support feeding, nesting, roosting and sheltering are essential to the conservation of the least Bell's vireo. These habitat features can be described as riparian woodland vegetation that contains both canopy and shrub layers, and includes some associated upland habitats. Vireos meet their survival and reproductive needs (food, cover, nest sites, nestling and fledgling protection) within the ripiarian zone in most areas. In some areas they also forage in adjacent upland habitats.

Consideration of New Information

The revised proposal is based on new biological and economic data, and material received during the comment period for the proposed rule and from State and Federal agencies.

Total Acres Included in Critical Habitat

The Service now proposes to designate critical habitat for the least Bell's vireo at 10 areas encompassing approximately 48,025 acres (19,210 ha) in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, and San Diego Counties, California. These 10 areas are occupied by about 88 percent of the known vireo population in the United States. Proposed critical habitat for the vireo occurs on the Santa Ynez River (Santa Barbara County), Santa Clara River (Ventura and Los Angeles Counties), Santa Ana River (Riverside and San Bernardino Counties), and Santa Margarita River, San Luis Rey River, Sweetwater River, San Diego River, Tijuana River, Coyote Creek, and Jamul-Dulzura Creeks (San Diego County).

Federal land within the revised proposed critical habitat consists of approximately 20,579 acres (8,232 ha) including approximately 7,600 (3,040 ha) in Santa Barbara County under the jurisdiction of the Forest Service, 3,338 acres (1,335 ha) in Riverside and San Bernardino Counties under the jurisdiction of the Corps of Engineers, and 9,641 acres (3,856 ha) in San Diego County under the jurisdiction of the Marine Corps and International Boundary and Water Commission. The remainder of the revised proposed critical habitat is in State, county, city, Indian, or private ownership.

Differences from Previous Proposal

The Service has used more recent information to update the May 3, 1985, proposal, but has followed the same approach in this revised proposed rule. The areas that were proposed as critical habitat in the May 3, 1985, proposal form the basis for the areas proposed for designation in this rule. The May 3, 1985, proposed rule identified approximately 43,000 acres for designation as critical habitat. In preparing this revised proposal, it was discovered that the 43,000-acre critical habitat figure was in error and should have been reported as approximately 45,805 acres. Therefore, this rule and associated documents will refer to the 45,805-acre figure as the correct acreage figure from the May 3, 1985, proposed designation.

The area encompassed by the 10 critical habitat areas has been adjusted from approximately 45,805 acres (18,322 ha) in the original proposed rule to 48,025 acres (19,210 ha) in this revised proposed rule. In adjusting the boundaries, 1,400 acres (560 ha) were deleted from the proposed critical habitat on the Santa Ynez River and 3,620 acres (1,448 ha) were added, resulting in a net increase of 2,220 acres (888 ha). This adjustment was recommended by the Forest Service and was based on the results of additional field research on the status, distribution, and behavior of the least Bell's vireo on the Santa Ynez River during the 1986 breeding season. An additional 120 acres (48 ha), adjacent to the northern border of Gibraltar Reservoir, were also recommended for deletion by the Forest Service but the Service does not believe that this change is warranted because this area contains potential nesting habitat. All the land suggested for either withdrawal or addition to the Santa Ynez River critical habitat is under the jurisdiction of the U.S. Forest Service. The additional 3,620 acres (1,448 ha) that were added are under Federal jurisdiction, withdrawn from mineral entry, and without any private or commercial interests.

Available Conservation Measures

Section 7 Consultation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

If critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies insure that their actions are not likely to jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take. Regulations implementing this interagency

cooperation provision of the Act are codified at 50 CFR part 402.

Prior to formal designation of critical habitat, section 76(a)(4) of the Act and 50 CFR 402.10 of the regulations require Federal agencies to confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat.

If an agency requests, and the Service concurs, a formal conference report may be issued. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14 as if the critical habitat were designated, not proposed. Such a formal conference report may be adopted pursuant to 50 CFR 402.10(d) as the biological opinion when the critical habitat is designated if no significant information or changes in the action alter the content of the opinion.

Conference on Current Activities

A number of Federal agencies or departments fund, authorize, carry out actions that affect lands that the Service proposes to designate as critical habitat. Among these agencies are the Forest Service, Corps of Engineers, Marine Corps, Federal Highway Administration, and International Boundary and Water Commission. The Service has identified several activities within the range of the least Bell's vireo that are the subject of formal or informal section 7 consultations. These include a Corps of Engineers flood control project, the Clean Water Act permit program, a water quality and siltation control program; Federal Highway Administration bridge replacement and highway projects; and Forest Service recreation and fire management programs.

Federal agencies are responsible for determining whether or not to confer with the Service on their actions and should consider a number of factors when determining whether any proposed action may destroy or adversely modify proposed critical habitat. Among these factors are impacts of the action on the primary constituent elements of feeding, nesting, roosting, and sheltering; the extent of fragmentation or current habitat suitability within the critical habitat site; the level of incidental take associated with the action; and the extent of the action (e.g., campground maintenance versus new construction of a highway or food control project). The Service will review the action agency's determination on a case-by-case basis and will concur whether or not the action is likely to destroy or adversely modify critical habitat. In order to concur, the Service will consider the effect of the proposed action on the above elements along with the reasons why that particular site was proposed to be critical habitat.

Basis for Analysis

The evaluation of actions that may adversely modify least Bell's vireo critical habitat should consider a number of factors such as the present condition of the habitat, the number of current pairs, the reproductive success of breeding pairs, the expected time to regenerate sufficient habitat to support an effective population in a particular site, and local and regional problems. Although the Service considered the entire range of the least Bell's vireo in determining an approach to critical habitat designation, its section 7 analysis of actions that may adversely affect vireo critical habitat will consider the significance of impacts at individual critical habitat areas as well as the entire range. All proposed actions should be viewed as to their impact on all four constituent elements relative to the potential for adverse modification on individual critical habitat areas.

Examples of Proposed Actions Affecting Critical Habitat

Activities that disturb or remove the primary constituent elements within propose critical habitat areas may constitute destruction or adverse modification of critical habitat. In the case of the vireo, these activities include: (1) Removal or destruction of riparian vegetation, (2) thinning of riparian growth, particularly near ground level, (3) removal or destruction of adjacent chaparral or other upland habitats used for foraging, and (4) increases in human-associated or human-induced disturbance. Specific actions that could adversely affect vireo critical habitat include stream channelization, water impoundment or extraction, water diversion, livestock grazing, intensive recreation, and conversion of presently existing riparian or adjacent upland areas to residential, agricultural, or commercial use. Complete or major destruction of riparian vegetation would result in the extirpation of the least Bell's vireo from the affected area, which could further endanger the species throughout the remainder of its range and prelude opportunities for recovery. Thinning or selectively removing components of riparian vegetation could cause vireos to abandon an area because suitable nesting and foraging sites are scarce or absent or could result in lowered reproductive success because of diminished habitat quality. Increases in recreation could cause actual destruction of nests or could disrupt nesting activities which in turn could cause nest abandonment, lowered hatching success, increased rates of cowbird parasitism and depredation events, and a decrease in the number of fledged young.

Other Conservation Measures: Non-Federal Lands

Section 9 of the Act prohibits intentional and unintentional "take" of listed species and applies to all landowners regardless of whether or not their lands are within critical habitat. Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities such as agriculture, sand and gravel mining, and urban development. Incidental take permits must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. An HCP would be approved and a section 10(a)(1)(B) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

The San Diego Association of Governments (SANDAG) is coordinating the development of HCPs for the San Diego River and Sweetwater River proposed critical habitat areas. This effort also included the development of draft plans for the Santa Ana River and San Luis Rey River proposed critical habitat areas, but these plans are no longer under consideration. The intent of these plans is to address land use conflicts and to conserve the vireo and its habitat. The Service will issue section 10(a)(1)(B) permits, if the HCPs are acceptable. In November 1991, the Service received two permit applications and final draft HCPs from SANDAG for the incidental take of vireos on the San Diego and Sweetwater Rivers. The Service is currently reviewing the HCPs and a draft Environmental Impact Statement is under preparation. Based on the review of drafts of these plans, the Service anticipates that they will be compatible with the designation of critical habitat.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude some critical habitat based upon those impacts.

The economic effects of designating critical habitat for the least Bell's vireo are the project-related costs of habitat mitigation within the 10 areas proposed for critical habitat designation over and above those costs that would be incurred as a result of listing the vireo as an endangered species in May 1986.

Affected Agencies

The Service assumes in the economic analysis that the impacts to Federal agencies are related to activities that physically alter critical habitat. The Forest Service, Marine Corps, Corps of Engineers, Federal Highway Administration, and International Boundary and Water Commission are the agencies most likely to be affected by the proposed critical habitat designation.

Economic Effects

The economic effects resulting from adverse modification of critical habitat (effects above those of listing the species and other land management decisions) are the subject of the economic analysis (USFWS 1992). It identifies and quantifies (where possible) the added probable costs and benefits that may result from critical habitat designation for the least Bell's vireo. Economic effects are the costs or benefits to society of precluding or limiting specific land uses.

Private lands within proposed critical habitat are used primarily for agriculture. Existing agricultural practices, (farming, ranching, dairy facilities) should not be economically affected by the designation of critical habitat because there are no known proposals requiring Federal approval for new agricultural activities within proposed critical habitat.

Federal agencies that would likely incur economic costs as a result of the designation of critical habitat include the Forest Service, Corps of Engineers, and the International Boundary and Water Commission.

The Forest Service anticipates an increased cost of $2,000 per year for fire suppression and $1,000 per year for ranger patrols to protect vireo habitat in the Santa Ynez River proposed critical habitat area.

The Corps of Engineers conducts a number of activities in the Prado Basin of the Santa Ana River proposed critical habitat area. Future changes in some of these existing activities could affect the vireo and its proposed critical habitat, and project proponents may incur economic costs as a result. These costs are primarily associated with creating habitat to replace habitat destroyed by project construction and operation. For actions directly affecting critical habitat or the vireo, the Service could require replacement prior to the destruction or adverse modification of the affected habitat. Based on projects which have created vireo habitat prior to its destruction, the Service estimates a maximum cost of $75,000 per acre. This cost represents the difference between replacement prior to destruction and concurrent replacement, and assumes no cost for land (USFWS 1992). This estimate attempts to consider only those impacts attributable to critical habitat designation and separate them from impacts to the vireo and its habitat attributable to listing.

Sand and gravel mining activities that are regulated under the Clean Water Act and require a permit from the Corps of Engineers could affect critical habitat, especially along the San Luis Rey River. No specific cost estimates are available for economic impacts on these activities due to critical habitat, so the added cost of $75,000 per acre for habitat replacement is used again. In certain parts of the San Luis Rey River critical habitat area, land valves are high and applicants may avoid destroying vireo habitat, thus resulting in lower total project costs.

The International Boundary and Water Commission (Commission) maintains a portion of an existing flood control project that is located within the proposed Tijuana River critical habitat area. The Commission has not requested formal consultation pursuant to section 7(a)(2) of the Act pertaining to the effect of its operation on the vireo and has not provided data that the Service requested on potential economic impacts of critical habitat designation. This project and other Commission activities (e.g., clearing of vegetation by the Border Patrol) are expected to affect proposed critical habitat and be affected by designation. However, the economic impact on these activities due to critical habitat is unknown at this time.

The proposed critical habitat consists of 10 areas that encompass 48,025 acres (19,210 ha). The following summarizes existing and planned activities within the proposed critical habitat areas and costs attributable to designation:

Area 1. Santa Ynez River

The City of Santa Barbara has proposed a 20-foot increase in the height of Gibraltar dam which could result in the inundation of most of the proposed critical habitat in the Santa Ynez River area. Currently, this expansion has been postponed indefinitely and no costs associated with critical habitat designation have been computed. The Forest Service estimates additional patrols to control off-road vehicles and additional fire management activities in proposed critical habitat would cost approximately $1,000 and $2,000 per year, respectively. No other costs have been identified that are attributable to critical habitat designation in the Santa Ynez River area.

Area 2. Santa Clara River

An oil pipeline extends across the Santa Clara River through proposed critical habitat. A ruptured pipeline in February 1991 resulted in an oil spill within proposed critical habitat. Unocal informed the Service that it has methods of rapidly containing any future spill and minimizing adverse impacts on the riparian habitat. No costs for these containment measures have been attributed to critical habitat designation. The Service recently learned of a project to widen State Route 126 which is the northern boundary of the Santa Clara River proposed critical habitat. The potential effects of this project on proposed critical habitat and associated costs attributable to critical habitat designation are unknown at this time.

Area 3. Santa Ana River

Planning has been completed for the Corps of Engineers' Santa Ana River Project, including section 7 consultation to address adverse impact to the least Bell's vireo. The Service and Corps of Engineers have agreed to a compensation plan and no additional costs attributed to critical habitat designation are anticipated. The Orange County Water District (District), Corps of Engineers, and the Service are pursuing a long-term agreement to

mitigate the adverse effects of storm flow retention at Prado Dam on the vireo. The draft agreement is being implemented and no additional costs attributable to critical habitat designation have been identified. Implementation of the Corps' recreation management plan for the Prado Basin may adversely affect proposed critical habitat, but costs are not determinable at this time. Construction of the Hamner Avenue bridge would adversely modify proposed critical habitat. A compensation program has been agreed to by the California Department of Transportation and Federal Highway Administration at a cost attributable to critical habitat designation of $113,400.

Area 4. Coyote Creek

No costs attributable to critical habitat designation have been identified.

Area 5. Santa Margarita River

The Service and Marine Corps are currently implementing an agreement for vireo management within proposed critical habitat on Camp Pendleton. No costs to the Marine Corps from critical habitat designation have been identified. The Fallbrook Public Utility District is considering alternatives for water storage and delivery on the Santa Margarita River. Construction and maintenance of a pipeline to utilize water from the live-stream discharge project would preclude the need for dam construction and avoid all impacts to proposed critical habitat.

Area 6. San Luis Rey River

Section 7 consultation has been completed with the Corps of Engineers on the San Luis Rey Flood Control Project. The Corps has agreed to implement the reasonable and prudent alternative offered by the Service in the 1987 biological opinion which stated that the project, as proposed, was likely to jeopardize the continued existence of the least Bell's vireo. By implementing the reasonable and prudent alternatives, the Corps has avoided a jeopardy situation and will not affect proposed critical habitat. The City of Oceanside has modified a channel maintenance project to clear phreatophyte vegetation so that proposed critical habitat would not be affected. This project modification was done at no additional cost to the City. The Federal Highway Administration and California Department of Transportation assisted in designing a plan to mitigate the adverse effects of the State Route 76 Bypass on least Bell's vireo and its habitat that resulted in a saving of $2.2 million. The savings can be attributed to replacement of habitat prior to its destruction requiring less land. Sand and gravel mining may incur additional costs estimated by the Service at $75,000 per acre to replace habitat for areas of vireo habitat destroyed. Such costs are presently not determinable.

Area 7. San Diego River

The Federal Highway Administration and California Department of Transportation developed a plan to mitigate adverse affects of the State Route 52 East Project on the vireo and its habitat. No additional costs to the project would result from critical habitat designation. The Service and Corps of Engineers developed a compensation plan to offset the impacts of the Old Mission Dam rehabilitation on least Bell's vireo. None of the cost of implementing the compensation plan is attributed with the proposed designation of critical habitat. A proposed road crossing of the San Diego River associated with the Mission Trails Regional Park could adversely affect proposed critical habitat. The project is still in planning stages and the amount of habitat that would be affected is not known. The Service estimates that up to 5 acres of habitat may need to be replaced at a total cost of $375,000.

Area 8. Sweetwater River

The Service and Sweetwater Authority (a joint powers agency) are working to avoid or minimize impacts to the vireo from the Upper Sweetwater Reservoir Habitat Management Plan. No estimate of costs attributable to critical habitat designation are currently available. The Home Capital Development Group has planned the Rancho San Diego project which may adversely affect proposed critical habitat. Currently, the Service estimates that up to 4 acres of habitat may need to be replaced at a total cost of $300,000. San Diego Association of Governments' (SANDAG) Sweetwater River Habitat Conservation Plan is likely to be compatible with critical habitat designation and no additional costs are anticipated.

Area 9. Jamal-Dulzura Creeks

No costs attributable to critical habitat designation have been identified.

Area 10. Tijuana River

Maintenance of the Tijuana River Flood Control Project may adversely affect proposed critical habitat. The amount of proposed critical habitat that may be affected is unknown at this time and no cost estimate is possible. Construction of sewage treatment plants and associated pipelines in the Tijuana River valley has the potential to adversely affect proposed critical habitat. The amount of proposed critical habitat that may be affected is unknown at this time and no cost estimate is possible.

Some agencies have avoided proposed critical habitat in their project designs and have realized overall cost savings resulting from purchasing less land. Savings to project costs that the Service is aware of total approximately $2.2 million (USFWS 1992).

Based on information available to the Service at this time, total costs associated with designating 48,025 acres of critical habitat for the least Bell's vireo in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, and San Diego Counties are approximately $0.8 million (USFWS 1992).

Summary of Comments and Recommendations

In the proposed rule published May 3, 1985, and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule for the vireo or its critical habitat. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published by June 7, 1985, in the Blade Tribune, Enterprise, Los Angeles Times, News Press, Riverside Press, San Bernardino Sun, San Diego Transcript, San Diego Tribune, and San Diego Union, all of which invited general public comment.

Public hearings were requested by a number of interested parties. Notification of the public hearings and an extension of the comment period to August 30, 1985, was published on July 9, 1985 (50 FR 27992). Public hearings were conducted in San Diego on July 30, 1985; in Oxnard on July 31, 1985; and in Anaheim, California, on August 1, 1985. A total of 370 individuals attended the hearings. An additional notification extending the comment period to December 2, 1985, was published on October 3, 1985 (50 FR 40424). These two additional notifications were also published in the aforementioned nine newspapers in July and October, respectively. On May 2, 1986, the least Bell's vireo was listed as endangered, and the public comment period on proposed critical habitat was reopened for an additional 90 days (51 FR 16483). A further extension of the comment period to January 1, 1987, was published on July 31, 1986 (51 FR 27429).

Approximately 120 interested parties were notified regarding the last extension of the comment period.

The total comment period encompassed approximately 14 months. Of the 397 comments on proposed critical habitat received, 256 (64.5 percent) supported the designation of critical habitat, 55 (13.9 percent) opposed the designation, 31 (7.8 percent) recommended that the Service change the boundaries or delay the designation, and 55 (13.9 percent) were non-committal.

Two elected officials, the California Department of Fish and Game, several local government entities, 26 conservation organizations (or branches thereof), and 207 other interested parties expressed support for the critical habitat proposal. A number of developers, landowners, local agencies, several State agencies (including the California Department of Transportation), and several local governments submitted comments regarding the possible effects that designation of critical habitat might have on planned activities and development.

Multiple comments whether written or oral from the same interested party are regarded as one comment. Written comments and oral statements questioning or opposing critical habitat as originally proposed are grouped into issues and discussed below.

Issue 1: Critical habitat designation may result in the delay of several important projects, or may force agencies to change the operation of existing projects. For example, to minimize the adverse effects of inundation on vireo habitat, the Corps of Engineers may release water from the Prado Basin of the Santa Ana River critical habitat area so quickly that the local water district could not divert it into percolation ponds. Projects important to public health and safety may be delayed or disapproved. Several other commenters expressed concern related to the section 7 requirements of the Act.

Service Response: Critical habitat only affects the activities of Federal agencies. Under section 7 of the Act, Federal agencies are required to consult with the Service if activities they authorize, fund, or carry out would affect a federally listed species or its critical habitat. After receipt of a request from an agency for formal consultation pursuant to section 7 of the Act, the Service issues a biological opinion that states whether or not the proposed action is likely to jeopardize the continued existence of the listed species or adversely modify its critical habitat. When the Service issues a jeopardy or adverse modification opinion, in nearly all cases, the Service also issues reasonable and prudent alternatives that would still allow the project's intended purpose to go forward, but would not jeopardize the continued existence of the species or result in adverse modification of its critical habitat. Federal agencies are required to ensure that their actions do not jeopardize the continued existence of federally listed species or adversely modify or destroy their critical habitat. In practice, the Service and action agency often work together to develop mutually acceptable reasonable and prudent alternatives.

In the case involving the Corps of Engineers cited above, the Corps did request formal consultation pursuant to section 7 of the Act on the operation and maintenance of Prado Dam and its effect on the vireo. The Service reviewed the situation and made recommendations in a biological opinion that the Corps undertake certain actions to conserve the species. Through this process the Corps has developed a program to avoid or minimize the potential adverse consequences of an extensive short-term water release.

In the rare cases where the Service issues jeopardy opinions without acceptable reasonable and prudent alternatives, the action agency may take the project to an exemption committee and ask that their project be excluded from the requirements of the Act. The Service anticipates that few, if any, opinions would not contain acceptable reasonable and prudent alternatives.

Issue 2: Critical habitat should not be designated because of institutional delays associated with the section 7 consultation process.

Service Response: The review requirements of section 7 do not require excessive time. Section 7 regulations require that the Service form an opinion within 90 days and issue it within an additional 45 days. By policy and in practice, the Service usually completes formal consultation (including issuance of the opinion) within 90 days.

Issue 3: Critical habitat should not be designated because of the time delays associated with providing habitat replacement in advance of the existing habitat's destruction. The requirement to replace habitat prior to its destruction subjects applicants to costs that may not be recoverable if the habitat creation effort is unsuccessful and the project is not approved. The burden of these added costs is too great and the Service should exclude certain areas such as Gibraltar Reservoir from critical habitat because of these economic costs.

Service Response: The National Environmental Policy Act and the Endangered Species Act state that costs associated with mitigation or compensation are part of the project costs. The least Bell's vireo is a wetland obligate species. A high level of protection is afforded to wetlands by the Clean Water Act and Federal wetland policy. Costs to avoid, minimize, or compensate for impacts to wetlands in general and vireo habitat in particular would be incurred even if critical habitat was not designated.

Wetland creation has met with varying degrees of success and often requires years to attain comparable habitat quality relative to the habitat impacted. This is particularly true for vireo habitat which includes an older, tree canopy component. When a project would result in the destruction of vireo quality habitat, the Service has required an action agency to create up to 5 acres for every 1 acre destroyed based on these considerations. Creation of 1 acre of riparian woodland generally costs about $25,000 and may require many years to reach maturity. Thus, in most cases an applicant could expect that mitigation efforts would cost on the order of up to $125,000 for every acre destroyed. This figure does not include the cost for the land—the purchase price for 5 acres for every 1 acre destroyed. In some cases where the habitat is occupied by the least Bell's vireo, the Service has required action agencies to create fully functional habitat prior to the destruction of existing habitat. When an applicant or action agency cannot afford to wait several years for the created habitat to mature, added costs are incurred. In a few cases, riparian habitat has been created relatively quickly. However, the cost for such efforts is about $200,000 per acre. When agencies must create habitat before existing habitat is destroyed, the required replacement ratio is 1 acre created for every 1 acre destroyed. Thus, the additional cost per acre to create habitat prior to destruction of existing habitat is $75,000. In some parts of southern California land values are very high, and in some cases it may be less expensive to create 1 acre quickly rather than 5 acres over a longer period of time.

In some cases, the designation of critical habitat would bring the requirement for prior replacement of habitat to projects that would result in the destruction of suitable, but unoccupied vireo habitat. The Service has completed an economic analysis for the listing of critical habitat for the least Bell's vireo and predicts that the

maximum additional cost incurred by a project proponent in such situations would be $75,000 per acre. This figure assumes no cost for land.

Wetland mitigation is a costly, time-consuming, and difficult endeavor with an uncertain probability of success. The requirement to create habitat before existing habitat is destroyed, ensures that the federally listed species would not sustain a loss of habitat, even temporarily. Given the uncertainty of wetland creation or restoration, it is unlikely that the Service would support a project proposal that would result in the destruction of large areas of riparian habitat without first providing adequate replacement habitat for the least Bell's vireos in the area.

In the 6 years since the vireo was listed, two agencies have constructed projects in areas that support least Bell's vireos that have been subject to this prior replacement requirement and both have produced habitat that now supports vireos. Designation of critical habitat could bring this requirement to applicants of projects in areas that contain suitable, unoccupied habitat, depending on the proposed action. As restoration techniques are refined, it is likely that revegetation projects will become more successful in shorter time frames.

For projects where unavoidable impacts to occupied or unoccupied vireo habitat would occur, compensatory habitat creation may have to be completed prior to the destruction of existing habitat so that the vireo will not sustain a net loss of available nesting or foraging habitat. The amount of time for successful revegetation will vary depending upon the method employed and may take several years. The action agency or permit applicant would need to initiate the restoration activities early enough to allow sufficient time for vireo habitat to develop. Most major projects are in the planning stages long enough to provide adequate time for habitat restoration if the compensation efforts are done expeditiously. That would reduce the likelihood of a delay.

Under section 4(b)(2) of the Act, the Secretary has the authority to exclude an area from critical habitat designation based on economic considerations, "* * * if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." The Gibraltar Reservoir population of the vireo represents the northern edge of its range, and therefore is most likely to be the source of recolonization to the north or to the Central Valley. Because of this geographical significance, the designation of this area as critical habitat is appropriate. In addition, the proposed project to raise the height of Gibraltar Dam is not currently being considered. Therefore, the Service believes that the economic costs of designating critical habitat in Gibraltar Reservoir do not outweigh the benefits of this designation.

Issue 4: The establishment of a Memorandum of Understanding between the Service and the Marine Corps in July 1986 for management of the vireo on Camp Pendleton precludes the need for designating critical habitat on the base.

Service Response: The Santa Margarita River contains approximately 40 percent of the breeding vireos in the United States. This area is, therefore, essential to the conservation of the species, and is appropriately included within the proposed critical habitat designation. Management actions undertaken pursuant to the Memorandum of Understanding conceptually preserve the constitutent elements of vireo habitat and provide special management considerations that are consistent with the spirit and intent of the Act. Actions taken under this agreement to date have successfully supplemented existing programs to control cowbirds and have greatly benefitted the vireo. However, three recent events strongly suggest that the Memorandum of Understanding may not be a completely effective mechanism for protecting vireo habitat. These events, which occurred between 1988 and 1990, involved military training activities that inadvertently started wildfires which caused the loss or degradation of large areas of vireo habitat within proposed critical habitat. The Service is working with the Marine Corps to resolve this matter. If future actions demonstrate that the Memorandum of Understanding can provide an equivalent level of protection, the Service will consider withdrawal of critical habitat for this locality.

Issue 5: Critical habitat is not necessary for areas in which activities are planned that would require National Environmental Policy Act (NEPA) review and compliance or are subject to the provisions of section 1601 or 1603 of the California Fish and Game Code.

Service Response: NEPA requires a full disclosure of impacts and feasible alternatives so that the decision regarding the proposed Federal action is based upon adequate information. It does not require alteration of project plans and does not necessarily facilitate resource protection.

Compliance with the California Fish and Game Code is manifested by an agreement (not a permit) that does not necessarily address the conservation of the vireo and its habitat and does not provide for denial of a project application, and hence is not an adequate substitute for designation of critical habitat.

Issue 6: Critical habitat should not be designated on the Santa Ynez River because this area is under the jurisdiction of the Forest Service, and therefore, already is protected and does not require special management considerations or protection in accordance with section 3(5)(A)(i)(II) of the Act.

Service Response: Even though proposed critical habitat on the Santa Ynez River is under Federal jurisdiction, this area contains physical and biological features essential to the conservation of the species and because of on-going water and fire management practices within the watershed may require special management considerations or protection. Therefore, inclusion of this locality as critical habitat is consistent with the definition cited under section 3(5)(A)(i)(II) of the Act.

Issue 7: Critical habitat is unnecessary because local city and county governments can manage the habitat.

Service Response: Under existing regulatory mechanisms, local governments have not prevented habitat loss for the least Bell's vireo. Most activities that may take place within critical habitat will require some sort of Federal approval, and therefore would be subject to the requirements of section 7 discussed above under Issues 1 and 2. Thus designation of critical habitat will provide added protection to these areas.

Issue 8: Critical habitat should not be designated because the vireo populations are so depleted that recovery is unlikely. The Santa Ynez population is stable and therefore can rebound from environmental disturbances. Critical habitat therefore should not be designated on this drainage.

Service Response: The stability or instability of populations is not one of the criteria used to determine the appropriateness of designating critical habitat. The Act requires the Service to designate critical habitat for a listed species in areas that are essential to the conservation of the species, unless it is not prudent to do so. The Service can, however, delay designation of critical habitat for 1 year at the time a species is

listed if the critical habitat is not determinable. The designation of critical habitat for the vireo is both prudent and determinable. In addition, the Act would require the designation of critical habitat even if little could be done to minimize the threats facing the species. Fortunately, the vireo has responded favorably to management in a number of locations throughout its range, and the United States population has increased from about 300 pairs to 500 pairs since this species was listed in 1986. Thus, it seems reasonable to conclude that the designation of critical habitat will provide added protection to the vireo and increase the likelihood of the recovery of the species.

Issue 9: Designation of critical habitat is unnecessary because nest parasitism by cowbirds is responsible for the decline of the vireo.

Service Response: Two major factors have been identified as being responsible for the relatively recent, dramatic decline of the least Bell's vireo: widespread habitat destruction and high rates of nest parasitism by cowbirds (Goldwasser *et al.* 1980). The synergistic effects of these two factors may have further exacerbated the situation. Although cowbird removal programs have effectively solved the problem of excessive parasitism in a number of locales, habitat preservation and creation programs have not achieved the same level of success. These programs eventually must be successful if the preservation and recovery of the vireo is to be achieved. To that end, the designation of critical habitat affords a higher level of protection to riparian woodland habitats that currently (or potentially could) support nesting pairs of vireos. The Service considers this action particularly appropriate in light of the inability of existing regulatory mechanisms (e.g., the Clean Water Act, local regulations) to adequately protect vireo habitat.

Issue 10: Critical habitat will discourage or complicate activities beneficial to listed species because of time delays associated with completing section 7 consultation procedures or obtaining scientific permits to carry out recovery activities. For example, agencies may be reluctant to implement cowbird control or giant reed removal programs because the approval processes may be too time-consuming.

Service Response: As discussed under Issue 2 above, the time required to complete formal consultation under section 7 is not excessive. If a proposed action is determined to be beneficial to the listed species, the consultation process is terminated. In addition, scientific permits authorizing recovery actions are generally issued by the Service within 30 to 60 days of receipt of a valid permit application.

Issue 11: The Service should expand critical habitat boundaries to include more habitat. Several sites contain vireo populations of 10 or more pairs or are important to the species for other reasons that are not included within proposed critical habitat boundaries. These areas include: The San Luis Rey River upstream from the proposed critical habitat boundary; many desert riparian areas (Whitewater Canyon, Chino Canyon, Andreas Canyon, Palm Canyon/Hermit's Bench, Willow Hole Oasis, and Big Morongo Wildlife Preserve); Temescal Canyon; Fairmont Park; Upper San Dieguito River; lower Santa Ysabel Creek; Pamo Valley; and the upper end of El Capitan Reservoir where the San Diego River enters the pool. Alternatively, critical habitat boundaries could be expanded to include all areas within the vireo's historical range that still contain riparian habitat capable of supporting the species, or all areas where cowbird trapping could increase vireo populations.

Service Response: Although the least Bell's vireo historically nested in the Central Valley and other low elevation riverine areas of California, nesting within the U.S. is now restricted to approximately 40 localities in southern California. In proposing critical habitat the Service selected sites that supported relatively large numbers of nesting pairs and all of these sites were in southern California.

The Service retains the option of proposing additional critical habitat areas if vireos expand their range north of Santa Barbara or into the Central Valley. The Service also retains the option of proposing to designate critical habitat for some of the additional populations listed above. Should the Service decide to propose any of these additional areas as critical habitat, this action would be the subject of a new **Federal Register** proposed rule that solicited public comments and provided for a public hearing, if so requested. The Service would evaluate the public comments before making a final decision regarding a new proposal.

Issue 12: Designation of critical habitat requires an Environmental Impact Statement (EIS) to assess the impact of such designation in accordance with the National Environmental Policy Act.

Service Response: The decision in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th Cir. 1981) held that as a matter of law an EIS is not required for listings under the Act. The decision noted that preparing EIS's on listing actions does not further the goals of NEPA or the Act. Although the decision cited above specifically addressed the listing of species, the Service believes that the *Pacific Legal Foundation* case may be used on the question of the applicability of NEPA to critical habitat designations. Further, the statutory limits on the Secretary's discretion (e.g., the standards for critical habitat in section 3(5) of the Act), make the preparation of an EIS unnecessary.

In addition, the Service prepares for each critical habitat rule a Determination of Effects of Rules in compliance with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act, as well as an economic analysis as required by section 4(b)(2) of the Act. These documents include an analysis of the economic impacts of the designation of critical habitat. Alternate critical habitat boundaries are considered as part of the economic analysis.

Issue 13: The Service should delay designation of critical habitat until further studies are completed, and we know exactly why the vireo has declined. The Service should wait for the results of further ecological studies or wait for the results of conservation efforts and cowbird control programs before designating critical habitat.

Service Response: The Service is required to use the best available biological information in determining critical habitat boundaries. Numerous researchers within the scientific community have concluded that least Bell's vireos have declined because of loss and modification of habitat and the effects of nest parasitism by brown-headed cowbirds. Further, it would not be prudent to wait for the results of additional predator reduction programs. The loss of vireo habitat has continued since the listing of the species, and although cowbird control programs have had beneficial effects on some populations, the recovery of the species is still dependent upon protection of its habitat.

As new information becomes available, however, the Service may consider proposing additional areas for critical habitat status or refining its existing boundaries.

Issue 14: The Service should not designate critical habitat in the areas that are within the boundaries of proposed Habitat Conservation Plans.

Service Response: Section 9 of the Act prohibits the take of federally listed species. Take is defined to include harm, harassment, wounding, shooting, killing, capturing, or attempting to engage in

any such conduct. Under some circumstances habitat destruction can constitute harm or harassment. Most biological opinions include an incidental take section that authorizes the Federal agency a limited amount of take.

Section 10(a) of the Act describes the process by which a private party may obtain a permit to take a federally listed species incidental to other legal activities. To obtain such a permit, an applicant must, among other requirements, submit a conservation plan that specifies the possible impacts of such taking on the listed species and the actions the applicant will undertake to minimize and mitigate these impacts. The Service may then issue a section 10(a) permit if it finds, among other considerations, that implementation of the conservation plan will insure the long-term conservation of the species and that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Issuance of such a permit is subject to the requirements of section 7(a)(2) of the Act as well as section 102(2)(C) of NEPA. Thus section 10(a) of the Act allows private parties an opportunity to take a federally listed species incidental to legal activities such as housing or road construction.

An interagency task force was established in November of 1985, under the auspices of the San Diego Association of Governments (SANDAG), to guide the development of separate HCP's for the Sweetwater, San Luis Rey, San Diego, and Santa Ana Rivers. A comprehensive species management plan was developed that includes general conservation recommendations based on available scientific data on habitat requirements of the least Bell's vireo as well as measures to minimize cowbird nest parasitism. An integral part of implementing this management is associated with the development of the HCP's listed above. The HCP's for the Santa Ana and San Luis Rey Rivers have since been abandoned. Although implementation of the remaining HCP's may benefit the vireo, the Service does not know if they will be completed or approved. Before the Service can approve the request for a section 10(a) permit, an EIS must be prepared. In November 1991, the Service received two permit applications from SANDAG for the incidental take of vireos on the San Diego and Sweetwater Rivers. A draft EIS is currently under preparation.

In any case, the section 10(a) permit process serves a separate purpose (it can authorize private parties a limited level of incidental take) from section 7 of the Act, and therefore, the preparation of HCP's cannot be used to alter critical habitat boundaries, because critical habitat designation only applies to Federal agencies.

Issue 15: The Service should encourage the development of HCP's rather than subjecting private parties to increased costs associated with critical habitat.

Service Response: The development of an HCP is a costly and time-consuming process. In the 6 years since the vireo was listed, two applications for section 10(a) permits have been received by the Service although no permits have been issued. The agencies involved in the efforts discussed above have incurred high costs, not including great amounts of staff time. Implementation costs have not been incurred. In contrast, the section 7 process is relatively straightforward and not particularly time-consuming. Therefore, the preparation and implementation of an HCP may be at least as expensive, if not more than, the costs for Federal agency compliance with regulations protecting critical habitat.

Issue 16: Riparian habitat is dynamic and shrinks during drought and expands with favorable rainfall. Flooding events scour and remove tracts of this habitat. Ground water levels also influence the extent of habitat. The expansion of riparian woodland habitat during the favorable climatic conditions of the early 1980's is atypical. These areas will not support vireos in the long-term. For these reasons, critical habitat should not be designated.

Service Response: The Service views the dynamic nature of riparian habitat as one of the major reasons why a designation of critical habitat would benefit this species. The critical habitat boundaries encompass floodplains where major populations of vireos exist. Areas that presently support vireo populations may become unsuitable due to climatic conditions. Nearby areas may be suitable, however. Vireos would invade these nearby areas following the natural destruction of previously occupied sites. The designation of critical habitat requires Federal agencies to follow the procedures set forth at section 7 of the Act in areas that are not currently occupied, but contain habitat that could be occupied by vireos. This aspect of critical habitat designation provides an important tool for the conservation of this species.

Some climatologists believe that the weather has been unusually benign for the past 30 to 40 years and that the climate is returning to its normal pattern of instability. Dry periods will be drier and wet periods will be wetter. Ground water levels would fluctuate less severely than weather patterns because of the ability of river basins to absorb and store surface flows. If surface conditions do not change, ground water basins should continue to recharge and support willows as they have in the past. Two recent years of relatively severe drought have not produced evidence to the contrary. The availability of ground water is essential to maintaining least Bell's vireo habitat, particularly in areas of ephemeral stream flows. Strategies to stabilize and enhance vireo population size will continue to be examined as part of the recovery effort for the least Bell's vireo These strategies will take into account the fact that vireo habitat is influenced by and dependent upon changing hydrologic conditions.

Issue 17: The Service should develop interim critical habitat to be deleted upon completion of acceptable HCP's.

Service Response: As explained above under Issue 14, HCP's and critical habitat serve separate purposes, and one cannot substitute for the other. However, following the issuance of a section 10(a) permit, the Service would reevaluate the need for critical habitat in the area covered by the HCP.

Issue 18: Critical habitat would impinge on the rights (including water rights) of private landowners and developers to use their property or public land for various purposes (e.g., farming, recreation, water supply, etc.)

Service Response: Designation of critical habitat is not synonymous with condemnation of land. Water rights cannot be negated because of the critical habitat designation. This designation only affects Federal activities, and results in greater section 7 requirements. Future activities on private land designated as critical habitat would only be affected where Federal funding, approval, permitting, or licensing were involved.

Issue 19: Proposed highway corridors should be excluded from critical habitat designation.

Service Response: The construction of highways across riparian areas would be subject to the requirements of section 7 of the Act if there was Federal involvement in these projects. Through this process, the applicant would compensate for impacts resulting from loss and fragmentation of habitat. The Service could consider excluding these corridors due to economic considerations; however, as discussed above under Issue 3, the economic costs

associated with critical habitat are not expected to be high.

Issue 20: The Service should not designate critical habitat in areas where the riparian woodland is the result of human activities. The Prado Flood Control Basin was largely agricultural 16 years ago, and the presence of the dam and cessation of farming has resulted in the presence of riparian habitat.

Service Response: The Act does not require critical habitat to be natural or pristine. An examination of aerial photographs taken of the Prado Basin reveals that the Santa Ana River Basin contained extensive riparian habitat before much of it was converted to agriculture. The Dam is situated at the confluence of Mill Creek, Chino Creek, and the Santa Ana River, where a natural restriction is formed by the Santa Ana Canyon. Under natural conditions, the confluence of the creeks at this restriction would probably facilitate the development of vast tracts of riparian habitat.

Issue 21: Proposed critical habitat boundaries should be changed to more accurately reflect the location of nesting and foraging habitat. Urban developments, agricultural lands, industrial operations, recreational facilities, highways, railroads, etc. are included within the boundaries of critical habitat. Many of the boundaries selected such as elevation contours, roads, section lines, etc. seem inappropriate (e.g., the 543-foot elevation contour at the Prado Basin, Highway 126 along the Santa Clara River). The need for extensive renegotiations should be avoided by refining the boundaries. One commenter offered to build a barrier or other permanent structure so that the legal description of critical habitat on the Sweetwater River could be revised.

Service Response: The Service is required to use existing, easily recognizable boundaries in the development of legal descriptions for critical habitat. The Service cannot use ephemeral features such as vegetational boundaries (50 CFR 424.12(C)). Consequently, when the Service selected recognizable boundaries, the amount of acreage encompassed within the boundaries, exceeded the precise lands needed. However, only those areas containing nesting (almost always riparian woodland) or foraging habitat (usually riparian, but also some adjacent uplands such as chaparral or coastal sage scrub) would be treated as critical habitat and subject to the requirements of section 7. Existing developments (e.g., housing projects, commercial and recreational facilities, and plowed fields) do not contain essential elements of critical habitat.

The Service considers the 543-foot elevation contour within the Prado Basin to be a well-defined legal boundary. Selection of the 543-foot elevation contour (the height of the spillway) was based on the distribution of actual and potential vireo habitat, and the estimated extent of historical riparian habitat.

The Service has retained the broader boundary at the Sweetwater River because vireo foraging data for this and at least two other localities indicate that vireos forage beyond the borders of strictly riparian parcels and into adjacent upland habitats. Thus, a critical habitat area that contains chaparral or coastal sage scrub is consistent with the Service's obligation to include the known primary constituent elements (foraging substrates and food resources) in critical habitat.

Issue 22: Critical habitat should not be designated in areas where adjacent land uses adversely affect vireo habitat or where cowbirds are exceptionally numerous. For example, the Prado Basin should be excluded because of high cowbird abundance and its location adjacent to an agricultural area.

Service Response: Cowbirds are present throughout much of southern California and occur commonly in most least Bell's vireo breeding areas. The judicious trapping of cowbirds and monitoring of vireo nests has significantly reduced the detrimental effects of cowbird parasitism. The act specifies that certain management considerations may be necessary in critical habitat areas. Nearby "incompatible" land uses are not considered as long as the designated habitat contains elements essential to the conservation of the listed species.

Issue 23: The Service should clearly define the phrase "constituent elements" in the definition of critical habitat. The Service should state specifically where these essential elements are.

Service Response: The Service is primarily concerned with the "known primary constituent elements" within designated critical habitat boundaries. These elements include habitat used for nesting, foraging, predator avoidance, and juvenile dispersal. The least Bell's vireo nests almost exclusively in willow-dominated, riparian woodlands containing a shrubby understory, although other habitat types may be used. In addition, vireos primarily forage in these same areas, but also use adjacent uplands such as chaparral and coastal sage scrub. Therefore, upland areas contain constituent elements in some cases.

As stated above under Issue 16, riparian habitat is dynamic and occupied habitat may change and become unsuitable through time. Younger areas will mature and form suitable habitat. For this reason, it would not serve the conservation of the species to precisely identify currently occupied stands.

Issue 24: Site specific regulations should be promulgated for the critical habitat areas before their official designation under the Act.

Service Response: The Act does not require the Service to prepare such regulations. As discussed above under Issue 1, proposed activities would be addressed by following the procedures described in section 7 of the Act. The Service will set specific goals for separate areas as part of the recovery planning process.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and effective as possible. Consequently, the Service used the most current data available to evaluate habitat for consideration as critical habitat. The Service recognizes, however, that relevant information, especially on private lands, may not be readily available in published scientific literature and government documents. Therefore, comments or suggestions from the public, governmental agencies, Indian Nations, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat (either existing or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Information regarding actions that should be considered necessary to achieve recovery of the least Bell's vireo and conditions that might allow it to be removed from the list of endangered and threatened wildlife and plants;

(3) Specific information on the amount and distribution of suitable vireo habitat and numbers and distribution of vireos by landowner and land designation (land managing agencies or affected parties should include updated information and maps);

(4) Specific information on the ability or values of proposed areas to support other listed, proposed, or candidate species and the relationship of this

proposal to maintaining biodiversity and ecosystem integrity;

(5) Current or planned activities and their possible impacts on proposed critical habitat areas;

(6) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat;

(7) Economic values associated with benefits of designating critical habitat for the least Bell's vireo. Such benefits include those derived from non-consumptive uses (e.g., hiking, camping, bird watching, etc.) watershed protection, air quality, soil retention, etc.; and

(8) The methodology the Service might use, under section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). See also Issue 12 under "Summary of Comments and Recommendations" above.

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this proposed designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the proposed critical habitat areas, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there are a limited number of actions on private land that have Federal involvement through funds or permits that would affect or be affected by a critical habitat designation; the potential economic impact of a critical habitat designation on these actions will be minor. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this proposed designation. Further, the revised proposed rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

References Cited

Franzreb, K.E. 1989. Ecology and conservation of the endangered least Bell's vireo. U.S. Fish and Wildl. Serv., Biol. Rep. 89(1). 17 pp.

Gaines, D. 1974. A new look at the nesting riparian avifauna of the Sacramento Valley, California. Western Birds 5:61–79.

Gaines, D. 1977. The status of selected riparian forest birds in California. Unpublished report to California Department of Fish and Game. 56 + viii pp.

Goldwasser, S. 1978. Distribution, reproductive success and impact of nest parasitism by brown-headed cowbirds on least Bell's vireos. California Department of Fish and Game. Nongame Wildlife Investigations. Job IV–1.5.1. 27 pp.

Goldwasser, S., D. Gaines, and S. Wilbur. 1980. The least Bell's vireo in California: a de facto endangered race. American Birds 34:742–745.

Gray, M.V., and J. Greaves. 1984. Riparian forest as habitat for the least Bell's vireo. Pages 605–611 *in* R. Warner and K. Hendrix, eds. California riparian systems: ecology, conservation and productive management. University of California Press, Davis.

Grinnell, J., and A. Miller. 1944. The distribution of the birds of California. Pacific Coast Avifauna 27. 608 pp.

Kus, B.E., and K.L. Miner. 1987. Foraging behavior of the least Bell's vireo: use of riparian and non-riparian habitats. San Diego State University, San Diego, CA. 22 pp. Unpubl. Rep.

RECON (Regional Environmental Consultants). 1989. Comprehensive species management plan for the least Bell's vireo *(Vireo bellii pusillus)*. Prepared for the San Diego Association of Governments, San Diego, California.

Salata, L. 1983. Status of the least Bell's vireo on Camp Pendleton, California. Unpublished report. U.S. Fish and Wildlife Service, Laguna Niguel, California. 62 pp.

Salata, L. 1987. The status of the least Bell's vireo at Camp Pendleton, California in 1987. Unpublished report. U.S. Marine Corps, Camp Pendleton, CA. 43 pp.

U.S. Fish and Wildlife Service. 1992. Economic analysis of critical habitat designation for the least Bell's vireo. Unpublished report. On file at U.S. Fish and Wildlife Service, Carlsbad, CA 115 pp.

Wilbur, S. 1980. Status report on least Bell's vireo. Unpublished report. U.S. Fish and Wildlife Service, Portland, Oregon. 46 pp.

Authors

This rule was prepared by Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, Sacramento, California 95625 (Telephone: 916–978–4613); Larry Salata and Loren Hays, U.S. Fish and Wildlife Service, Southern California Field Station, 2730 Loker Avenue West, Carlsbad, California 92008 (Telephone: 619/431–9440); and Karla Kramer and Bob Ruesink, U.S. Fish and Wildlife Service, 911 NE. 11th Ave., Portland, Oregon 97232–4181 (Telephone: 503–231–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1631–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.111 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "Critical habitat" entry for "Vireo, least Bell's", under BIRDS, to read "17.95(b)".

3. It is proposed to amend § 17.95(b) by adding critical habitat of the least Bell's vireo, in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(b) * * *

* * * * * *

Least Bell's Vireo *(Vireo bellii pusillus)*

California: Areas of land and water as follows:

1. Santa Ynez River, Santa Barbara County (Index map location A).

T. 5 N., R. 27 W.: secs. 1, W½, and 12, all except NE¼. In addition, all adjacent lands within the following circumscribed area: beginning at a point 0.25 mi south of the northeast corner of sec. 12, T. 5 N., R. 27 W.:

thence east about 0.5 mi; thence north about 1.25 mi; thence east approximately 1.3 mi to the intersection of Mono Creek and the Los Prietos Y Najalayegua land grant boundary; thence south about 2.5 mi; thence east approximately 2.6 mi to Agua Caliente Creek (at a point about 0.4 mi north and 0.1 mi east of the Pendola Guard Station); thence south about 0.5 mi; thence east about 1.0 mi; thence south about 0.25 mi; thence east about 0.5 mi; thence south about 0.75 mi to the southwest corner of T. 5 N., R. 25 W., sec. 19; thence east to the southeast corner of T. 5 N., R. 25 W., sec 20; thence south about 0.63 mi; thence west to western boundary of T. 5 N., R. 26 W., sec. 25; thence south about 0.16 mi; thence west to eastern boundary of T. 5 N., R. 26 W., sec. 27; thence north about 0.25 mi; thence west to western boundary of T. 5 N., R. 26 W., sec. 27; thence north to the northeastern corner of T. 5 N., R. 26 W., sec. 27; thence north to the northeastern corner of T. 5 N., R. 26 W., sec. 28; thence west to the northwest corner of T. 5 N., R. 26 W., sec. 28; thence north to the northeast corner of T. 5 N., R. 26 W., partially unsurveyed sec. 20; thence west to the northeast corner of T. 5 N., R. 26 W., unsurveyed sec. 19; thence north about 0.5 mi; thence west to the southeast corner of T. 5 N., R. 27 W., sec. 13, NE¼; and thence north to the southeast corner of T. 5 N., R. 27 W., sec. 12.

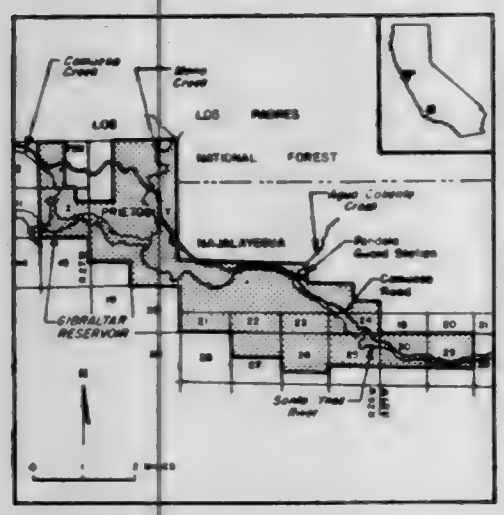

2. Santa Clara River, Los Angeles and Ventura Counties (Index map location B).

T. 4 N., Rs. 17 and 18 W.: all land within 3,500 feet perpendicularly and generally southward or westward of a line commencing at a point 100 yards west of BM 740 (a point about 2.3 mi east of the intersection of Main Street and State Highway 126 in Piru); thence east along State Highway 126 to its intersection with The Old Road at Castaic Junction; and thence eastward and southward along The Old Road to its intersection with Rye Canyon Road.

3. Santa Ana River, Riverside and San Bernardino Counties (Index map location C).

All lands below the 543-foot contour in partially surveyed T. 3 S., R. 7 W., within the Prado Flood Control Basin (upstream from Prado Dam). In addition, the following adjacent lands above the 543-foot contour in the Santa Ana River bottom and within the following boundaries: commencing at a point 0.1 mi east and 0.2 mi north of the southwest corner of sec. 2, T. 3 S., R. 7 W.; thence north about 0.4 mi; thence to a point 0.25 mi east and 0.4 mi north of southwest corner of sec. 31, T. 2 S., R. 6 W.; thence to the northeast corner of sec. 31, T. 2 S., R. 6 W.; thence east 0.35 mi; thence to midpoint of southern section line of sec. 21, T. 2 S., R. 6 W.; thence to a point 0.6 mi south of the northwest corner of sec. 25, T. 2 S., R. 6 W.; thence east about 0.6 mi; thence to a point 0.2 mi north of the center of sec. 30, T. 2 S., R. 5 W.; thence east about 0.7 mi; thence to a point 0.6 mi east of the southwest corner of sec. 20, T. 2 S., R. 5 W.; thence east about 0.8 mi; thence 0.6 mi south; thence to a point 0.3 mi north of the southwest corner of sec. 28, T. 2 S., R. 5 W.; thence to a point 0.45 mi north of the southwest corner of sec. 29, T. 2 S., R. 5 W.; thence generally westward and southward along the Riverside Corporation Boundary (as shown on USGS Riverside Quadrangle 1980) to its intersection with Van Buren Blvd.; thence to a point 0.2 mi east and 0.75 mi south of the northwest corner of sec. 27, T. 2 S., R. 6 W.; thence 0.25 mi north; thence 0.7 mi west; thence to a point 0.85 mi north of the southwest corner of sec. 32, T. 2 S., R. 6 W.; thence to a point 0.75 mi west and 0.1 mi south of the northeast corner of sec. 6, T. 3 S., R. 6 W.; thence 0.5 mi west; and thence to the 543-foot contour at a point 0.3 mi west of the southeast corner of sec. 2, T. 3 S., R. 7 W.

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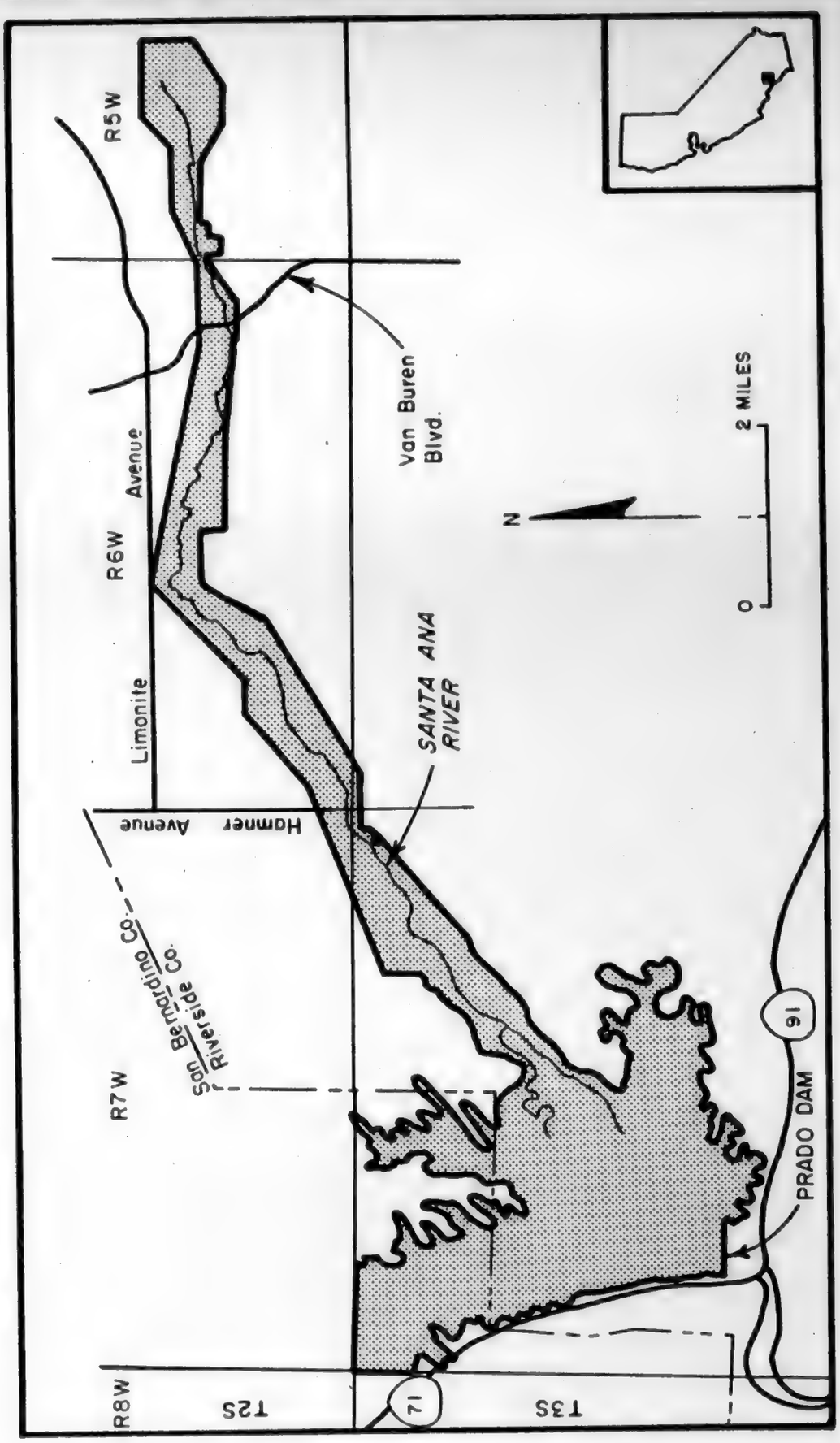

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4. Coyote Creek, San Diego County (Index map location D).

T. 9 S., R. 5 E.: secs. 22, N½, SE¼; and 23, SW¼.

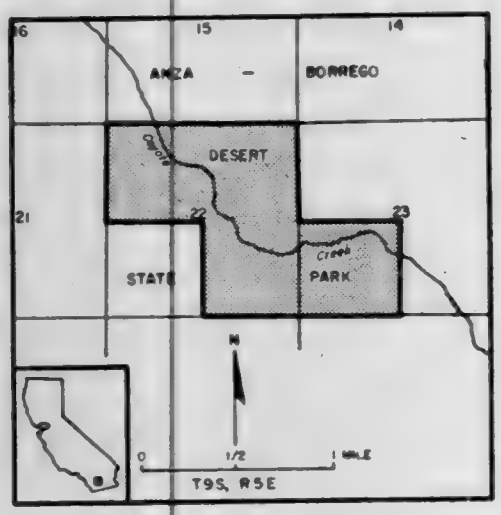

5. Santa Margarita River, San Diego County (Index map location E).

T. 9 S., R. 3 W.: secs. 4; 5 SE¼; 7; and 8.

In T. 9 S., R. 4 W., Sec. 12 S½, NE¼; 13 N½; 14; 15; 16 SE¼; 20; 21; 22 NW¼; 28 NW¼; 29; 31 SE¼; 32 W½, NE¼.

T. 10S, R. 4W: Sec. 5 W½; 6 E½; 7 E½, SW¼; 18 N½.

T. 10S, R. 5W: Sec. 13 S½, NE¼; 14 S½; 23; 24 NW¼, 26; 35.

T. 11S, R. 5W: Sec. 2N½, SW¼; 3 E½, 10 N½; 11 NW¼.

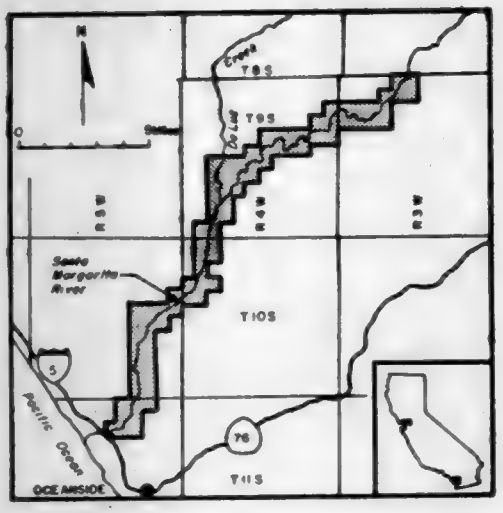

6. San Luis Rey River, San Diego County (Index map location F).

T. 11S., R. 5 W.: secs. 13, S½NE¼, SE¼NW¼, SW¼; 14, SE¼SW¼, S12SE¼; and 23, NW¼.

T. 11 S., R. 4 W.: secs. 3, all land north of Murray Road; 4, E½NE¼, E½SE¼SW¼, W½NE¼SE¼, E½NW¼SE¼, SW¼SE¼; 7, N½NE¼NE¼, NW¼NE¼, E½W½, SW¼SW¼; 8, N½NE¼, N½N½NW¼; 9, N½NW¼; and 18, NW¼.

T. 10 S., R. 4 W.: sec. 34, S½SW¼.

Surveyed and unsurveyed portions according to the following metes and bounds: bordered on the north by a line commencing at the intersection of North River Road and the surveyed eastern section line of sec. 3, T. 11 S., R. 4 W.; thence east along said road to its junction with Via Puerta Del Sol; thence east approximately 0.5 mi to State Highway 76 nearest the midpoint of sec. 31, T. 10 S., R. 3 W.; thence northward and eastward along said highway to its intersection with the eastern section line of sec. 27, T. 9 S., R. 2 W.; and bordered on the south by a line commencing at the intersection of Murray Road and the surveyed eastern section line of sec. 3, T. 11 S., R. 4 W.; thence southward and eastward along said road to its junction with State Highway 76; thence eastward and northward along said highway to its junction with Santa Fe Avenue; thence southeastward 3,000 feet along said avenue; thence northward along a straight line to Guajome Lake Road at a point 800 feet from the junction of said road and State Highway 76; thence northwestward along Guajome Lake Road to its junction with said highway; thence eastward along said highway to its junction with River Road in sec. 31, T. 10 S., R. 3 W.; thence northward along said road to its intersection with the surveyed eastern section line of sec. 20, T. 10 S., R. 3 W.; thence north to and northeasterly along the 250-foot contour in sec. 21 through partially surveyed sec. 15, T. 10 S., R. 3 W.; thence north to a point about 0.2 mi south of the northwest corner of sec. 14 and continuing along the 300-foot contour from the western section line of sec. 14 eastward through unsurveyed sec. 11, surveyed secs. 13 and 12, T. 10 S., R. 3 W.; and surveyed sec. 18, T. 10 S., R. 2 W.; thence east to and along the 325-foot contour through sec. 1, T. 10 S., R. 3 W.; thence south to and along the 350-foot contour in secs. 6 and 5, T. 10 S., R. 2 W., and secs. 32 and 33, T. 9 S., R. 2 W., to the northern section line of sec. 33; thence east approximately 1.5 mi to the southeastern corner of sec. 27, T. 9 S., R. 2 W.; and thence north about 0.4 mi to State Highway 76 in Pala.

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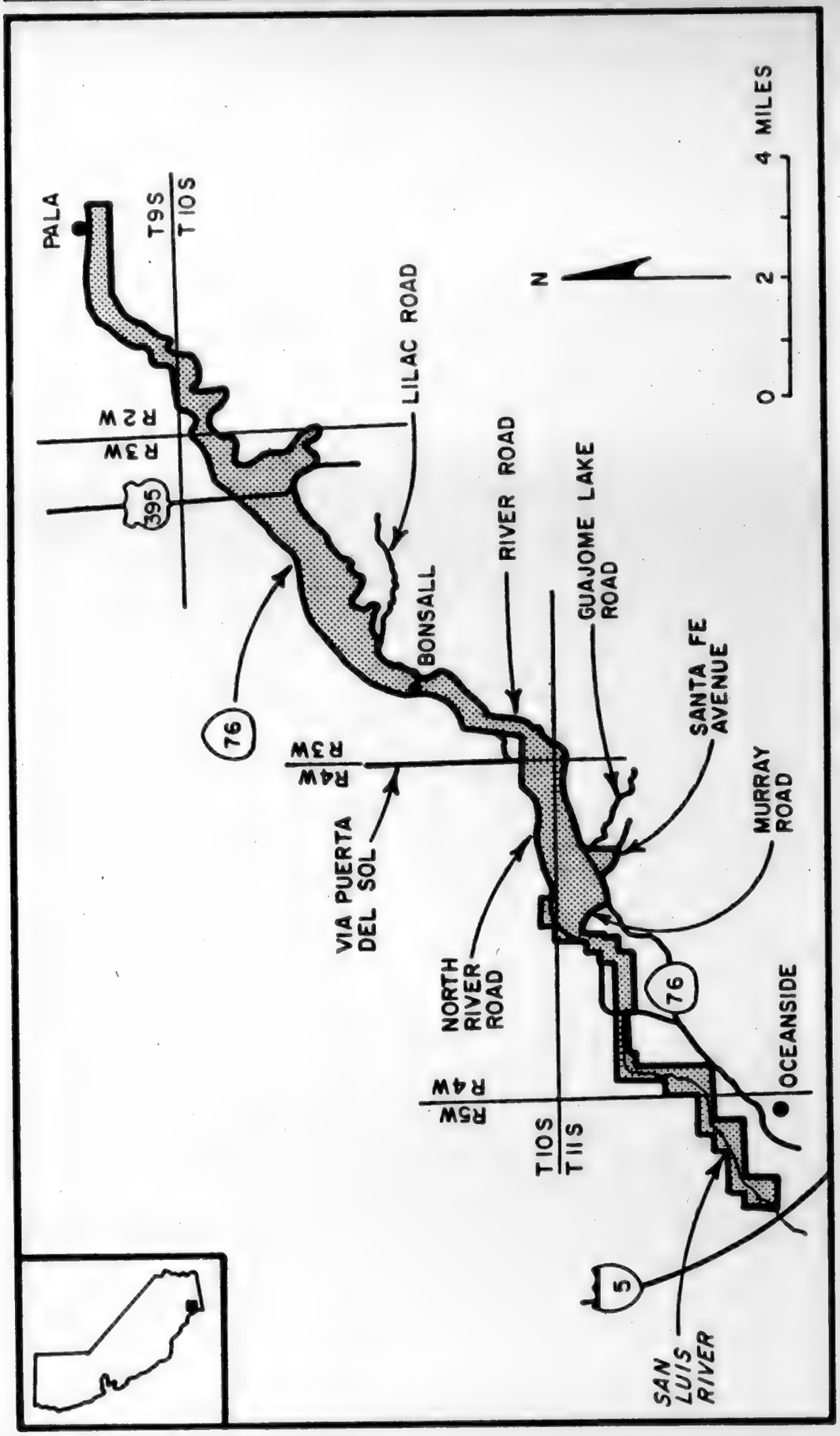

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7. San Diego River, San Diego County (Index map location G).

T. 15 S., Rs. 1 and 2 W.: commencing at the intersection of the Second San Diego Aqueduct and Mission Gorge Road; thence eastward along said road to the western-most intersection with Father Junipero Serra Trail; thence northward and eastward along said trail to the eastern-most intersection of said trail and said road; thence eastward along Mission Gorge Road to its intersection with Carlton Hills Blvd.; thence northward to its intersection with Carlton Oaks Drive; thence westward along said drive to its eastern-most intersection with Inverness Road; thence westward along said road to its intersection with Carlton Oaks Drive; thence westward along said drive to its intersection with Mast Street; thence westward and southward along the 320-foot contour to its intersection with the Second San Diego Aqueduct on the north side of the San Diego River; thence southeastward along said adqueduct to its intersection with Mission Gorge Road.

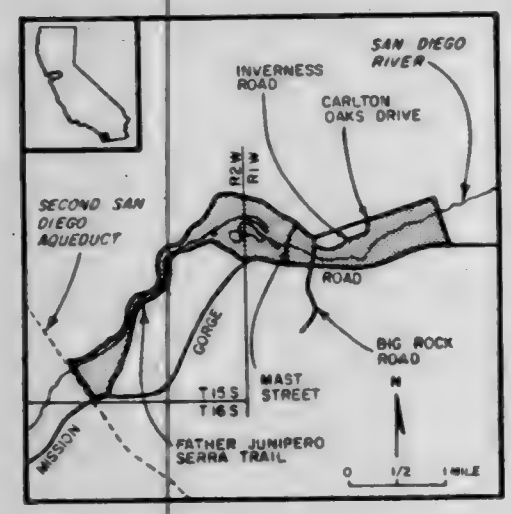

8. Sweetwater River, San Diego County (Index map location H).

Ts. 16 and 17 S., R. 1 W.: commencing at the intersection of the 320-foot contour and 116°58'14" W longitude immediately north of the confluence of Sweetwater River and Sweetwater Reservoir; thence eastward along the contour to the intersection of said contour with State Highway 94; thence northward along said highway to its intersection with State Highway 54; thence northeastward along said highway to the San Bernardino Meridian; thence south approximately 1,500 feet to the intersection with the 340-foot contour; thence westward and southward along said contour to the south end of the Steele Canyon Bridge on State Highway 94; thence south approximately 900 feet to the 340-foot contour; thence southwesterly along said contour to its intersection with 116°58'14" W longitude; thence north to starting point.

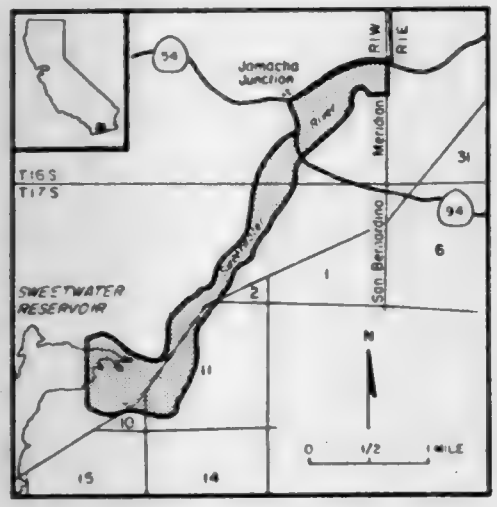

9. Jamul-Duzural Creeks, San Diego County (Index map location I).

Ts. 17 and 18 S., R. 1 E.: commencing from a point approximately 2,200 feet west of BM 515 along Otay Lakes Road, in sec. 5, T. 18 S., R. 1 E.; thence east approximately one mile to the crossing of said road at a bridge over Jamul Creek, including all land within 1,500 feet southward of Otay Lakes Road as measured perpendicularly from the road; thence eastward for about 4.8 mi along said road to its intersection with State Route 94 and including all lands within 1,500 feet northward of said road as measured perpendicularly from the road, and including all lands within 500 feet of said bridge not otherwise included above.

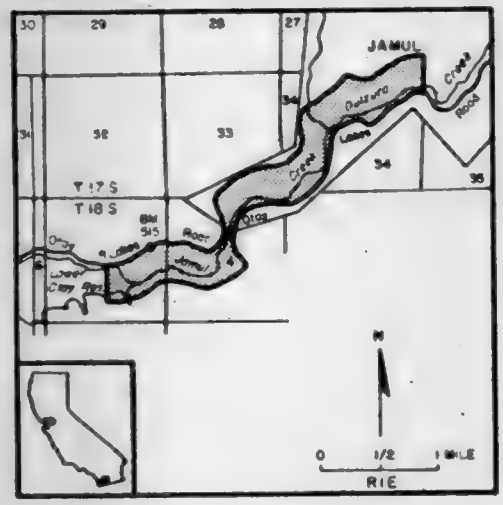

10. Tijuana River, San Diego County (Index map location J).

T. 18 S., R. 2 W.: secs. 34, S1/2SE1/4SE1/4; and 35, S1/2SW1/4, SW1/4SW1/4SE1/4.

T. 19 S., R. 2 W.: secs. 1, W1/2SW1/4NW1/4; 2, S1/2NE1/4NE1/4, NW1/4NE1/4, N1/2SE1/4NE1/4, N1/2NE1/4NW1/4, W1/2NW1/4; 3, N1/2; and 4, NE1/4, N1/2NW1/4.

Primary constituent elements: riverine and floodplain habitats (particularly willow-dominated riparian woodland with dense understory vegetation maintained, in part, in a non-climax stage by periodic floods or other agents) and adjacent coastal sage scrub, chaparral, or other upland plant communities.

Dated: July 14, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-18630 Filed 8-6-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 153
Friday, August 7, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. No. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following advisory committee meeting.

Name: Agricultural Biotechnology Research Advisory Committee.

Date: August 26-27, 1992.

Time: 9 a.m. to approximately 5 p.m. on August 26. 9 a.m. to approximately 3 p.m. on August 27.

Place: Georgetown Room, Rosslyn Westpark Hotel, 1900 N. Fort Myer Drive, Arlington, Virginia 22209.

Type of Meeting: This meeting is open to the public. Persons may participate in the meeting as time and space permit. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Comments: The public may file written comments before or after the meeting with the contact person specified below.

Purpose: To review matters pertaining to agricultural biotechnology research and to develop advice for the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research.

The items to be considered at this meeting include activities of committee working groups on aquaculture, risk assessment, and societal impacts of agricultural biotechnology.

Contact Persons: Dr. Alvin L. Young, Director, or Dr. Daniel D. Jones, Deputy Director, Office of Agricultural Biotechnology, Cooperative State Research Service, Department of Agriculture, room 1001, Rosslyn Plaza East, 14th Street and Independence Avenue SW., Washington, DC 20250. Telephone (703) 235-4419.

Done at Washington, DC, this 21st day of July, 1992.

Duane Acker,

Assistant Secretary, Science and Educotion.

[FR Doc. 92-18795 Filed 8-6-92; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Grand Island Advisory Commission; Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission meeting.

SUMMARY: The Grand Island Advisory Commission will meet on August 21, 1992 at 8 a.m. at the Comfort Inn on M-28 East in Munsing, Michigan. An agenda for the one day meeting will consist of an update on the DEIS and Public Involvement Plan. Time permitting a quick trip to the Island may be arranged.

Interested member of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786-4062.

Dated: July 31, 1992.

William F. Spinner,

Forest Supervisor.

[FR Doc. 92-18633 Filed 8-6-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

International Laboratory Accreditation Conference (ILAC) 1992

AGENCY: National Institute of Standards and Technology, Commerce.

ANNOUNCEMENT: International conference on laboratory accreditation and delegation preparatory meeting.

DATES: Twelfth ILAC meeting, Ottawa, Canada, October 12-16, 1992, and Open Pre-Conference Meeting, National Institute of Standards and Technology, Gaithersburg, MD, October 5, 1992.

SUMMARY: The Twelfth International Laboratory Accreditation Conference (ILAC) will be held in Ottawa, Canada, October 12-16, 1992. ILAC is an informal organization of approximately 45 nations and 12 international organizations whose purpose is to promote: (1) The development of national programs for accrediting testing laboratories, (2) the employment of harmonized accreditation criteria, and (3) the development of bilateral or multilateral arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a laboratory accreditation program in exporting nations.

Conferences in support of ILAC's stated purpose have been held since 1977, to develop information about laboratory accreditation systems, to provide a forum for discussing differences among such systems, to describe basic principles and criteria for operating such systems, and to develop bilateral or other arrangements which would establish mutual recognition of such systems or of test reports issued by laboratories accredited under such systems. These bilateral arrangements are intended to minimize technical barriers to trade.

The U.S. Delegation is chaired by the Chief of the Standards Code and Information Program of the National Institute of Standards and Technology. Anyone interested in attending this meeting in Ottawa as a member of the U.S. Delegation, using his or her own financial resources for registration fees, hotel accommodations, food, and travel expenses, can do so by registering with the Conference Secretariat, the Standards Council of Canada. Such persons should have a background in standards development, laboratory accreditation, product testing or product certification activities. Conference registration materials are available from NIST; those considering participation are advised that a discount on the conference fee is available for early registration, until August 14, 1992.

Notice is also given that the U.S. Delegation will hold an open pre-conference meeting at 10 a.m. on October 5, 1992, in Lecture Room C of the Administration Building at the National Institute of Standards and Technology, Gaithersburg, Maryland, to prepare for the conference. The meeting attendees and delegates will: (1) Review ILAC Committee reports, (2) consider the position that the U.S. Delegation should take in response to those reports.

(3) prepare any proposed resolution for introduction at ILAC 92, and (4) consider any additional matters of interest. The pre-conference meeting will be conducted by the delegation chairman.

CONTACT: Anyone wishing to attend these meetings or seeking additional information should contact Mr. John L. Donaldson, Chief, Standards Code and Information: By mail at the National Institute of Standards and Technology, Admin. A629, Gaithersburg, MD 20899; by telephone at 301–975–4029 or by fax on 301–963–2871.

Dated: August 3, 1992.

John W. Lyons,

Director.

[FR Doc. 92–18770 Filed 8–6–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Florida/Alabama Habitat Protection Advisory Panel (Panel) on August 13, 1992, from 9 a.m. until 3 p.m. The meeting will be held at the Holiday Inn Express, 6501 Pensacola Boulevard, Pensacola, FL.

The Panel's agenda includes the following: (1) Discuss Alabama's Experience with Increasing Pipeline Placements in Coastal Areas; (2) review the Coastwatch Change Analysis Program; (3) review the Keys Marine Sanctuary/DER (Department of Environmental Regulation) Responsibilities, Activities, and Description of Existing Habitat Conditions; (4) discuss Coastal Habitat Restoration as a Fishery Management Tool; and (5) consider an Overview of Habitat-Related Research Activities at Mote Marine Laboratory, Sarasota, FL.

For more information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 3, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18741 Filed 8–6–92; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council and its Committees will meet during the month of August on the following dates and at the locations noted below:

The Summer Flounder Monitoring Committee will meet on August 13, 1992, at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; (telephone 215–521–5900). The meeting is to begin at 10 a.m. The purpose of the meeting is to make recommendations concerning the summer flounder quota for 1993.

The Scientific and Statistical Committee will meet on August 27, 1992, at the Ramada Inn, 76 Industrial Highway, Essington, PA; (telephone 215–521–9600). The meeting will begin at 10 a.m. The purpose of the meeting is to develop surf clam and ocean quahog quota recommendations for 1993.

The Surf Clam and Ocean Quahog Committee will meet on August 27, 1992, at the Ramada Inn, 76 Industrial Highway, Essington, PA; (telephone 215–521–9600). The meeting will begin at 1 p.m. The purpose of the meeting is to develop surf clam and ocean quahog quota recommendations for 1993.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 3, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18740 Filed 8–6–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team will meet on August 24, 1992, beginning at 10:30 a.m. The meeting will be held at the Department of Parks and Recreation, in the large conference room, 2211 Garden Road, Monterey, CA.

The purpose of this meeting is to discuss management options for limited entry in the coastal pelagic fishery.

For individuals planning to attend this meeting who need directions to the meeting room, please contact the California Department of Fish and Game at (408) 649–2870.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Dated: August 3, 1992.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18737 Filed 8–6–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Issuance of permit; Idaho Department of Fish and Game; No. 795 (P503A).

On April 17, 1992, notice was published in the **Federal Register** (57 FR 13709) that an application had been filed by the Idaho Department of Fish and Game, 600 South Walnut Street, P.O. Box 25, Boise, ID 83707, to take Snake River Sockeye salmon *(Oncorhynchus nerka)* for the purposes of scientific research and enhancement as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222). An emergency permit allowing the requested activities for research on and the enhancement of Snake River sockeye salmon was issued on April 13, 1992. This emergency permit was in effect pending full public and governmental review of the application and is now superseded by the decision to issue the regular permit.

Notice is hereby given that on July 29, 1992 as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: July 29, 1992.

Charles Karnella, Ph.D.,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18739 Filed 8–6–92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of application for permit.

SUMMARY: Notice is hereby given that Dr. Kathryn A. Ono, Assistant Research Marine Biologist, Biology Board of Studies and Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR Part 217–222).

The applicant proposes to take up to 40 Steller sea lions (*Eumetopias jubatus*) per year for four years by capture to double tag (posterior edge of both front flippers with Reise tags), handle and release. Skin plugs will be saved for use in genetic analysis. An additional 20 post-partum females per year for three years will be remotely marked using hair dye-filled eggshells and a super-soaker technique and 70 Steller sea lions per year for four years will be inadvertently harassed while conducting these activities. Up to 2000 California sea lions (*Zalophus californianus*) will be inadvertently harassed per year for four years during periodic censuses for *Zapholus* and *Eumetopias*. An additional 20 California sea lions will be remotely marked with hair dye. The activities will occur on Ano Nuevo Island and one other site in northern California yet to be determined. However, the applicant must notify the Director, Southwest Region with a specific location prior to conducting activities on any site in California.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: August 3, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18738 Filed 8–6–92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of application for permit (P368C).

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to take 200 California sea lions by capture and temporary restraint at haul-out sites along the California coast to determine the effects of the El Niño. Each sea lion will be weighed, measured, blood sampled, blubber thickness determined using a portable ultrasound and two tags (Green Jumbo Roto tags) placed in the foreflippers. Each sea lion will be captured one to three times. Three hundred (300) individuals will be harassed during efforts to collect fecal and regurgitated material on haul-out sites. Because some of the animals are extremely emaciated and under stress, there may be some mortalities. Therefore, authorization is requested for accidental mortality of up to 20 of the 200 sea lions.

The objectives are to: (a) Assess abundance of juvenile sea lions in Monterey, (b) evaluate the appropriateness of various condition indices such as weight/length ratios, blubber thickness and blood characteristics, (c) compare a sample of juvenile sea lions that are obviously physically stressed with a sample that is considered normal, and (d) necropsy all juvenile sea lions washing up on beaches in the Monterey Bay area.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, NOAA 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review, by appointment, in the Permits Division Office of Protected Resources, NOAA, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713–2289); and Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: July 31, 1992.

Charles Karnella, Ph.D.,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18742 Filed 8–6–92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 8, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will not result in authorizing small entities to furnish the commodity and services to the Government.

4. There are known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List.

Commodity

Parts Kit, Spare, 1375–01–217–8725.
Nonprofit Agency: Blind Industries and Services of Maryland, Baltimore, Maryland at its facility in Salisbury, Maryland.

Services

Janitorial/Custodial, Naval Station, Mobile, Alabama.
Nonprofit Agency: Goodwill Industries of Mobile Area, Inc. Mobile, Alabama.
Janitorial/Custodial, Air National Guard Base, Buildings 197 and 179, Dormitories 5238, 5238 and 817, Otis, Massachusetts.
Nonprofit Agency: Community Connections, Inc., Yarmouth Port, Massachusetts.
Janitorial/Custodial, Federal Building, 1709 Jackson Street, Omaha, Nebraska.
Nonprofit Agency: Goodwill Industries, Inc., Omaha, Nebraska.
Janitorial/Custodial, U.S. Army Buffalo Reservation, Buffalo, New York.
Nonprofit Agency: Suburban Adult Services, Inc., Sardinia, New York.
Janitorial/Custorial, Ysleta U.S. Border Station, El Paso, Texas.
Nonprofit Agency: Goodwill Industries of El Paso, El Paso, Texas.
Microfilming of EEG Records, Veterans Administration Medical Center, Buffalo, New York.
Nonprofit Agency: Cattaraugus County Chapter, NYSARC, Olean, New York.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–18794 Filed 8–6–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 8, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 17, May 1, June 5 and 19, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 13715, 18869, 24025 and 27440) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities or services.

3. The action will result in authorizing small entities to furnish the commodities or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities or services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Binder, Looseleaf, Ring
7510–01–278–4129
7510–01–278–4131

Stamp, Rubber
7520–00–NSH–0045—¼" x 3"
7520–00–NSH–0046—⅜" x 3"
7520–00–NSH–0047—½" x 3"
7520–00–NSH–0048—⅝" x 3"
7520–00–NSH–0049—¾" x 3"
7520–00–NSH–0050—⅞" x 3"
7520–00–NSH–0051—1" x 3"
7520–00–NSH–0052—1⅛" x 3"
7520–00–NSH–0053—1¼" x 3"
7520–00–NSH–0054—1⅜" x 3"
7520–00–NSH–0055—2" x 3"
7520–00–NSH–0056—2½" x 3"
7520–00–NSH–0057—3" x 3"
7520–00–NSH–0058—3½" x 3'
7520–00–NSH–0059—4" x 3"
7520–00–NSH–0060—4½" x 3"
7520–00–NSH–0061—5" x 3"
(Requirements for Travis Air Force Base, California)

Compound, Corrosion Preventive

8030-01-045-4780
8030-00-938-1947
8030-00-546-8637
Necktab, Women's Shirt
8445-01-317-1620

Services

Grounds Maintenance, Travis Air Force Base, California
Grounds Maintenance, Sgt. Paul Beck AFRC, 987 East Bishop Street, Bellefonte, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, 3315 9th Street, Wichita Falls, Texas
Laundry Service, Naval Hospital, Portsmouth, Virginia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-18793 Filed 8-6-92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Government-Industry Technical Data Committee

AGENCY: Office of The Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102-120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee is scheduled to meet on August 19-20 and September 16-17, 1992 from 9:30 a.m. to 4 p.m. at The Herman Lay Room, The U.S. Chamber of Commerce, 1615 H Street, NW., Washington, DC 20062-2000. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693-5639.

Dated: July 31, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-18749 Filed 8-6-92; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 163. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 163 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: August 1, 1992.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-15--09-15	174	71	245	05-15-92
09-16--05-14	85	62	147	05-01-92
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	86	73	159	06-01-91
BETHEL				
05-01--09-30	93	83	176	05-01-92
10-01--04-30	80	81	161	02-01-92
BETTLES	65	45	110	12-01-90
CANTWELL	62	46	108	06-01-91
COLD BAY	71	54	125	12-01-90
COLDFOOT	75	47	122	12-01-90
CORDOVA	83	77	160	02-01-92
CRAIG	67	35	102	07-01-91
DILLINGHAM	76	38	114	12-01-90
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	100	66	166	05-15-92
09-16--05-14	66	63	129	05-01-92
ELMENDORF AFB				
05-15--09-15	174	71	245	05-15-92
09-16--05-14	85	62	147	05-01-92
EMMONAK	60	40	100	06-01-91
FAIRBANKS				
05-15--09-15	100	66	166	05-15-92
09-16--05-14	66	63	129	05-01-92
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-15--09-15	174	71	245	05-15-92
09-16--05-14	85	62	147	05-01-92
FT. WAINWRIGHT				
05-15--09-15	100	66	166	05-15-92
09-16--05-14	66	63	129	05-01-92
HOMER				
05-01--09-30	71	60	131	05-01-92
10-01--04-30	57	58	115	01-01-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
JUNEAU				
05-01--10-01	$ 88	$ 74	$162	05-01-92
10-02--04-30	75	73	148	01-01-92
KATMAI NATIONAL PARK	89	59	148	12-01-90
KENAI-SOLDOTNA				
04-02--09-30	94	68	162	04-02-92
10-01--04-01	69	66	135	01-01-92
KETCHIKAN				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	125	72	197	01-01-92
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-92
09-16--05-14	66	63	129	05-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	125	72	197	01-01-92
NOME				
05-15--09-15	87	72	159	05-15-92
09-16--05-14	76	71	147	05-01-92
NOORVIK	125	72	197	01-01-92
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	125	72	197	01-01-92
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
ST. MARY'S	$ 60	$ 40	$100	12-01-90
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA				
05-15--09-15	87	72	159	05-15-92
09-16--05-14	76	71	147	05-01-92
TOK	66	55	121	01-01-92
UMIAT	97	63	160	12-01-90
UNALAKLEET	58	47	105	12-01-90
VALDEZ				
05-01--09-01	98	53	151	05-01-92
09-02--04-30	84	51	135	01-01-92
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
YAKUTAT	70	40	110	12-01-90
OTHER 3, 4/	63	47	110	07-01-91
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	112	75	187	05-01-92
HAWAII:				
ISLAND OF HAWAII: HILO	65	61	126	06-01-92
ISLAND OF HAWAII: OTHER	80	61	141	06-01-92
ISLAND OF KAUAI	99	55	154	06-01-92
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI	79	64	143	06-01-92
ISLAND OF OAHU	105	55	160	06-01-92
OTHER	59	47	106	12-01-90
JOHNSTON ATOLL 2/	18	18	36	10-01-91
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	45	31	76	12-01-90
SAIPAN	68	47	115	12-01-90
TINIAN	44	24	68	12-01-90
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
CAROLINA				
04-16--12-14	$ 93	$ 67	$160	08-01-92
12-15--04-15	116	69	185	12-15-92
FAJARDO (INCLUDING LUQUILLO)				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
MAYAGUEZ	85	65	150	08-01-92
PONCE	106	65	171	08-01-92
ROOSEVELT ROADS				
04-16--12-14	90	57	147	08-01-92
12-15--04-15	134	61	195	12-15-92
SABANA SECA				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
04-16--12-14	93	67	160	08-01-92
12-15--04-15	116	69	185	12-15-92
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
05-02--12-15	100	68	168	08-01-92
12-16--05-01	144	73	217	12-16-92
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

3/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $16.25 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. government or contractor quarters.

L.M. BYNUM
Alternate OSD Federal Register Liaison Officer
Department of Defense
4 AUG 1992

[FR Doc. 92-18748 Filed 8-6-92; 8:45 am]
BILLING CODE 3810-01-C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 8, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 3, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Application for Grants under the Law-Related Education Program
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 115
Burden Hours: 4,600
Recordkeeping Burden:
Recordkeepers:
Burden Hours:
Abstract: This form will be used by State educational agencies to apply for funding under the Law-Related Education Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Annual Vocational Rehabilitation Program/Cost Report
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses; 84
Burden Hours: 420
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: State Vocational Rehabilitation agencies submit this report to the Department. The Department uses the information to analyze expenditures, to evaluate program accomplishments, and to examine data for indications of problem areas.

[FR Doc. 92–18719 Filed 8–6–92; 8:45 am]
BILLING CODE 4000–01–M

Fund for Innovation in Education: Innovation in Education Program—State Curriculum Frameworks for English, History, Geography, Civics, and Arts Education

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal years 1993 and 1994.

SUMMARY: The Secretary proposes priorities for fiscal years 1993 and 1994 for the Fund for Innovation in Education: Innovation in Education Program. The proposed priorities would assist projects to develop and implement State curriculum frameworks, kindergarten through grade 12 (K–12), in English, history, geography, civics, and the arts, together with new approaches to teacher education and certification appropriate to the frameworks. The Secretary takes this action to focus Federal financial assistance on State curriculum frameworks as the starting point for systemic school improvement.

DATES: Comments must be received on or before September 8, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Paul Gagnon, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Shirley Steele or Seresa Simpson, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Fund for Innovation in Education Program supports projects that show promise of identifying and disseminating innovative approaches to education at the preschool, elementary, and secondary levels. The program is authorized under Part F of Title IV of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100–297.

The priorities proposed in this notice support one of the six National Education Goals which calls for U.S. students to leave grades four, eight, and twelve having demonstrated competency in subjects including English, history, geography, mathematics, and science. The President's AMERICA 2000 strategy for helping the Nation achieve the goals calls for the creation of world-class national standards for student achievement in these subjects and for a system of improved assessments tied to the standards.

In addition, the Secretary wishes to extend the same strategy to civics and the arts. Civics is central to the attainment of goals three and five, which call for all students and every adult American to possess the knowledge and skills needed to exercise the rights and responsibilities of citizenship. The arts are essential to a liberal education. Appreciation of, and

participation in, the arts add to the quality of our lives and intersect everything we learn and do in every other subject.

The National Council on Education Standards and Testing, a congressionally created group of 32 individuals charged with investigating the desirability and feasibility of standards and improved assessments, issued its report in January 1992. The report called for the development of national standards and a national system of voluntary assessments as an urgently needed first step in reforming American education.

The feasibility of setting national standards and their effectiveness in encouraging State and local reform has been demonstrated by a number of national professional organizations. Recently the National Council of Teachers of Mathematics developed national standards for what students should know and be able to do in mathematics. While there do not exist fully developed national standards for K–12 in the arts, civics, English, history, geography, and science, considerable work has been done by a variety of organizations toward development of these standards.

World-class standards that define what students should know and be able to do provide the foundation for systemic reform. State curriculum frameworks serve as the bridge between these standards and the classroom by providing guidelines for the content of the curriculum and for how that content should be organized and presented. Frameworks provide the perimeters for curriculum and course design at the district, school, and classroom levels.

Defining what students in a State should learn is a critical step in the process of ensuring that the State's students are prepared to meet world-class standards. The Department, under the Dwight D. Eisenhower National Program for Mathematics and Science Education, intends to fund projects for the development of State curriculum frameworks in mathematics and science. Certain States have already developed in one or more subjects curriculum frameworks that embody high standards and provide guidelines to local schools and districts for the content of what should be taught. Engaging more and more States in this process would help to achieve national consensus on world-class standards for American students and would prepare the way for all students to reach these standards.

Under the proposed priorities the Secretary proposes that only States, or States working with other entities of their own choice, may apply for funding to support projects in one or more of the disciplines cited in the priorities. The Secretary believes that States must participate as lead agents in the development of curriculum frameworks and related activities because they bear central responsibility in matters of education. State leadership is essential to coordinate efforts to raise general standards, to disseminate curriculum frameworks, to influence new directions in teacher education and professional development, and to establish appropriate criteria for teacher certification. In every case, the development of a curriculum framework must be accompanied by closely related plans for teacher education and certification, as well as for professional development and recertification.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priorities 1–6

Proposed Priority 1—State Curriculum Frameworks for English

Proposed Priority 2—State Curriculum Frameworks for History

Proposed Priority 3—State Curriculum Frameworks for Geography

Proposed Priority 4—State Curriculum Frameworks for Civics

Proposed Priority 5—State Curriculum Frameworks for the Arts

Proposed Priority 6—State Curriculum Frameworks for Two or More of the Disciplines in Priorities 1–5

Projects in which States, or States in collaboration with other entities, carry out all of the following activities:

(a) Develop a State curriculum framework, kindergarten through grade 12 (K–12), that reflects world-class standards and that will be made available for local schools and districts to implement or to adapt. This framework must cover English, history, geography, civics, or the arts, or a combination of two or more of these disciplines. The framework must embody coherent, non-repetitive curricula carefully designed to ensure that all children study challenging subject material in every grade, K–12. The design of the framework must involve college and university scholars and specialists, as well as teachers and administrators from public or private schools, working together as equal collaborators.

(b) Develop model guidelines for effective approaches to teacher education and certification based on world-class standards and the State curriculum framework tied to these standards. The model guidelines must be developed in cooperation with one or more institutions of higher education in the State. The collaborative work of designing these model guidelines must also involve scholars and specialists, school teachers, and school administrators from public or private schools.

(c) Develop criteria for teacher recertification, and design and pilot test a model, cost-effective inservice professional development program for teachers based on world-class standards and the State curriculum framework tied to these standards. The work of designing these programs must involve collaboration among scholars and specialists, school teachers, and school administrators from public or private schools. In addition, these programs must be pilot-tested in a variety of schools throughout each State.

(d) Provide the Secretary with a copy of the evaluation conducted under 34 CFR 75.590.

To guide the activities of the project, each project must establish an overall advisory committee that includes classroom teachers, university scholars in English, history, geography, civics, or the arts; State and local school administrators, representatives of private schools, specialists in teacher education, representatives of the State legislature, the Governor's office, and State and local boards of education; and representatives of business, labor, industry, and the community at large.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372

and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number 84.215, Fund for Innovation in Education: Innovation in Education Program)

Dated: May 28, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-18720 Filed 8-6-92; 8:45 am]

BILLING CODE 4000-01-M

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIME: September 10, 1992, 9 a.m.–4 p.m. and September 11, 1992, 9 a.m.–noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 326 Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Suellen Mauchamer, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400E, Washington, DC 20208–7575, telephone: (202) 219–1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meetings of the Council is open to the public.

The proposed agenda includes the following:

- Updates on NCES resources; new data releases including *The Condition of Education 1992, Dropout Rates in the U.S.*, and *Historically Black Colleges and Universities.*
- NCES Role in International Surveys.
- Release of Data by Statistical Agencies.
- Utility and Reliability of Attitudinal Survey Items.
- Council Business.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW, room 400E, Washington, DC 20208–7575.

Dated: July 29, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research, and Improvement.

[FR Doc. 92-18799 Filed 8-6-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Nez Perce Tribe

AGENCY: U.S. Department of Energy (DOE), Richland Field Office.

ACTION: Notice of Intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Field Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a noncompetitive grant to the Nez Perce (Indian) Tribe. Under the terms of the award, the Nez Perce will conduct activities related to the protection of Nez Perce treaty rights which may be impacted by activities associated with DOE's environmental restoration activities at the Hanford Site. This award implements elements of the DOE Five-Year Plan recognizing DOE's commitment to the participation of affected Indian tribes in the planning and implementation of the Five-Year Plan.

DOE has determined that award on a noncompetitive basis is appropriate because the recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the jurisdiction of that unit of government, thereby precluding DOE provision of support to another entity. Since the award relates to agreements and treaties already made between the United States Government and the Nez Perce, it would be inappropriate for DOE to consider funding any other entity to be responsible for carrying out these activities. The duration of the grant is expected to be 12 months from the effective date of the award. FY92 funds obligated for the effort are expected to be approximately $100,000.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U. S. Department of Energy, Richland Field Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–2029.

Dated: July 24, 1992.

P.E. Rasmussen,

Acting Director, Procurement Division, Richland Operations Office.

[FR Doc. 92-18800 Filed 8-6-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 11151-000 Indiana]

Energy Alternatives of North America, Inc.; Availability of Environmental Assessment

August 3, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Williams Dam Project located on the East Fork of the White River in Lawrence County, Indiana, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices

at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18758 Filed 8-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11128-000 New Hampshire]

Odell Hydroelectric Co.; Availability of Environmental Assessment

August 3, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Brooklyn Dam Project located on the Upper Ammonoosuc River in Coos County in the village of Groveton, New Hampshire, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18757 Filed 8-6-92; 8:45 am]

BILLING CODE 6717-01-M

Central Hudson Gas & Electric Corp., et al.; Order Granting and Denying Waiver of Notice and Clarifying Waiver Policy

Issued August 3, 1992.

In the Matter of Central Hudson Gas & Electric Corporation, Docket Nos. ER92-346-000 and ER92-347-000; Kansas Power & Light Company, Docket No. ER92-379-000; New England Power Company, Docket Nos. ER92-382-000 and ER92-550-000; Potomac Electric Power Company, Docket No. ER92-430-000; Kansas Gas & Electric Company, Docket Nos. ER92-446-000 and ER92-538-000; Puget Sound Power & Light Company, Docket No. ER92-473-000; UtiliCorp United, Inc., Docket No. ER92-486-000; Tucson Electric Power Company, Docket Nos. ER92-495-000 through ER92-504-000; Florida Power & Light Company, Docket No. ER92-525-000; Centerior Energy, Docket No. ER92-529-000; Washington Water Power Company, Docket No. ER92-532-000; St. Joseph Light & Power Company, Docket No. ER92-534-000; UNITIL Power Corporation, Docket No. ER92-535-000; Pacific Gas & Electric Company, Docket No. ER92-539-000; Duke Power Company, Docket Nos. ER92-540-000 through ER92-542-000; Montaup Electric Company, Docket No. ER92-544-000; PacifiCorp Electric Operations, Docket No. ER92-547-000 and Southern California Edison Company, Docket No. ER92-548-000.

Summary

These proceedings have afforded the Commission an opportunity to reconsider its policy with respect to waiver of the 60-day prior notice requirement of section 205 of the Federal Power Act and the Commission's regulations, as set forth in our Central Maine orders, *infra* note 5. As a consequence of that reconsideration, in this order we provide further guidance to the electric utility industry concerning the circumstances under which we will find good cause for waiver of notice.

As described more fully below, the Commission believes that waiver of notice will generally be appropriate when the filing has no rate impact or reduces the rate, or when a rate increase and its effective date are prescribed by an agreement on file with the Commission or by a settlement accepted by the Commission. Even in these instances, however, the Commission stresses the need for public utilities to make the filings as soon as possible.

In other situations, such as rate increases not provided for in a contract or settlement on file with the Commission, or new services that will not result in rate decreases to customers, a strong showing of good cause will be required. We again stress that alleged justifications such as the press of other company business simply will not be accepted as sufficient demonstration of good cause for waiver.

Background

On June 26, 1992, the Commission issued an order in these proceedings accepting for filing and suspending rates for a nominal period. Central Hudson Gas & Electric Corporation, et al., 59 FERC ¶ 61,380 (1992) (June 26 Order). Each of the filings in these proceedings requires waiver of the 60-day prior notice requirement. *See* 16 U.S.C. 824d(d) (1988); 18 CFR 35.3(a). In the June 26 Order, we deferred final action on whether to grant waiver of notice.

Section 205(c) of the Federal Power Act (FPA) requires that utilities file rates for jurisdictional service at least 60 days prior to the commencement of service.[1] The statute and the Commission's regulations also give the Commission the discretion to grant waiver of the 60-day prior notice requirement for good cause shown.[2]

In Nevada Power Company,[3] the Commission expressed concern at the increasing number of rate filings that were being made after service had commenced. The Commission cautioned filing utilities "that we may not be as generous in the future in finding good cause to grant waiver if presented with, *inter alia*, unexplained filing delays."[4]

Subsequently, in Central Maine Power Company,[5] the Commission issued a policy statement concerning the 60-day prior notice requirement. The Commission again expressed its concern about the number of rate filings made after the commencement of service. The Commission noted that it had repeatedly disapproved of parties transacting business in violation of the Federal Power Act and the Commission's regulations concerning the timely filing of rates.[6] However, the Commission also stated that utilities providing jurisdictional service without agreements on file would be given one further opportunity to submit rates for such service within a certain period of time (*i.e.*, an amnesty window). The amnesty window ended on October 7, 1991, 60 days after publication of the Central Maine order in the Federal Register. The Commission stated that utilities filing rates for ongoing services outside of the amnesty window would be limited by the Commission to rates which would recover no more than such utilities' variable operation and maintenance costs.[7]

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[1] 16 U.S.C. 824d(d).

[2] *Id.*; 18 CFR 35.3(a), 35.11.

[3] 55 FERC ¶ 61,379 (1991); *see also* Portland General Exchange, Inc., 51 FERC ¶ 61,108, *order granting clarification*, 51 FERC ¶ 61,379, *order accepting compliance filing*, 53 FERC ¶ 61,216 (1990).

[4] 55 FERC at 62,153 n.14.

[5] 56 FERC ¶ 61,200, *reh'g denied*, 57 FERC ¶ 61,063 (1991).

[6] 56 FERC at 61,617.

[7] *Id.* at 61,619. The Commission has applied *Central Maine* in several contexts. *See* Florida Power Corporation, 58 FERC ¶ 61,161, *reh'g denied*, 60 FERC ¶ 61,003 (1992); Mississippi Power Company, 58 FERC ¶ 61,286 (1992), *reh'g pending*; PacifiCorp Electric Operations, 59 FERC ¶ 61,090 (1992) (*PacifiCorp*), *reh'g pending*; Western Massachusetts Electric Company, 59 FERC ¶ 61,091 (1992), *reh'g pending*; New England Power Company, 59 FERC ¶ 61,253 (1992), *reh'g pending*; Green Mountain Power Company, 59 FERC ¶ 61,291 (1992), *reh'g pending*; Portland General Electric Company, 59 FERC ¶ 61,005, *order on rehearing sub nom.*, Fail Safe, Inc. (Portland General Electric Company), 59 FERC ¶ 61,385 (1992).

Due to the facts presented by the filings in these proceedings, we take this opportunity to further clarify the Commission's policy on when waiver of the 60-day prior notice requirement will be granted, *i.e.* when good cause for waiver will be found. This will provide guidance to public utilities and their customers as to when the Commission, and its staff pursuant to delegated authority,[8] will grant (or deny) waiver.

Discussion

We will generally grant waiver of the 60-day prior notice requirement in the following instances: (1) Uncontested filings that do not change rates—such as notices of cancellation when the contract expires by its own terms and the customer does not desire an extension, changes in delivery points, and changes in non-rate terms; and (2) filings that reduce rates and charges—such as rate decreases or new services that provide the customer of a utility with an opportunity to reduce its purchases of other, more expensive service from the same utility.

The filings made by Central Hudson Gas & Electric Corporation, New England Power Company, Kansas Gas & Electric Company (in Docket No. ER92–538–000 only), Puget Sound Power & Light Company, Tucson Electric Power Company, Florida Power & Light Company, Washington Water Power Company, St. Joseph Light & Power Company, UNITIL Power Corp., Duke Power Company, and PacifiCorp Electric Operations all fall into one of the above categories. Accordingly, we will grant waiver of notice for these filings.

We will also generally grant waiver of the 60-day prior notice requirement for filings that increase rates when the rate change and the effective date are prescribed by contract, such as annual rate revisions required by contract to become effective on a date specified in the contract, or a new service filed to comply with requirements of an accepted settlement if the settlement specified the effective date. In these instances, there is a contractual commitment as to the effective date which the Commission has already accepted.[9] The filing by Pacific Gas & Electric Company falls into this category. Accordingly, we will grant waiver of notice for Pacific Gas & Electric Company's filing.

On the other hand, absent a strong showing of good cause, we will deny requests for waiver of notice for rate increases that do not implement a contract requirement, such as increases in requirements, coordination or transmission rates. Centerior Energy's (Centerior) filing falls into this category. Centerior presently provides various jurisdictional services to the City of Painesville. Centerior proposed a rate increase for these services in Docket No. ER92–529–000. Centerior filed its proposed rate increase on May 6, 1992 and requested waiver of notice to permit an effective date of July 1, 1992 (54 days after filing). In support of waiver of notice, Centerior states that a July 1, 1992 effective date will permit the parties to become more competitive in the bulk market. This justification does not constitute good cause. Accordingly, we will deny Centerior's request for waiver of notice. Therefore, Centerior's proposed rate increase in Docket No. ER92–529–000 will become effective July 6, 1992 (60 days after filing).[10]

Lastly, we address filings that provide for new service that is not pursuant to an accepted contract or settlement. When considering requests for waiver related to the provision of new service, we must balance the requirement that utilities promptly file their rates as embodied in the Federal Power Act and the need of utilities to transact business on short notice. Accordingly, we will grant waiver of notice if good cause is shown and the agreement is filed prior to the commencement of service. We will continue to determine whether an agreement is filed prior to the commencement of the service based on the original filing date (unless a filing is a patent nullity).[11] The filings made by Kansas Power & Light Company (the agreement was tendered 60 days before the proposed effective date, but the filing was amended to provide cost support), Potomac Electric Power Company (the company tendered the filing 60 days prior to the proposed effective date, but amended the filing to submit filing fees), Kansas Gas & Electric Company (in Docket No. ER92–446–000 only—the service was requested on short notice and the filing was tendered 53 days before the proposed effective date), UtiliCorp United, Inc. (the service was requested on short notice and the filing was tendered 33 days before the proposed effective date), and Southern California Edison Company (the proposed effective date would coincide with the date the Commission accepted the filing and thus waiver was requested only if the Commission itself acted on the filing in less than 60 days) fall into this category. Accordingly, we will grant waiver of notice for these filings.

Absent extraordinary circumstances, we will not grant waiver of notice when an agreement for new service is filed on or after the day service has commenced. Montaup Electric Company's (Montaup) filing in Docket No. ER92–544–000 falls into this category. On May 8, 1992 (seven days after service commenced), Montaup filed an agreement to sell capacity and energy from its Canal Electric Unit No. 2 to Massachusetts Municipal Wholesale Electric Company (MMWEC). Montaup requests waiver of notice to permit the proposed agreement to become effective on May 1, 1992. In support of its request for waiver, Montaup states that the agreement with MMWEC could not be negotiated and prepared for filing in time to comply with the 60-day prior notice requirement.

We find that Montaup has failed to demonstrate good cause for waiver with respect to its agreement with MMWEC. In support of waiver, Montaup states only that the agreement with MMWEC could not be negotiated and prepared for filing 60 days prior to the commencement of service. We have stated, however, that the press of other business does not provide good cause for waiver of the Central Maine policy [12] or, in general, for waiver of the 60-day prior notice requirement.[13] Therefore, consistent with the remedy established in Central Maine, we shall direct Montaup to revise its rates for service under the agreement with MMWEC to a level reflecting its variable operation and maintenance costs for service provided from May 1, 1992 to July 7, 1992 (60 days after the May 8, 1992 filing). Further, we shall direct Montaup to refund that portion of its rates that exceed variable operation and maintenance costs, with interest calculated pursuant to 18 C.F.R. § 35.19a (1991), from the date service commenced

[8] *See* 18 CFR 375.308(a)(1).

[9] While waiver of notice will generally be granted for the three categories discussed above, we do not mean to suggest that utilities have an unlimited time period for making the required filings. For example, when a contract or settlement requires a rate change to track a change in retail rates and specifies an effective date, we would expect the filing to be made within a reasonable time of the triggering event (the change in retail rates).

[10] We have measured the 60-day notice period from the May 6, 1992 initial filing date. In circumstances where a rate increase filing is amended in a good faith effort to cure a deficiency and no customer contests the rate increase or the proposed effective date, we will also measure the 60-day notice period from the initial filing date, rather than the date the filing was completed.

[11] *See* 57 FERC at 61,305.

[12] See 56 FERC at 61,617–19; 57 FERC at 61,303; see also Pacificorp Electric Operations, 58 FERC ¶ 61,283 at 61,882 (1992), *reh'g pending*.

[13] See PacifiCorp, 59 FERC ¶ 61,090 at 61,336.

under the agreement with MMWEC until July 7, 1992 (60 days after the May 8, 1992 filing).

We have noted in Central Maine and subsequent cases that utilities can avoid the delays cited by Montaup. Many utilities have managed to avoid late filings by having tariffs on file that permit transactions to be negotiated subject to a cap of a 100-percent contribution to fixed costs.[14] Such tariffs can be structured to allow the amount and duration of service to vary once an approved service agreement is on file for a particular customer. The parties to such an agreement may thus transact from time to time without the necessity of requesting Commission approval of each individual transaction.[15] These tariffs thus give the selling utility the flexibility to respond to market opportunities while satisfying its obligation to have its rates on file.[16]

The Commission orders

(A) Centerior's request for waiver of notice is hereby denied, as discussed in the body of this order.

(B) Montaup's request for waiver of notice is hereby denied, as discussed in the body of this order. Montaup is hereby directed to revise its rates for service provided to MMWEC prior to July 7, 1992 to a level reflecting its variable operation and maintenance costs and to make refunds, with interest calculated in accordance with 18 CFR 35.19a, within 45 days of the date of issuance of this order, as discussed in the body of this order.

(C) Montaup is hereby directed to file a refund report with the Commission within 15 days of the date refunds are made pursuant to Ordering Paragraph (B) above.

(D) All other requests for waiver of notice are hereby granted, as discussed in the body of this order.

(E) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18753 Filed 8-6-92; 8:45 am]

BILLING CODE 6717-01-M

[14] 56 FERC at 61,618-19.

[15] Mississippi Power & Light Company, 58 FERC ¶ 61,286 at 61,897-98 (1992), *reh'g pending.*

[16] 59 FERC at 62,076; *see also* 56 FERC at 61,618-19.

[Docket No. CP92-606-000]

Great Lakes Gas Transmission Limited Partnership; Application for a Certificate of Public Convenience and Necessity and for an Amendment to a Presidential Permit and a Section 3 Authorization for the Operation of an Existing Export Point at The United States/Canadian Border

July 31, 1992.

Take notice that on July 21, 1992, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP92-606-000 for (1) an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide gas transportation service on a firm basis, for Sithe/Independence Power Partners, L.P. (Sithe), a New York limited partnership proposing to build an electric cogeneration facility in Scriba, New York, and to construct and operate facilities necessary to provide such service, and (2) an application pursuant to section 3 of the Natural Gas Act and §§ 153.3 and 153.10 through 153.12 of the Commission's regulations and Executive Order 10485, as amended by Executive Order 12038, and Secretary of Energy Delegation Order No. 0204-112 for approval to modify the use of its existing St. Clair Delivery Point, a point of export, to include transportation of the volumes for the Sithe account, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In particular Great Lakes states that Sithe has requested that Great Lakes Transport up to 118,203 Mcf per day (Sithe volumes) from a point of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR Pipeline) at Farwell, Michigan (Farwell Receipt Point) to a point of interconnection between the facilities of Great Lakes and TransCanada PipeLines Limited (TransCanada) located on the international boundary, near St. Clair, Michigan (St. Clair Delivery Point).

The Sithe volumes received at the Farwell Receipt Point would come from various domestic suppliers who will arrange for delivery of the gas to ANR Pipeline who would then transport the volumes to the Farwell Receipt Point. Upon transportation and delivery by Great Lakes of the Sithe volumes to the St. Clair Delivery Point, TransCanada will transport the volumes through its system and those of Union Gas Ltd. (Union) and deliver the volumes to a proposed point of interconnection between the facilities of TransCanada and Empire State Pipeline (Empire), on the international boundary near Niagara Falls, New York. The gas will then be transported by Empire to proposed interconnections with Niagara Mohawk Power Corporation (Niagara Mohawk) for delivery by Niagara Mohawk to Sithe at Scriba, New York.

To implement the arrangements, Great Lakes and Sithe have entered into a Transportation Service Agreement (Agreement) dated May 5, 1992. The agreement provides for a 20-year initial term for the firm service ending on March 31, 2015. The cogeneration facility is expected to require a five month start-up period requiring percentages of the firm entitlement until the cogeneration facility is fully on line on January 1, 1995. To provide the service, Great Lakes proposes to construct and /or install at its existing Otisville Compressor Station located in Genesee County, Michigan:

(1) One 15,700 horsepower NEMA rated compressor unit;

(2) modifications, including two new aerodynamic assemblies to its two existing compressor units at Otisville; and

(3) certain parallel piping.

In addition Great Lakes proposes to install an additional meter tube at its existing St. Clair Meter Station. The estimated cost of the proposed facilities is $26,955,000. The facilities proposed in this application will be financed with funds generated internally, together with short-term borrowing under established lines of credit and/or issuance of commercial paper if required. It is contemplated that any short-term borrowings will be retired with internally generated funds.

The Agreement states that the reservation fee and utilization fee for the firm transportation rate will be $3.973 per Mcf and $0.01076 per Mcf respectively.

Great Lakes also requested an amendment to its Presidential Permit to allow Great Lakes to modify the use of the existing St. Clair Delivery Point as the point of export for the Sithe volumes. Great Lakes proposes to add additional metering facilities at that location.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 21, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations

under the Natural Gas Act (18 CFR 157.10). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 3, 7, and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Great Lakes to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18754 Filed 8-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-67-000]

Northern Border Pipeline Co.; Conference

August 3, 1992.

Take notice that on August 24, 1992 at 1 p.m. and continuing at 9 a.m. on August 25, 1992, a conference will be convened in the above-captioned docket to discuss Northern Border Pipeline Company's (Northern Border's) summary of its proposed plan for implementation of Order No. 636.

On August 24, 1992, Northern Border will give an informational presentation relating to its facilities, operations, customer contracts and tariff provisions. On August 25, 1992, the restructuring proposal will be discussed in detail. The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NW., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Warren C. Wood at (202) 208-2091 or Thomas E. Gooding at (202) 208-0831.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18758 Filed 8-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IR-924-003]

Public Utility Commission of Texas; Petition for Waiver

August 3, 1992.

Notice is hereby given that the Public Utility Commission of Texas (TPUC), has filed on July 24, 1992, pursuant to § 292.403 of the Commission's Regulations, a petition for waiver of certain obligations imposed under § 292.303(a) and 292.303(b) of the Commission's Regulations (18 CFR part 292 subpart C) which implement section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The TPUC has duly implemented the Commission's PURPA Regulations by filing a PURPA implementation plan on November 16, 1981.

The TPUC requests a waiver on behalf of the Rayburn County Electric Cooperative, Inc. (RCEC) and its six distribution cooperatives (Fannin County Electric Cooperative, Inc., Farmers Electric Cooperative Inc., Grayson-Collin Electric Cooperative, Inc., Kaufman County Electric Cooperative, Inc., Lamar County Electric Cooperative Association, and New Era Electric Cooperative, Inc. (members)). Specifically, the TPUC seeks waiver on behalf of RCEC of the obligation under 18 CFR 292.303(b) to sell power to qualifying facilities (QFs) and of the obligation on behalf of RCEC's members of the obligation under 18 CFR 292.303(a) to purchase energy and capacity that is made available by a QFs.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice and must be served on the TPUC. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18755 Filed 8-6-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

[Notice 92-19]

Special Research Grant Program; Pre-Freshman Enrichment (PREP)

AGENCY: Department of Energy (DOE). Office of Energy Research.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of University and Science Education Programs (USEP) of the Office of Science and Technology Advisor, U.S. Department of Energy, announces its interest in receiving Special Research Grant applications from four-year and two-year (community colleges) institutions of higher education that will support the development of programs and approaches to encourage underrepresented populations in science-based careers, such as minorities and women, to enter science-based careers. Examples of these approaches include, but are not limited to summer institutes and academic year activities that prepare students in science and mathematics subject matter and motivate them to take future, college-preparatory courses in science, mathematics, and engineering.

DATES: To permit timely consideration for award in Fiscal Year 1993, formal applications submitted in response to this notice should be received no later than 4:30 p.m., October 28, 1992. No electronic submissions of formal applications will be accepted.

ADDRESSES: Completed formal applications referencing Program Notice 92-19 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, Washington, DC 20585. Overnight express mailing address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: John Ortman, Program Manager, Office of University and Science Education Programs, ST-50, Office of Science and Technology Advisor, U.S. Department of Energy, 1000 Independence Avenue,

SW., Washington, DC 20585; telephone (202) 586–8949.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) is concerned about whether there will be enough science, engineering, and mathematics professionals to perform its research and development mission, and is authorized in the Energy Reorganization Act of 1974 to " * * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools and other institutions * * *," 42 U.S.C. 5813 (11).

Specifically, DOE's concern is based on the consideration that the future supply of science and engineering manpower is threatened by two factors: fewer students enrolling in science-based courses in high school and fewer students available to join the science, engineering, and math pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science-based course. Once the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university science and engineering programs.

The primary purpose of PREP is to alleviate manpower shortages in science, engineering, and math careers by preparing and guiding students in the sixth through tenth grades (not having completed the tenth grade) in the selection of college-preparatory courses in science, mathematics, and engineering. Therefore, in accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is limited to four-year accredited institutions of higher education which grant baccalaureate degrees in science, mathematics, and engineering, and to two-year institutions (community colleges). Community colleges are encouraged to maintain articulation agreements with four-year institutions which offer degrees in science, mathematics and engineering. Eligibility is restricted to these institutions because they offer the science, mathematics, and engineering degrees which the sixth through tenth grade student participants will be encouraged to pursue.

The PREP projects are required to have a summer component. The summer component must be no less than 4 weeks, reaching a minimum of 24 students in grades six to ten (not having completed the tenth grade). Typically, PREP grantee institutions work collaboratively with local school districts, local industry, and students' parents and peers, to ensure success. Other elements which may strengthen applications include, but are not limited to: (1) Follow-up activities during the academic year; (2) interdisciplinary approach to teaching science and mathematics; (3) the use of role models and field trips; and (4) students' active participation in hands-on activities. Department of Energy financial support is expected not to comprise the totality of funding for an individual project. In FY 92, projects were supported at 52 institutions. Department of Energy funds of approximately $2.1 million were augmented by over $3.8 million in non-DOE (private industry and university) funds, and it is desirable for applications for the FY 1993 program to indicate similar non-DOE support.

Subject to the availability of appropriated funds, DOE expects to make several two-year grants in FY 1993 to meet the objectives of the program. The amount of each grant award will be limited to a maximum of $42,000 or $21,000 per year.

Information about the development and submission of applications, eligibility, limitations, program requirements, evaluation and selection processes, and other policies and procedures is available from the U.S. Department of Energy, Office of Energy Research, Office of Science and Technology Advisor, ST–50, Washington, DC 20585. Telephone requests may be made by calling (202) 586–8949. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by CFR 10 Part 605 should not exceed 15 double-spaced, typed pages. This description of work should include: (1) The conceptual design and how that design relates to the program objectives; (2) the target audience(s) the project will serve and efforts planned to serve that audience; (3) the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; (4) the monitoring and evaluation plan, including how those plans can be used for possible modification; (5) the planned outcomes and how these outcomes will be assessed and reported; and (6) the anticipated significance of the project and how it will be confirmed.

Issued in Washington, DC, on July 29, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92–18804 Filed 8–6–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–14–NG]

BC Gas Inc.; Application for Amended Authorization to Add Alternative Import Point and Order Granting Interim Authority

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application and Interim Order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on July 17, 1992, by BC Gas Inc. (BC Gas) requesting that the import/export authorization previously granted in DOE/FE Opinion and Order No. 285–A, 1 FE ¶ 70,206, as amended in DOE/FE Opinion and Order No. 285–B, 1 FE ¶ 70,467, be amended to authorize as an alternative import point existing facilities at Eastport, Idaho, for the period up to November 1, 1992. DOE also gives notice at this time of its decision to issue an order, under 10 CFR 590.403, granting the request of BC Gas for interim authority in advance of public comment.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. By this notice DOE is establishing a 15-day comment period to provide all interested persons the opportunity to submit comments in response to BC Gas' request. Protest, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 24, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: BC Gas is a Canadian corporation with its principal place of business in Vancouver, British Columbia, Canada. BC Gas is a local distribution company which provides natural gas service primarily to residential customers in British Columbia. BC Gas is authorized to import, through the pipeline facilities of Northwest Pipeline Corporation (NWP) at Sumas, Washington, up to 3,180,243 Mcf of Canadian gas annually for storage at the Jackson (Prairie Storage Field (Jackson Prairie) in Lewis County, Washington, and to export equivalent volumes back into Canada. NWP has scheduled maintenance projects on its line, thereby reducing its "take away capacity" at Sumas, Washington, and has advised shippers, including BC Gas, to use an alternative receipt point until those maintenance procedures are completed. For this reason, BC Gas requests authority, for the period up to November 1, 1992, to import gas through existing Pacific Gas Transmission facilities at Eastport, Idaho.

This application has been considered, and DOE is issuing an interim order, consistent with the mandate of section 3 of the NGA and the agency's policy guidelines (49 FR 6684, February 22, 1984). In support of its request, BC Gas states that the temporary shift in receipt point from Sumas, Washington, to Eastport, Idaho will not affect its existing import/export arrangement because the volumes imported, stored and exported will remain the same. The requested action will allow BC Gas to resume necessary gas shipments to Jackson Prairie, and will ensure adequate gas volumes for BC Gas' system during the upcoming heating season. Therefore, BC Gas asserts that its request is not inconsistent with the public interest. Parties that may oppose the application bear the burden of overcoming these assertions.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application an responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of BC Gas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except federal holidays.

Issued in Washington, DC, on August 3, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–18801 Filed 8–6–92; 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. 92–92–NG, 92–96–NG, 92–97–NG]

North Canadian Marketing Corp., et al.; Applications for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that the applications in the attached appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. The applicants request blanket authorization to import and/or export natural gas from and to foreign countries on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the borders of the United States that would not require the construction of new pipeline or LNG processing facilities.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the below address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time, September 8, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:
P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commenter, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authority. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed in the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on July 31, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

APPENDIX

Filing date	Applicant name and docket No.	Two-year maximum			Comments
		Import volume	Export volume	Import/export volume [1]	
7/16/92	North Canadian Marketing Corp. (92-92-NG).	146 Bcf	40 Bcf		Imports/Exports from/to Canada.
7/21/92	Santanna Natural Gas Corp. (92-96-NG)			200 Bcf	Imports/Exports (including LNG) from/to any foreign country.
7/21/92	Norcen Marketing Inc. (92-97-NG)			200 Bcf	Imports/Exports (including LNG) from/to any foreign country.

[1] Represents combined total of imports and exports.

[FR Doc. 92-18802 Filed 8-6-92; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

[FE Docket No. 92-46-NG]

Texas-Ohio Gas, Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada, Mexico, and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texas-Ohio Gas, Inc. blanket authorization to import up to 30 Bcf and export up to 30 Bcf of natural gas, including liquefied natural gas, from and to Canada, Mexico and other countries over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 29, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-18803 Filed 8-6-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 10 through July 17, 1992

During the week of July 10 through July 17, 1992, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY OFFICE OF HEARINGS AND APPEALS

[Week of July 10 through July 17, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Jun. 12, 1992	Gulf/McKnight Fuel Oil, Inc., Atlantic Beach, FL	RR300-189	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 Dismissal Letter (Case No. RF300-13214) issued to McKnight Fuel Oil, Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Jun. 12, 1992	Gulf/Luter Pkg. Co., Inc., Atlantic Beach, FL	RR300-188	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 Dismissal Letter (Case No. RF300-13282) issued to Luter Pkg. Co., Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Jun. 12, 1992	Gulf/Lyndon Gulf, Atlantic Beach, FL	RR300-187	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 Dismissal Letter (Case No. RF300-13237) issued to Lyndon Gulf would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Jul. 16, 1992	Gulf/Joseph Mulligan Gasoline, East Hanover, NJ	RR300-190	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The July 1, 1992 Dismissal Letter (Case No. RF300-14790) issued to Joseph Mulligan Gasoline would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Jul. 17, 1992	Gulf/Mackno Fuel Co., Inc., Atlantic Beach, FL	RR300-191	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The April 6, 1992 Dismissal Letter (Case No. RF300-13003) issued to Mackno Fuel Co., Inc. would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Jul. 17, 1992	Arco/Ed & Marty's Fuel Oil, Tacoma, WA	RR304-43	Request for Modification/Rescission in the Arco Refund Proceeding. If Granted: The December 7, 1988 Decision and Order (Case No. RF304-723) issued to Ed & Marty's Fuel Oil would be modified regarding the firm's application for refund submitted in the Arco Refund Proceeding.
Jul. 13, 1992	Citizen Action, Washington, DC	LFA-0220	Appeal of an Information Request Denial. If Granted: Citizen Action would receive access to a copy of the testimony presented by former Deputy Secretary Danny Boggs at a closed hearing of the Senate Energy and Natural Resources Committee held on March 12, 1986, and all portions of the hearing transcript that contain answers or comments by Mr. Boggs to questions or statements made.
Jul. 14, 1992	Concord Oil Company, San Antonio, TX	LFA-0221	Appeal of an Information Request Denial. If Granted: Concord Oil Company would receive access to information requested in its March 24, 1992 Freedom of Information Act Request concerning the UMTRA project site in Falls City, Texas.

LIST OF CASES RECEIVED BY OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 10 through July 17, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Jul. 14, 1992	Northeast Petroleum Industries/MA, Boston, MA	RM25-260	Request for Modification/Rescission in the Northeast Petroleum Industries Second Stage Refund Proceeding. If Granted: The September 27, 1984 Decision and Order (Case No. RQ25-107) issued to Massachusetts would be modified regarding the state's application for refund submitted in the Northeast Petroleum Industries Second Stage Refund Proceeding.
Jul. 17, 1992	Western Asphalt Service, Inc., et al, Washington, DC.	LEF-0047	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with May 30, 1984, Consent Order entered into with Western Asphalt Service, Inc., et al.

REFUND APPLICATIONS RECEIVED

[Week of July 10 to July 17, 1992]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
07/13/92	Clark Oil	RF342-254
07/13/92	Al's Super 100	RF243-255
07/13/92	Jerome Schram Super 100	RF342-256
07/13/92	Jerome Schram Super 100	RF342-257
07/14/92	Bill's Super 100	RF342-258
07/14/92	Chuck Zirino's Super 100	RF342-259
07/14/92	Douglas Hilts	RF304-13220
07/17/92	Dan Bridger's Clark Service	RF342-261
07/17/92	Chuck Oleson Clark Service	RF342-262
07/17/92	Tom Soyk's Super 100, Inc	RF342-263
06/18/92	Painter's Rd. Shell	RF315-10219
07/16/92	Randy's I-26 Shell & Wrecker	RF315-10218
07/16/92	Drug Traneport, Inc.	RF315-10217
07/16/92	H.L. Roper & H.W. Roper	RF304-13221
07/16/92	John's Service Station	RF304-13222
07/16/92	McLeieer Oil Inc.	RF342-260
07/16/92	Tesoro Petroleum Corporation	RF345-3
07/16/92	Crown Central Petroleum Corp.	RF345-4
07/16/92	La Gloria Oil & Gas Co.	RF345-5
07/16/92	Fina Oil and Chemical Co.	RF345-6
07/16/92	Diamond Shamrock Refining	RF345-7
07/16/92	Commonwealth Oil Refining Co.	RF345-8
07/16/92	Hawaiian Independent Refinery	RF345-9
07/16/92	Kerr-McGee Refining Corp.	RF345-10
07/16/92	Kerr-McGee Refining Corp.	RF345-10
07/16/92	Ashland Oil Inc.	RF345-11
07/16/92	Clark Oil & Refining Corp.	RF345-12
07/10/92 thru 07/17/92	Crude Oil Refund, applications received	RF272-93739 thru RF272-93767
07/10/92 thru 07/17/92	Texaco Refund, applications received	RF321-18910 thru RF321-18971
07/10/92 thru 07/17/92	Gulf Oil Refund, applications received	RF300-20359 thru RF300-20371
07/10/92 thru 07/17/92	Atlantic Richfield, applications received	RF304-13208 thru RF304-13220

[FR Doc. 92-18806 Filed 8-6-92; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of July 17 Through July 24, 1992

During the Week of July 17 through July 24, 1992, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY OFFICE OF HEARINGS AND APPEALS

[Week of July 17 through July 24, 1992]

Date	Name and location of applicant	Case No.	Type of submission
July 20, 1992	International Association of Machinists & Aerospace Workers, Maywood, NJ.	LFA-0222	Appeal of an information request denial. If granted: International Association of Machinist & Aerospace Workers would receive access to DOE information concerning a proposed settlement agreement between the DOE and the Borough of Maywood, New Jersey regarding the Maywood Interim Storage site for thorium contaminated earth.
July 22, 1992	Gulf/Ed's Gulf Service, Homerville, GA	RR300-192	Request for modification/rescission in the Gulf refund proceeding. If granted: The September 10, 1991 dismissal letter (Case No. RF300-12948) issued to Ed's Gulf Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	The National Security Archive, Washington, DC	LFA-0223	Appeal of an information request denial. If granted: The July 13, 1992 Freedom of Information Request Denial issued by the Department of Army Freedom of Information/Privacy Office would be rescinded, and The National Security Archive would receive access to the withheld material from a damage report relating to the espionage activities of Lt. Col. W.H. Whalen.
July 23, 1992	Joan A. Estrada, Washington, DC	LFA-0224	Appeal of an information request denial. If granted: The June 26, 1992 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and Joan A. Estrada would receive access to units and prices of all orders and invoices in the DC area for carpet cleaning, installation and repairs from October 1991 to February 17, 1992.
July 24, 1992	Phillips, Nizer, Benjamin, Krimm & Ballon, New York, New York.	LFA-0225	Appeal of an information request denial. If granted: The June 16, 1992 Freedom of Information Request Denial issued by the Economic Regulatory Administration would be rescinded and Phillips, Nizer, Benjamin, Krimm & Ballon would receive access to West Texas Marketing's ERA-69 forms for September, November and December 1980.
Do	Robert Condra, Kingman, AZ	LFA-0226	Request for rescission of freedom of information appeal decision. If granted: The July 8, 1992 Decision and Order (Case No. LFA-0216) issued by the Office of Hearings and Appeals to Robert Condra would be rescinded and information sought by Mr. Condra under the Freedom of Information Act concerning his "personal files" at the Bonneville Power Administration would be released to him.

REFUND APPLICATIONS RECEIVED

[Week of July 17 to July 24, 1992]

Date received	Name or refund proceeding/Name of refund applicant	Case No.
07/20/92	Gary's Clark Service	RF342-264
07/20/92	Glen's Clark Oil	RF342-265
07/20/92	Larry's Clark	RF342-266
07/21/92	Hurst Arco, Inc	RF304-13226
07/21/92	Jim's Arco Service	RF304-13227
07/21/92	Morada Arco Service	RF304-13228
07/21/92	Parkway Service	RF304-13229
07/21/92	Collins Oil Company	RF304-13230
07/21/92	Collins Oil Company #2	RF304-13231
07/21/92	Mack's Arco	RF304-13232
07/17/92 thru 07/24/92	Crude Oil Refund Applications Received	RF272-93768 thru RF272-93778
07/17/92 thru 07/24/92	Texaco Refund Applications Received	RF321-16972 thru 321-16985
07/17/92 thru 07/24/92	Gulf Oil Refund Applications Received	RF300-20372 thru RF300-20396

[FR Doc. 92-18806 Filed 8-6-92; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders

Office of Hearings and Appeals

During the Week of June 22 through June 26, 1992

During the week of June 22 through June 26, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

Jim Woods Marketing, 6/22/92, LEE-0039

Jim Woods Marketing (Woods) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Forms EIA-782B and EIA-821, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report" and "Annual Fuel Oil and Kerosene Sales Report," respectively. In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. As a result, DOE found that Woods was not experiencing serious hardship or gross inequity warranting exception relief and the request was denied.

Refund Applications

Exxon Corporation/Mobil Oil Corp., 6/26/92, RF307–10012

The DOE issued a Decision and Order concerning an Application for Refund filed by the Mobil Oil Corporation (Mobil) for a portion of settlement monies paid to the DOE as a part of a Consent Order settlement between DOE and the Exxon Corporation. Although the Mobil refund Application stated that the firm intended to demonstrate injury in connection with its Exxon purchases, Mobil failed to make the requisite showing. As a result, the Mobil refund was limited to $50,000 in principal under the mid-range injury presumption established in Exxon Corporation, 17 DOE ¶ 85,590 (1988). Accordingly, the DOE granted Mobil a total refund of $74,590 ($50,000 principal and $24,590 interest).

Exxon Corporation, Williams' Exxon, 6/25/92, RR307–11

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Exxon Corporation special refund proceeding by Williams' Exxon, a retail motor gasoline outlet located in Fordyce, Arkansas. In a prior Decision, the DOE had denied an Application for Refund filed on behalf of Williams in the Exxon proceeding because the firm did not demonstrate that it had purchased Exxon refined products during the refund period. Subsequently, Williams discovered numerous Exxon sales invoices and, on the basis of that material, requested that its prior refund Application be reconsidered. In granting the request, the DOE noted that Williams had initially made a good-faith effort to locate purchase volume documentation and that Williams is a small business with limited record storage and retrieval capabilities. The DOE therefore reconsidered the Williams Application and granted a refund of $826 ($554 principal and $272 accrued interest) under the small claim presumption of injury.

Gulf Oil Corporation, Stephen H. Sack, 6/22/92, RR300–22

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Stephen H. Sack in the Gulf Oil Corporation special refund proceeding. Bassman, Mitchell & Alfano, on behalf of Mr. Sack, sought a refund for purchase gallons that were not included in an Application for Refund that Mr. Sack had previously filed in the Gulf proceeding. We asked that Mr. Sack explain the difference between his initial claim and the additional volume for which the Motion sought a refund and that he certify that the revised gallonage claim was more reasonable. Because Mr. Sack was unable to explain this discrepancy, the Motion was denied.

State of Nevada, 6/26/92, RF272–65398

The DOE issued a Decision and Order granting an Application for Refund submitted by the State of Nevada in the Subpart V crude oil special refund proceeding. The State of Nevada applied for a refund based on the purchases of refined petroleum products by certain state executive departments and commissions during the crude oil price control period. The state executive departments and commissions on whose behalf the Application was filed are listed in the Decision and Order. The refund granted to the State of Nevada in this Decision and Order was $79,658.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/by Lo Oil Company	RR304–39	06/25/92
Atlantic Richfield Company/Cactus Arco et al	RF304–13087	06/26/92
Atlantic Richfield Company/Carl King, Inc	RR304–41	06/26/92
Atlantic Richfield Company/F & F Oil Company, Inc	RF304–13026	06/26/92
Atlantic Richfield Company/G & H Arco	RF304–4943	06/26/92
Atlantic Richfield Company/Perrine Oils	RR304–40	06/26/92
Atlantic Richfield Company/Saturn Petroleum Co	RF304–11838	06/23/92
Atlantic Richfield Company/Walt's Arco et al	RF304–9213	06/23/92
General Leasing, Inc	RF272–44183	06/24/92
Gulf Oil Corporation/Central Concrete, Inc. et al	RF300–17701	06/25/92
Gulf Oil Corporation/J. Dudley Guillory, Dist. et al	RF300–15000	06/26/92
Gulf Oil Corporation/Terry's Tire & Supply et al	RF300–18000	06/26/92
Gulf Oil Corporation/Wolverton Associates	RF300–10549	06/25/92
Hamilton Creek School District 33 et al	RF272–87077	06/23/92
Schlesinger Management Corp	RF272–54388	06/25/92
Schlesinger Management Corp	RD272–54388	
Shell Oil Company/Bell's Shell Service Station et al	RF315–132	06/24/92
Shell Oil Company/John A. Regis et al	RF315–9336	06/23/92
Texaco Inc./Burns Texaco Service et al	RF321–2210	06/23/92
Texaco Inc./F.C. Haab Co., Inc. et al	RF321–13041	06/24/92
Texaco Inc./Fowler's Texaco Service et al	RF321–12354	06/26/92
Texaco Inc./Freedom Oil Co. et al	RF321–14943	06/26/92
Texaco Inc./Vance Moore's Texaco et al	RF321–1445	06/25/92

Dismissals

The following submissions were dismissed:

Name	Case No.
52nd Street Arco	RF304–12963
Ace Tex Corporation	RF321–18634
Albert R. Woodruff Service Station.	RF304–13052
Anderson Trucking	RF272–65677
Arrochar Fuel Corp	RF321–18600
Boston Public Schools	RF272–87655
Cain and Collier	RF321–18650
Community Bottled Gas Corp	RF272–90852
Crenshaw Lumber Co	RF321–18660
E.B. Adams & Sons	RF321–18653
Entenmann's Inc	RF300–17547
Fisher Motor Company	RF311–14
Fouth Plain Arco	RF304–13002
James P. Nobles	RF321–18658
James P. Nobles	RF321–18659
John Quill Automotive	RF304–12691
L.E. Ruffin	RF321–6144
La Sierra Texaco	RF321–10279
Larry Powers Texaco	RF321–6139
Major Chevway Leasing Corp	RF321–18661
Nichols Texaco	RF321–1721
Peoples' Texaco	RF321–10916
Shenandoah Gulf Service	RF300–13068

Name	Case No.
Smokey's Arco	RF304-7079
System Car Wash	RF304-13050
West Nashville Texaco	RF321-11203

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-18807 Filed 8-6-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4192-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 20, 1992 through July 24, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

DRAFT EISs

ERP No. D-BOP-G81006-AR Rating LO, Forrest City Federal Correctional Complex (FCC), Construction and Operation, St. Francis County, AR.

Summary

EPA had no objection to the Federal Bureau of Prisons' selection of the Forrest City Location as the preferred alternative.

ERP No. D1-AF-J67004-MT Rating EC2, Still water Valley Platinum-Palladium Mining and Milling Project, Amendment to Plan of Operations and Approval of Permit, Stillwater River Valley, Custer National Forest, Stillwater County, MT.

Summary

EPA expressed concern with impacts to ground water and surface water (increased nutrients and dissolved metals), reclamation soil salvage, and fish resources. EPA recommended the use of an advanced water treatment system.

Final EISs

ERP No. F-AFS-J67012-MT East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of Operations, Approval and COE Section 404 Permit, Gallatin National Forest, Sweet Grass County, MT.

Summary

EPA supported the Forest Service's selected alternative but expressed continued concerns about potential water quality impacts.

ERP No. F-COE-D3611-PA Curwensville Lake Water Storage Reallocation, Implementation, Susquehanna River Basin, Susquehanna River, Clearfield County, PA.

Summary

EPA had no objections to the proposed project.

ERP No. F-DOT-A52168-00 Commercial Reentry Vehicles Launched into and from Space, Licensing.

Summary

EPA's previous concerns have been resolved and no further comments were offered.

ERP No. F-UAF-C11018-NJ Boeing Michigan Aeronautical Research Center (BOMARC) Missile Site, Radioactive Contamination Clean-Up Evaluation, McGuire Air Force Base, Plumsted Township, Ocean County, NJ.

Summary

EPA supports the USAF's preferred alternative, off-site disposal, as an effective permanent solution to address the radioactive contamination at the BOMARC site. EPA believes that the no-action alternative is not a permanent solution for the site and should serve only as an interim action. If the USAF decides to implement the no-action alternative on an interim basis the project's ROD should include commitments identified in the final EIS and RI/FS, and EPA recommendations to ensure that the no-action alternative would not result in significant adverse environmental or public health impacts.

ERP No. F-USA-J10009-UT Dugway Proving Ground, Biological Aerosol Test Facility (BATF), Construction and Operation, Baker Laboratory, Tooele and Juab Counties, UT.

Summary

EPA reviewed the FEIS and had no objections to the proposed action.

ERP No. F-VAD-G99004-TX Dallas-Forth Worth Area National Cemetery Construction and Operation, Site Selection, Cedar Hill, Mansfield or Mountain Creek and Possible Section 404 Permit, Dallas and Tarrant Counties, TX.

Summary

EPA had no objections to the proposed project as described in the Final EIS.

Dated: August 4, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-18777 Filed 8-6-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4192-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Availability of Environmental Impact Statements Filed July 27, 1992 Through July 31, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920310, FINA EIS, AFS, MT, Bent Flat Timber Sale, Timber Harvest, Road Construction/ Reconstruction, Implementation, Flathead National Forest, Spotted Bear Ranger District, Flathead County, MT, Due: September 7, 1992, Contact: Michele Draggoo (406) 752-7345.

EIS No. 920311, FINAL EIS, AFS, NM, Felipito Timber Sale, Implementation, Carson National Forest, Rio Arriba County, NM, Due: September 7, 1992, Contact: Graciela Terrazas (505) 581-4554.

EIS No. 920312, FINAL EIS, COE, MS, Hickahala-Senatobia Creeks Watershed, Channel Modification Project and Demonstration Erosion Control, Implementation, Arkabutla Lake, Yazoo Basin, Tate County, MS, Due: September 7, 1992, Contact: Mr. Wendell King (601) 631-5967.

EIS No. 920313, FINAL EIS, FHW, AS, Territorial Route 50 in Pago Pago Park, Construction, Funding, U.S. Coast Guard Bridge Permit, and COE Section 10 and 404 Permits, Island of Tutuila, AS, Due: September 7, 1992, Contact: William R. Lake (808) 541-2700.

EIS No. 920314, DRAFT EIS, USN, NJ, SC, VA, US East Coast Homeporting Program, (two AOE-6 Class) Fast Combat Support Ships, Implementation, Site Selection of

Naval Weapons Station: Earle, Colts Neck, Monmouth Co., NJ; Yorktown, Gloucester Co., VA and Charleston, Charleston Co., SC., Due: September 21, 1992, Contact: Robert Schwarz (202) 433–3387.

EIS No. 920315, FINAL EIS, BLM, CA, Eagle Mountain Class III Nonhazardous Solid Waste Landfill Project and Specific Plan, Federal Land Exchange, Right-of-Way Approval, Section 404 Permit, Riverside County, CA, Due: September 7, 1992, Contact: Steve Nagle (619) 323–4421.

Dated: August 4, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–18776 Filed 8–6–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–59947; FRL–4159–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 11 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–164, 92–165, 92–166, 92–167, August 5, 1992.

Y 92–168, August 6, 1992.

Y 92–169, August 10, 1992.

Y 92–170, 92–171, 92–174, 92–175, August 11, 1992.

Y 92–176, August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–164

Manufacturer. Confidential.

Chemical. (G) Acrylic emulsion.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 92–165

Manufacturer. Confidential.

Chemical. (G) Acrylic emulsion.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 92–166

Manufacturer. Confidential.

Chemical. (G) Acrylic emulsion.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 92–167

Manufacturer. Confidential.

Chemical. (G) Acrylic emulsion.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 92–168

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (S) Binders for printing ink/vehicle for paint. Prod. range: Confidential.

Y 92–169

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 92–170

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Coil coatings. Prod. range: Confidential.

Y 92–171

Importer. Confidential.

Chemical. (G) Saturated copolymer resin.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Y 92–174

Manufacturer. Avery Dennison.

Chemical. (G) Non-volatile acrylic copolymer.

Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.

Y 92–175

Manufacturer. ABCO Industries, Ltd.

Chemical. (S) 2-Propenoic acid, polymer with butyl 2-propenoate; compound with 2,2'-iminobis (ethanol).

Use/Production. (S) Pressure sensitive adhesive. Prod. range: Confidential.

Y 92–176

Manufacturer. Rockland React-Rite, Inc.

Chemical. (G) Polymethacrylic acid-fish oil sulfonated sodium salt copolymer.

Use/Production. (S) Stain resistance emulsion for fibers. Prod. range: Confidential.

Dated: August 3, 1992.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–18784 Filed 8–6–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for new and modified noncommercial educational FM construction permits.

Applicant, city and state	File No.	MM docket No.
A. Liberty University, Inc., Lynchburg, VA.	BPED–911206MB.	92–170
B. Vision Communications, Inc.; Roanoke, VA.	BMPED–920414IF.	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Air Hazard	A
2. Environmental	B
3. 307(b)—Noncommercial Educational.	A, B
4. Ultimate	A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202–452–1422).

W. Jan Gay,

Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 92–18718 Filed 8–6–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: The submission is summarized as follows.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Monthly Consolidated Foreign Currency Report of Banks in the United States.

Form Number: FFIEC 035.

OMB Number: 3064–0105.

Expiration Date of Current OMB Clearance: October 31, 1992.

Frequency of Response: Monthly.

Respondents: Insured State nonmember banks with more than $1 billion in commitments to purchase foreign currencies and U.S. dollar exchange.

Number of Respondents: 2.

Number of Responses Per Respondent: 12.

Total Annual Responses: 24.

Average Number of Hours Per Response: 10.

Total Annual Burden Hours: 240.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0105, Washington, DC 20503.

FDIC CONTACT: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

COMMENTS: Comments on this collection of information are welcome and should be submitted on or before October 6, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use of form FFIEC 035, which the three Federal bank supervisory agencies use to monitor financial institution activity in foreign exchange markets. The FDIC collects information from fewer than 10 respondents, and is therefore not required to obtain OMB approval, but is making this submission to permit government-wide analysis of the use of FFIEC 035.

Dated: August 3, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–18732 Filed 8–6–92; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families Administration on Children, Youth and Families Family and Youth Services Bureau.

NOTICE: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection for the Family and Youth Services, ACYF of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF at (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Runaway and Homeless Youth Management Information System

OMB No.: New Request—Number not yet assigned

Description: ACF is requesting OMB approval of a Management Information System for the Runaway and Homeless Youth Programs. These programs make grants pursuant to the Runaway and Homeless Youth Act (Pub. L. 93–415) and the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690). Grantees funded under the Runaway and Homeless Youth Basic Center, Transitional Living and Drug Abuse Prevention Programs will be required to collect information on the youth they serve and the services provided to them, and report the information to ACF.

Annual Number of Respondents: 400.

Annual Frequency: 695.

Average Burden Hours Per Response: 22.

Total Burden Hours: 61,300.

Dated: August 2, 1992.

Naomi B. Marr,

Director, Office of Information, Systems Management.

[FR Doc. 92–18788 Filed 8–6–92; 8:45 am]

BILLING CODE 4130–01–M

[Program Announcement No. 93551–922]

Abandoned Infants Assistance Program

AGENCY: Administration on Children Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of correction.

SUMMARY: This notice corrects the closing date for applications submitted under Program Announcement No. 93551–921 which was published in the **Federal Register** Tuesday, July 21, 1992 (Vol. 57, No. 140). On page 32373, third column, under sub-heading B. Deadlines for Submittal of Applications, the

closing date should read September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia Campiglia (202) 205–8657.

(Federal Catalog of Domestic Assistance Program Number 93.551: Abandoned Infants Assistance Program)

Dated: July 31, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 92–18765 Filed 8–6–92; 8:45 am]

BILLING CODE 4130–01–M

Alcohol, Drug Abuse, and Mental Health Administration

Model Projects for Pregnant and Postpartum Women and Their Infants; Program Announcement Cancellation

AGENCY: Office for Substance Abuse Prevention, ADAMHA, HHS.

ACTION: Program announcement cancellation.

The Office for Substance Abuse Prevention (OSAP) is withdrawing the grant program announcement entitled, "Model Projects for Pregnant and Postpartum Women and Their Infants"—Published in the Federal Register on March 1, 1991.

The Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) Reorganization Act (Pub. L. 102–321), signed by the President on July 10, 1992, created the Substance Abuse and Mental Health Services Administration (SAMHSA), which will administer the alcohol and other drug abuse and mental health prevention and treatment programs currently in ADAMHA. Effective October 1, 1992, the Office for Substance Abuse Prevention (OSAP) will become the Center for Substance Abuse Prevention (CSAP) and, under the provisions of the Act, will not be authorized to fund any new demonstration grants under OSAP's Program Announcement PA–91–32, "Model Projects for Pregnant and Postpartum Women and Their Infants." The program announcement in hereby canceled, and no applications for grants under this program will be accepted for the September 20, 1992, or future receipt dates.

Joseph Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–18745 Filed 8–6–92; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 92D–0176]

Compliance Policy Guides for Issuing Orders for Post-Approval Record Reviews; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of July 6, 1992 (57 FR 29733), that announced the availability of Compliance Policy Guide (CPG) 7132c.07 entitled "Orders for Post-Approval Record Review." The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Paul J. Motise, Division of Manufacturing and Product Quality (HFD–323), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8089 or, Edward J. Ballitch, Division of Compliance (HFV–230), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8726.

In FR Doc. 92–15686, appearing on page 29733, in the Federal Register of Monday, July 6, 1992, the following correction is made: On the same page, in the second column, under the caption "ADDRESSES:", in the seventh line, "PB–183250" is corrected to read "PB92–183250".

Dated: August 3, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92–18750 Filed 8–6–92; 8:45 a.m.]

BILLING CODE 4160–01–F

[Docket No. 92M–0263]

Intermedics, Inc.; Premarket Approval of RELAY™/DASH™/ STRIDE™/ DART™ Pacing System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Intermedics, Inc., Angleton, TX, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the RELAY™/DASH™/ STRIDE™/DART™ Pacing System including the RELAY™ Pulse Generator, Models 293–03 and 294–03; the DASH™ Pulse Generator, Models 291–03, 292–03, and 292–03R; the STRIDE™ Pulse Generator, Model 294–05; and the DART™ Pulse Generator, Model 292–05 with RX2000 GRAPHICS Programmer, Model 522–06 and RX2000 GRAPHICS Program Module, Model 531–44. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 15, 1992, of the approval of the application.

DATES: Petitions for administrative review by September 8, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell J. Shein or Carole C. Carey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1018.

SUPPLEMENTARY INFORMATION: On August 15, 1991, Intermedics, Inc., Angleton, TX 77515, submitted to CDRH an application for premarket approval of the RELAY™/DASH™/STRIDE™/ DART™ Pacing System including the RELAY™ Pulse Generator, Models 293–03 and 294–03; the DASH™ Pulse Generator, Model 291–03, 292–03, and 292–03R; the STRIDE™ Pulse Generator, Model 294–05; and the DART™ Pulse Generator, Model 292–05 with RX2000 GRAPHICS Programmer, Model 522–06 and RX2000 GRAPHICS Program Module, Model 531–44. The devices are implantable pacemaker pulse generators and pacemaker programmer software module. The generally accepted indications for long-term cardiac pacing include, but are not limited to: (1) Sick sinus syndrome; (2) chronic, symptomatic drug-resistant sinus arrhythmias, including sinus bradycardia, sinus arrest, and sinoatrial (S–A) block as seen in sick sinus syndrome; (3) chronic, symptomatic second-degree or third-degree A–V block; (4) recurrent Adams-Stokes syndrome; (5) bradycardia-tachycardia syndrome; (6) symptomatic bilateral bundle branch block; and (7) hypersensitive carotid sinus syndrome (carotid sinus syncope). In addition, certain patients presenting such symptoms as intractable, recurrent congestive heart failure, cerebral or renal insufficiency, or recurrent drug-resistant tachyarrhythmias, and who

have been shown to benefit from temporary cardiac pacing, are considered candidates for permanent cardiac pacing.

Dual chamber modes are specifically indicated for treatment of conduction disorders that require restoration of rate and of atrioventricular synchrony. These indications include: (1) Varying degrees of A–V block (in these conditions, dual-chamber pacing maintains the atrial contribution to cardiac output by providing proper A–V synchrony); (2) low cardiac output or congestive heart failure related to bradycardia or VVI pacing intolerance (dual-chamber pacing maintains an adequate heart rate and ensures A–V synchrony); (3) certain tachyarrhythmias (dual-chamber pacing can overdrive the tachyarrhythmia by suppressing ectopic foci in both the atrium and the ventricle).

The rate-adaptive modes of these pulse generators are indicated for those patients who exhibit chronotropic incompetence and who can benefit from an increase in atrial and/or ventricular pacing rates concurrent with physical activity.

The indications for permanent pacing in cases of acute myocardial infarction have not yet been rigorously defined. Factors to be considered include the location of the myocardial infarct, the presence or absence of symptoms, ventricular rate, the mechanism of the arrhythmias, and response to therapy. In general, symptomatic bradyarrhythmias that impair cardiac output are considered indications for pacing in patients with acute myocardial infarction, regardless of infarct location.

On November 26, 1991, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On June 15, 1992, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 8, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 22, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92–18707 Filed 8–6–92; 8:45 a.m.]

BILLING CODE 4160–01–F

[Docket No. 92F–0279]

Toho Chemical Industry Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Toho Chemical Industry Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N,N*-bis(2-hydroxyethyl)dodecanamide as an antistatic agent in polypropylene food-packaging films.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4308) has been filed by Toho Chemical Industry Co., Ltd., c/o 195 West St., Waltham, MA 02154. The petition proposes to amend the food additive regulations in § 178.3130 *Antistatic and/or antifogging agents in food–packaging materials* (21 CFR 178.3130) to provide for the safe use of *N,N*-bis(2-hydroxyethyl)dodecanamide as an antistatic agent in polypropylene food-packaging films.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 28, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–18706 Filed 8–6–92; 8:45 a.m.]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities and Special Consideration for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1993 for Grants for Faculty Development in Family Medicine are being accepted under the authority of section 786(a), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Pub. L. 100–607. Comments are invited on the proposed funding priorities and special consideration listed below.

This program announcement is subject to reauthorization of this legislative authority and to the

appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. FY 1992 grant cycle data are not yet available. In the first cycle in FY 1991, HRSA reviewed 34 applications for Grants for Faculty Development in Family Medicine. Of those applications, 47 percent were approved and 53 percent were not recommended for further consideration. Sixteen projects, or 47 percent of the applications, were funded.

In the second cycle in FY 1991, HRSA reviewed 24 applications. Of those applications, 17, or 71 percent, were disapproved and 7, or 29 percent, were approved but unfunded.

In FY 1990, HRSA reviewed 44 applications for Grants for Faculty Development in Family Medicine. Of those applications, 48 percent were approved and 52 percent were not recommended for further consideration. Twenty-one projects, or 48 percent of the applications, were funded.

Purpose

Section 786(a) of the PHS Act authorizes the award of grants to schools of medicine or osteopathic medicine, hospitals, and other public or private nonprofit entities for projects to plan, develop, and operate, or participate in faculty development educational programs in family medicine.

To receive support, applicants must meet the requirements of final regulations as specified in 42 CFR part 57, subpart Q. The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;

(2) The degree to which the proposed project provides for the project requirements and guidelines;

(3) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis after the period of grant support.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications.

(1) Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

(2) Special consideration—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern. It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Proposed Funding Priorities For FY 1993

In making awards for fiscal year 1993, it is proposed to give funding priority to:

(1) Applications that currently have or propose to develop projects to provide instruction in clinical teaching skills (may also include other critical academic skills) to medical staff who are working in facilities in underserved areas and who hold academic appointments from a medical school. This priority is proposed to enhance the teaching capabilities in underserved areas, and to provide training experiences with underserved populations.

(2) Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately to provide a greater volume of health care in underserved areas.

Statutory Special Consideration

Special consideration will be given to applicants demonstrating a commitment to family medicine in their medical education training programs.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Definition

The term *facilities in underserved areas* includes:

(a) Outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332 or in a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3) or facilities serving Medically Underserved Populations (MUP), designated under PHS Act; section 330(b)(6);

(b) Outpatient health care facilities that draw substantial proportions of their teaching program patients from populations qualifying for services under the State Medicaid program and/or other state or local publicly-assisted health services assistance programs; or

(c) Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, facilities operated by state or local health departments and/or health care facilities of the Indian Health Service.

Additional Information

Interested persons are invited to comment on the proposed funding priorities and special consideration. All comments received on or before September 8, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities and special consideration will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Judy Bowen, Grants Management Specialist (D15), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–690.

Completed applications should be mailed to the Grants Management Office at the above address.

Questions regarding programmatic information should be directed to: Ms. Joan Harrison, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Rockville, Maryland 20857, Telephone: (301) 443–3614.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for fiscal year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

The application deadline date is September 24, 1992. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.895 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: July 1, 1992.

John H Kelso,

Acting Administrator.

[FR Doc. 92–18709 Filed 8–6–92; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement and Proposed Funding Priorities and Special Consideration for Grants for Faculty Development in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1993 for Grants for Faculty Development in General Internal Medicine and General Pediatrics are being accepted under the authority of section 784, title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607. Comments are invited on the proposed funding priorities and special consideration listed below.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for fiscal year 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. There was no competitive cycle for FY 1992.

In FY 1991, HRSA reviewed 36 applications for Grants for Faculty Development in General Internal Medicine and General Pediatrics. Of those applications, 64 percent were approved and 36 percent were not recommended for further consideration. Fourteen projects, or 39 percent of the applications received, were funded.

In FY 1990, HRSA reviewed 28 applications for Grants for Faculty Development in General Internal Medicine and General Pediatrics. Of those applications, 61 percent were approved and 39 percent were not recommended for further consideration. Fifteen projects, or 54 percent of the applications received, were funded.

Purpose

Section 784 of the Public Health Service Act authorizes Federal assistance to schools of medicine and osteopathic medicine, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal and general pediatrics training programs. These grants also provide financial assistance in meeting the cost of supporting physicians who are trainees in such programs.

In addition, section 784 authorizes the award of grants to support general internal medicine or general pediatrics residency training programs. A separate grant program exists for this purpose.

To receive support, applicants must meet the requirements of final regulations as specified in 42 CFR part 57, subpart FF. The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the applicant demonstrates a commitment to general internal medicine or general pediatrics;

(2) The degree to which the proposed project adequately provides for the project requirements;

(3) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The qualifications of the proposed staff and faculty; and

(5) The potential of the project to continue on a self-sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications:

(1) Funding priorities — favorable adjustment of aggregate review scores when applications meet specified objective criteria.

(2) Special considerations — enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Proposed Funding Priorities for FY 1993

In making awards for fiscal year 1993, it is proposed to give funding priority to:

(1) Applications that currently have or propose to develop projects to provide instruction in clinical teaching skills (may also include other critical academic skills) to medical staff who are working in facilities in underserved areas and who hold academic appointments from a medical school. This priority is proposed to enhance the teaching capabilities in underserved areas, and to provide training experiences with underserved populations.

(2) Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Definitions

The term "facilities in underserved areas" includes:

(a) Outpatient health care facilities: Located in a Health Professional Shortage Area (HPSA), PHS Act, section 332; or in a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b) or facilities serving Medically Underserved Populations (MUP), defined under provisions of PHS Act, section 330(b)(6).

(b) Outpatient health care facilities that draw substantial proportions of their teaching program patients from populations qualifying for services under the State Medicaid program and/or other state or local publicly-assisted health services assistance programs; or

(c) Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, facilities operated by state or local health departments and/or other health care facilities of the Indian Health Service.

Additional Information

Interested persons are invited to comment on the proposed funding priorities and special consideration. All comments received on or before September 8, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities and special consideration will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Melva Payne, Grants Management Specialist (D28), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Completed applications should be returned to the Grants Management Office at the above address.

Questions regarding programmatic information should be directed to: Ms. Dianne Harbison, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Rockville, Maryland 20857, Telephone: (301) 443–3614.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for fiscal year 1990 or subsequent fiscal years, the

Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

The application deadline date is September 17, 1992. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.900 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: June 29, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-18708 Filed 8-6-92; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1992.

Name: Subcommittee on Process of the Advisory Commission on Childhood Vaccines.

Date and Time: September 4, 1992, 10:30 a.m.-2 p.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Subcommittee is responsible for seeking, receiving, and analyzing systematic feedback (from interested parents' groups, petitioner's attorneys, etc.) on the implementation of the Vaccine Injury Compensation Program (VICP) and for making recommendations to the full Commission for appropriate changes in the system in order to improve the processes and procedures used by the various parties involved in the VICP.

Agenda: The Subcommittee will seek input and feedback (from interested parents' groups, petitioner's attorneys, etc.) on the implementation of the VICP in order to make recommendations (if any) to the full Commission for appropriate changes to the VICP.

Public comment will be permitted at the end of the meeting Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation by August 26 to Mr. Matthew Barry, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room L before 11 a.m. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, room 7-02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Agenda items are subject to change as priorities dictate.

Dated: August 3, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92-18710 Filed 8-6-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute on Aging; A Cognitive Neuroscience of Aging: Memory and Attention

Notice is hereby given of a meeting, "A Cognitive Neuroscience of Aging: Memory and Attention". This meeting is being sponsored by the National Institute on Aging. It will be held on August 13 from 8:30 a.m.-5:30 p.m. and August 14 from 8:30 a.m.-2 p.m., at the National Institutes of Health, Building 31C, Conference Room 10, at 9000 Rockville Pike, Bethesda, Maryland 20892.

The purpose of the meeting is to discuss the current state of memory and attention research in aging. The goals of the meeting are twofold: (1) To explore the commonalities and differences that are emerging as topics such as "working memory" are being addressed from different perspectives, including behavioral and neurophysiological investigations of aging rodents and monkeys; neuropsychological studies of patients with dementing illnesses; cognitive psychological studies of healthy older subjects; and computational modeling; and (2) To identify priorities and opportunities for cognitive neuroscience research on aging memory and attention for the National Institute on Aging.

Attendance at the meeting is by invitation only.

Further information on the program may be obtained from: Dr. Deborah Claman, NIA/NNA, Gateway Building Suite 3C307, 7201 Wisconsin Avenue, Bethesda, MD 20892; (301) 496-9350.

Dated: July 31, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-18836 Filed 8-6-92; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Meetings

Pursuant to Public Law 92-463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

These meetings will be open to the public to discuss administrative details relating to Special Emphasis Panel business for approximately one half hour at the beginning of each meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C.

and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the areas of the behavioral and neurosciences. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to announce meetings well in advance of the actual meeting, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences

Scientific Review Administrator: Dr. Jane Hu, (301) 496–7550. Date of Meeting: August 3, 1992. Place of Meeting: Chevy Chase Holiday Inn, Chevy Chase, MD. Time of Meeting: 8:30 a.m.

Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences

Scientific Review Administrator: Dr. Anita Sostek, (301) 496–8814. Date of Meeting: August 13, 1992. Place of Meeting: Westwood Bldg., Room 319C, NIH, Bethesda, MD (Telephone Conference). Time of Meeting: 3 p.m.

Meeting to Review Individual Grant Applications in the Areas of the Behavioral and Neurosciences

Scientific Review Administrator: Dr. Joseph Kimm, (301) 496–7404. Date of Meeting: August 21, 1992. Place of Meeting: Lowes Summitt Hotel, New York, NY. Time of Meeting: 3 p.m.

Meeting to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Anita Suran, (301) 496–7000. Date of Meeting: August 21, 1992. Place of Meeting: American Inn, Bethesda, MD. Time of Meeting: 1 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–18882 Filed 8–6–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 31, 1992.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of package)

1. Survey of the Characteristics, Distribution and Employment of Certified Nurse Practitioners and Clinical Nurse Specialists—New—A national survey will be conducted of certified nurse practitioners and clinical nurse specialists to determine their number and the nature and location of their practices. These data will be used by the Health Resources and Services Administration to address issues surrounding the provision of cost-effective primary care, particularly to underserved populations. Respondents: Individuals or households; Number of Respondents: 3,200; Number of Responses per Respondent: 1; Average Burden per Response: .5 hours; Estimated Annual Burden: 1,600 hours.

2. 1993 National Mortality Follow-back Survey and Pretest—New—Effective programs to prevent premature death and to finance and provide care for the seriously ill require knowledge about characteristics and behaviors of decedents in the U.S. The main survey will secure such information for a national sample of decedents in 1993 from next-of-kin informants, health care facilities, and medical examiners/coroners. Survey instruments and procedures will. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, room 3002 Washington, DC 20503

Dated: August 3, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92–18703 Filed 8–6–92; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–90]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been

reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agency at the following address: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; (This is not a toll-free number).

Dated: July 31, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/07/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. T00221
Fort McClellan
Fort McClellan Co: Calhoun AL 36205–5000
Location: Take left turn off Baltzell Gate Road.
Landholding Agency: Army
Property Number: 219110042
Status: Underutilized
Comment: 4,125 sq. ft.; one story wood frame; needs major rehab; termite infested; presence of asbestos; off-site use only.

Bldg. T00796
Fort McClellan
Fort mcClellan Co: Calhoun AL 36205–5000
Location: Intersection of 19th and 20th Streets.
Landholding Agency: Army
Property Number: 219110043
Status: Unutilized
Comment: 1,340 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00883
Fort McClellan
3rd Avenue
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219110044
Status: Unutilized
Comment: 760 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldgs. T01121, T01123, T01124
Fort McClellan
MacArthur Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Numbers: 219110048–219110050
Status: Unutilized
Comment: 2,400 sq. ft. each; two story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T01125
Fort McClellan
21st Street and MacArthur Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219110051
Status: Unutilized
Comment: 2,556 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T01394
Fort McClellan
4th Avenue in Area 13 of Post
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219110052
Status: Unutilized
Comment: 191 sq. ft.; one story tin and lumber building; needs major rehab; off-site use only.

Bldg. T01692
Fort McClellan
25th Street
Fort McClellan Co: Calhoun AL 36205–500
Landholding Agency: Army
Property Number: 219110053
Status: Unutilized
Comment: 4,404 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T02264, T02266
Fort McClellan
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219110054–219110055
Status: Unutilized
Comment: 664 sq. ft. each; one story wood frame; needs major rehab; electrical hazard; presence of asbestos; off-site use only.

Bldg. T00123
Post Chapel—Fort Rucker
5th Avenue
Fort Rucker Co: Dale AL 3632–
Landholding Agency: Army
Property Number: 219110145
Status: Unutilized
Comment: 4,798 sq. ft.; 1 story word structure; minor repairs.

Bldg. T05020—Fort Rucker
Fort McClellan
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120108
Status: Unutilized
Comment: 2,500 sq. ft., one story, possible asbestos, off-site use only.

Bldg. T00108
Fort McClellan
6th Avenue
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219120270
Status: Unutilized
Comment: 24,992 sq. ft., 1 story wood structure, most recent use—youth center gymnasium, possible asbestos, off-site use only.

Bldgs. 5120, Fort Rucker
3rd Avenue
Ft. Rucker Co: Dale AL 36362—
Landholding Agency: Army
Property Number: 219040024
Status: Unutilized
Comment: 2,500 sq. ft. each, 1 story, most recent use—supply buildings, off-site use only.

Bldg. 8913, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362—
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized

Comment: 3,100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only.

Bldg. 8914, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized
Comment: 2,250 sq. ft., 1 story wood, most recent use—chaplain's headquarters, off-site use only.

Bldgs. TO3202–TO3203, TO3206–TO3208, TO3211, TO3213, TO3216–TO3217
Cowboy & Crusader Street
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Numbers: 219210001–219210009
Status: Unutilized
Comment: 5,310 sq. ft. each, two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3214, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale Al 36362–
Landholding Agency: Army
Property Number: 219230001
Status: Unutilized
Comment: 3,306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Bldg. TO3215, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219230002
Status: Unutilized
Comment: 3,452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Arizona

Bldg. S–306
Yuma Proving Ground
Main Admin. Area—Near inter. 1st & D sts
Yuma Co: Yuma/La Paz AZ 85365–9102
Landholding Agency: Army
Property Number: 219011725
Status: Underutilized
Comment: 2 story wood and stucco frame; needs structural upgrading; portion of 2nd floor vacant.

Bldg. S–1003
Yuma Proving Ground
Main Admin. Area—5th & Barranca Road
Yuma Co: Yuma/La Paz AZ 85365–9102
Landholding Agency: Army
Property Number: 219011727
Status: Underutilized
Comment: 2,227 sq. ft.; two-story wood and stucco frame; 2 floor wood and frame; possible asbestos; bldg. committed to Congress for disposal.

Bldg. S–503
Yuma Proving Ground
Main Admin. Area—2nd St. bet. D & F Sts.
Yuma Co: Yuma/La Paz AZ 85365–9102
Landholding Agency: Army
Property Number: 219011746
Status: Underutilized
Comment: 2,123 sq. ft.; possible asbestos; 2nd floor vacant; structural upgrading needed; bldg. scheduled for renovation and used as community center.

Bldg. S–501
Yuma Proving Ground
Main Admin Area—D & 2nd Sts.
Yuma Co: Yuma/La Paz AZ 85365–9102
Landholding Agency: Army
Property Number: 219011747
Status: Unutilized
Comment: 4,000 sq. ft.; possible asbestos; scheduled for renovation; to be used as "Army Continuing Education Facility"; 2 floors.

Bldg. S–611
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9102
Location: Main Administrative Area—Near intersection of 5th and D streets.
Landholding Agency: Army
Property Number: 219013928
Status: Unutilized
Comment: 1,840 sq. ft.; 1 story wood and stucco frame; most recent use—child care center.

Bldg. S–1005
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9102
Location: Main Administrative Area–Near intersection of 7th and F streets.
Landholding Agency: Army
Property Number: 219013930
Status: Unutilized
Comment: 178 sq. ft.; 1 story wood and stucco frame; most recent use—cold storage and refrigeration facility.

Bldg. T67208
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120113
Status: Unutilized
Comment: 2,546 sq. ft., one story wood, most recent use—storage.

Bldg. T70224
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120149
Status: Unutilized
Comment: 1,252 sq. ft., one story wood; most recent use—Administrative.

Bldgs. 70117–70120
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3,434 sq. ft. each, 1 story wood structure, presence of asbestos, most recent use—general instructional.

Bldg. 70225—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3,813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83006—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2,062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83007—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2,000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83008—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2,192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83015—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2,325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

California

Bldg. 60
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120315
Status: Unutilized
Comment: 1,024 sq. ft., 2 story concrete-wood plaster, possible asbestos, off-site use only, most recent use—nose hanger.

Bldg. 95
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120316
Status: Unutilized
Comment: 392 sq. ft., 1 story raised portable, off-site use only, most recent use—radar maint. shop.

Bldg. 186
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120317
Status: Unutilized
Comment: 996 sq. ft., 1 story steel, off-site use only, most recent use—storage.

Bldg. 196
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120318
Status: Unutilized
Comment: 1,029 sq. ft., stucco structure, off site use only, most recent use—storage.

Bldg. 197
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120319
Status: Unutilized
Comment: 720 sq. ft., 1 story stucco structure, off-site use only, most recent use—storage, possible asbestos.

Bldgs. 262–263, 265, 268
Los Alamitos Armed Forces Reserve Center
Main Entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Numbers: 219120320–219120323
Status: Unutilized
Comment: 448 sq. ft. trailers, off-site use only, most recent use—storage

Colorado

Bldg. 2423 Fort Carson
Wetzel Avenue
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219220453
Status: Unutilized
Comment: 2200 sq. ft., 1-story wood structure, needs repair, possible asbestos, off-site removal only.

Bldg. 2217, Fort Carson
Yano Street
Colorado Springs, Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 2192204554
Status: Unutilized
Comment: 11,945 sq. ft., 2-story wood structure, presence of asbestos, off-site removal only.

Bldg. 1747, Fort Carson
Specker Avenue
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219220455
Status: Unutilized
Comment: 1440 sq. ft. trailer, off-site removal only.

Bldg. 1677, Fort Carson
Macgrath Avenue
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 2192204546
Status: Unutilized
Comment: 9019 sq. ft., 1-story wood structure, most recent use—theater, needs repair, off-site removal only.

Georgia

Bldgs. 4920, 4921, 4910–4911, 4928
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219010002–219010003, 219010105–219010106, 219010108
Status: Unutilized
Comment: 1888 sq. ft. each; most recent use—barracks; needs rehab

Bldg. 4915
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010004
Status: Unutilized
Comment: 1297 sq. ft.; most recent use—headquarters building; need rehab

Bldg. 4914
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010005
Status: Unutilized
Comment: 810 sq. ft.; most recent use—arms building; needs rehab

Bldg. 4927
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010107
Status: Unutilized
Comment: 1888 sq. ft.; most recent use—classrooms; 2-stories; needs rehab.

Bldg. 5390
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010137
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldgs. 5363
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010148
Status: Unutilized
Comment: 3759 sq. ft.; most recent use—recreation bldg.; needs rehab.

Bldg. 5362
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldgs. 5392, 5391
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219010151–219010152
Status: Unutilized
Comment: 2432 sq. ft. ea.; most recent use—dining room; needs rehab.

Bldg. 4865
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011447
Status: Unutilized
Comment: 1,098 sq ft., 1 floor, most recent use—storehouse, needs rehab.

Bldgs. 4867–4870
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219011448, 219011450–219011452
Status: Unutilized
Comment: 1,888 sq. ft. each, 2 floors; most recent use—trainee barracks; needs rehab/major construction to be habitable.

Bldg. 4871
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011453
Status: Unutilized
Comment: 1,507 sq. ft.; 1 floor; most recent use—day room; needs major rehab/construction to be made habitable.

Bldg. 4875
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011455
Status: Unutilized
Comment: 1,888 sq. ft.; 2 floors; most recent use—BN classrooms; major rehab/construction required to be habitable.

Bldg. 4872
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011458
Status: Unutilized
Comment: 2,183 sq. ft.; 1 floor; most recent use—dining room; major construction required to be made habitable.

Bldg. 4873
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011465
Status: Unutilized
Comment: 2,183 sq. ft.; 1 floor; most recent use—dining room; major construction required to be made habitable.

Bldg. 4874
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011467
Status: Unutilized
Comment: 1,507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.

Bldgs. 4877, 4876, 4878, 4880, 4902–4905
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219011468, 219011470, 219011472, 219011474, 219011476–219011479
Status: Unutilized
Comment: 1,888 sq. ft. each; 2 floors; most recent use—trainee barracks; major rehab/construction required to be habitable.

Bldg. 4906
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011480
Status: Unutilized
Comment: 1,507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.

Bldgs. 4907, 4908
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219011481, 219011482
Status: Unutilized
Comment: 2,183 sq. ft. each; 1 floor; most recent use—dining room facility; major construction required to be made habitable.

Bldg. 4909
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011483
Status: Unutilized
Comment: 1,507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.

Bldg. 4901
Fort Benning
Forth Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011484
Status: Unutilized
Comment: 810 sq. ft.; 1 floor; most recent use—other inst st.; major rehab/construction to be made habitable is required.

Bldg. 4866
Fort Benning
Forth Benning Co: Fort Benning GA 31905–
Landholding Agency: Army
Property Number: 219011485
Status: Unutilized

Comment: 794 sq. ft.; 1 floor; most recent use—arms bldg.; major rehab./construction required to be made habitable.

Bldg. 4879
Fort Benning
Forth Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011486
Status: Unutilized
Comment: 794 sq. ft.; 1 floor; most recent use—arms building; major rehab/construction required to be habitable.

Bldgs. 4605, 4615
Fort Benning
Forth Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbers: 219011493-219011494
Status: Unutilized
Comment: 915 sq ft.; buildings in poor condition, major construction needed to be made habitable.

Bldg. 4642, 4643
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbers: 219011495-219011496
Status: Unutilized
Comment: 3,066 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4747, 4834
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbers: 219011497-219011498
Status: Unutilized
Comment: 794 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldg. 4835
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011499
Status: Unutilized
Comment: 1,501 sq ft., building in poor condition, major construction needed to be made habitable.

Bldgs. 4840, 4841
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbers: 219011500-219011501
Status: Unutilized
Comment: 2,930 sq ft. buildings in poor condition, major construction needed to be made habitable.

Bldg. 4843
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011502
Status: Unutilized
Comment: 1,776 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4844
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011503
Status: Unutilized
Comment: 3,776 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4846
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011504
Status: Unutilized
Comment: 1,455 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4847
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011505
Status: Unutilized
Comment: 900 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4848
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011506
Status: Unutilized
Comment: 804 sq ft. building in poor condition, major construction needed to be made habitable.

Bldgs. 4851-4854, 4859-4862
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbers: 219011507-219011510, 219011515-219011518
Status: Unutilized
Comment: 1,888 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldg. 4855
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011511
Status: Unutilized
Comment: 1,507 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4856
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011512
Status: Unutilized
Comment: 2,183 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4857
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011513
Status: Unutilized
Comment: 2,160 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4858
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbr: 219011514
Status: Unutilized
Comment: 1,507 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4863
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011519
Status: Unutilized
Comment: 794 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4864
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011520
Status: Unutilized
Comment: 1,292 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4507
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011673
Status: Unutilized
Comment: 1,888 sq. ft.; most recent use—barracks, needs substantial rehabilitation, 2 floors.

Bldgs. 4506, 4505
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbers: 219011675-219011676
Status: Unutllized
Comment: 2,145 sq. ft. each; most recent use—dining facilities, needs substantial rehabilitation, 1 floor.

Bldg. 4487
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1,868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation, 1 floor.

Bldg. 4484
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011682
Status: Unutilized
Comment: 1,098 sq. ft.; most recent use—storehouse; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2,584 sq. ft.; most recent use—vehicle maintenance ship; needs substantial rehabilitation; 1 floor.

Bldgs. 4481, 4479
Fort Benning
Fort Benning Co: Muscogee GA 31905-
Landholding Agency: Army
Property Numbers: 219011685-219011686
Status: Unutilized
Comment: 1,507 sq. ft. each; most recent use—administrative (day room); needs substantial rehabilitation; 1 floor.

Bldg. 3400
Fort Benning
Fort Benning Co: Muscogee GA 31905-

Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment: 2,570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment: 4,574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflamable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldg. 4936
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012388
Status: Unutilized
Comment: 1,888 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldg. 4937
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012389
Status: Unutilized
Comment: 2,183 sq. ft.; 1 story; most recent use—dining room; poor condition; needs major rehab.

Bldg. 4938
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012391
Status: Unutilized
Comment: 1,320 sq. ft.; one story; most recent use—administrative; poor condition; needs major rehab.

Bldg. 4939
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012392
Status: Unutilized
Comment: 1,800 sq. ft.; one story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 4951
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012394
Status: Unutilized
Comment: 2,192 sq. ft.; one story; most recent use—storehouse; poor condition; needs major rehab.

Bldg. 4953
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012395
Status: Unutilized
Comment: 794 sq. ft.; 1 story; most recent use—storehouse; poor condition; needs major rehab.

Bldg. 4954
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012397
Status: Unutilized
Comment: 1,888 sq. ft.; 2 story; most recent use—custody fac.; poor condition; needs major rehab.

Bldg. 4926
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012398
Status: Unutilized
Comment: 1,888 sq. ft.; 2 story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 4925
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012400
Status: Unutilized
Comment: 1,507 sq. ft.; one story; most recent use—classroom; poor condition; needs major rehab.

Bldg. 4924
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012401
Status: Unutilized
Comment: 2,183 sq. ft.; one story; most recent use—dining room; poor condition; needs major rehab.

Bldgs. 4918, 4919, 4929, 4931, 4912, 4933, 4935
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219012403–219012404, 219012406, 219012410, 219012417–219012418, 219012422
Status: Unutilized
Comment: 1,888 sq. ft. each; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldgs. 4917, 4930
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219012405, 219012408
Status: Unutilized
Comment: 810 sq. ft. each; 1 story; most recent use—arms buildings; poor condition; needs major rehab.

Bldg. 4934
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012419
Status: Unutilized
Comment: 1,507 sq. ft.; one story; most recent use—dayroom; needs major rehab.

Bldg. 4932
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012421
Status: Unutilized
Comment: 794 sq. ft.; 1 story; most recent use—storehouse; needs rehab.

Bldgs. 34402, 34404, 35401
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located on Barnes Avenue and 20th street.
Landholding Agency: Army
Property Numbers: 219014285–219014287
Status: Unutilized
Comment: 4,524 sq. ft. each; 2 story wood structure; needs major rehab; off-site use only.

Bldgs. 1235, 1236
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014887–219014888
Status: Unutilized
Comment: 9,367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014889
Status: Unutilized
Comment: 18,385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 2591
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014906
Status: Unutilized
Comment: 1,863 sq. ft.; 1 story building; needs rehab; most recent use—General storehouse.

Bldgs. 3005–3010
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014907–219014912
Status: Unutilized
Comment: 7,686 sq. ft. each; 2 story building; needs rehab; most recent use—Barracks.

Bldg. 3080
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014913
Status: Unutilized
Comment: 1,372 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse

Bldg. 3081
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014914
Status: Unutilized
Comment: 2,284 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.

Bldg. 4022
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014915
Status: Unutilized

Comment: 1,712 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.

Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18,240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4500
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014917
Status: Unutilized
Comment: 1,372 sq. ft.; 1 story building; needs rehab; most recent use—Arms Building.

Bldg. 4511
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014918
Status: Unutilized
Comment: 4,720 sq. ft.; 2 story building; needs rehab; most recent use—Barracks.

Bldg. 4633
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5,060 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4634
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014920
Status: Unutilized
Comment: 5,060 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldgs. 4646, 4680
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014921, 219014923
Status: Unutilized
Comment: 1,372 sq. ft. each; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 4649
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status: Unutilized
Comment: 2,250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 4751
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014924
Status: Unutilized
Comment: 3,960 sq. ft.; 1 story building; needs rehab; most recent use—Recreation building.

Bldg. 4752
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014925
Status: Unutilized
Comment: 2,284 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 95
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120253
Status: Unutilized
Comment: 1,006 sq. ft., 1 story, most recent use—fire station annex, needs rehab.

Bldg. 1234
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120254
Status: Unutilized
Comment: 16,148 sq. ft., 2 story, most recent use—officer's club, needs rehab.

Bldg. 1684
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120255
Status: Unutilized
Comment: 2,671 sq. ft., 1 story, needs rehab, most recent use—administration/general purpose.

Bldgs. 1724, 1827
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219120256, 2190120257
Status: Unutilized
Comment: 943 sq. ft. each, 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2150
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3,909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldgs. 2212, 2213
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219120259–219120260
Status: Unutilized
Comment: 4,720 sq. ft. each, 2 story, needs rehab, most recent use—drug abuse center.

Bldg. 2214
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120261
Status: Unutilized
Comment: 2,253 sq. ft., 1 story, needs rehab, most recent use—enlisted persons dining room.

Bldg. 2215
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120262
Status: Unutilized
Comment: 1,844 sq. ft., 1 story, needs rehab, most recent use—day room.

Bldg. 2409
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9,348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2548
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120264
Status: Unutilized
Comment: 2,337 sq. ft., 1 story, needs rehab, most recent use—clinic w/o beds.

Bldg. 2590
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3,132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldgs. 3084, 3086, 3089, 3092, 3094, 3097, 2601
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219220687–219220692, 219220784
Status: Unutilized
Comment: 4,720 sq. ft. ea., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 499, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220693
Status: Unutilized
Comment: 840 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1253, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220695
Status: Unutilized
Comment: 617 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1615, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220696
Status: Unutilized
Comment: 1,750 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1678, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220697
Status: Unutilized
Comment:

Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220698

Status: Unutilized
Comment: 9,375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldgs. 3083, 3093, 3100, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Numbers: 219220699, 219220701–219220702
Status: Unutilized
Comment: 1,372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3091, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220700
Status: Unutilized
Comment: 1,635 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4,117 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldgs. 4099, 4490, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Numbers: 219220704, 219220706
Status: Unutilized
Comment: 2,740 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4216, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220705
Status: Unutilized
Comment: 9,211 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2,449 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4941, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220708
Status: Unutilized
Comment: 2,485 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4943, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220709
Status: Unutilized
Comment: 960 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6,077 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 5214, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220711
Status: Unutilized
Comment: 1,520 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 2398, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9,786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3011, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220713
Status: Unutilized
Comment: 2,775 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3012, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220714
Status: Unutilized
Comment: 2,794 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldgs. 3085, 3088, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Numbers: 219220715–219220716
Status: Unutilized
Comment: 2,253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldgs. 3087, 3095, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Numbers: 219220717–219220718
Status: Unutilized:
Comment: 1,884 sq. ft., 1 story, most recent use—day room, needs major rehab, off-site removal only.

Bldg. 3246, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220719
Status: Unutilized:
Comment: 973 sq. ft., 1 story, most recent use—tailor shop, needs major rehab, off-site removal only.

Bldg. 3730, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220720
Status: Unutilized:
Comment: 13,587 sq. ft., 1 story, most recent use—gym, needs major rehab, off-site removal only.

Bldgs. 5261–5265, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Numbers: 219220721–219220725
Status: Unutilized:
Comment: 1,750 sq. ft., 1 story, most recent use—day room, needs major rehab, off-site removal only.

Bldg. 2537, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized:
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only.

Bldgs. 4982, 4987, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Numbers: 219220727–219220728
Status: Unutilized:
Comment: 6,077 sq. ft., 1 story, most recent use—storage, needs repair, off-site removal only.

Bldgs. 1230, 1231, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Federal Register Notice Date: 08/07/92
Property Numbers: 219220729–219220730
Status: Unutilized:
Comment: 4,380 sq. ft. ea., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 4487, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220731
Status: Unutilized:
Comment: 4,850 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 4688, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220732
Status: Unutilized:
Comment: 3,492 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldgs. 5394, 5396, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220733–219220734
Status: Unutilized:
Comment: 10,944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized:
Comment: 1,144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldgs. 4977, 4978, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220736–219220737
Status: Unutilized:
Comment: 192 sq. ft. ea., 1 story, most recent use—offices, needs repairs, off-site removal only.

Bldg. 3099, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220738
Status: Unutilized:
Comment: 2,794 sq. ft., 1 story, most recent use—administration, needs major rehab, off-site removal only.

Bldg. 4633, Fort Benning

Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220739
Status: Unutilized:
Comment: 5,088 sq. ft., 1 story, most recent use—administration, needs major rehab, off-site removal only.

Bldg. 5153, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220740
Status: Unutilized:
Comment: 8,044 sq. ft., 1 story, most recent use—administration, needs major rehab, off-site removal only.

Bldg. 1240, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220741
Status: Unutilized
Comment: 1,197 sq. ft., 1 story, most recent use—recreation, needs major rehab, off-site removal only.

Bldg. 1673, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Comment: 1,286 sq. ft., 1 story, most recent use—recreation, needs major rehab, off-site removal only.

Bldg. 3743, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220743
Status: Unutilized
Comment: 6,954 sq. ft., 1 story, most recent use—recreation center, needs major rehab, off-site removal only.

Bldgs. 3805, 3806 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Numbers: 219220744–219220745
Status: Unutilized
Comment: 2,330 sq. ft. ea., 1 story, most recent use—recreation bldg., needs major rehab, off-site removal only.

Bldg. 5364, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220746
Status: Unutilized
Comment: 4,699 sq. ft., 1 story, most recent use—recreation bldg., needs major rehab, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6,400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4946, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220748
Status: Unutilized
Comment: 3,444 sq. ft., 1 story, most recent use—vehicle maintenance shop, needs major rehab, off-site removal only.

Bldgs. 4947–4949 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Numbers: 219220749–219220751
Status: Unutilized
Comment: 3,444 sq. ft. ea., 1 story, most recent use—vehicle maintenance shop, needs major rehab, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3,335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8,416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1724, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220754
Status: Unutilized
Comment: 7,873 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7,817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 9,243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1682, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220757
Status: Unutilized
Comment: 9,250 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4,000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 4372, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220759
Status: Unutilized
Comment: 9,190 sq. ft., 1 story, most recent use—warehouse needs major rehab, off-site removal only.

Bldg. 1732, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220760
Status: Unutilized
Comment: 2,304 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 3082, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220761
Status: Unutilized
Comment: 2,794 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldgs. 4884, 4964, 4966, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Numbers: 219220762–219220764
Status: Unutilized
Comment: 2,000 sq. ft., 1 story, most recent use—headquarters bldgs., need repairs, off-site removal only.

Bldg. 5105, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220765
Status: Unutilized
Comment: 2,350 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 5260, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220766
Status: Unutilized
Comment: 1,750 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 4679, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8,657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2,600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 7,713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 2513, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9,483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized

Comment: 11,855 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4486, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220773
Status: Unutilized
Comment: 3,238 sq. ft., 1 story, most recent use—chapel, needs major rehab, off-site removal only.

Bldg. 4832, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220774
Status: Unutilized
Comment: 3,364 sq. ft., 1 story, most recent use— chapel, needs major rehab, off-site removal only.

Bldg. 233, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220775
Status: Unutilized
Comment: 5,006 sq. ft., 1 story, most recent use—repair shop, needs major rehab, off-site removal only.

Bldg. 4970, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220776
Status: Unutilized
Comment: 4,912 sq. ft., 1 story, need repairs, off-site removal only.

Bldg. 4971, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220777
Status: Unutilized
Comment: 1,944 sq. ft., 1 story, need repairs, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, need repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.

Bldg. 5200, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220781
Status: Unutilized
Comment: 14,934 sq. ft., 2 story, most recent use—theater, needs major rehab, off-site removal only.

Bldg. 5285, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220782
Status: Unutilized
Comment: 1,520 sq. ft., 1 story, most recent use—arms bldg., needs major rehab, off-site removal only.

Bldg. 2601, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220784
Status: Unutilized
Comment: 4,720 sq. ft., 2 story, most recent use— indoor firing range, needs major rehab, off-site removal only.

Bldg. 4215, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220785
Status: Unutilized
Comment: 11,850 sq. ft., 1 story, most recent use—sales store, needs major rehab, off-site removal only.

Bldg. 4627, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1,676 sq. ft., 1 story, most recent use—sentry station, needs major rehab, off-site removal only.

Bldg. 5286, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220788
Status: Unutilized
Comment: 1,520 sq. ft., 1 story, most recent use—arms bldg., needs major rehab, off-site removal only.

Indiana

Bldg. 719–1
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Landholding Agency: Army
Property Number: 219013578
Status: Underutilized
Comment: 5,000 sq. ft.; 1 story brick frame; secured area with alternate access; most recent use—administration.

Bldg. 703–1C
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Underutilized
Comment: 4,000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.

Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant End of 3rd Street
Charlestown Co: Clark IN
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Underutilized
Comment: 4,040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.

Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Underutilized
Comment: 55,630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternative access; most recent use—cloth bag manufacturing.

Bldg. 720
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Landholding Agency: Army
Property Number: 219013765
Status: Underutilized
Comment: 5,000 sq. ft.; 2 story brick frame; possible asbestos; secured area with alternate access; most recent use—administrative.

Kansas

Bldg. T–1383
Fort Riley
Fort Riley Co: Geary KS 66442
Landholding Agency: Army
Property Number: 219013774
Status: Unutilized
Comment: 3,864 sq. ft.; 2 story wood frame; possible asbestos; most recent use—open-bay trainee barracks with gang latrine.

Bldg. T–2080
Fort Riley
Fort Riley Co: Geary KS 66442
Landholding Agency: Army
Property Number: 219013775
Status: Unutilized
Comment: 3,852 sq. ft.; 2 story wood frame; possible asbestos; most recent use—open-bay trainee barracks with gang latrine.

Bldg. T–2324
Fort Riley
Fort Riley Co: Geary KS 66442
Landholding Agency: Army
Property Number: 219013777
Status: Unutilized
Comment: 3,422 sq. ft.; 2 story wood frame; possible asbestos; most recent use—open-bay trainee barracks with gang latrines.

Bldg. T–1351, Fort Riley
Fort Riley Co: Geary KS 66442
Landholding Agency: Army
Property Number: 219210284
Status: Unutilized
Comment: 4,862 sq. ft., 2 story wood frame, most recent use—barracks, needs rehab, presence of asbestos.

Bldg. T–2336, Fort Riley
Ft. Riley Co: Geary KS 66442
Landholding Agency: Army
Property Number: 219210287
Status: Unutilized
Comment: 2,345 sq. ft., 1 story wood frame, most recent use—admin., needs rehab, presence of asbestos.

Bldgs. 1358–1360, 1439, 1454–1455, 1461, 1398–1399
Fort Leavenworth

Pershing Park
Leavenworth, KS, Leavenworth, Zip: 66027
Property Numbers: 219140105–219140107, 219140115, 219140127–219140128, 219140133, 219140147–219140148
Status: Unutilized
Comment: 1,075 sq. ft. each, 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.

Bldgs. 1362, 1457–1458, 1462, 1464, 1396.
Fort Leavenworth
Pershing Park
Leavenworth, KS, Leavenworth, Zip: 66027
Property Numbers: 219140109, 219140129–219140131, 219140134, 219140136, 219140145
Status: Unutilized
Comment: 863 sq. ft.; 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.

Kentucky

Bldg. 104
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010937
Status: Underutilized
Comment: 15,066 sq. ft.; two story; possible asbestos, most recent use—barracks.

Bldgs. 126, 141, 147, 149, 161, 165, 167, 169, 143
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010938, 219010940–219010946, 219013139
Status: Underutilized
Comment: 12,576 sq. ft. each; two story; possible asbestos; most recent use—storage/child care/administration.

Bldg. 122
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010939
Status: Underutilized
Comment: 1,488 sq. ft.; two story; possible asbestos; most recent use—storage and administration.

Bldg. 2244
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010948
Status: Underutilized
Comment: 4,248 sq. ft.; possible asbestos; two story; most recent use—storage.

Bldg. 3110
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219010950
Status: Unutilized
Comment: 1,000 sq. ft.; one story; possible asbestos; most recent use—administration.

Bldgs. 5954, 5956, 5958, 5960
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219010953, 219010956, 219010958, 219010961
Status: Unutilized
Comment: 2,179 sq. ft. each; one story; possible asbestos; most recent use—Military Vehicle Maintenance Shop, Organizational.

Bldg. 6605
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219010968
Status: Underutilized
Comment: 1,968 sq. ft.; one story most recent use—storage.

Bldg. 3148
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219013223
Status: Underutilized
Comment: 2,200 sq. ft.; 1 story; possible asbestos; selected periods used for military/training exercises.

Bldg. 00837, Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219220447
Status: Unutilized
Comment: 2,298 sq. ft., 1-story wooden structure with metal siding, presence of asbestos, most recent use—railroad repair shop, off-site removal only.

Bldgs. 0217–0219, 0281
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220457–219220460
Status: Unutilized
Comment: 4,720 sq. ft. each, 2-story, needs rehab, off-site use only.

Bldgs. 0617, 0620, 0621, 0624–0628, 0630, 0645–0652, 0659, 0660, 0665–0667, 0669, 0683, 0685–0688, 7306–7307, 7313
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220461–219220491
Status: Underutilized
Comment: 4,720 sq. ft. ea., 2-story, most recent use—barracks, needs rehab, presence of asbestos, off-site use only.

Bldg. 0633, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220492
Status: Underutilized
Comment: 1,144 sq. ft., 1 story, most recent use—admin., needs rehab, off-site use only.

Bldg. 0641, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220493
Status: Underutilized
Comment: 7706 sq. ft., 1 story, most recent use—offices, off-site use only.

Bldg. 0636, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220494
Status: Underutilized
Comment: 1,843 sq. ft., 1 story, most recent use—admin, needs rehab, off-site use only.

Bldg. 0654, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220495
Status: Underutilized

Bldg. 0663, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220496
Status: Underutilized
Comment: 1,600 sq. ft., 1 story, most recent use—admin., needs rehab, off-site use only.

Bldg. 0664, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220497
Status: Underutilized
Comment: 1,750 sq. ft., 1 story, most recent use—admin., needs rehab, off-site use only.

Bldg. 2418, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220498
Status: Underutilized
Comment: 2,294 sq. ft., 1 story, most recent use—admin./storage, off-site use only.

Bldg. 2837, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220499
Status: Underutilized
Comment: 1,600 sq. ft., 1 story, most recent use—admin., needs rehab, off-site use only.

Bldg. 0619, Fort Knox
Fort Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220500
Status: Underutilized
Comment: 2,284 sq. ft., 1 story, most recent use—offices, needs rehab, off-site use only.

Bldg. 0225, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220501
Status: Underutilized
Comment: 1,857 sq. ft., 1 story, most recent use—offices, off-site use only.

Bldg. 0224, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220502
Status: Underutilized
Comment: 1,876 sq. ft., 1 story, most recent use—offices, off-site use only.

Bldg. 0673, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220503
Status: Underutilized
Comment: 1,298 sq. ft., 1 story, most recent use—storehouse, needs rehab, off-site use only.

Bldg. 0679, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220504
Status: Underutilized
Comment: 1,500 sq. ft., 1 story, most recent use—storehouse, needs rehab, off-site use only.

Bldg. 2824, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220505
Status: Underutilized
Comment: 1,448 sq. ft., 1 story, most recent use—storage, needs rehab, off-site use only.

Bldg. 2898, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220506
Status: Underutilized

Comment: 600 sq. ft., 1 story, most recent use—storage, off-site use only.
Bldg. 9269, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220507
Status: Underutilized
Comment: 800 sq. ft., 1 story, most recent use—storage, off-site use only.
Bldg. 0283, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220508
Status: Underutilized
Comment: 2,430 sq. ft., 1 story, most recent use—storage, needs rehab, off-site use only.
Bldg. 0221, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220509
Status: Underutilized
Comment: 992 sq. ft., 1 story, most recent use—storage, needs rehab, off-site use only.
Bldg. 0032, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220510
Status: Underutilized
Comment: 9,305 sq. ft., 1 story, most recent use—storage, off-site use only.
Bldg. 0210, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220511
Status: Underutilized
Comment: 2,208 sq. ft., 1 story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 0634, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220512
Status: Underutilized
Comment: 2,006 sq. ft., 1 story, most recent use—mess hall, needs rehab, presence of asbestos, off-site use only.
Bldg. 0629, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220513
Status: Underutilized
Comment: 2,360 sq. ft., 1 story, most recent use—mess hall, needs rehab, presence of asbestos, off-site use only.
Bldg. 0675, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220514
Status: Underutilized
Comment: 2,360 sq. ft., 1 story, most recent use—dining facility, needs rehab, presence of asbestos, off-site use only.
Bldg. 0677, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220515
Status: Underutilized
Comment: 2,360 sq. ft., 1 story, most recent use—dining facility, needs rehab, presence of asbestos, off-site use only.
Bldg. 0678, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220516
Status: Underutilized
Comment: 2,360 sq. ft., 1 story, most recent use—dining facility, needs rehab, presence of asbestos, off-site use only.
Bldg. 0623 Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220517
Status: Underutilized
Comment: 2,527 sq. ft., 1 story, most recent use—classroom, needs rehab, off-site use only.
Bldg. 2420, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220518
Status: Underutilized
Comment: 3,663 sq. ft., 1 story, most recent use—classroom, needs rehab, off-site use only.
Bldg. 6894, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220519
Status: Underutilized
Comment: 9,308 sq. ft., 1 story, most recent use—classroom, off-site use only.
Bldg. 0265, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220520
Status: Underutilized
Comment: 3,158 sq. ft., 1 story, most recent use—classroom, off-site use only.
Bldg. 6625 Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220521
Status: Underutilized
Comment: 8,044 sq. ft., 2 story, most recent use—bachelor office quarters, needs rehab, presence of asbestos, off-site use only.
Bldg. 0888, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220522
Status: Underutilized
Comment: 3,765 sq. ft., 1 story, most recent use—chapel, off-site use only.
Bldg. 7398, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220523
Status: Underutilized
Comment: 2,000 sq. ft., 1 story, most recent use—courtroom, off-site use only.
Bldg. 0226, Fort Knox
Ft. Knox, KY, Hardin, Zip: 40121–
Landholding Agency: Army
Property Number: 219220524
Status: Underutilized
Comment: 367 sq. ft., 1 story, most recent use—heat plant, needs rehab, off-site use only.

Louisiana

Bldg. 8026
10th Street
Fort Polk Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219012724
Status: Underutilized
Comment: 2,580 sq. ft., 1 story temporary wood frame, most recent use—storage.
Bldg. 8228
12th Street
Fort Polk Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219012729
Status: Unutilized
Comment: 2,050 sq. ft., 1 story temporary wood frame; possible asbestos; most recent use—dining facility.

Maryland

Bldg. E4736
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012621
Status: Unutilized
Comment: Possible contamination—under study; potential utilities.
Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible abestos; and contamination.
Bldg. E5974
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012654
Status: Unutilized
Comment: 272 sq. ft.; possible asbestos and contamination; most recent use—headquarters building.
Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.
Bldg. E5978
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012667
Status: Unutilized
Comment: 256 sq. ft.; 1 story; structural deficiencies; possible asbestos and contamination; most recent use—general storehouse.
Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiencies most recent use—training exercises/chemicals and explosives; potential use—storage.
Bldg. 6926

Taylor Avenue
Fort Meade Co: Anne Arundel MD 21061–
Landholding Agency: Army
Property Number: 219013605
Status: Unutilized
Comment: 1275 sq. ft.; 1 story frame with basement (216 sq. ft.); possible asbestos; termite damage.

Bldg. 6590
Fort George G. Meade
Zimborski Road
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014852
Status: Unutilized
Comment: 4173 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access.

Bldg. 378
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014853
Status: Underutilized
Comment: 1144 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 2413
Frt George G. Meade
St Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014875
Status: Unutilized
Comment: 4720 sq. ft. each; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 649
Fort George G. Meade
Chamberlain Avenue
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014864
Status: Underutilized
Comment: 2594 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; needs rehab; most recent use—storage.

Bldg. 2847
Fort George G. Meade
Earnie Pyle Street
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014863
Status: Unutilized
Comment: 3863 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; most recent use—gym.

Bldg. 6687
Fort George G. Meade
Mapes and Zimborski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only, scheduled to be vacated 10/1/92.

Massachusetts

Bldgs. T–2732, T–2281
Fort Devens
Fort Devens Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Numbers: 219012343–219012344
Status: Unutilized
Comment: 6351 sq. ft. each, wood, two stories, most recent use—housing.

Bldg. T–201
Fort Devens
Fort Devens Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219012363
Status: Unutilized
Comment: 1000 sq. ft., wood structure—needs rehab, no sanitary facilities, most recent use—company admin/supply.

Bldg. KB–0021
Fort Devens
Ft. Rodman MA 02744–
Landholding Agency: Army
Property Number: 219140027
Status: Unutilized
Comment: 4,928 sq. ft., 1 story wood, presence of asbestos, most recent use—storage.

Bldg. KB–0100
Fort Devens
Ft. Rodman MA 02744–
Landholding Agency: Army
Property Number: 219140028
Status: Unutilized
Comment: 9,100 sq. ft., 1 story insulated monopanel, most recent use—reserve center.

Bldg. KB–0102
Fort Devens
Ft. Rodman MA 02744–
Landholding Agency: Army
Property Number: 219140029
Status: Unutilized
Comment: 15,480 sq. ft., 1 story concrete block, most recent use—reserve center.

Bldg. T–0208
Fort Devens
Ft. Devens Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140030
Status: Unutilized
Comment: 4,720 sq. ft., 2 story wood, presence of asbestos, needs rehab.

Bldg. T–0209
Fort Devens
Ft. Devens Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 2219140031
Status: Unutilized
Comment: 4,720 sq. ft., 2 story wood, presence of asbestos, needs rehab.

Bldg. T–0236
Fort Devens
Ft. Devens Co: Middlesex/Worce MA 01433
Landholding Agency: Army
Property Number: 219140032
Status: Unutilized
Comment: 4,613 sq. ft., 1 story wood, presence of asbestos, needs rehab.

Bldg. T–2676
Fort Devens
Ft. Devens Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140033
Status: Unutilized
Comment: 1,176 sq. ft., 1 story wood, presence of asbestos, needs rehab.

Michigan

Bldg. 300, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220448
Status: Unutilized
Comment: 52 sq. ft., sentry station, secured area w/alternate access.

Bldg. 301, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220449
Status: Unutilized
Comment: 3,125 sq. ft., 2-story colonial style home, secured area w/alternate access.

Bldg. 302, 303
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220450–219220451
Status: Unutilized
Comment: 2,619 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldg. 304, 305
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220452–219220787
Status: Unutilized
Comment: 2,443 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Minnesota

Le Sueur USAR Center
620 Turill Street
Le Sueur Co: Le Sueur MN 56058
Landholding Agency: Army
Property Number: 219013558
Status: Underutilized
Comment: 4,316/1,325 sq. ft.; 1 story; most recent use—storage.

Missouri

Bldg. 2138
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219210247
Status: Underutilized
Comment: 2,284 sq. ft. ea., 1 story, presence of asbestos, off-site use only.

Bldg. T200
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220525
Status: Underutilized
Comment: 2,284 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T455
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220526
Status: Underutilized
Comment: 6,736 sq. ft., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not

handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T532
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220527
Status: Underutilized
Comment: 1,298 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T546
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220528
Status: Underutilized
Comment: 2,740 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldgs. T588, T589
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220529–219220530
Status: Underutilized
Comment: 1,980 sq. ft. ea., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 10/1/92.

Bldgs. T1332, T1334, T1365
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220531–219220533
Status: Underutilized
Comment: 2,360 sq. ft. ea., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldgs. T1343, T1366, T1374, T1475, T1476
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220534–219220536, 219220538–219220539
Status: Underutilized
Comment: 1,144 sq. ft. ea., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldg. T1363
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220537
Status: Underutilized
Comment: 1,296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldgs. T1656, T1340, T1351, T1460, T1461–T1462, T1488–T1489, T2359, T2361, T2363, T1672–T1676, T1678, TT1681–T1682, T1693–T1696, T1698
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220540, 219220553–219220559, 219220562, 219220576–219220579, 219220818–219220830
Status: Underutilized
Comment: 4,720 sq. ft. ea., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldgs. T1677, T1684, T1686, T1692
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220541–219220544
Status: Underutilized
Comment: 3,012 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldg. T1904
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220545
Status: Underutilized
Comment: 2,360 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T2301
Fort Leonard Wood
Fort Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220546
Status: Underutilized
Comment: 614 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible.

Bldgs. T3065, T3066
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220547–219220548
Status: Underutilized
Comment: 2,750 sq. ft. ea., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general storehouse, not handicapped accessible, scheduled to be vacated 8/21/92.

Bldgs. T286, T3053, T3058, T3067, T3069–T3070
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220549, 219220563–219220567
Status: Unutilized
Comment: 5,310 sq. ft. ea., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldg. T290
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220550
Status: Unutilized
Comment: 5,482 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible.

Bldgs. T405-T406, T1900, T2106, T1751, T1753, T2107
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220551–219220552, 219220560–219220561, 219220605–219220606, 219220832
Status: Unutilized
Comment: 7,670 sq. ft. ea., wood frame, 2 story, presence of asbestos, off-site removal only, most recent use—enlisted barracks, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldgs. T451
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220568
Status: Underutilized
Comment: 4,640 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T515
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220569
Status: Underutilized
Comment: 2,331 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T1653
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220570
Status: Underutilized
Comment: 2,740 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T1687
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220571
Status: Underutilized
Comment: 2,646 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T1902
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000

Landholding Agency: Army
Property Number: 219220572
Status: Underutilized
Comment: 2,284 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 10/31/92.

Bldg. T1905
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220573
Status: Underutilized
Comment: 3,775 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 8/14/92.

Bldg. T1913
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220574
Status: Underutilized
Comment: 7,213 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T2120
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220575
Status: Underutilized
Comment: 1,296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T2126
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220576
Status: Underutilized
Comment: 1,500 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T2186
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 210220577
Status: Underutilized
Comment: 1,296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible, scheduled to be vacated 9/30/92.

Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2,650 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T1444, T1445, T1472, T1473, T1441–T1443, T1474
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220581–219220584, 219220590–219220591, 219220596, 219220831
Status: Underutilized
Comment: 1,828 sq. ft. ea., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general purpose, not handicapped accessible.

Bldg. T1832
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220585
Status: Underutilized
Comment: 5,893 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. bldg., not handicapped accessible, scheduled, scheduled to be vacated 1/30/93.

Bldg. T1842
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220586
Status: Underutilized
Comment: 2,740 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. bldg., not handicapped accessible, scheduled, scheduled to be vacated 1/31/92.

Bldg. T583
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220587
Status: Underutilized
Comment: 2,250 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—gen. instruction bldg., not handicapped accessible.

Bldg. T3072
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220588
Status: Underutilized
Comment: 2,750 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—gen. instruction bldg., not handicapped accessible.

Bldg. T1485
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220592
Status: Underutilized
Comment: 1,296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—cmder. hdqtrs. bldg., not handicapped accessible, scheduled to be vacated 10/1/92.

Bldg. T1491, T2121, T2154
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220593, 219220595, 219220598
Status: Underutilized
Comment: 1,296 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—cmder. hdqtrs. bldg., not handicapped accessible, scheduled to be vacated 10/1/92.

Bldg. 1691
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220594
Status: Underutilized
Comment: 2,646 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—cmder. hdqtrs. bldg., not handicapped accessible.

Bldg. T1651
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220597
Status: Underutilized
Comment: 1,600 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—battalion hdqtrs., not handicapped accessible.

Bldgs. T2168, T2199
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Numbers: 219220599–219220600
Status: Underutilized
Comment: 2892 sq. ft. ea., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—dining facility, not handicapped accessible.

Bldg. T201
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220602
Status: Unutilized
Comment: 3663 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—drama center, not handicapped accessible.

Bldg. T202
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220603
Status: Underutilized
Comment: 3775 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—exchange branch, not handicapped accessible.

Bldg. T2058
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220604
Status: Underutilized

Comment: 3448 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—guest house, not handicapped accessible, scheduled to be vacated.

Bldg. T2309
Fort Leonard Wood
Ft. Leonard Wood, MO. Pulaski. Zip: 65473–5000
Landholding Agency: Army
Property Number: 219220607
Status: Underutilized
Comment: 658 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—heating plant, not handicapped accessible, scheduled to be vacated 9/30/92.

Nebraska

Bldg. RG–1
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210292
Status: Unutilized
Comment: 1080 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–2
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210293
Status: Unutilized
Comment: 576 sq. ft., 1 story garage, secured area with alternate access.

Bldg. RG–3
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210294
Status: Unutilized
Comment: 936 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–4
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210295
Status: Unutilized
Comment: 1040 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–5
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210296
Status: Unutilized
Comment: 490 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Bldg. RG–6
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210297
Status: Unutilized
Comment: 510 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415
Landholding Agency: Army
Property Numbers: 219011946–219011952, 219011954, 219011956, 219011959, 219011961, 219011964, 219011968, 219011970, 291011974, 219011976–219011978, 219011980, 219011982, 219011984, 219011987, 219011990, 219011994, 219011996
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New Jersey

Bldg. 5316
Snyder Avenue
Fort Dix Co: Burlington NJ 08640
Landholding Agency: Army
Property Number: 219210280
Status: Unutilized
Comment: 700 sq. ft., 1 story cinder block structure, windowless.

Bldg. 9111, Evans Area
Fort Monmouth—Watson Avenue
Wall Co: Monmouth NJ 07719
Landholding Agency: Army
Property Number: 219210288
Status: Unutilized
Comment: 1,126 sq. ft., 1 story, needs major repairs, possible asbestos.

Bldg. 9113, Evans Area
Fort Monmouth—Watson Avenue
Wall Co: Monmouth NJ 07719
Landholding Agency: Army
Property Number: 219210289
Status: Unutilized
Comment: 2,000 sq. ft., 1 story, needs major repairs, possible asbestos.

Bldg. 9126, Evans Area
Fort Monmouth—Watson Avenue
Wall Co: Monmouth NJ 07719
Landholding Agency: Army
Property Number: 219210290
Status: Unutilized
Comment: 384 sq. ft., 1 story, needs major repairs, possible asbestos.

Bldg. 2534, Charles Wood Area
Fort Monmouth
Tinton Falls Co: Monmouth NJ
Landholding Agency: Army
Property Number: 219210291
Status: Unutilized
Comment: 5,307 sq. ft., 2 story, most recent use—storage, needs rehab, possible asbestos.

New York

Bldg. 503
Fort Totten
Ordnance Road
Bayside Co: Queens NY 11357
Landholding Agency: Army
Property Number: 219012564
Status: Unutilized
Comment: 510 sq ft., 1 floor, most recent use—storage, needs major rehab/no utilities.

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens NY 11359
Landholding Agency: Army
Property Number: 219012567
Status: Unutilized
Comment: 30,000 sq ft., 3 floors, most recent use—barracks & mess facility, needs major rehab.

Bldg. 304
Fort Totten
Shore Road
Bayside Co: Queens NY 11359
Landholding Agency: Army
Property Number: 219012570
Status: Unutilized
Comment: 9,610 sq ft., 3 floors, most recent use—hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens NY 11359
Landholding Agency: Army
Property Number: 219012573
Status: Unutilized
Comment: 6,329 sq ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected.

Bldg. 332
Fort Totten
Theater Road
Bayside Co: Queens NY 11359
Landholding Agency: Army
Property Number: 219012578
Status: Unutilized
Comment: 6,288 sq ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.

Bldg. 504
Fort Totten
Ordnance Road
Bayside Co: Queens NY 11359
Landholding Agency: Army
Property Number: 219012580
Status: Unutilized
Comment: 490 sq ft., 1 floor, most recent use—storage, no utilities, needs major rehab.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co: Queens NY 11359
Landholding Agency: Army
Property Number: 219012583
Status: Unutilized
Comment: 30,000 sq ft., 3 floors, most recent use—barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 328
Fort Totten
328 Pratt Avenue
Bayside Co: Queens NY 11359
Landholding Agency: Army
Property Number: 219012586
Status: Unutilized
Comment: 6,000 sq ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.

Bldg. 627
U.S. Military Academy-West Point
Pitcher Road, North Dock
Highland Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219030185
Status: Unutilized
Comment: 23,185 sq. ft.; 1 story wood frame; needs rehab; presence of asbestos; most recent use—storage warehouse.

North Dakota

Bldgs. D27 to D29, D46, D48, D53, D56, D75, D85, D87, D88
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Numbers: 219220236–219220246
Status: Unutilized
Comment: 64 sq. ft. each, metal frame, 1 story, needs major rehab, off-site use only, most recent use—storage.

Bldgs. 027, 028
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Numbers: 219220247–219220248
Status: Unutilized
Comment: 2940 sq. ft. each, wood frame, 1 story, needs major rehab, off-site use only, 2-bedroom duplexes.

Bldgs. 029, 056, 075, 087, 088
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Numbers: 219220249, 219220252–219220253, 219220255–219220256
Status: Unutilized
Comment: 2631 sq. ft. each, wood frame, 1 story, needs major rehab, off-site use only, 2-bedroom duplexes.

Bldgs. 048, 085
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Numbers: 219220250, 219220254
Status: Unutilized
Comment: 2105 sq. ft. each, wood frame, 1 story, needs major rehab, off-site use only, 2-bedroom duplexes.

Bldgs. 053
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220251
Status: Unutilized
Comment: 2424 sq. ft., wood frame, 1 story, needs major rehab, off-site use only, 2-bedroom duplex.

Bldg. 303
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220257
Status: Unutilized
Comment: 1692 sq. ft., wood frame, 1 story, needs major rehab, off-site use only, most recent use—youth center.

Bldg. 345
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220258
Status: Unutilized
Comment: 10,200 sq. ft., wood frame, 1 story, needs major rehab, off-site use only, most recent use—medical dispensary.

Bldg. 348
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220259
Status: Unutilized
Comment: 29,040 sq. ft., wood frame, 2 story, needs major rehab, off-site use only, most recent use—barracks.

Bldg. 355
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220260
Status: Unutilized
Comment: 23,020 sq. ft., wood frame, 2 story, needs major rehab, off-site use only, most recent use—barracks.

Bldg. 366
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220261
Status: Unutilized
Comment: 21,408 sq. ft., temporary trailer complex (42 mobile office trailers), needs major rehab, off-site use only.

Bldg. T–002
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220262
Status: Unutilized
Comment: 1728 sq. ft., 1 story, 4 mobile office trailers, needs major rehab, off-site use only.

Bldg. T–341
Stanley R. Mickelsen Safeguard Complex
Missile Site Radar
Nekoma ND, Cavalier, Zip: 58355
Property Number: 219220263
Status: Unutilized
Comment: 3500 sq. ft., 1 story, six trailers, needs major rehab, off-site use only, most recent use—religious education facility.

Oklahoma

Bldg. T–2545, Fort Sill
2544 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011255
Status: Unutilized
Comment: 1,994 sq. ft.; asbestos; wood frame; 2 floors, no operating sanitary facilities; most recent use—barracks.

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2,722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2,904 sq. ft; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.

Bldg. T–3516
Fort Sill
3516 Packard Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011324
Status: Unutilized
Comment: 1,495 sq. ft.; possible asbestos; wood frame; most recent use—administrative.

Bldgs. T–3779, T–3780
Fort Sill
3779 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011343, 219011344
Status: Unutilized
Comment: 4,720 sq ft each; possible asbestos, wood frame, 2 floors, most recent use—barracks.

Bldg. T–4502
Fort Sill
4502 Wilson Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011376
Status: Unutilized
Comment: 2,812 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldg. T–4720
Fort Sill
4720 Hartell Blvd.
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011405
Status: Unutilized
Comment: 13,225 sq. ft.; visual asbestos; wood frame; 2 floors; most recent use—recreation bldg.

Bldg. T–836
Fort Sill
Corner of Macomb Road and Burrell Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014328
Status: Unutilized
Comment: 1,341 sq. ft.; 1 story wood frame; most recent use—storage; possible asbestos.

Bldg. T–4919
Fort Sill
4919 Post Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4523, Fort Sill
4523 Wilson Road
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1,639 sq. ft., 1 story wood frame, needs rehab, possible asbestos, most recent use—storage.

Bldg. S–701
Fort Sill
701 Randolph Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219030183
Status: Unutilized
Comment: 19,903 sq. ft.; steel/wood frame; 1 story; needs rehab; possible asbestos; most recent use—general instruction building.

Bldg. T–283, Fort Sill
283 Knox Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army

Property Number: 219220608
Status: Unutilized
Comment: 2,419 sq. ft., wood frame, 2 story, off-site removal only, most recent use—classroom.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–3539, Fort Sill
3539 Tacy Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220610
Status: Unutilized
Comment: 1,594 sq. ft., wood frame, 1 story, off-site removal only, most recent use—headquarters bldg.

Bldg. T–3600, Fort Sill
3600 Tacy Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220611
Status: Unutilized
Comment: 2,267 sq. ft., wood frame, 1 story, off-site removal only, most recent use—storage.

Bldgs. T–3607, T–3621, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Numbers: 219220612–219220613
Status: Unutilized
Comment: 2,265 sq. ft. ea., wood frame, 1 story, off-site removal only, most recent use—storage.

Bldg. T–3658, Fort Sill
3658 Tacy Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220614
Status: Unutilized
Comment: 3,091 sq. ft., wood frame, 1 story, off-site removal only, most recent use—storage.

Bldg. T–3681, Fort Sill
3681 Thomas Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220615
Status: Unutilized
Comment: 3,673 sq. ft., wood frame, 1 story, off-site removal only, most recent use—detached dayroom.

Bldg. T–3700, Fort Sill
3700 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220616
Status: Unutilized
Comment: 3,162 sq. ft., wood frame, 1 story, off-site removal only, most recent use—classroom.

Bldg. T–3701, Fort Sill
3701 Walker Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220617
Status: Unutilized
Comment: 2,263 sq. ft., wood frame, 1 story, off-site removal only, most recent use—barracks.

Bldg. T–4712, Fort Sill
4712 Hartell Blvd.
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220618
Status: Unutilized
Comment: 3,842 sq. ft., wood frame, 1 story, off-site removal only, most recent use—chapel/administration.

Bldg. T–7452, Fort Sill
Lake Elmer Thomas Rec Area
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220619
Status: Unutilized
Comment: 450 sq. ft., metal frame, 1 story, off-site removal only, most recent use—garage.

Bldg. T–7453, Fort Sill
7453 Lake Elmer Thomas Rec Area
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220620
Status: Unutilized
Comment: 64 sq. ft., wood frame, 1 story, off-site removal only, most recent use—storehouse.

Pennsylvania

Bldg. T–685, Carlisle Barracks
Lukens Road
Carlisle Co: Cumberland PA 17013–5002
Landholding Agency: Army
Property Number: 219230003
Status: Unutilized
Comment: 6,697 sq. ft., wood frame structure, needs major rehab, possible asbestos, most recent use—R&D Science lab, off-site use only.

Tennessee

Robert Joel Ridings
US Army Reserve Center
920 Cherokee Avenue
Nashville Co: Davidson TN 37207–
Landholding Agency: Army
Property Number: 219011667
Status: Excess
Comment: 40,000 sq. ft.; 3.67 acres; concrete block; utilities disconnected; site vandalized.

Texas

Bldg. T–227
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 219014275
Status: Excess
Comment: 2987 sq. ft., 1 story wood structure; major rehab needed.

Bldgs. 1189, 1192, T–1193
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Numbers: 219014276–219014277, 219014280
Status: Excess
Comment: 9190 sq. ft. each; 1 story wood structure; needs major rehabilitation.

T–4013
Fort Sam Houston
San Antonio Co: Bexar TX: 78234–
Landholding Agency: Army
Property Number: 219030001
Status: Underutilized
Comment: 64067 sq. ft.; 1 story wood frame; needs rehab; limited utilities.

Bldgs. T4001, T–4004
Fort Sam Houston
San Antonio Co: Bexar TX: 78234–
Landholding Agency: Army
Property Numbers: 219014278, 219014279
Status: Underutilized
Comment: 48000 sq. ft. each; 2 story wood frame building with metal siding; needs rehab; possible asbestos.

Bldg. P–3350, Fort Sam Houston
San Antonio TX: Bexar Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220397
Status: Underutilized
Comment: 992 sq. ft., 1-story wood structure, possible asbestos, off-site removal only.

Bldg. P–3824, Fort Sam Houston
San Antonio TX: Bexar Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. B0186, Fort Sam Houston
San Antonio TX: Bexar Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220399
Status: Unutilized
Comment: 400 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos, off-site removal only.

Bldg. T–88, Fort Sam Houston
San Antonio TX: Bexar Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220400
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood structure, off-site removal only.

Bldg. T–185, Fort Sam Houston
San Antonio TX: Bexar Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220401
Status: Unutilized
Comment: 2058 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos, off-site removal only.

Bldg. T–221 thru T–223, T–2068 thru T–2069, 2240–2242, T–2292
Fort Sam Houston
San Antonio TX: Bexar Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220403–219220405, 219220426–219220427, 219220429–219220431, 219220434
Status: Unutilized
Comment: 4720 sq. ft. ea, 2-story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. T–332, Fort Sam Houston
San Antonio TX: Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220407
Status: Unutilized
Comment: 9360 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. T–339, Fort Sam Houston
San Antonio TX: Bexar Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220408
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. T–1101, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220410
Status: Unutilized
Comment: 617 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. T–1134, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220411
Status: Unutilized
Comment: 1,514 sq. ft., 1-story corrugated iron structure, within National Landmark Historic District, possible contamination, off-site removal only.

Bldg. T–1198, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220412
Status: Underutilized
Comment: 2,548 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldgs. T–1466, T–1473, T–1479, T–1480, T–1485–T–1488, T–1494, T–1499
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220413–219220422
Status: Unutilized
Comment: 4,720 sq. ft. ea., 2-story wood structure, possible asbestos and lead contamination, off-site removal only.

Bldg. T–1490, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220423
Status: Unutilized
Comment: 2,802 sq. ft., 1-story wood structure, possible asbestos and lead contamination, off-site removal only.

Bldg. 2202, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220428
Status: Unutilized
Comment: 3,525 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. T–2253, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220433
Status: Unutilized
Comment: 2,360 sq. ft., 1-story wood structure within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. T–2400, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220435
Status: Underutilized
Comment: 6,093 sq. ft., 1-story concrete and tile structure, off-site removal only.

Bldgs. T–4007, T–4008, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220436–219220437
Status: Unutilized
Comment: 48,000 sq. ft., 1-story corrugated iron structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. T–5110, Camp Bullis
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220439
Status: Unutilized
Comment: 800 sq. ft., 1-story wood structure, possible asbestos and lead contamination, off-site removal only.

Bldg. T–5111, Camp Bullis
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220440
Status: Unutilized
Comment: 93 sq. ft., 1-story wood structure, possible asbestos and lead contamination, off-site removal only.

Bldg. T–5147B, Camp Bullis
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220441
Status: Unutilized
Comment: 168 sq. ft., 1 story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. A–5147, Camp Bullis
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220442
Status: Unutilized
Comment: 406 sq. ft., 1-story wood structure, possible asbestos and lead contamination, off-site removal only.

Bldg. T–6002, Camp Bullis
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220443
Status: Unutilized
Comment: 1,099 sq. ft., 1-story wood structure, possible asbestos and lead contamination, off-site removal only.

Bldg. S–6034, Camp Bullis
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220444
Status: Unutilized
Comment: 1,150 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos and lead contamination, off-site removal only.

Bldg. 458, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220621
Status: Unutilized
Comment: 2,584 sq. ft., 1 story brick structure (exterior brick must be removed), most recent use—youth center, off-site use only.

Bldgs. 358, 359 Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220622, 219220623
Status: Unutilized
Comment: 4,000 sq. ft. ea., 2 story barracks, presence of asbestos, most recent use—storage, off-site use only.

Bldgs. 466–467, 474–477 Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220624–219220629
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood structure, presence of asbestos, most recent use—barracks/troop hsg., off-site use only.

Bldg. 660, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220630
Status: Unutilized
Comment: 1,687 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 704, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220631
Status: Unutilized
Comment: 4,500 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 901, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220632
Status: Unutilized
Comment: 2,747 sq. ft. 2 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 1160, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220633
Status: Unutilized
Comment: 3,540 sq. ft., 2 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 1162, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220634
Status: Unutilized
Comment: 937 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 1163, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220635
Status: Unutilized
Comment: 5,577 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 2500, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220636
Status: Unutilized
Comment: 168 sq. ft., 1 story wood frame structure, most recent use—oil storage, off-site use only.

Bldg. 2502, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army

Property Number: 219220637
Status: Unutilized
Comment: 1,200 sq. ft., 1 story wood frame structure,most recent use—admin., off-site use only.

Bldg. 2546, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220638
Status: Unutilized
Comment: 54 sq. ft., 1 story wood frame structure, most recent use—heat plant, off-site use only.

Bldg. 4305, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220639
Status: Unutilized
Comment: 1,713 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 4639, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220640
Status: Unutilized
Comment: 875 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 4649, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220641
Status: Unutilized
Comment: 873 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 4739, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220642
Status: Unutilized
Comment: 874 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 4761, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220643
Status: Unutilized
Comment: 915 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldg. 11050, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220644
Status: Unutilized
Comment: 2,304 sq. ft., 1 story wood frame structure, most recent use—admin., off-site use only.

Bldgs. 4552, 4567, 4752, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220645–219220646, 219220650
Status: Unutilized
Comment: 2,169 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 4582, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220647
Status: Unutilized
Comment: 1,713 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 4650, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220648
Status: Unutilized
Comment: 858 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 4721, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220649
Status: Unutilized
Comment: 1,381 sq. ft., 1 story wood frame structure, most recent use—storage, off-site use only.

Bldg. 4822, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220651
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood frame structure, most recent use—storage, off-site use only.

Bldg. 4829, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220652
Status: Unutilized
Comment: 915 sq. ft., 1 story wood frame structure, most recent use—storage, off-site use only.

Bldgs. 11610, 11625, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220653–219220654
Status: Unutilized
Comment: 322 sq. ft., 1 story wood frame structure, most recent use—storage, off-site use only.

Bldg. 4617, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220655
Status: Unutilized
Comment: 978 sq. ft., 1 story wood frame structure, most recent use—general instruction, off-site use only.

Bldg. 4670, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220656
Status: Unutilized
Comment: 2,214 sq. ft., 1 story wood frame structure, presence of asbestos, most recent use—instruction bldg., off-site use only.

Bldg. 4621, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220657
Status: Unutilized
Comment: 1,382 sq. ft., 1 story wood frame structure, most recent use—day room, off-site use only.

Bldgs. 4623, 4638, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220658–219220659
Status: Unutilized
Comment: 875 sq. ft. ea., 1 story wood frame structure, most recent use—day room, off-site use only.

Bldg. 4640, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220660
Status: Unutilized
Comment: 1,770 sq. ft., 1 story wood structure, presence of asbestos, most recent use—day room, off-site use only.

Bldgs. 4645, 4646 Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220661–219220662
Status: Unutilized
Comment: 873 sq. ft. ea., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4647, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220663
Status: Unutilized
Comment: 659 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4696, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220664
Status: Unutilized
Comment: 1,658 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldgs. 4720, 4738 Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220665–219220666
Status: Unutilized
Comment: 874 sq. ft. ea., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldgs. 4760, 4828, 4831 Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220667, 219220670–219220671
Status: Unutilized
Comment: 915 sq. ft. ea, 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4818, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220668
Status: Unutilized
Comment: 873 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldg. 4821, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220669
Status: Unutilized
Comment: 1,381 sq. ft., 1 story wood structure, presence of asbestos, most recent use—recreation, off-site use only.

Bldgs. 4655, 4740, 4755, 4837, 4840, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220672–219220674, 219220676–219220677

Status: Unutilized
Comment: 1,770 sq. ft. each, 1 story wood structure, most recent use—classroom, off-site use only.

Bldg. 4770, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220675
Status: Unutilized
Comment: 2,109 sq. ft., 1 story wood structure, most recent use—classroom, off-site use only.

Bldg. 5345, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220678
Status: Unutilized
Comment: 874 sq. ft., 1 story wood structure, most recent use—classroom, off-site use only.

Bldgs. 4679, 4779 Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219220679–219220680
Status: Unutilized
Comment: 2,747 sq. ft. each, 1 story wood structure, presence of asbestos, most recent use—sales store, off-site use only.

Bldg. 11042, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220681
Status: Unutilized
Comment: 6,851 sq. ft. 1 story wood structure, most recent use—vehicle maintenance shop, off-site use only.

Bldg. 11187, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220682
Status: Unutilized
Comment: 1,500 sq. ft. 1 story wood structure, most recent use—craft shop, off-site use only.

Bldg. 11283, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220683
Status: Unutilized
Comment: 8,773 sq. ft. 1 story wood structure, presence of asbestos, most recent use—retail store, off-site use only.

Bldg. 11550, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220684
Status: Unutilized
Comment: 400 sq. ft., 1 story cinder block, most recent use—ammunition storage, off-site use only.

Bldg. 11628, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220685
Status: Unutilized
Comment: 112 sq. ft., 1 story concrete structure, most recent use—generator bldg., off-site use only.

Bldg. 11637, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219220686
Status: Unutilized
Comment: 228 sq. ft., 1 story navigations aids bldg. off-site use only.

Bldg. 659, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219230004
Status: Unutilized
Comment: 630 sq. ft., 1-story wood structure, needs major rehab, most recent use—admin., off-site use only.

Bldgs. 4868, Fort Bliss
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219120140
Status: Unutilized
Comment: 873 net sq. ft. each, one story; most recent use—storage; off-site use only.

Bldgs. 4875, 4925
Fort Bliss, Tex.
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Numbers: 219120141, 219120144
Status: Unutilized
Comment: 2,169 sq. ft. each, one story wood frame; most recent use—general storage; off-site use only.

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014815
Status: Unutilized
Comment: 94,806 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 4
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014816
Status: Unutilized
Comment: 1,350 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 17
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014817
Status: Unutilized
Comment: 68 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.

Bldg. 29
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014818
Status: Unutilized
Comment: 5,028 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 30
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014819
Status: Unutilized
Comment: 5,323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 18
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014820
Status: Unutilized
Comment: 9,560 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 6
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014821
Status: Unutilized
Comment: 1,258 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 7
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014822
Status: Unutilized
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 8
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014824
Status: Unutilized
Comment: 171 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—watch tower.

Bldg. 16
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014825
Status: Unutilized
Comment: 17,283 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 19
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014826
Status: Unutilized
Comment: 25,399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014827
Status: Unutilized
Comment: 1,392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014828
Status: Unutilized
Comment: 244 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014829
Status: Unutilized

Comment: 1,320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house.

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014830
Status: Unutilized
Comment: 354 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 28
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014831
Status: Unutilized
Comment: 3,518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014832
Status: Unutilized
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014833
Status: Unutilized
Comment: 50,581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014834
Status: Unutilized
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower.

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014835
Status: Unutilized
Comment: 19,548 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Harlingen USARC
1920 East Washington
Harlingen Co: Cameron TX 78550–
Landholding Agency: Army
Property Number: 219120304
Status: Excess
Comment: 19,440 sq. ft.; 1 story brick; needs rehabx with approx. 6 acres including parking areas; most recent use—Army Reserve Training Center.

Virginia

Bldgs. T413–T415, T418, T421–T423, T426–T428, T431–T433, T441–T443, T446–T448, T1724, T1726–T1727, T1676–T1677, T2213, T2413–T2415, T2418–T2424, T2427–T2430, T2437–T2439, T2442–T2448, T2451–T2453, T2615–T2616, T1363–T1364, T2208, T2209, T1349–T1351, T1354–T1355, T3042–T3048, T3051–T3054
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219010006–219010079
Status: Unutilized
Comment: 4,292 sq. ft. each; selected periods are reserved for military/training exercises.

Bldgs. T435–T438, T440, T1718, T2226, 1662, T2411–T2412, 2431, T2433–T2434, T2455–T2457, T2612–T2614, T2683, T2635–T2636, T2638, T2657, T2659, T1367, T1666, 1667, 2205, 2207, 2227, 2228, 2811, 2832, 2834–2835, 2837, 2856, 3016–3017, 3031, 3032–3036, T412, T424–T425, T434, T444, T445, T1680, 2416, T2425, 2416, T2425, T2426, 2440–2441, 2449–2450, 2618, 2619, 2627, 2628, 2642, 2643, 2652, 1357, 1358, 2211, 2220–2221, 2826–2827, 2841–2842, 2850–2851, 3010, 3012, 3025, 3040–3041, 3049, 3050, 3057
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219010080–219010104, 219011002, 219011004, 219011005–219011009, 219011011, 219011013, 219011015–219011016, 219011018–219011019, 219011021–219011022, 219011024–219011026, 219011028–219011030, 219011060, 219011064–219011065, 219011067–219011068, 219011070–219011071, 219011073–219011074, 219011076–219011077, 219011079–219011081, 219011083, 219011085–219011086, 219011088–219011089, 219011091, 219011093, 219011096–219011103, 219011105, 219011107, 219011114, 219011118, 219011121, 219011140, 219011143, 219011145–219011147, 219011031
Status: Unutilized
Comment: 2,900 sq. ft. each; selected periods are reserved for military/training exercises.

Bldg. 1676
Fort Pickett
Blackstone Co: Nottoway VA 23930–
Landholding Agency: Army
Property Number: 219010971
Status: Underutilized
Comment: 3,300 sq. ft.; selected periods are reserved for military/training exercises; most recent use—Hdqts. Bldg.

Bldgs. 1663, 1664, T2617, T2620–T2626, T2629–T2632, 2639, T2640, T2641, 2644–2646, 2647–2648, 2650, 2814, 2815, T2852–T2853, T2854–T2855
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219010972, 219010976, 219010979, 219010982, 219010984, 219010987, 219010990, 219010993, 219010995, 219010998, 219011000, 219011003, 219011010, 219011012, 219011014, 219011017, 219011020, 219011023, 219011027, 219011032, 219011033–219011036, 219011038, 219011040, 219011043, 219011046, 219011047
Status: Underutilized
Comment: 4,292 sq. ft. each; selected periods are reserved for military/training exercises; most recent use—barracks.

Bldg. 1677
Fort Pickett
Blackstone Co: Nottoway VA 23930–
Landholding Agency: Army
Property Number: 219010973
Status: Underutilized
Comment: 3,300 sq. ft.; selected periods are reserved for military/training exercises; most recent use—Hdqts. Bldg.

Bldgs. 1666, 1687, 1696
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219010974–219010975, 219010977
Status: Underutilized
Comment: 1,300 sq. ft. each; selected periods are reserved for military/training exercises; most recent use—Hdqts. Bldgs.

Bldg. 1667
Fort Pickett
Blackstone Co: Nottoway VA 23930–
Landholding Agency: Army
Property Number: 219010978
Status: Underutilized
Comment: 11,000 sq. ft.; most recent use—mess hall; selected periods are reserved for military/training exercises.

Bldg. 1686
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219010980
Status: Underutilized
Comment: 11,000 sq. ft.; most recent use—mess hall; selected periods are reserved for military/training exercises.

Bldg. 1690
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219010981
Status: Underutilized
Comment: 2,300 sq. ft.; selected periods are reserved for military/training exercises; most recent use—storage.

Bldg. 2810
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219010983
Status: Underutilized
Comment: 3,500 sq. ft.; most recent use—recreation; selected periods are reserved for military/training exercises.

Bldgs. 2809, 2801
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219010985–219010986
Status: Underutilized
Comment: 1,200 sq. ft. each; most recent use—recreation; selected periods are reserved for military/training exercises.

Bldgs. 2802, 2808
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219010988–219010989
Status: Underutilized
Comment: 2,220 sq. ft. each; most recent use—Recreation Bldg.; selected periods are reserved for military/training exercises.

Bldgs. 1315, 1318
Fort Pickett
Blackstone Co: Nottoway VA 23930–
Landholding Agency: Army
Property Numbers: 219010991–219010992

Status: Underutilized
Comment: 4,038 sq. ft. each; most recent use—housing; selected periods are reserved for military/training exercises.

Bldgs. T1348, T1365, 1309, 2610
Fort. Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219010994, 219010996–219010997, 219010999
Status: Underutilized
Comment: 2,256 sq. ft. each; most recent use—housing; selected periods are reserved for military/training exercises.

Bldg. T3055
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219011001
Status: Underutilized
Comment: 2,307 sq. ft.; most recent use—recreation facility; selected periods are reserved for military/training exercises.

Bldgs. 1662, 1665, 1688, 1689, 1691
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219011037, 219011039, 219011041–219011042, 219011044
Status: Underutilized
Comment: 2,500 sq. ft. each; selected periods reserved for military/training exercises; most recent use—Hdqts. Bldg.

Bldgs. 2402, 2869, T2410, 3002, 3005
Fort Pickett
Blackstone Co: Nottoway VA 23930–
Landholding Agency: Army
Property Numbers: 219011045, 219011048–219011049, 219011051–219011052
Status: Underutilized
Comment: 1,176 sq. ft. each; selected periods of time reserved for military/training exercises; most recent use—Hdqts. Bldg.

Bldgs. 1897, 2229, 2238–2239, 2373, 2462–2463, 2671, 2672–2678, 2864, 2865, 3061–3063
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219011050, 219011053–219011059, 219011061–219011063, 219011066, 219011069, 219011072, 219011075
Status: Underutilized
Comment: 2,761 sq. ft. each; most recent use—veh. maint. shop; selected periods are reserved for military/training exercises.

Bldgs. 1725, 2608, 2651, 2803, 2817
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219011078, 219011082, 219011084, 219011087, 219011090
Status: Underutilized
Comment: 2,300 sq. ft. each; most recent use—dining fac; selected periods are reserved for military/training exercises.

Bldgs. 1352, 3026
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219011092, 219011095
Status: Underutilized
Comment: 3,500 sq. ft. each; most recent use—dining fac; selected periods are reserved for military/training exercises.

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee
Shop Road
Fort Lee Co: Prince George VA 23901–
Landholding Agency: Army
Property Number: 219012376
Status: Underutilized
Comment: 2,124 sq. ft.; 2 story; most recent use—barracks; poor conditions; needs major rehab.

Bldg. T–6018
U.S. Army Logistics Center and Fort Lee
Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012396
Status: Underutilized
Comment: 1,575 sq. ft., 1 floor, no utilities, possible asbestos, needs rehab, off-site use only.

Bldg. T–12054
U.S. Army Logistics Center and Fort Lee
Logistics Circle
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219030328
Status: Underutilized
Comment: 4,095 sq. ft.; 1 story sheet metal; needs rehab; presence of asbestos; off-site use only.

Bldg. 49, Fort Myer
Johnson lane
Ft. Myer Co: Arlington VA 22211
Landholding Agency: Army
Property Number: 219220816
Status: Underutilized
Comment: 2-story residence, possible asbestos, off-site use only.

Bldg. 52, Fort Myer
Johnson Lane
Ft. Myer Co: Arlington VA 22211
Landholding Agency: Army
Property Number: 219220817
Status: Unutilized
Comment: 8,210 sq. ft., 2-story BOQ bldg., possible asbestos, needs repair, off-site use only.

Wisconsin

Bldgs. T–1058, T–01027–T–01030, T–01035–T–01040, T–01044, T–01046–T–01053, T–01059, T–01063, T–01069, T–01034, T–01041, T–01057, T–01071–T–01080, T–01082–T–01084
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013435, 219013471–219013480, 219013483, 219013485–219013493, 219013497, 219013502, 219013504–219013505, 219013519, 219013521–219013533
Status: Unutilized
Comment: 4,829 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10122
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013436
Status: Unutilized
Comment: 1,900 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10123
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013437
Status: Unutilized
Comment: 2,405 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10135
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013438
Status: Unutilized
Comment: 97 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings/ most recent use—power plant.

Bldg. T–10136
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013439
Status: Unutilized
Comment: 98 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T–10127
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013440
Status: Unutilized
Comment: 1,148 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10119
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013441
Status: Unutilized
Comment: 215 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. P–10137
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013442
Status: Unutilized
Comment: 192 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldgs. T–01088–T–01089, T–01090–T–01093, T–01094–T–01097, T–01014
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013444–219013445, 219013446–219013449, 219013452–219013455, 219013457
Status: Unutilized
Comment: 5,295 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10118
Fort McCoy

Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013450
Status: Unutilized
Comment: 1,250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10120
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013451
Status: Unutilized
Comment: 1,250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10113
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013456
Status: Unutilized
Comment: 2393 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10121
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013458
Status: Unutilized
Comment: 506 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10100–T–10103, T–10105, T–10107, T–10108
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013459–219013462, 219013463, 219013465–219013466
Status: Unutilized
Comment: 3944 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10106
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013464
Status: Unutilized
Comment: 4105 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10124
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013467
Status: Unutilized
Comment: 3115 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10125–T–10126
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013468–219013469
Status: Unutilized
Comment: 3590 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10110
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013470
Status: Unutilized
Comment: 2458 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—vehicle storage.

Bldg. T–01042, T–01043, T–01045, T–01060–T01062, T–01022–T01025, T–01064, T–01085–T–01086
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013481–219013482, 219013484, 219013494–219013496, 219013515–219013518, 219013520, 219013534–219013535
Status: Unutilized
Comment: 4666 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01065–T01067
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013498–219013500
Status: Unutilized
Comment: 4793 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01068
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013501
Status: Unutilized
Comment: 4848 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01032
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013503
Status: Unutilized
Comment: 5588 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. 01054
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013506
Status: Unutilized
Comment: 4184 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01033
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013507
Status: Unutilized
Comment: 5,241 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10112
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013508
Status: Unutilized
Comment: 1,273 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—morgue.

Bldg. T–01031
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013509
Status: Unutilized
Comment: 4,813 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01002
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013510
Status: Unutilized
Comment: 2,573 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01010
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013511
Status: Unutilized
Comment: 8,799 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10109
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013512
Status: Unutilized
Comment: 2,000 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01098
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013513
Status: Unutilized
Comment: 7,133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01099
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013514
Status: Unutilized

Comment: 3,294 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01003
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013536
Status: Unutilized
Comment: 3,366 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01001
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013537
Status: Unutilized
Comment: 3,350 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01005
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013538
Status: Unutilized
Comment: 3,253 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01020
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013539
Status: Unutilized
Comment: 4,150 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01070, T–01081
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013540–219013541
Status: Unutilized
Comment: 7,133 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01006–T01007, T–01009, T–01012–T–01013, T–01015–T–01018
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013542–219013544, 219013546–219013551
Status: Unutilized
Comment: 5,295 sq. ft. Each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01011
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013545
Status: Unutilized
Comment: 4,236 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01021
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013552
Status: Unutilized
Comment: 4,236 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01004, T–01019
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013553–219013554
Status: Unutilized
Comment: 2,815 sq. ft. each, 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01056
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013555
Status: Unutilized
Comment: 15,657 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01000
Ft McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013556
Status: Unutilized
Comment: 3,378 sq ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—fire station.

Bldg. T–01055
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54646–5000
Landholding Agency: Army
Property Number: 219013557
Status: Unutilized
Comment: 5,471 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. 2112, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210310
Status: Underutilized
Comment: 582 sq. ft., 1 story, most recent use—ice house, needs repair.

Bldgs. 212–214, 218–220, 223–225, 228–231, 312–314, 318–320, 402–404, 407–410, 412–414, 418–420, 423–425, 428–429, 440–442
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210311–219210350
Status: Underutilized
Comment: 5,310 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—housing.

Bldgs. 216–217, 226–227, 316–317, 405–406, 416–417
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210351–219210360
Status: Underutilized
Comment: 2,950 sq. ft. ea., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess halls.

Bldg. 426–427, 439
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210361–219210362, 219210364
Status: Underutilized
Comment: 2,350 sq. ft. ea., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess halls.

Bldg. 438, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210363
Status: Underutilized
Comment: 2500 sq. ft., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess hall.

Bldgs. 221–222, 232–233, 321, 333, 401, 411, 421, 433, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210365–219210368, 219210371–219210375, 219210378
Status: Underutilized
Comment: 3250 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldg. 234, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210369
Status: Underutilized
Comment: 2682 sq. ft., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldg. 240, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210370
Status: Underutilized
Comment: 1750 sq. ft., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office.

Bldgs. 422, 432, 443
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210376–219210377, 219210380
Status: Underutilized
Comment: 2750 sq. ft., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldgs. 434, 444
Fort McCoy
US Highway 21
Ft. McCoy, WI. Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210379, 219210381
Status: Underutilized
Comment: 2682 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Land (by State)

Arkansas

Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Location: 8 miles north of Pine Bluff on Highway 365
Landholding Agency: Army
Property Number: 219013841
Status: Unutilized
Comment: 1 acre and 3 acres; potential utilities; brush terrain; used as safety buffer; subject to easements.

Georgia

Land—Fort Gordon
Between Windermere Dr. & Wyevale Rd.
Augusta Co: Richmond GA 30909
Landholding Agency: Army
Property Number: 219210382
Status: Unutilized
Comment: Approximately .54 acres, entire parcel under easement to State Hwy. Department

Kansas

Parcel 1
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4 + acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 261 + acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1 + acres; selected periods are reserved for military/training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1,280 acres; selected periods are reserved for military/training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked: heavily wooded: periodic flooding.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1,920 acres; road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359.
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

Tennessee

Milan Army Ammunition Plant
Milan Co: Carroll TN 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint

Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Texas

Land Saginaw Army Aircraft Plt
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 154.3 acres; includes buildings/structures/parking and air strip.

Vacant Land, Fort Sam Houston
All of Block 1800; Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 250.33 acres, 85% located in floodplain, possibility of unexploded ordnance.

Suitable/Unavailable Properties

Kentucky

Bldgs. 2945
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Numbers: 219012543
Status: Underutilized
Comment: 4,248 sq. ft.; 2 story; selected periods are reserved for military/training exercises; possible asbestos.

Bldgs. 144, 145
Ft. Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Numbers: 219013140–219013141
Status: Underutilized
Comment: 12,576 sq. ft. each; 2 story; possible asbestos; most recent use—basic training central issue facility.

Massachusetts

Bldg. T–208
Fort Devens
Fort Devens Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219012345
Status: Underutllized
Comment: 1,000 sq ft., 1 story, wood, most recent use—day room.
Bldg. T–209
Fort Devens
Fort Devens MA 01433–
Landholding Agency: Army
Property Number: 219030265
Status: Underutilized

Comment: 4,070 sq. ft.; 2 story wood frame; needs rehab; most recent use—barracks.

Missouri

Bldg. T1461
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219220589
Status: Underutilized
Comment: 2,360 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—general instruct. bldg, not handicapped accessible.

Texas

Bldg. P–16, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220366
Status: Underutilized
Comment: 76,102 sq. ft., 2-story stone bldg., within National Landmark Historic District

Bldg P–44, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220367
Status: Underutilized
Comment: 95,332 sq. ft., 3-story concrete bldg., possible asbestos

Bldg. P–122, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220368
Status: Underutilized
Comment: 12,782 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–125, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220369
Status: Underutilized
Comment: 1,593 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–126, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220370
Status: Underutilized
Comment: 12,445 sq. ft., 3-story brick bldg., within National Landmark Historic District

Bldg. P–127, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220371
Status: Underutilized
Comment: 1593 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–133, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220372
Status: Underutilized
Comment: 13,232 sq. ft., 2-story brick bldg., within National Landmark Historic District

Bldgs. P–135, P–140, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220373–219220374
Status: Underutilized
Comment: 1593 sq. ft. ea., 1-story brick bldg., within National Landmark Historic District

Bldg. P–142, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220375
Status: Underutilized
Comment: 4735 sq. ft., 3-story brick bldg., within National Landmark Historic District

Bldgs. P–145, P–146 Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220376–219220377
Status: Underutilized
Comment: 14,813 sq. ft. ea., 3-story brick bldg., within National Landmark Historic District

Bldg. P–155, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220378
Status: Underutilized
Comment: 7374 sq. ft., 2-story brick bldg., within National Landmark Historic District

Bldg. P–197, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220379
Status: Underutilized
Comment: 13,819 sq. ft., 3-story stucco bldg., within National Landmark Historic District

Bldg. P–198, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220380
Status: Underutilized
Comment: 5468 sq. ft., 3-story stucco bldg., within National Landmark Historic District

Bldg. P–252, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220381
Status: Underutilized
Comment: 1830 sq. ft., 1-story stucco bldg.

Bldgs. P–260, P–261, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220382–219220383
Status: Underutilized
Comment: 1749 sq. ft. ea., 1-story brick bldg., within National Landmark Historic District

Bldg. P–366, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220384
Status: Underutilized
Comment: 2844 sq. ft., 1-story stucco bldg.

Bldg. P–367, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220385
Status: Underutilized
Comment: 19,830 sq. ft., 1-story stucco bldg., possible asbestos

Bldg. P–369, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220386
Status: Underutilized
Comment: 10,361 sq. ft., 2-story concrete bldg.

Bldg. P–912, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220387
Status: Underutilized
Comment: 4390 sq. ft., 1-story stone bldg.

Bldg. P–1029, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220388
Status: Underutilized
Comment: 51,236 sq. ft., 3-story brick structure

Bldg. P–2000, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220389
Status: Underutilized
Comment: 49,542 sq. ft., 3-story brick structure, within National Landmark Historic District

Bldg. P–2001, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16,539 sq. ft., 4-story brick structure, within National Landmark Historic District.

Bldg. P–2007, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220391
Status: Underutilized
Comment: 13,058 sq. ft., 3-story brick structure, within National Landmark Historic District.

Bldg. P–2267, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220392
Status: Underutilized
Comment: 7,075 sq. ft., 2-story brick structure, within National Landmark Historic District.

Bldg. P–2268, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220393
Status: Underutilized
Comment: 10,260 sq. ft., 2-story brick structure, within National Landmark Historic District, possible asbestos.

Bldg. P–2289, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220394
Status: Underutilized
Comment: 4720 sq. ft., 2 story wood structure, possible abestos.

Bldg. P–2509, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220395
Status: Underutilized
Comment: 3147 sq. ft., 1-story wood structure, possible asbestos.

Bldg. P–2840, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220396
Status: Underutilized
Comment: 102,194 sq. ft., 4-story concrete structure.

Bldg. T–189, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11,949 sq. ft., 4-story brick structure, within National Landmark Historic District, possible lead contamination.

Bldg. T–300, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220406
Status: Underutilized
Comment: 8352 sq. ft., 1-story wood structure, possible asbestos.

Bldg. T–942, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220409
Status: Underutilized
Comment: 2740 sq. ft., 1-story brick structure, within National Landmark Historic District, possible asbestos.

Bldg. T–2066, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220424
Status: Underutilized
Comment: 4720 sq. ft., 1-story brick structure, within National Landmark Historic District, possible asbestos.

Bldg. T–2067, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220425
Status: Underutilized
Comment: 2664 sq. ft., 1-story brick structure, within National Landmark Historic District, possible asbestos.

Bldg. T–2250, Fort Sam Houston
San Antonio TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220432
Status: Underutilized
Comment: 13,483 sq. ft., 3-story brick structure, within National Landmark Historic District, possible asbestos.

Virginia

Bldg. 2809
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219030271
Status: Underutilized
Comment: 3500 sq. ft., selected periods are reserved for military/training exercises: most recent use—recreation building.

Bldg. 2849
Fort Pickett
Blackstone Co: Nottoway VA 23824-
Landholding Agency: Army
Property Number: 219030272
Status: Underutilized
Comment: 2900 sq. ft.; selected periods are reserved for military/training exercises: most recent use—dining facility.

Bldgs. 2212, 2417
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219030279–219030280
Status: Underutilized
Comment: 2256 sq. ft. ea.; selected periods are reserved for military/training exercises: most recent use—headquarters building.

Bldgs. 1693–1695
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219030281–219030283
Status: Underutilized
Comment: 6912 sq. ft. ea.; selected periods are reserved for military/training exercises: most recent use—barracks.

Bldgs. T–3029, 3030, T–3037 thru T–3039
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219030284–219030288
Status: Underutilized
Comment: 4292 sq. ft. ea.; selected periods are reserved for military/training exercises: most recent use—barracks.

Bldgs. 1358, 1360–1362, 1668–1675, 1678–1685
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Numbers: 219030295–219030314
Status: Underutilized
Comment: 11000 sq. ft. ea.; selected periods are reserved for military/training exercises: most recent use—mess hall.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 270
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120324
Status: Underutilized
Comment: 90 sq. ft., concrete/aluminum, off-site use only, most recent use—aircraft steam cleaning bldg.

Maryland

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012680
Status: Underutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized
Comment: 2442 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Unsuitable Properties

Buildings (by State)

Alabama

77 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014003–219014005, 219014009, 219014012, 219014015–219014053, 219014055–219014061, 219014064, 219014066, 219014068–219014080, 219014291–219014292, 219110109, 219110111, 219120247–219120250, 219140614–219140615
Status: Unutilized
Reason: Secured Area

Bldg. P00894
Fort McClellan
3rd Avenue in Area 8 Motor Pool
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219110046
Status: Unutilized
Reason: Other
Comment: Gas station

Bldg. T00862
Fort McClellan
Off 21st Street between 2nd & 3rd Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219130019
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Complex A, B, C, D
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219130104–219130107
Status: Excess
Reason: Other
Comment: Extensive deterioration

Two Bedroom Apt.
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219130108
Status: Excess
Reason: Other
Comment: Extensive deterioration

77 Bldgs.
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210018–219210094
Status: Excess
Reason: Secured Area

L006T1, L006T2, L006T3
Troy Municipal Airport
Troy Co: Pike AL 36081
Landholding Agency: Army
Property Number: 219220294
Status: Unutilized
Reason: Other
Extensive deterioration

Bldgs. 3403, 24201–24203
Fort Rucker Co: Dale AL 36362

Landholding Agency: Army
Property Number: 219220341–219220344
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Alaska

Bldg. 5001
Fort Wainwright Co: Fairbanks AK 99703–
Landholding Agency: Army
Property Number: 219220346
Status: Unutilized
Rason: Floodway

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220319–219220332
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 47022
Fort Richardson
Ft. Richardson Co: Anchorage AK 99505
Landholding Agency: Army
Property Number: 219220351
Status: Unutilized
Reason: Within airport runway clear zone

Bldgs. S39600, T–47713, 47715, 35752
Fort Richardson
Ft. Richardson Co: Anchorage AK 99505
Landholding Agency: Army
Property Number: 219220352–219220355
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Arizona

49 Bldgs.
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9102
Landholdin Agency: Army
Property Number: 219011738, 219011744–219011745, 219013931–219013958, 219013962–219013964, 219013966–219013980
Status: Underutilized
Reason: Secured Area

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area

Bldgs. 22330, 84001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219210016–219210017
Status: Excess
Reason: Other
Comment: Extensive deterioration

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material

U.S. Army Garrison
Fort Chaffee
428 Ellis Avenue
Fort Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219110114
Status: Underutilized
Reason: Other
Comment: Fuel pumphouse

Army Reserve Center
Hwy 79 North
Camden Co: Calhoun AR 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

U.S. Army Garrison
Fort Chaffee
2520 1st Avenue
Fort Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219110116
Status: Unutilized
Reason: Other
Comment: Fuel pumphouse

California

Bldgs. P–99, T–324
Fort Hunter Liggett
Jolon Co: Monterey CA 93944–
Landholding Agency: Army
Property Number: 219012413, 219012420
Status: Unutilized
Reason: Other
Comment: Latrine, detached structure

Bldgs. P–177, P–178, 325
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012414–219012415, 219012600
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. T–323, T–322
Fort Hunter Liggett
Mission Road
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012601–219012602
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material,
Comment: Within 2000 ft. of sewage facility

9 Bldgs., Nos. 2–8, 16, 156
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013590
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Oakland Army Base
Oakland Co: Alemeda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120048–219120051, 219140568
Status: Unutilized
Reason: Secured Area

Bldg. S–108
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Location: Roth Road
Landholding Agency: Army
Property Number: 219014290
Status: Underutilized
Reason: Secured Area

Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Location: POL Road
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014705, 219014713–219014717, 219014719–219014721
Status: Unutilized
Reason: Secured Area

Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Other
Comment: Oil Storage Tank

P–CO707, P–CO708, P–CO808—Igloo
Sierra Army Depot
Magazine Area
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014708–21901710
Status: Unutilized
Reason: Secured Area

Bldgs. 173, 177, 197

Roth Road-Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014942
Status: Unutilized
Reason: Secured Area

Bldgs. 13, 171, 178
Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

Bldg. 61
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange CA 90720–5001
Location: Main entrance on Lexington Dr.
Landholding Agency: Army
Property Number: 219120276
Status: Unutilized
Reason: Other
Comment: Detached latrine

Bldgs. S–60, S–115, S–133, S–136, S–206
Sharpe Site
Roth Road
Lathrop Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219140282–219140286
Status: Unutilized
Reason: Secured Area

Colorado

87 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo CO 81001–
Location:14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012226–219012228, 219012230–219012237, 219012239–219012257, 219012260–219012278, 219012280–219012288, 219012290– 219012296, 219012300, 219012303, 219012743, 219012745, 219012747– 219012748, 219014845, 219120058–219120063
Status: Unutilized
Reason: Secured Area

Bldgs. T–9643, T–9644
Fort Carson
Butts Airfield
Colorado Springs Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219013603–219013604
Status: Unutilized
Reason: Secured Area

Georgia

Fort Steward
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Other
Comment: Sewage treatment

Railway Spur and Bridge
Fort Gillem
Forest Park Co: Clayton GA 30050–
Location: Located on Highway 42, Southeast
Property Number: 219014293
Status: Unutilized
Reason: Within airport runway clear zone

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Other
Comment: Wheeled vehicle grease/ inspection rack

Bldg.5397
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219120268
Status: Unutilized
Reason: Other
Comment: Detached lavatory bldg.

32 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219140179–219140180, 219220264–219220293
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

25 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219140181–219140203, 219140205–219140206
Status: Unutilized
Reason: Other
Comment: Structural damage

Bldgs. GT001, GT002, GT003, GT004, 11725–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210136–219210139
Status: Unutilized
Reason: Secured Area

8 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220333–219220340
Status: Unutilized
Reason: Other
Comment: Detached lavatory

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Scholfield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area

P–3384 East Range
Schofield Barracks
East Range Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219030361
Status: Unutilized
Reason: Secured Area

Illinois

577 Bldgs.
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–219013136, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210140
Status: Unutilized
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.

Bldg. 251
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219012357
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 725
Fort Sheridan
Highwood Co: Lake IL 60037–5000
Landholding Agency: Army
Property Number: 219013769
Status: Underutilized
Reason: Secured Area

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area

Bldg. 133, Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100
Status: Underutilized
Reason: Other
Comment: Extensive deterioration

Indiana

138 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010919, 219010925–219010928, 219010929–219010936, 219010952, 219010954–219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014808–219014820, 219014822–219014851, 219014853–219014883, 219030315, 219120168–219120171, 219140425–219140440
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

6 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010920, 219010924, 219010927–219010928, 219014821, 219014852
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

56 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636,

219011638–219011641, 219210149–219210151, 219220220
Status: Unutilized
Reason: Secured Area

25 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219210152–219210155
Status: Unutilized
Reason: Secured Area

Iowa

14 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012603, 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219120172–219120174
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

33 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA
Landholding Agency: Army
Property Number: 219013706–219013738
Status: Unutilized
Reason: Secured Area

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

324 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040005–219040006, 219040032–219040353
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway. Secured Area

25 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040007–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway

Bldg. 9002
Sunflower Army Ammunition Plant
35525 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219110073
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

21 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Numbers: 219140209–219140219, 219140226–219140229, 219140233–219140235, 219140237–219140238, 219140240
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

33 Bldgs.
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Numbers: 219140549–219140577, 219140580–219140592, 219140594, 219140599–219140601, 219140606–219140612
Status: Unutilized
Reason: Secured Area. Within 2000 ft. of flammable or explosive material. Floodway

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Numbers: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Other
Comment: Detached Latrine

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Other. Secured Area
Comment: Sewage treatment facility

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Other
Comment: Industrial waste treatment plant.

4 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Numbers: 219140557–219140560
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldgs. TO5650, TO6136, TO6382, TO6486
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Numbers: 219210132–219210135
Status: Unutilized
Reason: Secured Area
Comment: Extensive deterioration

Louisiana

58 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Numbers: 219011668–219011670, 219011691, 219011700, 219011714–219011716, 219011718–219011724, 219011726, 219011728, 219011731, 219011733–219011737, 219012112, 219013571–219013572, 219013862–219013869, 219110121–219110137, 219120287–219120290, 219120303, 219140325–219140328, 219210147
Status: Unutilized
Reason: Secured Area (Most are within 2,000 ft. of flammable or explosive material)

Staff Residences
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Numbers: 219120284–219120286
Status: Excess
Reason: Secured Area

Maryland

55 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Numbers: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2,000 ft. of flammable or explosive material) (Some are in a floodway)

P501
Installation #24235
Ballast House
La Plata Co: Charles MD 20646–
Location: At the end of the access road
Landholding Agency: Army
Property Number: 219011643
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

8 Bldgs.
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014789, 219014847, 219120154, 219130039–219130042, 219130044
Status: Unutilized
Reason: Secured Area.

Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harfffford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Other
Comment: Sewage treatment plant.

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Other
Comment: Sewage pumping station.

Bldgs. 142–146, USARC Gaithersburg
8510 Snouffers School Road
Gaithersburg Co: Montgomery MD 20879–1624
Landholding Agency: Army
Property Number: 219120009–219120013
Status: Unutilized

Reason: Secured Area

140 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130048, 219130050, 219130053–219130054, 219130056, 219130059, 219140458, 219140460–219140462, 219140464–219140468, 219140470, 219140472–219140473, 219140475, 219140477, 219140479, 219140484, 219140486–219140488, 219140491–219140498, 219140500–219140503, 219140506–219140507, 219140509–219140510, 219140520–219140521, 219210116–219210123, 219220100–219220107
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown Co: Middlesex MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: Within 2000 ft. of Flammable or explosive material, Floodway, Secured Area.

14 Bldgs.
Fort Devens
Ft. Devens Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140241–219140254
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. T–102, T–110, T–111, Hudson Family Hsg
Natick RD&E Center
Bruen Road
Hudson Co: Middlesex MA 01749
Landholding Agency: Army
Property Number: 219220105–219220107
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Michigan

Bldg. 602, 604
US Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012358
Status: Unutilized
Reason: Within airport runway clear zone, Floodway, Secured Area.

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area.

33 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21901494–219014963, 219120001–219120008, 219140447–219140454
Status: Unutilized
Reason: Secured Area.

Minnesota

Bldgs. 113, 575, 598
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167
Status: Unutilized
Reason: Secured Area.

11 Bldgs.
Twin Cities Army Ammunition Plant
Old Highway 8
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219210014–219210015, 219220227–219220235
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Missouri

Lake City Army Ammo. Plant
59, 59A, 59C, 59B
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area.

Bldg #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area.

4 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140350–219140351, 219140422–219140423
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Nebraska

13 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68802–
Location: 4 miles west (Potash Road)
Landholding Agency: Army
Property Number: 219013849–219013861
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Nevada

124 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011953, 219011955, 219011957–219011958, 219011960, 219011962–219011963, 219011965–219011967, 219011969, 219011971–219011973, 219011975, 219011979, 219011981, 219011983, 219011985–219011986, 219011988–219011989, 219011991–219011993, 219011995, 219011998–219012001, 219012003–219012004, 219012006–219012008, 219012010–219012012, 219012014–219012015, 219012017–219012020, 219012022–219012024, 219012026, 219012027, 219012029–219012030, 219012032–219012033, 219012035–219012036, 219012038–219012040, 219012042–219012043, 219012045–219012048, 219012050–219012055, 219012059–219012107, 219013613–219013614
Status: Unutilized
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

64 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012002, 219012005, 219012009, 219012013, 219012016, 219012021, 219012025, 219012028, 219012031, 219012034, 219012037, 219012041, 219012044, 219013615–219013665
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material).

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area.

259 Concrete Explo. Mag. Stor.
Howthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area.

New Jersey

184 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 north
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012472, 219012474–219012475, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140616–219140617
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area

10 Bldgs.
Armament Reserve Dev. and Engineering Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army

Property Number: 219012758–219012760, 219012763–219012767
Status: Excess
Reason: Secured Area

Bldg. 2337
Fort Monmouth
Charles Wood Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012828
Status: Unutilized
Reason: Secured Area

18 Bldgs. Evans Area
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012844, 219013788, 219210102
Status: Unutilized
Reason: Secured Area

Bldgs. 13–14, 15A, 41, 100, 110–111
Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Location: Foot of 32nd Street and Route 169
Landholding Agency: Army
Property Number: 219013890–219013896
Status: Unutilized
Reason: Floodway, Secured Area

New York

Bldgs. 10, 20, 40
Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 219012514, 219012516, 219012519
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area

Bldg. 25
Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 219012521
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area
Comment: Contamination

Bldg. 110
Fort Totten
110 Duane Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012589
Status: Unutilized
Reason: Other
Comment: Contamination

Bldgs. 202, 204
Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148
Status: Unutilized
Reason: Secured Area

Oklahoma

553 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013792–219013793, 219013981–219013995, 219014081–219014102, 219014104, 219014107–219014137, 219014139, 219014141–219014159, 219014161–219014162, 219014165–219014216, 219014218–219014274, 219014330–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area (Some are within 2,000 ft. of flammable or explosive material)

P–3042
Fort Sill
3042 Austin Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130060
Status: Unutilized
Reason: Other
Comment: Structurally unsound

26 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219140524–219140530, 219140532–219140537, 219140540–219140541, 219140545–219140555
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219014844, 219030362–219030363, 219120032
Status: Unutilized
Reason: Secured Area

Pennsylvania

Defense Personnel Support Ctr.
2800 South 20th Street
Philadelphia Co: Philadelphia PA 19101–8419
Landholding Agency: Army
Property Number: 219011664
Status: Underutilized
Reason: Other environmental, Secured Area
Comment: Friable asbestos

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess
Reason: Secured Area

58 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219140267–219140324
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Tennessee

Bldg. 100
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010475
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area

23 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010477, 219010479–219010500
Status: Underutilized
Reason: Secured Area (Some are within 2,000 ft. of flammable or explosive material)

23 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030286, 219140613
Status: Unutilized
Reason: Secured Area (Some are within 2,000 ft. of flammable or explosive material)

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: Other
Comment: Easement to city of Saginaw for sewer pipeline ending 5/15/2023

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area

Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army

Property Number: 219012546, 219012548
Status: Underutilized
Reason: Secured Area

Bldg. 14
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014823
Status: Unutilized
Reason: Other
Comment: Pump house

Bldg. 9042
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040397
Status: Unutilized
Reason: Other
Comment: Detached latrine

Bldg. 9046
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040399
Status: Unutilized
Reason: Other
Comment: Sewage treatment plant

Bldg. 9047
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040400
Status: Unutilized
Reason: Other
Comment: Chlorine Building

Bldg. 40A Red River Army Depot
Texarkana Co: Bowie TX 75505–
Landholding Agency: Army
Property Number: 219120064
Status: Unutilized
Reason: Secured Area

Bldg. T–1191, T–1198 Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219120065–219120066
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 05
Red River Army Depot
18 miles W. of Texarkana, Hwy. 82
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219130002
Status: Excess
Reason: Secured Area

Bldg. 247
Red River Army Depot
18 miles west of Texarkana U.S. Hwy. 82
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219140255
Status: Underutilized
Reason: Secured Area

Bldg. T–5000
Camp Bullis
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Utah

21 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012114–219012115, 219012121, 219012138, 219012140, 219012150, 219012153, 219012159, 219012162, 219012164–219012167, 219012169–219012170, 219012172, 219012752, 219012755, 219030366, 219120031, 219120283
Status: Unutilized
Reason: Secured Area

18 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012142–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012163, 219012171, 219012742, 219012750–219012751, 219014938, 219040003, 219120279, 219120281
Status: Underutilized
Reason: Secured Area

12 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013996–219013999, 219130008, 219130011–219130013, 219130015–219130018
Status: Underutilized
Reason: Secured Area

8 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219014893, 219130009–219130010, 219130014, 219220204–219220207
Status: Unutilized
Reason: Secured Area

Bldg. 104
Tooele Army Depot, North Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219120014
Status: Underutilized
Reason: Other
Comment: Extensive deterioration

13 Bldgs.
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219120015–21912027
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Virginia

165 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120070–219120071, 219140618–219140633
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011576–219011580
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Other, Secured Area
Comment: Latrine, detached structure

3 Bldgs.
Fort Belvoir Co: Fairfax VA 22060–
Landholding Agency: Army
Property Number: 219012553, 219012556, 219012562
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material

16 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219120033, 219120035–219120039, 219120041–219120043, 219130006–219130007, 219140256, 219140258–219140261
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T–221
Vint Hill Farms Station
Warrenton Co: Fauquier VA 22186–
Landholding Agency: Army
Property Number: 219210142
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

9 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218
Status: Unutilized
Reason: Secured Area

7 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219220312–219220318
Status: Underutilized
Reason: Other
Comment: Extensive deterioration

Washington

6 Bldgs.
130–228th Street, SW.
Federal Regional Center (FEMA) Laboratory
Bothell Co: Snohomish WA 98021–
Landholding Agency: Army
Property Number: 219011637, 219011642, 219011644, 219011646–219011647, 219011649
Status: Unutilized
Reason: Secured Area

Bldg. 209
Yakima Firing Center
Yakima Co: Yakima WA 98901–5000
Location: Exit 26 off I–82 on Yakima Firing Center Road
Landholding Agency: Army
Property Number: 219040363

Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Other environmental, Secured Area
Comment: friable asbestos.

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319, 219011320–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Other environmental, Secured Area
Comment: friable asbestos.

Bldg. P–10111
Fort McCoy
Army Hospital Complex
Spart Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013443
Status: Unutilized
Reason: Other
Comment: Structure is boiler plant for hospital.

Bldg. 264
Badger Army Ammunition Plant
Bus Station
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219013784
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013870–219013875
Status: Unutilized
Reason: Secured Area.

5 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219030275–219030276
Status: Unutilized
Reason: Secured Area.

Bldgs. 6513–27, 6823–2, 6861–4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

13 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210103–219210115
Status: Underutilized
Reason: Other
Comment: Extensive deterioration.

17 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219220295–219220311
Status: Unutilized
Reason: Secured Area.

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area.

Georgia

Facility EH001
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located at the Eisenhower Army Medical Center
Landholding Agency: Army
Property Number: 219014786
Status: Unutilized
Reason: Other
Comment: heliport—concrete pad.

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River Road
Landholding Agency: Army
Property Number: 219012810
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material, Floodway.

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Floodway.

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Unutilized
Reason: Secured Area.

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline Co: Webster LA
Landholding Agency: Army
Property Number: 219013923
Status: Unutilized
Reason: Other
Comment: barrow pit, predominately under water.

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Unutilized
Reason: Floodway, Secured Area.

Nebraska

Land
Cornhusker Army Ammunition Plant
Potash Road
Grand Island Co: Hall NE 68802–
Location: 4 miles west of Grand Island
Landholding Agency: Army
Property Number: 219013785
Status: Unutilized
Reason: Floodway.

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area.

New York

Watervilet Arsenal
Watervliet Co: Albany NY 12189–4050
Location: East of Main Arsenal Reservation
Landholding Agency: Army
Property Number: 219012508
Status: Excess
Reason: Other
Comment: Easement to N.Y. State, 6-lane highway construction.

Oklahoma

McAlester Army Ammo. Plant
McAlester Co: Pittsburg OK 74501-5000
Location: 10 miles south of McAlester OK
Landholding Agency: Army
Property Number: 219011671
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.
McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501-5000
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Pennsylvania

Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon PA 17038-
Landholding Agency: Army
Property Number: 219012359
Status: Excess
Reason: Floodway.

Tennessee

Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN
Location: Area around VAAP—outside fence in buffer zone
Landholding Agency: Army
Property Number: 219013880
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Virginia

Fort Belvoir Military Reservation—5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060-
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area
Comment: 5.6 acres.

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913-
Location: Vacant land within plant boundaries
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area.

[FR Doc. 92-18605 Filed 8-6-92; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15]

Notice for Publication, F-14910-K; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to NANA Regional Corporation, Inc., successor in interest to Putoo Corporation, for approximately 3,930 acres. The lands involved are in the vicinity of Noorvik, Alaska Within T. 17 N., R. 10 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Arctic Sounder. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, and agency of the Federal Government or regional corporation, shall have until September 8, 1992 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,
Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 92-18713 Filed 8-6-92; 8:45 am]
BILLING CODE 4310-JA-M

[AZ-040-02-4333-02]

Call for Nominations for the San Pedro Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for the San Pedro Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill two positions whose terms expire this year on the San Pedro Riparian National Conservation Area Advisory Committee, which was established pursuant to section 104 of the Arizona-Idaho Conservation Act of 1988, Public Law 100-696.

DATES: All nominations should be received by September 15, 1992.

ADDRESSES: Bureau of Land Management, Safford District, 425 East Fourth Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The Committee is comprised of seven members. Under the Committee's staggered-term arrangement, the terms of two members will expire on December 31, 1992. The current members may be reappointed, or new members may be appointed. The new terms will be for 3 years, ending December 31, 1995.

Appointments made by the Secretary of the Interior pursuant to this call will ensure continued representation of specific categories of interest on the Committee. Nominees for the two expiring terms must be persons with recognized backgrounds in either Riparian Ecology of Environmental Education.

The purpose of the Committee is to provide informed advice to the Bureau's Safford District Manager on the management of the San Pedro Riparian National Conservation Area, as required by section 103 of the Arizona-Idaho Conservation Act of 1988, Public Law 10-696.

Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for government employees. The Committee normally meets at least twice yearly. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to serve on the Committee or to nominate individuals to serve on the Committee must do so in writing. Each nomination must include the name, address, and phone number of the nominee, along with biographical information such as profession, experience, and related interests. Nominations should be addressed to Safford District Manager, 425 East Fourth Street, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Diane Drobka, Public Affairs Officer, at the address above, or phone 602-428-4040.

Dated: July 30, 1992.
William T. Civish,
District Manager.
[FR Doc. 92-18714 Filed 8-6-92; 8:45 am]
BILLING CODE 4310-32-M

[ID-943-02-4212-13; IDI-27335]

Exchange and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange and Opening Order.

SUMMARY: The United States has issued an exchange conveyance document to Reed T. Mickelsen and LeVaun C. Mickelsen, of Hamer, Idaho, under section 206 of the Federal land Policy and Management Act. In addition to providing official public notice of the exchange, this document contains an order which opens land received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In an exchange made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described land has been conveyed from the United States:

Boise Meridian

T. 8 N., R. 36 E.,
Sec 28, NW¼NW¼, N½SW¼NW¼, SW¼SW¼NW¼, and NW¼SE¼SW¼NW¼.
Comprising 72.50 acres of public land.

2. In exchange for these lands, the United States acquired the following described land:

Boise Meridian

T. 8 N., R. 36 E.,
Sec. 29, W½SW¼.
Comprising 80.00 acres of private land.

The purpose of the exchange was to acquire non-Federal land which has high public value for wildlife habitat. The public interest was well served through completion of the exchange. The values of both the Federal and private lands were appraised at $7,200.

3. At 9 a.m. on September 8, 1992, the reconveyed private land described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 8, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on September 8, 1992, the reconveyed private land described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 8 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 28, 1992.
William E. Ireland,
Chief, Realty Operations Section.
[FR Doc. 92-18715 Filed 8-6-92; 8:45 am]
BILLING CODE 4310-GG-M

Fish and Wildlife Service

Availability of the Agency Draft American Hart's-tongue Fern Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of an agency draft recovery plan for American hart's-tongue fern. This species is known from both publicly and privately owned sites in Michigan and New York and from privately owned sites in Tennessee and Alabama. It also occurs in Ontario, Canada. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 28, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the address shown above (telephone 704/665-1195, Ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The agency draft recovery plan for American hart's-tongue fern outlines a mechanism that provides for the recovery and eventual delisting of this federally threatened species. This species was listed as a threatened species primarily because of alteration or destruction of its habitat through land-clearing, quarrying, trampling, timber-harvesting, or construction activities. The plan requires that the Service and other cooperators in the recovery effort protect the known

populations, determine the biological requirements of the species, protect the species' genetic resources, and implement the management actions needed to ensure the continued existence of 15 self-sustaining populations. This agency draft of the recovery plan was preceded by a technical review draft that was reviewed by species experts and by experts in the protection of rare plants. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 28, 1992.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 92-16712 Filed 8-6-92; 8:45 am]

BILLING CODE 4310-55-M

Emergency Exemption; Issuance

On July 29, 1992, the U.S. Fish and Wildlife Service (Service) issued a permit, US 770682, to Hawthorn Corporation, Grayslake, IL, to import four captive born unsexed tiger cubs (*Panthera tigris*). The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the tigers existed and that no reasonable alternative was available to the applicant. There were no available experienced veterinary medical services available that could provide care for the cubs during their infancy.

Dated: August 3, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-16711 Filed 8-6-92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Victoria Dettmar, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6211.

Comments on the following assessment are due 15 days after the date of availability: AB-55 (Sub-No. 381X), CSX Transportation—Abandonment—In Somerset County, Pennsylvania. EA available 7/30/92.

Comments on the following assessment are due 30 days after the date of availability: AB-55 (Sub-No. 371X), CSX Transportation, Inc.—Abandonment Exemption In Polk County, Florida. EA available 7/28/92.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-16781 Filed 8-6-92; 8:45 am]

BILLING CODE 7035-01-M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. The parent corporation and address of its principal office: Guardian Industries Corp., 43043 West Nine Mile Road, Northville, Michigan 48167.

2. Guardian Transportation Corp., Consolidated Glass and Mirror Trucking Corporation and Falconer Glass Industries, Inc., all wholly-owned subsidiaries of Guardian Industries Corp., will provide transportation services to the Guardian Industries Corp. wholly-owned subsidiaries listed hereafter.

3. Wholly-owned subsidiaries which will participate in the operations, and their State(s) of incorporation are:

(i) Guardian Fiberglass, Inc., Delaware
(ii) Guardian Glass Company, Ohio
(iii) Guardian Transportation Corp., Delaware
(iv) Guardian Walled Lake Fabrication Corp., Michigan
(v) Capital of PASCO, Inc., Delaware
(vi) Falconer Glass Industries, Inc., Delaware
(vii) Guardian Automotive Products, Inc., Delaware
(viii) Guardian Fabrication, Inc., Delaware
(ix) Windsor Plastics, Inc., Nevada
(x) Windsor Plastics, Inc., Texas
(xi) Consolidated Glass and Mirror Corporation, Virginia
(xii) Consolidated Glass and Mirror Trucking Corporation Delaware

B. 1. The parent corporation is IRECO Incorporated; Eleventh Floor Crossroads Tower; Salt Lake City, UT 84144.

2. Wholly-owned subsidiaries (with states of incorporation) participating in the operations are:

A.E. Sibley, Inc.—CT
ECONEX Inc.—OH
ECONEX North, Inc.—DE
Explosive Supply Company, Inc.—MA
Gibson-IRECO, Inc.—DE
IRECO of Florida, Inc.—DE
Lilly—IRECO, Inc.—DE
OEI. Inc.—DE
Pacific Powder Co.—DE
Paige-IRECO, Inc.—DE
Southeastern Energy, Inc.—UT
Strawn Explosives, Inc.—DE
W.H. Burt Explosives, Inc.—NM

C. 1. Parent corporation and address of principal office: Poly-America, Inc., 2000 West Marshall Drive, Grand Prairie, TX 75051.

2. Wholly-owned subsidiaries and commonly controlled corporations which will participate in the operations, and State of Incorporation:

(i) Upnorth Plastics, Inc., State of Incorporation: Minnesota
(ii) Western Poly Corp., State of Incorporation: Texas
(iii) Poly-Flex, Inc., State of Incorporation: Texas
(iv) Poly Trucking, Inc., State of Incorporation: Texas

D. 1. Parent Corporation and address of principal office: Savannah Foods & Industries, Inc., Post Office Box 339, Savannah, GA 31402-0339.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

(a) Everglades Sugar Refinery, Inc., Florida
(b) Food Carrier, Inc., Georgia
(c) Michigan Sugar Company, Michigan
(d) Savannah FoodService, Inc., Delaware
(e) Great Lakes Sugar Company, Ohio
(f) Colonial Sugars, Delaware
(g) Phoenix Packaging Corporation, Delaware
(h) Raceland Sugars, Inc., Delaware

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-16782 Filed 8-6-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–30]

Don H. Cole, M.D. Revocation of Registration

On January 23, 1992, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Don H. Cole, M.D., (Respondent) of 3715 Carlile Avenue, Pueblo, Colorado, seeking to revoke his DEA Certificate of Registration, BC1841534, and to deny any pending applications for renewal of that registration. The grounds for the issuance of the Order to Show Cause and Immediate Suspension of Registration were that Respondent's continued registration is inconsistent with the public interest and would constitute an imminent danger to the public health and safety during the pendency of any administrative proceedings involving his registration. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated January 28, 1992. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On March 3, 1992, the Government filed a motion for summary disposition on the ground that Respondent was no longer authorized to handle controlled substances in the state in which he was registered with the Drug Enforcement Administration. With the motion, Government counsel attached a copy of the Colorado Board of Medical Examiner's Order of Summary Suspension, dated January 29, 1992. On March 13, 1992 and March 30, 1992, Respondent filed his Responses to the Government's motion for summary disposition.

On May 4, 1992, Judge Bittner issued her opinion and recommended decision, recommending the revocation of Respondent's registration and the denial of any pending applications for renewal. Neither party filed exceptions to the administrative law judge's opinion and recommended decision and, on June 4, 1992, the administrative law judge transmitted the record in this matter to the Administrator. The Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The Administrator finds that on January 29, 1992, the Colorado Board of Medical Examiners suspended Respondent's medical license, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in that state. Consequently, Respondent is not currently authorized to handle controlled substances in the State of Colorado.

The Drug Enforcement Administration does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. *See* 21 U.S.C. 801(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Bobby Watts, M.D., 53 FR 11919 (1988); Wingfield Drugs, Inc., 52 FR 27070 (1987); Avner Kauffman, M.D., 50 FR 34208 (1985).

In his response to the Government's motion for summary disposition, Respondent acknowledged that his state medical license had been suspended since January 1992. Respondent, however, argued that his DEA registration should not be revoked because the Colorado Medical Board action is not final and that a summary disposition and revocation of his DEA registration would be unduly harsh. For the reasons discussed in the administrative law judge's opinion, the Administrator finds no merit to Respondent's argument that revocation of his DEA registration at this time would be unduly harsh. Respondent is not currently authorized to practice medicine or authorized to handle controlled substances in Colorado, the state where he is registered with DEA. At this time, there is a lawful basis for the revocation of Respondent's registration.

Since there is no dispute about Respondent's lack of state authority to handle controlled substances, the administrative law judge properly granted the Government's motion for summary disposition. When no question of fact is involved, a plenary, adversarial administrative proceeding with the full panoply of due process rights is not obligatory. See Philip E. Kirk, M.D., Docket No. 82–36, 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BC1841534, previously issued to Don H. Cole, M.D., be, and it hereby is, revoked. The Administrator further orders that all pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 7, 1992.

Dated: August 3, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–18721 Filed 8–6–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202) 523–5095). Comments and questions about the items on this list should be directed to

Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Bureau of Labor Statistics
National Survey of Users of Employment and Unemployment Statistics
BLS–CS–1
Annually
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
825 respondents; 15 minutes per response; 206 total burden hours

The National Survey of Users of Employment and Unemployment Statistics measures "customer satisfaction" of all users of such data in order to provide strategic guidance to a quality improvement program.

Extension

Bureau of Labor Statistics
Report of Occupational Employment
1220–0042, BLS–2877
Annually
State or Local Governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
229,000 respondents; 127,120 total burden hours; .56 hours per response; 1 form

The OES survey program is a Federal/State sample survey of employment by occupation in non-farm establishment that is used to produce data on current occupational employment and is a component in the development of employment and training programs and occupational information systems.

Due to changes in printing schedules and the coming end of the fiscal year, it is requested that the OES survey be granted clearance before August 15. The program requests a one-year extension which will enable the survey's continued operation, while providing the public an opportunity to comment on the survey within a reasonable period.

Employment and Training Administration
Alien Claimant Activity report
1205–0268, ETA 9016
53 respondents; 1 hour per response (quarterly); 212 total burden hours
Quarterly
State or local governments

This report allows assessment of cost efficient of the INS' Verification System (commonly known as SAVE) and allows the determination of the impact of the Immigration Reform and Control Act on the Unemployment Insurance System nationally.

Employment and Training Administration
Attestation by Employers for Off-Campus Work Authorization for F–1 Students
1205–0315; ETA 9034
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organization
40,000 respondents, 40,040 total burden hours; 1 hour 1 minute per response; 1 form

The information provided on this form by employers seeking to use aliens admitted as students on F–1 visas in off-campus work will permit DOL to meet Federal responsibilities for program administration, management and oversight.

Mine Safety and Health Administration
Notification of Legal Identity
1219–0008; MSHA Form 2000–7
On occasion
Businesses and other for profit; Small businesses or organizations
10,000 respondents; 1 hour per response; 10,000 total burden hours

Requires mine operators to file with MSHA the name and address of the mine and the name and address of the persons who control and operate the mine, and any revisions of such names and addresses. The information is used to identify persons chargeable with violations of safety and health standards, in the assessment of civil penalties, and in the service of legal documents.

Mine Safety and Health Administration
Record of All Certified and Qualified Persons
1219–0049
Quarterly
Businesses and other for profit; Small businesses or organizations
18,580 responses; 5 minutes per response; 1,542 total burden hours

Requires coal mine operators to maintain a list of persons who are certified and those who are qualified to perform duties which require specialized expertise at underground and surface coal mines. The recorded information is necessary to ensure that only persons who are properly trained and have the required experience are permitted to perform these duties.

Pension and Welfare Benefits Administration
DOL Prohibited Transaction Class Exemption 76–1
3,400 recordkeepers; 15 minutes per response; 850 total burden hours
Businesses or other for-profit; Small businesses or organizations; Non-profit institutions

The paperwork requirements included in this Prohibited Transaction Class Exemption are maintenance of written records documenting the agreement between a plan and a participating employer concerning payment of delinquent plan contributions; the agreement between a plan and participating employer regarding the terms under which a plan makes a loan to the employer for construction; and, the agreement concerning the leasing of office space, provisions of administrative services or sale/leasing of goods by a plan to an employer.

Revision

Employment and Training Administration
Weekly Claims and Extended Benefits Data; Weekly Initial and Continued Claims Report
1205–0028; ETA 538 and 539
53 respondents; .66 hours per response; 3,675 total burden hours
Weekly
State or local governments

Data for the determination of the beginning continuance, or termination of an extended benefit period in any State by reason of the Extended Benefits trigger rate.

Employment and Training Administration
Title 29 CFR Part 30; Equal Employment Opportunity in Apprenticeship and Training
1205–0224; ETA 9030
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

CFR No.	Affected public	Respondents	Frequency	Per response
30.3	Apprenticeship Sponsors	2,700	One-time	½ hour.
30.4	do	300	One-time	1 hour.
30.5	do	5,000	One-time	½ hour.
30.6	do	50	One-time	5 hours.
30.8	do	44,000	One-time	1 minute.
30.8	Apprenticeship Programs	22,000	One-time	5 minutes.
30.11 (ETA 9039)	Applicants/Apprentices	30	One-time	½ hour.

5,030 respondents (5,000 sponsors + 30 appl/appr); 6,981 total burden hours

This information is required to promote and ensure equality of opportunity with sponsors of apprenticeship programs registered with recognized State apprenticeship agencies.

Signed at Washington, DC this 4th day of August, 1992.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 92-18746 Filed 8-6-92; 8:45 am]

BILLING CODE 4510-22-M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
- GA91-3 (Feb. 22, 1991)..... p. All.
- GA91-22 (Feb. 22, 1991)..... p. All.
- GA91-32 (Feb. 22, 1991)..... p. All.

New York:
- NY91-9 (Feb. 22, 1991)..... p. 869, p. 870.
- NY91-10 (Feb. 22, 1991)..... p. 873, p. 874.
- NY91-12 (Feb. 22, 1991)..... p. 893, pp. 895-900.
- NY91-20 (Feb. 22, 1991)..... p. 949, pp. 950, 952.

Pennsylvania:
- PA91-4 (Feb. 22, 1991)..... p. 985, pp. 987-994.

Volume II

Indiana:
- IN91-1 (Feb. 22, 1991)..... p. 243, pp. 245, 247.
- IN91-2 (Feb. 22, 1991)..... p. 259, pp. 262-263, 265.
- IN91-5 (Feb. 22, 1991)..... p. 305, p. 308.

Kansas:
- KS91-9 (Feb. 22, 1991)..... p. All.

Michigan:
- MI91-12 (Feb. 22, 1991)..... p. All.

Minnesota:
- MN91-5 (Feb. 22, 1991)..... p. 577, p. 578.
- MN91-7 (Feb. 22, 1991)..... p. 587, p. 590.
- MN91-8 (Feb. 22, 1991)..... p. 607, pp. 610-611.
- MN91-12 (Feb. 22, 1991)..... p. 629, p. 630.
- MN91-15 (Feb. 22, 1991)..... p. 637, p. 639.

Missouri:
- MO91-13 (Feb. 22, 1991)..... p. All.

Ohio:
- OH91-2 (Feb. 22, 1991)..... p. 821, pp. 822-824, 826.

OH91-34 (Feb. 22, 1991)..... p. All.

Volume III

Arizona:
AZ91-2 (Feb. 22, 1991)..... p. All.
Colorado:
CO91-5 (Feb. 22, 1991)..... p. All.
Washington:
WA91-3 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 31st day of July 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-18617 Filed 8-6-92; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, two public meetings of the Working Group on Individual Participant Rights of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m., Tuesday, September 8, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Individual Participant Rights Working Group was formed by the Advisory Council to study issues relating to Individual Participant Rights for employee benefit plans covered by ERISA.

The purpose of the September 8 meeting is to take testimony from the American Institute of Certified Public Accountants. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter. In addition, the Working Group will review and discuss past testimony presented and begin deliberation regarding possible recommendations to the Advisory Council.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before September 1, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1, 1992.

Signed at Washington, DC, this 4th day of August, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-18763 Filed 8-6-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-45]

National Environmental Policy Act; Finding of No Significant Impact; Mars Observer Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of No Significant Impact.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and NASA's Procedures for Implementing NEPA (14 CFR subpart 1216.3), NASA has made a Finding of No Significant Impact (FONSI) with respect to the planned Mars Observer mission. The Mars Observer spacecraft and its Transfer Orbit Stage will be assembled and integrated at the Kennedy Space Center and then launched from Cape Canaveral Air Force Station, Florida The launch vehicle will be a Commercial Titan.

DATES: Comments must be in writing and received no later than September 8, 1992.

ADDRESSES: Comments should be addressed to Dr. William L. Piotrowski, NASA Headquarters, Code SL, Two Independence Square, SW., Washington, DC 20546. The Environmental Assessment (EA) prepared for the Mars Observer mission which supports this FONSI may be reviewed at:

(a) NASA Headquarters Information Center, room 126, 600 Independence Avenue, SW., Washington, DC, 20546

(b) Spaceport U.S.A., room 2001, John F. Kennedy Space Center, Florida, 32899.

(c) NASA Information Center, Dryden Flight Research Facility, P.O. Box 273, Edwards, CA 93523.

(d) NASA Information Center, Goodard Space Flight Center, Greenbelt, MD 20771.

(e) NASA Information Center, Johnson Space Center, Houston, TX 77058.

(f) NASA Information Center, Ames Research Center, Moffett Field, CA 94035.

(g) NASA Information Center, Langley Research Center, Hampton, VA 23665.

(h) NASA Information Center, Lewis Research Center, 21000 Brookpart Road, Cleveland, OH 44135.

(i) NASA Information Center, Marshall Space Flight Center, Huntsville, AL 35812.

(j) NASA Information Center, Stennis Space Center, MS 39529.

(k) NASA Information Center, Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA Information Center, Wallops Flight Facility, Wallops Island, VA 23337.

A limited number of copies of the EA are available for persons wishing a copy by contacting Dr. Piotrowski.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Piotrowski, NASA Headquarters, Code SL, Two Independence Square, SW., Washington, DC 20546, 202-453-1584; or Kenneth M. Kumor, NASA Headquarters, Code JXG, Two Independence Square, SW., Washington, DC 20546, 202-358-1112.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the Mars Observer mission and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The EA, which includes input from Federal and Florida state agencies, is incorporated by reference in this FONSI.

The Mars Observer mission will deliver a spacecraft platform to a low altitude near-polar orbit around Mars where it will collect global observations of basic geological, geophysical, and climatological processes of the planet. The spacecraft will carry a complement of eight science instruments that will be used to collect data on the climatology, surface composition, topography, gravity field, and magnetic field of Mars. The launch vehicle for the mission will be a Commercial Titan, which is a growth version of the existing Tital 34D design. The Transfer Orbit Stage, used to inject the spacecraft on a trajectory to Mars, utilizes solid propellants. The spacecraft itself will have two chemical propellant systems, one for maneuvers requiring large velocity changes and the other for orbit maintenance. The spacecraft's electric power will be provided by rechargeable nickel-cadmium batteries and solar array panels.

Alternatives considered include the no action alternative (i.e., no Mars Observer mission) and alternative launch vehicles, including the Space Shuttle, other Titan vehicles, Deltas and Atlases. Only larger Titans and the Space Shuttle have the capacity needed for the Mars Observer mission. A manned mission is not required to launch the Mars Observer spacecraft. Among Titan configurations, the Commercial Titan is the most appropriate size launch vehicle. Termination of the mission would result in the loss of important and substantial scientific knowledge.

Impacts to the human environment associated with this mission arise almost entirely during the launch of the spacecraft by the Commercial Titan. There will be air emissions during the launch, with carbon monoxide, hydrogen chloride, and aluminum oxide particulates as the primary pollutants. Short-term water quality and noise impacts will occur and there may be short-term impacts on wetlands, and animal and plant life. The mission will not affect cultural resources or floodplains. The level and scope of environmental impacts associated with the Commercial Titan launch vehicle are within the envelope of impacts that have been addressed in previous EA's and FONSI's concerning other Titan configurations. No significant new circumstances or information relevant to environmental concerns associated with the launch vehicle have been identified which would affect the earlier findings. On the basis of the Mars Observer EA, NASA has determined that the environmental impacts associated with the mission will not individually or cumulatively have a significant effect on the quality of the human environment. Therefore, an environmental impact statement is not required.

Dated: July 31, 1992.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 92-18722 Filed 8-6-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: Monday, August 10, 1992, 11 a.m.

ADDRESSES: National Press Club, 14th & F Streets, NW., 13th Floor/Room: Lisagor, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1111 18th Street, NW., #806, Washington, DC 20036 (202) 275-6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92-18797 Filed 8-6-92; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date and Time: Thursday, August 27, 1992, 2 p.m.-3:30 p.m.

Place: National Science Foundation, room 540, 18th and G Street, NW., Washington, DC.

Type of Meeting: Closed. The meeting is closed to the public because future budget and program issues will be discussed.

Contact Persons: Charles E. Myers or Noel Broadbent, Division of Polar Programs, room 627, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7817.

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Public Law 98-373, the Arctic Research and Policy Act, to survey arctic research, help set priorities for future arctic research, assist in the development of a national arctic research policy, prepare an integrated multi-agency budget request for arctic research, develop a plan to implement national arctic research policy, and simplify cooperation in and coordination of arctic research.

Proposed Agenda Item: Discussion of proposed U.S. arctic research related to radioactive and other environmental pollution in the Arctic Region of the Former Soviet Union.

Public Participation: Committee meetings are not public hearings and will not normally receive verbal comments from the public unless specifically invited by the Committee. Persons invited to address the Committee will be limited to 5 minutes each. To address the Committee, submit a proposed statement. If the statement is relevant and appropriate to the agenda at that particular meeting, the Committee will invite you to present your statement. The texts of statements shall not exceed 5 double spaced typed pages each.

Charles E. Myers,

Head, Arctic Staff, Division of Polar Programs.

[FR Doc. 92-18744 Filed 8-6-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co. Fermi Nuclear Plant, Unit 2; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that Mr. Robert Karalewitz (Petitioner) has submitted to the U.S. Nuclear Regulatory Commission (NRC) on June 22, 1992, a Petition pursuant to 10 CFR 2.206.

The Petitioner requests that the license to operate the Fermi Nuclear Plant be suspended until certain supervisors are replaced. As a basis for this request, the Petitioner asserts that certain security department supervisors lied and falsified documents to the NRC. The Petitioner also asserts that these supervisors conspired to revoke his

access to the protected area at Fermi-2 and to have him fired.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Reactor Regulatory (NRR). As provided by 10 CFR 2.206, the NRC will take appropriate action on this request with a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 3rd day of August, 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18789 Filed 8-6-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co. et al., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 64 to Facility Operating License No. NPF-62, issued to Illinois Power Company and Soyland Power Cooperative Inc., which revised the Technical Specifications for operation of the Clinton Power Station, Unit 1, located in Dewitt County, Illinois. The amendment was effective as of the date of issuance.

The amendment revised Technical Specification 3/4.3.4.1, Anticipated Transient Without Scram Recirculation Pump Trip System, to allow use of the trip system test switches during condition 1 (rum mode), and to extend the time when an operable channel must be placed in the tripped condition from 48 to 72 hours.

The application for the amendment compiles with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 31, 1991 (56 FR 24849). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 17, 1990 and supplemented December 17, 1991; (2) Amendment No. 64 to License No. NPF-62, (3) the Commission's related Safety Evaluation dated July 30, 1992; and (4) the Environmental Assessment dated February 20, 1992 (57 FR 6747). All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 6172. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: John N. Hannon, Director, Project Directorate III-3, Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland this 30th day of July 1992.

For the Nuclear Regulatory Commission.

C. E. Carpenter, Jr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18786 Filed 8-6-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Millstone Nuclear Power Station, Unit 1; Revocation of Exemption

I

Northeast Nuclear Energy Company (NNECO or the licensee) is the holder of Facility Operating License No. DPR-21, which authorizes the operation of the Millstone Nuclear Power Station, Unit 1, (the facility) at steady-state power levels not in excess of 2010 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in New London County, Connecticut. The license provides, among other things, that it is subject to all rules, regulations and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

The Code of Federal Regulations at 10 CFR 50.49, "Environmental qualification of electric equipment important to safety for nuclear power plants," requires that the environmental qualification program at Millstone Unit 1 be completed at the end of the second refueling outage following March 31, 1983 (the second refueling outage ended December 23, 1985). The Commission issued a Memorandum and Order to the licensee regarding the deadline for environmental qualification of the remaining unqualified motor operators at Millstone Unit 1, dated November 20, 1985, that granted an extension of the schedule to not later than August 30, 1987. On June 9, 1987, the NRC granted an exemption to the environmental requirements for seven valve motor operators because it was determined that they were not necessary to ensure that the required systems will function to mitigate a design basis event (June 18, 1987, 52 FR 23219).

By the licensee's letter dated May 24, 1991, the licensee requested that the exemption for the motor operators for Drywell Spray Valves 1-LP-15A and B and 1-LP-16A and B be revoked. Revocation of the exemption would allow credit for drywell spray, following an accident, as reflected in the plant Emergency Operating Procedures. As stated in the licensee's letter, the subject valve motor operators have now been replaced with equipment which is fully in conformance with 10 CFR 50.49 with regard to environmental qualifications for electric equipment. A new containment pressure/temperature profile has also been generated which takes credit for the post-design basis accident (DBA) operability of Drywell Spray.

III

The NRC staff has reviewed the information submitted by the licensee including additional information submitted by letters dated August 28, 1991 and May 1, 1992, and concludes that the basis upon which the exemption for the subject motor operators was granted is no longer valid in that the motor operators for valves 1-LP-15A and B and 1-LP-16A and B have been replaced with fully environmentally qualified equipment. The pose-DBA operability of these valves is reflected in a revised post-DBA containment pressure/temperature profile. It should be noted, as explained in the NRC staff Safety Evaluation, that a minimum initiation time of 30 minutes is acceptable for crediting drywell spray.

IV

Accordingly, the Commission has determined that the specific exemption from 10 CFR 50.49 granted on June 8,

1987, for the motor operators for valves 1–LP–15A and B and 1–LP–16A and B is hereby revoked in that it is no longer necessary.

This revocation of exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of July 1992.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–18787 Filed 8–6–92; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting of Panel on Structural Geology & Geoengineering

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's (the Board) Panel on Structural Geology & Geoengineering will hold a meeting on September 14 and 15, 1992, on the volcanic vulnerabilities of the proposed high-level waste repository at Yucca Mountain, Nevada. The meeting will be held at the Alexis Park Hotel, 375 East Harmon, Las Vegas, Nevada 89109. In conjunction with the meeting, the panel is hosting a field trip on September 16 to areas of recent geologic investigations near Lathrop Wells and in Crater Flat.

During the two-day meeting, Panel members will receive updates on the geological and geophysical studies related to volcanism, including geochronology, paleomagnetism, and soils and geomorphology. Panel members also will review probabilistic studies of volcanic hazards and receive updated information on volcanic effects studies. The meeting will conclude with a round table discussion of issues related to volcanism. Presenters will include members of the Department of Energy (DOE) and its contractors, the state of Nevada and its contractors, the Nuclear Regulatory Commission, and individual scientists. The panel meeting will be conducted from 1 p.m. to 5:15 p.m. on Monday, September 14, and from 8:30 a.m. to 5:30 p.m. on Tuesday, September 15.

On Wednesday, September 16, the Panel will host a DOE-conducted field trip to areas of recent geologic investigations near Lathrop Wells and in Crater Flat. The field trip will begin at 7 a.m. at the Valley Bank Center, 101 Convention Center Drive, Las Vegas, and return to the Valley Bank Center at approximately 7 p.m. There will be a bring-your-own lunch and discussion break at Steve's Pass.

Persons wishing to join the field trip must register in advance by calling Frank Randall at the Board's Office of External Affairs, (703) 235–4473, no later than September 4, 1992. Please bring the following for the field trip: Brown-bag lunch, jacket and rain gear, sturdy walking shoes, hat, and sunscreen. Ice chests and water will be provided.

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning October 27, 1992. For further information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: August 4, 1992.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 92–18747 Filed 8–6–92; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash, (202) 272–2142.

Upon Written Request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Revisions

Regulation 14A—File No. 270–56.
Regulation S–K—File No. 270–2.
Form 10–K—File No. 270–48.
Form 10—File No. 270–51.
Form S–1—File No. 270–58.
Form S–4—File No. 270–287.
Form S–11—File No. 270–64.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval proposed revisions for the following rules and forms:

Regulation 14A (Rule governing the solicitation of proxies), as revised, would affect approximately 8,733 filers and result in an average burden of 90 hours per response.

Regulation S–K (Standard Instructions for 1933 and 1934 Act filings) is assigned one burden hour for administrative convenience.

Form 10–K (1934 Act annual report) would affect approximately 6,261 filers and result in an average burden of 1,716 hours.

Form 10 (1934 Act registration statement) would affect approximately 110 filers and result in an average burden of 120 hours.

Form S–1 (1933 Act registration statement) would affect approximately 1,239 filers and result in an average burden of 1,299 hours.

Form S–4 (1933 Act registration statement) would affect approximately 505 filers and result in an estimated burden of 1,272 hours.

Form S–11 (1933 Act registration statement for securities of certain real estate companies), would affect approximately 340 filers and result in an average burden of 875 hours.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission forms and rules.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503 (Project numbers 3235–0059, 0063, 0064, 0065, 0067, 0071, and 0324).

Dated: July 29, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18728 Filed 8–6–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 1667]

National Committee for Man and the Biosphere; Request for Proposals Fiscal Year 1993

Introduction

The mission of the United States Man and the Biosphere Program (U.S. MAB) is to foster harmonious relationships between humans and the biosphere through an international program of policy-relevant research which

integrates social, physical and biological sciences to address actual problems.

To implement this mission, the U.S. National Committee for U.S. MAB hereby announces its priorities and criteria for the selection of original research proposals and projects to receive U.S. MAB support in federal fiscal year 1993, contingent upon the availability of funds. During federal fiscal year 1993, U.S. MAB will concentrate the majority of its available resources on the development of the major core research programs of the U.S. MAB Directorates and U.S. Biosphere Reserves. Consequently the U.S. MAB Program intends to make available a relatively modest amount of funds (approximately two hundred fifty thousand dollars) for individual scientist investigators, or small groups of scientists to begin in a limited, yet timely, manner interdisciplinary pilot projects and programs. U.S. MAB funding is aimed at stimulating scientists from different disciplines to work together in the areas described below.

Scientists are encouraged to seek complementary funds from other sources. Funding from U.S. MAB is not intended to substitute for discipline specific support available from other sources.

Because of limited available funding, U.S. MAB will give priority consideration to proposals which directly complement the objectives of the U.S. MAB directorate programs. Proposed research and projects which further the U.S. MAB objectives, may be spread over several years. Proposal will be evaluated for the intrinsic merit of the research, its policy relevance, effectiveness in integrating the social and biological sciences, and the quality and demonstrated productivity of the principal investigators. Interested scientists and individuals are encouraged to write to the U.S. MAB Secretariat to receive copies of the full U.S. MAB Directorate Mission Statements and approved directorate core programs for:

- High Latitude Ecosystems;
- Human Dominated Systems;
- Marine and Coastal Ecosystems;
- Temperate Ecosystems; and
- Tropical Ecosystems.

Program Areas

In the area of High Latitude Ecosystems, the U.S. MAB program will focus on proposals which enhance the understanding and rational management of resources and ecosystems in the high-latitude regions of the United States and other circumpolar northern lands in order to sustain the region's biology and the welfare of its inhabitants. The directorate's core program will assess human-environment interactions and institutional frameworks in terms of their effect on the success of alternative caribou management systems in the Arctic, in order to: (1) Advance our understanding of the relationships between common property resource management structures and management effectiveness; (2) develop a sound empirical baseline on two Arctic management systems which may be severely stressed in the next five to ten years; and (3) apply quantitative scientific methods to comparisons of management systems and their effectiveness.

In support of the High Latitude Ecosystems Directorate core project, investigator-initiated proposals are solicited that relate to the Directorate mission. Priority will be given to proposed research and activities that address specific components of the Directorate's core program or which address specific aspects of the dynamics, protection and management of northern biosphere reserves.

In the area of Human Dominated Systems, the U.S. MAB program focuses on ecological systems that are significantly affected by human activities. The Directorate's core program focuses on the central theme of *ecological sustainability*, attempting to define its meaning and examining a variety of human institutions and policies that impinge upon it.

The Directorate's core project explores these issues through case studies on three U.S. biosphere reserves: the Everglades and surrounding areas of South Florida, the New Jersey Pinelands, and the Virginia Coastal Biosphere Reserve. The goal is explicitly to: (a) Define ecological sustainability for the ecosystems of the case-study biosphere reserves and surrounding areas, in terms of particular levels of selected ecological endpoints; (b) evaluate patterns of human uses of environmental resources and other anthropogenic stresses imposed on these ecosystems; (c) examine societal and institutional factors influencing ecological sustainability; and (d) assess their compatibility with essential characteristics of ecological sustainability.

In support of the Human Dominated Systems Directorate core project, investigator-initiated proposals are solicited that advance methodologies for defining ecological sustainability or understanding its causal relationships with and feedbacks from society. Priority will be given to proposed research and activities that address specific components of the Directorate's coupled human/ecological systems model and/or address specific aspects of one of the selected biosphere reserves.

In the area of Marine and Coastal Ecosystems, U.S. MAB seeks proposals that: assess the sources, impacts and control of marine pollution, including but not limited to nutrient loading, eutrophication, siltation and relationships to freshwater resources; analyze sea level rises, coastal erosion and other land margin disturbances; assess habitat loss or alteration, including implications for biological diversity; identify and estimate the means for and benefits of preservation of traditional marine and coastal uses; clarify the relationships between natural fluctuations and human perturbations, as with red tides and harmful algal blooms; or investigate fisheries and other living resource management issues.

In the area of Temperate Ecosystems, the U.S. MAB program focuses on the comparative analysis of social and economic processes, land uses, landscape dynamics, and resource effects and environmental quality impacts for the case study areas in the Southern Appalachian Mountains and the Olympic Peninsula of Washington State. An interdisciplinary team of social, biological, and quantitative scientists has developed an integrated approach to studying landscape-level processes coupling humans and their biophysical environment.

In Phase II of the core program the Temperate Directorate proposes to examine water quality and sediment routing as a function of landscape change. It will examine how the abundance and spatial arrangement of landscape patches affect sediment routing and water quality; and how changes in these environmental conditions influence socioeconomic conditions and institutional decisions. U.S. MAB seeks proposals that complement and reinforce the Temperate Ecosystems Directorate core project's theme of management of the temperate landscape for diversity, resilience, productivity and sustainability for the long-term. Proposals and the products of research should: (1) Involve the integration of social and biophysical sciences; (2) address problems of integrating either site or community level processes with landscape processes, or landscape processes with regional or global processes; and (3) be useful to major land management agencies, landowners and authorities coordinating multi-

ownership resources. Preference will be given to projects that function as satellite programs and provide pertinent information that is beyond the scope of the Directorate's core project or provide comparative information from other regions or levels or ecological analysis.

In the area of Tropical Ecosystems, the U.S. MAB core program reflects a theme central to the goals of the directorate—management of the tropical landscape for diversity, resilience, productivity, and sustainability for the long term. The Maya Tri-national Region, encompassing parts of Belize, Guatemala, and Mexico was selected as the research site in order to enhance understanding of the interrelationships among the diverse factors impacting upon tropical landscapes. These three countries offer contrasts for studying how surrounding land tenure and land use affect landscape patterns, ecosystem function and biological diversity. The Belize component is heavily forested with a low population density; the Mexican component has a relatively dense human population and low forest cover; and the Guatemalan component is currently well forested but is being rapidly transformed by logging and agriculture. Land tenure and land use patterns differ significantly among the three countries.

The Directorate will focus on a program for synthesis and coordination of the information gathered in the three separate countries for use in addressing urgent issues on a regional scale. It will establish links between researchers and resource management personnel; provide data from research projects relevant to environmental management issues; and by proposing concentration on needs driven research, the directorate will strive to ensure the utilization of the research findings to actively address immediate threats to the natural resources of the region. Preference will be given to projects that function as satellite programs and provide pertinent information that is beyond the scope of the Directorate's core project. Successful proposals must demonstrate that the human aspects of the research are an integral part of the study and must include a clear effort to address the human-biosphere interaction.

Workshops, Conferences and Seminars

Proposals for U.S. MAB endorsement and/or funding of workshops, conferences and seminar activities should only describe activities that are especially innovative to merit consideration and are interdisciplinary in order to comply with the interests of the U.S. MAB Program.

U.S. MAB will give preference to lending its endorsement and consideration for possible funding of workshops, conferences and seminars only when:

1. U.S. MAB is involved early in the planning process in order to provide substantial intellectual input;

2. The conference involves interdisciplinary input and participation by scientists from the natural, biological and social sciences; and

3. The conference has a clearly stated relevance and/or focus on governmental (federal, state and/or local) environmental policy.

Because of limited available funding, U.S. MAB will give priority consideration to proposals for workshops, conferences and seminar activities which directly meet the objectives and complement the core research programs of the U.S. MAB directorates.

General Instructions

All potential proposers are encouraged to contact the Secretariat of the U.S. Man and the Biosphere Program. U.S. Department of State, SA-37, room 608, Washington, DC 20522-3706, Tel. (703) 235-2946 to request the mission statement of the particular directorate to which their proposal would be addressed. Potential proposers, if invited to submit a full proposal, should expect to be interactive with the relevant U.S. MAB directorate, and the proposal budgets should reflect, within the total amount requested, sufficient funds to implement this interaction.

Preference will be given to proposals that:

- Are interdisciplinary in terms of including the biological, natural, and social sciences;
- Request $50,000 or less in total support;
- When seeking initiation or seed funding from U.S. MAB, also indicate potential additional funding sources for continued project support;
- Are submitted by U.S. citizens or persons studying or teaching at U.S. institutions/universities;
- When international, also involve scientists from the host country;
- Deal with environmental policy issues relevant to agencies which support U.S. MAB;
- Are within the program areas, or utilize units of the International Network of Biosphere Reserves. Proposals concerning activities within biosphere reserves should contain a letter of endorsement from the manager of the relevant biosphere reserve; and
- Include in the proposal that the project activities will result in a report that is intended to be of publishable quality in a peer reviewed scientific journal or report.

The U.S. MAB process for evaluating and selecting projects for funding includes a pre-proposal stage. All pre-proposals must be submitted as a prospectus of a maximum length of two (2) pages, which clearly indicates how the potential proposal meets the above stated requisite criteria. Prospectuses must be accompanied by a summary biographic sketch of the potential principal(s) which should include exceptional qualifications and a publication list which is limited to a maximum of 5 titles of articles relevant to the proposed activities and which appeared in peer reviewed journals. Biographic sketches should demonstrate that principals have worked with others from different disciplines; and may not exceed three (3) pages for each principal.

U.S. MAB will not pay overhead fees on grants.

Mail prospectuses to: U.S. MAB Secretariat, OES/EGC/MAB, Room 608, SA-37, U.S. Department of State, Washington, DC 20522-3706.

No prospectus will be accepted after November 3, 1992. Prospectus will be subject to an administrative review for adherence to the requirements listed and will be returned without review if deficiencies are found.

Evaluation and Review Process of Prospectuses. The U.S. MAB Secretariat will distribute prospectuses to the appropriate U.S. MAB Directorate. Individual Directorates will review the prospectuses based on their responsiveness to this call, relevancy of the proposed activity to their mission statements, and the performance competence of the proposed principal(s) as evidenced by the summary biographic sketch.

Prospectuses favorably reviewed by a Directorate will be sent to the U.S. National Committee for MAB for evaluation at the January 1993 National Committee meeting. The National Committee will review each of these prospectuses for its relevance to the U.S. MAB program priorities. The National Committee will then determine which principals will be invited to submit a full proposal. The U.S. National Committee, at its own initiative, may request that additional proposals on specific subjects be submitted for review and consideration.

Evaluation and Review Process of Proposals. Invited prospective investigators should submit proposals

which clearly state the objectives, scientific rationale, methodology, personnel, and time and funding requirements. Prospective investigators may also nominate not more than five individuals, who are not members of the same institution as the potential investigator(s), who they believe are qualified to serve as peer reviewers of the proposal to supplement the peer reviewers selected by the U.S. MAB Program. The list must include addresses and phone numbers of the nominated reviewers.

Complete project and research proposals must be received by the U.S. MAB Secretariat by close of business May 5, 1993. Proposal texts may not exceed 25 pages, double-spaced, including a two page executive summary describing the objective of the proposed effort and the method of approach. Proposals must be accompanied by a summary biographic sketch of the potential principal(s) which should include exceptional qualifications and a publication list which is limited to a maximum of 5 titles of articles relevant to the proposed activities and which appeared in peer reviewed journals. Biographic sketches should demonstrate that principals have worked with others from different disciplines. The biographic sketch for each principal may not exceed three (3) pages.

If proposed project activities are international in scope, the proposal must provide written evidence that host country permissions on an appropriate level have already been obtained to carry out the project.

All proposals must contain: (1) Clearly defined objectives; (2) a feasible work plan to achieve those objectives within the time frame and resources of the grant; (3) specified work products resulting from the grant with a minimum requirement of two levels of annual progress reports and final reports prepared for the scientific audience and for the nontechnical layman. The proposal must state when the interim reports will be produced and that two final reports will be delivered to the U.S. MAB Secretariat within 90 days of the completion of the grant.

Proposals must indicate how the proposal could complement or assist in problem-solving for funded core Directorate programs.

Proposals must identify one individual for contract purposes and specify one institution to receive and sub-allocate funds for the proposed activities.

Proposals will be subject to an administrative review for adherence to listed requirements and, if deficiencies are found, will be returned without further consideration.

Appropriate U.S. MAB directorate and outside peer reviews, including specialists in the areas of the proposals, will be selected by U.S. MAB to evaluate each proposal. Evaluative criteria for assessing the proposals include, but are not limited to: the intrinsic scientific or technical merit of the activities; the utility or policy relevance of the research or activities; the interdisciplinarity of the proposed activities in terms of the biological, natural and social sciences; and the performance record of the principal(s).

A final ranking of the proposal will be made by the U.S. National Committee for the Man and the Biosphere program based on all of the above factors and their assessment of each proposal's relevancy to the goals of U.S. MAB. Proposals will then be funded in the order of their assigned rank and based on availability of funds.

Principals will receive copies of all peer review evaluations made of their proposal and a written notification of the Committee's decision on their project. Selected proposals become part of the public domain; proposals not selected for funding by the U.S. National Committee for MAB will be returned to the authors.

The National Committee will notify all principals of its final decisions in August/September 1993. Funds will be committed to the managing institutions identified in the selected proposals by October 1, 1993.

Agencies supporting the U.S. MAB Program include: the Department of Agriculture-Forest Service, the Department of Energy, the Department of the Interior-National Park Service, the Department of State, the Agency for International Development, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Peace Corps, and the Smithsonian Institution.

Dated July 31, 1992.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program.

[FR Doc. 92-18723 Filed 8-6-92; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice 1669]

Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Advisory Committee on International Communications and Information Policy will hold an open meeting on August 20, 1992, from 9:30 a.m. to 12:30 p.m. in room 6909, Department of State, 2201 C Street NW., Washington DC.

The Advisory Committee deals with issues of international communications and information policy, especially as the issues involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, and the activities of international organizations with regard to the development of communications and information policy.

This meeting will address one issue.

During the report of the Blue Ribbon Panel on telecommunications in the Commonwealth of Independent States, at the July 16 Advisory Committee meeting, several members spoke on the desirability of cooperation by U.S. companies in telecommunications joint-ventures in the Independent States.

Additionally, Committee Chairman Leonard H. Marks introduced a protocol from the Office of Vice-President Rutskoi of the Russian Federation proposing talks on establishing a joint U.S./Russian venture to plan, construct, and operate in the Russian Federation new communication services in rural areas and manufacturing facilities.

As a consequence of the discussion of the recommendations of the Blue Ribbon Panel, the Advisory Committee concluded that a broad based U.S. telecommunications industry response was desirable to the possibility of cooperation by U.S. companies in telecom joint-ventures in the Independent States, including the specific proposal from the Russian Federation.

The meeting on August 20 will be an opportunity for the entire U.S. telecommunications industry to discuss these issues and identify concerns or problem areas.

Consistent with its mission, the Department of State wishes to help American business find and develop opportunities abroad; however, for obvious legal reasons, in calling this meeting the Department of State cannot undertake to guarantee any conclusions which may result nor can U.S. private sector participants in the meeting enter into any agreements on behalf of the U.S. Government. It is envisioned that the meeting may reach some recommendations to the Department of State concerning the proposal from the Russian Federation or other proposals for joint cooperation by U.S. companies; however, development and elaboration of specific project proposals would be

undertaken by separate private sector initiative.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Arrangements must be made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise Ms. Rebecca Boothby, Department of State, Washington, DC; telephone 202–647–5220, by providing their name, title, company name, social security number and date of birth. All attendees must use the C Street entrance to the building.

Dated: July 30, 1992.

Bohdan Bulawka,

Executive Secretary, Advisory Committee on International Communications & Information Policy.

[FR Doc. 92–18785 Filed 8–6–92; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 31, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48274.
Date filed: July 27, 1992.
Parties: Members of the International Air Transport Association.
Subject: Telex-Mail Vote 581 (Fares from Hong Kong to Japan).
Proposed Effective Date: August 1, 1992.

Docket Number: 48277.
Date filed: July 28, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC12 Mail Vote 582. USA–UK ADD–ONS & US–Europe Military Fares R–1–015h R–2–090ss.
Proposed Effective Date: September 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–18761 Filed 8–6–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 31, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48275.
Date filed: July 27, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 24, 1992.
Description: Application of TMG Air, Corp., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations requests a Fitness Determination and issuance of a Certificate of Public Convenience and Necessity to engage in scheduled interstate and overseas air transportation of property and mail.

Docket Number: 48278.
Date filed: July 29, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 26, 1992.
Description: Application of Tower Air, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, seeks certificate authority to operate scheduled property and mail service between points in the United States and points in Korea.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–18760 Filed 8–6–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 91–53A, Noise Abatement Departure Profiles

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed advisory circular.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to issue an advisory circular (AC) designed to provide standard guidelines for noise abatement departure profiles for all civil turbojet airplanes with a maximum certificated gross takeoff weight of more than 75,000 pounds operating within the United States.

The proposed AC would cancel AC 91–53, Noise Abatement Departure Profile, dated October 17, 1978. The proposal reflects FAA's continuing effort to enhance safety of flight operations through standardization and reduce airplane noise. To achieve this objective, the FAA proposes a means, but not the only means, of avoiding proliferation of noise abatement departure profiles tailored for unique airport/community environments while providing noise relief to communities.

The Proposal

The proposed AC recommends two standard noise abatement departure profiles for all turbojet airplanes, one designed to reduce noise over communities near the airport and the other to provide noise reduction benefits to communities located farther away. It recommends that airplane operators select one of these two procedures for each noise sensitive departure, replacing the variety of procedures now planned or in use. It also recognizes the important role of airport proprietors in determining the most beneficial procedure.

DATES: Comments must be received on or before October 1, 1992.

ADDRESSES: Send comments and requests for copies and supporting noise analysis documentation on this proposed AC to: Federal Aviation Administration, Attn: Technical Programs Division, AFS–400, 800 Independence Avenue SW., Washington, DC 20591. Comments and supporting documentation may be inspected at the above address between 8:30 a.m. and 4:30 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Te Winkle, Flight Standards Service, at the above address: telephone (202) 267–3728

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed AC by submitting such written data, views, or arguments, and by commenting on possible environmental, energy, or economic impacts of this AC. Comments should identify AC 91–53A and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the

Flight Standards staff before issuing the final AC.

Background

The Secretary of Transportation and the FAA Administrator created a departmental task force on FAA reform to recommend improvements in the operations within the FAA itself and between the FAA and the Office of the Secretary. A subgroup of the Task Force was specifically directed to recommend improvements in the rulemaking process concerning safety issues. That subgroup proposed to establish an advisory committee as a forum for the FAA to obtain input from outside the Government on major regulatory issues facing the agency.

The Secretary approved the proposal to establish an advisory committee, and the Aviation Rulemaking Advisory Committee (ARAC) was chartered in February 1991. The committee is to provide advice and recommendations to the Administrator, through the Associate Administrator for Regulation and Certification and the Director of Rulemaking, concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, such as air carrier operations, airplane certification, airports, and noise. The committee affords the FAA additional opportunities to obtain information and insight directly from the substantially affected interests meeting together and exchanging ideas on proposed or existing rules and other operational procedures that should be revised or eliminated. This will result in the development of better rules and operational procedures in less time and is intended to require fewer FAA resources than under the current practice. The activities of the committee are designed to facilitate but not circumvent the normal coordination process or the public rulemaking procedures. All communications between the FAA and the committee on any particular issue and an assessment of the effect of those communications on the development of proposed rules will be disclosed fully in the public docket.

ARC is composed of approximately 60 members and has sufficient diversity to ensure the requisite range of views and expertise necessary to discharge its responsibilities. The membership of the committee is balanced fairly in points of view representative of the aviation community and affected non-aviation interests and includes air carriers, manufacturers, general aviation representatives, airport operators, labor groups, environmental groups, universities, corporations, associations, and passenger groups.

One of the initial subcommittees established under the ARAC was the Air Carrier Operations Subcommittee. Of the initial safety-related procedures that surfaced in an early meeting of the subcommittee, one was the lack of standardization in noise abatement departure profiles. Although some work had been accomplished on this issue, the task for resolving the problem of nonstandard noise abatement departure profiles was formally assigned to a working group, appropriately named the Noise Abatement Takeoff Profile Working Group. Within this group were the representatives of various affected aviation interests.

As the working group began its task, a number of related problems surfaced. One problem was that, because of unique runway/community situations and varying performance and noise characteristics of different airplanes, pressures to use nonstandard or special noise abatement takeoff profiles have been increasing. A second problem was that the lack of standardization and any proliferation of airport specific vertical departure profiles may conflict with the high degree of public safety demanded of aviation. Although a nonstandard profile may not have a significant effect when considered alone, a plethora of profiles varying from airport to airport and airplane to airplane would tend to detract from safety. On August 12, 1991, the working group formally presented its recommendations to the subcommittee in a public hearing, and the recommendations were forwarded to the FAA Administrator. The FAA accepted the following recommendations:

(1) "The minimum performance criteria established by the working group (draft AC) should be incorporated in an advisory circular.

(2) "The guidelines established for selection of noise abatement takeoff profiles should be formalized.

(3) "In the interest of ensuring an orderly transition in the adoption of the performance criteria described in recommendation #1, it is recommended that the FAA implement subsequent takeoff noise abatement profiles through air carriers Operations Specifications at an appropriate time. In addition, at airports where current air carrier operations are not compatible with the performance criteria in recommendation #1, it is recommended that the FAA coordinate appropriate agreements and arrangements with the affected airports and, if appropriate, the affected air carriers.

(4) "Although some preliminary noise assessments have been accomplished with data from a B737–300 simulator, more work is needed to ensure that a process is available to assess whether any proposed takeoff profile does in fact offer sufficient noise abatement to justify its use. Accordingly, assessments of which departure profile is preferable from environmental standpoints, including noise abatement and energy conservation, require consideration of airplane type and the variety of airport conditions including the locations of affected noise sensitive areas. In the interest of developing a method and data base for assessing the community noise benefit (or non-benefit) of the noise abatement takeoff profiles, it is recommended that the FAA establish a working group to accomplish this activity."

The submission and acceptance of these recommendations completed the work of the Noise Abatement Takeoff Profile Working Group, and it disbanded. Subsequently, the FAA authorized the subcommittee to form an Airport Noise Assessment Working Group to evaluate the noise impact relating to proposed noise abatement departure profiles and other factors. Representing a broad base of aviation community participants, this working group continued to develop the two noise abatement departure profiles described in this proposed AC. A list of the working group members is available from the Air Carrier Operations Subcommittee.

The Noise Assessment Working Group embarked on two parallel studies. The first was to assign the airframe manufactures (Boeing Co., McDonnell Douglas Aircraft, and Fokker Aircraft) with the task of producing noise level data, in terms of Sound Exposure Level for under the flightpath of a B727–200 (Stage 2 airplane), MD–80 (Stage 3 airplane), and an F100 (Stage 3 airplane). The second area of study was to review, and revise as needed, the AC as proposed by the previous Noise Abatement Takeoff Profile Working Group. The airplane manufacturers' noise level generic data and the Noise Assessment Working Groups noise assessment are available upon request.

The current AC 91–53 provides for one standard noise abatement departure profile, which is most effective in providing relief for noise sensitive areas some distance from the airport. The proposed AC 91–53A recommends two noise abatement departure profiles for each airplane type. These profiles provide potential noise reduction benefits to close-in and distant noise sensitive areas. Minimizing the number of profiles to be used would benefit airplane operators and pilots by offering

standard noise abatement departure profiles that could be used nationwide. Standardization of operational profiles and flightcrew training enhance safety.

Section 91.129(f)(2) of the Federal Aviation Regulations (FAR) states, "Unless otherwise required by the departure procedure or the applicable distance from clouds criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane shall climb to an altitude of 1,500 feet above the surface as rapidly as practicable." This section provides guidance for airplane operators to minimize environmental impact on noise sensitive areas. Other climb profiles can be just as effective, if not more effective, in relieving noise at certain close-in and distant airport communities.

If an airplane operator wishes to use any noise abatement departure profile other than the two defined by the criteria in the AC, a request must be made to the FAA through the Technical Programs Division, AFS-400. Before reaching a determination on the request, the FAA will consult with a cross section of interested industry groups.

The acceptance by the industry on a limited number of basic noise abatement departure profiles applicable to all turbojet airplanes with a maximum certificated gross takeoff weight of more than 75,000 pounds, would provide for standardization of flightcrew procedures and training. The two noise abatement departure profiles, a close-in and a distant profile, would be adopted as standard guidelines for nationwide use for each airplane type, as determined by each airplane operator. The airplane operator may implement a procedure set forth in the proposed AC once the airport proprietor agrees, in writing, that either the close-in or the distant profile set forth in the proposed AC should be adopted for a designated runway. If the airport proprietor agrees, the airplane operator is strongly encouraged to use the noise abatement departure profile agreed to by the airport proprietor.

Using a minimum altitude of 800 feet above airport field elevation to initiate noise abatement thrust reduction would provide for reasonable flightcrew workloads to achieve a stable flight profile during a critical workload period in high density traffic. It would also provide a safety margin in altitude should unexpected windshear, wake turbulence, or other adverse weather conditions be encountered after the trust reduction or configuration change is initiated.

The proposed AC recommends a minimum allowable thrust level to ensure a positive rate of climb in the event of an engine failure, without pilot intervention. This minimum level also would provide sufficient thrust margins to permit normal maneuvering after a thrust reduction, thereby reducing flightcrew workloads associated with a pitchover to an acceptable airplane attitude.

Noise Analysis

The FAA is proposing an AC that recommends two standard noise abatement departure profiles for turbojet airplanes. This AC is proposed primarily to maximize safety by discouraging a proliferation of unique, airport specific noise abatement departure profiles. The AC supports the FAA program of minimizing noise impact on airport neighbors which involves: (1) Noise performance standards for individual aircraft, (2) noise abatement air traffic procedures, and (3) airport noise compatibility planning.

In conjunction with the proposed AC the FAA has prepared a draft report reflecting work completed to date on the noise impact analysis of noise abatement departure profiles for large turbojet airplanes. This draft report documents the results of the computational noise analysis of the proposed departure profiles relative to the baseline profiles outlined in AC 91-53, which reflect the current actual profiles flown by most air carriers. The draft report will be available during the comment period at the location listed in this preamble under ADDRESSES.

The final report will contain additional noise sensitivity analyses of the change in exposure and impacts as a result of a change in the initiating altitude of the proposed profiles from 1,000 feet to 800 feet above ground level.

In addition, there is an actual flight demonstration program currently going on at John Wayne Airport (JWA), California, which is a cooperative effort by the airport, airlines, and airport communities. The goal of this program is to develop a noise database for an array of different noise abatement takeoff profiles for aircraft operating at JWA. The program is currently underway and is scheduled to be completed by December 31, 1992.

Conclusion

In summary, the procedures set forth in proposed AC 91-53A would enhance safety, standardize departure profiles, and address the noise associated with airplane operations nationwide. Additionally, these proposed profiles would serve as a baseline for operational testing to be completed in 1992.

Issued in Washington, DC on July 16, 1992.

Jack Howell,

Acting Director, Flight Standards Service.

Draft AC 91-53A—

Noise Abatement Departure Profiles

1. *Pupose:* This advisory Circular (AC) describes acceptable criteria for safe noise abatement departure profiles for subsonic turbojet-powered airplanes with a maximum certificated gross takeoff weight of more than 75,000 pounds. These departure profiles are consistent with the airworthiness standards required by the Federal Aviation Regulations (FAR) part 25 for type certification and FAR part 91 for general airplane operations. This AC also provides a technical analysis and description of typical departure profiles that are consistent with the Federal Aviation Administration's (FAA) safety responsibilities and have the potential to minimize the airplane noise impact on communities surrounding airports.

2. *Concellation.* AC 91-53, Noise Abatement Departure Profile, dated October 17, 1978, is cancelled.

3. *Related Federal Aviation Regulations.* FAR parts 25, 91, and 121.

4. *Background.*

a. For several years, the FAA has worked to develop and standardize profiles to minimize airplane noise. As part of the commitment, the FAA has worked with airport managers, airplane operators, pilots, special interest groups, and federal, state, and local agencies in numerous programs for evaluating noise levels in the airport environment. The research considered a variety of departure flight tracks and profiles.

(b) From an environmental standpoint, avoiding noise sensitive areas by using preferential noise abatement runways and flights tracks whenever possible can effectively supplement a comprehensive noise abatement program. The FAA believes that using the two noise abatement departure profiles described in this AC for subsonic turbojet-powered airplanes can provide environmental benefits to the airport communities. The profiles outline acceptable criteria for speed, thrust settings, and airplane configurations used in connection with noise abatement departure profiles. These noise abatement departure profiles can be combined with preferential runway selection and flight path techniques to minimize noise impact.

c. FAA reviews of various airplane vertical noise abatement profiles indicate that some intricate noise abatement departure profiles have been developed on an airport specific basis.

The management of these intricate profiles could compromise the pilot's attention to interior flight deck details, traffic avoidance, and other safety responsibilities.

5. *Definitions.*

a. *NADP.* Noise Abatement Departure Profile.

b. *Close-in Community NADP's.* NADP's for individual airplane types intended to provide noise reduction for noise sensitive areas located in close proximity to the departure end of an airport runway.

c. *Distant Community NADP's.* NADPs for individual airplane types intended to provide noise reduction for all other noise sensitive areas.

d. *AFE.* Above field elevation.

6. *Comments Invited.* Comments regarding this publication should be directed to: Federal Aviation Administration, Attn: Technical Programs Division, AFS-400, 800 Independence Avenue, SW., Washington, DC 20591.

Comments received will not necessarily be acknowledged, but will be considered in the development of upcoming revisions to AC's or other related technical material.

7. *Noise Abatement Departure Profiles (NADP's).* Acceptable criteria have been established for two types of NADPs for each airplane type, as defined by each airplane operator. These departure profiles are applicable to all types of subsonic turbojet-powered airplanes over 75,000 pounds gross takeoff weight. The two types of NADPs are the "close-in" and "distant" profiles as described below.

a. Close-in NADP

(1) Initiate thrust cutback at an altitude of no less than 800 feet AFE and prior to initiation of flaps or slats retraction.

(2) For airplanes without an operational automatic thrust restoration system, achieve and maintain no less than the thrust level necessary after thrust reduction to maintain, for the flaps/slats configuration of the airplane, the takeoff path engine-inoperative climb gradients specified in FAR 25.111(c)(3) in the event of an engine failure.

(3) For airplanes with an operational automatic thrust restoration system, achieve and maintain no less than the thrust level necessary after thrust reduction to maintain, for the flaps/slats configuration of the airplane, a takeoff path engine-inoperative climb gradient of 0%, provided that the automatic thrust restoration system will, at a minimum, restore sufficient thrust to maintain the takeoff path engine-inoperative climb gradients specified in FAR 25.111(c)(3) in the event of an engine failure.

(4) During the thrust reduction, coordinate the pitchover rate and thrust reduction to provide a decrease in pitch consistent with allowing indicated airspeed to decay to no more than 5 knots below the all-engine target climb speed, and in no case to less than V_2 for the airplane configuration.

(5) Maintain the speed and thrust criteria as described in paragraph 7a(2) through 7a(4) to 3,000 feet AFE or above, or until the airplane has been fully transitioned to the en route climb configuration (whichever occurs first), then transition to normal en route climb procedures.

b. Distant NADP

(1) Initiate flaps/slats retraction prior to thrust cutback initiation. Thrust cutback is initiated at an altitude no less than 800 feet AFE.

(2) For airplane without an operational automatic thrust restoration system, achieve and maintain no less than the thrust level necessary after thrust reduction to maintain, for the flaps/slats configuration of the airplane, the takeoff path engine-inoperative climb gradients specified in FAR 25.111(c)(3) in the event of an engine failure.

(3) For airplanes with an operational automatic thrust restoration system, achieve and maintain no less than the thrust level necessary after thrust reduction to maintain, for the flaps/slats configuration of the airplane, a takeoff path engine-inoperative climb gradient of 0%, provided that the automatic thrust restoration system will, at a minimum, restore sufficient thrust to maintain the takeoff path engine-inoperative climb gradients specified in FAR 25.111(c)(3) in the event of an engine failure.

(4) During the thrust reduction, coordinate the pitchover rate and thrust reduction to provide a decrease in pitch consistent with allowing indicated airspeed to decay to no more than 5 knots below the all-engine target climb speed, and in no case to less than V_2 for the airplane configuration.

(5) Maintain the speed the thrust criteria as described in paragraph 7b(2) through 7b(4) to 3,000 feet AFE or above, or until the airplane has been fully transitioned to the en route climb configuration (whichever occurs first), then transition to normal en route climb procedures.

8. Operational Guidelines

a. Each airplane operator may apply the procedures specified in this AC to determine the following for each of its airplane types:

(1) Close-in community noise abatement departure profile (NADP).

(2) Distant community noise abatement departure profile (NADP).

b. Each airplane operator is encouraged to consult with the airport operator before determining the appropriate NADP for each airplane type and runway it will be using at that airport.

c. For each NADP, the airplane operator should specify the altitude AFE at which thrust reduction from takeoff thrust or airplane configuration change, excluding gear retraction, is initiated.

d. Each airplane operator should limit the number of noise abatement departure profiles for any airplane type at any one time to no more than two.

e. This AC should not be construed to affect the responsibilities and authority of the pilot in command for the safe operation of the airplane.

[FR Doc. 92-18809 Filed 8-6-92; 8:45 am]
BILLING CODE 4910-13-M

[File No. AC 21-17.XX]

Proposed Advisory Circular: Type Certification of Very Light Airplanes Meeting the Requirements of JAR-VLA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular 21-17.XX and Request for Comments.

SUMMARY: This notice announces the availability of and request for comment on a proposed Advisory Circular (AC) 21-17.XX which described an acceptable means for the type certification of very light airplanes that meet the requirements of the Joint Aviation Requirements-Very Light Aeroplanes (JAR-VLA), that may be used by an applicant in showing compliance with § 21.17(b) of the Federal Aviation Regulations (FAR). It also provides general guidance relative to type certification of very light airplanes. This notice is necessary to give all interested persons an opportunity to present views on the proposed AC.

DATES: Comments must be received on or before September 8, 1992.

ADDRESSES: Comments on proposed AC 21-17.XX may be mailed or delivered to: Federal Aviation Administration; 800 Independence Avenue SW., AIR-110; Washington, DC 20591. A copy of proposed AC 21-17.XX, Type Certification of Very Light Airplanes Meeting the Requirements of JAR-VLA, may be obtained by writing to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Davis, Policy and Procedures Branch, AIR-110, at the address above, telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the AC number and be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before issuing AC 21-17.XX. Comments may be inspected at the above address between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

Additional requirements have caused part 23 to grow in size and complexity as mandated by the emergence of high performance airplanes. Over the years, the level of safety has generally increased for part 23 as well as for all of the other airworthiness standards. However, because of the increased complexity of part 23, complying with the requirements during type certification of small, low-performance airplanes has become more costly and burdensome. Because the basis certification requirements applicable to small, low-performance, airplanes were essentially unchanged, the level of safety did not increase commensurately with the increased burden.

In response to this situation, various industry groups have recently proposed to the FAA that the JAR-VLA as issued by the Joint Aviation Authorities (JAA) on April 28, 1990, be used for the type certification of small, low-performance airplanes. They believe that the JAR-VLA would provide an equivalent level of safety to the applicable requirements of part 23 of the FAR, as amended to amendment 23-42, and allow a less costaly methodology for type certification of these airplanes.

In verifying this conclusion, the FAA reviewed the requirements of the JAR-VLA and the applicable portions of pat 23. There are 225 sections of part 23 that were considered appropriate. The requirements of JAR-VLA corresponded directly to 204 of these sections: Either being identical or having no substantive differences. Of the other 21 sections, which contained substantive differences from the JAR-VLA, the FAA conducted a detailed analysis on the level of safety imposed by these sections and the corresponding requirements of JAR-VLA. For all 21 sections (the JAR-VLA requirements were less rigorous or absent), the FAA determined that compliance would not be needed to provide a level of safety equivalent to part 23 for these small, low-performance airplanes if appropriate operating limitations are imposed.

An airplane meeting the requirements of the JAR-VLA may be considered as a special class of aircraft under § 21.17(b) of the FAR. The FAA based this finding on both the unique design and operational limitations imposed by JAR-VLA. The method of accomplishing the type certification process described in the proposed AC is not mandatory. As such the terms "shall" and "must" used in the proposed AC pertain to an applicant who chooses to follow the method.

Related Federal Aviation Regulations (FAR)

a. Section 21.3—Reporting of failures, malfunctions, and defects.

b. Section 21.5—Airplane or Rotorcraft Flight Manual.

c. Section 21.17—Designation of applicable regulations.

d. Section 21.21—Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; propellers.

e. Section 21.29—Issue of type certificate: import products.

f. Section 21.50—Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections.

g. Part 23—Airworthiness standards: normal, utility, acrobatic, and commuter category airplanes.

h. Part 36—Noise standards: aircraft type and Airworthiness Certification.

i. Part 45, Subpart C—Nationality and Registration Marks.

j. Section 91.9—Civil aircraft flight manual, marking, and placard requirements.

k. Section 91.205—Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

Issued in Washington, DC, on July 31, 1992.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 92-18762 Filed 8-6-92; 8:45 am]

BILLING CODE 4910-13-M

FAA Approval of Noise Compatibility Program; Albuquerque International Airport, Albuquerque, NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Albuquerque under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On December 31, 1991, the FAA determined that the noise exposure maps submitted by the City of Albuquerque under part 150 were in compliance with applicable requirements. On June 24, 1992, the Administrator approved the noise compatibility program. All but one of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Albuquerque International Airport noise compatibility program is June 24, 1992.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Albuquerque International Airport, effective June 24, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval of disapproval of FAR Part 150 program

recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office, in Fort Worth, Texas.

The City of Albuquerque submitted to the FAA on July 16, 1991, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study. The Albuquerque International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on December 31, 1991. Notice of this determination was published in the **Federal Register** on January 9, 1992.

The Albuquerque International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion through the year 1994. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 31, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 13 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective June 24, 1992.

Outright approval was granted for 12 of the specific program elements. Sub-element 1.3 (monitoring nighttime training activities) was disapproved because sub-element 4.1 (noise monitoring and acquisition of portable equipment), which was approved, would provide similar information. Of the 13 elements included in the study, 8 were noise related, 4 were land use related, and 1 was concerning land acquisition.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on June 24, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Albuquerque.

Issued in Forth Worth, Texas, July 24, 1992.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 92-18764 Filed 8-6-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Transit Administration

Environmental Impact Statement on Central Corridor Transit Project in Minneapolis and St. Paul, MN

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environment Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Minnesota Department of Transportation (Mn/DOT), Hennepin County Regional Railroad Authority (HCRRA), and Ramsey County Regional Railroad Authority (RCRRA), are undertaking the preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), for transit improvements in the Twin Cities Central Corridor linking Minneapolis and St. Paul. Mn/DOT, HCRRA and RCRRA are joint lead agencies (JLA) on the project. The EIS is being prepared in conformance with 40 CFR part 1500, Council on Environmental Quality, regulations for implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended; and 49 CFR part 622, Federal Transit Administration Environmental Impact and related procedures. In addition to fixed guideway or rail transit alternatives, the EIS will include on evaluation of the No-Build and Transportation System Management (TSM) alternatives, a busway alternative, an HOV alternative, and any additional alternatives which result from the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal state and local agencies and through two public meetings.

DATES: Written comments on the scope of alternatives and impacts to be considered must be received by the Joint Lead Agencies on or before September 11, 1992. Public scoping meeting will be held on Wednesday, August 26, 1992 at 7 p.m. at the Radisson Hotel Metrodome, and on Thursday, August 27, 1992 at 7 p.m. at Concordia College. Interested persons may view exhibits describing the Central Corridor beginning one hour before each meeting: See ADDRESSES below.

ADDRESSES: Written comments on the project scope should be sent to Mr. Robert Winter, Central Corridor Project Manager, Minnesota Department of Transportation, Metro District—Oakdale, 3485 Hadley Avenue North, Oakdale, Minnesota 55109. Scoping meetings will be held at the following locations:

1. August 26 meeting—6:00 exhibit viewing, 7:00—public meeting, Radisson Hotel Metrodome, East Bank Campus—University of Minnesota, 615 Washington Avenue SE., Minneapolis, Mn.

2. August 27 meeting—6:00 exhibit viewing, 7:00—public meeting.

Concordia College, Fine Arts Center—Buetow Coral Room, Hamiline Avenue between Concordia and Marshall, St. Paul, Minnesota.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Libby, Federal Transit Administration, Phone: (202) 366–6510. Scoping materials may be requested from Mr. Robert Winter, Phone: (612) 779–1209.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and Joint Lead Agencies invite interested individuals, organizations and federal, state and local agencies to public scoping meetings to be held on August 26 and 27, 1992 at the times and locations indicated under DATES and ADDRESSES (above), to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives.

An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting Mr. Robert Winter at the address above or by calling him at (612) 779–1209. Scoping comments may be made verbally at either of the public scoping meetings or in writing. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives.

Scoping should not indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on a mailing list to receive further information as the project develops, contact Mr. Robert Winter as previously described.

Description of Study Area and Project Need

The Central Corridor connects downtown Minneapolis in Hennepin County with downtown St. Paul in Ramsey County, a distance of approximately eleven miles. The Central Corridor extends from the Convention Center in downtown Minneapolis, through the Mills District and stadium areas adjacent to downtown, the main campus of the University of Minnesota, the Midway commercial area in St. Paul, the state Capitol, and into downtown St. Paul. The downtown St. Paul end of the corridor also contains the city's emerging "cultural corridor" and Lowertown, a renovated warehouse district. The two central cities and the University are the three major transit generators in the region.

The Central Corridor is a densely developed urban corridor containing a number of important employment and activity centers, as noted above. Downtown and University growth and urban redevelopment are occurring in the corridor, centered on the areas identified above.

Portions of the Central Corridor have been recently studied following the State of Minnesota's environmental review process and the regional transit facilities plan process. Work completed as part of these studies will be updated and incorporated into the Central Corridor DEIS.

Transit improvements in the Central Corridor are intended to improve transportation capacity, transit quality and accessibility in the corridor. The project should alleviate regional air quality problems by providing an improved alternative to single occupancy automobile trips.

Alternatives

Transportation alternatives proposed for consideration in the Central Corridor are the following:

1. A No-Build option, which involves no change to transportation services or facilities in the corridor beyond already committed projects;
2. A Transportation System Management (TSM) approach, which represents the optimum bus service improvements that can be made without construction of a fixed guideway or exclusive busway;
3. A busway facility extending from the Convention Center in downtown Minneapolis to the Union Depot in downtown St. Paul;
4. High Occupancy Vehicle (HOV) facility between the two downtowns.
5. Light rail transit extending from the Convention Center in downtown Minneapolis to the Union Depot in downtown St. Paul;

These alternatives have been selected based on the results of previous planning efforts in the corridor area. Other alternatives may emerge during the scoping process.

Probable Effects

The FTA and Joint Lead Agencies plan to evaluate all significant social, economic, and environmental impacts of these and other alternatives and publish findings in the EIS. Among the primary issues are:

- Transportation service, including future capacity of the corridor, transit cost, transit service, patronage change, and effect on traffic movement;
- Transit financial implications;
- The impact of the proposed alternatives on strengthening the urbanized core of the Twin Cities and proposed improvements by other agencies;
- Local and regional economic impacts;
- Community impacts, including land use and neighborhood compatibility;
- Cultural impacts, including the effects on historic, archaeological and park resources;
- Natural resource impacts, including air quality, noise and vibration; water resources and quality. The proposed impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed impact evaluation criteria will take into account both positive and negative impacts, direct and indirect impacts, and site-specific and corridor-wide impacts. Evaluation criteria will be consistent with the applicable federal, state, and local standards, criteria, regulations, and policies. Mitigation (reduction) measures will be explored for any adverse impacts that are identified as part of the analysis.

FTA Procedures

In accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering, the next step in project planning. After its publication, the Draft EIS will be available for public and agency review and comment, and public hearings will be held. On the basis of the Draft EIS and the comments received, the Joint Lead Agencies will select a locally preferred alternative and seek approval from the FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: August 3, 1992.

Joel Ettinger,

FTA Central Area Director.

[FR Doc. 92–18743 Filed 8–6–92; 8:45 am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 91-38; Notice 2]

Receipt of Revised Petition for Determination That Nonconforming 1986 Mercedes-Benz 200D Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of revised petition for determination that nonconforming 1986 Mercedes-Benz 200D passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a revised petition for a determination that a 1986 Mercedes-Benz 200D that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the revised petition is September 8, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

ICI International, Inc., of Orlando, Florida (Registered Importer No. R-90-003) petitioned NHTSA to determine whether 1986 Mercedes-Benz 200D (Model ID 124.120) passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 22, 1991 (56 FR 41718) to afford an opportunity for public comment.

One comment was received in response to the notice of the petition, from Mercedes-Benz of North America, Inc. ("MBNA"), the U.S. subsidiary of the original manufacturer. In its comment, MBNA noted, among other things, that ICI had identified the 1987 Mercedes-Benz 300E as the U.S. counterpart for the 1986 Mercedes-Benz 200D that is the subject of its petition. MBNA observed that section 108(c)(3)(A)(i)(I) of the Act requires the nonconforming vehicle for which import eligibility is sought to be substantially similar to a motor vehicle manufactured and certified for sale in the United States that is "of the same model year."

After this discrepancy was brought to its attention, ICI submitted a revised petition in which it stated that it had erred in identifying the 1987 model 300E as the U.S.-companion vehicle for the 1986 model 200D, and that the 1986 model 300E should be substituted as the U.S.-companion vehicle. Because this substitution may alter the analysis of the 1986 model 200D's ability to conform to applicable safety standards, NHTSA is resoliciting comments on the petition, as revised.

The reader is referred to the August 22, 1991 notice for a thorough description of the original petition. Aside from the substitution of the 1986 Mercedes-Benz 300E as the U.S.-companion vehicle for the 1986 Mercedes-Benz 200D that it seeks to import, ICI has made the following additional revisions to its petition:

Standard No. 102 *Transmission shift lever sequence * * *:* The revised petition states that the vehicle is equipped with a manual transmission, and not with an automatic transmission, as claimed in the original petition.

Standard No. 203 *Impact Protection for the Driver From the Steering Control System:* The revised petition retracts ICI's original claim that the Mercedes-Benz 200D is equipped with an airbag, and asserts that it is equipped with a steering system that is the same as that supplied on the U.S.-certified model 300E.

Standard No. 208 *Occupant Crash Protection:* The original petition stated that each seating position in the 1986 model 200D is equipped with a lap belt and that the front seats are also equipped with upper torso restraints, but did not specify whether any modifications were necessary to bring the vehicle into conformity with this standard. The revised petition states that the vehicle lacks the required seat belt warning system, but that this requirement can be met through the installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 302 *Flammability of Interior Materials:* The original petition asserted that the interior materials furnished by the manufacturer on the 1986 model 200D are in conformity with the standard. In the revised petition, ICI states that it treated all interior seats, panels and the ceiling with Homesafe fire retardant spray to ensure conformity.

Interested persons are invited to submit comments on the revised petition, as described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 8, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 21, 1992.
William A. Boehly,
Associate Administrator for Enforcement.
[FR Doc. 92-18728 Filed 8-6-92; 8:45 am]
BILLING CODE 4910-59-M

[Docket No. 92-38; Notice 1]

Receipt of Petition for Determination That Nonconforming 1986 Mercedes-Benz 260SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1986 Mercedes-Benz 260SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1986 Mercedes-Benz 260SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is September 8, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

> (I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1986 Mercedes-Benz 260SE (Model ID 126.020) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1986 Mercedes-Benz 300SE (Model ID 126.024). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1986 Mercedes-Benz 300SE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 260SE is substantially similar to the 300SE, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 260SE's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1986 model 260SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1986 model 300SE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1986 model 260SE is identical to the certified 1986 model 300SE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging System*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Intallation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

206 *Door Locks and Door Retention Components:* Replacement of the rear door locks and rear door lock buttons.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel system Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1986 model 260SE must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 8, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 21, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-18725 Filed 8-6-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-39; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 Mercedes Benz 230E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989 Mercedes-Benz 230E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1989 Mercedes-Benz 230E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is September 8, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [or the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1989 Mercedes-Benz 230E (Model ID 124.023) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1989 Mercedes-Benz 260E (Model ID 124.026). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1989 Mercedes-Benz 260E, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 230E is substantially similar to the 260E, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 230E's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1989 model 230E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 model 260E that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1989 model 230E is identical to the certified 1989 model 260E with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*.

219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1989 model 230E complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 206 *Door Locks and Door Retention Components:* Replacement of the rear door locks and rear door lock buttons.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: September 8, 1992.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on July 21, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-18727 Filed 8-6-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-37; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 230E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 230E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 230E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is September 8, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Baylor, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 230E (Model ID 124.023) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1990 Mercedes-Benz 300E (Model ID 124.030). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1990 Mercedes-Benz 300E, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 230E is substantially similar to the 300E, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that

manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 230E's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1990 model 230E, and originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1990 model 300E that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1990 model 230E is identical to the certified 1990 model 300E with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Addionally, the petitioner states that the 1990 model 230E complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the 1990 model 230E is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 206 *Door Locks and Door Retention Components:* Replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner claims that the 1990 model 230E is equipped with a passive restraint system consisting of an airbag, control module, and knee bolster, which have identical part numbers to those found on the U.S. certified 1990 model 300E.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 8, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 21, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-18724 Filed 8-6-92; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 153
Friday, August 7, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the assembly and disassembly of nuclear weapons at the Department of Energy's Pantex Plant near Amarillo, Texas.

TIME AND DATE: 5:30 p.m. August 20, 1992—Department of Energy presentations; 7:30 p.m.—Opportunity for interested persons to present oral comments.

PLACE: Amarillo Civic Center, 401 S. Buchanan, Amarillo, Texas.

STATUS: Open.

MATTERS TO BE CONSIDERED: The open public meeting and hearing will address safety issues related to the assembly and disassembly of nuclear weapons at the Pantex Plant near Amarillo, Texas. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208-6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the public hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on August 18, 1992, will be scheduled for time slots, beginning at approximately 7:30 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Meeting Room, at the start of the 5:30 p.m. meeting. So that everyone who wishes to speak will have an opportunity, speakers will be limited to five minutes each.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. The Board will hold the record open until September 20, 1992, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office, at the Department of Energy Reading Room at Lynn Library/Learning Center, Amarillo College, P.O. Box 447, Amarillo, Texas 79178, and at the Department of Energy Reading Room, Carson County Library, P.O. Box 339, Panhandle, Texas 79068.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers as provided by law.

During the public meeting portion beginning at 5:30 p.m., the Board will review with the Department of Energy, its contractors, and outside experts the safety issues related to the assembly and disassembly of nuclear weapons at the Department of Energy's Pantex Plant, and associated public health and safety matters. The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting.

Dated: August 5, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-18929 Filed 8-5-92; 3:00 p.m.]

BILLING CODE 6820-KD-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, August 4, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of a certain insured bank.

Recommendations concerning administrative enforcement proceedings.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,824—Gibraltar Savings Association, Dallas, Texas

Case No. 47,825—Various Liquidations and Receiverships

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate activities.

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Vice Chairman Andrew C. Hove, Jr., Ms. Judith A. Walter, acting in the place and stead of Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: August 4, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-18852 Filed 8-5-92; 10:32 am]

BILLING CODE 6714-0-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 12, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following

items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment of an advance notice of proposed rulemaking in connection with a review of Regulation T (Credit by Brokers and Dealers).

2. Proposed amendments to Regulation D (Reserve Requirements of Depository Institutions) to facilitate the computation and maintenance of reserves. (Proposed earlier for public comment; Docket No. R–0750)

Discussion Agenda

3. Proposed amendments to Regulation D (Reserve Requirements of Depository Institutions) to prevent erosion of the reserve base for transaction accounts. (Proposed earlier for public comment; Docket No. R–0729)

4. Proposed changes to certain Board regulations and procedures affecting applications processing to improve efficiency and reduce regulatory burden.

5. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–18859 Filed 8–5–92; 10:38 am]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 12, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–18860 Filed 8–5–92; 10:38 am]

BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., August 17, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 20, 1992, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Quarterly review of investment policy.

4. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Loan Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of U.S. Department of Treasury Operations Relating to the Thrift Savings Plan Investments in the Government Securities Fund."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Interfund Transfer Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: August 3, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92–18847 Filed 8–4–92; 5:00 pm]

BILLING CODE 6760–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on August 3, 1992, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 31, 1992, in Washington, D.C. The members will consider 1) a filing with the Postal Rate Commission to Establish a Bulk Small Parcel Service, 2) a filing with the Postal Rate Commission for a Mail Classification Change Regarding Delivery Point Barcoding and 3) the July 17, 1992, Postal Rate Commission Opinion and Recommended Decision in Docket No. MC91–3, Second-Class Pallet Discount, 1991.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Mackie, Nevin, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39 United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 92–18924 Filed 8–5–92; 2:59 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 57, No. 153
Friday, August 7, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

RIN 9581-AA49

Procedures for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order and Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Such Order

Correction

In rule document 92-17000 beginning on page 31948 in the issue of Monday, July 20, 1992, make the following correction:

On page 31951, in the 1st column, in the 12th line, after "rules." and before "Further", insert the following sentence: "Therefore, the pertinent terms and definitions found in the order have been incorporated with minor changes in this rule for clarity."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

Correction

In rule document 92-18052 appearing on page 33902 in the issue of Friday, July 31, 1992, make the following correction in the second column, in the FR Doc. line appearing at the end of the document, "8:45 am" should read "3:40 pm":

BILLING CODE 1505-01-D

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS92-1]

Appraisal Regulation; Rules of Practice for Proceedings

Correction

In rule document 92-16599 beginning on page 31645 in the issue of Friday, July 17, 1992, make the following corrections:

1. On page 31645, in the second column, in footnote 11, in the last full line, "long" should read "along".

2. On page 31646, in the third column, third full paragraph, in the second line, "understanding" should "understating".

3. On the same page, in the same column, in the 4th full paragraph, in the 15th line, insert "under" between "fact" and "title XI". And in the 20th line, "full" should read "fully".

4. On page 31648, in the second column, second full paragraph, in the third line, insert "in" between "standard" and "§ 1102.31".

5. On page 31649, in the 1st column, 1st full paragraph, in the 13th line, "inquire" should read "inquiry".

§ 1102.20 [Corrected]

5. On page 31650, in the second column, in § 1102.20(b), in the last line "proceeding" should read "proceedings".

§ 1102.29 [Corrected]

6. On page 31651, in the third column, in § 1102.29(f)(1)(ii), "Simplification" was misspelled.

7. On page 31652, in the first column, in § 1102.29(g), in the eighth line "anytime" should read "any time".

BILLING CODE 1505-01-D

federal register

Friday
August 7, 1992

Part II

Office of Government Ethics

5 CFR Part 2635
Standards of Ethical Conduct for Employees of the Executive Branch; Final Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule which establishes uniform standards of ethical conduct for officers and employees of the executive branch of the Federal Government (hereinafter Government). When effective in 180 days, part 2635 will supersede most of subparts A, B and C of 5 CFR part 735 and agency regulations thereunder, as well as 5 CFR 2635.101 of the Office of Government Ethics regulations.

The final rule establishes standards relating to the receipt of gifts, whether from prohibited sources, because of official position, or between employees. It establishes standards for dealing with the employee's own and other financial interests that conflict with an employee's official duties. These include disqualification requirements that apply when a matter to which the employee is assigned affects a person with whom he or she is seeking employment. In addition to standards relating to use of official position and time, Government property and nonpublic information, it establishes specific standards for application to outside activities in which an employee may participate, including fundraising and outside employment.

EFFECTIVE DATE: February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie L. Wilcox, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

On July 23, 1991, the Office of Government Ethics (OGE) published for comment a proposed rule to establish uniform standards of ethical conduct for all employees of the executive branch (56 FR 33778–33815). The proposed rule was issued pursuant to section 201 of Executive Order 12674 of April 12, 1989, as modified by E.O. 12731, which directs the Office of Government Ethics to "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable" and gives the Office of Government Ethics authority, with the concurrence of the Attorney General, to issue regulations interpreting 18 U.S.C. 207–209.

Title III of the Ethics Reform Act of 1989 amended title 5 of the U.S. Code to add a new section 7353 which, in language virtually identical to that contained in section 101(d) of Executive Order 12674, restricts the solicitation and receipt of gifts from outside sources and authorizes the Office of Government Ethics to issue implementing regulations for the executive branch. Subpart B of this regulation was thus proposed as the Office of Government Ethics' implementation of both 5 USC 7353 and the Executive order. Subpart C of the rule, which concerns gifts between employees, was proposed as the Office of Government Ethics' implementation of the longstanding statutory prohibition against gifts to superiors at 5 U.S.C. 7351. As amended by the Ethics Reform Act of 1989, 5 U.S.C. 7351 authorizes the Office of Government Ethics to issue implementing regulations applicable to employees of the executive branch.

The proposed rule provided a 60-day comment period and invited comments by agencies and the public. Timely comments were received from 1,068 sources. After carefully considering all comments and making appropriate modifications, the Office of Government Ethics is publishing this final rule after consultation with the Department of Justice and the Office of Personnel Management pursuant to section 201(a) of Executive Order 12674 of April 12, 1989, as modified by E.O. 12731, and authorities contained in titles I and IV of the Ethics in Government Act of 1978, Public Law 95521, October 26, 1978, as amended, 5 U.S.C. Appendix, and 5 U.S.C. 7351(d)(1) and 7353(b)(1) as added by the Ethics Reform Act of 1989, Public Law 101–194, November 30, 1989, as amended. Those portions of subparts D and F of this final rule which involve an interpretation of 18 U.S.C. 208 are issued with the concurrence of the Attorney General pursuant to section 201(c) of Executive Order 12674. The Office of Government Ethics expects to issue separate regulations to interpret 18 U.S.C. 207 and 209 and to provide waivers under 18 U.S.C. 208(b)(2).

II. Summary of Comments

Of the 1,068 sets of comments timely submitted, 37 were from executive branch agencies (including 7 from agency Inspectors General) and 1,031 were from organizations and individuals. Many commented on several different sections of the proposed rule. OGE has considered each comment submitted by each commenter and those determined to be significant are discussed below in the context of the particular subparts or sections to which they pertain. We have not specifically discussed comments that were either generally laudatory or generally critical, either of style or substantive content, or that offered editorial suggestions or suggestions regarding format that would not affect meaning. In addition, we have not specifically discussed comments that were plainly unreasonable or that exhibited a clear misunderstanding of the purpose or language of the proposed regulation or of Government processes in general. The following comments fall within these categories: Proposals to revise the regulations to include a list of ethical obligations the Government owes to individual employees; recommendations to make the same ethical standards applicable to employees in all three branches of Government; comments that pertain to ethics training requirements that are the subject of other regulations; a suggestion to discuss the relationship between part 2635 and the ethical standards of the legal profession; and a recommendation to establish standards of "courtesy" for employees who deal with members of the public.

Other comments not separately addressed below include those that pertain only to a single agency. Comments that fall within this category include requests to clarify the application of certain provisions in the regulation to various types of military reserve officers and to include in the listing of statutory prohibitions generally relevant to outside activities a synopsis of a statute applicable only to employees of the Bureau of Indian Affairs and the Indian Health Service. The regulations in this new 5 CFR part 2635 apply to all executive branch personnel and, thus, contain provisions intended for broad application throughout the executive branch. To the extent they may need to be tailored to the functions and activities of a given agency, § 2635.105 of this rule provides authority for individual agencies to issue supplemental regulations. We also have not addressed recommendations which information contained in the preamble accompanying the proposed rule made clear could not be adopted because they are contrary to underlying legal authority. See, for instance, the discussion in the preamble of the proposed rule (56 FR 33779) of why the regulations do not cover enlisted members of the uniformed services. We have not specifically addressed comments that have been rendered inapplicable by changes to the regulation which have been made for other reasons. And, lastly, we have not

discussed recommendations for additional examples unless, in our opinion, the proposed example would be helpful to illustrate a point in need of clarification.

Subpart A—General Provisions

Section 2635.101 Basic Obligation of Public Service

Because certain of the principles listed in § 2635.101 are not further amplified in the regulation, one individual observed that the sentence, as proposed, introducing that listing inaccurately states that the general principles "form the basis for the standards contained in this part." This sentence has been revised to more accurately state that the general principles "apply to every employee and many form the basis for the standards contained in this part." One agency recommended a restructuring of § 2635.101(b) to make it clear that the last sentence, as proposed, applies to all fourteen principles and not just the fourteenth. In accordance with this recommendation, the statement directing employees to apply the general principles to conduct not otherwise addressed in the subpart has been moved to the beginning of § 2635.101(b) of this regulation.

The three agencies that commented on § 2635.101(b)(6) agreed that an employee who acted without knowledge that those actions exceeded his or her authority should not be disciplined for violating the ethical principle, as stated in Executive Order 12674, that an employee "shall make no unauthorized commitments or promises of any kind purporting to bind the Government." While two endorsed the proposed addition of a knowledge standard to the restatement of that principle, one expressed concern that, as an evidentiary matter, § 2635.101(b)(6) would require an agency to show that the employee acted knowingly. The Office of Government Ethics has not changed this paragraph. Whatever burden an explicit knowledge standard may impose upon an agency seeking to discipline an employee for a violation of this principle is more than compensated for by the fairness it affords thousands of employees who are called upon to exercise discretion in applying complex laws and regulations.

One agency suggested that the principle at § 2635.101(b)(7) be rephrased to include the prefatory caveat, "Except as authorized or permitted by law," in order to ensure that it is not interpreted to prohibit an employee's receipt of Federal salary and benefits. That agency suggested that the statement of the principle be further revised to prohibit employees' use of public office for private gain "of themselves and others." The Office of Government Ethics has not made the revisions suggested. The prohibition against use of public office for private gain has been in effect and stated in essentially the same terms since the 1960's with never a serious suggestion that it prohibits an employee's receipt of Federal salary or benefits. And § 2635.702 serves to clarify that the principle is sufficiently broad to prohibit an employee's use of public office for the private gain of other persons.

Two agencies suggested that the impartiality principle at § 2635.101(b)(8) be qualified so that the obligation to act impartially and not give preferential treatment does not apply when preferential treatment is required by law, such as the statute according veterans a preference when applying for Federal employment. Because the impartiality principle is further amplified in subpart E of this regulation, OGE did not adopt this suggestion.

Five agencies suggested changes to § 2635.101(b)(11), the principle requiring disclosure of fraud, waste, abuse and corruption. The recommendation by two agencies to change "shall" to "should" was not adopted. Section 2635.101(b)(11) is a verbatim restatement of the principle enunciated in the Executive order and the recommended substitution of precatory for mandatory language would change the principle. The Office of Government Ethics does not share those agencies' concern that the principle will elicit frivolous reporting. The Government's interest in curbing waste, fraud, abuse and corruption is better served by overreporting than by underreporting, and the authorities to whom such disclosures are to be made can best determine the merits of allegations and ensure that harm does not result from any that are spurious.

The suggestion by two agencies to specify agency Inspectors General as an appropriate authority for reporting required by § 2635.101(b)(11) was also rejected. The Executive order requires employees to report waste, fraud, abuse and corruption to "an" appropriate authority. Adoption of this suggestion might be viewed as limiting an employee's reporting options. The Office of Government Ethics also did not adopt the recommendation by one agency to revise § 2635.101(b)(11) to include references to legal definitions of "fraud" and "corruption." Such references would tend to suggest that an employee is responsible for applying complex legal principles in determining whether improprieties should be reported. The purpose of the principle is to elicit disclosures of improprieties, and the terms "waste" and "abuse" are sufficiently broad that an employee should not hesitate to report activities or conduct that he or she believes involve fraud or corruption as those terms are commonly used. The Office of Government Ethics also rejected the suggestion by one agency to expand upon the statement of the ethical principle at § 2635.101(b)(11) to state that employees shall cooperate with Inspectors General.

The Office of Government Ethics did not adopt a suggestion by one agency and one individual to delete §§ 2635.101(b)(12) and 2635.101(b)(13), dealing respectively with just financial obligations and adherence to equal opportunity laws and regulations, on the basis that agencies do not have sufficient authority to enforce these principles. Both principles are stated in the Executive order. For example, while agencies do not generally have authority to act as collection agents on behalf of an employee's creditors, they do have authority to initiate disciplinary action for failure to satisfy financial obligations in good faith to the extent that such action promotes the efficiency of the service. Because it is beyond the scope of the Executive order, we did not adopt the suggestion by one agency to augment the listing of prohibited bases for discrimination at § 2635.101(b)(13) to reflect Federal Personnel Manual provisions prohibiting discrimination on the basis of politics or marital status. The term "handicap" is used in the Executive order. For this reason and for reasons of consistency with other statutes and regulations applicable within the executive branch, OGE did not adopt that agency's other recommendation to substitute the term "disability" for the term "handicap."

Of the three agencies that commented on § 2635.101(b)(14), two specifically endorsed addition of the reasonable person test to the appearance principle as it is stated in the Executive order. While one agreed that appearances should be judged from the "perspective of a reasonable person with knowledge of the relevant facts," the third agency was concerned that so judging appearances would weaken the principle, since the public may not have knowledge of all relevant facts. The Office of Government Ethics has retained the reasonable person test as set forth in the proposed regulations. The test assumes that conduct will be judged by a reasonable person having knowledge of the relevant facts and does not depend on the public's actual

knowledge. We do not view that test as weakening the appearance principle, but rather as appropriate assurance to an employee that his or her conduct will not be judged from the perspective of the unreasonable, uninformed or overly zealous.

In a comment on a later section, one agency suggested that appearances might more appropriately be judged on the basis of the "knowledge common to the community." We do not believe this affords employees a useful yardstick for judging appearances, but rather invites debate about how many facts, out of the body of all relevant facts, should be considered and what constitutes "the community." At the time an employee is trying to judge whether a particular fact situation will give rise to an appearance of violating any principle or standard in part 2635, it is unlikely that "the community" will have any knowledge of the relevant facts and, in a particular case, such knowledge as "the community" ultimately gains may depend on factors as unpredictable as whether the media takes an interest in the matter.

One of the three agencies that commented on § 2635.101(b)(14) felt that the appearance principle should require only that employees avoid "substantial" appearance problems. This recommendation was not adopted. While OGE agrees that employees should not be disciplined for appearance problems that are trivial, the requirement to judge appearances from the perspective of a reasonable person with knowledge of the relevant facts will insulate employees from unreasonable application of the appearance principle.

One agency suggested that a paragraph be added to § 2635.101 stating that an agency may enforce a violation of one of the principles even if the conduct involved is not covered under another provision within part 2635. The suggested paragraph was not added since it would essentially duplicate § 2635.106, which provides that a violation of anything in part 2635 may be cause for appropriate disciplinary or corrective action.

Section 2635.102 Definitions

One individual and one organization objected to the proposed definition of the term "agency" at § 2635.102(a) as including an "executive agency as defined in 5 U.S.C. 105." Both suggested that the definition in 5 U.S.C. 106 be used to treat the Army, Navy and Air Force as separate agencies. Use of 5 U.S.C. 105 to define the term "agency" is required by the definition at section 503(c) of the Executive order. The Office of Government Ethics views as fairly minor the concern expressed by one commenter that an additional level of delegations can be avoided by treating the Army, Navy and Air Force as separate agencies. The regulations contain authority at § 2635.203(a) for the Department of Defense to designate the Army, Navy and Air Force as separate agencies for purposes of subpart B and § 2635.807. Moreover, the effect of the definition, which has not been modified, is to subject all Department of Defense employees to one Department-wide set of supplemental agency regulations. This is preferable, in our view, to the Army, Navy and Air Force each issuing its own supplemental regulations.

One agency agreed generally with the concept at § 2635.102(b) of this rule of permitting an agency to delegate to agency designees authority to make determinations, give approvals or take other action required by the regulations. In a comment supported by an outside organization, a second agency recommended that the definition of the term "agency designee" be deleted and that any responsibilities delegable to agency designees be placed upon agency ethics officials. A third agency suggested that the proposed definition specifically require that agency designees be "sufficiently qualified to perform their duties" or that their determinations be reviewed.

The Office of Government Ethics has not changed § 2635.102(b) on the basis of the above recommendations. The agency that advocates reserving all determinations to ethics officials is itself small enough that it may be able to administer its ethics program in this manner and it is free to designate only ethics officials as its agency designees. The Office of Government Ethics is convinced that this would be impractical in many departments and larger agencies, and has retained the agency designee concept to give those agencies the flexibility needed to administer their ethics programs. As to the need to specify qualifications for or to oversee the determinations of agency designees, it should be noted that the determinations reserved to agency designees, like those at §§ 2635.204(g) and 2635.502(d), generally involve determinations of agency interest to be made under standards specified in the regulations. We expect agencies to designate individuals who are qualified to make determinations of this type and, in this regard, anticipate that the ethics training program required under section 301 of the Executive order and subpart G of 5 CFR part 2638 of OGE's regulations will prove helpful. More complex determinations, as under § 2635.805(c), are reserved to agency ethics officials.

One organization expressed concern that an employee's duties as an agency designee will take time away from his or her other responsibilities. In drafting the regulations in part 2635, OGE has imposed as few requirements as possible for authorization or approval. Whether performed by the agency designee or someone else, these responsibilities will involve time. The Executive order clearly contemplates that appropriate agency resources will be devoted to the executive branch ethics program, and employee time is but one of those resources.

One agency asked that the definition in § 2635.102(b) be revised to make it clear that delegations may be accomplished with less formality than required for regulations. Since this should be clear from § 2635.105(c)(2), OGE determined that no change was needed. Neither did we make any change as the result of another agency's suggestion, without specific recommendations, to "strengthen and clarify" the authority of agency heads stated in the last sentence of the paragraph. That agency also suggested that OGE's role be clarified by cross-reference to the enforcement provisions of 5 CFR part 2638. Because the authorities in part 2638 are cross-referenced in § 2635.106, a crossreference in § 2635.102(b) was determined to be unnecessary. Moreover, such a crossreference in § 2635.102(b) could be confusing since the effect of an agency designee's determination or authorization will be to ensure that the employee is not subject to disciplinary action when the employee is acting according to that determination or authorization.

The Office of Government Ethics did not adopt the recommendation by two individuals to include in § 2635.102(c) information about the qualifications for appointment as an ethics official. Jointly, §§ 2635.102(c) and 2635.102(f) contain crossreferences to subpart B of part 2638, which sets forth the responsibilities of designated agency ethics officials and their alternates and their authority to delegate certain of those responsibilities to deputy ethics officials. As with similar authorities, it is implicit that the individuals chosen to serve as designated agency ethics officials or as alternates or deputy ethics officials will have the knowledge and ability necessary to perform the responsibilities specified.

For consistency with subparts D, E and F of this regulation, one agency recommended that the word

"disqualification" be substituted for the word "recusal" in the definition of the term "corrective action" at § 2635.102(e). This change has been made. Because the term "corrective action" as used in § 2635.106 has reference to the authorities in subpart E of part 2638 to remedy existing violations, OGE did not adopt the suggestion by another agency to include within that definition action necessary to remedy a "future" violation.

Six individuals felt that it was unfair to include special Government employees within the definition of the term "employee" at § 2635.102(h). The Office of Government Ethics has not changed this definition. Where appropriate, the regulations apply standards to special Government employees that differ from those applicable to other employees. However, their inclusion within the definition of the term "employee" is required by section 503(b) of the Executive order.

Two agencies and one organization recommended that the regulations specify what is meant by the reference in § 2635.102(k) to "management and control" of a subsidiary, suggesting that it will be difficult to determine, without examining public filings, whether the proposed equity test is met. The proposed definition has been revised to substitute "ownership of 50 percent or more of the subsidiary's voting securities" for the proposed language concerning management and control. Information as to ownership of voting securities can be obtained from reference volumes generally available in libraries.

The Office of Government Ethics did not adopt an agency's suggestion to revise § 2635.102(l) to address the circumstances of an individual appointed as a special Government employee whose actual service within a 365 day period exceeds 130 days. Section 2635.102(l) adequately reflects the statutory definition at 18 U.S.C. 202(a) of the term "special Government employee" and is not intended to provide comprehensive guidance on procedural matters relating to the appointment of special Government employees. Nor have we adopted the suggestion by another agency to expand § 2635.102 to include a definition of the term "reasonable person." The concept of reasonableness is generally understood and does not require a regulatory definition. In addition, it is amplified in § 2635.101(b)(14) by reference to the perspective of a "reasonable person with knowledge of the relevant facts."

Section 2635.104 Applicability to Employees on Detail

Two agencies objected to § 2635.104(a) insofar as it would subject an employee on detail to another agency to the supplemental regulations of the agency to which the employee is detailed rather than to those of his or her employing agency. They suggested instead that an employee be required to comply with the supplemental regulations of both agencies. One of the agencies raised the concern that detailed employees might acquire a financial interest that they could not retain after termination of the detail and indicated that its own supplemental regulations might ultimately contain provisions implementing special statutory restrictions that will continue to apply to its employees even while they are detailed to other agencies.

Because of the confusion that could result from different, and possibly inconsistent, requirements in two agencies' supplemental regulations, OGE concluded that it would be impractical to subject an employee to the supplemental regulations of his or her own agency as well as to those of the agency to which he or she is detailed. Unless it would violate a statutory restriction, any problem posed by an employee's investment activities while on detail can be readily remedied by divestiture when the employee returns to his or her regular duties. This prospect should serve to temper the investment activities of detailed employees. For these reasons, the section retains the basic concept of subjecting a detailed employee to the standards of the entity to which he or she is detailed. However, a new § 2635.104(d) has been added to clarify that any restrictions on the employee's activities or holdings imposed by an agency statute that are reflected in the agency's supplemental regulations will continue to apply during the detail. Proposed § 2635.104(a) has been divided into §§ 2635.104(a) and 2635.104(b) dealing, respectively, with interagency and interbranch details, and new § 2635.104(d) is cross-referenced in those sections.

One agency was concerned that proposed § 2635.104(b), now redesignated as § 2635.104(c), would inappropriately subject employees to standards less restrictive than Federal standards while detailed to international organizations or to State and local governments. We note that the paragraph provides for an exception only from the gift provisions in subpart B, and then only on the basis of a case-by-case determination by the agency ethics official that takes into consideration the standards of the organization or government to which the employee will be detailed. Another agency interpreted proposed § 2635.104(b) as applicable to details to universities, as well as to State and local governments, and suggested that a specific reference to the Intergovernmental Personnel Act, 5 U.S.C. 3371, be incorporated into redesignated § 2635.104(c). The suggested reference has not been included since 5 U.S.C. 3371 is but one authority under which details covered by § 2635.104(c) may be made. Moreover, the section does not extend to all details permissible under the Intergovernmental Personnel Act. Section 2635.104(c) applies only to details to international organizations and to State and local governments, whereas 5 U.S.C. 3371 authorizes details to universities and certain other organizations.

In a joint request, eleven agencies, all of whom have significant numbers of employees assigned to overseas posts of duty, asked that the overseas assignment provisions of proposed § 2635.104(c) be deleted. The majority preferred that employees serving overseas remain subject to the supplemental agency regulations of their respective employing agencies rather than to those of the Departments of State or Defense. They agreed, however, with one premise underlying the proposed section: all employees in one overseas location should be subject to the same gift rules. In the international context, employees from several agencies may participate in particular diplomatic or commercial matters and it is desirable that foreign nationals and companies be able to rely on a single set of gift standards. In lieu of proposed § 2635.104(c) as a means of achieving uniformity, the eleven agencies jointly recommended an additional gift exception for application overseas. In response to this recommendation, OGE has adopted a new exception at renumbered § 2635.204(i) which is discussed below in connection with other comments on subpart B of this regulation. As suggested, we have deleted proposed § 2635.104(c).

Section 2635.105 Supplemental Agency Regulations

No changes have been made to § 2635.105 notwithstanding two agencies' comments. Both would treat part 2635 as establishing a floor on ethical standards rather than as setting uniform ethical standards for application to all executive branch

personnel. By way of example, one raised the possibility of an agency, by supplemental regulation, revoking exceptions to the gift restrictions in subpart B of this rule and thereby imposing stricter gift standards. Both felt that more guidance was needed on agency authority to supplement part 2635.

Section 2635.105 permits supplemental regulations "which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part" and that are "(1) in the form of a supplement * * * and (2) in addition to the substantive provisions of this part." The requirement that they be "in addition" means that the basic provisions will apply and that a supplemental regulation can add something more, such as an additional gift exception, but cannot be used to negate or revoke the provisions of this part. The uniformity required by the Executive order cannot be achieved if agencies can pick and choose which provisions they adopt or override.

One individual asked whether, in view of the principle at § 2635.101(b)(13), all regulations implementing equal employment opportunity laws will have to be included in supplemental agency regulations. We do not believe that § 2635.105 needs to be revised to further clarify that regulations implementing other statutory requirements should continue to be issued separately and should not be included in an agency's supplemental regulations. Section 2635.105(c)(3) states that the requirements for issuance of supplemental agency regulations in § 2635.105 do not apply to "regulations or instructions that an agency has authority, independent of this part, to issue." One agency objected to this aspect of the regulations based on its view that supplemental agency regulations should include all regulations that relate to any of the principles or standards in this part 2635. This would mean, for example, that because § 2635.705 contains standards that refer to regulations dealing with use of Government property, an agency would be required to publish all property-related regulations in its supplemental regulations. Under this approach, supplemental agency regulations would become a repository for a large portion of all agency management regulations. This approach was rejected as impractical. However, the agency's concern that employees be placed on notice of relevant provisions can be easily accommodated by cross-references in its supplemental regulations or by handbooks that may encompass more than what is contained in its supplemental regulations, including references to or synopses or complete reprints of related regulations.

Because it would be contrary to the Executive order's requirement for joint issuance by the agency and OGE, we did not adopt one agency's recommendation to revise § 2635.105(b) to eliminate the requirement for concurrence in supplemental agency regulations and co-signature by OGE "in urgent situations." We anticipate few "urgent situations" that will warrant issuance of or changes in supplemental agency regulations and expect any that do arise will be handled expeditiously. Nor has OGE revised this section to accommodate two agencies that would prefer to publish their supplemental regulations in the titles of the Code of Federal Regulations that contain their other agency regulations. The stated requirement for publication in title 5 of the Code of Federal Regulations is imposed by section 301(a) of the Executive order. As long as this requirement is met, an agency is not prohibited from otherwise republishing the part, as in an internal instruction.

One organization expressed concern that, whereas supplemental agency regulations must be issued under normal rulemaking procedures, § 2635.105(c) will permit agencies to issue other regulations without notice and comment. Section 2635.105(c) states nothing about rulemaking; rulemaking requirements will apply, as appropriate. Insofar as § 2635.105(c) provides that delegations of authority and documentation and processing requirements need not be issued as part of a supplemental agency regulation, we further note that 5 U.S.C. 553(a)(2) exempts matters of this nature from the statute's notice and comment requirements. Those requirements also would not apply to a handbook that simply reiterates and explains regulations that have been issued under proper rulemaking procedures.

Regarding the agency handbooks contemplated by § 2635.105(c)(1), one agency and one organization suggested that OGE instead prepare a handbook for use by all agencies. Because nothing in the section would preclude OGE's intended publication of such a handbook and because agencies that wish to issue their own handbooks should have clearly stated authority to do so, this section has not been revised.

One agency asked that § 2635.105(c) be revised to require all agencies to place in their supplemental agency regulations all provisions now contained in their individual agency standards of conduct regulations. The agency noted that its current standards of conduct regulations include a provision regarding sexual harassment. This revision has not been made. By addition over time, a variety of provisions not based specifically on the standards of ethical conduct have been included in agency standards of conduct regulations. Insofar as Executive Order 12674 provides for individual agency regulations, it contemplates that those regulations will supplement part 2635 only to the extent necessary to apply the principles and standards in part 2635 to an agency's particular functions and activities. Provisions in current agency regulations that do not relate specifically to the principles and standards in part 2635 may be reissued by the agency, but not as part of its supplemental agency regulations issued under § 2635.105.

Seven agencies and one individual requested a delay in the effective date of the regulations. This suggestion was adopted to provide agencies the lead time necessary to repeal or preserve, as appropriate, existing agency regulations, and otherwise to adapt their existing ethics programs to the new regulations. One agency sought authority to "grandfather in" and, thus, retain for one year any provisions contained in its current standards of conduct regulations. Its request, in effect, is for a one-year delay in the effective date of part 2635 and, therefore, was not adopted. However, the concerns that prompted its request should be met, in part, by the 180-day delay in the effective date of part 2635. The Office of Government Ethics rejected another agency's request to revise the regulations to preserve a provision in its current standards of conduct regulations that creates a one-year restriction on former agency employees engaging in representational activities before the agency. Because part 2635 does not apply to former employees, restrictions such as these fall outside the scope of the regulations. To the extent that an agency has authority to issue rules governing practice before it, such rules may be issued separately under that authority in accordance with § 2635.105(c)(3). The 180-day delay in the effective date of this part should give the agency time to reissue or otherwise preserve this particular provision.

Section 2635.106 Disciplinary and Corrective Action

One individual raised technical concerns about an agency's ability to enforce the standards of ethical conduct through disciplinary action. The

individual noted that under the Uniform Code of Military Justice a military officer can only be charged with failure to obey a regulation that is either a Presidential order or a departmental regulation and, accordingly, urged deletion of the second sentence of proposed § 2635.106(a). Based on this comment, OGE has deleted the statement that officers of the uniformed services shall continue to be subject to the Uniform Code of Military Justice for a violation of this part or of supplemental agency regulations. Instead, we have included specific reference to the Uniform Code of Military Justice in the definition of disciplinary action at § 2635.102(g). The manner in which it is there referenced incidentally addresses one agency's technical concern that the Uniform Code of Military Justice does not apply to officers in the Public Health Service. To ensure that agencies that commission military officers do not encounter technical impediments when bringing disciplinary action, each such agency should formally adopt part 2635 as part of its own agency regulations.

Two agencies asked for guidance on the nature and extent of disciplinary action to be taken for violations of this part. The Office of Government Ethics recognizes that there are legitimate concerns about uniformity in enforcement of the standards of ethical conduct. However, part 2635 is not the appropriate vehicle for establishing tables or guidelines for disciplinary action and, as is generally true with disciplinary action for violations of other laws and regulations, the precise action to be taken is a matter for determination by each agency in accordance with applicable Governmentwide regulations and agency procedures. Accordingly, OGE has modified the statement at § 2635.106(b) regarding the agency's responsibility to initiate disciplinary and corrective action to clarify that it is also the agency's responsibility to decide upon the appropriate action to be taken in an individual case.

No revision has been made in response to another agency's recommendation to limit application of the first sentence of § 2635.106(c), concerning violations of the standards, to a person "claiming to be aggrieved by a violation of part 2635." The section, as proposed and adopted herein, more closely reflects section 504 of Executive Order 12674 which states that the Executive order "is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person."

Section 2635.107 Ethics Advice

Several commenters endorsed § 2635.107(b) insofar as it provides that employees will not be disciplined for standards of conduct violations when they have acted in accordance with the advice of an agency ethics official. Based on recommendations by two agencies and one individual, OGE has revised the second sentence of § 2635.107(b) to clarify that the employee must act in good faith reliance upon the advice of an agency ethics official. This revision satisfies another agency recommendation to clarify that ethics advice will only provide protection against disciplinary action if it predates the employee conduct in question.

The Office of Government Ethics did not adopt an agency recommendation to recast § 2635.107 so that employees are protected only when the ethics advice on which they rely has been given in writing. Traditionally, ethics counseling within the executive branch has been given informally and, unless required by a statute such as the procurement integrity provisions at 41 U.S.C. 423(k), has been reduced to writing at the discretion of the agency ethics official, or insofar as practicable, when requested by an employee. Many agency ethics officials maintain a log to serve as an aid to memory. On any given day, an agency ethics official may give advice on dozens of matters. Considering that much of that advice is routine and is rarely brought into issue, on balance we do not believe that the benefits of a requirement for written ethics advice are worth the time, expense and disruption it would cause.

Because it would be contrary to the weight of legal authority, OGE did not revise proposed § 2635.107(b), as recommended by one agency, to state that disclosures to an agency ethics official who is an attorney will be protected by an attorney-client privilege. Nor have we accommodated another agency's request to address in the regulations unique circumstances that may give rise to an attorney-client privilege. The case of concern to that agency involved circumstances unique to the military legal services programs that can be addressed, if necessary, by the Department of Defense. Because employees are unlikely to have questions about the application of any privilege other than the attorney-client privilege, OGE also rejected an agency recommendation to revise proposed § 2635.107(b) to state that disclosures are not protected by the attorney-client privilege "or any other privilege."

One agency felt that § 2635.107 should alert employees to the fact that agency ethics officials are required by 28 U.S.C. 535 to report information they receive relating to any violation of the provisions in title 18 of the U.S. Code. Language to this effect has been included in § 2635.107(b).

Subpart B—Gifts From Outside Sources

Section 2635.202 General Standards

Two agencies and two others who commented objected to the proposed prohibition at § 2635.202(a)(2) against gifts given because of an employee's official position. In part, they believe the prohibition unfairly requires an employee to speculate about the motives of the person offering the gift and could unreasonably limit a broad range of purely social activities. The Department of Defense expressed particular concern that the prohibition would inhibit the ability of its personnel to interact with members of local communities in which its military installations are located. Like other agencies with field offices away from the Washington, DC area, the Department of Defense believes its interests are best served by encouraging its personnel to participate in the civic activities of those communities. The Office of Government Ethics has not deleted the prohibition against gifts given because of official position. The absence of that standard would significantly diminish the fundamental ethical principle that an employee shall not use public office for private gain. However, to address the problems these four commenters have noted, a new exception § 2635.204(h) has been added to permit attendance at certain social events to which an employee is invited because of his or her official position by a person who is not a prohibited source. This exception is discussed more fully in the context of the comments on § 2635.204.

The Office of Government Ethics has adopted the recommendation by one agency to expand the limitation at proposed § 2635.202(c)(2) to provide that, notwithstanding any exception in subpart B, an employee shall not "solicit or coerce the offering of a gift."

Six agencies objected to the limitation at proposed § 2635.202(c)(3) on use of any of the exceptions in subpart B to accept a gift from a person who "has interests that may be substantially affected by the performance or nonperformance of the employee's official duties under circumstances where the timing and nature of the gift

would cause a reasonable person to question the employee's impartiality in the matter affecting that person." Three agencies with a contrary view proposed language that would tighten the limitation, either by making it applicable to gifts from any prohibited source or by revising the language which, as proposed, focuses on the timing and nature of the gift.

The concerns of those opposed to the appearance limitation in proposed § 2635.202(c)(3) relate primarily to its subjective nature. Requiring an employee to exercise judgment in accepting a gift from a person affected by the performance of his or her duties, in the view of some, invites Inspectors General and others with investigative, review or oversight functions to second-guess the employee's judgment. And, because it would place an employee in the position of having his or her judgment reviewed against the more perfect standard of hindsight, it would also create an incentive for the employee to seek the insulation of ethics advice concerning even the most trivial of gifts. Two of the agencies that commented expressed the same concerns regarding proposed § 2635.202(c)(4).

Based in part on concerns regarding its subjective nature, OGE has deleted proposed § 2635.202(c)(3). We have, however, retained the appearance limitation at proposed § 2635.202(c)(4), now renumbered § 2635.202(c)(3), to ensure that no employee engages in a pattern or practice of accepting even de minimis gifts. There are reasons other than those noted by the commenters for deleting proposed § 2635.202(c)(3) that relate to the prospect of inconsistent application of the gift standards throughout the executive branch. Several of the agencies that commented on the proposed $25 de minimis exception at paragraph (a) of § 2635.204 suggested that they would seek to build upon the proposed limitation at § 2635.202(c)(3) either by including in their supplemental agency regulations provisions to prohibit use of the de minimis exception by certain classes of employees, or by interpreting proposed § 2635.202(c)(3) to achieve the same result. In fact, the comments submitted by two regulatory agencies suggested that they would view proposed § 2635.202(c)(3) as a basis for prohibiting all agency employees, without regard to the nature of their duties, from accepting anything from a regulated entity. What these comments portend would be an ethics program destined to fall short of meeting the President's goal of a uniform set of standards of conduct for all executive branch employees.

The Office of Government Ethics has deleted the proposed appearance limitation at § 2635.202(c)(3) only after reviewing all of the gift exceptions in § 2635.204 and revising the de minimis exception at § 2635.204(a). That appearance limitation had been proposed primarily to temper use of the proposed $25 de minimis exception. As discussed in more detail below, that $25 amount has been reduced to $20 and the proposed aggregate limitation of $100 per year has been reduced by half. With these reductions, the need for an appearance limitation becomes less compelling, particularly when balanced against the disparate treatment such a limitation promises to generate.

Each of the other exceptions in §§ 2635.204(b) through 2635.204(l) is so drawn that the exception itself addresses major appearance concerns. For example, the exception for awards at § 2635.204(d), like the newly added exception at § 2635.204(h) for attendance at certain social events, has a built-in prohibition against a gift being given by a person affected by the employee's duties. Similarly, the exception at § 2635.204(e)(3) for interview travel expenses applies only after the employee has been disqualified from participation in matters affecting the prospective employer. The determination of agency interest that, under § 2635.204(g)(3), is a prerequisite to participation in a widely attended gathering specifically requires that appearance issues be taken into consideration, and appearance considerations were taken into account in crafting the exception at § 2635.204(c) for discounts. By its terms, the exception at § 2635.204(b) for gifts based on a personal relationship would not apply unless the circumstances make it clear that the gift is motivated by the family relationship or personal friendship involved, and the exceptions at §§ 2635.204(e)(1) and 2635.204(e)(2) for certain gifts based on outside business and employment relationships would not apply to gifts offered or enhanced because of the employee's official position.

Consistent with the congressional intent in enacting 5 U.S.C. 7353 and with the fact that appearance and related standards of conduct issues have been taken into account in formulating subpart B of this regulation, OGE has expanded the first sentence of § 2635.204 to make it clear that a gift accepted under the standards set forth in subpart B will not violate the appearance or any other principle set forth in § 2635.101(b). Nevertheless, we have added a second sentence to the prefatory part of § 2635.204 to remind employees that they should exercise judgment in accepting gifts even though they will not be disciplined for accepting a gift permitted by one of the exceptions listed in that section.

One agency suggested that the term "public official" used in the synopsis of 18 U.S.C. 201(b) at redesignated § 2635.202(c)(4)(i) be more specifically defined than by the proposed statement that it is "broadly construed and includes special Government employees as well as all other Government officials." For clarity, the words "regular or" have been inserted before "special" in this phrase. However, the recommendation otherwise to expand upon the definition of the term "public official" was not adopted. Part 2635 applies to executive branch employees as defined at § 2635.102(h), and it is sufficient that these employees understand that they are public officials within the meaning of 18 U.S.C. 201(b). That the term may have been more broadly construed to cover other persons is a matter beyond the scope of part 2635.

The Office of Government Ethics has added a new § 2635.202(c)(5) to provide that none of the exceptions in § 2635.204 may be used to accept vendor promotional training in contravention of applicable procurement regulations, policies or guidance. We have also included a definition of "vendor promotional training" at § 2635.203(g) and have amplified the definition of a "gift" at § 2635.203(b) to make it clear that it would include, for example, a gift of free attendance at a training course. Notwithstanding recommendations to expand the scope of subpart B to include standards for acceptance of vendor promotional training, we have included this limitation to ensure that the standards of ethical conduct do not limit the ability of those who establish policies relating to procurement of goods and services to address the issues of competitive advantage raised by offers of training by those engaged in the sale of products and services to the Government. Those issues are presently being addressed by the General Services Administration in the Federal Information Resources Management Regulations based on a congressionally mandated study by that agency of marketing practices in the automated data processing industry. It is OGE's purpose in adding § 2635.202(c)(5) to ensure that employee attendance at vendor promotional training is in accordance with applicable

procurement authorities. It is not an across-the-board prohibition on use of the exceptions in § 2635.204 to accept vendor promotional training. Rather, it would apply only insofar as vendor promotional training is the subject of specified procurement regulations, policies or guidance.

Section 2635.203 Definitions

Two agencies specifically endorsed the authority at proposed § 2635.203(a) for executive departments to designate certain components as separate agencies for purposes of subpart B. Such designations would serve to narrow the class of persons who meet the definition of a prohibited source at § 2635.203(d) and would also contract the scope of the limitations on speaking, teaching and writing at § 2635.807. One of the agencies objected, however, to the third sentence of § 2635.203(a) which, as proposed, would have precluded any such designation from being effective as to the head of a designated separate agency or as to department-level employees. It noted, by way of example, that the Director of the Bureau of the Mint would have little way of knowing what matters are pending before the Office of Thrift Supervision even though both are components of the Department of the Treasury. And, where a matter is pending within a separate bureau or office and has not been escalated to department level, the agency notes that department-level employees would face similar difficulties. In part because of these practical considerations, OGE has deleted the third sentence of proposed § 2635.203(a). In addition to complicating the administration of subpart B, we find that the proposed limitation would have accomplished little beyond what is addressed by the prohibition on gifts given because of an employee's official position.

One agency and one organization recommended that all of the items excluded from the definition of the term "gift" by § 2635.203(b) be treated instead as additional exceptions under § 2635.204. In a related comment, one agency recommended that the proposed exclusion at § 2635.203(b)(2) for certain discounts be merged with the exception for other discounts at § 2635.204(c). These recommendations were not adopted. Certain of the excluded items, such as anything paid for by the employee, loans on customary terms and broadly available commercial discounts, simply are not gifts to the employee. Others, such as items secured under Government contract or accepted by the Government under specific statutory authority, accrue to the employee from the Government and, thus, are not gifts from an outside source. It could be fairly argued that the regulations should not mention any of these items. However, questions routinely arise as to whether they are gifts, and they are specifically excluded by § 2635.203(b) to clarify that they are not. Also for the purpose of eliminating any questions about benefits that are not gifts, OGE has added a specific exclusion, now at renumbered § 2635.203(b)(6), for pension and other benefits resulting from continued participation in an employee welfare or benefit plan maintained by a former employer.

As subpart B is structured, items excluded from the definition of the term "gift" can be accepted without regard to the limitations in § 2635.202(c). Although they might have been treated instead as exceptions, a few items, such as plaques and certificates with little intrinsic value, have been treated as exclusions specifically so that they will not be subject to the limitations in § 2635.202. Because the broad scope of the term "gift" should be clear from the listing of included items in the second sentence of § 2635.203(b), OGE rejected an agency recommendation to insert the phrase "tangible or intangible" in the first sentence of that section.

At the suggestion of one agency and one organization, OGE has expanded the list of items excluded from the definition of the term "gift" to cover "modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal." OGE agrees with the observations made by both commenters that food and refreshments of this nature are given as a matter of custom when people meet and that employees should not have to decline these courtesies under any circumstances. The effect of the new exclusion at renumbered § 2635.203(b)(1) is not only to exempt items, such as coffee and donuts, from the limitations in § 2635.202(c), but also to permit their acceptance without regard to the $50 aggregate annual limitation at § 2635.204(a) on de minimis gifts from any one person.

One agency expressed concern that the exclusion of loans by proposed § 2635.203(b)(1) from the definition of the term "gift" might limit its ability to prohibit its employees from obtaining loans from the financial institutions it regulates. Under § 2635.403 agencies have authority to prohibit certain financial holdings, including loans. The exclusion for loans on terms available to the public from the definition of the term "gift" merely recognizes their commercial character and has no effect on the agency's authority to treat any loan as a financial interest under § 2635.403. The exclusion for loans has been redesignated as § 2635.203(b)(3).

The Office of Government Ethics did not adopt the recommendation by one agency to augment the exclusion at proposed § 2635.203(b)(2) to permit acceptance of offers, such as discounts on health club memberships, made available to tenants of specific buildings housing Government agencies. To the extent that such offers are made by the owner or manager of the building and flow to all tenants, they are a consequence of the Government's lease for that space and may be accepted in accordance with renumbered § 2635.203(b)(7) as "secured by the Government under Government contract." Otherwise, such offers come within the ambit of the exception for discounts and similar benefits at § 2635.204(c).

Two agencies offered recommendations to modify the exclusion at renumbered § 2635.203(b)(5) for rewards and prizes. While one felt an employee should not be able to accept a prize from any prohibited source, even in a drawing open to the general public, the other recommended allowing rewards and prizes in contests if they are either open to the general public or unrelated to the employee's duties. Where a contest is open to the public, the danger is remote that a prohibited source will use the contest as a means of giving something to an employee or that a reasonable person would question the motive for any prize awarded. Where the contest is not open to the public, appearance issues may arise without regard to whether the contest is related or unrelated to the employee's official duties. For these reasons, OGE has retained the exclusion for rewards and prizes in contests and events but, to ensure against the potential abuses that concern the commenters, has limited its applicability to those that are open to the public, and not, as proposed, to those open to a "broadly-defined class." And, we have reworded the exclusion to make it clear that an employee may accept a prize in a contest or random drawing open to the general public even though the opportunity to enter the contest occurs while or because the employee is on official duty. *See also* Comptroller General Opinion B–199056, July 15, 1981. As revised, it would continue to preclude receipt of a prize if, for example, members of an agency rifle team placed first in a competition open to the public. Because prizes of that nature are subject instead to the

exception at § 2635.204(d), discussed below, OGE did not revise renumbered § 2635.203(b)(5), as suggested by one organization and one individual, to cover a prize for an essay contest open, for example, only to junior Naval officers.

One agency and two others suggested that the exclusion at proposed § 2635.203(b)(4) be revised to allow "mementos" on the same basis as plaques, certificates and trophies. OGE did not adopt this recommendation. The word "memento" means simply a souvenir or keepsake. It can take any form and, thus, unlike the more specific terms "plaques," "certificates" and 'trophies," would allow the giving of a broad range of items. While plaques and certificates, by their very nature, ordinarily have little intrinsic value, broadening the exclusion to cover "mementos" would invite controversy as to the value of other items that might not so clearly be of little intrinsic value. Mementos other than plaques, certificates and trophies may be accepted only if they come within one of the exceptions in § 2635.204. The $20 de minimis exception at § 2635.204(a) should be sufficient to permit many customary mementos.

Two agencies expressed concern with the scope of the exclusion for anything "paid for by the Government or secured by the Government under Government contract" which was proposed as § 2635.203(b)(5) and now appears as renumbered § 2635.203(b)(7). Both requested that language be added to make it clear that this exclusion does not permit a contractor to give a gift to an agency contracting official because the contractor has, by including its cost in overhead or otherwise, obtained reimbursement for the cost of the gift under a Government contract. The exclusion is intended to cover items the Government procures for use by its employees under a Government contract or knowingly obligates itself to pay for. The Office of Government Ethics believes it is clear from the wording of § 2635.203(b)(7) that the exclusion is not intended to cover items which are improperly or fraudulently charged to the Government.

Two organizations and one agency recommended deletion of the note regarding airline bonus points following renumbered § 2635.203(b)(7). The note has been included as a caution to employees that airline bonus points received for Government travel are Government property. Several employees who have used these bonus points for personal travel have been required to reimburse the Government for the value of the travel taken. In issuing a regulation that covers gifts from outside sources and that speaks specifically to commercial discounts and favorable rates, OGE would be remiss in failing to caution employees that bonus points that accrue from official travel should not be used for personal travel. Thus, OGE has retained the cautionary note.

One organization asked that proposed § 2635.203(b)(6)(i), now renumbered § 2635.203(b)(8)(i), be revised specifically to permit reimbursement of transportation, meals and lodging for activities engaged in for reasons of furthering scientific exchange or professional development. The suggested revision cannot be made. The paragraph is merely a synopsis of the statutory authority contained in 31 U.S.C. 1353 for agencies to accept travel and related expenses for an employee's attendance at meetings and similar functions. The regulations implementing that statute at 41 CFR part 304–1 are promulgated by the General Services Administration and cannot be revised by OGE. However, those regulations will, in many cases, enable agencies to accept travel and related expenses for employees to participate in meetings that involve an exchange of scientific information or otherwise enhance professional development. We also did not adopt an agency recommendation to revise these part 2635 regulations to specifically state that a contribution to an agency's gift fund would not be considered a gift covered by subpart B. The fact that such contributions are not gifts within the meaning of subpart B should be clear from renumbered § 2635.203(b)(8)(ii).

In a recommended departure from the definition of "market value" at § 2635.203(c), one agency argued that the face value of a ticket that is in high demand may not be a fair measure of its market value. That agency urged that proposed § 2635.203(b)(7), now renumbered as § 2635.203(b)(9), be revised to exclude from the definition of a "gift" only those items that are "readily available for purchase by the employee, other than from a prohibited source, for which market value is paid by the employee." Stating a contrary view with regard to the market value of tickets, one agency and one organization urged that § 2635.203(c) be revised to provide that the market value of a ticket is the value of the food, refreshments, and entertainment purchased with the ticket rather than its face value. Both noted that the price of a ticket for a charitable event ordinarily includes a charitable donation and, thus, is more than payment to cover the value of the food, refreshments and entertainment provided at the event.

The three comments reflect legitimate, though differing, positions that capsulize a debate that has existed for years over how to value tickets. While each may highlight a shortcoming in the approach adopted in § 2635.203(c), each suggestion has its own shortcomings. The recommendation to place a value higher than face value on hard-to-obtain tickets might, in some circumstances, place the Government in the position of sanctioning price scalping; the recommendation to place a lower value on tickets, for example to charitable events, would undervalue tickets which purchase access not only to food, refreshments and entertainment, but often to very exclusive occasions that many pay dearly to attend. Both approaches would leave employees with a difficult task in trying to determine the market value of a ticket. On balance, OGE believes that the most appropriate measure of the market value of a ticket is its face value, an amount that can be readily determined.

One agency suggested that the definition of "market value" at § 2635.203(c), when combined with the exclusion at renumbered § 2635.203(b)(9), could create a windfall to the donor who purchased a gift at wholesale but was reimbursed by an employee on the basis of retail prices. The Office of Government Ethics has not changed either section. The purpose of these sections is to ensure that the employee pays the fair value of an item he or she cannot accept under subpart B and not to ensure that the donor, through reimbursement, comes out even. Moreover, the approach adopted in the regulations should, in most cases, allow the employee to determine the value or the amount to be reimbursed without having to consult the donor as to the donor's cost.

The Office of Government Ethics also did not adopt the recommendation by one agency to insert a parenthetical phrase in § 2635.203(d)(2) to specifically state that persons who do business or seek to do business with the employee's agency include "all persons or organizations receiving benefits from a Federal program involving a grant, contract, subsidy, loan guarantee, insurance or other form of Federal assistance from the employee's agency and those seeking to obtain such benefits." Section 2635.203(d)(2) restates the language of the Executive order and 5 U.S.C. 7353. While we agree that the class of persons who do or seek to do business with an agency would include

persons seeking or receiving the benefits listed by the agency, OGE has a general concern that employees may read any enumeration, such as that proposed, as excluding all others not mentioned.

Three agencies and four others opposed the definition at § 2635.203(d)(5) of a "prohibited source" as including an organization, a majority of whose members are otherwise prohibited sources within the meaning of §§ 2635.203(d)(1) through 2635.203(d)(4). Some of those opposed cited the fact that many such organizations have established educational foundations and other entities for laudable purposes. Others expressed concern that the definition may hinder agency relations with professional associations and that it may be difficult to determine the composition of an organization.

Notwithstanding that it may require inquiry about the composition of some organizations, OGE did not change the definition of a prohibited source at § 2635.203(d)(5) to eliminate its coverage of organizations a majority of whose members are otherwise prohibited sources. The Office of Government Ethics has long held that a gift from an organization that does not itself meet the definition in the Executive order of a prohibited source should be treated as a gift from a prohibited source if all or a substantial majority of its members are prohibited sources. Office of Government Ethics informal advisory opinion 84 x 5 issued May 1, 1984, as published in the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988). We believe this view is still warranted. Where, for example, an organization is composed largely of agency contractors, that organization should not give a gift to an agency employee that its individual members could not give. The explicit inclusion of such organizations in the definition of a "prohibited source" at § 2635.203(d)(5) addresses the fact that, through payment of dues or otherwise, gifts from such organizations are paid for wholly or in substantial part by their members. If the employee and the agency are unwilling to pay for attendance, an employee may be able to attend certain events sponsored by such organizations under the exception at § 2635.204(g) for widely attended gatherings or, perhaps, using the Governmentwide gift acceptance authority at 31 U.S.C. 1353 or an agency gift acceptance statute. It should be noted that nothing in the regulations prohibits any employee from being a member of such an organization on the same basis as all other members and § 2635.204(c) specifically permits certain discounts on membership and other fees offered by such organizations.

One agency did not agree with the seven commenters who objected to the prohibited source definition at § 2635.203(d)(5), but suggested a tightening of the standard so that an organization would be considered a prohibited source if "a significant number" or "some" of its members are prohibited sources. It expressed concern that an individual member who is a prohibited source might have authority to offer gifts on behalf of the organization. The language of proposed § 2635.203(d)(5) has not been changed. The Office of Government Ethics believes the more specific standard proposed is preferable to one that leaves the status of many organizations in question. The agency's concern that a prohibited source will use an association that is not a prohibited source as a means of giving an improper gift to an employee is addressed, in part, by the prohibition against acceptance of a gift given because of the employee's official position.

One organization suggested that the definition of a prohibited source at § 2635.203(d) be revised so that, in the specific case of universities, only the particular school or department that has an agency contract or grant, and not the whole university, is a prohibited source. This recommendation has not been adopted. Its logical extension would be to allow corporations to carve out divisions and subsidiaries from the effect of subpart B, contrary to the definition of the term "person" at § 2635.102(k).

One individual was concerned that the prohibition on gifts because of official position might be interpreted as applying to gifts between employees and, thus, preclude an employee from giving a gift to his or her secretary on Secretary's Day. Unless the employee giving the gift is a prohibited source, OGE had intended that subpart C, rather than subpart B, apply to gifts between two employees, and we have revised § 2635.203(e) to make this clear.

One agency and one organization suggested that the definition at § 2635.203(f) of "indirect" receipt of a gift be revised to allow an employee to suggest a list of charities to receive a gift he or she cannot accept. The Office of Government Ethics did not adopt this recommendation. While the process these two commenters propose ensures that individual employees will not personally profit from gifts from prohibited sources or because of official position, it would create an incentive for donors to offer employees items they cannot accept and, in the case of highly visible employees, might result in their favorite charities profiting from their official positions. The Office of Government Ethics recognizes that the Ethics in Government Act, as amended, 5 U.S.C. App. 501(c), and the implementing regulations at 5 CFR 2636.204, permit charitable donations in lieu of certain payments employees cannot receive. For the reasons stated, we have chosen to treat gifts differently.

Section 2635.204 Exceptions

Gifts of $20 or Less

The proposed exception at § 2635.204(a) for gifts of $25 or less prompted comments from 20 agencies, 15 organizations and 5 individuals. The concept of a de minimis limitation was endorsed by four agencies, 14 organizations and one individual. Five agencies, one organization and one individual were opposed to any exception for gifts of de minimis value, arguing variously that: There is no sound reason for a de minimis exception; it will be used to accept restaurant lunches and dinners from prohibited sources; it will pressure outside sources to give gifts to Federal employees; it will impair the integrity of Government ethics programs; it will make it difficult for employees to tactfully decline offered gifts; and its use should be absolutely prohibited by employees with regulatory or procurement responsibilities. Three of the agencies that opposed any de minimis exception recommended permitting only promotional items and refreshments of nominal value. One agency recommended that the proposed de minimis exception apply only to gifts offered because of official position.

Of those who commented specifically on the $25 dollar amount proposed by § 2635.204(a), four agencies and seven organizations thought the amount should be raised to anywhere from $35 to more than $100. One individual suggested a higher amount for gifts given because of official position. Three agencies, on the other hand, thought $25 was too high. Three individuals observed that any amount that might be chosen will have an element of arbitrariness. Two agencies suggested revising § 2635.204(a) to specifically exclude restaurant meals, tickets to sporting events, greens fees and personal services. One agency expressed concern, on the other hand, that $25 would be insufficient to cover working meals and recommended a separate

exception for working meals with a value in excess of $25. Two agencies and one organization thought the proposed $100 aggregate annual limitation on gifts from any one source should be lowered, while two agencies and four organizations urged the deletion of any such limitation.

Regardless of whether they opposed or endorsed the concept of a de minimis exception, eight agencies and two organizations thought that any such exception should not apply to certain categories of employees, such as those with inspectional or procurement responsibilities. Two regulatory agencies believed that no employee of a regulatory agency should be permitted to accept a gift using the proposed de minimis exception.

Six agencies stated that they were opposed to the appearance limitation in proposed § 2635.202(c)(3) and, in particular, were concerned with its application to de minimis gifts. One agency endorsed the appearance limitation, as proposed, and three recommended that it be tightened. The comments by several of the agencies that thought a de minimis exception should not apply to certain categories of employees indicated that they anticipated using the proposed appearance limitation at § 2635.202(c)(3) as a basis for supplemental agency regulations that would prohibit use of any de minimis exception by some, if not all, of their employees. For the reasons discussed in connection with other comments on § 2635.202(c)(3), OGE has deleted that particular section. However, we have retained the limitation at proposed § 2635.202(c)(4), which is now renumbered as § 2635.202(c)(3).

This final rule was prompted, in large measure, by the President's desire for a uniform set of standards of conduct applicable to all executive branch personnel. In reviewing existing agency standards of conduct, OGE found a great deal of variation between the gift standards applicable to employees of different agencies. The Office of Government Ethics proposed the $25 de minimis exception in an effort to eliminate the variations that now exist between agencies in gift exceptions and in interpretation of the gift rules. As noted in the discussion accompanying the proposed rule at 56 FR 33781, we had concluded that a de minimis exception is preferable to a laundry list of exceptions for small, unobjectionable gifts that employees would have difficulty remembering and applying. While the 40 comments we received concerning § 2635.204(a) reflect anything but a clear consensus, they confirm the need for an across-the-board de minimis exception that can be used by all executive branch employees. Without such an exception, we foresee the slow erosion of the uniformity in gift standards we have sought to achieve by this regulation.

While we adhere to our earlier view that a de minimis exception is appropriate, we have reconsidered the appropriateness of the $25 amount proposed. When coupled with the appearance limitation in proposed § 2635.202(c)(3), OGE had viewed a $25 amount as appropriate. In the absence of that limitation, we have reduced the amount to $20. Our sense from the comments submitted is that few would object to a $10 de minimis amount and many would have no problem with a $15 de minimis amount. But it appears that several would find reason to object to a $25 de minimis amount decoupled from an appearance limitation such as that at proposed § 2635.202(c)(3). We rejected a $10 amount as too low to eliminate the necessity to create additional exceptions for certain unobjectionable gifts likely to be worth more than $10. We have chosen $20 rather than $15 because we believe it will allow employees to accept a range of unobjectionable items, but will generally be low enough to discourage the restaurant dinners and lavish lunches that concerned some of the commenters. The Office of Government Ethics expects that the de minimis amount will remain at $20 for the foreseeable future and has not adopted recommendations to include provisions for cost of living adjustments. We would note that a de minimis exception for gifts is not without precedent. House and Senate gift rules currently contain a $100 de minimis exception and the procurement integrity provisions at 41 U.S.C. 423 require a de minimis exception for gifts given to procurement officials by competing contractors. That amount is presently set by the Federal Acquisition Regulation at $10.

The Office of Government Ethics also has lowered to $50 the proposed $100 annual aggregate limitation on de minimis gifts from any one source. We appreciate the view expressed by some that any aggregate limitation will be difficult to monitor, but do not think it wise to adopt a de minimis gift exception that will allow repeated gifts from any one source. We have also declined to create a formal reporting requirement for individual gifts. The administrative burden that such a requirement would impose could well negate many of the benefits that will result from a de minimis rule that is otherwise easy to apply. We expect individual employees to keep their own tallies. To help simplify their task, OGE has added a new exclusion from the definition of a gift at renumbered § 2635.203(b)(1) for modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal. Because they can be disregarded for purposes of applying the $50 aggregate limitation, employees need not keep a running mental tab on coffee and similar items. The examples accompanying § 2635.204(a) have been changed to reflect the above-noted revisions to this section.

Gifts Based on a Personal Relationship

One agency urged that the discussion in Example 1 following § 2635.204(b) be expanded to address other implications of the dating relationship between the Federal Deposit Insurance Corporation employee and the employee of a member bank. The agency is concerned that a reasonable person with knowledge of the relationship might question the Federal Deposit Insurance Corporation employee's impartiality in performing duties affecting the member bank. Although some dating relationships may give rise to questions about an employee's impartiality, OGE did not revise the example to address these concerns. The example is intended to illustrate the gift exception at § 2635.204(b) and the discussion is limited to that purpose.

Discounts and Similar Benefits

Seven agencies, three organizations and two individuals commented on the exception at § 2635.204(c) for discounts and similar benefits. Five of those who commented either overlooked the exclusion from the definition of a "gift" at renumbered § 2635.203(b)(4) or were concerned that those reading the regulations would fail to note the relationship between that exclusion for certain publicly available discounts and the exception at § 2635.204(c) for discounts and similar benefits available to more narrowly defined classes of persons. Because the publicly available discounts excluded by § 2635.203(b)(4) are not gifts and because OGE believes their acceptance should not be subject to the limitations in § 2635.202(c), we have not adopted the offered solution of merging the exclusion into the exception. However, to ensure that employees note both the exclusion and exception, § 2635.204(c) has been redrafted to include a prominent cross-reference to the exclusion at § 2635.203(b)(4).

Three agencies recommended that proposed § 2635.204(c) be revised to allow employees to accept a broader range of discounts. One felt that an employee should be able to accept discounts offered as a result of activities unrelated to his or her Federal employment; another felt that an employee should be able to accept certain broadly available discounts from even prohibited sources; and the third asked OGE to reconsider the proposed exception with a view to allowing employees to accept discounts under additional circumstances where the potential for abuse is minimal. One organization was concerned that § 2635.204(c), as proposed, would prohibit a union from offering discounts to its own members.

After reviewing proposed § 2635.204(c), OGE agrees with the observations by these four commenters that it is unnecessarily restrictive. The Office of Government Ethics has redrafted § 2635.204(c) to accommodate their recommendations, all of which seemed reasonable. As revised, it includes a specific exception for certain reductions in membership rates and other fees offered by professional and similar organizations. The section also permits discounts and similar benefits offered to members of a class when membership in that class is unrelated to Government employment or, when membership is related to Government employment, if the same offer is made broadly available to large segments of the public through organizations of similar size.

One individual took exception to the limitation in proposed § 2635.204(c)(2). In his view, high-level officials should be able to accept "perks," such as free country club memberships, in recognition of the sacrifices they make to serve their country. The Office of Government Ethics disagrees. To the extent that they have monetary value and are given by outside sources because of the employee's official position, such gifts are subject to the basic prohibition in § 2635.202(a)(2). The limitation on favorable rates offered to a class defined in a manner that discriminates among employees on the basis of rank, rate of pay or type of official responsibility was proposed at § 2635.204(c)(2) to ensure that gifts, such as free country club memberships, are not simply recharacterized as reduced rates to avoid the general prohibition. That general concept has been retained.

One agency and one individual raised a legitimate concern that the restriction at proposed § 2635.204(c)(2) on reduced rates or discounts that discriminate on the basis of rank or rate of pay may be overly broad and could be viewed as precluding the customary practice of offering discounts, for example, to all enlisted members of the armed services. Although enlisted personnel in particular are not subject to the regulations, the restriction now included in renumbered paragraph § 2635.204(c)(2)(iii) has been rephrased to prohibit reduced rates and discounts from other than prohibited sources when they discriminate on a basis that favors those of higher rank or rate of pay. Discounts that discriminate in favor of those of lower rank or rate of pay are more likely to have a legitimate commercial purpose and are not likely to present significant issues of use of public office for private gain.

Awards and Honorary Degrees

Six agencies, eight organizations and two individuals commented on the proposed exception at § 2635.204(d) for awards and honorary degrees. Two agencies were concerned that the scope of the requirement in the second sentence of § 2635.204(d)(1) for approval for "other" gifts was unclear. This lack of clarity was evident from comments by three organizations and one individual, all of whom misconstrued the proposed regulation as placing a flat bar on awards with an aggregate market value in excess of $200. Subject to the stated limitation on the source of the award, it was OGE's intent to permit awards with an aggregate market value in excess of $200 based on a written determination by an agency ethics official that the award is made as part of an established awards program meeting the criteria stated. To avoid further misconstruction, the second sentence of the section has been revised to include specific reference to gifts with an aggregate market value in excess of $200.

Those who addressed the requirement in § 2635.204(d)(1) for approval of awards with a market value in excess of $200 presented opposing views regarding the appropriateness of that dollar threshold. One agency and one organization believed that, regardless of value, no award should be permitted unless the agency ethics official specifically determines that it is part of a bona fide awards program. Of a contrary view, another agency suggested that the $200 amount be raised to $1,000 and coupled with specific authority to accept travel expenses, meals and entertainment. The Office of Government Ethics has not adopted either recommendation.

The Office of Government Ethics' determination to exempt awards with an aggregate value of $200 or less from any requirement for review or approval was based, in part, on programmatic considerations. When its value is not great, a bona fide award given for meritorious public service or achievement by a person who is not affected by the recipient's official duties is not likely to pose significant appearance or other conflict of interest problems that demand the time and attention of busy agency ethics officials. We have retained the $200 amount, however, as an appropriate threshold and believe that awards with an aggregate value above that amount should be reviewed to ensure that they are given as part of an established awards program. The Office of Government Ethics has also retained § 2635.204(d)(3), which excludes meals and entertainment given to the employee and his or her family members at the event at which the presentation takes place from the aggregation requirement. The purpose of this exclusion is to permit members of the recipient's family freely to attend awards ceremonies.

Subject to the requirement that their values be aggregated, and subject to any consequent requirement for review by an agency ethics official, travel expenses incident to an award or the presentation of an award may be accepted under § 2635.204(d)(1). Because travel expenses may have considerable value, OGE rejected the recommendation by one individual to include travel expenses, as well as meals and entertainment, under § 2635.204(d)(3) and thereby permit their acceptance without regard to value. The discussion in Example 3 following § 2635.204(d)(3) has been expanded to illustrate the proper treatment of travel expenses offered incident to an award.

One agency objected to the prohibition in the first sentence of proposed § 2635.204(d)(1) on acceptance of awards from persons affected by the employee's duties, and one organization objected to the prohibition on acceptance of awards from an organization the majority of whose members have interests that may be substantially affected by the employee's duties. Neither limitation has been deleted. Some limitation is necessary, even for established programs, to ensure that awards are not used by outside sources to make gifts to employees whose official duties affect their interests. In the absence of a limitation on awards from persons affected by the employee's duties, the regulation would have to be recrafted, as suggested by another agency, to include a

requirement for agency ethics officials to review every award with a view to considering any appearance problem it might create. The Office of Government Ethics does not expect the application of the limitation in § 2635.204(d)(1) on awards from organizations with affected members to be unnecessarily restrictive. While many organizations may be prohibited sources because more than half of their members are prohibited sources, relatively few will have a membership composed of a majority of persons affected by any one employee's official duties. Moreover, in view of the gift exclusion at § 2635.203(b)(2), even these organizations are free to honor employees with modest plaques and certificates.

The Office of Government Ethics also did not revise § 2635.204(d)(1) to require, as suggested by one agency, that the employee or the agency ethics official specifically consider any "appearance of impropriety" before accepting or authorizing acceptance of an award. In most cases, significant appearance problems will be effectively addressed by the requirement for review of any award over $200 to ensure that it is part of an established awards program and by the prohibition against awards from any person affected by performance or nonperformance of the employee's official duties.

One agency and one organization recommended deletion of the requirement in the second sentence of § 2635.204(d)(1) for a written determination by an agency ethics official that the award is part of an established program of recognition. An award that is given for reasons related to an employee's performance of his or her official duties could raise questions regarding improper supplementation of Federal salary in possible violation of the criminal statute, 18 U.S.C. 209, unless the award is given pursuant to a bona fide awards program. The requirement for a written determination regarding more significant awards is retained for the protection of employees. For similar reasons, OGE also did not adopt the recommendation by one agency to delete the requirement that awards subject to the second sentence of § 2635.204(d)(1) be reviewed by the agency ethics official to determine that selection of the award recipient is made pursuant to written standards. Written standards help to ensure that the awards program is an established program of recognition and that the employee's selection was not motivated by an intent to supplement his or her Federal salary. To ensure that the condition is not interpreted in an unduly restrictive manner, we have deleted the word "specific" that appeared prior to "written standards" in proposed § 2635.204(d)(1)(iii), which is now renumbered as § 2635.204(d)(1)(ii).

One significant change to § 2635.204(d)(1) was prompted by comments from three agencies, two organizations and one individual all of whom objected to the requirement at proposed § 2635.204(d)(1)(ii) that individuals other than Federal employees be eligible for the award. Several cited existing awards for Federal employees that would not meet this condition. On further review, OGE agrees that the condition is neither necessary nor desirable, and it has been deleted.

One agency suggested that the condition at proposed § 2635.204(d)(2) that acceptance of an honorary degree not "create an appearance of loss of impartiality or use of public office for private gain" be changed to focus instead on whether the timing of the award or the degree would cause a reasonable person to question the employee's impartiality in a matter affecting the degree-granting institution. OGE adopted this recommendation for its greater specificity and revised Example 2 accordingly. One individual suggested that an employee has a "right" to receive an honorary degree offered for reasons related to his or her official duties. We do not agree and, therefore, have rejected that individual's suggestion to provide a mechanism to appeal adverse determinations under § 2635.204(d)(2).

One organization recommended that § 2635.204(d)(2) be revised to permit acceptance of honorary degrees without regard to whether the degree-granting institution is an institution of higher education under 20 U.S.C. 1141(a). Unlike awards under established programs permitted by § 2635.204(d)(1), honorary degrees are customarily bestowed on a purely discretionary basis and the stated limitation on the source of honorary degrees is an appropriate means of preventing their use to recognize employees who would not qualify for recognition as part of a bona fide awards program.

Gifts Based on Outside Business or Employment Relationships

Four agencies and one individual commented on the exception at § 2635.204(e) for gifts based on outside business or employment relationships. The Office of Government Ethics did not adopt one agency's recommendation to revise § 2635.204(e)(1) to permit acceptance of benefits that flow from spousal employment activities only when an agency ethics official has determined in writing that acceptance of the benefits would not appear to improperly influence the employee in the performance of his or her official duties. In large agencies, like the Department of Defense, there may be thousands of employees whose spouses are employed by one of the thousand or more companies that meet the definition of a prohibited source. In practice, most employees are disqualified from working on matters that affect their spouses' employers and, thus, it is the rare employee whose official duties would prompt his or her spouse's employer to offer or enhance an employment benefit. The suggestion to require every employee to obtain a written opinion before enjoying the normal benefits that flow from a spouse's employment with a prohibited source would be so administratively burdensome as to be unworkable. Because it is intended simply to illustrate the gift exception in that section and because the preceding example includes a specific cross-reference to relevant provisions in subpart E of this regulation, OGE did not accommodate one agency's request to elaborate upon the possible applicability of the standards in subpart E to the facts stated in Example 2 following § 2635.204(e)(1). The Office of Government Ethics did, however, adopt an agency recommendation to expand the exception in § 2635.204(e)(2) to cover regular as well as special Government employees.

Because such gifts are appropriately addressed by the respective exclusions and exceptions related to discounts at §§ 2635.203(b)(4) and 2635.204(c), we did not adopt an individual's recommendation to create an additional category of exceptions under § 2635.204(e) for benefits "offered as a public relations gesture." Based on an agency suggestion to amplify the need for the employee's disqualification, Example 1 following § 2635.204(e)(3) has been revised so that the regulation for which the employee is responsible affects only cable television networks and so that the employee is seeking employment with an affected cable television holding company.

Gifts From a Political Organization

One individual alluded to policies under which certain employees who are exempt from the Hatch Act restriction in 5 U.S.C. 7324(a)(2) against active participation in political management or campaigns are asked, nevertheless, to refrain from partisan political activities. His suggestion to revise § 2635.204(f) to

reflect this policy was rejected. It is not the purpose of this section to implement 5 U.S.C. 7324 or to reflect related policies that may change from time to time. The authority in § 2635.204(f) for Hatch-exempt employees to accept certain gifts from political organizations would be unaffected by the fact that a particular employee's participation on behalf of a political organization may violate an existing agency or other policy on participation in political activities.

Widely Attended Gatherings and Other Events

The proposed exception for speaking engagements and widely attended gatherings at § 2635.204(g) elicited comments from 21 agencies, ten organizations and four individuals. Three agencies and one association suggested that proposed § 2635.204(g)(1)(i) be revised to recognize that employees are sometimes assigned by their agencies to take an active but less formal role than that of a speaker or panel participant in the presentation of information at conferences and similar events. Consistent with this observation, OGE has revised proposed § 2635.204(g)(1)(i) to permit free attendance on the day an employee is assigned to participate as a speaker, panel participant, or "otherwise to present information on behalf of the agency at a conference or other event." This language appears as renumbered § 2635.204(g)(1).

The Office of Government Ethics did not adopt the recommendation by one agency and one organization to revise proposed § 2635.204(g)(1) to routinely permit those speaking or otherwise presenting information to accept free attendance for the entire event. In addition to being customary, attendance on the day of an employee's presentation will ordinarily be useful, and often necessary, to the presentation. The same cannot be said for attendance on days the employee is not speaking or otherwise presenting information. It may be possible, however, for an employee to accept an offer of free attendance on those additional days under renumbered § 2635.204(g)(2) if the event is widely attended. Or, the employee or the agency may be able to accept an offer of free attendance, as well as travel and related expenses, under statutory authorities such as those referred to in renumbered §§ 2635.203(b)(8) and 2635.204(l). Conforming revisions have been made to the determination requirements of renumbered § 2635.204(g)(3). Contrary to the view expressed by one agency, free attendance at the entire event cannot simply be extracted by an agency as "consideration" for providing an agency speaker.

More than half of those who commented on § 2635.204(g) objected to or questioned the basis for the condition at proposed § 2635.204(g)(1)(ii) that an employee may accept free attendance at widely attended gatherings only if attendance will be on his or her "own time." Three noted that the Government benefits from the employee's attendance at events that are educational in nature, and many pointed out the logical inconsistency between the condition that attendance be on the employee's own time and the requirement, now at renumbered § 2635.204(g)(3), for a threshold determination of agency interest. Two noted that distinctions between official and personal time cannot be made in the case of Cabinet officials and others who are not subject to formal leave systems.

Proposed § 2635.204(g)(1)(ii) has been renumbered as § 2635.204(g)(2) and revised to provide that, in the case of an employee who is subject to a leave system, attendance will be on the employee's own time or, when authorized, on excused absence or otherwise without charge to the employee's leave account. The phrase "or otherwise" was included to refer to those, such as military officers, who are excused from duty otherwise than under systems that use the precise concept of excused absence. While this revision may not fully address the concerns noted, it is imposed of necessity to ensure that the gift is made to the employee rather than to the agency and, thus, that it does not improperly augment agency appropriations available for payment of expenses of attendance at training, meetings or similar events. Appropriate use of the authority in chapter 630 of the Federal Personnel Manual to grant brief periods of excused absence without loss of pay or charge to leave will ensure that employees are not charged leave to attend events that are in the agency's interest.

In order to craft a regulatory exception permitting an employee to accept a gift of free attendance at meetings and other events that serve an agency's interests, it must be clear that the gift is to the employee and does not augment the appropriation of his or her employing agency by permitting an outside source to pay for attendance that the agency should finance. In addition to authority to pay for all or part of the expenses of training employees, agencies have authority under 5 U.S.C. 4110 to use travel expense appropriations to facilitate "attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities." Implementing guidance at Federal Personnel Manual chapter 410, subchapter 8, encourages agencies to adopt policies to facilitate attendance at meetings where ideas and information in areas significant to agency operations will be communicated, even when the agency cannot pay the necessary expenses of attendance. That subchapter recommends that agencies adopt a liberal standard for authorizing attendance at meetings without charge to leave when travel funds cannot be provided by the agency. Thus, the Office of Personnel Management (OPM) specifically recognizes that employees may pay for the cost of attending meetings either on their own time or, when authorized, on excused absence. In view of these authorities recognizing that an employee may pay for attendance at meetings and similar events while on excused absence, an employee's acceptance of a gift of free attendance while on his or her own time or while on excused absence would not augment the agency's appropriations.

It is in part the purpose of renumbered § 2635.204(g)(2) to fill a gap in statutory authorities under which agencies or employees may accept gifts of free attendance. Some agency gift acceptance statutes and 31 U.S.C. 1353 provide authority for agencies, that otherwise would use their own funds for those purposes, to accept gifts from non-Federal sources to enable their employees to attend certain events on official time. Not all agencies have gift acceptance statutes, however, and 31 U.S.C. 1353 cannot be used to accept free attendance at an event that takes place at an employee's duty station. Provided that the offer is from an organization that is exempt from taxation under 26 U.S.C. 501(c)(3) or from a State, county or municipality, an individual employee may be authorized to accept expenses for attendance at training or meetings under 5 U.S.C. 4111 without regard to whether the event takes place at or away from his or her official duty station. If the event takes place at the employee's duty station and if the offer cannot be accepted under 5 U.S.C. 4111, there is no statutory authority for an employee or for an agency without independent statutory gift acceptance authority to accept an offer of free attendance. Section 2635.204(g)(2) partially fills this void.

Based on comments by one agency and one organization suggesting a need to clarify that § 2635.204(g) is but one of several authorities to accept free attendance, OGE has added a note to that effect following renumbered § 2635.204(g)(4).

One agency recommended deletion of the condition that the widely attended gathering be of "mutual interest to a number of parties." The recommendation, intended to permit attendance at events that are primarily social in nature, was not adopted. Where the invitation is from a person who is not a prohibited source, and provided that no one in attendance is charged an attendance fee, the exception at renumbered § 2635.204(h) may permit an employee to accept an invitation to an event of a social nature.

Only one individual objected to the requirement at proposed § 2635.204(g)(2) for a determination of agency interest. However, twelve who commented felt that the requirement for a written determination of agency interest would be difficult to administer. After further consideration, OGE has retained the requirement for a determination of agency interest but has revised renumbered § 2635.204(g)(3) to permit that determination to be made orally unless the sponsor has interests that may be substantially affected by performance or nonperformance of the employee's duties. At the suggestion of one organization, we also have added a provision at § 2635.204(g)(3)(ii) to permit certain group or class determinations of agency interest.

The Office of Government Ethics did not revise § 2635.204(g), as requested by one agency, to include a statement that it may be possible to accept free attendance at some events under the exception at § 2635.204(a) for de minimis gifts, without regard to whether they are widely attended or serve an agency interest. It would be unnecessarily repetitious to note in every exception to the gift prohibitions that the de minimis exception might be used in lieu of a more specific exception when the market value of the particular gift does not exceed $20. Example 3 following § 2635.204(g), however, makes this point.

One agency suggested that proposed § 2635.204(g)(4) be rephrased to make it clear that a prohibited source cannot funnel payment for the employee's attendance through a sponsor. As renumbered, that section is now § 2635.204(g)(5). Espousing precisely the contrary position, one agency and one organization suggested that this paragraph be liberalized to permit any prohibited source to pay for an employee's attendance, provided that seating is arranged solely and randomly by the sponsor. As a check on possible appearance problems that could result when a prohibited source, such as a NASA contractor, finances attendance by the NASA contracting official who administers its contract, the agency suggested that employees be required to indicate to sponsors those persons with whom they should not be seated and be required to change seating as necessary. One organization suggested that the requirement for a written determination of agency interest be the sole check on the ultimate source of payment.

Renumbered § 2635.204(g)(5) has not been revised. As stated, the section provides a sufficient safeguard that a person other than the sponsor will not funnel payment for a particular employee's attendance through a nominal sponsor. The recommendation to permit payment by other than the sponsor was rejected as potentially more troublesome than worthy. Artificial requirements, in the nature of those suggested, to assure random seating and anonymity of the donor are not likely to be perceived as shielding the identity of the actual donor. In OGE's view, they are an overly complex means of accomplishing a goal that is met more directly by requiring that the sponsor actually bear the cost of attendance.

Four agencies commented on the authority at proposed § 2635.204(g)(5) for employees to accept free attendance for an accompanying spouse. One suggested that, in addition to the requirement for attendance by other spouses, the section require a determination that the spouse's presence will support the mission of the agency. Another suggested that the requirement that others at the event be accompanied by spouses be deleted in favor of a determination that the gift not appear to influence the employee in the performance of his or her official duties. Neither recommendation has been adopted. The Office of Government Ethics recognizes that, as a condition of the agency's acceptance of travel and related expenses for an accompanying spouse, the General Services Administration's interim regulations implementing 31 U.S.C. 1353 (56 FR 9878–9881) require a determination that the spouse's presence will support the agency's mission or assist the employee in carrying out his or her participation in the event. Because that statute authorizes "agency" acceptance of the gift, a regulatory requirement for a finding that the spouse's participation will serve an agency purpose may be appropriate, particularly when travel and subsistence expenses are likely to be involved. In contrast, § 2635.204(g) is authority for acceptance by the employee rather than the agency and it does not permit acceptance of travel and lodging expenses but is limited to gifts of free attendance. Because of the limited nature of the benefit involved, OGE believes it is a sufficient limitation that others attending the portion or portions of the event in question will generally be accompanied by their spouses. Moreover, a requirement for a determination that the gift will not create an appearance of improper influence would largely duplicate the determination required by renumbered § 2635.204(g)(3).

At the recommendation of one agency, language has been included in renumbered § 2635.204(g)(6) to clarify that the offer of free attendance for an employee's spouse must also be from the sponsor of the event. The Office of Government Ethics rejected as unnecessary the suggestion by another agency to add language specifying that acceptance of free attendance by a spouse does not obligate the agency to assume travel costs for an accompanying spouse. The examples following § 2635.204(g)(6) have been revised to reflect the changes in § 2635.204(g) noted above.

One organization sought clarification as to whether an employee serving as an agency representative or liaison to an outside organization may attend ongoing working groups where no fee is charged to any attendee. Renumbered § 2635.204(g)(4) defines a gift of free attendance as including waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. Where the meeting does not involve food, refreshments, entertainment, instruction or materials and no fee is charged to any participant, there is no gift. Moreover, an employee serving as an agency liaison to a particular organization is authorized to perform those liaison duties on official time and could accept waiver of an attendance fee under § 2635.204(g)(1) if his or her participation in the particular meeting involves presentation of information on behalf of the agency.

Social Invitations From Persons Other Than Prohibited Sources

The Office of Government Ethics has added a new exception at renumbered § 2635.204(h) to address several concerns that relate to the limitations in § 2635.204(g) on free attendance at widely attended gatherings and those noted in the first paragraph of this

discussion of the comments regarding subpart B. Where no one in attendance is charged a fee, this exception permits acceptance of food, refreshments and entertainment at a social event attended by several persons where the employee is invited by a person who is not a prohibited source. Some of these events may fall within the exception at § 2635.204(g) for widely attended gatherings and others may fall within the exception at § 2635.204(b) for gifts based on a personal relationship. However, § 2635.204(h) will extend to smaller gatherings and will permit attendance even when the agency has no interest in the employee's participation. It is intended to ensure that the prohibition on gifts because of official position not unreasonably restrict social interaction and to accommodate some of the community relations concerns expressed by the Department of Defense.

Meals, Refreshments and Entertainment in Foreign Areas

As explained in the above discussion of the comments concerning proposed § 2635.104(c), eleven agencies with overseas operations jointly requested that an exception be added to subpart B to permit employees assigned to duty overseas to accept certain meals and entertainment. These agencies are concerned that employees will be required to decline the customary invitations of hospitality that frequently accompany the transaction of business in many foreign countries and that the foreign nationals and entities involved may be offended. Although some of those agencies currently use gift acceptance statutes to enable employees to accept meals and entertainment overseas, it is the consensus of these eleven agencies that there should be a uniform standard applicable to all executive branch personnel overseas. Presently, the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, contains a nominal value exception of $200 for gifts from foreign governments and international or multinational organizations and their representatives. This authority does not extend, however, to gifts from foreign individuals or nongovernmental entities.

In renumbered § 2635.204(i), OGE has adopted the concept of a special exception for foreign areas recommended by the 11 agencies with overseas operations. The exception drafted and offered by the group would have allowed acceptance of meals, refreshments and entertainment up to the per diem rate for the foreign area without any approval, and would have permitted acceptance without regard to value when approved by a supervisor or agency designee. As that proposal has been modified and adopted by OGE at § 2635.204(i), the value of food, refreshments and entertainment that may be accepted is limited to the applicable daily per diem rate for the particular foreign area. The daily per diem rate is the amount the agency may pay an employee on temporary duty in the particular overseas area to cover lodgings, meals and incidental expenses for one day and should be sufficient to permit participation in most meetings or events of the character envisioned by the agencies that recommended the exception. In those few cases where it is not sufficient, agencies may be able to use the authority at 31 U.S.C. 1353 to accept free attendance at meetings and similar events, or may be able to use a separate agency gift acceptance statute.

Gifts Accepted Under Specific Statutory Authority

One organization noted that the synopsis of 5 U.S.C. 4111 in proposed § 2635.204(j)(1) does not reflect the interpretive regulations in 5 CFR 410.702 which permit acceptance not only from 501(c)(3) tax exempt organizations, but from organizations to which the prohibitions in 18 U.S.C. 209 do not apply. The section, renumbered as § 2635.204(l)(1), has been revised to reflect the broader scope of this authority to accept expenses incident to training or attendance at meetings from State, county and municipal governments.

Additional Exceptions Recommended

Three agencies and two others requested an additional exception to permit acceptance of gifts in "special situations" when approved in writing. One of the agencies noted that acceptance in certain special situations may now be permitted under some agency gift acceptance statutes. Another agency noted that its regulations now provide for acceptance of "items of nominal value and perishable gifts from inhabitants of the islands, territories and possessions that fall within the responsibility of the United States," with a provision that other gifts given by such inhabitants become the property of the agency.

A "special circumstances exception" has not been added to § 2635.204. OGE views the de minimis exception at § 2635.204(a) as appropriate to deal with nominal gifts, including those from inhabitants of islands, territories and possessions of the United States. We recognize that agencies, using gift acceptance statutes, may be able to provide for acceptance of gifts in certain special circumstances. However, where the item is tangible and nonperishable, acceptance under an agency gift statute means that the item cannot be retained by the employee but must be turned over to the agency. Thus, the fact that some agencies may have statutory gift acceptance authority does not warrant an exception that would result in the employee, rather than the agency, retaining a nonperishable item that may be of more than nominal value. Nor did OGE adopt a recommendation to add an exception to § 2635.204 to cover "working meals." The Office of Government Ethics views the recommendation for a "working meals" exception as eclipsed by the de minimis exception at § 2635.204(a).

Section 2635.205 Proper Disposition of Prohibited Gifts

One individual suggested that the sharing of perishable items within an office could never raise an appearance of impropriety and, thus, that the reference to supervisory discretion in § 2635.205(a)(2) was unnecessary. Two agencies felt, to the contrary, that even supervisory approval was insufficient to guard against appearance problems. One would permit sharing of perishable items within the office only if the items cannot be given to a charitable organization, and the other would require a specific determination that sharing within the office does not create an appearance of impropriety. The Office of Government Ethics has not revised § 2635.205(a)(2) to limit the discretion of supervisors or agency ethics officials to choose between destruction, donation or sharing of perishable items. Although donation to a charity may often be the most appropriate disposition of perishable items that cannot be accepted under subpart B, there are any number of factors, including costs of delivery, that may make it more appropriate to share perishable items within the office.

We did not adopt the recommendation by one agency to illustrate the reimbursement requirement at § 2635.205(a)(3) with an additional example involving the sponsor of a reception who provides a box permitting executive branch employees to deposit their fair share of the reception's cost. Section 2635.205(a)(3) imposes a requirement for reimbursement but does not specify particular means by which reimbursement may be accomplished. Because it would relate more appropriately to renumbered § 2635.203(b)(4) and was overly complex, we also did not adopt that agency's recommendation to add an

example following § 2635.205(a)(3) involving tickets offered at a reduced rate to all Government employees. We also did not adopt an agency recommendation to revise § 2635.205(a)(4) to include a reference to the excess personal property provisions at 41 CFR 101–43.305. It is not feasible for OGE to address all the various issues relating to property management and disposal that may arise when items of tangible property are accepted by agencies.

Subpart C—Gifts Between Employees

Section 2635.302 General Standards

Because both suggestions would be contrary to the underlying statutory language of 5 U.S.C. 7351, OGE did not adopt the recommendation by one individual to permit only group gifts to superiors or the recommendation by two agencies to delete the prohibition at § 2635.302(b) on acceptance of gifts from employees receiving less pay. Section 7351, as amended by the Ethics Reform Act of 1989, specifically authorizes OGE to issue regulations that contain an exemption for "voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under circumstances in which gifts are traditionally given or exchanged." Thus, the statute contemplates exceptions allowing individual gifts as well as contributions for group gifts. The prohibition against an employee accepting a gift from another employee who receives less pay is mandated by 5 U.S.C. 7351(a)(3) and cannot be eliminated by the implementing regulations.

One organization recommended deletion of § 2635.302(b)(2) so that an employee can freely accept a gift from any employee receiving less pay as long as the two employees are not in a superior-subordinate relationship. The Office of Government Ethics has not deleted the paragraph and does not agree with the organization's suggestion that the mere assertion of "friendship" will always permit a gift and that the limitation serves no purpose. To permit acceptance of a gift from an employee receiving less pay, § 2635.302(b)(2) requires a personal relationship "that would justify the gift." For example, where the two employees are acquainted simply because they work for the same agency, the paragraph would preclude an employee from giving a gift to a higher-paid employee in another office who is the selecting official for a position for which the lower-paid employee has applied.

Section 2635.303 Definitions

The Office of Government Ethics did not adopt the recommendation by one organization to eliminate the last sentence of § 2635.303(f) which requires that any recommendation of an amount to be contributed to a group gift be accompanied with a statement that an employee may contribute less or not at all. In OGE's opinion, the organization's recommendation instead to require an annual notification to this effect would not provide the same degree of assurance that contributions will be voluntary.

Section 2635.304 Exceptions

Of the four agencies that commented on the general exception at § 2635.304(a)(1) for items with an aggregate market value of $10 or less, one opposed any such de minimis exception and three asked that the amount be raised. The first agency's recommendation to prohibit gifts on all but special, infrequent occasions was rejected in view of the statutory language which requires an exception for circumstances in which gifts are traditionally given or exchanged. For this same reason, OGE did not revise § 2635.304(a) in response to one individual's concern that the exception may operate in a manner that is biased in favor of certain religious holidays. Although gift-giving is frequently associated with religious holidays, the exception is not limited to such holidays or to the holidays of any particular religious group.

The three agencies that recommended a higher de minimis amount for the occasional gifts permitted by § 2635.304(a)(1) all suggested that the $10 amount be raised to comport with the de minimis exception at § 2635.204(a) for gifts from outside sources. The Office of Government Ethics has not raised the amount. The underlying statute, 5 U.S.C. 7351, specifically requires an exception for gifts for occasions such as birthdays and certain holidays. While a de minimis exception for these and other occasional gifts is appropriate to permit modest exchanges of gifts between coworkers, OGE believes that a standard more restrictive than § 2635.204(a) is appropriate for gifts between superiors and subordinates. In an office environment where superiors and subordinates interact daily and where subordinates compete for advancement, there may be subtle pressures to give gifts to superiors that are not present when outside sources deal only occasionally with employees. The $10 amount was proposed and is retained because it is high enough to permit an exchange of modest tokens between all employees, such as cookies on holidays and flowers and vegetables from home gardens in the summer, but low enough generally to discourage employees from purchasing gifts for their superiors. The Office of Government Ethics has modified § 2635.304(a)(1) to make it clear that gifts of cash are not included within the exception for gifts of $10 or less.

Two agencies recommended that the exception at § 2635.304(a)(3) for gifts of personal hospitality not be limited to hospitality extended at an employee's personal residence. The Office of Government Ethics has retained the limitation, in the absence of which the term personal hospitality could be interpreted to permit any form of entertainment as long as the employee is personally present. The term personal residence is flexible enough to cover entertainment at a second home the employee maintains for personal use and to cover amenities, such as use of a swimming pool or tennis court, available to all tenants of the employee's apartment building. One agency expressed concern that § 2635.304(a)(3) could justify an employee hosting an official superior for an entire week at his or her beach cottage. The exception was not intended to facilitate entertainment of this nature, but rather to permit employees to entertain superiors in their homes on the same basis that they customarily entertain personal friends. Occasional dinners and, if the employee owns a weekend residence, a weekend visit are within the range of personal hospitality contemplated. To help convey this meaning, OGE has revised § 2635.304(a)(3) to permit personal hospitality provided at a residence "which is of a type and value customarily provided by the employee to personal friends."

To ensure that items that are highly valuable cannot be given simply because they are customary in nature, two agencies suggested that a dollar limitation be placed on hostess and similar gifts permitted by § 2635.304(a)(4). While OGE has not revised this section to include a specific dollar amount limitation, the section has been revised to stipulate that the value as well as the type of the gift must be customary.

One agency disagreed with the exception at § 2635.304(a)(5) which permits an employee to transfer leave to an official superior in accordance with the leave transfer provisions of 5 CFR part 630, subpart I. Another agency pointed out that these leave transfer

regulations specifically prohibit an employee's transfer of leave to his or her immediate supervisor. The exception was retained in order not to defeat the purpose of the leave transfer program but has been revised to reflect the regulatory prohibition at § 630.906(d) on transferring leave to an immediate supervisor.

The two agencies and one organization that commented on § 2635.304(b) suggested a specific dollar limitation on gifts for special, infrequent occasions. Two of the three recommended a $25 limit and one individual suggested limiting gifts on such occasions to those of a purely sentimental nature. The Office of Government Ethics did not revise the section to incorporate a dollar limitation or to limit gifts to those of a sentimental nature. More flexibility is required to permit appropriate gifts on the special occasions covered. For example, where an employee is invited by his or her official superior to a formal wedding and reception, a gift in excess of $25 may be customary and, thus, appropriate to the occasion. On the other hand, a gift worth considerably less may be appropriate for an office bridal shower.

In commenting on § 2635.304(c), one agency suggested that the term "nominal amount" be specifically defined by a dollar limit and one organization specifically recommended $5 as an appropriate limitation. Although collections for gifts of all types within the executive branch generally involve individual contributions less than $5, OGE has not imposed a specific dollar limit. Where contributions meet the regulatory requirement that they be entirely voluntary, higher amounts may appropriately be contributed in some cases, as when several senior members of an office provide an additional contribution to subsidize a collection that has come up short of sufficient funds to purchase a desired gift. The Office of Government Ethics is not aware of any particular abuse of the longstanding restriction on gifts to superiors contained in 5 CFR 735.202(d) which, for special occasions such as marriage, illness or retirement, has similarly limited donations to those of "nominal amount."

One individual expressed concern that within large offices, collections of voluntary contributions for a retirement gift might be sufficient to purchase a new automobile. Because OGE is not aware that this is other than a theoretical concern, an aggregate limitation on the value of group gifts has not been imposed. However, to comport with the similar limitation on individual gifts contained in § 2635.304(b), the word "appropriate" has been inserted before the word "gift" both times it appears in the first sentence of § 2635.304(c). This serves to limit group gifts for special, infrequent occasions to those of a type and value appropriately given by a group on such occasions and will preclude gifts of the extravagant nature postulated.

Subpart D—Conflicting Financial Interests

Section 2635.402 Disqualifying Financial Interests

One agency and one individual noted an internal inconsistency in the statement at § 2635.402(b)(1)(ii) that a matter will have a direct and predictable effect if there is a "real," as opposed to a "slight or speculative," possibility that the matter will affect a financial interest. To avoid possible confusion resulting from the fact that a "slight" possibility may be a "real" possibility, OGE has deleted the word "slight." Based on another agency suggestion, the last sentence of that section has been expanded to include the statement that the dollar amount of the effect on the financial interest is immaterial.

One agency asked for further clarification of the definition of "direct and predictable effect" at § 2635.402(b)(1) to ensure its correct application to matters affecting corporations in which employees hold stocks or bonds. The agency was concerned that an employee might argue that a million dollar change order under a Government contract with a corporation in which the employee owns stock will not have a "direct and predictable effect" on his or her financial interests. For the purpose of clarification, OGE has revised the note following § 2635.402(b)(1)(ii) to reflect its longstanding position, and that of the Department of Justice, that an employee's ownership of stock may give rise to a financial interest that, under the direct and predictable effect test, could require disqualification. By way of illustration, we have added Example 1 following § 2635.402(b)(1)(ii). And, as requested by one agency, we have added Example 2 immediately thereafter to illustrate the application of the direct and predictable effect test to an employee's participation in a procurement that involves the competitor of a corporation in which the employee holds stock. We note, furthermore, that because a bond evidences a debt of the corporation, the question of whether a particular matter will have a direct and predictable effect on the financial interests of a bondholder will depend on whether the matter will affect the market value of the bond or the corporation's ability to pay the debt.

One agency requested further guidance in § 2635.402(b)(2) for dealing with conflicts that arise when an employee is assigned to participate in a particular matter that affects the employer of his or her spouse. Under 18 U.S.C. 208, matters affecting the employer of an employee's spouse are treated differently than matters affecting the employee's own outside employer. The statute requires an employee's disqualification from a particular matter affecting the financial interests of a person he or she serves as officer, director, trustee, general partner or employee without regard to whether the matter will ultimately affect the employee's own financial interests. Where the matter affects the employer of a spouse, the statutory prohibition applies only if the matter will affect a financial interest of the spouse. To illustrate the application of § 2635.402 to both types of employment interests, and to highlight the fact that spousal employment interests also should be addressed under § 2635.502, Examples 1 and 2 have been added following § 2635.402(b)(2). The Office of Government Ethics has not revised this section to accommodate three commenters who requested specific standards for determining when a child is a "minor child." Minority status is generally dependent on State law.

Two agencies suggested that the definition of "imputed interests" in § 2635.402(b)(2) be expanded to cover stepchildren, adult children, divorced spouses, members of an employee's household and any person an employee serves as an adviser or consultant. Section 2635.402 implements the criminal statute, 18 U.S.C. 208, and OGE does not have authority to expand its reach by extending the definition of "imputed interests" at § 2635.402(b)(2) to cover additional categories of persons. The fact that a particular person's financial interests are not imputed to an employee under § 2635.402(b)(2) does not mean, however, that the employee should participate in a matter affecting a person with whom he or she has a close personal relationship. The impartiality principle, as amplified in § 2635.502, is intended to address matters affecting the financial interests of members of the employee's household and others with whom the employee has certain business and personal relationships.

The Office of Government Ethics did not adopt the suggestion by one agency and one organization to add language to § 2635.402(b)(2) to make it clear that an obligation of disqualification will arise only if an employee knows that a matter will affect the financial interests of a person whose interests are imputed to him or her by that section. Section 2635.402(b)(2) is intended only to define "imputed interests." The statutory requirement of knowledge is appropriately reflected in §§ 2635.401, 2635.402(a) and 2635.402(c) of this regulation.

Two agencies and two organizations asked for further clarification of the definition at § 2635.402(b)(3) of a "particular matter." Examples 1 and 2 have been added following § 2635.402(b)(3) to illustrate the difference between regulations affecting members of a particular industry which, generally, are "particular matters," and matters of broader applicability that, generally, are not.

One agency requested further clarification of the phrase "material significance" used in the definition of "personal and substantial" participation at proposed § 2635.402(b)(4). To conform this section to the definition of the same concept used in the postemployment statute, 18 U.S.C. 207, OGE has deleted the word "material" and expanded the discussion of substantial participation to more closely reflect the definition of substantial participation at 5 CFR 2637.201(d).

Five agencies, one organization and one individual commented on the provisions at § 2635.402(c) governing disqualification. Three agencies and the individual argued that written disqualification statements should be required. Three agencies noted that practical problems of supervision are likely to arise if employees can unilaterally disqualify themselves from participation in particular matters. One agency and one organization asked that the regulation be revised to require an employee to inform his or her supervisor of the disqualification.

Those who proposed a requirement for written disqualification statements may misperceive the value of such statements. While it may be useful to document that an employee understands that he or she is not to participate in a particular matter, a written disqualification statement will not insulate an employee who, nevertheless, participates in a particular matter that directly and predictably affects his or her own financial interests or the financial interests of any person that are imputed to the employee under § 2635.402(b)(2). Actual nonparticipation in the matter is what is required by 18 U.S.C. 208. In proposing § 2635.402(c) without a general requirement for written disqualification statements, it was OGE's purpose to ensure that employees who properly refrain from participating in particular matters from which they are disqualified will not be disciplined simply for failing to document their good intentions.

One factor that had entered into OGE's decision not to require written disqualification statements under § 2635.402(c) was the practical difficulty of defining precisely the circumstances under which a written disqualification statement should be filed. The mere fact, for example, that a matter that may directly and predictably affect the employee's financial interests is pending before his or her agency, or even before the employee's particular office, should not ordinarily trigger a requirement for written disqualification statements. If the employee has been assigned to a matter that directly and predictably affects his or her financial interests, it may be reasonable to require a written disqualification statement. However, the fact that an employee has been assigned to a matter does not necessarily mean that the employee has begun working on it, and many matters that have been assigned are not active. When an employee finds that he or she is disqualified from working on a particular matter to which he or she has been assigned, OGE believes it should generally suffice that the employee arranges to have the matter reassigned. If the employee does not have authority to cause that reassignment, then the employee may need to notify a supervisor or other person responsible for the assignment. We are hesitant to complicate a simple process that will meet the requirements of 18 U.S.C. 208 by requiring all employees to file written disqualification statements.

Although § 2635.402(c) has not been revised to require written disqualification statements, OGE has undertaken to address the stated concern that, without notification to a supervisor, an employee's unilateral disqualification may pose practical problems for managers who are responsible for ensuring that the agency's work is accomplished. Section 2635.402(c)(1) has been revised to state that an employee who becomes aware of the need to avoid participating in a matter to which he or she has been assigned should notify the person responsible for that assignment. Section 2635.402(c)(2) has also been revised to provide that, in addition to an agency ethics official, the person responsible for the employee's assignment may require a written disqualification statement in an individual case. Example 1 following § 2635.402(c)(2) has been modified to reflect these changes.

One individual claimed that written disqualification statements are an essential part of the process by which his agency reviews financial disclosure statements and that his agency must be able to impose an across-the-board requirement for written disqualification statements in its supplemental agency regulations. The Office of Government Ethics does not believe the circumstances that confront the individual's employing agency are significantly different from those encountered by other agencies nor would otherwise justify a departure from renumbered § 2635.402(c)(2).

The Office of Government Ethics has not adopted the recommendation by one agency to revise § 2635.402(d)(2)(ii) to provide that individual waivers can only be granted by agency ethics officials. Under 18 U.S.C. 208(b)(1), authority to grant individual employee waivers is not reserved to agency ethics officials but is expressly given to the Government official responsible for the employee's appointment. We see no reason to constrain the ability of those individuals to delegate that authority as they deem appropriate. As a matter of practice, agency ethics officials have been consulted or otherwise have participated in the granting of individual waivers. The consultation provision set forth in renumbered § 2635.402(d)(4) helps to ensure that their involvement will continue. We also did not adopt an agency recommendation to delete that consultation requirement or the requirement, also contained in § 2635.402(d)(4), to forward copies of such waivers to OGE. Both requirements are specifically imposed by section 301(d) of Executive Order 12674.

The Office of Government Ethics did not adopt one agency's suggestion to include in the first sentence of § 2635.402(e)(2) a statement indicating that an employee may be required to divest a financial interest under § 2635.403 even though the employee has disqualified himself or herself from participation in matters affecting that interest. We believe this is clear from § 2635.403. We also rejected an agency recommendation to revise §§ 2635.402(e)(2) and 2635.403 to further define what constitutes a substantial conflict under § 2635.403(b). That concept is sufficiently addressed in § 2635.403(b). To ensure that employees do not prematurely divest and thereby lose tax benefits provided by certificates of divestiture under subpart J of 5 CFR

part 2634, OGE adopted one agency's suggestion to revise the last sentence of renumbered § 2635.402(e)(3) to delete the word "voluntarily" from the statement that "an employee who voluntarily divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment."

Section 2635.403 Prohibited Financial Interests

In commenting on § 2635.403(a), one agency sought assurance that it will continue to have authority to implement certain statutory provisions in its organic act by regulations issued separately from its supplemental agency regulations. Another agency expressed concern that § 2635.403(a) not interfere with its authority to provide for regulatory waivers of such statutory prohibitions. We believe § 2635.105(c)(3) makes it clear that an agency need not include in its supplemental agency regulations any regulations it has independent authority to issue. To address both comments, however, OGE has included in the note following § 2635.403 a statement to indicate that, in some cases, agency specific statutes prohibiting employees from holding or acquiring specified financial interests may be implemented by agency regulations issued independent of part 2635. At the suggestion of another agency, OGE has revised § 2635.403(b) to clarify that authority to determine that a substantial conflict exists may be delegated to an agency designee.

Three agencies objected to the definition of the term "financial interest" at proposed § 2635.403(c) insofar as it would exclude interests of an employee's spouse or minor child over which the employee does not have control. Each argued that it is necessary to the functioning of its ethics program to prohibit certain holdings by the spouses and minor children of its employees. And each suggested that it makes little sense to prohibit an employee from holding a particular financial interest when the employee is free to transfer that interest to his or her spouse. The limitation to which these agencies object was included in the proposed regulations because of OGE's concern that an agency might be unsuccessful in pursuing disciplinary action against an employee for his or her spouse's refusal to divest an independently held financial interest. After further consideration, OGE now believes it may be appropriate to apply similar standards to the financial interests of employees and to those of their spouses and minor children. The definition at § 2635.403(c)(1) has been revised accordingly and conforming changes have been made to § 2635.403(a).

The success of disciplinary action against an employee whose spouse or minor child acquires a financial interest prohibited by an agency's supplemental regulations is likely to turn on the nexus between the prohibition and the efficiency of the service. The Office of Government Ethics, in exercising its concurrence function under § 2635.105(a), will review any provisions in proposed supplemental agency regulations that would restrict the financial interests of spouses and minor children to ensure that a direct and appropriate nexus exists. For reasons discussed in connection with similar comments regarding § 2635.402(b)(2), we did not extend the definition, as suggested by one agency, to cover a person other than a spouse or minor child who is a member of the employee's household.

One agency and one organization found it confusing that the term "financial interest" is used differently in § 2635.402 and § 2635.403 and suggested that the term "financial holding" might be substituted in § 2635.403 to avoid confusion. We did not make the substitution recommended because the term "financial interest" as defined in § 2635.403(c) covers more than those interests that are ordinarily viewed as "holdings." It may cover, for example, indebtedness or compensated employment relationships. We believe the term "financial interest" is used in sufficiently different contexts in §§ 2635.402 and 2635.403 that there should be little confusion. The term is used in § 2635.403 to refer to a discrete holding or relationship, such as a share of stock, a loan or a deed of trust. In § 2635.402, as in 18 U.S.C. 208, it is used in the broader sense of the employee's overall financial well-being to describe the effect that will trigger an employee's obligation to disqualify himself or herself from participation in a particular matter. The Office of Government Ethics has added a new Example 2 following § 2635.403(c)(1) to illustrate this distinction.

One agency suggested that § 2635.403(c)(2) be revised to specify that the interests of an outside organization will not be imputed to an employee under § 2635.402(b)(2)(iv) if the employee serves on the organization's advisory board rather than on its managerial board. The Office of Government Ethics did not adopt this recommendation because it could be misleading. Although members of advisory boards generally are not directors, they may be employees of the organization within the meaning of § 2635.402(b)(2)(iv). We also rejected as unnecessary and potentially misleading an organization's request to add a statement to § 2635.403(c) that "the retention of seniority rights or an unpaid leave of absence" is not a financial interest. Employees who have these rights or benefits often have stock or other ownership interests that are financial interests, whether held directly or indirectly, as through participation in pension plans. At the request of one individual and one agency, the discussion in Example 1 following § 2635.403(c)(2) has been modified to clarify the basis for the agency's request for the employee to resign his office with the nonprofit organization as a condition to his promotion.

Subpart E—Impartiality in Performing Official Duties

Section 2635.502 Personal and Business Relationships

Three agencies and one organization objected to § 2635.502 for imposing standards that elaborate upon the impartiality and appearance principles in §§ 2635.101(b)(8) and 2635.101(b)(14). They variously characterized the section as vague, subjective, overbroad or burdensome to administer. One agency and the organization suggested that the section be deleted in favor of "the present practice of having such matters handled case-by-case by ethics officials." Another agency advocated reframing the section as "guidance only," and retaining the status quo, which it characterized as educating employees to apply the "Washington Post Standard" to solve appearance problems. The agency explained that it resolved appearances of conflicts informally and by various means.

Employees have long been required by the standards of conduct to avoid even an appearance of loss of impartiality. Section 2635.502 does not in fact change the first step of the process by which employees have long addressed appearance problems. Under § 2635.502(a), it is the employee's responsibility in the first instance to consider whether a reasonable person with knowledge of the relevant facts would question his or her impartiality in a particular matter involving specific parties and, thus, to decide whether he or she has an "appearance problem." In pinpointing certain relationships that are especially likely to raise issues of lack of impartiality, the section helps to focus the employee's inquiry.

Additionally, § 2635.502 makes clear that an employee who has determined

that his or her impartiality in a matter would be questioned may not authorize his or her own participation in that matter. Under the standards as they have been articulated in regulations since the 1980's, the employee's determination that his or her participation in a particular matter would raise an appearance of lack of impartiality is supposed to end the inquiry: the employee is not supposed to participate in the matter. However, as indicated by the comment that these matters are "handled" or "resolved," in some cases an ethics official may determine that it is important to the agency that the employee participate in the matter even though his or her impartiality is likely to be questioned. Often, these determinations are not made by ethics officials but by the employee involved, without prior consultation with a supervisor or ethics official. What § 2635.502 does is sanction the former type of approach by providing specific standards in accordance with which an employee may be authorized by an agency designee to participate in certain matters. It modifies current informal practice by taking these decisions out of the hands of the employee involved for the very reason that his or her judgment is likely to be questioned.

Commenting on § 2635.502(a), one agency suggested that the inquiry be changed from whether the circumstances "would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter" to whether the circumstances "might result in or reasonably be expected to create the appearance of loss of impartiality by an employee." The Office of Government Ethics has not changed the proposed standard which, for the purpose of this particular section, is an appropriate articulation of the appearance standard as applied to the principle that an employee shall act impartially and not give preferential treatment to any private organization or individual. We also rejected the suggestion by another agency to delete § 2635.502 and issue instead a new proposed rule dealing more broadly with appearance issues. That agency believes § 2635.502 inappropriately focuses on issues relating to impartiality. Section 2635.502 is not intended to diminish the importance of the appearance principle or to suggest that it is not to be applied in conjunction with other standards and principles in part 2635. In fact, many standards incorporated throughout part 2635 are based on appearance considerations. We have found, however, that appearances of lack of impartiality raised by certain outside relationships are among the most common and troubling of the various appearance problems that arise and we believe they warrant the specific treatment given by § 2635.502.

Eight agencies and one organization commented on one or more of the covered relationships listed in § 2635.502(b)(1). In comments directed at § 2635.502(b)(1)(ii), two agencies requested a more specific definition of the phrase "member of the employee's household" and three agencies and one organization requested more guidance in determining who is a "relative with whom the employee has a close personal relationship." One agency asked whether a roommate with whom an employee shares living quarters for primarily economic reasons is a member of the employee's household. Another agency asked the same with regard to a college student who only lives at home between semesters and a visitor who stays for a month in the employee's home.

Both phrases used in § 2635.502(b)(1)(ii) are intended to be broadly construed and for this reason OGE has not expanded upon the meaning of either. The question of whether the college student is a member of his or her parents' household is easily resolved by the fact that the student is, in any event, a relative with whom the parents have a close personal relationship. We do not believe any reasonable reading of the term "member of household" would include a guest who visits briefly, as for a month. The term is broad enough, however, to cover a roommate who shares the rent or mortgage payments. That roommate is, moreover, a person with whom the employee has a financial relationship within the meaning of § 2635.502(b)(1)(i). Any problem with either phrase being construed too broadly will be checked by the employee's consideration of whether a reasonable person would question his or her impartiality if the employees were to participate in a particular matter involving specific parties in which the particular person is or represents a party. The particular nature of the relationship is a factor to be taken into account in that consideration. For example, an employee's decision regarding participation in a matter affecting a member of his or her household could well be different depending upon whether the person is someone with whom the employee lives in an intimate relationship or whether the person is simply one of four acquaintances who share a group home.

One agency suggested that the list of covered relationships at § 2635.502(b)(1) be expanded to include anyone with whom the employee has a "close personal friendship." Another agency noted that the definition would not cover a boyfriend or girlfriend. Because the term "friendship" can be used to cover a very broad range of relationships, OGE has not expanded the definitions at § 2635.502(b)(1) to cover friendships. Section 2635.502(a)(2) is intended to alert employees to the fact that the covered relationships described in § 2635.502(b)(1) are not the only relationships that can raise appearance issues and to encourage employees to use the process set forth in § 2635.502 to address any circumstances that would raise a question regarding their impartiality. These could well include an employee's assignment to a particular matter to which a boyfriend, girlfriend, or other close friend is a party.

One of the three agencies that commented on § 2635.502(b)(1)(iii) felt that the paragraph was too broad, in light of the concept of seeking employment used in subpart F, in covering "a person with whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee." In fact, the definition of the term "seeking employment" at § 2635.603(b) is not applicable to § 2635.502(b)(1)(iii). Any potential § 2635.502(b)(1)(iii) may have for unreasonable application is checked by the admonition in § 2635.502(a) that the employee consider whether the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter. The particular steps an employee's spouse, parent or dependent child has taken to serve another as an employee or in another specified capacity would be relevant facts. Another agency objected to the coverage of such relationships involving an employee's parent, and the third objected to use of the term "dependent child" as inconsistent with the coverage of only "minor" children in 18 U.S.C. 208(a) and § 2635.402(b)(2)(ii). The Office of Government Ethics has not revised § 2635.502(b)(1)(iii). We believe it is appropriate to ask an employee to consider whether a reasonable person would question his or her impartiality in a particular matter to which the

employer of a parent or dependent child is a party.

Here again, the importance of relevant facts must be emphasized. An employee who knows that his or her mother has sent a resume to a company that is a party to a matter to which the employee is assigned could well conclude that the circumstances would not cause a reasonable person to question his or her impartiality in the matter. Where the employee's mother is the company's attorney who worked on that matter, then the conclusion that a reasonable person would question his or her impartiality in the matter becomes compelling. The Office of Government Ethics recognizes that under § 2635.402(b)(2)(ii), as under 18 U.S.C. 208(a), the financial interests of a child are imputed to the employee only if the child is a minor. We have purposely included the employment relationships of dependent children in § 2635.502(b)(1)(iii) because children beyond the age of majority are more likely than minor children to have the business and employment relationships listed.

One agency objected to the definition of a "covered relationship" at § 2635.502(b)(1)(iv) as including a person by whom the employee was employed during the previous year. It noted that Congress has not enacted a "reverse revolving door statute" and urged that OGE not create any such restrictions by regulation. One agency and one organization objected to the definition as establishing a one-year bar on participation in matters involving prior employers and nonprofit organizations that employees served as officers or directors. The Office of Government Ethics has retained § 2635.502(b)(1)(iv) as proposed. Contrary to the suggestions by two commenters, this definition does not constitute a "bar." As in the situation described in Example 4 following § 2635.502(b)(3), we believe an employee ought to consider whether recently severed employment and similar relationships, including such relationships with nonprofit organizations, will give rise to questions about his or her impartiality in specific party matters. Under § 2635.502(d), the agency designee may authorize the employee's participation in an appropriate case.

Postulating a case in which an employee makes a large bequest by will to an environmental organization to be used to oppose legislation that would affect agency programs, one agency urged that the last sentence of § 2635.502(b)(1)(v) be revised so that any such donation would render the donor an active participant. The section has not been revised. The unusual situation postulated, if combined with the employee's assignment to work on matters related to that legislation, can be satisfactorily addressed by § 2635.502(a)(2). We have inserted a note following § 2635.502(b)(1)(v) to ensure that § 2635.502 is not interpreted as requiring disqualification on the basis of an employee's political, religious or moral views. At the request of one agency, Example 3 following § 2635.502(b)(3) has been revised to clarify the basis for the conclusion that a reasonable person would not question the employee's impartiality.

One agency objected to the next to the last sentence of proposed § 2635.502(d) which gives the agency designee discretion to decide whether to document his or her authorization. That agency would prefer an across-the-board requirement to document all authorizations and recommended, in addition, that any employee who disagreed with an agency designee's determination be given a right to a "second opinion." Although OGE has not revised § 2635.502(d) to require written authorization in every case, the next to the last sentence has been revised to require documentation when requested by the employee. In part, because an employee is effectively insulated by the agency designee's determination authorizing his or her participation in a matter, we did not adopt the recommendation to create an appeal process. We view an appeal process as inappropriate since the determinations contemplated by § 2635.502(d) necessarily call for the agency designee's exercise of judgment and not the application of precise standards from which only one correct conclusion can be reached.

One agency recommended that § 2635.502(e) be revised to require written disqualification statements and another agency and one organization asked that it be revised to require an employee to give notice of his or her disqualification. We rejected the first recommendation for essentially the same reasons we rejected recommendations to require written disqualification statements under § 2635.402(c). In response to the other suggestion, however, we have revised § 2635.502(e) to conform to the changes to § 2635.402(c) which are discussed in connection with other comments on subpart D. We did not adopt another agency's suggestion to revise § 2635.502(e) to include language cautioning that care be taken to avoid disclosures of personal information. We do not believe any special caution is warranted.

One agency and one organization asked that § 2635.502(f) be deleted and took exception to the statement that an employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination under § 2635.502. The Office of Government Ethics has retained this section. The effect of retaining § 2635.502(f) is to treat the honesty and integrity of all employees as equally above reproach. Moreover, we believe it is inadvisable to expect an agency designee to make a judgment about a subordinate's or coworker's character or reputation. An agency designee's reliance upon an assessment of an employee's reputation for purposes of either § 2635.502(c) or 2635.502(d) would tend to result in a determination allowing the employee's participation. Reliance on an employee's own assessment of his or her reputation for honesty and integrity for purposes of the consideration required by § 2635.502(a) would most likely result in few appearance issues being raised for resolution under the process described in § 2635.502.

Section 2635.503 Extraordinary Payments From Former Employers

Four agencies and one organization commented on § 2635.503. The Office of Government Ethics has made no changes to this section. One agency and the organization simply stated that the section has no constructive value and should be deleted. One agency thought that a two-year period of disqualification was too long and another agency criticized the section for being "subjective." The Office of Government Ethics' reasons for including this section are detailed in the discussion at 56 FR 33788 accompanying the proposed rule. We continue to believe that extraordinary payments within the meaning of § 2635.503(b)(1) are likely to raise greater concerns about an employee's impartiality in specific party matters involving the payor than would the mere fact that a former employer is or represents a party. Moreover, we do not view the section as "subjective." It includes specific standards for determining whether a payment is an extraordinary payment and defines a narrow range of matters, particular matters in which the former employer/payor is a party or represents a party, to which the disqualification applies. In OGE's view, a two-year hiatus between the employee's receipt of an extraordinary payment and his or her participation in particular matters involving the payor as a party or

representative of a party is warranted. As to whether two years may be unnecessarily long in a specific case, we note that § 2635.503(c) gives the head of the agency, or his delegee, authority to waive any or all of the two-year period of disqualification.

One agency suggested that the effect of § 2635.503 be expanded by redefining an "extraordinary payment" to include even a payment made pursuant to an employment contract or employee benefits plan if it is related to the acceptance of employment. In its view, the definition at § 2635.503(b)(1) could improperly encourage private entities to insert "reward" provisions in employment contracts in the hope that employees will subsequently obtain Government positions which could benefit their businesses. The Office of Government Ethics has not made the change requested. In our view, the generally unpredictable character of future employment prospects makes it unlikely that employers will contractually obligate themselves to make extraordinary payments to employees who later serve in a Government position which could benefit the employer.

One organization questioned whether a waiver could ever be granted under § 2635.503(c). In its view no payment in excess of $10,000 could ever be "not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party." The standard contemplates a consideration of relevant factors other than simply the dollar amount of the payment. For an employee whose assets are very substantial, a payment of $10,000 could well meet the test stated.

Subpart F—Seeking Other Employment

Section 2635.602 Applicability and Related Considerations

At the suggestion of one agency, we have revised § 2635.602(a)(2) to include specific references to the special post-employment restrictions imposed by statute upon procurement officials and upon certain Department of Defense personnel. One agency misread § 2635.602(b) as forbidding an employee's acceptance of interview travel expenses from any prohibited source. At the suggestion of another agency and to ensure that others do not misread that section, OGE has revised § 2635.602(b) by substituting a specific reference to § 2635.204(e)(3) for the proposed general reference to subpart B of this regulation. The added reference should help to clarify that interview and other expenses in connection with bona fide employment discussions can be accepted from a prohibited source once the employee has complied with the disqualification requirements in subpart F.

Section 2635.603 Definitions

One agency noted that the definition of "employment" at § 2635.603(a) does not specifically exclude uncompensated services. An individual may be an employee of an organization, within the meaning of 18 U.S.C. 208(a), even though his or her service is uncompensated and, thus, OGE has not revised § 2635.603(a) to exclude uncompensated services. Rather, we have modified Example 2 following that section to more clearly indicate that the many officers and directors of nonprofit organizations who serve without compensation are, nonetheless, officers and directors of those organizations. While we recognize that certain volunteer services, such as washing dishes one night a week at a soup kitchen, do not involve an employment or other specified relationship, we do not believe these circumstances need to be specifically addressed in subpart F. In general, the employees who engage in these good works do not send resumes or engage in negotiations over their service. They simply volunteer their time and effort.

Nine agencies and one organization objected to the proposed definition at § 2635.603(b) of "seeking employment" insofar as it would cover an employee who had merely dispatched an unsolicited resume or other employment proposal. They generally were of the view that a requirement for disqualification upon the sending of an unsolicited resume would have a chilling effect on employees who wish merely to "test the waters" of the employment market and who would prefer that their superiors not know they are doing so. The consensus of those who commented seemed to be that the adverse effects such a rule would have on employees outweigh any appearance of lack of impartiality that might result from employees' continued performance of official duties affecting resume recipients.

Four agencies and the organization suggested that the definition be revised to cover only those actions that constitute negotiating for employment within the meaning of 18 U.S.C. 208(a). Four other agencies suggested an exception from the proposed definition of "seeking employment" for any resume dispatched as part of a "mass mailing." One commenter believed that the concurrent dispatch of ten resumes should constitute a "mass mailing." One agency suggested "a rule of reason addressed to appearance problems that arise in job seeking." The Office of Government Ethics has fully considered these comments but has not narrowed the definition at § 2635.603(b) to cover only employment negotiations. Such a narrowing would be inconsistent with the ethical principle restated at § 2635.101(b)(10) which uses both the terms "negotiating" and "seeking" and thus contemplates coverage of actions that fall short of actually negotiating for employment. Neither have we revised that definition to create a mass mailing exception for resumes. We have, however, extended to all employees the proposed exclusion at § 2635.603(b)(1)(ii)(B) for a resume or other employment proposal sent to a person affected by performance or nonperformance of the employee's duties only as part of an industry or other discrete class. As originally proposed, that exclusion would have applied only to special Government employees. Because it failed to cover all aspects of the proposed definition, we also rejected alternate language offered by one agency in an effort to simplify the wording of § 2635.603(b).

None of those who commented objected to the proposed definition of employment negotiations in § 2635.603(b)(1)(i). That definition is derived from 18 U.S.C. 208(a) which prohibits an employee from participating in a particular matter that affects the financial interests of a person with whom he or she is negotiating for or has any arrangement concerning prospective employment. For purposes of this criminal statute, the phrase "negotiating for employment" has been interpreted as referring to bilateral communications looking toward an agreement concerning employment. Because the phrase has an established meaning for purposes of 18 U.S.C. 208(a) and because we could not and would not wish to broaden the reach of that criminal statute, we have not adopted one agency's recommendation to eliminate the more expansive proposed definition of "seeking employment" in favor of a broadened definition of "negotiating."

It has long been OGE's view that the standards of conduct require disqualification in a broader range of situations than those covered by 18 U.S.C. 208 that involve employment negotiations. Thus, in a memorandum concerning "Negotiation for Future Employment" dated April 27, 1987, OGE advised that an employee should avoid acting on matters which directly affect a person or organization which the employee has contacted inquiring about

future employment or which has unilaterally expressed to the employee an interest in employing him or her which the employee has not rejected. Consistent with the principle of ethical conduct restated at § 2635.101(b)(10), the regulations use the concept of seeking employment to encompass contacts of this type that fall short of negotiations and, thus, fall outside the criminal statute.

In the 1987 memorandum, *supra*, OGE stated that, in the absence of other communications, it did not view the mass distribution of resumes as requiring disqualification. Notwithstanding this memorandum or the fact that three agencies and one organization have recommended revising § 2635.603(b) to incorporate a "mass mailing" exception, we have concluded that a regulatory exception for mass mailings would be inappropriate. Carried to its logical conclusion, an exception for mass mailings of, for example, ten or more resumes would mean that an employee who sent out a single resume to a person affected by his or her duties would be disqualified from performing those duties, but could avoid any obligation of disqualification simply by sending out nine similar resumes to companies in which he or she had no real interest.

However, in response to concern expressed by one agency that the proposed definition of "seeking employment" will have an especially harsh effect on employees whose duties affect entire industries, we have expanded the exemption at § 2635.603(b)(1)(ii)(B) to cover regular as well as special Government employees. This will permit an employee to submit resumes to persons involved in matters of industry-wide or class-wide applicability in which the employee is participating without requiring disqualification until the employee receives a response indicating interest in employment discussions. We have revised accompanying Example 4 to conform to this revision. Under that section as revised, an employee who is engaged, for example, in general rulemaking affecting all airlines would not be disqualified from continuing to participate in that general rulemaking by reason of having sent a resume to an airline. That employee would have begun seeking employment and would be disqualified from further participation in the rulemaking only upon receipt of a response to the resume indicating an interest in employment discussions. The exemption from the definition and, thus, from the disqualification requirement would not apply, however, if the employee's official duties involved a matter affecting one airline, such as an investigation of an accident or a review of an airline's safety procedures. We have added Example 6 following § 2635.603(b)(3) to illustrate that the exception at § 2635.603(b)(1)(ii)(B) does not apply to matters such as these that affect a resume recipient distinctly.

While one agency that has a number of advisory committees recommended liberalizing the standards for special Government employees, another agency noted reasons for treating special Government employees the same as all other employees. Because many, if not most, advisory committees have charters that involve their members in matters that affect industries or other large, discrete classes, we do not anticipate that advisory committee operations will be unduly encumbered by § 2635.603(b)(1)(ii) and have modified Example 5 following § 2635.603(b)(3) to illustrate the section's application to advisory committee members. By the modification to § 2635.603(b)(1)(ii)(B) discussed above, special Government employees are subject to the same rules as other employees with regard to the obligation to disqualify themselves from participation in matters that affect persons to whom they have sent unsolicited resumes other than as part of an industry or other discrete class.

One agency questioned the need for a two-month period of disqualification following dispatch of an unsolicited resume or business proposal and suggested that the two-month period stated in § 2635.603(b)(2)(ii) be reduced to 30 days. The Office of Government Ethics has not adopted this recommendation. We view two months as a more realistic period than 30 days within which to expect a response to an unsolicited resume or other employment proposal. We would point out that the two-month period establishes an outside limit. An earlier response from the recipient indicating no interest in pursuing the matter further will terminate the employee's disqualification at that time.

One organization requested that the definition of "seeking employment" be revised to exclude the retention of seniority rights and leaves of absence from previous employment. The Office of Government Ethics has not made the revision requested. As the organization has noted, the definition of seeking employment clearly conveys the idea that subpart F applies to the situation in which action is taken, whether by the employee or the prospective employer, and not to the passive holding of rights that may have accrued from previous employment. However, where an employee is on a leave of absence at the end of which he or she will return to work for a previous employer, the employee has an arrangement concerning prospective employment that, under 18 U.S.C. 208(a), would require disqualification from matters affecting the person with whom he or she has that arrangement. Section 2635.606 has been revised to more clearly highlight this statutory disqualification requirement and, for illustration, Example 2 has been added following § 2635.606(a).

One agency was concerned that an employee who phrased his or her rejection of an unsolicited employment overture otherwise than as in Example 1 following § 2635.603(b)(3) would be found to be seeking employment under § 2635.603(b)(1)(iii) even though he or she had intended rejection. Example 1 does not suggest that any particular words need to be used to communicate an employee's rejection. If the employee makes it clear to the prospective employer that he or she has no interest in considering the employment overture at the present time and has no plans for such consideration in the foreseeable future, the employee may couch his or her rejection in whatever language the circumstances and etiquette require.

One agency and one organization recommended that § 2635.603(b)(3) be revised to provide that an employee with an established separation date who defers discussions until after separation will be regarded as having rejected an unsolicited employment overture. We have not adopted this suggestion, which would encourage prospective employers to curry favor by raising the possibility of employment discussions with employees who, though they are approaching separation from Federal service, nevertheless are working on matters that affect the prospective employers' interests. We expect, in fact, that disqualification will be less troublesome for these short-termers than for many other employees.

One agency incorrectly concluded that § 2635.604 would require an employee's disqualification upon being contacted about possible employment by a "headhunter" even if that agent did not identify the party on whose behalf the contact was being made. To the contrary, § 2635.604(a) requires disqualification from a matter affecting a "prospective employer" and, in the case of an employment contact made to the employee by an agent of another party, § 2635.603(c) defines a "prospective employer" as a person who

uses that agent only where the agent has identified that party to the employee.

Section 2635.604 Disqualification While Seeking Employment

Three agencies objected to the lack of any requirement for written disqualification statements in § 2635.604(b) and four agencies and one organization requested that the section be revised to require notice of disqualification. One agency raised a question as to whether an employee should notify his supervisor before he or she had been assigned to work on a matter as to which he or she would be disqualified. For the reasons discussed above in response to similar comments regarding § 2635.402(c), OGE has not revised § 2635.604(b) to require written disqualification statements. We have, however, revised § 2635.604(b) to conform to the above-discussed revisions to §§ 2635.402(c)(1) and 2635.502(e)(1) to provide that notice of disqualification should be given by employees who are not responsible for their own assignments. The examples following that section have been modified accordingly.

One organization recommended that the word "direct" be deleted from the statement at § 2635.604(d) that an "agency may allow or direct the employee to take annual leave or leave without pay while seeking employment or may take other appropriate administrative action." We have deleted the word "direct" as unnecessary in view of the statement that an agency may take "other appropriate administrative action." This organization and one agency requested additional guidance on what might constitute other appropriate administrative action. For the same reason that we have declined to further elaborate upon disciplinary actions under § 2635.106, we do not believe it is appropriate for OGE to expand upon matters that are the subject of OPM regulations and of agency discretion. The range of administrative and personnel actions an agency can take is determined by other statutes and regulations.

Section 2635.606 Disqualification Based on an Arrangement Concerning Prospective Employment or Otherwise After Negotiations

Section 2635.606(b) gives the agency designee authority to disqualify an employee from participating in matters affecting a person with whom he or she had sought employment, even though the employment negotiations ended without an employment offer. One agency stated that it would better understand the need for this provision if the expressed rationale were a concern that an employee who had been turned down for a job might use his or her official duties to effect some kind of reprisal. Whether it exists in fact or is merely a matter of perception, the "getting even" syndrome to which this agency alludes is, in large part, the basis for this section. Reprisal is not the only concern, however. Most employment negotiations end amicably and, in some cases, the concern is one of favoritism. In Example 1 following § 2635.606(b), we have characterized the problem more generally as an appearance of lack of impartiality. One agency suggested that an agency designee should not be able to require an employee's disqualification under § 2635.606(b) if the employee had been given a waiver under § 2635.605 while seeking employment. While we agree that § 2635.606(b) is unlikely to be used in such cases, we have not revised the section, as suggested by this agency, to prohibit its use when an employee has been given a waiver under § 2635.605. We believe an agency should have the flexibility to use § 2635.606(b) when it deems appropriate.

Subpart G—Misuse of Position

Section 2635.702 Use of Public Office for Private Gain

One agency recommended that the first sentence of § 2635.702 be rephrased to state that an employee may not use public office for his or her own private gain "or for the private gain of anyone else." This recommendation was not adopted. The section is based on the general principle stated in Executive Order 12674 that "employees shall not use public office for private gain." That principle is one of long standing and consistently has been interpreted as prohibiting an employee's use of public office for the gain of persons other than himself or herself. The recommended language, however, is overly broad and could be construed as prohibiting employees from energetically and properly assisting citizens they know only because they have contacted the employee's agency. It would raise repeated questions about individual employee actions that have less to do with individual conduct than with how agency programs are carried out. Issues relating to an individual employee's use of public office for private gain tend to arise when the employee's actions benefit those with whom the employee has a relationship outside the office and the language of § 2635.702 is intended to pinpoint this conduct without unreasonably limiting employees in the performance of their official duties. However, a reference to the prohibition on endorsements has been added to § 2635.702 based on the observation by one agency that this particular prohibition, spelled out more specifically in § 2635.702(c), is not limited to endorsements on behalf of friends, relatives or affiliated persons.

One agency stated that the regulations should include standards to prohibit an employee from participating in his or her official capacity as a speaker in a "for-profit" conference unless it has been determined that the employee's participation is in the interest of the agency. The question of whether an agency should assign an employee to speak at a for-profit, privately sponsored conference is one that the agency must address considering such factors as the agency's mission, whether the conference is an appropriate forum in which to disseminate the information, whether agency participation is necessary to provide balance and perspective, the reasonableness of the conference fees charged and the availability of the employee's time and funding for any travel involved. These are considerations that relate to how an agency runs its program or otherwise carries out its mission and not considerations that should be included in a regulation that deals with the individual conduct of the employee assigned as a speaker.

Two agencies and one organization suggested that, in the absence of coercion, § 2635.702(a) should only prohibit an employee from using his or her official position, title or authority in a manner intended to "improperly" induce another to provide a benefit to himself or herself or to other persons specified. The word "improperly" has not been inserted because it would suggest that there are ways in which an employee may properly invoke his or her official title, position or authority specifically to induce another person to provide a benefit to the employee or to another person with whom he or she has a relationship as specified. As stated, the prohibition does not preclude an employee from using his or her official title or position as necessary for identification purposes. The prohibition is on use of official title, position or authority "in a manner intended to coerce or induce" another person to provide a benefit.

One agency recommended that the definition of the term "relative" used in § 2635.702(a) be limited to an employee's parent, spouse or child. This recommendation was not adopted. The term "relative," like the term "friend," is intended to have an expansive rather

than a narrow interpretation in the context of this section. Another agency commented on Example 2 accompanying § 2635.702(a) and suggested that it might be part of the employee's official duties in that example to request expeditious processing of the friend's export license. We believe the facts as stated make it clear that the employee is in a different office and does not have responsibility in the matter. Moreover, an employee should not use his or her official authority to induce special treatment of a friend's application.

Three agencies and one organization that commented on § 2635.702(b) objected to any restriction on the use of official title in conjunction with an employee's signature on any letter of recommendation for any person. One expressed the view that use of an employee's official title in a letter of recommendation is not generally construed to imply agency endorsement of the person who is the subject of the recommendation. Another stated that it is customary for a person giving a recommendation to identify himself or herself professionally and even suggested that it would be appropriate for an employee to use official stationery to write a letter of recommendation for any personal friend. Three believed that it was inconsistent to preclude an employee's use of official stationery and official title to write a letter of recommendation for a personal friend but, as indicated in Example 1 accompanying § 2635.702(b), to permit reference to the employee's official position in the body of the letter.

Notwithstanding these comments, OGE has made no change to § 2635.702(b). Official stationery is to be used for official purposes. Where the employee has not dealt with the person in the course of Federal employment, no official purpose is served by a letter recommending that individual other than for Federal employment. We recognize that letters of recommendation frequently include some indication of the job or profession of the person making the recommendation. It is for this reason that Example 1 states that, when writing a letter of recommendation that cannot be signed using one's official title, it may be appropriate, nevertheless, for an employee to include some reference to his or her official position in the body of the letter. We do not agree that custom can be served only if employees are permitted to sign letters of recommendation for personal friends using their official titles. It is not customary for employees to sign other personal letters using their official titles. And, it would not be unreasonable for the recipient of a letter of recommendation signed by a high-level official, such as a Cabinet Secretary, to construe that letter as conveying some official endorsement of the individual who is the subject of the recommendation. Section 2635.702(b) is an attempt to balance custom and necessity with the prohibition against use of public office for private gain.

Two agencies expressed concern that the prohibition in § 2635.702(c) on use of official position, title or authority to endorse products and services not be interpreted to bar agencies from recognizing certain contributions and efforts that promote their missions. They point out that recognition of this type is not given for the purpose of endorsement even though it ultimately may by used by the recipient for a commercial purpose. Section 2635.702(c) has been revised to address this concern and a new Example 3 has been substituted for proposed Example 3, to which two commenters had objected. At the request of one agency and one organization we have added a new Example 4 to illustrate application of § 2635.702(c) to an employee who has been asked to write a book review or a book jacket endorsement. We did not adopt another recommendation by that agency and organization to append the word "person" to the listing at § 2635.702(c) of any "product, service or enterprise." This suggestion would unduly extend the essentially commercial reach of the proscription.

Four agencies noted that the phrase "significant relationships" used in proposed § 2635.702(d) is not defined. To comport with the introductory language of § 2635.702 and the parallel language of § 2635.702 (a) and (b), the phrase "certain persons with whom he has a significant relationship" has been changed to "a friend, relative or person with whom he is affiliated in a nongovernmental capacity." While the procedures in § 2635.502 apply, by their terms, only when the relationship is a "covered relationship" as defined in § 2635.502(b)(1), § 2635.502(a)(2) encourages employees to use the process described in the section to address other circumstances that raise questions about their impartiality.

Section 2635.703 Use of Nonpublic Information

One organization suggested that § 2635.703(a) be reworded to prohibit use of nonpublic information only if that use is to further the employee's own financial interests or the financial interests of a person with whom he has a significant relationship. Another organization recommended that the prohibition apply only where the use of nonpublic information will further a financial interest. The Office of Government Ethics has not adopted either suggestion. The section's broad reach is a consequence of the breadth of the underlying principle as stated in the Executive order. While specifically prohibiting an employee from engaging in a "financial transaction" using nonpublic information, the principle provides further that an employee shall not allow the use of nonpublic information to further "any private interest." The purpose of the principle is as much to protect nonpublic information as it is ensure that the employee and others do not profit from the improper disclosure of such information.

Two agencies and one organization suggested that the phrase "is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute or Executive order" used at § 2635.703(b)(1) be amplified by listing various statutes, other than the Freedom of Information Act, under which information is protected. The Office of Government Ethics has not made this change. All statutes cannot be listed and the risk of a partial listing is that it will be viewed as exhaustive. However, we have added "regulation" to the reference to other statutes and Executive orders protecting against disclosure.

One agency asked that the phrase "or any person" be inserted after the word friend in Example 2 following § 2635.703(b)(3) to reflect the fact that 41 U.S.C. 423 prohibits unauthorized disclosure of proprietary or source selection information to anyone, not just to a friend. The Office of Government Ethics has not changed the example. It is intended to illustrate application of § 2635.703 to the facts stated and it does not purport to provide a full explanation of the complex restrictions on disclosure of procurement-sensitive information imposed by the procurement integrity provisions. Commenting on that same example, one agency and one organization suggested that it be modified to state that bid or proposal information often remains sensitive after contract award. The example has not been changed. Example 3 immediately thereafter involves a proposal containing proprietary information that would be protected after award by 18 U.S.C. 1905 and provisions of the Federal Acquisition Regulation. This example should serve to alert employees that there are statutes and regulations other than 41 U.S.C. 423 that may protect

procurement-sensitive information, even after award.

One organization expressed concern that the definition of nonpublic information at § 2635.703(b), in covering information, "that has not been made available to the general public," could reach information that, although releasable under FOIA, simply has not been disseminated. As proposed, § 2635.703(b)(3) expands upon the concept of nonpublic information by explicitly stating that it means information which, if not protected by statute, Executive order or regulation or designated as confidential, "has not been disseminated to the general public and is not authorized to be made available to the public upon request." The Office of Government Ethics believes this portion of the definition adequately addresses the organization's concern and has not modified the section.

One agency asked that § 2635.703(b) be revised to delete any mention of information "designated as confidential" and substitute a more general reference to information "that contains a restrictive legend placed on it by an agency such as 'sensitive'." The Office of Government Ethics has not made this change since information so designated would come within § 2635.703(b)(3).

Section 2635.704 Use of Government Property

One agency and one individual suggested that the regulations be expanded to address the use of Government vehicles. No change has been made since "Government property" is specifically defined at § 2635.704(b)(1) to include Government vehicles. More detailed guidance is not provided since there are statutes, as well as General Services Administration and agency regulations, governing use of Government vehicles. Nor have we revised this section, as recommended by two agencies, to include specific prohibitions against gambling and use of alcoholic beverages and drugs on Government property. These matters are covered by the regulations of other agencies. See *e.g.*, 41 CFR 101–20.306 and 101–20.307. The Office of Personnel Management also intends to reissue the constraint against gambling in 5 CFR part 735.

One agency and two organizations noted that § 2635.704(b)(2), as proposed, failed to take into account the fact that many Federal facilities, such as libraries, are open to the public and that employees may use them to the same extent as other members of the public. Accordingly, OGE has expanded the definition of "authorized purposes" at § 2635.704(b)(2) to encompass those "for which Government property is made available to members of the public."

A number of organizations and several individuals suggested that § 2635.704(b)(2) is unnecessarily restrictive in limiting authorized purposes to those authorized by law or regulation for the performance of official duty. One commenter cited the practice at certain military bases of making Government facilities available for meetings by Boy Scout troops whose members are military dependents. Several suggested language specifically permitting use of Government resources to support the activities of professional associations. The Office of Government Ethics has retained the requirement that Government property be used only for purposes authorized by law or regulation and has not incorporated a specific exception for the support of professional associations. However, we have revised § 2635.704(b)(2) to make it clear that authorized purposes may be purposes that do not strictly relate to the performance of official duties and we have deleted the second sentence of that section, as proposed.

With the revisions discussed above, we believe § 2635.704(b)(2) appropriately accommodates the purposes about which these commenters have raised questions. For example, authority can be found in regulations, such as 41 CFR 101–20.4, to allow outside organizations to occasionally use public buildings for certain purposes. And, guidance in chapter 250 of the Federal Personnel Manual provides that agencies may grant professional associations privileges, such as the use of agency facilities for meetings. Use of agency facilities under these circumstances would be for authorized purposes, even though not specifically related to performance of an employee's official duties. We have added Example 3 following § 2635.704(b)(2) to clarify that the concept of authorized purposes is broad enough to accommodate concerns expressed by several organizations that this section would contract the authority agencies now have to permit use of Government property. Our specific purpose in revising § 2635.704(b)(2) was to ensure that these regulations not interfere with those authorities.

One agency and several organizations suggested that the definition of authorized purposes be expanded to include any purpose authorized by an employee's supervisor. This change has not been made as it would suggest that supervisors have inherent authority to authorize the use of Government property for any purpose. To the extent that a supervisor is exercising authority that derives from a statute, Executive order or a regulation authorizing the use of Government property for certain purposes, including an agency regulation, those purposes would meet the definition at § 2635.704(b)(2). Contrary to the suggestion by these and several other commenters, OGE does not have authority to promulgate regulations that expand upon authorities regarding use of Government property contained in General Services Administration or other regulations. Our authority is limited to implementing the principle of conduct stated in the Executive order that "Employees shall protect and conserve Federal property and shall not use it for other than authorized purposes." In § 2635.704(b)(2), we have undertaken only to define what is meant by "authorized purposes." The revision made to Example 1 following § 2635.704(b)(2) was made only to reflect a recent change in regulations issued by the General Services Administration.

Four agencies commented on the language in proposed § 2635.704(b)(2)(i) and (ii). The Office of Government Ethics has not adopted their recommendation to define the phrase "professional development" used therein. Instead, we have deleted both paragraphs as inappropriate for inclusion in regulations issued by OGE. As indicated above, nothing in Executive Order 12674 or in any statute gives OGE authority to issue regulations specifically authorizing use of Government property for any purpose. Such regulations are the province of other agencies. We had included § 2635.704(b)(2) (i) and (ii) in the proposed rule in an effort to capsulize our understanding of existing guidance issued by other agencies regarding use of agency resources for training and other professional development. We have deleted both paragraphs out of concern that they may not accurately reflect regulations and policies in all agencies and to avoid any suggestion that OGE has authority to create exceptions permitting the use of Government property in circumstances otherwise falling within the general prohibition set forth in Executive Order 12674. For this reason, OGE has rejected informal recommendations to create an exception permitting de minimis personal use of agency photocopy equipment.

Section 2635.705 Use of Official Time

Two agencies and several organizations and individuals commented on § 2635.705 and noted that

there are statutes and regulations that specifically authorize employees to use official time for purposes that do not necessarily involve the performance of official duties. Two that commented cited the specific authority at 5 U.S.C. 7131 for employees to use official time for certain representational activities on behalf of employee labor organizations. Several employee and professional organizations referred to the Federal Personnel Manual as recognizing that agencies may grant excused absence to permit employees to participate during regular duty hours in the meetings or other affairs of professional organizations. To accommodate these and similar authorities that allow use of official time or authorize excused absences for purposes other than official duties, § 2635.705 (a) and (b) have been redrafted to make it clear that laws and regulations, and guidance of this type regarding the exercise of such authorities, are proper exceptions to the requirement that employees use official time in an honest effort to perform official duties. Examples 1 and 2 have been added following § 2635.705(a) to illustrate the breadth of these exceptions. The changes OGE has made to § 2635.705 are intended to ensure that these regulations will not be construed to limit any authority an agency may have to permit its employees to use official time for appropriate purposes.

One agency asked that § 2635.705(b) be revised to prohibit a supervisor from accepting any work accomplished by a subordinate on official time that would further the supervisor's personal interests. OGE has revised this section to prohibit a superior from encouraging a subordinate to improperly use official time, but not to place an affirmative burden on a superior to ensure that a subordinate's voluntary efforts do not in any way accrue to the superior's personal benefit. If a subordinate, at his or her own initiative, improperly uses official time to perform work that benefits a supervisor, that subordinate will have violated § 2635.705(a). The violation is not the supervisor's if he or she has not encouraged, directed, coerced or requested the subordinate's actions. On the theory that an employee should never be permitted to render personal services to a superior, one agency asked that the last sentence of Example 1 following § 2635.705(b) be deleted. The Office of Government Ethics has not deleted the sentence. Where the arrangement is entirely voluntary, fair compensation is paid, and no use of official time or property is involved, we do not view the arrangement discussed in the example as improper. However, we have added a final sentence to the example to make it clear that, in the absence of appropriate compensation, the arrangement would involve an improper gift to the superior in violation of the standards in subpart C of this regulation.

Subpart H—Outside Activities

Section 2635.801 Overview

One agency suggested that the first sentence of § 2635.801 be revised to indicate that the provisions in subpart H apply to outside activities "with or without compensation." The Office of Government Ethics rejected this recommendation because it is technically inaccurate. The outside earned income provisions of § 2635.804, for example, apply only to compensated activities. Moreover, the second sentence of § 2635.801 accurately states that several of the provisions in subpart H "apply to uncompensated as well as to compensated outside activities." Based on the recommendation of another agency, OGE has revised the synopses of 18 U.S.C. 203(a) and 205 now set forth in renumbered §§ 2635.801(c) (3) and (4) to more closely reflect the wording of those statutes.

Section 2635.802 Conflicting Outside Employment and Activities

One agency commented that § 2635.802 "does not provide the Government with a sufficiently broad basis for refusing to permit certain outside employment and activities." The agency cited an example of outside employment that, though it would not require the employee's disqualification from his or her official duties, would create an appearance of use of public office for private gain. Because this and comments from two other agencies indicated that all three viewed § 2635.802 as providing the only basis for precluding outside employment or other activities, OGE has revised § 2635.801(c) to stress that the provisions in subpart H, including § 2635.802, are in addition to the principles and standards set forth in other subparts of part 2635. To further highlight the applicability of principles and standards stated elsewhere in part 2635, specific mention of the appearance principle and the prohibition against use of public office for private gain have been included in § 2635.801(c). In addition, language has been added to § 2635.802 to make it clear that outside employment which is not "conflicting" within the meaning of that section nevertheless may violate other principles or standards. We have added Example 2 following § 2635.802 to further illustrate that outside employment that is not "conflicting" within the meaning of that section is nonetheless improper where it would give rise to an appearance of use of public office for private gain.

Two agencies recommended that § 2635.802 be revised to include within the definition of "conflicting" activities any activities that tend to impair the employee's mental or physical capacity to perform Government duties or take the employee's time and attention during official work hours. The Office of Government Ethics has not adopted this recommendation. An employee whose outside employment or activities demand time and attention during official duty hours would violate the standard at § 2635.705 that an employee shall not use official time other than as authorized or in an honest effort to perform official duties. An employee who devoted so much personal time and effort to an outside activity that it adversely affected his or her ability to perform official duties should be dealt with on the same basis as any other employee whose performance is inadequate. This, in turn, may mean that the employee will need to devote less time and effort to outside activities.

Section 2635.803 Prior Approval for Outside Employment and Activities

Two agencies urged OGE to revise § 2635.803 to incorporate a Governmentwide requirement for prior approval of outside employment. While one suggested a broad requirement for prior approval of all outside employment, the other suggested limiting the requirement to outside employment and activities that specifically focus on the employee's official duties or on the programs, activities and responsibilities of the employing agency. A third agency suggested, to the contrary, that agencies are in the best position to determine whether outside activities conflict with employees' duties or otherwise violate the standards of ethical conduct. Accordingly, that agency suggested that agencies be given total discretion to establish prohibitions and approval procedures without any requirement to incorporate those prohibitions or procedures in their supplemental agency regulations.

The absence from § 2635.803 of an across-the-board requirement for prior approval of outside employment or activities reflects OGE's agreement with the premise that individual executive agencies are in the best position to determine whether, and to what extent, a requirement for approval of outside

activities would be beneficial to the proper administration of their respective ethics programs. While we expect that an approval system of some type will be beneficial for many agencies, there may be agencies whose ethics programs are better served by identifying and specifically prohibiting, in their supplemental regulations, those outside activities that pose ethical problems. Those agencies may have no need for an approval system. Moreover, an executive branchwide requirement for approval of all outside activities would be unnecessarily intrusive and administratively wasteful. There are activities, such as hobbies, that should not require approval even though they may generate some income. The Office of Government Ethics believes that individual agencies are in the best position to identify and require approval for specific types of activities that pose potential ethics problems and, thus, to administer approval systems in the least intrusive manner.

While § 2635.803 recognizes that agencies should be responsible for tailoring approval requirements to their particular needs, it does not adopt the recommendation that agencies be permitted to do so without incorporating those requirements in supplemental agency regulations. The Executive order requires a uniform set of standards of conduct regulations for the entire executive branch and provides for supplementation by individual agencies subject to requirements for OGE concurrence and co-signature and publication. Thus, any agency requirement for approval of outside employment or other activities must be included in its supplemental agency regulations.

One organization stated that the second sentence of § 2635.803 could be read to permit an agency to require approval for "any" outside activity including serving as a Girl Scout troop leader or babysitting on an occasional Saturday night. One agency with similar concerns recommended that § 2635.803 be revised to include a list of activities for which agencies could not require outside approval. The Office of Government Ethics has revised § 2635.803 to delete the word "any" and to provide that agencies "shall" impose requirements for prior approval of outside activities, as necessary or desirable. We have not, however, listed specific activities for which agencies may not require prior approval. Under § 2635.105, any agency requirement for prior approval of outside employment must be included in its supplemental agency regulations and those may be published only with OGE's concurrence and co-signature. OGE will exercise its concurrence function with a view, among other things, to ensuring that such requirements are not unnecessarily intrusive. We are not aware that any requirements for approval of outside activities now found in agency standards of conduct regulations extend beyond reasonable bounds.

Section 2635.805 Service as an Expert Witness

Four organizations and three individuals objected to § 2635.805 as inappropriately restricting access to the expert testimony of Government employees by public interest or other groups suing the Government or otherwise opposing its policies. The courts have long recognized the right of an agency to exercise control over agency resources, including those sought for purposes of litigation. *Touhy* v. *Ragan*, 340 U.S. 462 (1951). Many departments and agencies have issued policies that restrict access to the expert or opinion testimony of their employees. Department of Defense Directive 5405.2 provides, for example, that Department personnel shall not provide opinion or expert testimony concerning official information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. It provides for granting special authorization for Department of Defense personnel to appear and testify at no expense to the United States upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States.

The basis for § 2635.805 rests, however, not only on an agency's right to manage its resources and litigation in which it has an interest. It is based also upon the principle that an employee shall not engage in outside employment or activities that conflict with his or her official Government duties and the Government's reasonable expectation that its employees will not use their official positions on behalf of those who bring legal and other proceedings against it. Contrary to the suggestion by one organization, it does not prohibit fact testimony or interfere with the statutory protections afforded whistleblowers. Nor does it prohibit an employee from using proper channels to make his or her opinions known. It only places constraints on the use of an employee's expert testimony in a manner adverse to the interests of the United States in proceedings before a court or agency of the United States when the United States is a party or has a direct and substantial interest.

One agency and one organization urged that § 2635.805 be expanded to provide guidance for employees who wish to serve as expert witnesses in private litigation. The Office of Government Ethics has not expanded the scope of § 2635.805 to cover service as an expert witness under circumstances where the United States is not a party or does not otherwise have a direct and substantial interest. The matter of compensation for expert testimony is addressed by the honoraria regulations at 5 CFR 2636.201–2636.205 which prohibit an employee's receipt of compensation for "an appearance," including an appearance as an expert witness in private litigation. At the suggestion of another agency, an introductory phrase has been added to § 2635.805(c) to serve as a cross-reference to these regulations, which implement the statutory ban on receipt of honoraria.[1] Uncompensated service as an expert witness in private litigation, like any other outside activity, should be analyzed in light of the standards and principles set forth in part 2635, including § 2635.702.

One agency suggested that § 2635.805(a) be revised to clarify that the prohibition stated therein does not apply to an appearance on behalf of the United States. We have changed the first sentences of § 2635.805 (a) and (b)(1) to provide that the prohibitions therein apply to service "other than on behalf of the United States." At the suggestion of another agency, OGE has added a new § 2635.805(d) to make it clear that the prohibitions stated in § 2635.805 (a) and (b) do not prohibit an employee from serving as a fact witness when subpoenaed by an appropriate authority. We will not here undertake to address one organization's suggestion that the well-recognized distinction between fact and opinion testimony is illusory. See Fed. R. Evid. 701 and 702.

One agency sought guidance as to when the United States would be viewed as having a direct and substantial interest in litigation to which it is not a party. Because the same

[1] On March 19, 1992, the District Court for the District of Columbia issued an opinion holding the honorarium ban unconstitutional as applied to executive branch employees, but stayed its injunction pending appeal. At the time this part 2635 was submitted for publication, the Government had filed a notice of appeal and, accordingly, this regulation treats the statutory honorarium ban and the implementing regulations at 5 CFR 2636.201–2635.205 as fully effective. Appropriate modifications will be made to pertinent portions of this part 2635 depending upon the disposition of the appeal.

standard has long been used in 18 U.S.C. 203, 205 and 207, OGE has not undertaken to provide additional guidance in the context of § 2635.805. Another agency suggested that the section be revised to specifically state whether it extends to testimony before Congress. The prohibition would not extend to testimony before Congress. Because § 2635.805(a) states very specifically that it only prohibits expert testimony before a court or agency of the United States, OGE does not believe further clarification is necessary. The word "court" clearly excludes Congress and the term "agency," as defined at § 2635.102(a), would not include Congress.

One organization felt that § 2635.805 was overly broad in that it could be construed to prohibit an Internal Revenue Service clerk-typist who happened to be a pharmacologist from being called as an expert witness on pharmacology by a plaintiff in a malpractice suit filed against the Indian Health Service. The organization urged that § 2635.805(c) be revised to provide for authorization to serve as an expert witness if the employee's credentials as an expert are unrelated to his or her Government employment. As suggested, § 2635.805(c) has been revised to provide for approval when the subject matter of the testimony does not relate to the employee's official duties, even though it may not otherwise be in the interest of the Government. To ensure that the subject matter of proposed testimony is properly reviewed, the regulation requires this determination to be made by the designated agency ethics official.

One agency and one individual asked that § 2635.805 be revised to include specific criteria to be used in determining when an employee's service is in the interest of the Government. One organization suggested that, in the absence of such criteria, § 2635.805(c) would constitute an improper delegation of authority to designated agency ethics officials. The diversity of cases in which employees may be called to expert witness service makes it impractical to provide a regulatory checklist to determine in every case whether a particular employee's testimony will serve the Government's interest. Like the determination of agency interest required by § 2635.204(g), this is a matter for determination on a case-by-case basis.

Section 2635.806 Participation in Professional Associations

The proposed provisions of § 2635.806 relating to participation in professional associations prompted comments from 980 agencies, organizations and individuals. Nearly all took exception to some aspect of proposed § 2635.806. The overwhelming majority felt the proposed section was overly restrictive in limiting use of official time and Government property to administer the internal affairs of professional associations. As justification for permitting use of official time and Government property to run the internal affairs of these organizations, the commenters pointed to the many benefits that agencies and individual employees receive from employees' active participation in professional associations, from access to the latest technological information to opportunities to gain management skills and recognition through service as an officer. Many took exception to the proposed distinction between participation in substantive programs sponsored by professional organizations and participation in the internal and business affairs of those organizations. Some argued that the distinction is artificial, while others noted that substantive programs come about only through efforts, such as renting conference rooms and arranging for speakers, that might be characterized as "internal affairs."

The overwhelming consensus of those who commented is that proposed § 2635.806 needs to be revisited. Accordingly, OGE has deleted the text of proposed § 2635.806 from this final rule. We have reserved the section, however, and anticipate that we will issue a new proposed rule on participation in professional associations at a later date. In the meantime, any ethics issues relating to participation in professional associations should be addressed under the more general principles and standards stated in part 2635. Employees who are officers of professional organizations should continue to comply with the statutory restrictions, now to be implemented by § 2635.402, on participating in their governmental capacities in particular matters affecting the financial interests of such organizations. Those who are not officers but who otherwise are actively involved in the affairs of professional organizations should comply with the impartiality provisions of § 2635.502. As with any other activity, the respective standards relating to use of Government property and official time at §§ 2635.704 and 2635.705 would also apply. We have addressed the comments by those who urged that Government time and resources be made freely available for the support of professional organizations in the discussion of other comments regarding those sections.

Section 2635.807 Teaching, Speaking and Writing

Twelve agencies, 23 organizations and 44 individuals commented on the proposed restrictions at § 2635.807 on receipt of compensation for teaching, speaking or writing that relates to an employee's official duties. Most of the commenters were members of the scientific community and were specifically concerned with the impact of the provision on Government physicians and scientists, particularly those responsible for the conduct of Government research. All of the commenters expressed dissatisfaction with limitations on an employee's receipt of compensation for teaching, speaking and writing.

Seven individuals and five organizations believe that proposed § 2635.807 is so restrictive that it will cause top scientists and other valued employees to leave Government service. Five individuals and four organizations stated that the proposed restrictions will diminish the reputation and prestige of Government programs and operations and hamper efforts to recruit and retain recognized experts in scientific fields. Three individuals and one organization believe that § 2635.807 will further exacerbate the recruitment difficulties that result from Government salaries they believe lag behind those in the private sector. Seven organizations and ten individuals stated that restrictions on receipt of compensation for teaching, speaking, and writing will discourage efforts by Federal employees to enhance their expertise and communicate the results of their research. This, they believe, will place Federal employees at a disadvantage in terms of career development and peer recognition.

The Office of Government Ethics is sensitive to the concerns expressed. We have crafted the restrictions on receipt of compensation bearing in mind the competing considerations of, on the one hand, prohibiting the use of public office for private gain and outside activities that conflict with official duties and, on the other hand, avoiding unnecessary restrictions that would impair the recruitment and retention of valued employees. But OGE does not agree with those who have suggested that allowing employees to use their official positions as a means to generate outside earned income is a proper means of closing a perceived gap between Government salaries and those for comparable positions in the private sector.

Section 2635.807 does not bar any employee from teaching, speaking or writing on any subject. It is merely a prohibition on receipt of compensation. It prohibits the receipt of compensation for teaching, speaking and writing performed as part of an employee's official duties or involving the use of nonpublic information and also prohibits receipt of compensation where the invitation is extended because of the employee's position or by certain prohibited sources. In addition to these prohibitions, the section establishes limitations of varying degree on the ability of different categories of employees to accept compensation for teaching, speaking and writing based on the subject matter involved. The prohibitions in § 2635.807 derive from one or more of the principles of ethical conduct set forth in section 101 of Executive Order 12674, including the principle that an employee shall endeavor to avoid actions creating even the appearance of using public office for private gain. The prohibition on receipt of compensation for activities that are part of the employee's official duties, which flows from the definition at renumbered § 2635.807(a)(2)(i)(A), addresses conduct that may also be prohibited by 18 U.S.C. 209. However, § 2635.807 is not intended to implement or interpret section 209. The Office of Government Ethics intends to issue separate regulations interpreting 18 U.S.C. 209.

The most significant limitations imposed by § 2635.807 are on noncareer employees. They are prohibited from accepting compensation for teaching, speaking and writing which deals in significant part with the subject matter area, industry or economic sector primarily affected by the programs and operations of their agencies. This limitation, for example, bars a noncareer employee of the SEC from accepting compensation for teaching, speaking or writing about the securities industry generally, not just the SEC's regulation of the industry.

Career employees are subject to narrower prohibitions. They are prohibited from accepting compensation when teaching, speaking and writing about agency policies, programs and operations, or on specific matters on which they work. This would not normally prohibit an employee from accepting compensation for an activity applying the employee's general area of expertise. For example, an engineer who works at NASA could receive compensation for writing a textbook on the general subject of aeronautics, but could not accept compensation for a book which specifically focuses on NASA's space shuttle program or on the specific aspects of rocket design to which he has been assigned.

Special Government employees are subject to the least restrictive standards. They are prohibited from accepting compensation only for teaching, speaking and writing which deals to a significant degree with the specific matters they are working on for the Government during the terms of their appointments. And, if they serve 60 or fewer days in a year, the limitation applies only to particular matters involving specific parties in which they are involved. They are free to accept compensation when teaching, speaking or writing on other matters. We have modified § 2635.807 to more clearly reflect these restrictions and have added a number of examples by way of illustration.

Nine individuals and six organizations believe that § 2635.807 will stifle dissemination of information about important scientific or medical findings. Several of these commenters suggested that the Government lacks the resources or commitment to send employees to meetings and conferences to discuss their research. Others were concerned that the subject matter to be discussed may not be sufficiently related to an employee's official duties so that the Government would permit the work to be done on official time or at agency expense.

The Office of Government Ethics does not expect § 2635.807 to impede the dissemination of scientific or medical information. Significant research is of interest to the Government and will most likely be disseminated as part of the Government's official operations. Under 42 U.S.C. 282(e)(3), for example, dissemination of such information is an important part of the mission of the National Institutes of Health. Moreover, scientific or medical findings which are related to an employee's official duties may be disseminated by the employee, without compensation, unless the information involved is nonpublic information within the meaning of § 2635.703(b).

Concern that the Government has insufficient resources to send employees to meetings and conferences to discuss medical and scientific research can be addressed, in part, by the authority at 31 U.S.C. 1353 for agencies to accept travel expenses from non-Federal sources to facilitate employees' attendance at meetings or similar functions relating to their official duties. Additionally, when approved in accordance with applicable regulations implementing 5 U.S.C. 4111, an employee may be able to accept travel expenses to attend a meeting to discuss his research and writings if the offer is from a State or local government or an organization exempt from taxation under 26 U.S.C. 501(c)(3). Thus, OGE cannot agree with one individual who believes the rule will preclude even uncompensated teaching, speaking or writing because employees will not be able to cover associated travel expenses. We also do not agree with two individuals and one organization who suggested that § 2635.807 would either waste Government travel funds or create an unwarranted paperwork burden to accept expenses from outside sources. Because the section codifies current practice at most agencies, it should not appreciably increase Government travel expenditures. In OGE's view, any administrative burden associated with accepting travel expenses under the authorities cited above is less objectionable than a rule that would sanction use of public office for private gain.

Although three individuals and one organization felt that § 2635.807 would violate the First Amendment protections for free speech, OGE believes the section will withstand scrutiny on constitutional grounds. It does not prohibit any form of expression and, to the extent it may incidentally burden an employee's ability to teach, speak or write, it serves a legitimate governmental purpose in ensuring that public office is not used for private gain.

Two individuals and two organizations stated that the rule is overbroad and does not correct any identified abuse. Most agencies are currently applying the guidance in OGE informal advisory memorandum 85 x 18 issued October 28, 1985, as published in the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988). For this reason, OGE agrees that there ought to be few instances in which employees are now receiving compensation for teaching, speaking or writing that relates to their official duties. In translating that guidance into § 2635.807, it is OGE's purpose to ensure that this continues to be the case and that application is consistent throughout the executive branch. While we do not agree with one individual who found the section too complex to be understood by those who would engage in outside teaching, speaking or writing, we have attempted to simplify the language and have added a number of examples to illustrate the section's application.

Although he offered no specific recommendation for revision, one individual stated that § 2635.807 fails to recognize that the off-duty and official activities of some Government researchers and scientists are so intertwined that it may be impossible to distinguish one from the other. The Office of Government Ethics has not revised § 2635.807 on the basis of this individual's observations. Rather, we would caution employees who have difficulty distinguishing between their personal activities and official duties to consult with their agency ethics official. Some of the commenters cited speaking and writing activities conducted as part of an employee's official duties as examples of activities that should be compensable. Under such circumstances, receipt of additional compensation would be prohibited by 18 U.S.C. 209 which bars an employee from accepting any supplementation of his or her Federal salary.

One individual and one organization suggested that § 2635.807 be revised to apply to political appointees, and not to Government scientists. Under section 201(a) of Executive Order 12674, it is OGE's responsibility to create a single set of standards of conduct implementing a single set of ethical principles that apply to all executive branch employees. We cannot create exceptions for certain classes of employees unless the exceptions relate to a legitimate governmental purpose. In this regard, we do not agree with those who suggest that Government employees involved in scientific research should be exempted from application of § 2635.807 because university faculty are permitted to receive compensation for speaking and writing about research funded by their respective institutions. The salary structure and reasonable expectations associated with academic employment are not the same as those associated with Federal employment. Moreover, under § 2635.804 and 5 CFR 2636.301 through 2636.307, Presidential appointees and other covered noncareer employees are subject to more stringent limitations on outside employment than apply to other employees.

One individual recommended that employees be allowed to accept compensation for teaching, speaking or writing that is related to the employing agency's policies, programs or operations, as long as the subject matter does not relate to the individual employee's assigned duties. A professional association recommended that teaching, speaking or writing that relates to the maintenance, development or application of an employee's general professional expertise and standing be exempted from § 2635.807 unless it is directly related to the individual employee's duties. The Office of Government Ethics has not adopted either recommendation. In many cases, an employee may have, or may be perceived as having, access to official information available in other parts of the agency which would enhance his or her value as a speaker or writer. Use of agency information under these circumstances would amount to use of public office for private gain. Moreover, an employee is likely to be perceived as an official of his or her employing agency when speaking or writing about its policies, programs or operations and use of a disclaimer may not fully dispel the appearance that the employee is conveying an agency perspective. In addition, we believe the public should be able to obtain information about agency policies, programs and operations through agency channels, without paying an individual employee for making that information available. For these same reasons, we also rejected the recommendation by one individual to modify § 2635.807 to permit receipt of compensation for teaching, speaking or writing subject only to a prohibition on disclosure of nonpublic information.

Two individuals and one organization stated that compensated teaching should be permitted because it promotes better Government and greatly aids schools in carrying out their educational mission. We agree with the commenters' views that teaching is a desirable off-duty activity and note that the rule has an exception for teaching set forth in § 2635.807(a)(3). One individual asked for a delayed effective date for the provision so that employees can fulfill prior commitments for compensated activities that were properly entered into under agency standards of conduct regulations then in effect. Because most agencies have been applying the guidance in OGE informal advisory memorandum 85 x 18, we do not expect this to be a problem for many employees. And, since the effective date of this final rule is 180 days after publication, most of those for whom it will be a problem should have sufficient time to fulfill any prior commitments which, though inconsistent with § 2635.807, may have been consistent with agency regulations when undertaken. Legally binding commitments entered into before the publication of this final rule which cannot be fulfilled within the 180 day period should be brought to the attention of an agency ethics official.

The Office of Government Ethics did not adopt the recommendation by one individual to revise § 2635.807 to permit employees to use a small amount of official duty time to engage in compensated outside activities. This agency has no authority to authorize such use of official time and views this particular recommendation as unreasonable.

Relationship to Other Limitations on Compensation

Three agencies, one organization and one individual found the relationship between § 2635.807 and the statutory prohibition on the receipt of honoraria implemented at 5 CFR 2636.201 through 2636.205 confusing. Their recommendations to clarify the rule ranged from a suggestion to transfer the honoraria regulations from part 2636 into § 2635.807 to a suggestion to give more prominence to proposed § 2635.807(a)(3), which describes the relationship between the two sets of restrictions. We have adopted the latter suggestion and have moved proposed § 2635.807(a)(3) to the beginning of the section where it appears renumbered as § 2635.807(a)(1).[2] Succeeding provisions have been renumbered accordingly.

Invitation Extended Because of Official Position

One agency and one organization commented on renumbered § 2635.807(a)(2)(i)(B) which, as proposed, would have prohibited compensation where the invitation to engage in teaching, speaking or writing was "extended to the employee because of his official position." Because it will sometimes be difficult to determine whether an employee has been invited to speak or write because of his or her official position or because of an expertise on the subject matter, both recommended that the paragraph be deleted. We agree that it may sometimes be difficult to discern the motivation behind an invitation to speak or write, but do not believe the provision should be deleted simply because it may be difficult to implement in a particular case. To clarify this issue, we have amended § 2635.807(a)(2)(i)(B) to state that a covered activity relates to an employee's official duties if the "circumstances indicate that the invitation * * * was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter "

[2] See Footnote 1.

Source of Invitation

One agency recommended that renumbered § 2635.807(a)(2)(i)(C) be deleted. In the agency's view, the source of an invitation to teach, speak or write is irrelevant and the restrictions on receipt of compensation from a prohibited source would more appropriately be covered in subpart D of this regulation dealing with conflicting financial interests. On the other hand, one individual suggested that this is the only definition of the phrase "related to official duties" that should be retained. Because deletion of the rest of the definition would be inconsistent with the principle prohibiting use of public office for private gain, we have not adopted the latter suggestion. We also do not agree that the restriction should be moved to subpart D. Although receipt of compensation certainly affects an employee's financial interests, subpart D imposes disqualification and divestiture requirements that would not deal as directly as does § 2635.807 with the appearance problems associated with payments from prohibited sources. We have added a phrase to renumbered § 2635.807(a)(2)(i)(C) to make it clear that the definition therein covers the case in which the offer of compensation to engage in the activity is extended, directly or indirectly, by someone affected by the employee's official duties, even though the actual invitation to engage in the activity may have been extended by another.

Nonpublic Information

Two agencies recommended that renumbered § 2635.807(a)(2)(i)(D) be amended to add language from current 5 CFR 735.203(c) concerning the use of nonpublic information. The provision at § 735.203(c) permits an agency head to authorize an employee to use nonpublic information when that use is in the public interest. We have not adopted this suggestion. Although § 2635.807(a)(2)(i)(D) does not specifically provide for agency authorization to use nonpublic information, much the same result can be accomplished by authorizing information to be made available to the public under § 2635.703(b)(3), which is cross-referenced in the section. Moreover, the provision in 5 CFR 735.203(c) to which the agencies refer does not deal specifically with teaching, speaking or writing for compensation. We have no doubt that more extensive use of agency information may be appropriate when an individual is properly speaking on behalf of the agency and nothing in this part is intended to restrict the proper use of agency information in that context.

Special Government Employees

Two agencies, two organizations, and three individuals commented that proposed § 2635.807(a)(1)(i)(E) was too restrictive as it would apply to special Government employees. In general, the commenters stated that the provision would discourage individuals in the private sector from volunteering to serve on Government boards and panels, particularly on those dealing with scientific or technical subject matter. Two of the commenters suggested restricting only the use of nonpublic information by special Government employees.

We agree that the proposed rule was capable of being interpreted so broadly that it could have created a disincentive for private individuals to volunteer their services on special boards and panels. Nevertheless, it is clear that Executive Order 12674 requires the promulgation of appropriate restrictions on the use of public office for private gain by all employees, including special Government employees. To accommodate the concerns expressed by the commenters, we have revised renumbered § 2635.807(a)(2)(i)(E)(*4*) to make it clear that a special Government employee is barred from receiving compensation for teaching, speaking and writing only if the subject matter deals in significant part with the specific identifiable matter, such as a study or grant, to which the employee is assigned. The revised provision also clarifies that restrictions on the receipt of compensation exist only during the term of the special Government employee's current appointment.

For those who serve, or are expected to serve, for 60 days or less during the first year or any subsequent one year period of their appointments, the restriction has been further revised to apply only to particular matters involving specific parties in which special Government employees have participated or are participating personally and substantially. A similar exclusion for special Government employees who serve no more than 60 days can be found in 18 U.S.C. 203 and 205. The term "particular matter involving specific parties" is defined at § 2635.807(a)(2)(v) to have the meaning set forth in 5 CFR 2637.102(a)(7) and "personal and substantial" participation is defined at § 2635.807(a)(2)(vi) to have the meaning set forth in § 2635.402(b)(4).

As revised, § 2635.807(a)(2)(i)(E)(*4*) clearly states that special Government employees are not subject to the prohibitions at revised § 2635.807(a)(2)(i)(E) (*2*) and (*3*) on receipt of compensation for teaching, speaking or writing where the subject relates to agency policies, programs or operations or to the economic sector or industry affected by those operations. These revisions and clarifications, as well as the examples of application of § 2635.807 to special Government employees, should ensure that special Government employees are not unnecessarily deterred from Government service, while at the same time promoting the integrity that the public expects of its officials.

Regular Employees

In addition to the general comments discussed above, five agencies and one organization submitted specific recommendations for revisions to renumbered § 2635.807(a)(2)(i)(E)(*2*). One agency expressed the view that the language relating to agency policies, programs and operations engulfs the rest of the rule and should be deleted. One agency stated that employees should be permitted to accept compensation for any off-duty teaching, speaking or writing unless it involves a "specific issue" the employee worked on in his official capacity. The agency reasoned that such issues would normally involve privileged communications which could not be disclosed. Taken as a whole, these comments amount to a recommendation to permit employees to accept compensation for teaching, speaking or writing on agency policies, programs and operations unless they were personally assigned to a matter. For the reasons stated above in response to three general comments to much the same effect, OGE has not adopted this recommendation. We have, however, deleted the modifier "planned" before agency policies in proposed § 2635.807(a)(1)(i)(E)(*2*). This deletion accommodates the concern expressed by one commenter that an employee could be found to have spoken or written on a planned agency policy when he or she, in fact, had no knowledge that it was planned. Receipt of compensation for teaching, speaking or writing on policies in the planning stages by an employee with knowledge of those plans would, in all likelihood, be related to that employee's duties under renumbered § 2635.807(a)(2)(i)(D). We have replaced the modifier "planned" with the word "ongoing" and have restructured the paragraph so that the dual modifiers "ongoing or announced" precede the phrase "policy, program or operation of the agency." Insertion of the word "ongoing" addesses the concern expressed by one

commenter that the proposed regulations would limit teaching, speaking and writing on matters of historical significance.

Three other agencies and one organization suggested that the proposed restriction at renumbered § 2635.807(a)(2)(i)(E)(*1*) on receipt of compensation for teaching, speaking or writing on a matter presently or formerly assigned be limited to matters to which the employee is currently assigned or to which the employee has been assigned in the last year. On the basis of these comments, OGE has revised renumbered § 2635.807(a)(2)(i)(E)(*1*) to limit its coverage to matters assigned to the employee at the time the teaching, speaking or writing takes place and to other matters the employee worked on over the one-year period preceding the activity.

Two agencies asked that OGE clarify the meaning of the term "particular matter" as used in proposed § 2635.807(a)(1)(i)(E)(*2*). Both suggested that we specifically adopt the definition of the term "particular matter" as used in subpart D of this regulation. Since it was not OGE's intention to limit the applicability of § 2635.807(a)(2)(i)(E) to the types of particular matters described in subpart D, we deleted the word "particular" from § 2635.807(a)(2)(i)(E). The types of matters covered in this section include those described in subpart D, as well as any other matter which comprises the employee's assigned duties, such as development of agency programs or the conduct of scientific research.

The Office of Government Ethics has added a note and a number of examples following § 2635.807(a)(2)(i)(E) to clarify that an employee may accept compensation for teaching, speaking or writing about a matter within his or her general expertise and which relates generally to an agency's activities, as long as it does not deal in significant part with the specific matters to which the employee is or, within the past year, has been assigned, or to any ongoing or announced policy, program or operation of the agency.

Compensation

Renumbered § 2635.807(a)(2)(ii) defines "compensation" to include reimbursement or other payment of transportation, lodgings and meal expenses incurred in carrying out an activity. Three organizations and three individuals specifically recommended that payment of such expenses not be considered compensation. Several of the commenters observed that agency budgets are often inadequate to permit payment of these expenses and that employees cannot afford the out-of-pocket costs involved. We cannot agree that payment of transportation expenses by a private source should not be considered compensation. Insofar as Congress intends to permit outside sources to pay employee travel expenses for activities related to official duties, it has provided specific authority at 5 U.S.C. 4111 and 7342 and 31 U.S.C. 1353.

One organization suggested that the term "compensation" exclude amounts paid to charitable organizations, as permitted in the honoraria rule at 5 CFR 2636.201 through 2636.205.[3] We decided not to adopt this suggestion since there is no statutory basis permitting payment of compensation to charitable organizations similar to that upon which the honoraria provision is based.

Exceptions

Renumbered § 2635.807(a)(3) contains an exception for receipt of compensation for teaching courses involving multiple presentations offered as part of the regularly established curricula of certain accredited educational institutions, or as part of a program of education or training sponsored and funded by the Federal Government, or by a State or local government. Two commenters suggested that the exception be modified to permit receipt of compensation for teaching courses sponsored by other organizations, including professional associations and private nonprofit or profit-making firms. One organization suggested that receipt of compensation for teaching should be permitted regardless of the sponsoring institution's identity. One individual stated that employees should be permitted to teach single-presentation courses sponsored by a university or professional association. The Office of Government Ethics has not adopted these suggestions. The intent of the exception at § 2635.807(a)(3) is to permit compensation for teaching sponsored by recognized educational institutions and government entities. Receipt of compensation for teaching courses involving multiple presentations is not likely to raise concern that an employee has been invited to teach for reasons other than his or her expertise in a particular field. One individual recommended that the exception for teaching not require any prior agency approval. Section 2635.807 contains no such requirement. While 5 CFR 2636.307 requires certain noncareer employees to obtain prior approval to engage in teaching for compensation, that requirement is imposed by statute and is merely cross-referenced in renumbered § 2635.807(a)(1)(ii).

One agency recommended that OGE add another exception to the rule to permit receipt of compensation for writing books relating to an employee's official duties. An association made a similar suggestion for an exception for books, chapters of books and scholarly writings. The Office of Government Ethics has not adopted these recommendations. There does not appear to be any compelling reason to treat books or chapters of books differently than other forms of writing. Moreover, because there are no generally accepted standards for distinguishing between scholarly and other writings, an exception for scholarly writings would be difficult to implement.

Reference to Position

In response to an agency's concern that § 2636.807(b)(2) is too restrictive, we have revised the section to permit an employee to use his or her title or position in connection with certain writings, provided that the writing has a "reasonably prominent disclaimer" stating that the author's views are his or her own and not necessarily those of the United States. The proposed rule had required that the disclaimer be on the same page as the employee's position or title. The final rule deletes this requirement. We also adopted the commenting agency's recommendation to delete the requirements that the writing be "scholarly" and published in a "recognized" journal. We agree that retaining these restrictions would place agency officials in the difficult position of evaluating the scholarship of an employee's off-duty writings and the reputation of the journal in which those writings would be published. The final rule permits use of an employee's title or position in connection with "an article published in a scientific or professional journal."

One agency recommended that supplemental agency regulations include a requirement that employees who use an official title or position in connection with any teaching, speaking or writing sign a disclaimer of official agency endorsement and that such endorsements be published by the agency. The Office of Government Ethics believes that such a publication requirement would impose a considerable administrative burden on those agencies that have a large number of employees who engage in outside

[3] See Footnote 1.

speaking, teaching and writing. Moreover, writings containing an official title or position would already have a "published" disclaimer. We do not find the recommendation meritorious.

Another agency suggested that language be added to § 2635.807(b)(2) to make it clear that an employee will not be held responsible for use of his or her position and title by others, such as an organization sponsoring a conference at which the employee is speaking. As a general matter, we agree that an employee cannot be held responsible for use of his or her title and position by others without his knowledge and acquiescence. However, an employee does have the responsibility to take steps to ensure that his or her title and position are not misused by others with whom he or she has a relationship outside the Government. We believe that the prohibition against an employee "permitting" the use of his or her official position or title appropriately conveys this meaning, and therefore we have not revised this section.

One agency that viewed § 2635.807(b)(2) as overly restrictive recommended that an employee participating on a panel be permitted to refer to his or her position if other participants are using their titles for purposes of identification. With certain limitations, nothing in § 2635.807 would bar an employee from referring to his or her position or title under these circumstances. Section 2635.807(b)(1) permits reference to an employee's title or position, along with other biographical information, for identification in connection with teaching, speaking or writing.

Approval of Content

In response to comments made by four agencies and one organization, OGE has deleted proposed § 2635.807(c) which stated that employees must comply with agency requirements for advance approval of the content of any speech, writing or similar product. Each of the commenters argued that the provision is overbroad and would violate the First Amendment. Consistent with our original intent, the final rule simply notes that some agencies may have policies requiring advance approval, review, or clearance of certain speeches or writings to determine whether they contain an appropriate disclaimer, disclose nonpublic information or otherwise comply with this part.

Consulting

Since the proposed rule was published for public comment, it has come to OGE's attention that some employees have restructured or recharacterized teaching, speaking and writing activities as "consulting" in an effort to avoid application of the honorarium prohibitions in 5 CFR 2636.201 through 2636.205 and our informal opinion 85 x 18, *supra*.[4] Because consulting was not treated the same as teaching, speaking and writing in the proposed rule, we have not expanded § 2635.807 to covering consulting. Any such extension would require notice and comment. Nevertheless, we believe it is appropriate to note that many of the same considerations applicable to teaching, speaking and writing apply as well to consulting activities. And, as noted by OGE's addition of a new Example 2 following § 2635.802, consulting activities that involve use of public office for private gain or that otherwise violate part 2635 are improper even though not covered by § 2635.807.

Section 2635.808 Fundraising Activities

At the suggestion of one agency and one individual, OGE has revised the first section of § 2635.808 to make it clear that employees' fundraising activities are to be in compliance with the restrictions in 5 CFR part 950 on fundraising in the Federal workplace as well as with the restrictions in § 2635.808 (b) and (c). Part 950 is sometimes referred to as the Combined Federal Campaign rules. Because these rules are controlling as to charitable fundraising drives in the Federal workplace, we did not adopt the recommendation by one organization to give agencies discretion to approve fundraising in the workplace for local charities. One agency asked that language be added to make it clear that § 2635.808 has no application to efforts to raise funds for the United States, as through the savings bond program. Because "fundraising" is specifically defined at § 2635.808(a)(1) as the raising of funds for a nonprofit organization, OGE does not believe any further clarification is needed.

The Office of Government Ethics adopted the recommendation by one agency to revise the definition of the phrase "personally solicit" at § 2635.808(a)(4) to make it clear that use of an employee's name by another constitutes personal solicitation only when that use is permitted by the employee. It would not include use of an employee's name without his or her knowledge and agreement or acquiescence.

Five agencies felt that the language of proposed § 2635.808(b) was overly restrictive in limiting fundraising in an official capacity to that "specifically authorized by statute, Executive order or regulation." They recommended more flexibility to allow official fundraising that is consistent with the agency's mission or otherwise furthers agency programs. As it is not OGE's purpose to interfere with any agency's prerogatives to determine the proper scope of its authority to engage in fundraising, we have revised § 2635.808(b) to recognize that an agency may have authority to permit official fundraising notwithstanding that such authority is not expressly set forth in a statute, Executive order or regulation.

One agency endorsed the proposed special limitations on fundraising by officials holding Executive Level I and II positions, but three agencies objected to proposed § 2635.808(c)(2) for unfairly singling out high-level officials. They believe these officials should have the same rights as other employees to engage in activities in their personal capacities. After reconsidering these limitations, we have deleted proposed § 2635.808(c)(2). With this deletion, officials in Executive Level I and II positions will be subject to the same constraints as other employees on personal participation in fundraising, including the prohibitions on use of official title, position or authority. The examples have been revised to conform to this deletion and § 2635.808(a)(2) has been revised to conform to the concept in § 2635.204(g)(1).

One individual suggested that organizations will be placed at a disadvantage if they are prohibited from using Government employees' titles in their fundraising letters. He stated that Government titles "lend validity to non-profits in that responsible people have oversight of the affairs of the organization." Because § 2635.808(c) will preclude use of official titles for all fundraising that employees undertake in their personal capacities, no one organization should be at a greater disadvantage than any other. Moreover, in prohibiting the use of official titles other than for fundraising properly undertaken in an official capacity, the regulation is specifically intended to preclude any suggestion that the Government endorses one organization over any other.

One organization expressed concern that § 2635.808 would preclude a union member from asking employees to make contributions to the union's nonpartisan legislative action fund. The Hatch Act regulations at 5 CFR 733.122 prohibits soliciting, paying, collecting, or receiving a contribution at or in the Federal

[4] See Footnote 1.

workplace from any employee for any political party or partisan political fund or other partisan recipient and, as noted in subpart I, there are other restrictions on political solicitations in title 18 of the U.S. Code. If the solicitation is not prohibited by any of these and if its purpose is to raise funds for a nonprofit organization that is not a political organization within the meaning of 26 U.S.C. 527(e), § 2635.808(c) would apply and, as a practical matter, would prohibit a union employee from personally soliciting from a subordinate and from using his or her official title, position or authority to collect funds from any employee. It would not otherwise preclude an employee from asking for a contribution to a union fund. The union argues that OGE has no statutory authority to impose constraints of this nature. However, the restrictions on personal fundraising imposed by § 2635.808(c) are a proper implementation of the Executive order principle that an employee shall not use public office for private gain. As further implemented at § 2635.702, this prohibition applies even though the gain does not accrue to the employee personally but accrues to a nonprofit organization with which he or she is affiliated.

Section 2635.809 Just Financial Obligations

One agency felt that the scope of § 2635.809 should be limited to require only that employees meet tax obligations and such other obligations as have been reduced to court judgments. The Office of Government Ethics has not revised § 2635.809. The first sentence of the section is a verbatim restatement of the principle set forth in the Executive order. The definition of a "just financial obligation" is essentially the same as has been applicable for many years under 5 CFR 735.207.

Two agencies and one individual asked that subpart H be expanded to include sections dealing specifically with sales activities, consulting and legal work. The Office of Government Ethics has not added the sections suggested and believes the standards set forth in part 2635 are adequate to address these as well as other outside activities. It should be clear from the general standards, for example, that employees should not engage in sales activities using official time or Government telephones. It should also be clear that sales to subordinates may present issues of use of public office for private gain and can raise gift issues under subpart C of this regulation. If, for reasons relating to the principles of ethical conduct, an agency believes that its employees should be prohibited from engaging in certain outside activities, such as consulting or the practice of law, they have authority to impose appropriate limitations by supplemental agency regulations issued in accordance with § 2635.105. Where an outside employment relationship involves compensation and would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered, appropriate limitations may be imposed by individual agencies under § 2635.403.

Subpart I—Related Statutory Authorities

Based on suggestions from two agencies, OGE has added the Foreign Gifts and Decorations Act (5 U.S.C. 7342), the Freedom of Information Act and Privacy Act (5 U.S.C. 552 and 552a) and the prohibitions on lobbying with public funds (18 U.S.C. 1913) to the list of statutes in § 2635.902. Because the listing at § 2635.902 is of statutory, rather than regulatory authorities, we did not adopt the suggestion by one agency to include a citation to the regulations at 41 CFR subpart 101–20.3, Conduct on Federal Property. Because it would erroneously suggest that every statute listed in § 2635.902 had been incorporated into the standards of conduct, we did not adopt the recommendation by one agency and one organization to state in subpart I that administrative action may be taken by the employing agency based on a violation of any of the listed statutes. Such action could, of course, be taken to promote the efficiency of the service.

III. Revocation by OPM of Superseded Portions of 5 CFR Part 735 and by OGE of Current 5 CFR 2635.101

When this final rule takes effect on February 3, 1993, § 2635.101 of this chapter will be superseded by the Office of Government Ethics' new 5 CFR part 2635. Effective that date, the Office of Personnel Management will simultaneously revoke all but § 735.106 of subparts A through C of current part 735 of 5 CFR,[5] pursuant to a final rule that the agency intends to issue after this regulation is published in the **Federal Register**. That Office of Personnel Management regulation will also retain and reissue, as new sections of a residual 5 CFR part 735, the prohibitions relating to gambling, betting and lotteries, safeguarding the civil and foreign service examination process and conduct prejudicial to the Government currently found at 5 CFR 735.203(c), 735.208 and 735.209.

[5] Section 735.106 and subpart D of 5 CFR part 735 will be removed effective October 5, 1992, see 57 FR 11800–11830 (April 7, 1992).

IV. Matters of Regulatory Procedure

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

As Director of the Office of Government Ethics, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of conduct, Government employees.

Approved: May 7, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending title 5, chapter XVI, subchapter B of the Code of Federal Regulations by revising part 2635 to read as follows:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Subpart A—General Provisions

Sec.

2635.101 Basic obligation of public service.
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2635.602 Applicability and related considerations.
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Subpart G—Misuse of Position

2635.701 Overview.
2635.702 Use of public office for private gain.
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2635.704 Use of Government property.
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Subpart H—Outside Activities

2635.801 Overview.
2635.802 Conflicting outside employment and activities.
2635.803 Prior approval for outside employment and activities.
2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.
2635.805 Service as an expert witness.
2635.806 Participation in professional associations. [Reserved]
2635.807 Teaching, speaking and writing.
2635.808 Fundraising activities.
2635.809 Just financial obligations.

Subpart I—Related Statutory Authorities

2635.901 General.
2635.902 Related statutes.

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2635.101 Basic obligation of public service.

(a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) *General principles.* The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

(c) *Related statutes.* In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

§ 2635.102 Definitions.

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) *Agency* means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

(b) *Agency designee* refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted by this part with respect to another employee. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency

designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.

(c) *Agency ethics official* refers to the designated agency ethics official or to the alternate designated agency ethics official, referred to in § 2638.202(b) of this chapter, and to any deputy ethics official, described in § 2638.204 of this chapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.

(d) *Agency programs or operations* refers to any program or function carried out or performed by an agency, whether pursuant to statute, Executive order, or regulation.

(e) *Corrective action* includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

(f) *Designated agency ethics official* refers to the official designated under § 2638.201 of this chapter.

(g) *Disciplinary action* includes those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal. In the case of a military officer, comparable provisions may include those in the Uniform Code of Military Justice.

(h) *Employee* means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

(i) *Head of an agency* means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(j) *He, his,* and *him* include she, hers and her.

(k) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(l) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(m) *Supplemental agency regulation* means a regulation issued pursuant to § 2635.105.

§ 2635.103 Applicability to members of the uniformed services.

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. Those regulations shall be consistent with Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions, including those available under the Uniform Code of Military Justice, for failure to comply with such regulations.

§ 2635.104 Applicability to employees on detail.

(a) *Details to other agencies.* Except as provided in paragraph (d) of this section, an employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 calendar days shall be subject to any supplemental agency regulations of the agency to which he is detailed rather than to any supplemental agency regulations of his employing agency.

(b) *Details to the legislative or judicial branch.* An employee on detail, including a uniformed officer on assignment, from his employing agency to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the provisions of this part, except this section, or, except as provided in paragraph (d) of this section, to any supplemental agency regulations of his employing agency, but shall remain subject to the conflict of interest prohibitions in title 18 of the United States Code.

(c) *Details to non-Federal entities.* Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethics official may grant a written exemption from subpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(d) *Applicability of special agency statutes.* Notwithstanding paragraphs (a) and (b) of this section, an employee who is subject to an agency statute which restricts his activities or financial holdings specifically because of his status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his employing agency that implement that statute.

§ 2635.105 Supplemental agency regulations.

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section.

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:

(1) In the form of a supplement to the regulations in this part; and

(2) In addition to the substantive provisions of this part.

(b) After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the Federal Register for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the Federal Register.

(c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:

(1) A handbook or other issuance intended merely as an explanation of the standards contained in this part or in supplemental agency regulations;

(2) An instruction or other issuance the purpose of which is to:

(i) Delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or

(ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or

(3) Regulations or instructions that an agency has authority, independent of this part, to issue, such as regulations implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standards for use of Government vehicles. Where the content of any such regulations or instructions was included in the agency's standards of conduct regulations issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

§ 2635.106 Disciplinary and corrective action.

(a) Except as provided in § 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Governmentwide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

§ 2635.107 Ethics advice.

(a) As required by §§ 2638.201 and 2638.202(b) of this chapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program, as well as an alternate. The designated agency ethics official has authority under § 2638.204 of this chapter to delegate certain responsibilities, including that of providing ethics counseling regarding the application of this part, to one or more deputy ethics officials.

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

Subpart B—Gifts From Outside Sources

§ 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.202 General standards.

(a) *General prohibitions.* Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

(1) From a prohibited source; or

(2) Given because of the employee's official position.

(b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) *Limitations on use of exceptions.* Notwithstanding any exception provided in this subpart, other than § 2635.204(j), an employee shall not:

(1) Accept a gift in return for being influenced in the performance of an official act;

(2) Solicit or coerce the offering of a gift;

(3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than $6 and the aggregate value from any one manufacturer does not exceed the $50 aggregate limitation in § 2635.204(a) on de minimis gifts of $20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting,

or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials;

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; and

(iii) 41 U.S.C. 423(b)(2), which prohibits a procurement official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a Federal agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in the Federal Acquisition Regulation, 48 CFR 3.104.

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to § 2635.204(l).

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Agency* has the meaning set forth in § 2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

(1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301–1.6(b).

(8) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304–1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(9) Anything for which market value is paid by the employee.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about $20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only $20, the market value of the ticket is its $250 face value.

(d) *Prohibited source* means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held his position as a Federal employee.

Note: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this chapter.

Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) *Vendor promotional training* means training provided by any person

for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section and a gift accepted in accordance with one of those paragraphs will not be deemed to violate the principles set forth in § 2635.101(b). Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) *Gifts of $20 or less.* An employee may accept unsolicited gifts having an aggregate market value of $20 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed $50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds $20, the employee may not pay the excess value over $20 in order to accept that portion of the gift or those gifts worth $20. Where the aggregate value of tangible items offered on a single occasion exceeds $20, the employee may decline any distinct and separate item in order to accept those items aggregating $20 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of $30 each. The aggregate market value of the gifts offered on this single occasion is $60, $40 more than the $20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full $60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of $18 and a book about the history of cartography with a market value of $15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds $20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth $10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly $50 limitation on gifts of $20 or less from any one person, the four gifts must be aggregated because a *person* is defined at § 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the $50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at § 2635.204(b) for gifts based on a personal relationship.

Example 4: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of $20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of $20 or less accepted under § 2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: A Navy contracting officer is participating in a procurement for environmental cleanup services at a Navy installation that has recently been closed. She is presently involved in negotiations with three competing contractors, one of whom has offered her a fancy ballpoint pen embossed with its corporate logo. Even though the pen has a market value of $18 and could be accepted under the $20 de minimis exception at § 2635.204(a), the contracting officer cannot accept the competing contractor's gift. Under the procurement integrity provisions at 41 U.S.C. 423, she is a "procurement official" for that contract and, except as specifically permitted by the regulations implementing that statute, she is prohibited prior to award from accepting a gift from a competing contractor for that contract. The Federal Acquisition Regulation at 48 CFR 3.104 contains an exception for gifts with a market value of $10 or less.

(b) *Gifts based on a personal relationship.* An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is $500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) *Discounts and similar benefits.* In addition to those opportunities and benefits excluded from the definition of a gift by § 2635.203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: An employee of the Consumer Product Safety Commission may accept a

discount of $50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the $50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.

Example 2: An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its $5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) *Awards and honorary degrees.* (1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of $200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of $200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth $200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds $200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under § 2635.502, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a $50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.

(4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in § 2635.603(a).

(f) *Gifts from a political organization.* An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an exempt employee to a political event may accept meals, free attendance and entertainment provided at the event by such a political organization.

Example 1: The Secretary of the Department of Health and Human Services is exempt from the noted Hatch Act restrictions. He may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) *Widely attended gatherings and other events*—(1) *Speaking and similar engagements.* When an employee is assigned to participate as a speaker or panel participant or otherwise to present

information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) *Widely attended gatherings.* When there has been a determination that his attendance is in the interest of the agency because it will further agency programs or operations, an employee may accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) *Determination of agency interest.* The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the monetary value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom a finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the sponsor or its members.

(4) *Free attendance.* For purposes of paragraphs (g) (1) and (2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

Note: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) *Accompanying spouse.* When others in attendance will generally be accompanied by spouses, the agency designee may authorize an employee to accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsors a seminar for which it charges a fee of $100. An Air Force contractor pays $500 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid $500 to the association in order that it might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency.

Example 2: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of § 2635.204(a), he may accept a token of appreciation for his speech having a market value of $20 or less.

Example 3: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a $15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the $20 de minimis exception at § 2635.204(a).

Example 4: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

(h) *Social invitations from persons other than prohibited sources.* An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

(1) The invitation is from a person who is not a prohibited source; and

(2) No fee is charged to any person in attendance.

Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his official position.

(i) *Meals, refreshments and entertainment in foreign areas.* An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301–7.3(c) may accept food, refreshments or entertainment in

the course of a breakfast, luncheon, dinner or other meeting or event provided:

(1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;

(3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(j) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c) (1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(k) *Gifts authorized by supplemental agency regulation.* An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(l) *Gifts accepted under specific statutory authority.* The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with § 410.701 through § 410.706 of this title; or

Note: 26 U.S.C. 501(c)(3) is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

§ 2635.205 Proper disposition of prohibited gifts.

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See § 2635.203(c).

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth $200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor $200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a $300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under § 2635.204(g), he may attend if he reimburses the donor the $300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101–49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101–25.103.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

Subpart C—Gifts Between Employees

§ 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.302 General standards.

(a) *Gifts to superiors.* Except as provided in this subpart, an employee may not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) *Gifts from employees receiving less pay.* Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

(c) *Limitation on use of exceptions.* Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 2635.303 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Gift* has the meaning set forth in § 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) *Indirectly*, for purposes of § 2635.302(b), has the meaning set forth in § 2635.203(f). For purposes of § 2635.302(a), it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, *market value* has the meaning set forth in § 2635.203(c).

(d) *Official superior* means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) *Solicit* means to request contributions by personal communication or by general announcement.

(f) *Voluntary contribution* means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.

§ 2635.304 Exceptions.

The prohibitions set forth in § 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) *General exceptions.* On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items, other than cash, with an aggregate market value of $10 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

(3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;

(4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and

(5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of § 630.912 of this title.

Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for $8.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than $5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a $15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of $10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for $10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) *Special, infrequent occasions.* A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Example 1: The administrative assistant to the personnel director of the Tennessee Valley Authority may send a $30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

Example 2: A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for $70.

Example 3: Upon the occasion of the supervisor's retirement from Federal service, an employee of the Fish and Wildlife Service may give her supervisor a book of wildlife photographs which she purchased for $19. The retiring supervisor may accept the book.

(c) *Voluntary contributions.* An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee

receiving less pay than himself has contributed.

Example 1: To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

Example 2: The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Christmas occurs annually and is not an occasion of personal significance.

Example 3: Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of § 2635.304(b). However, subordinates may take up a collection and employees may contribute $3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

Example 4: Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

Example 5: An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute $5 for the gift. Her method of collection is improper. Although she may recommend a $5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

Subpart D—Conflicting Financial Interests

§ 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

§ 2635.402 Disqualifying financial interests.

(a) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

Note: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver, as described in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Direct and predictable effect.* (i) A particular matter will have a *direct* effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Note: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors

Example 1: An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the technical evaluation panel to review proposals for a new library computer search system. DEF Computer Corporation, a closely held company in which he and his wife own a majority of the stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee cannot participate on the technical evaluation team unless his disqualification has been waived.

Example 2: Upon assignment to the technical evaluation panel, the employee in the preceding example finds that DEF Computer Corporation has not submitted a proposal. Rather, LMN Corp., with which DEF competes for private sector business, is one of the six offerors. The employee is not disqualified from serving on the technical evaluation panel. Any effect on the employee's financial interests as a result of the agency's decision to award or not award the systems contract to LMN would be at most indirect and speculative.

(2) *Imputed interests.* For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:

(i) The employee's spouse;

(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

Example 1: An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation that engages in good works. Even though her personal financial interests will not be affected, the employee must disqualify herself from participating in the review of a grant application submitted by Kinder World. Award or denial of the grant will affect the financial interests of Kinder World and its financial interests are imputed to her as a member of its board of directors.

Example 2: The spouse of an employee of the Food and Drug Administration has obtained a position with a well established biomedical research company. The company has developed an artificial limb for which it is seeking FDA approval and the employee would ordinarily be asked to participate in the FDA's review and approval process. The spouse is a salaried employee of the company and has no direct ownership interest in the company. Nor does she have an indirect ownership interest, as would be the case, for example, if she were participating in a pension plan that held stock in the company. Her position with the company is such that the granting or withholding of FDA approval will not have a direct and predictable effect on her salary or on her continued employment with the company. Since the FDA approval process will not affect his spouse's financial interests, the employee is not disqualified under § 2635.402 from participating in that process. Nevertheless, the financial interests of the spouse's employer may be disqualifying under the impartiality principle, as implemented at § 2635.502.

(3) *Particular matter.* The term *particular matter* encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Internal Revenue Service's amendment of its regulations to change the manner in which depreciation is calculated is not a particular matter, nor is the Social Security Administration's consideration of changes to its appeal procedures for disability claimants.

Example 2: Consideration by the Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways involves a particular matter.

(4) *Personal and substantial.* To participate *personally* means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate *substantially* means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

(c) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would directly and predictably increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary might be wise to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

(d) *Waiver of disqualification.* An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) *Regulatory waivers.* Under 18 U.S.C. 208(b)(2), regulatory waivers of general applicability may be issued by the Office of Government Ethics based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of the employees to whom the waivers apply. Pending issuance of superseding regulatory waivers under this authority, agency regulatory waivers issued under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989 continue to apply.

(2) *Individual waivers.* An individual waiver enabling the employee to participate in one or more particular matters may be issued under 18 U.S.C. 208(b)(1) if, in advance of the employee's participation:

(i) The employee:

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter or matters; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of

the services which the Government may expect from such employee.

(3) *Federal advisory committee member waivers.* An individual waiver may be issued under 18 U.S.C. 208(b)(3) to a special Government employee serving on, or under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

(i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and

(ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest.

(4) *Consultation and notification regarding waivers.* When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.

(1) *Voluntary divestiture.* An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a), or if the agency determines in accordance with § 2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

§ 2635.403 Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

Note: There is no statute of Governmentwide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes which, in some cases, may be implemented by agency regulations issued independent of this part.

(a) *Agency regulation prohibiting certain financial interests.* An agency may, by supplemental agency regulation, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, and the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Where the agency restricts or prohibits the holding of certain financial interests by its employees' spouses or minor children, any such prohibition or restriction shall be based on a determination that there is a direct and appropriate nexus between the prohibition or restriction as applied to spouses and minor children and the efficiency of the service.

Note: Any prohibition on acquiring or holding a specific financial interest contained in an agency regulation, instruction or other issuance in effect prior to the effective date of this part shall, for employees of that agency, constitute a prohibited financial interest for purposes of this paragraph for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

(b) *Agency determination of substantial conflict.* An agency may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest or interests will:

(1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. If the agency determined that engineering and other decisions about the Air Force's requirements for the fighter would directly and predictably affect his financial interests, the employee could not, by virtue of 18 U.S.C. 208(a), perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position rather than allowing him to disqualify himself in particular matters.

(c) *Definition of financial interest.* For purposes of this section:

(1) Except as provided in paragraph (c)(2) of this section, the term financial interest is limited to financial interests that are owned by the employee or by the employee's spouse or minor children. However, the term is not limited to only those financial interests that would be disqualifying under 18 U.S.C. 208(a) and § 2635.402. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

Example 1: A regulatory agency has concluded that ownership by its employees of stock in entities regulated by the agency would significantly diminish public confidence in the agency's performance of its regulatory functions and thereby interfere

with the accomplishment of its mission. In its supplemental agency regulations, the agency may prohibit its employees from acquiring or continuing to hold stock in regulated entities.

Example 2: An agency that insures bank deposits may, by supplemental agency regulation, prohibit its employees who are bank examiners from obtaining loans from banks they examine. Examination of a member bank could have no effect on an employee's fixed obligation to repay a loan from that bank and, thus, would not affect an employee's financial interests so as to require disqualification under § 2635.402. Nevertheless, a loan from a member bank is a discrete financial interest within the meaning of § 2635.403(c) that may, when appropriate, be prohibited by supplemental agency regulation.

(2) The term financial interest includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 2635.402(b)(2)(iii) or (iv).

Example 1. The Foundation for the Preservation of Wild Horses maintains herds of horses that graze on public and private lands. Because its costs are affected by Federal policies regarding grazing permits, the Foundation routinely comments on all proposed rules governing use of Federal grasslands issued by the Bureau of Land Management. BLM may require an employee to resign his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position within the Bureau rather than allowing him to rely on disqualification in particular cases.

(d) *Reasonable period to divest or terminate.* Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

(e) *Eligibility for special tax treatment.* An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter.

Subpart E—Impartiality in Performing Official Duties

§ 2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 to determine whether he should or should not participate in a particular matter.

(b) Under § 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

Note: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver, as described respectively in §§ 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

§ 2635.502 Personal and business relationships.

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

Note: An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

Note: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) *Direct and predictable effect* has the meaning set forth in § 2635.402(b)(1).

(3) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this chapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

(1) The nature of the relationship involved;

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(4) The sensitivity of the matter;

(5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading

by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 2635.503 Extraordinary payments from former employers.

(a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2: An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. For two years thereafter, she may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Extraordinary payment* means any item, including cash or an investment interest, with a value in excess of $10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him $50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of $50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) *Former employer* includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) *Waiver of disqualification.* The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

Subpart F—Seeking Other Employment

§ 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons who otherwise would be affected by the performance or nonperformance of the employees' official duties. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

§ 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in § 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of §§ 2635.604 and 2635.606 if the employee's official duties would affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

Note: An employee who is seeking employment with a person whose financial interests are not affected by the performance or nonperformance of his official duties has no obligation under this subpart. An employee may, however, be subject to other statutes which impose restrictions on employment contacts or discussions, such as 41 U.S.C. 423(b)(1), applicable to procurement officials, and 10 U.S.C. 2397a, applicable to certain employees of the Department of Defense.

(a) *Related employment restrictions*—(1) Outside employment while a Federal employee. An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D or E of this part as a result of his outside employment activities.

(2) *Post-employment restrictions.* An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Governmentwide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory restrictions on their post-employment activities, such as 41 U.S.C. 423(f) applicable to procurement officials, 10 U.S.C. 2397b applicable to certain Department of Defense personnel and special statutes applicable to certain retired officers.

(b) *Interview trips and entertainment.* Where a prospective employer who is a prohibited source as defined in § 2635.203(d) offers to reimburse an employee's travel expenses, or provide other reasonable amenities incident to employment discussions, the employee may accept such amenities in accordance with § 2635.204(e)(3).

§ 2635.603 Definitions.

For purposes of this subpart:

(a) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

(b) An employee is seeking employment once he has begun seeking employment within the meaning of paragraph (b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if he has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a), the term negotiations means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(A) For the sole purpose of requesting a job application; or

(B) For the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(iii) Made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 3: An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not

discuss salary. The head of the division explains that he has not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.

Example 4: An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has not begun seeking employment with any of the twenty-five. If he receives a response from one of the resume recipients indicating an interest in employment discussions, the employee will have begun seeking employment with the respondent at that time.

Example 5: A special Government employee of the Federal Deposit Insurance Corporation is serving on an advisory committee formed for the purpose of reviewing rules applicable to all member banks. She mails an unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

Example 6: A geologist employed by the U.S. Geological Survey has been working as a member of a team preparing the Government's case in an action brought by the Government against six oil companies. The geologist sends her resume to an oil company that is a named defendant in the action. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.

(c) *Prospective employer* means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) *Direct and predictable effect* and *particular matter* have the respective meanings set forth in § 2635.402(b) (1) and (3).

§ 2635.604 Disqualification while seeking employment.

(a) *Obligation to disqualify.* Unless the employee's participation is authorized in accordance with § 2635.605, the employee shall not participate in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment within the meaning of § 2635.603(b). Disqualification is accomplished by not participating in the particular matter.

(b) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(c) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in his work assignments can be made.

Example 2: An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is involved in testing a drug for which the company is seeking FDA approval. Before making a response that is not a rejection, the employee should disqualify himself from further participation in the testing. Where he has authority to ask his colleague to assume his testing responsibilities, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his disqualification.

Example 3: The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he would be wise to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official or the Commissioners to file a written disqualification statement.

Example 4: A scientist is employed by the National Science Foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.

(d) *Agency determination of substantial conflict.* Where the agency determines that the employee's action in seeking employment with a particular person will require his disqualification

from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

§ 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) *Waiver.* Where, as defined in § 2635.603(b)(1)(i), an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in § 2635.402(d).

Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and § 2635.603(b)(1)(i). In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) *Authorization by agency designee.* Where an employee is seeking employment within the meaning of § 2635.603(b)(1) (ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer, the employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in § 2635.502(d).

Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of § 2635.603(b)(1)(ii) even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with § 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

§ 2635.606 Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations.

(a) *Employment or arrangement concerning employment.* An employee shall be disqualified from taking official action in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3). These waivers are described in § 2635.402(d).

Example 1: A military officer has accepted a job with a defense contractor to begin in six months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

Example 2: An accountant has just been offered a job with the Comptroller of the Currency which involves a two-year limited appointment. Her private employer, a large corporation, believes the job will enhance her skills and has agreed to give her a two-year unpaid leave of absence at the end of which she has agreed to return to work for the corporation. During the two-year period she is to be a COC employee, the accountant will have an arrangement concerning future employment with the corporation that will require her disqualification from participation in any particular matter that will have a direct and predictable effect on the corporation's financial interests.

(b) *Offer rejected or not made.* The agency designee for the purpose of § 2635.502(c) may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors, including those listed in § 2635.502(d), and a determination that the concern that a reasonable person may question the integrity of the agency's decisionmaking process outweighs the Government's interest in the employee's participation in the particular matter.

Example 1: An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Government's interest in her participation.

Subpart G—Misuse of Position

§ 2635.701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

(a) Use of public office for private gain;

(b) Use of nonpublic information;

(c) Use of Government property; and

(d) Use of official time.

§ 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) *Inducement or coercion of benefits.* An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a

department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in act ng as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated 18 U.S.C. 205.

(b) *Appearance of governmental sanction.* Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

(c) *Endorsements.* An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:

(1) In furtherance of statutory authority to promote products, services or enterprises; or

(2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procurement from the United States company.

Example 3: The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed letters of this type in television commercials portraying it as a "trustee of the environment for future generations."

Example 4: An Assistant Attorney General may not use his official title or refer to his Government position in a book jacket endorsement of a novel about organized crime written by an author whose work he admires. Nor may he do so in a book review published in a newspaper.

(d) *Performance of official duties affecting a private interest.* To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of § 2635.502.

(e) *Use of terms of address and ranks.* Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable", or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

§ 2635.703 Use of nonpublic information.

(a) *Prohibition.* An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

(b) *Definition of nonpublic information.* For purposes of this section, *nonpublic information* is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;

(2) Is designated as confidential by an agency; or

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Example 1: A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate Federal securities statutes as well as this section.

Example 2: A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.

Example 3: An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. The Federal Acquisition Regulation in 48 CFR parts 3, 14 and 15 restricts the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905 and 41 U.S.C. 423.

Example 4: An employee of the Nuclear Regulatory Commission inadvertently includes a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee's disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.

Example 5: An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

§ 2635.704 Use of Government property.

(a) *Standard.* An employee has a duty to protect and conserve Government

property and shall not use such property, or allow its use, for other than authorized purposes.

(b) *Definitions.* For purposes of this section:

(1) *Government property* includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) *Authorized purposes* are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Example 1: Under regulations of the General Services Administration at 41 CFR 201–21.601, an employee may make a personal long distance call charged to her personal calling card.

Example 2: An employee of the Commodity Futures Trading Commission whose office computer gives him access to a commercial service providing information for investors may not use that service for personal investment research.

Example 3: In accordance with chapter 252 of the Federal Personnel Manual, an attorney employed by the Department of Justice may be permitted to use her office word processor and agency photocopy equipment to prepare a paper to be presented at a conference sponsored by a professional association of which she is a member.

§ 2635.705 Use of official time.

(a) *Use of an employee's own time.* Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

Example 1: An employee of the Social Security Administration may use official time to engage in certain representational activities on behalf of the employee union of which she is a member. Under 5 U.S.C. 7131, this is a proper use of her official time even though it does not involve performance of her assigned duties as a disability claims examiner.

Example 2: A pharmacist employed by the Department of Veterans Affairs has been granted excused absence to participate as a speaker in a conference on drug abuse sponsored by the professional association to which he belongs. Although excused absence granted by an agency in accordance with guidance in chapter 630 of the Federal Personnel Manual allows an employee to be absent from his official duties without charge to his annual leave account, such absence is not on official time.

(b) *Use of a subordinate's time.* An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Example 1: An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during nonduty hours constitutes an improper use of public office for private gain in violation of § 2635.702(a). Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time. Where the compensation is not adequate, however, the arrangement would involve a gift to the superior in violation of the standards in subpart C of this part.

Subpart H—Outside Activities

§ 2635.801 Overview.

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of this part. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

(1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;

(2) Any agency-specific requirement for prior approval of outside employment or activities;

(3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;

(4) The limitations on paid and unpaid service as an expert witness;

(5) The limitations on participation in professional organizations;

(6) The limitations on paid and unpaid teaching, speaking, and writing; and

(7) The limitations on fundraising activities.

(c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee's private gain or for the private gain of any person with whom he has employment or business relations or is otherwise affiliated in a nongovernmental capacity.

(d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty;

(2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act;

(3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction;

(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for

special Government employees that limit the scope of the restrictions;

(5) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability;

(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits anyone holding an office of profit or trust under the United States from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any public official from being or acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 *et seq;*

(7) The Hatch Act, 5 U.S.C. 7321 through 7328, which prohibits most employees from engaging in certain partisan political activities and prohibits all employees from interfering with elections and conducting political activities in the Federal workplace;

(8) The honorarium prohibition, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibits an employee, other than a special Government employee, from receiving any compensation for an appearance, speech or article. Implementing regulations are contained in §§ 2636.201 through 2636.205 of this chapter; and

(9) The limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this chapter.

§ 2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of § 2635.802, it would create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.

§ 2635.803 Prior approval for outside employment and activities.

When required by agency supplemental regulation, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

Note: Any requirement for prior approval of employment or activities contained in any agency regulation, instruction, or other issuance in effect prior to the effective date of this part shall constitute a requirement for prior approval for purposes of this section for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

§ 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.

(a) *Presidential appointees to full-time noncareer positions.* A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) *Covered noncareer employees.* Covered noncareer employees, as defined in § 2636.303(a) of this chapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in §§ 2636.301 through 2636.304 of this chapter.

Note: In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other entity; or teaching without prior approval. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this chapter.

(c) *Definitions.* For purposes of this section:

(1) *Outside earned income* has the meaning set forth in § 2636.303(b) of this chapter, except that § 2636.303(b)(8) shall not apply.

(2) *Presidential appointee to a full-time noncareer position* means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:

(i) A position filled under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is

less than that for GS–9, step 1 of the General Schedule;

(ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;

(iii) A position within the uniformed services; or

(iv) A position in which a member of the foreign service is serving that does not require advice and consent of the Senate.

Example 1: A career Department of Justice employee who is detailed to a policy-making position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.

Example 2: A Department of Energy employee appointed under § 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a Presidential appointee to a full-time noncareer position.

§ 2635.805 Service as an expert witness.

(a) *Restriction.* An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section. Except as provided in paragraph (b) of this section, this restriction shall apply to a special Government employee only if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.

(b) *Additional restriction applicable to certain special Government employees.* (1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which his employing agency is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section.

(2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:

(i) Is appointed by the President;

(ii) Serves on a commission established by statute; or

(iii) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

(c) *Authorization to serve as an expert witness.* Provided that the employee's testimony will not result in compensation for an appearance in violation of § 2636.201 of this chapter or violate any of the principles or standards set forth in this part, authorization to provide expert witness service otherwise prohibited by paragraphs (a) and (b) of this section may be given by the designated agency ethics official of the agency in which the employee serves when:

(1) After consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter, the designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government; or

(2) The designated agency ethics official determines that the subject matter of the testimony does not relate to the employee's official duties within the meaning of § 2635.807(a)(2)(i).

(d) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

§ 2635.806 Participation in professional associations. [Reserved]

§ 2635.807 Teaching, speaking and writing.

(a) *Compensation for teaching, speaking or writing.* Except as permitted by paragraph (a)(3) of the section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.

(1) *Relationship to other limitations on receipt of compensation.* The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this chapter, including:

(i) The honorarium prohibition on receipt of compensation for an appearance, speech or article, which is implemented in §§ 2636.201 through 2636.205 of this chapter;

(ii) The requirement contained in § 2636.307 of this chapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

(iii) The prohibitions and limitations in § 2635.804 and in § 2636.304 of this chapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

Example 1. A personnel specialist employed by the Department of Labor has been asked by the publisher of a magazine to write an article on his hobby of collecting arrowheads. Even though the subject matter is unrelated to his official duties, he may not accept the publisher's offer of $200 for the article. Because the compensation offered is for an article, its receipt would violate the honorarium prohibition contained in §§ 2636.201 through 2636.205 of this chapter.

(2) *Definitions.* For purposes of this paragraph:

(i) Teaching, speaking or writing relates to the employee's official duties if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;

(C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in § 2635.703(b); or

(E) Except as provided in paragraph (a)(2)(i)(E)(*4*) of this section, the subject of the activity deals in significant part with:

(*1*) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;

(*2*) Any ongoing or announced policy, program or operation of the agency; or

(*3*) In the case of a noncareer employee as defined in § 2636.303(a) of this chapter, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.

(*4*) The restrictions in paragraphs (a)(2)(i)(E) (*2*) and (*3*) of this section do not apply to a special Government employee. The restriction in paragraph (a)(2)(i)(E)(*1*) of this section applies only during the current appointment of a special Government employee; except that if the special Government employee has not served or is not expected to serve for more than 60 days during the first year or any subsequent one year period of that appointment, the restriction applies only to particular matters involving specific parties in which the special Government employee has participated or is participating personally and substantially.

Note: Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

Example 1: The Director of the Division of Enforcement at the Commodity Futures Trading Commission has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to give a series of four lectures on how to assess the value of American stamps. Because the subject does not relate to his official duties, the Director may accept compensation for the lecture series. He could not, however, accept a similar invitation from a commodities broker.

Example 2: A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.

Example 3: On his own time, a National Highway Traffic Safety Administration employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide deals in significant part with the programs or operations of NHTSA and, therefore, relates to the employee's official duties. On the other hand, the employee could receive royalties from the sale of a consumer's guide to values in used automobiles even though it contains a brief, incidental discussion of automobile safety standards developed by NHTSA.

Example 4: An employee of the Securities and Exchange Commission may not receive compensation for a book which focuses specifically on the regulation of the securities industry in the United States, since that subject concerns the regulatory programs or operations of the SEC. The employee may, however, write a book about the advantages of investing in various types of securities as long as the book contains only an incidental discussion of any program or operation of the SEC.

Example 5: An employee of the Department of Commerce who works in the Department's employee relations office is an acknowledged expert in the field of Federal employee labor relations, and participates in Department negotiations with employee unions. The employee may receive compensation from a private training institute for a series of lectures which describe the decisions of the Federal Labor Relations Authority concerning unfair labor practices, provided that her lectures do not contain any significant discussion of labor relations cases handled at the Department of Commerce, or the Department's labor relations policies. Federal Labor Relations Authority decisions concerning Federal employee unfair labor practices are not a specific program or operation of the Department of Commerce and thus do not relate to the employee's official duties. However, an employee of the FLRA could not give the same presentations for compensation.

Example 6: A program analyst employed at the Environmental Protection Agency may receive royalties and other compensation for a book about the history of the environmental movement in the United States even though it contains brief references to the creation and responsibilities of the EPA. A covered noncareer employee of the EPA, however, could not receive compensation for writing the same book because it deals with the general subject matter area affected by EPA programs and operations. Neither employee could receive compensation for writing a book that focuses on specific EPA regulations or otherwise on its programs and operations.

Example 7: An attorney in private practice has been given a one year appointment as a special Government employee to serve on an advisory committee convened for the purpose of surveying and recommending modification of procurement regulations that deter small businesses from competing for Government contracts. Because his service under that appointment is not expected to exceed 60 days, the attorney may accept compensation for an article about the anticompetitive effects of certain regulatory certification requirements even though those regulations are being reviewed by the advisory committee. The regulations which are the focus of the advisory committee deliberations are not a particular matter involving specific parties. Because the information is nonpublic, he could not, however, accept compensation for an article which recounts advisory committee deliberations that took place in a meeting closed to the public in order to discuss proprietary information provided by a small business.

Example 8: A biologist who is an expert in marine life is employed for more than 60 days in a year as a special Government employee by the National Science Foundation to assist in developing a program of grants by the Foundation for the study of coral reefs. The biologist may continue to receive compensation for speaking, teaching and writing about marine life generally and coral reefs specifically. However, during the term of her appointment as a special Government employee, she may not receive compensation for an article about the NSF program she is participating in developing. Only the latter would concern a matter to which the special Government employee is assigned.

Example 9: An expert on international banking transactions has been given a one-year appointment as a special Government employee to assist in analyzing evidence in the Government's fraud prosecution of owners of a failed savings and loan association. It is anticipated that she will serve fewer than 60 days under that appointment. Nevertheless, during her appointment, the expert may not accept compensation for an article about the fraud prosecution, even though the article does not reveal nonpublic information. The prosecution is a particular matter that involves specific parties.

(ii) *Agency* has the meaning set forth in § 2635.102(a), except that any component of a department designated as a separate agency under § 2635.203(a) shall be considered a separate agency.

(iii) *Compensation* includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:

(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this part;

(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place; or

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking or writing activity.

(iv) *Receive* means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(v) *Particular matter involving specific parties* has the meaning set forth in § 2637.102(a)(7) of this chapter.

(vi) *Personal and substantial participation* has the meaning set forth in § 2635.402(b)(4).

(3) *Exception for teaching certain courses.* Notwithstanding that the activity would relate to his official duties under paragraphs (a)(2)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentations by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or

(ii) A program of education or training sponsored and funded by the Federal Government or by a State or local government which is not offered by an entity described in paragraph (a)(3)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though a substantial portion of the course deals with cost accounting principles applicable to contracts with the Government. Moreover, his receipt of a salary or other compensation for teaching this course does not violate the honorarium prohibition on receipt of compensation for any speech, which is implemented in §§ 2636.201 through 2636.205 of this chapter.

Example 2: An attorney employed by the Equal Employment Opportunity Commission may accept compensation for teaching a course at a state college on the subject of Federal employment discrimination law. The attorney could not accept compensation for teaching the same seminar as part of a continuing education program sponsored by her bar association because the subject of the course is focused on the operations or programs of the EEOC and the sponsor of the course is not an accredited educational institution.

Example 3: An employee of the National Endowment for the Humanities is invited by a private university to teach a course that is a survey of Government policies in support of artists, poets and writers. As part of his official duties, the employee administers a grant that the university has received from the NEH. The employee may not accept compensation for teaching the course because the university has interests that may be substantially affected by the performance or nonperformance of the employee's duties. Likewise, an employee may not receive compensation for any teaching that is undertaken as part of his official duties or that involves the use of nonpublic information.

(b) *Reference to official position.* An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that:

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) An employee may use, or permit the use of, his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank in connection with his teaching, speaking or writing.

Note: Some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches, books, articles or similar products to determine whether the product contains an appropriate disclaimer, discloses nonpublic information, or otherwise complies with this section.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data on all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor just employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the article also contains a disclaimer, concurred in by the CDC, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the CDC.

Example 3: An employee of the Federal Deposit Insurance Corporation has been asked to give a speech in his private capacity, without compensation, to the annual meeting of a committee of the American Bankers Association on the need for banking reform. The employee may be described in his introduction at the meeting as an employee of the Federal Deposit Insurance Corporation provided that other pertinent biographical details are mentioned as well.

§ 2635.808 Fundraising activities.

An employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace and in accordance with paragraphs (b) and (c) of this section.

(a) *Definitions.* For purposes of this section: (1) *Fundraising* means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) *Participation in the conduct of an event* means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

Note: This section does not prohibit fundraising for political parties. However, there are statutory restrictions that apply to political fundraising. Employees, other than those exempt under 5 U.S.C. 7324(d), are prohibited by the Hatch Act, 5 U.S.C. 7321 through 7328, from soliciting or collecting contributions or other funds for a partisan political purpose or in connection with a

partisan election. In addition, all employees are prohibited by 18 U.S.C. 602 from knowingly soliciting contributions for any political purpose from other employees and by 18 U.S.C. 607 from soliciting such contributions in the Federal workplace.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost $150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

(3) *Official speech* means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in § 2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a nonprofit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light initiative, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.

Example 2: A charitable organization is sponsoring a two-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under § 2635.204(g)(1), he may partake of the meal provided to him at the dinner.

(4) *Personally solicit* means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of § 2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) *Fundraising in an official capacity.* An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.

Example 1: Because participation in his official capacity is authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

(c) *Fundraising in a personal capacity.* An employee may engage in fundraising in his personal capacity provided that he does not:

(1) Personally solicit funds or other support from a subordinate or from any person:

(i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of § 2635.203(d); or

(ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of § 2635.203(d)(4) that is a person whose interests may be substantially affected by performance or nonperformance of his official duties.

(2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(3) Engage in any action that would otherwise violate this part.

Example 1: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy.

Example 2: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 regarding use of Government property.

Example 3: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

§ 2635.809 Just financial obligations.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

Subpart I—Related Statutory Authorities

§ 2635.901 General.

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in § 2635.902 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic

conflict of interest statutes whose standards are explained in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

§ 2635.902 Related statutes.

(a) The prohibition against solicitation or receipt of bribes (18 U.S.C. 201(b)).

(b) The prohibition against solicitation or receipt of illegal gratuities (18 U.S.C. 201(c)).

(c) The prohibition against seeking or receiving compensation for certain representational services before the Government (18 U.S.C. 203).

(d) The prohibition against assisting in the prosecution of claims against the Government or acting as agent or attorney before the Government (18 U.S.C. 205).

(e) The post-employment restrictions applicable to former employees (18 U.S.C. 207, with implementing regulations at parts 2637 and 2641 of this chapter).

(f) The post-employment restrictions applicable to former procurement officials (41 U.S.C. 423(f)).

(g) The prohibition against participating in matters affecting an employee's own financial interests or the financial interests of other specified persons or organizations (18 U.S.C. 208).

(h) The prohibition on a procurement official's negotiating for employment with competing contractors (41 U.S.C. 423(b)(1)).

(i) The prohibition against receiving salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. 209).

(j) The prohibition against gifts to superiors (5 U.S.C. 7351).

(k) The prohibition against solicitation or receipt of gifts from specified prohibited sources (5 U.S.C. 7353).

(l) The prohibition against solicitation or receipt of gifts from competing contractors (41 U.S.C. 423(b)(2)).

(m) The provisions governing receipt and disposition of foreign gifts and decorations (5 U.S.C. 7342).

(n) The Code of Ethics for Government Service (Pub. L. 96-303, 94 Stat. 855).

(o) The prohibitions against certain political activities (5 U.S.C. 7321 *et seq.* and 18 U.S.C. 602, 603, 606 and 607).

(p) The prohibitions against disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).

(q) The general prohibition against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (18 U.S.C. 219).

(r) The prohibition against employment of a person convicted of participating in or promoting a riot or civil disorder (5 U.S.C. 7313).

(s) The prohibition against employment of an individual who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).

(t) The prohibition against misuse of a Government vehicle (31 U.S.C. 1344).

(u) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(v) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(w) The prohibition against concealing, mutilating or destroying a public record (18 U.S.C. 2071).

(x) The prohibition against counterfeiting or forging transportation requests (18 U.S.C. 508).

(y) The restrictions on disclosure of certain sensitive Government information under the Freedom of Information Act and the Privacy Act (5 U.S.C. 552 and 552a).

(z) The prohibitions against disclosure of classified information (18 U.S.C. 798 and 50 U.S.C. 783(b)).

(aa) The prohibition against disclosure of proprietary information and certain other information of a confidential nature (18 U.S.C. 1905).

(bb) The prohibition against unauthorized disclosure of certain procurement sensitive information, including proprietary or source selection information (41 U.S.C. 423(b) (3) and (d)).

(cc) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(dd) The prohibition against certain personnel practices (5 U.S.C. 2302).

(ee) The prohibition against interference with civil service examinations (18 U.S.C. 1917).

(ff) The restrictions on use of public funds for lobbying (18 U.S.C. 1913).

(gg) The prohibition against participation in the appointment or promotion of relatives (5 U.S.C. 3110).

(hh) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).

(ii) The prohibition against conspiracy to commit an offense against or to defraud the United States (18 U.S.C. 371).

(jj) The prohibition against embezzlement or conversion of Government money or property (18 U.S.C. 641).

(kk) The prohibition against failing to account for public money (18 U.S.C. 643).

(ll) The prohibition against embezzlement of the money or property of another person that is in the possession of an employee by reason of his employment (18 U.S.C. 654).

[FR Doc. 92-16070 Filed 8-6-92; 8:45 am]
BILLING CODE 6345-01-M

VOL
57
ISS
1
53
AG
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992
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federal register

Friday
August 7, 1992

Part III

Securities and Exchange Commission

17 CFR Part 200, et al.
Rulemaking for Electronic Data Gathering, Analysis, and Retrieval (EDGAR) System; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 202, 210, 229, 230, 232, 239, 240, 249, 260, and 269

[Release Nos. 33-6944; 34-30951; 35-25587; 39-2285; IC-18862; File No. S7-21-92]

RIN 3235-AC48

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") requests public comment on proposed rules to implement the operational phase of its Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. The rules as set forth in this release will apply to electronic submissions processed by the Division of Corporation Finance, and in some cases, to those processed by the Division of Investment Management. Paper filings also will be affected by the rule proposals in limited circumstances. Separate releases contain additional proposed rules relating to electronic submissions processed by the Division of Investment Management and to payment of fees into the Commission's lockbox depository.

This month the EDGAR Pilot participants began filing voluntarily on the operational EDGAR system. Mandated electronic filing is scheduled to begin in April 1993 for the EDGAR Pilot participants and selected volunteers. Phase-in of all registrants is expected to be completed by mid-1996. Comment is requested on proposed new rules required for the EDGAR system, changes to the existing rules necessary to accommodate electronic filing, and the phase-in procedures and schedule.

DATES: Comments should be received on or before October 6, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-21-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. To facilitate the processing of comments, commenters are encouraged to provide the Commission, in addition to written comments, a copy of comments on computer diskette.[1]

FOR FURTHER INFORMATION CONTACT: Barbara C. Smith Jacobs or James R. Budge, at (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today requests public comment on the proposed rules and procedures to implement the EDGAR system,[2] in which most filings and related correspondence processed by the Division of Corporation Finance and the Division of Investment Management will be submitted electronically, and on the proposed schedule to bring registrants into the EDGAR system.[3] The Commission is seeking comment on the proposed rules to mandate and accommodate submissions in electronic format, as well as the proposed updating of current rules to take advantage of the efficiencies of electronic submission and processing.

The Commission proposes to adopt new Regulation S-T governing electronic submissions [4] and to amend a number of rules, regulations, schedules and forms under: (1) The Rules on Organization and Program Management; [5] (2) the Regulation Concerning Information and Requests; [6] (3) the Rules of Practice; [7] (4) the Rules on Informal and Other Procedures; [8] (5) Regulation S-X; [9] (6) Regulation S-K; [10] (7) Industry Guides [11] under the Securities Act of 1933 ("Securities Act") [12] and the Securities Exchange Act of 1934 ("Exchange Act"); [13] (8) the Rules and Regulations under the Securities Act; [14] (9) the Forms under the Securities Act; [15] (10) the Rules, Regulations and Schedules under the Exchange Act; [16] (11) the Forms under the Exchange Act; [17] (12) the Rules [18] under the Trust Indenture Act of 1939 [19] ("Trust Indenture Act"); and (13) the Forms under the Trust Indenture Act.[20] In addition to those areas specifically discussed below, commenters are encouraged to suggest other areas where rule and form changes are necessary or appropriate to implement electronic filing.

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[1] See Section IX, *infra*, for the procedure for submitting a copy of comments by computer diskette.

[2] The technical formatting requirements for electronic filings are set forth in the EDGAR Filer Manual. As used in this Release, the term "EDGAR Filer Manual" means the version of the EDGAR Filer Manual that has been published and adopted by the Commission prior to mandated phase-in of registrants.

[3] In addition to this Release, three companion releases are being issued today. The first [Release No. IC-18863] requests public comment regarding rules specific to electronic submissions made by investment companies under the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a-1 *et seq.*] and institutional investment managers under Section 13(f) of the Exchange Act [15 U.S.C. 78m(f)], and includes the phase-in schedule for investment companies. The second [Release No. 35-25588] requests public comment regarding rules specific to electronic submissions made by public utility holding companies and their subsidiaries under the Public Utility Holding Company Act of 1935 ("PUHCA") [15 U.S.C. 79a *et seq.*], and includes the phase-in schedule for PUHCA filings by such companies. The third [Release No. 33-6947] relates to the payment of filing fees, by both paper and electronic filers, to the Commission's lockbox depository at Mellon Bank in Pittsburgh, Pennsylvania pursuant to Rule 3a [17 CFR 202.3a] of the Rules Relating to Informal and Other Procedures.

[4] Proposed 17 CFR Part 232.

[5] 17 CFR 200.1 *et seq.*

[6] 17 CFR 200.80 *et seq.*

[7] 17 CFR 201.1 *et seq.*

[8] 17 CFR 202.1 *et seq.*

[9] 17 CFR 210.1-01 *et seq.*

[10] 17 CFR 229.10 *et seq.*

[11] 17 CFR 229.801-229.802.

[12] 15 U.S.C. 77a *et seq.*

[13] 15 U.S.C. 78a *et seq.*

[14] 17 CFR 230.100 *et seq.*

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[16] 17 CFR 240.0-1 *et seq.*

[17] 17 CFR 249.0-1 *et seq.*

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I. Executive Summary

The Commission is proposing to adopt new rules and amend its existing rules and forms to implement the EDGAR system. When the system is fully operational, virtually all documents processed by the Division, including correspondence and supplemental information, will be required to be submitted electronically by direct transmission, magnetic tape or diskette. Registrants [21] whose submissions are processed by the Division will be phased into electronic filing in a series of discrete groups pursuant to the proposed schedule published for comment today. [22] It is anticipated that phase-in will begin in April 1993 and be completed by mid-1996. All submissions made by third parties relating to a registrant, such as Schedules 13D, would be required to be submitted electronically once the subject registrant is an electronic filer.

Electronic submissions would be governed principally by proposed Regulation S–T, which contains rules prescribing requirements and procedures relating to electronic submissions. Proposed Regulation S–T is complemented by proposed rules and requirements relating to filers, which would be part of existing regulations and forms, including Regulation C [23] and Form 10–K. [24] On April 30, 1991, the Commission released a draft of the EDGAR Filer Manual that provides details on technical formatting requirements for electronic submissions, and updated versions were disseminated in January 1992 and again in June 1992.

Electronic filers that obtain an exemption from the provisions of Regulation S–T for specified submissions [25] and filers that are not phased in would file in paper in accordance with existing provisions of the Commission's regulations and forms. Certain provisions relating to paper submissions, however, would be amended to ensure consistency of treatment between electronic and paper filers.[26]

Magnetic tapes and diskettes would be accepted during the Commission's current hours for receipt of paper filings, 8 a.m. to 5:30 p.m. Eastern Time. Direct transmission filers would be permitted to transmit until 10 p.m. Eastern Time, but any direct transmission submission that commenced after 5:30 p.m. Eastern Time, if accepted, would be considered filed as of the next business day. A direct transmission submission commencing on or before 5:30 p.m. Eastern Time, if accepted, would be considered filed on that business day, except for a Schedule 13D or cash tender offer filing, which would be considered filed on that business day only if accepted by 5:30 p.m. Eastern Time.

As proposed, under EDGAR required signatures would be submitted in typed form. This approach would eliminate the practical problems associated with personal identification numbers ("PINs") used in the EDGAR Pilot. Signature requirements for electronic filings would remain the same as for paper format documents in all other respects.

The EDGAR rules would include a safe harbor against liability for errors in, or omissions from, documents in electronic format [27] resulting solely from

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[21] EDGAR participants are referred to as "filers" and "electronic filers." These terms mean any person or entity who makes an electronic submission, including agents of such person or entity, such as financial printers or law firms. Filers will be either "registrants" (such as Exchange Act reporting companies) or third parties making filings with respect to a registrant (such as beneficial owners filing Schedules 13D [17 CFR 240.13d–101]). A "registrant" (sometimes also referred to as an "electronic registrant") is an issuer of securities for which a Securities Act registration statement is required to be filed on EDGAR and/or an issuer of securities with respect to which an Exchange Act registration statement or report is required to be filed on EDGAR. Entities making submissions in paper format are referred to as "paper filers" or "paper registrants," as appropriate.

[22] See Appendix E—Division of Corporation Finance Phase-in Schedule, *infra*.

[23] 17 CFR 230.400 *et seq.*

[24] 17 CFR 249.310.

[25] The term "submission," as used in this release, means one or more documents that are transmitted or delivered to the Commission in electronic format. A submission could include, for example, a Form 10–K, exhibits, and related correspondence. The term "submission" also may include a portion of a document that is transmitted or delivered to the Commission in electronic format, such as a modular submission.

[26] See Section V.F, *infra*.

[27] The term "electronic format," as used in this release, means the computerized format of a document prepared in accordance with proposed Regulation S–T and the EDGAR Filer Manual.

electronic transmission problems beyond the control of the electronic filer, if corrective action were taken by the electronic filer within five business days after it became aware of the error or omission. The Commission also proposes two hardship exemptions that would permit a filing or other submission to be made in paper rather than electronic format. First, a temporary exemption would be available to electronic filers, generally for short-term difficulties in submitting an electronic document. Under the exemption, a paper filing would constitute the official filing, but it would have to be followed by an electronic copy so that the electronic database would be complete. Second, a continuing exemption also would be available to electronic filers under limited circumstances for a specific document or group of documents. The exemption would provide that any submission would be made in paper, with no requirement for a subsequent electronic copy. In addition to the two hardship exemptions, the proposed rules would permit an electronic filer to request an adjustment of the filing date of an electronic document when the electronic filer encountered technical problems beyond its control which prevented electronic submission by the due date specified by the applicable form or rule.

Because of difficulties associated with sending and interpreting graphic and image material in electronic submissions, the proposed rules provide that an electronic filer no longer would be required to submit a copy of its annual report to security holders, which often contains such material, for the information of the Commission, provided its Form 10–K report includes all information required by the proxy rules to be included in an annual report to security holders. However, an electronic filer that incorporates information from its annual report to security holders into a filing such as a Form 10–K report would have to submit the annual report to the Commission in electronic format. In addition, Regulation S–T would contain rules regarding disclosure concerning graphic and image information in electronic submissions. Under the proposal, an appendix to the electronic format document would have to list all graphic and image information appearing in the paper format document and provide a fair and accurate narrative description of such information. If, however, the substantive information conveyed by the graphic and image information presented in the paper format document is described narratively in the body of the document, the appendix to the electronic format document listing the graphic and image information would simply contain a cross-reference to the narrative discussion.

Under proposed Regulation S–T, a modular submission procedure, similar to the "reference filing" available in the EDGAR Pilot, would be provided. Information intended to become part of more than one filed document, such as financial statements, could be submitted electronically one time, retained as non-public information on EDGAR, and subsequently included, at the filer's direction, in as many filings as the filer designated.

A similar feature that could be used by electronic filers to submit information on the EDGAR system for subsequent inclusion in an electronic filing is segmented filing. Various segments of a document to be filed with the Commission could be submitted to the EDGAR non-public data storage area up to six days in advance of the anticipated filing date. On the anticipated filing date, the electronic filer then would submit a master segment instructing EDGAR to assemble the desired filing from the previously submitted segments and file it. Unlike modules, segments may be used only once. Neither modular submissions nor segments would be deemed filed or subject to liability under the federal securities laws until the filer included the information in an electronic filing.

Electronic registrants would be required to submit "Financial Data Schedules" similar to those used in the EDGAR Pilot. The Schedule would include specified financial data extracted from the financial statements, schedules and disclosures pursuant to industry guides, placed in formatted schedules and identified with special tags to facilitate retrieval of the information by EDGAR. This would enable the EDGAR system to perform numerous functions with the data automatically, such as the calculation of financial ratios or the identification of companies with certain financial characteristics.

II. Background

A. EDGAR Pilot System

Development of an electronic disclosure system was undertaken by the Commission in 1983, and construction of a pilot system ("EDGAR Pilot") to develop and test an electronic system was commenced in May 1984. The first filings were received in the EDGAR Pilot on September 24, 1984, and through the closing of the Pilot, the Commission received over 116,000 electronic filings from over 1800 filers.[28] They include a wide range of filings made pursuant to the Securities Act, the Exchange Act, PUHCA, the Trust Indenture Act, and the Investment Company Act. Under the EDGAR Pilot, documents were submitted to and accepted by the Commission through three different media: direct transmission over telephone lines using asynchronous or bisynchronous modems,[29] diskettes, and magnetic tapes.[30] Experience with the EDGAR Pilot was very favorable and demonstrated the feasibility of electronic filing. On July 14, 1992, the EDGAR Pilot was closed and the next day the Pilot participants became the first filers to submit live filings on the operational system.[31]

B. The EDGAR System

1. Background

Development and implementation of an electronic system was authorized as part of the Securities and Exchange Commission Authorization Act of 1987 ("EDGAR Authorization Act").[32] In

[28] As of July 14, 1992, the date the EDGAR Pilot was closed, there were 228 companies whose filings are processed the Division and 303 companies whose filings are processed by the Division of Investment Management participating in the EDGAR Pilot. In addition, over 1300 registered investment companies have filed their semi-annual reports on Form N–SAR electronically via EDGAR.

[29] See Section II.B.2, *infra*, for a discussion of the terms asynchronous and bisynchronous.

[30] In most cases, direct transmission filing is the most efficient filing method, as it eliminates the cost of physically delivering filings to Washington, DC and the consequent potential for delay. In the EDGAR Pilot, the trend moved overwhelmingly from diskette filing to direct transmission. Magnetic tape submissions were acceptable in the EDGAR Pilot and are acceptable in EDGAR, but this transmission method has limited usefulness to those filers who normally make only one or two submissions at a time.

[31] See section III.A, *infra*, for further information regarding the phase-in of registrants onto EDGAR.

[32] Securities and Exchange Commission Authorization Act of 1987, Public Law 100–181, 101 Stat. 1249 (1987) (amending Exchange Act Section 35 (15 U.S.C. 78kk) and adding Section 35A (15 U.S.C. 78ll)).

Preparatory to drafting rules for the implementation of operational EDGAR, in 1988 the Commission issued for public comment an advance notice of proposed rulemaking ("Advance Notice") [Release No. 33–6651 (June 28, 1988) [51 FR 24155]]. The Advance Notice elicited 104 letters of comment from 103 commenters, 52 of whom were EDGAR Pilot participants or represented EDGAR Pilot participants. The main areas addressed by the commenters were: (1) the mandated electronic filing concept; (2) hardship exemptions; (3) incorporation by reference; (4) signatures; (5) graphic and image material; and (6) data tagging. The comment letters, as well as the comment summary prepared by the staff, are available for inspection and copying in the Commission's Public Reference Room (see File No. S7–15–88).

accordance with that authorization, on January 4, 1989, the Commission awarded a contract to build the EDGAR system to BDM International, Inc. ("BDM").[33] The contract has a term of eight years, if all renewal options are exercised. BDM has been implementing an electronic filing system for most submissions, including filings and related correspondence, processed by the Division of Corporation Finance and the Division of Investment Management. BDM also has developed a filer assistance software package known as EDGARLink to aid filers in the creation and transmission of electronic format documents.[34] Enhancements to EDGAR will be developed and implemented on an ongoing basis.

On May 1, 1991, the operational EDGAR system was officially opened for test submissions by EDGAR Pilot participants.[35] As noted above, the new EDGAR system began receiving live filings submitted by Pilot participants on July 15, 1992.

A number of benefits will accrue to filers from the submission of documents in electronic format. First, time savings in delivery of direct transmission filings will provide filers with a greater opportunity to meet market windows and eliminate the uncertainty and delay of mail or messenger delivery. Second, the improved dissemination of information resulting from the system will increase public information about all companies, particularly mid-size companies and smaller companies, and should increase their visibility and market following.[36] Third, the Commission's hours for receipt of direct transmission submissions will be extended to 10 p.m. Eastern Time. Fourth, use of modular submissions and segmented filings will save transmission time and eliminate duplicative transmission of information by permitting a filer to submit data, such as financial statements, and then use the data in subsequent submissions.[37] Fifth, the EDGAR electronic mail/bulletin board service will provide prompt filer notification of acceptance or suspension of submissions.[38]

In addition, EDGAR will allow the Commission to store, process and disseminate information more efficiently, and will make the staff review process more efficient. Computerization also will provide a foundation for future development of one-stop filing via EDGAR and EDGAR-compatible systems with the North American Securities Administrators Association for the states and with the self-regulatory organizations, namely, the National Association of Securities Dealers and the stock exchanges.

Investors and other members of the public will have faster access to corporate disclosure under EDGAR, through EDGAR terminals in the Commission's public reference rooms, subscriptions for electronic copies of all or certain subsets of EDGAR public filings, and subscriptions to private sector databases containing all or certain EDGAR public filings.[39]

Resales of the EDGAR database in the private sector also will provide access to disclosure documents outside Commission business hours.[40] The efficiency of the market will be improved by facilitating dissemination of information and access to financial and other data of public companies.[41]

2. Structure of the EDGAR System

Registrants and third party filers will be required to submit a completed Form ID, the uniform application for access codes to file on EDGAR,[42] prior to becoming subject to mandated filing. Upon receipt of the completed Form ID, the Commission will send to the filer, at no cost, a set of computer diskettes containing the current version of the filer assistance software

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[33] Other parties to the contract include Mead Data Central, Inc., Bowne & Company, Disclosure Information Services, Inc., and CompuServe, Inc.

[34] EDGARLink is intended to facilitate preparation, validation and transmission of EDGAR filings using IBM-compatible personal computers operating on DOS 3.2 or higher, which should permit its use with the more popular systems.

[35] Shortly before that time, copies of the April 1991 draft EDGAR Filer Manual and the EDGARLink filer assistance software were mailed to EDGAR Pilot participants and also were made available through the Commission's public reference rooms at nominal cost. On January 27, 1992, the second release of EDGAR (Release 2.0) was made available for testing by EDGAR Pilot participants. This release greatly expanded the number of form types that can be submitted as test filings. Concurrently, an updated version of EDGARLink, the filer assistance software, and the draft EDGAR Filer Manual were made available. On June 29, 1992, a revised draft of the EDGAR Filer Manual and an updated version of EDGARLink were distributed to Pilot participants in anticipation of their conversion to the operational EDGAR system on July 15, 1992.

[36] Public dissemination of EDGAR filings began on a limited basis on July 15, 1992, when the Pilot participants converted to EDGAR from the Pilot. In addition to access in the Commission's public reference rooms, public electronic filings are available to investors and other members of the public who may subscribe for magnetic tapes of all such documents through the EDGAR contractor. As explained in detail below, a more elaborate dissemination scheme will be in place once mandated electronic filing commences.

[37] See Section IV.A, *infra*, for a discussion of modular submissions (designated "reference filings" in the EDGAR Pilot) and segmented filing.

[38] See Section V.E, *infra*, for a discussion of the optional EDGAR electronic mail/bulletin board service. In the future, it is anticipated that staff letters of comment will be delivered electronically to filers that elect to subscribe to the EDGAR electronic mail/bulletin board service.

[39] The EDGAR contract provides for specified services to be sold by the EDGAR contractor at fees regulated by the Commission. The services currently proposed are listed in the following paragraphs. The services ultimately offered will depend on whether there is sufficient subscriber interest to justify each service, *i.e.*, revenues for the service must be sufficient to cover the cost of providing the service plus a reasonable rate of return to the dissemination subcontractor. Cross-subsidization of the various services is not planned.

The "Level I magnetic tape" subscription provides subscribers with overnight delivery of magnetic tapes containing all filings accepted on or before 5:30 p.m. the previous business day.

With a "Level I broadcast" subscription, accepted filings for that business day will be transmitted to the subscriber in a continuous electronic stream in order of priority. The subscriber must have sufficient computer capacity to receive the filings in this manner and also must provide the communications line to EDGAR and appropriate line termination equipment. Overnight delivery of magnetic tapes of the filings will be available to Level I broadcast subscribers at an additional charge.

The "Level I interactive" subscription will provide the subscriber with on-line access to all filings that were accepted during the three most recent business days, including the current business day. Filings selected by the subscriber can be downloaded via a communications link and viewed on equipment provided by the dissemination subcontractor as part of the subscription. The subscription also includes overnight delivery of magnetic tapes of all filings accepted on or before 5:30 p.m. the previous business day.

A "Level II" subscription will provide access to one of eight different subsets of accepted filings by overnight delivery of a magnetic tape. The magnetic tapes will contain filings which were accepted the previous business day on or before 5:30 p.m. in the following areas: (1) Periodic and other Exchange Act filings by domestic companies listed on the New York Stock Exchange (Forms 10–K, 10–Q, 8–K, 10, and definitive proxy statements); (2) periodic and other Exchange Act filings by domestic companies listed on the American Stock Exchange (Forms 10–K, 10–Q, 8–K, 10, and definitive proxy statements); (3) periodic and other Exchange Act filings by domestic companies traded over-the-counter (Forms 10–K, 10–Q, 8–K, 10, and definitive proxy statements; (4) filings made pursuant to the Williams Act (Schedules 13D, 13G, 14D–1, 14D–9, 13E–3, and 13E–4); (5) annual and quarterly reports of all domestic companies filed pursuant to the Exchange Act (Forms 10–K and 10–Q) whether or not listed on an exchange or quoted on NASDAQ; (6) Securities Act registration statements; (7) stock ownership reports (Forms 3, 4, 5, 144 and 13F; Schedules 13D, 13G and 14D–1); and (8) periodic reports filed under the Investment Company Act, Forms N–SAR–A, N–SAR–B and N–SAR–U.

With respect to subsets (1), (2), and (3) of the Level II subscription, the dissemination subcontractor has recommended that they be combined into a single offering at least in the early stages of operation of the EDGAR system. This recommendation is under consideration by the staff.

With respect to subset (7) of the Level II subscription, Forms 3, 4, 5, and 144 will not be filed electronically, subject to future rulemaking.

[40] There are no limitations on the resale of any of the information contained in Level I or Level II subscriptions.

[41] See Section VII, *infra*, for further discussion of the costs and benefits of EDGAR.

[42] See Sections III.D.3 and VI.A, *infra*, for a discussion of Form ID.

("EDGARLink"),[43] the EDGAR Filer Manual,[44] and the necessary EDGAR identification numbers and passwords.

EDGARLink is intended to facilitate preparation, validation and transmission of electronic submissions using IBM-compatible personal computers operating on DOS 3.2 or higher, which should permit its use with the more popular systems. EDGARLink will enable the filer to test the submission prior to direct transmission in order to identify many of the technical, formatting and other problems that may result in suspension of the submission. EDGARLink also can be used for checking diskettes prior to submission; however, before using EDGARLink, the documents must be converted to ASCII format.[45] Although use of EDGARLink is not required, filers should find it useful in preparing a document for direct transmission.[46]

As in the EDGAR Pilot, a filer may submit an electronic format document via direct transmission, diskette, or magnetic tape. In order to make a direct transmission, a modem, telephone line, and the associated communications software are required. EDGARLink will incorporate asynchronous [47] communication software. The filer needs to have only the asynchronous modem and a telephone line. Filers wishing to use bisynchronous [48] communications also must have the modem, a telephone line, and the appropriate communications software.

All direct transmission submissions must be in ASCII format. Diskette transmissions, however, also may be submitted in any of the word processing languages specified in the EDGAR Filer Manual.[49] Such submissions will be translated to ASCII format by EDGAR.[50] If a diskette filer elects not to use one of the designated word processing programs, it must file the submission in ASCII format. Filers choosing this alternative must use an MS-DOS-based [51] word processing language that provides as one of its functions a means of converting document files to an ASCII file. Magnetic tape submissions must be in ASCII or EBCDIC format.[52]

The EDGAR system will consist of three subsystems: (1) Receipt and Acceptance; (2) Analysis and Review; and (3) Dissemination. The Receipt and Acceptance subsystem will receive all electronically formatted submissions; automatically check, among other things, for certain items in the submission header,[53] proper formatting, proper filing fees, and form type; [54] notify the filer whether the submission has been accepted or suspended and, if suspended, the reason; hold suspended submissions for six business days until they are corrected or resubmitted; [55] and forward accepted submissions to the Analysis and Review subsystem and the public portions of such submissions to the Dissemination subsystem.

Filers will receive a message that a submission either has been accepted or suspended. Some errors will not prevent a submission from being accepted, while other errors will cause a submission to be suspended.[56] If the submission has been suspended, the filer will receive an error message: (1) identifying the submission as being suspended; (2) stating the reasons for the suspension; and (3) informing the filer that the submission must be corrected or resubmitted before it can be accepted.[57] For example, the error message may state that a required tag is missing or that there is an inconsistency between the filer's identification numbers, such as the Central Index Key number ("CIK number") and the CIK confirmation code ("CCC") in the submission header.[58]

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[43] Initially, EDGARLink will support Hayes compatible asynchronous modems, *i.e.* those supporting the full AT command set, at speeds from 1200 to 9600 baud. Other modems may be added to the list in the future. See Appendix B—Equipment and Software For Electronic Submissions, *infra*. Discussions of asynchronous and bisynchronous transmissions follow.

[44] See Section V.A, *infra*, regarding the EDGAR Filer Manual.

[45] ASCII, "American Standard Code for Information Interchange," represents letters, numbers, a blank space, and a limited number of symbols. When properly translated to ASCII, word processing codes for features such as underlining and bold-face are removed and codes indicating indentation and tabbing are replaced by the appropriate number of spaces on a line. Codes indicating new pages are replaced by the appropriate number of blank lines. If the software does not completely remove these codes, then these word processing codes must be removed manually.

[46] EDGARLink will inform the filer of word processing codes that need to be removed manually and assist the filer in removing them. The EDGARLink software will contain a "correction script" feature that will allow filers to correct errors that suspended a filing without having to resubmit the entire filing. Use of the correction script requires the filer to subscribe to the EDGAR electronic mail system, as the electronic error message drives the correction process. Alternatively, if EDGARLink is not used, a filer could submit a test or live filing and if the word processing codes had not been successfully removed, the filer would receive a suspension message. The filer would then be required to make any corrections and resubmit the entire filing.

[47] Asynchronous data transmission is a method in which each character is transmitted as a self-contained unit. Modems and associated communications software for asynchronous transmission generally are used more widely and are less expensive than those designed for other means of direct transmission. While asynchronous communication without added error checking was allowed in the EDGAR Pilot, software which incorporates error checking, such as Kermit or X-modem protocols with Cyclical Redundancy Check (CRC), will be required for all asynchronous transmissions to EDGAR. EDGARLink incorporates CRC error checking.

[48] Bisynchronous transmission adds timing information to each block of information transmitted. Bisynchronous communications software always incorporates an error checking mechanism. For this reason, it was recommended to EDGAR Pilot filers. However, bisynchronous communication does not permit the interactive communication planned for the EDGAR system. Changing passwords on-line, validating on-line that the filer is using the latest version of the filer software, and downloading new versions of the filer software are functions that are only available to those using asynchronous communications.

[49] The EDGAR Pilot system, as originally established, allowed filing of diskettes prepared on a variety of different types of word processors and personal computers. However, some of these products no longer exist. EDGAR will continue to support recent editions of a variety of widely-used systems, both personal computer based word processing software, such as WordPerfect versions 4.2, 5.0, and 5.1, Microsoft Word MacIntosh 1.5, Microsoft Word MS DOS 3.2, Multimate and Multimate Advantage, as well as stand-alone word processing systems. For a listing of the currently acceptable types of systems, see Appendix B—Equipment and Software for Electronic Submissions, *infra*.

[50] Some features of word processing software packages may not translate readily into ASCII format and should be avoided in preparing documents for submission on diskette or otherwise. See ¶¶ 4.3.4 and 8.1 of the draft EDGAR Filer Manual issued June 1992.

[51] MS-DOS is the disk operating system of the Microsoft Corporation that operates on IBM-compatible personal computers.

[52] EBCDIC is an acronym for "Extended Binary Coded Decimal Interchange Code." EBCDIC is a code that is used in connection with IBM mainframe computer equipment.

[53] A submission header contains key information about the electronic submission. See Section III.D.4, *infra*, for a discussion of headers.

[54] See Section III.D.2.b, *infra*, for a discussion of acceptance processing.

[55] A filing will be held in suspense for up to six business days, after which, if it is not corrected using EDGARLink, the filer assistance software, or resubmitted, it will be removed from the system's file of pending incoming submissions. The Commission's filer support staff will have prompt access to suspended documents and will be able to instruct a filer in making any necessary corrections. A six business day suspense period is being proposed because of the need to limit the data stored on the Commission's electronic system. It is anticipated that the availability of EDGARLink and the provisions for testing filings will reduce the number of filing errors. See Section III.D.5, *infra*, for a discussion of testing procedures.

[56] See Section III.D.b, *infra*, for examples of such errors.

[57] See Appendix C—List of Representative Error Messages, *infra*.

[58] Two of the identifiers used to ensure system security and accurate identification of registrants and other filing parties are the CIK number and the CIK confirmation code. The CIK number, which is public information, is assigned to each person or entity as a means of identification. The CCC, which is non-public information, is used by EDGAR to confirm the identity of the registrant or third party filer. The CCC must be matched with the

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An accepted submission will be passed from the Receipt and Acceptance subsystem to the Analysis and Review subsystem and if public, to the Dissemination subsystem. The Analysis and Review subsystem is the means by which the Commission staff receives and examines documents on-line. Public documents will be available for viewing on terminals in the Commission's public reference rooms.[58] The Dissemination subsystem will be managed by Mead Data Central Inc. and overseen by the Commission. Non-public submissions, such as correspondence accompanying filings, will be available to the Commission staff only, subject to requests under the Freedom of Information Act ("FOIA").[60]

III. Electronic Filing; Related Rules

A. Mandated Filers and Volunteers

Domestic registrants [61] whose filings are processed by the Division will be brought onto the EDGAR system in a series of discrete groups.[62] Section 35A(c)(5) of the Exchange Act [63] requires that mandated filings from a "significant test group" of registrants be received and reviewed by the Commission for at least six months before the final adoption of any rule requiring electronic filing by registrants. The "significant test group" will be phased in between April and December 1993, in four groups or installments. Pilot participants will commence mandated electronic filing in April 1993 (Group CF–01).[64] The next group (Group CF–02), consisting of approximately 525 registrants whose filings are processed by the Division of Corporation Finance, will begin mandated electronic filing in July 1993. However, the Commission may allow a limited number of registrants, otherwise scheduled for mandated phase-in with the first non-Pilot group, to elect to begin their mandated filing with the Pilot participants in April 1993.[64] The third (Group CF–03) and fourth (Group CF–04) installments of the "significant test group" will consist of approximately 750 and 1000 registrants, respectively, whose filings are processed by the Division.

After considering public comments and suggestions relating to the proposals issued today, the Commission will adopt interim EDGAR rules to govern electronic submissions by the "significant test group," as well as a phase-in schedule reflecting any required changes from that proposed. After the "significant test group" has successfully filed for at least six months, the Commission will adopt final EDGAR rules modified to reflect the experience gained during that period, together with a revised phase-in schedule, if necessary. Registrants will then be phased in, in groups of approximately 1500, every three months (except for the first calendar quarter of each year), with any new registrants [65] or others not named in the phase-in schedule included in the last group phased in.[67] All filings made by third parties relating to a registrant, such as proxy contest materials, tender offer materials, and beneficial ownership filings would be required to be submitted electronically once the subject registrant became an electronic filer.[68]

Before becoming subject to mandated electronic filing, each registrant, and each third party making filings with respect to that registrant, must submit a completed Form ID [69] to the Commission in order to receive necessary identification and password codes for filing on EDGAR.[70] Filers are strongly encouraged to submit the Form ID three to six months prior to becoming subject to mandated electronic filing in order to allow them the opportunity to become familiar with EDGAR procedures and prepare test filings. Special arrangements for expedited processing of Forms ID will be made for third party filers who did not know of their electronic filing obligations three to six months in advance.

Until the period for successful filing by the "significant test group" has been concluded, the Commission does not anticipate accepting volunteers to file on EDGAR (aside from those moved from Group CF–02 to Group CF–01) in order to assure that there is sufficient Commission filer support staff to answer questions and provide assistance to newly phased-in electronic filers. After that, during the remainder of the phase-in, the Commission may allow subsidiaries of a parent filing on EDGAR, foreign issuers, and others to file electronically. Priority would be given to subsidiaries of parents filing on EDGAR that desired to volunteer for electronic filing in order to facilitate the conversion of the parent-subsidiary structure to electronic format in one step, or in a shorter time than that specified in the phase-in schedule. Priority also would be given to foreign issuers that wanted to volunteer for electronic filing so as to facilitate transnational capital formation in increasingly global securities markets.[71]

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registrant's or third party filer's CIK number, as appropriate, or the filing will not be permitted to proceed. See Section III.D.3, *infra*, for a discussion of identification and login procedures.

[58] Paper copies of public filings will continue to be available through the public reference rooms upon the payment of scheduled fees.

[60] 5 U.S.C. 552.

[61] Foreign issuers may be required to file electronically at some future date. Any foreign issuers that are inadvertently listed in Appendix E should contact Sylvia Reis, Assistant Director—CF EDGAR Policy, Division of Corporation Finance, Mail Stop 3–8, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–3691.

[62] See Appendix E, *infra*. A proposed amendment to Rule 30–1 of the rules governing Commission organization [17 CFR 200.30–1] would add paragraph (m), delegating authority to the Division of Corporation Finance to grant or deny a request by a registrant to participate in a phase-in group other than the group established by the Commission for that registrant.

[63] 15 U.S.C. 78*ll*(c)(5).

[64] On July 15, 1992 the EDGAR Pilot participants were permitted to convert to the operational EDGAR system prior to mandated filing. Those electing to do so are referred to in this release as "Transitional Filers." The Commission has revised the EDGAR Temporary Rules ("amended Temporary Rules") in order to facilitate these filers' transition to operational EDGAR. *See* Release No. 33–6983 (April 20, 1992) [57 FR 18210] for rules relating to filings processed by the Division; Release No. IC–18884 (April 20, 1992) [57 FR 18223] for rules relating to investment companies and institutional investment managers; and Release No. 35–25520 (April 20, 1992) [57 FR 18229] for rules relating to public utility holding companies. Upon adoption of Regulation S–T, the EDGAR Temporary Rules will be rescinded. The EDGAR Temporary Rules originally were adopted in Release No. 33–6539 (June 27, 1984) [49 FR 26044]; Release 35–23704 (May 23, 1985) [50 FR 23287]; Release No. IC–14738 (September 23, 1985) [50 FR 40479]. They are as follows: Securities Act Rule 490 [17 CFR 230.490]; Exchange Act Rules 12b–37 [17 CFR 240.12b–37] and 13f–2(T) [17 CFR 240.13f–2(T)]; PUHCA Rule 111 [17 CFR 250.111]; Trust Indenture Act Rule 0–12 [17 CFR 260.0–12]; and Investment Company Act Rule 0–11 [17 CFR 270.0–11].

[65] Non-Pilot registrants in Group CF–02 that are interested in the April 1993 phase-in date should contact Sylvia Reis, Assistant Director—CF EDGAR Policy, Division of Corporation Finance, Mail Stop 3–8, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–3691.

[67] After phase-in is completed, any company, except for a foreign issuer, that makes a registered offering under the Securities Act or that becomes subject to the reporting requirements of the Exchange Act would be required to file electronically, absent a hardship exemption.

[67] A schedule of the proposed phase-in is set forth in Appendix E—Division of Corporation Finance Phase-in Schedule for EDGAR, *infra*.

[68] As Transitional Filers will be volunteers from July 15, 1992 to the commencement of mandated electronic filing, a third party making a filing relating to one of these registrants may submit it in electronic format, but will not be required to do so. Once Transitional Filers are subject to mandated electronic filing, third party filers would be required to file electronically.

[69] See Proposed Rule 10(b) of Regulation S–T.

[70] Identification and password codes are discussed in Section III.D.3, Identification and Login Procedures, *infra*.

[71] As foreign issuers may elect to file electronically after the period for successful filing by the "significant test group" has been concluded.

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Other volunteers may be accepted as well. Once permitted to file on EDGAR, volunteers would be treated as mandated electronic filers, subject to the same rules as filers that are mandated to be phased in and would not be permitted to make required filings in paper except pursuant to a hardship exemption. Comment is solicited as to whether there are other categories of volunteers that should be given priority to file electronically after the successful filing by the "significant test group" has been completed.

Once a public utility holding company becomes an electronic filer, its subsidiaries will be required to make PUHCA filings in electronic format.[72] Consistent with the treatment afforded other types of companies, subsidiaries of phased-in public utility holding companies would be permitted, but not required, to file Securities Act and Exchange Act filings in electronic format after the completion of the "significant test group" filing period. Comment is requested regarding whether such subsidiaries should be required to file their Securities Act and Exchange Act filings electronically at the time they are phased in for purposes of their PUHCA filings. Comment also is solicited as to whether they should be allowed to volunteer during the "significant test group" period.

The proposed rules provide that a registrant's first mandated electronic filing would not be an annual report on Form 10–K unless the registrant so desired.[73] Where the first filing of a phased-in registrant is a Form 10–K, the Form 10–K may, at the option of the registrant, be submitted in paper format.

Registrants are encouraged to test file on EDGAR prior to their mandated filing date.[74] The procedures for test filing are detailed in the EDGAR Filer Manual. Telephone lines for direct transmission testing will be available except at certain peak filing times.[75] Acceptance and suspension messages resulting from a test submission will be available immediately to electronic mail subscribers.[76] Electronic filers that elect not to subscribe to the electronic mail service will receive these messages via first-class U.S. mail.

As required by the EDGAR Authorization Act, the proposed rules specify a period of one year during which all electronic filers, including EDGAR Pilot and Transitional Filers, would be required to submit copies of electronic filings to the Commission in paper format.[77] Electronic filers could elect to receive return paper copies of their electronic submissions at their expense.[78]

B. Scope and Format of Rules; Regulation S–T

Electronic filing via EDGAR would be governed principally by proposed Regulation S–T.[79] The rules in proposed Regulation S–T would prescribe the general requirements and procedures for electronic filing.[80] To complement Regulation S–T, rules or instructions specifically relating to electronic filing would be added to current regulations, such as Regulation C, as well as to forms and schedules, such as Form 10–K. Comment is solicited on the structure of the rules, and in particular, whether the modification of numerous existing rules, forms and schedules is useful to filers, or alternatively, if it would be preferable to streamline the specific changes applicable to electronic filers by grouping them together in Regulation S–T. In either event, paper filings will continue to be governed by existing provisions of the regulations, which will remain in effect even after phase-in is completed since paper filings will be required, or permitted, in limited circumstances.[81]

C. Mandated, Permitted, and Excluded Electronic Submissions

1. Mandated Electronic Submissions

a. *Filings and Other Documents.* The Commission is proposing to require, except as discussed below, that all documents, including filings, correspondence and supplemental information,[82] submitted by or relating to registrants under the Securities Act, the Exchange Act and the Trust Indenture Act be submitted electronically in accordance with the phase-in schedule in appendix E.[83] Once phased in, a registrant would not be permitted to file in paper except: pursuant to a hardship exemption; [84] if it is required to file a Schedule 13D or 13G relating to a registrant not yet phased in; or if it commenced a proxy contest or cash tender offer for a registrant not yet phased in.[85] Once a registrant is required to file electronically, all filings made by third parties relating to the registrant, such as proxy materials (including solicitation materials submitted to the Commission under cover of proposed Form 14 [86]),

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forms filed by foreign issuers are proposed to be amended to include electronic filing paragraphs similar to those proposed for forms filed by domestic issuers. For a discussion of other topics relating to foreign issuers, see: Section III.C.1, *infra* (third party filings made by foreign individuals or entities, or with respect to foreign issuers); Section III.C.3.a, *infra* (foreign language documents and symbols); and Section IV.D.3, *infra* (Financial Data Schedules).

[72] See Section II of the companion release relating to public utility holding companies.

[73] Proposed Rule 100(a)(3) of Regulation S–T.

[74] See Section III.D.5, *infra*, for a further discussion of testing. Filing agents also are encouraged to test file on EDGAR.

[75] Peak filing times are those periods in which the Commission routinely receives a high volume of filings, often in excess of 2000 on a day. Examples of current peak periods include: 1) March 31, when Forms 10–K are filed for calendar year-end companies; and 2) February 14, May 15, August 14, and November 14, forty-five days after quarterly periods when Forms 10–Q are filed.

[76] See Section V.E, *infra*, for a discussion of the optional EDGAR electronic mail/bulletin board system.

[77] Transitional Filers will not be required to submit copies of electronic filings to the Commission in paper format until they are mandated to file electronically. See Section V.D.1, *infra*, for a further discussion of the requirement for paper copies.

[78] The cost will be the scheduled rates for obtaining paper copies through the Commission's public reference rooms with one-day response. Filers also may contact the Commission's paper and microfiche services contractor regarding expedited delivery.

[79] Proposed 17 CFR Part 232. Technical formatting requirements for electronic filing are set forth in the EDGAR Filer Manual.

[80] The entire text of proposed Regulation S–T, including those sections applicable to entities whose filings are subject to review by the Division of Investment Management, is found in Section XI, *infra*.

[81] Paper filings may be permitted pursuant to a hardship exemption, as discussed in Section III.E, *infra*. Further, certain types of filings will continue to be submitted in paper, as discussed in Section III.C.3, *infra*.

[82] See Section IV.G.2, *infra*, for a discussion of the proposed treatment of supplemental information.

[83] Proposed Rule 100 of Regulation S–T. Once a filer becomes subject to the mandated electronic filing rules, any documents, amendments, or supplements to documents filed in paper would be required to be filed in electronic format, absent a hardship exemption. See Section III.E, *infra*, regarding the hardship exemptions. Restatement of the amended document would not be required unless it was either an exhibit or the first amendment to a Schedule 13D or 13G required to be filed electronically. See Sections III.C.1.b. and IV.G.6, *infra*.

[84] An electronic filer would be ineligible to use Forms S–2, [17 CFR 239.12] S–3, [17 CFR 239.13] S–8, [17 CFR 239.16b] F–2, [17 CFR 239.32] and F–3 [17 CFR 239.33] if it failed to make any required electronic filing, including the confirming electronic format copy required by the temporary hardship exemption. See Section III.E.2, *infra*, regarding the temporary hardship exemption.

[85] Proposed Rule 300(c)(1) of Regulation S–T. See Section III.C.2, *infra*.

[86] On June 24, 1992, the Commission reproposed an exemption from the proxy rules filing requirements for solicitations made by qualified persons who do not seek proxy authority in connection with the solicitation. If such solicitation is in writing, the reproposal would require that the distributed material be submitted to the Commission under cover of proposed Form 14. See Release No. 34–30849 (June 24, 1992) [57 FR 29564].

tender offer materials, and beneficial ownership materials would be required to be submitted electronically, absent a hardship exemption.[87]

While foreign issuers would not be subject to mandated electronic filing, foreign individuals or entities would be required to submit electronically third party filings, such as a Schedule 13D or tender offer filing, with respect to domestic companies to the same extent domestic individuals or entities would be required to do so. Comment is solicited as to whether this approach would be viewed as a burden that would impede foreign investment in the United States, and if so, whether foreign individuals or entities making third party filings with respect to domestic companies should be permitted, but not required, to file such documents electronically. Further, as noted above,[88] foreign private issuers will not be required to file electronically, but rather, will be permitted to do so. Comment is solicited as to whether foreign individuals or entities making third party filings with respect to such issuers who have chosen to become electronic filers should be required to file electronically, or whether they should merely be permitted to do so.

Filings and other documents filed by or relating to a registrant required to file in paper generally would not be permitted to be made electronically. Exceptions would be provided for joint registration statements involving electronic and paper registrants;[89] filings relating to cash tender offers or proxy contests involving a paper bidder and an electronic target;[90] mergers, exchange offers and other business combinations involving a Securities Act registration statement filed by a paper filer seeking to acquire an electronic target; and cash mergers involving a joint proxy statement filed by a paper and an electronic filer.[91] In these circumstances, the status of the electronic filer would control, requiring the paper bidder or acquiror to make filings relating to the particular transaction in electronic format, absent a hardship exemption.[92]

b. *Exhibits.* Under the proposed rules the objective of ensuring a complete EDGAR electronic database is balanced against the burden to registrants of converting and refiling previously filed exhibits in electronic format. Generally, under proposed Regulation S-T, exhibits filed in paper prior to the time the filer becomes subject to mandated electronic filing would not have to be refiled in electronic format.[93] Once the filer becomes subject to mandated electronic filing,[94] any new exhibits would have to be filed in electronic format, absent a hardship exemption.[95] Further, an amendment to an exhibit previously filed in paper either would have to restate the exhibit to which it relates in its entirety,[96] or the amendment and the exhibit to which it relates would have to be filed in electronic format, absent a hardship exemption.[97] With the exception of Financial Data Schedules,[98] if an exhibit contained an error that precluded its acceptance, the related filing would not be accepted. Rather, the entire filing, including exhibits, would be suspended and the filer so notified. The filer would then have six business days to correct or resubmit the filing.[99]

Comment is solicited as to whether documents that are not frequently amended, such as the articles of incorporation and by-laws, should be required to be refiled in electronic format at the time a registrant becomes subject to mandated electronic filing even if the documents are not being amended at that time. Comment also is solicited as to whether there is a need to require electronic refiling of paper exhibits with finite duration, such as merger agreements, upon amendment. Commenters should identify which exhibits should be refiled, if any, and address any associated benefits and burdens of electronic refiling.

The proposed exhibit filing approach should afford filers sufficient time to prepare electronic exhibits upon becoming subject to mandated electronic filing. However, the format of some exhibits may be difficult to convert to electronic format.[100] Examples of such exhibits would include contracts with federal or state governmental agencies that are prepared on prescribed preprinted forms and thus may not be easily transferred to a word processing format.[101] Comment is requested as to whether contracts with federal or state governmental agencies, or any other contracts prepared on prescribed preprinted forms, should be exempt for

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[87] Proposed Rule 300(b) of Regulation S-T.

[88] See Section III.A, *supra*.

[89] Where a registration statement is submitted by co-registrants (for example, pursuant to Securities Act Rule 140 [17 CFR 230.140]) one of whom files electronically and the other of whom files in paper, the registration statement would be required to be filed electronically. Proposed Rule 300(c)(3) of Regulation S-T.

Similarly, as an employee benefit plan ("plan") will be treated as a co-issuer on Form 11-K [17 CFR 249.311] with the issuer of the securities offered to employees pursuant to the plan, the plan would be required to file the Form 11-K in electronic format once the issuer was phased in. Proposed Rule 300(c)(3) of Regulation S-T.

[90] The converse situation, namely, an electronic bidder commencing a cash tender offer or proxy contest for a paper target, is discussed in Section III.C.2, *infra*.

[91] Cash mergers involving a single proxy statement would follow the general rules as explained above.

[92] Proposed Rule 300(c)(2) of Regulation S-T.

[93] Although not currently proposed, at a later time the Commission may require, as indicated in the Advance Notice, that all exhibits be refiled electronically after a specified date.

[94] Proposed Rule 100 of Regulation S-T.

[95] Proposed Rule 200(a) of Regulation S-T. In the EDGAR system, registrants would file an exhibit in paper under cover of Form SE [17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403] if a temporary hardship exemption had been granted. A confirming copy would be required to be submitted subsequently in electronic format. Proposed Rule 101(c) of Regulation S-T. See Section III.E.2, *infra*, for a discussion of the consequences of not submitting a confirming copy in electronic format. A continuing hardship exemption for filing only an exhibit also could be granted to an electronic filer under limited circumstances. In such case, the exemption would be conditioned on the submission of the exhibit in paper under cover of Form SE. Proposed Rule 102(c) of Regulation S-T.

Under the proposed rules, whenever an exhibit is filed in paper pursuant to a hardship exemption, the filer would be required by Item 601(a) of Regulation S-K [17 CFR 229.601(a)] and Exchange Act Rule 0-3(d) [17 CFR 240.0-3(d)] to place the letter "P" next to the listed exhibit in the exhibit index, indicating that the exhibit was in paper format. If an exhibit previously filed in paper pursuant to a temporary hardship exemption was submitted electronically, as required, as an electronic confirming copy, Item 601(a) and Rule 0-3(d) would require the notation "CE" be placed next to that exhibit's entry in the exhibit index, indicating that the exhibit has been electronically filed as a confirming electronic exhibit and is therefore available on the EDGAR database.

[96] When the first amendment is made to either the articles of incorporation or by-laws after a registrant has become subject to mandated electronic filing, a complete copy of the document, as amended, would have to be filed in electronic format. See Item 601(b)(3) of Regulation S-K [17 CFR 229.601(b)(3)], which now requires that the articles of incorporation or by-laws of a registrant be refiled upon amendment. See also Section IV.G.6, *infra*, regarding restatement of Schedules 13D and 13G with the first amendment to those schedules after the registrant to which they relate has become subject to mandated electronic filing.

[97] Proposed Rule 209(b) of Regulation S-T.

[98] See Section IV.D.2, *infra*, for further discussion of the acceptance of Financial Data Schedules.

[99] See *generally* Section III.D.2.b, *infra*, for a discussion of acceptance processing.

[100] See Section V.G.6, *infra*, for a discussion of special treatment for plan financial statements and schedules required to be filed on Form 11-K, the annual report for employee benefit plans, prepared in accordance with the financial reporting requirements of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 *et seq.*].

[101] For example, federal government contracts with defense contractors often are prepared on government preprinted forms. Similarly, copies of the latest reports of condition of a trustee published pursuant to law on the requirements of its supervising or examining authority often are prepared on preprinted forms. The reports are filed as exhibits to Trust Indenture Act Forms T-1 [17 CFR 269.1] and T-6 [17 CFR 269.9].

electronic filing, and, if they are not so exempt, how the exhibits could best be filed in electronic format. The Commission specifically requests comment as to whether there are certain exhibits that should be exempt from the mandated electronic filing requirements so that only paper format copies of the exhibits would be filed with the Commission. For example, a registrant is required to file a letter from a former accountant stating whether it agrees with the statements made by the registrant in response to Item 304(a) of Regulation S–K,[102] and if not, stating the respects in which it does not agree.[103] In addressing the issue of whether this type of letter should be required to be filed electronically, commenters should note that the exhibit could be filed electronically as a segment to be included in a segmented filing.[104]

Comment also is requested as to whether registrants should be required to file electronic format summaries of any exhibits filed in paper to ensure the completeness of the EDGAR database. The Commission requests that commenters in favor of such approach specify the nature of such contracts, or other exhibits, to which the exemption should apply and the burden of preparing such documents in electronic format. Commenters also are requested to provide samples of such documents with their comment letters.

As discussed in detail below,[105] exhibits for which a temporary or continuing hardship exemption has been granted may be submitted to the Commission in paper under cover of Form SE. The Temporary Rules allow paper documents that constitute a part of an otherwise direct transmission filing to be submitted to the Commission before or on the date of filing the electronic format document, with acceptance conditioned on receipt by the Commission of the paper filing.[106] In the case of Williams Act filings, the paper documents were allowed to be filed the business day after the electronic filing as well, without delaying acceptance of the electronic filing.[107] Unlike the Temporary Rules, however, proposed Form SE would require the paper document to be filed with the Commission only on the same day the electronic format filing to which it relates is filed. Comment is requested as to whether the requirement to file paper documents on the same day as related direct transmission filings is appropriate, or whether such filing should be allowed prior to the date of electronic filing. Comment also is requested as to whether the paper exhibits for any types of filings should be permitted to be filed one business day after an electronic filing to which it relates, without delaying acceptance of the electronic filing. Commenters addressing this question should specify limited circumstances in which this filing scheme might be appropriate, in light of the need to ensure completeness of information available to the public.

Certain Commission forms are not currently subject to the exhibit requirements of Regulation S–K.[108] Rather, these forms have specific exhibit requirements unique to each form. As such, the exhibits may not be easily located in the EDGAR database. In order to enhance the search capability of EDGAR, comment is solicited on the following exhibit identification schemes. First, the current exhibit requirements of Regulation S–K could be expanded to encompass the forms not currently listed. For example, exhibits to Schedules 13D could be added as new paragraphs to Item 601 of Regulation S–K, so that written agreements relating to the filing of joint acquisition agreements[109] or to the borrowing of funds to finance the acquisition of securities,[110] for example, could be filed pursuant to Item 601(b) (40) and (41), respectively. However, this approach to Item 601 of Regulation S–K runs counter to the general structure of the integrated disclosure system, which focuses on registrants rather than third party filers. Further, the addition of these forms to the exhibit index of Regulation S–K may lead to the index becoming so expansive that it proves unwieldy. Alternatively, forms not currently listed in the current exhibit requirements of Regulation S–K could receive their own numbering system. For example, exhibits to Williams Act filings could be consecutively numbered such that any loan agreement to a Schedule 13E–3[111] could be identified as EX–13E3–1. Commenters are encouraged to provide specific comments on the benefits and burdens associated with each approach and to suggest any alternatives.

To assist the Commission staff in easily identifying and locating certain material exhibits of a registrant, such as its articles of incorporation and by-laws, EDGAR has been designed to list exhibits that are filed electronically in a registrant exhibit index. The index will facilitate identification and retrieval of exhibits from the EDGAR database.[112] The Commission is considering whether the registrant exhibit index may be viewable by the public at the Commission's public reference room terminals.

c. Filings Made By Individuals. Individuals are required to make several types of filings pursuant to existing regulations.[113] In the Advance Notice, the Commission solicited comment on whether there should be a specific exemptive procedure from electronic filing for individuals. A number of commenters supported a specific exemption of some kind.[114] However, the Commission believes that filings by individuals are essential to the EDGAR database; thus, the proposed rules provide that all third-party filings relating to an electronic registrant, whether made by an entity or an individual, would be required to be in electronic format.[115] Since the Advance Notice was published, technological advances have made filing on EDGAR more readily accessible to individuals. Those individuals who do not wish to file electronically on their own may retain third party services to make electronic filings on their behalf, or request a hardship exemption.[116]

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[102] 17 CFR 229.304(a).

[103] The letter must be filed as an exhibit to the report or registration statement containing the disclosure.

[104] See Section IV.A, *infra*, for a discussion of the conditions for use of segmented filing.

[105] Section III.E, *infra*. See also Section VI.C, *infra*, relating to Form SE.

[106] See amended Securities Act Rule 499(e)(2) [17 CFR 230.499(e)(2)], Exchange Act Rule 12b–37(e)(2) [17 CFR 240.12b–37(e)(2)], and Trust Indenture Act Rule 0–12(e)(2) [17 CFR 260.0–12(e)(2)].

[107] Exchange Act Rule 12b–37.

[108] Examples of such forms include Williams Act filings, such as Schedules 13D [17 CFR 240.13d–101] and 14D–1 [17 CFR 240.14d–100], certain Exchange Act forms filed by foreign issuers, such as Forms 18 [17 CFR 249.218] and 20–F [17 CFR 249.220f], as well as Trust Indenture Act Form T–3 [17 CFR 269.3].

[109] The agreements are filed pursuant to Item 7 of Schedule 13D.

[110] *Id.*

[111] 17 CFR 240.13e–100.

[112] This approach was first suggested in the Advance Notice. For ease of locating the articles of incorporation and by-laws, the Commission proposes to separate by number the requirements of Item 601 of Regulation S–K to Item 601(b)(3)(i) (articles of incorporation) and Item 601(b)(3)(ii) (by-laws). See Sections IV.D.2 and V.F.2, *infra*, for other proposed changes to Item 601 of Regulation S–K.

[113] For example, individuals file Schedules 13D and 13G and statements pursuant to the proxy and tender offer rules. See Exchange Act Rules 13d–1(a) and (b) [17 CFR 240.13d–1(a) and 240.13d–1(b)]; Exchange Act Rule 14a–6 [17 CFR 240.14a–6]; Exchange Act Rule 14a–11 [17 CFR 240.14a–11]; and Exchange Act Rules 14d–3 and 14d–9 [17 CFR 240.14d–3 and 240.14d–9].

[114] Suggestions were based either on form type or on filer status as an individual.

[115] Proposed Rule 300(b) of Regulation S–T.

[116] See Section III.E, *infra*.

Initially, Forms 3, 4, 5, and 144,[117] which generally are filed by individuals, would be exempt from electronic filing. However, the Commission anticipates that the electronic filing of these reports will be the subject of future rulemaking.

2. Permitted Electronic Submissions

In general, whether a filing is made electronically depends on whether the registrant to which the filing relates is an EDGAR filer. However, the proposed rules provide alternatives in certain situations where one party is a paper filer and the other is an electronic filer. If an electronic filer is required to file a Schedule 13D or 13G with respect to a paper filer, the proposed rules provide that the electronic filer would be permitted, but not required, to file the Schedule in electronic format.[118] If an electronic bidder commences a cash tender offer or proxy contest for a paper target, then the proposed rules would provide that the electronic bidder be permitted, but not required, to file all materials relating to that transaction in electronic format.[119] If the electronic bidder elected to file in electronic format, the paper target also would be given the choice to file in electronic format in order to ensure a "level playing field" between the parties. If the electronic bidder elected to file in paper, the paper target also would be required to file in paper. If the electronic bidder filed in electronic format and the paper target elected to file in electronic format, under the proposed rules the paper target would be deemed phased in and all future filings by the paper target would be required to be in electronic format.[120] Comment is solicited on whether the paper target should be required to file in electronic format with respect to the particular proxy contest or cash tender offer only.

If an electronic filer made an exchange offer, merger or other business combination involving a Securities Act registration statement, such as a Form S–4,[121] for a paper filer, the electronic filer would be required to make all filings in electronic format. If the paper target made any filing, such as a Schedule 14D–9,[122] it would be permitted, but not required, to file in electronic format.[123] As with proxy contests and cash tender offers, if the paper target elected to file in electronic format, the target would be phased in and any future filings would be required to be in electronic format.[124] Comment is solicited whether the paper target should be required to file in electronic format for the particular exchange offer, merger, or other business combination only.

The Commission requests comment concerning the proposed electronic filing provisions. The proposed rules are designed to minimize partial electronic databases with respect to contests for corporate control and business combinations in which one party is an electronic filer and the other party is a paper filer.[125] However, the proposed rules would permit a paper target to continue to make filings relating to these transactions in paper. Would it be appropriate to require a paper target to file electronically in exchange offers, mergers or other business combinations involving Securities Act registration statements, if the other party to the transaction has filed electronically, so as to ensure a complete database for filing, review and dissemination purposes?

3. Excluded Electronic Submissions

As described in more detail below, the proposed rules would not permit the electronic submission of: (1) confidential treatment applications; (2) Regional Office filings and filings relating to exempt offerings; (3) Regulation B filings; [126] (4) Forms SR; [127] (5) sales literature; [128] (6) certain documents frequently filed by individuals, such as Forms 3, 4, and 5 as well as Form 144; [129] (7) Exchange Act filings submitted to the Division of Market Regulation; [130] (8) shareholder proposal filings; [131] (9) interpretive, no-action and exemptive requests; [132] (10) Trust Indenture Act applications for exemptive relief; [133] (11) foreign language documents and symbols; and (12) documents submitted pursuant to the Rules of Practice [134] that relate primarily to investigations and litigation. While these submissions initially would remain subject to paper filing requirements, future rulemaking may require some of these to be filed in electronic format.

a. *Confidential Treatment Applications.* Initially, confidential treatment applications would not be submitted electronically via EDGAR, so that filers will have an opportunity to become familiar with electronic filing procedures.[135] Thus, confidential treatment applications will continue to be submitted in paper. When a confidential treatment application was filed, the electronic filer would be required to file in electronic format the redacted document that is subject of the confidential treatment application. For example, if an electronic filer desires confidential treatment of the pricing information in a material contract [136] required to be filed with its Form 10–K, then the electronic filer would submit the confidential treatment application in paper and submit the Form 10–K in electronic format, redacting the pricing information from the contract that is filed as an exhibit.[137] If an electronic filer inadvertently included material for which confidential treatment was requested in its electronic submission, the material would be disseminated

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[117] 17 CFR 249.103, 249.104, 249.105, and 239.144, respectively.

[118] Proposed Rule 300(c)(4) of Regulation S-T.

[119] Proposed Rule 300(c)(1) of Regulation S-T. The converse of this situation, namely, a paper bidder commencing a tender offer or proxy contest for an electronic target, is discussed in Section III.C.1.a, *supra*.

[120] *Id.*

[121] 17 CFR 239.25.

[122] 17 CFR 240.14d–101.

[123] Proposed Rule 300(c)(2) of Regulation S-T. The converse of this situation, namely, a paper filer seeking an exchange offer, merger or other business combination with an electronic target, is discussed in Section III.C.1.a, *supra*.

[124] *Id.*

[125] The Commission's official records on microfiche with respect to such a proxy contest or tender offer would remain complete whether or not both parties file electronically.

[126] 17 CFR 230.300 *et seq.*

[127] 17 CFR 239.61.

[128] Item 19 of Securities Act Industry Guide 5 [17 CFR 229.801(e)].

[129] See Section III.C.1.c, *supra*.

[130] Forms 1 [17 CFR 249.1], 1–A [17 CFR 249.1a], 25 [17 CFR 249.25], 26 [17 CFR 249.26], 27 [17 CFR 249.27], 28 [17 CFR 249.28], BD [17 CFR 249.501], BDW [17 CFR 249.501a], 7–M[17 CFR 249.507], 8–M [17 CFR 249.508], 9–M [17 CFR 249.509], 10–M [17 CFR 249.510], X–17A–5 [17 CFR 249.617], X–17A–19 [17 CFR 249.635], X–15AA–1 [17 CFR 249.801], X–15AJ–1 [17 CFR 249.802], X–15AJ–2 [17 CFR 249.803], 19B–4 [17 CFR 249.819], SIP [17 CFR 249.1001], MSD [17 CFR 249.1100], MSDW [17 CFR 249.1110], X–17F–1A [17 CFR 249.1200], TA–1 [17 CFR 249b.100], TA-W [17 CFR 249b.101], TA–2 [17 CFR 249b.102] and CA–1 [17 CFR 249b.200].

[131] Rule 14a–8(d) and (e) [17 CFR 240.14a–8(d) and 240.14a–8 (e)].

[132] 17 CFR 200.81 and 15 U.S.C. 78*l*(h).

[133] Applications for exemptive relief may be submitted pursuant to Section 304(c) [15 U.S.C. 77ddd(c)] on Form T–6 [17 CFR 269.4].

[134] 17 CFR 201.1 *et seq.*

[135] See proposed amendments to Securities Act Rule 406 [17 CFR 230.406] and Exchange Act Rule 24b–2 [17 CFR 240.24b–2]. Requests for confidential treatment under the Freedom of Information Act [5 U.S.C. 552] pursuant to Rule 83 of the Commission's Regulation concerning Information and Requests [17 CFR 200.83] also would be excluded from electronic submission. See Section IV.G.2, *infra*.

[136] Item 601(b)(10) of Regulation S–K [17 CFR 229.601(b)(10)].

[137] The redacted electronic document would contain notations identifying the specific information for which confidential treatment was requested. For example, a filer could state that sales figure information had been omitted by identifying the section heading and stating "(Confidential treatment has been requested)" in the location of the redacted sales figure information.

publicly and thus no longer entitled to confidential treatment.

If the confidential treatment application was denied and all appeal rights had terminated,[138] the material for which confidential treatment had been requested (*i.e.*, the previously redacted material), would be required to be filed electronically as an amendment. If the filer failed to do so, the Commission would make the information publicly available in paper. The Commission anticipates proposing electronic submission of confidential treatment applications at a later time.

b. *Regional Office Filings and Exempted Offerings.* Currently, the following documents are, or may be, submitted to the Commission's Regional Offices: Form S–18 (proposed to be replaced by Form SB–1);[139] Form 1–A,[140] the Regulation A [141] offering statement; and Form 1–F notification statements.[142] Registration statements on Form S–18 (and proposed Form SB–1) would be treated in the same manner as those filed on Form S–1, in that the registration statement would be filed in paper before the registrant becomes subject to mandated electronic filing and in electronic format after the registrant has become an electronic filer. It is expected that few Forms S–18 initially would be filed electronically, since companies making initial public offerings will be among the last to be phased in. If proposed Form SB–1 is adopted, however, electronic filings could begin sooner because that form is proposed to be available to Exchange Act reporting companies as well as companies making their initial public offerings. If a registrant is subject to the mandated electronic filing requirements, it would be required to submit the Form S–18 or SB–1 registration statement in electronic format via EDGAR at the Commission's headquarters, but the document still could be reviewed by the Regional Office staff.

All other Regional Office filings will continue to be filed in paper at the appropriate Regional Office.[143] Other filings relating to exempt offerings, such as Form D notices,[144] which are filed at the Commission's headquarters, also would be excluded from electronic submission. There are no current plans to require these documents in electronic format.

c. *Regulation B Filings.* The proposed rules do not provide for electronic filing of offerings of fractional undivided interests in oil and gas rights made under Regulation B. These filings contain extensive graphic materials, not easily accommodated by the electronic filing system. Moreover, given the limited number and size of these filings,[145] there does not appear to be a substantial need for the electronic filing and dissemination of this information.

d. *Forms SR; Sales Literature; Shareholder Proposal Submissions; No-Action and Inter-pretive Letter Requests; Formal Exemptive Requests Pursuant to Exchange Act Section 12(h); and Exemptive Requests and Applications Pursuant to the Trust Indenture Act.* The following documents would be excluded from electronic submission via EDGAR: Forms SR; [146] sales literature; shareholder proposal submissions pursuant to Exchange Act Rule 14a–8(d) and related correspondence pursuant to Exchange Act Rule 14a–8(e); no-action and interpretive letter requests; formal exemptive requests pursuant to Section 12(h) of the Exchange Act; and exemptive requests and applications pursuant to the Trust Indenture Act.[147] No plans currently exist for the electronic filing of these documents.

e. *Foreign Language Documents and Symbols.* The proposed rule would exclude foreign language documents from electronic filing.[148] If a foreign language document was required to be filed, for example, as an exhibit to a filing on Form F–1 [149] or F–6,[150] then a document that is a fair and accurate English translation of the foreign language document must be filed and a representation to that effect must be included and signed by a designated officer of the filer.[151] The proposed Rule also would require that upon request any foreign language document required to be filed must be provided to the Commission or the staff.[152]

To ensure the widest possible dissemination and use of the EDGAR data, the proposed rules also would prohibit the use of representative symbols for foreign currency, such as the symbols for pounds and yen, as these symbols may not be recognizable by all forms of printers. Accordingly, electronic filers would be required to express foreign currency denominations in English words or letters rather than representative symbols; [153] however, consideration is being given to whether in the future, EDGAR will be able to accept representative symbols for foreign currency.

f. *Other Excluded Electronic Submissions.* The Commission proposes to exclude from electronic submission via EDGAR of documents that relate primarily to enforcement investigations or litigation as well as Exchange Act filings that are processed by the Division of Market Regulation. No plans currently exist for the electronic filing of these documents.

D. Filing Procedures and Related Rules

1. Hours of Operation

Currently, the Commission receives and accepts paper filings between the hours of 8 and 5:30 p.m. Eastern Time,[154]

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[138] Applications for review of a confidential treatment denial, submitted pursuant to Rule 26 of the Commission's Rules of Practice [17 CFR 201.26], also would be excluded from electronic submission.

[139] 17 CFR 239.28. On March 12, 1992, the Commission issued for comment a proposal to replace Form S–18 with a new Form SB–1. Release No. 33–6924 (March 12, 1992) [57 FR 9768]. If adopted, paper filings on Form SB–1 could be filed at Commission headquarters or an appropriate Regional Office, at the option of the issuer. Once the issuer is phased in as an electronic filer, registration statements on this form would be filed in electronic format at Commission headquarters.

In Release No. 33–6924, the Commission also proposes other new disclosure documents involving various small business capital-raising activities, *e.g.*, 10–KSB and 10–QSB. If adopted, the electronic filing rules will be amended where necessary.

[140] 17 CFR 239.90.

[141] 17 CFR 230.251–230.264.

[142] 17 CFR 239.300.

[143] In Release No. 33–6924, the Commission has proposed allowing issuers to choose between filing Regulation A offering statements with Commission headquarters or an appropriate Regional Office. In either event the filings would remain in paper format.

[144] 17 CFR 239.500.

[145] The number of Regulation B filings for the past four fiscal years ending September 30 were as follows: 1991–2; 1990–6; 1989–5; and 1988–4.

[146] Form SR indicates the use of proceeds in an initial public offering.

[147] Sections 304(c), 304(d) and 310(b)(1)(ii) [15 U.S.C. 77ddd(c), 77ddd(d) and 15 U.S.C. 77jjj(b)(1)(ii)]. Applications for exemptive relief may be made pursuant to Trust Indenture Act Section 304(c) on Form T–4 [17 CFR 269.4].

[148] Proposed Rule 220(a) of Regulation S–T. Documents furnished to the Commission by foreign private issuers pursuant to Rule 12g3–2(b) [17 CFR 240.12g3–2(b)] would continue to be submitted in paper.

[149] 17 CFR 239.31.

[150] 17 CFR 239.36.

[151] Proposed Rule 220(a) of Regulation S–T.

[152] Id. Forms 18 [17 CFR 249.218] and 18–K [17 CFR 249.318] filed by foreign governments require that a copy of the latest annual budget of the registrant as presented to its legislative body be filed as an exhibit and that this document need not be translated into English. As EDGAR cannot accept foreign language documents, proposed amendments to these forms would require that if an English version of the budget has been prepared, it must be filed electronically. If, however, no such version has been prepared, the foreign language budget document must be provided to the Commission or the staff upon request.

[153] Proposed Rule 220(b) of Regulation S–T and proposed amendment to Rule 3–20 of Regulation S–X [17 CFR 210.3–20].

[154] The term "Eastern Time" means "Eastern Standard Time" or "Eastern Daylight Saving Time," whichever is applicable.

Monday through Friday, except for holidays. In the EDGAR Pilot, filings on diskettes and magnetic tapes were received, and most acceptance processing occurs, during those hours. Direct transmission filings made on the Pilot were permitted between 7:30 a.m. and 7 p.m. Eastern Time [155] on Commission business days. Direct transmission filing sessions that commenced after 5:30 p.m. Eastern Time, if accepted, received the next business day's filing date.

In the Advance Notice, the Commission requested comment concerning the proposed hours for receipt of submissions under the EDGAR system, indicating that it anticipated that the proposed hours for direct transmission filings would be 8 a.m. to 8 p.m. Eastern Time. The majority of commenters responding to this request urged the Commission to extend the hours of operation for the EDGAR system. As reasons for extending hours of operation, commenters cited the need to accommodate different time zones, the need to prevent congestion on the EDGAR system, and the increased internationalization of the securities markets. Commenters noted that the 24-hour availability of public data networks would make possible round-the-clock hours for submission of direct transmission filings. The majority of commenters who specifically addressed the hours for receipt of magnetic tape and diskette filings stated that the Commission should not change the existing hours for these forms of electronic submission.

Upon consideration of the comments, the Commission proposes (1) retention of the existing hours of 8 a.m. to 5:30 p.m. Eastern Time for receipt of diskette and magnetic tape filings, [156] and (2) revised hours of 8 a.m. to 10 p.m. Eastern Time for receipt of direct transmission filings. [157] The 10 p.m. Eastern Time limit reflects the request of filers for extended hours and the need to provide time for maintenance of the EDGAR system and sufficient Commission filer support staff to respond to filer questions during this extended period. While acceptance procedures will be automated in EDGAR, [158] the Commission intends to make filer support staff available between 8 a.m. and 10 p.m. Eastern Time to assist filers with issues that may arise in accessing the system and during the acceptance process. EDGAR will not be available twenty-four hours a day because time is required for system maintenance as well as for the performance of backup procedures, and also because current budgetary constraints limit the availability of filer support staff.

Direct transmission submissions may not be commenced after 10 p.m. Eastern Time. Further, direct transmissions in process at 10 p.m. will be disconnected. If a filing within an electronic submission is interrupted because the transmission was disconnected at 10 p.m., that filing must be resubmitted in its entirety the next business day, together with any other filings in the submission whose transmission was not completed the night before. Accordingly, a direct transmission filer should determine that it has sufficient time to transmit the complete submission before 10 p.m. Eastern Time. [159]

2. Receipt and Acceptance

a. *Date of Filing.* In the Advance Notice, the Commission indicated that the EDGAR system would automate acceptance processing to the extent possible, including checking for required fees, and noted that acceptance processing may begin and be completed after the close of the Commission's business hours. The Commission also specifically sought comment on whether the official filing date should be the date of receipt, or, if different, the date of acceptance for: (1) Direct transmission filings submitted or completed after the close of office hours, and (2) filings submitted on diskettes and magnetic tapes.

The proposed rules provide that the date of filing [160] for an electronic filing pursuant to the Securities Act, Exchange Act and Trust Indenture Act, except for certain cash tender offer [161] and Schedule 13D filings, would be the business day on which the filing is received, if: (i) The filing is submitted on or before 5:30 p.m. Eastern Time; [162] (ii) the required filing fee is paid in the manner prescribed; [163] and (iii) all requirements of the Acts and rules applicable to such filing have been complied with and the filing conforms to the applicable technical standards regarding electronic format. [164] These requirements mirror the requirements applicable to paper filings. [165] Comment is requested regarding the requirement that an electronic filing satisfy all requirements of the Acts and rules applicable to the filing before a filing date is assigned. If commenters believe that this requirement should be eliminated for electronic filings, they should address whether the equivalent requirement for paper filings also should be eliminated.

Although automated acceptance processing of some filings submitted on or before 5:30 p.m. Eastern Time may not be completed until after 5:30 p.m., they would nonetheless receive a filing date corresponding to the date of receipt, provided that the conditions for acceptance were met. Electronic filings made via direct transmission commencing after 5:30 p.m. Eastern Time would receive the next business day's filing date, provided that the requisite conditions were met. Where multiple filings are submitted in a single direct transmission, each filing will be treated separately in determining the date of filing. For example, if the first

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[155] The 7 p.m. time represented the cut-off time for the commencement of new transmissions. The EDGAR Pilot system permitted completion of any transmission commenced on or before the cut-off time, including delivery of additional filings in the same transmission. The EDGAR Pilot hours of operation have not been changed for Transitional Filers filing on the operational system.

[156] The Commission will retain its existing hours for the receipt of paper filings—8 a.m. to 5:30 p.m. Eastern Time, Monday through Friday, except for holidays. The Commission also will retain its regular office hours of 9 a.m. to 5:30 p.m. Eastern Time, Monday through Friday, except holidays, as official business hours for purposes other than receipt of filings.

[157] See proposed revisions to Securities Act Rule 110 [17 CFR 230.110], Exchange Act Rule 0–2 [17 CFR 240.0–2] and Trust Indenture Act Rule 0–5 [17 CFR 260.0–5].

[158] See Section III.D.2.b, *infra*, regarding acceptance processing.

[159] The following may assist filers in determining the length of time required to transmit ten pages: 9600 baud modem—30 to 60 seconds; 4800 baud modem—1 to 2 minutes; 2400 baud modem—2 to 4 minutes; and 1200 baud modem—4 to 8 minutes.

[160] The term "filed" as applied to electronic filings would have the same legal meaning and effect as it does with respect to filings in paper format. For example, statutory time periods relating to filing dates would continue to commence running from the date of filing.

[161] Filings on Schedule 13E–4, Schedule 14D–1, and Schedule 14D–9. Dates of filings of non-cash tender offer filings, for example, registered exchange offers, would be treated in the same manner as other filings, *i.e.*, their filing date would be their date of receipt if all the applicable requirements have been satisfied.

[162] The direct transmission of a filing need only be commenced, not completed, on or before 5:30 p.m. Eastern Time. For instance, if a registrant commenced a direct transmission of a transmittal letter with a Form 10–K prior to 5:30 p.m., the entire submission would receive that day's date, even if the transmission of Form 10–K itself began after 5:30 p.m., so long as that submission satisfied all other applicable conditions.

[163] See Section III.D.7, *infra*, regarding filing fees.

[164] Proposed Rule 12(a) of Regulation S–T.

[165] The language regarding "all requirements of the Acts and rules applicable to such filing" is the current requirement under Securities Act Rules 456 and 474 [17 CFR 230.456 and 230.474] and Exchange Act Rule 0–3 [17 CFR 240.0–3]. The requirement that the filing conform to specified technical standards is analogous to one of the provisions for acceptance of paper filings. *See* Securities Act Rule 403 [17 CFR 230.403].

filing was commenced before 5:30 p.m., but the other filings in the submission commenced after 5:30 p.m., the first would receive the filing date corresponding to the date of receipt, provided all other conditions were satisfied, but the others would receive the next day's date as the filing date.[166]

Given the importance to the market of cash tender offer and Schedule 13D filings, the proposed rules would require that such filings be received and accepted on or before 5:30 p.m. Eastern Time in order to receive a filing date corresponding to the transmission date.[167] Cash tender offer and Schedule 13D filings submitted on or before 5:30 p.m. Eastern Time, but not accepted until after 5:30 p.m., would receive the next business day's filing date.[168] Therefore, while acceptance processing of these priority filings will be completed promptly, to receive a filing date corresponding to the receipt date, they should be submitted early in the day to be accepted on or before 5:30 p.m. Eastern Time. This would be consistent with the current tender offer rules, which require filings to be made as soon as practicable on the date of commencement of a tender offer or solicitation/recommendation with respect to certain tender offers.[169]

The Commission requests comment on the proposed rules governing the date of filing. Commenters are specifically invited to address whether the proposed filing date rule that would govern tender offer and Schedule 13D filings should apply to all of these types of filings or any additional types of filings.

If the transmission of a filing is interrupted for any reason, requiring the filing to be resubmitted later, the filing date would be based on the date and time of the resubmission session that corrected the problem.[170] If resubmission was required due to difficulties beyond the filer's control, the filer could request adjustment of the filing date to the date and time of the initial submission. The staff would consider such requests on a case-by-case basis.[171]

If a filing contained errors preventing its acceptance as initially submitted,[172] it would be placed in a suspense file for up to six business days. A filing in suspense would be considered filed as of the business day on which it was corrected or resubmitted in a form that was accepted. If a filing in suspense has not been corrected or resubmitted and accepted within six business days, it would be deleted from the system's file of pending submissions. After that, the Commission's filer support staff would not have access to the document to provide assistance and there would be no further ability to correct the filing.

b. *Acceptance Processing.* Acceptance procedures will be automated in the EDGAR system, and acceptance will begin promptly after receipt of an electronic document,[173] except in unusual situations, such as during peak filing times.[174] Staff will be available between 8 a.m. and 10 p.m. Eastern Time to assist filers in accessing the system and to answer questions associated with the acceptance of filings. Under the terms of the EDGAR contract, acceptance processing must begin no later than two hours after receipt of direct transmission of time-sensitive filings such as Schedules 13D, tender offers and proxy contests,[175] and acceptance processing of non-sensitive filings must begin no later than four hours after receipt.[176]

A filing will be accepted when EDGAR verifies electronically that the filing conforms to specified electronic formatting requirements, and, with respect to a Securities Act filing, that the required fee has been paid. Verification of compliance with applicable technical requirements regarding format will consist of confirmation that the filing is presented in the format prescribed by the then current EDGAR Filer Manual.[177]

Failure to comply with certain technical format requirements could result in suspension of the filing until the formatting problems are corrected.[178] For example, an electronic submission will be suspended if the number of documents actually submitted is greater than the number specified in the submission header, since an extra document might have been submitted in error.[179]

In certain instances, although a filing has formatting or other errors, it will be accepted, and a message will be sent to the filer. For example, if a submission contains fewer documents than the number specified in the submission header, then the submission may be accepted, but the acceptance message would indicate that there had been a discrepancy between the number of documents received by EDGAR and the number of documents specified. In addition, circumstances may arise in which a document containing a limited number of invalid symbols would be accepted as submitted,[180] with a circumflex symbol (^) substituted for each invalid symbol in the document disseminated.

While there will be staff available to assist filers in electronic filing and address issues relating to electronic errors, it is not anticipated that the Commission staff will respond orally to inquiries regarding the status of filings. Filers may subscribe to the EDGAR electronic mail service to receive notices of the acceptance or suspension of a filing on a real-time basis as soon as the

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[166] Multiple filings submitted on magnetic tape or diskette under cover of Form ET receive different treatment as their date of filing depends upon when the Form ET is received and accepted.

[167] Proposed Rule 12(b) of Regulation S–T.

[168] *Id.*

[169] See Rule 13e–4(c)(1), 14d–3(a), 14d–9(a) [17 CFR 240.13e–4(c)(1), 240.14d–3(a) and 240.14d–9(a)]. Filers should rely only upon a notice from the Commission to verify that a filing has been accepted.

[170] The EDGARLink software will include a "restart" feature that will permit a filer to resume an interrupted direct transmission session, from the point of interruption, within 15 minutes from the time the interruption occurred. Use of the "restart" function would not constitute a resubmission for purposes of determining the date of receipt or the date of filing.

[171] See proposed Rule 12(c) of Regulation S–T and Section III.E.4, *infra*, regarding adjustment of filing date.

[172] See Section III.D.2.b, *infra*, regarding the Commission's proposed acceptance processing system, for discussion of filings that have been suspended.

[173] Direct transmission filers will receive a receipt message identifying the date and time that submission receipt began. The message will state that the submission has not yet been accepted or filed, and that a notice will be furnished when the filing has been accepted. See proposed Rule 12 of Regulation S–T regarding date of filing and Section III.D.2.a, *supra*.

[174] See Section III.A, *supra*, for further discussion regarding peak filing times.

[175] The contract requirements for the start of acceptance processing for time-sensitive filings do not cover filings submitted on tape or diskette. It is recommended that filers of time-sensitive documents file via direct transmission in order to ensure the most prompt treatment available.

[176] However, when the Commission's daily filing rate exceeds 2000 filings ("peak periods"), acceptance processing of filings on magnetic tape and diskette may be deferred overnight.

[177] See Section V.A, *infra*, for a discussion of the EDGAR Filer Manual.

[178] As noted above, a filer will have six business days to correct a suspended filing. If the error is not corrected within six business days, a filer would have to resubmit the filing in its entirety.

[179] Another example of an error that would cause a filing to be suspended would be a failure to identify the type of securities to be registered under the Securities Act by not inserting the tag ⟨EQUITY⟩, ⟨DEBT⟩ or ⟨CONVERTIBLE⟩ in the submission header, as appropriate.

[180] If a filing contains any invalid symbol, the filing will be suspended and a suspension message will be sent to the filer regarding the nature and extent of the invalid symbols. A filer may elect to correct the error using EDGARLink, if a subscriber to the electronic mail service, or resubmit a corrected filing. Alternatively, if a filer elected not to correct the invalid symbol because the invalid symbol did not affect the substantive disclosure in the filing, then the filer could contact the Commission's filer support staff. If upon review of the document the filer support staff determined that the filing cannot be accepted and disseminated in an intelligible and readable format, the filer would be required to correct the error(s) or resubmit a corrected filing.

process is complete.[181] Filers who do not subscribe to the EDGAR electronic mail service will be advised of the results of acceptance processing through first-class U.S. mail. If the filing is accepted, the acceptance notice also will advise the filer whether the filing contained any errors which should be avoided in the future but which were not of sufficient magnitude to result in suspension or whether the filing must be amended to correct the deficiency. If the filing is suspended, the notice of suspension will specify the problems that caused the suspension, including non-payment of a fee, so that the filer can correct [182] or resubmit the filing within the six business days.[183]

Comment is requested regarding the proposed six business day time period for filings to remain in suspense. In addressing this issue, commenters should consider that error messages will be available immediately to those filers who subscribe to the EDGAR electronic mail service, enabling such filers to take advantage of the full six business day period to correct their filings. Filers who do not subscribe to the EDGAR electronic mail service will receive suspension messages via first-class U.S. mail.

c. *Date of Dissemination.* Generally, public filings will be received, accepted and disseminated electronically on the same day.[184] For example, filings that are accepted on or before 5:30 p.m. would be available to all Level I subscribers upon acceptance.[185] Magnetic tapes of these filings would be delivered overnight to standard Level I, magnetic tape Level I, and Level II subscribers.[186] These filings also could be accessed by the Commission staff and the public through the Commission's public reference room terminals on their date of acceptance.

Public filings received on or before 5:30 p.m. but accepted after 5:30 p.m. would be deemed filed the day of receipt and would be disseminated that evening to standard Level I subscribers and broadcast Level I subecribers as well as to the Commission staff and the Commission public reference rooms open after 5 p.m. Eastern Time.[187] These filings would be included with filings accepted the next business day for overnight magnetic tape delivery to standard Level I, magnetic tape Level I, and Level II subscribers.

Filings received and accepted after 5:30 p.m. would be deemed filed the next business day and would be disseminated the next business day to Level I subscribers and included in the next business day's magnetic tapes. In addition, certain cash tender offer filings and filings on Schedule 13D that were received on or before 5:30 p.m., but not accepted until after 5:30 p.m., would receive the next business day's filing date and would not be disseminated until that day.

3. Identification and Login Procedures

In order to submit documents electronically, EDGAR access codes and passwords are required. Registrants, third party filers, and their agents would be required to submit a Form ID, the uniform application for access codes to file on EDGAR, to the Commission.[188] Upon receipt of the completed Form ID, the Commission will mail the EDGAR access codes and passwords and in addition furnish, at no cost, a copy of the EDGAR Filer Manual as well as a set of computer diskettes which contain the current version of EDGARLink, the filer assistance software.

The Commission is aware that in some cases it may be essential to obtain the access codes and passwords on very short notice, for example, where a third party has just decided to engage in a proxy contest or tender offer. If necessary, the Form ID may be sent to the Commission by facsimile or courier. The staff will process the Form ID expeditiously and issue an initial set of numbers to the potential filer by facsimile or to a registrant's courier after having made a confirming telephone call to the contact person listed on the Form ID.

Form ID must be used to request the following access codes: Central Index Key ("CIK") numbers,[189] passwords,[190] and CIK confirmation codes ("CCC").[191] Form ID also must be used to obtain a password modification authorization code ("PMAC"), a non-public code which would allow a filer to change the password on-line if it was compromised or at the filer's option to insure continued protection.[192] The proposed identification procedures provide a means to ensure the accurate identification of each registrant, third party filer, or agent.[193]

The four possible types of filing situations are as follows: a registrant's electronic submission of its own filing; an agent's electronic submission on behalf of a registrant; a third party's electronic submission of its own filing, such as a Schedule 13D; and an agent's electronic submission on behalf of a third party filer. The situations are further discussed below.

When a registrant makes its own submission, such as filing a Form 10–Q through direct transmission, the identification procedure would be as follows. The registrant would gain admittance to the EDGAR system by inserting its public login CIK number and non-public password. If EDGAR recognizes that the non-public password

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[181] See Section V.E. *infra*, for a discussion of the electronic mail/bulletin board system.

[182] The EDGARLink software will contain a "correction script" feature that will allow filers to correct errors that cause the filing to be suspended without resubmitting the entire filing. This feature may only be used if the filer subscribes to the electronic mail service. The date of filing would be based upon the date and time of the correction of the errors.

[183] Each time a correction script is used or a filing is resubmitted, the six business day period begins anew.

[184] Non-public filings, for example, preliminary filings on Schedule 13E–3 [17 CFR 240.13e–100], will not be disseminated.

[185] See Section II.B.3, *supra*, for a description of the EDGAR subscription services being offered.

[186] The cut-off time for accepted filings to be placed on magnetic tape for Level I and Level II subscribers is 5:30 p.m. Eastern Time in order to guarantee tape copy and overnight delivery.

[187] The filings would not be available through the public reference room at Commission headquarters until the following business day since it closes at 5 p.m. Eastern Time. However, due to time zone differences, these filings would be available at the Commission Regional Offices on Central, Mountain or Pacific Time during regular business hours of the Regional Offices.

[188] As noted above, the Form ID should be applied for between three and six months in advance of the phase-in date.

[189] The Commission, under the current paper system, assigns a unique CIK number to each registrant, as a means of identifying the entity making a filing. These numbers are publicly available in any of the Commission's public reference rooms. In EDGAR, CIK numbers will be assigned to all registrants, third party filers and agents. As under the current system, the numbers will be publicly available.

[190] Identifying codes, such as CIKs and passwords, would consist of a series of numbers, letters and/or special characters or a combination of all three. In direct transmission filing, the public login CIK must be matched to the non-public password of the registrant, third party filer, or agent or access to EDGAR will be denied. The use of two, rather than one, identifiers improves accuracy of identification. Moreover, when a registrant or third party filer is involved, the second identifier is particularly crucial as the login CIK is publicly available.

[191] CCCs are non-public codes that are used in the submission header to confirm the identity of the registrant or third party filer. The CCC must be matched with the registrant's or third party filer's CIK number, as appropriate, or the filing will not be permitted to proceed.

[192] Forms ID also may be used to change the password and the CCC. Asynchronous filers are encouraged to use the EDGAR on-line facility to change their passwords and CCCs in lieu of submitting a Form ID to the Commission. The capability of making on-line changes to access codes is restricted to filers using asynchronous terminals due to inherent limitations of bisynchronous communication. In all cases, a Form ID must be submitted to the Commission in order to change the PMAC.

[193] The identification procedures also are set forth in the EDGAR Filer Manual.

is authorized for use with the public login CIK, the direct transmission is permitted to proceed. After the filing is received, EDGAR verifies that the public CIK number matches the non-public CCC in the submission header,[194] and checks for required and optional tags within the submission.[195] If the direct transmission filing meets the acceptance standards, the filing is accepted and the registrant is so notified. If there are errors in the filing, the filing is suspended. The registrant is then notified of all errors, including any mismatch in the CIK number and CCC. Thus, a registrant filing on its own behalf would use the following codes: a public CIK number; a non-public password which must match the public login CIK number to access the system; and a non-public CCC which must match the public CIK number to authorize the submission.

When the registrant uses an agent, such as a law firm, to make the filing on its behalf, the identification process would be as follows. First, the agent would access the EDGAR system by using its public login CIK number and its non-public password. If EDGAR recognizes that the password is authorized for use with the login CIK for that agent, the direct transmission is permitted to proceed. After the filing is received, EDGAR verifies, among other things, that the registrant's public CIK number matches the registrant's non-public CCC in the submission header.[196] If the direct transmission filing meets the acceptance standards, the filing is accepted and the agent and registrant so notified. If there are any errors in the filing, the filing is suspended. The agent and the filer are then notified of all errors, including any mismatch in the CIK number and CCC.

In the third situation, the third party filer makes its own electronic submission, such as a Schedule 13D. First, the third party would access EDGAR by means of its public login CIK number and non-public password. If EDGAR recognizes that the third party filer's non-public password is authorized for use with its public login CIK number, the direct transmission is permitted to proceed. After the filing is received, EDGAR verifies that the third party filer's public CIK number matches the third party filer's non-public CCC in the submission header. With respect to third party filings, EDGAR also verifies a third set of matching identifiers in the submission header, the subject company's CIK number and the subject company's Internal Revenue Service ("IRS") taxpayer identification number; both of these numbers are publicly available through the Commission's public reference rooms or the optional EDGAR electronic bulletin board.[197] If the filing meets the acceptance standards, the filing is accepted and the third party filer is notified. If there are any errors in the filing, the filing is suspended. The third party filer is then notified of all errors, including any mismatches in the third party filer's CIK number and CCC and/or subject company CIK number and IRS taxpayer identification number.

In the fourth situation, the third party filer retains an agent to file on its behalf. The identification procedure would be similar to the third situation except that the agent would use its login CIK and its password to access EDGAR. If EDGAR recognizes that the non-public password is authorized for use with the public login CIK number, it then verifies that the third party filer's public CIK number matches the third party filer's non-public CCC in the submission header.[198] As a third party filing is involved, EDGAR also verifies a third set of matching identifiers, namely, the subject company's public CIK number and the subject company's IRS taxpayer identification number in the submission header. If the filing meets the acceptance standards, the filing is accepted and the third party filer and agent are so notified. If there are any errors in the filing, the filing is suspended. The agent and the filer are then notified of all errors, including any mismatches in the third party filer's CIK number and CCC and/or subject company CIK number and IRS taxpayer identification number.

The procedures outlined above will be substantially similar for electronic filings made on diskette or magnetic tape except that these types of filings do not require login CIKs and passwords, as filers do not have direct access to the EDGAR system. Rather, as diskettes and magnetic tapes are physically delivered to the Commission they are accompanied by Form ET,[199] which provides various identifying information including the CIK of the sender, *i.e.*, the registrant, third party filer, or agent.

Special procedures for assigning CIKs, passwords and CCCs are required for electronic filing where new entities are formed following effectiveness of a Securities Act registration statement, as with collateralized mortgage offerings, serial offerings, limited partnership offerings, and other similar offerings. For example, with collateralized mortgage offerings, the originator of the offering will file an initial registration statement using its CIK number, password and CCC. The originator would file a Rule 424 prospectus[200] using its CIK number, password and CCC when a new legal entity is formed to take down tranches of securities covered by the registration statement. The submission header to the Rule 424 prospectus must identify the new legal entity as being distinct from the registrant by using the tag <SERIAL>. Upon receipt of the Rule 424 prospectus with the tag <SERIAL> in its header, EDGAR will assign both a CIK number and a file number to the new legal entity and advise the originator of the offering of these new numbers as part of the acceptance message.[201] The new legal entity would be required to submit a manually signed Form ID to obtain its password and other identifying codes for use in connection with subsequent filings.

4. Headers

Headers contain key information about the electronic submission. They are a critical element in any electronic communication, as they identify for the computer the data being transmitted and provide other necessary instructions to facilitate proper processing. Headers must be precise, complete and prepared according to strict guidelines in order to be understood by the computer. The detailed requirements for EDGAR headers are set forth in the EDGAR Filer Manual.

Each electronic submission will contain two types of headers, a submission header and a document header for each document transmitted, *e.g.*, a cover letter, a registration statement, and each exhibit. Submission headers begin with identifying information about the filing—the form

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[194] The submission header contains the registrant's or third party filer's public CIK number and non-public CCC. EDGAR will verify that the CIK number matches the CCC or the direct transmission filing cannot be accepted. See Section III.D.4, *infra*, for further discussion on submission headers.

[195] The EDGAR Filer Manual will provide electronic filers instructions on use of required and optional tags.

[196] When a registrant or third party uses a filing agent, it must provide its CCC to the agent.

[197] Taxpayer identification numbers also are made available on the outside front cover pages of periodic reports such as Forms 10–Q [17 CFR 249.308a] and 8–K [17 CFR 249.308].

[198] As in the second situation, the third party filer would have to provide its CCC to the agent for filing purposes.

[199] 17 CFR 239.62, 249.445, 259.601, 269.6, and 274.401.

[200] 17 CFR 230.424.

[201] Currently, the Commission assigns a unique CIK number and file number to each new legal entity upon the filing of a Rule 424 prospectus.

type of the principal document [202] or a modular submission, [203] and the identity of the filing entity. If the subject company is different from the filer, identifying information about the subject company, namely, the CIK number and IRS taxpayer identification number, would be included. [204] The submission header would indicate the number of documents being filed, data on fees being paid, such as the amount of the fee and whether there is an offsetting amount, and the method of fee payment, among other items.

Submission header elements also may be used to identify the filer contact person and telephone number for the submission. In addition, submission headers may be used to notify EDGAR of certain changes affecting the filing company, such as a change in company name, fiscal year, address or state of incorporation.

The other type of header is a document header. Each document in a submission, including the principal document, would be preceded by a document header identifying the particular document. For example, if the principal document being filed was a Form 10–Q, there would be a submission header identifying the principal document as a Form 10–Q, a document header for the Form 10–Q, a document header for the cover letter, and a document header for each exhibit filed with the Form 10–Q.

5. Testing

Filers are urged to submit test filings in order to become familiar with the electronic filing system. To begin testing, a filer must submit a Form ID in order to receive its EDGAR access codes, password, EDGAR Filer Manual and EDGARLink software. The test features of the EDGARLink software should assist filers in testing filings. The EDGARLink software can be used not only to check new equipment or software but also to assure that there are no errors prior to submitting a "live" filing. If the EDGARLink software is used, a filer may test at its workstation without needing to submit any filings to EDGAR. Alternatively, the filer may elect to submit test filings to EDGAR, as described below.

For direct transmission of test filings, identification of testing is done in one of two ways, depending upon whether a filer wants to identify the entire session as a test or certain individual filings within a submission as a test. In either case, if a filer fails to identify filings as test, EDGAR will treat them as official filings and if they contain no suspendable errors, the filings will be accepted and the public portions, if any, will be publicly disseminated.

If the entire session is a test, identification is made at the login stage and all filings made during that transmission will be treated as test filings. [205] If the filer desires to make official filings following completion of a successful test session, the filer will sign on again, identify the session as a live session, and resubmit the filings. In this instance, no changes to the submission header are required.

Alternatively, in order to identify certain individual filings within a direct transmission submission as a test, a filer must place test tags in appropriate places in the submission. Test filings may be transmitted together with official filings; however, a registrant should be careful to identify test filings individually in order to avoid their being publicly disseminated. If a filer desires to make an official filing of any of the test filings, it must remove the submission header tag which identifies the filing as a test and resubmit the filing.

Registrants also may submit one or more test filings on diskette or magnetic tape. Unlike direct transmission submissions, entire submissions may not be identified as test, given the manual procedures required to load the filings on EDGAR. Rather, a registrant may only test selected filings within a submission. To do so, a registrant must insert test tags in appropriate places in the submission. If a registrant desires to make an official filing following completion of successful testing, it must remove the header that identifies the filing as a test and then create and resubmit a second diskette or magnetic tape.

With respect to the identification of test filings, comment is requested specifically as to whether EDGAR should treat an electronic filing without any identification as a test filing rather than as an official filing in order to prevent inadvertent public dissemination of filings intended to be test. In addressing this issue, commenters should consider that under the system being proposed, after testing has been completed, a registrant must sign on again to resubmit the filing as an official filing.

6. Safe Harbor

In response to a concern elicited by the Advance Notice, the proposed rules include a safe harbor which provides that an electronic filer would not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in a document resulting solely from the good faith transmission of such document via EDGAR, whether by magnetic tape, diskette or direct transmission. [206] The safe harbor would be conditioned upon correction of the error or omission no more than five business days after the electronic filer becomes aware of the error or omission.

The Commission requests comment on the benefit of the safe harbor rule as proposed. Comments also are requested on whether a five-business day time period is appropriate or whether a shorter or longer time period, such as three or ten business days, would serve the purposes of this Rule. Commenters should provide justification for any recommended change in the time period.

7. Filing Fees; Lockbox

As was true in the EDGAR Pilot, Transitional Filers who make direct electronic submissions are required to use the Commission's lockbox depository [207] for the payment of filing fees. [208] Lockbox fee payment also is available, on an optional basis, for filers who submit electronic filings on diskette or magnetic tape, as well as for paper filers. [209]

The Securities Act requires that the filing fee be paid "at the time of filing" and "accompany" the filing. [210] As was

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[202] For example, if a Form 10–K was being filed along with a cover letter and several exhibits, for purposes of the submission header, the principal document form type would be a Form 10–K.

[203] See Section IV.A, *infra*, for a discussion of modular submissions.

[204] See Section III.D.3, *supra*, for additional information regarding identification and login procedures. All identifying information, such as a CIK number and CCC, would be included in the submission header.

[205] With respect to asynchronous filings, identification is made at the login stage while with respect to bisynchronous filings identification of a test is made in the first three lines of the submission header.

[206] Proposed Rule 103 of Regulation S–T. The Rule would limit a registrant's liability under Securities Act Sections 11, 12, and 17 [15 U.S.C. 77k, 77*l*, and 77q]; Exchange Act Sections 10, 14, 18, and 20 [15 U.S.C. 78j, 78n, 78r and 78t]; PUHCA Section 16 [15 U.S.C. 79p]; Trust Indenture Act Section 323 [15 U.S.C. 77www] and Investment Company Act Section 34(b) [15 U.S.C. 80a–33] if the conditions of the Rule are met.

[207] The Commission maintains a U.S. Treasury designated lockbox at Mellon Bank in Pittsburgh, Pennsylvania.

[208] See Rule 3a [17 CFR 202.3a] of the Rules Relating to Informal and Other Procedures. See also EDGAR Pilot User Manual [1988] at paragraph 150.

[209] *Id.*

[210] 15 U.S.C. 77*f* (b) and (c).

the case in the EDGAR Pilot, all Securities Act filings (including Securities Act filings by investment companies) made by direct transmission by Transitional Filers are deemed filed as of the date of receipt and acceptance if the Commission staff confirms the fee payment at the lockbox by the close of that business day.[211] Fees paid by certified check, money order, or wire transfer to the lockbox are considered received by the Commission at the time of their receipt at the lockbox.[212]

The Commission is proposing to require all electronic filers to pay fees via the lockbox at the U.S. Treasury designated lockbox depository at the Mellon Bank in Pittsburgh, Pennsylvania.[213] This requirement would be phased in along with electronic filing. Thus, a fee paid with respect to any electronic filing, whether by direct transmission, tape or diskette, would be paid via the lockbox. The lockbox procedures are intended to facilitate Commission compliance with United States Treasury Regulations [214] promulgated under the Deficit Reduction Act of 1984,[215] which require federal agencies to achieve same-day or next-day deposit of monies. A proposed rule in Regulation S–T [216] would require electronic filers to pay filing fees in accordance with any lockbox procedures ultimately adopted.

A Securities Act registration statement (including a Securities Act filing by an investment company) would be deemed filed as of its date of receipt provided that all of the conditions of acceptance are satisfied,[217] including verification of fee payment at the lockbox.[218] If payment is not confirmed until the day following receipt by the Commission, the filing would be assigned a filing date as of the date of confirmation of payment, not the date of receipt.[219] If payment cannot be verified, the filing would be placed in a suspense file for up to six business days and the filer would be so notified.[220] If the filer corrects the problem within the six day period and fee payment is confirmed, the filing would be considered filed as of the business day on which verification occurred. A suspended filing that had not been corrected and accepted within the six day period would be deleted from the system's file of pending submissions. In such cases, the filing would have to be resubmitted with the appropriate fee and accepted.

Filers should be aware that fee payments made via wire transfer will be verified on a real-time basis, while those made by check will be verified on a daily basis. Accordingly, a filer may wish to pay fees with respect to a time-sensitive Securities Act registration statement by wire transfer in order to expedite acceptance processing.

E. Hardship Exemptions and Adjustment of the Filing Date

1. General

Regulation S–T includes three provisions to address difficulties in the electronic submission of documents: A temporary hardship exemption; a continuing hardship exemption; and an adjustment of the filing date.[221] The Commission proposes to provide delegated authority to the Director of the Division to grant or deny requests made pursuant to these provisions.[222]

2. Temporary Hardship Exemption

The proposed rules would provide that an electronic filer may request a temporary hardship exemption [223] from electronic filing, either orally or in writing, when the filer encounters temporary difficulties with its electronic submission. Examples of such technical problems might include a storm that interrupts power to the filer's area or problems with the filer's computer equipment that had been used previously to transmit either test or required electronic filings successfully.

As proposed, the request for the temporary hardship exemption would include:

(1) The reasons for the requested exemption;

(2) A description of the nature and extent of the temporary technical difficulties experienced by the electronic filer in attempting to submit the document in electronic format;

(3) A description of the extent to which the electronic filer has successfully submitted documents previously in electronic format with the same hardware and software, for test or required filings; and

(4) A description of the burden and expense involved to use alternative means to make the electronic submission.

If the Commission, or the staff acting pursuant to delegated authority, determines that the request is appropriate and consistent with the public interest and the protection of investors, the request will be granted promptly.[224] Comment is solicited as to whether temporary hardship exemptions should be acted on by the staff, as proposed, or whether they should be granted automatically, like extension of time requests filed pursuant to Exchange Act Rule 12b–25.

The proposed rules would require that the electronic filer file the document in paper,[225] as promptly as possible, but no

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[211] See Merrill Lynch, Pierce, Fenner & Smith, Inc., response of the Office of Chief Counsel, Division of Investment Management, Available February 27, 1987. While this interpretive letter related specifically to Rule 24f–2 [17 CFR 270.24f–2] notices, the position taken has been applied to all Securities Act filings.

[212] Rule 3a [17 CFR 202.3a] of the Rules relating to Informal and Other Procedures.

[213] See the companion release containing the proposed amendment to the filing fee payment rule.

[214] Management of Federal Agency Receipts and Operation of the Cash Management Improvements Fund, 31 CFR Part 206.

[215] Deficit Reduction Act of 1984, Public Law 98–369, 98 Stat. 494, 1152 (1984).

[216] Proposed Rule 12(d) of Regulation S–T.

[217] See Section III.D.2.a, *supra*, regarding date of filing.

[218] As currently, acceptance of registration statements or pre-effective amendments to registration statements under the Securities Act that increase the number of securities registered is conditioned on confirmation that the required fee has been paid. Filings under the Exchange Act, including tender offer filings, also will be checked for fee payment, although acceptance will not be conditioned on confirmation of such payment. However, the filer will be billed for any amount that is due on an Exchange Act filing.

[219] Payment will be confirmed when the Commission is notified that the filer's account has been credited with sufficient funds to cover the required fee. It is anticipated that information with respect to check payments received at the lockbox will be relayed to the Commission's computer at 8 a.m. Eastern Time each business day. Consequently, if a registrant submits an electronic Securities Act filing on Monday and pays the required fee by a check that reaches the lockbox prior to 8 a.m. Monday, the filing would be deemed filed on that day, provided all other conditions of acceptance are satisfied. If the check reaches the lockbox after 8 a.m. on Monday, the filing would be deemed filed on Tuesday, the date of fee payment confirmation.

[220] See Section III.D.2.b, *supra*, for further discussion regarding suspension.

[221] A filer may request an exemption or a filing date adjustment, or both. Electronic filers, like paper filers, may file a Form 12b–25 [17 CFR 249.322] to notify the Commission of their inability to timely file all or any portion of a Form 10–K, Form 20–F [17 CFR 249.220f], Form 11–K [17 CFR 249.311], or Form 10–Q [17 CFR 249.308a], but only where their inability to file the subject report in a timely manner is unrelated to electronic submission. Form 12b–25 would be revised to note that an electronic filer that is granted a temporary hardship exemption from electronic filing should not file a Form 12b–25. If a temporary hardship exemption is granted, the electronic filer would be required to make the filing in paper and submit an electronic confirming copy of the subject document within the time periods specified. Proposed Rule 101 of Regulation S–T.

[222] Proposed Rule 30–1(k) (adjustment of filing date) and Proposed Rule 30–1(l) (exemptions) of the Commission's Rules of Organization; Conduct and Ethics; and Information & Requests. The authority may be subdelegated to other Division staff as appropriate.

[223] Proposed Rule 101 of Regulation S–T.

[224] See Rule 26 [17 CFR 201.26] of the Rules of Practice for procedures for Commission review of staff determinations at a delegated level.

[225] Where only an exhibit is granted a temporary hardship exemption, the exhibit must be filed in paper under cover of Form SE.

later than one business day after the date the exemption had been granted, or such other date as may be specified. The paper format document would be the required filing of the registrant for purposes of the federal securities laws. The cover page of the paper filing would contain the following legend in capital letters: IN ACCORDANCE WITH RULE 101 OF REGULATION S–T, THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A TEMPORARY HARDSHIP EXEMPTION.[226] If the request pertained to documents filed pursuant to Section 13(a) or 15(d) of the Exchange Act and the filing was submitted in paper within the time period specified by the Commission in granting the temporary exemption, the paper filing would be deemed filed by its required due date.

To assure the completeness of the EDGAR database, the proposed rule would require the filer to submit a copy of the filing in electronic format within three business days of submitting the filing in paper format, or such longer period as may be permitted pursuant to delegated authority.[227] The electronic format copy would be required to contain the following statement in capital letters: THIS DOCUMENT IS A COPY OF THE (SPECIFY DOCUMENT) PREVIOUSLY FILED ON (DATE) PURSUANT TO A RULE 101 TEMPORARY HARDSHIP EXEMPTION.

For those Securities Act registration statements that incorporate by reference Exchange Act periodic reports, the proposed rules would provide that use of the form is conditioned upon the electronic filer having submitted all required electronic filings, including confirming electronic copies with respect to those reports.[228] This condition would apply without regard to the length of time that has elapsed since the failure to submit a required confirming electronic copy. Comment is solicited as to whether there should be a time limit on the condition, such as seven, five, or three years. Further, proposed amendments to the rules relating to incorporation by reference[229] would prohibit electronic filers from incorporating by reference any document filed in paper in violation of the mandated electronic filing requirements, or any document filed in paper pursuant to a temporary hardship exemption for which a confirming electronic copy has not been submitted. Finally, proposed amendments to the tender offer rules[230] would provide that where a bidder who is an electronic filer has failed to file a required electronic filing, including a confirming electronic copy required by any temporary hardship exemption, the withdrawal rights period and the termination dates of the tender offer would be tolled for the period of non-compliance. Comment is solicited as to whether these measures are necessary or appropriate.

Comment also is solicited as to whether oral requests for temporary hardship exemptions should be reduced to writing and submitted to the Commission at some later date, such as within three business days of submitting the filing in paper format. If oral requests are reduced to writing, comment is solicited as to whether the written request should be treated like correspondence, and thus, be non-public unless a request under the Freedom of Information Act is received and an exemption under that Act is not available, or whether it should be treated like Form 12b–25, and thus be publicly available.

3. Continuing Hardship Exemption

The proposed rules provide that an electronic filer may submit a request for a continuing hardship exemption from the electronic filing provisions if the filer is unable to submit a specific filing or group of filings in electronic format because of undue burden and expense or impracticability, given the nature of the document or group of documents.[231] The exemption might be appropriate, for example, for filings of a company under the protection of a bankruptcy court where electronic filing may be burdensome, or for voluminous material contracts of an acquired company, the conversion of which would present undue hardship to the acquiror. Unlike the temporary hardship exemption, the continuing hardship exemption would require no confirming electronic copy. The Commission anticipates that grants of the continuing hardship exemption will be circumscribed as narrowly as possible, given the ease of submitting electronic filings generally and the need to ensure the completeness of the EDGAR database.[232]

For a continuing hardship exemption, as proposed, the electronic filer would be required to submit a written application to the Commission ten business days prior to the required due date of the filing or the proposed filing date, as appropriate, or within such other shorter period as may be permitted. Factors to be addressed as specified in the proposed Rule would include: (1) The reasons the filing or group of filings cannot be filed electronically and the justification for time period requested;[233] (2) the reasons that the necessary hardware and software are not available without unreasonable burden and expense; and (3) the burden and expense involved to employ alternative means to make the electronic filing. The proposed Rule specifically would provide that the application for a continuing hardship exemption is deemed denied unless the applicant is otherwise notified by the Commission staff.

If the filer is notified that the request is granted, a paper filing must be made on the required due date as specified in the applicable form, rule or regulation. The grant of the continuing hardship exemption would not exempt the filer from the filing requirements of applicable forms or other provisions of the federal securities laws.[234] The paper document must contain the following legend at the top of the cover page: IN ACCORDANCE WITH RULE 102 OF REGULATION S–T, THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.[235] Comment is solicited as

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[226] Proposed Rule 101(c)(*l*) of Regulation S–T. Manual signatures would not be required for documents submitted in paper pursuant to the temporary exemption, as delays resulting from obtaining the signatures could undermine the flexibility the exemption is intended to provide. *See* Section III.F, *infra*, regarding signatures.

[227] Proposed Rule 101(c)(2) of Regulation S–T.

[228] See proposed changes to Securities Act Forms S–2, S–3, S–8, [17 CFR 239.16b], F–2, and F–3. The proposed amendments also would affect Forms S–4 [17 CFR 239.25] and F–4 [17 CFR 239.34], as a registrant must be eligible to use Form S–3 or F–3 in order to incorporate by reference periodic reports into Forms S–4 and F–4. Similarly, registrants must be eligible to use Form S–2 or Form S–3 in order to incorporate by reference periodic reports into the proxy statement pursuant to Item 14 of Schedule 14A.

[229] See Securities Act Rule 411 [17 CFR 230.411], Exchange Act Rule 12b–23 [17 CFR 240.12b–23], Exchange Act Rule 12b–32 [17 CFR 240.12b–32] and Trust Indenture Act Rule 7a–29 [17 CFR 260.7a–29].

[230] See proposed changes to Exchange Act Rules 14d–7 [17 CFR 240.14d–7] and 14e–1 [17 CFR 240.14e–1].

[231] Proposed Rule 102 of Regulation S–T.

[232] If a registrant needs more time to prepare for mandated electronic filing than would be allowed prior to its phase-in date, it may apply to the Division of Corporation Finance for a deferral of that date, which request will be considered pursuant to delegated authority. See Section III.A. *supra*.

[233] Proposed Rule 102(b) of Regulation S–T.

[234] For example, if an electronic filer is granted a continuing hardship exemption for its Form 10–K, the filer would still be required to file its Form 10–K in paper format 90 days after the fiscal year end covered by the report. See Instruction A to Form 10–K.

[235] If a continuing hardship exemption is granted with respect to an exhibit only, the exhibit must be filed in paper under cover of Form SE.

to whether the written request should be treated like correspondence, and thus be non-public unless a request under the Freedom of Information Act is received and an exemption under that Act is not available, or whether it should be treated like Form 12b–25 and be publicly available.

4. Adjustment of Filing Date

Current rules permit the staff, pursuant to delegated authority, to adjust the filing date of an electronically submitted document where acceptance of the filing is delayed because of equipment malfunction or other technical problem.[236] The Division has exercised its discretion to adjust filing dates where transmission has been delayed due to either malfunction in the Commission's system or where receipt was delayed because of technical difficulties experienced by the filer in transmitting a filing.

In the Advance Notice, the Commission indicated its intention to continue to adjust filing dates in the EDGAR system to ensure that filers would not be penalized for technical difficulties beyond their control in making electronic filings. The Commission requested comment as to whether specific criteria for adjustment of the filing date should be adopted to assure that the adjustment procedure would not encourage an abuse of filing deadlines. While commenters favored continued provisions for adjustment of filing dates, they preferred a flexible approach rather than the establishment of specific criteria. Those that did suggest criteria cited the following: Equipment malfunction, the timeliness of the attempted filing, and difficulties due to systems or programming errors.

The proposed rule [237] would permit an electronic filer to request an adjustment of the filing date of an electronic document,[238] regardless of the electronic medium, when the electronic filer encountered technical problems beyond its control which prevented electronic submission by the due date specified by the applicable form or rule. The Commission generally would not adjust a filing date pertaining to a transactional filing, such as a tender offer filing or a Securities Act registration statement, since the dates of such filings affect shareholder rights. For example, a filer that commences direct transmission of a Form 10–K filing [239] on or before 5:30 p.m. Eastern Time on the date the filing is due but that is interrupted due to technical electronic difficulties beyond its control, such that it must recommence the direct transmission after 5:30 p.m. Eastern Time on that date, and under the proposed date of filing rule [240] would receive the next business day's filing date, may request an adjustment of the Form 10–K's filing date. As another example, although back-up measures have been instituted to assure EDGAR will be fully operational at all required times, if a situation did arise that resulted in delay on the EDGAR system, the Commission could adjust the filing date.

F. Signatures

1. Background

The Temporary Rules governing the EDGAR Pilot defined the term "signed" to mean the entry, in the form of a magnetic impulse or other form of computer data compilation, of any symbol or series of symbols executed, adopted or authorized as a signature.[241] In the EDGAR Pilot, two methods of signatures were used, depending on the filing medium. Electronic filings made on diskette or magnetic tape contained conformed signature pages and manually signed copies of the signature pages, opinions and consents were submitted under cover of temporary Form ET.[242] In contrast, submissions by direct transmission used personal identification numbers ("PINs"). PINs are unique sets of characters assigned by the Commission which represent the signatures of persons required to sign a form or document such as officers, directors, accountants and experts.[243]

In the Advance Notice, the Commission solicited comment on a number of alternatives to satisfy statutory signature requirements in the EDGAR SYSTEM. The following were suggested: (1) PINs with or without modification; (2) powers of attorney filed in paper or electronically; and (3) typed signatures with or without a representation by a filer that a manually signed copy would be retained in its files and made available to the Commission and others upon request. With respect to filings for which there is no statutory signature requirement, the Commission suggested that it could amend its forms and schedules to require a representation that specified persons had reviewed the filing and caused it to be filed.

Of the commenters who addressed the use of PINs as the sole means to satisfy statutory requirements, no consensus emerged either favoring or opposing their use. Commenters raised three major concerns about the continued use of PINs: Security problems, administrative burdens, and potential problems with technical transmission. Security of PINs was a primary concern, since a typed PIN is visible to anyone who has access to the filing before transmission, absent an ability to suppress the set of characters electronically. Thus, PINs were viewed as not guaranteeing a secure system.

Commenters also expressed concern over the administrative burden of obtaining and controlling PINs. A few commenters recognized that PINs were a viable system in the EDGAR Pilot as only a limited number of volunteer companies were involved, while the operational EDGAR will involve thousands of registrants. One commenter stated that the problem of collection, insertion and transmission of PINs was the most frustrating aspect of the EDGAR Pilot system. From the perspective of the Commission, the administrative burdens on the limited financial and personnel resources of the Commission in terms of generating, assigning, and maintaining records of PINs appear neither cost-justified nor practicable in the EDGAR system. Some EDGAR Pilot participants have voiced concern over another administrative problem, namely, that PINs have caused some difficulty where signatories were unwilling to release their PINs where they were geographically distant from the place of transmission. Finally, a few commenters, including one EDGAR Pilot participant, addressed the issue of technical transmission difficulties associated with PINs, *i.e.*, more PINs are required in a filing, the

[236] This authority is delegated to the Director of the Division pursuant to Rules 30–1(a)(9), 30–1(e)(4) and 30–1(f)(11) of the Commission's Rules of Organization; Conduct and Ethics; and Information and Requests [17 CFR 200.30–1(a)(9), (e)(4) and (f)(11)].

[237] Proposed Rule 12(c) of Regulation S–T.

[238] It is proposed that General Organization Rules 30–1(a)(9), (e)(4) and (f)(11), which delegate authority to the Director of the Division to adjust the filing date of electronic filings, be rescinded and replaced by proposed Rule 30–1(k), which would delegate authority to the Director of the Division to adjust the filing date of a filing submitted pursuant to Regulation S–T.

[239] This situation assumes that there is no pending transactional filing such as a Securities Act registration statement on Form S–3.

[240] Proposed Rule 12 of Regulation S–T.

[241] See former Securities Act Rule 499(b)(7) [17 CFR 230.499(b)(7)], incorporated into Securities Act Rule 499(d)(2), effective July 15, 1992.

[242] 17 CFR 239.62, 249.445, 259.601, 269.6, and 274.401.

[243] Temporary Form ID, adopted by the Commission for PIN applications, required that the applicant agree that "execution, adoption or authorization to enter the PIN . . . constitutes . . . the applicant's signature." 17 CFR 239.63, 249.446, 259.602, 269.7 and 274.402.

possibility of error through transposition or incorrect format increases significantly.

The overwhelming majority of commenters who addressed the issue of typed signatures either supported or were disposed favorably toward their use. Some commenters stated that typed signatures were a more convenient and practical approach to the issue of signatures.

2. Requirements in EDGAR

The proposed rules would provide that statutory and non-statutory signature requirements are satisfied if the signatory's name appears in typed form. Accordingly, the term would be defined as the electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters comprising a name, executed, adopted or authorized as a signature.[244] Typed signatures would be required under all statutes and rules for all media of electronic submission.[245] The proposed approach would eliminate both the practical problems associated with PINs and the need to revise the signature requirements found in various rules and forms, which would remain the same as for paper filings.[246] The security controls in the EDGAR system for access and transmission should help guarantee the viability of a typed signature system.

Commonly accepted legal principles provide that the term "signature" means any symbol executed or adopted by a party with the present intention to authenticate a writing.[247] A signature may be written by hand, stamped, typewritten and engraved, among other means.[248] The current definition of "signed" under the EDGAR Temporary Rules comports with these principles, as would the definition of "signed" under the proposed rule.[249] By requiring that the symbol be entered physically into the document, the present intention to authenticate would be demonstrated.

The rules and forms under the various Acts are proposed to be amended by adding provisions alerting electronic filers to the typed signature requirement.[250] The Commission's auxiliary proposal in the Advance Notice that typed signatures be accompanied by a representation that a manually signed copy be retained by the filer and made available to the Commission and others upon request appears to be unnecessary.[251] Filers, in conjunction with the multi-level security measures in EDGAR for access and transmission, are best equipped to create and monitor their system of internal control of signatures and have sufficient reasons to do so in case questions of authenticity arise. Comment, however, is solicited on the necessity or usefulness of requiring filers to retain a manually signed document to be made available to the Commission and others upon request, and if so, whether three years, five years or some longer time, such as ten years, should be specified. The Commission is considering such a requirement.

3. Powers of Attorney and Consents

Section 7 of the Securities Act requires, with limited exceptions, the filing of a written consent of any expert named in the registration statement as having prepared or certified any part of the registration statement, or named as having prepared or certified a report or valuation for use in connection with the registration statement.[252] In the EDGAR Pilot, the majority of participants filed manually signed powers of attorney or consents of experts on paper under temporary Form SE for all media of electronic submission.

In the Advance Notice, the Commission requested comment on whether signatures of experts should be handled differently from required signatures. For example, PINs could be used solely for expert signatures. In order to avoid the logistical problem of having the expert present at the submission of the filing, the signed consent, and perhaps the opinion itself, could be submitted separately by the expert.[253] The majority of commenters stated that such disparate treatment was unwarranted; many believed that experts and their organizations could control adequately the security of signature procedures. Moreover, concern was voiced that the filer would lack control over a filing if portions were submitted separately. Based on the foregoing, the Commission is proposing to extend to powers of attorney and consents of experts the requirement that signatures be in typed form.[254] Comment is solicited regarding any continuing need for PINs in the context of expert signatures, particularly with respect to accountants' consents and accountants' reports, or whether there is any other means for independent professionals to have their signatures verified.

IV. Presentation And Entering of Information

A. Modular Submissions and Segmented Filings

The EDGAR Pilot used a modular submission procedure successfully for several years.[255] This procedure allows electronic filers to submit information that is intended to become a part of more than one filed document to a non-public EDGAR data storage area and then transfer the information to an official electronic filing, as desired. In the EDGAR Pilot, this submission method was restricted to investment companies; however, under the operational EDGAR system, all electronic filers that subscribe to the optional EDGAR electronic mail service may use modular submissions.[256] This feature will eliminate the need for submission of duplicative information, which is of particular value when substantially similar information is required in more than one filing.[257]

Under the proposals, for example, a registrant could use the modular submission procedure to file its description of business as one modular document, the description of property as

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[244] Proposed Rule 13 of Regulation S–T.

[245] Typed signatures would be adequate for all related materials submitted via EDGAR, such as correspondence, acceleration requests, and applications. Signatures on Form SE, for filing paper exhibits pursuant to a hardship exemption, would be in typed form rather than manual format. See Section III.E.2, *supra*, for discussion of hardship exemptions. However, Form ID would retain the requirement for manual signatures, as this form initiates a filer's access to the EDGAR system.

Pursuant to the amended Temporary Rules, Transitional Filers currently are subject to typed signature requirements. See, *e.g.*, Rule 499(d)(2) [17 CFR 230.499(d)(2)], as amended.

[246] Manual signatures would continue to be required for paper filings, except that they would not be required for documents submitted on paper pursuant to the temporary hardship exemption. See Section III.E.2, *supra*.

[247] See, for example, the Uniform Commercial Code § 1–201(39).

[248] Black's Law Dictionary, 6th ed. (1990), pages 1381–1382.

[249] Securities Act Rule 499(c)(2) and proposed Rule 13 of Regulation S–T.

[250] See Section IV.G.1, *infra*.

[251] In the context of the Securities Act, section 6(a) [15 U.S.C. 77f(a)] places the burden of proof on one denying that a signature was authorized.

[252] 15 U.S.C. 77g.

[253] See Section IV.A, *infra*, for a discussion of the ability to separately transmit portions of filings using segmented filing.

[254] See generally Proposed Rule 13 of Regulation S–T.

[255] In the EDGAR Pilot this procedure was referred to as the "reference filing procedure." Procedures used in the EDGAR Pilot appeared in the EDGAR Pilot User Manual (1988) at paragraph 147.

[256] This procedure became available to Transitional Filers under the amended Temporary Rules beginning July 15, 1992.

[257] It is estimated that despite its restricted use in the EDGAR Pilot, modular submissions eliminated the need to transmit over one million duplicative pages of information.

a second modular document, audited year end financial statements and management's discussion and analysis as a third modular document, disclosure on directors, executive officers and control persons as a fourth modular document, and exhibits as a fifth modular document. The registrant then could file a Form S–1 registration statement which instructs the EDGAR system to insert each of the five modular documents into specified places in the Form S–1. With respect to its annual proxy statement, the registrant could request that only the directors, executive officers, and control persons disclosure module be included in a specified location in the proxy statement.

Since modular submissions require closer coordination and more prompt communications between EDGAR and the filer than other submissions, the proposed rule governing modular submissions specifies that only those filers that subscribe to the EDGAR electronic mail service may make modular submissions.[258] Such filers will be allowed up to ten modular submissions in the non-public EDGAR data storage area at any time, not to exceed a total of one megabyte of digital information (approximately 300 double-spaced typed pages).[259] If an electronic filer attempts to submit a modular filing which, if accepted, would cause either of these limits to be exceeded, EDGAR will suspend the modular submission and notify the electronic filer by electronic mail. After six business days, the modular submission held in suspense will be deleted from the EDGAR system.[260]

Inasmuch as EDGAR will not permit parts of modular submissions to be extracted and used separately, an entire modular submission would have to be used. If updating is required, or changes are made for other reasons, an entirely new modular submission must be substituted for the previously existing one.

The modular submission would not constitute an official filing[261] or be deemed filed for purposes of the federal securities laws.[262] However, once the filer included a modular submission in a particular filing, all applicable liability provisions of the federal securities laws would apply to the information.[263] In order to maintain reasonable limits on the amount of storage space required to accommodate modular submissions, there would be a one year limit on the use of a modular submission. The data included in the submission must remain current enough to satisfy the requirements of the filing in which it is included.

The EDGAR filer could use the modular submission in any number of official filings. The use of information from a modular submission would not be a form of incorporation by reference.[264] Unlike incorporation by reference, which includes disclosure from one required filing in another required filing by an express statement describing the inclusion, the text of the modular submission would be physically set forth in the designated location in the required filing. As a result, both the electronic and microfiche copy of the filing, as well as any paper printouts, would be complete.

Another feature designed to assist filers in submitting voluminous data is segmented filing. Material submitted as segments may originate from several different geographic locations using different transmission media, and may be submitted over a period of six business days in advance of the anticipated filing date.[265] The filer instructs the EDGAR system as to the order of presentation of the segments, and submits the "master segment" last. EDGAR's acceptance of the master segment triggers the construction of the filing from the previously submitted subordinate segments. The filing date of a segmented filing would be the date upon which the filing is assembled and accepted. The electronic and microfiche copy of the filing and the Commission's official microfiche and any paper printouts will be complete filings.

If the filer identifies incorrectly the names of segments to be included in a filing, the filing will not be constructed. Electronic mail messages will be sent upon receipt of each segment. Imperfect segments would have to be resubmitted in their entirety.

Just as for modular submissions, all EDGAR filers that subscribe to the optional EDGAR electronic mail service may submit segmented filings. In contrast to modules, there is no limit to the size of any segment, nor to the number of segments which may be used to create a filing. Segments, however, are to be used only once and do not remain on the database.

Like modular submissions, subordinate segments do not constitute an official filing and are not considered filed for the purposes of the federal securities laws. However, once the filer submits the master segment for a particular filing, all applicable liability provisions of the federal securities laws would apply to the newly created filing.

Modular submissions and segments not included in a filing would not be available to the public.[266] However, the Commission may be required to release the modules or segments to the public pursuant to a request under the Freedom of Information Act [267] if an exemption under that Act is not available.

In the EDGAR Pilot, direct transmission filers had the option to file pricing amendments to registration statements in two parts to facilitate filing and acceptance at the time of pricing.[268] The first part contained all amended information except specific pricing information, and was submitted at least one day in advance of the anticipated date of effectiveness. The second part contained only those pages of the registration statement containing pricing information, e.g., cover page, use of proceeds, capitalization table, etc., and was submitted on the day of requested effectiveness of the registration statement. The two parts constituted the pricing amendment to the registration statement. Some commenters on the Advance Notice favored this capability and further urged that it be extended to other time-sensitive documents, such as tender offers. However, this procedure was used only 14 times in the Pilot and has not been used at all in the last three years.[269] Therefore, the two-part filing system as such will not be available under EDGAR. However, segmented filing could be used to achieve similar results.

Comments are requested on the usefulness of the modular and segmented submission systems in general, as well as on the limitations on the number of modular submissions permitted, the non-public aspects of the procedures, and the need for filers to be EDGAR electronic mail subscribers.

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[258] Proposed Rule 215 of Regulation S–T.

[259] Proposed Rule 215(a)(2) of Regulation S–T.

[260] *Id.*

[261] See paragraph (m) of proposed Rule 11 of Regulation S–T for a definition of official filing.

[262] See Securities Act Section 11 [15 U.S.C. 77k], Exchange Act Section 18 [15 U.S.C. 78r] and Trust Indenture Act Section 323 [15 U.S.C. 77www].

[263] Proposed Rule 215(c)(3) of Regulation S–T.

[264] See Section IV.C, *infra*, for a discussion regarding the incorporation by reference rules.

[265] Proposed Rule 215(b) of Regulation S–T. For example, voluminous exhibits could be sent in advance of a filing, or financial statements could be sent from the offices of the registrant's auditors.

[266] Proposed Rule 215(c)(1) of Regulation S–T.

[267] 5 U.S.C. 552.

[268] Procedures used in the EDGAR Pilot for two-part pricing amendments appear in the EDGAR Pilot User Manual (1988) at paragraph 143.

[269] The need to file most pricing amendments in cash offerings has been obviated by Securities Act Rule 430A [17 CFR 230.430A].

B. Annual and Quarterly Reports to Security Holders

Currently, registrants subject to the proxy rules are required to furnish to the Commission, for its information, copies of their annual report to security holders, including financial statements and information required by the proxy rules.[270] In recognition of the fact that the annual report to security holders may be difficult to transmit electronically due to the format and graphics commonly associated with such documents, a revision to the proxy and information statement requirements is proposed.[271]

Specifically, the proposed rules would relieve both paper and electronic filers from the obligation to send copies of their annual reports to security holders to the Commission if their Form 10–K reports include all of the information required to be disclosed in the annual report to security holders under the proxy rules.[272] If the Form 10–K does not include all of the required disclosure, registrants would continue to be subject to the requirement to furnish a copy of their annual reports to security holders to the Commission in paper or electronically, depending on the status of the registrant.[273] The proposed change would not affect registrants' substantive disclosure obligations since the Form 10–K would have to include all of the information currently required to be disclosed in the annual report to security holders, and a registrant's liability [274] for misstatements in the annual report to security holders is unchanged whether or not copies are furnished to the Commission.[275]

Comment is solicited as to whether registrants should be relieved of their obligation to furnish copies of the annual report to security holders to the Commission where the information required to be disclosed in the report is included in the Form 10–K. Commenters also should address whether this change should apply only to electronic filers, since they would be the only filers encountering the difficulties associated with electronic submission of the annual report to security holders. Comment also is requested as to whether the Commission should require electronic filers to electronically transmit only the portions of an annual or quarterly report that are incorporated by reference into a filed document, rather than the entire report, as proposed. Finally, comment is solicited as to whether, in the context of business combination transactions involving both a paper and electronic filer, the Commission should require the entire annual report or quarterly report to security holders of the paper filer to be filed electronically when it is incorporated by reference into the electronic filer's registration statement,[276] or whether this would constitute an undue hardship.

Registrants would continue to have the option of using information contained in the annual report to security holders in their annual reports filed with the Commission on Form 10–K, either by incorporating all or portions of the annual report to security holders by reference [277] or by filing with the Commission and distributing to security holders a combined Form 10–K and annual report to security holders.[278] Because it is essential for information incorporated by reference, such as financial statements, to be part of the electronic database, a registrant who chooses to incorporate by reference into a Form 10–K information from an annual report to security holders would be required to file in electronic format the entire annual report to security holders as an exhibit to the Form 10–K.[279] If the integrated report to security holders is used, any graphic and image material distributed to security holders in paper format but omitted from the electronic filing would be described in the manner prescribed by proposed Regulation S–T.[280]

The proposed change also would not alter the currently available option of incorporating by reference the annual report to security holders (and, in certain cases, the quarterly report to security holders), or portions thereof, into filings other than the Form 10–K, such as registration statements on Forms S–2 or S–4.[281] If, however, an electronic filer incorporates by reference its annual report to security holders or any portion thereof into a Commission filing, or the annual report to security holders was deemed to be soliciting material in a proxy contest, [282] then it would have to be filed electronically with the Commission in its entirety.[283] Similar provisions would apply to the quarterly report to security holders when incorporated by reference. Further, Form S–2 would be amended to give both paper and electronic filers the option to deliver with the prospectus the Form 10–K rather than the annual report to security holders.[284]

Under the proposed rules, Form 8–A, [285] for registration under Section 12 of the Exchange Act [286] of any class of

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[270] Exchange Act Rules 14a–3 and 14c–3 [17 CFR 240.14a–3 and 240.14c–3].

[271] The proposed revision would relate only to material furnished to the Commission; it would not affect a registrant's obligation to distribute to shareholders the annual report to security holders. The revision also would not affect the staff's position that a company may, under specified circumstances, include the Rule 14a–3 information in an appendix to its proxy statement rather than distribute it in an annual report to security holders. See letter re *General Motors Corp.*, avail. Jan. 20, 1987.

[272] Under the current requirements, the Form 10–K should include this information since the Form 10–K disclosure requirements are substantially similar, but more extensive, than the disclosure requirements under Rule 14a–3 or 14c–3. Rule 29 under PUHCA [17 CFR 250.29] and the annual report filed by registered holding companies on PUHCA Form U5S [17 CFR 259.5s] will continue to require that the annual reports to security holders be submitted in paper. See Sections III.E and IV of the PUHCA Release.

[273] Under the proposals, Rules 14a–3(c) and 14c–3(b) would be revised to require electronic filers that do not include all of the information required to appear in the annual report to security holders to electronically submit a copy of their annual reports to security holders for the information of the Commission.

[274] Annual reports to security holders are not subject to liability as filings under Sections 13(a), 14(a), 14(b), 15(d) or 18 of the Exchange Act [15 U.S.C. 78m(a), 78n(a), 78n(b), 78o(d) and 78r] except to the extent incorporated by reference into reports and statements filed thereunder. Of course, annual reports to security holders are subject to the anti-fraud provisions of the federal securities laws.

[275] Rules 14a–3(c) and 14c–3(b) currently request managements of registrants to indicate in a transmittal letter whether the financial statements in the annual report to security holders furnished to the Commission reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices. Since it is anticipated that many registrants will include the information required in the annual report to security holders in their Form 10–Ks rather than furnish the annual report to security holders in electronic format, this request is proposed to be removed from the proxy rules and placed in an instruction to Form 10–K. See proposed General Instruction D(3).

[276] See proposed paragraph (b) to Item 16 of Form S–4.

[277] See General Instruction G to Form 10–K.

[278] See Exchange Act Rule 14a–3(d) [17 CFR 240.14a–3(d)] and General Instruction H to Form 10–K.

[279] See Proposed General Instruction K(5) of Form 10–K and Item 601(b)(13) of Regulation S–K [17 CFR 229.601(b)(13)].

[280] See proposed General Instruction K(6) to Form 10–K and Rule 205 of Regulation S–T. Graphic material in the annual report to security holders would be treated in the manner discussed in Section IV.E, infra.

[281] See Item 12 of Form S–2 and Items 13 and 16 of Form S–4; see also Item 14 of Schedule 14A.

[282] See Exchange Act Rule 14a–11(f) [17 CFR 240.14a–11(f)].

[283] In connection with the incorporation by reference of the annual report to security holders, see the proposed revisions to Form S–2, Item 12(c); Form S–4, Items 13(c) and 16; Form S–8, Item 3; Note D of Schedule 14A of the Exchange Act [17 CFR 240.14a–101]; and Exchange Act Rule 14a–11(i).

[284] This option also would be available for Form S–2 level disclosure on Form S–4 and Schedule 14A. See Section V.F.1, *infra*.

[285] 17 CFR 249.208a.

[286] 15 U.S.C. 78(*l*).

securities of an issuer that is required to file reports pursuant to Section 13(a) [287] or 15(d), [288] also would be amended to delete the requirement, for both paper and electronic filers, that copies of the annual report to security holders be furnished to the Commission. The Commission further proposes to delete the Form 10–K requirements that Section 15(d) filers furnish to the Commission copies of the annual report to security holders and proxy material sent to more than ten security holders.[289] Instead, a new item would be added to Form 10–K requiring Section 15(d) filers to furnish copies of their annual reports to security holders and proxy material upon request by the Commission.[290]

C. Incorporation by Reference

In the Advance Notice, the Commission requested comment on possible changes to the rules regarding incorporation by reference [291] that should be considered in connection with the EDGAR system. The Commission also requested comment on the specific methods that should be used to ensure that information in the EDGAR database is as complete as possible when some or all of the information is incorporated by reference.

In light of the comments received in response to the Advance Notice, and with a view to ensuring that the electronic database under EDGAR is as complete as possible, one change to the incorporation by reference rules is proposed. The proposed rule would prohibit electronic filers from incorporating by reference any document filed in paper in violation of the mandated electronic filing requirements, or any document filed in paper pursuant to a temporary hardship exemption for which a confirming electronic copy has not been submitted.[292]

In the Advance Notice, the Commission indicated that it might amend Rule 12b–23 under the Exchange Act, which covers incorporation by reference to the narrative portions of Exchange Act filings, to eliminate the current requirement to include as an exhibit to the filing any incorporated document, even if previously filed. This requirement, however, ensures that copies of filings viewed at the Commission's public reference rooms or that are furnished to the public upon request are complete without the necessity of referring to other filings. The provision of complete documents, including information incorporated by reference, to those viewing or requesting copies of a filing is essential; therefore, a change in the Rule does not appear appropriate at this time.[293]

Comments are requested on the proposed treatment of incorporation by reference and on any other aspects of incorporation by reference that should be considered in connection with the implementation of EDGAR.[294]

D. Financial Data Schedule

1. Background

As discussed in the Advance Notice, "data tagging," the basis for the proposed Financial Data Schedules, requires identification of specific information in a manner that permits the data to be readily identified and extracted by the electronic system.[295] For example, if the system can identify specific items of financial information, financial ratios can be calculated automatically by computer, and searches of the database can be made for registrants with specific financial characteristics. Filings submitted on EDGAR in free-form textual format, similar to the format of paper filings, are not amenable to such analysis without manual re-entering of the data. The use of data tagging in the proposed Financial Data Schedules, however, provides such capability.

The EDGAR Pilot tested two methods of identifying critical financial data. First, EDGAR Pilot participants were asked to submit, voluntarily, a data tagged schedule listing certain of the items required to be presented in financial statements pursuant to Article 5 of Regulation S–X,[296] and the amounts reflected in their financial statements responding to the requirements. The EDGAR Pilot read the data tagged information in the schedule, and used this data to compute predetermined ratios to facilitate financial analysis by the Commission staff. Pilot filer response to this method generally was positive, with filers indicating that it took less than an hour to prepare the schedule.

In the second approach, a prototype artificial intelligence ("AI") project, the Financial Statement Analyzer, was undertaken. The AI project identified and extracted specific items of financial information from financial statements and related footnotes and automatically computed standard financial ratios. Based on a sample of 30 balance sheets, income statements and related footnotes, the AI project correctly computed 94% of the standard financial ratios. Unfortunately, the Commission currently does not have sufficient resources to test and fully develop the AI technology on a large-scale. Therefore, while the implementation of an artificial intelligence system will be considered in the future, it does not appear to be a practical alternative at this time. Comment is solicited, however, as to whether there are cost-effective means currently available to implement an artificial intelligence system capable of computing a high volume of financial ratios in a timely manner.

2. Proposed Financial Data Schedule

The Commission proposes to require EDGAR registrants that are required to file financial statements to submit electronically a Financial Data Schedule which would be available to the public as well as the Commission. The Financial Data Schedule would set forth specific financial data from the registrant's financial statements, schedules and other disclosure requirements such as industry guides. It would not be deemed a "filed" document for purposes of liability under the federal securities laws.[297]

The use of a Financial Data Schedule was chosen for a number of reasons. In addition to the successful experience with a similar schedule in the EDGAR

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[287] 15 U.S.C. 78m(a).

[288] 15 U.S.C. 78o(d).

[289] The requirements appear under the caption "Supplemental Information to be Furnished with Reports Filed Pursuant to Section 15(d) of the Act, by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act."

[290] Proposed Part IV, Item 15 of Form 10–K.

[291] The basic requirements for incorporation by reference are provided in Securities Act Rule 411 [17 CFR 230.411]; Exchange Act Rule 12b–23 [17 CFR 240.12b–23] (for documents other than exhibits); Exchange Act Rule 12b–32 [17 CFR 240.12b–32] (for exhibits); Trust Indenture Act Rules 7a–28, 7a–29, 7a–30, 7a–31 and 7a–32 [17 CFR 260.7a–28, 260.7a–29, 260.7a–30, 260.7a–31 and 260.7a–32]; and Rule 24 of the Rules of Practice [17 CFR 201.24].

[292] See Section III.E.2, *supra*, regarding the temporary hardship exemption. Documents filed in paper before a registrant became an electronic filer could remain in paper format, except as otherwise provided. For example, a registration statement on Form S–3 filed in electronic format could incorporate by reference a Form 10–K or Form 10–Q filed in paper before the registrant became subject to mandated electronic filing.

[293] The registrant could avoid having to transmit multiple copies of the incorporated document by using the modular submission procedure. See Section IV.A, *supra*.

[294] For a discussion of incorporation by reference of the annual report to security holders, see Section IV.B, *supra*.

[295] Data tags will be used in the EDGAR system in a variety of ways other than in the Financial Data Schedule. See, *e.g.*, Section III.D.4. relating to tags in headers and Section IV.F. relating to tags used to indicate changed material. For a general discussion of tagging, see Section V.B., *infra*.

[296] 17 CFR 210.5–01, 210.5–02, 210.5–03, and 210.5–04.

[297] See Section IV.D.4, *infra*, for further discussion regarding liability for the Financial Data Schedule.

Pilot, the Schedule places minimal burden on registrants, given the relative ease of making changes and/or corrections to the Schedule.

Furthermore, the proposed Financial Data Schedule provides a means whereby specific numbers taken from a registrant's financial statements, schedules, and disclosures made pursuant to applicable industry guides are placed into a formatted schedule and identified with data tags (computer-recognizable labels), which permits the data to be identified and analyzed by the EDGAR system. For example, when numbers representing a registrant's total current assets and total current liabilities for its last fiscal year are placed in the Financial Data Schedule, EDGAR can identify them and automatically calculate working capital.

As proposed, Financial Data Schedules would be required as exhibits pursuant to Item 601 of Regulation S–K. Filing of the Schedules as separate exhibits would facilitate the Commission's comment and amendment process with respect to Schedules containing errors or omissions. The proposed form of the Financial Data Schedules and items from financial statements and schedules, as well as other disclosures to be included, are set forth in the proposed Appendices to Item 601(c) of Regulation S–K. The exhibit index table to Item 601 of Regulation S–K would indicate the forms for which a Financial Data Schedule would be required. The specific instructions for preparing such schedules would be contained in the EDGAR Filer Manual. EDGAR could easily determine their presence or absence and automatically send a message to the filer if the required exhibit was missing. Unlike other exhibits, a missing Financial Data Schedule or one with an error that precludes its acceptance will not mean that the related filing is not accepted.[298] However, if the filing is not amended to add the Financial Data Schedule, the filing would be incomplete, and failure to include a required Financial Data Schedule would affect the subsequent use and availability of Forms S–2, S–3, S–8, F–2, and F–3.[299]

For example, under a proposed amendment to the Form S–2 eligibility requirements,[300] a registrant would not be eligible to use Form S–2 unless it had filed all Financial Data Schedules that it had been required to file pursuant to Item 601(c) of Regulation S–K. Comment is solicited as to whether it would be more appropriate to permit electronic filers to use Forms S–2, S–3, S–8, F–2 and F–3 if they had filed all required Financial Data Schedules for a more limited period such as three, five or seven years prior to filing the registration statement or such shorter period as the registrant had been subject to the Financial Data Schedule filing requirements. Moreover, as with any incomplete registration statement, failure to include the required Schedule would be a factor in considering whether to grant acceleration of the registration statement, where appropriate.

3. Data Required in Schedule

In the EDGAR Pilot, the data tagged schedule contained specific financial items required in financial statements pursuant to Regulation S–X.[301] These same items would be included in the EDGAR Financial Data Schedule required to be filed by commercial and industrial companies.[302] Companies in other industries also would be required to file Financial Data Schedules reflecting financial data relevant to their industry. The Schedules applicable to these companies would refer not only to specific items in Regulation S–X but also to specific items in the Commission's Securities Act and Exchange Act Industry Guides. For example, with respect to bank holding companies, the proposed Financial Data Schedule items [303] would be taken from a combination of items appearing in the registrant's financial statements required by Article 9 of Regulation S–X [304] and from data required under Securities Act and Exchange Act Industry Guide 3 (Statistical disclosure by bank holding companies).[305] Similar information also would be required with respect to savings and loan holding companies. With respect to insurance companies, the proposed Financial Data Schedule items would be taken from items in the registrant's financial statements required by Article 7 of Regulation S–X and from data required under Securities Act Industry Guide 6 and Exchange Act Industry Guide 4 (Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty insurance underwriters).[306]

The use of existing financial items in Regulation S–X and the Guides obviates the need to develop a definition for the specified items. However, the proposed Financial Data Schedule based on Article 5 of Regulation S–X may not be appropriate or useful with respect to broker-dealer or investment banking firms and may be difficult for such companies to prepare. Accordingly, the proposed rules provide that these companies may elect to file an alternative Financial Data Schedule.[307] The items listed in the proposed alternative Schedule for such entities are believed to have a commonly understood meaning and thus will provide sufficient uniformity without the need to refer to specific rules or other requirements.

Certain registrants include financial information from more than one Article of Regulation S–X in their consolidated financial statements. For example, a registrant may be required to present financial information not only from its primary commercial and industrial operations pursuant to Article 5 of Regulation S–X, but also from its insurance company subsidiary operations pursuant to Article 7 of Regulation S–X, Securities Act Industry Guide 6, and Exchange Act Guide 4. In such case, the registrant should file only the Financial Data Schedule that reflects financial data relevant to its primary industry, which, in the example above, would be the one required to be filed by commercial and industrial companies.[308]

Comment also is specifically requested on the proposed alternative schedule for broker-dealer or investment banking firms. Comment is solicited as to whether there are other companies, for example, real estate limited

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[298] If other exhibits contain an error that precludes their acceptance, the related filing will not be accepted. See Section III.C.1.b, *supra*, for a further discussion.

[299] The proposed amendment also would affect Forms S–4 and F–4, since a registrant must be eligible to use Forms S–3 or F–3 in order to incorporate periodic reports by reference into Forms S–4 or F–4. Similarly, registrants must be eligible to use Form S–2 or S–3 in order to incorporate by reference periodic reports into the proxy statement pursuant to Item 14 of Schedule 14A.

[300] Proposed General Instruction I.H.

[301] In the EDGAR Pilot, the schedule items were drawn from Article 5 of Regulation S–X, which relates to commercial and industrial companies.

[302] These items, and their references to financial statement items, are enumerated in the proposed Appendices to Item 601(c) of Regulation S–K.

[303] These items, consisting of balance sheet, income statement and industry guide figures and their financial statement and schedule references, are enumerated in the proposed Appendices to Item 601(c) of Regulation S–K, as are the items required for insurance companies and broker-dealers, as discussed below.

[304] 17 CFR 210.9–01, 210.9–02, 210.9–03, 210.9–04, 210.9–05, 210.9–06, and 210.9–07.

[305] 17 CFR 229.801(c) and 229.802(c).

[306] 17 CFR 229.801(f) and 229.802(d).

[307] Proposed Item 601(c)(5)(iv) of Regulation S–K.

[308] See proposed Appendix A to Item 601(c) of Regulation S–K.

partnerships and utilities, for which the proposed Financial Data Schedule based on Article 5 of Regulation S–X may not elicit appropriate information and may be difficult for such entities to prepare. Commenters should address specific items that should be included in any recommended Financial Data Schedules that would have a commonly understood meaning.

Although financial statements to Form S–18 registration statements are ordinarily prepared in accordance with generally accepted accounting principles (GAAP) rather than Regulation S–X, it is not anticipated that the preparation of Financial Data Schedules would impose a significant burden on Form S–18 registrants, as many of the Financial Data Schedule items are commonly found in GAAP. If adopted, registration statements on proposed Form SB–1 would require Financial Data Schedules with similar items of information.[309] Comment is solicited as to whether there are certain items of information in the Financial Data Schedules which would be burdensome for small business registrants to include.

Foreign private issuers who are subject to Exchange Act periodic reporting requirements and who prepare financial statements according to a comprehensive body of accounting principles other than United States GAAP are required to discuss in their annual reports the differences in accounting principles and reconcile variations in income statements and balance sheets resulting from those differences.[310] To the extent that foreign private issuers volunteer to file on EDGAR, they would be required to file Financial Data Schedules to the same extent as domestic issuers.[311] Comment is solicited as to whether Financial Data Schedules should be required from foreign private issuers and, if so, whether the Financial Data Schedules should include financial information based on the foreign accounting principles or the reconciled information, or both. Further, foreign private issuers, who under current rules generally must present financial information in the currency of the country in which they are incorporated or organized, may present a translation of financial statements into United States dollars for the most recent fiscal year and any subsequent interim period.[312] If foreign private issuers are required to file Financial Data Schedules, comment is requested whether financial information relating to foreign private issuers in Financial Data Schedules should be required to translated into dollars for the most recent fiscal year and if not, whether provisions should be made to include dollar information on an optional basis.

Under the proposed rules, registrants would file an initial Financial Data Schedule as an exhibit to the first electronically filed Exchange Act registration statement or periodic report or Securities Act registration statement on Form F–1, S–1, S–11 or S–18 (or proposed Form SB–1) after the registrant becomes phased in to EDGAR. Historical as well as current financial information would be included in the initial Financial Data Schedule except where the Schedule is filed as an exhibit to Form 10–Q, in which case the Schedule would provide information only for the quarter for which financial information is presented in the form.[313] If the initial Financial Data Schedule is filed as an exhibit to Form 10–Q, historical financial information would have to be included in the Financial Data Schedule filed as an exhibit to the first Form 10–K or above-referenced registration statement filed electronically.

If a Securities Act registration statement does not contain certified financial statements for the registrant's last full fiscal year (or for the life of the registrant if less than a full fiscal year) preceding the fiscal year in which the registration statement became effective, the registrant must file a special report furnishing certified financial statements for such last full fiscal year or other period, as appropriate.[314] Comment is requested as to whether these special reports should include a Financial Data Schedule for the period presented or instead the historical information should be presented in the Financial Data Schedule to the registrant's next annual report.

Once a company's historical financial information has been provided in a Financial Data Schedule, subsequent Financial Data Schedules would continue to be filed with quarterly and annual reports, but these schedules would provide information only for the most recent financial reporting period, *e.g.*, quarter or year. Comment is requested on whether the initial Financial Data Schedule filed by a registrant should be required to include historical information, as proposed, or whether it should include information only for the most recent financial reporting period, as proposed for subsequent Financial Data Schedules.

Although the Financial Data Schedule would not have to be filed by Exchange Act reporting companies in connection with a Form S–2, S–3, F–2 or F–3 registration statement, a subsidiary of a Form S–2, S–3, F–2 or F–3 level reporting company registering an initial public offering of investment grade debt securities [315] would be required to file a Financial Data Schedule on Forms S–2, S–3, F–2 or F–3 only. Comment is requested as to whether a subsidiary of a Form S–2, S–3, F–2 or F–3 level company registering an initial public offering of debt securities that is fully guaranteed by the parent company should be required to file a Financial Data Schedule. Comment is requested on the proposed approach and whether there are any alternative approaches.

Where information in financial statements is restated, e.g., to reflect an acquisition accounted for as a pooling of interests, an accounting principle change, a reorganization or recapitalization, or the correction of an error, the proposed rules would require the filing of an amended Financial Data Schedule. [316] The document header to the Financial Data Schedule would specify that information in the Financial Data Schedule had been restated.

The Commission requests comment on the proposed Financial Data Schedule system, particularly with respect to the use of formatted schedules to tag the required data, the data proposed to be included in such schedules, whether there is any need at the outset to include additional information from the Securities Act and Exchange Act Industry Guides, the treatment of restatements, and any other related matters. Comment is specifically

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[309] The Commission has proposed to replace Form S–18 with Form SB–1. See Release No. 33–6924 (March 12, 1992) (57 FR 9768).

[310] See Items 17 and 18 of Form 20–F.

[311] For example, Financial Data Schedules would be required as exhibits to certain registration statements, such as Forms F–1, as well as certain periodic reports, such as Forms 20–F and 40–F (17 CFR 249.240f).

[312] Regulation S–X Item 3–20(b) (17 CFR 210.3–20(b)).

[313] Historical financial information would be provided in the Financial Data Schedule for the periods reflected in the Form 10–K or registration statement financial statements. Since the proposed rules provide that if the first filing to be made after a registrant becomes subject to the electronic filing requirements is a Form 10–K it may be filed in paper format, it is likely that many electronic filers would file an initial Financial Data Schedule as an exhibit to Form 10–Q.

[314] Exchange Act Rule 15d–2 (17 CFR 240.15d–2).

[315] An "investment grade security" is defined in General Instruction I.B.2 of Form S–3 as a non-convertible debt or preferred security if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (see Exchange Act Rule 15c3–1(c)(2)(vi)(F) (17 CFR 240.15c3–1(c)(2)(vi)(F))) has rated the security in one of its generic rating categories which signifies investment grade.

[316] Proposed Item 601(c)(3)(iii) of Regulation S–K.

solicited as to whether there would be any value to adding line items relating to property, plant and equipment and intangibles to the Financial Data Schedules for commercial and industrial companies. The Commission also requests suggestions on alternatives to the schedule format, including whether there should be additional types or items of data, or fewer items of data. For example, items relating to current portions of long-term debt and short-term borrowings could be included in the Financial Data Schedule relating to commercial and industrial companies.

The Commission is considering whether the Financial Data Schedules also should require *pro forma* financial information, *i.e.*, financial information prepared to show the effect on a registrant's historical financial statements of a proposed or consummated transaction, such as a business combination or an acquisition or disposition of a business. [317] Initially, the Commission proposes to exclude pro forma information from the Financial Data Schedule requirement for filers subject to review by the Division of Corporation Finance. [318] Thus, financial information reflecting the consummation of acquisitions or dispositions of a business would be reflected in the Financial Data Schedules filed with the first quarterly or annual report filed after consummation of the transaction. [319]

4. Liability for the Financial Data Schedule

Commenters responding to the Advance Notice expressed concern regarding liability under the federal securities laws resulting from furnishing data tagged schedules since the data, which would be available to the public, would not be in the context of the full financial statements and footnotes. In response to these concerns, the proposed rules would permit registrants to qualify an item in the Financial Data Schedule by referencing notes to the Financial Data Schedule or notes to the financial statements [320] or placing a qualifying legend on the Financial Data Schedule. [321]

The proposed rules also include a safe harbor provision [322] stating that any item provided in the Schedule, in accordance with the rules governing the Schedule, will not be subject to liability under the federal securities laws, except to the extent that the financial statements and other information from which the data were extracted violated the federal securities laws. Finally, the proposed rules provide that Financial Data Schedules are not deemed "filed" for purposes of Section 11 of the Securities Act, Section 18 of the Exchange Act, or Section 323 of the Trust Indenture Act, or otherwise subject to the liabilities of such sections. [323] Comment is solicited whether these measures are necessary or appropriate. In addressing the issue, commenters should consider that this data will have been extracted from the registrant's financial statements and footnotes.

E. Graphic and Image Material

1. General

While most information filed with the Commission is textual and financial material, limited graphic and image material, such as pictures, graphs and company logos, ("graphic material") is contained in documents submitted to the Commission and disseminated in paper. Because of difficulties associated with sending and interpreting graphics and image material in electronic submissions, it is not anticipated that EDGAR initially will accommodate electronic submission of graphic material. [324] However, the feasibility of providing for the receipt of at least limited graphics continues to be explored.

Under the proposed rules, electronic filers must list in an appendix any omitted graphic material and provide a fair and accurate narrative description of such material. If the substantive information conveyed by the omitted graphic material is narratively described in all material respects in the body of the electronic filing, the appendix simply would list the omitted material and cross-reference the section of the filing containing the description of such material. [325] Unlike the Pilot requirements, electronic filers would not be required to describe differences relating to corporate logos, pagination, color, or type size and style. [326]

For example, if a paper format document contained a pie chart showing percentages and dollar amounts of revenue by source, the pie chart would be omitted from the filing in electronic format and replaced by a narrative description in an appendix to the electronic filing, or by a narrative description of the chart in the text of the filing, such as in the management's discussion and analysis section, [327] with a reference to that section in an appendix to the electronic filing.

As another example, if a paper format document contained a photograph, an appendix to the electronic format document would have to list the photograph and include a brief description of the subject matter depicted by the photograph. The graphic material would have to be narratively described in all material respects to ensure that those relying on EDGAR dissemination rather than paper delivery have complete information.

The Commission also proposes to eliminate the current requirements in Forms 8–A and 18 [328] that copies of securities certificates be filed. This revision would apply to both electronic and paper filers.

Comment is requested on the proposed treatment of graphic and image material in general. Specific comment is solicited with respect to the proposed requirement that an appendix containing a listing and description of omitted graphic material be filed with electronic format documents. Further, in light of the Commission's proposed rulemaking to enhance disclosure relating to executive compensation, [329]

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[317] The requirements for the preparation of *pro forma* financial information are contained in Article 11 of Regulation S–X (17 CFR 210.11–01, 210.11–02, and 210.11–03).

[318] Proposed Item 601(c)(1)(v) of Regulation S–K. *Pro forma* financial information will be required in financial data schedules submitted pursuant to PUHCA.

[319] Since foreign issuers generally do not file Forms 10–Q, their first Financial Data Schedule reflecting the consummated acquisition/disposition would be a Form 20–F. No Financial Data Schedule would be required with a Form 6–K (17 CFR 249.306).

[320] Proposed Item 601(c)(3)(ii) of Regulation S–K.

[321] See proposed Item 601(c)(3)(i) of Regulation S–K, which would permit registrants to place the following legend on their Financial Data Schedules: THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM (Identify specific financial statements) AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH (Identify filing).

[322] Proposed Item 601(c)(1)(iii) of Regulation S–K.

[323] Proposed Rule 104 of Regulation S–T and proposed Item 601(c)(1)(iii) of Regulation S–K. Information in the Financial Data Schedules taken from financial statements, schedules and disclosures in response to industry guides, would continue to be subject to liability under Sections 12(2) (15 U.S.C. 77l(2)) and 17(a) (15 U.S.C. 77q(a)) of the Securities Act and Section 10(b) (15 U.S.C. 78j(b)) of the Exchange Act, except as provided in the safe harbor provision.

[324] See Section IV.B, *supra*, addressing the treatment of annual reports to security holders.

[325] Proposed Rule 205 of Regulation S–T.

[326] The Temporary Rules have been amended to be substantially similar to the proposed Rule. See Securities Act Rule 499(d)(3), Exchange Act Rule 12b–37(d) and Trust Indenture Act Rule 0–12(d), as amended, effective July 15, 1992.

[327] Requirements for the management's discussion and analysis section are found in Item 303 of Regulation S–K (17 CFR 229.303).

[328] 17 CFR 249.218.

[329] See Release No. 33–6940 (June 23, 1992) (57 FR 29582).

commenters are requested to address the feasibility and desirability of developing the capacity in EDGAR to accept graphic materials that present information relating to executive compensation, and requiring submission of that graphic information rather than a description in an appendix.

2. Liability

Under the proposed rules, the narrative description of graphic material appearing in the body of the electronic format document or appendix thereto and the graphic material in the paper format document would be subject to the liability and anti-fraud provisions of the federal securities laws. Thus, electronic filers would be responsible for the substance and accuracy of graphic material as well as the narrative description of such material.[330] Electronic filers would be required to retain copies of a paper document containing graphic and image material for five years after the filing date of the document or date appearing on the document whichever is later.[331] Under the proposed rules, copies of the retained documents would have to be furnished to the Commission or staff upon request.[332] Comment is solicited whether there should be a shorter retention period, such as three years, or a longer period, such as ten years.[333] Commenters should provide the rationale for recommended retention periods.

F. Redlining Changed Materials

During the initial stages of EDGAR, the proposed rules would require electronic filers to redline changed material by inserting tags at the beginning and end of each paragraph containing a change.[334] Because of the format of financial statements and notes thereto, changes to this information would not have to be marked.[335] In order to relieve electronic filers from the burden of marking materials to reflect changes, the Commission is developing a system that will permit the staff to compare at their workstations documents as originally filed and as amended.

G. Rule and Form Changes Facilitating Electronic Filing

1. General

A new paragraph captioned "Electronic Filings" containing technical requirements applicable to electronic filers would be added to existing rules and forms as necessary. Electronic filers also would be referred to Regulation S–T and the EDGAR Filer Manual as appropriate.

The rules and forms would clarify, where necessary, that the following requirements applicable to paper filings do not apply to filings in electronic format: the requirement to submit multiple copies of documents to the Commission; the requirement that documents submitted to the Commission be signed manually; and requirements regarding paper size, type size, sequential page numbering, and binding. Furthermore, references in the forms and rules to foreign currencies would be revised to indicate that, in electronic filings, foreign currency denominations must be expressed in words or letters in the English language and not in representative symbols. Regulation S–T also would include definitions that reflect electronic filing requirements.[336]

Where the rules or forms require presentation of graphic materials, electronic filers would be directed to the graphic and image material rule of proposed Regulation S–T,[337] which provides that such material must be described rather than submitted in an electronic filing. Further, the definition of terms in Regulation C under the Securities Act would be expanded to state that the term "graphic communications" which appears in the definition of "write," or "written" in Section 2(9) of the Securities Act,[338] includes magnetic impulse or other form of computer data compilation.[339] The changes outlined below also would be made to facilitate electronic filing.

2. Supplemental Information

Under the proposed amendments, electronic filers would be required to submit supplemental information in paper format if return of the information after staff review was requested and/or the information was the subject of a confidential treatment request under Rule 83, which would protect it from public disclosure under the Freedom of Information Act.[340] An electronic filer that claims protection of supplemental information from public disclosure must provide written substantiation of such claim.[341] Supplemental information that is submitted in electronic format would be retained in the non-public EDGAR storage area along with all other correspondence.

3. Descriptions of Securities

Currently, descriptions of securities may be incorporated by reference in Form 10–K from previously filed documents. However, because descriptions of securities are an important element of the disclosure system, the Commission proposes to amend the Exchange Act Form 10-K exhibit requirement[342] to require

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[330] Proposed Rule 305(b) of Regulation S–T. The graphic material disseminated to shareholders in paper would be deemed to be part of the electronically filed document for purposes of the liability and anti-fraud provisions of the federal securities laws. This is not the case under the provision of the amended Temporary Rules relating to graphic materials [17 CFR 230.499(d)(3)].

[331] Proposed Rule 305(c) of Regulation S–T. The amended Temporary Rules do not contain a similar provision.

[332] *Id.*

[333] The three-year period comports with the Securities Act Section 13 [15 U.S.C. 77m] and Exchange Act Section 18 statute of limitations periods.

[334] Securities Act Rule 472(a) [17 CFR 230.472(a)] requires that a registration statement be marked (*i.e.*, redlined) to indicate the changes effected by an amendment to the registration statement. Exchange Act Rule 14a–6(i) [17 CFR 240.14a–6(i)] requires that any amended or revised proxy materials be marked to indicate changes effected therein. Both of these rules would be amended to refer to the EDGAR Filer Manual for instruction on how to mark electronic format documents for changes. The tags reflecting changed material would be deleted prior to public dissemination of the changed material.

[335] In the Advance Notice, the Commission stated that it anticipated proposing that an asterisk or similar symbol be used at the end of any line containing changed material and the EDGAR Pilot procedures incorporated that approach. The amended Temporary Rules, however, require tags to indicate changes. See Securities Act Rule 499(d)(5), Exchange Act Rule 12b–37(d) and Trust Indenture Act Rule 0–12(d), as amended, effective July 15, 1992.

[336] See generally, Rule 11 of Regulation S–T. For example, Rule 11(m) would define the term "official filing" to mean a microfiche copy, prepared in compliance with the Commission's administrative regulations and other requirements, of a registration statement, report or other document filed under the federal securities laws, regardless of filing medium, and exclusive of header information, tags and any other technical information required in an electronic filing. The term "original," when used or implied in the federal securities laws, rules, regulations or forms, would be defined to include the writing itself or any counterpart intended to have the same effect by a person executing or issuing it; if data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, would be an original. See proposed Rule 11(n).

[337] Proposed Rule 205 of Regulation S–T.

[338] 15 U.S.C. 77(b)(9).

[339] Proposed definition of "graphic communications" in Securities Act Rule 405 [17 CFR 230.405]. This is the same as in the Temporary Rules, both before and after amendment. See, e.g., amended Securities Act Rule 499(c)(8) [17 CFR 230.499(c)(8)].

[340] Supplemental information is submitted pursuant to Securities Act Rule 418 [17 CFR 230.418], Exchange Act Rule 12b–4 [17 CFR 240.12b–4] and Rule 83 of the Commission's Regulation Concerning Information and Requests [17 CFR 200.83]. See also Proposed Rule 210 of Regulation S–T.

[341] Proposed Rule 210(b) of Regulation S–T.

[342] Descriptions of securities would be filed pursuant to proposed Item 601(b)(3)(iii) of Regulation S–K.

electronic and paper filers to provide an exhibit that describes each class of the registrant's equity securities,[343] excluding convertible debt securities, registered under Exchange Act Section 12 or 15(d).[344] The description of securities would be required in the first electronically filed Form 10–K. Thereafter, if not amended, the exhibit may be incorporated by reference into future filings. This requirement would ensure that an up-to-date description of securities in electronic format could be easily located. Comment is solicited as to whether convertible and non-convertible debt securities registered under Exchange Act Sections 12 and 15(d) also should be described in an exhibit to Form 10–K.

4. Going Private Filings

Schedule 13E–3 would be amended to require all filers, both paper and electronic, that incorporate a preliminary proxy or information statement into a Schedule 13E–3 to resubmit, with the definitive copy of the schedule, current versions of all exhibits previously filed on a non-public basis.[345] Currently, unless filers voluntarily resubmit the exhibits previously filed with the preliminary Schedule 13E–3, along with the definitive copy, members of the public must submit a Freedom of Information Act request to gain access to them.[346] Comment is requested on the proposed approach.

5. Fee Tables

Under the proposed rules, both paper and electronic registrants would be required to disclose in a note to existing fee tables the basis for fee calculations in connection with the registration of securities pursuant to the Securities Act.[347] This information would facilitate verification that required fees are paid. Moreover, cover pages containing fee tables would be added to proxy and information statements.[348] Paper and electronic filers would be required to reflect in notes to the proxy and information statement fee tables any offset fees [349] that had been paid with other filings and identify such filings.

6. Schedules 13D and 13G

Under the proposed rules, a Schedule 13D or 13G or amendment thereto must be filed electronically if the company to which the schedule relates has been phased into EDGAR.[350] As a result, situations may arise where a Schedule 13D or 13G that was initially filed in paper must be amended electronically because the registrant becomes subject to the electronic filing requirements subsequent to filing of the Schedule but prior to filing of the amendment. In this situation, a complete copy of the Schedule 13D or 13G, as amended, including all exhibits currently in effect, would have to be filed in electronic format.[351] The importance of Schedules 13D and 13G to the investing community and the fact that the informational value of Schedules 13D and 13G generally does not diminish over time support the need for the electronic restatement of Schedules 13D and 13G in their entirety. Comment is requested regarding the need to restate these schedules in their entirety at the time of first amending them in electronic format.

7. Schedules 14A, 14B, and 14C

Under the proposed rules, a new cover page would have to be filed in connection with all Schedule 14A, 14B, and 14C proxy and information statements.[352] The Schedule 14A and 14C cover pages would require filers to: (a) Indicate whether a preliminary proxy statement or definitive proxy statement (or, regarding Schedule 14A filers, soliciting material pursuant to Rules 14a–11(a) or 14a–12) was being filed; (b) name the registrant to which the proxy statement relates as well as the name of the filer; (c) provide filing fee information; and (d) disclose specified information concerning the securities to which the transaction discussed in the proxy or information statement relates.[353] The Schedule 14B cover page would require filers to disclose the names of the registrant and participant(s) to which the schedule relates.[354]

8. Form 11–K

In lieu of the Form 11–K financial statements, employee benefit plans subject to the Employment Retirement Income Security Act of 1974 ("ERISA") [355] may file plan financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA. Since the electronic filing of ERISA financial statements on EDGAR would be difficult at present, due to their specialized format, the proposed rules [356] provide that these financial statements may be filed in paper under cover of Form SE.[357]

V. Other Matters

A. EDGAR Filer Manual

The Advance Notice pointed out that an EDGAR Pilot User Manual and updates had been issued to provide technical procedures for electronic filing under the Pilot. The Commission indicated that it anticipated taking a similar approach in the operational system. In April 1991, a draft EDGAR Filer Manual for the operational EDGAR system was issued to Pilot filers setting out the technical format requirements for an electronic submission, and updated versions were disseminated in January 1992 and again in June 1992. Compliance with the technical format requirements will be essential, since failure to comply with certain formatting requirements could delay the acceptance of an electronic submission.

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[343] The description of securities would provide the information required by Item 202 of Regulation S–K [17 CFR 229.202].

[344] 15 U.S.C. 78l and 15 U.S.C. 78o(d).

[345] See proposed General Instruction I of Schedule 13E–3.

[346] Currently, the Office of Tender Offers of the Division of Corporation Finance requests the resubmission of these exhibits when issuing comments on Schedule 13E–3 filings that incorporate preliminary proxy or information statements. The proposed amendment would make the exhibits publicly available without the need for a Freedom of Information Act request. With respect to EDGAR filers, the exhibits could be submitted as modular submissions and then used as part of multiple filings. On June 23, 1992, the Commission reproposed for comment amendments to the proxy rules that would eliminate the non-public status of many preliminary proxy statements filed with the Commission. See Release No. 34–30849 (June 23, 1992) [57 FR 29564].

[347] Registrants would be required to specify the paragraph of Securities Act Rule 457 [17 CFR 230.457] relied upon to calculate the registration fee.

[348] Proposed Exchange Act Rules 14a–6(n) and 14c–5(h). The fee tables would reference Exchange Act Rule 0–11 [17 CFR 240.0–11]. Additional information unrelated to fees also would have to be disclosed on the cover pages. See Section IV.G.7, *infra*.

[349] See the fee offset provisions of Securities Act Rule 457(b) [17 CFR 230.457(b)] and Exchange Act Rule 0–11(a)(2) [17 CFR 240.0–11(a)(2)].

[350] See Appendix E, the Division of Corporation Finance's Phase-In Schedule for EDGAR. See also Section III.C.2, *supra*, for discussion regarding Schedules 13D and 13G being filed by an electronic filer with respect to a paper filer.

[351] Proposed Rule 100(b)(2) of Regulation S–T. The Schedule 13D or 13G would have to be restated in electronic format in its entirety only one time, *i.e.*, only at the time that the first amendment to the schedule is filed after the subject company becomes an electronic filer.

[352] The proposed new cover page requirement would apply to paper as well as electronic filers. Currently, information concerning the nature of the transaction and fees generally is included in cover letters attached to Schedules 14A, 14B and 14C.

[353] The cover sheet for Schedule 14A and Schedule 14C information would not be required to be disseminated to security holders.

[354] These cover pages would be updated as necessary to reflect any changes made to the proxy rules in the future.

[355] Pub. L. No. 93–406, 88 Stat. 829 (codified at 29 U.S.C. 1001, *et seq.*).

[356] See Proposed General Instruction E to Form 11–K.

[357] 17 CFR 249.444.

The EDGAR Filer Manual and updates will be available generally in paper, as was the case with the EDGAR Pilot User Manual.[358] They also will be available immediately upon issuance in electronic format through the EDGAR electronic bulletin board.[359] When the number of updates makes the EDGAR Filer Manual unwieldy, a complete, updated and integrated version will be issued. In addition, commercial services may publish the EDGAR Filer Manual and updates.

B. Data Tagging

In order to receive and process information from many sources, an electronic system such as EDGAR requires a uniform means of identifying information, commonly referred to as "data tagging." Tags enable the system to recognize and process information automatically, without human intervention. The limited data tagging scheme employed in the EDGAR Pilot has been replaced in EDGAR by a widely accepted scheme that is easy to use and will lend itself to further development. This scheme involves the use of Standard Generalized Mark-up Language ("SGML") tags to alert EDGAR to particular data in a submission. SGML tags are created by inserting the tag name between an opening angle bracket and a closing angle bracket, such as "⟨FILER⟩." Information following tags, or included between beginning and end tags, such as "⟨TABLE⟩" and "⟨/TABLE⟩," will be distinguished from the text of the document.[360]

Some tags will be required in all submission headers.[361] If these tags are not included, the submission will be suspended. Submission header tags identify, among other things, the registrant, the type of filing, and the number of documents filed with the submission.[362] For example, if a registrant filed a Form 10–K, the submission header would include, in addition to information as to the identity of the registrant and other items, the tag "⟨TYPE⟩" followed by "10–K." If this information was not included, or if an indicated form type was not recognized by EDGAR, the filing would be suspended until the submission was corrected.

Other tags are required in a submission based on its contents. For example, a submission containing a Form 10–K would be required to include a number of tags in the submission header, including the tag "⟨PERIOD⟩" followed by the end date of the period covered by the report. A document header also would be required at the beginning of each document being submitted in connection with the annual report. For instance, the registrant would identify Exhibit 9, voting trust agreements, in the document header by using the tags "⟨DOCUMENT⟩⟨TYPE⟩" followed by "EX–9."

Other examples of tags required in submission headers of specified submissions include: "⟨FILE-NUMBER⟩" required for amendments to Securities Act registration statements; "⟨ITEMS⟩" required in current reports on Form 8–K to identify the item of the Form to which the filing relates; "⟨AUDITOR⟩" used to identify the auditor in any filing containing audited financial statements; "⟨EQUITY⟩," "⟨DEBT⟩," or "⟨CONVERTIBLE⟩," indicating the total dollar amount of the securities on which the filing fee is based; and "⟨FEE-PAID⟩" indicating the amount of filing fee paid with the filing submitted.[363] A "⟨BOX405⟩" tag also would be included in a Form 10–K submission header where the company could represent that its insiders had not failed to timely file reports pursuant to Section 16 of the Exchange Act.[364]

Some tags are required to be inserted in the body of an electronic filing, not in the submission header. For example, until another method is developed, tags must be used to identify any portions of the text that have been changed from a previously filed document. This redlining method is accomplished by inserting the tag "⟨R⟩" at the beginning of a paragraph containing the changed information and by ending the paragraph with the changed material with the tag "⟨/R⟩."[365]

As discussed in detail above,[366] it is proposed that tags will be required in the Financial Data Schedules to facilitate filing the schedules in a standard format. Preformatted tagged schedules will be used to identify specified financial data from the registrant's financial statements, schedules and other disclosure requirements, such as industry guides.

It also is proposed that tags be required to identify any information presented in tabular or columnar format that exceeds 80 positions in width, up to 132 characters per line, including blank spaces. The proposed rules require that data not exceed 80 positions, except tables and columns that have been appropriately tagged, in order that the Commission's official microfiche copies, limited to 80 positions including blank spaces, will be intelligible.[367] The 80-position limit also permits electronic dissemination through personal computers, which generally employ an 80-position screen. Any submission containing data exceeding the 80-position limit that is not properly tagged will be suspended by EDGAR. This tagging scheme is particularly important in the case of financial statements, which usually exceed 80 positions in width because of the number of the required reporting periods (*e.g.*, three years and comparative interim periods).

Under the proposed procedures, filers must include the tag "⟨TABLE⟩" at the beginning of the data that will exceed 80 positions and place the tag "⟨/TABLE⟩" following the wide data. Tags must be used within tables and charts that exceed 80 positions to designate table headings ("⟨CAPTION⟩"), stub entries ("⟨S⟩"), columns ("⟨C⟩"), and

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[358] The draft EDGAR Filer Manual is available from Disclosure Inc., Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, NW., Washington, DC 20549, or call (800) 638–8241 or (301) 957–1350.

[359] See Section V.E, *infra*, regarding the filer's option to subscribe to the EDGAR electronic bulletin board.

[360] All non-public tagged information will be removed prior to dissemination.

[361] See Section II.D.4., *supra*, for a discussion of headers.

[362] The following tags are required in all submission headers: ⟨SUBMISSION⟩ marks the beginning of a submission; ⟨TYPE⟩ marks the type of submission being filed, *e.g.*, form type, module or segment; ⟨DOCUMENT-COUNT⟩ indicates the number of documents included in the submission; ⟨FILER⟩ marks the beginning of filer identification and is to be followed by tags related to the filer's identification information ⟨CIK⟩ and ⟨CCC⟩ (if there are filings from multiple filers on a single submission, each filer would be identified at the beginning of the appropriate portion of the submission by including the ⟨FILER⟩ tag at the beginning of that portion—an optional tag ⟨/FILER⟩ may be included to indicate the end of filings from that filer); and ⟨/SUBMISSION⟩ marks the end of a complete submission.

[363] See the EDGAR Filer Manual for a complete list of required tags and when they are to be used.

[364] 15 U.S.C. 78p. Since some registrants cannot make that representation, the tag will not be included in the Form 10–K submission header. See Item 405 of Regulation S–K [17 CFR 229.405]. Consequently, unlike the other tags cited above, the absence of this tag will not cause the filing to be suspended.

[365] See Section IV.F, *supra*, for a discussion of marking changed material.

[366] See Section IV.D, *supra*, for a detailed discussion of Financial Data Schedules.

[367] Since data reproduced on microfiche is limited to 80 characters in width, any portion of an electronic submission exceeding that limit requires special processing in order to be reproduced in its entirety. Once data is identified by the microfiche contractor as exceeding 80 characters in width by locating the table tags, all of the information may then be processed. Without the tags, identification of such information is more difficult and the risk of incomplete reproduction on microfiche increases.

footnotes that are to be separated from numerical data ("⟨FN⟩").[368]

Tabular and columnar information that does not exceed 80 characters in width may, but need not be, tagged. Since tagging provides flexibility and ease in identifying, evaluating and disseminating electronic data, filers are encouraged to use the SGML tags for all tables and other data in columnar format. Nevertheless, filers have the option of avoiding these tagging requirements altogether by presenting financial or other tabular or columnar information in some readily comprehensible format that uses 80 positions or less, even if the information is displayed on multiple pages. Comment is solicited as to whether all tabular information that does not exceed 80 characters in width should be marked with a beginning table tag (*e.g.*, "<TABLE>") and an end table tag (*e.g.*, "<TABLE>") to enable disseminators to identify all tables in a document. Commenters who address the issue should specify the benefits and burdens associated with this approach.

In addition to required tags, the EDGAR system has been designed to accommodate tags that may be included voluntarily to aid in the processing and presentation of electronic filings. For instance, if a filer desires to begin a new page at a point other than would be imposed automatically by EDGAR, the tag "<PAGE>" may be used to identify where the new page begins. The use of this tag is encouraged to ensure that information is presented in the format desired by the filer. The "<SRO>" tag may be inserted to identify the national securities exchange on which the subject securities are listed, if any, or the national securities association whose facilities are used to disseminate quotation information. If the filer intends to use information from a previously submitted modular submission in a filing, tags must be used to indicate where that information should be inserted.[369] Further, it is strongly recommended that filers include tags identifying a person the staff may contact if there are any questions regarding the electronic submission, as well as a telephone number where that person can be reached (*i.e.*, "<CONTACT>," "<NAME>," and "<PHONE>"). These contact identification tags are easily inserted by using the EDGARLink software or by manually typing them in submission headers.[370]

The Commission solicits comment on the costs and benefits of the proposed data tagging scheme, and asks that commenters indicate specifically which tags may be most helpful or most burdensome. Both the costs to the filers and the benefits to users of the information should be considered. Comment also is solicited on whether tags should be mandatory or optional, recognizing that if mandatory tags are not supplied, filings will be suspended and that the public would not have access to the information until the filing was corrected. Comment also is requested as to whether any of the proposed optional tags, such as the "<SRO>" tag, should be mandatory because of the necessity or usefulness of the information.

In addition, because data tagging is helpful to the staff and to the public in identifying information within an electronic submission, the Commission is considering additional tags that could aid in the processing and analysis of filings made with the Commission in electronic format. For example, should there be tags to identify unaffiliated market capitalization as of the close of the quarter, to indicate the amount of offering expenses and other offering information, or to identify other data provided on the facing page of registration statements? Should such tags be mandatory or optional? Commenters are encouraged to suggest other types of information for which tags would be useful in processing and analyzing electronic submissions.

C. One-Stop Filing

Companies whose securities are listed on a national securities exchange are required to file copies of Exchange Act reports and other documents with the stock exchanges.[371] In addition, copies of registration statements and other documents relating to proposed public offerings of securities must be filed with the National Association of Securities Dealers ("NASD") [372] and the states.[373] Frequently documents filed with the Commission are used to satisfy self-regulatory organization ("SRO") and state blue sky law requirements with respect to securities offerings. As indicated in the Advance Notice, the Commission has been working with the SROs, including the exchanges and the NASD, and the states through the North American Securities Administrators Association ("NASAA") to develop a system in which EDGAR filings could be used to satisfy the requirements of the various parties and will be available when fully developed.

It is contemplated that EDGAR would provide various SROs and the states, via NASAA, with a direct feed of SRO and state required public filings that are designated for such treatment by an electronic filer, in priority order of acceptance. An electronic filer would indicate that a filing should be forwarded to an SRO or the states by including an optional tag in the submission header.[374] Under the contemplated system, the SROs and the states would furnish the connection with EDGAR and maintain facilities to receive filings directed to them. The states and SROs would be able to obtain other public filings through access to the public EDGAR database by a low priority query of the EDGAR system. The contemplated system would permit the SROs and the states, at their option and expense, to use the EDGAR electronic mail/bulletin board system and develop a communications system to notify filers and their agents regarding the status of their SRO or state filing. All electronic filings obtained by the states or SROs via EDGAR could be used solely for regulatory purposes.

D. Paper Copies

1. Paper Copies Required From Electronic Filers

The EDGAR Authorization Act requires electronic filers to submit paper copies of electronic filings for at least the first year after they are mandated to file electronically (or for such shorter period that the Commission determines is appropriate).[375] Accordingly, unless

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[368] See appendix D for an example of how tabular information exceeding 80 positions in width is to be tagged.

[369] See Section IV.A, *supra*, for discussion of modular submissions.

[370] Other optional tags are described in the EDGAR Filer Manual.

[371] Section 13(a) of the Exchange Act [15 U.S.C. 78n(a)].

[372] NASD Manual (CCH) ¶ 2151.02.

[373] States often coordinate their securities laws filing requirements with those of the federal government. See, *e.g.*, Cal. Corp. Code 25111(b) (West Supp. 1992); Pa. Stat. Ann. tit. 70, 1–205 (Purdon Supp. 1991); and Tex. Rev. Civ. Stat. Ann. art. 581–7 (Vernon Supp. 1992).

[374] Electronic filers could submit to the states via EDGAR only filings that also are filed under the federal securities laws. In addition, they could file on EDGAR a new form to be proposed by NASAA, Form EU–1, for state filings relating to previously or simultaneously submitted federal filings. Submissions on the proposed Form EU–1 would then be routed through the EDGAR system to the states' system for further processing. It is not currently anticipated that the EDGAR system will accept other filings required only by state law.

[375] See Section 35A(d) of the Exchange Act [15 U.S.C. 78*ll*(d)]. As Transitional Filers are volunteers, they are not required to submit paper copies of their filings until they are mandated to file electronically.

expressly notified otherwise by the Commission, a filer making any filing on EDGAR, including Williams Act and tender offer submissions, would be required to furnish the Commission with a paper copy of each electronic filing for one year after its mandated electronic filing date.[376] Either paper printouts of the EDGAR filing or traditional paper filings will be acceptable. If the copy being submitted is a paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual must be omitted to ensure that confidential information contained in the header remains non-public. Only one paper copy of the filing need be submitted. Signatures would not be required in the paper filing.

To avoid confusion with a paper filer or a paper filing made pursuant to a temporary hardship exemption, the following legend would be required to be set forth on the paper copy: THIS CONFORMING PAPER FORMAT DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 300(d) OF REGULATION S–T.[377] The requirement to submit paper copies applies only to filings under the Securities Act, Exchange Act, and Trust Indenture Act, not to other submissions, such as the correspondence accompanying such filings.[378] The paper copies must be received by the Commission no later than six business days after the electronic filing. Paper copies will be retained by the Commission for two months following their submission. Microfiche made from the electronic filing will constitute the Commission's official filing. Comment is solicited as to whether a six business day submission period is sufficient for submitting the copy or whether the period should be shorter or longer, for example, three business days or ten business days.

2. Paper Copies of Electronic Filings from the Commission

In connection with implementation of the EDGAR system, some filers may want to have for their records a paper copy of the electronic document accepted and filed with the Commission. Filers may request, at their expense,[379] paper copies of test and live filings through the Commission's paper and microfiche services contractor by so indicating in the submission header, or upon written request, a printout of the public filing from the EDGAR terminal located in the Commission's public reference rooms.[380] Paper copies of the filed electronic document also may be available from other vendors offering such services. Electronic mail subscribers may request return copies, at their expense, of test and live filings by so indicating in the submission header. The return copy will be transmitted to the filer's electronic mailbox for downloading and printout by the filer.

E. EDGAR Electronic Mail/Bulletin Board

Filers will have the option to subscribe to the EDGAR electronic mail/bulletin board service, which will provide for rapid electronic communications from the Commission. Filers who do not subscribe to this optional service, which will function in connection with, but separately from EDGAR,[381] will receive communications from the Commission, as is currently the case, through first-class United States mail.[382]

At the outset, the electronic mail service will be available for EDGAR to send acceptance and suspense (*i.e.*, errors found) messages, as well as return copies of electronically filed documents, at a cost borne by the subscriber. In addition, subscribers will be able to receive, at their expense, general communications regarding EDGAR, such as updates to the EDGAR Filer Manual, through the service's bulletin board feature. Additional services may be added in the future, such as electronic mail transmission of staff no-review and comment letters.[383]

Those who subscribe to this service will contact the service through a personal computer modem to determine whether any electronic mail or bulletin board messages are waiting. If any messages are waiting, the service will so advise. The subscriber may access the message through the modem, read it on the personal computer screen, and request that a paper copy be printed on the personal computer's printer or sent by facsimile transmission or first-class United States mail. Communications from the Commission via the electronic mail/bulletin board service will be directed only to those who are identified by an EDGAR filer in a submission header and who are themselves subscribers.

F. Effect of EDGAR on Paper Filers

1. Documents Delivered to Security Holders

The proposed EDGAR rules would not affect the obligation of paper or electronic filers to deliver to security holders paper copies of documents such as prospectuses, tender offer materials, and proxy or information statements. The proposed rules would, however, afford all registrants filing on Form S–2 and S–4, or providing information pursuant to Item 14 of Schedule 14A, the option to deliver with the prospectus the Form 10–K rather than the annual report to security holders, regardless of paper or electronic filing status.[384]

2. Documents Filed with the Commission

Under the proposed rules, the following documents no longer would be submitted to the Commission by either paper or electronic filers:

(1) The annual report to security holders furnished to the Commission under the proxy rules, provided that all of the information required to be disclosed in the annual report is included in the Form 10–K;[385] and

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[376] Proposed Rule 300(d) of Regulation S–T.

[377] *Id.*

[378] Consistent with this approach, paper copies would not be required of modules or segments submitted on EDGAR for subsequent inclusion in a filing or filings. See Section IV.A, *supra*, for a discussion of modular and segmented filing.

[379] The cost is the scheduled rate for paper copies obtained from the Commission through the Commission's paper and microfiche services contractor with one-day response. The paper copies will be sent via first-class U.S. mail. Alternatively, the filer or its agent may contact the Commission's paper and microfiche services contractor regarding expedited delivery.

[380] Paper copies of test filings will be sent to the party who logged onto the EDGAR system to make the test filing. Paper copies of live filings will be sent to the registrant, whether submitted by the registrant or by an agent. If several registrants are listed on the filing, the paper copy will be sent only to the first registrant listed.

[381] Subscribers will be charged a one time sign-up fee by the Commission's electronic mail vendor; thereafter, they will be billed on a monthly basis for continued service.

[382] The status of a filing will be conveyed by only two means: direct mail or the optional EDGAR electronic mail system. As receipt and acceptance will be automated, it is not anticipated that staff will be available to respond to telephone inquiries regarding the receipt and acceptance of a particular filing. See Section III.D.2, *supra*, regarding receipt and acceptance. If a filer receives a suspense message, the filer support staff will be available to assist the filer during the six-business day period the filing is in suspense.

[383] While filers cannot use the EDGAR electronic mail service to submit communications, such as responses to staff comments, to the Commission, such communications could be submitted electronically via EDGAR as correspondence, so long as the correspondence related to an electronic filer and the person submitting the correspondence was an electronic filer. Correspondence transmitted through EDGAR will be routed to the appropriate processing branch based upon the EDGAR identification number of the company that is the subject of the correspondence.

[384] See proposed Item 11 of Form S–2, proposed Item 12 of Form S–4 and proposed amendments to Item 14 of Schedule 14A.

[385] See Section IV.B, *supra*. The annual report to security holders still would have to be filed in electronic format as an exhibit to the Form 10–K (or

Continued

(2) Copies of securities certificates currently filed in connection with the registration of securities on Exchange Act Forms 8–A and 18.[386]

There are several other minor proposed changes that would affect paper filers as well as electronic filers. First, a description of equity securities would have to be filed as an exhibit to Form 10–K reports.[387] Second, if in connection with Securities Act registration statements the basis of the calculation is not otherwise evident from the information presented in the fee table, registrants would be required to furnish specific details relating to the calculation in notes to the table.[388] Third, under the proposed rules a new cover page would be required to be filed by paper and electronic filers with proxy and information statements; such cover pages would identify the nature of the filings and set forth fee information.[389] Fourth, registrants would submit amendments to Exchange Act filings under cover of the form amended rather than filing such amendments under cover of Form 8.[390] Registrants would designate amendments by adding the letter "A" after the form title, *e.g.*, "Form 10–K/A." Comment is solicited as to whether amendments to Forms 10–K should be signed by all the persons currently required to sign the Form [391] or whether the signature requirements should remain the same as for Form 8. Fifth, with respect to amendments to Exchange Act filings, registrants and third-party filers would have to file complete disclosure items as amended, rather than only revised words or lines as permitted currently.[392] Sixth, registrants that incorporate preliminary proxy or information statements into their Schedule 13E–3 reports would have to resubmit all exhibits to the Schedule 13E–3 (updated as necessary) when filing the definitive version of the schedule.[393] Seventh, the requirements of Item 601 of Regulation S–K relating to articles of incorporation and by-laws would be bifurcated.[394] Eighth, under the proposed rules, Item 601(b)(19) of Regulation S–K, which pertains to previously unfiled documents, would be moved to the instructions of the Item and revised for clarity.[395] Ninth, the exhibit requirement relating to filing a power of attorney is proposed to be amended to codify the current staff interpretation that a power of attorney must relate to a specific filing or an amendment thereto, and may not confer general authority.[396]

Finally, if under Section 11(a) of the Securities Act [397] an issuer generally makes available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is submitted to the Commission, it must be filed as an exhibit to the next periodic report required by Section 13 or 15(d) of the Exchange Act covering the period when the earnings statement is released so that the information is available in the disclosure system.[398]

VI. Permanent EDGAR Forms

To accommodate electronic filing in the Pilot, three temporary forms were adopted concurrently with the Temporary Rules: Form ID, the uniform application for identification numbers and passwords; Form ET, the transmittal form for electronic format documents when the filing medium is either magnetic tape or diskette; and Form SE, the form for filing paper format exhibits. In connection with the amendments to the Temporary Rules, the Commission adopted revisions to Forms ID, ET and SE to allow Transitional Filers to use the operational EDGAR system. The Commission proposes to amend these forms again for permanent use in the operational EDGAR system by mandated electronic filers.

A. Form ID

Form ID was used in the EDGAR Pilot as an application whereby registrants who wish to make electronic submissions obtain a company identification ("Central Index Key" or "CIK") number and PINs to be used as signatures in required filings. The proposed permanent Form ID, like the amended temporary form, would be used to apply for or to amend the codes necessary for access to file on EDGAR,[399] and would provide identifying information on companies and individuals who are required to file with the Commission, as well as information on agents who are authorized to file on behalf of such persons. It also would reflect the proposed elimination of PIN signature requirements.[400] Proposed Form ID would require:

(1) The registrant's current Commission file number, if known, in order to assist the staff in assigning access codes; (2) the name, address and telephone number of the registrant's EDGAR contact person to facilitate staff communication regarding EDGAR information, inquiries and access codes; and (3) the name, address, and telephone number of the individual who should receive billing invoices from the Commission. Inasmuch as Form ID initiates a filer's access to the EDGAR system, the requirement for manual signatures on the Form ID itself would be retained.[401]

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other Commission filing) pursuant to Item 601(b)(13) of Regulation S–K if information was incorporated from the annual report into the Form 10–K or other filing.

[386] See Section IV.E, *supra*.

[387] See proposed Item 601(b)(3)(iii) of Regulation S–K [17 CFR 229.601(b)(3)(iii)]. See also Section IV.G.3, *supra*.

[388] See Section IV.G.4, *supra*. Registrants would be required to supply references to any provision of Securities Act Rule 457 [17 CFR 230.457] relied upon in the calculation.

[389] See Sections IV.G.5 and IV.G.7, *supra*.

[390] 17 CFR 249.460. Form 8 would be rescinded under the proposed rules.

[391] See General Instruction D to Form 10–K for instructions as to signatures.

[392] See proposed amendment to Exchange Act Rule 12b–15. For example, a registrant filing an amended Form 10–K to add some information to its description of business, Item 1 of Form 10–K, would restate Item 1 in its entirety.

[393] See Section IV.G.6, *supra*.

[394] See proposed Item 601(b)(3)(i) (articles of incorporation) and 601(b)(3)(ii) (by-laws) of Regulation S–K.

[395] See proposed Instruction 4 to Item 601 of Regulation S–K. Exhibits subsequent to number 19 would be renumbered; additional exhibits (currently Item 601(b)(28) of Regulation S–K) would become Item 601(b)(99) in case additional types of exhibits are required in the future. In addition, the exhibit index to Item 601 of Regulation S–K would be amended to reflect this change by requiring that if a material contract or plan of acquisition, reorganization, arrangement, liquidation or succession is executed or becomes effective during the reporting period reflected by the Form 10–Q or Form 10–K, it must be filed as an exhibit to the Form 10–Q or Form 10–K filed for the corresponding period. Further, any amendment or modification to a previously filed exhibit to a Form 10–K or 10–Q document must be filed as an exhibit to a Form 10–Q or Form 10–K. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

[396] See proposed amendment to redesignated Item 601(b)(24) of Regulation S–K [17 CFR 229.601(b)(24)], which codifies *Allied Corporation*, letter from the Office of Chief Counsel, Division of Corporation Finance, dated July 21, 1982.

[397] 15 U.S.C. 77k(a).

[398] The earnings statement would be filed pursuant to proposed subparagraph (iii) of redesignated Item 601(b)(99) of Regulation S–K [17 CFR 229.601(b)(99)].

[399] See Section III.D.3, *supra*, regarding identification and login procedures for detailed descriptions of these codes. The CIK is the one code that may not be changed.

[400] The Form ID adopted in the amended Temporary Rules, which will be used by Transitional Filers, is substantially similar to the proposed Form ID.

[401] The proposed amendments also would require training agents, who will provide courses of instruction regarding the use of EDGAR, to obtain an identification number by filing a Form ID. These training agents will be given special identification numbers to ensure that all submissions made by them will be treated as test filings.

B. Form ET

Form ET was the temporary form used when submitting electronic filings to the EDGAR Pilot on magnetic tape or diskette. Like its amended temporary counterpart, permanent Form ET, as proposed, requests more specific information relating to the tape or diskette submitted, the word processing package used, and the hardware used to prepare the diskette than is required under the Pilot. This information is helpful in translating the submission into a form compatible with EDGAR. While no signatures are required on the Form itself, an instruction to the Form reminds the filer that, as with all electronic submissions, required signatures within the documents submitted on the diskette or magnetic tape must be in typed form.[402] Since all fee payments would be required to be made through the lockbox,[403] thus eliminating the option of attaching a check to the Form, filers no longer would be required to indicate the method of fee payment on the Form.

C. Form SE

Form SE currently is used as a cover sheet to identify a paper format exhibit filed by a Transitional Filer who determines that it is impracticable to file the exhibit electronically. Under the proposals, this Form would be revised to allow its use by an electronic filer as a cover sheet to be attached to any paper format exhibit filed pursuant to the grant of a temporary or continuing hardship exemption.[404] In keeping with other signature requirements associated with electronically filed documents, the manual signature requirements currently found in Form SE would be replaced with provisions allowing typed signatures to satisfy all signature requirements. Comment is requested as to whether the manual signature requirement of Form SE should be retained to be consistent with the signature requirements of other filings made in paper, at least when the Form is being filed in connection with a continuing hardship exemption. Commenters should address specifically any hardships or time delays associated with a manual signature requirement.

VII. Cost-Benefit Analysis

To evaluate the costs and benefits associated with the proposed rule and form changes contained in this release, the Commission requests commenters to provide views and data as to the costs and benefits associated with these proposals.

For the reasons set forth below, it is expected that the proposed changes for both paper and electronic documents would benefit both paper and electronic filers as well as investors and the Commission. The proposed changes are expected to make the processes more efficient for: (1) Filers, in preparing and submitting documents to the Commission; (2) investors, in gaining access to and reviewing the documents submitted; and (3) the Commission staff, in retrieving, storing, processing and disseminating such documents.

Proposed Regulation S–T, in conjunction with the other proposed changes, would mandate that designated filings and related documents under the Securities Act, Exchange Act and Trust Indenture Act be submitted to the Commission in electronic format by way of direct transmission, magnetic tape or diskette. Certain other documents would be permitted to be submitted electronically, while others may not be filed electronically.

Electronic submission would result in a number of benefits to filers. Those submitting documents by direct transmission would avoid the uncertainty and delay of alternate forms of delivery and would be able to transmit documents for filing during extended Commission hours. Electronic submission also would eliminate the need to submit multiple copies of filings and would enable filers, through the use of modular submissions, to transmit only once information that is to be filed as part of several required filings. The development of a one-stop filing system would allow a filing with the Commission to satisfy the filing requirements of SROs and the States through their agent, NASAA. Furthermore, electronic submission would facilitate staff review and response to filings because of the added ease with which filings being examined and other information would be accessible. To the extent filers subscribe to the optional electronic mail/bulletin board system, they would receive Commission responses more promptly than they would otherwise. And finally, filers would be able to prepare their filings more easily by having more ready access to examples of disclosures made by others.

Electronic filing is expected to enable investors to access and review submitted information more efficiently.[405] Since information submitted through EDGAR will be made available to various information vendors that often make access to their databases available to subscribers at all hours, investors would have available to them the entire public database of current information regarding public companies regardless of time of day. Information regarding smaller registrants would be more readily available to investors, thereby enhancing the market exposure of those companies. Investor selected search criteria could be used to facilitate finding information. The proposed data tagging procedures will greatly enhance the ability of investors, analysts and the Commission staff to identify vital financial and other information; having once identified information desired electronically, the information can better be adapted for specific uses through computerized manipulation of the data.

The Commission is incurring significant cost to design, implement and operate the EDGAR system. However, because of the EDGAR system, the Commission is expected to be able to receive, store, process and disseminate electronic format information more efficiently. The physical volume of information received and requiring storage would be reduced. Automatic routing would help ensure that filings are directed to the proper office or processing branch. Computer-assisted screening would aid in the selection of filings for review. Reviews would be more thorough because of full-text search capability and the availability of previously submitted documents. Electronic in-boxes and file folders also would facilitate staff work flow. The Commission also could use electronically gathered data to more easily perform analyses of trends. In addition, Commission responses would reach filers more rapidly to the extent communications are sent by the optional

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[402] The Form ET adopted in the amended Temporary Rules requires substantially the same information as would be required by the proposed Form.

[403] See Section III.D.7, *supra*, regarding payment of filing fees through the lockbox.

[404] See Section III.E, *supra*, regarding hardship exemptions. The current proposal represents a substantial revision to this Form, primarily because of the proposed existence of hardship exemptions. Because the amended Temporary Rules do not mandate electronic filing for Transitional Filers, provisions for requesting hardship exemptions were unnecessary. As a consequence, the Form SE used in the Pilot was not modified substantially when the Temporary Rules were amended. The Form SE used in the Pilot and the amended Form used by Transitional Filers both provide that an electronic filer may submit an exhibit in paper format if the filer determines that it is impracticable to file the exhibit in electronic format.

[405] In 1988, the Commission contracted with MITRE Corporation to conduct a study of the cumulative external benefits of EDGAR. Copies of this study are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

EDGAR electronic mail system instead of first-class United States mail.

It is expected that the proposed changes to paper and electronic format related requirements for submitting documents to the Commission may result in some costs to filers and investors exceeding that which would have been incurred under a continuing paper-based system. Filers without the equipment to submit electronically would need to purchase such equipment or hire agents to submit electronically on their behalf. Those subscribing to the EDGAR electronic mail/bulletin board service also will incur the cost of subscription and other attendant expenses. Investors who want to access the EDGAR database may use either the Commission public reference rooms where EDGAR terminals are located, at no charge, or become subscribers to a service that disseminates information supplied by EDGAR. An investor who decides to become a subscriber to such a service without the necessary equipment would need to purchase such equipment or pay a higher subscription fee to obtain the information by other means. However, the Commission believes that, in the aggregate, the benefits will exceed the incremental costs.

VIII. Summary of Initial Regulatory Flexibility Act Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to: (1) The Rules of Organization, and Program Management; [406] (2) The Regulation Concerning Information and Requests; [407] (3) the Rules of Practice; [408] (4) the Rules of Informal and Other Procedures; [409] (5) Regulation S–X; [410] (6) Regulation S–K; [411] (7) Industry Guides under the Securities Act and the Exchange Act; [412] (8) Securities Act Rules [413] and Forms; [414] (9) Rules [415] and Forms [416] under the Securities Exchange Act; and (10) Rules [417] and Forms [418] under the Trust Indenture Act. The analysis also covers the proposed addition of Regulation S–T pursuant to the Securities Act, the Exchange Act, PUHCA, the Trust Indenture Act, and the Investment Company Act.[419]

The analysis notes that the proposed form and rule changes are intended to facilitate: filers' preparation to submit and submission of documents to the Commission; investors' access to the documents submitted; and the Commission's retrieval, storage, processing and dissemination of such documents.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that the overall effect of the proposed amendments would be to decrease slightly the impact of reporting, recordkeeping and compliance requirements upon those submitting documents to the Commission. For example, filers would have more flexibility in determining when to submit a filing, since submissions may be made by direct transmission over telephone lines during extended hours. In addition, multiple copies of electronic format documents would not need to be submitted, and a part of a filing intended to be inserted in more than one otherwise incomplete subsequent filing could be filed only once as a modular submission.

As the analysis indicates, several possible significant alternatives to the proposals were considered, including among others, establishing different compliance or reporting requirements for small entities, implementing performance standards rather than design standards for such entities, or exempting small entities from all or part of the proposed requirements. As more fully discussed in the analysis, the Commission has designed the EDGAR system to accommodate small entities to the greatest degree possible while still carrying out its mandate to develop a system for the electronic dissemination of information to the public. Small companies will be the last group phased into the system, allowing them to take advantage of the substantial body of experience gained by those who precede them. Even after they are phased in, small entities will not be required to file electronically if they satisfy the requirements of a temporary or continuing hardship exemption. The Commission will provide all companies, at no expense, with EDGARLink software, which includes communications software for making submissions directly to the system, and for those companies that so desire, the Commission will allow submissions to be made on diskette. None of the alternatives considered would accommodate small companies without infringing on the purposes of the Acts to provide to investors access to information relating to all public companies in order to allow them to make informed investment decisions.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Barbara C. Smith Jacobs or James R. Budge at (202) 272–2589, Division of Corporation Finance, Mail Stop 3–12, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

IX. Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and form changes and additions to requirements relating to the electronic or paper format in which documents are submitted to the Commission, as well as on other matters that may have an impact on the proposals contained herein, are requested to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commenters are requested to address the proposed changes and additions both from the perspective of those submitting documents and those using such documents. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Acts under which the proposals are promulgated. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[420] All comment letters will be available for public inspection in the Commission's public reference room under file number S7–21–92.

To facilitate the processing of comments, commenters are encouraged to provide the Commission, in addition to written comments, a copy of the comments in electronic format. The electronic copy of the comments should be in a file on either a 3.5 or 5.25 inch personal computer diskette. The file should be either a WordPerfect word processing file or a DOS, ASCII or Print image file. A label should be affixed to

[406] 17 CFR part 200, subpart A.
[407] 17 CFR part 200, subpart B.
[408] 17 CFR part 201, subpart A.
[409] 17 CFR part 202.
[410] 17 CFR part 210.
[411] 17 CFR part 229.
[412] 17 CFR 229.801 and 229.802.
[413] 17 CFR part 230.
[414] 17 CFR part 239.
[415] 17 CFR part 240.
[416] 17 CFR part 249.
[417] 17 CFR part 260.
[418] 17 CFR part 269.

[419] Proposed 17 CFR part 232.

[420] 15 U.S.C. 78w(a).

the diskette giving the name of the commenter, the name of the file, and the file type. If a WordPerfect file is provided, the WordPerfect version number also should be included on the label.

X. Statutory Basis for Rule and Form Proposals

The amendments to 17 CFR Part 200, Organization; Conduct and Ethics; and Information and Requests, are being proposed under: Securities Act Section 19; Exchange Act Sections 4A, 4B, 23 and 35A; PUHCA Section 20; Trust Indenture Act Section 319; and Investment Company Act Section 38. The amendments to subpart A of 17 CFR Part 201, Rules of Practice, are proposed under: Securities Act Sections 9 and 19; Exchange Act Sections 4A, 22, 23 and 35A; PUHCA Sections 19 and 20; Trust Indenture Act Sections 319 and 320; and Investment Company Act Sections 38 and 41. The amendments to 17 CFR Part 202, Informal and Other Procedures, are proposed under: Securities Act Sections 19 and 20; Exchange Act Sections 4A, 21, 23 and 35A; PUHCA Sections 18 and 20; Trust Indenture Act Sections 319 and 321; and Investment Company Act Sections 38 and 42. The amendments to Regulation S–X are being proposed under: Securities Act Sections 6, 7, 8, 10, 19 and Schedule A; Exchange Act Sections 12, 13, 14, 15, 23 and 35A; PUHCA Sections 5, 10, 14 and 20; and Investment Company Act Sections 8, 20, 30, 31 and 36. The amendments to Regulation S–K are being proposed under: Securities Act Sections 6, 7, 8, 10 and 19 and Schedule A; Exchange Act Sections 3, 9, 10, 12, 13, 14, 15, 23 and 35A; PUHCA Section 20; Trust Indenture Act Sections 304, 305, 307, 308, 309, 314 and 319; and Investment Company Act Sections 8, 30, 31 and 38. The amendments to the general rules and regulations under the Securities Act are being proposed under: Securities Act Sections 2, 6, 7, 8, 10, and 19(a); Exchange Act Sections 3, 12, 13, 14, 15, 23, and 35A; PUHCA Section 20; and Investment Company Act Sections 8, 30, 31 and 38. The amendments to the Securities Act Forms are proposed under: Securities Act Sections 6, 7, 8, 10 and 19; Exchange Act Sections 3, 12, 13, 14, 15, 23 and 35A; PUHCA Sections 7, 10, 12, 13, 14, 17 and 20; Trust Indenture Act Section 319; and Investment Company Act Sections 8, 30, 31 and 38. The amendments to the general rules and regulations under the Exchange Act are being proposed under: Securities Act Sections 3, 4, 7, 10 and 19; Exchange Act Sections 3, 4, 9, 10, 12, 13, 14, 15, 16, 23, 24 and 35A; PUHCA Sections 19 and 20; Trust Indenture Act Sections 305, 307, 314, 319 and 320; and Investment Company Act Sections 20, 23, 30 and 38. The amendments to the Exchange Act Forms are proposed under: Securities Exchange Act of 1934. The amendments to the general rules and regulations under the Trust Indenture Act are being proposed under: Exchange Act Section 35A; and Trust Indenture Act Sections 305, 307, 314 and 319. The amendments to the Trust Indenture Act Forms are being proposed under: Exchange Act Section 35A; and, Trust Indenture Act Sections 304, 305, 307, 308, 309, 310 and 319. Regulation S–T is being proposed under: Securities Act Sections 6, 7, 8, 10 and 19(a); Exchange Act Sections 3, 12, 13, 14, 15, 23 and 35A; PUHCA Section 20; Trust Indenture Act Section 319; and Investment Company Act Sections 8, 30, 31 and 38.

List of Subjects in 17 CFR Parts 200, 201, 202, 210, 229, 230, 232, 239, 240, 249, 260, and 269

Authority delegations (Government agencies), Administrative practice and procedure, Accountants, Reporting and recordkeeping requirements, Confidential business information, and Securities.

XI. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as set forth below.

Note: Forms ET (§§ 239.62, 249.445 and 269.6), ID (§§ 239.63, 249.446 and 269.7) and SE (§§ 239.64, 249.444, and 269.8) referenced in chapter II are proposed to be revised as set forth in Section XII, *infra*, and will not appear in the Code of Federal Regulations.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A is revised to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*l*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. By adding § 200.26b to read as follows:

§ 200.26b Office of EDGAR Management.

(a) The Office of EDGAR Management, which is part of the Office of the Executive Director, is responsible for the design, development, implementation, operation, maintenance, and contract administration of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system which electronically receives, stores, processes, and disseminates documents filed with the Commission. This responsibility includes definition of functional system requirements for the receipt, acceptance, retrieval and analysis of electronic documents. The Office also has responsibility for communicating those requirements to the contractors engaged in developing and implementing the system; providing administrative, financial and technical oversight of the multiple year prime contact; ensuring the availability of technical support for filers, filing agents and Commission users; preparing and delivering training materials and manuals; providing advice on rules and regulations proposed by the Divisions and offices affected by electronic filing and dissemination; coordinating with North American Securities Administrators Association, the stock exchanges, and the National Association of Securities Dealers to provide them with electronic copies of public documents for use in exercising their regulatory oversight responsibilities; and engaging in financial oversight and price regulation of the data products and services provided by the EDGAR contractor.

(b) The Director has authority to act as Contracting Officer for the Commission for procurement of all services, hardware, software, and other materials necessary for the development and operation of the EDGAR system.

3. By amending § 200.30–1 by removing paragraphs (a)(9), (e)(4), and (f)(11); redesignating paragraphs (e)(5), (e)(6), (e)(7) and (e)(8) as (e)(4), (e)(5), (e)(6) and (e)(7), respectively, and redesignating paragraphs (f)(12), (f)(13) and (f)(14) as (f)(11), (f)(12) and (f)(13), respectively; and adding paragraphs (k), (*l*), and (m) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(k) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa, *et seq.*), and Regulation S-T thereunder (§ 232.10 *et seq.*), to grant or deny a request submitted pursuant to Rule 12(c) of Regulation S-T (§ 232.12(c) of this chapter) to adjust the filing date of an electronic filing.

(*l*) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa, *et seq.*), and Regulation S-T thereunder (§ 232.10 *et seq.*), to grant or deny applications for

and set the terms of temporary and continuing hardship exemptions pursuant to Rules 101 and 102 of Regulation S-T, respectively, (§§ 232.101 and 232.102 of this chapter) from the electronic submission requirements of Rule 100 of Regulation S-T (§ 232.100 of this chapter).

(m) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation S-T thereunder (§ 232.10 *et seq.*), to grant or deny a request by a registrant to participate in a phase-in group other than the group established by the Commission for that registrant.

4. By amending § 200.83 by adding paragraph (i) to read as follows:

§ 200.83 Confidential treatment procedures under the Freedom of Information Act.

* * * * *

(i) *Electronic filings.* Confidential treatment requests shall be submitted in paper format only, whether or not the person making the request is an electronic filer.

PART 201—RULES OF PRACTICE

5. The authority citation for part 201 is revised to read as follows:

Authority: 15 U.S.C. 77h, 77s, 77sss, 77ttt, 78w, 78d–1, 78*ll*(d), 78v, 79s, 79t, 80a–37, 80a–40, 80b–11 and 80b–12, unless otherwise noted.

6. By amending § 201.5 by revising the second sentence to read as follows:

§ 201.5 Business hours.

* * * Legal holidays consist of New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any day appointed as a holiday in the District of Columbia by the President or the Congress of the United States.

7. By amending § 201.25 by revising the second sentence of paragraph (a) to read as follows:

§ 201.25 Confidential treatment of certain matters.

(a) * * * Requests for confidential treatment may be made pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933 and § 230.406 of this chapter thereunder, section 24(b) of the Securities Exchange Act of 1934 and § 240.24b–2 of this chapter thereunder, section 22(b) of the Public Utility Holding Company Act of 1935 and § 250.104 of this chapter thereunder, section 45(a) of the Investment Company Act of 1940 and § 270.45a–1 of this chapter thereunder, or section 210(a) of the Investment Advisers Act of 1940. * * *

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PART 202—INFORMAL AND OTHER PROCEDURES

8. The authority citation for Part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

9. By amending § 202.7 by designating the current text as paragraph (a); revising the first sentence of paragraph (a); and adding paragraph (b) to read as follows:

§ 202.7 Submittals.

(a) All required statements, reports, applications, etc. must be filed with the principal office of the Commission except letters of notification submitted pursuant to § 230.251 *et seq.* of this chapter under the Securities Act of 1933. * * *

(b) *Electronic filings.* All documents required to be filed in electronic format with the Commission pursuant to the Acts or the rules and regulations thereunder shall be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission of a magnetic tape or diskette, or by direct transmission.

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

10. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

§ 210.3–20 [Amended]

11. The authority citation following Section 210.3–20 is removed.

12. By amending § 210.2–02 by adding paragraph (e) to read as follows:

§ 210.2–02 Accountants' reports.

* * * * *

(e) *Electronic filings.* Signatures to accountants' reports shall be in typed form rather than manual format. *See* Rule 13 of Regulation S-T (§ 232.13 of this chapter).

13. By amending § 210.3–20 by adding paragraph (d) to read as follows:

§ 210.3–20 Currency for financial statements for foreign private issuers.

* * * * *

(d) *Electronic filings.* Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. *See* Rule 220 of Regulation S-T (§ 232.220 of this chapter).

14. By amending § 210.4–01 by adding paragraph (d) to read as follows:

§ 210.4–01 Form, order, and terminology.

* * * * *

(d) *Electronic filings.* (1) Documents in electronic format shall be prepared in accordance with Regulation S-T (§ 232.10 *et seq.*) and the EDGAR Filer Manual.

(2) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

15. The authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§§ 229.201, 229.301, 229.503, 229.601 [Amended]

16. The authority citations following §§ 229.201, 229.301, 229.503 and 229.601 are removed.

§ 229.10 [Amended]

17. In § 229.10, the reference to "projects" in the second sentence of paragraph (b)(3)(iii) is corrected to read "projections."

18. By amending § 229.101 by adding a note following paragraphs (a)(2)(iii)(B)(*5*) and (d)(1)(ii) and the introductory paragraphs of Appendices A and B to read as follows:

§ 229.101 (Item 101) Description of business.

(a) * * *
(2) * * *
(iii) * * *
(B) * * *
(5) * * *

Note: *Electronic filings.* **Registrants are directed to Rule 210 of Regulation S-T (§ 232.210 of this chapter) for the requirements for submission of supplemental information relating to electronic filings.**

* * * * *

(d) * * *
(1) * * *
(ii) * * *

Note: *Electronic filings.* **Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S-T (§ 232.220 of this chapter).**

* * * * *

Appendix A—Industry Segments

* * * * *

Note: *Electronic filings.* **The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.**

* * * * *

Appendix B—Foreign and Domestic Operations of Export Sales

* * * * *

Note: *Electronic filings.* **The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.**

* * * * *

19. By amending § 229.102 by adding notes to **Instructions 3.B. and 4.A.** to Instructions to Item 102 to read as follows:

§ 229.102 (Item 102) Description of property.

* * * * *

Instructions to Item 102.

* * * * *

3. * * *
B. * * *

Note: *Electronic filings.* **Registrants are directed to Rule 205 of Regulation S-T (§ 232.205 of this chapter) regarding the treatment of graphic and image materials in electronic filings.**

4. * * *
A. * * *

Note: *Electronic filings.* **Registrants are directed to Rule 210 of Regulation S-T (§ 232.210 of this chapter) regarding the requirements for submission of supplemental information relating to electronic filings.**

* * * * *

20. By amending § 229.201 by adding Instruction 6 to Instructions to Item 201 to read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

Instructions to Item 201

* * * * *

6. *Electronic filings.* **Foreign currency** denominations shall be expressed in words or letters in the English language and not in representative symbols. *See* **Rule 220** of Regulation S-T (§ 232.220 of this chapter).

21. By amending § 229.301 by adding Instruction 8 to Instructions to Item 301 to read as follows:

§ 229.301 (Item 301) Selected financial data.

* * * * *

Instructions to Item 301.

* * * * *

8. *Electronic filings.* **The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S-T (§ 232.220 of this chapter).**

22. By amending § 229.401 by adding a note following Instruction 2 of Instructions to Paragraph (f) of Item 401 to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

Instructions to Paragraph (f) of Item 401.

* * * * *

2. * * *

Note: *Electronic filings.* **Registrants are directed to Rule 210 of Regulation S-T (§ 232.210 of this chapter) regarding the requirements for submission of supplemental information relating to electronic filings.**

* * * * *

23. By amending § 229.402 by adding Instruction 3 to Instructions to Item 402(a) to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

Instructions to Item 402(a).

* * * * *

3. *Electronic filings.* **The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.**

* * * * *

24. By amending § 229.403 by adding Instruction 8 to Instructions to Item 403 to read as follows:

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

* * * * *

Instructions to Item 403.

* * * * *

8. *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

25. By amending § 229.501 by replacing the phrase ", add ";" " following the word "leaded" at the end of paragraph (c)(4) with a semicolon and adding Instruction 6 to Instructions to Item 501 to read as follows:

§ 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

* * * * *

Instructions to Item 501.

* * * * *

6. *Electronic filings.* **Requirements as to bold-face type in paragraphs (c)(4) and (c)(5) of this section shall be satisfied by placing the entire statement in capital letters. *See* the EDGAR Filer Manual. The red ink requirement in paragraph (c)(8) of this section shall be satisfied by placing the caption in** capital letters.

26. By amending § 229.503 by adding a note following paragraph (d)(10) to read as follows:

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

* * * * *

(d) * * *
(10) * * *

Note: *Electronic filings.* **The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information**

(*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

27. By amending § 229.504 by adding Instruction 8 to Instructions to Item 504 to read as follows:

§ 229.504 (Item 504) Use of proceeds.

* * * * *

Instructions to Item 504.

* * * * *

8. *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

28. By amending § 229.506 by adding a note at the end of the section to read as follows:

§ 229.506 (Item 506) Dilution.

* * * * *

Note: *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

29. By amending § 229.507 by adding a note at the end of the section to read as follows:

§ 229.507 (Item 507) Selling security holders.

* * * * *

Note: *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

30. By amending § 229.508 by revising the instruction heading and designating the current instruction to Paragraph 508(a) as "1" and adding Instruction 2 to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

Instructions to Paragraph 508(a).

1. * * *

2. *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

* * * * *

31. By amending § 229.511 by revising the instruction heading and by designating the current Instruction to Item 511 as "1" and adding Instruction 2 to read as follows:

§ 229.511 (Item 511) Other expenses of issuance and distribution.

* * * * *

Instructions to Item 511.

1. * * *

2. *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Foreign currency denominations shall be expressed in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

32. In § 229.601, in paragraph (a)(1), add a clause after the word "reference,"; add paragraph (a)(4); add Instruction 4 to Instructions to Item 601; in the Exhibit Table remove number 29, revise numbers (2), (3), (10), (27), and (28) and add number (99) and Footnote 5; revise paragraph (b)(3); redesignate the current text of paragraph (b)(13) as paragraph (i) and add paragraph (ii); remove paragraph (b)(19); redesignate paragraphs (b)(20) through (b)(27) as paragraphs (b)(19) through (b)(26); add new paragraph (b)(27); redesignate paragraph (b)(28) as paragraph (b)(99) and paragraph (b)(29) paragraph (b)(28); reserve paragraphs (b)(29) through (b)(98); in newly redesignated paragraph (b)(23) add paragraph (iii); in newly redesignated paragraph (b)(24), designate the current text as paragraph (i), add a sentence at the end of paragraph (i) and add paragraph (ii); in newly redesignated paragraph (b)(25), redesignate the current text as paragraph (i) and add paragraph (ii); in newly redesignated paragraph (b)(99) add paragraph (iii); and add paragraph (c) with appendices A, B, C and D to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) * * * and if an electronic filer, subject to the provisions of paragraph (c) of this Item regarding Financial Data Schedules, * * *

* * * * *

(4) If a material contract or plan of acquisition, reorganization, arrangement, liquidation or succession is executed or becomes effective during the reporting period reflected by a Form 10–Q or Form 10–K, it shall be filed as an exhibit to the Form 10–Q or Form 10–K filed for the corresponding period. Any amendment or modification to a previously filed exhibit to a Form 10, 10–K or 10–Q document shall be filed as an exhibit to a Form 10–Q or Form 10–K. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

* * * * *

Instructions to Item 601

* * * * *

4. *Electronic filings.* Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein covering the same subject matter shall be controlling unless otherwise specifically provided.

Attention is directed to Item 601(c) of this Item (Financial Data Schedule) as to financial data schedules required in an electronic filing. Attention also is directed to the EDGAR Filer Manual.

Whenever an exhibit is filed on paper pursuant to a hardship exemption (§§ 232.101 and 232.102 of this chapter), the letter "P" (paper) shall be placed next to the exhibit in the list of exhibits required by Item 601(a)(2) of this Rule. Whenever an electronic confirming copy of an exhibit is filed pursuant to a grant of a temporary hardship exemption (§ 232.101 of this chapter), the exhibit index shall specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) shall be placed next to the listed exhibit in the exhibit index.

Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

EXHIBIT TABLE—INSTRUCTIONS TO THE EXHIBIT TABLE

[* * * * *]

	Securities Act forms											Exchange Act forms			
	S-1	S-2	S-3	S-4[3]	S-8	S-11	S-18	F-1	F-2	F-3	F-4[3]	10	8-K	10-Q	10-K
(2) Plan of acquisition, reorganization, arrangement, liquidation, or succession.	X	X	X	X		X		X	X	X	X	X	X	X	X
(3)(i) Articles of incorporation.	X			X		X	X	X			X	X			X
(ii) By-laws.	X			X		X	X	X			X	X			X
(iii) Description of securities.															X
(10) Material contracts.	X	X		X		X	X	X	X		X	X		X	X
(27) Financial Data Schedule [5].	X	X	X			X	X	X	X	X		X		X	X
(28) Information from reports furnished to state insurance regulatory authorities.	X	X	X	X	X							X			X
(99) Additional Exhibits.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

[5] Financial Data Schedules shall be filed by electronic filers only. *See* Item 601(c) of Regulation S-K. Financial Data Schedules shall be filed on Form S-2, S-3, F-2, or F-3 only by a subsidiary of a Form S-2, S-3, F-2 or F-3 level reporting company in connection with an initial public offering of investment grade debt securities.

(b) * * *

(3)(i) *Articles of incorporation.* The articles of incorporation of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to articles of incorporation are filed, a complete copy of the articles as amended shall be filed. Where it is impracticable for the registrant to file a charter amendment authorizing new securities with the appropriate state authority prior to the effective date of the registration statement registering such securities, the registrant may file as an exhibit to the registration statement the form of amendment to be filed with the state authority; and in such a case, if material changes are made after the copy is filed, the registrant must also file the changed copy.

(ii) *By-laws.* The by-laws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to the by-laws are filed, a complete copy of the by-laws as amended shall be filed.

(iii) *Description of equity securities.* A description of each class of equity securities, excluding convertible debt securities, registered under Exchange Act Section 12 or for which reports are filed pursuant to Exchange Act Section 15(d) in the same detail as required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

* * * * *

(13) *Annual report to security holders. Form 10-Q or quarterly report to security holders.*

* * * * *

(ii) *Electronic filings.* With respect to electronic filers, the entire annual report to security holders or quarterly report to security holders shall be filed in electronic format. Signatures shall be in typed form rather than manual format. *See* Rule 13 of Regulation S-T (§ 232.13 of this chapter). *See also* Rule 205 of Regulation S-T (§ 232.205 of this chapter) regarding the treatment of graphic and image material in electronic filings.

* * * * *

(23) *Consents of experts and counsel.*

* * * * *

(iii) *Electronic filings.* Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S-T (§ 232.13 of this chapter).

(24) *Power of Attorney.* (i) * * * A power of attorney that is filed with the Commission shall relate to a specific filing or an amendment thereto. A power of attorney that confers general authority shall not be filed with the Commission.

(ii) *Electronic filings.* Signatures shall be in typed form rather than manual format. *See* Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(25) *Statement of eligibility of trustee.*

(i) * * *

(ii) *Electronic filings.* The requirement to bind separately the statement of eligibility and qualification of each person designated to act as a trustee under the Trust Indenture Act of 1939 from other exhibits shall not apply to statements submitted in electronic format. Rather, such statements shall be submitted as exhibits in the same electronic submission as the subject registration statement to which it relates or an amendment thereto, *provided that* registrants that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file statements of eligibility as exhibits to a post-effective amendment to the registration statement to which the statements relate.

* * * * *

(27) *Financial Data Schedule.* The Financial Data Schedule shall be filed only by electronic filers. Applicable requirements are set forth in paragraph (c) of this Item.

* * * * *

(99) *Additional Exhibits.*

* * * * *

(iii) If pursuant to Section 11(a) of the Securities Act [15 U.S.C. 77k(a)] an issuer makes available to its security holders generally an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is submitted to the Commission, it must be filed as an exhibit to the Form 10–Q or the Form 10–K, as appropriate, when the earnings statement is released.

(c) *Financial Data Schedule*—(1) *General.* (i) A Financial Data Schedule shall be submitted only by an electronic registrant that is required to submit financial statements and shall set forth the financial information specified in the applicable table in the Appendices to this item. The Schedule shall be prepared in the format prescribed by the EDGAR Filer Manual.

(ii) The amounts reflected in the Financial Data Schedule shall correspond to amounts reflected in the registrant's financial statements or notes thereto. Amounts aggregated or combined in the financial statements should be shown in separate line items as indicated in the Appendices.

(iii) The Schedule shall be submitted as an exhibit to the filing(s) to which it relates, but shall not be deemed filed for purposes of Section 11 of the Securities Act (15 U.S.C. 77k) Section 18 of the Exchange Act (15 U.S.C. 78r), and Section 323 of the Trust Indenture Act (15 U.S.C. 77www) or otherwise be subject to the liabilities of such sections. It shall, however, be subject to all other liability and anti-fraud provisions of the Acts. *See* Rule 104 of Regulation S–T (§ 232.104 of this chapter). A registrant that accurately extracts the Financial Data Schedule information from its financial statements, financial statement schedules, or disclosures prepared in response to applicable industry guides, shall not be liable, under the Securities Act, the Exchange Act or the Trust Indenture Act for such extracted information, *provided that* the extracted data was not materially false or misleading in the underlying financial statements, financial statement schedules, or disclosures prepared in response to applicable industry guides.

(iv) Where a registrant has been granted a temporary hardship exemption, the required confirming electronic copy required by Rule 101(c) of Regulation S–T (§ 232.101(c) of this chapter) shall contain a Financial Data Schedule.

(v) A Financial Data Schedule reflecting *pro forma* financial information shall not be filed.

Note: A registrant's failure to furnish a Financial Data Schedule pursuant to this paragraph will not prevent acceptance of the filing for which the Schedule is required. However, as the Schedule may be used by the Commission staff in its review of the filing, processing of the filing may be delayed pending filing of the Schedule. Further, registrants that have not filed a required Financial Data Schedule will be ineligible to use Form S–2 (§ 239.12 of this chapter), Form S–3 (§ 239.13 of this chapter), Form S–8 (§ 239.16b of this chapter), Form F–2 (§ 239.32 of this chapter) and Form F–3 (§ 239.33 of this chapter). (See eligibility requirements of those forms.)

(2) *Other Provisions Applicable to Specific Forms.* (i) Registrants, other than those that are broker-dealers, filing on Form S–18 (§ 239.28 of this chapter) that would prepare financial statements in accordance with Articles 5, 7 or 9 of Regulation S–X (Part 210 of this chapter) if filing on Form S–1 (§ 239.11 of this chapter) shall prepare a Financial Data Schedule that includes information required by Articles 5, 7 or 9, as appropriate. Broker-dealer registrants filing on Form S–18 that would provide financial statements in accordance with Appendix D to paragraph (c) of this Item if filing on Form S–1 shall prepare a Financial Data Schedule that includes information required by appendix D to paragraph (c) of this Item.

(ii) If, at the time a registration statement on Forms S–1, S–11, or F–1 (§§ 239.11, 239.18, 239.31 of this chapter) is filed:

(A) the registrant is required to submit the registration statement and any amendments thereto electronically via EDGAR; and (B) the registrant does not have a class of securities registered pursuant to either Exchange Act Section 12(b) (15 U.S.C. 78l(b)) or Section 12(g) (15 U.S.C. 78l(g)) and is not required to file reports pursuant to Section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act, the registrant shall furnish the Financial Data Schedule as an exhibit to the registration statement.

(3) *Format and Presentation of Schedule.* (i) At the option of the registrant, the following legend may be inserted at the beginning of any Financial Data Schedule submitted to the Commission, in the manner prescribed by the EDGAR Filer Manual:

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM [Identify specific financial statements] AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH [Identify filing].

(ii) Items set forth in a Financial Data Schedule may be qualified by cross-referencing a specific footnote to the Financial Data Schedule or notes to the registrant's financial statements. (*See* the EDGAR Filer Manual for instructions on qualifying cross-references.)

(iii) If any of the amounts contained in a previously submitted Financial Data Schedule are restated as a result of pooling of interests, an accounting principle change, a reorganization or recapitalization, or correction of an error, then a complete Schedule, as amended or restated, shall be submitted. The document shall specify that the Financial Data Schedule has been restated. (*See* the EDGAR Filer Manual.)

(4) *Periods Presented in Schedule.* An electronic filer shall submit a Financial Data Schedule containing financial information for the periods specified below, *provided that* financial data reflected in a previously filed Financial Data Schedule shall not be repeated unless there has been a subsequent restatement of the data:

(i) Annual reports pursuant to Exchange Act Sections 13 or 15(d)—The periods required by Rules 3–01 and 3–02 of Regulation S–X (§ 210.3–01 and § 210.3–02 of this chapter).

(ii) Securities Act Registration Statements and Exchange Act Section 12(b) or 12(g) Registration Statements—

The periods required by Rules 3–01 and 3–02 of Regulation S–X (§ 210.3–01 and § 210.3–02 of this chapter).

(iii) Quarterly reports pursuant to Exchange Act Section 13 or 15(d)—The periods required by Rule 10–01(c) of Regulation S–X (§ 210.10–01(c) of this chapter).

(5) *Contents of Financial Data Schedule.* The Schedule shall set forth the financial information specified below that is applicable to the registrant.

(i) *Article 5 Registrants (Commercial and Industrial Companies).* Registrants that prepare financial statements in accordance with Article 5 of Regulation S–X (§ 210.5–01 through § 210.5–04 of this chapter), including registrants filing on Form S–18 (§ 239.28 of this chapter) that would prepare financial statements in accordance with Article 5 if filing on Form S–1 (§ 239.11 of this chapter), shall prepare a Financial Data Schedule that contains the Article 5 items listed in Appendix A to this Item. (*See also* the EDGAR Filer Manual.)

(ii) *Article 7 Registrants (Insurance Companies).* Registrants that prepare financial statements in accordance with Article 7 of Regulation S–X (§ 210.7–01 through § 210.7–05 of this chapter), including registrants filing on Form S–18 (§ 239.28 of this chapter) that would prepare financial statements in accordance with Article 7 if filing on Form S–1 (§ 239.11 of this chapter), shall prepare a Financial Data Schedule that contains the Article 7 financial statement items, and the industry guide items (Securities Act Industry Guide 6 (§ 229.801(f) of this chapter) or Exchange Act Industry Guide 4 (§ 229.802(d) of this chapter) listed in Appendix B to this Item. (*See also* the EDGAR Filer Manual.)

(iii) *Article 9 Registrants (Bank Holding Companies and Savings and Loan Holding Companies).* Registrants that prepare their financial statements in accordance with Article 9 of Regulation S–X (§ 210.9–01 through § 210.9–07 of this chapter), and savings and loan holding companies including registrants filing on Form S–18 (§ 239.28 of this chapter) that would prepare financial statements in accordance with Article 9 if filing on Form S–1 (§ 239.11 of this chapter), shall prepare a Financial Data Schedule that contains the Article 9 financial statement items and Securities Act Industry Guide 3 (§ 229.801(c) of this chapter) and Exchange Act Industry Guide 3 (§ 229.802(c) of this chapter) listed in Appendix C to this Item. (*See also* the EDGAR Filer Manual.)

(iv) *Broker-Dealer and Broker-Dealer Holding Companies.* Registrants that are broker-dealers or broker-dealer holding companies may prepare a Financial Data Schedule that contains the items listed in Appendix D to this Item in lieu of a Financial Data Schedule containing the items listed in Appendix A to this Item. (*See also* the EDGAR Filer Manual.)

Appendix A to Item 601(c) of Regulation S–K Commercial and Industrial Companies Article 5 of Regulation S–X

Item No.	Item description
5–02(1)	Cash and cash items.
5–02(2)	Marketable securities.
5–02(3)(a)(1)	Notes and accounts receivable-trade.
5–02(4)	Allowances for doubtful accounts.
5–02(5)	Unearned income.
5–02(6)	Inventory.
5–02(9)	Total current assets.
	Unscheduled assets.
5–02(18)	Total assets.
5–02(21)	Total current liabilities.
5–02(22)	Bonds, mortgages and similar debt.
5–02(23)	Indebtedness to related parties.
	Other personnel and employee benefits.
5–02(24)	Other liabilities.
5–02(28)	Preferred stock—mandatory redemption.
5–02(29)	Preferred stock—no mandatory redemption.
5–02(30)	Common stock.
5–02(31)(a)(1)	Additional paid in capital.
5–02(31)(a)(2)	Other additional capital.
5–02(31)(a)(3)(i)	Retained earnings-appropriated.
5–02(31)(a)(3)(ii)	Retained earnings-unappropriated.
	Unscheduled liabilities and/or stockholders' equity.
5–02(32)	Total liabilities and stockholders' equity.
5–03(b)(1)(a)	Net sales, tangible products.
5–03(b)(1)(e)	Other revenue.
5–03(b)(2)(a)	Cost of tangible goods sold.
5–03(b)(2)(b)	Operating expenses, utilities and others.
5–03(b)(2)(e)	Cost of other revenues.
5–03(b)(2)(8)(a)	Interest capitalized.
	Operating income.
5–03(b)(8)(b)	Interest and amortization of debt discount.
5–03(b)(10)	Income before taxes and other items.
5–03(b)(11)	Income tax expense.
5–03(b)(14)	Income/loss continuing operations.
5–03(b)(15)	Discontinued operations.
5–03(b)(17)	Extraordinary items.
5–03(b)(18)	Cumulative effect-changes in accounting principles.
	Unscheduled income/expense item.
5–03(b)(19)	Net income or loss.
5–03(b)(20)	Earnings per share—primary.
5–03(b)(20)	Earnings per share—fully diluted.

Appendix B to Item 601(c) of Regulation S–K, Insurance Companies, Article 7 of Regulation S–X

Item No.	Item description
7–03(1)(a)	Fixed maturities, cost.
7–03(1)(a)	Fixed maturities, market.
7–03(1)(a)	Fixed maturities, non-income producing.
7–03(1)(b)	Investment in equity securities.
7–03(1)(c)	Mortgage loans on real estate.
7–03(1)(c)	Mortgage loans on real estate non-income producing.
7–03(1)(d)	Investment in real estate.
7–03(1)(d)	Investment in real estate non-income producing.
7–03(6)	Reinsurance recoverable on paid losses.
7–03(7)	Deferred policy acquisition costs. Unscheduled assets.
7–03(12)	Total assets.
7–03(13)(a)(1)	Policy liabilities—future benefits, losses, claims.
7–03(13)(a)(2)	Policy liabilities—unearned premiums.
7–03(13)(a)(3)	Policy liabilities—other claims and benefits.
7–03(14)	Other policyholder funds.
7–03(16)	Notes payable, bonds, mortgages and similar debt.
7–03(17)	Indebtedness to related parties.
	Other personnel and employee benefits.
7–03(21)	Preferred stocks mandatory redemption.
7–03(22)	Preferred stock—not mandatory.
7–03(23)	Common stock.
7–03(24)(a)(1)	Additional paid-in capital.
7–03(24)(a)(2)	Other additional capital.
7–03(24)(a)(3)	Unrealized appreciation/depreciation of equity securities less applicable deferred income taxes.
7–03(24)(a)(4)	Retained earnings.
	Total stockholders' equity.
	Unscheduled liabilities and/or equity.
7–03(25)	Total liabilities and stockholders' equity.
7–04(1)	Premiums.
7–04(2)	Net investment income.
7–04(3)	Other income.
7–04(4)	Benefits, claims, losses and settlement expenses.
7–04(6)(a)	Underwriting acquisition and insurance expenses—amortization of deferred policy acquisition costs.
7–04(6)(b)	Underwriting acquisition and insurance expense—other.
7–04(7)	Income or loss before income taxes.
7–04(8)	Income tax expense.
7–04(12)	Realized gains or losses on investments.
7–04(13)	Discontinued operations.
7–04(14)	Income/loss continuing operations.
7–04(15)	Extraordinary items.
7–04(16)	Cumulative effect—changes in accounting principles.
7–04(17)	Net income or loss.
7–04(18)	Earnings per share—primary.
7–04(18)	Earnings per share—fully diluted.

Securities Act Industry Guide 6 and Exchange Act Industry Guide 4

Guide No.	Item description
2.B(1)(a)	Reserves for unpaid claims—beginning of year.
2.B(1)(b)(i)	Provision for insured events current year.
2.B(1)(b)(ii)	Provision for insured events prior years.
2.B(1)(c)(i)	Payments of claims—current years.
2.B(1)(c)(ii)	Payments of claims—prior years.
2.B(1)(e)	Reserves for unpaid claims—end of year.
2.B(2)(d)	Deficiency/redundancy in restated reserve.

Appendix C to Item 601(c) of Regulation S–K, Bank Holding Companies and Savings and Loan Holding Companies, Article 9 of Regulation S–X

Item No.	Item description
9–03(1)	Cash and due from banks.
9–03(2)	Interest-bearing deposits.
9–03(3)	Federal funds sold-purchased securities for resale.
9–03(4)	Trading account assets.
9–03(6)	Investment and mortgage backed securities-book value.
9–03(6)	Investment and mortgage backed securities-market value.
9–03(7)	Loans.
9–03(7)(2)	Allowance for losses.
9–03(11)	Unscheduled assets.
9–03(12)	Total assets.
9–03(13)	Deposits.
	Short-term borrowings.
	Other personnel and employee benefits.
9–03(15)	Other liabilities.
9–03(16)	Long-term debt.
9–03(19)	Preferred stock-mandatory redemption.
9–03(20)	Preferred stock-no mandatory redemption.
9–03(21)	Common stocks.
9–03(22)	Other stockholders' equity.
	Unscheduled liabilities and/or stockholders' equity.
9–03(23)	Total liabilities and stockholders' equity.
9–04(1)	Interest and fees on loans.
9–04(2)	Interest and dividends on investments.
9–04(4)	Other interest income.
9–04(5)	Total interest income.
9–04(6)	Interest on deposits.
9–04(9)	Total interest expense.
9–04(10)	Net interest income.
9–04(11)	Provision for loan losses.
9–04(13)(h)	Investment securities gains/losses.
9–04(14)	Other expenses.
9–04(15)	Income/loss before income tax.
9–04(17)	Income/loss before extraordinary items.
9–04(18)	Extraordinary items, less tax.
9–04(19)	Cumulative change in accounting principles.
	Unscheduled income/expense item.
9–04(20)	Net income or loss.
9–04(21)	Earnings per share—primary.
9–04(21)	Earnings per share—fully diluted.

Appendix C to Item 601(c) of Regulation S–K, Bank Holding Companies and Savings and Loan Holding Companies, Industry Guide 3

Guide No.	Item description
I.B	Net yield-interest earning assets—actual.
I.B	Net yield-interest earning assets—tax equivalent.
III.C.1(a)	Loans on non accrual.
III.C.1(b)	Accruing loans past due 90 days or more.
III.C.1(c)	Troubled debt restructuring.
III.C.2	Potential problem loans.
IV.A	Allowance for loan loss-beginning of period.
IV.A	Total chargeoffs.
IV.A	Total recoveries.
IV.A	Allowance for loan loss-end of period.
IV.B	Loan loss allowance allocated to domestic loans.
IV.B	Loan loss allowance allocated to foreign loans.
IV.B	Loan loss allowance-unallocated.
	Investment and mortgage backed securities—market value.

Appendix D to Item 601(c) of Regulation S–K, Broker-Dealers and Broker-Dealer Holding Companies

Item Description

Cash and cash items.
Receivables.
Securities purchased under resale agreements.
Trading account assets.
Investment securities including those sold under repurchase agreements.
Unscheduled assets.
Total assets.
Deposits.
Short-term borrowing.
Other personnel and employee benefits.
Other liabilities.
Long-term debt.
Preferred stock—mandatory redemption.
Preferred stock—no mandatory redemption.
Common stock.
Other stockholders' equity.
Unscheduled liabilities and/or equity.
Total liabilities and stockholders' equity.
Interest and dividends on investments.
Total interest expense.
Commissions and fees from fiduciary activities and customer services.
Fees on securities underwriting and other activities.
Profit or loss on transactions in trading account.
Investment securities gain/losses.
Other expenses.
Income/loss before income tax and other items.
Income/loss before extraordinary items.
Extraordinary items, less tax.
Cumulative change in accounting principles.
Net income or loss.
Earnings per share—primary.
Earnings per share—fully diluted.

33. By amending § 229.701 by adding Instruction 3 to read as follows:

§ 229.701 (Item 701) Recent sales of unregistered securities.

* * * * *

Instructions

* * * * *

3. *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

§ 229.801 [Amended]

34. By amending Securities Act Industry Guide 2.(§ 229.801(b) of this chapter) by designating the current note as Note "1" and adding Note 2 to read as follows:

Note 2—The text of Securities Act Industry Guide 2 is not and the amendments will not appear in the Code of Federal Regulations.

Guide 2. Disclosure of oil and gas operations.

* * * * *

Notes

* * * * *

2. *Electronic filings.* Registrants are directed to Rule 205 of Regulation S–T (§ 232.205 of this chapter) for the requirement to provide a narrative description of graphic and image materials in electronic filings. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Foreign currency denominations shall be expressed in words or letters in the English language and not in

representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

* * * * *

35. By amending Securities Act Industry Guide 3 (§ 229.801(c) of this chapter) by adding Instruction 8 to the General Instructions to read as follows:

Note—The text of Securities Act Industry Guide 3 is not and the amendments will not appear in the Code of Federal Regulations.

Guide 3. Statistical Disclosure by Bank Holding Companies.

General Instructions

* * * * *

8. *Electronic filings.* The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

* * * * *

36. By amending Securities Act Industry Guide 4 (§ 229.801(d) of this chapter) by adding a note following the introductory paragraph, to read as follows:

Note—The text of Securities Act Industry Guide 4 is not and the amendments will not appear in the Code of Federal Regulations.

Guide 4. Prospectuses Relating to Interests in Oil and Gas Programs.

* * * * *

Note: *Electronic filings.* Registrants are directed to Rule 205 of Regulation S–T (§ 232.205 of this chapter) for the requirement to provide a narrative description of graphic and image materials in electronic filings. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

* * * * *

37. By amending Securities Act Industry Guide 5 (§ 229.801(e) of this chapter) by adding a note following Item 5.B. and designating the current text of Item 19.B. as Item 19.B.1. and adding Item 19.B.2. to read as follows:

Note—The text of Securities Act Industry Guide 5 is not and the amendments will not appear in the Code of Federal Regulations.

Guide 5. Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships.

* * * * *

5. * * *

B. * * *

Note: *Electronic filings.* Registrants are directed to Rule 205 of Regulation S–T (§ 232.205 of this chapter) for the requirement to provide a narrative description of graphic and image materials in electronic filings. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

* * * * *

19.B. * * *

2. *Electronic filings.* Promotional and sales material shall be submitted in paper format only, whether or not the filer is an electronic filer.

* * * * *

1PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

38. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

39. The authority citations following § 230.403, 230.411, 230.418, 230.431, 230.455 and 230.471 are removed.

40. By amending § 230.100 by adding paragraphs (a)(6) and (a)(7) to read as follows:

§ 230.100 Definition of terms used in the rules and regulations.

(a) * * *

(6) The term "electronic filer" means a person or an entity that submits filings electronically pursuant to Rule 100 of Regulation S–T (§ 232.100 of this chapter). (7) The term "electronic filing" means a document under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

41. By revising § 230.110 to read as follows:

§ 230.110 Business hours of the Commission.

(a) *General.* The principal office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays, and federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, *provided that* hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b) and (c) of this section.

(b) *Paper and electronic filings.* Filings in paper format, or elecronic filings on magnetic tape or diskette, may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(c) *Electronic filings.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

42. By amending § 230.158 by adding paragraph (d) to read as follows:

§ 230.158 Definition of certain terms in the last paragraph of section 11(a).

* * * * *

(d) If an earnings statement was made available by "other methods" than those specified in paragraphs (a) and (b) of this section, the earnings statement must be filed as exhibit 99 to the next periodic report required by section 13 or 15(d) of the Exchange Act covering the period in which the earnings statement was released.

43. By amending § 230.402 by adding paragraph (d) to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(d) *Electronic filings.* (1) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission.

(2) The requirement to bind material in one or more parts does not apply to electronic format documents.

(3) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

44. By amending § 230.403 by adding paragraph (e) to read as follows:

§ 230.403 Requirements as to paper, printing, language and pagination.

* * * * *

(e) *Electronic filings.* (1) Documents in electronic format shall be prepared as prescribed in the EDGAR Filer Manual.

(2) The narrative portion text of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions

only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions.

(3) Requirements as to paper size shall not apply to documents in electronic format.

(4) Capital letters shall be used to satisfy bold-face type requirements.

(5) Requirements as to sequential page numbering shall not apply to documents in electronic format.

Note: See Rule 220 of Regulation S–T (§ 232.220 of this chapter) for requirements regarding foreign language documents.

45. By amending § 230.405 by adding definitions of "electronic filer" and "electronic filing" between the definitions of "dividend or interest investment plan" and "employee," and a definition of "Graphic communications" between the definitions of "foreign private issuer" and "Majority-owned subsidiary," to read as follows:

§ 230.405 Definition of terms.

* * * * *

Electronic filer. The term "electronic filer" means a person or an entity that submits filings electronically pursuant to Rule 100 of Regulation S–T (§ 232.100 of this chapter).

Electronic filing. The term "electronic filing" means a document under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

* * * * *

Graphic communications. The term "graphic communications," which appears in the definition of "write, written" in section 2(9) of the Securities Act, shall include magnetic impulses or other forms of computer data compilation.

* * * * *

46. By amending § 230.406 by adding paragraph (j) to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

* * * * *

(j) *Electronic filings.* Confidential treatment requests shall be submitted in paper format only, whether or not the filer is an electronic filer.

47. By amending § 230.411 by adding a new paragraph (e) to read as follows:

§ 230.411 Incorporation by reference.

* * * * *

(e) *Electronic filings.* Electronic filers shall not incorporate by reference any document filed in paper in violation of the mandated filing requirements, or any document filed in paper pursuant to a temporary hardship exemption (§ 232.101 of this chapter) for which a confirming electronic copy has not been submitted.

48. By amending § 230.418 by removing the word "and" at the end of paragraph (b)(2), replacing the period at the end of paragraph (b)(3) with "; and", and adding paragraph (b)(4) and paragraph (c) to read as follows:

§ 230.418 Supplemental information.

* * * * *

(b) * * *

(4) The information was not filed in electronic format.

(c) *Electronic filings.* Electronic filers are directed to Rule 210 of Regulation S–T (§ 232.210 of this chapter) for provisions relating to submitting supplemental information in electronic format.

49. By amending § 230.420 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.420 Legibility of prospectus.

* * * * *

(b) The requirements set forth in paragraph (a) of this section shall apply only to disseminated paper documents and not to electronic filings.

50. By amending § 230.424 by adding paragraph (g) to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(g) *Electronic filings.* Requirements as to paper size and multiple copies required to be filed with the Commission do not apply to documents in electronic format. See also Securities Act Rule 403(e) (§ 230.403(e) of this chapter).

51. By amending § 230.431 by adding paragraph (h) to read as follows:

§ 230.431 Summary prospectuses.

* * * * *

(h) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rule 424(g) (§ 230.424(g) of this chapter).

52. By amending § 230.455 by redesignating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.455 Place of filing.

(a) * * *

(b) *Electronic filings.* Any electronic registration statement and any other document shall be filed with the Commission via EDGAR by direct transmission, magnetic tape, or diskette in accordance with Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual.

53. By amending § 230.456 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.456 Date of filing.

* * * * *

(b) *Electronic filings.* Dates of filings of electronic documents shall be determined in accordance with Rule 12 of Regulation S–T (§ 232.12 of this chapter).

54. By amending § 230.471 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.471 Signatures to amendments.

* * * * *

(b) *Electronic filings.* Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter). An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rule 472(d) (§ 230.472(d) of this chapter).

55. By amending § 230.472 by adding paragraph (e) to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(e) *Electronic filings.* Registrants are directed to the EDGAR Filer Manual for procedures for marking electronic text to indicate changes. An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission.

56. By amending § 230.474 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.474 Date of filing of amendments.

* * * * *

(b) *Electronic filings.* Dates of filings of electronic documents shall be determined in accordance with Rule 12 of Regulation S–T (§ 232.12 of this chapter).

§ 230.499 [Removed]

57. By removing § 230.499.

58. By adding part 232 to read as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

Sec.

232.10 Application of part 232.
232.11 Definitions of terms used in the regulation.
232.12 Date of filing.
232.13 Signatures.
232.14–232.99 [Reserved]
232.100 Mandated electronic submissions.
232.101 Temporary hardship exemption.
232.102 Continuing hardship exemption.
232.103 Liability for transmission errors or omissions in documents filed via EDGAR.
232.104 Liability for Financial Data Schedule.
232.105–232.199 [Reserved]
232.200 Exhibits.
232.201–232.204 [Reserved]
232.205 Graphic and image material.
232.206–232.209 [Reserved]
232.210 Supplemental information.
232.211–232.214 [Reserved]
232.215 Modular submissions and segmented filings.
232.216–232.219 [Reserved]
232.220 Foreign language documents and symbols.
232.221–232.299 [Reserved]
232.300 Division of Corporation Finance EDGAR Transition.
232.301–232.304 [Reserved]
232.305 Division of Investment Management EDGAR Transition.
232.306 Division of Investment Management Electronic Submissions during Transition.

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

§ 232.10 Application of part 232.

(a) Part 232 of this chapter, together with the EDGAR Filer Manual and the electronic filing provisions of applicable rules, regulations and forms, set forth the requirements applicable to the electronic submission of documents required to be filed or otherwise submitted to the Commission pursuant to Rule 100 of Regulation S–T (§ 232.100 of this chapter).

(b) A Form ID (§§ 239.63, 249.446, 259.602, 269.7, 274.402 of this chapter), the uniform application for access codes to file on EDGAR, shall be filed by each registrant, third party, or agent prior to becoming subject to mandated electronic filing.

Note: It is strongly urged that persons or entities submit Form ID to the Commission between three and six months prior to becoming subject to mandated electronic filing.

§ 232.11 Definition of terms used in the regulation.

Unless otherwise specifically provided, the terms used in Regulation S–T (part 232 of this chapter) have the same meanings as in the federal securities laws and the rules, regulations and forms promulgated thereunder. In addition, the following definitions of terms apply specifically to electronic format documents and shall apply wherever they appear in laws, rules, regulations and forms governing such documents, unless the context otherwise specifies:

(a) *Business development company.* The term *business development company* has the meaning set forth in Section 2(a)(48) of the Investment Company Act.

(b) *Direct transmission.* The term *direct transmission* means the transmission of one or more electronic submissions via a telephonic communication session.

(c) *EDGAR.* The term *EDGAR* (Electronic Data Gathering, Analysis, and Retrieval) means the computer system for the receipt, acceptance, review and dissemination of documents submitted in electronic format.

(d) *EDGAR Filer Manual.* The term *EDGAR Filer Manual* means the current version of the manual prepared by the Commission setting out the technical format requirements for an electronic submission.

Note: Paper copies of the EDGAR Filer Manual may be purchased at the following address: Disclosure Inc., Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, NW., Washington, DC 20549. Electronic format copies are available through the EDGAR electronic bulletin board.

(e) *Electronic filer.* The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rule 100 of Regulation S–T (§ 232.100 of this chapter).

(f) *Electronic filing.* The term *electronic filing* means a document filed under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

(g) *Electronic format.* The term *electronic format* means the computerized format of a document prepared in accordance with the EDGAR Filer Manual.

(h) *Electronic submission.* The term *electronic submission* means any document, such as a filing, correspondence, or modular submission, or any discrete set of documents, transmitted or delivered to the Commission in electronic format.

(i) *Exchange Act.* The term *Exchange Act* means the Securities Exchange Act of 1934.

(j) *Header information.* The term *header information* means information designated by the EDGAR Filer Manual to precede the text of each electronic submission and document submitted therewith via EDGAR that identifies characteristics of the submission and documents in order to facilitate electronic processing by the EDGAR system.

(k) *Investment Company Act.* The term *Investment Company* Act means the Investment Company Act of 1940.

(l) *Modular submission.* The term *modular submission* means an electronic submission that contains one or more documents, or portions of a document, submitted for storage in the non-public EDGAR data storage area for purposes of subsequent inclusion in one or more electronic filings pursuant to Rule 215(a) of Regulation S–T (§ 232.215(a) of this chapter).

(m) *Official filing.* The term *official filing* means a microfiche copy, prepared in compliance with the Commission's administrative regulations and other requirements, of a registration statement, report or other document filed under the federal securities laws, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing.

(n) *Original.* The term *original*, when used or implied in the securities laws, rules, regulations or forms, includes the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.

(o) *Paper format.* The term *paper format* means a paper document.

(p) *Phase-in date.* The term *phase-in* date means the date established by the Commission on and after which a registrant is required to submit filings electronically pursuant to Rule 100 of Regulation S–T (§ 232.100 of this chapter).

(q) *Public Utility Act.* The term *Public Utility Act* means the Public Utility Holding Company Act of 1935.

(r) *Registrant.* The term *registrant* means an issuer of securities for which a Securities Act registration statement is required to be filed on EDGAR and/or an issuer of securities with respect to which an Exchange Act registration statement or report is required to be filed on EDGAR and/or an investment company required to file an Investment Company Act registration statement or report on EDGAR.

(s) *Securities Act.* The term *Securities Act* means the Securities Act of 1933.

(t) *Segmented Filing.* The term *segmented* filing means an electronic

format document assembled from segments previously submitted to the non-public EDGAR data storage for one-time inclusion in an electronic filing pursuant to Rule 215(b) of Regulation S–T (§ 232.215(b) of this chapter).

(u) *Tag.* The term *tag* means an identifier that highlights specific information to EDGAR that is in the format required by the EDGAR Filer Manual.

(v) *Third party filer.* The term *third party* filer means any person or entity that files documents with the Commission pursuant to federal securities laws and regulations with respect to another entity.

(w) *Trust Indenture Act.* The term *Trust Indenture Act* means the Trust Indenture Act of 1939.

§ 232.12 Date of filing.

(a) *General.* (1) Except as provided in paragraph (b) of this section, the business day on which a filing is received by the Commission shall be the date of filing thereof, if:

(i) All requirements of the Acts and rules applicable to such filing have been complied with;

(ii) The filing conforms to the applicable technical standards regarding electronic format in the EDGAR Filer Manual; and

(iii) With respect to Securities Act filings, the required fee payment has been confirmed, *Provided, That* the failure to pay an insignificant amount of the fee at the time of the filing, as a result of a *bona fide* error, shall not affect the date of filing.

(2) If the conditions of paragraph (a)(1) of this section are otherwise satisfied, all filings submitted by direct transmission commencing on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the same business day, and all filings submitted by direct transmission commencing after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed as of the next business day.

(b) *Ownership Report and tender offer filings.* If the conditions of paragraph (a)(1) of this section are otherwise satisfied, the business day on which the filing is accepted by the Commission shall be the date of filing for Schedules 13D (§ 240.13d–101 of this chapter), as well as for cash tender offer filings on Schedules 14D–1 (§ 240.14d–100 of this chapter), 14D–9 (§ 240.14d–101 of this chapter), and 13E–4 (§ 240.13e–101 of this chapter), and all amendments thereto. If acceptance occurs after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, the date of filing and the date upon which the cash tender offer may commence shall be the next business day. See Exchange Act Rule 14d–2 (§ 240.14d–2 of this chapter).

(c) *Adjustment of the filing date.* If an electronic filer in good faith attempts to file a document with the Commission in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request an adjustment of the filing date of such document. The Commission, or the staff acting pursuant to delegated authority, may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(d) *Payment of fees.* Fees required with respect to a filing that is submitted electronically shall be paid in accordance with the procedures set forth in Instructions for Filing Fees Rule 3a of the Commission's Informal and Other Procedures (§ 202.3a of this chapter).

§ 232.13 Signatures.

Signatures to or within any electronic filing shall be in typed form rather than manual format. For purposes of Regulation S–T (part 232 of this chapter), the term "signature" means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters comprising a name, executed, adopted or authorized as a signature.

§§ 232.14–232.99 [Reserved]

§ 232.100 Mandated electronic submissions.

(a) The following filings, including any related correspondence and supplemental information, except as otherwise provided, shall be submitted in electronic format:

(1) Registration statements filed with the Commission pursuant to the Securities Act (15 U.S.C. 77a, *et seq.*) or sections 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or (g));

(2) Statements and applications filed with the Commission pursuant to the Trust Indenture Act (15 U.S.C. 77aaa, *et seq.*), other than applications for exemptive relief filed pursuant to section 304(c) (15 U.S.C. 77ddd(c)) on Form T–4 (§ 269.4 of this chapter) and section 310(b)(1)(ii) (15 U.S.C. 77jjj(b)(1)(ii)) of that Act;

(3) Statements, reports and schedules filed with the Commission pursuant to sections 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, n, and *o*(d)), *Provided, That* if a registrant's first mandated electronic filing would be an annual report on Form 10–K (§ 249.310 of this chapter) such Form 10–K may, at the option of the registrant, be submitted in paper format;

(4) Documents filed with the Commission pursuant to sections 8, 17, 20, and 30 of the Investment Company Act (15 U.S.C. 80a–8, 80a–17, 80a–20, and 80a–29); *Provided, however,* That in no event shall any submissions under section 6(c) of the Act or documents related to applications for exemptive relief under any section of the Act, be made electronically; and,

(5) Documents filed with the Commission pursuant to the Public Utility Act (15 U.S.C. 79a *et seq.*).

(b) The following amendments to filings, including any related correspondence and supplemental information except as otherwise provided, shall be submitted as follows:

(1) Any amendment to a filing by or relating to a registrant required to file electronically, including any amendment to a paper filing, shall be submitted in electronic format.

(2) An amendment to a paper format Schedule 13D (§ 240.13d–101 of this chapter) or Schedule 13G (§ 240.13d–102 of this chapter) relating to a registrant that has become subject to mandated electronic filing shall be in electronic format and the first such amendment shall restate the entire Schedule 13D or 13G, including exhibits that are current as of the date of the amendment.

Note: See Rule 200(b) (§ 232.200(b) of this chapter) regarding amendments to exhibits previously filed in paper format.

§ 232.101 Temporary hardship exemption.

(a) An electronic filer may apply, either orally or in writing, for a temporary hardship exemption. Such request shall contain the information set forth in paragraph (b) of this section. If the Commission, or the staff acting pursuant to delegated authority, determines that the grant of the request is appropriate and is consistent with the public interest and the protection of investors, the electronic filer shall follow the procedures set forth in paragraph (c) of this section. If the Commission, or the staff acting pursuant to delegated authority, denies the request for a temporary hardship exemption, the electronic filer shall file the subject document in electronic format on the business day on which the document is due or such other date as may be permitted.

(b)(1) The request for the temporary hardship exemption shall include, but not be limited to, the following:

(i) The reasons for the requested exemption;

(ii) A description of the nature and extent of the temporary technical difficulties experienced by the electronic filer in attempting to submit the document in electronic format;

(iii) A description of the extent to which the electronic filer has successfully submitted documents previously in electronic format with the same hardware and software, in test or required filings; and

(iv) A description of the burden and expense involved to employ alternative means to submit the electronic submission in a timely manner.

(2) The request shall include a representation that the subject document will be submitted in electronic format in accordance with paragraph (c) of this section.

(c)(1) If the request is granted, the electronic filer shall submit promptly in paper format the document for which the temporary hardship exemption is granted, no later than one business day after the date on which the exemption was granted, or such other date as may be specified.

(i) A microfiche copy of the paper format document shall be the official filing of the registrant for purposes of the Federal securities laws.

(ii) Signatures to the paper format document may be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter). All other requirements relating to paper format documents shall be satisfied.

(iii) If the grant pertains to a document filed pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m and o(d)) and the paper format document is filed within the time period of the grant, the filing shall be deemed to have been filed by its required due date.

(iv) The following legend shall be set forth in capital letters on the cover page of the paper format document:

IN ACCORDANCE WITH RULE 101 OF REGULATION S–T, THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A TEMPORARY HARDSHIP EXEMPTION.

(2) An electronic format copy of the filed paper format document shall be submitted to the Commission within three business days of filing the paper format document, or such other date as may be permitted. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document: THIS DOCUMENT IS A COPY OF THE (SPECIFY DOCUMENT) FILED ON (DATE) PURSUANT TO A RULE 101 TEMPORARY HARDSHIP EXEMPTION. If the temporary hardship exemption was granted with respect to an exhibit only, the electronic format copy of the exhibit shall be filed as an amendment to the document to which it relates.

Note 1: Attention is directed to the eligibility requirements of Forms S–2, S–3, S–8, F–2 and F–3 (§§ 239.12, 239.13, 239.16b, 239.32, and 239.33 of this chapter), which prohibit future use of these forms if the registrant fails to make any required electronic filing, including the confirming electronic copy required pursuant to paragraph (c) of this section. Attention is directed to the incorporation by reference provisions of Securities Act Rule 411(c) (§ 230.411(c) of this chapter), Exchange Act Rules 12b–23 and 12b–32 (§§ 240.12b–23 and 240.12b–32 of this chapter) and Trust Indenture Act Rule 7a–29(a) (§ 260.7a–29 of this chapter), which restrict a registrant from incorporating by reference a document filed in paper in violation of the mandated electronic filing requirements, or any document filed in paper pursuant to a temporary hardship exemption for which a confirming electronic copy has not been submitted. Attention also is directed to Exchange Act Rules 14d–7(c) (§ 240.14d–7(c) of this chapter) and 14e–1(e) (§ 240.14e–1(e) of this chapter), which provide where a bidder has failed to file a required electronic filing, including a confirming electronic format copy of a document required by any temporary hardship exemption granted pursuant to paragraph (c) of this section, the withdrawal rights period and termination dates, respectively, shall be tolled for the period of non-compliance.

Note 2: Where a temporary hardship exemption is granted with respect to an exhibit only, the paper format exhibit shall be filed under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter).

§ 232.102 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

(1) The application shall be deemed denied unless the applicant is otherwise notified by the Commission or the staff.

(2) If the Commission, or the staff acting pursuant to delegated authority, denies the application for a continuing hardship exemption, the electronic filer shall file the required filing in electronic format on the required due date or the proposed filing date or such other date as may be permitted.

(3) If the Commission, or the staff acting pursuant to delegated authority, determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors and so notifies the applicant, the electronic filer shall follow the procedures set forth in paragraph (c) of this section.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following:

(1) The reason(s) that the necessary hardware and software is not available without unreasonable burden and expense;

(2) The burden and expense involved to employ alternative means to make the electronic filing; and/or

(3) The reasons for not submitting electronically the filing or group of filings as well as justification for the requested time period.

(c) If the request is granted, the electronic filer shall submit the filing(s) for which the continuing hardship exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate. The following legend shall be placed in capital letters at the top of the cover page of the paper format document(s):

IN ACCORDANCE WITH RULE 102 OF REGULATION S–T, THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.

Note: Where a continuing hardship exemption is granted with respect to an exhibit only, the paper format exhibit shall be filed under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8 and 274.403 of this chapter).

§ 232.103 Liability for transmission errors or omissions in documents filed via EDGAR.

An electronic filer shall not be subject to the liability and anti-fraud provisions of the Securities Act, the Exchange Act, the Trust Indenture Act, the Public Utility Act and/or the Investment Company Act, as applicable, with respect to an error or omission in a document resulting solely from the good faith electronic transmission of such document via EDGAR, whether by magnetic tape, diskette, or direct transmission, where the error or omission is corrected by the filing of an amendment in electronic format no more than five business days after the electronic filer becomes aware of the error or omission.

§ 232.104 Liability for Financial Data Schedule.

A Financial Data Schedule shall be submitted as an exhibit to the filing(s) to which it relates in accordance with Item 601(c) of Regulation S–K (§ 229.601(c) of

this chapter) or rule 483(e) (§ 230.483(e) of this chapter), but it shall not be deemed filed for purposes of Section 11 of the Securities Act (15 U.S.C. 77k), section 18 of the Exchange Act (15 U.S.C. 78r), section 16 of the Public Utility Act (15 U.S.C. 79p), section 323 of the Trust Indenture Act (15 U.S.C. 77www), or section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)), or otherwise be subject to the liabilities of such sections. The Financial Data Schedule shall, however, be subject to all other liability and anti-fraud provisions of the Acts.

§§ 232.105–232.199 [Reserved]

§ 232.200 Exhibits.

(a) Any exhibit to an electronic filing, not previously filed in paper, shall be filed in electronic format, unless a hardship exemption (§§ 232.101 and 232.102 of this chapter) has been granted.

(b) The first amendment to an exhibit previously filed in paper shall either restate the subject exhibit in its entirety in electronic format or include both the subject exhibit to which the amendment relates and the amendment in electronic format, absent a hardship exemption.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a registered investment company or a business development company subject to the mandatory electronic filing rules shall file all exhibits included in an electronic filing, including any exhibit previously filed in paper, electronically unless a hardship exemption (§§ 232.101 and 232.102 of this chapter) has been granted.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, persons submitting filings electronically under the Public Utility Act shall file all exhibits, including any exhibit previously filed in paper, electronically unless a hardship exemption (§§ 232.101 and 232.102 of this chapter) has been granted or the specific form provides otherwise.

§§ 232.201–232.204 [Reserved]

§ 232.205 Graphic and image material.

(a) Where a paper format version of a document includes graphic or image material, an appendix to the electronic format document shall list all such graphic and image information and provide a fair and accurate narrative description of such information. If, however, the substantive information conveyed by the graphic and image information presented in the paper format document is described narratively in the body of the electronic format document, the appendix to the document listing the graphic and image information shall contain only a crossreference to the narrative discussion. Differences between the electronic and paper format copies of the document such as pagination, color, type size or style, or corporate logo need not be described.

(b) The narrative description of the graphic and image material appearing in the electronic filing or appendix thereto and the graphic and image material in the paper format version of the document shall be deemed part of the filing and subject to the liability and anti-fraud provisions of the Securities Act, the Exchange Act, the Trust Indenture Act, the Public Utility Act and/or the Investment Company Act, as applicable.

(c) An electronic filer shall maintain a file of each paper document containing graphic and image material for five years after the filing date of each document or the date appearing on each document, whichever is later. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all of the documents contained in the file.

§§ 232.206–232.209 [Reserved]

§ 232.210 Supplemental information.

(a) Supplemental information shall be submitted in electronic format except as provided in paragraph (b) of this section. The information shall be stored in the non-public EDGAR data storage area as correspondence. Supplemental information that is submitted in electronic format shall not be returned.

(b) Supplemental information shall be submitted in paper format if return of the information after staff review is requested and/or the information is sought to be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 552) pursuant to a request for confidential treatment under Rule 83 (§ 200.83 of this chapter).

§§ 232.211–232.214 [Reserved]

§ 232.215 Modular submissions and segmented filings.

An electronic filer that subscribes to the optional EDGAR electronic mail service may use the following procedures to submit information on the EDGAR system for subsequent inclusion in an electronic filing.

(a) *Modular submissions.* (1) One or more electronic format documents may be submitted for storage in the non-public EDGAR data storage area as a modular submission for subsequent inclusion in one or more electronic submissions.

(2) An electronic filer shall be permitted a maximum of ten modular submissions in the non-public EDGAR data storage area at any time, not to exceed a total of one megabyte of digital information. If an electronic filer attempts to submit a modular filing which, if accepted, would cause either of these limits to be exceeded, EDGAR will suspend the modular submission and notify the electronic filer by electronic mail. After six business days, the modular submission held in suspense will be deleted from the system.

(3) A modular submission may be corrected or amended only by resubmitting the entire modular submission.

(b) *Segmented filings.* (1) Segments of a document intended to become an electronic filing may be submitted to the non-public EDGAR data storage area for assembly as a segmented filing.

(2) Segments shall be submitted no more than six business days in advance of the anticipated filing date and are not limited in number or size. They may be submitted from several geographic locations by more than one filing entity. Segments may be included in only one electronic filing. Once used, segments will be removed from the non-public EDGAR data storage area. The assembly of segments into a segmented filing shall be effected pursuant to the applicable provisions of the EDGAR Filer Manual. If segments are not prepared in accordance with the EDGAR Filer Manual, the filing will not be constructed. The filing date of a segmented filing shall be the date upon which the filing is assembled and accepted.

(3) Segments may be corrected or amended only by resubmitting the entire segment.

(c) A modular submission or segment shall not:

(1) Be publicly available;

(2) Be deemed filed with the Commission for purposes of Securities Act Section 11 (15 U.S.C. 77k), Exchange Act Section 18 (15 U.S.C. 78r), Public Utility Act Section 16 (15 U.S.C. 79p), Trust Indenture Act Section 323 (15 U.S.C. 77www), or Investment Company Act Section 34(b) (15 U.S.C. 80a–33(b)) prior to its inclusion in a filing; or

(3) Be deemed to constitute an official filing prior to its inclusion in a filing under the federal securities laws. Once a modular submission or segment has been included in an electronic filing, the liability and anti-fraud provisions of the Securities Act, the Exchange Act, the Trust Indenture Act, the Public Utility Act and the Investment Company Act shall apply to the electronic filing.

Note: Pursuant to a request under the Freedom of Information Act (5 U.S.C. 552) the Commission may release a modular submission or a segment to a member of the public if no exemption under that Act is available to the submitter.

§§ 232.216–232.219 [Reserved]

§ 232.220 Foreign language documents and symbols.

(a) Foreign language documents shall not be filed with the Commission in electronic format. A fair and accurate English translation of any required document shall be filed. A written representation to that effect shall be included in the English translation document and the representation shall be signed by a designated officer in the manner set forth in Rule 13 of Regulation S–T (§ 232.13 of this chapter). Upon request, any foreign language document otherwise required to be filed shall be provided to the Commission or the staff.

(b) Foreign currency denominations shall be expressed in words or letters in the English language rather than representative symbols.

§§ 232.221–232.299 [Reserved]

§ 232.300 Division of Corporation Finance EDGAR Transition.

(a) *Registrant electronic submissions.* Registrants whose filings are subject to review by the Division of Corporation Finance, except for foreign issuers, shall be subject to the electronic filing requirements of this part in accordance with the registrant phase-in schedule published by the Commission including any amendments thereto.

(1) After the companies listed in the phase-in schedule have become subject to mandated electronic filing, all other public companies, except for foreign issuers, shall become subject to the electronic filing requirements of this Part, including any company that makes a registered offering under the Securities Act or that becomes subject to the reporting requirements of the Exchange Act.

(2) A registrant may request to participate in a phase-in group other than the group established by the Commission for the registrant. If such a request is granted by the Commission, or by the staff pursuant to Rule 30–1(m) of the Rules of Organization and Management (17 CFR 200.30–1(m)), the registrant shall become subject to the mandated filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) on the phase-in date applicable to the group to which it has been reassigned.

(b) *Third party filers.* Any third party filings of the type enumerated in Rule 100 of Regulation S–T (§ 232.100 of this chapter) made by a person or business entity with respect to a registrant required to file electronically shall be filed in electronic format.

(c) *Electronic filings involving both a paper filer and an electronic filer.* Filings involving both a paper filer and an electronic filer shall be made as follows:

(1) *Cash tender offers and proxy contests.* Where a paper filer commences a cash tender offer or proxy contest (including a solicitation in opposition) with respect to an electronic filer, submissions by both filers relating to the transaction shall be in electronic format. Where an electronic filer commences a cash tender offer or proxy contest with respect to a paper filer, the electronic filer is permitted, but not required, to submit all filings in electronic format. If the electronic filer elects to file in electronic format in connection with the transaction, all related submissions by the electronic filer must be in electronic format. If the electronic filer elects to file in electronic format, the paper filer is permitted, but not required, to submit all filings in electronic format. If the paper filer makes this election, the paper filer shall become subject to mandated filing under Rule 100 of Regulation S–T (§ 232.100 of this chapter) and all future filings shall be submitted in electronic format.

(2)(i) *Securities Act registered business combinations.* Where a paper filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to an electronic filer, submissions by both parties relating to that transaction shall be in electronic format. Where an electronic filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to a paper filer, the electronic filer shall submit all filings in electronic format. The paper filer is permitted, but not required, to submit all filings in electronic format. If the paper filer elects to file in electronic format, the paper filer shall become subject to mandated electronic filing under Rule 100 of Regulation S–T (§ 232.100 of this chapter) and all future filings, if any, shall be submitted in electronic format.

(ii) *Cash mergers involving joint proxy statements.* Where a paper filer and an electronic filer seek a cash merger involving a joint proxy statement, submission by both parties relating to that transaction shall be in electronic format.

(3) *Co-registrants.* Where a paper filer and an electronic filer are co-registrants with respect to an offering required to be registered under the Securities Act, the registration statement shall be filed in electronic format. Co-registrants that become subject to the reporting requirements of section 13 or 15(d) (15 U.S.C. 78m and 78o(d)) of the Exchange Act shall submit all reports in electronic format if one of the registrants is an electronic filer.

(4) *Schedules 13D and 13G.* Where a paper filer is required to file a Schedule 13D or 13G (§§ 240.13d–101 and 240.13d–102 of this chapter) relating to an electronic filer in accordance with paragraph (b) of this section, the Schedule 13D or 13G shall be filed in electronic format. Where an electronic filer is required to file a Schedule 13D or 13G relating to a paper filer, the Schedule 13D or 13G may be filed in electronic format.

(d) *Conforming Paper Format Documents.* Mandated electronic filers shall submit to the Commission a paper copy of each electronic filing for a period of one year after becoming subject to mandated electronic filing (§ 232.100 of this chapter), or such shorter period as the Commission shall determine, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper print-out of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be received at the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS CONFORMING PAPER FORMAT DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 300(d) OF REGULATION S–T

(3) Signatures are not required for conforming paper format documents submitted pursuant to paragraph (d) of this section.

§§ 232.301–232.304 [Reserved]

§ 232.305 Division of Investment Management EDGAR transition.

(a) *Registrant transition to electronic submission via EDGAR.* Registrants whose filings are subject to review by the Division of Investment Management shall be subject to the electronic filing requirements of this Part ("phased in") in accordance with the phase-in

schedule established and published by the Commission, including any amendments thereto (the "Phase-In Schedule"). At the conclusion of phase-in, all remaining registered investment companies or business development companies shall be subject to the electronic filing requirements of this Part.

(b) *Phase-in rule for investment companies.* (1) Each registered investment company or business development company listed on the Phase-In Schedule is deemed to have the phase-in date assigned to the group in which it is included as listed on the schedule, or as may be designated by the Commission.

(2) For investment companies not listed on the Phase-In Schedule (including any company that subsequently registers under the Investment Company Act),

(i) An open-end or closed-end management investment company that has the same investment adviser, or a unit investment trust that has the same depositor, as a registrant that is listed on the Phase-In Schedule shall have the same phase-in date as the registrant listed on the schedule.

(ii) A closed-end management investment company that does not have an investment adviser shall have the same phase-in date as a registrant having an investment adviser that is, or is affiliated with, the principal underwriter of the unlisted registrant.

(3) A registrant not listed on the Phase-In Schedule that has more than one investment adviser shall be deemed to have the same investment adviser as a registrant that is listed on the schedule if any of its investment advisers, other than subadvisers, are investment advisers to the listed registrant.

(4) A registrant that is not phased-in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is phased in shall be deemed to be phased in at the time it changes its investment adviser.

(5) A registrant that is phased in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is not phased in shall remain phased in.

(c) *Phase-in rule for Public Utility Act filers.* When a Public Utility Act filer is phased in to electronic filing in accordance with the Commission's published phase-in schedule, it will be considered phased in for purposes of all filings submitted to the Commission under the Public Utility Act, except as otherwise provided, and all such filings shall be submitted electronically, absent a hardship exemption granted by the Commission. In addition, a subsidiary company of a phased-in public-utility holding company shall be required, absent a hardship exemption granted by the Commission, to submit all required filings under the Public Utility Act electronically. Any Public Utility Filer that does not make Securities Act or Exchange Act filings and is not part of a holding company system previously phased in will be deemed to have the same phase-in date for electronic filing as the final phase-in group of registrants whose filings are subject to review by the Division of Corporation Finance.

(d) *Reassignment of phase-in group.* The Commission may, in its discretion, grant or deny a request by a registrant to participate in a phase-in group other than the group established under paragraph (b)(1) or (b)(2) of this section.

(e) *Required electronic filing for phased-in filers.* A registrant that is phased in, under either the mandatory electronic filing provisions of paragraph (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under Rule 100 of Regulation S–T (§ 232.100 of this chapter) and which are made on or after a registrant's phase-in date, Provided, however, That a registrant need not file electronically a filing under Rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date.

(f) *Electronic filings involving both a paper filer and an electronic filer.* Filings involving both a paper filer and an electronic filer shall be made as set forth in this section, Provided, however, That the following provisions shall not affect a filer's phase-in date for mandatory electronic filing.

(1) *Cash tender offers and proxy contests.* Where a paper filer commences a cash tender offer or proxy contest (including solicitation in opposition) with respect to an electronic filer, submissions by both filers relating to the transaction shall be in electronic format. Where an electronic filer commences a cash tender offer or proxy contest with respect to a paper filer, the electronic filer is permitted, but not required, to submit all filings in electronic format. If the electronic filer elects to file in electronic format in connection with the transaction, all related submissions by the electronic filer must be in electronic format. If the electronic filer elects to file in electronic format, the paper filer is permitted, but not required, to submit all filings in electronic format. Notwithstanding the foregoing, submissions consisting solely of correspondence relating to a registrant not yet phased in shall be submitted in paper.

(2) *Securities Act registered business combinations.* Where a paper filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to an electronic filer, submissions by both parties relating to that transaction shall be in electronic format. Where an electronic filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to a paper filer, the electronic filer shall submit all filings in electronic format. The paper filer is permitted, but not required, to submit all filings in electronic format. Notwithstanding the foregoing, submissions consisting solely of correspondence relating to a registrant not yet phased in shall be submitted in paper.

(3) *Schedules 13D and 13G.* Where a paper filer is required to file a Schedule 13D or 13G (§§ 240.13d–101 and 240.13d–102 of this chapter) relating to an electronic filer in accordance with paragraph (b) of this section, the Schedule 13D or 13G shall be filed in electronic format. Where an electronic filer is required to file a Schedule 13D or 13G relating to a paper filer, the Schedule 13D or 13G may be filed in electronic format.

(g) *Conforming paper format documents.* Mandated electronic filers shall submit to the Commission a paper copy of each electronic filing for a period of one year after becoming subject to mandated electronic filing (§ 232.100 of this chapter), or such shorter period as the Commission shall determine, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be received at the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS CONFORMING PAPER FORMAT DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 305(g) OF REGULATION S–T

(3) Signatures are not required for conforming paper format documents submitted pursuant to paragraph (g) of this section.

(4) EDGAR Pilot participants that elect to participate in advance of their mandatory phase-in date shall not be required to submit a paper copy of each electronic filing until they become subject to mandatory electronic filing.

§ 232.306 Division of Investment Management Electronic Submissions during transition.

In addition to the electronic submission requirements set forth in Rule 100 of this part, the following provisions shall apply during the mandatory electronic filing phase-in period:

(a) *Permitted electronic submissions*—(1) *Filings by investment companies.* Prior to its phase-in date, a filer that is a registered investment company or a business development company may, but is not required to, submit Form N–SAR (§ 274.101 of this chapter) in electronic format, *Provided, That,* if the filer elects to file Form N–SAR in electronic format, all subsequent amendments to the subject Form N–SAR shall be filed in electronic format.

(2) *Public Utility Act Filings.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings under the Public Utility Act filed in paper prior to the phase-in date of the filer shall be submitted in electronic format in accordance with rule 100 of Regulation S–T (§ 232.100 of this chapter). The subject filing, as amended, including any exhibit that has been previously filed only in paper and which is incorporated by reference into the filing, shall be filed electronically in its entirety.

(3) *Form 13F.* An institutional investment manager required by section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and rule 13f–1 (§ 240.13f–1 of this chapter) under, the Exchange Act to file a report on Form 13F (§ 249.325 of this chapter) with the Commission may file that report on magnetic tape in the format described in Form 13F–E (§ 249.326 of this chapter), *Provided That,* if the filer elects to submit a filing in electronic format, all subsequent amendments to the subject filing shall be filed in electronic format.

(b) *Amendments to paper filings*—(1) *Filings by investment companies.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings filed in paper prior to the phase-in date of a registrant that is a registered investment company or a business development company shall be submitted in electronic format in accordance with Rule 100 of Regulation S–T (§ 232.100 of this chapter). The subject filing, as amended, including any exhibit that has been previously filed only in paper and which is incorporated by reference into the filing, shall be filed electronically in its entirety.

(2) *Public Utility Act filings.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings under the Public Utility Act filed in paper prior to the phase-in date of the filer shall be submitted in electronic format in accordance with Rule 100 of Regulation S–T (§ 232.100 of this chapter). The subject filing, as amended, including any exhibit that has been previously filed only in paper and which is incorporated by reference into the filing, shall be filed electronically in its entirety.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

59. The authority citation for part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

60. The authority citations following § 239.12, 239.18 and 239.36 of this chapter are removed.

§ 239.11 [Amended]

61. By amending Form S–1 (§ 239.11) by adding a note to the fee calculation table and adding General Instruction IV. to read as follows:

Note.—The text of Form S–1 does not and the amendments will not appear in the Code of Federal Regulations.

FORM S–1—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

IV. Electronic filings

A. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. *See* Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Attention is directed to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter) and the EDGAR Filer Manual regarding the filing of a Financial Data Schedule.

* * * * *

62. By amending § 239.12 by adding paragraph (h) to read as follows:

§ 239.12 Form S–2, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

(h) *Electronic filings.* In addition to satisfying the foregoing conditions of this section, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(1) All required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(2) All Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

§ 239.12 [Amended]

63. By amending Form S–2 (§ 239.12) by adding a note to the fee calculation table; adding General Instructions I.H and III; revising the introductory text of Item 11, paragraph (a) of Item 11, and the introductory text of paragraph (b) of Item 11; adding paragraph (c) to Item 11, and paragraph (c) to Item 12 to read as follows:

Note: The text of Form S–2 does not and the amendments will not appear in the Code of Federal Regulations.

FORM S–2—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not

otherwise evident from the information presented in the table.

General Instructions

I. Eligibility Requirements for Use of Form S–2

* * * * *

H. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(1) All required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(2) All Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

III. Electronic filings

A. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers that elect to deliver and incorporate by reference the quarterly or annual report to security holders, or any portion thereof, pursuant to Item 12 of this Form shall file as an exhibit such quarterly or annual report to security holders in electronic format.

Item 11. Information with Respect to the Registrant

Furnish the information required by either paragraph (a) or paragraph (b) of this Item. The information required by paragraph (b) shall be furnished if the registrant satisfies the conditions of paragraph (c) of this Item.

(a) If the registrant elects to deliver this prospectus together with a copy of either its latest Form 10–K filed pursuant to Sections 13(a) or 15(d) of the Exchange Act or its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a–3 or Rule 14c–3:

(1) Indicate that the prospectus is accompanied by either a copy of the registrant's latest Form 10–K or a copy of its latest annual report to security holders, whichever the registrant elects to deliver pursuant to paragraph (a) of this Item.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q (§ 249.308a of this chapter) as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest Form 10–K or the latest report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item), and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus; or

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report which was delivered to its shareholders and which included the required financial information.

(3) If not reflected in the registrant's latest Form 10–K or its latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) provide information required by Rule 3–05 (§ 210.3–05 of this chapter) and Article 11 (§ 210.11–01 through § 210.11.03 of this chapter) of Regulation S–X.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest Form 10–K or the latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) and which were not described in a Form 10–Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2)(ii) or (iii) of this Item.

Instruction. Where the registrant elects to deliver the documents identified in paragraph (a) with a preliminary prospectus, such documents need not be redelivered with the final prospectus.

(b) If the registrant does not elect to deliver its latest Form 10–K or its latest annual report to security holders: * * *

(c) The registrant shall furnish the information required by paragraph (b) of this Item if:

(1) The registrant was required to make a material retroactive restatement of financial statements because of

(i) A change in accounting principles; or

(ii) A correction of an error; or

(iii) A consummation of one or more business combinations accounted for by the pooling of interest method of accounting was effected subsequent to the most recent fiscal year and the acquired businesses considered in the aggregate meet the test of a significant subsidiary;

OR

(2) The registrant engaged in a material disposition of assets outside the normal course of business;

AND

(3) Such restatement of financial statements or disposition of assets was not reflected in the registrant's latest annual report to security holders and/or its latest Form 10–K filed pursuant to sections 13(a) or 15(d) of the Exchange Act.

Item 12. Incorporation of Certain Information by Reference

* * * * *

(c) *Electronic filings.* Electronic filers that elect to deliver and incorporate by reference the quarterly or annual report to security holders, or any portion thereof, pursuant to this Item shall file as an exhibit such quarterly or annual report to security holders in electronic format.

* * * * *

64. By amending § 239.13 by adding paragraph (a)(7) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(7) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(i) All required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(ii) All Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

§ 239.13 [Amended]

65. By amending Form S–3 (§ 239.13) by adding a note to the fee calculation table and adding General Instructions I.A.7. and IV. to read as follows:

Note.—The text of Form S–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–3—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. * * *

7. *Electronic filings:* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing

requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(a) all required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(b) all Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers offering securities pursuant to dividend or interest reinvestment plans should note that an electronic filing must be accepted by and filed with the Commission before the twenty-day waiting period for automatic effectiveness of the Form S–3 commences or before a post-effective amendment thereto becomes immediately effective. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and General Instruction III. to this Form relating to the automatic effectiveness of Form S–3.

* * * * *

66. By amending § 239.16b by designating the introductory text as paragraph (a), redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively; and adding paragraph (b) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

* * * * *

(b) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(1) All required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(2) All Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

§ 239.16b [Amended]

67. By amending Form S–8 (§ 239.16b) by removing the parentheses surrounding the parenthetical statement following the fee calculation table and designating it as Note 1; adding Note 2 to the fee calculation table; adding General Instructions A.3. and H; and designating the current text in Item 3 as paragraph (a), redesignating paragraphs (a), (b) and (c) as paragraphs (a)(1), (a)(2) and (3) respectively; and adding paragraph (b) to read as follows:

Note.—The text of Form S–8 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–8—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Notes:

1. * * *

2. Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

A. * * *

3. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(a) All required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(b) all Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

H. Electronic Filings

1. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

2. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

3. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

4. Electronic filers should note that the Form S–8 will become immediately effective only when accepted by and filed with the Commission. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and General Instruction D. to this Form relating to the automatic effectiveness of Form S–8.

5. Electronic filers that incorporate by reference their annual reports to security holders pursuant to Item 3 of this Form shall file as an exhibit such annual report to security holders in electronic format.

* * * * *

Item 3. Incorporation of Documents by Reference

* * * * *

(b) *Electronic filings.* Electronic filers that incorporate by reference the annual report to security holders pursuant to this Item shall file as an exhibit such annual report to security holders in electronic format.

* * * * *

§ 239.18 [Amended]

68. By amending Form S–11 (§ 239.18) by adding General Instruction F and adding a note to the fee calculation table to read as follows:

Note.—The text of Form S–11 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–11—For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

General Instructions

* * * * *

F. Electronic Filings

(a) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(d) Attention is directed to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter) and the EDGAR Filer Manual regarding the filing of a Financial Data Schedule.

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

§ 239.20 [Amended]

69. By amending Form S–20 (§ 239.20) by adding a note to the fee calculation table and adding General Instruction III. to read as follows:

Note.—The text of Form S–20 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–20—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

III. Electronic Filings

A. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

§ 239.25 [Amended]

70. By amending Form S–4 (§ 239.25) by adding a note to the fee calculation table; adding General Instruction J.; revising the introductory text to Item 12, paragraph (a) of Item 12, and the introductory text to paragraph (b) of Item 12; adding paragraph (c) to Item 12 and paragraph (c) to Item 13; and designating the current text in Item 16 as paragraph (a) and adding paragraph (b) to read as follows:

Note.—The text of Form S–4 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–4—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

J. Electronic Filings

1. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

2. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

3. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

4. Electronic filers satisfying the conditions for formation of a bank or savings and loan holding company set forth in General Instruction G should note that the Form S–4 will become immediately effective only when accepted by and filed with the Commission. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and General Instruction G. to this Form relating to the automatic effectiveness of Form S–4.

5. Electronic filers that elect to deliver and incorporate by reference a quarterly or annual report to security holders, or any portion thereof, pursuant to Items 12 and 13 of this Form shall file as an exhibit such quarterly or annual report to security holders in electronic format.

* * * * *

Item 12. Information With Respect to S–2 or S–3 Registrants

If the registrant meets the requirements for use of Form S–2 or S–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or paragraph (b) of this Item. The information required by paragraph (b) shall be furnished if the registrant satisfies the conditions of paragraph (c) of this Item.

(a) If the registrant elects to deliver this prospectus together with a copy of either its latest Form 10–K filed pursuant to sections 13(a) or 15(d) of the Exchange Act or its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a–3 or Rule 14c–3:

(1) Indicate that the prospectus is accompanied by either a copy of the registrant's latest Form 10–K or a copy of its latest annual report to security holders, whichever the registrant elects to deliver pursuant to paragraph (a) of this Item.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q (§ 249.308a of this chapter) as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest Form 10–K or the latest report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item), and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report that was delivered to its security holders and which included the required financial information.

(3) If not reflected in the registrant's latest Form 10–K or its latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) provide information required by Rule 3–05 (§ 210.3–05 of this chapter) and Article 11 (§ 210.11–01 through § 210.11.03 of this chapter) of Regulation S–X.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10–K or the latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) and that were not described in a Form 10–Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2) (ii) or (iii) of this Item.

Instruction. Where the registrant elects to deliver the documents identified in paragraph (a) with a preliminary prospectus, such documents need not be redelivered with the final prospectus.

(b) If the registrant does not elect to deliver its latest Form 10–K or its latest annual report to security holders: * * *

(c) The registrant shall furnish the information required by paragraph (b) of this Item if:

(1) The registrant was required to make a material retroactive restatement of financial statements because of

(i) A change in accounting principles; or

(ii) A correction of an error; or

(iii) A consummation of one or more business combinations accounted for by the pooling of interest method of accounting was effected subsequent to the most recent fiscal year and the acquired businesses considered in the aggregate meet the test of a significant subsidiary; .

OR

(2) the registrant engaged in a material disposition of assets outside the normal course of business;

AND

(3) such restatement of financial statements or disposition of assets was not reflected in the registrant's latest annual report to

security holders and/or its latest Form 10–K filed pursuant to Sections 13(a) or 15(d) of the Exchange Act.

Item 13. Incorporation of Certain Information by Reference

* * * * *

(c) *Electronic filings.* Electronic filers that elect to deliver and incorporate by reference the quarterly or annual report to security holders, or any portion thereof, pursuant to this Item shall file as an exhibit such quarterly or annual report to security holders in electronic format.

* * * * *

Item 16. Information With Respect to S–2 or S–3 Companies

(a) * * *

(b) *Electronic filings.* In addition to satisfying the requirements of paragraph (a) of this Item, electronic filers that elect to deliver and incorporate by reference the quarterly or annual report to security holders of a company being acquired, or any portion thereof, pursuant to this Item shall file as an exhibit such quarterly or annual report to security holders in electronic format.

* * * * *

§ 239.28 [Amended]

71. By amending Form S–18 (§ 239.28) by adding a note to the fee calculation table and adding Paragraph IV. immediately prior to Part I to read as follows:

Note.—The text of Form S–18 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–18—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note.— Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. *See* Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Attention is directed to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter) and the EDGAR Filer Manual regarding the filing of a Financial Data Schedule.

E. If filed electronically, the registration statement, amendments thereto, and related documents shall be filed at the Commission's principal office in Washington, DC.

F. Electronic filers are directed to Rule 210 of Regulation S–T (§ 232.210 of this chapter) for provisions relating to the submission of supplemental information in electronic format.

* * * * *

§ 239.3 [Amended]

72. By amending Form F–1 (§ 239.31) by adding a note to the fee calculation table and adding General Instruction IV. to read as follows:

Note.—The text of Form F–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–1—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * * *

Note.— Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Attention is directed to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter) and the EDGAR Filer Manual regarding the filing of a Financial Data Schedule.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

73. By amending § 239.32 by adding paragraph (h) after the note at the end of the section to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(h) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(1) All required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(2) all Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

§ 239.32 [Amended]

74. By amending Form F–2 (§ 239.32) by adding a note to the fee calculation table and adding General Instruction I.H. and General Instruction IV. to read as follows:

Note.—The text of Form F–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–2—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note.— Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

I. Eligibility Requirements for Use of Form F–2

* * * * *

(H) *Electronic filings:* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(1) All required electronic filings, including confirming electronic format copies of

documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(2) All Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers offering securities pursuant to dividend or interest reinvestment plans should note that an electronic filing must be accepted by and filed with the Commission before the twenty-day waiting period for automatic effectiveness of the Form F–2 commences or before a post-effective amendment thereto becomes immediately effective. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and General Instruction III to this Form relating to the automatic effectiveness of Form F–2.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

75. By amending § 239.33 by adding paragraph (a)(7) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a)(7) *Electronic filings:* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(i) All required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(ii) All Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

§ 239.33 [Amended]

76. By amending Form F–3 (§ 239.33) by adding a note to the fee calculation table and adding General Instruction I.A.7. and IV. to read as follows:

Note.—The text of Form F–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–3—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

I. Eligibility Requirements for Use of Form F–3

A. * * *

7. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 100 of Regulation S–T (§ 232.100 of this chapter) shall have filed with the Commission:

(i) all required electronic filings, including confirming electronic format copies of documents required to be submitted by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter); and

(ii) all Financial Data Schedules required to be submitted in electronic format pursuant to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers offering securities pursuant to dividend or interest reinvestment plans should note that an electronic filing must be accepted by and filed with the Commission before the twenty-day waiting period for automatic effectiveness of the Form F–3 commences or before a posteffective amendment thereto becomes immediately effective. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and General Instruction III to this Form relating to the automatic effectiveness of Form F–3.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 239.34 [Amended]

77. By amending Form F–4 (§ 239.34) by adding a note to the fee calculation table and adding General Instruction H to read as follows:

Note.—The text of Form F–4 does not and the amendment will not appear in the Code of Federal Regulations.

Form F–4—Registration Statement Under the Securities Act of 1933

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the

table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

H. Electronic Filings

1. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

2. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

3. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

4. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

5. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 239.36 [Amended]

78. By amending Form F–6 (§ 239.36) by adding a note to the fee calculation table and adding General Instruction IV. to read as follows:

Note.—The text of Form F–6 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–6—Registration Statement Under the Securities Act of 1933 for Depositary Shares Evidenced by American Depositary Receipts

* * * * *

Calculation of Registration Fee

* * * * *

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Securities Act Rules 402(d) and 472(d) (§§ 230.402(d) and 230.472(d) of this chapter).

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers should note that the Form F–6 becomes effective immediately only when accepted by and filed with the Commission. The Commission will issue a notice that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and Rule 466 (§ 230.466 of this chapter) relating to the effective date of Form F–6.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

§ 239.37 [Amended]

79. By amending Form F–7 (§ 239.37) by adding General Instruction IV. to read as follows:

Note.—The text of Form F–7 does not and the amendment will not appear in the Code of Federal Regulations.

Form F–7—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

IV. Electronic Filings.

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements.

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers should note that the Form F–7 will become immediately effective only when accepted by and filed with the Commission. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and Rule 467(a) (§ 230.467(a) of this chapter) relating to the automatic effectiveness of Form F–7.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 239.38 [Amended]

80. By amending Form F–8 (§ 239.38) by adding General Instruction VI. to read as follows:

Note.—The text of Form F–8 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–8—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

VI. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format.

Capital letters shall be used to satisfy boldface type requirements.

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers should note that the Form F–8 will become immediately effective only when accepted by and filed with the Commission. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and Rule 467(a) (§ 230.467(a) of this chapter) relating to the automatic effectiveness of Form F–8.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 239.39 [Amended]

81. By amending Form F–9 (§ 239.39) by adding General Instruction IV. to read as follows:

Note.—The text of Form F–9 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–9 Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements.

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers should note that the Form F–9 will become immediately effective only when accepted by and filed with the Commission. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and Rule 467(a) (§ 230.467(a) of this chapter) relating to the automatic effectiveness of Form F–9.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 239.40 [Amended]

82. By amending Form F–10 (§ 239.40) by adding General Instruction IV. to read as follows:

Note.—The text of Form F–10 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–10 Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

IV. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements.

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers should note that the Form F–10 will become immediately effective only when accepted by and filed with the Commission. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and Rule 467(a) (§ 230.467(a) of this chapter) relating to the automatic effectiveness of Form F–10.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 232.41 [Amended]

83. By amending Form F–80 (§ 232.41) by adding General Instruction VI. to read as follows:

Note.—The text of Form F–80 does not and the amendment will not appear in the Code of Federal Regulations.

[Form F–80—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

VI. Electronic Filings

A. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

B. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements.

C. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

D. Electronic filers should note that the Form F–80 will become immediately effective only when accepted by and filed with the Commission. The Commission will issue a notice confirming that the filing has been accepted and filed. See Rule 12 of Regulation S–T (§ 232.12 of this chapter) relating to the date of filing of electronic format documents and Rule 467(a) (§ 230.467(a) of this chapter) relating to the automatic effectiveness of Form F–80.

E. Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon

request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

F. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 239.61 [Amended]

84. By amending Form SR (§ 239.61) by adding General Instruction G. to read as follows:

Note.—The text of Form SR does not and the amendment will not appear in the Code of Federal Regulations.

Form SR—Report of Sales of Securities and Use of Proceeds Therefrom

* * * * *

General Instructions

* * * * *

G. *Electronic filings.* This form shall not be filed in electronic format.

* * * * *

85. By revising § 239.64 to read as follows:

§ 239.64 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by any electronic filer for the submission of any required paper format exhibit pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940, *Provided, That* submission of such paper format exhibit is permitted pursuant to Rule 101 or Rule 102 of Regulation S–T (§ 232.101 and § 232.102 of this chapter).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

86. The authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

87. The authority citations following §§ 240.0–3, 240.12b–12, 240.12b–15, 240.12b–32, 240.12b–36, 240.13d–1, 240.13d–2, 240.13d–101, 240.13d–102, 240.13e–3, 240.13e–100, 240.13e–101, 240.14a–3, 240.14a–4, 240.14a–5, 240.14a–6, 240.14a–8, 240.14a–11, 240.14a–12, 240.14a–101, 240.14a–102, 240.14c–3, 240.14d–3, 240.14d–9, 240.14d–100, 240.14d–101, and 240.24b–2 are removed.

88. By amending § 240.0–1 by adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 240.0–1 Definitions.

(a) * * *

(5) The term "electronic filer" means a person or an entity that submits filings electronically pursuant to Rule 100 of Regulation S–T (§ 232.100 of this chapter).

(6) The term "electronic filing" means a document under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

* * * * *

89. By revising § 240.0–2 to read as follows:

§ 240.0–2 Business hours of the Commission.

(a) The principal office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays, and legal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever currently is in effect in Washington, DC, *Provided, that* hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b) and (c) of this section.

(b) *Paper and Electronic filings.* Filings in paper format, or on magnetic tape or diskette, may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(c) *Electronic filings.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays and legal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

90. By amending § 240.0–3 by adding paragraph (d) to read as follows:

§ 240.0–3 Filing of material with the Commission.

* * * * *

(d) *Electronic filings.* (1) All documents required to be filed in electronic format with the Commission pursuant to the Act or the rules and regulations thereunder shall be filed at the principal office in Washington, DC by delivery to the Commission of a magnetic tape or diskette, or by direct transmission. The date of filing of such documents shall be determined in the manner set forth in Rule 12 of Regulation S–T (§ 232.12 of this chapter).

(2) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(3) The requirement relating to sequential page numbering in paragraph (b) of this section does not apply to documents in electronic format.

(4) Each document filed shall contain an exhibit index, which should immediately precede the exhibits filed with the document. The index shall list each exhibit filed. Whenever an exhibit is filed in paper pursuant to a temporary or continuing hardship exemption (§ 232.101 and § 232.102 of this chapter), the letter "P" shall be placed next to the listed exhibit in the exhibit index to reflect that the exhibit was filed in paper pursuant to such exemption. Whenever an electronic confirming copy of an exhibit is filed pursuant to the grant of a temporary hardship exemption (§ 232.101 of this chapter), the electronic filer shall place the designation "CE" next to the listed exhibit in the exhibit index.

91. By amending § 240.0–11 by revising paragraph (a)(5) to read as follows:

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) * * *

(5) The cover page of the filing shall set forth the calculation of the fee in tabular format, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

* * * * *

92. By amending § 240.12b–4 by adding paragraph (d) to read as follows:

§ 240.12b–4 Supplemental information.

* * * * *

(d) *Electronic filings.* Electronic filers are directed to Rule 210 of Regulation S–T (§ 232.210 of this chapter) for provisions relating to submission of supplemental information in electronic format.

93. By amending § 240.12b–11 by adding paragraph (d) to read as follows:

§ 240.12b–11 Number of copies; signatures; binding.

* * * * *

(d) *Electronic filings.* (1) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such

document be filed with or provided to the Commission.

(2) The requirement to bind material in one or more parts does not apply to electronic format documents.

(3) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

94. By amending § 240.12b–12 by adding paragraph (e) to read as follows:

§ 240.12b–12 Requirements as to paper, printing and language.

* * * * *

(e) *Electronic filings.* (1) Documents in electronic format shall be prepared as prescribed by the EDGAR Filer Manual.

(2) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

(3) Requirements as to paper size, printing, and type size shall not apply to documents in electronic format.

(4) Capital letters shall be used to satisfy bold-face type requirements.

(5) Electronic filers are directed to Rule 220 of Regulation S–T (§ 232.220 of this chapter) for provisions relating to foreign language documents filed with statements or reports.

95. By revising § 240.12b–15 to read as follows:

§ 240.12b–15 Amendments.

All amendments shall be filed under cover of the form amended, marked with the letter "A" to designate the document as an amendment, *e.g.*, "10–K/A," and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section shall set forth the complete text of each item as amended. Amendments shall be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective.

96. By amending § 240.12b–23 by removing the word "and" following the semi-colon in paragraph (a)(2); replacing the period with a semi-colon in paragraph (a)(3); adding the word "and" following the semi-colon in paragraph (a)(3); and adding paragraph (a)(4) to read as follows:

§ 240.12b–23 Incorporation by reference.

(a)* * *

(4) *Electronic filings.* Electronic filers shall not incorporate by reference any document filed in paper in violation of the mandated electronic filing requirements, or any document filed in paper pursuant to a temporary hardship exemption (§ 232.101 of this chapter) for which a confirming electronic copy has not been submitted.

* * * * *

97. By amending § 240.12b–25 by adding paragraph (g) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 20–F, 11–K, N–SAR or 10–Q.

* * * * *

(g) *Electronic filings.* The provisions of this section shall not apply to reports required to be filed in electronic format if the sole reason the report is not filed within the time period prescribed is that the filer is unable to file the report in electronic format. Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with either Rule 101 or 102 of Regulation S–T (§ 232.101 and § 232.102 of this chapter), or apply for an adjustment of filing date pursuant to Rule 12(c) of Regulation S–T (232.12(c) of this chapter).

98. By amending § 240.12b–32 by adding new paragraph (c) to read as follows:

§ 240.12b–32 Incorporation of exhibits by reference.

* * * * *

(c) *Electronic filings.* Electronic filers shall not incorporate by reference any document filed in paper in violation of the mandated electronic filing requirements, or any document filed in paper pursuant to a temporary hardship exemption (§ 232.101 of this chapter) for which a confirming electronic copy has not been submitted.

99. By amending § 240.12b–36 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 240.12b–36 Use of financial statements filed under other acts.

* * * * *

(b) *Electronic filings.* Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

§ 240.12b–3 [Amended]

100. By removing § 240.12b–37.

101. By amending § 240.13d–1 by adding paragraph (g) to read as follows:

§ 240.13d–1 Filing of Schedules 13D and 13G.

* * * * *

(g) *Electronic filings.* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of a Schedule 13D or Schedule 13G be filed with the Commission.

102. By amending § 240.13d–2 by adding paragraph (c) to read as follows:

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

* * * * *

(c) *Electronic filings.* The first electronic format amendment to a Schedule 13D or 13G previously filed in paper shall restate the Schedule 13D or 13G in its entirety, as amended, including exhibits that are current as of the date of the amendment. See Rule 100(b)(2) of Regulation S–T (§ 232.100(b)(2) of this chapter). An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission.

103. By amending § 240.13d–101 by designating the current note to the cover page as note 1 and adding note 2 to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

Schedule 13D

* * * * *

Note 1: * * *

Note 2: *Electronic filings:* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission. See Rules 13d–1(g) and 13d–2(c) under the Act (§§ 240.13d–1(g) and 240.13d–2(c) of this chapter). Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

104. By amending § 240.13d–102 by adding Instruction D following the notes to read as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1 (b) and (c) and amendments thereto filed pursuant to § 240.13d–2(b).

* * * * *

Schedule 13G

* * * * *

Instructions.

* * * * *

D. *Electronic filings:* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission. See Rules 13d–1(g) and 13d–2(c) of the Act (§§ 240.13d–1(g) and 240.13d–2(c) of this chapter). Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

105. By amending § 240.13e–1 by adding paragraph (d) to read as follows:

§ 240.13e–1 Purchase of securities by issuer thereof.

* * * * *

(d) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission.

106. By amending § 240.13e–3 by adding paragraph (d)(4) to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

* * * * *

(d) Material required to be filed. * * *

(4) *Electronic filings.* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. Capital letters shall be used to satisfy bold face type requirements.

* * * * *

107. By amending § 240.13e–4 by adding paragraph (c)(4) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(c) Material required to be filed. * * *

(4) *Electronic filings.* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. Where an electronic filer has received a temporary hardship exemption pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter) and has failed to file the required electronic confirming copy, termination dates and withdrawal rights periods shall be tolled for the period of non-compliance.

* * * * *

108. By amending § 240.13e–100 by designating the current instruction to the cover page as Instruction 1, adding Instruction 2 to the cover page, and adding General Instruction I to read as follows:

§ 240.13e–100 Schedule 13E–3 [§ 240.13e–3], Rule 13e–3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 [§ 240.13e–3] thereunder.

* * * * *

Rule 13e–3 Transaction Statement

* * * * *

Instruction 1: * * *

Instruction 2. Electronic filings: An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Rule 13e–3(d)(4) under the Act (§ 240.13e–3(d)(4) of this chapter). See the EDGAR Filer Manual for instructions regarding header designation of this Schedule. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

General Instructions

* * * * *

I. If a preliminary copy of a proxy or information statement has been incorporated by reference into this statement, the amendment to this Schedule that incorporates by reference the definitive proxy or information statement shall restate the Schedule 13E–3 in its entirety, as amended, including the resubmission of all required exhibits.

* * * * *

109. By amending § 240.13e–101 by designating the current Instruction to its cover page as Instruction 1 and adding Instruction 2 to read as follows:

§ 240.13e–101 Schedule 13E–4. Tender offer statement pursuant to section 13(e)(1) of the Securities Act of 1934 and § 240.13e–4 thereunder.

* * * * *

Issuer Tender Offer Statement

* * * * *

Instruction 1: * * *

Instruction 2. Electronic filings: An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Rule 13e–4(c)(4) under the Act (§ 240.13e–4(c)(4) of this chapter). Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

110. By amending § 240.14a–3 by adding a sentence to the end of the text of paragraph (c), removing the note following paragraph (c) and adding paragraph (f) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(c) * * * If the Form 10–K filed with the Commission includes the information required by this section, copies of the annual report to security holders need not be mailed for the information of the Commission.

* * * * *

(f) *Electronic filings.* An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. Capital letters should be used to satisfy bold face type requirements. Any reference to specific size type does not apply to electronic format documents. Electronic filers are directed to Rule 205 of Regulation S–T (§ 232.205 of this chapter) for provisions relating to submission of graphic and image material in electronic format.

111. By amending § 240.14a–4 by adding paragraph (f) to read as follows:

§ 240.14a–4 Requirements as to proxy.

* * * * *

(f) *Electronic filings.* An electronic copy of the form of proxy shall be submitted. Capital letters shall be used to satisfy bold face type requirements.

112. By amending § 240.14a–5 by adding paragraph (f) to read as follows:

§ 240.14a–5 Presentation of information in proxy statement.

* * * * *

(f) *Electronic filings.* Any reference to specific size type does not apply to electronic format documents.

113. By amending § 240.14a–6 by adding paragraphs (n) and (o) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(n) *Cover Page.* Each proxy statement or amendment shall include a cover page in the form set forth in Schedule 14A (§ 240.14a–101 of this chapter).

(o) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission. Capital letters shall be used to satisfy bold-face type requirements. Registrants are directed to the EDGAR Filer Manual for procedures for marking electronic text to indicate changes.

114. By amending § 240.14a–8 by adding paragraph (f) to read as follows:

§ 240.14a–8 Proposals of security holders.

* * * * *

(f) *Electronic filings.* Filings pursuant to paragraph (d) of this section and

letters from proponents pursuant to paragraph (e) of this section shall be submitted to the Commission in paper format only, notwithstanding that the registrant to which the filings and letters relate is otherwise required to file in electronic format.

115. By amending § 240.14a–11 by adding paragraph (c)(7), a sentence to the end of paragraph (e), and paragraph (i) to read as follows:

§ 240.14a–11 Special provisions applicable to election contests.

* * * * *

(c) * * *

(7) Each Schedule 14B statement and amendment shall include a cover page in the form set forth in Schedule 14B.

* * * * *

(e) *Solicitations prior to furnishing required written proxy statement; filing requirements.* * * * Such soliciting material shall include a cover page in the form set forth in Schedule 14A and the appropriate box on that cover page shall be checked to indicate such filing.

* * * * *

(i) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission. If the annual report to security holders is soliciting material, it shall be filed in electronic format with the Commission in its entirety.

116. By amending § 240.14a–12 by adding a sentence to the end of paragraph (b) and adding paragraph (c) to read as follows:

§ 240.14a–12 Solicitation prior to furnishing required proxy statement.

* * * * *

(b) * * * Such soliciting material shall include a cover page in the form set forth in Schedule 14A and the appropriate box on that cover page shall be checked to indicate such filing.

(c) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. If the annual report to security holders is soliciting material, it shall be filed in electronic format with the Commission in its entirety.

117. By amending § 240.14a–101 by adding a cover page after the section heading and before the notes; adding Note D.4; removing the last sentence of Item 10(a)(3) and adding two sentences to the end of Item 10(a)(3); revising paragraphs (b)(2)(i)(A) and (b)(2)(i)(A)(*1*) of Item 14, to read as follows:

§ 240.14a–101. Schedule 14A. Information required in proxy statement.

Schedule 14A Information

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No. _____)

Filed by the Registrant ☐
Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement
☐ Preliminary Additional Materials
☐ Definitive Proxy Statement
☐ Definitive Additional Materials
☐ Soliciting Material Pursuant to § 240.14a–11(e) or § 240.14a–12

_____

(Name of Registrant as Specified In Its Charter)

_____

(Name of Person(s) Filing Proxy Statement)

Payment of Filing Fee (Check the appropriate box):

☐ $125 per Exchange Act Rules 0–11(c)(1)(ii), 14a–6(j)(1), or 14a–6(j)(2).
☐ $500 per each party to the controversy pursuant to Exchange Act Rule 14a–6(j)(3).
☐ Fee computed on table below per Exchange Act Rules 14a–6(j)(4) and 0–11.

(1) Title of each class of securities to which transaction applies:

_____

(2) Aggregate number of securities to which transaction applies:

_____

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11: [1]

_____

(4) Proposed maximum aggregate value of transaction:

_____

[1] Set forth the amount on which the filing fee is calculated and state how it was determined.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

_____

(2) Form, Schedule or Registration Statement No.:

_____

(3) Filing Party:

_____

(4) Date Filed:

_____

* * * * *

Notes:

* * * * *

D. * * *

4. *Electronic filings.* If any of the information required by Items 13 or 14 of this Schedule is incorporated by reference from an annual or quarterly report to security holders, such report shall be filed in electronic format in its entirety with the proxy statement. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Item 10—Compensation Plans.

(a) * * *

(3) * * * The information called for by paragraph (b)(4)(ii) of Item 402 of Regulation S–K (§ 229.402 of this chapter) need not be provided for all employees as a group. The information required by this paragraph (a)(3) is in lieu of the information otherwise called for by Item 402(b) of Regulation S–K (§ 229.402 of this chapter) in connection with the disclosure required by Item 8 of this Schedule.

* * * * * *

Item 14—Mergers, Consolidations, Acquisitions and Similar Matters

* * * * *

(b) * * *
(2) * * *
(i) * * *

(A) If the registrant elects to furnish information pursuant to this paragraph (b)(2)(i)(A) and delivers the proxy statement together with a copy of either its latest Form 10–K filed pursuant to Sections 13(a) or 15(d) of the Exchange Act or its latest annual report to security holders which, at the time of original preparation met the requirements of either Rule 14a–3 (§ 240.14a–3 of this chapter) or 14c–3 (§ 240.14c–3 of this chapter):

(*1*) Indicate that the proxy statement is accompanied by either a copy of the registrant's latest Form 10–K or a copy of its latest annual report to security holders.

* * * * *

118. By amending § 240.14a–102 by adding a cover page before the instructions and Instruction 3 to read as follows:

§ 240.14a–102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the registrant) pursuant to § 240.14a–11(c) (Rule 14a–11(c)).

Schedule 14B

Filed by or on Behalf of a Participant (other than the registrant) Pursuant to § 240.14a–11(c) (Amendment No.)

_____

(Name of Registrant as Specified in its Charter)

_____

(Name of Participant(s))

* * * * *

3. *Electronic Filers:* Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

119. By amending § 240.14c–3 by revising the section heading, adding a sentence to the end of the text of paragraph (b), removing the note following paragraph (b), and adding paragraph (c) to read as follows:

§ 240.14c–3 Annual report to be furnished to security holders.

* * * * *

(b) * * * If the Form 10–K filed with the Commission includes the information required by this section, copies of the annual report to security holders need not be mailed for the information of the Commission.

(c) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

120. By amending § 240.14c–4 by adding paragraph (d) to read as follows:

§ 240.14c–4 Presentation of information in information statement.

* * * * *

(d) *Electronic filings.* Any reference to specific size type does not apply to electronic format documents.

121. By amending § 240.14c–5 by adding paragraphs (h) and (i) to read as follows:

§ 240.14c–5 Filing requirements.

* * * * *

(h) *Cover page.* Each information statement or amendment shall include a cover page in the form set forth in Schedule 14C (§ 240.14c–101 of this chapter).

(i) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission. Registrants are directed to the EDGAR Filer Manual for procedures marking electronic text to indicate changes.

122. By amending § 240.14c–101 by adding a cover page after the section heading and before the notes changing "note" to "notes"; designating the existing note as Note A; and adding Note B to read as follows:

§ 240.14c–101. Schedule 14C. Information required in information statement.

Schedule 14C Information

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934 (Amendment No.)

Check the appropriate box:

☐ Preliminary Information Statement
☐ Definitive Information Statement

(Name of Registrant As Specified In Charter)

(Name of Person(s) Filing the Information Statement)

Payment of Filing Fee (Check the appropriate box):

☐ $125 per Exchange Act Rules 0–11(c)(1)(ii), or 14c–5(g).
☐ Fee computed on table below per Exchange Act Rules 14c–5(g) and 0–11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11: [2]

(4) Proposed maximum aggregate value of transaction:

[2] Set forth the amount on which the filing fee is calculated and state how it was determined.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

* * * * *

Notes: * * *

B. Capital letters shall be used to satisfy bold face type requirements.

* * * * *

123. By amending § 240.14d–3 by adding paragraph (d) to read as follows:

§ 240.14d–3 Filing and transmission of tender offer statement.

* * * * *

(d) *Electronic filings.* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with the Commission.

124. By amending § 240.14d–7 by adding paragraph (c) to read as follows:

§ 240.14d–7 Additional withdrawal rights.

* * * * *

(c) *Electronic filings.* Where the bidder has failed to file a required electronic filing, including a confirming electronic format copy of a document required by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter), the withdrawal rights period shall be tolled for the period of non-compliance.

125. By amending § 240.14d–9 by adding paragraph (g) to read as follows:

§ 240.14d–9 Solicitation/recommendation statements with respect to certain tender offers.

* * * * *

(g) *Electronic filings.* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

126. By amending § 240.14d–100 by pluralizing "General Instruction" and adding General Instruction H to read as follows:

§ 240.14d–100 Schedule 14D–1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

* * * * *

Schedule 14D–1

* * * * *

General Instructions.

* * * * *

H. *Electronic filings.* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Rule 14d–3(d) (§ 240.14d–3(d) of this chapter). Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

127. By amending § 240.14d–101 by adding General Instruction C to read as follows:

§ 240.14d–101 Schedule 14D–9.

* * * * *

Schedule 14D–9

* * * * *

General Instructions:

* * * * *

C. *Electronic filings.* An electronic format document, including all exhibits, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Rule 14d–9(g) (§ 240.14d–9(g) of this chapter). Signatures shall be in typed form rather than

manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

128. By amending § 240.14e–1 by adding paragraph (e) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(e) *Electronic filings.* Where the bidder has failed to file a required electronic filing, including a confirming electronic format copy of a document required by any temporary hardship exemption granted pursuant to Rule 101 of Regulation S–T (§ 232.101 of this chapter), the periods of time required by paragraphs (a) and (b) of this section shall be tolled for the period of non-compliance.

129. By amending § 240.14f–1 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 240.14f–1 Change in majority of directors.

* * * * *

(b) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

130. By amending § 240.24b–2 by adding paragraph (g) to read as follows:

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

* * * * *

(g) *Electronic filings.* Confidential treatment requests shall be submitted in paper format only, whether or not the filer is required to submit a filing in electronic format.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

131. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et. seq.*, unless otherwise noted.

132. The authority citations following §§ 249.208a, 249.210, 249.308a, 249.311, 249.322, and 249.323 are removed.

§ 249.208a [Amended]

133. By amending Form 8–A (§ 249.208a) by adding General Instruction E, revising Instruction I, removing Instruction II.7 and II.8 and redesignating Instruction II.3 through II.6 as II.1 through II.4 of Instructions As To Exhibits to read as follows:

Note.—The text of Form 8–A is not and the amendment will not appear in the Code of Federal Regulations.

Form 8–A

For Registration of Certain Classes of Securities Pursuant to Section 12(b) or (g) of the Securities Exchange Act

General Instructions

* * * * *

E. *Electronic Filers.* (a) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Instructions as to Exhibits

I. If the securities to be registered on this form are to be registered on an exchange on which other securities of the registrant are registered, or are to be registered pursuant to Section 12(g) of the Act, copies of all constituent instruments defining the rights of the holders of each class of such securities, including any contracts or other documents which limit or qualify the rights of such holders, shall be filed as exhibits, subject to Rule 12b–32 regarding incorporation by reference.

* * * * *

§ 249.208b [Amended]

134. By amending Form 8–B (§ 249.208b) by adding General Instruction F to read as follows:

Note.—The text of Form 8–B is not and the amendment will not appear in the Code of Federal Regulations.

Form 8–B

For Registration of Securities of Certain Successor Issuers Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

General Instructions

* * * * *

F. *Electronic Filers.* (a) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

§ 249.210 [Amended]

135. By amending Form 10 (§ 249.210) by adding General Instruction G to read as follows:

Note.—The text of Form 10 is not and the amendment will not appear in the Code of Federal Regulations.

Form 10

General Form for Registration of Securities Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * *

G. *Electronic Filers.* (a) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(d) Attention is directed to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter) and the EDGAR Filer Manual regarding the filing of a Financial Data Schedule.

§ 249.21 [Amended]

136.8 By amending Form 18 (§ 249.218) by adding Instruction 8 and removing Exhibit A of Exhibits to Form 18 and redesignating the remaining Exhibits as Exhibits A through C to read as follows:

Note.—The text of Form 18 is not and the amendment will not appear in the Code of Federal Regulations.

Form 18

For Foreign Governments and Political Subdivisions Thereof Application for Registration Pursuant to Section 12(b) and (c) of the Securities Exchange Act of 1934

* * * * *

Instructions

* * * * *

8. *Electronic Filers.* (a) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–12(e) (§ 240.12b–12(e) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(d) Notwithstanding the Exhibit "A" requirement, electronic filers need not file copies of securities registered as exhibits to the Form 18 registration statement.

(e) Notwithstanding the Exhibit "B" and "C" requirements, foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall

be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

(f) With respect to the Exhibit "C" requirement, if an English version of the last annual budget of the registrant as presented to its legislative body has been prepared, it shall be filed electronically. If no such version has been prepared, the budget shall be provided upon request.

(g) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 249.220f [Amended]

137. By amending Form 20–F (§ 249.220f) by adding General Instruction I, Item 20, and Instructions A.6 and B.4 to Exhibits to read as follows:

Note.—The text of Form 20–F is not and the amendments will not appear in the Code of Federal Regulations.

Form 20–F

Registration Statement Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934 [Fee Required] or Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 [Fee Required]

For the Fiscal Year Ended _____

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 [No Fee Required]

For the Transition Period From _____ to _____

* * * * *

General Instructions

* * * * *

I. *Electronic Filers.* (a) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed form than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(d) Attention is directed to Item 20 of this Form and the EDGAR Filer Manual regarding the filing of a Financial Data Schedule.

(e) Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document required to be filed with the Commission shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

(f) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

Item 20. Financial Data Schedule.

Registrants that are required to file this form in electronic format shall furnish the Financial Data Schedule required by Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

Instructions as to Exhibits

A. Registration Statements.

* * * * *

6. Any Financial Data Schedule filed as provided in Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

B. Annual Reports.

* * * * *

4. Any Financial Data Schedule filed as provided in Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

* * * * *

§ 249.240f [Amended]

138. By amending Form 40–F (§ 249.240f) by adding General Instruction E to read as follows:

Note.—The text of Form 40–F is not and the amendments will not appear in the Code of Federal Regulations.

Form 40–F

Registration Statement Pursuant to Section 12 of the Securities Exchange Act of 1934 or Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

E. *Electronic Filers.* (1) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(2) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(3) Signatures shall be in typed form than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(4) To the extent that audited financial statements are filed under cover of this Form pursuant to General Instruction B, a Financial Data Schedule shall be filed as well. See the EDGAR Filer Manual for further information.

(5) Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document required to be filed with the Commission shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

(6) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (e.g., financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

§ 249.306 [Amended]

139. By amending Form 6–K (§ 249.306) by adding General Instruction E to read as follows:

Note.—The text of Form 6–K is not and the amendment will not appear in the Code of Federal Regulations.

Instructions and Form

Form 6–K

Report of Foreign Private Issuer Pursuant to Rules 13a–16 or 15d–16 of the Securities Exchange Act of 1934

* * * * *

General Instructions

E. *Electronic Filers*

(a) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed format form rather than manually signed. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(d) Foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed, including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign document exhibit shall be made available to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters in the English language and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

(e) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

§ 249.308 [Amended]

140. By amending Form 8–K (§ 249.308) by adding General Instruction G to read as follows:

Note—The text of Form 8–K is not and the amendment will not appear in the Code of Federal Regulations.

Form 8–K Current Report

Pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

General Instructions

* * * * *

G. Electronic Filers

1. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

2. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

3. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

§ 249.308a [Amended]

141. By amending Form 10–Q (§ 249.308a) by adding General Instruction I to read as follows:

Note—The text of Form 10–Q is not and the amendment will not appear in the Code of Federal Regulations.

Form 10–Q—General Instructions

* * * * *

I. Electronic Filers

1. Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

2. An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

3. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

4. Attention is directed to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter) regarding the filing of a Financial Data Schedule. Attention also is directed to the EDGAR Filer Manual regarding Financial Data Schedule format requirements.

* * * * *

§ 249.310 [Amended]

142. By amending Form 10–K (249.310) by removing the Section regarding Supplemental Information To Be Furnished With Reports Filed Pursuant To Section 15(d) of the Act By Registrants Which Have Not Registered Securities Pursuant To Section 12 Of The Act; adding paragraph (3) to General Instruction D; adding General Instruction K; and adding Item 15 to Part IV to read as follows:

Note—The text of Form 10–K is not and the amendments will not be appearing in the Code of Federal Regulations.

Instructions and Form

Form 10–K Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

General Instructions

* * * * *

D. Signature and Filing of Report

* * * * *

(3) Registrants are requested to indicate in a transmittal letter with the Form 10–K whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

* * * * *

K. Electronic Filers

(1) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(2) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(3) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(4) Attention is directed to Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter) and the EDGAR Filer Manual regarding the filing of a Financial Data Schedule.

(5) If any information required by Part I or Part II is incorporated by reference from the annual report to security holders as provided in General Instruction G, the entire annual report to security holders shall be filed as an exhibit in electronic format, as required by Item 601(b)(13) of Regulation S–K (§ 229.601(b)(13) of this chapter).

(6) Electronic filers incorporating by reference information from an annual report to security holders or using integrated reports to security holders, as provided by General Instruction H, are directed to Rule 205 of Regulation S–T (§ 232.205 of this chapter) for provisions relating to submission of graphic and image material in electronic format.

* * * * *

Part IV

* * * * *

Item 15. *Information to be Furnished by Registrants Filing Reports pursuant to Section 15(d) of the Act.*

Upon request by the Commission, the following materials shall be furnished for the information of the Commission by registrants filing annual reports on this form pursuant to Section 15(d) of the Act:

(a) Any annual report to security holders covering the registrant's last fiscal year; and

(b) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders.

§ 249.310c [Amended]

143. By amending Form 10–C (§ 249.310c) by adding Instruction G to read as follows:

Note—The text of Form 10–C is not and the amendment will not appear in the Code of Federal Regulations.

Form 10–C—Report by Issuer of Securities Quoted on NASDAQ Interdealer Quotation System

* * * * *

Instructions

* * * * *

G. Electronic Filers

An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. (See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter.) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

§ 249.311 [Amended]

144. By amending Form 11–K (§ 249.311) by adding General Instruction E to read as follows:

Note—The text of Form 11–K is not and the amendment will not appear in the Code of Federal Regulations.

Form 11–K—For Annual Reports of Employee Stock Purchase, Savings and Similar Plans Pursuant to Section 15(d) of the Securities Exchange Act of 1934

General Instructions

* * * * *

E. Electronic Filers

(a) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(d) Plans subject to ERISA that file plan financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA may file this form in paper under cover of Form SE (§ 249.444 of this chapter).

§ 249.318 [Amended]

* * * * *

145. By amending Form 18–K (§ 249.318) by adding Instruction 7 to Instructions as to the Preparation and Filing of the Report to read as follows:

Note—The text of Form 18–K is not and the amendments will not appear in the Code of Federal Regulations.

Form 18–K—For Foreign Governments and Political Subdivisions Thereof

Annual Report

* * * * *

Instructions as to the Preparation and Filing of the Report.

* * * * *

7. Electronic Filers

(a) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(d) Notwithstanding the Exhibit "A" and "B" requirements, foreign language documents shall not be filed with the Commission. Instead, a fair and accurate English translation of such documents shall be filed, including a representation signed by the registrant that the translation is fair and accurate. Upon request, the foreign language document shall be provided to the Commission or its staff. Foreign currency denominations shall be expressed in words or letters and not in representative symbols. See Rule 220 of Regulation S–T (§ 232.220 of this chapter).

(e) With respect to the Exhibit "C" requirement, if an English version of the last annual budget of the registrant as presented to its legislative body has been prepared, it shall be filed electronically. If no such version has been prepared, the budget shall be provided upon request.

(f) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. See Rule 12b–12(e) of the Exchange Act (§ 240.12b–12(e) of this chapter).

* * * * *

146. By amending § 249.322 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 249.322 Form 12b–25—Notification of late filing.

* * * * *

(b) This form shall not be used by electronic filers unable to timely file a report solely due to electronic difficulties. Filers unable to submit a report within the time period prescribed due to electronic difficulties should comply with either Rule 101 or Rule 102 of Regulation S–T (§ 232.101 or § 232.102 of this chapter), or apply for an adjustment in filing date pursuant to Rule 12(c) of Regulation S–T (§ 232.12(c) of this chapter).

§ 249.322 [Amended]

147. By amending Form 12b–25 (§ 249.322) by adding General Instruction 5 to read as follows:

Note—The text of Form 12b–25 is not and the amendment will not appear in the Code of Federal Regulations.

Form 12b–25—Notification of Late Filing

* * * * *

General Instructions

* * * * *

5. Electronic Filers

(a) This form shall not be used by electronic filers to timely file a report solely due to electronic difficulties. Filers unable to submit a report within the time period prescribed due to difficulties in electronic filing should comply with either Rule 101 and Rule 102 of Regulation S–T (§ 232.101 or § 230.102 of this chapter) or apply for an adjustment in filing date pursuant to Rule 12(c) of Regulation S–T (§ 232.12(c) of this chapter).

(b) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(c) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(d) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

§ 249.323 [Amended]

148. By amending Form 15 (§ 249.323) by changing "Instruction" to "Instructions," designating the current text as Instruction 1 and adding Instruction 2 to read as follows:

Note.—The text of Form 15 is not and the amendment will not appear in the Code of Federal Regulations.

Form 15—Certification and Notice of Termination of Registration Under Section 12(g) of the Securities Exchange Act of 1934 or Suspension of Duty to File Reports Under Sections 13 and 15(d) of the Securities Exchange Act of 1934

* * * * *

Instructions:

* * * * *

2. Electronic Filers

(a) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission. See Exchange Act Rule 12b–11(d) (§ 240.12b–11(d) of this chapter).

(c) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

149. By revising § 249.444 to read as follows:

§ 249.444 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by any electronic filer for the submission of any required paper format exhibit pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940, *Provided, That* submission of such paper format exhibit is permitted pursuant to Rule 101 or Rule 102 of Regulation S–T (§ 232.101 and § 232.102 of this chapter).

§ 249.460 [Removed]

150. By removing § 249.460 and Form 8.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

151. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*l*(d), 80b–3, 80b–4 and 80b–11.

152. The authority citation following § 260.0–4 is removed.

153. By amending § 260.0–2 by redesignating paragraphs (g) through (k) as paragraphs (i) through (m) and adding paragraphs (g) and (h) to read as follows:

§ 260.0–2 Definition of terms used in the rules and regulations.

* * * * *

(g) *Electronic filer.* The term "electronic filer" means a person or an entity that submits filings electronically pursuant to Rule 100 of Regulation S–T (§ 232.100 of this chapter).

(h) *Electronic filing.* The term "electronic filing" means a document under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

* * * * *

154. By amending § 260.0–4 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 260.0–4 Sequential numbering of documents filed with the Commission.

* * * * *

(b) *Electronic filings.* Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Requirements as to sequential page numbering shall not apply to documents in electronic format.

155. By revising § 260.0–5 to read as follows:

§ 260.0–5 Business hours of the Commission.

(a) *General.* The principal office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays and federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, *Provided, That* the hours for the filing of documents with the Commission are as set forth in paragraphs (b) and (c) of this section.

(b) *Paper and electronic filings.* Filings in paper format, or on magnetic tape or diskette, may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(c) *Electronic filings.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

156. By amending § 260.5a–3 by adding paragraph (e) to read as follows:

§ 260.5a–3 Number of copies; filing; signatures; binding.

* * * * *

(e) *Electronic filings.* (1) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(2) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

(3) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(4) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

(5) The requirement for a copy to be bound in one or more parts does not apply to electronic format documents.

157. By amending § 260.7a–3 by adding paragraph (d) to read as follows:

§ 260.7a–3 Number of copies; filing; signatures; binding.

* * * * *

(d) *Electronic filings.* (1) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(2) An electronic format document submitted in the manner prescribed by the EDGAR Filer Manual shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

(3) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

(4) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

(5) The requirement for a copy to be bound in one or more parts does not apply to electronic format documents.

158. By amending § 260.7a–5 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 260.7a–5 Filing of amendments; number of copies.

* * * * *

(b) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

159. By amending § 260.7a–17 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 260.7a–17 Quality, color and size of paper.

* * * * *

(b) *Electronic filings.* The requirements in paragraph (a) of this section as to paper format and color do not apply to electronic format documents.

160. By amending § 260.7a–18 by adding paragraph (d) to read as follows:

§ 260.7a–18 Legibility.

* * * * *

(d) *Electronic filings.* The requirements in paragraphs (b) and (c) of this section as to type size and ink color do not apply to electronic format documents.

161. By amending § 260.7a–19 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 260.7a–19 Margin for binding.

* * * * *

(b) *Electronic filings.* The requirement for a copy to be bound in one or more parts does not apply to electronic format documents.

162. By amending § 260.7a–28 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 260.7a–28 Incorporation of matter in application, statement or report, other than exhibits, as answer to item.

* * * * *

(b) *Electronic filings.* Electronic filers shall not incorporate by reference any document filed in paper in violation of the mandated electronic filing requirements, or any document filed in paper pursuant to a temporary hardship exemption (§ 232.101 of this chapter) for which a confirming electronic copy has not been submitted.

163. By amending § 260.7a–29 by adding paragraph (d) to read as follows:

§ 260.7a–29 Incorporation of exhibits as such.

* * * * *

(d) *Electronic filings.* Electronic filers shall not incorporate by any document filed in paper in violation of the mandated electronic filing requirements, or any document filed in paper pursuant to a temporary hardship exemption (§ 232.101 of this chapter) for which a confirming electronic copy has not been submitted.

164. By amending § 260.7a–36 by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 260.7a–36 Signatures to amendments.

* * * * *

(b) *Electronic filings.* Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

165. By amending § 260.10b–3 by adding paragraph (e) to read as follows:

§ 260.10b–3 Applications relative to affiliations between trustees and underwriters.

* * * * *

(e) *Electronic filings.* An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

166. The authority citation for part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*l*(d), unless otherwise noted.

§ 269.1 [Amended]

167. By amending Form T–1 (§ 269.1) by adding General Instruction H to read as follows:

Note.—The text of Form T–1 is not and the amendment will not appear in the Code of Federal Regulations.

Form T–1—Statement of Eligibility Under the Trust Indenture Act of 1939 of a Corporation Designated To Act as Trustee

* * * * *

General Instructions

* * * * *

H. Electronic Filers

1. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

2. Attention is directed to Item 601(b)(25) of Regulation S–K (§ 229.601(b)(25) of this chapter), which provides that any statement of eligibility shall be submitted in the same electronic submission as the subject registration statement to which it relates; *Provided,* That registrants that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file a post-effective amendment to the registration statement to which it relates.

3. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

§ 269.2 [Amended]

168. By amending Form T–2 (§ 269.2) by adding General Instruction H to read as follows:

Note.—The text of Form T–2 is not and the amendment will not appear in the Code of Federal Regulations.

Form T–2—Statement of Eligibility Under the Trust Indenture Act of 1939 of An Individual Designated to Act as Trustee

* * * * *

General Instructions

* * * * *

H. Electronic Filers

1. Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

2. Attention is directed to Item 601(b)(25) of Regulation S–K (§ 229.601(b)(25) of this chapter), which provides that any statement of eligibility shall be submitted in the same electronic submission as the subject registration statement to which it relates; *Provided That* registrants that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file a post-effective amendment to the registration statement to which it relates.

3. Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

§ 269.3 [Amended]

169. By amending Form T–3 (§ 269.3) by adding General Instruction 4 to read as follows:

Note.—The text of Form T–3 is not and the amendment will not appear in the Code of Federal Regulations.

Form T–3—For Applications for Qualification of Indentures Under the Trust Indenture Act of 1939

* * * * *

General Instructions

* * * * *

4. Electronic Filers

(a) Electronic filers are subject to Regulation S–T (part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided.

(b) Signatures shall be in typed form rather than manual format. See Rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

§ 269.4 [Amended]

170. By amending Form T–4 (§ 269.4) by adding a title and adding General Instruction 4 to read as follows:

Note.—The text of Form T–4 is not and the amendment will not appear in the Code of Federal Regulations.

Form T–4—For Applications for Exemption Filed Pursuant to Section 304(c) of the Trust Indenture Act of 1939

* * * * *

General Instructions

* * * * *

4. *Electronic Filers.* Form T–4 shall not be filed in electronic format. See Rule 100(a)(2) of Regulation S–T (§ 232.100(a)(2) of this chapter).

* * * * *

171. By revising § 269.8 to read as follows:

§ 269.8 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by any electronic filer for the submission of any required paper format exhibit pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940, *Provided, that* submission of such paper format exhibit is permitted pursuant to Rule 101 or Rule 102 of Regulation S–T (§ 232.101 and § 232.102 of this chapter).

XII. Proposed Permanent Forms ID, ET and SE

The Commission proposes to replace temporary Forms ID, ET and SE with permanent forms for use by mandated electronic filers. The text that follows will not appear in the Code of Federal Regulations.

Applicant's CIK (if known)

OMB Approval

OMB Number: 3235-0328
Expires: October 31, 1992
Estimated average burden hours per response.....0.15

Form ID—Uniform Application for Access Codes to File on EDGAR

Part I—Applicant Information (To be completed by all applicants)

Exact Name of Registrant as specified in its charter or individual's name as used for signature purposes

Former Name (if changed since last application)

Mailing Address
Street Address or Post Office Box No.
City
State
Zip

Applicant is a (*see* definitions in the General Instructions):

☐ Filer
☐ Filing Agent
☐ Training Agent

☐ Initial Application for EDGAR Access Codes.

If you are associated with another party which already has access codes to use EDGAR, and if you want to use the same PMAC as the associated party, please write the CIK of the associated party on the following line:

Do you want a Filer Manual?: Yes ☐ No ☐

☐ Amended Application for (*see* definitions in the General Instructions):

☐ CCC
☐ Password
☐ PMAC

☐ Amended Application to change reported information only (Access codes to remain the same)

Part II—Filer Information
(To be completed by filers only)

If you currently file with the SEC, check this box ☐ and provide at least one of your SEC file numbers, if known:

1933 Act No.	1934 Act No.	1940 Act No.	Other
2-_____	0-_____	811-__	__-____
33-____	1-_____	814-__	

Tax No. or federal identification No. (registrants only)	Telephone No. (include area code)

Primary Business Address (if different from mailing address) Street Address or Post Office Box No.
City
State
Zip

State of incorporation/organization	Fiscal year end (mm/dd)

Part III—Contact Information (To be completed by applicants)

Person to receive EDGAR Information, Inquiries and Access Codes

Telephone No. (include area code)	

Mailing Address (if different from applicant's mailing address) Street Address or Post Office Box No.
City
State
Zip

If you are CompuServe subscriber, provide your User ID:

Part IV—Account Information (To be completed by filers and filing agents only)

Person to receive SEC Account Information and Billing Invoices

Telephone No. (include area code)	

Address (if different from applicant's mailing address) Street Address or Post Office Box No.
City
State
Zip

Part V—Signature (To be Completed by all Applicants)

Signature:
Type or Print Name:
Position or Title:
Date:

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), sections 13(a) and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) and 78w), section 319 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss), section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79t) and sections 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-29 and 80a-37) authorize solicitation of this information. This information will be used to assign system identification to filers, filing agents, and training agents. This will allow the Commission to identify persons sending electronic submissions and grant secure access to the EDGAR system.

Form ID—General Instructions

Use and Preparation of Form ID

Form ID is used to apply for or to amend the following codes that are necessary to access the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

- Central Index Key (CIK)—Uniquely identifies each filer, filing agent, and training agent. The CIK is assigned by the SEC at the time of an initial application and may not be changed by the filer, filing agent, or training agent.
- CIK Confirmation Code (CCC)—Used in the header of a filing in conjunction with the filer's CIK to ensure that the filing has been authorized by the filer.
- Password (PW)—allows a filer, filing agent, or training agent to log onto the EDGAR system, submit filings, and change its CCC.
- Password Modification Authorization Code (PMAC)—allows a filer, filing agent, or training agent to change its Password.

Please see the EDGAR Filer Manual for instructions on how to file electronically, including how to use the access codes.

Please refer to the published phase-in schedules for filer phase-in groups and phase-in dates for electronic filing for each group. No electronic filings, other than test filings, may be submitted by or on behalf of a filer not phased in, unless otherwise permitted by Regulation S-T.

Applicants must complete all items in any Parts which are applicable. If any item in any Part is inapplicable, please so indicate. Incomplete Forms may require amendment and cause delays in assigning access codes.

PART I—APPLICANT INFORMATION (To be completed by all applicants)

Indicate whether you will be sending electronic submissions as a filer, filing agent, or training agent. Only one box may be marked on an application. A "filer" is any person or entity on whose behalf an electronic filing is made. A "filing agent" is a financial printer, law firm, or other party which will be using these access codes to send a filing or portion of a filing on behalf of a filer. A "training agent" is any person or entity which will be sending only test filings in conjunction with training other persons.

If you do not already have access codes, please mark the "Initial Application" box, answer the two related questions, (if they apply), and complete all other applicable items in Parts II through V.

If you already have access codes, please provide your CIK in the upper left corner and mark the boxes to indicate the reason for the amendment and any access codes you want to replace. You also should complete Part V—Signature and those items in Parts II through IV which have changed from the previous application. Changes to access codes (except the PMAC) and most other information on Form ID may be made electronically via EDGAR. *See* the EDGAR Filer Manual for details.

PART II—FILER INFORMATION (To be completed by filers only)

Tax number or federal identification number—the number issued by the Internal Revenue Service. (Not required for individuals.)

State of Incorporation/Organization and Fiscal Year End are not required for individuals. Foreign issuers are requested to include their country of organization.

PART III—CONTACT INFORMATION (To be completed by all applicants)

This section identifies the individual who should receive the access codes and EDGAR-related information.

Filers, filing agents, and training agents who become CompuServe subscribers will receive acceptance and suspension messages and any requested return copies of their filings via electronic mail at their expense. They will also be able to access and download EDGAR-related information from the CompuServe electronic bulletin board. Filers and filing agents who do not subscribe to CompuServe will receive their acceptance and suspension messages by regular U.S. Mail. They may also request return copies of their filings by U.S. Mail at their option and expense.

PART IV—ACCOUNT INFORMATION (To be completed by filers and filing agents only)

This section identifies the individual who should receive account information and/or billing invoices from the SEC. This information will be used by the SEC to facilitate electronic processing of fee payments and billings.

PART V—SIGNATURE (To be completed by all applicants)

Manually sign and date this form and return it to:

Attn: Filer Support, EDGAR, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 11-1, Washington, DC 20549.

OMB APPROVAL

OMB Number: 3235-0329
Expires: October 31, 1992
Estimated average burden hours per response.....0.25

Form ET

Transmittal Form for Electronic Format Documents Under the EDGAR System

PART I—SUBMISSION INFORMATION

(Read the instructions before completing the following items.)

1. CIK of Sender of diskette(s) or tape(s) _____

2. Name of Sender of diskette(s) or tape(s) _____

3. Number of diskette(s) or tape(s) in package _____

4. Person to contact in the event of problems regarding the diskette(s) or tape(s)_____

a. Name _____

b.Telephone Number (including Area Code) ( )_____

PART II—MAGNETIC TAPES

1. Volume ID on internal label: _____

2. Language: _____ASCII _____EBCDIC

3. Density: _____1600 bpi _____6250 bpi

PART III—DISKETTES

1. Sides:_____Single_____Double

2. Density:_____Single_____Double_____High

3. Word Processing data (*See* the EDGAR Filer Manual for acceptable formats):

Format:

_____Word Processing
_____Print Image (ASCII)

If in word processing format, please provide:

Name of word processing software: _____

Version of word processing software: _____

4. Hardware on which the diskette was prepared:

Brand:_____
Model Number: _____
Operating system: _____

Form ET—General Instructions

1. Rule as to Use of Form ET

One copy of this form shall accompany all diskette or magnetic tape submissions.

Diskettes or magnetic tapes, regardless of the manner of delivery, should be addressed: ATTN: DOCUMENT CONTROL-EDGAR, U.S. SECURITIES AND EXCHANGE COMMISSION, 450 5TH STREET, NW., WASHINGTON, DC 20549.

2. Preparation of Diskette or Magnetic Tape Submissions

Attention is directed to the EDGAR Filer Manual which contains information and procedures for electronic filing.

A. All files on a diskette must be in the same word processing format.

B. More than one submission may be sent on a diskette or magnetic tape; however, each submission must be contained in a single file. The Commission will assume that each file on a diskette or magnetic tape contains a separate submission and will transfer all such files to the EDGAR system. Therefore, the preparer should recheck all files prior to sending a diskette or magnetic tape to the Commission to ensure that it contains only those files intended to be sent.

C. If more than one diskette or magnetic tape is used, their order of processing should be indicated on the external label of each diskette or magnetic tape, e.g., 1 of 3; 2 of 3, etc.

D. Please write the CIK of the Sender on the external label of each diskette or magnetic tape.

E. To expedite processing of diskettes or magnetic tapes, please write in large, bold letters on the envelope or carton: EDGAR DISKETTE or EDGAR MAGNETIC TAPE, as appropriate.

3. Preparation of Form

A. The form should be completed carefully as this data will be used by the Commission to transfer submissions from the diskette(s) or magnetic tape(s) to the EDGAR system.

B. The CIK and Name of Sender requested in Part I should be that of the filer or filing agent, whichever prepared and sent the diskette(s) or magnetic tape(s) to the Commission.

C. The contact person identified in Part I should be the person who can respond to technical questions concerning the electronic preparation of the diskette(s) or magnetic tape(s).

D. If more than one filer and/or more than one submission is included on the diskette(s) or magnetic tape(s) submitted, it is not necessary to complete a separate form for each filer or submission if the information contained in Parts I, II, and III is identical for all filers and submissions.

4. Signatures

While there are no signature requirements to Form ET, each of the various electronic forms to be filed on diskette or magnetic tape that accompany Form ET contains certain signature requirements. Such electronic forms and other documents required to be manually signed shall be in typed form. See Rule 13 of Regulation S-T (§ 232.13 of this chapter).

5. Application of General Rules and Regulations

The electronic filer is subject to Regulation S-T (Part 232 of this chapter) and the EDGAR Filer Manual. Attention is directed to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940, as modified by any electronic filing provisions to such rules and regulations.

OMB Approval

OMB Number: 3235-0327
Expires: October 31, 1992
Estimated average burden hours per response.....0.15

Form SE—Form for Submission of Paper Format Exhibits by Electronic Filers

Exact Name of Registrant as Specified in Charter

Registrant CIK Number

Electronic Report, Schedule or Registration Statement of Which the Documents Are a Part (give period of report)

SEC File Number of Registration Statement or Schedule of Which the Documents Are a Part, or Commission File Number if a Form 10–K, 10–Q or 8–K.

Name of Person Filing the Document (If Other than the Registrant)

Signatures

Filings Made By the Registrant

The Registrant has duly caused this form to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____ _____, 19____.

(Registrant)
By: _____
(Name and Title)

Filings Made by Person Other Than the Registrant

After reasonable inquiry and to the best of my knowledge and belief, I certify on _____, 19 ____, that the information set forth in this statement is true and complete.

By: _____
(Name)

(Title)

General Instructions to Form SE

I. Use of Form SE

A. This form shall be used by an electronic filer for the submission of any required paper format exhibit pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, or the Investment Company Act of 1940, *provided that* submission of such exhibit in paper format is permitted pursuant to Rule 101 or Rule 102 of Regulation S–T (§§ 232.101 and 232.102 of this chapter).

B. Attention is directed to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Holding Company Act and the Investment Company Act. Requirements applicable to electronic submission are set forth in Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual.

II. Preparation and Filing of the Form

A. Three complete copies of the form and exhibits shall be submitted in paper format.

B. The Form SE shall be submitted within the period set forth in the grant of the temporary or continuing hardship exemption.

C. Whenever a document, or part thereof, that is incorporated by reference into a directly transmitted electronic filing is required with, provided with, or to accompany the filing and such document is not in electronic format, the requirement shall be suspended, provided that the document is filed with the Commission on the same day. A directly transmitted electronic filing that incorporates by reference a required document shall not be accepted until the document incorporated by reference has been received by the Commission. Any requirements as to delivery or furnishing the information to persons other than the Commission shall not be affected by this Instruction.

D. The registrant, or person other than the registrant, shall identify the documents being filed. Attach any paper format exhibit and an exhibit index as required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

E. One copy of the form shall be signed by each person on whose behalf the form is submitted or by an authorized representative. If the form is signed by the authorized representative of a person (other than an executive officer or general partner), evidence of the authority of the representative to sign on behalf of such person shall be filed with the form, provided, however, that a power of attorney for this purpose that is already on file with the Commission may be incorporated by reference.

F. Signatures shall be in typed form rather than manual format.

Note: Appendices A through E, *infra*, will not appear in the Code of Federal Regulations.

Dated: July 23, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Timetable for Implementation of EDGAR Division of Corporation Finance Filings (Subject to adjustment)

July 1992—EDGAR rules and phase-in schedule are published for comment.

July 15, 1992—Amended temporary EDGAR rules become effective for filers who convert to the operational system in advance of their mandated phase-in date. Pilot filers who convert begin to make live filings. EDGAR Pilot will be closed.

4th Quarter of 1992 or 1st Quarter of 1993—Interim EDGAR rules and phase-in schedule are adopted.

April 1993—Approximately 2500 registrants are phased onto EDGAR in four groups over a nine-month period, beginning in April 1993. These four groups will constitute the "significant test group" that Congress mandated must file successfully for at least six months before final EDGAR rules can be adopted.

All persons or entities submitting a proxy statement, tender offer schedule, a Schedule 13D, or any other filing relating to a registrant that has been phased in must submit the filing in electronic format.

Mid 1994—Final EDGAR rules and phase-in schedule are adopted.

2nd Half 1994—Phase-in of all registrants begins in accordance with the final phase-in schedule.

Summer 1996—Phase-in of all mandated registrants is completed.

Appendix B—Equipment and Software for EDGAR Submissions

I. Direct Transmission

A. *Equipment and Software for Direct Transmission with EDGARLink.*

1. IBM or compatible PC, with the following:

- 640 Kb of RAM (512 Kb available for EDGARLink).
- 3.5 inch diskette drive.
- Hard Drive (with approximately 5 Mb available, to store filings and EDGARLink software).
- DOS version 3.2 or higher.
- Serial port (if using external modem).

2. Monitor (color recommended).

3. Printer (recommended, not required).

4. Modem using Hayes or AT command set that runs at 9600, 4800, 2400 or 1200 bits per second (bps).

5. Word processing and spreadsheet applications with option of saving in or converting files to standard ASCII.

6. EDGARLink (supplied free of charge by the Commission; provides error-checking capability).

B. *Equipment and Software for Direct Transmission without EDGARLink.*

1. Any PC, mini, or mainframe computer.

2. Modem.

The EDGAR system will support the following CCITT modem standards and speeds using dial-up telephone lines:

Transmission

Designation	Rate (bps)	Mode
V.22	1200	Asynchronous
V.22 bis	2400	Asynchronous.
V.32	4800/9600	Asynchronous or Synchronous.

3. Word processing or spreadsheet application with option of saving in or converting files to standard ASCII.

4. Communications software that supports one of the following protocols:

a. *Asynchronous.*

- Kermit CRC: 1200, 2400, 4800 and 9600 bps.

• XModem CRC: 1200, 2400, 4800 and 9600 bps.

b. *Synchronous.*

• 4800 or 9600 bps dial-up lines. or

• 56 Kb leased line.

II. Tape Specifications

A. *Tape type.*

• Open-reel, half-inch.

• Formatted with standard ANSI or IBM labels.

• 1600 or 6250 bpi storage density.

B. *Acceptable formats.*

• EBCDIC.

• ASCII.

C. *Creation parameters.*

• One record per printed line of filing.

• Maximum record length of 132 bytes.

• Blocking factor of 10.

III. Diskette Specifications

Formats	Versions [1]
Apple III Plus	3.3
Apple MacWrite	2.2, 4.5
Apricot	
CPT 9000	
DEC Rainbow 100	
IBM DisplayWrite	3, 4
Lanier Deskworks	2.0, 4.0
Microsoft Work MacIntosh	1.5
Microsoft Word MS DOS	3.2
Multimate	
Multimate Advantage	
NBI 4000	
PCWrite	
PeachText	
Volkswriter	4.0
Wang OIS	
Wang VS	
Wangwriter	
WordPerfect	4.2, 5.0, 5.1
Wordstar	2.0, 3.3, 4.0
Wordstar 2000	
XyWrite 3 Plus	
ASCII created on a PC using MS-DOS	

[1] Some word processing software is marketed without a designated version number. While it is anticipated that most currently marketed versions of the listed software will be acceptable, acceptance of all versions cannot be guaranteed. Filers are encouraged to make test filings to assure compatibility with EDGAR.

Appendix C—Representative Error Messages

The following is a representative sample of the type of error messages sent to filers, and descriptions of and solutions to those errors, taken from the draft EDGAR Filer Manual. If a submission cannot be processed by the EDGAR system, the filer will receive an error message from EDGAR, represented by the first two lines of information in each example. The information following the headings "Description of Error" and "Solution" is included in the draft EDGAR Filer Manual and will be included in the final version of the EDGAR Filer Manual to aid filers in correcting the submission error. For other examples of error messages and solutions, attention is directed to Appendix D of the EDGAR Filer Manual.

1. Err: DUPLICATE_FILING
   Msg: Duplicate filing.
   Description of Error: Filer has apparently submitted a duplicate filing.
   Solution: Verify period of report and make correction, if necessary. If a duplicate filing was submitted inadvertently, no further action is needed. A suspended submission is deleted from the EDGAR system after six (6) business days.
2. Err: DUPLICATED_TAG
   Msg: ⟨tag⟩ tag is duplicated.
   Description of Error: Duplicated entries of this tag are not permitted. For example, two ⟨FEE-PAID⟩ tags are not permitted.
   Solution: Remove the duplicate tag and any associated value.
3. Err: EMPTY_SUBMISSION_FILE
   Msg: Empty submission file.
   Description of Error: File submitted contains no headers or text.
   Solution: Make sure that the file transmitted contains the submission.
4. Err: INCONSISTENT_TAG_VALUES
   Msg: ⟨tag1⟩ (value) is inconsistent with ⟨tag2⟩ (value).
   Description of Error: The submission header contains conflicting tag value information as specified above. Common occurrences of this error include using incorrect combinations of the values for ⟨CIK⟩ and ⟨CCC⟩, and ⟨CIK⟩ and ⟨FILE-NUMBER⟩.
   Solution: Correct the inconsistent values.
5. Err: INCONSISTENT_TAG
   Msg: ⟨tag1⟩ is inconsistent with ⟨tag2⟩.
   Description of Error: The submission header contains conflicting information. For instance, the filing must be either ⟨TEST⟩ or ⟨LIVE⟩, not both.
   Solution: Eliminate the incorrect tag.
6. Err: REQUIRED_TAG_MISSING
   Msg: Required ⟨tag⟩ tag is missing.
   Description of Error: The indicated tag was not found, but is required for acceptance.
   Solution: Add required tag. *See* Chapter 4 of the EDGAR Filer Manual for general information on required tags and Appendix B of the EDGAR Filer Manual for information on required tags for each form type.
7. Err: TEXT_ EXCEEDS _80_ CHARACTERS
   Msg: Text line exceeds 80 characters.
   Description of Error: The text of the submission exceeds 80 characters (including spaces) on the line indicated. Text exceeding 80 characters on a line is not permitted except in tagged tables.
   Solution: If the specified line is not in a table, eliminate the excess characters. If the specified line is in a table, insert the correct table tags. *See* section 4.11 of the EDGAR Filer Manual for information on table tagging.
8. Err: TEXT_ EXCEEDS_ 132_ CHARACTERS
   Msg: The line exceeds 132 characters.
   Description of Error: The text of the submission exceeds 132 characters (including spaces) on the line indicated. Text exceeding 132 characters on a line cannot be accepted by the EDGAR system.
   Solution: Eliminate the excess characters.
9. Err: TOO_ FEW_ DOCUMENTS_ RECEIVED
   Msg: Number of documents received (value) is less than ⟨DOCUMENT-COUNT⟩ (value).
   Description: This is a warning that fewer documents were received than were specified in the ⟨DOCUMENT-COUNT⟩ value.
   Solution: If all documents intended to be submitted were included in the submission and properly identified by document headers no further action is required. Otherwise an amendment may be necessary.
10. Err: TOO_ MANY_ DOCUMENTS_ RECEIVED
    Msg: Number of documents received (value) is greater than ⟨DOCUMENT-COUNT⟩ (value).
    Description of Error: More documents were received than were specified in the ⟨DOCUMENT-COUNT⟩ value. The filing has been suspended for your resolution of this problem because EDGAR cannot assume that you meant to submit all of what was received.
    Solution: Verify the ⟨DOCUMENT-COUNT⟩ value. If it is correct, eliminate the extra document(s) in the submission. If the ⟨DOCUMENT-COUNT⟩ is low, correct the value.

Appendix D

Tags Required if Data Presented in Tabular or Columnar Format Exceeds 80 Positions in Width

TABLE III.—OPERATING RESULTS OF PRIOR PROGRAMS

(CAPTION)	ABC partners limited (F1)	CDE partners limited	FGH partners limited	IJK partners limited	LMN partners limited	OPQ partners limited
(S)	(C)	(C)	(C)	(C)	(C)	(C)
Gross Revenues	33,036.00	0	3,594,354.00	1,881,419.00	749,379.00	222,917.00
Less: Operating Expenses	16,027.00	0	0	0	0	0
Net Income	17,009.00	0	3,594,354.00	1,881,419.00	749,379.00	222,197.00
Other Income						
Taxable Income	16,839.00	0	419,466.00	340,207.00	749,379.00	222,917.00
Cash Generated	17,009.00	0	3,594,354.00	1,881,419.00	749,379.00	222,917.00
Less: Cash Distributions to investors—from operating cash flow	17,009.00	0	3,594,354.00	1,881,419.00	749,379.00	222,917.00
Cash generated (deficiency) after cash distributions	0	0	0	0	0	0
Less: Special Items						
Cash generated (deficiency) after cash distributions and special items	0	0	0	0	0	0

(F1) This program is not similar to this offering in that it does not involve the telecommunications business.
(/TABLE)

Key: (TABLE) Indicates the beginning of data presented in tabular or columnar format that exceeds 80 characters in width.
(CAPTION) Identifies the captions placed above the columns of data.
(S) Marks the stub information in a chart or table.
(C) Marks each column of data to aid in reformatting the information for presentation on 80 character computer screens.
(F1) Indicates where footnote 1 should be placed in the table or chart and identifies the text of that footnote.
(/TABLE) Indicates the end of data presented in tabular or columnar format that exceeds 80 characters in width.

Appendix E—Division of Corporation Finance Phase-In Schedule for EDGAR

At least three months prior to phase-in, registrants should file a completed Form ID with the Commission. After becoming subject to EDGAR, a filer must submit all filings in electronic format unless exempted from doing so. Note: Once a registrant is required to file electronically, all persons or entities submitting a filing relating to that registrant, such as a tender offer schedule, proxy statement or Schedule 13D, must submit the filing in electronic format.

July 15, 1992—Pilot filers that so elect may convert to the EDGAR system. Persons or entities making filings with respect to such filers may, at their option, submit their filings on EDGAR.

April 1993—Pilot filers and any approved Division volunteers will commence mandated electronic filing (Group CF–01). This is the first of four subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

July 1993—The group of 525 registrants listed in Group CF–02 of Appendix E, less any volunteers that moved to CF–01, must make all filings via EDGAR on or after this date. This is the second of four subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

October 1993—The group of 750 registrants listed in Group CF–03 of Appendix E must make all filings via EDGAR on or after this date. This is the third of four subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

December 1993—The group of 1000 registrants in Group CF–04 of Appendix E must make all filings via EDGAR on or after this date. This is the last of the subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

August 1994—The group of registrants listed as Group CF–05 in Appendix E must make all filings via EDGAR on or after this date. This is the first group of registrants following the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

November 1994—The group of registrants listed in Group CF–06 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

May 1995—The group of registrants listed in Group CF–07 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

August 1995—The group of registrants listed in Group CF–08 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

November 1995—The group of registrants listed in Group CF–09 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

May 1996—The group of registrants listed in Group CF–10 of Appendix E, plus any other parties submitting materials to the Commission and not previously named in Appendix E, must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Registrant	CIK No.
Group CF–01	
AETNA LIFE & CASUALTY CO	002648
ALABAMA POWER CO	003153
ALBERTSONS INC /DE/	003333
ALCOA INTERNATIONAL HOLDINGS CO	836243
ALLEGHENY & WESTERN RAILWAY CO	003650
ALLTEL CORP	065873
ALPART JAMAICA INC	856651
ALUMINUM CO OF AMERICA	004281
AMERICAN EXPRESS CREDIT CORP	004969
AMERICAN NUCLEAR CORP	005550
AMERICAN PRESIDENT COMPANIES LTD	725457
AMERICAN TELEPHONE & TELEGRAPH CO	005907
ANHEUSER BUSCH COMPANIES INC	310569
ANHEUSER-BUSCH INC	006627
ARCHER DANIELS MIDLAND CO	007084
AT&T CAPITAL CORP	861940
AT&T CREDIT CORP	760815
ATLANTIC CITY ELECTRIC CO	008192

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
ATLANTIC ENERGY INC	806393
ATWOOD OCEANICS INC	008411
BB&T FINANCIAL CORP	013839
BELL ATLANTIC CAPITAL FUNDING CORP	667681
BELL ATLANTIC CORP	732712
BELLSOUTH CAPITAL FUNDING CORP	815474
BELLSOUTH CORP	732713
BELLSOUTH SAVINGS & EMPLOYEE STOCK OWNERSHIP TRUST	852339
BELLSOUTH SAVINGS & SECURITY ESOP TRUST	859224
BLACK & DECKER CORP	012355
BOWNE & CO INC	013610
BRENCO INC	014029
CADMUS COMMUNICATIONS CORP/ NEW	745274
CAPITAL HOLDING CORP	017206
CENTRAL & SOUTH WEST CORP	018540
CENTRAL POWER & LIGHT CO /TX/	018734
CERIDIAN CORP	109758
CHECKPOINT SYSTEMS INC	215419
CONNECTICUT NATURAL GAS CORP	023432
CONSOLIDATED FREIGHTWAYS INC	023675
CONSOLIDATED PAPERS INC	023752
CONTROL DATA SYSTEMS, INC	887309
CROWN CENTRAL PETROLEUM CORP /MD/	025885
CSX CORP	277948
CSX TRANSPORTATION INC	088128
CURTIS HELENE INDUSTRIES INC / DE/	745142
DAYTON & MICHIGAN RAILROAD CO	027409
DESOTO INC	028345
DIGITAL EQUIPMENT CORP	028887
DOMINION RESOURCES INC /VA/	715957
DONNELLEY R R & SONS CO	029669
DOW JONES & CO INC	029924
DUPONT E I DE NEMOURS & CO	030554
DURR FILLAUER MEDICAL INC	030645
EASTMAN KODAK CO	031235
EASTMAN KODAK CREDIT CORP	790534
EATON CORP	031277
EATON ETN OFFSHORE LTD	864915
EMC INSURANCE GROUP INC	356130
EMBASSY SUITES INC	858395
EXXON CAPITAL CORP	788903
EXXON CAPITAL VENTURES INC	811695
EXXON CORP	034088
FAIRCHILD INDUSTRIES INC	034257
FARMLAND INDUSTRIES INC	034616
FEDERAL MOGUL CORP	034879
FIRST CITIZENS BANCSHARES INC / TN/	719264
FIRST COMMONWEALTH FINANCIAL CORP /PA/	712537
FIRST FRANKLIN FINANCIAL CORP	038723
FIRST MARYLAND BANCORP	036510
FLEETWOOD ENTERPRISES INC/DE/	314132
FMC CORP	037785
GANDALF TECHNOLOGIES INC	355876
GATX CORP	040211
GEICO CORP	277795
GENERAL AMERICAN TRANSPORTATION CORP /NY	276478
GENERAL DYNAMICS CORP	040533
GENERAL ELECTRIC CO	040545
GENERAL MOTORS ACCEPTANCE CORP	040729
GENERAL MOTORS CORP	040730
GENERAL PUBLIC UTILITIES CORP / PA/	040779
GENERAL SIGNAL CORP	040834
GENRAD INC	040972
GEORGIA POWER CO	041091
GMAC 1985-A GRANTOR TRUST	779507
GMAC 1986-A GRANTOR TRUST	787812

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
GMAC 1986-B GRANTOR TRUST	788048
GMAC 1986-C GRANTOR TRUST	788047
GMAC 1986-E GRANTOR TRUST	788045
GMAC 1986-F GRANTOR TRUST	796653
GMAC 1986-G GRANTOR TRUST	796652
GMAC 1987-A GRANTOR TRUST	796651
GMAC 1987-B GRANTOR TRUST	796650
GMAC 1987-C GRANTOR TRUST	796649
GMAC 1987-D GRANTOR TRUST	796648
GMAC 1987-F GRANTOR TRUST	811709
GMAC 1990-A GRANTOR TRUST	868571
GMAC 1991-A GRANTOR TRUST	872551
GMAC 1991-B GRANTOR TRUST	872552
GMAC 1991-C GRANTOR TRUST	872553
GMAC 1992-A GRANTOR TRUST	882234
GMAC 1992-B GRANTOR TRUST	882237
GMAC 1992-C GRANTOR TRUST	882239
GMAC 1992-D GRANTOR TRUST	882240
GMAC AUTO RECEIVABLES CORP	869739
GOLDEN VALLEY MICROWAVE FOODS INC	797394
GTE CORP	040858
GULF POWER CO	044545
GULF STATES UTILITIES CO	044570
HARLAND JOHN H CO	045599
HEWLETT PACKARD CO	047217
HUMANA INC	049071
IBM CREDIT CORP	353524
IMC FERTILIZER GROUP INC	820626
IMCERA GROUP INC	051396
INDIANA BELL TELEPHONE CO INC	050178
INTERNATIONAL BUSINESS MACHINES CORP	051143
ITT CORP	216228
JEFFERSON PILOT CORP	053347
JERSEY CENTRAL POWER & LIGHT CO	053456
KAISER ALUMINA AUSTRALIA CORP	856654
KAISER ALUMINUM & CHEMICAL CORP	054291
KAISER ALUMINUM CORP	811596
KAISER JAMAICA CORP	856650
KANSAS POWER & LIGHT CO	054507
KELLY SERVICES INC	055135
KOLLMORGEN CORP	056583
L&N FUNDING CORP	740127
LOCKHEED CORP	060026
LONGS DRUG STORES CORP	764762
MARK IV INDUSTRIES INC	082418
MASSACHUSETTS ELECTRIC CO	063073
MCGRAW HILL INC	064040
MCI COMMUNICATIONS CORP	064079
MCKESSON CORP /DE/	816768
MCN CORP	837579
MEDTRONIC INC	064670
MENTOR GRAPHICS CORP	701811
MERRILL CORP	790406
METROPOLITAN EDISON CO	065350
MICHIGAN BELL TELEPHONE CO	065622
MICHIGAN CONSOLIDATED GAS CO / MI/	065632
MICRO SECURITY SYSTEMS INC	736469
MISSISSIPPI POWER CO	066904
MOBIL CORP	067182
MOBIL OIL CORP ESOP TRUST	862072
MOMENTUM DISTRIBUTION INC	853436
MONSANTO CO	067686
MONTGOMERY WARD HOLDING CORP	836974
MORGAN J P & CO INC	068100
MOTORS MECHANICAL REINSURANCE CO LTD	790381
NARRAGANSETT ELECTRIC CO	069659
NATIONAL FUEL GAS CO	070145
NATIONAL GRAPE COOPERATIVE ASSOCIATION INC	277587
NATIONAL SEMICONDUCTOR CORP	070530

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
NAVISTAR INTERNATIONAL CORP / DE/NEW	808450
NAVISTAR INTERNATIONAL TRANSPORTATION CO	051296
NEW ENGLAND ELECTRIC SYSTEM	071297
NEW ENGLAND POWER CO	071337
NEW ENGLAND TELEPHONE & TELEGRAPH CO	071344
NEW YORK TELEPHONE CO	071689
NIKE INC	320187
NORTHROP CORP	072945
NYNEX CAPITAL FUNDING CORP	862447
NYNEX CORP	732714
OHIO EDISON CO	073960
OXFORD INDUSTRIES INC	075288
PACIFIC BELL	075641
PACIFIC TELESIS GROUP	732716
PACIFICORP /OR/	075594
PACTEL CAPITAL RESOURCES	785213
PACTEL PERSONAL COMMUNICATIONS	822638
PENNSYLVANIA ELECTRIC CO	077227
PFIZER INC	078003
PHILIP MORRIS COMPANIES INC	764180
PHILIP MORRIS INC	078141
PIONEER HI BRED INTERNATIONAL INC	078716
POLICY MANAGEMENT SYSTEMS CORP	358226
PRICE CO	356461
PROCTER & GAMBLE CO	080424
PROCTER & GAMBLE EMPLOYEE STOCK OWNERSHIP TRUST	862335
PROMUS COMPANIES INC	858339
PUBLIC SERVICE CO OF NORTH CAROLINA INC	081025
PUBLIC SERVICE CO OF OKLAHOMA	081027
PUBLIC SERVICE ELECTRIC & GAS CO	081033
PUBLIC SERVICE ENTERPRISE GROUP INC	788784
QUAKER OATS CO	081371
RALSTON PURINA CO	081870
RAYTHEON CO	082267
RELIABILITY INC	034285
REPUBLIC NEW YORK CORP	083246
RESIDENTIAL FUNDING MORTGAGE SECURITIES I INC	774352
REXNORD HOLDINGS INC	083573
ROBERTSON CECO CORP	868635
SATELLITE INFORMATION SYSTEMS CO	721235
SAVANNAH ELECTRIC & POWER CO	086940
SCANA CORP	754737
SHELL CANADA LTD	702983
SIERRA PACIFIC RESOURCES	741508
SIGNAL CAPITAL HOLDINGS CORP	842461
SOUTH CAROLINA ELECTRIC & GAS CO	091882
SOUTH CENTRAL BELL TELEPHONE CO	091899
SOUTHERN BELL TELEPHONE & TELEGRAPH CO	092088
SOUTHERN CO	092122
SOUTHERN ELECTRIC GENERATING CO	092150
SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORP	790650
SOUTHWESTERN BELL CAPITAL CORP	798263
SOUTHWESTERN BELL CORP	732717
SOUTHWESTERN BELL TELEPHONE CO	092476
SOUTHWESTERN ELECTRIC POWER CO	092487
SPECTRUM FINANCIAL CORP	741212
ST PAUL COMPANIES INC /MN/	086312

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SUBURBAN BANCORP INC /DE/	356981
SUN CITY INDUSTRIES INC	095302
SUN CO INC	095304
SYNCOR INTERNATIONAL CORP / DE/	202763
TJX COMPANIES INC /DE/	109198
TRANSAMERICA CORP	099189
TRANSAMERICA FINANCE GROUP INC	099193
TRAVELERS CORP	099429
TRINOVA CORP	059198
TW HOLDINGS INC	852772
TW SERVICES INC	807862
U S TRUST CORP	225971
U S WEST CAPITAL FUNDING INC	794987
U S WEST COMMUNICATIONS INC	068622
U S WEST FINANCIAL SERVICES INC	780577
UNION LIGHT HEAT & POWER CO	100858
URS CORP /NEW/	102379
US WEST INC	732718
US WEST NEWVECTOR GROUP INC	822661
VIRGINIA ELECTRIC & POWER CO	103682
VWR CORP	788043
WASHINGTON ENERGY CO	225998
WASHINGTON NATURAL GAS CO	104880
WEST TEXAS UTILITIES CO	105860
WISCONSIN ELECTRIC POWER CO	107815
WISCONSIN ENERGY CORP	783325
WISCONSIN NATURAL GAS CO	107830
WRIGLEY WILLIAM JR CO	106601
XEROX CORP	108772
XEROX CREDIT CORP	351936
Group CF-02	
AANCOR HOLDINGS INC	795738
ABBOTT LABORATORIES	001800
ADVANCED MICRO DEVICES INC	002488
ADVANTA CORP	096638
AFG INDUSTRIES INC	007668
AGWAY INC	002852
AHMANSON H F & CO /DE/	771667
AIR PRODUCTS & CHEMICALS INC / DE/	002969
ALCO STANDARD CORP	003370
ALEXANDER & BALDWIN INC	003453
ALLEGHENY POWER SYSTEM INC	003673
ALLIED SIGNAL INC	773840
ALLIED STORES CORP	003961
AMAX INC /NY/	004363
AMBASE CORP	020639
AMDAHL CORP	004427
AMERADA HESS CORP	004447
AMERCO /NV/	004457
AMERICAN AIRLINES INC	004515
AMERICAN BRANDS INC /DE/	789073
AMERICAN CYANAMID CO	004829
AMERICAN ELECTRIC POWER COMPANY INC	004904
AMERICAN EXPRESS CO	004962
AMERICAN FINANCIAL CORP	005016
AMERICAN GENERAL CORP /TX/	005103
AMERICAN GENERAL FINANCE CORP	025598
AMERICAN GENERAL FINANCE INC	025600
AMERICAN GREETINGS CORP	005133
AMERICAN HOME PRODUCTS CORP	005187
AMERICAN INFORMATION TECHNOLOGIES CORP	732715
AMERICAN INTERNATIONAL GROUP INC	005272
AMERICAN MEDICAL HOLDINGS INC	861439
AMERICAN MEDICAL INTERNATIONAL INC /DE/	312655
AMERICAN PETROFINA INC	005611
AMERICAN SOUTHWEST FINANCIAL CORP	706236
AMERICAN STANDARD INC	005850
AMERICAN STORES CO /NEW/	090811

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
AMERICAN TELEVISION & COMMUNICATIONS CORP	005910
AMERICAN WATER WORKS CO INC	318819
AMERITRUST CORP	020972
AMES DEPARTMENT STORES INC	006071
AMOCO CO	766916
AMOCO CORP	093397
AMP INC	006164
AMPAL AMERICAN ISRAEL CORP / NY/	731859
AMR CORP	006201
AMSOUTH BANCORPORATION	003133
ANAC HOLDING CORP	805741
ANADARKO PETROLEUM CORP	773910
ANR PIPELINE CO	065695
AON CORP	315293
APPALACHIAN POWER CO	006879
APPLE COMPUTER INC	320193
ARA GROUP INC	757523
ARCO CHEMICAL CO	819544
ARISTAR INC	007214
ARIZONA PUBLIC SERVICE CO	007286
ARKANSAS POWER & LIGHT CO	007323
ARKLA INC	007314
ARMCO INC	007383
ARMSTRONG WORLD INDUSTRIES INC	007431
ARVIN INDUSTRIES INC	007636
ASARCO INC	007649
ASHLAND OIL INC	007694
ASSET INVESTORS CORP	804136
ASSOCIATES CORPORATION OF NORTH AMERICA	007973
ASSOCIATES FIRST CAPITAL CORP	007974
ATLANTA GAS LIGHT CO	008154
ATLANTIC RICHFIELD CO /DE	775483
AUTOMATIC DATA PROCESSING INC	008670
AVCO FINANCIAL SERVICES INC	008795
AVERY DENNISON CORPORATION	008818
AVNET INC	008858
AVON PRODUCTS INC	008868
BAKER HUGHES INC	808362
BALLY MANUFACTURING CORP	009435
BALTIMORE GAS & ELECTRIC CO	009466
BANC ONE CORP/OH/	036090
BANCORP HAWAII INC	046195
BANK OF BOSTON CORP	036672
BANK OF NEW ENGLAND CORP	071322
BANK OF NEW YORK CO INC	009626
BANKAMERICA CORP	009672
BANKERS TRUST NEW YORK CORP	009749
BARNETT BANKS INC	010012
BAUSCH & LOMB INC	010427
BAXTER INTERNATIONAL INC	010456
BAYBANKS INC	010497
BEAR STEARNS COMPANIES INC	777001
BEATRICE COMPANY	785960
BECTON DICKINSON & CO	010795
BELL TELEPHONE CO OF PENNSYLVANIA	011107
BENEFICIAL CORP	008960
BERGEN BRUNSWIG CORP	011454
BERKSHIRE HATHAWAY INC /DE/	109694
BEST PRODUCTS CO INC	011821
BETHLEHEM STEEL CORP /DE/	011860
BEVERLY ENTERPRISES INC /DE	812305
BHC COMMUNICATIONS INC	855433
BOATMENS BANCSHARES INC /MO	040454
BOEING CO	012927
BOISE CASCADE CORP	012978
BORDEN INC	013239
BORG WARNER CORP /DE/	817945
BOSTON EDISON CO	013372
BOWATER INC	743988
BRISTOL MYERS SQUIBB CO	014272
BROOKLYN UNION GAS CO	014525
BROWNING FERRIS INDUSTRIES INC	014827

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
BRUNSWICK CORP	014930
BURLINGTON HOLDINGS INC	820110
BURLINGTON NORTHERN INC/DE/	351979
BURLINGTON NORTHERN RAILROAD CO	015511
BURLINGTON RESOURCES INC	833320
CABLEVISION SYSTEMS CORP	784681
CABOT CORP	016040
CALFED INC	727011
CAMPBELL SOUP CO	016732
CAPITAL CITIES ABC INC /NY/	017109
CAPSTEAD MORTGAGE CORP	766701
CARNIVAL CRUISE LINES INC	815097
CAROLINA POWER & LIGHT CO	017797
CARTER HAWLEY HALE STORES INC /DE/	750217
CASTLE & COOKE INC	018169
CATERPILLAR FINANCIAL SERVICES CORP	764764
CATERPILLAR INC	018230
CBI INDUSTRIES INC /DE/	310431
CBS INC	018366
CENTEL CORP	018787
CENTERIOR ENERGY CORP	774197
CENTEX CORP	018532
CENTRAL HUDSON GAS & ELECTRIC CORP	018647
CENTRAL ILLINOIS PUBLIC SERVICE CO	018654
CENTRAL MAINE POWER CO	018675
CENTRAL TELEPHONE CO	018792
CENTURY COMMUNICATIONS CORP	785060
CHAMPION INTERNATIONAL CORP	019150
CHARTER MEDICAL CORP	019411
CHASE MANHATTAN CORP	019489
CHASE MANHATTAN LEASING COMPANY MICH INC	020724
CHEMICAL BANKING CORP	019617
CHEMICAL WASTE MANAGEMENT INC	800287
CHESAPEAKE & POTOMAC TELEPHONE CO OF MARYLAND	019722
CHESAPEAKE & POTOMAC TELEPHONE CO OF VIRGINIA	019725
CHEVRON CORP	093410
CHICAGO & NORTH WESTERN HOLDINGS CORP	854884
CHIQUITA BRANDS INTERNATIONAL INC	101063
CHRIS CRAFT INDUSTRIES INC	020067
CHRYSLER CORP /DE	791269
CHRYSLER FINANCIAL CORP	020164
CHUBB CORP	020171
CIGNA CORP	701221
CILCORP INC	762129
CINCINNATI BELL INC /OH/	716133
CINCINNATI GAS & ELECTRIC CO	020290
CIRCLE K CORP /NEW/	350215
CIT GROUP HOLDINGS INC /DE/	020388
CITICORP	020405
CITIZENS & SOUTHERN CORP/GA/	020429
CITIZENS UTILITIES CO	020520
CLEVELAND ELECTRIC ILLUMINATING CO	020947
CLOROX CO /DE/	021076
CMS ENERGY CORP	811156
CNA FINANCIAL CORP	021175
COASTAL CORP	021267
COCA COLA CO	021344
COCA COLA ENTERPRISES INC	804055
COLGATE PALMOLIVE CO	021665
COLORADO INTERSTATE GAS CO	200155
COLTEC HOLDINGS INC	832369
COLUMBIA GAS SYSTEM INC	022099
COLUMBIA SAVINGS & LOAN ASSOCIATION/CA/	824204

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
COLUMBUS SOUTHERN POWER CO /OH/	022198
COMCAST CORP	022301
COMDISCO INC	722487
COMERICA INC /NEW/	028412
COMMERCIAL CREDIT CO	201499
COMMONWEALTH EDISON CO	022606
COMMONWEALTH ENERGY SYSTEM	071304
COMMUNICATIONS SATELLITE CORP	022698
COMPAQ COMPUTER CORP	714154
COMPUTER ASSOCIATES INTERNATIONAL INC	356028
CONAGRA INC /DE/	023217
CONNECTICUT LIGHT & POWER CO	023426
CONSOLIDATED EDISON CO OF NEW YORK INC	023632
CONSOLIDATED NATURAL GAS CO	023738
CONSOLIDATED RAIL CORP /PA/	810765
CONTAINER CORP OF AMERICA /DE/	798916
CONTEL CORP	024188
CONTINENTAL AIRLINES HOLDINGS INC	316647
CONTINENTAL BANK CORP	024058
CONTINENTAL CABLEVISION INC	355069
CONTINENTAL CORP	024011
CONTINENTAL HOLDINGS INC	752198
COOPER INDUSTRIES INC	024454
COORS ADOLPH CO	024545
CORESTATES FINANCIAL CORP	069952
CORNING INC /NY	024741
COUNTRYWIDE MORTGAGE INVESTMENTS INC /DE	773468
COUNTRYWIDE MORTGAGE OBLIGATIONS III INC	775748
CPC INTERNATIONAL INC	025350
CRESTAR FINANCIAL CORP	101880
CROWN CORK & SEAL CO INC	025890
CUMMINS ENGINE CO INC	026172
CYPRUS MINERALS CO	769589
DANA CORP	026780
DAYTON HUDSON CORP	027419
DAYTON POWER & LIGHT CO	027430
DCNY CORP	718448
DEERE & CO	315189
DEERE JOHN CAPITAL CORP	027673
DELMARVA POWER & LIGHT CO /DE/	027879
DELTA AIR LINES INC /DE/	027904
DETROIT EDISON CO	028385
DILLARD DEPARTMENT STORES INC	028917
DISCOVER CREDIT CORP	815743
DISNEY WALT CO	029082
DOMINION BANKSHARES CORP	029587
DOVER CORP	029905
DOW CHEMICAL CO /DE/	029915
DOW CORNING CORP	029917
DPL INC	787250
DRESSER INDUSTRIES INC /DE/	030099
DUKE POWER CO /NC/	030371
DUN & BRADSTREET CORP	030419
DUQUESNE LIGHT CO	030573
DURACELL HOLDINGS CORP	837338
EASTERN AIR LINES INC	031089
EASTERN ENTERPRISES	311259
EASTERN UTILITIES ASSOCIATES	031224
ECHLIN INC	031348
ECKERD JACK CORP /DE/	031364
EDWARDS A G INC	718482
EL PASO ELECTRIC CO /TX/	031978
EL PASO NATURAL GAS CO	031986
EMERSON ELECTRIC CO	032604
ENGELHARD CORP	352947
ENRON CORP	072859
ENRON OIL & GAS CO	821189
ENSERCH CORP	033015
ENTERGY CORP	065984
EQUITABLE OF IOWA COMPANIES	225300
EQUITABLE RESOURCES INC /PA/	033213
ETHYL CORP	033658
FAIRCHILD CORP	009779
FEDERAL EXPRESS CORP	230211
FEDERAL PAPER BOARD CO INC	034891
FEDERATED DEPARTMENT STORES INC	034945
FIFTH THIRD BANCORP	035527
FIRST AMERICAN CORP /TN/	036068
FIRST BANK SYSTEM INC	036104
FIRST CAPITAL HOLDINGS CORP	719520
FIRST CHICAGO CORP	036161
FIRST EMPIRE STATE CORP	036270
FIRST EXECUTIVE CORP	036288
FIRST FIDELITY BANCORPORATION /NJ/	823870
FIRST FINANCIAL MANAGEMENT CORP	036326
FIRST INTERSTATE BANCORP /DE/	105982
FIRST OF AMERICA BANK CORP /MI/	036703
FIRST REPUBLICBANK CORP	083251
FIRST TENNESSEE NATIONAL CORP	036966
FIRST UNION CORP	036995
FIRST WACHOVIA CORP	774203
FIRSTAR CORP/WI	037076
FLEET NORSTAR FINANCIAL GROUP INC	050341
FLEMING COMPANIES INC /OK/	352949
FLORIDA POWER CORP	037637
FLORIDA PROGRESS CORP	357261
FLUOR CORP/DE/	037748
FOOD LION INC	037912
FORD HOLDINGS INC	857775
FORD MOTOR CO	037996
FORD MOTOR CREDIT CO	038009
FOREST CITY ENTERPRISES INC	038067
FORT HOWARD CORP	038195
FOSTER WHEELER CORP	038321
FPL GROUP INC	753308
FREEPORT MCMORAN ENERGY PARTNERS LTD	764207
FREEPORT MCMORAN INC	351116
FREEPORT MCMORAN RESOURCE PARTNERS LTD PARTNERSHIP	793421
FRUIT OF THE LOOM INC /DE/	771296
FUND AMERICAN COMPANIES INC	776867
FUQUA INDUSTRIES INC /DE/	039547
GAF CORP	039698
GANNETT CO INC /DE/	039899
GENCORP INC	040888
GENERAL CINEMA CORP	040493
GENERAL ELECTRIC CAPITAL CORP	040554
GENERAL ELECTRIC FINANCIAL SERVICES INC	797463
GENERAL INSTRUMENT CORP /DE/	040656
GENERAL MILLS INC	040704
GENERAL RE CORP	317745
GENUINE PARTS CO	040987
GEORGIA PACIFIC CORP	041077
GIANT FOOD INC	041289
GILLETTE CO	041499
GLENFED INC	774488
GND HOLDINGS CORP /DE/	852804
GOLDEN NUGGET INC	042246
GOLDEN WEST FINANCIAL CORP /DE/	042293
GOODRICH B F CO	042542
GOODYEAR TIRE & RUBBER CO /OH/	042582
GRACE W R & CO/NY	042872
GREAT AMERICAN COMMUNICATIONS CO	317833
GREAT AMERICAN MANAGEMENT & INVESTMENT I	043287
GREAT ATLANTIC & PACIFIC TEA CO INC	043300
GREAT LAKES CHEMICAL CORP	043362
GREAT NORTHERN NEKOOSA CORP	043414
GREAT WESTERN FINANCIAL CORP	043512
GREYHOUND DIAL CORP /AZ/	043959
GREYHOUND FINANCIAL CORP	043960
GRUMMAN CORP	044279
GTE CALIFORNIA INC	040864
GTE FLORIDA INC	040865
GTE NORTH INC	040867
GTE NORTHWEST INC	040877
GTE SOUTH INC	040878
GTE SOUTHWEST INC	040874
HALLIBURTON CO	045012
HARCOURT BRACE JOVANOVICH INC	045529
HARNISCHFEGER INDUSTRIES INC	801898
HARRIS CORP /DE/	202058
HASBRO INC	046080
HAWAIIAN ELECTRIC INDUSTRIES INC	354707
HEALTHTRUST INC THE HOSPITAL CO	826490
HEINZ H J CO	046640
HELLER FINANCIAL INC	046738
HENLEY PROPERTIES INC	840216
HERCULES INC	046989
HERSHEY FOODS CORP	047111
HERTZ CORP	047129
HIBERNIA CORP	047288
HILLSBOROUGH HOLDINGS CORP	837173
HILTON HOTELS CORP	047580
HOECHST CELANESE CORP	812427
HOLNAM INC	860602
HOME DEPOT INC	354950
HOMESTAKE MINING CO /DE/	743872
HONEYWELL INC	048305
HOSPITAL CORP OF AMERICA /TN/	311314
HOUSEHOLD FINANCE CORP	048681
HOUSEHOLD INTERNATIONAL INC	354964
HOUSTON INDUSTRIES INC	202131
HOUSTON LIGHTING & POWER CO	048732
HUNTINGTON BANCSHARES INC/MD	049196
HYSTER YALE MATERIALS HANDLING INC	850422
IBM 1991 A TAX EXEMPT GRANTOR TRUST	811128
IBM 1991 B NEW YORK TAX EXEMPT GRANTOR TRUST	811151
IBM 1991 C CALIFORNIA TAX EXEMPT GRANTOR TRUST	811152
IBP INC	052477
IDAHO POWER CO	049648
ILLINOIS BELL TELEPHONE CO	049789
ILLINOIS CENTRAL CORP	859119
ILLINOIS CENTRAL RAILROAD CO	049792
ILLINOIS POWER CO	049816
ILLINOIS TOOL WORKS INC	049826
INDIANA MICHIGAN POWER CO	050172
INDIANAPOLIS POWER & LIGHT CO	050217
INGERSOLL RAND CO	050485
INLAND STEEL CO	050548
INLAND STEEL INDUSTRIES INC /DE/	790528
INSILCO CORP	050623
INTEGRATED RESOURCES INC	050857
INTEL CORP	050863
INTER REGIONAL FINANCIAL GROUP INC	050916
INTERCO INC	050957
INTERNATIONAL LEASE FINANCE CORP	714311
INTERNATIONAL PAPER CO /NEW/	051434
INTERPUBLIC GROUP OF COMPANIES INC	051644
IOWA ILLINOIS GAS & ELECTRIC CO	052491
IOWA RESOURCES INC	310170
IPALCO ENTERPRISES INC	728391
ITEL CORP	052795
ITT FINANCIAL CORP	052825
ITT RAYONIER INC	052827
JAMES RIVER CORP OF VIRGINIA	053117

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
JEFFERSON SMURFIT CORP	727742
JOHNSON & JOHNSON	200406
JOHNSON CONTROLS INC	053669
JWP INC/DE/	105634
K MART CORP	056824
KANSAS CITY POWER & LIGHT CO	054476
KANSAS GAS & ELECTRIC CO /KS/	054496
KAUFMAN & BROAD HOME CORP	795266
KELLOGG CO	055067
KEMPER CORP	055195
KENTUCKY UTILITIES CO	055387
KERR MCGEE CORP	055458
KEYCORP	036208
KIEWIT PETER SONS INC	794323
KIMBERLY CLARK CORP	055785
KNIGHT RIDDER INC	205520
KRAFT GENERAL FOODS INC	318717
KROGER CO	056873
LAFARGE CORP	716763
LEE SARA CORP	023666
LEUCADIA NATIONAL CORP	096223
LILLY ELI & CO	059478
LIMITED INC	701985
LINCOLN NATIONAL CORP	059558
LITTON INDUSTRIES INC	059680
LOEWS CORP	060066
LOMAS FINANCIAL CORP	060150
LONE STAR INDUSTRIES INC	060195
LONE STAR TECHNOLOGIES INC	791348
LONG ISLAND LIGHTING CO	060251
LORAL CORP /NY/	060357
LOUISIANA LAND & EXPLORATION CO	060512
LOUISIANA PACIFIC CORP	060519
LOUISIANA POWER & LIGHT CO /LA/	060527
LOUISVILLE GAS & ELECTRIC CO / KY/	060549
LOWES COMPANIES INC	060667
LTV AEROSPACE & DEFENSE CO	103944
LTV CORP	060731
LTV STEEL CO INC	063264
LYONDELL PETROCHEMICAL CO	842635
MACK TRUCKS INC /PA/	061213
MANUFACTURERS HANOVER CORP	062119
MANUFACTURERS NATIONAL CORP	062126
MANVILLE CORP	355473
MAPCO INC	062142
MARRIOTT CORP	314733
MARSHALL & ILSLEY CORP/WI/	062741
MARTIN MARIETTA CORP	062857
MASCO CORP /DE/	062996
MASCO INDUSTRIES INC	745448
MAXUS ENERGY CORP /DE/	724176
MAXXAM GROUP INC /DE/	764542
MAXXAM INC	063814
MAY DEPARTMENT STORES CO	063416
MAYTAG CORP	063541
MCA INC	063577
MCCAW CELLULAR COMMUNICATIONS INC	818687
MCDERMOTT INTERNATIONAL INC	708819
MCDONALDS CORP	063908
MCDONNELL DOUGLAS CORP	063917
MCDONNELL DOUGLAS FINANCE CORP /DE	711513
MDC HOLDINGS INC	773141
MEAD CORP	064394
MELLON BANK CORP	064782
MELVILLE CORP	064803
MEMOREX TELEX CORP	097031
MERCANTILE BANCORPORATION INC	064907
MERCANTILE STORES CO INC	064923
MERCK & CO INC	064978
MERIDIAN BANCORP INC	723916
MERRILL LYNCH & CO INC	065100
MESA LTD PARTNERSHIP	775967
MGM PATHE COMMUNICATIONS CO	776706

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
MICHIGAN NATIONAL CORP	065660
MICROSOFT CORP	789019
MIDLANTIC CORP	793548
MIDWEST ENERGY CO	740072
MINNESOTA MINING & MANUFACTURING CO	066740
MINNESOTA POWER & LIGHT CO	066756
MISSISSIPPI POWER & LIGHT CO	066901
MISSOURI PACIFIC RAILROAD CO/DEL	310183
MITCHELL ENERGY & DEVELOPMENT CORP	311995
MNC FINANCIAL INC /MD/	062973
MONTANA POWER CO /MT/	067727
MORGAN STANLEY GROUP INC /DE/	789625
MORTON INTERNATIONAL INC	068361
MOTEL 6 LP	794359
MOTOROLA INC	068505
MURPHY OIL CORP /DE	717423
NACCO INDUSTRIES INC	789933
NATIONAL BREWING HOLDINGS LTD	804137
NATIONAL CITY CORP	069970
NATIONAL GYPSUM CO	070174
NATIONAL INTERGROUP INC	716644
NATIONAL MEDICAL ENTERPRISES INC /NV/	070318
NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORP	070502
NATIONAL STEEL CORP	070578
NAVISTAR FINANCIAL CORP	051303
NBD BANCORP INC /DE/	070040
NCNB CORP	070858
NCR CORP	070866
NERCO INC	748581
NEVADA POWER CO	071160
NEW JERSEY BELL TELEPHONE CO	071428
NEW YORK STATE ELECTRIC & GAS CORP	071675
NEW YORK TIMES CO	071691
NEWMONT MINING CORP	071824
NIAGARA MOHAWK POWER CORP / NY/	071932
NICOR INC	072020
NIPSCO INDUSTRIES INC	823392
NL INDUSTRIES INC	072162
NORDSTROM INC	072333
NORFOLK & WESTERN RAILWAY CO /PRED/	072342
NORFOLK SOUTHERN CORP	702165
NORFOLK SOUTHERN RAILWAY CO/VA	092275
NORTH AMERICAN PHILIPS CORP	072523
NORTHEAST FEDERAL CORP	863517
NORTHEAST UTILITIES	072741
NORTHERN STATES POWER CO / MN/	072903
NORTHERN STATES POWER CO /WI/	072909
NORTHERN TRUST CORP	073124
NORTHWEST PIPELINE CORP	110019
NORTON SIMON INC	090534
NORWEST CORP	072971
NORWEST FINANCIAL INC	708481
NVR LP	792972
OCCIDENTAL PETROLEUM CORP / DE/	797468
OGDEN CORP	073902
OGDEN PROJECTS INC	851945
OGLETHORPE POWER CORP	788816
OHIO BELL TELEPHONE CO	073945
OHIO POWER CO	073966
OKLAHOMA GAS & ELECTRIC CO	074145
OLD KENT FINANCIAL CORP /MI/	746989
OLIN CORP	074303
OMNICOM GROUP INC	029989
OPPENHEIMER & CO INC	728848
ORYX ENERGY CO	836442
OUTBOARD MARINE CORP	075149

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
OVERSEAS SHIPHOLDING GROUP INC	075208
OWENS CORNING FIBERGLAS CORP	075234
OWENS ILLINOIS GROUP INC	812233
OWENS ILLINOIS INC /DE/	812074
PA HOLDINGS CORP	835763
PACCAR FINANCIAL CORP	731288
PACCAR INC	075362
PACIFIC ENTERPRISES INC	075527
PACIFIC GAS & ELECTRIC CO	075488
PACIFIC TELECOM INC	096977
PAINE WEBBER GROUP INC	075754
PAN AM CORP/DE	743216
PAN AMERICAN WORLD AIRWAYS INC	075989
PANHANDLE EASTERN CORP /DE/	351696
PARAMOUNT COMMUNICATIONS INC /DE/	044482
PARKER HANNIFIN CORP	076334
PAYLESS CASHWAYS INC	076744
PENN CENTRAL CORP	077098
PENN TRAFFIC CO	077155
PENNEY J C CO INC	077182
PENNEY J C FUNDING CORP	077193
PENNSYLVANIA POWER & LIGHT CO /PA	317187
PENNSYLVANIA POWER CO	077278
PENNZOIL CO /DE/	077320
PEOPLES ENERGY CORP	077385
PEOPLES GAS LIGHT & COKE CO	077388
PEPSICO INC	077476
PHARMACIA CORP	355942
PHELPS DODGE CORP	076066
PHH CORPORATION	077776
PHILADELPHIA ELECTRIC CO	078100
PHILLIPS PETROLEUM CO	078214
PHM CORP	822416
PINNACLE WEST CAPITAL CORP	764622
PITNEY BOWES CREDIT CORP	788170
PITNEY BOWES INC /DE/	078814
PNC FINANCIAL CORP	713676
POLAROID CORP	079326
PORTLAND GENERAL CORP /OR	079636
PORTLAND GENERAL ELECTRIC CO / OR/	784977
POTLATCH CORP	079716
POTOMAC EDISON CO	079731
POTOMAC ELECTRIC POWER CO	079732
PPG INDUSTRIES INC	079879
PREMARK INTERNATIONAL INC	800575
PRIME MOTOR INNS INC	080293
PRIMERICA CORP /NEW/	831001
PRIMERICA HOLDINGS INC	004690
PROSPECT GROUP INC	739169
PRUDENTIAL REALTY SECURITIES II INC	730713
PSI ENERGY INC	081020
PSI RESOURCES INC	829966
PUBLIC SERVICE CO OF COLORADO	081018
PUBLIC SERVICE CO OF NEW HAMPSHIRE	315256
PUBLIC SERVICE CO OF NEW MEXICO	081023
PUBLIX SUPER MARKETS INC	081061
PUGET SOUND POWER & LIGHT CO / WA/	081100
QUANTUM CHEMICAL CORP	070047
QUESTAR CORP	751652
RAC MORTGAGE INVESTMENT CORP	826675
RALPHS GROCERY CO	836023
RAYCHEM CORP	082206
READERS DIGEST ASSOCIATION INC	858558
REEBOK INTERNATIONAL LTD	770949
RELIANCE ELECTRIC CO/DE	814331
RELIANCE GROUP HOLDINGS INC	356395
REVLON INC	083539
REYNOLDS METALS CO	083604

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
RHONE POULENC RORER INC	217028
RIGGS NATIONAL CORP	350847
RITE AID CORP	084129
RJR NABISCO INC	083612
ROADWAY SERVICES INC	701706
ROCHESTER GAS & ELECTRIC CORP	084557
ROCKEFELLER CENTER PROPERTIES INC	773652
ROCKWELL INTERNATIONAL CORP	084636
ROHM & HAAS CO	084792
ROHR INDUSTRIES INC	084801
ROUSE CO	085388
RYDER SYSTEM INC	085961
RYLAND GROUP INC	085974
SAFECO CORP	086104
SAFEWAY CANADA HOLDINGS INC	802840
SAFEWAY INC	086144
SAFEWAY U S HOLDINGS INC	802839
SAINT JOE PAPER CO	745308
SALOMON INC	200245
SAN DIEGO GAS & ELECTRIC CO	086521
SANTA FE PACIFIC CORP	732639
SATURN CORP	879143
SCECORP	827052
SCHERING PLOUGH CORP	310158
SCHWAB CHARLES CORP	316709
SCI HOLDINGS INC	772973
SCOTT PAPER CO	087949
SCRIPPS E W CO /DE	832428
SEAGATE TECHNOLOGY INC	354952
SEALY CORP	748015
SEARS ROEBUCK & CO	319256
SEARS ROEBUCK ACCEPTANCE CORP	088255
SECURITY PACIFIC CORP	088608
SEQUA CORP /DE/	095301
SERVICE CORPORATION INTERNATIONAL	089089
SERVICE MERCHANDISE CO INC	089107
SHAWMUT NATIONAL CORP	823393
SHEARSON LEHMAN BROTHERS HOLDINGS INC	806085
SHEARSON LEHMAN BROTHERS INC	726586
SHELL OIL CO	089629
SHERWIN WILLIAMS CO	089800
SIGNET BANKING CORP	009659
SOCIETY CORP	091576
SONAT INC	092236
SOUTH CAROLINA NATIONAL CORP	091893
SOUTHEAST BANKING CORP	091980
SOUTHERN CALIFORNIA EDISON CO	092103
SOUTHERN CALIFORNIA GAS CO	092108
SOUTHERN NATURAL GAS CO	092232
SOUTHERN NEW ENGLAND TELEPHONE CO	092244
SOUTHERN PACIFIC TRANSPORTATION CO	092259
SOUTHLAND CORP	092344
SOUTHTRUST CORP	092081
SOUTHWEST AIRLINES CO	092380
SOUTHWEST GAS CORP	092416
SOUTHWESTERN PUBLIC SERVICE CO	092521
SOVRAN FINANCIAL CORP	103702
SPIEGEL INC	276641
SPRINGS INDUSTRIES INC	093102
SQUARE D CO	093128
ST PAUL BANCORP INC	810578
STANLEY WORKS	093556
STATE STREET BOSTON CORP	093751
STONE CONTAINER CORP	094610
STRAUSS LEVI ASSOCIATES INC	778977
SUN ENERGY PARTNERS LP	778201
SUN MICROSYSTEMS INC	709519
SUNDSTRAND CORP /DE/	095395
SUNTRUST BANKS INC	750556
SUPER VALU STORES INC	095521
SUPERMARKETS GENERAL HOLDINGS CORP	821139
SYNTEX CORP	096000
SYSCO CORP	096021
SYSTEM ENERGY RESOURCES INC	202584
TALLEY INDUSTRIES INC	096238
TANDEM COMPUTERS INC /DE/	315180
TANDY CORP /DE/	096289
TECO ENERGY INC	350563
TELE COMMUNICATIONS INC	096903
TELEDYNE INC	096935
TEMPLE INLAND INC	731939
TENNECO CREDIT CORP	805019
TENNECO INC /DE/	823549
TENNESSEE GAS PIPELINE CO	097142
TEXACO INC	097349
TEXAS EASTERN CORP	097430
TEXAS INSTRUMENTS INC	097476
TEXAS UTILITIES CO	097561
TEXTRON INC	217346
TIME WARNER INC	736157
TIMES MIRROR CO	098349
TIMKEN CO	098362
TOLEDO EDISON CO	352049
TOYOTA MOTOR CREDIT CORP	834071
TOYS R US INC	051734
TRANS WORLD AIRLINES INC /NEW/	278327
TRANSCO ENERGY CO	099231
TRANSCONTINENTAL GAS PIPE LINE CORP	099250
TRIBUNE CO	726513
TRW INC	100030
TUCSON ELECTRIC POWER CO	100122
TURNER BROADCASTING SYSTEM INC	100240
TWENTIETH CENTURY FOX FILM CORP /DE/ /NE	356364
TYCO LABORATORIES INC	100441
TYSON FOODS INC	100493
UAL CORP /DE/	100517
UJB FINANCIAL CORP /NJ/	101320
UNICORP AMERICAN CORP /DE/ / NEW/	202172
UNION CAMP CORP	100783
UNION CARBIDE CHEMICALS PLASTICS CO INC	100790
UNION ELECTRIC CO	100826
UNION EXPLORATION PARTNERS LTD	769747
UNION OIL CO OF CALIFORNIA	100880
UNION PACIFIC CORP	100885
UNION TANK CAR CO	100923
UNION TEXAS PETROLEUM HOLDINGS INC	774214
UNIROYAL GOODRICH TIRE CO	831872
UNISYS CORP	746838
UNITED AIR LINES INC	101001
UNITED BANKS OF COLORADO INC	101047
UNITED ILLUMINATING CO	101265
UNITED PARCEL SERVICE OF AMERICA INC	809697
UNITED STATES LEASING INTERNATIONAL INC	101679
UNITED STATES SHOE CORP	101771
UNITED TECHNOLOGIES CORP /DE/	101829
UNITED TELECOMMUNICATIONS INC	101830
UNITED TELEPHONE CO OF FLORIDA/NEW	037664
UNIVERSAL CORP /VA/	102037
UNOCAL CORP/DE	716039
UPJOHN COMPANY	102237
USAIR GROUP INC	701345
USBANCORP INC /PA/	707605
USF&G CORP	354396
USG CORP	757011
USX CORP	101778
UTILICORP UNITED INC	066960
V F CORP /PA/	103379
VALERO NATURAL GAS PARTNERS L P	810021
VALHI INC /DE/	059255
VALLEY NATIONAL CORP	350006
VIACOM INC	813828
VIACOM INTERNATIONAL INC /DE/	814135
VONS COMPANIES INC	715633
WAL MART STORES INC	104169
WALGREEN CO	104207
WANG LABORATORIES INC	104519
WARNER LAMBERT CO	104669
WASHINGTON POST CO	104889
WASHINGTON WATER POWER CO	104918
WASTE MANAGEMENT INC	104938
WELLS FARGO & CO	105598
WEST PENN POWER CO	105839
WEST POINT PEPPERELL INC	105846
WESTERN MASSACHUSETTS ELECTRIC CO	106170
WESTINGHOUSE CREDIT CORP	106412
WESTINGHOUSE ELECTRIC CORP	106413
WESTVACO CORP	106498
WEYERHAEUSER CO	106535
WHEELABRATOR TECHNOLOGIES INC /DE/	790159
WHEELING PITTSBURGH STEEL CORP	106618
WHIRLPOOL CORP /DE/	106640
WHITMAN CORP	049573
WICKES COMPANIES INC /DE/	106998
WILLAMETTE INDUSTRIES INC	107189
WILLIAMS COMPANIES INC	107263
WINN DIXIE STORES INC	107681
WISCONSIN BELL INC	107844
WITCO CORP	107889
YELLOW FREIGHT SYSTEM INC OF DELAWARE	716006
ZALE CORP	109156

Group CF-03

AAR CORP	001750
ACE HARDWARE CORP	002024
ADELPHIA COMMUNICATIONS CORP	796486
ADOBE RESOURCES CORP	777877
ADVEST GROUP INC	319489
AFFILIATED BANKSHARES OF COLORADO INC	002682
AGENCY RENT A CAR INC	716936
AIR & WATER TECHNOLOGIES CORP	823556
AIRBORNE FREIGHT CORP /DE/	003000
ALASKA AIR GROUP INC	766421
ALBANY INTERNATIONAL CORP /DE/	819793
ALBERTO CULVER CO	003327
ALCO HEALTH SERVICES CORP	731269
ALEXANDER & ALEXANDER SERVICES INC	003449
ALLEGHANY CORP /DE	775368
ALLEGHENY LUDLUM CORP	811929
ALLERGAN INC	850693
ALLIED PRODUCTS CORP /DE/	003941
AM INTERNATIONAL INC	002310
AMC ENTERTAINMENT INC	722077
AMERICA WEST AIRLINES INC	706270
AMERICAN CAPITAL CORP	004707
AMERICAN FAMILY CORP	004977
AMERICAN HEALTH PROPERTIES INC	808240
AMERICAN HEALTHCARE MANAGEMENT INC	738339
AMERICAN MAIZE PRODUCTS CO	005405
AMERICAN REAL ESTATE PARTNERS L P	813762
AMERICAN SOUTHWEST MORTGAGE INVESTMENTS CORP	817383
AMERICOLD CORP /OR/	811119
AMERON INC/DE	790730
AMETEK INC	006082

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
AMOSKEAG CO	006161
AMSTAR CORP /DE/	807711
ANACOMP INC	006260
ANALOG DEVICES INC	006281
APACHE CORP	006769
APL CORP	006841
APPLE BANCORP INC	829761
APPLIED MATERIALS INC /DE	006951
APPLIED POWER INC	006955
ARKANSAS BEST CORP	007302
ARKLA EXPLORATION CO	856592
ARROW ELECTRONICS INC	007536
ARVIDA JMB PARTNERS L P	814046
ATKINSON GUY F CO OF CALIFORNIA	008137
AVATAR HOLDINGS INC	039677
AVONDALE INDUSTRIES INC	829444
AVX CORP	008878
AZTAR CORP	852607
BALFOUR MACLAINE CORP	054611
BALL CORP	009389
BALLYS PARK PLACE INC	311359
BALTIMORE BANCORP	751926
BANCFLORIDA FINANCIAL CORP	719146
BANCOKLAHOMA CORP	009515
BANDAG INC	009534
BANK SOUTH CORP	039394
BANKATLANTIC FINANCIAL CORP	315858
BANKS OF IOWA INC	009767
BANKS OF MID AMERICA INC	737287
BANPONCE CORP	763901
BANTA CORP	009801
BARD C R INC /NJ/	009892
BATTLE MOUNTAIN GOLD CO	771498
BAY STATE GAS CO /NEW/	010488
BEARINGS INC /OH/	109563
BECKMAN INSTRUMENTS INC/DE/	840467
BELO A H CORP	356080
BEMIS CO INC	011199
BERLITZ INTERNATIONAL INC	856529
BETZ LABORATORIES INC	011884
BIG THREE INDUSTRIES INC	012099
BLOCK DRUG CO INC	012654
BLOCKBUSTER ENTERTAINMENT CORP	710979
BLOUNT INC	012707
BONNEVILLE PACIFIC CORP	795182
BORDEN CHEMICALS PLASTICS LIMITED PARTNERSHIP	821202
BOSTON GAS CO	013390
BP PRUDHOE BAY ROYALTY TRUST	850033
BRIGGS & STRATTON CORP	014195
BROAD INC	054727
BROWN ALEX INC	787977
BROWN FORMAN CORP	014693
BROWN GROUP INC	014707
BRUNOS INC	014920
BRUSH WELLMAN INC	014957
BUCKEYE PARTNERS L P	805022
BURLINGTON COAT FACTORY WAREHOUSE CORP	718916
BUSINESSLAND INC	707542
C TEC CORP	310433
CAESARS WORLD INC	016095
CALIFORNIA ENERGY CO INC	720556
CALIFORNIA WATER SERVICE CO	016422
CALMAT CO	023533
CALTON INC	717216
CANAL ELECTRIC CO	016906
CAPITAL ASSOCIATES INC	804188
CARLISLE COMPANIES INC	790051
CARLYLE REAL ESTATE LTD PARTNERSHIP XIII	711604
CARLYLE REAL ESTATE LTD PARTNERSHIP XV	761023
CAROLCO PICTURES INC	801441
CAROLINA FREIGHT CORP	706166
CAROLINA TELEPHONE & TELEGRAPH CO	275177
CARPENTER TECHNOLOGY CORP	017843
CARTER WALLACE INC /DE/	018000
CCB FINANCIAL CORP	714812
CELLULAR COMMUNICATIONS INC	761676
CENTRAL BANCSHARES OF THE SOUTH INC	018568
CENTRAL FIDELITY BANKS INC	276235
CENTRAL ILLINOIS LIGHT CO	018651
CENTRAL LOUISIANA ELECTRIC CO INC	018672
CENTRAL NEWSPAPERS INC	854094
CENTRAL TELEPHONE CO OF FLORIDA	018793
CENTRAL VERMONT PUBLIC SERVICE CORP	018808
CENTURY TELEPHONE ENTERPRISES INC	018926
CENVILL DEVELOPMENT CORP	319302
CERTIFIED GROCERS OF CALIFORNIA LTD	320431
CHAMBERS DEVELOPMENT CO INC	776074
CHAPARRAL STEEL CO	833226
CHARMING SHOPPES INC	019353
CHEMED CORP	019584
CHESAPEAKE & POTOMAC TELEPHONE CO	019719
CHESAPEAKE & POTOMAC TELEPHONE CO OF WEST VIRGINIA	019724
CHESAPEAKE CORP /VA/	019731
CHILD WORLD INC	019930
CINCINNATI FINANCIAL CORP	020286
CINCINNATI MILACRON INC /DEL/	716823
CIRCUIT CITY STORES INC	104599
CIRCUS CIRCUS ENTERPRISES INC	725549
CITADEL HOLDING CORP	716634
CITIZENS FIRST BANCORP INC /NJ/	702163
CITY NATIONAL CORP	201461
CITYTRUST BANCORP INC	023413
CLAIBORNE LIZ INC	352363
CLARK EQUIPMENT CO /DE/	109710
CLARK OIL & REFINING CORP	020762
CLAYTON HOMES INC	719547
CLEVELAND CLIFFS INC	764065
CNC HOLDING CORP/DE	769644
COCA COLA BOTTLING CO CONSOLIDATED /DE/	317540
COLLINS FOODS INTERNATIONAL INC /DE/	350929
COLOR TILE INC	276780
COLORADO NATIONAL BANKSHARES INC	021956
COLORADO UTE ELECTRIC ASSOCIATION INC	752757
COLTEC INDUSTRIES INC	201493
COLUMBIA REAL ESTATE INVESTMENTS INC	779606
COMDATA HOLDINGS CORP	814246
COMFED BANCORP INC	825393
COMMERCE CLEARING HOUSE INC	022366
COMMERCIAL BANCSHARES INC / WV/	726738
COMMERCIAL METALS CO	022444
COMMONWEALTH EQUITY TRUST	314485
COMMONWEALTH MORTGAGE OF AMERICA L P	799030
COMMUNITY PSYCHIATRIC CENTERS /NV/	022764
COMPUTER SCIENCES CORP	023082
CONE MILLS CORP	023304
CONNER PERIPHERALS INC	792397
CONSECO INC	719241
CONTEL OF CALIFORNIA INC	024186
CONTINENTAL AIRLINES INC /DE/	319687
COOPER TIRE & RUBBER CO	024491
COPELAND AL ENTERPRISES INC	020224
COSTCO WHOLESALE CORP	734198
COTTER & CO	025095
COUNTRYWIDE CREDIT INDUSTRIES INC	025191
CRANE CO /DE/	025445
CRAY RESEARCH INC	025506
CRI INSURED MORTGAGE ASSOCIATION INC	847322
CRI LIQUIDATING REIT INC	850143
CROSS & TRECKER CORP	277721
CRYSTAL BRANDS INC	778169
CULBRO CORP	026093
CULLEN FROST BANKERS INC	039263
CULLUM COMPANIES INC	026114
CURTICE BURNS FOODS INC	026285
CURTISS WRIGHT CORP	026324
CYCLOPS INDUSTRIES INC	202646
DALTON B BOOKSELLER INC	823970
DAMON GROUP INC	036127
DAMSON BIRTCHER REALTY INCOME FUND II L P	773915
DANAHER CORP /DE/	313616
DART GROUP CORP	026938
DATA GENERAL CORP	026999
DAUPHIN DEPOSIT CORP	215619
DE TOMASO INDUSTRIES INC	028367
DEAN FOODS CO	027500
DEKALB ENERGY CO	111001
DELTA WOODSIDE INDUSTRIES INC / DE	806624
DELUXE CORP	027996
DENNISON MANUFACTURING CO / NV/	026117
DEPOSIT GUARANTY CORP	028209
DEXTER CORP	028582
DIAMOND SHAMROCK INC	810316
DIAMOND STATE TELEPHONE CO	028729
DIBRELL BROTHERS INC	028755
DIEBOLD INC	028823
DILLARD INVESTMENT CO INC	773428
DIVERSIFIED ENERGIES INC	703300
DIXIE YARNS INC	029332
DOSKOCIL COMPANIES INC	004960
DR PEPPER SEVEN UP COMPANIES INC /DE/	836400
DREYFUS CORP	030163
DSC COMMUNICATIONS CORP	316004
DWG CORP	030697
E SYSTEMS INC	030875
EAGLE INDUSTRIES INC /DE/	837486
EAGLE PICHER INDUSTRIES INC	030927
EASTERN EDISON CO	014407
ECOLAB INC	031462
EDGCOMB CORP	802896
EDGCOMB METALS CO	791904
EDISON BROTHERS STORES INC	031575
EG&G INC	031791
ELIZABETHTOWN GAS CO	032377
EMERSON RADIO CORP	032821
EMPIRE DISTRICT ELECTRIC CO	032689
ENERGEN CORP	277595
ENSERCH EXPLORATION PARTNERS LTD	764625
ENSTAR GROUP INC	055820
ENVIRODYNE INDUSTRIES INC	033073
ENVIROSOURCE INC	106752
EPIC HEALTHCARE GROUP INC /DE/	841940
EQUIMARK CORP	033189
ESSELTE BUSINESS SYSTEMS INC	743416
ESSEX GROUP INC	033565
ETOWN CORP	764403
EXIDE CORP	813781
FAIRFIELD COMMUNITIES INC	276189
Group CF-01	
FAMILY DOLLAR STORES INC	034408
FARWEST FINANCIAL CORP	034489
FAY LESLIE COMPANIES INC	796226

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
FEDERAL REALTY INVESTMENT TRUST	034903
FERRELLGAS INC	811082
FERRO CORP	035214
FHP INTERNATIONAL CORP	793499
FIELDCREST CANNON INC	035469
FIGGIE INTERNATIONAL INC /DE/	720032
FINANCIAL CORP OF SANTA BARBARA	035679
FINGERHUT COMPANIES INC	740126
FIRST ALABAMA BANCSHARES INC	036032
FIRST BANCORPORATION OF OHIO	354869
FIRST BRANDS CORP	797320
FIRST COMMERCE CORP /LA/	036204
FIRST FINANCIAL CARIBBEAN CORP	840889
FIRST FINANCIAL CORP /WI/	735553
FIRST FLORIDA BANKS INC	109834
FIRST HAWAIIAN INC	036377
FIRST MISSISSIPPI CORP	036537
FIRST NATIONAL FINANCIAL CORP / NM/	779575
FIRST SECURITY CORP /DE/	312367
FIRST UNION REAL ESTATE EQUITY & MORTGAGE INV	037008
FIRST VIRGINIA BANKS INC	037032
FIRSTFED FINANCIAL CORP	810536
FISERV INC	798354
FLEXI VAN CORP	037464
FLIGHTSAFETY INTERNATIONAL INC	037481
FLORIDA EAST COAST INDUSTRIES INC	740796
FLORIDA STEEL CORP	037661
FLS HOLDINGS INC	839727
FOOD 4 LESS SUPERMARKETS INC	852840
FOODMAKER INC /DE/	807882
FOOTE CONE & BELDING COMMUNICATIONS INC	037931
FOOTHILL GROUP INC	037941
FOREST OIL CORP	038079
FORMICA CORP	814241
FORUM GROUP INC	033939
FOURTH FINANCIAL CORP	038475
FOXBORO CO	038563
FPL GROUP CAPITAL INC	794447
FRANKLIN RESOURCES INC	038777
FREEPORT MCMORAN COPPER & GOLD INC	831259
FULLER H B CO	039368
GAP INC	039911
GATX CAPITAL CORP	357019
GAYLORD CONTAINER CORP /DE/	812700
GENENTECH INC	318771
GENERAL CHEMICAL CORP/DE	854599
GENERAL HOST CORP	040638
GENERAL NUTRITION INC	317030
GENERAL WATERWORKS CORP / NEW/	040921
GEORGIA GULF CORP /DE/	805264
GERBER PRODUCTS CO	041130
GIBSON GREETINGS INC	717829
GITANO GROUP INC	837912
GLATFELTER P H CO	041719
GLOBAL MARINE INC	041850
GOLD KIST INC	215994
GORDON JEWELRY CORP	042632
GOULDS PUMPS INC	042791
GRACE ENERGY CORP	852551
GRAINGER W W INC	277135
GRAYBAR ELECTRIC CO INC	205402
GREEN TREE ACCEPTANCE INC	315815
GRENADA SUNBURST SYSTEM CORP	789575
GREY ADVERTISING INC /DE/	043952
GREYHOUND LINES INC	813040
GTE HAWAIIAN TELEPHONE CO INC	046216
GTECH CORP	719702
GUARANTEED MORTGAGE CORP III	752302
GUILFORD MILLS INC	044471

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
GWC CORP	779244
H&R BLOCK INC	012659
HADSON CORP	044801
HAMILTON OIL CORP	727283
HANDLEMAN CO /MI/	314727
HANDY & HARMAN	045333
HANNA M A CO/DE	045370
HANNAFORD BROTHERS CO	045379
HARLEY DAVIDSON INC	793952
HARMAN INTERNATIONAL INDUSTRIES INC /DE/	800459
HARNISCHFEGER CORP /DE/	027803
HARSCO CORP	045876
HARTE HANKS COMMUNICATIONS INC	045919
HARTMARX CORP/DE	723371
HARVARD INDUSTRIES INC	046012
HEALTH CARE PROPERTY INVESTORS INC	765880
HEALTHVEST	792337
HECHINGER CO	046517
HEILIG MEYERS CO	046601
HELMERICH & PAYNE INC	046765
HERITAGE MEDIA CORP	821020
HEWLETT PACKARD FINANCE CO	741171
HEXCEL CORP/DE	717605
HIGHLAND SUPERSTORES INC	766003
HILLENBRAND INDUSTRIES INC	047518
HILLHAVEN CORP	276477
HILLS DEPARTMENT STORES INC / DE/	786877
HOME INSURANCE CO	048195
HOME SHOPPING NETWORK INC	791024
HOMEPLEX MORTGAGE INVESTMENTS CORP	833079
HOMESTEAD FINANCIAL CORP	048272
HOOK SUPERX INC	823883
HORMEL GEORGE A & CO	048465
HORN & HARDART CO /NV/	320333
HORSEHEAD INDUSTRIES INC	847326
HOVNANIAN ENTERPRISES INC	357294
HUBBELL INC	048898
HUDSON FOODS INC	786617
HUNT J B TRANSPORT SERVICES INC	728535
ICH CORP	049588
ICN PHARMACEUTICALS INC /DE/	049601
IE INDUSTRIES INC	789943
IMO INDUSTRIES INC	804151
IMPERIAL HOLLY CORP	831327
INB FINANCIAL CORP /IN/	050200
INDIANA ENERGY INC	780859
INDIANA GAS CO INC	050183
INGLES MARKETS INC	050493
INSPIRATION RESOURCES CORP	722079
INTERFACE INC	715787
INTERGRAPH CORP	351145
INTERLAKE CORP	790929
INTERMARK INC /DE/	731573
INTERNATIONAL CONTROLS CORP	051200
INTERNATIONAL FLAVORS & FRAGRANCES INC	051253
INTERNATIONAL MULTIFOODS CORP	051410
INTERNATIONAL SHIPHOLDING CORP	278041
INTERSTATE BAKERIES CORP /DE/	030021
INTERSTATE JOHNSON LANE INC	771296
INTERSTATE POWER CO	051720
INVG MORTGAGE SECURITIES CORP /DE/	792014
IOWA ELECTRIC LIGHT & POWER CO	052485
IOWA SOUTHERN INC	790499
IP TIMBERLANDS LTD	761860
IRE REAL ESTATE FUND LTD SERIES 25	720042
JAMESWAY CORP	053134
JEFFERIES GROUP INC	717867
JEFFERSON BANKSHARES INC	311100

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
JOHNSTON COCA COLA BOTTLING GROUP INC	818433
JONES FINANCIAL COMPANIES	815917
JONES INTERCABLE INC	275605
JONES SPACELINK LTD	353796
JOSTENS INC	054050
JOURNAL COMMUNICATIONS INC	054056
JOY TECHNOLOGIES INC	812944
JP INDUSTRIES INC	319375
JPS TEXTILE GROUP INC /DE/	846615
K&F INDUSTRIES INC	851797
KAMAN CORP	054381
KANSAS CITY SOUTHERN INDUSTRIES INC	054480
KASH N KARRY FOOD STORES INC	842913
KAY JEWELERS INC	766566
KAY MARY CORP	783197
KELLWOOD CO	055080
KENNAMETAL INC	055242
KENTUCKY POWER CO	055373
KEYSTONE INTERNATIONAL INC	055642
KIMBALL INTERNATIONAL INC	055772
KING WORLD PRODUCTIONS INC	756764
KN ENERGY INC	054502
KOGER PROPERTIES INC /FL/	355357
LA QUINTA MOTOR INNS INC	278243
LA Z BOY CHAIR CO	057131
LACLEDE GAS CO	057183
LADD FURNITURE INC	721669
LANDMARK BANCSHARES CORP	036948
LANDMARK LAND CO INC/DE	749028
LDI CORP	814500
LEAR SEATING CORP	842162
LEE ENTERPRISES INC	058361
LEGG MASON INC	704051
LEGGETT & PLATT INC	058492
LENNAR CORP	058696
LFC HOLDING CORP	767554
LIBERTY NATIONAL BANCORP INC / KY/	316909
LIN BROADCASTING CORP	059498
LINCOLN ELECTRIC CO	059527
LIVE ENTERTAINMENT INC	840260
LOCTITE CORP	060041
LOMAS & NETTLETON MORTGAGE INVESTORS	060153
LONGVIEW FIBRE CO	060302
LORILLARD INC	277684
LOTUS DEVELOPMENT CORP	711761
LPL TECHNOLOGIES INC	799315
LSB INDUSTRIES INC	060714
LSI LOGIC CORP	703360
LUBRIZOL CORP	060751
LUKENS INC /DE/	808317
LUKENS INC /DE/	060860
MA COM INC	065771
MACY CREDIT CORP	061298
MADISON GAS & ELECTRIC CO	061339
MAGMA COPPER CO	061425
MAGNETEK INC	751085
MAI BASIC FOUR INC	760436
MAINE YANKEE ATOMIC POWER CO	061617
MANOR CARE INC/NEW	354604
MARION MERRELL DOW INC	062391
MATTEL INC /DE/	063276
MAXTOR CORP	711039
MAYFLOWER GROUP INC /IN/	063506
MCCLATCHY NEWSPAPERS INC	822043
MCCORMICK & CO INC	063754
MCCRORY CORP	063801
MCCRORY PARENT CORP	055211
MCORP	064924
MDU RESOURCES GROUP INC	067716
MEASUREX CORP /DE/	751190
MEDCO CONTAINMENT SERVICES INC	741520
MEDIA GENERAL INC	216539

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
MEDIQ INC	350920
MEDITRUST INC	774350
MEPC CAPITAL CORP	819343
MERCANTILE BANKSHARES CORP	064908
MERCHANTS NATIONAL CORP	064970
MERCURY FINANCE COMPANY	846378
MEREDITH CORP	065011
MERRY LAND & INVESTMENT CO INC	350071
METRO MOBILE CTS INC	749922
METROPOLITAN FINANCIAL CORP / DE/	741341
METROPOLITAN MORTGAGE & SECURITIES CO INC	065384
MEYER FRED INC	701169
MHS HOLDINGS CORP	854087
MICRON TECHNOLOGY INC	723125
MIDLAND ENTERPRISES INC /DE/	066029
MIDWAY AIRLINES INC /DE/	319668
MILLER HERMAN INC	066382
MILLIPORE CORP	066479
MINE SAFETY APPLIANCES CO	066570
ML MEDIA PARTNERS LP	785959
MOLEX INC	067472
MONARCH CAPITAL CORP /MA/	067516
MONONGAHELA POWER CO /OH/	067646
MORNINGSTAR FOODS INC	832768
MORRISON KNUDSEN CORP	763739
MORTGAGE & REALTY TRUST	079259
MOUNTAIN FUEL SUPPLY CO	068589
MUELLER INDUSTRIES INC	089439
MULTIBANK FINANCIAL CORP	068803
MULTIMEDIA INC	068813
MUSICLAND GROUP INC /DE	798507
NALCO CHEMICAL CO	069598
NASH FINCH CO	069671
NATIONAL BANCSHARES CORP OF TEXAS	069834
NATIONAL COMMUNITY BANKS INC	841534
NATIONAL CONSUMER COOPERATIVE BANK /DC/	356801
NATIONAL CONVENIENCE STORES INC /DE/	314662
NATIONAL EDUCATION CORP	277821
NATIONAL HEALTH LABORATORIES INC	832427
NATIONAL REALTY L P	819671
NATIONAL SERVICE INDUSTRIES INC	070538
NCH CORP	069960
NEIMAN MARCUS GROUP INC	819539
NEW JERSEY RESOURCES CORP	356309
NEW ORLEANS PUBLIC SERVICE INC	071508
NEWELL CO	814453
NEWMONT GOLD CO	793308
NOBLE AFFILIATES INC	072207
NORTEK INC	072423
NORTH FORK BANCORPORATION INC	352510
NORTHEAST BANCORP INC /CT/	072740
NORTHWEST NATURAL GAS CO	073020
NORTHWESTERN STEEL & WIRE CO	073093
NOVELL INC	758004
NRM ENERGY COMPANY L P	759202
NUCOR CORP	073309
NUI CORP	070668
OCEAN DRILLING & EXPLORATION CO	073722
OLD REPUBLIC INTERNATIONAL CORP	074260
OMI CORP	732780
ONE VALLEY BANCORP OF WEST VIRGINIA INC	351616
ONEOK INC	074154
ORACLE SYSTEMS CORP	777676
ORANGE & ROCKLAND UTILITIES INC	074778
ORION PICTURES CORP	035590
OTTER TAIL POWER CO	075129
PACIFIC LUMBER CO /DE/	796838
PALL CORP	075829
PAPER CORP OF AMERICA	087023
PARTECH HOLDINGS CORP	791027
PATHE COMMUNICATIONS CORP	720695
PAY N PAK STORES INC	076732
PENNSYLVANIA AMERICAN WATER CO	106239
PENNSYLVANIA ENTERPRISES INC	077231
PENNSYLVANIA GAS & WATER CO	077242
PENTAIR INC	077360
PEP BOYS MANNY MOE & JACK	077449
PERINI CORP	077543
PERKIN ELMER CORP	077551
PERMIAN PARTNERS LP	812023
PETERS J M CO INC	813945
PETRIE STORES CORP	077808
PHILADELPHIA SUBURBAN CORP	078128
PHILIPS INDUSTRIES INC /OH/	205778
PHILLIPS VAN HEUSEN CORP /DE/	078239
PHLCORP INC	230046
PIEDMONT NATURAL GAS CO INC	078460
PIER 1 IMPORTS INC/DE	278130
PIPER JAFFRAY INC	078778
PITTSTON CO	078890
PITTWAY CORP	078895
PITTWAY CORP /DE/	093469
PLAYTEX APPAREL INC	817215
PLAYTEX BEAUTY CARE INC	817217
PLM INTERNATIONAL INC	814677
PLUM CREEK TIMBER CO L P	849213
POGO PRODUCING CO	230463
POPE & TALBOT INC /DE/	311871
PRECISION CASTPARTS CORP	079958
PREMIER BANCORP INC	761332
PRESIDIO OIL CO	060134
PRESTON CORP	716741
PRO FAC COOPERATIVE INC	202932
PROGRESSIVE CORP/OH/	080661
PS GROUP INC	080966
PUGET SOUND BANCORP	352076
QUAKER STATE CORP	081381
QUANEX CORP	276889
QUESTAR PIPELINE CO	764044
QUICK & REILLY GROUP INC /DE/	719544
QVC NETWORK INC	797565
RAYMOND JAMES FINANCIAL INC	720005
READING & BATES CORP	082329
RELIANCE GROUP INC/NEW/	700756
RELIANCE INSURANCE CO	083053
RESIDENTIAL MORTGAGE ACCEPTANCE INC	795807
RESIDENTIAL MORTGAGE INVESTMENTS INC	791681
RESORTS INTERNATIONAL INC	083394
RESTAURANT ENTERPRISES GROUP INC /DEL/	813856
REX PT HOLDINGS INC	843761
REXENE CORP	829218
REYNOLDS & REYNOLDS CO	083588
RHODES INC	083679
ROCHESTER TELEPHONE CORP	084567
ROLLINS TRUCK LEASING CORP	084244
ROSES STORES INC	085149
ROUNDYS INC	314423
ROWAN COMPANIES INC	085408
RPM INC/OH/	110621
RUBBERMAID INC	085627
RUDDICK CORP	085704
RUSSELL CORP	085812
RYKOFF SEXTON INC	085973
RYMAC MORTGAGE INVESTMENT CORP	835669
SAFETY KLEEN CORP	086135
SAHARA CASINO PARTNERS L P	812482
SAHARA RESORTS	704435
SALANT CORP	086346
SANTA FE ENERGY PARTNERS L P	780391
SANTA FE ENERGY RESOURCES INC	086772
SANTA FE PACIFIC PIPELINE PARTNERS LP	840251
SAUL B F REAL ESTATE INVESTMENT TRUST	086902
SAVANNAH FOODS & INDUSTRIES INC	086941
SCHERER R P CORP	087243
SCI SYSTEMS INC	087744
SCIENCE APPLICATIONS INTERNATIONAL CORP	353394
SCIENTIFIC ATLANTA INC	087777
SCRIPPS HOWARD BROADCASTING CO	088034
SEABOARD CORP /DE/	088121
SEAGULL ENERGY CORP	320321
SEAMENS CORP	794932
SECURITY BANCORP INC /MI/	088496
SERVICE AMERICA CORP	820287
SERVICEMASTER LTD PARTNERSHIP	806027
SHAW INDUSTRIES INC	089498
SHONEYS INC	089902
SIGMA ALDRICH CORP	090185
SIGNAL FINANCE CORP	090218
SILGAN CORP	825541
SILICON GRAPHICS INC /CA/	802301
SIX FLAGS CORP /DE/	818243
SMITH A O CORP	091142
SMITHS FOOD & DRUG CENTERS INC	850309
SNAP ON TOOLS CORP	091440
SONOCO PRODUCTS CO	091767
SOTHEBYS HOLDINGS INC	823094
SOUTH JERSEY INDUSTRIES INC	091928
SOUTHDOWN INC	313058
SOUTHERN INDIANA GAS & ELECTRIC CO	092195
SOUTHERN NATIONAL CORP /NC/	092230
SOUTHMARK CORP	701998
SOUTHWESTERN ENERGY CO	007332
SPECIALTY RETAILERS INC /DE/	846723
SPI HOLDING INC	819898
SPRAGUE TECHNOLOGIES INC	814564
SPX CORP	088205
STANDARD COMMERCIAL CORP	093319
STANDARD MOTOR PRODUCTS INC	093389
STANDARD PACIFIC LP	799146
STANDARD PRODUCTS CO	093448
STANDARD REGISTER CO	093456
STANHOME INC	093542
STAR BANC CORP /DE/	036678
STERLING CHEMICALS INC	795662
STOKELY VAN CAMP INC	094567
STONE & WEBSTER INC	094601
STONERIDGE RESOURCES INC	074783
STORAGE TECHNOLOGY CORP	094673
STRAWBRIDGE & CLOTHIER	094855
SUBARU OF AMERICA INC	095056
SUNBEAM CORP/DE/	095370
SUNWEST FINANCIAL SERVICES INC	036758
TAMBRANDS INC	096277
TAYLOR ANN HOLDINGS INC	850098
TCF FINANCIAL CORP	814184
TECUMSEH PRODUCTS CO	096831
TEKTRONIX INC	096879
TELECOM USA INC /DE/	763392
TELEFLEX INC	096943
TELEMUNDO GROUP INC	806083
TELEPHONE & DATA SYSTEMS INC	096966
TERADYNE INC	097210
TEREX CORP	097216
TESORO PETROLEUM CORP /NEW/	050104
TEXAS GAS TRANSMISSION CORP	097452
TEXAS INDUSTRIES INC	097472
TEXAS NEW MEXICO POWER CO	022767
THERMADYNE INDUSTRIES INC	822795
THERMO ELECTRON CORP	097745
THIOKOL CORP /DE/	768366

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
THOMAS & BETTS CORP	097854
THOMAS INDUSTRIES INC	097886
TIDEWATER INC	098222
TIS MORTGAGE INVESTMENT CO	833088
TLC BEATRICE INTERNATIONAL HOLDINGS INC	835589
TNP ENTERPRISES INC	741612
TODD SHIPYARDS CORP	098537
TOLL BROTHERS INC	794170
TONKA CORP	098651
TOPS MARKETS INC/NY/	071922
TORCHMARK CORP	320335
TORO CO/DE	737758
TOSCO CORP	074091
TPI ENTERPRISES INC	096919
TRANSCAPITAL FINANCIAL CORP	093321
TREDEGAR INDUSTRIES INC	850429
TRIANGLE PACIFIC CORP	230602
TRINITY INDUSTRIES INC	099780
TRINITY INDUSTRIES LEASING CO	350024
TRITON ENERGY CORP	099830
TRITON GROUP LTD /DE/	319250
TRUMP PLAZA FUNDING INC	791445
TRUMPS CASTLE FUNDING INC	770618
TRUSTCOMPANY BANCORPORATION	768905
TRUSTMARK CORP	036146
TURNER CORP	743475
U S HOME CORP /DE/	101640
UDC UNIVERSAL DEVELOPMENT LP	769824
UGI CORP	100548
UNC INC	276104
UNIMAR CO	752290
UNION PLANTERS CORP	100893
UNIONFED FINANCIAL CORP	802223
UNISYS FINANCE CORP	814073
UNITED ASSET MANAGEMENT CORP	796370
UNITED INVESTORS MANAGEMENT CO	791262
UNITED MISSOURI BANCSHARES INC	101382
UNITED STATIONERS INC	355999
UNITED TELEPHONE CO OF OHIO	101839
UNITED TELEPHONE CO OF PENNSYLVANIA	101841
UNITED WATER RESOURCES INC	715969
UNIVAR CORP	101929
UNIVERSAL FOODS CORP	310142
UNIVERSAL HEALTH SERVICES INC	352915
UNUM CORP	795581
USLICO CORP	750234
USLIFE CORP	102420
UST INC	811669
VALERO ENERGY CORP	021271
VALLEY BANCORPORATION	102661
VALLEY NATIONAL BANCORP	714310
VARIAN ASSOCIATES INC /DE/	203527
VERMONT YANKEE NUCLEAR POWER CORP	103298
VISHAY INTERTECHNOLOGY INC	103730
VISTA CHEMICAL CO /DE/	805270
VORNADO INC	103925
VULCAN MATERIALS CO	103973
WABAN INC	850316
WABASH RAILROAD CO	104005
WALLACE COMPUTER SERVICES INC	104348
WARNACO GROUP INC /DE/	801351
WARNACO INC	104628
WASHINGTON GAS LIGHT CO	104819
WASHINGTON NATIONAL CORP	104867
WEINGARTEN REALTY INVESTORS / TX/	828916
WEIRTON STEEL CORP	849979
WEIS MARKETS INC	105418
WELLMAN INC	812708
WENDYS INTERNATIONAL INC	105668
WESCO FINANCIAL CORP	105729
WEST ONE BANCORP	351155
WESTAMERICA BANCORPORATION	311094
WESTCORP /CA/	813461
WESTERN COMPANY OF NORTH AMERICA	106015
WESTERN DIGITAL CORP	106040
WESTERN UNION CORP /DE/	106367
WESTERN UNION CORP /NY/	106374
WESTFIELD FINANCE INC	823869
WESTMARK INTERNATIONAL INC	806086
WESTMORELAND COAL CO	106455
WESTWOOD ONE INC /DE/	771950
WETTERAU INC	106521
WHITNEY HOLDING CORP	106926
WHITTAKER CORP	106945
WICOR INC	314890
WILLIAMS NATURAL GAS CO /DE/	020415
WISCONSIN GAS CO	107819
WISCONSIN POWER & LIGHT CO	107832
WISCONSIN PUBLIC SERVICE CORP	107833
WORTHEN BANKING CORP	350572
WORTHINGTON INDUSTRIES INC	108516
WPL HOLDINGS INC	352541
WYMAN GORDON CO	108703
XTRA CORP /DE/	217591
YANKEE ENERGY SYSTEM INC	849210
ZAPATA CORP	109177
ZENITH ELECTRONICS CORP	109265
ZIONS BANCORPORATION /UT/	109380
ZURN INDUSTRIES INC	109448
Group CF-04	
20TH CENTURY INDUSTRIES	100331
3 BEALLS HOLDING CORP	840468
3COM CORP	738076
ABCO MARKETS INC /AZ/	843087
ABF FREIGHT SYSTEM INC	838830
ACKERLEY COMMUNICATIONS INC	319120
ACME CLEVELAND CORP	002066
ACME STEEL CO	002093
ACNB CORP	715579
ACTION AUTO RENTAL INC	810309
ACUSON CORP	717014
ADC TELECOMMUNICATIONS INC	061478
ADDINGTON RESOURCES INC	810665
ADIA SERVICES INC	752200
ADIENCE INC	846972
ADVANCED TELECOMMUNICATIONS CORP	729647
ADVO SYSTEM INC	801622
AEL INDUSTRIES INC	004911
AFFILIATED BANC CORP	824205
AIR EXPRESS INTERNATIONAL CORP/DE/	700674
AIR WIS SERVICES INC	717324
AIRGAS INC	804212
AL LABORATORIES INC	730469
ALABAMA GAS CORP	003148
ALC COMMUNICATIONS CORP	783425
ALEXANDERS INC	003499
ALLEGHENY & WESTERN ENERGY CORP	351547
ALLEN GROUP INC	003721
ALLIANCE BANCORPORATION /AK/	728534
ALLIANCE CAPITAL MANAGEMENT LP	825313
ALLSTAR INNS L P /DE/	810992
ALLWASTE INC	804742
ALTUS FINANCE CORPORATION	816643
ALZA CORP	004310
AMAX GOLD INC	814577
AMBRIT INC	319678
AMCAST INDUSTRIAL CORP	027425
AMDURA CORP	005177
AMERICA FIRST TAX EXEMPT MORTGAGE FUND LP	776734
AMERICAN BUILDING MAINTENANCE INDUSTRIES INC	771497
AMERICAN BUSINESS PRODUCTS INC	004672
AMERICAN CAPITAL & RESEARCH CORP /DE/	856200
AMERICAN CARRIERS INC	719271
AMERICAN EXPLORATION CO	715428
AMERICAN FRUCTOSE CORP	725552
AMERICAN INSURED MORTGAGE INVESTORS	724533
AMERICAN INSURED MORTGAGE INVESTORS L P	784014
AMERICAN OIL & GAS CORP	746896
AMERICAN PACESETTER	005577
AMERICAN REALTY TRUST INC /GA	827165
AMERICAN RICE INC	824206
AMERICAN SOUTHWEST FINANCE CO INC	725349
AMGEN INC	318154
AMITY BANCORP INC	799026
AMPCO PITTSBURGH CORP	006176
AMPLICON INC	803016
AMREP CORP	006207
AMVESTORS FINANCIAL CORP	005320
ANALOGIC CORP	006284
ANCHOR CAPITAL I INC	819336
ANDERSONS	006474
ANDREW CORP	317093
ANGELES CORP /CA/	316315
ANGELICA CORP /NEW/	006571
ANTHONY C R CO	006715
ANTHONY INDUSTRIES INC	006720
AP INDUSTRIES INC	726819
APOGEE ENTERPRISES INC	006845
APPLETREE MARKETS INC	840470
APPLIED BIOSYSTEMS INC	719545
APPLIED MAGNETICS CORP	006948
ARBOR DRUGS INC	791048
ARCHIVE CORP /DE/	731655
ARCTIC ALASKA FISHERIES CORP	819790
ARDEN GROUP INC	225051
ARGONAUT GROUP INC	800082
ARIS CORPORATION	785962
ARMOR ALL PRODUCTS CORP	797975
ASB CAPITAL CORP	766841
ASB FUNDING CORP	803337
ASHLAND COAL INC	833890
ASHTON TATE CORP	727472
ASK COMPUTER SYSTEMS INC	354797
ASSOCIATED NATURAL GAS CORP	836666
AST GENERAL CORP /DE/	844216
AST RESEARCH INC /DE/	725162
ASTEC INDUSTRIES INC	792987
ATARI CORP	802019
ATHLONE INDUSTRIES INC	008117
ATICO FINANCIAL CORP	008126
ATLANTIC SOUTHEAST AIRLINES INC	702720
ATLANTIS GROUP INC /DE/	811828
ATMOS ENERGY CORP	731802
AUDIOVOX CORP	807707
AUGAT INC	008462
AUTODESK INC	768397
AUTODIE CORP	778705
AVANTEK INC	277161
AYDIN CORP	008919
BAIRNCO CORP	350750
BAKER J INC	792570
BALCOR EQUITY PENSION INVESTORS I	723873
BALCOR EQUITY PENSION. INVESTORS II	748501
BALCOR PENSION INVESTORS IV	709329
BALCOR PENSION INVESTORS V	732350
BALCOR PENSION INVESTORS VI	755497
BALCOR REALTY INVESTORS 84	726927
BALCOR REALTY INVESTORS 84 SERIES II	740582
BALDOR ELECTRIC CO	009342
BALDWIN PIANO ORGAN CO /DE	797315
BALDWIN TECHNOLOGY CO INC	805792

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
BANCTEC INC	318378
BANCTEXAS GROUP INC	310979
BANGOR HYDRO ELECTRIC CO	009548
Group CF-01	
BANK OF NEW HAMPSHIRE CORP	313857
BANK OF SAN FRANCISCO CO HOLDING CO	351238
BARNES GROUP INC	009984
BARRYS JEWELERS INC /CA/	790360
BASIC AMERICAN MEDICAL INC	717723
BASSETT FURNITURE INDUSTRIES INC	010329
BAY FINANCIAL CORP	313294
BAYOU STEEL CORP	807877
BE HOLDINGS INC	824776
BELL INDUSTRIES INC/DEL/	314346
BELL JAN MARKETING INC	817946
BERRIE RUSS & CO INC	739878
BEST BUY CO INC	764478
BIBB CO /DE	814570
BIC CORP	011975
BICOASTAL CORP	090656
BIG B INC	352720
BINDLEY WESTERN INDUSTRIES INC	722808
BINKS MANUFACTURING CO	012180
BIO RAD LABORATORIES INC	012208
BIOCRAFT LABORATORIES INC	763043
BIOGEN INC	714655
BIOMET INC	351346
BIRMINGHAM STEEL CORP	779334
BLACK HILLS CORP	012400
BLAIR CORP	071525
BMA CORP /MO/	830158
BOHEMIA INC	012960
BOLAR PHARMACEUTICAL CO INC	013006
BOLT BERANEK & NEWMAN INC	013021
BRADY W H CO	746598
BRAND COMPANIES INC	806635
BRANIFF INC	737576
BRE PROPERTIES INC	009677
BRENDLES INC	791851
BRENTON BANKS INC	014060
BROOKE GROUP LTD	059440
BROWN & SHARPE MANUFACTURING CO /DE/	014637
BRT REALTY TRUST	014846
BSD BANCORP INC	319498
BTR REALTY INC	015019
BULOVA CORP	015310
BUREAU OF NATIONAL AFFAIRS INC	015393
BURNHAM PACIFIC PROPERTIES INC	805730
BURNUP & SIMS INC	015615
BURR BROWN CORP	715577
BUTLER MANUFACTURING CO	015840
BWIP HOLDING INC	817637
CABLE TV FUND 12-D LTD	789292
CABLE TV FUND 14 B LTD	821480
CABOT OIL & GAS CORP	858470
CADENCE DESIGN SYSTEMS INC	813672
CAESARS NEW JERSEY INC	276310
CAL REP BANCORP INC	705679
CALGON CARBON CORPORATION	812701
CALIFORNIA SEVEN ASSOCIATES LTD PARTNERSHIP	765506
CAMBREX CORP	820081
CANANDAIGUA WINE CO INC	016918
CAPITAL CITY BANK GROUP INC	726601
CAPITOL BANCORPORATION	017329
CAPITOL STREET CORP	057424
CARDINAL DISTRIBUTION INC	721371
CARE ENTERPRISES INC /DE	794456
CARLISLE PLASTICS INC	846902
CARLYLE REAL ESTATE LTD PARTNERSHIP X	314459
CARLYLE REAL ESTATE LTD PARTNERSHIP XI	350667
CARLYLE REAL ESTATE LTD PARTNERSHIP XII	700949
CARLYLE REAL ESTATE LTD PARTNERSHIP XIV	737291
CARLYLE REAL ESTATE LTD PARTNERSHIP XVI	789950
CARMIKE CINEMAS INC	799088
CAROLINA STEEL CORPORATION	846466
CARROLS CORP	017927
CASCADE NATURAL GAS CORP	018072
CASEYS GENERAL STORES INC	726958
CASTLE A M & CO	018172
CBT CORP /KY/	719227
CDI CORP	018396
CECO INDUSTRIES INC /DE/	806090
CEDAR FAIR L P	811532
CENCOM CABLE INCOME PARTNERS LP	798769
CENCOR INC	018497
CENTENNIAL GROUP INC /DE/	810909
CENTOCOR INC	706823
CENTRAL FREIGHT LINES INC	018639
CENTRAL HOLDING CO	771722
CENTRAL STEEL & WIRE CO	018783
CENTRAL TELEPHONE CO OF ILLINOIS	018794
CENTRAL TELEPHONE CO OF VIRGINIA	018795
CENTURY PROPERTIES FUND XIX	705752
CENTURY PROPERTIES GROWTH FUND XXII	740156
CENVEST INC	811209
CETUS CORP	350383
CF INCOME PARTNERS L P	802779
CF&I STEEL CORP	019020
CHANCELLOR CORP	724051
CHARTER BANCSHARES INC	718607
CHARTER CO	312667
CHARTWELL GROUP LTD	790230
CHEROKEE GROUP	729582
CHERRY CORP	019704
CHESHIRE FINANCIAL CORP	800042
CHILIS INC	703351
CHIPS & TECHNOLOGIES INC	767965
CHITTENDEN CORP /VT/	200138
CHOCK FULL O NUTS CORP	020041
CHURCH & DWIGHT CO INC /DE/	313927
CINTAS CORP	723254
CIVISTA CORP	831486
CLARCOR INC	020740
CLARIDGE HOTEL & CASINO CORP	730409
CLEAN HARBORS INC	822818
CLIFFS DRILLING CO	831964
CLINTON MILLS INC	810571
CLYDE FINANCIAL CORP	802902
CML GROUP INC	729576
CNB FINANCIAL CORP/KS	700916
COBE LABORATORIES INC	021310
COEUR D ALENE MINES CORP	215466
COHERENT INC	021510
COLONIAL GAS CO	060653
COMMERCIAL INTERTECH CORP	022470
COMMONWEALTH GAS CO	022620
COMMTRON CORP	793277
COMMUNICATIONS TRANSMISSION INC	820285
COMMUNITY BANK SYSTEM INC	723188
COMMUNITY NATIONAL BANCORPORATION	855386
COMPREHENSIVE CARE CORP	022872
COMPUTER FACTORY INC	351360
CONAIR CORP/DE/NEW	769208
CONCURRENT COMPUTER CORP/DE	749038
CONNECTICUT ENERGY CORP	310103
CONNECTICUT WATER SERVICE INC / CT	276209
CONQUEST EXPLORATION CO	354829
CONSOLIDATED CAPITAL INSTITUTIONAL PROPERTIES II	719184
CONSOLIDATED CAPITAL INSTITUTIONAL PROPERTIES	352983
CONSOLIDATED STORES CORP /DE/	766835
CONSTAR INTERNATIONAL INC	029806
CONSUMERS POWER CO	201533
CONSUMERS WATER CO	023910
CONTEL CELLULAR INC	822419
CONTINENTAL HOMES HOLDING CORP	798122
CONTINENTAL MEDICAL SYSTEMS INC /DE/	802284
CONVEX COMPUTER CORP	743653
COOPER COMPANIES INC	711404
COPPERWELD CORP	024596
CORDIS CORP	024654
CORE INDUSTRIES INC	091817
CORROON & BLACK CORP	024975
COUSINS PROPERTIES INC	025232
CPB INC	701347
CPI CORP	025354
CRACKER BARREL OLD COUNTRY STORE INC	025373
CROMPTON & KNOWLES CORP	025757
CROSS A T CO	025793
CRSS INC	025941
CSC INDUSTRIES INC	806400
CTS CORP	026058
CU BANCORP	356050
CUBIC CORP /DE/	026076
CV REIT INC	018934
CVB FINANCIAL CORP	354647
CYPRESS SEMICONDUCTOR CORP / DE/	791915
DAIRY MART CONVENIENCE STORES INC	721675
DAISY SYSTEMS CORP /DE	811028
DAMON CORP	026757
DAMSON ENERGY CO LP	764865
DANIEL INDUSTRIES INC	026821
DANIELS & ASSOCIATES INC	807645
DARLING DELAWARE CO INC	845756
DATA SWITCH CORP	701376
DATAPOINT CORP	205239
DCS CAPITAL CORP	711054
DEKALB GENETICS CORP	835015
DEL VAL FINANCIAL CORP	215639
DELCHAMPS INC	729970
DELL COMPUTER CORP	826083
DELTONA CORP	027984
DIAMOND SHAMROCK OFFSHORE PARTNERS LTD PARTNERSHIP	773350
DIASONICS INC	317814
DIGITAL COMMUNICATIONS ASSOCIATES INC	712744
DOLLAR FINANCE INC	765878
DOLLAR GENERAL CORP	029534
DONALDSON CO INC	029644
DONNELLY CORP	805583
DOUGLAS & LOMASON CO	029854
DR PEPPER BOTTLING HOLDINGS INC	843396
DRAVO CORP	030067
DRESS BARN INC	717724
DREYERS GRAND ICE CREAM INC	352305
DRUG EMPORIUM INC/DE	832922
DS BANCOR INC	790168
DST SYSTEMS INC	714603
DUKE REALTY INVESTMENTS INC	783280
DUPLEX PRODUCTS INC	030547
DURHAM CORP	316444
DURIRON CO INC	030625
DYERSBURG FABRICS INC	811523
DYNAMICS CORP OF AMERICA	030819
DYNASCAN CORP	030828
DYNATECH CORP	030841

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
DYNCORP	030770
EAGLE FINANCIAL CORP	792369
EAGLE FOOD CENTERS INC	030906
EATON VANCE CORP	350797
EDO CORP	031617
EGGHEAD INC /WA/	832320
EHRLICH BOBER FINANCIAL CORP	803130
EKCO GROUP INC /DE/	018827
ELCO INDUSTRIES INC	032013
ELECTRO RENT CORP	032166
ELIZABETHTOWN WATER CO /NJ/	032379
ELJER INDUSTRIES INC	846857
EMC CORP	790070
EMERALD HOMES LP	806627
EMMIS BROADCASTING CORPORATION	783005
EMPIRE GAS CORP /MO/	032703
EMPIRE OF CAROLINA INC	312840
ENCORE COMPUTER CORP /DE/	764037
ENDEVCO INC	725625
ENERGY DEVELOPMENT PARTNERS LTD	773649
ENERGY SERVICE COMPANY INC	314808
ENGRAPH INC	032991
ENSTAR INDONESIA INC	717239
ENVIRONMENTAL SYSTEMS CO /DE/	774709
EQK GREEN ACRES LP	796509
EQK REALTY INVESTORS I	755926
EQUITABLE REAL ESTATE SHOPPING CENTERS LP	806029
ERLY INDUSTRIES INC	030966
ESTERLINE CORP	033619
EVANS & SUTHERLAND COMPUTER CORP	276283
EVANS BOB FARMS INC	033769
EVEREST & JENNINGS INTERNATIONAL LTD	033837
EVEREX SYSTEMS INC /DE/	816762
EXCEL INDUSTRIES INC	740868
EXECUTONE INFORMATION SYSTEMS INC	725282
F&M NATIONAL CORP	034125
FAB INDUSTRIES INC	034136
FABRI CENTERS OF AMERICA INC	034151
FARAH INC	034501
FARMER BROTHERS CO	034563
FARMERS CAPITAL BANK CORP	713095
FARMERS NATIONAL BANCORP /MD/	700850
FARMLAND FOODS INC	034615
FAYS INCORPORATED	034788
FB&T CORP	700725
FEDDERS CORP /DE	744106
FEDERAL SIGNAL CORP /DE/	277509
FIBREBOARD CORP /DE	833053
FINEVEST FOODS INC	830141
FIRST ABILENE BANKSHARES INC	036029
FIRST ALBANY COMPANIES INC	782842
FIRST AMARILLO BANCORPORATION INC	702654
FIRST BANCORP OF KANSAS	705025
FIRST CITIZENS BANCORPORATION OF SOUTH CAROLINA	708848
FIRST FEDERAL BANCORP INC	813749
FIRST FEDERAL CAPITAL FUNDING III INC	822741
FIRST FINANCIAL ASSOCIATES INC	726737
FIRST FINANCIAL HOLDINGS INC / DE/	787075
FIRST MERCHANTS CORP	712534
FIRST NATIONAL BANCORP /GA/	351825
FIRST NATIONAL BANK CORP	808364
FIRST NATIONAL CORP /CA/	700941
FIRST REPUBLIC BANCORP INC	770975
FIRST REPUBLIC CORP OF AMERICA	036856
FIRST SECURITY FINANCIAL CORP	717217
FIRST UNITED BANCSHARES INC / AR/	355883
FIRST UNITED CORP/MD/	763907
FIRSTCORP INC	749099
FISCHER & PORTER CO	037115
FISHER FOODS INC /OH/	037180
FLORIDA ROCK INDUSTRIES INC	037651
FLUKE JOHN MANUFACTURING CO INC	037743
FMC GOLD CO	814429
FNW BANCORP INC	000063
FOODARAMA SUPERMARKETS INC	037914
FOREST LABORATORIES INC	038074
FORSTMANN & CO INC	798246
FORUM RETIREMENT PARTNERS L P	804752
FURON CO	037755
FURRS BISHOPS CAFETERIAS L P	816814
GANTOS INC	791182
GEHL CO	856386
GENERAL BINDING CORP	040481
GENERAL DATACOMM INDUSTRIES INC	040518
GENESCO INC	018498
GENETICS INSTITUTE INC	731336
GENEVA STEEL	860192
GENICOM CORP	766738
GENLYTE GROUP INC	833076
GENOVESE DRUG STORES INC	040970
GERBER SCIENTIFIC INC	041133
GERIATRIC & MEDICAL CENTERS INC	041147
GETTY PETROLEUM CORP	079849
GF MORTGAGE CORP	769027
GIANT GROUP LTD	041296
GIANT INDUSTRIES INC	856465
GIDDINGS & LEWIS INC /WI/	851588
GILBERT ASSOCIATES INC/NEW	740763
GLEASON CORP /DE/	743239
GLENBOROUGH LTD	790129
GLENMORE DISTILLERIES CO	041781
GLOBAL NATURAL RESOURCES INC/ NJ	733289
GOLDOME FLORIDA FUNDING CORP	763840
GOLDOME FLORIDA FUNDING CORP II	790632
GOODY PRODUCTS INC	317332
GOTTSCHALKS INC	790414
GOULD INVESTORS L P	779335
GOVERNMENT EMPLOYEES FINANCIAL CORP	042817
GR FOODS INC	051467
GRACO INC	042888
GRAPHIC INDUSTRIES INC	727162
GRAPHIC SCANNING CORP	043142
GREAT AMERICAN INDUSTRIES INC	043279
GREEN A P INDUSTRIES INC	826619
GREEN MOUNTAIN POWER CORP	043704
GREIF BROTHERS CORP	043920
GROSSMANS INC	033798
GROW GROUP INC	044171
GRUBB & ELLIS CO	216039
GUARDIAN BANCORP	749751
GULF RESOURCES & CHEMICAL CORP	044549
HAL INC /HI/	046205
HALF ROBERT INTERNATIONAL INC / DE/	315213
HALL FINANCIAL GROUP INC	063436
HALL FRANK B & CO INC	044956
HALLWOOD GROUP INC	355766
HANCOCK FABRICS INC	812906
HANCOCK HOLDING CO	750577
HARKEN ENERGY CORP	313478
HARPER GROUP INC /DE/	045674
HART HOLDING CO INC	087266
HARTFORD STEAM BOILER INSPECTION & INSURANCE CO	310823
HAVERTY FURNITURE COMPANIES INC	216085
HEALTH & REHABILITATION PROPERTIES TRUST	803649
HEALTH CARE REIT INC /DE/	766704
HEALTH EQUITY PROPERTIES INC	822415
HEALTHCARE INTERNATIONAL INC	717517
HEALTHCO INTERNATIONAL INC	046454
HEALTHSOUTH REHABILITATION CORP	785161
HECLA MINING CO/DE/	719413
HEEKIN CAN INC	773594
HERITAGE FINANCIAL CORP /VA/	275514
Group CF-01	
HICKORY FURNITURE CO	047312
HOLIDAY RAMBLER CORP	811658
HOLLY CORP	048039
HOME BENEFICIAL CORP	048174
HOME NATIONAL CORP/MA	715128
HOMELAND HOLDING CORP	835582
HON INDUSTRIES INC	048287
HONDO OIL & GAS CO	076696
HONEYWELL FINANCE INC	048304
HORIZON INDUSTRIES INC/GA/	720501
HORRIGAN AMERICAN INC	716801
HOTEL INVESTORS CORP	316206
HOTEL INVESTORS TRUST	048595
HOUGHTON MIFFLIN CO	048638
HOUSE OF FABRICS INC/DE/	315125
HPSC INC	718909
HRE PROPERTIES	048896
HUBCO INC	703559
HUFFY CORP	225463
HUGHES SUPPLY INC	049029
HUNT MANUFACTURING CO	049146
HYDRAULIC CO	049423
ICM PROPERTY INVESTORS INC	757448
ICN BIOMEDICALS INC	798166
IDB COMMUNICATIONS GROUP INC	799319
IDEX CORP /DE/	832101
INACOMP COMPUTER CENTERS INC	730717
INDEPENDENCE MINING COMPANY INC	768961
INDEPENDENT INSURANCE GROUP INC	319735
INDUSTRIAL FUNDING CORP	857067
INFINITY BROADCASTING CORP	792863
INFORMATION RESOURCES INC	714278
INFORMIX CORP	799089
INGRES CORP	712849
INSTRUMENT SYSTEMS CORP /DE/	050725
INSURED INCOME PROPERTIES 1985	754758
INSURED INCOME PROPERTIES 1986 LP	778435
INTEGRATED DEVICE TECHNOLOGY INC	703361
INTELLIGENT ELECTRONICS INC	814430
INTELOGIC TRACE INC	771993
INTERMEC CORP	051017
INTERMET CORP	745287
INTERNATIONAL ALUMINUM CORP	051103
INTERNATIONAL AMERICAN HOMES INC	760878
INTERNATIONAL DAIRY QUEEN INC	051207
INTERNATIONAL GAME TECHNOLOGY	353944
INTERNATIONAL INCOME PROPERTY INC	310989
INTERNATIONAL RECTIFIER CORP / DE/	316793
INTERNATIONAL TECHNOLOGY CORP	731190
INTERNATIONAL TELECHARGE INC	780853
INTERNATIONAL THOROUGHBRED BREEDERS INC	320573
INTERSTATE GENERAL CO L P	807364
INVESTORS SAVINGS CORP	804124
INVG GOVERNMENT SECURITIES CORP	793467

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
IONICS INC	052466
IOWA SOUTHERN UTILITIES CO	052508
IRONSTONE GROUP INC	723269
IRT PROPERTY CO	311099
IWC RESOURCES CORP	790523
JACOBS ENGINEERING GROUP INC / DE/	052988
JACOBSON STORES INC	053025
JACOR COMMUNICATIONS INC	702808
JESUP GROUP INC	702724
JHM MORTGAGE SECURITIES L P	820167
JIFFY LUBE INTERNATIONAL INC	730922
JMB INCOME PROPERTIES LTD X	719244
JMB INCOME PROPERTIES LTD XI	744437
JMB INCOME PROPERTIES LTD XII	765813
JMB INCOME PROPERTIES LTD XIII	790603
JOHNSON WORLDWIDE ASSOCIATES INC	788329
JORDAN INDUSTRIES INC	839484
JORGENSEN EARLE M CO /DE/	054003
JOSLYN CORP /IL/	054045
JUSTIN INDUSTRIES INC	054182
KANEB SERVICES INC	054441
KANSAS CITY LIFE INSURANCE CO	054473
KARCHER CARL ENTERPRISES INC	353718
KATY INDUSTRIES INC	054681
KAYDON CORP	740694
KD HOLDINGS CORP	851089
KDI CORP	054876
KERR GLASS MANUFACTURING CORP	055454
KETEMA INC	838224
KEYSTONE CONSOLIDATED INDUSTRIES INC	055604
KINETIC CONCEPTS INC /TX/	831967
KIRBY CORP	056047
KLA INSTRUMENTS CORP	319201
KLEIN CALVIN INC	778422
KOGER CO/FL/NEW	353025
KOGER EQUITY INC	835664
KOPPERS HOLDINGS CORP	852553
KRUPP CASH PLUS III LTD PARTNERSHIP	803767
KRUPP INSURED PLUS LTD PARTNERSHIP	786622
KYSOR INDUSTRIAL CORP/MI	202356
LA GEAR INC	793837
LA PETITE ACADEMY INC	357158
LA QUINTA MOTOR INNS LTD PARTNERSHIP	799169
LACLEDE STEEL CO /DE/	057187
LADISH CO INC	814250
LAMSON & SESSIONS CO	057497
LANCASTER COLONY CORP	057515
LANCE INC	057528
LANDS END INC	799288
LANDSING PACIFIC FUND	631300
LANDSTAR SYSTEM INC	853816
LARIZZA INDUSTRIES INC	817134
LAURENTIAN CAPITAL CORP/DE/	092342
LAWTER INTERNATIONAL INC	058091
LCB BANCORP INC	745276
LDDS COMMUNICATIONS INC /TN/	047409
LEISURE TECHNOLOGY INC	058621
LEPERCQ CORPORATE INCOME FUND L P	790877
LIBERTY CORP	059229
LIFE TECHNOLOGIES INC	727737
LIFETIME CORP	276886
LILLY INDUSTRIAL COATINGS INC	059479
LINCOLN TELECOMMUNICATIONS CO	320446
LIONEL CORP	059696
LOEHMANNS HOLDINGS INC	843081
LONDONTOWN CORP	060183
LONDONTOWN HOLDINGS CORP	849266
LOUISIANA GAS SERVICE CO	352319
LTX CORP	357020
LUBYS CAFETERIAS INC	016099
LUFKIN INDUSTRIES INC	060849
LURIA L & SON INC	277057
LVI GROUP INC	058526
LW INDUSTRIES INC	057792
LYPHOMED INC	716827
MADISON JAMES LTD	350838
MAGMA POWER CO /NV/	355878
MALRITE COMMUNICATIONS GROUP INC	734102
MANHATTAN NATIONAL CORP	061952
MANITOWOC CO INC	061986
MARCADE GROUP INC	100979
MARCUS CORP	062234
MARITRANS PARTNERS L P	810113
MARSH & MCLENNAN COMPANIES INC	062709
MARSH SUPERMARKETS INC	062737
MARSHALL INDUSTRIES	062765
MAXICARE HEALTH PLANS INC	722573
MBIA INC	814585
MCDONALD & CO INVESTMENTS INC	720900
MCNEIL REAL ESTATE FUND XII LTD	351708
MEDICAL CARE INTERNATIONAL INC	704156
MEI DIVERSIFIED INC	790725
MENDIK REAL ESTATE LIMITED PARTNERSHIP	783996
MERCHANTS BANCORP INC/CT	740666
MERCHANTS BANCSHARES INC	726517
MERRY GO ROUND ENTERPRISES INC	719721
METCALF & EDDY COMPANIES INC	839479
MGI PROPERTIES	068330
MGM GRAND INC	789570
MICHAEL FOODS INC	811930
MICHAELS STORES INC	740670
MICROPOLIS CORP	718865
MID AMERICA BANCORP/KY/	711083
MIDLAND CO	066025
MIDSOUTH CORP /DE/	807359
MILLICOM INC	703769
MINSTAR INC	007119
MIPS COMPUTER SYSTEMS INC /CA/	857327
MISSISSIPPI CHEMICAL CORP	066895
ML EQ REAL ESTATE PORTFOLIO L P	808369
ML MEDIA OPPORTUNITY PARTNERS L P	818080
MLX CORP /MI	064247
MMR HOLDING CORP	810666
MODINE MANUFACTURING CO	067347
MOOG INC	067887
MOORE BENJAMIN CO	276999
MORGAN KEEGAN INC	729600
MORGAN PRODUCTS LTD	739790
MORRISON INC /DE/	068270
MOSINEE PAPER CORP	068412
MRI BUSINESS PROPERTIES FUND LTD III	769635
MTS SYSTEMS CORP	068709
MYLAN LABORATORIES INC	069499
NAPA VALLEY BANCORP	700928
NASHUA CORP	069680
NATIONAL CITY BANCSHARES INC	764241
NATIONAL COMPUTER SYSTEMS INC	069999
NATIONAL DATA CORP	070033
NATIONAL HEALTHCARE INC	765052
NATIONAL HEALTHCORP L P	805274
NATIONAL INCOME REALTY TRUST	277577
NATIONAL LEASE INCOME FUND 6 LP	799034
NATIONAL PATENT DEVELOPMENT CORP	070415
NATIONAL PIZZA CO/KS	748714
NATIONAL PRESTO INDUSTRIES INC	080172
NATIONAL STANDARD CO	070584
NATIONAL WESTERN LIFE INSURANCE CO	070684
NATIONWIDE HEALTH PROPERTIES INC	780053
NBB BANCORP INC	829732
NBC CAPITAL CORP	742054
NCF FINANCIAL CORP	807712
NETWORK EQUIPMENT TECHNOLOGIES INC	752431
NETWORK SYSTEMS CORP	319645
NEUTROGENA CORP	071125
NEW CENTURY COMMUNICATIONS INC	842809
NEW ENGLAND BUSINESS SERVICE INC	205700
NEW PLAN REALTY TRUST	071519
NEWHALL LAND & FARMING CO /CA/	751976
NOBLE DRILLING CORP	777201
NOLAND CO	072243
NORD RESOURCES CORP	072316
NORDSON CORP	072331
NORTH CAROLINA NATURAL GAS CORP	072596
NORTH STAR UNIVERSAL INC	768158
NORTHWESTERN PUBLIC SERVICE CO	073088
NPL CORP	352973
NS GROUP INC	745026
NU MED INC	314928
OAK INDUSTRIES INC	073568
OAKWOOD HOMES CORP	073609
OBRIEN ENERGY SYSTEMS INC	795185
OCEAN SHOWBOAT INC	810312
OCTEL COMMUNICATIONS CORP	792723
OFFICE DEPOT INC	800240
OGLEBAY NORTON CO	073918
OHM CORP	788964
OLSTEN CORP	074386
OLYMPUS CAPITAL CORP/UT	707706
ONEIDA LTD	074585
OPTICAL RADIATION CORP	074702
ORANGE CO INC /FL/	004507
ORCHARD SUPPLY HARDWARE CORP	856712
OREGON STEEL MILLS INC	830260
ORIOLE HOMES CORP	074928
ORION CAPITAL CORP	074931
OSHKOSH B GOSH INC	075042
OSHKOSH TRUCK CORP	775158
OSHMANS SPORTING GOODS INC	075043
OSULLIVAN CORP	075072
OUTLET BROADCASTING INC	804060
OUTLET COMMUNICATIONS INC	803743
OWENS & MINOR INC	075252
OXFORD ENERGY CO	743332
PACIFIC SCIENTIFIC CO	075608
PACIFIC WESTERN BANCSHARES INC /DE/	317964
PAINEWEBBER EQUITY PARTNERS TWO LTD PARTNERSHIP	793973
PANSOPHIC SYSTEMS INC	353652
PARK COMMUNICATIONS INC	726957
PARK ELECTROCHEMICAL CORP	076267
PARKER & PARSLEY DEVELOPMENT PARTNERS LP	818093
PARKER DRILLING CO /DE/	076321
PATTEN CORP	778946
PAY N SAVE INC	793322
PBL ACQUISITION CORP	846717
PEC ISRAEL ECONOMIC CORP	076888
PEEBLES INC	804125
PENN VIRGINIA CORP	077159
PEOPLES BANCORP INC	318300
PEOPLES BANCORPORATION	707603
PEOPLES FIRST CORP	718077
PEOPLES HOLDING CO	715072
PERINI INVESTMENT PROPERTIES INC	743443
PERRY DRUG STORES INC	077628

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
PETROLEUM HEAT & POWER CO INC	736768
PETROLEUM HELICOPTERS INC	350403
PETROLITE CORP	077943
PHOENIX LEASING CASH DISTRIBUTION FUND II	798905
PIC N SAVE CORP	078384
PICCADILLY CAFETERIAS INC	277923
PILGRIMS PRIDE CORP	802481
PIONEER FINANCIAL CORP	826329
PIONEER FINANCIAL SERVICES INC / DE	799036
PIONEER STANDARD ELECTRONICS INC	078749
PITT DES MOINES INC	078853
PIZZA INN INC /TX/	718332
PLANTERS CORP	709469
PLENUM PUBLISHING CORP	079166
PLM EQUIPMENT GROWTH FUND II	812072
PLY GEM INDUSTRIES INC	079209
PNP PRIME CORP	825312
POLARIS AIRCRAFT INCOME FUND II	789895
POLARIS AIRCRAFT INCOME FUND III	806031
POLARIS AIRCRAFT INCOME FUND IV	818145
POLARIS INDUSTRIES PARTNERS L P	816951
POLIFLY FINANCIAL CORP	826501
PRATT HOTEL CORP /DE/	030117
PREMIER BANKSHARES CORP	797541
PREMIER FINANCIAL SERVICES INC	036340
PREMIER INDUSTRIAL CORP	080051
PRICE COMMUNICATIONS CORP	355787
PRICE T ROWE ASSOCIATES INC / MD/	789671
PRIMARK CORP	356064
PRIME CAPITAL CORP	791013
PROLER INTERNATIONAL CORP	080693
PROPERTY CAPITAL TRUST	080718
PROTECTIVE LIFE CORP	355429
PROVIDENCE ENERGY CORP	319651
PROVIDENCE GAS CO	080812
PST HOLDINGS INC	810627
PUERTO RICAN CEMENT CO INC	081076
PULITZER PUBLISHING CO	805357
PULTE HOME CREDIT CORP	713076
PURITAN BENNETT CORP	081199
PYRAMID TECHNOLOGY CORP	714865
QINTEX ENTERTAINMENT INC	830351
QMS INC	710983
QUAKER CHEMICAL CORP	081362
QUANTUM CORP /DE/	709283
RAMADA NEW JERSEY HOLDINGS CORP	756708
RAMSAY HEALTH CARE INC	773136
RANGER INDUSTRIES INC	021610
RAYMOND CORP	082231
RAYONIER TIMBERLANDS LP	778439
RE CAPITAL CORP /DE/	074347
RECOGNITION EQUIPMENT INC	082523
RED LION INNS LIMITED PARTNERSHIP	810724
REEVES INDUSTRIES INC /DE/	799274
RELIANCE FINANCIAL SERVICES CORP	083047
REPUBLIC BANCORP INC	813808
RESIDENTIAL RESOURCES MORTGAGE INVESTMENTS CORP	831007
RICHARDSON ELECTRONICS LTD/DE	355948
RICHFOOD HOLDINGS INC	819632
RISER FOODS INC /DE/	832177
RMI TITANIUM CO	854663
ROANOKE ELECTRIC STEEL CORP	084278
ROCHESTER & PITTSBURGH COAL CO	084548
RODMAN & RENSHAW CAPITAL GROUP INC	726977
ROGERS CORP	084748
ROLLINS ENVIRONMENTAL SERVICES INC	701856
ROLLINS INC	084839
ROSEVILLE TELEPHONE CO	085153
ROSS STORES INC	745732
RPS REALTY TRUST	842183
RYANS FAMILY STEAK HOUSES INC	355622
SAFE HARBOR WATER POWER CORP	086100
SAFECARD SERVICES INC	086103
SAFEGUARD SCIENTIFICS INC	086115
SALEM CARPET MILLS INC	086357
SANDY SPRING BANCORP INC	824410
SANTA ANITA OPERATING CO	313749
SANTA ANITA REALTY ENTERPRISES INC	314661
SANTA BARBARA BANCORP	357264
SAVIN CORP	276894
SB PARTNERS	087047
SCA TAX EXEMPT FUND LIMITED PARTNERSHIP	806641
SCHULMAN A INC	087565
SCOTSMAN INDUSTRIES INC	846660
SCOTTS COMPANY	825542
SEALED AIR CORP	088204
SEAMENS CAPITAL CORP	795577
SEAWAY FOOD TOWN INC	088296
SEMINOLE KRAFT CORPORATION	815276
SENECA FOODS CORP /NY/	088948
SENSORMATIC ELECTRONICS CORP	088974
SEQUENT COMPUTER SYSTEMS INC /OR/	811716
SHARED MEDICAL SYSTEMS CORP	089415
SHEARSON UNION SQUARE ASSOCIATES LTD PARTNERSHIP	795879
SHORELINE FINANCIAL CORP	822697
SHOWBOAT INC	089966
SIERRA CAPITAL REALTY TRUST VII CO	774853
SIMMONS FIRST NATIONAL CORP	090498
SIZZLER RESTAURANTS INTERNATIONAL INC	706694
SJW CORP	766829
SKYLINE CORP	090896
SMITH CORONA CORP	851292
SMITH INTERNATIONAL INC	721083
SMITHFIELD FOODS INC	091388
SMUCKER J M CO	091419
SNYDER OIL CORP	860713
SNYDER OIL PARTNERS LP	357221
SOFTSEL COMPUTER PRODUCTS INC	724941
SOUTHEASTERN MICHIGAN GAS ENTERPRISES INC	277158
SOUTHEASTERN PUBLIC SERVICE CO	092050
SOUTHERN CALIFORNIA WATER CO	092116
SOUTHERN UNION CO	203248
SPARTECH CORP	077597
SPARTON CORP	092679
SPC ACQUISITION INC	700990
SPRECKELS INDUSTRIES INC	824096
SPS TECHNOLOGIES INC	093444
ST JOSEPH LIGHT & POWER CO	086251
ST JUDE MEDICAL INC	203077
STANDARD BRANDS PAINT CO	093308
STANDEX INTERNATIONAL CORP/DE/	310354
STANLEY INTERIORS CORP	797465
STARRETT HOUSING CORP	093675
STARRETT L S CO	093676
STEPAN CO	094049
STERLING BANCORP	093451
STERLING FINANCIAL CORP /PA/	811671
STERLING SOFTWARE INC	716714
STEWART & STEVENSON SERVICES INC	094328
STIFEL FINANCIAL CORP	720672
STOKELY USA INC	777538
STORAGE EQUITIES INC	318380
STOTLER GROUP INC	822614
STRATUS COMPUTER INC	723610
STRIDE RITE CORP	094887
STRYKER CORP	310764
SUDBURY INC	811801
SUFFOLK BANCORP	754673
SUMMIT HEALTH LTD	725555
SUMMIT TAX EXEMPT BOND FUND LP	786156
SUMMIT TAX EXEMPT L P II	792924
SUN DISTRIBUTORS L P	807396
SUN ELECTRIC CORP	095311
SUNGARD DATA SYSTEMS INC	789388
SUPER FOOD SERVICES INC	095504
SUPER RITE FOODS INC	731133
SUPERIOR INDUSTRIES INTERNATIONAL INC	095552
SYMBOL TECHNOLOGIES INC	278352
SYMS CORP	724742
SYNTHETIC INDUSTRIES INC	809803
T2 MEDICAL INC	830735
TALMAN FINANCE CORP A	796315
TALMAN FINANCE CORP B	796316
TALMAN FINANCE CORP C	810692
TALMAN FINANCE CORP D	813423
TALMAN FINANCE CORP E	814727
TALMAN FINANCE CORP G	819819
TALMAN FINANCE CORP H	822436
TANDON CORP	350068
TBC CORP	718449
TCA CABLE TV INC	700997
TCBY ENTERPRISES INC	740893
TECH SYM CORP	096669
TELCO CAPITAL CORP	096895
TELECREDIT INC	096929
TELLABS INC	317771
TELXON CORP	352495
TERADATA CORP /DE/	816761
TEXAS SECURITY BANCSHARES INC	813764
TGX CORP	319650
THERMO INSTRUMENT SYSTEMS INC	795986
TIE COMMUNICATIONS INC	313309
TIFFANY & CO	098246
TIMBERLAND CO	814361
TJ INTERNATIONAL INC	099974
TOKHEIM CORP	098559
TOOTSIE ROLL INDUSTRIES INC	098677
TOWN & COUNTRY CORP	768608
TPI RESTAURANTS INC	719663
TRAK AUTO CORP	716438
TRAMMELL CROW REAL ESTATE INVESTORS	778437
TRANS FINANCIAL BANCORP INC	704469
TRANS RESOURCES INC	810020
TRANS WORLD MUSIC CORP	795212
TRANSCONTINENTAL REALTY INVESTORS INC	733590
TRANSTECHNOLOGY CORP	099359
TRIAD SYSTEMS CORP	313867
TRICO PRODUCTS CORP	099724
TRIMAS CORP	842633
TRUSTCO BANK CORP N Y	357301
TUBOSCOPE CORP	860097
TULTEX CORP	100166
TVX BROADCAST GROUP INC	774388
TYCO INDUSTRIES INC	849262
TYCO TOYS INC	786130
ULTIMATE CORP	350874
UNICARE HEALTH FACILITIES INC	732010
UNIFI INC	100726
UNIFIRST CORP	717954
UNILAB CORP	835472
UNION BANCSHARES INC/KS/	701546
UNION VALLEY CORP	794223
UNIROYAL PLASTICS ACQUISITION CORP	813792
UNITED BANKSHARES INC/WV	729986
UNITED CAPITAL CORP /DE/	065358

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
UNITED CITIES GAS CO	101105
UNITED COMPANIES FINANCIAL CORP	217416
UNITED DOMINION REALTY TRUST INC	074208
UNITED GROCERS INC /OR/	225966
UNITED INDUSTRIAL CORP /DE/	101271
UNITED INNS INC	101281
UNITED MERCHANTS & MANUFACTURERS INC	101357
UNITED STATES CELLULAR CORP	821130
UNITED STATES SURGICAL CORP	101788
UNITED TELEVISION INC	352942
UNITED THERMAL CORP	820411
UNITED VERMONT BANCORPORATION	351965
UNIVERSAL HEALTH REALTY INCOME TRUST	798763
UNIVEST CORP OF PENNSYLVANIA	102212
UNR INDUSTRIES INC	315641
URCARCO INC	804269
UST CORP	316901
VALID LOGIC SYSTEMS INC	706314
VALMONT INDUSTRIES INC	102729
VALSPAR CORP	102741
VAN DORN CO	102883
VANGUARD CELLULAR SYSTEMS INC	771178
VANGUARD REAL ESTATE FUND I / MA/	801124
VARLEN CORP	103071
VERMONT FINANCIAL SERVICES CORP	706116
VESTRON INC	775526
VIATECH INC	103392
VICORP RESTAURANTS INC	703799
VICTORY MARKETS INC	103492
VIEW MASTER IDEAL GROUP INC	723922
VILLAGE SUPER MARKET INC	103595
VISTA PROPERTIES	716942
VLSI TECHNOLOGY INC	704386
VMS NATIONAL PROPERTIES JOINT VENTURE	789089
VMS STRATEGIC LAND FUND II	812914
VOLT INFORMATION SCIENCES INC	103872
WACKENHUT CORP	104030
WAINOCO OIL CORP	110430
WALTHAM CORP	810962
WASHINGTON BANCORP INC	811553
WASHINGTON TRUST BANCORP INC	737468
WATKINS JOHNSON CO	105006
WATTS INDUSTRIES INC	795403
WAUSAU PAPER MILLS CO	105076
WAXMAN INDUSTRIES INC	105096
WEBB DEL CORP	105189
WERNER ENTERPRISES INC	793074
WESBANCO INC	203596
WEST CO INC	105770
WEST COAST BANCORP /CA/	352187
WEST SUBURBAN BANCORP INC	805080
WESTBANK CORP	742070
WESTERN GAS PROCESSORS LTD	813790
WESTERN GAS RESOURCES INC	856716
WESTERN INVESTMENT REAL ESTATE TRUST	106135
WESTERN PACIFIC INDUSTRIES INC	106230
WESTERN PUBLISHING GROUP INC	790706
WESTERN RESERVE TELEPHONE CO	106291
WESTERN WASTE INDUSTRIES	718244
WESTON ROY F INC	106473
WHEREHOUSE ENTERTAINMENT INC	050859
WILEY JOHN & SONS INC	107140
WILLCOX & GIBBS INC	107203
WINDMERE CORP	217084
WINNEBAGO INDUSTRIES INC	107687
WITTER DEAN COLDWELL BANKER TAX EXEMPT MTG FUND LP	794449
WITTER DEAN REALTY INCOME PARTNERSHIP III LP	784161
WITTER DEAN REALTY INCOME PARTNERSHIP II LP	752744
WITTER DEAN REALTY INCOME PARTNERSHIP IV LP	819342
WITTER DEAN REALTY YIELD PLUS L P	810116
WLR FOODS INC	760775
WOLVERINE WORLD WIDE INC /DE/	110471
WOODWARD GOVERNOR CO	108312
WORK WEAR CORP INC	217577
WORLDCORP INC	811664
WTD INDUSTRIES INC	797543
WYLE LABORATORIES	108683
WYNNS INTERNATIONAL INC	108721
WYOMING NATIONAL BANCORPORATION	108738
XL DATACOMP INC	763358
ZENITH NATIONAL INSURANCE CORP	109261
ZERO CORP	109284
Group CF-05	
21ST CENTURY FILM CORP	838179
A&W BRANDS INC /DE/	799692
AARON RENTS INC	706688
ABC BANCORP	351569
ABINGTON BANCORP INC	812146
ABRAMS INDUSTRIES INC	001923
ACCLAIM ENTERTAINMENT INC	804888
ACETO CORP	002034
ACMAT CORP	002062
ACME ELECTRIC CORP	002070
ACTION AUTO STORES INC	811096
ACTION INDUSTRIES INC	002145
ACTON CORP/DE	103575
ACXIOM CORP	733269
ADAC LABORATORIES	313798
ADAPTEC INC	709804
ADOBE SYSTEMS INC /CA/	796343
ADVANCED LOGIC RESEARCH INC	861289
ADVANCED MARKETING SERVICES INC	814580
ADVANCED MEDICAL INC	817181
AEP INDUSTRIES INC	785787
AEROVOX INC	856164
AIFS INC	785929
AIM TELEPHONES INC	354173
AIR MIDWEST INC	310454
AIRCOA HOSPITALITY SERVICES INC	703570
AIRCOA HOTEL PARTNERS L P	812591
AIRLEASE LTD	799033
ALAMCO INC	355115
ALATENN RESOURCES INC	701288
ALDUS CORP /WA/	813656
ALICO INC	003545
ALLEN ORGAN CO	003753
ALLIANCE PHARMACEUTICAL CORP	736994
ALLIANT COMPUTER SYSTEMS CORP /DE/	806002
ALLIED RESEARCH CORP	003952
ALPHA INDUSTRIES INC	004127
ALTA GOLD CO/NV/	090350
ALTERA CORP	768251
AMBANC CORP	702904
AMBASSADOR FINANCIAL GROUP INC	724458
AMERICA FIRST FEDERALLY GUARANTEED MTG FUND II LP	799212
AMERICA FIRST PARTICIPATING PREFERRED EQ MTG FUND	789951
AMERICAN BANCORPORATION /OH/	004570
AMERICAN BILTRITE INC	004611
AMERICAN CABLE TV INVESTORS 3	742274
AMERICAN CABLE TV INVESTORS 4 LTD	785025
AMERICAN CABLE TV INVESTORS 5 LTD	810963
AMERICAN CAPITAL MANAGEMENT & RESEARCH INC	789468
AMERICAN CITY BUSINESS JOURNALS INC	769339
AMERICAN COLLOID CO	813621
AMERICAN CONSUMER PRODUCTS INC	799028
AMERICAN ECOLOGY CORP	742126
AMERICAN FILTRONA CORP	005009
AMERICAN HERITAGE LIFE INVESTMENT CORP	005172
AMERICAN HOME SHIELD CORP	005193
AMERICAN INCOME PARTNERS III-A LIMITED PARTNERSHIP	808512
AMERICAN INCOME PARTNERS III-B LIMITED PARTNERSHIP	808513
AMERICAN MANAGEMENT SYSTEMS INC	310624
AMERICAN NATIONAL BANKSHARES INC	741516
AMERICAN NATIONAL PETROLEUM CO /DE/	350898
AMERICAN NURSERY PRODUCTS INC	740055
AMERICAN PACIFIC CORP/DE	350832
AMERICAN RECREATION CENTERS INC	005719
AMERICAN REPUBLIC BANKCORP	352904
AMERICAN SHARED HOSPITAL SERVICES	744825
AMERICAN SHIP BUILDING CO	005818
AMERICAN SOFTWARE INC	713425
AMERICAN STEEL & WIRE CORPORATION	804307
AMERICAN WOODMARK CORP	794619
AMERICANA HOTELS & REALTY CORP	356959
AMRE INC	809572
ANALYSIS & TECHNOLOGY INC	310876
ANDAL CORP	070262
ANDERSEN GROUP INC	006383
ANDOVER TOGS INC	793029
ANDREWS GROUP INC /DE/	277025
ANGELES INCOME PROPERTIES LTD 6	812564
ANGELES PARTICIPATING MORTGAGE TRUST	831972
ANTHEM ELECTRONICS INC /DE/	727120
AOI COAL CO	777358
APACHE OFFSHORE INVESTMENT PARTNERSHIP	727538
APERTUS TECHNOLOGIES INC	351139
APPAREL AMERICA INC	004319
APPLIED BIOSCIENCE INTERNATIONAL INC	810723
ARITECH CORP	793592
ARKANSAS FREIGHTWAYS CORP	846729
ARLINGTON FINANCE CORP	788610
ARMADA CORP	007377
ARNOLD INDUSTRIES INC	700612
ARROW AUTOMOTIVE INDUSTRIES INC	007533
ARTRA GROUP INC	200243
ARX INC	002601
ASSOCIATED COMMUNICATIONS CORP	230036
ASSOCIATED MORTGAGE INVESTORS	007913
ASTROSYSTEMS INC	008065
AT&E CORP	008076
ATALANTA SOSNOFF CAPITAL CORP /DE/	792449
ATI MEDICAL INC	737276
ATLANTIC EXPRESS INC	788618
ATLAS CORP	008302
ATLAS VAN LINES INC	318397

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
AUDIO VIDEO AFFILIATES INC	744187
AUTO TROL TECHNOLOGY CORP	278048
AUTOCLAVE ENGINEERS INC	350067
AVEMCO CORP	008802
BABBAGES INC	833443
BADDOUR INC	724571
BADGER METER INC	009092
BADGER PAPER MILLS INC	009096
BAKER MICHAEL CORP	009263
BALCOR COLONIAL STORAGE INCOME FUND 85	763535
BALCOR COLONIAL STORAGE INCOME FUND 86	795748
BALCOR CURRENT INCOME FUND 85	763697
BALCOR EQUITY PENSION INVESTORS IV	796805
BALCOR EQUITY PROPERTIES XIV	714913
BALCOR EQUITY PROPERTIES XVIII	740553
BALCOR PENSION INVESTORS	225075
BALCOR PENSION INVESTORS II	350845
BALCOR PENSION INVESTORS III	357329
BALCOR PENSION INVESTORS VII	783456
BALCOR REALTY INVESTORS 83	705959
BALCOR REALTY INVESTORS 83 SERIES II	717856
BALCOR REALTY INVESTORS 85 SERIES I	751341
BALCOR REALTY INVESTORS 85 SERIES II	759831
BALCOR REALTY INVESTORS 85 SERIES III	766769
BALCOR REALTY INVESTORS 86 SERIES I	777574
BALCOR REALTY INVESTORS LTD 82	355797
BAMBERGER POLYMERS INC	806011
BANK MARYLAND CORP	819540
BANK OF GRANITE CORP	810689
BAR HARBOR BANKSHARES	743367
BARDEN CORP	009901
BARR LABORATORIES INC	010081
BARRY R G CORP /OH/	749872
BAYLAKE CORP	275119
BEARD OIL CO /DE/	832192
BEEBAS CREATIONS INC	772263
BEI ELECTRONICS INC	851478
BEI HOLDINGS LTD /DE/	225569
BELDING HEMINWAY CO INC /DE/	011027
BELL W & CO INC	011109
BELMONT BANCORP	726294
BERKLINE CORP	011545
BERKSHIRE GAS CO /MA/	317406
BERRY PETROLEUM CO	778438
BEST FRANK E INC	011806
BEST LOCK CORP	011814
BEST UNIVERSAL LOCK CO	011825
BIG O TIRES INC	718082
BIOTECHNICA INTERNATIONAL INC	715374
BIRD CORP	012245
BIZMART INC	827651
BKLA BANCORP	716615
BLESSINGS CORP	012814
BLISS & LAUGHLIN INDUSTRIES INC / DE	842679
BMC BANKCORP INC	702903
BMC INDUSTRIES INC/MN/	215310
BMC SOFTWARE INC	835729
BNH BANCSHARES INC	764205
BNR BANCSHARES INC	701256
BODDIE NOELL RESTAURANTS PROPERTIES INC	812150
BOKUM RESOURCES CORP	013000
BOMBAY COMPANY INC	096287
BOOLE & BABBAGE INC	734394
BOSTON FINANCIAL QUALIFIED HOUSING LTD PARTNERSHIP	810863
BRADLEY REAL ESTATE TRUST	013777
BRESLER & REINER INC	014073
BROOKS BOBBIE INC	014537
BROWN TOM INC /DE	014803
BRYN MAWR BANK CORP	802681
BSN CORP	319237
BTU INTERNATIONAL INC	840883
BUELL INDUSTRIES INC	015166
BUFFETS INC	750274
BUFFTON CORP	351220
BURGER KING INVESTORS MASTER LP	785994
BUSH INDUSTRIES INC	758604
BUSINESS RECORDS CORPORATION HOLDING CO	205219
C3 INC	320121
CABLE TV FUND 12-A	763657
CABLE TV FUND 12-B	774557
CABLE TV FUND 14-A LTD	810334
CABLETRON SYSTEMS INC	846909
CACI INTERNATIONAL INC /DE/	016058
CAGLES INC	016104
CALGENE INC /DE/	783931
CALIFORNIA BIOTECHNOLOGY INC	726512
CALIFORNIA COMMERCIAL BANKSHARES	704886
CALIFORNIA JOCKEY CLUB	016343
CALIFORNIA MICROWAVE INC	016357
CALIFORNIA REAL ESTATE INVESTMENT TRUST	016387
CALLAHAN MINING CORP	016455
CALPROP CORP	016496
CALUMET INDUSTRIES INC	016511
CANAL CAPITAL CORP	101821
CANONIE ENVIRONMENTAL SERVICES CORP	798139
CAPITAL GROWTH MORTGAGE INVESTORS L P	798533
CAPITAL HOUSING & MORTGAGE PARTNERS INC	849537
CAPITAL REALTY INVESTORS III LTD PARTNERSHIP	722833
CAPITAL REALTY INVESTORS IV LIMITED PARTNERSHIP	740371
CAPITAL REALTY INVESTORS TAX EXEMPT FUND LP	799690
CAPITAL SOURCE II L P A	799410
CAPITALCORP INC	725056
CARDIS CORP /DE/	748313
CAREERCOM CORP	005931
CARL JACK 312 FUTURES INC	792861
CARLYLE INCOME PLUS LTD	792978
CARLYLE REAL ESTATE LTD PARTNERSHIP IX	310812
CARLYLE REAL ESTATE LTD PARTNERSHIP VII	215371
CARLYLE REAL ESTATE LTD PARTNERSHIP VIII	275172
CAROLINA BANCORP INC /DE/	825546
CAROLINA FIRST CORP	797871
CARRIAGE INDUSTRIES INC	746650
CASCADE CORP	018061
CASH AMERICA INVESTMENTS INC / TX/	807884
CASUAL MALE CORP	836866
CATO CORP	018255
CCX INC	024009
CELLCOM CORP	737275
CELLULAR INC	787912
CELLULAR INFORMATION SYSTEMS INC	838184
CENTEX TELEMANAGEMENT INC	819724
CENTRAL & SOUTHERN HOLDING CO/GA	815032
CENTRAL BANC SYSTEM INC	712535
CENTRAL PENNSYLVANIA FINANCIAL CORP	769751
CENTRAL SERVICE CORP	018751
CENTRAL SPRINKLER CORP	766041
CENTURI INC	003905
CENTURY PENSION INCOME FUND XXIII	764543
CENTURY PROPERTIES FUND XIV	278128
CENTURY PROPERTIES FUND XV	314690
CENTURY PROPERTIES FUND XVI	351931
CENTURY PROPERTIES FUND XVII	356472
CENTURY PROPERTIES FUND XVIII	704271
CENTURY PROPERTIES FUND XX	736909
CERNER CORP /MO/	804753
CHALONE INC	742685
CHAMPION ENTERPRISES INC	814068
CHAMPION PARTS INC	019161
CHART HOUSE ENTERPRISES INC	820757
CHARTER POWER SYSTEMS INC	808064
CHATTEM INC	019520
CHAUS BERNARD INC	793983
CHEMDESIGN CORP	734541
CHEMICAL LEAMAN CORP /PA/	215425
CHEMUNG FINANCIAL CORP	763563
CHESAPEAKE UTILITIES CORP	019745
CHEYENNE SOFTWARE INC	738830
CHICAGO DOCK & CANAL TRUST	774658
CHIRON CORP	706539
CHRISTIANA COMPANIES INC	020104
CHYRON CORP	020232
CIGNA INCOME REALTY I LTD PARTNERSHIP	784000
CII-X HOLDINGS INC	026301
CIMCO INC /DE/	791243
CIMFLEX TEKNOWLEDGE CORP	716214
CINCINNATI MICROWAVE INC	729583
CIRCON CORP	719727
CIRRUS LOGIC INC	772406
CISCO SYSTEMS INC	858877
CITIZENS & NORTHERN CORP	810958
CITY HOLDING CO	726854
CLAIRES STORES INC	034115
CLAIRSON INTERNATIONAL CORP	803028
CLEAR CHANNEL COMMUNICATIONS INC	739708
CLEVETRUST REALTY INVESTORS	020975
CLINTON GAS SYSTEMS INC	702256
CLOTHESTIME INC	727739
CLR CORP	205171
CLUB CAR INC	846872
CMI CORP	021157
CMS ENHANCEMENTS INC	764864
CNB CORP /SC/	764581
CNB FINANCIAL CORP/PA	736772
COACHMEN INDUSTRIES INC	021212
COAST DISTRIBUTION SYSTEM	728303
COCA MINES INC	066627
CODORUS VALLEY BANCORP INC	806279
COLLAGEN CORP /DE	021686
COLLINS INDUSTRIES INC	021759
COLONIAL COMPANIES INC	853995
COLONIAL GROUP INC /MA/	783282
COM SYSTEMS INC	355374
COMDIAL CORP	230131
COMMERCE BANCORP INC /NJ/	715096
COMMERCEBANCORP	720883
COMMERCIAL BANCORP	717059
COMMONWEALTH INDUSTRIES CORP	022626
COMMUNITY BANCORP INC /MA/	742170
COMMUNITY BANKS INC /PA/	714710
COMMUNITY BANKSHARES INC /NH/	776815
COMPRESSION LABS INC	319085
COMPUCOM SYSTEMS INC	736291
COMPUTER DATA SYSTEMS INC	022989
COMPUTER LANGUAGE RESEARCH INC	716903
COMPUTER PRODUCTS INC	023071
COMPUTER TASK GROUP INC	023111
COMSHARE INC	201513
CONCORD FABRICS INC	023249

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
CONCORD MILESTONE INCOME FUND LP	757639
CONCORD TELEPHONE CO	023259
CONESTOGA ENTERPRISES INC	854727
CONESTOGA TELEPHONE & TELEGRAPH CO	023315
CONNECTICUT BANCORP INC	804147
CONNECTICUT GENERAL REALTY INVESTORS III	745471
CONSOLIDATED CAPITAL GROWTH FUND	201529
CONSOLIDATED CAPITAL INSTITUTIONAL PROPERTIES 3	768890
CONSOLIDATED CAPITAL PROPERTIES I	275251
CONSOLIDATED CAPITAL PROPERTIES II	311867
CONSOLIDATED CAPITAL PROPERTIES III	317331
CONSOLIDATED CAPITAL PROPERTIES V	725614
CONSOLIDATED CAPITAL VENTURE PROPERTIES I	769902
CONSOLIDATED EQUITIES CORP	023648
CONSOLIDATED PACKAGING CORP	023750
CONSOLIDATED PRODUCTS INC /IN/	093859
CONSOLIDATED RESOURCES HEALTH CARE FUND V	764544
CONSOLIDATED RESOURCES HEALTH CARE FUND VI	777953
CONSOLIDATED RESOURCES HEALTH CARE FUND IV	752895
CONSOLIDATED TOMOKA LAND CO	023795
CONSTON CORP	793925
CONSUL RESTAURANT CORP	313632
CONTINENTAL HEALTH AFFILIATES INC	354761
CONTINENTAL INC	821617
CONTINENTAL MATERIALS CORP	024104
CONTINUUM CO INC	096608
COOPER DEVELOPMENT CO	720062
COPLEY PROPERTIES INC	769017
CORCAP INC	835176
CORPORATE DATA SCIENCES INC	726911
CORPORATE PROPERTY ASSOCIATES 2	312918
CORPORATE PROPERTY ASSOCIATES 3	350745
CORPORATE PROPERTY ASSOCIATES 4	706005
CORPORATE PROPERTY ASSOCIATES 5	718075
CORPORATE PROPERTY ASSOCIATES 6	750456
CORPORATE PROPERTY ASSOCIATES 7	789459
CORPORATE REALTY INCOME FUND I L P	785898
CORPORATE SOFTWARE INCORPORATED	815273
CORPUS CHRISTI BANCSHARES INC	757012
CORRECTIONS CORPORATION OF AMERICA	739404
CORTLAND BANCORP INC	774569
CORTLAND FIRST FINANCIAL CORP	796317
COSTAR CORP	027025
COUNTRY LAKE FOODS INC	823248
COUNTRY WIDE TRANSPORT SERVICES INC	810950
COUNTRYWIDE MORTGAGE TRUST 1987-I	814389
COURIER CORP	025212
COVINGTON DEVELOPMENT GROUP INC	814849
CPC REXCEL INC	805645
CPI ACQUISITION INC	808411
CRAIG CORP	110985
CRAWFORD & CO	025475
CRAY COMPUTER CORP	857101
CRAZY EDDIE INC	746550
CRESTWOOD REALTY INVESTORS INC/DE	778971
CROWLEY MILNER & CO	025871
CROWN BOOKS CORP	719798
CROWN CRAFTS INC	025895
CROWTHERS MCCALL PATTERN INC	778499
CRUISE AMERICA INC	733775
CRYSTAL OIL CO /LA/	745907
CSA FINANCE CORP	781883
CSA INCOME FUND LIMITED PARTNERSHIP III	831890
CSS INDUSTRIES INC	020629
CULP INC	723603
CUMBERLAND HEALTHCARE L P I-A	790952
CYCARE SYSTEMS INC	354888
DACOTAH BANK HOLDING CO	026525
DAKA INTERNATIONAL INC	840826
DALLAS SEMICONDUCTOR CORP	749420
DAMSON BIRTCHER REALTY INCOME FUND I	745932
DAMSON OIL CORP	026771
DART DRUG STORES INC	789965
DATA DESIGN LABORATORIES INC	026987
DATA I/O CORP	351998
DATASCOPE CORP	027096
DATRON SYSTEMS INC/DE	027116
DAVEY TREE EXPERT CO	277638
DAVIS WATER & WASTE INDUSTRIES INC	027326
DCB CORP	357224
DEB SHOPS INC	715779
DEFIANCE INC	775995
DEL LABORATORIES INC	027751
DEL TACO RESTAURANTS INC	725820
DELAWARE OTSEGO CORP	757189
DELTA NATURAL GAS CO INC	277375
DEP CORP	728330
DESIGNS INC	813298
DETREX CORPORATION	028372
DEVCON INTERNATIONAL CORP	028452
DEVLIEG BULLARD INC	858710
DEVON ENERGY CORP /DE/	837330
DEVON GROUP INC	040542
DI INDUSTRIES INC	320186
DIAGNOSTEK INC	726606
DIAGNOSTIC PRODUCTS CORP	702259
DIAGNOSTIC RETRIEVAL SYSTEMS INC	028630
DIAL REIT INC	805057
DIANA CORP	057201
DICEON ELECTRONICS INC	727010
DIGICON INC	028866
DIGITAL MICROWAVE CORP /DE/	812703
DIONEX CORP /DE	708850
DIVERSICARE CORPORATION OF AMERICA	092057
DIVERSIFIED HISTORIC INVESTORS II	763586
DIVERSIFIED INDUSTRIES INC	029208
DIXON TICONDEROGA CO	014995
DNA PLANT TECHNOLOGY CORP	730985
DNB FINANCIAL CORP	713671
DREW INDUSTRIES INCORPORATED	763744
DREXEL BURNHAM LAMBERT REAL ESTATE ASSOCIATES III	761657
DRIVER HARRIS CO	030197
DRUG GUILD DISTRIBUTORS INC	201696
DUCOMMUN INC /DE/	030305
DURAKON INDUSTRIES INC	748792
DUTY FREE INTERNATIONAL INC	820756
DVI FINANCIAL CORP	801550
DYCOM INDUSTRIES INC	067215
DYNAMICS RESEARCH CORP	030822
DYNEER CORP/DE	830047
EAGLE BANCSHARES INC	783604
EASCO HAND TOOLS INC	811798
EASTERN CO	031107
EASTERN STAINLESS CORP /VA/	843867
EASTEX ENERGY INC	818075
EASTGROUP PROPERTIES	049600
ECC INTERNATIONAL CORP	031660
ECOLOGY & ENVIRONMENT INC	809933
EECO INC /DE/	811636
ELCOR CORP	032017
ELDEC CORP	793575
ELDON INDUSTRIES INC /DE/	032032
ELDORADO BANCORP	351991
ELECTRO SCIENTIFIC INDUSTRIES INC	726514
ELECTROMAGNETIC SCIENCES INC	032198
ELECTRONIC ARTS	712515
ELSINORE CORP	311049
EMULEX CORP /DE/	350917
ENCLEAN INC	842916
ENERGY VENTURES INC /DE/	032908
ENERGYNORTH INC	704503
ENNIS BUSINESS FORMS INC	033002
ENSR CORP	813566
ENTERRA CORP /DE/	353181
ENTERTAINMENT MARKETING INC	768178
ENTWISTLE CO	033061
ENVIRONMENTAL CONTROL GROUP INC	835014
ENVIROSAFE SERVICES INC	811932
ENZO BIOCHEM INC	316253
EQUIFAX INC	033185
EQUITEC FINANCIAL GROUP INC	722807
EQUITY OIL CO	033325
ERC ENVIRONMENTAL & ENERGY SERVICES COMPANY INC	842151
ERIE FAMILY LIFE INSURANCE CO	033416
ESCALADE INC	033488
ESI INDUSTRIES INC	350846
ESSEF CORP	814037
ESSEX COUNTY GAS COMPANY	046189
ESSEX FINANCIAL PARTNERS LP	847325
EVANS INC	033780
EXABYTE CORP /DE/	855109
EXAR CORP	753568
EXIDE ELECTRONICS GROUP INC	772372
EXOLON ESK CO	034046
EXPEDITORS INTERNATIONAL OF WASHINGTON I	746515
EXPLORATION CO OF LOUISIANA INC	720676
EZ EM INC	727008
F A COMPUTER TECHNOLOGIES INC	827838
F&M BANCORP	736473
FABRICLAND INC	034165
FALCON CABLE SYSTEMS CO	783008
FALL RIVER GAS CO	034371
FAMILY STEAK HOUSES OF FLORIDA INC	784539
FAMOUS RESTAURANTS INC	354929
FANSTEEL INC	034471
FARM FAMILY MUTUAL INSURANCE CO	277269
FARM HOUSE FOODS CORP	034552
FARR CO	034629
FEDERAL INSURED MORTGAGE INVESTORS LP	779229
FEDERAL INSURED MORTGAGE INVESTORS LP II	798433
FEDERAL SCREW WORKS	034908
FFP PARTNERS L P	811863
FIBRONICS INTERNATIONAL INC	724968
FILENET CORPORATION	816161
FILTERTEK INC/DE	719164
FINANCIAL CENTER BANCORP	724769
FINANCIAL NEWS NETWORK INC	700860
FINNIGAN CORP /VA/	035968
FIRST AMERICAN FINANCIAL CORP	036047
FIRST BANCORP /NC/	811589

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
FIRST BANCSHARES OF ST LANDRY INC	355543
FIRST BANKING CENTER INC	356858
FIRST BANKING CO OF SOUTHEAST GEORGIA	357208
FIRST CAPITAL INCOME PROPERTIES LTD SERIES IX	771983
FIRST CAPITAL INCOME PROPERTIES LTD SERIES VIII	703482
FIRST CAPITAL INCOME PROPERTIES LTD SERIES X	750301
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 2	727087
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 4	794665
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 1	730212
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 3	757528
FIRST CHARTER CORP /NC/	717306
FIRST CONTINENTAL REAL ESTATE INVESTMENT TRUST /TX 036233	
FIRST FARMERS & MERCHANTS CORP	703329
FIRST FEDERAL CAPITAL FUNDING INC	796125
FIRST FIDELITY BANCORP INC	711403
FIRST FRANKLIN CORP	742161
FIRST GEORGIA HOLDING INC	826491
FIRST GOLDEN BANCORPORATION	036352
FIRST HUNTSVILLE CORP	036394
FIRST MF CORP/MS	320387
FIRST NATIONAL CORP /ND/	731650
FIRST NATIONAL FINANCIAL CORP / MS/	715259
FIRST NATIONAL LINCOLN CORP / ME/	765207
FIRST OF LONG ISLAND CORP	740663
FIRST OF MICHIGAN CAPITAL CORP	036781
FIRST PULASKI NATIONAL CORP	354706
FIRST WILKOW VENTURE	037070
FIRSTBANK CORP	778972
FIRSTMISS GOLD INC	824590
FISHKILL NATIONAL CORP	749923
FITCHBURG GAS & ELECTRIC LIGHT CO	037248
FLAGSHIP EXPRESS INC	791953
FLEXSTEEL INDUSTRIES INC	037472
FLEXTRONICS INC	820095
FLIGHT INTERNATIONAL GROUP INC	732775
FLOATING POINT SYSTEMS INC	276558
FLORIDA PUBLIC UTILITIES CO	037643
FLOW INTERNATIONAL CORP	713002
FNB BANKING CO /GA	757262
FNB CORP/NC	764811
FONAR CORP	355019
FOOTHILL INDEPENDENT BANCORP	718903
FOR BETTER LIVING INC	037946
FOSTER L B CO	352825
FOUNDATION HEALTH CORPORATION	859493
FOXFIELD FUND	775045
FPA CORP /DE/	038570
FRANKLIN ELECTRIC CO INC	038725
FRANKLIN ELECTRONIC PUBLISHERS INC	356841
FREDERICKSBURG NATIONAL BANCORP INC	707177
FREEMAN DIVERSIFIED REAL ESTATE II LP	750258
FREEMAN DIVERSIFIED REAL ESTATE III LP	773679
FREEMAN GROWTH PLUS LP	795757
FREQUENCY ELECTRONICS INC	039020
FRETTER INC	790815
FREYMILLER TRUCKING INC	811213
FRIES ENTERTAINMENT INC	733267
FRISCHS RESTAURANTS INC	039047
FRONTIER FINANCIAL CORP /WA/	716457
FROZEN FOOD EXPRESS INDUSTRIES INC	039273
FUTURE FUND	277807
FUTURES DIMENSION FUND	789864
G III APPAREL GROUP LTD/DE	821002
GK SERVICES INC	039648
GALAXY CABLEVISION L P	809608
GALILEO ELECTRO OPTICS CORP	711425
GALLAGHER ARTHUR J & CO	354190
GALOOB LEWIS TOYS INC /DE/	751968
GALVESTON HOUSTON CO	039838
GARAN INC	039917
GARDEN STATE BANCSHARES INC	752390
GATEWAY BANCORP INC /NY	758029
GELMAN SCIENCES INC	310252
GENCOR INDUSTRIES INC	064472
GENERAL BUILDING PRODUCTS CORP	810625
GENERAL COMMUNICATION INC	808461
GENERAL HOUSEWARES CORP	040643
GENESEE CORP	040934
GENUS INC	837913
GENZYME CORP	732485
GEO INTERNATIONAL CORP /NEW/	702993
GEODYNAMICS CORP	769409
GEODYNE RESOURCES INC	318223
GEOSTAR CORP /DE/	832481
GIBSON C R CO	041365
GOAL SYSTEMS INTERNATIONAL INC/OH	847434
GOLDEN CORRAL RESTAURANT JOINT VENTURES	319495
GOLDEN ENTERPRISES INC	042228
GOLDEN POULTRY CO INC	758292
GOLF HOST RESORTS INC	042429
GOOD GUYS INC	785931
GOODMARK FOODS INC	778709
GORMAN RUPP CO	042682
GRADCO SYSTEMS INC	719597
GRAHAM CORP	716314
GRAHAM FIELD HEALTH PRODUCTS INC	709136
GRANADA BIOSCIENCES INC	854154
GRANADA FOODS CORP	854153
GRC INTERNATIONAL INC	201944
GREAT AMERICAN RECREATION INC	103317
GREATBANC INC	351005
GREENE COUNTY BANCSHARES INC	764402
GREENERY REHABILITATION GROUP INC	778433
GREENMAN BROTHERS INC	043837
GREINER ENGINEERING INC	040956
GRIFFITH CONSUMERS CO /MD/	801937
GRIST MILL CO	044041
GROUNDWATER TECHNOLOGY INC	795579
GROWTH & GUARANTEE FUND L P	812188
GUARDSMAN PRODUCTS INC	044420
GUEST SUPPLY INC	722642
GULF SOUTHWEST BANCORP INC	717411
GULFBANKS INC	813921
GUNDLE ENVIRONMENTAL SYSTEMS INC	805023
HABERSHAM BANCORP	754597
HACH CO	044764
HADCO CORP	729533
HALL STUART CO INC	094963
HALLWOOD ENERGY CORP	319019
HALLWOOD ENERGY PARTNERS LP	768172
HAMMOND CO/CA	722075
HAMPTON INDUSTRIES INC /NC/	045260
HAMPTONS BANCSHARES INC	746715
HANCOCK JOHN PROPERTIES LTD PARTNERSHIP	746262
HANCOCK JOHN REALTY INCOME FUND II LP	818257
HANCOCK JOHN REALTY INCOME FUND LTD PARTNERSHIP	795196
HARBOR BANCORP	708193
HARDING ASSOCIATES INC	818968
HARLEYSVILLE NATIONAL CORP	702902
HARMON INDUSTRIES INC	045635
HARRIS PAUL STORES INC	045791
HARROW INDUSTRIES INC	811081
HARVEST BANCORP INC	745299
HASTINGS MANUFACTURING CO	046109
HAWAII NATIONAL BANCSHARES INC	805304
HBO & CO	310377
HEALTH CHEM CORP	046428
HEALTH IMAGES INC	769689
HEALTHCARE SERVICES GROUP INC	731012
HEALTHDYNE INC	046455
HEI CORP	720609
HEICO CORP	046619
HEIN WERNER CORP	046613
HELDOR INDUSTRIES INC	350684
HELEN OF TROY CORP	046675
HELM RESOURCES INC/DE/	351685
HERITAGE ENTERTAINMENT INC	047016
HI SHEAR INDUSTRIES INC	047268
HICKORY TECH CORP	766561
HIGHLAND TELEPHONE CO	047417
HILLS BANCORPORATION	732417
HMG COURTLAND PROPERTIES INC	311817
HOGAN SYSTEMS INC	709139
HOLCO MORTGAGE ACCEPTANCE CORP I	813418
HOLLYWOOD PARK REALTY ENTERPRISES INC	356213
HOME FEDERAL CORP	811097
HOME NUTRITIONAL SERVICES INC	857009
HOME OFFICE REFERENCE LABORATORY INC	816151
HOMEWOOD FINANCE CORP	735297
HOPPER SOLIDAY CORP	793042
HORIZON BANCORP INC /WV/	730025
HORIZON FINANCIAL SERVICES INC	794621
HORIZON HEALTHCARE CORP	806151
HOUSTON OIL TRUST	355118
HOWE RICHARDSON INC /DE/	061931
HOWELL CORP /DE/	745113
HUDSON GENERAL CORP	048948
HUFFMAN KOOS INC	797462
HUNTER ENVIRONMENTAL SERVICES INC	803740
HUNTWAY PARTNERS L P	840335
HURCO COMPANIES INC	315374
HUTCHINSON TECHNOLOGY INC	772897
HUTTON CONAM REALTY INVESTORS 3	711389
HUTTON CONAM REALTY INVESTORS 4	722745
HUTTON CONAM REALTY PENSION INVESTORS	706120
HUTTON ENERGY ASSETS 3RD ENERGY PARTNERSHIP A LTD	760728
HUTTON GSH COMMERCIAL PROPERTIES 2	706003
HUTTON GSH COMMERCIAL PROPERTIES 3	725767
HUTTON REAL AMERICAN PROPERTIES	758479
HYDE ATHLETIC INDUSTRIES INC	049401
IFR SYSTEMS INC	785546
ILLINI COMMUNITY BANCORP INC	730037
IMAGINE FILMS ENTERTAINMENT INC	793726
IMCO RECYCLING INC	202690
IMMUNEX CORP /DE/	719529
IMNET INC /DE/	075448
INBANCSHARES	357074
INCOME OPPORTUNITY REALTY INVESTORS INC	760730
INCSTAR CORP	216184

APPENDIX F.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
INDEPENDENCE BANCORP INC /NJ/	741356
INDEPENDENCE BANCORP INC /PA/	700753
INDEPENDENT BANK CORP /MI/	039311
INDEPENDENT BANKGROUP INC	708194
INDEPENDENT BANKSHARES INC	316870
INDEX TECHNOLOGY CORP	739661
INDIANA BANCSHARES INC /IN/	813617
INDIANA UNITED BANCORP	720002
INDUSTRIAL ACOUSTICS CO INC	050253
INFOPAGE INC	716944
INFOTRON SYSTEMS CORP	350921
INMAC CORP	801121
INSITUFORM OF NORTH AMERICA INC	353020
INSTEEL INDUSTRIES INC	764401
INSTRON CORP	050716
INSURED INCOME PROPERTIES 1983	710870
INSURED INCOME PROPERTIES 1984	730988
INSURED INCOME PROPERTIES 1988 L P	808029
INSURED PENSION INVESTORS 1984	747549
INSURED PENSION INVESTORS 1985	756896
INTEGRA A HOTEL & RESTAURANT CO	316740
INTEGRATED RESOURCES NATIONAL LEASE INCO	764691
INTELLICALL INC	818674
INTELLIGENT SYSTEMS MASTER L P	806846
INTER TEL INC	350066
INTERCHANGE FINANCIAL SERVICES CORP /NJ/	755933
INTERCONTINENTAL ENTERPRISES INC	783994
INTERIM SYSTEMS CORP	823913
INTERLEAF INC /MA/	793604
INTERMAGNETICS GENERAL CORP	351012
INTERNATIONAL BROADCASTING CORP /MN/	355912
INTERNATIONAL BUSINESS INTERIORS CORP	854899
INTERNATIONAL MICROELECTRONIC PRODUCTS INC	812927
INTERNATIONAL MORTGAGE ACCEPTANCE CORP	735381
INTERNATIONAL RECOVERY CORP	789460
INTERNATIONAL RESEARCH & DEVELOPMENT CORP	051497
INTERNATIONAL SPEEDWAY CORP	051548
INTERSPEC INC	814059
INTERTRANS CORP	737573
INTERVOICE INC	764244
INTRENET INC	778161
INVACARE CORP	742112
INVESTMENT PROPERTIES ASSOCIATES	052067
INVESTORS FIRST STAGED EQUITY LP	768834
INVESTORS HERITAGE LIFE INSURANCE CO /KY	052301
INVESTORS TRUST INC	052441
INVITRON CORP /DE/	820413
IOMEGA CORP	352789
IOWA AMERICAN CAPITAL CORP	751655
IOWA FIRST BANCSHARES CORP	740155
IRE REAL ESTATE FUND LTD SERIES 26	748620
IREX CORP/PA	001952
IROQUOIS BRANDS LTD	052586
IRWIN FINANCIAL CORPORATION	052617
ISOMEDIX INC	719522
ISS INTERNATIONAL SERVICE SYSTEM INC	080904
IVAX CORP	772197
IVERSON TECHNOLOGY CORP	771858
J R GOLD MINES INC	794219
J&J SNACK FOODS CORP	785956
JACKPOT ENTERPRISES INC	351903

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
JACOBS JAY INC	812127
JASON INC	813471
JBS RESTAURANTS INC	053261
JEFFERSON BANCORP INC	053316
JETSTREAM II L P	831331
JETSTREAM LP	825336
JG INDUSTRIES INC/IL/	042179
JLG INDUSTRIES INC	216275
JMB INCOME PROPERTIES LTD IX	355472
JMB INCOME PROPERTIES LTD VI	275600
JMB INCOME PROPERTIES LTD VII	313019
JMB MORTGAGE PARTNERS LTD III	763820
JOHNSTON INDUSTRIES INC	041017
JONES CABLE INCOME FUND 1-C LTD	813710
JONES INTERCABLE INVESTORS L P	802361
JUNIATA VALLEY FINANCIAL CORP	714712
JUNO LIGHTING INC	723888
K TRON INTERNATIONAL INC	000020
KAHLER CORP/DE/	054235
KANE INDUSTRIES INC	798770
KANEB PIPE LINE PARTNERS L P	853890
KASLER CORP	357257
KCS GROUP INC	832820
KEITHLEY INSTRUMENTS INC	054991
KELLEY OIL & GAS PARTNERS LTD	776818
KENAN TRANSPORT CO	745379
KENTUCKY COMMUNITY BANCORP INC	702661
KETCHUM & CO INC	055510
KETTLE RESTAURANTS INC	711205
KEWAUNEE SCIENTIFIC CORP /DE/	055529
KEY PRODUCTION COMPANY INC	837290
KEY TRONIC CORP	719733
KEYSTONE CAMERA PRODUCTS CORP	006125
KFC NATIONAL PURCHASING COOPERATIVE INC	310205
KILLEARN PROPERTIES INC	055742
KIMMINS ENVIRONMENTAL SERVICE CORP	811562
KIRSCHNER MEDICAL CORP	785022
KLLM TRANSPORT SERVICES INC	793765
KNAPE & VOGT MANUFACTURING CO	056382
KNOGO CORP	056439
KNOWLEDGEWARE INC	854992
KOMAG INC /DE/	813347
KRUG INTERNATIONAL CORP	096793
KRUPP CASH PLUS II LTD PARTNERSHIP	785988
KRUPP CASH PLUS IV LIMITED PARTNERSHIP	819999
KRUPP REALTY LTD PARTNERSHIP V	721799
KRUPP REALTY LTD PARTNERSHIP VII	751570
KUHLMAN CORP	056955
KULICKE & SOFFA INDUSTRIES INC	056978
KV PHARMACEUTICAL CO /DE/	057055
L&N HOUSING CORP	350206
LABARGE INC	057139
LAM RESEARCH CORP	707549
LAMA TONY CO INC	057418
LANCER CORP /TX/	788162
LANDMARK FINANCIAL GROUP INC/TX	730606
LANDMARK GRAPHICS CORP	749510
LASALLE MARKET STREETS ASSOCIATES LTD	766416
LATTICE SEMICONDUCTOR CORP	855658
LAWRENCE INSURANCE GROUP INC	805286
LAWSON PRODUCTS INC/NEW/DE	703604
LAZARE KAPLAN INTERNATIONAL INC	202375
LDB CORP /TX/	740745
LEARONAL INC	058172
LECHTERS INC	799186

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
LEES INNS OF AMERICA INC	202382
LEPERCQ CORPORATE INCOME FUND II L P	809862
LESCO INC/OH	745394
LEXINGTON PRECISION CORP	012570
LIBERTY EQUIPMENT INVESTORS 1983	717233
LIBERTY EQUIPMENT INVESTORS LP 1984	749502
LIBERTY HOMES INC	059240
LINDBERG CORP /DE/	059593
LINDSAY MANUFACTURING CO	836157
LINEAR TECHNOLOGY CORP /CA/	791907
LIQUI BOX CORP	216430
LNB BANCORP INC	737210
LOAN AMERICA FINANCIAL CORP	759578
LOCKWOOD BANC GROUP INC	811910
LOGICON INC /DE/	311946
LORI CORP	006814
LSI INDUSTRIES INC	763532
LUMEX INC	060876
LYDALL INC /DE/	060977
LYNCH CORP	061004
MACDERMID INC	061136
MACNEAL SCHWENDLER CORP	717238
MADISON FINANCIAL CORP	061336
MAGELLAN PETROLEUM CORP /DE/	061396
MAINE PUBLIC SERVICE CO	061611
MALLARD COACH CO INC	820082
MANUFACTURED HOMES INC	721688
MARCOR RESORTS INC	734380
MARIETTA CORP	792969
MARK CONTROLS CORP /DE/	820392
MARKEL CORP	803509
MARQUEST MEDICAL PRODUCTS INC	719497
MARTEN TRANSPORT LTD	799167
MARTIN LAWRENCE LIMITED EDITIONS INC	745600
MASON GEORGE BANKSHARES INC	761651
MATERIAL SCIENCES CORP	755003
MATEWAN BANCSHARES INC	742246
MATLACK SYSTEMS INC	837339
MATTEL FUNDING CORPORATION	816966
MATTHEWS INTERNATIONAL CORP	063296
MAUI LAND & PINEAPPLE CO INC	063330
MAUNA LOA MACADAMIA PARTNERS LP	792161
MAXIM INTEGRATED PRODUCTS INC	743316
MAXWELL LABORATORIES INC /DE/	319815
MAYNARD OIL CO	063528
MBC CORP	701073
MCCORMICK CAPITAL INC	788077
MCFARLAND ENERGY INC	063959
MCGRATH RENTCORP	752714
MCM CORP	275710
MCNEIL REAL ESTATE FUND IX LTD	276326
MCNEIL REAL ESTATE FUND X LTD	312812
MCNEIL REAL ESTATE FUND XI LTD	318140
MCNEIL REAL ESTATE FUND XIV LTD	702657
MCNEIL REAL ESTATE FUND XV LTD /CA	751044
MDT CORP /DE/	806089
MECHANICAL TECHNOLOGY INC	064463
MEDALIST INDUSTRIES INC	064493
MEDCHEM PRODUCTS INC /MA/	711074
MEDICAL IMAGING CENTERS OF AMERICA INC	746712
MEDICAL PROPERTIES INC	803608
MEDICINE SHOPPE INTERNATIONAL INC	731841
MEDUSA CORP	064674
MELAMINE CHEMICALS INC	816955
MELLON PARTICIPATING MTG TRUST COMM PROP SERIES 85	759174
MEM CO INC	064807
MENTOR CORP /MN/	064892
MERCHANTS CAPITAL CORP /MS/	357065

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
MERCHANTS GROUP INC	803027
MERIDIAN INSURANCE GROUP INC	809801
MESTEK INC	065195
MET COIL SYSTEMS CORP	745469
METHODE ELECTRONICS INC	065270
METRO AIRLINES INC	355625
METROCORP INC	200513
METROPOLITAN REALTY CORP	811516
MGI PHARMA INC	702131
MHI GROUP INC	067217
MI SCHOTTENSTEIN HOMES INC	799292
MICHAEL ANTHONY JEWELERS INC	799515
MICHIGAN GENERAL CORP	065648
MICKELBERRY CORP	065705
MICROAGE INC /DE/	814249
MICROCOM INC	795571
MICROSEMI CORP	310568
MID ATLANTIC CENTERS LIMITED PARTNERSHIP	806375
MID STATES BANCSHARES INC	793768
MIDDLEBY CORP	769520
MIDDLESEX WATER CO	066004
MIDWEST COMMUNICATIONS CORP / DE/	813745
MIDWEST GRAIN PRODUCTS INC	835011
MILGRAY ELECTRONICS INC	066270
MILTOPE GROUP INC	752692
MILWAUKEE INSURANCE GROUP INC	801321
MINISCRIBE CORP	714921
MIP PROPERTIES INC	766680
MISCHER CORP	066849
MISSION RESOURCE PARTNERS L P	820745
MISSION VALLEY BANCORP	726986
MISSION WEST PROPERTIES/NEW/	704874
MNX INC	795425
MOBILE GAS SERVICE CORP	067212
MOBILE TELECOMMUNICATION TECHNOLOGIES CO	842915
MOLECULAR BIOSYSTEMS INC	719598
MOMENTUM INC	703845
MONARCH CEMENT CO	067517
MONARCH MACHINE TOOL CO	067532
MONY REAL ESTATE INVESTORS	067872
MOORE MEDICAL CORP	074691
MOORE PRODUCTS CO	067975
MOR FLO INDUSTRIES INC	068013
MPSI SYSTEMS INC	714540
MR COFFEE INC	831463
MR GASKET CO	724967
MRI BUSINESS PROPERTIES FUND LTD II	745289
MS CARRIERS INC	790372
MSA REALTY CORP	740074
MUELLER PAUL CO	068726
MULTI COLOR CORP	819220
MUNSINGWEAR INC	069067
MYERS INDUSTRIES INC	069488
N W GROUP INC	808918
NABORS INDUSTRIES INC	798943
NAPCO SECURITY SYSTEMS INC	069633
NASTA INTERNATIONAL INC	812628
NATIONAL GAS & OIL CO	355313
NATIONAL LEASE INCOME FUND 3	740581
NATIONAL LEASE INCOME FUND 5	779613
NATIONAL LUMBER & SUPPLY INC	725364
NATIONAL MEDIA CORP	070412
NATIONAL SANITARY SUPPLY CO	793500
NAVIGATORS GROUP INC	793547
NBI INC	313518
NCC INDUSTRIES INC	070855
NECO ENTERPRISES INC	801547
NELLCOR INC /DE/	799290
NELSON THOMAS INC	071023
NEORX CORP	755806
NEW BRUNSWICK SCIENTIFIC CO INC	071241
NEW ENERGY CO OF INDIANA	355783
NEW ENGLAND CRITICAL CARE INC	799300
NEW ENGLAND LIFE PENSION PROPERTIES II	728525
NEW ENGLAND LIFE PENSION PROPERTIES III	757221
NEW ENGLAND LIFE PENSION PROPERTIES IV	779742
NEW ENGLAND PENSION PROPERTIES V	806028
NEW IBERIA BANCORP INC	731940
NEW JERSEY STEEL CORP	812310
NEW LINE CINEMA CORP	797658
NEW LONDON INC	350402
NEW MEXICO & ARIZONA LAND CO	071478
NEWCOR INC	071745
NEWMARK & LEWIS INC	769940
NEWPORT CORP	225263
NHP RETIREMENT HOUSING PARTNERS I LTD PARTNERSHIP	793730
NICHOLS INSTITUTE /DE/	765410
NICHOLS S E INC	071985
NICOLET INSTRUMENT CORP	072013
NORSTAN INC	072418
NORTANKERS INC	847452
NORTH AMERICAN VENTURES INC	786765
NORTH LILY MINING CO	072655
NORTH PITTSBURGH SYSTEMS INC	764765
NORTH SIDE CAPITAL CORP	799276
NORTH WEST TELECOMMUNICATIONS INC	072724
NORTHBAY FINANCIAL CORP	844162
NORTHERN CALIFORNIA COMMUNITY BANCORPORATION INC	318779
NORTHLAND CRANBERRIES INC /WI/	818010
NORTHWEST BANK HOLDING CO	313292
NOVA PHARMACEUTICAL CORP	714460
NOVA VISTA INDUSTRIES INC	316656
NOVACARE INC	802843
NOVELLUS SYSTEMS INC	836106
NTS PROPERTIES VI	765232
NU WEST INDUSTRIES INC	840759
NUCLEAR METALS INC	276331
NUTMEG INDUSTRIES INC	793652
NVF CO	073515
NYCOR INC /DE/	809066
OAK HILL SPORTSWEAR CORP /NY/	012203
OCEANEERING INTERNATIONAL INC	073756
ODETICS INC	350868
OEA INC /DE/	073864
OFFICE CLUB INC	807450
OFFSHORE LOGISTICS INC	073887
OIL DRI CORP OF AMERICA	074046
OILGEAR CO	074058
OLD POINT FINANCIAL CORP	740971
OLDE WINDSOR BANCORP INC	752324
OLYMPIC FINANCE CORPORATION A	828526
OLYMPIC FINANCE CORPORATION B	828527
OMNICARE INC	353230
ON LINE SOFTWARE INTERNATIONAL INC	705406
ONEITA INDUSTRIES INC	820957
OPPENHEIMER CAPITAL L P /DE/	814562
OPTEK TECHNOLOGY INC	804312
OPTICAL COATING LABORATORY INC	074897
ORANGE NATIONAL BANCORP	801443
ORBIT INSTRUMENT CORP	074818
ORBITAL SCIENCES CORP II	820736
OREGON METALLURGICAL CORP	074856
ORIENT EXPRESS HOTELS INC	088096
OSBORN COMMUNICATIONS CORP / DE/	811714
OSMONICS INC	075049
OUTLOOK INCOME FUND 9	801449
OUTLOOK INCOME GROWTH FUND VIII	771998
OWENS MORTGAGE INVESTMENT FUND II	841501
P LEINER NUTRITIONAL PRODUCTS CORP	748228
PF INDUSTRIES INC	075340
PACESETTER BUSINESS PROPERTIES	835169
PACESETTER HOMES INC	835170
PACIFIC AGRICULTURAL HOLDINGS INC	727273
PACIFIC BANCORPORATION	075417
PACIFIC INTERNATIONAL SERVICES CORP	727066
PACIFIC NUCLEAR SYSTEMS INC	782379
PACIFIC REAL ESTATE INVESTMENT TRUST	230437
PACIFIC SECURITY COMPANIES	203159
PACIFICARE HEALTH SYSTEMS INC	766456
PACKAGE MACHINERY CO	075675
PAINE WEBBER INCOME PROPERTIES EIGHT LP	792888
PAINE WEBBER QUALIFIED PLAN PROPERTY FUND FOUR LP	756428
PAINEWEBBER EQUITY PARTNERS ONE LTD PARTNERSHIP	766658
PAINEWEBBER GROWTH PARTNERS THREE L P	769847
PAINEWEBBER RD PARTNERS II LP	814576
PAM TRANSPORTATION SERVICES INC	798287
PANCHOS MEXICAN BUFFET INC /DE	075929
PAPERCRAFT CORP	076120
PAR PHARMACEUTICAL INC	728351
PAR TECHNOLOGY CORP	708821
PARK OHIO INDUSTRIES INC	076282
PARKWAY CO/TX	729237
PARTICIPATING DEVELOPMENT FUND 86	785940
PARTICIPATING INCOME PROPERTIES 1986 LP	797977
PARTNERS PREFERRED YIELD LTD	819635
PATRICK INDUSTRIES INC	076605
PATRICK PETROLEUM CO /DE/	316695
PAXAR CORP	075681
PAYCHEX INC	723531
PAYCO AMERICAN CORP	076741
PCA INTERNATIONAL INC	076791
PEERLESS TUBE CO	076958
PEGASUS AIRCRAFT PARTNERS L P	835900
PENN ENGINEERING & MANUFACTURING CORP	077106
PENNROCK FINANCIAL SERVICES CORP	790968
PENNSYLVANIA ENGINEERING CORP	077228
PENNSYLVANIA REAL ESTATE INVESTMENT TRUST	077281
PENWEST LTD	739608
PEOPLES BANCTRUST CO INC	762128
PEORIA JOURNAL STAR INC	729969
PERKINS FAMILY RESTAURANTS LP	797460
PETROLEUM EQUIPMENT TOOLS CO	277014
PETTIBONE CORP	077969
PGI INC	081157
PHILADELPHIA ELECTRIC POWER CO	078103
PHM CREDIT CORP	351015
PHOENIX AMERICAN INC	710126
PHOENIX RESOURCE COMPANIES INC	097483
PHOENIX TECHNOLOGIES LTD	832767
PIEDMONT MANAGEMENT CO INC	078457
PIGGLY WIGGLY ALABAMA DISTRIBUTING CO INC	766592
PIONEER AMERICAN HOLDING CO CORP	760731
PIONEER GROUP INC	733060
PLAINS PETROLEUM CO	775272
PLAINS RESOURCES INC	350426
PLASTI LINE INC /TN/	790966
PLAYBOY ENTERPRISES INC	079114

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
PLM EQUIPMENT GROWTH FUND	788813
POLARIS AIRCRAFT INCOME FUND I	748218
POPE RESOURCES	784011
PORTA SYSTEMS CORP	079564
PORTEC INC	079570
POWELL INDUSTRIES INC	080420
POWER TEST INVESTORS LTD PARTNERSHIP	766748
PRATT & LAMBERT INC	079920
PRECISION AEROTECH INC /DE/	802825
PRECISION STANDARD INC	771729
PREFERRED PROPERTIES FUND 80	312903
PREFERRED PROPERTIES FUND 81	318995
PREFERRED PROPERTIES FUND 82	702173
PREMIER ACCEPTANCE CORP /MN/	833374
PRESIDENTIAL LIFE CORP	080124
PRESIDENTIAL MORTGAGE CO	757078
PRICE STERN SLOAN INC	080252
PRIDE PETROLEUM SERVICES INC	833081
PRIME MOTOR INNS LTD PARTNERSHIP	804219
PRINTRONIX INC	311505
PRODUCTION OPERATORS CORP	100712
PROFFITTS INC	812900
PROGRESS FINANCIAL CORP	790183
PROPERTY TRUST OF AMERICA	080737
PROVIDENCE & WORCESTER RAILROAD CO	831968
PRUDENTIAL ACQUISITION FUND I LP	717319
PRUDENTIAL BACHE VMS REALTY ASSOCIATES LP I	350558
PRUDENTIAL REALTY SECURITIES INC	715770
PRUDENTIAL REALTY TRUST	771641
PS PARTNERS II LTD	727069
PS PARTNERS III LTD	741513
PS PARTNERS IV LTD	748901
PS PARTNERS LTD	702276
PS PARTNERS V LTD	763541
PS PARTNERS VII LTD	781850
PSH MASTER L P I	813897
PUBCO CORP	080984
PUBLIC STORAGE PROPERTIES XVII LTD	775612
PUBLIC STORAGE PROPERTIES XVIII LTD	790128
PUBLICKER INDUSTRIES INC	081050
PUBLISHERS EQUIPMENT CORP	715414
PULASKI FURNITURE CORP	081112
QUALITY FOOD CENTERS INC	804333
QUEEN CITY BROADCASTING INC / DE/	818013
QUEEN CITY BROADCASTING OF NEW YORK INC	818012
QUIXOTE CORP	032870
QUME CORP	812544
RACING CORPORATION OF AMERICA	355611
RADIATION SYSTEMS INC /NV/	216949
RAGAN BRAD INC	081764
RAVEN INDUSTRIES INC	082166
RAX RESTAURANTS INC	710485
RAYTECH CORP	797917
RB&W CORP	061927
READING CO	082334
REAL ESTATE ASSOCIATES LTD VI	715578
REAL ESTATE INCOME PARTNERS III LTD PARTNERSHIP	785566
REAL ESTATE INVESTMENT TRUST OF CALIFORNA	082373
REALTY REFUND TRUST	082473
REECE CORP	082696
REEDS JEWELERS INC	805900
REGAL BELOIT CORP	082811
REGENCY CRUISES INC	765861
REPUBLIC AUTOMOTIVE PARTS INC	083194
REPUBLIC GYPSUM CO	083226
REPUBLIC PICTURES CORP/DE	761915

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
RESORT INCOME INVESTORS INC	837336
RESOURCES ACCRUED MORTGAGE INVESTORS LP SERIES 86	779231
RESOURCES PENSION SHARES 5 LP	789987
RETAILING CORP OF AMERICA	720626
REUTER INC	083490
REXON INC	701290
RHEOMETRICS INC	779164
RHNB CORP	706852
RIC 17 LTD	736948
RIC 21 LTD	783318
RIC 22 LTD	804148
RIC 23 LTD	804149
RIDGEWOOD PROPERTIES INC	783728
RIEDEL ENVIRONMENTAL TECHNOLOGIES INC	790704
RIVERBEND INTERNATIONAL CORP	809719
RIVERSIDE GROUP INC/FL	277358
RLI CORP	084246
ROADMASTER INDUSTRIES INC	816350
ROADWAY MOTOR PLAZAS INC	798935
ROANOKE GAS CO	084279
ROBBINS & MYERS INC	084290
ROBEC INC	854462
ROBINSON NUGENT INC	276747
ROCKING HORSE CHILD CARE CENTERS OF AMERICA /DE/	721237
ROCKWOOD HOLDING CO	352906
ROPAK CORP /CA/	043514
ROSPATCH CORP /MI/	774487
ROTHSCHILD L F HOLDINGS INC	789456
ROTO ROOTER INC	755548
ROTOR TOOL CO	085357
ROTOREX CORP /NY/	034821
ROWE FURNITURE CORP	085417
ROY MILTON CO	066527
ROYAL BANK GROUP INC	742053
ROYAL INTERNATIONAL OPTICAL CORP	730006
RPC ENERGY SERVICES INC	742278
RSI CORP	085540
RULE INDUSTRIES INC	276437
RURBAN FINANCIAL CORP	767405
RUSS TOGS INC	085795
RYAN BECK & CO INC	793280
RYMER FOODS INC	056871
SAFETY FUND CORP	086134
SAGE ENERGY CO	216991
SAGE SOFTWARE INC	805330
SALEM CORP	086358
SALICK HEALTH CARE INC	762131
SAMSON ENERGY CO LTD PARTNERSHIP	777568
SAN JUAN BASIN ROYALTY TRUST	319655
SANDERSON FARMS INC	812128
SANDS REGENT	753899
SANFORD CORP	772112
SANMARK STARDUST INC	093631
SBARRO INC	766004
SBT BANCORP INC	350999
SCAN OPTICS INC	087086
SCHULT HOMES CORP	803349
SCHULTZ SAV O STORES INC	087588
SCHWARTZ BROTHERS INC	087669
SCHWITZER INC	846659
SCI MED LIFE SYSTEMS INC	087743
SCOPE INDUSTRIES	087864
SCOR US CORP	798363
SCOTT & STRINGFELLOW FINANCIAL INC	802555
SCOTTISH HERITABLE INC	082020
SDNB FINANCIAL CORP	702147
SEALRIGHT CO INC	712964
SECURED INVESTMENT RESOURCES FUND LP II	797331
SECURITY FINANCIAL GROUP INC	811970
SECURITY FUNDING CAPITAL CORP	800038

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SEEQ TECHNOLOGY INC	702756
SEI CORP	350894
SEIBELS BRUCE GROUP INC	276380
SELAS CORP OF AMERICA	088790
SEQUOIA SYSTEMS INC	724821
SEVEN OAKS INTERNATIONAL INC	352330
SEVENSON ENVIRONMENTAL SERVICES INC	846976
SHARPER IMAGE CORP	811696
SHEARSON BEVERLY HILLS MEDICAL OFFICE PARTNERS LP	811800
SHEARSON CALIFORNIA RADISSON PLAZA PARTNERS LP	822026
SHEARSON LEHMAN SELECT ADVISORS FUTURES	811078
SHEARSON LEHMAN SENIOR INCOME FUND LTD PARTNERSHIP	805387
SHELBY WILLIAMS INDUSTRIES INC	730564
SHELDAHL INC	089615
SHELTER COMPONENTS CORP	821530
SHELTER PROPERTIES IV LIMITED PARTNERSHIP	702174
SHELTER PROPERTIES V LIMITED PARTNERSHIP	712753
SHELTER PROPERTIES VI LIMITED PARTNERSHIP	730013
SHEPAUG CORP	206018
SHIRT SHED INC	071894
SHOPCO LAUREL CENTRE L P & CONSOLIDATED	810781
SHOREWOOD PACKAGING CORP	800266
SHOWBIZ PIZZA TIME INC	813920
SHURGARD INCOME PROPERTIES ELEVEN	791425
SHURGARD INCOME PROPERTIES FUND 14 LP	808415
SHURGARD INCOME PROPERTIES TEN	791424
SHURGARD INCOME PROPERTIES TWELVE	791426
SIERRA CAPITAL REALTY TRUST IV CO	759819
SIERRA CAPITAL REALTY TRUST VI CO	786050
SIERRA REAL ESTATE EQUITY TRUST 83	703702
SIERRA REAL ESTATE EQUITY TRUST 84 CO	733594
SIFCO INDUSTRIES INC	090168
SIGMA DESIGNS INC	790715
SIGNAL APPAREL COMPANY INC	105107
SIGNATURE INNS INC/IN	352948
SIKES CORP /FL/	090245
SILICON GENERAL INC	082628
SILICON VALLEY BANCSHARES	719739
SILICON VALLEY GROUP INC	712752
SILICONIX INC	090283
SILK GREENHOUSE INC	831323
SILVERCREST INDUSTRIES INC	090429
SIMPSON INDUSTRIES INC	090588
SIZELER PROPERTY INVESTORS INC	805419
SKI LTD	755499
SKYWEST INC	793733
SL INDUSTRIES INC	089270
SLATTERY GROUP INC /NJ/	004139
SMITH LABORATORIES INC	319094
SMITHTOWN BANCORP INC	747345
SNL FINANCIAL CORP	318673
SOBANK INC	705432
SOFTWARE PUBLISHING CORP	755659
SOFTWARE TOOLWORKS INC	798534
SOLECTRON CORP	835541
SOLITRON DEVICES INC	091668
SOMERSET GROUP INC	789792
SONESTA INTERNATIONAL HOTELS CORP	091741
SOUND ADVICE INC	793971

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SOUTHEASTERN BANKING CORP	353386
SOUTHERN BANCSHARES NC INC	703904
SOUTHMARK EQUITY PARTNERS II LTD	778921
SOUTHMARK EQUITY PARTNERS III LTD	793307
SOUTHMARK PRIME PLUS L P	810481
SOUTHMARK REALTY PARTNERS II LTD	758745
SOUTHMARK REALTY PARTNERS LTD	734761
SOUTHWALL TECHNOLOGIES INC / DE/	813619
SOUTHWEST REALTY LTD	702991
SOUTHWEST WATER CO	092472
SOUTHWESTERN ELECTRIC SERVICE CO	092488
SPECTRUM CONTROL INC	092769
SPI PHARMACEUTICALS INC	723046
SPROUSE REITZ STORES INC	093109
SQUARE INDUSTRIES INC	093134
ST CHARLES FINANCE CORP	802777
ST IVES LABORATORIES INC	814248
STAFF BUILDERS INC /DE/	720480
STAGE II APPAREL CORP	811933
STAMFORD CAPITAL GROUP INC	701869
STAMFORD TOWERS LIMITED PARTNERSHIP	799149
STANDARD MICROSYSTEMS CORP	093384
STANFORD TELECOMMUNICATIONS INC	725727
STAPLES INC	791519
STATE BANCORP INC	723458
STATE O MAINE INC	093736
STEEGO CORP	094170
STEEL OF WEST VIRGINIA INC	820960
STEEL TECHNOLOGIES INC	771790
STERLING OPTICAL CORP	052522
STEVENS GRAPHICS CORP	817644
STEWART INFORMATION SERVICES CORP	094344
STRATEGIC MORTGAGE TRUST 1986-I	812071
STRATEGIC MORTGAGE TRUST 1987-I	816221
STROBER ORGANIZATION INC	803515
STRUCTURAL DYNAMICS RESEARCH CORP /OH/	820235
STUARTS DEPARTMENT STORES INC	744795
STURM RUGER & CO INC	095029
STV ENGINEERS INC	095045
SUAVE SHOE CORP	095052
SUMMAGRAPHICS CORP	818470
SUMMIT BANCSHARES INC /TX/	745344
SUMMIT HOLDING CORP	742282
SUN SPORTSWEAR INC	856711
SUNRISE MEDICAL INC	720577
SUNSHINE JR STORES INC	095479
SUNSHINE PRECIOUS METALS INC	317083
SUNWARD TECHNOLOGIES INC	313042
SUPERIOR SURGICAL MANUFACTURING CO INC	095574
SUPERIOR TELETEC INC	771935
SURGICAL CARE AFFILIATES INC	722692
SWANK INC	095779
SWIFT ENERGY CO	351817
SYMANTEC CORP	849399
SYMBOLICS INC	745664
SYNALLOY CORP	095953
SYNERGEN INC	730358
SYNETIC INC	850436
SYNOPTICS COMMUNICATIONS INC	816530
SYSTEM INDUSTRIES INC	317781
SYSTEM SOFTWARE ASSOCIATES INC	808207
SYSTEMS & COMPUTER TECHNOLOGY CORP	707606
SYSTEMS CENTER INC /DE/	713412
T SF COMMUNICATIONS CORP	847841
TAB PRODUCTS CO	096116
TACOMA BOATBUILDING CO	318830
TALCON LP	814855
TANDYCRAFTS INC	096294
TASTY BAKING CO	096412
TCI INTERNATIONAL INC	357064
TEAM INC	318833
TECH DATA CORP	790703
TECHNITROL INC	096763
TEJON RANCH CO	096869
TELCO SYSTEMS INC /DE/	736893
TELECOM CORP	096918
TELEMATICS INTERNATIONAL INC / FL/	801313
TELESPHERE COMMUNICATIONS INC	351978
TELEVIDEO SYSTEMS INC	353779
TENNANT CO	097134
TEXAS MERIDIAN RESOURCES LTD	768863
TEXFI INDUSTRIES INC	097579
THERMEDICS INC	721356
THERMO PROCESS SYSTEMS INC	796038
THOMASTON MILLS INC	097931
THOR INDUSTRIES INC	730263
THORN APPLE VALLEY INC	038851
THOUSAND TRAILS INC	312187
TIERCO GROUP INC/DE	701374
TITAN CORP	032258
TNE FUNDING CORP	811642
TOPPS CO INC	612076
TOTAL SYSTEM SERVICES INC	721683
TRADITIONAL INDUSTRIES INC	789605
TRANS KENTUCKY BANCORP	718928
TRANS LEASING INTERNATIONAL INC	789577
TRANS LUX CORP	099106
TRANS NATIONAL LEASING INC	099114
TRANSCISCO INDUSTRIES INC	786053
TRANSCO EXPLORATION PARTNERS LTD	720246
TRANSCONTINENTAL REALTY TRUST INC	319416
TRANSTECH INDUSTRIES INC	087799
TRANSWORLD BANCORP	700613
TRANZONIC COMPANIES	001761
TRI CITY BANKSHARES CORP	313337
TRI STATE MOTOR TRANSIT CO OF DELAWARE	744081
TRIANGLE CORP	099703
TRIBUNE SWAB FOX COMPANIES INC	066109
TRICO BANCSHARES	356171
TUESDAY MORNING INC	737031
TUSCARORA PLASTICS INC	821538
TWENTIETH BANCORP INC	724098
TWIN DISC INC	100378
U S GOLD CORP	314203
U S HEALTHCARE INC	711405
U S INTEC INC	778424
ULTRATECH KNOWLEDGE SYSTEMS INC	791118
UNI MARTS INC	805020
UNICARE FINANCIAL CORP	799297
UNION BANKSHARES CO/ME	745083
UNION CORP	100817
UNION PLAZA HOTEL & CASINO INC	087918
UNIPROP MANUFACTURED HOUSING COMM INCOME FUND II	805993
UNIT CORP	798949
UNITED BANCORP INC /MI/	775345
UNITED EDUCATION & SOFTWARE INC /DE/	814069
UNITED FIRE & CASUALTY CO	101199
UNITED FOODS INC/DE	728258
UNITED GAMING INC	002491
UNITED HEALTHCARE CORP	731766
UNITED MEDICAL CORP	352997
UNITED STATES BANKNOTE CORP / NY/	051124
UNITEL VIDEO INC/DE	740103
UNITIL CORP	755001
UNITOG CO	101909
UNITRODE CORP	101911
UNIVERSAL MEDICAL BUILDINGS LIMITED PARTNERSHIP	799842
UNIVERSITY REAL ESTATE FUND 10 LTD	356311
USAA INCOME PROPERTIES II LTD PARTNERSHIP	739245
USAA INCOME PROPERTIES III LTD PARTNERSHIP	764036
USAA INCOME PROPERTIES IV LIMITED PARTNERSHIP	810584
USB HOLDING CO INC	707805
USP REAL ESTATE INVESTMENT TRUST	102438
V BAND CORPORATION	731181
VALCOM INC	818815
VALLEN CORP	312907
VALLEY RESOURCES INC /RI/	102710
VALUE LINE INC	717720
VALUE MERCHANTS INC	814228
VARCO INTERNATIONAL INC	102993
VENTURA COUNTY NATIONAL BANCORP	744471
VERIT INDUSTRIES	103274
VERNITRON CORP	206030
VERNON LILLIAN CORPORATION	818008
VERSA TECHNOLOGIES INC	320357
VERSAR INC	803647
VESPER CORP	108140
VF FUNDING CORP	810544
VICON INDUSTRIES INC /NY/	310056
VICTORIA CREATIONS INC	796812
VIDEO DISPLAY CORP	758743
VIE DE FRANCE CORP	737602
VIKING OFFICE PRODUCTS INC	859303
VINLAND PROPERTY TRUST	023593
VIRCO MANUFACTURING CORP/DE	751365
VISTA RESOURCES INC	088190
VITALINK COMMUNICATIONS CORP	710884
VIVRA INC	850882
VMS HOTEL INVESTMENT FUND	764897
VMS MORTGAGE INVESTORS L P II	778714
VMS MORTGAGE INVESTORS L P III	802678
VMS SHORT TERM INCOME TRUST / MA/	749882
VMS STRATEGIC LAND TRUST	790817
VMX INC	700816
VSE CORP	102752
WALBRO CORP	104174
WALL TO WALL SOUND & VIDEO INC	769465
WAREHOUSE CLUB INC	716180
WARRANTECH CORP	735571
WARWICK INSURANCE MANAGERS INC	710849
WASHINGTON CORP	314625
WASHINGTON REAL ESTATE INVESTMENT TRUST	104894
WASHINGTON SCIENTIFIC INDUSTRIES INC	104897
WATERHOUSE INVESTOR SERVICES INC	812712
WATSCO INC	105016
WAVERLY INC	105085
WAVETEK CORP/DE/	700839
WAYNE BANCORP INC /OH/	788134
WD 40 CO	105132
WEAN INC	821468
WEATHERFORD INTERNATIONAL INC	029302
WEDGESTONE FINANCIAL	315621
WEIGH TRONIX INC	105318
WELLINGTON LEISURE PRODUCTS INC	840887

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
WELLS ALUMINUM CORP	828737
WEST MASS BANKSHARES INC	793992
WESTAIR HOLDING INC	839480
WESTPORT BANCORP INC	735961
WESTWOOD GROUP INC	083530
WETTERAU PROPERTIES INC	810907
WEYCO GROUP INC	106532
WHITEHALL CORP	106827
WHOLESALE CLUB INC	752033
WILFRED AMERICAN EDUCATIONAL CORP	745905
WILLIAMS INDUSTRIES INC	107294
WILLIAMS SONOMA INC	719955
WILLIAMS W W CO	107362
WILSHIRE OIL CO OF TEXAS	107454
WINDPOWER PARTNERS 1983-1	719934
WINTHROP GROWTH INVESTORS I LTD PARTNERSHIP	722565
WINTHROP INSURED MORTGAGE INVESTORS II	709287
WISCONSIN REAL ESTATE INVESTMENT TRUST	107835
WISER OIL CO	107874
WITTER DEAN CORNERSTONE FUND IV	808373
WITTER DEAN REALTY GROWTH PROPERTIES L P	765923
WITTER DEAN REALTY INCOME PARTNERSHIP I LP	726315
WM BANCORP	804194
WMS INDUSTRIES INC /DE/	350077
WOLOHAN LUMBER CO	108079
WOLVERINE EXPLORATION CO	005696
WOODHEAD INDUSTRIES INC	108215
WRITER CORP	108606
WSMP INC	067494
WUNDIES INDUSTRIES INC	771639
XICOR INC	319191
XOMA CORP /DE/	791908
XYVISION INC	721080
YORK WATER CO	108985
ZEMEX CORP	075644
ZENITH LABORATORIES INC	109259
ZEUS COMPONENTS INC	756055
ZIEGLER CO INC	109312
ZIONS COOPERATIVE MERCANTILE INSTITUTION	109378
ZYCAD CORP	727621

Group CF-06

1ST COMMUNITY BANCORP INC	803164
50 OFF STORES INC	735584
AA IMPORTING CO INC	730052
ABIGAIL ADAMS NATIONAL BANCORP INC	356809
ABIOMED INC	815094
ABS INDUSTRIES INC /DE/	313366
ACA JOE INC	098707
ACC CORP	783233
ACCEPTANCE INSURANCE HOLDINGS INC	793588
ACCUHEALTH INC	840401
ACME UNITED CORP	002098
ACTION STAFFING INC	058254
ADACORP INC	008050
ADAGE INC	002186
ADAMS RESOURCES & ENERGY INC	002178
ADDSCO INDUSTRIES INC	003141
ADVANCE CIRCUITS INC	002435
ADVANCE ROSS CORP	002457
ADVANCED MAGNETICS INC	792977
ADVANCED POLYMER SYSTEMS INC /DE/	818033
ADVATEX ASSOCIATES INC	820906
AEI REAL ESTATE FUND XVI LTD PARTNERSHIP	804127
AEQUITRON MEDICAL INC	736970

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
AERO SERVICES INTERNATIONAL INC	350200
AERO SYSTEMS ENGINEERING INC	002589
AERO SYSTEMS INC	002590
AEROSONIC CORP /DE/	109471
AFA PROTECTIVE SYSTEMS INC	002668
AFP IMAGING CORP	319126
AGOURON PHARMACEUTICALS INC	811210
AGRIPOST INC	313997
AILEEN INC	002904
AIRSENSORS INC	790708
AIRSHIP INTERNATIONAL LTD	764587
AJAY SPORTS INC	854858
AKORN INC	003116
ALASKA GOLD CO	003228
ALBA WALDENSIAN INC	003292
ALDEN ELECTRONICS INC	003398
ALEXANDER ENERGY CORP	355143
ALFIN INC	724989
ALL AMERICAN SEMICONDUCTOR INC	818074
ALL AMERICAN TELEVISION INC	783265
ALLEGHENY BANKSHARES CORP	715606
ALLIED GROUP INC	774624
ALLIS CHALMERS CORP	003982
ALLOU HEALTH & BEAUTY CARE INC	846538
ALLOY COMPUTER PRODUCTS INC	793522
ALLSTATE FINANCIAL CORP /VA/	852220
ALOETTE COSMETICS INC	792160
ALPHA MICROSYSTEMS	352869
ALPINE GROUP INC /DE/	004164
ALPNET INC	712425
ALTA ENERGY CORP	355493
ALTRON INC	741339
AM DIAGNOSTICS INC	005483
AMCOR CAPITAL CORP	831002
AMELCO CORP	004438
AMERIBANC INVESTORS GROUP	068336
AMERICA FIRST PREP FUND 2 PENSION SERIES	812565
AMERICAN AFFORDABLE HOUSING II LIMITED PARTNERSHIP	815024
AMERICAN BANCORP INC/LA	721238
AMERICAN BANCORP OF NEVADA	701803
AMERICAN BANCSHARES OF HOUMA INC	352801
AMERICAN CABLE TV INVESTORS	353712
AMERICAN CABLE TV INVESTORS 2	704847
AMERICAN COMMUNITY DEVELOPMENT GROUP INC	019548
AMERICAN FIRST CORP	109543
AMERICAN HEALTH SERVICES CORP /DE/	712194
AMERICAN INCOME 2 LTD PARTNERSHIP	742102
AMERICAN INCOME 3 LTD PARTNERSHIP	742103
AMERICAN INCOME 4 LTD PARTNERSHIP	789673
AMERICAN INCOME 5 LTD PARTNERSHIP	799175
AMERICAN INCOME 7 LTD PARTNERSHIP	780398
AMERICAN INCOME 8 LIMITED PARTNERSHIP	780399
AMERICAN INCOME PARTNERS III-C LIMITED PARTNERSHIP	808515
AMERICAN INTEGRITY CORP	732179
AMERICAN INTERNATIONAL PETROLEUM CORP /NV/	799119
AMERICAN LEARNING CORP	794881
AMERICAN MIDLAND CORP	066052
AMERICAN MOBILE SYSTEMS INC	714593
AMERICAN PHYSICIANS SERVICE GROUP INC	724024
AMERICAN POWER CONVERSION CORPORATION	835910

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No
AMERICAN PRECISION INDUSTRIES INC	005657
AMERICAN PROPERTIES LTD	786717
AMERICAN RELIANCE GROUP INC	792126
AMERICAN REPUBLIC REALTY FUND I	711512
AMERICAN RETIREMENT VILLAS PROPERTIES	778643
AMERICAN TECHNICAL CERAMICS CORP	766430
AMERICAN TOXXIC CONTROL INC	318025
AMERICAN VANGUARD CORP	005981
AMERICAN VISION CENTERS INC	277592
AMERICORP INC	757765
AMERIHEALTH INC	721801
AMERISCRIBE CORP	072354
AMISTAR CORP	741559
AMTECH CORP	855612
AMWEST INSURANCE GROUP INC	780118
ANALYSTS INTERNATIONAL CORP	006292
ANAREN MICROWAVE INC	006314
ANCHOR FINANCIAL CORP	741561
ANDROS INC	352425
ANW INC /DE	006756
APCO ARGENTINA INC/NEW	311471
APPIAN TECHNOLOGY INC	704322
APPLEBEES INTERNATIONAL INC	853665
APPLIED SOLAR ENERGY CORP	311882
ARABIAN SHIELD DEVELOPMENT CO	007039
ARCH PETROLEUM INC	722144
ARIX CORP	838445
ARIZONA LAND INCOME CORP	830748
ARK RESTAURANTS CORP	779544
ARMATRON INTERNATIONAL INC	008699
ASA INTERNATIONAL LTD	793961
ASPEN IMAGING INTERNATIONAL INC	741517
ASSIX INTERNATIONAL INC	832813
ASSUMPTION BANCSHARES INC	742356
ASTREX INC	008038
ASTRO MED INC /NEW/	008146
ASTRONICS CORP	008063
ATA RESEARCH PROFUTURES DIVERSIFIED FUND LP	812192
ATEK METALS CENTER INC	818730
ATHEY PRODUCTS CORP	008109
ATLANTIC GROUP INC	073382
ATNN INC	765028
AUBURN BANCORP	707364
AURA SYSTEMS INC	826253
AUTOINFO INC	351017
AUTOTROL CORP	008759
AVERY INC	740630
AVON RENT A CAR & TRUCK CORP	832493
AZTEC MANUFACTURING CO	008947
BAILEY CORP	753237
BALCOR CURRENT INCOME FUND-87	798790
BALCOR EQUITY PROPERTIES LTD X	351892
BALCOR EQUITY PROPERTIES LTD-VIII	310614
BALCOR EQUITY PROPERTIES XII	701785
BALCOR FILM INVESTORS	751312
BALCOR INCOME PROPERTIES LTD II	215168
BALCOR MOBILE HOME INCOME FUND	787987
BALCOR PREFERRED PENSION-12	819576
BALCOR REALTY INVESTORS LTD 80	313852
BALCOR REALTY INVESTORS LTD 81	320038
BALDWIN SECURITIES CORP /DE/	009375
BALLARD MEDICAL PRODUCTS	723534
BALTEK CORP	009442
BANCORP OF SOUTHERN INDIANA	711667
BANCSHARES 2000 INC	768177
BANCTENN CORP	763538
BANK BUILDING & EQUIPMENT CORP OF AMERICA	313214
BANKERS NOTE INC	354611
BANYAN CORP	744041

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
BARNWELL INDUSTRIES INC	010048
BARRETT RESOURCES CORP	351993
BARRISTER INFORMATION SYSTEMS CORP	754128
BARTON INDUSTRIES INC	352383
BARUCH FOSTER CORP	010226
BASE TEN SYSTEMS INC	010242
BASIX CORP	106790
BASS INCOME PLUS FUND LIMITED PARTNERSHIP	810368
BAY AREA BANCSHARES	701153
BAY COMMERCIAL SERVICES	707854
BAY MEADOWS OPERATING CO	715273
BAYLY CORP	010518
BE AVIONICS INC	861361
BEAUTICONTROL COSMETICS INC	788330
BEL FUSE INC /NJ	729580
BELCOR INC	099286
BELDEN & BLAKE ENERGY CO	734778
BELVEDERE CORP	805265
BEN & JERRYS HOMEMADE INC	768384
BENIHANA NATIONAL CORP	715384
BERRY & BOYLE CLUSTER HOUSING PROPERTIES	726995
BERRY & BOYLE DEVELOPMENT PARTNERS	785540
BERRY & BOYLE DEVELOPMENT PARTNERS II	806397
BETHEL BANCORP	811831
BEVERLY HILLS BANCORP	011917
BF ENTERPRISES INC	814856
BGS SYSTEMS INC	718976
BHA GROUP INC	801128
BI INC	716629
BIG BOULDER CORP/PA	277666
BILTMORE BANK CORP	757546
BINGO KING CO INC	355142
BIO MEDICUS INC	012204
BIO TECHNOLOGY GENERAL CORP	722104
BIOMAGNETIC TECHNOLOGIES INC	729330
BIOPHARMACEUTICS INC	733337
BIOTECH RESEARCH LABORATORIES INC	350405
BIRTCHER MEDICAL SYSTEMS INC	012288
BISCAYNE HOLDINGS INC	068706
BLAU BARRY & PARTNERS INC	780265
BLOC DEVELOPMENT CORP	796624
BLUE DOLPHIN ENERGY CO	793306
BLUE RIDGE REAL ESTATE CO	012779
BOETTCHER WESTERN PROPERTIES II LTD	703152
BOETTCHER WESTERN PROPERTIES III LTD	716822
BOETTCHER WESTERN PROPERTIES IV LTD	737028
BONRAY DRILLING CORP	351683
BOONTON ELECTRONICS CORP	013191
BOSTON ACOUSTICS INC	805268
BOSTON CELTICS LIMITED PARTNERSHIP	805009
BOSTON DIGITAL CORP	013370
BOSTON TECHNOLOGY INC	771470
BOWL AMERICA INC	013573
BOWMAR INSTRUMENT CORP	013606
BRAJDAS CORP	320591
BRANDON SYSTEMS CORP	807782
BRAUVIN HIGH YIELD FUND L P	810587
BRAUVIN REAL ESTATE FUND LP 4	736908
BRAUVIN REAL ESTATE FUND LP 5	762848
BRENNER INTERNATIONAL INC	029051
BRIDGFORD FOODS CORP	014177
BRIGHT STAR HOLDING INC	799369
BRITE VOICE SYSTEMS INC	852637
BROCK EXPLORATION CORP	014399
BROWN FLOURNOY EQUITY INCOME FUND LTD PARTNERSHIP	796333
BRUCE ROBERT INDUSTRIES INC	753263
BRUNSWICK BANCORP	771614
BUILDERS TRANSPORT INC	726617
BURKE MILLS INC	015486
BURLINGAME BANCORP	737269
BUSINESS BANCORP	700570
BUTTON GWINNETT BANCORP INC	813613
BWC FINANCIAL CORP	353650
BYTEX CORP	726744
C COR ELECTRONICS INC	350621
C&K 1980 FUND B LTD	319315
C&R CLOTHIERS INC	015983
CABLE TV FUND 11-B LTD	725684
CABLE TV FUND 12-C LTD	782975
CABOT MEDICAL CORP	719073
CADE INDUSTRIES INC	356211
CAERE CORP	854916
CAFES ONE L P	805275
CALIFORNIA BEACH RESTAURANTS INC	738274
CALIFORNIA MICRO DEVICES CORP	800460
CALLON CONSOLIDATED PARTNERS L P	832478
CALMARK REAL ESTATE FUND LTD	354701
CAMBEX CORP	016590
CAMBRIDGE BIOTECH CORP	704292
CANDELA LASER CORP	793279
CANNON EXPRESS INC	801558
CANTEL INDUSTRIES INC	019446
CAPITAL INDUSTRIES INC	726593
CAPITAL INVESTMENT OF HAWAII INC	017221
CAPITAL PROPERTIES INC /RI/	202947
CAPITAL REALTY INVESTORS 85 LTD PARTNERSHIP	770895
CAPITAL REALTY INVESTORS II LTD PARTNERSHIP	713571
CAPITOL TRANSAMERICA CORP	017385
CARDINAL INDUSTRIES INC	355168
CARE PLUS INC	726330
CARLSBERG MOBILE HOME PROPERTIES LTD 73	017670
CARLYLE REAL ESTATE LTD PARTNERSHIP 75	017701
CARLYLE REAL ESTATE LTD PARTNERSHIP VI	017696
CAROLINA MOUNTAIN HOLDING CO	745069
CARVER CORP	766177
CASCADE INTERNATIONAL INC	828174
CASTLE ENERGY CORP	709355
CAVALIER HOMES INC	789863
CAVCO INDUSTRIES INC	278166
CAYMAN RESOURCES CORP	355649
CCAIR INC	850922
CCFNB BANCORP INC	731122
CEDAR GROUP INC	854859
CEDAR INCOME FUND LTD	761648
CELGENE CORP /DE/	816284
CELL TECHNOLOGY INC /DE/	816159
CELUTEL INC	716879
CEM CORP	793933
CENTENNIAL BANCORP	702430
CENTENNIAL MORTGAGE INCOME FUND	736980
CENTENNIAL MORTGAGE INCOME FUND II	773337
CENTER INCOME PROPERTIES 1	723503
CENTER INCOME PROPERTIES 2	748685
CENTERCORE INC	826330
CENTRAL BANCORPORATION /WA/	718984
CENTRAL FINANCIAL CORP /PA/	826481
CENTRAL RESERVE LIFE CORP	215403
CENTRAL UNITED CORP	018801
CENTURY BANCSHARES INC	785813
CENTURY PACIFIC HOUSING FUND I	809034
CENTURY PENSION INCOME FUND XXIV	780590
CENTURY PROPERTIES FUND XI	215406
CENTURY PROPERTIES FUND XII	275193
CENTURY PROPERTIES FUND XIII	276703
CERADYNE INC	018937
CERBCO INC	826821
CERTRON CORP	019002
CETUS HEALTHCARE LTD PARTNERSHIP II	799209
CHARIOT GROUP INC	790932
CHEFS INTERNATIONAL INC	201424
CHEMFIX TECHNOLOGIES INC	354278
CHEMI TROL CHEMICAL CO	215420
CHEMICAL FABRICS CORP	725813
CHEMPOWER INC	847595
CHESAPEAKE INDUSTRIES INC /MD/	019736
CHESAPEAKE LIFE INSURANCE CO	019739
CHICAGO RIVET & MACHINE CO	019871
CHILDRENS DISCOVERY CENTERS OF AMERICA INC	775820
CHIPWICH INC	704175
CHRISKEN PARTNERS CASH INCOME FUND L P	815278
CHRONAR CORP	352800
CHURCH LOANS & INVESTMENTS TRUST	020199
CHURCHILL DOWNS INC	020212
CINE SOURCE INC /CO	839428
CIP CORP	020341
CIRCLE FINE ART CORP	020356
CIRCUIT SYSTEMS INC	773657
CIRO INC	726602
CIS CAPITAL EQUIPMENT FUND LTD 2	807060
CIS TECHNOLOGIES INC	806072
CITIZENS BANCSHARES CORP /GA/	813640
CITIZENS BANCSHARES INC /LA/	715762
CITIZENS BANCSHARES INC /WV/	771481
CITIZENS FINANCIAL CORP/DE/	764156
CITIZENS FINANCIAL SERVICES INC	739421
CITIZENS INC	024090
CITIZENS INDEPENDENT BANCORP	739412
CITY NATIONAL BANCSHARES CORP	714980
CLARK DICK PRODUCTIONS INC	805370
CLOVER INCOME PROPERTIES II L P	818671
CLOVER INCOME PROPERTIES L P	802679
CNL INCOME FUND II LTD	806510
CNL INCOME FUND III LTD	817845
CODA ENERGY INC	356799
CODE ALARM INC	821509
COGNEX CORP	851205
COHU INC	021535
COLLABORATIVE RESEARCH INC	356830
COLONIAL COMMERCIAL CORP	021828
COLOROCS CORP /GA/	789990
COLUMBIA LABORATORIES INC	821995
COMARCO INC	022252
COMBANCORP	741316
COMCOA INC	718451
COMMERCE BANCSHARES INC /MO/	022356
COMMERCE NATIONAL CORP	773319
COMMERCIAL DEVELOPMENT FUND 85	769400
COMMERCIAL FEDERAL CORP	744778
COMMERCIAL INTERNATIONAL CORP	022428
COMMERCIAL PROGRAMMING UNLIMITED INC	022460
COMMODITY TREND TIMING FUND II	702655
COMMODORE ENVIRONMENTAL SERVICES INC /UT	071528
COMMON GOAL HEALTH CARE PARTICIPATING MTG FUND LP	800444
COMMONWEALTH FINANCIAL FUTURES FUND	708131
COMMONWEALTH FINANCIAL FUTURES FUND II	737841
COMMONWEALTH GROWTH FUND I	793034
COMMONWEALTH OIL REFINING CO INC	022646

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
COMMUNICATION CABLE INC	789869
COMMUNICATIONS SYSTEMS INC/MN	022701
COMMUNITY BANCORP /VT/	718413
COMMUNITY BANCSHARES INC /DE/	752195
COMMUNITY BANKSHARES INC /VA/	742279
COMNET CORP	023055
COMPTEK RESEARCH INC/NY	720031
COMPTRONIX CORPORATION	848462
COMPUCHEM CORP	747902
COMPUDYNE CORP	022912
COMPUMAT INC	831889
COMPUTER HORIZONS CORP	023019
COMPUTER MEMORIES INC	356446
COMPUTER POWER INC	792986
COMPUTRAC INC	720507
COMSTOCK RESOURCES INC	023194
COMTECH TELECOMMUNICATIONS CORP /DE/	023197
COMVERSE TECHNOLOGY INC/NY/	803014
CONCORD CAMERA CORP	831861
CONCORD COMPUTING CORP	740112
CONCORDE CAREER COLLEGES INC	832483
CONGRESS STREET PROPERTIES INC	745770
CONKLIN CO INC	215506
CONMED CORP	816956
CONNECTICUT GENERAL EQUITY PROPERTIES I	733460
CONNECTICUT GENERAL REALTY INVESTORS II	716008
CONNECTICUT GENERAL REALTY INVESTORS L P	356456
CONQUEST AIRLINES CORP	810328
CONSILIUM INC	795090
CONSOLIDATED CAPITAL PROPERTIES VI	755908
CONSOLIDATED CAPITAL PROPERTIES VII	783321
CONSOLIDATED FIBRES INC	023657
CONSOLIDATED OIL & GAS INC	023744
CONSOLIDATED RESOURCES HEALTH CARE FUND III	744594
CONSOLIDATED RESOURCES HEALTH CARE FUND II	732247
CONSUMAT SYSTEMS INC	312950
CONTROL RESOURCE INDUSTRIES INC	769626
CONVERGENT SOLUTIONS INC /NY/	811870
CONVEST ENERGY PARTNERS LTD	766776
COOKER RESTAURANT CORP /OH/	832412
COOPER LIFE SCIENCES INC	759718
COPLEY REALTY INCOME PARTNERS I	784928
CORADIAN CORP	310402
CORCOM INC	316402
CORNERSTONE FINANCIAL CORP	716407
CORNING NATURAL GAS CORP	024751
CORPORATE INVESTMENT CO	024900
CORPORATE PROPERTY ASSOCIATES	276280
COSMETIC & FRAGRANCE CONCEPTS INC	793520
COSMO COMMUNICATIONS CORP	718096
COTTON STATES LIFE & HEALTH INSURANCE CO	025118
COURIER DISPATCH GROUP INC	730259
CPAC INC	351717
CPT CORP	025360
CRESCOTT INC	715795
CRI HOTEL INCOME PARTNERS L P	808377
CRITICAL INDUSTRIES INC	820739
CRITICARE SYSTEMS INC /DE/	812121
CROWN ANDERSEN INC	778808
CROWN BANCORP	706244
CROWN BRANDS INC/NJ/	806839
CROWNAMERICA INC	025933

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
CSA INCOME FUND LIMITED PARTNERSHIP II	809224
CSP INC /MA/	356037
CUPERTINO NATIONAL BANCORP	757790
CUSTOMEDIX CORP	026361
CYBERTEK CORP /DE/	725869
CYPRESS BANKS INC	729981
CYTOGEN CORP	725058
DAHLBERG INC	028364
DAILY JOURNAL CORP	783412
DAIN INCOME PROPERTIES-86	813367
DAIN PENSION INVESTORS 85	756765
DAIN REAL ESTATE PARTNERS I	715764
DAIN SOUTHEAST GROWTH PROPERTIES	795963
DASH INDUSTRIES INC	027153
DATA MEASUREMENT CORP	354827
DATA TRANSLATION INC	713138
DATA TRANSMISSION NETWORK CORP	790498
DATAFLEX CORP	355735
DATAMARINE INTERNATIONAL INC	027075
DATAMETRICS CORP	027082
DATAPHAZ INC	819897
DATARAM CORP	027093
DATASOUTH COMPUTER CORP	722582
DATRONIC RENTAL CORP /IL/	027117
DATUM INC	027119
DAVOX CORP	811640
DAXOR CORP	027367
DBA SYSTEMS INC	027442
DC TRADING & DEVELOPMENT CORP	027448
DE ANZA HOLDING CORP	702336
DE ANZA PROPERTIES XII LTD	351509
DECADE COMPANIES INCOME PROPERTIES	775840
DEL ELECTRONICS CORP	027748
DELAWARE NATIONAL BANKSHARES CORP	763827
DELMED INC	320185
DELTA NATIONAL BANCORP	706343
DELTAK CORP	027976
DERAND REAL ESTATE INVESTMENT TRUST	028238
DERWOOD INVESTMENT CORP	082455
DESIGNATRONICS INC	028323
DETECTION SYSTEMS INC	028365
DETROIT & CANADA TUNNEL CORP	028374
DH TECHNOLOGY INC	728376
DIGI INTERNATIONAL INC	854775
DISTRIBUTED LOGIC CORP	718823
DIVALL INSURED INCOME FUND LTD PARTNERSHIP	786974
DIVERSCO INC	811515
DIVERSIFIED HISTORIC INVESTORS	745143
DIVERSIFIED HISTORIC INVESTORS V	818669
DIXIE NATIONAL CORP	029322
DMI FURNITURE INC	225261
DOC OPTICS CORP	002131
DOMINGUEZ WATER CORP	029578
DONEGAL GROUP INC	800457
DORCHESTER HUGOTON LTD	703814
DOTRONIX INC	351809
DOUGHTIES FOODS INC	029850
DREWRY PHOTOCOLOR CORP	030121
DREXEL BURNHAM LAMBERT REAL ESTATE ASSOCIATES II	725646
DREXEL BURNHAM LAMBERT REAL ESTATE ASSOCIATES	700951
DSI REALTY INCOME FUND X	792989
DUNES HOTELS & CASINOS INC	024004
DURAMED PHARMACEUTICALS INC	799903
DYANSEN CORP	719650
E&B MARINE INC	716740
EA ENGINEERING SCIENCE & TECHNOLOGY INC	802492
EAC INDUSTRIES INC	030892

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
EAGLE TELEPHONICS INC	722383
EARTH SCIENCES INC	030985
EARTH TECHNOLOGY CORP USA	819541
EASTCO INDUSTRIAL SAFETY CORP	031079
EASTERN ENVIRONMENTAL SERVICES INC	815272
EASTOVER CORP	036207
EASTPOINT MALL LTD PARTNERSHIP	772074
ECI ENVIRONMENTAL INC	855571
ECL INDUSTRIES INC	072357
EDAC TECHNOLOGIES CORP	772572
EDISON THOMAS INNS INC	808219
ELCOTEL INC	801448
ELECTRIC & GAS TECHNOLOGY INC	785819
ELECTROMEDICS INC	032203
ELECTRONIC ASSOCIATES INC	313096
ELECTRONIC DATA TECHNOLOGIES	820759
ELECTROSOUND GROUP INC	103542
EMCON ASSOCIATES /CA/	819977
EMONS HOLDINGS INC	032666
EMPIRE BANCORP	711211
EMPIRE ORR INC/NY	757185
EMPIRE STATE BUILDING ASSOCIATES	032776
ENERCAP CORP /DE/	313419
ENERGY ASSETS INTERNATIONAL CORP	315406
ENERGY CONVERSION DEVICES INC	032878
ENEX PROGRAM I PARTNERS L P	775274
ENEX RESOURCES CORP	314864
ENGINEERED SUPPORT SYSTEMS INC	772891
ENTREE CORP	814579
ENTRONICS CORP/DE/	818017
ENVIRONMENTAL POWER CORP	805012
ENVIRONMENTAL TECTONICS CORP	033113
ENZON INC	727510
EPI INTERNATIONAL INC	032160
EPIC HEALTH GROUP INC	718084
EQUITABLE BANKSHARES OF COLORADO INC	315881
EREIM LP ASSOCIATES	808370
ERIE LACKAWANNA INC	033420
ESPEY MANUFACTURING & ELECTRONICS CORP	033533
ESQUIRE RADIO & ELECTRONICS INC	033541
ESSEX CORPORATION	355199
ESSEX REAL ESTATE PARTNERS LTD	714233
EVERGOOD PRODUCTS CORP	714162
EVERGREEN RESOURCES INC	353943
F&M BANK CORP	740806
FAIR GROUNDS CORP	034236
FAIR ISAAC & COMPANY INC	814547
FALCON OIL & GAS CO INC	215797
FALCON PRODUCTS INC /DE/	034339
FALLS CITY INDUSTRIES INC	034382
FAR WEST ELECTRIC ENERGY FUND L P	753767
FASTENAL COMPANY	815556
FCS FINANCIAL CORP /GA/	784720
FEDERAL AGRICULTURAL MORTGAGE CORP	845877
FERROFLUIDICS CORP	353286
FERRY CAP & SET SCREW CO	035223
FIDELITY LEASING INCOME FUND II	764761
FIDELITY LEASING INCOME FUND III LP	786470
FIDELITY LEASING INCOME FUND IV L P	810363
FIDELITY NATIONAL FINANCIAL INC / DE/	809398
FINANCIAL GUARDIAN GROUP INC	035720
FIRST AMERI CABLE CORP /OH/	760995
FIRST AMERICAN CORP /GA/	109830
FIRST CAPITAL INCOME PROPERTIES LTD SERIES VII	355774

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
FIRST CAPITAL INCOME PROPERTIES LTD SERIES VI	318217
FIRST CAPITAL INCOME PROPERTIES LTD SERIES V	311916
FIRST CAROLINA INVESTORS INC	811040
FIRST CENTRAL FINANCIAL CORP	759441
FIRST COMMERCIAL BANCORPORATION	775621
FIRST COMMONWEALTH CORP	200776
FIRST COMMUNITY CORP	812498
FIRST DEARBORN INCOME PROPERTIES LP	806182
FIRST FINANCIAL BANCORP /CA/	729502
FIRST HOME CREDIT CORP I	805675
FIRST INDEPENDENCE CORP	745140
FIRST KEYSTONE CORP	737875
FIRST LEESPORT BANCORP INC	775662
FIRST LIBERTY BANCORP INC	816237
FIRST MANISTIQUE CORP	036506
FIRST MERCHANTS BANCORP INC	804128
FIRST NATIONAL BANKSHARES CORP	814178
FIRST PACIFIC BANCORP INC	354271
FIRST PEOPLES BANCORP INC/TN/	725570
FIRST REAL ESTATE INVESTMENT TRUST OF NEW JERSEY	036840
FIRST REGIONAL BANCORP	356708
FIRST SUNBELT BANKSHARES INC	802776
FIRST UNITED BANCORP INC	717585
FIRST UNITED INC	037014
FIRST WORLD CHEESE INC	791714
FLANIGANS ENTERPRISES INC	012040
FLORIDA INCOME FUND II LTD PARTNERSHIP	790986
FLOWMOLE CORP	821381
FORSCHNER GROUP INC	731947
FORTUNE NATIONAL CORP	038240
FOUNDATION REALTY FUND LTD	813652
FOUNTAIN POWERBOAT INDUSTRIES INC	764858
FOX STRATEGIC HOUSING INCOME PARTNERS	800080
FRANCOR FINANCIAL INC	726317
FRAWLEY CORP	038824
FREDERICKS OF HOLLYWOOD INC	038868
FREEMAN DIVERSIFIED REAL ESTATE I LP	721673
FREEMAN DIVERSIFIED REAL ESTATE IV L P	808376
FREEMAN INCOME REAL ESTATE LP	768598
FREEPORT MCMORAN OIL & GAS ROYALTY TRUST	727094
FRENCHTEX INC	849805
FRIEDMAN INDUSTRIES INC	039092
FSI INTERNATIONAL INC	841692
FURNISHINGS 2000 INC	730302
FUTURES ADVANTAGE FUND	773825
FUTURES EXPANSION FUND LTD PARTNERSHIP	799824
FWB BANCORPORATION	719488
GAINSCO INC	786344
GALLERY OF HISTORY INC	763730
GAMMA BIOLOGICALS INC	317890
GANDER MOUNTAIN INC	789598
GARNET RESOURCES CORP /DE/	820084
GEMCO NATIONAL INC	043340
GEMINI EQUIPMENT PARTNERS INCOME FUND IX	761281
GENDEX CORP	818479
GENERAL AUTOMATION INC	040443
GENERAL COMPUTER CORP	788306
GENERAL MICROWAVE CORP	040703
GENERAL PARAMETRICS CORP /DE/	795665
GENISCO TECHNOLOGY CORP /DE/	746071
GENTEX CORP	355811
GEONEX CORP	796318
GEORGIA BONDED FIBERS INC	041052
GEOTEK INDUSTRIES INC	844843
GERAGHTY & MILLER INC /DE/	821527
GIBRALTAR FINANCIAL CORP	041336
GIGA TRONICS INC	718274
GMI GROUP INC	082554
GNI INC /DE/	043422
GOLD CO OF AMERICA	751260
GOLD RESERVE CORP	042119
GOLDEN CORRAL REALTY CORP	751364
GOLDFIELD CORP	042316
GOLDTEX INC	819676
GRAND VALLEY GAS CO	841709
GRANGE NATIONAL BANC CORP	763850
GREASE MONKEY HOLDING CORP	350179
GREAT FALLS BANCORP	773845
GREAT FALLS GAS CO	043350
GREAT NORTHERN IRON ORE PROPERTIES	043410
GREEN DANIEL CO	026820
GREENWICH PROPERTIES I LTD	719174
GRI CORP	043965
GRIFFIN REAL ESTATE FUND II	319716
GRIFFIN REAL ESTATE FUND III	705974
GRIFFIN REAL ESTATE FUND IV	728526
GRIFFIN REAL ESTATE FUND V	760451
GRIFFIN REAL ESTATE FUND VI	783452
GRIFFIN TECHNOLOGY INC	082295
GROUP 1 SOFTWARE INC	806435
GRUBB & ELLIS REALTY INCOME TRUST	763977
GTI CORP	044319
GUARANTY BANCSHARES CORP	768536
GUARANTY BANCSHARES HOLDING CORP	706731
GULF & SOUTHERN FINANCIAL CORP	774555
GULF APPLIED TECHNOLOGIES INC	044524
GV MEDICAL INC	727672
GZA GEOENVIRONMENTAL TECHNOLOGIES INC	852004
H&H OIL TOOL CO INC	355902
HADRON INC	044800
HAKO MINUTEMAN INC	810876
HALIFAX ENGINEERING INC/VA	720671
HALLADOR PETROLEUM CO	788965
HALLWOOD INDUSTRIES INC	046535
HALSEY DRUG CO INC/NEW	786947
HAMMOND MORTGAGE SECURITIES CORP	744362
HAMPSHIRE FUNDING INC	205422
HANA BIOLOGICS INC	791925
HANCOCK JOHN REAL ESTATE LTD PARTNERSHIP	708319
HANDEX ENVIRONMENTAL RECOVERY INC	850414
HANGER ORTHOPEDIC GROUP INC	722723
HARDEES LEASE PARTNERS 1980	318225
HARLYN PRODUCTS INC	045621
HAROLDS STORES INC	818682
HARRIS BANKCORP INC	045729
HARVEY GROUP INC	046043
HATHAWAY CORP	046129
HAWKINS CHEMICAL INC	046250
HCW PENSION REAL ESTATE FUND LTD PARTNERSHIP	745538
HEALTH CARE PROPERTIES II	760689
HEALTH MOR INC	046445
HEALTHCARE COMPARE CORP/DE/	812910
HEALTHSOURCE INC	855587
HEARTLAND EXPRESS INC	799233
HEIST C H CORP	046653
HELIAN HEALTH GROUP INC	856288
HELIX TECHNOLOGY CORP	046709
HEMET BANCORP	804135
HENRY JACK & ASSOCIATES INC	779152
HERBALIFE INTERNATIONAL INC	791449
HERLEY INDUSTRIES INC /NEW	047035
HERSHEY OIL CORP	047114
HICKAM DOW B INC	736915
HIGH PLAINS CORP	317551
HIGHLANDS BANKSHARES INC	756862
HILB ROGAL & HAMILTON CO /VA/	814898
HINDERLITER INDUSTRIES INC	355557
HIPOTRONICS INC	047647
HITOX CORPORATION OF AMERICA	842295
HNB FINANCIAL GROUP	737213
HOFMANN INDUSTRIES INC	047878
HOLIDAY RV SUPERSTORES INC	822076
HOLLYWOOD PARK OPERATING CO	356212
HOMASOTE CO	048165
HOME CENTERS INC	788588
HOME INTENSIVE CARE INC	313321
HOMESTYLE BUFFET INC	831984
HOOPER HOLMES INC	741815
HORIZON FUTURES FUND	316225
HORIZON GOLD CORP	750740
HOSPITAL STAFFING SERVICES INC	731625
HOUSTON BIOTECH PARTNERS L P	812592
HOWELL INDUSTRIES INC	048824
HOWTEK INC	749660
HQ OFFICE SUPPLIES WAREHOUSE INC	837292
HUTTON APACHE ENERGY INCOME FUND II	717566
HUTTON ASSET RECOVERY FUND	731717
HUTTON CONAM REALTY INVESTORS 2	357099
HUTTON CONAM REALTY INVESTORS 5	761310
HUTTON CONAM REALTY INVESTORS 81	350023
HUTTON ENERGY ASSETS 2ND OIL & GAS COM & EQ PT A	791190
HUTTON GSH AMERICAN STORAGE PROPERTIES LP	769330
HUTTON GSH COMMERCIAL PROPERTIES 1	353891
HUTTON GSH COMMERCIAL PROPERTIES 4	759852
HUTTON INVESTORS FUTURES FUND L P II	812816
HUTTON INVESTORS FUTURES FUND LTD PARTNE	794224
HUTTON SOUTHERN TIMBER PARTNERS 2	707600
HUTTON SOUTHERN TIMBER PARTNERS I	355298
HYDRO FLAME CORP	049438
ICO INC	353567
ICOT CORPORATION	065745
IDS BALCOR INCOME PARTNERS	811524
IDS JONES GROWTH PARTNERS	811435
IDS MANAGED FUTURES II L P	813831
IGI INC	352998
II-VI INC	820318
IKOS SYSTEMS INC	756365
ILC TECHNOLOGY INC	719625
ILIO INC	854550
IMAGE BANK INC	850341
IMAGE ENTERTAINMENT INC	216324
IMATRON INC	720477
IMMUCOR INC	736822
IMMUNOGEN INC	855654
IMPACT SYSTEMS INC /CA/	813740
INAMED CORP	109831
INDEPRO PROPERTY FUND I LP	710982
INDEPRO PROPERTY FUND II LP	722232
INDIAN RIVER CITRUS INVESTORS LTD PARTNERSHIP	760612
INDIANA FINANCIAL INVESTORS INC	310621
INFORMATION INTERNATIONAL INC	216205
INNOVEX INC	050601
INSITUFORM EAST INC	355431
INSITUFORM GULF SOUTH INC	806173
INSITUFORM MID AMERICA INC	807903

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
INSITUFORM SOUTHEAST CORP	799096
INSTITUTIONAL PROPERTIES 4	806638
INSURED INCOME PROPERTIES 1982	353392
INSURED PENSION INVESTORS 1983	709947
INTELLICORP INC	730169
INTERFACE SYSTEMS INC	714981
INTERGROUP CORP	069422
INTERMETRICS INC	702736
INTERNATIONAL CONSUMER BRANDS INC	779314
INTERNATIONAL LEISURE ENTERPRISES INC /AZ/	819551
INTERNATIONAL MERCANTILE CORP	051387
INTERNATIONAL MOBILE MACHINES CORP	354913
INTERNATIONAL POWER MACHINES CORP	318775
INTERNATIONAL TOTALIZATOR SYSTEMS INC	354813
INTERPHASE CORP	728249
INTERPOINT CORP /NEW/	050842
INVESTORS REAL ESTATE TRUST	798359
IRE PENSION INVESTORS LTD	748827
IRE REAL ESTATE FUND LTD SERIES 27	756800
IRE REAL ESTATE GROWTH FUND LTD SERIES 28	769643
IRT CORP	052589
ISCO INC	773730
JACLYN INC	052969
JACO ELECTRONICS INC	052971
JACQUES MILLER INCOME FUND LP	752698
JACQUES MILLER INCOME FUND LP II	774655
JACQUES MILLER REALTY PARTNERS LP II	721700
JACQUES MILLER REALTY PARTNERS LP III	757775
JACQUES MILLER REALTY PARTNERS LP IV	784040
JAYARK CORP	053260
JERRYS INC	053453
JETBORNE INTERNATIONAL INC	811786
JETRONIC INDUSTRIES INC	053500
JEWELMASTERS INC	794048
JMB INCOME PROPERTIES LTD II	053567
JMB INCOME PROPERTIES LTD IV	053568
JMB MORTGAGE PARTNERS LTD	706074
JMB MORTGAGE PARTNERS LTD II	730206
JOHNSON PRODUCTS CO INC	053748
JOHNSTOWN CONSOLIDATED INCOME PARTNERS 1	787621
JONES CABLE INCOME FUND 1-B LTD	799122
JONES MEDICAL INDUSTRIES INC / DE/	793613
JONES PLUMBING SYSTEMS INC	096653
JOULE INC	798168
K TEL INTERNATIONAL INC	054193
KAPLAN INDUSTRIES INC	320432
KEANE INC	054883
KEEGAN MANAGEMENT CO	857400
KEITH GROUP OF COMPANIES INC	803656
KELLEY OIL CORP	746627
KEMPER CYMROT REAL ESTATE INVESTMENT FUND A LP	751262
KENT ELECTRONICS CORP	793024
KENT FINANCIAL SERVICES INC	316028
KENTUCKY INVESTORS INC	055362
KENWIN SHOPS INC	055393
KEPTEL INC	819840
KIDDIE PRODUCTS INC	055698
KINARK CORP	055805
KINGFISHER BANCORP INC	771859
KINGS ROAD ENTERTAINMENT INC	773588
KIT MANUFACTURING CO	056151
KLEINERTS INC /PA/	056252
KMS INDUSTRIES INC	056356
KOSS CORP	056701
KP MILLER REALTY GROWTH FUND I	700834
KRELITZ INDUSTRIES INC	056808
KRISCH AMERICAN INNS INC	799099
KRUPP INSTITUTIONAL MORTGAGE FUND LTD PARTNERSHIP	757549
KRUPP REALTY FUND LTD II	350478
KURZWEIL MUSIC SYSTEMS INC	730991
KUSHNER LOCKE CO	842009
LAKELAND FINANCIAL CORP	721994
LAKELAND INDUSTRIES INC	798081
LASER PHOTONICS INC	711665
LASER PRECISION CORP	312242
LASERMASTER TECHNOLOGIES INC	857470
LASERSCOPE	851737
LATSHAW ENTERPRISES INC	023236
LCS INDUSTRIES INC	058151
LEASTEC INCOME FUND III	773911
LEASTEC INCOME FUND IV	799179
LEASTEC INCOME FUND V	821218
LEE PHARMACEUTICALS	058411
LEECO DIAGNOSTICS INC	728294
LEISURE CONCEPTS INC	058592
LEOS INDUSTRIES INC	760487
LEXICON CORP	312065
LIFELINE SYSTEMS INC	720195
LIFETIME PRODUCTS INC	039503
LINCAM PROPERTIES LTD SERIES 85	774489
LINCOLN FOODSERVICE PRODUCTS INC	791726
LINCOLN NC REALTY FUND INC	773654
LINCOLN PROPERTY ASSOCIATES LTD	777350
LINDAL CEDAR HOMES INC /DE/	059591
LIPE ROLLWAY CORP	047798
LIPOSOME CO INC	786557
LIPOSOME TECHNOLOGY INC /DE/	812444
LL&E ROYALTY TRUST	721765
LLOYDS SHOPPING CENTERS INC	059956
LODGISTIX INC	023107
LONG LAKE ENERGY CORP	790044
LORIMAR FILM PARTNERS L P	778923
LOWRANCE ELECTRONICS INC	804073
LUNAR CORP	864906
MACHINE TECHNOLOGY INC	320654
MAIL BOXES ETC	791014
MAJOR GROUP INC	081700
MAJOR REALTY CORP	061666
MALLON RESOURCES CORP	837759
MANISCHEWITZ B CO	061981
MARATHON BANCORP	718446
MARC INC	356287
MARGATE VENTURES INC	761198
MARGO NURSERY FARMS INC	808493
MARINE MIDLAND BANKS INC	062348
MARKET FACTS INC	062465
MARKETPLACE INCOME PROPERTIES	784508
MARS GRAPHIC SERVICES INC	796972
MARSAM PHARMACEUTICALS INC	810590
MASSTOR SYSTEMS CORP /DE/	715086
MATEC CORP/DE/	085608
MATTHEWS & WRIGHT GROUP INC	795255
MAX & ERMAS RESTAURANTS INC	706471
MAXCO INC	078966
MAYS J W INC	054187
MCCLAIN INDUSTRIES INC	063686
MCCORMICK COMMODITY FUND I LIMITED PARTNERSHIP	354995
MCNEIL PACIFIC INVESTORS FUND 1972	064309
MCRAE INDUSTRIES INC/DE	729284
MED CARE CORP	857887
MEDAR INC	719152
MEDEX INC	064513
MEDIAGENIC	716877
MEDICAL ACTION INDUSTRIES INC	748270
MEDICAL MANAGEMENT OF AMERICA INC	838443
MEDICAL RESOURCE COMPANIES OF AMERICA	105744
MEDICORE INC	008643
MEDSTONE INTERNATIONAL INC / DE/	819939
MEGATEST CORP	745213
MERCOM INC	850315
MERCURY AIR GROUP INC	052532
MERIDIAN NATIONAL CORP	717192
MERRIMAC INDUSTRIES INC	706864
MESA AIRLINES INC	810332
MESA ROYALTY TRUST/TX	313364
MET PRO CORP	065201
METATEC CORP	203200
MICHAELS J INC	065596
MICHIGAN RIVET CORP	065666
MICRO BIO MEDICS INC	318251
MICRODYNE CORP	065743
MICROLOG CORP	792094
MICROS SYSTEMS INC	320345
MID CITY BANCORP	709331
MID PLAINS TELEPHONE INC	065901
MID SOUTH BANCORP INC /KY/	713143
MIDSOUTH BANCORP INC	745981
MILLER BUILDING SYSTEMS INC	791905
MILLFELD TRADING CO INC	857737
MILTEX MORTGAGE ACCEPTANCE CORP	768604
MINING SERVICES INTERNATIONAL CORP	356342
MINNTECH CORP	724969
ML TECHNOLOGY VENTURES LP	748828
MMI MEDICAL INC	746072
MOLECULON INC	729069
MONARCH BANCORP	721670
MONITERM CORP	351507
MONMOUTH REAL ESTATE INVESTMENT CORP	067625
MONTGOMERY BANCORP INC	807522
MOORE HANDLEY INC /DE/	788951
MORGANS FOODS INC	068145
MOSCOM CORP	747605
MOTO PHOTO INC	704508
MOTOR CLUB OF AMERICA	068480
MOUNTAIN MEDICAL EQUIPMENT INC	351707
MULTI BENEFIT REALTY FUND 87-1	802200
MULTIVEST REAL ESTATE FUND LTD SERIES IV	205671
MULTIVEST REAL ESTATE FUND LTD SERIES V	068841
MULTIVEST REAL ESTATE FUND LTD SERIES VI	068842
MUNICIPAL DEVELOPMENT CORP	790812
MURRAY INCOME PROPERTIES I LTD	742299
MURRAY INCOME PROPERTIES II LTD	786163
MYCOGEN CORP	813742
MYERS L E CO GROUP	700923
MYLEX CORP	731619
NAHAMA & WEAGANT ENERGY CO	350070
NAMSCO CORP	822373
NANOMETRICS INC	704532
NANTUCKET INDUSTRIES INC	069623
NAPA NATIONAL BANCORP	700699
NATEC RESOURCES INC	050361
NATIONAL BANCSHARES CORP /OH/	790362
NATIONAL CAPITAL MANAGEMENT CORP	826495
NATIONAL ENTERPRISES INC	070202
NATIONAL ENVIRONMENTAL GROUP INC	316996
NATIONAL HERITAGE INC	810306
NATIONAL HERITAGE INDUSTRIES INC	824428
NATIONAL HMO CORP/DE	726389

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
NATIONAL HOUSING PARTNERSHIP REALTY FUND IV	780149
NATIONAL HOUSING TRUST LIMITED PARTNERSHIP	818803
NATIONAL LEASE INCOME FUND 2	717726
NATIONAL MICRONETICS INC	070333
NATIONAL REAL ESTATE LTD PARTNERSHIP V	729445
NATIONAL SECURITIES CORP/WA/	811859
NATIONAL TECHNICAL SYSTEMS INC /DE/	110536
NATIONWIDE CELLULAR SERVICE INC	795265
NATURES BOUNTY INC	070793
NATURES SUNSHINE PRODUCTS INC	275053
NBT BANCORP INC	790359
NET 1 L P	821129
NETWORK GENERAL CORPORATION	844643
NEUROGEN CORP	849043
NEW ENGLAND LIFE PENSION PROPERTIES	711417
NEW ENGLAND REALTY ASSOCIATES LIMITED PARTNERSHIP	746514
NEW IMAGE INDUSTRIES INC	853706
NEW ULM TELECOM INC	071557
NEW VISIONS ENTERTAINMENT CORP	356906
NEWMAN FINANCIAL CORP	785655
NEWPARK RESOURCES INC	071829
NEWPORT ELECTRONICS INC	071842
NEWPORT PHARMACEUTICALS INTERNATIONAL INC /DE/	110074
NHD STORES INC	070182
NICHOLS RESEARCH CORP /AL/	806386
NMR OF AMERICA INC	724141
NOONEY INCOME FUND LTD II L P	757764
NOONEY INCOME FUND LTD III LP	797976
NOONEY INCOME FUND LTD LP	725266
NOONEY REAL PROPERTY INVESTORS FIVE L P	708133
NOONEY REAL PROPERTY INVESTORS FOUR L P	700720
NOONEY REAL PROPERTY INVESTORS THREE L P	350113
NOONEY REALTY TRUST INC	748580
NORTH AMERICAN BIOLOGICALS INC	072444
NORTH ATLANTIC INDUSTRIES INC	072575
NORTH BAY BANCORP	754440
NORTHEAST WISCONSIN FINANCIAL SERVICES INC	793498
NORTHERN EMPIRE BANCSHARES	746253
NORTHERN NECK BANKSHARES CORP	750005
NORTHLAND CABLE PROPERTIES SEVEN LP	813658
NORTHLAND CABLE PROPERTIES SIX LP	788736
NORTHWEST TELEPRODUCTIONS INC	073048
NORTHWESTERN DRUG CO	073058
NOVA TECHNOLOGY LIMITED PARTNERSHIP	815563
NOVAMETRIX MEDICAL SYSTEMS INC	310450
NTS PROPERTIES III	703667
NTS PROPERTIES IV	719589
NTS PROPERTIES V	745302
NU HORIZONS ELECTRONICS CORP	718074
NUCLEAR DATA INC /DE/	073271
NUCLEAR SUPPORT SERVICES INC	317488
NUCORP INC / DE/	837906
NUVISION INC	756918
NYCAL CORP	706086
OHIO ART CO	073942
OKC LTD PARTNERSHIP	353607
OLD FASHION FOODS INC/GA	724103
OLD STONE CORP	074273
OLSON INDUSTRIES INC /DE/	074374
OLYMPIA BROADCASTING CORP	786539
OLYMPIC NATIONAL BANCORP	710985
OMNICORP LTD	719775
ONCOGENE SCIENCE INC	729922
ONE AMERICAN CORP	706817
ONE LIBERTY PROPERTIES INC	712770
ONE PRICE CLOTHING STORES INC	812446
OPPENHEIMER INDUSTRIES INC	074864
OPTO MECHANIK INC	031688
ORTHOMET INC	765353
OSICOM TECHNOLOGIES INC	812491
OTRA SECURITIES GROUP INC	816330
OUTLET CENTRE PARTNERS	812094
OUTLOOK ALL SUITE HOTELS L P	810736
OUTLOOK PENSION INVESTORS	755869
OUTLOOK PROPERTIES FUND IV	777955
OVERMYER CORP	075189
OXFORD FUTURES FUND LTD	811100
OXFORD RESIDENTIAL PROPERTIES I LTD PARTNERSHIP	744786
OXIDYNE GROUP INC	310801
PACIFIC FIRST FINANCIAL CORP	741295
PACIFIC INLAND BANCORP	724179
PAGE AMERICA GROUP INC	311048
PAINE WEBBER GROWTH PROPERTIES LP	705191
PAINE WEBBER GROWTH PROPERTIES TWO LP	722569
PAINE WEBBER INCOME PROPERTIES SIX LTD PARTNERSHIP	745933
PAINE WEBBER IRB PROPERTY FUND LTD PARTNERSHIP	354875
PAINE WEBBER QUALIFIED PLAN PROPERTY FUND TWO LP	700913
PAINE WEBBER QUALIFIED PLAN PROPERTY FUND THREE LP	724136
PAINEWEBBER DEVELOPMENT PARTNERS FOUR LTD	772124
PAINEWEBBER EQUITY PARTNERS THREE LTD PARTNERSHIP	814460
PAINEWEBBER GEODYNE ENERGY INCOME LP I-E	806613
PAINEWEBBER GEODYNE ENERGY INCOME LP II-B	826345
PAINEWEBBER INCOME PROPERTIES TWO LTD PARTNERSHIP	313044
PAINEWEBBER MORTGAGE PARTNERS FIVE L P	779339
PAINEWEBBER RD PARTNERS LP	770470
PAJARO VALLEY BANCORPORATION	707801
PAN PETROLEUM MASTER LTD PARTNERSHIP	814850
PANATECH RESEARCH & DEVELOPMENT CORP	354992
PARADISE FRUIT CO INC /FL/	076149
PARIS BUSINESS FORMS INC	789660
PARKER & PARSLEY 83-B LTD	743457
PARKER & PARSLEY 84-A LTD	757545
PARKER & PARSLEY 86-C LTD	789791
PARKER & PARSLEY 87-A LTD	810999
PARKER & PARSLEY 87-B LTD	811000
PARLEX CORP	724988
PARLUX FRAGRANCES INC	802356
PATLEX CORP	076057
PDA ENGINEERING	759436
PEERLESS MANUFACTURING CO	076954
PENGO INDUSTRIES INC	225747
PENRIL CORP	077328
PENTECH INTERNATIONAL INC	760461
PEOPLES BANCSHARES OF POINTE COUPEE PARISH INC	720026
PEOPLES TELEPHONE COMPANY INC	819694
PERCEPTION TECHNOLOGY CORP	791453
PERCEPTRONICS INC	710217
PETROLEUM DEVELOPMENT CORP	077877
PETROLEUM INVESTMENTS LTD	356224
PHARMACONTROL CORP	353827
PHARMACY MANAGEMENT SERVICES INC	861049
PHARMAKINETICS LABORATORIES INC	351506
PHM FINANCE CORP I	745893
PHOENIX MEDICAL TECHNOLOGY INC	745167
PHOENIX RE CORP	799721
PHOTO CONTROL CORP	078311
PHOTRONICS INC	810136
PHP HEALTHCARE CORP	803568
PICO PRODUCTS INC	352994
PICTURETEL CORP	755095
PLACER BANCORPORATION	711651
PLASMA THERM INC	354452
PLAYERS INTERNATIONAL INC /NV/	798912
PLEXUS CORP	785786
PLYMOUTH RUBBER CO INC	079225
PNB FINANCIAL GROUP	704693
POE & ASSOCIATES INC	079282
POLK AUDIO INC	793982
POLORON PRODUCTS INC	079388
POP RADIO CORP	799937
POPE EVANS & ROBBINS INC	079511
PORTAGE INDUSTRIES CORP /DE/	808241
POTOMAC BANCORP INC	720469
PRAB ROBOTS INC	354383
PRE PAID LEGAL SERVICES INC	311657
PRESIDENTIAL REALTY CORP/NEW/ DE	731245
PRICOR INC	816247
PRIMA ENERGY CORP	318107
PRIME MEDICAL SERVICES INC	717421
PRIMEENERGY CORP	056668
PRISM ENTERTAINMENT CORP	773135
PRIVATE BRANDS INC	804084
PROCYTE CORP /WA/	856072
PROFESSIONAL BANCORP INC	700914
PROFIT SYSTEMS INC	076773
PROGRAMMING & SYSTEMS INC	080630
PROGROUP INC	080397
PROMETHEUS INCOME PARTNERS	803026
PRONET INC /DE/	815553
PROPERTY RESOURCES FUND VI	702313
PROPERTY RESOURCES FUND VII	718497
PRUDENTIAL BACHE VMS REALTY ASSOCIATES LP II	734362
PRUDENTIAL BACHE WATSON & TAYLOR LTD 2	737296
PRUDENTIAL BACHE WATSON & TAYLOR LTD 3	759726
PRUDENTIAL BACHE WATSON & TAYLOR LTD-4	780352
PS PARTNERS VIII LTD	793934
PSICOR INC	792853
PUBLIC STORAGE PROPERTIES IV LTD	225775
PUBLIC STORAGE PROPERTIES IX LTD	707883
PUBLIC STORAGE PROPERTIES V LTD	277925
PV FINANCIAL	702901
PVC CONTAINER CORP	081288
PYRAMIDWEST DEVELOPMENT CORP	072654
QANTEL CORP /NY/	067421
QUADREX CORP	073299
QUANTRONIX CORP	081426
QUAREX INDUSTRIES INC	081942
QUEST MEDICAL INC	351721
QUESTECH INC	737033
QUIKSILVER INC	805305
QUIPP INC	796577
RADIUS INC	805574
RADIX VENTURES INC	758452
RAL YIELD PLUS EQUITIES IV LTD PARTNERSHIP	799126
RAMSAY HMO INC	857404

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
RASTEROPS	833619
RAUCH INDUSTRIES INC	715817
READICARE INC	710851
REAL EQUITY PARTNERS	717303
REAL ESTATE ASSOCIATES LTD VII	722648
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP VI-A	822783
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP IV	763698
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP V	790067
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP III	733591
REALTY BUSINESS PARTNERS	766850
REALTY SOUTH INVESTORS INC	763736
RECEPTECH CORP	855611
RECOTON CORP	082536
RED EAGLE RESOURCES CORP	088997
REFAC TECHNOLOGY DEVELOPMENT CORP	082788
REGAL INTERNATIONAL INC	357434
REGENCY EQUITIES CORP	046656
REGIONAL FEDERAL BANCORP INC	801336
RELM COMMUNICATIONS INC	082845
REN CORP USA	840491
REPLIGEN CORP	730272
REPUBLIC CORP /TX/	202995
REPUBLIC SAVINGS FINANCIAL CORP	743136
RESEARCH INDUSTRIES CORP	083306
RESOURCE AMERICA INC	083402
RESOURCE RECYCLING TECHNOLOGIES INC	051519
RESOURCES ACCRUED MORTGAGE INVESTORS 2 LP	804671
RESPIRONICS INC	780434
RESURGENS COMMUNICATIONS GROUP INC	723527
RETAIL EQUITY PARTNERS LIMITED PARTNERSHIP	818021
REXHALL INDUSTRIES INC	850476
REXWORKS INC	811432
RIC 15 LTD	705973
RIC 16 LTD	717223
RIC 18 LTD	760087
RIC 19 LTD	771603
RIC 20 LTD	783317
RICHTON INTERNATIONAL CORP	083877
RIGHT MANAGEMENT CONSULTANTS INC	802806
RIVER OAKS INDUSTRIES INC	718978
RIVERSIDE PROPERTIES	084202
ROBERTS PHARMACEUTICAL CORP	853022
ROBERTS RICHARD REAL ESTATE GROWTH TRUST I	761236
ROBOTIC VISION SYSTEMS INC	225868
ROCKWOOD NATIONAL CORP	084651
RONSON CORP	084819
ROSS A J LOGISTICS INC	760031
ROTECH MEDICAL CORP	771142
ROYAL PALM BEACH COLONY LTD PARTNERSHIP	764606
ROYALPAR INDUSTRIES INC	085558
RSI HOLDINGS INC	853897
RUDYS RESTAURANT GROUP INC	793026
RURAL ELECTRIC COOP GRANTOR TRUST SOYLAND 1987-AZ	814695
RWB MEDICAL INCOME PROPERTIES 1 LTD PARTNERSHIP	750457
S&K FAMOUS BRANDS INC	723924
SADDLEBROOK RESORTS INC	313151
SADLIER WILLIAM H INC	086082
SAFEGUARD HEALTH ENTERPRISES INC	727303
SANDWICH CHEF INC	705409
SANDY CORP	778107
SARATOGA BANCORP	792700
SBC FINANCIAL CORP	763859
SBC TECHNOLOGIES INC /DE/	812955
SBT CORP /CT/	731276
SCANFORMS INC	087097
SCHEIB EARL INC	087196
SCHERER HEALTHCARE INC	763596
SCHWERMAN TRUCKING CO	887731
SCIENCE MANAGEMENT CORP	087759
SCIENTIFIC SOFTWARE INTERCOMP INC	087822
SCOTTS LIQUID GOLD INC	088000
SCS COMPUTE INC	727127
SDN BANCORP	701255
SEA GALLEY STORES INC	275885
SEAFIRST CORP	088178
SEATRAIN LINES INC	088275
SECONN HOLDING CO	764662
SECURED INVESTMENT RESOURCES FUND LP	745481
SECURITY CHICAGO CORP	723926
SECURITY FEDERAL CORPORATION	818677
SECURITY NATIONAL CORP /DE/	821672
SECURITY TAG SYSTEMS INC	356623
SEITEL INC	750813
SELECTERM INC	718577
SELECTRONICS INC	733472
SELFIX INC	814457
SEMTECH CORP	088941
SENIOR SERVICE CORP	799231
SERV TECH INC /TX/	852485
SERVICE FRACTURING CO	317832
SFE TECHNOLOGIES	088537
SFM CORP	089261
SHAER SHOE CORP	089269
SHARE PARTNERS LTD 1972	089411
SHAREBASE CORP	316845
SHARED IMAGING PARTNERS L P	812381
SHARED TECHNOLOGIES INC	817632
SHAWSVILLE BANCORP INC	789967
SHEARSON LEHMAN COAST SAVINGS HOUSING PARTNERS LTD	750304
SHEARSON LEHMAN FUTURES 1000 FUND	768158
SHEARSON MURRAY REAL ESTATE FUND II LTD	316290
SHEARSON MURRAY REAL ESTATE FUND III LTD	316067
SHEARSON MURRAY REAL ESTATE FUND VII LTD /TX/	709296
SHELTER PROPERTIES II LTD PARTNERSHIP	319723
SHELTER PROPERTIES III LTD PARTNERSHIP	353282
SHELTER PROPERTIES VII LTD PARTNERSHIP	758069
SHENANDOAH TELECOMMUNICATIONS CO/VA/	354983
SHERWOOD GROUP INC	811917
SHOPSMITH INC	089925
SHOWSCAN CORP	812682
SHURGARD GROWTH CAPITAL FUND 15 LTD PARTNERSHIP	808412
SHURGARD GROWTH CAPITAL FUND 17 LTD PARTNERSHIP	808413
SHURGARD INCOME PROPERTIES EIGHT	764767
SHURGARD INCOME PROPERTIES FIVE	733449
SHURGARD INCOME PROPERTIES FUND 16 LTD PARTNERSHIP	808416
SHURGARD INCOME PROPERTIES IV	721697
SHURGARD INCOME PROPERTIES NINE	764768
SHURGARD INCOME PROPERTIES SEVEN	764766
SHURGARD INCOME PROPERTIES SIX	750242
SI HANDLING SYSTEMS INC	088045
SICO INC	796220
SIERRA HEALTH SERVICES INC	754008
SIERRA ON LINE INC	724991
SIERRA TUCSON COMPANIES INC	855272
SIGNATURE VII LTD	769603
SIMETCO INC	073867
SIRCO INTERNATIONAL CORP	090721
SIS CORP	719113
SJNB FINANCIAL CORP	721161
SKYLINK AMERICA INC	799850
SMITHFIELD COMPANIES INC	835342
SOCIETY FOR SAVINGS BANCORP INC	810354
SOFTECH INC	354269
SOUTH BANKING CO	351566
SOUTH FLORIDA FINANCIAL CORP	753900
SOUTH VALLEY BANCORPORATION	704171
SOUTHEASTERN INCOME PROPERTIES LIMITED PARTNERSHIP	802869
SOUTHERN BANK GROUP INC	811098
SOUTHERN EDUCATORS LIFE INSURANCE CO	092149
SOUTHERN ELECTRONICS CORP	800286
SOUTHERN SCOTTISH INNS INC	092284
SOUTHMARK CRCA HEALTH CARE FUND VII LP	797672
SOUTHMARK CRCA HEALTH CARE FUND VIII L P	811674
SOUTHMARK CRCA HEALTH CARE INCOME FUND I LP	797504
SOUTHMARK EQUITY PARTNERS LTD	758427
SOUTHMARK INCOME INVESTORS LTD	750334
SOUTHMARK REALTY PARTNERS III LTD	783414
SOUTHWEST CAFES INC	719961
SOUTHWEST GEORGIA FINANCIAL CORP	315849
SOVEREIGN BANCORP INC	811830
SPAGHETTI WAREHOUSE INC	775298
SPAN AMERICA MEDICAL SYSTEMS INC	716924
SPARTAN MOTORS INC	743238
SPEAR FINANCIAL SERVICES INC	746425
SPEARHEAD INDUSTRIES INC	355968
SPECS MUSIC INC	777277
SPIRE CORP	731657
SPORTS ARENAS INC	093003
SPORTS SHINKO FLORIDA CO LTD	706073
SPRINGS VILLAGE LTD	813763
STAAR SURGICAL CORP	716937
STANSBURY HOLDINGS CORP	093566
STAR TECHNOLOGIES INC	733871
STARS TO GO INC	796040
STATESWEST AIRLINES INC	764259
STERLING BANCORPORATION /CA/	702170
STERLING ELECTRONICS CORP	094136
STERLING SUGARS INC	094185
STEVES HOMEMADE ICE CREAM INC	792643
STEWART SANDWICHES INC	094369
STOCKHOLDER SYSTEMS INC	732591
STOR FURNISHINGS INTERNATIONAL INC	861393
STRATAMERICA CORP	810829
STRATFORD AMERICAN CORP	836435
STRUTHERS WELLS CORP	094947
SUGARLOAF MOUNTAIN CORP	095153
SUMMIT BANCSHARES INC/CA	353203
SUMMIT OILFIELD CORP	355730
SUN COAST PLASTICS INC/DE/	319129
SUNAIR ELECTRONICS INC	095366
SUNGROUP INC	067903
SUNLITE INC	312540
SUPERTEX INC	730000
SUPRADUR COMPANIES INC	085616
SUPREME EQUIPMENT & SYSTEMS CORP	095620

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SURGICAL LASER TECHNOLOGIES INC /DE/	854099
SURVIVAL TECHNOLOGY INC	095676
SWIFT ENERGY INCOME PARTNERS 1987-B LTD	825167
SWIFT ENERGY INCOME PARTNERS 1987-C LTD	831329
SWITCHCO INC	354874
SYM TEK SYSTEMS INC	350615
SYMBION INC	720327
SYNBIOTICS CORP	719483
SYNERCOM TECHNOLOGY INC	710807
SYNTECH INTERNATIONAL INC	351940
SYNTREX INC	318280
T CELL SCIENCES INC	744218
TARA BANKSHARES CORP	814678
TASA PRODUCTS LTD	318346
TDINDUSTRIES INC	716757
TECH OPS LANDAUER INC	825410
TECHE BANCSHARES INC	740878
TECHNODYNE INC	315777
TECHNOLOGY DEVELOPMENT CORP	770719
TECHNOLOGY FUNDING SECURED INVESTORS I	764062
TECHNOLOGY FUNDING SECURED INVESTORS II	764061
TECOGEN INC	813895
TEKELEC	790705
TEMCO NATIONAL CORP	728392
TEMTEX INDUSTRIES INC	110740
TENERA LP	804731
TENNEY ENGINEERING INC	097184
TERMINAL DATA CORP	097224
TEXAS PACIFIC LAND TRUST	097517
TEXAS UTILITIES ELECTRIC CO	710182
TEXON ENERGY CORP	312827
TEXSCAN CORP/DE	771984
THACKERAY CORP	354639
THERMAL INDUSTRIES INC	097726
THERMAL PROFILES INC	319239
THERMO CARDIOSYSTEMS INC	841939
THOMSON ADVISORY GROUP L P	822426
THOR ENERGY RESOURCES INC	003933
THREE D DEPARTMENTS INC	034169
TIGERA GROUP INC	714399
TII INDUSTRIES INC	277928
TIPPERARY CORP	098410
TITUS FOODS INC	725458
TMBR SHARP DRILLING INC	751288
TODD AO CORP	061442
TONS OF TOYS INC	812153
TOTH ALUMINUM CORP	098788
TOWER BANCORP INC	740942
TOWER PROPERTIES CO	098827
TRACE PRODUCTS	731427
TRANS INDUSTRIES INC	099102
TRANS PACIFIC BANCORP	729661
TRANSNATIONAL INDUSTRIES INC	796228
TRANSNET CORP	099313
TRAVELERS INCOME PROPERTIES I LTD PARTNERSHIP	705024
TRAVELERS REALTY 100 LP	773655
TRC COMPANIES INC /DE/	103096
TREND LABORATORIES INC	800443
TRICARE INC	858452
TRIDEX CORP	047254
TRIMEDYNE INC	357001
TRIO TECH INTERNATIONAL	732026
TRION INC	099802
TROY INVESTMENT FUND	099927
TSENG LABS INC	741742
TSI CORP /DE/	841243
TSI INC	100063
TUCKER DRILLING CO INC	100102
TURF PARADISE INC	100217
TWO PESOS INC	802574
U S BIOSCIENCE INC	847582
U S SHELTER CORP /DE/	728360
UNICO AMERICAN CORP	100716
UNIFLEX INC	100740
UNIFORCE TEMPORARY PERSONNEL INC	740285
UNIMAX HOLDINGS CORP	747566
UNIPROP MANUFACTURED HOUSING COMM INCOME FUND	769856
UNITED BANCORP /OR/	101032
UNITED BANCORP INC /DE/	721357
UNITED BANCORP INC /OH/	731653
UNITED BANCORPORATION OF ALABAMA INC	704561
UNITED COASTS CORP	814497
UNITED FINANCIAL BANKING COMPANIES INC	714286
UNITED FINANCIAL GROUP INC/DE	355589
UNITED FINANCIAL OPERATIONS INC	225406
UNITED GROUP INC	101252
UNITED MOBILE HOMES INC	752642
UNITED PARK CITY MINES CO	101424
UNITED RESOURCES INC	101473
UNITED SECURITY BANCORPORATION	726990
UNITED SECURITY BANCSHARES INC	717806
UNITED STATES EQUIPMENT INCOME FUND II	773432
UNITED TOTE INC	750004
UNIVERSAL BANCORP INC	744638
UNIVERSAL HOLDING CORP	709878
UNIVERSAL SECURITY INSTRUMENTS INC	102109
UNIVERSITY REAL ESTATE FUND 12 LTD	713010
UNIVERSITY REAL ESTATE INVESTORS	276782
UNO RESTAURANT CORP	812075
URANIUM RESOURCES INC /DE/	839470
URT INDUSTRIES INC	101461
US BANCORP /OR/	101542
US ENERGY CORP	101594
US REALTY PARTNERS LTD PARTNERSHIP	788955
USAA REAL ESTATE INCOME INVESTMENTS I LP	751468
USAA REAL ESTATE INCOME INVESTMENTS II LP	820094
USB CORP	811163
USMX INC	315523
UTAH MEDICAL PRODUCTS INC	706698
UTILITECH INC	743029
VACATION SPA RESORTS INC	087992
VALLEY FAIR CORP	102678
VALLEY FINANCIAL SERVICES INC	719356
VALLEY FORGE CORP	102680
VALLEY INDUSTRIES INC	102695
VANDERBILT GOLD CORP	102854
VARI CARE INC	103000
VARITRONIC SYSTEMS INC	738633
VELOBIND INC	103168
VENCOR INC	740260
VENTREX LABORATORIES INC	203530
VENTURA ENTERTAINMENT GROUP LTD	828217
VENTURIAN CORP	745756
VERDIX CORP	722056
VERNON VALLEY RECREATION ASSOCIATION INC	705783
VERTEX COMMUNICATIONS CORP / TX/	780416
VESTRO FOODS INC	080418
VHA ENTERPRISES INC	748442
VHC LTD	719159
VIEJO BANCORP	718934
VIRATEK INC	351237
VISTA ORGANIZATION PARTNERSHIP LP	790411
VISUAL INDUSTRIES INC	103755
VITRONICS CORP	712036
VMS MORTGAGE INVESTORS L P	757245
VOIT CORP	083082
VOLUNTEER CAPITAL CORP / TN /	103884
VOPLEX CORP	103916
VTX ELECTRONICS CORP	798438
WALKER B B CO	104218
WALNUT EQUIPMENT LEASING CO INC	312259
WARWICK VALLEY TELEPHONE CO	104777
WASHINGTON COUNTY BANCSHARES INC	727276
WEBSTER CLOTHES INC	790984
WEDCO TECHNOLOGY INC	104060
WEGENER CORP	715073
WEIMAN CO INC/DE/	105336
WEITEK CORP	719322
WELDOTRON CORP	105519
WELLCO ENTERPRISES INC	105532
WELLESLEY LEASE INCOME LTD PARTNERSHIP D	720308
WELLESLEY LEASE INCOME LTD PARTNERSHIP IID	739712
WELLS GARDNER ELECTRONICS CORP	105608
WELLS REAL ESTATE FUND I	746259
WELLS REAL ESTATE FUND II	797544
WEST AMERICAN HOLDING INC	750540
WESTAMERICA INC	031964
WESTBRIDGE CAPITAL CORP	703701
WESTCOTT COMMUNICATIONS INC	850670
WESTERN COMMUNITY BANCORP	820749
WESTERN MICRO TECHNOLOGY INC	715842
WESTERN OHIO HEALTH CARE CORP	823548
WESTLAND DEVELOPMENT CO INC	106423
WESTWORLD RESOURCES INC	074278
WHITING PETROLEUM CORP	727097
WICAT SYSTEMS INC	351134
WICHITA RIVER OIL CORP/DE/	857566
WIENER ENTERPRISES INC	319320
WILAND SERVICES INC	748939
WILSHIRE CENTER BANCORP	320803
WINDSOR PARK PROPERTIES 3	774544
WINDSOR PARK PROPERTIES 4	796177
WINDSOR PARK PROPERTIES 5	818817
WINTHROP INSURED MORTGAGE INVESTORS I	706234
WINTHROP PARTNERS 80	315275
WINTHROP RESIDENTIAL ASSOCIATES III	711418
WISCONSIN SOUTHERN GAS CO INC	107841
WM REALTY LTD PARTNERSHIP	791852
WNS INC	769413
WOLF FINANCIAL GROUP INC	719774
WOODBURY TELEPHONE CO	108202
WORDSTAR INTERNATIONAL INC	719612
WORLD WIDE TECHNOLOGY INC	819479
WORTH CORP	701974
WORTHINGTON GEORGE CO	836155
X RITE INC	790818
XYLOGICS INC /DE/	810957
YES CLOTHING CO	856979
YORK RESEARCH CORP	108976
ZACHARY BANCSHARES INC	740875
ZITEL CORP	731647
ZYGO CORP	730716

Group CF-07

1ST AMERICAN BANCORP INC	806387
1ST SOURCE CORP	034782
ABQ CORP	721689
ACCESS CORP	001988
ACCUGRAPH CORP	811703
ACS ENTERPRISES INC	702511
ADTEC INC	809796
ADVANCED COMPUTER TECHNIQUES CORP	002467

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
ADVANCED ENERGY RESOURCES INC	740966
ADVANCED ENVIRONMENTAL RECYCLING TECHNOLOGIES INC	849706
ADVANCED MANUFACTURING SYSTEMS INC	319919
AEI REAL ESTATE FUND 85-A LTD PARTNERSHIP	750641
AEI REAL ESTATE FUND 85-B LTD PARTNERSHIP	771677
AEI REAL ESTATE FUND 86-A LTD PARTNERSHIP	795788
AEI REAL ESTATE FUND XV LTD PARTNERSHIP	793631
AFN INC	810351
AG AUTOMOTIVE WAREHOUSES INC	853882
AIC INTERNATIONAL INC	002860
AIR TRANSPORTATION HOLDING CO INC	353184
ALANCO RESOURCES CORP	098618
ALASKA NORTHWEST PROPERTIES INC	313809
ALCIDE CORP	708484
ALFA CORP	743532
ALFA INTERNATIONAL CORP	820600
ALL STATE PROPERTIES LP	745543
ALLERCARE INC	716193
ALLICO CORP	352996
ALPHAREL INC /CA/	813747
ALS FORMAL WEAR INC	824185
ALTAI INC	796313
AMALGAMATED AUTOMOTIVE INDUSTRIES INC	004325
AMBASSADOR FOOD SERVICES CORP	008734
AMBER RESOURCES CO	276750
AMCORE FINANCIAL INC	714756
AMERIBANC INC	004468
AMERICAN AFFORDABLE HOUSING III LTD PARTNERSHIP	815025
AMERICAN AIRCRAFT CORP/OR/	794803
AMERICAN BODY ARMOR & EQUIPMENT INC	845752
AMERICAN BUSINESS COMPUTERS CORP	748103
AMERICAN CAMPGROUNDS INC	004688
AMERICAN COMMUNICATIONS & TELEVISION INC	357070
AMERICAN DESIGN CORP	860427
AMERICAN DRUG SCREENS INC	837038
AMERICAN ENTERTAINMENT PARTNERS II L P	808378
AMERICAN EQUINE PRODUCTS INC	764199
AMERICAN EQUITY HOUSING FUND 1	317548
AMERICAN FILM TECHNOLOGIES INC /DE/	819028
AMERICAN FRANCHISE GROUP INC	351541
AMERICAN HOUSING PARTNERS	005207
AMERICAN INDEMNITY FINANCIAL CORP	005227
AMERICAN LIST CORP	005385
AMERICAN LOCKER GROUP INC	008855
AMERICAN MEDICAL BUILDINGS INC	005431
AMERICAN MEDICAL ELECTRONICS INC	715247
AMERICAN METALS SERVICE INC	319016
AMERICAN NETWORK GROUP INC	837296
AMERICAN PACIFIC MINT INC	701719
AMERICAN PLASTICS & CHEMICALS INC	078319
AMERICAN RESTAURANT PARTNERS L P	817900
AMERICAN RESTAURANTS CORP	729545
AMERICAN SAFETY CLOSURE CORP	770701
AMERICAN SCIENCE & ENGINEERING INC	005768
AMERICAN SCREEN CO	799296
AMERICAN VIDEO IMAGING INC	818263
AMERICUS MANAGEMENT CORP	066661
AMERIHOST PROPERTIES INC	778423
AMOSKEAG BANK SHARES INC	725729
AMRECORP REALTY FUND II	745061
AMSERV INC	078302
AMTECH SYSTEMS INC	720500
ANAHEIM FOUNDRY CO	839022
ANALYTICAL SURVEYS INC	753048
ANDOVER BANCORP INC	810589
ANDREA RADIO CORP	006494
ANGELON CORP/MN	815093
ANGELES OPPORTUNITY PROPERTIES LTD	789282
ANSONIA DERBY WATER CO	006694
APA OPTICS INC /MN/	796505
APACHE PETROLEUM LTD PARTNERSHIP 1980-I	318681
APPLIED DATA COMMUNICATIONS INC	726398
ARCUS INC	844849
ARDEN INTERNATIONAL KITCHENS INC	353575
ARES SERONO RESEARCH & DEVELOPMENT LTD PARTNERSHIP	813832
ARIZONA INSTRUMENT CORP	724804
ARLEN CORP	007346
ARMORED STORAGE INCOME INVESTORS LTD PARTNERSHIP	760719
ARROW MAGNOLIA INTERNATIONAL INC	061494
ARTEL COMMUNICATIONS CORP	718044
ARTISTIC GREETINGS INC	007910
ARTS WAY MANUFACTURING CO INC	007623
ASHLAND FINANCIAL SERVICES INC	007686
ASKCORP	314202
ASPEN WIND INC	841073
ASSOCIATED BANC CORP	007789
ASSOCIATED PLANNERS REALTY FUND	785791
ASSOCIATED PLANNERS REALTY INCOME FUND	808420
ASTRA CORP	008033
ASTRO DRILLING CO	351365
ASTROCOM CORP	215155
ATC ENVIRONMENTAL INC	828828
ATEL CASH DISTRIBUTION FUND	785867
ATHANOR GROUP INC	276314
ATI PHARMACEUTICALS INC	002616
ATLANTA MOTOR SPEEDWAY INC	008155
ATLANTIC RESTAURANT VENTURES INC	802480
ATLANTIC WEST LANDMARK PROPERTIES LTD	702338
ATRIX LABORATORIES INC	809875
AULT INC	723639
AURORA ENVIRONMENTAL INC	725518
AUTHENTICOLOR INC	008588
AUTHORIZED DISTRIBUTION NETWORK INC	843086
AUTO GRAPHICS INC	008598
AUTOMATIX INC	702891
AUTOMOBILE PROTECTION CORP APCO	833441
AZUSA VALLEY WATER CO	008958
BAKER COMMUNICATIONS INC	726656
BALA REALTY INC	804215
BALCHEM CORP	009326
BALCOR GROWTH FUND	792334
BALCOR INCOME PROPERTIES LTD	009329
BALCOR INCOME PROPERTIES LTD III	276216
BALVERNE CELLARS INC	706480
BANCFIRST CORP /OK/	760498
BANCORP OF MISSISSIPPI INC	701853
BANGOR AMERICA INC	031606
BANKEAST CORP	036322
BANKERS BUILDING LAND TRUST	314404
BANKERS FIRST CORP	732640
BANKWORCESTER CORP	811436
BARRINGER LABORATORIES INC	859463
BARRINGER RESOURCES INC	019119
BASIC EARTH SCIENCE SYSTEMS INC	010254
BASS REAL ESTATE FUND 84	750303
BASS REAL ESTATE FUND II	783992
BEAR STEARNS SECURED INVESTORS INC	806741
BEAUTY LABS INC	811422
BELL NATIONAL CORP	075439
BELLWETHER EXPLORATION CO	319459
BENEDICT NUCLEAR PHARMACEUTICALS INC	312651
BENTON OIL & GAS CO	845289
BERES INDUSTRIES INC	790710
BERGER HOLDINGS LTD	706777
BERNSTEIN LEIBSTONE ASSOCIATES INC /NY/	849343
BESICORP GROUP INC	320443
BEST BUY DRUGS INC	726443
BESTWAY RENTAL INC	004344
BETHLEHEM CORP	011856
BIG SKY TRANSPORTATION CO	313522
BIG TURTLE INC /ID/	318596
BIO LOGIC SYSTEMS CORP	355007
BIO REFERENCE LABORATORIES INC	792641
BIOMEDICAL DYNAMICS CORP	726570
BIOMERICA INC	073290
BIOPLASTY INC	040944
BIOSEARCH MEDICAL PRODUCTS INC	350646
BIOSPHERICS INC	012239
BIRDSBORO CORP	012257
BISHOP INC	012304
BLACK INDUSTRIES INC	012404
BLACK WARRIOR WIRELINE CORP	839871
BMF MORTGAGE INCOME FUND	758113
BMJ FINANCIAL CORP	731244
BOETTCHER PENSION INVESTORS LTD	745895
BOGEN CORP	732267
BOGERT 1986-II LIMITED PARTNERSHIP	806605
BOGERT 1986-III LIMITED PARTNERSHIP	806606
BOSTON BANCORP	760079
BOSTON FIVE BANCORP INC	826756
BOULEVARD BANCORP INC /DE/	746594
BOUNTY GROUP INC	810674
BOUTON CORP/PA	064382
BOWLES FLUIDICS CORP	013585
BOWLINE CORP	034682
BRAUVIN REAL ESTATE FUND I	318722
BRAUVIN REAL ESTATE FUND II	701467
BRILUND LTD	014231
BRISTOL HOLDINGS INC	014280
BRNF LIQUIDATING TRUST	751310
BROADCAST INTERNATIONAL INC / UT/	832411
BRUSH CREEK MINING & DEVELOPMENT CO INC	715583
BRYAN STEAM CORP	014971
BT ENERGY CORPORATION	716786
BT FINANCIAL CORP	716459
BUCKEYE FINANCIAL CORP	314462
BUILDERS DESIGN INC /DE/	812629
BULL & BEAR GROUP INC	052234
BULL RUN GOLD MINES LTD	319697
BURGER KING LTD PARTNERSHIP I	356958
BURGER KING LTD PARTNERSHIP II	705740
BURGER KING LTD PARTNERSHIP III	733667
BUTTERFIELD PREFERRED GROWTH FUND 83	355809
CK 1981 FUND A LTD	355058
CABLE CAR BEVERAGE CORP	081057

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
CABLE TV FUND 10-C LTD	711680
CABLE TV FUND 11-E LTD	751371
CABLE TV FUND 11-F	756904
CABLEVISION INVESTMENT OF DETROIT INC	806003
CACHE INC	350199
CALIFORNIA ALMOND INVESTORS I	806179
CALIFORNIA AMPLIFIER INC	730255
CALNETICS CORP	277376
CALSTAR INC	771777
CAMERA PLATFORMS INTERNATIONAL INC	775714
CANAL RANDOLPH LTD PARTNERSHIP	764129
CANAVERAL INTERNATIONAL CORP	016926
CANCER TREATMENT HOLDINGS INC	832092
CANTERBURY EDUCATIONAL SERVICES INC /PA/	794927
CANYON RESOURCES CORP	739460
CAPITAL BANCORP/FL	702164
CAPITAL BUILDERS DEVELOPMENT PROPERTIES /CA/	763978
CAPITAL BUILDERS DEVELOPMENT PROPERTIES II	791452
CAPITAL REALTY INVESTORS LTD	354521
CAPITAL RESOURCES REAL ESTATE PARTNERSHIP II	017294
CAPT CRAB INC	356622
CAPUCINOS INC /DE/	857134
CARDIAC CONTROL SYSTEMS INC	706507
CARE GROUP INC	847935
CARIBBEAN SELECT INC	774554
CARLSBERG MOBILE HOME PROPERTIES LTD	205132
CARLSBERG MOBILE HOME PROPERTIES LTD 72	017669
CARLYLE REAL ESTATE LTD PARTNERSHIP 72	017698
CARLYLE REAL ESTATE LTD PARTNERSHIP 73	017699
CARLYLE REAL ESTATE LTD PARTNERSHIP 74	017700
CAROLINA INVESTMENT PARTNERS LIMITED PARTNERSHIP	789457
CAROM CAPITAL CORP	759855
CARRINGTON LABORATORIES INC / TX/	716007
CARTER DAY INDUSTRIES INC	022296
CASPEN OIL INC	095254
CATTLEGUARD INC	842728
CB BANCSHARES INC/HI	316312
CB FINANCIAL CORP	351326
CBL MEDICAL INC	832440
CBLX HOLDINGS INC	818675
CCA INDUSTRIES INC	721447
CCC FRANCHISING CORP	790526
CCNB CORP	018387
CCR INC	789881
CEL COMMUNICATIONS INC	355271
CELINA FINANCIAL CORP	201401
CELLTRONICS INC	740664
CENTENNIAL PENSION INVESTORS LTD	707806
CENTRAL BANKING SYSTEM INC	018575
CENTRAL COAL & COKE CORP	018605
CENTRAL CORP /LA/	018620
CENTRAL JERSEY BANCORP	761201
CENTRAL PACIFIC CORP	350649
CENTREVEST CORP	766515
CENTURY BANCORP INC	812348
CENTURY MEDICORP	726985
CENTURY PACIFIC CORP	791770
CENTURY PROPERTIES EQUITY FUND 73	018904
CENTURY PROPERTIES FUND X	018909
CENTURY REALTY TRUST	018914
CERAMICS PROCESS SYSTEMS CORP/DE/	814676
CFS FINANCIAL CORP	752260
CFS REAL ESTATE INVESTORS LTD	735585
CHALCO INDUSTRIES INC	019082
CHARTER ONE FINANCIAL INC	819692
CHARTWELL PARTNERS LP	798660
CHASE CORP	830524
CHECK TECHNOLOGY CORP	350692
CHECKROBOT INC	773548
CHEMICAL FINANCIAL CORP	019612
CHERNE MEDICAL INC	731446
CHESTER COUNTY BANCSHARES INC	810997
CHIEF CONSOLIDATED MINING CO	019913
CHOICE DRUG SYSTEMS INC	792932
CHURCHILL TECHNOLOGY INC	721233
CIATTIS INC /DE/	802517
CIMARRON INVESTMENT CO INC	020270
CINCINNATI UNION STOCK YARD CO	020305
CIPRICO INC	720145
CIRCADIAN INC	738014
CITIZENS BANCORP /MD/	704054
CITIZENS BANKING CORP	351077
CITIZENS GROWTH PROPERTIES	020467
CITIZENS SECURITY GROUP INC / MN/	802971
CLARK COUNTY PROPERTIES 5	768681
CLARY CORP	020819
CLINICAL DATA INC	716646
CLINTON APPALACHIAN IX LTD PARTNERSHIP	773280
CLINTON APPALACHIAN V LTD PARTNERSHIP	727065
CLINTON APPALACHIAN VII LTD	748894
CLINTON APPALACHIAN X LTD PARTNERSHIP	788909
CM COMMUNICATIONS INC	852448
CMS DATA CORP	862420
CNB BANCSHARES INC	724198
CNS INC /DE/	814258
COACHMAN INC	816249
COACHMAN INNS INCOME LTD PARTNERSHIP	787494
COBB RESOURCES CORP	049444
CODENOLL TECHNOLOGY CORP	318379
COGNITRONICS CORP	021438
COLLEGE BOUND INC	824575
COLONIAL BANCGROUP INC	092339
COLONIAL DATA TECHNOLOGIES CORP	811243
COLONIAL STORAGE CENTERS I LTD	319000
COLONIAL STORAGE CENTERS II LTD	357175
COLONIAL STORAGE CENTERS III LTD	715763
COLOR SYSTEMS TECHNOLOGY INC/ DE	771617
COLUMBIA FUTURES FUND	701286
COLUMBIA LEASE INCOME FUND A LP	751683
COLUMBIA LEASE INCOME FUND B LP	751684
COLUMBIA LEASE INCOME FUND II-A LP	769332
COLUMBIA MANAGEMENT CO	022120
COLUMBIAN ENERGY CO LTD PARTNERSHIP	793521
COM TEK RESOURCES INC	732700
COMCAST CABLEVISION OF PHILADELPHIA INC	711419
COMMERCE GROUP CORP /DE/	109757
COMMERCIAL DECAL INC	022412
COMMODITY STRATEGY PARTNERS	700705
COMMODITY TREND TIMING FUND	310913
COMMODITY VENTURE FUND	318294
COMMONWEALTH BANCSHARES CORP	355574
COMMONWEALTH EQUITY TRUST USA	803771
COMMONWEALTH GROWTH FUND II	810387
COMPARATOR SYSTEMS CORP	277809
COMPONENTGUARD INC	818973
COMPUMED INC	700998
COMPUTER AUTOMATION INC	022962
COMPUTER COMMUNICATIONS INC	022973
COMPUTER IDENTICS CORP /MA/	023023
COMPUTER NETWORK TECHNOLOGY CORP	701319
COMPUTER RESEARCH INC	201511
COMPUTER TELEPHONE CORP	764841
CONDEV LAND GROWTH FUND 86 LTD	795280
CONESCO INDUSTRIES LTD	023314
CONFERTECH INTERNATIONAL INC	756768
CONOLOG CORP	023503
CONSOLIDATED CAPITAL CORP/FL/	023591
CONSOLIDATED IMAGING CORP	752346
CONSULIER ENGINEERING INC	846718
CONTINENTAL CONNECTOR INDUSTRIES INC	753282
CONTINENTAL REAL ESTATE PARTNERS LTD	024148
COPYTELE INC	715445
CORAL COMPANIES INC	821356
CORKEN INTERNATIONAL CORP	808021
CORTEX PHARMACEUTICALS INC/ DE/	849636
COVENTRY CARE INC	025243
CRAFTMADE INTERNATIONAL INC	856250
CREDO PETROLEUM CORP	277924
CRESTED CORP	025657
CRESTEK INC /NJ/	025652
CROP GENETICS INTERNATIONAL CORP	810818
CROWELL & CO INC /GA/	065905
CRYOMEDICAL SCIENCES INC	834365
CRYSTAL MOUNTAIN INC	026020
CSA INCOME FUND LTD PARTNERSHIP I-D	764629
CSM ENVIRONMENTAL SYSTEMS INC	085356
CUCOS INC	731724
CUTCO INDUSTRIES INC	026379
CVD EQUIPMENT CORP	766792
CYBERMEDIC INC	720013
CYBEROPTICS CORP	768411
DAEDALUS ENTERPRISES INC	026537
DAIG CORP	314416
DAIN PENSION INVESTORS 84	726370
DAIN PROPERTIES 81 LTD	350115
DAIN TEXAS PARTNERS	730566
DALLAS OIL & MINERALS INC	320380
DANNINGER MEDICAL TECHNOLOGY INC	731241
DAROX CORP	706743
DARTMOUTH BANCORP INC	740970
DATAGUARD RECOVERY SERVICES INC	797221
DATAIMAGE INC /DE/	853835
DATAKEY INC	704914
DATAMAG INC	795760
DAWSON GEOPHYSICAL CO	351231
DAYLIGHT INDUSTRIES INC	027399
DCX INC	783284
DDI PHARMACEUTICALS INC	109657
DE ROSE INDUSTRIES INC	028262
DECOM SYSTEMS INC	357176
DECORATOR INDUSTRIES INC	027613
DECORP INC	095133
DEL TACO INCOME PROPERTIES IV	812630
DEL TACO RESTAURANT PROPERTIES I	711213
DEL TACO RESTAURANT PROPERTIES II	749153

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
DEL TACO RESTAURANT PROPERTIES III	786360
DELPHI INFORMATION SYSTEMS INC /DE/	814549
DENSE PAC MICROSYSTEMS INC	784770
DENTO MED INDUSTRIES INC	028146
DESCHUTES BUSINESS PARK CO LTD	313420
DESIGNCRAFT INDUSTRIES INC/DE/	028325
DEV TECH CORP	818970
DEWEY ELECTRONICS CORP	028561
DIGIMETRICS INC	814853
DIGITAL METCOM INC	756759
DIGITAL OPTRONICS CORPORATION	816954
DIGITAL PRODUCTS CORP	028895
DIGITAL TRANSMISSION INC	764577
DIMENSIONAL MEDICINE INC	723799
DIMENSIONAL VISIONS GROUP LTD	836809
DIODES INC /DEL/	029002
DIRECT PHARMACEUTICAL CORP	745460
DISCOVERY TECHNOLOGIES INC / KS/	857949
DISCUS CORP	746156
DIVERSIFIED FOODSERVICE DISTRIBUTORS INC	800263
DIVERSIFIED HISTORIC INVESTORS IV INCOME FUND	810623
DIVERSIFIED HUMAN RESOURCES GROUP INC	779226
DIVERSIFIED INDUSTRIAL CORP OF KANSAS INC	029207
DIVERSIFIED RETAIL GROUP INC	820163
DOUBLE HELIX FILMS INC	758924
DOVER LEASING INCOME FUND LTD 1-A	766495
DREXLER TECHNOLOGY CORP	030140
DRX INC	320211
DSI REALTY INCOME FUND IX	764586
DSI REALTY INCOME FUND VIII	743366
DSP TECHNOLOGY INC	773720
DTI MEDICAL CORPORATION INC	718247
DURATEK CORP	785186
DYCO 1979 OIL & GAS PROGRAMS	276338
DYCO 1980 OIL & GAS PROGRAMS	313317
DYCO 1982 OIL & GAS PROGRAMS	354808
DYCO 1985 OIL & GAS PROGRAMS	751337
DYCO OIL & GAS PROGRAM 1979-2	806574
DYCO OIL & GAS PROGRAM 1980-1	806576
DYCO OIL & GAS PROGRAM 1980-2	806577
DYCO OIL & GAS PROGRAM 1981-1	702402
DYCO OIL & GAS PROGRAM 1981-2	702403
DYCO OIL & GAS PROGRAM 1982-1	718943
DYCO OIL & GAS PROGRAM 1983-1	719958
DYCO OIL & GAS PROGRAM 1983-2	715369
DYCO OIL & GAS PROGRAM 1984-1	725261
DYCO OIL & GAS PROGRAM 1984-2	725262
DYCO OIL & GAS PROGRAM 1985-1	751255
DYCO OIL & GAS PROGRAM 1985-2	751256
DYCO OIL & GAS PROGRAM 1986-2	778961
DYCO OIL & GAS PROGRAM 1986-X	803095
DYCO OIL & GAS PROGRAM 1987-1	811438
DYCO OIL & GAS PROGRAM 1987-2	811442
DYNA GROUP INTERNATIONAL INC	844787
DYNAMIC AMERICAN CORP	030780
DYNAMIC CLASSICS LTD/DE	030786
DYNATRONICS LASER CORP	720875
E&J PROPERTIES LTD	350268
EAGLE ENTERTAINMENT INC	790066
EARTHWORM INC	752363
ECC ENERGY CORP	836044
ECOGEN INC	814050
EDISON CONTROL CORP	795968
EDUCATIONAL DEVELOPMENT CORP	031667
EFI ELECTRONICS CORP	785970
EIP MICROWAVE INC	026782
ELECTRO CATHETER CORP	032120
ELECTRO SENSORS INC	351789

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
ELECTRONIC CLEARING HOUSE INC	721773
ELECTRONIC TECHNOLOGY GROUP INC	854556
ELECTRONIC TELE COMMUNICATIONS INC	773547
ELECTRONICS MISSILES & COMMUNICATIONS INC	032312
ELECTROSOURCE INC	823927
ELEXIS CORP	808305
ELMERS RESTAURANTS INC	771214
ELXSI CORP	712843
EMPI INC	317032
EMPIRE BANC CORP	810830
ENCHANTED PARKS INC	764217
ENCORE GROUP INC	276259
ENDOTRONICS INC	704384
ENERGETICS INC	032866
ENERGY SOURCES INC	032907
ENEX OIL & GAS INCOME PROGRAM II-1	743801
ENEX OIL & GAS INCOME PROGRAM II-2	757658
ENEX OIL & GAS INCOME PROGRAM III SERIES 5 LP	825247
ENEX OIL & GAS INCOME PROGRAM III SERIES 4 LP	820159
ENGINEERING MEASUREMENTS CO	205303
ENSTAR INCOME GROWTH PROGRAM FIVE-A LP	805391
ENSTAR INCOME GROWTH PROGRAM FIVE-B LP	805392
ENSTAR INCOME PROGRAM 1984-1 LP	737762
ENSTAR INCOME PROGRAM II-1 LP	757595
ENSTAR INCOME PROGRAM II-2 LP	757597
ENSTAR INCOME PROGRAM IV-1 LP	783763
ENSTAR INCOME PROGRAM IV-2 LP	783764
ENSTAR INCOME PROGRAM IV-3 LP	783765
ENVIRONMENT ONE CORP	033081
ENVIRONMENTAL MONITORING & TESTING CORPORATION	842919
ENVIRONMENTAL SERVICES OF AMERICA INC	773399
ENVIROPACT INC	797989
EPITOPE INC/OR/	801555
EQUIPMENT COMPANY OF AMERICA	033195
EQUITY AU INC	830741
EQUITY CONCEPTS INC	769853
ERC INDUSTRIES INC /DE/	775477
ERNST DIESSNER MORTGAGE FUND 86 LTD PARTNERSHIP	785545
ESCAGENETICS CORP	810370
ESPERO ENERGY CORP	230624
EUROCAPITAL CORP	357010
EUROPA CRUISES CORP	844887
EVERGREEN BANCORP INC	351521
EXCALIBUR TECHNOLOGIES CORP	316222
EXCEL BANCORP INC	793589
EXCEL INTERFINANCIAL CORP	354247
EXCEL REALTY TRUST INC	798288
EXECUTIVE NATIONAL DEVELOPMENT CORP	703805
EXECUTIVE OFFICE GROUP INC	834935
EXPLORATION CO	313395
EXPLOSIVE FABRICATORS INC	034067
EXPORT TYRE HOLDING CO	798275
F M G RITA RANCH LIMITED PARTNERSHIP	820047
F&M FINANCIAL SERVICES CORP	357372
FAIRCOM INC	810827
FAIRMOUNT CHEMICAL CO INC	034296
FARADYNE ELECTRONICS CORP	034497
FARM FISH INC	034551
FBX CORP	799904
FCS LABORATORIES INC	719130
FDP CORP	722826

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
FEDERATED NATURAL RESOURCES CORP	722203
FEDERATED PURCHASER INC	034977
FERTILITY & GENETICS RESEARCH INC	779162
FIBERCHEM INC /IA/	811014
FIDELITY LEASING INCOME FUND	740867
FIDELITY MEDICAL INC	320017
FILMSTAR INC /DE/	819794
FINANCIAL INSTITUTIONS INSURANCE GROUP LTD	805647
FINANCIAL LAND CORP	035754
FINANCIAL TRUST CORP	702508
FIND SVP INC	801338
FINGERMATRIX INC	316618
FIRECOM INC	732248
FIREPLACE MANUFACTURERS INC	738992
FIRETECTOR INC	823130
FIRST CENTENNIAL CORP	318638
FIRST CITIZENS BANCSHARES INC / NC/	798941
FIRST COLONIAL BANKSHARES CORP	275380
FIRST COMMERCE BANCSHARES INC	768532
FIRST COMMERCIAL BANCSHARES INC	720643
FIRST COMMERCIAL CORP	316769
FIRST CONSTITUTION FINANCIAL CORP	790071
FIRST CONTINENTAL BANCSHARES INC	700571
FIRST EASTERN CORP /PA/	357427
FIRST ESSEX BANCORP INC	806246
FIRST EVERGREEN CORP	278138
FIRST FINANCIAL BANCORP /OH/	708955
FIRST FINANCIAL CORP /IN/	714562
FIRST FINANCIAL CORP /TX/	036315
FIRST ILLINOIS CORP	036398
FIRST INDIANA CORP	789670
FIRST INTERSTATE CORP OF WISCONSIN	020438
FIRST INTERSTATE OF HAWAII INC	775749
FIRST INTERSTATE OF IOWA INC	276293
FIRST LIBERTY FINANCIAL CORP	760077
FIRST MICHIGAN BANK CORP	036522
FIRST MIDWEST BANCORP INC	702325
FIRST NATIONAL OF NEBRASKA INC	036725
FIRST NATIONAL PENNSYLVANIA CORP	351396
FIRST PEOPLES FINANCIAL CORP	807521
FIRST PROVIDENT GROUP INC	802904
FIRST SECURITY CORP OF KENTUCKY	036896
FIRST STATE FINANCIAL SERVICES INC	820240
FIRST SUN SOUTH CORP	043566
FIRST WESTERN BANCORP INC	740876
FIRST WESTERN FINANCIAL CORP	037059
FIRSTBANK OF ILLINOIS CO	037093
FIRSTIER FINANCIAL INC /NE/	074431
FISCHER WATT GOLD CO INC	844788
FISHER TRANSPORTATION SERVICES INC	811237
FLAMEMASTER CORP	037358
FLIGHT DYNAMICS INC	352284
FLOCK INDUSTRIES INC	037509
FLORAFAX INTERNATIONAL INC	037525
FLORIDA GLASS INDUSTRIES INC	037594
FLORIDA INCOME FUND LP	737829
FMA REALTY INVESTORS I LTD PARTNERSHIP	715269
FNB CORP/PA	037808
FOLIAGE PLUS INC	778702
FORD BANK GROUP INC	778168
FORT WAYNE NATIONAL CORP	357269
FORTUNE FINANCIAL GROUP INC	734370

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
FORTY SIX HUNDRED LTD PARTNERSHIP	766826
FOX TECHNOLOGY INC	721776
FRANCHISEIT CORP	733595
FRANKFORD CORP	700714
FRANKLIN CONSOLIDATED MINING CO INC	215913
FRANKLIN TELECOMMUNICATIONS CORP	722572
FRONTEER DIRECTORY COMPANY INC	844780
FRONTIER ADJUSTERS OF AMERICA INC	735349
FRONTIER INSURANCE CO	039244
FRONTIER INSURANCE GROUP INC	797496
FULTON FINANCIAL CORP	700564
FUTURE COMMUNICATIONS INC	032190
FUTURE FUND II	354983
GAINER CORP	705029
GALAXY CHEESE CO	819527
GALVEST INC	842808
GARB OIL & POWER CORP	798371
GATEWAY COMMUNICATIONS INC	725876
GC INTERNATIONAL INC /CA	841708
GEMINI 87-88 XI L P	813784
GEMINI 87-88 XII L P	813785
GEMINI EQUIPMENT PARTNERS INCOME FUND IV LP	761276
GEMINI EQUIPMENT PARTNERS INCOME FUND V	761277
GEMINI EQUIPMENT PARTNERS INCOME FUND VI LP	761278
GEMINI EQUIPMENT PARTNERS INCOME FUND X LP	761282
GENERAL BUILDERS CORP	040472
GENERAL DEVICES INC	040528
GENERAL EMPLOYMENT ENTERPRISES INC	040570
GENERAL KINETICS INC	040675
GENERAL MAGNAPLATE CORP	040687
GENERAL PARCEL SERVICE INC	853532
GENERAL SCIENCES CORP	789096
GENEX CORP	704695
GEORESOURCES INC	041023
GEOTEL INC	041114
GEXA GOLD CORP	821113
GISH BIOMEDICAL INC	700945
GLASSMASTER CO	109870
GLOBAL ENVIRONMENTAL CORP	825521
GMX COMMUNICATIONS INC	790933
GNC ENERGY CORP	043398
GO VIDEO INC	784721
GODDARD INDUSTRIES INC	041980
GOLD KING CONSOLIDATED INC	314834
GOLD MEDALLION CORP SHAREHOLDERS LIQUIDATING TRUST	042100
GOLD STANDARD INC	042136
GOLDEN OIL CO /DE/	350685
GOODHEART WILLCOX CO INC	042504
GRAHAM INCOME FUND 82A	400001
GRAYHOUND ELECTRONICS INC	833216
GREAT AMERICAN CORP	043271
GREAT EASTERN ENERGY & DEVELOPMENT CORP	352871
GREAT WESTERN SYSTEMS INC	068805
GREENSTONE RABASCA ROBERTS INC	845048
GREENWICH PHARMACEUTICALS INC	094784
GREENWOOD HOLDINGS INC/CO/	718474
GROWTH DEVELOPMENT CORP	783266
GTS CORP/DE/	041107
GUILDER 82 PROPERTY CO	706148
GUILDER 83 PROPERTY CO	719503
GULF EXPLORATION CONSULTANTS INC	824088
GYRODYNE COMPANY OF AMERICA INC	044689

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
HABERSHAM ENERGY CO	101704
HADSON EUROPE INC	350091
HALL INSTITUTIONAL MORTGAGE FUND LTD PARTNERSHIP	757004
HAMILTON DIGITAL CONTROLS INC	045136
HAMPTON INCOME FUND LTD 1983-B	704868
HANDY HARDWARE WHOLESALE INC	354053
HANDYMAN CORP	768806
HARBOR AMERICAN HEALTH CARE TRUST INC	810836
HARCOR ENERGY INC	315272
HARDINGE BROTHERS INC	313716
HARRIER INC	789847
HAWAIIAN ELECTRIC CO INC	046207
HAWKEYE BANCORPORATION	046238
HAWKINS ENERGY CORP	854661
HAWKS INDUSTRIES INC	015678
HAWTHORNE FINANCIAL CORP	046267
HDR POWER SYSTEMS INC /DE/	803348
HEALTH CONCEPTS IV INC	811565
HEALTHWATCH INC	725627
HEARX LTD /DE/	821536
HEI INC	351298
HELIONETICS INC	319648
HEMACARE CORP /CA/	801748
HEMODYNAMICS INC	801350
HERITAGE FINANCIAL SERVICES INC /IL/	355946
HIA INC	318189
HICKOK ELECTRICAL INSTRUMENT CO	047307
HICKORY HILLS LTD	824481
HICKORY LENDERS LTD	824482
HIGHLANDER INTERNATIONAL CORP	704774
HIGHLINE INDUSTRIES INC	313372
HILLIARD FUND 79-A LTD	314016
HILLIARD FUND 79-B LTD	314018
HMO AMERICA INC	742415
HODGSON HOUSES INC	047800
HOLOGIC INC	859737
HOMEFREE VILLAGE RESORTS INC	065291
HOMEOWNERS GROUP INC	831906
HOMESTEAD MINERALS CORP	048276
HORNBECK OFFSHORE SERVICES INC	354359
HOSOI GARDEN MORTUARY INC	048544
HOSPOSABLE PRODUCTS INC	048589
HOTELECOPY INC	854883
HOUSTON OIL ROYALTY TRUST	316245
HUMPHREY INC	049101
HUTTON APACHE 1982 ENERGY INCOME FUND LTD	702653
HUTTON ENERGY ASSETS 2ND OIL & GAS COMP & EQUIP LP	791997
HUTTON INVESTORS FUTURES FUND L P III	821541
HUTTON PRC TECHNOLOGY PARTNERS 2	751313
HYCOR BIOMEDICAL INC /DE/	719447
HYDRAULIC PRESS BRICK CO	049425
HYDROGEN ENERGY CORP	215244
HYTEK MICROSYSTEMS INC	715593
IDS JMB BALANCED INCOME GROWTH LTD	811430
IDS MANAGED FUTURES L P	809061
IEH CORPORATION	050292
IMAGE RETAILING GROUP INC	814611
IMEX MEDICAL SYSTEMS INC	715430
IMMUCELL CORP /DE/	811641
IMMUNOMEDICS INC	722830
IMPERIAL BANCORP	049899
IMPERIAL INDUSTRIES INC	049930
IMREG INC	730757
IMTEC INC	730045
IN HOME HEALTH INC /MN/	818645
INDEPENDENCE LEAD MINES CO	050073

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
INDEPENDENT AMERICAN PARTICIPATING INCOME FUND LP	760688
INDEPENDENT BANK CORP /MA/	776901
INDUSTRIAL INVESTMENT CORP	050326
INDUSTRIAL TRAINING CORP	764867
INFINITE GRAPHICS INC	744500
INFODATA SYSTEMS INC	050420
INFORMATION MANAGEMENT TECHNOLOGIES CORP	824578
INFORMATION SCIENCE INC	721934
INFORMATION SOLUTIONS INC	723574
INFRASONICS INC	748618
INLAND GOLD & SILVER CORP /WA/	811038
INLAND MORTGAGE INVESTORS FUND LP	786149
INLAND REAL ESTATE GROWTH FUND II LP	817652
INRAD INC	719494
INSURED INCOME PROPERTIES 1981	318844
INTECH INC	110640
INTEGRAL SYSTEMS INC /MD/	718130
INTEGRATED SYSTEMS INC	775163
INTEK DIVERSIFIED CORP	050977
INTERCARE INC	773678
INTERCIM CORP	744731
INTERFERENCE CONTROL TECHNOLOGIES INC	751314
INTERFERON SCIENCES INC	351532
INTERMARK GAMING INTERNATIONAL INC/DE/	764839
INTERNATIONAL 800 TELECOM CORP	814220
INTERNATIONAL AIRLINE SUPPORT GROUP INC	859307
INTERNATIONAL BANCSHARES CORP	315709
INTERNATIONAL BARRIER CORP	842396
INTERNATIONAL BASIC RESOURCES INC	038483
INTERNATIONAL BROADCAST SYSTEMS LTD /DE/	846923
INTERNATIONAL CMOS TECHNOLOGY INC	798965
INTERNATIONAL CONTAINER SYSTEMS INC	768832
INTERNATIONAL HOLDING CAPITAL CORP	751417
INTERNATIONAL REMOTE IMAGING SYSTEMS INC	319240
INTERNATIONAL YOGURT CO	821572
INTERWEST MEDICAL CORP	717197
INVENTION DESIGN ENGINEERING ASSOCIATES	719582
INVESTORS COMMODITY FUND III	814440
INVESTORS TITLE CO	720858
IOWA NATIONAL BANKSHARES CORP	355818
IPL SYSTEMS INC	351810
IRE PENSION INVESTORS LTD-II	775440
IRONTON IRON INC	771176
ISOMET CORP	052708
ISRAMCO INC	719209
J2 COMMUNICATIONS /CA/	798078
JACKS INC	797894
JACQUES MILLER BALANCED FUND LP	785958
JACQUES MILLER REALTY PARTNERS LP	703710
JAEGER INDUSTRIES INC	216262
JASON NORTHCO PROPERTIES LTD PARTNERSHIP II	746031
JEAN PHILIPPE FRAGRANCES INC	822663
JENNIFER CONVERTIBLES INC	806817
JEROME GROUP INC /DE/	053448
JMB 245 PARK AVENUE ASSOCIATES LTD	747159
JMB INCOME PROPERTIES LTD 1973	053569
JMB MANHATTAN ASSOCIATES LTD	771210
JOHNSON ELECTRONICS INC	053678

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
JOHNSTOWN CONSOLIDATED INCOME PARTNERS 2	812431
JONES CABLE INCOME FUND 1-A	779542
JOURNEYS END RESORTS INC	825797
JRM HOLDINGS INC	821609
K MED CENTERS INC	724267
KAMENSTEIN M INC	734101
KAPPA NETWORKS INC	748212
KAUFMAN H W FINANCIAL GROUP INC	054750
KELDON OIL CO	205508
KEMPER FINANCIAL COMPANIES INC	799367
KENILWORTH SYSTEMS CORP	055234
KENTANA DEVELOPMENT INC	313261
KEVLIN MICROWAVE CORP	701194
KEY CENTURION BANCSHARES INC	723648
KEY CO /NC/	055536
KEYSTONE FINANCIAL INC	717809
KEYSTONE HERITAGE GROUP INC	715366
KEYSTONE MORTGAGE FUND	793038
KEYSTONE MORTGAGE FUND II	812084
KINNARD INVESTMENTS INC	314037
KITCHEN BAZAAR INC	837022
KLEER VU INDUSTRIES INC/DE/	719729
KNICKERBOCKER VILLAGE INC	056396
KNOWLEDGE DATA SYSTEMS INC	319316
KOALA TECHNOLOGIES CORP /CA/	801873
KOBER CORP	313142
KP GRUBB & ELLIS REALTY INCOME FUND LP	806186
KREISLER MANUFACTURING CORP	056806
KRUPP ASSOCIATES 1980-1	318526
KUSTOM ELECTRONICS INC	057041
LAKE SHORE BANCORP INC	356598
LAKELAND DEVELOPMENT CORP	057370
LANCER ORTHODONTICS INC /CA/	057538
LANDER ENERGY CO	103657
LANDMARK BANCORP	705403
LANE PLYWOOD INC	351864
LANGER BIOMECHANICS GROUP INC	725460
LARCHDALE OWNERSHIP CO LTD	753258
LARSON DAVIS INC	789851
LASER CORP	740726
LASER MASTER INTERNATIONAL INC	700892
LASERMETRICS INC	057881
LASERTECHNICS INC	710597
LE PEEP RESTAURANTS INC	793630
LEADVILLE CORP	058204
LEASTEC INCOME FUND 1984-I	768373
LEASTEC INCOME FUND 1985-I	756939
LECTEC CORP /MN/	805928
LIBRARY BUREAU INC	225662
LIFECO INVESTMENT GROUP INC	802677
LIFECORE BIOMEDICAL INC	028626
LIFESURANCE CORP	059425
LINCOLN FINANCIAL CORP	059532
LINCOLN INTERNATIONAL CORP	059544
LINCOLN LOGS LTD	717422
LINPRO SPECIFIED PROPERTIES	790816
LITTLEFIELD ADAMS & CO	059870
LLOYDS ACCEPTANCE CORP	820087
LMR LAND CO LTD /TN/	809938
LOBELL LANA INCOME PARTNERS II	789955
LOGIC DEVICES INC	802851
LOGIMETRICS INC	060128
LOJACK CORP	355777
LOMAK PETROLEUM INC	315852
LOYOLA CAPITAL CORP	798953
LRH INCOME PROPERTIES LTD	275663
LUND INTERNATIONAL HOLDINGS INC	820526
LUTHERAN BROTHERHOOD REALTY FUND I	821365
LYNTON GROUP INC	027566
MAGIC CIRCLE ENERGY CORP	315571
MAGIC YEARS CHILD CARE & LEARNING CENTERS INC	720131
MAGNA GROUP INC	036094
MAGNETECH CORP	743051
MAGNETIC TECHNOLOGIES CORP	015354
MALL CORP	796210
MANAGEMENT ASSISTANCE INC LIQUIDATING TRUST /NY/	785852
MANAGEMENT TECHNOLOGIES INC	806566
MANATRON INC	798736
MANSION INDUSTRIES INC	062090
MARGAUX INC /DE/	709694
MARINA LIMITED PARTNERSHIP	803605
MARINE CORP /IL/	713168
MARKETING SYSTEMS OF AMERICA INC	739281
MARKITSTAR INC	756680
MARLTON TECHNOLOGIES INC	096988
MARROW TECH INC	829549
MASCOTT CORP	850338
MASS MICROSYSTEMS INC	855610
MATTERHORN COMMODITY PARTNERS	350198
MATTERHORN COMMODITY PARTNERS II	728296
MAVERICK RESTAURANT CORP	727089
MAXON INDUSTRIES INC	063373
MCCOMBS INCOME PARTNERS LTD	750500
MCCORMICK COMMODITY FUND II LIMITED PARTNERSHIP	702405
MCDERMOTT INC	225615
MCKEE INCOME REALTY TRUST	064127
MCNEIL PENSION INVESTMENT FUND LTD	357270
MCNEIL REAL ESTATE FUND IV LTD	064312
MCNEIL REAL ESTATE FUND V LTD	064310
MEASUREMENT SPECIALTIES INC	778734
MEDCO GROUP INC	064500
MEDCROSS INC	849145
MEDIA LOGIC INC	815185
MEDICAL DEVICES INC	064578
MEDICAL DYNAMICS INC	216540
MEDICAL GRAPHICS CORP /MN/	352862
MEDICAL INNOVATIONS INC /DE/	835908
MEDICAL STERILIZATION INC	723592
MEGADATA CORP	225628
MEMBERS SERVICE CORP	813342
MEMRY CORP	720896
MERET INC /OH/	714282
MERIDIAN DIAGNOSTICS INC	794172
MERLIN MINING CO	789949
MERRIMACK BANCORP INC	810737
MESABI TRUST	065172
MET CAPITAL CORPORATION	814085
METAL RESOURCES CORP	812186
METALCLAD CORP	013547
METALLURGICAL INDUSTRIES INC	065231
METRO BANCSHARES INC	837602
METRO CABLE CORP	353601
METRO SELF STORAGE LTD PARTNERSHIP I	277143
METRO TEL CORP	065312
METROBANK FINANCIAL GROUP INC	813898
MHP MACHINES INC	743365
MICHIGAN FINANCIAL CORP	065637
MICRO GENERAL CORP	067383
MICRO HEALTHSYSTEMS INC	795965
MICRO IMAGING SYSTEMS INC	800267
MICROENERGY INC	740622
MICRON PRODUCTS INC	804334
MICROPAC INDUSTRIES INC	065759
MICROWAVE FILTER CO INC /NY	716688
MICROWAVE LABORATORIES INC	796289
MID AM INC	357066
MID ATLANTIC MEDICAL SERVICES INC	805037
MID STATE RACEWAY INC	065914
MIDWESCO FILTER RESOURCES INC	857135
MILASTAR CORP	066544
MILE HIGH KENNEL CLUB	066244
MILLS JENNINGS CO	075136
MIMBRES VALLEY FARMERS ASSOC INC	781889
MIRACLE RECREATION EQUIPMENT CO	066827
MIRAMAR RESOURCES INC	831246
MISSION BAY SUPER 8 LTD	803868
MISSION VALLEY COMFORT SUITES LTD	810661
MISSOURI RESEARCH LABORATORIES INC	066965
MITEK SYSTEMS INC	807863
MIZLOU COMMUNICATIONS CO INC	736456
MLL EQUIPMENT INVESTORS I	353940
MLL EQUIPMENT INVESTORS II	700731
MOBILE AMERICA CORP	067199
MOD U KRAF HOMES INC	067251
MODERN CONTROLS INC	067279
MOMED HOLDING CO	315845
MONARCH AVALON INC	202685
MONITEK TECHNOLOGIES INC	814180
MONOCLONAL ANTIBODIES INC /DE/	353569
MOORES LANE PROPERTIES LTD	790609
MORGAN TREND FUND	792934
MOUNTAINEER BANKSHARES OF W VA INC	722202
MOVIE SUPERSTORE INC /AZ/	855110
MOYCO INDUSTRIES INC	200533
MSI ELECTRONICS INC	354807
MULTIVEST CORP	718430
MULTIVEST REAL ESTATE FUND LTD SERIES I	068837
MULTIVEST REAL ESTATE FUND LTD SERIES II	068838
MULTIVEST REAL ESTATE FUND LTD SERIES VI	068836
MULTNOMAH KENNEL CLUB	068851
MUSTANG COMPANIES INC	352798
MUTUAL BENEFIT COMMERCIAL PROPERTIES INC	766828
MUTUAL BENEFIT MORTGAGE INVESTORS 1985	760994
MUTUAL BENEFIT SECURED MORTGAGE INVESTORS	715151
MYO TECH CORP	830991
NASHVILLE LAND FUND LTD	793935
NASHVILLE PARKVIEW PARTNERS	357319
NATIONAL BANC OF COMMERCE CO	713078
NATIONAL BANCORP OF ALASKA INC	705356
NATIONAL CITY BANCORPORATION	069968
NATIONAL COMMERCE BANCORPORATION /TN/	101844
NATIONAL ENVIRONMENTAL CONTROLS INC	070083
NATIONAL HOUSING PARTNERSHIP REALTY FUND TWO	762859
NATIONAL IMAGING INC	811864
NATIONAL INSURANCE GROUP /CA/	815555
NATIONAL LAMPOON INC	100348
NATIONAL PENN BANCSHARES INC	700733
NATIONAL PROPERTIES CORP	070453
NATIONAL REAL ESTATE LTD PARTNERSHIP III	700580
NATIONAL REAL ESTATE LP INCOME PROP	759857
NATIONAL REAL ESTATE LP INCOME PROP II	795306
NATIONAL REAL ESTATE LTD PARTNERSHIP IV	714314
NATIONAL REAL ESTATE LTD PARTNERSHIP VI	785703
NATIONAL TECHTEAM INC /DE/	805054
NATURAL ALTERNATIVES INTERNATIONAL INC	787253
NBSC CORP	707602
NDL PRODUCTS INC /DE/	814930

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
NELSON L B CORP	070998
NEOGEN CORP	711377
NEOLENS INC	780068
NESB CORP	810949
NETWORKS ELECTRONIC CORP	071106
NEUROMEDICAL TECHNOLOGIES INC	845605
NEW ENGLAND BANCORP INC	071282
NEW GENERATION FOODS INC	315958
NEW HAMPSHIRE SAVINGS BANK CORP	710984
NEW PARAHO CORP	216810
NEW RETAIL CONCEPTS INC	797659
NEW SKY COMMUNICATIONS INC	771999
NEW YORK BANCORP INC	820068
NEW YORK TESTING LABORATORIES INC	071690
NEWBERRY BANCORP INC	811211
NEWMIL BANCORP INC	807524
NEWORLD BANCORP INC	801771
NEWS COMMUNICATIONS INC	794487
NFS FINANCIAL CORP	794103
NIAGARA CORP	710976
NOBILITY HOMES INC	072205
NOBLE ROMANS INC	709005
NON INVASIVE MONITORING SYSTEMS INC /FL/	720762
NOONEY REAL PROPERTY INVESTORS LP	275829
NORMANDY OIL & GAS CO INC	754012
NORTH AMERICAN NATIONAL CORP	072514
NORTH CAROLINA RAILROAD CO	813794
NORTH COAST ENERGY INC/DE/	839950
NORTH DALLAS PARTNERS	704216
NORTH EAST INSURANCE CO	352162
NORTHLAND CABLE PROPERTIES FIVE LTD PARTNERSHIP	776730
NORTHLAND CABLE PROPERTIES FOUR LTD PARTNERSHIP	760729
NORWEST MORTGAGE CONVENTIONAL 1 INC	731162
NORWEST MORTGAGE INSURED 1 INC	731767
NOSTALGIA NETWORK INC	747178
NOVEN PHARMACEUTICALS INC	815838
NOXSO CORP	314307
NRP INC	778426
NRUC CORP	277028
NTS PROPERTIES VII LTD	814222
NUCLEAR RESEARCH CORP	073296
NUMERICA FINANCIAL CORP	768603
NURSECARE HEALTH CENTERS INC	073354
NYCOM INFORMATION SERVICES INC	793526
NYTEST ENVIRONMENTAL INC	766823
OCCUPATIONAL MEDICAL CORP OF AMERICA INC	754438
OCEAN BIO CHEM INC	350737
OCEANIC EXPLORATION CO	073759
ODYSSEY ENTERTAINMENT LTD	771262
OFFICE PRODUCTS OF AMERICA INC	851631
OFFICIAL INDUSTRIES INC	073881
OHIO BANCORP	357149
OI CORP	073773
OIS OPTICAL IMAGING SYSTEMS INC	753601
OLD NATIONAL BANCORP	707179
OMEGA FINANCIAL CORP /PA/	705671
OMNI EXPLORATION INC	353153
OMNI FILMS INTERNATIONAL INC	816348
OMNITEC INC	838872
OPPENHEIMER LANDMARK PROPERTIES	205741
OPTICAL SPECIALTIES INC	706766
OPUS COMPUTER PRODUCTS INC	023080
ORBIT GAS CO	074816
ORGANOGENESIS INC	779733
ORION FINANCIAL LTD	711210
ORMAND INDUSTRIES INC	074954
ORS CORP /OK/	310316
OVONIC SYNTHETIC MATERIALS CO INC	784571
OXFORD CONSOLIDATED INC	766585
OZITE CORP	091755
PACER TECHNOLOGY	275866
PACIFIC PARTNERS REAL ESTATE LEASING PART 1985	768889
PAINE WEBBER CMJ PROPERTIES LP	711393
PAINE WEBBER INCOME PROPERTIES FIVE LTD	714211
Group CF-07	
PAINE WEBBER INCOME PROPERTIES FOUR LTD	354884
PAINEWEBBER GEODYNE ENERGY INCOME LP I-F	811031
PAINEWEBBER GEODYNE ENERGY INCOME LP I-B	780200
PAINEWEBBER GEODYNE ENERGY INCOME LP I-D	799178
PAINEWEBBER GEODYNE ENERGY INCOME LP I-C	791067
PAINEWEBBER INCOME PROPERTIES LTD PARTNERSHIP	277641
PAINEWEBBER INCOME PROPERTIES THREE LP	318016
PALMETTO REAL ESTATE TRUST	075894
PALO ALTO FUTURES FUND	704475
PANHANDLE ROYALTY CO	315131
PANTHEON INDUSTRIES INC	763733
PARALLEL PETROLEUM CORP /DE/	750581
PARAMETRIC TECHNOLOGY CORP	857005
PARKER & PARSLEY 83-A LTD	743458
PARKER & PARSLEY 85-A LTD	791230
PARKER & PARSLEY 85-B LTD	791231
PARKER & PARSLEY 86-A LTD	789789
PARKER & PARSLEY 86-B LTD	789790
PARKER & PARSLEY PRODUCING PROPERTIES 87-B LTD	809017
PARLIAMENT HILL CORP	317951
PARTNERS HEALTH PLAN OF PENNSYLVANIA INC	801335
PARTNERS OIL CO	318894
PAY FONE SYSTEMS INC	076728
PC QUOTE INC	745774
PEACHES ENTERTAINMENT CORP	709197
PENOBSCOT SHOE CO	077326
PENTA SYSTEMS INTERNATIONAL INC	714956
PERIPHERAL SYSTEMS INC	768153
PERMIAN BASIN ROYALTY TRUST	319654
PERSONAL COMPUTER PRODUCTS INC	725394
PERSONAL DIAGNOSTICS INC	351935
PETROMINERALS CORP	077952
PHOENIX FARMLAND INVESTORS LTD PARTNERSHIP I	726573
PHOTOCOMM INC	746255
PHOTOGRAPHIC SCIENCES CORP	319379
PHOTON TECHNOLOGY INTERNATIONAL INC	808338
PIEDMONT BANKGROUP INC	216870
PIEDMONT MINING CO INC	819517
PIEMONTE FOODS INC	813765
PIKEVILLE NATIONAL CORP	350852
PILGRIM INTERGROUP INVESTMENT CORP	078563
PIONEER SYSTEMS INC	078751
PIONEER WESTERN PROPERTIES INCOME FUND LP	799320
PISMO COAST VILLAGE INC	216877
PITTSBURGH & WEST VIRGINIA RAILROAD	078838
PLASTIGONE TECHNOLOGIES INC	835494
PLAZA COMMERCE BANCORP	353000
PLM TRANS EQUIP PARTNERS IXA 1986 INCOME FUND	778791
PLM TRANS EQUIP PARTNERS IXC 1986 INCOME FUND	778793
PLM TRANS EQUIP PARTNERS IXB 1986 INCOME FUND	778792
PLM TRANS EQUIP PARTNERS VIIC 1985 INCOME FUND	754714
PLM TRANS EQUIP PARTNERS VIIB 1985 INCOME FUND	754712
PMC POWDERED METALS CORP	079242
POCI INC	777623
POCONO HOTELS CORP	079274
POLARIS AIRCRAFT INVESTORS I	700763
POLARIS AIRCRAFT INVESTORS II-C	717285
POLARIS AIRCRAFT INVESTORS II-D	746568
POLLUTION RESEARCH & CONTROL CORP /CA/	763950
POSSIS CORP	079677
PRECISION RESOURCES INC /NJ/	102886
PREFERRED HEALTH CARE LTD /DE/	723532
PREFERRED HOMECARE OF AMERICA INC	849804
PREMIER RESOURCES LTD	109410
PRESSTEK INC /DE/	846876
PRIMAGES INC	716712
PRIME TELECOMMUNICATIONS CORP	852124
PRINCETON DIAGNOSTIC LABORATORIES OF AMERICA INC	811421
PROFESSIONAL CARE INC	275503
PROFIT TECHNOLOGY INC	729232
PROGRESSIVE BANK INC	797507
PROPERTY RESOURCES EQUITY TRUST	765195
PROPERTY RESOURCES FUND IX	796981
PROPERTY SECURED INVESTMENTS INC	790410
PROVENA FOODS INC	814139
PROVIDENT BANCORP INC	316770
PRUDENTIAL BACHE WATSON & TAYLOR LTD I	708320
PS BUSINESS PARKS LTD	353535
PS CAROLINAS BALANCED FUND LTD	724536
PUBLIC STORAGE PARTNERS II LTD	275915
PUBLIC STORAGE PROPERTIES LTD	202953
PURE TECH INTERNATIONAL INC	809646
PURECYCLE CORP	276720
PUROFLOW INC	100591
PYRAMID OIL CO	081318
Q MED INC	729213
QMC TECHNOLOGIES INC	809800
QSR INC	707361
QSR INCOME PROPERTIES II LTD	810274
QUADRAX CORP /DE/	814273
QUALITY SYSTEMS INC	708818
QUESTA OIL & GAS CO /CO/	352511
RABBIT SOFTWARE CORP /PA /	804121
RADIANT TECHNOLOGY CORP	310235
RADVA CORP	792984
RADYNE CORP	718573
RAGEN CORP	081766
RAINBOW TECHNOLOGIES INC	819706
RAL YIELD EQUITIES II LTD PARTNERSHIP	793035
RAL YIELD PLUS EQUITIES III LTD PARTNERSHIP	768825
RAMTEK CORP	277317
RANDERS GROUP INC	830104
RANDOM ACCESS INC	766588
RAVENS METAL PRODUCTS INC	082172
RAWSON KOENIG INC	725014
RAYCOMM TRANSWORLD INDUSTRIES INC	082213
RAYDON TECHNOLOGY CORP	082214
RCM TECHNOLOGIES INC	700841
REAL ESTATE ASSOCIATES LTD III	318986
REAL ESTATE ASSOCIATES LTD IV	355573
REAL ESTATE ASSOCIATES LTD V	702644
REAL ESTATE EQUITIES CORP	082363

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
REAL ESTATE FUND INVESTMENT TRUST	311157
REALMARK PROPERTY INVESTORS LIMITED PARTNERSHIP I	312982
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP II	704165
REALTY SOUTHWEST FUND II LTD	721520
REALTY SOUTHWEST FUND III LTD	754545
REDWOOD MORTGAGE INVESTORS VI	811592
REGENCY AFFILIATES INC	099249
REGIONAL BANCORP INC	810746
REICH & TANG L P	812468
RENTRAK CORP	800458
REPUBLIC CAPITAL GROUP INC	820200
RESEARCH INC	216983
RESERVE INDUSTRIES CORP /NM/	083347
RESERVE PETROLEUM CO	083350
RESOURCE FUND	230492
RESPONSE TECHNOLOGIES INC	763096
REVOTEK INC	822374
RHODES M H INC	083680
RIBI IMMUNOCHEM RESEARCH INC	352331
RIC 14 LTD	356489
RIC 79 LTD	310797
RIC 81 LTD	319180
RIO GRANDE INC /DE/	352964
RIPLEY CO INC	064091
RIVER FOREST BANCORP INC	051939
RIVERCHASE INVESTORS I LTD	764031
RMS INTERNATIONAL INC	064262
ROBERT MARK INC	786542
ROBERTSON COMPANIES INC	064415
ROCKY MOUNT UNDERGARMENT CO INC	064655
ROCKY MOUNTAIN MINERALS INC	312583
ROSS COSMETICS DISTRIBUTION CENTERS INC	737203
ROSS INDUSTRIES INC /VA/	754365
ROYAL GOLD INC /DE/	085535
RTI INC	081699
RUBICON CORP	777479
RYKA INC	828750
S&M CO	217058
S&T BANCORP INC	719220
SABINE ROYALTY TRUST	710752
SAFETY RAILWAY SERVICE CORP	314865
SAFEWAY AUSTRALIA HOLDINGS INC	802842
SAGE ANALYTICS INTERNATIONAL INC	796080
SAGE DRILLING CO INC	350019
SAGE LABORATORIES INC	086166
SAINT LOUIS RAINTREE PARTNERS LTD	310157
SALVATORI OPHTHALMICS INC	823187
SAMNA CORP /GA/	812193
SAN JUAN FIBERGLASS POOLS INC	813609
SANDATA INC	755465
SANITAS INC	086727
SANTA FE FINANCIAL CORP	086759
SAZTEC INTERNATIONAL INC	801354
SBE INC	087050
SCHIELD MANAGEMENT CO	765815
SCIENCE ACCESSORIES CORP /DE/	803498
SCIENCE DYNAMICS CORP	350644
SCIENTIFIC MEASUREMENT SYSTEMS INC/TX	087814
SCIENTIFIC TECHNOLOGIES INC	708250
SCIOTO DOWNS INC	087836
SCORE BOARD INC	813013
SCRIPT SYSTEMS INC	750485
SEACOAST BANKING CORP OF FLORIDA	730706
SEAGO GROUP INC	063516
SEAL FLEET INC	110027
SEAPORT CORP	088217
SEATTLE FILMWORKS INC	791050
SECOM GENERAL CORP	790375
SECOND BANCORP INC	803112
SECTOR ASSOCIATES LTD	785081
SECURITY ENVIRONMENTAL SYSTEMS INC	842399
SECURITY FIRST REAL ESTATE INVESTMENT TRUST	088539
SECURITY INVESTORS LTD II	722762
SECURITY SPRING & BOE INVESTORS LTD 82	704430
SELVAC CORP	726606
SEMICON INC	088922
SENSOR CONTROL CORP	806168
SERVOTRONICS INC /DE/	089140
SGI INTERNATIONAL	737955
SHAREDATA INC	700885
SHEARSON EQUIPMENT INVESTORS II	352849
SHEARSON MURRAY REAL ESTATE FUND LTD	311781
SHEARSON MURRAY REAL ESTATE FUND V LTD	320341
SHEARSON MURRAY REAL ESTATE FUND VI LTD	354106
SHELLY ASSOCIATES INC	790940
SHELTER PROPERTIES I LTD PARTNERSHIP	316220
SHERWOOD CORP	089807
SHOP TELEVISION NETWORK INC	814893
SHORT C A INTERNATIONAL INC	354564
SHURGARD INCOME PROPERTIES II	353812
SHURGARD MINI STORAGE LTD PARTNERSHIP I	313297
SIERRA REAL ESTATE EQUITY TRUST 82	315138
SIGNATURE X LTD	813826
SILVAR LISCO	708367
SIMONE L J INC	813424
SIXX HOLDINGS INC	832407
SKOLNIKS INC	821124
SKYLINE CHILI INC	803497
SMI/USA INC	095111
SOFTWARE DEVELOPERS CO INC/DE/	840824
SOI INDUSTRIES INC	814920
SOLITEC INC	729971
SOURCE VENTURE CAPITAL INC	757766
SOUTH CAROLINA FEDERAL CORP	806624
SOUTHEAST ACQUISITIONS I L P	810994
SOUTHERN HOSPITALITY CORP	052552
SOUTHERN MINERAL CORP	092223
SOUTHERN SECURITY LIFE INSURANCE CO	109747
SOUTHERN STARR BROADCASTING GROUP INC /DE/	810622
SOUTHLAND COMMUNICATIONS INC /CA/	814084
SOUTHWEST NATIONAL CORP	092440
SOUTHWEST OIL & GAS INCOME FUND VII A LP	808028
SOUTHWEST ROYALTIES INC INCOME FUND V	782149
SOUTHWEST ROYALTIES INC INCOME FUND VI	796489
SOUTHWEST ROYALTIES INST INCOME FUND VII-B LP	810117
SPECIALTY RETAIL SERVICES INC	824768
SPECTEX INDUSTRIES INC	092739
SPECTRAN CORP	718487
SPECTRUM INFORMATION TECHNOLOGIES INC	812551
SPEED O PRINT BUSINESS MACHINES CORP /DE	771504
SPEIZMAN INDUSTRIES INC /DE/	092827
SPINNAKER SOFTWARE CORP/MN	801343
SPORTING LIFE INC	727503
SPORTS TECH INTERNATIONAL INC	850091
ST LOUIS STEEL CASTING INC	086293
STANDARD METALS CORP	093383
STAODYN INC	203285
STAR CLASSICS INC	806842
STARTEL CORP	725572
STATE FINANCIAL SERVICES CORP	745614
STATE FIRST FINANCIAL CORP	766842
STATEWIDE BANCORP	700722
STERLING ASSET & INCOME FUND L P A-1	814330
STERLING FUEL RESOURCES DRILLING FUND 1983-1	721538
STERLING FUEL RESOURCES DRILLING FUND 1983-2	722439
STERLING FUEL RESOURCES DRILLING FUND 1984-2	748859
STERLING MEDICAL SYSTEMS INC / UT/	819221
STRIKER PETROLEUM CORP	352944
SUFFIELD FINANCIAL CORP	802763
SUMMA MEDICAL CORP	310436
SUMMCORP	352952
SUMMIT BANCORPORATION	200754
SUMMIT TECHNOLOGY INC	813902
SUNGROWTH PROPERTY INVESTORS LTD	727165
SUNSHINE FIFTY INC	095477
SUNSTAR FOODS INC	095490
SUNSTYLE CORP	839219
SUPER 8 ECONOMY LODGING IV LTD	700664
SUPER 8 MOTELS II LTD	316554
SUPER 8 MOTELS III LTD	317859
SUPER 8 MOTELS LTD	311174
SUPER FUND LIMITED PARTNERSHIP	812798
SUPERCOMPUTING SOLUTIONS INC	824600
SURETY CAPITAL CORP /DE/	784932
SUSQUEHANNA BANCSHARES INC	700863
SUTRON CORP	728331
SWIFT ENERGY INCOME PARTNERS 1986-C LTD	811957
SWIFT ENERGY INCOME PARTNERS 1986-D LTD	814414
SWIFT ENERGY INCOME PARTNERS 1987-A LTD	820155
SWISS CHALET INC	095898
SYNOVUS FINANCIAL CORP	018349
SYNTRO CORP /DE/	794627
SYSTEMS EQUIPMENT CORP	812156
TAYLOR DEVICES INC	096536
TCC EQUIPMENT INCOME FUND	820083
TCS ENTERPRISES INC	733729
TECH OPS SEVCON INC	825411
TECHDYNE INC	764039
TECHKNITS INC	814081
TECHNALYSIS CORP	096677
TECHNE CORP /MN/	842023
TECHNICAL COATINGS INC	755113
TECHNICAL COMMUNICATIONS CORP	096699
TECHNOLOGY FUNDING PARTNERS I	744964
TECHNOLOGY FUNDING PARTNERS II	772001
TECHNOLOGY GENERAL CORP	768914
TECHNOLOGY MARKETING INC	351115
TECHNOLOGY RESEARCH CORP	741556
TEL OFFSHORE TRUST	097148
TELE OPTICS INC	813565
TELECONCEPTS CORP	048107
TELEQUEST INC	789754
TELEVISION TECHNOLOGY CORP	700800
TELTONE CORP	096890
TELTRONICS INC	097052
TEMPEST TECHNOLOGIES INC	821126
TENET INFORMATION SERVICES INC	845696
TERMIFLEX CORP	726431
TERMINAL APPLICATIONS GROUP INC	841075
TERRANO CORP	720481

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
TESCO AMERICAN INC	315981
TEXCEL INTERNATIONAL INC	729519
TEXLAND DRILLING PROGRAM 1982	701440
THERAGENICS CORP	796762
THERMAL EXPLORATION CO	097725
THERMODYNETICS INC	351902
THERMWOOD CORP	732240
THOMSON FINANCIAL FUTURES PARTNERS II	770327
THREE FIVE SYSTEMS INC	032272
TIDE WEST OIL CO	705453
TIMBERLINE SOFTWARE CORPORATION	314436
TIME ENERGY SYSTEMS INC	711307
TINSLEY LABORATORIES INC	098383
TLM CORP	096959
TM CENTURY INC	754590
TODAY HOME ENTERTAINMENT INC	798526
TOLTEC REAL ESTATE CORP	092522
TOP AIR MANUFACTURING INC	355469
TOP SOURCE INC	800055
TOREADOR ROYALTY CORP	098720
TOROTEL INC	098752
TOTAL ASSETS PROTECTION INC	741330
TOTAL RESEARCH CORP	803058
TRANS ATLANTIC VIDEO INC	847420
TRANSACT INTERNATIONAL INC	102701
TRANSCO REALTY TRUST	099235
TRANSFORM LOGIC CORP	788178
TRANSMATION INC	099302
TRANSTECTOR SYSTEMS INC	746630
TRAVELERS INCOME PROPERTIES II LTD PARTNERSHIP	731163
TRI R SYSTEMS CORP	832438
TRIANGLE HOME PRODUCTS INC/DE	099693
TRILLING MEDICAL TECHNOLOGIES INC	721176
TRUDY CORP	815096
TRUVEL CORP /CA/	823880
TSI INC /MT/	099506
TSR INC	098338
TSS LTD	846013
TUCKER LAND CO	100113
TVC IMAGE TECHNOLOGY INC	027030
Group CF–07	
TVI CORP	352079
TWAIN MARK BANCSHARES INC	100307
TWIN STAR PRODUCTIONS INC	847908
TWISTEE TREAT CORP	714256
TWO COUNT HOLDING CO	806631
ULTRAK INC	318259
UNICO INC /DE/	797564
UNICO INC /NM/	766794
UNIFAST INDUSTRIES INC	715803
UNIGENE LABORATORIES INC	352747
UNIMED INC	100759
UNITED CAROLINA BANCSHARES CORP	101090
UNITED COUNTIES BANCORPORATION	719623
UNITED FASHIONS INC	354199
UNITED GUARDIAN INC	101295
UNITED HERITAGE CORP	354567
UNITED MEDICORP INC	831460
UNITED NEW MEXICO FINANCIAL CORP	009664
UNITED SECURITY FINANCIAL CORP OF ILLINOIS	101499
UNITED SERVICES ADVISORS INC	754811
UNITED STATES ANTIMONY CORP	101538
UNITED TRUST INC /IL/	832480
UNITRONIX CORP	835270
UNITY HEALTHCARE HOLDING COMPANY INC	848092
UNIVERSAL DYNAMICS INC	081846
UNIVERSAL GUARANTY INVESTMENT CO	110619
UNIVERSAL LIFE HOLDING CORP	102043
UNIVERSAL MANUFACTURING CO	102049
UNIVERSAL VOLTRONICS CORP	102138
UNIVERSITY PATENTS INC	102198
UNIVERSITY REAL ESTATE INVESTORS–80	314086
UPTOWNER INNS INC	102267
US FACILITIES CORP	796085
US REALTY INCOME PARTNERS LP	822819
US TRANSPORTATION SYSTEMS INC	779954
USA WASTE SERVICES INC	823768
UTAH RESOURCES INTERNATIONAL INC	353793
VAC TEC SYSTEMS INC	317280
VACATION PUBLICATIONS INC	799068
VACU DRY CO	102588
VADER GROUP INC	097196
VALENCIA PARK ASSOCIATES LTD	704215
VALLEY CAPITAL CORP	701937
VANZETTI SYSTEMS INC	718432
VAUGHN COMMUNICATIONS INC	808095
VECTOR AEROMOTIVE CORP	830664
VENETIAN PARK ASSOCIATES LTD	745345
VENTURA MOTION PICTURE GROUP LTD	854937
VERMONT RESEARCH CORP /VT/	319922
VERSUS TECHNOLOGY INC	842638
VESTAR INC	799229
VICOM INC	732412
VICON FIBER OPTICS CORP	718396
VICTOR TECHNOLOGIES INC	715261
VICTORIA BANKSHARES INC	103466
VICTORIA FINANCIAL CORP	720479
VIDEO JUKEBOX NETWORK INC	803266
VIDEO SUPERSTORES OF AMERICA INC	803167
VILLAGE GREEN BOOKSTORE INC	791731
VINEYARD OIL & GAS CO	777582
VIPONT ROYALTY INCOME FUND LTD	809873
VIRAGEN INC	353482
VISION SCIENCES INC	797922
VISTA ORGANIZATION LTD	725311
VIVIGEN INC	722580
VOGART CRAFTS CORP	103803
VTN CORP	103958
WALKER INTERNATIONAL INDUSTRIES INC	104224
WALKER TELECOMMUNICATIONS CORP	276341
WALSHIRE ASSURANCE COMPANY	818155
WARNER COMPUTER SYSTEMS INC	737300
WASATCH EDUCATION SYSTEMS CORP /UT/	837987
WASHINGTON BANCORPORATION	714398
WASTE RECOVERY INC	710118
WASTE TECHNOLOGY CORP	781902
WATERS INSTRUMENTS INC	104967
WATSON GENERAL PICTURES INC	817820
WEB PRESS CORP	105183
WEBSTER FINANCIAL CORP	801337
WEDDING INFORMATION NETWORK INC	818812
WELLESLEY LEASE INCOME LTD PARTNERSHIP A	720276
WELLESLEY LEASE INCOME LTD PARTNERSHIP B	720277
WELLESLEY LEASE INCOME LTD PARTNERSHIP C	751235
WELLESLEY LEASE INCOME LTD PARTNERSHIP III–C	760382
WELLESLEY LEASE INCOME LTD PARTNERSHIP III–D	760386
WELLESLEY LEASE INCOME LTD PARTNERSHIP II–B	739710
WELLESLEY LEASE INCOME LTD PARTNERSHIP III–A	760371
WELLESLEY LEASE INCOME LTD PARTNERSHIP III–B	760375
WELLESLEY LEASE INCOME LTD PARTNERSHIP II–C	720307
WELLESLEY LEASE INCOME LTD PARTNERSHIP II–A	739709
WELLINGTON HALL LTD	105567
WESTAR CORP	726803
WESTERBEKE CORP	796502
WESTERN ACCEPTANCE CORP /NV/	823386
WESTERN CAPITAL INVESTMENT CORP	716720
WESTERN FINANCIAL CORP /KS	732781
WESTERN FUTURES FUND	812025
WESTERN HOST MONTEREY PARTNERS	311158
WESTERN MICROWAVE INC	106176
WHITE DAVID INC	082414
WILLIAM & CLARISSA INC	852450
WILLIAMS CONTROLS INC	854860
WILSON BROTHERS	107469
WILTEK INC	107559
WINDERMERE LTD	758765
WINDSOR PARK PROPERTIES 2	755500
WINDSOR PARK PROPERTIES LTD	725418
WINSTON RESOURCES INC	815274
WINTER SPORTS INC /NEW	803003
WINTHROP PARTNERS 79	277886
WINTHROP PARTNERS 81	351147
WISMER MARTIN INC	791260
WOLF HOWARD B INC	108018
WOODBINE PETROLEUM INC	319646
WORLCO DATA SYSTEMS INC	726991
WORLCO INC	108383
WORLD LIFE & HEALTH INSURANCE CO OF PENNSYLVANIA	108418
WORLDWIDE COMPUTER SERVICES INC /NJ/	790423
XETA CORP	742550
XPLOR CORP	776820
XSCRIBE CORP /CA/	814427
XSIRIUS INC	792381
XSIRIUS SUPERCONDUCTIVITY INC / DE/	845753
Y&A GROUP INC	813359
YORK FINANCIAL CORP	777876
YOUNGWOOD ELECTRONIC METALS INC	109088
YUBA WESTGOLD INC	109110
ZENTEC CORP	320141
ZEOS INTERNATIONAL LTD	854460
ZG ENERGY CORP	810353
ZONIC CORP	320515
Group CF–08	
2 B SYSTEM INC	100404
202 DATA SYSTEMS INC	718248
21ST CENTURY AMERICAN TECHNOLOGY DEVELOPMENT CORP	803031
21ST CENTURY HOLDINGS INC	817747
250 WEST 57TH ST ASSOCIATES	100412
AAON INC	824142
ABATIX ENVIRONMENTAL CORP	845779
ABCO ICE CREAM INC	815108
ABF ENERGY CORP	354195
ABS LIFESCIENCES INC	806063
ACADEMIC COMPUTER SYSTEMS INC	001961
ACAP CORP	792468
ACCELR8 TECHNOLOGY CORP	727207
ACQUISITION INDUSTRIES INC /CO/	813928
ACTEK INC	751156
ACTION PRODUCTS INC	795887
ACTION PRODUCTS INTERNATIONAL INC	747435
ACTV INC /DE/	854152
ACUNET CORPORATION	816239
AD RAK HOLDINGS INC	806586

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
ADAMS JOHN LIFE CORP	773727
ADCOM SYSTEMS INC	741012
ADM TRONICS UNLIMITED INC/DE	849401
ADMAR GROUP INC	779438
ADVANCE DISPLAY TECHNOLOGIES INC	770034
ADVANCED CELLULAR TECHNOLOGY INC	726747
ADVANCED ENVIRONMENTAL SYSTEMS INC	796860
ADVANCED MEDICAL PRODUCTS INC	807732
ADVANCED MONITORING SYSTEMS INC	315898
ADVANCED NMR SYSTEMS INC	722567
ADVANCED TOBACCO PRODUCTS INC	737717
ADVANCED VIRAL RESEARCH CORP	786823
AETNA REAL ESTATE ASSOCIATES L P	785860
AGINCOURT VENTURES LTD	797325
AGRI DYNAMICS INC	002817
AGRIBIOTECH INC /DE/	818071
AGRISTAR INC	842888
AKIRA CORP	815107
ALASKA PRECIOUS METALS LTD	817642
ALCO INTERNATIONAL GROUP INC	701722
ALD INC	003392
ALFA LEISURE INC	014611
ALFACELL CORP	706717
ALGOREX CORP	003535
ALLEGHENY GENERATING CO	774459
ALLIANCE WELL SERVICE INC	745452
ALLSTAR VIDEO INC	778595
ALPHA 1 BIOMEDICALS INC /DE/	707511
ALPHA PAY PHONES LTD III	806767
ALPHA SOLARCO INC	312257
ALPINE INTERNATIONAL CORP	004165
ALTEX INDUSTRIES INC	775057
AM COMMUNICATIONS INC	316580
AMACAN RESOURCES CORP	004317
AMALGAMATED INVESTMENT CORP	774448
AMBASSADOR REAL ESTATE INVESTORS LP	756709
AMBULATORY MEDICAL CARE INC	724126
AMERALIA INC	811419
AMERICA FIRST FINANCIAL FUND 1987-A LP	818788
AMERICAN BIONETICS INC	741443
AMERICAN CLAIMS EVALUATION INC	774517
AMERICAN COMPLETION PROGRAM 1983-3	743458
AMERICAN CONSOLIDATED GOLD CORP	812407
AMERICAN CONSUMERS INC	004811
AMERICAN CONTINENTAL CORP / OH/	314474
AMERICAN CORPORATE INVESTORS INC	811780
AMERICAN CREDIT OPTICAL INC / DE/	819913
AMERICAN CYTOGENETICS INC	004833
AMERICAN EAGLE RESOURCES INC	731297
AMERICAN EDUCATIONAL PRODUCTS INC	790089
AMERICAN ELECTROMEDICS CORP	352281
AMERICAN ENTERPRISES INC	315428
AMERICAN FINANCIAL ENTERPRISES INC /CT/	319157
AMERICAN GEOLOGICAL ENTERPRISES INC	005117
AMERICAN INCOME 1 LTD PARTNERSHIP	742101
AMERICAN LIBERTY FINANCIAL CORP	005368
AMERICAN MEDICAL ALERT CORP	700721
AMERICAN MORTGAGE & INVESTMENT CO	005486
AMERICAN RESOURCES GROUP INC/ CO	225255
AMERICAN SPORTS ADVISORS INC	350190
AMERICAN SURGERY CENTERS CORP	316024
AMERICAN UNDERWRITERS GROUP INC	005951
AMERICAN WATER RESOURCES INC	080040
AMERIFAX INC /DE/	837993
AMERIMARK CORP	799896
AMETECH INC	001969
AN CON GENETICS INC	719135
ANDERSON STOKES INC	007659
ANGHEL LABORATORIES INC	706081
ANGIO MEDICAL CORP /DE/	811317
ANNANDALE CORP	316499
ANVIL INVESTOR SERVICES INC	742492
AORTECH INC	716399
APACHE PETROLEUM PARTNERSHIP 1985 LP	769529
API ENTERPRISES INC	003197
APOGEE ROBOTICS INC	724915
APOGEE TECHNOLOGY INC	823876
APPLIED DNA SYSTEMS INC	716778
APPLIED GENETIC VENTURES INC	761034
APPLIED MEDICAL DEVICES INC	312258
APPLIED MICROBIOLOGY INC	744982
APPLIED RESEARCH CORP	794876
APPLIED SPECTRUM TECHNOLOGIES INC	705868
AQUANAUTICS CORP	352991
AQUASCIENCES INTERNATIONAL INC	762831
ARIL GROUP INC	765863
ARISTA INVESTORS CORP	799902
ARLINGTON REALTY INVESTORS	085942
ARMORED STORAGE INCOME INVESTORS 2	788078
ARRHYTHMIA RESEARCH TECHNOLOGY INC /DE/	819689
ARROW FINANCIAL CORP	717538
ARTECH RECOVERY SYSTEMS INC	804237
ARVAL HOLDINGS INC	812704
ASDAR GROUP INC	746631

Group CF-06

Registrant	CIK No.
ASHA CORP	789547
ASPEN EXPLORATION CORP	319458
ASPEN LEAF INC	814725
ASSET GROWTH PARTNERS INC	799241
ASSOCIATED PLANNERS REALTY GROWTH FUND	814077
ASTRO STREAM CORP	782145
ATLANTIC FUNDING LTD	789876
ATRATECH INC	825830
ATS MONEY SYSTEMS INC	828509
ATTENTION MEDICAL CO INC	761272
AUDRE RECOGNITION SYSTEMS INC	811206
AUNTEL CAPITAL INC	814548
AURIC METALS CORP	008497
AUTOFINANCE GROUP INC /CA/	357078
AUTOMEDIX SCIENCES INC	754568
AVESIS INC	795574
AVOCA INC	316537
AW COMPUTER SYSTEMS INC	319037
AZATECH INC	791012
AZTECH INTERNATIONAL LTD	225067
BAGDAD CHASE INC	009126
BALA CYNWYD CORP	052813
BALLISTIC RECOVERY SYSTEMS INC	801907
BANCALABAMA INC	814575
BANCINSURANCE CORP	276400
BANK OF GONZALES HOLDING CO INC	718907
BANYAN INDUSTRIES INC	811232
BARRIE RICHARD FRAGRANCES INC	536937
BARRIER SCIENCE & TECHNOLOGY INC	732786
BASEBALL CARD SOCIETY INC	814925
BATH NATIONAL CORP	709335
BATON ROUGE BANCSHARES INC	716135
BAY AREA HOLDINGS INC	060796
BC COMMUNICATIONS INC	773430
BCI GEONETICS INC	806516
BEACON FINANCIAL INC	789092
BEAN CAROLYN PUBLISHING LTD	768260
BELMAC CORP /FL/	821616
BENNETT PETROLEUM CORP	011337
BERYLLIUM INTERNATIONAL CORP / UT/	315263
BETA PHASE INC /DE/	792163
BEVERLY NATIONAL CORP	742275
BEVIS INDUSTRIES INC /RI/	011929
BIG PINEY OIL & GAS CO	012078
BIG SKY USA INC	807526
BIO MONITOR INC	845032
BIO VASCULAR INC	780127
BIOANALOGICS INC /CA/	837487
BIOCHEM INTERNATIONAL INC	312833
BIOCONTROL TECHNOLOGY INC	225211
BIOENERGY NUTRIENTS INC	812788
BIOMECHANICS CORP OF AMERICA	856143
BIOPOOL INTERNATIONAL INC	830736
BIOPORE INC	838442
BIOSENSOR CORP	708282
BIOSONICS INC	352715
BIOSYNERGY INC	715812
BIOTECHNOLOGY DEVELOPMENT CORP	723889
BLACK DOME ENERGY CORP	316704
BLACK HAWK HOLDINGS INC /MN/	852426
BLOCKERS C A INC	820734
BLUE DIAMOND COAL CO	704870
BLYTH HOLDINGS INC	820738
BOGERT 1985-II LTD PARTNERSHIP	774198
BOGERT 1985-III LTD PARTNERSHIP	783332
BOGERT 1985-IV LTD PARTNERSHIP	787671
BOGERT 1986-IV LTD PARTNERSHIP	810828
BOLT TECHNOLOGY CORP	354655
BOMED MEDICAL MANUFACTURING LTD	719722
BOSTON FINANCIAL APARTMENTS ASSOCIATES LP	354626
BOULDER BREWING CO	721693
BRAINERD INTERNATIONAL INC	771249
BRIGHTON INFORMATION SYSTEMS CORP	773342
BRISTOL RESEARCH CORP	839436
BROAD NATIONAL BANCORPORATION	703800
BROADWAY FINANCIAL CORP	711206
BRODIE EXPLORATION CORP	014423
BSD MEDICAL CORP	320174
BSI HOLDINGS INC /VA/	799699
BUCK HILL FALLS CO /PA/	783283
BUDGET STORAGE ASSOCIATES I L P	790939
BUFFALO INC	768534
BUFFS N PUFFS LTD	350133
BUNTING INC	015359
BURST AGRITECH INC	314940
BUSINESS DEVELOPMENT CORP OF SOUTH CAROLINA	727736
BUTLER NATIONAL CORP	015847
CDK 1980 FUND A LTD	318678
CDK 1981 FUND B LTD	356288
CABLE TV FUND 11-D LTD	741124
CADEMA CORP	318951
CALCASIEU REAL ESTATE & OIL CO INC	352955
CALIFORNIA ENGELS MINING CO	016317
CALVIN EXPLORATION INC	317438
CAM DATA SYSTEMS INC	819334
CAMBRIDGE HOLDINGS LTD	712757
CAMELOT CORP	013033
CAMERON CAPITAL CORP	789891

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
CANADA CREEK RANCH ASSOCIATION INC	215352
CANANDAIGUA NATIONAL CORP	759458
CANTON INDUSTRIAL CORP	788738
CAPFILM INC	788845
CAPITAL BANCORPORATION INC	748529
CAPITAL INCOME PROPERTIES C LTD PARTNERSHIP	780348
CAPITAL RESERVE CORP	707674
CAPITOL RESOURCES INC	017377
CAPLAN CORP	725395
CAPROCK CORP	801310
CAPTAIN TONYS PIZZA INC /NY/	802523
CARDIAC RESUSCITATOR CORP	017482
CARDINAL TECHNOLOGIES INC	787426
CARDTEL INC	767974
CARE MED CENTERS INC	825391
CARMEL ENERGY INC	747681
CAS MEDICAL SYSTEMS INC	764579
CBDT FINANCIAL CORP	736475
CBDT INC	357130
CDX CORP	351129
CEASE FIRE CORP	830485
CEC INDUSTRIES CORP	054175
CEL SCI CORP	725363
CELCOR INC	745651
CELEBRITY RESORTS INC	831671
CELEREX CORP	795711
CELESTA CORP /CO/	813308
CELESTIAL VENTURES CORP	811639
CELLULAR PRODUCTS INC	718585
CENTER BANCORP INC	712771
CENTERSCOPE INC	776208
CENTRAC ASSOCIATES INC	814257
CENTRAL ILLINOIS FINANCIAL CORP	746688
CENTRAL REALTY INVESTORS INC	786714
CENTRUM INDUSTRIES INC	351127
CENTURION MINES CORP	836123
CENTURY LABORATORIES INC	018886
CENTURY PARK PICTURES CORP	728387
CENTURY PROPERTIES EQUITY PARTNERSHIP 72	018905
CERPROBE CORP	725259
CEZAR INDUSTRIES LTD	202196
CGS SCIENTIFIC CORP	019047
CHAD THERAPEUTICS INC	713492
CHAMPIONS SPORTS INC	771856
CHANNEL AMERICA LPTV HOLDINGS INC	833850
CHANTAL PHARMACEUTICAL CORP	721408
CHAPARRAL RESOURCES INC	019252
CHARTER GOLF INC	820774
CHARTWELL CABLE FUND INC	824606
CHASE GENERAL CORP	015357
CHECK EXPRESS INC	806439
CHEMEX PHARMACEUTICALS INC	318306
CHEMICAL DEPENDENCY HEALTH-CARE INC /CA/	739717
CHEQUE ALERT INC	809153
CHESAPEAKE BIOLOGICAL LABORATORIES INC	799485
CHEUNG LABORATORIES INC	749647
CHILDRENS CREATIVE WORKSHOP LTD	785317
CHOICES ENTERTAINMENT CORP	822935
CHROMALUX CORP	802355
CHRONODYNAMICS LTD	828679
CIMARRON GRANDVIEW GROUP INC	043052
CIMM INC	822664
CINEMA GROUP PARTNERS	351002
CIRCUIT RESEARCH LABS INC	725897
CISTRON BIOTECHNOLOGY INC	793725
CITADEL ASSET MANAGEMENT LTD	799097
CITI BANCSHARES INC	715991
CITINATIONAL DEVELOPMENT TRUST	020423
CIVIC BANCORP	747205
CLAJON CAPITAL INC	814503
CLAJON HOLDINGS L P	814504
CLARK MELVIN SECURITIES CORP / DE/	829596
CLAYTON SILVER MINES INC	020871
CLIFF ENGLE LTD /NY/	793596
CLIFTON INCOME FUND LTD PARTNERSHIP II	788069
CLINICAL TECHNOLOGIES ASSOCIATES INC	805326
CLUB DE SPORT INC	803573
CNL FINANCIAL CORP	021193
COASTAL STRATEGIES INCOME FUND A	792220
COASTAL STRATEGIES INCOME FUND B	792222
COASTLAND CORP OF FLORIDA	310285
CODERCARD INC	730390
COGNITIVE SYSTEMS INC	739371
COLORADO GOLD & SILVER INC	354699
COLUMBIA LEASE INCOME FUND II-D LP	769335
COLUMBIA LEASE INCOME FUND II-E LP	769336
COLUMBIAN OIL & GAS DRILLING PROGRAM 1985-B LP	763713
COLUMBIAN OIL & GAS DRILLING PROGRAM 1985-A LP	763711
COLUMBIAN OIL & GAS PRODUCTION PROGRAM 1-A LP	806118
COM VU CORP	714281
COMET ENTERTAINMENT INC	748856
COMM BANCORP INC	730030
COMMAND CREDIT CORP	856130
COMMODITY GROWTH FUND LTD	725582
COMMUNICATIONS GROUP INC	355627
COMMUNICATIONS WORLD INTERNATIONAL INC	727347
COMMUNITY BANCORP INC /PA/	838164
COMMUNITY BANCORP INC/NY	776848
COMMUNITY BANCSHARES INC /TN	763585
COMMUNITY FINANCIAL CORP	771970
COMMUNITY NATIONAL BANCORP INC	825539
COMP U CHECK INC	022788
COMPLIANCE RECYCLING INDUSTRIES INC	780151
COMPUFLIGHT INC	790272
COMPUSONICS CORP	724027
COMPUSONICS VIDEO CORP	777844
COMPUTER DEVICES INC /MD	311507
COMPUTER PLUS INC	826443
COMPUTER TRANSCEIVER SYSTEMS INC	023120
COMPUTERIZED BUYING NETWORK INC	730626
COMSOUTH BANKSHARES INC	823246
COMTEX SCIENTIFIC CORP	352988
COMTREX SYSTEMS CORP	769525
CONCORDE HOLDINGS CORP	215503
CONCOURSE CORP	729156
CONGRESS INDUSTRIES INC	791679
CONSOLIDATED ENERGY SYSTEMS INC /CA/	818787
CONSOLIDATED SILVER CORP	023778
CONSTELLATION BANCORP	753766
CONSTITUTION BANCORP OF NEW ENGLAND INC	809794
CONTINENTAL HERITAGE CORP	024055
CONTINENTAL INVESTMENT CORP / GA/	024077
CONTINENTAL RECREATION CORP	024152
CONTINENTAL VENTURES INC	775616
CONVEST INCOME PROGRAM VII-F	769394
CONWOOD CAPITAL CORP	780386
CONWOOD CO L P	780388
COPYMAT INC	799638
CORAL INC	808448
CORDATUM INC	713996
CORFACTS INC	791298
CORPORATE MANAGEMENT GROUP INC /FL/	741557
CORRECTIONS SERVICES INC	785562
COTTON PETROLEUM CORP 1976 OIL & GAS PROGRAM	025114
COUNTRYWIDE MORTGAGE TRUST 1987-II	816430
CPS CORPORATE PLANNING SERVICES INC	773383
CREATIVE COMPUTER APPLICATIONS INC	712815
CREATIVE LEARNING PRODUCTS INC	846614
CREATIVE TECHNOLOGIES CORP	785321
CRESCENT OIL & GAS CORP	717818
CROFF OIL CO	025743
CROWLEY FINANCIAL SERVICES INC	792455
CROWN NATIONAL VENTURES INC	789659
CRYOTECH INDUSTRIES INC	799365
CRYSTAL OIL 1981 EXPLORATION & DEVELOPMENT PROGRAM	351600
CSA INCOME FUND LTD PARTNERSHIP I-B	764627
CSA INCOME FUND LTD PARTNERSHIP I-C	764628
CUC INTERNATIONAL INC /DE/	723612
CULINARY CAPITAL CORP	795267
CUYAHOGA LANDMARK INC	762960
CYANOTECH CORP	768408
CYBER DIGITAL INC	721295
CYTRX CORP	799698
DAINE INDUSTRIES INC	824845
DALTEX MEDICAL SCIENCES INC	742686
DAMSON 1984-85 INST OIL & GAS INCOME FUND SERIES	769121
DATA DIMENSIONS INC	026990
DATA DISPLAY CORP	796513
DATA LEASE FINANCIAL CORP	027011
DATA NATIONAL CORP	760462
DATA SYSTEMS INC OREGON	027053
DATATAB INC	027099
DATAVISION INC /DE/	027109
DAVIN COMPUTER CORP /DE/	795803
DAVIN ENTERPRISES INC	815017
DCC COMPACT CLASSICS INC	809932
DECISION SYSTEMS INC	027594
DEFAULT PROOF CREDIT CARD SYSTEM INC /FL/	803260
DEL PAINT CORP	786767
DELCOTT COMMODITY PARTNERS	716933
DELTA COMPUTEC INC	779338
DELTA MANAGEMENT SYSTEMS INC	731139
DELTA PETROLEUM CORP/CO	821483
DELTA RENTAL SYSTEMS INC	758328
DENCOR ENERGY COST CONTROLS INC	312066
DENNING MOBILE ROBOTICS INC	720505
DENPAC CORP	754086
DETONICS SMALL ARMS LTD	351397
DEUCALION RESEARCH INC	820295
DI AN CONTROLS INC	028613
DIAGNON CORP	719711
DIAGNOSTIC MEDICAL INSTRUMENTS INC/NY	794147
DIAGNOSTIC SCIENCES INC /NEW/	806850
DIAPULSE CORP OF AMERICA	028742
DIGITAL DEVICES INC	725731
DIGITAL RECORDING CORP	318439
DIGITAL SOLUTIONS INC	785557
DIMENSION CAPITAL CORP	818073
DIONICS INC	029006
DIRECT CONNECT INTERNATIONAL INC	840815
DISEASE DETECTION INTERNATIONAL INC	805383
DISTINCTIVE DEVICES INC	059963

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
DIVIDE DRIVES INC /NV/	812795
DIXCOM INC	760777
DIXON CAPITAL CORPORATION	816640
DMI INC /CO/	796337
DOAK PHARMACAL CO INC	029386
DOCUCON INCORPORATED	843006
DOCUGRAPHIX INC /CA/	768841
DOL RESOURCES INC	029504
DOMINION RESOURCES INC/DE/	314712
DOMINION STOCK INDEX FUND	760687
DOUBLE EAGLE PETROLEUM & MINING CO	029834
DOUBLE RIVER OIL & GAS COMPANY	351400
DRAGON MINING CORP	030037
DRCA MEDICAL CORP	807144
DREAMCAR HOLDINGS INC	828220
DRILLSTAR INTERNATIONAL CORP	829084
DRIVEFONE INC	826771
DROVERS BANCSHARES CORP	703109
DRUG SCREENING SYSTEMS INC	828747
DRUSILLA SEAFOOD RESTAURANTS INC	794625
DWI CORP	709599
DYCO 1976 OIL & GAS PROGRAMS	355055
DYCO 1977 OIL & GAS PROGRAMS	201707
DYCO 1978 OIL & GAS PROGRAMS	215718
DYCO OIL & GAS PROGRAM 1975	318808
DYCO OIL & GAS PROGRAM 1976-1	806569
DYCO OIL & GAS PROGRAM 1977-1	806570
DYCO OIL & GAS PROGRAM 1977-X	310908
DYCO OIL & GAS PROGRAM 1978-1	806571
DYCO OIL & GAS PROGRAM 1978-2	806572
DYCO OIL & GAS PROGRAM 1979-1	806573
DYCO OIL & GAS PROGRAM 1986-1	778956
DYNAMARK CORP	824846
DYNAMIC HOMES INC	225278
DYNAMIC SCIENCES INTERNATIONAL INC	729520
DYNATEC INTERNATIONAL INC	752208
DYNATEM INC	795424
EAGLE EXPLORATION CO	030906
EASTERN EMPIRE CORP	031121
EATERIES INC	796369
EDGEMARK FINANCIAL CORP	320547
EDMARK CORP	777249
EDUCATION SYSTEMS & PUBLICATIONS CORP	031647
EDUCATORS INDUSTRIES INC	031698
EDUDATA CORP	738194
EH INTERNATIONAL INC	031827
EICO ELECTRONIC INSTRUMENT CO INC	031862
ELDORADO ARTESIAN SPRINGS INC	796124
ELECTRIC AVENUE INC	107707
ELECTRIC M & R INC	016218
ELECTRO KINETIC SYSTEMS INC	723616
ELECTROGRAPH SYSTEMS INC	722641
Group CF-08	
ELECTRONIC ASSEMBLY SERVICES INC	831241
ELECTRONIC CONTROL SYSTEMS INC	032228
ELECTRONIC DATA CONTROLS CORP	032230
ELECTRONIC SPECIALTY PRODUCTS INC	317191
ELECTRONIC SYSTEMS TECHNOLOGY INC	752294
ENB HOLDING CO	731804
ENCO FLORIDA FUND LTD	753551
ENERCON DATA CORP /DE/	022932
ENERGY OPTICS INC	350193
ENERGYSEARCH 1980 2 DEVELOP DRILLING PARTNERSHIP	352712
ENERGYSEARCH 1980 3 DEVELOP DRILLING PARTNERSHIP	354597
ENERGYSEARCH 1981-1 DEVELOP DRILLING PARTNERSHIP	356329

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
ENERGYSEARCH 1981-2 DEVELOP DRILLING PARTNERSHIP	701624
ENEX OIL & GAS INCOME PROGRAM II 7	782335
ENEX OIL & GAS INCOME PROGRAM II-10	799171
ENEX OIL & GAS INCOME PROGRAM II-3	766039
ENEX OIL & GAS INCOME PROGRAM II-4	769502
ENEX OIL & GAS INCOME PROGRAM II-5	769501
ENEX OIL & GAS INCOME PROGRAM II-6	769503
ENEX OIL & GAS INCOME PROGRAM II-8	789882
ENEX OIL & GAS INCOME PROGRAM II-9	798954
ENEX OIL & GAS INCOME PROGRAM III SERIES 6 LP	830319
ENEX OIL & GAS INCOME PROGRAM III SERIES 3 LP	814780
ENEX OIL & GAS INCOME PROGRAM III SERIES 2 LP	811205
ENTERPRISE ENERGY PARTNERS 1980	317923
ENTOURAGE INTERNATIONAL INC	774740
ENVIRONMENTAL DIAGNOSTICS INC	739944
ENVIROTECH SYSTEMS INC	792981
EPOLIN INC /NJ/	797079
EQUIFUND LP	350972
EQUITEC REAL ESTATE INVESTORS FUND XVI	761199
EUA POWER CORP /NH/	808277
EUROAMERICAN GROUP INC	832443
EUROPA TRADING CORP	817638
EVRO FINANCIAL CORP	033115
EXCALIBUR INDUSTRIES	201779
EXECUTIVE HOUSE INC	033992
EXOTECH INC	034047
EXOVIR INC	717653
EXPERTELLIGENCE INC	723533
EXTEN VENTURES INC	811779
EYE TECHNOLOGY INC	776008
F&E RESOURCE SYSTEMS TECHNOLOGY INC	748055
FAFCO INC	352956
FAIRFIELD ACCEPTANCE CORP	710681
FAR WEST VENTURES INC	806514
FARMERS NATIONAL BANC CORP / OH/	709337
FARMERS NATIONAL BANCORP INC / DE/	700946
FARMSTEAD TELEPHONE GROUP INC	804331
FAST FOOD OPERATORS INC	350487
FASTCOMM COMMUNICATIONS CORP	828529
FBC MORTGAGE SECURITIES TRUST 18	825087
FCNB CORP	803644
FERTIL A CHRON INC	729216
FFM FINANCE CORP	778211
FFM FINANCE CORP II	794558
FIFTH DIMENSION INC	035522
FINANCIAL INDUSTRIES CORP	035733
FINANCIAL SERVICES CORPORATION OF THE MIDWEST	035838
FIREMANS FUND MORTGAGE CORP	801543
FIRMA INC	808575
FIRST AMERICAN CAPITAL CORP/DE/	730822
FIRST AMERICAN HEALTH CONCEPTS INC	776997
FIRST AMFED CORP	783995
FIRST BATH CORP	705459
FIRST CAPITAL REALTY OF OHIO	036141
FIRST COLONIAL GROUP INC	714719

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
FIRST COMMERCIAL BANCORP INC	315547
FIRST COMMUNITY BANCORP INC / PA/	741355
FIRST COMMUNITY BANCSHARES INC	709344
FIRST COMMUNITY BANCSHARES INC/GA/	825351
FIRST EQUITY OF NEW JERSEY INC	806844
FIRST FILMS INC	796312
FIRST FINANCIAL BANCORPORATION /IA/	779633
FIRST FINCORP INC	749879
FIRST HIGHLAND CORP	820394
FIRST JERMYN CORP	741562
FIRST KNOX BANC CORP	756899
FIRST MCMINNVILLE CORP	743397
FIRST MEDICAL DEVICES CORP	793771
FIRST MEDICAL INTERNATIONAL INC	824166
FIRST MID ILLINOIS BANCSHARES INC	700565
FIRST MONTAUK FINANCIAL CORP	083125
FIRST MORTGAGE CORP	036548
FIRST MUTUAL INC	069280
FIRST NATIONAL BANCORP INC /IL/	786783
FIRST NATIONAL BANKSHARES INC/LA/	700694
FIRST NATIONAL CORP /SC/	764038
FIRST OAK BROOK BANCSHARES INC	717837
FIRST OF HURON CORP	355433
FIRST PRIORITY GROUP INC	778164
FIRST TEAM SPORTS INC	820242
FIRST UNITED BANCORPORATION / SC/	820379
FIRST VICTORIA CORP	764469
FIRST WEST CHESTER CORP	744126
FIRST WOBURN BANCORP INC	812334
FISHER BUSINESS SYSTEMS INC	790733
FLAGLER BANK CORP	721296
FLAT TOP BANKSHARES INC	707123
FLEXCEL INTERNATIONAL INC	723595
FLEXWATT CORP	704360
FLORIDA LIFE EQUITIES INC	756910
FLORIDA PARTNERS CORP	705405
FLORIDA WESTCOAST BANKS INC	700566
FLOYD VALLEY PACKING CO	037727
FNB FINANCIAL SERVICES CORP	742679
FNB ROCHESTER CORP	745087
FORELAND CORP	773326
FOREST 1980 DRILLING PROGRAM	314579
FORTUNE PETROLEUM CORP	038242
FOUR CORNERS FINANCIAL CORP	230014
FOXMOOR INTERNATIONAL FILMS LTD	720527
FRANKLIN CAPITAL CORP /DE/	083216
FRANKLIN FINANCIAL SERVICES CORP /PA/	723646
FRANKLIN JOE PRODUCTIONS INC	205048
FRESH JUICE CO INC	802354
FRONTIER MINING & OIL CORP	707945
FURIA ORGANIZATION INC /DE/	757563
FUTURA WEST INC	737212
FUTURE MEDICAL PRODUCTS INC / NY/	839087
GAB BANCORP	714395
GALLERIA GROUP INC	790072
GAM RAD INC	039843
GAMOGEN INC	803034
GAP INSTRUMENT CORP	039910
GARMENT CAPITOL ASSOCIATES	040023
GASCARD INC /DE/	807062
GBC BANCORP	351710
GBI INTERNATIONAL INDUSTRIES INC	764482
GCI INDUSTRIES INC	708712
GEMINI ENERGY CORPORATION	810270
GEMINI EQUIPMENT PARTNERS INCOME FUND III LP	761275

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
GENERAL ENERGY RESOURCES & TECHNOLOGY CORP	350387
GENERAL GENETICS CORP	707452
GENERAL METAL & ABRASIVES CO	745612
GENERAL REAL ESTATE SHARES	040788
GENERAL RESIDENTIAL CORP	040806
GENERATION 5 TECHNOLOGY INC / CO/	818726
GENETIC ENGINEERING INC	319649
GENETIC LABORATORIES WOUND CARE INC	831365
GENIUS TECHNOLOGIES INC	730038
GENTNER ELECTRONICS CORP	840715
GEOKINETICS INC	314606
GHS INC	791398
GIBRALTAR PARI MUTUEL INC	215970
GIL MED INDUSTRIES INC	731306
GLADSTONE RESOURCES INC	041656
GLENDALE BANCORPORATION/NJ	769800
GLOBAL CAPITAL GROUP INC/NY	793635
GLOBAL GAMING & TECHNOLOGY INC	278165
GLOBAL RESOURCES INC /AK/	842683
GLOBESAT HOLDING CORP	836868
GLOBUS GROWTH GROUP INC	352868
GNF CORP /NJ/	722310
GOLD COIN MINING INC	748794
GOLD EXPRESS CORP	761895
GOLD SECURITIES CORP	773487
GOLDEN BEVERAGE COMPANY	811271
GOLDEN CYCLE GOLD CORP	719754
GOLDEN MAPLE MINING & LEACHING CO INC	700815
GOLDEN TRIANGLE ROYALTY & OIL INC	042284
GOOD SOFTWARE CORP	313252
GOOD TIMES RESTAURANTS INC	825324
GRACIOUS ESTATES PROPERTIES LTD	042887
GRANITE LTD	703901
GRANITE STATE BANKSHARES INC	792360
GRASON INDUSTRIES INC	828931
GREAT AMERICAN REALTY CORP	043296
GREAT BAY BANKSHARES INC	819550
GREAT NORTHERN GAS CO	352684
GREENFIELD BANCSHARES INC /IN/	356031
GREENFIELD FINANCIAL CORP /UT/	763821
GREENTREE SOFTWARE INC	727063
GREENWICH FINANCIAL CORP	814479
GRIFFIN RESORTS INC	836104
GRUDGE MUSIC GROUP INC	826144
GULF & MISSISSIPPI CORP	796044
GVC VENTURE CORP /DE/	814286
GYNEX INC	734194
H&S TREAT & RELEASE INC	787793
HABEN INDUSTRIES INC	764218
HABER INC	355699
HAHN INC	225418
HAILEY ENERGY CORP	723906
HALTER VENTURE CORP	790934
HANKS SEAFOOD CO INC	045356
HANOVER BANCORP INC	713094
HANOVER INSURANCE CO	045403
HARRIS & HARRIS GROUP INC	714504
HART INDUSTRIES INC	751145
HART TECHNOLOGIES INC	822046
HARVEST CAPITAL CORP	785544
HAUSER CHEMICAL RESEARCH INC	773723
HDL COMMUNICATIONS	805907
HEALTH & LEISURE INC /DE/	774657
HEALTH INSURANCE OF VERMONT INC	046441
HEALTHPLEX INC	770506
HEAVY DUTY AIR INC	741560
HELENA SILVER MINES INC	046676
HEMCURE INC	810206
HEMOKINETICS INC	351297
HIGH HOPES INC	800161
HIGH POINT FINANCIAL CORP	708815
HIKO BELL MINING & OIL CO	047431
HILLIARD FUND 81-A LTD	319496
HILLIARD FUND 82-B LTD	709313
HILLS STORES CO /NEW/	782998
HIMEDICS INC	842914
HIPOINT INVESTMENTS LTD	350876
HITECH ENGINEERING CO	731838
HJELMS JIM PRIVATE COLLECTION LTD /DE/	806384
HOH WATER TECHNOLOGY CORP	808015
HOLDEN DAY INC	047931
HOLDEN REAL ESTATE INCOME & GROWTH FUND	803131
HOLIDAY GULF HOMES INC	082179
HOLOBEAM INC	048105
HOLOMETRIX INC	812151
HOME DISH SATELLITE NETWORKS INC	820070
HOME INTERSTATE BANCORP	357133
HOMECALL INC /MD/	809716
HOMECARE MANAGEMENT INC	791164
HOMETOWN BANCORPORATION INC	812699
HOOKER ENTERPRISES INC	763364
HORIZON BANCORP /IN/	706129
HORN & HARDART BAKING CO	048466
HORN SILVER MINES INC	048474
HOUSTON BIOMEDICAL INC	822583
HUGHES TEXAS PETROLEUM CORP	087815
HUNTER INDUSTRIAL FACILITIES INC	795430
HUTTON PRC TECHNOLOGY PARTNERS 1	741619
HYDROMER INC	704432
HYTK INDUSTRIES INC	775351
I FLOW CORP /CA/	857728
IBC HOLDINGS CORP	829499
ICC TECHNOLOGIES INC	756502
ICON CASH FLOW PARTNERS LP SERIES A	775346
IDAHO CO	809365
IDENTIX INC	735780
IEA MARINE CONTAINER FUND	311780
IFRB CORP	036414
IFS INTERNATIONAL INC	808310
IGENE BIOTECHNOLOGY INC	793160
IMMUNE RESPONSE INC	824174
IMMUNOTHERAPEUTICS INC	812796
IMPERIAL PETROLEUM INC	355356
IMPLANT TECHNOLOGIES INC	703339
IMPROCOM INC	805327
IMRE CORP	716054
INCE IV INC	804889
INCOMNET INC	353356
INCORP INC	051853
INDEPENDENT BANKS OF VIRGINIA INC	719731
INDEPENDENT ENTERTAINMENT GROUP INC	833847
INDUSTRIAL SERVICES OF AMERICA INC /FL	004187
INDUSTRIAL TRAINING SYSTEMS CORP	801309
INERTIAL MOTORS CORP	050394
INFERGENE CO	797542
INFORMATION ANALYSIS INC	803578
INLAND INVESTORS INC /WA/	796868
INMEDICA DEVELOPMENT CORP	726037
INNOVET INC	821243
INSTA COOL INC OF NORTH AMERICA	811212
INSTANT TRANSACTIONS CORP OF AMERICA	216209
INSTRUCTIVISION INC	770183
INSURANCE INVESTORS & HOLDING CO	050773
INTEGRATED LOGIC SYSTEMS INC	729439
INTEGRATED RESOURCES AMER INS MTG INV SERIES 85	753281
INTER CONTINENTAL SERVICES CORP	310585
INTERACTIVE MEDIA TECHNOLOGIES INC	850510
INTERAND CORP	718460
INTERCOM SYSTEMS INC	723501
INTERCONTINENTAL LIFE CORP	050982
INTERMOUNTAIN EXPLORATION CO	051072
INTERNATIONAL BANKCARD SERVICES CORP	814915
INTERNATIONAL DESIGN GROUP INC /DE/	773267
INTERNATIONAL ELECTRONICS INC	717751
INTERNATIONAL FUTURES FUND ONE	748829
INTERNATIONAL LEISURE HOSTS LTD /NEW/	052935
INTERNATIONAL MANAGEMENT & RESEARCH CORP	740892
INTERNATIONAL MICROCOMPUTER SOFTWARE INC	814929
INTERNATIONAL NUTRITION & GENETICS CORP	814234
INTERNATIONAL ROYALTY & OIL CO	051511
INTERNATIONAL SUPERCONDUCTOR CORP	846537
INTERNATIONAL SYSTEMS & TECHNOLOGY INC	704525
INTERNEURON PHARMACEUTICALS INC	854222
INTRAMERICAN CORP	031063
INTREX FINANCIAL SERVICES INC	810752
INVESTEX INC	006626
INVESTMENT TECHNOLOGIES INC	759672
IOWA POWER INC	052499
IRVINE SENSORS CORP/DE/	357108
ITI CORP/OH	052811
IVCI CORPORATION	758249
IVEY PROPERTIES INC	315882
JAM INC	765449
JAMCO LTD	066995
JEC LASERS INC	354697
JEGEROIL CORP	351921
JENNINGS 1981-2 LTD PARTNERSHIP	701515
JMB INCOME PROPERTIES LTD III	053563
JOURNAL EMPLOYEES STOCK TRUST	054058
JUDICATE INC	732152
KCR TECHNOLOGY INC	313469
KENTUCKY BANCORPORATION INC	734134
KENTUCKY CENTRAL LIFE INSURANCE CO	055345
KEYSTONE MEDICAL CORPORATION	722839
KIEWIT ROYALTY TRUST	711477
KIMCO ENERGY CORP	320427
KINGSFORD INDUSTRIES INC	055977
KNUSAGA CORP	225544
KP TEMPLETON INSTITUTIONAL OIL & GAS INC	715118
L A ENTERTAINMENT INC	852570
LA MAN CORP	716660
LABOR READY INC	768899
LAKE ARIEL BANCORP INC	723878
LAKESIDE BANCSHARES INC	711414
LAMCOR INC	806549
LANNETT CO INC	057725
LAS VEGAS DISCOUNT GOLF & TENNIS INC	793044
LASER RECORDING SYSTEMS INC	855581
LASERGATE SYSTEMS INC	797324
LAWN AMERICA INC	828594
LAZARUS INDUSTRIES INC	789868
LEADVILLE MINING & MILLING CORP	726845
LEADVILLE SILVER & GOLD INC	731654
LEAK X CORP	842697

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
LEARNING ANNEX INC	746553
LEASERVICE INCOME FUND I	709145
LEGAL SOFTWARE SOLUTIONS INC	770509
LEGEND FOODS INC	812790
LEGENDS COMPANY OF CHICAGO INC /DE/	842681
LEHMAN ABS CORP	829281
LEHMAN CMO INC	742454
LIBRA SYSTEMS INC	070031
LIFE RESOURCES INC	059399
LIFE SCIENCES INC	059401
LIFEWAY FOODS INC	814586
LINIUM TECHNOLOGY INC	804191
LITTLE PRINCE PRODUCTIONS LTD	318958
LITTLE SQUAW GOLD MINING CO	059860
LOBELL LANA INCOME PARTNERS	764827
LOCH EXPLORATION INC	313041
Group CF-01	
LOGAN COUNTY BANCSHARES INC	760327
LOGITEK INC /NY	812083
LONG SHORE DEVELOPMENT CORP	700760
LONGWOOD GROUP LTD	813775
LSB BANCSHARES INC /NC/	714530
LSB BANCSHARES INC OF SOUTH CAROLINA	742263
LUNN INDUSTRIES INC /DE/	060911
LUTHER MEDICAL PRODUCTS INC	319204
LUXTEC CORP /MA/	793523
LWAY PRODUCTIONS INC	806277
LYNX EXPLORATION CO	352180
LYRIC ENERGY INC	319420
MACK TRUCKS RECEIVABLES CORP	810903
MACROCHEM CORP	743884
MAGIC CIRCLE ENERGY 1982 DRILLING PROGRAM	356128
MAGNOLIA FOODS INC	794107
MAGNUM RESOURCES INTERNATIONAL INC /NV/	791912
MAIL BOXES COAST TO COAST INC	808013
MAMBA CORP	825832
MAMMATECH CORP	704366
MANAGEMENT ADVISORY SOFTWARE INC/DE/	801426
MARBLE FINANCIAL CORP	794620
MARINE PETROLEUM TRUST	062362
MARITEK CORP	715781
MARKET GUIDE INC	720462
MASSBANK CORP	799166
MAST KEYSTONE INC	743250
MCDANIEL AUSTIN CORP	768942
MCMARTIN INC	079383
MD ENTERPRISES OF CONNECTICUT INC	806178
MEADOW GROUP INC	829903
MEDCO RESEARCH INC	723385
MEDGROUP INC	859364
MEDI MAIL INC /NV/	832485
MEDICAL ADVISORY SYSTEMS INC	771252
MEDICAL DEPOT INC	747539
MEDICAL TECHNOLOGY PRODUCTS INC	718633
MEDICAL TECHNOLOGY SYSTEMS INC /DE/	823560
MEDISCIENCE TECHNOLOGY CORP	064647
MEDITECH MANAGEMENT INC	789609
MEDIVIX INC	715994
MEDMASTER SYSTEMS INC /DE/	794324
MEDPHONE CORP	771674
MEDSTAT SYSTEMS INC	726732
MEGA GROUP INC	828942
MEGATECH CORP	064708
MEICOR INC	805644
MELBOURNE FUTURES FUND L P	777197
MELDON ALUMNI INC	350088
MEMORY SCIENCES CORP /DE/	819203
MEMTEK CORP	353377
MERCHANTS BANCORP INC/DE/	707817

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
MERCHANTS CAPITAL CORP /DE/	821121
MESA CONTRACT MINING INC	774491
MESA MEDICAL INC	724004
METAL ARTS CO INC	320303
METRO SELF STORAGE LTD PARTNERSHIP-II	799667
METROPOLITAN MINES CORP LTD	065381
MEXCO ENERGY CORP	066418
MICROFRAME INC	754813
MICRONETICS INC /DE/	820097
MICROSIZE INC	744099
MICROTECH MEDICAL SYSTEMS INC	755720
MICROTEL FRANCHISE & DEVELOPMENT CORP /NY/	846469
MID AMERICA RACING STABLES INC	813309
MID AMERICAN LINES INC	065820
MIDNITE MINES INC	066078
MIDWEST BEST WATER SALES INC	811783
MIDWEST MANAGEMENT CORP	066124
MIKRON INSTRUMENT CO INC	787809
MIKROS SYSTEMS CORP	317340
MILLER INDUSTRIES INC	066388
MINERS NATIONAL BANCORP INC	714309
MINEX RESOURCES INC	350389
MINNEGASCO INC	722010
MINORITY BUSINESS ENTERPRISES INC	729639
MIRROR TECHNOLOGIES INC /DE/	783738
MLH INCOME REALTY PARTNERSHIP III	710132
MLH INCOME REALTY PARTNERSHIP IV	718417
MLH INCOME REALTY PARTNERSHIP V	755643
MLH INCOME REALTY PARTNERSHIP VI	771586
MOBILE NATIONAL CORP	783739
MODERN TECHNOLOGY CORP	711422
MONOGRAM OIL & GAS INC	319478
MONTANA CORP /MT/	067715
MONTANA NATURALS INTERNATIONAL INC	819182
MONTANA PRECISION MINING LTD	799268
MONUMENT RESOURCES INC	818468
MOREHOUSE INDUSTRIES INC	062262
MORGRO CHEMICAL CO	727346
MORTGAGE BANKERS FINANCIAL CORP I	741627
MOTHER LODE GOLD MINES CONSOLIDATED	802595
MR ROOTER CORP	797502
MRI OF NORTHERN NEW JERSEY L P	810143
MSE CABLE SYSTEMS INC	104501
MTX INTERNATIONAL INC	710197
MULTI SOFT INC	766404
MULTI SOLUTIONS INC	723733
MULTIVEST REAL ESTATE FUND LTD SERIES III	068839
MURDOCK CAPITAL CORP /CO/	814472
MUTUAL BANCORP INC	826489
MUTUAL BENEFIT TRAMMELL CROWRES OPPORTUNITY FUND	779317
NACO FINANCE CORP	806087
NASTECH PHARMACEUTICAL CO INC	737207
NATIONAL AFFILIATED CORP	706597
NATIONAL BANKSHARES INC	796534
NATIONAL DATACOMPUTER INC	812880
NATIONAL DIVERSIFIED SERVICES INC	772784
NATIONAL HEALTH CARE SYSTEMS INC	070184
NATIONAL HEALTH ENHANCEMENT SYSTEMS INC	804368
NATIONAL HOUSING PARTNERSHIP REALTY FUND I	731131
NATIONAL INDUSTRIAL SECURITY CORP	104401

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
NATIONAL LEASE INCOME FUND	357219
NATIONAL MEDICAL HEALTH CARD SYSTEMS INC	813562
NATIONAL MERCANTILE BANCORP	714801
NATIONAL PETROLEUM CORP LTD	070427
NATIONAL PROPANE CORP	070452
NATIONAL QUICK LUBE LTD	851063
NATIONAL REAL ESTATE LTD PARTNERSHIP II	350382
NATIONAL TECHNOLOGIES INC	737923
NATIONAL TRANSACTION NETWORK INC	315999
NATIONAL TRANSFER & REGISTER CORP	792933
NAUTILOID CORP	070808
NAVARRE 500 BUILDING ASSOCIATES	070816
NDE ENVIRONMENTAL CORP	851476
NEMDACO INC	793036
NEOTERIK HEALTH TECHNOLOGIES INC	838790
NESTOR INC	720851
NETCOR INC	809060
NETI TECHNOLOGIES INC	778362
NETWORD INC	715031
NETWORKED PICTURE SYSTEMS INC /CA/	811802
NEUROTECH CORP	758953
NEW AGE CORP	714634
NEW HILARITY MINING CO	071391
NEW QUINCY MINING CO	071530
NEW STAR ENTERTAINMENT INC / CA/	769122
NEW YORK FILM WORKS INC	739279
NIGHT FLIGHT ENTERTAINMENT INC	817746
NIX O TINE PHARMACEUTICALS LTD	848468
NMC CORP	072170
NOISE CANCELLATION TECHNOLOGIES INC	722051
NORCAP FINANCIAL CORP	742127
NORDSTROM CREDIT INC	757439
NORMAR INVESTMENT CORP	767791
NORTECH SYSTEMS INC	722313
NORTH AMERICAN BANCORPORATION INC	700929
NORTH AMERICAN COMMODITY FUND III LTD PARTNERSHIP	730073
NORTH AMERICAN DIVERSIFIED INVESTMENT FUND LP	776001
NORTH AMERICAN DIVERSIFIED INVESTMENT FUND II LP	799876
NORTH ATLANTIC FISHERIES INC	759695
NORTH ATLANTIC TECHNOLOGIES INC	706021
NORTH COUNTY BANCORP	357262
NORTH EUROPEAN OIL ROYALTY TRUST	072633
NORTH SHORE GAS CO /IL/	110101
NORTH VALLEY BANCORP	353191
NORTHAMPTON INC	783209
NORTHERN ILLINOIS FINANCIAL CORP	826447
NORTHERN ILLINOIS GAS CO /IL/ / NEW/	110104
NORTHWEST ILLINOIS BANCORP INC	216729
NORWEST MORTGAGE INSURED 2 INC	740768
NOVA INTERNATIONAL FILMS INC	773394
NOVA NATURAL RESOURCES CORP	792935
NRG INC	073225
NRM 1984 DEVELOPMENT INCOME FUND LTD	752201
NRM DEVELOPMENT INCOME FUND LTD	714915
NTN COMMUNICATIONS INC	748592
NUGGET EXPLORATION INC	356590
NUMERICOM INC /OK/	357038

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
NUTRAMAX PRODUCTS INC /DE/	818467
NUTRITION NOW INC	790648
OAK TREE CONSTRUCTION COMPUTERS INC	799426
OASIS LAUNDRIES INC	823073
OCCUPATIONAL URGENT CARE HEALTH SYSTEMS INC	744040
OCG TECHNOLOGY INC	073779
OHIO CASUALTY CORP	073952
OIA INC	797662
OIL CITY PETROLEUM INC	277952
OLD SECOND BANCORP INC	357173
ON SITE TOXIC CONTROL INC	818183
ONCOR INC	806637
OPT SCIENCES CORP	074688
OPTELECOM INC	275858
OPTICORP INC	836433
OPTIMUM ELECTRONICS INC	806174
OPTIMUMCARE CORP /DE/	820474
ORANGE BANCORP	702302
ORBIS INC	799514
ORIGINAL ITALIAN PASTA PRODUCTS CO INC	802686
ORRSTOWN FINANCIAL SERVICES INC	826154
OUTBACK OIL & MINERAL EXPLORATION CORP	352870
OUTRIGHT INDUSTRIES INC	766348
OXBORO MEDICAL INTERNATIONAL INC	350557
OXFORD CAPITAL CORP	818475
OZO DIVERSIFIED AUTOMATION INC /CO/	812152
P&C FOOD MARKETS INC /NY/	784558
PACE GROUP INTERNATIONAL INC	791958
PACE MEDICAL INC	814057
PACIFIC CAPITAL BANCORP	731805
PACIFIC ENERGY & MINING CO	778584
PACIFIC GOLD CORP	277058
PACIFIC INTERNATIONAL FUTURES FUND/CA	769347
PACIFICORP FINANCIAL SERVICES INC	072965
PAINEWEBBER COMMODITY LTD PARTNERSHIP I	352911
PAINEWEBBER COMMODITY LTD PARTNERSHIP I	313909
PAK MAIL CENTERS OF AMERICA INC	754921
PALMETTO BANCSHARES INC	706874
PANHANDLE EASTERN PIPE LINE CO	076063
PAPERBACK SOFTWARE INTERNATIONAL	756439
PARKER & PARSLEY 82 I LTD	714909
PARTNERS HEALTH PLAN OF FLORIDA INC	756928
PASSPORT TRAVEL INC	313141
PATHE COMPUTER CONTROL SYSTEMS CORP	731895
PATHFINDER DATA GROUP INC	718499
PATTERN PROCESSING TECHNOLOGIES INC	704460
PAUL ENTERTAINMENT INC	809706
PAULSON CAPITAL CORP	704159
PAVICHEVICH BREWING CO /IL/	818786
PAYLINE SYSTEMS INC	779628
PC ETCETERA INC	827053
PCR INTERNATIONAL INC	798398
PDG ENVIRONMENTAL INC	771485
PEI INC /DE/	716524
PELL INDUSTRIES INC	077004
PEMI BANCORP INC	768868
PENN CENTRAL BANCORP INC	737220
PENN PACIFIC CORP	077140
PENN TIDE CORP	740045
PENNS WOODS BANCORP INC	716605
PEOPLES BANCORP OF WORCESTER INC	811908
PEOPLES MID ILLINOIS CORP	763861
PERFECTDATA CORP	719662
PERPETUAL FINANCIAL CORP	815275
PETRO GLOBAL INC	217165
PETROL INDUSTRIES INC	077864
PHARMACO MEDICO SYSTEMS CORP	720685
PHARMATEC INC	713275
PHARMETICS INC	823754
PHC INC	225759
PHOENIX ADVANCED TECHNOLOGY INC	789562
PHOENIX LASER SYSTEMS INC	848102
PHOENIX LEASING PERFORMANCE FUND 1981	320451
PHOENIX NETWORK INC	704862
PHONETEL TECHNOLOGIES INC	821511
PHOTO ACOUSTIC TECHNOLOGY INC	743871
PHYSIO TECHNOLOGY INC	729645
PIASECKI AIRCRAFT CORP	078375
PICNIC POINT DEVELOPMENT CO LTD	277318
PIERCE INTERNATIONAL INC	823387
PIEZO ELECTRIC PRODUCTS INC	352427
PINNACLE BANC GROUP INC	827085
PINNACLE ENVIRONMENTAL INC	857353
PIONEER RAILROAD CO INC /IA/	796374
PIONEER WESTERN ENERGY 1987-A INCOME LTD	819965
PIONEER WESTERN ENERGY 1987-B INCOME LTD	822507
PLANO PETROLEUM CORP	315671
PLASTIC SPECIALTIES & TECHNOLOGIES INC	810628
PLATRONICS INC	079090
PLAZA COMMUNICATIONS INC	720642
PLM TRANS EQUIP PARTNERS IXD 1986 INCOME FUND	778794
POCAHONTAS BANKSHARES CORP	723594
POLAR MOLECULAR CORP /UT/	810613
POLYMER RESEARCH CORP OF AMERICA	079424
POLYMERIX INC	813719
POLYMUSE INC	735422
POOL ENERGY SERVICES CO	842815
PORTSMOUTH BANK SHARES INC	825534
PORTSMOUTH SQUARE INC	079661
POWER CELL INC	798539
POWER DESIGNS INC	079829
POWER OIL CO	079839
POWER SPECTRA INC /CA/	777527
POWEREC INTERNATIONAL INC	826757
PREMIER BANCORPORATION INC	826810
PREMIS CORP	724910
PRESSURE PIPING COMPONENTS INC	747675
PRESTO TEK CORP	804126
PRIME FINANCIAL PARTNERS L P	813616
PRIMEFAX INC	720476
PRINCETON ELECTRONIC PRODUCTS INC	080324
PRINCETON MINING CO	080327
PRINTRON INC	829068
PRO DEX INC	788920
PRO OIL INC	355511
PROBAC INTERNATIONAL CORP	800401
PROGRESSIVE BANCORPORATION INC	735424
PROMENADE BANCSHARES INC	711610
PROSPECT PARK FINANCIAL CORP / DE/	818239
PROTEIN DATABASES INC	770131
PROTOCOM DEVICES INC	789565
PROVIDENT BANKSHARES CORP	818969
PROVIDENT LIFE CAPITAL CORP	821475
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-1	774457
PSYCHEMEDICS CORP	806517
Q1 CORP	081344
QCB BANCORP	714308
QUANTECH ELECTRONICS CORP	715788
QUANTUM DIAGNOSTICS LTD /NY/	768986
QUANTUM VENTURES GROUP INC	801557
QUARTZ INC	804330
QUATECH INC	789945
QUEST BIOTECHNOLOGY INC	793395
QUICKSILVER ENTERPRISES INC	832985
QWIX TECHNOLOGIES INC	830484
R 2000 CORP	700573
R SCAN CORP	827958
RADIATION DISPOSAL SYSTEMS INC	758256
RADON TESTING CORP OF AMERICA INC	805905
RAMAPO FINANCIAL CORP	081893
RAMPART GENERAL INC	081918
RAPHOLZ SILVER INC	740110
RAPITECH SYSTEMS INC	795611
RARITAN BANCORP INC	811434
RASTRA BUILDING SYSTEMS INC	805228
RATEL CORP	825829
RATEX RESOURCES INC	789293
REAL ESTATE ASSOCIATES LTD I	225789
REAL ESTATE ASSOCIATES LTD II	314237
REALAMERICA CO/NEW	716266
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP VI-B	822784
RECREATIVE TECHNOLOGIES CORP	825828
REDDING BANCORP	702513
REEVES TELECOM LTD PARTNERSHIP	314741
REGAL COMMUNICATIONS CORP	763414
REGENT PETROLEUM CORP	319200
REMITTANCE TECHNOLOGIES CORP	850921
RENT A WRECK OF AMERICA INC	763567
REPRO MED SYSTEMS INC	704440
REPUBLIC HOLDINGS CORP	810739
REPUBLIC OIL CO	780126
REPUBLIC WASTE INDUSTRIES INC	350698
RES TECH INC	789537
RESEARCH FRONTIERS INC	793524
RESERVE EXPLORATION CO	353576
RESOURCE GENERAL CORP	035305
RESOURCE NETWORK INTERNATIONAL INC	808371
RESTAURANT HOTLINE SYSTEMS INC	831320
REX LEASING COVERED HOPPER RAILCAR MGMT PROG 1980	315276
RISK GEORGE INDUSTRIES INC	084112
RIVER TOWNE PARTNERS I LTD	717561
RMED INTERNATIONAL INC	777513
ROBERTS OIL & GAS INC	355300
ROCK FINANCIAL CORP/NJ/	775663
ROCKY MOUNTAIN BEVERAGE CO	772831
ROCKY MOUNTAIN CHOCOLATE FACTORY INC	785815
ROLLFORM OF JAMESTOWN INC	830256
ROOSEVELT HOT SPRINGS CORP	217026
ROTAN MOSLE REALTY FUND I LTD	354082
ROVAC CORP	085399
ROYAL BUSINESS GROUP INC	312160
ROYAL CAPITAL CORP	828956
ROYCE LABORATORIES INC /FL/	789462
RUBY MINING CO	085684
RYAN MURPHY INC	802524
S B H VENTURES	807630
S2 GOLF INC	782126
SABLE CORP	825152
SAFARI CORP	789559
SAFE WASTE SYSTEMS INC	769107
SAI GROUP INC	319519
SAINTS & SINNERS ENTERTAINMENT CO	813610
SAN MATEO COUNTY BANCORP	775473

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SANCHEZ OBRIEN 1981 A DRILLING CO	350212
SANI MED INC	823570
SARATOGA MINT LTD	820100
SAWYER ADECOR INTERNATIONAL INC	087009
SC BANCORP	351617
SCAN GRAPHICS INC	764843
SCAT HOVERCRAFT INC	779999
SCIENTIFIC IMAGING INSTRUMENTS INC /DE/	852003
SCIENTIFIC INDUSTRIES INC	087802
SCIENTIFIC NRG INC	794929
SCIENTIFIC RADIO SYSTEMS INC	087817
SCORE EXPLORATION CORP	318852
SCORPION TECHNOLOGIES INC	803190
SCOTT INSTRUMENTS CORP	350899
SCOTT SCIENCE & TECHNOLOGY INC	735635
SEA GALLEY PROPERTIES LTD 1980	317892
SEA ISLAND BANKSHARES INC	824905
SEAHAWK CAPITAL CORP	317788
SEAHAWK DEEP OCEAN TECHNOLOGY INC	833020
SEARCH NATURAL RESOURCES INC	318672
SECURITY BANC CORP	763956
SECURITY CAPITAL CORP/DE/	314340
SECURITY LAND & DEVELOPMENT CORP	088572
SEMICON TOOLS INC /NV/	794998
SENTEX SENSING TECHNOLOGY INC	729599
SEQUENTIAL INFORMATION SYSTEMS INC	069041
SERVAM CORP	820286
SERVINATIONAL INC	089122
SEVEN J STOCK FARM INC	089177
SHEARSON EQUIPMENT INVESTORS III	357012
SHEFFIELD EXPLORATION CO INC	755199
SHELTON BANCORP INC	820786
SHOP AT HOME INC /TN/	810029
SHORT TAKES INC	844698
SHOWCASE COSMETICS INC	807397
SIBONEY CORP	090057
SIDARI CORP	801899
SIERRA MONITOR CORP /CA/	100625
SIERRA TAHOE BANCORP	790555
SILVER BUTTE MINING CO	090310
SILVER LEDGE INC	090357
SILVER MOUNTAIN LEAD MINES INC	090366
SLHD INC	730339
SLM ENTERTAINMENT LTD	354630
SMARTCARD INTERNATIONAL INC / NY/	795214
SNOWY OWL INN CORP	356996
SOFTGUARD SYSTEMS INC	727477
SOFTWARE FUND II	722581
SOFTWARE SERVICES OF AMERICA INC	725628
SOLV EX CORP	350305
SOMERSET BANKSHARES INC	814272
SONAR RADIO CORP	091735
SONEX RESEARCH INC	723312
SONO TEK CORP	806172
SOONER ENERGY CORP	353904
SOUTH BRANCH VALLEY BANCORP INC	811808
SOUTH STANDARD MINING CO	091950
SOUTH TEXAS DRILLING & EXPLORATION INC	320575
SOUTHERN ACCEPTANCE CORP	092066
SOUTHERN BANKSHARES INC/WV/	715135
SOUTHERN HERITAGE INSURANCE CO	809937
SOUTHERN JERSEY BANCORP OF DELAWARE INC	740830
SOUTHERN KITCHENS INC	831668
SOUTHERN MICHIGAN BANCORP INC	703699
SOUTHERN STATES CORP	277385
SOUTHLAND ESTATE WINERY INC	788132
SOUTHLAND NATIONAL INSURANCE CORP	071546
SOUTHMARK LIFE SUBSIDIARY CORP	050829
SOUTHNET CORP	820114
SOUTHSIDE BANCSHARES CORP	703970
SOUTHWARD VENTURES DEPOSITARY TRUST	701983
SPARTA SURGICAL CORP	819981
SPECTRUM DATATECH INC	830985
SPECTRUM LABORATORIES INC /CA	319013
SPENDTHRIFT FARM INC	729499
SPHINX MINING INC	796117
SPORTS ENTERTAINMENT GROUP INC	814254
SPORTSMANS GUIDE INC	791450
SPRING BANCORP INC	825042
SSE TELECOM INC	808220
ST LAWRENCE SEAWAY CORP	086264
STAN WEST MINING CORP	320549
STANDARD ENERGY CORP	205921
STANDARD LOGIC INC	093379
STANDARD OIL & EXPLORATION OF DELAWARE INC	831978
STANWICK CORP	093584
STARSTREAM COMMUNICATIONS GROUP INC	815029
STATE RECREATION INC	093741
STAUN BANCORP INC	826615
STELLAR PETROLEUM INC	740401
STEPHAN CO	094056
STERLING FINANCIAL CORP /MO/	094140
STERLING GAS DRILLING FUND 1981	356448
STERLING GAS DRILLING FUND 1982	704202
STEVIA CO INC	731933
STONE MEDICAL SUPPLY CORP	716431
STOTLER FUTURES FUND	787627
STOTLERS HEARTLAND FUTURES FUND	788737
STRATEGIC ABSTRACT & TITLE CORP	845414
STRATEGIC DISTRIBUTION INC	073822
STRATFORD FINANCIAL GROUP LTD /NY/	751418
STRINGS LTD	849682
STRUCTOFAB INC	788902
STRUTHERS OIL & GAS CORP	094945
SULCUS COMPUTER CORP	726712
SUMMA RX LABORATORIES INC	777517
SUMMIT BANK CORP	820067
SUN UP FOODS INC	819803
SUNLITE TECHNOLOGIES CORP	814071
SUNRISE BANCORP	701709
SUNRISE PRESCHOOLS INC/DE/	818695
SUNRISE TECHNOLOGIES INC	846771
SUNWALKER DEVELOPMENT INC	789879
SUPERMAIL INTERNATIONAL INC	832508
SURE HAIR INC	801412
SURGE COMPONENTS INC	747540
SURGIDYNE INC	745788
SWIFT ENERGY INCOME PARTNERS 1986-A LTD	799064
SWIFT ENERGY INCOME PARTNERS 1986-B LTD	806614
SWISHER INTERNATIONAL INC	808356
SYMETRICS INDUSTRIES INC	095944
SYNERGETICS INTERNATIONAL INC	724264
SYNERGISTICS INC	095986
SYNTHETECH INC	749290
SYS	096057
SYSTEMS TECHNOLOGY ASSOCIATES INC	756824
SYSTEMS WEST INC	819346
SYSTONETICS INC	096079
TABOR ENVIRONMENTAL SERVICES INC	831490
TAGO INC	718543
TAHOE CO INC /CO/	791956
TAL CAP INC	096207
TANDY CREDIT CORP	818153
TAPE SPECIALTY INC	353821
TATUM PETROLEUM CORP	766624
TAURUS PETROLEUM INC /CO/	225926
TECFIN CORP	352860
TECH TIME INC	766887
TECHNICLONE INTERNATIONAL CORP	704562
TECHNOLOGY 80 INC	735703
TECHNOLOGY INTERNATIONAL LTD	201040
TECHSCIENCE INDUSTRIES INC	318523
TEECO PROPERTIES LP	277377
TEL ELECTRONICS INC	756767
TELEBYTE TECHNOLOGY INC	726451
TELECALC INC	741038
TELECOMMUNICATION PRODUCTS INC	725929
TELECONFERENCING SYSTEMS INTERNATIONAL INC	754435
TELENETICS CORP	810018
TELEPHONE SPECIALISTS INC	715805
TELETEK INC	312979
TELETIMER INTERNATIONAL INC	790238
TELETRAK ADVANCED TECHNOLOGY SYSTEMS INC	722828
TELVUE CORP	839443
TEMPLETON 82 B LTD	703877
TERRITORIAL RESOURCES INC	319770
TEXAS REGIONAL BANCSHARES INC	787648
TEXAS SECURITIES INC	806583
TEXAS VANGUARD OIL CO	315261
TGC INDUSTRIES INC	799165
THERAPEUTIC TECHNOLOGIES INC	761800
THERMACOR TECHNOLOGY INC	786129
THOMSON COMMODITY PARTNERS II	704846
THOMSON DIAMOND TRUST JEFFERSON COLLECTION	320167
THORATEC LABORATORIES CORP	350907
THRIFTY TEL INC	820417
THT INC	721602
THUNDER MOUNTAIN GOLD INC	711034
TIC INTERNATIONAL CORP	098596
TIDELANDS ROYALTY TRUST B	276077
TIMBERLINE MINERALS INC	098305
TIME MANAGEMENT CORP /MN/	813717
TNR TECHNICAL INC	723615
TOFUTTI BRANDS INC	730349
TOUCHSTONE SOFTWARE CORP / CA/	751160
TPA OF AMERICA INC	772249
TPC COMMUNICATIONS INC	217370
TPEX EXPLORATION INC	312842
TRAKIT CORP	354867
TRANSAMERICAN PETROLEUM CORP	801451
TRANSMEDIA NETWORK INC /DE/	078536
TRAVELERS MORTGAGE SECURITIES CORP	737294
TRIANGLE GROUP INC	764763
TRION FUND II	766563
TRIUMPH OIL & GAS CORP	789558
TROUND INTERNATIONAL INC	312478
TRVLSYS INC	755635
TSL INC	843961
TSUNAMI CAPITAL CORP	799230
TUBBYS INC	725398
TWENTY SERVICES INC	031704
TWIN CREEK EXPLORATION CO INC	318291
TYREX OIL CO	317889
U S TECHNOLOGIES INC	810130
UCI MEDICAL AFFILIATES INC	737561
UINTAH ENERGY CORP	350095
ULTIMAP INTERNATIONAL CORP	795820
ULTRA PAC INC	813134
UMC ELECTRONICS CO	100619

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
UNB CORP/OH	746481
UNICOMP INC	792341
UNIPHY DIAGNOSTICS PHYSICIANS LTD	810626
UNIQUE MOBILITY INC	315449
UNITED BUYING SERVICE INTERNATIONAL INC	819187
UNITED CAPITAL HOLDINGS INC	101554
UNITED FINANCIAL CORP OF SOUTH CAROLINA INC	818096
UNITED IOWA CORP	757641
UNITED LEISURE CORP	059684
UNITED NATIONAL BANCORPORATION	355453
UNITED NATIONAL FINANCIAL CORP	225968
UNITED OKLAHOMA BANKSHARES INC	725806
UNITED RESERVE UNDERWRITERS INC	101471
UNITED SATELLITE AMERICA INC	841128
UNITED SERVICE SOURCE INC	810624
UNITED SHOPPERS OF AMERICA INC	808715
UNITED SOFTWARE SECURITY INC	742714
UNITED STORAGE ASSOCIATES 85-1 LTD	768749
UNITED STORAGE ASSOCIATES 86-1 LTD	790415
UNITED SYSTEMS TECHNOLOGY INC	350194
UNITED TRANS WESTERN INC	316600
UNIVERSAL CAPITAL CORP	798528
UNIVERSAL CERAMICS INC	320579
UNIVERSAL SERVICES GROUP INC / DE/	741564
UNIVERSITY GENETICS CO	717193
UNIVERSITY GRAPHICS INC	102163
UNIVERSITY REAL ESTATE INVESTORS-81	320175
UNO INC	811512
UPBANCORP INC	715081
UPWARD TECHNOLOGY CORP	062600
URBAN IMPROVEMENT FUND LTD 1973	102341
URBAN IMPROVEMENT FUND LTD 1974	102343
USA BANCORP INC	826740
USA INTERNATIONAL DEFENSE SYSTEMS INC	808267
USAIR INC /NEW/	714560
USASIA INTERNATIONAL PUBLICATIONS INC	819931
USR INDUSTRIES INC/DE/	316911
UTAH SHALE LAND & MINERALS CORP	102499
VALCO COMMUNICATIONS INC	813901
VALDAK CORP	102625
VALLEY BANCORP INC	070670
VALLEY FORGE SCIENTIFIC CORP	836429
VANDERBILT SQUARE CORP	764773
VEGAS CHIPS INC	811868
VERAZZANA VENTURES LTD	790023
VEREX LABORATORIES INC/CO	716861
VERITEC INC	773318
VERTEX INDUSTRIES INC	779681
VERTICAL SOFTWARE SYSTEMS INC	730872
VEST H D INC /TX/	819521
VETLINE INC/CO/	797568
VIABLE RESOURCES INC	319008
VIDEO COMMUNICATIONS & RADIO INC	803170
VIDEO SCIENCE TECHNOLOGY INC	754881
VIDEO SHOPPING MALL INC	765484
VIDEOPLEX INC	758119
VIKONICS INC /NY/	814932
VILLAGE BANCORP INC	715148
VIRAL RESPONSE SYSTEMS INC	744956
VISION TECHNOLOGIES INTERNATIONAL INC	812805
VISX INC	837991
VITA PLUS INDUSTRIES INC	721684
VITAFORT INTERNATIONAL CORP	857139
VITEL FIBER OPTICS CORP	806492
VITRO DIAGNOSTICS INC	793171
VOCALTECH INC	793043
VOICEMAIL INTERNATIONAL INC	731819
VOLUNTEER BANCSHARES INC	356003
VOLUNTEER STATE BANCSHARES INC	709417
VOTRAX INC	721353
VYSTAR GROUP INC	797164
W W CAPITAL CORP	831253
WAINOCO 77 CO	203551
WALL STREET FINANCIAL CORP /DE/	837491
WASHINGTON COMMERCIAL BANCORP	817643
WAVEMAT INC	803957
WAVETECH INC	799694
WEBCOR ELECTRONICS INC	058636
WELLS AMERICAN CORP	351514
WEPCO ENERGY CO/NEW/	752388
WESPERCORP	312835
WEST COAST BANCORP INC	826764
WESTBRIDGE RESEARCH GROUP	750150
WESTERN ENERGY RESOURCES INC	766822
WESTERN GOLD MINING INC	106105
WESTERN HOST SACRAMENTO PARTNERS	702387
WESTERN MEDIA GROUP CORP	225501
WESTERN SILVER LEAD CORP	106311
WESTERN STANDARD CORP	106318
WESTERN STAR INC	727164
WESTFORD GROUP INC	022709
WESTIN HOTELS LTD PARTNERSHIP	790549
WESTPAR CORP	808308
WETJET INTERNATIONAL LTD /DE/	814183
WHITETAIL INC	793764
WHITING PETROLEUM 1982 I INCOME & DEVELOP PART LTD	356871
WHITMAN MEDICAL CORP	352183
WILDEY INC	827245
WILLARD PEASE OIL & GAS CO	076878
WILLOW INVESTMENTS INC	822036
WILSON DOUG STUDIOS INC /DE/	819216
WILSON LEE ENGINEERING CO INC	058429
WINCO PETROLEUM CORP	313968
WINE SOCIETY OF AMERICA INC / DE/	831982
WINGATE HOUSING PARTNERS 85 LTD PARTNERSHIP	773870
WINGATE HOUSING PARTNERS LTD II	715769
WINJAK INC /DE/	107748
WINTHROP FINANCIAL ASSOCIATES	759253
WINTHROP INTERIM PARTNERS I	718535
WINTHROP RESIDENTIAL ASSOCIATES I	350903
WINTHROP RESIDENTIAL ASSOCIATES II	356141
WIRE GRAPHICS INC /NV/	707369
WITH DESIGN IN MIND INTERNATIONAL INC	800454
WORD TRONICS CORP	311268
WORKINGMENS CORP	820528
WORLD CONTAINER CORP	745374
WSC GROUP INC	108618
WURLTECH INDUSTRIES INC	108637
WYNN INDUSTRIES INC	108712
WYOMING OIL & MINERALS INC	108729
XEDAR CORP	108770
XELEX INC	786703
XENEJENEX INC	837028
Group CF-01	
XIOX CORP	782995
XTRAMEDICS INC /NV/	820608
XYTRONYX INC	731252
YARDLEY VENTURES INC	802781
YELLOW GOLD OF CRIPPLE CREEK INC	313109
YELLOWSTONE RESOURCES INC	715142
YREKA UNITED INC	109105
YUKON ENERGY CORP	757763
ZALE CREDIT CORP	812163
ZENOX INC	779676
ZFAX IMAGE CORP	847541
ZILA INC	827156
ZINETICS MEDICAL INC/ UT	789892
ZOMAX INC	811784
Group CF-09	
1600 MARKET STREET ASSOCIATES	754080
1867 WESTERN FINANCIAL CORP	840663
1990 CALIFORNIA TAX CREDIT PARTNERS L P	841020
1990 FEDERAL TAX CREDIT PARTNERS LP	837924
3333 HOLDING CORP	818762
60 EAST 42ND STREET ASSOCIATES	090794
A R CABLE SERVICES INC	002271
ABLE TELCOM HOLDING CORP	826411
ABOVE TECHNOLOGIES INC	743213
ACADEMY INSURANCE GROUP INC	001973
ACCEL INTERNATIONAL CORP	001985
ACCESS GROUP INC	833798
ACQUISITION CAPABILITY INC	819255
ACTION COMMUNICATIONS INC	752263
ACTIVE CAPITAL INC	824301
ADDITIVE TECHNOLOGY CORP	730347
ADEN ENTERPRISES INC	798538
ADINA INC	826773
ADVANCED BIOLOGICAL SYSTEMS INC	843004
ADVANCED ENERGY CORP	320179
ADVANCED RECORDING INSTRUMENTS INC	725935
ADVANTAGE LIFE PRODUCTS INC / CO	824840
ADVANTISTICS INC /DE/	843496
ADVEN INC	802206
AEGIS FINANCIAL CORP	825722
AEI REAL ESTATE FUND XVII LIMITED PARTNERSHIP	819577
AEI REAL ESTATE FUND XVIII LIMITED PARTNERSHIP	840459
AG-BAG INTERNATIONAL LTD	842289
AGRI PONICS INC	826678
AIRCRAFT INCOME PARTNERS L P	826156
AIRFUND INTERNATIONAL LIMITED PARTNERSHIP	842184
AIRTRAN CORP	835768
ALFA RESOURCES INC	354767
ALL QUOTES INC	837472
ALLANTE CAPITAL CORP	813362
ALLCITY INSURANCE CO /NY/	003642
ALLIANCE ENTERPRISES INC	828881
ALLIANCE HEALTH INC	822434
ALLIED BANKSHARES INC	810995
ALLIED SILVER LEAD CO	003959
ALPINE MEADOWS OF TAHOE INC	808302
ALZA TTS RESEARCH PARTNERS LTD	710178
AMDL INC	838879
AMERICA FIRST FEDERALLY GUARANTEED MTG FUND 2 /NE/	764638
AMERICA FIRST PARTICIPATING PREFD EQ MTG FUND LP	789952
AMERICA FIRST PREP FUND 2 LIMITED PARTNERSHIP	844327
AMERICA FIRST TAX EXEMPT MORTGAGE FUND 2 LP	793245
AMERICAN BANKERS INSURANCE GROUP INC	350571
AMERICAN BANKSHARES INC /GA/	840500
AMERICAN COAL CORP	799194

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
AMERICAN CONFECTIONERY CORP	762404
AMERICAN EDUCATORS FINANCIAL CORP/DE/	320349
AMERICAN ENTERTAINMENT PARTNERS LP	793078
AMERICAN ENTERTAINMENT VENTURE CORP	737299
AMERICAN INCOME 6 LTD PARTNERSHIP	780396
AMERICAN INCOME PARTNERS III-D LIMITED PARTNERSHIP	808516
AMERICAN INCOME PARTNERS IV A	826929
AMERICAN INCOME PARTNERS IV B	826930
AMERICAN INCOME PARTNERS IV C L P	826931
AMERICAN INCOME PARTNERS IV D LP	826932
AMERICAN INDUSTRIES LTD	276298
AMERICAN INSURED MORTGAGE INVESTORS L P	811437
AMERICAN INSURED MORTGAGE INVESTORS SERIES 89	842181
AMERICAN JET HOLDINGS INC	830483
AMERICAN LIFE INVESTORS INC	768710
AMERICAN QUALITY PRODUCTS INC	723253
AMERICAN RETIREMENT VILLAS PROPERTIES II	830156
AMERICAN TAX CREDIT PROPERTIES LP	830159
AMERICAN TRAVELLERS CORP	790928
AMERICAN VETERINARY PRODUCTS INC	841543
AMERICAN VIDEO CLEARING HOUSE INC	837037
AMERICAS COFFEE CUP INC	830746
AMERICUS FUNDING CORP	831547
AMERISERVE CAPITAL CORP	797892
AMFAC JMB HAWAII INC	839437
AMNET TELECOMMUNICATIONS GROUP LTD	839667
AMRECORP REALTY FUND III	776813
AMS INC /OK/	843009
ANCHOR CAPITAL II INC	819716
ANCO PRODUCTION CO	841002
ANDOVER EQUITIES CORP	842923
ANGELES FINANCE TRUST	840999
ANGELES MORTGAGE INVESTMENT TRUST	840997
ANGELES PARTNERS 16	812187
ANNAPOLIS BANCSHARES INC	842705
ANTARES RESOURCES CORP	065202
ANTENNAS AMERICA INC	826326
APACHE ENERGY & MINERALS CO	315645
APACHE INVESTMENTS INC	824104
APACHE PETROLEUM LTD PARTNERSHIP 1980-II	313304
APPLIED BIOSENSORS INC	806523
APPLIED DENTAL TECHNOLOGY INC	789103
APPLIED TECHNOLOGY SYSTEMS INC	818469
APT HOUSING PARTNERS LTD PARTNERSHIP	721465
AQUA BUOY CORP	841054
AQUASEARCH INC	837490
ARAPAHO PETROLEUM INC	007047
ARICO AMERICA REALESTATE INVESTMENT CO	702301
ARINCO COMPUTER SYSTEMS INC	356591
ART GUARD INC	820735
ASI HOLDING CORP	836102
ASSET BACKED SECURITIES CORP	797510
ASSET MANAGEMENT INTL FINANCING AND SETTLEMENT	814054
ASSISTED HOUSING FUND LP I	825535
ASTORIA INC	837584
ATCHISON TOPEKA & SANTA FE RAILWAY CO	006066
ATCORP INC	840016
ATEL CASH DISTRIBUTION FUND II	823065
ATHENA FUND II L P	821529
ATHENA VENTURES INC	844053
ATLANFED BANCORP INC	832770
ATLANTIC AMERICAN CORP	008177
ATLANTIC CITY BOARDWALK ASSOCIATES LP	730408
ATLANTIC INCOME PROPERTIES LIMITED PARTNERSHIP	831612
ATRIX INTERNATIONAL INC	831532
AUDIOVENTURES CORP	786625
AUTO CHEK CENTERS INC	841715
AVENGER CORP	828876
AVIATION EDUCATION SYSTEMS INC	812371
BALCOR EQUITY PENSION INVESTORS III	768605
BANC ONE OHIO CORP	841690
BANCORP NEW JERSEY INC	829753
BAND IT IDEX INC	832102
BANK CORP OF GEORGIA	315706
BANK OF AMERICA NATL TRUST & SAVINGS ASSN SERIES	310685
BANK OF AMERICA NATL TRUST & SAVINGS ASSN SERIES	310364
BANKERS FIDELITY LIFE INSURANCE CO	009696
BASS MORTGAGE INCOME FUND I LIMITED PARTNERSHIP	799568
BAY TACT CORP	814927
BAY VIEW CAPITAL CORP	840387
BEAR STEARNS MORTGAGE CAPITAL CMO TRUST	831203
BELL SAVINGS HOLDINGS INC	837534
BELLATRIX INTERNATIONAL INC	826152
BENCHMARK BANKSHARES INC	804563
BERKLEY W R CORP	011544
BEST ACQUISITIONS INC	829649
BIG RIVER PRODUCTIONS LTD PARTNERSHIP	759440
BIO ELECTRO SYSTEMS INC	841076
BIRMINGHAM TURF CLUB INC	789034
BIRMINGHAM TURF CLUB LTD	785538
BLACKSTONE VALLEY ELECTRIC CO	012473
BLACKWOOD ENTERPRISES INC	789616
BLAZO CORP	835407
BMR FINANCIAL GROUP INC	831677
BNB HOLDING COMPANY INC	837677
BOL BANCSHARES INC	832818
BORDEAUX PETROLEUM CO	312340
BOSTON CAPITAL TAX CREDIT FUND LTD PARTNERSHIP	835095
BOSTON FINANCIAL QUAL HOUSING TAX CREDIT LP III	839345
BOSTON PRIVATE BANCORP INC	821127
BOUCHER OEHMKE HOLDINGS INC	809393
BRACKEN EXPLORATION CO LIQUIDATING TRUST	352957
BRADLEY COUNTY FINANCIAL CORP	840709
BRAUVIN HIGH YIELD FUND L P II	832775
BRAUVIN INCOME PROPERTIES LP 6	793066
BRAUVIN REAL ESTATE FUND LP 3	715988
BREMER FINANCIAL CORPORATION	846616
BRILL HYGIENIC PRODUCTS INC	837161
BRONCO OIL & GAS CO	014474
BROOKFIELD BANCSHARES CORP	830248
BROWN BENCHMARK PROPERTIES LIMITED PARTNERSHIP	818084
BRUNNER COMPANIES INCOME PROPERTIES LP I	830737
BRUNNER COMPANIES INCOME PROPERTIES LP II	839705
BRUSHGARD SYSTEMS INC /DE/	780088
BSB BANCORP INC	830257
BUCYRUS ERIE CO /DE	740761
BULLION SECURITY CORP	821140
BUSINESS DATA GROUP INC	718905
BUTTES GAS & OIL CO /DE/	015876
C SQUARE VENTURES INC	844008
CABLE TV FUND 11	709472
CABLE TV FUND 11-A LTD	725683
CABLE TV FUND 11-C LTD	742181
CABLE TV FUND 12	756902
CABLE TV FUND 15	839483
CABLEVISION OF BOSTON LTD PARTNERSHIP	709105
CAGY INDUSTRIES INC	818471
CALHOUN BANKSHARES INC	834157
CALIFORNIA CARS GRANTOR TRUST 1986-A	804143
CALIFORNIA FINANCIAL HOLDING CO	828976
CALIFORNIA REAL ESTATE PARTNERS	825156
CAMBRIDGE ELECTRIC LIGHT CO	016573
CANARCHON HOLDINGS LTD	079451
CANNON PICTURES INC	703807
CAPITAL ACQUISITION CO	798952
CAPITAL APPRECIATION PLUS L P I	832990
CAPITAL BANKSHARES INC	829233
CAPITAL DIRECTIONS INC	830157
CAPITAL GROWTH INC	839441
CAPITAL REALTY INVESTORS TAX EXEMPT FUND	822522
CAPITAL SOURCE L P	775629
CAPITAL VENTURES INC /DE/	808852
CAPITOL BANCORP LTD	840264
CARDIFF COMMUNICATIONS INC	017485
CARDINAL INDUSTRIES INCOME PROPERTIES II LP	835668
CARDIOTRONICS SYSTEMS INC	835316
CARE CONCEPTS INC	842927
CARLYLE INCOME PLUS LP II	827086
CARLYLE REAL ESTATE LTD PARTNERSHIP XVII	804214
CAROLINA FIRST BANCSHARES INC	846465
CAROLINAS REAL ESTATE FUND	355291
CC&S SYSTEMS INC	215387
CEETAC CORP	840249
CENCOM CABLE ENTERTAINMENT INC	827160
CENCOM CABLE INCOME PARTNERS II L P	821582
CENTENNIAL REAL ESTATE INVESTMENT FUND	820273
CENTER BANKS INC	829282
CENTEX ACCEPTANCE CORP	712790
CENTEX COLLATERALIZED MORTGAGE CORP	779240
CENTEX CREDIT CORP	783193
CENTEX DEVELOPMENT CO LP	818764
CENTRAL LIFE ASSURANCE CO	837332
CENTURY FINANCIAL CORP /PA/	820414
CENTURY HILLCRESTE APARTMENT INVESTORS LP	835596
CENTURY PACIFIC TAX CREDIT HOUSING FUND	840258
CENTURY PROPERTIES PREFERRED FUND 73	018911
CENTURY PROPERTIES PREFERRED PARTNERSHIP 72	018912
CERON RESOURCES CORPORATION	037848
CFW COMMUNICATIONS CO	829676
CHARGE INC	805074
CHASE MORTGAGE FINANCE CORP	830379
CHATTAHOOCHEE BANCORP INC	839091
CHEROKEE INC	844161
CHESTER COUNTY SECURITY FUND INC	793375
CHILD WRIT & CO INC	830747
CHOCOLATE PIX INC	803866
CIMETRIX INC	786620
CIMSTAT INVESTMENTS INC	840388

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
Group CF-01	
CINEMA N DRAFTHOUSE SYSTEMS INC	830984
CINEMA PLUS LP	822368
CITICORP MORTGAGE INC	700630
CITIZENS SAVINGS FINANCIAL CORP	315176
CITY INVESTING CO LIQUIDATING TRUST	778171
CLANCY SYSTEMS INTERNATIONAL INC./CO/	789318
CLAREMONT ASSOCIATES	710632
CLARITY HOLDINGS CORP	834154
CLARK COUNTY PROPERTIES 2	748394
CLARKE CORP	020784
CLASSIFIED FINANCIAL CORP	020828
CLINICAL HOMECARE LTD	818725
CLOVER APPRECIATION PROPERTIES I LP	837103
CLOVER INCOME PROPERTIES III LP	844151
CLUB AMERICA INC	027894
CM MAGNETICS CORP	822150
CNB BANCORP INC. /NY/	839928
CNL INCOME FUND IV LTD	829739
CNL INCOME FUND LTD	788338
CNL INCOME FUND V LTD	837985
CNL INCOME FUND VI LTD	837986
COAST SAVINGS FINANCIAL INC	841074
COASTAL 1981 DEVELOPMENT PROGRAM LTD	319616
COASTAL 1982 DRILLING PROGRAM LTD	355539
COASTAL 1983 DRILLING PROGRAM LTD	708132
COASTAL 1984 B DRILLING PROGRAM LTD	740933
COASTAL 1984 DRILLING PROGRAM LTD	732366
COASTAL 1985 DRILLING PROGRAM LTD	757771
COASTAL 1985-B DRILLING PROGRAM LTD	769522
COASTAL 1986 DRILLING PROGRAM LTD	783747
COASTAL 1987 DRILLING PROGRAM LTD	812067
COASTAL STRATEGIES INCOME FUND C	817133
COGENRON INC	822814
COLLATERALIZED MORTGAGE SECURITIES CORP	762852
COLLATERALIZED MORTGAGE SECURITIES TRUST	799281
COLLECTIVE BANCORP INC	835345
COLLINS FUTURES FUND III	790416
COLONY BANKCORP INC	711669
COLUMBIA LEASE INCOME FUND II-B LP	769333
COLUMBIA LEASE INCOME FUND II-C LP	769334
COLUMBIA SUSSEX CORP	843381
COLUMBIAN OIL & GAS DRILLING PROGRAM 1984 A LP	736449
COLUMBIAN OIL & GAS PRODUCTION PROGRAM 1-B LP	806119
COLUMBUS ENERGY CORP	823975
COMAIR HOLDINGS INC	835344
COMBINED ASSETS INC	744152
COMBINED ENTERTAINMENT ORGANIZATION INC	829342
COMDATA NETWORK INC	022306
COMMERCE GROUP INC./MA	811612
COMMERCIAL BANCORPORATION OF COLORADO	022390
COMMERCIAL NATIONAL FINANCIAL CORP./MI	828535
COMMONWEALTH BANKSHARES INC	835012
COMMONWEALTH ELECTRIC CO	071222
COMPASS FUTURES FUND	811273
COMPUTERLAND CORP	836100
COMSTOCK INDUSTRIES INC	717410
CONCORD CAPITAL INC	844055
CONCORD MILESTONE INCOME FUND II LP	824303
CONCORD MILESTONE PLUS LP	808460
CONDEV LAND FUND II LTD	828744
CONDOR CAPITAL INC	831375
CONDOR WEST CORP	831378
CONSOLIDATED AMERICAN INDUSTRIES INC./DE	843462
CONSOLIDATED CAPITAL OF NORTH AMERICA INC	839426
CONSOLIDATED CAPITAL PROPERTIES IV	355804
CONSOLIDATED FINANCIAL CORP./DE/	838808
CONSOLIDATED RESOURCES HEALTH CARE FUND	705188
CONSOLIDATED TECHNOLOGY INC	823189
CONSUMERS FINANCIAL CORP	100320
CONTINENTAL CAPITAL RESOURCES INC	835909
CONVERGENCE INC	824305
COOPERATIVE UTILITY TRUST BIG RIVERS SER 1988-A3	829297
COPILOT ELECTRONIC PRODUCTS INC	831687
COPLEY PENSION PROPERTIES VI	824209
COPLEY PENSION PROPERTIES VII	841285
COPLEY REALTY INCOME PARTNERS 2	809765
COPLEY REALTY INCOME PARTNERS 3	829906
COREAST CAPITAL FUNDING I INC	833887
CORNERSTONE MORTGAGE INVESTMENT GROUP II INC	809767
CORNERSTONE MORTGAGE INVESTMENT GROUP INC	790524
CORPORATE FINANCIAL VENTURES INC	811644
CORPORATE PROPERTY ASSOCIATES 8 LP	824978
COTA BIOTECH INC	842813
COUNTY BANK CORP	830480
CRAMER INC	319497
CRAWFORD ENERGY INC	350853
CREATIVE RESOURCES INC	814919
CRITERION ACCEPTANCE CORP	726327
CROWN NATIONAL BANCORPORATION INC	845777
CROWN RESOURCES CORP	841555
CRYSTAL VENTURE CORP	830489
CS PRIMO CORP	792157
CUMBERLAND FEDERAL BANCORPORATION INC	830315
D H Z CAPITAL CORP	817879
D&N FINANCIAL CORP	830143
DAIN INCOME PROPERTIES IV	783235
DAMSON 1983-84 OIL & GAS INCOME FUND SERIES 1985-1	769563
DAMSON INCOME ENERGY LTD PARTNERSHIP	776809
DAMSON INSTITUTIONAL ENERGY LTD PARTNERSHIP	777355
DANIELSON HOLDING CORP	225648
DANZAR INVESTMENT GROUP INC	726435
DATA MED CLINICAL SUPPORT SERVICES INC. /MN/	804157
DATA SERVICES INTERNATIONAL LTD	843364
DATRONIC EQUIPMENT INCOME FUND XVII LP	833409
DAWN CAPITAL CORP	831752
DBSI TRI EQUITY INCOME FUND	809799
DCUSA CORP	833083
DE ANZA PROPERTIES IX	027466
DE ANZA PROPERTIES X	215628
DE ANZA PROPERTIES XI LTD	352978
DECADES MONTHLY INCOME & APPRECIATION FUND	820395
DEER PARK FINANCIAL CORP	839106
DELPHI FILM ASSOCIATES	700579
DELPHI FILM ASSOCIATES II	719615
DELPHI FILM ASSOCIATES III	732288
DELPHI FILM ASSOCIATES IV	764636
DELPHI FILM ASSOCIATES V	771978
DELTA GOVERNMENT OPTIONS CORP	832229
DESIGN INSTITUTE AMERICA INC	842288
DEWANI LAURO MARINE PRODUCT DEVELOPMENT	830739
DFSOUTHEASTERN INC	833000
DIABLO REAL ESTATE INVESTMENT TRUST	314178
DIAL A GIFT INC	808972
DIAL ONE ACQUISITION INC	818557
DIALOGUE INCORPORATED	823068
DIM INC	843212
DIME FINANCIAL CORP./CT/	841909
DIMENSION GROUP INC	841447
DISCOVERY CAPITAL CORP	838193
DIVALL INSURED INCOME PROPERTIES 2 LTD PARTNERSHIP	825788
DIVERSIFIED HISTORIC INVESTORS III	792979
DIVERSIFIED HISTORIC INVESTORS VI	828604
DIVERSIFIED PHOTOGRAPHIC INDUSTRIES INC	840827
DIVERSIFIED REALTY INC	029258
DLJ MORTGAGE ACCEPTANCE CORP	834163
DOLOMITE GLASS FIBRES INC	029540
DONNEBROOKE CORP	843494
DORCHESTER MASTER LTD PARTNERSHIP	759864
DRILEX OIL & GAS INC	030177
DSI REALTY INCOME FUND VI	318835
DSI REALTY INCOME FUND VII	719581
DSI REALTY INCOME FUND XI	844048
DUCKBACK INDUSTRIES INC	831240
DUFF & PHELPS INC	843764
DULLES BANK CORP	844857
DUMAC CORP	843763
DYCO 1988 DEVELOPMENT GENERAL PARTNERSHIP	832846
DYCO 1988 DEVELOPMENT LIMITED PARTNERSHIP	832845
DYCO DEVELOPMENT PARTNERS 1988	832844
DYCO OIL & GAS PROGRAM 1982-2	718944
EAGLE 86 NOVEMBER LTD PARTNERSHIP	789611
EAGLE 86 OSCAR LTD PARTNERSHIP	789612
EAGLE 87 QUEBEC LIMITED PARTNERSHIP	813379
EAGLE 88 SIERRA LIMITED PARTNERSHIP	831814
EAGLE 89 TANGO LTD PARTNERSHIP	842802
EAGLE BANCORP INC./DE/	830996
EAGLE CAPITAL CORP II	830349
EASTCHESTER FINANCIAL CORP	844126
EASTERN BANCORP INC	793169
EASTLAND FINANCIAL CORP/RI/	823557
ECONTECH I INC	837889
EDGEMARK VOTING TRUST	836642
EDP OF CALIFORNIA INC	067152
ELECTRONIC PUBLISHING TECHNOLOGY CORP./CO	277471
ELECTRONIC TRANSLATION CORP	843516
ELLISON RAY MORTGAGE ACCEPTANCE CORP	754591
EMC ENERGIES INC	032567
EMERALD EAGLE CORP	832975

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
EMERALD INSTRUMENT CORP	818320
EMMET INC	835641
EMPIRE FINANCIAL CORP./NJ	032695
EMPIRE STATE LIFE INSURANCE CO	107613
ENERGY ASSETS IV-A LTD	841238
ENERGY RECOVERY SYSTEMS INC	351328
ENEX 88-89 INCOME & RETIREMENT FUND SERIES 2 LP	842829
ENEX INCOME & RETIREMENT FUND SERIES 1 LP	820750
ENEX INCOME & RETIREMENT FUND SERIES 2 LP	825248
ENEX INCOME & RETIREMENT FUND SERIES 3 LP	830320
ENEX OIL & GAS INCOME PROGRAM III SERIES I LP	806612
ENEX OIL & GAS INCOME PROGRAM IV SERIES 1 LP	842832
ENSTAR INCOME GROWTH PROGRAM SIX A LP	824778
ENSTAR INCOME GROWTH PROGRAM SIX B LP	824779
ENTERTAINMENT CORPORATION OF AMERICA	826772
ENTERTAINMENT PUBLISHING CORP	843028
ENVIRITE CORP	803501
ENVIRONETICS INC	812013
EPIC VENTURES CORP	840099
EQUITEC 80 REAL ESTATE INVESTORS	314887
EQUITEC 81 REAL ESTATE INVESTORS	351835
EQUITEC 82 LEASING INVESTORS	701466
EQUITEC 82 REAL ESTATE INVESTORS	701437
EQUITEC 83 LEASING INVESTORS	722823
EQUITEC 83 REAL ESTATE INVESTORS	716387
EQUITEC INCOME REAL ESTATE INVESTORS A	775051
EQUITEC INCOME REAL ESTATE INVESTORS B	775053
EQUITEC INCOME REAL ESTATE INVESTORS C	775054
EQUITEC LEASING INVESTORS 10	798051
EQUITEC LEASING INVESTORS 9	798050
EQUITEC MORTGAGE INVESTORS FUND IV	732413
EQUITEC REAL ESTATE INVESTORS FUND 17	783421
EQUITEC REAL ESTATE INVESTORS FUND 18	783422
EQUITEC REAL ESTATE INVESTORS FUND XIII	735419
EQUITEC REAL ESTATE INVESTORS FUND XIV	746263
EQUITEC VENTURE LEASING INVESTORS A	747409
EQUITEC VENTURE LEASING INVESTORS B	747410
ESKEY INC	313757
EVEREST ENERGY FUTURES FUND LP	837919
EXCALIBUR SECURITY SERVICES INC	834162
EXCEL PROPERTIES LTD	785932
EXECUFIRST BANCORP INC	834285
EXECUTIVE TELECARD LTD	842807
EXHIBITRONIX INC	827164
F 1000 GUARANTEE FUTURES FUND LP SERIES II	826741
F 1000 GUARANTEE FUTURES FUND LP SERIES IV	837107
F&M BANCORPORATION INC	793049
F-1000 FUTURES FUND LP SERIES V	841098
F-1000 GUARANTEE FUTURES FUND LP SERIES	832903
FAIRFIELD COUNTY BANCORP INC	831464
FAIRVIEW MOUNTAIN GOLD INC	831256
FAMILY GROUP BROADCASTING LP	799668
FARM & HOME FINANCIAL CORP	829902
FARMERS & MERCHANTS BANCORP INC	792966
FARMERS BANCORP	730726
FAYETTE COUNTY BANCSHARES INC./GA/	837874
FBC MORTGAGE SECURITIES TRUST 20	842901
FBS MORTGAGE CORP	784556
FBS MORTGAGE CORP MTG PASS THR CERT SER 1988-A1	812259
FBS MORTGAGE CORP MTG PASS THR CERT SER 1988-B	812261
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-C2	812263
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-F1	812265
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-A2	812260
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-D	812264
FBS MORTGAGE CORP MTG PASS THR CERT SER 1987-A	812269
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-C1	812262
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-F3	812267
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-F4	812268
FCC NATIONAL BANK	819975
FEDTRUST CORP	842640
FFCA INVESTOR SERVICES CORP 85-A	778969
FFCA INVESTOR SERVICES CORP 86-A	778436
FFCA INVESTOR SERVICES CORP 86-B	797978
FFCA INVESTOR SERVICES CORP 88-A	826579
FFCA INVESTOR SERVICES CORP 88-B	824134
FFCA INVESTOR SERVICES CORP 88-C	820807
FFM FINANCE CORP III	812086
FFM FINANCE CORP IV	807071
FFO FINANCIAL GROUP INC	836819
FIDELITY LEASING INCOME FUND V LP	830660
FIDELITY SOUTHERN CORP	822662
FINACORP INC	844884
FINALCO INCOME FUND LTD IA	723621
FINALCO INCOME FUND LTD IB	723622
FINALCO INCOME FUND LTD IC	723623
FINALCO INCOME FUND LTD ID	723624
FINANCIAL BENEFIT GROUP INC./DE/	737823
FINANCIAL RESOURCES MARKETING CORP	835314
FIRST AGATE CAPITAL CORP	835953
FIRST AMERICAN ENERGY INC	843189
FIRST ARTISTS MEDIA ENTERTAINMENT LTD	823005
FIRST BANCORP /IN/	840458
FIRST BANKERS TRUSTSHARES INC	844419
FIRST BOSTON MORTGAGE SECURITIES CORP /DE/	802106
FIRST BUSEY CORP /DE/	314489
FIRST CAPITAL GROWTH FUND—XIV	826745
FIRST CAPITAL INCOME & GROWTH FUND SERIES XII	811117
FIRST CAPITAL INCOME PROPERTIES LTD SERIES	716297
FIRST CAPITAL INSURED REAL ESTATE LIMITED IX	819253
FIRST CHATTANOOGA FINANCIAL CORP	838330
FIRST CHEROKEE BANCSHARES INC	841545
FIRST CITIZENS BANCSTOCK INC	826328
FIRST CITIZENS FINANCIAL CORP	846869
FIRST CITY BANCORP INC./TN/	830154
FIRST CITY BANCORPORATION OF TEXAS INC	826678
FIRST COLONIAL VENTURES LTD	769882
FIRST COMMUNITY BANCORP INC	700858
FIRST DEARBORN INCOME PROPERTIES LP II	837557
FIRST EXPLORATION CO./CO/	091650
FIRST FEDERAL CAPITAL FUNDING II INC	810696
FIRST FEDERAL CAPITAL FUNDING IV INC	833729
FIRST FINANCIAL OF RUSSELLVILLE INC	842393
FIRST FINANCIAL SHARES INC	835734
FIRST HARRISBURG BANCOR INC	846768
FIRST NATIONAL BANK OF CHICAGO /USA/	819974
FIRST NEW YORK BUSINESS BANK CORP	837471
FIRST PITTSBURGH CAPITAL CORP	835320
FIRST SAVINGS BANCORP	837180
FIRST SECURED MORTGAGE DEPOSIT CORP	833016
FIRST SECURITY 1988-A GRANTOR TRUST	841538
FIRST USA BANK	832500
FIRSTFEDERAL FINANCIAL SERVICES CORP	846814
FIRSTSHARES OF TEXAS INC	840014
FIRSTSOUTH COMMERCIAL CORP	752789
FLAME INDUSTRIES INC	225360
FLEXWEIGHT CORP	316128
FLORIDA FIRST EQUITIES CORP	037577
FLORIDA INCOME FUND III LIMITED PARTNERSHIP	826498
FLORIDA POWER & LIGHT CO	037634
FMD INC	773475
FMS FINANCIAL CORP	839845
FNB FINANCIAL CORP	831787
FOGELMAN MORTGAGE LP I	800608
FOGELMAN PROPERTY INVESTORS LTD	702806
FOGELMAN SECURED EQUITY LP	811556
FONE AMERICA INC	809928
FOREMOST CORP OF AMERICA	018508
FORME CAPITAL INC	808047
FORTUNISTICS INC	838796
FOSSIL BAY HOLDING CO.INC	839206
FOUNDATION REALTY FUND LTD II	833197
FOUR NINES GOLD INC	827157
FOUR SEASONS FUND LIMITED PARTNERSHIP	767882
FRANCISCO INDUSTRIES INC	038626
FRANKLIN FINANCIAL CORP /TN/	846903
FRANKLIN FIRST FINANCIAL CORP	833050
FRANKLIN REAL ESTATE INCOME FUND	820206
FREIGHT SERVICE GROUP INC./CO/	830380
FREMONT GENERAL CORP	038984
FSA CAPITAL INC	793962
FTB VENTURES LTD	832811
FUND AMERICA INVESTORS CORP	823980
FUTURES DIMENSION FUND II LP	811533
GALT FINANCIAL CORP	832324
GAME A TRON CORP	310449
GATEWAY FINANCIAL CORPORATION	846539
GATEWAY MORTGAGE ACCEPTANCE CORP	841975
GATEWAY SPORTING GOODS CO	040194
GE CAPITAL MORTGAGE SERVICES INC	792428
GEMINI 87-88 XIV LP	813787
GEMINI 87-88 XV LP	813788

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
GEMINI 87-88 XVI LP	813789
GEMINI EQUIPMENT PARTNERS INCOME FUND VIII LP	761280
GEMSTAR ENTERPRISES INC	829323
GENERAL CELLULAR CORP	831104
GENERAL GROWTH LTD PARTNERSHIP	778339
GLACIER HOLDINGS INC	814924
GLENDALE FEDERAL BANK FEDERAL SAVINGS BANK	820699
GLOBAL ASSET ALLOCATION PORTFOLIO LP	835539
GMAC MORTGAGE SECURITIES INC	792859
GMBS INC.SERIES 1990-2	840339
GNS FINANCE CORP	832613
GNW FINANCIAL CORP	837921
GOLDEN ARK INC	844063
Group CF-01	
GOLDEN ISLES FINANCIAL HOLDINGS INC	826749
GOLDEN NUGGET FINANCE CORP/NV	813663
GOLDOME NEW YORK CAPITAL CORP II	826746
GOODHEART VENTURES INC	825630
GOVERNMENT BACKED TRUST T 4	842907
GOVERNMENT BACKED TRUST T-1	841535
GOVERNMENT BACKED TRUST T-2	841536
GOVERNMENT BACKED TRUST T-3	841537
GOVERNMENT SECURITIES TRUST J 1	842814
GOVERNMENT TRUST 1 A	837577
GOVERNMENT TRUST 1 B	837578
GOVERNMENT TRUST 1 C	837582
GOVERNMENT TRUST 1 D	837583
GOVERNMENT TRUST 2 A	842667
GOVERNMENT TRUST 2 B	842668
GOVERNMENT TRUST 2 C	842669
GOVERNMENT TRUST 2 D	842670
GOVERNMENT TRUST 2 E	842699
GOVERNMENT TRUST 2 F	842900
GRADIN EQUITIES INC	835092
GRAHAM ENERGY INCOME FUND SERIES I	826500
GRANADA FOODS L P	819215
GRAYBAR ELECTRIC CO INC VOTING TRUST	313563
GRAYCOR LASER SYSTEMS INC	842922
GRAYSTONE COMPANIES INC	841008
GREAT BEAR AUTOMOTIVE CENTERS INC	819344
GREAT WESTERN BANK	741511
GREATE BAY PROPERTY FUNDING CORP	827771
GREATER ENERGY CORPORATION	835688
GREENWOOD NATIONAL BANCORPORATION	832847
GREYSTONE FINANCIAL SERVICES INC	799020
GROUP W CABLE ASSOCIATES OF CHICAGO	742665
GROWTH HOTEL INVESTORS	769129
GROWTH HOTEL INVESTORS II	791346
GRUBB & ELLIS REALTY FUND II	844251
GRUBB & ELLIS REALTY FUND III	278230
GUARANTEED HOTEL INVESTORS 1985 LP	773933
GUARANTEED MORTGAGE CORP	356127
GUARANTEED MORTGAGE CORP II	722124
GULLEDGE REALTY INVESTORS II	739626
GUNNER ENERGY CORP	832986
GUSTAVUS ADOLPHUS COLLEGE POOLED LIFE INCOME FUND	825156
GVS MED INC	824106
GWINNETT BANCORP INC	840196
HADSON PETROLEUM USA INC	792458
HALLWOOD CONSOLIDATED PARTNER LP	529241
HANCOCK JOHN REALTY INCOME FUND III LP	842741
HANSEN CAPITAL FUNDING I INC	836383
HARLEYSVILLE GROUP INC	792013
HARMONEY STREET CAPITAL INC	830488
HARTFORD FIRE INSURANCE CO	045939
HAVENWOOD VENTURES INC	833845
HAVERFIELD CORP	846917
HAWAII PACIFIC CAPITAL CORP	813655
HAWAII VENTURES INC	829606
HEALTH CORP OF AMERICA	737214
HEARTLAND PARTNERS L P	843964
HERITAGE BANCORP INC /DE/	829129
HERITAGE BANCSHARES INC /FLA/	843519
HERITAGE BANKCORP INC	846677
HI LO NO INC	833205
HIBERNIA NATIONAL BANK 1989 A GRANTOR TRUST	842811
HIGH CASH PARTNERS L P	794984
HIGH EQUITY PARTNERS L P SERIES 86	784054
HIGH EQUITY PARTNERS L P SERIES 88	831574
HISTORIC HOUSING FOR SENIORS II LTD PARTNERSHIP	835413
HISTORIC HOUSING FOR SENIORS LIMITED PARTNERSHIP	820199
HISTORIC PRESERVATION PROPERTIES 1989 LP	839614
HOLCO SECURED MORTGAGE INVESTMENT III	799275
HOLMES MICROSYSTEMS INC	832100
HOME MISSION BD OF THE SOUTH BAPT CONV SERIES D	771459
HOME PORT BANCORP INC	832769
HOME SAVINGS OF AMERICA FA	794322
HOMEFED CORP	833795
HOMEFREE INVESTORS L P	820889
HOMESTEAD HOLDING CORP	830921
HOMETOWN BANCSHARES INC	837994
HOPE TECHNOLOGIES INC /NV	804154
HORIZON BANKS INC	830993
HORIZON WORLD FUTURES FUND	715123
HOSPITALITY CAPITAL CORP /AZ/	310540
HOUSING FOR SENIORS PARTICIPATING MTG FUND LP	833825
HOUSTON OIL & ENERGY INC	317795
HOUSTON PIPE LINE CO	048738
HUNT INTERNATIONAL RESOURCES CORP	218153
HUTTON GSH QUALIFIED PROPERTIES 80	317279
HUTTON INDIAN WELLS 1983 ENERGY INCOME FUND LTD	715337
IBS COMPUTER CORP	835595
IBT BANCORP INC /MI/	842517
IDM FINANCIAL INCOME PARTNERS CO II	832477
IDM PARTICIPATING INCOME CO	813814
IDM PARTICIPATING INCOME CO II	832475
IDM PARTICIPATING INCOME CO III	832476
IDM PARTICIPATING INCOME COMPANY IV	842812
IDORA SILVER MINES INC	049694
IDS SHURGARD INCOME GROWTH PARTNERS L P II	843023
IEA INCOME FUND IX L P	836972
IEA INCOME FUND VI	774482
IEA INCOME FUND VII	803511
IEA INCOME FUND VIII	821097
IEA MARINE CONTAINER FUND II	315806
IEA MARINE CONTAINER INCOME FUND III	350202
IEA MARINE CONTAINER INCOME FUND IV	357047
IEA MARINE CONTAINER INCOME FUND V-A	727047
IEA MARINE CONTAINER INCOME FUND V-B	727048
INCOME GROWTH PARTNERS LTD X	830051
INDEPENDENT BUSINESS ALLIANCE INC	025819
INDIANA FEDERAL CORP	830250
INFINITY INC	822746
INFISY SYSTEMS INC	734368
INFOAMERICA INC	760497
INFORMATION DISPLAY TECHNOLOGY INC	835405
INLAND MONTHLY INCOME FUND II L P	835322
INLAND MORTGAGE INVESTORS FUND III LP	841129
INLAND MORTGAGE INVESTORS FUND LP II	806434
INLAND REAL ESTATE GROWTH FUND LP	773839
INNOVATIVE TECH SYSTEMS INC	824008
INNOVATIVE TECHNOLOGY INC	312646
INNOVO GROUP INC	844143
INSIGHT CAPITAL CORP	833613
INTEGRA FINANCIAL CORP	831231
INTEGRATED RESOURCES HIGH EQUITY PARTNERS SER 85	730067
INTELEPLEX CORP	355270
INTERACTIVE MEDICAL TECHNOLOGIES LTD	822997
INTERCARGO CORP	815787
INTERCELL CORP	745655
INTERFERON SCIENCES RESEARCH PARTNERS LTD	740628
INTERLINE RESOURCES CORP	841533
INTERMOUNTAIN RESOURCES INC	320166
INTERNATIONAL CONVERTER CORP/CO/	837488
INTERNATIONAL FUTURES FUND TWO	783275
INTERNATIONAL GAMING MANAGEMENT INC	803168
INTERNATIONAL META SYSTEMS INC/DE/	820475
INTERNATIONAL SPORTSFEST INC	840159
INTERNET COMMUNICATIONS CORP	841693
INTERSTATE LAND INVESTORS I LTD PARTNERSHIP	835248
INTERVEST CORPORATION OF NEW YORK	835955
INTERWEST OPPORTUNITIES INC	798623
INVESTMENT GROWTH RESOURCES INC	832336
INVESTORS COMMODITY FUND II	792488
IOWA PUBLIC SERVICE CO /IA	052502
IPO FINANCING CORP	843958
IRE REAL ESTATE INCOME FUND LTD	765220
IROQUOIS BANCORP INC	846753
IVC INC	789546
IVORY CAPITAL CORP	841096
IVY MEDICAL INC /DE/	772337
JACQUES MILLER HEALTHCARE PROPERTIES L P	814458
JAGUAR CAPITAL CORP	844166
JCP RECEIVABLES INC	833210
JEFFERSON FUTURES FUND	814051
JERICAP INC	839431
JES PROPERTIES LTD PARTNERSHIP	729626
JHM ACCEPTANCE CORP	839461
JHM ACCEPTANCE CORP III	793951
JIFFY LUBE INSURED INCOME PARTNERS LP	826496
JILCO INDUSTRIES INC	053540
JILLY BEAR & CO INC	791115
JMB INCOME PROPERTIES LTD V	202240
JMB INCOME PROPERTIES LTD VIII	319192

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
JMB MORTGAGE PARTNERS LTD IV	790550
JONATHON NO 2 GROUP INC	843980
JONES GROWTH PARTNERS L P	843010
JONES PROGRAMMING PARTNERS LTD	832901
JONES SPACELINK INCOME GROWTH FUND 1	824955
JP 2000 CORP	833834
JRS FOODS INC	833836
JSL INC	810156
K TECH INC	820140
KAISER RESEARCH INC	801904
KAISER STEEL RESOURCES INC	729365
KAR VENTURES INC	835409
KB COMMUNICATIONS INC	818676
KBF POLLUTION MANAGEMENT INC	810162
KEEBEE CORP	353810
KELLEY PARTNERS 1988 DEVELOPMENT DRILLING PROGRAM	835343
KEMPER CYMROT REAL ESTATE INVESTMENT FUND B LP	751263
KEYES FLORIDA PROPERTIES LTD 85	755872
KEYES OFFSHORE LTD PARTNERSHIP	798782
KIDDER PEABODY MORTGAGE ASSETS TRUST TWENTY TWO	843995
KIMBELL DECAR CORP	797329
KINDER CARE LEARNING CENTERS INC /DE	832812
KINLAW ENERGY PARTNERS CORP	759401
KIWI III LTD	840402
KOGER PARTNERSHIP LTD	202328
KP MILLER REALTY GROWTH FUND II	716139
KP MILLER REALTY GROWTH FUND III	765197
KP TEMPLETON OIL & GAS INCOME FUND LTD 1983	715117
KRUPP CASH PLUS LTD PARTNERSHIP	768175
KRUPP CASH PLUS V LIMITED PARTNERSHIP	839427
KRUPP COMMERCIAL PROPERTIES LTD PARTNERSHIP	732729
KRUPP INSURED MORTGAGE LIMITED PARTNERSHIP	832095
KRUPP INSURED PLUS II LTD PARTNERSHIP	805297
KRUPP INSURED PLUS III LIMITED PARTNERSHIP	832091
KRUPP REALTY FUND LTD III	702117
KRUPP REALTY LTD PARTNERSHIP IV	710389
KRUPP YIELD PLUS LIMITED PARTNERSHIP	818077
LAKELAND BANCORP INC	846901
LAKELAND FIRST FINANCIAL GROUP INC	839538
LANCER INDUSTRIES INC /DE/	722069
LANDMARK COMMUNITY BANCORP INC	830986
LANDMARK FINANCIAL CORP /DE/	806847
LANDSING DIVERSIFIED PROPERTIES II	711098
LANDSING DIVERSIFIED PROPERTIES III	727745
LANIER BANKSHARES INC	842898
LAS VEGAS INVESTORS LTD	276388
LASERMAX CORP	830097
LATIN FOODS INTERNATIONAL INC	780376
LATOKA INC /TX	828879
LAUGHLIN RECREATIONAL ENTERPRISES INC	057966
LAUR CORP	833218
LAUTREC INC	774746
LAVI INVESTMENT CORP	844054
LBO CAPITAL CORP	753557
LEHMAN PASS THROUGH SECURITIES INC	811420
LEONA ENTERPRISES INC	821492
LESCARDEN INC	058822
LETCHWORTH INDEPENDENT BANCSHARES CORP	723323
LEWIS RESOURCES INC	828413
LIDAK PHARMACEUTICALS	858803
LIF	757642
LIFE BALANCES INTERNATIONAL INC	840160
LIGHTNING BOLT INTERNATIONAL INC	826405
LIGHTWAVE CABLEVISION SYSTEMS INC	797154
LINCOLN LIBERTY AVENUE LTD	779586
LINCOLN SERVICE CAPITAL TRUST I	792562
LINCOLN SERVICE CAPITAL TRUST II	806608
LINCOLN SERVICE CAPITAL TRUST III	806609
LINCOLN SERVICE CAPITAL TRUST IV	806610
LINCOLN SERVICE CAPITAL TRUST V	806611
LIND WALDOCK COMMODITY PARTNERS LTD PARTNERSHIP	838810
LINKON CORP	833203
LMD ACQUISITIONS INC	791350
LONG ISLAND CITY FINANCIAL CORP	833041
LOON MOUNTAIN RECREATION CORP	060338
LORD ABBOTT INC	832370
LOUISIANA PACIFIC RESOURCES INC	060525
LSS HOLDINGS CORP	842161
LUBRIQUIP INC	832103
LUMINALL PAINTS INC	060878
LUXELLO PROPERTIES INC	799318
M INC	710846
MACKINAC FINANCIAL CORP	866939
MADISON BANCSHARES GROUP LTD	846809
MAGIC CIRCLE ENERGY 1981-A DRILLING PROGRAMS	702399
MAGIC CIRCLE ENERGY 1981-B DRILLING PROGRAMS	702400
MAGIC RESTAURANTS INC	837596
MALEX INC	819926
MANATI INDUSTRIES INC	061882
MARCO VENTURES	827055
MARCUS & MILLICHAP PENSION VENTURES	830481
MARCUS & MILLICHAP PROPERTY PARTNERS 88	830482
MARIN FUND INC	831669
MARKET DATA CORP	833837
MARKET LINE INTERNATIONAL INC	749890
MARLENE INDUSTRIES CORP/NY	840070
MARTEL MICRO SYSTEMS INC	724680
MARTINIQUE VENTURES CORP	832496
MARYLAND CABLE CORP	837554
MARYLAND CABLE HOLDINGS CORP	837555
MAST OPTICAL SYSTEMS INC	808497
MASTER MORTGAGE INVESTMENT FUND INC	835712
MAUI CAPITAL CORP	842305
MAXI GROUP INC	799511
MAY DRILLING PARTNERSHIP 1983-1	711308
MAY DRILLING PARTNERSHIP 1983-2	711309
MAY DRILLING PARTNERSHIP 1983-3	711310
MAY DRILLING PARTNERSHIP 1984-1	739645
MAY DRILLING PARTNERSHIP 1984-2	739646
MAY DRILLING PARTNERSHIP 1984-3	739647
MAY DRILLING PARTNERSHIP 1985-2	761165
MAY LIMITED PARTNERSHIP 1983-1	725650
MAY LIMITED PARTNERSHIP 1983-2	735552
MAY LIMITED PARTNERSHIP 1983-3	743453
MAY LIMITED PARTNERSHIP 1984-1	757525
MAY LIMITED PARTNERSHIP 1984-2	757385
MAY LIMITED PARTNERSHIP 1984-3	765946
MAY LIMITED PARTNERSHIP 1985-2	799177
MBNA CREDIT CARD TRUST 1987-A	824090
MBNA CREDIT CARD TRUST 1988-A	831260
MCCOMBS PROPERTIES V LTD	353391
MCCOMBS PROPERTIES VI LTD	356681
MCCOMBS PROPERTIES VIII LTD	721937
MCCOMBS REALTY PARTNERS LTD	759198
MCCOMBS RENTA SPACE PROPERTIES LTD	276282
MCCORMICK COMMODITY FUND III LIMITED PARTNERSHIP	843819
MCCORMICK INTERNATIONAL FUND I LIMITED PARTNERSHIP	838831
MCDONNELL DOUGLAS CAPITAL INCOME 1A LP	823251
MCDONNELL DOUGLAS CAPITAL INCOME 1B LP	823252
MCDONNELL DOUGLAS CAPITAL INCOME 1C LP	823253
MCDONNELL DOUGLAS CAPITAL INCOME 1D LP	823254
MCDONNELL DOUGLAS CAPITAL INCOME 1E LP	823256
MECHANICS & FARMERS SAVINGS BANK FSB	802897
MED VENTURE INC	722566
MEDIA DEVELOPMENT INDUSTRIES LTD	818181
MEDICAL EQUIPMENT INCOME FUND LIMITED PARTNERSHIP	839092
MEDICAL INCOME PROPERTIES 2A LTD PARTNERSHIP	814433
MEDICAL PLAZA PARTNERS LTD	764835
MEDICAL SCIENCES INC	810107
MEDITECH PHARMACEUTICALS INC	717588
MEDIZONE INTERNATIONAL INC	753772
MEGAPIX CORP	794355
MEGO CORP	736035
MELBOURNE CAPITAL CORP	841126
MELLYNE HOLDINGS INC	842674
MEMBERS FINANCIAL SERVICE BUREAU INC	820168
MEMOREX CORP /DE/	110704
MENDELL DENVER CORP	827161
MEPC CAPITAL CORP II	831654
MERCURY CAPITAL CORP	835767
MERCURY ENTERTAINMENT CORP	747777
MERCURY GENERAL CORP	064996
MERIDIAN FUND LTD	833051
MERIDIAN HEALTHCARE GROWTH & INCOME FUND LP	826682
MERISEL INC	839438
MERRICO GUARANTY INCOME FUND LTD 1984-4	784481
MERRILL LYNCH CORPORATE PASS THROUGH SEC	351709
MERRILL LYNCH ENERGY PARTNERS I LP	713977
MERRILL LYNCH ENERGY PARTNERS IIA L P	780217
MERRILL LYNCH ENERGY PARTNERS IIB L P	780219
MERRILL LYNCH MORTGAGE INVESTORS INC /DE	809940
MESA OFFSHORE TRUST	711303
METALINE MINING & LEASING CO	065224
METRIC PARTNERS GROWTH SUITE INVESTORS LP	800730
METROPOLITAN FUND DOVER PENSION INVESTORS 1986	773540
MICROBYX CORP	771570
MICROCARE INC	793629
MID ALLEGHENY CORP	794278
MID ATLANTIC BANKCORP	759727
MID SOUTH INSURANCE CO	791254
MID STATE TRUST II	828978
MIDAMERICAN CORP	808687
MIDMERICA BANK CORP	833727
MIDTOWN NORTH LTD /GA/	779587
MILESTONE CAPITAL INC	817129
MILLS MUSIC TRUST	066496
MINERAL DEVELOPMENT INC	316300

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
MINERAL KING BANCORP INC	842179
MINERAL MOUNTAIN MINING & MILLING CO	066600
ML ASSET BACKED CORP	822760
ML DELPHI PREMIER PARTNERS LP	795252
ML REAL ESTATE RECOVERY FUND L P	825036
Group CF-09	
ML TRUST XLI	837561
ML TRUST XLII	837571
MLH INCOME REALTY PARTNERSHIP	317150
MLH INCOME REALTY PARTNERSHIP II	701285
MLH PROPERTIES LTD PARTNERSHIP	310990
MLH PROPERTIES LTD PARTNERSHIP II	316223
MLH PROPERTIES LTD PARTNERSHIP III	350871
MONEY RADIO INC	843514
MONITREND INVESTMENT MANAGEMENT INC	811614
MONOCLONAL MEDICAL INC	841112
MONTCLAIR BANCORP INC	829341
MORGAN CLIFTON FUND LTD PARTNERSHIP	789101
MORGAN MEDICAL HOLDINGS INC	834112
MORGAN WINDSOR LTD	840823
MORITZ ENERGY CORP	317949
MORTGAGE SECURITIES I CORP	751419
MORTGAGE SECURITIES II CORP	769357
MORTGAGE SECURITIES III TRUST A	785618
MORTGAGE SECURITIES III TRUST C	814144
MORTGAGE SECURITIES III TRUST D	806264
MOTELS OF AMERICA SERIES XIV	831974
MOUNTAIN STATES GUARANTY MORTGAGE CO	826740
MOUNTAIN VENTURES INC	835269
MPB CORP /DE/	068668
MRI BUSINESS PROPERTIES FUND LTD	722886
MSA SHOPPING MALLS INC	718572
MULTIPLEX SERVICES INC	740073
MURRAY UNITED DEVELOPMENT CORP	826444
MUSICLAND STORES CORP	832995
MUSTANG RANCH INC	840006
MUTUAL BENEFIT INCOME PARTNERS LP I	830350
MUTUAL BENEFIT MORTGAGE INVESTORS III LP	786420
NAC RE CORP	775542
NACOMA CONSOLIDATED INDUSTRIES INC	842884
NASHVILLE SUPER 8 LTD	820062
NATL BANK OF DETROIT RET PLAN & TRUST FOR SELF EM	070846
NATIONAL CREDIT CARD TRUST 1988-1	839949
NATIONAL CREDIT CARD TRUST 1989-1	845581
NATIONAL HOUSING PARTNERSHIP REALTY FUND III	769028
NATIONAL LEASE INCOME FUND 7 L P	835737
NATIONAL MARINAS L P	836867
NATIONAL MORTGAGE ACCEPTANCE CORP	768600
NEEDLE IN A HAYSTACK INC	793364
NET 2 L P	843756
NETWORK REAL ESTATE OF CALIFORNIA INC	820771
NEW EAST BANCORP	845754
NEW GOLF CONCEPTS INC	820221
NEW HAMPSHIRE THRIFT BANCSHARES INC	846931
NEW PIG CORP	825371
NGT ENTERPRISES INC	353646
NIAGARA EXCHANGE CORP	732433
NIGHTINGALE INC	837296
NIGHTWING GROUP INC	811787
NITE LITE USA LTD	832488
NOONEY REAL PROPERTY INVESTORS TWO L P	312155
NORCAP INC	793702
NORTH AMERICAN ENERGY OF DELAWARE INC /DE/	225854
NORTH BY NORTHEAST LTD	835954
NORTH GEORGIA NATIONAL BANCSHARES INC	843493
NORTHERN INDIANA PUBLIC SERVICE CO	072843
NORTHLAND CABLE PROPERTIES EIGHT LTD PARTNERSHIP	843368
NORTHLAND CABLE PROPERTIES TWO LTD PARTNERSHIP	732048
NORTHSTAR INCOME FUND I LP	838814
NORTHWEST GOLD INC	352447
NORWICH FINANCIAL CORP	828808
NOVA CAPITAL INC	840404
NOVA COLOR INC	313457
NOVATEK INTERNATIONAL INC	832334
NRM OPERATING CO LP	794413
NSA INC /CO	798176
NSC SERVICE GROUP INC	810111
NTS MORTGAGE INCOME FUND	841942
NTS PROPERTIES PLUS LTD	818089
NUGGET OIL CORP	276327
NUMEX CORP	318716
NUTRI PRODUCTS INC	831202
NYLIFE GOVERNMENT MORTGAGE PLUS LTD PARTNERSHIP	844414
OHIO & SOUTHWESTERN ENERGY CO	053320
OLD TYME SOFT DRINKS INC	819967
OLDE FINANCIAL CORP	813180
OLYMPIC FINANCE CORPORATION C	842334
OMNI CAPITAL GROUP INC	838870
ONBANCORP INC	846609
ONE BANCORP	740781
OPTI MAG SUBSTRATE INC	814921
OPTIFUND INC	819201
ORBITRON CAPITAL CORP	797983
ORCHARD HOUSE PARTNERSHIP	837590
ORIGINAL SIXTEEN TO ONE MINE INC /CA/	074925
OUTLOOK INCOME FUND 10	822729
OXFORD TAX EXEMPT FUND LTD PARTNERSHIP	766020
PAB BANKSHARES INC	705200
PACIFIC EAGLE TREASURE SALVORS INC	786128
PAINEWEBBER GEODYNE ENERGY INCOME LP I-A	746254
PAINEWEBBER GEODYNE ENERGY INCOME LP IIA	824894
PAINEWEBBER GEODYNE ENERGY INCOME LP II-C	833054
PAINEWEBBER GEODYNE ENERGY INCOME LP II-D	833526
PALFED INC	793075
PAN AMERICAN ENERGY CORPORATION	095626
PAN ATLANTIC INC	807906
PANACO INC	882074
PANTHER MOUNTAIN WATER PARK INC /DE/	815577
PARAGON TEMPLETON 81-A LTD	320342
PARAGON TEMPLETON 81-B LTD	356180
PARK PREMIER MINING CO	076286
PARKER & PARSLEY 82 II LTD	717374
PARKER & PARSLEY 88 A L P	828186
PARKER & PARSLEY 88 B L P	828191
PARKER & PARSLEY 89 A G P	844624
PARKER & PARSLEY 89 A L P	844582
PARKER & PARSLEY 89 B L P	844606
PARKER & PARSLEY PRODUCING PROPERTIES 87-A LTD	809016
PARKER & PARSLEY PRODUCING PROPERTIES 88A LP	837893
PARKER AUTOMOTIVE CORP	839434
PARKVALE FINANCIAL CORP	820807
PARKWAY CAPITAL CORP	825517
PARTICIPATING INCOME PROPERTIES II LP	820806
PARTNERS PREFERRED YIELD II LTD	827101
PARTNERS PREFERRED YIELD III LTD	827102
PATRIOT FINANCIAL CORP	838564
PB SECURED FINANCING CORP	839849
PBM BANCORP INC	704538
PCC GROUP INC	758972
PCI ASSOCIATES NO 8 LIMITED PARTNERSHIP	831233
PCPI FUNDING CORP	824561
PEACHTREE EQUITIES INC	831859
PEGASUS GYMNASTICS EQUIPMENT INC	806521
PEMBROKE CAPITAL INC	842706
PENN TREATY AMERICAN CORP	814181
PEOPLES HERITAGE FINANCIAL GROUP INC	829750
PEOPLES SAVINGS FINANCIAL CORP	846801
PERSHING LEASE INCOME LTD PARTNERSHIP	826407
PETROLEUM SEC FUND 1980 DEV DRIL PROG LTD PT NO 1	317616
PHASE OUT OF AMERICA INC	824416
PHH CAPITAL INC	716789
PHOENIX HIGH TECH HIGH YIELD FUND	837903
PHOENIX LEASING CAPITAL ASSURANCE FUND	773621
PHOENIX LEASING CASH DISTRIBUTION FUND	755118
PHOENIX LEASING CASH DISTRIBUTION FUND III	822690
PHOENIX LEASING GROWTH FUND 1982	356225
PHOENIX LEASING INCOME FUND 1977	216860
PHOENIX LEASING INCOME FUND 1980	313351
PHOENIX LEASING INCOME FUND 1981	353543
PHOENIX LEASING INCOME FUND 1982-1	355845
PHOENIX LEASING INCOME FUND 1982-2	702803
PHOENIX LEASING INCOME FUND 1982-3	702804
PHOENIX LEASING INCOME FUND 1982-4	702805
PHOENIX LEASING INCOME FUND VI	709995
PHOENIX LEASING INCOME FUND VII	732676
PHOENIX LEASING PERFORMANCE FUND 1980	316578
PHOENIX NBC PLAZA LTD	702927
PHOENIX VENTURES INC	215023
PIEDMONT FEDERAL CORP	829552
PINNACLE BANCORP INC	838881
PITCAIRN GROUP L P	801588
PLANTS FOR TOMORROW INC	824103
PLANVEST DEVELOPMENT PARTNERS	769025
PLAYTEX FAMILY PRODUCTS CORP / DE/	842945
PLAZA FINANCE CO INC	839084
PLM EQUIPMENT GROWTH FUND III	824210
PMR CORP	829608
PNB BANKSHARES INC	847068
POLARIS AIRCRAFT INCOME FUND V	832923
POLYDYNE INDUSTRIES INC	832984

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
PORT ST LUCIE NATIONAL BANK HOLDING CORP	835411
PRECIOUS METAL MINES INC	825999
PREFERRED INCOME FUND II LIMITED PARTNERSHIP	843005
PREMIERE LTD	792336
PRESIDENTIAL FUND I LIMITED PARTNERSHIP	631242
PRICE T ROWE REALTY INCOME FUND I	752743
PRICE T ROWE REALTY INCOME FUND II	787493
PRICE T ROWE REALTY INCOME FUND III	805298
PRICE T ROWE REALTY INCOME FUND IV	826315
PRIME BANCORP INC	823550
PRIME CABLE INCOME PARTNERS LP	793598
PRIME PLUS REALTY PARTNERS	357217
PRIMEBANK FINANCIAL CORP	846804
PRIMOS HOLDINGS INC	837760
PRINCETON FINE ART INC	789850
PRINCIPAL GROWTH MORTGAGE INVESTORS FUND LP SER I	823195
PROCYON CORP	812306
PROFESSIONAL VENTURES INC	803172
PROGRAMS UNLIMITED INC	353705
PROGRESSIVE VENTURES INC	843518
PROPERTY RESOURCES FUND VIII	746720
PROPERTY SOLUTION USA INC	775762
PROPHETSTOWN MANUFACTURING INC	729975
PROVIDENT AMERICAN CORP	768892
PRUDENTIAL BACHE DIVERSIFIED FUTURES FUND LP	833225
PRUDENTIAL BACHE ENERGY GROWTH FUND LP G-2	801582
PRUDENTIAL BACHE ENERGY GROWTH FUND LP G-3	801585
PRUDENTIAL BACHE ENERGY GROWTH FUND LP G-1	801580
PRUDENTIAL BACHE ENERGY INCOME FUND 1983 P-3	745148
PRUDENTIAL BACHE ENERGY INCOME FUND 1983 P-2	743452
PRUDENTIAL BACHE ENERGY INCOME FUND 1983 P-1	743451
PRUDENTIAL BACHE ENERGY INCOME LP IVP-17	814397
PRUDENTIAL BACHE ENERGY INCOME LP IVP-16	813768
PRUDENTIAL BACHE ENERGY INCOME LP VP-19	825198
PRUDENTIAL BACHE ENERGY INCOME LP VIP-23	826493
PRUDENTIAL BACHE ENERGY INCOME LP VP-18	820079
PRUDENTIAL BACHE ENERGY INCOME LP VP-21	831963
PRUDENTIAL BACHE ENERGY INCOME LP VP-20	831362
PRUDENTIAL BACHE ENERGY INCOME LP VP-22	837493
PRUDENTIAL BACHE ENERGY INCOME LP IIIP-12	798912
PRUDENTIAL BACHE ENERGY INCOME LP IIIP-13	799170
PRUDENTIAL BACHE ENERGY INCOME LP IIP-8	774456
PRUDENTIAL BACHE ENERGY INCOME LP IIP-10	736493
PRUDENTIAL BACHE ENERGY INCOME LP IIP-11	795751
PRUDENTIAL BACHE ENERGY INCOME LP IIP-9	782997
PRUDENTIAL BACHE ENERGY INCOME LP IIP-4	751373

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
PRUDENTIAL BACHE ENERGY INCOME LP IIP-7	764575
PRUDENTIAL BACHE ENERGY INCOME LP IIP-5	751375
PRUDENTIAL BACHE ENERGY INCOME LP IIP-6	765947
PRUDENTIAL BACHE ENERGY INCOME LP IIIP-15	790518
PRUDENTIAL BACHE EQUITEC REAL ESTATE PARTNERSHIP	757191
PRUDENTIAL BACHE FUTURES GROWTH FUND LP	823347
PRUDENTIAL BACHE PENSION & INTL INVESTOR LP PI 2	837494
PRUDENTIAL BACHE PENSION & INTL INVESTOR LP PI 1	837492
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-3	793711
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-4	813767
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-2	775301
PRUDENTIAL HOME MORTGAGE SECURITIES COMPANY INC	822657
PRUDENTIAL REALTY ACQUISITION FUND II LP	752292
PS MARINA INVESTORS I	831491
PS PARTNERS VI LTD	773281
PSN COMMUNICATIONS INC	742689
PUBLIC STORAGE PROPERTIES VI INC	313741
PUBLIC STORAGE PROPERTIES VII LTD	319785
PUBLIC STORAGE PROPERTIES VIII LTD	353461
PUBLIC STORAGE PROPERTIES X LTD	709333
PUBLIC STORAGE PROPERTIES XI LTD	726282
PUBLIC STORAGE PROPERTIES XII LTD	737206
PUBLIC STORAGE PROPERTIES XIV LTD	719839
PUBLIC STORAGE PROPERTIES XIX LTD	800180
PUBLIC STORAGE PROPERTIES XV LTD	757564
PUBLIC STORAGE PROPERTIES XVI LTD	768569
PUBLIC STORAGE PROPERTIES XX LTD	819335
QNB CORP	750558
QSR INCOME PROPERTIES LTD	783287
QUAD METALS CORP/WA	081350
QUALIFIED HOUSING PARTNERS LIMITED PARTNERSHIP	826817
QUALITY RESORTS OF AMERICA INC	766431
QUANTUS CAPITAL INC	828878
QUIESCENT CORP	841262
RAL INCOME PLUS EQUITY GROWTH V LTD PARTNERSHIP	832310
RAMADA ASSURED INCOME ASSOCIATES LP	812621
RAMCO ENERGY CORP	829283
RANCHO VENTURES LTD	789986
REALTY PARKING PROPERTIES LP	841127
RECOGNITION TECHNOLOGY INC	799834
REDWOOD EMPIRE BANCORP	840007
REFLECTONE INC /FL/	785037
REGENT BANCSHARES CORP	846979
REMINGTON FOX INC	829548
RENAISSANCE CONCEPTS INC	821706
REPUBLIC HEALTH CORP	719242
REPUBLIC LEASING INC /WA/	781682
RESIDENTIAL RESOURCES INC	791344
RESNICK WORLDWIDE INC	838044

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
RESOURCE TECHNOLOGY GROUP INC	831206
RETIREMENT LIVING TAX EXEMPT MORTGAGE FUND LP	769283
REVCO D S INC	083496
REXNORD CORP	843762
RF&P CORP	826830
RIC 24 LTD	825006
RIC 25 LTD	825007
RINGOR INTERNATIONAL LIMITED	826511
RINGSIDE INTERNATIONAL BROADCASTING CORP	824961
RITTENHOUSE CAPITAL CORP	831382
RIVAL CO	860194
RIVERSIDE CAPITAL INC	842694
RMI COVERED HOPPER RAILCAR MANAGEMENT PROGRAM 79-1	311250
RMSM LITHOTRIPTER LIMITED PARTNERSHIP	843492
ROBOTIC LASERS INC	827100
ROCHESTER COMMUNITY SAVINGS BANK	840068
ROCK A BYE BABY INC /DE	819553
ROCKLAND ELECTRIC CO	084613
ROOSEVELT FINANCIAL GROUP INC	830055
ROTHCHILD COMPANIES INC	099680
ROYALE GROUP LTD	016300
RPS GROWTH & INCOME FUND LP	823211
RPS HOUSING FUND I L P	825980
RS FINANCIAL CORP	840252
RURAL ELEC COOP GRANTOR TRUST SOYLAND 1987 A-4	814702
RURAL ELEC COOP GRANTOR TRUST SOYLAND 1987-A33	814699
RURAL ELEC COOP GRANTOR TRUST KEPCO 1989-K1	820761
RURAL ELEC COOP GRANTOR TRUST DESERET 1988-D2	829874
RURAL ELEC COOP GRANTOR TRUST DESERET 1988-D1	829873
RURAL ELEC COOP GRANTOR TRUST TEX LA 1988-T2	829648
RURAL ELEC COOP GRANTOR TRUST TEX LA 1988-T1	829547
RURAL ELEC COOP GRANTOR TRUST KEPCO 1988-K2	829677
RURAL HOUSING TRUST 1987-1	820783
RUSSCO INC	790228
RYAN MORTGAGE ACCEPTANCE CORP	703347
RYAN MORTGAGE ACCEPTANCE CORP II	725591
RYAN MORTGAGE ACCEPTANCE CORP III	740987
RYAN MORTGAGE ACCEPTANCE CORP IV	740963
RYAN MORTGAGE ACCEPTANCE CORP V	832357
RYLAND ACCEPTANCE CORP THREE	724272
RYLAND ACCEPTANCE CORP TWO	706318
RYLAND ACCEPTANCE CORPORATION FOUR	783660
RYLAND MORTGAGE SECURITIES CORP /VA/	811493
S L RESOURCES INC	842906
S Y BANCORP INC	835324
SAFE AID PRODUCTS INC	829117
SALOMON BROTHERS MORTGAGE SECURITIES VII INC	809877
SAME DAY EXPRESS INC	786815
SANCHEZ OBRIEN 1981 B DRILLING CO	354253
SANI TECH INDUSTRIES INC	805904
SANTA BARBARA FUNDING I INC	788426
SANTA BARBARA SAVINGS & LOAN ASSOCIATION	809171
SANWA BANK CALIFORNIA	059951

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SARKIS CAPITAL INC	813567
SASSOON INTERNATIONAL INC	724977
SCFC AUTOMOBILE LOAN TRUST 1989-1	841392
SCI TECH VENTURES INC	826674
SCOTTSDALE LAND TRUST LIMITED PARTNERSHIP	824098
SEA WOLF VENTURES INC	841124
SEAMENS MORTGAGE FINANCE II INC	831236
SEAMENS MORTGAGE FINANCE INC	818434
SEARS CREDIT ACCOUNT TRUST 1988 A	832088
SEARS CREDIT ACCOUNT TRUST 1988 B	838162
SEARS CREDIT ACCOUNT TRUST 1988 C	843767
SEARS MORTGAGE FUNDING TRUST 1988-1	842703
SEAWAY FINANCIAL CORP	830927
SECURED EQUITY LEASING PLUS LP	840214
SECURED INCOME L P	804217
SECURED INVESTMENT RESOURCES FUND LP III	839638
SECURITY BANCORP INC /GA/	843155
SECURITY INVESTMENTS GROUP INC	088547
SECURITY PACIFIC NATIONAL BANK /DE/	806244
SECURNET MORTGAGE SECURITIES CORP I	811594
SELECTIVE INSURANCE GROUP INC	230557
SELECTORS INC	746776
SEMPER BARRIS INC	819555
SENERGY 1986 LTD	784009
SEPTIMA ENTERPRISES INC	842013
SEVEN VENTURES INC	779956
SFFED CORP	829803
SHEARSON BK PROPERTIES INC	783463
SHEARSON BK REALTY INC	783462
SHEARSON BK RESTAURANTS INC	783464
Group CF-09	
SHEARSON MURRAY REAL ESTATE FUND IV LTD	319303
SHOPCO REGIONAL MALLS LP	830738
SHUR SCAPE SYSTEM INC	833204
SHURGARD INCOME PROPERTIES FUND 18 LP	808417
SHURGARD INCOME PROPERTIES III	706004
SIE COMMUNICATIONS INC	827083
SIERRA CAPITAL REALTY TRUST VIII CO	828957
SIERRA PACIFIC POWER CO	090144
SILVER CRESCENT INC /NEW/	319984
SILVER SCREEN PARTNERS II L P	764219
SILVER SCREEN PARTNERS III LP	799101
SILVER SCREEN PARTNERS IV L P	826600
SILVER SCREEN PARTNERS L P	715082
SIMPLICITY HOLDINGS INC	832504
SKIN CONTROL SYSTEMS INC	716939
SLH PERFORMANCE PARTNERS FUTURES FUND LP	841941
SMITH BARNEY MORTGAGE CAPITAL TRUST VI	842788
SOLAR SATELLITE COMMUNICATION INC	729588
SOLARCELL CORP	091649
SOLECTRIC CORP	731651
SONOCHEM INC	799120
SOUTHEAST ACQUISITIONS II LP	829905
SOUTHEASTERN CONTROL SYSTEMS INC	819631
SOUTHERN GOURMET PRODUCTS INC	791302
SOUTHERN LAND & EXPLORATION INC	789885
SOUTHWEST CAPITAL CORP	217222
SOUTHWEST FINANCIAL CORP	354509

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SOUTHWEST OIL & GAS INCOME FUND VIII-A LP	825881
SOUTHWEST ROYALTIES INST INCOME FUND VIII B LP	825886
SPACE WIF CORP	830519
SPANTEL CORP	732046
SPARTA CORP	838171
SPECIAL DELIVERY SYSTEMS INC	844164
SPECIALTY RETAIL VENTURES INC	840570
SPERZEL NV INC /NV/	823190
SPM GROUP INC	315545
ST JOSEPHS PHYSICIAN ASSOCIATES INC	833212
ST LOUIS SUNSWEPT PARTNERS LTD	317261
ST SYSTEMS INC	742167
STAMFORD TOWERS DEPOSITARY CORP	805890
STAR ACQUISITIONS CORP	819690
STAR PARTNERS II LTD	839516
STAR PARTNERS LTD	820760
STAR RESOURCES INC /DE/	827065
STAR STATES CORP	828944
STARS & STRIPES INVESTMENTS INC	812951
STATESMAN GROUP INC	093779
STERLING ASSET & INCOME FUND L P A-3	842715
STERLING FUEL RESOURCES DRILLING FUND 19	748858
STERLING HISTORIC INVESTORS LP	771557
STERLING INVESTMENTS LTD	829322
STERLING OIL OF OKLAHOMA INC	094167
STIMUTECH INC	719272
STONE MOUNTAIN INDUSTRIES INC	831674
STORAGE PROPERTIES INC	839477
STRIPPIT INC	832104
STRUCTURED ASSET SECURITIES CORPORATION	808851
STYLEX HOMES INC	095047
SUBURBAN BANKSHARES INC /FL	793080
SUN BANCORP INC	713975
SUNRISE BANCORP INC	840115
SUNSHINE MINING CO /DE	833376
SUPER 8 LODGING V LTD	737876
SUPER 8 MOTELS NORTHWEST I	316297
SUPER 8 MOTELS NORTHWEST II	701258
SUPER 8 MOTELS TEXAS LTD	313299
SUPER FUND PREFERRED LTD PARTNERSHIP	832453
SUPREME INCOME FUND LP	826401
SWIFT ENERGY INCOME PARTNERS 1988-1 LTD	842786
SWIFT ENERGY INCOME PARTNERS 1988-B LTD	842784
SWIFT ENERGY MNGD PENSION ASSETS PART 1988-1 LTD	842785
SWIFT ENERGY MNGD PENSION ASSETS PART 1988-B LTD	842787
SYBRON CHEMICAL INDUSTRIES INC	832816
SYBRON CHEMICALS INC	832815
SYMMAR INC	095948
SYNTHETIC BLOOD & MEDICAL TECHNOLOGIES INC	833844
SYNTHETIC BLOOD INTERNATIONAL INC	034956
SYSTEMS ASSURANCE CORP /ME/	705581
TALKING RINGS ENTERTAINMENT INC	828827
TALMAN FINANCE CORP F	818031
TAMPA ELECTRIC CO	096271
TAMPA FOODS L P	835949
TARRAGON CORP	778701
TECH HOLDING INC	818180
TECHNICRAFT FINANCIAL LTD	831888
TECHNOLOGY FUNDING SECURED INVESTORS III	844217
TECON INC /UT/	769592

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
TEJAS GAS CORP /DE/	840257
TEL INSTRUMENT ELECTRONICS CORP	096885
TELCO COMMUNICATIONS INC	827082
TELESCAN INC	832175
TEMPO LP INC	794450
TERRAMAR CORP	097258
TEXAS EASTERN TRANSMISSION CORP	097432
TEXAS TORTILLA BAKERY INC	843523
TEXLAND DRILLING PROGRAM 1981	352507
THERMAL ENERGY STORAGE INC	313277
TIS MORTGAGE ACCEPTANCE CORP	841752
TIVOLI VENTURES INC	799205
TMI INCOME PLUS LIMITED PARTNERSHIP	840543
TMS INC	835412
TOEN GROUP INC	837295
TONGA CAPITAL CORP	813718
TPI LAND DEVELOPMENT III LIMITED PARTNERSHIP	785539
TPI LAND DEVELOPMENT IV LIMITED PARTNERSHIP	825668
TPI LAND INVESTORS II LIMITED PARTNERSHIP	740727
TRADUX CORP	820377
TRANSAMERICA OCCIDENTAL LIFE INSURANCE CO /CA/	837757
TRANSCOLOR CORP	832444
TRANSMAGNETICS INC	099300
TRANSMARK USA INC	811591
TRAWEEK INVESTMENT FUND NO 12 LTD	702321
TREATS ENTERPRISES INC	839430
TRENWICK GROUP INC	787952
TRIPLE CO /CO/	831126
TRISTATE BANCORP INC	839539
TROY LEASE INCOME L P	833026
TRUMP TAJ MAHAL FUNDING INC	835544
TUBOSCOPE INC	100087
TUDOR PRIME ADVISORS FUND LP	835666
TUFCO INTERNATIONAL INC	808714
TV COMMUNICATIONS NETWORK INC	819802
TWO PARK AVENUE ASSOCIATES	356024
U HAUL INTERNATIONAL INC	004458
U S ENVIRONMENTAL INC	844010
U S THRIFT OPPORTUNITY PARTNERS L P	831660
U T INC	830995
UAC INC	203505
UGTC CAPITAL CORP	831873
UGTC HOLDING CORP	832172
UNCLE GEORGES PIZZA & SUBS INC	840255
UNDERWRITERS RE CORP	832425
UNIMAX CORP	100757
UNIOIL CORP	352710
UNIROYAL CHEMICAL ACQUISITION CORP	830994
UNITED EDUCATORS INC	101150
UNITED ENVIRONMENTAL CORP	832193
UNITED FEDERAL BANCORP INC	843082
UNITED INSURANCE COMPANIES INC	773660
UNITED INVESTORS GROWTH PROPERTIES	831663
UNITED INVESTORS INCOME PROPERTIES	830056
UNITED MAGAZINE CO	020469
UNITED NATIONAL BANCORP	831959
UNITED STATES EQUIPMENT INCOME FUND I	750681
UNITED STATES EQUIPMENT INCOME FUND III	808274
UNITED STATES HOME FINANCE CORP	316692
UNITED STATES HOME MORTGAGE CAPITAL CORP	730473

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
UNITED STATES HOME MORTGAGE CREDIT CORP	713621
UNIVERSAL CABLE TELEVISION INC	803964
UNIVERSAL CAPITAL INC	840466
UNIVERSAL FUELS CO	315375
UNIVERSITY REAL ESTATE PARTNERSHIP V	311173
UNSL FINANCIAL CORP	846807
UPTICK VENTURES INC	831232
URBAN IMPROVEMENT FUND LTD 1973 II	102342
US ACCEPTANCE CORP	766549
USA INTERNATIONAL CHEMICAL INC	840399
USF & G LEGG MASON REALTY PARTNERS LIMITED	832482
UST FASTBACS 1987-A GRANTOR TRUST	820784
UST FASTBACS 1987-B GRANTOR TRUST	823884
UST FASTBACS 1988-A GRANTOR TRUST	829286
UST FASTBACS 1988-B GRANTOR TRUST	840544
VALENCE TECHNOLOGY INC	885551
VAN DOREN RUBBER COMPANY INC	844494
VANDEN CAPITAL GROUP INC	837600
VANFED BANCORP	840575
VANGUARD REAL ESTATE FUND II	823488
VANTAGE INC	788687
VARSITY DEVELOPMENT INC	788333
VENTNOR CORP	810822
VENTURA INC	835406
VENTURE ENTERPRISES INC	778165
VENTURE FUNDING CORP	774454
VENTURE WORLD LTD	826683
VERTX CORP	702177
VESTEX INC	837342
VIBRATECH INC	832105
VICTORY TAX EXEMPT REALTY INCOME FUND LI	829374
VIDA MEDICAL SYSTEMS INC	103501
VIDEO STATION INC	700711
VIGILANCE SYSTEMS CORP	315411
VIKING PUMP INC	832106
VINEYARD NATIONAL BANCORP	840256
VMS INVESTORS FIRST STAGED EQUITY LP II	790882
VMS MORTGAGE INVESTMENT FUND	822829
VMS NATIONAL HOTEL PARTNERS	792896
WARNER TECHNOLOGIES INC /LA/	806280
WARREN BANCORP INC	830750
WARREN RUPP INC	832107
WASHINGTON GEORGE CORP	104826
WELCOM CAPITAL INC	833209
WELLESLEY LEASE INCOME LIMITED PARTNERSHIP IV	825851
WELLMAN MINING CORP	789858
WELLS REAL ESTATE FUND II-OW	824004
WELLS REAL ESTATE FUND III L P	838856
WENDYS OF WEST MICHIGAN LIMITED PARTNERSHIP	801446
WES TENN BANCORP INC	823555
WEST TENNESSEE FINANCIAL CORP	831662
WESTAM MORTGAGE FINANCIAL CORP	832434
WESTAR INDUSTRIES INTERNATIONAL INC	826445
WESTERN ANTENNA CORP	805902
WESTERN FEDERAL SAVINGS & LOAN ASSOCIATION	786706
WESTERN FINANCIAL AUTO LOANS 2 INC	802676
WESTERN NATIONAL LIFE INSURANCE CO	841286
WESTERN REAL ESTATE FUND INC	806187
WESTFED HOLDINGS INC	840784
WESTSTAR GROUP INC	814741
WESTWIND GROUP INC	838783
WHITE CLOUD EXPLORATION INC	736314
WHITE HALL INVESTMENTS INC	841287
WHITEHALL INCOME FUND 86	790027
WHOLESALE OPTICAL CLUB INTERNATIONAL INC	835766
WILDCAT MOUNTAIN CORP	107111
WILDER RICHMAN HISTORIC PROPERTIES II LP	827830
WINDPOWER PARTNERS 1984	746059
WINDSOR PARK PROPERTIES 6	836393
WINGATE HOUSING PARTNERS LTD	701745
WINLAND ELECTRONICS INC	749935
WINTERHAWK INVESTMENTS INC	839485
WITTER DEAN CORNERSTONE FUND I	736998
WITTER DEAN CORNERSTONE FUND II	736999
WITTER DEAN CORNERSTONE FUND III	737000
WITTER DEAN DIVERSIFIED FUTURES FUND II	839945
WITTER DEAN PRINCIPAL GUARANTEED FUND II LP	841754
WITTER DEAN PRINCIPAL GUARANTEED FUND III LP	844234
WITTER DEAN PRINCIPAL GUARANTEED FUND LP	832350
WITTER DEAN REALTY YIELD PLUS II LP	830340
WONG SUE INTERNATIONAL,INC	797666
WORK RECOVERY INC	841712
WORLD CUP CHAMPIONSHIP FUND LIMITED PARTNERSHIP	832487
WORLD WIDE STONE CORP	841123
WR CAPITAL GROUP INC	821357
WULF OIL CORP	108633
X ZEL INC	778885
XI TEC INC	786301
YAGER KUESTER PUBLIC FUND LIMITED PARTNERSHIP	797397
YELLOW LINE CAPITAL INC	790025
YOUNG CLIFF RESTAURANTS INC	832099
ZENITH VENTURES CORP	831251
ZEVEX INTERNATIONAL INC	827056
ZIEGLER MORTGAGE SECURITIES INC II	784013
ZODIAC FUTURES FUND LP	832608
ZOND PANAERO WINDSYSTEM PARTNERS I	787404
ZORBAS PALACE INC	741256
ZOTEK INC	836457

Group CF-10

1986-A GRANTOR TRUST	829083
1ST NATIONAL FILM CORP	853832
ACTIVE ACQUISITIONS INC	846194
ADLEX CORP	859173
ADVANCED MEDICAL DYNAMICS INC	823314
ADVANCED PORTFOLIO MANAGEMENT II L P	845927
ADVANTAGE CORPORATE INCOME FUND L P	851719
AEP GENERATING CO /OH/	857571
AERIAL ACQUISITION INC	856572
AFFILIATED PUBLICATIONS INC	849696
AHSC HOLDINGS CORP	855042
AIRFUND II INTERNATIONAL LIMITED PARTNERSHIP	853937
ALFA INDUSTRIES INC	846376
ALTERNATIVE ASSET GROWTH FUND L P	851998
AME FINANCIAL SERVICES INC	852905
AMERIANA BANCORP	855574
AMERICA FIRST FINANCIAL FUND 1988 LTD PARTNERSHIP	854696
AMERICAN CAPITAL HOLDINGS INC	842570
AMERICAN EAGLE INVESTMENT CORP	847394
AMERICAN HOME FUNDING TRUST 1989-2	852774
AMERICAN HOUSING TRUST III /NY/	848613
AMERICAN HOUSING TRUST IV	846009
AMERICAN INCOME PARTNERS V A LTD PARTNERSHIP	847557
AMERICAN INCOME PARTNERS V B LTD PARTNERSHIP	847558
AMERICAN MEDICAL TECHNOLOGIES INC	842695
AMERICAN OPPORTUNITY SEARCH INC	855689
AMERICAN RETIREMENT VILLAS PROPERTIES III LP	853274
AMERICAN TAX CREDIT PROPERTIES II L P	842314
AMERICAN TAX CREDIT PROPERTIES III LP	856135
AMERINST INSURANCE GROUP INC	822615
AMES FINANCIAL CORP	862694
AMFAC JMB FINANCE INC	842701
ANDRAPLEX CORP	849146
ANGELES GROWTH & INCOME FUND	852159
ANKAP INC	853529
ANTAEUS ACQUISITIONS INC	852001
APPLIED VISION SYSTEMS INC /MN/	845751
ARGYLE FUNDING INC	846806
ARIZONA LAND OPPORTUNITY FUND LIMITED PARTNERSHIP	846906
ARMANINO FOODS OF DISTINCTION INC /CO/	814339
ART CARDS INC	822618
ARVIDA JMB PARTNERS L P II	852494
ASHLAND CAPITAL GROUP INC	831744
ASPEN FOUR SEASONS L P	854165
ASTROTECH INTERNATIONAL CORP /NEW	835759
ATLANTIS CATALINA L P	853997
BAKER VIDEOACTIVE CORP	846874
BALANCED OPPORTUNITY FUND LIMITED PARTNERSHIP	854151
BALDWIN & LYONS INC	009346
BANK OF NEW ENGLAND 1989 A GRANTOR TRUST	856927
BANK OF NEW ENGLAND WEST NA	856675
BANKNORTH GROUP INC /DE/	851105
BARTON WILLIAM FINANCIAL INC	849312
BASES BURKE INSTITUTE INC	851964
BASS REAL ESTATE FUND III LIMITED PARTNERSHIP	819934
BAYVIEW CAPITAL INC	856571
BDOL 1979 PROGRAM LTD	278050
BEACON CAPITAL CORP	853530
BEAR STEARNS SECURED INVESTORS TRUST 1989-2	846892
BEAR STEARNS SECURED INVESTORS TRUST 1989-4	849134
BELLBROOK BANCORP INC	849346
BENAPLEX CORP	849215
BERRY & BOYLE DEVELOPMENT PARTNERS III	841239
BEST RESOURCES INC	846866
BIG BEAR STORES COMPANY/DE/	848099
BIO MANUFACTURING INC	862339
BJ SERVICES CO	864328
BLACK BOX INCORPORATED	849547
BLACKHAWK CAPITAL CORP	845042
BLUEFIELD ENTERPRISES	847416
BOARDWALK CONVENTION HOTEL PARTNERS LTD	855893
BOGERT 1989 II LTD PARTNERSHIP	862069
BOGERT 1989 III LTD PARTNERSHIP	862070
BOGERT 1989-I LIMITED PARTNERSHIP	857491
BORLAND INTERNATIONAL INC/DE	853273

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
BOSTON CAPITAL TAX CREDIT FUND II LTD PARTNERSHIP	853568
BOSTON FINANCIAL QUAL HOUSING TAX CREDIT LP 4 /MA/	845035
BOSTON FINANCIAL QUAL HOUSING TAX CREDIT LP 2	830997
BRADFORD BANKSHARES INC	852618
BRAUVIN INCOME PLUS L P III	850142
BRIAN CAPITAL INC	845874
BROWN DISC PRODUCTS CO INC	855373
BRUNNER COMPANIES INCOME PROPERTIES LP III	847319
BRYAN BANCORP OF GEORGIA INC	850210
BTNC CORP	846491
BURKE MARKETING RESEARCH INC / OH	851963
BURLINGTON INDUSTRIES CAPITAL INC	855047
BW TRUST 1989 1	854773
CABLE TV FUND 10	355562
CABLE TV FUND 15-A LTD	849976
CALMAR SPRAYING SYSTEMS INC	844864
CAMELBACK CAPITAL INC	814499
CAPITAL ADVISORS ACQUISITION CORP	844893
CAPITAL MORTGAGE PLUS L P	845875
CAPSTEAD SECURITIES CORP II	819046
CARDINAL FINANCIAL GROUP INC	842925
CARGILL BANCORP INC	844125
CATERAIR HOLDINGS CORP	855020
CAYMAN ACQUISITIONS INC	846810
CB COMMERCIAL HOLDINGS INC	852203
CECO FILTERS INC	811037
CELLULAR TELEPHONE ENTERPRISES INC	862885
CENTENNIAL FINANCIAL CORP	861997
CENTRA CORP	831904
CENTRAL JERSEY FINANCIAL CORP	851635
CENTRAPLEX CORP	849147
CENTURY SOUTH BANKS INC	357105
CERRITOS VALLEY BANCORP	822371
CFAC REMIC TRUST 1989-A	856594
CFC-7 GRANTOR TRUST	855916
CHEMICAL BANK CREDIT CARD TRUST 1989-A	857089
CHEMICAL BANK GRANTOR TRUST 1989 A	855579
CHEMICAL GRANTOR TRUST 1989 B	858234
CHESAPEAKE FINANCIAL SHARES INC	847538
CHESTER VALLEY BANCORP INC	854098
CHEVY CHASE EXTENDIBLE CREDIT CARD TRUST 1989-C	856421
CHEVY CHASE EXTENDIBLE CREDIT CARD TRUST 1989-B	856420
CHICAGO & NORTH WESTERN ACQUISITION CORP	854384
CHRISKEN GROWTH & INCOME LP II	850625
CHRISTIAN PURCHASING NETWORK INC	855663
CHRYSLER CAPITAL INCOME PARTNERS L P	852576
CIS CAPITAL EQUIPMENT FUND LTD 1	769725
CITI CREDIT CARD TRUST 1989 1	849487
CITI CREDIT CARD TRUST 1989-2	856610
CITIBANK FEDERAL SAVINGS BANK	848655
CITIBANK N A MORTGAGE PASS THROUGH CERTIFICATES	849345
CITIBANK NA	036684
CITICORP MORTGAGE SECURITIES INC	811785
CITICORP NATL SERV INC CONS AUTO CERT GRANT TR	854118
CITICORP NATL SERV INC CONS AUTO CERT GRANT TR II	854119
CITIZENS & SOUTHERN 1989 A GRANTOR TRUST	853771
CITIZENS BANCSHARES INC /OH/	855876
CITRUS FINANCIAL SERVICES INC	852616
CLINTON APPALACHIAN 89 PROGRAM	850413
CLUB USPN INC	845807
CML CHURCH MORTGAGE INC	847433
COALMONT INC	855372
COLLATERALIZED MORTGAGE OBLIGATION TRUST 59	846654
COLLATERALIZED MORTGAGE OBLIGATION TRUST 58	846794
COLLATERALIZED MORTGAGE OBLIGATION TRUST 57	845840
COLLATERALIZED MORTGAGE OBLIGATION TRUST 60	849403
COLLATERALIZED MORTGAGE OBLIGATION TRUST 61	858230
COLONIAL CREDIT CARD TRUST 1989-A	857017
COLONIAL NATIONAL BANK USA	822399
COMMERCE VENTURES INC	814606
COMMERCIAL ACQUISITIONS CORP / CO/	854096
COMMERCIAL BANCORP OF GWINNETT INC	852573
CON TECH SYSTEMS INC	842233
CONDOR SERVICES INC	845815
CONNECTICUT BANK & TRUST COMPANY NA	817427
CONQUEST VENTURES INC	845880
CONROY INC LIQUIDATING TRUST	023538
CONSERVATIVE SAVINGS CORP	855890
CONSOLIDATED CIGAR CORP	846584
CONTINENTAL BANCORPORATION	847926
CONTINENTAL GENERAL CORP	829650
CONTINENTAL SAVINGS OF AMERICA SERIES 19	846980
COOPER LABORATORIES INC	024473
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A7	832942
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A8	832943
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A9	832944
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A11	851872
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A10	851870
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A12	851876
COORDINATED MEDICAL SERVICES OF NORTH CAROLINA INC	857100
COPLEY REALTY INCOME PARTNERS 4	847450
CORPORATE ACQUISITION GROUP INC	855879
CORPORATE PROPERTY ASSOCIATES 9 L P	845028
CORPORATE REALTY INCOME TRUST I	853075
CROSSLAND COMMERCIAL FUNDING CORP I	847077
CURBSTONE ACQUISITION CORP	846005
CXR CORP	854852
CYPRESS EQUIPMENT FUND LTD	847486
DANDEES ENTERPRISES INC	852769
DATABASE TECHNOLOGIES INC	849315
DATATRONIX FINANCIAL SERVICES	857738
DATRONIC EQUIPMENT INCOME FUND XVI L P	814323
DATRONIC EQUIPMENT INCOME FUND XVIII L P	850671
DAVID ENTERPRISES INC	854242
DECATHLON ADVISORS LP	850340
DELTA OMEGA TECHNOLOGIES INC	846978
DESAI FUTURES FUND LIMITED PARTNERSHIP	847479
DISTRIBUTION SERVICES INC	853930
DIVERSIFIED HISTORIC INVESTORS VII	845029
DLJ ACCEPTANCE TRUST I	850451
DLJ ACCEPTANCE TRUST II	851745
DOLLAR DRY DOCK FUNDING CORP	821131
DOVER CAPITAL CORP	846770
DOVER HISTORIC PARTNERS L P	849544
DOWELL ENTERPRISES INC	846873
DQE INC	846930
DR HOLDINGS INC OF DELAWARE	859081
DR PEPPER BOTTLING COMPANY OF TEXAS	843397
DREWRY PHOTOCOLOR CORPORATION LIQUIDATING TRUST	862310
DREXEL BURNHAM LAMBERT CMO TRUST SERIES 27	846498
DRUMMOND BANKING CO	857558
DURAPLEX CORP	849143
EAGLE BANCORP INC /GA/	865792
EAGLE EYE ENTERPRISES INC	855351
EAGLE VISION INC	845560
EASTERN PETROLEUM CO /OH/	853633
ECOVA CORP	799541
EDINBURGH CAPITAL INC	849291
EDISTO RESOURCES CORP	857102
EIGHT HOLDINGS INC	858365
EL PASO REFINERY LP	854932
ELECTRO BRAIN INTERNATIONAL CORP	820902
ELEVEN HOLDINGS INC	858368
ELLER INDUSTRIES INC	850493
EMERALD CAPITAL INC /DE/	854164
EMPLOYEE BENEFIT PLANS INC	854807
ENEX 88 89 INCOME & RETIREMENT FUND SERIES I LP	837896
ENEX 88 89 INCOME & RETIREMENT FUND SERIES 5 LP	857507
ENEX 88-89 INCOME & RETIREMENT FUND SERIES 3 LP	848081
ENEX 88-89 INCOME & RETIREMENT FUND SERIES 6 LP	861065
ENEX 88-89 INCOME & RETIREMENT FUND SERIES 4 LP	861064
ENEX OIL & GAS INCOME PROGRAM III SERIES 8 LP	837894
ENEX OIL & GAS INCOME PROGRAM III SERIES 7 LP	837895
ENEX OIL & GAS INCOME PROGRAM IV SERIES 2 LP	848463
ENEX OIL & GAS INCOME PROGRAM IV SERIES 3 LP	854221
ENEX OIL & GAS INCOME PROGRAM IV SERIES 4 LP	855112
ENEX OIL & GAS INCOME PROGRAM IV SERIES 5 LP	861063
EQ SHEARSON HOTEL PROPERTIES L P	822968
EQUIPMENT LEASING CORPORATION OF AMERICA	794566
EQUITAS GROUP	850317
EQUITEC INCOME REAL ESTATE INVESTORS EQUITY FUND 4	820908
EQUIVEST FINANCE INC	820917
ES&L BANCORP INC	861995
ESCO ELECTRONICS CORP	866706
ESELCO INC	828941
EUREKA CAPITAL CORPORATION I	846715
EVCO INDUSTRIES INC	854378
EVERFLOW DRILLING PROGRAM 1989-90A	862015
EXALTISTICS INC	846381
EXCEL PROPERTIES LTD II	850958
EXCELSIOR CAPITAL CORP/CO/	824485
EXCELSIOR FUND II L P	852525

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
EXESS INC	851720
EXOTIC BODIES INC	846476
F 1000 FUTURES FUND LP SERIES VI	856646
FAIRVIEW PRINTING INC	853931
FAIRVIEW REAL ESTATE INC	853932
FALCON CLASSIC CABLE INCOME PROPERTIES LP	846811
FALLS FINANCIAL INC	854666
FAMILY BANCORP	825314
FBS MORTGAGE CORP MTG PASS THR CERT SER ABC 1989-A	863450
FCC 1989-A GRANTOR TRUST	854723
FFCA INVESTOR SERVICES CORP 85-B	811520
FI TEK III INC	846775
FI TEK IV INC	857502
FIDELITY BANCSHARES INC	850345
FIDELITY LEASING INCOME FUND VI LP	846471
FIFTEEN HOLDINGS INC	858371
FILENES BASEMENT INC	851277
FIRST & PEOPLES BANCSHARES INC	847453
FIRST AMERICAN 1989-A GRANTOR TRUST	858453
FIRST AMERICAN BANCORP /AL/	854631
FIRST AMERICAN BANCORP /OH/	865117
FIRST CAPITOL FINANCIAL CORP	821138
FIRST CLAYTON BANCSHARES INC	849627
FIRST COMMERCIAL HOLDING CORP	853071
FIRST COMMUNITY BANCORP INC / GA/	853467
FIRST FEDERAL CAPITAL CORP	851207
FIRST FEDERAL FINANCIAL CORPORATION OF KENTUCKY	854395
FIRST FED SAV & LOAN ASSN OF ROCHESTER 1989 SER 5	854215
FIRST FED SAV & LOAN ASSN OF ROCHESTER 1989 SER 4	857492
FIRST HOME CREDIT CORPORATION II	814710
FIRST INTER BANCORP INC	850496
FIRST LANDMARK HOLDING CO	844215
FIRST NATIONAL BANKSHARES OF HENRY COUNT	852558
FIRST NATIONAL FINANCIAL CORP / GA/	855582
FIRST NATIONAL REALTY ASSOCIATES INC	854882
FIRST NATIONWIDE BANK SERIES 1989 AMRES-2	856221
FIRST NATIONWIDE BANK SERIES 1989 AMRES-3	856219
FIRST NATIONWIDE BANK SERIES 1989 AMRES-4	857304
FIRST NATIONWIDE BANK SERIES 1989 FNB-1	857303
FIRST NATIONWIDE BANK SERIES 1989 FNB-2	856222
FIRST NATIONWIDE BANK SERIES 1989 ICAMC-1	856224
FIRST PATRIOT BANKSHARES CORP	855645
FIRST SECURITY CORP /GA/	856064
FIRST USA CREDIT CARD TRUST 1989-A	853023
FIRST USA CREDIT CARD TRUST 1989-B	856648
FIRSTFED MICHIGAN CORPORATION	846492
FIVE HOLDINGS INC	858363
FIVE K 2 CO INC	846733
FLAGSHIP FINANCIAL CORP	844060
FLAIR COMMUNICATIONS INC	820789
FLEA FAIR USA INC	846773
FLEET REMIC CASH FLOW CERT SERIES 1989-3 TRUST	860128
FLORIDA FORECLOSURE RESALE CORP	844883
FLOWERS INDUSTRIES INC /GA	826227
FORD CREDIT 1989-A GRANTOR TRUST	842911
FORD CREDIT 1989-B GRANTOR TRUST	857464
FOTG FUND I LIMITED PARTNERSHIP	849937
FOUR HOLDINGS INC	858362
FOURTEEN HOLDINGS INC	858370
FRANKLIN SELECT REAL ESTATE INCOME FUND	845613
FRP PROPERTIES INC	844059
FUTURE FUNDING CORP	855578
FUTURE SYSTEMS INC	857326
FUTURISTIC INNOVATIONS INC	855424
G I HOLDINGS INC	845806
GANT J W FINANCIAL INC	855926
GATEWAY FED CORP	853275
GATEWAY TAX CREDIT FUND LTD	824605
GEM CITY FINANCIAL FUNDING INC	844838
GEMINEX INDUSTRIES INC	831970
GEMINI INCOME FUND 17 LP	847472
GENESIS INVESTMENT GROUP INC	852449
GILBERT ROBINSON INC /DE/	846583
GLASSTECH INDUSTRIES INC /DE/	857564
GLENDALE FED BANK FED SAV BANK CLASS A SER 1989-1	849287
GLENDALE FED BANK FED SAV BANK SERIES 1991-1	860219
GMAC MORTGAGE SECURITIES II INC	812354
GNB BANCSHARES INC	855572
GNI GROUP INC /DE/	355269
GNLV FINANCE CORP	793723
GOLAR GAS HOLDING COMPANY INC	856587
GOLDEN GATE ACQUISITIONS INC	854053
GOLDRIVER FINANCE CORP	845609
GOLDRIVER LIMITED PARTNERSHIP	845610
GOVERNMENT TRUST 3 A	853492
GOVERNMENT TRUST 3 B	853493
GOVERNMENT TRUST 3 C	853494
GOVERNMENT TRUST M 1	856139
GOVERNMENT TRUST P 1	845381
GOVERNMENT TRUST P 2	845382
GOVERNMENT TRUST P 3	845383
GP GROUP INC	853927
GRAND COMPANY LIMITED PARTNERSHIP	852130
GREAT OAKS FINANCIAL CORP	835307
GREAT SOUTHERN BANCORP INC	854560
GREAT WEST LIFECO INC	850918
GREEN MOUNTAIN HOLDING CORP	854558
GROWTH FINANCIAL CORP	849212
GS TRUST 8	823000
GTA CORP	854575
GULL LABORATORIES INC /UT/	832404
GWINNETT BANCSHARES INC	858862
HANCOCK JOHN MORTGAGE INVESTORS LTD PARTNERSHIP	852908
HANOVER FOODS CORP /PA/	853733
HANOVER LEASE INCOME LTD PARTNERSHIP	796529
HARMONIA BANCORP INC	854160
HARVEST FINANCIAL CORP /IA/	857089
HAWK MARINE POWER INC	841183
HAYNES INTERNATIONAL INC	858655
HAZLETON BANCORP INC	864970
HCA HOSPITAL CORPORATION OF AMERICA	846489
HEALTH ADVANCEMENT SERVICES INC /DE/	853074
HEALTHTEK INC	847929
HEARTFED FINANCIAL CORP	849939
HEAVENLY HOT DOGS INC /DE/	823546
HENLEY GROUP INC /DE/	855911
HENRY JOHN W & CO/MILLBURN L P	853458
HERITAGE FINANCIAL LIMITED	855114
HFC HOME EQUITY LOAN TRUST SERIES 1988-1	846188
HFC HOME EQUITY LOAN TRUST SERIES 1989 1	853908
HIGH COUNTRY VENTURES INC	845879
HIGHLAND GOLD PROPERTIES INC	852903
HISTORIC HOUSING FOR SENIORS III LTD PARTNERSHIP	850961
HOME EQUITY LOAN ASSET BACKED CERTIFICATE 1989-2	861093
HOME EQUITY LOAN ASSET BACKED TRUST SERIES 1989-1	859229
HOME FINANCIAL CORP /DE/	847410
HOME MISSION BD OF THE SOUTHERN BAPT CONV	847789
HOME MISSION BD OF THE SOUTHERN BAPT CONV SER C	847790
HOME MISSION BD OF THE SOUTHERN BAPT CONV SER B	847791
HOME MISSION BD OF THE SOUTHERN BAPT CONV SER E	862282
HOMESTEAD NATIONAL CORPORATION	835920
HORACE MANN EDUCATORS CORP	850141
ICA MORTGAGE CORPORATION TRUST 1989-2	851744
ICON CASH FLOW PARTNERS LP SERIES B	849276
IDM PARTICIPATING INCOME COMPANY V	849623
IDS JONES GROWTH PARTNERS 87-A LTD /CO/	857488
IDS JONES GROWTH PARTNERS 89-B LTD	849978
IDS JONES GROWTH PARTNERS II LP	850669
IDS SHURGARD INCOME GROWTH PARTNERS LP	822816
IEA INCOME FUND X LP	853735
IMA MEDIKOS GROUP INC	849407
IMAGING MANAGEMENT ASSOCIATES INC /COLO/	845401
INDEPENDENT RESEARCH AGENCY FOR LIFE INSURANCE INC	354242
INDEPENDENT TELECOMMUNICATIONS NETWORK INC	834948
INDSPEC CHEMICAL CORP	847069
INFORMATION RESOURCE ENGINEERING INC	850313
INLAND LAND APPRECIATION FUND II LP	853496
INLAND LAND APPRECIATION FUND LP	825315
INLANDS MONTHLY INCOME FUND LP	812909
INSIGHT ENVIRONMENTAL CORP	849356
INSTAFF INTERNATIONAL INC	850217
INSTITUTE FOR LABORATORY MEDICINE INC	824109
INTERCAP MONITORING INCOME FUND IV-A LTD	864338
INTERCAP MONITORING INCOME FUND IV-B LTD	855419
INTERCAP MONITORING INCOME FUND IV-C LTD	863449
INTERNATIONAL CABLECASTING TECHNOLOGIES	865745
INTERPORE INTERNATIONAL /CA/	854093
INTERSTATE LAND INVESTORS II LTD PARTNER	853891
INTERWEST COMMUNICATIONS CORP	845400
INVESTAR INC /MN/	845044
INVESTORS ADJUSTABLE MORTGAGE TRUST I	854577
INVESTORS CHOICE FLORIDA PUBLIC FUND I LTD	853841
INVESTORS CHOICE FLORIDA PUBLIC FUND II LTD	853851

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
INVESTORS CHOICE FLORIDA PUBLIC FUND III LTD	853854
INVESTORS CHOICE FLORIDA PUBLIC FUND IV LTD	853857
INVESTORS CHOICE FLORIDA PUBLIC FUND V LTD	853859
INVESTORS FINANCIAL CORP /VA/	825160
INVESTORS GNMA MTG BACKED SECURITIES TRUST INC /MD/	857929
ITRONICS INC	825203
IVORY COAST INC	847537
J C CAPITAL CORP	852333
JCP MASTER CREDIT CARD TRUST	833211
JENNICA INC	824573
JETFLEET AIRCRAFT L P	846927
JOHN HANSON BANCORP INC	849626
KANGAROO FRANCHISES INC	849355
KELLEY PARTNERS 1989 DEVELOPMENT DRILLING PROGRAM	853635
KELLY MOTORS LTD	853154
KENTUCKY MEDICAL INSURANCE CO	840163
KIDDER PEABODY MORTGAGE ASSETS TRUST TWENTY THREE	847280
KIDDER PEABODY MORTGAGE ASSETS TRUST TWENTY FOUR	847596
KP WINGATE INSURED PARTNERS LIMITED PARTNERSHIP	814826
KWIK TRIP FINANCIAL INC	857008
KYLE DEVELOPMENT CORP	855652
LAFAYETTE ENTERPRISES LTD	846107
LASALLE CAPITAL CORP	850412
LAUREL CENTRE DEPOSITARY CORP	911715
LEGENT CORP	846607
LIBERTY INCOME PLUS LIMITED PARTNERSHIP	843730
LIFE USA HOLDING INC /MN/	832989
LOS ALAMOS DIAGNOSTICS INC /DE/	816944
LUBBOCK NATIONAL BANCSHARES INC	857401
MACKENZIE INVESTMENT MANAGEMENT INC	856711
MACY RECEIVABLES FUNDING CORP	847840
MADISON EQUITIES INC	822822
MAF BANCORP INC	854682
MAGELLAN TECHNOLOGY INC	856923
MAGNOLIA FUND LTD	853291
MAGNUM PETROLEUM INC /NV/	854271
MAIN LINE BANCSHARES INC	857345
MAIN ST & MAIN INC	847466
MALIBU INC	847390
MALRITE GUARANTEED BROADCAST PARTNERS LP	803018
MARCAM CORP	846551
MARINE HOLDING CO	860521
MARINE MIDLAND 1987-1 CARS TRUST	814654
MARINE MIDLAND 1988-1 CARS R TRUST	846890
MARINE MIDLAND 1988-2 CARS R TRUST	846891
MARINE MIDLAND 1989 1 CARS R TRUST	846221
MARINE MIDLAND 1989-2 CARS R TRUST	852540
MARINE MIDLAND BANK N A	316905
MARTECH USA INC	857475
MARYLAND FEDERAL BANCORP INC	853020
MASTER VENTURES INC	849360
MBNA CREDIT CARD TRUST 1988-B	838441
MBNA CREDIT CARD TRUST 1988-C	843807
MBNA CREDIT CARD TRUST 1989 A	849402
MBNA CREDIT CARD TRUST 1989 B	855367
MCD MB DRILLING PROGRAM 1989	852560
MECA SOFTWARE INC	864704
MEDICAL INCOME PROPERTIES 2B LTD PARTNERSHIP	820390
MEDICIS PHARMACEUTICAL CORP	859368
MEGAMATION INC	833498
MERCHANT BANK CORP	850314
MERCHANT BANKSHARES GROUP INC	856299
MERRICO OIL & GAS INCOME FUND LIMITED 1987-2	855004
MERRICO OIL & GAS INCOME FUND LIMITED 1987-1	854980
MERRICO OIL & GAS INCOME FUND LIMITED 1986-1	855003
MERRICO OIL & GAS INCOME FUND LIMITED 1987-3	855100
MERRICO OIL & GAS INCOME FUND LIMITED 1986-4	854994
MERRICO OIL & GAS INCOME FUND LIMITED 1986-2	855001
MERRICO OIL & GAS INCOME FUND LIMITED 1988-1	862583
MERRICO OIL & GAS INCOME FUND LIMITED 1987-4	861780
MERRICO OIL & GAS INCOME FUND LTD 1988-2	862098
MERRICO OIL & GAS INCOME FUND LP 1988-3	841237
MET LIFE AGRICULTURAL LIMITED PARTNERSHIP	824976
METLIFE TEXAS HOLDINGS INC	829321
METRIC INCOME TRUST SERIES INC	846722
METRO FINANCIAL CORP	857891
METROBANCORP	818999
MEXICAN PATIO CAFES INC	851891
MEXICAN PATIO CAFES OF CALIFORNIA I LP	839626
MICRON CORP /TX/	803512
MICROSCIENCE INTERNATIONAL CORPORATION	812994
MID COAST BANCORP INC	851785
MILLER DIVERSIFIED CORP	844856
MOORGATE LTD	855894
MORELLIS NONA II INC	848296
MORTGAGE CAPITAL TRUST VI	814337
MORTGAGE SECURITIES III TRUST B	799830
MORTGAGE SECURITIES III TRUST E	826488
MORTGAGE SECURITIES III TRUST F	830431
MOTTS HOLDINGS INC	846340
MOUNTAIN VALLEY BANCSHARES INC	844640
MS ESSEX HOLDINGS INC	846919
MTG CAPITAL CORP	850645
NATIONAL CREDIT CARD TRUST 1989-2	846545
NATIONAL CREDIT CARD TRUST 1989-3	847000
NATIONAL CREDIT CARD TRUST 1989-4	850959
NATIONAL CREDIT CARD TRUST 1989-5	847377
NATIONAL ENQUIRER INC	853928
NATIONAL MEDIA HOLDING CO INC	814656
NATIONAL RESOURCE RECOVERY SYSTEMS INC	847235
NATIONAL SECURITIES HOLDING CORPORATION	847383
NATIONAL TAX CREDIT PARTNERS LP	847415
NDSI INC	853933
NEW YORK LIFE OIL & GAS NET PROF PROD PROP IIIA LP	857530
NEW YORK LIFE OIL & GAS OPER PROD PROP III-A LP	857529
NEWPORT INVESTMENTS INC	846011
NFS AGENCY CORP	822320
NINE HOLDINGS INC	858366
NOMURA MORTGAGE CAPITAL CORP /DE/	846519
NORTH AMERICAN INTEGRATED MARKETING INC	847388
NORTH COAST ENERGY 1989 APPALACHIAN PUB DRILLING	852562
NORTH FLORIDA BANK CORP	854861
NORTH LENDERS L P	835959
NORTH OAKS REAL ESTATE PARTNERSHIP	857614
NORTHGATE INDUSTRIES INC	855207
NORTHWEST ACQUISITIONS INC / MN/	854398
NOTABLE ENTERPRISES INC	857103
NTC FINANCIAL GROUP INC /GA/	857142
NWNL COMPANIES INC	841528
OAK ISLAND EXPLORATION CO	853531
OAKRIDGE ACQUISITIONS INC	847603
OFFSHORE PIPELINES INC	862078
OMEGA POWER INC	857104
OMNI USA INC	846732
ONE HOLDINGS INC	858359
P B CMO TRUST 8	843773
P B CMO TRUST 89	846893
PAINE WEBBER GUARANTEED FUTURES FUND L P	850310
PAINE WEBBER QUALIFIED PLAN PROPERTY FUND LP	352723
PAINEWEBBER CMO TRUST SERIES O	848105
PAINEWEBBER CMO TRUST SERIES P	852469
PAINEWEBBER GEODYNE ENERGY INCOME LP II-F	850506
PAINEWEBBER GEODYNE ENERGY INCOME LP II-E	842881
PAINEWEBBER GEODYNE ENERGY INCOME LP II-H	854062
PAINEWEBBER GEODYNE ENERGY INCOME LP II-G	851724
PAINEWEBBER GEODYNE ENERGY INCOME LP III-A	860745
PAINEWEBBER GEODYNE INST PENSION ENERGY INC LP P-1	850427
PAINEWEBBER GEODYNE INST PENSION ENERGY INC LP P-2	850428
PAINEWEBBER GEODYNE INST PENSION ENERGY INC LP P-3	854066
PAINEWEBBER GEODYNE INST PENSION ENERGY INC LP P-4	860744
PAINEWEBBER INDEPENDENT LIVING MTG FUND INC	847414
PAINEWEBBER INDEPENDENT LIVING MTG FUND INC II	861880
PAINEWEBBER INSURED MORTGAGE PARTNERS 1-A LP	846557
PAINEWEBBER INSURED MORTGAGE PARTNERS 1-B LP	857098
PAINEWEBBER RETAIL PROPERTY INVESTMENTS INC	852748
PAMRAPO BANCORP INC	854071
PAN WORLD MINERALS INTERNATIONAL INC /UT/	847419
PANDA ENERGY CORP	816870
PARAGON MORTGAGE CORP	852615
PARDEE RESOURCES CO	852133
PARKER & PARSLEY 89 B CONV LP	844625
PAUDAN INC	854862
PDC 1989-A LIMITED PARTNERSHIP	854197
PDC 1989-B LIMITED PARTNERSHIP	854198
PEGASUS AIRCRAFT PARTNERS II LP	849870
PEREGRINE CAPITAL CORP	847386
PERPETUAL SAVINGS BANK TRUST 1989-1A	857462
PERSHING LEASE INCOME LIMITED PARTNERSHIP II	847582
PETROLANE GAS SERVICE LIMITED PARTNERSHIP /DE/	854520
PETROVEST INC	846012
PHOENIX LEASING CASH DISTRIBUTION FUND IV	853571

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
PHS INDUSTRIES INC	822748
PI HOLDINGS INC	846193
PIEDMONT BANCSHARES CORP	854132
PINNACLE FINANCIAL SERVICES INC	853461
PLANTATION CAPITAL CORP	852904
PLAYTEX BARCELONETA CORP	846622
PLAYTEX COROZAL CORP	846624
PLAYTEX DORADO CORP	846625
PLAYTEX FP GROUP INC	842699
PLAYTEX INDUSTRIES INC	846626
PLAYTEX MANATI CORP	846631
PLM EQUIPMENT GROWTH FUND IV	847517
POINT LOMA SUPER 8 LTD	822439
PONDER INDUSTRIES INC	859917
PONTE VEDRA BANKING CORP	845806
POTENTIALISTICS INC	847256
PREFERRED FINANCIAL CORP /DE/	847476
PRICE T ROWE RENAISSANCE FUND LTD	852160
PRIME BANCSHARES INC	849803
PRINCIPAL GROWTH MORTGAGE INVESTORS FUND LP	843513
PROCESS EQUIPMENT INC	857073
PROTECH INC	802142
PRUDENTIAL BACHE CAPITAL RETURN FUTURES FUND LP	846176
PRUDENTIAL BACHE CAPITAL RETURN FUTURES FUND 2 LP	851786
PRUDENTIAL BACHE ENERGY GROWTH FUND L P G-4	801586
PRUDENTIAL BACHE ENERGY INCOME LP VI P-25	850266
PRUDENTIAL BACHE ENERGY INCOME LP VI P-24	849797
PRUDENTIAL BACHE ENERGY INCOME LP VI P-26	856314
PRUDENTIAL BACHE ENERGY INCOME LP IIIP-14	804457
PRUDENTIAL BACHE PENSION & INTL INVESTOR LP PI3	850265
PRUDENTIAL BACHE PENSION & INTL INVESTOR LP PI4	854195
PRUDENTIAL BACHE PENSION & INTL INVESTOR LP PI5	862517
PRUDENTIAL BACHE TAX CREDIT PROPERTIES LP	850184
PULSE BANCORP INC	857559
PW PRIVATE CAPITAL TECHNOLOGY FUND LP	837212
QUEST CORP	852234
QUIKBYTE SOFTWARE INC	850261
QUORUM HEALTH GROUP INC	854694
R I C 26 LTD	855660
R L MICHELLE & CO	845608
RAGAR CORP	853271
RAILROAD FINANCIAL CORP	846007
RAINES LENDERS L P	845399
RAINES ROAD L P	845397
RALLYS INC	854873
RAMEX SYNFUELS INTERNATIONAL INC	857132
RAMTRON INTERNATIONAL CORP	849502
REDWOOD MORTGAGE INVESTORS VII	854092
RENEGADE VENTURE CORP	854171
REPUBLIC FEDERAL SAVINGS & LOAN ASSN SERIES 1989-2	857398
REPUBLIC FEDERAL SAVINGS & LOAN ASSN SERIES 19-	862068
RETA RETAIL ACQUISITIONS INC	849934
RICHMOND CAPITAL CORPORATION	846535
RINGER CORP /MN/	866752
RJ OIL & GAS ASSOCIATES LTD 1980-C	351718
RJR NABISCO CAPITAL CORP	848094
RJR NABISCO HOLDINGS CORP	847903
RJR NABISCO HOLDINGS GROUP INC	847904

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
ROUTE 43 LAND DEVELOPMENT LIMITED PARTNERSHIP	854606
ROYAL INTERNATIONAL OPTICAL INC	864010
ROYALTY MORTGAGE INCOME FUND	824093
RPS CORP	855106
RURAL ELEC COOP GRANTOR TRUST SOYLAND 1987 A-6	814704
RURAL ELEC COOP GRANTOR TRUST SOYLAND 1987 A-5	814703
RYLAND MTG SECURITIES CORP SERIES 1989-7A TRUST	864548
RYLAND MTG SECURITIES CORP SERIES 1989-7B	864547
RZW VENTURES INC	847540
SABLE VENTURES INC	848458
SAHARA FINANCE CORP	859245
SALOMON BROTHERS MORTGAGE SECURITIES VI INC	801342
SAN VAL INC	846977
SCFC HOME EQUITY LOAN TRUST 1989 1	856478
SCI LEVERAGED ALLOCATION FUND I L P	846719
SEA PINES ASSOCIATES INC	846926
SEALED POWER TECHNOLOGIES L P	848449
SEALY HOLDINGS INC	851420
SEARS CREDIT ACCOUNT TRUST 1989 A	847318
SEARS CREDIT ACCOUNT TRUST 1989 B	851417
SEARS CREDIT ACCOUNT TRUST 1989 C	856422
SEARS CREDIT ACCOUNT TRUST 1989 D	856275
SEARS CREDIT ACCOUNT TRUST 1989 E	857402
SEARS MTG SEC CORP MULT CLA MORT PAS THR CERT 19	859035
SEARS MTG FUNDING TRUST 1989-1	848477
SEARS MTG SEC CORP MTG PASS THR CERT SER 1988-A	835773
SEARS MTG SEC CORP MTG PASS THR CERT SER 1988-B	835774
SEARS MTG SEC CORP STRIP MTG PASS THR CERT SER	862244
SECURED FINANCE INC	853662
SECURITY PACIFIC CREDIT CARD TRUST 1989	857172
SHARK INC	855043
SHARON ENERGY LTD	844680
SILGAN HOLDINGS INC	849869
SIX HOLDINGS INC	862359
SK TECHNOLOGIES CORP	847777
SLH MORTGAGE TRUST SERIES 1989-1	856305
SLH MORTGAGE TRUST SERIES 1989-2	859989
SMITH BARNEY MORTGAGE CAPITAL TRUST 10	856552
SMITH BARNEY MORTGAGE CAPITAL TRUST 11	858733
SMITH BARNEY MORTGAGE CAPITAL TRUST 9	852202
SMITH BARNEY MORTGAGE CAPITAL TRUST VII	847374
SMITH BARNEY MORTGAGE CAPITAL TRUST VIII	848209
SOLARIS INC	855577
SOUTHEAST ACQUISITIONS III L P	846014
SOUTHEASTERN INCOME PROPERTIES II LTD PARTNERSHIP	822983
SOUTHERN CRESCENT FINANCIAL CORP	849951
SOUTHWEST INFORMATION & EDUCATION UTILITIES INC	853868
SOUTHWEST OIL & GAS INCOME FUND IX-A LP	847320

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SOUTHWEST ROYALTIES INST INCOME FUND IX-B LP	847384
SPELLING ENTERTAINMENT INC	845568
STARLIGHT ACQUISITIONS INC	850083
STERLING ASSET & INCOME FUND LP A-2	831328
STERLING ASSET & INCOME FUND LP AA-1	857533
STERLING ENTERPRISES INC	852000
STONE SAVANNAH RIVER PULP & PAPER CORP	852554
STRATEGIC ACQUISITIONS INC /NV/	847942
STRUCTURED ASSET SECURITIES CORP SERIES 1989-1	862099
STRUCTURED ASSET SECURITIES CORP SERIES 1989-2	862100
SULLIVAN HOLDINGS INC	856710
SUMMIT BANCORP /OH/	852803
SUMMIT ENVIRONMENTAL GROUP INC	855927
SUMMIT FINANCIAL CORP	856223
SUMMIT TAX CREDIT PROPERTIES I L P	855366
SUN HARBOR FINANCIAL RESOURCES INC	841360
SUPER RITE FOODS HOLDINGS CORP	854728
SURETY FINANCE CORPORATION I	846766
SURREY ENTERPRISES INC	844892
SWEET THANKS INTERNATIONAL INC	846013
SWIFT ENERGY INCOME PARTNERS 1987-D LTD	832872
SWIFT ENERGY INCOME PARTNERS 1988-2 LTD	847785
SWIFT ENERGY INCOME PARTNERS 1988-3 LTD	850418
SWIFT ENERGY INCOME PARTNERS 1988-A LTD	837752
SWIFT ENERGY INCOME PARTNERS 1988-C LTD	847786
SWIFT ENERGY INCOME PARTNERS 1988-D LTD	848082
SWIFT ENERGY INCOME PARTNERS 1989-1 LTD	850419
SWIFT ENERGY INCOME PARTNERS 1989-2 LTD	854303
SWIFT ENERGY INCOME PARTNERS 1989-3 LTD	857496
SWIFT ENERGY INCOME PARTNERS 1989-4 LTD	862155
SWIFT ENERGY INCOME PARTNERS 1989-A LTD	850420
SWIFT ENERGY INCOME PARTNERS 1989-B LTD	854220
SWIFT ENERGY INCOME PARTNERS 1989-C LTD	857532
SWIFT ENERGY INCOME PARTNERS 1989-D LTD	862129
SWIFT ENERGY MAN PENSION ASSETS PART 1988-A LTD	837753
SWIFT ENERGY MAN PENSION ASSETS PART 1988-C LTD	847806
SWIFT ENERGY MAN PENSION ASSETS PART 1989-A LTD	850424
SWIFT ENERGY MAN PENSION ASSETS PART 1988-2 LTD	850425
SWIFT ENERGY MAN PENSION ASSETS PART 1989-1 LTD	854864
SWIFT ENERGY MAN PENSION ASSETS PART 1989-B LTD	854302
SWIFT ENERGY MAN PENSION ASSETS PART 1989-2 LTD	857495
SWIFT ENERGY MAN PENSION ASSETS PART 1989-C LTD	857531
SWIFT ENERGY MAN PENSION ASSETS PART 1989-D LTD	861761
SWISS SUN INTERNATIONAL LTD	846379

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
SYNERGY FUNDING INC	852332
SYNESYS INC	856669
T A BUSCAGLIA CO INC	822321
TARIS INC	855585
TAYLOR ANN INC	850090
TAYLOR EQUITIES INC	853270
TELECOMMUNICATIONS GROWTH & INCOME FUND LP	845394
TELEPHONICS OFFICE TECHNOLOGIES INC	847471
TELEX COMMUNICATIONS INC	857668
TELIDENT INC /MN/	845047
TEN HOLDINGS INC	858367
TEXAS AMERICAN GROUP INC	846905
TEXTAINER EQUIPMENT INCOME FUND II L P	853086
THEME FACTORY INC	853833
THERMADYNE HOLDINGS CORP	850660
THIRTEEN HOLDINGS INC	858369
THREE HOLDINGS INC	858361
TJ SYSTEMS CORP	849354
TOCOR INC	850978
TOPS INC /NY/	822322
TOPS INC /PA/	822323
TOPSEARCH INC	847555
TORONTO CORP	849406
TRANS AM CAPITAL CORP	851943
TRANSGLOBAL HOLDINGS INC	856364
TREMONT CORPORATION	842718
TRI COUNTY FINANCIAL CORP /MD/	855874
TRIAX USA ASSOCIATES L P	850956
TRIAX USA CAPITAL CORP	850960
TRIGATE ASSOCIATES INC	849835
TRIM A LAWN CORP /DE/	822670
TRIPLE C ACQUISITION CORP	846585
TRIZAK CORP	016760
TURTLE EQUITIES LTD	847633
TWO HOLDINGS INC	858360
TYLER CORP /NEW/	851878
U S CARD INVESTORS INC	846975
U S LONG DISTANCE CORP	858764
U S MAGNET & ALLOY CORPORATION LIQUIDATION TRUST	849139
U S OPPORTUNITY SEARCH INC	855683
U S PAWN INC	844780
UBS MORTGAGE TRUST 1	856074
UBS MORTGAGE TRUST 2	858450
UCC INVESTORS HOLDING INC	858905
UFSB 1989-A GRANTOR TRUST	856975
UFSB 1989-B GRANTOR TRUST	856974
ULTRA BANCORP	858792
ULTRASYSTEMS INC/DE	839654
UNIFIED CAPITAL INC	854551
UNION CARBIDE CORP /NY/	845559
UNITED ARKANSAS CORP	846772
UNITED ARTISTS ENTERTAINMENT CO /DE/	849493
UNITED STATES EXPLORATION INC	847074
UNITED TENNESSEE INC	835769
UNLIMITED FRONTIERS ORGANIZATION INC	846619
UPPER PENINSULA ENERGY CORP / NEW/	836868
UPSILON INC	853465
URBAN IMPROVEMENT FUND LIMITED 1972	850453
VALLEY NATIONAL BANK OF ARIZONA /AZ/	851034
VALLICORP HOLDINGS INC	849865
VICTORIA STATION ACQUISITION CORP	846731
VIDEO DIGEST INC	853934
VIDEO PROFESSOR INDUSTRIES INC	851965
VIDMARK INC	863896
VILLAGE FINANCIAL SERVICES LTD	853935
VISION TEN INC	848101
VISITEL NETWORK INC	846978

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Registrant	CIK No.
VISX CALIFORNIA INC	833590
VITAL SIGNS INC	865846
VULCAN INTERNATIONAL CORP	848448
WAYNE BANCORP INC/GA/	856063
WCI HOLDINGS CORP	846815
WCN INVESTMENT CORP	853831
WEEKLY WORLD NEWS INC	853929
WEST JERSEY BANCSHARES INC	854864
WESTERN FUTURES FUND II LP	857075
WESTERN THEMED WATERPARKS INC	854072
WESTERNWORLD INC	857448
WEYERHAEUSER MTG PASS THR CERT SERIES 1989-1	859763
WEYERHAEUSER MTG PASS THR CERT SERIES 1989-2	862309
WILSON FARMS INC	822324
WILSON FUND II LIMITED PARTNERSHIP	850089
WINDFIELD DEVELOPMENT CORP	845043
WINFED FINANCIAL CORP	847451
WINGATE GOVERNMENT MORTGAGE PARTNERS II LP	847324
WINS SATELLITE INC	844890
WINTON FINANCIAL CORP	857907
WISCONSIN PHARMACAL COMPANY INC	863894
WL FUNDING TRUST	852232
WOOLWORTH CORPORATION	850209
WORKMENS BANCORP INC	855609
WORLDWIDE CAPITAL LTD	856163
WORLDWIDE FOREST PRODUCTS INC	851479
XEBEC GALLEON INC	853464
YORK HOLDINGS CORP	842662
ZEBU INC	852127
ZOE CAPITAL CORP	847468

[FR Doc. 92-17957 Filed 8-6-92; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 239, 240, 249, 270 and 274

[Release Nos. 33-6945; 34-30952; IC-18863; File No. S7-22-92]

RIN No. 3235-AD92

Rulemaking for EDGAR System; Investment Companies and Institutional Investment Managers

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing for public comment rules and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 for investment companies, business development companies, and institutional investment managers to implement the operational phase of its Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. This release discusses those matters with respect to the EDGAR system that are unique to investment companies, business development companies, and institutional investment managers reporting securities holdings under management. Beginning July 15, 1992, the EDGAR Pilot participants were permitted to transfer to the operational EDGAR system under temporary rules as amended on April 20, 1992. The proposed rules would replace the temporary rules now in effect, govern electronic filing for the operational EDGAR system, and provide for phase-in of mandatory electronic filing beginning in April 1993. Comment is requested on proposed new rules required for the EDGAR system, changes to the existing rules necessary to accommodate electronic filing, and the phase-in procedures and schedule.

DATES: Comments should be received on or before October 6, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. All comment letters should refer to File No. S7-22-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. To facilitate the processing of comments, commenters are encouraged to provide the Commission, in addition to written comments, a copy of comments in electronic format.[1]

FOR FURTHER INFORMATION CONTACT: Anthony A. Vertuno, Senior Special Counsel, EDGAR IM Project, (202) 272-7716, Kenneth J. Berman, Special Counsel, (202) 272-2107, or Ruth Armfield Sanders, Staff Attorney, (202) 272-7714, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") is proposing for public comment rules covering those aspects of the EDGAR system that are unique to submissions made by registered investment companies and business development companies (collectively, "investment companies") and by institutional investment managers reporting securities holdings

[1] See Section IX of this release for the procedure for submitting a copy of comments by computer diskette.

under management on Form 13–F [2] under the Securities Exchange Act of 1934 [3] ("portfolio managers"), including the proposed phase-in schedule for bringing investment companies onto the EDGAR system. Submissions made by these entities are processed by the Commission's Division of Investment Management (the "Division"). In a concurrent release (the "General EDGAR Release"),[4] the Commission is seeking comment on proposed rules, rule amendments, and procedures that will apply generally to all electronic filings on EDGAR and proposed rule and form amendments under the Securities Act of 1933 [5], the Exchange Act and the Trust Indenture Act that will apply to submissions [6] processed by the Division of Corporation Finance. Matters discussed in the General EDGAR Release that are also applicable to electronic submissions by investment companies are not discussed in detail in this release.

In this release, the Commission is proposing to amend (1) certain Commission rules, regulations, schedules and forms used by investment companies and portfolio managers under the Securities Act, the Exchange Act, and the Investment Company Act of 1940.[7] and (2) rule 30–5 of the Rules of Practice [8] to provide the Director of the Division delegated authority to grant hardship exemptions and take certain other actions in connection with filings processed by the Division. In addition to the areas discussed below, commenters are invited to suggest other areas in which rule and form changes are appropriate for filings processed by the Division as the result of the implementation of the EDGAR system.

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I. Background

Beginning in 1984, the Commission operated a pilot program (the "Pilot") to develop and test an electronic disclosure system. Investment companies participated in the Pilot since October 1985, with over 250 management investment companies and seventy-eight unit investment trusts ("UITs") electronically submitting substantially all their filings under the Securities Act, the Exchange Act, and the 1940 Act. As of June 1992, over 1,300 registered management investment companies filed their semi-annual and annual reports electronically on Form N–SAR, the periodic reporting form filed by investment companies.[9] Over sixty portfolio managers filed reports electronically on Form 13F–E, the variant of Form 13F used for electronic filing.[10]

The Commission and the contractor began to design and build the operational EDGAR system in 1989. EDGAR began to accept test filings on May 1, 1991, and live (non-test) filings on July 15, 1992, from Pilot volunteer filers electing to file electronically on the operational EDGAR system prior to mandatory electronic filing.[11] As explained in this release and the General EDGAR Release, the Commission is proposing to begin the phase into mandatory electronic filing in April 1993.

II. Phase In

The Commission proposes that existing investment companies be phased into the EDGAR system (i.e., begin mandatory electronic filing) in groups according to a published schedule, set forth in Appendix A.[12] After a registrant is phased in, it will be required to submit electronically all filings (and related submissions) required to be electronically filed with, or submitted to, the Commission.

Mandated electronic filing will begin in April 1993, with approximately 300 investment company registrants who were Pilot participants.[13] This initial group of mandated filers will be part of the "significant test group" that Congress has stated must file successfully for at least six months before the Commission can adopt final mandatory filing rules. The remainder of the significant test group, approximately 500 investment company registrants, will

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[2] 17 CFR 249.325.

[3] 15 U.S.C. 78a et seq. (the "Exchange Act").

[4] The General EDGAR Release, Release No. 33–6944 requests comment on rules for filings on EDGAR that will affect all registrants and other persons who make electronic filings with the Commission. Among other things, the General EDGAR Release discusses electronic filing generally (e.g., formatting and submission requirements, signatures, filing fees, safe harbors, and hardship exemptions) and proposes rules, including proposed Regulation S-T [to be codified at 17 CFR 232.10 et seq.], prescribing the requirements that must be met in order to file electronically and the procedures for making such filings. The General EDGAR Release also discusses the Commission's plan to publish an EDGAR Filer Manual setting out many of the procedures for using EDGAR. (See Section V.A of the General EDGAR Release for a detailed description of the EDGAR Filer Manual.) In addition, Release No. 35–25588 requests public comment on proposed EDGAR rules under the Public Utility Holding Company Act of 1935.

[5] 15 U.S.C. 77a et seq. (the "Securities Act").

[6] The term "submission," as used in this release, means a document (whether or not a filing) or a discrete set of documents (such as a registration statement or periodic report, including exhibits, together with associated correspondence) that is conveyed to the Commission in electronic format. The phrase "to submit electronically" means to convey a document or discrete set of documents to the Commission in electronic format. The phrase "to file electronically" means to convey a filing to the Commission in electronic format and excludes any submission other than a filing. The phrase "electronic format" means the computerized format of a document prepared in accordance with proposed Regulation S-T and the EDGAR Filer Manual. See Section I of the General EDGAR Release.

[7] 15 U.S.C. 80a-1 et seq. (the "1940 Act").

[8] 17 CFR 200.30–5.

[9] 17 CFR 274.101.

[10] 17 CFR 249.328(T). Reports on Form 13F are filed by portfolio managers exercising investment discretion over accounts holding registered equity securities with an aggregate fair market value of at least $100 million on the last trading day of any month within a calendar year.

[11] At that time, the Pilot terminated. Any Pilot filers not electing to continue electronic filing during the interval prior to mandatory electronic filing will return to filing on paper until they are required to file electronically with the first mandated group. See Release Nos. 33–6933 (Apr. 20, 1992) [57 FR 18210 (Apr. 29, 1992)], IC–18664 (Apr. 20, 1992) [57 FR 18223 (Apr. 29, 1992)], and 35–25520 (Apr. 20, 1992) [57 FR 18229 (Apr. 29, 1992)].

[12] The list is divided into two parts: Part I for management investment companies and Part II for UITs. The UIT list names unit trusts that are registered as investment companies. Each series of a named UIT would be phased in at the date designated for the UIT.

Appendix A sets forth only the phase-in schedule for investment companies. The phase-in schedule for other types of companies is set forth in the General EDGAR Release. If an investment adviser to an investment company is itself a registrant, its phase in would be determined by the phase-in schedule in the General EDGAR Release.

[13] All Pilot participants will be included in the first mandatory phase-in group, even if they do not elect to file electronically during the optional period.

begin mandatory filing in May 1993. However, the Commission may allow a limited number of registrants, otherwise scheduled for mandatory phase in with the first non-Pilot group, to elect to begin their mandated filing with the initial phase-in group. Registrants in the first non-Pilot group that are interested in making this election should contact the Office of Investment Management EDGAR Project, (202) 272-7710, Securities and Exchange Commission, 450 Fifth Street, Stop 10-6, NW., Washington, DC 20549.

When final EDGAR rules are adopted, the remaining investment company filers will be phased in in five groups of approximately 800 registrants each at six-month intervals. Except as described below, registrants that come into existence after the phase-in schedule is adopted and registrants not named in Appendix A will be phased in with the last group.

The number of investment companies proposed to be phased in with each group is as follows:

Group	Date	Approximate No. of investment companies
IM-01	Apr 1993	300 (Pilot Participants; this group comprises part of the significant test group)
IM-02	July 1993	500 (Remainder of significant test group) [14]
IM-03	May 1994	500
IM-04	Nov 1994	600
IM-05	May 1995	600
IM-06	Nov 1995	750

[14] This group includes the first non-Pilot mandatory electronic filers.

All registrants must file a Form ID with the Commission prior to being phased in.[15] Form ID contains basic identifying information required for the Commission to issue the access codes that enable a registrant to make filings (including test filings) on the EDGAR system. A registrant should file a Form ID between three and four months in advance of its scheduled mandatory phase-in date. Each registrant will be responsible for ascertaining its phase-in date from the phase-in rules and published phase-in list and filing a completed Form ID to obtain its access codes to meet its duty to begin electronic filing in accordance with its phase-in date.[16]

[15] See Section VI.A of the General EDGAR Release for a description of Form ID.

[16] A registrant phased in because of a merger or change in investment adviser likewise will be responsible for filing a completed Form ID to begin electronic filing.

When it receives a completed Form ID from a filer, the Commission will send the filer the necessary identification and access codes. Prior to its phase-in date, a filer will be permitted to make only test filings and filings of certain forms designated for acceptance regardless of the filer's phase-in date.[17]

Under the schedule set forth in appendix A, investment company registrants will be phased in according to the investment company complex with which they are associated. Appendix A assigns companies to a complex according to the following factors: for management investment companies, the investment adviser; for unit investment trusts, the depositor; and for internally managed closed-end funds, the principal underwriter.[18] Where these factors did not identify members of a group of companies generally perceived as being part of the same fund complex, the identity of the distributor or administrator was considered. The designation of an investment company complex in appendix A applies only for purposes of establishing the phase-in schedule for mandatory electronic filing and not for any other purpose.

Registrants not named in appendix A must determine their phase-in date from rules set out in paragraph (b) of proposed rule 305 of Regulation S-T. These rules provide that, if a registrant is part of a complex that has been phased in, it will be phased in with the complex based on the investment adviser [19] in the case of management investment companies, the depositor in the case of unit investment trusts, or the principal underwriter in the case of internally managed closed-end funds. Thus, a newly created fund that is part of a phased-in complex (i.e., the new fund has an adviser that is adviser to a phased-in complex) will be required to make its submissions electronically. Similarly, if a fund that is not phased in changes its investment adviser to one that advises funds in a phased-in complex, it would be required to begin filing electronically after the new advisory relationship becomes effective.[20] Companies that are not named in appendix A or associated with a phased-in complex will be phased in in the last group.

The proposed phase-in schedule is designed generally to bring onto EDGAR first those investment company complexes having the largest number of registrants. It is also designed to allow investment advisers that make electronic submissions to do so for all of the funds they advise, even if those funds are organized after the initial assignment of phase-in dates, thus avoiding the need to maintain both paper and electronic filing procedures for investment companies in the same complex.

The Commission proposes to delegate authority to the Division to grant or deny a request by a registrant to be assigned to a phase-in group other than the one to which it is initially assigned, whether the initial assignment is by designation in appendix A or by operation of paragraphs (b) (2), (3) or (4) of rule 305.[21] Reassignments may be made to either earlier or later phase-in groups, as appropriate. However, in order to keep the number of filers in the initial groups manageable, reassignments will be made for the purpose of rectifying cases of inappropriate phase-in group assignment and not simply to facilitate registrants' desires to volunteer for an earlier phase-in group.[22]

We request comment on the proposed investment company phase-in approach. Registrants are also invited to comment on whether Appendix A appropriately reflects their investment company complex association.

[17] Generally, these excepted form types include all Williams Act filings, reports on Form N-SAR, reports on Form 13F, and filings under the Public Utility Holding Company Act. In order for a filer not yet phased in to make one of these optional electronic filings, Form ID must be submitted sufficiently prior to the date of filing to allow for processing and return to the filer of the required access codes.

[18] There are separate phase-in lists for management investment companies and unit investment trusts, and thus the phase-in group for the two types of investment companies may be different for certain sponsors with both types of investment companies.

[19] Some funds have more than one adviser. The phase-in schedule would provide that a registrant has the same adviser as another fund with the same adviser except in cases where the common adviser is only a sub-adviser of one of the registrants. See paragraph (b)(3) of proposed rule 305.

[20] However, in order to avoid interrupting the availability of information in electronic format for phased-in filers, after a fund is phased in, it would continue to file electronically even if it changes its investment adviser to one advising investment companies not yet phased in.

[21] In some cases, the assignment of a company based on investment adviser may be inappropriate. For example, the sponsor of a complex might form a "private-label fund" for the customers of a specific financial institution. This fund may use the financial institution as its investment adviser but have the same distributor and administrator as other funds in the complex. In that case, the registrant could request reassignment to the phase-in group that includes most of the investment companies using the same distributor or administrator.

[22] The policy on accepting volunteers may be reevaluated after phase in is underway and the mandatory test period has been completed.

III. Mandatory, Voluntary and Prohibited Electronic Submissions

A. General

A phased-in registrant would be required to file electronically all forms that are accepted by EDGAR. These include (1) all registration statements under the Securities Act and the 1940 Act; [23] (2) all proxy materials required to be filed with the Commission; [24] (3) reports, including reports on Form N–SAR, required to be filed with the Commission under Section 30 of the 1940 Act; [25] and (4) all other reports, forms, and schedules required to be filed by or with respect to investment companies under the Exchange Act that are accepted by EDGAR. Appendix B lists the forms and reports unique to investment companies that would be required to be filed electronically under the proposed rules.

In addition, for one year beginning with the commencement of mandated electronic filings, or until expressly notified otherwise by the Commission, all registrants making filings on EDGAR [26] would be required to furnish the Commission with paper copies of the filings. [27]

Generally, unless specific rules or form instructions provide otherwise, all documents associated with a filing, including exhibits, correspondence and supplemental information that an electronic filer is required to file with, or otherwise furnish to, the Commission, will have to be submitted electronically. [28] The proposed rules would permit a registrant to incorporate by reference into an electronic filing only exhibits that have been filed electronically. Filings under the Investment Advisers Act of 1940, [29] exemptive applications and requests for no-action or interpretive advice would be excluded from electronic filing. While the Commission may consider electronic submission of these filings in the future, no plans currently exist for electronic filing of these documents. [30]

Amendments (including pre-effective amendments to registrations statements) to filings that were filed in paper prior to the registrant's phase-in date would have to be submitted electronically after the registrant is phased in. [31] Investment companies typically update their registration statements annually through a post-effective amendment. Following the registrant's phase-in date, the first time such a post-effective amendment is required to be filed, a complete copy of the entire filing as amended, including all current exhibits to the filing and all other documents filed with the Commission in paper and incorporated by reference into the filing, would be required to be filed electronically. This approach should result in a more complete electronic database and will enable EDGAR users to obtain more complete information about registrants through EDGAR. Registrants could apply for a hardship exemption to the extent that converting existing documents to electronic format would create an undue burden. [32]

The requirement to file electronically all current exhibits and all documents previously filed with the Commission in paper and incorporated by reference into the filing differs from the approach taken in the General EDGAR Release. [33] Documents filed as exhibits to investment company registration statements and other filings tend to be relatively brief, which should reduce the costs of converting them to an electronic medium. [34] We request comment on whether this approach to investment company filings would create an undue burden on filers and, if so, what alternative approaches could be used to achieve the Commission's goal of a complete electronic database.

B. Form N–SAR

Form N–SAR, a periodic reporting form under the Exchange Act and the 1940 Act for registered investment companies, could be filed electronically on the Pilot by management investment companies in a form that facilitated automated extraction and tabulation of reported information. Since 1985, most management investment companies were able to use personal computer software created by the Commission to prepare Form N–SAR, and these companies were permitted to file Form N–SAR electronically, even if they did not make other filings on the Pilot. As a result, Form N–SAR was filed electronically on the Pilot by over half of the active management investment companies. This high degree of voluntary participation has facilitated the development of an electronic database of investment company information. Under the proposed EDGAR rules, management investment companies could continue to make voluntary filings on Form N–SAR electronically until their phase-in date. Phased-in registrants would be required to file Form N–SAR electronically. [35]

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[23] Forms N–1 [17 CFR 239.15 and 274.11], N–1A [17 CFR 239.15A and 274.11A], N–2 [17 CFR 239.14 and 274.11a–1], N–3 [17 CFR 239.17a and 274.11b], N–4 [17 CFR 239.17b and 274.11c], N–5 [17 CFR 239.24 and 274.5], N–8B–2 [17 CFR 274.12], N–8B–3 [17 CFR 274.13], N–8B–4 [17 CFR 274.14], N–14 [17 CFR 239.23], S–3 [17 CFR 239.13], and S–6 [17 CFR 239.16].

[24] *See* rule 20a–1 under the 1940 Act [17 CFR 270.20a–1] and Regulation 14A under the Exchange Act [17 CFR 240.14a–1 *et seq.*].

[25] Rules 30a–1, 30b–1 and 30b1–2 under the 1940 Act [17 CFR 270.30a–1, 30b1–1, and 30b1–2].

[26] Pilot filers who continue electronic filing between the end of the Pilot and the beginning of mandatory electronic filing will also be required to submit paper copies during the year beginning with their mandated phase-in date or until expressly notified otherwise by the Commission.

[27] Paper copies are required by the Securities and Exchange Commission Authorization Act of 1987, Public Law 100–181 (Dec. 4, 1987) (amending Exchange Act section 35 (15 U.S.C. 78kk and adding section 35A (15 U.S.C. 78*l*)) (the "EDGAR Authorization Act"). For a discussion of the requirements for paper copies of electronic filings under the EDGAR Authorization Act, see Section V.D of the General EDGAR Release.

[28] If an investment company is required to make a filing under the Exchange Act with respect to another issuer (*e.g.*, a Williams Act filing), it would be required to do so electronically if the issuer to which the filing relates has been phased in. In order for any filing to be made electronically, the filer must obtain the necessary access codes. See Sections III.C of the General EDGAR Release for a complete discussion of the proposed rules with respect to Williams Act filings by third parties.

[29] 15 U.S.C. 80b–1 *et seq.*

[30] These filings were not included in the Pilot.

[31] An exception would be provided for a prospectus filed under rule 497 (17 CFR 230.497) that relates solely to a registration statement or amendment that was filed prior to the filer's phase-in date. *Cf.* Sections III.C.1 of the General EDGAR Release.

[32] Under the proposed revisions to the Rules of Organization; Conduct and Ethics; and Information and Requests, the Director of the Division of Investment Management would have delegated authority from the Commission to grant hardship exemptions and adjust filing dates under proposed Regulation S-T. Regulation S-T would permit a temporary exemption for an electronic filer that is unable to submit a specific document(s) or filing(s) in electronic format. It would also permit a continuing hardship exemption for a class of documents or form types (where the filer can show impracticality or undue expense) or from all electronic filing (where the filer can show undue hardship). An adjustment of the filing date would be allowed where acceptance of a filing is delayed because of equipment malfunction or a technical problem. The provisions relating to hardship exemptions and filing date adjustments are discussed in detail in the General EDGAR Release. (See Section III.E of the General EDGAR Release.)

[33] See Section III.C.1 of the General EDGAR Release.

The approach for investment companies would apply to registered investment companies filing on forms designated for investment companies and to business development companies. Investment companies (including business development companies) making filings on forms whose applicability is not limited to registered investment companies (*e.g.*, Forms 10–K (17 CFR 249.310) and 10–Q (17 CFR 249.308a)) would be required to file exhibits electronically.

[34] Most of the forms used by investment companies have individual exhibit lists and do not use a single standardized set of exhibits. Thus, except for those few investment companies that file on forms with standardized exhibit requirements (*e.g.*, Form S–1 or S–3), EDGAR would not create "exhibit files" for investment companies. See Section III.C.1.b of the General EDGAR Release.

[35] The Commission may require the electronic filing of Form N–SAR by all investment companies prior to completion of the phase-in schedule.

However, because of the unique design of Form N–SAR, electronic submission of Form N–SAR will be restricted to direct transmission; filing on magnetic tapes or diskettes will not be permitted.[36] This exclusive method of filing was used successfully in the Pilot.

C. Sales Literature

The proposed rules would not permit the electronic submission on EDGAR of sales literature required to be filed under section 24(b) of the 1940 Act.[37] Because of the format and graphics which characterize these submissions, at the present time the burden to registrants of electronically formatting sales literature appears to outweigh the usefulness of developing an electronic database. In addition, in lieu of filing with the Commission, most investment company registrants file sales literature with the National Association of Securities Dealers ("NASD") as permitted by rule 24b–3 under the 1940 Act.[38] Thus, even if the Commission were to require electronic, rather than paper, filing of sales literature, the Commission's electronic database would be incomplete at best.

IV. Electronic Filing by Investment Companies

A. Incorporation by Reference

Rule 8b-23 under the 1940 Act [39] governs incorporation by reference in registration statements and reports filed under the 1940 Act. The rule would be amended to follow the approach to incorporation by reference described in the General EDGAR Release,[40] except that, as described in Section III of this release, all documents incorporated by reference would have to be filed electronically.[41]

We request comments on the proposed specific changes to the incorporation by reference rules. We also request comment on any other aspects of incorporation by reference that should be considered in connection with the implementation of EDGAR.

B. Modular and Segmented Submissions

As explained in detail in the General EDGAR Release, the operational EDGAR system will include provisions for "modular submissions" and "segmented" filings. Modular submissions allow information intended to become part of more than one filed document to be submitted electronically for subsequent inclusion in filings upon designation by the filer. Segmented filings allow information to be submitted in separate parts for ultimate assembly into a single filing at the direction of the filer.[42]

The modular submission feature may be of particular value to investment company filers. Investment company Pilot filers used modular submissions successfully for several years in a procedure referred to as "reference filing."[43] The General EDGAR Release describes modular submissions and segmented filing and requests comment on these procedures.[44]

C. Annual Reports to Securityholders

In the General EDGAR Release, the Commission is proposing to amend its proxy rules so that non-investment companies would no longer be required to submit their "glossy" annual report to securityholders to the Commission for its "information," if the information required by rule 14a-3 under the Exchange Act is included in the registrant's Form 10–K.[45] The principal reason for this change is the difficulty of filing annual reports of non-investment companies electronically because of the formatting and graphics commonly associated with such documents.

The Commission proposes to treat investment company shareholder reports differently. Semi-annual reports required to be sent to shareholders and filed with the Commission under section 30 of the 1940 Act [46] would be required to be filed electronically by phased-in registrants. Typically, these reports consist only of financial information and related commentary. The Commission's experience with Pilot filers has shown that these reports generally do not contain graphic material other than graphs that can be described easily.[47] In addition, the financial statements contained in annual reports to securityholders often are incorporated by reference into fund registration statements. Requiring these filings to become part of the electronic database would assure that they are readily accessible to Commission staff and the public.

D. Financial Data Schedule

As explained in more detail in the General EDGAR Release, the Commission is proposing that registrants file electronically as an exhibit to certain registration statements, reports, and proxy materials a Financial Data Schedule which would be available to the public as well as the Commission.[48] A registrant would place specific numbers from its existing financial statements and schedules into a formatted schedule. The schedule would permit the data to be recognized and captured by the EDGAR system for automated tabulation and computation.[49] Commission staff would use this information for screening purposes and to help examiners review filings.

The proposed Financial Data Schedule for investment companies is contained in the proposed amendments to rule 483 under the Securities Act.[50] The schedule would be comprised of specified financial information from the financial statements, per share table and related data in the registration statement and from specified sections of Form N-SAR (the "source documents").[51] The specific technical instructions for preparing the schedule will be included in the EDGAR Filer Manual. Rule 483 would require that Financial Data Schedules be filed as exhibits to registration statements, their post-effective amendments, semi-annual and annual reports on Form N–SAR filed by investment companies, and proxy statements that include financial statements because they seek shareholder approval of certain

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[36] See proposed General Instruction F(4) to Form N–SAR.

[37] 15 U.S.C. 80a–24(b).

[38] 17 CFR 270.24b–3.

[39] 17 CFR 270.8b–23.

[40] See Section IV.C of the General EDGAR Release.

[41] As noted below, investment companies will continue to be required to file their annual and other reports to securityholders under section 30(d) (15 U.S.C. 80a–30(d)), and these reports would have to be submitted electronically.

[42] Both modular and segment submissions will be stored in a non-public database and will not be deemed to be "filed" until included in a complete filing that is accepted.

[43] See Pilot EDGAR User Manual (1988) at paragraph 147.

[44] See Section IV.A of the General EDGAR Release.

[45] See Section IV.B of the General EDGAR Release.

[46] 15 U.S.C. 80a–30.

[47] See Section IV.E of the General EDGAR Release concerning the rules governing the treatment of graphic and image material. While most information filed with the Commission is textual and financial material, a limited amount of graphic and image material (collectively, "graphic material"), such as pictures and graphs, are contained in Commission submissions. The General EDGAR Release describes how this material was treated in the Pilot and the proposed approach for EDGAR.

[48] See Section IV.D of the General EDGAR Release.

[49] The schedule would include standardized computer-recognizable captions, or tags, based on information in the registration statement and Commission forms.

[50] 17 CFR 230.483.

[51] The per share and related data would be provided only where the form which the registrant uses to register its securities under the Securities Act requires such information to be included in the prospectus. This information would be required to be provided by registrants that file on Forms N–1A, N–2, and N–3.

transactions.[52] A Financial Data Schedule could not be incorporated by reference into a filing; registrants could, however, use modular submissions for Financial Data Schedules if the same information is to be used for more than one filing. We request comment on whether all reports to stockholders that include financial statements (*i.e.*, quarterly reports which are often provided but not required) should be accompanied by a Financial Data Schedule.

As described in the General EDGAR Release, the Commission is proposing a safe harbor to protect a registrant against general anti-fraud liability arising solely from the extraction of financial information from source documents, such as financial statements.[53] The proposed safe harbor for investment companies is contained in the proposed amendments to rule 483.[54] A registrant that accurately extracts the schedule information from its source documents will not be deemed to have filed such extracted information with the Commission under section 11 of the Securities Act,[55] section 18 of the Exchange Act,[56] or section 34(b) of the 1940 Act,[57] or otherwise be subject to the liabilities of those sections.[58] If the data are accurately extracted from the source documents, and the extracted data as presented in the underlying source documents were not materially false or misleading, the registrant would not have any liability under the Securities Act, the Exchange Act, or the 1940 Act. If the data as presented in the source documents were materially false or misleading, the source documents would be the principal basis for liability.

We request comment on the proposed Financial Data Schedule and, particularly, the use of schedules to identify financial data. We also request comment on the data proposed to be included for investment companies and alternative or supplemental data that should be included in the Financial Data Schedule.

[53] The forms for which Financial Data Schedules are required are indicated in Appendix B.

[53] For the proposed safe harbor rule for non-investment companies, see Section IV.D.4 of the General EDGAR Release.

[54] See proposed paragraph (e)(1)(iii) of rule 483.

[55] 15 U.S.C. 77k.

[56] 15 U.S.C. 78.

[57] 15 U.S.C. 80a-33(b).

[58] On the other hand, a filer that prepared the schedule inaccurately would not be able to claim the protection of the safe harbor rule and might be subject to liability for any resulting misleading presentation in the Financial Data Schedule as filed.

V. Electronic Filing by Portfolio Managers

Form 13F reports are filed by portfolio managers to report certain equity securities holdings of their managed accounts.[59] In the Pilot, these reports could be filed on Form 13F-E, under temporary rule 13f-2(T).[60] The proposed rules would make rule 13f-2(T) and Form 13F-E permanent, with some modifications. As proposed, all Form 13F reports could be filed electronically on a voluntary basis, whether or not the filer is a mandatory electronic filer.

Initially, electronic filing of Form 13F-E would be limited to magnetic tape, as in the Pilot. Form 13F-E reports consist of large numbers of similar data records, and, at least initially, magnetic tape filings will provide the most efficient means of standardizing the filing format and facilitating automated and accurate transfer and tabulation of the reported data.[61] Instructions for filing electronically are included in proposed Form 13F-E and the EDGAR Filer Manual.

The Commission is not proposing at this time to make electronic filing of Form 13F reports mandatory. Portfolio managers would retain the option of filing their Form 13F reports on paper under rule 13f-1.[62] As the Commission and filers gain experience with the EDGAR system, the Commission expects to propose rules that would both allow the filing of Form 13F reports by direct transmission and diskette and make the electronic filing of Form 13F mandatory.

[59] Section 13(f)(1) of the Exchange Act [15 U.S.C. 78m(f)(1)] requires managers exercising investment discretion over accounts holding certain equity securities to file a report on Form 13F with the Commission at the times set forth in rule 13f-1 (17 CFR 240.13f-1). Equity securities subject to Section 13 reporting are securities with an aggregate fair market value of at least $100 million on the last trading day of any month within a calendar year.

[60] 17 CFR 240.13f-2(T). Rule 13f-2(T) was proposed in Release No. 34-23694 (Oct. 8, 1986) (51 FR 37291 (Oct. 21, 1986) and adopted in Release. No. 34-24206 (Mar. 12, 1987) (52 FR 9151 (Mar. 23, 1987). The background of, and reasons for, the temporary rule and form are discussed in that release.

The temporary rule was amended recently to govern the filing of Form 13F on EDGAR until permanent EDGAR rules are adopted. See Release No. IC-18664 (Apr. 20, 1992) (57 FR 18223 (Apr. 29, 1992).

[61] Section 13(f)(3) of the Exchange Act requires the Commission to tabulate the information reported under section 13(f)(1). The reported securities holdings are tabulated both by the issuer of the securities being held (showing the manager whose clients hold the securities) and by reporting manager (showing the securities being held by each reporting manager). These tabulations are made available in the Commission's public reference room and are published in both hard copy and on-line computerized form, by the contractor employed by the Commission to tabulate the data.

[62] 17 CFR 240.13f-1.

Requests for confidential treatment of Form 13F information would be treated in the same manner as other requests for confidential treatment under the EDGAR system. Both the confidential treatment request and the report of the securities holdings for which confidential treatment is requested would be filed in paper, not electronically. During the period while electronic filing of Form 13F-E is optional, if a confidential treatment request is denied, the filer would have the option to submit an electronic confirming copy, but would not be required to do so.

VI. Rule and Form Changes

Current regulations, rules and forms under the 1940 Act applicable solely to investment companies would be amended to reflect that certain procedures associated with paper filings are inapplicable to electronic filings.[63] Text would be added to rules stating how the rules will apply differently to electronic filings, and appropriate instructions would be added to forms. In general, the proposed instructions will duplicate current instructions except to require typed signatures in lieu of manual ones, suspend the requirement to provide multiple copies, require a Financial Data Schedule, and delete the requirement to file a form of specimen security as an exhibit.[64]

VII. Rescission of Temporary Edgar Rules; Proposed Permanent Edgar Forms

On April 20, 1992, the Commission adopted temporary rules and forms to permit voluntary filing by Pilot participants on the operational EDGAR system.[65] The proposals in this release, the General EDGAR Release, and Release No. 35-25588 (including proposed Regulation S-T) constitute comprehensive regulations addressing all aspects of electronic submission. Therefore, upon the adoption of Regulation S-T and the other rules

[63] See Section IV.G of the General EDGAR Release.

[64] Registrants filing on Forms S-8, N-1, N-1A, N-2, N-5, and N-14 are currently required to file specimen securities. This requirement is being deleted in order to relieve registrants of requirements to file documents containing graphic materials. See Section IV.E of the General EDGAR Release.

[65] Release Nos. 33-6933 (Apr. 20, 1992) (57 FR 18210 (Apr. 29, 1992)), IC-18664 (Apr. 20, 1992) (57 FR 18223 (Apr. 29, 1992)), and 35-25520 (Apr. 20, 1992) (57 FR 18229 (Apr. 29, 1992)), amending the temporary Pilot rules. See Release No. 33-6539 (June 27, 1984) (49 FR 28044 (July 10, 1984)); Release No. 35-23704 (May 23, 1985) (50 FR 23287 (June 3, 1985)); and Release No. IC-14733 (Sep. 23, 1985))50 FR 40479 (Oct. 4, 1985)).

proposed in these releases, the temporary rules will be rescinded.

VIII. Future Rulemaking

The rules proposed in this release would be adopted on an interim basis for application during the initial stages of registrant phase in to the EDGAR system. After the Congressionally-mandated significant test group has filed successfully for six months, the Commission will adopt permanent EDGAR rules, based on the interim rules as modified appropriately in light of the significant test group's experience with EDGAR. The permanent rules will apply during the later stages of filer phase in to the EDGAR system.

IX. Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and form changes as well as on other matters that may have an impact on the proposals contained herein are requested to do so. Commenters are requested to address the proposed changes from the perspectives of both those submitting documents as well as those using the documents.

Commenters are encouraged to provide the Commission, in addition to written comments, a copy of the comments in electronic format. The electronic copy of the comments should be in a file on a 3.5 or 5.25 inch personal computer diskette, in either a WordPerfect word processing file or a DOS, ASCII, or print image file. The diskette should be labeled with the name of the commenter, the name of the file, the file type, and, for WordPerfect files, the WordPerfect version number.

X. Cost-Benefit Analysis

To evaluate the costs and benefits associated with the proposed rule and form changes contained in this release, the Commission requests that commenters provide views and data as to the costs and benefits associated with these proposals.

The anticipated costs and benefits of EDGAR are discussed in Section VII of the General EDGAR Release. EDGAR is expected to benefit investment company registrants and investors in a similar manner. While the transition to mandated electronic filing may involve some incremental initial costs to registrants, we believe that these costs will be reduced by the fact that the great majority, if not all, of the filers are currently using personal computers for document preparation. Moreover, the efficiencies of electronic filing should offset burdens for filers in the long term. Additionally, proposed rule 13f-2 and proposed Form 13F-E would not impose any significant additional burdens on portfolio managers and could reduce the costs they incur by providing them with the option of filing electronically or on paper, whichever is least burdensome for them. The Commission and the public would benefit from the use of electronic filing to the extent that it contributes to more rapid dissemination of the information in these reports.

XI. Summary of Initial Regulatory Flexibility Act Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to (1) rule 30-5 under the Commission's Rules of Organization and Program Management; (2) Item 601 of Regulation S-K; (3) rules 405, 483, 485, 486, 487, 488, 495, and 497 and Forms S-6, N-14, and 2-E under the Securities Act; (4) rule 13f-2 and Form 13F-E under the Exchange Act; (5) rules 0-1, 0-2, 0-3, 0-4, 0-8, 0-9, 0-11, 8b-2, 8b-6, 8b-15, 8b-23, 8b-25, 8b-32, 23c-2, 24b-2, 24e-2, 24f-1, 24f-2, 30b2-1, and 45a-1 and Forms N-8A, N-8B-2, N-8B-3, N-8B-4, N-6F, N-18F-1, N-54A, N-54C, N-SAR, N-27D-1, and N-23C-1 under the 1940 Act; and (6) Forms N-2, N-1, N-1A, N-3, N-4, and N-5 under the Securities Act and the 1940 Act. The analysis also covers proposed rules 100(a)(4), 200(c), 305 and 306 of new Regulation S-T under the Securities Act, Exchange Act, Trust Indenture Act, and 1940 Act (collectively, the "Acts") and proposed rule 20a-4 under the 1940 Act. The analysis notes that the proposed form and rule changes are intended to facilitate filers' preparation to submit and submission of documents to the Commission; investors' access to the documents submitted; and the Commission's retrieval, storage, processing and dissemination of such documents. As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. The overall effect of the proposed amendments is expected to decrease slightly the impact of reporting, recordkeeping and compliance requirements upon those submitting documents to the Commission. Filers would have more flexibility in determining when to submit a filing since submissions may be made by direct transmission over telephone lines during extended hours. Multiple copies of electronic format documents would not need to be submitted. A part of a filing intended to be inserted in more than one subsequent filing could be filed only once as a modular submission.

As the analysis indicates, several possible significant alternatives to the proposals were considered, including among others, establishing different compliance or reporting requirements for small entities, implementing performance standards rather than design standards for such entities, or exempting small entities from all or part of the proposed requirements. As more fully discussed in the analysis, the Commission has designed the EDGAR system to accommodate small entities to the greatest degree possible while still carrying out its mandate to develop a system for the electronic dissemination of information to the public. Small companies will be the last group phased into the system, allowing them to take advantage of the substantial body of experience gained by those who precede them. Even after they are phased in, small entities will not be required to file electronically if they satisfy the requirements of a temporary or permanent hardship exemption. The Commission will provide all companies, at no expense, with EDGARLink software, which includes communications software for making submissions directly to the system, and for those companies that so desire, the Commission will allow submissions to be made on diskette. None of the alternatives considered would accommodate small companies without infringing on the purposes of the Acts to provide to investors access to information relating to all public companies in order to allow them to make informed investment decisions.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Anthony A. Vertuno, Senior Special Counsel, at (202) 272-7716, or Ruth Armfield Sanders, Staff Attorney, at (202) 272-7714, Division of Management, Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

XII. Statutory Basis for Rule and Form Proposals

The amendments to 17 CFR part 200, Organization; Conduct and Ethics; and Information and Requests, are being proposed under: Securities Act section 19; Exchange Act sections 4A, 4B, 23 and 35A; Trust Indenture Act section 319; and Investment Company Act section 38. The amendments to Regulation S-K are being proposed under: Securities Act sections 6, 7, 8, 10 and 19 and Schedule A; Exchange Act sections 3, 9, 10, 12, 13, 14, 15, 23 and 35A; Trust Indenture Act sections 304, 305, 307, 308, 309, 314 and 319; and Investment Company Act

sections 8, 30, 31 and 38. The amendments to the general rules and regulations under the Securities Act are being proposed under: Securities Act sections 2, 6, 7, 8, 10 and 19(a); Exchange Act sections 3, 12, 13, 14, 15, 23 and 35A; and Investment Company Act sections 8, 30, 31 and 38. The amendments to the Securities Act Forms are proposed under: Securities Act sections 6, 7, 8, 10 and 19; Exchange Act sections 3, 12, 13, 14, 15, 23 and 35A; Trust Indenture Act section 319; and Investment Company Act sections 8, 30, 31 and 38. The amendments to the general rules and regulations under the Exchange Act are being proposed under: Securities Act sections 3, 4, 7, 10 and 19; Exchange Act sections 3, 4, 9, 10, 12, 13, 14, 15, 16, 23, 24 and 35A; Trust Indenture Act sections 305, 307, 314, 319 and 320; and Investment Company Act sections 20, 23, 30 and 38. The amendments to the Exchange Act Forms are proposed under: Securities Exchange Act of 1934. The amendments to the general rules and regulations under the 1940 Act are being proposed under: Securities Act sections 3, 4, 7, 10 and 19; Exchange Act sections 3, 4, 9, 10, 12, 13, 14, 15, 16, 23, 24 and 35A; and Investment Company Act sections 20, 23, 30 and 38. The amendments to the Investment Company Act Forms are proposed under: Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 200, 229, 230, 239, 240, 249, 270 and 274

List of Subjects

17 CFR Part 200

Authority delegations (Government agencies).

17 CFR Part 229

Accountants.

17 CFR Part 230

Reporting and recordkeeping requirements, Confidential business information, and Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Confidential business information, and Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

XIII. Text of Proposed Rules

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as set forth below.

Note: Forms ET (§ 274.401), ID (§ 274.402) and SE (§ 274.403) referenced in chapter II are proposed to be revised as set forth in the appendix to Securities Act Release No. 33-6944 and will not appear in the Code of Federal Regulations.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citations for subpart A—Organization and Management of part 200 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*l*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 200.30–5 by removing paragraphs (a)(7) and (f)(10); redesignating paragraphs (a)(8) and (a)(9) as (a)(7) and (a)(8); and by adding paragraphs (j), (k), and (l) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(j) With respect to the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation S–T thereunder (§ 232.10 *et seq.*), to grant or deny a request submitted under rule 12(c) of Regulation S–T (§ 232.12(c) of this chapter) to adjust the filing date of an electronic filing.

(k) With respect to the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) and rule 8b–25 thereunder (§ 270.8b–25), the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation S–T thereunder (§ 232.10 *et seq.*) to grant or deny applications for and set the terms of temporary and continuing hardship exemptions under rules 101 and 102 of Regulation S–T, respectively, (§ 232.101 and .102 of this chapter) from the electronic submission requirements of rule 100 of Regulation S–T (§ 232.100 of this chapter).

(l) With respect to the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), and Regulation S–T thereunder (§ 232.10 et seq.), to grant or deny a request by a registrant to participate in a phase-in group other than the group established by the Commission for that registrant.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. By amending § 229.601 by adding a sentence at the end of paragraph (a)(3) to read as follows:

§ 229.601 (Item 601)Exhibits.

(a) *Exhibits and index required.* * * *

(3) * * * Notwithstanding the provisions of paragraph (c) of this Item, registered investment companies and business development companies filing on forms available solely to investment companies shall be subject to the provisions of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter), and any provision or instruction therein shall be controlling with respect to registered investment companies and business development companies unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

* * * * *

PART 230 —GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

6. By amending § 230.405 by adding a definitional term in alphabetical order to read as follows:

§ 230.405 Definition of Terms.

* * * * *

EDGAR Filer Manual. The term "EDGAR Filer Manual" shall have the

meaning assigned to such term in rule 11(d) of Regulation S–T—General Rules for Electronic Filings (§ 232.10 *et seq.* of this chapter).

* * * * *

7. By amending § 230.483 by revising the section heading, adding a sentence to the end of both paragraphs (a) and (c), and adding paragraph (e) to read as follows:

§ 230.483 Exhibits for certain registration statements, financial data schedule.

* * * * *

(a) * * * Notwithstanding the foregoing, the requirement for sequential numbering of pages in a filing shall not apply to documents filed in electronic format.

* * * * *

(c) * * * In the case of an electronic filing, signatures shall be in typed form rather than manual format. *See* rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

(e) *Financial Data Schedule*—(1) *General.*

(i) A Financial Data Schedule ("Schedule") shall be filed only by an electronic filer and shall set forth the financial information specified in the applicable table in paragraph (e)(4) of this section. Where required by the applicable form, an electronic filer that is a registered investment company or a business development company shall file a Schedule as an exhibit to the form in accordance with the following instructions. The Schedule shall be prepared in the format prescribed in the EDGAR Filer Manual.

(ii) The amounts reflected in the Schedule shall correspond to amounts reflected in the registrant's financial statements or notes thereto, financial schedules, registration statements, or reports (collectively, "source documents"). Amounts aggregated or combined in the financial statements should be shown in separate line items as indicated in paragraph (e)(4) of this section.

(iii) The Schedule shall be submitted as an exhibit to the filing(s) to which it relates but shall not be deemed to be filed for purposes of section 11 of the Securities Act (15 U.S.C. 77k), section 18 of the Exchange Act (15 U.S.C. 78r), section 323 of the Trust Indenture Act (15 U.S.C. 77www), or section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)) or otherwise be subject to the liabilities of such sections. It shall, however, be subject to all other liability and anti-fraud provisions of the aforementioned Acts. See rule 104 of Regulation S–T (§ 232.104 of this chapter). A registrant that accurately extracts the Schedule information from the source document in which it appears shall not be liable, under the Securities Act, the Exchange Act, or the Investment Company Act, for such extracted information, *provided that* the extracted data were not materially false or misleading in the underlying source document.

(iv) Where a registrant has been granted a temporary hardship exemption, the confirming electronic copy required by rule 101(c) of Regulation S–T (§ 232.101(c) of this chapter) shall contain a Schedule.

Note: A registrant's failure to furnish a Schedule under this paragraph will not prevent acceptance of the filing for which the Schedule is required. However, because the Schedule may be used by the Commission staff in its review of the filing, processing of the filing may be delayed pending filing of the Schedule.

(2) *Special Provisions.* (i) A Schedule reflecting *pro forma* financial information shall not be filed.

(ii) A registered investment company or business development company filing on a form not unique to investment companies shall prepare its Schedule in accordance with Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter).

(3) *Format and Presentation of Schedule.* (i) At the option of the registrant, the following legend may be inserted at the top of any Schedule submitted to the Commission:

This schedule contains summary information derived from [identify source document(s)] and is qualified in its entirety by reference to such [source document(s)].

(ii) Amounts or items set forth in a Schedule may be qualified by cross referencing a specific footnote to the Schedule or the registrant's financial statements or other source document from which such amount or item was taken. (See the EDGAR Filer Manual for further instructions on qualifying cross references.)

(4) *Contents of Financial Data Schedule.* The Schedule shall set forth the financial information and other data specified below that are applicable to the registrant.

Article 6 of Regulation S–X

Item No.	Item description
6–03–	Investments—cost.
6–04–4	Investments.
6–04–6	Receivables.
6–04–8	Other assets.
	Balancing amount to total assets.
6–04–9	Total assets.
6–04–	Accounts payable for securities.
6–04–13	Senior long-term debt.
	Balancing amount to total liabilities.
6–04–14	Total liabilities.
6–04–15	Senior equity securities.
6–04–15	Paid-in-capital—common shareholders.
6–04–16	Number of shares or units—current period.
6–04–16	Number of shares or units—prior period.
6–04–17(a)	Accumulated income—net (current year).
	Over distribution of net investment income.
6–04–17(b)	Accumulated net realized gains (losses).
	Over distribution of realized gains.
6–04–17(c)	Accumulated net unrealized appreciation (depreciation).
6–04–19	Net assets.
6–07–1(a)	Dividend income.
6–07–1(b)	Interest income.
6–07–1(c)	Other income.
6–07–2	Expenses—net.
6–07–6	Investment income—net.
6–07–7(a)	Realized gains (losses) on investments.
6–07–7(d)	Net increase (decrease) in appreciation (depreciation).
6–07–8	Net gain (loss) on investments.
6–09–2	Net equalization charges and credits.
6–09–3(a)	Distributions from net investment income.
6–09–3(b)	Distributions from realized gains.
6–09–3(c)	Distributions from other sources.
6–09–4(b)	Number of shares sold.
6–09–4(b)	Number of shares redeemed.
6–09–4(b)	Number of shares issued—reinvestment.
6–09–5	Total increase (decrease).
6–09–7	Accumulated net investment income (prior year).
6–04–17(b)	Accumulated net gains (prior year).

Form N–SAR

Item No.	Item description
72F	Gross advisory fees.
72P	Interest expense.
72X	Total expenses (gross).
75	Average net assets.

Form N–1A

Item No.	Item description
3–1	Investment income per share.
3–2	Expenses per share.
3–3	Net investment income (loss) per share.

Item No.	Item description
3–4	Dividends per share from net investment income.
	Distributions from other sources.
3–5	Net realized and unrealized gain (loss).
3–6	Distributions from realized gains.
3–7	Net increase (decrease).
3–8	Net asset value per share—beginning of period.
3–9	Net asset value per share—end of period.
3–10	Ratio of expenses to average net assets.
4–3	Average debt outstanding during period.
4–5	Average debt outstanding per share.

8. By amending § 230.485 by adding paragraph (f) to read as follows:.

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(f)(1) Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission.

(3) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(4) Attention is directed to the requirements of the relevant registration statement form and rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) concerning certain items of financial information (the Financial Data Schedule) that may be required.

(5) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

9. By amending § 230.486 by adding paragraph (g) to read as follows:

§ 230.486 Effective date of post-effective amendments filed by registered separate accounts of insurance companies.

* * * * *

(g)(1) Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(3) Attention is directed to the requirements of the relevant registration statement form and rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) concerning certain items of financial information (the Financial Data Schedule) that may be required.

(4) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

10. By amending § 230.487 by adding paragraph (d) to read as follows:

§ 230.487 Effectiveness of registration statements filed by certain unit investment trusts.

* * * * *

(d)(1) Electronic filers are subject to Regulation S–T (§§ 232.10—232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(3) Attention is directed to the requirements of the relevant registration statement form and rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) concerning certain items of financial information (the Financial Data Schedule) that may be required.

(4) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

11. By amending § 230.488 by adding paragraph (c) to read as follows:

§ 230.488 Effective date of registration statements relating to securities to be issued in certain business combination transactions.

* * * * *

(c)(1) Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(3) Attention is directed to the requirements of the relevant registration statement form and rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) concerning certain items of financial information (the Financial Data Schedule) that may be required.

(4) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

12. By amending § 230.495 by adding paragraph (e) to read as follows:

§ 230.495 Preparation of registration statement.

* * * * *

(e) *Electronic Filings.* (1) Documents in electronic format shall be prepared as prescribed in the EDGAR Filer Manual. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

(3) Requirements as to paper size and sequential numbering of pages shall not apply to documents in electronic format.

(4) Capital letters shall be used to satisfy bold-face type requirements.

(5) When ascertaining the date of filing, electronic filers should not

presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(6) Attention is directed to the requirements of the relevant registration statement form and rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) concerning certain items of financial information (the Financial Data Schedule) that may be required.

(7) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

Note: See rule 220 of Regulation S–T (§ 232.220) for requirements regarding foreign language documents.

13. By amending § 230.497 by adding paragraph (j) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(j)(1) Documents in electronic format shall be prepared as prescribed in the EDGAR Filer Manual. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide.

(3) Requirements as to paper size and sequential numbering of pages shall not apply to documents in electronic format.

(4) Capital letters shall be used to satisfy bold-face type requirements.

(5) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

Note: See rule 220 of Regulation S–T (§ 232.220) for requirements regarding foreign language documents.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

14. The authority citation for part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

Note—The text of the following forms and the amendments will not appear in the Code of Federal Regulations.

15. By amending Form S–6 (§ 239.16) by adding General Instruction 5, by removing Instruction 2 of Instructions as to Exhibits, by redesignating Instructions 3 through 5 of Instructions as to Exhibits as Instructions 2 through 4, and by adding an Instruction 5 to Instructions as to Exhibits to read as follows:

Instructions and Form

Form S–6

For Registration Under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2

* * * * *

General Instructions

* * * * *

Instruction 5. Electronic Filers

(a) Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

(b) Attention is directed to Instruction 5 of Instructions as to Exhibits (Financial Data Schedule) for certain items of financial information that are required. Attention also is directed to the EDGAR Filer Manual regarding paper format for presenting this information.

(c) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(d) Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2.

(e) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Instructions as to Exhibits

* * * * *

5. When the registration statement is filed by an electronic filer, a Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

16. By amending Form N–14 (§ 239.23) by adding General Instruction H and revising paragraph (5) of Item 16 of part C to read as follows:

Instructions and Form

Form N–14

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

H. Electronic Filers

1. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

2. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2.

3. When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

4. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Part C

Other Information

* * * * *

Item 16. Exhibits

* * * * *

(5) Copies of all instruments defining the rights of holders of the securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant;

* * * * *

17. By amending Form 2–E (§ 239.201) by redesignating the Instruction as Instruction 1 and by adding Instruction 2 to read as follows:

Instructions and Form

Form 2–E

Report Pursuant to Rule 609 of Regulation E

* * * * *

Instruction 1. * * *

Instruction 2. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

PART 240 —GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

18. The authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

19. By revising § 240.13f–2(T) to read as follows:

§ 240.13f–2 EDGAR filing of form 13F reports by institutional money managers.

(a) An institutional investment manager required by Section 13(f)(1) (15 U.S.C.78m(f)(1)) of, and rule 13f–1 (§ 240.13f–1 of this chapter) under, the Exchange Act of 1934 to file a report on Form 13F (§ 249.325 of this chapter) with the Commission may file that report on magnetic tape in the format described in Form 13F–E (§ 249.326 of this chapter).

(b) Unless otherwise specifically provided herein, the terms used in this section have the same meaning as in the Exchange Act and in the rules and regulations prescribed under the Exchange Act.

(c) Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of the specific form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

PART 249 —FORMS, THE SECURITIES EXCHANGE ACT OF 1934

20. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et. seq.*, unless otherwise noted.

Note—The text of the following forms and the amendments will not appear in the Code of Federal Regulations.

21. By revising the section heading of § 249.326(T) to read as follows:

§ 249.326 Form 13F–E for filing of Form 13F reports on magnetic tape.

* * * * *

22. By amending Form 13F–E (§ 249.326) by removing appendix B and by revising General Instruction F to read as follows:

Instructions and Form

Form 13F–E

Information Required of Institutional Investment Managers Pursuant to Section 13(f) of the Securities Exchange Act of 1934 and Rules Thereunder

General Instructions

* * * * *

F. Electronic Filing

Electronic filers are subject to Regulation S–T (§§ 232.10—232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

PART 270 —RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

23. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted;

24. By amending § 270.0–1 by adding a sentence to the end of paragraph (b) to read as follows:

§ 270.0–1 Definition of terms used in this part.

* * * * *

(b) * * * The terms "EDGAR," "EDGAR Filer Manual," "electronic filer," "electronic filing," "electronic format," "electronic submission," "paper format," and "signature" shall have the meanings assigned to such terms in Regulation S–T—General Rules for Electronic Filings (§ 232.10 *et seq.* of this chapter).

25. By amending § 270.0–2 by adding a sentence to the end of paragraph (b) and adding paragraph (i) to read as follows:

§ 270.0–2 General requirements of papers and applications.

* * * * *

(b) * * * Every application for an order under any provision of the Act and every amendment to such application shall be submitted to the Commission in paper only, whether or not the applicant is otherwise required to file in electronic format, unless instructions for electronic filing are included on the form, if any, prescribed for such application.

* * * * *

(i) *Electronic Filings.* Notwithstanding the requirements of any rule, the following provisions shall be applicable to electronic filings:

(1) Documents in electronic format shall be prepared as prescribed in the EDGAR Filer Manual. The narrative portion of a document shall not exceed 80 positions per line, including blank spaces, and shall not be presented in multi-column newspaper format. Non-narrative information (*e.g.*, financial statements) may be presented in tabular or columnar format and may exceed 80 positions only if it is tagged as specified in the EDGAR Filer Manual. In no event shall information presented in tabular or columnar format exceed 132 positions wide. Requirements as to paper size and sequential numbering of pages shall not apply to documents in electronic format, *provided, however* that printed documents used and distributed by a registrant must comply with all applicable type size requirements. Capital letters shall be used to satisfy bold-face type requirements.

Note: *See* rule 220 of Regulation S–T (§ 232.220) for requirements regarding foreign language documents.

(2) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission.

(3) The requirement for a copy to be bound in one or more parts does not apply to electronic format documents.

(4) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

(5) Foreign language documents shall not be filed with the Commission in electronic format. A fair and accurate English translation of any required document shall be filed. A written representation to that effect shall be included in the English translation document and the representation shall be signed by a designated officer in the manner set forth in rule 13 of Regulation S–T (§ 232.13 of this chapter). Upon request, any foreign language document otherwise required to be filed shall be provided to the Commission or the staff. Foreign currency denominations shall be expressed in words or letters in the

English language rather than representative symbols.

(6) Any exhibit filed in electronic format after having been converted from paper shall be a fair and accurate restatement of that exhibit.

Note: Whenever an exhibit is filed in paper under a temporary or continuing hardship exemption (§§ 232.101 and 232.102 of this chapter), all references in electronic and paper filing exhibit lists to the exhibit shall note that such exhibit was filed in paper.

26. By amending § 270.0–4 by revising paragraph (d) to read as follows:

* * * * *

(d) Notwithstanding any particular provision permitting incorporation by reference, no registration statement, application or report shall incorporate by reference any exhibit or financial statement which:

(1) Has been withdrawn, or

(2) Was filed in connection with a registration statement under the Act, or a registration on a national securities exchange, which has ceased to be effective, or

(3) Is contained in a registration statement or report subject, at the time of the incorporation by reference, to pending proceedings under section 8(b) or 8(d) of the Securities Act of 1933, section 8(e) of the Act, or to an order entered under any of those sections, or

(4) If it is a document that has been filed in paper with respect to an electronic filer under a temporary hardship exemption (§ 232.101 of this chapter) and an electronic format copy has not been submitted.

* * * * *

27. By amending § 270.0–8 by adding a Note at the end of the section to read as follows:

§ 270.0–8 Payment of fees.

* * * * *

Note: § 202.3a of this chapter sets forth procedures for payment of fees with respect to a filing that is submitted electronically.

28. By amending § 270.0–9 by adding paragraph (d) to read as follows:

§ 270.0–9 Liability for Certain Statements by Issuers.

* * * * *

(d) An error or omission in a document resulting from the electronic submission of the document to the Commission shall not be deemed a fraudulent statement as defined in paragraph (c) of this section, unless it is shown that such statement was submitted electronically other than in good faith, *provided that* the error or omission is corrected by the filing of an amendment to the document within five (5) business days after the registrant knows or should have known, or is notified of, the error or omission.

29. By removing § 270.0–11.

30. By amending § 270.8b-1 by adding a sentence to the end of the rule text to read as follows:

§ 270.8b-1 Scope of §§ 270.8b-1 to 270.8b-32.

* * * Reference should be made to paragraph (i) of § 270.0–2 for certain rules with respect to electronic filings.

31. By revising the introductory paragraph to § 270.8b-2 to read as follows:

§ 270.8b-2 Definitions.

Unless the context otherwise requires, the terms in paragraphs (a) through (m) of this section, when used in the rules contained in §§ 270.8b-1 to 270.8b-32, in the rules under section 30 (a) or (b) of the Act or in the forms for registration statements and reports pursuant to section 8 or 30 (a) or (b) of the Act, shall have the respective meanings indicated in this section. The terms "EDGAR," "EDGAR Filer Manual," "electronic filer," "electronic filing," "electronic format," "electronic submission," "paper format," and "signature" shall have the meanings assigned to such terms in Regulation S–T—General Rules for Electronic Filings (§ 232.10 *et seq.* of this chapter). The term "Financial Data Schedule" shall mean a Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

32. By revising § 270.8b-6 to read as follows:

§ 270.8b-6 Fee for registration.

At the time of filing of a registration statement under section 8(b) of the Act by any registered investment company, the company filing such statement shall pay to the Commission a fee of One Thousand Dollars ($1,000), no part of which shall be refunded.

Note: § 202.3a of this chapter sets forth procedures for payment of fees with respect to a filing that is submitted electronically.

33. By amending § 270.8b-15 by adding a sentence to the end of the text to read as follows:

§ 270.8b-15 Amendments.

* * * Any amendment filed under this section shall state the complete text of each item amended.

34. By amending § 270.8b-23 by revising paragraph (a) to read as follows:

§ 270.8b-23 Incorporation by reference.

(a) Any registrant may incorporate by reference, in answer or partial answer to any item of a registration statement or report, any information contained elsewhere in the statement or report or any information contained in any other statement, report or prospectus filed with the Commission under any Act administered by it, *provided that* a copy of such other statement, report or prospectus is filed with each copy of the registration statement or report in which it is incorporated by reference or, in the case of a registration statement, report or prospectus filed in electronic format, the registration statement, report or prospectus that is incorporated by reference is also filed in electronic format. Matter contained in an exhibit, however, may be incorporated only to the extent permitted by rules 8b-24 and 8b-32. A Financial Data Schedule may not be incorporated by reference.

* * * * *

35. By amending § 270.8b-25 by designating the current text as paragraph (a), adding an introductory phrase to the newly designated paragraph (a); and adding paragraph (b) to read as follows:

§ 270.8b-25 Extension of time for furnishing information.

(a) Subject to paragraph (b) of this section, * * *

(b) If it is impracticable to furnish any document or report required to be filed in electronic format at the time it is required to be filed, the electronic filer may apply, either orally or in writing, for a temporary hardship exemption, or may submit a written application for a continuing hardship exemption, in accordance with rules 101 and 102 of Regulation S–T (§§ 232.101 and 232.102 of this chapter). Applications for such exemptions shall be considered in accordance with the provisions of those sections and paragraphs (j) and (k) of § 200.30–5 of this chapter.

36. By amending § 270.8b-32 by adding an introductory phrase to paragraph (a) and adding paragraph (c) to read as follows:

§ 270.8b-32 Incorporation of exhibits by reference.

(a) Except as provided in paragraph (c) of this section, * * *

* * * * *

(c) *Electronic Filings.* (1) A registrant subject to the mandatory electronic filing rules (§ 232.10 *et seq.* of this chapter) shall file any exhibit previously filed in paper that is incorporated by reference into a registration statement or report in electronic format unless a hardship exemption (§§ 232.101 and 232.102 of this chapter) has been granted.

(2) Notwithstanding the foregoing, a Financial Data Schedule may not be incorporated by reference as an exhibit to a registration statement, report, or other filing in which it is required to be included.

37. By adding section 270.20a-4 to read as follows:

§ 270.20a-4 Exhibit required for certain transactions: Electronic filings.

If action is to be taken with respect to any transaction described in Items 11, 12, or 14 of Schedule 14A (§ 240.14a-101), and the statement on Schedule 14A or Schedule 14C (§ 240.14c-101) is filed electronically, the cover page required by rule 14a-6 (§ 240.14a-6) shall be followed by a Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter). Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific filing.

38. By amending § 270.23c-2 by adding paragraph (c) to read as follows:

§ 270.23c-2 Call and redemption of securities issued by registered closed-end companies.

* * * * *

(c) If a registrant electronically files notice under paragraph (b) of this section, the following provisions shall apply to the filing:

(1) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S-T (§ 232.13 of this chapter).

(2) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission.

39. By amending § 270.24b-2 by adding a sentence to the end of the current text to read as follows:

§ 270.24b-2 Filing copies of sales literature.

* * * Such material shall be submitted to the Commission in paper only, whether or not the investment company to which the material relates is otherwise required to file in electronic format.

40. By amending § 270.24e-2 by adding a note before paragraph (a) and adding a sentence to the introductory text of paragraph (a) to read as follows:

§ 270.24e-2 Computation of fee.

* * * * *

Note: § 202.3a of this chapter sets forth procedures for payment of fees with respect to a filing that is submitted electronically.

(a) * * * (Any fee payable with respect to a filing that is filed electronically shall be paid in accordance with the procedures set forth in Instructions for Filing Fees—Rule 3a of the Rules regarding Informal and Other Procedures.)

* * * * *

41. By amending § 270.24f-1 by adding paragraph (d) to read as follows:

§ 270.24f-1 Retroactive registration under the Securities Act of 1933 of certain investment company shares sold in excess of number of shares included in an effective registration statement.

* * * * *

(d) *Electronic Filings.* Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter). An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission. Any fee payable with respect to a filing that is filed electronically shall be paid in accordance with the procedures set forth in Instructions for Filing Fees—Rule 3a of the Rules regarding Informal and Other Procedures.

42. By amending § 270.24f–2 by adding paragraph (e) to read as follows:

§ 270.24f–2 Registration under the Securities Act of 1933 of an indefinite number of certain investment company securities.

* * * * *

(e) *Electronic Filings.* Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter). An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission. Any fee payable with respect to a filing that is filed electronically shall be paid in accordance with the procedures set forth in Instructions for Filing Fees—Rule 3a of the Rules regarding Informal and Other Procedures.

43. By amending § 270.30b2–1 by adding a parenthetical statement "(or, in the case of an electronic filing, one copy)" between "Four copies" and "of every" * * *

44. By amending § 270.31a–2 by removing the ";" at the end of paragraph (a)(2) and adding the following text to the end of paragraph (a)(2) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(2) * * *, and documents required to be maintained under rule 205(c) of Regulation S–T (§ 232.205(c) of this chapter); and

* * * * *

45. By amending § 270.45a–1 by adding a sentence to the end of paragraph (b) to read as follows:

§ 270.45a–1 Confidential treatment of names and addresses of dealers of registered investment company securities.

* * * * *

(b) * * * Confidential treatment requests shall be submitted in paper only, whether or not the registrant is required to file in electronic format.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

46. The authority citation for part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, unless otherwise noted.

Note—The text of the following forms and the amendments will not appear in the Code of Federal Regulations.

47. By amending Form N–8A (§ 274.10) by adding Instruction 7 to read as follows:

Instructions and Form

Form N–8A

Notification of Registration Filed Pursuant to Section 8(a) of the Investment Company Act of 1940

* * * * *

Instructions for Form N–8A

* * * * *

7. Electronic Filers

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2. Signatures shall be in

typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

48. By amending Form N–8B–2 (§ 274.12) by adding General Instruction 3 for Form N–8B–2 to read as follows:

Instructions and Form

Form N–8B–2

Registration Statement of Unit Investment Trusts Which Are Currently Issuing Securities

* * * * *

General Instructions for Form N–8B–2

* * * * *

3. Electronic Filers.

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

49. By amending Form N–8B–3 (§ 274.13) by adding General Instruction 4 for Form N–8B–3 to read as follows:

Instructions and Form

Form N–8B–3

Registration Statement of Unincorporated Management Investment Companies Currently Issuing Periodic Payment Plan Certificates

* * * * *

General Instructions for Form N–8B–3

* * * * *

4. Electronic Filers

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

50. By amending Form N–8B–4 (§ 274.14) by adding General Instruction 5 to read as follows:

Instructions and Form

Form N–8B–4

Registration Statement of Face-Amount Certificate Companies

* * * * *

General Instructions

* * * * *

5. Electronic Filers

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

51. By amending Form N–6F (§ 274.15) by redesignating Instruction (b) as Instruction (b)(1) and adding Instruction (b)(2) to read as follows:

Instructions and Form

Form N–6F

Notice of Intent To Elect To Be Subject To Sections 55 Through 65 of the Investment Company Act of 1940

* * * * *

Instructions For Form N–6F

* * * * *

(b)(1) Signature. * * *

(b)(2) Electronic Filers.

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

52. By amending Form N–18F–1 (§ 274.51) by redesignating Instruction (b) as Instruction (b)(1) and adding Instruction (b)(2) to read as follows:

Instructions and Form

Form N–18F–1

Notification of Election Pursuant to Rule 18f-1 Under the Investment Company Act of 1940

* * * * *

Instructions For Form N–18F–1

* * * * *

(b)(1) Signature. * * *

(b)(2) Electronic Filers.

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

53. By amending Form N–54A (§ 274.53) by redesignating Instruction (b) as Instruction (b)(1) and adding Instruction (b)(2) to read as follows:

Instructions and Form

Form N–54A

Notification of Election To Be Subject to Sections 55 Through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(a) of the Act

* * * * *

Instructions for Form N–54A

* * * * *

(b)(1) Signature. * * *

(b)(2) Electronic Filers.

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2. Signatures shall be in

typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

54. By amending Form N–54C (§ 274.54) by redesignating Instruction (b) as Instruction (b)(1) and adding Instruction (b)(2) to read as follows:

Instructions and Form

Form N–54C

Notification of Withdrawal of Election To Be Subject to Sections 55 Through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(c) of the Investment Company Act of 1940

* * * * *

Instructions for Form N–54C

* * * * *

(b)(1) Signature. * * *

(b)(2) Electronic Filers.

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

55. By amending Form N–SAR (§ 274.101) by revising General Instruction F and adding paragraph (h) to Sub-Item 77Q (Exhibits) to read as follows:

Instructions and Form

Form N–SAR

Semi-Annual Report for Registered Investment Companies

* * * * *

General Instructions

* * * * *

F. Filings on EDGAR

(1) A registrant that is required or elects to file Form N–SAR electronically is subject to Regulation S–T (§§ 232.10 – 232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

(2) Attention is directed to Sub-Item 77Q (Exhibits) for certain items of financial information that are required (Financial Data Schedule).

(3) Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements.

See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2.

(4) Electronic filing of Form N–SAR for management investment companies, exclusive of small business investment companies, may be made by direct transmission, and in accordance with the EDGAR Filer Manual, only. Filing of the form on magnetic tapes or diskettes is not permitted.

(5) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Sub-Item 77Q: Exhibits

* * * * *

(h) If the filing is made electronically, a Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

56. By amending Form N–27D–1 (§ 274.127d–1) by adding Instruction 7 to read as follows:

Instructions and Form

Form N–27D–1

Accounting of Segregated Trust Account

* * * * *

Instructions for Form N–27D–1

* * * * *

7. Electronic filers are subject to Regulation S–T (§§ 232.10 –232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

57. By amending Form N–23C–1 (§ 274.201) by adding Instruction 5 to read as follows:

Instructions and Form

Form N–23C–1

Statement by Registered Closed-End Investment Company With Respect to Purchases of Its Own Securities Pursuant to Rule N–23C–1 During the Last Calendar Month

* * * * *

Rules and Instructions for Form N–23C–1

* * * * *

5. *Electronic Filers.* Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy bold-face type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

58. By revising § 274.403 to read as follows:

§ 274.403 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by any electronic filer for the submission of any required paper format exhibit pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940, provided that submission of such paper format exhibit is permitted pursuant to rule 101 or rule 102 of Regulation S–T (§ 232.101 and § 232.102 of this chapter).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Note.—The text of the following forms and the amendments will not appear in the Code of Federal Regulations.

59. By amending Form N–2 (§§ 239.14 and 274.11a–1) by adding General Instruction H and revising paragraph (b)(4) of, and by adding paragraph (b)(16) to, Item 4 of Part II to read as follows:

Instructions and Form

Form N–2

Registration Statement Under the Securities Act of 1933

* * * * *

Registration Statement Under the Investment Company Act of 1940

* * * * *

General Instructions

* * * * *

H. Electronic Filers

1. Electronic filers are subject to Regulation S–T (§§ 232.10 - 232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter) and rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

2. Attention is directed to Item 4(b)(16) of Part II (Financial Data Schedule) for certain items of financial information that are required.

3. When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

4. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2.

5. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Part II

Other Information

* * * * *

Item 4.

* * * * *

(b) * * *

(4) Copies of all instruments defining the rights of holders of the securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant;

* * * * *

(16) *Electronic Filers.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

60. By amending Form N–1 (§§ 239.15 and 274.11) by adding General Instruction H and by revising paragraph (b)(4) of, and adding paragraph (b)(16) to, Item 4 of Part II to read as follows:

Instructions and Form

Form N–1

Registration Statement Under the Securities Act of 1933

* * * * *

Registration Statement Under the Investment Company Act of 1940

* * * * *

General Instructions

* * * * *

H. Electronic Filers

1. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter) and rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

2. Attention is directed to Item 1(b)(16) of Part II (Financial Data Schedule) for certain items of financial information that are required.

3. When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

4. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b–1 and 8b–2.

5. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Part II

Other Information

Item 1. Financial Statements and Exhibits

* * * * *

(b) * * *

(4) copies of all instruments defining the rights of holders of the securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant;

* * * * *

(16) *Electronic Filers.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

61. By amending Form N–1A (§§ 239.15A and 274.11A) by adding General Instruction H and revising paragraph (b)(4) of, and by adding paragraph (b)(17) to, Item 24 of Part C to read as follows:

Instructions and Form

Form N–1A

Registration Statement Under the Securities Act of 1933

* * * * *

Registration Statement Under the Investment Company Act of 1940

* * * * *

General Instructions

* * * * *

H. Electronic Filers

1. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter) and rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

2. Attention is directed to Item 24(b)(17) of part C (Financial Data Schedule) for certain items of financial information that are required.

3. When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

4. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2.

5. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Part C

Other Information

Item 24. Financial Statements and Exhibits

* * * * *

(b) * * *

(4) copies of all instruments defining the rights of holders of the securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant;

* * * * *

(17) *Electronic Filers.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

62. By amending Form N–3 (§§ 239.17a and 274.11b) by adding General Instruction J and by adding paragraph (b)(17) to Item 28 of Part C to read as follows:

Instructions and Form

Form N–3

Registration Statement Under the Securities Act of 1933

* * * * *

Registration Statement Under the Investment Company Act of 1940

* * * * *

General Instructions

* * * * *

J. Electronic Filers

1. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S–T (§ 232.11(d) of this chapter) and rule 0–1 under the Investment Company Act of 1940 (§ 270.0–1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

2. Attention is directed to Item 28(b)(17) of part C (Financial Data Schedule) for certain items of financial information that are required.

3. When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

4. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2.

5. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S-T (§ 232.13 of this chapter).

* * * * *

Part C—Other Information

Item 28. Financial Statements and Exhibits

* * * * *

(b) * * *

(17) *Electronic Filers.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

63. By amending Form N-4 (§§ 239.17b and 274.11c) by adding General Instruction J and by adding paragraph (b)(14) to Item 34 of Part C to read as follows:

Instructions and Form

Form N-4—Registration Statement Under the Securities Act of 1933

* * * * *

Registration Statement Under the Investment Company Act of 1940

* * * * *

General Instructions

* * * * *

J. Electronic Filers

1. Electronic filers are subject to Regulation S-T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S-T (§ 232.11(d) of this chapter) and rule 0-1 under the Investment Company Act of 1940 (§ 270.0-1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

2. Attention is directed to Item 24(b)(14) of part C (Financial Data Schedule) for certain items of financial information that are required.

3. When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

4. Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2.

5. Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S-T (§ 232.13 of this chapter).

* * * * *

Part C—Other Information

Item 24. Financial Statements and Exhibits

* * * * *

(b) * * *

(14) *Electronic Filers.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

64. By amending Form N-5 (§§ 239.24 and 274.5) by adding General Instruction H and by revising Instruction 3 and adding Instruction 13 to Instructions as to Exhibits to read as follows:

Instructions and Form

Form N-5—Registration Statement of Small Business Investment Company Under the Securities Act of 1933 and the Investment Company Act of 1940

* * * * *

General Instructions

* * * * *

H. Electronic Filers

(a) Electronic filers are subject to Regulation S-T (§§ 232.10 - 232.306 of this chapter) and the EDGAR Filer Manual, as that term is defined in rule 11(d) of Regulation S-T (§ 232.11(d) of this chapter) and rule 0-1 under the Investment Company Act of 1940 (§ 270.0-1 of this chapter). Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

(b) Attention is directed to Instruction 13 of Instructions as to Exhibits (Financial Data Schedule) for certain items of financial information that are required.

(c) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(d) Provisions relating to binding, page numbering and multiple copies required to be filed with the Commission do not apply to registration statements in electronic format. Capital letters shall be used to satisfy boldface type requirements. See Securities Act rules 402(d) and 403(e) and Investment Company Act rules 8b-1 and 8b-2.

(e) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S-T (§ 232.13 of this chapter).

* * * * *

Instructions as to Exhibits

* * * * *

3. Copies of all instruments defining the rights of holders of the securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant.

* * * * *

13. *Electronic Filers.* If the registrant is an electronic filer, a Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

Dated: July 23, 1992.

By the Commission.

Note.—The appendices will not appear in the Code of Federal Regulations.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Phase-In Schedule for Mandatory Electronic Filing by Investment Companies

Following is a listing of investment company registrants (registered investment companies, including series offerings individually registered under the Securities Act of 1933, and business development companies) and their assigned phase-in groups. Any investment company registrants not named in the listing and not otherwise assigned to a phase-in group by operation of the phase-in rules for investment companies or by Commission action shall be required to begin mandatory electronic filing with Group IM-06.

Investment company registrants assigned to the phase-in groups listed below shall begin mandatory electronic filing through EDGAR on the dates designated below for each phase-in group or on such other dates that the Commission may hereafter designate.

Group IM-01: April 1, 1993
Group IM-02: July 1, 1993
Group IM-03: May 1, 1994
Group IM-04: November 1, 1994
Group IM-05: May 1, 1995
Group IM-06: November 1, 1995

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES

Count	Group	Complex	CIK	Name
1	IM-01	FEDERATED	883496	111 CORCORAN FUNDS.
2	IM-01	FEDERATED	751954	A T OHIO TAX FREE MONEY FUND.
3	IM-01	FEDERATED	005352	AMERICAN LEADERS FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
4	IM-01	FEDERATED	357053	AUTOMATED CASH MANAGEMENT TRUST.
5	IM-01	FEDERATED	702906	AUTOMATED GOVERNMENT MONEY TRUST.
6	IM-01	FEDERATED	873934	BAYFUNDS.
7	IM-01	FEDERATED	874493	BERRY STREET FUNDS.
8	IM-01	FEDERATED	881299	BILTMORE FUNDS.
9	IM-01	FEDERATED	846071	CALIFORNIA MUNICIPAL CASH TRUST.
10	IM-01	FEDERATED	883428	CAMBRIDGE SERIES TRUST.
11	IM-01	FEDERATED	852495	CASH TRUST SERIES.
12	IM-01	FEDERATED	870241	CASH TRUST SERIES II.
13	IM-01	FEDERATED	799704	CONVERTIBLE SECURITIES & INCOME INC.
14	IM-01	FEDERATED	883843	DG INVESTOR SERIES.
15	IM-01	FEDERATED	350973	EGT MONEY MARKET TRUST.
16	IM-01	FEDERATED	771520	FEDERATED BOND FUND.
17	IM-01	FEDERATED	811862	FEDERATED CONVERTIBLE SECURITIES TRUST.
18	IM-01	FEDERATED	743212	FEDERATED CORPORATE CASH TRUST.
19	IM-01	FEDERATED	034952	FEDERATED EXCHANGE FUND LTD.
20	IM-01	FEDERATED	789281	FEDERATED FLOATING RATE TRUST.
21	IM-01	FEDERATED	357110	FEDERATED GNMA TRUST.
22	IM-01	FEDERATED	858463	FEDERATED GOVERNMENT TRUST/PA.
23	IM-01	FEDERATED	745968	FEDERATED GROWTH TRUST.
24	IM-01	FEDERATED	745967	FEDERATED HIGH YIELD TRUST.
25	IM-01	FEDERATED	357052	FEDERATED INCOME TRUST.
26	IM-01	FEDERATED	861469	FEDERATED INDEX TRUST.
27	IM-01	FEDERATED	357159	FEDERATED INTERMEDIATE GOVERNMENT TRUST.
28	IM-01	FEDERATED	770116	FEDERATED INTERMEDIATE MUNICIPAL TRUST.
29	IM-01	FEDERATED	225319	FEDERATED MASTER TRUST.
30	IM-01	FEDERATED	866700	FEDERATED MUNICIPAL INCOME TRUST.
31	IM-01	FEDERATED	855108	FEDERATED MUNICIPAL TRUST.
32	IM-01	FEDERATED	823939	FEDERATED NEW JERSEY MUNICIPAL SERIES TRUST.
33	IM-01	FEDERATED	809453	FEDERATED SHORT INTERMEDIATE CORPORATE TRUST.
34	IM-01	FEDERATED	739594	FEDERATED SHORT INTERMEDIATE GOVERNMENT TRUST.
35	IM-01	FEDERATED	353101	FEDERATED SHORT INTERMEDIATE MUNICIPAL TRUST.
36	IM-01	FEDERATED	810413	FEDERATED SHORT TERM US GOVERNMENT TRUST.
37	IM-01	FEDERATED	013386	FEDERATED STOCK & BOND FUND INC.
38	IM-01	FEDERATED	357236	FEDERATED STOCK TRUST.
39	IM-01	FEDERATED	201801	FEDERATED TAX FREE INCOME FUND INC.
40	IM-01	FEDERATED	278002	FEDERATED TAX FREE TRUST.
41	IM-01	FEDERATED	771524	FEDERATED US GOVERNMENT FUND.
42	IM-01	FEDERATED	818876	FEDERATED VARIABLE RATE MORTGAGE SECURITIES TRUST.
43	IM-01	FEDERATED	880934	FIRST PRIORITY FUNDS.
44	IM-01	FEDERATED	879569	FIXED INCOME SECURITIES INC.
45	IM-01	FEDERATED	355693	FORT WASHINGTON MONEY MARKET FUND.
46	IM-01	FEDERATED	875267	FORTRESS ADJUSTABLE RATE US GOVERNMENT FUND INC.
47	IM-01	FEDERATED	771517	FORTRESS HIGH QUALITY STOCK FUND.
48	IM-01	FEDERATED	807607	FORTRESS MUNICIPAL INCOME FUND INC.
49	IM-01	FEDERATED	832799	FORTRESS TOTAL PERFORMANCE US TREASURY FUND INC.
50	IM-01	FEDERATED	802199	FORTRESS UTILITY FUND INC.
51	IM-01	FEDERATED	840678	FOUNTAIN SQUARE FUNDS.
52	IM-01	FEDERATED	742286	FT INTERNATIONAL TRUST.
53	IM-01	FEDERATED	039439	FUND FOR US GOVERNMENT SECURITIES INC.
54	IM-01	FEDERATED	355691	GOVERNMENT INCOME SECURITIES INC.
55	IM-01	FEDERATED	701902	HIGH YIELD CASH TRUST.
56	IM-01	FEDERATED	889388	INVESTMENT SERIES FUNDS INC.
57	IM-01	FEDERATED	811647	INVESTMENT SERIES TRUST.
58	IM-01	FEDERATED	314650	JONES EDWARD D & CO DAILY PASSPORT CASH TRUST.
59	IM-01	FEDERATED	225318	LIBERTY HIGH INCOME BOND FUND INC.
60	IM-01	FEDERATED	872168	LIBERTY MUNICIPAL BOND FUND INC.
61	IM-01	FEDERATED	889386	LIBERTY NATIONAL BANK FUNDS.
62	IM-01	FEDERATED	225320	LIBERTY U S GOVERNMENT MONEY MARKET TRUST.
63	IM-01	FEDERATED	812219	LIBERTY UTILITY FUND INC.
64	IM-01	FEDERATED	316619	LIQUID CASH TRUST.
65	IM-01	FEDERATED	846030	LOSANTIVILLE FUNDS.
66	IM-01	FEDERATED	889366	MARSHALL FUNDS.
67	IM-01	FEDERATED	067576	MONEY MARKET MANAGEMENT.
68	IM-01	FEDERATED	856517	MONEY MARKET OBLIGATIONS TRUST /NEW.
69	IM-01	FEDERATED	067578	MONEY MARKET TRUST /PA.
70	IM-01	FEDERATED	701438	NEW YORK MUNICIPAL CASH TRUST.
71	IM-01	FEDERATED	852916	PALM SERIES TRUST.
72	IM-01	FEDERATED	867502	PASSAGEWAY FUNDS.
73	IM-01	FEDERATED	869393	PORTAGE FUNDS.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
74	IM-01	FEDERATED	873929	RIMCO MONUMENT FUNDS.
75	IM-01	FEDERATED	867063	SBK SELECT SERIES.
76	IM-01	FEDERATED	854650	STARBURST FUNDS.
77	IM-01	FEDERATED	864484	STARBURST FUNDS II.
78	IM-01	FEDERATED	862364	TARGETED DURATION TRUST.
79	IM-01	FEDERATED	356678	TAX FREE INSTRUMENTS TRUST.
80	IM-01	FEDERATED	831809	TOWER MUTUAL FUNDS.
81	IM-01	FEDERATED	356133	TOWER SERIES FUNDS INC.
82	IM-01	FEDERATED	313714	TRUST FOR CASH RESERVES /NEW.
83	IM-01	FEDERATED	846663	TRUST FOR GOVERNMENT CASH RESERVES.
84	IM-01	FEDERATED	069954	TRUST FOR SHORT TERM UNITED STATES GOVERNMENT SECURITIES.
85	IM-01	FEDERATED	312671	TRUST FOR UNITED STATES TREASURY OBLIGATIONS.
86	IM-01	IDS	049697	IDS BOND FUND INC.
87	IM-01	IDS	792717	IDS CALIFORNIA TAX EXEMPT TRUST.
88	IM-01	IDS	049698	IDS CASH MANAGEMENT FUND INC.
89	IM-01	IDS	052428	IDS CERTIFICATE CO /MN.
90	IM-01	IDS	352863	IDS DISCOVERY FUND INC.
91	IM-01	IDS	052445	IDS EQUITY PLUS FUND INC.
92	IM-01	IDS	728374	IDS EXTRA INCOME FUND INC.
93	IM-01	IDS	764802	IDS FEDERAL INCOME FUND INC.
94	IM-01	IDS	842918	IDS GLOBAL SERIES INC.
95	IM-01	IDS	049702	IDS GROWTH FUND INC.
96	IM-01	IDS	310187	IDS HIGH YIELD TAX EXEMPT FUND INC /MN.
97	IM-01	IDS	750022	IDS INTERNATIONAL FUND INC.
98	IM-01	IDS	755221	IDS MANAGED RETIREMENT FUND INC.
99	IM-01	IDS	854689	IDS MARKET ADVANTAGE SERIES INC.
100	IM-01	IDS	052347	IDS MUTUAL INC /NEW.
101	IM-01	IDS	049717	IDS NEW DIMENSIONS FUND INC.
102	IM-01	IDS	755222	IDS PRECIOUS METALS FUND INC.
103	IM-01	IDS	049722	IDS PROGRESSIVE FUND INC.
104	IM-01	IDS	052407	IDS SELECTIVE FUND INC.
105	IM-01	IDS	792719	IDS SPECIAL TAX EXEMPT SERIES TRUST.
106	IM-01	IDS	052423	IDS STOCK FUND INC.
107	IM-01	IDS	740148	IDS STRATEGY FUND INC.
108	IM-01	IDS	202159	IDS TAX EXEMPT BOND FUND INC.
109	IM-01	IDS	315524	IDS TAX FREE MONEY FUND INC.
110	IM-01	IDS	831025	IDS UTILITIES INCOME FUND INC.
111	IM-01	PUTNAM	869392	PUTNAM ARIZONA TAX EXEMPT INCOME FUND.
112	IM-01	PUTNAM	866649	PUTNAM ASIA PACIFIC GROWTH FUND.
113	IM-01	PUTNAM	711402	PUTNAM CALIFORNIA TAX EXEMPT INCOME FUND.
114	IM-01	PUTNAM	821545	PUTNAM CALIFORNIA TAX EXEMPT MONEY MARKET FUND.
115	IM-01	PUTNAM	081249	PUTNAM CAPITAL FUND.
116	IM-01	PUTNAM	807932	PUTNAM CAPITAL PRESERVATION INCOME TRUST.
117	IM-01	PUTNAM	081247	PUTNAM CONVERTIBLE INCOME GROWTH TRUST.
118	IM-01	PUTNAM	730178	PUTNAM CORPORATE CASH TRUST /MA.
119	IM-01	PUTNAM	732365	PUTNAM CORPORATE CASH TRUST ADJUSTABLE RATE PREFERRED PORTFO.
120	IM-01	PUTNAM	081248	PUTNAM DAILY DIVIDEND TRUST.
121	IM-01	PUTNAM	836822	PUTNAM DIVERSIFIED INCOME TRUST.
122	IM-01	PUTNAM	849344	PUTNAM DIVERSIFIED PREMIUM INCOME TRUST.
123	IM-01	PUTNAM	795215	PUTNAM DIVIDEND GROWTH FUND.
124	IM-01	PUTNAM	853474	PUTNAM DIVIDEND INCOME FUND.
125	IM-01	PUTNAM	317031	PUTNAM ENERGY RESOURCES TRUST.
126	IM-01	PUTNAM	842940	PUTNAM EUROPE GROWTH FUND.
127	IM-01	PUTNAM	864468	PUTNAM FLORIDA TAX EXEMPT INCOME FUND.
128	IM-01	PUTNAM	866797	PUTNAM FOCUS GROWTH FUND.
129	IM-01	PUTNAM	081260	PUTNAM FUND FOR GROWTH & INCOME.
130	IM-01	PUTNAM	081259	PUTNAM GEORGE FUND OF BOSTON.
131	IM-01	PUTNAM	794614	PUTNAM GLOBAL GOVERNMENTAL INCOME TRUST.
132	IM-01	PUTNAM	081251	PUTNAM GLOBAL GROWTH FUND.
133	IM-01	PUTNAM	780207	PUTNAM GNMA PLUS TRUST /MA.
134	IM-01	PUTNAM	830923	PUTNAM GOLD & PRECIOUS METALS FUND
135	IM-01	PUTNAM	357295	PUTNAM HEALTH SCIENCES TRUST.
136	IM-01	PUTNAM	810943	PUTNAM HIGH INCOME CONVERTIBLE & BOND FUND.
137	IM-01	PUTNAM	759827	PUTNAM HIGH INCOME GOVERNMENT TRUST.
138	IM-01	PUTNAM	846077	PUTNAM HIGH YIELD MUNICIPAL TRUST.
139	IM-01	PUTNAM	225777	PUTNAM HIGH YIELD TRUST.
140	IM-01	PUTNAM	787836	PUTNAM HIGH YIELD TRUST II.
141	IM-01	PUTNAM	081264	PUTNAM INCOME FUND.
142	IM-01	PUTNAM	715281	PUTNAM INFORMATION SCIENCES TRUST.
143	IM-01	PUTNAM	832754	PUTNAM INTERMEDIATE GOVERNMENT INCOME TRUST.
144	IM-01	PUTNAM	855048	PUTNAM INVESTMENT GRADE MUNICIPAL TRUST
145	IM-01	PUTNAM	081269	PUTNAM INVESTORS FUND.
146	IM-01	PUTNAM	844790	PUTNAM MANAGED MUNICIPAL INCOME TRUST

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
147	IM-01	PUTNAM	792288	PUTNAM MASSACHUSETTS TAX EXEMPT INCOME FUND /MA/.
148	IM-01	PUTNAM	824463	PUTNAM MASTER INCOME TRUST.
149	IM-01	PUTNAM	830622	PUTNAM MASTER INTERMEDIATE INCOME TRUST.
150	IM-01	PUTNAM	794611	PUTNAM MICHIGAN TAX EXEMPT INCOME FUND.
151	IM-01	PUTNAM	794612	PUTNAM MINNESOTA TAX EXEMPT INCOME FUND.
152	IM-01	PUTNAM	202958	PUTNAM MUNICIPAL BOND FUND LTD.
153	IM-01	PUTNAM	857463	PUTNAM NEW JERSEY TAX EXEMPT INCOME FUND.
154	IM-01	PUTNAM	865177	PUTNAM NEW OPPORTUNITIES FUND.
155	IM-01	PUTNAM	719712	PUTNAM NEW YORK TAX EXEMPT INCOME FUND.
156	IM-01	PUTNAM	821546	PUTNAM NEW YORK TAX EXEMPT MONEY MARKET FUND.
157	IM-01	PUTNAM	867921	PUTNAM NEW YORK TAX FREE HIGH INCOME FUND.
158	IM-01	PUTNAM	794616	PUTNAM OHIO TAX EXEMPT INCOME FUND.
159	IM-01	PUTNAM	216934	PUTNAM OPTION INCOME TRUST.
160	IM-01	PUTNAM	764110	PUTNAM OPTION INCOME TRUST II.
161	IM-01	PUTNAM	703969	PUTNAM OTC EMERGING GROWTH FUND.
162	IM-01	PUTNAM	868648	PUTNAM OVERSEAS GROWTH FUND.
163	IM-01	PUTNAM	794615	PUTNAM PENNSYLVANIA TAX EXEMPT INCOME FUND.
164	IM-01	PUTNAM	827773	PUTNAM PREMIER INCOME TRUST.
165	IM-01	PUTNAM	861104	PUTNAM QUALIFIED DIVIDEND INCOME FUND.
166	IM-01	PUTNAM	205802	PUTNAM TAX EXEMPT INCOME FUND.
167	IM-01	PUTNAM	806944	PUTNAM TAX EXEMPT MONEY MARKET FUND.
168	IM-01	PUTNAM	844872	PUTNAM TAX FREE HIGH INCOME FUND.
169	IM-01	PUTNAM	771951	PUTNAM TAX FREE INCOME TRUST.
170	IM-01	PUTNAM	871433	PUTNAM TOTAL RETURN FUND.
171	IM-01	PUTNAM	732337	PUTNAM U S GOVERNMENT INCOME TRUST.
172	IM-01	PUTNAM	867824	PUTNAM UTILITIES GROWTH & INCOME FUND.
173	IM-01	PUTNAM	868480	PUTNAM VECTOR GROWTH FUND.
174	IM-01	PUTNAM	081279	PUTNAM VISTA FUND/NEW/.
175	IM-01	PUTNAM	081280	PUTNAM VOYAGER FUND.
176	IM-01	T ROWE PRICE	852254	INSTITUTIONAL INTERNATIONAL FUNDS INC.
177	IM-01	T ROWE PRICE	878168	PRICE T ROWE ADJUSTABLE RATE U S GOVERNMENT FUND INC.
178	IM-01	T ROWE PRICE	871839	PRICE T ROWE BALANCED FUND INC.
179	IM-01	T ROWE PRICE	798086	PRICE T ROWE CALIFORNIA TAX FREE INCOME TRUST.
180	IM-01	T ROWE PRICE	793347	PRICE T ROWE CAPITAL APPRECIATION FUND.
181	IM-01	T ROWE PRICE	775688	PRICE T ROWE EQUITY INCOME FUND.
182	IM-01	T ROWE PRICE	779785	PRICE T ROWE GNMA FUND.
183	IM-01	T ROWE PRICE	706211	PRICE T ROWE GROWTH & INCOME FUND INC.
184	IM-01	T ROWE PRICE	080257	PRICE T ROWE GROWTH STOCK FUND INC.
185	IM-01	T ROWE PRICE	754915	PRICE T ROWE HIGH YIELD FUND INC.
186	IM-01	T ROWE PRICE	858581	PRICE T ROWE INDEX TRUST INC.
187	IM-01	T ROWE PRICE	794226	PRICE T ROWE INSTITUTIONAL TRUST.
188	IM-01	T ROWE PRICE	313212	PRICE T ROWE INTERNATIONAL FUNDS INC.
189	IM-01	T ROWE PRICE	887147	PRICE T ROWE MID CAP GROWTH FUND INC.
190	IM-01	T ROWE PRICE	773485	PRICE T ROWE NEW AMERICA GROWTH FUND.
191	IM-01	T ROWE PRICE	216907	PRICE T ROWE NEW ERA FUND INC.
192	IM-01	T ROWE PRICE	080248	PRICE T ROWE NEW HORIZONS FUND INC.
193	IM-01	T ROWE PRICE	080249	PRICE T ROWE NEW INCOME FUND INC.
194	IM-01	T ROWE PRICE	316968	PRICE T ROWE PRIME RESERVE FUND INC.
195	IM-01	T ROWE PRICE	819930	PRICE T ROWE SCIENCE & TECHNOLOGY FUND INC.
196	IM-01	T ROWE PRICE	731890	PRICE T ROWE SHORT TERM BOND FUND INC.
197	IM-01	T ROWE PRICE	834798	PRICE T ROWE SMALL CAP VALUE FUND INC.
198	IM-01	T ROWE PRICE	808303	PRICE T ROWE SPECTRUM FUND INC.
199	IM-01	T ROWE PRICE	795384	PRICE T ROWE STATE TAX FREE INCOME TRUST.
200	IM-01	T ROWE PRICE	315748	PRICE T ROWE TAX EXEMPT MONEY FUND INC.
201	IM-01	T ROWE PRICE	758003	PRICE T ROWE TAX FREE HIGH YIELD FUND INC.
202	IM-01	T ROWE PRICE	202927	PRICE T ROWE TAX FREE INCOME FUND INC.
203	IM-01	T ROWE PRICE	730200	PRICE T ROWE TAX FREE SHORT INTERMEDIATE FUND INC.
204	IM-01	T ROWE PRICE	853437	PRICE T ROWE U S TREASURY FUNDS INC.
205	IM-01	T ROWE PRICE	701903	PRICE T ROWE U S TREASURY MONEY FUND INC.
206	IM-01	T ROWE PRICE	813899	ROWE PRICE FLEMING FOREIGN DISCOVERY FUND INC.
207	IM-01	UNIFIED	863001	LIQUID GREEN GOVERNMENT TRUST.
208	IM-01	UNIFIED	355742	LIQUID GREEN TAX FREE TRUST.
209	IM-01	UNIFIED	317267	LIQUID GREEN TRUST.
210	IM-01	UNIFIED	100736	UNIFIED FUNDS.
211	IM-01	UNIFIED	205996	UNIFIED INCOME FUND INC.
212	IM-01	UNIFIED	217409	UNIFIED MUNICIPAL FUND INC.
213	IM-01	UNIFIED	100738	UNIFIED MUTUAL SHARES INC.
214	IM-01	VANGUARD	764117	EXPLORER II INC.
215	IM-01	VANGUARD	759277	GEMINI II INC.
216	IM-01	VANGUARD	752177	PRIMECAP FUND.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
217	IM-01	VANGUARD	719716	VANGUARD ADJUSTABLE RATE PREFERRED STOCK FUND.
218	IM-01	VANGUARD	836906	VANGUARD ASSET ALLOCATION FUND INC.
219	IM-01	VANGUARD	889519	VANGUARD BALANCED INDEX FUND INC.
220	IM-01	VANGUARD	791107	VANGUARD CONVERTIBLE SECURITIES FUND INC.
221	IM-01	VANGUARD	826473	VANGUARD EQUITY INCOME FUND INC.
222	IM-01	VANGUARD	034066	VANGUARD EXPLORER FUND INC.
223	IM-01	VANGUARD	106444	VANGUARD FIXED INCOME SECURITIES FUND INC.
224	IM-01	VANGUARD	888451	VANGUARD FLORIDA INSURED TAX FREE FUND.
225	IM-01	VANGUARD	024919	VANGUARD HIGH YIELD STOCK FUND INC.
226	IM-01	VANGUARD	036405	VANGUARD INDEX TRUST.
227	IM-01	VANGUARD	862084	VANGUARD INSTITUTIONAL INDEX FUND.
228	IM-01	VANGUARD	846591	VANGUARD INSTITUTIONAL PORTFOLIOS INC.
229	IM-01	VANGUARD	857489	VANGUARD INTERNATIONAL EQUITY INDEX FUND INC.
230	IM-01	VANGUARD	106830	VANGUARD MONEY MARKET RESERVES INC.
231	IM-01	VANGUARD	068138	VANGUARD MORGAN GROWTH FUND INC.
232	IM-01	VANGUARD	225997	VANGUARD MUNICIPAL BOND FUND INC.
233	IM-01	VANGUARD	821404	VANGUARD NEW JERSEY TAX FREE FUND.
234	IM-01	VANGUARD	788599	VANGUARD NEW YORK INSURED TAX FREE FUND.
235	IM-01	VANGUARD	862341	VANGUARD OHIO TAX FREE FUND.
236	IM-01	VANGUARD	788606	VANGUARD PENNSYLVANIA TAX FREE FUND.
237	IM-01	VANGUARD	081391	VANGUARD PREFERRED STOCK FUND.
238	IM-01	VANGUARD	799127	VANGUARD QUANTITATIVE PORTFOLIOS INC.
239	IM-01	VANGUARD	734383	VANGUARD SPECIALIZED PORTFOLIOS INC.
240	IM-01	VANGUARD	736054	VANGUARD STAR FUND.
241	IM-01	VANGUARD	052848	VANGUARD WORLD FUND INC.
242	IM-01	VANGUARD	105544	WELLESLEY INCOME FUND INC.
243	IM-01	VANGUARD	105563	WELLINGTON FUND INC.
244	IM-01	VANGUARD	107606	WINDSOR FUNDS INC.
245	IM-01	WADDELL & REED	883622	WADDELL & REED FUNDS INC.
246	IM-01	WADDELL & REED	311405	UNITED CASH MANAGEMENT INC.
247	IM-01	WADDELL & REED	101124	UNITED CONTINENTAL INCOME FUND INC.
248	IM-01	WADDELL & REED	217420	UNITED FUNDS INC.
249	IM-01	WADDELL & REED	764842	UNITED GOLD & GOVERNMENT FUND INC.
250	IM-01	WADDELL & REED	702331	UNITED GOVERNMENT SECURITIES FUND INC.
251	IM-01	WADDELL & REED	793300	UNITED HIGH INCOME FUND II INC.
252	IM-01	WADDELL & REED	310254	UNITED HIGH INCOME FUND INC.
253	IM-01	WADDELL & REED	101122	UNITED INTERNATIONAL GROWTH FUND INC.
254	IM-01	WADDELL & REED	203493	UNITED MUNICIPAL BOND FUND INC.
255	IM-01	WADDELL & REED	778807	UNITED MUNICIPAL HIGH INCOME FUND INC.
256	IM-01	WADDELL & REED	716855	UNITED NEW CONCEPTS FUND INC.
257	IM-01	WADDELL & REED	101185	UNITED RETIREMENT SHARES INC.
258	IM-01	WADDELL & REED	101868	UNITED VANGUARD FUND INC.
259	IM-02	DEAN WITTER	351898	ACTIVE ASSETS GOVERNMENT SECURITIES TRUST.
260	IM-02	DEAN WITTER	351895	ACTIVE ASSETS MONEY TRUST.
261	IM-02	DEAN WITTER	351881	ACTIVE ASSETS TAX FREE TRUST.
262	IM-02	DEAN WITTER	745992	DEAN WITTER CALIFORNIA TAX FREE INCOME FUND.
263	IM-02	DEAN WITTER	864229	DEAN WITTER CAPITAL PARTNERS RETIREMENT FUND L P.
264	IM-02	DEAN WITTER	866538	DEAN WITTER GLOBAL SHORT TERM INCOME FUND INC.
265	IM-02	DEAN WITTER	869427	DEAN WITTER MULTI STATE MUNICIPAL SERIES TRUST.
266	IM-02	DEAN WITTER	865276	DEAN WITTER PACIFIC GROWTH FUND INC.
267	IM-02	DEAN WITTER	843963	DEAN WITTER QUALITY INCOME TRUST.
268	IM-02	DEAN WITTER	832705	DEAN WITTER SEARS CALIFORNIA TAX FREE DAILY INCOME TRUST.
269	IM-02	DEAN WITTER	837529	DEAN WITTER STRATEGIST FUND.
270	IM-02	DEAN WITTER	817906	HIGH INCOME ADVANTAGE TRUST.
271	IM-02	DEAN WITTER	836045	HIGH INCOME ADVANTAGE TRUST II.
272	IM-02	DEAN WITTER	843063	HIGH INCOME ADVANTAGE TRUST III.
273	IM-02	DEAN WITTER	861185	INTERCAPITAL INSURED MUNICIPAL BOND TRUST.
274	IM-02	DEAN WITTER	721303	SEARS TAX EXEMPT REINVESTMENT FUND.
275	IM-02	DEAN WITTER	314366	WITTER DEAN AMERICAN VALUE FUND.
276	IM-02	DEAN WITTER	858376	WITTER DEAN CAPITAL GROWTH SECURITIES.
277	IM-02	DEAN WITTER	864228	WITTER DEAN CAPITAL PARTNERS L P.
278	IM-02	DEAN WITTER	769395	WITTER DEAN CONVERTIBLE SECURITIES TRUST.
279	IM-02	DEAN WITTER	711674	WITTER DEAN DEVELOPING GROWTH SECURITIES TRUST.
280	IM-02	DEAN WITTER	350183	WITTER DEAN DIVIDEND GROWTH SECURITIES INC.
281	IM-02	DEAN WITTER	860720	WITTER DEAN EUROPEAN GROWTH FUND INC.
282	IM-02	DEAN WITTER	857248	WITTER DEAN FINANCIAL ASSETS FUND.
283	IM-02	DEAN WITTER	825353	WITTER DEAN GOVERNMENT INCOME TRUST.
284	IM-02	DEAN WITTER	806564	WITTER DEAN GOVERNMENT SECURITIES PLUS.
285	IM-02	DEAN WITTER	311847	WITTER DEAN HIGH YIELD SECURITIES INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
286	IM-02	DEAN WITTER	839302	WITTER DEAN INTERMEDIATE INCOME SECURITIES.
287	IM-02	DEAN WITTER	823504	WITTER DEAN MANAGED ASSETS TRUST.
288	IM-02	DEAN WITTER	350184	WITTER DEAN NATURAL RESOURCE DEVELOPMENT SECURITIES INC.
289	IM-02	DEAN WITTER	763062	WITTER DEAN NEW YORK TAX FREE INCOME FUND.
290	IM-02	DEAN WITTER	755107	WITTER DEAN OPTION INCOME TRUST.
291	IM-02	DEAN WITTER	859034	WITTER DEAN PRECIOUS METALS & MINERALS TRUST.
292	IM-02	DEAN WITTER	093285	WITTER DEAN SEARS LIQUID ASSET FUND INC.
293	IM-02	DEAN WITTER	859037	WITTER DEAN SEARS NEW YORK MUNICIPAL MONEY MARKET TRUST.
294	IM-02	DEAN WITTER	315812	WITTER DEAN SEARS TAX FREE DAILY INCOME TRUST.
295	IM-02	DEAN WITTER	356409	WITTER DEAN SEARS U.S. GOVERNMENT MONEY MARKET TRUST.
296	IM-02	DEAN WITTER	745991	WITTER DEAN TAX ADVANTAGED CORPORATE TRUST.
297	IM-02	DEAN WITTER	314367	WITTER DEAN TAX EXEMPT SECURITIES TRUST.
298	IM-02	DEAN WITTER	730044	WITTER DEAN U.S. GOVERNMENT SECURITIES TRUST.
299	IM-02	DEAN WITTER	826344	WITTER DEAN UTILITIES FUND.
300	IM-02	DEAN WITTER	814657	WITTER DEAN VALUE ADDED MARKET SERIES.
301	IM-02	DEAN WITTER	716716	WITTER DEAN VARIABLE INVESTMENT SERIES.
302	IM-02	DEAN WITTER	844936	WITTER DEAN WORLD WIDE INCOME TRUST.
303	IM-02	DEAN WITTER	723596	WITTER DEAN WORLD WIDE INVESTMENT TRUST.
304	IM-02	DREYFUS	030151	DREYFUS A BONDS PLUS INC.
305	IM-02	DREYFUS	839123	DREYFUS CALIFORNIA MUNICIPAL INCOME INC.
306	IM-02	DREYFUS	720064	DREYFUS CALIFORNIA TAX EXEMPT BOND FUND INC.
307	IM-02	DREYFUS	762855	DREYFUS CALIFORNIA TAX EXEMPT MONEY MARKET FUND.
308	IM-02	DREYFUS	737768	DREYFUS CAPITAL VALUE FUND INC.
309	IM-02	DREYFUS	759667	DREYFUS CASH MANAGEMENT.
310	IM-02	DREYFUS	820482	DREYFUS CASH MANAGEMENT PLUS INC.
311	IM-02	DREYFUS	824932	DREYFUS CONNECTICUT TAX EXEMPT BOND FUND INC.
312	IM-02	DREYFUS	030164	DREYFUS CONVERTIBLE SECURITIES FUND INC.
313	IM-02	DREYFUS	779994	DREYFUS CORPORATE CASH TRUST.
314	IM-02	DREYFUS	707723	DREYFUS DOLLAR INTERNATIONAL FUND INC.
315	IM-02	DREYFUS	873639	DREYFUS EDISON ELECTRIC INDEX FUND INC.
316	IM-02	DREYFUS	811789	DREYFUS FOREIGN INVESTORS GNMA FUND LP.
317	IM-02	DREYFUS	811858	DREYFUS FOREIGN INVESTORS U.S. GOVERNMENT BOND FUND LP.
318	IM-02	DREYFUS	030146	DREYFUS FUND INC.
319	IM-02	DREYFUS	881773	DREYFUS GLOBAL INVESTING INC.
320	IM-02	DREYFUS	762156	DREYFUS GNMA FUND INC.
321	IM-02	DREYFUS	870783	DREYFUS GOVERNMENT & AGENCIES MONEY MARKET FUND.
322	IM-02	DREYFUS	740766	DREYFUS GOVERNMENT CASH MANAGEMENT.
323	IM-02	DREYFUS	820523	DREYFUS GOVERNMENT CASH MANAGEMENT PLUS INC.
324	IM-02	DREYFUS	844068	DREYFUS GROWTH & INCOME FUND INC.
325	IM-02	DREYFUS	030162	DREYFUS GROWTH OPPORTUNITY FUND INC.
326	IM-02	DREYFUS	863245	DREYFUS HIGHEST QUALITY GOVERNMENT SECURITIES MONEY FUND.
327	IM-02	DREYFUS	810539	DREYFUS INDEX FUND.
328	IM-02	DREYFUS	315783	DREYFUS INSTITUTIONAL MONEY MARKET FUND INC.
329	IM-02	DREYFUS	763897	DREYFUS INSURED MUNICIPAL BOND FUND INC.
330	IM-02	DREYFUS	718935	DREYFUS INTERMEDIATE MUNICIPAL BOND FUND INC.
331	IM-02	DREYFUS	862284	DREYFUS INVESTMENT GRADE MUNICIPAL FUND INC.
332	IM-02	DREYFUS	030156	DREYFUS LEVERAGE FUND INC. /NY/.
333	IM-02	DREYFUS	846800	DREYFUS LIFE & ANNUITY INDEX FUND INC.
334	IM-02	DREYFUS	030158	DREYFUS LIQUID ASSETS INC.
335	IM-02	DREYFUS	871967	DREYFUS MASSACHUSETTS MUNICIPAL MONEY MARKET FUND.
336	IM-02	DREYFUS	765823	DREYFUS MASSACHUSETTS TAX EXEMPT BOND FUND.
337	IM-02	DREYFUS	863510	DREYFUS MICHIGAN MUNICIPAL MONEY MARKET FUND INC.
338	IM-02	DREYFUS	030160	DREYFUS MONEY MARKET INSTRUMENTS INC.
339	IM-02	DREYFUS	867955	DREYFUS MUNICIPAL CASH MANAGEMENT PLUS.
340	IM-02	DREYFUS	839122	DREYFUS MUNICIPAL INCOME INC.
341	IM-02	DREYFUS	828475	DREYFUS NEW JERSEY MUNICIPAL BOND FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
342	IM-02	DREYFUS	823341	DREYFUS NEW JERSEY TAX EXEMPT BOND FUND LP.
343	IM-02	DREYFUS	831363	DREYFUS NEW JERSEY TAX EXEMPT MONEY MARKET FUND INC.
344	IM-02	DREYFUS	737520	DREYFUS NEW LEADERS FUND INC.
345	IM-02	DREYFUS	804260	DREYFUS NEW YORK INSURED TAX EXEMPT BOND FUND.
346	IM-02	DREYFUS	878734	DREYFUS NEW YORK MUNICIPAL CASH MANAGEMENT.
347	IM-02	DREYFUS	839124	DREYFUS NEW YORK MUNICIPAL INCOME INC
348	IM-02	DREYFUS	723765	DREYFUS NEW YORK TAX EXEMPT BOND FUND INC. /NEW/.
349	IM-02	DREYFUS	814217	DREYFUS NEW YORK TAX EXEMPT INTERMEDIATE BOND FUND.
350	IM-02	DREYFUS	814236	DREYFUS NEW YORK TAX EXEMPT MONEY MARKET FUND/NY.
351	IM-02	DREYFUS	863558	DREYFUS OHIO MUNICIPAL MONEY MARKET FUND INC.
352	IM-02	DREYFUS	779128	DREYFUS ONE HUNDRED PERCENT TREASURY MONEY MARKET FUND LP.
353	IM-02	DREYFUS	865440	DREYFUS PENNSYLVANIA MUNICIPAL MONEY MARKET FUND.
354	IM-02	DREYFUS	863509	DREYFUS PENNSYLVANIA MUNICIPAL MONEY MARKET FUND INC.
355	IM-02	DREYFUS	804887	DREYFUS SHORT INTERMEDIATE GOVERNMENT FUND.
356	IM-02	DREYFUS	810305	DREYFUS SHORT INTERMEDIATE TAX EXEMPT BOND FUND.
357	IM-02	DREYFUS	810540	DREYFUS STRATEGIC AGGRESSIVE INVESTING LP.
358	IM-02	DREYFUS	832534	DREYFUS STRATEGIC GOVERNMENTS INCOME INC.
359	IM-02	DREYFUS	797073	DREYFUS STRATEGIC INCOME.
360	IM-02	DREYFUS	794280	DREYFUS STRATEGIC INVESTING.
361	IM-02	DREYFUS	855887	DREYFUS STRATEGIC MUNICIPAL BOND FUND INC.
362	IM-02	DREYFUS	818972	DREYFUS STRATEGIC MUNICIPALS INC.
363	IM-02	DREYFUS	794387	DREYFUS STRATEGIC WORLD INCOME.
364	IM-02	DREYFUS	794386	DREYFUS STRATEGIC WORLD INVESTING LP.
365	IM-02	DREYFUS	820707	DREYFUS STRATEGIC WORLD REVENUES LP.
366	IM-02	DREYFUS	075176	DREYFUS TAX EXEMPT BOND FUND INC.
367	IM-02	DREYFUS	740123	DREYFUS TAX EXEMPT CASH MANAGEMENT.
368	IM-02	DREYFUS	312564	DREYFUS TAX EXEMPT MONEY MARKET FUND INC.
369	IM-02	DREYFUS	030167	DREYFUS THIRD CENTURY FUND INC.
370	IM-02	DREYFUS	796251	DREYFUS TREASURY CASH MANAGEMENT.
371	IM-02	DREYFUS	843781	DREYFUS TREASURY PRIME CASH MANAGEMENT.
372	IM-02	DREYFUS	779129	DREYFUS U.S. GOVERNMENT BOND FUND LP.
373	IM-02	DREYFUS	779131	DREYFUS U.S. GOVERNMENT INTERMEDIATE SECURITIES LP.
374	IM-02	DREYFUS	813383	DREYFUS VARIABLE INVESTMENT FUND.
375	IM-02	DREYFUS	846421	DREYFUS WORLDWIDE DOLLAR MONEY MARKET FUND INC.
376	IM-02	DREYFUS	762126	FIRST PRAIRIE DIVERSIFIED ASSET FUND
377	IM-02	DREYFUS	763065	FIRST PRAIRIE MONEY MARKET FUND.
378	IM-02	DREYFUS	826302	FIRST PRAIRIE TAX EXEMPT BOND FUND INC.
379	IM-02	DREYFUS	762123	FIRST PRAIRIE TAX EXEMPT MONEY MARKET FUND.
380	IM-02	DREYFUS	831958	FN NETWORK TAX FREE MONEY MARKET FUND INC.
381	IM-02	DREYFUS	318478	GENERAL AGGRESSIVE GROWTH FUND INC
382	IM-02	DREYFUS	854857	GENERAL CALIFORNIA MUNICIPAL BOND FUND INC. /NY/.
383	IM-02	DREYFUS	803951	GENERAL CALIFORNIA MUNICIPAL MONEY MARKET FUND.
384	IM-02	DREYFUS	702172	GENERAL GOVERNMENT SECURITIES MONEY MARKET FUND INC.
385	IM-02	DREYFUS	353560	GENERAL MONEY MARKET FUND INC.
386	IM-02	DREYFUS	357063	GENERAL MUNICIPAL BOND FUND INC.
387	IM-02	DREYFUS	703153	GENERAL MUNICIPAL MONEY MARKET FUND INC.
388	IM-02	DREYFUS	750002	GENERAL NEW YORK MUNICIPAL BOND FUND INC.
389	IM-02	DREYFUS	803950	GENERAL NEW YORK MUNICIPAL MONEY MARKET FUND.
390	IM-02	DREYFUS	857114	PEOPLES INDEX FUND INC.
391	IM-02	DREYFUS	797925	PREMIER CALIFORNIA TAX EXEMPT BOND FUND.
392	IM-02	DREYFUS	804171	PREMIER GNMA FUND.
393	IM-02	DREYFUS	797072	PREMIER INCOME FUND.
394	IM-02	DREYFUS	797923	PREMIER MUNICIPAL BOND FUND.
395	IM-02	DREYFUS	797920	PREMIER NEW YORK MUNICIPAL BOND FUND
396	IM-02	DREYFUS	806176	PREMIER STATE MUNICIPAL BOND FUND
397	IM-02	FIDELITY	028540	DAILY MONEY FUND/MA/.
398	IM-02	FIDELITY	704207	DAILY TAX EXEMPT MONEY FUND
399	IM-02	FIDELITY	722574	EQUITY PORTFOLIO GROWTH

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
400	IM-02	FIDELITY	702533	EQUITY PORTFOLIO INCOME.
401	IM-02	FIDELITY	311884	FIDELITY BEACON STREET TRUST.
402	IM-02	FIDELITY	718891	FIDELITY CALIFORNIA MUNICIPAL TRUST.
403	IM-02	FIDELITY	275309	FIDELITY CAPITAL TRUST.
404	IM-02	FIDELITY	278001	FIDELITY CASH RESERVES FUND.
405	IM-02	FIDELITY	354046	FIDELITY CHARLES STREET TRUST.
406	IM-02	FIDELITY	205323	FIDELITY COMMONWEALTH TRUST.
407	IM-02	FIDELITY	023355	FIDELITY CONGRESS STREET FUND.
408	IM-02	FIDELITY	024238	FIDELITY CONTRAFUND.
409	IM-02	FIDELITY	746264	FIDELITY CORPORATE TRUST.
410	IM-02	FIDELITY	225323	FIDELITY COURT STREET TRUST.
411	IM-02	FIDELITY	035331	FIDELITY DESTINY PORTFOLIOS.
412	IM-02	FIDELITY	812574	FIDELITY DEUTSCHE MARK PERFORMANCE PORTFOLIO LP.
413	IM-02	FIDELITY	035341	FIDELITY DEVONSHIRE TRUST.
414	IM-02	FIDELITY	320254	FIDELITY EXCHANGE FUND.
415	IM-02	FIDELITY	708191	FIDELITY FINANCIAL TRUST.
416	IM-02	FIDELITY	035315	FIDELITY FIXED INCOME TRUST.
417	IM-02	FIDELITY	035348	FIDELITY FUND.
418	IM-02	FIDELITY	276773	FIDELITY GOVERNMENT SECURITIES FUND.
419	IM-02	FIDELITY	035353	FIDELITY INCOME FUND.
420	IM-02	FIDELITY	751199	FIDELITY INCOME FUND /MA/.
421	IM-02	FIDELITY	356173	FIDELITY INSTITUTIONAL CASH PORTFOLIOS.
422	IM-02	FIDELITY	700859	FIDELITY INSTITUTIONAL TAX EXEMPT CASH PORTFOLIOS.
423	IM-02	FIDELITY	819118	FIDELITY INSTITUTIONAL TRUST.
424	IM-02	FIDELITY	744822	FIDELITY INVESTMENT TRUST.
425	IM-02	FIDELITY	215829	FIDELITY LIMITED TERM MUNICIPALS.
426	IM-02	FIDELITY	061397	FIDELITY MAGELLAN FUND INC.
427	IM-02	FIDELITY	357057	FIDELITY MASSACHUSETTS TAX FREE FUND.
428	IM-02	FIDELITY	276516	FIDELITY MONEY MARKET TRUST.
429	IM-02	FIDELITY	707823	FIDELITY MOUNT VERNON STREET TRUST.
430	IM-02	FIDELITY	035373	FIDELITY MUNICIPAL TRUST.
431	IM-02	FIDELITY	814231	FIDELITY NEW JERSEY TAX FREE PORTFOLIO LP.
432	IM-02	FIDELITY	718581	FIDELITY NEW YORK MUNICIPAL TRUST.
433	IM-02	FIDELITY	035390	FIDELITY PREFERRED TRUST.
434	IM-02	FIDELITY	081205	FIDELITY PURITAN TRUST.
435	IM-02	FIDELITY	318013	FIDELITY QUALIFIED DIVIDEND FUND.
436	IM-02	FIDELITY	754510	FIDELITY SECURITIES FUND.
437	IM-02	FIDELITY	320351	FIDELITY SELECT PORTFOLIOS.
438	IM-02	FIDELITY	729218	FIDELITY SPECIAL SITUATIONS FUND.
439	IM-02	FIDELITY	812575	FIDELITY STERLING PERFORMANCE PORTFOLIO LP.
440	IM-02	FIDELITY	225322	FIDELITY SUMMER STREET TRUST.
441	IM-02	FIDELITY	035402	FIDELITY TREND FUND.
442	IM-02	FIDELITY	312031	FIDELITY TRIAD FUND INC.
443	IM-02	FIDELITY	814066	FIDELITY U.S. INVESTMENTS BOND FUND LP.
444	IM-02	FIDELITY	814136	FIDELITY U.S. INVESTMENTS GOVERNMENT SECURITIES FUND LP.
445	IM-02	FIDELITY	035330	FIDELITY UNION STREET TRUST.
446	IM-02	FIDELITY	812573	FIDELITY YEN PERFORMANCE PORTFOLIO LP.
447	IM-02	FIDELITY	702980	FINANCIAL RESERVES FUND.
448	IM-02	FIDELITY	719451	INCOME PORTFOLIOS.
449	IM-02	FIDELITY	702149	NORTH CAROLINA CASH MANAGEMENT TRUST.
450	IM-02	FIDELITY	795422	PLYMOUTH FUND.
451	IM-02	FIDELITY	803013	PLYMOUTH INVESTMENT SERIES /NY/.
452	IM-02	FIDELITY	315700	PLYMOUTH SECURITIES TRUST.
453	IM-02	FIDELITY	823535	SPARTAN U.S. TREASURY MONEY MARKET FUND.
454	IM-02	FIDELITY	720318	TAX EXEMPT PORTFOLIOS.
455	IM-02	FIDELITY	356494	VARIABLE INSURANCE PRODUCTS FUND.
456	IM-02	FIDELITY	831016	VARIABLE INSURANCE PRODUCTS FUND II.
457	IM-02	FIDELITY	789865	ZERO COUPON BOND FUND.
458	IM-02	IDS	353968	IDS LIFE CAPITAL RESOURCE FUND INC.
459	IM-02	IDS	764546	IDS LIFE MANAGED FUND INC.
460	IM-02	IDS	353315	IDS LIFE MONEYSHARE FUND INC.
461	IM-02	IDS	768845	IDS LIFE SERIES FUND INC.
462	IM-02	IDS	353967	IDS LIFE SPECIAL INCOME FUND INC.
463	IM-02	IDS	049706	IDS LIFE VARIABLE ANNUITY FUND A.
464	IM-02	IDS	049707	IDS LIFE VARIABLE ANNUITY FUND B.
465	IM-02	IDS	768836	IDS LIFE VARIABLE LIFE SEPARATE ACCOUNT.
466	IM-02	MERRILL LYNCH	817998	APEX MUNICIPAL FUND INC.
467	IM-02	MERRILL LYNCH	717288	CBA MONEY FUND.
468	IM-02	MERRILL LYNCH	830630	CMA CALIFORNIA TAX EXEMPT FUND OF CMA MULTI-STATE MUN SER TR.
469	IM-02	MERRILL LYNCH	353480	CMA GOVERNMENT SECURITIES FUND
470	IM-02	MERRILL LYNCH	862958	CMA MASS TAX EXEMPT FUND OF CMA MUL-ST MUN SER TRUST.
471	IM-02	MERRILL LYNCH	215457	CMA MONEY FUND.
472	IM-02	MERRILL LYNCH	863034	CMA NEW JERSEY TAX EXEMPT FUND OF CMA MULTI-STATE MUNICIPAL.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
473	IM-02	MERRILL LYNCH	810598	CMA NEW YORK LTD MAT FUND OF CMA MULTI-STATE MUN SER TRUST.
474	IM-02	MERRILL LYNCH	863036	CMA PENNSYLVANIA TAX EXEMPT FUND OF CMA MULTI-STATE MUNICIPAL.
475	IM-02	MERRILL LYNCH	320281	CMA TAX EXEMPT TRUST.
476	IM-02	MERRILL LYNCH	791121	FALCON DIVERSIFIED HOLDINGS INC.
477	IM-02	MERRILL LYNCH	278211	GOVERNMENT SECURITIES INCOME FUND.
478	IM-02	MERRILL LYNCH	855021	LMS MONEY FUND.
479	IM-02	MERRILL LYNCH	216557	MERRILL LYNCH BASIC VALUE FUND INC.
480	IM-02	MERRILL LYNCH	851113	MERRILL LYNCH CALIFORNIA HIGH YIELD MUNICIPAL FUND INC.
481	IM-02	MERRILL LYNCH	765199	MERRILL LYNCH CALIFORNIA MUNICIPAL BOND FUND.
482	IM-02	MERRILL LYNCH	110055	MERRILL LYNCH CAPITAL FUND INC.
483	IM-02	MERRILL LYNCH	850917	MERRILL LYNCH COMMUNITY SERVICES FUND INC.
484	IM-02	MERRILL LYNCH	276463	MERRILL LYNCH CORPORATE BOND FUND INC. / NY.
485	IM-02	MERRILL LYNCH	733258	MERRILL LYNCH CORPORATE DIVIDEND FUND INC.
486	IM-02	MERRILL LYNCH	849402	MERRILL LYNCH DEVELOPING CAPITAL MARKETS FUND INC.
487	IM-02	MERRILL LYNCH	225634	MERRILL LYNCH EQUI BOND I FUND INC.
488	IM-02	MERRILL LYNCH	790525	MERRILL LYNCH EUROFUND.
489	IM-02	MERRILL LYNCH	750406	MERRILL LYNCH FEDERAL SECURITIES TRUST.
490	IM-02	MERRILL LYNCH	730168	MERRILL LYNCH FUND FOR TOMORROW INC.
491	IM-02	MERRILL LYNCH	814079	MERRILL LYNCH FUNDS FOR INSTITUTIONS SERIES.
492	IM-02	MERRILL LYNCH	834237	MERRILL LYNCH GLOBAL ALLOCATION FUND INC.
493	IM-02	MERRILL LYNCH	825306	MERRILL LYNCH GLOBAL CONVERTIBLE FUND INC
494	IM-02	MERRILL LYNCH	868452	MERRILL LYNCH GLOBAL UTILITY FUND INC.
495	IM-02	MERRILL LYNCH	106810	MERRILL LYNCH GOVERNMENT FUND INC.
496	IM-02	MERRILL LYNCH	867189	MERRILL LYNCH HIGH INCOME MUNICIPAL BOND FUND INC.
497	IM-02	MERRILL LYNCH	106811	MERRILL LYNCH INSTITUTIONAL FUND INC.
498	IM-02	MERRILL LYNCH	820611	MERRILL LYNCH INSTITUTIONAL INDEX SERIES.
499	IM-02	MERRILL LYNCH	801421	MERRILL LYNCH INSTITUTIONAL INTERMEDIATE FUND.
500	IM-02	MERRILL LYNCH	725741	MERRILL LYNCH INSTITUTIONAL TAX EXEMPT FUND.
501	IM-02	MERRILL LYNCH	741886	MERRILL LYNCH INTERNATIONAL HOLDINGS INC.
502	IM-02	MERRILL LYNCH	877151	MERRILL LYNCH LATIN AMERICA FUND INC.
503	IM-02	MERRILL LYNCH	774013	MERRILL LYNCH MULTI STATE MUNICIPAL SERIES TRUST.
504	IM-02	MERRILL LYNCH	225635	MERRILL LYNCH MUNICIPAL BOND FUND INC.
505	IM-02	MERRILL LYNCH	799113	MERRILL LYNCH MUNICIPAL SERIES TRUST.
506	IM-02	MERRILL LYNCH	786555	MERRILL LYNCH NATURAL RESOURCES TRUST.
507	IM-02	MERRILL LYNCH	864995	MERRILL LYNCH NEW JERSEY MUNICIPAL BOND FUND.
508	IM-02	MERRILL LYNCH	202741	MERRILL LYNCH PACIFIC FUND INC.
509	IM-02	MERRILL LYNCH	819628	MERRILL LYNCH PENNSYLVANIA MUNICIPAL BOND FUND.
510	IM-02	MERRILL LYNCH	701960	MERRILL LYNCH PHOENIX FUND INC.
511	IM-02	MERRILL LYNCH	853911	MERRILL LYNCH PRIME FUND INC.
512	IM-02	MERRILL LYNCH	065109	MERRILL LYNCH READY ASSETS TRUST.
513	IM-02	MERRILL LYNCH	748637	MERRILL LYNCH RETIREMENT BENEFIT INVESTMENT PROGRAM INC.
514	IM-02	MERRILL LYNCH	807907	MERRILL LYNCH RETIREMENT EQUITY FUND.
515	IM-02	MERRILL LYNCH	794220	MERRILL LYNCH RETIREMENT GLOBAL BOND FUND.
516	IM-02	MERRILL LYNCH	786707	MERRILL LYNCH RETIREMENT INCOME FUND INC
517	IM-02	MERRILL LYNCH	356013	MERRILL LYNCH RETIREMENT SERIES TRUST.
518	IM-02	MERRILL LYNCH	882681	MERRILL LYNCH SHORT-TERM GLOBAL INCOME FUND INC.
519	IM-02	MERRILL LYNCH	230382	MERRILL LYNCH SPECIAL VALUE FUND INC.
520	IM-02	MERRILL LYNCH	814507	MERRILL LYNCH STRATEGIC DIVIDEND FUND.
521	IM-02	MERRILL LYNCH	869663	MERRILL LYNCH TREASURY ASSETS FUND.
522	IM-02	MERRILL LYNCH	704957	MERRILL LYNCH USA GOVERNMENT RESERVES
523	IM-02	MERRILL LYNCH	837227	ML OKLAHOMA VENTURE PARTNERS LIMITED PARTNERSHIP.
524	IM-02	MERRILL LYNCH	789538	ML VENTURE PARTNERS II LP.
525	IM-02	MERRILL LYNCH	844172	MUNIENHANCED FUND INC.
526	IM-02	MERRILL LYNCH	818436	MUNIINSURED FUND INC.
527	IM-02	MERRILL LYNCH	835948	MUNIVEST FUND INC.
528	IM-02	MERRILL LYNCH	709140	SCI TECH HOLDINGS INC.
529	IM-02	MERRILL LYNCH	857086	TAURUS MUNICALIFORNIA HOLDINGS INC.
530	IM-02	MERRILL LYNCH	857099	TAURUS MUNINEWYORK HOLDINGS INC.
531	IM-02	MERRILL LYNCH	835620	WORLD INCOME FUND INC.
532	IM-02	MFS	746288	GOVERNMENT SECURITIES VARIABLE ACCOUNT / MA/.
533	IM-02	MFS	798243	LIFETIME CAPITAL GROWTH TRUST.
534	IM-02	MFS	798250	LIFETIME EMERGING GROWTH TRUST.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
535	IM-02	MFS	798234	LIFETIME GLOBAL EQUITY TRUST.
536	IM-02	MFS	830973	LIFETIME GOLD & PRECIOUS METALS TRUST.
537	IM-02	MFS	798235	LIFETIME GOVERNMENT INCOME PLUS TRUST.
538	IM-02	MFS	798245	LIFETIME HIGH INCOME TRUST.
539	IM-02	MFS	830974	LIFETIME INTERMEDIATE INCOME TRUST.
540	IM-02	MFS	798236	LIFETIME MANAGED MUNICIPAL BOND TRUST.
541	IM-02	MFS	798244	LIFETIME MANAGED SECTORS TRUST.
542	IM-02	MFS	798249	LIFETIME MONEY MARKET TRUST.
543	IM-02	MFS	843390	LIFETIME QUALITY BOND TRUST.
544	IM-02	MFS	811090	LIFETIME TOTAL RETURN TRUST /MA/.
545	IM-02	MFS	827121	MANAGED SECTORS VARIABLE ACCOUNT.
546	IM-02	MFS	063067	MASSACHUSETTS CAPITAL DEVELOPMENT FUND INC.
547	IM-02	MFS	063068	MASSACHUSETTS CASH MANAGEMENT TRUST.
548	IM-02	MFS	063075	MASSACHUSETTS FINANCIAL BOND FUND.
549	IM-02	MFS	200488	MASSACHUSETTS FINANCIAL DEVELOPMENT FUND INC.
550	IM-02	MFS	354443	MASSACHUSETTS FINANCIAL EMERGING GROWTH TRUST.
551	IM-02	MFS	225604	MASSACHUSETTS FINANCIAL HIGH INCOME TRUST.
552	IM-02	MFS	318874	MASSACHUSETTS FINANCIAL INTERNATIONAL TRUST BOND PORTFOLIO.
553	IM-02	MFS	717243	MASSACHUSETTS FINANCIAL SPECIAL FUND.
554	IM-02	MFS	200489	MASSACHUSETTS FINANCIAL TOTAL RETURN TRUST.
555	IM-02	MFS	063090	MASSACHUSETTS INVESTORS GROWTH STOCK FUND INC.
556	IM-02	MFS	063091	MASSACHUSETTS INVESTORS TRUST.
557	IM-02	MFS	851170	MFS CHARTER INCOME TRUST.
558	IM-02	MFS	356349	MFS GOVERNMENT GUARANTEED SECURITIES TRUST.
559	IM-02	MFS	783740	MFS GOVERNMENT INCOME PLUS TRUST.
560	IM-02	MFS	811922	MFS GOVERNMENT MARKETS INCOME TRUST.
561	IM-02	MFS	764719	MFS GOVERNMENT PREMIUM ACCOUNT.
562	IM-02	MFS	819673	MFS INCOME & OPPORTUNITY TRUST.
563	IM-02	MFS	826735	MFS INTERMEDIATE INCOME TRUST.
564	IM-02	MFS	766300	MFS MANAGED CALIFORNIA MUNICIPAL BOND TRUST.
565	IM-02	MFS	736466	MFS MANAGED HIGH YIELD MUNICIPAL BOND TRUST.
566	IM-02	MFS	751656	MFS MANAGED MULTI-STATE MUNICIPAL BOND TRUST.
567	IM-02	MFS	202570	MFS MANAGED MUNICIPAL BOND TRUST.
568	IM-02	MFS	788958	MFS MANAGED SECTORS TRUST.
569	IM-02	MFS	879808	MFS MANAGED UTILITIES TRUST.
570	IM-02	MFS	809173	MFS MULTIMARKET INCOME TRUST.
571	IM-02	MFS	832998	MFS MULTIMARKET TOTAL RETURN TRUST.
572	IM-02	MFS	801961	MFS MUNICIPAL INCOME TRUST.
573	IM-02	MFS	856128	MFS SPECIAL VALUE TRUST.
574	IM-02	MFS	719269	MFS SUN LIFE SERIES TRUST.
575	IM-02	MFS	863032	MFS WORLDWIDE TOTAL RETURN TRUST.
576	IM-02	MFS	315673	MUNICIPAL WORKING CAPITAL TRUST.
577	IM-02	MFS	095324	SUN GROWTH VARIABLE ANNUITY FUND INC.
578	IM-02	MFS	827119	TOTAL RETURN VARIABLE ACCOUNT.
579	IM-02	OPPENHEIMER	833331	ADVANCE AMERICA FUNDS INC. /CO/.
580	IM-02	OPPENHEIMER	854437	CENTENNIAL CALIFORNIA TAX EXEMPT TRUST.
581	IM-02	OPPENHEIMER	858798	CENTENNIAL CONNECTICUT TAX-EXEMPT TRUST.
582	IM-02	OPPENHEIMER	355471	CENTENNIAL GOVERNMENT TRUST.
583	IM-02	OPPENHEIMER	357247	CENTENNIAL GOVERNMENT TRUST /CO/.
584	IM-02	OPPENHEIMER	312538	CENTENNIAL MONEY MARKET TRUST.
585	IM-02	OPPENHEIMER	837278	CENTENNIAL NEW YORK TAX EXEMPT TRUST.
586	IM-02	OPPENHEIMER	319880	CENTENNIAL TAX EXEMPT TRUST /CO/.
587	IM-02	OPPENHEIMER	045129	DAILY CASH ACCUMULATION FUND INC.
588	IM-02	OPPENHEIMER	811267	FIRST TRUST AMERICA FUND LP.
589	IM-02	OPPENHEIMER	788303	FIRST TRUST FUND.
590	IM-02	OPPENHEIMER	799102	FIRST TRUST TAX FREE BOND FUND.
591	IM-02	OPPENHEIMER	823483	MAIN STREET FUNDS INC.
592	IM-02	OPPENHEIMER	820090	NEW YORK TAX EXEMPT INCOME FUND INC.
593	IM-02	OPPENHEIMER	729968	OPPENHEIMER ASSET ALLOCATION FUND.
594	IM-02	OPPENHEIMER	795737	OPPENHEIMER BLUE CHIP FUND.
595	IM-02	OPPENHEIMER	837441	OPPENHEIMER CALIFORNIA TAX EXEMPT FUND.
596	IM-02	OPPENHEIMER	836423	OPPENHEIMER CASH RESERVES.
597	IM-02	OPPENHEIMER	820120	OPPENHEIMER CHAMPION HIGH YIELD FUND.
598	IM-02	OPPENHEIMER	276302	OPPENHEIMER DIRECTORS FUND.
599	IM-02	OPPENHEIMER	777547	OPPENHEIMER DISCOVERY FUND.
600	IM-02	OPPENHEIMER	045156	OPPENHEIMER EQUITY INCOME FUND INC.
601	IM-02	OPPENHEIMER	074661	OPPENHEIMER FUND.
602	IM-02	OPPENHEIMER	824610	OPPENHEIMER GLOBAL BIOTECH FUND.
603	IM-02	OPPENHEIMER	857636	OPPENHEIMER GLOBAL ENVIRONMENT FUND.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
604	IM-02	OPPENHEIMER	074658	OPPENHEIMER GLOBAL FUND.
605	IM-02	OPPENHEIMER	861457	OPPENHEIMER GLOBAL GROWTH & INCOME FUND.
606	IM-02	OPPENHEIMER	862118	OPPENHEIMER GLOBAL SECURITIES FUND.
607	IM-02	OPPENHEIMER	795640	OPPENHEIMER GNMA FUND.
608	IM-02	OPPENHEIMER	716836	OPPENHEIMER GOLD & SPECIAL MINERALS FUND
609	IM-02	OPPENHEIMER	276195	OPPENHEIMER HIGH YIELD FUND INC.
610	IM-02	OPPENHEIMER	701265	OPPENHEIMER INTEGRITY FUNDS.
611	IM-02	OPPENHEIMER	074673	OPPENHEIMER MONEY MARKET FUND INC.
612	IM-02	OPPENHEIMER	841057	OPPENHEIMER MULTI-GOVERNMENT TRUST.
613	IM-02	OPPENHEIMER	829801	OPPENHEIMER MULTI-SECTOR INCOME TRUST.
614	IM-02	OPPENHEIMER	748009	OPPENHEIMER NEW YORK TAX EXEMPT FUND.
615	IM-02	OPPENHEIMER	763539	OPPENHEIMER NINETY TEN FUND.
616	IM-02	OPPENHEIMER	853593	OPPENHEIMER PENNSYLVANIA TAX EXEMPT FUND
617	IM-02	OPPENHEIMER	216781	OPPENHEIMER PREMIUM INCOME FUND
618	IM-02	OPPENHEIMER	707807	OPPENHEIMER REGENCY FUND.
619	IM-02	OPPENHEIMER	074676	OPPENHEIMER SPECIAL FUND INC.
620	IM-02	OPPENHEIMER	850134	OPPENHEIMER STRATEGIC INCOME FUND.
621	IM-02	OPPENHEIMER	319767	OPPENHEIMER TARGET FUND.
622	IM-02	OPPENHEIMER	836424	OPPENHEIMER TAX EXEMPT CASH RESERVES.
623	IM-02	OPPENHEIMER	275857	OPPENHEIMER TAX FREE BOND FUND.
624	IM-02	OPPENHEIMER	074679	OPPENHEIMER TIME FUND INC.
625	IM-02	OPPENHEIMER	045147	OPPENHEIMER TOTAL RETURN FUND INC.
626	IM-02	OPPENHEIMER	701382	OPPENHEIMER US GOVERNMENT TRUST.
627	IM-02	OPPENHEIMER	752737	OPPENHEIMER VARIABLE ACCOUNT FUNDS.
628	IM-02	PRUDENTIAL	355349	COMMAND GOVERNMENT FUND.
629	IM-02	PRUDENTIAL	355347	COMMAND MONEY FUND.
630	IM-02	PRUDENTIAL	355348	COMMAND TAX FREE FUND.
631	IM-02	PRUDENTIAL	820675	FIRST IBERIAN FUND INC.
632	IM-02	PRUDENTIAL	813339	GLOBAL GOVERNMENT PLUS FUND INC.
633	IM-02	PRUDENTIAL	843091	GLOBAL UTILITY FUND INC.
634	IM-02	PRUDENTIAL	793159	GLOBAL YIELD FUND INC.
635	IM-02	PRUDENTIAL	820537	HIGH YIELD INCOME FUND INC.
636	IM-02	PRUDENTIAL	746516	PRUDENTIAL BACHE CALIFORNIA MUNICIPAL FUND.
637	IM-02	PRUDENTIAL	861283	PRUDENTIAL BACHE CONTRAVALUE FUND INC.
638	IM-02	PRUDENTIAL	356683	PRUDENTIAL BACHE EQUITY FUND INC.
639	IM-02	PRUDENTIAL	803191	PRUDENTIAL BACHE EQUITY INCOME FUND.
640	IM-02	PRUDENTIAL	811444	PRUDENTIAL BACHE FLEXIFUND.
641	IM-02	PRUDENTIAL	741350	PRUDENTIAL BACHE GLOBAL FUND INC.
642	IM-02	PRUDENTIAL	819189	PRUDENTIAL BACHE GLOBAL GENESIS FUND INC.
643	IM-02	PRUDENTIAL	816753	PRUDENTIAL BACHE GLOBAL NATURAL RESOURCES FUND INC.
644	IM-02	PRUDENTIAL	700662	PRUDENTIAL BACHE GNMA FUND INC.
645	IM-02	PRUDENTIAL	778364	PRUDENTIAL BACHE GOVERNMENT PLUS FUND.
646	IM-02	PRUDENTIAL	717819	PRUDENTIAL BACHE GOVERNMENT PLUS FUND INC.
647	IM-02	PRUDENTIAL	355605	PRUDENTIAL BACHE GOVERNMENT SECURITIES TRUST.
648	IM-02	PRUDENTIAL	318531	PRUDENTIAL BACHE GROWTH OPPORTUNITY FUND INC.
649	IM-02	PRUDENTIAL	278187	PRUDENTIAL BACHE HIGH YIELD FUND INC.
650	IM-02	PRUDENTIAL	317326	PRUDENTIAL BACHE INCOMEVERTIBLE PLUS FUND INC.
651	IM-02	PRUDENTIAL	067590	PRUDENTIAL BACHE MONEYMART ASSETS INC.
652	IM-02	PRUDENTIAL	860916	PRUDENTIAL BACHE MULTI-SECTOR FUND INC.
653	IM-02	PRUDENTIAL	807394	PRUDENTIAL BACHE MUNICIPAL BOND FUND.
654	IM-02	PRUDENTIAL	746382	PRUDENTIAL BACHE MUNICIPAL SERIES FUND.
655	IM-02	PRUDENTIAL	314612	PRUDENTIAL BACHE NATIONAL MUNICIPALS FUND INC.
656	IM-02	PRUDENTIAL	702168	PRUDENTIAL BACHE OPTION GROWTH FUND INC.
657	IM-02	PRUDENTIAL	717342	PRUDENTIAL BACHE RESEARCH FUND INC.
658	IM-02	PRUDENTIAL	861002	PRUDENTIAL BACHE SHORT TERM GLOBAL INCOME FUND INC.
659	IM-02	PRUDENTIAL	856715	PRUDENTIAL BACHE SPECIAL MONEY MARKET FUND INC.
660	IM-02	PRUDENTIAL	848445	PRUDENTIAL BACHE SPECIAL SITUATIONS FUND LP.
661	IM-02	PRUDENTIAL	826596	PRUDENTIAL BACHE STRATEGIC INCOME FUND INC.
662	IM-02	PRUDENTIAL	834126	PRUDENTIAL BACHE STRUCTURED MATURITY FUND INC.
663	IM-02	PRUDENTIAL	311561	PRUDENTIAL BACHE TAX FREE MONEY FUND INC
664	IM-02	PRUDENTIAL	782409	PRUDENTIAL BACHE US GOVERNMENT FUND.
665	IM-02	PRUDENTIAL	352865	PRUDENTIAL BACHE UTILITY FUND INC.
666	IM-02	PRUDENTIAL	814129	PRUDENTIAL EMPLOYEES LIMITED PARTNERSHIP 1987.
667	IM-02	PRUDENTIAL	825206	PRUDENTIAL EMPLOYEES LIMITED PARTNERSHIP 1988.
668	IM-02	PRUDENTIAL	769290	PRUDENTIAL EMPLOYEES LTD PARTNERSHIP 1986

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
669	IM-02	PRUDENTIAL	822337	PRUDENTIAL INSTITUTIONAL LIQUIDITY PORTFOLIO INC.
670	IM-02	PRUDENTIAL	831015	PRUDENTIAL INTERMEDIATE INCOME FUND INC.
671	IM-02	PRUDENTIAL	711175	PRUDENTIAL SERIES FUND INC.
672	IM-02	PRUDENTIAL	828972	PRUDENTIAL VARIABLE APPRECIABLE ACCOUNT.
673	IM-02	PRUDENTIAL	701276	PRUDENTIAL VARIABLE CONTRACT ACCOUNT 10.
674	IM-02	PRUDENTIAL	701275	PRUDENTIAL VARIABLE CONTRACT ACCOUNT 11.
675	IM-02	PRUDENTIAL	080941	PRUDENTIAL VARIABLE CONTRACT ACCOUNT 2.
676	IM-02	PRUDENTIAL	080946	PRUDENTIALS GIBRALTAR FUND.
677	IM-02	PUTNAM	822671	PUTNAM CAPITAL MANAGER TRUST.
678	IM-02	SHEARSON	825201	ADVISORS FUND LP.
679	IM-02	SHEARSON	825064	AMERICAN EXPRESS FUNDS/NY.
680	IM-02	SHEARSON	775686	AMERICAN EXPRESS R CALIFORNIA DAILY TAX FREE FUND.
681	IM-02	SHEARSON	775685	AMERICAN EXPRESS R NEW YORK DAILY TAX FREE FUND.
682	IM-02	SHEARSON	833154	BOSTON CO INVESTMENT SERIES.
683	IM-02	SHEARSON	717341	BOSTON CO TAX FREE MUNICIPAL FUNDS.
684	IM-02	SHEARSON	053808	BOSTON COMPANY FUND.
685	IM-02	SHEARSON	833377	BOSTON COMPANY INDEX & BLUE CHIP TRUST.
686	IM-02	SHEARSON	820265	CANADIAN DOLLAR PERFORMANCE PORTFOLIO LP.
687	IM-02	SHEARSON	820266	DEUTSCHE MARK PERFORMANCE PORTFOLIO LP.
688	IM-02	SHEARSON	710191	HUTTON CALIFORNIA MUNICIPAL FUND INC.
689	IM-02	SHEARSON	710195	HUTTON NEW YORK MUNICIPAL FUND INC.
690	IM-02	SHEARSON	823482	LEHMAN MANAGEMENT SELECT INVESTMENT FUNDS INC.
691	IM-02	SHEARSON	820258	MANAGED CURRENCY PORTFOLIO L P.
692	IM-02	SHEARSON	820264	POUND STERLING PERFORMANCE PORTFOLIO LP.
693	IM-02	SHEARSON	720506	SHEARSON LEHMAN AGGRESSIVE GROWTH FUND INC.
694	IM-02	SHEARSON	857618	SHEARSON LEHMAN BROTHERS 1990S FUND.
695	IM-02	SHEARSON	764042	SHEARSON LEHMAN BROTHERS CAPITAL PARTNERS—85.
696	IM-02	SHEARSON	788663	SHEARSON LEHMAN BROTHERS CAPITAL PARTNERS I.
697	IM-02	SHEARSON	787514	SHEARSON LEHMAN BROTHERS EQUITY PORTFOLIOS.
698	IM-02	SHEARSON	314855	SHEARSON LEHMAN BROTHERS HIGH YIELD FUND.
699	IM-02	SHEARSON	809846	SHEARSON LEHMAN BROTHERS MASSACHUSETTS MUNICIPALS FUND.
700	IM-02	SHEARSON	841489	SHEARSON LEHMAN BROTHERS PRINCIPAL RETURN FUND.
701	IM-02	SHEARSON	861872	SHEARSON LEHMAN BROTHERS SHORT TERM WORLD INCOME FUND.
702	IM-02	SHEARSON	869796	SHEARSON LEHMAN BROTHERS WORLDWIDE PRIME ASSETS FUND.
703	IM-02	SHEARSON	792824	SHEARSON LEHMAN SERIES FUND.
704	IM-02	SHEARSON	355764	SHEARSON VIP FUND.
705	IM-02	SHEARSON	704808	SHL DAILY TAX FREE DIVIDEND FUND INC.
706	IM-02	SHEARSON	089558	SLH APPRECIATION FUND INC.
707	IM-02	SHEARSON	740871	SLH CALIFORNIA MUNICIPALS FUND INC.
708	IM-02	SHEARSON	804830	SLH CONVERTIBLE SECURITIES FUND.
709	IM-02	SHEARSON	310591	SLH DAILY DIVIDEND FUND.
710	IM-02	SHEARSON	351934	SLH FUNDAMENTAL VALUE FUND INC.
711	IM-02	SHEARSON	740799	SLH GLOBAL OPPORTUNITIES FUND.
712	IM-02	SHEARSON	315736	SLH GOVERNMENT & AGENCIES FUND.
713	IM-02	SHEARSON	764624	SLH INCOME PORTFOLIOS /NY/.
714	IM-02	SHEARSON	355747	SLH INVESTMENT PORTFOLIOS INC.
715	IM-02	SHEARSON	748826	SLH MANAGED GOVERNMENTS FUND.
716	IM-02	SHEARSON	319460	SLH MANAGED MUNICIPALS FUND INC.
717	IM-02	SHEARSON	806396	SLH MICHIGAN MUNICIPALS FUND.
718	IM-02	SHEARSON	806092	SLH MULTIPLE OPPORTUNITIES PORTFOLIO LP.
719	IM-02	SHEARSON	811706	SLH MUNICIPALS SERIES FUND INC.
720	IM-02	SHEARSON	825629	SLH NEW JERSEY MUNICIPALS FUND INC.
721	IM-02	SHEARSON	730047	SLH NEW YORK MUNICIPALS FUND INC.
722	IM-02	SHEARSON	806093	SLH OHIO MUNICIPALS FUND.
723	IM-02	SHEARSON	797480	SLH PRECIOUS METALS & MINERALS FUND INC.
724	IM-02	SHEARSON	824196	SLH SMALL CAPITALIZATION FUND.
725	IM-02	SHEARSON	721648	SLH TELECOMMUNICATIONS TRUST.
726	IM-02	SHEARSON	820267	YEN PERFORMANCE PORTFOLIO LP.
727	IM-02	T ROWE PRICE	845631	PRICE T ROWE INTERNATIONAL EQUITY FUND INC.
728	IM-02	VANGUARD	715144	MANN HORACE BALANCED FUND INC.
729	IM-02	VANGUARD	062009	MANN HORACE GROWTH FUND INC.
730	IM-02	VANGUARD	715145	MANN HORACE INCOME FUND INC.
731	IM-02	VANGUARD	715143	MANN HORACE SHORT TERM INVESTMENT FUND INC.
732	IM-02	VANGUARD	857490	VANGUARD VARIABLE INSURANCE FUND INC.
733	IM-02	WADDELL & REED	810016	TMK UNITED FUNDS INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
734	IM-03	ALLIANCE	816754	ACM GOVERNMENT INCOME FUND INC.
735	IM-03	ALLIANCE	834933	ACM GOVERNMENT OPPORTUNITY FUND INC.
736	IM-03	ALLIANCE	825650	ACM GOVERNMENT SECURITIES FUND INC.
737	IM-03	ALLIANCE	830624	ACM GOVERNMENT SPECTRUM FUND INC/NY.
738	IM-03	ALLIANCE	845554	ACM HIGH INCOME FUND INC.
739	IM-03	ALLIANCE	862021	ACM INSTITUTIONAL RESERVES INC.
740	IM-03	ALLIANCE	838133	ACM MANAGED INCOME FUND INC /NY/.
741	IM-03	ALLIANCE	857540	ACM MANAGED MULTI MARKET TRUST INC.
742	IM-03	ALLIANCE	069752	ALLIANCE BALANCED SHARES INC.
743	IM-03	ALLIANCE	808276	ALLIANCE BOND FUND HIGH YIELD PORTFOLIO.
744	IM-03	ALLIANCE	003794	ALLIANCE BOND FUND INC.
745	IM-03	ALLIANCE	808263	ALLIANCE BOND FUND US GOVERNMENT PORTFOLIO.
746	IM-03	ALLIANCE	275017	ALLIANCE CAPITAL RESERVES INC.
747	IM-03	ALLIANCE	779811	ALLIANCE CONVERTIBLE FUND.
748	IM-03	ALLIANCE	756794	ALLIANCE COUNTERPOINT FUND.
749	IM-03	ALLIANCE	019614	ALLIANCE FUND INC.
750	IM-03	ALLIANCE	861100	ALLIANCE GLOBAL ENVIRONMENT FUND INC.
751	IM-03	ALLIANCE	773868	ALLIANCE GLOBAL FUND.
752	IM-03	ALLIANCE	095669	ALLIANCE GLOBAL SMALL CAP FUND.
753	IM-03	ALLIANCE	278042	ALLIANCE GOVERNMENT RESERVES INC.
754	IM-03	ALLIANCE	029292	ALLIANCE GROWTH & INCOME FUND INC.
755	IM-03	ALLIANCE	350182	ALLIANCE INTERNATIONAL FUND.
756	IM-03	ALLIANCE	725919	ALLIANCE MORTGAGE SECURITIES INCOME FUND INC.
757	IM-03	ALLIANCE	869461	ALLIANCE MULTI MARKET INCOME TRUST INC.
758	IM-03	ALLIANCE	798737	ALLIANCE MUNICIPAL INCOME FUND INC.
759	IM-03	ALLIANCE	859605	ALLIANCE NEW EUROPE FUND INC.
760	IM-03	ALLIANCE	081443	ALLIANCE QUASAR FUND INC.
761	IM-03	ALLIANCE	846711	ALLIANCE SHORT TERM MULTI MARKET TRUST INC.
762	IM-03	ALLIANCE	707857	ALLIANCE TAX EXEMPT RESERVES.
763	IM-03	ALLIANCE	350181	ALLIANCE TECHNOLOGY FUND INC.
764	IM-03	ALLIANCE	825316	ALLIANCE VARIABLE PRODUCTS SERIES FUND INC.
765	IM-03	ALLIANCE	869406	ALLIANCE WORLD INCOME TRUST INC.
766	IM-03	ALLIANCE	843615	AUSTRIA FUND INC.
767	IM-03	ALLIANCE	035429	FIDUCIARY MANAGEMENT ASSOCIATES.
768	IM-03	ALLIANCE	835697	FINLAND FUND INC.
769	IM-03	ALLIANCE	856073	GREECE FUND INC.
770	IM-03	ALLIANCE	818105	SPAIN FUND INC.
771	IM-03	AMERICAN CAP	005094	AMERICAN CAPITAL BOND FUND INC.
772	IM-03	AMERICAN CAP	783989	AMERICAN CAPITAL CALIFORNIA TAX EXEMPT TRUST.
773	IM-03	AMERICAN CAP	205193	AMERICAN CAPITAL COMSTOCK FUND INC.
774	IM-03	AMERICAN CAP	005099	AMERICAN CAPITAL CONVERTIBLE SECURITIES INC /TX.
775	IM-03	AMERICAN CAP	109488	AMERICAN CAPITAL CORPORATE BOND FUND INC.
776	IM-03	AMERICAN CAP	005115	AMERICAN CAPITAL EMERGING GROWTH FUND INC.
777	IM-03	AMERICAN CAP	033032	AMERICAN CAPITAL ENTERPRISE FUND INC.
778	IM-03	AMERICAN CAP	080832	AMERICAN CAPITAL EQUITY INCOME FUND INC.
779	IM-03	AMERICAN CAP	005100	AMERICAN CAPITAL EXCHANGE FUND.
780	IM-03	AMERICAN CAP	783743	AMERICAN CAPITAL FEDERAL MORTGAGE TRUST.
781	IM-03	AMERICAN CAP	723109	AMERICAN CAPITAL FUND INC.
782	IM-03	AMERICAN CAP	800686	AMERICAN CAPITAL GOVERNMENT MONEY MARKET TRUST.
783	IM-03	AMERICAN CAP	744376	AMERICAN CAPITAL GOVERNMENT SECURITIES INC.
784	IM-03	AMERICAN CAP	865441	AMERICAN CAPITAL GOVERNMENT TARGET SERIES.
785	IM-03	AMERICAN CAP	039451	AMERICAN CAPITAL GROWTH & INCOME FUND INC.
786	IM-03	AMERICAN CAP	005101	AMERICAN CAPITAL GROWTH FUND INC.
787	IM-03	AMERICAN CAP	045507	AMERICAN CAPITAL HARBOR FUND INC.
788	IM-03	AMERICAN CAP	276242	AMERICAN CAPITAL HIGH YIELD INVESTMENTS INC.
789	IM-03	AMERICAN CAP	820026	AMERICAN CAPITAL INCOME TRUST.
790	IM-03	AMERICAN CAP	201085	AMERICAN CAPITAL MUNICIPAL BOND FUND INC.
791	IM-03	AMERICAN CAP	201084	AMERICAN CAPITAL MUNICIPAL BOND FUND INC / OLD.
792	IM-03	AMERICAN CAP	726292	AMERICAN CAPITAL OVER THE COUNTER SECURITIES INC.
793	IM-03	AMERICAN CAP	075368	AMERICAN CAPITAL PACE FUND INC.
794	IM-03	AMERICAN CAP	005114	AMERICAN CAPITAL RESERVE FUND INC.
795	IM-03	AMERICAN CAP	783856	AMERICAN CAPITAL TAX EXEMPT TRUST.
796	IM-03	AMERICAN CAP	869760	AMERICAN CAPITAL WORLD PORTFOLIO SERIES INC.
797	IM-03	CAPITAL RESEARCH	004405	AMCAP FUND INC.
798	IM-03	CAPITAL RESEARCH	004568	AMERICAN BALANCED FUND INC.
799	IM-03	CAPITAL RESEARCH	792953	AMERICAN FUNDS TAX EXEMPT SERIES I.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
800	IM-03	CAPITAL RESEARCH	794389	AMERICAN FUNDS TAX EXEMPT SERIES II /CA.
801	IM-03	CAPITAL RESEARCH	823620	AMERICAN HIGH INCOME TRUST.
802	IM-03	CAPITAL RESEARCH	808072	AMERICAN LIFE ANNUITY SERIES.
803	IM-03	CAPITAL RESEARCH	005506	AMERICAN MUTUAL FUND INC.
804	IM-03	CAPITAL RESEARCH	814150	ANCHOR PATHWAY FUND.
805	IM-03	CAPITAL RESEARCH	013075	BOND FUND OF AMERICA INC.
806	IM-03	CAPITAL RESEARCH	013083	BOND PORTFOLIO FOR ENDOWMENTS INC.
807	IM-03	CAPITAL RESEARCH	811968	CAPITAL INCOME BUILDER INC.
808	IM-03	CAPITAL RESEARCH	812303	CAPITAL WORLD BOND FUND INC.
809	IM-03	CAPITAL RESEARCH	018109	CASH MANAGEMENT TRUST OF AMERICA.
810	IM-03	CAPITAL RESEARCH	032859	ENDOWMENTS INC.
811	IM-03	CAPITAL RESEARCH	719603	EUROPACIFIC GROWTH FUND.
812	IM-03	CAPITAL RESEARCH	039473	FUNDAMENTAL INVESTORS INC.
813	IM-03	CAPITAL RESEARCH	044201	GROWTH FUND OF AMERICA INC.
814	IM-03	CAPITAL RESEARCH	050013	INCOME FUND OF AMERICA INC.
815	IM-03	CAPITAL RESEARCH	826813	INTERMEDIATE BOND FUND OF AMERICA.
816	IM-03	CAPITAL RESEARCH	051931	INVESTMENT CO OF AMERICA.
817	IM-03	CAPITAL RESEARCH	719608	NEW ECONOMY FUND.
818	IM-03	CAPITAL RESEARCH	071516	NEW PERSPECTIVE FUND INC.
819	IM-03	CAPITAL RESEARCH	846944	NEW WORLD INVESTMENT FUND.
820	IM-03	CAPITAL RESEARCH	858744	SMALLCAP WORLD FUND INC.
821	IM-03	CAPITAL RESEARCH	050142	TAX EXEMPT BOND FUND OF AMERICA INC.
822	IM-03	CAPITAL RESEARCH	845376	TAX EXEMPT MONEY FUND OF AMERICA.
823	IM-03	CAPITAL RESEARCH	870827	US TREASURY MONEY FUND OF AMERICA.
824	IM-03	CAPITAL RESEARCH	104865	WASHINGTON MUTUAL INVESTORS FUND INC.
825	IM-03	COLONIAL	763780	COLONIAL ADVANCED STRATEGIES GOLD TRUST.
826	IM-03	COLONIAL	787622	COLONIAL CALIFORNIA TAX EXEMPT TRUST.
827	IM-03	COLONIAL	351488	COLONIAL CORPORATE CASH TRUST I.
828	IM-03	COLONIAL	736187	COLONIAL CORPORATE CASH TRUST II.
829	IM-03	COLONIAL	350180	COLONIAL EQUITY INCOME TRUST.
830	IM-03	COLONIAL	021844	COLONIAL FUND /MA/.
831	IM-03	COLONIAL	731809	COLONIAL GOVERNMENT SECURITIES PLUS TRUST.
832	IM-03	COLONIAL	021847	COLONIAL GROWTH SHARES TRUST.
833	IM-03	COLONIAL	821477	COLONIAL HANCOCK LIBERTY TRUST.
834	IM-03	COLONIAL	845606	COLONIAL HIGH INCOME MUNICIPAL TRUST.
835	IM-03	COLONIAL	021832	COLONIAL HIGH YIELD SECURITIES TRUST.
836	IM-03	COLONIAL	021851	COLONIAL INCOME TRUST.
837	IM-03	COLONIAL	853770	COLONIAL INTERMARKET INCOME TRUST I.
838	IM-03	COLONIAL	833021	COLONIAL INTERMEDIATE HIGH INCOME FUND.
839	IM-03	COLONIAL	793028	COLONIAL INTERNATIONAL EQUITY INDEX TRUST.
840	IM-03	COLONIAL	847411	COLONIAL INVESTMENT GRADE MUNICIPAL TRUST.
841	IM-03	COLONIAL	810891	COLONIAL MASSACHUSETTS TAX EXEMPT TRUST.
842	IM-03	COLONIAL	798834	COLONIAL MICHIGAN TAX EXEMPT TRUST.
843	IM-03	COLONIAL	798914	COLONIAL MINNESOTA TAX EXEMPT TRUST.
844	IM-03	COLONIAL	315665	COLONIAL MONEY MARKET TRUST.
845	IM-03	COLONIAL	809844	COLONIAL MUNICIPAL INCOME TRUST.
846	IM-03	COLONIAL	798835	COLONIAL NEW YORK TAX EXEMPT TRUST.
847	IM-03	COLONIAL	798913	COLONIAL OHIO TAX EXEMPT TRUST.
848	IM-03	COLONIAL	793008	COLONIAL SMALL STOCK INDEX TRUST.
849	IM-03	COLONIAL	205181	COLONIAL STRATEGIC INCOME TRUST.
850	IM-03	COLONIAL	813815	COLONIAL TAX EXEMPT MONEY MARKET TRUST.
851	IM-03	COLONIAL	276716	COLONIAL TAX EXEMPT TRUST.
852	IM-03	COLONIAL	819800	COLONIAL U S GOVERNMENT TRUST.
853	IM-03	COLONIAL	785780	COLONIAL UNITED STATES EQUITY INDEX TRUST.
854	IM-03	COLONIAL	828805	COLONIAL VALUE INVESTING PORTFOLIOS EQUITY PORTFOLIO.
855	IM-03	COLONIAL	817752	COLONIAL VALUE INVESTING PORTFOLIOS INCOME PORTFOLIO.
856	IM-03	DB CAPITAL	806380	APOLLO INSTITUTIONAL INVESTMENTS INC.
857	IM-03	DB CAPITAL	757118	ATLAS INSTITUTIONAL INVESTMENTS INC.
858	IM-03	DB CAPITAL	860489	FUTURE GERMANY FUND INC.
859	IM-03	DB CAPITAL	791718	GERMANY FUND INC.
860	IM-03	DB CAPITAL	764043	HERCULES INSTITUTIONAL INVESTMENTS INC.
861	IM-03	DB CAPITAL	793602	HERMES INSTITUTIONAL INVESTMENTS INC.
862	IM-03	DB CAPITAL	757119	MERCURY INSTITUTIONAL INVESTMENTS INC.
863	IM-03	DB CAPITAL	858706	NEW GERMANY FUND INC.
864	IM-03	DB CAPITAL	765665	OLYMPUS INSTITUTIONAL INVESTMENTS INC.
865	IM-03	DB CAPITAL	806581	ORION INSTITUTIONAL INVESTMENTS INC.
866	IM-03	DB CAPITAL	751311	PEGASUS INSTITUTIONAL INVESTMENTS INC.
867	IM-03	DB CAPITAL	755344	TAURUS INSTITUTIONAL INVESTMENTS INC.
868	IM-03	DB CAPITAL	804170	TITAN INSTITUTIONAL INVESTMENTS INC.
869	IM-03	DB CAPITAL	865480	WILSON BOND FUND.
870	IM-03	DB CAPITAL	865478	WILSON EQUITY FUND.
871	IM-03	EATON VANCE	017147	CAPITAL EXCHANGE FUND INC.
872	IM-03	EATON VANCE	028221	DEPOSITORS FUND OF BOSTON INC.
873	IM-03	EATON VANCE	029156	DIVERSIFICATION FUND INC.
874	IM-03	EATON VANCE	779991	EATON VANCE CALIFORNIA MUNICIPALS TRUST.
875	IM-03	EATON VANCE	031264	EATON VANCE CASH MANAGEMENT FUND.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
876	IM-03	EATON VANCE	809772	EATON VANCE CORPORATE HIGH INCOME DOLLAR FUND LP.
877	IM-03	EATON VANCE	820066	EATON VANCE EQUITY INCOME TRUST.
878	IM-03	EATON VANCE	745463	EATON VANCE GOVERNMENT OBLIGATIONS TRUST.
879	IM-03	EATON VANCE	102816	EATON VANCE GROWTH FUND INC.
880	IM-03	EATON VANCE	790257	EATON VANCE HIGH INCOME TRUST
881	IM-03	EATON VANCE	031267	EATON VANCE HIGH YIELD FUND.
882	IM-03	EATON VANCE	074663	EATON VANCE INCOME FUND OF BOSTON.
883	IM-03	EATON VANCE	102822	EATON VANCE INVESTORS FUND INC.
884	IM-03	EATON VANCE	814454	EATON VANCE LIQUID ASSETS TRUST.
885	IM-03	EATON VANCE	225977	EATON VANCE MUNICIPAL BOND FUND LP.
886	IM-03	EATON VANCE	778365	EATON VANCE MUNICIPALS TRUST.
887	IM-03	EATON VANCE	819938	EATON VANCE NATURAL RESOURCES TRUST.
888	IM-03	EATON VANCE	850025	EATON VANCE PRIME RATE RESERVES.
889	IM-03	EATON VANCE	867240	EATON VANCE SHORT TERM GLOBAL INCOME FUND INC.
890	IM-03	EATON VANCE	031266	EATON VANCE SPECIAL EQUITIES FUND
891	IM-03	EATON VANCE	031273	EATON VANCE STOCK FUND.
892	IM-03	EATON VANCE	354212	EATON VANCE TAX FREE RESERVES.
893	IM-03	EATON VANCE	355758	EATON VANCE TOTAL RETURN TRUST.
894	IM-03	EATON VANCE	809771	EATON VANCE U S GOVERNMENT INCOME DOLLAR FUND LP.
895	IM-03	EATON VANCE	853255	EQUIFUND WRIGHT NATIONAL FIDUCIARY EQUITY FUNDS.
896	IM-03	EATON VANCE	035427	FIDUCIARY EXCHANGE FUND INC.
897	IM-03	EATON VANCE	277588	NAUTILUS FUND INC.
898	IM-03	EATON VANCE	088329	SECOND FIDUCIARY EXCHANGE FUND INC.
899	IM-03	EATON VANCE	102818	VANCE SANDERS EXCHANGE FUND.
900	IM-03	EATON VANCE	225976	VANCE SANDERS MUNICIPAL BOND FUND INC
901	IM-03	EATON VANCE	102824	VANCE SANDERS SPECIAL FUND INC.
902	IM-03	EATON VANCE	715165	WRIGHT MANAGED BOND TRUST.
903	IM-03	EATON VANCE	703499	WRIGHT MANAGED EQUITY TRUST.
904	IM-03	EATON VANCE	354943	WRIGHT MANAGED MONEY MARKET TRUST.
905	IM-03	FIRST INVESTORS	807332	EXECUTIVE INVESTORS TRUST.
906	IM-03	FIRST INVESTORS	276461	FIRST INVESTORS CASH MANAGEMENT FUND INC.
907	IM-03	FIRST INVESTORS	036444	FIRST INVESTORS DISCOVERY FUND INC.
908	IM-03	FIRST INVESTORS	312370	FIRST INVESTORS FUND FOR INCOME INC.
909	IM-03	FIRST INVESTORS	036447	FIRST INVESTORS FUND FOR INCOME INC.
910	IM-03	FIRST INVESTORS	352564	FIRST INVESTORS GLOBAL FUND INC.
911	IM-03	FIRST INVESTORS	740967	FIRST INVESTORS GOVERNMENT FUND INC.
912	IM-03	FIRST INVESTORS	793666	FIRST INVESTORS HIGH YIELD FUND INC /NY/.
913	IM-03	FIRST INVESTORS	770952	FIRST INVESTORS LIFE LEVEL PREMIUM VAR LIFE INS SEP ACC B.
914	IM-03	FIRST INVESTORS	770908	FIRST INVESTORS LIFE SERIES FUND.
915	IM-03	FIRST INVESTORS	314391	FIRST INVESTORS LIFE VARIABLE ANNUITY FUND A.
916	IM-03	FIRST INVESTORS	810371	FIRST INVESTORS MULTISTATE INSURED TAX FREE FUND.
917	IM-03	FIRST INVESTORS	727586	FIRST INVESTORS NEW YORK INSURED TAX FREE FUND INC.
918	IM-03	FIRST INVESTORS	842939	FIRST INVESTORS SERIES FUND.
919	IM-03	FIRST INVESTORS	006331	FIRST INVESTORS SINGLE PAY & PER PAY PFAS OF AMCAP FUND INC.
920	IM-03	FIRST INVESTORS	201844	FIRST INVESTORS SINGLE PAYMENT & PERIODIC PAYMENT PLANS FOR.
921	IM-03	FIRST INVESTORS	314480	FIRST INVESTORS SPECIAL BOND FUND INC.
922	IM-03	FIRST INVESTORS	716792	FIRST INVESTORS TAX EXEMPT MONEY MARKET FUND INC.
923	IM-03	FIRST INVESTORS	759686	FIRST INVESTORS US GOVERNMENT PLUS FUND.
924	IM-03	FRANKLIN ADVISORS	002768	AGE HIGH INCOME FUND INC.
925	IM-03	FRANKLIN ADVISORS	856119	FRANKLIN BALANCE SHEET INVESTMENT FUND
926	IM-03	FRANKLIN ADVISORS	872625	FRANKLIN CALIFORNIA 250 GROWTH INDEX FUND.
927	IM-03	FRANKLIN ADVISORS	225375	FRANKLIN CALIFORNIA TAX FREE INCOME FUND INC.
928	IM-03	FRANKLIN ADVISORS	773478	FRANKLIN CALIFORNIA TAX FREE TRUST
929	IM-03	FRANKLIN ADVISORS	038721	FRANKLIN CUSTODIAN FUNDS INC.
930	IM-03	FRANKLIN ADVISORS	083297	FRANKLIN EQUITY FUND.
931	IM-03	FRANKLIN ADVISORS	316403	FRANKLIN FEDERAL MONEY FUND.
932	IM-03	FRANKLIN ADVISORS	357310	FRANKLIN FEDERAL TAX FREE INCOME FUND.
933	IM-03	FRANKLIN ADVISORS	083293	FRANKLIN GOLD FUND.
934	IM-03	FRANKLIN ADVISORS	872687	FRANKLIN INSTITUTIONAL US GOVERNMENT ARM FUND.
935	IM-03	FRANKLIN ADVISORS	809707	FRANKLIN INVESTORS SECURITIES TRUST.
936	IM-03	FRANKLIN ADVISORS	805650	FRANKLIN MANAGED TRUST.
937	IM-03	FRANKLIN ADVISORS	038778	FRANKLIN MONEY FUND.
938	IM-03	FRANKLIN ADVISORS	854856	FRANKLIN MULTI INCOME TRUST.
939	IM-03	FRANKLIN ADVISORS	798523	FRANKLIN NEW YORK TAX EXEMPT MONEY FUND.
940	IM-03	FRANKLIN ADVISORS	703112	FRANKLIN NEW YORK TAX FREE INCOME FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
941	IM-03	FRANKLIN ADVISORS	014698	FRANKLIN OPTION FUND.
942	IM-03	FRANKLIN ADVISORS	799215	FRANKLIN PENNSYLVANIA INVESTORS FUND.
943	IM-03	FRANKLIN ADVISORS	843287	FRANKLIN PRINCIPAL MATURITY TRUST.
944	IM-03	FRANKLIN ADVISORS	810303	FRANKLIN TAX ADVANTAGED HIGH YIELD SECURITIES FUND.
945	IM-03	FRANKLIN ADVISORS	802669	FRANKLIN TAX ADVANTAGED INTERNATIONAL BOND FUND.
946	IM-03	FRANKLIN ADVISORS	810742	FRANKLIN TAX ADVANTAGED US GOVERNMENT SECURITIES FUND /CA/.
947	IM-03	FRANKLIN ADVISORS	353316	FRANKLIN TAX EXEMPT MONEY FUND.
948	IM-03	FRANKLIN ADVISORS	757010	FRANKLIN TAX FREE TRUST.
949	IM-03	FRANKLIN ADVISORS	833040	FRANKLIN UNIVERSAL TRUST.
950	IM-03	FRANKLIN ADVISORS	765485	INSTITUTIONAL FIDUCIARY TRUST.
951	IM-03	JOHN HANCOCK	710181	HANCOCK JOHN ASSET ALLOCATION TRUST.
952	IM-03	JOHN HANCOCK	045288	HANCOCK JOHN BOND TRUST.
953	IM-03	JOHN HANCOCK	312904	HANCOCK JOHN CASH MANAGEMENT TRUST.
954	IM-03	JOHN HANCOCK	750760	HANCOCK JOHN GLOBAL FUND.
955	IM-03	JOHN HANCOCK	316005	HANCOCK JOHN GOVERNMENT SPECTRUM FUND.
956	IM-03	JOHN HANCOCK	760285	HANCOCK JOHN GROWTH TRUST.
957	IM-03	JOHN HANCOCK	045291	HANCOCK JOHN GROWTH TRUST /MA.
958	IM-03	JOHN HANCOCK	792658	HANCOCK JOHN HIGH INCOME TRUST.
959	IM-03	JOHN HANCOCK	759866	HANCOCK JOHN INCOME SECURITIES TRUST /MA.
960	IM-03	JOHN HANCOCK	759828	HANCOCK JOHN INVESTORS TRUST.
961	IM-03	JOHN HANCOCK	750741	HANCOCK JOHN SPECIAL EQUITIES FUND.
962	IM-03	JOHN HANCOCK	202049	HANCOCK JOHN TAX EXEMPT INCOME TRUST.
963	IM-03	JOHN HANCOCK	811921	HANCOCK JOHN TAX EXEMPT SERIES FUND.
964	IM-03	JOHN HANCOCK	045296	HANCOCK JOHN US GOVERNMENT SECURITIES TRUST.
965	IM-03	JOHN HANCOCK	045299	HANCOCK JOHN VARIABLE ANNUITY ACCOUNT U.
966	IM-03	JOHN HANCOCK	785303	HANCOCK JOHN VARIABLE SERIES TRUST I.
967	IM-03	JOHN HANCOCK	807639	HANCOCK JOHN WORLD FUND.
968	IM-03	KEMPER	858372	CASH ACCOUNT TRUST.
969	IM-03	KEMPER	310030	CASH EQUIVALENT FUND INC.
970	IM-03	KEMPER	849255	COLLEGE PREPAYMENT FUND INC.
971	IM-03	KEMPER	858998	GROWTH FUND OF SPAIN INC.
972	IM-03	KEMPER	701638	INVESTMENT PORTFOLIOS INC.
973	IM-03	KEMPER	863209	INVESTORS CASH TRUST.
974	IM-03	KEMPER	823342	KEMPER BLUE CHIP FUND.
975	IM-03	KEMPER	216314	KEMPER DIVERSIFIED INCOME FUND.
976	IM-03	KEMPER	814955	KEMPER ENHANCED GOVERNMENT INCOME FUND.
977	IM-03	KEMPER	861783	KEMPER ENVIRONMENTAL SERVICES FUND.
978	IM-03	KEMPER	852067	KEMPER GLOBAL INCOME FUND.
979	IM-03	KEMPER	826597	KEMPER GOLD FUND.
980	IM-03	KEMPER	095601	KEMPER GROWTH FUND.
981	IM-03	KEMPER	830160	KEMPER HIGH INCOME TRUST.
982	IM-03	KEMPER	225528	KEMPER HIGH YIELD FUND.
983	IM-03	KEMPER	055185	KEMPER INCOME & CAPITAL PRESERVATION FUND INC.
984	IM-03	KEMPER	832925	KEMPER INTERMEDIATE GOVERNMENT TRUST.
985	IM-03	KEMPER	350562	KEMPER INTERNATIONAL FUND.
986	IM-03	KEMPER	810573	KEMPER INVESTORS FUND.
987	IM-03	KEMPER	313596	KEMPER INVESTORS LIFE INSURANCE CO VARIABLE ANNUITY ACCT C.
988	IM-03	KEMPER	055189	KEMPER MONEY MARKET FUND.
989	IM-03	KEMPER	842905	KEMPER MULTI MARKET INCOME TRUST.
990	IM-03	KEMPER	055190	KEMPER MUNICIPAL BOND FUND.
991	IM-03	KEMPER	838533	KEMPER MUNICIPAL INCOME TRUST.
992	IM-03	KEMPER	777904	KEMPER NEW YORK TAX FREE INCOME FUND.
993	IM-03	KEMPER	856345	KEMPER PREMIER TRUST.
994	IM-03	KEMPER	854905	KEMPER RETIREMENT FUND.
995	IM-03	KEMPER	886537	KEMPER SHORT TERM GLOBAL INCOME FUND.
996	IM-03	KEMPER	868792	KEMPER SHORT TERM GLOBAL INCOME FUND-B.
997	IM-03	KEMPER	714267	KEMPER STATE TAX FREE INCOME SERIES.
998	IM-03	KEMPER	846596	KEMPER STRATEGIC MUNICIPAL INCOME TRUST.
999	IM-03	KEMPER	095605	KEMPER SUMMIT FUND.
1000	IM-03	KEMPER	096790	KEMPER TECHNOLOGY FUND.
1001	IM-03	KEMPER	095603	KEMPER TOTAL RETURN FUND.
1002	IM-03	KEMPER	202163	KEMPER US GOVERNMENT SECURITIES FUND INC.
1003	IM-03	KEMPER	719719	KILICO EQUITY SEPARATE ACCOUNT.
1004	IM-03	KEMPER	353449	KILICO INCOME SEPARATE ACCOUNT.
1005	IM-03	KEMPER	353450	KILICO TOTAL RETURN SEPARATE ACCOUNT.
1006	IM-03	KEMPER	353448	KILICO VARIABLE ANNUITY SEPARATE ACCOUNT
1007	IM-03	KEMPER	810369	KILICO VARIABLE SEPARATE ACCOUNT/IL.
1008	IM-03	KEMPER	811911	TAX EXEMPT CALIFORNIA MONEY MARKET FUND.
1009	IM-03	KEMPER	701718	TAX EXEMPT MONEY MARKET FUND.
1010	IM-03	KEMPER	863420	TAX EXEMPT NEW YORK MONEY MARKET FUND.
1011	IM-03	KEYSTONE	045997	HARTWELL EMERGING GROWTH FUND INC.
1012	IM-03	KEYSTONE	045993	HARTWELL GROWTH FUND INC.
1013	IM-03	KEYSTONE	872324	KEYSTONE AMERICA CAPITAL PRESERVATION & INCOME FUND II.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1014	IM-03	KEYSTONE	871230	KEYSTONE AMERICA CAPITAL PRESERVATION AND INCOME FUND.
1015	IM-03	KEYSTONE	808335	KEYSTONE AMERICA EQUITY INCOME FUND.
1016	IM-03	KEYSTONE	820810	KEYSTONE AMERICA FUND OF GROWTH STOCKS.
1017	IM-03	KEYSTONE	825557	KEYSTONE AMERICA GLOBAL OPPORTUNITIES FUND.
1018	IM-03	KEYSTONE	808332	KEYSTONE AMERICA GOVERNMENT SECURITIES FUND.
1019	IM-03	KEYSTONE	808330	KEYSTONE AMERICA HIGH YIELD BOND FUND.
1020	IM-03	KEYSTONE	808338	KEYSTONE AMERICA INVESTMENT GRADE BOND FUND.
1021	IM-03	KEYSTONE	808331	KEYSTONE AMERICA MONEY MARKET FUND.
1022	IM-03	KEYSTONE	074458	KEYSTONE AMERICA OMEGA FUND INC /MA/.
1023	IM-03	KEYSTONE	868651	KEYSTONE AMERICA STATE TAX FREE FUND.
1024	IM-03	KEYSTONE	808334	KEYSTONE AMERICA TAX FREE INCOME FUND.
1025	IM-03	KEYSTONE	808422	KEYSTONE AMERICA TAX FREE MONEY MARKET FUND.
1026	IM-03	KEYSTONE	800446	KEYSTONE AMERICA WORLD BOND FUND.
1027	IM-03	KEYSTONE	055611	KEYSTONE CUSTODIAN FUND SERIES B-1.
1028	IM-03	KEYSTONE	055615	KEYSTONE CUSTODIAN FUND SERIES B-2.
1029	IM-03	KEYSTONE	055613	KEYSTONE CUSTODIAN FUND SERIES B-3.
1030	IM-03	KEYSTONE	055614	KEYSTONE CUSTODIAN FUND SERIES B-4.
1031	IM-03	KEYSTONE	055618	KEYSTONE CUSTODIAN FUND SERIES K-1.
1032	IM-03	KEYSTONE	055619	KEYSTONE CUSTODIAN FUND SERIES K-2.
1033	IM-03	KEYSTONE	055624	KEYSTONE CUSTODIAN FUND SERIES S-1.
1034	IM-03	KEYSTONE	055626	KEYSTONE CUSTODIAN FUND SERIES S-3.
1035	IM-03	KEYSTONE	055627	KEYSTONE CUSTODIAN FUND SERIES S-4.
1036	IM-03	KEYSTONE	055628	KEYSTONE CUSTODIAN FUNDS INC.
1037	IM-03	KEYSTONE	868539	KEYSTONE HIGH YIELD PRIORITY VALUE FUND.
1038	IM-03	KEYSTONE	079321	KEYSTONE INTERNATIONAL FUND INC.
1039	IM-03	KEYSTONE	005384	KEYSTONE LIQUID TRUST.
1040	IM-03	KEYSTONE	079951	KEYSTONE PRECIOUS METALS HOLDINGS INC.
1041	IM-03	KEYSTONE	771648	KEYSTONE TAX EXEMPT TRUST.
1042	IM-03	KEYSTONE	216494	KEYSTONE TAX FREE FUND.
1043	IM-03	KEYSTONE	801415	MASTER EQUITY TRUST.
1044	IM-03	KEYSTONE	799701	MASTER INCOME TRUST.
1045	IM-03	KEYSTONE	707083	MASTER RESERVES TAX FREE TRUST.
1046	IM-03	KEYSTONE	082345	MASTER RESERVES TRUST.
1047	IM-03	NATIONAL SECURITIES	225880	NATIONAL BOND FUND.
1048	IM-03	NATIONAL SECURITIES	701266	NATIONAL CASH RESERVES INC.
1049	IM-03	NATIONAL SECURITIES	755341	NATIONAL FEDERAL SECURITIES TRUST.
1050	IM-03	NATIONAL SECURITIES	811231	NATIONAL GLOBAL ALLOCATION FUND.
1051	IM-03	NATIONAL SECURITIES	796306	NATIONAL GROWTH FUND.
1052	IM-03	NATIONAL SECURITIES	070167	NATIONAL GROWTH INVESTMENT PLAN.
1053	IM-03	NATIONAL SECURITIES	857015	NATIONAL HIGH YIELD BOND FUND INC.
1054	IM-03	NATIONAL SECURITIES	275611	NATIONAL LIQUID RESERVES INC.
1055	IM-03	NATIONAL SECURITIES	855889	NATIONAL MULTI SECTOR FIXED INCOME FUND INC.
1056	IM-03	NATIONAL SECURITIES	821226	NATIONAL PRECIOUS METALS FUND INC.
1057	IM-03	NATIONAL SECURITIES	796301	NATIONAL PREFERRED FUND.
1058	IM-03	NATIONAL SECURITIES	755225	NATIONAL PREMIUM INCOME FUND INC.
1059	IM-03	NATIONAL SECURITIES	202709	NATIONAL SECURITIES TAX EXEMPT BONDS INC.
1060	IM-03	NATIONAL SECURITIES	796299	NATIONAL STOCK FUND.
1061	IM-03	NATIONAL SECURITIES	796298	NATIONAL TOTAL INCOME FUND.
1062	IM-03	NATIONAL SECURITIES	796300	NATIONAL TOTAL RETURN FUND.
1063	IM-03	NATIONAL SECURITIES	783990	NATIONAL VALUE FUND INC.
1064	IM-03	NATIONAL SECURITIES	034273	NATIONAL WORLDWIDE OPPORTUNITIES FUND INC.
1065	IM-03	NUVEEN	868440	NUVEEN CALIFORNIA INVESTMENT QUALITY MUNICIPAL FUND INC.
1066	IM-03	NUVEEN	830266	NUVEEN CALIFORNIA MUNICIPAL INCOME FUND INC.
1067	IM-03	NUVEEN	862313	NUVEEN CALIFORNIA MUNICIPAL MARKET OPPORTUNITY FUND INC.
1068	IM-03	NUVEEN	818851	NUVEEN CALIFORNIA MUNICIPAL VALUE FUND INC.
1069	IM-03	NUVEEN	856227	NUVEEN CALIFORNIA PERFORMANCE PLUS MUNICIPAL FUND INC.
1070	IM-03	NUVEEN	784879	NUVEEN CALIFORNIA TAX FREE FUND INC.
1071	IM-03	NUVEEN	870779	NUVEEN FLORIDA INVESTMENT QUALITY MUNICIPAL FUND.
1072	IM-03	NUVEEN	073391	NUVEEN INCOME FUND SERIES 1.
1073	IM-03	NUVEEN	073386	NUVEEN INCOME TRUST SERIES 1 CHECK A MONTH.
1074	IM-03	NUVEEN	869405	NUVEEN INSURED QUALITY MUNICIPAL FUND INC.
1075	IM-03	NUVEEN	790691	NUVEEN INSURED TAX FREE BOND FUND INC.
1076	IM-03	NUVEEN	862716	NUVEEN INVESTMENT QUALITY MUNICIPAL FUND INC.
1077	IM-03	NUVEEN	857361	NUVEEN MUNICIPAL ADVANTAGE FUND INC.
1078	IM-03	NUVEEN	202768	NUVEEN MUNICIPAL BOND FUND INC.
1079	IM-03	NUVEEN	830271	NUVEEN MUNICIPAL INCOME FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1080	IM-03	NUVEEN	860188	NUVEEN MUNICIPAL MARKET OPPORTUNITY FUND INC.
1081	IM-03	NUVEEN	812801	NUVEEN MUNICIPAL VALUE FUND INC.
1082	IM-03	NUVEEN	870778	NUVEEN NEW JERSEY INVESTMENT QUALITY MUNICIPAL FUND INC.
1083	IM-03	NUVEEN	868449	NUVEEN NEW YORK INVESTMENT QUALITY MUNICIPAL FUND INC.
1084	IM-03	NUVEEN	830264	NUVEEN NEW YORK MUNICIPAL INCOME FUND INC.
1085	IM-03	NUVEEN	862338	NUVEEN NEW YORK MUNICIPAL MARKET OPPORTUNITY FUND INC.
1086	IM-03	NUVEEN	818850	NUVEEN NEW YORK MUNICIPAL VALUE FUND INC.
1087	IM-03	NUVEEN	856226	NUVEEN NEW YORK PERFORMANCE PLUS MUNICIPAL FUND INC.
1088	IM-03	NUVEEN	870780	NUVEEN PENNSYLVANIA INVESTMENT QUALITY MUNICIPAL FUND.
1089	IM-03	NUVEEN	849998	NUVEEN PERFORMANCE PLUS MUNICIPAL FUND INC.
1090	IM-03	NUVEEN	833251	NUVEEN PREMIUM INCOME MUNICIPAL FUND INC.
1091	IM-03	NUVEEN	350316	NUVEEN TAX EXEMPT MONEY MARKET FUND INC.
1092	IM-03	NUVEEN	799665	NUVEEN TAX FREE BOND FUND INC.
1093	IM-03	NUVEEN	799689	NUVEEN TAX FREE MONEY MARKET FUND INC.
1094	IM-03	NUVEEN	704779	NUVEEN TAX FREE RESERVES INC.
1095	IM-03	PAINEWEBBER	794229	CYPRESS FUND INC.
1096	IM-03	PAINEWEBBER	840946	FLEXIBLE BOND TRUST INC.
1097	IM-03	PAINEWEBBER	836212	GLOBAL INCOME PLUS FUND INC.
1098	IM-03	PAINEWEBBER	703887	PAINEWEBBER AMERICA FUND /NY/.
1099	IM-03	PAINEWEBBER	721358	PAINEWEBBER ATLAS FUND INC.
1100	IM-03	PAINEWEBBER	769894	PAINEWEBBER CALIFORNIA TAX EXEMPT INCOME FUND INC.
1101	IM-03	PAINEWEBBER	225732	PAINEWEBBER CASHFUND INC.
1102	IM-03	PAINEWEBBER	789576	PAINEWEBBER CLASSIC REGIONAL FINANCIAL FUND INC.
1103	IM-03	PAINEWEBBER	831550	PAINEWEBBER CLASSIC SERIES INC.
1104	IM-03	PAINEWEBBER	746703	PAINEWEBBER FIXED INCOME PORTFOLIOS INC.
1105	IM-03	PAINEWEBBER	808424	PAINEWEBBER INVESTMENT SERIES.
1106	IM-03	PAINEWEBBER	739243	PAINEWEBBER MANAGED MUNICIPAL TRUST/.
1107	IM-03	PAINEWEBBER	780403	PAINEWEBBER MASTER SERIES INC.
1108	IM-03	PAINEWEBBER	809991	PAINEWEBBER MUNICIPAL SERIES /NY/.
1109	IM-03	PAINEWEBBER	759729	PAINEWEBBER OLYMPUS FUND /NY.
1110	IM-03	PAINEWEBBER	703876	PAINEWEBBER RMA MONEY FUND INC.
1111	IM-03	PAINEWEBBER	703875	PAINEWEBBER RMA TAX FREE FUND INC.
1112	IM-03	PAINEWEBBER	806591	PAINEWEBBER SERIES TRUST.
1113	IM-03	PROVIDENT	706366	ARCH FUND INC.
1114	IM-03	PROVIDENT	792075	ARCH TAX EXEMPT TRUST.
1115	IM-03	PROVIDENT	357369	BISON MONEY MARKET FUND.
1116	IM-03	PROVIDENT	019780	CHESTNUT STREET EXCHANGE FUND.
1117	IM-03	PROVIDENT	831101	EMERALD FUNDS.
1118	IM-03	PROVIDENT	845107	INDEPENDENCE ONE MUTUAL FUNDS.
1119	IM-03	PROVIDENT	109778	INDEPENDENCE SQUARE INCOME SECURITIES INC.
1120	IM-03	PROVIDENT	769100	MARKETMASTER TRUST.
1121	IM-03	PROVIDENT	847090	MSD&T FUNDS INC.
1122	IM-03	PROVIDENT	707180	MUNICIPAL FUND FOR CALIFORNIA INVESTORS INC.
1123	IM-03	PROVIDENT	715997	MUNICIPAL FUND FOR NEW YORK INVESTORS INC.
1124	IM-03	PROVIDENT	311241	MUNICIPAL FUND FOR TEMPORARY INVESTMENT.
1125	IM-03	PROVIDENT	774412	PLAN INVESTMENT FUND INC.
1126	IM-03	PROVIDENT	814041	PNC FINANCIAL COMMON TRUST FUND FOR RETIREMENT ASSETS.
1127	IM-03	PROVIDENT	844779	PNC FUND.
1128	IM-03	PROVIDENT	739602	PORTFOLIOS FOR DIVERSIFIED INVESTMENT INC.
1129	IM-03	PROVIDENT	316103	PROVIDENTMUTUAL FEDERAL MONEYFUND INC.
1130	IM-03	PROVIDENT	090188	PROVIDENTMUTUAL GROWTH FUND INC.
1131	IM-03	PROVIDENT	090194	PROVIDENTMUTUAL INCOME SHARES INC.
1132	IM-03	PROVIDENT	090199	PROVIDENTMUTUAL INVESTMENT SHARES INC.
1133	IM-03	PROVIDENT	316104	PROVIDENTMUTUAL MONEYFUND INC.
1134	IM-03	PROVIDENT	798292	PROVIDENTMUTUAL PENNSYLVANIA TAX FREE TRUST.
1135	IM-03	PROVIDENT	107415	PROVIDENTMUTUAL SPECIAL FUND INC.
1136	IM-03	PROVIDENT	311748	PROVIDENTMUTUAL TAX FREE BOND FUND INC.
1137	IM-03	PROVIDENT	796522	PROVIDENTMUTUAL TAX FREE MONEYFUND INC.
1138	IM-03	PROVIDENT	090204	PROVIDENTMUTUAL TOTAL RETURN TRUST.
1139	IM-03	PROVIDENT	796521	PROVIDENTMUTUAL US GOVERNMENT FUND FOR INCOME INC /DE/.
1140	IM-03	PROVIDENT	201731	PROVIDENTMUTUAL VALUE SHARES INC.
1141	IM-03	PROVIDENT	090205	PROVIDENTMUTUAL VENTURES SHARES INC.
1142	IM-03	PROVIDENT	764825	PROVIDENTMUTUAL WORLD FUND INC.
1143	IM-03	PROVIDENT	831114	RBB FUND INC.
1144	IM-03	PROVIDENT	097098	TEMPORARY INVESTMENT FUND INC.
1145	IM-03	PROVIDENT	034913	TRUST FOR FEDERAL SECURITIES.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1146	IM-03	PROVIDENT	357204	WESTCORE TRUST.
1147	IM-03	SCUDDER	713331	AARP CASH INVESTMENT FUNDS.
1148	IM-03	SCUDDER	747676	AARP GROWTH TRUST.
1149	IM-03	SCUDDER	747677	AARP INCOME TRUST.
1150	IM-03	SCUDDER	747678	AARP INSURED TAX FREE INCOME TRUST.
1151	IM-03	SCUDDER	820026	BRAZIL FUND INC.
1152	IM-03	SCUDDER	053192	JAPAN FUND INC.
1153	IM-03	SCUDDER	067813	MONTGOMERY STREET INCOME SECURITIES INC.
1154	IM-03	SCUDDER	719150	SCUDDER CALIFORNIA TAX FREE TRUST.
1155	IM-03	SCUDDER	088047	SCUDDER CASH INVESTMENT TRUST.
1156	IM-03	SCUDDER	088048	SCUDDER DEVELOPMENT FUND.
1157	IM-03	SCUDDER	088051	SCUDDER EQUITY TRUST.
1158	IM-03	SCUDDER	703842	SCUDDER FUND INC.
1159	IM-03	SCUDDER	354472	SCUDDER FUNDS TRUST.
1160	IM-03	SCUDDER	793597	SCUDDER GLOBAL FUND INC.
1161	IM-03	SCUDDER	716963	SCUDDER GNMA FUND.
1162	IM-03	SCUDDER	316138	SCUDDER GOVERNMENT MONEY FUND.
1163	IM-03	SCUDDER	088064	SCUDDER GROWTH & INCOME FUND.
1164	IM-03	SCUDDER	088063	SCUDDER INCOME FUND.
1165	IM-03	SCUDDER	787628	SCUDDER INSTITUTIONAL FUND INC.
1166	IM-03	SCUDDER	088053	SCUDDER INTERNATIONAL FUND INC.
1167	IM-03	SCUDDER	203142	SCUDDER MUNICIPAL TRUST.
1168	IM-03	SCUDDER	832946	SCUDDER MUTUAL FUNDS INC.
1169	IM-03	SCUDDER	798738	SCUDDER NEW ASIA FUND INC.
1170	IM-03	SCUDDER	857690	SCUDDER NEW EUROPE FUND INC.
1171	IM-03	SCUDDER	720245	SCUDDER STATE TAX FREE TRUST.
1172	IM-03	SCUDDER	313397	SCUDDER TAX FREE MONEY FUND.
1173	IM-03	SCUDDER	711600	SCUDDER TAX FREE TARGET FUND.
1174	IM-03	SCUDDER	810114	SCUDDER TREASURERS TRUST.
1175	IM-03	SCUDDER	764797	SCUDDER VARIABLE LIFE INVESTMENT FUND /MA/
1176	IM-03	SELIGMAN	100786	SELIGMAN CAPITAL FUND INC.
1177	IM-03	SELIGMAN	100802	SELIGMAN CASH MANAGEMENT FUND INC.
1178	IM-03	SELIGMAN	014358	SELIGMAN COMMON STOCK FUND INC.
1179	IM-03	SELIGMAN	709146	SELIGMAN COMMUNICATIONS & INFORMATION FUND INC.
1180	IM-03	SELIGMAN	750679	SELIGMAN FRONTIER FUND INC.
1181	IM-03	SELIGMAN	316411	SELIGMAN GROWTH FUND INC.
1182	IM-03	SELIGMAN	752372	SELIGMAN HIGH INCOME FUND SERIES.
1183	IM-03	SELIGMAN	100852	SELIGMAN INCOME FUND INC.
1184	IM-03	SELIGMAN	881466	SELIGMAN INTERNATIONAL FUND SERIES INC.
1185	IM-03	SELIGMAN	817841	SELIGMAN MUTUAL BENEFIT PORTFOLIOS INC.
1186	IM-03	SELIGMAN	813240	SELIGMAN NEW JERSEY TAX EXEMPT FUND INC.
1187	IM-03	SELIGMAN	793701	SELIGMAN PENNSYLVANIA TAX EXEMPT FUND SERIES.
1188	IM-03	SELIGMAN	862813	SELIGMAN QUALITY MUNICIPAL FUND INC.
1189	IM-03	SELIGMAN	857684	SELIGMAN SELECT MUNICIPAL FUND INC.
1190	IM-03	SELIGMAN	726291	SELIGMAN TAX EXEMPT FUND SERIES INC.
1191	IM-03	SELIGMAN	750756	SELIGMAN TAX EXEMPT SERIES TRUST.
1192	IM-03	SELIGMAN	099614	TRI CONTINENTAL CORP.
1193	IM-03	STRONG	840519	STRONG ADVANTAGE FUND INC.
1194	IM-03	STRONG	842791	STRONG COMMON STOCK FUND INC.
1195	IM-03	STRONG	822619	STRONG DISCOVERY FUND INC.
1196	IM-03	STRONG	799027	STRONG GOVERNMENT SECURITIES FUND INC.
1197	IM-03	STRONG	775181	STRONG INCOME FUND INC.
1198	IM-03	STRONG	879142	STRONG INSURED MUNICIPAL BOND FUND INC.
1199	IM-03	STRONG	355414	STRONG INVESTMENT FUND INC.
1200	IM-03	STRONG	773916	STRONG MONEY MARKET FUND INC.
1201	IM-03	STRONG	798170	STRONG MUNICIPAL BOND FUND INC.
1202	IM-03	STRONG	798169	STRONG MUNICIPAL MONEY MARKET FUND INC.
1203	IM-03	STRONG	723257	STRONG OPPORTUNITY FUND INC.
1204	IM-03	STRONG	820293	STRONG PRECIOUS METALS FUND INC.
1205	IM-03	STRONG	851679	STRONG READY ASSETS FUND INC.
1206	IM-03	STRONG	812486	STRONG SHORT TERM BOND FUND INC.
1207	IM-03	STRONG	878358	STRONG SHORT TERM MUNICIPAL BOND FUND INC.
1208	IM-03	STRONG	355416	STRONG TOTAL RETURN FUND INC.
1209	IM-03	STRONG	846907	STRONG U S GOVERNMENT RESERVES INC.
1210	IM-03	STRONG	869297	STRONG U S TREASURY MONEY FUND INC.
1211	IM-03	TEMPLETON	869404	TEMPLETON AMERICAN GROWTH TRUST INC.
1212	IM-03	TEMPLETON	869313	TEMPLETON CAPITAL ACCUMULATOR FUND INC.
1213	IM-03	TEMPLETON	829965	TEMPLETON CONSTANT PAY OUT FUND INC.
1214	IM-03	TEMPLETON	878087	TEMPLETON DEVELOPING MARKETS TRUST.
1215	IM-03	TEMPLETON	809706	TEMPLETON EMERGING MARKETS FUND INC.
1216	IM-03	TEMPLETON	225930	TEMPLETON FUNDS INC.
1217	IM-03	TEMPLETON	841191	TEMPLETON GLOBAL GOVERNMENTS INCOME TRUST.
1218	IM-03	TEMPLETON	828803	TEMPLETON GLOBAL INCOME FUND INC.
1219	IM-03	TEMPLETON	856138	TEMPLETON GLOBAL OPPORTUNITIES FUNDS.
1220	IM-03	TEMPLETON	861876	TEMPLETON GLOBAL UTILITIES INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1221	IM-03	TEMPLETON	805664	TEMPLETON GROWTH FUND INC.
1222	IM-03	TEMPLETON	097086	TEMPLETON GROWTH FUND LTD.
1223	IM-03	TEMPLETON	795402	TEMPLETON INCOME TRUST.
1224	IM-03	TEMPLETON	865722	TEMPLETON INSTITUTIONAL TRUST INC.
1225	IM-03	TEMPLETON	853183	TEMPLETON REAL ESTATE SECURITIES FUND.
1226	IM-03	TEMPLETON	350900	TEMPLETON SMALLER COMPANIES GROWTH FUND INC.
1227	IM-03	TEMPLETON	853342	TEMPLETON TAX FREE TRUST.
1228	IM-03	TEMPLETON	837949	TEMPLETON VALUE FUND INC.
1229	IM-03	TEMPLETON	810355	TEMPLETON VARIABLE ANNUITY FUND /FL/.
1230	IM-03	TEMPLETON	829959	TEMPLETON VARIABLE PRODUCTS SERIES FUND.
1231	IM-04	AIM	225206	AIM CONVERTIBLE SECURITIES INC.
1232	IM-04	AIM	105377	AIM EQUITY FUNDS INC.
1233	IM-04	AIM	824212	AIM GOVERNMENT FUNDS INC.
1234	IM-04	AIM	216115	AIM HIGH YIELD SECURITIES INC.
1235	IM-04	AIM	888361	AIM INTERNATIONAL EQUITY FUND.
1236	IM-04	AIM	842790	AIM PRIME RATE PREMIUM INCOME FUND INC.
1237	IM-04	AIM	844778	AIM STRATEGIC INCOME FUND INC.
1238	IM-04	AIM	701748	AIM SUMMIT FUND INC.
1239	IM-04	AIM	814723	AIM TAX EXEMPT FUNDS INC.
1240	IM-04	AIM	205007	SHORT TERM INVESTMENTS CO.
1241	IM-04	AIM	205010	TAX FREE INVESTMENTS TRUST /TX/.
1242	IM-04	ALLSTATE	835333	ALLSTATE MUNICIPAL INCOME OPPORTUNITIES TRUST.
1243	IM-04	ALLSTATE	847593	ALLSTATE MUNICIPAL INCOME OPPORTUNITIES TRUST II.
1244	IM-04	ALLSTATE	861069	ALLSTATE MUNICIPAL INCOME OPPORTUNITIES TRUST III.
1245	IM-04	ALLSTATE	817130	ALLSTATE MUNICIPAL INCOME TRUST.
1246	IM-04	ALLSTATE	830975	ALLSTATE MUNICIPAL INCOME TRUST II.
1247	IM-04	ALLSTATE	852984	ALLSTATE MUNICIPAL INCOME TRUST III.
1248	IM-04	ALLSTATE	842891	ALLSTATE MUNICIPAL PREMIUM INCOME TRUST.
1249	IM-04	ALLSTATE	854904	ALLSTATE PRIME INCOME TRUST.
1250	IM-04	AMEV	823344	AMEV ADVANTAGE PORTFOLIOS INC.
1251	IM-04	AMEV	049905	AMEV CAPITAL FUND INC.
1252	IM-04	AMEV	355716	AMEV FIDUCIARY FUND INC.
1253	IM-04	AMEV	049925	AMEV GROWTH FUND INC.
1254	IM-04	AMEV	312572	AMEV MONEY FUND INC.
1255	IM-04	AMEV	086317	AMEV SECURITIES INC.
1256	IM-04	AMEV	790558	AMEV SERIES FUNDS INC.
1257	IM-04	AMEV	703708	AMEV TAX FREE FUND INC.
1258	IM-04	AMEV	049929	AMEV U S GOVERNMENT SECURITIES FUND INC.
1259	IM-04	BABSON	009014	BABSON D L BOND TRUST.
1260	IM-04	BABSON	313565	BABSON D L MONEY MARKET FUND INC.
1261	IM-04	BABSON	313136	BABSON D L TAX FREE INCOME FUND INC.
1262	IM-04	BABSON	009017	BABSON DAVID L GROWTH FUND INC.
1263	IM-04	BABSON	873076	BABSON ENTERPRISE FUND II INC /MO/.
1264	IM-04	BABSON	725496	BABSON ENTERPRISE FUND INC.
1265	IM-04	BABSON	823338	BABSON STEWART IVORY INTERNATIONAL FUND INC.
1266	IM-04	BABSON	753901	BABSON VALUE FUND INC.
1267	IM-04	BABSON	817750	SHADOW STOCK FUND INC.
1268	IM-04	BABSON	706127	UMB BOND FUND INC.
1269	IM-04	BABSON	704773	UMB MONEY MARKET FUND INC.
1270	IM-04	BABSON	803019	UMB QUALIFIED DIVIDEND FUND INC.
1271	IM-04	BABSON	706130	UMB STOCK FUND INC.
1272	IM-04	BABSON	706126	UMB TAX FREE MONEY MARKET FUND INC.
1273	IM-04	BENHAM	717316	BENHAM CALIFORNIA TAX FREE TRUST.
1274	IM-04	BENHAM	827060	BENHAM EQUITY FUNDS.
1275	IM-04	BENHAM	773674	BENHAM GOVERNMENT INCOME TRUST.
1276	IM-04	BENHAM	312152	BENHAM GOVERNMENT INCOME TRUST /CA/.
1277	IM-04	BENHAM	746458	BENHAM NATIONAL TAX FREE TRUST.
1278	IM-04	BENHAM	757928	BENHAM TARGET MATURITIES TRUST.
1279	IM-04	BENHAM	813720	BENHAM VARIABLE INSURANCE TRUST.
1280	IM-04	BENHAM	315961	CAPITAL PRESERVATION FUND II INC.
1281	IM-04	BENHAM	017271	CAPITAL PRESERVATION FUND INC.
1282	IM-04	BULL & BEAR	732801	BULL & BEAR CAPITAL GROWTH FUND INC.
1283	IM-04	BULL & BEAR	017050	BULL & BEAR EQUITY INCOME FUND INC.
1284	IM-04	BULL & BEAR	812487	BULL & BEAR FINANCIAL NEWS COMPOSITE FUND INC.
1285	IM-04	BULL & BEAR	042031	BULL & BEAR GOLD INVESTORS LTD.
1286	IM-04	BULL & BEAR	015260	BULL & BEAR INC /NY/.
1287	IM-04	BULL & BEAR	736952	BULL & BEAR MUNICIPAL SECURITIES INC.
1288	IM-04	BULL & BEAR	796532	BULL & BEAR OVERSEAS FUND LTD.
1289	IM-04	BULL & BEAR	788422	BULL & BEAR SPECIAL EQUITIES FUND INC.
1290	IM-04	CAPSTONE	791549	CAPSTONE EQUITY SERIES INC.
1291	IM-04	CAPSTONE	092500	CAPSTONE GOVERNMENT INCOME TRUST INC.
1292	IM-04	CAPSTONE	793601	CAPSTONE INTERNATIONAL SERIES TRUST.
1293	IM-04	CAPSTONE	039454	FUND OF THE SOUTHWEST INC.
1294	IM-04	CAPSTONE	314183	INVESTORS CASH RESERVE FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1295	IM-04	CAPSTONE	760110	MEDICAL RESEARCH INVESTMENT FUND INC.
1296	IM-04	CAPSTONE	079179	US TREND FUND INC.
1297	IM-04	CIGNA	022828	CIGNA ANNUITY FUNDS GROUP.
1298	IM-04	CIGNA	019034	CIGNA FUNDS GROUP.
1299	IM-04	CIGNA	830474	CIGNA HIGH INCOME SHARES.
1300	IM-04	CIGNA	275551	CIGNA HIGH YIELD FUND INC.
1301	IM-04	CIGNA	019035	CIGNA INCOME FUND INC.
1302	IM-04	CIGNA	019037	CIGNA MONEY MARKET FUND INC.
1303	IM-04	CIGNA	201414	CIGNA MUNICIPAL BOND FUND INC.
1304	IM-04	CIGNA	702906	CIGNA TAX EXEMPT CASH FUND INC.
1305	IM-04	CIGNA	734524	CIGNA VALUE FUND INC.
1306	IM-04	CIGNA	830035	CIGNA VARIABLE PRODUCTS GROUP.
1307	IM-04	CIGNA	049975	INA INVESTMENT SECURITIES INC.
1308	IM-04	CITIBANK	850615	CASH RESERVES PORTFOLIO.
1309	IM-04	CITIBANK	821466	CIM HIGH YIELD SECURITIES.
1310	IM-04	CITIBANK	747576	LANDMARK CASH RESERVES.
1311	IM-04	CITIBANK	744388	LANDMARK FUNDS I.
1312	IM-04	CITIBANK	744389	LANDMARK FUNDS II.
1313	IM-04	CITIBANK	866747	LANDMARK INTERNATIONAL EQUITY FUND.
1314	IM-04	CITIBANK	794047	LANDMARK NEW YORK TAX FREE INCOME FUND.
1315	IM-04	CITIBANK	775613	LANDMARK NEW YORK TAX FREE RESERVES.
1316	IM-04	CITIBANK	850628	LANDMARK PREMIUM FUNDS.
1317	IM-04	CITIBANK	731762	LANDMARK TAX FREE RESERVES.
1318	IM-04	CITIBANK	795808	LANDMARK U S GOVERNMENT INCOME FUND.
1319	IM-04	CITIBANK	864953	TAX FREE RESERVES PORTFOLIO.
1320	IM-04	COMPOSITE	200159	COMPOSITE BOND & STOCK FUND INC.
1321	IM-04	COMPOSITE	312346	COMPOSITE CASH MANAGEMENT CO.
1322	IM-04	COMPOSITE	808421	COMPOSITE DEFERRED SERIES INC.
1323	IM-04	COMPOSITE	022864	COMPOSITE GROWTH FUND INC.
1324	IM-04	COMPOSITE	022865	COMPOSITE INCOME FUND INC.
1325	IM-04	COMPOSITE	796533	COMPOSITE NORTHWEST 50 FUND INC.
1326	IM-04	COMPOSITE	201507	COMPOSITE TAX EXEMPT BOND FUND INC.
1327	IM-04	COMPOSITE	701379	COMPOSITE UNITED STATES GOVERNMENT SECURITIES INC.
1328	IM-04	COUNSELLORS	811159	COUNSELLORS CAPITAL APPRECIATION FUND.
1329	IM-04	COUNSELLORS	759433	COUNSELLORS CASH RESERVE FUND INC.
1330	IM-04	COUNSELLORS	825305	COUNSELLORS EMERGING GROWTH FUND INC.
1331	IM-04	COUNSELLORS	811142	COUNSELLORS FIXED INCOME FUND.
1332	IM-04	COUNSELLORS	866265	COUNSELLORS GLOBAL FIXED INCOME FUND INC.
1333	IM-04	COUNSELLORS	835598	COUNSELLORS INTERMEDIATE MATURITY GOVERNMENT FUND INC.
1334	IM-04	COUNSELLORS	846582	COUNSELLORS INTERNATIONAL EQUITY FUND INC.
1335	IM-04	COUNSELLORS	808433	COUNSELLORS NEW YORK MUNICIPAL BOND FUND.
1336	IM-04	COUNSELLORS	759434	COUNSELLORS NEW YORK TAX EXEMPT FUND INC.
1337	IM-04	COUNSELLORS	798311	COUNSELLORS TANDEM SECURITIES FUND INC.
1338	IM-04	COUNSELLORS	025165	COUNSELORS INVESTMENT FUND INC.
1339	IM-04	CRABBE HUSON	841289	CRABBE HUSON ASSET ALLOCATION FUND INC.
1340	IM-04	CRABBE HUSON	841288	CRABBE HUSON EQUITY FUND INC.
1341	IM-04	CRABBE HUSON	810281	CRABBE HUSON GROWTH FUND INC.
1342	IM-04	CRABBE HUSON	841279	CRABBE HUSON INCOME FUND INC.
1343	IM-04	CRABBE HUSON	841290	CRABBE HUSON MONEY MARKET FUND INC.
1344	IM-04	CRABBE HUSON	841280	CRABBE HUSON US GOVERNMENT INCOME FUND INC.
1345	IM-04	CRABBE HUSON	749804	OREGON MUNICIPAL BOND FUND INC.
1346	IM-04	DELAWARE MGT	230173	DELAWARE GROUP CASH RESERVE.
1347	IM-04	DELAWARE MGT	027574	DELAWARE GROUP DECATUR FUND INC.
1348	IM-04	DELAWARE MGT	027801	DELAWARE GROUP DELAWARE FUND INC.
1349	IM-04	DELAWARE MGT	778108	DELAWARE GROUP DELCAP FUND INC.
1350	IM-04	DELAWARE MGT	027825	DELAWARE GROUP DELCHESTER HIGH YIELD BOND FUND INC.
1351	IM-04	DELAWARE MGT	875610	DELAWARE GROUP GLOBAL & INTERNATIONAL FUNDS INC.
1352	IM-04	DELAWARE MGT	769220	DELAWARE GROUP GOVERNMENT FUND INC.
1353	IM-04	DELAWARE MGT	814230	DELAWARE GROUP PREMIUM FUND INC.
1354	IM-04	DELAWARE MGT	728352	DELAWARE GROUP TAX FREE FUND INC.
1355	IM-04	DELAWARE MGT	320572	DELAWARE GROUP TAX FREE MONEY FUND INC.
1356	IM-04	DELAWARE MGT	357059	DELAWARE GROUP TREASURY RESERVES.
1357	IM-04	DELAWARE MGT	027937	DELAWARE GROUP TREND FUND INC.
1358	IM-04	DELAWARE MGT	809821	DELAWARE GROUP VALUE FUND INC.
1359	IM-04	DELAWARE MGT	875352	DELAWARE POOLED TRUST INC.
1360	IM-04	DELAWARE MGT	201670	DMC TAX FREE INCOME TRUST PENNSYLVANIA.
1361	IM-04	EQUITABLE	814605	EQUITABLE TRUST.
1362	IM-04	EQUITABLE	759751	HUDSON RIVER TRUST.
1363	IM-04	EQUITABLE	802275	PRISM INVESTMENT TRUST.
1364	IM-04	EQUITABLE	089024	SEPARATE ACCOUNT A OF THE EQUITABLE LIFE ASSU SOC OF THE US.
1365	IM-04	EQUITABLE	089032	SEPARATE ACCOUNT D OF THE EQUITABLE LIFE ASSU SOC OF THE US.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1366	IM-04	EQUITABLE	089034	SEPARATE ACCOUNT E OF THE EQUITABLE LIFE ASSU SOC OF THE US.
1367	IM-04	EQUITABLE	312576	SEPARATE ACCOUNT I OF EQUITABLE VARIABLE LIFE INSURANCE CO.
1368	IM-04	EVERGREEN	826733	EVERGREEN AMERICAN RETIREMENT TRUST.
1369	IM-04	EVERGREEN	082693	EVERGREEN FUND.
1370	IM-04	EVERGREEN	842436	EVERGREEN GLOBAL REAL ESTATE EQUITY TRUST.
1371	IM-04	EVERGREEN	714234	EVERGREEN LIMITED MARKET FUND INC.
1372	IM-04	EVERGREEN	820636	EVERGREEN MONEY MARKET TRUST.
1373	IM-04	EVERGREEN	836375	EVERGREEN MUNICIPAL TRUST.
1374	IM-04	EVERGREEN	275346	EVERGREEN TOTAL RETURN FUND.
1375	IM-04	EVERGREEN	795891	EVERGREEN VALUE TIMING FUND.
1376	IM-04	FAIRFIELD	769270	NAVIGATOR MONEY MARKET FUND INC.
1377	IM-04	FAIRFIELD	769018	NAVIGATOR TAX FREE MONEY MARKET FUND INC.
1378	IM-04	FAIRFIELD	746713	ST CLAIR EQUITY FUND INC.
1379	IM-04	FAIRFIELD	746714	ST CLAIR FIXED INCOME FUND INC.
1380	IM-04	FAIRFIELD	770176	ST CLAIR TAX FREE FUND INC.
1381	IM-04	FAIRFIELD	830755	VISION FIDUCIARY FUNDS INC.
1382	IM-04	FAIRFIELD	830744	VISION GROUP OF FUNDS INC.
1383	IM-04	FINANCIAL	201815	FINANCIAL BOND SHARES INC.
1384	IM-04	FINANCIAL	035685	FINANCIAL DAILY INCOME SHARES INC.
1385	IM-04	FINANCIAL	035692	FINANCIAL DYNAMICS FUND INC.
1386	IM-04	FINANCIAL	110042	FINANCIAL INDUSTRIAL FUND INC.
1387	IM-04	FINANCIAL	035732	FINANCIAL INDUSTRIAL INCOME FUND INC.
1388	IM-04	FINANCIAL	789940	FINANCIAL SERIES TRUST.
1389	IM-04	FINANCIAL	725781	FINANCIAL STRATEGIC PORTFOLIOS INC.
1390	IM-04	FINANCIAL	352662	FINANCIAL TAX FREE INCOME SHARES INC.
1391	IM-04	FINANCIAL	717198	FINANCIAL TAX FREE MONEY FUND INC.
1392	IM-04	FINANCIAL	828806	INVESCO TREASURERS SERIES TRUST.
1393	IM-04	FLAG INVESTORS	353447	BROWN ALEX CASH RESERVE FUND INC.
1394	IM-04	FLAG INVESTORS	793953	FLAG INVESTORS CORPORATE CASH TRUST.
1395	IM-04	FLAG INVESTORS	831675	FLAG INVESTORS EMERGING GROWTH FUND INC.
1396	IM-04	FLAG INVESTORS	862473	FLAG INVESTORS HIGH YIELD OPPORTUNITIES FUND INC.
1397	IM-04	FLAG INVESTORS	800074	FLAG INVESTORS INTERNATIONAL TRUST.
1398	IM-04	FLAG INVESTORS	849686	FLAG INVESTORS QUALITY GROWTH FUND INC.
1399	IM-04	FLAG INVESTORS	731129	FLAG INVESTORS TELEPHONE INCOME FUND INC.
1400	IM-04	FLAG INVESTORS	859031	MANAGED MUNICIPAL FUND INC.
1401	IM-04	FLAG INVESTORS	811160	TOTAL RETURN US TREASURY FUND INC.
1402	IM-04	GABELLI	840289	DSI SERIES FUND INC.
1403	IM-04	GABELLI	783898	GABELLI ASSET FUND.
1404	IM-04	GABELLI	819696	GABELLI CONVERTIBLE SECURITIES FUND INC.
1405	IM-04	GABELLI	794685	GABELLI EQUITY TRUST INC.
1406	IM-04	GABELLI	806857	GABELLI GROWTH FUND.
1407	IM-04	GABELLI	845811	GABELLI SERIES FUNDS INC.
1408	IM-04	GABELLI	853438	GABELLI VALUE FUND INC.
1409	IM-04	GABELLI	860122	MANAGERS FUND INC.
1410	IM-04	GABELLI	822922	TREASURERS FUND INC /CT/.
1411	IM-04	GOLDMAN SACHS	703878	ASSET MANAGEMENT PORTFOLIOS.
1412	IM-04	GOLDMAN SACHS	704178	CENTERLAND FUND.
1413	IM-04	GOLDMAN SACHS	856554	FINANCIAL SQUARE MONEY MARKET TRUST.
1414	IM-04	GOLDMAN SACHS	225484	GOLDMAN SACHS INSTITUTIONAL LIQUID ASSETS.
1415	IM-04	GOLDMAN SACHS	701602	GOLDMAN SACHS INSTITUTIONAL TAX EXEMPT ASSETS.
1416	IM-04	GOLDMAN SACHS	822977	GOLDMAN SACHS SHORT INTERMEDIATE GOVERNMENT FUND.
1417	IM-04	GOLDMAN SACHS	860118	GS CAPITAL GROWTH FUND INC.
1418	IM-04	GOLDMAN SACHS	734376	INSTITUTIONAL DIVERSIFIED ASSETS.
1419	IM-04	GOLDMAN SACHS	800445	INSTITUTIONAL INCOME FUND.
1420	IM-04	GOLDMAN SACHS	868660	PEPPER LANE FUND.
1421	IM-04	GOLDMAN SACHS	860579	RIVERSIDE FUND INC.
1422	IM-04	GOLDMAN SACHS	825759	TRUST FOR CREDIT UNIONS.
1423	IM-04	GOLDMAN SACHS	861103	WEST END FUND INC.
1424	IM-04	GUARDIAN	869759	BAILLIE GIFFORD INTERNATIONAL FUND INC.
1425	IM-04	GUARDIAN	711872	GUARDIAN BOND FUND INC.
1426	IM-04	GUARDIAN	356305	GUARDIAN CASH FUND INC.
1427	IM-04	GUARDIAN	703192	GUARDIAN CASH MANAGEMENT TRUST.
1428	IM-04	GUARDIAN	044406	GUARDIAN PARK AVENUE FUND INC.
1429	IM-04	GUARDIAN	711873	GUARDIAN STOCK FUND INC.
1430	IM-04	GUARDIAN	837910	GUARDIAN US GOVERNMENT TRUST.
1431	IM-04	GUARDIAN	826736	GUARDIAN GENERATION SERIES TRUST.
1432	IM-04	HARTFORD	714502	HARTFORD BOND DEBT SECURITIES FUND INC.
1433	IM-04	HARTFORD	756930	HARTFORD GNMA MORTGAGE SECURITIES FUND INC.
1434	IM-04	HARTFORD	811086	HARTFORD INDEX FUND INC.
1435	IM-04	HARTFORD	861503	HARTFORD INTERNATIONAL OPPORTUNITIES FUND INC.
1436	IM-04	HARTFORD	714501	HARTFORD US GOVERNMENT MONEY MARKET FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1437	IM-04	HARTFORD	783748	HARTFORD ZERO COUPON TREASURY FUND INC.
1438	IM-04	HARTFORD	714499	HVA ADVISERS FUND INC.
1439	IM-04	HARTFORD	741585	HVA AGGRESSIVE GROWTH FUND INC.
1440	IM-04	HARTFORD	714500	HVA MONEY MARKET FUND INC.
1441	IM-04	HARTFORD	045941	HVA STOCK FUND INC.
1442	IM-04	KIDDER PEABODY	814400	KIDDER PEABODY CALIFORNIA TAX EXEMPT MONEY FUND.
1443	IM-04	KIDDER PEABODY	771587	KIDDER PEABODY EQUITY INCOME FUND INC.
1444	IM-04	KIDDER PEABODY	796546	KIDDER PEABODY EXCHANGE MONEY FUND.
1445	IM-04	KIDDER PEABODY	771588	KIDDER PEABODY GOVERNMENT INCOME FUND INC.
1446	IM-04	KIDDER PEABODY	714979	KIDDER PEABODY GOVERNMENT MONEY FUND INC.
1447	IM-04	KIDDER PEABODY	806005	KIDDER PEABODY MARKETGUARD APPRECIATION FUND.
1448	IM-04	KIDDER PEABODY	868055	KIDDER PEABODY MUNICIPAL MONEY MARKET SERIES.
1449	IM-04	KIDDER PEABODY	357206	KIDDER PEABODY PREMIUM ACCOUNT FUND.
1450	IM-04	KIDDER PEABODY	743234	KIDDER PEABODY SPECIAL GROWTH FUND INC.
1451	IM-04	KIDDER PEABODY	715150	KIDDER PEABODY TAX EXEMPT MONEY FUND INC.
1452	IM-04	KIDDER PEABODY	773467	KIDDER PEABODY TAX FREE INCOME FUND.
1453	IM-04	LEGG MASON	276300	LEGG MASON CASH RESERVE TRUST.
1454	IM-04	LEGG MASON	810868	LEGG MASON INCOME TRUST INC.
1455	IM-04	LEGG MASON	781880	LEGG MASON SPECIAL INVESTMENT TRUST INC.
1456	IM-04	LEGG MASON	869906	LEGG MASON TAX EXEMPT INCOME FUND.
1457	IM-04	LEGG MASON	704560	LEGG MASON TAX EXEMPT TRUST INC.
1458	IM-04	LEGG MASON	769342	LEGG MASON TOTAL RETURN TRUST INC.
1459	IM-04	LEGG MASON	357235	LEGG MASON VALUE TRUST INC.
1460	IM-04	LEGG MASON	863520	WESTERN ASSET TRUST INC.
1461	IM-04	LEGG MASON	794279	WORLDWIDE VALUE FUND INC.
1462	IM-04	LEXINGTON	812576	LEXINGTON GLOBAL FUND INC.
1463	IM-04	LEXINGTON	059140	LEXINGTON GNMA INCOME FUND INC.
1464	IM-04	LEXINGTON	844070	LEXINGTON GOLD TRUST.
1465	IM-04	LEXINGTON	277512	LEXINGTON GOLDFUND INC.
1466	IM-04	LEXINGTON	355154	LEXINGTON GOVERNMENT SECURITIES MONEY MARKET FUND INC.
1467	IM-04	LEXINGTON	059139	LEXINGTON GROWTH FUND INC.
1468	IM-04	LEXINGTON	201196	LEXINGTON MONEY MARKET TRUST.
1469	IM-04	LEXINGTON	059146	LEXINGTON RESEARCH FUND INC.
1470	IM-04	LEXINGTON	793741	LEXINGTON TAX EXEMPT BOND TRUST.
1471	IM-04	LEXINGTON	202403	LEXINGTON TAX FREE MONEY FUND INC.
1472	IM-04	LEXINGTON	820915	LEXINGTON TECHNICAL STRATEGY FUND INC.
1473	IM-04	LINCOLN NATL	353875	LINCOLN NATIONAL BOND FUND INC.
1474	IM-04	LINCOLN NATL	793158	LINCOLN NATIONAL CONVERTIBLE SECURITIES FUND INC.
1475	IM-04	LINCOLN NATL	353874	LINCOLN NATIONAL GROWTH FUND INC.
1476	IM-04	LINCOLN NATL	059560	LINCOLN NATIONAL INCOME FUND INC /NEW/.
1477	IM-04	LINCOLN NATL	870782	LINCOLN NATIONAL INTERNATIONAL FUND INC.
1478	IM-04	LINCOLN NATL	715974	LINCOLN NATIONAL MANAGED FUND INC.
1479	IM-04	LINCOLN NATL	353872	LINCOLN NATIONAL MONEY MARKET FUND INC.
1480	IM-04	LINCOLN NATL	812806	LINCOLN NATIONAL PUTNAM MASTER FUND INC.
1481	IM-04	LINCOLN NATL	828807	LINCOLN NATIONAL SOCIAL AWARENESS FUND INC.
1482	IM-04	LINCOLN NATL	355933	LINCOLN NATIONAL SPECIAL OPPORTUNITIES FUND INC.
1483	IM-04	LINCOLN NATL	059566	LINCOLN NATIONAL VARIABLE ANNUITY FUND A.
1484	IM-04	LINCOLN NATL	059567	LINCOLN NATIONAL VARIABLE ANNUITY FUND B.
1485	IM-04	LORD ABBETT	002691	AFFILIATED FUND INC.
1486	IM-04	LORD ABBETT	060365	LORD ABBETT BOND DEBENTURE FUND INC.
1487	IM-04	LORD ABBETT	769893	LORD ABBETT CALIFORNIA TAX FREE INCOME FUND INC.
1488	IM-04	LORD ABBETT	311635	LORD ABBETT CASH RESERVE FUND INC.
1489	IM-04	LORD ABBETT	276914	LORD ABBETT DEVELOPING GROWTH FUND INC / NEW/.
1490	IM-04	LORD ABBETT	859903	LORD ABBETT EQUITY FUND.
1491	IM-04	LORD ABBETT	792887	LORD ABBETT FUNDAMENTAL VALUE FUND INC.
1492	IM-04	LORD ABBETT	829901	LORD ABBETT GLOBAL FUND INC.
1493	IM-04	LORD ABBETT	855396	LORD ABBETT SERIES FUND INC.
1494	IM-04	LORD ABBETT	737800	LORD ABBETT TAX FREE INCOME FUND INC.
1495	IM-04	LORD ABBETT	060367	LORD ABBETT US GOVERNMENT SECURITIES FUND INC.
1496	IM-04	LORD ABBETT	716788	LORD ABBETT VALUE APPRECIATION FUND INC.
1497	IM-04	METLIFE	862488	ALL CITY TRUST.
1498	IM-04	METLIFE	790941	METLIFE STATE STREET EQUITY TRUST.
1499	IM-04	METLIFE	806390	METLIFE STATE STREET FIXED INCOME TRUST.
1500	IM-04	METLIFE	787980	METLIFE STATE STREET INCOME TRUST.
1501	IM-04	METLIFE	768530	METLIFE STATE STREET MONEY MARKET TRUST.
1502	IM-04	METLIFE	787978	METLIFE STATE STREET TAX EXEMPT TRUST.
1503	IM-04	METLIFE	710826	METROPOLITAN SERIES FUND INC.
1504	IM-04	MUTUAL OF OMAHA	089400	MUTUAL OF OMAHA AMERICA FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1505	IM-04	MUTUAL OF OMAHA	316462	MUTUAL OF OMAHA CASH RESERVE FUND INC.
1506	IM-04	MUTUAL OF OMAHA	069404	MUTUAL OF OMAHA GROWTH FUND INC.
1507	IM-04	MUTUAL OF OMAHA	069405	MUTUAL OF OMAHA INCOME FUND INC.
1508	IM-04	MUTUAL OF OMAHA	069407	MUTUAL OF OMAHA INTEREST SHARES INC.
1509	IM-04	MUTUAL OF OMAHA	311371	MUTUAL OF OMAHA MONEY MARKET ACCOUNT INC.
1510	IM-04	MUTUAL OF OMAHA	202679	MUTUAL OF OMAHA TAX FREE INCOME FUND INC.
1511	IM-04	NBNE	856338	CONNECTICUT TAX FREE INCOME PORTFOLIO.
1512	IM-04	NBNE	872026	EQUITY INCOME PORTFOLIO.
1513	IM-04	NBNE	856340	EQUITY PORTFOLIO.
1514	IM-04	NBNE	856335	MASSACHUSETTS TAX FREE INCOME PORTFOLIO.
1515	IM-04	NBNE	856256	TAX EXEMPT INCOME PORTFOLIO TARGET 1995.
1516	IM-04	NBNE	856257	TAX EXEMPT INCOME PORTFOLIO TARGET 2000.
1517	IM-04	NBNE	856255	TAX EXEMPT INCOME PORTFOLIO TARGET 2010.
1518	IM-04	NBNE	856373	TAX FREE MONEY MARKET PORTFOLIO.
1519	IM-04	NBNE	856124	US GOVERNMENT INCOME PORTFOLIO TARGET 1992.
1520	IM-04	NBNE	856126	US GOVERNMENT INCOME PORTFOLIO TARGET 1995.
1521	IM-04	NBNE	856127	US GOVERNMENT INCOME PORTFOLIO TARGET 2000.
1522	IM-04	NBNE	856125	US GOVERNMENT INCOME PORTFOLIO TARGET 2010.
1523	IM-04	NBNE	856133	YANKEE FUNDS.
1524	IM-04	NEUBERGER	736913	NEUBERGER & BERMAN ADVISERS MANAGEMENT TRUST.
1525	IM-04	NEUBERGER	828924	NEUBERGER & BERMAN CASH RESERVES.
1526	IM-04	NEUBERGER	760107	NEUBERGER & BERMAN GENESIS FUND INC.
1527	IM-04	NEUBERGER	723620	NEUBERGER & BERMAN GOVERNMENT MONEY FUND INC/MD.
1528	IM-04	NEUBERGER	044402	NEUBERGER & BERMAN GUARDIAN FUND INC.
1529	IM-04	NEUBERGER	787979	NEUBERGER & BERMAN LTD MATURITY BOND FUND.
1530	IM-04	NEUBERGER	061944	NEUBERGER & BERMAN MANHATTAN FUND INC.
1531	IM-04	NEUBERGER	799203	NEUBERGER & BERMAN MONEY MARKET PLUS.
1532	IM-04	NEUBERGER	752251	NEUBERGER & BERMAN MUNICIPAL MONEY FUND.
1533	IM-04	NEUBERGER	912485	NEUBERGER & BERMAN MUNICIPAL SECURITIES TRUST.
1534	IM-04	NEUBERGER	076482	NEUBERGER & BERMAN PARTNERS FUND INC.
1535	IM-04	NEUBERGER	032684	NEUBERGER & BERMAN SELECTED SECTORS PLUS ENERGY INC.
1536	IM-04	NEW ENGLAND	070969	NEW ENGLAND BOND INCOME FUND.
1537	IM-04	NEW ENGLAND	317947	NEW ENGLAND CASH MANAGEMENT TRUST.
1538	IM-04	NEW ENGLAND	070966	NEW ENGLAND EQUITY INCOME FUND.
1539	IM-04	NEW ENGLAND	770540	NEW ENGLAND FUNDS.
1540	IM-04	NEW ENGLAND	070968	NEW ENGLAND GROWTH FUND.
1541	IM-04	NEW ENGLAND	355761	NEW ENGLAND LIFE RETIREMENT INVESTMENT ACCOUNT.
1542	IM-04	NEW ENGLAND	071319	NEW ENGLAND RETIREMENT EQUITY FUND.
1543	IM-04	NEW ENGLAND	202722	NEW ENGLAND TAX EXEMPT INCOME FUND.
1544	IM-04	NEW ENGLAND	714528	NEW ENGLAND TAX EXEMPT MONEY MARKET TRUST.
1545	IM-04	NEW ENGLAND	071318	NEW ENGLAND VARIABLE ANNUITY FUND 1.
1546	IM-04	NEW ENGLAND	719211	NEW ENGLAND ZENITH FUND.
1547	IM-04	NML	072173	NML BOND FUND INC.
1548	IM-04	NML	351788	NML MONEY MARKET FUND INC.
1549	IM-04	NML	351787	NML ONE FUND INC.
1550	IM-04	NML	072175	NML STOCK FUND INC.
1551	IM-04	NML	867822	NORTHWESTERN MUTUAL AGGRESSIVE GROWTH STOCK FUND INC.
1552	IM-04	NML	867818	NORTHWESTERN MUTUAL INDEX 500 STOCK FUND INC.
1553	IM-04	NML	742277	NORTHWESTERN MUTUAL VARIABLE LIFE ACCOUNT.
1554	IM-04	NML	742212	NORTHWESTERN MUTUAL VARIABLE LIFE SERIES FUND INC.
1555	IM-04	PB-SB	715214	PB-SB 1983 INVESTMENT PARTNERSHIP I.
1556	IM-04	PB-SB	725492	PB-SB 1983 INVESTMENT PARTNERSHIP IA.
1557	IM-04	PB-SB	807448	PB-SB 1983 INVESTMENT PARTNERSHIP III.
1558	IM-04	PB-SB	724542	PB-SB 1983 INVESTMENT PARTNERSHIP IV.
1559	IM-04	PB-SB	746413	PB-SB 1984 INVESTMENT PARTNERSHIP I.
1560	IM-04	PB-SB	741314	PB-SB 1984 INVESTMENT PARTNERSHIP VA.
1561	IM-04	PB-SB	767722	PB-SB 1985 INVESTMENT PARTNERSHIP I.
1562	IM-04	PB-SB	772144	PB-SB 1985 INVESTMENT PARTNERSHIP VI.
1563	IM-04	PB-SB	779001	PB-SB 1985 INVESTMENT PARTNERSHIP VII.
1564	IM-04	PB-SB	794811	PB-SB 1986 INVESTMENT PARTNERSHIP VI.
1565	IM-04	PB-SB	816487	PB-SB 1987 INVESTMENT PARTNERSHIP VI.
1566	IM-04	PB-SB	845311	PB-SB 1988 INVESTMENT PARTNERSHIP III.
1567	IM-04	PB-SB	843914	PB-SB 1988 INVESTMENT PARTNERSHIP VIII.
1568	IM-04	PIERPONT	819636	PIERPONT BOND FUND.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1569	IM-04	PIERPONT	766838	PIERPONT CAPITAL APPRECIATION FUND.
1570	IM-04	PIERPONT	766837	PIERPONT EQUITY FUND.
1571	IM-04	PIERPONT	860732	PIERPONT INTERNATIONAL EQUITY FUND INC.
1572	IM-04	PIERPONT	702081	PIERPONT MONEY MARKET FUND.
1573	IM-04	PIERPONT	750204	PIERPONT TAX EXEMPT BOND FUND.
1574	IM-04	PIERPONT	722836	PIERPONT TAX EXEMPT MONEY MARKET FUND.
1575	IM-04	PILGRIM	739589	PILGRIM CORPORATE CASH FUND.
1576	IM-04	PILGRIM	712156	PILGRIM CORPORATE UTILITIES FUND.
1577	IM-04	PILGRIM	746575	PILGRIM GNMA FUND.
1578	IM-04	PILGRIM	802670	PILGRIM GOVERNMENT SECURITIES FUND.
1579	IM-04	PILGRIM	802560	PILGRIM HIGH INCOME FUND.
1580	IM-04	PILGRIM	808152	PILGRIM INVESTMENT TRUST.
1581	IM-04	PILGRIM	061448	PILGRIM MAGNACAP FUND INC.
1582	IM-04	PILGRIM	700882	PILGRIM MONEY MARKET FUND.
1583	IM-04	PILGRIM	826020	PILGRIM PRIME RATE TRUST.
1584	IM-04	PILGRIM	784055	PILGRIM REGIONAL BANKSHARES INC.
1585	IM-04	PILGRIM	783262	PILGRIM SHORT TERM MULTI MARKET INCOME FUND.
1586	IM-04	PILGRIM	061435	PILGRIM STRATEGIC INVESTMENT SERIES.
1587	IM-04	PILGRIM	868713	PILGRIM TAX FREE TRUST.
1588	IM-04	PIONEER	278776	PIONEER BOND FUND /MA/.
1589	IM-04	PIONEER	078708	PIONEER ENTERPRISE FUND INC.
1590	IM-04	PIONEER	866707	PIONEER EUROPE FUND.
1591	IM-04	PIONEER	078713	PIONEER FUND INC.
1592	IM-04	PIONEER	863334	PIONEER GROWTH TRUST.
1593	IM-04	PIONEER	078758	PIONEER II.
1594	IM-04	PIONEER	812195	PIONEER MONEY MARKET TRUST.
1595	IM-04	PIONEER	798172	PIONEER MUNICIPAL BOND FUND.
1596	IM-04	PIONEER	746520	PIONEER SCOUT INC.
1597	IM-04	PIONEER	706155	PIONEER THREE.
1598	IM-04	PIONEER	831120	PIONEER US GOVERNMENT TRUST.
1599	IM-04	PIPER	859000	AMERICAN ADJUSTABLE RATE TERM TRUST INC 1995.
1600	IM-04	PIPER	866335	AMERICAN ADJUSTABLE RATE TERM TRUST INC 1996.
1601	IM-04	PIPER	829344	AMERICAN GOVERNMENT INCOME FUND INC.
1602	IM-04	PIPER	836425	AMERICAN GOVERNMENT INCOME PORTFOLIO INC.
1603	IM-04	PIPER	843766	AMERICAN GOVERNMENT TERM TRUST INC.
1604	IM-04	PIPER	854125	AMERICAN OPPORTUNITY INCOME FUND INC.
1605	IM-04	PIPER	860721	PACIFIC EUROPEAN GROWTH FUND INC.
1606	IM-04	PRINCIPAL	814573	PRINCIPAL AGGRESSIVE GROWTH FUND INC.
1607	IM-04	PRINCIPAL	814571	PRINCIPAL BOND FUND INC.
1608	IM-04	PRINCIPAL	012601	PRINCIPAL CAPITAL ACCUMULATION FUND INC.
1609	IM-04	PRINCIPAL	806565	PRINCIPAL GOVERNMENT SECURITIES FUND INC.
1610	IM-04	PRINCIPAL	814609	PRINCIPAL HIGH YIELD FUND INC.
1611	IM-04	PRINCIPAL	811810	PRINCIPAL MANAGED FUND INC.
1612	IM-04	PRINCIPAL	705401	PRINCIPAL MONEY MARKET FUND INC.
1613	IM-04	PRINCOR	814572	PRINCOR AGGRESSIVE GROWTH FUND INC.
1614	IM-04	PRINCOR	870786	PRINCOR BLUE CHIP FUND INC.
1615	IM-04	PRINCOR	814574	PRINCOR BOND FUND INC.
1616	IM-04	PRINCOR	012603	PRINCOR CAPITAL ACCUMULATION FUND INC.
1617	IM-04	PRINCOR	707827	PRINCOR CASH MANAGEMENT FUND INC.
1618	IM-04	PRINCOR	783569	PRINCOR GOVERNMENT SECURITIES INCOME FUND INC.
1619	IM-04	PRINCOR	012602	PRINCOR GROWTH FUND INC.
1620	IM-04	PRINCOR	814506	PRINCOR HIGH YIELD FUND INC.
1621	IM-04	PRINCOR	811803	PRINCOR MANAGED FUND INC.
1622	IM-04	PRINCOR	780267	PRINCOR TAX EXEMPT BOND FUND INC.
1623	IM-04	PRINCOR	832513	PRINCOR TAX EXEMPT CASH MANAGEMENT FUND INC.
1624	IM-04	PRINCOR	353024	PRINCOR WORLD FUND INC.
1625	IM-04	REICH & TANG	808620	CALIFORNIA DAILY TAX FREE INCOME FUND INC.
1626	IM-04	REICH & TANG	764901	CONNECTICUT DAILY TAX FREE INCOME FUND INC.
1627	IM-04	REICH & TANG	759699	CORTLAND TRUST INC.
1628	IM-04	REICH & TANG	706115	DAILY DOLLAR RESERVES INC.
1629	IM-04	REICH & TANG	026592	DAILY INCOME FUND INC.
1630	IM-04	REICH & TANG	704480	DAILY TAX FREE INCOME FUND INC.
1631	IM-04	REICH & TANG	810104	MICHIGAN DAILY TAX FREE INCOME FUND INC.
1632	IM-04	REICH & TANG	740372	NEW YORK DAILY TAX FREE INCOME FUND INC.
1633	IM-04	REICH & TANG	756916	REICH & TANG EQUITY FUND INC.
1634	IM-04	REICH & TANG	783749	REICH & TANG GOVERNMENT SECURITIES TRUST.
1635	IM-04	REICH & TANG	312669	SHORT TERM INCOME FUND INC.
1636	IM-04	REICH & TANG	843078	TAX EXEMPT PROCEEDS FUND INC.
1637	IM-04	SAFECO	867263	INVESTORS PREFERENCE NY TAX FREE FUND INC.
1638	IM-04	SAFECO	722817	SAFECO CALIFORNIA TAX FREE INCOME FUND INC.
1639	IM-04	SAFECO	086105	SAFECO EQUITY FUND INC.
1640	IM-04	SAFECO	086106	SAFECO GROWTH FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1641	IM-04	SAFECO	833059	SAFECO HIGH YIELD BOND FUND INC.
1642	IM-04	SAFECO	086107	SAFECO INCOME FUND INC.
1643	IM-04	SAFECO	833045	SAFECO INTERMEDIATE TERM BOND FUND INC.
1644	IM-04	SAFECO	356822	SAFECO MONEY MARKET MUTUAL FUND INC.
1645	IM-04	SAFECO	354868	SAFECO MUNICIPAL BOND FUND INC.
1646	IM-04	SAFECO	867579	SAFECO NORTHWEST FUND INC.
1647	IM-04	SAFECO	795892	SAFECO RESOURCE SERIES TRUST.
1648	IM-04	SAFECO	748584	SAFECO TAX FREE MONEY MARKET FUND INC.
1649	IM-04	SAFECO	793155	SAFECO U S GOVERNMENT SECURITIES FUND INC.
1650	IM-04	SECURITY MGT	356420	SECURITY ACTION FUND.
1651	IM-04	SECURITY MGT	317977	SECURITY CASH FUND.
1652	IM-04	SECURITY MGT	088525	SECURITY EQUITY FUND.
1653	IM-04	SECURITY MGT	088498	SECURITY INCOME FUND /KS/.
1654	IM-04	SECURITY MGT	088565	SECURITY INVESTMENT FUND INC.
1655	IM-04	SECURITY MGT	761030	SECURITY OMNI FUND.
1656	IM-04	SECURITY MGT	354185	SECURITY TAX EXEMPT FUND.
1657	IM-04	SECURITY MGT	088676	SECURITY ULTRA FUND.
1658	IM-04	SEI	701939	SEI CASH & PLUS TRUST.
1659	IM-04	SEI	766589	SEI INDEX FUNDS.
1660	IM-04	SEI	866585	SEI INSTITUTIONAL CASH ASSETS.
1661	IM-04	SEI	804239	SEI INSTITUTIONAL MANAGED TRUST.
1662	IM-04	SEI	835597	SEI INTERNATIONAL TRUST.
1663	IM-04	SEI	354603	SEI LIQUID ASSET TRUST.
1664	IM-04	SEI	701817	SEI TAX EXEMPT TRUST.
1665	IM-04	STATE BOND	093706	STATE BOND & MORTGAGE CO.
1666	IM-04	STATE BOND	355988	STATE BOND CASH MANAGEMENT FUND INC.
1667	IM-04	STATE BOND	093704	STATE BOND COMMON STOCK FUND INC.
1668	IM-04	STATE BOND	029199	STATE BOND DIVERSIFIED FUND INC.
1669	IM-04	STATE BOND	080644	STATE BOND PROGRESS FUND INC.
1670	IM-04	STATE BOND	702133	STATE BOND TAX EXEMPT FUND INC.
1671	IM-04	STATE BOND	826037	STATE BOND TAX FREE INCOME FUND INC.
1672	IM-04	STATE BOND	780113	STATE BOND US GOVERNMENT SECURITIES FUND INC.
1673	IM-04	STEADMAN	093838	STEADMAN AMERICAN INDUSTRY FUND.
1674	IM-04	STEADMAN	093839	STEADMAN ASSOCIATED FUND.
1675	IM-04	STEADMAN	314569	STEADMAN FINANCIAL FUND.
1676	IM-04	STEADMAN	093843	STEADMAN INVESTMENT FUND.
1677	IM-04	STEADMAN	073769	STEADMAN OCEANOGRAPHIC TECHNOLOGY & GROWTH FUND.
1678	IM-04	STEADMAN	110559	STEADMAN SECURITY CORP PFAS STEADMAN AMERICAN INDUSTRY FUND.
1679	IM-04	STEADMAN	110560	STEADMAN SECURITY CORP PFAS STEADMAN SCIENCE & GROWTH FUND.
1680	IM-04	SUNAMERICA	755002	EQUITEC SIEBEL FUND GROUP.
1681	IM-04	SUNAMERICA	803962	EQUITEC SIEBEL FUND GROUP II.
1682	IM-04	SUNAMERICA	724052	SUNAMERICA CAPITAL APPRECIATION FUND INC.
1683	IM-04	SUNAMERICA	796954	SUNAMERICA CASH FUND.
1684	IM-04	SUNAMERICA	799084	SUNAMERICA EQUITY PORTFOLIOS.
1685	IM-04	SUNAMERICA	724100	SUNAMERICA INCOME PLUS FUND INC.
1686	IM-04	SUNAMERICA	795307	SUNAMERICA INCOME PORTFOLIOS.
1687	IM-04	SUNAMERICA	724129	SUNAMERICA MONEY MARKET SECURITIES INC.
1688	IM-04	SUNAMERICA	819181	SUNAMERICA MULTI ASSET PORTFOLIOS INC.
1689	IM-04	SUNAMERICA	777486	SUNAMERICA TAX FREE PORTFOLIOS.
1690	IM-04	TRANSAMERICA	315554	TRANSAMERICA BOND FUND.
1691	IM-04	TRANSAMERICA	771503	TRANSAMERICA BOND FUND /MA/.
1692	IM-04	TRANSAMERICA	856671	TRANSAMERICA CALIFORNIA TAX FREE INCOME FUND.
1693	IM-04	TRANSAMERICA	314721	TRANSAMERICA CASH RESERVE INC.
1694	IM-04	TRANSAMERICA	026262	TRANSAMERICA CURRENT INTEREST INC.
1695	IM-04	TRANSAMERICA	099197	TRANSAMERICA INCOME SHARES INC.
1696	IM-04	TRANSAMERICA	022370	TRANSAMERICA INVESTMENT TRUST.
1697	IM-04	TRANSAMERICA	723256	TRANSAMERICA SPECIAL EQUITY PORTFOLIOS.
1698	IM-04	TRANSAMERICA	819300	TRANSAMERICA SPECIAL SERIES INC.
1699	IM-04	TRANSAMERICA	857769	TRANSAMERICA TAX FREE BOND FUND.
1700	IM-04	TRANSAMERICA	708871	TRANSAMERICA TAX FREE FUND INC.
1701	IM-04	TRANSAMERICA	740916	TRANSAMERICA TECHNOLOGY FUND.
1702	IM-04	TRAVELERS	099442	TRAVELERS FUND B FOR VARIABLE CONTRACTS.
1703	IM-04	TRAVELERS	099443	TRAVELERS FUND B-1 FOR VARIABLE CONTRACTS.
1704	IM-04	TRAVELERS	099444	TRAVELERS GROWTH STOCK ACCOUNT FOR VARIABLE ANNUITIES.
1705	IM-04	TRAVELERS	700871	TRAVELERS MONEY MARKET ACCOUNT FOR VARIABLE ANNUITIES.
1706	IM-04	TRAVELERS	099440	TRAVELERS QUALITY BOND ACCOUNT FOR VARIABLE ANNUITIES.
1707	IM-04	TRAVELERS	812051	TRAVELERS TIMED AGGRESSIVE STOCK ACCOUNT FOR VARIABLE ANNUITIES.
1708	IM-04	TRAVELERS	812048	TRAVELERS TIMED BOND ACCOUNT FOR VARIABLE ANNUITIES.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1709	IM-04	TRAVELERS	812021	TRAVELERS TIMED GROWTH STOCK ACCOUNT FOR VARIABLE ANNUITIES.
1710	IM-04	TRAVELERS	812022	TRAVELERS TIMED MONEY MARKET ACCOUNT FOR VARIABLE ANNUITIES.
1711	IM-04	VALUE LINE	320580	GUARDIAN VALUE LINE SEPARATE ACCOUNT.
1712	IM-04	VALUE LINE	783318	VALUE LINE AGGRESSIVE INCOME TRUST.
1713	IM-04	VALUE LINE	310012	VALUE LINE CASH FUND INC.
1714	IM-04	VALUE LINE	720994	VALUE LINE CENTURION FUND INC.
1715	IM-04	VALUE LINE	764772	VALUE LINE CONVERTIBLE FUND INC.
1716	IM-04	VALUE LINE	102756	VALUE LINE FUND INC.
1717	IM-04	VALUE LINE	102757	VALUE LINE INCOME FUND INC.
1718	IM-04	VALUE LINE	102764	VALUE LINE LEVERAGED GROWTH INVESTORS INC.
1719	IM-04	VALUE LINE	811268	VALUE LINE NEW YORK TAX EXEMPT TRUST.
1720	IM-04	VALUE LINE	102767	VALUE LINE SPECIAL SITUATIONS FUND INC.
1721	IM-04	VALUE LINE	819978	VALUE LINE STRATEGIC ASSET MANAGEMENT TRUST.
1722	IM-04	VALUE LINE	733257	VALUE LINE TAX EXEMPT FUND INC.
1723	IM-04	VALUE LINE	817843	VALUE LINE US GOVERNMENT SECURITIES TRUST.
1724	IM-04	VALUE LINE	352430	VALUE LINE US GOVERNMENT SECURITIES FUND INC.
1725	IM-04	VAN KAMPEN	840248	VAN KAMPEN MERRITT CALIFORNIA MUNICIPAL TRUST.
1726	IM-04	VAN KAMPEN	799180	VAN KAMPEN MERRITT EQUITY TRUST.
1727	IM-04	VAN KAMPEN	843506	VAN KAMPEN MERRITT INTERMEDIATE TERM HIGH INCOME TRUST.
1728	IM-04	VAN KAMPEN	849135	VAN KAMPEN MERRITT INVESTMENT GRADE MUNICIPAL TRUST.
1729	IM-04	VAN KAMPEN	846671	VAN KAMPEN MERRITT LIMITED TERM HIGH INCOME TRUST.
1730	IM-04	VAN KAMPEN	704169	VAN KAMPEN MERRITT MONEY MARKET TRUST / IL/.
1731	IM-04	VAN KAMPEN	818305	VAN KAMPEN MERRITT MUNICIPAL INCOME TRUST.
1732	IM-04	VAN KAMPEN	809592	VAN KAMPEN MERRITT PENNSYLVANIA TAX FREE INCOME FUND.
1733	IM-04	VAN KAMPEN	853180	VAN KAMPEN MERRITT PRIME RATE INCOME TRUST.
1734	IM-04	VAN KAMPEN	819385	VAN KAMPEN MERRITT SERIES TRUST.
1735	IM-04	VAN KAMPEN	774556	VAN KAMPEN MERRITT TAX FREE FUND /IL/.
1736	IM-04	VAN KAMPEN	795827	VAN KAMPEN MERRITT TAX FREE MONEY FUND.
1737	IM-04	VAN KAMPEN	791069	VAN KAMPEN MERRITT TRUST /IL/.
1738	IM-04	VAN KAMPEN	739714	VAN KAMPEN MERRITT US GOVERNMENT TRUST / IL/.
1739	IM-04	VOYAGEUR	104410	SAMARNAN INVESTMENT CORP.
1740	IM-04	VOYAGEUR	809872	VOYAGEUR COLORADO TAX FREE FUND INC.
1741	IM-04	VOYAGEUR	819799	VOYAGEUR FUNDS INC.
1742	IM-04	VOYAGEUR	764539	VOYAGEUR GRANIT INSURED TAX EXEMPT FUND INC.
1743	IM-04	VOYAGEUR	763749	VOYAGEUR GROWTH STOCK FUND INC.
1744	IM-04	VOYAGEUR	809064	VOYAGEUR MINNESOTA INSURED FUNDS INC.
1745	IM-04	VOYAGEUR	773675	VOYAGEUR MINNESOTA INTERMEDIATE TAX FREE FUNDS INC.
1746	IM-04	VOYAGEUR	733362	VOYAGEUR MINNESOTA TAX FREE FUNDS INC.
1747	IM-04	VOYAGEUR	763748	VOYAGEUR MONEY MARKET FUND INC.
1748	IM-05	44 WALL ST	316572	44 WALL STREET EQUITY FUND INC /MD/.
1749	IM-05	44 WALL ST	038248	44 WALL STREET FUND INC.
1750	IM-05	44 WALL ST	003804	CUMBERLAND GROWTH FUND INC.
1751	IM-05	ABD	765703	CRUSADER INCOME SHARES INC.
1752	IM-05	ABD	790175	HORIZON INCOME SHARES INC.
1753	IM-05	ABT	201066	ABT GROWTH & INCOME TRUST.
1754	IM-05	ABT	701164	ABT INVESTMENT SERIES INC.
1755	IM-05	ABT	839637	ABT MONEY MARKET SERIES INC.
1756	IM-05	ABT	814082	ABT SOUTHERN MASTER TRUST.
1757	IM-05	ABT	037618	ABT UTILITY INCOME FUND INC.
1758	IM-05	ADVANCE	813470	ADVANCE CAPITAL I INC.
1759	IM-05	ADVANCE	002443	ADVANCE GROWTH CAPITAL CORP.
1760	IM-05	ADVANTAGE	779236	ADVANTAGE GOVERNMENT SECURITIES FUND.
1761	IM-05	ADVANTAGE	779233	ADVANTAGE GROWTH FUND.
1762	IM-05	ADVANTAGE	830477	ADVANTAGE HIGH YIELD BOND FUND.
1763	IM-05	ADVANTAGE	779234	ADVANTAGE INCOME FUND.
1764	IM-05	ADVANTAGE	859032	ADVANTAGE MUNICIPAL BOND FUND.
1765	IM-05	ADVANTAGE	779235	ADVANTAGE SPECIAL FUND.
1766	IM-05	AETNA	811637	AETNA GUARANTEED EQUITY TRUST.
1767	IM-05	AETNA	002646	AETNA INCOME SHARES.
1768	IM-05	AETNA	846799	AETNA INVESTMENT ADVISERS FUND INC.
1769	IM-05	AETNA	732796	AETNA LIFE INSURANCE & ANNUITY CO.
1770	IM-05	AETNA	877233	AETNA SERIES FUND INC.
1771	IM-05	AETNA	002663	AETNA VARIABLE ENCORE FUND INC.
1772	IM-05	AETNA	002664	AETNA VARIABLE FUND.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1773	IM-05	ALGER	832566	ALGER AMERICAN FUND.
1774	IM-05	ALGER	003521	ALGER FUND.
1775	IM-05	ALGER	018180	CASTLE CONVERTIBLE FUND INC.
1776	IM-05	ALLIED	003845	ALLIED CAPITAL CORP.
1777	IM-05	ALLIED	850426	ALLIED CAPITAL CORP II.
1778	IM-05	ALLIED	705972	ALLIED DEVELOPMENT CORP.
1779	IM-05	ALLIED	003898	ALLIED INVESTMENT CORP.
1780	IM-05	ALLIED	003906	ALLIED LENDING CORP.
1781	IM-05	AMA	080398	AMA FAMILY OF FUNDS INC.
1782	IM-05	AMA	080395	AMA GROWTH FUND INC.
1783	IM-05	AMA	356071	AMA MONEY FUND INC.
1784	IM-05	AMERICAN GENERAL	700933	AMERICAN GENERAL EQUITY ACCUMULATION FUND INC.
1785	IM-05	AMERICAN GENERAL	356070	AMERICAN GENERAL FIXED INCOME ACCUMULATION FUND INC.
1786	IM-05	AMERICAN GENERAL	316047	AMERICAN GENERAL MONEY MARKET ACCUMULATION FUND INC.
1787	IM-05	AMERICAN GENERAL	719423	AMERICAN GENERAL SERIES PORTFOLIO CO.
1788	IM-05	AMERICAN GENERAL	761861	AMERICAN GENERAL SERIES PORTFOLIO CO/TX.
1789	IM-05	AMERICAN INVESTORS	005315	AMERICAN INVESTORS GROWTH FUND INC.
1790	IM-05	AMERICAN INVESTORS	005317	AMERICAN INVESTORS INCOME FUND INC.
1791	IM-05	AMERICAN INVESTORS	704217	AMERICAN INVESTORS MONEY FUND INC.
1792	IM-05	AMERICAN INVESTORS	789567	AMERICAN INVESTORS OPTION FUND INC.
1793	IM-05	AMERICAN NATL	005529	AMERICAN NATIONAL GROWTH FUND INC.
1794	IM-05	AMERICAN NATL	005533	AMERICAN NATIONAL INCOME FUND INC.
1795	IM-05	AMERICAN NATL	867050	AMERICAN NATIONAL INVESTMENT ACCOUNTS INC.
1796	IM-05	AMERICAN NATL	355755	AMERICAN NATIONAL MONEY MARKET FUND INC.
1797	IM-05	AMERICAN NATL	275039	TRIFLEX FUND INC.
1798	IM-05	AMERICAN UNITED	005966	AMERICAN UNITED LIFE POOLED EQUITY FUND B.
1799	IM-05	AMERICAN UNITED	853618	AUL AMERICAN SERIES FUND INC.
1800	IM-05	ANCHOR	034433	ANCHOR CAPITAL ACCUMUATION TRUST.
1801	IM-05	ANCHOR	792338	ANCHOR GOLD & CURRENCY TRUST.
1802	IM-05	ANCHOR	792353	ANCHOR INTERNATIONAL BOND TRUST.
1803	IM-05	ANCHOR	726735	ANCHOR SERIES TRUST.
1804	IM-05	ANCHOR	857683	ANCHOR STRATEGIC ASSETS TRUST.
1805	IM-05	ARNOLD INVEST	852244	PRIMARY INCOME FUNDS INC.
1806	IM-05	ARNOLD INVEST	794801	PRIMARY TREND FUND INC.
1807	IM-05	ASSOC PLANNERS	797540	ASSOCIATED PLANNERS INVESTMENT TRUST.
1808	IM-05	ASSOC PLANNERS	751506	ASSOCIATED PLANNERS STOCK FUND INC.
1809	IM-05	AXE HOUGHT	008891	AXE HOUGHTON FUND B INC.
1810	IM-05	AXE HOUGHT	865414	AXE HOUGHTON FUNDS INC.
1811	IM-05	AXE HOUGHT	008889	AXE HOUGHTON INCOME FUND INC.
1812	IM-05	AXE HOUGHT	353317	AXE HOUGHTON MONEY MARKET FUND INC.
1813	IM-05	AXE HOUGHT	008893	AXE HOUGHTON STOCK FUND INC.
1814	IM-05	BAILARD BIEHL	800075	BAILARD BIEHL & KAISER FUND GROUP.
1815	IM-05	BAILARD BIEHL	277955	BAILARD BIEHL & KAISER INTERNATIONAL FUND GROUP INC.
1816	IM-05	BANK FIDUCIARY	009572	BANK FIDUCIARY EQUITY FUND.
1817	IM-05	BANK FIDUCIARY	276495	BANK FIDUCIARY FIXED INCOME FUND.
1818	IM-05	BANKERS SECURITY	701383	BANKERS SECURITY VARIABLE LIFE SEPARATE ACCOUNT I.
1819	IM-05	BANKERS SECURITY	802979	BANKERS SECURITY VARIABLE LIFE SEPARATE ACCOUNT III.
1820	IM-05	BANKERS SECURITY	802981	BANKERS SECURITY VARIABLE LIFE SEPARATE ACCOUNT IV.
1821	IM-05	BANKERS SYSTEM	763748	BANKERS SYSTEMS GRANIT FIXED INCOME FUND INC.
1822	IM-05	BANKERS SYSTEM	762968	BANKERS SYSTEMS GRANIT STOCK FUND INC.
1823	IM-05	BARTLETT	710434	BARTLETT CAPITAL TRUST.
1824	IM-05	BARTLETT	750006	BARTLETT MANAGEMENT TRUST.
1825	IM-05	BAXTER	030912	EAGLE GROWTH SHARES INC.
1826	IM-05	BAXTER	078105	PHILADELPHIA FUND INC.
1827	IM-05	BEA	846676	CHILE FUND INC.
1828	IM-05	BEA	859120	INDONESIA FUND INC.
1829	IM-05	BEA	862599	LATIN AMERICA INVESTMENT FUND INC.
1830	IM-05	BEA	854580	PORTUGAL FUND INC.
1831	IM-05	BENCHMARK	710124	BENCHMARK MONEY MARKET FUND DIVERSIFIED ASSETS & GOVERNMENT.
1832	IM-05	BENCHMARK	710125	BENCHMARK TAX EXEMPT FUND.
1833	IM-05	BERGER	074529	BERGER ONE HUNDRED & ONE FUND INC.
1834	IM-05	BERGER	074532	BERGER ONE HUNDRED FUND INC.
1835	IM-05	BERWYN	731764	BERWYN FUND INC.
1836	IM-05	BERWYN	808452	BERWYN INCOME FUND INC.
1837	IM-05	BLACKSTONE	872604	BLACKSTONE 1998 TERM TRUST.
1838	IM-05	BLACKSTONE	845851	BLACKSTONE ADVANTAGE TERM TRUST INC.
1839	IM-05	BLACKSTONE	832327	BLACKSTONE INCOME TRUST INC.
1840	IM-05	BLACKSTONE	868784	BLACKSTONE STRATEGIC TERM TRUST INC.
1841	IM-05	BLACKSTONE	839636	BLACKSTONE TARGET TERM TRUST INC.
1842	IM-05	BLANCHARD	789289	BLANCHARD FUNDS.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1843	IM-05	BLANCHARD	820676	BLANCHARD PRECIOUS METALS FUND INC.
1844	IM-05	BROWN BROS HARR	865898	59 WALL STREET FUND INC.
1845	IM-05	BROWN BROS HARR	722575	59 WALL STREET TRUST.
1846	IM-05	BT	862157	BT INSTITUTIONAL FUNDS.
1847	IM-05	BT	797657	BT INVESTMENT FUNDS.
1848	IM-05	CALAMOS	817937	CALAMOS INVESTMENT TRUST.
1849	IM-05	CALAMOS	826732	CFS INVESTMENT TRUST.
1850	IM-05	CALVERT	798365	ARIEL GROWTH FUND.
1851	IM-05	CALVERT	701219	CALVERT CASH RESERVES.
1852	IM-05	CALVERT	701039	CALVERT FUND.
1853	IM-05	CALVERT	356682	CALVERT SOCIAL INVESTMENT FUND.
1854	IM-05	CALVERT	319676	CALVERT TAX FREE RESERVES.
1855	IM-05	CAPITAL GROWTH	060332	CGM CAPITAL DEVELOPMENT FUND.
1856	IM-05	CAPITAL GROWTH	060335	CGM MUTUAL FUND.
1857	IM-05	CARDINAL	017493	CARDINAL FUND INC.
1858	IM-05	CARDINAL	783413	CARDINAL GOVERNMENT GUARANTEED FUND.
1859	IM-05	CARDINAL	315779	CARDINAL GOVERNMENT SECURITIES TRUST.
1860	IM-05	CARDINAL	716313	CARDINAL TAX EXEMPT MONEY TRUST.
1861	IM-05	CARILLON	356952	CARILLON CASH RESERVES INC.
1862	IM-05	CARILLON	820432	CARILLON INVESTMENT TRUST.
1863	IM-05	CARNEGIE	315991	CARNEGIE GOVERNMENT SECURITIES TRUST.
1864	IM-05	CARNEGIE	785973	CARNEGIE TAX EXEMPT INCOME TRUST.
1865	IM-05	CARNEGIE	701616	CARNEGIE TAX FREE INCOME TRUST.
1866	IM-05	CARNEGIE	862512	CARNEGIE WORLD TRUST.
1867	IM-05	CCM PARTNERS	778206	CALIFORNIA INVESTMENT TRUST.
1868	IM-05	CCM PARTNERS	778205	CALIFORNIA INVESTMENT TRUST II.
1869	IM-05	CHUBB	757551	CHUBB AMERICA FUND INC.
1870	IM-05	CHUBB	814883	CHUBB INVESTMENT FUNDS INC.
1871	IM-05	CITADEL	731266	COMBINED PENNY STOCK FUND INC.
1872	IM-05	CITADEL	742094	PENNY STOCK FUND OF NORTH AMERICA INC.
1873	IM-05	CITIUS	771883	CITIUS ALPHA FUND INC.
1874	IM-05	CITIUS	771884	CITIUS BETA FUND INC.
1875	IM-05	CITIUS	771881	CITIUS DELTA FUND INC.
1876	IM-05	CITIUS	771880	CITIUS EPSILON FUND INC.
1877	IM-05	CITIUS	771882	CITIUS GAMMA FUND INC.
1878	IM-05	CITIZENS	763534	CHURCHILL CASH RESERVES TRUST.
1879	IM-05	CITIZENS	812006	CHURCHILL TAX FREE TRUST.
1880	IM-05	CLEMENTE	814083	CLEMENTE GLOBAL GROWTH FUND INC.
1881	IM-05	CLEMENTE	868666	CLEMENTE GLOBAL INVESTMENT SERIES INC.
1882	IM-05	CLEMENTE	855237	FIRST PHILIPPINE FUND INC.
1883	IM-05	COLUMBIA	876613	COLUMBIA BALANCED FUND INC /OR/.
1884	IM-05	COLUMBIA	876606	COLUMBIA COMMON STOCK FUND INC.
1885	IM-05	COLUMBIA	022082	COLUMBIA DAILY INCOME CO.
1886	IM-05	COLUMBIA	707833	COLUMBIA FIXED INCOME SECURITIES FUND INC.
1887	IM-05	COLUMBIA	022105	COLUMBIA GROWTH FUND INC.
1888	IM-05	COLUMBIA	741558	COLUMBIA MUNICIPAL BOND FUND INC.
1889	IM-05	COLUMBIA	773599	COLUMBIA SPECIAL FUND INC.
1890	IM-05	COLUMBIA	801962	COLUMBIA US GOVERNMENT GUARANTEED SECURITIES FUND INC.
1891	IM-05	CONCORDE	822519	CONCORDE VALUE FUND INC.
1892	IM-05	CONCORDE	862063	INFINITY MUTUAL FUNDS INC.
1893	IM-05	COUNTRY CAPITAL	025175	COUNTRY CAPITAL GROWTH FUND INC.
1894	IM-05	COUNTRY CAPITAL	275275	COUNTRY CAPITAL INCOME FUND INC.
1895	IM-05	COUNTRY CAPITAL	353312	COUNTRY CAPITAL MONEY MARKET FUND INC.
1896	IM-05	COUNTRY CAPITAL	275276	COUNTRY CAPITAL TAX EXEMPT BOND FUND INC.
1897	IM-05	DFA	837950	DFA DUAL FUND ONE INC.
1898	IM-05	DFA	355437	DFA INVESTMENT DIMENSIONS GROUP INC.
1899	IM-05	DFA	861929	DFA US LARGE CAP PORTFOLIO INC.
1900	IM-05	DILLON READ	790402	DR EQUITY FUND.
1901	IM-05	DILLON READ	788424	DR EUROPEAN EQUITY FUND INC.
1902	IM-05	DILLON READ	850359	DR FUNDS INC.
1903	IM-05	DODGE & COX	029440	DODGE & COX BALANCED FUND/CA.
1904	IM-05	DODGE & COX	836427	DODGE & COX INCOME FUND.
1905	IM-05	DODGE & COX	029442	DODGE & COX STOCK FUND.
1906	IM-05	EBI	731273	EBI FUNDS INC.
1907	IM-05	EBI	824034	EBI SERIES TRUST.
1908	IM-05	EHRENKRANTZ	820991	EHRENKRANTZ GROWTH FUND.
1909	IM-05	EHRENKRANTZ	808069	EHRENKRANTZ TRUST.
1910	IM-05	EQUITILINK	779336	FIRST AUSTRALIA FUND INC.
1911	IM-05	EQUITILINK	852464	FIRST AUSTRALIA MUTUAL FUNDS INC.
1912	IM-05	EQUITILINK	790500	FIRST AUSTRALIA PRIME INCOME FUND INC.
1913	IM-05	EQUITILINK	862283	FIRST NEW ZEALAND FUND INC.
1914	IM-05	EQUUS	843626	EQUUS CAPITAL PARTNERS LP.
1915	IM-05	EQUUS	745894	EQUUS INVESTMENTS I LP.
1916	IM-05	EQUUS	795931	EQUUS INVESTMENTS II L P.
1917	IM-05	EQUUS	869682	EQUUS INVESTMENTS INCORPORATED.
1918	IM-05	EXCEL	770200	EXCEL MIDAS GOLD SHARES INC.
1919	IM-05	EXCEL	355419	EXCEL VALUE FUND INC.
1920	IM-05	FBL	824035	FBL INSTITUTIONAL SERIES FUND.
1921	IM-05	FBL	320595	FBL MONEY MARKET FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1922	IM-05	FFCA	354631	FIDUCIARY CAPITAL GROWTH FUND INC.
1923	IM-05	FFCA	841687	FIDUCIARY CAPITAL PARTNERS L P.
1924	IM-05	FFCA	841688	FIDUCIARY CAPITAL PENSION PARTNERS L P.
1925	IM-05	FFCA	771585	FIDUCIARY INCOME FUNDS INC.
1926	IM-05	FIRST BOSTON	833044	FIRST BOSTON INVESTMENT FUNDS INC /PA/.
1927	IM-05	FIRST BOSTON	828781	FIRST BOSTON STRATEGIC INCOME FUND INC.
1928	IM-05	FIRST PENN	103381	VESTAUR SECURITIES INC.
1929	IM-05	FIRST PENN	757529	VIKING EQUITY INDEX FUND INC.
1930	IM-05	FIRST PENN	748512	VIKING MONEY MARKET FUND INC.
1931	IM-05	FLAGSHIP	797690	FLAGSHIP PENNSYLVANIA TRIPLE TAX EXEMPT FUND.
1932	IM-05	FLAGSHIP	784880	FLAGSHIP TAX EXEMPT FUNDS TRUST.
1933	IM-05	FPA	099188	FPA CAPITAL FUND INC.
1934	IM-05	FPA	099203	FPA NEW INCOME INC.
1935	IM-05	FPA	078210	FPA PARAMOUNT FUND INC.
1936	IM-05	FPA	732041	FPA PERENNIAL FUND INC.
1937	IM-05	FRANK RUSSELL	351601	RUSSELL FRANK INVESTMENT CO.
1938	IM-05	FRANK RUSSELL	824036	RUSSELL INSURANCE FUNDS INC.
1939	IM-05	FRANK RUSSELL	826896	SEVEN SEAS SERIES FUND.
1940	IM-05	FRANKLIN	844040	FRANKLIN GOVERNMENT SECURITIES TRUST.
1941	IM-05	FRANKLIN	808848	FRANKLIN INVESTMENT TRUST.
1942	IM-05	FRANKLIN	837274	FRANKLIN VALUEMARK FUNDS.
1943	IM-05	FRANKLIN LIFE	038748	FRANKLIN LIFE VARIABLE ANNUITY FUND A.
1944	IM-05	FRANKLIN LIFE	038749	FRANKLIN LIFE VARIABLE ANNUITY FUND B.
1945	IM-05	FREEDOM	704348	FREEDOM GROUP OF TAX EXEMPT FUNDS.
1946	IM-05	FREEDOM	743861	FREEDOM INVESTMENT TRUST.
1947	IM-05	FREEDOM	791271	FREEDOM INVESTMENT TRUST II.
1948	IM-05	FREEDOM	852204	FREEDOM INVESTMENT TRUST III.
1949	IM-05	FRIESS	869942	BRANDYWINE BLUE FUND INC.
1950	IM-05	FRIESS	780253	BRANDYWINE FUND INC.
1951	IM-05	FUNDAMENTAL	715758	CALIFORNIA MUNI FUND.
1952	IM-05	FUNDAMENTAL	811668	FUNDAMENTAL FIXED INCOME FUND.
1953	IM-05	FUNDAMENTAL	315811	NEW YORK MUNI FUND INC.
1954	IM-05	FURMAN SELZ	788352	OLYMPUS EQUITY PLUS FUND.
1955	IM-05	FURMAN SELZ	788348	OLYMPUS FUNDS TRUST.
1956	IM-05	FURMAN SELZ	788347	OLYMPUS MONEY MARKET FUND.
1957	IM-05	FURMAN SELZ	788429	OLYMPUS OPTION INCOME PLUS FUND.
1958	IM-05	FURMAN SELZ	788334	OLYMPUS U S GOVERNMENT PLUS FUND.
1959	IM-05	G T	203032	G T GLOBAL GROWTH SERIES.
1960	IM-05	G T	856461	G T GREATER EUROPE FUND.
1961	IM-05	G T	826844	G T INVESTMENT FUNDS INC.
1962	IM-05	G T	355978	G T INVESTMENT PORTFOLIOS INC.
1963	IM-05	GE	821484	ELFUN DIVERSIFIED FUND.
1964	IM-05	GE	817856	ELFUN GLOBAL FUND.
1965	IM-05	GE	717854	ELFUN INCOME FUND.
1966	IM-05	GE	855630	ELFUN MONEY MARKET FUND.
1967	IM-05	GE	215740	ELFUN TAX EXEMPT INCOME FUND.
1968	IM-05	GE	032239	ELFUN TRUSTS.
1969	IM-05	GEICO	745451	GEICO TAX ADVANTAGED SERIES TRUST /DC/.
1970	IM-05	GEICO	770482	GROWTH FUND OF WASHINGTON INC /DC/.
1971	IM-05	GENERAL AMER	805896	GENERAL AMERICAN CAPITAL CO.
1972	IM-05	GENERAL AMER	278380	GENERAL AMERICAN SEPARATE ACCOUNT NO 2.
1973	IM-05	GINTEL	777964	GINTEL CAPITAL APPRECIATION FUND.
1974	IM-05	GINTEL	355749	GINTEL ERISA FUND INC.
1975	IM-05	GINTEL	320984	GINTEL FUND INC.
1976	IM-05	GIT	710977	GIT EQUITY TRUST.
1977	IM-05	GIT	710978	GIT INCOME TRUST.
1978	IM-05	GIT	703303	GIT TAX FREE TRUST.
1979	IM-05	GLOBAL ADVSRS	825202	AMERICAS ALL SEASON FUND INC.
1980	IM-05	GLOBAL ADVSRS	838917	AMERICAS ALL SEASONS INCOME FUND INC.
1981	IM-05	GOLDEN AMERICAN	862885	GOLDEN AMERICAN SEPARATE ACCOUNT D.
1982	IM-05	GOLDEN AMERICAN	837278	SPECIALTY MANAGERS TRUST.
1983	IM-05	GRADISON	042895	GRADISON CASH RESERVES TRUST.
1984	IM-05	GRADISON	815913	GRADISON CUSTODIAN TRUST.
1985	IM-05	GRADISON	720492	GRADISON GROWTH TRUST.
1986	IM-05	GRADISON	357205	GRADISON UNITED STATES GOVERNMENT TRUST.
1987	IM-05	GRANTHAM MAYO	862354	GMO INVESTMENT TRUST.
1988	IM-05	GRANTHAM MAYO	772129	GMO TRUST.
1989	IM-05	GREAT AMERICAN	786418	GREAT AMERICAN RESERVE VARIABLE ANNUITY ACCOUNT C.
1990	IM-05	GREAT AMERICAN	786412	GREAT AMERICAN RESERVE VARIABLE ANNUITY ACCOUNT D.
1991	IM-05	GREAT AMERICAN	786417	GREAT AMERICAN RESERVE VARIABLE ANNUITY FUND.
1992	IM-05	GREAT WEST LIFE	043498	GREAT WEST VARIABLE ANNUITY ACCOUNT A.
1993	IM-05	GREAT WEST LIFE	358476	MAXIM SERIES FUND INC.
1994	IM-05	HEARTLAND	809586	HEARTLAND GROUP INC.
1995	IM-05	HEARTLAND	758743	HEARTLAND VALUE FUND INC.
1996	IM-05	HERITAGE	771809	HERITAGE CAPITAL APPRECIATION TRUST.
1997	IM-05	HERITAGE	771840	HERITAGE CASH TRUST.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
1998	IM-05	HERITAGE	798075	HERITAGE INCOME GROWTH TRUST.
1999	IM-05	HERITAGE	853977	HERITAGE INCOME TRUST.
2000	IM-05	HMK	759815	APOLLONIUS INSTITUTIONAL INVESTMENT FUND INC.
2001	IM-05	HMK	806469	COLOGNE RE INVESTMENTS INC.
2002	IM-05	HMK	823361	PRIAMOS INSTITUTIONAL INVESTMENTS INC.
2003	IM-05	HOME LIFE	721777	HOME LIFE BOND FUND INC.
2004	IM-05	HOME LIFE	048199	HOME LIFE EQUITY FUND INC.
2005	IM-05	HOME LIFE	721778	HOME LIFE LIQUID FUND INC.
2006	IM-05	HUDSON	867575	FAHNESTOCK FUNDS.
2007	IM-05	HUDSON	864012	HUDSON FUND INC /NY/.
2008	IM-05	HUDSON	782810	HUDSON INCOME SHARES INC.
2009	IM-05	HYPERION	870486	HYPERION GOVERNMENT MORTGAGE TRUST.
2010	IM-05	HYPERION	869470	HYPERION GOVERNMENT MORTGAGE TRUST II.
2011	IM-05	HYPERION	851169	HYPERION TOTAL RETURN FUND INC.
2012	IM-05	HYPERION	869467	SHORT DURATION GOVERNMENT PORTFOLIO.
2013	IM-05	IAI	721789	IAI APOLLO FUND INC.
2014	IM-05	IAI	216725	IAI BOND FUND INC.
2015	IM-05	IAI	806128	IAI INTERNATIONAL FUND INC.
2016	IM-05	IAI	315543	IAI REGIONAL FUND INC.
2017	IM-05	IAI	782977	IAI RESERVE FUND INC.
2018	IM-05	IAI	072699	IAI STOCK FUND INC.
2019	IM-05	IDEX	810477	IDEX FUND 3.
2020	IM-05	IDEX	760611	IDEX FUND INC.
2021	IM-05	IDEX	787623	IDEX II.
2022	IM-05	IDEX	809019	IDEX TOTAL INCOME TRUST.
2023	IM-05	IMG	757442	IMG BOND ACCUMULATION FUND INC.
2024	IM-05	IMG	703485	IMG LIQUID ASSETS FUND INC.
2025	IM-05	IMG	757240	IMG STOCK ACCUMULATION FUND INC.
2026	IM-05	IMG	714291	IMG TAX EXEMPT LIQUID ASSETS FUND INC.
2027	IM-05	INSTITUTIONAL	050691	INSTITUTIONAL INVESTORS CAPITAL APPRECIATION FUND INC.
2028	IM-05	INSTITUTIONAL	717427	INSTITUTIONAL INVESTORS CAPITAL RESERVE FUND INC.
2029	IM-05	INSTITUTIONAL	717452	INSTITUTIONAL INVESTORS CONVERTIBLE SECURITIES FUND INC.
2030	IM-05	INSTITUTIONAL	717453	INSTITUTIONAL INVESTORS OPTION INCOME FUND INC.
2031	IM-05	INSTITUTIONAL	824469	INSTITUTIONAL INVESTORS TAX ADVANTAGE INCOME FUND INC.
2032	IM-05	ISI	052653	ISI GROWTH FUND INC.
2033	IM-05	ISI	052659	ISI TRUST FUND.
2034	IM-05	JANUS	809205	JANUS INCOME SERIES.
2035	IM-05	JANUS	277751	JANUS INVESTMENT FUND.
2036	IM-05	JANUS	752661	JANUS TWENTY FUND INC.
2037	IM-05	JANUS	752660	JANUS VENTURE FUND INC.
2038	IM-05	JEFFERSON PILOT	705364	JEFFERSON PILOT GROWTH FUND INC.
2039	IM-05	JEFFERSON PILOT	705363	JEFFERSON PILOT INCOME FUND INC.
2040	IM-05	JEFFERSON PILOT	701639	JEFFERSON PILOT MONEY MARKET FUND INC.
2041	IM-05	JP INVESTMENT	054076	JP GROWTH FUND INC.
2042	IM-05	JP INVESTMENT	230316	JP INCOME FUND INC.
2043	IM-05	LAZARD FRERES	319964	LAZARD CASH MANAGEMENT FUND INC.
2044	IM-05	LAZARD FRERES	787614	LAZARD FRERES INSTITUTIONAL TAX EXEMPT FUND INC.
2045	IM-05	LAZARD FRERES	874964	LAZARD FUNDS INC.
2046	IM-05	LAZARD FRERES	355153	LAZARD GOVERNMENT FUND INC.
2047	IM-05	LAZARD FRERES	773567	LAZARD SPECIAL EQUITY FUND INC.
2048	IM-05	LIBERTY	808071	LIBERTY ADVANTAGE TRUST.
2049	IM-05	LIBERTY	799195	LIBERTY ALL STAR EQUITY FUND.
2050	IM-05	LIBERTY	785805	LIBERTY MUTUAL TAX EXEMPT INCOME TRUST.
2051	IM-05	LIBERTY	782788	LIBERTY MUTUAL US GOVERNMENT GUARANTEED SECURITIES INCOME TR.
2052	IM-05	LINDNER	059614	LINDNER DIVIDEND FUND INC.
2053	IM-05	LINDNER	059615	LINDNER FUND INC.
2054	IM-05	LUTHERAN BROTHERHOOD	790166	LBVIP SERIES FUND INC.
2055	IM-05	LUTHERAN BROTHERHOOD	060945	LUTHERAN BROTHERHOOD FUND INC.
2056	IM-05	LUTHERAN BROTHERHOOD	806178	LUTHERAN BROTHERHOOD HIGH YIELD FUND INC /MN/.
2057	IM-05	LUTHERAN BROTHERHOOD	060946	LUTHERAN BROTHERHOOD INCOME FUND INC.
2058	IM-05	LUTHERAN BROTHERHOOD	276227	LUTHERAN BROTHERHOOD MONEY MARKET FUND.
2059	IM-05	LUTHERAN BROTHERHOOD	202451	LUTHERAN BROTHERHOOD MUNICIPAL BOND FUND INC.
2060	IM-05	MADISON	799899	BASCOM HILL BALANCED FUND INC.
2061	IM-05	MADISON	275113	BASCOM HILL INVESTORS INC.
2062	IM-05	MADISON	857016	MADISON BOND FUND INC.
2063	IM-05	MAIRS & POWER	061628	MAIRS & POWER GROWTH FUND INC.
2064	IM-05	MAIRS & POWER	061630	MAIRS & POWER INCOME FUND INC.
2065	IM-05	MARINER	781904	MARINER EQUITY TRUST.
2066	IM-05	MARINER	781905	MARINER FUNDS TRUST /NY/.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2067	IM-05	MARINER	881106	MARINER MUTUAL FUNDS TRUST.
2068	IM-05	MASS MUTUAL	063124	MASS MUTUAL CORPORATE INVESTORS INC.
2069	IM-05	MASS MUTUAL	831655	MASSMUTUAL PARTICIPATION INVESTORS.
2070	IM-05	MASS MUTUAL	275684	MASSMUTUAL CORPORATE INVESTORS.
2071	IM-05	MAXUS	853162	MAXUS EQUITY FUND.
2072	IM-05	MAXUS	758976	MAXUS FUND.
2073	IM-05	MCDONALD	823343	MCDONALD INTERMEDIATE GOVERNMENT FUND.
2074	IM-05	MCDONALD	320581	MCDONALD MONEY MARKET FUND INC.
2075	IM-05	MCDONALD	751589	MCDONALD TAX EXEMPT MONEY MARKET FUND INC.
2076	IM-05	MCDONALD	853636	MCDONALD US GOVERNMENT MONEY MARKET FUND INC.
2077	IM-05	MELLON BANK	816160	LAUREL FUNDS.
2078	IM-05	MELLON BANK	819940	LAUREL FUNDS INC.
2079	IM-05	MERRILL LYNCH	319108	MERRILL LYNCH SERIES FUND INC.
2080	IM-05	MERRILL LYNCH	355916	MERRILL LYNCH VARIABLE SERIES FUNDS INC.
2081	IM-05	MIDAMERICA	065951	AEGON USA MANAGED PORTFOLIOS INC.
2082	IM-05	MIDAMERICA	005254	MIDAMERICA HIGH GROWTH FUND INC.
2083	IM-05	MIDAMERICA	782857	MIDAMERICA HIGH YIELD FUND INC.
2084	IM-05	MIDAMERICA	757067	MIDAMERICA TAX EXEMPT BOND FUND INC.
2085	IM-05	MIDWEST	352967	MIDWEST GROUP TAX FREE TRUST.
2086	IM-05	MIDWEST	066117	MIDWEST INCOME TRUST.
2087	IM-05	MIDWEST	711080	MIDWEST STRATEGIC TRUST.
2088	IM-05	MIMLIC	756925	MIMLIC ASSET ALLOCATION FUND INC.
2089	IM-05	MIMLIC	810899	MIMLIC CASH FUND INC.
2090	IM-05	MIMLIC	810900	MIMLIC FIXED INCOME SECURITIES FUND INC.
2091	IM-05	MIMLIC	756923	MIMLIC INVESTORS FUND I INC.
2092	IM-05	MIMLIC	756924	MIMLIC MONEY MARKET FUND INC.
2093	IM-05	MIMLIC	756922	MIMLIC MORTGAGE SECURITIES INCOME FUND INC.
2094	IM-05	MINNESOTA MUTUAL	766351	MIMLIC SERIES FUND INC.
2095	IM-05	MINNESOTA MUTUAL	066749	MINNESOTA MUTUAL VARIABLE FUND D.
2096	IM-05	ML LEE	840334	ML LEE ACQUISITION FUND II L P.
2097	IM-05	ML LEE	813343	ML LEE ACQUISITION FUND L P.
2098	IM-05	ML LEE	843367	ML LEE ACQUISITION FUND RETIREMENT ACCOUNTS II L P.
2099	IM-05	MONY	761686	MONY SERIES FUND INC.
2100	IM-05	MONY	067873	MONY VARIABLE ACCOUNT A.
2101	IM-05	MORGAN STANLEY	836487	MORGAN STANLEY INSTITUTIONAL FUND INC.
2102	IM-05	MORGAN STANLEY	845108	PCS CASH FUND INC.
2103	IM-05	MUNIYIELD	882152	MUNIYIELD CALIFORNIA FUND INC.
2104	IM-05	MUNIYIELD	882153	MUNIYIELD FLORIDA FUND.
2105	IM-05	MUNIYIELD	878361	MUNIYIELD FUND INC.
2106	IM-05	MUNIYIELD	883412	MUNIYIELD INSURED FUND INC.
2107	IM-05	MUNIYIELD	882151	MUNIYIELD MICHIGAN FUND INC.
2108	IM-05	MUNIYIELD	882150	MUNIYIELD NEW YORK INSURED FUND INC.
2109	IM-05	MUTUAL OF AMER	795259	MUTUAL OF AMERICA INVESTMENT CORP.
2110	IM-05	MUTUAL OF AMER	743415	MUTUAL OF AMERICA SEPARATE ACCOUNT NO 2.
2111	IM-05	NATIONWIDE	832800	FINANCIAL HORIZONS INVESTMENT TRUST.
2112	IM-05	NATIONWIDE	069380	NATIONWIDE INVESTING FOUNDATION.
2113	IM-05	NATIONWIDE	353905	NATIONWIDE SEPARATE ACCOUNT TRUST.
2114	IM-05	NATIONWIDE	779239	NATIONWIDE TAX FREE FUND.
2115	IM-05	ND MONEY MGT	871428	ND INSURED INCOME FUND INC.
2116	IM-05	ND MONEY MGT	841870	ND TAX FREE FUND INC /ND/.
2117	IM-05	NEW YORK LIFE	071632	NEW YORK LIFE FUND INC.
2118	IM-05	NEW YORK LIFE	726508	NEW YORK LIFE MFA SERIES FUND INC.
2119	IM-05	NEW YORK LIFE	721896	NEW YORK LIFE VLI SERIES FUND INC.
2120	IM-05	NEWTON	071873	NEWTON GROWTH FUND INC.
2121	IM-05	NEWTON	071878	NEWTON INCOME FUND INC.
2122	IM-05	NICHOLAS	071859	NICHOLAS FUND INC.
2123	IM-05	NICHOLAS	723455	NICHOLAS II INC.
2124	IM-05	NICHOLAS	107822	NICHOLAS INCOME FUND INC.
2125	IM-05	NICHOLAS	809802	NICHOLAS LIMITED EDITION INC.
2126	IM-05	NICHOLAS	832473	NICHOLAS MONEY MARKET FUND INC.
2127	IM-05	NORTHWESTERN NAT	073521	SELECT CAPITAL GROWTH FUND INC.
2128	IM-05	NORTHWESTERN NAT	356709	SELECT CASH MANAGEMENT FUND INC.
2129	IM-05	NORTHWESTERN NAT	715995	SELECT HIGH YIELD FUND INC.
2130	IM-05	NORTHWESTERN NAT	779099	SELECT MANAGED FUND INC.
2131	IM-05	OSTRANDER	825345	NEW AMERICA HIGH INCOME FUND INC.
2132	IM-05	OSTRANDER	839050	OSTRANDER FIXED INCOME TRUST.
2133	IM-05	PACIFIC HORIZON	719720	PACIFIC HORIZON CALIFORNIA TAX EXEMPT BOND PORTFOLIO INC.
2134	IM-05	PACIFIC HORIZON	814860	PACIFIC HORIZON FUNDS.
2135	IM-05	PACIFIC HORIZON	711883	PACIFIC HORIZON FUNDS INC.
2136	IM-05	PACIFIC HORIZON	748822	PACIFIC HORIZON TAX EXEMPT MONEY MARKET PORTFOLIO INC.
2137	IM-05	PARKWAY	312068	PARKWAY CASH FUND INC.
2138	IM-05	PARKWAY	319231	PARKWAY TAX FREE RESERVE FUND INC.
2139	IM-05	PATRIOT	796307	PATRIOT GROUP INVESTMENT TRUST.
2140	IM-05	PATRIOT	868549	PATRIOT PREMIUM DIVIDEND FUND I.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2141	IM-05	PATRIOT	855886	PATRIOT PREMIUM DIVIDEND FUND II.
2142	IM-05	PATRIOT	836219	PATRIOT PREMIUM DIVIDEND FUND INC.
2143	IM-05	PATRIOT	852025	PATRIOT PRIVATE DIVIDEND TERM TRUST.
2144	IM-05	PATRIOT	863328	PATRIOT SELECT DIVIDEND TRUST.
2145	IM-05	PENN MUTUAL	077130	PENN MUTUAL EQUITY FUND INC.
2146	IM-05	PENN MUTUAL	702340	PENN SERIES FUNDS INC.
2147	IM-05	PHOENIX	826737	PHOENIX MULTI PORTFOLIO FUND.
2148	IM-05	PHOENIX	019469	PHOENIX SERIES FUND.
2149	IM-05	PHOENIX	049999	PHOENIX TOTAL RETURN FUND INC.
2150	IM-05	PROVIDENT NAT	110230	PROVIDENT NATIONAL ASSURANCE CO SEPARATE ACCOUNT B.
2151	IM-05	PROVIDENT NAT	080645	PROVIDENT NATIONAL ASSURANCE CO SEPARATE ACCOUNT C.
2152	IM-05	QUEST FOR VALUE	851173	QUEST CASH RESERVES INC.
2153	IM-05	QUEST FOR VALUE	804632	QUEST FOR VALUE CASH MANAGEMENT TRUST.
2154	IM-05	QUEST FOR VALUE	799029	QUEST FOR VALUE DUAL PURPOSE FUND INC.
2155	IM-05	QUEST FOR VALUE	817982	QUEST FOR VALUE FAMILY OF FUNDS.
2156	IM-05	QUEST FOR VALUE	312555	QUEST FOR VALUE FUND INC.
2157	IM-05	QUEST FOR VALUE	863250	QUEST FOR VALUE GLOBAL EQUITY FUND INC.
2158	IM-05	RESERVE MGT	724200	RESERVE EQUITY TRUST.
2159	IM-05	RESERVE MGT	083335	RESERVE FUND/NY.
2160	IM-05	RESERVE MGT	350641	RESERVE INSTITUTIONAL TRUST.
2161	IM-05	RESERVE MGT	724201	RESERVE NEW YORK TAX EXEMPT TRUST.
2162	IM-05	RESERVE MGT	716644	RESERVE TAX EXEMPT TRUST.
2163	IM-05	RNC	787495	RNC CORPORATE CASH MANAGEMENT FUND INC.
2164	IM-05	RNC	766758	RNC INCOME FUND INC.
2165	IM-05	RNC	773298	RNC LIQUID ASSETS FUND INC.
2166	IM-05	RNC	082848	RNC REGENCY FUND INC.
2167	IM-05	RNC	801132	RNC WESTWIND FUND INC.
2168	IM-05	ROCHESTER	758959	ROCHESTER CONVERTIBLE FUND.
2169	IM-05	ROCHESTER	093621	ROCHESTER FUND MUNICIPALS INC.
2170	IM-05	ROCHESTER	711751	ROCHESTER GROWTH FUND INC.
2171	IM-05	ROCHESTER	878409	ROCHESTER PORTFOLIO SERIES.
2172	IM-05	ROCHESTER	084555	ROCHESTER TAX MANAGED FUND INC.
2173	IM-05	RODNEY SQUARE	793276	RODNEY SQUARE BENCHMARK U S TREASURY FUND.
2174	IM-05	RODNEY SQUARE	700844	RODNEY SQUARE FUND.
2175	IM-05	RODNEY SQUARE	819341	RODNEY SQUARE INTERNATIONAL SECURITIES FUND INC.
2176	IM-05	RODNEY SQUARE	799199	RODNEY SQUARE MULTI MANAGER FUND.
2177	IM-05	RODNEY SQUARE	773826	RODNEY SQUARE TAX EXEMPT FUND.
2178	IM-05	ROTHSCHILD	356537	ROTHSCHILD L F EARNINGS & LIQUIDITY INC
2179	IM-05	ROTHSCHILD	723643	ROTHSCHILD L F EXEMPT FUND INC.
2180	IM-05	ROYCE	077271	PENNSYLVANIA MUTUAL FUND INC.
2181	IM-05	ROYCE	709364	ROYCE FUND.
2182	IM-05	ROYCE	804116	ROYCE VALUE TRUST INC.
2183	IM-05	RSI	869964	RETIREMENT SYSTEM FUND INC.
2184	IM-05	RSI	759947	RSI RETIREMENT TRUST.
2185	IM-05	RUSHMORE	843251	AMERICAN GAS INDEX FUND INC.
2186	IM-05	RUSHMORE	039436	FUND FOR GOVERNMENT INVESTORS INC.
2187	IM-05	RUSHMORE	718824	FUND FOR TAX FREE INVESTORS INC.
2188	IM-05	RUSHMORE	773754	RUSHMORE FUND INC.
2189	IM-05	SALOMON BROS	202385	SALOMON BROTHERS CAPITAL FUND INC.
2190	IM-05	SALOMON BROS	205545	SALOMON BROTHERS FUND INC/DE/.
2191	IM-05	SALOMON BROS	862501	SALOMON BROTHERS INSTITUTIONAL SERIES FUNDS INC.
2192	IM-05	SALOMON BROS	074575	SALOMON BROTHERS INVESTORS FUND INC.
2193	IM-05	SALOMON BROS	277585	SALOMON BROTHERS OPPORTUNITY FUND INC
2194	IM-05	SALOMON BROS	862502	SALOMON BROTHERS SERIES FUNDS INC.
2195	IM-05	SCHWAB	857156	SCHWAB CHARLES FAMILY OF FUNDS.
2196	IM-05	SCHWAB	869365	SCHWAB INVESTMENTS.
2197	IM-05	SECURAL	356134	FIRST AMERICAN FUNDS INC.
2198	IM-05	SECURAL	820892	SECURAL MUTUAL FUNDS INC.
2199	IM-05	SELECTED	088608	SELECTED AMERICAN SHARES INC.
2200	IM-05	SELECTED	818869	SELECTED CAPITAL PRESERVATION TRUST.
2201	IM-05	SELECTED	783416	SELECTED INVESTMENT MANAGERS SERIES FUND.
2202	IM-05	SELECTED	217131	SELECTED MONEY MARKET FUND INC.
2203	IM-05	SELECTED	084237	SELECTED SPECIAL SHARES INC.
2204	IM-05	SENTINEL	353706	SENTINEL CASH MANAGEMENT FUND INC.
2205	IM-05	SENTINEL	225843	SENTINEL GROUP FUNDS INC.
2206	IM-05	SIGNATURE	856324	FIRST CASH FUNDS OF AMERICA.
2207	IM-05	SIGNATURE	856325	FIRST FUNDS OF AMERICA.
2208	IM-05	SIT	358786	SIT NEW BEGINNING GROWTH FUND INC /NEW/.
2209	IM-05	SIT	358787	SIT NEW BEGINNING INCOME & GROWTH FUND INC.
2210	IM-05	SIT	746603	SIT NEW BEGINNING INVESTMENT RESERVE FUND INC.
2211	IM-05	SIT	746601	SIT NEW BEGINNING TAX FREE INCOME FUND INC
2212	IM-05	SIT	809981	SIT NEW BEGINNING U S GOVERNMENT SECURITIES FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2213	IM-05	SMITH BARNEY	091158	SMITH BARNEY EQUITY FUNDS INC.
2214	IM-05	SMITH BARNEY	091157	SMITH BARNEY FUNDS INC.
2215	IM-05	SMITH BARNEY	847020	SMITH BARNEY L P ESC 1.
2216	IM-05	SMITH BARNEY	808244	SMITH BARNEY VARIABLE ACCOUNT FUNDS.
2217	IM-05	SMITH BARNEY	873637	SMITH BARNEY WORLD FUNDS INC.
2218	IM-05	SMITH BARNEY	703802	VANTAGE MONEY MARKET FUNDS.
2219	IM-05	SMITH HAYES	828844	SMITH HAYES TRUST INC.
2220	IM-05	SMITH HAYES	870156	STRATUS FUND INC.
2221	IM-05	STATE FARM	093716	STATE FARM BALANCED FUND INC.
2222	IM-05	STATE FARM	093715	STATE FARM GROWTH FUND INC.
2223	IM-05	STATE FARM	205925	STATE FARM INTERIM FUND INC.
2224	IM-05	STATE FARM	205926	STATE FARM MUNICIPAL BOND FUND INC.
2225	IM-05	STATE MUTUAL	313754	SEPARATE ACCOUNT VA A OF SMA LIFE ASSURANCE CO.
2226	IM-05	STATE MUTUAL	008775	SEPARATE ACCOUNT VA B OF SMA LIFE ASSURANCE CO.
2227	IM-05	STATE MUTUAL	008776	SEPARATE ACCOUNT VA C OF SMA LIFE ASSURANCE CO.
2228	IM-05	STATE MUTUAL	727146	SEPARATE ACCOUNT VA G OF SMA LIFE ASSURANCE CO.
2229	IM-05	STATE MUTUAL	756742	SMA INVESTMENT TRUST.
2230	IM-05	STATE MUTUAL	814807	VEL ACCOUNT OF SMA LIFE ASSURANCE CO.
2231	IM-05	STATE STREET	727101	STATE STREET CAPITAL TRUST.
2232	IM-05	STATE STREET	093753	STATE STREET EXCHANGE FUND.
2233	IM-05	STATE STREET	766768	STATE STREET EXCHANGE TRUST.
2234	IM-05	STATE STREET	774202	STATE STREET FUND FOR FOUNDATIONS & ENDOWMENTS.
2235	IM-05	STATE STREET	034918	STATE STREET GROWTH TRUST.
2236	IM-05	STATE STREET	093755	STATE STREET INVESTMENT TRUST.
2237	IM-05	STEIN ROE	094017	STEINROE CASH RESERVES INC.
2238	IM-05	STEIN ROE	704177	STEINROE GOVERNMENT RESERVES INC.
2239	IM-05	STEIN ROE	734766	STEINROE HIGH YIELD MUNICIPALS INC.
2240	IM-05	STEIN ROE	787491	STEINROE INCOME TRUST.
2241	IM-05	STEIN ROE	809558	STEINROE INVESTMENT TRUST.
2242	IM-05	STEIN ROE	203296	STEINROE MANAGED MUNICIPALS INC.
2243	IM-05	STEIN ROE	093166	STEINROE SPECIAL FUND INC.
2244	IM-05	STEIN ROE	773757	STEINROE TAX EXEMPT INCOME TRUST.
2245	IM-05	STEIN ROE	710997	STEINROE TAX EXEMPT MONEY FUND INC.
2246	IM-05	STEIN ROE	093976	STEINROE TOTAL RETURN FUND INC.
2247	IM-05	STEIN ROE	815425	STEINROE VARIABLE INVESTMENT TRUST.
2248	IM-05	STRATEGIC	356779	STRATEGIC GOLD MINERALS FUND INC.
2249	IM-05	STRATEGIC	094780	STRATEGIC INVESTMENTS FUND INC /TX/.
2250	IM-05	STRATEGIC	753311	STRATEGIC SILVER FUND INC.
2251	IM-05	STRATEGIC	355602	STRATEGIC TREASURY POSITIONS INC.
2252	IM-05	STRATTON	094823	STRATTON FUND INC.
2253	IM-05	STRATTON	094825	STRATTON GROWTH FUND INC.
2254	IM-05	STRATTON	030137	STRATTON MONTHLY DIVIDEND SHARES INC.
2255	IM-05	TCW	809559	TCW CONVERTIBLE SECURITIES FUND INC.
2256	IM-05	TCW	830265	TCW INVESTMENT FUNDS INC.
2257	IM-05	TRANSAMERICA OCCIDENTALS.	073710	TRANSAMERICA OCCIDENTALS SEPARATE ACCOUNT FUND B.
2258	IM-05	TRANSAMERICA OCCIDENTALS.	073711	TRANSAMERICA OCCIDENTALS SEPARATE ACCOUNT FUND C.
2259	IM-05	TUDOR	780257	WPG GROWTH FUND INC.
2260	IM-05	TUDOR	100132	WPG TUDOR FUND.
2261	IM-05	TWENTIETH CENTURY	100334	TWENTIETH CENTURY INVESTORS INC.
2262	IM-05	TWENTIETH CENTURY	872825	TWENTIETH CENTURY WORLD INVESTORS INC.
2263	IM-05	US TRUST	852571	TRIUMPH TRUST.
2264	IM-05	US TRUST	751200	UST MASTER FUNDS INC.
2265	IM-05	US TRUST	752322	UST MASTER TAX EXEMPT FUNDS INC.
2266	IM-05	USAA	745903	USAA INVESTMENT TRUST.
2267	IM-05	USAA	102401	USAA MUTUAL FUND INC.
2268	IM-05	USAA	356555	USAA TAX EXEMPT FUND INC.
2269	IM-05	USAA LIFE	802978	UNITED SERVICES VARIABLE LIFE SEPARATE ACCOUNT I.
2270	IM-05	USAA LIFE	827885	UNITED SERVICES VARIABLE LIFE SEPARATE ACCOUNT I /MA/.
2271	IM-05	USAA LIFE	802980	UNITED SERVICES VARIABLE LIFE SEPARATE ACCOUNT II.
2272	IM-05	USAA LIFE	802977	UNITED SERVICES VARIABLE LIFE SEPARATE ACCOUNT III.
2273	IM-05	USAA LIFE	802985	UNITED SERVICES VARIABLE LIFE SEPARATE ACCOUNT IV.
2274	IM-05	USAA LIFE	754931	USAA LIFE PORTFOLIO SERIES INC.
2275	IM-05	USF&G	865416	USF&G MONEY MARKET FUNDS INC.
2276	IM-05	USF&G	867551	USF&G TAX EXEMPT MONEY MARKET FUNDS INC.
2277	IM-05	VAN ECK	051353	INTERNATIONAL INVESTORS INC
2278	IM-05	VAN ECK	768847	VAN ECK FUNDS.
2279	IM-05	VAN ECK	811976	VAN ECK INVESTMENT TRUST.
2280	IM-05	VENTURE	071701	NEW YORK VENTURE FUND INC

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2281	IM-05	VENTURE	203002	RETIREMENT PLANNING FUNDS OF AMERICA INC.
2282	IM-05	VENTURE	315609	VENTURE INCOME PLUS INC.
2283	IM-05	VENTURE	355714	VENTURE MUNI PLUS INC.
2284	IM-05	VENTURE	318399	VENTURE TRUST MONEY MARKET FUNDS.
2285	IM-05	VOYAGER	318515	VOYAGER VARIABLE ANNUITY ACCOUNT C.
2286	IM-05	VOYAGER	103948	VOYAGER VARIABLE ANNUITY FUND.
2287	IM-05	WARBURG	860510	EUROPE FUND INC.
2288	IM-05	WARBURG	814830	UNITED KINGDOM FUND INC.
2289	IM-05	WARBURG	764034	WARBURG INTERNATIONAL FUNDS INC.
2290	IM-05	WAYNE HUMMER	730462	HUMMER WAYNE GROWTH FUND TRUST.
2291	IM-05	WAYNE HUMMER	357055	HUMMER WAYNE MONEY FUND TRUST.
2292	IM-05	WEISS PECK	846111	WEISS PECK & GREER INTERNATIONAL FUND.
2293	IM-05	WEISS PECK	004879	WPG FUND INC.
2294	IM-05	WEISS PECK	777025	WPG FUNDS TRUST.
2295	IM-05	WELLS FARGO	105604	WELLS FARGO BANK REAL ESTATE EQUITY COMMON TR FD FOR EMPL BE.
2296	IM-05	WELLS FARGO	727163	WELLS FARGO INVESTMENT TRUST FOR RETIREMENT PROGRAMS.
2297	IM-05	WILLIAM BLAIR	822832	BLAIR WILLIAM READY RESERVES INC.
2298	IM-05	WILLIAM BLAIR	044207	GROWTH INDUSTRY SHARES INC.
2299	IM-05	WMM	870995	CPA FUNDS INC.
2300	IM-05	WMM	357298	PERMANENT PORTFOLIO FAMILY OF FUNDS INC.
2301	IM-05	ZWEIG	319960	ZWEIG CASH FUND INC.
2302	IM-05	ZWEIG	812090	ZWEIG FUND INC /MD/.
2303	IM-05	ZWEIG	754363	ZWEIG SERIES TRUST.
2304	IM-05	ZWEIG	711418	ZWEIG TAX FREE FUND INC.
2305	IM-05	ZWEIG	836412	ZWEIG TOTAL RETURN FUND INC.
2306	IM-06		030125	1838 BOND DEBENTURE TRADING FUND.
2307	IM-06		819687	AA FUND INC.
2308	IM-06		811869	AAL MUTUAL FUNDS.
2309	IM-06		001770	ABACUS FUND INC.
2310	IM-06		225002	ABC INVESTMENT CO.
2311	IM-06		846884	ABD AMERICAN CAPITAL MARKETS FUNDS INC.
2312	IM-06		001656	ABERDEEN FUND.
2313	IM-06		001652	ABERDEEN INVESTOR PROGRAMS.
2314	IM-06		708950	ACACIA CAPITAL CORP.
2315	IM-06		002110	ACORN FUND INC.
2316	IM-06		737243	ACORN VENTURE CAPITAL CORP.
2317	IM-06		741687	ADAM INVESTORS INC.
2318	IM-06		002230	ADAMS EXPRESS CO/MD.
2319	IM-06		794602	ADDISON CAPITAL SHARES INC.
2320	IM-06		826131	ADIRONDACK INCOME SHARES INC.
2321	IM-06		871426	ADVISORS INTERNATIONAL FUND.
2322	IM-06		357238	AFA FUNDS INC.
2323	IM-06		225030	AFL CIO HOUSING INVESTMENT TRUST.
2324	IM-06		002745	AFUTURE FUND INC.
2325	IM-06		701368	AGGRESSIVE STOCK TRUST.
2326	IM-06		706451	AGGRESSIVE STOCK TRUST/MA/.
2327	IM-06		883248	AIM EQUITY INSURED TRUST.
2328	IM-06		858583	ALAMEDA CONTRA COSTA MEDICAL ASSOCIATION COLLECTION INVESTMENT TR FOR RETIREMENT.
2329	IM-06		880124	ALL AMERICA FUND INC.
2330	IM-06		836396	ALLEGHENY INCOME SHARES INC.
2331	IM-06		773139	ALLEGRO GROWTH FUND INC.
2332	IM-06		003682	ALLIED FINANCIAL CORP.
2333	IM-06		784003	ALPINE INCOME SHARES INC.
2334	IM-06		796329	ALPINE MUTUAL FUND TRUST.
2335	IM-06		315127	ALTERMAN INVESTMENT FUND INC.
2336	IM-06		784004	ALTIUS ALPHA FUND INC.
2337	IM-06		784005	ALTIUS BETA FUND INC.
2338	IM-06		792747	ALTURA FUND.
2339	IM-06		786285	AMANA MUTUAL FUNDS TRUST.
2340	IM-06		855022	AMBASSADOR FUNDS.
2341	IM-06		809583	AMERICAN ADVANTAGE FUNDS.
2342	IM-06		004536	AMERICAN ANNUITY SAVINGS ASSOCIATION.
2343	IM-06		803140	AMERICAN ASSET TRUST.
2344	IM-06		004955	AMERICAN EUROPEAN SECURITIES CO.
2345	IM-06		356399	AMERICAN EXPRESS VARIABLE ANNUITY FUND INC.
2346	IM-06		770161	AMERICAN FUNDS INCOME SERIES.
2347	IM-06		005136	AMERICAN GROWTH FUND INC.
2348	IM-06		047020	AMERICAN HERITAGE FUND INC.
2349	IM-06		005286	AMERICAN INTERNATIONAL CORP.
2350	IM-06		005298	AMERICAN INVESTMENT COUNSELING FUND INC
2351	IM-06		005374	AMERICAN LIFE FUND INC.
2352	IM-06		864508	AMERICAN PERFORMANCE FUNDS.
2353	IM-06		878930	AMERICAN STRATEGIC INCOME PORTFOLIO INC
2354	IM-06		729528	AMERICAN VARIABLE INSURANCE SERIES.
2355	IM-06		805745	AMERITRUSTS COLLECTIVE INVESTMENT RETIREMENT FUND.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2356	IM-06		006247	AMWAY MUTUAL FUND INC.
2357	IM-06		831869	APPALACHIAN INCOME SHARES INC.
2358	IM-06		843386	ARBITRAGE PARTNERS SPECIAL FUND LTD.
2359	IM-06		878351	ARGENTINA FUND INC.
2360	IM-06		721938	ARIZONA TAX FREE FUND INC.
2361	IM-06		007308	ARKANSAS FUND.
2362	IM-06		007426	ARMSTRONG ASSOCIATES INC.
2363	IM-06		007645	ASA LTD.
2364	IM-06		795618	ASIA PACIFIC FUND INC.
2365	IM-06		832544	ASO OUTLOOK GROUP.
2366	IM-06		856321	ASSET ALLOCATION TRUST.
2367	IM-06		705318	ASSET MANAGEMENT FUND FOR FINANCIAL INSTITUTIONS INC.
2368	IM-06		833438	ASSOCIATED CAPITAL INSTITUTIONAL TRUST.
2369	IM-06		830155	ASSOCIATION ADVISERS FUNDS INC.
2370	IM-06		847531	AVDON CAPITAL CORP.
2371	IM-06		008831	AVIATION GROWTH INVESTMENTS INC.
2372	IM-06		811030	AVONDALE INVESTMENT TRUST.
2373	IM-06		741028	BAIRD CAPITAL DEVELOPMENT FUND INC.
2374	IM-06		009235	BAKER FENTRESS & CO.
2375	IM-06		783894	BAKER FUND.
2376	IM-06		009521	BANCROFT CONVERTIBLE FUND INC.
2377	IM-06		723209	BANDO MCGLOCKLIN CAPITAL CORP.
2378	IM-06		810902	BARON ASSET FUND.
2379	IM-06		790814	BAYSHORE FUNDS INC.
2380	IM-06		014343	BDI INVESTMENT CORP.
2381	IM-06		010578	BEACON HILL MUTUAL FUND INC.
2382	IM-06		771985	BENCH PORTFOLIOS FUND.
2383	IM-06		028827	BERGSTROM CAPITAL CORP.
2384	IM-06		854911	BERKSHIRE PARTNERS III RETIREMENT FUND LP.
2385	IM-06		859123	BERLIN FUND INC.
2386	IM-06		832808	BERNSTEIN SANFORD FUND INC.
2387	IM-06		011841	BETCO CORP.
2388	IM-06		856317	BLUE CHIP TRUST.
2389	IM-06		351786	BMC FUND INC.
2390	IM-06		701566	BMI EQUITY FUND INC.
2391	IM-06		729209	BOETTCHER VENTURE CAPITAL PARTNERS LP.
2392	IM-06		869581	BOING GERMANY PERFORMANCE FUND INC.
2393	IM-06		856322	BOND TRUST.
2394	IM-06		013109	BONDSTOCK INVESTMENT PLAN.
2395	IM-06		013385	BOSTON FOUNDATION FUND AGREEMENTS PLANS A B C D E.
2396	IM-06		870355	BRANCH CABELL INVESTMENT TRUST.
2397	IM-06		872822	BRAZILIAN INVESTMENT FUND INC.
2398	IM-06		014170	BRIDGES INVESTMENT FUND INC.
2399	IM-06		047071	BRUCE FUND INC.
2400	IM-06		868662	BRUNDAGE STORY & ROSE INVESTMENT TRUST.
2401	IM-06		030126	BURNHAM FUND INC.
2402	IM-06		856319	CALIFORNIA MUNICIPAL BOND TRUST.
2403	IM-06		841051	CALIFORNIA MUNICIPAL INCOME FUND.
2404	IM-06		355985	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 1.
2405	IM-06		718027	CALIFORNIA TAX EXEMPT BONDS INC.
2406	IM-06		715755	CALIFORNIA TAX FREE MONEY FUND.
2407	IM-06		856323	CALIFORNIA TAX FREE MONEY TRUST.
2408	IM-06		093832	CAPITAL CASH MANAGEMENT TRUST.
2409	IM-06		017126	CAPITAL CORP OF AMERICA.
2410	IM-06		732813	CAPITAL INVESTMENTS INC.
2411	IM-06		843170	CAPITAL MARKET FUND INC.
2412	IM-06		017313	CAPITAL SOUTHWEST CORP.
2413	IM-06		026037	CAPITAL SOUTHWEST VENTURE CORP.
2414	IM-06		017323	CAPITAL VENTURE FUND INC.
2415	IM-06		859750	CAPITOL MUTUAL FUNDS.
2416	IM-06		730020	CARNEGIE CAPPIELLO TRUST.
2417	IM-06		791049	CASCADES TRUST.
2418	IM-06		748719	CASH ACCUMULATION TRUST.
2419	IM-06		749748	CASH ASSETS TRUST.
2420	IM-06		355751	CASH INCOME TRUST.
2421	IM-06		862064	CASH MANAGEMENT PORTFOLIO.
2422	IM-06		355760	CBC CORNERSTONE FUNDS /MA/.
2423	IM-06		018748	CENTRAL SECURITIES CORP.
2424	IM-06		018922	CENTURY SHARES TRUST.
2425	IM-06		019023	CFC INDUSTRIES INC.
2426	IM-06		759581	CHALLENGER INCOME SHARES INC.
2427	IM-06		843164	CHAPMAN FUNDS INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2428	IM-06		742555	CHARTER CAPITAL BLUE CHIP GROWTH FUND INC.
2429	IM-06		019400	CHARTER FUND INC.
2430	IM-06		826333	CHARTER FUNDS.
2431	IM-06		819634	CHARTWELL CAPITAL CORP /CO/.
2432	IM-06		063848	CHESAPEAKE INVESTORS INC/MD/.
2433	IM-06		355986	CHESTNUT STREET CASH FUND INC.
2434	IM-06		019855	CHICAGO MILWAUKEE CORP.
2435	IM-06		845379	CHINA FUND INC.
2436	IM-06		705587	CIMCO MONEY MARKET TRUST.
2437	IM-06		020358	CIRCLE INCOME SHARES INC.
2438	IM-06		060384	CIVIL & MILITARY INVESTORS MUTUAL FUND INC.
2439	IM-06		020691	CLARION CAPITAL CORP.
2440	IM-06		811161	CLEARWATER INVESTMENT TRUST.
2441	IM-06		736978	CLIPPER FUND INC.
2442	IM-06		830523	CMA NEW YORK TAX EXEMPT FUND OF CMA MULTI STATE MUN SER TR.
2443	IM-06		869311	CMA TREASURY FUND.
2444	IM-06		854126	CMC FUND TRUST.
2445	IM-06		831113	CMC REAL ESTATE CORPORATION.
2446	IM-06		021178	CNA INCOME SHARES INC.
2447	IM-06		773154	CO OPERATIVE BANK INVESTMENT FUND.
2448	IM-06		709258	COLLECTIVE INVESTMENT TRUST FOR CITIBANK IRAS.
2449	IM-06		799069	COLLECTIVE INVESTMENT TRUST FOR FIRST UNION IRAS.
2450	IM-06		824018	COLLECTIVE INVESTMENT TRUST FOR SEAFIRST RETIREMENT ACCOUNTS.
2451	IM-06		820300	COLLEGE & UNIVERSITY FACILITY LOAN TRUST ONE.
2452	IM-06		830977	COLLEGE & UNIVERSITY FACILITY LOAN TRUST TWO.
2453	IM-06		022093	COLUMBIA FUND INC.
2454	IM-06		764717	COLUMBUS INCOME SHARES INC.
2455	IM-06		810271	COMMON SENSE TRUST.
2456	IM-06		807878	COMMONWEALTH CASH RESERVE FUND INC.
2457	IM-06		022616	COMMONWEALTH FUND PLAN A & B.
2458	IM-06		022614	COMMONWEALTH INVESTMENT TRUST.
2459	IM-06		846051	COMMUNITY BANKERS MUTUAL FUND INC.
2460	IM-06		856670	COMMUNITY INVESTMENT PARTNERS LP.
2461	IM-06		826738	COMPASS CAPITAL GROUP.
2462	IM-06		830779	COMSTOCK PARTNERS STRATEGY FUND INC.
2463	IM-06		023252	CONCORD FUND INC.
2464	IM-06		806841	CONCORD INCOME TRUST.
2465	IM-06		854127	CONESTOGA FAMILY OF FUNDS.
2466	IM-06		752371	CONNECTICUT BANK & TRUST CO IRA COLLECTIVE INVESTMENT FUND.
2467	IM-06		023412	CONNECTICUT FIDUCIARIES FUND INC.
2468	IM-06		769998	CONNECTICUT LIQUIDITY INVESTMENT FUND INC.
2469	IM-06		356865	CONNECTICUT MUTUAL INVESTMENT ACCOUNTS INC.
2470	IM-06		023830	CONSTELLATION GROWTH FUND INC.
2471	IM-06		024119	CONTINENTAL MUTUAL INVESTMENT FUND INC.
2472	IM-06		769566	CONVERTIBLE HOLDINGS INC.
2473	IM-06		721291	COPLEY FUND INC /MA/.
2474	IM-06		093652	COPLEY TRUST/MA.
2475	IM-06		752761	COREFUNDS INC.
2476	IM-06		721704	CORPORATE CASH MANAGEMENT FUND INC.
2477	IM-06		024858	CORPORATE FUND ACCUMULATION PROGRAM INC.
2478	IM-06		825067	COWEN FUNDS INC.
2479	IM-06		793578	COWEN INCOME PLUS GROWTH FUND INC.
2480	IM-06		806437	CREDIT UNION GOVERNMENT SECURITIES FUND INC.
2481	IM-06		026261	CURRENT INCOME SHARES INC.
2482	IM-06		354181	DAIWA MONEY FUND INC.
2483	IM-06		352669	DECLARATION FUND.
2484	IM-06		868739	DELOTECH CAPITAL CORPORATION.
2485	IM-06		028465	DEVELOPERS SMALL BUSINESS INVESTMENT CORP.
2486	IM-06		821369	DEVONSHIRE FUND.
2487	IM-06		106835	DIVIDEND GROWTH FUND INC.
2488	IM-06		277905	DK INVESTORS INC.
2489	IM-06		870377	DOCK CAPITAL INC.
2490	IM-06		786424	DOLPHIN FRIC CONVERTIBLE FUND.
2491	IM-06		851681	DOMINI SOCIAL INDEX PORTFOLIO.
2492	IM-06		851680	DOMINI SOCIAL INDEX TRUST.
2493	IM-06		796578	DOVER REGIONAL FINANCIAL SHARES.
2494	IM-06		023562	DRANOEL INC.
2495	IM-06		825062	DREMAN MUTUAL GROUP INC.
2496	IM-06		040417	DREYFUS AMERICAN INVESTORS CO INC.

APPENDIX A.—PART 1—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2497	IM-06		806628	DUFF & PHELPS SELECTED UTILITIES INC.
2498	IM-06		311101	DUPREE MUTUAL FUNDS.
2499	IM-06		830032	EAST COAST VENTURE CAPITAL INC.
2500	IM-06		862920	EAST WEST EUROPE FUND INC.
2501	IM-06		802209	ECLIPSE FINANCIAL ASSET TRUST.
2502	IM-06		863930	EDUCATION FINANCE FUND INC.
2503	IM-06		799196	ELITE GROUP.
2504	IM-06		723106	ELK ASSOCIATES FUNDING CORP.
2505	IM-06		786425	ELK RIDGE FUND INC.
2506	IM-06		793040	ELLSWORTH CONVERTIBLE GROWTH & INCOME FUND INC.
2507	IM-06		802718	EMBLEM FUND.
2508	IM-06		860127	EMERGING GERMANY FUND INC.
2509	IM-06		794458	EMERGING MARKETS GROWTH FUND INC.
2510	IM-06		744390	EMERGING MEDICAL TECHNOLOGY FUND INC.
2511	IM-06		865531	EMERGING MEXICO FUND INC.
2512	IM-06		730004	EMPIRE BUILDER TAX FREE BOND FUND.
2513	IM-06		847254	ENDEAVOR SERIES TRUST.
2514	IM-06		794277	ENDOWMENT & ANNUITY TRUST.
2515	IM-06		032598	ENGEX INC.
2516	IM-06		004123	ENTERPRISE GROUP OF FUNDS INC.
2517	IM-06		850614	EQUITABLE CAPITAL HIGH YIELD PLUS FUND.
2518	IM-06		828847	EQUITABLE CAPITAL PARTNERS LP.
2519	IM-06		829305	EQUITABLE CAPITAL PARTNERS RETIREMENT FUND LP.
2520	IM-06		812015	EQUITABLE FUNDS.
2521	IM-06		821655	EQUITEC SIEBEL SERIES TRUST.
2522	IM-06		354965	EQUITY STRATEGIES FUND INC.
2523	IM-06		856318	EQUITY TRUST /NY/.
2524	IM-06		863903	EUROPEAN WARRANT FUND INC.
2525	IM-06		866789	EVERGREEN FOUNDATION TRUST.
2526	IM-06		817819	EVERLAST CAPITAL CORP.
2527	IM-06		033886	EVERYMAN FUND INC.
2528	IM-06		033951	EXCHANGE FUND OF BOSTON INC.
2529	IM-06		722058	EXEMPT ASSETS PORTFOLIOS.
2530	IM-06		818458	FASCIANO FUND INC.
2531	IM-06		034549	FBL SERIES FUND INC.
2532	IM-06		034930	FEDERAL UNITED CORP.
2533	IM-06		797136	FENIMORE ASSET MANAGEMENT TRUST FAM VALUE FUND SERIES.
2534	IM-06		740765	FENIMORE INTERNATIONAL FUND INC.
2535	IM-06		784975	FFB FUNDS TRUST.
2536	IM-06		848012	FFTW RESERVES INC.
2537	IM-06		796227	FIDUCIARY TOTAL RETURN FUND INC.
2538	IM-06		821132	FIFTH THIRD BANK IRA COLLECTIVE INVESTMENT TRUST.
2539	IM-06		035616	FINANCE CO OF PENNSYLVANIA.
2540	IM-06		035726	FINANCIAL INDEPENDENCE FOUNDERS SER D PERIODIC PAYMENT & FUL.
2541	IM-06		353281	FINANCIAL INSTITUTIONS SERIES TRUST.
2542	IM-06		870781	FINANCIAL SOCIAL AWARENESS FUND INC.
2543	IM-06		810766	FIRST BOSTON INCOME FUND INC.
2544	IM-06		870787	FIRST CITY INVESTMENTS INC.
2545	IM-06		036222	FIRST CONNECTICUT SMALL BUSINESS INVESTMENT CO.
2546	IM-06		807986	FIRST EAGLE FUND OF AMERICA INC.
2547	IM-06		790202	FIRST FINANCIAL FUND INC.
2548	IM-06		865277	FIRST ISRAEL FUND INC.
2549	IM-06		036563	FIRST MUTUAL FUND INC.
2550	IM-06		837351	FIRST PACIFIC MUTUAL FUND INC /HI/.
2551	IM-06		700604	FIRST TRUST OF INSURED MUNICIPAL BONDS STATE SERIES.
2552	IM-06		205355	FIRST VARIABLE RATE FUND FOR GOVERNMENT INCOME INC.
2553	IM-06		215884	FKF INC.
2554	IM-06		702435	FLEX FUNDS.
2555	IM-06		879638	FMB FUNDS INC.
2556	IM-06		795663	FN CAPITAL STRATEGIES FUND I.
2557	IM-06		852572	FONTAINE TRUST.
2558	IM-06		858465	FORESTER GROUP SBIC INC.
2559	IM-06		038188	FORT DEARBORN INCOME SECURITIES INC.
2560	IM-06		315774	FORUM FUNDS INC.
2561	IM-06		038357	FOUNDATION GROWTH STOCK FUND INC.
2562	IM-06		350795	FOX FUND INC.
2563	IM-06		860917	FRANCE FUND INC /NY/.
2564	IM-06		860743	FRANCE GROWTH FUND INC.
2565	IM-06		038715	FRANKLIN CORP /DE/.
2566	IM-06		812301	FRANKLIN HOLDING CORP.
2567	IM-06		357215	FREEDOM FUND.
2568	IM-06		350300	FREEDOM MUTUAL FUND.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2569	IM-06		837389	FREMONT MUTUAL FUNDS INC.
2570	IM-06		818897	FRESHSTART VENTURE CAPITAL CORP.
2571	IM-06		844209	FSB FUNDS.
2572	IM-06		833426	FUND ALABAMA INC.
2573	IM-06		749925	FUND SOURCE.
2574	IM-06		847246	FUNDS OF AUSTRALIA INC.
2575	IM-06		796290	FUNDTRUST /NY/.
2576	IM-06		749155	GAM FUNDS INC.
2577	IM-06		729999	GAMMA PARTNERS INC.
2578	IM-06		837532	GANT J W FUND INC.
2579	IM-06		807640	GARDNER MANAGED ASSET TRUST.
2580	IM-06		312586	GENERAL ELECTRIC S&S LONG TERM INTEREST FUND.
2581	IM-06		040559	GENERAL ELECTRIC S&S PROGRAM MUTUAL FUND.
2582	IM-06		276548	GENERAL INDUSTRIAL ENTERPRISES INC.
2583	IM-06		110043	GENERAL SECURITIES INC.
2584	IM-06		716611	GIBRALTAR FUND INC.
2585	IM-06		835663	GLENMEDE FUND INC.
2586	IM-06		849867	GLOBAL SETTLEMENT FUND INC.
2587	IM-06		041950	GM SHARES INC.
2588	IM-06		225399	GNMA FUND INVESTMENT ACCUMULATION PROGRAM INC.
2589	IM-06		785567	GOVAARS INVESTMENT TRUST.
2590	IM-06		773477	GOVERNMENT GUARANTEED SECURITIES TRUST.
2591	IM-06		310407	GOVERNMENT INVESTORS TRUST.
2592	IM-06		700729	GOVERNMENT LIQUID RESERVES INC.
2593	IM-06		856331	GOVERNMENT MONEY TRUST.
2594	IM-06		843101	GOVERNMENT SECURITIES EQUITY TRUST GSET SERIES.
2595	IM-06		784543	GOVERNMENT SECURITIES ZERO COUPON TRUST.
2596	IM-06		869698	GOVETT WORLDWIDE OPPORTUNITY FUNDS INC.
2597	IM-06		275474	GPM FUND INC.
2598	IM-06		858374	GRANITE INCOME FUND INC.
2599	IM-06		826750	GREATER WASHINGTON INVESTMENTS INC /MD/.
2600	IM-06		043620	GREATER WASHINGTON INVESTORS INC.
2601	IM-06		043823	GREENFIELD FUND INC/.
2602	IM-06		711322	GREENSPRING FUND INC.
2603	IM-06		044186	GROWTH CAPITAL INC.
2604	IM-06		718930	GROWTH FUND OF FLORIDA INC.
2605	IM-06		786035	GROWTH STOCK OUTLOOK TRUST INC.
2606	IM-06		846883	GW SIERRA TRUST FUNDS.
2607	IM-06		805267	H&Q HEALTHCARE INVESTORS /MA/.
2608	IM-06		821600	HAMPTON UTILITIES TRUST.
2609	IM-06		760323	HANCOCK JOHN BOND TRUST /MA.
2610	IM-06		840844	HANOVER FUNDS INC.
2611	IM-06		793769	HARBOR FUND.
2612	IM-06		700872	HARTFORD MONEY MARKET FUND INC.
2613	IM-06		045949	HARTFORD MUTUAL INVESTMENT FUND INC.
2614	IM-06		046015	HARVARD SMALL BUSINESS INVESTMENT CO.
2615	IM-06		046135	HATTERAS INCOME SECURITIES INC.
2616	IM-06		840084	HAWAII PACIFIC FUND INC.
2617	IM-06		750909	HAWAIIAN TAX FREE TRUST.
2618	IM-06		858572	HAWTHORNE INVESTMENT TRUST.
2619	IM-06		763852	HELMSMAN FUND.
2620	IM-06		794624	HIDDEN STRENGTH FUNDS.
2621	IM-06		701387	HIGH YIELD BOND TRUST.
2622	IM-06		828990	HIGH YIELD PLUS FUND INC.
2623	IM-06		811527	HIGHMARK GROUP /OH/.
2624	IM-06		317872	HILLIARD LYONS GOVERNMENT FUND INC.
2625	IM-06		711426	HOME INVESTORS GOVERNMENT GUARANTEED INCOME FUND INC.
2626	IM-06		823871	HT INSIGHT FUNDS INC.
2627	IM-06		782827	HUMBOLDT INCOME SHARES INC.
2628	IM-06		831319	HUNTINGTON INVESTMENT TRUST.
2629	IM-06		832796	I P CAPITAL FUND I.
2630	IM-06		861097	IBM MUTUAL FUNDS.
2631	IM-06		052741	IIC INDUSTRIES INC.
2632	IM-06		856290	IMAK INVESTMENT CO.
2633	IM-06		049919	IMPERIAL EQUITY CORP.
2634	IM-06		823004	IMPERIAL PORTFOLIOS INC.
2635	IM-06		867834	INDIA EQUITY FUND INC.
2636	IM-06		862513	INDIA FUND INC /NJ/.
2637	IM-06		833072	INDIA GROWTH FUND INC.
2638	IM-06		770469	INDUSTRIAL SERIES TRUST.
2639	IM-06		856343	INEFFICIENT MARKET FUND INC.
2640	IM-06		768888	INSURERS SERIES FUND INC.
2641	IM-06		737603	INTEGRA FUND.
2642	IM-06		093284	INTERCAPITAL INCOME SECURITIES INC.
2643	IM-06		780379	INTERNATIONAL CASH PORTFOLIOS.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2644	IM-06		723212	INTERNATIONAL FUND FOR INSTITUTIONS INC.
2645	IM-06		310545	INTERSTATE CAPITAL GROWTH FUND INC.
2646	IM-06		810093	INVESTMENT GRADE BOND TRUST.
2647	IM-06		034427	INVESTMENT PLANS PFAS OF PLANNED INVESTMENT FUND.
2648	IM-06		052136	INVESTMENT TRUST OF BOSTON FUNDS.
2649	IM-06		052316	INVESTORS INTER CONTINENTAL FUND INC.
2650	IM-06		052319	INVESTORS INTER CONTINENTAL FUND LTD.
2651	IM-06		052436	INVESTORS TRADING CO.
2652	IM-06		849074	IOWA BUSINESS DEVELOPMENT FINANCE CORP.
2653	IM-06		856707	IRISH INVESTMENT FUND INC.
2654	IM-06		052733	ISRAEL FUND INC.
2655	IM-06		052742	ISRAEL INVESTORS INC.
2656	IM-06		785855	ITALY FUND INC.
2657	IM-06		052858	IVY FUND.
2658	IM-06		880076	JAKARTA GROWTH FUND INC.
2659	IM-06		886095	JAPAN EMERGING EQUITY FUND INC.
2660	IM-06		859796	JAPAN OTC EQUITY FUND INC.
2661	IM-06		870239	JERMYN STREET FUNDS INC.
2662	IM-06		842883	KAGAN MEDIA PARTNERS L P.
2663	IM-06		054771	KAUFMANN FUND INC.
2664	IM-06		859765	KAVILCO INC/WA/.
2665	IM-06		799700	KENT FUNDS.
2666	IM-06		866754	KEY FUND INC.
2667	IM-06		835766	KEY INVESTMENT FUNDS INC.
2668	IM-06		313180	KEYCO BOND FUND INC.
2669	IM-06		788125	KLEINWORT BENSON AUSTRALIAN INCOME FUND INC.
2670	IM-06		099221	KLEINWORT BENSON INVESTMENT STRATEGIES.
2671	IM-06		748691	KOREA FUND INC.
2672	IM-06		867832	LEBENTHAL FUNDS INC.
2673	IM-06		877885	LEEB PERSONAL FINANCE INVESTMENT TRUST.
2674	IM-06		721647	LEHMAN T H & CO INC.
2675	IM-06		355743	LENED INC.
2676	IM-06		023421	LENNON COMPANY CONNECTICUT GENERAL STOCK INVESTMENT PROGRAMS.
2677	IM-06		052761	LEPERCQ ISTEL TRUST.
2678	IM-06		056906	LEVERAGE FUND OF BOSTON INC.
2679	IM-06		059136	LEXINGTON FOUNDATION TRUST CERTIFICATES.
2680	IM-06		876606	LFC UTILITIES TRUST.
2681	IM-06		711511	LIBRA FUND INC.
2682	IM-06		740643	LIMITED TERM MUNICIPAL FUND INC.
2683	IM-06		059744	LIQUID CAPITAL INCOME TRUST.
2684	IM-06		872475	LIQUID INSTITUTIONAL RESERVES.
2685	IM-06		720496	LMH FUND LTD.
2686	IM-06		812073	LOCH NESS OPTION FUND INC.
2687	IM-06		816871	LOCUST STREET TAX EXEMPT MONEY MARKET FUND.
2688	IM-06		060191	LONE STAR FUND.
2689	IM-06		311961	LORENT INVESTMENT CO.
2690	IM-06		866913	LYONS GROUP CAPITAL CORP.
2691	IM-06		787441	MACKAY SHIELDS MAINSTAY SERIES FUND /NY/.
2692	IM-06		812847	MACKENZIE FUNDS INC.
2693	IM-06		811797	MALAYSIA FUND INC.
2694	IM-06		706453	MANAGED ASSETS TRUST.
2695	IM-06		797495	MANAGED GROWTH STOCK TRUST.
2696	IM-06		720309	MANAGEMENT OF MANAGERS GROUP OF FUNDS.
2697	IM-06		751173	MANNING & NAPIER FUND INC.
2698	IM-06		705677	MAP GOVERNMENT FUND INC.
2699	IM-06		772034	MARKET STREET FUND INC.
2700	IM-06		062723	MARSH GROWTH FUND.
2701	IM-06		741375	MAS POOLED TRUST FUND.
2702	IM-06		730762	MASSACHUSETTS TAX EXEMPT MONEY MARKET FUND.
2703	IM-06		063210	MATHERS FUND INC.
2704	IM-06		063354	MAVERICK FUND INC.
2705	IM-06		847079	MCKEEVER INVESTMENT TRUST.
2706	IM-06		806426	MCKINNON THOMSON ACCUMULATION PLAN TRUST.
2707	IM-06		357316	MEDALLION FUNDING CORP.
2708	IM-06		310513	MEDICAL TECHNOLOGY FUND INC.
2709	IM-06		701604	MERGER FUND.
2710	IM-06		714494	MERRILL LYNCH KECALP GROWTH INVESTMENTS LTD PARTNERSHIP 83.
2711	IM-06		830274	MERRIMAN INVESTMENT TRUST.
2712	IM-06		866083	MEXICO CAPITAL GROWTH FUND INC.
2713	IM-06		863900	MEXICO EQUITY & INCOME FUND INC.
2714	IM-06		065433	MEXICO FUND INC.
2715	IM-06		062621	MI FUND INC.
2716	IM-06		065915	MID STATES BUSINESS CAPITAL CORP.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2717	IM-06		066022	MIDLAND BASIC INC.
2718	IM-06		066119	MIDWEST INVESTMENT CO.
2719	IM-06		830979	MILLS VALUE FUND INC.
2720	IM-06		831115	MILWAUKEE LAND COMPANY.
2721	IM-06		783702	MIM MUTUAL FUNDS INC.
2722	IM-06		066556	MINBANC CAPITAL CORP.
2723	IM-06		066622	MINERALS & RESOURCES CORP/ADR/CITIBANK NA.
2724	IM-06		066726	MINNESOTA CAPITAL CORP.
2725	IM-06		356422	ML INVESTMENT CORP.
2726	IM-06		355600	MONARCH INVESTMENT SERIES TRUST.
2727	IM-06		783194	MONETTA FUND INC.
2728	IM-06		713003	MONEY MARKET FUND INC /MI.
2729	IM-06		067577	MONEY MARKET OPTIONS INVESTMENTS INC.
2730	IM-06		856378	MONEY MARKET PORTFOLIO.
2731	IM-06		856315	MONEY MARKET TRUST /NY/.
2732	IM-06		810695	MONITOR FUNDS.
2733	IM-06		067618	MONMOUTH CAPITAL CORP.
2734	IM-06		823866	MONSEY CAPITAL CORP.
2735	IM-06		863435	MONTGOMERY FUNDS.
2736	IM-06		865417	MORAN EQUITY FUND INC.
2737	IM-06		793072	MORGAN KEEGAN SOUTHERN CAPITAL FUND INC.
2738	IM-06		790880	MORISON ASSET ALLOCATION FUND INC.
2739	IM-06		854559	MORTGAGE LIQUIDITY FUND INC.
2740	IM-06		788940	MORTGAGE SECURITIES INCOME TRUST.
2741	IM-06		068405	MOSHER INC /TX.
2742	IM-06		068693	MSB FUND INC.
2743	IM-06		775370	MUNI BOND FUNDS.
2744	IM-06		202662	MUNICIPAL FUND ACCUMULATION PROGRAM INC.
2745	IM-06		830487	MUNICIPAL HIGH INCOME FUND INC.
2746	IM-06		277099	MUNICIPAL INVESTMENT TRUST FUND FIRST CALIFORNIA SERIES.
2747	IM-06		861869	MUNICIPAL PERFORMANCE INCOME FUND INC.
2748	IM-06		010580	MUTUAL BEACON FUND INC.
2749	IM-06		069260	MUTUAL BENEFIT FUND.
2750	IM-06		814078	MUTUAL FUND GROUP.
2751	IM-06		069379	MUTUAL INVESTMENT FUND OF CONNECTICUT INC.
2752	IM-06		069436	MUTUAL SELECTION FUND INC.
2753	IM-06		825063	MUTUAL SERIES FUND INC.
2754	IM-06		850027	NAIC GROWTH FUND INC.
2755	IM-06		069828	NATIONAL AVIATION & TECHNOLOGY CORP.
2756	IM-06		779241	NAVIGATOR INCOME SHARES INC.
2757	IM-06		778202	NCC FUNDS.
2758	IM-06		071130	NEUWIRTH FUND INC.
2759	IM-06		355767	NEW ALTERNATIVES FUND INC.
2760	IM-06		071247	NEW CAPITAL FOR SMALL BUSINESS INC.
2761	IM-06		866782	NEW JERSEY DAILY MUNICIPAL INCOME FUND INC.
2762	IM-06		868307	NEW YORK LIFE INSTITUTIONAL FUNDS INC.
2763	IM-06		071941	NIAGARA SHARE CORP /NEW/.
2764	IM-06		810212	NICHOLAS APPLEGATE GROWTH EQUITY FUND INC.
2765	IM-06		805901	NLV SERIES FUND INC.
2766	IM-06		751118	NODDINGS INVESTMENT TRUST /IL/.
2767	IM-06		765230	NOMURA PACIFIC BASIN FUND INC.
2768	IM-06		848103	NORTH AMERICAN SECURITY TRUST.
2769	IM-06		876895	NORTH CAROLINA DAILY MUNICIPAL INCOME FUND INC.
2770	IM-06		835335	NORTH DAKOTA DOUBLE TAX EXEMPT BOND FUND INC.
2771	IM-06		318192	NORTHEAST INVESTORS GROWTH FUND INC.
2772	IM-06		072760	NORTHEAST INVESTORS TRUST.
2773	IM-06		811860	NORTHWEST INVESTORS TRUST.
2774	IM-06		862112	NORWAY FUND INC.
2775	IM-06		842512	NOTTINGHAM INVESTMENT TRUST.
2776	IM-06		869351	NOTTINGHAM INVESTMENT TRUST II.
2777	IM-06		313038	NRM INVESTMENT CO.
2778	IM-06		862065	NY TAX FREE MONEY PORTFOLIO.
2779	IM-06		759829	OLYMPIC TRUST.
2780	IM-06		765924	OMNI INVESTMENT FUND.
2781	IM-06		861866	ONE GERMANY FUND INC.
2782	IM-06		075170	OVER THE COUNTER SECURITIES GROUP INC.
2783	IM-06		819644	OVERLAND EXPRESS FUNDS INC.
2784	IM-06		075396	PACIFIC AMERICAN INCOME SHARES INC.
2785	IM-06		810893	PACIFIC INVESTMENT MANAGEMENT INSTITUTIONAL TRUST.
2786	IM-06		076094	PANTEPEC INTERNATIONAL INC.
2787	IM-06		856217	PAPP L ROY STOCK FUND INC.
2788	IM-06		856120	PARAGON PORTFOLIO.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2789	IM-06		756673	PARK AVENUE NEW YORK TAX EXEMPT MONEY MARKET FUND INC.
2790	IM-06		812304	PARKSTONE GROUP OF FUNDS /OH/.
2791	IM-06		747546	PARNASSUS FUND.
2792	IM-06		866256	PARNASSUS INCOME FUND.
2793	IM-06		768213	PARTNERS DEFERRAL FUND.
2794	IM-06		751414	PARTNERS GROWTH FUND.
2795	IM-06		850982	PASCAL CAPITAL INC.
2796	IM-06		076721	PAX WORLD FUND INC.
2797	IM-06		775180	PBHG GROWTH FUND INC.
2798	IM-06		820093	PCL DIVERSIFUND INC.
2799	IM-06		731759	PDC&J PERFORMANCE FUND.
2800	IM-06		760692	PDC&J PRESERVATION FUND.
2801	IM-06		077151	PENN SQUARE MUTUAL FUND.
2802	IM-06		061437	PEOPLES INVESTMENT PROGRAM.
2803	IM-06		875732	PEOPLES S&P MIDCAP INDEX FUND INC.
2804	IM-06		820876	PERRITT CAPITAL GROWTH FUND INC.
2805	IM-06		216851	PETROLEUM & RESOURCES CORP.
2806	IM-06		077907	PETROLEUM INVESTMENT CAPITAL CORP.
2807	IM-06		867297	PFAMCO FUND.
2808	IM-06		826659	PHILLIPS CAPITAL INVESTMENTS INC.
2809	IM-06		855628	PHOTONIC FUND INC.
2810	IM-06		036567	PIEDMONT CAPITAL CORP PFAS LEXINGTON RESEARCH INVESTING CORP.
2811	IM-06		784064	PIERRE FUNDING CORP.
2812	IM-06		078635	PINE STREET FUND INC.
2813	IM-06		759862	PINNACLE FUND.
2814	IM-06		318689	PINNACLE GOVERNMENT FUND INC.
2815	IM-06		078670	PINNACLE INVESTMENT CORP.
2816	IM-06		806177	PIPER JAFFRAY INVESTMENT TRUST INC.
2817	IM-06		872032	PLEIADES TAX FREE FUND.
2818	IM-06		075931	PMD INVESTMENT CO.
2819	IM-06		355222	PMI FUND INC.
2820	IM-06		873388	POLAND FUND.
2821	IM-06		079753	POTOSI INVESTMENT CO.
2822	IM-06		840084	PRA SECURITIES TRUST.
2823	IM-06		868578	PREFERRED INCOME FUND INC.
2824	IM-06		841050	PREVIOUSLY OWNED PARTNERSHIPS INCOME FUND 90.
2825	IM-06		707800	PRIME CASH FUND.
2826	IM-06		823308	PRIME INCOME FUNDS INC.
2827	IM-06		350165	PRIME MONEY MARKET TRUST.
2828	IM-06		804235	PRIME VALUE FUNDS INC.
2829	IM-06		722571	PRO MED CAPITAL INC.
2830	IM-06		832365	PROSPECT GROUP OPPORTUNITY FUND INC.
2831	IM-06		836909	PROSPECT HIGH YIELD MEZANINE FUND INC.
2832	IM-06		832904	PROSPECT STREET HIGH INCOME PORTFOLIO INC.
2833	IM-06		110227	PROTECTED INVESTORS OF AMERICA TRUST 1934.
2834	IM-06		080815	PROVIDENCE INVESTORS CO.
2835	IM-06		791886	PROVIDENT MUTUAL CONVERTIBLE SECURITIES FUND INC.
2836	IM-06		810129	PRUDENT SPECULATOR FUND.
2837	IM-06		811158	PUBLIC EMPLOYEES RETIREMENT TRUST.
2838	IM-06		835950	PUBLIC FACILITY LOAN TRUST.
2839	IM-06		867969	PUBLIC FUNDS INVESTMENT TRUST.
2840	IM-06		741211	QUANTUM FUND INC.
2841	IM-06		838131	RAC INCOME FUND INC.
2842	IM-06		081810	RAINBOW FUND INC.
2843	IM-06		081955	RAND CAPITAL CORP.
2844	IM-06		081967	RAND SBIC INC.
2845	IM-06		866841	RANSON MANAGED PORTFOLIOS.
2846	IM-06		310619	RCM GROWTH EQUITY FUND INC.
2847	IM-06		701570	REA GRAHAM FUNDS INC.
2848	IM-06		835268	REAL ESTATE SECURITIES INCOME FUND INC.
2849	IM-06		082405	REAL SILK INVESTMENTS INC.
2850	IM-06		858779	REGIONAL GROWTH FUNDS OF AMERICA.
2851	IM-06		842286	REGIS FUND INC.
2852	IM-06		356474	RENAISSANCE ASSETS TRUST.
2853	IM-06		871867	RENAISSANCE CAPITAL PARTNERS II LTD /TX/.
2854	IM-06		083313	RESEARCH INVESTING CORP.
2855	IM-06		803747	RETIREMENT INVESTMENT TRUST.
2856	IM-06		862917	RETIREMENT SECURITY FUND.
2857	IM-06		083524	REVERE FUND INC/MD.
2858	IM-06		832574	REYNOLDS BLUE CHIP GROWTH FUND INC.
2859	IM-06		793166	RHENUS INCOME SHARES INC.
2860	IM-06		751171	RHODE ISLAND LOCALITIES PRUDENT CASH FUND INC.
2861	IM-06		773756	RHODE ISLAND TAX FREE BOND FUND.
2862	IM-06		855921	RICHMOND CAPITAL TRUST.
2863	IM-06		763727	RIGHTIME FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2864	IM-06		787531	ROCKWOOD GROWTH FUND INC.
2865	IM-06		832545	ROSENBERG SERIES TRUST.
2866	IM-06		867418	ROUSSEAU CAPITAL INC.
2867	IM-06		085467	ROYAL BUSINESS FUNDS CORP.
2868	IM-06		841067	RR FUND INC.
2869	IM-06		809457	RXR CAPITAL MANAGEMENT INC.
2870	IM-06		757440	SALEM FUNDS.
2871	IM-06		870398	SBM CERTIFICATE CO.
2872	IM-06		722832	SBSF FUNDS INC.
2873	IM-06		792857	SCANDINAVIA COMPANY INC.
2874	IM-06		774827	SCHAFER VALUE FUND INC.
2875	IM-06		794385	SCHAFER VALUE TRUST INC.
2876	IM-06		774417	SCHIELD PORTFOLIOS SERIES.
2877	IM-06		012027	SCIOTO INVESTMENT CO.
2878	IM-06		837220	SCM PORTFOLIO FUND INC.
2879	IM-06		883886	SCOTTISH WIDOWS INTERNATIONAL FUND.
2880	IM-06		088079	SCYTHIAN FUND INC.
2881	IM-06		088123	SEABOARD ASSOCIATES INC.
2882	IM-06		814496	SEAGATE FUNDS.
2883	IM-06		088327	SECOND FEDERAL STREET FUND INC.
2884	IM-06		857397	SECURITY GROWTH & INCOME FUND.
2885	IM-06		088778	SEILON INC.
2886	IM-06		089012	SENTRY FUND INC.
2887	IM-06		089043	SEQUOIA FUND INC.
2888	IM-06		832403	SESSIONS GROUP.
2889	IM-06		858496	SHEFFIELD FUNDS INC.
2890	IM-06		089765	SHERMAN DEAN FUND INC.
2891	IM-06		883904	SHORT INTERMEDIATE ASSETS FUND INC.
2892	IM-06		750913	SHORT TERM ASSET RESERVES.
2893	IM-06		205009	SHORT TERM YIELD SECURITIES INC.
2894	IM-06		727189	SIEBEL CAPITAL PARTNERS INC.
2895	IM-06		051815	SIERRA GROWTH FUND INC.
2896	IM-06		731812	SIERRA RESOURCES CORP.
2897	IM-06		052654	SIGMA U S GOVERNMENT FUND INC /DE/.
2898	IM-06		795019	SIMMS GLOBAL FUND.
2899	IM-06		864415	SINGAPORE FUND INC /MD/.
2900	IM-06		859738	SINGAPORE MALAYSIA FUND INC.
2901	IM-06		091040	SMALL BUSINESS INVESTMENT CO OF CONNECTICUT.
2902	IM-06		091612	SOGEN INTERNATIONAL FUND INC.
2903	IM-06		764157	SOUND SHORE FUND INC.
2904	IM-06		091847	SOURCE CAPITAL INC /DE/.
2905	IM-06		857247	SOUTHEASTERN COMMUNITY BANK FUND INC.
2906	IM-06		852954	SOUTHEASTERN SAVINGS INSTITUTIONS FUND INC.
2907	IM-06		092370	SOUTHPORT COMMERCIAL CORP.
2908	IM-06		092425	SOUTHWEST INTERNATIONAL CORP.
2909	IM-06		783455	SOWER SERIES FUND INC.
2910	IM-06		862020	SPAIN STRATEGIC GROWTH & INCOME FUND INC.
2911	IM-06		054047	SPECIAL PORTFOLIOS INC.
2912	IM-06		092751	SPECTRA FUND INC.
2913	IM-06		354051	STANDBY RESERVE FUND INC.
2914	IM-06		771879	STANDBY TAX EXEMPT RESERVE FUND INC.
2915	IM-06		799295	STANDISH AYER & WOOD INVESTMENT TRUST.
2916	IM-06		856713	STARTRADE FUND INC.
2917	IM-06		093730	STATE MUTUAL SECURITIES TRUST.
2918	IM-06		102754	STERLING CAPITAL CORP.
2919	IM-06		871297	STERLING HIGH YIELD FUND INC.
2920	IM-06		793612	STOVALL TWENTY FIRST CONSISTENT RETURN TRUST.
2921	IM-06		094745	STRALEM FUND INC.
2922	IM-06		821472	STUART JAMES VENTURE PARTNERS I L P.
2923	IM-06		789280	SUNSHINE GROWTH TRUST.
2924	IM-06		804123	TAIWAN FUND INC.
2925	IM-06		856320	TAX EXEMPT MONEY TRUST.
2926	IM-06		811239	TAX FREE FUND OF COLORADO.
2927	IM-06		320282	TAX FREE MONEY FUND INC.
2928	IM-06		862066	TAX FREE MONEY PORTFOLIO.
2929	IM-06		784056	TAX FREE TRUST OF ARIZONA.
2930	IM-06		808068	TECHNOLOGY FUNDING PARTNERS III L P.
2931	IM-06		826595	TECHNOLOGY FUNDING VENTURE PARTNERS IV.
2932	IM-06		850877	TECHNOLOGY FUNDING VENTURE PARTNERS V.
2933	IM-06		317062	TEP FUND INC /DE/.
2934	IM-06		861865	THAI CAPITAL FUND INC.
2935	IM-06		822794	THAI FUND INC.
2936	IM-06		819251	THC FUND INC.
2937	IM-06		862030	THOMAS WILLIAM A FUND INC.
2938	IM-06		795264	THOMPSON UNGER & PLUMB FUND INC.
2939	IM-06		730874	THOMSON FUND GROUP.
2940	IM-06		816153	THORNBURG INCOME TRUST

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
2941	IM-06		768886	THOROUGHBRED GROUP.
2942	IM-06		801444	TOCQUEVILLE FUND.
2943	IM-06		862696	TORRAY FUND.
2944	IM-06		759549	TRANSPORTATION CAPITAL CORP.
2945	IM-06		741296	TREASURERS FUND INC.
2946	IM-06		800228	TREASURY FIRST INC.
2947	IM-06		862062	TREASURY MONEY PORTFOLIO.
2948	IM-06		856316	TREASURY MONEY TRUST.
2949	IM-06		846422	TRI MAGNA CORPORATION.
2950	IM-06		847533	TRICO VENTURE INC.
2951	IM-06		316762	TRIDAN CORP.
2952	IM-06		869273	TRINIDAD & TOBAGO US INVESTMENT FUND INC.
2953	IM-06		707799	TRINITY LIQUID ASSETS TRUST.
2954	IM-06		862342	TRUST ADVISORY GROUP OF FUNDS INC.
2955	IM-06		052034	TRUSTEED INCOME ESTATES CERTIICATES ORIGINAL SERIES SOVEREIGN.
2956	IM-06		313850	TRUSTEES COMMINGLED FUND INC.
2957	IM-06		856218	TURKISH INVESTMENT FUND INC.
2958	IM-06		837742	TYLER CABOT MORTGAGE SECURITIES FUND INC.
2959	IM-06		705455	TYNDALL WORLD FUNDS INC.
2960	IM-06		722885	U S BOSTON INVESTMENT CO.
2961	IM-06		869094	UNION INVESTORS PORTFOLIOS.
2962	IM-06		844111	UNITED CAPITAL INVESTMENT CORP.
2963	IM-06		101215	UNITED FUNDS CANADA INTERNATIONAL LTD.
2964	IM-06		101220	UNITED FUNDS MANAGEMENT CORP.
2965	IM-06		101507	UNITED SERVICES FUNDS.
2966	IM-06		101747	UNITED STATES RAILROAD SECURITIES FUND I.
2967	IM-06		869596	UNIVERSAL CAPITAL INVESTMENT TRUST.
2968	IM-06		827191	US TREASURY RESERVES PORTFOLIO.
2969	IM-06		837951	USF&G PACHOLDER FUND INC /OH/.
2970	IM-06		102426	USLIFE INCOME FUND INC.
2971	IM-06		102681	VALLEY FORGE FUND INC.
2972	IM-06		276206	VALOR INVESTMENT FUND INC.
2973	IM-06		794105	VANGUARD BOND MARKET FUND INC.
2974	IM-06		783401	VANGUARD CALIFORNIA TAX FREE FUND.
2975	IM-06		069559	VANGUARD SMALL CAPITALIZATION STOCK FUND INC.
2976	IM-06		808490	VARIABLE INVESTORS SERIES TRUST /MA/.
2977	IM-06		103052	VARIABLE STOCK FUND INC.
2978	IM-06		094942	VEGA CAPITAL CORP.
2979	IM-06		808382	VERRAZANO INCOME SHARES INC.
2980	IM-06		823143	VESPUCCI INCOME SHARES INC.
2981	IM-06		755343	VICTORY FIXED INCOME INVESTMENTS INC.
2982	IM-06		796524	VLC TRUST.
2983	IM-06		838876	VOLTAIRE CAPITAL INC.
2984	IM-06		792394	VOLUMETRIC FUND INC.
2985	IM-06		764024	VOYAGEUR GRANIT GOVERNMENT SECURITIES FUND INC.
2986	IM-06		104049	WADE FUND INC.
2987	IM-06		104300	WALL STREET FUND INC.
2988	IM-06		806633	WASATCH ADVISORS FUNDS INC.
2989	IM-06		706050	WASHINGTON SQUARE CASH FUND INC.
2990	IM-06		311684	WEBSTER CASH RESERVE FUND INC.
2991	IM-06		840203	WEITZ SERIES FUND INC.
2992	IM-06		789288	WEITZ VALUE FUND INC.
2993	IM-06		092493	WESTGATE PACIFIC GROWTH FUND INC.
2994	IM-06		831883	WESTMED VENTURE PARTNERS 2 LP.
2995	IM-06		106449	WESTMINSTER FUND INC.
2996	IM-06		838802	WESTON PORTFOLIOS INC.
2997	IM-06		796229	WESTWOOD FUND.
2998	IM-06		811885	WHITEHALL LINKED LIFE SERIES FUND CO.
2999	IM-06		835399	WHITESTONE FUND INC.
3000	IM-06		814436	WILLIAM PENN INTEREST INCOME FUND.
3001	IM-06		819983	WILLIAMSBURG FUND INC.
3002	IM-06		790184	WINTHROP FOCUS FUNDS.
3003	IM-06		277878	WOODS INVESTMENT CO.
3004	IM-06		852316	WOODSTOCK COLLECTIVE INVESTMENT TRUST.
3005	IM-06		814067	WOODWARD FUNDS.
3006	IM-06		711202	WORKING ASSETS MONEY FUND.
3007	IM-06		859801	WORLD APPRECIATION FUND INC.
3008	IM-06		827118	WORLD GOVERNMENTS VARIABLE ACCOUNT.
3009	IM-06		778209	WRL SERIES LIFE ACCOUNT.
3010	IM-06		830272	YAMAICHI FUNDS INC.
3011	IM-06		730476	Z SEVEN FUND INC.
3012	IM-06		830142	ZENIX INCOME FUND INC.
3013	IM-06		808103	ZEUS INSTITUTIONAL INVESTMENTS INC.
3014	IM-06	AMERICAN CAPITAL	778536	AMERICAN CAPITAL LIFE INVESTMENT TRUST.
3015	IM-06	AMERICAN FIDEL	005007	AMERICAN FIDELITY VARIABLE ANNUITY FUND A.
3016	IM-06	AMERICAN PENSION	764859	AMERICAN PENSION INVESTORS TRUST.
3017	IM-06	ANALYTIC	230025	ANALYTIC OPTIONED EQUITY FUND INC.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
3018	IM-06	ASTER CAPITAL	745467	MERIDIAN FUND INC/NEW.
3019	IM-06	ATLAS	830144	ATLAS ASSETS INC.
3020	IM-06	B C ZIEGLER	775689	PRINCIPAL PRESERVATION PORTFOLIOS INC.
3021	IM-06	BAIRD	804192	BAIRD BLUE CHIP FUND INC.
3022	IM-06	BANKERS NATL	709558	BANKERS NATIONAL SERIES TRUST.
3023	IM-06	BASS CAPITAL	812939	HARVEST FUNDS INC /NC/.
3024	IM-06	BAUPOST	865827	BAUPOST FUND.
3025	IM-06	BELL ATLANTIC	856225	BELL ATLANTIC MUTUAL FUNDS INC.
3026	IM-06	BRADFORD	841899	BRADFORD FUNDS INC.
3027	IM-06	C&O	864230	OTC SELECT 100 FUND INC.
3028	IM-06	CALDWELL	764304	CALDWELL FUND INC.
3029	IM-06	CANADA LIFE	851085	CANADA LIFE OF AMERICA SERIES FUND INC.
3030	IM-06	CAPITAL SUPERVIS	722838	CAPITAL SUPERVISORS HELIOS FUND INC.
3031	IM-06	CASHMAN FARRELL	775157	CASHMAN FARRELL VALUE FUND INC.
3032	IM-06	CENTURY LIFE	732697	ULTRA SERIES FUND.
3033	IM-06	CHANCELLOR	867550	CHANCELLOR FUNDS INC.
3034	IM-06	CIGNA	702909	CIGNA CASH FUND INC.
3035	IM-06	CONN MUTUAL	310771	CML ACCUMULATION ANNUITY ACCOUNT E.
3036	IM-06	CONTINENTAL ASSU	023971	CONTINENTAL ASSURANCE CO SEPARATE ACCOUNT B.
3037	IM-06	CREF	777535	COLLEGE RETIREMENT EQUITIES FUND.
3038	IM-06	CROWLEY	855049	CROWLEY PORTFOLIO GROUP INC.
3039	IM-06	CROWN AMERICA	749939	CROWN AMERICA SERIES FUND INC.
3040	IM-06	DENVER INV ADV	810439	BLUE CHIP VALUE FUND INC.
3041	IM-06	DOLLAR DRY DOCK	807937	INVESTORS PREFERENCE FUND FOR INCOME INC.
3042	IM-06	EMERALD	847379	OCTAGON FUNDS INC.
3043	IM-06	EQSF	862472	THIRD AVENUE FUND INC.
3044	IM-06	EXCELSIOR	033934	EXCELSIOR INCOME SHARES INC.
3045	IM-06	F & G LIFE	804134	U S EAGLE FUND INC.
3046	IM-06	FARM BUREAU LIFE	811707	FBL VARIABLE INSURANCE SERIES FUND.
3047	IM-06	FIRST INTERSTATE	319461	PACIFIC AMERICAN FUND.
3048	IM-06	FLEET/NORSTAR	791914	GALAXY FUND /DE/.
3049	IM-06	FOUNDERS	038403	FOUNDERS FUNDS INC.
3050	IM-06	GATEWAY	215952	GATEWAY TRUST.
3051	IM-06	GNA CAPITAL	808245	GNA INVESTORS TRUST.
3052	IM-06	HANIFEN IMHOFF	810744	HANIFEN IMHOFF COLORADO BONDSHARES.
3053	IM-06	HELVETIA CAPITAL	813623	SWISS HELVETIA FUND INC.
3054	IM-06	HENDERSON INT	814679	HENDERSON INTERNATIONAL GROWTH FUND.
3055	IM-06	HEWITT	831957	AHA INVESTMENT FUNDS INC.
3056	IM-06	HOME CAPITAL	820875	HOME GROUP TRUST.
3057	IM-06	INDEPENDENCE CAP	856070	INDEPENDENCE CAPITAL GROUP OF FUNDS INC.
3058	IM-06	INDIANAPOLIS	774382	INDIANAPOLIS LIFE SERIES FUND INC.
3059	IM-06	INVESTMENT MGMT	760679	SOUTHEASTERN GROWTH FUND INC.
3060	IM-06	INVESTORS RESEAR	052389	INVESTORS RESEARCH FUND INC.
3061	IM-06	INVESTORS SECURI	074206	OLD DOMINION INVESTORS TRUST INC.
3062	IM-06	LEAHI	821196	LEAHI INVESTMENT TRUST.
3063	IM-06	LIFE OF VA	746687	LIFE OF VIRGINIA SERIES FUND INC.
3064	IM-06	LLOYDS	861206	GERMAN SMALLER COMPANIES FUND INC.
3065	IM-06	MANUFACTRS LIFE	724340	MANULIFE SERIES FUND INC.
3066	IM-06	MESIROW	810308	SKYLINE FUND.
3067	IM-06	MIDWEST LIFE	719776	MIDWEST LIFE FUND INC.
3068	IM-06	MML	067160	MML SERIES INVESTMENT FUND.
3069	IM-06	MONARCH	794049	VARIABLE ACCOUNT A1 OF MONARCH LIFE INSURANCE CO.
3070	IM-06	MONITREND	745338	MONITREND MUTUAL FUND.
3071	IM-06	MORGAN GRENFELL	809584	MORGAN GRENFELL SMALLCAP FUND INC.
3072	IM-06	MUHLENKAMP	829433	WEXFORD TRUST.
3073	IM-06	MUTUAL BENEFIT	708952	MBL GROWTH FUND INC.
3074	IM-06	NASL	756913	NASL SERIES TRUST.
3075	IM-06	NATL HOME LIFE	866252	NATIONAL HOME LIFE ASSURANCE CO SEPARATE ACCOUNT IV.
3076	IM-06	NCNB TEXAS	790569	HATTERAS FUNDS INC.
3077	IM-06	NIF MANAGEMENT	070218	NATIONAL INDUSTRIES FUND INC.
3078	IM-06	OBERWEIS	803020	OBERWEIS EMERGING GROWTH FUND /IL/.
3079	IM-06	OHIO NATIONAL	315754	OHIO NATIONAL FUND INC.
3080	IM-06	OLDE	819467	OLDE CUSTODIAN FUND.
3081	IM-06	PACIFIC MUTUAL	813900	PACIFIC SELECT FUND.
3082	IM-06	PARIBAS	777512	PARIBAS TRUST FOR INSTITUTIONS.
3083	IM-06	PASADENA	784880	PASADENA INVESTMENT TRUST.
3084	IM-06	PHOENIX MUTUAL	792359	BIG EDGE SERIES FUND.
3085	IM-06	PROVIDENT MUTUAL	740269	PROVIDENT MUTUAL VARIABLE GROWTH SEPARATE ACCOUNT.
3086	IM-06	QUEST VALUE	832359	QUEST FOR VALUE ACCUMULATION TRUST.
3087	IM-06	R O C TAIWAN	836267	R O C TAIWAN FUND.
3088	IM-06	RE ADVISORS	865733	HOMESTEAD FUNDS INC.
3089	IM-06	RENAISSANCE CAP	855567	RENAISSANCE CAPITAL PARTNERS LTD.
3090	IM-06	REVERE PAUL INS	083527	REVERE PAUL VARIABLE ANNUITY CONTRACT ACCUMULATION FUND.
3091	IM-06	RITTENHOUSE	225852	SHEPMYERS INVESTMENT CO.

APPENDIX A.—PART I—MANAGEMENT INVESTMENT COMPANIES—Continued

Count	Group	Complex	CIK	Name
3092	IM-06	ROBERTSON STEPH	814232	ROBERTSON STEPHENS EMERGING GROWTH FUND.
3093	IM-06	SACHS	350796	FAIRMONT FUND TRUST.
3094	IM-06	SCHNEIDER	825019	SCHNEIDER INVESTMENT TRUST.
3095	IM-06	SCHRODER	918532	SCHRODER CAPITAL FUNDS INC.
3096	IM-06	SECURITY BENEFIT	217067	SBL FUND.
3097	IM-06	SECURITY FIRST	088537	SECURITY FIRST TRUST.
3098	IM-06	SECURITY PACIFIC	815345	BUNKER HILL INCOME SECURITIES INC.
3099	IM-06	SIFE	728167	SIFE TRUST FUND.
3100	IM-06	SOUTHEASTERN	909636	SOUTHEASTERN ASSET MANAGEMENT FUNDS TRUST.
3101	IM-06	SOUTHERN FARM	354112	SOUTHERN FARM BUREAU CASH FUND INC.
3102	IM-06	SOUTHWESTERN LIF	103014	VARIABLE ANNUITY FUND I OF SOUTHWESTERN LIFE.
3103	IM-06	SOVEREIGN	082951	SOVEREIGN INVESTORS INC.
3104	IM-06	SUNSTONE FINAN	824612	PORTICO FUNDS INC.
3105	IM-06	SUNWESTERN	083514	REVERE FUND INC.
3106	IM-06	TRANSAMERICA MGT	355834	TRANSAMERICA SUNBELT GROWTH FUND INC.
3107	IM-06	TREMONT PARTNERS	851971	TREMONT SELECT FUNDS.
3108	IM-06	TWENTIETH	814680	TCI PORTFOLIOS INC.
3109	IM-06	UNION CENTRAL	743773	CARILLON FUND INC.
3110	IM-06	USGI	052768	ASSOCIATION FOR INVESTMENT IN U S GUARANTEED ASSETS INC.
3111	IM-06	WASHINGTON NATL	711501	SEPARATE ACCOUNT I OF WASHINGTON NATIONAL INSURANCE CO.
3112	IM-06	WESTERN RES LIFE	776207	WRL SERIES FUND INC.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS

Count	Group	Complex	CIK	Name
1	IM-01	MERRILL LYNCH	024873	CORPORATE INCOME FUND FORTIETH MONTHLY PAYMENT SERIES.
2	IM-01	MERRILL LYNCH	024893	CORPORATE INCOME FUND THIRTY FIFTH MONTHLY PAYMENT SERIES.
3	IM-01	MERRILL LYNCH	024892	CORPORATE INCOME FUND THIRTY FOURTH MONTHLY PAYMENT SERIES.
4	IM-01	MERRILL LYNCH	024857	CORPORATE INCOME FUND THIRTY SEVENTH MONTHLY PAYMENT SERIES.
5	IM-01	MERRILL LYNCH	024891	CORPORATE INCOME FUND THIRTY THIRD MONTHLY PAYMENT SERIES.
6	IM-01	MERRILL LYNCH	024867	CORPORATE INCOME FUND TWENTY EIGHTH MONTHLY PAYMENT SERIES.
7	IM-01	MERRILL LYNCH	024888	CORPORATE INCOME FUND TWENTY NINTH MONTHLY PAYMENT SERIES.
8	IM-01	MERRILL LYNCH	810562	CORPORATE INCOME FUND TWENTY SECOND INTERMEDIATE TERM SERIES.
9	IM-01	MERRILL LYNCH	024887	CORPORATE INCOME FUND TWENTY SEVENTH MONTHLY PAYMENT SERIES.
10	IM-01	MERRILL LYNCH	869729	CREDIT LYONNAIS AUSTRALIAN MORTGAGELINK LTD.
11	IM-01	MERRILL LYNCH	854568	DEFINED ASSET FDS EQTY INC FD INV PHIL SER 1992 SEL IND PORT.
12	IM-01	MERRILL LYNCH	885530	DEFINED ASSET FDS EQTY INC FD INVT PHI SER 1992 SEL IND PO 2.
13	IM-01	MERRILL LYNCH	854566	DEFINED ASSET FDS EQUITY INCOME FD INVT PHIL SER 1991 SEL IN.
14	IM-01	MERRILL LYNCH	810030	DEFINED ASSET FDS EQUITY INCOME FD MERIT 1987 QUAL LIST STKS.
15	IM-01	MERRILL LYNCH	809523	DEFINED ASSET FDS EQUITY INCOME FD MERIT 1987 SER 2 OTC STKS.
16	IM-01	MERRILL LYNCH	816227	DEFINED ASSET FDS EQUITY INCOME FD MERIT 1987 SER INDL RENAI.
17	IM-01	MERRILL LYNCH	781820	DEFINED ASSET FDS GOV SEC INC FD MON PYMT US TREA SER 10.
18	IM-01	MERRILL LYNCH	781824	DEFINED ASSET FDS GOV SEC INCOME FD MON PYMT US TREA SER 12.
19	IM-01	MERRILL LYNCH	781827	DEFINED ASSET FDS GOVT SEC INC FD MON PYMT US TREA SER 14.
20	IM-01	MERRILL LYNCH	827768	DEFINED ASSET FDS GOVT SEC INC FD TREASURY ZERO SERIES 6.
21	IM-01	MERRILL LYNCH	827769	DEFINED ASSET FDS GOVT SEC INC FD US TREASURY GOLD SERIES 2.
22	IM-01	MERRILL LYNCH	853188	DEFINED ASSET FDS INTERNATIONAL BD FD CAN DOLLAR BDS SER 11.
23	IM-01	MERRILL LYNCH	877103	DEFINED ASSET FDS INTERNATIONAL BD FD MULTI CURRENCY SER 24.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
24	IM-01	MERRILL LYNCH	880254	DEFINED ASSET FDS INTL BD FD AUS & NEW ZEALAND DOL BDS SE 44.
25	IM-01	MERRILL LYNCH	877065	DEFINED ASSET FDS INTL BD FD FIRST CIT OF AUS CRE LY AM SE 3.
26	IM-01	MERRILL LYNCH	873440	DEFINED ASSET FDS INTL BD FD FIRST CIT OF AUS CRE LYO AML S2.
27	IM-01	MERRILL LYNCH	877323	DEFINED ASSET FDS INTL BOND FD AUSTRALIAN DOL BONDS SER 11.
28	IM-01	MERRILL LYNCH	858774	DEFINED ASSET FDS MUNICIPAL INVT TR FD AMT MON PYMT SER 11.
29	IM-01	MERRILL LYNCH	858775	DEFINED ASSET FDS MUNICIPAL INVT TR FD AMT MON PYMT SER 12.
30	IM-01	MERRILL LYNCH	858776	DEFINED ASSET FDS MUNICIPAL INVT TR FD AMT MON PYMT SER 13.
31	IM-01	MERRILL LYNCH	858777	DEFINED ASSET FDS MUNICIPAL INVT TR FD AMT MON PYMT SER 14.
32	IM-01	MERRILL LYNCH	803826	DEFINED ASSET FDS MUNICIPAL INVT TRUST FUND INSURED SER 170.
33	IM-01	MERRILL LYNCH	791018	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 30.
34	IM-01	MERRILL LYNCH	791019	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 31.
35	IM-01	MERRILL LYNCH	791020	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 32.
36	IM-01	MERRILL LYNCH	791021	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 33.
37	IM-01	MERRILL LYNCH	791022	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 34.
38	IM-01	MERRILL LYNCH	791023	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 35.
39	IM-01	MERRILL LYNCH	883647	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 36.
40	IM-01	MERRILL LYNCH	883648	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 37.
41	IM-01	MERRILL LYNCH	883650	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TERM SER 39.
42	IM-01	MERRILL LYNCH	781813	DEFINED ASSET FUNDS CORPORATE INCOME FD MON PYMT SER 308.
43	IM-01	MERRILL LYNCH	781805	DEFINED ASSET FUNDS CORPORATE INCOME FD MONTHLY PYMT SER 305.
44	IM-01	MERRILL LYNCH	805089	DEFINED ASSET FUNDS CORPORATE INCOME FUND HIGH YIELD SER 30.
45	IM-01	MERRILL LYNCH	843854	DEFINED ASSET FUNDS CORPORATE INCOME FUND INSURED SERIES 12.
46	IM-01	MERRILL LYNCH	843855	DEFINED ASSET FUNDS CORPORATE INCOME FUND INSURED SERIES 13.
47	IM-01	MERRILL LYNCH	843857	DEFINED ASSET FUNDS CORPORATE INCOME FUND INSURED SERIES 15.
48	IM-01	MERRILL LYNCH	024878	DEFINED ASSET FUNDS CORPORATE INCOME FUND MON PYMT SER 18.
49	IM-01	MERRILL LYNCH	024879	DEFINED ASSET FUNDS CORPORATE INCOME FUND MON PYMT SER 19.
50	IM-01	MERRILL LYNCH	781808	DEFINED ASSET FUNDS CORPORATE INCOME FUND MON PYMT SER 306.
51	IM-01	MERRILL LYNCH	781811	DEFINED ASSET FUNDS CORPORATE INCOME FUND MON PYMT SER 307.
52	IM-01	MERRILL LYNCH	854567	DEFINED ASSET FUNDS EQUITY INCOME FD CONCEPT SER NEW INVT TR.
53	IM-01	MERRILL LYNCH	883462	DEFINED ASSET FUNDS EQUITY INCOME FD CONCEPT SERIES FOOD FD.
54	IM-01	MERRILL LYNCH	882432	DEFINED ASSET FUNDS EQUITY INCOME FD INDEX SER S&P 500 TR 2.
55	IM-01	MERRILL LYNCH	854569	DEFINED ASSET FUNDS EQUITY INCOME FUND CONCEPT SERIES 14.
56	IM-01	MERRILL LYNCH	807582	DEFINED ASSET FUNDS EQUITY INCOME FUND MERIT 1987 SERIES.
57	IM-01	MERRILL LYNCH	781331	DEFINED ASSET FUNDS GOVERNMENT SEC INCOME FD GNMA SERIES 1T.
58	IM-01	MERRILL LYNCH	781825	DEFINED ASSET FUNDS GOVT SEC INC FD MON. PYMT US TREAS SER 13.
59	IM-01	MERRILL LYNCH	781822	DEFINED ASSET FUNDS GOVT SEC INCOME FD US TREASURY SER 11.
60	IM-01	MERRILL LYNCH	782339	DEFINED ASSET FUNDS INTERNATIONAL BD FD MULTICURRENCY SER 25.
61	IM-01	MERRILL LYNCH	794694	DEFINED ASSET FUNDS INTL BD FD AUS & NEW ZEA DOL BDS SER 11.
62	IM-01	MERRILL LYNCH	842486	DEFINED ASSET FUNDS INTL BD FD AUSTRALIAN DOL BDS SER 12.
63	IM-01	MERRILL LYNCH	831896	DEFINED ASSET FUNDS INTL BD FD CANADIAN DOL BDS SER 13.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
64	IM-01	MERRILL LYNCH	831895	DEFINED ASSET FUNDS INTL BD FD CANADIAN DOL BDS SERS 12.
65	IM-01	MERRILL LYNCH	782238	DEFINED ASSET FUNDS INTL BD FD MULTI CURRENCY SER 20.
66	IM-01	MERRILL LYNCH	782241	DEFINED ASSET FUNDS INTL BD FD MULTI CURRENCY SER 26.
67	IM-01	MERRILL LYNCH	877291	DEFINED ASSET FUNDS MUN INVT TR FD AMT MON PYMT SER 16.
68	IM-01	MERRILL LYNCH	877292	DEFINED ASSET FUNDS MUN INVT TR FD AMT MON PYMT SER 17.
69	IM-01	MERRILL LYNCH	877294	DEFINED ASSET FUNDS MUN INVT TR FD AMT MON PYMT SER 18.
70	IM-01	MERRILL LYNCH	877295	DEFINED ASSET FUNDS MUN INVT TR FD AMT MON PYMT SER 19.
71	IM-01	MERRILL LYNCH	877296	DEFINED ASSET FUNDS MUN INVT TR FD AMT MON PYMT SER 20.
72	IM-01	MERRILL LYNCH	881825	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 1.
73	IM-01	MERRILL LYNCH	881834	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 10.
74	IM-01	MERRILL LYNCH	881836	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 11.
75	IM-01	MERRILL LYNCH	881837	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 12.
76	IM-01	MERRILL LYNCH	881826	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 2.
77	IM-01	MERRILL LYNCH	881827	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 3.
78	IM-01	MERRILL LYNCH	881828	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 4.
79	IM-01	MERRILL LYNCH	881829	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 5.
80	IM-01	MERRILL LYNCH	881830	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 6.
81	IM-01	MERRILL LYNCH	881831	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 7.
82	IM-01	MERRILL LYNCH	881832	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 8.
83	IM-01	MERRILL LYNCH	881833	DEFINED ASSET FUNDS MUN INVT TR FD MULTISTATE SERIES 9.
84	IM-01	MERRILL LYNCH	868778	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD AMT MON PYMT SER 15.
85	IM-01	MERRILL LYNCH	879014	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INS INTERM SER 1.
86	IM-01	MERRILL LYNCH	886578	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INS INTERM SER 2.
87	IM-01	MERRILL LYNCH	892125	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSD INTERM SER 3.
88	IM-01	MERRILL LYNCH	898417	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSD INTERM SER 4.
89	IM-01	MERRILL LYNCH	803813	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 165.
90	IM-01	MERRILL LYNCH	803815	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 166.
91	IM-01	MERRILL LYNCH	803817	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 167.
92	IM-01	MERRILL LYNCH	803820	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 168.
93	IM-01	MERRILL LYNCH	803826	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 171.
94	IM-01	MERRILL LYNCH	803831	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 173.
95	IM-01	MERRILL LYNCH	803836	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 175.
96	IM-01	MERRILL LYNCH	803839	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 176.
97	IM-01	MERRILL LYNCH	803842	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 177.
98	IM-01	MERRILL LYNCH	803845	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 178.
99	IM-01	MERRILL LYNCH	803849	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 179.
100	IM-01	MERRILL LYNCH	803852	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INSURED SERIES 180.
101	IM-01	MERRILL LYNCH	205674	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 10.
102	IM-01	MERRILL LYNCH	277228	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 11.
103	IM-01	MERRILL LYNCH	277281	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 12.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
104	IM-01	MERRILL LYNCH	277282	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 13.
105	IM-01	MERRILL LYNCH	216656	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 14.
106	IM-01	MERRILL LYNCH	868088	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 174.
107	IM-01	MERRILL LYNCH	868094	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 180.
108	IM-01	MERRILL LYNCH	868095	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 190.
109	IM-01	MERRILL LYNCH	202670	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 8.
110	IM-01	MERRILL LYNCH	202671	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD INTERM TERM SER 9.
111	IM-01	MERRILL LYNCH	068866	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 10.
112	IM-01	MERRILL LYNCH	068927	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 11.
113	IM-01	MERRILL LYNCH	068928	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 15.
114	IM-01	MERRILL LYNCH	068980	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 17.
115	IM-01	MERRILL LYNCH	068950	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 2.
116	IM-01	MERRILL LYNCH	069000	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 24.
117	IM-01	MERRILL LYNCH	069005	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 29.
118	IM-01	MERRILL LYNCH	068988	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 3.
119	IM-01	MERRILL LYNCH	069007	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 30.
120	IM-01	MERRILL LYNCH	069008	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 31.
121	IM-01	MERRILL LYNCH	069014	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 37.
122	IM-01	MERRILL LYNCH	069015	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 38.
123	IM-01	MERRILL LYNCH	069016	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 39.
124	IM-01	MERRILL LYNCH	069019	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 41.
125	IM-01	MERRILL LYNCH	069022	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 44.
126	IM-01	MERRILL LYNCH	068939	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 47.
127	IM-01	MERRILL LYNCH	068929	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 5.
128	IM-01	MERRILL LYNCH	803717	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 510.
129	IM-01	MERRILL LYNCH	803718	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 511.
130	IM-01	MERRILL LYNCH	803719	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 512.
131	IM-01	MERRILL LYNCH	803720	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 513.
132	IM-01	MERRILL LYNCH	803721	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 514.
133	IM-01	MERRILL LYNCH	803722	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 515.
134	IM-01	MERRILL LYNCH	803723	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 516.
135	IM-01	MERRILL LYNCH	803724	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 517.
136	IM-01	MERRILL LYNCH	803726	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 519.
137	IM-01	MERRILL LYNCH	803727	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 520.
138	IM-01	MERRILL LYNCH	068983	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 6.
139	IM-01	MERRILL LYNCH	202665	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 62.
140	IM-01	MERRILL LYNCH	068946	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MON PYMT SER 9.
141	IM-01	MERRILL LYNCH	868142	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8K.
142	IM-01	MERRILL LYNCH	868154	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8L.
143	IM-01	MERRILL LYNCH	868155	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8M.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
144	IM-01	MERRILL LYNCH	868157	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8N.
145	IM-01	MERRILL LYNCH	868158	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8O.
146	IM-01	MERRILL LYNCH	868159	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8P.
147	IM-01	MERRILL LYNCH	868160	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8Q.
148	IM-01	MERRILL LYNCH	868161	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8R.
149	IM-01	MERRILL LYNCH	868162	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8S.
150	IM-01	MERRILL LYNCH	868163	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8T.
151	IM-01	MERRILL LYNCH	868164	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8U.
152	IM-01	MERRILL LYNCH	868165	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8V.
153	IM-01	MERRILL LYNCH	868166	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8W.
154	IM-01	MERRILL LYNCH	868167	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8X.
155	IM-01	MERRILL LYNCH	868170	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 8Z.
156	IM-01	MERRILL LYNCH	868171	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9A.
157	IM-01	MERRILL LYNCH	868172	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9B.
158	IM-01	MERRILL LYNCH	868173	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9C.
159	IM-01	MERRILL LYNCH	868174	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9D.
160	IM-01	MERRILL LYNCH	868175	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9E.
161	IM-01	MERRILL LYNCH	868177	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9F.
162	IM-01	MERRILL LYNCH	868178	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9G.
163	IM-01	MERRILL LYNCH	868179	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9H.
164	IM-01	MERRILL LYNCH	868180	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9I.
165	IM-01	MERRILL LYNCH	868181	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9J.
166	IM-01	MERRILL LYNCH	868182	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9K.
167	IM-01	MERRILL LYNCH	868183	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9L.
168	IM-01	MERRILL LYNCH	868184	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9M.
169	IM-01	MERRILL LYNCH	868185	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9N.
170	IM-01	MERRILL LYNCH	868186	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9O.
171	IM-01	MERRILL LYNCH	868187	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9P.
172	IM-01	MERRILL LYNCH	868188	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9Q.
173	IM-01	MERRILL LYNCH	868189	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9R.
174	IM-01	MERRILL LYNCH	868190	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9S.
175	IM-01	MERRILL LYNCH	881819	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9U.
176	IM-01	MERRILL LYNCH	881820	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9V.
177	IM-01	MERRILL LYNCH	881821	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9W.
178	IM-01	MERRILL LYNCH	881822	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9X.
179	IM-01	MERRILL LYNCH	881823	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9Y.
180	IM-01	MERRILL LYNCH	881824	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9Z.
181	IM-01	MERRILL LYNCH	754046	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD NEW YORK INS SER 5.
182	IM-01	MERRILL LYNCH	782083	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD NEW YORK SER 109.
183	IM-01	MERRILL LYNCH	068951	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD NEW YORK SER 2.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
184	IM-01	MERRILL LYNCH	068989	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD NEW YORK SER 3.
185	IM-01	MERRILL LYNCH	068984	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD NEW YORK SER 6.
186	IM-01	MERRILL LYNCH	068995	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD PENNSYLVANIA SER 11.
187	IM-01	MERRILL LYNCH	068931	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD PENNSYLVANIA SER 5.
188	IM-01	MERRILL LYNCH	868169	DEFINED ASSET FUNDS MUNICIPAL INVT TR FUND MULTISTATE SER 8Y.
189	IM-01	MERRILL LYNCH	803823	DEFINED ASSET FUNDS MUNICIPAL INVT TRUST FD INSURED SER 169.
190	IM-01	MERRILL LYNCH	803829	DEFINED ASSET FUNDS MUNICIPAL INVT TRUST FD INSURED SER 172.
191	IM-01	MERRILL LYNCH	803834	DEFINED ASSET FUNDS MUNICIPAL INVT TRUST FD INSURED SER 174.
192	IM-01	MERRILL LYNCH	868191	DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 9T.
193	IM-01	MERRILL LYNCH	874619	MERRILL LYNCH ADJUSTABLE RATE SECURITIES FUND INC.
194	IM-01	MERRILL LYNCH	782711	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SEC SER H/.
195	IM-01	MERRILL LYNCH	782713	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SEC SER I.
196	IM-01	MERRILL LYNCH	796405	MORTGAGE BACKED INCOME FUND FIRST MONTHLY PAYMENT SERIES.
197	IM-01	MERRILL LYNCH	858766	MUNICIPAL INVESTMENT TRUST FUND THIRD AMT MONTHLY PYMT SER.
198	IM-01	MERRILL LYNCH	068921	MUNICIPAL INCOME FUND FIRST INSURED DISCOUNT SERIES.
199	IM-01	MERRILL LYNCH	067148	ML TRUST FOR GOVERNMENT GUARANTEED SECURITIES FIRST MONTHLY.
200	IM-01	MERRILL LYNCH	799247	CORPORATE INCOME FUND MERRILL LYNCH GUAR INVT CONT SER 1.
201	IM-01	MERRILL LYNCH	803674	CORPORATE INCOME FUND MERRILL LYNCH GUAR INVT CONT SER 2.
202	IM-01	MERRILL LYNCH	718875	CORPORATE INCOME FUND FIRST ADJUSTABLE RATE PREFERRED STOCK.
203	IM-01	MERRILL LYNCH	723447	CORPORATE INCOME FD SECOND ADJUSTABLE RATE PREFERRED STK SER.
204	IM-01	MERRILL LYNCH	726850	CORPORATE INCOME FUND THIRD ADJUSTABLE RATE PREFERRED STOCK.
205	IM-01	MERRILL LYNCH	735934	CORPORATE INCOME FUND FOURTH ADJUSTABLE RATE PREFERRED STOCK.
206	IM-01	MERRILL LYNCH	740150	CORPORATE INCOME FUND SIXTH ADJUSTABLE RATE PREFERRED STOCK.
207	IM-01	MERRILL LYNCH	751575	CORPORATE INCOME FUND FIRST CASH OR ACCRETION BOND SERIES.
208	IM-01	MERRILL LYNCH	760736	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES 2.
209	IM-01	MERRILL LYNCH	761195	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES 3.
210	IM-01	MERRILL LYNCH	779322	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES-4.
211	IM-01	MERRILL LYNCH	780405	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES-5.
212	IM-01	MERRILL LYNCH	782391	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES 6.
213	IM-01	MERRILL LYNCH	782392	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES-7.
214	IM-01	MERRILL LYNCH	782393	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES-8.
215	IM-01	MERRILL LYNCH	782394	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES-9.
216	IM-01	MERRILL LYNCH	782395	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES-10.
217	IM-01	MERRILL LYNCH	782396	CORPORATE INCOME FUND CASH OR ACCRETION BOND SERIES-11.
218	IM-01	MERRILL LYNCH	357123	CORPORATE INCOME FUND DISCOUNT SERIES A.
219	IM-01	MERRILL LYNCH	700869	CORPORATE INCOME FUND DISCOUNT SERIES B.
220	IM-01	MERRILL LYNCH	847150	CORPORATE INCOME FUND EQUITY PARTICIPATION NOTE SER GER TR.
221	IM-01	MERRILL LYNCH	225214	CORPORATE INCOME FUND FIRST GNMA SERIES.
222	IM-01	MERRILL LYNCH	275270	CORPORATE INCOME FUND FIRST GNMA COLLATERALIZED BOND SERIES
223	IM-01	MERRILL LYNCH	745053	CORPORATE INCOME FUND SECOND GNMA COLLATERALIZED BOND SERIES.
224	IM-01	MERRILL LYNCH	725019	CORPORATE INCOME FUND THIRD GNMA COLLATERALIZED BOND SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
225	IM-01	MERRILL LYNCH	737787	CORPORATE INCOME FUND FOURTH GNMA COLLATERALIZED BOND SERIES.
226	IM-01	MERRILL LYNCH	740835	CORPORATE INCOME FUND FIFTH GNMA COLLATERALIZED BOND SERIES.
227	IM-01	MERRILL LYNCH	743526	CORPORATE INCOME FUND SIXTH GNMA COLLATERALIZED BOND SERIES.
228	IM-01	MERRILL LYNCH	719365	CORPORATE INCOME FUND SEVENTH GNMA COLLATERALIZED BOND SERIES.
229	IM-01	MERRILL LYNCH	731771	CORPORATE INCOME FUND GNMA COLLATERALIZED COM INT BOND SER A.
230	IM-01	MERRILL LYNCH	797878	CORPORATE INCOME FUND HIGH YIELD SERIES 1.
231	IM-01	MERRILL LYNCH	797881	CORPORATE INCOME FUND HIGH YIELD SERIES 2.
232	IM-01	MERRILL LYNCH	797882	CORPORATE INCOME FUND HIGH YIELD SERIES 3.
233	IM-01	MERRILL LYNCH	797883	CORPORATE INCOME FUND HIGH YIELD SERIES 4.
234	IM-01	MERRILL LYNCH	797885	CORPORATE INCOME FUND HIGH YIELD SERIES 5.
235	IM-01	MERRILL LYNCH	797886	CORPORATE INCOME FUND HIGH YIELD SERIES 6.
236	IM-01	MERRILL LYNCH	797887	CORPORATE INCOME FUND HIGH YIELD SERIES 7.
237	IM-01	MERRILL LYNCH	797890	CORPORATE INCOME FUND HIGH YIELD SERIES 8.
238	IM-01	MERRILL LYNCH	797891	CORPORATE INCOME FUND HIGH YIELD SERIES 9.
239	IM-01	MERRILL LYNCH	797895	CORPORATE INCOME FUND HIGH YIELD SERIES 10.
240	IM-01	MERRILL LYNCH	805063	CORPORATE INCOME FUND HIGH YIELD SERIES 11.
241	IM-01	MERRILL LYNCH	805064	CORPORATE INCOME FUND HIGH YIELD SERIES 12.
242	IM-01	MERRILL LYNCH	805065	CORPORATE INCOME FUND HIGH YIELD SERIES 13.
243	IM-01	MERRILL LYNCH	805066	CORPORATE INCOME FUND HIGH YIELD SERIES 14.
244	IM-01	MERRILL LYNCH	805067	CORPORATE INCOME FUND HIGH YIELD SERIES 15.
245	IM-01	MERRILL LYNCH	805068	CORPORATE INCOME FUND HIGH YIELD SERIES 16.
246	IM-01	MERRILL LYNCH	805069	CORPORATE INCOME FUND HIGH YIELD SERIES 17.
247	IM-01	MERRILL LYNCH	805070	CORPORATE INCOME FUND HIGH YIELD SERIES 18.
248	IM-01	MERRILL LYNCH	805071	CORPORATE INCOME FUND HIGH YIELD SERIES 19.
249	IM-01	MERRILL LYNCH	805073	CORPORATE INCOME FUND HIGH YIELD SERIES 20.
250	IM-01	MERRILL LYNCH	805075	CORPORATE INCOME FUND HIGH YIELD SERIES 21.
251	IM-01	MERRILL LYNCH	805077	CORPORATE INCOME FUND HIGH YIELD SERIES 22.
252	IM-01	MERRILL LYNCH	805078	CORPORATE INCOME FUND HIGH YIELD SERIES 23.
253	IM-01	MERRILL LYNCH	805079	CORPORATE INCOME FUND HIGH YIELD SERIES 24.
254	IM-01	MERRILL LYNCH	805081	CORPORATE INCOME FUND HIGH YIELD SERIES 25.
255	IM-01	MERRILL LYNCH	805082	CORPORATE INCOME FUND HIGH YIELD SERIES 26.
256	IM-01	MERRILL LYNCH	805083	CORPORATE INCOME FUND HIGH YIELD SERIES 27.
257	IM-01	MERRILL LYNCH	805085	CORPORATE INCOME FUND HIGH YIELD SERIES 28.
258	IM-01	MERRILL LYNCH	805087	CORPORATE INCOME FUND HIGH YIELD SERIES 29.
259	IM-01	MERRILL LYNCH	847299	CORPORATE INCOME FUND HIGH YIELD PRINCIPAL INSURED SER 1A.
260	IM-01	MERRILL LYNCH	847152	CORPORATE INCOME FUND SELECT HIGH YIELD SERIES 1.
261	IM-01	MERRILL LYNCH	805048	CORPORATE INCOME FUND HIGH YIELD TRUST SERIES 1.
262	IM-01	MERRILL LYNCH	215565	CORPORATE INCOME FUND TWENTIETH INTERMEDIATE TERM SERIES.
263	IM-01	MERRILL LYNCH	225222	CORPORATE INCOME FUND TWENTY FIRST INTERMEDIATE TERM SERIES.
264	IM-01	MERRILL LYNCH	230148	CORPORATE INCOME FUND TWENTY THIRD INTERMEDIATE TERM SERIES.
265	IM-01	MERRILL LYNCH	782040	CORPORATE INCOME FUND SECOND INSURED SERIES.
266	IM-01	MERRILL LYNCH	782041	CORPORATE INCOME FUND THIRD INSURED SERIES.
267	IM-01	MERRILL LYNCH	782049	CORPORATE INCOME FUND FOURTH INSURED SERIES.
268	IM-01	MERRILL LYNCH	782050	CORPORATE INCOME FUND FIFTH INSURED SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
269	IM-01	MERRILL LYNCH	843452	CORPORATE INCOME FUND SIXTH INSURED SERIES.
270	IM-01	MERRILL LYNCH	863733	CORPORATE INCOME FUND SEVENTH INSURED SERIES.
271	IM-01	MERRILL LYNCH	843850	CORPORATE INCOME FUND EIGHTH INSURED SERIES.
272	IM-01	MERRILL LYNCH	843851	CORPORATE INCOME FUND NINTH INSURED SERIES.
273	IM-01	MERRILL LYNCH	843852	DEFINED ASSET FDS CORPORATE INCOME FD TENTH INSURED SERIES.
274	IM-01	MERRILL LYNCH	355220	DEFINED ASSET FUNDS CORPORATE INCOME FUND 10TH INSURED SERIES.
275	IM-01	MERRILL LYNCH	843853	CORPORATE INCOME FUND ELEVENTH INSURED SERIES.
276	IM-01	MERRILL LYNCH	843856	DEFINED ASSET FUNDS CORPORATE INCOME FUND INSURED SERIES 14.
277	IM-01	MERRILL LYNCH	827011	CORPORATE INCOME FUND FIRST INSURED SERIES/NEW.
278	IM-01	MERRILL LYNCH	312229	CORPORATE INCOME FUND TWENTY FIFTH INTERMEDIATE TERM SERIES.
279	IM-01	MERRILL LYNCH	781783	CORPORATE INCOME FUND TWENTY SIXTH INTERMEDIATE TERM SER.
280	IM-01	MERRILL LYNCH	791016	DEFINED ASSET FDS CORP INCOME FD TWENTY EIGHTH INTER TERM SERIES.
281	IM-01	MERRILL LYNCH	791017	DEFINED ASSET FDS CORP INCOME FD TWENTY NINTH INTERM TER SER.
282	IM-01	MERRILL LYNCH	24867	CORPORATE INCOME FUND TWENTY EIGHTH MONTHLY PAYMENT SERIES.
283	IM-01	MERRILL LYNCH	24865	CORPORATE INCOME FUND THIRTEENTH MONTHLY PAYMENT SERIES.
284	IM-01	MERRILL LYNCH	24881	CORPORATE INCOME FUND TWENTIETH MONTHLY PAYMENT SERIES.
285	IM-01	MERRILL LYNCH	24868	CORPORATE INCOME FUND TWENTY FOURTH MONTHLY PAYMENT SERIES.
286	IM-01	MERRILL LYNCH	276910	CORPORATE INCOME FUND TWENTY FIFTH MONTHLY PAYMENT SERIES.
287	IM-01	MERRILL LYNCH	24887	CORPORATE INCOME FUND TWENTY SEVENTH MONTHLY PAYMENT SERIES.
288	IM-01	MERRILL LYNCH	24886	CORPORATE INCOME FUND TWENTY NINTH MONTHLY PAYMENT SERIES.
289	IM-01	MERRILL LYNCH	24889	CORPORATE INCOME FUND THIRTY FIRST MONTHLY PAYMENT SERIES.
290	IM-01	MERRILL LYNCH	24891	CORPORATE INCOME FUND THIRTY THIRD MONTHLY PAYMENT SERIES.
291	IM-01	MERRILL LYNCH	24892	CORPORATE INCOME FUND THIRTY FOURTH MONTHLY PAYMENT SERIES.
292	IM-01	MERRILL LYNCH	24893	CORPORATE INCOME FUND THIRTY FIFTH MONTHLY PAYMENT SERIES.
293	IM-01	MERRILL LYNCH	24857	CORPORATE INCOME FUND THIRTY SEVENTH MONTHLY PAYMENT SERIES.
294	IM-01	MERRILL LYNCH	201561	CORPORATE INCOME FUND THIRTY EIGHTH MONTHLY PAYMENT SERIES.
295	IM-01	MERRILL LYNCH	201562	CORPORATE INCOME FUND THIRTY NINTH MONTHLY PAYMENT SERIES.
296	IM-01	MERRILL LYNCH	24873	CORPORATE INCOME FUND FORTIETH MONTHLY PAYMENT SERIES.
297	IM-01	MERRILL LYNCH	201563	CORPORATE INCOME FUND FORTY FIRST MONTHLY PAYMENT SERIES.
298	IM-01	MERRILL LYNCH	201564	CORPORATE INCOME FUND FORTY SECOND MONTHLY PAYMENT SERIES.
299	IM-01	MERRILL LYNCH	201565	CORPORATE INCOME FUND FORTY THIRD MONTHLY PAYMENT SERIES.
300	IM-01	MERRILL LYNCH	201566	CORPORATE INCOME FUND FORTY FOURTH MONTHLY PAYMENT SERIES.
301	IM-01	MERRILL LYNCH	201567	CORPORATE INCOME FUND FORTY FIFTH MONTHLY PAYMENT SERIES.
302	IM-01	MERRILL LYNCH	201568	CORPORATE INCOME FUND FORTY SIXTH MONTHLY PAYMENT SERIES.
303	IM-01	MERRILL LYNCH	205210	CORPORATE INCOME FUND FORTY NINTH MONTHLY PAYMENT SERIES.
304	IM-01	MERRILL LYNCH	205211	CORPORATE INCOME FUND FIFTIETH MONTHLY PAYMENT SERIES.
305	IM-01	MERRILL LYNCH	215548	CORPORATE INCOME FUND FIFTY FIRST MONTHLY PAYMENT SERIES.
306	IM-01	MERRILL LYNCH	215552	CORPORATE INCOME FUND FIFTY SECOND MONTHLY PAYMENT SERIES.
307	IM-01	MERRILL LYNCH	215554	CORPORATE INCOME FUND FIFTY THIRD MONTHLY PAYMENT SERIES.
308	IM-01	MERRILL LYNCH	215549	CORPORATE INCOME FUND FIFTY FOURTH MONTHLY PAYMENT SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
309	IM-01	MERRILL LYNCH	215547	CORPORATE INCOME FUND FIFTY FIFTH MONTHLY PAYMENT SERIES.
310	IM-01	MERRILL LYNCH	215553	CORPORATE INCOME FUND FIFTY SIXTH MONTHLY PAYMENT SERIES.
311	IM-01	MERRILL LYNCH	215566	CORPORATE INCOME FUND FIFTY SEVENTH MONTHLY PAYMENT SERIES.
312	IM-01	MERRILL LYNCH	215567	CORPORATE INCOME FUND FIFTY EIGHTH MONTHLY PAYMENT SERIES.
313	IM-01	MERRILL LYNCH	215550	CORPORATE INCOME FUND FIFTY NINTH MONTHLY PAYMENT SERIES.
314	IM-01	MERRILL LYNCH	215560	CORPORATE INCOME FUND SIXTIETH MONTHLY PAYMENT SERIES.
315	IM-01	MERRILL LYNCH	215562	CORPORATE INCOME FUND SIXTY SECOND MONTHLY PAYMENT SERIES.
316	IM-01	MERRILL LYNCH	225217	CORPORATE INCOME FUND SIXTY FOURTH MONTHLY PAYMENT SERIES.
317	IM-01	MERRILL LYNCH	225216	CORPORATE INCOME FUND SIXTY FIFTH MONTHLY PAYMENT SERIES.
318	IM-01	MERRILL LYNCH	225220	CORPORATE INCOME FUND SIXTY SIXTH MONTHLY PAYMENT SERIES.
319	IM-01	MERRILL LYNCH	225215	CORPORATE INCOME FUND SIXTY EIGHTH MONTHLY PAYMENT SERIES.
320	IM-01	MERRILL LYNCH	225218	CORPORATE INCOME FUND SIXTY NINTH MONTHLY PAYMENT SERIES.
321	IM-01	MERRILL LYNCH	230146	CORPORATE INCOME FUND SEVENTY SECOND MONTHLY PAYMENT SERIES.
322	IM-01	MERRILL LYNCH	230147	CORPORATE INCOME FUND SEVENTY THIRD MONTHLY PAYMENT SERIES.
323	IM-01	MERRILL LYNCH	275267	CORPORATE INCOME FUND SEVENTY FIFTH MONTHLY PAYMENT SERIES.
324	IM-01	MERRILL LYNCH	275269	CORPORATE INCOME FUND SEVENTY SIXTH MONTHLY PAYMENT SERIES.
325	IM-01	MERRILL LYNCH	311311	CORPORATE INCOME FUND EIGHTY SEVENTH MONTHLY PAYMENT SERIES.
326	IM-01	MERRILL LYNCH	311413	CORPORATE INCOME FUND EIGHTY NINTH MONTHLY PAYMENT SERIES.
327	IM-01	MERRILL LYNCH	312230	CORPORATE INCOME FUND NINETY SECOND MONTHLY PAYMENT SERIES.
328	IM-01	MERRILL LYNCH	740164	CORPORATE INCOME FUND TWO HUNDRED TWENTY SECOND MON PYMT SER.
329	IM-01	MERRILL LYNCH	024883	CORPORATE INCOME FUND TWENTY FIRST MONTHLY PAYMENT SERIES.
330	IM-01	MERRILL LYNCH	024884	CORPORATE INCOME FUND TWENTY SECOND MONTHLY PAYMENT SERIES.
331	IM-01	MERRILL LYNCH	024885	CORPORATE INCOME FUND TWENTY THIRD MONTHLY PAYMENT SERIES.
332	IM-01	MERRILL LYNCH	205206	CORPORATE INCOME FUND FORTY SEVENTH MONTHLY PAYMENT SERIES.
333	IM-01	MERRILL LYNCH	205209	CORPORATE INCOME FUND FORTY EIGHTH MONTHLY PAYMENT SERIES.
334	IM-01	MERRILL LYNCH	215561	CORPORATE INCOME FUND SIXTY FIRST MONTHLY PAYMENT SERIES.
335	IM-01	MERRILL LYNCH	215563	CORPORATE INCOME FUND SIXTY THIRD MONTHLY PAYMENT SERIES.
336	IM-01	MERRILL LYNCH	225219	CORPORATE INCOME FUND SIXTY SEVENTH MONTHLY PAYMENT SERIES.
337	IM-01	MERRILL LYNCH	230144	CORPORATE INCOME FUND SEVENTIETH MONTHLY PAYMENT SERIES.
338	IM-01	MERRILL LYNCH	230145	CORPORATE INCOME FUND SEVENTY FIRST MONTHLY PAYMENT SERIES.
339	IM-01	MERRILL LYNCH	275268	CORPORATE INCOME FUND SEVENTY FOURTH MONTHLY PAYMENT SERIES.
340	IM-01	MERRILL LYNCH	276224	CORPORATE INCOME FUND SEVENTY SEVENTH MONTHLY PAYMENT SERIES.
341	IM-01	MERRILL LYNCH	276454	CORPORATE INCOME FUND SEVENTY EIGHTH MONTHLY PAYMENT SERIES.
342	IM-01	MERRILL LYNCH	276847	CORPORATE INCOME FUND SEVENTY NINTH MONTHLY PAYMENT SERIES.
343	IM-01	MERRILL LYNCH	277324	CORPORATE INCOME FUND EIGHTIETH MONTHLY PAYMENT SERIES.
344	IM-01	MERRILL LYNCH	277583	CORPORATE INCOME FUND EIGHTY FIRST MONTHLY PAYMENT SERIES.
345	IM-01	MERRILL LYNCH	278273	CORPORATE INCOME FUND EIGHTY SECOND MONTHLY PAYMENT SERIES.
346	IM-01	MERRILL LYNCH	310193	CORPORATE INCOME FUND EIGHTY THIRD MONTHLY PAYMENT SERIES.
347	IM-01	MERRILL LYNCH	310588	CORPORATE INCOME FUND EIGHTY FOURTH MONTHLY PAYMENT SERIES.
348	IM-01	MERRILL LYNCH	310701	CORPORATE INCOME FUND EIGHTY FIFTH MONTHLY PAYMENT SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
349	IM-01	MERRILL LYNCH	310977	CORPORATE INCOME FUND EIGHTY SIXTH MONTHLY PAYMENT SERIES.
350	IM-01	MERRILL LYNCH	311411	CORPORATE INCOME FUND EIGHTY EIGHTH MONTHLY PAYMENT SERIES.
351	IM-01	MERRILL LYNCH	311709	CORPORATE INCOME FUND NINETIETH MONTHLY PAYMENT SERIES.
352	IM-01	MERRILL LYNCH	311977	CORPORATE INCOME FUND NINETY FIRST MONTHLY PAYMENT SERIES.
353	IM-01	MERRILL LYNCH	313272	CORPORATE INCOME FUND NINETY THIRD MONTHLY PAYMENT SERIES.
354	IM-01	MERRILL LYNCH	314385	CORPORATE INCOME FUND NINETY SEVENTH MONTHLY PAYMENT SERIES.
355	IM-01	MERRILL LYNCH	314604	CORPORATE INCOME FUND NINETY EIGHTH MONTHLY PAYMENT SERIES.
356	IM-01	MERRILL LYNCH	314860	CORPORATE INCOME FUND NINETY NINTH MONTHLY PAYMENT SERIES.
357	IM-01	MERRILL LYNCH	314867	CORPORATE INCOME FUND ONE HUNDREDTH MONTHLY PAYMENT SERIES.
358	IM-01	MERRILL LYNCH	316503	CORPORATE INCOME FUND ONE HUNDRED SECOND MONTHLY PAYMENT SER.
359	IM-01	MERRILL LYNCH	316532	CORPORATE INCOME FUND ONE HUNDRED THIRD MONTHLY PAYMENT SERI.
360	IM-01	MERRILL LYNCH	316646	CORPORATE INCOME FUND ONE HUNDRED FOURTH MONTHLY PAYMENT SER.
361	IM-01	MERRILL LYNCH	316701	CORPORATE INCOME FUND ONE HUNDRED FIFTH MONTHLY PAYMENT SERI.
362	IM-01	MERRILL LYNCH	317037	CORPORATE INCOME FUND ONE HUNDRED SIXTH MONTHLY PAYMENT SERI.
363	IM-01	MERRILL LYNCH	316242	CORPORATE INCOME FUND ONE HUNDRED NINTH MONTHLY PAYMENT SERI.
364	IM-01	MERRILL LYNCH	315611	CORPORATE INCOME FUND ONE HUNDRED TENTH MONTHLY PAYMENT SERI.
365	IM-01	MERRILL LYNCH	315612	CORPORATE INCOME FUND ONE HUNDRED ELEVENTH MONTHLY PAYMENT S.
366	IM-01	MERRILL LYNCH	315770	CORPORATE INCOME FUND ONE HUNDRED TWELFTH MONTHLY PAYMENT SERIES.
367	IM-01	MERRILL LYNCH	315518	CORPORATE INCOME FUND ONE HUNDRED THIRTEENTH MONTHLY PAYMENT.
368	IM-01	MERRILL LYNCH	320013	CORPORATE INCOME FUND ONE HUNDRED SIXTEENTH MONTHLY PAYMENT.
369	IM-01	MERRILL LYNCH	000026	CORPORATE INCOME FUND ONE HUNDRED SEVENTEENTH MONTHLY PAYMENT.
370	IM-01	MERRILL LYNCH	320546	CORPORATE INCOME FUND ONE HUNDRED EIGHTEENTH MONTHLY PAYMENT.
371	IM-01	MERRILL LYNCH	350479	CORPORATE INCOME FUND ONE HUNDRED NINETEENTH MONTHLY PAYMENT.
372	IM-01	MERRILL LYNCH	350829	CORPORATE INCOME FUND ONE HUNDRED TWENTIETH MONTHLY PAYMENT.
373	IM-01	MERRILL LYNCH	353884	CORPORATE INCOME FUND ONE HUNDRED TWENTY FIRST MONTHLY PAYMENT.
374	IM-01	MERRILL LYNCH	351714	CORPORATE INCOME FUND ONE HUNDRED TWENTY SECOND MON PYMT SERIES.
375	IM-01	MERRILL LYNCH	352005	CORPORATE INCOME FUND ONE HUNDRED TWENTY THIRD MON PYMT SERIES.
376	IM-01	MERRILL LYNCH	352380	CORPORATE INCOME FUND ONE HUNDRED TWENTY FOURTH MON PYMT SERIES.
377	IM-01	MERRILL LYNCH	352614	CORPORATE INCOME FUND ONE HUNDRED TWENTY FIFTH MON PYMT SERIES.
378	IM-01	MERRILL LYNCH	353578	CORPORATE INCOME FUND ONE HUNDRED TWENTY SIXTH MONTHLY PAYMENT.
379	IM-01	MERRILL LYNCH	353710	CORPORATE INCOME FUND ONE HUNDRED TWENTY SEVENTH MONTHLY PAYMENT.
380	IM-01	MERRILL LYNCH	353708	CORPORATE INCOME FUND ONE HUNDRED TWENTY EIGHTH MON PYMT SERIES.
381	IM-01	MERRILL LYNCH	351117	CORPORATE INCOME FUND ONE HUNDRED TWENTY NINTH MON PYMT SERIES.
382	IM-01	MERRILL LYNCH	354121	CORPORATE INCOME FUND ONE HUNDRED THIRTIETH MONTHLY PAY SERIES.
383	IM-01	MERRILL LYNCH	354876	CORPORATE INCOME FUND ONE HUNDRED THIRTY FIRST MONTHLY PAYMENT.
384	IM-01	MERRILL LYNCH	355304	CORPORATE INCOME FUND ONE HUNDRED THIRTY SECOND MON PYMT SERIES.
385	IM-01	MERRILL LYNCH	355309	CORPORATE INCOME FUND ONE HUNDRED THIRTY THIRD MON PYMT SERIES.
386	IM-01	MERRILL LYNCH	355889	CORPORATE INCOME FUND ONE HUNDRED THIRTY FOURTH MONTHLY PAYMENT.
387	IM-01	MERRILL LYNCH	355857	CORPORATE INCOME FUND ONE HUNDRED THIRTY FIFTH MON PYMT SERIES.
388	IM-01	MERRILL LYNCH	355881	CORPORATE INCOME FUND ONE HUNDRED THIRTY FIFTH MONTLY PAYMENT.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
389	IM-01	MERRILL LYNCH	355929	CORPORATE INCOME FUND ONE HUNDRED THIRTY SIXTH MON PYMT SERIES.
390	IM-01	MERRILL LYNCH	355956	CORPORATE INCOME FUND ONE HUNDRED THIRTY SEVENTH MONTHLY PAYMENT.
391	IM-01	MERRILL LYNCH	355922	CORPORATE INCOME FUND ONE HUNDRED THIRTY SEVENTH PAYMT SERIES.
392	IM-01	MERRILL LYNCH	356138	CORPORATE INCOME FUND ONE HUNDRED THIRTY EIGHTH MONTHLY PAYMENT.
393	IM-01	MERRILL LYNCH	356154	CORPORATE INCOME FUND ONE HUNDRED THIRTY NINTH MON PYMT SERIES.
394	IM-01	MERRILL LYNCH	356600	CORPORATE INCOME FUND ONE HUNDRED FORTIETH MON PYMT SERIES.
395	IM-01	MERRILL LYNCH	356482	CORPORATE INCOME FUND ONE HUNDRED FORTY FIRST MON PYMT SERIES.
396	IM-01	MERRILL LYNCH	356679	CORPORATE INCOME FUND ONE HUNDRED FORTY SECOND MON PYMT SERIES.
397	IM-01	MERRILL LYNCH	356930	CORPORATE INCOME FUND ONE HUNDRED FORTY THIRD MON PYMT SERIES.
398	IM-01	MERRILL LYNCH	356987	CORPORATE INCOME FUND ONE HUNDRED FORTY FOURTH MON PYMT SERIES.
399	IM-01	MERRILL LYNCH	357228	CORPORATE INCOME FUND ONE HUNDRED FORTY FIFTH MON PYMT SERIES.
400	IM-01	MERRILL LYNCH	357290	CORPORATE INCOME FUND ONE HUNDRED FORTY SIXTH MON PYMT SERIES.
401	IM-01	MERRILL LYNCH	700745	CORPORATE INCOME FUND ONE HUNDRED FORTY SEVENTH MON PYMT SERIES.
402	IM-01	MERRILL LYNCH	700779	CORPORATE INCOME FUND ONE HUNDRED FORTY EIGHT MONTHLY PAYMENT.
403	IM-01	MERRILL LYNCH	702138	CORPORATE INCOME FUND ONE HUNDRED FORTY NINTH MON PYMT SERIES.
404	IM-01	MERRILL LYNCH	702293	CORPORATE INCOME FUND ONE HUNDRED FIFTIETH MONTHLY PYMT SERIES.
405	IM-01	MERRILL LYNCH	702528	CORPORATE INCOME FUND ONE HUNDRED FIFTY FIRST MON PYMT SERIES.
406	IM-01	MERRILL LYNCH	703283	CORPORATE INCOME FUND ONE HUNDRED FIFTY SECOND MONTHLY PAYMENT.
407	IM-01	MERRILL LYNCH	703682	CORPORATE INCOME FUND ONE HUNDRED FIFTY THIRD MON PYMT SERIES.
408	IM-01	MERRILL LYNCH	703894	CORPORATE INCOME FUND ONE HUNDRED FIFTY FOURTH MON PYMT SERIES.
409	IM-01	MERRILL LYNCH	704805	CORPORATE INCOME FUND ONE HUNDRED FIFTY FIFTH MON PYMT SERIES.
410	IM-01	MERRILL LYNCH	705400	CORPORATE INCOME FUND ONE HUNDRED FIFTY SIXTH MON PYMT SERIES.
411	IM-01	MERRILL LYNCH	705975	CORPORATE INCOME FUND ONE HUNDRED FIFTY SEVENTH MON PYMT SERIES.
412	IM-01	MERRILL LYNCH	706046	CORPORATE INCOME FUND ONE HUNDRED FIFTY EIGHTH MONTHLY PAYMENT.
413	IM-01	MERRILL LYNCH	706119	CORPORATE INCOME FUND ONE HUNDRED FIFTY NINTH MONTHLY PAYMENT.
414	IM-01	MERRILL LYNCH	706368	CORPORATE INCOME FUND ONE HUNDRED SIXTIETH MONTHLY PAYMENT SERIES.
415	IM-01	MERRILL LYNCH	707227	CORPORATE INCOME FUND ONE HUNDRED SIXTY FIRST MONTHLY PAYMENT.
416	IM-01	MERRILL LYNCH	707797	CORPORATE INCOME FUND ONE HUNDRED SIXTY SECOND MON PYMT SERIES.
417	IM-01	MERRILL LYNCH	706129	CORPORATE INCOME FUND ONE HUNDRED SIXTY THIRD MONTHLY PAYMENT.
418	IM-01	MERRILL LYNCH	708827	CORPORATE INCOME FUND ONE HUNDRED SIXTY FOURTH MON PYMT SERIES.
419	IM-01	MERRILL LYNCH	709368	CORPORATE INCOME FUND ONE HUNDRED SIXTY FIFTH MON PYMT SERIES.
420	IM-01	MERRILL LYNCH	710773	CORPORATE INCOME FUND ONE HUNDRED SIXTY SIXTH MON PYMT SERIES.
421	IM-01	MERRILL LYNCH	711318	CORPORATE INCOME FUND ONE HUNDRED SIXTY SEVENTH MON PYMT SER.
422	IM-01	MERRILL LYNCH	715067	CORPORATE INCOME FUND ONE HUNDRED SIXTY NINTH MON PYMT SER.
423	IM-01	MERRILL LYNCH	715271	CORPORATE INCOME FUND ONE HUNDRED SEVENTIETH MONTHLY PAYMENT.
424	IM-01	MERRILL LYNCH	715757	CORPORATE INCOME FUND ONE HUNDRED SEVENTY FIRST MON PAY SER.
425	IM-01	MERRILL LYNCH	716408	CORPORATE INCOME FUND ONE HUNDRED SEVENTY SECOND MON PAY SER.
426	IM-01	MERRILL LYNCH	717302	CORPORATE INCOME FUND ONE HUNDRED SEVENTY THIRD MON PAY SER.
427	IM-01	MERRILL LYNCH	718549	CORPORATE INCOME FUND ONE HUNDRED SEVENTY FOURTH MON PAY SER.
428	IM-01	MERRILL LYNCH	719434	CORPORATE INCOME FUND ONE HUNDRED SEVENTY FIFTH MON PYMT SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
429	IM-01	MERRILL LYNCH	722417	CORPORATE INCOME FUND ONE HUNDRED SEVENTY SIXTH MON PAY SER.
430	IM-01	MERRILL LYNCH	722750	CORPORATE INCOME FD ONE HUNORED SEVENTY SEVENTH MON PAY SER.
431	IM-01	MERRILL LYNCH	723743	CORPORATE INCOME FUND ONE HUNDRED SEVENTY EIGHTH MON PYMT SER.
432	IM-01	MERRILL LYNCH	726302	CORPORATE INCOME FUND ONE HUNDRED SEVENTY NINTH MON PAY SER.
433	IM-01	MERRILL LYNCH	726841	CORPORATE INCOME FUND ONE HUNORED EIGHTIETH MON PYMT SER.
434	IM-01	MERRILL LYNCH	729115	CORPORATE INCOME FUND ONE HUNDRED EIGHTY FIRST MON PYMT SER.
435	IM-01	MERRILL LYNCH	730005	CORPORATE INCOME FUND ONE HUNDRED EIGHTY SECOND MON PYMT SER.
436	IM-01	MERRILL LYNCH	731949	CORPORATE INCOME FUND ONE HUNDRED EIGHTY THIRD MON PYMT SER.
437	IM-01	MERRILL LYNCH	732744	CORPORATE INCOME FUND ONE HUNDRED EIGHTY FOURTH MON PYMT SER.
438	IM-01	MERRILL LYNCH	735580	CORPORATE INCOME FUND ONE HUNDRED EIGHTY FIFTH MON PYMT SER.
439	IM-01	MERRILL LYNCH	736443	CORPORATE INCOME FUND ONE HUNDRED EIGHTY SIXTH MON PYMT SER.
440	IM-01	MERRILL LYNCH	739262	CORPORATE INCOME FUND ONE HUNDRED EIGHTY SEVENTH MON PYMT SER.
441	IM-01	MERRILL LYNCH	739713	CORPORATE INCOME FUND ONE HUNDRED EIGHTY EIGHTH MON PYMT SER.
442	IM-01	MERRILL LYNCH	741519	CORPORATE INCOME FUND ONE HUNDRED EIGHTY NINTH MON PYMT SER.
443	IM-01	MERRILL LYNCH	742460	CORPORATE INCOME FUND ONE HUNDRED NINETIETH MONTHLY PAYMENT.
444	IM-01	MERRILL LYNCH	744101	CORPORATE INCOME FUND ONE HUNDRED NINETY FIRST MON PYMT SER.
445	IM-01	MERRILL LYNCH	744188	CORPORATE INCOME FUND ONE HUNORED NINETY SECOND MON PYMT SER.
446	IM-01	MERRILL LYNCH	745355	CORPORATE INCOME FUND ONE HUNDRED NINETY THIRD MON PYMT SER.
447	IM-01	MERRILL LYNCH	745465	CORPORATE INCOME FUND ONE HUNDRED NINETY FOURTH MON PYMT SER.
448	IM-01	MERRILL LYNCH	746557	CORPORATE INCOME FUND ONE HUNDRED NINETY FIFTH MON PYMT SER.
449	IM-01	MERRILL LYNCH	747731	CORPORATE INCOME FUND ONE HUNDRED NINETY SIXTH MON PYMT SER.
450	IM-01	MERRILL LYNCH	748638	CORPORATE INCOME FUND ONE HUNDRED NINETY SEVENTH MON PYMT SER.
451	IM-01	MERRILL LYNCH	748652	CORPORATE INCOME FUND ONE HUNDRED NINETY EIGHTH MON PYMT SER.
452	IM-01	MERRILL LYNCH	749758	CORPORATE INCOME FUND ONE HUNDRED NINETY NINTH MON PYMT SER.
453	IM-01	MERRILL LYNCH	750037	CORPORATE INCOME FUND TWO HUNDREDTH MONTHLY PAYMENT SERIES.
454	IM-01	MERRILL LYNCH	750408	CORPORATE INCOME FUND TWO HUNDRED FIRST MONTHLY PAYMENT SER.
455	IM-01	MERRILL LYNCH	751574	CORPORATE INCOME FUND TWO HUNDRED SECOND MONTHLY PAYMENT SER.
456	IM-01	MERRILL LYNCH	753350	CORPORATE INCOME FUND TWO HUNDRED THIRD MONTHLY PAYMENT SER.
457	IM-01	MERRILL LYNCH	755122	CORPORATE INCOME FUND TWO HUNDRED FOURTH MONTHLY PAYMENT SER.
458	IM-01	MERRILL LYNCH	743259	CORPORATE INCOME FUND TWO HUNDRED FIFTH MON PYMT SER.
459	IM-01	MERRILL LYNCH	758117	CORPORATE INCOME FUND TWO HUNDRED SIXTH MONTHLY PAYMENT SER.
460	IM-01	MERRILL LYNCH	758118	CORPORATE INCOME FUND TWO HUNDRED SEVENTH MONTHLY PAYMENT SER.
461	IM-01	MERRILL LYNCH	761311	CORPORATE INCOME FUND TWO HUNDRED NINTH MONTHLY PAYMENT SER.
462	IM-01	MERRILL LYNCH	763322	CORPORATE INCOME FUND TWO HUNDRED TENTH MONTHLY PAYMENT SER.
463	IM-01	MERRILL LYNCH	763696	CORPORATE INCOME FUND TWO HUNDRED ELEVENTH MONTHLY PYMT SER.
464	IM-01	MERRILL LYNCH	764474	CORPORATE INCOME FUND TWO HUNDRED TWELFTH MONTHLY PAYMENT SER.
465	IM-01	MERRILL LYNCH	765226	CORPORATE INCOME FUND TWO HUNDRED THIRTEENTH MONTHLY PAY SER.
466	IM-01	MERRILL LYNCH	766010	CORPORATE INCOME FUND TWO HUNDRED FOURTEENTH MON PYMT SER.
467	IM-01	MERRILL LYNCH	766306	CORPORATE INCOME FUND TWO HUNORED FIFTEENTH MONTHLY PYMT SER.
468	IM-01	MERRILL LYNCH	766740	CORPORATE INCOME FUND TWO HUNDRED SIXTEENTH MONTHLY PYMT SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
469	IM-01	MERRILL LYNCH	766733	CORPORATE INCOME FUND TWO HUNDRED SEVENTEENTH MON PYMT SER.
470	IM-01	MERRILL LYNCH	768596	CORPORATE INCOME FUND TWO HUNDRED EIGHTEENTH MON PYMT SER.
471	IM-01	MERRILL LYNCH	781732	CORPORATE INCOME FUND TWO HUNDRED EIGHTIETH MONTHLY PYMT SER.
472	IM-01	MERRILL LYNCH	769133	CORPORATE INCOME FUND TWO HUNDRED NINETEENTH MON PYMT SER.
473	IM-01	MERRILL LYNCH	769136	CORPORATE INCOME FUND TWO HUNDRED TWENTIETH MON PYMT SER.
474	IM-01	MERRILL LYNCH	739698	CORPORATE INCOME FUND TWO HUNDRED TWENTY FIRST MON PYMT SER.
475	IM-01	MERRILL LYNCH	771974	CORPORATE INCOME FUND TWO HUNDRED TWENTY THIRD MON PYMT SER.
476	IM-01	MERRILL LYNCH	771975	CORPORATE INCOME FUND TWO HUNDRED TWENTY FOURTH MON PYMT SER.
477	IM-01	MERRILL LYNCH	773472	CORPORATE INCOME FUND TWO HUNDRED TWENTY FIFTH MON PYMT SERS.
478	IM-01	MERRILL LYNCH	773709	CORPORATE INCOME FUND TWO HUNDRED TWENTY SIXTH MON PYMT SERS.
479	IM-01	MERRILL LYNCH	774024	CORPORATE INCOME FUND TWO HUNDRED TWENTY SEVENTH MON PAY SER.
480	IM-01	MERRILL LYNCH	774441	CORPORATE INCOME FUND TWO HUNDRED TWENTY EIGHTH MON PYMT SER.
481	IM-01	MERRILL LYNCH	774943	CORPORATE INCOME FUND TWO HUNDRED TWENTY NINTH MONTHLY PAYMENT.
482	IM-01	MERRILL LYNCH	775982	CORPORATE INCOME FUND TWO HUNDRED THIRTIETH MONTHLY PAY SER.
483	IM-01	MERRILL LYNCH	777447	CORPORATE INCOME FUND TWO HUNDRED THIRTY FIRST MON PYMT SER.
484	IM-01	MERRILL LYNCH	777887	CORPORATE INCOME FUND TWO HUNDRED THIRTY SECOND MON PAY SER.
485	IM-01	MERRILL LYNCH	779321	CORPORATE INCOME FUND TWO HUNDRED THIRTY THIRD MON PAY SER.
486	IM-01	MERRILL LYNCH	780412	CORPORATE INCOME FUND TWO HUNDRED THIRTY FOURTH MON PAY SER.
487	IM-01	MERRILL LYNCH	781549	CORPORATE INCOME FUND TWO HUNDRED THIRTY FIFTH MONTHLY PAYMENT.
488	IM-01	MERRILL LYNCH	781564	CORPORATE INCOME FUND TWO HUNDRED THIRTY SIXTH MON PYMT SER.
489	IM-01	MERRILL LYNCH	781569	CORPORATE INCOME FUND TWO HUNDRED THIRTY SEVENTH MON PYMT SER.
490	IM-01	MERRILL LYNCH	781578	CORPORATE INCOME FUND TWO HUNDRED THIRTY EIGHTH MON PYMT SER.
491	IM-01	MERRILL LYNCH	781584	CORPORATE INCOME FUND TWO HUNDRED THIRTY NINTH MON PYMT SER.
492	IM-01	MERRILL LYNCH	781588	CORPORATE INCOME FUND TWO HUNDRED FORTIETH MONTHLY PYMT SER.
493	IM-01	MERRILL LYNCH	781592	CORPORATE INCOME FUND TWO HUNDRED FORTY FIRST MON PYMT SER.
494	IM-01	MERRILL LYNCH	781597	CORPORATE INCOME FUND TWO HUNDRED FORTY SECOND MON PYMT SER.
495	IM-01	MERRILL LYNCH	781604	CORPORATE INCOME FUND TWO HUNDRED FORTY THIRD MON PYMT SER.
496	IM-01	MERRILL LYNCH	841079	CORPORATE INCOME FUND TWO HUNDRED FORTY THIRD SHORT TERM SER.
497	IM-01	MERRILL LYNCH	781609	CORPORATE INCOME FUND TWO HUNDRED FORTY FOURTH MON PYMT SER.
498	IM-01	MERRILL LYNCH	841078	CORPORATE INCOME FUND TWO HUNDRED FORTY FOURTH SHORT TERM SER.
499	IM-01	MERRILL LYNCH	781615	CORPORATE INCOME FUND TWO HUNDRED FORTY FIFTH MON PYMT SER.
500	IM-01	MERRILL LYNCH	781617	CORPORATE INCOME FUND TWO HUNDRED FORTY SIXTH MON PYMT SER.
501	IM-01	MERRILL LYNCH	781621	CORPORATE INCOME FUND TWO HUNDRED FORTY SEVENTH MON PYMT SER.
502	IM-01	MERRILL LYNCH	781625	CORPORATE INCOME FUND TWO HUNDRED FORTY EIGHTH MON PYMT SER.
503	IM-01	MERRILL LYNCH	781629	CORPORATE INCOME FUND TWO HUNDRED FORTY NINTH MON PYMT SER.
504	IM-01	MERRILL LYNCH	781634	CORPORATE INCOME FUND TWO HUNDRED FIFTIETH MON PYMT SER.
505	IM-01	MERRILL LYNCH	768984	CORPORATE INCOME FUND TWO HUNDRED FIFTY FIRST MON PYMT SER.
506	IM-01	MERRILL LYNCH	777890	CORPORATE INCOME FUND TWO HUNDRED FIFTY SECOND MON PYMT SER.
507	IM-01	MERRILL LYNCH	781646	CORPORATE INCOME FUND TWO HUNDRED FIFTY THIRD MON PAY SER.
508	IM-01	MERRILL LYNCH	781651	CORPORATE INCOME FUND TWO HUNDRED FIFTY FOURTH MON PYMT SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
509	IM-01	MERRILL LYNCH	781657	CORPORATE INCOME FUND TWO HUNDRED FIFTY FIFTH MON PYMT SER.
510	IM-01	MERRILL LYNCH	781662	CORPORATE INCOME FUND TWO HUNDRED FIFTY SIXTH MON PYMT SER.
511	IM-01	MERRILL LYNCH	790979	CORPORATE INCOME FUND TWO HUNDRED FIFTY SEVENTH MON PYMT SER.
512	IM-01	MERRILL LYNCH	781669	CORPORATE INCOME FUND TWO HUNDRED FIFTY EIGHTH MON PYMT SER.
513	IM-01	MERRILL LYNCH	781672	CORPORATE INCOME FUND TWO HUNDRED FIFTY NINTH MON PYMT SER.
514	IM-01	MERRILL LYNCH	781674	CORPORATE INCOME FUND TWO HUNDRED SIXTIETH MONTHLY PYMT SER.
515	IM-01	MERRILL LYNCH	781675	CORPORATE INCOME FUND TWO HUNDRED SIXTY FIRST MON PYMT SER.
516	IM-01	MERRILL LYNCH	781678	CORPORATE INCOME FUND TWO HUNDRED SIXTY SECOND MON PYMT SER.
517	IM-01	MERRILL LYNCH	781681	CORPORATE INCOME FUND TWO HUNDRED SIXTY THIRD MON PYMT SER.
518	IM-01	MERRILL LYNCH	781683	CORPORATE INCOME FUND TWO HUNDRED SIXTY FOURTH MON PYMT SER.
519	IM-01	MERRILL LYNCH	781686	CORPORATE INCOME FUND TWO HUNDRED SIXTY FIFTH MON PYMT SER.
520	IM-01	MERRILL LYNCH	781689	CORPORATE INCOME FUND TWO HUNDRED SIXTY SIXTH MON PYMT SER.
521	IM-01	MERRILL LYNCH	781691	CORPORATE INCOME FUND TWO HUNDRED SIXTY SEVENTH MON PYMT SER.
522	IM-01	MERRILL LYNCH	781693	CORPORATE INCOME FUND TWO HUNDRED SIXTY EIGHTH MON PYMT SER.
523	IM-01	MERRILL LYNCH	781697	CORPORATE INCOME FUND TWO HUNDRED SIXTY NINTH MON PYMT SER.
524	IM-01	MERRILL LYNCH	781699	CORPORATE INCOME FUND TWO HUNDRED SEVENTIETH MON PYMT SERIES.
525	IM-01	MERRILL LYNCH	781702	CORPORATE INCOME FUND TWO HUNDRED SEVENTY FIRST MON PYMT SER.
526	IM-01	MERRILL LYNCH	781706	CORPORATE INCOME FUND TWO HUNDRED SEVENTY SECOND MON PAY SER.
527	IM-01	MERRILL LYNCH	781709	CORPORATE INCOME FUND TWO HUNDRED SEVENTY THIRD MON PYMT SER.
528	IM-01	MERRILL LYNCH	781713	CORPORATE INCOME FUND TWO HUNDRED SEVENTY FOURTH MON PAY SER.
529	IM-01	MERRILL LYNCH	781718	CORPORATE INCOME FUND TWO HUNDRED SEVENTY FIFTH MON PYMT SER.
530	IM-01	MERRILL LYNCH	781724	CORPORATE INCOME FUND TWO HUNDRED SEVENTY SIXTH MON PYMT SER.
531	IM-01	MERRILL LYNCH	781727	CORPORATE INCOME FD TWO HUNDRED SEVENTY SEVENTH MON PYMT SER.
532	IM-01	MERRILL LYNCH	781730	CORPORATE INCOME FUND TWO HUNDRED SEVENTY EIGHTH MON PAY SER.
533	IM-01	MERRILL LYNCH	781731	CORPORATE INCOME FUND TWO HUNDRED SEVENTY NINTH MON PYMT SER.
534	IM-01	MERRILL LYNCH	781734	CORPORATE INCOME FUND TWO HUNDRED EIGHTY FIRST MON PYMT SER.
535	IM-01	MERRILL LYNCH	781736	CORPORATE INCOME FUND TWO HUNDRED EIGHTY SECOND MON PYMT SER.
536	IM-01	MERRILL LYNCH	781739	CORPORATE INCOME FUND TWO HUNDRED EIGHTY THIRD MON PYMT SER.
537	IM-01	MERRILL LYNCH	781741	CORPORATE INCOME FUND TWO HUNDRED EIGHTY FOURTH MON PYMT SER.
538	IM-01	MERRILL LYNCH	781746	CORPORATE INCOME FUND TWO HUNDRED EIGHTY FIFTH MON PYMT SER.
539	IM-01	MERRILL LYNCH	781749	CORPORATE INCOME FUND TWO HUNDRED EIGHTY SIXTH MON PYMT SER.
540	IM-01	MERRILL LYNCH	781752	CORPORATE INCOME FUND TWO HUNDRED EIGHTY SEVENTH MON PYMT SER.
541	IM-01	MERRILL LYNCH	758022	CORPORATE INCOME FUND TWO HUNDRED EIGHTH MONTHLY PAYMENT SER.
542	IM-01	MERRILL LYNCH	781753	CORPORATE INCOME FUND TWO HUNDRED EIGHTY EIGHTH MON PYMT SER.
543	IM-01	MERRILL LYNCH	781757	CORPORATE INCOME FUND TWO HUNDRED EIGHTY NINTH MON PYMT SER.
544	IM-01	MERRILL LYNCH	781760	CORPORATE INCOME FUND TWO HUNDRED NINETIETH MONTHLY PYMT SER.
545	IM-01	MERRILL LYNCH	781763	CORPORATE INCOME FUND TWO HUNDRED NINETY FIRST MON PYMT SER.
546	IM-01	MERRILL LYNCH	781766	CORPORATE INCOME FUND TWO HUNDRED NINETY SECOND MON PYMT SER.
547	IM-01	MERRILL LYNCH	781769	CORPORATE INCOME FUND TWO HUNDRED NINETY THIRD MON PYMT SER.
548	IM-01	MERRILL LYNCH	781772	CORPORATE INCOME FUND TWO HUNDRED NINETY FOURTH MON PYMT SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
549	IM-01	MERRILL LYNCH	781774	CORPORATE INCOME FUND TWO HUNDRED NINETY FIFTH MON PYMT SER.
550	IM-01	MERRILL LYNCH	781775	CORPORATE INCOME FUND TWO HUNDRED NINETY SIXTH MON PYMT SER.
551	IM-01	MERRILL LYNCH	781776	CORPORATE INCOME FUND TWO HUNDRED NINETY SEVENTH MON PAY SER.
552	IM-01	MERRILL LYNCH	781778	CORPORATE INCOME FUND TWO HUNDRED NINETY EIGHTH MON PYMT SER.
553	IM-01	MERRILL LYNCH	781781	CORPORATE INCOME FUND TWO HUNDRED NINETY NINTH MON PYMT SER.
554	IM-01	MERRILL LYNCH	862554	CORPORATE INCOME FUND THREE HUNDREDTH MONTHLY PYMT SER.
555	IM-01	MERRILL LYNCH	781785	CORPORATE INCOME FUND THREE HUNDRED FIRST MONTHLY PYMT SER.
556	IM-01	MERRILL LYNCH	781802	DEFINED ASSET FDS CORP INCOME FD THREE HUNDRED FOURTH MPS.
557	IM-01	MERRILL LYNCH	781788	DEFINED ASSET FDS CORP INCOME FD THREE HUNDRED SECOND MPS.
558	IM-01	MERRILL LYNCH	781791	CORPORATE INCOME FUND THREE HUNDRED THIRD MONTHLY PYMT SER.
559	IM-01	MERRILL LYNCH	843849	CORPORATE INCOME FUND PRINCIPAL INSURED TRUST SERIES 1.
560	IM-01	MERRILL LYNCH	24855	CORPORATE INCOME FUND SECOND PREFERRED STOCK SERIES.
561	IM-01	MERRILL LYNCH	24863	CORPORATE INCOME FUND THIRD PREFERRED STOCK SERIES.
562	IM-01	MERRILL LYNCH	24851	CORPORATE INCOME FUND FOURTH PREFERRED STOCK SERIES.
563	IM-01	MERRILL LYNCH	201570	CORPORATE INCOME FUND SEVENTH PREFERRED STOCK SERIES.
564	IM-01	MERRILL LYNCH	201571	CORPORATE INCOME FUND EIGHTH PREFERRED STOCK SERIES.
565	IM-01	MERRILL LYNCH	215557	CORPORATE INCOME FUND NINTH PREFERRED STOCK SERIES.
566	IM-01	MERRILL LYNCH	215564	CORPORATE INCOME FUND TENTH PREFERRED STOCK SERIES.
567	IM-01	MERRILL LYNCH	225213	CORPORATE INCOME FUND ELEVENTH PREFERRED STOCK SERIES.
568	IM-01	MERRILL LYNCH	024844	CORPORATE INCOME FUND FIFTH PREFERRED STOCK SERIES.
569	IM-01	MERRILL LYNCH	024896	CORPORATE INCOME FUND SIXTH PREFERRED STOCK SERIES.
570	IM-01	MERRILL LYNCH	702529	CORPORATE INCOME FUND FIRST PREFERRED STOCK PUT SERIES.
571	IM-01	MERRILL LYNCH	741673	CORPORATE INCOME FUND SECOND PREFERRED STOCK PUT SERIES.
572	IM-01	MERRILL LYNCH	758347	CORPORATE INCOME FUND THIRD PREFERRED STOCK PUT SERIES.
573	IM-01	MERRILL LYNCH	758345	CORPORATE INCOME FUND FOURTH PREFERRED STOCK PUT SERIES.
574	IM-01	MERRILL LYNCH	758121	CORPORATE INCOME FUND FIFTH PREFERRED STOCK PUT SERIES.
575	IM-01	MERRILL LYNCH	768987	CORPORATE INCOME FUND SIXTH PREFERRED STOCK PUT SERIES.
576	IM-01	MERRILL LYNCH	782397	CORPORATE INCOME FUND SELECT SERIES 12.
577	IM-01	MERRILL LYNCH	782398	CORPORATE INCOME FUND SELECT SERIES 13.
578	IM-01	MERRILL LYNCH	782399	CORPORATE INCOME FUND SELECT SERIES 14.
579	IM-01	MERRILL LYNCH	351392	CORPORATE INCOME FUND ONE HUNDRED SEVENTH SHORT TERM SERIES.
580	IM-01	MERRILL LYNCH	352545	CORPORATE INCOME FUND ONE HUNDRED FOURTEENTH SHORT TERM SERIES.
581	IM-01	MERRILL LYNCH	723075	CORPORATE INCOME FD TWO HUNDRED THIRTY FIRST SHORT TERM SER.
582	IM-01	MERRILL LYNCH	748093	CORPORATE INCOME FUND EIGHTH COLLATERALIZED BOND SERIES.
583	IM-01	MERRILL LYNCH	854564	DEFINED ASSET FDS EQUITY INCOME FD CONCEPT SER TELE UTIL TR.
584	IM-01	MERRILL LYNCH	853364	EQUITY INCOME FUND CONCEPT SERIES ENERGY TRUST.
585	IM-01	MERRILL LYNCH	822636	EQUITY INCOME FUND CONCEPT SERIES ENVIRONMENTAL TECH TRUST.
586	IM-01	MERRILL LYNCH	854562	EQUITY INCOME FUND CONCEPT SERIES HEALTH CARE TRUST.
587	IM-01	MERRILL LYNCH	853363	EQUITY INCOME FUND CONCEPT SERIES NATURAL GAS TRUST.
588	IM-01	MERRILL LYNCH	852594	EQUITY INCOME FUND CONCEPT SERIES REBUILDING AMERICA TRUST.
589	IM-01	MERRILL LYNCH	854561	EQUITY INCOME FUND CONCEPT SERIES THE NEW EUROPE TRUST.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
590	IM-01	MERRILL LYNCH	793577	EQUITY INCOME FUND BLUE CHIP STOCK SERIES 1.
591	IM-01	MERRILL LYNCH	793576	EQUITY INCOME FUND GROUP ONE OVERSEAS INDEX FD SERIES 1 & 2.
592	IM-01	MERRILL LYNCH	822637	EQUITY INCOME FUND MERRILL LYNCH EQUITY TRUST 1.
593	IM-01	MERRILL LYNCH	351732	EQUITY INCOME FUND S&P 500 INDEX FIRST MONTHLY PAYMENT SERIES.
594	IM-01	MERRILL LYNCH	854525	EQUITY INCOME FD CONCEPT SERIES ENVIRONMENTAL TECH TR SER 2.
595	IM-01	MERRILL LYNCH	731871	EQUITY INCOME FUND SECOND EXCHANGE SERIES AT&T SHARES.
596	IM-01	MERRILL LYNCH	854565	DEFINED ASSET FDS EQUITY INCOME FD CONCEPT SERIES 10.
597	IM-01	MERRILL LYNCH	816226	EQUITY INCOME FD MERRILL LYNCH EQUITY RES INVT TR 1987 SE CA.
598	IM-01	MERRILL LYNCH	810028	EQUITY INCOME FUND MERIT 1987 SERIES INTERNATIONAL STOCKS.
599	IM-01	MERRILL LYNCH	822331	EQUITY INCOME FD MERRILL LYNCH EQUITY RES INVT TR 1988 SER.
600	IM-01	MERRILL LYNCH	822633	EQUITY INCOME FD MERRILL LYNCH EQ RES INVT TR 1988 SER II.
601	IM-01	MERRILL LYNCH	822634	EQUITY INCOME FD MERRILL LYNCH EQ RES INVT TR 1988 SER III.
602	IM-01	MERRILL LYNCH	822635	EQUITY INCOME FD MERRILL LYNCH EQ RES INVT TR 1989 SER I.
603	IM-01	MERRILL LYNCH	854563	EQUITY INCOME FUND CONCEPT SERIES ECOLOGICAL TRUST 1990.
604	IM-01	MERRILL LYNCH	796171	EQUITY INCOME FUND BLUE CHIP STOCK SERIES 2.
605	IM-01	MERRILL LYNCH	313358	EQUITY INCOME FUND FIRST UTILITY COMMON STOCK SERIES.
606	IM-01	MERRILL LYNCH	317329	EQUITY INCOME FUND SECOND UTILITY COMMON STOCK SERIES.
607	IM-01	MERRILL LYNCH	317421	EQUITY INCOME FUND THIRD UTILITY COMMON STOCK SERIES.
608	IM-01	MERRILL LYNCH	318480	EQUITY INCOME FUND FIFTH UTILITY COMMON STOCK SERIES.
609	IM-01	MERRILL LYNCH	779876	EQUITY INCOME FUND SIXTH UTILITY COMMON STOCK SERIES.
610	IM-01	MERRILL LYNCH	745995	EQUITY INCOME FUND SEVENTH UTILITY COMMON STOCK SERIES.
611	IM-01	MERRILL LYNCH	766703	EQUITY INCOME FUND EIGHTH UTILITY COMMON STOCK SERIES.
612	IM-01	MERRILL LYNCH	773286	EQUITY INCOME FUND NINTH UTILITY STOCK SERIES.
613	IM-01	MERRILL LYNCH	781240	EQUITY INCOME FUND TENTH UTILITY STOCK SERIES.
614	IM-01	MERRILL LYNCH	781244	EQUITY INCOME FUND ELEVENTH UTILITY STOCK SERIES.
615	IM-01	MERRILL LYNCH	781249	EQUITY INCOME FUND TWELFTH UTILITY STOCK SERIES.
616	IM-01	MERRILL LYNCH	781256	EQUITY INCOME FUND THIRTEENTH UTILITY STOCK SERIES.
617	IM-01	MERRILL LYNCH	781258	EQUITY INCOME FUND FOURTEENTH UTILITY COMMON STOCK SERIES.
618	IM-01	MERRILL LYNCH	781261	EQUITY INCOME FUND FIFTEENTH UTILITY STOCK SERIES.
619	IM-01	MERRILL LYNCH	318042	EQUITY INCOME FUND FOURTH UTILITY COMMON STOCK SERIES.
620	IM-01	MERRILL LYNCH	797761	GOVERNMENT SECURITIES INCOME FUND FREDDIE MAC SERIES 3.
621	IM-01	MERRILL LYNCH	275472	GOVERNMENT SECURITIES INCOME FUND THIRD GNMA SERIES.
622	IM-01	MERRILL LYNCH	275471	GOVERNMENT SECURITIES INCOME FUND FOURTH GNMA SERIES.
623	IM-01	MERRILL LYNCH	278040	GOVERNMENT SECURITIES INCOME FUND NINTH GNMA SERIES.
624	IM-01	MERRILL LYNCH	318725	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES A.
625	IM-01	MERRILL LYNCH	775971	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES Z.
626	IM-01	MERRILL LYNCH	797783	GOVERNMENT SECURITIES INCOME FUND FREDDIE MAC SERIES 10.
627	IM-01	MERRILL LYNCH	278276	GOVERNMENT SECURITIES INCOME FUND TENTH GNMA SERIES.
628	IM-01	MERRILL LYNCH	314131	GOVERNMENT SECURITIES INCOME FUND NINETEENTH GNMA SERIES.
629	IM-01	MERRILL LYNCH	314291	GOVERNMENT SECURITIES INCOME FUND TWENTIETH GNMA SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
630	IM-01	MERRILL LYNCH	314764	GOVERNMENT SECURITIES INCOME FUND TWENTY FIRST GNMA SERIES.
631	IM-01	MERRILL LYNCH	315878	GOVERNMENT SECURITIES INCOME FUND TWENTY SECOND GNMA SERIES.
632	IM-01	MERRILL LYNCH	317034	GOVERNMENT SECURITIES INCOME FUND TWENTY THIRD GNMA SERIES.
633	IM-01	MERRILL LYNCH	318509	GOVERNMENT SECURITIES INCOME FUND TWENTY SIXTH GNMA SERIES.
634	IM-01	MERRILL LYNCH	318503	GOVERNMENT SECURITIES INCOME FUND TWENTY SEVENTH GNMA SERIES.
635	IM-01	MERRILL LYNCH	318510	GOVERNMENT SECURITIES INCOME FUND TWENTY EIGHTH GNMA SERIES.
636	IM-01	MERRILL LYNCH	796128	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 1.
637	IM-01	MERRILL LYNCH	797674	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 2.
638	IM-01	MERRILL LYNCH	797770	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 4.
639	IM-01	MERRILL LYNCH	797772	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 5.
640	IM-01	MERRILL LYNCH	797774	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 6.
641	IM-01	MERRILL LYNCH	797776	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 7.
642	IM-01	MERRILL LYNCH	797778	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 8.
643	IM-01	MERRILL LYNCH	797780	GOVERNMENT SECURITIES INCOME FUND FRED-DIE MAC SERIES 9.
644	IM-01	MERRILL LYNCH	230256	GOVERNMENT SECURITIES INCOME FUND SECOND GNMA SERIES.
645	IM-01	MERRILL LYNCH	276386	GOVERNMENT SECURITIES INCOME FUND FIFTH GNMA SERIES.
646	IM-01	MERRILL LYNCH	276751	GOVERNMENT SECURITIES INCOME FUND SIXTH GNMA SERIES.
647	IM-01	MERRILL LYNCH	276774	GOVERNMENT SECURITIES INCOME FUND SEVENTH GNMA SERIES.
648	IM-01	MERRILL LYNCH	277325	GOVERNMENT SECURITIES INCOME FUND EIGHTH GNMA SERIES.
649	IM-01	MERRILL LYNCH	319056	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES B.
650	IM-01	MERRILL LYNCH	320319	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES C.
651	IM-01	MERRILL LYNCH	355917	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES D.
652	IM-01	MERRILL LYNCH	356387	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES E.
653	IM-01	MERRILL LYNCH	701471	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES F.
654	IM-01	MERRILL LYNCH	702871	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES G.
655	IM-01	MERRILL LYNCH	702872	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES H.
656	IM-01	MERRILL LYNCH	707795	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES I.
657	IM-01	MERRILL LYNCH	707794	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES J.
658	IM-01	MERRILL LYNCH	712750	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES K.
659	IM-01	MERRILL LYNCH	712773	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES L.
660	IM-01	MERRILL LYNCH	717803	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES M.
661	IM-01	MERRILL LYNCH	718095	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES N.
662	IM-01	MERRILL LYNCH	726322	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES O.
663	IM-01	MERRILL LYNCH	726328	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES P.
664	IM-01	MERRILL LYNCH	733963	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES Q.
665	IM-01	MERRILL LYNCH	733704	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES R.
666	IM-01	MERRILL LYNCH	751165	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES S.
667	IM-01	MERRILL LYNCH	751163	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES T.
668	IM-01	MERRILL LYNCH	752748	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES U.
669	IM-01	MERRILL LYNCH	763280	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES V.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
670	IM-01	MERRILL LYNCH	768916	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES W.
671	IM-01	MERRILL LYNCH	770718	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES X.
672	IM-01	MERRILL LYNCH	777965	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES Y.
673	IM-01	MERRILL LYNCH	310186	GOVERNMENT SECURITIES INCOME FUND ELEVENTH GNMA SERIES.
674	IM-01	MERRILL LYNCH	310978	GOVERNMENT SECURITIES INCOME FUND TWELFTH GNMA SERIES.
675	IM-01	MERRILL LYNCH	311744	GOVERNMENT SECURITIES INCOME FUND THIRTEENTH GNMA SERIES.
676	IM-01	MERRILL LYNCH	311858	GOVERNMENT SECURITIES INCOME FUND FOURTEENTH GNMA SERIES.
677	IM-01	MERRILL LYNCH	312078	GOVERNMENT SECURITIES INCOME FUND FIFTEENTH GNMA SERIES.
678	IM-01	MERRILL LYNCH	312153	GOVERNMENT SECURITIES INCOME FUND SIXTEENTH GNMA SERIES.
679	IM-01	MERRILL LYNCH	312910	GOVERNMENT SECURITIES INCOME FUND SEVENTEENTH GNMA SERIES.
680	IM-01	MERRILL LYNCH	781272	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1A.
681	IM-01	MERRILL LYNCH	781276	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1B.
682	IM-01	MERRILL LYNCH	781280	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1C.
683	IM-01	MERRILL LYNCH	781283	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1D.
684	IM-01	MERRILL LYNCH	781287	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1E.
685	IM-01	MERRILL LYNCH	781291	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1F.
686	IM-01	MERRILL LYNCH	781293	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1G.
687	IM-01	MERRILL LYNCH	781296	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1H.
688	IM-01	MERRILL LYNCH	781299	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1I.
689	IM-01	MERRILL LYNCH	781302	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1J.
690	IM-01	MERRILL LYNCH	781306	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1K.
691	IM-01	MERRILL LYNCH	781309	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1L.
692	IM-01	MERRILL LYNCH	781311	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1M NRA.
693	IM-01	MERRILL LYNCH	781314	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1N.
694	IM-01	MERRILL LYNCH	781317	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 10 NRA.
695	IM-01	MERRILL LYNCH	781323	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1P.
696	IM-01	MERRILL LYNCH	781320	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1Q NRA.
697	IM-01	MERRILL LYNCH	781325	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1R.
698	IM-01	MERRILL LYNCH	781328	GOVERNMENT SECURITIES INCOME FUND GNMA SERIES 1S.
699	IM-01	MERRILL LYNCH	781334	DEFINED ASSET FUNDS GOVERNMENT SECURITIES INC FD GNMA SER 1U.
700	IM-01	MERRILL LYNCH	317606	GOVERNMENT SECURITIES INCOME FUND TWENTY FOURTH GNMA SERIES.
701	IM-01	MERRILL LYNCH	318296	GOVERNMENT SECURITIES INCOME FUND TWENTY FIFTH GNMA SERIES.
702	IM-01	MERRILL LYNCH	318733	GOVERNMENT SECURITIES INCOME FUND TWENTY NINTH GNMA SERIES.
703	IM-01	MERRILL LYNCH	814465	GOVERNMENT SECURITIES INCOME FD US GOVT ZERO COUPON BD SER 1.
704	IM-01	MERRILL LYNCH	842327	GOVERNMENT SECURITIES INCOME FD US GOVT ZERO COUPON BD SER 2.
705	IM-01	MERRILL LYNCH	845859	GOVERNMENT SECURITIES INCOME FD US GOVT ZERO COUPON BD SER 3.
706	IM-01	MERRILL LYNCH	847117	GOVERNMENT SECURITIES INCOME FD US GOVT ZERO COUP BD SER 4.
707	IM-01	MERRILL LYNCH	824466	GOVERNMENT SECURITIES INCOME FUND TREASURY ZERO SERIES 5.
708	IM-01	MERRILL LYNCH	781698	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 1.
709	IM-01	MERRILL LYNCH	781751	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 2.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
710	IM-01	MERRILL LYNCH	781754	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 3.
711	IM-01	MERRILL LYNCH	781758	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 4.
712	IM-01	MERRILL LYNCH	828427	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 5.
713	IM-01	MERRILL LYNCH	781765	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 6.
714	IM-01	MERRILL LYNCH	781773	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 8.
715	IM-01	MERRILL LYNCH	781818	GOVERNMENT SECURITIES INCOME FUND MON PYMT US TREAS SER 9.
716	IM-01	MERRILL LYNCH	781768	GOVERNMENT SECURITIES INCOME FD US TREAS SER 7 LADDERED ZERO.
717	IM-01	MERRILL LYNCH	706121	GOVERNMENT SECURITIES INCOME FD US TREA ACC SER PAYOUT SER 1.
718	IM-01	MERRILL LYNCH	705192	GOVERNMENT SECURITIES INCOME FD US TREASURY ACCUM SER A.
719	IM-01	MERRILL LYNCH	781762	GOVERNMENT SECURITIES INCOME FUND US TREASURY GOLD SERIES 1.
720	IM-01	MERRILL LYNCH	852492	INTERNATIONAL BD FD FIRST CITIES OF AUS CRE LYN AUS MOR SER 1.
721	IM-01	MERRILL LYNCH	839328	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 2.
722	IM-01	MERRILL LYNCH	839329	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 3.
723	IM-01	MERRILL LYNCH	840564	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 4.
724	IM-01	MERRILL LYNCH	842479	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 5.
725	IM-01	MERRILL LYNCH	842480	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 6.
726	IM-01	MERRILL LYNCH	842481	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 7.
727	IM-01	MERRILL LYNCH	842482	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 8.
728	IM-01	MERRILL LYNCH	842483	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 9.
729	IM-01	MERRILL LYNCH	842484	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 10.
730	IM-01	MERRILL LYNCH	782330	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 2.
731	IM-01	MERRILL LYNCH	794490	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 3.
732	IM-01	MERRILL LYNCH	794687	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 4.
733	IM-01	MERRILL LYNCH	794688	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 5.
734	IM-01	MERRILL LYNCH	794689	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 6.
735	IM-01	MERRILL LYNCH	794690	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 7.
736	IM-01	MERRILL LYNCH	794691	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 8.
737	IM-01	MERRILL LYNCH	794692	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 9.
738	IM-01	MERRILL LYNCH	794693	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 10.
739	IM-01	MERRILL LYNCH	794695	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 12.
740	IM-01	MERRILL LYNCH	794696	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 13.
741	IM-01	MERRILL LYNCH	794698	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 15.
742	IM-01	MERRILL LYNCH	794697	INTERNATIONAL BD FD AUSTRALIAN & NEW ZEALAND DOL BD SER 16.
743	IM-01	MERRILL LYNCH	796507	INTERNATIONAL BD FUND AUSTRALIAN & NEW ZEALAND DOL BD SER 17.
744	IM-01	MERRILL LYNCH	782329	INTERNATIONAL BD FD AUSTRALIAN & NEW ZEALAND DOL BD SER 18.
745	IM-01	MERRILL LYNCH	794702	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 19.
746	IM-01	MERRILL LYNCH	794703	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 20.
747	IM-01	MERRILL LYNCH	819051	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 21.
748	IM-01	MERRILL LYNCH	819052	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 22.
749	IM-01	MERRILL LYNCH	819053	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 23.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
750	IM-01	MERRILL LYNCH	819055	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 24.
751	IM-01	MERRILL LYNCH	819056	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 25.
752	IM-01	MERRILL LYNCH	825318	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 26.
753	IM-01	MERRILL LYNCH	819059	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 27.
754	IM-01	MERRILL LYNCH	819060	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 28.
755	IM-01	MERRILL LYNCH	819061	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 29.
756	IM-01	MERRILL LYNCH	819062	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 30.
757	IM-01	MERRILL LYNCH	819064	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 31.
758	IM-01	MERRILL LYNCH	819065	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 32.
759	IM-01	MERRILL LYNCH	819066	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 33.
760	IM-01	MERRILL LYNCH	819067	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 34.
761	IM-01	MERRILL LYNCH	819068	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 35.
762	IM-01	MERRILL LYNCH	819069	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 36.
763	IM-01	MERRILL LYNCH	819070	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 37.
764	IM-01	MERRILL LYNCH	819072	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 38.
765	IM-01	MERRILL LYNCH	819075	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 39.
766	IM-01	MERRILL LYNCH	819076	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 40.
767	IM-01	MERRILL LYNCH	852775	INTERNATIONAL BOND FD AUSTRALIAN & NEW ZEALAND DOL BD SER 41.
768	IM-01	MERRILL LYNCH	853186	DEFINED ASSET FDS INTL BD FD AUST & NEW ZEA DOL BDS SER 42.
769	IM-01	MERRILL LYNCH	853187	DEFINED ASSET FDS INTL BD FD AUS & NEW ZEAL DOL BDS SER 43.
770	IM-01	MERRILL LYNCH	831693	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 10.
771	IM-01	MERRILL LYNCH	827787	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 2.
772	IM-01	MERRILL LYNCH	828733	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 3.
773	IM-01	MERRILL LYNCH	828734	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 4.
774	IM-01	MERRILL LYNCH	829358	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 5.
775	IM-01	MERRILL LYNCH	830211	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 6.
776	IM-01	MERRILL LYNCH	830943	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 7.
777	IM-01	MERRILL LYNCH	831691	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 8.
778	IM-01	MERRILL LYNCH	831692	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 9.
779	IM-01	MERRILL LYNCH	831694	INTERNATIONAL BOND FUND CANADIAN DOLLAR BONDS SERIES 11.
780	IM-01	MERRILL LYNCH	842485	INTERNATIONAL BOND FUND AUSTRALIAN DOLLAR BONDS SERIES 11.
781	IM-01	MERRILL LYNCH	740972	INTERNATIONAL BOND FUND FIRST MULTI CURRENCY SERIES.
782	IM-01	MERRILL LYNCH	764472	INTERNATIONAL BOND FUND THIRD MULTI CURRENCY SERIES.
783	IM-01	MERRILL LYNCH	765227	INTERNATIONAL BOND FUND FOURTH MULTI CURRENCY SERIES.
784	IM-01	MERRILL LYNCH	765224	INTERNATIONAL BOND FUND FIFTH MULTI CURRENCY SERIES.
785	IM-01	MERRILL LYNCH	768743	INTERNATIONAL BOND FUND SIXTH MULTI CURRENCY SERIES.
786	IM-01	MERRILL LYNCH	769877	INTERNATIONAL BOND FUND SEVENTH MULTI CURRENCY SERIES.
787	IM-01	MERRILL LYNCH	773284	INTERNATIONAL BOND FUND EIGHTH MULTI CURRENCY SERIES.
788	IM-01	MERRILL LYNCH	774028	INTERNATIONAL BOND FUND NINTH MULTI CURRENCY SERIES.
789	IM-01	MERRILL LYNCH	778411	INTERNATIONAL BOND FUND TENTH MULTI CURRENCY SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
790		IM-01	MERRILL LYNCH	782324	INTERNATIONAL BOND FUND ELEVENTH MULTI CURRENCY SERIES.
791		IM-01	MERRILL LYNCH	782325	INTERNATIONAL BOND FUND TWELFTH MULTI CURRENCY SER.
792		IM-01	MERRILL LYNCH	782326	INTERNATIONAL BOND FUND THIRTEENTH MULTI CURRENCY SERIES.
793		IM-01	MERRILL LYNCH	782327	INTERNATIONAL BOND FUND FOURTEENTH MULTI CURRENCY SERIES.
794		IM-01	MERRILL LYNCH	782328	INTERNATIONAL BOND FUND FIFTEENTH MULTI CURRENCY SERIES.
795		IM-01	MERRILL LYNCH	819058	INTERNATIONAL BOND FUND SIXTEENTH MULTI CURRENCY SER.
796		IM-01	MERRILL LYNCH	782331	INTERNATIONAL BOND FUND EIGHTEENTH MULTI CURRENCY SERIES.
797		IM-01	MERRILL LYNCH	782332	INTERNATIONAL BD FD NINETEENTH MULTI CURRENCY SER.
798		IM-01	MERRILL LYNCH	782334	INTERNATIONAL BOND FUND TWENTY FIRST MULTI CURRENCY SERIES.
799		IM-01	MERRILL LYNCH	782336	INTERNATIONAL BOND FUND TWENTY-SECOND MULTI CURRENCY SERIES.
800		IM-01	MERRILL LYNCH	782337	DEFINED ASSET FDS INTERNATIONAL BD FD TWENTY THIRD MULTI CUR.
801		IM-01	MERRILL LYNCH	782338	DEFINED ASSET FDS INTL BD FD TWENTY FOURTH MULTI CUR SER.
802		IM-01	MERRILL LYNCH	825317	INTERNATIONAL BOND FUND SEVENTEENTH MULTI CURRENCY SERIES/NY.
803		IM-01	MERRILL LYNCH	275572	DEFINED ASSET FUNDS INTERNATIONAL BOND FD 23RD MO PAY SERIES.
804		IM-01	MERRILL LYNCH	883649	DEFINED ASSET FUNDS CORPORATE INCOME FD INTERM TEM SER 38.
805		IM-01	MERRILL LYNCH	355225	LIBERTY STREET TRUST FIRST CORPORATE MONTHLY PAYMENT SERIES.
806		IM-01	MERRILL LYNCH	702137	LIBERTY STREET TRUST SECOND CORPORATE MONTHLY PAYMENT SERIES.
807		IM-01	MERRILL LYNCH	703477	LIBERTY STREET TRUST THIRD CORPORATE MONTHLY PAYMENT SERIES.
808		IM-01	MERRILL LYNCH	704205	LIBERTY STREET TRUST FOURTH CORPORATE MONTHLY PAYMENT SERIES.
809		IM-01	MERRILL LYNCH	705373	LIBERTY STREET TRUST FIFTH CORPORATE MONTHLY PAYMENT SERIES.
810		IM-01	MERRILL LYNCH	705976	LIBERTY STREET TRUST SIXTH CORPORATE MONTHLY PAYMENT SERIES.
811		IM-01	MERRILL LYNCH	706123	LIBERTY STREET TRUST SEVENTH CORPORATE MONTHLY PAYMENT SER.
812		IM-01	MERRILL LYNCH	706369	LIBERTY STREET TRUST EIGHTH CORPORATE MONTHLY PAYMENT SERIES.
813		IM-01	MERRILL LYNCH	708135	LIBERTY STREET TRUST NINTH CORPORATE MONTHLY PAYMENT SERIES.
814		IM-01	MERRILL LYNCH	710786	LIBERTY STREET TRUST TENTH CORPORATE MONTHLY PAYMENT SERIES.
815		IM-01	MERRILL LYNCH	716389	LIBERTY STREET TRUST TWELFTH CORPORATE MONTHLY PAYMENT SERIES.
816		IM-01	MERRILL LYNCH	719713	LIBERTY STREET TRUST FOURTEENTH CORPORATE MON PYMT SER.
817		IM-01	MERRILL LYNCH	722747	LIBERTY STREET TRUST FIFTEENTH CORPORATE MONTHLY PAYMENT SER.
818		IM-01	MERRILL LYNCH	725069	LIBERTY STREET TRUST SIXTEENTH CORPORATE MONTHLY PAYMENT SER.
819		IM-01	MERRILL LYNCH	726848	LIBERTY STREET TRUST SEVENTEENTH CORPORATE MONTHLY PAYMENT SER.
820		IM-01	MERRILL LYNCH	729984	LIBERTY STREET TRUST EIGHTEENTH CORPORATE MONTHLY PAYMENT SER.
821		IM-01	MERRILL LYNCH	731416	LIBERTY STREET TRUST NINETEENTH CORPORATE MONTHLY PYMT SER.
822		IM-01	MERRILL LYNCH	731948	LIBERTY STREET TRUST TWENTIETH CORPORATE MONTHLY PAYMENT SER.
823		IM-01	MERRILL LYNCH	736173	LIBERTY STREET TRUST TWENTY FIRST CORPORATE MONTHLY PAYMENT.
824		IM-01	MERRILL LYNCH	739320	LIBERTY STREET TRUST TWENTY SECOND CORPORATE MONTHLY PAYMENT.
825		IM-01	MERRILL LYNCH	740829	LIBERTY STREET TRUST TWENTY THIRD CORPORATE MONTHLY PAYMENT.
826		IM-01	MERRILL LYNCH	357292	LIBERTY STREET TRUST FIRST MUNICIPAL MONTHLY PAYMENT SERIES.
827		IM-01	MERRILL LYNCH	701987	LIBERTY STREET TRUST SECOND MUNICIPAL MONTHLY PAYMENT SERIES.
828		IM-01	MERRILL LYNCH	702171	LIBERTY STREET TRUST THIRD MUNICIPAL MONTHLY PAYMENT SERIES.
829		IM-01	MERRILL LYNCH	703663	LIBERTY STREET TRUST FOURTH MUNICIPAL MONTHLY PAYMENT SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
830	IM-01	MERRILL LYNCH	705032	LIBERTY STREET TRUST FIFTH MUNICIPAL MONTHLY PAYMENT SERIES.
831	IM-01	MERRILL LYNCH	705967	LIBERTY STREET TRUST SIXTH MUNICIPAL MONTHLY PAYMENT SERIES.
832	IM-01	MERRILL LYNCH	706117	LIBERTY STREET TRUST SEVENTH MUNICIPAL MONTHLY PAYMENT SERIES.
833	IM-01	MERRILL LYNCH	706134	LIBERTY STREET TRUST EIGHTH MUNICIPAL MONTHLY PAYMENT SERIES.
834	IM-01	MERRILL LYNCH	710645	LIBERTY STREET TRUST NINTH MUNICIPAL MONTHLY PAYMENT SERIES.
835	IM-01	MERRILL LYNCH	715063	LIBERTY STREET TRUST ELEVENTH CORPORATE MONTHLY PAYMENT SERIES.
836	IM-01	MERRILL LYNCH	717519	LIBERTY STREET TRUST THIRTEENTH CORPORATE MONTHLY PAYMENT SERIES.
837	IM-01	MERRILL LYNCH	797671	MUNICIPAL INVESTMENT TRUST FUND SERIES 1Q.
838	IM-01	MERRILL LYNCH	277221	MUNICIPAL INVESTMENT TRUST FUND SERIES 1F.
839	IM-01	MERRILL LYNCH	277217	MUNICIPAL INVESTMENT TRUST FUND SERIES 1G.
840	IM-01	MERRILL LYNCH	277220	MUNICIPAL INVESTMENT TRUST FUND SERIES 1H.
841	IM-01	MERRILL LYNCH	277111	MUNICIPAL INVESTMENT TRUST FUND SERIES 1I.
842	IM-01	MERRILL LYNCH	277110	MUNICIPAL INVESTMENT TRUST FUND SERIES 1J.
843	IM-01	MERRILL LYNCH	277112	MUNICIPAL INVESTMENT TRUST FUND SERIES 1K.
844	IM-01	MERRILL LYNCH	277114	MUNICIPAL INVESTMENT TRUST FUND SERIES 1L.
845	IM-01	MERRILL LYNCH	277113	MUNICIPAL INVESTMENT TRUST FUND SERIES 1M.
846	IM-01	MERRILL LYNCH	277218	MUNICIPAL INVESTMENT TRUST FUND SERIES 1N.
847	IM-01	MERRILL LYNCH	351900	MUNICIPAL INVESTMENT TRUST TRUST FUND SECOND THREE YEAR SERIES.
848	IM-01	MERRILL LYNCH	858478	MUNICIPAL INVESTMENT TRUST FUND FIRST AMT MON PYMT SERIES.
849	IM-01	MERRILL LYNCH	858458	MUNICIPAL INVESTMENT TRUST FUND SECOND AMT MONTHLY PYMT SER.
850	IM-01	MERRILL LYNCH	803704	MUNICIPAL INVESTMENT TRUST FUND THIRD AMT MON PYMT SER.
851	IM-01	MERRILL LYNCH	858767	MUNICIPAL INVESTMENT TRUST FUND FOURTH AMT MONTHLY PYMT SER.
852	IM-01	MERRILL LYNCH	858768	MUNICIPAL INVESTMENT TRUST FUND FIFTH AMT MONTHLY PYMT SER.
853	IM-01	MERRILL LYNCH	858769	MUNICIPAL INVESTMENT TRUST FUND SIXTH AMT MONTHLY PYMT SER.
854	IM-01	MERRILL LYNCH	858770	MUNICIPAL INVESTMENT TRUST FUND SEVENTH AMT MONTHLY PYMT SER.
855	IM-01	MERRILL LYNCH	858771	MUNICIPAL INVESTMENT TRUST FUND EIGHTH AMT MONTHLY PYMT SER.
856	IM-01	MERRILL LYNCH	858772	DEFINED ASSET FDS MUNICIPAL INVT TR FD NINTH AMT MON PYMT SE.
857	IM-01	MERRILL LYNCH	858773	DEFINED ASSET FDS MUN INVT TR FD TENTH AMT MONTHLY PYMT SER.
858	IM-01	MERRILL LYNCH	313081	MUNICIPAL INVESTMENT TRUST FUND SECOND CALIFORNIA SERIES.
859	IM-01	MERRILL LYNCH	357379	MUNICIPAL INVESTMENT TRUST FUND THIRD CALIFORNIA SERIES.
860	IM-01	MERRILL LYNCH	357441	MUNICIPAL INVESTMENT TRUST FUND FOURTH CALIFORNIA SERIES.
861	IM-01	MERRILL LYNCH	700774	MUNICIPAL INVESTMENT TRUST FUND FIFTH CALIFORNIA SERIES.
862	IM-01	MERRILL LYNCH	701263	MUNICIPAL INVESTMENT TRUST FUND SIXTH CALIFORNIA SERIES.
863	IM-01	MERRILL LYNCH	701472	MUNICIPAL INVESTMENT TRUST FUND SEVENTH CALIFORNIA SERIES.
864	IM-01	MERRILL LYNCH	701711	MUNICIPAL INVESTMENT TRUST FUND EIGHTH CALIFORNIA SERIES.
865	IM-01	MERRILL LYNCH	702136	MUNICIPAL INVESTMENT TRUST FUND NINTH CALIFORNIA SERIES.
866	IM-01	MERRILL LYNCH	702721	MUNICIPAL INVESTMENT TRUST FUND TENTH CALIFORNIA SERIES.
867	IM-01	MERRILL LYNCH	703476	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH CALIFORNIA SERIES.
868	IM-01	MERRILL LYNCH	703681	MUNICIPAL INVESTMENT TRUST FUND TWELFTH CALIFORNIA SERIES.
869	IM-01	MERRILL LYNCH	705044	MUNICIPAL INVESTMENT TRUST FUND THIRTEENTH CALIFORNIA SERIES.
870	IM-01	MERRILL LYNCH	705410	MUNICIPAL INVESTMENT TRUST FUND FOURTEENTH CALIFORNIA SERIES.
871	IM-01	MERRILL LYNCH	705591	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH CALIFORNIA SERIES.
872	IM-01	MERRILL LYNCH	707375	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH CALIFORNIA SERIES.
873	IM-01	MERRILL LYNCH	708826	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH CALIFORNIA SERIE.
874	IM-01	MERRILL LYNCH	709276	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH CALIFORNIA SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
875	IM-01	MERRILL LYNCH	709709	MUNICIPAL INVESTMENT TRUST FUND NINETEENTH CALIFORNIA SERIES.
876	IM-01	MERRILL LYNCH	710776	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH CALIFORNIA SERIES.
877	IM-01	MERRILL LYNCH	711312	MUNICIPAL INVESTMENT TRUST FUND TWENTY-FIRST CALIFORNIA SERI.
878	IM-01	MERRILL LYNCH	715062	MUNICIPAL INVESTMENT TRUST FUND TWENTY THIRD CALIFORNIA SERI.
879	IM-01	MERRILL LYNCH	715800	MUNICIPAL INVESTMENT TRUST FUND TWENTY FOURTH CALIFORNIA SER.
880	IM-01	MERRILL LYNCH	717232	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIFTH CALIFORNIA SER.
881	IM-01	MERRILL LYNCH	719050	MUNICIPAL INVESTMENT TRUST FUND TWENTY SIXTH CALIFORNIA SER.
882	IM-01	MERRILL LYNCH	720488	MUNICIPAL INVESTMENT TRUST FUND TWENTY SEVENTH CALIFORNIA SE.
883	IM-01	MERRILL LYNCH	721943	MUNICIPAL INVESTMENT TRUST FUND TWENTY EIGHTH CALIFORNIA SER.
884	IM-01	MERRILL LYNCH	725732	MUNICIPAL INVESTMENT TRUST FUND TWENTY NINTH CALIFORNIA SER.
885	IM-01	MERRILL LYNCH	727310	MUNICIPAL INVESTMENT TRUST FUND THIRTIETH CALIFORNIA SERIES.
886	IM-01	MERRILL LYNCH	729273	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIRST CALIFORNIA SER.
887	IM-01	MERRILL LYNCH	730354	MUNICIPAL INVESTMENT TRUST FUND THIRTY SECOND CALIFORNIA SER.
888	IM-01	MERRILL LYNCH	731419	MUNICIPAL INVESTMENT TRUST FUND THIRTY THIRD CALIFORNIA SER.
889	IM-01	MERRILL LYNCH	732737	MUNICIPAL INVESTMENT TRUST FUND THIRTY FOURTH CALIFORNIA SER.
890	IM-01	MERRILL LYNCH	736167	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIFTH CALIFORNIA SERI.
891	IM-01	MERRILL LYNCH	737780	MUNICIPAL INVESTMENT TRUST FUND THIRTY SIXTH CALIFORNIA SER.
892	IM-01	MERRILL LYNCH	739705	MUNICIPAL INVESTMENT TRUST FUND THIRTY SEVENTH CALIFORNIA SE.
893	IM-01	MERRILL LYNCH	740148	MUNICIPAL INVESTMENT TRUST FUND THIRTY EIGHTH CALIFORNIA SER.
894	IM-01	MERRILL LYNCH	741521	MUNICIPAL INVESTMENT TRUST FUND THIRTY NINTH CALIFORNIA SER.
895	IM-01	MERRILL LYNCH	742459	MUNICIPAL INVESTMENT TRUST FUND FORTIETH CALIFORNIA SERIES.
896	IM-01	MERRILL LYNCH	744019	MUNICIPAL INVESTMENT TRUST FUND FORTY FIRST CALIFORNIA SER.
897	IM-01	MERRILL LYNCH	745352	MUNICIPAL INVESTMENT TRUST FUND FORTY SECOND CALIFORNIA SER.
898	IM-01	MERRILL LYNCH	747838	MUNICIPAL INVESTMENT TRUST FUND FORTY THIRD CALIFORNIA SERIE.
899	IM-01	MERRILL LYNCH	711315	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST CALIFORNIA SERI.
900	IM-01	MERRILL LYNCH	714191	MUNICIPAL INVESTMENT TRUST FUND TWENTY SECOND CALIFORNIA SER.
901	IM-01	MERRILL LYNCH	743442	MUNICIPAL INVESTMENT TRUST FUND FIRST CALIFORNIA INSURED SER.
902	IM-01	MERRILL LYNCH	745998	MUNICIPAL INVESTMENT TRUST FUND SECOND CALIFORNIA INSURED SE.
903	IM-01	MERRILL LYNCH	750119	MUNICIPAL INVESTMENT TRUST FUND THIRD CALIFORNIA INSURED SER.
904	IM-01	MERRILL LYNCH	750317	MUNICIPAL INVESTMENT TRUST FUND FOURTH CALIFORNIA INS SER.
905	IM-01	MERRILL LYNCH	751221	MUNICIPAL INVESTMENT TRUST FUND FIFTH CALIFORNIA INSURED SER.
906	IM-01	MERRILL LYNCH	751573	MUNICIPAL INVESTMENT TRUST FUND SIXTH CALIFORNIA INSURED SER.
907	IM-01	MERRILL LYNCH	754045	MUNICIPAL INVESTMENT TRUST FUND SEVENTH CALIFORNIA INSURED S.
908	IM-01	MERRILL LYNCH	755121	MUNICIPAL INVESTMENT TRUST FUND EIGHTH CALIFORNIA INSURED SE.
909	IM-01	MERRILL LYNCH	756669	MUNICIPAL INVESTMENT TRUST FUND NINTH CALIFORNIA INSURED SER.
910	IM-01	MERRILL LYNCH	757105	MUNICIPAL INVESTMENT TRUST FUND TENTH CALIFORNIA INSURED SER.
911	IM-01	MERRILL LYNCH	760457	MUNICIPAL INVESTMENT TRUST FUND TWELFTH CALIFORNIA INSURED S.
912	IM-01	MERRILL LYNCH	761190	MUNICIPAL INVESTMENT TRUST FUND THIRTEENTH CALIF INSURED SER.
913	IM-01	MERRILL LYNCH	763761	MUNICIPAL INVESTMENT TRUST FUND FOURTEENTH CA INSURED SER.
914	IM-01	MERRILL LYNCH	764226	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH CA INSURED SER.
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APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
915	IM-01	MERRILL LYNCH	764830	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH CALIFORNIA INS SER.
916	IM-01	MERRILL LYNCH	766008	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH CA INSURED SER.
917	IM-01	MERRILL LYNCH	766303	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH CA INSURED SER.
918	IM-01	MERRILL LYNCH	766725	MUNICIPAL INVESTMENT TR FD NINETEENTH CALIFORNIA INS SER.
919	IM-01	MERRILL LYNCH	767033	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH CALIFORNIA INS SER.
920	IM-01	MERRILL LYNCH	769062	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST CALIF INS SER.
921	IM-01	MERRILL LYNCH	769135	MUNICIPAL INVESTMENT TRUST FUND TWENTY SECOND CALIF INS SER.
922	IM-01	MERRILL LYNCH	770717	MUNICIPAL INVESTMENT TRUST FUND TWENTY THIRD CALIF INS SERIE.
923	IM-01	MERRILL LYNCH	771742	MUNICIPAL INVESTMENT TR FD TWENTY FOURTH CALIFORNIA INS SER.
924	IM-01	MERRILL LYNCH	771977	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIFTH CALIFORNIA INSU.
925	IM-01	MERRILL LYNCH	773474	MUNICIPAL INVESTMENT TR FD TWENTY SIXTH CALIFORNIA INS SER.
926	IM-01	MERRILL LYNCH	774826	MUNICIPAL INVESTMENT TR FD TWENTY SEVENTH CALIFORNIA INS SER.
927	IM-01	MERRILL LYNCH	778443	MUNICIPAL INVESTMENT TRUST FUND TWENTY NINTH CALIF INS SER.
928	IM-01	MERRILL LYNCH	779816	MUNICIPAL INVESTMENT TRUST FUND THIRTIETH CALIFORNIA INSURED.
929	IM-01	MERRILL LYNCH	780881	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIRST CALIF INS SER.
930	IM-01	MERRILL LYNCH	780886	MUNICIPAL INVESTMENT TRUST FUND THIRTY SECOND CALIF INS SERI.
931	IM-01	MERRILL LYNCH	780889	MUNICIPAL INVESTMENT TRUST FUND THIRTY THIRD CA INSURED SER.
932	IM-01	MERRILL LYNCH	780893	MUNICIPAL INVESTMENT TRUST FUND THIRTY FOURTH CALIF INS SERS.
933	IM-01	MERRILL LYNCH	786715	MUNICIPAL INVESTMENT TRUST FUND FIRST FLORIDA INSURED SERIES.
934	IM-01	MERRILL LYNCH	786742	MUNICIPAL INVESTMENT TRUST FUND SECOND FLORIDA INSURED SER.
935	IM-01	MERRILL LYNCH	775300	MUNICIPAL INVESTMENT TRUST FUND FIFTH FLOATING RATE SERIES.
936	IM-01	MERRILL LYNCH	352561	MUNICIPAL INVESTMENT TRUST FUND FIRST FLOATING RATE SERIES.
937	IM-01	MERRILL LYNCH	355982	MUNICIPAL INVESTMENT TRUST FUND SECOND FLOATING RATE SERIES.
938	IM-01	MERRILL LYNCH	356042	MUNICIPAL INVESTMENT TRUST FUND THIRD FLOATING RATE SERIES.
939	IM-01	MERRILL LYNCH	356688	MUNICIPAL INVESTMENT TRUST FUND FOURTH FLOATING RATE SERIES.
940	IM-01	MERRILL LYNCH	357137	MUNICIPAL INVESTMENT TRUST FUND SIXTH FLOATING RATE SERIES.
941	IM-01	MERRILL LYNCH	357164	MUNICIPAL INVESTMENT TRUST FUND SEVENTH FLOATING RATE SERIES.
942	IM-01	MERRILL LYNCH	700734	MUNICIPAL INVESTMENT TRUST FUND EIGHTH FLOATING RATE SERIES.
943	IM-01	MERRILL LYNCH	700737	MUNICIPAL INVESTMENT TRUST FUND NINTH FLOATING RATE SERIES.
944	IM-01	MERRILL LYNCH	701986	MUNICIPAL INVESTMENT TRUST FUND TENTH FLOATING RATE SERIES.
945	IM-01	MERRILL LYNCH	702530	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH FLOATING RATE SERIE.
946	IM-01	MERRILL LYNCH	703111	MUNICIPAL INVESTMENT TRUST FUND TWELFTH FLOATING RATE SERIES.
947	IM-01	MERRILL LYNCH	703523	MUNICIPAL INVESTMENT TRUST FUND THIRTEENTH FLOATING RATE SER.
948	IM-01	MERRILL LYNCH	704535	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH FLOATING RATE SER.
949	IM-01	MERRILL LYNCH	704698	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH FLOATING RATE SERI.
950	IM-01	MERRILL LYNCH	705606	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH FLOATING RATE SE.
951	IM-01	MERRILL LYNCH	705596	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH FLOATING RATE SER.
952	IM-01	MERRILL LYNCH	708450	MUNICIPAL INVESTMENT TRUST FUND NINETEENTH FLOATING RATE SER.
953	IM-01	MERRILL LYNCH	708839	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH FLOATING RATE SERI.
954	IM-01	MERRILL LYNCH	709279	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST FLOATING RATE S.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
956	IM-01	MERRILL LYNCH	711317	MUNICIPAL INVESTMENT TRUST FUND TWENTY SECOND FLOATING RATE.
956	IM-01	MERRILL LYNCH	722053	MUNICIPAL INVESTMENT TRUST FUND TWENTY THIRD FLOATING RATE.
957	IM-01	MERRILL LYNCH	733260	MUNICIPAL INVESTMENT TRUST FUND FIRST INSURED SERIES.
958	IM-01	MERRILL LYNCH	739699	MUNICIPAL INVESTMENT TRUST FUND SECOND INSURED SERIES.
959	IM-01	MERRILL LYNCH	740828	MUNICIPAL INVESTMENT TRUST FUND THIRD INSURED SERIES.
960	IM-01	MERRILL LYNCH	742461	MUNICIPAL INVESTMENT TRUST FUND FOURTH INSURED SERIES.
961	IM-01	MERRILL LYNCH	744193	MUNICIPAL INVESTMENT TRUST FUND FIFTH INSURED SERIES.
962	IM-01	MERRILL LYNCH	745052	MUNICIPAL INVESTMENT TRUST FUND SIXTH INSURED SERIES.
963	IM-01	MERRILL LYNCH	745358	MUNICIPAL INVESTMENT TRUST FUND SEVENTH INSURED SERIES.
964	IM-01	MERRILL LYNCH	745983	MUNICIPAL INVESTMENT TRUST FUND EIGHTH INSURED SERIES.
965	IM-01	MERRILL LYNCH	746573	MUNICIPAL INVESTMENT TRUST FUND NINTH INSURED SERIES.
966	IM-01	MERRILL LYNCH	747225	MUNICIPAL INVESTMENT TRUST FUND TENTH INSURED SERIES.
967	IM-01	MERRILL LYNCH	747732	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH INSURED SERIES.
968	IM-01	MERRILL LYNCH	747841	MUNICIPAL INVESTMENT TRUST FUND TWELFTH INSURED SERIES.
969	IM-01	MERRILL LYNCH	748759	MUNICIPAL INVESTMENT TRUST FUND THIRTEENTH INSURED SERIES.
970	IM-01	MERRILL LYNCH	749681	MUNICIPAL INVESTMENT TRUST FUND FOURTEENTH INSURED SERIES.
971	IM-01	MERRILL LYNCH	751220	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH INSURED SERIES.
972	IM-01	MERRILL LYNCH	751518	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH INSURED SERIES.
973	IM-01	MERRILL LYNCH	753037	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH INSURED SERIES.
974	IM-01	MERRILL LYNCH	753041	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH INSURED SERIES.
975	IM-01	MERRILL LYNCH	753348	MUNICIPAL INVESTMENT TRUST FUND NINETEENTH INSURED SERIES.
976	IM-01	MERRILL LYNCH	754456	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH INSURED SERIES.
977	IM-01	MERRILL LYNCH	755146	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST INSURED SERIES.
978	IM-01	MERRILL LYNCH	755877	MUNICIPAL INVESTMENT TRUST FUND TWENTY SECOND INSURED SERIES.
979	IM-01	MERRILL LYNCH	756670	MUNICIPAL INVESTMENT TRUST FUND TWENTY THIRD INSURED SERIES.
980	IM-01	MERRILL LYNCH	722816	MUNICIPAL INVESTMENT TRUST FUND TWENTY FOURTH INSURED SERIES.
981	IM-01	MERRILL LYNCH	757841	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIFTH INSURED SERIES.
982	IM-01	MERRILL LYNCH	759020	MUNICIPAL INVESTMENT TRUST FUND TWENTY SIXTH INSURED SERIES.
983	IM-01	MERRILL LYNCH	759760	MUNICIPAL INVESTMENT TRUST FUND TWENTY SEVENTH INSURED SERS.
984	IM-01	MERRILL LYNCH	760484	MUNICIPAL INVESTMENT TRUST FUND TWENTY EIGHTH INSURED SERIES.
985	IM-01	MERRILL LYNCH	760737	MUNICIPAL INVESTMENT TRUST FUND TWENTY NINTH INSURED SERIES.
986	IM-01	MERRILL LYNCH	760742	MUNICIPAL INVESTMENT TRUST FUND THIRTIETH INSURED SERIES.
987	IM-01	MERRILL LYNCH	761194	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIRST INSURED SERIES.
988	IM-01	MERRILL LYNCH	761660	MUNICIPAL INVESTMENT TRUST FUND THIRTY SECOND INSURED SERIES.
989	IM-01	MERRILL LYNCH	763323	MUNICIPAL INVESTMENT TRUST FUND THIRTY THIRD INSURED SERIES.
990	IM-01	MERRILL LYNCH	764026	MUNICIPAL INVESTMENT TRUST FUND THIRTY FOURTH INSURED SERIES.
991	IM-01	MERRILL LYNCH	764471	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIFTH INSURED SERIES.
992	IM-01	MERRILL LYNCH	764831	MUNICIPAL INVESTMENT TRUST FUND THIRTY SIXTH INSURED SERIES.
993	IM-01	MERRILL LYNCH	766007	MUNICIPAL INVESTMENT TRUST FUND THIRTY SEVENTH INSURED SERIE.
994	IM-01	MERRILL LYNCH	766306	MUNICIPAL INVESTMENT TRUST FUND THIRTY EIGHTH INS SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
995	IM-01	MERRILL LYNCH	766744	MUNICIPAL INVESTMENT TRUST FUND THIRTY NINTH INSURED SERIES.
996	IM-01	MERRILL LYNCH	768611	MUNICIPAL INVESTMENT TRUST FUND FORTIETH INSURED SERIES.
997	IM-01	MERRILL LYNCH	768610	MUNICIPAL INVESTMENT TRUST FUND FORTY FIRST INSURED SERIES.
998	IM-01	MERRILL LYNCH	769132	MUNICIPAL INVESTMENT TRUST FUND FORTY SECOND INSURED SERIES.
999	IM-01	MERRILL LYNCH	769867	MUNICIPAL INVESTMENT TRUST FUND FORTY THIRD INSURED SERIES.
1000	IM-01	MERRILL LYNCH	770687	MUNICIPAL INVESTMENT TRUST FUND FORTY FOURTH INSURED SERIES.
1001	IM-01	MERRILL LYNCH	768961	MUNICIPAL INVESTMENT TRUST FUND FORTY FIFTH INSURED SERIES.
1002	IM-01	MERRILL LYNCH	771973	MUNICIPAL INVESTMENT TRUST FUND FORTY SIXTH INSURED SERIES.
1003	IM-01	MERRILL LYNCH	773283	MUNICIPAL INVESTMENT TRUST FUND FORTY SEVENTH INSURED SERIES.
1004	IM-01	MERRILL LYNCH	773473	MUNICIPAL INVESTMENT TRUST FUND FORTY EIGHTH INSURED SERIES.
1005	IM-01	MERRILL LYNCH	773713	MUNICIPAL INVESTMENT TRUST FUND FORTY NINTH INSURED SERIES.
1006	IM-01	MERRILL LYNCH	774029	MUNICIPAL INVESTMENT TRUST FUND FIFTIETH INSURED SERIES.
1007	IM-01	MERRILL LYNCH	774443	MUNICIPAL INVESTMENT TRUST FUND FIFTY FIRST INSURED SERIES.
1008	IM-01	MERRILL LYNCH	774827	MUNICIPAL INVESTMENT TRUST FUND FIFTY SECOND INSURED SERIES.
1009	IM-01	MERRILL LYNCH	775499	MUNICIPAL INVESTMENT TRUST FUND FIFTY THIRD INSURED SERIES.
1010	IM-01	MERRILL LYNCH	777446	MUNICIPAL INVESTMENT TRUST FUND FIFTY FOURTH INSURED SERIES.
1011	IM-01	MERRILL LYNCH	778401	MUNICIPAL INVESTMENT TRUST FUND FIFTY FIFTH INSURED SERIES.
1012	IM-01	MERRILL LYNCH	778442	MUNICIPAL INVESTMENT TRUST FUND FIFTY SIXTH INSURED SERIES.
1013	IM-01	MERRILL LYNCH	778337	MUNICIPAL INVESTMENT TRUST FUND FIFTY SEVENTH INSURED SERIES.
1014	IM-01	MERRILL LYNCH	779810	MUNICIPAL INVESTMENT TRUST FUND FIFTY EIGHTH INSURED SERIES.
1015	IM-01	MERRILL LYNCH	780414	MUNICIPAL INVESTMENT TRUST FUND FIFTY NINTH INSURED SERIES.
1016	IM-01	MERRILL LYNCH	780895	MUNICIPAL INVESTMENT TRUST FUND SIXTIETH INSURED SERIES.
1017	IM-01	MERRILL LYNCH	780901	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIRST INSURED SERIES.
1018	IM-01	MERRILL LYNCH	780904	MUNICIPAL INVESTMENT TRUST FUND SIXTY SECOND INSURED SERIES.
1019	IM-01	MERRILL LYNCH	780906	MUNICIPAL INVESTMENT TRUST FUND SIXTY THIRD INSURED SERIES.
1020	IM-01	MERRILL LYNCH	780910	MUNICIPAL INVESTMENT TRUST FUND SIXTY FOURTH INSURED SERIES.
1021	IM-01	MERRILL LYNCH	780922	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIFTH INSURED SERIES.
1022	IM-01	MERRILL LYNCH	780915	MUNICIPAL INVESTMENT TRUST FUND SIXTY SIXTH INSURED SERIES.
1023	IM-01	MERRILL LYNCH	780929	MUNICIPAL INVESTMENT TRUST FUND SIXTY SEVENTH INSURED SERIES.
1024	IM-01	MERRILL LYNCH	780933	MUNICIPAL INVESTMENT TRUST FUND SIXTY EIGHTH INSURED SERIES.
1025	IM-01	MERRILL LYNCH	780935	MUNICIPAL INVESTMENT TRUST FUND SIXTY NINTH INSURED SER.
1026	IM-01	MERRILL LYNCH	780937	MUNICIPAL INVESTMENT TRUST FUND SEVENTIETH INSURED SERIES.
1027	IM-01	MERRILL LYNCH	780940	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIRST INSURED SERIES.
1028	IM-01	MERRILL LYNCH	780944	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SECOND INSURED SERIE.
1029	IM-01	MERRILL LYNCH	780948	MUNICIPAL INVESTMENT TRUST FUND SEVENTY THIRD INSURED SERIES.
1030	IM-01	MERRILL LYNCH	780952	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FOURTH INSURED SERIE.
1031	IM-01	MERRILL LYNCH	780955	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIFTH INSURED SERIES.
1032	IM-01	MERRILL LYNCH	780959	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SIXTH INSURED SERIES.
1033	IM-01	MERRILL LYNCH	780962	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SEVENTH INSURED SERI.
1034	IM-01	MERRILL LYNCH	780964	MUNICIPAL INVESTMENT TRUST FUND SEVENTY EIGHTH INSURED SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1035	IM-01	MERRILL LYNCH	780969	MUNICIPAL INVESTMENT TRUST FUND SEVENTY NINTH INSURED SERIES.
1036	IM-01	MERRILL LYNCH	780973	MUNICIPAL INVESTMENT TRUST FUND EIGHTIETH INSURED SERIES.
1037	IM-01	MERRILL LYNCH	780977	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIRST INSURED SERIES.
1038	IM-01	MERRILL LYNCH	780979	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SECOND INSURED SERIES.
1039	IM-01	MERRILL LYNCH	780980	MUNICIPAL INVESTMENT TRUST FUND EIGHTY THIRD INSURED SERIES.
1040	IM-01	MERRILL LYNCH	780984	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FOURTH INSURED SERIES.
1041	IM-01	MERRILL LYNCH	780986	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIFTH INSURED SERIES.
1042	IM-01	MERRILL LYNCH	780993	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SEVENTH INSURED SERIE.
1043	IM-01	MERRILL LYNCH	780997	MUNICIPAL INVESTMENT TRUST FUND EIGHTY EIGHTH INSURED SERIES.
1044	IM-01	MERRILL LYNCH	780999	MUNICIPAL INVESTMENT TRUST FUND EIGHTY NINTH INSURED SERIES.
1045	IM-01	MERRILL LYNCH	781001	MUNICIPAL INVESTMENT TRUST FUND NINETIETH INSURED SERIES.
1046	IM-01	MERRILL LYNCH	781003	MUNICIPAL INVESTMENT TRUST FUND NINETY FIRST INSURED SERIES.
1047	IM-01	MERRILL LYNCH	781004	MUNICIPAL INVESTMENT TRUST FUND NINETY SECOND INSURED SERIES.
1048	IM-01	MERRILL LYNCH	781008	MUNICIPAL INVESTMENT TRUST FUND NINETY THIRD INSURED SERIES.
1049	IM-01	MERRILL LYNCH	781011	MUNICIPAL INVESTMENT TRUST FUND NINETY FOURTH INSURED SERIES.
1050	IM-01	MERRILL LYNCH	781014	MUNICIPAL INVESTMENT TRUST FUND NINETY FIFTH INSURED SERIES.
1051	IM-01	MERRILL LYNCH	781023	MUNICIPAL INVESTMENT TRUST FUND NINETY SIXTH INSURED SERIES.
1052	IM-01	MERRILL LYNCH	781027	MUNICIPAL INVESTMENT TRUST FUND NINETY SEVENTH INSURED SERIES.
1053	IM-01	MERRILL LYNCH	781029	MUNICIPAL INVESTMENT TRUST FUND NINETY EIGHTH INSURED SERIES.
1054	IM-01	MERRILL LYNCH	781035	MUNICIPAL INVESTMENT TRUST FUND NINETY NINTH INSURED SERIES.
1055	IM-01	MERRILL LYNCH	781038	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDREDTH INSURED SERIES.
1056	IM-01	MERRILL LYNCH	781040	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIRST INSURED SERIES.
1057	IM-01	MERRILL LYNCH	781043	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SECOND INSURED SERIES.
1058	IM-01	MERRILL LYNCH	781045	MUNICIPAL INVT TR FD ONE HUNDRED THIRD INSURED SERIES.
1059	IM-01	MERRILL LYNCH	781049	MUNICIPAL INVT TR FD ONE HUNDRED FOURTH INSURED SERIES.
1060	IM-01	MERRILL LYNCH	781052	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTH INS SERIES.
1061	IM-01	MERRILL LYNCH	781055	MUNICIPAL INVT TR FD ONE HUNDRED SIXTH INSURED SERIES.
1062	IM-01	MERRILL LYNCH	781058	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SEVENTH INSURED SERIES.
1063	IM-01	MERRILL LYNCH	781060	MUNICIPAL INVT TR FD ONE HUNDRED EIGHTH INSURED SERIES.
1064	IM-01	MERRILL LYNCH	781063	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINTH INS SERIES.
1065	IM-01	MERRILL LYNCH	781067	MUNICIPAL INVESTMENT TRUST FD ONE HUNDRED TENTH INSURED SERIES.
1066	IM-01	MERRILL LYNCH	781070	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED ELEVENTH INS SERIES.
1067	IM-01	MERRILL LYNCH	781074	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWELFTH INS SERIES.
1068	IM-01	MERRILL LYNCH	781075	MUNICIPAL INVT TR FD ONE HUNDRED THIRTEENTH INSURED SERIES.
1069	IM-01	MERRILL LYNCH	781078	MUNICIPAL INVT TR FD ONE HUNDRED FOURTEENTH INSURED SERIES.
1070	IM-01	MERRILL LYNCH	781079	MUNICIPAL INVT TR FD ONE HUNDRED FIFTEENTH INSURED SERIES.
1071	IM-01	MERRILL LYNCH	781082	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SIXTEENTH INSURED SERIES.
1072	IM-01	MERRILL LYNCH	781084	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SEVENTEENTH INS SERIES.
1073	IM-01	MERRILL LYNCH	781086	MUNICIPAL INVESTMENT TRUST FD ONE HUNDRED EIGHTEENTH INS SERIES.
1074	IM-01	MERRILL LYNCH	781088	MUNICIPAL INVT TR FD ONE HUNDRED NINETEENTH INSURED SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1075	IM-01	MERRILL LYNCH	781090	MUNICIPAL INVT TR FD ONE HUNDRED TWENTIETH INSURED SERIES.
1076	IM-01	MERRILL LYNCH	781097	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY THIRD INSURED SERIES.
1077	IM-01	MERRILL LYNCH	781101	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY FOURTH INSURED SERIES.
1078	IM-01	MERRILL LYNCH	781105	MUNICIPAL INVESTMENT TR FD ONE HUNDRED TWENTY FIFTH INS SERIES.
1079	IM-01	MERRILL LYNCH	781108	MUNICIPAL INVESTMENT TRUST FUND 126 INSURED SERIES.
1080	IM-01	MERRILL LYNCH	781113	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY SEVENTH INSURED SERIES.
1081	IM-01	MERRILL LYNCH	781116	MUNICIPAL INVESTMENT TR FD ONE HUNDRED TWENTY EIGHTH INS SERIES.
1082	IM-01	MERRILL LYNCH	781118	MUNICIPAL INVESTMENT TR FD ONE HUNDRED TWENTY NINTH INS SERIES.
1083	IM-01	MERRILL LYNCH	781126	MUNICIPAL INVT TR FD ONE HUNDRED THIRTIETH INS SERIES.
1084	IM-01	MERRILL LYNCH	781129	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY FIRST INSURED SERIES.
1085	IM-01	MERRILL LYNCH	781133	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY SECOND INSURED SERIES.
1086	IM-01	MERRILL LYNCH	781135	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY THIRD INSURED SERIES.
1087	IM-01	MERRILL LYNCH	781138	MUNICIPAL INVESTMENT TR FD ONE HUNDRED THIRTY FOURTH INS SERIES.
1088	IM-01	MERRILL LYNCH	781142	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY FIFTH INSURED SERIES.
1089	IM-01	MERRILL LYNCH	781146	MUNICIPAL INVESTMENT TR FD ONE HUNDRED THIRTY SIXTH INS SERIES.
1090	IM-01	MERRILL LYNCH	781149	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY SEVENTH INSURED SERIES.
1091	IM-01	MERRILL LYNCH	781152	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY EIGHTH INSURED SERIES.
1092	IM-01	MERRILL LYNCH	781155	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY NINTH INSURED SERIES.
1093	IM-01	MERRILL LYNCH	781158	MUNICIPAL INVT TR FD ONE HUNDRED FORTIETH INSURED SERIES.
1094	IM-01	MERRILL LYNCH	781160	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FIRST INSURED SERIES.
1095	IM-01	MERRILL LYNCH	781161	MUNICIPAL INVT TR FD ONE HUNDRED FORTY SECOND INSURED SERIES.
1096	IM-01	MERRILL LYNCH	781162	MUNICIPAL INVT TR FD ONE HUNDRED FORTY THIRD INSURED SERIES.
1097	IM-01	MERRILL LYNCH	781164	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FOURTH INSURED SERIES.
1098	IM-01	MERRILL LYNCH	781165	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FIFTH INSURED SERIES.
1099	IM-01	MERRILL LYNCH	781167	MUNICIPAL INVESTMENT TR FD ONE HUNDRED FORTY SIXTH INS SERIES.
1100	IM-01	MERRILL LYNCH	781169	MUNICIPAL INVT TR FD ONE HUNDRED FORTY SEVENTH INSURED SERIES.
1101	IM-01	MERRILL LYNCH	781170	MUNICIPAL INVT TR FD ONE HUNDRED FORTY EIGHTH INSURED SERIES.
1102	IM-01	MERRILL LYNCH	781172	MUNICIPAL INVT TR FD ONE HUNDRED FORTY NINTH INSURED SERIES.
1103	IM-01	MERRILL LYNCH	781174	MUNICIPAL INVT TR FD ONE HUNDRED FIFTIETH INSURED SERIES.
1104	IM-01	MERRILL LYNCH	781176	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY FIRST INSURED SERIES.
1105	IM-01	MERRILL LYNCH	781179	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY SECOND INSURED SERIES.
1106	IM-01	MERRILL LYNCH	781180	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY THIRD INSURED SERIES.
1107	IM-01	MERRILL LYNCH	781181	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY FOURTH INSURED SERIES.
1108	IM-01	MERRILL LYNCH	781182	MUNICIPAL INVESTMENT TRUST FD ONE HUNDRED FIFTY FIFTH INS SER.
1109	IM-01	MERRILL LYNCH	781183	MUNICIPAL INVT TRUST FD ONE HUNDRED FIFTY SIXTH INS SERIES.
1110	IM-01	MERRILL LYNCH	781184	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY SEVENTH INSURED SERIES.
1111	IM-01	MERRILL LYNCH	803792	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY EIGHTH INS.
1112	IM-01	MERRILL LYNCH	803803	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTIETH INSURED.
1113	IM-01	MERRILL LYNCH	803804	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY FIRST INS.
1114	IM-01	MERRILL LYNCH	803805	DEFINED ASSET FDS MUN INVT TR FD ONE HUNDRED SIXTY SECOND INS.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1115	IM-01	MERRILL LYNCH	803810	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY FOURTH INS.
1116	IM-01	MERRILL LYNCH	780720	MUNICIPAL INVT TR FD ONE HUNDRED EIGHTEENTH INTERM TERM SERIES.
1117	IM-01	MERRILL LYNCH	780600	MUNICIPAL INVESTMENT TRUST FUND NINETIETH INTERM TERM SERIES.
1118	IM-01	MERRILL LYNCH	276371	MUNICIPAL INVESTMENT TRUST FD TWENTY SECOND INTERM TERM SERIES.
1119	IM-01	MERRILL LYNCH	276892	MUNICIPAL INVESTMENT TRUST FUND TWENTY THIRD INTERM TERM SERIES.
1120	IM-01	MERRILL LYNCH	310185	MUNICIPAL INVESTMENT TRUST FUND TWENTY FOURTH INTER TERM SERIES.
1121	IM-01	MERRILL LYNCH	069001	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIFTH INTERM TERM SERIES.
1122	IM-01	MERRILL LYNCH	312315	MUNICIPAL INVESTMENT TRUST FUND TWENTY SEVENTH INTERMEDIATE.
1123	IM-01	MERRILL LYNCH	709367	MUNICIPAL INVESTMENT TRUST FUND TWENTY EIGHTH INTER TERM SERIES.
1124	IM-01	MERRILL LYNCH	709371	MUNICIPAL INVESTMENT TRUST FUND TWENTY NINTH INTERMEDIATE TERM.
1125	IM-01	MERRILL LYNCH	710805	MUNICIPAL INVESTMENT TRUST FUND THIRTIETH INTERMEDIATE TERM.
1126	IM-01	MERRILL LYNCH	713675	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIRST INTERM TERM SERIES.
1127	IM-01	MERRILL LYNCH	715061	MUNICIPAL INVESTMENT TRUST FUND THIRTY SECOND INTERMEDIATE TERM.
1128	IM-01	MERRILL LYNCH	715608	MUNICIPAL INVESTMENT TRUST FUND THIRTY THIRD INTERMEDIATE TERM.
1129	IM-01	MERRILL LYNCH	716803	MUNICIPAL INVESTMENT TRUST FUND THIRTY FOURTH INTERM TERM SER.
1130	IM-01	MERRILL LYNCH	716798	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIFTH INTERM TERM SERIES.
1131	IM-01	MERRILL LYNCH	716799	MUNICIPAL INVESTMENT TRUST FUND THIRTY SIXTH INTERM TERM SERIES.
1132	IM-01	MERRILL LYNCH	720751	MUNICIPAL INVESTMENT TRUST FUND THIRTY EIGHTH INTERM TERM SER.
1133	IM-01	MERRILL LYNCH	726853	MUNICIPAL INVESTMENT TRUST FUND THIRTY NINTH INTERM TERM SERIES.
1134	IM-01	MERRILL LYNCH	732724	MUNICIPAL INVESTMENT TRUST FUND FORTY FIRST INTERM TERM SERIES.
1135	IM-01	MERRILL LYNCH	732738	MUNICIPAL INVESTMENT TRUST FUND FORTY SECOND INTERM TERM SERIES.
1136	IM-01	MERRILL LYNCH	069020	MUNICIPAL INVESTMENT TRUST FUND FORTY SECOND MONTHLY PAYMENT.
1137	IM-01	MERRILL LYNCH	735416	MUNICIPAL INVESTMENT TRUST FUND FORTY THIRD INTERMEDIATE TERM.
1138	IM-01	MERRILL LYNCH	735420	MUNICIPAL INVESTMENT TRUST FUND FORTY FOURTH INTERM TERM SERIES.
1139	IM-01	MERRILL LYNCH	739292	MUNICIPAL INVESTMENT TRUST FUND FORTY FIFTH INTERM TERM SERIES.
1140	IM-01	MERRILL LYNCH	739290	MUNICIPAL INVESTMENT TRUST FUND FORTY SIXTH INTERM TERM SERIES.
1141	IM-01	MERRILL LYNCH	741522	MUNICIPAL INVESTMENT TRUST FUND FORTY SEVENTH INTERM TERM SER.
1142	IM-01	MERRILL LYNCH	744192	MUNICIPAL INVESTMENT TR FD FORTY EIGHTH INTERM TERM SERIES.
1143	IM-01	MERRILL LYNCH	744467	MUNICIPAL INVESTMENT TRUST FUND FORTY NINTH INTERM TERM SERIES.
1144	IM-01	MERRILL LYNCH	746571	MUNICIPAL INVESTMENT TRUST FUND FIFTIETH INTER TERM SERIES.
1145	IM-01	MERRILL LYNCH	750319	MUNICIPAL INVESTMENT TRUST FUND FIFTY FIRST INTERMEDIATE TERM.
1146	IM-01	MERRILL LYNCH	780799	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY FIRST INTERM TERM SER.
1147	IM-01	MERRILL LYNCH	755876	MUNICIPAL INVESTMENT TRUST FUND FIFTY THIRD INTER TERM SERIES.
1148	IM-01	MERRILL LYNCH	718502	MUNICIPAL INVESTMENT TRUST FUND FIFTY FOURTH INTERM TERM SERIES.
1149	IM-01	MERRILL LYNCH	759429	MUNICIPAL INVESTMENT TRUST FUND FIFTY FIFTH INTERMEDIATE TERM.
1150	IM-01	MERRILL LYNCH	780813	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY FIFTH INTERM TERM SERIES.
1151	IM-01	MERRILL LYNCH	762911	MUNICIPAL INVESTMENT TRUST FUND FIFTY SIXTH INTERMEDIATE TERM.
1152	IM-01	MERRILL LYNCH	763981	MUNICIPAL INVESTMENT TRUST FUND FIFTY SEVENTH INTERM TERM SER.
1153	IM-01	MERRILL LYNCH	766006	MUNICIPAL INVESTMENT TRUST FUND FIFTY EIGHTH INTERM TERM SERIES.
1154	IM-01	MERRILL LYNCH	780821	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY EIGHT INTERM TERM SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1155	IM-01	MERRILL LYNCH	766729	MUNICIPAL INVESTMENT TRUST FUND FIFTY NINTH INTERM TERM SERIES.
1156	IM-01	MERRILL LYNCH	770726	MUNICIPAL INVESTMENT TRUST FUND SIXTIETH INTERMEDIATE TER SER.
1157	IM-01	MERRILL LYNCH	771979	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIRST INTERMEDIATE TERM.
1158	IM-01	MERRILL LYNCH	774442	MUNICIPAL INVESTMENT TRUST FUND SIXTY SECOND INTERM TERM SERIES.
1159	IM-01	MERRILL LYNCH	774930	MUNICIPAL INVESTMENT TRUST FUND SIXTY THIRD INTERMEDIATE TERM.
1160	IM-01	MERRILL LYNCH	780545	MUNICIPAL INVESTMENT TRUST FUND SIXTY FOURTH INTERM TERM SERIES.
1161	IM-01	MERRILL LYNCH	780546	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIFTH INTERM TERM SERIES.
1162	IM-01	MERRILL LYNCH	780547	MUNICIPAL INVESTMENT TRUST FUND SIXTY SIXTH INTERM TERM SERIES.
1163	IM-01	MERRILL LYNCH	780548	MUNICIPAL INVESTMENT TRUST FUND SIXTY SEVENTH INTERM TERM SER.
1164	IM-01	MERRILL LYNCH	780549	MUNICIPAL INVESTMENT TRUST FUND SIXTY EIGHTH INTERM TERM SERIES.
1165	IM-01	MERRILL LYNCH	780550	MUNICIPAL INVESTMENT TRUST FUND SIXTY NINTH INTERM TERM SERIES.
1166	IM-01	MERRILL LYNCH	780551	MUNICIPAL INVESTMENT TRUST FUND SEVENTIETH INTERM TERM SERIES.
1167	IM-01	MERRILL LYNCH	780552	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIRST INTER TERM SER.
1168	IM-01	MERRILL LYNCH	780553	MUNICIPAL INVESTMENT TR FD SEVENTY SECOND INTERM TERM SERIES.
1169	IM-01	MERRILL LYNCH	780554	MUNICIPAL INVESTMENT TRUST FUND SEVENTY THIRD INTER TERM SERIES.
1170	IM-01	MERRILL LYNCH	780555	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FOURTH INTERMEDIATE.
1171	IM-01	MERRILL LYNCH	780556	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIFTH INTER TERM SERIES.
1172	IM-01	MERRILL LYNCH	780557	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SIXTH INTERMEDIATE TERM.
1173	IM-01	MERRILL LYNCH	780558	MUNICIPAL INVESTMENT TR FD SEVENTY SEVENTH INTERM TERM SERIES.
1174	IM-01	MERRILL LYNCH	780559	MUNICIPAL INVT TR FD SEVENTY EIGHTH INTERMEDIATE TERM SERIES.
1175	IM-01	MERRILL LYNCH	780560	MUNICIPAL INVESTMENT TRUST FUND SEVENTY NINTH INTERM TERM SER.
1176	IM-01	MERRILL LYNCH	780561	MUNICIPAL INVESTMENT TRUST FUND EIGHTIETH INTERM TERM SERIES.
1177	IM-01	MERRILL LYNCH	780562	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIRST INTERM TERM SERIES.
1178	IM-01	MERRILL LYNCH	780591	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SECOND INTERM TERM SER.
1179	IM-01	MERRILL LYNCH	780592	MUNICIPAL INVESTMENT TRUST FD EIGHTY THIRD INTERM TERM SERIES.
1180	IM-01	MERRILL LYNCH	780593	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FOURTH INTERM TERM SER.
1181	IM-01	MERRILL LYNCH	780594	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIFTH INTERM TERM SERIES.
1182	IM-01	MERRILL LYNCH	780595	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SIXTH INTERM TERM SERIES.
1183	IM-01	MERRILL LYNCH	780596	MUNICIPAL INVESTMENT TRUST FD EIGHTY SEVENTH INTERM TERM SERIES.
1184	IM-01	MERRILL LYNCH	780597	MUNICIPAL INVESTMENT TRUST FUND EIGHTY EIGHTH INTERM TERM SER.
1185	IM-01	MERRILL LYNCH	780598	MUNICIPAL INVESTMENT TRUST FUND EIGHTY NINTH INTERM TERM SERIES.
1186	IM-01	MERRILL LYNCH	780606	MUNICIPAL INVESTMENT TRUST FUND NINETY FIRST INTERM TERM SERIES.
1187	IM-01	MERRILL LYNCH	780609	MUNICIPAL INVESTMENT TRUST FUND NINETY SECOND INTERM TERM SER.
1188	IM-01	MERRILL LYNCH	780612	MUNICIPAL INVESTMENT TRUST FUND NINETY THIRD INTERM TERM SERIES.
1189	IM-01	MERRILL LYNCH	780615	MUNICIPAL INVESTMENT TRUST FUND NINETY FOURTH INTERM TM SERIES.
1190	IM-01	MERRILL LYNCH	780619	MUNICIPAL INVESTMENT TRUST FUND NINETY FIFTH INTERM TERM SERIES.
1191	IM-01	MERRILL LYNCH	780623	MUNICIPAL INVESTMENT TRUST FUND NINETY SIXTH INTERM TERM SERIES.
1192	IM-01	MERRILL LYNCH	780626	MUNICIPAL INVESTMENT TRUST FD NINETY SEVENTH INTERM TERM SERIES.
1193	IM-01	MERRILL LYNCH	780628	MUNICIPAL INVESTMENT TRUST FD NINETY EIGHTH INTERM TERM SERIES.
1194	IM-01	MERRILL LYNCH	780632	MUNICIPAL INVESTMENT TRUST FUND NINETY NINTH INTERM TERM SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1195	IM-01	MERRILL LYNCH	780635	MUNICIPAL INVESTMENT TRUST FD ONE HUNDREDTH INTERM TERM SERIES.
1196	IM-01	MERRILL LYNCH	780637	MUNICIPAL INVT TR FD ONE HUNDRED FIRST INTERMEDIATE TERM SERIES.
1197	IM-01	MERRILL LYNCH	780643	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SECOND INTERM TERM SER.
1198	IM-01	MERRILL LYNCH	780647	MUNICIPAL INVESTMENT TR FD ONE HUNDRED THIRD INTER TERM SERIES.
1199	IM-01	MERRILL LYNCH	780651	MUNICIPAL INVT TR FD ONE HUNDRED FOURTH INTERM TERM SERIES.
1200	IM-01	MERRILL LYNCH	780657	MUNICIPAL INVT TR FD ONE HUNDRED FIFTH INTERM TERM SERIES.
1201	IM-01	MERRILL LYNCH	780662	MUNICIPAL INVT TR FD ONE HUNDRED SIXTH INTERM TERM SERIES.
1202	IM-01	MERRILL LYNCH	780667	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTH INTERM TERM SERIES.
1203	IM-01	MERRILL LYNCH	780672	MUNICIPAL INVT TR FD ONE HUNDRED EIGHTH INTERM TERM SERIES.
1204	IM-01	MERRILL LYNCH	780677	MUNICIPAL INVT TR FD ONE HUNDRED NINTH INTERM TERM SERIES.
1205	IM-01	MERRILL LYNCH	780682	MUNICIPAL INVT TR FD ONE HUNDRED TENTH INTERMEDIATE TERM SERIES.
1206	IM-01	MERRILL LYNCH	780686	MUNICIPAL INVT TR FD ONE HUNDRED ELEVENTH INTERM TERM SERIES.
1207	IM-01	MERRILL LYNCH	780691	MUNICIPAL INVT TR FD ONE HUNDRED TWELFTH INTERM TERM SERIES.
1208	IM-01	MERRILL LYNCH	780694	MUNICIPAL INVT TR FD ONE HUNDRED THIRTEENTH INTERM TERM SERIES.
1209	IM-01	MERRILL LYNCH	780698	MUNICIPAL INVT TR FD ONE HUNDRED FOURTEENTH INTERM TERM SERIES.
1210	IM-01	MERRILL LYNCH	780703	MUNICIPAL INVESTMENT TR FD ONE HUNDRED FIFTEENTH INTERM TERM.
1211	IM-01	MERRILL LYNCH	780708	MUNICIPAL INVT TR FD ONE HUNDRED SIXTEENTH INTERM TERM SERIES.
1212	IM-01	MERRILL LYNCH	780715	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTEENTH INTERM TERM SERIES.
1213	IM-01	MERRILL LYNCH	780733	MUNICIPAL INVT TR FD ONE HUNDRED NINETEENTH INTERM TERM SERIES.
1214	IM-01	MERRILL LYNCH	780737	MUNICIPAL INVT TR FD ONE HUNDRED TWENTIETH INTERM TERM SERIES.
1215	IM-01	MERRILL LYNCH	780743	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY FIRST INTER TERM SERIES.
1216	IM-01	MERRILL LYNCH	780748	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY SECOND INTERM TM SERIES.
1217	IM-01	MERRILL LYNCH	780754	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY THIRD INTERM TERM SER.
1218	IM-01	MERRILL LYNCH	781271	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY FOURTH INTERM TERM SER.
1219	IM-01	MERRILL LYNCH	781277	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY FIFTH INTERM TERM SER.
1220	IM-01	MERRILL LYNCH	781281	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY SIXTH INTERM TERM SER.
1221	IM-01	MERRILL LYNCH	781285	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY SEVENTH INTERM TERM.
1222	IM-01	MERRILL LYNCH	781289	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY EIGHTH INTERM TERM SER.
1223	IM-01	MERRILL LYNCH	781300	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY NINTH INTER TERM SERIES.
1224	IM-01	MERRILL LYNCH	781305	MUNICIPAL INVT TR FD ONE HUNDRED THIRTIETH INTERM TERM SERIES.
1225	IM-01	MERRILL LYNCH	781346	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY FIRST INTERM TERM SER.
1226	IM-01	MERRILL LYNCH	781349	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY SECOND INTERM TERM SER.
1227	IM-01	MERRILL LYNCH	781353	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY THIRD INTERM TM SERIES.
1228	IM-01	MERRILL LYNCH	781354	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY FOURTH INTERM TM SERIES.
1229	IM-01	MERRILL LYNCH	781358	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY FIFTH INTERM TERM SER.
1230	IM-01	MERRILL LYNCH	781361	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY SIXTH INTER TERM SERIES.
1231	IM-01	MERRILL LYNCH	781366	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY SEVENTH INTERM TERM.
1232	IM-01	MERRILL LYNCH	781369	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY EIGHTH INTER TERM SER.
1233	IM-01	MERRILL LYNCH	781374	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY NINTH INTERM TERM SER.
1234	IM-01	MERRILL LYNCH	781377	MUNICIPAL INVT TR FD ONE HUNDRED FORTIETH INTERM TERM SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1235	IM-01	MERRILL LYNCH	781380	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FIRST INTERM TERM SERIES.
1236	IM-01	MERRILL LYNCH	781384	MUNICIPAL INVT TR FD ONE HUNDRED FORTY SECOND INTERM TERM SER.
1237	IM-01	MERRILL LYNCH	781387	MUNICIPAL INVT TR FD ONE HUNDRED FORTY THIRD INTERM TERM SER.
1238	IM-01	MERRILL LYNCH	781390	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FOURTH INTER TERM SERIES.
1239	IM-01	MERRILL LYNCH	781393	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FIFTH INTERM TERM SERIES.
1240	IM-01	MERRILL LYNCH	781396	MUNICIPAL INVT TR FD ONE HUNDRED FORTY SIXTH INTERM TERM SERIES.
1241	IM-01	MERRILL LYNCH	781402	MUNICIPAL INVT TR FD ONE HUNDRED FORTY SEVENTH INTERM TERM SER.
1242	IM-01	MERRILL LYNCH	781404	MUNICIPAL INVT TR FD ONE HUNDRED FORTY EIGHTH INTERM TERM SER.
1243	IM-01	MERRILL LYNCH	781406	MUNICIPAL INVT TR FD ONE HUNDRED FORTY NINTH INTERM TERM SERIES.
1244	IM-01	MERRILL LYNCH	780797	MUNICIPAL INVT TR FD ONE HUNDRED FIFTIETH INTERM TERM SERIES.
1245	IM-01	MERRILL LYNCH	780801	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY SECOND INTERM TERM SER.
1246	IM-01	MERRILL LYNCH	780803	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY THIRD INTERM TERM SERIES.
1247	IM-01	MERRILL LYNCH	780807	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY FOURTH INTERM TERM SER.
1248	IM-01	MERRILL LYNCH	780817	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY SIXTH INTERM TERM SERIES.
1249	IM-01	MERRILL LYNCH	780818	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY SEVENTH INTER TERM SER.
1250	IM-01	MERRILL LYNCH	780824	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY NINTH INTERM TERM SERIES.
1251	IM-01	MERRILL LYNCH	780827	MUNICIPAL INVT TR FD ONE HUNDRED SIXTIETH INTERM TERM SERIES.
1252	IM-01	MERRILL LYNCH	780830	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY FIRST INTERM TERM SERIES.
1253	IM-01	MERRILL LYNCH	780835	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY SECOND INTERM TERM SERIES.
1254	IM-01	MERRILL LYNCH	780838	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY THIRD INTERM TERM SERIES.
1255	IM-01	MERRILL LYNCH	780850	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY FIFTH INTERM TERM SERIES.
1256	IM-01	MERRILL LYNCH	868078	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY SIXTH INTERM TERM SERIES.
1257	IM-01	MERRILL LYNCH	868080	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY SEVENTH INTERM TM SERIES.
1258	IM-01	MERRILL LYNCH	868081	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY EIGHTH INTERM TM SERIES.
1259	IM-01	MERRILL LYNCH	868083	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY NINTH INTERM TERM SERIES.
1260	IM-01	MERRILL LYNCH	868084	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTIETH INTERM TERM SERIES.
1261	IM-01	MERRILL LYNCH	868085	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTY FIRST INTERM TM SERIES.
1262	IM-01	MERRILL LYNCH	868086	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTY SECOND INTERM TM SERIES.
1263	IM-01	MERRILL LYNCH	868087	DEFINED ASSET FDS MUN INVT TR FD ONE HUNDRED SEVENTY THIRD I.
1264	IM-01	MERRILL LYNCH	711904	MUNICIPAL INVESTMENT TRUST FUND FIRST MASSACHUSETTS SERIES.
1265	IM-01	MERRILL LYNCH	715115	MUNICIPAL INVESTMENT TRUST FUND SECOND MASSACHUSETTS SERIES.
1266	IM-01	MERRILL LYNCH	716602	MUNICIPAL INVESTMENT TRUST FUND THIRD MASSACHUSETTS SERIES.
1267	IM-01	MERRILL LYNCH	717804	MUNICIPAL INVESTMENT TRUST FUND FOURTH MASSACHUSETTS SERIES.
1268	IM-01	MERRILL LYNCH	719437	MUNICIPAL INVESTMENT TRUST FUND FIFTH MASSACHUSETTS SERIES.
1269	IM-01	MERRILL LYNCH	721766	MUNICIPAL INVESTMENT TRUST FUND SIXTH MASSACHUSETTS SERIES.
1270	IM-01	MERRILL LYNCH	68933	MUNICIPAL INVESTMENT TRUST FUND FIRST MICHIGAN SERIES.
1271	IM-01	MERRILL LYNCH	277256	MUNICIPAL INVESTMENT TRUST FUND SECOND MICHIGAN SERIES.
1272	IM-01	MERRILL LYNCH	718910	MUNICIPAL INVESTMENT TRUST FUND FIRST MBIA INSURED DISCOUNT.
1273	IM-01	MERRILL LYNCH	718115	MUNICIPAL INVESTMENT TRUST FUND FIRST MBIA INSURED SERIES.
1274	IM-01	MERRILL LYNCH	720504	MUNICIPAL INVESTMENT TRUST FUND SECOND MBIA INSURED SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1275	IM-01	MERRILL LYNCH	277061	MUNICIPAL INVESTMENT TRUST FUND SECOND MINNESOTA SERIES.
1276	IM-01	MERRILL LYNCH	278213	MUNICIPAL INVESTMENT TRUST FUND THIRD MINNESOTA SERIES.
1277	IM-01	MERRILL LYNCH	714527	MUNICIPAL INVESTMENT TRUST FUND FOURTH MINNESOTA SERIES.
1278	IM-01	MERRILL LYNCH	716094	MUNICIPAL INVESTMENT TRUST FUND FIFTH MINNESOTA SERIES.
1279	IM-01	MERRILL LYNCH	277229	MUNICIPAL INVESTMENT TRUST FUND FIRST MINNESOTA SERIES.
1280	IM-01	MERRILL LYNCH	68934	MUNICIPAL INVESTMENT TRUST FUND FIRST MONTHLY PAYMENT SERIES.
1281	IM-01	MERRILL LYNCH	68950	MUNICIPAL INVESTMENT TRUST FUND SECOND MONTHLY PAYMENT SERIE.
1282	IM-01	MERRILL LYNCH	68968	MUNICIPAL INVESTMENT TRUST FUND THIRD MONTHLY PAYMENT SERIES.
1283	IM-01	MERRILL LYNCH	797667	MUNICIPAL INVESTMENT TRUST FUND FOURTH MONTHLY PAYMENT SERIE.
1284	IM-01	MERRILL LYNCH	68929	MUNICIPAL INVESTMENT TRUST FUND FIFTH MONTHLY PAYMENT SERIES.
1285	IM-01	MERRILL LYNCH	68983	MUNICIPAL INVESTMENT TRUST FUND SIXTH MONTHLY PAYMENT SERIES.
1286	IM-01	MERRILL LYNCH	68981	MUNICIPAL INVESTMENT TRUST FUND SEVENTH MONTHLY PAYMENT SERIES.
1287	IM-01	MERRILL LYNCH	68924	MUNICIPAL INVESTMENT TRUST FUND EIGHTH MONTHLY PAYMENT SERIE.
1288	IM-01	MERRILL LYNCH	68946	MUNICIPAL INVESTMENT TRUST FUND NINTH MONTHLY PAYMENT SERIES.
1289	IM-01	MERRILL LYNCH	68986	MUNICIPAL INVESTMENT TRUST FUND TENTH MONTHLY PAYMENT SERIES.
1290	IM-01	MERRILL LYNCH	68927	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH MONTHLY PAYMENT SERIES.
1291	IM-01	MERRILL LYNCH	68991	MUNICIPAL INVESTMENT TRUST FUND TWELFTH MONTHLY PAYMENT SERIES.
1292	IM-01	MERRILL LYNCH	277260	MUNICIPAL INVESTMENT TRUST FUND THIRTEENTH MONTHLY PYMT SERIES.
1293	IM-01	MERRILL LYNCH	68941	MUNICIPAL INVESTMENT TRUST FUND FOURTEENTH MONTHLY PAYMENT S.
1294	IM-01	MERRILL LYNCH	68928	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH MONTHLY PYMT SERIES.
1295	IM-01	MERRILL LYNCH	277263	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH MONTHLY PAYMENT SE.
1296	IM-01	MERRILL LYNCH	68980	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH MONTHLY PAYMENT.
1297	IM-01	MERRILL LYNCH	68926	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH MONTHLY PAYMENT S.
1298	IM-01	MERRILL LYNCH	68945	MUNICIPAL INVESTMENT TRUST FUND NINETEENTH MONTHLY PAYMENT S.
1299	IM-01	MERRILL LYNCH	68996	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH MONTHLY PAYMENT SE.
1300	IM-01	MERRILL LYNCH	68997	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST MONTHLY PAYMENT.
1301	IM-01	MERRILL LYNCH	68998	MUNICIPAL INVESTMENT TRUST FUND TWENTY SECOND MONTHLY PAYMEN.
1302	IM-01	MERRILL LYNCH	68999	MUNICIPAL INVESTMENT TRUST FUND TWENTY THIRD MONTHLY PAYMENT.
1303	IM-01	MERRILL LYNCH	69000	MUNICIPAL INVESTMENT TRUST FUND TWENTY FOURTH MON PYMT SERIES.
1304	IM-01	MERRILL LYNCH	315541	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIFTH MON PYMT SERIES.
1305	IM-01	MERRILL LYNCH	69003	MUNICIPAL INVESTMENT TRUST FUND TWENTY SEVENTH MON PYMT SERIES.
1306	IM-01	MERRILL LYNCH	69004	MUNICIPAL INVESTMENT TRUST FUND TWENTY EIGHTH MONTHLY PAYMEN.
1307	IM-01	MERRILL LYNCH	69005	MUNICIPAL INVESTMENT TRUST FUND TWENTY NINTH MONTHLY PAYMENT.
1308	IM-01	MERRILL LYNCH	69007	MUNICIPAL INVESTMENT TRUST FUND THIRTIETH MONTHLY PAYMENT SE.
1309	IM-01	MERRILL LYNCH	69008	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIRST MONTHLY PAYMENT.
1310	IM-01	MERRILL LYNCH	69010	MUNICIPAL INVESTMENT TRUST FUND THIRTY THIRD MON PYMT SERIES.
1311	IM-01	MERRILL LYNCH	69011	MUNICIPAL INVESTMENT TRUST FUND THIRTY FOURTH MONTHLY PAYMEN.
1312	IM-01	MERRILL LYNCH	69013	MUNICIPAL INVESTMENT TRUST FUND THIRTY SIXTH MONTHLY PAYMENT.
1313	IM-01	MERRILL LYNCH	69014	MUNICIPAL INVESTMENT TRUST FUND THIRTY SEVENTH MONTHLY PAYME.
1314	IM-01	MERRILL LYNCH	69015	MUNICIPAL INVESTMENT TRUST FUND THIRTY EIGHTH MONTHLY PAYMEN.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1315	IM-01	MERRILL LYNCH	69016	MUNICIPAL INVESTMENT TRUST FUND THIR 'Y NINTH MONTHLY PAYMENT.
1316	IM-01	MERRILL LYNCH	69018	MUNICIPAL INVESTMENT TRUST FUND FORTIETH MONTHLY PAYMENT SERIES.
1317	IM-01	MERRILL LYNCH	69019	MUNICIPAL INVESTMENT TRUST FUND FORTY FIRST MONTHLY PAYMENT.
1318	IM-01	MERRILL LYNCH	69021	MUNICIPAL INVESTMENT TRUST FUND FORTY THIRD MONTHLY PAYMENT.
1319	IM-01	MERRILL LYNCH	69022	MUNICIPAL INVESTMENT TRUST FUND FORTY FOURTH MONTHLY PAYMENT.
1320	IM-01	MERRILL LYNCH	69023	MUNICIPAL INVESTMENT TRUST FUND FORTY FIFTH MONTHLY PAYMENT.
1321	IM-01	MERRILL LYNCH	68940	MUNICIPAL INVESTMENT TRUST FUND FORTY SIXTH MONTHLY PAYMENT.
1322	IM-01	MERRILL LYNCH	68939	MUNICIPAL INVESTMENT TRUST FUND FORTY SEVENTH MONTHLY PAYMEN.
1323	IM-01	MERRILL LYNCH	202664	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIRST MONTHLY PAYMENT.
1324	IM-01	MERRILL LYNCH	711316	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIRST NEW YORK SERIES.
1325	IM-01	MERRILL LYNCH	205677	MUNICIPAL INVESTMENT TRUST FUND SIXTY SEVENTH MONTHLY PAYMEN.
1326	IM-01	MERRILL LYNCH	813081	MUNICIPAL INVESTMENT TRUST FUND SIXTY NINTH MONTHLY PAY SERIES.
1327	IM-01	MERRILL LYNCH	216653	MUNICIPAL INVESTMENT TRUST FUND SEVENTIETH MONTHLY PAYMENT S.
1328	IM-01	MERRILL LYNCH	216650	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIRST MONTHLY PAYMEN.
1329	IM-01	MERRILL LYNCH	277260	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SECOND MONTHLY PAYM.
1330	IM-01	MERRILL LYNCH	277262	MUNICIPAL INVESTMENT TRUST FUND SEVENTY NINTH MONTHLY PAYMEN.
1331	IM-01	MERRILL LYNCH	225667	MUNICIPAL INVESTMENT TRUST FUND EIGHTIETH MONTHLY PAYMENT SE.
1332	IM-01	MERRILL LYNCH	806239	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIRST MON PAY SRS.
1333	IM-01	MERRILL LYNCH	230396	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIFTH MONTHLY PAYMENT.
1334	IM-01	MERRILL LYNCH	277226	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SIXTH MONTHLY PAYMENT.
1335	IM-01	MERRILL LYNCH	68923	MUNICIPAL INVESTMENT TRUST FUND SIXTY EIGHTH MONTHLY PAYMENT.
1336	IM-01	MERRILL LYNCH	277227	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SEVENTH MONTHLY PAYME.
1337	IM-01	MERRILL LYNCH	275780	MUNICIPAL INVESTMENT TRUST FUND EIGHTY EIGHTH MONTHLY PAYMEN.
1338	IM-01	MERRILL LYNCH	276217	MUNICIPAL INVESTMENT TRUST FUND NINETIETH MONTHLY PAYMENT SE.
1339	IM-01	MERRILL LYNCH	276257	MUNICIPAL INVESTMENT TRUST FUND NINETY FIRST MONTHLY PAYMENT.
1340	IM-01	MERRILL LYNCH	276385	MUNICIPAL INVESTMENT TRUST FUND NINETY SECOND MON PYMT SERIES.
1341	IM-01	MERRILL LYNCH	277870	MUNICIPAL INVESTMENT TRUST FUND NINETY SEVENTH MONTHLY PAYME.
1342	IM-01	MERRILL LYNCH	277912	MUNICIPAL INVESTMENT TRUST FUND NINETY EIGHTH MONTHLY PAYMEN.
1343	IM-01	MERRILL LYNCH	276156	MUNICIPAL INVESTMENT TRUST FUND NINETY NINTH MONTHLY PAYMENT.
1344	IM-01	MERRILL LYNCH	278274	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDREDTH MONTHLY PAYMEN.
1345	IM-01	MERRILL LYNCH	311312	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SIXTH MON PYMT SERIES.
1346	IM-01	MERRILL LYNCH	311864	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TENTH MONTHLY.
1347	IM-01	MERRILL LYNCH	312231	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWELFTH MONTHLY.
1348	IM-01	MERRILL LYNCH	313112	MUNICIPAL INVT TR FD ONE HUNDRED FOURTEENTH MON PYMT SERIES.
1349	IM-01	MERRILL LYNCH	313447	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTEENTH MONTH.
1350	IM-01	MERRILL LYNCH	313560	MUNICIPAL INVT TR FUND ONE HUNDRED SEVENTEENTH MON PYMT SERIES.
1351	IM-01	MERRILL LYNCH	313786	MUNICIPAL INVT TR FUND ONE HUNDRED EIGHTEENTH MON PYMT SERIES.
1352	IM-01	MERRILL LYNCH	313882	MUNICIPAL INVT TR FUND ONE HUNDRED NINETEENTH MON PYMT SERIES.
1353	IM-01	MERRILL LYNCH	314602	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTY THIRD MO.
1354	IM-01	MERRILL LYNCH	314766	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTY FOURTH MO.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1355	IM-01	MERRILL LYNCH	315175	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTY SIXTH MO.
1356	IM-01	MERRILL LYNCH	315618	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY EIGHTH MON PYMT SERIES.
1357	IM-01	MERRILL LYNCH	316298	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY SECOND MON PYMT SERIES.
1358	IM-01	MERRILL LYNCH	317327	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY SEVENTH MON PYMT SERIES.
1359	IM-01	MERRILL LYNCH	317423	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY EIGHTH MON PYMT SERIES.
1360	IM-01	MERRILL LYNCH	317857	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FORTY FIRST MONT.
1361	IM-01	MERRILL LYNCH	318105	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FORTY SECOND MO.
1362	IM-01	MERRILL LYNCH	318263	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FORTY THIRD MO.
1363	IM-01	MERRILL LYNCH	318502	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FOURTH MON PYMT SERIES.
1364	IM-01	MERRILL LYNCH	318711	MUNICIPAL INVT TR FD ONE HUNDRED FORTY FIFTH MON PYMT SERIES.
1365	IM-01	MERRILL LYNCH	318694	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FORTY SIXTH MO.
1366	IM-01	MERRILL LYNCH	319125	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FORTY SEVENTH MO.
1367	IM-01	MERRILL LYNCH	319116	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FORTY EIGHTH MO.
1368	IM-01	MERRILL LYNCH	319347	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FORTY NINTH MONT.
1369	IM-01	MERRILL LYNCH	319387	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTIETH MONTHL.
1370	IM-01	MERRILL LYNCH	319386	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY FIRST MO.
1371	IM-01	MERRILL LYNCH	320384	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY SEVENTH M.
1372	IM-01	MERRILL LYNCH	320437	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY EIGHTH MO.
1373	IM-01	MERRILL LYNCH	703114	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY FIRST MO.
1374	IM-01	MERRILL LYNCH	703666	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY FIFTH MO.
1375	IM-01	MERRILL LYNCH	707223	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FORTY NINTH MONT.
1376	IM-01	MERRILL LYNCH	727427	MUNICIPAL INVT TR FD TWO HUNDRED FINETY SEVENTH MON PYMT SERIES.
1377	IM-01	MERRILL LYNCH	713042	MUNICIPAL INVT TR FD TWO HUNDRED SIXTY SIXTH MON PYMT SERIES.
1378	IM-01	MERRILL LYNCH	717531	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SEVENTY SEVENTH.
1379	IM-01	MERRILL LYNCH	720738	MUNICIPAL INVT TR FD TWO HUNDRED EIGHTY FOURTH MON PYMT SERIES.
1380	IM-01	MERRILL LYNCH	720842	MUNICIPAL INVT TR FD TWO HUNDRED EIGHTY FIFTY MON PYMT SERIES.
1381	IM-01	MERRILL LYNCH	727645	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETY SIXTH MO.
1382	IM-01	MERRILL LYNCH	729368	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETY EIGHTH MO.
1383	IM-01	MERRILL LYNCH	775973	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED SIXTY NINTH M.
1384	IM-01	MERRILL LYNCH	780650	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY FOURTH MON PYMT S.
1385	IM-01	MERRILL LYNCH	780771	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED EIGHTH MON PYMT.
1386	IM-01	MERRILL LYNCH	780829	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY FIFTH MON PYMT SERIES.
1387	IM-01	MERRILL LYNCH	069002	MUNICIPAL INVESTMENT TRUST FUND TWENTY SIXTH MON PYMT SERIES.
1388	IM-01	MERRILL LYNCH	069009	MUNICIPAL INVESTMENT TRUST FUND THIRTY SECOND MON PYMT SERIES.
1389	IM-01	MERRILL LYNCH	069012	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIFTH MON PYMT SERIES.
1390	IM-01	MERRILL LYNCH	202666	MUNICIPAL INVESTMENT TRUST FUND SIXTY THIRD MON PYMT SERIES.
1391	IM-01	MERRILL LYNCH	202667	MUNICIPAL INVESTMENT TRUST FUND SIXTY FOURTH MONTHLY PAYMENT.
1392	IM-01	MERRILL LYNCH	202668	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIFTH MONTHLY PAYMENT.
1393	IM-01	MERRILL LYNCH	205676	MUNICIPAL INVESTMENT TRUST FUND SIXTY SIXTH MONTHLY PAYMENT.
1394	IM-01	MERRILL LYNCH	215654	MUNICIPAL INVESTMENT TRUST FUND SEVENTY THIRD MONTHLY PAYMEN.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1395	IM-01	MERRILL LYNCH	216659	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FOURTH MON PYMT SERIES.
1396	IM-01	MERRILL LYNCH	277267	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIFTH MON PYMT SERIES.
1397	IM-01	MERRILL LYNCH	216652	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SIXTH MON PYMT SERIES.
1398	IM-01	MERRILL LYNCH	277261	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SEVENTH MONTHLY PAYM.
1399	IM-01	MERRILL LYNCH	230397	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SECOND MONTHLY PAYMEN.
1400	IM-01	MERRILL LYNCH	230398	MUNICIPAL INVESTMENT TRUST FUND EIGHTY THIRD MON PYMT SERIES.
1401	IM-01	MERRILL LYNCH	277225	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FOURTH MON PYMT SERIES.
1402	IM-01	MERRILL LYNCH	275781	MUNICIPAL INVESTMENT TRUST FUND EIGHTY NINTH MONTHLY PAYMENT.
1403	IM-01	MERRILL LYNCH	276777	MUNICIPAL INVESTMENT TRUST FUND NINETY THIRD MONTHLY PAYMENT.
1404	IM-01	MERRILL LYNCH	276891	MUNICIPAL INVESTMENT TRUST FUND NINETY FOURTH MONTHLY PAYMEN.
1405	IM-01	MERRILL LYNCH	277322	MUNICIPAL INVESTMENT TRUST FUND NINETY FIFTH MONTHLY PAYMENT.
1406	IM-01	MERRILL LYNCH	277640	MUNICIPAL INVESTMENT TRUST FUND NINETY SIXTH MONTHLY PAYMENT.
1407	IM-01	MERRILL LYNCH	310073	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIRST MONTHLY PA.
1408	IM-01	MERRILL LYNCH	310476	MUNICIPAL INVT TR FD ONE HUNDRED SECOND MON PYMT SERIES.
1409	IM-01	MERRILL LYNCH	310631	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRD MONTHLY PA.
1410	IM-01	MERRILL LYNCH	310991	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FOURTH MONTHLY P.
1411	IM-01	MERRILL LYNCH	311466	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTH MONTHLY.
1412	IM-01	MERRILL LYNCH	311412	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SEVENTH MONTHLY.
1413	IM-01	MERRILL LYNCH	311410	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTH MONTHLY.
1414	IM-01	MERRILL LYNCH	311861	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINTH MONTHLY.
1415	IM-01	MERRILL LYNCH	312150	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED ELEVENTH MONTHL.
1416	IM-01	MERRILL LYNCH	312909	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRTEENTH MONTH.
1417	IM-01	MERRILL LYNCH	313307	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTEENTH MONTH.
1418	IM-01	MERRILL LYNCH	314124	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTIETH MONTHL.
1419	IM-01	MERRILL LYNCH	314289	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTY FIRST MO.
1420	IM-01	MERRILL LYNCH	781092	MUNICIPAL INVT TRUST FUND ONE HUNDRED TWENTY FIRST INS SERIES.
1421	IM-01	MERRILL LYNCH	314503	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTY SECOND MO.
1422	IM-01	MERRILL LYNCH	781094	MUNICIPAL INVT TRUST FUND ONE HUNDRED TWENTY SECOND INS SERIES.
1423	IM-01	MERRILL LYNCH	315140	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTY FIFTH MO.
1424	IM-01	MERRILL LYNCH	315350	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWENTY SEVENTH M.
1425	IM-01	MERRILL LYNCH	315879	MUNICIPAL INVT TR FD ONE HUNDRED TWENTY NINTH MON PYMT SERIES.
1426	IM-01	MERRILL LYNCH	316045	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRTIETH MONTH.
1427	IM-01	MERRILL LYNCH	316281	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRTY FIRST MO.
1428	IM-01	MERRILL LYNCH	316457	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRTY THIRD MO.
1429	IM-01	MERRILL LYNCH	316475	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRTY FOURTH MO.
1430	IM-01	MERRILL LYNCH	316644	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRTY FIFTH MO.
1431	IM-01	MERRILL LYNCH	317036	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRTY SIXTH MO.
1432	IM-01	MERRILL LYNCH	317538	MUNICIPAL INVT TR FD ONE HUNDRED THIRTY NINTH MON PYMT SERIES.
1433	IM-01	MERRILL LYNCH	317807	MUNICIPAL INVT TR FD ONE HUNDRED FORTIETH MON PYMT SERIES.
1434	IM-01	MERRILL LYNCH	319610	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY SECOND MON PYMT SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
1435		IM-01	MERRILL LYNCH	319664	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY THIRD MONT.
1436		IM-01	MERRILL LYNCH	319672	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY FOURTH MO.
1437		IM-01	MERRILL LYNCH	000014	MUNICIPAL INVT TR FD ONE HUNDRED FIFTY FIFTH MON PYMT SERIES.
1438		IM-01	MERRILL LYNCH	000017	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY SIXTH MONT.
1439		IM-01	MERRILL LYNCH	803800	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY NINTH INSU.
1440		IM-01	MERRILL LYNCH	350018	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTY NINTH MONT.
1441		IM-01	MERRILL LYNCH	350097	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTIETH MONTHLY.
1442		IM-01	MERRILL LYNCH	350221	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY FIRST MONT.
1443		IM-01	MERRILL LYNCH	350481	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY SECOND MO.
1444		IM-01	MERRILL LYNCH	803807	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY THIRD INSU.
1445		IM-01	MERRILL LYNCH	350681	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY THIRD MONT.
1446		IM-01	MERRILL LYNCH	350809	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY FOURTH MO.
1447		IM-01	MERRILL LYNCH	780844	MUNICIPAL INVT TRUST FUND ONE HUNDRED SIXTY FOURTH INTER TER.
1448		IM-01	MERRILL LYNCH	788956	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SIXTY FIFTH MON PYMT.
1449		IM-01	MERRILL LYNCH	351073	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY SIXTH MON PYMT SERIES.
1450		IM-01	MERRILL LYNCH	351121	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY SEVENTH MON PYMT SERIES.
1451		IM-01	MERRILL LYNCH	351118	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTY EIGHTH MO.
1452		IM-01	MERRILL LYNCH	351497	MUNICIPAL INVT TR FD ONE HUNDRED SIXTY NINTH MON PYMT SERIES.
1453		IM-01	MERRILL LYNCH	715092	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SEVENTIETH MONTH.
1454		IM-01	MERRILL LYNCH	351713	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SEVENTY FIRST MO.
1455		IM-01	MERRILL LYNCH	351726	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTY SECOND MON PYMT SERIES.
1456		IM-01	MERRILL LYNCH	351724	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SEVENTY THIRD MO.
1457		IM-01	MERRILL LYNCH	352077	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTY FOURTH MON PYMT SERIES.
1458		IM-01	MERRILL LYNCH	352050	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SEVENTY FIFTH MO.
1459		IM-01	MERRILL LYNCH	352379	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SEVENTY SIXTH MO.
1460		IM-01	MERRILL LYNCH	352333	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTY SEVENTH MON PYMT SE.
1461		IM-01	MERRILL LYNCH	216655	MUNICIPAL INVESTMENT TRUST FUND SEVENTY EIGHTH MONTHLY PAYME.
1462		IM-01	MERRILL LYNCH	352546	MUNICIPAL INVT TR FD ONE HUNDRED SEVENTY EIGHTH MON PYMT SERIES.
1463		IM-01	MERRILL LYNCH	352838	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SEVENTY NINTH MO.
1464		IM-01	MERRILL LYNCH	352727	MUNICIPAL INVT TR FD ONE HUNDRED EIGHTIETH MON PYMT SERIES.
1465		IM-01	MERRILL LYNCH	352724	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTY FIRST MO.
1466		IM-01	MERRILL LYNCH	353226	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTY SECOND.
1467		IM-01	MERRILL LYNCH	353383	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTY THIRD MO.
1468		IM-01	MERRILL LYNCH	400014	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTY FOURTH MO.
1469		IM-01	MERRILL LYNCH	353546	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTY FIFTH MO.
1470		IM-01	MERRILL LYNCH	353596	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTY SIXTH MO.
1471		IM-01	MERRILL LYNCH	353711	MUNICIPAL INVT TR FD ONE HUNDRED EIGHTY SEVENTH MON PYMT SER.
1472		IM-01	MERRILL LYNCH	353878	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED EIGHTY EIGHTH MO.
1473		IM-01	MERRILL LYNCH	353986	MUNICIPAL INVT TR FD ONE HUNDRED EIGHTY NINTH MON PYMT SER.
1474		IM-01	MERRILL LYNCH	354005	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETIETH MONTHL.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1475	IM-01	MERRILL LYNCH	354906	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY MONTHLY.
1476	IM-01	MERRILL LYNCH	354907	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY MONTHLY P.
1477	IM-01	MERRILL LYNCH	354108	MUNICIPAL INVT TR FD ONE HUNDRED NINETY FIRST MON PYMT SER.
1478	IM-01	MERRILL LYNCH	354487	MUNICIPAL INVT TR FD ONE HUNDRED NINETY SECOND MON PYMT SER.
1479	IM-01	MERRILL LYNCH	354733	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY THIRD MO.
1480	IM-01	MERRILL LYNCH	354936	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY FOURTH.
1481	IM-01	MERRILL LYNCH	354934	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY FIFTH.
1482	IM-01	MERRILL LYNCH	355292	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY SIXTH MO.
1483	IM-01	MERRILL LYNCH	355299	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY SEVENTH MO.
1484	IM-01	MERRILL LYNCH	276054	MUNICIPAL INVESTMENT TRUST FD ONE HUNDRED NINETY EIGHTH MO.
1485	IM-01	MERRILL LYNCH	355595	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED NINETY NINTH MO.
1486	IM-01	MERRILL LYNCH	788957	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDREDTH MON PYMT SER.
1487	IM-01	MERRILL LYNCH	355880	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIRST MONTHLY.
1488	IM-01	MERRILL LYNCH	355826	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SECOND MONTHLY P.
1489	IM-01	MERRILL LYNCH	355973	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRD MON PYMT S.
1490	IM-01	MERRILL LYNCH	068942	MUNICIPAL INVT TR FD TWO HUNDRED FOURTH MON PYMT SER.
1491	IM-01	MERRILL LYNCH	356237	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTH MONTHLY.
1492	IM-01	MERRILL LYNCH	356236	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTH MONTHLY PA.
1493	IM-01	MERRILL LYNCH	356407	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SEVENTH MONTHLY.
1494	IM-01	MERRILL LYNCH	356405	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED EIGHTH MONTHLY.
1495	IM-01	MERRILL LYNCH	357102	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINTH MONTHLY PA.
1496	IM-01	MERRILL LYNCH	356969	MUNICIPAL INVESTMENT TRUST FD TWO HUNDRED TENTH MON PYMT SER.
1497	IM-01	MERRILL LYNCH	356966	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED ELEVENTH MON PAY.
1498	IM-01	MERRILL LYNCH	357147	MUNICIPAL INVESTMENT TR FD TWO HUNDRED TWELFTH MON PYMT SER.
1499	IM-01	MERRILL LYNCH	357124	MUNICIPAL INVT TR FD TWO HUNDRED THIRTEENTH MON PYMT SER.
1500	IM-01	MERRILL LYNCH	357165	MUNICIPAL INVESTMENT TR FD TWO HUNDRED FOURTEENTH MON PYMT.
1501	IM-01	MERRILL LYNCH	357269	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTEENTH MONTHL.
1502	IM-01	MERRILL LYNCH	357380	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTEENTH MONTHL.
1503	IM-01	MERRILL LYNCH	357438	MUNICIPAL INVT TR FD TWO HUNDRED SEVENTEENTH MON PYMT SER.
1504	IM-01	MERRILL LYNCH	700736	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED EIGHTEENTH MONTHLY.
1505	IM-01	MERRILL LYNCH	700778	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETEENTH MONTHLY.
1506	IM-01	MERRILL LYNCH	700988	MUNICIPAL INVT TR FD TWO HUNDRED TWENTIETH MON PYMT SER.
1507	IM-01	MERRILL LYNCH	780804	MUNICIPAL INVT TRUST FUND FOUR HUNDRED TWENTIETH MON PAY SER.
1508	IM-01	MERRILL LYNCH	701261	MUNICIPAL INVT TR FD TWO HUNDRED TWENTY FIRST MON PYMT SER.
1509	IM-01	MERRILL LYNCH	701469	MUNICIPAL INVT TR FD TWO HUNDRED TWENTY SECOND MON PYMT SER.
1510	IM-01	MERRILL LYNCH	701644	MUNICIPAL INVT TR FD TWO HUNDRED TWENTY THIRD MON PYMT SER.
1511	IM-01	MERRILL LYNCH	701654	MUNICIPAL INVT TR FD TWO HUNDRED TWENTY FOURTH MON PYMT SER.
1512	IM-01	MERRILL LYNCH	701809	MUNICIPAL INVT TR FD TWO HUNDRED TWENTY FIFTH MON PYMT SER.
1513	IM-01	MERRILL LYNCH	701808	MUNICIPAL INVT TR FD TWO HUNDRED TWENTY SIXTH MON PYMT SER.
1514	IM-01	MERRILL LYNCH	702296	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED TWENTY SEVENTH MO.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1515	IM-01	MERRILL LYNCH	702415	MUNICIPAL INVT TR FD TWO HUNDRED TWENTY EIGHTH MON PYMT SER.
1516	IM-01	MERRILL LYNCH	702524	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED TWENTY NINTH MO.
1517	IM-01	MERRILL LYNCH	702722	MUNICIPAL INVT TR FD TWO HUNDRED THIRTIETH MON PYMT SER.
1518	IM-01	MERRILL LYNCH	703215	MUNICIPAL INVT TR FD TWO HUNDRED THIRTY SECOND MON PYMT SER.
1519	IM-01	MERRILL LYNCH	703524	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY THIRD MO.
1520	IM-01	MERRILL LYNCH	703552	MUNICIPAL INVT TR FD TWO HUNDRED THIRTY FOURTH MON PYMT SER.
1521	IM-01	MERRILL LYNCH	703658	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY FIFTH MO.
1522	IM-01	MERRILL LYNCH	703884	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY SIXTH MO.
1523	IM-01	MERRILL LYNCH	703882	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY SEVENTH MO.
1524	IM-01	MERRILL LYNCH	704204	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY EIGHTH MO.
1525	IM-01	MERRILL LYNCH	704534	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED THIRTY NINTH MO.
1526	IM-01	MERRILL LYNCH	704804	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FORTIETH MONTHLY.
1527	IM-01	MERRILL LYNCH	757560	MUNICIPAL INVT TR FUND THREE HUNDRED FORTY FIRST MON PAY SER.
1528	IM-01	MERRILL LYNCH	705374	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FORTY SECOND MO.
1529	IM-01	MERRILL LYNCH	705597	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FORTY THIRD MO.
1530	IM-01	MERRILL LYNCH	781080	MUNICIPAL INVT TR FUND FOUR HUNDRED FORTY THIRD MON PYMT SER.
1531	IM-01	MERRILL LYNCH	705594	MUNICIPAL INVT TR FD TWO HUNDRED FORTY FOURTH MON PYMT SER.
1532	IM-01	MERRILL LYNCH	705603	MUNICIPAL INVT TR FD TWO HUNDRED FORTY FIFTH MON PYMT SER.
1533	IM-01	MERRILL LYNCH	706214	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FORTY SIXTH MO.
1534	IM-01	MERRILL LYNCH	706372	MUNICIPAL INVT TR FD TWO HUNDRED FORTY SEVENTH MON PYMT SER.
1535	IM-01	MERRILL LYNCH	706708	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FORTY EIGHTH MO.
1536	IM-01	MERRILL LYNCH	707368	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTIETH MONTHLY.
1537	IM-01	MERRILL LYNCH	707796	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY FIRST MO.
1538	IM-01	MERRILL LYNCH	708130	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY SECOND MO.
1539	IM-01	MERRILL LYNCH	708449	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY THIRD MO.
1540	IM-01	MERRILL LYNCH	708869	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY FOURTH MO.
1541	IM-01	MERRILL LYNCH	709259	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY FIFTH MO.
1542	IM-01	MERRILL LYNCH	709377	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY SIXTH MO.
1543	IM-01	MERRILL LYNCH	709708	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY SEVENTH MO.
1544	IM-01	MERRILL LYNCH	709711	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY EIGHTH MO.
1545	IM-01	MERRILL LYNCH	710768	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FIFTY NINTH MO.
1546	IM-01	MERRILL LYNCH	710779	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTIETH MONTHLY.
1547	IM-01	MERRILL LYNCH	711075	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTY FIRST MO.
1548	IM-01	MERRILL LYNCH	711314	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTY SECOND MO.
1549	IM-01	MERRILL LYNCH	320804	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTY THIRD MO.
1550	IM-01	MERRILL LYNCH	712617	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTY FOURTH MO.
1551	IM-01	MERRILL LYNCH	713027	MUNICIPAL INVESTMENT TR FD TWO HUNDRED SIXTY FIFTH MON PYMT.
1552	IM-01	MERRILL LYNCH	713028	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTY SIXTH MO.
1553	IM-01	MERRILL LYNCH	714161	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SIXTY SEVENTH MO.
1554	IM-01	MERRILL LYNCH	714526	MUNICIPAL INVT TR FD TWO HUNDRED SIXTY EIGHTH MON PYMT SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1555	IM-01	MERRILL LYNCH	715068	MUNICIPAL INVT TR FD TWO HUNDRED SIXTY NINTH MON PYMT SER.
1556	IM-01	MERRILL LYNCH	715274	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SEVENTIETH MONTHLY.
1557	IM-01	MERRILL LYNCH	715602	MUNICIPAL INVT TR FD TWO HUNDRED SEVENTY FIRST MON PYMT SER.
1558	IM-01	MERRILL LYNCH	766083	MUNICIPAL INVT TR FD TWO HUNDRED SEVENTY SECOND MON PYMT SER.
1559	IM-01	MERRILL LYNCH	716388	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SEVENTY THIRD MO.
1560	IM-01	MERRILL LYNCH	716604	MUNICIPAL INVT TR FD TWO HUNDRED SEVENTY FOURTH MON PYMT SER.
1561	IM-01	MERRILL LYNCH	716915	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED SEVENTY FIFTH MO.
1562	IM-01	MERRILL LYNCH	717230	MUNICIPAL INVT TR FD TWO HUNDRED SEVENTY SIXTH MON PYMT SER.
1563	IM-01	MERRILL LYNCH	718113	MUNICIPAL INVT TR FD TWO HUNDRED SEVENTY EIGHTH MON PYMT SER.
1564	IM-01	MERRILL LYNCH	718555	MUNICIPAL INVT TR FD TWO HUNDRED SEVENTY NINTH MON PYMT SER.
1565	IM-01	MERRILL LYNCH	718919	MUNICIPAL INVT TR FD TWO HUNDRED EIGHTIETH MON PYMT SER.
1566	IM-01	MERRILL LYNCH	719359	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED EIGHTY FIRST MO.
1567	IM-01	MERRILL LYNCH	719599	MUNICIPAL INVT TR FD TWO HUNDRED EIGHTY SECOND MON PYMT SER.
1568	IM-01	MERRILL LYNCH	719723	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED EIGHTY THIRD MO.
1569	IM-01	MERRILL LYNCH	721720	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED EIGHTY SIXTH MO.
1570	IM-01	MERRILL LYNCH	722415	MUNICIPAL INVT TR FD TWO HUNDRED EIGHTY SEVENTH MON PYMT SER.
1571	IM-01	MERRILL LYNCH	722749	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED EIGHTY EIGHTH MO.
1572	IM-01	MERRILL LYNCH	723267	MUNICIPAL INVT TR FD TWO HUNDRED EIGHTY NINTH MON PYMT SER.
1573	IM-01	MERRILL LYNCH	723265	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETIETH MONTHL.
1574	IM-01	MERRILL LYNCH	723744	MUNICIPAL INVT TR FD TWO HUNDRED NINETY FIRST MON PYMT SER.
1575	IM-01	MERRILL LYNCH	724578	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETY SECOND MO.
1576	IM-01	MERRILL LYNCH	725682	MUNICIPAL INVT TR FD TWO HUNDRED NINETY THIRD MON PYMT SER.
1577	IM-01	MERRILL LYNCH	726323	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETY FOURTH MO.
1578	IM-01	MERRILL LYNCH	726842	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETY FIFTH MO.
1579	IM-01	MERRILL LYNCH	727306	MUNICIPAL INVESTMENT TR FUND TWO HUNDRED NINETY SIXTH MON PA.
1580	IM-01	MERRILL LYNCH	727308	MUNICIPAL INVESTMENT TR FUND TWO HUNDRED NINETY SEVENTH MO.
1581	IM-01	MERRILL LYNCH	730021	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED NINETY NINTH MO.
1582	IM-01	MERRILL LYNCH	730353	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDREDTH MON PYMT SER.
1583	IM-01	MERRILL LYNCH	730682	MUNICIPAL INVESTMENT TR FD THREE HUNDRED FIRST MON PYMT SER.
1584	IM-01	MERRILL LYNCH	730759	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED SECOND MONTHLY.
1585	IM-01	MERRILL LYNCH	731418	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED THIRD MON PAY.
1586	IM-01	MERRILL LYNCH	731417	MUNICIPAL INVESTMENT TR FD THREE HUNDRED FOURTH MON PYMT SER.
1587	IM-01	MERRILL LYNCH	732725	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED FIFTH MONTHLY.
1588	IM-01	MERRILL LYNCH	732728	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED SIXTH MONTHLY.
1589	IM-01	MERRILL LYNCH	733959	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED SEVENTH MONTHL.
1590	IM-01	MERRILL LYNCH	736056	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED EIGHTH MONTHLY.
1591	IM-01	MERRILL LYNCH	736045	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED NINTH MONTHLY.
1592	IM-01	MERRILL LYNCH	736044	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED TENTH MONTHLY.
1593	IM-01	MERRILL LYNCH	737794	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED ELEVENTH MONTHLY.
1594	IM-01	MERRILL LYNCH	739296	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED TWELFTH MONTHL.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count		Group	Complex	CIK	Name
1595		IM-01	MERRILL LYNCH	739291	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED THIRTEENTH MO.
1596		IM-01	MERRILL LYNCH	739704	MUNICIPAL INVT TR FD THREE HUNDRED FOURTEENTH MON PYMT SER.
1597		IM-01	MERRILL LYNCH	740791	MUNICIPAL INVESTMENT TR FD THREE HUNDRED FIFTEENTH MON PYMT.
1598		IM-01	MERRILL LYNCH	740792	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED SIXTEENTH MO.
1599		IM-01	MERRILL LYNCH	741774	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTEENTH MON PYMT SER.
1600		IM-01	MERRILL LYNCH	742458	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTEENTH MON PYMT SER.
1601		IM-01	MERRILL LYNCH	743441	MUNICIPAL INVT TR FD THREE HUNDRED NINETEENTH MON PYMT SER.
1602		IM-01	MERRILL LYNCH	744127	MUNICIPAL INVESTMENT TR FD THREE HUNDRED TWENTIETH MON PYMT.
1603		IM-01	MERRILL LYNCH	744191	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY FIRST MON PYMT SER.
1604		IM-01	MERRILL LYNCH	745050	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY SECOND MON PYMT SE.
1605		IM-01	MERRILL LYNCH	745480	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY THIRD MON PYMT SER.
1606		IM-01	MERRILL LYNCH	745997	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY FOURTH MON PYMT SE.
1607		IM-01	MERRILL LYNCH	746556	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY FIFTH MON PYMT SER.
1608		IM-01	MERRILL LYNCH	746559	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY SIXTH MON PYMT SER.
1609		IM-01	MERRILL LYNCH	747220	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY SEVENTH MON PYMT S.
1610		IM-01	MERRILL LYNCH	747216	MUNICIPAL INVT TR FD THREE HUNDRED TWENTY EIGHTH MON PAY SER.
1611		IM-01	MERRILL LYNCH	748095	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED TWENTY NINTH MO.
1612		IM-01	MERRILL LYNCH	748635	MUNICIPAL INVT TR FD THREE HUNDRED THIRTIETH MON PMYT SER.
1613		IM-01	MERRILL LYNCH	748897	MUNICIPAL INVT TR FD THREE HUNDRED THIRTY FIRST MON PYMT SER.
1614		IM-01	MERRILL LYNCH	749918	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED THIRTY SECOND.
1615		IM-01	MERRILL LYNCH	750392	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED THIRTY THIRD MO.
1616		IM-01	MERRILL LYNCH	750649	MUNICIPAL INVT TR FD THREE HUNDRED THIRTY FOURTH MON PYMT SE.
1617		IM-01	MERRILL LYNCH	751516	MUNICIPAL INVT TR FD THREE HUNDRED THIRTY FIFTH MON PYMT SER.
1618		IM-01	MERRILL LYNCH	752758	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED THIRTY SIXTH MO.
1619		IM-01	MERRILL LYNCH	754611	MUNICIPAL INVT TR FD THREE HUNDRED THIRTY SEVENTH MON PAY SE.
1620		IM-01	MERRILL LYNCH	755140	MUNICIPAL INVT TR FD THREE HUNDRED THIRTY EIGHTH MON PYMT SE.
1621		IM-01	MERRILL LYNCH	756671	MUNICIPAL INVT TR FD THREE HUNDRED THIRTY NINTH MON PYMT SER.
1622		IM-01	MERRILL LYNCH	722809	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED FORTIETH MONTHLY.
1623		IM-01	MERRILL LYNCH	759018	MUNICIPAL INVT TR FD THREE HUNDRED FORTY SECOND MON PYMT SER.
1624		IM-01	MERRILL LYNCH	759743	MUNICIPAL INVT TR FD THREE HUNDRED FORTY THIRD MON PYMT SER.
1625		IM-01	MERRILL LYNCH	760468	MUNICIPAL INVT TR FD THREE HUNDRED FORTY FOURTH MON PYMT SER.
1626		IM-01	MERRILL LYNCH	760735	MUNICIPAL INVT TR FD THREE HUNDRED FORTY FIFTH MON PYMT SER.
1627		IM-01	MERRILL LYNCH	760738	MUNICIPAL INVT TR FD THREE HUNDRED FORTY SIXTH MON PYMT SER.
1628		IM-01	MERRILL LYNCH	761324	MUNICIPAL INVT TR FD THREE HUNDRED FORTY SEVENTH MON PYMT SE.
1629		IM-01	MERRILL LYNCH	762910	MUNICIPAL INVT TR FD THREE HUNDRED FORTY EIGHTH MON PYMT SER.
1630		IM-01	MERRILL LYNCH	763295	MUNICIPAL INVT TR FD THREE HUNDRED FORTY NINTH MON PYMT SER.
1631		IM-01	MERRILL LYNCH	764213	MUNICIPAL INVT TR FD THREE HUNDRED FIFTIETH MON PYMT SERIES.
1632		IM-01	MERRILL LYNCH	764215	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY FIRST MON PYMT SER.
1633		IM-01	MERRILL LYNCH	764473	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY SECOND MON PYMT SER.
1634		IM-01	MERRILL LYNCH	764826	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED FIFTY THIRD MO.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1635	IM-01	MERRILL LYNCH	766009	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY FOURTH MON PYMT SER.
1636	IM-01	MERRILL LYNCH	766304	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY FIFTH MON PYMT SER.
1637	IM-01	MERRILL LYNCH	766742	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY SIXTH MON PYMT SER.
1638	IM-01	MERRILL LYNCH	766741	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY SEVENTH MON PAY SER.
1639	IM-01	MERRILL LYNCH	768597	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY EIGHTH MON PYMT SER.
1640	IM-01	MERRILL LYNCH	768912	MUNICIPAL INVT TR FD THREE HUNDRED FIFTY NINTH MON PYMT SER.
1641	IM-01	MERRILL LYNCH	769274	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED SIXTIETH MONTHLY.
1642	IM-01	MERRILL LYNCH	769892	MUNICIPAL INVT TR FD THREE HUNDRED SIXTY FIRST MON PYMT SER.
1643	IM-01	MERRILL LYNCH	771480	MUNICIPAL INVT TR FD THREE HUNDRED SIXTY SECOND MON PYMT SER.
1644	IM-01	MERRILL LYNCH	771740	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED SIXTY THIRD MO.
1645	IM-01	MERRILL LYNCH	773287	MUNICIPAL INVT TR FD THREE HUNDRED SIXTY FOURTH MON PYMT SER.
1646	IM-01	MERRILL LYNCH	773471	MUNICIPAL INVT TR FD THREE HUNDRED SIXTY FIFTH MON PYMT SER.
1647	IM-01	MERRILL LYNCH	773712	MUNICIPAL INVT TR FD THREE HUNDRED SIXTY SIXTH MON PYMT SER.
1648	IM-01	MERRILL LYNCH	774444	MUNICIPAL INVT TR FD THREE HUNDRED SIXTY SEVENTH MON PYMT SE.
1649	IM-01	MERRILL LYNCH	774941	MUNICIPAL INVT TR FD THREE HUNDRED SIXTY EIGHTH MON PYMT SER.
1650	IM-01	MERRILL LYNCH	777445	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTIETH MON PYMT SER.
1651	IM-01	MERRILL LYNCH	778381	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY FIRST MON PYMT SE.
1652	IM-01	MERRILL LYNCH	779323	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY SECOND MON PAY SE.
1653	IM-01	MERRILL LYNCH	780644	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY THIRD MON PAY SER.
1654	IM-01	MERRILL LYNCH	780655	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY FIFTH MON PAY SER.
1655	IM-01	MERRILL LYNCH	780660	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY SIXTH MON PYMT SE.
1656	IM-01	MERRILL LYNCH	780666	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY SEVENTH MON PYMT.
1657	IM-01	MERRILL LYNCH	780670	MUNICIPAL INVT TR FD THREE HUNDRED SEVENTY EIGHTH MON PAY SE.
1658	IM-01	MERRILL LYNCH	780676	MUNICIPAL INVESTMENT TR FD THREE HUNDRED SEVENTY NINTH MONTHLY.
1659	IM-01	MERRILL LYNCH	780680	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTIETH MON PYMT SER.
1660	IM-01	MERRILL LYNCH	780684	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTY FIRST MON PYMT SER.
1661	IM-01	MERRILL LYNCH	780689	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTY SECOND MON PYMT SE.
1662	IM-01	MERRILL LYNCH	780699	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTY THIRD MON PYMT SER.
1663	IM-01	MERRILL LYNCH	780705	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTY FOURTH MON PYMT SE.
1664	IM-01	MERRILL LYNCH	780709	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTY FIFTH MON PYMT SER.
1665	IM-01	MERRILL LYNCH	780713	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTY SIXTH MON PYMT SER.
1666	IM-01	MERRILL LYNCH	780719	MUNICIPAL INVT TR FD THREE HUNDRED EIGHTY SEVENTH MON PYMT S.
1667	IM-01	MERRILL LYNCH	780724	MUNICIPAL INVESTMENT TR FD THREE HUNDRED EIGHTY EIGHTH MONTHLY.
1668	IM-01	MERRILL LYNCH	780728	MUNICIPAL INVESTMENT TRUST FUND THREE HUNDRED EIGHTY NINTH MO.
1669	IM-01	MERRILL LYNCH	780734	MUNICIPAL INVESTMENT TR FD THREE HUNDRED NINETIETH MON PYMT.
1670	IM-01	MERRILL LYNCH	791850	MUNICIPAL INVT TR FD THREE HUNDRED NINETY FIRST MON PYMT SER.
1671	IM-01	MERRILL LYNCH	791877	MUNICIPAL INVT TR FD THREE HUNDRED NINETY SECOND MON PAY SER.
1672	IM-01	MERRILL LYNCH	791878	MUNICIPAL INVT TR FD THREE HUNDRED NINETY THIRD MON PYMT SER.
1673	IM-01	MERRILL LYNCH	791879	MUNICIPAL INVT TR FD THREE HUNDRED NINETY FOURTH MON PYMT SE.
1674	IM-01	MERRILL LYNCH	791880	MUNICIPAL INVESTMENT TR FD THREE HUNDRED NINETY FIFTH MON PA

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1675	IM-01	MERRILL LYNCH	791881	MUNICIPAL INVT TR FD THREE HUNDRED NINETY SIXTH MON PYMT SER.
1676	IM-01	MERRILL LYNCH	791882	MUNICIPAL INVT TR FD THREE HUNDRED NINETY SEVENTH MON PAY SE.
1677	IM-01	MERRILL LYNCH	791883	MUNICIPAL INVT TR FD THREE HUNDRED NINETY EIGHTH MON PAY SER.
1678	IM-01	MERRILL LYNCH	791884	MUNICIPAL INVT TR FD THREE HUNDRED NINETY NINTH MON PYMT SER.
1679	IM-01	MERRILL LYNCH	780739	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDREDTH MON PYMT SER.
1680	IM-01	MERRILL LYNCH	780745	MUNICIPAL INVT TR FD FOUR HUNDRED FIRST MONTHLY PAYMENT SER.
1681	IM-01	MERRILL LYNCH	780750	MUNICIPAL INVESTMENT TR FD FOUR HUNDRED SECOND MON PYMT SER.
1682	IM-01	MERRILL LYNCH	780756	MUNICIPAL INVESTMENT TR FD FOUR HUNDRED THIRD MON PYMT SER.
1683	IM-01	MERRILL LYNCH	780760	MUNICIPAL INVESTMENT TR FD FOUR HUNDRED FOURTH MON PYMT SER.
1684	IM-01	MERRILL LYNCH	780764	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED FIFTH MON PYMT.
1685	IM-01	MERRILL LYNCH	780765	MUNICIPAL INVESTMENT TR FD FOUR HUNDRED SIXTH MON PYMT SER.
1686	IM-01	MERRILL LYNCH	780768	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED SEVENTH MO PYMT.
1687	IM-01	MERRILL LYNCH	780773	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED NINTH MON PYMT.
1688	IM-01	MERRILL LYNCH	780775	MUNICIPAL INVESTMENT TRUST FD FOUR HUNDRED TENTH MON PAY SER.
1689	IM-01	MERRILL LYNCH	780778	MUNICIPAL INVT TR FD FOUR HUNDRED ELEVENTH MON PYMT SER.
1690	IM-01	MERRILL LYNCH	780780	MUNICIPAL INVESTMENT TR FD FOUR HUNDRED TWELFTH MON PYMT SER.
1691	IM-01	MERRILL LYNCH	780783	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTEENTH MON PYMT SER.
1692	IM-01	MERRILL LYNCH	780786	MUNICIPAL INVT TR FD FOUR HUNDRED FOURTEENTH MON PYMT SER.
1693	IM-01	MERRILL LYNCH	780792	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTEENTH MON PYMT SERIES.
1694	IM-01	MERRILL LYNCH	780795	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED SIXTEENTH MPS.
1695	IM-01	MERRILL LYNCH	780798	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTEENTH MON PYMT SER.
1696	IM-01	MERRILL LYNCH	780800	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTEENTH MON PYMT SERIES.
1697	IM-01	MERRILL LYNCH	780802	MUNICIPAL INVT TR FD FOUR HUNDRED NINETEENTH MON PYMT SER.
1698	IM-01	MERRILL LYNCH	780808	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY FIRST MON PYMT SER.
1699	IM-01	MERRILL LYNCH	780811	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY SECOND MON PYMT SER.
1700	IM-01	MERRILL LYNCH	780815	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY THIRD MON PYMT SER.
1701	IM-01	MERRILL LYNCH	780825	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY FOURTH MON PYMT SER.
1702	IM-01	MERRILL LYNCH	780832	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY SIXTH MON PYMT SER.
1703	IM-01	MERRILL LYNCH	780836	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY SEVENTH MON PAY SER.
1704	IM-01	MERRILL LYNCH	780840	MUNICIPAL INVST TR FD FOUR HUNDRED TWENTY EIGHTH MON PYMT SE.
1705	IM-01	MERRILL LYNCH	780845	MUNICIPAL INVT TR FD FOUR HUNDRED TWENTY NINTH MON PYMT SER.
1706	IM-01	MERRILL LYNCH	780855	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTIETH MON PYMT SER.
1707	IM-01	MERRILL LYNCH	780858	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTY FIRST MON PYMT SER.
1708	IM-01	MERRILL LYNCH	780862	MUNICIPAL INVESTMENT TRUST FD FOUR HUNDRED THIRTY SECOND MPS.
1709	IM-01	MERRILL LYNCH	780866	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTY THIRD MON PYMT SER.
1710	IM-01	MERRILL LYNCH	780870	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTY FOURTH MON PYMT SER.
1711	IM-01	MERRILL LYNCH	780874	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED THIRTY FIFTH MP.
1712	IM-01	MERRILL LYNCH	780876	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTY SIXTH MON PYMT SER.
1713	IM-01	MERRILL LYNCH	780879	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTY SEVENTH MON PYMT SE.
1714	IM-01	MERRILL LYNCH	780883	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTY EIGHTH MON PYMT SER.
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APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1715	IM-01	MERRILL LYNCH	780887	MUNICIPAL INVT TR FD FOUR HUNDRED THIRTY NINTH MON PYMT SER.
1716	IM-01	MERRILL LYNCH	780891	MUNICIPAL INVT TR FD FOUR HUNDRED FORTIETH MON PYMT SER.
1717	IM-01	MERRILL LYNCH	780894	MUNICIPAL INVT TR FD FOUR HUNDRED FORTY FIRST MON PYMT SER.
1718	IM-01	MERRILL LYNCH	780912	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED FORTY SECOND MO.
1719	IM-01	MERRILL LYNCH	781119	MUNICIPAL INVT TR FD FOUR HUNDRED FORTY FOURTH MON PYMT SER.
1720	IM-01	MERRILL LYNCH	781121	MUNICIPAL INVT TR FD FOUR HUNDRED FORTY FIFTH MON PYMT SER.
1721	IM-01	MERRILL LYNCH	781123	MUNICIPAL INVT TR FD FOUR HUNDRED FORTY SIXTH MON PYMT SER.
1722	IM-01	MERRILL LYNCH	781125	MUNICIPAL INVT TR FD FOUR HUNDRED FORTY SEVENTH MON PYMT SER.
1723	IM-01	MERRILL LYNCH	781140	MUNICIPAL INVESTMENT TRUST FUND FOUR HUNDRED FORTY EIGHTH MO.
1724	IM-01	MERRILL LYNCH	781143	MUNICIPAL INVT TR FD FOUR HUNDRED FORTY NINTH MON PYMT SER.
1725	IM-01	MERRILL LYNCH	781145	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTIETH MON PYMT SER.
1726	IM-01	MERRILL LYNCH	781148	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY FIRST MON PYMT SER.
1727	IM-01	MERRILL LYNCH	781150	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY SECOND MON PYMT SER.
1728	IM-01	MERRILL LYNCH	781154	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY THIRD MON PYMT SER.
1729	IM-01	MERRILL LYNCH	781156	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY FOURTH MON PYMT SER.
1730	IM-01	MERRILL LYNCH	781907	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY FIFTH MON PYMT SER.
1731	IM-01	MERRILL LYNCH	781910	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY SIXTH MON PYMT SER.
1732	IM-01	MERRILL LYNCH	781912	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY SEVENTH MON PYMT SER.
1733	IM-01	MERRILL LYNCH	781911	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY EIGHTH MON PYMT SER.
1734	IM-01	MERRILL LYNCH	781913	MUNICIPAL INVT TR FD FOUR HUNDRED FIFTY NINTH MON PYMT SER.
1735	IM-01	MERRILL LYNCH	781914	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTIETH MON PYMT SER.
1736	IM-01	MERRILL LYNCH	781915	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY FIRST MON PYMT SER.
1737	IM-01	MERRILL LYNCH	781916	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY SECOND MON PYMT SER.
1738	IM-01	MERRILL LYNCH	781917	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY THIRD MON PYMT SER.
1739	IM-01	MERRILL LYNCH	781918	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY FOURTH MON PYMT SER.
1740	IM-01	MERRILL LYNCH	781919	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY FIFTH MON PYMT SER.
1741	IM-01	MERRILL LYNCH	781920	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY SIXTH MON PYMT SER.
1742	IM-01	MERRILL LYNCH	781921	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY SEVENTH MON PYMT SER.
1743	IM-01	MERRILL LYNCH	781922	MUNICIPAL INVT TR FD FOUR HUNDRED SIXTY EIGHTH MON PYMT SER.
1744	IM-01	MERRILL LYNCH	781923	MUNICIPAL INVESTMENT TR FD FOUR HUNDRED SIXTY NINTH MON PYMT.
1745	IM-01	MERRILL LYNCH	781924	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTIETH MON PYMT SER.
1746	IM-01	MERRILL LYNCH	781925	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY FIRST MON PYMT SER.
1747	IM-01	MERRILL LYNCH	781926	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY SECOND MON PYMT SE.
1748	IM-01	MERRILL LYNCH	781927	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY THIRD MON PYMT SER.
1749	IM-01	MERRILL LYNCH	803678	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY FOURTH MON PYMT SE.
1750	IM-01	MERRILL LYNCH	803679	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY FIFTH MON PYMT SER.
1751	IM-01	MERRILL LYNCH	803680	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY SIXTH MON PYMT SER.
1752	IM-01	MERRILL LYNCH	803681	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY SEVENTH MON PYMT S.
1753	IM-01	MERRILL LYNCH	803682	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY EIGHTH MON PYMT SE.
1754	IM-01	MERRILL LYNCH	803683	MUNICIPAL INVT TR FD FOUR HUNDRED SEVENTY NINTH MON PYMT SER.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
1755		IM-01	MERRILL LYNCH	803684	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTIETH MON PYMT SER.
1756		IM-01	MERRILL LYNCH	803685	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY FIRST MON PYMT SER.
1757		IM-01	MERRILL LYNCH	803686	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY SECOND MON PYMT SER.
1758		IM-01	MERRILL LYNCH	803689	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY THIRD MON PYMT SER.
1759		IM-01	MERRILL LYNCH	803690	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY FOURTH MON PYMT SER.
1760		IM-01	MERRILL LYNCH	803692	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY SIXTH MON PYMT SER.
1761		IM-01	MERRILL LYNCH	803693	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY SEVENTH MONTHLY PAY.
1762		IM-01	MERRILL LYNCH	803694	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY EIGHTH MON PYMT SER.
1763		IM-01	MERRILL LYNCH	803691	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY FIFTH MON PYMT SER.
1764		IM-01	MERRILL LYNCH	803696	MUNICIPAL INVT TR FD FOUR HUNDRED EIGHTY NINTH MON PYMT SER.
1765		IM-01	MERRILL LYNCH	803697	MUNICIPAL INVT TR FD FOUR HUNDRED NINETIETH MON PYMT SER.
1766		IM-01	MERRILL LYNCH	803698	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY FIRST MON PYMT SER.
1767		IM-01	MERRILL LYNCH	803699	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY SECOND MON PYMT SER.
1768		IM-01	MERRILL LYNCH	803700	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY THIRD MON PYMT SER.
1769		IM-01	MERRILL LYNCH	803701	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY FOURTH MONTHLY PAYM.
1770		IM-01	MERRILL LYNCH	803702	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY FIFTH MON PYMT SER.
1771		IM-01	MERRILL LYNCH	803703	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY SIXTH MON PYMT SER.
1772		IM-01	MERRILL LYNCH	862067	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY SEVENTH MON PYMT SE.
1773		IM-01	MERRILL LYNCH	803705	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY EIGHTH MON PYMT SER.
1774		IM-01	MERRILL LYNCH	803706	MUNICIPAL INVT TR FD FOUR HUNDRED NINETY NINTH MONTHLY PAYME.
1775		IM-01	MERRILL LYNCH	803707	MUNICIPAL INVT TR FD FIVE HUNDRED MONTHLY PAYMENT SERIES.
1776		IM-01	MERRILL LYNCH	803708	MUNICIPAL INVT TR FD FIVE HUNDRED FIRST MONTHLY PAYMENT SERI.
1777		IM-01	MERRILL LYNCH	803709	MUNICIPAL INVT TR FD FIVE HUNDRED SECOND MONTHLY PAYMENT SER.
1778		IM-01	MERRILL LYNCH	803710	MUNICIPAL INVT TR FD FIVE HUNDRED THIRD MONTHLY PAYMENT SERI.
1779		IM-01	MERRILL LYNCH	803711	MUNICIPAL INVT TR FD FIVE HUNDRED FOURTH MONTHLY PAYMENT SER.
1780		IM-01	MERRILL LYNCH	803712	MUNICIPAL INVT TR FD FIVE HUNDRED FIFTH MONTHLY PAYMENT SER.
1781		IM-01	MERRILL LYNCH	803713	DEFINED ASSET FDS MUNICIPAL INVT TR FD FIVE HUNDRED SIXTH MP.
1782		IM-01	MERRILL LYNCH	068966	DEFINED ASSET FUNDS MUNI INV TR FD 506TH MO PAYMENT SERIES.
1783		IM-01	MERRILL LYNCH	803714	MUNICIPAL INVT TR FD FIVE HUNDRED SEVENTH MONTHLY PAYMENT SE.
1784		IM-01	MERRILL LYNCH	803715	MUNICIPAL INVT TR FD FIVE HUNDRED EIGHTH MONTHLY PAYMENT SER.
1785		IM-01	MERRILL LYNCH	803716	DEFINED ASSET FDS MUN INVT TR FD FIVE HUNDRED NINTH MPS.
1786		IM-01	MERRILL LYNCH	803725	DEFINED ASSET FUNDS NUMICIPAL INVT TR FD MON PYMT SER 518.
1787		IM-01	MERRILL LYNCH	731715	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES A.
1788		IM-01	MERRILL LYNCH	733259	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES B.
1789		IM-01	MERRILL LYNCH	735402	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES C.
1790		IM-01	MERRILL LYNCH	737757	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES D.
1791		IM-01	MERRILL LYNCH	741258	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES E.
1792		IM-01	MERRILL LYNCH	742457	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES F.
1793		IM-01	MERRILL LYNCH	744482	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES G.
1794		IM-01	MERRILL LYNCH	745343	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES H.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1795	IM-01	MERRILL LYNCH	746555	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES I.
1796	IM-01	MERRILL LYNCH	748094	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES J.
1797	IM-01	MERRILL LYNCH	749757	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES K.
1798	IM-01	MERRILL LYNCH	750650	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES L.
1799	IM-01	MERRILL LYNCH	751653	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES M.
1800	IM-01	MERRILL LYNCH	752734	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES N.
1801	IM-01	MERRILL LYNCH	753349	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES O.
1802	IM-01	MERRILL LYNCH	754043	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES P.
1803	IM-01	MERRILL LYNCH	755120	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES Q.
1804	IM-01	MERRILL LYNCH	755894	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES R.
1805	IM-01	MERRILL LYNCH	756839	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES S.
1806	IM-01	MERRILL LYNCH	757099	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES T.
1807	IM-01	MERRILL LYNCH	757839	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES U.
1808	IM-01	MERRILL LYNCH	759422	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES V.
1809	IM-01	MERRILL LYNCH	761192	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES W.
1810	IM-01	MERRILL LYNCH	761189	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES X.
1811	IM-01	MERRILL LYNCH	762124	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES Y.
1812	IM-01	MERRILL LYNCH	762134	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES Z.
1813	IM-01	MERRILL LYNCH	763318	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1A.
1814	IM-01	MERRILL LYNCH	763271	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1B.
1815	IM-01	MERRILL LYNCH	764022	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1C.
1816	IM-01	MERRILL LYNCH	764824	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1D.
1817	IM-01	MERRILL LYNCH	765225	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1E.
1818	IM-01	MERRILL LYNCH	766745	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1F.
1819	IM-01	MERRILL LYNCH	766732	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1G.
1820	IM-01	MERRILL LYNCH	768612	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1H.
1821	IM-01	MERRILL LYNCH	768928	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1I.
1822	IM-01	MERRILL LYNCH	770722	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1J.
1823	IM-01	MERRILL LYNCH	771479	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1K.
1824	IM-01	MERRILL LYNCH	771976	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1L.
1825	IM-01	MERRILL LYNCH	773285	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1M.
1826	IM-01	MERRILL LYNCH	773714	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1N.
1827	IM-01	MERRILL LYNCH	774019	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1O.
1828	IM-01	MERRILL LYNCH	774413	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1P.
1829	IM-01	MERRILL LYNCH	775416	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1Q.
1830	IM-01	MERRILL LYNCH	778410	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1S.
1831	IM-01	MERRILL LYNCH	778325	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1T.
1832	IM-01	MERRILL LYNCH	780411	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1U.
1833	IM-01	MERRILL LYNCH	780454	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1V.
1834	IM-01	MERRILL LYNCH	780455	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1W.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1835	IM-01	MERRILL LYNCH	780456	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1X.
1836	IM-01	MERRILL LYNCH	780457	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1Y.
1837	IM-01	MERRILL LYNCH	780458	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1Z.
1838	IM-01	MERRILL LYNCH	780459	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2A.
1839	IM-01	MERRILL LYNCH	780460	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2B.
1840	IM-01	MERRILL LYNCH	780461	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2C.
1841	IM-01	MERRILL LYNCH	780462	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2D.
1842	IM-01	MERRILL LYNCH	780464	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2E.
1843	IM-01	MERRILL LYNCH	780465	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2F.
1844	IM-01	MERRILL LYNCH	780466	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2G.
1845	IM-01	MERRILL LYNCH	780468	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2H.
1846	IM-01	MERRILL LYNCH	780469	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2I.
1847	IM-01	MERRILL LYNCH	780470	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2J.
1848	IM-01	MERRILL LYNCH	780472	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2K.
1849	IM-01	MERRILL LYNCH	780473	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2L.
1850	IM-01	MERRILL LYNCH	780474	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2M.
1851	IM-01	MERRILL LYNCH	780475	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2N.
1852	IM-01	MERRILL LYNCH	780476	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2O.
1853	IM-01	MERRILL LYNCH	780477	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2P.
1854	IM-01	MERRILL LYNCH	780478	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2Q.
1855	IM-01	MERRILL LYNCH	780479	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2R.
1856	IM-01	MERRILL LYNCH	780480	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2S.
1857	IM-01	MERRILL LYNCH	780481	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2T.
1858	IM-01	MERRILL LYNCH	780482	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2U.
1859	IM-01	MERRILL LYNCH	780483	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2V.
1860	IM-01	MERRILL LYNCH	780484	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2W.
1861	IM-01	MERRILL LYNCH	780485	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2X.
1862	IM-01	MERRILL LYNCH	780487	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2Y.
1863	IM-01	MERRILL LYNCH	780488	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 2Z.
1864	IM-01	MERRILL LYNCH	780489	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3A.
1865	IM-01	MERRILL LYNCH	780490	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3B.
1866	IM-01	MERRILL LYNCH	780491	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3C.
1867	IM-01	MERRILL LYNCH	780492	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3D.
1868	IM-01	MERRILL LYNCH	780493	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3E.
1869	IM-01	MERRILL LYNCH	780494	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3F.
1870	IM-01	MERRILL LYNCH	780495	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3G.
1871	IM-01	MERRILL LYNCH	780496	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3H.
1872	IM-01	MERRILL LYNCH	780497	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3I.
1873	IM-01	MERRILL LYNCH	780498	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3J.
1874	IM-01	MERRILL LYNCH	780499	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3K.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1875	IM-01	MERRILL LYNCH	780500	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3L.
1876	IM-01	MERRILL LYNCH	780501	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3M.
1877	IM-01	MERRILL LYNCH	780502	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3N.
1878	IM-01	MERRILL LYNCH	780503	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3O.
1879	IM-01	MERRILL LYNCH	780505	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3P.
1880	IM-01	MERRILL LYNCH	780506	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3Q.
1881	IM-01	MERRILL LYNCH	780507	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3R.
1882	IM-01	MERRILL LYNCH	780509	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3S.
1883	IM-01	MERRILL LYNCH	780511	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3T.
1884	IM-01	MERRILL LYNCH	780512	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3U.
1885	IM-01	MERRILL LYNCH	780513	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3V.
1886	IM-01	MERRILL LYNCH	780514	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3W.
1887	IM-01	MERRILL LYNCH	780515	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3X.
1888	IM-01	MERRILL LYNCH	780516	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3Y.
1889	IM-01	MERRILL LYNCH	780517	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 3Z.
1890	IM-01	MERRILL LYNCH	780518	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4A.
1891	IM-01	MERRILL LYNCH	780519	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4B.
1892	IM-01	MERRILL LYNCH	780520	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4C.
1893	IM-01	MERRILL LYNCH	780521	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4D.
1894	IM-01	MERRILL LYNCH	780522	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4E.
1895	IM-01	MERRILL LYNCH	780523	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4F.
1896	IM-01	MERRILL LYNCH	780524	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4G.
1897	IM-01	MERRILL LYNCH	780525	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4H.
1898	IM-01	MERRILL LYNCH	780526	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4I.
1899	IM-01	MERRILL LYNCH	780527	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4J.
1900	IM-01	MERRILL LYNCH	780528	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4K.
1901	IM-01	MERRILL LYNCH	780529	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4L.
1902	IM-01	MERRILL LYNCH	780530	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4M.
1903	IM-01	MERRILL LYNCH	780531	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4N.
1904	IM-01	MERRILL LYNCH	780532	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4O.
1905	IM-01	MERRILL LYNCH	780533	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4P.
1906	IM-01	MERRILL LYNCH	780534	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4Q.
1907	IM-01	MERRILL LYNCH	780535	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4R.
1908	IM-01	MERRILL LYNCH	780537	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4S.
1909	IM-01	MERRILL LYNCH	780538	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4T.
1910	IM-01	MERRILL LYNCH	780539	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4U.
1911	IM-01	MERRILL LYNCH	780540	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4V.
1912	IM-01	MERRILL LYNCH	780541	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4W.
1913	IM-01	MERRILL LYNCH	780542	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4X.
1914	IM-01	MERRILL LYNCH	780543	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4Y.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1915	IM-01	MERRILL LYNCH	780544	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 4Z.
1916	IM-01	MERRILL LYNCH	836057	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5A.
1917	IM-01	MERRILL LYNCH	836059	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5B.
1918	IM-01	MERRILL LYNCH	836061	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5C.
1919	IM-01	MERRILL LYNCH	836063	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5D.
1920	IM-01	MERRILL LYNCH	836064	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5E.
1921	IM-01	MERRILL LYNCH	836065	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5F.
1922	IM-01	MERRILL LYNCH	836067	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5G.
1923	IM-01	MERRILL LYNCH	836069	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5H.
1924	IM-01	MERRILL LYNCH	836070	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5I.
1925	IM-01	MERRILL LYNCH	836074	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5J.
1926	IM-01	MERRILL LYNCH	836077	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5K.
1927	IM-01	MERRILL LYNCH	836079	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5L.
1928	IM-01	MERRILL LYNCH	836080	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5M.
1929	IM-01	MERRILL LYNCH	836081	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5N.
1930	IM-01	MERRILL LYNCH	836082	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5O.
1931	IM-01	MERRILL LYNCH	836083	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5P.
1932	IM-01	MERRILL LYNCH	836084	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5Q.
1933	IM-01	MERRILL LYNCH	836085	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5R.
1934	IM-01	MERRILL LYNCH	836087	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5T.
1935	IM-01	MERRILL LYNCH	836088	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5U.
1936	IM-01	MERRILL LYNCH	836089	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5V.
1937	IM-01	MERRILL LYNCH	836090	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5W.
1938	IM-01	MERRILL LYNCH	836091	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5X.
1939	IM-01	MERRILL LYNCH	836093	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5Y.
1940	IM-01	MERRILL LYNCH	836094	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5Z.
1941	IM-01	MERRILL LYNCH	847165	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6A.
1942	IM-01	MERRILL LYNCH	847166	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6B.
1943	IM-01	MERRILL LYNCH	847167	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6C.
1944	IM-01	MERRILL LYNCH	847168	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6D.
1945	IM-01	MERRILL LYNCH	847169	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6E.
1946	IM-01	MERRILL LYNCH	847170	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6F.
1947	IM-01	MERRILL LYNCH	847171	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6G.
1948	IM-01	MERRILL LYNCH	847172	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6H.
1949	IM-01	MERRILL LYNCH	847173	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6I.
1950	IM-01	MERRILL LYNCH	847174	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6J.
1951	IM-01	MERRILL LYNCH	847175	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6K.
1952	IM-01	MERRILL LYNCH	847176	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6L.
1953	IM-01	MERRILL LYNCH	847177	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6M.
1954	IM-01	MERRILL LYNCH	847178	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6N.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1955	IM-01	MERRILL LYNCH	847179	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6O.
1956	IM-01	MERRILL LYNCH	847180	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6P.
1957	IM-01	MERRILL LYNCH	847181	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6Q.
1958	IM-01	MERRILL LYNCH	847182	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6R.
1959	IM-01	MERRILL LYNCH	847183	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6S.
1960	IM-01	MERRILL LYNCH	847184	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6T.
1961	IM-01	MERRILL LYNCH	847185	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6U.
1962	IM-01	MERRILL LYNCH	847186	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6V.
1963	IM-01	MERRILL LYNCH	847189	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6W.
1964	IM-01	MERRILL LYNCH	847191	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6X.
1965	IM-01	MERRILL LYNCH	847193	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6Y.
1966	IM-01	MERRILL LYNCH	847194	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 6Z.
1967	IM-01	MERRILL LYNCH	847200	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7A.
1968	IM-01	MERRILL LYNCH	847202	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7B.
1969	IM-01	MERRILL LYNCH	847205	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7C.
1970	IM-01	MERRILL LYNCH	847207	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7D.
1971	IM-01	MERRILL LYNCH	847209	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7E.
1972	IM-01	MERRILL LYNCH	847211	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7F.
1973	IM-01	MERRILL LYNCH	847213	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7G.
1974	IM-01	MERRILL LYNCH	847214	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7H.
1975	IM-01	MERRILL LYNCH	847215	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7I.
1976	IM-01	MERRILL LYNCH	847216	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7J.
1977	IM-01	MERRILL LYNCH	847217	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7K.
1978	IM-01	MERRILL LYNCH	847218	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7L.
1979	IM-01	MERRILL LYNCH	847219	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7M.
1980	IM-01	MERRILL LYNCH	847220	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7N.
1981	IM-01	MERRILL LYNCH	847221	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7O.
1982	IM-01	MERRILL LYNCH	847222	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7P.
1983	IM-01	MERRILL LYNCH	847223	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7Q.
1984	IM-01	MERRILL LYNCH	847224	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7R.
1985	IM-01	MERRILL LYNCH	847225	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7S.
1986	IM-01	MERRILL LYNCH	847226	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7T.
1987	IM-01	MERRILL LYNCH	847227	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7U.
1988	IM-01	MERRILL LYNCH	847228	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7V.
1989	IM-01	MERRILL LYNCH	847229	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7W.
1990	IM-01	MERRILL LYNCH	847230	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7X.
1991	IM-01	MERRILL LYNCH	847231	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7Y.
1992	IM-01	MERRILL LYNCH	847232	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 7Z.
1993	IM-01	MERRILL LYNCH	868132	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 8A.
1994	IM-01	MERRILL LYNCH	868133	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 8B.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
1995	IM-01	MERRILL LYNCH	868134	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 8C.
1996	IM-01	MERRILL LYNCH	868135	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 8D.
1997	IM-01	MERRILL LYNCH	868136	DEFINED ASSET FDS MUN INVT TR FD MULTISTATE SERIES 8E.
1998	IM-01	MERRILL LYNCH	868137	DEFINED ASSET FDS MUNICIPAL INVT TR FD MULTISTATE SERIES 8F.
1999	IM-01	MERRILL LYNCH	868138	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 8G.
2000	IM-01	MERRILL LYNCH	868139	DEFINED ASSET FDS MUN INVT TR FD MULTISTATE SERIES 8H.
2001	IM-01	MERRILL LYNCH	868140	DEFINED ASSET FDS MUN INVT TR FD MULTISTATE SERIES 8I.
2002	IM-01	MERRILL LYNCH	868141	DEFINED ASSET FDS MUNICIPAL INVT TR FD MULTISTATE SERIES 8J.
2003	IM-01	MERRILL LYNCH	775872	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 1R.
2004	IM-01	MERRILL LYNCH	836096	MUNICIPAL INVESTMENT TRUST FUND MULTISTATE SERIES 5S.
2005	IM-01	MERRILL LYNCH	780588	MUNICIPAL INVESTMENT TRUST FUND FIRST NEW JERSEY SERIES.
2006	IM-01	MERRILL LYNCH	780743	MUNICIPAL INVESTMENT TRUST FUND SECOND NEW JERSEY SERIES.
2007	IM-01	MERRILL LYNCH	781464	MUNICIPAL INVESTMENT TRUST FUND THIRD NEW JERSEY SERIES.
2008	IM-01	MERRILL LYNCH	781471	MUNICIPAL INVESTMENT TRUST FUND FOURTH NEW JERSEY SERIES.
2009	IM-01	MERRILL LYNCH	725948	MUNICIPAL INVESTMENT TRUST FUND NEW YORK SER A.
2010	IM-01	MERRILL LYNCH	732349	MUNICIPAL INVESTMENT TRUST FUND NEW YORK SERIES B.
2011	IM-01	MERRILL LYNCH	277259	MUNICIPAL INVESTMENT TRUST FUND SEVENTH NEW YORK SERIES.
2012	IM-01	MERRILL LYNCH	748642	MUNICIPAL INVESTMENT TRUST FUND EIGHTY EIGHTH NEW YORK SERIES.
2013	IM-01	MERRILL LYNCH	230395	MUNICIPAL INVESTMENT TRUST FUND NINTH NEW YORK SERIES.
2014	IM-01	MERRILL LYNCH	68935	MUNICIPAL INVESTMENT TRUST FUND FIRST NEW YORK SERIES.
2015	IM-01	MERRILL LYNCH	276213	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH NEW YORK SERIES.
2016	IM-01	MERRILL LYNCH	276515	MUNICIPAL INVESTMENT TRUST FUND TWELFTH NEW YORK SERIES.
2017	IM-01	MERRILL LYNCH	277323	MUNICIPAL INVESTMENT TRUST FUND THIRTEENTH NEW YORK SERIES.
2018	IM-01	MERRILL LYNCH	277876	MUNICIPAL INVESTMENT TRUST FUND FOURTEENTH NEW YORK SERIES.
2019	IM-01	MERRILL LYNCH	310074	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH NEW YORK SERIES.
2020	IM-01	MERRILL LYNCH	311144	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH NEW YORK SERIES.
2021	IM-01	MERRILL LYNCH	311239	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH NEW YORK SERIES.
2022	IM-01	MERRILL LYNCH	311710	MUNICIPAL INVESTMENT TRUST FUND NINETEENTH NEW YORK SERIES.
2023	IM-01	MERRILL LYNCH	68951	MUNICIPAL INVESTMENT TRUST FUND SECOND NEW YORK SERIES.
2024	IM-01	MERRILL LYNCH	311978	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH NEW YORK SERIES.
2025	IM-01	MERRILL LYNCH	312216	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST NEW YORK SERIES.
2026	IM-01	MERRILL LYNCH	68960	MUNICIPAL INVESTMENT TRUST FUND THIRD NEW YORK SERIES.
2027	IM-01	MERRILL LYNCH	318057	MUNICIPAL INVESTMENT TRUST FUND THIRTIETH NEW YORK SERIES.
2028	IM-01	MERRILL LYNCH	318606	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIRST NEW YORK SERIES.
2029	IM-01	MERRILL LYNCH	008903	MUNICIPAL INVESTMENT TRUST FUND THIRTY THIRD NEW YORK SERIES.
2030	IM-01	MERRILL LYNCH	351158	MUNICIPAL INVESTMENT TRUST FUND THIRTY FOURTH NEW YORK SERIES.
2031	IM-01	MERRILL LYNCH	351728	MUNICIPAL INVESTMENT TRUST FUND THIRTY FIFTH NEW YORK SERIES.
2032	IM-01	MERRILL LYNCH	318734	MUNICIPAL INVESTMENT TRUST FUND THIRTY SECOND NEW YORK SERIES.
2033	IM-01	MERRILL LYNCH	352332	MUNICIPAL INVESTMENT TRUST FUND THIRTY SIXTH NEW YORK SERIES.
2034	IM-01	MERRILL LYNCH	353473	MUNICIPAL INVESTMENT TRUST FUND THIRTY SEVENTH NEW YORK SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2035	IM-01	MERRILL LYNCH	354652	MUNICIPAL INVESTMENT TRUST FUND THIRTY EIGHTH NEW YORK SERIES.
2036	IM-01	MERRILL LYNCH	355170	MUNICIPAL INVESTMENT TRUST FUND THIRTY NINTH NEW YORK SERIES.
2037	IM-01	MERRILL LYNCH	277076	MUNICIPAL INVESTMENT TRUST FUND FOURTH NEW YORK SERIES.
2038	IM-01	MERRILL LYNCH	356824	MUNICIPAL INVESTMENT TRUST FUND FORTIETH NEW YORK SERIES.
2039	IM-01	MERRILL LYNCH	356913	MUNICIPAL INVESTMENT TRUST FUND FORTY FIRST NEW YORK SERIES.
2040	IM-01	MERRILL LYNCH	357117	MUNICIPAL INVESTMENT TRUST FUND FORTY SECOND NEW YORK SERIES.
2041	IM-01	MERRILL LYNCH	357436	MUNICIPAL INVESTMENT TRUST FUND FORTY THIRD NEW YORK SERIES.
2042	IM-01	MERRILL LYNCH	700781	MUNICIPAL INVESTMENT TRUST FUND FORTY FOURTH NEW YORK SERIES.
2043	IM-01	MERRILL LYNCH	701040	MUNICIPAL INVESTMENT TRUST FUND FORTY FIFTH NEW YORK SERIES.
2044	IM-01	MERRILL LYNCH	701326	MUNICIPAL INVESTMENT TRUST FUND FORTY SIXTH NEW YORK SERIES.
2045	IM-01	MERRILL LYNCH	701989	MUNICIPAL INVESTMENT TRUST FUND FORTY SEVENTH NEW YORK SERIES.
2046	IM-01	MERRILL LYNCH	702130	MUNICIPAL INVESTMENT TRUST FUND FORTY EIGHTH NEW YORK SERIES.
2047	IM-01	MERRILL LYNCH	702527	MUNICIPAL INVESTMENT TRUST FUND FORTY NINTH NEW YORK SERIES.
2048	IM-01	MERRILL LYNCH	68930	MUNICIPAL INVESTMENT TRUST FUND FIFTH NEW YORK SERIES.
2049	IM-01	MERRILL LYNCH	703286	MUNICIPAL INVESTMENT TRUST FUND FIFTIETH NEW YORK SERIES.
2050	IM-01	MERRILL LYNCH	703690	MUNICIPAL INVESTMENT TRUST FUND FIFTY SECOND NEW YORK SERIES.
2051	IM-01	MERRILL LYNCH	705378	MUNICIPAL INVESTMENT TRUST FUND FIFTY THIRD NEW YORK SERIES.
2052	IM-01	MERRILL LYNCH	706754	MUNICIPAL INVESTMENT TRUST FUND FIFTY FOURTH NEW YORK SERIES.
2053	IM-01	MERRILL LYNCH	707367	MUNICIPAL INVESTMENT TRUST FUND FIFTY FIFTH NEW YORK SERIES.
2054	IM-01	MERRILL LYNCH	708028	MUNICIPAL INVESTMENT TRUST FUND FIFTY SIXTH NEW YORK SERIES.
2055	IM-01	MERRILL LYNCH	708816	MUNICIPAL INVESTMENT TRUST FUND FIFTY SEVENTH NEW YORK SERIES.
2056	IM-01	MERRILL LYNCH	709277	MUNICIPAL INVESTMENT TRUST FUND FIFTY EIGHTH NEW YORK SERIES.
2057	IM-01	MERRILL LYNCH	709370	MUNICIPAL INVESTMENT TRUST FUND FIFTY NINTH NEW YORK SERIES.
2058	IM-01	MERRILL LYNCH	68984	MUNICIPAL INVESTMENT TRUST FUND SIXTH NEW YORK SERIES.
2059	IM-01	MERRILL LYNCH	310487	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH NEW YORK SERIES.
2060	IM-01	MERRILL LYNCH	710783	MUNICIPAL INVESTMENT TRUST FUND SIXTIETH NEW YORK SERIES.
2061	IM-01	MERRILL LYNCH	712035	MUNICIPAL INVESTMENT TRUST FUND SIXTY SECOND NEW YORK SERIES.
2062	IM-01	MERRILL LYNCH	714053	MUNICIPAL INVESTMENT TRUST FUND SIXTY THIRD NEW YORK SERIES.
2063	IM-01	MERRILL LYNCH	714524	MUNICIPAL INVESTMENT TRUST FUND SIXTY FOURTH NEW YORK SERIES.
2064	IM-01	MERRILL LYNCH	715066	MUNICIPAL INVESTMENT TRUST FUND SIXTY FIFTH NEW YORK SERIES.
2065	IM-01	MERRILL LYNCH	715383	MUNICIPAL INVESTMENT TRUST FUND SIXTY SIXTH NEW YORK SERIES.
2066	IM-01	MERRILL LYNCH	716409	MUNICIPAL INVESTMENT TRUST FUND SIXTY SEVENTH NEW YORK SERIES.
2067	IM-01	MERRILL LYNCH	716916	MUNICIPAL INVESTMENT TRUST FUND SIXTY EIGHTH NEW YORK SERIES.
2068	IM-01	MERRILL LYNCH	216656	MUNICIPAL INVESTMENT TRUST FUND SIXTY NINTH NEW YORK SERIES.
2069	IM-01	MERRILL LYNCH	718548	MUNICIPAL INVESTMENT TRUST FUND SEVENTIETH NEW YORK SERIES.
2070	IM-01	MERRILL LYNCH	719438	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIRST NEW YORK SERIES.
2071	IM-01	MERRILL LYNCH	721952	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FOURTH NEW YORK SERIES.
2072	IM-01	MERRILL LYNCH	722419	MUNICIPAL INVESTMENT TRUST FUND SEVENTY FIFTH NEW YORK SERIES.
2073	IM-01	MERRILL LYNCH	723745	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SIXTH NEW YORK SERIES.
2074	IM-01	MERRILL LYNCH	725009	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SEVENTH NEW YORK SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2075	IM-01	MERRILL LYNCH	789894	MUNICIPAL INVESTMENT TRUST FUND SEVENTY EIGHTH NEW YORK SERIES.
2076	IM-01	MERRILL LYNCH	729272	MUNICIPAL INVESTMENT TRUST FUND SEVENTY NINTH NEW YORK SERIES.
2077	IM-01	MERRILL LYNCH	225666	MUNICIPAL INVESTMENT TRUST FUND EIGHTH NEW YORK SERIES.
2078	IM-01	MERRILL LYNCH	733964	MUNICIPAL INVESTMENT TRUST FUND EIGHTIETH NEW YORK SERIES.
2079	IM-01	MERRILL LYNCH	736891	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIRST NEW YORK SERIES.
2080	IM-01	MERRILL LYNCH	739303	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SECOND NEW YORK SERIES.
2081	IM-01	MERRILL LYNCH	740151	MUNICIPAL INVESTMENT TRUST FUND EIGHT THIRD NEW YORK SERIES.
2082	IM-01	MERRILL LYNCH	742055	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FOURTH NEW YORK SERIES.
2083	IM-01	MERRILL LYNCH	742456	MUNICIPAL INVESTMENT TRUST FUND EIGHTY FIFTH NEW YORK SERIES.
2084	IM-01	MERRILL LYNCH	744955	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SIXTH NEW YORK SERIES.
2085	IM-01	MERRILL LYNCH	745966	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SEVENTH NEW YORK SERIES.
2086	IM-01	MERRILL LYNCH	750330	MUNICIPAL INVESTMENT TRUST FUND EIGHTY NINTH NEW YORK SERIES.
2087	IM-01	MERRILL LYNCH	751517	MUNICIPAL INVESTMENT TRUST FUND NINETIETH NEW YORK SERIES.
2088	IM-01	MERRILL LYNCH	761191	MUNICIPAL INVESTMENT TRUST FUND NINETY SECOND NEW YORK SERIES.
2089	IM-01	MERRILL LYNCH	763760	MUNICIPAL INVESTMENT TRUST FUND NINETY THIRD NEW YORK SERIES.
2090	IM-01	MERRILL LYNCH	764470	MUNICIPAL INVESTMENT TRUST FUND NINETY FOURTH NEW YORK SERIES.
2091	IM-01	MERRILL LYNCH	765223	MUNICIPAL INVESTMENT TRUST FUND NINETY FIFTH NEW YORK SERIES.
2092	IM-01	MERRILL LYNCH	767032	MUNICIPAL INVESTMENT TRUST FUND NINETY SIXTH NEW YORK SERIES.
2093	IM-01	MERRILL LYNCH	767034	MUNICIPAL INVESTMENT TRUST FUND NINETY SEVENTH NEW YORK SERIES.
2094	IM-01	MERRILL LYNCH	769134	MUNICIPAL INVESTMENT TRUST FUND NINETY EIGHTH NEW YORK SERIES.
2095	IM-01	MERRILL LYNCH	771739	MUNICIPAL INVESTMENT TRUST FUND NINETY NINTH NEW YORK SERIES.
2096	IM-01	MERRILL LYNCH	275782	MUNICIPAL INVESTMENT TRUST FUND TENTH NEW YORK SERIES.
2097	IM-01	MERRILL LYNCH	773555	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDREDTH NEW YORK SERIES.
2098	IM-01	MERRILL LYNCH	774923	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIRST NY SERIES.
2099	IM-01	MERRILL LYNCH	777448	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SECOND NY SERIES.
2100	IM-01	MERRILL LYNCH	743276	MUNICIPAL INVESTMENT TRUST FUND SECOND NEW YORK INSURED SERIES.
2101	IM-01	MERRILL LYNCH	779324	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED THIRD NY SERIES.
2102	IM-01	MERRILL LYNCH	782068	MUNICIPAL INVESTMENT TRUST FD ONE HUNDRED FOURTH NEW YORK SER.
2103	IM-01	MERRILL LYNCH	782070	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FIFTH NY SERIES.
2104	IM-01	MERRILL LYNCH	782075	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED SIXTH NEW YORK SER.
2105	IM-01	MERRILL LYNCH	782077	MUNICIPAL INVESTMENT TR FD ONE HUNDRED SEVENTH NEW YORK SER.
2106	IM-01	MERRILL LYNCH	782079	MUNICIPAL INVESTMENT TR FD ONE HUNDRED EIGHTH NEW YORK SER.
2107	IM-01	MERRILL LYNCH	782085	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TENTH NEW YORK SER.
2108	IM-01	MERRILL LYNCH	782087	MUNICIPAL INVESTMENT TR FD ONE HUNDRED ELEVENTH NEW YORK SER.
2109	IM-01	MERRILL LYNCH	782090	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED TWELFTH NY SRS.
2110	IM-01	MERRILL LYNCH	312567	MUNICIPAL INVESTMENT TRUST FUND TWENTY SECOND NEW YORK SERIES.
2111	IM-01	MERRILL LYNCH	313416	MUNICIPAL INVESTMENT TRUST FUND TWENTY THIRD NEW YORK SERIES.
2112	IM-01	MERRILL LYNCH	313613	MUNICIPAL INVESTMENT TRUST FUND TWENTY FOURTH NEW YORK SERIES.
2113	IM-01	MERRILL LYNCH	313643	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIFTH NEW YORK SERIES.
2114	IM-01	MERRILL LYNCH	313962	MUNICIPAL INVESTMENT TRUST FUND TWENTY SIXTH NEW YORK SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2115	IM-01	MERRILL LYNCH	315347	MUNICIPAL INVESTMENT TRUST FUND TWENTY EIGHTH NEW YORK SERIES.
2116	IM-01	MERRILL LYNCH	317722	MUNICIPAL INVESTMENT TRUST FUND TWENTY NINTH NEW YORK SERIES.
2117	IM-01	MERRILL LYNCH	703864	MUNICIPAL INVESTMENT TRUST FUND FIFTY FIRST NEW YORK SERIES.
2118	IM-01	MERRILL LYNCH	719968	MUNICIPAL INVESTMENT TRUST FUND SEVENTY SECOND NEW YORK SERIES.
2119	IM-01	MERRILL LYNCH	720696	MUNICIPAL INVESTMENT TRUST FUND SEVENTY THIRD NEW YORK SERIES.
2120	IM-01	MERRILL LYNCH	740163	MUNICIPAL INVESTMENT TRUST FUND EIGHTY THIRD NEW YORK SERIES.
2121	IM-01	MERRILL LYNCH	720727	MUNICIPAL INVESTMENT TRUST FUND NINETY FIRST NEW YORK SERIES.
2122	IM-01	MERRILL LYNCH	782093	MUNICIPAL INVESTMENT TRUST FUND ONE HUNDRED FOURTEENTH NEW YORK.
2123	IM-01	MERRILL LYNCH	314868	MUNICIPAL INVESTMENT TRUST FUND TWENTY SEVENTH NEW YORK SERIES.
2124	IM-01	MERRILL LYNCH	741616	MUNICIPAL INVESTMENT TRUST FUND FIRST NEW YORK INSURED SERIES.
2125	IM-01	MERRILL LYNCH	745473	MUNICIPAL INVESTMENT TRUST FUND THIRD NEW YORK INSURED SERIES.
2126	IM-01	MERRILL LYNCH	746574	MUNICIPAL INVESTMENT TRUST FUND FIRST NEW YORK PUT SERIES.
2127	IM-01	MERRILL LYNCH	752745	MUNICIPAL INVESTMENT TRUST FUND SECOND NEW YORK PUT SERIES.
2128	IM-01	MERRILL LYNCH	756921	MUNICIPAL INVESTMENT TRUST FUND THIRD NEW YORK PUT SERIES.
2129	IM-01	MERRILL LYNCH	759756	MUNICIPAL INVESTMENT TRUST FUND FOURTH NEW YORK PUT SERIES.
2130	IM-01	MERRILL LYNCH	782092	MUNICIPAL INVT TR FD FIRST NEW YORK INTERMEDIATE TERM SERIES.
2131	IM-01	MERRILL LYNCH	859373	MUNICIPAL INVESTMENT TR FD SECOND NEW YORK INTERM TERM SER.
2132	IM-01	MERRILL LYNCH	720511	MUNICIPAL INVESTMENT TRUST FUND FIRST OHIO SERIES.
2133	IM-01	MERRILL LYNCH	723530	MUNICIPAL INVESTMENT TRUST FUND SECOND OHIO SERIES.
2134	IM-01	MERRILL LYNCH	725023	MUNICIPAL INVESTMENT TRUST FUND THIRD OHIO SERIES.
2135	IM-01	MERRILL LYNCH	735403	MUNICIPAL INVESTMENT TRUST FUND PENNSYLVANIA SERIES A.
2136	IM-01	MERRILL LYNCH	740147	MUNICIPAL INVESTMENT TRUST FUND PENNSYLVANIA SERIES B.
2137	IM-01	MERRILL LYNCH	742525	MUNICIPAL INVESTMENT TRUST FUND PENNSYLVANIA SERIES C.
2138	IM-01	MERRILL LYNCH	277283	MUNICIPAL INVESTMENT TRUST FUND TWELFTH PENNSYLVANIA SERIES.
2139	IM-01	MERRILL LYNCH	709707	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH PENNSYLVANIA SERIES.
2140	IM-01	MERRILL LYNCH	277284	MUNICIPAL INVESTMENT TRUST FUND THIRTEENTH PENNSYLVANIA SERIES.
2141	IM-01	MERRILL LYNCH	310939	MUNICIPAL INVESTMENT TRUST FND FOURTEENTH PENNSYLVANIA SERIES.
2142	IM-01	MERRILL LYNCH	310940	MUNICIPAL INVESTMENT TRUST FUND FOURTEENTH PENNSYLVANIA SERIES.
2143	IM-01	MERRILL LYNCH	313105	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH PENNSYLVANIA SERIES.
2144	IM-01	MERRILL LYNCH	319568	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH PENNSYLVANIA SERIES.
2145	IM-01	MERRILL LYNCH	700983	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH PENNSYLVANIA SER.
2146	IM-01	MERRILL LYNCH	703478	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH PENNSYLVANIA SER.
2147	IM-01	MERRILL LYNCH	708029	MUNICIPAL INVESTMENT TRUST FUND NINETEENTH PENNSYLVANIA SER.
2148	IM-01	MERRILL LYNCH	710787	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST PENNSYLVANIA SER.
2149	IM-01	MERRILL LYNCH	714110	MUNICIPAL INVESTMENT TRUST FD TWENTY SECOND PENNSYLVANIA SER.
2150	IM-01	MERRILL LYNCH	715807	MUNICIPAL INVESTMENT TRUST FD TWENTY THIRD PENNSYLVANIA SER.
2151	IM-01	MERRILL LYNCH	717231	MUNICIPAL INVESTMENT TRUST FUND TWENTY FOURTH PENNSYLVANIA SER.
2152	IM-01	MERRILL LYNCH	719043	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIFTH PENNSYLVANIA SER.
2153	IM-01	MERRILL LYNCH	721703	MUNICIPAL INVESTMENT TRUST FUND TWENTY SIXTH PENNSYLVANIA SER.
2154	IM-01	MERRILL LYNCH	723741	MUNICIPAL INVESTMENT TRUST FUND TWENTY SEVENTH PENNSYLVANIA.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2155	IM-01	MERRILL LYNCH	68938	MUNICIPAL INVESTMENT TRUST FUND FOURTH PENNSYLVANIA SERIES.
2156	IM-01	MERRILL LYNCH	68931	MUNICIPAL INVESTMENT TRUST FUND FIFTH PENNSYLVANIA SERIES.
2157	IM-01	MERRILL LYNCH	68985	MUNICIPAL INVESTMENT TRUST FUND SIXTH PENNSYLVANIA SERIES.
2158	IM-01	MERRILL LYNCH	277258	MUNICIPAL INVESTMENT TRUST FUND SEVENTH PENNSYLVANIA SERIES.
2159	IM-01	MERRILL LYNCH	68925	MUNICIPAL INVESTMENT TRUST FUND EIGHTH PENNSYLVANIA SERIES.
2160	IM-01	MERRILL LYNCH	68947	MUNICIPAL INVESTMENT TRUST FUND NINTH PENNSYLVANIA SERIES.
2161	IM-01	MERRILL LYNCH	68987	MUNICIPAL INVESTMENT TRUST FUND TENTH PENNSYLVANIA SERIES.
2162	IM-01	MERRILL LYNCH	68995	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH PENNSYLVANIA SERIES.
2163	IM-01	MERRILL LYNCH	727654	MUNICIPAL INVESTMENT TRUST FUND FIRST PUT SERIES.
2164	IM-01	MERRILL LYNCH	735590	MUNICIPAL INVESTMENT TRUST FUND SECOND PUT SERIES.
2165	IM-01	MERRILL LYNCH	735920	MUNICIPAL INVESTMENT TRUST FUND THIRD PUT SERIES.
2166	IM-01	MERRILL LYNCH	749745	MUNICIPAL INVESTMENT TRUST FUND FOURTH PUT SERIES.
2167	IM-01	MERRILL LYNCH	750011	MUNICIPAL INVESTMENT TRUST FUND FIFTH PUT SERIES.
2168	IM-01	MERRILL LYNCH	751572	MUNICIPAL INVESTMENT TRUST FUND SIXTH PUT SERIES.
2169	IM-01	MERRILL LYNCH	727006	MUNICIPAL INVESTMENT TRUST FUND SEVENTH PUT SERIES.
2170	IM-01	MERRILL LYNCH	757838	MUNICIPAL INVESTMENT TRUST FUND EIGHTH PUT SERIES.
2171	IM-01	MERRILL LYNCH	781661	MUNICIPAL INVESTMENT TRUST FUND NINTH PUT SERIES.
2172	IM-01	MERRILL LYNCH	759757	MUNICIPAL INVESTMENT TRUST FUND TENTH PUT SERIES.
2173	IM-01	MERRILL LYNCH	781321	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH PUT SERIES.
2174	IM-01	MERRILL LYNCH	750555	MUNICIPAL INVESTMENT TRUST FUND FIRST TEXAS INSURED SERIES.
2175	IM-01	MERRILL LYNCH	752199	MUNICIPAL INVESTMENT TRUST FUND SECOND TEXAS INSURED SERIES.
2176	IM-01	MERRILL LYNCH	755119	MUNICIPAL INVESTMENT TRUST FUND THIRD TEXAS INSURED SERIES.
2177	IM-01	MERRILL LYNCH	755896	MUNICIPAL INVESTMENT TRUST FUND FOURTH TEXAS INSURED SERIES.
2178	IM-01	MERRILL LYNCH	757079	MUNICIPAL INVESTMENT TRUST FUND FIFTH TEXAS INSURED SERIES.
2179	IM-01	MERRILL LYNCH	763663	MUNICIPAL INVESTMENT TRUST FUND ELEVENTH CALIFORNIA INS SER.
2180	IM-01	MERRILL LYNCH	775974	MUNICIPAL INVESTMENT TRUST FUND TWENTY EIGHTH CALIFORNIA INS.
2181	IM-01	MERRILL LYNCH	780897	MUNICIPAL INVESTMENT TR FD THIRTY FIFTH CALIFORNIA INS SER.
2182	IM-01	MERRILL LYNCH	780900	MUNICIPAL INVESTMENT TR FD THIRTY SIXTH CALIFORNIA INS SER.
2183	IM-01	MERRILL LYNCH	780990	MUNICIPAL INVESTMENT TRUST FUND EIGHTY SIXTH INSURED SERIES.
2184	IM-01	MERRILL LYNCH	216651	MUNICIPAL INVESTMENT TRUST FUND FIFTEENTH INTERM TERM SER.
2185	IM-01	MERRILL LYNCH	68982	MUNICIPAL INVESTMENT TRUST FUND SIXTEENTH INTERMEDIATE TERM.
2186	IM-01	MERRILL LYNCH	277257	MUNICIPAL INVESTMENT TRUST FUND SEVENTEENTH INTERMEDIATE TERM.
2187	IM-01	MERRILL LYNCH	225665	MUNICIPAL INVESTMENT TRUST FUND EIGHTEENTH INTERMEDIATE TERM.
2188	IM-01	MERRILL LYNCH	277254	MUNICIPAL INVESTMENT TRUST FUND NINETEENTH INTERMEDIATE TERM.
2189	IM-01	MERRILL LYNCH	275783	MUNICIPAL INVESTMENT TRUST FUND TWENTIETH INTERMEDIATE TERM.
2190	IM-01	MERRILL LYNCH	275784	MUNICIPAL INVESTMENT TRUST FUND TWENTY FIRST INTERMEDIATE TERM.
2191	IM-01	MERRILL LYNCH	312046	MUNICIPAL INVESTMENT TRUST FUND TWENTY SIXTH INTERM TERM SER.
2192	IM-01	MERRILL LYNCH	720717	MUNICIPAL INVESTMENT TRUST FUND THIRTY SEVENTH INTERM TERM SER.
2193	IM-01	MERRILL LYNCH	752759	MUNICIPAL INVESTMENT TRUST FUND FIFTY SECOND INTERM TERM SER.
2194	IM-01	MERRILL LYNCH	780890	MUNICIPAL INVESTMENT TRUST FUND NEW YORK PUT SERIES 73.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2195	IM-01	MERRILL LYNCH	868519	MUNICIPAL INVESTMENT TRUST FD THIRD NEW YORK INTERM TERM SER.
2196	IM-01	MERRILL LYNCH	757117	MUNICIPAL INVESTMENT TRUST FUND THIRD SHORT TERM SERIES.
2197	IM-01	MERRILL LYNCH	740833	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SECURITIES A.
2198	IM-01	MERRILL LYNCH	782699	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SECURITIES C.
2199	IM-01	MERRILL LYNCH	782701	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SEC SER D.
2200	IM-01	MERRILL LYNCH	782707	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SECUR SER E.
2201	IM-01	MERRILL LYNCH	782708	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SECURITIES F.
2202	IM-01	MERRILL LYNCH	782709	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SECURITIES G.
2203	IM-01	MERRILL LYNCH	786284	STRIPPED ZERO U S TREASURY SEC FUND PROVIDENT MUTUAL SERIES.
2204	IM-01	NUVEEN	073443	NUVEEN TAX EXEMPT UNIT TRUST SERIES 43 NATIONAL TRUST 43.
2205	IM-01	NUVEEN	073445	NUVEEN TAX EXEMPT UNIT TRUST SERIES 44 NATIONAL TRUST 44.
2206	IM-01	NUVEEN	073451	NUVEEN TAX EXEMPT UNIT TRUST SERIES 48 NATIONAL TRUST 48.
2207	IM-01	NUVEEN	073453	NUVEEN TAX EXEMPT UNIT TRUST SERIES 49 NATIONAL TRUST 49.
2208	IM-01	NUVEEN	073457	NUVEEN TAX EXEMPT UNIT TRUST SERIES 51 NATIONAL TRUST 51.
2209	IM-01	NUVEEN	860930	NUVEEN TAX EXEMPT UNIT TRUST SERIES 599.
2210	IM-01	NUVEEN	860931	NUVEEN TAX EXEMPT UNIT TRUST SERIES 600.
2211	IM-01	NUVEEN	860932	NUVEEN TAX EXEMPT UNIT TRUST SERIES 601.
2212	IM-01	NUVEEN	860933	NUVEEN TAX EXEMPT UNIT TRUST SERIES 602.
2213	IM-01	NUVEEN	860934	NUVEEN TAX EXEMPT UNIT TRUST SERIES 603.
2214	IM-01	NUVEEN	860935	NUVEEN TAX EXEMPT UNIT TRUST SERIES 604.
2215	IM-01	NUVEEN	860936	NUVEEN TAX EXEMPT UNIT TRUST SERIES 605.
2216	IM-01	NUVEEN	860937	NUVEEN TAX EXEMPT UNIT TRUST SERIES 606.
2217	IM-01	NUVEEN	860938	NUVEEN TAX EXEMPT UNIT TRUST SERIES 607.
2218	IM-01	NUVEEN	860939	NUVEEN TAX EXEMPT UNIT TRUST SERIES 608.
2219	IM-01	NUVEEN	860940	NUVEEN TAX EXEMPT UNIT TRUST SERIES 609.
2220	IM-01	NUVEEN	073472	NUVEEN TAX EXEMPT UNIT TRUST SERIES 61 NATIONAL TRUST 61.
2221	IM-01	NUVEEN	860941	NUVEEN TAX EXEMPT UNIT TRUST SERIES 610.
2222	IM-01	NUVEEN	860942	NUVEEN TAX EXEMPT UNIT TRUST SERIES 611.
2223	IM-01	NUVEEN	860943	NUVEEN TAX EXEMPT UNIT TRUST SERIES 612.
2224	IM-01	NUVEEN	860944	NUVEEN TAX EXEMPT UNIT TRUST SERIES 613.
2225	IM-01	NUVEEN	860945	NUVEEN TAX EXEMPT UNIT TRUST SERIES 614.
2226	IM-01	NUVEEN	860946	NUVEEN TAX EXEMPT UNIT TRUST SERIES 615.
2227	IM-01	NUVEEN	860947	NUVEEN TAX EXEMPT UNIT TRUST SERIES 616.
2228	IM-01	NUVEEN	860948	NUVEEN TAX EXEMPT UNIT TRUST SERIES 617.
2229	IM-01	NUVEEN	860949	NUVEEN TAX EXEMPT UNIT TRUST SERIES 618.
2230	IM-01	NUVEEN	860950	NUVEEN TAX EXEMPT UNIT TRUST SERIES 619.
2231	IM-01	NUVEEN	073474	NUVEEN TAX EXEMPT UNIT TRUST SERIES 62 NATIONAL TRUST 62.
2232	IM-01	NUVEEN	860951	NUVEEN TAX EXEMPT UNIT TRUST SERIES 620.
2233	IM-01	NUVEEN	860952	NUVEEN TAX EXEMPT UNIT TRUST SERIES 621.
2234	IM-01	NUVEEN	860953	NUVEEN TAX EXEMPT UNIT TRUST SERIES 622.
2235	IM-01	NUVEEN	860954	NUVEEN TAX EXEMPT UNIT TRUST SERIES 623.
2236	IM-01	NUVEEN	860955	NUVEEN TAX EXEMPT UNIT TRUST SERIES 624.
2237	IM-01	NUVEEN	860956	NUVEEN TAX EXEMPT UNIT TRUST SERIES 625.
2238	IM-01	NUVEEN	860957	NUVEEN TAX EXEMPT UNIT TRUST SERIES 626.
2239	IM-01	NUVEEN	860958	NUVEEN TAX EXEMPT UNIT TRUST SERIES 627.
2240	IM-01	NUVEEN	860959	NUVEEN TAX EXEMPT UNIT TRUST SERIES 628.
2241	IM-01	NUVEEN	860960	NUVEEN TAX EXEMPT UNIT TRUST SERIES 629.
2242	IM-01	NUVEEN	860961	NUVEEN TAX EXEMPT UNIT TRUST SERIES 630.
2243	IM-01	NUVEEN	860962	NUVEEN TAX EXEMPT UNIT TRUST SERIES 631.
2244	IM-01	NUVEEN	860963	NUVEEN TAX EXEMPT UNIT TRUST SERIES 632.
2245	IM-01	NUVEEN	860964	NUVEEN TAX EXEMPT UNIT TRUST SERIES 633.
2246	IM-01	NUVEEN	860965	NUVEEN TAX EXEMPT UNIT TRUST SERIES 634.
2247	IM-01	NUVEEN	860966	NUVEEN TAX EXEMPT UNIT TRUST SERIES 635.
2248	IM-01	NUVEEN	860967	NUVEEN TAX EXEMPT UNIT TRUST SERIES 636.
2249	IM-01	NUVEEN	860968	NUVEEN TAX EXEMPT UNIT TRUST SERIES 637.
2250	IM-01	NUVEEN	860969	NUVEEN TAX EXEMPT UNIT TRUST SERIES 638.
2251	IM-01	NUVEEN	860970	NUVEEN TAX EXEMPT UNIT TRUST SERIES 639.
2252	IM-01	NUVEEN	860971	NUVEEN TAX EXEMPT UNIT TRUST SERIES 640.
2253	IM-01	NUVEEN	860972	NUVEEN TAX EXEMPT UNIT TRUST SERIES 641.
2254	IM-01	NUVEEN	860973	NUVEEN TAX EXEMPT UNIT TRUST SERIES 642.
2255	IM-01	NUVEEN	860974	NUVEEN TAX EXEMPT UNIT TRUST SERIES 643.
2256	IM-01	NUVEEN	860975	NUVEEN TAX EXEMPT UNIT TRUST SERIES 644.
2257	IM-01	NUVEEN	860976	NUVEEN TAX EXEMPT UNIT TRUST SERIES 645.
2258	IM-01	NUVEEN	860977	NUVEEN TAX EXEMPT UNIT TRUST SERIES 646.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2259	IM-01	NUVEEN	860978	NUVEEN TAX EXEMPT UNIT TRUST SERIES 647.
2260	IM-01	NUVEEN	860979	NUVEEN TAX EXEMPT UNIT TRUST SERIES 648.
2261	IM-01	NUVEEN	860980	NUVEEN TAX EXEMPT UNIT TRUST SERIES 649.
2262	IM-01	NUVEEN	860982	NUVEEN TAX EXEMPT UNIT TRUST SERIES 650.
2263	IM-01	NUVEEN	882868	NUVEEN TAX EXEMPT UNIT TRUST SERIES 651.
2264	IM-01	NUVEEN	882869	NUVEEN TAX EXEMPT UNIT TRUST SERIES 652.
2265	IM-01	NUVEEN	882870	NUVEEN TAX EXEMPT UNIT TRUST SERIES 653.
2266	IM-01	NUVEEN	882874	NUVEEN TAX EXEMPT UNIT TRUST SERIES 654.
2267	IM-01	NUVEEN	882876	NUVEEN TAX EXEMPT UNIT TRUST SERIES 655.
2268	IM-01	NUVEEN	882877	NUVEEN TAX EXEMPT UNIT TRUST SERIES 656.
2269	IM-01	NUVEEN	882878	NUVEEN TAX EXEMPT UNIT TRUST SERIES 657.
2270	IM-01	NUVEEN	882879	NUVEEN TAX EXEMPT UNIT TRUST SERIES 658.
2271	IM-01	NUVEEN	882880	NUVEEN TAX EXEMPT UNIT TRUST SERIES 659.
2272	IM-01	NUVEEN	882881	NUVEEN TAX EXEMPT UNIT TRUST SERIES 660.
2273	IM-01	NUVEEN	073494	NUVEEN TAX EXEMPT UNIT TRUST SERIES 80 NATIONAL TRUST 80.
2274	IM-01	NUVEEN	311341	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 4.
2275	IM-01	NUVEEN	311523	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 6.
2276	IM-01	NUVEEN	743282	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 7.
2277	IM-01	NUVEEN	768044	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 7.
2278	IM-01	NUVEEN	314723	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 8.
2279	IM-01	NUVEEN	314746	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 9.
2280	IM-01	NUVEEN	316004	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 10.
2281	IM-01	NUVEEN	316188	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 11.
2282	IM-01	NUVEEN	318436	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 12.
2283	IM-01	NUVEEN	318504	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 13.
2284	IM-01	NUVEEN	319494	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 15.
2285	IM-01	NUVEEN	357125	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 34.
2286	IM-01	NUVEEN	73443	NUVEEN TAX EXEMPT UNIT TRUST SERIES 43 NATIONAL TRUST 43.
2287	IM-01	NUVEEN	73445	NUVEEN TAX EXEMPT UNIT TRUST SERIES 44 NATIONAL TRUST 44.
2288	IM-01	NUVEEN	73451	NUVEEN TAX EXEMPT UNIT TRUST SERIES 48 NATIONAL TRUST 48.
2289	IM-01	NUVEEN	73453	NUVEEN TAX EXEMPT UNIT TRUST SERIES 49 NATIONAL TRUST 49.
2290	IM-01	NUVEEN	73457	NUVEEN TAX EXEMPT UNIT TRUST SERIES 51 NATIONAL TRUST 51.
2291	IM-01	NUVEEN	73472	NUVEEN TAX EXEMPT UNIT TRUST SERIES 61 NATIONAL TRUST 61.
2292	IM-01	NUVEEN	73494	NUVEEN TAX EXEMPT UNIT TRUST SERIES 80 NATIONAL TRUST 80.
2293	IM-01	NUVEEN	205723	NUVEEN TAX EXEMPT UNIT TRUST SERIES 96 - NATIONAL TRUST 96.
2294	IM-01	NUVEEN	216745	NUVEEN TAX EXEMPT UNIT TRUST SERIES 97 - NATIONAL TRUST 97.
2295	IM-01	NUVEEN	216746	NUVEEN TAX EXEMPT UNIT TRUST SERIES 98 NATIONAL TRUST 98.
2296	IM-01	NUVEEN	216747	NUVEEN TAX EXEMPT UNIT TRUST SERIES 99 NATIONAL TRUST 99.
2297	IM-01	NUVEEN	216744	NUVEEN TAX EXEMPT UNIT TRUST SERIES 101 NATIONAL TRUST 101.
2298	IM-01	NUVEEN	275840	NUVEEN TAX EXEMPT UNIT TRUST SERIES 105 NATIONAL TRUST 105.
2299	IM-01	NUVEEN	275841	NUVEEN TAX EXEMPT UNIT TRUST SERIES 106 NATIONAL TRUST 106.
2300	IM-01	NUVEEN	727041	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 106.
2301	IM-01	NUVEEN	275842	NUVEEN TAX EXEMPT UNIT TRUST SERIES 107 NATIONAL TRUST 107.
2302	IM-01	NUVEEN	311684	NUVEEN TAX EXEMPT UNIT TRUST SERIES 131 NATIONAL TRUST 131.
2303	IM-01	NUVEEN	312299	NUVEEN TAX EXEMPT UNIT TRUST SERIES 134 NATIONAL TRUST 134.
2304	IM-01	NUVEEN	313512	NUVEEN TAX EXEMPT UNIT TRUST SERIES 135 NATIONAL TRUST 135.
2305	IM-01	NUVEEN	313564	NUVEEN TAX EXEMPT UNIT TRUST SERIES 136 NATIONAL TRUST 136.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2306	IM-01	NUVEEN	313841	NUVEEN TAX EXEMPT UNIT TRUST SERIES 138 NATIONAL TRUST 138.
2307	IM-01	NUVEEN	313854	NUVEEN TAX EXEMPT UNIT TRUST SERIES 140 NATIONAL TRUST 140.
2308	IM-01	NUVEEN	313934	NUVEEN TAX EXEMPT UNIT TRUST SERIES 141 NATIONAL TRUST 141.
2309	IM-01	NUVEEN	313926	NUVEEN TAX EXEMPT UNIT TRUST SERIES 142- NATIONAL TRUST 142.
2310	IM-01	NUVEEN	314288	NUVEEN TAX EXEMPT UNIT TRUST SERIES 143 NATIONAL TRUST 143.
2311	IM-01	NUVEEN	314280	NUVEEN TAX EXEMPT UNIT TRUST SERIES 144- NATIONAL TRUST 144.
2312	IM-01	NUVEEN	314595	NUVEEN TAX EXEMPT UNIT TRUST SERIES 145- NATIONAL TRUST 145.
2313	IM-01	NUVEEN	315503	NUVEEN TAX EXEMPT UNIT TRUST SERIES 150.
2314	IM-01	NUVEEN	315982	NUVEEN TAX EXEMPT UNIT TRUST SERIES 152 NATIONAL TRUST 152.
2315	IM-01	NUVEEN	316196	NUVEEN TAX EXEMPT UNIT TRUST SERIES 153.
2316	IM-01	NUVEEN	316254	NUVEEN TAX EXEMPT UNIT TRUST SERIES 154 NATIONAL TRUST 154.
2317	IM-01	NUVEEN	316455	NUVEEN TAX EXEMPT UNIT TRUST SERIES 155.
2318	IM-01	NUVEEN	316645	NUVEEN TAX EXEMPT UNIT TRUST SERIES 158.
2319	IM-01	NUVEEN	317620	NUVEEN TAX EXEMPT UNIT TRUST SERIES 159.
2320	IM-01	NUVEEN	317671	NUVEEN TAX EXEMPT UNIT TRUST SERIES 160 NATIONAL TRUST 160.
2321	IM-01	NUVEEN	318088	NUVEEN TAX EXEMPT UNIT TRUST SERIES 161 NATIONAL TRUST 161.
2322	IM-01	NUVEEN	318187	NUVEEN TAX EXEMPT UNIT TRUST SERIES 162 NATIONAL TRUST 162.
2323	IM-01	NUVEEN	318442	NUVEEN TAX EXEMPT UNIT TRUST SERIES 164 NATIONAL TRUST 164.
2324	IM-01	NUVEEN	319321	NUVEEN TAX EXEMPT UNIT TRUST SERIES 165 NATIONAL TRUST 165.
2325	IM-01	NUVEEN	825509	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 197.
2326	IM-01	NUVEEN	718055	NUVEEN TAX EXEMPT UNIT TRUST SERIES 261 NATIONAL TRUST 261.
2327	IM-01	NUVEEN	775844	NUVEEN TAX EXEMPT UNIT TRUST SERIES 347 NATIONAL TRUST 347.
2328	IM-01	NUVEEN	782804	NUVEEN TAX EXEMPT UNIT TRUST SERIES 371.
2329	IM-01	NUVEEN	860901	NUVEEN TAX EXEMPT UNIT TRUST SERIES 572.
2330	IM-01	NUVEEN	356142	NUVEEN TAX EXEMPT UNIT TRUST DISCOUNT SERIES 1.
2331	IM-01	NUVEEN	356282	NUVEEN TAX EXEMPT UNIT TRUST DISCOUNT SERIES 2.
2332	IM-01	NUVEEN	737991	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 1.
2333	IM-01	NUVEEN	739449	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 2.
2334	IM-01	NUVEEN	739649	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 3.
2335	IM-01	NUVEEN	741032	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 4.
2336	IM-01	NUVEEN	741826	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 5.
2337	IM-01	NUVEEN	741798	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 6.
2338	IM-01	NUVEEN	743142	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 8.
2339	IM-01	NUVEEN	743140	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 9.
2340	IM-01	NUVEEN	743138	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 10.
2341	IM-01	NUVEEN	743963	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 11.
2342	IM-01	NUVEEN	744377	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 12.
2343	IM-01	NUVEEN	745461	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 13.
2344	IM-01	NUVEEN	746716	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 14.
2345	IM-01	NUVEEN	747547	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 15.
2346	IM-01	NUVEEN	748098	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 16.
2347	IM-01	NUVEEN	748673	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 17.
2348	IM-01	NUVEEN	748724	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 18

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count		Group	Complex	CIK	Name
2349		IM-01	NUVEEN	748938	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 19.
2350		IM-01	NUVEEN	749511	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 20.
2351		IM-01	NUVEEN	750007	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 21.
2352		IM-01	NUVEEN	750498	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 22.
2353		IM-01	NUVEEN	750690	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 23.
2354		IM-01	NUVEEN	751230	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 24.
2355		IM-01	NUVEEN	751584	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 25.
2356		IM-01	NUVEEN	752698	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 26.
2357		IM-01	NUVEEN	754030	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 27.
2358		IM-01	NUVEEN	754991	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 28.
2359		IM-01	NUVEEN	756753	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 29.
2360		IM-01	NUVEEN	757489	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 30.
2361		IM-01	NUVEEN	759109	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 31.
2362		IM-01	NUVEEN	759477	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 32.
2363		IM-01	NUVEEN	759822	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 33.
2364		IM-01	NUVEEN	760988	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 34.
2365		IM-01	NUVEEN	761248	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 35.
2366		IM-01	NUVEEN	762878	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 36.
2367		IM-01	NUVEEN	763857	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 37.
2368		IM-01	NUVEEN	765926	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 38.
2369		IM-01	NUVEEN	766433	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 39.
2370		IM-01	NUVEEN	766696	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 40.
2371		IM-01	NUVEEN	766755	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 41.
2372		IM-01	NUVEEN	766879	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 42.
2373		IM-01	NUVEEN	768359	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 43.
2374		IM-01	NUVEEN	768819	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 44.
2375		IM-01	NUVEEN	769021	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 45.
2376		IM-01	NUVEEN	769348	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 46.
2377		IM-01	NUVEEN	769586	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 47.
2378		IM-01	NUVEEN	769783	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 48.
2379		IM-01	NUVEEN	770199	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 49.
2380		IM-01	NUVEEN	770742	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 50.
2381		IM-01	NUVEEN	771596	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 51.
2382		IM-01	NUVEEN	771795	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 52.
2383		IM-01	NUVEEN	772003	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 53.
2384		IM-01	NUVEEN	772866	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 54.
2385		IM-01	NUVEEN	773339	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 55.
2386		IM-01	NUVEEN	773823	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 56.
2387		IM-01	NUVEEN	774483	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 57.
2388		IM-01	NUVEEN	775410	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 58.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2389	IM-01	NUVEEN	776769	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 59.
2390	IM-01	NUVEEN	777341	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 60.
2391	IM-01	NUVEEN	777619	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 61.
2392	IM-01	NUVEEN	778584	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 62.
2393	IM-01	NUVEEN	779263	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 63.
2394	IM-01	NUVEEN	779812	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 64.
2395	IM-01	NUVEEN	779986	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 65.
2396	IM-01	NUVEEN	780172	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 66.
2397	IM-01	NUVEEN	782123	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 67.
2398	IM-01	NUVEEN	782843	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 68.
2399	IM-01	NUVEEN	782844	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 69.
2400	IM-01	NUVEEN	782845	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 70.
2401	IM-01	NUVEEN	782846	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 71.
2402	IM-01	NUVEEN	782847	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 72.
2403	IM-01	NUVEEN	782848	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 73.
2404	IM-01	NUVEEN	782849	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 74.
2405	IM-01	NUVEEN	782850	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 75.
2406	IM-01	NUVEEN	782851	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 76.
2407	IM-01	NUVEEN	782852	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 77.
2408	IM-01	NUVEEN	782853	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 78.
2409	IM-01	NUVEEN	782854	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 79.
2410	IM-01	NUVEEN	782855	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 80.
2411	IM-01	NUVEEN	782857	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 81.
2412	IM-01	NUVEEN	782858	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 82.
2413	IM-01	NUVEEN	782859	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 83.
2414	IM-01	NUVEEN	782860	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 84.
2415	IM-01	NUVEEN	782861	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 85.
2416	IM-01	NUVEEN	782862	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 86.
2417	IM-01	NUVEEN	782863	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 87.
2418	IM-01	NUVEEN	782864	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 88.
2419	IM-01	NUVEEN	782865	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 89.
2420	IM-01	NUVEEN	782866	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 90.
2421	IM-01	NUVEEN	782868	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 91.
2422	IM-01	NUVEEN	782869	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 92.
2423	IM-01	NUVEEN	782871	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 93.
2424	IM-01	NUVEEN	782872	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 94.
2425	IM-01	NUVEEN	782873	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 95.
2426	IM-01	NUVEEN	782874	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 96.
2427	IM-01	NUVEEN	782876	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 97.
2428	IM-01	NUVEEN	782877	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 98.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2429	IM-01	NUVEEN	782878	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 99.
2430	IM-01	NUVEEN	782880	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 100.
2431	IM-01	NUVEEN	782881	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 101.
2432	IM-01	NUVEEN	782882	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 102.
2433	IM-01	NUVEEN	782884	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 103.
2434	IM-01	NUVEEN	782885	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 104.
2435	IM-01	NUVEEN	782888	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 105.
2436	IM-01	NUVEEN	782889	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 106.
2437	IM-01	NUVEEN	782891	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 107.
2438	IM-01	NUVEEN	782893	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 108.
2439	IM-01	NUVEEN	782895	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 109.
2440	IM-01	NUVEEN	782896	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 110.
2441	IM-01	NUVEEN	782897	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 111.
2442	IM-01	NUVEEN	782900	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 112.
2443	IM-01	NUVEEN	782901	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 113.
2444	IM-01	NUVEEN	782903	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 114.
2445	IM-01	NUVEEN	782904	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 115.
2446	IM-01	NUVEEN	782905	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 116.
2447	IM-01	NUVEEN	782906	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 117.
2448	IM-01	NUVEEN	782908	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 118.
2449	IM-01	NUVEEN	782909	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 119.
2450	IM-01	NUVEEN	782911	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 120.
2451	IM-01	NUVEEN	782912	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 121.
2452	IM-01	NUVEEN	782914	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 122.
2453	IM-01	NUVEEN	782917	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 123.
2454	IM-01	NUVEEN	782919	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 124.
2455	IM-01	NUVEEN	782921	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 125.
2456	IM-01	NUVEEN	802478	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 126.
2457	IM-01	NUVEEN	802479	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 127.
2458	IM-01	NUVEEN	802480	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 128.
2459	IM-01	NUVEEN	802482	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 129.
2460	IM-01	NUVEEN	802483	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 130.
2461	IM-01	NUVEEN	802485	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 131.
2462	IM-01	NUVEEN	802486	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 132.
2463	IM-01	NUVEEN	802488	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 133.
2464	IM-01	NUVEEN	802489	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 134.
2465	IM-01	NUVEEN	802491	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 135.
2466	IM-01	NUVEEN	802493	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 136.
2467	IM-01	NUVEEN	802494	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 137.
2468	IM-01	NUVEEN	802495	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 138.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2469	IM-01	NUVEEN	802496	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 139.
2470	IM-01	NUVEEN	802497	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 140.
2471	IM-01	NUVEEN	802498	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 141.
2472	IM-01	NUVEEN	802499	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 142.
2473	IM-01	NUVEEN	802500	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 143.
2474	IM-01	NUVEEN	802501	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 144.
2475	IM-01	NUVEEN	802502	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 145.
2476	IM-01	NUVEEN	802503	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 146.
2477	IM-01	NUVEEN	802504	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 147.
2478	IM-01	NUVEEN	802505	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 148.
2479	IM-01	NUVEEN	802506	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 149.
2480	IM-01	NUVEEN	802507	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 150.
2481	IM-01	NUVEEN	825462	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 151.
2482	IM-01	NUVEEN	825463	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 152.
2483	IM-01	NUVEEN	825464	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 153.
2484	IM-01	NUVEEN	825465	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 154.
2485	IM-01	NUVEEN	825466	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 155.
2486	IM-01	NUVEEN	825467	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 156.
2487	IM-01	NUVEEN	825468	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 157.
2488	IM-01	NUVEEN	825469	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 158.
2489	IM-01	NUVEEN	825470	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 159.
2490	IM-01	NUVEEN	825471	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 160.
2491	IM-01	NUVEEN	825472	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 161.
2492	IM-01	NUVEEN	825473	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 162.
2493	IM-01	NUVEEN	825474	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 163.
2494	IM-01	NUVEEN	825475	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 164.
2495	IM-01	NUVEEN	825476	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 165.
2496	IM-01	NUVEEN	825477	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 166.
2497	IM-01	NUVEEN	825478	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 167.
2498	IM-01	NUVEEN	825479	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 168.
2499	IM-01	NUVEEN	825481	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 169.
2500	IM-01	NUVEEN	825482	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 170.
2501	IM-01	NUVEEN	825483	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 171.
2502	IM-01	NUVEEN	825484	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 172.
2503	IM-01	NUVEEN	825485	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 173.
2504	IM-01	NUVEEN	825486	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 174.
2505	IM-01	NUVEEN	825487	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 175.
2506	IM-01	NUVEEN	825488	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 176.
2507	IM-01	NUVEEN	825489	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 177.
2508	IM-01	NUVEEN	825490	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 178.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
2509		IM-01	NUVEEN	825491	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 179.
2510		IM-01	NUVEEN	825492	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 180.
2511		IM-01	NUVEEN	825493	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 181.
2512		IM-01	NUVEEN	825494	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 182.
2513		IM-01	NUVEEN	825495	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 183.
2514		IM-01	NUVEEN	825496	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 184.
2515		IM-01	NUVEEN	825497	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 185.
2516		IM-01	NUVEEN	825498	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 186.
2517		IM-01	NUVEEN	825499	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 187.
2518		IM-01	NUVEEN	825500	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 188.
2519		IM-01	NUVEEN	825501	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 189.
2520		IM-01	NUVEEN	825502	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 190.
2521		IM-01	NUVEEN	825503	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 191.
2522		IM-01	NUVEEN	825504	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 192.
2523		IM-01	NUVEEN	825505	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 193.
2524		IM-01	NUVEEN	825506	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 194.
2525		IM-01	NUVEEN	825507	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 195.
2526		IM-01	NUVEEN	825508	NUVEEN TAX EXEMPT UNIT TRUST INSURED SERIES 196.
2527		IM-01	NUVEEN	202769	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 1.
2528		IM-01	NUVEEN	277482	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 2.
2529		IM-01	NUVEEN	277483	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 3.
2530		IM-01	NUVEEN	277484	NUVEEN TAX-EXEMPT UNIT TRUSTS INTERMEDIATE SERIES 4.
2531		IM-01	NUVEEN	277485	NUVEEN TAX EXEMPT UNIT TRUSTS INTERMEDIATE SERIES 5.
2532		IM-01	NUVEEN	277486	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 6.
2533		IM-01	NUVEEN	216743	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 7.
2534		IM-01	NUVEEN	277830	NUVEEN TAX EXEMPT UNIT TRUSTS INTERMEDIATE SERIES 8.
2535		IM-01	NUVEEN	277487	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 9.
2536		IM-01	NUVEEN	277488	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 10.
2537		IM-01	NUVEEN	277489	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 11.
2538		IM-01	NUVEEN	352267	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 12.
2539		IM-01	NUVEEN	352301	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 13.
2540		IM-01	NUVEEN	352578	NUVEEN TAX EXEMPT UNIT TRUST INTERMEDIATE SERIES 14.
2541		IM-01	NUVEEN	073400	NUVEEN TAX EXEMPT UNIT TRUST SERIES 9.
2542		IM-01	NUVEEN	073413	NUVEEN TAX EXEMPT UNIT TRUST SERIES 15.
2543		IM-01	NUVEEN	073416	NUVEEN TAX EXEMPT UNIT TRUST SERIES 18.
2544		IM-01	NUVEEN	073417	NUVEEN TAX EXEMPT UNIT TRUST SERIES 19.
2545		IM-01	NUVEEN	073418	NUVEEN TAX EXEMPT UNIT TRUST SERIES 20.
2546		IM-01	NUVEEN	073419	NUVEEN TAX EXEMPT UNIT TRUST SERIES 21.
2547		IM-01	NUVEEN	073420	NUVEEN TAX EXEMPT UNIT TRUST SERIES 22.
2548		IM-01	NUVEEN	073421	NUVEEN TAX EXEMPT UNIT TRUST SERIES 23.
2549		IM-01	NUVEEN	073422	NUVEEN TAX EXEMPT UNIT TRUST SERIES 24.
2550		IM-01	NUVEEN	073423	NUVEEN TAX EXEMPT UNIT TRUST SERIES 25.
2551		IM-01	NUVEEN	073424	NUVEEN TAX EXEMPT UNIT TRUST SERIES 26.
2552		IM-01	NUVEEN	073425	NUVEEN TAX EXEMPT UNIT TRUST SERIES 27.
2553		IM-01	NUVEEN	073426	NUVEEN TAX EXEMPT UNIT TRUST SERIES 28.
2554		IM-01	NUVEEN	073427	NUVEEN TAX EXEMPT UNIT TRUST SERIES 29 NATIONAL TRUST 29.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2555	IM-01	NUVEEN	073428	NUVEEN TAX EXEMPT UNIT TRUST SERIES 30 NATIONAL TRUST 30.
2556	IM-01	NUVEEN	073429	NUVEEN TAX EXEMPT UNIT TRUST SERIES 31 NATIONAL TRUST 31.
2557	IM-01	NUVEEN	073430	NUVEEN TAX EXEMPT UNIT TRUST SERIES 32 NATIONAL TRUST 32.
2558	IM-01	NUVEEN	073431	NUVEEN TAX EXEMPT UNIT TRUST SERIES 33 NATIONAL TRUST 33.
2559	IM-01	NUVEEN	073432	NUVEEN TAX EXEMPT UNIT TRUST SERIES 34 NATIONAL TRUST 34.
2560	IM-01	NUVEEN	073433	NUVEEN TAX EXEMPT UNIT TRUST SERIES 35 NATIONAL TRUST 35.
2561	IM-01	NUVEEN	073434	NUVEEN TAX EXEMPT UNIT TRUST SERIES 36 NATIONAL TRUST 36.
2562	IM-01	NUVEEN	073435	NUVEEN TAX EXEMPT UNIT TRUST SERIES 37 NATIONAL TRUST 37.
2563	IM-01	NUVEEN	073436	NUVEEN TAX EXEMPT UNIT TRUST SERIES 38.
2564	IM-01	NUVEEN	073437	NUVEEN TAX EXEMPT UNIT TRUST SERIES 39 NATIONAL TRUST 39.
2565	IM-01	NUVEEN	073438	NUVEEN TAX EXEMPT UNIT TRUST SERIES 40 NATIONAL TRUST 40.
2566	IM-01	NUVEEN	073439	NUVEEN TAX EXEMPT UNIT TRUST SERIES 41 NATIONAL TRUST 41.
2567	IM-01	NUVEEN	073441	NUVEEN TAX EXEMPT UNIT TRUST SERIES 42 NATIONAL TRUST 42.
2568	IM-01	NUVEEN	073447	NUVEEN TAX EXEMPT UNIT TRUST SERIES 45 NATIONAL TRUST 45.
2569	IM-01	NUVEEN	073448	NUVEEN TAX EXEMPT UNIT TRUST SERIES 46 NATIONAL TRUST 46.
2570	IM-01	NUVEEN	073449	NUVEEN TAX EXEMPT UNIT TRUST SERIES 47 NATIONAL TRUST 47.
2571	IM-01	NUVEEN	073456	NUVEEN TAX EXEMPT UNIT TRUST SERIES 50 NATIONAL TRUST 50.
2572	IM-01	NUVEEN	073459	NUVEEN TAX EXEMPT UNIT TRUST SERIES 52 NATIONAL TRUST 52.
2573	IM-01	NUVEEN	073461	NUVEEN TAX EXEMPT UNIT TRUST SERIES 53 NATIONAL TRUST 53.
2574	IM-01	NUVEEN	073463	NUVEEN TAX EXEMPT UNIT TRUST SERIES 54 NATIONAL TRUST 54.
2575	IM-01	NUVEEN	073465	NUVEEN TAX EXEMPT UNIT TRUST SERIES 55 NATIONAL TRUST 55.
2576	IM-01	NUVEEN	073466	NUVEEN TAX EXEMPT UNIT TRUST SERIES 56 NATIONAL TRUST 56.
2577	IM-01	NUVEEN	073467	NUVEEN TAX EXEMPT UNIT TRUST SERIES 57 NATIONAL TRUST 57.
2578	IM-01	NUVEEN	073468	NUVEEN TAX EXEMPT UNIT TRUST SERIES 58 NATIONAL TRUST 58.
2579	IM-01	NUVEEN	073469	NUVEEN TAX EXEMPT UNIT TRUST SERIES 59 NATIONAL TRUST 59.
2580	IM-01	NUVEEN	073471	NUVEEN TAX EXEMPT UNIT TRUST SERIES 60 NATIONAL TRUST 60.
2581	IM-01	NUVEEN	073476	NUVEEN TAX EXEMPT UNIT TRUST SERIES 63 NATIONAL TRUST 63.
2582	IM-01	NUVEEN	073477	NUVEEN TAX EXEMPT UNIT TRUST SERIES 64 NATIONAL TRUST 64.
2583	IM-01	NUVEEN	073478	NUVEEN TAX EXEMPT UNIT TRUST SERIES 65 NATIONAL TRUST 65.
2584	IM-01	NUVEEN	073479	NUVEEN TAX EXEMPT UNIT TRUST SERIES 66 NATIONAL TRUST 66.
2585	IM-01	NUVEEN	073480	NUVEEN TAX EXEMPT UNIT TRUST SERIES 67 NATIONAL TRUST 67.
2586	IM-01	NUVEEN	073481	NUVEEN TAX EXEMPT UNIT TRUST SERIES 68 NATIONAL TRUST 68.
2587	IM-01	NUVEEN	073482	NUVEEN TAX EXEMPT UNIT TRUST SERIES 69 NATIONAL TRUST 69.
2588	IM-01	NUVEEN	073483	NUVEEN TAX EXEMPT UNIT TRUST SERIES 70-NATIONAL TRUST 70.
2589	IM-01	NUVEEN	073484	NUVEEN TAX EXEMPT UNIT TRUST SERIES 71.
2590	IM-01	NUVEEN	073485	NUVEEN TAX EXEMPT UNIT TRUST SERIES 72-NATIONAL TRUST 72.
2591	IM-01	NUVEEN	073486	NUVEEN TAX EXEMPT UNIT TRUST SERIES 73 NATIONAL TRUST 73.
2592	IM-01	NUVEEN	073487	NUVEEN TAX EXEMPT UNIT TRUST SERIES 74 NATIONAL TRUST 74.
2593	IM-01	NUVEEN	073488	NUVEEN TAX EXEMPT UNIT TRUST SERIES 75 NATIONAL TRUST 75.
2594	IM-01	NUVEEN	073489	NUVEEN TAX EXEMPT UNIT TRUST SERIES 76 NATIONAL TRUST 76.
2595	IM-01	NUVEEN	073490	NUVEEN TAX EXEMPT UNIT TRUST SERIES 77 NATIONAL TRUST 77.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2596	IM-01	NUVEEN	073491	NUVEEN TAX EXEMPT UNIT TRUST SERIES 78 NATIONAL TRUST 78.
2597	IM-01	NUVEEN	073492	NUVEEN TAX EXEMPT UNIT TRUST SERIES 79 NATIONAL TRUST 79.
2598	IM-01	NUVEEN	073495	NUVEEN TAX EXEMPT UNIT TRUST SERIES 81 NATIONAL TRUST 81.
2599	IM-01	NUVEEN	073496	NUVEEN TAX EXEMPT UNIT TRUST SERIES 82 NATIONAL TRUST 82.
2600	IM-01	NUVEEN	073497	NUVEEN TAX EXEMPT UNIT TRUST SERIES 83 NATIONAL TRUST 83.
2601	IM-01	NUVEEN	073498	NUVEEN TAX EXEMPT UNIT TRUST SERIES 84 NATIONAL TRUST 84.
2602	IM-01	NUVEEN	073499	NUVEEN TAX EXEMPT UNIT TRUST SERIES 85 NATIONAL TRUST 85.
2603	IM-01	NUVEEN	073500	NUVEEN TAX EXEMPT UNIT TRUST SERIES 86 NATIONAL TRUST 86.
2604	IM-01	NUVEEN	073501	NUVEEN TAX EXEMPT UNIT TRUST SERIES 87 NATIONAL TRUST 87.
2605	IM-01	NUVEEN	073502	NUVEEN TAX EXEMPT UNIT TRUST SERIES 88 NATIONAL TRUST 88.
2606	IM-01	NUVEEN	073503	NUVEEN TAX EXEMPT UNIT TRUST SERIES 89 NATIONAL TRUST 89.
2607	IM-01	NUVEEN	073505	NUVEEN TAX EXEMPT UNIT TRUST SERIES 90 NATIONAL TRUST 90.
2608	IM-01	NUVEEN	073506	NUVEEN TAX EXEMPT UNIT TRUST SERIES 91 NATIONAL TRUST 91.
2609	IM-01	NUVEEN	202770	NUVEEN TAX EXEMPT UNIT TRUST SERIES 92 NATIONAL TRUST 92.
2610	IM-01	NUVEEN	202771	NUVEEN TAX EXEMPT UNIT TRUST SERIES 93 NATIONAL TRUST 93.
2611	IM-01	NUVEEN	202772	NUVEEN TAX EXEMPT UNIT TRUST SERIES 94 NATIONAL TRUST 94.
2612	IM-01	NUVEEN	202773	NUVEEN TAX EXEMPT UNIT TRUST SERIES 95 NATIONAL TRUST 95.
2613	IM-01	NUVEEN	278358	NUVEEN TAX EXEMPT UNIT TRUST SERIES 100 NATIONAL TRUST 100.
2614	IM-01	NUVEEN	225713	NUVEEN TAX EXEMPT UNIT TRUST SERIES 102 NATIONAL TRUST 102.
2615	IM-01	NUVEEN	225714	NUVEEN TAX EXEMPT UNIT TRUST SERIES 103 NATIONAL TRUST 103.
2616	IM-01	NUVEEN	277831	NUVEEN TAX EXEMPT UNIT TRUST SERIES 104 NATIONAL TRUST 104.
2617	IM-01	NUVEEN	276261	NUVEEN TAX EXEMPT UNIT TRUST SERIES 108.
2618	IM-01	NUVEEN	276260	NUVEEN TAX EXEMPT UNIT TRUST SERIES 109 NATIONAL TRUST 109.
2619	IM-01	NUVEEN	276263	NUVEEN TAX EXEMPT UNIT TRUST SERIES 110 NATIONAL TRUST 110.
2620	IM-01	NUVEEN	276251	NUVEEN TAX EXEMPT UNIT TRUST SERIES 111 NATIONAL TRUST 111.
2621	IM-01	NUVEEN	276362	NUVEEN TAX EXEMPT UNIT TRUST SERIES 112 NATIONAL TRUST 112.
2622	IM-01	NUVEEN	276275	NUVEEN TAX EXEMPT UNIT TRUST SERIES 113 NATIONAL TRUST 113.
2623	IM-01	NUVEEN	276668	NUVEEN TAX EXEMPT UNIT TRUST SERIES 114 NATIONAL TRUST 114.
2624	IM-01	NUVEEN	276753	NUVEEN TAX EXEMPT UNIT TRUST SERIES 115 NATIONAL TRUST 115.
2625	IM-01	NUVEEN	276752	NUVEEN TAX EXEMPT UNIT TRUST SERIES 116 NATIONAL TRUST 116.
2626	IM-01	NUVEEN	277144	NUVEEN TAX EXEMPT UNIT TRUST SERIES 117.
2627	IM-01	NUVEEN	277586	NUVEEN TAX EXEMPT UNIT TRUST SERIES 118 NATIONAL TRUST 118.
2628	IM-01	NUVEEN	277716	NUVEEN TAX EXEMPT UNIT TRUST SERIES 119 NATIONAL TRUST 119.
2629	IM-01	NUVEEN	277874	NUVEEN TAX EXEMPT UNIT TRUST SERIES 120 NATIONAL TRUST 120.
2630	IM-01	NUVEEN	278121	NUVEEN TAX EXEMPT UNIT TRUST SERIES 121 NATIONAL TRUST 121.
2631	IM-01	NUVEEN	278120	NUVEEN TAX EXEMPT UNIT TRUST SERIES 122 NATIONAL TRUST 122.
2632	IM-01	NUVEEN	278316	NUVEEN TAX EXEMPT UNIT TRUST SERIES 123 NATIONAL TRUST 123.
2633	IM-01	NUVEEN	300007	NUVEEN TAX EXEMPT UNIT TRUST SERIES 124 NATIONAL TRUST 124.
2634	IM-01	NUVEEN	310090	NUVEEN TAX EXEMPT UNIT TRUST SERIES 125 NATIONAL TRUST 125.
2635	IM-01	NUVEEN	310208	NUVEEN TAX EXEMPT UNIT TRUST SERIES 126 NATIONAL TRUST 126.
2636	IM-01	NUVEEN	310674	NUVEEN TAX EXEMPT UNIT TRUST SERIES 127

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2637	IM-01	NUVEEN	310675	NUVEEN TAX EXEMPT UNIT TRUST SERIES 128 NATIONAL TRUST 128.
2638	IM-01	NUVEEN	311202	NUVEEN TAX EXEMPT UNIT TRUST SERIES 129 NATIONAL TRUST 129.
2639	IM-01	NUVEEN	311351	NUVEEN TAX EXEMPT UNIT TRUST SERIES 130 NATIONAL TRUST 130.
2640	IM-01	NUVEEN	311767	NUVEEN TAX EXEMPT UNIT TRUST SERIES 132 NATIONAL TRUST 132.
2641	IM-01	NUVEEN	312298	NUVEEN TAX EXEMPT UNIT TRUST SERIES 133 NATIONAL TRUST 133.
2642	IM-01	NUVEEN	313733	NUVEEN TAX EXEMPT UNIT TRUST SERIES 137 NATIONAL TRUST 137.
2643	IM-01	NUVEEN	313814	NUVEEN TAX EXEMPT UNIT TRUST SERIES 139 NATIONAL TRUST 139.
2644	IM-01	NUVEEN	314622	NUVEEN TAX EXEMPT UNIT TRUST SERIES 146- NATIONAL TRUST 146.
2645	IM-01	NUVEEN	314894	NUVEEN TAX EXEMPT UNIT TRUST SERIES 147- NATIONAL TRUST 147.
2646	IM-01	NUVEEN	315132	NUVEEN TAX EXEMPT UNIT TRUST SERIES 148- NATIONAL TRUST 148.
2647	IM-01	NUVEEN	315855	NUVEEN TAX EXEMPT UNIT TRUST SERIES 151- NATIONAL TRUST 151.
2648	IM-01	NUVEEN	316613	NUVEEN TAX EXEMPT UNIT TRUST SERIES 157.
2649	IM-01	NUVEEN	319717	NUVEEN TAX EXEMPT UNIT TRUST SERIES 167 NATIONAL TRUST 167.
2650	IM-01	NUVEEN	319754	NUVEEN TAX EXEMPT UNIT TRUST SERIES 168 NATIONAL TRUST 168.
2651	IM-01	NUVEEN	000018	NUVEEN TAX EXEMPT UNIT TRUST SERIES 169 NATIONAL TRUST 169.
2652	IM-01	NUVEEN	320168	NUVEEN TAX EXEMPT UNIT TRUST SERIES 170 NATIONAL TRUST 170.
2653	IM-01	NUVEEN	320554	NUVEEN TAX EXEMPT UNIT TRUST SERIES 171- NATIONAL TRUST 171.
2654	IM-01	NUVEEN	320630	NUVEEN TAX EXEMPT UNIT TRUST SERIES 172 NATIONAL TRUST 172.
2655	IM-01	NUVEEN	350554	NUVEEN TAX EXEMPT UNIT TRUST SERIES 173.
2656	IM-01	NUVEEN	350555	NUVEEN TAX EXEMPT UNIT TRUST SERIES 174.
2657	IM-01	NUVEEN	350603	NUVEEN TAX EXEMPT UNIT TRUST SERIES 175- NATIONAL TRUST 175.
2658	IM-01	NUVEEN	350647	NUVEEN TAX EXEMPT UNIT TRUST SERIES 176/IL/.
2659	IM-01	NUVEEN	350824	NUVEEN TAX EXEMPT UNIT TRUST SERIES 177.
2660	IM-01	NUVEEN	350913	NUVEEN TAX EXEMPT UNIT TRUST SERIES 178- NATIONAL TRUST 178.
2661	IM-01	NUVEEN	352182	NUVEEN TAX EXEMPT UNIT TRUST SERIES 179- NATIONAL TRUST 179.
2662	IM-01	NUVEEN	352264	NUVEEN TAX EXEMPT UNIT TRUST SERIES 180- NATIONAL TRUST 180.
2663	IM-01	NUVEEN	353088	NUVEEN TAX EXEMPT UNIT TRUST SERIES 181 NATIONAL TR 181.
2664	IM-01	NUVEEN	353089	NUVEEN TAX EXEMPT UNIT TRUST SERIES 182 NATIONAL TR 182.
2665	IM-01	NUVEEN	353467	NUVEEN TAX EXEMPT UNIT TRUST SERIES 183 NATIONAL TR 183.
2666	IM-01	NUVEEN	354025	NUVEEN TAX EXEMPT UNIT TRUST SERIES 184 NATIONAL TR 184.
2667	IM-01	NUVEEN	353971	NUVEEN TAX EXEMPT UNIT TRUST SERIES 185 NATIONAL TR 185.
2668	IM-01	NUVEEN	355060	NUVEEN TAX EXEMPT UNIT TRUST SERIES 186 NATIONAL TR 186.
2669	IM-01	NUVEEN	355108	NUVEEN TAX EXEMPT UNIT TRUST SERIES 187
2670	IM-01	NUVEEN	355778	NUVEEN TAX EXEMPT UNIT TRUST SERIES 188.
2671	IM-01	NUVEEN	355879	NUVEEN TAX EXEMPT UNIT TRUST SERIES 189.
2672	IM-01	NUVEEN	355954	NUVEEN TAX EXEMPT UNIT TRUST SERIES 190.
2673	IM-01	NUVEEN	355911	NUVEEN TAX EXEMPT UNIT TRUST SERIES 191.
2674	IM-01	NUVEEN	356065	NUVEEN TAX EXEMPT UNIT TRUST SERIES 192.
2675	IM-01	NUVEEN	356066	NUVEEN TAX EXEMPT UNIT TRUST SERIES 193 NATIONAL TRUST 193.
2676	IM-01	NUVEEN	356513	NUVEEN TAX EXEMPT UNIT TRUST SERIES 194 NATIONAL TRUST 194.
2677	IM-01	NUVEEN	356512	NUVEEN TAX EXEMPT UNIT TRUST SERIES 195- NATIONAL TRUST 195.
2678	IM-01	NUVEEN	356903	NUVEEN TAX EXEMPT UNIT TRUST SERIES 196 NATIONAL TRUST 196.
2679	IM-01	NUVEEN	357033	NUVEEN TAX EXEMPT UNIT TRUST SERIES 197 NATIONAL TRUST 197.
2680	IM-01	NUVEEN	357134	NUVEEN TAX EXEMPT UNIT TRUST SERIES 198 NATIONAL TRUST 198.
2681	IM-01	NUVEEN	357135	NUVEEN TAX EXEMPT UNIT TRUST SERIES 199- NATIONAL TRUST 199.
2682	IM-01	NUVEEN	357234	NUVEEN TAX EXEMPT UNIT TRUST SERIES 200

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2683	IM-01	NUVEEN	357249	NUVEEN TAX EXEMPT UNIT TRUST SERIES 201.
2684	IM-01	NUVEEN	357248	NUVEEN TAX EXEMPT UNIT TRUST SERIES 202-NATIONAL TRUST 202.
2685	IM-01	NUVEEN	357296	NUVEEN TAX EXEMPT UNIT TRUST SERIES 203-NATIONAL TRUST 203.
2686	IM-01	NUVEEN	357313	NUVEEN TAX EXEMPT UNIT TRUST SERIES 204-NATIONAL TRUST 204.
2687	IM-01	NUVEEN	700590	NUVEEN TAX EXEMPT UNIT TRUST SERIES 205-NATIONAL TRUST 205.
2688	IM-01	NUVEEN	700717	NUVEEN TAX EXEMPT UNIT TRUST SERIES 206.
2689	IM-01	NUVEEN	700718	NUVEEN TAX EXEMPT UNIT TRUST SERIES 207-NATIONAL TRUST 207.
2690	IM-01	NUVEEN	700904	NUVEEN TAX EXEMPT UNIT TRUST SERIES 208.
2691	IM-01	NUVEEN	700988	NUVEEN TAX EXEMPT UNIT TRUST SERIES 209.
2692	IM-01	NUVEEN	701289	NUVEEN TAX EXEMPT UNIT TRUST SERIES 210 NATIONAL TR 210.
2693	IM-01	NUVEEN	701342	NUVEEN TAX EXEMPT UNIT TRUST SERIES 211 NATIONAL TR 211.
2694	IM-01	NUVEEN	701805	NUVEEN TAX EXEMPT UNIT TRUST SERIES 212 NATIONAL TR 212.
2695	IM-01	NUVEEN	702000	NUVEEN TAX EXEMPT UNIT TRUST SERIES 213 NATIONAL TR 213.
2696	IM-01	NUVEEN	702311	NUVEEN TAX EXEMPT UNIT TRUST SERIES 215.
2697	IM-01	NUVEEN	703317	NUVEEN TAX EXEMPT UNIT TRUST SERIES 216.
2698	IM-01	NUVEEN	703525	NUVEEN TAX EXEMPT UNIT TRUST SERIES 217.
2699	IM-01	NUVEEN	703696	NUVEEN TAX EXEMPT UNIT TRUST SERIES 218.
2700	IM-01	NUVEEN	703889	NUVEEN TAX EXEMPT UNIT TRUST SERIES 219 NATIONAL TRUST 219.
2701	IM-01	NUVEEN	704470	NUVEEN TAX EXEMPT UNIT TRUST SERIES 220 NATIONAL TRUST 220.
2702	IM-01	NUVEEN	704806	NUVEEN TAX EXEMPT UNIT TRUST SERIES 221 NATIONAL TRUST 221.
2703	IM-01	NUVEEN	704771	NUVEEN TAX EXEMPT UNIT TRUST SERIES 222 NATIONAL TRUST 222.
2704	IM-01	NUVEEN	704770	NUVEEN TAX EXEMPT UNIT TRUST SERIES 223 NATIONAL TRUST 223.
2705	IM-01	NUVEEN	705443	NUVEEN TAX EXEMPT UNIT TRUST SERIES 224.
2706	IM-01	NUVEEN	705958	NUVEEN TAX EXEMPT UNIT TRUST SERIES 225.
2707	IM-01	NUVEEN	706154	NUVEEN TAX EXEMPT UNIT TRUST SERIES 226.
2708	IM-01	NUVEEN	706206	NUVEEN TAX EXEMPT UNIT TRUST SERIES 227.
2709	IM-01	NUVEEN	706239	NUVEEN TAX EXEMPT UNIT TRUST SERIES 228.
2710	IM-01	NUVEEN	706362	NUVEEN TAX EXEMPT UNIT TRUST SERIES 229.
2711	IM-01	NUVEEN	706466	NUVEEN TAX EXEMPT UNIT TRUST SERIES 230 NATIONAL TRUST 230.
2712	IM-01	NUVEEN	706689	NUVEEN TAX EXEMPT UNIT TRUST SERIES 231 NATIONAL TRUST 231.
2713	IM-01	NUVEEN	706865	NUVEEN TAX EXEMPT UNIT TRUST SERIES 232 NATIONAL TRUST 232.
2714	IM-01	NUVEEN	707111	NUVEEN TAX EXEMPT UNIT TRUST SERIES 233 NATIONAL TRUST 233.
2715	IM-01	NUVEEN	707359	NUVEEN TAX EXEMPT UNIT TRUST SERIES 234 NATIONAL TRUST 234.
2716	IM-01	NUVEEN	707803	NUVEEN TAX EXEMPT UNIT TRUST SERIES 235 NATIONAL TRUST 235.
2717	IM-01	NUVEEN	707852	NUVEEN TAX EXEMPT UNIT TRUST SERIES 236 NATIONAL TRUST 236.
2718	IM-01	NUVEEN	708853	NUVEEN TAX EXEMPT UNIT TRUST SERIES 238 NATIONAL TRUST 238.
2719	IM-01	NUVEEN	709142	NUVEEN TAX EXEMPT UNIT TRUST SERIES 239 NATIONAL TRUST 239.
2720	IM-01	NUVEEN	709369	NUVEEN TAX EXEMPT UNIT TRUST SERIES 240-NATIONAL TRUST 240.
2721	IM-01	NUVEEN	709703	NUVEEN TAX EXEMPT UNIT TRUST SERIES 241-NATIONAL TRUST 241.
2722	IM-01	NUVEEN	710159	NUVEEN TAX EXEMPT UNIT TRUST SERIES 242-NATIONAL TRUST 242.
2723	IM-01	NUVEEN	710998	NUVEEN TAX EXEMPT UNIT TRUST SERIES 243-NATIONAL TRUST 243.
2724	IM-01	NUVEEN	711203	NUVEEN TAX EXEMPT UNIT TRUST SERIES 244-NATIONAL TRUST 244.
2725	IM-01	NUVEEN	711394	NUVEEN TAX EXEMPT UNIT TRUST SERIES 245-NATIONAL TRUST 245.
2726	IM-01	NUVEEN	711420	NUVEEN TAX EXEMPT UNIT TRUST SERIES 246-NATIONAL TRUST 246.
2727	IM-01	NUVEEN	711678	NUVEEN TAX EXEMPT UNIT TRUST SERIES 247-NATIONAL TRUST 247.
2728	IM-01	NUVEEN	712152	NUVEEN TAX EXEMPT UNIT TRUST SERIES 248-NATIONAL TRUST 248.
2729	IM-01	NUVEEN	713022	NUVEEN TAX EXEMPT UNIT TRUST SERIES 249-NATIONAL TRUST 249.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2730	IM-01	NUVEEN	713670	NUVEEN TAX EXEMPT UNIT TRUST SERIES 250.
2731	IM-01	NUVEEN	714204	NUVEEN TAX EXEMPT UNIT TRUST SERIES 251-NATIONAL TRUST 251.
2732	IM-01	NUVEEN	714641	NUVEEN TAX EXEMPT UNIT TRUST SERIES 252.
2733	IM-01	NUVEEN	715077	NUVEEN TAX EXEMPT UNIT TRUST SERIES 253-NATIONAL TRUST 253.
2734	IM-01	NUVEEN	715152	NUVEEN TAX EXEMPT UNIT TRUST SERIES 254 NATIONAL TRUST 254.
2735	IM-01	NUVEEN	715427	NUVEEN TAX EXEMPT UNIT TRUST SERIES 255 NATIONAL TRUST 255.
2736	IM-01	NUVEEN	716102	NUVEEN TAX EXEMPT UNIT TRUST SERIES 256 NATIONAL TRUST 256.
2737	IM-01	NUVEEN	716406	NUVEEN TAX EXEMPT UNIT TRUST SERIES 257 NATIONAL TRUST 257.
2738	IM-01	NUVEEN	716730	NUVEEN TAX EXEMPT UNIT TRUST SERIES 258 NATIONAL TRUST 258.
2739	IM-01	NUVEEN	717087	NUVEEN TAX EXEMPT UNIT TRUST SERIES 259 NATIONAL TRUST 259.
2740	IM-01	NUVEEN	717290	NUVEEN TAX EXEMPT UNIT TRUST SERIES 260 NATIONAL TRUST 260.
2741	IM-01	NUVEEN	718871	NUVEEN TAX EXEMPT UNIT TRUST SERIES 262 NATIONAL TRUST 262.
2742	IM-01	NUVEEN	719591	NUVEEN TAX EXEMPT UNIT TRUST SERIES 263 NATIONAL TRUST 263.
2743	IM-01	NUVEEN	719983	NUVEEN TAX EXEMPT UNIT TRUST SERIES 264 NATIONAL TRUST 264.
2744	IM-01	NUVEEN	721697	NUVEEN TAX EXEMPT UNIT TRUST SERIES 265 NATIONAL TRUST 265.
2745	IM-01	NUVEEN	722068	NUVEEN TAX EXEMPT UNIT TRUST SERIES 266 NATIONAL TRUST 266.
2746	IM-01	NUVEEN	722680	NUVEEN TAX EXEMPT UNIT TRUST SERIES 267 NATIONAL TRUST 267.
2747	IM-01	NUVEEN	722984	NUVEEN TAX EXEMPT UNIT TRUST SERIES 268 NATIONAL TRUST 268.
2748	IM-01	NUVEEN	723566	NUVEEN TAX EXEMPT UNIT TRUST SERIES 269 NATIONAL TRUST 269.
2749	IM-01	NUVEEN	723918	NUVEEN TAX EXEMPT UNIT TRUST SERIES 270 NATIONAL TRUST 270.
2750	IM-01	NUVEEN	724590	NUVEEN TAX EXEMPT UNIT TRUST SERIES 271.
2751	IM-01	NUVEEN	725022	NUVEEN TAX EXEMPT UNIT TRUST SERIES 272.
2752	IM-01	NUVEEN	725535	NUVEEN TAX EXEMPT UNIT TRUST SERIES 273.
2753	IM-01	NUVEEN	725793	NUVEEN TAX EXEMPT UNIT TRUST SERIES 274 NATIONAL TRUST 274.
2754	IM-01	NUVEEN	726560	NUVEEN TAX EXEMPT UNIT TRUST SERIES 275 NATIONAL TRUST 275.
2755	IM-01	NUVEEN	726992	NUVEEN TAX EXEMPT UNIT TRUST SERIES 276 NATIONAL TRUST 276.
2756	IM-01	NUVEEN	727223	NUVEEN TAX EXEMPT UNIT TRUST SERIES 277 NATIONAL TRUST 277.
2757	IM-01	NUVEEN	728251	NUVEEN TAX EXEMPT UNIT TRUST SERIES 278 NATIONAL TRUST 278.
2758	IM-01	NUVEEN	729276	NUVEEN TAX EXEMPT UNIT TRUST SERIES 279 NATIONAL TRUST 279.
2759	IM-01	NUVEEN	729641	NUVEEN TAX EXEMPT UNIT TRUST SERIES 280 NATIONAL TRUST 280.
2760	IM-01	NUVEEN	730215	NUVEEN TAX EXEMPT UNIT TRUST SERIES 281 NATIONAL TRUST 281.
2761	IM-01	NUVEEN	730359	NUVEEN TAX EXEMPT UNIT TRUST SERIES 282 NATIONAL TRUST 282.
2762	IM-01	NUVEEN	731283	NUVEEN TAX EXEMPT UNIT TRUST SERIES 283 NATIONAL TRUST 283.
2763	IM-01	NUVEEN	731752	NUVEEN TAX EXEMPT UNIT TRUST SERIES 284 NATIONAL TRUST 284.
2764	IM-01	NUVEEN	732290	NUVEEN TAX EXEMPT UNIT TRUST SERIES 285 NATIONAL TRUST 285.
2765	IM-01	NUVEEN	732682	NUVEEN TAX EXEMPT UNIT TRUST SERIES 286-NATIONAL TRUST 286.
2766	IM-01	NUVEEN	732782	NUVEEN TAX EXEMPT UNIT TRUST SERIES 287 NATIONAL TRUST 287.
2767	IM-01	NUVEEN	734121	NUVEEN TAX EXEMPT UNIT TRUST SERIES 288-NATIONAL TRUST 288.
2768	IM-01	NUVEEN	735343	NUVEEN TAX EXEMPT UNIT TRUST SERIES 289-NATIONAL TRUST 289.
2769	IM-01	NUVEEN	736442	NUVEEN TAX EXEMPT UNIT TRUST SERIES 290-NATIONAL TRUST 290.
2770	IM-01	NUVEEN	736951	NUVEEN TAX EXEMPT UNIT TRUST SERIES 291-NATIONAL TRUST 291.
2771	IM-01	NUVEEN	736942	NUVEEN TAX EXEMPT UNIT TRUST SERIES 292-NATIONAL TRUST 292.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2772	IM-01	NUVEEN	737253	NUVEEN TAX EXEMPT UNIT TRUST SERIES 293-NATIONAL TRUST 293.
2773	IM-01	NUVEEN	737568	NUVEEN TAX EXEMPT UNIT TRUST SERIES 294 NATIONAL TRUST 294.
2774	IM-01	NUVEEN	737735	NUVEEN TAX EXEMPT UNIT TRUST SERIES 295 NATIONAL TRUST 295.
2775	IM-01	NUVEEN	737926	NUVEEN TAX EXEMPT UNIT TRUST SERIES 296 NATIONAL TRUST 296.
2776	IM-01	NUVEEN	739453	NUVEEN TAX EXEMPT UNIT TRUST SERIES 297 NATIONAL TRUST 297.
2777	IM-01	NUVEEN	740557	NUVEEN TAX EXEMPT UNIT TRUST SERIES 298 NATIONAL TRUST 298.
2778	IM-01	NUVEEN	740560	NUVEEN TAX EXEMPT UNIT TRUST SERIES 299 NATIONAL TRUST 299.
2779	IM-01	NUVEEN	740814	NUVEEN TAX EXEMPT UNIT TRUST SERIES 300 NATIONAL TRUST 300.
2780	IM-01	NUVEEN	741210	NUVEEN TAX EXEMPT UNIT TRUST SERIES 301 NATIONAL TRUST 301.
2781	IM-01	NUVEEN	741514	NUVEEN TAX EXEMPT UNIT TRUST SERIES 302 NATIONAL TRUST 302.
2782	IM-01	NUVEEN	742276	NUVEEN TAX EXEMPT UNIT TRUST SERIES 303 NATIONAL TRUST 303.
2783	IM-01	NUVEEN	743513	NUVEEN TAX EXEMPT UNIT TRUST SERIES 304 NATIONAL TRUST 304.
2784	IM-01	NUVEEN	744776	NUVEEN TAX EXEMPT UNIT TRUST SERIES 305.
2785	IM-01	NUVEEN	748106	NUVEEN TAX EXEMPT UNIT TRUST SERIES 306 NATIONAL TRUST 306.
2786	IM-01	NUVEEN	748830	NUVEEN TAX EXEMPT UNIT TRUST SERIES 307 NATIONAL TRUST 307.
2787	IM-01	NUVEEN	749049	NUVEEN TAX EXEMPT UNIT TRUST SERIES 308 NATIONAL TRUST 308.
2788	IM-01	NUVEEN	749641	NUVEEN TAX EXEMPT UNIT TRUST SERIES 309 NATIONAL TRUST 309.
2789	IM-01	NUVEEN	750031	NUVEEN TAX EXEMPT UNIT TRUST SERIES 310 NATIONAL TRUST 310.
2790	IM-01	NUVEEN	750557	NUVEEN TAX EXEMPT UNIT TRUST SERIES 311 NATIONAL TRUST 311.
2791	IM-01	NUVEEN	750722	NUVEEN TAX EXEMPT UNIT TRUST SERIES 312 NATIONAL TRUST 312.
2792	IM-01	NUVEEN	751254	NUVEEN TAX EXEMPT UNIT TRUST SERIES 313 NATIONAL TRUST 313.
2793	IM-01	NUVEEN	751717	NUVEEN TAX EXEMPT UNIT TRUST SERIES 314 NATIONAL TRUST 314.
2794	IM-01	NUVEEN	752697	NUVEEN TAX EXEMPT UNIT TRUST SERIES 315.
2795	IM-01	NUVEEN	755201	NUVEEN TAX EXEMPT UNIT TRUST SERIES 316 NATIONAL TRUST 316.
2796	IM-01	NUVEEN	756656	NUVEEN TAX EXEMPT UNIT TRUST SERIES 317 NATIONAL TRUST 317.
2797	IM-01	NUVEEN	757220	NUVEEN TAX EXEMPT UNIT TRUST SERIES 318-NATIONAL TRUST 318.
2798	IM-01	NUVEEN	759113	NUVEEN TAX EXEMPT UNIT TRUST SERIES 319.
2799	IM-01	NUVEEN	759821	NUVEEN TAX EXEMPT UNIT TRUST SERIES 320.
2800	IM-01	NUVEEN	761029	NUVEEN TAX EXEMPT UNIT TRUST SERIES 321.
2801	IM-01	NUVEEN	761306	NUVEEN TAX EXEMPT UNIT TRUST SERIES 322.
2802	IM-01	NUVEEN	763731	NUVEEN TAX EXEMPT UNIT TRUST SERIES 323.
2803	IM-01	NUVEEN	763860	NUVEEN TAX EXEMPT UNIT TRUST SERIES 324.
2804	IM-01	NUVEEN	766746	NUVEEN TAX EXEMPT UNIT TRUST SERIES 325.
2805	IM-01	NUVEEN	766747	NUVEEN TAX EXEMPT UNIT TRUST SERIES 326.
2806	IM-01	NUVEEN	767031	NUVEEN TAX EXEMPT UNIT TRUST SERIES 327.
2807	IM-01	NUVEEN	768357	NUVEEN TAX EXEMPT UNIT TRUST SERIES 328.
2808	IM-01	NUVEEN	768747	NUVEEN TAX EXEMPT UNIT TRUST SERIES 329 NATIONAL TRUST 329.
2809	IM-01	NUVEEN	768979	NUVEEN TAX EXEMPT UNIT TRUST SERIES 330.
2810	IM-01	NUVEEN	769022	NUVEEN TAX EXEMPT UNIT TRUST SERIES 331 NATIONAL TRUST 331.
2811	IM-01	NUVEEN	769210	NUVEEN TAX EXEMPT UNIT TRUST SERIES 332 NATIONAL TRUST 332.
2812	IM-01	NUVEEN	769349	NUVEEN TAX EXEMPT UNIT TRUST SERIES 333 NATIONAL TRUST 333.
2813	IM-01	NUVEEN	769585	NUVEEN TAX EXEMPT UNIT TRUST SERIES 334 NATIONAL TRUST 334.
2814	IM-01	NUVEEN	769782	NUVEEN TAX EXEMPT UNIT TRUST SERIES 335.
2815	IM-01	NUVEEN	770105	NUVEEN TAX EXEMPT UNIT TRUST SERIES 336.
2816	IM-01	NUVEEN	771110	NUVEEN TAX EXEMPT UNIT TRUST SERIES 337.
2817	IM-01	NUVEEN	771595	NUVEEN TAX EXEMPT UNIT TRUST SERIES 338 NATIONAL TRUST 338.
2818	IM-01	NUVEEN	771794	NUVEEN TAX EXEMPT UNIT TRUST SERIES 339 NATIONAL TRUST 339.
2819	IM-01	NUVEEN	772061	NUVEEN TAX EXEMPT UNIT TRUST SERIES 340 NATIONAL TRUST 340.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2620	IM-01	NUVEEN	772686	NUVEEN TAX EXEMPT UNIT TRUST SERIES 341.
2621	IM-01	NUVEEN	773329	NUVEEN TAX EXEMPT UNIT TRUST SERIES 342.
2622	IM-01	NUVEEN	773624	NUVEEN TAX EXEMPT UNIT TRUST SERIES 343.
2623	IM-01	NUVEEN	774353	NUVEEN TAX EXEMPT UNIT TRUST SERIES 344.
2624	IM-01	NUVEEN	774467	NUVEEN TAX EXEMPT UNIT TRUST SERIES 345 NATIONAL TRUST 345.
2625	IM-01	NUVEEN	775412	NUVEEN TAX EXEMPT UNIT TRUST SERIES 346 NATIONAL TRUST 346.
2626	IM-01	NUVEEN	777340	NUVEEN TAX EXEMPT UNIT TRUST SERIES 348 NATIONAL TRUST 348.
2627	IM-01	NUVEEN	777926	NUVEEN TAX EXEMPT UNIT TRUST SERIES 349 NATIONAL TRUST 349.
2628	IM-01	NUVEEN	778583	NUVEEN TAX EXEMPT UNIT TRUST SERIES 350.
2629	IM-01	NUVEEN	779264	NUVEEN TAX EXEMPT UNIT TRUST SERIES 351.
2630	IM-01	NUVEEN	779614	NUVEEN TAX EXEMPT UNIT TRUST SERIES 352.
2631	IM-01	NUVEEN	780150	NUVEEN TAX EXEMPT UNIT TRUST SERIES 353.
2632	IM-01	NUVEEN	781906	NUVEEN TAX EXEMPT UNIT TRUST SERIES 354.
2633	IM-01	NUVEEN	782764	NUVEEN TAX EXEMPT UNIT TRUST SERIES 355.
2634	IM-01	NUVEEN	782766	NUVEEN TAX EXEMPT UNIT TRUST SERIES 356.
2635	IM-01	NUVEEN	782769	NUVEEN TAX EXEMPT UNIT TRUST SERIES 357.
2636	IM-01	NUVEEN	782771	NUVEEN TAX EXEMPT UNIT TRUST SERIES 358.
2637	IM-01	NUVEEN	782772	NUVEEN TAX EXEMPT UNIT TRUST SERIES 359.
2638	IM-01	NUVEEN	782781	NUVEEN TAX EXEMPT UNIT TRUST SERIES 360.
2639	IM-01	NUVEEN	782782	NUVEEN TAX EXEMPT UNIT TRUST SERIES 361.
2640	IM-01	NUVEEN	782784	NUVEEN TAX EXEMPT UNIT TRUST SERIES 362.
2641	IM-01	NUVEEN	782786	NUVEEN TAX EXEMPT UNIT TRUST SERIES 363.
2642	IM-01	NUVEEN	782794	NUVEEN TAX EXEMPT UNIT TRUST SERIES 364.
2643	IM-01	NUVEEN	782795	NUVEEN TAX EXEMPT UNIT TRUST SERIES 365.
2644	IM-01	NUVEEN	782796	NUVEEN TAX EXEMPT UNIT TRUST SERIES 366.
2645	IM-01	NUVEEN	782798	NUVEEN TAX EXEMPT UNIT TRUST SERIES 367.
2646	IM-01	NUVEEN	782800	NUVEEN TAX EXEMPT UNIT TRUST SERIES 368.
2647	IM-01	NUVEEN	782802	NUVEEN TAX EXEMPT UNIT TRUST SERIES 369.
2648	IM-01	NUVEEN	782803	NUVEEN TAX EXEMPT UNIT TRUST SERIES 370.
2649	IM-01	NUVEEN	782805	NUVEEN TAX EXEMPT UNIT TRUST SERIES 372.
2650	IM-01	NUVEEN	782806	NUVEEN TAX EXEMPT UNIT TRUST SERIES 373.
2651	IM-01	NUVEEN	782807	NUVEEN TAX EXEMPT UNIT TRUST SERIES 374.
2652	IM-01	NUVEEN	782809	NUVEEN TAX EXEMPT UNIT TRUST SERIES 375.
2653	IM-01	NUVEEN	782811	NUVEEN TAX EXEMPT UNIT TRUST SERIES 376.
2654	IM-01	NUVEEN	782816	NUVEEN TAX EXEMPT UNIT TRUST SERIES 377.
2655	IM-01	NUVEEN	782817	NUVEEN TAX EXEMPT UNIT TRUST SERIES 378.
2656	IM-01	NUVEEN	782818	NUVEEN TAX EXEMPT UNIT TRUST SERIES 379.
2657	IM-01	NUVEEN	782820	NUVEEN TAX EXEMPT UNIT TRUST SERIES 380.
2658	IM-01	NUVEEN	782821	NUVEEN TAX EXEMPT UNIT TRUST SERIES 381.
2659	IM-01	NUVEEN	782822	NUVEEN TAX EXEMPT UNIT TRUST SERIES 382.
2660	IM-01	NUVEEN	782823	NUVEEN TAX EXEMPT UNIT TRUST SERIES 383.
2661	IM-01	NUVEEN	782824	NUVEEN TAX EXEMPT UNIT TRUST SERIES 384.
2662	IM-01	NUVEEN	782825	NUVEEN TAX EXEMPT UNIT TRUST SERIES 385.
2663	IM-01	NUVEEN	782826	NUVEEN TAX EXEMPT UNIT TRUST SERIES 386.
2664	IM-01	NUVEEN	782828	NUVEEN TAX EXEMPT UNIT TRUST SERIES 387.
2665	IM-01	NUVEEN	782829	NUVEEN TAX EXEMPT UNIT TRUST SERIES 388.
2666	IM-01	NUVEEN	782830	NUVEEN TAX EXEMPT UNIT TRUST SERIES 389.
2667	IM-01	NUVEEN	782831	NUVEEN TAX EXEMPT UNIT TRUST SERIES 390.
2668	IM-01	NUVEEN	782832	NUVEEN TAX EXEMPT UNIT TRUST SERIES 391.
2669	IM-01	NUVEEN	782833	NUVEEN TAX EXEMPT UNIT TRUST SERIES 392.
2670	IM-01	NUVEEN	782834	NUVEEN TAX EXEMPT UNIT TRUST SERIES 393.
2671	IM-01	NUVEEN	782835	NUVEEN TAX EXEMPT UNIT TRUST SERIES 394.
2672	IM-01	NUVEEN	782836	NUVEEN TAX EXEMPT UNIT TRUST SERIES 395.
2673	IM-01	NUVEEN	782837	NUVEEN TAX EXEMPT UNIT TRUST SERIES 396.
2674	IM-01	NUVEEN	782838	NUVEEN TAX EXEMPT UNIT TRUST SERIES 397.
2675	IM-01	NUVEEN	782960	NUVEEN TAX EXEMPT UNIT TRUST SERIES 398.
2676	IM-01	NUVEEN	782961	NUVEEN TAX EXEMPT UNIT TRUST SERIES 399.
2677	IM-01	NUVEEN	782962	NUVEEN TAX EXEMPT UNIT TRUST SERIES 400.
2678	IM-01	NUVEEN	802375	NUVEEN TAX EXEMPT UNIT TRUST SERIES 401.
2679	IM-01	NUVEEN	802376	NUVEEN TAX EXEMPT UNIT TRUST SERIES 402.
2680	IM-01	NUVEEN	802379	NUVEEN TAX EXEMPT UNIT TRUST SERIES 403.
2681	IM-01	NUVEEN	802380	NUVEEN TAX EXEMPT UNIT TRUST SERIES 404.
2682	IM-01	NUVEEN	802381	NUVEEN TAX EXEMPT UNIT TRUST SERIES 405.
2683	IM-01	NUVEEN	802382	NUVEEN TAX EXEMPT UNIT TRUST SERIES 406.
2684	IM-01	NUVEEN	802383	NUVEEN TAX EXEMPT UNIT TRUST SERIES 407.
2685	IM-01	NUVEEN	802384	NUVEEN TAX EXEMPT UNIT TRUST SERIES 408.
2686	IM-01	NUVEEN	802385	NUVEEN TAX EXEMPT UNIT TRUST SERIES 409.
2687	IM-01	NUVEEN	802386	NUVEEN TAX EXEMPT UNIT TRUST SERIES 410.
2688	IM-01	NUVEEN	802389	NUVEEN TAX EXEMPT UNIT TRUST SERIES 411.
2689	IM-01	NUVEEN	802391	NUVEEN TAX EXEMPT UNIT TRUST SERIES 412.
2690	IM-01	NUVEEN	802393	NUVEEN TAX EXEMPT UNIT TRUST SERIES 413.
2691	IM-01	NUVEEN	802394	NUVEEN TAX EXEMPT UNIT TRUST SERIES 414.
2692	IM-01	NUVEEN	802395	NUVEEN TAX EXEMPT UNIT TRUST SERIES 415.
2693	IM-01	NUVEEN	802396	NUVEEN TAX EXEMPT UNIT TRUST SERIES 416.
2694	IM-01	NUVEEN	802397	NUVEEN TAX EXEMPT UNIT TRUST SERIES 417.
2695	IM-01	NUVEEN	802399	NUVEEN TAX EXEMPT UNIT TRUST SERIES 418.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2896	IM-01	NUVEEN	802404	NUVEEN TAX EXEMPT UNIT TRUST SERIES 419.
2897	IM-01	NUVEEN	802407	NUVEEN TAX EXEMPT UNIT TRUST SERIES 420.
2898	IM-01	NUVEEN	802408	NUVEEN TAX EXEMPT UNIT TRUST SERIES 421.
2899	IM-01	NUVEEN	802409	NUVEEN TAX EXEMPT UNIT TRUST SERIES 422.
2900	IM-01	NUVEEN	802410	NUVEEN TAX EXEMPT UNIT TRUST SERIES 423.
2901	IM-01	NUVEEN	802411	NUVEEN TAX EXEMPT UNIT TRUST SERIES 424.
2902	IM-01	NUVEEN	802412	NUVEEN TAX EXEMPT UNIT TRUST SERIES 425.
2903	IM-01	NUVEEN	802413	NUVEEN TAX EXEMPT UNIT TRUST SERIES 426.
2904	IM-01	NUVEEN	802414	NUVEEN TAX EXEMPT UNIT TRUST SERIES 427.
2905	IM-01	NUVEEN	802415	NUVEEN TAX EXEMPT UNIT TRUST SERIES 428.
2906	IM-01	NUVEEN	802416	NUVEEN TAX EXEMPT UNIT TRUST SERIES 429.
2907	IM-01	NUVEEN	802417	NUVEEN TAX EXEMPT UNIT TRUST SERIES 430.
2908	IM-01	NUVEEN	802418	NUVEEN TAX EXEMPT UNIT TRUST SERIES 431.
2909	IM-01	NUVEEN	802419	NUVEEN TAX EXEMPT UNIT TRUST SERIES 432.
2910	IM-01	NUVEEN	802420	NUVEEN TAX EXEMPT UNIT TRUST SERIES 433.
2911	IM-01	NUVEEN	802421	NUVEEN TAX EXEMPT UNIT TRUST SERIES 434.
2912	IM-01	NUVEEN	802422	NUVEEN TAX EXEMPT UNIT TRUST SERIES 435.
2913	IM-01	NUVEEN	802424	NUVEEN TAX EXEMPT UNIT TRUST SERIES 436.
2914	IM-01	NUVEEN	802425	NUVEEN TAX EXEMPT UNIT TRUST SERIES 437.
2915	IM-01	NUVEEN	802426	NUVEEN TAX EXEMPT UNIT TRUST SERIES 438.
2916	IM-01	NUVEEN	802427	NUVEEN TAX EXEMPT UNIT TRUST SERIES 439.
2917	IM-01	NUVEEN	802428	NUVEEN TAX EXEMPT UNIT TRUST SERIES 440.
2918	IM-01	NUVEEN	802429	NUVEEN TAX EXEMPT UNIT TRUST SERIES 441.
2919	IM-01	NUVEEN	802430	NUVEEN TAX EXEMPT UNIT TRUST SERIES 442.
2920	IM-01	NUVEEN	802431	NUVEEN TAX EXEMPT UNIT TRUST SERIES 443.
2921	IM-01	NUVEEN	802432	NUVEEN TAX EXEMPT UNIT TRUST SERIES 444.
2922	IM-01	NUVEEN	802433	NUVEEN TAX EXEMPT UNIT TRUST SERIES 445.
2923	IM-01	NUVEEN	802434	NUVEEN TAX EXEMPT UNIT TRUST SERIES 446.
2924	IM-01	NUVEEN	802435	NUVEEN TAX EXEMPT UNIT TRUST SERIES 447.
2925	IM-01	NUVEEN	802436	NUVEEN TAX EXEMPT UNIT TRUST SERIES 448.
2926	IM-01	NUVEEN	802437	NUVEEN TAX EXEMPT UNIT TRUST SERIES 449.
2927	IM-01	NUVEEN	802438	NUVEEN TAX EXEMPT UNIT TRUST SERIES 450.
2928	IM-01	NUVEEN	825407	NUVEEN TAX EXEMPT UNIT TRUST SERIES 451.
2929	IM-01	NUVEEN	825408	NUVEEN TAX EXEMPT UNIT TRUST SERIES 452.
2930	IM-01	NUVEEN	825413	NUVEEN TAX EXEMPT UNIT TRUST SERIES 453.
2931	IM-01	NUVEEN	825414	NUVEEN TAX EXEMPT UNIT TRUST SERIES 454.
2932	IM-01	NUVEEN	825415	NUVEEN TAX EXEMPT UNIT TRUST SERIES 455.
2933	IM-01	NUVEEN	825416	NUVEEN TAX EXEMPT UNIT TRUST SERIES 456.
2934	IM-01	NUVEEN	825417	NUVEEN TAX EXEMPT UNIT TRUST SERIES 457.
2935	IM-01	NUVEEN	825418	NUVEEN TAX EXEMPT UNIT TRUST SERIES 458.
2936	IM-01	NUVEEN	825419	NUVEEN TAX EXEMPT UNIT TRUST SERIES 459.
2937	IM-01	NUVEEN	825420	NUVEEN TAX EXEMPT UNIT TRUST SERIES 460.
2938	IM-01	NUVEEN	825421	NUVEEN TAX EXEMPT UNIT TRUST SERIES 461.
2939	IM-01	NUVEEN	825422	NUVEEN TAX EXEMPT UNIT TRUST SERIES 462.
2940	IM-01	NUVEEN	825423	NUVEEN TAX EXEMPT UNIT TRUST SERIES 463.
2941	IM-01	NUVEEN	825424	NUVEEN TAX EXEMPT UNIT TRUST SERIES 464.
2942	IM-01	NUVEEN	825426	NUVEEN TAX EXEMPT UNIT TRUST SERIES 465.
2943	IM-01	NUVEEN	825427	NUVEEN TAX EXEMPT UNIT TRUST SERIES 466.
2944	IM-01	NUVEEN	825428	NUVEEN TAX EXEMPT UNIT TRUST SERIES 467.
2945	IM-01	NUVEEN	825429	NUVEEN TAX EXEMPT UNIT TRUST SERIES 468.
2946	IM-01	NUVEEN	825430	NUVEEN TAX EXEMPT UNIT TRUST SERIES 469.
2947	IM-01	NUVEEN	825431	NUVEEN TAX EXEMPT UNIT TRUST SERIES 470.
2948	IM-01	NUVEEN	825432	NUVEEN TAX EXEMPT UNIT TRUST SERIES 471.
2949	IM-01	NUVEEN	825433	NUVEEN TAX EXEMPT UNIT TRUST SERIES 472.
2950	IM-01	NUVEEN	825434	NUVEEN TAX EXEMPT UNIT TRUST SERIES 473.
2951	IM-01	NUVEEN	825435	NUVEEN TAX EXEMPT UNIT TRUST SERIES 474.
2952	IM-01	NUVEEN	825436	NUVEEN TAX EXEMPT UNIT TRUST SERIES 475.
2953	IM-01	NUVEEN	825437	NUVEEN TAX EXEMPT UNIT TRUST SERIES 476.
2954	IM-01	NUVEEN	825438	NUVEEN TAX EXEMPT UNIT TRUST SERIES 477.
2955	IM-01	NUVEEN	825439	NUVEEN TAX EXEMPT UNIT TRUST SERIES 478.
2956	IM-01	NUVEEN	825440	NUVEEN TAX EXEMPT UNIT TRUST SERIES 479.
2957	IM-01	NUVEEN	825441	NUVEEN TAX EXEMPT UNIT TRUST SERIES 480.
2958	IM-01	NUVEEN	825442	NUVEEN TAX EXEMPT UNIT TRUST SERIES 481.
2959	IM-01	NUVEEN	825443	NUVEEN TAX EXEMPT UNIT TRUST SERIES 482.
2960	IM-01	NUVEEN	825444	NUVEEN TAX EXEMPT UNIT TRUST SERIES 483.
2961	IM-01	NUVEEN	825445	NUVEEN TAX EXEMPT UNIT TRUST SERIES 484.
2962	IM-01	NUVEEN	825446	NUVEEN TAX EXEMPT UNIT TRUST SERIES 485.
2963	IM-01	NUVEEN	825447	NUVEEN TAX EXEMPT UNIT TRUST SERIES 486.
2964	IM-01	NUVEEN	825448	NUVEEN TAX EXEMPT UNIT TRUST SERIES 487.
2965	IM-01	NUVEEN	825449	NUVEEN TAX EXEMPT UNIT TRUST SERIES 488.
2966	IM-01	NUVEEN	825450	NUVEEN TAX EXEMPT UNIT TRUST SERIES 489.
2967	IM-01	NUVEEN	825451	NUVEEN TAX EXEMPT UNIT TRUST SERIES 490.
2968	IM-01	NUVEEN	825452	NUVEEN TAX EXEMPT UNIT TRUST SERIES 491.
2969	IM-01	NUVEEN	825453	NUVEEN TAX EXEMPT UNIT TRUST SERIES 492.
2970	IM-01	NUVEEN	825454	NUVEEN TAX EXEMPT UNIT TRUST SERIES 493.
2971	IM-01	NUVEEN	825455	NUVEEN TAX EXEMPT UNIT TRUST SERIES 494.
2972	IM-01	NUVEEN	825456	NUVEEN TAX EXEMPT UNIT TRUST SERIES 495.
2973	IM-01	NUVEEN	825457	NUVEEN TAX EXEMPT UNIT TRUST SERIES 496.
2974	IM-01	NUVEEN	825458	NUVEEN TAX EXEMPT UNIT TRUST SERIES 497.
2975	IM-01	NUVEEN	825459	NUVEEN TAX EXEMPT UNIT TRUST SERIES 498.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
2976	IM-01	NUVEEN	825460	NUVEEN TAX EXEMPT UNIT TRUST SERIES 499.
2977	IM-01	NUVEEN	825461	NUVEEN TAX EXEMPT UNIT TRUST SERIES 500.
2978	IM-01	NUVEEN	846228	NUVEEN TAX EXEMPT UNIT TRUST SERIES 501.
2979	IM-01	NUVEEN	846230	NUVEEN TAX EXEMPT UNIT TRUST SERIES 502.
2980	IM-01	NUVEEN	846232	NUVEEN TAX EXEMPT UNIT TRUST SERIES 503.
2981	IM-01	NUVEEN	846233	NUVEEN TAX EXEMPT UNIT TRUST SERIES 504.
2982	IM-01	NUVEEN	846234	NUVEEN TAX EXEMPT UNIT TRUST SERIES 505.
2983	IM-01	NUVEEN	846235	NUVEEN TAX EXEMPT UNIT TRUST SERIES 506.
2984	IM-01	NUVEEN	846236	NUVEEN TAX EXEMPT UNIT TRUST SERIES 507.
2985	IM-01	NUVEEN	846237	NUVEEN TAX EXEMPT UNIT TRUST SERIES 508.
2986	IM-01	NUVEEN	846238	NUVEEN TAX EXEMPT UNIT TRUST SERIES 509.
2987	IM-01	NUVEEN	846239	NUVEEN TAX EXEMPT UNIT TRUST SERIES 510.
2988	IM-01	NUVEEN	846240	NUVEEN TAX EXEMPT UNIT TRUST SERIES 511.
2989	IM-01	NUVEEN	846242	NUVEEN TAX EXEMPT UNIT TRUST SERIES 512.
2990	IM-01	NUVEEN	846243	NUVEEN TAX EXEMPT UNIT TRUST SERIES 513.
2991	IM-01	NUVEEN	846245	NUVEEN TAX EXEMPT UNIT TRUST SERIES 514.
2992	IM-01	NUVEEN	846247	NUVEEN TAX EXEMPT UNIT TRUST SERIES 515.
2993	IM-01	NUVEEN	846249	NUVEEN TAX EXEMPT UNIT TRUST SERIES 516.
2994	IM-01	NUVEEN	846250	NUVEEN TAX EXEMPT UNIT TRUST SERIES 517.
2995	IM-01	NUVEEN	846252	NUVEEN TAX EXEMPT UNIT TRUST SERIES 518.
2996	IM-01	NUVEEN	846254	NUVEEN TAX EXEMPT UNIT TRUST SERIES 519.
2997	IM-01	NUVEEN	846256	NUVEEN TAX EXEMPT UNIT TRUST SERIES 520.
2998	IM-01	NUVEEN	846258	NUVEEN TAX EXEMPT UNIT TRUST SERIES 521.
2999	IM-01	NUVEEN	846260	NUVEEN TAX EXEMPT UNIT TRUST SERIES 522.
3000	IM-01	NUVEEN	846262	NUVEEN TAX EXEMPT UNIT TRUST SERIES 523.
3001	IM-01	NUVEEN	846264	NUVEEN TAX EXEMPT UNIT TRUST SERIES 524.
3002	IM-01	NUVEEN	846265	NUVEEN TAX EXEMPT UNIT TRUST SERIES 525.
3003	IM-01	NUVEEN	846267	NUVEEN TAX EXEMPT UNIT TRUST SERIES 526.
3004	IM-01	NUVEEN	846270	NUVEEN TAX EXEMPT UNIT TRUST SERIES 527.
3005	IM-01	NUVEEN	846272	NUVEEN TAX EXEMPT UNIT TRUST SERIES 528.
3006	IM-01	NUVEEN	846274	NUVEEN TAX EXEMPT UNIT TRUST SERIES 529.
3007	IM-01	NUVEEN	846276	NUVEEN TAX EXEMPT UNIT TRUST SERIES 530.
3008	IM-01	NUVEEN	846279	NUVEEN TAX EXEMPT UNIT TRUST SERIES 531.
3009	IM-01	NUVEEN	846280	NUVEEN TAX EXEMPT UNIT TRUST SERIES 532.
3010	IM-01	NUVEEN	846282	NUVEEN TAX EXEMPT UNIT TRUST SERIES 533.
3011	IM-01	NUVEEN	846284	NUVEEN TAX EXEMPT UNIT TRUST SERIES 534.
3012	IM-01	NUVEEN	846286	NUVEEN TAX EXEMPT UNIT TRUST SERIES 535.
3013	IM-01	NUVEEN	846288	NUVEEN TAX EXEMPT UNIT TRUST SERIES 536.
3014	IM-01	NUVEEN	846290	NUVEEN TAX EXEMPT UNIT TRUST SERIES 537.
3015	IM-01	NUVEEN	846292	NUVEEN TAX EXEMPT UNIT TRUST SERIES 538.
3016	IM-01	NUVEEN	846293	NUVEEN TAX EXEMPT UNIT TRUST SERIES 539.
3017	IM-01	NUVEEN	846295	NUVEEN TAX EXEMPT UNIT TRUST SERIES 540.
3018	IM-01	NUVEEN	846297	NUVEEN TAX EXEMPT UNIT TRUST SERIES 541.
3019	IM-01	NUVEEN	846299	NUVEEN TAX EXEMPT UNIT TRUST SERIES 542.
3020	IM-01	NUVEEN	846301	NUVEEN TAX EXEMPT UNIT TRUST SERIES 543.
3021	IM-01	NUVEEN	846304	NUVEEN TAX EXEMPT UNIT TRUST SERIES 544.
3022	IM-01	NUVEEN	846306	NUVEEN TAX EXEMPT UNIT TRUST SERIES 545.
3023	IM-01	NUVEEN	846307	NUVEEN TAX EXEMPT UNIT TRUST SERIES 546.
3024	IM-01	NUVEEN	846308	NUVEEN TAX EXEMPT UNIT TRUST SERIES 547.
3025	IM-01	NUVEEN	846309	NUVEEN TAX EXEMPT UNIT TRUST SERIES 548.
3026	IM-01	NUVEEN	846310	NUVEEN TAX EXEMPT UNIT TRUST SERIES 549.
3027	IM-01	NUVEEN	846311	NUVEEN TAX EXEMPT UNIT TRUST SERIES 550.
3028	IM-01	NUVEEN	860880	NUVEEN TAX EXEMPT UNIT TRUST SERIES 551.
3029	IM-01	NUVEEN	860881	NUVEEN TAX EXEMPT UNIT TRUST SERIES 552.
3030	IM-01	NUVEEN	860882	NUVEEN TAX EXEMPT UNIT TRUST SERIES 553.
3031	IM-01	NUVEEN	860883	NUVEEN TAX EXEMPT UNIT TRUST SERIES 554.
3032	IM-01	NUVEEN	860884	NUVEEN TAX EXEMPT UNIT TRUST SERIES 555.
3033	IM-01	NUVEEN	860885	NUVEEN TAX EXEMPT UNIT TRUST SERIES 556.
3034	IM-01	NUVEEN	860886	NUVEEN TAX EXEMPT UNIT TRUST SERIES 557.
3035	IM-01	NUVEEN	860887	NUVEEN TAX EXEMPT UNIT TRUST SERIES 558.
3036	IM-01	NUVEEN	860888	NUVEEN TAX EXEMPT UNIT TRUST SERIES 559.
3037	IM-01	NUVEEN	860889	NUVEEN TAX EXEMPT UNIT TRUST SERIES 560.
3038	IM-01	NUVEEN	860890	NUVEEN TAX EXEMPT UNIT TRUST SERIES 561.
3039	IM-01	NUVEEN	860891	NUVEEN TAX EXEMPT UNIT TRUST SERIES 562.
3040	IM-01	NUVEEN	860892	NUVEEN TAX EXEMPT UNIT TRUST SERIES 563.
3041	IM-01	NUVEEN	860893	NUVEEN TAX EXEMPT UNIT TRUST SERIES 564.
3042	IM-01	NUVEEN	860894	NUVEEN TAX EXEMPT UNIT TRUST SERIES 565.
3043	IM-01	NUVEEN	860895	NUVEEN TAX EXEMPT UNIT TRUST SERIES 566.
3044	IM-01	NUVEEN	860896	NUVEEN TAX EXEMPT UNIT TRUST SERIES 567.
3045	IM-01	NUVEEN	860897	NUVEEN TAX EXEMPT UNIT TRUST SERIES 568.
3046	IM-01	NUVEEN	860898	NUVEEN TAX EXEMPT UNIT TRUST SERIES 569.
3047	IM-01	NUVEEN	860899	NUVEEN TAX EXEMPT UNIT TRUST SERIES 570.
3048	IM-01	NUVEEN	860900	NUVEEN TAX EXEMPT UNIT TRUST SERIES 571.
3049	IM-01	NUVEEN	860902	NUVEEN TAX EXEMPT UNIT TRUST SERIES 573.
3050	IM-01	NUVEEN	860903	NUVEEN TAX EXEMPT UNIT TRUST SERIES 574.
3051	IM-01	NUVEEN	860904	NUVEEN TAX EXEMPT UNIT TRUST SERIES 575.
3052	IM-01	NUVEEN	860905	NUVEEN TAX EXEMPT UNIT TRUST SERIES 576.
3053	IM-01	NUVEEN	860906	NUVEEN TAX EXEMPT UNIT TRUST SERIES 577.
3054	IM-01	NUVEEN	860907	NUVEEN TAX EXEMPT UNIT TRUST SERIES 578.
3055	IM-01	NUVEEN	860908	NUVEEN TAX EXEMPT UNIT TRUST SERIES 579.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3056	IM-01	NUVEEN	860909	NUVEEN TAX EXEMPT UNIT TRUST SERIES 580.
3057	IM-01	NUVEEN	860910	NUVEEN TAX EXEMPT UNIT TRUST SERIES 581.
3058	IM-01	NUVEEN	860911	NUVEEN TAX EXEMPT UNIT TRUST SERIES 582.
3059	IM-01	NUVEEN	860912	NUVEEN TAX EXEMPT UNIT TRUST SERIES 583.
3060	IM-01	NUVEEN	860913	NUVEEN TAX EXEMPT UNIT TRUST SERIES 584.
3061	IM-01	NUVEEN	860914	NUVEEN TAX EXEMPT UNIT TRUST SERIES 585.
3062	IM-01	NUVEEN	860915	NUVEEN TAX EXEMPT UNIT TRUST SERIES 586.
3063	IM-01	NUVEEN	860918	NUVEEN TAX EXEMPT UNIT TRUST SERIES 587.
3064	IM-01	NUVEEN	860919	NUVEEN TAX EXEMPT UNIT TRUST SERIES 588.
3065	IM-01	NUVEEN	860920	NUVEEN TAX EXEMPT UNIT TRUST SERIES 589.
3066	IM-01	NUVEEN	860921	NUVEEN TAX EXEMPT UNIT TRUST SERIES 590.
3067	IM-01	NUVEEN	860922	NUVEEN TAX EXEMPT UNIT TRUST SERIES 591.
3068	IM-01	NUVEEN	860923	NUVEEN TAX EXEMPT UNIT TRUST SERIES 592.
3069	IM-01	NUVEEN	860924	NUVEEN TAX EXEMPT UNIT TRUST SERIES 593.
3070	IM-01	NUVEEN	860925	NUVEEN TAX EXEMPT UNIT TRUST SERIES 594.
3071	IM-01	NUVEEN	860926	NUVEEN TAX EXEMPT UNIT TRUST SERIES 595.
3072	IM-01	NUVEEN	860927	NUVEEN TAX EXEMPT UNIT TRUST SERIES 596.
3073	IM-01	NUVEEN	860928	NUVEEN TAX EXEMPT UNIT TRUST SERIES 597.
3074	IM-01	NUVEEN	860929	NUVEEN TAX EXEMPT UNIT TRUST SERIES 598.
3075	IM-01	NUVEEN	277264	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 1.
3076	IM-01	NUVEEN	311056	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 2.
3077	IM-01	NUVEEN	311332	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 3.
3078	IM-01	NUVEEN	311352	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 5.
3079	IM-01	NUVEEN	319349	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 14.
3080	IM-01	NUVEEN	319612	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 16.
3081	IM-01	NUVEEN	319606	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 17.
3082	IM-01	NUVEEN	320632	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 18.
3083	IM-01	NUVEEN	320650	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 19.
3084	IM-01	NUVEEN	350911	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 20.
3085	IM-01	NUVEEN	351075	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 21.
3086	IM-01	NUVEEN	352053	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 22.
3087	IM-01	NUVEEN	352146	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 23.
3088	IM-01	NUVEEN	352803	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 24.
3089	IM-01	NUVEEN	352850	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 25.
3090	IM-01	NUVEEN	353667	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 26.
3091	IM-01	NUVEEN	353889	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 27.
3092	IM-01	NUVEEN	355844	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 28.
3093	IM-01	NUVEEN	355900	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 29.
3094	IM-01	NUVEEN	356041	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 30.
3095	IM-01	NUVEEN	356067	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 31.
3096	IM-01	NUVEEN	356990	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 32.
3097	IM-01	NUVEEN	356991	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 33.
3098	IM-01	NUVEEN	357122	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 35.
3099	IM-01	NUVEEN	357241	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 36.
3100	IM-01	NUVEEN	357285	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 37.
3101	IM-01	NUVEEN	357431	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 38.
3102	IM-01	NUVEEN	700563	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 39.
3103	IM-01	NUVEEN	700773	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 40.
3104	IM-01	NUVEEN	700866	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 41.
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APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3105	IM-01	NUVEEN	700905	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 42.
3106	IM-01	NUVEEN	700906	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 43.
3107	IM-01	NUVEEN	701749	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 44.
3108	IM-01	NUVEEN	701984	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 45.
3109	IM-01	NUVEEN	702090	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 46.
3110	IM-01	NUVEEN	702193	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 47.
3111	IM-01	NUVEEN	703262	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 48.
3112	IM-01	NUVEEN	703496	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 49.
3113	IM-01	NUVEEN	703627	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 50.
3114	IM-01	NUVEEN	703879	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 51.
3115	IM-01	NUVEEN	704478	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 52.
3116	IM-01	NUVEEN	704803	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 53.
3117	IM-01	NUVEEN	704844	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 54.
3118	IM-01	NUVEEN	704845	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 55.
3119	IM-01	NUVEEN	705448	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 56.
3120	IM-01	NUVEEN	705957	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 57.
3121	IM-01	NUVEEN	706190	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 58.
3122	IM-01	NUVEEN	706246	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 59.
3123	IM-01	NUVEEN	706739	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 60.
3124	IM-01	NUVEEN	707125	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 61.
3125	IM-01	NUVEEN	707345	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 62.
3126	IM-01	NUVEEN	707788	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 63.
3127	IM-01	NUVEEN	707896	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 64.
3128	IM-01	NUVEEN	708235	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 65.
3129	IM-01	NUVEEN	708616	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 66.
3130	IM-01	NUVEEN	709144	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 67.
3131	IM-01	NUVEEN	709341	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 68.
3132	IM-01	NUVEEN	709948	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 69.
3133	IM-01	NUVEEN	710183	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 70.
3134	IM-01	NUVEEN	711022	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 71.
3135	IM-01	NUVEEN	711207	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 72.
3136	IM-01	NUVEEN	711346	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 73.
3137	IM-01	NUVEEN	711421	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 74.
3138	IM-01	NUVEEN	711718	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 75.
3139	IM-01	NUVEEN	712153	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 76.
3140	IM-01	NUVEEN	712775	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 77.
3141	IM-01	NUVEEN	713666	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 78.
3142	IM-01	NUVEEN	714231	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 79.
3143	IM-01	NUVEEN	714635	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 80.
3144	IM-01	NUVEEN	715060	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 81.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3145	IM-01	NUVEEN	715166	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 82.
3146	IM-01	NUVEEN	715585	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 83.
3147	IM-01	NUVEEN	716103	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 84.
3148	IM-01	NUVEEN	716410	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 85.
3149	IM-01	NUVEEN	716731	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 86.
3150	IM-01	NUVEEN	717208	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 87.
3151	IM-01	NUVEEN	717327	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 88.
3152	IM-01	NUVEEN	718114	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 89.
3153	IM-01	NUVEEN	718918	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 90.
3154	IM-01	NUVEEN	719510	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 91.
3155	IM-01	NUVEEN	720012	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 92.
3156	IM-01	NUVEEN	721719	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 93.
3157	IM-01	NUVEEN	722204	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 94.
3158	IM-01	NUVEEN	722741	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 95.
3159	IM-01	NUVEEN	723137	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 96.
3160	IM-01	NUVEEN	723504	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 97.
3161	IM-01	NUVEEN	723601	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 98.
3162	IM-01	NUVEEN	723735	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 99.
3163	IM-01	NUVEEN	724210	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 100.
3164	IM-01	NUVEEN	724409	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 101.
3165	IM-01	NUVEEN	725132	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 102.
3166	IM-01	NUVEEN	725538	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 103.
3167	IM-01	NUVEEN	725792	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 104.
3168	IM-01	NUVEEN	726559	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 105.
3169	IM-01	NUVEEN	727224	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 107.
3170	IM-01	NUVEEN	728252	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 108.
3171	IM-01	NUVEEN	729307	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 109.
3172	IM-01	NUVEEN	729640	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 110.
3173	IM-01	NUVEEN	730216	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 111.
3174	IM-01	NUVEEN	730618	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 112.
3175	IM-01	NUVEEN	731189	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 113.
3176	IM-01	NUVEEN	731755	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 114.
3177	IM-01	NUVEEN	732292	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 115.
3178	IM-01	NUVEEN	732686	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 116.
3179	IM-01	NUVEEN	732783	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 117.
3180	IM-01	NUVEEN	733779	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 118.
3181	IM-01	NUVEEN	735291	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 119.
3182	IM-01	NUVEEN	736732	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 120.
3183	IM-01	NUVEEN	736746	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 121.
3184	IM-01	NUVEEN	736941	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 122.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3185	IM-01	NUVEEN	736293	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 123.
3186	IM-01	NUVEEN	737569	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 124.
3187	IM-01	NUVEEN	737906	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 125.
3188	IM-01	NUVEEN	738172	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 126.
3189	IM-01	NUVEEN	739451	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 127.
3190	IM-01	NUVEEN	740056	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 128.
3191	IM-01	NUVEEN	740567	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 129.
3192	IM-01	NUVEEN	740815	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 130.
3193	IM-01	NUVEEN	741246	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 131.
3194	IM-01	NUVEEN	741389	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 132.
3195	IM-01	NUVEEN	741802	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 133.
3196	IM-01	NUVEEN	742280	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 134.
3197	IM-01	NUVEEN	742688	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 135.
3198	IM-01	NUVEEN	743440	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 136.
3199	IM-01	NUVEEN	744466	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 137.
3200	IM-01	NUVEEN	745189	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 138.
3201	IM-01	NUVEEN	745934	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 139.
3202	IM-01	NUVEEN	746635	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 140.
3203	IM-01	NUVEEN	747544	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 141.
3204	IM-01	NUVEEN	748096	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 142.
3205	IM-01	NUVEEN	748230	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 143.
3206	IM-01	NUVEEN	748361	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 144.
3207	IM-01	NUVEEN	748680	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 145.
3208	IM-01	NUVEEN	748825	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 146.
3209	IM-01	NUVEEN	748837	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 147.
3210	IM-01	NUVEEN	749629	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 148.
3211	IM-01	NUVEEN	750008	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 149.
3212	IM-01	NUVEEN	750499	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 150.
3213	IM-01	NUVEEN	750695	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 151.
3214	IM-01	NUVEEN	751233	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 152.
3215	IM-01	NUVEEN	751521	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 153.
3216	IM-01	NUVEEN	752387	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 154.
3217	IM-01	NUVEEN	752386	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 155.
3218	IM-01	NUVEEN	753014	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 156.
3219	IM-01	NUVEEN	753732	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 157.
3220	IM-01	NUVEEN	754105	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 158.
3221	IM-01	NUVEEN	754989	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 159.
3222	IM-01	NUVEEN	756163	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 160.
3223	IM-01	NUVEEN	756809	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 161.
3224	IM-01	NUVEEN	757215	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 162.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3225	IM-01	NUVEEN	758738	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 163.
3226	IM-01	NUVEEN	759476	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 164.
3227	IM-01	NUVEEN	759823	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 165.
3228	IM-01	NUVEEN	760990	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 166.
3229	IM-01	NUVEEN	761247	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 167.
3230	IM-01	NUVEEN	762879	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 168.
3231	IM-01	NUVEEN	762990	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 169.
3232	IM-01	NUVEEN	763359	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 170.
3233	IM-01	NUVEEN	763732	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 171.
3234	IM-01	NUVEEN	763882	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 172.
3235	IM-01	NUVEEN	765669	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 173.
3236	IM-01	NUVEEN	766435	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 174.
3237	IM-01	NUVEEN	766458	NUVEEN TAX EXEMPT UNIT TRUST STATE SERIES 175.
3238	IM-01	PAINEWEBBER	700884	CORPORATE BOND TRUST DISCOUNT SERIES B-1.
3239	IM-01	PAINEWEBBER	201554	CORPORATE BOND TRUST SERIES 11.
3240	IM-01	PAINEWEBBER	068915	MUNICIPAL BOND FUND SERIES 8.
3241	IM-01	PAINEWEBBER	713033	MUNICIPAL BOND TRUST SERIES 151.
3242	IM-01	PAINEWEBBER	872494	MUNICIPAL BOND TRUST SERIES 233.
3243	IM-01	PAINEWEBBER	872495	MUNICIPAL BOND TRUST SERIES 234.
3244	IM-01	PAINEWEBBER	872496	MUNICIPAL BOND TRUST SERIES 235.
3245	IM-01	PAINEWEBBER	796165	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 10.
3246	IM-01	PAINEWEBBER	796166	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 11.
3247	IM-01	PAINEWEBBER	796167	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 12.
3248	IM-01	PAINEWEBBER	796164	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 9.
3249	IM-01	PAINEWEBBER	799683	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 10.
3250	IM-01	PAINEWEBBER	799684	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 11.
3251	IM-01	PAINEWEBBER	811878	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STK SERS 13.
3252	IM-01	PAINEWEBBER	811877	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STK SERS 14.
3253	IM-01	PAINEWEBBER	827088	PAINEWEBBER EQUITY TR AMERICAN STK EXCHANGE XII INDEX SER 1.
3254	IM-01	PAINEWEBBER	799589	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 1.
3255	IM-01	PAINEWEBBER	799671	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 2.
3256	IM-01	PAINEWEBBER	796129	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 2.
3257	IM-01	PAINEWEBBER	806231	PAINEWEBBER FEDERAL GOVERNMENT TRUST FREDDIE MAC SERIES 1.
3258	IM-01	PAINEWEBBER	840520	PAINEWEBBER FEDERAL GOVERNMENT TRUST TREASURY SERIES 2.
3259	IM-01	PAINEWEBBER	068885	MUNICIPAL BOND FUND SERIES 10.
3260	IM-01	PAINEWEBBER	068899	MUNICIPAL BOND FUND SERIES 23 & SUB SERIES.
3261	IM-01	PAINEWEBBER	205672	MUNICIPAL BOND FUND SERIES 37.
3262	IM-01	PAINEWEBBER	216645	MUNICIPAL BOND FUND SERIES 39.
3263	IM-01	PAINEWEBBER	216647	MUNICIPAL BOND FUND SERIES 41.
3264	IM-01	PAINEWEBBER	216649	MUNICIPAL BOND FUND SERIES 43.
3265	IM-01	PAINEWEBBER	216646	MUNICIPAL BOND FUND SERIES 40.
3266	IM-01	PAINEWEBBER	216648	MUNICIPAL BOND FUND SERIES 42.
3267	IM-01	PAINEWEBBER	230394	MUNICIPAL BOND TRUST SERIES 44.
3268	IM-01	PAINEWEBBER	277130	MUNICIPAL BOND TRUST SERIES 47.
3269	IM-01	PAINEWEBBER	278324	MUNICIPAL BOND TRUST SERIES 48.
3270	IM-01	PAINEWEBBER	277954	MUNICIPAL BOND TRUST SERIES 49.
3271	IM-01	PAINEWEBBER	278158	MUNICIPAL BOND TRUST SERIES 50.
3272	IM-01	PAINEWEBBER	278164	MUNICIPAL BOND TRUST SERIES 51.
3273	IM-01	PAINEWEBBER	310026	MUNICIPAL BOND TRUST SERIES 52.
3274	IM-01	PAINEWEBBER	310029	MUNICIPAL BOND TRUST SERIES 53.
3275	IM-01	PAINEWEBBER	311139	MUNICIPAL BOND TRUST SERIES 54.
3276	IM-01	PAINEWEBBER	311124	MUNICIPAL BOND TRUST SERIES 55.
3277	IM-01	PAINEWEBBER	312006	MUNICIPAL BOND TRUST SERIES 57.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3278	IM-01	PAINEWEBBER	312559	MUNICIPAL BOND TRUST SERIES 58.
3279	IM-01	PAINEWEBBER	312551	MUNICIPAL BOND TRUST SERIES 59.
3280	IM-01	PAINEWEBBER	313978	MUNICIPAL BOND TRUST SERIES 60.
3281	IM-01	PAINEWEBBER	314814	MUNICIPAL BOND TRUST SERIES 64.
3282	IM-01	PAINEWEBBER	318306	MUNICIPAL BOND TRUST SERIES 71.
3283	IM-01	PAINEWEBBER	319418	MUNICIPAL BOND TRUST SERIES 75.
3284	IM-01	PAINEWEBBER	000066	MUNICIPAL BOND TRUST SERIES 77.
3285	IM-01	PAINEWEBBER	000052	MUNICIPAL BOND TRUST SERIES 78.
3286	IM-01	PAINEWEBBER	000050	MUNICIPAL BOND TRUST SERIES 79.
3287	IM-01	PAINEWEBBER	320648	MUNICIPAL BOND TRUST SERIES 80.
3288	IM-01	PAINEWEBBER	320649	MUNICIPAL BOND TRUST SERIES 81.
3289	IM-01	PAINEWEBBER	351114	MUNICIPAL BOND TRUST SERIES 82.
3290	IM-01	PAINEWEBBER	351164	MUNICIPAL BOND TRUST SERIES 83.
3291	IM-01	PAINEWEBBER	351161	MUNICIPAL BOND TRUST SERIES 84.
3292	IM-01	PAINEWEBBER	351832	MUNICIPAL BOND TRUST SERIES 85.
3293	IM-01	PAINEWEBBER	351908	MUNICIPAL BOND TRUST SERIES 86.
3294	IM-01	PAINEWEBBER	351833	MUNICIPAL BOND TRUST SERIES 87.
3295	IM-01	PAINEWEBBER	353273	MUNICIPAL BOND TRUST SERIES 88.
3296	IM-01	PAINEWEBBER	353676	MUNICIPAL BOND TRUST SERIES 89.
3297	IM-01	PAINEWEBBER	353678	MUNICIPAL BOND TRUST SERIES 90.
3298	IM-01	PAINEWEBBER	354186	MUNICIPAL BOND TRUST SERIES 91.
3299	IM-01	PAINEWEBBER	354188	MUNICIPAL BOND TRUST SERIES 92.
3300	IM-01	PAINEWEBBER	354187	MUNICIPAL BOND TRUST SERIES 93.
3301	IM-01	PAINEWEBBER	354649	MUNICIPAL BOND TRUST SERIES 94.
3302	IM-01	PAINEWEBBER	354648	MUNICIPAL BOND TRUST SERIES 95.
3303	IM-01	PAINEWEBBER	354654	MUNICIPAL BOND TRUST SERIES 96.
3304	IM-01	PAINEWEBBER	355402	MUNICIPAL BOND TRUST SERIES 97.
3305	IM-01	PAINEWEBBER	355400	MUNICIPAL BOND TRUST SERIES 99.
3306	IM-01	PAINEWEBBER	355925	MUNICIPAL BOND TRUST SERIES 100.
3307	IM-01	PAINEWEBBER	355924	MUNICIPAL BOND TRUST SERIES 101.
3308	IM-01	PAINEWEBBER	355930	MUNICIPAL BOND TRUST SERIES 102.
3309	IM-01	PAINEWEBBER	355923	MUNICIPAL BOND TRUST SERIES 103.
3310	IM-01	PAINEWEBBER	356851	MUNICIPAL BOND TRUST SERIES 104.
3311	IM-01	PAINEWEBBER	356864	MUNICIPAL BOND TRUST SERIES 105.
3312	IM-01	PAINEWEBBER	356862	MUNICIPAL BOND TRUST SERIES 106.
3313	IM-01	PAINEWEBBER	357252	MUNICIPAL BOND TRUST SERIES 107.
3314	IM-01	PAINEWEBBER	357251	MUNICIPAL BOND TRUST SERIES 108.
3315	IM-01	PAINEWEBBER	357253	MUNICIPAL BOND TRUST SERIES 109.
3316	IM-01	PAINEWEBBER	700934	MUNICIPAL BOND TRUST SERIES 110.
3317	IM-01	PAINEWEBBER	700936	MUNICIPAL BOND TRUST SERIES 112.
3318	IM-01	PAINEWEBBER	700975	MUNICIPAL BOND TRUST SERIES 113.
3319	IM-01	PAINEWEBBER	700974	MUNICIPAL BOND TRUST SERIES 114.
3320	IM-01	PAINEWEBBER	700985	MUNICIPAL BOND TRUST SERIES 115.
3321	IM-01	PAINEWEBBER	701822	MUNICIPAL BOND TRUST SERIES 116.
3322	IM-01	PAINEWEBBER	701823	MUNICIPAL BOND TRUST SERIES 117.
3323	IM-01	PAINEWEBBER	701824	MUNICIPAL BOND TRUST SERIES 118.
3324	IM-01	PAINEWEBBER	702342	MUNICIPAL BOND TRUST SERIES 119.
3325	IM-01	PAINEWEBBER	702343	MUNICIPAL BOND TRUST SERIES 120.
3326	IM-01	PAINEWEBBER	702344	MUNICIPAL BOND TRUST SERIES 121.
3327	IM-01	PAINEWEBBER	703400	MUNICIPAL BOND TRUST SERIES 122.
3328	IM-01	PAINEWEBBER	703401	MUNICIPAL BOND TRUST SERIES 123.
3329	IM-01	PAINEWEBBER	703473	MUNICIPAL BOND TRUST SERIES 124.
3330	IM-01	PAINEWEBBER	704181	MUNICIPAL BOND TRUST SERIES 125.
3331	IM-01	PAINEWEBBER	704180	MUNICIPAL BOND TRUST SERIES 126.
3332	IM-01	PAINEWEBBER	704182	MUNICIPAL BOND TRUST SERIES 127.
3333	IM-01	PAINEWEBBER	705201	MUNICIPAL BOND TRUST SERIES 128.
3334	IM-01	PAINEWEBBER	705202	MUNICIPAL BOND TRUST SERIES 129.
3335	IM-01	PAINEWEBBER	705195	MUNICIPAL BOND TRUST SERIES 130.
3336	IM-01	PAINEWEBBER	705196	MUNICIPAL BOND TRUST SERIES 131.
3337	IM-01	PAINEWEBBER	705198	MUNICIPAL BOND TRUST SERIES 132.
3338	IM-01	PAINEWEBBER	705197	MUNICIPAL BOND TRUST SERIES 133.
3339	IM-01	PAINEWEBBER	706479	MUNICIPAL BOND TRUST SERIES 134.
3340	IM-01	PAINEWEBBER	706477	MUNICIPAL BOND TRUST SERIES 135.
3341	IM-01	PAINEWEBBER	706475	MUNICIPAL BOND TRUST SERIES 136.
3342	IM-01	PAINEWEBBER	706478	MUNICIPAL BOND TRUST SERIES 137.
3343	IM-01	PAINEWEBBER	706481	MUNICIPAL BOND TRUST SERIES 138.
3344	IM-01	PAINEWEBBER	706480	MUNICIPAL BOND TRUST SERIES 139.
3345	IM-01	PAINEWEBBER	709380	MUNICIPAL BOND TRUST SERIES 140.
3346	IM-01	PAINEWEBBER	709379	MUNICIPAL BOND TRUST SERIES 141.
3347	IM-01	PAINEWEBBER	709378	MUNICIPAL BOND TRUST SERIES 142.
3348	IM-01	PAINEWEBBER	709382	MUNICIPAL BOND TRUST SERIES 143.
3349	IM-01	PAINEWEBBER	709383	MUNICIPAL BOND TRUST SERIES 144.
3350	IM-01	PAINEWEBBER	713025	MUNICIPAL BOND TRUST SERIES 146.
3351	IM-01	PAINEWEBBER	713029	MUNICIPAL BOND TRUST SERIES 147.
3352	IM-01	PAINEWEBBER	713030	MUNICIPAL BOND TRUST SERIES 148.
3353	IM-01	PAINEWEBBER	713031	MUNICIPAL BOND TRUST SERIES 149.
3354	IM-01	PAINEWEBBER	713032	MUNICIPAL BOND TRUST SERIES 150.
3355	IM-01	PAINEWEBBER	716722	MUNICIPAL BOND TRUST SERIES 152.
3356	IM-01	PAINEWEBBER	716724	MUNICIPAL BOND TRUST SERIES 154.
3357	IM-01	PAINEWEBBER	716725	MUNICIPAL BOND TRUST SERIES 155.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3358	IM-01	PAINEWEBBER	716727	MUNICIPAL BOND TRUST SERIES 156.
3359	IM-01	PAINEWEBBER	720542	MUNICIPAL BOND TRUST SERIES 158.
3360	IM-01	PAINEWEBBER	720669	MUNICIPAL BOND TRUST SERIES 159.
3361	IM-01	PAINEWEBBER	720670	MUNICIPAL BOND TRUST SERIES 160.
3362	IM-01	PAINEWEBBER	720543	MUNICIPAL BOND TRUST SERIES 161.
3363	IM-01	PAINEWEBBER	720662	MUNICIPAL BOND TRUST SERIES 162.
3364	IM-01	PAINEWEBBER	720540	MUNICIPAL BOND TRUST SERIES 163.
3365	IM-01	PAINEWEBBER	725575	MUNICIPAL BOND TRUST SERIES 164.
3366	IM-01	PAINEWEBBER	725576	MUNICIPAL BOND TRUST SERIES 165.
3367	IM-01	PAINEWEBBER	725578	MUNICIPAL BOND TRUST SERIES 167.
3368	IM-01	PAINEWEBBER	725574	MUNICIPAL BOND TRUST SERIES 168.
3369	IM-01	PAINEWEBBER	735935	MUNICIPAL BOND TRUST SERIES 169.
3370	IM-01	PAINEWEBBER	735905	MUNICIPAL BOND TRUST SERIES 170.
3371	IM-01	PAINEWEBBER	735906	MUNICIPAL BOND TRUST SERIES 171.
3372	IM-01	PAINEWEBBER	735919	MUNICIPAL BOND TRUST SERIES 172.
3373	IM-01	PAINEWEBBER	735936	MUNICIPAL BOND TRUST SERIES 173.
3374	IM-01	PAINEWEBBER	735914	MUNICIPAL BOND TRUST SERIES 175.
3375	IM-01	PAINEWEBBER	748597	MUNICIPAL BOND TRUST SERIES 176.
3376	IM-01	PAINEWEBBER	748594	MUNICIPAL BOND TRUST SERIES 178.
3377	IM-01	PAINEWEBBER	748585	MUNICIPAL BOND TRUST SERIES 180.
3378	IM-01	PAINEWEBBER	755093	MUNICIPAL BOND TRUST SERIES 181.
3379	IM-01	PAINEWEBBER	754891	MUNICIPAL BOND TRUST SERIES 182.
3380	IM-01	PAINEWEBBER	754929	MUNICIPAL BOND TRUST SERIES 183.
3381	IM-01	PAINEWEBBER	755094	MUNICIPAL BOND TRUST SERIES 184.
3382	IM-01	PAINEWEBBER	755091	MUNICIPAL BOND TRUST SERIES 185.
3383	IM-01	PAINEWEBBER	764077	MUNICIPAL BOND TRUST SERIES 187.
3384	IM-01	PAINEWEBBER	764149	MUNICIPAL BOND TRUST SERIES 188.
3385	IM-01	PAINEWEBBER	771850	MUNICIPAL BOND TRUST SERIES 189.
3386	IM-01	PAINEWEBBER	771849	MUNICIPAL BOND TRUST SERIES 190.
3387	IM-01	PAINEWEBBER	771851	MUNICIPAL BOND TRUST SERIES 191.
3388	IM-01	PAINEWEBBER	783768	MUNICIPAL BOND TRUST SERIES 192.
3389	IM-01	PAINEWEBBER	783769	MUNICIPAL BOND TRUST SERIES 193.
3390	IM-01	PAINEWEBBER	783770	MUNICIPAL BOND TRUST SERIES 194.
3391	IM-01	PAINEWEBBER	783862	MUNICIPAL BOND TRUST SERIES 195.
3392	IM-01	PAINEWEBBER	783863	MUNICIPAL BOND TRUST SERIES 196.
3393	IM-01	PAINEWEBBER	783864	MUNICIPAL BOND TRUST SERIES 197.
3394	IM-01	PAINEWEBBER	783865	MUNICIPAL BOND TRUST SERIES 198.
3395	IM-01	PAINEWEBBER	783866	MUNICIPAL BOND TRUST SERIES 199.
3396	IM-01	PAINEWEBBER	783867	MUNICIPAL BOND TRUST SERIES 200.
3397	IM-01	PAINEWEBBER	783868	MUNICIPAL BOND TRUST SERIES 201.
3398	IM-01	PAINEWEBBER	783869	MUNICIPAL BOND TRUST SERIES 202.
3399	IM-01	PAINEWEBBER	783870	MUNICIPAL BOND TRUST SERIES 203.
3400	IM-01	PAINEWEBBER	783871	MUNICIPAL BOND TRUST SERIES 204.
3401	IM-01	PAINEWEBBER	783873	MUNICIPAL BOND TRUST SERIES 205.
3402	IM-01	PAINEWEBBER	783874	MUNICIPAL BOND TRUST SERIES 206.
3403	IM-01	PAINEWEBBER	783875	MUNICIPAL BOND TRUST SERIES 207.
3404	IM-01	PAINEWEBBER	783876	MUNICIPAL BOND TRUST SERIES 208.
3405	IM-01	PAINEWEBBER	783878	MUNICIPAL BOND TRUST SERIES 209.
3406	IM-01	PAINEWEBBER	783879	MUNICIPAL BOND TRUST SERIES 210.
3407	IM-01	PAINEWEBBER	783880	MUNICIPAL BOND TRUST SERIES 211.
3408	IM-01	PAINEWEBBER	783881	MUNICIPAL BOND TRUST SERIES 212.
3409	IM-01	PAINEWEBBER	783882	MUNICIPAL BOND TRUST SERIES 213.
3410	IM-01	PAINEWEBBER	783883	MUNICIPAL BOND TRUST SERIES 214.
3411	IM-01	PAINEWEBBER	783884	MUNICIPAL BOND TRUST SERIES 215.
3412	IM-01	PAINEWEBBER	783885	MUNICIPAL BOND TRUST SERIES 216.
3413	IM-01	PAINEWEBBER	783886	MUNICIPAL BOND TRUST SERIES 217.
3414	IM-01	PAINEWEBBER	827089	MUNICIPAL BOND TRUST SERIES 218.
3415	IM-01	PAINEWEBBER	827092	MUNICIPAL BOND TRUST SERIES 219.
3416	IM-01	PAINEWEBBER	827093	MUNICIPAL BOND TRUST SERIES 220.
3417	IM-01	PAINEWEBBER	827094	MUNICIPAL BOND TRUST SERIES 221.
3418	IM-01	PAINEWEBBER	827095	MUNICIPAL BOND TRUST SERIES 222.
3419	IM-01	PAINEWEBBER	827096	MUNICIPAL BOND TRUST SERIES 223.
3420	IM-01	PAINEWEBBER	827097	MUNICIPAL BOND TRUST SERIES 224.
3421	IM-01	PAINEWEBBER	827107	MUNICIPAL BOND TRUST SERIES 225.
3422	IM-01	PAINEWEBBER	827106	MUNICIPAL BOND TRUST SERIES 226.
3423	IM-01	PAINEWEBBER	827108	MUNICIPAL BOND TRUST SERIES 227.
3424	IM-01	PAINEWEBBER	827109	MUNICIPAL BOND TRUST SERIES 228.
3425	IM-01	PAINEWEBBER	827110	MUNICIPAL BOND TRUST SERIES 229.
3426	IM-01	PAINEWEBBER	827111	MUNICIPAL BOND TRUST SERIES 230.
3427	IM-01	PAINEWEBBER	827112	MUNICIPAL BOND TRUST SERIES 231.
3428	IM-01	PAINEWEBBER	827113	MUNICIPAL BOND TRUST SERIES 232.
3429	IM-01	PAINEWEBBER	275776	MUNICIPAL BOND TRUST SERIES 45.
3430	IM-01	PAINEWEBBER	275777	MUNICIPAL BOND TRUST SERIES 46.
3431	IM-01	PAINEWEBBER	312007	MUNICIPAL BOND TRUST SERIES 56.
3432	IM-01	PAINEWEBBER	313977	MUNICIPAL BOND TRUST SERIES 61.
3433	IM-01	PAINEWEBBER	314373	MUNICIPAL BOND TRUST SERIES 62.
3434	IM-01	PAINEWEBBER	314372	MUNICIPAL BOND TRUST SERIES 63.
3435	IM-01	PAINEWEBBER	314809	MUNICIPAL BOND TRUST SERIES 65.
3436	IM-01	PAINEWEBBER	316448	MUNICIPAL BOND TRUST SERIES 66.
3437	IM-01	PAINEWEBBER	316449	MUNICIPAL BOND TRUST SERIES 67.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3438	IM-01	PAINEWEBBER	316450	MUNICIPAL BOND TRUST SERIES 68.
3439	IM-01	PAINEWEBBER	317528	MUNICIPAL BOND TRUST SERIES 69.
3440	IM-01	PAINEWEBBER	317535	MUNICIPAL BOND TRUST SERIES 70.
3441	IM-01	PAINEWEBBER	318307	MUNICIPAL BOND TRUST SERIES 72.
3442	IM-01	PAINEWEBBER	318522	MUNICIPAL BOND TRUST SERIES 73.
3443	IM-01	PAINEWEBBER	319307	MUNICIPAL BOND TRUST SERIES 74.
3444	IM-01	PAINEWEBBER	319305	MUNICIPAL BOND TRUST SERIES 76.
3445	IM-01	PAINEWEBBER	355403	MUNICIPAL BOND TRUST SERIES 98.
3446	IM-01	PAINEWEBBER	700992	MUNICIPAL BOND TRUST SERIES 111.
3447	IM-01	PAINEWEBBER	709381	MUNICIPAL BOND TRUST SERIES 145.
3448	IM-01	PAINEWEBBER	725577	MUNICIPAL BOND TRUST SERIES 166.
3449	IM-01	PAINEWEBBER	719551	MUNICIPAL BOND TRUST SERIES 174/.
3450	IM-01	PAINEWEBBER	719552	MUNICIPAL BOND TRUST SERIES 177/.
3451	IM-01	PAINEWEBBER	748610	MUNICIPAL BOND TRUST SERIES 179.
3452	IM-01	PAINEWEBBER	764153	MUNICIPAL BOND TRUST SERIES 186.
3453	IM-01	PAINEWEBBER	807610	MUNICIPAL BOND TRUST ALTERNATIVE MINIMUM TAX SERIES 1.
3454	IM-01	PAINEWEBBER	353228	MUNICIPAL BOND TRUST CALIFORNIA SERIES A.
3455	IM-01	PAINEWEBBER	353981	MUNICIPAL BOND TRUST CALIFORNIA SERIES B.
3456	IM-01	PAINEWEBBER	354981	MUNICIPAL BOND TRUST CALIFORNIA SERIES C.
3457	IM-01	PAINEWEBBER	354982	MUNICIPAL BOND TRUST CALIFORNIA SERIES D.
3458	IM-01	PAINEWEBBER	354983	MUNICIPAL BOND TRUST CALIFORNIA SERIES E.
3459	IM-01	PAINEWEBBER	700976	MUNICIPAL BOND TRUST CALIFORNIA SERIES F.
3460	IM-01	PAINEWEBBER	700980	MUNICIPAL BOND TRUST CALIFORNIA SERIES G.
3461	IM-01	PAINEWEBBER	700982	MUNICIPAL BOND TRUST CALIFORNIA SERIES H.
3462	IM-01	PAINEWEBBER	702723	MUNICIPAL BOND TRUST CALIFORNIA SERIES I.
3463	IM-01	PAINEWEBBER	703639	MUNICIPAL BOND TRUST CALIFORNIA SERIES J.
3464	IM-01	PAINEWEBBER	703641	MUNICIPAL BOND TRUST CALIFORNIA SERIES K.
3465	IM-01	PAINEWEBBER	703640	MUNICIPAL BOND TRUST CALIFORNIA SERIES L.
3466	IM-01	PAINEWEBBER	706149	MUNICIPAL BOND TRUST CALIFORNIA SERIES M.
3467	IM-01	PAINEWEBBER	757633	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 1A.
3468	IM-01	PAINEWEBBER	757702	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 2A.
3469	IM-01	PAINEWEBBER	757593	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 3A.
3470	IM-01	PAINEWEBBER	771675	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 4A.
3471	IM-01	PAINEWEBBER	771676	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 5A.
3472	IM-01	PAINEWEBBER	783966	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 6A.
3473	IM-01	PAINEWEBBER	783967	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 7A.
3474	IM-01	PAINEWEBBER	783968	MUNICIPAL BOND TRUST CALIFORNIA INSURED SERIES 8A.
3475	IM-01	PAINEWEBBER	355997	MUNICIPAL BOND TRUST DISCOUNT SERIES 1.
3476	IM-01	PAINEWEBBER	357383	MUNICIPAL BOND TRUST DISCOUNT SERIES 3.
3477	IM-01	PAINEWEBBER	700977	MUNICIPAL BOND TRUST DISCOUNT SERIES 4.
3478	IM-01	PAINEWEBBER	700987	MUNICIPAL BOND TRUST DISCOUNT SERIES 5.
3479	IM-01	PAINEWEBBER	706160	MUNICIPAL BOND TRUST DISCOUNT SERIES 6.
3480	IM-01	PAINEWEBBER	313106	GOVERNMENT SECURITIES INCOME FUND EIGHTEENTH GNMA SERIES.
3481	IM-01	PAINEWEBBER	740869	MUNICIPAL BOND TRUST INSURED SERIES 2.
3482	IM-01	PAINEWEBBER	783944	MUNICIPAL BOND TRUST INSURED SERIES 43.
3483	IM-01	PAINEWEBBER	783947	MUNICIPAL BOND TRUST INSURED SERIES 44.
3484	IM-01	PAINEWEBBER	783948	MUNICIPAL BOND TRUST INSURED SERIES 45.
3485	IM-01	PAINEWEBBER	783949	MUNICIPAL BOND TRUST INSURED SERIES 46.
3486	IM-01	PAINEWEBBER	783951	MUNICIPAL BOND TRUST INSURED SERIES 47.
3487	IM-01	PAINEWEBBER	783952	MUNICIPAL BOND TRUST INSURED SERIES 48.
3488	IM-01	PAINEWEBBER	789250	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 7.
3489	IM-01	PAINEWEBBER	737282	MUNICIPAL BOND TRUST INSURED SERIES 1.
3490	IM-01	PAINEWEBBER	740820	MUNICIPAL BOND TRUST INSURED SERIES 2.
3491	IM-01	PAINEWEBBER	740821	MUNICIPAL BOND TRUST INSURED SERIES 3.
3492	IM-01	PAINEWEBBER	742680	MUNICIPAL BOND TRUST INSURED SERIES 4.
3493	IM-01	PAINEWEBBER	742681	MUNICIPAL BOND TRUST INSURED SERIES 5.
3494	IM-01	PAINEWEBBER	742682	MUNICIPAL BOND TRUST INSURED SERIES 6.
3495	IM-01	PAINEWEBBER	745253	MUNICIPAL BOND TRUST INSURED SERIES 7.
3496	IM-01	PAINEWEBBER	745254	MUNICIPAL BOND TRUST INSURED SERIES 8.
3497	IM-01	PAINEWEBBER	746632	MUNICIPAL BOND TRUST INSURED SERIES 9.
3498	IM-01	PAINEWEBBER	746633	MUNICIPAL BOND TRUST INSURED SERIES 10.
3499	IM-01	PAINEWEBBER	746634	MUNICIPAL BOND TRUST INSURED SERIES 11.
3500	IM-01	PAINEWEBBER	746636	MUNICIPAL BOND TRUST INSURED SERIES 12.
3501	IM-01	PAINEWEBBER	750042	MUNICIPAL BOND TRUST INSURED SERIES 13.
3502	IM-01	PAINEWEBBER	750034	MUNICIPAL BOND TRUST INSURED SERIES 14.
3503	IM-01	PAINEWEBBER	750035	MUNICIPAL BOND TRUST INSURED SERIES 15.
3504	IM-01	PAINEWEBBER	750010	MUNICIPAL BOND TRUST INSURED SERIES 16.
3505	IM-01	PAINEWEBBER	750009	MUNICIPAL BOND TRUST INSURED SERIES 17.
3506	IM-01	PAINEWEBBER	758325	MUNICIPAL BOND TRUST INSURED SERIES 18.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3507	IM-01	PAINEWEBBER	758324	MUNICIPAL BOND TRUST INSURED SERIES 19.
3508	IM-01	PAINEWEBBER	758459	MUNICIPAL BOND TRUST INSURED SERIES 20.
3509	IM-01	PAINEWEBBER	758326	MUNICIPAL BOND TRUST INSURED SERIES 21.
3510	IM-01	PAINEWEBBER	757993	MUNICIPAL BOND TRUST INSURED SERIES 22.
3511	IM-01	PAINEWEBBER	764152	MUNICIPAL BOND TRUST INSURED SERIES 23.
3512	IM-01	PAINEWEBBER	764148	MUNICIPAL BOND TRUST INSURED SERIES 24.
3513	IM-01	PAINEWEBBER	764147	MUNICIPAL BOND TRUST INSURED SERIES 25.
3514	IM-01	PAINEWEBBER	764150	MUNICIPAL BOND TRUST INSURED SERIES 26.
3515	IM-01	PAINEWEBBER	771848	MUNICIPAL BOND TRUST INSURED SERIES 27.
3516	IM-01	PAINEWEBBER	771852	MUNICIPAL BOND TRUST INSURED SERIES 28.
3517	IM-01	PAINEWEBBER	771885	MUNICIPAL BOND TRUST INSURED SERIES 29.
3518	IM-01	PAINEWEBBER	780055	MUNICIPAL BOND TRUST INSURED SERIES 30.
3519	IM-01	PAINEWEBBER	780154	MUNICIPAL BOND TRUST INSURED SERIES 31.
3520	IM-01	PAINEWEBBER	780057	MUNICIPAL BOND TRUST INSURED SERIES 32.
3521	IM-01	PAINEWEBBER	780153	MUNICIPAL BOND TRUST INSURED SERIES 33.
3522	IM-01	PAINEWEBBER	780056	MUNICIPAL BOND TRUST INSURED SERIES 34.
3523	IM-01	PAINEWEBBER	783930	MUNICIPAL BOND TRUST INSURED SERIES 35.
3524	IM-01	PAINEWEBBER	783932	MUNICIPAL BOND TRUST INSURED SERIES 36.
3525	IM-01	PAINEWEBBER	783934	MUNICIPAL BOND TRUST INSURED SERIES 37.
3526	IM-01	PAINEWEBBER	783936	MUNICIPAL BOND TRUST INSURED SERIES 38.
3527	IM-01	PAINEWEBBER	783937	MUNICIPAL BOND TRUST INSURED SERIES 39.
3528	IM-01	PAINEWEBBER	783939	MUNICIPAL BOND TRUST INSURED SERIES 40.
3529	IM-01	PAINEWEBBER	783940	MUNICIPAL BOND TRUST INSURED SERIES 41.
3530	IM-01	PAINEWEBBER	783942	MUNICIPAL BOND TRUST INSURED SERIES 42.
3531	IM-01	PAINEWEBBER	754993	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 5.
3532	IM-01	PAINEWEBBER	789210	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 6.
3533	IM-01	PAINEWEBBER	789252	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 8.
3534	IM-01	PAINEWEBBER	789253	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 9.
3535	IM-01	PAINEWEBBER	789255	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 10.
3536	IM-01	PAINEWEBBER	789256	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 11.
3537	IM-01	PAINEWEBBER	789258	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 12.
3538	IM-01	PAINEWEBBER	789260	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 13.
3539	IM-01	PAINEWEBBER	789262	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 14.
3540	IM-01	PAINEWEBBER	789264	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 15.
3541	IM-01	PAINEWEBBER	789265	MUNICIPAL BOND TRUST INTERMEDIATE TERM TRUST SERIES 16.
3542	IM-01	PAINEWEBBER	804755	MUNICIPAL BOND TRUST MASSACHUSETTS TRUST SERIES A1.
3543	IM-01	PAINEWEBBER	711387	MUNICIPAL BOND TRUST MULTIPLE MATURITY PROGRAM SERIES 1.
3544	IM-01	PAINEWEBBER	714906	MUNICIPAL BOND TRUST MULTIPLE MATURITY PROGRAM SERIES 2.
3545	IM-01	PAINEWEBBER	714905	MUNICIPAL BOND TRUST MULTIPLE MATURITY PROGRAM SERIES 3.
3546	IM-01	PAINEWEBBER	719535	MUNICIPAL BOND TRUST MULTIPLE MATURITY PROGRAM SERIES 4.
3547	IM-01	PAINEWEBBER	754988	MUNICIPAL BOND TRUST MULTIPLE MATURITY PROGRAM SERIES 7.
3548	IM-01	PAINEWEBBER	804757	MUNICIPAL BOND TRUST MINNESOTA TRUST SERIES A1.
3549	IM-01	PAINEWEBBER	805743	MUNICIPAL INCOME FUND FIRST MONTHLY PAYMENT SERIES.
3550	IM-01	PAINEWEBBER	311134	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 1.
3551	IM-01	PAINEWEBBER	312569	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 4.
3552	IM-01	PAINEWEBBER	320640	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 6.
3553	IM-01	PAINEWEBBER	320641	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 7.
3554	IM-01	PAINEWEBBER	711390	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 8.
3555	IM-01	PAINEWEBBER	711391	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 9.
3556	IM-01	PAINEWEBBER	711392	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 10.
3557	IM-01	PAINEWEBBER	715758	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 11.
3558	IM-01	PAINEWEBBER	715759	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 13.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3559	IM–01	PAINEWEBBER	719800	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 14.
3560	IM–01	PAINEWEBBER	721333	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 15.
3561	IM–01	PAINEWEBBER	721315	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 16.
3562	IM–01	PAINEWEBBER	721339	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 17.
3563	IM–01	PAINEWEBBER	721317	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 18.
3564	IM–01	PAINEWEBBER	721319	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 19.
3565	IM–01	PAINEWEBBER	311843	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 2.
3566	IM–01	PAINEWEBBER	721337	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 20.
3567	IM–01	PAINEWEBBER	725036	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 21.
3568	IM–01	PAINEWEBBER	725045	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 22.
3569	IM–01	PAINEWEBBER	725027	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 23.
3570	IM–01	PAINEWEBBER	725024	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 24.
3571	IM–01	PAINEWEBBER	725026	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 25.
3572	IM–01	PAINEWEBBER	725031	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 26.
3573	IM–01	PAINEWEBBER	736048	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 27.
3574	IM–01	PAINEWEBBER	735912	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 28.
3575	IM–01	PAINEWEBBER	736043	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 29.
3576	IM–01	PAINEWEBBER	312217	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 3.
3577	IM–01	PAINEWEBBER	735937	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 30.
3578	IM–01	PAINEWEBBER	735917	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 31.
3579	IM–01	PAINEWEBBER	735907	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 32.
3580	IM–01	PAINEWEBBER	735916	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 33.
3581	IM–01	PAINEWEBBER	750398	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 34.
3582	IM–01	PAINEWEBBER	750374	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 35.
3583	IM–01	PAINEWEBBER	750375	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 36.
3584	IM–01	PAINEWEBBER	750378	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 37.
3585	IM–01	PAINEWEBBER	314286	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 5.
3586	IM–01	PAINEWEBBER	715761	MUNICIPAL BOND TRUST MULTI STATE PROGRAM SERIES 12.
3587	IM–01	PAINEWEBBER	804754	MUNICIPAL BOND TRUST NEW YORK TRUST SERIES A1.
3588	IM–01	PAINEWEBBER	804756	MUNICIPAL BOND TRUST OHIO TRUST SERIES A1.
3589	IM–01	PAINEWEBBER	789222	MUNICIPAL BOND TRUST SHORT TERM TRUST SERIES 9.
3590	IM–01	PAINEWEBBER	789223	MUNICIPAL BOND TRUST SHORT TERM TRUST SERIES 10.
3591	IM–01	PAINEWEBBER	789528	MUNICIPAL BOND TRUST SHORT INTERMEDIATE TERM TRUST SERIES 1.
3592	IM–01	PAINEWEBBER	789267	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 1/NEW.
3593	IM–01	PAINEWEBBER	789268	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 2/NEW.
3594	IM–01	PAINEWEBBER	789269	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 3/NEW.
3595	IM–01	PAINEWEBBER	789220	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 4.
3596	IM–01	PAINEWEBBER	789221	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 5.
3597	IM–01	PAINEWEBBER	789246	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 6.
3598	IM–01	PAINEWEBBER	789247	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 7.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3599	IM-01	PAINEWEBBER	789248	MUNICIPAL BOND TRUST SPECIAL TERM TRUST SERIES 8.
3600	IM-01	PAINEWEBBER	789218	MUNICIPAL BOND TRUST SHORT TERM TRUST SERIES 7.
3601	IM-01	PAINEWEBBER	789219	MUNICIPAL BOND TRUST SHORT TERM TRUST SERIES 8.
3602	IM-01	PAINEWEBBER	802080	MUNICIPAL BOND TRUST TAXABLE SERIES 1.
3603	IM-01	PAINEWEBBER	790054	PAINEWEBBER PATHFINDERS TRUST SPECIAL SITUATIONS SERIES 1.
3604	IM-01	PAINEWEBBER	769804	PAINEWEBBER PATHFINDERS TRUST MUNICIPAL & GROWTH STOCK SER 1.
3605	IM-01	PAINEWEBBER	777616	PAINEWEBBER PATHFINDERS TRUST MUNICIPAL & GROWTH STOCK SER 2.
3606	IM-01	PAINEWEBBER	757449	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 1.
3607	IM-01	PAINEWEBBER	763498	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 2.
3608	IM-01	PAINEWEBBER	763504	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 3.
3609	IM-01	PAINEWEBBER	783851	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 4.
3610	IM-01	PAINEWEBBER	783852	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 5.
3611	IM-01	PAINEWEBBER	783853	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 6.
3612	IM-01	PAINEWEBBER	783854	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 7.
3613	IM-01	PAINEWEBBER	783855	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 8.
3614	IM-01	PAINEWEBBER	811872	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STOCK SER 9.
3615	IM-01	PAINEWEBBER	811873	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STK SERS 10.
3616	IM-01	PAINEWEBBER	811874	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STK SERS 11.
3617	IM-01	PAINEWEBBER	811875	PAINEWEBBER PATHFINDERS TRUST TREASURY & GROWTH STK SERS 12.
3618	IM-01	PAINEWEBBER	718866	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 1.
3619	IM-01	PAINEWEBBER	796158	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 3.
3620	IM-01	PAINEWEBBER	796159	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 4.
3621	IM-01	PAINEWEBBER	796160	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 5.
3622	IM-01	PAINEWEBBER	796161	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 6.
3623	IM-01	PAINEWEBBER	796162	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 7.
3624	IM-01	PAINEWEBBER	796163	PAINEWEBBER EQUITY TRUST GROWTH STOCK SERIES 8.
3625	IM-01	PAINEWEBBER	799672	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 3.
3626	IM-01	PAINEWEBBER	799673	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 4.
3627	IM-01	PAINEWEBBER	799674	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 5.
3628	IM-01	PAINEWEBBER	799676	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 6.
3629	IM-01	PAINEWEBBER	799680	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 7.
3630	IM-01	PAINEWEBBER	799681	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 8.
3631	IM-01	PAINEWEBBER	799682	PAINEWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 9.
3632	IM-01	PAINEWEBBER	800272	PAINEWEBBER EQUITY TRUST UTILITY SERIES 1.
3633	IM-01	PAINEWEBBER	800273	PAINEWEBBER EQUITY TRUST UTILITY SERIES 2.
3634	IM-01	PAINEWEBBER	703812	PAINEWEBBER FEDERAL GOVERNMENT TRUST GNMA SERIES 1.
3635	IM-01	PAINEWEBBER	800769	PAINEWEBBER FEDERAL GOVERNMENT TRUST TREASURY SERIES 1.
3636	IM-01	SEARS	840584	SEARS CORPORATE INVESTMENT TR MULTI CURRENCY PORTFOLIO SER 3.
3637	IM-01	SEARS	850846	SEARS EQUITY INVESTMENT TRUST PACIFIC NORTHWEST PORT SER 2.
3638	IM-01	SEARS	853103	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 10.
3639	IM-01	SEARS	882101	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 11.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3640	IM-01	SEARS	883417	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 12.
3641	IM-01	SEARS	885723	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 13.
3642	IM-01	SEARS	853096	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 5.
3643	IM-01	SEARS	853097	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 6.
3644	IM-01	SEARS	853098	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 7.
3645	IM-01	SEARS	853099	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 8.
3646	IM-01	SEARS	853101	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 9.
3647	IM-01	SEARS	832305	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 10.
3648	IM-01	SEARS	832303	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 9.
3649	IM-01	SEARS	814265	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 7.
3650	IM-01	SEARS	814266	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 8.
3651	IM-01	SEARS	862236	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 10.
3652	IM-01	SEARS	862237	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 11.
3653	IM-01	SEARS	862234	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 8.
3654	IM-01	SEARS	862235	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 9.
3655	IM-01	SEARS	809654	SEARS GOVERNMENT INVESTMENT TRUST FREDDIE MAC PORT SERIES 11.
3656	IM-01	SEARS	874476	SEARS MUNICIPAL TRUST CALIFORNIA INTERMEDIATE TERM SER 2.
3657	IM-01	SEARS	874768	SEARS MUNICIPAL TRUST CALIFORNIA PORTFOLIO SERIES 67.
3658	IM-01	SEARS	839585	SEARS MUNICIPAL TRUST DELAWARE PORTFOLIO SERIES 10.
3659	IM-01	SEARS	883485	SEARS MUNICIPAL TRUST DELAWARE PORTFOLIO SERIES 11.
3660	IM-01	SEARS	874627	SEARS MUNICIPAL TRUST DELAWARE PORTFOLIO SERIES 8.
3661	IM-01	SEARS	874628	SEARS MUNICIPAL TRUST DELAWARE PORTFOLIO SERIES 9.
3662	IM-01	SEARS	885389	SEARS MUNICIPAL TRUST DELAWARE PORTFOLIO SERIES 12.
3663	IM-01	SEARS	875299	SEARS MUNICIPAL TRUST INSD NEW YORK INTERM TERM SERIES 1.
3664	IM-01	SEARS	875294	SEARS MUNICIPAL TRUST INSD PENNSYLVANIA INTERM TERM SERIES 1.
3665	IM-01	SEARS	877423	SEARS MUNICIPAL TRUST INSURED CALIFORNIA INTERM TERM SER 3.
3666	IM-01	SEARS	885724	SEARS MUNICIPAL TRUST INSURED CALIFORNIA INTERM TERM SER 5.
3667	IM-01	SEARS	874475	SEARS MUNICIPAL TRUST INSURED CALIFORNIA INTERMEDIATE SER 1.
3668	IM-01	SEARS	878145	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 50.
3669	IM-01	SEARS	832275	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 51.
3670	IM-01	SEARS	832277	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 52.
3671	IM-01	SEARS	879915	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 53.
3672	IM-01	SEARS	880547	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 54.
3673	IM-01	SEARS	880868	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 55.
3674	IM-01	SEARS	880869	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 56.
3675	IM-01	SEARS	880870	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 57.
3676	IM-01	SEARS	882416	SEARS MUNICIPAL TRUST INSURED CALIFORNIA SERIES 58.
3677	IM-01	SEARS	878147	SEARS MUNICIPAL TRUST INSURED FLORIDA SERIES 10.
3678	IM-01	SEARS	874629	SEARS MUNICIPAL TRUST INSURED FLORIDA SERIES 7.
3679	IM-01	SEARS	874630	SEARS MUNICIPAL TRUST INSURED FLORIDA SERIES 8.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3680	IM-01	SEARS	785075	SEARS MUNICIPAL TRUST INSURED INTERMEDIATE TERM SERIES 11.
3681	IM-01	SEARS	807346	SEARS MUNICIPAL TRUST INSURED LONG TERM SERIES 36.
3682	IM-01	SEARS	873291	SEARS MUNICIPAL TRUST INSURED LONG TERM SERIES 37.
3683	IM-01	SEARS	883486	SEARS MUNICIPAL TRUST INSURED LONG TERM SERIES 43.
3684	IM-01	SEARS	884333	SEARS MUNICIPAL TRUST INSURED NEW JERSEY INTERM TERM SER 1.
3685	IM-01	SEARS	874474	SEARS MUNICIPAL TRUST INSURED NEW YORK SERIES 8/NEW.
3686	IM-01	SEARS	879916	SEARS MUNICIPAL TRUST INSURED PENNSYLVANIA SERIES 7.
3687	IM-01	SEARS	879917	SEARS MUNICIPAL TRUST INSURED PENNSYLVANIA SERIES 8.
3688	IM-01	SEARS	874634	SEARS MUNICIPAL TRUST INSURED TEXAS PORTFOLIO SERIES 9.
3689	IM-01	SEARS	872864	SEARS MUNICIPAL TRUST LONG TERM MUNICIPAL PORTFOLIO SER 110.
3690	IM-01	SEARS	885390	SEARS MUNICIPAL TRUST LONG TERM PORTFOLIO SERIES 122.
3691	IM-01	SEARS	874631	SEARS MUNICIPAL TRUST MARYLAND PORTFOLIO SERIES 15.
3692	IM-01	SEARS	874632	SEARS MUNICIPAL TRUST MARYLAND PORTFOLIO SERIES 16.
3693	IM-01	SEARS	880346	SEARS MUNICIPAL TRUST NEW MEXICO PORTFOLIO SERIES 1.
3694	IM-01	SEARS	883418	SEARS MUNICIPAL TRUST NEW MEXICO PORTFOLIO SERIES 2.
3695	IM-01	SEARS	875293	SEARS MUNICIPAL TRUST NEW YORK INTERMEDIATE TERM SERIES 1.
3696	IM-01	SEARS	885561	SEARS MUNICIPAL TRUST NEW YORK INTERMEDIATE TERM SERIES 2.
3697	IM-01	SEARS	867270	SEARS MUNICIPAL TRUST NEW YORK PORTFOLIO SERIES 37.
3698	IM-01	SEARS	875292	SEARS MUNICIPAL TRUST PENNSYLVANIA INTERMEDIATE TERM SER 1.
3699	IM-01	SEARS	878878	SEARS MUNICIPAL TRUST TENNESSEE PORTFOLIO SERIES 6.
3700	IM-01	SEARS	878880	SEARS MUNICIPAL TRUST TENNESSEE PORTFOLIO SERIES 7.
3701	IM-01	SEARS	874635	SEARS MUNICIPAL TRUST TEXAS PORTFOLIO SERIES 10.
3702	IM-01	SEARS	878877	SEARS MUNICIPAL TRUST TEXAS PORTFOLIO SERIES 12.
3703	IM-01	SEARS	878879	SEARS MUNICIPAL TRUST TEXAS PORTFOLIO SERIES 13.
3704	IM-01	SEARS	797744	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 29.
3705	IM-01	SEARS	872085	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 109.
3706	IM-01	SEARS	107930	WITTER DEAN TAX EXEMPT TRUST FIRST SERIES.
3707	IM-01	SEARS	785623	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 13.
3708	IM-01	SEARS	825013	SEARS CORPORATE INVESTMENT TRUST C D SERIES 2.
3709	IM-01	SEARS	825009	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BD PORT SER 1.
3710	IM-01	SEARS	825010	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BD PORT SER 2.
3711	IM-01	SEARS	825011	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BD PORT SER 3.
3712	IM-01	SEARS	830848	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BDS PORT SER 4.
3713	IM-01	SEARS	830849	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BDS PORT SER 5.
3714	IM-01	SEARS	830850	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BDS PORT SER 6.
3715	IM-01	SEARS	830853	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BDS PORT SER 8.
3716	IM-01	SEARS	830855	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BDS PORT SER 9.
3717	IM-01	SEARS	830768	SEARS CORPORATE INVT TRUST CANADIAN DOLLAR BONDS PORT SER 1.
3718	IM-01	SEARS	830769	SEARS CORPORATE INVT TRUST CANADIAN DOLLAR BONDS PORT SER 2.
3719	IM-01	SEARS	840532	SEARS CORPORATE INVT TRUST CANADIAN DOLLAR BONDS PORT SER 5.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3720	IM-01	SEARS	840533	SEARS CORPORATE INVT TRUST CANADIAN DOLLAR BONDS PORT SER 6.
3721	IM-01	SEARS	825012	SEARS CORPORATE INVT TRUST CERTIFICATE OF DEPOSIT PORT SER 1.
3722	IM-01	SEARS	764631	SEARS CORPORATE INVESTMENT TRUST LONG TERM PORTFOLIO SER 2.
3723	IM-01	SEARS	836168	SEARS CORPORATE INVESTMENT TRUST LONG TERM SERIES 5.
3724	IM-01	SEARS	836170	SEARS CORPORATE INVESTMENT TRUST LONG TERM PORTFOLIO SER 6.
3725	IM-01	SEARS	814264	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 6.
3726	IM-01	SEARS	814263	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 5.
3727	IM-01	SEARS	802445	SEARS FIXED INCOME INVESTMENT TRUST PAC PORTFOLIO SERIES 1.
3728	IM-01	SEARS	768682	SEARS GOVERNMENT INVT TRUST ZERO COUPON INTERM TERM SER 1.
3729	IM-01	SEARS	733968	SEARS GOVERNMENT INVT TRUST ZERO COUPON INTERM TERM SER 2.
3730	IM-01	SEARS	785628	SEARS GOVERNMENT INVT TRUST ZERO COUPON INTERM TERM SER 4.
3731	IM-01	SEARS	785629	SEARS GOVERNMENT INVT TRUST ZERO COUPON INTERM TERM SER 5.
3732	IM-01	SEARS	741806	SEARS GOVERNMENT INVESTMENT TRUST ZERO COUPON LONG TERM SER 1.
3733	IM-01	SEARS	773580	SEARS GOVERNMENT INVESTMENT TRUST ZERO COUP LONG TERM SER 2.
3734	IM-01	SEARS	785619	SEARS GOVERNMENT INVESTMENT TRUST ZERO COUPON LONG TERM SER 3.
3735	IM-01	SEARS	785630	SEARS GOVERNMENT INVESTMENT TRUST ZERO COUPON LONG TERM SER 4.
3736	IM-01	SEARS	750411	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 1.
3737	IM-01	SEARS	733773	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 2.
3738	IM-01	SEARS	733970	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 3.
3739	IM-01	SEARS	771627	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 4.
3740	IM-01	SEARS	773582	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 5.
3741	IM-01	SEARS	773584	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 6.
3742	IM-01	SEARS	773572	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 7.
3743	IM-01	SEARS	785621	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 11.
3744	IM-01	SEARS	785622	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 12.
3745	IM-01	SEARS	785624	SEARS GOVERNMENT INVT TRUST ZERO COUPON SERIAL PAYOUT SER 14.
3746	IM-01	SEARS	773575	SEARS GOVERNMENT INVT TRUST ZERO COUPON SHORT INTERM TERM SER 1.
3747	IM-01	SEARS	785625	SEARS GOVERNMENT INVT TRUST ZERO COUPON SHORT INTERM TERM SER 3.
3748	IM-01	SEARS	785626	SEARS GOVERNMENT INVT TRUST ZERO COUPON SHORT INTERM TERM SER 4.
3749	IM-01	SEARS	737307	SEARS GOVERNMENT INVESTMENT TRUST INTERM TERM PORT SERIES 1.
3750	IM-01	SEARS	737306	SEARS GOVERNMENT INVESTMENT TRUST MULTI MATURITY PROG SER 1.
3751	IM-01	SEARS	785600	SEARS GOVERNMENT INVESTMENT TRUST SHORT TERM PORT SERIES 6.
3752	IM-01	SEARS	796280	SEARS GOVERNMENT INVESTMENT TRUST SHORT TERM PORT SERS 8.
3753	IM-01	SEARS	833802	SEARS GOVERNMENT INVESTMENT TRUST U S TREASURY SERIES 4.
3754	IM-01	SEARS	833803	SEARS GOVERNMENT INVESTMENT TRUST U S TREASURY SERIES 5.
3755	IM-01	SEARS	797953	SEARS GOVERNMENT INVESTMENT TRUST FREDDIE MAC PORT SERIES 1.
3756	IM-01	SEARS	798657	SEARS GOVERNMENT INVESTMENT TRUST FREDDIE MAC PORT SERIES 4.
3757	IM-01	SEARS	718547	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 1.
3758	IM-01	SEARS	775549	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 8.
3759	IM-01	SEARS	726222	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 2.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3760	IM-01	SEARS	726226	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 3.
3761	IM-01	SEARS	726228	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 4.
3762	IM-01	SEARS	756974	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 5.
3763	IM-01	SEARS	764214	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 6.
3764	IM-01	SEARS	814325	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 16.
3765	IM-01	SEARS	814326	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 17.
3766	IM-01	SEARS	859215	SEARS CORPORATE INVT TRUST ASSET BACKED SECURITIES PORT SER 1.
3767	IM-01	SEARS	859216	SEARS CORPORATE INVT TRUST ASSET BACKED SECURITIES PORT SER 2.
3768	IM-01	SEARS	859217	SEARS CORPORATE INVT TRUST ASSET BACKED SECURITIES PORT SER 3.
3769	IM-01	SEARS	859218	SEARS CORPORATE INVT TRUST ASSET BACKED SECURITIES PORT SER 4.
3770	IM-01	SEARS	830852	SEARS CORPORATE INVT TRUST AUST & NEW ZEAL DOL BDS PORT SER 7.
3771	IM-01	SEARS	830770	SEARS CORPORATE INVT TRUST CANADIAN DOLLAR BONDS PORT SER 3.
3772	IM-01	SEARS	830771	SEARS CORPORATE INVT TRUST CANADIAN DOLLAR BONDS PORT SER 4.
3773	IM-01	SEARS	737778	SEARS CORPORATE INVESTMENT TRUST INTERM TERM PORT SER 1.
3774	IM-01	SEARS	730562	SEARS CORPORATE INVESTMENT TRUST LONG TERM PORTFOLIO SER 1.
3775	IM-01	SEARS	785632	SEARS CORPORATE INVESTMENT TRUST LONG TERM PORTFOLIO SER 3.
3776	IM-01	SEARS	785634	SEARS CORPORATE INVESTMENT TRUST LONG TERM PORTFOLIO SER 4.
3777	IM-01	SEARS	840579	SEARS CORPORATE INVESTMENT TRUST MULTI CURRENCY PORTFOLIO SER 1.
3778	IM-01	SEARS	840581	SEARS CORPORATE INVESTMENT TRUST MULTI CURRENCY PORTFOLIO SER 2.
3779	IM-01	SEARS	811811	SEARS EQUITY INVESTMENT TRUST.
3780	IM-01	SEARS	853880	SEARS EQUITY INVESTMENT TRUST CALIFORNIA BAY AREA PORT SER 1.
3781	IM-01	SEARS	854668	SEARS EQUITY INVESTMENT TRUST FLORIDA PORTFOLIO SERIES 1.
3782	IM-01	SEARS	850711	SEARS EQUITY INVESTMENT TRUST PACIFIC NORTHWEST PORT SER 1.
3783	IM-01	SEARS	823603	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 1.
3784	IM-01	SEARS	832288	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 2.
3785	IM-01	SEARS	832290	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 3.
3786	IM-01	SEARS	832292	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 4.
3787	IM-01	SEARS	832295	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 5.
3788	IM-01	SEARS	832297	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 6.
3789	IM-01	SEARS	862233	SEARS EQUITY INVT TRUST DEAN WITTER RECOMMENDED LIST SER 7.
3790	IM-01	SEARS	853093	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 2.
3791	IM-01	SEARS	853092	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 1.
3792	IM-01	SEARS	853094	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 3.
3793	IM-01	SEARS	853095	SEARS EQUITY INVESTMENT TRUST SELECTED OPPORTUNITIES SER 4.
3794	IM-01	SEARS	823599	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 1.
3795	IM-01	SEARS	823601	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 2.
3796	IM-01	SEARS	823602	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 3.
3797	IM-01	SEARS	832309	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 4.
3798	IM-01	SEARS	823604	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 5.
3799	IM-01	SEARS	823606	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 6.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3800	IM-01	SEARS	832300	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 7.
3801	IM-01	SEARS	832301	SEARS EQUITY INVESTMENT TRUST STRATEGIC SERIES 8.
3802	IM-01	SEARS	797954	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 1.
3803	IM-01	SEARS	814260	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 2.
3804	IM-01	SEARS	814261	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 3.
3805	IM-01	SEARS	814262	SEARS EQUITY INVESTMENT TRUST UTILITY STOCK SERIES 4.
3806	IM-01	SEARS	718938	SEARS GOVERNMENT INVESTMENT TRUST.
3807	IM-01	SEARS	798654	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 2.
3808	IM-01	SEARS	798655	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 3.
3809	IM-01	SEARS	798658	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 5.
3810	IM-01	SEARS	807399	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 6.
3811	IM-01	SEARS	807400	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 7.
3812	IM-01	SEARS	785617	SEARS GOVERNMENT INVESTMENT TRUST SHORT TERM PORT SERIES 7.
3813	IM-01	SEARS	807401	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 8.
3814	IM-01	SEARS	807403	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 9.
3815	IM-01	SEARS	807404	SEARS GOVERNMENT INVESTMENT TRUST FRED-DIE MAC PORT SERIES 10.
3816	IM-01	SEARS	784769	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 7.
3817	IM-01	SEARS	785587	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 9.
3818	IM-01	SEARS	785588	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 10.
3819	IM-01	SEARS	785589	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 11.
3820	IM-01	SEARS	793110	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 12.
3821	IM-01	SEARS	793114	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 13.
3822	IM-01	SEARS	793117	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 14.
3823	IM-01	SEARS	814324	SEARS GOVERNMENT INVESTMENT TRUST GNMA PORTFOLIO SERIES 15.
3824	IM-01	SEARS	825015	SEARS GOVERNMENT INVESTMENT TRUST U S TREASURY SERIES 1.
3825	IM-01	SEARS	825016	SEARS GOVERNMENT INVESTMENT TRUST U S TREASURY SERIES 2.
3826	IM-01	SEARS	825017	SEARS GOVERNMENT INVESTMENT TRUST U S TREASURY SERIES 3.
3827	IM-01	SEARS	799508	SEARS INVESTMENT TRUST.
3828	IM-01	SEARS	796413	SEARS INVESTMENT TRUST DUAL VALUE SERIES 1.
3829	IM-01	SEARS	798546	SEARS INVESTMENT TRUST DUAL VALUE SERIES 2.
3830	IM-01	SEARS	806546	SEARS INVESTMENT TRUST DUAL VALUE SERIES 3.
3831	IM-01	SEARS	807336	SEARS INVESTMENT TRUST DUAL VALUE SERIES 6.
3832	IM-01	SEARS	807337	SEARS INVESTMENT TRUST DUAL VALUE SERIES 7.
3833	IM-01	SEARS	806547	SEARS INVESTMENT TRUST DUAL VALUE SERIES 4.
3834	IM-01	SEARS	807335	SEARS INVESTMENT TRUST DUAL VALUE SERIES 5.
3835	IM-01	SEARS	716270	SEARS TAX EXEMPT INVESTMENT TRUST.
3836	IM-01	SEARS	753032	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM BONDS SER 1.
3837	IM-01	SEARS	754459	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 1.
3838	IM-01	SEARS	720494	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 1.
3839	IM-01	SEARS	808235	SEARS TAX EXEMPT INVT TRUST ALT MIN TAX PORT INTERM LONG TM SER 1.
3840	IM-01	SEARS	807228	SEARS TAX EXEMPT INVT TRUST ALT MIN TAX PORT LONG TM SRS 1.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3841	IM-01	SEARS	739592	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 1.
3842	IM-01	SEARS	732352	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 1.
3843	IM-01	SEARS	728350	SEARS TAX EXEMPT INVESTMENT TRUST DISCOUNT MUN PORT SER 2.
3844	IM-01	SEARS	808841	SEARS TAX EXEMPT INVT TRUST ALT MIN TAX PORT INTERM LONG TM SER 2.
3845	IM-01	SEARS	808934	SEARS TAX EXEMPT INVT TRUST ALT MIN TAX PORT LONG TERM SER 2.
3846	IM-01	SEARS	737790	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 2.
3847	IM-01	SEARS	728349	SEARS TAX EXEMPT INVESTMENT TRUST DISCOUNT MUN PORT SER 3.
3848	IM-01	SEARS	755478	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 3.
3849	IM-01	SEARS	740808	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 3.
3850	IM-01	SEARS	756416	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 4.
3851	IM-01	SEARS	739593	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 4.
3852	IM-01	SEARS	756934	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 5.
3853	IM-01	SEARS	756936	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 5.
3854	IM-01	SEARS	739590	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 5.
3855	IM-01	SEARS	740860	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 6.
3856	IM-01	SEARS	761074	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 7.
3857	IM-01	SEARS	785133	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 7.
3858	IM-01	SEARS	740817	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 7.
3859	IM-01	SEARS	741321	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 8.
3860	IM-01	SEARS	766553	SEARS TAX EXEMPT INVT TRUST MARYLAND MUN PORTFOLIO SERIES 8.
3861	IM-01	SEARS	755668	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 9.
3862	IM-01	SEARS	745406	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 9.
3863	IM-01	SEARS	749372	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 10.
3864	IM-01	SEARS	756419	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 10.
3865	IM-01	SEARS	740984	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 10.
3866	IM-01	SEARS	764832	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 11.
3867	IM-01	SEARS	748350	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS LONG TERM SER 11.
3868	IM-01	SEARS	764536	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 12.
3869	IM-01	SEARS	764828	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 13.
3870	IM-01	SEARS	768911	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 14.
3871	IM-01	SEARS	771549	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 15.
3872	IM-01	SEARS	749743	SEARS TAX EXEMPT INVT TRUST INSURED LONG TERM SER 16.
3873	IM-01	SEARS	783181	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 18.
3874	IM-01	SEARS	785097	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 18.
3875	IM-01	SEARS	785132	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 20.
3876	IM-01	SEARS	785134	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 21.
3877	IM-01	SEARS	785100	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 21.
3878	IM-01	SEARS	785135	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 22.
3879	IM-01	SEARS	785101	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 22.
3880	IM-01	SEARS	785138	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 23.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3881	IM-01	SEARS	797731	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 23.
3882	IM-01	SEARS	785139	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 24.
3883	IM-01	SEARS	797733	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 24.
3884	IM-01	SEARS	785140	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 25.
3885	IM-01	SEARS	785141	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 26.
3886	IM-01	SEARS	791898	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 27.
3887	IM-01	SEARS	797742	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 28.
3888	IM-01	SEARS	797745	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 30.
3889	IM-01	SEARS	797746	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 31.
3890	IM-01	SEARS	797747	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 32.
3891	IM-01	SEARS	797748	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 33.
3892	IM-01	SEARS	807343	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 34.
3893	IM-01	SEARS	807344	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 35.
3894	IM-01	SEARS	797710	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORT SER 35.
3895	IM-01	SEARS	797712	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORT SER 36.
3896	IM-01	SEARS	807275	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORT SER 38.
3897	IM-01	SEARS	807278	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORT SER 41.
3898	IM-01	SEARS	807279	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORT SER 42.
3899	IM-01	SEARS	807280	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORT SER 43.
3900	IM-01	SEARS	828577	SEARS TAX EXEMPT INVESTMENT TRUST ALABAMA MUN PORT SER 1.
3901	IM-01	SEARS	828578	SEARS TAX EXEMPT INVESTMENT TRUST ALABAMA MUN PORT SER 2.
3902	IM-01	SEARS	835177	SEARS TAX EXEMPT INVESTMENT TRUST ARKANSAS MUN PORT SER 1.
3903	IM-01	SEARS	835179	SEARS TAX EXEMPT INVESTMENT TRUST ARKANSAS MUN PORT SER 2.
3904	IM-01	SEARS	833161	SEARS TAX EXEMPT INVT TRUST ARIZONA MUNICIPAL PORTFOLIO SER 1.
3905	IM-01	SEARS	833163	SEARS TAX EXEMPT INVT TRUST ARIZONA MUNICIPAL PORTFOLIO SER 2.
3906	IM-01	SEARS	833164	SEARS TAX EXEMPT INVT TRUST ARIZONA MUNICIPAL PORTFOLIO SER 3.
3907	IM-01	SEARS	832755	SEARS TAX EXEMPT INVESTMENT TRUST CALIF INTERM TERM SER 1.
3908	IM-01	SEARS	732747	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT INTERM TERM SER 1.
3909	IM-01	SEARS	716947	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER.
3910	IM-01	SEARS	719725	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 2.
3911	IM-01	SEARS	740803	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 2.
3912	IM-01	SEARS	740318	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 2.
3913	IM-01	SEARS	719726	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 3.
3914	IM-01	SEARS	737792	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 3.
3915	IM-01	SEARS	723548	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 4.
3916	IM-01	SEARS	740810	SEARS TAX EXEMPT INVT TRUST FIN GUAR INS CO INSURED CALIF SER 4.
3917	IM-01	SEARS	783186	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 5.
3918	IM-01	SEARS	747652	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 5.
3919	IM-01	SEARS	723545	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 6.
3920	IM-01	SEARS	785131	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 6.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3921	IM-01	SEARS	750207	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INSURED CALIF SER 6.
3922	IM-01	SEARS	723544	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 7.
3923	IM-01	SEARS	751603	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 7.
3924	IM-01	SEARS	723543	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 8.
3925	IM-01	SEARS	785136	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 8.
3926	IM-01	SEARS	753993	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 8.
3927	IM-01	SEARS	730043	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 9.
3928	IM-01	SEARS	756937	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 9.
3929	IM-01	SEARS	785137	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 9.
3930	IM-01	SEARS	757074	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 10.
3931	IM-01	SEARS	791887	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 10.
3932	IM-01	SEARS	733273	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 11.
3933	IM-01	SEARS	758763	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 11.
3934	IM-01	SEARS	791888	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 11.
3935	IM-01	SEARS	733278	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 12.
3936	IM-01	SEARS	761246	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 12.
3937	IM-01	SEARS	791889	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 12.
3938	IM-01	SEARS	733270	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 13.
3939	IM-01	SEARS	763829	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 13.
3940	IM-01	SEARS	791890	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 13.
3941	IM-01	SEARS	733271	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 14.
3942	IM-01	SEARS	766423	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 14.
3943	IM-01	SEARS	793096	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 14.
3944	IM-01	SEARS	733272	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 15.
3945	IM-01	SEARS	766422	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 15.
3946	IM-01	SEARS	793099	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 15.
3947	IM-01	SEARS	745898	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 16.
3948	IM-01	SEARS	766424	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 16.
3949	IM-01	SEARS	810095	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 16.
3950	IM-01	SEARS	766885	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 17.
3951	IM-01	SEARS	810096	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 17.
3952	IM-01	SEARS	770203	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 18.
3953	IM-01	SEARS	810097	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 18.
3954	IM-01	SEARS	773644	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 19.
3955	IM-01	SEARS	815837	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 19.
3956	IM-01	SEARS	777353	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 20.
3957	IM-01	SEARS	815838	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 20.
3958	IM-01	SEARS	815839	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 21.
3959	IM-01	SEARS	761233	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 22.
3960	IM-01	SEARS	783183	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 22.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
3961	IM-01	SEARS	815940	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 22.
3962	IM-01	SEARS	764363	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 23.
3963	IM-01	SEARS	785109	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 23.
3964	IM-01	SEARS	815941	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 23.
3965	IM-01	SEARS	766425	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 24.
3966	IM-01	SEARS	785110	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 24.
3967	IM-01	SEARS	815942	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 24.
3968	IM-01	SEARS	766426	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 25.
3969	IM-01	SEARS	785111	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 25.
3970	IM-01	SEARS	832281	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 25.
3971	IM-01	SEARS	767010	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 26.
3972	IM-01	SEARS	785112	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 26.
3973	IM-01	SEARS	832283	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 26.
3974	IM-01	SEARS	770202	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 27.
3975	IM-01	SEARS	785113	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 27.
3976	IM-01	SEARS	832285	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 27.
3977	IM-01	SEARS	777348	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 28.
3978	IM-01	SEARS	785114	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 28.
3979	IM-01	SEARS	779104	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 29.
3980	IM-01	SEARS	785115	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 29.
3981	IM-01	SEARS	832287	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORT INTERM LONG TERM SER 29.
3982	IM-01	SEARS	783180	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 30.
3983	IM-01	SEARS	815943	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 30.
3984	IM-01	SEARS	785102	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 31.
3985	IM-01	SEARS	815944	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 31.
3986	IM-01	SEARS	785103	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 32.
3987	IM-01	SEARS	815945	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 32.
3988	IM-01	SEARS	785104	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 33.
3989	IM-01	SEARS	815946	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 33.
3990	IM-01	SEARS	785105	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 34.
3991	IM-01	SEARS	815947	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 34.
3992	IM-01	SEARS	785106	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 35.
3993	IM-01	SEARS	815948	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 35.
3994	IM-01	SEARS	785107	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 36.
3995	IM-01	SEARS	815949	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 36.
3996	IM-01	SEARS	785108	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 37.
3997	IM-01	SEARS	815950	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 37.
3998	IM-01	SEARS	791899	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 38.
3999	IM-01	SEARS	815951	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 38.
4000	IM-01	SEARS	815952	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 39.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4001	IM-01	SEARS	832260	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 39.
4002	IM-01	SEARS	815953	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 40.
4003	IM-01	SEARS	832261	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 40.
4004	IM-01	SEARS	815954	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 41.
4005	IM-01	SEARS	832262	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 41.
4006	IM-01	SEARS	815955	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 42.
4007	IM-01	SEARS	832263	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 42.
4008	IM-01	SEARS	815956	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 43.
4009	IM-01	SEARS	815957	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 44.
4010	IM-01	SEARS	815958	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 45.
4011	IM-01	SEARS	815959	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 46.
4012	IM-01	SEARS	832242	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 47.
4013	IM-01	SEARS	832243	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 48.
4014	IM-01	SEARS	832245	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 49.
4015	IM-01	SEARS	832247	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 50.
4016	IM-01	SEARS	832248	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 51.
4017	IM-01	SEARS	832249	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 52.
4018	IM-01	SEARS	832250	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 53.
4019	IM-01	SEARS	832251	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 54.
4020	IM-01	SEARS	832252	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 55.
4021	IM-01	SEARS	832254	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 56.
4022	IM-01	SEARS	832255	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 57.
4023	IM-01	SEARS	832256	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 58.
4024	IM-01	SEARS	832258	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORT SER 59.
4025	IM-01	SEARS	832259	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 60.
4026	IM-01	SEARS	854275	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 61.
4027	IM-01	SEARS	854276	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 62.
4028	IM-01	SEARS	854277	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 63.
4029	IM-01	SEARS	854278	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 64.
4030	IM-01	SEARS	854279	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 65.
4031	IM-01	SEARS	854280	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 66.
4032	IM-01	SEARS	854281	SEARS TAX EXEMPT INVESTMENT TRUST CALIFORNIA MUN PORT SER 67.
4033	IM-01	SEARS	840903	SEARS TAX EXEMPT INVESTMENT TRUST INSURED FLORIDA SER 1.
4034	IM-01	SEARS	819907	SEARS TAX EXEMPT INVESTMENT TRUST FLORIDA MUNIC PORT SER 1.
4035	IM-01	SEARS	819908	SEARS TAX EXEMPT INVESTMENT TRUST FLORIDA MUNIC PORT SER 2.
4036	IM-01	SEARS	840905	SEARS TAX EXEMPT INVESTMENT TRUST INSURED FLORIDA SER 2.
4037	IM-01	SEARS	819909	SEARS TAX EXEMPT INVESTMENT TRUST FLORIDA MUNIC PORT SER 3.
4038	IM-01	SEARS	840906	SEARS TAX EXEMPT INVESTMENT TRUST INSURED FLORIDA SER 3.
4039	IM-01	SEARS	826559	SEARS TAX EXEMPT INVESTMENT TRUST FLORIDA MUNIC PORT SER 4.
4040	IM-01	SEARS	840908	SEARS TAX EXEMPT INVESTMENT TRUST INSURED FLORIDA SER 4.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4041	IM-01	SEARS	828536	SEARS TAX EXEMPT INVESTMENT TRUST GEORGIA MUN PORT SERIES 1.
4042	IM-01	SEARS	828537	SEARS TAX EXEMPT INVESTMENT TRUST GEORGIA MUN PORT SERIES 2.
4043	IM-01	SEARS	715804	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 1.
4044	IM-01	SEARS	716881	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 2.
4045	IM-01	SEARS	716889	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 3.
4046	IM-01	SEARS	716887	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 4.
4047	IM-01	SEARS	719718	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 5.
4048	IM-01	SEARS	719728	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 6.
4049	IM-01	SEARS	719724	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 7.
4050	IM-01	SEARS	721857	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 8.
4051	IM-01	SEARS	721860	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 9.
4052	IM-01	SEARS	721861	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 10.
4053	IM-01	SEARS	726319	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 11.
4054	IM-01	SEARS	726320	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 12.
4055	IM-01	SEARS	726321	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 13.
4056	IM-01	SEARS	726306	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 14.
4057	IM-01	SEARS	731279	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 15.
4058	IM-01	SEARS	731278	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 16.
4059	IM-01	SEARS	731280	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 17.
4060	IM-01	SEARS	731281	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 18.
4061	IM-01	SEARS	731282	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 19.
4062	IM-01	SEARS	741298	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 20.
4063	IM-01	SEARS	741319	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 21.
4064	IM-01	SEARS	741323	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 22.
4065	IM-01	SEARS	744733	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 23.
4066	IM-01	SEARS	745414	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 24.
4067	IM-01	SEARS	746861	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 25.
4068	IM-01	SEARS	747325	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 26.
4069	IM-01	SEARS	747654	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 27.
4070	IM-01	SEARS	748229	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 28.
4071	IM-01	SEARS	752370	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 31.
4072	IM-01	SEARS	753925	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 32.
4073	IM-01	SEARS	764771	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 40.
4074	IM-01	SEARS	764770	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 41.
4075	IM-01	SEARS	765745	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 42.
4076	IM-01	SEARS	766876	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 43.
4077	IM-01	SEARS	768664	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 44.
4078	IM-01	SEARS	770463	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 45.
4079	IM-01	SEARS	770464	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 46.
4080	IM-01	SEARS	772035	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 47.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4081	IM-01	SEARS	773643	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 48.
4082	IM-01	SEARS	775978	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 49.
4083	IM-01	SEARS	778976	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 50.
4084	IM-01	SEARS	780418	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 51.
4085	IM-01	SEARS	783162	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 52.
4086	IM-01	SEARS	783836	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 53.
4087	IM-01	SEARS	785116	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 54.
4088	IM-01	SEARS	785117	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 55.
4089	IM-01	SEARS	785120	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 56.
4090	IM-01	SEARS	785119	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 57.
4091	IM-01	SEARS	785121	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 58.
4092	IM-01	SEARS	785122	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 59.
4093	IM-01	SEARS	791893	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 60.
4094	IM-01	SEARS	791894	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 61.
4095	IM-01	SEARS	791895	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 62.
4096	IM-01	SEARS	791896	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 63.
4097	IM-01	SEARS	791897	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 64.
4098	IM-01	SEARS	797714	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 65.
4099	IM-01	SEARS	797716	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 66.
4100	IM-01	SEARS	797717	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 67.
4101	IM-01	SEARS	797718	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 68.
4102	IM-01	SEARS	797719	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 69.
4103	IM-01	SEARS	807261	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 70.
4104	IM-01	SEARS	807262	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 71.
4105	IM-01	SEARS	807263	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 72.
4106	IM-01	SEARS	807264	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 73.
4107	IM-01	SEARS	807265	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 74.
4108	IM-01	SEARS	807266	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 75.
4109	IM-01	SEARS	807267	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 76.
4110	IM-01	SEARS	807268	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 77.
4111	IM-01	SEARS	807269	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 78.
4112	IM-01	SEARS	807271	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 79.
4113	IM-01	SEARS	807272	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 80.
4114	IM-01	SEARS	843692	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 81.
4115	IM-01	SEARS	843693	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 82.
4116	IM-01	SEARS	843694	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 83.
4117	IM-01	SEARS	843695	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 84.
4118	IM-01	SEARS	843697	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 85.
4119	IM-01	SEARS	843698	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 86.
4120	IM-01	SEARS	843699	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 87.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4121	IM-01	SEARS	843701	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 88.
4122	IM-01	SEARS	843702	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 89.
4123	IM-01	SEARS	843704	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 90.
4124	IM-01	SEARS	843706	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 91.
4125	IM-01	SEARS	843708	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 92.
4126	IM-01	SEARS	843709	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 93.
4127	IM-01	SEARS	854482	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 94.
4128	IM-01	SEARS	854484	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 95.
4129	IM-01	SEARS	854485	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 96.
4130	IM-01	SEARS	854486	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 97.
4131	IM-01	SEARS	854487	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 98.
4132	IM-01	SEARS	854488	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 99.
4133	IM-01	SEARS	854489	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 100.
4134	IM-01	SEARS	854490	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 101.
4135	IM-01	SEARS	854491	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 102.
4136	IM-01	SEARS	854492	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 103.
4137	IM-01	SEARS	854493	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 104.
4138	IM-01	SEARS	854494	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 105.
4139	IM-01	SEARS	854495	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 106.
4140	IM-01	SEARS	854496	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 107.
4141	IM-01	SEARS	854497	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 108.
4142	IM-01	SEARS	828585	SEARS TAX EXEMPT INVESTMENT TRUST COLORADO MUN PORT SER 1.
4143	IM-01	SEARS	828586	SEARS TAX EXEMPT INVESTMENT TRUST COLORADO MUN PORT SER 2.
4144	IM-01	SEARS	838546	SEARS TAX EXEMPT INVESTMENT TRUST CONNECTICUT MUN PORT SER 1.
4145	IM-01	SEARS	839576	SEARS TAX EXEMPT INVESTMENT TRUST DELAWARE MUN PORT SER 1.
4146	IM-01	SEARS	839577	SEARS TAX EXEMPT INVESTMENT TRUST DELAWARE MUN PORT SER 2.
4147	IM-01	SEARS	839578	SEARS TAX EXEMPT INVESTMENT TRUST DELAWARE MUN PORT SER 3.
4148	IM-01	SEARS	839579	SEARS TAX EXEMPT INVESTMENT TRUST DELAWARE MUN PORT SER 4.
4149	IM-01	SEARS	839580	SEARS TAX EXEMPT INVESTMENT TRUST DELAWARE MUN PORT SER 5.
4150	IM-01	SEARS	839581	SEARS TAX EXEMPT INVESTMENT TRUST DELAWARE MUN PORT SER 6.
4151	IM-01	SEARS	839582	SEARS TAX EXEMPT INVESTMENT TRUST DELAWARE MUN PORT SER 7.
4152	IM-01	SEARS	836198	SEARS TAX EXEMPT INVESTMENT TRUST HAWAII MUN PORT SER 1.
4153	IM-01	SEARS	836200	SEARS TAX EXEMPT INVESTMENT TRUST HAWAII MUN PORT SER 2.
4154	IM-01	SEARS	836201	SEARS TAX EXEMPT INVESTMENT TRUST HAWAII MUN PORT SER 3.
4155	IM-01	SEARS	836202	SEARS TAX EXEMPT INVESTMENT TRUST HAWAII MUN PORT SER 4.
4156	IM-01	SEARS	836203	SEARS TAX EXEMPT INVESTMENT TRUST HAWAII MUN PORT SER 5.
4157	IM-01	SEARS	839356	SEARS TAX EXEMPT INVESTMENT TRUST IDAHO MUN PORT SER 1.
4158	IM-01	SEARS	844080	SEARS TAX EXEMPT INVESTMENT TRUST KANSAS MUN PORT SER 1.
4159	IM-01	SEARS	841136	SEARS TAX EXEMPT INVESTMENT TRUST KENTUCKY MUN PORT SER 1.
4160	IM-01	SEARS	841137	SEARS TAX EXEMPT INVESTMENT TRUST KENTUCKY MUN PORT SER 2.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4161	IM-01	SEARS	836180	SEARS TAX EXEMPT INVESTMENT TRUST LOUISIANA MUN PORT SER 1.
4162	IM-01	SEARS	766510	SEARS TAX EXEMPT INVESTMENT TRUST MASS MUN PORT SER 5.
4163	IM-01	SEARS	766511	SEARS TAX EXEMPT INVESTMENT TRUST MASS MUN PORT SER 6.
4164	IM-01	SEARS	785143	SEARS TAX EXEMPT INVESTMENT TRUST MASS MUN PORT SER 7.
4165	IM-01	SEARS	786142	SEARS TAX EXEMPT INVT TRUST MARYLAND MUN PORTFOLIO SERIES 10.
4166	IM-01	SEARS	825627	SEARS TAX EXEMPT INVESTMENT TRUST MARYLAND MUNIC PORT SER 11.
4167	IM-01	SEARS	825628	SEARS TAX EXEMPT INVESTMENT TRUST MARYLAND MUNIC PORT SER 12.
4168	IM-01	SEARS	825630	SEARS TAX EXEMPT INVESTMENT TRUST MARYLAND MUNIC PORT SER 13.
4169	IM-01	SEARS	829899	SEARS TAX EXEMPT INVESTMENT TRUST MICHIGAN MUN PORT SERIES 1.
4170	IM-01	SEARS	829948	SEARS TAX EXEMPT INVESTMENT TRUST MICHIGAN MUN PORT SERIES 2.
4171	IM-01	SEARS	829950	SEARS TAX EXEMPT INVESTMENT TRUST MICHIGAN MUN PORT SERIES 3.
4172	IM-01	SEARS	829951	SEARS TAX EXEMPT INVESTMENT TRUST MICHIGAN MUN PORT SERIES 4.
4173	IM-01	SEARS	829952	SEARS TAX EXEMPT INVESTMENT TRUST MICHIGAN MUN PORT SERIES 5.
4174	IM-01	SEARS	837126	SEARS TAX EXEMPT INVESTMENT TRUST MICHIGAN MUN PORT SERIES 7.
4175	IM-01	SEARS	763533	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 8.
4176	IM-01	SEARS	753891	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 8.
4177	IM-01	SEARS	757704	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 11.
4178	IM-01	SEARS	759459	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 12.
4179	IM-01	SEARS	760577	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 13.
4180	IM-01	SEARS	761243	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 14.
4181	IM-01	SEARS	828559	SEARS TAX EXEMPT INVESTMENT TRUST MINNESOTA MUN PORT SER 1.
4182	IM-01	SEARS	841573	SEARS TAX EXEMPT INVESTMENT TRUST MISSOURI MUN PORT SER 1.
4183	IM-01	SEARS	839373	SEARS TAX EXEMPT INVESTMENT TRUST MISSISSIPPI MUN PORT SER 1.
4184	IM-01	SEARS	740818	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 6.
4185	IM-01	SEARS	745410	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 8.
4186	IM-01	SEARS	751212	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 11.
4187	IM-01	SEARS	756088	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 12.
4188	IM-01	SEARS	756975	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 13.
4189	IM-01	SEARS	760501	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 14.
4190	IM-01	SEARS	835190	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 1.
4191	IM-01	SEARS	835191	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 2.
4192	IM-01	SEARS	835192	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 3.
4193	IM-01	SEARS	835193	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 4.
4194	IM-01	SEARS	835194	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 5.
4195	IM-01	SEARS	835195	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 6.
4196	IM-01	SEARS	835196	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 7.
4197	IM-01	SEARS	835197	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 8.
4198	IM-01	SEARS	835199	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORT SER 10.
4199	IM-01	SEARS	840577	SEARS TAX EXEMPT INVESTMENT TRUST NEBRASKA MUN PORT SER 1.
4200	IM-01	SEARS	840576	SEARS TAX EXEMPT INVESTMENT TRUST NEBRASKA MUN PORT SER 2.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4201	IM-01	SEARS	835601	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW JERSEY SER 1.
4202	IM-01	SEARS	835602	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW JERSEY SER 2.
4203	IM-01	SEARS	835603	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW JERSEY SER 3.
4204	IM-01	SEARS	835604	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW JERSEY SER 4.
4205	IM-01	SEARS	835605	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW JERSEY SER 5.
4206	IM-01	SEARS	835606	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW JERSEY SER 6.
4207	IM-01	SEARS	835607	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW JERSEY SER 7.
4208	IM-01	SEARS	766558	SEARS TAX EXEMPT INVT TRUST NEW JERSEY MUN PORTFOLIO SERIES 8.
4209	IM-01	SEARS	785144	SEARS TAX EXEMPT INVT TRUST NEW JERSEY MUN PORTFOLIO SERIES 9.
4210	IM-01	SEARS	825614	SEARS TAX EXEMPT INVESTMENT TRUST NEW JERSEY MUNIC PORTFOLIO SER 10.
4211	IM-01	SEARS	825615	SEARS TAX EXEMPT INVESTMENT TRUST NEW JERSEY MUNIC PORTFOLIO SER 11.
4212	IM-01	SEARS	819910	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK INTERM LG TERM SER 1.
4213	IM-01	SEARS	739591	SEARS TAX EXEMPT INVT TRUST INSURED NEW YORK MUN PORTFOLIO SER 1.
4214	IM-01	SEARS	819911	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK INTERM LG TERM SER 2.
4215	IM-01	SEARS	780417	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW YORK SER 2.
4216	IM-01	SEARS	785313	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW YORK SER 3.
4217	IM-01	SEARS	785314	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW YORK SER 4.
4218	IM-01	SEARS	767111	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 15.
4219	IM-01	SEARS	773845	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 16.
4220	IM-01	SEARS	777351	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SERIES 17.
4221	IM-01	SEARS	780420	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 18.
4222	IM-01	SEARS	785145	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 19.
4223	IM-01	SEARS	785148	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 20.
4224	IM-01	SEARS	825257	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 21.
4225	IM-01	SEARS	825258	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 22.
4226	IM-01	SEARS	825259	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 23.
4227	IM-01	SEARS	825260	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 24.
4228	IM-01	SEARS	825261	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 25.
4229	IM-01	SEARS	825262	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 26.
4230	IM-01	SEARS	832270	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 27.
4231	IM-01	SEARS	832272	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 28.
4232	IM-01	SEARS	832274	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 29.
4233	IM-01	SEARS	832276	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 30.
4234	IM-01	SEARS	832278	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 31.
4235	IM-01	SEARS	832279	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 32.
4236	IM-01	SEARS	832280	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 33.
4237	IM-01	SEARS	832282	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 34.
4238	IM-01	SEARS	832284	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 35.
4239	IM-01	SEARS	867268	SEARS TAX EXEMPT INVT TRUST NEW YORK MUN PORTFOLIO SER 36.
4240	IM-01	SEARS	828567	SEARS TAX EXEMPT INVESTMENT TRUST OHIO MUNICIPAL PORTFOLIO SER 1.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4241	IM-01	SEARS	828568	SEARS TAX EXEMPT INVESTMENT TRUST OHIO MUNICIPAL PORTFOLIO SER 2.
4242	IM-01	SEARS	828569	SEARS TAX EXEMPT INVESTMENT TRUST OHIO MUNICIPAL PORTFOLIO SER 3.
4243	IM-01	SEARS	828570	SEARS TAX EXEMPT INVESTMENT TRUST OHIO MUNICIPAL PORTFOLIO SER 4.
4244	IM-01	SEARS	828572	SEARS TAX EXEMPT INVESTMENT TRUST OHIO MUNICIPAL PORTFOLIO SER 5.
4245	IM-01	SEARS	835202	SEARS TAX EXEMPT INVESTMENT TRUST OKLAHOMA MUN PORTFOLIO SER 1.
4246	IM-01	SEARS	835203	SEARS TAX EXEMPT INVESTMENT TRUST OKLAHOMA MUN PORTFOLIO SER 2.
4247	IM-01	SEARS	838476	SEARS TAX EXEMPT INVESTMENT TRUST OREGON MUN PORTFOLIO SER 2.
4248	IM-01	SEARS	838477	SEARS TAX EXEMPT INVESTMENT TRUST OREGON MUN PORTFOLIO SER 3.
4249	IM-01	SEARS	840948	SEARS TAX EXEMPT INVESTMENT TRUST INSURED PENN SER 1.
4250	IM-01	SEARS	840949	SEARS TAX EXEMPT INVESTMENT TRUST INSURED PENN SER 2.
4251	IM-01	SEARS	840950	SEARS TAX EXEMPT INVESTMENT TRUST INSURED PENN SER 3.
4252	IM-01	SEARS	840963	SEARS TAX EXEMPT INVESTMENT TRUST INSURED PENN SER 4.
4253	IM-01	SEARS	766552	SEARS TAX EXEMPT INVT TRUST PENNSYLVANIA MUN PORTFOLIO SER 8.
4254	IM-01	SEARS	766560	SEARS TAX EXEMPT INVT TRUST PENNSYLVANIA MUN PORTFOLIO SER 9.
4255	IM-01	SEARS	785316	SEARS TAX EXEMPT INVT TRUST PENNSYLVANIA MUN PORTFOLIO SER 10.
4256	IM-01	SEARS	825639	SEARS TAX EXEMPT INVESTMENT TRUST PENNSYLVANIA MUN PORTFOLIO SER 11.
4257	IM-01	SEARS	825640	SEARS TAX EXEMPT INVESTMENT TRUST PENNSYLVANIA MUN PORTFOLIO SER 12.
4258	IM-01	SEARS	825652	SEARS TAX EXEMPT INVESTMENT TRUST PENNSYLVANIA MUN PORTFOLIO SER 13.
4259	IM-01	SEARS	839563	SEARS TAX EXEMPT INVT TRUST PUERTO RICO MUN PORTFOLIO SER 1.
4260	IM-01	SEARS	846355	SEARS TAX EXEMPT INVESTMENT TRUST RHODE ISLAND MUN PORTFOLIO SER 1.
4261	IM-01	SEARS	838492	SEARS TAX EXEMPT INVESTMENT TRUST SOUTH CAROLINA MUN PORTFOLIO SER 1.
4262	IM-01	SEARS	838493	SEARS TAX EXEMPT INVESTMENT TRUST SOUTH CAROLINA MUN PORTFOLIO SER 2.
4263	IM-01	SEARS	853170	SEARS TAX EXEMPT INVESTMENT TRUST TENNESSEE MUN PORTFOLIO SER 1.
4264	IM-01	SEARS	853171	SEARS TAX EXEMPT INVESTMENT TRUST TENNESSEE MUN PORTFOLIO SER 2.
4265	IM-01	SEARS	853172	SEARS TAX EXEMPT INVESTMENT TRUST TENNESSEE MUN PORTFOLIO SER 3.
4266	IM-01	SEARS	853173	SEARS TAX EXEMPT INVESTMENT TRUST TENNESSEE MUN PORTFOLIO SER 4.
4267	IM-01	SEARS	819904	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 1.
4268	IM-01	SEARS	819905	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 2.
4269	IM-01	SEARS	819906	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 3.
4270	IM-01	SEARS	826541	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 4.
4271	IM-01	SEARS	826542	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 5.
4272	IM-01	SEARS	826543	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 6.
4273	IM-01	SEARS	826544	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 7.
4274	IM-01	SEARS	766554	SEARS TAX EXEMPT INVT TRUST VIRGINIA MUN PORTFOLIO SERIES 9.
4275	IM-01	SEARS	825606	SEARS TAX EXEMPT INVESTMENT TRUST VIRGINIA MUNIC PORTFOLIO SER 12.
4276	IM-01	SEARS	825607	SEARS TAX EXEMPT INVESTMENT TRUST VIRGINIA MUNIC PORTFOLIO SER 13.
4277	IM-01	SEARS	825608	SEARS TAX EXEMPT INVESTMENT TRUST VIRGINIA MUNIC PORTFOLIO SER 14.
4278	IM-01	SEARS	840924	SEARS TAX EXEMPT INVESTMENT TRUST VERMONT MUN PORTFOLIO SER 1.
4279	IM-01	SEARS	840925	SEARS TAX EXEMPT INVESTMENT TRUST VERMONT MUN PORTFOLIO SER 2.
4280	IM-01	SEARS	840926	SEARS TAX EXEMPT INVESTMENT TRUST VERMONT MUN PORTFOLIO SER 3.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4281	IM-01	SEARS	838528	SEARS TAX EXEMPT INVESTMENT TRUST WASHINGTON MUN PORTFOLIO SER 1.
4282	IM-01	SEARS	741318	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 2.
4283	IM-01	SEARS	722418	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 3.
4284	IM-01	SEARS	835180	SEARS TAX EXEMPT INVESTMENT TRUST ARKANSAS MUN PORTFOLIO SER 3.
4285	IM-01	SEARS	835181	SEARS TAX EXEMPT INVESTMENT TRUST ARKANSAS MUN PORTFOLIO SER 4.
4286	IM-01	SEARS	828554	SEARS TAX EXEMPT INVESTMENT TRUST GEORGIA MUN PORTFOLIO SERIES 4.
4287	IM-01	SEARS	739278	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 4.
4288	IM-01	SEARS	748940	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 4.
4289	IM-01	SEARS	840582	SEARS TAX EXEMPT INVESTMENT TRUST NEBRASKA MUN PORTFOLIO SER 4.
4290	IM-01	SEARS	835205	SEARS TAX EXEMPT INVESTMENT TRUST OKLAHOMA MUN PORTFOLIO SER 4.
4291	IM-01	SEARS	838478	SEARS TAX EXEMPT INVESTMENT TRUST OREGON MUN PORTFOLIO SER 4.
4292	IM-01	SEARS	833165	SEARS TAX EXEMPT INVT TRUST ARIZONA MUNICIPAL PORTFOLIO SER 4.
4293	IM-01	SEARS	741322	SEARS TAX EXEMPT INVT TRUST FINL GUA INS CO INS CALIF SER 4.
4294	IM-01	SEARS	723547	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORTFOLIO SER 5.
4295	IM-01	SEARS	826560	SEARS TAX EXEMPT INVESTMENT TRUST FLORIDA MUNIC PORTFOLIO SER 5.
4296	IM-01	SEARS	840909	SEARS TAX EXEMPT INVESTMENT TRUST INSURED FLORIDA SER 5.
4297	IM-01	SEARS	845950	SEARS TAX EXEMPT INVESTMENT TRUST INSURED NEW YORK SER 5.
4298	IM-01	SEARS	840964	SEARS TAX EXEMPT INVESTMENT TRUST INSURED PENN SER 5.
4299	IM-01	SEARS	739895	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 5.
4300	IM-01	SEARS	750133	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 5.
4301	IM-01	SEARS	838479	SEARS TAX EXEMPT INVESTMENT TRUST OREGON MUN PORTFOLIO SER 5.
4302	IM-01	SEARS	726229	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 5.
4303	IM-01	SEARS	833167	SEARS TAX EXEMPT INVT TRUST ARIZONA MUNICIPAL PORTFOLIO SER 5.
4304	IM-01	SEARS	761036	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 5.
4305	IM-01	SEARS	765215	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 5.
4306	IM-01	SEARS	836204	SEARS TAX EXEMPT INVESTMENT TRUST HAWAII MUN PORTFOLIO SER 6.
4307	IM-01	SEARS	840911	SEARS TAX EXEMPT INVESTMENT TRUST INSURED FLORIDA SER 6.
4308	IM-01	SEARS	758069	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 6.
4309	IM-01	SEARS	840965	SEARS TAX EXEMPT INVESTMENT TRUST INSURED PENN SER 6.
4310	IM-01	SEARS	829953	SEARS TAX EXEMPT INVESTMENT TRUST MICHIGAN MUN PORTFOLIO SERIES 6.
4311	IM-01	SEARS	751214	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 6.
4312	IM-01	SEARS	828573	SEARS TAX EXEMPT INVESTMENT TRUST OHIO MUNICIPAL PORTFOLIO SER 6.
4313	IM-01	SEARS	761027	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 6.
4314	IM-01	SEARS	764911	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 6.
4315	IM-01	SEARS	836205	SEARS TAX EXEMPT INVESTMENT TRUST HAWAII MUN PORTFOLIO SER 7.
4316	IM-01	SEARS	742337	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 7.
4317	IM-01	SEARS	752760	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 7.
4318	IM-01	SEARS	766557	SEARS TAX EXEMPT INVT TRUST NEW JERSEY MUN PORTFOLIO SERIES 7.
4319	IM-01	SEARS	766877	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 7.
4320	IM-01	SEARS	825658	SEARS TAX EXEMPT INVESTMENT TRUST MASSACHUSETTS MUN PORTFOLIO SER 8.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4321	IM-01	SEARS	758423	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 8.
4322	IM-01	SEARS	826546	SEARS TAX EXEMPT INVESTMENT TRUST TEXAS MUNICIPAL PORTFOLIO SER 8.
4323	IM-01	SEARS	771814	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 8.
4324	IM-01	SEARS	766556	SEARS TAX EXEMPT INVT TRUST VIRGINIA MUN PORTFOLIO SERIES 8.
4325	IM-01	SEARS	825659	SEARS TAX EXEMPT INVESTMENT TRUST MASSACHUSETTS MUN PORTFOLIO SER 9.
4326	IM-01	SEARS	749102	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 9.
4327	IM-01	SEARS	765755	SEARS TAX EXEMPT INVT TRUST INSURED INTERMEDIATE TERM SERIES 9.
4328	IM-01	SEARS	771813	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 9.
4329	IM-01	SEARS	766559	SEARS TAX EXEMPT INVT TRUST MARYLAND MUN PORTFOLIO SERIES 9.
4330	IM-01	SEARS	835198	SEARS TAX EXEMPT INVT TRUST NORTH CAROLINA MUN PORTFOLIO SER 9.
4331	IM-01	SEARS	773424	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 9.
4332	IM-01	SEARS	730053	SEARS TAX EXEMPT INVESTMENT TRUST CALIF MUN PORTFOLIO SER 10.
4333	IM-01	SEARS	768908	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 10.
4334	IM-01	SEARS	775361	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 10.
4335	IM-01	SEARS	785316	SEARS TAX EXEMPT INVT TRUST VIRGINIA MUN PORTFOLIO SERIES 10.
4336	IM-01	SEARS	825605	SEARS TAX EXEMPT INVESTMENT TRUST VIRGINIA MUNIC PORTFOLIO SER 11.
4337	IM-01	SEARS	768910	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 11.
4338	IM-01	SEARS	825617	SEARS TAX EXEMPT INVESTMENT TRUST NEW JERSEY MUNIC PORTFOLIO SER 12.
4339	IM-01	SEARS	771548	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 12.
4340	IM-01	SEARS	784832	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 12.
4341	IM-01	SEARS	825618	SEARS TAX EXEMPT INVESTMENT TRUST NEW JERSEY MUNIC PORTFOLIO SER 13.
4342	IM-01	SEARS	766507	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 13.
4343	IM-01	SEARS	769415	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 13.
4344	IM-01	SEARS	780424	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 13.
4345	IM-01	SEARS	785049	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 13.
4346	IM-01	SEARS	825653	SEARS TAX EXEMPT INVESTMENT TRUST PENNSYLVANIA MUN PORTFOLIO SER 14.
4347	IM-01	SEARS	825631	SEARS TAX EXEMPT INVESTMENT TRUST MARYLAND MUNIC PORTFOLIO SER 14.
4348	IM-01	SEARS	766506	SEARS TAX EXEMPT INVESTMENT TRUST NEW YORK MUN PORTFOLIO SER 14.
4349	IM-01	SEARS	769459	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 14.
4350	IM-01	SEARS	785055	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 14.
4351	IM-01	SEARS	785050	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 14.
4352	IM-01	SEARS	825632	SEARS TAX EXEMPT INVESTMENT TRUST MARYLAND MUNIC PORTFOLIO SER 15.
4353	IM-01	SEARS	773351	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 15.
4354	IM-01	SEARS	825609	SEARS TAX EXEMPT INVESTMENT TRUST VIRGINIA MUNIC PORTFOLIO SER 15.
4355	IM-01	SEARS	777914	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 15.
4356	IM-01	SEARS	785057	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 15.
4357	IM-01	SEARS	765214	SEARS TAX EXEMPT INVT TRUST INTERM TERM MUN PORTFOLIO SER 15.
4358	IM-01	SEARS	785051	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 15.
4359	IM-01	SEARS	775977	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 16.
4360	IM-01	SEARS	825610	SEARS TAX EXEMPT INVESTMENT TRUST VIRGINIA MUNIC PORTFOLIO SER 16.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4361	IM-01	SEARS	779939	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 16.
4362	IM-01	SEARS	785058	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 16.
4363	IM-01	SEARS	764917	SEARS TAX EXEMPT INVT TRUST INTERM TERM MUN PORTFOLIO SER 16.
4364	IM-01	SEARS	785052	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 16.
4365	IM-01	SEARS	777902	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 17.
4366	IM-01	SEARS	777901	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 17.
4367	IM-01	SEARS	783835	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 17.
4368	IM-01	SEARS	785056	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 17.
4369	IM-01	SEARS	768683	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 17.
4370	IM-01	SEARS	785053	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 17.
4371	IM-01	SEARS	780419	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 18.
4372	IM-01	SEARS	785059	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 18.
4373	IM-01	SEARS	769460	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 18.
4374	IM-01	SEARS	785054	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 18.
4375	IM-01	SEARS	783761	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LONG TERM SER 19.
4376	IM-01	SEARS	785033	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 19.
4377	IM-01	SEARS	785096	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 19.
4378	IM-01	SEARS	785060	SEARS TAX EXEMPT INVT TRUST INSURED SHORT INTERM TERM SER 19.
4379	IM-01	SEARS	769458	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 19.
4380	IM-01	SEARS	797704	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 19.
4381	IM-01	SEARS	785038	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 20.
4382	IM-01	SEARS	785099	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 20.
4383	IM-01	SEARS	773426	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 20.
4384	IM-01	SEARS	797705	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 20.
4385	IM-01	SEARS	778975	SEARS TAX EXEMPT INVESTMENT TRUST INSURED CALIFORNIA SER 21.
4386	IM-01	SEARS	785040	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 21.
4387	IM-01	SEARS	776732	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 21.
4388	IM-01	SEARS	807292	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 21.
4389	IM-01	SEARS	785042	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 22.
4390	IM-01	SEARS	778974	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 22.
4391	IM-01	SEARS	807293	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 22.
4392	IM-01	SEARS	785043	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 23.
4393	IM-01	SEARS	779937	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 23.
4394	IM-01	SEARS	807294	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 23.
4395	IM-01	SEARS	785044	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 24.
4396	IM-01	SEARS	783184	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 24.
4397	IM-01	SEARS	807296	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 24.
4398	IM-01	SEARS	785636	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 25.
4399	IM-01	SEARS	797735	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 25.
4400	IM-01	SEARS	784857	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 25.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4401	IM-01	SEARS	807297	SEARS TAX EXEMPT INVT TRUST SHORT INTERM TERM MUN PORTFOLIO SER 25.
4402	IM-01	SEARS	791892	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 26.
4403	IM-01	SEARS	797738	SEARS TAX EXEMPT INVT TRUST INSURED INTERM LONG TERM SER 26.
4404	IM-01	SEARS	785084	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 26.
4405	IM-01	SEARS	793094	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 27.
4406	IM-01	SEARS	785085	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 27.
4407	IM-01	SEARS	793095	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 28.
4408	IM-01	SEARS	832286	SEARS TAX EXEMPT INVT TRUST CALIF MUN PORTFOLIO INTERM LONG TERM SER 28.
4409	IM-01	SEARS	785086	SEARS TAX EXEMPT INVT TRUST INTERM LONG TERM MUN PORTFOLIO SER 28.
4410	IM-01	SEARS	797701	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORTFOLIO SER 29.
4411	IM-01	SEARS	785089	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 29.
4412	IM-01	SEARS	751213	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 30.
4413	IM-01	SEARS	797702	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORT SER 30.
4414	IM-01	SEARS	785090	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 30.
4415	IM-01	SEARS	797703	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORT SER 31.
4416	IM-01	SEARS	785091	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 31.
4417	IM-01	SEARS	793096	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 32.
4418	IM-01	SEARS	793097	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 33.
4419	IM-01	SEARS	797706	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 34.
4420	IM-01	SEARS	756421	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 35.
4421	IM-01	SEARS	757594	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 36.
4422	IM-01	SEARS	759438	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 37.
4423	IM-01	SEARS	807274	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 37.
4424	IM-01	SEARS	760510	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 38.
4425	IM-01	SEARS	761245	SEARS TAX EXEMPT INVESTMENT TRUST LONG TERM MUN PORT SER 39.
4426	IM-01	SEARS	807276	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 39.
4427	IM-01	SEARS	836181	SEARS TAX EXEMPT INVESTMENT TRUST LOUISIANA MUN PORT SER 2.
4428	IM-01	SEARS	807277	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 40.
4429	IM-01	SEARS	807281	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 44.
4430	IM-01	SEARS	807282	SEARS TAX EXEMPT INVT TR INTERM LONG TERM MUN PORT SER 45.
4431	IM-01	SEARS	828579	SEARS TAX EXEMPT INVESTMENT TRUST ALABAMA MUN PORT SER 3.
4432	IM-01	SEARS	832756	SEARS TAX EXEMPT INVT TR CALIFORNIA INTERMEDIATE TERM SER 2.
4433	IM-01	SEARS	779996	SEARS TAX EXEMPT INVT TR CA MUN PORT INTERM LONG TERM SER 3.
4434	IM-01	SEARS	838549	SEARS TAX EXEMPT INVESTMENT TR CONNECTICUT MUN PORT SER 2.
4435	IM-01	SEARS	828587	SEARS TAX EXEMPT INVESTMENT TRUST COLORADO MUN PORT SER 3.
4436	IM-01	SEARS	719407	SEARS TAX EXEMPT INVESTMENT TRUST DISCOUNT MUN PORT SER 1.
4437	IM-01	SEARS	828553	SEARS TAX EXEMPT INVESTMENT TRUST GEORGIA MUN PORT SERIES 3.
4438	IM-01	SEARS	830764	SEARS TAX EXEMPT INVESTMENT TRUST HIGH YIELD PORT SER 1.
4439	IM-01	SEARS	839357	SEARS TAX EXEMPT INVESTMENT TRUST IDAHO MUN PORT SER 2.
4440	IM-01	SEARS	844081	SEARS TAX EXEMPT INVESTMENT TRUST KANSAS MUN PORT SER 2.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4441	IM-01	SEARS	841138	SEARS TAX EXEMPT INVESTMENT TRUST KENTUCKY MUN PORT SER 3.
4442	IM-01	SEARS	836182	SEARS TAX EXEMPT INVESTMENT TRUST LOUISIANA MUN PORT SER 3.
4443	IM-01	SEARS	726230	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 1.
4444	IM-01	SEARS	740819	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 2.
4445	IM-01	SEARS	740944	SEARS TAX EXEMPT INVESTMENT TRUST MULTIPLE MATU PRG SER 3.
4446	IM-01	SEARS	828560	SEARS TAX EXEMPT INVESTMENT TRUST MINNESOTA MUN PORT SER 2.
4447	IM-01	SEARS	828561	SEARS TAX EXEMPT INVESTMENT TRUST MINNESOTA MUN PORT SER 3.
4448	IM-01	SEARS	841574	SEARS TAX EXEMPT INVESTMENT TRUST MISSOURI MUN PORT SER 2.
4449	IM-01	SEARS	839375	SEARS TAX EXEMPT INVESTMENT TR MISSISSIPPI MUN PORT SER 2.
4450	IM-01	SEARS	730055	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 2.
4451	IM-01	SEARS	730054	SEARS TAX EXEMPT INVESTMENT TRUST MULTI STATE PROGRAM SER 3.
4452	IM-01	SEARS	840580	SEARS TAX EXEMPT INVESTMENT TRUST NEBRASKA MUN PORT SER 3.
4453	IM-01	SEARS	844093	SEARS TAX EXEMPT INVESTMENT TR NEW HAMPSHIRE MUN PORT SER 1.
4454	IM-01	SEARS	819912	SEARS TAX EXEMPT INVESTMENT TR NEW YORK INTERM LG TERM SER 3.
4455	IM-01	SEARS	825250	SEARS TAX EXEMPT INVESTMENT TR NEW YORK INTERM LG TERM SER 4.
4456	IM-01	SEARS	835204	SEARS TAX EXEMPT INVESTMENT TRUST OKLAHOMA MUN PORT SER 3.
4457	IM-01	SEARS	839564	SEARS TAX EXEMPT INVT TR PUERTO RICO MUN PORT SER 2.
4458	IM-01	SEARS	839565	SEARS TAX EXEMPT INVT TR PUERTO RICO MUN PORT SER 3.
4459	IM-01	SEARS	846356	SEARS TAX EXEMPT INVESTMENT TR RHODE ISLAND MUN PORT SER 2.
4460	IM-01	SEARS	846357	SEARS TAX EXEMPT INVESTMENT TR RHODE ISLAND MUN PORT SER 3.
4461	IM-01	SEARS	838495	SEARS TAX EXEMPT INVESTMENT TR SOUTH CAROLINA MUN PORT SER 3.
4462	IM-01	SEARS	838515	SEARS TAX EXEMPT INVESTMENT TR SOUTH CAROLINA MUN PORT SER 4.
4463	IM-01	SEARS	716779	SEARS TAX EXEMPT INVESTMENT TRUST SHORT TERM MUN PORT SER 1.
4464	IM-01	SEARS	838530	SEARS TAX EXEMPT INVESTMENT TRUST WASHINGTON MUN PORT SER 2.
4465	IM-01	SEARS	845922	SEARS TAX EXEMPT INVT TR WEST VIRGINA MUN PORT SER 1.
4466	IM-01	SEARS	808842	SEARS TAX EXEMPT INVT TR ALT MIN TAX PORT INT LONG TM SER 3.
4467	IM-01	SEARS	808935	SEARS TAX EXEMPT INVT TR ALT MIN TAX PORT LONG TERM SER 3.
4468	IM-01	SEARS	830760	SEARS TAX EXEMPT INVT TR CALIFORNIA HIGH YIELD PORT SER 1.
4469	IM-01	SEARS	841491	SEARS TAX EXEMPT INVESTMENT TRUST INSURED LOUISIANA SER 1.
4470	IM-01	SEARS	755479	SEARS TAX EXEMPT INVESTMENT TRUST INSURED MULT MAT PRG SER 2.
4471	IM-01	SEARS	830756	SEARS TAX EXEMPT INVT TR NEW YORK HIGH YIELD PORT SER 1.
4472	IM-02	BEAR STEARNS	866753	MORTGAGE SECURITIES TRUST CMO SERIES I.
4473	IM-02	BEAR STEARNS	869543	MORTGAGE SECURITIES TRUST CMO SERIES 2.
4474	IM-02	BEAR STEARNS	766593	MUNICIPAL INSURED NATIONAL TRUST SERIES 2.
4475	IM-02	BEAR STEARNS	766839	MUNICIPAL INSURED NATIONAL TRUST SERIES 4.
4476	IM-02	BEAR STEARNS	766834	MUNICIPAL INSURED NATIONAL TRUST SERIES 5.
4477	IM-02	BEAR STEARNS	769744	MUNICIPAL INSURED NATIONAL TRUST SERIES 5 & 6 & 7.
4478	IM-02	BEAR STEARNS	766840	MUNICIPAL INSURED NATIONAL TRUST SERIES 6.
4479	IM-02	BEAR STEARNS	769749	MUNICIPAL INSURED NATIONAL TRUST SERIES 8.
4480	IM-02	BEAR STEARNS	778134	MUNICIPAL INSURED NATIONAL TRUST SERIES 9.
4481	IM-02	BEAR STEARNS	778132	MUNICIPAL INSURED NATIONAL TRUST SERIES 10.
4482	IM-02	BEAR STEARNS	783594	MUNICIPAL INSURED NATIONAL TRUST SERIES 11.
4483	IM-02	BEAR STEARNS	783596	MUNICIPAL INSURED NATIONAL TRUST SERIES 12.
4484	IM-02	BEAR STEARNS	790158	MUNICIPAL INSURED NATIONAL TRUST SERIES 13 MINT SH INTE SE 2.
4485	IM-02	BEAR STEARNS	790144	MUNICIPAL INSURED NATIONAL TRUST SERIES 14.
4486	IM-02	BEAR STEARNS	790157	MUNICIPAL INSURED NATIONAL TR SERS 15 MINT DISCOUNT TR SER 1.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4487	IM-02	BEAR STEARNS	799271	MUNICIPAL INSURED NATIONAL TRUST SERIES 16.
4488	IM-02	BEAR STEARNS	799264	MUNICIPAL INSURED NATIONAL TRUST SERIES 17.
4489	IM-02	BEAR STEARNS	808850	MUNICIPAL INSURED NATIONAL TRUST SERIES 17 MINT SH TER SE 3.
4490	IM-02	BEAR STEARNS	799269	MUNICIPAL INSURED NATIONAL TRUST SERIES 18.
4491	IM-02	BEAR STEARNS	822979	MUNICIPAL INSURED NAT TR SE 19 MINT DIS TR SE 6 MIN SH I S 5.
4492	IM-02	BEAR STEARNS	807993	MUNICIPAL INSURED NATIONAL TRUST SERIES 20.
4493	IM-02	BEAR STEARNS	807995	MUNICIPAL INSURED NATIONAL TRUST SERIES 21.
4494	IM-02	BEAR STEARNS	832178	MUNICIPAL INSURED NATIONAL TRUST SERIES 21 & 22.
4495	IM-02	BEAR STEARNS	838799	MUNICIPAL INSURED NATIONAL TRUST SERIES 23.
4496	IM-02	BEAR STEARNS	843020	MUNICIPAL INSURED NATIONAL TRUST SERIES 24.
4497	IM-02	BEAR STEARNS	843845	MUNICIPAL INSURED NATIONAL TRUST SERIES 25.
4498	IM-02	BEAR STEARNS	845290	MUNICIPAL INSURED NATIONAL TRUST SERIES 26.
4499	IM-02	BEAR STEARNS	846439	MUNICIPAL INSURED NATIONAL TRUST SERIES 27.
4500	IM-02	BEAR STEARNS	847307	MUNICIPAL INSURED NATIONAL TRUST SERIES 28 29 & 30.
4501	IM-02	BEAR STEARNS	848018	MUNICIPAL INSURED NATIONAL TRUST SERIES 29.
4502	IM-02	BEAR STEARNS	850306	MUNICIPAL INSURED NATIONAL TRUST SERIES 30.
4503	IM-02	BEAR STEARNS	853744	MUNICIPAL INSURED NATIONAL TRUST SERIES 31.
4504	IM-02	BEAR STEARNS	855593	MUNICIPAL INSURED NATIONAL TRUST SERIES 32.
4505	IM-02	BEAR STEARNS	861567	MUNICIPAL INSURED NATIONAL TRUST SERIES 33.
4506	IM-02	BEAR STEARNS	807956	MUNICIPAL INSURED NATIONAL TRUSTS MINT DISCOUNT TRUST SER 5.
4507	IM-02	BEAR STEARNS	276896	MUNICIPAL SECURITIES TRUST SERIES 1.
4508	IM-02	BEAR STEARNS	310188	MUNICIPAL SECURITIES TRUST SERIES 2.
4509	IM-02	BEAR STEARNS	318525	MUNICIPAL SECURITIES TRUST SERIES 6.
4510	IM-02	BEAR STEARNS	319451	MUNICIPAL SECURITIES TRUST SERIES 7.
4511	IM-02	BEAR STEARNS	350096	MUNICIPAL SECURITIES TRUST SERIES 8.
4512	IM-02	BEAR STEARNS	351512	MUNICIPAL SECURITIES TRUST SERIES 9.
4513	IM-02	BEAR STEARNS	352417	MUNICIPAL SECURITIES TRUST SERIES 10.
4514	IM-02	BEAR STEARNS	353084	MUNICIPAL SECURITIES TRUST SERIES 11.
4515	IM-02	BEAR STEARNS	353868	MUNICIPAL SECURITIES TRUST SERIES 12.
4516	IM-02	BEAR STEARNS	701821	MUNICIPAL SECURITIES TRUST SERIES 13.
4517	IM-02	BEAR STEARNS	702774	MUNICIPAL SECURITIES TRUST SERIES 14 & 5TH DISCOUNT SERIES.
4518	IM-02	BEAR STEARNS	705458	MUNICIPAL SECURITIES TRUST SERIES 15 & 7TH DISCOUNT SERIES.
4519	IM-02	BEAR STEARNS	707902	MUNICIPAL SECURITIES TRUST SERIES 16 & 9TH DISCOUNT SERIES.
4520	IM-02	BEAR STEARNS	714564	MUNICIPAL SECURITIES TRUST SERIES 17 & 11TH DISCOUNT SERIES.
4521	IM-02	BEAR STEARNS	730611	MUNICIPAL SECURITIES TRUST SERIES 20 & 17TH DISCOUNT SERIES.
4522	IM-02	BEAR STEARNS	715798	MUNICIPAL SECURITIES TRUST SERIES 18 & 13TH DISCOUNT SERIES.
4523	IM-02	BEAR STEARNS	718439	MUNICIPAL SECURITIES TRUST SERIES 19 & 15TH DISCOUNT SERIES.
4524	IM-02	BEAR STEARNS	737025	MUNICIPAL SECURITIES TRUST SERIES 21 & 20TH DISCOUNT SERIES.
4525	IM-02	BEAR STEARNS	740965	MUNICIPAL SECURITIES TRUST SERIES 22 & 22ND DISCOUNT SERIES.
4526	IM-02	BEAR STEARNS	750716	MUNICIPAL SECURITIES TRUST SERIES 24 & 27TH DISCOUNT SERIES.
4527	IM-02	BEAR STEARNS	754035	MUNICIPAL SECURITIES TRUST SERIES 25 & 30TH DISCOUNT SERIES.
4528	IM-02	BEAR STEARNS	766035	MUNICIPAL SECURITIES TRUST SERIES 26 & 35TH DISCOUNT SERIES.
4529	IM-02	BEAR STEARNS	768363	MUNICIPAL SECURITIES TRUST SERIES 27 & 36TH DISCOUNT SERIES.
4530	IM-02	BEAR STEARNS	773019	MUNICIPAL SECURITIES TRUST SERIES 28 & 38TH DISCOUNT SERIES.
4531	IM-02	BEAR STEARNS	779237	MUNICIPAL SECURITIES TRUST SERIES 29 & 40TH DISCOUNT SERIES.
4532	IM-02	BEAR STEARNS	784850	MUNICIPAL SECURITIES TR SER 30 & 41ST DISCOUNT SERIES.
4533	IM-02	BEAR STEARNS	787611	MUNICIPAL SECURITIES TRUST SERIES 31 & 42ND DISCOUNT SERIES.
4534	IM-02	BEAR STEARNS	790018	MUNICIPAL SECURITIES TRUST SERIES 32 & 43RD DISCOUNT SERIES.
4535	IM-02	BEAR STEARNS	792450	MUNICIPAL SECURITIES TRUST SERIES 33 & 46TH DISCOUNT SERIES.
4536	IM-02	BEAR STEARNS	797643	MUNICIPAL SECURITIES TRUST SERIES 34 & 48 DISCOUNT SERIES.
4537	IM-02	BEAR STEARNS	801327	MUNICIPAL SECURITIES TRUST SERIES 35 & 50TH DISCOUNT SERIES.
4538	IM-02	BEAR STEARNS	810671	MUNICIPAL SECURITIES TRUST SERIES 37 & 55 TH DISCOUNT SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4539	IM-02	BEAR STEARNS	832575	MUNICIPAL SECURITIES TRUST SERIES 38 & 66TH DISCOUNT SERIES.
4540	IM-02	BEAR STEARNS	838541	MUNICIPAL SECURITIES TRUST SERIES 39 & 67TH DISCOUNT SERIES.
4541	IM-02	BEAR STEARNS	841718	MUNICIPAL SECURITIES TRUST 40 AND 68TH DISCOUNT SERIES.
4542	IM-02	BEAR STEARNS	844421	MUNICIPAL SECURITIES TRUST SERIES 41 & 69 DISCOUNT SERIES.
4543	IM-02	BEAR STEARNS	845558	MUNICIPAL SECURITIES TRUST SERIES 42 & 70TH DISCOUNT SERIES.
4544	IM-02	BEAR STEARNS	846673	MUNICIPAL SECURITIES TRUST SERIES 43 & 71ST DISCOUNT SER.
4545	IM-02	BEAR STEARNS	849866	MUNICIPAL SECURITIES TRUST SERIES 44 & 72ND DISCOUNT SERIES.
4546	IM-02	BEAR STEARNS	851949	MUNICIPAL SECURITIES TRUST SERIES 45 & 73RD DISCOUNT SERIES.
4547	IM-02	BEAR STEARNS	853595	MUNICIPAL SECURITIES TRUST SERIES 46 & 74TH DISCOUNT SER.
4548	IM-02	BEAR STEARNS	861087	MUNICIPAL SECURITIES TRUST SERIES 47 & 75 DISCOUNT SERIES.
4549	IM-02	BEAR STEARNS	863446	MUNICIPAL SECURITIES TRUST SERIES 48 & 76TH DISCOUNT SERIES.
4550	IM-02	BEAR STEARNS	866763	MUNICIPAL SECURITIES TRUST SERIES 49 & 77TH DISCOUNT SER.
4551	IM-02	BEAR STEARNS	872002	MUNICIPAL SECURITIES TRUST SERIES 50 & 78TH DISCOUNT SERIES.
4552	IM-02	BEAR STEARNS	355440	MUNICIPAL SECURITIES TRUST 1ST DISCOUNT SERIES.
4553	IM-02	BEAR STEARNS	355836	MUNICIPAL SECURITIES TRUST SECOND DISCOUNT SERIES.
4554	IM-02	BEAR STEARNS	356372	MUNICIPAL SECURITIES TRUST THIRD DISCOUNT SERIES.
4555	IM-02	BEAR STEARNS	700962	MUNICIPAL SECURITIES TRUST FOURTH DISCOUNT SERIES.
4556	IM-02	BEAR STEARNS	705456	MUNICIPAL SECURITIES TRUST 6TH DISCOUNT SERIES.
4557	IM-02	BEAR STEARNS	706482	MUNICIPAL SECURITIES TRUST 8TH DISCOUNT SERIES.
4558	IM-02	BEAR STEARNS	711720	MUNICIPAL SECURITIES TRUST TENTH DISCOUNT SERIES.
4559	IM-02	BEAR STEARNS	715799	MUNICIPAL SECURITIES TRUST 12TH DISCOUNT SERIES.
4560	IM-02	BEAR STEARNS	718453	MUNICIPAL SECURITIES TRUST 14TH DISCOUNT SERIES.
4561	IM-02	BEAR STEARNS	726470	MUNICIPAL SECURITIES TRUST 16TH DISCOUNT SERIES.
4562	IM-02	BEAR STEARNS	732671	MUNICIPAL SECURITIES TRUST 18TH DISCOUNT SERIES.
4563	IM-02	BEAR STEARNS	735353	MUNICIPAL SECURITIES TRUST 19TH DISCOUNT SERIES.
4564	IM-02	BEAR STEARNS	737922	MUNICIPAL SECURITIES TRUST 21ST DISCOUNT SERIES.
4565	IM-02	BEAR STEARNS	743370	MUNICIPAL SECURITIES TRUST 23RD DISCOUNT SERIES.
4566	IM-02	BEAR STEARNS	744730	MUNICIPAL SECURITIES TRUST 24TH DISCOUNT SERIES.
4567	IM-02	BEAR STEARNS	747545	MUNICIPAL SECURITIES TRUST 23 & 25TH DISCOUNT SERIES.
4568	IM-02	BEAR STEARNS	749501	MUNICIPAL SECURITIES TRUST 26TH DISCOUNT SERIES.
4569	IM-02	BEAR STEARNS	751576	MUNICIPAL SECURITIES TRUST 28TH DISCOUNT SERIES.
4570	IM-02	BEAR STEARNS	752422	MUNICIPAL SECURITIES TRUST 29TH DISCOUNT SERIES.
4571	IM-02	BEAR STEARNS	757492	MUNICIPAL SECURITIES TRUST 31ST DISCOUNT SERIES.
4572	IM-02	BEAR STEARNS	760561	MUNICIPAL SECURITIES TRUST 32ND DISCOUNT SERIES.
4573	IM-02	BEAR STEARNS	762136	MUNICIPAL SECURITIES TRUST 33RD DISCOUNT SERIES.
4574	IM-02	BEAR STEARNS	764023	MUNICIPAL SECURITIES TRUST 34TH DISCOUNT SERIES.
4575	IM-02	BEAR STEARNS	769743	MUNICIPAL SECURITIES TRUST 37TH DISCOUNT SERIES.
4576	IM-02	BEAR STEARNS	777622	MUNICIPAL SECURITIES TRUST 39TH DISCOUNT SERIES.
4577	IM-02	BEAR STEARNS	791031	MUNICIPAL SECURITIES TRUST 44TH DISCOUNT SERIES.
4578	IM-02	BEAR STEARNS	792862	MUNICIPAL SECURITIES TRUST 45TH DISCOUNT SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4579	IM-02	BEAR STEARNS	796488	MUNICIPAL SECURITIES TRUST 47TH DISCOUNT SERIES.
4580	IM-02	BEAR STEARNS	799697	MUNICIPAL SECURITIES TRUST 49TH DISCOUNT SERIES.
4581	IM-02	BEAR STEARNS	804982	MUNICIPAL SECURITIES TRUST 51ST DISCOUNT SERIES.
4582	IM-02	BEAR STEARNS	806629	MUNICIPAL SECURITIES TRUST 52ND DISCOUNT SERIES.
4583	IM-02	BEAR STEARNS	809337	MUNICIPAL SECURITIES TRUST 54TH DISCOUNT SERIES.
4584	IM-02	BEAR STEARNS	811033	MUNICIPAL SECURITIES TRUST 56TH DISCOUNT SERIES.
4585	IM-02	BEAR STEARNS	815099	MUNICIPAL SECURITIES TRUST 57TH DISCOUNT SERIES.
4586	IM-02	BEAR STEARNS	818095	MUNICIPAL SECURITIES TRUST 58TH DISCOUNT SERIES.
4587	IM-02	BEAR STEARNS	819542	MUNICIPAL SECURITIES TRUST 59TH DISCOUNT SERIES.
4588	IM-02	BEAR STEARNS	824211	MUNICIPAL SECURITIES TRUST 60TH DISCOUNT SERIES.
4589	IM-02	BEAR STEARNS	826203	MUNICIPAL SECURITIES TRUST 61ST DISCOUNT SERIES.
4590	IM-02	BEAR STEARNS	826706	MUNICIPAL SECURITIES TRUST 62ND DISCOUNT SERIES.
4591	IM-02	BEAR STEARNS	828630	MUNICIPAL SECURITIES TRUST 63RD DISCOUNT SERIES.
4592	IM-02	BEAR STEARNS	829811	MUNICIPAL SECURITIES TRUST 64TH DISCOUNT SERIES.
4593	IM-02	BEAR STEARNS	831965	MUNICIPAL SECURITIES TRUST 65TH DISCOUNT SERIES.
4594	IM-02	BEAR STEARNS	778414	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 1.
4595	IM-02	BEAR STEARNS	783997	MUNICIPAL SECURITIES TRUST HIGH INCOME SER 2 SER 3 & SER 4.
4596	IM-02	BEAR STEARNS	788158	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 3.
4597	IM-02	BEAR STEARNS	790043	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 4.
4598	IM-02	BEAR STEARNS	793706	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 5.
4599	IM-02	BEAR STEARNS	798138	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 6.
4600	IM-02	BEAR STEARNS	799693	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 7.
4601	IM-02	BEAR STEARNS	802900	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 8.
4602	IM-02	BEAR STEARNS	805302	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 9.
4603	IM-02	BEAR STEARNS	807206	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 10.
4604	IM-02	BEAR STEARNS	809798	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 11.
4605	IM-02	BEAR STEARNS	811683	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 12.
4606	IM-02	BEAR STEARNS	818982	MUNICIPAL SECURITIES TRUST HIGH INCOME SERIES 13.
4607	IM-02	BEAR STEARNS	356091	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 1.
4608	IM-02	BEAR STEARNS	744449	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 2.
4609	IM-02	BEAR STEARNS	745892	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 3.
4610	IM-02	BEAR STEARNS	749074	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 4.
4611	IM-02	BEAR STEARNS	751198	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 5.
4612	IM-02	BEAR STEARNS	752358	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 6.
4613	IM-02	BEAR STEARNS	755879	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 7.
4614	IM-02	BEAR STEARNS	757769	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 8.
4615	IM-02	BEAR STEARNS	759246	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 9.
4616	IM-02	BEAR STEARNS	760802	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 10.
4617	IM-02	BEAR STEARNS	761234	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 11.
4618	IM-02	BEAR STEARNS	764243	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 12.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4619	IM-02	BEAR STEARNS	766230	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 13.
4620	IM-02	BEAR STEARNS	768767	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 14.
4621	IM-02	BEAR STEARNS	770091	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 15.
4622	IM-02	BEAR STEARNS	774425	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 16.
4623	IM-02	BEAR STEARNS	777494	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 17.
4624	IM-02	BEAR STEARNS	783405	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 18.
4625	IM-02	BEAR STEARNS	786769	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 19.
4626	IM-02	BEAR STEARNS	788912	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 20.
4627	IM-02	BEAR STEARNS	790494	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 21.
4628	IM-02	BEAR STEARNS	791901	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 22.
4629	IM-02	BEAR STEARNS	793574	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 23.
4630	IM-02	BEAR STEARNS	796267	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 24.
4631	IM-02	BEAR STEARNS	799067	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 25.
4632	IM-02	BEAR STEARNS	812849	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 26.
4633	IM-02	BEAR STEARNS	816226	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 27.
4634	IM-02	BEAR STEARNS	824613	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 28.
4635	IM-02	BEAR STEARNS	830976	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 29.
4636	IM-02	BEAR STEARNS	833119	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 30.
4637	IM-02	BEAR STEARNS	837484	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 31.
4638	IM-02	BEAR STEARNS	842451	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 32.
4639	IM-02	BEAR STEARNS	843498	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 33.
4640	IM-02	BEAR STEARNS	845522	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 34.
4641	IM-02	BEAR STEARNS	846672	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 35.
4642	IM-02	BEAR STEARNS	849397	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 36.
4643	IM-02	BEAR STEARNS	851739	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 37.
4644	IM-02	BEAR STEARNS	853006	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 38.
4645	IM-02	BEAR STEARNS	861068	MUNICIPAL SECURITIES TRUST MULTI STATE SERIES 39.
4646	IM-02	BEAR STEARNS	866766	MUNICIPAL SEC TRUST MULTI STATE SER 40 SER 49 & 77TH DISCOUNT SERIES.
4647	IM-02	BEAR STEARNS	845774	MUNICIPAL SECURITIES TRUST SHORT INTERMEDIATE TERM SERIES 1.
4648	IM-02	BEAR STEARNS	852287	MUNICIPAL SECURITIES TRUST SHORT INTERMEDIATE TERM SERIES 2.
4649	IM-02	CLAYTON BROWN	717328	FIRST TRUST ADVANTAGE FUND SERIES 3.
4650	IM-02	CLAYTON BROWN	357328	FIRST TRUST CALIFORNIA ADVANTAGE FUND SERIES 1.
4651	IM-02	CLAYTON BROWN	777487	FIRST TRUST COMBINED SERIES 1.
4652	IM-02	CLAYTON BROWN	784970	FIRST TRUST COMBINED SERIES 2.
4653	IM-02	CLAYTON BROWN	785318	FIRST TRUST COMBINED SERIES 3.
4654	IM-02	CLAYTON BROWN	788309	FIRST TRUST COMBINED SERIES 4.
4655	IM-02	CLAYTON BROWN	788594	FIRST TRUST COMBINED SERIES 5.
4656	IM-02	CLAYTON BROWN	788731	FIRST TRUST COMBINED SERIES 6.
4657	IM-02	CLAYTON BROWN	790578	FIRST TRUST COMBINED SERIES 7.
4658	IM-02	CLAYTON BROWN	790577	FIRST TRUST COMBINED SERIES 8.
4659	IM-02	CLAYTON BROWN	791911	FIRST TRUST COMBINED SERIES 9.
4660	IM-02	CLAYTON BROWN	808712	FIRST TRUST COMBINED SERIES 10.
4661	IM-02	CLAYTON BROWN	809273	FIRST TRUST COMBINED SERIES 11.
4662	IM-02	CLAYTON BROWN	809271	FIRST TRUST COMBINED SERIES 12.
4663	IM-02	CLAYTON BROWN	809882	FIRST TRUST COMBINED SERIES 13.
4664	IM-02	CLAYTON BROWN	810577	FIRST TRUST COMBINED SERIES 14.
4665	IM-02	CLAYTON BROWN	811972	FIRST TRUST COMBINED SERIES 16.
4666	IM-02	CLAYTON BROWN	811971	FIRST TRUST COMBINED SERIES 17.
4667	IM-02	CLAYTON BROWN	813615	FIRST TRUST COMBINED SERIES 18.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4668	IM-02	CLAYTON BROWN	814191	FIRST TRUST COMBINED SERIES 19.
4669	IM-02	CLAYTON BROWN	814447	FIRST TRUST COMBINED SERIES 20.
4670	IM-02	CLAYTON BROWN	814911	FIRST TRUST COMBINED SERIES 21.
4671	IM-02	CLAYTON BROWN	815906	FIRST TRUST COMBINED SERIES 22.
4672	IM-02	CLAYTON BROWN	818009	FIRST TRUST COMBINED SERIES 23.
4673	IM-02	CLAYTON BROWN	819083	FIRST TRUST COMBINED SERIES 24.
4674	IM-02	CLAYTON BROWN	819249	FIRST TRUST COMBINED SERIES 25.
4675	IM-02	CLAYTON BROWN	821673	FIRST TRUST COMBINED SERIES 26.
4676	IM-02	CLAYTON BROWN	822425	FIRST TRUST COMBINED SERIES 27.
4677	IM-02	CLAYTON BROWN	822429	FIRST TRUST COMBINED SERIES 28.
4678	IM-02	CLAYTON BROWN	823182	FIRST TRUST COMBINED SERIES 29.
4679	IM-02	CLAYTON BROWN	824512	FIRST TRUST COMBINED SERIES 30.
4680	IM-02	CLAYTON BROWN	825070	FIRST TRUST COMBINED SERIES 31.
4681	IM-02	CLAYTON BROWN	825390	FIRST TRUST COMBINED SERIES 32.
4682	IM-02	CLAYTON BROWN	826707	FIRST TRUST COMBINED SERIES 33.
4683	IM-02	CLAYTON BROWN	827834	FIRST TRUST COMBINED SERIES 34.
4684	IM-02	CLAYTON BROWN	828631	FIRST TRUST COMBINED SERIES 35.
4685	IM-02	CLAYTON BROWN	829343	FIRST TRUST COMBINED SERIES 36.
4686	IM-02	CLAYTON BROWN	829642	FIRST TRUST COMBINED SERIES 37.
4687	IM-02	CLAYTON BROWN	829746	FIRST TRUST COMBINED SERIES 38.
4688	IM-02	CLAYTON BROWN	829812	FIRST TRUST COMBINED SERIES 39.
4689	IM-02	CLAYTON BROWN	829962	FIRST TRUST COMBINED SERIES 40.
4690	IM-02	CLAYTON BROWN	829961	FIRST TRUST COMBINED SERIES 41.
4691	IM-02	CLAYTON BROWN	830049	FIRST TRUST COMBINED SERIES 42.
4692	IM-02	CLAYTON BROWN	830150	FIRST TRUST COMBINED SERIES 43.
4693	IM-02	CLAYTON BROWN	830514	FIRST TRUST COMBINED SERIES 44.
4694	IM-02	CLAYTON BROWN	831121	FIRST TRUST COMBINED SERIES 45.
4695	IM-02	CLAYTON BROWN	831953	FIRST TRUST COMBINED SERIES 46.
4696	IM-02	CLAYTON BROWN	832171	FIRST TRUST COMBINED SERIES 47.
4697	IM-02	CLAYTON BROWN	832535	FIRST TRUST COMBINED SERIES 48.
4698	IM-02	CLAYTON BROWN	832632	FIRST TRUST COMBINED SERIES 49.
4699	IM-02	CLAYTON BROWN	832701	FIRST TRUST COMBINED SERIES 50.
4700	IM-02	CLAYTON BROWN	832851	FIRST TRUST COMBINED SERIES 51.
4701	IM-02	CLAYTON BROWN	832999	FIRST TRUST COMBINED SERIES 52.
4702	IM-02	CLAYTON BROWN	833001	FIRST TRUST COMBINED SERIES 53.
4703	IM-02	CLAYTON BROWN	835168	FIRST TRUST COMBINED SERIES 54.
4704	IM-02	CLAYTON BROWN	835103	FIRST TRUST COMBINED SERIES 55.
4705	IM-02	CLAYTON BROWN	836134	FIRST TRUST COMBINED SERIES 56.
4706	IM-02	CLAYTON BROWN	836395	FIRST TRUST COMBINED SERIES 57.
4707	IM-02	CLAYTON BROWN	836394	FIRST TRUST COMBINED SERIES 58.
4708	IM-02	CLAYTON BROWN	836657	FIRST TRUST COMBINED SERIES 59.
4709	IM-02	CLAYTON BROWN	837108	FIRST TRUST COMBINED SERIES 60.
4710	IM-02	CLAYTON BROWN	837222	FIRST TRUST COMBINED SERIES 61.
4711	IM-02	CLAYTON BROWN	837598	FIRST TRUST COMBINED SERIES 62.
4712	IM-02	CLAYTON BROWN	839248	FIRST TRUST COMBINED SERIES 63.
4713	IM-02	CLAYTON BROWN	839481	FIRST TRUST COMBINED SERIES 64.
4714	IM-02	CLAYTON BROWN	839652	FIRST TRUST COMBINED SERIES 65.
4715	IM-02	CLAYTON BROWN	840938	FIRST TRUST COMBINED SERIES 66.
4716	IM-02	CLAYTON BROWN	840936	FIRST TRUST COMBINED SERIES 67.
4717	IM-02	CLAYTON BROWN	840937	FIRST TRUST COMBINED SERIES 68.
4718	IM-02	CLAYTON BROWN	842504	FIRST TRUST COMBINED SERIES 69.
4719	IM-02	CLAYTON BROWN	842502	FIRST TRUST COMBINED SERIES 70.
4720	IM-02	CLAYTON BROWN	842503	FIRST TRUST COMBINED SERIES 71.
4721	IM-02	CLAYTON BROWN	844835	FIRST TRUST COMBINED SERIES 72.
4722	IM-02	CLAYTON BROWN	844791	FIRST TRUST COMBINED SERIES 73.
4723	IM-02	CLAYTON BROWN	845886	FIRST TRUST COMBINED SERIES 74.
4724	IM-02	CLAYTON BROWN	845885	FIRST TRUST COMBINED SERIES 75.
4725	IM-02	CLAYTON BROWN	845887	FIRST TRUST COMBINED SERIES 76.
4726	IM-02	CLAYTON BROWN	846786	FIRST TRUST COMBINED SERIES 77.
4727	IM-02	CLAYTON BROWN	846785	FIRST TRUST COMBINED SERIES 78.
4728	IM-02	CLAYTON BROWN	846784	FIRST TRUST COMBINED SERIES 79.
4729	IM-02	CLAYTON BROWN	850212	FIRST TRUST COMBINED SERIES 80.
4730	IM-02	CLAYTON BROWN	851779	FIRST TRUST COMBINED SERIES 81.
4731	IM-02	CLAYTON BROWN	851811	FIRST TRUST COMBINED SERIES 82.
4732	IM-02	CLAYTON BROWN	852480	FIRST TRUST COMBINED SERIES 83.
4733	IM-02	CLAYTON BROWN	852445	FIRST TRUST COMBINED SERIES 84.
4734	IM-02	CLAYTON BROWN	853362	FIRST TRUST COMBINED SERIES 85.
4735	IM-02	CLAYTON BROWN	853376	FIRST TRUST COMBINED SERIES 86.
4736	IM-02	CLAYTON BROWN	853361	FIRST TRUST COMBINED SERIES 87.
4737	IM-02	CLAYTON BROWN	856285	FIRST TRUST COMBINED SERIES 88.
4738	IM-02	CLAYTON BROWN	856283	FIRST TRUST COMBINED SERIES 89.
4739	IM-02	CLAYTON BROWN	857409	FIRST TRUST COMBINED SERIES 90.
4740	IM-02	CLAYTON BROWN	857408	FIRST TRUST COMBINED SERIES 91.
4741	IM-02	CLAYTON BROWN	857406	FIRST TRUST COMBINED SERIES 92.
4742	IM-02	CLAYTON BROWN	857405	FIRST TRUST COMBINED SERIES 93.
4743	IM-02	CLAYTON BROWN	858240	FIRST TRUST COMBINED SERIES 94.
4744	IM-02	CLAYTON BROWN	859069	FIRST TRUST COMBINED SERIES 95.
4745	IM-02	CLAYTON BROWN	859068	FIRST TRUST COMBINED SERIES 96.
4746	IM-02	CLAYTON BROWN	860151	FIRST TRUST COMBINED SERIES 97.
4747	IM-02	CLAYTON BROWN	860155	FIRST TRUST COMBINED SERIES 98.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4748	IM-02	CLAYTON BROWN	860727	FIRST TRUST COMBINED SERIES 99.
4749	IM-02	CLAYTON BROWN	860726	FIRST TRUST COMBINED SERIES 100.
4750	IM-02	CLAYTON BROWN	861621	FIRST TRUST COMBINED SERIES 101.
4751	IM-02	CLAYTON BROWN	861623	FIRST TRUST COMBINED SERIES 102.
4752	IM-02	CLAYTON BROWN	862350	FIRST TRUST COMBINED SERIES 103.
4753	IM-02	CLAYTON BROWN	862372	FIRST TRUST COMBINED SERIES 104.
4754	IM-02	CLAYTON BROWN	862351	FIRST TRUST COMBINED SERIES 105.
4755	IM-02	CLAYTON BROWN	863368	FIRST TRUST COMBINED SERIES 106.
4756	IM-02	CLAYTON BROWN	863367	FIRST TRUST COMBINED SERIES 107.
4757	IM-02	CLAYTON BROWN	863555	FIRST TRUST COMBINED SERIES 108.
4758	IM-02	CLAYTON BROWN	863556	FIRST TRUST COMBINED SERIES 109.
4759	IM-02	CLAYTON BROWN	864232	FIRST TRUST COMBINED SERIES 110.
4760	IM-02	CLAYTON BROWN	864132	FIRST TRUST COMBINED SERIES 111.
4761	IM-02	CLAYTON BROWN	864231	FIRST TRUST COMBINED SERIES 112.
4762	IM-02	CLAYTON BROWN	864751	FIRST TRUST COMBINED SERIES 113.
4763	IM-02	CLAYTON BROWN	864134	FIRST TRUST COMBINED SERIES 114.
4764	IM-02	CLAYTON BROWN	866714	FIRST TRUST COMBINED SERIES 115.
4765	IM-02	CLAYTON BROWN	866713	FIRST TRUST COMBINED SERIES 116.
4766	IM-02	CLAYTON BROWN	866715	FIRST TRUST COMBINED SERIES 117.
4767	IM-02	CLAYTON BROWN	867872	FIRST TRUST COMBINED SERIES 118.
4768	IM-02	CLAYTON BROWN	867871	FIRST TRUST COMBINED SERIES 119.
4769	IM-02	CLAYTON BROWN	867873	FIRST TRUST COMBINED SERIES 120.
4770	IM-02	CLAYTON BROWN	868904	FIRST TRUST COMBINED SERIES 121.
4771	IM-02	CLAYTON BROWN	868906	FIRST TRUST COMBINED SERIES 122.
4772	IM-02	CLAYTON BROWN	868901	FIRST TRUST COMBINED SERIES 123.
4773	IM-02	CLAYTON BROWN	868820	FIRST TRUST COMBINED SERIES 124.
4774	IM-02	CLAYTON BROWN	868819	FIRST TRUST COMBINED SERIES 125.
4775	IM-02	CLAYTON BROWN	869823	FIRST TRUST COMBINED SERIES 126.
4776	IM-02	CLAYTON BROWN	870733	FIRST TRUST COMBINED SERIES 127.
4777	IM-02	CLAYTON BROWN	870734	FIRST TRUST COMBINED SERIES 128.
4778	IM-02	CLAYTON BROWN	870735	FIRST TRUST COMBINED SERIES 129.
4779	IM-02	CLAYTON BROWN	740555	FIRST TRUST GNMA FUND SERIES 1.
4780	IM-02	CLAYTON BROWN	742283	FIRST TRUST GNMA FUND SERIES 2.
4781	IM-02	CLAYTON BROWN	763893	FIRST TRUST GNMA FUND SERIES 3.
4782	IM-02	CLAYTON BROWN	766565	FIRST TRUST GNMA FUND SERIES 4.
4783	IM-02	CLAYTON BROWN	766564	FIRST TRUST GNMA FUND SERIES 5.
4784	IM-02	CLAYTON BROWN	770466	FIRST TRUST GNMA FUND SERIES 6.
4785	IM-02	CLAYTON BROWN	773549	FIRST TRUST GNMA FUND SERIES 7.
4786	IM-02	CLAYTON BROWN	779545	FIRST TRUST GNMA SERIES 9.
4787	IM-02	CLAYTON BROWN	781909	FIRST TRUST GNMA SERIES 10.
4788	IM-02	CLAYTON BROWN	785319	FIRST TRUST GNMA SERIES 11 & SERIES 12.
4789	IM-02	CLAYTON BROWN	789314	FIRST TRUST GNMA SERIES 13.
4790	IM-02	CLAYTON BROWN	789494	FIRST TRUST GNMA SERIES 14.
4791	IM-02	CLAYTON BROWN	790107	FIRST TRUST GNMA SERIES 15 & SERIES 16.
4792	IM-02	CLAYTON BROWN	790890	FIRST TRUST GNMA SERIES 17.
4793	IM-02	CLAYTON BROWN	791268	FIRST TRUST GNMA SERIES 18 & SERIES 19.
4794	IM-02	CLAYTON BROWN	792850	FIRST TRUST GNMA SERIES 20.
4795	IM-02	CLAYTON BROWN	793490	FIRST TRUST GNMA SERIES 21.
4796	IM-02	CLAYTON BROWN	790270	FIRST TRUST GNMA SERIES 22.
4797	IM-02	CLAYTON BROWN	791551	FIRST TRUST GNMA SERIES 23 & SERIES 24.
4798	IM-02	CLAYTON BROWN	796653	FIRST TRUST GNMA SERIES 25 & SERIES 26.
4799	IM-02	CLAYTON BROWN	797498	FIRST TRUST GNMA SERIES 27 & SERIES 28.
4800	IM-02	CLAYTON BROWN	804144	FIRST TRUST GNMA SERIES 29 & SERIES 30.
4801	IM-02	CLAYTON BROWN	805380	FIRST TRUST GNMA SERIES 31 & 32.
4802	IM-02	CLAYTON BROWN	807636	FIRST TRUST GNMA SERIES 33 & SERIES 34.
4803	IM-02	CLAYTON BROWN	809561	FIRST TRUST GNMA SERIES 35 & SERIES 36.
4804	IM-02	CLAYTON BROWN	798940	FIRST TRUST GNMA SERIES 37.
4805	IM-02	CLAYTON BROWN	806010	FIRST TRUST GNMA SERIES 38.
4806	IM-02	CLAYTON BROWN	806083	FIRST TRUST GNMA SERIES 39 & SERIES 40.
4807	IM-02	CLAYTON BROWN	810109	FIRST TRUST GNMA SERIES 41 /IL/.
4808	IM-02	CLAYTON BROWN	829904	FIRST TRUST GNMA SERIES 42 SERIES 44 & SERIES 45.
4809	IM-02	CLAYTON BROWN	830515	FIRST TRUST GNMA SERIES 43.
4810	IM-02	CLAYTON BROWN	845244	FIRST TRUST GNMA SERIES 46 48 & 49.
4811	IM-02	CLAYTON BROWN	846999	FIRST TRUST GNMA SERIES 47.
4812	IM-02	CLAYTON BROWN	847429	FIRST TRUST GNMA SERIES 50 & SERIES 51.
4813	IM-02	CLAYTON BROWN	847489	FIRST TRUST GNMA SERIES 52 & SERIES 54.
4814	IM-02	CLAYTON BROWN	857792	FIRST TRUST GNMA SERIES 53.
4815	IM-02	CLAYTON BROWN	871430	FIRST TRUST GNMA SERIES 57.
4816	IM-02	CLAYTON BROWN	871868	FIRST TRUST GNMA SERIES 58.
4817	IM-02	CLAYTON BROWN	871509	FIRST TRUST INSURED CORPORATE TRUST SERIES 1.
4818	IM-02	CLAYTON BROWN	737773	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE SERIES 1.
4819	IM-02	CLAYTON BROWN	740837	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE 2.
4820	IM-02	CLAYTON BROWN	745487	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE 3.
4821	IM-02	CLAYTON BROWN	754436	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE 4.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4822	IM-02	CLAYTON BROWN	759670	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE 5.
4823	IM-02	CLAYTON BROWN	760108	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE 6.
4824	IM-02	CLAYTON BROWN	762154	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE SERIES 7.
4825	IM-02	CLAYTON BROWN	762155	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE 8.
4826	IM-02	CLAYTON BROWN	763747	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE SERIES 9.
4827	IM-02	CLAYTON BROWN	766503	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE SERIES 10.
4828	IM-02	CLAYTON BROWN	768746	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE 11.
4829	IM-02	CLAYTON BROWN	811717	FIRST TRUST OF INSURED MUNICIPAL BONDS MULTI STATE SER 15.
4830	IM-02	CLAYTON BROWN	706380	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 2.
4831	IM-02	CLAYTON BROWN	708486	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 3.
4832	IM-02	CLAYTON BROWN	711664	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 4.
4833	IM-02	CLAYTON BROWN	713061	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 5.
4834	IM-02	CLAYTON BROWN	713062	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 6.
4835	IM-02	CLAYTON BROWN	715260	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 7.
4836	IM-02	CLAYTON BROWN	717572	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 8.
4837	IM-02	CLAYTON BROWN	721242	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 9.
4838	IM-02	CLAYTON BROWN	729652	FIRST TRUST OF INSURED MUNICIPAL BONDS NEW YORK SERIES 10.
4839	IM-02	CLAYTON BROWN	719592	FIRST TRUST OF INSURED MUNICIPAL BONDS PENNSYLVANIA SERIES 1.
4840	IM-02	CLAYTON BROWN	722207	FIRST TRUST OF INSURED MUNICIPAL BONDS PENNSYLVANIA SERIES 2.
4841	IM-02	CLAYTON BROWN	729274	FIRST TRUST OF INSURED MUNICIPAL BONDS PENNSYLVANIA SERIES 3.
4842	IM-02	CLAYTON BROWN	729982	FIRST TRUST OF INSURED MUNICIPAL BONDS PENNSYLVANIA SERIES 4.
4843	IM-02	CLAYTON BROWN	036413	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 1 & SUB SER.
4844	IM-02	CLAYTON BROWN	036989	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 2.
4845	IM-02	CLAYTON BROWN	036990	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 3.
4846	IM-02	CLAYTON BROWN	109935	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 4.
4847	IM-02	CLAYTON BROWN	109936	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 5.
4848	IM-02	CLAYTON BROWN	109937	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 6.
4849	IM-02	CLAYTON BROWN	109938	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 7.
4850	IM-02	CLAYTON BROWN	109939	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 8.
4851	IM-02	CLAYTON BROWN	109940	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 9.
4852	IM-02	CLAYTON BROWN	036988	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 10.
4853	IM-02	CLAYTON BROWN	109941	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 11.
4854	IM-02	CLAYTON BROWN	109942	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 12.
4855	IM-02	CLAYTON BROWN	109943	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 13.
4856	IM-02	CLAYTON BROWN	109944	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 14.
4857	IM-02	CLAYTON BROWN	109945	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 15.
4858	IM-02	CLAYTON BROWN	038173	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 16.
4859	IM-02	CLAYTON BROWN	310325	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 17.
4860	IM-02	CLAYTON BROWN	310326	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 18.
4861	IM-02	CLAYTON BROWN	310324	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 19.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4862	IM-02	CLAYTON BROWN	310323	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 20.
4863	IM-02	CLAYTON BROWN	310322	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 21.
4864	IM-02	CLAYTON BROWN	310321	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 22.
4865	IM-02	CLAYTON BROWN	310319	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 23.
4866	IM-02	CLAYTON BROWN	310320	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 24.
4867	IM-02	CLAYTON BROWN	310327	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 25.
4868	IM-02	CLAYTON BROWN	277472	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 26.
4869	IM-02	CLAYTON BROWN	215874	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 27.
4870	IM-02	CLAYTON BROWN	311565	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 28.
4871	IM-02	CLAYTON BROWN	276264	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 29.
4872	IM-02	CLAYTON BROWN	277449	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 30.
4873	IM-02	CLAYTON BROWN	277436	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 31.
4874	IM-02	CLAYTON BROWN	311564	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 32.
4875	IM-02	CLAYTON BROWN	311562	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 33.
4876	IM-02	CLAYTON BROWN	311563	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 34.
4877	IM-02	CLAYTON BROWN	276267	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 35.
4878	IM-02	CLAYTON BROWN	276272	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 36.
4879	IM-02	CLAYTON BROWN	276667	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 37.
4880	IM-02	CLAYTON BROWN	277069	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 38.
4881	IM-02	CLAYTON BROWN	311566	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 39.
4882	IM-02	CLAYTON BROWN	277953	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 40.
4883	IM-02	CLAYTON BROWN	310257	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 41.
4884	IM-02	CLAYTON BROWN	311057	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 42.
4885	IM-02	CLAYTON BROWN	311614	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 43.
4886	IM-02	CLAYTON BROWN	312020	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 44.
4887	IM-02	CLAYTON BROWN	312843	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 45.
4888	IM-02	CLAYTON BROWN	313642	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 46.
4889	IM-02	CLAYTON BROWN	313851	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 47.
4890	IM-02	CLAYTON BROWN	314084	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 48.
4891	IM-02	CLAYTON BROWN	314599	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 49.
4892	IM-02	CLAYTON BROWN	315271	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 50.
4893	IM-02	CLAYTON BROWN	315760	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 51.
4894	IM-02	CLAYTON BROWN	316446	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 52.
4895	IM-02	CLAYTON BROWN	316445	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 53.
4896	IM-02	CLAYTON BROWN	317029	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 54.
4897	IM-02	CLAYTON BROWN	317858	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 55.
4898	IM-02	CLAYTON BROWN	318353	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 56.
4899	IM-02	CLAYTON BROWN	319236	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 58.
4900	IM-02	CLAYTON BROWN	319614	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 59.
4901	IM-02	CLAYTON BROWN	320165	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 60.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4902	IM-02	CLAYTON BROWN	350376	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 61.
4903	IM-02	CLAYTON BROWN	350885	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 62.
4904	IM-02	CLAYTON BROWN	351487	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 63.
4905	IM-02	CLAYTON BROWN	352167	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 64.
4906	IM-02	CLAYTON BROWN	352816	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 65.
4907	IM-02	CLAYTON BROWN	353010	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 66.
4908	IM-02	CLAYTON BROWN	353674	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 67.
4909	IM-02	CLAYTON BROWN	354381	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 68.
4910	IM-02	CLAYTON BROWN	355162	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 69.
4911	IM-02	CLAYTON BROWN	355441	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 70.
4912	IM-02	CLAYTON BROWN	355863	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 71.
4913	IM-02	CLAYTON BROWN	355776	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 72.
4914	IM-02	CLAYTON BROWN	356122	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 73.
4915	IM-02	CLAYTON BROWN	356490	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 74.
4916	IM-02	CLAYTON BROWN	356992	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 75.
4917	IM-02	CLAYTON BROWN	357126	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 76.
4918	IM-02	CLAYTON BROWN	357282	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 77.
4919	IM-02	CLAYTON BROWN	700609	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 78.
4920	IM-02	CLAYTON BROWN	700921	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 79.
4921	IM-02	CLAYTON BROWN	701323	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 80.
4922	IM-02	CLAYTON BROWN	701667	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 81.
4923	IM-02	CLAYTON BROWN	702135	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 82.
4924	IM-02	CLAYTON BROWN	702518	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 83.
4925	IM-02	CLAYTON BROWN	703334	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 84.
4926	IM-02	CLAYTON BROWN	703697	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 85.
4927	IM-02	CLAYTON BROWN	704791	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 86.
4928	IM-02	CLAYTON BROWN	705190	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 87.
4929	IM-02	CLAYTON BROWN	706125	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 88.
4930	IM-02	CLAYTON BROWN	707131	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 89.
4931	IM-02	CLAYTON BROWN	707722	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 90.
4932	IM-02	CLAYTON BROWN	708286	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 91.
4933	IM-02	CLAYTON BROWN	708287	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 92.
4934	IM-02	CLAYTON BROWN	709465	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 93.
4935	IM-02	CLAYTON BROWN	710869	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 94.
4936	IM-02	CLAYTON BROWN	711204	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 95.
4937	IM-02	CLAYTON BROWN	711777	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 96.
4938	IM-02	CLAYTON BROWN	713661	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 97.
4939	IM-02	CLAYTON BROWN	714709	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 98.
4940	IM-02	CLAYTON BROWN	715421	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 99.
4941	IM-02	CLAYTON BROWN	716303	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 100.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4942	IM-02	CLAYTON BROWN	718112	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 101.
4943	IM-02	CLAYTON BROWN	718862	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 102.
4944	IM-02	CLAYTON BROWN	719740	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 103.
4945	IM-02	CLAYTON BROWN	722288	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 104.
4946	IM-02	CLAYTON BROWN	724211	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 105.
4947	IM-02	CLAYTON BROWN	724655	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 106.
4948	IM-02	CLAYTON BROWN	726491	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 107.
4949	IM-02	CLAYTON BROWN	726519	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 108.
4950	IM-02	CLAYTON BROWN	728359	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 109.
4951	IM-02	CLAYTON BROWN	730612	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 110.
4952	IM-02	CLAYTON BROWN	731937	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 111.
4953	IM-02	CLAYTON BROWN	732784	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 112.
4954	IM-02	CLAYTON BROWN	736892	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 113.
4955	IM-02	CLAYTON BROWN	737919	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 114.
4956	IM-02	CLAYTON BROWN	739890	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 115.
4957	IM-02	CLAYTON BROWN	741388	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 116.
4958	IM-02	CLAYTON BROWN	742354	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 117.
4959	IM-02	CLAYTON BROWN	743401	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 118.
4960	IM-02	CLAYTON BROWN	744796	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 119.
4961	IM-02	CLAYTON BROWN	745275	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 120.
4962	IM-02	CLAYTON BROWN	746606	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 121.
4963	IM-02	CLAYTON BROWN	746871	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 122.
4964	IM-02	CLAYTON BROWN	748097	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 123.
4965	IM-02	CLAYTON BROWN	748725	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 124.
4966	IM-02	CLAYTON BROWN	749390	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 125.
4967	IM-02	CLAYTON BROWN	749921	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 126.
4968	IM-02	CLAYTON BROWN	750655	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 127.
4969	IM-02	CLAYTON BROWN	751499	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 128.
4970	IM-02	CLAYTON BROWN	752699	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 129.
4971	IM-02	CLAYTON BROWN	754901	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 130.
4972	IM-02	CLAYTON BROWN	755916	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 131.
4973	IM-02	CLAYTON BROWN	757488	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 132.
4974	IM-02	CLAYTON BROWN	760416	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 133.
4975	IM-02	CLAYTON BROWN	761196	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 134.
4976	IM-02	CLAYTON BROWN	762973	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 135.
4977	IM-02	CLAYTON BROWN	764475	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 136.
4978	IM-02	CLAYTON BROWN	764834	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 137.
4979	IM-02	CLAYTON BROWN	766514	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 138.
4980	IM-02	CLAYTON BROWN	768179	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 139.
4981	IM-02	CLAYTON BROWN	770302	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 140.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
4982	IM-02	CLAYTON BROWN	772193	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 141.
4983	IM-02	CLAYTON BROWN	773143	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 142.
4984	IM-02	CLAYTON BROWN	773864	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 143.
4985	IM-02	CLAYTON BROWN	779349	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 145.
4986	IM-02	CLAYTON BROWN	783459	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 146.
4987	IM-02	CLAYTON BROWN	789550	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 148.
4988	IM-02	CLAYTON BROWN	790949	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 150.
4989	IM-02	CLAYTON BROWN	793170	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 151.
4990	IM-02	CLAYTON BROWN	796952	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 152.
4991	IM-02	CLAYTON BROWN	801127	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 153.
4992	IM-02	CLAYTON BROWN	806626	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 155.
4993	IM-02	CLAYTON BROWN	809274	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 156.
4994	IM-02	CLAYTON BROWN	809676	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 157.
4995	IM-02	CLAYTON BROWN	813050	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 158.
4996	IM-02	CLAYTON BROWN	813633	FIRST TRUST OF INSURED MUNICIPAL BONDS SERIES 159.
4997	IM-02	CLAYTON BROWN	861458	FIRST TRUST SPECIAL SITUATIONS TRUST SERIES 1.
4998	IM-02	CLAYTON BROWN	866296	FIRST TRUST SPECIAL SITUATIONS TRUST SERIES 2.
4999	IM-02	CLAYTON BROWN	871508	FIRST TRUST SPECIAL SITUATIONS TRUST SERIES 6.
5000	IM-02	CLAYTON BROWN	871700	FIRST TRUST SPECIAL SITUATIONS TRUST SERIES 7.
5001	IM-02	GLICKENHAUS	810908	EMPIRE STATE MUNICIPAL EXEMPT TRUST EMPIRE MAXIMUS AMT SERIES A.
5002	IM-02	GLICKENHAUS	709147	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 43.
5003	IM-02	GLICKENHAUS	276850	EMPIRE STATE TAX EXEMPT BOND TRUST SERIES 8.
5004	IM-02	GLICKENHAUS	277618	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 10.
5005	IM-02	GLICKENHAUS	310166	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 11.
5006	IM-02	GLICKENHAUS	310873	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 12.
5007	IM-02	GLICKENHAUS	311415	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 13.
5008	IM-02	GLICKENHAUS	312214	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 14.
5009	IM-02	GLICKENHAUS	314376	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 17.
5010	IM-02	GLICKENHAUS	314863	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 18.
5011	IM-02	GLICKENHAUS	315732	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 19.
5012	IM-02	GLICKENHAUS	316649	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 21.
5013	IM-02	GLICKENHAUS	317281	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 22.
5014	IM-02	GLICKENHAUS	318007	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 23.
5015	IM-02	GLICKENHAUS	319128	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 24.
5016	IM-02	GLICKENHAUS	351144	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 25.
5017	IM-02	GLICKENHAUS	352272	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 26.
5018	IM-02	GLICKENHAUS	353122	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 27.
5019	IM-02	GLICKENHAUS	353486	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 28.
5020	IM-02	GLICKENHAUS	353485	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 29.
5021	IM-02	GLICKENHAUS	354881	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 30.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5022	IM-02	GLICKENHAUS	356147	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 31.
5023	IM-02	GLICKENHAUS	700919	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 32.
5024	IM-02	GLICKENHAUS	701269	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 33.
5025	IM-02	GLICKENHAUS	702158	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 34.
5026	IM-02	GLICKENHAUS	703102	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 35.
5027	IM-02	GLICKENHAUS	703103	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 36.
5028	IM-02	GLICKENHAUS	704802	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 37.
5029	IM-02	GLICKENHAUS	704801	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 38.
5030	IM-02	GLICKENHAUS	706124	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 39.
5031	IM-02	GLICKENHAUS	706238	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 40.
5032	IM-02	GLICKENHAUS	707121	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 41.
5033	IM-02	GLICKENHAUS	707901	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 42.
5034	IM-02	GLICKENHAUS	710754	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 44.
5035	IM-02	GLICKENHAUS	712156	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 45.
5036	IM-02	GLICKENHAUS	714543	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 46.
5037	IM-02	GLICKENHAUS	715775	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 47.
5038	IM-02	GLICKENHAUS	716828	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 48.
5039	IM-02	GLICKENHAUS	717563	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 49.
5040	IM-02	GLICKENHAUS	718436	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 50.
5041	IM-02	GLICKENHAUS	719450	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 51.
5042	IM-02	GLICKENHAUS	721401	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 52.
5043	IM-02	GLICKENHAUS	724202	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 53.
5044	IM-02	GLICKENHAUS	726577	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 54.
5045	IM-02	GLICKENHAUS	729585	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 55.
5046	IM-02	GLICKENHAUS	743137	EMPIRE STATE MUN EXEMPT TRUST SERIES 56 57 58 59 & 60.
5047	IM-02	GLICKENHAUS	740202	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 59.
5048	IM-02	GLICKENHAUS	748547	EMPIRE STATE MUN EXEMPT TRUST SERIES 61 62 63 64 & 65.
5049	IM-02	GLICKENHAUS	743879	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 61.
5050	IM-02	GLICKENHAUS	744732	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 62.
5051	IM-02	GLICKENHAUS	745899	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 63.
5052	IM-02	GLICKENHAUS	746872	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 64.
5053	IM-02	GLICKENHAUS	750704	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 66.
5054	IM-02	GLICKENHAUS	753980	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 67.
5055	IM-02	GLICKENHAUS	761894	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 68.
5056	IM-02	GLICKENHAUS	778203	EMPIRE STATE MUNICIPAL EXEMPT TRUST SERIES 70.
5057	IM-02	GLICKENHAUS	744495	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 1.
5058	IM-02	GLICKENHAUS	753129	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 2.
5059	IM-02	GLICKENHAUS	753128	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 3.
5060	IM-02	GLICKENHAUS	755881	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 4.
5061	IM-02	GLICKENHAUS	757701	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 5.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5062	IM-02	GLICKENHAUS	760726	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 6.
5063	IM-02	GLICKENHAUS	761918	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 7.
5064	IM-02	GLICKENHAUS	763615	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 8.
5065	IM-02	GLICKENHAUS	764393	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 9.
5066	IM-02	GLICKENHAUS	765233	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 10.
5067	IM-02	GLICKENHAUS	768839	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 11.
5068	IM-02	GLICKENHAUS	768606	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 12.
5069	IM-02	GLICKENHAUS	768607	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 13.
5070	IM-02	GLICKENHAUS	770954	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 14.
5071	IM-02	GLICKENHAUS	770956	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 15.
5072	IM-02	GLICKENHAUS	771016	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 16.
5073	IM-02	GLICKENHAUS	774550	EMPIRE STATE MUN EXEMPT TRUST GUARANTEED SERIES 17 & SERIES 69.
5074	IM-02	GLICKENHAUS	779130	EMPIRE STATE MUN EXEMPT TRUST GUARANTEED SERIES 18 19 20 & 21.
5075	IM-02	GLICKENHAUS	774551	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 18.
5076	IM-02	GLICKENHAUS	779132	EMPIRE STATE MUN EXEMPT TRUST GUARANTEED SERIES 22 & SERIES 70.
5077	IM-02	GLICKENHAUS	790143	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 23 & 24.
5078	IM-02	GLICKENHAUS	779133	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 23.
5079	IM-02	GLICKENHAUS	790155	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 25.
5080	IM-02	GLICKENHAUS	790156	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 26.
5081	IM-02	GLICKENHAUS	794146	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 27.
5082	IM-02	GLICKENHAUS	794144	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 28.
5083	IM-02	GLICKENHAUS	794143	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 29 & 30.
5084	IM-02	GLICKENHAUS	794145	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 29.
5085	IM-02	GLICKENHAUS	807962	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 31.
5086	IM-02	GLICKENHAUS	807997	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 32.
5087	IM-02	GLICKENHAUS	827886	EMPIRE STATE MUN EXEMPT TRUST GUARANTEED SERIES 33 34 & 35.
5088	IM-02	GLICKENHAUS	808000	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 33.
5089	IM-02	GLICKENHAUS	807998	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 34.
5090	IM-02	GLICKENHAUS	827887	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 36.
5091	IM-02	GLICKENHAUS	834888	EMPIRE STATE MUNICIPAL EXEMPT TRST GUARANTEED SERIES 37 & 38.
5092	IM-02	GLICKENHAUS	827888	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 37.
5093	IM-02	GLICKENHAUS	834892	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 39.
5094	IM-02	GLICKENHAUS	845519	EMPIRE STATE MUN EXEMPT TRUST GUARANTEED SERIES 40 41 42 43 & 44.
5095	IM-02	GLICKENHAUS	834894	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 40.
5096	IM-02	GLICKENHAUS	840594	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 41.
5097	IM-02	GLICKENHAUS	840593	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 42.
5098	IM-02	GLICKENHAUS	840576	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 43.
5099	IM-02	GLICKENHAUS	845520	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 45.
5100	IM-02	GLICKENHAUS	845521	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 46.
5101	IM-02	GLICKENHAUS	849391	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 47.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5102	IM-02	GLICKENHAUS	849398	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 48.
5103	IM-02	GLICKENHAUS	849387	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 49.
5104	IM-02	GLICKENHAUS	853384	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 50.
5105	IM-02	GLICKENHAUS	858427	EMPIRE STATE MUN EXEMPT TRUST GUARANTEED SERIES 51 52 53 & 54.
5106	IM-02	GLICKENHAUS	853381	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 51.
5107	IM-02	GLICKENHAUS	853387	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 52.
5108	IM-02	GLICKENHAUS	858428	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 53.
5109	IM-02	GLICKENHAUS	858426	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 55.
5110	IM-02	GLICKENHAUS	731658	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 56.
5111	IM-02	GLICKENHAUS	732777	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 57.
5112	IM-02	GLICKENHAUS	737770	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 58.
5113	IM-02	GLICKENHAUS	864320	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 59.
5114	IM-02	GLICKENHAUS	864319	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 60.
5115	IM-02	GLICKENHAUS	864321	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 61.
5116	IM-02	GLICKENHAUS	867913	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 62.
5117	IM-02	GLICKENHAUS	867912	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 63.
5118	IM-02	GLICKENHAUS	867914	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 64.
5119	IM-02	GLICKENHAUS	869748	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 65.
5120	IM-02	GLICKENHAUS	869746	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 66.
5121	IM-02	GLICKENHAUS	869747	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 67.
5122	IM-02	GLICKENHAUS	871233	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 68.
5123	IM-02	GLICKENHAUS	871232	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 69.
5124	IM-02	GLICKENHAUS	871231	EMPIRE STATE MUNICIPAL EXEMPT TRUST GUARANTEED SERIES 70.
5125	IM-02	INSURED MUNI	759204	INSURED MUNICIPALS INCOME TRUST SERIES 132.
5126	IM-02	INSURED MUNI	759206	INSURED MUNICIPALS INCOME TRUST SERIES 133.
5127	IM-02	INSURED MUNI	759203	INSURED MUNICIPALS INCOME TRUST SERIES 134.
5128	IM-02	INSURED MUNI	797090	INSURED MUNICIPALS INCOME TRUST SERIES 171.
5129	IM-02	INSURED MUNI	836389	INSURED MUNICIPALS INCOME TRUST SERIES 212.
5130	IM-02	INSURED MUNI	819565	INSURED MUNICIPALS INCOME TRUST 36TH INSURED MULTI SERIES.
5131	IM-02	INSURED MUNI	866739	INSURED MUNICIPAL SECURITIES TRUST CALIFORNIA NAVIGATOR INS.
5132	IM-02	INSURED MUNI	863845	INSURED MUNICIPAL SECURITIES TR NEW JERSEY SERIES 1 & PENN SE 1.
5133	IM-02	INSURED MUNI	868870	INSURED MUNICIPAL SEC TR NY NAV INS SERIES 5 & NJ NAV INS SERIES 2.
5134	IM-02	INSURED MUNI	840822	INSURED MUNICIPAL SEC TR 39TH DISCOUNT SERIES & SERIES 12.
5135	IM-02	INSURED MUNI	863533	INSURED MUNICIPAL SECS TR 50TH DIS SERIES 24 & NY NAV INS SERIES 3.
5136	IM-02	INSURED MUNI	866536	INSURED MUN SEC TR SERS 25 & NY NAVIGATOR INSURED SERIES 4.
5137	IM-02	INSURED MUNI	869774	INSURED MUN SEC TR 51ST DIS SE SERIES 26 NY NAV INS SERIES 6.
5138	IM-02	INSURED MUNI	778708	INSURED MUN SECURITIES TRUST 15TH DISCOUNT SERIES & SERIES 5.
5139	IM-02	INSURED MUNI	757819	INSURED MUNICIPAL SECURITIES TRUST 5TH DISCOUNT SERS & SERIES 1.
5140	IM-02	INSURED MUNI	762932	INSURED MUNICIPAL SECURITIES TRUST 8TH DISCOUNT SERIES & SERIES 2.
5141	IM-02	INSURED MUNI	835775	INSURED MUNICIPAL SECURITIES TRUST 37TH DIS SERIES & SERIES 10.
5142	IM-02	INSURED MUNI	839046	INSURED MUNICIPAL SECURITIES TRUST 38TH DIS SERIES & SERIES 11.
5143	IM-02	INSURED MUNI	841967	INSURED MUNICIPAL SECURITIES TRUST 40TH DIS SERIES & SERIES 13.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5144	IM-02	INSURED MUNI	843784	INSURED MUNICIPAL SECURITIES TRUST 41ST DISCOUNT SERIES & SR 14.
5145	IM-02	INSURED MUNI	845294	INSURED MUNICIPAL SECURITIES TRUST 42ND DISCOUNT SERIES & SE 15.
5146	IM-02	INSURED MUNI	846125	INSURED MUNICIPAL SECURITIES TRUST 43RD DIS SERIES & SERIES 16.
5147	IM-02	INSURED MUNI	846803	INSURED MUNICIPAL SECURITIES TR 45TH DISCOUNT SERIES & SERIES 18.
5148	IM-02	INSURED MUNI	847561	INSURED MUNICIPAL SECURITIES TRUST 46TH DISC SERIES & SERIES 19.
5149	IM-02	INSURED MUNI	849697	INSURED MUNICIPAL SECURITIES TRUST 47TH DISC SERIES & SERIES 20.
5150	IM-02	INSURED MUNI	850308	INSURED MUNICIPAL SECURITIES TR 48TH DISCOUNT SERIES 21.
5151	IM-02	INSURED MUNI	856292	INSURED MUNICIPAL SECURITIES TR 49TH DIS SE SERIES 23 NEW YORK.
5152	IM-02	INSURED MUNI	810357	INSURED MUNICIPAL SECURITIES TRUST 28 DISCOUNT SERIES.
5153	IM-02	INSURED MUNI	759728	INSURED MUNICIPAL SECURITIES TRUST 6TH DISCOUNT SERIES.
5154	IM-02	INSURED MUNI	760660	INSURED MUNICIPAL SECURITIES TRUST 7TH DISCOUNT SERIES.
5155	IM-02	INSURED MUNI	763694	INSURED MUNICIPAL SECURITIES TRUST 9TH DISCOUNT SERIES.
5156	IM-02	INSURED MUNI	766706	INSURED MUNICIPAL SECURITIES TRUST 10TH DISCOUNT SERIES & SERIES 3.
5157	IM-02	INSURED MUNI	769273	INSURED MUNICIPAL SECURITIES TRUST 11TH DISCOUNT SERIES.
5158	IM-02	INSURED MUNI	771612	INSURED MUNICIPAL SECURITIES TRUST 12TH DISCOUNT SERIES & SERIES 4.
5159	IM-02	INSURED MUNI	773340	INSURED MUNICIPAL SECURITIES TRUST 13TH DISCOUNT SERIES.
5160	IM-02	INSURED MUNI	782152	INSURED MUNICIPAL SECURITIES TRUST 16TH DISCOUNT SERIES.
5161	IM-02	INSURED MUNI	786051	INSURED MUNICIPAL SECURITIES TRUST 17TH DIS SERIES & SERIES 6.
5162	IM-02	INSURED MUNI	789294	INSURED MUNICIPAL SECURITIES TRUST 18TH DISCOUNT SERIES.
5163	IM-02	INSURED MUNI	791244	INSURED MUNICIPAL SECURITIES TRUST 19TH DISCOUNT SERIES & SERIES 7.
5164	IM-02	INSURED MUNI	793384	INSURED MUNICIPAL SECURITIES TRUST 20TH DISCOUNT SERIES.
5165	IM-02	INSURED MUNI	795037	INSURED MUNICIPAL SECURITIES TRUST 21ST DISCOUNT SERIES.
5166	IM-02	INSURED MUNI	797224	INSURED MUNICIPAL SECURITIES TRUST 22ND DISCOUNT SERIES.
5167	IM-02	INSURED MUNI	799010	INSURED MUNICIPAL SECURITIES TRUST 23RD DISCOUNT SERIES.
5168	IM-02	INSURED MUNI	801326	INSURED MUNICIPAL SECURITIES TRUST 24TH DISCOUNT SERIES.
5169	IM-02	INSURED MUNI	804082	INSURED MUNICIPAL SECURITIES TRUST 25TH DISCOUNT SERIES.
5170	IM-02	INSURED MUNI	806088	INSURED MUNICIPAL SECURITIES TRUST 26TH DISCOUNT SERIES.
5171	IM-02	INSURED MUNI	808365	INSURED MUNICIPAL SECURITIES TRUST 27TH DISCOUNT SERIES.
5172	IM-02	INSURED MUNI	811496	INSURED MUNICIPAL SECURITIES TRUST 29TH DISCOUNT SERIES.
5173	IM-02	INSURED MUNI	814902	INSURED MUNICIPAL SECURITIES TRUST 30TH DISCOUNT SERIES.
5174	IM-02	INSURED MUNI	817650	INSURED MUNICIPAL SECURITIES TRUST 31ST DISCOUNT SERIES.
5175	IM-02	INSURED MUNI	820108	INSURED MUNICIPAL SECURITIES TRUST 32ND DISCOUNT SERIES.
5176	IM-02	INSURED MUNI	826724	INSURED MUNICIPAL SECURITIES TRUST 33RD DISCOUNT SERIES.
5177	IM-02	INSURED MUNI	830623	INSURED MUNICIPAL SECURITIES TRUST 34TH DISCOUNT SERIES.
5178	IM-02	INSURED MUNI	832406	INSURED MUNICIPAL SECURITIES TRUST 35TH DISCOUNT SERIES & SERIES 8.
5179	IM-02	INSURED MUNI	833437	INSURED MUNICIPAL SECURITIES TRUST 36TH DISCOUNT SERIES & SERIES 9.
5180	IM-02	INSURED MUNI	846418	INSURED MUNICIPAL SECURITIES TRUST 44TH DISCOUNT SERIES &.
5181	IM-02	INSURED MUNI	852243	INSURED MUNICIPAL SECURITIES TRUST 22 & NEW YORK NAV IN SE 1.
5182	IM-02	INSURED MUNI	740856	INSURED MUNICIPAL SECURITIES TRUST SERIES 1.
5183	IM-02	INSURED MUNI	754836	INSURED MUNICIPAL SECURITIES TRUST SERIES 2.
5184	IM-02	INSURED MUNI	755880	INSURED MUNICIPAL SECURITIES TRUST SERIES 3.
5185	IM-02	INSURED MUNI	756926	INSURED MUNICIPAL SECURITIES TRUST SERIES 4.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5186	IM-02	KEMPER	799877	KEMPER BOND ENHANCED SECURITIES TRUST SERIES 5 SUM SERIES 6.
5187	IM-02	KEMPER	810774	KEMPER BOND ENHANCED SEC TR SERIES 7 SUMMIT SERIES 8.
5188	IM-02	KEMPER	810760	KEMPER BOND ENHANCED SECURITIES TRUST SERIES 7.
5189	IM-02	KEMPER	810776	KEMPER BOND ENHANCED SECURITIES TRUST SERIES 9 9S 10 & 10S.
5190	IM-02	KEMPER	810775	KEMPER BOND ENHANCED SECURITIES TRUST SERIES 10.
5191	IM-02	KEMPER	833290	KEMPER BOND ENHANCED SECURITIES TRUST SERIES 11 12 & 12S.
5192	IM-02	KEMPER	822703	KEMPER BOND ENHANCED SECURITIES TRUST SERIES 11.
5193	IM-02	KEMPER	844165	KEMPER BOND ENHANCED SEC TR SE 13 GROWTH SE 14 TOTAL RET & S.
5194	IM-02	KEMPER	796711	KEMPER BOND ENHANCED SECURITIES TRUST SUMMIT SE & TOTAL RETU.
5195	IM-02	KEMPER	774404	KEMPER DOUBLE PLAY TRUST SERIES 1 SUMMIT.
5196	IM-02	KEMPER	790943	KEMPER DOUBLE PLAY TRUST SERIES 2.
5197	IM-02	KEMPER	790942	KEMPER DOUBLE PLAY TRUST SERIES 3.
5198	IM-02	KEMPER	858239	KEMPER EQUITY PORTFOLIO TRUST SERIES I.
5199	IM-02	KEMPER	351754	KEMPER INVESTORS LIFE INSURANCE CO.
5200	IM-02	KEMPER	864529	KEMPER GOVERNMENT SECURITIES TRUST FNMA DEBENTURE SERIES 3.
5201	IM-02	KEMPER	729679	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 1.
5202	IM-02	KEMPER	741030	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 2.
5203	IM-02	KEMPER	741031	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 3.
5204	IM-02	KEMPER	760499	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 4.
5205	IM-02	KEMPER	771478	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 5.
5206	IM-02	KEMPER	771933	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 6.
5207	IM-02	KEMPER	773814	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 7 & 9.
5208	IM-02	KEMPER	729523	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 8.
5209	IM-02	KEMPER	788607	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 10.
5210	IM-02	KEMPER	788911	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 11.
5211	IM-02	KEMPER	788848	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORT SERIES 12 & 13.
5212	IM-02	KEMPER	795087	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 14.
5213	IM-02	KEMPER	795085	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 15.
5214	IM-02	KEMPER	795080	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 16.
5215	IM-02	KEMPER	800079	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 17.
5216	IM-02	KEMPER	800077	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 18.
5217	IM-02	KEMPER	800073	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 19.
5218	IM-02	KEMPER	800076	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 20.
5219	IM-02	KEMPER	810757	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORT SERIES 21 & 22.
5220	IM-02	KEMPER	810756	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORTFOLIO SERIES 23.
5221	IM-02	KEMPER	836391	KEMPER GOVERNMENT SECURITIES TR GNMA PORTFOLIO SERIES 26 27 & 2.
5222	IM-02	KEMPER	846015	KEMPER GOVERNMENT SECURITIES TR GNMA PORTFOLIO SERIES 28 29 30.
5223	IM-02	KEMPER	853157	KEMPER GOVERNMENT SECURITIES TRUST GNMA PORT SERIES 31 32 & 33.
5224	IM-02	KEMPER	859712	KEMPER GOVERNMENT SECURITIES TR SERIES 34 GNMA SERIES 35 & SERIES 36.
5225	IM-02	KEMPER	866481	KEMPER GOVN SEC TR SERIES 37 GNMA PORT SERIES 38 US TREY PORT FNMA.
5226	IM-02	KEMPER	870273	KEMPER INSURED CORPORATE TRUST SERIES 1.
5227	IM-02	KEMPER	721084	KEMPER TAX EXEMPT INSURED INCOME TR SERIES A-1 MULTI ST 34.
5228	IM-02	KEMPER	724207	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 2.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5229	IM-02	KEMPER	724206	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 3.
5230	IM-02	KEMPER	727225	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A4.
5231	IM-02	KEMPER	727226	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-5.
5232	IM-02	KEMPER	727227	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A6.
5233	IM-02	KEMPER	732732	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-7.
5234	IM-02	KEMPER	732731	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A8.
5235	IM-02	KEMPER	732734	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A9.
5236	IM-02	KEMPER	739335	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A11.
5237	IM-02	KEMPER	739345	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A12.
5238	IM-02	KEMPER	739334	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A13.
5239	IM-02	KEMPER	739325	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A14.
5240	IM-02	KEMPER	739326	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A15.
5241	IM-02	KEMPER	746041	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-16.
5242	IM-02	KEMPER	746042	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-17.
5243	IM-02	KEMPER	746043	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-18.
5244	IM-02	KEMPER	746044	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-19.
5245	IM-02	KEMPER	746045	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-20.
5246	IM-02	KEMPER	751327	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-21.
5247	IM-02	KEMPER	751331	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A22.
5248	IM-02	KEMPER	751333	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A23.
5249	IM-02	KEMPER	751335	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A24.
5250	IM-02	KEMPER	751336	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 25.
5251	IM-02	KEMPER	757228	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-26.
5252	IM-02	KEMPER	757227	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-27.
5253	IM-02	KEMPER	757226	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-28.
5254	IM-02	KEMPER	762994	KEMPER TAX EXEMPT INSURED INCOME TRUST SER A-29 & MULTI STATE 3.
5255	IM-02	KEMPER	757222	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-30.
5256	IM-02	KEMPER	732733	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A30.
5257	IM-02	KEMPER	762995	KEMPER TAX EXEMPT INSURED INC TR SER A-31 INS INC TR MU STATE 4.
5258	IM-02	KEMPER	762996	KEMPER TAX EXEMPT INSURED INCOME TR SERIES A-32 MULTI STATE 5.
5259	IM-02	KEMPER	766063	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 33.
5260	IM-02	KEMPER	766064	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 34.
5261	IM-02	KEMPER	766065	KEMPER TAX EXEMPT INSURED INCOME TRUST SER A 35 MUL STATE SERIES 7.
5262	IM-02	KEMPER	784047	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-39.
5263	IM-02	KEMPER	784048	KEMPER TAX EXEMPT INSURED INCOME TR SERIES A-40 MULTI STATE 10.
5264	IM-02	KEMPER	784052	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-41.
5265	IM-02	KEMPER	796364	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 43.
5266	IM-02	KEMPER	796365	KEMPER TAX EXEMPT INSURED INCOME TR SER A 44 MULTI STATE SER 28.
5267	IM-02	KEMPER	796363	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 45.
5268	IM-02	KEMPER	801345	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-47.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5269	IM-02	KEMPER	801353	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-48.
5270	IM-02	KEMPER	801347	KEMPER TAX EXEMPT INSURED IN TR A-49 MUL ST 12 SH INTE TE 15.
5271	IM-02	KEMPER	801360	KEMPER TAX EXEMPT INSURED INCOME TR SERIES A-50 & MULTI STATE 13.
5272	IM-02	KEMPER	716636	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-51.
5273	IM-02	KEMPER	821151	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 54.
5274	IM-02	KEMPER	821154	KEMPER TAX EXEMPT INS INC TR SERIES A-55 SERIES A-56 & MUL STATE SERIES 15.
5275	IM-02	KEMPER	850078	KEMPER TAX EXEMPT INSURED INCOME TR SER A 57 58 MULTI STATE 16.
5276	IM-02	KEMPER	825400	KEMPER TAX EXEMPT INS IN TR SERIES A59 & MU STATE SERIES 17 SERIES 86 & MU STATE 39.
5277	IM-02	KEMPER	825399	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 60.
5278	IM-02	KEMPER	853156	KEMPER TAX EXEMPT INS INCOME TRUST SER A 62 & MULTI STATE SER 19.
5279	IM-02	KEMPER	855271	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-63.
5280	IM-02	KEMPER	853155	KEMPER TAX EXEMPT INSURED INC TR SERIES A-64 A-65 & MUL STATE SERIES 22.
5281	IM-02	KEMPER	858233	KEMPER TAX EXEMPT INS INCOME TR SERIES A 66 & MUL STATE SERIES 24 SERIES 40.
5282	IM-02	KEMPER	860259	KEMPER TAX EXEMPT INSURED INC TR SERIES A-67 & MUL STATE SERIES 25 & 41.
5283	IM-02	KEMPER	862625	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A 68.
5284	IM-02	KEMPER	864726	KEMPER TAX EXEMPT INSUR INCOME TRU SER A 69 & MUL STA SER 27.
5285	IM-02	KEMPER	864924	KEMPER TAX EXEMPT INS INC TR SER A 70 & MULTI STATE SERIES 42.
5286	IM-02	KEMPER	867576	KEMPER TAX EXEMPT INSURED INCOME TRUST SERIES A-71.
5287	IM-02	KEMPER	868707	KEMPER TAX EXEMPT INSURED INCOME TR SER A-72 & MUL STATE SER 30.
5288	IM-02	KEMPER	869683	KEMPER TAX EXEMPT INS INC TR SER A-73 & MUL STATE SER 32KEMPER TAX.
5289	IM-02	KEMPER	871528	KEMPER TAX EXEMPT INSURED INCOME TRUS SER A-74 MU STATE SER 33.
5290	IM-02	KEMPER	761893	KEMPER TAX EXEMPT INSURED INCOME TRUST MULTI STATE SERIES 1.
5291	IM-02	KEMPER	762993	KEMPER TAX EXEMPT INSURED INCOME TRUST MULTI STATE SERS 2.
5292	IM-02	KEMPER	856284	KEMPER TAX EXEMPT INSURED INCOME TRUST MULTI STATE SERIES 21.
5293	IM-02	KEMPER	859684	KEMPER TAX EXEMPT INSURED INCOME TR MULTI STATE SER 23.
5294	IM-02	KEMPER	869588	KEMPER TAX EXEMPT INSURED INCOME TRUST MULTI STATE SER 31.
5295	IM-02	KEMPER	871006	KEMPER TAX EXEMPT INSURED INCOME TRUST MULT STA SER 32.
5296	IM-02	KEMPER	810773	KEMPER TAX EXEMPT IN TR SH IN TE SERIES 17 & MU STATE SERIES 37 & KE TAX EX.
5297	IM-02	KEMPER	110706	KEMPER TAX EXEMPT INCOME TRUST.
5298	IM-02	KEMPER	316883	KEMPER TAX EXEMPT INCOME TRUST SERIES 12.
5299	IM-02	KEMPER	317154	KEMPER TAX EXEMPT INCOME TRUST SERIES 13.
5300	IM-02	KEMPER	317451	KEMPER TAX EXEMPT INCOME TRUST SERIES 14.
5301	IM-02	KEMPER	317619	KEMPER TAX EXEMPT INCOME TRUST SERIES 16.
5302	IM-02	KEMPER	318520	KEMPER TAX EXEMPT INCOME TRUST SERIES 18.
5303	IM-02	KEMPER	351826	KEMPER TAX EXEMPT INCOME TRUST SERIES 21.
5304	IM-02	KEMPER	352030	KEMPER TAX EXEMPT INCOME TRUST SERIES 22.
5305	IM-02	KEMPER	353002	KEMPER TAX EXEMPT INCOME TRUST SERIES 23.
5306	IM-02	KEMPER	353003	KEMPER TAX EXEMPT INCOME TRUST SERIES 24.
5307	IM-02	KEMPER	353973	KEMPER TAX EXEMPT INCOME TRUST SERIES 25.
5308	IM-02	KEMPER	353897	KEMPER TAX EXEMPT INCOME TRUST SERIES 26.
5309	IM-02	KEMPER	355160	KEMPER TAX EXEMPT INCOME TRUST SERIES 27.
5310	IM-02	KEMPER	355164	KEMPER TAX EXEMPT INCOME TRUST SERIES 28.
5311	IM-02	KEMPER	356046	KEMPER TAX EXEMPT INCOME TRUST SERIES 29.
5312	IM-02	KEMPER	356056	KEMPER TAX EXEMPT INCOME TRUST SERIES 30.
5313	IM-02	KEMPER	356032	KEMPER TAX EXEMPT INCOME TRUST SERIES 31.
5314	IM-02	KEMPER	357284	KEMPER TAX EXEMPT INCOME TRUST SERIES 32.
5315	IM-02	KEMPER	357286	KEMPER TAX EXEMPT INCOME TRUST SERIES 33.
5316	IM-02	KEMPER	357283	KEMPER TAX EXEMPT INCOME TRUST SERIES 34.
5317	IM-02	KEMPER	702087	KEMPER TAX EXEMPT INCOME TRUST SERIES 35.
5318	IM-02	KEMPER	702083	KEMPER TAX EXEMPT INCOME TRUST SERIES 36.
5319	IM-02	KEMPER	702084	KEMPER TAX EXEMPT INCOME TRUST SERIES 37.
5320	IM-02	KEMPER	703772	KEMPER TAX EXEMPT INCOME TRUST SERIES 38.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5321	IM-02	KEMPER	703771	KEMPER TAX EXEMPT INCOME TRUST SERIES 39.
5322	IM-02	KEMPER	703770	KEMPER TAX EXEMPT INCOME TRUST SERIES 40.
5323	IM-02	KEMPER	705447	KEMPER TAX EXEMPT INCOME TRUST SERIES 41.
5324	IM-02	KEMPER	705445	KEMPER TAX EXEMPT INCOME TRUST SERIES 42.
5325	IM-02	KEMPER	705446	KEMPER TAX EXEMPT INCOME TRUST SERIES 43.
5326	IM-02	KEMPER	705444	KEMPER TAX EXEMPT INCOME TRUST SERIES 44.
5327	IM-02	KEMPER	706463	KEMPER TAX EXEMPT INCOME TRUST SERIES 45.
5328	IM-02	KEMPER	706460	KEMPER TAX EXEMPT INCOME TRUST SERIES 46.
5329	IM-02	KEMPER	706462	KEMPER TAX EXEMPT INCOME TRUST SERIES 47.
5330	IM-02	KEMPER	708852	KEMPER TAX EXEMPT INCOME TRUST SERIES 48.
5331	IM-02	KEMPER	708856	KEMPER TAX EXEMPT INCOME TRUST SERIES 49.
5332	IM-02	KEMPER	708855	KEMPER TAX EXEMPT INCOME TRUST SERIES 50.
5333	IM-02	KEMPER	711006	KEMPER TAX EXEMPT INCOME TRUST SERIES 51.
5334	IM-02	KEMPER	711003	KEMPER TAX EXEMPT INCOME TRUST SERIES 52.
5335	IM-02	KEMPER	711004	KEMPER TAX EXEMPT INCOME TRUST SERIES 53.
5336	IM-02	KEMPER	711007	KEMPER TAX EXEMPT INCOME TRUST SERIES 54.
5337	IM-02	KEMPER	715266	KEMPER TAX EXEMPT INCOME TRUST SERIES 55.
5338	IM-02	KEMPER	715265	KEMPER TAX EXEMPT INCOME TRUST SERIES 56.
5339	IM-02	KEMPER	715264	KEMPER TAX EXEMPT INCOME TRUST SERIES 57.
5340	IM-02	KEMPER	715263	KEMPER TAX EXEMPT INCOME TRUST SERIES 58.
5341	IM-02	KEMPER	718403	KEMPER TAX EXEMPT INCOME TRUST SERIES 59.
5342	IM-02	KEMPER	718402	KEMPER TAX EXEMPT INCOME TRUST SERIES 60.
5343	IM-02	KEMPER	718401	KEMPER TAX EXEMPT INCOME TRUST SERIES 61.
5344	IM-02	KEMPER	718400	KEMPER TAX EXEMPT INCOME TRUST SERIES 62.
5345	IM-02	KEMPER	722050	KEMPER TAX EXEMPT INCOME TRUST SERIES 63.
5346	IM-02	KEMPER	722048	KEMPER TAX EXEMPT INCOME TRUST SERIES 64.
5347	IM-02	KEMPER	722067	KEMPER TAX EXEMPT INCOME TRUST SERIES 65.
5348	IM-02	KEMPER	722066	KEMPER TAX EXEMPT INCOME TRUST SERIES 66.
5349	IM-02	KEMPER	736466	KEMPER TAX EXEMPT INCOME TRUST SERIES 67.
5350	IM-02	KEMPER	736463	KEMPER TAX EXEMPT INCOME TRUST SERIES 68.
5351	IM-02	KEMPER	736464	KEMPER TAX EXEMPT INCOME TRUST SERIES 69.
5352	IM-02	KEMPER	736465	KEMPER TAX EXEMPT INCOME TRUST SERIES 70.
5353	IM-02	KEMPER	746046	KEMPER TAX EXEMPT INCOME TRUST SERIES 71.
5354	IM-02	KEMPER	746050	KEMPER TAX EXEMPT INCOME TR SER 72 & SHORT INTER TER SER 1.
5355	IM-02	KEMPER	746049	KEMPER TAX EXEMPT INCOME TRUST SERIES 73 SHORT INT TERM SERIES 2.
5356	IM-02	KEMPER	746048	KEMPER TAX EXEMPT INCOME TRUST SERIES 74.
5357	IM-02	KEMPER	746047	KEMPER TAX EXEMPT INCOME TRUST SR 75 & SHORT INTER TERM SR 3.
5358	IM-02	KEMPER	757443	KEMPER TAX EXEMPT INCOME TRUST SR 76 & SHORT INTER TERM SR 4.
5359	IM-02	KEMPER	757444	KEMPER TAX EXEMPT INCOME TRUST SERIES 77 SHT INTER TER SER 5.
5360	IM-02	KEMPER	757445	KEMPER TAX EXEMPT INCOME TRUST SERIES 78.
5361	IM-02	KEMPER	757446	KEMPER TAX EXEMPT INCOME TRUST SERIES 79 INC TR SH INT TER SER 6.
5362	IM-02	KEMPER	757447	KEMPER TAX EXEMPT INCOME TRUST SERIES 80.
5363	IM-02	KEMPER	769064	KEMPER TAX EXEMPT INCOME TRUST SERIES 82.
5364	IM-02	KEMPER	769065	KEMPER TAX EXEMPT INCOME TR SERIES 83 & MULTI STATE SER 27.
5365	IM-02	KEMPER	769066	KEMPER TAX EXEMPT INCOME TR SERIES 84 & MULTI STATE SERIES 30.
5366	IM-02	KEMPER	810761	KEMPER TAX EXEMPT INCOME TRUST SERIES 85 & MULTI STATE SERIES.
5367	IM-02	KEMPER	862246	KEMPER TAX EXEMPT INCOME TRUST SERIES 88.
5368	IM-02	KEMPER	733593	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 1.
5369	IM-02	KEMPER	737600	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 2.
5370	IM-02	KEMPER	737599	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 3.
5371	IM-02	KEMPER	737605	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 4.
5372	IM-02	KEMPER	737595	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 5.
5373	IM-02	KEMPER	743519	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 6.
5374	IM-02	KEMPER	743481	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 7.
5375	IM-02	KEMPER	743515	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 8.
5376	IM-02	KEMPER	743480	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 9.
5377	IM-02	KEMPER	751315	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 10.
5378	IM-02	KEMPER	751317	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 11.
5379	IM-02	KEMPER	751316	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 12.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5380	IM-02	KEMPER	757195	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 13.
5381	IM-02	KEMPER	757216	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 14.
5382	IM-02	KEMPER	757217	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 15.
5383	IM-02	KEMPER	765675	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 16.
5384	IM-02	KEMPER	765677	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 18.
5385	IM-02	KEMPER	766062	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 20 SER 81.
5386	IM-02	KEMPER	778395	KEMPER TAX EXEMPT INCOME TRUST MUL STATE SERIES 21 SH INT TERM SERIES 9.
5387	IM-02	KEMPER	778396	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 22.
5388	IM-02	KEMPER	784050	KEMPER TAX EXEMPT INC TR MU STATE SERIES 24&KEM TAX EXEMPT INS IN TR SERIES A-38.
5389	IM-02	KEMPER	789752	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 26.
5390	IM-02	KEMPER	789738	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 29.
5391	IM-02	KEMPER	810359	KEMPER TAX EXEMPT INCOME TRUST MULTI STATE SERIES 31.
5392	IM-02	KEMPER	821155	KEMPER TAX EXEMPT INC TR SH INT TER SERIES 4 MU STATE SERIES 38 SERIES A-53.
5393	IM-02	KEMPER	765676	KEMPER TAX EXEMPT INC TR SHT INTER TERM SER 8 & MUL STATE SER 19.
5394	IM-02	KEMPER	765682	KEMPER TAX EXEMPT INCOME TRUST SHORT INTERM TERM SERIES 11.
5395	IM-02	KEMPER	796335	KEMPER TAX EXEMPT INC TR SH INT TER SERIES 12 SERIES 25 SERIES A-42 & 11.
5396	IM-02	KEMPER	810759	KEMPER TAX EXEMPT INCOME TR SH INT TER SER 14 & MU STATE SER 33.
5397	IM-02	KEMPER	769067	KEMPER TAX EXEMPT INC TR SH IN TE SERIES 16 IN TE SERIES 3 & MU STATE SERIES 35.
5398	IM-02	KEMPER	765678	KEMPER TAX EXEMPT INCOME TRUST SH INT TERM SERIES 7 MUL STATE SERIES 17.
5399	IM-02	MERRILL LYNCH	805047	CORPORATE INCOME FUND MERRILL LYNCH GUAR INVT CONT SER 3.
5400	IM-02	MERRILL LYNCH	791015	CORPORATE INCOME FUND TWENTY SEVENTH INTERMEDIATE TERM SRS.
5401	IM-02	MERRILL LYNCH	024906	CORPORATE INVESTMENT TRUST FUND FIRST MONTHLY PAYMENT SERIES.
5402	IM-02	MERRILL LYNCH	704768	MUNICIPAL INVESTMENT TRUST FUND TWO HUNDRED FORTY FIRST MONT.
5403	IM-02	MERRILL LYNCH	845091	MERRILL LYNCH LIFE INSURANCE COMPANY.
5404	IM-02	MERRILL LYNCH	318352	MERRILL LYNCH VARIABLE ANNUITY ACCOUNT.
5405	IM-02	MERRILL LYNCH	869799	MERRILL LYNCH VARIABLE LIFE SEPARATE ACCOUNT.
5406	IM-02	MERRILL LYNCH	759865	MERRILL LYNCH FUND OF STRIPPED ZERO U S TREA SECURITIES B.
5407	IM-02	NUVEEN	049719	IDS NUVEEN INCOME TRUST SERIES 1.
5408	IM-02	PRUDENTIAL	711201	PRUDENTIAL INDIVIDUAL VARIABLE CONTRACT ACCOUNT.
5409	IM-02	PRUDENTIAL	729057	PRUDENTIAL INSURANCE CO OF AMERICA.
5410	IM-02	PRUDENTIAL	711321	PRUDENTIAL QUALIFIED INDIVIDUAL VARIABLE CONTRACT ACCOUNT/NJ.
5411	IM-02	PRUDENTIAL	846581	PRUDENTIAL VARIABLE CONTRACT REAL PROPERTY ACCOUNT.
5412	IM-02	PRUDENTIAL	843166	GOVERNMENT SECURITIES EQUITY TRUST SERIES I.
5413	IM-02	PRUDENTIAL	858780	NATIONAL EQUITY TRUST UTILITY SERIES 1.
5414	IM-02	PRUDENTIAL	778418	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SEL TER SER 1 INS TAX EXEMPT SER 13.
5415	IM-02	PRUDENTIAL	745350	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 1.
5416	IM-02	PRUDENTIAL	852109	GOVERNMENT SECURITIES EQUITY TRUST SERIES 2.
5417	IM-02	PRUDENTIAL	767412	PRUDENTIAL UNIT TRUSTS INSURED MULTISTATE TAX EXEM SERIES 2.
5418	IM-02	PRUDENTIAL	765891	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 2 INS TAX EXE SER 5.
5419	IM-02	PRUDENTIAL	768688	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SEL TERM SERIES 3.
5420	IM-02	PRUDENTIAL	827992	PRUDENTIAL UNIT TRUSTS PRUDENTIAL EQUITY TRUST SHARES 3.
5421	IM-02	PRUDENTIAL	766349	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 3
5422	IM-02	PRUDENTIAL	768686	PRUDENTIAL UNT TRS TAX EXP SERIES 4 INS MULTS TAX EXP SERIES 3 INS TAX.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5423	IM-02	PRUDENTIAL	785983	PRUDENTIAL UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 4.
5424	IM-02	PRUDENTIAL	764777	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 4.
5425	IM-02	PRUDENTIAL	858347	PRUDENTIAL UNIT TRUSTS PRUDENTIAL EQUITY TRUST SHARES 4.
5426	IM-02	PRUDENTIAL	771474	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 5 IN MULTIST TAX EXEMPT SERIES 4.
5427	IM-02	PRUDENTIAL	785975	PRUDENTIAL UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 5.
5428	IM-02	PRUDENTIAL	769427	PRUDENTIAL UNIT TRUSTS INS TAX EXEMPT SERIES 8 INS MULTIST TAX EXEMPT SERIES 5.
5429	IM-02	PRUDENTIAL	799670	PRUDENTIAL UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 6.
5430	IM-02	PRUDENTIAL	765668	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 6.
5431	IM-02	PRUDENTIAL	769425	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 6.
5432	IM-02	PRUDENTIAL	803607	PRUDENTIAL UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 7.
5433	IM-02	PRUDENTIAL	766353	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 7.
5434	IM-02	PRUDENTIAL	808018	PRUDENTIAL UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 8.
5435	IM-02	PRUDENTIAL	774355	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 9.
5436	IM-02	PRUDENTIAL	772036	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 10.
5437	IM-02	PRUDENTIAL	773554	PRUDENTIAL UN TR INS TAX EXE SERIES 11 INS TAX EXE SEL TRM SERIES 51N.
5438	IM-02	PRUDENTIAL	773552	PRUDENTIAL UNIT TRUSTS INS TAX-EX SER 12 & INS MUL TAX-EX SR 9.
5439	IM-02	PRUDENTIAL	785978	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 13.
5440	IM-02	PRUDENTIAL	785990	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 14.
5441	IM-02	PRUDENTIAL	783453	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 15.
5442	IM-02	PRUDENTIAL	792720	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 15.
5443	IM-02	PRUDENTIAL	785976	PRUDENTIAL UNIT TRUSTS INSURED MULTISTATE TAX EXEMPT SER 16.
5444	IM-02	PRUDENTIAL	794705	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 16.
5445	IM-02	PRUDENTIAL	794704	PRUDENTIAL UNIT TRUSTS INSURED MULTISTATE TAX EXEMPT SER 17.
5446	IM-02	PRUDENTIAL	745351	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 17.
5447	IM-02	PRUDENTIAL	797455	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 17.
5448	IM-02	PRUDENTIAL	797661	PRUDENTIAL UNIT TRUSTS INSURED MULTISTATE TAX EXEMPT SER 18.
5449	IM-02	PRUDENTIAL	791853	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 18.
5450	IM-02	PRUDENTIAL	797456	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 18.
5451	IM-02	PRUDENTIAL	803503	PRUDENTIAL UNIT TRUSTS INSURED MULTISTATE TAX EXEMPT SR 19.
5452	IM-02	PRUDENTIAL	797660	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 19.
5453	IM-02	PRUDENTIAL	806766	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 19 INS TAX EXEMPT SERIES 23.
5454	IM-02	PRUDENTIAL	799525	NATIONAL MUNICIPAL TR SPEC TRUSTS TWENTIETH MULTI STATE SER.
5455	IM-02	PRUDENTIAL	803567	PRUDENTIAL UNIT TR INSURED MULTISTATE TAX EXEMPT SERIES 20.
5456	IM-02	PRUDENTIAL	829528	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 36 IN MU TAX EXEMPT S 20.
5457	IM-02	PRUDENTIAL	797663	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 20.
5458	IM-02	PRUDENTIAL	804089	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 20.
5459	IM-02	PRUDENTIAL	808014	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 20 INS TAX EXEMPT SERIES 24.
5460	IM-02	PRUDENTIAL	806765	PRUDENTIAL UNIT TRUSTS INSURED MUL TAX EXEMPT SERIES 21.
5461	IM-02	PRUDENTIAL	803504	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 21.
5462	IM-02	PRUDENTIAL	806764	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 21.
5463	IM-02	PRUDENTIAL	809635	PRUDENTIAL UNIT TRUSTS TAX EXEMPT SERIES 21 INS TAX EX SERIES 25.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5464	IM-02	PRUDENTIAL	812124	PRUDENTIAL UNIT TRUSTS INSURED MULTISTATE TAX EXEMPT SERIES 22.
5465	IM-02	PRUDENTIAL	803505	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 22.
5466	IM-02	PRUDENTIAL	832497	PRUDENTIAL UNIT TRUSTS INSURED TX EX SERIES 38 IN MU TX EX SERIES 22.
5467	IM-02	PRUDENTIAL	812123	PRUDENTIAL UNIT TRUSTS INSURED MULTISTATE TAX EXEMPT SERIES 23.
5468	IM-02	PRUDENTIAL	835401	PRUDENTIAL UNIT TRUSTS INS TX EX SERIES 39 INS MUL TX EX SERIES 24.
5469	IM-02	PRUDENTIAL	811394	PRUDENTIAL VARIABLE CONTRACT ACCOUNT 24
5470	IM-02	PRUDENTIAL	838823	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 40 & SERIES 25.
5471	IM-02	PRUDENTIAL	842167	PRUDENTIAL UNIT TRUSTS INS TX EX SERIES 41 INS MULST TX EX SERIES 26.
5472	IM-02	PRUDENTIAL	812045	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 26.
5473	IM-02	PRUDENTIAL	790229	NATIONAL MUNICIPAL TR SPECIAL TRUSTS DIS SERIES TWENTY SEVEN.
5474	IM-02	PRUDENTIAL	809634	PRUDENTIAL UNIT TRUSTS INSURED TAX-EXEMPT SERIES 27.
5475	IM-02	PRUDENTIAL	816960	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 28.
5476	IM-02	PRUDENTIAL	821093	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 29.
5477	IM-02	PRUDENTIAL	821092	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 30.
5478	IM-02	PRUDENTIAL	822705	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 31.
5479	IM-02	PRUDENTIAL	822984	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 32.
5480	IM-02	PRUDENTIAL	825071	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 33.
5481	IM-02	PRUDENTIAL	826448	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 34.
5482	IM-02	PRUDENTIAL	828682	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 35.
5483	IM-02	PRUDENTIAL	831658	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 37.
5484	IM-02	PRUDENTIAL	833118	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 39.
5485	IM-02	PRUDENTIAL	835402	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 40.
5486	IM-02	PRUDENTIAL	842164	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 41.
5487	IM-02	PRUDENTIAL	843540	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 42.
5488	IM-02	PRUDENTIAL	858351	PRUDENTIAL UNIT TRUSTS INSURED TAX EXEMPT SERIES 44.
5489	IM-02	PRUDENTIAL	856450	NATIONAL MUNICIPAL TR ONE HUNDRED & TWENTIETH SERIES TWENTY SEVE.
5490	IM-02	PRUDENTIAL	866355	NATIONAL MUN TR MULTISTATE SERIES 31 NATIONAL MUN TR SERIES 128.
5491	IM-02	PRUDENTIAL	070357	NATIONAL MUNICIPAL TRUST & SUBSEQUENT TRUSTS.
5492	IM-02	PRUDENTIAL	318063	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES.
5493	IM-02	PRUDENTIAL	709473	NATIONAL MUNICIPAL TRUST SPECIAL TRUSTS DISC SERIES SEVEN.
5494	IM-02	PRUDENTIAL	858379	NATIONAL MUNICIPAL TRUST SELECTED CREDIT TRUST SERIES 1.
5495	IM-02	PRUDENTIAL	736932	NATIONAL MUNICIPAL TRUST SPECIAL TRUSTS FIRST PUT SERIES.
5496	IM-02	PRUDENTIAL	741265	NATIONAL MUNICIPAL TRUST SPECIAL TRUSTS SECOND PUT SERIES.
5497	IM-02	PRUDENTIAL	778176	NATIONAL MUNICIPAL TRUST INSURED SERIES 12
5498	IM-02	PRUDENTIAL	780588	NATIONAL MUNICIPAL TRUST INSURED SERIES 13
5499	IM-02	PRUDENTIAL	783406	NATIONAL MUNICIPAL TRUST INSURED SERIES 14.
5500	IM-02	PRUDENTIAL	783762	NATIONAL MUNICIPAL TRUST INSURED SERIES 15
5501	IM-02	PRUDENTIAL	784557	NATIONAL MUNICIPAL TRUST INSURED SERIES 16.
5502	IM-02	PRUDENTIAL	787428	NATIONAL MUNICIPAL TRUST INSURED SERIES 17.
5503	IM-02	PRUDENTIAL	794421	NATIONAL MUNICIPAL TRUST INSURED SERIES 21
5504	IM-02	PRUDENTIAL	799524	NATIONAL MUNICIPAL TRUST INSURED SERIES 22.
5505	IM-02	PRUDENTIAL	809155	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 22.
5506	IM-02	PRUDENTIAL	822427	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 24 D.
5507	IM-02	PRUDENTIAL	756806	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 25.
5508	IM-02	PRUDENTIAL	833439	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 25.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5509	IM-02	PRUDENTIAL	774449	NATIONAL MUNICIPAL TRUST SPECIAL TR DISCOUNT SERIES TWENTY SIX.
5510	IM-02	PRUDENTIAL	813827	NATIONAL MUNICIPAL TRUST INSURED SERIES 27.
5511	IM-02	PRUDENTIAL	790205	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 28.
5512	IM-02	PRUDENTIAL	814506	NATIONAL MUNICIPAL TRUST INSURED SERIES 28.
5513	IM-02	PRUDENTIAL	862325	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 28.
5514	IM-02	PRUDENTIAL	793064	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 29.
5515	IM-02	PRUDENTIAL	820480	NATIONAL MUNICIPAL TRUST INSURED SERIES 29.
5516	IM-02	PRUDENTIAL	863135	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 29.
5517	IM-02	PRUDENTIAL	825352	NATIONAL MUNICIPAL TRUST INSURED SERIES 30.
5518	IM-02	PRUDENTIAL	863360	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 30.
5519	IM-02	PRUDENTIAL	775611	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 33.
5520	IM-02	PRUDENTIAL	833323	NATIONAL MUNICIPAL TRUST INSURED SERIES 33.
5521	IM-02	PRUDENTIAL	868323	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 33.
5522	IM-02	PRUDENTIAL	804086	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 34.
5523	IM-02	PRUDENTIAL	837765	NATIONAL MUNICIPAL TRUST INSURED SERIES 34.
5524	IM-02	PRUDENTIAL	804746	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 35.
5525	IM-02	PRUDENTIAL	841879	NATIONAL MUNICIPAL TRUST INSURED SERIES 35.
5526	IM-02	PRUDENTIAL	841885	NATIONAL MUNICIPAL TRUST INSURED SERIES 36.
5527	IM-02	PRUDENTIAL	869779	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 36.
5528	IM-02	PRUDENTIAL	810771	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 37.
5529	IM-02	PRUDENTIAL	845418	NATIONAL MUNICIPAL TRUST INSURED SERIES 37.
5530	IM-02	PRUDENTIAL	870851	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 37.
5531	IM-02	PRUDENTIAL	812429	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 38.
5532	IM-02	PRUDENTIAL	845472	NATIONAL MUNICIPAL TRUST INSURED SERIES 38.
5533	IM-02	PRUDENTIAL	870849	NATIONAL MUNICIPAL TRUST MULTISTATE SERIES 38.
5534	IM-02	PRUDENTIAL	846781	NATIONAL MUNICIPAL TRUST INSURED SERIES 39.
5535	IM-02	PRUDENTIAL	822982	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 40.
5536	IM-02	PRUDENTIAL	846780	NATIONAL MUNICIPAL TRUST INSURED SERIES 40.
5537	IM-02	PRUDENTIAL	826825	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 41.
5538	IM-02	PRUDENTIAL	848480	NATIONAL MUNICIPAL TRUST INSURED SERIES 41.
5539	IM-02	PRUDENTIAL	840423	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 42.
5540	IM-02	PRUDENTIAL	850225	NATIONAL MUNICIPAL TRUST INSURED SERIES 42.
5541	IM-02	PRUDENTIAL	844210	NATIONAL MUNICIPAL TRUST DISCOUNT SERIES 43.
5542	IM-02	PRUDENTIAL	851944	NATIONAL MUNICIPAL TRUST INSURED SERIES 43.
5543	IM-02	PRUDENTIAL	864291	NATIONAL MUNICIPAL TRUST INSURED SERIES 45.
5544	IM-02	PRUDENTIAL	846420	NATIONAL MUNICIPAL TRUST SPEC TRUSTS DIS SERIES FORTY FIVE.
5545	IM-02	PRUDENTIAL	846675	NATIONAL MUNICIPAL TRUST TWENTY SIXTH MULTISTATE SERIES.
5546	IM-02	PRUDENTIAL	780585	NATIONAL MUNICIPAL TRUST EIGHTY NINTH SERIES.
5547	IM-02	PRUDENTIAL	783899	NATIONAL MUNICIPAL TRUST SERIES 90.
5548	IM-02	PRUDENTIAL	784555	NATIONAL MUNICIPAL TRUST SERIES 91.
5549	IM-02	PRUDENTIAL	797098	NATIONAL MUNICIPAL TRUST SERIES 95.
5550	IM-02	PRUDENTIAL	800431	NATIONAL MUNICIPAL TRUST SERIES 96.
5551	IM-02	PRUDENTIAL	804747	NATIONAL MUNICIPAL TRUST SERIES 97.
5552	IM-02	PRUDENTIAL	809063	NATIONAL MUNICIPAL TRUST SERIES 98.
5553	IM-02	PRUDENTIAL	809915	NATIONAL MUNICIPAL TRUST SERIES 100.
5554	IM-02	PRUDENTIAL	816162	NATIONAL MUNICIPAL TRUST SERIES 104.
5555	IM-02	PRUDENTIAL	819537	NATIONAL MUNICIPAL TRUST SERIES 105.
5556	IM-02	PRUDENTIAL	821223	NATIONAL MUNICIPAL TRUST SERIES 106.
5557	IM-02	PRUDENTIAL	825039	NATIONAL MUNICIPAL TRUST SERIES 107.
5558	IM-02	PRUDENTIAL	826206	NATIONAL MUNICIPAL TRUST SERIES 108.
5559	IM-02	PRUDENTIAL	827853	NATIONAL MUNICIPAL TRUST SERIES 109.
5560	IM-02	PRUDENTIAL	837766	NATIONAL MUNICIPAL TRUST ONE HUNDRED & FOURTEENTH SERIES.
5561	IM-02	PRUDENTIAL	839531	NATIONAL MUNICIPAL TRUST SERIES 115.
5562	IM-02	PRUDENTIAL	843021	NATIONAL MUNICIPAL TRUST ONE HUNDRED & SIXTEENTH SERIES.
5563	IM-02	PRUDENTIAL	846419	NATIONAL MUNICIPAL TRUST ONE HUNDRED & SEVENTEENTH SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5564	IM-02	PRUDENTIAL	847298	NATIONAL MUNICIPAL TRUST ONE HUNDRED & EIGHTEENTH SERIES.
5565	IM-02	PRUDENTIAL	849622	NATIONAL MUNICIPAL TRUST ONE HUNDRED & NINETEENTH SERIES.
5566	IM-02	PRUDENTIAL	862176	NATIONAL MUNICIPAL TRUST SERIES 121.
5567	IM-02	PRUDENTIAL	862696	NATIONAL MUNICIPAL TRUST SERIES 122.
5568	IM-02	PRUDENTIAL	863137	NATIONAL MUNICIPAL TRUST SERIES 123.
5569	IM-02	PRUDENTIAL	863361	NATIONAL MUNICIPAL TRUST SERIES 124.
5570	IM-02	PRUDENTIAL	863359	NATIONAL MUNICIPAL TRUST SERIES 125.
5571	IM-02	PRUDENTIAL	796152	NATIONAL MUNICIPAL TRUST SERIES 126.
5572	IM-02	PRUDENTIAL	864293	NATIONAL MUNICIPAL TRUST SERIES 127.
5573	IM-02	PRUDENTIAL	866146	NATIONAL MUNICIPAL TRUST SERIES 128.
5574	IM-02	PRUDENTIAL	866143	NATIONAL MUNICIPAL TRUST SERIES 129.
5575	IM-02	PRUDENTIAL	866371	NATIONAL MUNICIPAL TRUST SERIES 129 MULTISTATE SERIES 32.
5576	IM-02	PRUDENTIAL	868276	NATIONAL MUNICIPAL TRUST SERIES 130.
5577	IM-02	PRUDENTIAL	868324	NATIONAL MUNICIPAL TRUST SERIES 131.
5578	IM-02	PRUDENTIAL	868319	NATIONAL MUNICIPAL TRUST SERIES 132 MULTISTATE SERIES 34.
5579	IM-02	PRUDENTIAL	869876	NATIONAL MUNICIPAL TRUST SERIES 133.
5580	IM-02	PRUDENTIAL	869875	NATIONAL MUNICIPAL TRUST SERIES 133 MULTISTATE SERIES 35.
5581	IM-02	PRUDENTIAL	870784	NATIONAL MUNICIPAL TRUST SERIES 134 & MULTISTATE SERIES 36.
5582	IM-02	PRUDENTIAL	870835	NATIONAL MUNICIPAL TRUST SERIES 135.
5583	IM-02	PRUDENTIAL	870836	NATIONAL MUNICIPAL TRUST SERIES 136.
5584	IM-02	PRUDENTIAL	764690	PRUDENTIAL BACHE UNIT TRUSTS INSURED MULTISTATE TAX SERIES 1.
5585	IM-02	PRUDENTIAL	766048	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT INTERM SR 1.
5586	IM-02	PRUDENTIAL	766595	PRUDENTIAL BACHE UNIT TRUSTS MULTISTATE TAX EXEMPT SERIES 1.
5587	IM-02	PRUDENTIAL	766059	PRUDENTIAL BACHE UNIT TRUSTS TAX EXEMPT INTERMEDIATE SERIES I.
5588	IM-02	PRUDENTIAL	810990	PRUDENTIAL UNIT TRUSTS PRUDENTIAL EQUITY TRUST SHARES 1.
5589	IM-02	PRUDENTIAL	768690	PRUDENTIAL BACHE UNIT TRUSTS INSURED MUL ST TAX EXEMPT SERIES 3.
5590	IM-02	PRUDENTIAL	769424	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT INTER SERIES 4.
5591	IM-02	PRUDENTIAL	773279	PRUDENTIAL BACHE UNIT TRUSTS INS TAX EXEMPT SELEC TERSER5.
5592	IM-02	PRUDENTIAL	771619	PRUDENTIAL BACHE UNIT TRUSTS INS MULTISTATE TAX EXEMPT SERIES 6.
5593	IM-02	PRUDENTIAL	778420	PRUDENTIAL BACHE UNIT TRUSTS INS TAX EXEMPT SEL TERM SERIES 7.
5594	IM-02	PRUDENTIAL	771988	PRUDENTIAL BACHE UNIT TRUSTS INSURED MUL TAX EXEMPT SERIES 7.
5595	IM-02	PRUDENTIAL	784793	PRUDENTIAL BACHE UNIT TR INS TAX EXEMPT SELECTED TERM SERIES 8.
5596	IM-02	PRUDENTIAL	771997	PRUDENTIAL BACHE UNIT TRUSTS INSURED MUL TAX EXEMPT SERIES 8.
5597	IM-02	PRUDENTIAL	778419	PRUDENTIAL BACHE UNIT TRUSTS INS MUL ST TAX EXEMPT SERIES 10.
5598	IM-02	PRUDENTIAL	784792	PRUDENTIAL BACHE UNIT TRUSTS INS MULTISTATE TAX EXEMPT SR 12.
5599	IM-02	PRUDENTIAL	785804	PRUDENTIAL BACHE UNIT TRUSTS INSURED MULTISTATE TAX EX SERIES 14.
5600	IM-02	PRUDENTIAL	835125	PRUDENTIAL BACHE UNIT TRUSTS CORPORATE HIGH YIELD SERIES 2.
5601	IM-02	PRUDENTIAL	833425	PRUDENTIAL BACHE UNIT TRUSTS CORPORATE HIGH YIELD SERIES 3.
5602	IM-02	PRUDENTIAL	840201	PRUDENTIAL BACHE UNIT TRUSTS CORPORATE HIGH YIELD SERIES 4.
5603	IM-02	PRUDENTIAL	840545	PRUDENTIAL BACHE UNIT TRUSTS CORPORATE HIGH YIELD SERIES 5.
5604	IM-02	PRUDENTIAL	767383	PRUDENTIAL BACHE UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 1.
5605	IM-02	PRUDENTIAL	777615	PRUDENTIAL BACHE UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 2.
5606	IM-02	PRUDENTIAL	780002	PRUDENTIAL BACHE UNIT TRUSTS HIGH YIELD TAX EXEMPT SERIES 3.
5607	IM-02	PRUDENTIAL	740116	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT SERIES 1.
5608	IM-02	PRUDENTIAL	764063	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT SERIES 2.
5609	IM-02	PRUDENTIAL	764210	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT SERIES 3.
5610	IM-02	PRUDENTIAL	764776	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT SERIES 5.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5611	IM-02	PRUDENTIAL	768154	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT SERIES 8.
5612	IM-02	PRUDENTIAL	768685	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT SERIES 9.
5613	IM-02	PRUDENTIAL	773553	PRUDENTIAL BACHE UNIT TRUSTS INSURED TAX EXEMPT SERIES 12.
5614	IM-02	PRUDENTIAL	766459	PRUDENTIAL BACHE UNIT TRUSTS TAX EXEMPT SERIES 4.
5615	IM-02	PRUDENTIAL	768689	PRUDENTIAL BACHE UNIT TRUSTS TAX EXEMPT SERIES 5.
5616	IM-02	PRUDENTIAL	771616	PRUDENTIAL BACHE UNIT TRUSTS TAX EXEMPT SERIES 7.
5617	IM-02	PRUDENTIAL	771994	PRUDENTIAL BACHE UNIT TRUSTS TAX EXEMPT SERIES 8.
5618	IM-02	PRUDENTIAL	778416	PRUDENTIAL BACHE UNIT TR TAX EX SERIES 11 INS TAX EX SERIES TER SERIES 7.
5619	IM-02	PRUDENTIAL	784794	PRUDENTIAL BACHE UNIT TRUSTS TAX EXEMPT SERIES 12.
5620	IM-02	PRUDENTIAL	779990	PRUDENTIAL BACHE UNIT TR INS TAX EX SERIES 14 IN MU TAX EX SERIES 11.
5621	IM-02	PRUDENTIAL	080943	PRUDENTIALS ANNUITY PLAN ACCOUNT.
5622	IM-02	PRUDENTIAL	080945	PRUDENTIALS ANNUITY PLAN ACCOUNT-2.
5623	IM-02	PRUDENTIAL	080948	PRUDENTIALS INVESTMENT PLAN ACCOUNT.
5624	IM-02	SHEARSON	843256	SHEARSON LEHMAN HUTTON CAPITAL PARTNERS II L P.
5625	IM-02	SHEARSON	720490	SHEARSON VIP SEPARATE ACCT OF FIRST CAPITAL LIFE INSURANCE CO.
5626	IM-02	SHEARSON	703546	SHEARSON LEHMAN HUTTON UNIT TRUST DIRECTION UIT SERIES.
5627	IM-02	SHEARSON	827012	SHEARSON LEHMAN HUTTON DIRECTIONS UNIT INVST TRUST SERIES 59.
5628	IM-02	SHEARSON	829460	SHEARSON LEHMAN HUTTON UNIT TR DIRECTIONS UIT SIXTIETH SERIE.
5629	IM-02	SHEARSON	830625	SHEARSON LEHMAN HUTTON UNIT TR DIRECTIONS UIT SIXTY FIRST SE.
5630	IM-02	SHEARSON	831802	SHEARSON LEHMAN HUTTON UNIT TR DIRECTIONS UIT SIXTY SECOND S.
5631	IM-02	SHEARSON	832555	SHEARSON LEHMAN HUTTON UNIT TR DIRECTIONS UIT SIXTY THIRD SE.
5632	IM-02	SHEARSON	833879	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 64.
5633	IM-02	SHEARSON	835967	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 65.
5634	IM-02	SHEARSON	837483	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 66.
5635	IM-02	SHEARSON	839532	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 67.
5636	IM-02	SHEARSON	841049	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 68.
5637	IM-02	SHEARSON	842166	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 69.
5638	IM-02	SHEARSON	843439	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 70.
5639	IM-02	SHEARSON	845241	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 71.
5640	IM-02	SHEARSON	846219	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 72.
5641	IM-02	SHEARSON	846888	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 73.
5642	IM-02	SHEARSON	848413	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 74.
5643	IM-02	SHEARSON	850067	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 75.
5644	IM-02	SHEARSON	851888	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 76.
5645	IM-02	SHEARSON	852880	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 77.
5646	IM-02	SHEARSON	854128	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 78.
5647	IM-02	SHEARSON	855313	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 79.
5648	IM-02	SHEARSON	856301	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 80.
5649	IM-02	SHEARSON	857305	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 81.
5650	IM-02	SHEARSON	858103	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 82.
5651	IM-02	SHEARSON	859010	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 83.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5652	IM-02	SHEARSON	860416	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 84.
5653	IM-02	SHEARSON	861279	SHEARSON LEHMAN HUTTON UNIT TRUST DIRECTIONS UIT SERIES 85.
5654	IM-02	SHEARSON	863247	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 86.
5655	IM-02	SHEARSON	865576	SHEARSON LEHMAN HUTTON UNIT TRUSTS DIRECTIONS UIT SERIES 87.
5656	IM-02	SHEARSON	867938	SHEARSON LEHMAN BROTHERS UNIT TRUSTS DIRECTIONS UIT SERIES 88.
5657	IM-02	SHEARSON	869869	SHEARSON LEHMAN BROTHERS UNIT TRUST DIRECTIONS UIT SERIES 89.
5658	IM-02	SHEARSON	870907	SHEARSON LEHMAN BROTHERS UNIT TR DIR UIT SERIES 90.
5659	IM-02	SHEARSON	049331	HUTTON E F CORPORATE INCOME FUND FIRST SERIES.
5660	IM-02	SHEARSON	769033	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT TRUST SERIES 1.
5661	IM-02	SHEARSON	775471	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT INV TR SERIES 2.
5662	IM-02	SHEARSON	777352	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT INV TR SERIES 3.
5663	IM-02	SHEARSON	779576	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT INV TR SERIES 4.
5664	IM-02	SHEARSON	783751	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT INV TR SERIES 5.
5665	IM-02	SHEARSON	786055	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT INVT TR SERIES 6.
5666	IM-02	SHEARSON	788872	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT INVT TR SERIES 7.
5667	IM-02	SHEARSON	790501	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT TRUST SERIES 8.
5668	IM-02	SHEARSON	791808	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT TRUST SERIES 9.
5669	IM-02	SHEARSON	793600	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT TRUST SERIES 10.
5670	IM-02	SHEARSON	795613	HUTTON INVESTMENT TRUST CONVERTIBLE UNIT TRUST SERIES 11.
5671	IM-02	SHEARSON	846714	SHEARSON LEHMAN HUTTON UNIT TRUSTS CONVERTIBLE UIT SERIES 12.
5672	IM-02	SHEARSON	712371	HUTTON INVESTMENT TRUST GNMA SERIES 83 1.
5673	IM-02	SHEARSON	752297	HUTTON INVESTMENT TRUST GNMA SERIES 85-A.
5674	IM-02	SHEARSON	771624	HUTTON INVESTMENT TRUST GNMA SERIES 85-B.
5675	IM-02	SHEARSON	786173	HUTTON INVESTMENT TRUST GNMA SERIES 86-A.
5676	IM-02	SHEARSON	807880	HUTTON INVESTMENT TRUST GNMA SERIES 87-A.
5677	IM-02	SHEARSON	756935	HUTTON INVESTMENT TRUST HIGH YIELD & ZERO COUPON TREA SERIES 1.
5678	IM-02	SHEARSON	764070	HUTTON INVESTMENT TRUST HIGH YIELD & ZERO COUPON TREA SERIES 1B.
5679	IM-02	SHEARSON	750719	HUTTON INVESTMENT TRUST SHORT/INTER TERM U S TREAS SECURITIES 1.
5680	IM-02	SHEARSON	759746	HUTTON INVESTMENT TRUST SHORT/INTER TERM U S TREAS SERIES 2.
5681	IM-02	SHEARSON	817139	HUTTON INVESTMENT TRUST SHORT INT TERM U S TREASURY SERIES 4.
5682	IM-02	SHEARSON	825180	HUTTON INVESTMENT TRUST SHORT INTERMEDIATE TERM US TRE SERIES 5.
5683	IM-02	SHEARSON	770467	HUTTON INVESTMENT TRUST SHORT INTER TERM US TREASURY SERIES 3.
5684	IM-02	SHEARSON	275544	HUTTON E F TRUST FOR GOVERNMENT GUARANTEED SECURITIES.
5685	IM-02	SHEARSON	759247	HUTTON E F TAX EXEMPT TRUST CALIFORNIA INSURED SERIES 7.
5686	IM-02	SHEARSON	783309	HUTTON E F TAX EXEMPT TRUST CALIFORNIA INSURED SERIES 14.
5687	IM-02	SHEARSON	813823	HUTTON E F TAX EXEMPT TRUST CALIFORNIA INSURED SERIES 17.
5688	IM-02	SHEARSON	817601	HUTTON E F TAX EXEMPT TRUST CALIFORNIA INSURED SERIES 18.
5689	IM-02	SHEARSON	736767	HUTTON E F TAX EXEMPT TRUST MULTISTATE SERIES 3.
5690	IM-02	SHEARSON	783285	HUTTON E F TAX EXEMPT TRUST MULTISTATE SERIES 26.
5691	IM-02	SHEARSON	785981	HUTTON E F TAX EXEMPT TRUST MULTISTATE SERIES 27.
5692	IM-02	SHEARSON	788191	HUTTON E F TAX EXEMPT TRUST MULTISTATE SERIES 28.
5693	IM-02	SHEARSON	815020	HUTTON E F TAX EXEMPT TRUST MULTISTATE SERIES 29.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
5694		IM-02	SHEARSON	817596	HUTTON E F TAX EXEMPT TRUST MULTISTATE SERIES 30.
5695		IM-02	SHEARSON	748885	HUTTON E F TAX EXEMPT TRUST NATIONAL INSURED SERIES 6.
5696		IM-02	SHEARSON	277166	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 7.
5697		IM-02	SHEARSON	785982	HUTTON E F TAX EXEMPT TRUST NATIONAL INSURED SERIES 19.
5698		IM-02	SHEARSON	788183	HUTTON E F TAX EXEMPT TRUST NATIONAL INSURED SERIES 20.
5699		IM-02	SHEARSON	277189	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 23.
5700		IM-02	SHEARSON	277190	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 24.
5701		IM-02	SHEARSON	315664	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 46.
5702		IM-02	SHEARSON	317766	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 47.
5703		IM-02	SHEARSON	353476	HUTTON E F EXEMPT TRUST NATIONAL SERIES 54.
5704		IM-02	SHEARSON	355367	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 56.
5705		IM-02	SHEARSON	356135	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 57.
5706		IM-02	SHEARSON	714983	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 78.
5707		IM-02	SHEARSON	715112	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 79.
5708		IM-02	SHEARSON	715064	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 80.
5709		IM-02	SHEARSON	716717	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 81.
5710		IM-02	SHEARSON	716800	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 82.
5711		IM-02	SHEARSON	716829	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 83.
5712		IM-02	SHEARSON	720325	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 84.
5713		IM-02	SHEARSON	720668	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 85.
5714		IM-02	SHEARSON	720863	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 86.
5715		IM-02	SHEARSON	733965	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 89.
5716		IM-02	SHEARSON	736491	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 90.
5717		IM-02	SHEARSON	783310	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 121.
5718		IM-02	SHEARSON	788302	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 123.
5719		IM-02	SHEARSON	789465	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 124.
5720		IM-02	SHEARSON	793554	HUTTON E F TAX EXEMPT TRUST NATIONAL SERIES 125.
5721		IM-02	SHEARSON	351734	HUTTON E F TAX EXEMPT TRUST NEW YORK SERIES 16.
5722		IM-02	SHEARSON	354315	HUTTON E F TAX EXEMPT TRUST NEW YORK SERIES 17.
5723		IM-02	SHEARSON	277184	HUTTON E F TAX EXEMPT TRUST NEW YORK SERIES 18.
5724		IM-02	SHEARSON	701899	HUTTON E F TAX EXEMPT TRUST NEW YORK SERIES 20.
5725		IM-02	SHEARSON	702603	HUTTON E F TAX EXEMPT TRUST NEW YORK SERIES 21.
5726		IM-02	SHEARSON	857790	SHEARSON LEHMAN HUTTON UNIT TRUSTS FIRST CMO TRUST.
5727		IM-02	SHEARSON	859167	SHEARSON LEHMAN HUTTON UNIT TRUSTS SECOND CMO TRUST.
5728		IM-02	SHEARSON	859453	SHEARSON LEHMAN HUTTON UNIT TRUSTS THIRD CMO TRUST.
5729		IM-02	SHEARSON	860256	SHEARSON LEHMAN HUTTON UNIT TRUSTS FOURTH CMO TRUST.
5730		IM-02	SHEARSON	861086	SHEARSON LEHMAN HUTTON UNIT TRUSTS FIFTH CMO TRUST.
5731		IM-02	SHEARSON	862130	SHEARSON LEHMAN HUTTON UNIT TRUSTS SIXTH CMO TRUST.
5732		IM-02	SHEARSON	863246	SHEARSON LEHMAN HUTTON UNIT TRUSTS SEVENTH CMO TRUST.
5733		IM-02	SHEARSON	867686	SHEARSON LEHMAN BROTHERS UNIT TRUSTS EIGHTH CMO TRUST.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5734	IM-02	SHEARSON	854855	SHEARSON LEHMAN HUTTON UNIT TRUSTS FUTURE VALUE FUND SERIES 1.
5735	IM-02	SHEARSON	819084	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 2.
5736	IM-02	SHEARSON	816772	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 1.
5737	IM-02	SHEARSON	819089	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 3.
5738	IM-02	SHEARSON	819090	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 4.
5739	IM-02	SHEARSON	829688	SHEARSON LEHMAN HUTTON UNIT TRUST HIGH YIELD MUNICIPAL SERIES 5.
5740	IM-02	SHEARSON	832499	SHEARSON LEHMAN HUTTON UNIT TRUST HIGH YIELD MUNICIPAL SERIES 6.
5741	IM-02	SHEARSON	832806	SHEARSON LEHMAN HUTTON UNIT TRUST HIGH YIELD MUNICIPAL SERIES 7.
5742	IM-02	SHEARSON	841716	SHEARSON LEHMAN HUTTON UNIT TRUST HIGH YIELD MUNICIPAL SERIES 8.
5743	IM-02	SHEARSON	843441	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 9.
5744	IM-02	SHEARSON	846220	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 10.
5745	IM-02	SHEARSON	846889	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 11.
5746	IM-02	SHEARSON	848416	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUNICIP SERIES 12.
5747	IM-02	SHEARSON	850060	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 13.
5748	IM-02	SHEARSON	852884	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD MUN SERIES 14.
5749	IM-02	SHEARSON	804145	SHEARSON LEHMAN HUTTON UNIT TRUST HIGH YIELD TAXABLE SERIES 1.
5750	IM-02	SHEARSON	805833	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 2.
5751	IM-02	SHEARSON	809295	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERS 3.
5752	IM-02	SHEARSON	809755	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 4.
5753	IM-02	SHEARSON	810947	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAX SERIES 5.
5754	IM-02	SHEARSON	816336	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 6.
5755	IM-02	SHEARSON	818267	SHEARSON LEHMAN HUTTON UNIT TRUST HIGH YIELD TAXABLE SERIES 7.
5756	IM-02	SHEARSON	820532	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 8.
5757	IM-02	SHEARSON	820542	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 9.
5758	IM-02	SHEARSON	826726	SHEARSON LEHMAN BROTHERS UNIT TRUSTS HIGH YIELD TAXABLE S 10.
5759	IM-02	SHEARSON	828599	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 11.
5760	IM-02	SHEARSON	829687	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 12.
5761	IM-02	SHEARSON	832498	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 13.
5762	IM-02	SHEARSON	832807	SHEARSON LEHMAN HUTTON UNIT TRUST HIGH YIELD TAXABLE SERIES 14.
5763	IM-02	SHEARSON	836420	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXA SERIES 15.
5764	IM-02	SHEARSON	838238	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 16.
5765	IM-02	SHEARSON	840546	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 17.
5766	IM-02	SHEARSON	841689	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 18.
5767	IM-02	SHEARSON	842959	SHEARSON LEHMAN HUTTON UNIT TRUSTS HIGH YIELD TAXABLE SERIES 19.
5768	IM-02	SHEARSON	850435	SHEARSON LEHMAN HUTTON UNIT TRUST PRINCIPAL RETURN TRUST II APP SERIES.
5769	IM-02	SHEARSON	847427	SHEARSON LEHMAN HUTTON UNIT TRUST PRINCIPAL RETURN TRUST 1.
5770	IM-02	SHEARSON	841396	SHEARSON LEHMAN HUTTON UNIT TRUSTS REAL ESTATE VALUE TRUST I.
5771	IM-02	SHEARSON	852394	SHEARSON LEHMAN HUTTON UNIT TRUSTS SHORT INTERM MUN SERIES 1.
5772	IM-02	SHEARSON	831952	SHEARSON LEHMAN HUTTON UNIT TRUSTS TAX EXEMPT STATE SERIES 1.
5773	IM-02	SHEARSON	721705	HUTTON TELEPHONE TRUST FIRST TAX FREE EXCHANGE SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
5774		IM-02	SHEARSON	737193	HUTTON TELEPHONE TRUST SECOND TAX FREE EXCHANGE SERIES.
5775		IM-02	SHEARSON	701680	HUTTON UTILITY TRUST FIRST PUBLIC UTILITY EQUITY SERIES.
5776		IM-02	SHEARSON	821120	SHEARSON LEHMAN HUTTON UNIT TRUSTS UTILITY VALUE TRUST I.
5777		IM-02	SHEARSON	836419	SHEARSON LEHMAN HUTTON UN TRUST UTIL VALUE TRUST II HIGH YIELD EQ.
5778		IM-02	SHEARSON	830306	SHEARSON LEHMAN HUTTON UNIT TRUST UTILITY VALUE TRUST III MERGER &.
5779		IM-02	SHEARSON	842165	SHEARSON LEHMAN HUTTON UNIT TRUSTS UTILITY VALUE TRUST IV.
5780		IM-02	SHEARSON	770898	SHEARSON LEHMAN BROTHERS FUND OF STRIPPED ZERO US TREAS SECURITIES.
5781		IM-02	SHEARSON	790198	SHEARSON LEHMAN BROS STRIPPED ZERO COUPON US TRUST SERIES FUN SERIES A.
5782		IM-02	SHEARSON	840012	SHEARSON LEHMAN HUTTON UNIT TRUSTS STRIP ZER US TRE SECURITIES SERIES B.
5783		IM-02	SHEARSON	850919	SHEARSON LEHMAN HUTTON UNIT TRUST UNCOMMON VALUES UN TRUST 1989 SE.
5784		IM-02	SHEARSON	864765	SHEARSON LEHMAN HUTTON UNIT TRUST UNCOMMON VAL UNIT TRUST 1990 SERIES.
5785		IM-02	SMITH BARNEY	045809	HARRIS UPHAM TAX EXEMPT BOND FUND FIRST SERIES.
5786		IM-02	SMITH BARNEY	748611	TAX EXEMPT SECURITIES TRUST FIFTH MULTIPLE MATURITY PROGRAM.
5787		IM-02	SMITH BARNEY	741555	TAX EXEMPT SECURITIES TRUST FIRST MULTIPLE MATURITY PROGRAM.
5788		IM-02	SMITH BARNEY	746666	TAX EXEMPT SECURITIES TRUST FOURTH MULTIPLE MATURITY PROGRAM.
5789		IM-02	SMITH BARNEY	317033	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES B.
5790		IM-02	SMITH BARNEY	318139	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES C.
5791		IM-02	SMITH BARNEY	352432	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES F.
5792		IM-02	SMITH BARNEY	353007	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES G.
5793		IM-02	SMITH BARNEY	353402	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES H.
5794		IM-02	SMITH BARNEY	355214	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES I.
5795		IM-02	SMITH BARNEY	703940	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES R.
5796		IM-02	SMITH BARNEY	704272	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES S.
5797		IM-02	SMITH BARNEY	705961	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES T.
5798		IM-02	SMITH BARNEY	706454	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES U.
5799		IM-02	SMITH BARNEY	707348	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES V.
5800		IM-02	SMITH BARNEY	708195	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES W.
5801		IM-02	SMITH BARNEY	708835	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES X.
5802		IM-02	SMITH BARNEY	710152	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES Y.
5803		IM-02	SMITH BARNEY	710765	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES Z.
5804		IM-02	SMITH BARNEY	745077	TAX EXEMPT SECURITIES TRUST SECOND MULTIPLE MATURITY PROGRAM.
5805		IM-02	SMITH BARNEY	752291	TAX EXEMPT SECURITIES TRUST SEVENTH MULTIPLE MATURITY PROGRA.
5806		IM-02	SMITH BARNEY	751438	TAX EXEMPT SECURITIES TRUST SIXTH MULTIPLE MATURITY PROGRAM.
5807		IM-02	SMITH BARNEY	745621	TAX EXEMPT SECURITIES TRUST THIRD MULTIPLE MATURITY PROGRAM.
5808		IM-02	SMITH BARNEY	355961	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 1.
5809		IM-02	SMITH BARNEY	745166	TAX EXEMPT SECURITIES TRUST INSURED SERIES 1.
5810		IM-02	SMITH BARNEY	808463	TAX EXEMPT SECURITIES TRUST SELECTED TERM 95-99 SERIES 1.
5811		IM-02	SMITH BARNEY	357150	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 2.
5812		IM-02	SMITH BARNEY	752204	TAX EXEMPT SECURITIES TRUST INSURED SERIES 2.
5813		IM-02	SMITH BARNEY	700776	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 3.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5814	IM-02	SMITH BARNEY	753952	TAX EXEMPT SECURITIES TRUST INSURED SERIES 3.
5815	IM-02	SMITH BARNEY	773598	TAX EXEMPT SECURITIES TRUST SELECTED TERM 95-99 SERIES 3.
5816	IM-02	SMITH BARNEY	700938	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 4.
5817	IM-02	SMITH BARNEY	757048	TAX EXEMPT SECURITIES TRUST INSURED SERIES 4.
5818	IM-02	SMITH BARNEY	773323	TAX EXEMPT SECURITIES TRUST SELECTED TERM 95-99 SERIES 4.
5819	IM-02	SMITH BARNEY	701699	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 5.
5820	IM-02	SMITH BARNEY	757999	TAX EXEMPT SECURITIES TRUST INSURED SERIES 5.
5821	IM-02	SMITH BARNEY	702990	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 6.
5822	IM-02	SMITH BARNEY	760617	TAX EXEMPT SECURITIES TRUST INSURED SERIES 6.
5823	IM-02	SMITH BARNEY	704273	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 7.
5824	IM-02	SMITH BARNEY	763979	TAX EXEMPT SECURITIES TRUST INSURED SERIES 7.
5825	IM-02	SMITH BARNEY	705965	TAX EXEMPT SECURITIES TRUST APPRECIATION SERIES 8.
5826	IM-02	SMITH BARNEY	766856	TAX EXEMPT SECURITIES TRUST INSURED SERIES 8.
5827	IM-02	SMITH BARNEY	768751	TAX EXEMPT SECURITIES TRUST INSURED SERIES 9.
5828	IM-02	SMITH BARNEY	770204	TAX EXEMPT SECURITIES TRUST INSURED SERIES 10.
5829	IM-02	SMITH BARNEY	755090	TAX EXEMPT SECURITIES TRUST INTERMEDIATE TERM SERIES 10.
5830	IM-02	SMITH BARNEY	781699	TAX EXEMPT SECURITIES TRUST INSURED SERIES 11.
5831	IM-02	SMITH BARNEY	757045	TAX EXEMPT SECURITIES TRUST INTERMEDIATE TERM SERIES 11.
5832	IM-02	SMITH BARNEY	788071	TAX EXEMPT SECURITIES TRUST INSURED SERIES 12.
5833	IM-02	SMITH BARNEY	757994	TAX EXEMPT SECURITIES TRUST INTERMEDIATE TERM SERS 12.
5834	IM-02	SMITH BARNEY	788070	TAX EXEMPT SECURITIES TRUST INSURED SERIES 13.
5835	IM-02	SMITH BARNEY	760467	TAX EXEMPT SECURITIES TRUST INTERMEDIATE TERM SERIES 13.
5836	IM-02	SMITH BARNEY	796247	TAX EXEMPT SECURITIES TRUST INSURED SERIES 14.
5837	IM-02	SMITH BARNEY	761032	TAX EXEMPT SECURITIES TRUST INTERMEDIATE TERM SERIES 14.
5838	IM-02	SMITH BARNEY	808017	TAX EXEMPT SECURITIES TRUST INSURED SERIES 15.
5839	IM-02	SMITH BARNEY	762858	TAX EXEMPT SECURITIES TRUST INTERMEDIATE TERM SERIES 15.
5840	IM-02	SMITH BARNEY	832180	TAX EXEMPT SECURITIES TRUST INSURED SERIES 16.
5841	IM-02	SMITH BARNEY	764212	TAX EXEMPT SECURITIES TRUST INTERMEDIATE TERM SEREIS 16.
5842	IM-02	SMITH BARNEY	832993	TAX EXEMPT SECURITIES TRUST INSURED SERIES 17.
5843	IM-02	SMITH BARNEY	835340	TAX EXEMPT SECURITIES TRUST SERIES 285 & INSURED SERIES 17.
5844	IM-02	SMITH BARNEY	837908	TAX EXEMPT SECURITIES TRUST INSURED SERIES 18.
5845	IM-02	SMITH BARNEY	841273	TAX EXEMPT SECURITIES TRUST SERIES 292 & SERIES 18.
5846	IM-02	SMITH BARNEY	844937	TAX EXEMPT SECURITIES TRUST INSURED SERIES 19.
5847	IM-02	SMITH BARNEY	276062	TAX EXEMPT SECURITIES TRUST SERIES 19.
5848	IM-02	SMITH BARNEY	846478	TAX EXEMPT SECURITIES TRUST INSURED SERIES 20.
5849	IM-02	SMITH BARNEY	276063	TAX EXEMPT SECURITIES TRUST SERIES 20.
5850	IM-02	SMITH BARNEY	850139	TAX EXEMPT SECURITIES TRUST SERIES 305 & INSURED SERIES 20.
5851	IM-02	SMITH BARNEY	851278	TAX EXEMPT SECURITIES TRUST INSURED SERIES 21.
5852	IM-02	SMITH BARNEY	276370	TAX EXEMPT SECURITIES TRUST SERIES 21.
5853	IM-02	SMITH BARNEY	276084	TAX EXEMPT SECURITIES TRUST SERIES 22.
5854	IM-02	SMITH BARNEY	310474	TAX EXEMPT SECURITIES TRUST SERIES 24.
5855	IM-02	SMITH BARNEY	311177	TAX EXEMPT SECURITIES TRUST SERIES 26.
5856	IM-02	SMITH BARNEY	320807	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 27.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5857	IM-02	SMITH BARNEY	311506	TAX EXEMPT SECURITIES TRUST SERIES 27.
5858	IM-02	SMITH BARNEY	713040	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 28.
5859	IM-02	SMITH BARNEY	312826	TAX EXEMPT SECURITIES TRUST SERIES 28.
5860	IM-02	SMITH BARNEY	713663	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 29.
5861	IM-02	SMITH BARNEY	714640	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 30.
5862	IM-02	SMITH BARNEY	715420	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 31.
5863	IM-02	SMITH BARNEY	716766	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 32.
5864	IM-02	SMITH BARNEY	314127	TAX EXEMPT SECURITIES TRUST SERIES 32.
5865	IM-02	SMITH BARNEY	717295	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 33.
5866	IM-02	SMITH BARNEY	314659	TAX EXEMPT SECURITIES TRUST SERIES 33.
5867	IM-02	SMITH BARNEY	314763	TAX EXEMPT SECURITIES TRUST SERIES 34.
5868	IM-02	SMITH BARNEY	718462	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 35.
5869	IM-02	SMITH BARNEY	719222	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 36.
5870	IM-02	SMITH BARNEY	720017	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 37.
5871	IM-02	SMITH BARNEY	316252	TAX EXEMPT SECURITIES TRUST SERIES 37.
5872	IM-02	SMITH BARNEY	721780	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 38.
5873	IM-02	SMITH BARNEY	724029	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 39.
5874	IM-02	SMITH BARNEY	725795	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 40.
5875	IM-02	SMITH BARNEY	728532	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 41.
5876	IM-02	SMITH BARNEY	318387	TAX EXEMPT SECURITIES TRUST SERIES 41.
5877	IM-02	SMITH BARNEY	730071	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 43.
5878	IM-02	SMITH BARNEY	319609	TAX EXEMPT SECURITIES TRUST SERIES 43.
5879	IM-02	SMITH BARNEY	730613	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 44.
5880	IM-02	SMITH BARNEY	740162	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 46.
5881	IM-02	SMITH BARNEY	742273	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 47.
5882	IM-02	SMITH BARNEY	744032	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 48.
5883	IM-02	SMITH BARNEY	744501	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 49.
5884	IM-02	SMITH BARNEY	745464	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 50.
5885	IM-02	SMITH BARNEY	351824	TAX EXEMPT SECURITIES TRUST SERIES 50.
5886	IM-02	SMITH BARNEY	746667	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 51.
5887	IM-02	SMITH BARNEY	750652	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 52.
5888	IM-02	SMITH BARNEY	353477	TAX EXEMPT SECURITIES TRUST SERIES 52.
5889	IM-02	SMITH BARNEY	751434	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 53.
5890	IM-02	SMITH BARNEY	353590	TAX EXEMPT SECURITIES TRUST SERIES 53.
5891	IM-02	SMITH BARNEY	752295	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 54.
5892	IM-02	SMITH BARNEY	354474	TAX EXEMPT SECURITIES TRUST SERIES 54.
5893	IM-02	SMITH BARNEY	757451	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 55.
5894	IM-02	SMITH BARNEY	354910	TAX EXEMPT SECURITIES TRUST SERIES 55.
5895	IM-02	SMITH BARNEY	760576	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 56.
5896	IM-02	SMITH BARNEY	355591	TAX EXEMPT SECURITIES TRUST SERIES 56.
5897	IM-02	SMITH BARNEY	760616	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 57.
5898	IM-02	SMITH BARNEY	355826	TAX EXEMPT SECURITIES TRUST SERIES 57.
5899	IM-02	SMITH BARNEY	763335	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 58.
5900	IM-02	SMITH BARNEY	355962	TAX EXEMPT SECURITIES TRUST SERIES 58.
5901	IM-02	SMITH BARNEY	763565	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 59.
5902	IM-02	SMITH BARNEY	718443	TAX EXEMPT SECURITIES TRUST SERIES 59.
5903	IM-02	SMITH BARNEY	764159	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 60.
5904	IM-02	SMITH BARNEY	700723	TAX EXEMPT SECURITIES TRUST SERIES 60.
5905	IM-02	SMITH BARNEY	766665	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 61.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
5906	IM-02	SMITH BARNEY	357432	TAX EXEMPT SECURITIES TRUST SERIES 61.
5907	IM-02	SMITH BARNEY	768163	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 62.
5908	IM-02	SMITH BARNEY	701643	TAX EXEMPT SECURITIES TRUST SERIES 62.
5909	IM-02	SMITH BARNEY	768166	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 63.
5910	IM-02	SMITH BARNEY	768831	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 64.
5911	IM-02	SMITH BARNEY	768745	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 65.
5912	IM-02	SMITH BARNEY	702989	TAX EXEMPT SECURITIES TRUST SERIES 65.
5913	IM-02	SMITH BARNEY	770211	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 66.
5914	IM-02	SMITH BARNEY	772871	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 67.
5915	IM-02	SMITH BARNEY	773000	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 68.
5916	IM-02	SMITH BARNEY	704357	TAX EXEMPT SECURITIES TRUST SERIES 68.
5917	IM-02	SMITH BARNEY	781898	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 69.
5918	IM-02	SMITH BARNEY	784953	TAX EXEMPT SECURITIES TRUST MULTISTATE SERIES 70.
5919	IM-02	SMITH BARNEY	706458	TAX EXEMPT SECURITIES TRUST SERIES 70.
5920	IM-02	SMITH BARNEY	707347	TAX EXEMPT SECURITIES TRUST SERIES 71.
5921	IM-02	SMITH BARNEY	708192	TAX EXEMPT SECURITIES TRUST SERIES 72.
5922	IM-02	SMITH BARNEY	708851	TAX EXEMPT SECURITIES TRUST SERIES 73.
5923	IM-02	SMITH BARNEY	710189	TAX EXEMPT SECURITIES TRUST SERIES 74.
5924	IM-02	SMITH BARNEY	710766	TAX EXEMPT SECURITIES TRUST SERIES 75.
5925	IM-02	SMITH BARNEY	320806	TAX EXEMPT SECURITIES TRUST SERIES 76.
5926	IM-02	SMITH BARNEY	713044	TAX EXEMPT SECURITIES TRUST SERIES 77.
5927	IM-02	SMITH BARNEY	713664	TAX EXEMPT SECURITIES TRUST SERIES 78.
5928	IM-02	SMITH BARNEY	714288	TAX EXEMPT SECURITIES TRUST SERIES 79.
5929	IM-02	SMITH BARNEY	714637	TAX EXEMPT SECURITIES TRUST SERIES 80.
5930	IM-02	SMITH BARNEY	715460	TAX EXEMPT SECURITIES TRUST SERIES 81.
5931	IM-02	SMITH BARNEY	716767	TAX EXEMPT SECURITIES TRUST SERIES 82.
5932	IM-02	SMITH BARNEY	717294	TAX EXEMPT SECURITIES TRUST SERIES 83.
5933	IM-02	SMITH BARNEY	717570	TAX EXEMPT SECURITIES TRUST SERIES 84.
5934	IM-02	SMITH BARNEY	718442	TAX EXEMPT SECURITIES TRUST SERIES 85.
5935	IM-02	SMITH BARNEY	719223	TAX EXEMPT SECURITIES TRUST SERIES 86.
5936	IM-02	SMITH BARNEY	720015	TAX EXEMPT SECURITIES TRUST SERIES 87.
5937	IM-02	SMITH BARNEY	721771	TAX EXEMPT SECURITIES TRUST SERIES 88.
5938	IM-02	SMITH BARNEY	725006	TAX EXEMPT SECURITIES TRUST SERIES 89.
5939	IM-02	SMITH BARNEY	725794	TAX EXEMPT SECURITIES TRUST SERIES 90.
5940	IM-02	SMITH BARNEY	726434	TAX EXEMPT SECURITIES TRUST SERIES 91.
5941	IM-02	SMITH BARNEY	728531	TAX EXEMPT SECURITIES TRUST SERIES 92.
5942	IM-02	SMITH BARNEY	729625	TAX EXEMPT SECURITIES TRUST SERIES 93.
5943	IM-02	SMITH BARNEY	730070	TAX EXEMPT SECURITIES TRUST SERIES 94.
5944	IM-02	SMITH BARNEY	740552	TAX EXEMPT SECURITIES TRUST SERIES 99.
5945	IM-02	SMITH BARNEY	730809	TAX EXEMPT SECURITIES TRUST SERIES 103.
5946	IM-02	SMITH BARNEY	741342	TAX EXEMPT SECURITIES TRUST SERIES 104.
5947	IM-02	SMITH BARNEY	757496	TAX EXEMPT SECURITIES TRUST SERIES 105.
5948	IM-02	SMITH BARNEY	760473	TAX EXEMPT SECURITIES TRUST SERIES 106.
5949	IM-02	SMITH BARNEY	761025	TAX EXEMPT SECURITIES TRUST SERIES 107.
5950	IM-02	SMITH BARNEY	762854	TAX EXEMPT SECURITIES TRUST SERIES 108.
5951	IM-02	SMITH BARNEY	764209	TAX EXEMPT SECURITIES TRUST SERIES 109.
5952	IM-02	SMITH BARNEY	766698	TAX EXEMPT SECURITIES TRUST SERIES 110.
5953	IM-02	SMITH BARNEY	766786	TAX EXEMPT SECURITIES TRUST SERIES 111.
5954	IM-02	SMITH BARNEY	766878	TAX EXEMPT SECURITIES TRUST SERIES 112.
5955	IM-02	SMITH BARNEY	769565	TAX EXEMPT SECURITIES TRUST SERIES 113.
5956	IM-02	SMITH BARNEY	771282	TAX EXEMPT SECURITIES TRUST SERIES 114.
5957	IM-02	SMITH BARNEY	770946	TAX EXEMPT SECURITIES TRUST SERIES 115.
5958	IM-02	SMITH BARNEY	773322	TAX EXEMPT SECURITIES TRUST SERIES 116 & SELECTED TERM SER 2.
5959	IM-02	SMITH BARNEY	778713	TAX EXEMPT SECURITIES TRUST SERIES 117.
5960	IM-02	SMITH BARNEY	778711	TAX EXEMPT SECURITIES TRUST SERIES 118.
5961	IM-02	SMITH BARNEY	781900	TAX EXEMPT SECURITIES TRUST SERIES 119.
5962	IM-02	SMITH BARNEY	864762	TAX EXEMPT SECURITIES TRUST NATIONAL TRUST 163.
5963	IM-02	SMITH BARNEY	785657	TAX EXEMPT SECURITIES TRUST SERIES 237.
5964	IM-02	SMITH BARNEY	787043	TAX EXEMPT SECURITIES TRUST SERIES 238.
5965	IM-02	SMITH BARNEY	787041	TAX EXEMPT SECURITIES TRUST SERIES 239.
5966	IM-02	SMITH BARNEY	789556	TAX EXEMPT SECURITIES TRUST SERIES 240.
5967	IM-02	SMITH BARNEY	789551	TAX EXEMPT SECURITIES TRUST SERIES 241.
5968	IM-02	SMITH BARNEY	790520	TAX EXEMPT SECURITIES TRUST SERIES 242.
5969	IM-02	SMITH BARNEY	790519	TAX EXEMPT SECURITIES TRUST SERIES 243.
5970	IM-02	SMITH BARNEY	791160	TAX EXEMPT SECURITIES TRUST SERIES 244.
5971	IM-02	SMITH BARNEY	791161	TAX EXEMPT SECURITIES TRUST SERIES 245.
5972	IM-02	SMITH BARNEY	792718	TAX EXEMPT SECURITIES TRUST SERIES 246.
5973	IM-02	SMITH BARNEY	793515	TAX EXEMPT SECURITIES TRUST SERIES 247.
5974	IM-02	SMITH BARNEY	794226	TAX EXEMPT SECURITIES TRUST SERIES 248.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
5975		IM-02	SMITH BARNEY	796841	TAX EXEMPT SECURITIES TRUST SERIES 249.
5976		IM-02	SMITH BARNEY	798238	TAX EXEMPT SECURITIES TRUST SERIES 251.
5977		IM-02	SMITH BARNEY	798938	TAX EXEMPT SECURITIES TRUST SERIES 252.
5978		IM-02	SMITH BARNEY	799590	TAX EXEMPT SECURITIES TRUST SERIES 253.
5979		IM-02	SMITH BARNEY	799591	TAX EXEMPT SECURITIES TRUST SERIES 254.
5980		IM-02	SMITH BARNEY	801317	TAX EXEMPT SECURITIES TRUST SERIES 255.
5981		IM-02	SMITH BARNEY	804651	TAX EXEMPT SECURITIES TRUST SERIES 257.
5982		IM-02	SMITH BARNEY	806023	TAX EXEMPT SECURITIES TRUST SERIES 258.
5983		IM-02	SMITH BARNEY	806022	TAX EXEMPT SECURITIES TRUST SERIES 259.
5984		IM-02	SMITH BARNEY	806019	TAX EXEMPT SECURITIES TRUST SERIES 260.
5985		IM-02	SMITH BARNEY	809769	TAX EXEMPT SECURITIES TRUST SERIES 261.
5986		IM-02	SMITH BARNEY	809770	TAX EXEMPT SECURITIES TRUST SERIES 262.
5987		IM-02	SMITH BARNEY	814140	TAX EXEMPT SECURITIES TRUST SERIES 263.
5988		IM-02	SMITH BARNEY	814141	TAX EXEMPT SECURITIES TRUST SERIES 264.
5989		IM-02	SMITH BARNEY	816644	TAX EXEMPT SECURITIES TRUST SERIES 265.
5990		IM-02	SMITH BARNEY	816450	TAX EXEMPT SECURITIES TRUST SERIES 266.
5991		IM-02	SMITH BARNEY	819843	TAX EXEMPT SECURITIES TRUST SERIES 267.
5992		IM-02	SMITH BARNEY	819847	TAX EXEMPT SECURITIES TRUST SERIES 268.
5993		IM-02	SMITH BARNEY	821579	TAX EXEMPT SECURITIES TRUST SERIES 269.
5994		IM-02	SMITH BARNEY	821580	TAX EXEMPT SECURITIES TRUST SERIES 270.
5995		IM-02	SMITH BARNEY	824001	TAX EXEMPT SECURITIES TRUST SERIES 271.
5996		IM-02	SMITH BARNEY	823947	TAX EXEMPT SECURITIES TRUST SERIES 272.
5997		IM-02	SMITH BARNEY	826822	TAX EXEMPT SECURITIES TRUST SERIES 273.
5998		IM-02	SMITH BARNEY	826823	TAX EXEMPT SECURITIES TRUST SERIES 274.
5999		IM-02	SMITH BARNEY	829284	TAX EXEMPT SECURITIES TRUST SERIES 275.
6000		IM-02	SMITH BARNEY	829285	TAX EXEMPT SECURITIES TRUST SERIES 276.
6001		IM-02	SMITH BARNEY	830521	TAX EXEMPT SECURITIES TRUST SERIES 277.
6002		IM-02	SMITH BARNEY	831666	TAX EXEMPT SECURITIES TRUST SERIES 278.
6003		IM-02	SMITH BARNEY	831665	TAX EXEMPT SECURITIES TRUST SERIES 279.
6004		IM-02	SMITH BARNEY	832462	TAX EXEMPT SECURITIES TRUST SERIES 280.
6005		IM-02	SMITH BARNEY	832461	TAX EXEMPT SECURITIES TRUST SERIES 281.
6006		IM-02	SMITH BARNEY	833056	TAX EXEMPT SECURITIES TRUST SERIES 282 & SERIES 283.
6007		IM-02	SMITH BARNEY	832992	TAX EXEMPT SECURITIES TRUST SERIES 283.
6008		IM-02	SMITH BARNEY	835338	TAX EXEMPT SECURITIES TRUST SERIES 284.
6009		IM-02	SMITH BARNEY	836410	TAX EXEMPT SECURITIES TRUST SERIES 286.
6010		IM-02	SMITH BARNEY	836414	TAX EXEMPT SECURITIES TRUST SERIES 287.
6011		IM-02	SMITH BARNEY	837908	TAX EXEMPT SECURITIES TRUST SERIES 288.
6012		IM-02	SMITH BARNEY	840081	TAX EXEMPT SECURITIES TRUST SERIES 289.
6013		IM-02	SMITH BARNEY	840083	TAX EXEMPT SECURITIES TRUST SERIES 290.
6014		IM-02	SMITH BARNEY	841274	TAX EXEMPT SECURITIES TRUST SERIES 291.
6015		IM-02	SMITH BARNEY	843247	TAX EXEMPT SECURITIES TRUST SERIES 293.
6016		IM-02	SMITH BARNEY	843246	TAX EXEMPT SECURITIES TRUST SERIES 294.
6017		IM-02	SMITH BARNEY	844926	TAX EXEMPT SECURITIES TRUST SERIES 295.
6018		IM-02	SMITH BARNEY	845562	TAX EXEMPT SECURITIES TRUST SERIES 296.
6019		IM-02	SMITH BARNEY	845561	TAX EXEMPT SECURITIES TRUST SERIES 297.
6020		IM-02	SMITH BARNEY	846477	TAX EXEMPT SECURITIES TRUST SERIES 298.
6021		IM-02	SMITH BARNEY	846973	TAX EXEMPT SECURITIES TRUST SERIES 299.
6022		IM-02	SMITH BARNEY	846925	TAX EXEMPT SECURITIES TRUST SERIES 300.
6023		IM-02	SMITH BARNEY	847481	TAX EXEMPT SECURITIES TRUST SERIES 301.
6024		IM-02	SMITH BARNEY	847480	TAX EXEMPT SECURITIES TRUST SERIES 302.
6025		IM-02	SMITH BARNEY	849654	TAX EXEMPT SECURITIES TRUST SERIES 303.
6026		IM-02	SMITH BARNEY	849652	TAX EXEMPT SECURITIES TRUST SERIES 304.
6027		IM-02	SMITH BARNEY	850063	TAX EXEMPT SECURITIES TRUST SERIES 306.
6028		IM-02	SMITH BARNEY	851289	TAX EXEMPT SECURITIES TRUST SERIES 307.
6029		IM-02	SMITH BARNEY	852112	TAX EXEMPT SECURITIES TRUST SERIES 308.
6030		IM-02	SMITH BARNEY	852110	TAX EXEMPT SECURITIES TRUST SERIES 309.
6031		IM-02	SMITH BARNEY	853011	TAX EXEMPT SECURITIES TRUST SERIES 310.
6032		IM-02	SMITH BARNEY	853010	TAX EXEMPT SECURITIES TRUST SERIES 311.
6033		IM-02	SMITH BARNEY	854769	TAX EXEMPT SECURITIES TRUST SERIES 311 AND SERIES 312.
6034		IM-02	SMITH BARNEY	854851	TAX EXEMPT SECURITIES TRUST SERIES 313.
6035		IM-02	SMITH BARNEY	855709	TAX EXEMPT SECURITIES TRUST SERIES 314.
6036		IM-02	SMITH BARNEY	857410	TAX EXEMPT SECURITIES TRUST SERIES 315.
6037		IM-02	SMITH BARNEY	857479	TAX EXEMPT SECURITIES TRUST SERIES 316.
6038		IM-02	SMITH BARNEY	857480	TAX EXEMPT SECURITIES TRUST SERIES 317.
6039		IM-02	SMITH BARNEY	858350	TAX EXEMPT SECURITIES TRUST SERIES 318.
6040		IM-02	SMITH BARNEY	860415	TAX EXEMPT SECURITIES TRUST SERIES 319.
6041		IM-02	SMITH BARNEY	861105	TAX EXEMPT SECURITIES TRUST SERIES 320.
6042		IM-02	SMITH BARNEY	861102	TAX EXEMPT SECURITIES TRUST SERIES 321.
6043		IM-02	SMITH BARNEY	862305	TAX EXEMPT SECURITIES TRUST SERIES 322.
6044		IM-02	SMITH BARNEY	863271	TAX EXEMPT SECURITIES TRUST SERIES 323.
6045		IM-02	SMITH BARNEY	863272	TAX EXEMPT SECURITIES TRUST SERIES 324.
6046		IM-02	SMITH BARNEY	864761	TAX EXEMPT SECURITIES TRUST SERIES 326.
6047		IM-02	SMITH BARNEY	866312	TAX EXEMPT SECURITIES TRUST SERIES 327.
6048		IM-02	SMITH BARNEY	866311	TAX EXEMPT SECURITIES TRUST SERIES 328.
6049		IM-02	SMITH BARNEY	867682	TAX EXEMPT SECURITIES TRUST SERIES 329.
6050		IM-02	SMITH BARNEY	867683	TAX EXEMPT SECURITIES TRUST SERIES 330.
6051		IM-02	SMITH BARNEY	868425	TAX EXEMPT SECURITIES TRUST SERIES 331.
6052		IM-02	SMITH BARNEY	868426	TAX EXEMPT SECURITIES TRUST SERIES 332.
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APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6053	IM-02	SMITH BARNEY	868661	TAX EXEMPT SECURITIES TRUST SERIES 333.
6054	IM-02	SMITH BARNEY	868665	TAX EXEMPT SECURITIES TRUST SERIES 333 & SERIES 334.
6055	IM-02	SMITH BARNEY	869808	TAX EXEMPT SECURITIES TRUST SERIES 335.
6056	IM-02	SMITH BARNEY	869810	TAX EXEMPT SECURITIES TRUST SERIES 336.
6057	IM-02	SMITH BARNEY	871259	TAX EXEMPT SECURITIES TRUST SERIES 337.
6058	IM-02	SMITH BARNEY	871258	TAX EXEMPT SECURITIES TRUST SERIES 338.
6059	IM-02	UNISON	857620	CENTRAL EQUITY TRUST ET AL.
6060	IM-02	UNISON	857647	CENTRAL EQUITY TRUST UTILITY SERIES 1.
6061	IM-02	UNISON	783232	INSURED TAX FREE INCOME TRUST MULTI SERIES 1.
6062	IM-02	UNISON	865643	CENTRAL EQUITY TRUST UTILITY SERIES 2.
6063	IM-02	UNISON	789030	INSURED TAX FREE INCOME TRUST MULTI SERIES 2.
6064	IM-02	UNISON	866369	CENTRAL EQUITY TRUST UTILITY SERIES 3.
6065	IM-02	UNISON	791875	INSURED TAX FREE INCOME TRUST MULTI SERIES 3.
6066	IM-02	UNISON	868613	CENTRAL EQUITY TRUST UTILITY SERIES 4.
6067	IM-02	UNISON	794268	INSURED TAX FREE INCOME TRUST MULTI SERIES 4.
6068	IM-02	UNISON	870839	CENTRAL EQUITY TRUST UTILITY SERIES 5.
6069	IM-02	UNISON	769858	INSURED TAX FREE INCOME TRUST SERIES 85 7.
6070	IM-02	UNISON	784882	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 19.
6071	IM-02	UNISON	787624	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 20.
6072	IM-02	UNISON	790019	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 22.
6073	IM-02	UNISON	790604	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 23.
6074	IM-02	UNISON	794525	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 24.
6075	IM-02	UNISON	793237	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 25.
6076	IM-02	UNISON	796371	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 26.
6077	IM-02	UNISON	796485	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 28.
6078	IM-02	UNISON	796372	INSURED TAX FREE INCOME TRUST SERIES 29.
6079	IM-02	UNISON	802228	INSURED TAX FREE INCOME TRUST SERIES 30.
6080	IM-02	UNISON	802229	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 31.
6081	IM-02	UNISON	803673	INSURED TAX FREE INCOME TRUST SERIES 32.
6082	IM-02	UNISON	803763	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 33.
6083	IM-02	UNISON	803954	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 34.
6084	IM-02	UNISON	803955	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 35.
6085	IM-02	UNISON	809156	INSURED TAX FREE INCOME TRUST SERIES 36.
6086	IM-02	UNISON	809157	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 37.
6087	IM-02	UNISON	809218	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 38.
6088	IM-02	UNISON	814138	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 40.
6089	IM-02	UNISON	814137	INSURED TAX FREE INCOME TRUST SERIES 41.
6090	IM-02	UNISON	816964	INSURED TAX FREE INCOME TRUST SERIES 42.
6091	IM-02	UNISON	816642	INSURED TAX FREE INCOME TRUST SERIES 43.
6092	IM-02	UNISON	816758	INSURED TAX FREE INCOME TRUST SERIES 44.
6093	IM-02	UNISON	816759	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 45.
6094	IM-02	UNISON	828505	INSURED TAX FREE INCOME TRUST SERIES 46.
6095	IM-02	UNISON	830306	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 48.
6096	IM-02	UNISON	831247	INSURED TAX FREE INCOME TRUST SERIES 49 NATIONAL SERIES 49.
6097	IM-02	UNISON	832338	INSURED TAX FREE INCOME TRUST SERIES 50- NATIONAL SERIES 50.
6098	IM-02	UNISON	832953	INSURED TAX FREE INCOME TRUST SERIES 51 NATIONAL SERIES 51.
6099	IM-02	UNISON	836682	INSURED TAX EXEMPT INCOME TRUST SERIES 53 NATIONAL SERIES 53.
6100	IM-02	UNISON	836684	INSURED TAX EXEMPT INCOME TRUST SERIES 54.
6101	IM-02	UNISON	840426	INSURED TAX FREE INCOME TRUST SERIES 55 NATIONAL SERIES 55.
6102	IM-02	UNISON	840421	INSURED TAX FREE INCOME TRUST SERIES 56 NATIONAL SERIES 56.
6103	IM-02	UNISON	842889	INSURED TAX FREE INCOME TRUST SERIES 57 NATIONAL SERIES 57.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
6104		IM-02	UNISON	842892	INSURED TAX FREE INCOME TRUST SERIES 58 NATIONAL SERIES 58.
6105		IM-02	UNISON	845110	INSURED TAX FREE INCOME TRUST SERIES 59 NATIONAL SERIES 59.
6106		IM-02	UNISON	845109	INSURED TAX FREE INCOME TRUST SERIES 60 NATIONAL SERIES 60.
6107		IM-02	UNISON	846110	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 61.
6108		IM-02	UNISON	846109	INSURED TAX FREE INCOME TRUST SERIES 62 NATIONAL SERIES 62.
6109		IM-02	UNISON	850666	INSURED TAX FREE INCOME TRUST SERIES 63 NATIONAL SERIES 63.
6110		IM-02	UNISON	854816	INSURED TAX FREE INCOME TRUST SERIES 65 NATIONAL SERIES 65.
6111		IM-02	UNISON	854818	INSURED TAX FREE INCOME TRUST SERIES 66 NATIONAL SERIES 66.
6112		IM-02	UNISON	754997	INSURED TAX FREE INCOME TRUST NATIONAL SERIES 85-1.
6113		IM-02	UNISON	764844	INSURED TAX FREE INCOME TRUST SERIES 85-4.
6114		IM-02	UNISON	766695	INSURED TAX FREE INCOME TRUST SERIES 85-5.
6115		IM-02	UNISON	769216	INSURED TAX FREE INCOME TRUST SERIES 85-6.
6116		IM-02	VAN KAMPEN	835716	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 82.
6117		IM-02	VAN KAMPEN	777442	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MUL SER 2.
6118		IM-02	VAN KAMPEN	777571	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MUT SER 3.
6119		IM-02	VAN KAMPEN	777961	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MUL SER 4.
6120		IM-02	VAN KAMPEN	277438	INSURED MUNICIPALS INCOME TRUST SERIES 4.
6121		IM-02	VAN KAMPEN	777958	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MUL SER 5.
6122		IM-02	VAN KAMPEN	050809	INSURED MUNICIPALS INCOME TRUST SERIES 5.
6123		IM-02	VAN KAMPEN	779266	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 6.
6124		IM-02	VAN KAMPEN	050810	INSURED MUNICIPALS INCOME TRUST SERIES 6.
6125		IM-02	VAN KAMPEN	779246	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MUL SER 7.
6126		IM-02	VAN KAMPEN	050811	INSURED MUNICIPALS INCOME TRUST SERIES 7.
6127		IM-02	VAN KAMPEN	779267	INSURED MUNICIPALS INCOME TRUST & INVS QUA TX EXEM TRUST MUL SER 8.
6128		IM-02	VAN KAMPEN	202176	INSURED MUNICIPALS INCOME TRUST SERIES 8.
6129		IM-02	VAN KAMPEN	783153	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 9.
6130		IM-02	VAN KAMPEN	202177	INSURED MUNICIPALS INCOME TRUST SERIES 9.
6131		IM-02	VAN KAMPEN	310291	INSURED MUNICIPALS INCOME TRUST SERIES 10.
6132		IM-02	VAN KAMPEN	783152	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 11.
6133		IM-02	VAN KAMPEN	277443	INSURED MUNICIPALS INCOME TRUST SERIES 11.
6134		IM-02	VAN KAMPEN	783178	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 12.
6135		IM-02	VAN KAMPEN	277448	INSURED MUNICIPALS INCOME TRUST SERIES 12.
6136		IM-02	VAN KAMPEN	783149	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 13.
6137		IM-02	VAN KAMPEN	277441	INSURED MUNICIPALS INCOME TRUST SERIES 13.
6138		IM-02	VAN KAMPEN	785801	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 14.
6139		IM-02	VAN KAMPEN	277440	INSURED MUNICIPALS INCOME TRUST SERIES 14.
6140		IM-02	VAN KAMPEN	785800	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 15.
6141		IM-02	VAN KAMPEN	216214	INSURED MUNICIPALS INCOME TRUST SERIES 15.
6142		IM-02	VAN KAMPEN	785799	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 16.
6143		IM-02	VAN KAMPEN	216213	INSURED MUNICIPALS INCOME TRUST SERIES 16.
6144		IM-02	VAN KAMPEN	785798	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 17.
6145		IM-02	VAN KAMPEN	277750	INSURED MUNICIPALS INCOME TRUST SERIES 17.
6146		IM-02	VAN KAMPEN	785802	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 18.
6147		IM-02	VAN KAMPEN	278375	INSURED MUNICIPALS INCOME TRUST SERIES 18.
6148		IM-02	VAN KAMPEN	785806	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 19.
6149		IM-02	VAN KAMPEN	278376	INSURED MUNICIPALS INCOME TRUST SERIES 19.
6150		IM-02	VAN KAMPEN	785807	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 20.
6151		IM-02	VAN KAMPEN	225485	INSURED MUNICIPALS INCOME TRUST SERIES 20.
6152		IM-02	VAN KAMPEN	785797	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 21.
6153		IM-02	VAN KAMPEN	275563	INSURED MUNICIPALS INCOME TRUST SERIES 21.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6154	IM-02	VAN KAMPEN	789756	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 22.
6155	IM-02	VAN KAMPEN	278266	INSURED MUNICIPALS INCOME TRUST SERIES 22.
6156	IM-02	VAN KAMPEN	789672	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 23.
6157	IM-02	VAN KAMPEN	275562	INSURED MUNICIPALS INCOME TRUST SERIES 23.
6158	IM-02	VAN KAMPEN	789762	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 24.
6159	IM-02	VAN KAMPEN	276550	INSURED MUNICIPALS INCOME TRUST SERIES 24.
6160	IM-02	VAN KAMPEN	789761	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 25.
6161	IM-02	VAN KAMPEN	276273	INSURED MUNICIPALS INCOME TRUST SERIES 25.
6162	IM-02	VAN KAMPEN	792358	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 26.
6163	IM-02	VAN KAMPEN	277096	INSURED MUNICIPALS INCOME TRUST SERIES 26.
6164	IM-02	VAN KAMPEN	792357	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 27.
6165	IM-02	VAN KAMPEN	277883	INSURED MUNICIPALS INCOME TRUST SERIES 27
6166	IM-02	VAN KAMPEN	792354	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 28.
6167	IM-02	VAN KAMPEN	278355	INSURED MUNICIPALS INCOME TRUST SERIES 28.
6168	IM-02	VAN KAMPEN	792355	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 29.
6169	IM-02	VAN KAMPEN	310388	INSURED MUNICIPALS INCOME TRUST SERIES 29.
6170	IM-02	VAN KAMPEN	792356	INSURED MUNICIPALS INCOME TRUST & INVS QUAL TAX EX TRUST MUT SERIES 30.
6171	IM-02	VAN KAMPEN	311078	INSURED MUNICIPALS INCOME TRUST SERIES 30.
6172	IM-02	VAN KAMPEN	794931	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 31.
6173	IM-02	VAN KAMPEN	311191	INSURED MUNICIPALS INCOME TRUST SERIES 31.
6174	IM-02	VAN KAMPEN	794863	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 32.
6175	IM-02	VAN KAMPEN	794937	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 33.
6176	IM-02	VAN KAMPEN	794935	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 34.
6177	IM-02	VAN KAMPEN	794928	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EXE TRUST MU SER 35.
6178	IM-02	VAN KAMPEN	796562	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 36.
6179	IM-02	VAN KAMPEN	796561	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 37.
6180	IM-02	VAN KAMPEN	796560	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 38.
6181	IM-02	VAN KAMPEN	796564	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 39.
6182	IM-02	VAN KAMPEN	796563	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 40.
6183	IM-02	VAN KAMPEN	804284	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 41.
6184	IM-02	VAN KAMPEN	804262	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 42.
6185	IM-02	VAN KAMPEN	804278	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 43.
6186	IM-02	VAN KAMPEN	804263	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 44.
6187	IM-02	VAN KAMPEN	804279	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 45.
6188	IM-02	VAN KAMPEN	000054	INSURED MUNICIPALS INCOME TRUST SERIES 45.
6189	IM-02	VAN KAMPEN	807436	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 46.
6190	IM-02	VAN KAMPEN	320108	INSURED MUNICIPALS INCOME TRUST SERIES 46.
6191	IM-02	VAN KAMPEN	807438	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 47.
6192	IM-02	VAN KAMPEN	350483	INSURED MUNICIPALS INCOME TRUST SERIES 47.
6193	IM-02	VAN KAMPEN	807435	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 48.
6194	IM-02	VAN KAMPEN	350477	INSURED MUNICIPALS INCOME TRUST SERIES 48.
6195	IM-02	VAN KAMPEN	807432	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 49.
6196	IM-02	VAN KAMPEN	351697	INSURED MUNICIPALS INCOME TRUST SERIES 49.
6197	IM-02	VAN KAMPEN	807434	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 50.
6198	IM-02	VAN KAMPEN	351944	INSURED MUNICIPALS INCOME TRUST SERIES 50.
6199	IM-02	VAN KAMPEN	351704	INSURED MUNICPALS INCOME TRUST SERIES 50.
6200	IM-02	VAN KAMPEN	810268	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EXE TRUST MUL SER 51.
6201	IM-02	VAN KAMPEN	352302	INSURED MUNICIPALS INCOME TRUST SERIES 51.
6202	IM-02	VAN KAMPEN	810278	INSURED MUNICIPALS IN TRUST & IN QU TAX EX TRUST MUL SER 52.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
6203		IM-02	VAN KAMPEN	352303	INSURED MUNICIPALS INCOME TRUST SERIES 52.
6204		IM-02	VAN KAMPEN	810280	INSURED MUNICIPALS IN TRUST & IN QU TAX EX TRUST MULTI SERIES 53.
6205		IM-02	VAN KAMPEN	353285	INSURED MUNICIPALS INCOME TRUST SERIES 53.
6206		IM-02	VAN KAMPEN	810277	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 54.
6207		IM-02	VAN KAMPEN	354183	INSURED MUNICIPALS INCOME TRUST SERIES 54.
6208		IM-02	VAN KAMPEN	810279	INSURED MUNICIPALS IN TRUST & IN QU TAX EX TRUST MULTI SERIES 55.
6209		IM-02	VAN KAMPEN	354074	INSURED MUNICIPALS INCOME TRUST SERIES 55.
6210		IM-02	VAN KAMPEN	815461	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EXE TRUST MUL SER 56.
6211		IM-02	VAN KAMPEN	355371	INSURED MUNICIPALS INCOME TRUST SERIES 56.
6212		IM-02	VAN KAMPEN	815462	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EXE TRUST MUL SER 57.
6213		IM-02	VAN KAMPEN	815463	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EXE TRUST MUL SER 58.
6214		IM-02	VAN KAMPEN	356008	INSURED MUNICIPALS INCOME TRUST SERIES 58.
6215		IM-02	VAN KAMPEN	818026	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EXE TRUST MUT SER 59.
6216		IM-02	VAN KAMPEN	356009	INSURED MUNICIPALS INCOME TRUST SERIES 59.
6217		IM-02	VAN KAMPEN	818023	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EXE TRUST MUT SER 60.
6218		IM-02	VAN KAMPEN	356718	INSURED MUNICIPALS INCOME TRUST SERIES 60.
6219		IM-02	VAN KAMPEN	818025	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EXE TRUST MUT SER 61.
6220		IM-02	VAN KAMPEN	821227	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 62.
6221		IM-02	VAN KAMPEN	357151	INSURED MUNICIPALS INCOME TRUST SERIES 62.
6222		IM-02	VAN KAMPEN	821226	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 63.
6223		IM-02	VAN KAMPEN	357146	INSURED MUNICIPALS INCOME TRUST SERIES 63.
6224		IM-02	VAN KAMPEN	821222	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 64.
6225		IM-02	VAN KAMPEN	700610	INSURED MUNICIPALS INCOME TRUST SERIES 64.
6226		IM-02	VAN KAMPEN	821224	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 65.
6227		IM-02	VAN KAMPEN	700611	INSURED MUNICIPALS INCOME TRUST SERIES 65.
6228		IM-02	VAN KAMPEN	821225	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 66.
6229		IM-02	VAN KAMPEN	701686	INSURED MUNICIPALS INCOME TRUST SERIES 66.
6230		IM-02	VAN KAMPEN	826281	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 67.
6231		IM-02	VAN KAMPEN	701684	INSURED MUNICIPALS INCOME TRUST SERIES 67.
6232		IM-02	VAN KAMPEN	826279	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 68.
6233		IM-02	VAN KAMPEN	702646	INSURED MUNICIPALS INCOME TRUST SERIES 68.
6234		IM-02	VAN KAMPEN	826276	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 69.
6235		IM-02	VAN KAMPEN	702647	INSURED MUNICIPALS INCOME TRUST SERIES 69.
6236		IM-02	VAN KAMPEN	826278	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 70.
6237		IM-02	VAN KAMPEN	702648	INSURED MUNICIPALS INCOME TRUST SERIES 70.
6238		IM-02	VAN KAMPEN	826283	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 71.
6239		IM-02	VAN KAMPEN	703712	INSURED MUNICIPALS INCOME TRUST SERIES 71.
6240		IM-02	VAN KAMPEN	830243	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULTI SER 72.
6241		IM-02	VAN KAMPEN	703713	INSURED MUNICIPALS INCOME TRUST SERIES 72.
6242		IM-02	VAN KAMPEN	830245	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SER 73.
6243		IM-02	VAN KAMPEN	703714	INSURED MUNICIPALS INCOME TRUST SERIES 73.
6244		IM-02	VAN KAMPEN	830242	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULTI SER 74.
6245		IM-02	VAN KAMPEN	705977	INSURED MUNICIPALS INCOME TRUST SERIES 74.
6246		IM-02	VAN KAMPEN	830241	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULTI SER 75.
6247		IM-02	VAN KAMPEN	705980	INSURED MUNICIPALS INCOME TRUST SERIES 75.
6248		IM-02	VAN KAMPEN	830244	INSURED MUNICIPALS INCOME TRUST & INV QUA TAX EXE TRUST MUL SER 76.
6249		IM-02	VAN KAMPEN	705979	INSURED MUNICIPALS INCOME TRUST SERIES 76.
6250		IM-02	VAN KAMPEN	832697	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EXE TRUST MULTI SERIES 77.
6251		IM-02	VAN KAMPEN	707831	INSURED MUNICIPALS INCOME TRUST SERIES 77.
6252		IM-02	VAN KAMPEN	832695	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EXE TRUST MULTI SERIES 78.
6253		IM-02	VAN KAMPEN	707820	INSURED MUNICIPALS INCOME TRUST SERIES 78.
6254		IM-02	VAN KAMPEN	832698	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EXE TRUST MULTI SERIES 79.
6255		IM-02	VAN KAMPEN	709276	INSURED MUNICIPALS INCOME TRUST SERIES 79.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6256	IM-02	VAN KAMPEN	832696	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EXE TRUST MULTI SERIES 80.
6257	IM-02	VAN KAMPEN	854755	INSURED MUNICIPALS INC TRUST 80 INS MULTI SERIES.
6258	IM-02	VAN KAMPEN	709275	INSURED MUNICIPALS INCOME TRUST SERIES 80.
6259	IM-02	VAN KAMPEN	832699	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EXE TRUST MULTI SERIES 81.
6260	IM-02	VAN KAMPEN	854752	INSURED MUNICIPALS INC TRUST 81 INSURD MULTI SERIES.
6261	IM-02	VAN KAMPEN	711423	INSURED MUNICIPALS INCOME TRUST SERIES 81.
6262	IM-02	VAN KAMPEN	854751	INSURED MUNICIPALS INC TRUST 82 INS MULTI SERIES.
6263	IM-02	VAN KAMPEN	711606	INSURED MUNICIPALS INCOME TRUST SERIES 82.
6264	IM-02	VAN KAMPEN	854753	INSURED MUNICIPALS INC TRUST 83 INS MULTI SERIES.
6265	IM-02	VAN KAMPEN	835718	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 83.
6266	IM-02	VAN KAMPEN	713034	INSURED MUNICIPALS INCOME TRUST SERIES 83.
6267	IM-02	VAN KAMPEN	835713	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 84.
6268	IM-02	VAN KAMPEN	713036	INSURED MUNICIPALS INCOME TRUST SERIES 84.
6269	IM-02	VAN KAMPEN	835728	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 85.
6270	IM-02	VAN KAMPEN	716304	INSURED MUNICIPALS INCOME TRUST SERIES 85.
6271	IM-02	VAN KAMPEN	835720	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SER 86.
6272	IM-02	VAN KAMPEN	716309	INSURED MUNICIPALS INCOME TRUST SERIES 86.
6273	IM-02	VAN KAMPEN	839042	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 87.
6274	IM-02	VAN KAMPEN	717351	INSURED MUNICIPALS INCOME TRUST SERIES 87.
6275	IM-02	VAN KAMPEN	839044	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 88.
6276	IM-02	VAN KAMPEN	717352	INSURED MUNICIPALS INCOME TRUST SERIES 88.
6277	IM-02	VAN KAMPEN	839039	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 89.
6278	IM-02	VAN KAMPEN	719218	INSURED MUNICIPALS INCOME TRUST SERIES 89.
6279	IM-02	VAN KAMPEN	839036	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 90.
6280	IM-02	VAN KAMPEN	719214	INSURED MUNICIPALS INCOME TRUST SERIES 90.
6281	IM-02	VAN KAMPEN	839038	INSURED MUNICIPALS INCOME TRUST & INVS QUA TAX EX TRUST MUT SER 91.
6282	IM-02	VAN KAMPEN	721954	INSURED MUNICIPALS INCOME TRUST SERIES 91.
6283	IM-02	VAN KAMPEN	844004	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUT SER 92.
6284	IM-02	VAN KAMPEN	721942	INSURED MUNICIPALS INCOME TRUST SERIES 92.
6285	IM-02	VAN KAMPEN	844003	INSURED MUNICIPAL INCOME TRUST & INV QU TAX EX TRUST MU SER 93.
6286	IM-02	VAN KAMPEN	721941	INSURED MUNICIPALS INCOME TRUST SERIES 93.
6287	IM-02	VAN KAMPEN	844001	INSURED MUNICIPAL INCOME TRUST & INV QU TAX EX TRUST MUT SER 94.
6288	IM-02	VAN KAMPEN	722623	INSURED MUNICIPALS INCOME TRUST SERIES 94.
6289	IM-02	VAN KAMPEN	846448	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUT SER 95.
6290	IM-02	VAN KAMPEN	725351	INSURED MUNICIPALS INCOME TRUST SERIES 95.
6291	IM-02	VAN KAMPEN	846449	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUT SER 96.
6292	IM-02	VAN KAMPEN	725655	INSURED MUNICIPALS INCOME TRUST SERIES 96.
6293	IM-02	VAN KAMPEN	846450	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUT SER 97.
6294	IM-02	VAN KAMPEN	727280	INSURED MUNICIPALS INCOME TRUST SERIES 97.
6295	IM-02	VAN KAMPEN	846895	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRUST MU SER 98.
6296	IM-02	VAN KAMPEN	727281	INSURED MUNICIPALS INCOME TRUST SERIES 98.
6297	IM-02	VAN KAMPEN	846894	INSURED MUNICIPALS INCOME TRUST & INV QUA TAX EX TRUST MU SERIES 99.
6298	IM-02	VAN KAMPEN	728536	INSURED MUNICIPALS INCOME TRUST SERIES 99.
6299	IM-02	VAN KAMPEN	846896	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRUST MU SR 100.
6300	IM-02	VAN KAMPEN	728537	INSURED MUNICIPALS INCOME TRUST SERIES 100.
6301	IM-02	VAN KAMPEN	848519	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 101.
6302	IM-02	VAN KAMPEN	731662	INSURED MUNICIPALS INCOME TRUST SERIES 101.
6303	IM-02	VAN KAMPEN	848521	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 102.
6304	IM-02	VAN KAMPEN	731781	INSURED MUNICIPALS INCOME TRUST SERIES 102.
6305	IM-02	VAN KAMPEN	848617	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRUST MU SERIES 103.
6306	IM-02	VAN KAMPEN	733274	INSURED MUNICIPALS INCOME TRUST SERIES 103.
6307	IM-02	VAN KAMPEN	848615	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRUST MU SERIES 104.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6308	IM-02	VAN KAMPEN	733263	INSURED MUNICIPALS INCOME TRUST SERIES 104.
6309	IM-02	VAN KAMPEN	848520	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 105.
6310	IM-02	VAN KAMPEN	736476	INSURED MUNICIPALS INCOME TRUST SERIES 105.
6311	IM-02	VAN KAMPEN	854795	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 106.
6312	IM-02	VAN KAMPEN	736485	INSURED MUNICIPALS INCOME TRUST SERIES 106.
6313	IM-02	VAN KAMPEN	854748	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SERIES 107.
6314	IM-02	VAN KAMPEN	739884	INSURED MUNICIPALS INCOME TRUST SERIES 107.
6315	IM-02	VAN KAMPEN	854754	INSURED MUNICIPALS INC TRUST & INV QU TAX EX TRUST MUT SERIES 108.
6316	IM-02	VAN KAMPEN	739902	INSURED MUNICIPALS INCOME TRUST SERIES 108.
6317	IM-02	VAN KAMPEN	856595	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRMU SERIES 109.
6318	IM-02	VAN KAMPEN	740065	INSURED MUNICIPALS INCOME TRUST SERIES 109.
6319	IM-02	VAN KAMPEN	856608	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRUST MU SERIES 110.
6320	IM-02	VAN KAMPEN	739901	INSURED MUNICIPALS INCOME TRUST SERIES 110.
6321	IM-02	VAN KAMPEN	856609	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRUST MU SERIES 111.
6322	IM-02	VAN KAMPEN	742365	INSURED MUNICIPALS INCOME TRUST SERIES 111.
6323	IM-02	VAN KAMPEN	856607	INSURED MUNICIPALS INCOME TRUST & INV QU TAX EX TRUST MU SERIES 112.
6324	IM-02	VAN KAMPEN	742360	INSURED MUNICIPALS INCOME TRUST SERIES 112.
6325	IM-02	VAN KAMPEN	859347	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 113.
6326	IM-02	VAN KAMPEN	742361	INSURED MUNICIPALS INCOME TRUST SERIES 113.
6327	IM-02	VAN KAMPEN	859349	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 114.
6328	IM-02	VAN KAMPEN	742362	INSURED MUNICIPALS INCOME TRUST SERIES 114.
6329	IM-02	VAN KAMPEN	859346	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 115.
6330	IM-02	VAN KAMPEN	742363	INSURED MUNICIPALS INCOME TRUST SERIES 115.
6331	IM-02	VAN KAMPEN	859348	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 116.
6332	IM-02	VAN KAMPEN	746002	INSURED MUNICIPALS INCOME TRUST SERIES 116.
6333	IM-02	VAN KAMPEN	746005	INSURED MUNICIPALS INCOME TRUST SERIES 117.
6334	IM-02	VAN KAMPEN	862248	INSURED MUNICIPALS IN TRU & INV QU TAX EX TRUST MU SERIES 118.
6335	IM-02	VAN KAMPEN	746004	INSURED MUNICIPALS INCOME TRUST SERIES 118.
6336	IM-02	VAN KAMPEN	862247	INSURED MUNICIPALS INC TRUST & INV QU TAX EX TRUST MU SERIES 119.
6337	IM-02	VAN KAMPEN	746000	INSURED MUNICIPALS INCOME TRUST SERIES 119.
6338	IM-02	VAN KAMPEN	862245	INSURED MUNICIPALS INCOME TRUST & INV QUA TAX EX TRUST MU SERIES 120.
6339	IM-02	VAN KAMPEN	746001	INSURED MUNICIPALS INCOME TRUST SERIES 120.
6340	IM-02	VAN KAMPEN	863757	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUT SERIES 121.
6341	IM-02	VAN KAMPEN	751223	INSURED MUNICIPALS INCOME TRUST SERIES 121.
6342	IM-02	VAN KAMPEN	863848	INSURED MUNICIPALS INCOME TRUST & QU TAX EX TRUST MUL SERIES 122.
6343	IM-02	VAN KAMPEN	751218	INSURED MUNICIPALS INCOME TRUST SERIES 122.
6344	IM-02	VAN KAMPEN	863849	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 123.
6345	IM-02	VAN KAMPEN	751217	INSURED MUNICIPALS INCOME TRUST SERIES 123.
6346	IM-02	VAN KAMPEN	863850	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 124.
6347	IM-02	VAN KAMPEN	751222	INSURED MUNICIPALS INCOME TRUST SERIES 124.
6348	IM-02	VAN KAMPEN	866310	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MU SERIES 125.
6349	IM-02	VAN KAMPEN	751224	INSURED MUNICIPALS INCOME TRUST SERIES 125.
6350	IM-02	VAN KAMPEN	866315	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SERIES 126.
6351	IM-02	VAN KAMPEN	756610	INSURED MUNICIPALS INCOME TRUST SERIES 126.
6352	IM-02	VAN KAMPEN	866314	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SERIES 127.
6353	IM-02	VAN KAMPEN	756672	INSURED MUNICIPALS INCOME TRUST SERIES 127.
6354	IM-02	VAN KAMPEN	866313	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SERIES 128.
6355	IM-02	VAN KAMPEN	756654	INSURED MUNICIPALS INCOME TRUST SERIES 128.
6356	IM-02	VAN KAMPEN	868412	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SERIES 129.
6357	IM-02	VAN KAMPEN	756647	INSURED MUNICIPALS INCOME TRUST SERIES 129.
6358	IM-02	VAN KAMPEN	868414	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SERIES 130.
6359	IM-02	VAN KAMPEN	756608	INSURED MUNICIPALS INCOME TRUST SERIES 130.
6360	IM-02	VAN KAMPEN	868404	INSURED MUN INCOME TRUST & INVESTORS QUA TAX EX TRUST MULT SERIES 131.
6361	IM-02	VAN KAMPEN	758741	INSURED MUNICIPALS INCOME TRUST SERIES 131.
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APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6362	IM-02	VAN KAMPEN	869585	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 132.
6363	IM-02	VAN KAMPEN	869583	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MU SERIES 133.
6364	IM-02	VAN KAMPEN	869586	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 134.
6365	IM-02	VAN KAMPEN	870233	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 135.
6366	IM-02	VAN KAMPEN	759205	INSURED MUNICIPALS INCOME TRUST SERIES 135.
6367	IM-02	VAN KAMPEN	870247	INSURED MUNICIPALS INCOME TRUST & IN QU TAX EX TRUST MUL SERIES 136.
6368	IM-02	VAN KAMPEN	759697	INSURED MUNICIPALS INCOME TRUST SERIES 136.
6369	IM-02	VAN KAMPEN	871812	INSURED MUNICIPALS INCOME INVE QUAL TAX EXE TRU MUL SERIES 137.
6370	IM-02	VAN KAMPEN	759759	INSURED MUNICIPALS INCOME TRUST SERIES 137.
6371	IM-02	VAN KAMPEN	871872	INSURED MUNICIPALS INCOME TRUST INV QU TAX EX TRUST MUL SERIES 138.
6372	IM-02	VAN KAMPEN	871870	INSURED MUNICIPALS INCOME TRUST INV QU TAX EX TRUST MUL SERIES 139.
6373	IM-02	VAN KAMPEN	871869	INSURED MUNICIPALS INCOME TRUST INV QU TAX EX TRUST MU SERIES 140.
6374	IM-02	VAN KAMPEN	871871	INSURED MUNICIPALS INCOME TRUST INV QU TAX EX TRUST MUL SERIES 141.
6375	IM-02	VAN KAMPEN	763115	INSURED MUNICIPALS INCOME TRUST SERIES 142.
6376	IM-02	VAN KAMPEN	764674	INSURED MUNICIPALS INCOME TRUST SERIES 143.
6377	IM-02	VAN KAMPEN	766252	INSURED MUNICIPALS INCOME TRUST SERIES 144.
6378	IM-02	VAN KAMPEN	766253	INSURED MUNICIPALS INCOME TRUST SERIES 145.
6379	IM-02	VAN KAMPEN	766254	INSURED MUNICIPALS INCOME TRUST SERIES 146.
6380	IM-02	VAN KAMPEN	766282	INSURED MUNICIPALS INCOME TRUST SERIES 147.
6381	IM-02	VAN KAMPEN	766256	INSURED MUNICIPALS INCOME TRUST SERIES 148.
6382	IM-02	VAN KAMPEN	771594	INSURED MUNICIPALS INCOME TRUST SERIES 149.
6383	IM-02	VAN KAMPEN	771597	INSURED MUNICIPALS INCOME TRUST SERIES 150.
6384	IM-02	VAN KAMPEN	771590	INSURED MUNICIPALS INCOME TRUST SERIES 151.
6385	IM-02	VAN KAMPEN	771592	INSURED MUNICIPALS INCOME TRUST SERIES 152.
6386	IM-02	VAN KAMPEN	771593	INSURED MUNICIPALS INCOME TRUST SERIES 153.
6387	IM-02	VAN KAMPEN	777962	INSURED MUNICIPALS INCOME TRUST SERIES 154.
6388	IM-02	VAN KAMPEN	777957	INSURED MUNICIPALS INCOME TRUST SERIES 155.
6389	IM-02	VAN KAMPEN	777960	INSURED MUNICIPALS INCOME TRUST SERIES 156.
6390	IM-02	VAN KAMPEN	777958	INSURED MUNICIPALS INCOME TRUST SERIES 157.
6391	IM-02	VAN KAMPEN	777959	INSURED MUNICIPALS INCOME TRUST SERIES 158.
6392	IM-02	VAN KAMPEN	785796	INSURED MUNICIPALS INCOME TRUST SERIES 159.
6393	IM-02	VAN KAMPEN	785792	INSURED MUNICIPALS INCOME TRUST SERIES 160.
6394	IM-02	VAN KAMPEN	785794	INSURED MUNICIPALS INCOME TRUST SERIES 161.
6395	IM-02	VAN KAMPEN	785793	INSURED MUNICIPALS INCOME TRUST SERIES 162.
6396	IM-02	VAN KAMPEN	785795	INSURED MUNICIPALS INCOME TRUST SERIES 163.
6397	IM-02	VAN KAMPEN	790995	INSURED MUNICIPALS INCOME TRUST SERIES 164.
6398	IM-02	VAN KAMPEN	790996	INSURED MUNICIPALS INCOME TRUST SERIES 165.
6399	IM-02	VAN KAMPEN	790997	INSURED MUNICIPALS INCOME TRUST SERIES 166.
6400	IM-02	VAN KAMPEN	793669	INSURED MUNICIPALS INCOME TRUST SERIES 167.
6401	IM-02	VAN KAMPEN	793668	INSURED MUNICIPALS INCOME TRUST SERIES 168.
6402	IM-02	VAN KAMPEN	793667	INSURED MUNICIPALS INCOME TRUST SERIES 169.
6403	IM-02	VAN KAMPEN	797082	INSURED MUNICIPALS INCOME TRUST SERIES 170.
6404	IM-02	VAN KAMPEN	797083	INSURED MUNICIPALS INCOME TRUST SERIES 172.
6405	IM-02	VAN KAMPEN	801131	INSURED MUNICIPALS INCOME TRUST SERIES 173.
6406	IM-02	VAN KAMPEN	801129	INSURED MUNICIPALS INCOME TRUST SERIES 174.
6407	IM-02	VAN KAMPEN	801123	INSURED MUNICIPALS INCOME TRUST SERIES 175.
6408	IM-02	VAN KAMPEN	804118	INSURED MUNICIPALS INCOME TRUST SERIES 176.
6409	IM-02	VAN KAMPEN	804119	INSURED MUNICIPALS INCOME TRUST SERIES 177.
6410	IM-02	VAN KAMPEN	804120	INSURED MUNICIPALS INCOME TRUST SERIES 178.
6411	IM-02	VAN KAMPEN	809752	INSURED MUNICIPALS INCOME TRUST SERIES 179.
6412	IM-02	VAN KAMPEN	809749	INSURED MUNICIPALS INCOME TRUST SERIES 180.
6413	IM-02	VAN KAMPEN	809751	INSURED MUNICIPALS INCOME TRUST SERIES 181.
6414	IM-02	VAN KAMPEN	814177	INSURED MUNICIPALS INCOME TRUST SERIES 182.
6415	IM-02	VAN KAMPEN	814175	INSURED MUNICIPALS INCOME TRUST SERIES 183.
6416	IM-02	VAN KAMPEN	814176	INSURED MUNICIPALS INCOME TRUST SERIES 184.
6417	IM-02	VAN KAMPEN	815464	INSURED MUNICIPALS INCOME TRUST SERIES 185.
6418	IM-02	VAN KAMPEN	815465	INSURED MUNICIPALS INCOME TRUST SERIES 186.
6419	IM-02	VAN KAMPEN	815466	INSURED MUNICIPALS INCOME TRUST SERIES 187.
6420	IM-02	VAN KAMPEN	819088	INSURED MUNICIPALS INCOME TRUST SERIES 188.
6421	IM-02	VAN KAMPEN	819081	INSURED MUNICIPALS INCOME TRUST SERIES 189.
6422	IM-02	VAN KAMPEN	819082	INSURED MUNICIPALS INCOME TRUST SERIES 190.
6423	IM-02	VAN KAMPEN	819087	INSURED MUNICIPALS INCOME TRUST SERIES 191.
6424	IM-02	VAN KAMPEN	819086	INSURED MUNICIPALS INCOME TRUST SERIES 192.
6425	IM-02	VAN KAMPEN	822764	INSURED MUNICIPALS INCOME TRUST SERIES 193.
6426	IM-02	VAN KAMPEN	822770	INSURED MUNICIPALS INCOME TRUST SERIES 194.
6427	IM-02	VAN KAMPEN	822766	INSURED MUNICIPALS INCOME TRUST SERIES 195.
6428	IM-02	VAN KAMPEN	822767	INSURED MUNICIPALS INCOME TRUST SERIES 196.
6429	IM-02	VAN KAMPEN	822768	INSURED MUNICIPALS INCOME TRUST SERIES 197.
6430	IM-02	VAN KAMPEN	825290	INSURED MUNICIPALS INCOME TRUST SERIES 198.
6431	IM-02	VAN KAMPEN	825287	INSURED MUNICIPALS INCOME TRUST SERIES 199.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
6432		IM-02	VAN KAMPEN	825288	INSURED MUNICIPALS INCOME TRUST SERIES 200.
6433		IM-02	VAN KAMPEN	825291	INSURED MUNICIPALS INCOME TRUST SERIES 201.
6434		IM-02	VAN KAMPEN	825289	INSURED MUNICIPALS INCOME TRUST SERIES 202.
6435		IM-02	VAN KAMPEN	821481	INSURED MUNICIPALS INCOME TRUST SERIES 203.
6436		IM-02	VAN KAMPEN	831318	INSURED MUNICIPALS INCOME TRUST SERIES 204.
6437		IM-02	VAN KAMPEN	831317	INSURED MUNICIPALS INCOME TRUST SERIES 205.
6438		IM-02	VAN KAMPEN	831316	INSURED MUNICIPALS INCOME TRUST SERIES 206.
6439		IM-02	VAN KAMPEN	831315	INSURED MUNICIPALS INCOME TRUST SERIES 207.
6440		IM-02	VAN KAMPEN	831324	INSURED MUNICIPALS INCOME TRUST SERIES 208.
6441		IM-02	VAN KAMPEN	834875	INSURED MUNICIPALS INCOME TRUST SERIES 209.
6442		IM-02	VAN KAMPEN	834874	INSURED MUNICIPALS INCOME TRUST SERIES 210.
6443		IM-02	VAN KAMPEN	834878	INSURED MUNICIPALS INCOME TRUST SERIES 211.
6444		IM-02	VAN KAMPEN	836390	INSURED MUNICIPALS INCOME TRUST SERIES 213.
6445		IM-02	VAN KAMPEN	836404	INSURED MUNICIPALS INCOME TRUST SERIES 214.
6446		IM-02	VAN KAMPEN	840231	INSURED MUNICIPALS INCOME TRUST SERIES 215.
6447		IM-02	VAN KAMPEN	840232	INSURED MUNICIPALS INCOME TRUST SERIES 216.
6448		IM-02	VAN KAMPEN	840233	INSURED MUNICIPALS INCOME TRUST SERIES 217.
6449		IM-02	VAN KAMPEN	842716	INSURED MUNICIPALS INCOME TRUST SERIES 218.
6450		IM-02	VAN KAMPEN	842752	INSURED MUNICIPALS INCOME TRUST SERIES 219.
6451		IM-02	VAN KAMPEN	842753	INSURED MUNICIPALS INCOME TRUST SERIES 220.
6452		IM-02	VAN KAMPEN	842754	INSURED MUNICIPALS INCOME TRUST SERIES 221.
6453		IM-02	VAN KAMPEN	842750	INSURED MUNICIPALS INCOME TRUST SERIES 222.
6454		IM-02	VAN KAMPEN	846433	INSURED MUNICIPALS INCOME TRUST SERIES 223.
6455		IM-02	VAN KAMPEN	846390	INSURED MUNICIPALS INCOME TRUST SERIES 224.
6456		IM-02	VAN KAMPEN	846451	INSURED MUNICIPALS INCOME TRUST SERIES 225.
6457		IM-02	VAN KAMPEN	847035	INSURED MUNICIPALS INCOME TRUST SERIES 226.
6458		IM-02	VAN KAMPEN	847036	INSURED MUNICIPALS INCOME TRUST SERIES 227.
6459		IM-02	VAN KAMPEN	847037	INSURED MUNICIPALS INCOME TRUST SERIES 228.
6460		IM-02	VAN KAMPEN	850138	INSURED MUNICIPALS INCOME TRUST SERIES 229.
6461		IM-02	VAN KAMPEN	850136	INSURED MUNICIPALS INCOME TRUST SERIES 230.
6462		IM-02	VAN KAMPEN	850135	INSURED MUNICIPALS INCOME TRUST SERIES 231.
6463		IM-02	VAN KAMPEN	851812	INSURED MUNICIPALS INCOME TRUST SERIES 232.
6464		IM-02	VAN KAMPEN	851743	INSURED MUNICIPALS INCOME TRUST SERIES 233.
6465		IM-02	VAN KAMPEN	851740	INSURED MUNICIPALS INCOME TRUST SERIES 234.
6466		IM-02	VAN KAMPEN	854749	INSURED MUNICIPALS INCOME TRUST SERIES 235.
6467		IM-02	VAN KAMPEN	854745	INSURED MUNICIPALS INCOME TRUST SERIES 236.
6468		IM-02	VAN KAMPEN	854750	INSURED MUNICIPALS INCOME TRUST SERIES 237.
6469		IM-02	VAN KAMPEN	856674	INSURED MUNICIPALS INCOME TRUST SERIES 238.
6470		IM-02	VAN KAMPEN	856673	INSURED MUNICIPALS INCOME TRUST SERIES 239.
6471		IM-02	VAN KAMPEN	858383	INSURED MUNICIPALS INCOME TRUST SERIES 240.
6472		IM-02	VAN KAMPEN	858385	INSURED MUNICIPALS INCOME TRUST SERIES 241.
6473		IM-02	VAN KAMPEN	858386	INSURED MUNICIPALS INCOME TRUST SERIES 242.
6474		IM-02	VAN KAMPEN	858384	INSURED MUNICIPALS INCOME TRUST SERIES 243.
6475		IM-02	VAN KAMPEN	861044	INSURED MUNICIPALS INCOME TRUST SERIES 244.
6476		IM-02	VAN KAMPEN	861045	INSURED MUNICIPALS INCOME TRUST SERIES 245.
6477		IM-02	VAN KAMPEN	861047	INSURED MUNICIPALS INCOME TRUST SERIES 246.
6478		IM-02	VAN KAMPEN	861048	INSURED MUNICIPALS INCOME TRUST SERIES 247.
6479		IM-02	VAN KAMPEN	863125	INSURED MUNICIPALS INCOME TRUST SERIES 248.
6480		IM-02	VAN KAMPEN	863124	INSURED MUNICIPALS INCOME TRUST SERIES 249.
6481		IM-02	VAN KAMPEN	863123	INSURED MUNICIPALS INCOME TRUST SERIES 250.
6482		IM-02	VAN KAMPEN	863122	INSURED MUNICIPALS INCOME TRUST SERIES 251.
6483		IM-02	VAN KAMPEN	865800	INSURED MUNICIPALS INCOME TRUST SERIES 252.
6484		IM-02	VAN KAMPEN	868402	INSURED MUNICIPALS INCOME TRUST SERIES 256.
6485		IM-02	VAN KAMPEN	868403	INSURED MUNICIPALS INCOME TRUST SERIES 257.
6486		IM-02	VAN KAMPEN	868413	INSURED MUNICIPALS INCOME TRUST SERIES 258.
6487		IM-02	VAN KAMPEN	870237	INSURED MUNICIPALS INCOME TRUST SERIES 259.
6488		IM-02	VAN KAMPEN	870236	INSURED MUNICIPALS INCOME TRUST SERIES 260.
6489		IM-02	VAN KAMPEN	870235	INSURED MUNICIPALS INCOME TRUST SERIES 261.
6490		IM-02	VAN KAMPEN	870238	INSURED MUNICIPALS INCOME TRUST SERIES 262.
6491		IM-02	VAN KAMPEN	871816	INSURED MUNICIPLAS INCOME TRUST SERIES 263.
6492		IM-02	VAN KAMPEN	871814	INSURED MUNICIPALS INCOME TRUST SERIES 264.
6493		IM-02	VAN KAMPEN	871817	INSURED MUNICIPALS INCOME TRUST SERIES 265.
6494		IM-02	VAN KAMPEN	761244	INSURED MUNICIPALS INCOME TRUST 1ST INSURED MULTI SERIES.
6495		IM-02	VAN KAMPEN	763479	INSURED MUNICIPALS INCOME TRUST 2ND INSURED MULTI SER.
6496		IM-02	VAN KAMPEN	764369	INSURED MUNICIPALS INCOME TRUST 3RD INSURED MULTI SERIES.
6497		IM-02	VAN KAMPEN	764489	INSURED MUNICIPALS INCOME TRUST 4TH INSURED MULTI SERIES.
6498		IM-02	VAN KAMPEN	764496	INSURED MUNICIPALS INCOME TRUST 5TH INSURED MULTI SERIES.
6499		IM-02	VAN KAMPEN	764493	INSURED MUNICIPALS INCOME TRUST 6TH INSURED MULTI SERIES.
6500		IM-02	VAN KAMPEN	764488	INSURED MUNICIPALS INCOME TRUST 7TH INSURED MULTI SERIES.
6501		IM-02	VAN KAMPEN	766257	INSURED MUNICIPALS INCOME TRUST 8TH INSURED MULTI SERIES.
6502		IM-02	VAN KAMPEN	766255	INSURED MUNICIPALS INCOME TRUST 9TH INSURED MULTI SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6503	IM-02	VAN KAMPEN	766251	INSURED MUNICIPALS INCOME TRUST 10TH INSURED MULTI SERIES.
6504	IM-02	VAN KAMPEN	766258	INSURED MUNICIPALS INCOME TRUST 11TH INSURED MULTI SERIES.
6505	IM-02	VAN KAMPEN	766281	INSURED MUNICIPALS INCOME TRUST 12TH INSURED MULTI SERIES.
6506	IM-02	VAN KAMPEN	768864	INSURED MUNICIPALS INCOME TRUST 13TH INSURED MULTI SERIES.
6507	IM-02	VAN KAMPEN	768865	INSURED MUNICIPALS INCOME TRUST 14TH INSURED MULTI SERIES.
6508	IM-02	VAN KAMPEN	768867	INSURED MUNICIPALS INCOME TRUST 15TH INSURED MULTI SERIES.
6509	IM-02	VAN KAMPEN	768807	INSURED MUNICIPALS INCOME TRUST 16TH INSURED MULTI SERIES.
6510	IM-02	VAN KAMPEN	768808	INSURED MUNICIPALS INCOME TRUST 17TH INSURED MULTI SERIES.
6511	IM-02	VAN KAMPEN	768866	INSURED MUNICIPALS INCOME TRUST 18TH INSURED MULTI SERIES.
6512	IM-02	VAN KAMPEN	768796	INSURED MUNICIPALS INCOME TRUST 19TH INSURED MULTI SERIES.
6513	IM-02	VAN KAMPEN	768816	INSURED MUNICIPALS INCOME TRUST 20TH INSURED MULTI SERIES.
6514	IM-02	VAN KAMPEN	773865	INSURED MUNICIPALS INCOME TRUST 21ST INSURED MULTI SERIES.
6515	IM-02	VAN KAMPEN	773866	INSURED MUNICIPALS INCOME TRUST 22ND INSURED MULTI SERIES.
6516	IM-02	VAN KAMPEN	773941	INSURED MUNICIPALS INCOME TRUST 23RD INSURED MULTI SERIES.
6517	IM-02	VAN KAMPEN	773872	INSURED MUNICIPALS INCOME TRUST 24TH INSURED MULTI SERIES.
6518	IM-02	VAN KAMPEN	773863	INSURED MUNICIPALS INCOME TRUST 25TH INSURED MULTI SERIES.
6519	IM-02	VAN KAMPEN	773862	INSURED MUNICIPALS INCOME TRUST 26TH INSURED MULTI SERIES.
6520	IM-02	VAN KAMPEN	773867	INSURED MUNICIPALS INCOME TRUST 27TH INSURED MULTI SERIES.
6521	IM-02	VAN KAMPEN	773882	INSURED MUNICIPALS INCOME TRUST 28TH INSURED MULTI SERIES.
6522	IM-02	VAN KAMPEN	799116	INSURED MUNICIPALS INCOME TRUST 29TH INSURED MULTI SERIES.
6523	IM-02	VAN KAMPEN	801130	INSURED MUNICIPALS INCOME TRUST 30TH INSURED MULTI SERIES.
6524	IM-02	VAN KAMPEN	812189	INSURED MUNICIPALS INCOME TRUST 31ST INSURED MULTI SERIES.
6525	IM-02	VAN KAMPEN	813560	INSURED MUNICIPALS INCOME TRUST 32ND INSURED MULTI SERIES.
6526	IM-02	VAN KAMPEN	814035	INSURED MUNICIPALS INCOME TRUST 33RD INSURED MULTI SERIES.
6527	IM-02	VAN KAMPEN	814174	INSURED MUNICIPALS INCOME TRUST 34TH INSURED MULTI SERIES.
6528	IM-02	VAN KAMPEN	814550	INSURED MUNICIPALS INCOME TRUST 35TH INSURED MULTI SERIES.
6529	IM-02	VAN KAMPEN	819922	INSURED MUNICIPALS INCOME TRUST MULTI SERIES 37.
6530	IM-02	VAN KAMPEN	822428	INSURED MUNICIPALS INCOME TRUST 38TH INSURED MULTI SERIES.
6531	IM-02	VAN KAMPEN	824178	INSURED MUNICIPALS INCOME TRUST INSURED MULTI SERIES 39.
6532	IM-02	VAN KAMPEN	824645	INSURED MUNICIPALS INCOME TRUST 40TH INSURED MULTI SERIES.
6533	IM-02	VAN KAMPEN	824646	INSURED MUNICIPALS INCOME TRUST INSURED MULTI SERIES 41.
6534	IM-02	VAN KAMPEN	825066	INSURED MUNICIPALS INCOME TRUST 42ND INSURED MULTI SERIES.
6535	IM-02	VAN KAMPEN	826827	INSURED MUNICIPALS INCOME TRUST 43RD INSURED MULTI SERIES.
6536	IM-02	VAN KAMPEN	826826	INSURED MUNICIPALS INCOME TRUST 44TH INSURED MULTI SERIES.
6537	IM-02	VAN KAMPEN	827770	INSURED MUNICIPALS INCOME TRUST 45TH INSURED MULTI SERIES.
6538	IM-02	VAN KAMPEN	828979	INSURED MUNICIPALS INCOME TRUST 46TH INSURED MULT SERIES.
6539	IM-02	VAN KAMPEN	828975	INSURED MUNICIPALS INCOME TRUST 47TH INSURED MULT SERIES.
6540	IM-02	VAN KAMPEN	831879	INSURED MUNICIPALS INCOME TRUST 48TH INSURED MULTI SERIES.
6541	IM-02	VAN KAMPEN	832947	INSURED MUNICIPALS INCOME TRUST 49TH INSURED MULTI SERIES.
6542	IM-02	VAN KAMPEN	832949	INSURED MUNICIPALS INCOME TRUST 50TH INSURED MULTI SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

	Count	Group	Complex	CIK	Name
6543		IM-02	VAN KAMPEN	834881	INSURED MUNICIPALS INCOME TRUST 51ST INSURED MULTI SERIES.
6544		IM-02	VAN KAMPEN	835348	INSURED MUNICIPALS INCOME TRUST 52ND INSURED MULTI SERIES.
6545		IM-02	VAN KAMPEN	837148	INSURED MUNICIPALS INCOME TRUST 53RD INSURED MULTI SERIES.
6546		IM-02	VAN KAMPEN	837884	INSURED MUNICIPALS INCOME TRUST INSURED MULTI SERIES 54.
6547		IM-02	VAN KAMPEN	838457	INSURED MUNICIPALS INCOME TRUST INSURED MULTI SERIES 55.
6548		IM-02	VAN KAMPEN	840234	INSURED MUNICIPALS INCOME TRUST 56TH INSURED MULTI SERIES.
6549		IM-02	VAN KAMPEN	840596	INSURED MUNICIPALS INCOME TRUST 57TH INSURED MULTI SERIES.
6550		IM-02	VAN KAMPEN	842195	INSURED MUNICIPALS INCOME TRUST 58TH INSURED MULTI SERIES.
6551		IM-02	VAN KAMPEN	842271	INSURED MUNICIPALS INCOME TRUST 59TH INSURED MULTI SERIES.
6552		IM-02	VAN KAMPEN	842781	INSURED MUNICIPALS INCOME TRUST 60TH INS MULTI SERIES.
6553		IM-02	VAN KAMPEN	842868	INSURED MUNICIPALS INCOME TRUST 61ST INSURED MULTI SERIES.
6554		IM-02	VAN KAMPEN	845099	INSURED MUNICIPALS INCOME TRUST 62ND INSURED MULTI SERIES.
6555		IM-02	VAN KAMPEN	845100	INSURED MUNICIPALS INCOME TRUST 63RD INSURED MULTI SERIES.
6556		IM-02	VAN KAMPEN	846517	INSURED MUNICIPALS INCOME TRUST 64TH INSURED MULT SERIES.
6557		IM-02	VAN KAMPEN	846779	INSURED MUNICIPALS INCOME TRUST 65TH INSURED MULTI SERIES.
6558		IM-02	VAN KAMPEN	846778	INSURED MUNICIPALS INCOME TRUST 66TH INSURED MULTI SERIES.
6559		IM-02	VAN KAMPEN	849353	INSURED MUNICIPALS INCOME TRUST 67TH INSURED MULTI SERIES.
6560		IM-02	VAN KAMPEN	849352	INSURED- MUNICIPALS INCOME TRUST 68TH INSURED MULTI SERIES.
6561		IM-02	VAN KAMPEN	849396	INSURED MUNICIPALS INCOME TRUST 69TH INSURED MULTI SERIES.
6562		IM-02	VAN KAMPEN	850188	INSURED MUNICIPALS INCOME TRUST 70TH INSURED MULTI SERIES.
6563		IM-02	VAN KAMPEN	850186	INSURED MUNICIPALS INCOME TRUST 71ST INS MULTI SERIES.
6564		IM-02	VAN KAMPEN	850551	INSURED MUNICIPALS INCOME TRUST 72ND INSURED MULTI SERIES.
6565		IM-02	VAN KAMPEN	850562	INSURED MUNICIPALS INCOME TRUST 73RD INDURED MULTI SERIES.
6566		IM-02	VAN KAMPEN	850561	INSURED MUNICIPALS INCOME TRUST 74TH INSURED MULTI SERIES.
6567		IM-02	VAN KAMPEN	851742	INSURED MUNICIPALS INCOME TRUST 75TH INSURED MULTI SERIES.
6568		IM-02	VAN KAMPEN	851741	INSURED MUNICIPALS INCOME TRUST 76TH INSURED MULTI SERIES.
6569		IM-02	VAN KAMPEN	853012	INSURED MUNICIPALS INCOME TRUST 77TH INSURED MULTI SERIES.
6570		IM-02	VAN KAMPEN	853021	INSURED MUNICIPALS INCOME TRUST 78TH INSURED MULTI SERIES.
6571		IM-02	VAN KAMPEN	853013	INSURED MUNICIPALS INCOME TRUST 79TH INSURED MULTI SERIES.
6572		IM-02	VAN KAMPEN	857552	INSURED MUNICIPALS INCOME TRUST 84TH INSURED MULTI SERIES.
6573		IM-02	VAN KAMPEN	857554	INSURED MUNICIPALS INCOME TRUST 85TH INSURED MULTI SERIES.
6574		IM-02	VAN KAMPEN	857550	INSURED MUNICIPALS INCOME TRUST 86TH INSURED MULTI SERIES.
6575		IM-02	VAN KAMPEN	857551	INSURED MUNICIPALS INCOME TRUST 87TH INSURED MULTI SERIES.
6576		IM-02	VAN KAMPEN	859350	INSURED MUNICIPALS INCOME TRUST 88TH INSURED MULTI SERIES.
6577		IM-02	VAN KAMPEN	859351	INSURED MUNICIPALS INCOME TRUST 89TH INSURED MULTI SERIES.
6578		IM-02	VAN KAMPEN	859344	INSURED MUNICIPALS INCOME TRUST 90TH INSURED MULTI SERIES.
6579		IM-02	VAN KAMPEN	859343	INSURED MUNICIPALS INCOME TRUST 91ST INSURED MULTI SERIES.
6580		IM-02	VAN KAMPEN	862336	INSURED MUNICIPALS INCOME TRUST 92ND INSURED MULTI SERIES.
6581		IM-02	VAN KAMPEN	862307	INSURED MUNICIPALS INCOME TRUST 93RD INSURED MULTI SERIES.
6582		IM-02	VAN KAMPEN	862308	INSURED MUNICIPALS INCOME TRUST 94TH INSURED MULTI SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6583	IM-02	VAN KAMPEN	862306	INSURED MUNICIPALS INCOME TRUST 95TH INSURED MULTI SERIES.
6584	IM-02	VAN KAMPEN	867436	INSURED MUNICIPALS INCOME TRUST 96TH INSURED MULTI SERIES.
6585	IM-02	VAN KAMPEN	868398	INSURED MUNICIPALS INCOME TRUST 97TH INSURED MULTI SERIES.
6586	IM-02	VAN KAMPEN	868401	INSURED MUNICIPALS INCOME TRUST 98TH INSURED MULTI SERIES.
6587	IM-02	VAN KAMPEN	868400	INSURED MUNICIPALS INCOME TRUST 99TH INSURED MULTI SERIES.
6588	IM-02	VAN KAMPEN	870231	INSURED MUNICIPALS INCOME TRUST 100TH INSURED MULTI SERIES.
6589	IM-02	VAN KAMPEN	870234	INSURED MUNICIPALS INCOME TRUST 101TH IN MULTI SERIES.
6590	IM-02	VAN KAMPEN	862273	INSURED MUNICIPALS INCOME TRUST & INV QUA TAX EX MULTI SERIES 1.
6591	IM-02	VAN KAMPEN	314844	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 3.
6592	IM-02	VAN KAMPEN	317039	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 4.
6593	IM-02	VAN KAMPEN	317038	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 5.
6594	IM-02	VAN KAMPEN	317726	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 6.
6595	IM-02	VAN KAMPEN	318373	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 7.
6596	IM-02	VAN KAMPEN	318375	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 8.
6597	IM-02	VAN KAMPEN	350204	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 9.
6598	IM-02	VAN KAMPEN	350476	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 10.
6599	IM-02	VAN KAMPEN	352035	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 11.
6600	IM-02	VAN KAMPEN	352817	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 12.
6601	IM-02	VAN KAMPEN	356123	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 13.
6602	IM-02	VAN KAMPEN	702120	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 14.
6603	IM-02	VAN KAMPEN	702273	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 15.
6604	IM-02	VAN KAMPEN	702261	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 16.
6605	IM-02	VAN KAMPEN	704472	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 17.
6606	IM-02	VAN KAMPEN	704474	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 18.
6607	IM-02	VAN KAMPEN	706080	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 19.
6608	IM-02	VAN KAMPEN	706077	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 20.
6609	IM-02	VAN KAMPEN	707829	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 21.
6610	IM-02	VAN KAMPEN	713038	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 25.
6611	IM-02	VAN KAMPEN	713035	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 26.
6612	IM-02	VAN KAMPEN	715125	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 27.
6613	IM-02	VAN KAMPEN	716307	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 29.
6614	IM-02	VAN KAMPEN	716305	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 30.
6615	IM-02	VAN KAMPEN	716306	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 31.
6616	IM-02	VAN KAMPEN	719217	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 32.
6617	IM-02	VAN KAMPEN	719219	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 33.
6618	IM-02	VAN KAMPEN	721950	INVESTORS QUALITY TAX EXEMPT TRUST SERIES 35.
6619	IM-02	VAN KAMPEN	715084	INVESTORS QUALITY TAX EXEMPT TRUST 1ST MULTI SERIES.
6620	IM-02	VAN KAMPEN	719787	INVESTORS QUALITY TAX EXEMPT TRUST 2ND MULTI STATE.
6621	IM-02	VAN KAMPEN	719606	INVESTORS QUALITY TAX EXEMPT TRUST 3RD MULTI STATE.
6622	IM-02	VAN KAMPEN	724214	INVESTORS QUALITY TAX EXEMPT TRUST 4TH MULTI STATE.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6623	IM-02	VAN KAMPEN	724212	INVESTORS QUALITY TAX EXEMPT TRUST 5TH MULTI STATE.
6624	IM-02	VAN KAMPEN	726846	INVESTORS QUALITY TAX EXEMPT TRUST 6TH MULTI STATE.
6625	IM-02	VAN KAMPEN	726730	INVESTORS QUALITY TAX EXEMPT TRUST 7TH MULTI STATE.
6626	IM-02	VAN KAMPEN	731761	INVESTORS QUALITY TAX EXEMPT TRUST 8TH MULTI SERIES.
6627	IM-02	VAN KAMPEN	731763	INVESTORS QUALITY TAX EXEMPT TRUST 9TH MULTI SERIES.
6628	IM-02	VAN KAMPEN	736490	INVESTORS QUALITY TAX EXEMPT TRUST 10TH MULTI SERIES.
6629	IM-02	VAN KAMPEN	736477	INVESTORS QUALITY TAX EXEMPT TRUST 11TH MULTI SERIES.
6630	IM-02	VAN KAMPEN	736976	INVESTORS QUALITY TAX EXEMPT TRUST 12TH MULTI SERIES.
6631	IM-02	VAN KAMPEN	743959	INVESTORS QUALITY TAX EXEMPT TRUST 13TH MULTI SERIES.
6632	IM-02	VAN KAMPEN	743371	INVESTORS QUALITY TAX EXEMPT TRUST 14TH MULTI SERIES.
6633	IM-02	VAN KAMPEN	743372	INVESTORS QUALITY TAX EXEMPT TRUST 15TH MULTI SERIES.
6634	IM-02	VAN KAMPEN	743373	INVESTORS QUALITY TAX EXEMPT TRUST 16TH MULTI SERIES.
6635	IM-02	VAN KAMPEN	743374	INVESTORS QUALITY TAX EXEMPT TRUST 17TH MULTI SERIES.
6636	IM-02	VAN KAMPEN	743139	INVESTORS QUALITY TAX EXEMPT TRUST 18TH MULTI SERIES.
6637	IM-02	VAN KAMPEN	746028	INVESTORS QUALITY TAX EXEMPT TRUST 19TH MULTI SERIES.
6638	IM-02	VAN KAMPEN	746027	INVESTORS QUALITY TAX EXEMPT TRUST 20TH MULTI SERIES.
6639	IM-02	VAN KAMPEN	746026	INVESTORS QUALITY TAX EXEMPT TRUST 21ST MULTI SERIES.
6640	IM-02	VAN KAMPEN	746025	INVESTORS QUALITY TAX EXEMPT TRUST 22ND MULTI SERIES.
6641	IM-02	VAN KAMPEN	746024	INVESTORS QUALITY TAX EXEMPT TRUST 23RD MULTI SERIES.
6642	IM-02	VAN KAMPEN	750648	INVESTORS QUALITY TAX EXEMPT TRUST 24TH MULTI SERIES.
6643	IM-02	VAN KAMPEN	750647	INVESTORS QUALITY TAX EXEMPT TRUST 25TH MULTI SERIES.
6644	IM-02	VAN KAMPEN	750651	INVESTORS QUALITY TAX EXEMPT TRUST 26TH MULTI SERIES.
6645	IM-02	VAN KAMPEN	750646	INVESTORS QUALITY TAX EXEMPT TRUST 27TH MULTI SERIES.
6646	IM-02	VAN KAMPEN	750645	INVESTORS QUALITY TAX EXEMPT TRUST 28TH MULTI SERIES.
6647	IM-02	VAN KAMPEN	755220	INVESTORS QUALITY TAX EXEMPT TRUST 29TH MULTI SERIES.
6648	IM-02	VAN KAMPEN	755216	INVESTORS QUALITY TAX EXEMPT TRUST 30TH MULTI SERIES.
6649	IM-02	VAN KAMPEN	755217	INVESTORS QUALITY TAX EXEMPT TRUST 31ST MULTI SERIES.
6650	IM-02	VAN KAMPEN	755219	INVESTORS QUALITY TAX EXEMPT TRUST 32ND MULTI SERIES.
6651	IM-02	VAN KAMPEN	755215	INVESTORS QUALITY TAX EXEMPT TRUST 33RD MULTI SERIES.
6652	IM-02	VAN KAMPEN	760989	INVESTORS QUALITY TAX EXEMPT TRUST 34TH MULTI SERIES.
6653	IM-02	VAN KAMPEN	760778	INVESTORS QUALITY TAX EXEMPT TRUST 35TH MULTI SERIES.
6654	IM-02	VAN KAMPEN	760985	INVESTORS QUALITY TAX EXEMPT TRUST 36TH MULTI STATE SERIES.
6655	IM-02	VAN KAMPEN	760984	INVESTORS QUALITY TAX EXEMPT TRUST 37TH MULTI SERIES.
6656	IM-02	VAN KAMPEN	761022	INVESTORS QUALITY TAX EXEMPT TRUST 38TH MULTI SERIES.
6657	IM-02	VAN KAMPEN	765830	INVESTORS QUALITY TAX EXEMPT TRUST 39TH MULTI SERIES.
6658	IM-02	VAN KAMPEN	765877	INVESTORS QUALITY TAX EXEMPT TRUST 40TH MULTI SERIES.
6659	IM-02	VAN KAMPEN	765873	INVESTORS QUALITY TAX EXEMPT TRUST 41ST MULTI SERIES.
6660	IM-02	VAN KAMPEN	765875	INVESTORS QUALITY TAX EXEMPT TRUST 42ND MULTI SERIES.
6661	IM-02	VAN KAMPEN	766002	INVESTORS QUALITY TAX EXEMPT TRUST 43RD MULTI SERIES.
6662	IM-02	VAN KAMPEN	769211	INVESTORS QUALITY TAX EXEMPT TRUST 44TH MULTI SERIES.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6663	IM-02	VAN KAMPEN	769212	INVESTORS QUALITY TAX EXEMPT TRUST 45TH MULTI SERIES.
6664	IM-02	VAN KAMPEN	769213	INVESTORS QUALITY TAX EXEMPT TRUST 46TH MULTI SERIES.
6665	IM-03	MULTISTATE	791646	MULTISTATE TRUST.
6666	IM-03	MULTISTATE	733275	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 1.
6667	IM-03	MULTISTATE	736977	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 2.
6668	IM-03	MULTISTATE	740590	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 3.
6669	IM-03	MULTISTATE	742201	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 4.
6670	IM-03	MULTISTATE	745168	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 5.
6671	IM-03	MULTISTATE	746809	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 6.
6672	IM-03	MULTISTATE	750677	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 7.
6673	IM-03	MULTISTATE	752202	MULTISTATE TAX EXEMPT UNIT TRUST SERIES 8.
6674	IM-03	MULTISTATE	754596	MULTISTATE TRUST SERIES 9.
6675	IM-03	MULTISTATE	756906	MULTISTATE TRUST SERIES 10.
6676	IM-03	MULTISTATE	759668	MULTISTATE TRUST SERIES 11.
6677	IM-03	MULTISTATE	761249	MULTISTATE TRUST SERIES 12.
6678	IM-03	MULTISTATE	763272	MULTISTATE TRUST SERIES 13.
6679	IM-03	MULTISTATE	763662	MULTISTATE TRUST SERIES 14.
6680	IM-03	MULTISTATE	763758	MULTISTATE TRUST SERIES 15.
6681	IM-03	MULTISTATE	763757	MULTISTATE TRUST SERIES 16.
6682	IM-03	MULTISTATE	764623	MULTISTATE TRUST SERIES 17.
6683	IM-03	MULTISTATE	766460	MULTISTATE TRUST SERIES 18.
6684	IM-03	MULTISTATE	770904	MULTISTATE TRUST SERIES 18 19 20 & 21.
6685	IM-03	MULTISTATE	768159	MULTISTATE TRUST SERIES 19.
6686	IM-03	MULTISTATE	769340	MULTISTATE TRUST SERIES 20.
6687	IM-03	MULTISTATE	773330	MULTISTATE TRUST SERIES 22.
6688	IM-03	MULTISTATE	799270	MULTISTATE TRUST SERIES 22 23 24 & 34.
6689	IM-03	MULTISTATE	777354	MULTISTATE TRUST SERIES 23.
6690	IM-03	MULTISTATE	783598	MULTISTATE TRUST SERIES 24.
6691	IM-03	MULTISTATE	783591	MULTISTATE TRUST SERIES 25.
6692	IM-03	MULTISTATE	790148	MULTISTATE TRUST SERIES 26.
6693	IM-03	MULTISTATE	790153	MULTISTATE TRUST SERIES 27.
6694	IM-03	MULTISTATE	790151	MULTISTATE TRUST SERIES 28.
6695	IM-03	MULTISTATE	793555	MULTISTATE TRUST SERIES 29.
6696	IM-03	MULTISTATE	793571	MULTISTATE TRUST SERIES 30.
6697	IM-03	MULTISTATE	793572	MULTISTATE TRUST SERIES 31.
6698	IM-03	MULTISTATE	793573	MULTISTATE TRUST SERIES 32.
6699	IM-03	MULTISTATE	799263	MULTISTATE TRUST SERIES 33.
6700	IM-03	MULTISTATE	799266	MULTISTATE TRUST SERIES 35.
6701	IM-03	MULTISTATE	808002	MULTISTATE TRUST SERIES 35 36 37 & 38.
6702	IM-03	MULTISTATE	799265	MULTISTATE TRUST SERIES 36.
6703	IM-03	MULTISTATE	807960	MULTISTATE TRUST SERIES 37.
6704	IM-03	MULTISTATE	807992	MULTISTATE TRUST SERIES 39.
6705	IM-03	MULTISTATE	807991	MULTISTATE TRUST SERIES 40.
6706	IM-03	MULTISTATE	811042	MULTISTATE TRUST SERIES 41.
6707	IM-03	MULTISTATE	811044	MULTISTATE TRUST SERIES 42.
6708	IM-03	MULTISTATE	811046	MULTISTATE TRUST SERIES 43.
6709	IM-03	NEW YORK MUNI	726936	NEW YORK MUNICIPAL TRUST N Y DISCOUNT & ZERO COUPON FUND 2ND.
6710	IM-03	NEW YORK MUNI	735579	NEW YORK MUNICIPAL TRUST NY DISCOUNT & ZERO COUP FUND 3RD SE.
6711	IM-03	NEW YORK MUNI	739611	NEW YORK MUNICIPAL TRUST NEW YORK DISC & ZERO COU FD 4TH SERIES.
6712	IM-03	NEW YORK MUNI	276718	NEW YORK MUNICIPAL TRUST SERIES 1.
6713	IM-03	NEW YORK MUNI	278075	NEW YORK MUNICIPAL TRUST SERIES 2.
6714	IM-03	NEW YORK MUNI	278210	NEW YORK MUNICIPAL TRUST SERIES 3.
6715	IM-03	NEW YORK MUNI	310871	NEW YORK MUNICIPAL TRUST SERIES 4.
6716	IM-03	NEW YORK MUNI	311414	NEW YORK MUNICIPAL TRUST SERIES 5.
6717	IM-03	NEW YORK MUNI	312296	NEW YORK MUNICIPAL TRUST SERIES 7.
6718	IM-03	NEW YORK MUNI	313740	NEW YORK MUNICIPAL TRUST SERIES 8.
6719	IM-03	NEW YORK MUNI	314129	NEW YORK MUNICIPAL TRUST SERIES 9.
6720	IM-03	NEW YORK MUNI	315171	NEW YORK MUNICIPAL TRUST SERIES 10.
6721	IM-03	NEW YORK MUNI	316881	NEW YORK MUNICIPAL TRUST SERIES 11.
6722	IM-03	NEW YORK MUNI	317615	NEW YORK MUNICIPAL TRUST SERIES 12.
6723	IM-03	NEW YORK MUNI	317955	NEW YORK MUNICIPAL TRUST SERIES 13.
6724	IM-03	NEW YORK MUNI	318639	NEW YORK MUNICIPAL TRUST SERIES 14.
6725	IM-03	NEW YORK MUNI	000049	NEW YORK MUNICIPAL TRUST SERIES 15.
6726	IM-03	NEW YORK MUNI	352258	NEW YORK MUNICIPAL TRUST 16.
6727	IM-03	NEW YORK MUNI	352436	NEW YORK MUNICIPAL TRUST SERIES 16.
6728	IM-03	NEW YORK MUNI	353870	NEW YORK MUNICIPAL TRUST SERIES 17.
6729	IM-03	NEW YORK MUNI	355268	NEW YORK MUNICIPAL TRUST SERIES 18.
6730	IM-03	NEW YORK MUNI	700766	NEW YORK MUNICIPAL TRUST SERIES 19.
6731	IM-03	NEW YORK MUNI	705359	NEW YORK MUNICIPAL TRUST SERIES 20.
6732	IM-03	NEW YORK MUNI	707897	NEW YORK MUNICIPAL TRUST SERIES 21.
6733	IM-03	NEW YORK MUNI	709148	NEW YORK MUNICIPAL TRUST SERIES 22.
6734	IM-03	NEW YORK MUNI	710488	NEW YORK MUNICIPAL TRUST SERIES 23.
6735	IM-03	NEW YORK MUNI	714290	NEW YORK MUNICIPAL TRUST SERIES 24.
6736	IM-03	NEW YORK MUNI	715425	NEW YORK MUNICIPAL TRUST SERIES 25.
6737	IM-03	NEW YORK MUNI	716608	NEW YORK MUNICIPAL TRUST SERIES 26.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6738	IM–03	NEW YORK MUNI	718419	NEW YORK MUNICIPAL TRUST SERIES 27.
6739	IM–03	NEW YORK MUNI	719601	NEW YORK MUNICIPAL TRUST SERIES 28.
6740	IM–03	NEW YORK MUNI	719962	NEW YORK MUNICIPAL TRUST FIRST DISCOUNT SERIES.
6741	IM–03	OHIO TAX XMPT	721936	OHIO TAX EXEMPT BOND TRUST FIRST SERIES.
6742	IM–03	OHIO TAX XMPT	723645	OHIO TAX EXEMPT BOND TRUST SECOND SERIES.
6743	IM–03	OHIO TAX XMPT	732688	OHIO TAX EXEMPT BOND TRUST THIRD SERIES.
6744	IM–03	OHIO TAX XMPT	740222	OHIO TAX EXEMPT BOND TRUST FOURTH SERIES.
6745	IM–03	OHIO TAX XMPT	743369	OHIO TAX EXEMPT BOND TRUST FIFTH SERIES.
6746	IM–03	OHIO TAX XMPT	749480	OHIO TAX EXEMPT BOND TRUST SIXTH SERIES.
6747	IM–03	OHIO TAX XMPT	755192	OHIO TAX EXEMPT BOND TRUST SEVENTH SERIES.
6748	IM–03	OHIO TAX XMPT	757607	OHIO TAX EXEMPT BOND TRUST EIGHTH SERIES.
6749	IM–03	OHIO TAX XMPT	760573	OHIO TAX EXEMPT BOND TRUST NINTH SERIES.
6750	IM–03	OHIO TAX XMPT	768171	OHIO TAX EXEMPT BOND TRUST TENTH SERIES.
6751	IM–03	OHIO TAX XMPT	771807	OHIO TAX EXEMPT BOND TRUST ELEVENTH SERIES INSURED.
6752	IM–03	OHIO TAX XMPT	774002	OHIO TAX EXEMPT BOND TRUST TWELFTH SERIES INSURED.
6753	IM–03	OHIO TAX XMPT	783072	OHIO TAX EXEMPT BOND TRUST FOURTEENTH SERIES INSURED.
6754	IM–03	OHIO TAX XMPT	786044	OHIO TAX EXEMPT BOND TRUST FIFTEENTH SERIES INSURED.
6755	IM–03	OHIO TAX XMPT	797458	OHIO TAX EXEMPT BOND TRUST SIXTEENTH SERIES INSURED.
6756	IM–03	OHIO TAX XMPT	800262	OHIO TAX EXEMPT BOND TRUST SEVENTEENTH SERIES.
6757	IM–03	OHIO TAX XMPT	805050	OHIO TAX EXEMPT BOND TRUST EIGHTEENTH SERIES INSURED.
6758	IM–03	OHIO TAX XMPT	809773	OHIO TAX EXEMPT BOND TRUST NINETEENTH SERIES INSURED.
6759	IM–03	OHIO TAX XMPT	814048	OHIO TAX EXEMPT BOND TRUST TWENTIETH SERIES INSURED.
6760	IM–03	OHIO TAX XMPT	821531	OHIO TAX EXEMPT BOND TRUST TWENTY FIRST SERIES.
6761	IM–03	OHIO TAX XMPT	832898	OHIO TAX EXEMPT BOND TRUST TWENTY SECOND SERIES INSURED.
6762	IM–03	RANSON	751291	KANSAS TAX EXEMPT TRUST SERIES 1.
6763	IM–03	RANSON	754588	KANSAS TAX EXEMPT TRUST SERIES 2.
6764	IM–03	RANSON	757817	KANSAS TAX EXEMPT TRUST SERIES 3.
6765	IM–03	RANSON	762158	KANSAS TAX EXEMPT TRUST SERIES 4.
6766	IM–03	RANSON	763833	KANSAS TAX EXEMPT TRUST SERIES 5.
6767	IM–03	RANSON	764778	KANSAS TAX EXEMPT TRUST SERIES 6.
6768	IM–03	RANSON	769023	KANSAS TAX EXEMPT TRUST SERIES 7.
6769	IM–03	RANSON	773595	KANSAS TAX EXEMPT TRUST SERIES 8.
6770	IM–03	RANSON	785438	KANSAS TAX EXEMPT TRUST SERIES 9.
6771	IM–03	RANSON	789607	KANSAS TAX EXEMPT TRUST SERIES 10.
6772	IM–03	RANSON	790571	KANSAS TAX EXEMPT TRUST SERIES 11.
6773	IM–03	RANSON	793420	KANSAS TAX EXEMPT TRUST SERIES 12.
6774	IM–03	RANSON	796566	KANSAS TAX EXEMPT TRUST SERIES 13.
6775	IM–03	RANSON	804187	KANSAS TAX EXEMPT TRUST SERIES 14.
6776	IM–03	RANSON	809072	KANSAS TAX EXEMPT TRUST SERIES 15.
6777	IM–03	RANSON	811064	KANSAS TAX EXEMPT TRUST SERIES 16.
6778	IM–03	RANSON	813363	KANSAS TAX EXEMPT TRUST SERIES 17.
6779	IM–03	RANSON	814372	KANSAS TAX EXEMPT TRUST SERIES 18.
6780	IM–03	RANSON	820236	KANSAS TAX EXEMPT TRUST SERIES 19.
6781	IM–03	RANSON	822022	KANSAS TAX EXEMPT TRUST SERIES 20.
6782	IM–03	RANSON	824386	KANSAS TAX EXEMPT TRUST SERIES 21.
6783	IM–03	RANSON	828743	KANSAS TAX EXEMPT TRUST SERIES 22.
6784	IM–03	RANSON	831204	KANSAS TAX EXEMPT TRUST SERIES 23.
6785	IM–03	RANSON	831954	KANSAS TAX EXEMPT TRUST SERIES 24.
6786	IM–03	RANSON	837181	KANSAS TAX EXEMPT TRUST SERIES 25 & SERIES 26.
6787	IM–03	RANSON	842968	KANSAS TAX EXEMPT TRUST SERIES 26.
6788	IM–03	RANSON	843507	KANSAS TAX EXEMPT TRUST SERIES 27.
6789	IM–03	RANSON	850375	KANSAS TAX EXEMPT TRUST SERIES 28.
6790	IM–03	RANSON	853014	KANSAS TAX EXEMPT TRUST SERIES 29.
6791	IM–03	RANSON	854908	KANSAS TAX EXEMPT TRUST SERIES 30.
6792	IM–03	RANSON	857498	KANSAS TAX EXEMPT TRUST SERIES 31.
6793	IM–03	RANSON	859140	KANSAS TAX EXEMPT TRUST SERIES 32.
6794	IM–03	RANSON	861893	KANSAS TAX EXEMPT TRUST SERIES 33.
6795	IM–03	RANSON	864224	KANSAS TAX EXEMPT TRUST SERIES 35.
6796	IM–03	RANSON	866259	KANSAS TAX EXEMPT TRUST SERIES 36.
6797	IM–03	RANSON	868579	KANSAS TAX EXEMPT TRUST SERIES 37.
6798	IM–03	VAN KAMPEN	865802	VAN KAMPEN MERRITT INSURED MUNICIPALS INCOME TRUST SER 253.
6799	IM–03	VAN KAMPEN	865801	VAN KAMPEN MERRITT INSURED MUNICIPALS INCOME TRUST SER 254.
6800	IM–03	VAN KAMPEN	865803	VAN KAMPEN MERRITT INSURED MUNICIPALS INCOME TRUST SER 255.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6801	IM-03	VAN KAMPEN	730619	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 1.
6802	IM-03	VAN KAMPEN	732291	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 2.
6803	IM-03	VAN KAMPEN	732727	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 3.
6804	IM-03	VAN KAMPEN	732736	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 4.
6805	IM-03	VAN KAMPEN	736973	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 5.
6806	IM-03	VAN KAMPEN	736974	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 6.
6807	IM-03	VAN KAMPEN	736945	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 7.
6808	IM-03	VAN KAMPEN	740608	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 8.
6809	IM-03	VAN KAMPEN	740605	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 9.
6810	IM-03	VAN KAMPEN	740558	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 10.
6811	IM-03	VAN KAMPEN	740601	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 11.
6812	IM-03	VAN KAMPEN	740594	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 12.
6813	IM-03	VAN KAMPEN	747543	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 13.
6814	IM-03	VAN KAMPEN	747691	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 14.
6815	IM-03	VAN KAMPEN	747690	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 15.
6816	IM-03	VAN KAMPEN	747689	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 16.
6817	IM-03	VAN KAMPEN	747697	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 17.
6818	IM-03	VAN KAMPEN	753578	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 18.
6819	IM-03	VAN KAMPEN	753740	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 19.
6820	IM-03	VAN KAMPEN	753742	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 20.
6821	IM-03	VAN KAMPEN	753743	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 21.
6822	IM-03	VAN KAMPEN	753741	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 22.
6823	IM-03	VAN KAMPEN	761235	CALIFORNIA INSURED MUNICIPALS INCOME TRUST SERIES 23.
6824	IM-03	VAN KAMPEN	319814	NEW YORK INSURED MUNICIPAL BOND TRUST SERIES 1.
6825	IM-03	VAN KAMPEN	000207	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 2.
6826	IM-03	VAN KAMPEN	353087	NEW YORK INSURED MUNICIPAL BOND TRUST SERIES 3.
6827	IM-03	VAN KAMPEN	353992	NEW YORK INSURED MUNICIPAL BOND TRUST SERIES 4.
6828	IM-03	VAN KAMPEN	357144	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 5.
6829	IM-03	VAN KAMPEN	702295	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 6.
6830	IM-03	VAN KAMPEN	702271	NEW YORK INSURED MUNICIPAL BOND TRUST SERIES 7.
6831	IM-03	VAN KAMPEN	706704	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 8.
6832	IM-03	VAN KAMPEN	710845	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 10.
6833	IM-03	VAN KAMPEN	710844	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 11.
6834	IM-03	VAN KAMPEN	714986	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 12.
6835	IM-03	VAN KAMPEN	714985	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 13.
6836	IM-03	VAN KAMPEN	717325	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 14.
6837	IM-03	VAN KAMPEN	717326	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 15.
6838	IM-03	VAN KAMPEN	719163	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 16.
6839	IM-03	VAN KAMPEN	718926	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 17.
6840	IM-03	VAN KAMPEN	722585	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 18.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6841	IM-03	VAN KAMPEN	722586	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 19.
6842	IM-03	VAN KAMPEN	725635	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 20.
6843	IM-03	VAN KAMPEN	725634	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 21.
6844	IM-03	VAN KAMPEN	732284	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 22.
6845	IM-03	VAN KAMPEN	732286	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 23.
6846	IM-03	VAN KAMPEN	733264	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 24.
6847	IM-03	VAN KAMPEN	733262	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 25.
6848	IM-03	VAN KAMPEN	742048	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 26.
6849	IM-03	VAN KAMPEN	742090	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 27.
6850	IM-03	VAN KAMPEN	742058	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 28.
6851	IM-03	VAN KAMPEN	742049	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 29.
6852	IM-03	VAN KAMPEN	742082	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 30.
6853	IM-03	VAN KAMPEN	748108	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIE 31.
6854	IM-03	VAN KAMPEN	748113	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 32.
6855	IM-03	VAN KAMPEN	748116	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 33.
6856	IM-03	VAN KAMPEN	748219	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 34.
6857	IM-03	VAN KAMPEN	748165	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 35.
6858	IM-03	VAN KAMPEN	756606	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 36.
6859	IM-03	VAN KAMPEN	756604	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 37.
6860	IM-03	VAN KAMPEN	756652	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 38.
6861	IM-03	VAN KAMPEN	759488	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 39.
6862	IM-03	VAN KAMPEN	759487	NEW YORK INSURED MUNICIPALS INCOME TRUST SERIES 41.
6863	IM-03	VAN KAMPEN	351972	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 13.
6864	IM-03	VAN KAMPEN	353550	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 14.
6865	IM-03	VAN KAMPEN	355506	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 15.
6866	IM-03	VAN KAMPEN	357145	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 16.
6867	IM-03	VAN KAMPEN	700920	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 17.
6868	IM-03	VAN KAMPEN	702268	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 18.
6869	IM-03	VAN KAMPEN	702267	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 19.
6870	IM-03	VAN KAMPEN	705978	PENNSYLVANIA INSURED MUNICIPAL BOND TRUST SERIES 20.
6871	IM-03	VAN KAMPEN	705982	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 21.
6872	IM-03	VAN KAMPEN	717321	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 22.
6873	IM-03	VAN KAMPEN	717404	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 23.
6874	IM-03	VAN KAMPEN	718927	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 24.
6875	IM-03	VAN KAMPEN	719162	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 25.
6876	IM-03	VAN KAMPEN	725632	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 26.
6877	IM-03	VAN KAMPEN	725633	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 27.
6878	IM-03	VAN KAMPEN	730617	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 28.
6879	IM-03	VAN KAMPEN	730614	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 29.
6880	IM-03	VAN KAMPEN	736943	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 30.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6881	IM-03	VAN KAMPEN	736944	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 31.
6882	IM-03	VAN KAMPEN	736972	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 32.
6883	IM-03	VAN KAMPEN	742205	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 33.
6884	IM-03	VAN KAMPEN	742206	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 34.
6885	IM-03	VAN KAMPEN	742207	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 35.
6886	IM-03	VAN KAMPEN	742208	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 36.
6887	IM-03	VAN KAMPEN	742209	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 37.
6888	IM-03	VAN KAMPEN	748887	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 38.
6889	IM-03	VAN KAMPEN	748893	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 39.
6890	IM-03	VAN KAMPEN	748889	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 40.
6891	IM-03	VAN KAMPEN	748899	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 41.
6892	IM-03	VAN KAMPEN	748892	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 42.
6893	IM-03	VAN KAMPEN	757495	PENNSYLVANIA INSURED MUNICIPALS INCOME TRUST SERIES 43.
6894	IM-03	VAN KAMPEN	810954	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 1.
6895	IM-03	VAN KAMPEN	829230	VAN KAMPEN MERRITT UTILITY INCOME TRUST SERIES 1.
6896	IM-03	VAN KAMPEN	814332	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 2.
6897	IM-03	VAN KAMPEN	836159	VAN KAMPEN MERRITT UTILITY INCOME TRUST SERIES 2.
6898	IM-03	VAN KAMPEN	818024	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 3.
6899	IM-03	VAN KAMPEN	857793	VAN KAMPEN MERRITT UTILITY INCOME TRUST SERIES 3.
6900	IM-03	VAN KAMPEN	863468	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 4.
6901	IM-03	VAN KAMPEN	819741	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 4.
6902	IM-03	VAN KAMPEN	867205	VAN KAMPEN MERRITT UTILITY INCOME TRUST SERIES 4.
6903	IM-03	VAN KAMPEN	863469	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 5.
6904	IM-03	VAN KAMPEN	820704	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 5.
6905	IM-03	VAN KAMPEN	867119	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 6.
6906	IM-03	VAN KAMPEN	823340	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 6.
6907	IM-03	VAN KAMPEN	868396	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 7.
6908	IM-03	VAN KAMPEN	828980	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 7.
6909	IM-03	VAN KAMPEN	869584	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 8.
6910	IM-03	VAN KAMPEN	831123	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 8.
6911	IM-03	VAN KAMPEN	871813	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 9.
6912	IM-03	VAN KAMPEN	871811	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 10.
6913	IM-03	VAN KAMPEN	832948	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SER 10.
6914	IM-03	VAN KAMPEN	833318	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 11.
6915	IM-03	VAN KAMPEN	834882	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 12.
6916	IM-03	VAN KAMPEN	835727	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 13.
6917	IM-03	VAN KAMPEN	838458	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 14.
6918	IM-03	VAN KAMPEN	840595	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 15.
6919	IM-03	VAN KAMPEN	842751	VAN KAMPEN MERRITT INTERNATIONAL BOND INC TRUST SERIES 16.
6920	IM-03	VAN KAMPEN	846897	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 17.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6921	IM-03	VAN KAMPEN	871007	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUS SER 18.
6922	IM-03	VAN KAMPEN	853360	VAN KAMPEN MERRITT INTERNATIONAL BOND INCOME TRUST SERIES 19.
6923	IM-03	VAN KAMPEN	858241	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 1.
6924	IM-03	VAN KAMPEN	862347	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 2.
6925	IM-03	VAN KAMPEN	862348	VAN KAMPEN MERRITT INSURED INCOME TRUST SERIES 3.
6926	IM-03	VAN KAMPEN	854906	VAN KAMPEN MERRITT MUNICIPAL LEASE TRUST SERIES 1.
6927	IM-04	AMERICAN MUNI	832635	AMERICAN CORPORATE TRUST FOURTH YIELD SERIES.
6928	IM-04	AMERICAN MUNI	804141	AMERICAN CORPORATE TRUST FIRST YIELD SERIES.
6929	IM-04	AMERICAN MUNI	739722	AMERICAN MUNICIPAL TRUST FIRST YIELD SERIES.
6930	IM-04	AMERICAN MUNI	776819	AMERICAN MUNICIPAL TRUST SIXTEENTH YIELD SERIES.
6931	IM-04	AMERICAN MUNI	826722	AMERICAN CORPORATE TRUST SECOND YIELD SERIES.
6932	IM-04	AMERICAN MUNI	829492	AMERICAN CORPORATE TRUST THIRD YIELD SERIES.
6933	IM-04	AMERICAN MUNI	839469	AMERICAN CORPORATE TRUST FIFTH YIELD SERIES.
6934	IM-04	AMERICAN MUNI	719489	AMERICAN MUNICIPAL TRUST TWENTY FIFTH YIELD SERIES.
6935	IM-04	AMERICAN MUNI	762850	AMERICAN MUNICIPAL TRUST NINTH YIELD SERIES.
6936	IM-04	AMERICAN MUNI	773427	AMERICAN MUNICIPAL TRUST FOURTEENTH YIELD SERIES.
6937	IM-04	AMERICAN MUNI	774354	AMERICAN MUNICIPAL TRUST FIFTEENTH YIELD SERIES.
6938	IM-04	AMERICAN MUNI	779916	AMERICAN MUNICIPAL TRUST SEVENTEENTH YIELD SERIES.
6939	IM-04	AMERICAN MUNI	785079	AMERICAN MUNICIPAL TRUST EIGHTEENTH YIELD SERIES.
6940	IM-04	AMERICAN MUNI	787810	AMERICAN MUNICIPAL TRUST NINETEENTH YIELD SERIES.
6941	IM-04	AMERICAN MUNI	789010	AMERICAN MUNICIPAL TRUST TWENTIETH YIELD SERIES.
6942	IM-04	AMERICAN MUNI	790418	AMERICAN MUNICIPAL TRUST TWENTY SECOND YIELD SERIES.
6943	IM-04	AMERICAN MUNI	792121	AMERICAN MUNICIPAL TRUST TWENTY THIRD YIELD SERIES.
6944	IM-04	AMERICAN MUNI	809175	AMERICAN MUNICIPAL TRUST TWENTY SEVENTH YIELD SERIES.
6945	IM-04	FIDELITY	035319	FIDELITY CAPITAL INVESTMENT PLANS.
6946	IM-04	FIDELITY	275917	FIDELITY FUND ACCUMULATION PLANS.
6947	IM-04	FIDELITY	821051	FIDELITY INVESTMENTS VARIABLE ANNUITY ACCOUNT I.
6948	IM-04	FIDELITY	776991	FIDELITY STANDARD LIFE SEPARATE ACCOUNT.
6949	IM-04	FIDELITY	035333	FIDELITY SYSTEMATIC INVESTMENT PLANS.
6950	IM-04	FIDELITY	035403	FIDELITY TREND INVESTMENT PLANS.
6951	IM-04	FIDELITY	797461	FIDELITY VARIABLE ACCOUNT OF MONARCH LIFE INSURANCE CO.
6952	IM-04	FIDELITY	726352	FIDELITY VARIABLE ANNUITY ACCOUNT /IA/.
6953	IM-04	FIDELITY	314567	FIDELITY VARIABLE ANNUITY ACCOUNT /NY/.
6954	IM-04	FIDELITY	353538	FIDELITY TAX FREE TRUST FLOATING RATE SERIES I.
6955	IM-04	FIDELITY	859766	FIDELITY VARIABLE ACCOUNT II OF MONARCH LIFE INSURANCE CO.
6956	IM-04	FIRST INVESTORS	315177	FIRST INVESTORS INSURED TAX EXEMPT FUND INC.
6957	IM-04	FIRST INVESTORS	860516	FIRST INVESTORS LIFE VARIABLE ANNUITY FUND C.
6958	IM-04	FIRST INVESTORS	036438	FIRST INVESTORS PERIODIC PAY PLANS FOR INV IN FIRS INV HIGH.
6959	IM-04	FIRST INVESTORS	277519	FIRST INVESTORS SINGLE PAY & PER PAY PLANS FOR THE ACCU OF S.
6960	IM-04	FIRST INVESTORS	044203	FIRST INVESTORS SINGLE PAY & PER PAY PLS FOR INVT IN FIRST.
6961	IM-04	FIRST INVESTORS	790378	FIRST INVESTORS SINGLE PAYMENT & PERIODIC/ GOVERNMENT FUND.
6962	IM-04	FIRST INVESTORS	036454	FIRST INVESTORS SINGLE PAYMENT & PERIODIC / GLOBAL FUND INC.
6963	IM-04	GUARDIAN LIFE	044393	GUARDIAN INSURANCE & ANNUITY CO INC.
6964	IM-04	GUARDIAN LIFE	834286	GUARDIAN REAL ESTATE ACCT OF GUARDIAN INS & ANN COMPANY INC.
6965	IM-04	GUARDIAN LIFE	356385	GUARDIAN SEPARATE ACCOUNT A.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
6966	IM-04	GUARDIAN LIFE	769221	GUARDIAN SEPARATE ACCOUNT B.
6967	IM-04	GUARDIAN LIFE	841694	GUARDIAN SEPARATE ACCOUNT C.
6968	IM-04	GUARDIAN LIFE	856943	GUARDIAN SEPARATE ACCOUNT D.
6969	IM-04	GUARDIAN LIFE	044418	GUARDIAN VARIABLE ACCOUNT 1.
6970	IM-04	GUARDIAN LIFE	044417	GUARDIAN VARIABLE ACCOUNT 2.
6971	IM-04	HARTFORD LIFE	821610	HARTFORD LIFE INS CO PUTNAM CAPITAL ACCUMULATION TR SEP ACCT.
6972	IM-04	HARTFORD LIFE	045947	HARTFORD LIFE INSURANCE CO.
6973	IM-04	HARTFORD LIFE	109907	HARTFORD LIFE INSURANCE CO DC VARIABLE ACCOUNT I.
6974	IM-04	HARTFORD LIFE	821581	HARTFORD LIFE INSURANCE CO PUTNAM CAP MAN TR SEPARATE ACCOUN.
6975	IM-04	HARTFORD LIFE	790560	HARTFORD LIFE INSURANCE CO SEPARATE ACCOUNT TWO DC VAR AC II.
6976	IM-04	HARTFORD LIFE	314900	HARTFORD LIFE INSURANCE CO SEPARATE ACCOUNT TWO NQ VARI ACCO.
6977	IM-04	HARTFORD LIFE	276183	HARTFORD LIFE INSURANCE CO SEPARATE ACCOUNT TWO QP VARI ACCO.
6978	IM-04	HARTFORD LIFE	318104	HARTFORD LIFE INSURANCE CO SEPARATE ACCOUNT TWO VAR ACC A.
6979	IM-04	HARTFORD LIFE	809013	HARTFORD LIFE INSURANCE CO THOMSON MCKINNON SEPARATE ACCT.
6980	IM-04	HARTFORD LIFE	769785	HARTFORD LIFE INSURANCE COMPANY SEPARATE ACCOUNT ONE.
6981	IM-04	HARTFORD LIFE	796330	HARTFORD LIFE INSURANCE COMPANY SEPARATE ACCOUNT TWO.
6982	IM-04	HARTFORD LIFE	826457	HARTFORD REAL PROPERTY ACCOUNT OF HARTFORD LIFE INSURANCE CO.
6983	IM-04	IDS	353965	IDS LIFE ACCOUNT F.
6984	IM-04	IDS	832214	IDS LIFE ACCOUNT G.
6985	IM-04	IDS	832215	IDS LIFE ACCOUNT H.
6986	IM-04	IDS	832217	IDS LIFE ACCOUNT N.
6987	IM-04	IDS	812563	IDS LIFE ACCOUNT RE OF IDS LIFE INSURANCE COMPANY.
6988	IM-04	IDS	727892	IDS LIFE INSURANCE CO /MN.
6989	IM-04	IDS	792901	IDS LIFE VARIABLE ACCOUNT FOR SHEARSON LEHMAN.
6990	IM-04	IDS	703704	IDS LIFE OF NEW YORK ACCOUNT 4.
6991	IM-04	IDS	832206	IDS LIFE OF NEW YORK ACCOUNT 5.
6992	IM-04	IDS	832207	IDS LIFE OF NEW YORK ACCOUNT 6.
6993	IM-04	IDS	806382	IDS LIFE OF NEW YORK ACCOUNT 7.
6994	IM-04	IDS	817132	IDS LIFE OF NEW YORK ACCOUNT 8.
6995	IM-04	IDS	832208	IDS LIFE OF NEW YORK ACCOUNT 9.
6996	IM-04	J C BRADFORD	864330	MINT GROUP 1.
6997	IM-04	J C BRADFORD	818436	MINT LONG INTERMEDIATE SERIES 1.
6998	IM-04	J C BRADFORD	793898	MINT SHORT INTERMEDIATE SERIES 1.
6999	IM-04	J C BRADFORD	805333	MINT DISCOUNT TRUST SERIES 2.
7000	IM-04	J C BRADFORD	806584	MINT DISCOUNT TRUST SERIES 2, 3 & 4.
7001	IM-04	J C BRADFORD	871129	MINT GROUP 2.
7002	IM-04	J C BRADFORD	808849	MINT SHORT INTERMEDIATE SERIES 4.
7003	IM-04	J C BRADFORD	806585	MINT DISCOUNT TRUST SERIES 3.
7004	IM-04	MONY	709221	MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.
7005	IM-04	MONY	814378	MONY AMERICA VARIABLE ACCOUNT A.
7006	IM-04	MONY	763862	MONY AMERICA VARIABLE ACCOUNT L.
7007	IM-04	MONY	812194	MONY AMERICA VARIABLE ACCOUNT S.
7008	IM-04	MONY	825277	MONY LEGACY VARIABLE ACCOUNT A.
7009	IM-04	MONY	786038	MONY LEGACY VARIABLE ACCOUNT L.
7010	IM-04	MONY	813624	MONY LEGACY VARIABLE ACCOUNT S.
7011	IM-04	MONY	356036	MONY VARIABLE ACCOUNT B.
7012	IM-04	MONY	869627	MONY VARIABLE ACCOUNT L.
7013	IM-04	MONY	869628	MONY VARIABLE ACCOUNT S.
7014	IM-04	NATIONWIDE	070699	NATIONWIDE DC VARIABLE ACCOUNT.
7015	IM-04	NATIONWIDE	356723	NATIONWIDE MULTI FLEX VARIABLE ACCOUNT.
7016	IM-04	NATIONWIDE	818681	NATIONWIDE SIERRA CAPITAL VARIABLE ACCOUNT.
7017	IM-04	NATIONWIDE	202713	NATIONWIDE VARIABLE ACCOUNT.
7018	IM-04	NATIONWIDE	356514	NATIONWIDE VARIABLE ACCOUNT II.
7019	IM-04	NATIONWIDE	776744	NATIONWIDE VLI SEPARATE ACCOUNT.
7020	IM-04	NATIONWIDE	070715	NATIONWIDE LIFE INSURANCE CO SEPARATE ACCOUNT NO 1.
7021	IM-04	NATIONWIDE	820914	NATIONWIDE VLI SEPARATE ACCOUNT 2.
7022	IM-04	NATIONWIDE	825555	NATIONWIDE VARIABLE ACCOUNT 3.
7023	IM-04	NATIONWIDE	866064	NATIONWIDE VLI SEPARATE ACCOUNT 3.
7024	IM-04	NATIONWIDE	843075	NATIONWIDE VARIABLE ACCOUNT 4.
7025	IM-04	OPPENHEIMER	074677	OPPENHEIMER SYSTEMATIC CAPITAL ACCUMULATION PROGRAM.
7026	IM-04	OPPENHEIMER	074678	OPPENHEIMER TIME FUND CAPITAL ACCUMULATION PROGRAM.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7027	IM-04	OPPENHEIMER	045145	OPPENHEIMER TOTAL RETURN PERIODIC INVESTMENT PLAN.
7028	IM-04	OPPENHEIMER	832405	OPPENHEIMER ZERO COUPON U S TREASURIES TRUST SERIES D.
7029	IM-04	OPPENHEIMER	757995	OPPENHEIMER ZERO COUPON US TREASURIES TRUST SERIES A.
7030	IM-04	OPPENHEIMER	789005	OPPENHEIMER ZERO COUPON US TREASURIES TRUST SERIES B.
7031	IM-04	OPPENHEIMER	849872	OPPENHEIMER ZERO COUPON US TREASURIES TRUST SERIES E.
7032	IM-04	OPPENHEIMER	863141	OPPENHEIMER ZERO COUPON US TREASURIES TRUST SERIES F.
7033	IM-04	OPPENHEIMER	814011	OPPENHEIMER ZERO COUPONS U S TREASURIES TRUST SERIES C.
7034	IM-04	PACIFIC FIDELITY	847087	PFL ENDEAVOR REAL ESTATE ACC OF PACIFIC FID LIFE INS CO.
7035	IM-04	PACIFIC FIDELITY	846924	PFL ENDEAVOR VARIABLE ANNUITY ACCOUNT.
7036	IM-04	PACIFIC FIDELITY	078010	PFL VARIABLE ANNUITY FUND I.
7037	IM-04	PACIFIC FIDELITY	078011	PFL VARIABLE ANNUITY FUND II.
7038	IM-04	PACIFIC FIDELITY	078012	PFL VARIABLE ANNUITY FUND III.
7039	IM-04	PACIFIC FIDELITY	078013	PFL VARIABLE ANNUITY FUND IV.
7040	IM-04	PACIFIC FIDELITY	078014	PFL VARIABLE ANNUITY FUND V.
7041	IM-04	PACIFIC FIDELITY	078015	PFL VARIABLE ANNUITY FUND VI.
7042	IM-04	PRUCO LIFE	775515	PRUCO LIFE INS CO OF NEW JERSEY SINGLE PREMIUM VAR ANN ACCT.
7043	IM-04	PRUCO LIFE	774193	PRUCO LIFE INS CO OF NEW JERSEY SINGLE PREMIUM VAR LIFE ACCT.
7044	IM-04	PRUCO LIFE	777917	PRUCO LIFE INSURANCE CO.
7045	IM-04	PRUCO LIFE	774423	PRUCO LIFE INSURANCE CO SINGLE PREMIUM VARIABLE ANNUITY ACCT.
7046	IM-04	PRUCO LIFE	711302	PRUCO LIFE INSURANCE CO SINGLE PREMIUM VARIABLE LIFE ACCOUNT.
7047	IM-04	PRUCO LIFE	740870	PRUCO LIFE INSURANCE CO VARIABLE APPRECIABLE ACCOUNT.
7048	IM-04	PRUCO LIFE	741313	PRUCO LIFE OF NEW JERSEY VARIABLE APPRECIABLE ACCOUNT.
7049	IM-04	PRUCO LIFE	829114	PRUCO LIFE OF NEW JERSEY VARIABLE CONTRACT REAL PROPERTY ACC.
7050	IM-04	PRUCO LIFE	712539	PRUCO LIFE OF NEW JERSEY VARIABLE INSURANCE ACCOUNT.
7051	IM-04	PRUCO LIFE	801348	PRUCO LIFE VARIABLE CONTRACT REAL PROPERTY ACCOUNT.
7052	IM-04	PRUCO LIFE	710157	PRUCO LIFE VARIABLE INSURANCE ACCOUNT.
7053	IM-04	PRUCO LIFE	851693	PRUCO LIFE VARIABLE UNIVERSAL ACCOUNT.
7054	IM-04	SUN LIFE	745544	SUN LIFE ASSURANCE CO OF CANADA US.
7055	IM-04	SUN LIFE	779955	SUN LIFE INSURANCE & ANNUITY CO OF NEW YORK.
7056	IM-04	SUN LIFE	759814	SUN LIFE N Y VARIABLE ACCOUNT A.
7057	IM-04	SUN LIFE	759818	SUN LIFE N Y VARIABLE ACCOUNT B.
7058	IM-04	SUN LIFE	095335	SUN LIFE OF CANADA U S VARIABLE ACCOUNT A.
7059	IM-04	SUN LIFE	704843	SUN LIFE OF CANADA U S VARIABLE ACCOUNT C.
7060	IM-04	SUN LIFE	719799	SUN LIFE OF CANADA U S VARIABLE ACCOUNT D.
7061	IM-04	SUN LIFE	789316	SUN LIFE OF CANADA U S VARIABLE ACCOUNT E.
7062	IM-04	SUN LIFE	853285	SUN LIFE OF CANADA U S VARIABLE ACCOUNT F.
7063	IM-04	TRUST SOUTHWEST	753010	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST INSURED SERIES 1.
7064	IM-04	TRUST SOUTHWEST	760987	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST INSURED SERIES 5.
7065	IM-04	TRUST SOUTHWEST	748036	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 19.
7066	IM-04	TRUST SOUTHWEST	750720	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 20.
7067	IM-04	TRUST SOUTHWEST	753765	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 21.
7068	IM-04	TRUST SOUTHWEST	760618	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 22.
7069	IM-04	TRUST SOUTHWEST	769627	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 23.
7070	IM-04	TRUST SOUTHWEST	770723	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 24.
7071	IM-04	TRUST SOUTHWEST	771990	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 25.
7072	IM-04	TRUST SOUTHWEST	771987	TRUST SOUTHWEST TAX EXEMPT INCOME TRUST SERIES 26.
7073	IM-04	VAN KAMPEN	276274	INVESTORS GOVERNMENT SECURITIES INCOME TRUST SERIES 2 /IL/.
7074	IM-04	VAN KAMPEN	216241	INVESTORS CORPORATE INCOME TRUST SERIES 1.
7075	IM-04	VAN KAMPEN	277747	INVESTORS CORPORATE INCOME TRUST SERIES 3.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7076	IM-04	VAN KAMPEN	277748	INVESTORS CORPORATE INCOME TRUST SERIES 4.
7077	IM-04	VAN KAMPEN	275578	INVESTORS CORPORATE INCOME TRUST SERIES 5.
7078	IM-04	VAN KAMPEN	276252	INVESTORS CORPORATE INCOME TRUST SERIES 6.
7079	IM-04	VAN KAMPEN	276775	INVESTORS CORPORATE INCOME TRUST SERIES 7.
7080	IM-04	VAN KAMPEN	310733	INVESTORS CORPORATE INCOME TRUST SERIES 8.
7081	IM-04	VAN KAMPEN	312009	INVESTORS CORPORATE INCOME TRUST SERIES 9.
7082	IM-04	VAN KAMPEN	319680	INVESTORS CORPORATE INCOME TRUST SERIES 11.
7083	IM-04	VAN KAMPEN	828735	INVESTORS CORPORATE INCOME TRUST INTERMEDIATE SERIES 12.
7084	IM-04	VAN KAMPEN	275580	INVESTORS GOVERNMENT GUARANTEED INCOME TRUST GNMA SERIES 1.
7085	IM-04	VAN KAMPEN	355434	INVESTORS GOVERNMENTAL SECURITIES INCOME TRUST SERIES 1.
7086	IM-04	VAN KAMPEN	277097	INVESTORS GOVERNMENTAL SECURITIES INCOME TRUST SERIES 3.
7087	IM-04	VAN KAMPEN	278356	INVESTORS GOVERNMENTAL SECURITIES INCOME TRUST SERIES 4.
7088	IM-04	VAN KAMPEN	311079	INVESTORS GOVERNMENTAL SECURITIES INCOME TRUST SERIES 5.
7089	IM-04	VAN KAMPEN	312226	INVESTORS GOVERNMENTAL SECURITIES INCOME TRUST SERIES 6.
7090	IM-04	VAN KAMPEN	313107	INVESTORS GOVERNMENTAL SECURITIES INCOME TRUST SERIES 7.
7091	IM-04	VAN KAMPEN	701548	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 2.
7092	IM-04	VAN KAMPEN	702269	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 3.
7093	IM-04	VAN KAMPEN	702264	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 4.
7094	IM-04	VAN KAMPEN	704499	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 5.
7095	IM-04	VAN KAMPEN	705785	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 6.
7096	IM-04	VAN KAMPEN	706079	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 7.
7097	IM-04	VAN KAMPEN	706078	CALIFORNIA QUALITY TAX EXEMPT TRUST SERIES 8.
7098	IM-05	ACACIA	708967	ACACIA NATIONAL VARIABLE ANNUITY ACCOUNT A /NEW.
7099	IM-05	ACACIA	730176	ACACIA NATIONAL VARIABLE LIFE INSURANCE ACCOUNT B.
7100	IM-05	AETNA	785986	VARIABLE LIFE ACCOUNT B OF AETNA LIFE INSURANCE & ANNUITY CO.
7101	IM-05	AETNA	837010	AETNA LIFE INSURANCE & ANNUITY CO /CT.
7102	IM-05	AETNA	103005	VARIABLE ANNUITY ACCOUNT B OF AETNA LIFE INSURANCE & ANNUITY.
7103	IM-05	AETNA	103007	VARIABLE ANNUITY ACCOUNT C OF AETNA LIFE INSURANCE & ANNUITY.
7104	IM-05	AETNA	103009	VARIABLE ANNUITY ACCOUNT E OF AETNA LIFE INSURANCE & ANNUITY.
7105	IM-05	ALGER	849868	ALGER AMERICAN SEPARATE ACCOUNT A.
7106	IM-05	ALGER	847554	ALGER SEPARATE ACCOUNT A.
7107	IM-05	ALLSTATE	839815	ALLSTATE LIFE OF NEW YORK VARIABLE ANNUITY ACCOUNT.
7108	IM-05	ALLSTATE	864989	ALLSTATE LIFE OF NEW YORK VARIABLE ANNUITY ACCOUNT II.
7109	IM-05	AMERICAN GENERAL	089031	AMERICAN GENERAL LIFE INSURANCE CO OF DELAWARE SEPAR ACCT D.
7110	IM-05	AMERICAN GENERAL	316304	AMERICAN GENERAL LIFE INSURANCE CO OF NEW YORK SEPAR ACCT E.
7111	IM-05	AMERITAS	783402	AMERITAS VARIABLE LIFE INSURANCE CO SEPARATE ACCOUNT V.
7112	IM-05	AMERITAS	814848	AMERITAS VARIABLE LIFE INSURANCE CO SEPARATE ACCT VA-2.
7113	IM-05	BC ZIEGLER	746266	INSURED AMERICAN TAX EXEMPT BOND TRUST SERIES 1.
7114	IM-05	BC ZIEGLER	818245	INSURED AMERICAN TAX EXEMPT BOND TRUST SERIES 28.
7115	IM-05	BC ZIEGLER	824799	INSURED AMERICAN TAX EXEMPT BOND TRUST SERIES 30.
7116	IM-05	BC ZIEGLER	846836	INSURED AMERICAN TAX EXEMPT BOND TRUST SERIES 40.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7117	IM-05	BC ZIEGLER	847412	INSURED AMERICAN TAX EXEMPT BOND TRUST SERIES 41.
7118	IM-05	BC ZIEGLER	854881	INSURED AMERICAN TAX EXEMPT BOND TRUST SERIES 43.
7119	IM-05	BANKERS NATL	352806	BANKERS NATIONAL VARIABLE ACCOUNT A.
7120	IM-05	BANKERS NATL	313935	BANKERS NATIONAL VARIABLE ACCOUNT B.
7121	IM-05	BANKERS NATL	773919	BANKERS NATIONAL VARIABLE ACCOUNT C.
7122	IM-05	BANKERS SECURITY	109586	BANKERS SECURITY VARIABLE ANNUITY FUNDS A B & C.
7123	IM-05	BANKERS SECURITY	009738	BANKERS SECURITY VARIABLE ANNUITY FUNDS D E F G H & I.
7124	IM-05	BANKERS SECURITY	703124	BANKERS SECURITY VARIABLE LIFE SEPARATE ACCOUNT II.
7125	IM-05	BANNER LIFE	826598	BANNER LIFE VARIABLE ACCOUNT.
7126	IM-05	BANNER LIFE	856038	BANNER LIFE VARIABLE ANNUITY ACCOUNT.
7127	IM-05	BRADFORD	811884	BRADFORD LINKED LIFE VARIABLE ACCOUNT.
7128	IM-05	BRADFORD	353268	BRADFORD VARIABLE ACCOUNT I.
7129	IM-05	CAL WESTERN	016190	CAL WESTERN SEPARATE ACCOUNT A.
7130	IM-05	CAL WESTERN	016191	CAL WESTERN VARIABLE FUND C.
7131	IM-05	CAPITOL LIFE	017362	CAPITOL LIFE SEPARATE ACCOUNT A.
7132	IM-05	CAPITOL LIFE	277062	CAPITOL LIFE SEPARATE ACCOUNT M.
7133	IM-05	CARDINAL	859557	CARDINAL GNMA TRUST FOURTH SERIES.
7134	IM-05	CARDINAL	739446	CARDINAL GNMA TRUST FIRST SERIES.
7135	IM-05	CARDINAL	718869	CARDINAL TAX EXEMPT BOND TRUSTTHIRTY SECOND SERIES.
7136	IM-05	CARDINAL	836589	CARDINAL GNMA TRUST THIRD SERIES.
7137	IM-05	CHARTER NATL	789669	CHARTER NATIONAL VARIABLE ACCOUNT.
7138	IM-05	CHARTER NATL	820098	CHARTER NATIONAL VARIABLE ANNUITY ACCOUNT.
7139	IM-05	CHUBB	854458	CHUBB SEPARATE ACCOUNT B.
7140	IM-05	CHUBB	757552	CHUBB VOLUNTEER SEPARATE ACCOUNT A.
7141	IM-05	CIGNA	702712	CIGNA SEPARATE ACCOUNT I.
7142	IM-05	CIGNA	847567	CIGNA SEPARATE ACCOUNT II.
7143	IM-05	CIGNA	310965	CG VARIABLE ANNUITY ACCOUNT I GROUP TAX DEFERRED VARIABLE AN.
7144	IM-05	CIGNA	310967	CG VARIABLE ANNUITY ACCOUNT I GROUP VARIABLE ANNUITIES FOR.
7145	IM-05	CIGNA	313897	CG VARIABLE ANNUITY ACCOUNT I INDIVIDUAL VARIABLE ANNUITIES.
7146	IM-05	CIGNA	277418	CG VARIABLE ANNUITY ACCOUNT II.
7147	IM-05	CIGNA	310968	CG VARIABLE ANNUITY ACCOUNT II GROUP VARIABLE ANNUITIES FOR.
7148	IM-05	COMPOSITE	808442	COMPOSITE DEFERRED VARIABLE ACCOUNT.
7149	IM-05	COMPOSITE	830321	COMPOSITE DEFERRED VARIABLE ACCT OF EMPIRE LIFE INSURANCE CO.
7150	IM-05	CONN MUTUAL	021166	CML VARIABLE ANNUITY ACCOUNT A.
7151	IM-05	CONN MUTUAL	021167	CML VARIABLE ANNUITY ACCOUNT B.
7152	IM-05	CONN MUTUAL	355411	CONNECTICUT MUTUAL FINANCIAL SERVICES SERIES FUND I INC.
7153	IM-05	CROWN AMERICA	845102	CROWN AMERICA SEPARATE ACCOUNT B.
7154	IM-05	CROWN AMERICA	818462	CROWN AMERICA VARIABLE ANNUITY SEPARATE ACCOUNT.
7155	IM-05	CROWN AMERICA	749938	CROWN AMERICA VARIABLE LIFE SEPARATE ACCOUNT.
7156	IM-05	DREYFUS	863471	DREYFUS CONNECTICUT MUNICIPAL MONEY MARKET FUND INC.
7157	IM-05	DREYFUS	030152	DREYFUS INVESTMENT PROGRAM.
7158	IM-05	DREYFUS	770328	DREYFUS UNIT TRUSTS INSURED TAX EXEMPT TRUST SERIES 1.
7159	IM-05	EQUITABLE	856075	EQUITABLE CAPITAL PARTNERS II LP.
7160	IM-05	EQUITABLE	727920	EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES /NY/.
7161	IM-05	EQUITABLE	726879	EQUITABLE VARIABLE LIFE INSURANCE CO.
7162	IM-05	EQUITABLE	771726	SEPARATE ACCOUNT FP OF EQUITABLE VARIABLE LIFE INSURANCE CO.
7163	IM-05	EQUITABLE	356076	SEPARATE ACCOUNT NO 301 OF THE EQUIT LIFE ASS SOC OF THE U S.
7164	IM-05	F&G LIFE	854239	F&G LIFE VARIABLE ANNUITY ACCOUNT.
7165	IM-05	F&G LIFE	804115	F&G LIFE VARIABLE LIFE ACCOUNT.
7166	IM-05	HARVEST	825551	HARVEST REAL ESTATE VARIABLE ACCOUNT.
7167	IM-05	HARVEST	804085	HARVEST REAL ESTATE VARIABLE ANNUITY ACCOUNT C.
7168	IM-05	HOME LIFE	048200	HOME LIFE INSURANCE CO SEPARATE ACCOUNT B.
7169	IM-05	HOME LIFE	048203	HOME LIFE SEPARATE ACCOUNT C.
7170	IM-05	HOME LIFE	048204	HOME LIFE SEPARATE ACCOUNT D.
7171	IM-05	HOME LIFE	853707	HOME LIFE SEPARATE ACCOUNT V.
7172	IM-05	HORACE MANN	110698	MANN HORACE LIFE INSURANCE CO SEPARATE ACCOUNT.
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APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7173	IM-05	HORACE MANN	062014	MANN HORACE LIFE INSURANCE CO SEPARATE ACCOUNT B.
7174	IM-05	INTEGRITY LIFE	775270	SEPARATE ACCOUNT IN OF INTEGRITY LIFE INSURANCE CO.
7175	IM-05	INTEGRITY LIFE	802205	SEPARATE ACCOUNT INA OF INTEGRITY LIFE INSURANCE CO.
7176	IM-05	JOHN HANCOCK	818276	HANCOCK JOHN VARIABLE ANNUITY ACCOUNT V.
7177	IM-05	JOHN HANCOCK	317411	HANCOCK JOHN VARIABLE LIFE ACCOUNT U.
7178	IM-05	JOHN HANCOCK	820299	HANCOCK JOHN VARIABLE LIFE ACCOUNT V.
7179	IM-05	KEYSTONE PROV	737067	KEYSTONE PROVIDENT VARIABLE ACCOUNT I.
7180	IM-05	KEYSTONE PROV	813654	KEYSTONE PROVIDENT VARIABLE ACCOUNT II.
7181	IM-05	LIFE OF VA	745965	LIFE OF VIRGINIA SEPARATE ACCOUNT I.
7182	IM-05	LIFE OF VA	804286	LIFE OF VIRGINIA SEPARATE ACCOUNT II.
7183	IM-05	LIFE OF VA	811293	LIFE OF VIRGINIA SEPARATE ACCOUNT III.
7184	IM-05	LIFE OF VA	822616	LIFE OF VIRGINIA SEPARATE ACCOUNT 4.
7185	IM-05	LINCOLN NATL	777963	LINCOLN NATIONAL FLEXIBLE PREMIUM VARIABLE LIFE ACCOUNT D.
7186	IM-05	LINCOLN NATL	815207	LINCOLN NATIONAL FLEXIBLE PREMIUM VARIABLE LIFE ACCOUNT F.
7187	IM-05	LINCOLN NATL	835414	LINCOLN NATIONAL FLEXIBLE PREMIUM VARIABLE LIFE ACCOUNT G.
7188	IM-05	LINCOLN NATL	804223	LINCOLN NATIONAL PENSION VARIABLE ANNUITY ACCOUNT E.
7189	IM-05	LINCOLN NATL	353894	LINCOLN NATIONAL VARIABLE ANNUITY ACCOUNT C.
7190	IM-05	LINCOLN NATL	847552	LINCOLN NATIONAL VARIABLE ANNUITY ACCOUNT H.
7191	IM-05	LUTHERAN BRHOOD	819085	LBVIP VARIABLE ANNUITY ACCOUNT I.
7192	IM-05	LUTHERAN BRHOOD	789545	LBVIP VARIABLE INSURANCE ACCOUNT.
7193	IM-05	LUTHERAN BRHOOD	814342	LBVIP VARIABLE INSURANCE ACCOUNT II.
7194	IM-05	MANUFACTRS LIFE	813572	SEPARATE ACCOUNT FOUR OF THE MANUFACTURERS LIFE INS CO OF AM.
7195	IM-05	MANUFACTRS LIFE	801019	SEPARATE ACCOUNT THREE OF THE MANUFACT LIFE INS CO OF AM.
7196	IM-05	MANUFACTRS LIFE	814501	SEPARATE ACCOUNT TWO OF THE MANUFACTURERS LIFE INS CO OF AME.
7197	IM-05	MANUFACTRS LIFE	736950	SEPARATE ACCT ONE OF THE MANUFACTURERS LIFE INSUR CO OF AMER.
7198	IM-05	MASS MUTUAL	836249	MASSACHUSETTS MUTUAL VARIABLE LIFE SEPARATE ACCOUNT I.
7199	IM-05	MASS MUTUAL	746551	MASSACHUSETTS MUTUAL VARIABLE LIFE SEPARATE ACCOUNT II.
7200	IM-05	MASS MUTUAL	063099	MASSACHUSETTS MUTUAL VARIABLE ANNUITY FUND 1.
7201	IM-05	MASS MUTUAL	353445	MASSACHUSETTS MUTUAL VARIABLE ANNUITY SEPARATE ACCOUNT 1.
7202	IM-05	MASS MUTUAL	110701	MASSACHUSETTS MUTUAL VARIABLE ANNUITY FUND 2.
7203	IM-05	MASS MUTUAL	356985	MASSACHUSETTS MUTUAL VARIABLE ANNUITY SEPARATE ACCOUNT 2.
7204	IM-05	METLIFE	710828	METROPOLITAN TOWER SEPARATE ACCOUNT ONE.
7205	IM-05	METLIFE	759854	METROPOLITAN TOWER SEPARATE ACCOUNT TWO.
7206	IM-05	METLIFE	744043	METROPOLITAN LIFE SEPARATE ACCOUNT E.
7207	IM-05	METLIFE	858997	METROPOLITAN LIFE SEPARATE ACCOUNT UL.
7208	IM-05	MFS	353896	MFS SEPARATE ACCOUNT MONEY MARKET TRUST.
7209	IM-05	MFS	202571	MFS VARIABLE ACCOUNT.
7210	IM-05	MINNESOTA MUTUAL	768609	MINNESOTA MUTUAL VARIABLE ANNUITY ACCOUNT.
7211	IM-05	MINNESOTA MUTUAL	789535	MINNESOTA MUTUAL VARIABLE LIFE ACCOUNT.
7212	IM-05	MML	705189	MML BAY STATE VARIABLE LIFE SEPARATE ACCOUNT I.
7213	IM-05	MONARCH	831832	MONARCH LIFE INSURANCE COMPANY SEPARATE ACCOUNT VA.
7214	IM-05	MONARCH	318791	VARIABLE ACCOUNT A OF MONARCH LIFE INSURANCE CO.
7215	IM-05	MONARCH	758025	VARIABLE ACCOUNT B OF MONARCH LIFE INSURANCE CO.
7216	IM-05	MONARCH	817997	VARIABLE ACCOUNT D OF MONARCH LIFE INSURANCE CO.
7217	IM-05	MONARCH	837574	VARIABLE ACCOUNT H OF MONARCH LIFE INSURANCE CO.
7218	IM-05	MUTUAL BENEFIT	848473	MUTUAL BENEFIT VARIABLE CONTRACT ACCOUNT II.
7219	IM-05	MUTUAL BENEFIT	110709	MUTUAL BENEFIT VARIABLE CONTRACT ACCOUNT 2.
7220	IM-05	MUTUAL BENEFIT	069265	MUTUAL BENEFIT VARIABLE CONTRACT ACCOUNT 3.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7221	IM-05	MUTUAL BENEFIT	728568	MUTUAL BENEFIT VARIABLE CONTRACT ACCOUNT 7.
7222	IM-05	MUTUAL BENEFIT	819036	MUTUAL BENEFIT VARIABLE CONTRACT ACCOUNT 9.
7223	IM-05	MUTUAL BENEFIT	863523	MUTUAL BENEFIT VARIABLE CONTRACT ACCOUNT 12.
7224	IM-05	NALAC	808468	NALAC VARIABLE ACCOUNT A.
7225	IM-05	NALAC	836346	NALAC VARIABLE ACCOUNT B.
7226	IM-05	NATL HOME LIFE	796524	NATIONAL HOME LIFE ASSURANCE CO SEPARATE ACCOUNT I.
7227	IM-05	NATL HOME LIFE	796536	NATIONAL HOME LIFE ASSURANCE CO SEPARATE ACCOUNT II.
7228	IM-05	NATL HOME LIFE	070286	NATIONAL LIFE VARIABLE ANNUITY ACCOUNT 1.
7229	IM-05	NATL INTEGRITY	826751	SEPARATE ACCOUNT ANA OF NATIONAL INTEGRITY LIFE INSURANCE CO.
7230	IM-05	NATL INTEGRITY	783518	SEPARATE ACCOUNT NI OF NATIONAL INTEGRITY LIFE INSURANCE CO.
7231	IM-05	NATL INTEGRITY	802222	SEPARATE ACCOUNT NIA OF NATIONAL INTEGRITY LIFE INS CO.
7232	IM-05	NEW ENGLAND	822388	NEW ENGLAND VARIABLE ACCOUNT.
7233	IM-05	NEW ENGLAND	717347	NEW ENGLAND VARIABLE LIFE SEPARATE ACCOUNT.
7234	IM-05	NEW YORK LIFE	721699	NEW YORK LIFE INSURANCE & ANNUITY CORP VLI SEPARATE ACCOUNT.
7235	IM-05	NEW YORK LIFE	726509	NYLIAC MFA SEPARATE ACCOUNT I.
7236	IM-05	NEW YORK LIFE	726510	NYLIAC MFA SEPARATE ACCOUNT II.
7237	IM-05	NEW YORK LIFE	071634	NEW YORK LIFE SEPARATE ACCOUNT N.
7238	IM-05	NEW YORK LIFE	071635	NEW YORK LIFE SEPARATE ACCOUNT Q.
7239	IM-05	NML	790162	NML VARIABLE ANNUITY ACCOUNT A.
7240	IM-05	NML	072176	NML VARIABLE ANNUITY ACCOUNT B.
7241	IM-05	NML	790163	NML VARIABLE ANNUITY ACCOUNT C.
7242	IM-05	NML	073076	NORTHWESTERN MUTUAL LIFE INSURANCE CO.
7243	IM-05	NORTHBROOK	864822	NORTHBROOK VARIABLE ANNUITY ACCOUNT II.
7244	IM-05	NORTHBROOK	822772	NORTHBROOK VARIABLE LIFE SEPARATE ACCOUNT.
7245	IM-05	NORTHWESTERN NAT	761202	NWNL SELECT LIFE VARIABLE ACCOUNT.
7246	IM-05	NORTHWESTERN NAT	356778	NWNL SELECT VARIABLE ACCOUNT.
7247	IM-05	NORTHWESTERN NAT	073522	NWNL VARIABLE ANNUITY ACCOUNT B.
7248	IM-05	NORTHWESTERN NAT	314853	MFS NWNL VARIABLE ACCOUNT.
7249	IM-05	OHIO NATIONAL	073981	OHIO NATIONAL VARIABLE ACCOUNT A.
7250	IM-05	OHIO NATIONAL	073982	OHIO NATIONAL VARIABLE ACCOUNT B.
7251	IM-05	OHIO NATIONAL	770291	OHIO NATIONAL VARIABLE ACCOUNT R.
7252	IM-05	PACIFIC MUTUAL	832909	PACIFIC SELECT EXEC SEPARATE ACC OF PACIFIC MUTUAL LIFE IN.
7253	IM-05	PACIFIC MUTUAL	813936	PACIFIC SELECT SEPARATE ACCOUNT OF PACIFIC MUTUAL LIFE INSUR.
7254	IM-05	PACIFIC MUTUAL	858687	PACIFIC SELECT VARIABLE ANNUITY SEPARATE ACCOUNT.
7255	IM-05	PENN MUTUAL	077135	PENN MUTUAL VARIABLE ANNUITY ACCOUNT II.
7256	IM-05	PENN MUTUAL	702184	PENN MUTUAL VARIABLE ANNUITY ACCOUNT III.
7257	IM-05	PENN MUTUAL	810579	PENN MUTUAL VARIABLE LIFE ACCOUNT I.
7258	IM-05	PHOENIX MUTUAL	703321	PHOENIX MUTUAL VARIABLE ACCUMULATION ACCOUNT.
7259	IM-05	PHOENIX MUTUAL	796154	PHOENIX MUTUAL VARIABLE UNIVERSAL LIFE ACCOUNT.
7260	IM-05	PRINCIPAL MUT	812797	PRINCIPAL MUTUAL LIFE INSURANCE CO VARIABLE LIFE SEP ACCOUNT.
7261	IM-05	PRINCIPAL MUT	009713	PRINCIPAL MUTUAL LIFE INSURANCE COMPANY SEPARATE ACCOUNT B.
7262	IM-05	PRINCIPAL MUT	278194	PRINCIPAL MUTUAL LIFE INSURANCE COMPANY SEPARATE ACCOUNT C.
7263	IM-05	PROVIDENT MUTUAL	783312	PROVIDENT MUTUAL VARIABLE BOND SEPARATE ACCOUNT.
7264	IM-05	PROVIDENT MUTUAL	782774	PROVIDENT MUTUAL VARIABLE GROWTH ACCOUNT.
7265	IM-05	PROVIDENT MUTUAL	807201	PROVIDENT MUTUAL VARIABLE GROWTH SEPARATE ACCOUNT A.
7266	IM-05	PROVIDENT MUTUAL	783313	PROVIDENT MUTUAL VARIABLE MANAGED SEPARATE ACCOUNT.
7267	IM-05	PROVIDENT MUTUAL	783311	PROVIDENT MUTUAL VARIABLE MONEY MARKET SEPARATE ACCOUNT.
7268	IM-05	PROVIDENT MUTUAL	783314	PROVIDENT MUTUAL VARIABLE ZERO COUPON BOND SEPARATE ACCOUNT.
7269	IM-05	SAFECO LIFE	845417	SAFECO REAL ESTATE VARIABLE ANNUITY ACCOUNT.
7270	IM-05	SAFECO LIFE	795890	SAFECO RESOURCE VARIABLE ACCOUNT B.
7271	IM-05	SAFECO LIFE	806180	SAFECO SEPARATE ACCOUNT SL.
7272	IM-05	SECURITY BENEFIT	748591	SBL VARIABLE UNIVERSAL LIFE.
7273	IM-05	SECURITY BENEFIT	087062	SBL VARIABLE ANNUITY ACCOUNT.
7274	IM-05	SECURITY BENEFIT	087063	SBL VARIABLE ANNUITY ACCOUNT II.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7275	IM-05	SECURITY BENEFIT	352078	SBL VARIABLE ANNUITY ACCOUNT III.
7276	IM-05	SECURITY BENEFIT	352664	SBL VARIABLE ANNUITY ACCOUNT IV.
7277	IM-05	SENTRY LIFE	732642	SENTRY INVESTORS VARIABLE ACCOUNT II.
7278	IM-05	SENTRY LIFE	732643	SENTRY VARIABLE ACCOUNT I.
7279	IM-05	SENTRY LIFE	730150	SENTRY VARIABLE ACCOUNT II.
7280	IM-05	SENTRY LIFE	771440	SENTRY VARIABLE LIFE ACCOUNT I.
7281	IM-05	SKANDIA LIFE	826734	AMERICAN SKANDIA LIFE ASSURANCE CORP/CT/.
7282	IM-05	SKANDIA LIFE	841171	AMERICAN SKANDIA LIFE ASSURANCE CORP VARIABLE ACCOUNT C.
7283	IM-05	SKANDIA LIFE	823879	VARIABLE ACCOUNT A OF SKANDIA LIFE AMERICA CORP.
7284	IM-05	STERNE AGEE	751571	ALABAMA TAX EXEMPT BOND TRUST SERIES 1.
7285	IM-05	STERNE AGEE	763734	ALABAMA TAX EXEMPT BOND TRUST SERIES 2.
7286	IM-05	STERNE AGEE	774520	ALABAMA TAX EXEMPT BOND TRUST SERIES 3.
7287	IM-05	STERNE AGEE	785972	ALABAMA TAX EXEMPT BOND TRUST SERIES 4.
7288	IM-05	STERNE AGEE	811118	ALABAMA TAX EXEMPT BOND TRUST SERIES 5.
7289	IM-05	STERNE AGEE	814151	ALABAMA TAX EXEMPT BOND TRUST SERIES 6.
7290	IM-05	TEMPLETON	869312	TEMPLETON CAPITAL ACCUMULATION PLANS.
7291	IM-05	TEMPLETON	810356	TEMPLETON FUNDS RETIREMENT ANNUITY SEPARATE ACCOUNT.
7292	IM-05	TEMPLETON	869770	TEMPLETON IMMEDIATE VARIABLE ANNUITY SEPARATE ACCOUNT.
7293	IM-05	TEMPLETON	869285	TEMPLETON FOREIGN FUND & U S TREASURY SECURITIES TRUST SER 1.
7294	IM-05	TEMPLETON	853567	TEMPLETON GROWTH & TREASURY TRUST SERIES 1.
7295	IM-05	TRAVELERS LIFE	707215	TRAVELERS FUND U FOR VARIABLE ANNUITIES.
7296	IM-05	TRAVELERS LIFE	737026	TRAVELERS FUND UL FOR VARIABLE LIFE INSURANCE.
7297	IM-05	TRAVELERS LIFE	733076	TRAVELERS INSURANCE CO.
7298	IM-05	TUCKER ANTHONY	718086	FREEDOM INCOME TRUST NATIONAL & SPECIAL STATES SERIES 1.
7299	IM-05	TUCKER ANTHONY	818550	FREEDOM INCOME TRUST SPECIAL STATES SERIES 32.
7300	IM-05	VAN KAMPEN	752203	VAN KAMPEN MERRITT INSURED TAX FREE INCOME FUND INC.
7301	IM-05	VAN KAMPEN	765821	VAN KAMPEN MERRITT TAX FREE HIGH INCOME FUND INC.
7302	IM-05	VAN KAMPEN	708489	PENNSYLVANIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 6.
7303	IM-05	VAN KAMPEN	710148	PENNSYLVANIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 7.
7304	IM-05	VAN KAMPEN	710150	PENNSYLVANIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 8.
7305	IM-05	VAN KAMPEN	707135	CALIFORNIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 9.
7306	IM-05	VAN KAMPEN	831880	INTERNATIONAL BOND INCOME TRUST SERIES 9.
7307	IM-05	VAN KAMPEN	713037	PENNSYLVANIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 9.
7308	IM-05	VAN KAMPEN	709385	CALIFORNIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 10.
7309	IM-05	VAN KAMPEN	723167	PENNSYLVANIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 13.
7310	IM-05	VAN KAMPEN	709384	CALIFORNIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 11.
7311	IM-05	VAN KAMPEN	715147	CALIFORNIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 12.
7312	IM-05	VAN KAMPEN	715146	CALIFORNIA INVESTORS QUALITY TAX EXEMPT TRUST SERIES 13.
7313	IM-05	VOYAGEUR	812346	VOYAGEUR UNIT INVESTMENT TRUST SERIES 2.
7314	IM-05	VOYAGEUR	819011	VOYAGEUR UNIT INVESTMENT TRUST SERIES 3.
7315	IM-05	VOYAGEUR	797497	VOYAGEUR UNIT INVESTMENT TRUST SERIES 1.
7316	IM-05	WASHINGTON NATL	104879	WASHINGTON NATIONAL VARIABLE ANNUITY FUND A.
7317	IM-05	WASHINGTON NATL	110764	WASHINGTON NATIONAL VARIABLE ANNUITY FUND B.
7318	IM-05	WESTERN LIFE	823533	WESTERN LIFE INSURANCE CO.
7319	IM-05	WESTERN LIFE	311257	WESTERN LIFE VARIABLE ANNUITY FUND A.
7320	IM-05	WESTERN LIFE	300008	WESTERN LIFE VARIABLE ANNUITY FUND B.
7321	IM-05	WESTERN LIFE	790531	VARIABLE ACCOUNT C OF WESTERN LIFE INSURANCE CO.
7322	IM-05	XEROX LIFE	837857	XEROX REAL ESTATE VARIABLE ANNUITY ACCOUNT TWO.
7323	IM-05	XEROX LIFE	815915	XEROX VARIABLE ANNUITY ACCOUNT ONE.
7324	IM-06		706111	CAPITAL APPRECIATION VARIABLE ACCOUNT/MA.
7325	IM-06		109916	CHARTER CONSOLIDATED PLC/ADR/.
7326	IM-06		855882	CLIAC SEPARATE ACCOUNT A.
7327	IM-06		024819	CORPORATE BOND TRUST.
7328	IM-06		356676	CORPORATE BOND TRUST DISCOUNT SERIES A-1.
7329	IM-06		030913	EAGLE GROWTH SHARES INVESTING PROGRAMS.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7330	IM-06		728064	FINANCIAL PROGRAMS INC/CO.
7331	IM-06		036607	FIRST NATIONAL BANK OF BOSTON POOLED RETIREMENT FUND FOR PLA.
7332	IM-06		793605	FLEXSECURE.
7333	IM-06		740858	FUTUREFUNDS SERIES ACCOUNT.
7334	IM-06		706112	HIGH YIELD VARIABLE ACCOUNT/MA.
7335	IM-06		765196	LIFEFUND ACCOUNT.
7336	IM-06		706113	MONEY MARKET VARIABLE ACCOUNT/MA/.
7337	IM-06		760296	MUNICIPAL INSURED NATIONAL TRUSTS.
7338	IM-06		794121	MURDOCK CAPITAL CORP.
7339	IM-06		859607	NN ENDEAVOR VARIABLE ANNUITY ACCOUNT.
7340	IM-06		077238	PENNSYLVANIA FUND TAX EXEMPT MUNICIPAL INVESTMENT TRUST.
7341	IM-06		733056	PHILADELPHIA FUND INVESTING PROGRAMS.
7342	IM-06		763859	PINNACLE SERIES ACCOUNT.
7343	IM-06		039609	PIONEER INVESTMENT PFAS PIONEER FUND INC.
7344	IM-06		109897	PROGRAMS FOR THE ACCUMULATIONS OF SHARES OF TECHNOLOGY FUND.
7345	IM-06		881543	QUINBY PLANS.
7346	IM-06		828597	RSVP VARIABLE LIFE ACCOUNT ONE.
7347	IM-06		356421	SECURITY ACTION PLANS.
7348	IM-06		858757	STATE STREET MASTER INVESTMENT TRUST.
7349	IM-06		206005	UNITED MISSOURI BANK MASTER PLAN & TRUST FOR SELF EMPLY INDI.
7350	IM-06		803401	VARIABLE ACCOUNT A/NY.
7351	IM-06		803466	VARIABLE ACCOUNT B.
7352	IM-06		820627	VARIABLE ACCOUNT L
7353	IM-06		824611	VARIABLE ACCOUNT IL
7354	IM-06		768830	VARIABLE ANNUITY ACCOUNT ONE.
7355	IM-06		790487	VARIABLE LIFE ACCOUNT ONE.
7356	IM-06		814126	VARIABLE LIFE INVESTMENT FUND.
7357	IM-06		740583	VARIFLEX.
7358	IM-06		104848	WASHINGTON INVESTORS PLANS INC.
7359	IM-06		311649	AMERICAN INCOME TRUST 4-10 YEAR TERM SERIES 1.
7360	IM-06		109494	AMERICAN TAX EXEMPT BOND TRUST SERIES 1.
7361	IM-06		024936	CORPORATE SECURITIES TRUST INTERMEDIATE TERM DEBT SERIES 1.
7362	IM-06		276464	CORPORATE TRUST SERIES 1.
7363	IM-06		835765	FINANCIAL HORIZONS VA SEPERATE ACCOUNT 1.
7364	IM-06		865640	FINANCIAL HORIZONS VL SEPARATE ACCOUNT 1.
7365	IM-06		700883	FIXED INCOME TRUST ZERO COUPON SERIES 1.
7366	IM-06		275473	GOVERNMENT SECURITIES TRUST GNMA SERIES 1.
7367	IM-06		277307	NEW JERSEY TAX EXEMPT INCOME TRUST SERIES I.
7368	IM-06		730002	TAX EXEMPT TRUST MEDIUM TERM SERIES 1.
7369	IM-06		737791	MASSACHUSETTS TAX EXEPT UNIT TRUST SERIES 82.
7370	IM-06		353974	NATIONAL MUNICIPAL TRUST FIFTIETH SERIES.
7371	IM-06		278209	NEW YORK MUNICIPAL TRUST SERIES 3.
7372	IM-06	ALEX BROWN	725772	AMERICUS TRUST FOR AT&T COMMON SHARES SERIES A.
7373	IM-06	ALLEGIANCE LIC	031710	ALLEGIANCE SEPARATE ACCOUNT A.
7374	IM-06	AMERICAN BENEFIT	826647	AMERICAN BENEFIT VARIABLE ANNUITY ACCOUNT.
7375	IM-06	AMERICAN CAPITAL	746721	AMERICAN CAPITAL MONTHLY ACCUMULATION PLANS.
7376	IM-06	AMERICAN CAPITAL	701610	VARIABLE INVESTMENT PLAN FOR AMERICAN CAPITAL ENTERPRISE FUN.
7377	IM-06	AMERICAN NATL	867269	AMERICAN NATIONAL VARIABLE LIFE SEPARATE ACCOUNT.
7378	IM-06	AMERICAN REPUBLI	806575	AMERICAN REPUBLIC VARIABLE ANNUITY ACCOUNT.
7379	IM-06	AMERICAN UNITED	856341	AUL AMERICAN UNIT TRUST.
7380	IM-06	AMERICN FRANKLIN	847539	SEPARATE ACCOUNT VUL OF THE AMERICAN FRANKLIN LIFE INS CO.
7381	IM-06	ANCHOR NATIONAL	729522	AMERICAN PATHWAY II SEPARATE ACCOUNT OF ANCHOR NATIONAL LIFE.
7382	IM-06	BANKERS SECURITY	319539	BANKERS SECURITY VARIABLE ANNUITY FUNDS M P & Q.
7383	IM-06	BOSTON MUTUAL	278000	BOSTON MUTUAL LIFE VARIABLE ACCOUNT A.
7384	IM-06	CANADA LIFE	851066	CANADA LIFE OF AMERICA VARIABLE ANNUITY ACCOUNT 1.
7385	IM-06	CANADA LIFE	857588	CANADA LIFE OF NEW YORK VARIABLE ANNUITY ACCOUNT 1.
7386	IM-06	CAPITOL LIFE	804083	CAPITOL VARIABLE ANNUITY ACCOUNT ONE.
7387	IM-06	CARDINAL	017491	CARDINAL CORPORATE INCOME TRUST SERIES 101.
7388	IM-06	CENTURY LIFE	732726	CENTURY VARIABLE ACCOUNT.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7389	IM-06	CLAYTON BROWN	866299	MINNESOTA GROWTH & TREASURY TRUST SERIES I.
7390	IM-06	CLAYTON BROWN	867453	FIRST TR SPECIAL SITUATIONS TRUST SER 3 NEBRASKA GWTH & TREA.
7391	IM-06	CLAYTON BROWN	868014	FIRST TR SPEC SIT TR SER 4 GREAT LAKES GROWTH & TREA TR SE 1.
7392	IM-06	CLAYTON BROWN	869600	FIRST TR SPE SITUATIONS TR SE 5 GREAT LAKES & GR & TREA TR S.
7393	IM-06	COLONIAL	021696	COLONY GROWTH PLANS.
7394	IM-06	CRAIGIE	276436	TAX EXEMPT BOND FUND OF VIRGINIA FIRST SERIES.
7395	IM-06	CRAIGIE	310948	TAX EXEMPT BOND FUND OF VIRGINIA SECOND SERIES.
7396	IM-06	FARM BUREAU LIFE	811713	FARM BUREAU LIFE VARIABLE ACCOUNT.
7397	IM-06	FIDELIETY	819543	FIDELITY INVESTMENTS VARIABLE LIFE ACCOUNT I.
7398	IM-06	FIDELITY	086362	SALEM INVESTMENT PFAS FIDELITY MAGELLAN FUND.
7399	IM-06	FIRSR VARIABLE	751482	FIRST VARIABLE ANNUITY FUND E.
7400	IM-06	FIRST CHARLOTTE	310224	NORTH CAROLINA TAX EXEMPT BOND FUND SERIES ONE.
7401	IM-06	FIRST CHARTER	839051	FIRST CHARTER VARIABLE ANNUITY ACCOUNT.
7402	IM-06	FIRST VARIABLE	101872	FIRST VARIABLE ANNUITY FUND A.
7403	IM-06	FIRST VARIABLE	836656	FIRST VARIABLE ANNUITY FUND BE.
7404	IM-06	FRANKLIN LIFE	355947	FRANKLIN LIFE MONEY MARKET VARIABLE ANNUITY FUND C.
7405	IM-06	GENERAL AMERICAN	806004	GENERAL AMERICAN LIFE INSURANCE CO SEPARATE ACCOUNT ELEVEN.
7406	IM-06	GENERAL SERVICES	854394	GENERAL SERVICES LIFE INDIVIDUAL VARIABLE ACCOUNT B.
7407	IM-06	GENERAL SERVICES	854420	GENERAL SERVICES LIFE INSURANCE CO GROUP VARIABLE ACCOUNT A.
7408	IM-06	GOLDEN AMERICAN	836982	SPECIALTY MANAGERS SEPARATE ACCOUNT A.
7409	IM-06	GOLDEN AMERICAN	836687	SPECIALTY MANAGERS SEPARATE ACCOUNT B.
7410	IM-06	GREAT WEST LIFE	355316	MAXIM SERIES ACCOUNT OF GREAT WEST LIFE & ANNUITY INSUR.
7411	IM-06	HERBERT J SIMS	819184	AMERICAN ASSO OF HOMES FOR THE AGING TAX FREE TR HIGH IN SE 1.
7412	IM-06	INVESTORS LIFE	314377	INVESTORS LIFE INSURANCE CO OF NORTH AMERICA INA PUTNAM.
7413	IM-06	JEFFERSON PILOT	078509	JEFFERSON PILOT SEPARATE ACCOUNT A.
7414	IM-06	JOHN HANCOCK	821221	COLONIAL HANCOCK LIBERTY SEPARATE ACCOUNT.
7415	IM-06	KEYSTONE PROV	828684	KEYNOTE SERIES ACCOUNT /NY/.
7416	IM-06	KEYSTONE PROV	314568	KMA VARIABLE ACCOUNT.
7417	IM-06	KIDDER PEABODY	814448	TARGET UNIT INVESTMENT TRUST CORPORATE HIGH YIELD SERIES 1.
7418	IM-06	KIDDER PEABODY	822515	TARGET UNIT INVESTMENT TRUST CORPORATE HIGH YIELD SERIES 2.
7419	IM-06	KIDDER PEABODY	826929	TARGET UNIT INVESTMENT TRUST CORPORATE HIGH YIELD SERIES 3.
7420	IM-06	KIDDER PEABODY	832196	TARGET UNIT INVESTMENT TRUST CORPORATE HIGH YIELD SERIES 4.
7421	IM-06	LAMAR LIFE	822304	SEPARATE ACCOUNT LL OF LAMAR LIFE INSURANCE CO.
7422	IM-06	LEGG MASON	277563	MARYLAND TAX EXEMPT TRUST SERIES 1.
7423	IM-06	LEXINGTON	024924	LEXINGTON CORPORATE LEADERS TRUST FUND.
7424	IM-06	LIC NORTH AM	059362	LIFE INSURANCE CO OF NORTH AMERICA SEPARATE ACCOUNT A.
7425	IM-06	MIDLAND NATIONAL	819823	MIDLAND NATIONAL LIFE SEPARATE ACCOUNT A.
7426	IM-06	MIDWEST LIFE	719768	MIDWEST LIFE VARIABLE ACCOUNT.
7427	IM-06	MONARCH	826458	BENHAM VARIABLE ACCOUNT OF MONARCH LIFE INSURANCE CO.
7428	IM-06	MOSELLY	704220	MASSCHUSETTS TAX EXEMPT UNIT TRUST SERIES 45.
7429	IM-06	NACO	070281	NACO VARIABLE ACCOUNT.
7430	IM-06	NASL	753902	NASL VARIABLE ACCOUNT.
7431	IM-06	NOMURA	869095	NOMURA DIVIDEND INCOME FUND INC.
7432	IM-06	NORTHBOOK	716784	NORTHBROOK VARIABLE ANNUITY ACCOUNT.
7433	IM-06	OPPENHEIMER	002907	CAPITAL ACCUMULATION PROGRAM OF SHARES OF OPPENHEIMER GLO F.
7434	IM-06	OPPENHEIMER	852742	CENTENNIAL APPRECIATION PORTFOLIO SERIES 1.
7435	IM-06	OPPENHEIMER	857786	CENTENNIAL APPRECIATION PORTFOLIO SERIES 2.
7436	IM-06	OPPENHEIMER	865418	CENTENNIAL APPRECIATION PORTFOLIO SERIES 3.
7437	IM-06	PANORAMA	354007	PANORAMA SEPARATE ACCOUNT.
7438	IM-06	PARAGON LIFE	824725	SEPARATE ACCOUNT A OF PARAGON LIFE INSURANCE CO.
7439	IM-06	PENN MUTUAL	077136	PENN MUTUAL VARIABLE ANNUITY ACCOUNT I.
7440	IM-06	PETERS RICKEL	806746	RICKEL & ASSOCIATES TAX EXEMPT UNIT TRUST SERIES 1.

APPENDIX A—PART II—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7441	IM-06	PETERS RICKEL	819674	RICKEL & ASSOCIATES TAX EXEMPT UNIT TRUST SERIES 2.
7442	IM-06	PREFERRED LIFE	845775	PREFERRED LIFE VARIABLE ACCOUNT C.
7443	IM-06	PRESIDENTIAL LIF	826625	PRESIDENTIAL VARIABLE ANNUITY ACCOUNT ONE.
7444	IM-06	PROTECTIVE LIFE	310826	PROTECTIVE LIFE INSURANCE CO.
7445	IM-06	PROVIDENCE LIFE	724994	PROVIDENCE VARIABLE ACCOUNT ONE.
7446	IM-06	PROVIDENCE LIFE	821135	PROVIDENCE VARIABLE LIFE ACCOUNT ONE
7447	IM-06	PROVIDENT	080831	PROVIDENT FUND ACCUMULATION PLANS.
7448	IM-06	PROVIDENT MUTUAL	858375	PROVIDENT MUTUAL VARIABLE AGGRESSIVE GROWTH SEPARATE ACCOUNT.
7449	IM-06	PROVIDENT MUTUAL	723271	PROVIDENT MUTUAL VARIABLE GROWTH SEPARATE ACCOUNT A/PA.
7450	IM-06	PUTNAM	081268	PUTNAM INVESTMENT PLANS FOR GEORGE PUTNAM FUND OF BOSTON.
7451	IM-06	RAYMOND JAMES	858536	RAYMOND JAMES TOP 10 & APPRECIATION PORTFOLIO SERIES 1.
7452	IM-06	RESOURCES LIFE	821136	RESOURCES VARIABLE LIFE ACCOUNT ONE.
7453	IM-06	ROYAL TANDEM	862923	ROYAL TANDEM LIFE INSURANCE CO.
7454	IM-06	ROYAL TANDEM	869796	ROYAL TANDEM VARIABLE LIFE SEPARATE ACCOUNT.
7455	IM-06	SECURITY EQUITY	746662	SECURITY EQUITY VARIABLE LIFE SEPARATE ACCOUNT.
7456	IM-06	SECURITY FIRST	356475	SECURITY FIRST LIFE SEPARATE ACCOUNT A.
7457	IM-06	SECURITY FIRST	811157	SECURITY FIRST VARIABLE LIFE ACCOUNT.
7458	IM-06	SHEARSON	065641	MICHIGAN FUND TAX EXEMPT MUNICIPAL INVESTMENT TRUST FIRST SE.
7459	IM-06	SHEARSON	225749	PENN STATE TAX EXEMPT INVESTMENT TRUST SERIES 1.
7460	IM-06	SHEARSON	766493	UNCOMMON VALUES UNIT TRUST 1985 SER & SUBSEQ & SIMILAR SERIE.
7461	IM-06	SHEARSON	832945	UNCOMMON VALUES UNIT TRUST 1988 SERIES.
7462	IM-06	SHEARSON	752397	DIRECTIONS UNIT INVESTMENT TRUST TWENTIETH SERIES.
7463	IM-06	SMA LIFE	727145	SEPARATE ACCOUNT VA H OF SMA LIFE ASSURANCE CO.
7464	IM-06	SMITH BARNEY	804648	TAX EXEMPT SECURITIES TRUST SERIES 256.
7465	IM-06	STANDARD SECURIT	854148	STANDARD SECURITY KNOX FUNDS SEPARATE ACCOUNT B.
7466	IM-06	SUMMIT	701747	SUMMIT INVESTORS PLANS.
7467	IM-06	SUMMITT	731295	SUMMIT CASH RESERVES FUND.
7468	IM-06	TANDEM LIFE	869800	TANDEM VARIABLE LIFE SEPARATE ACCOUNT.
7469	IM-06	TOTAL GROWTH	777951	TOTAL GROWTH TRUST TREASURIES & GROWTH STOCKS SERIES 1.
7470	IM-06	TOTAL GROWTH	788947	TOTAL GROWTH TRUST TREASURIES & GROWTH STOCKS SERIES 2.
7471	IM-06	TOTAL GROWTH	790576	TOTAL GROWTH TRUST TREASURIES & GROWTH STOCKS SERIES 3.
7472	IM-06	TRANSAMERICA LIF	808102	SEPARATE ACCOUNT VA 1 OF TRANSAMERICA LIFE INS & ANNUITY CO.
7473	IM-06	TRANSAMERICA OCC	785026	SEPARATE ACCOUNT VL OF TRANSAMERICA OCCIDENTAL LIFE INS CO.
7474	IM-06	TRANSAMERICA OCC	073695	TRANSAMERICA OCCIDENTAL LIFE INSURANCE CO.
7475	IM-06	TUCKER ANTHONY	725558	TELEPHONE EXCHANGE FUND AT&T SHARES.
7476	IM-06	UNION CENTRAL	749330	CARILLON ACCOUNT.
7477	IM-06	UNITED	101269	UNITED INCOME INVESTMENT PROGRAMS.
7478	IM-06	UNITED INVESTORS	810814	UNITED INVESTORS ANNUITY VARIABLE ACCOUNT.
7479	IM-06	UNITED INVESTORS	809766	UNITED INVESTORS LIFE VARIABLE ACCOUNT.
7480	IM-06	UNUM LIFE	849589	TSAVA SEPARATE ACCOUNT OF UNUM LIFE INSURANCE COMPANY.
7481	IM-06	USAA LIFE	754928	VARIABLE ACCOUNT A OF USAA LIFE INSURANCE CO.
7482	IM-06	UTAH FARM BUREAU	811712	UTAH FARM BUREAU LIFE VARIABLE ACCOUNT.
7483	IM-06	VALIC	354912	VARIABLE ANNUITY LIFE INSURANCE CO SEPARATE ACCOUNT A.
7484	IM-06	VAN KAMPEN	277439	FIRST NATIONAL DUAL SERIES TAX EXEMPT BOND TRUST.
7485	IM-06	VAN KAMPEN	276808	INVESTORS MUNICIPAL YIELD TRUST SERIES 1.
7486	IM-06	VAN KAMPEN	313510	TAX EXEMPT TRUSTS FOR PENNSYLVANIA RESIDENTS FIRST SERIES CO.
7487	IM-06	VAN KAMPEN	277884	INVESTORS MUNICIPAL YIELD TRUST SERIES 2.
7488	IM-06	VAN KAMPEN	036699	FIRST NATIONAL DUAL SERIES TAX EXEMPT BOND TRUST SERIES 3.
7489	IM-06	VAN KAMPEN	706076	PENNSYLVANIA QUALITY TAX EXEMPT TRUST SERIES 5.
7490	IM-06	VAN KAMPEN	313964	INVESTORS MUNICIPAL INCOME TRUST SERIES 35.
7491	IM-06	VAN KAMPEN	770959	INSURED TAX FREE BOND TRUST INSURED MULTI SERIES 1.
7492	IM-06	VAN KAMPEN	764924	INSURED TAX FREE BOND TRUST SERIES 1.
7493	IM-06	VAN KAMPEN	773282	INSURED TAX FREE BOND TRUST SERIES 3.
7494	IM-06	VAN KAMPEN	773735	INSURED TAX FREE BOND TRUST SERIES 4.

APPENDIX A—PART B—UNIT INVESTMENT TRUSTS—Continued

Count	Group	Complex	CIK	Name
7495	IM-06	VAN KAMPEN	779245	INSURED TAX FREE BOND TRUST SERIES 5.
7496	IM-06	VAN KAMPEN	779268	INSURED TAX FREE BOND TRUST SERIES 6.
7497	IM-06	VERMONT LIFE	805625	VERMONT VARIABLE LIFE INSURANCE ACCOUNT.
7498	IM-06	VOYAGER LIFE	318324	VOYAGER VARIABLE ANNUITY ACCOUNT D.
7499	IM-06	WADDELL & REED	101125	UNITED CONTINENTAL INCOME INVESTMENT PROGRAMS.
7500	IM-06	WADDELL & REED	101123	UNITED INTERNATIONAL GROWTH INVESTMENT PROGRAMS.
7501	IM-06	WADDELL & REED	100997	UNITED PERIODIC INVESTMENT PFAS OF UNITED ACCUMULATIVE FUND.
7502	IM-06	WADDELL & REED	110400	UNITED PERIODIC INVESTMENT PFAS OF UNITED SCIENCE & ENERGY F.
7503	IM-06	WADDELL & REED	101669	UNITED VANGUARD INVESTMENT PROGRAMS PFAS UNITED VANGUARD FUN.
7504	IM-06	WESTERN LIFE	826723	VARIABLE ACCOUNT D OF WESTERN LIFE INSURANCE CO.
7505	IM-06	WESTERN RES LIFE	841056	WRL SERIES ANNUITY ACCOUNT.

Appendix B—List of Filings Required to be Submitted Electronically

Registration Forms unique to registered investment companies and business development companies under the Securities Act of 1933 and/or the Investment Company Act of 1940.[66]

- Form N-1—(Registration statement of open-end management investment companies)
- Form N-1A—(Registration statement of open-end management investment companies)
- Form N-2—(Registration statement of closed-end management investment companies)
- Form N-3—(Registration statement of separate accounts organized as management investment companies)
- Form N-4—(Registration statement of separate accounts organized as unit investment trusts)
- Form N-5—(Registration statement of small business investment companies under the Securities Act of 1933 and the Investment Company Act of 1940)
- Form N-8B-2—(Registration statement of unit investment trusts which are currently issuing securities)
- Form N-8B-3—(Registration statement of unincorporated management investment companies currently issuing periodic payment plan certificates)
- Form N-8B-4—(Registration statement of face-amount certificate companies)
- Form N-14—(Registration statement for the registration of securities issued in business combination transactions by investment companies and business development companies)
- Form S-6—(Registration statement for unit investment trusts registered on Form N-8B-2)

Notices and Elections

Form N-8A—(For notification of registration (filed under section 8(a) of the 1940 Act))

Form N-18F-1—(For notification of election under rule 18f-1 (of the Investment Company Act of 1940))

Form N-23C-1—(Statement by registered closed-end investment companies with respect to purchases during the last calendar month of its own securities under rule 23c-1 (of the Investment Company Act of 1940))

Form N-6F—(Notice of intent to elect to be subject to sections 55 through 65 of the Investment Company Act of 1940)

Form N-54A—(Notification of election to be subject to sections 55 through 65 of the Investment Company Act of 1940 filed under section 54(a) of the Investment Company Act of 1940)

Form N-54C—(Notification of withdrawal of election to be subject to sections 55 through 65 of the Investment Company Act of 1940 filed under section 54(c) of the Investment Company Act of 1940)

Periodic Reports

- Form N-SAR—(Semi-Annual Report of Registered Investment Companies)

Other Filings

- Proxy materials required to be filed under section 20 (of the Investment Company Act of 1940) and Section 14(a) (of the Securities Exchange Act of 1934).[67]

Reports to Shareholders required to be filed under section 30 (of the Investment Company Act of 1940).

Notices filed under rule 24f-2 (of the Investment Company Act of 1940).

Notification of filing of reports to stockholders of registered investment companies under rule 30b2-1 (of the Investment Company Act of 1940).

Prospectuses filed under rule 497 (of the Securities Act of 1933).

Form N-27D-1—(Accounting of segregated trust account)

Form 2-E—(Report under rule 609 of Regulation E (of the Securities Act of 1933))

Form 13F-E—(Report of institutional investment managers under section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f) and rule 13f-1 thereunder))

Appendix C—Sections of Proposed Regulation S-T of Particular Interest to Investment Companies and Reporting Investment Managers

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

* * * * *

Section 232.100 Mandated Electronic Submissions

(a)

* * * * *

(4) * * * ; *provided, however* that in no event shall any submissions under Section 6(c) of the Investment Company Act or documents related to applications for exemptive relief under any section of the

[66] Investment companies filing on other forms should see Section III.C and Appendix A of the General EDGAR Release for a discussion and list of other forms required to be submitted electronically. Forms which would include a Financial Data Schedule are indicated with an asterisk ("*").

[67] A Financial Data Schedule will be required for proxy materials if action is to be taken with respect to any transaction described in Items 11, 12, or 14 of Schedule 14A.

Investment Company Act, be made electronically:

* * * * *

Section 232.200 Exhibits

* * * * *

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a registered investment company or a business development company subject to the mandatory electronic filing rules shall file all exhibits included in an electronic filing, including any exhibit previously filed in paper, electronically unless a hardship exemption (§§ 232.101 and 232.102 of this chapter) has been granted.

* * * * *

Section 232.305 Division of Investment Management EDGAR Transition

(a) *Registrant transition to electronic submission via EDGAR.* Registrants whose filings are subject to review by the Division of Investment Management shall be subject to the electronic filing requirements of this Part ("phased-in") in accordance with the phase-in schedule established and published by the Commission, including any amendments thereto (the "Phase-In Schedule"). At the conclusion of phase-in, all remaining registered investment companies or business development companies shall be subject to the electronic filing requirements of this Part.

(b) *Phase-in Rule for Investment Companies.* (1) Each registered investment company or business development company listed on the Phase-In Schedule is deemed to have the phase-in date assigned to the group in which it is included as listed on the schedule, or as may be designated by the Commission.

(2) For any investment company not listed on the Phase-In Schedule (including any company that subsequently registers under the Investment Company Act),

(i) an open-end or closed-end management investment company that has the same investment adviser, or a unit investment trust that has the same depositor, as a registrant that is listed on the Phase-In Schedule shall have the same phase-in date as the registrant listed on the schedule.

(ii) a closed-end management investment company that does not have an investment adviser shall have the same phase-in date as a registrant having an investment adviser that is, or is affiliated with, the principal underwriter of the unlisted registrant.

(3) A registrant not listed on the Phase-In Schedule that has more than one investment adviser shall be deemed to have the same investment adviser as a registrant that is listed on the schedule if any of its investment advisers, other than sub-advisers, are investment advisers to the listed registrant.

(4) A registrant that is not phased-in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is phased-in shall be deemed to be phased in at the time it changes its investment adviser.

(5) A registrant that is phased-in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is not phased-in shall remain phased-in.

* * * * *

(d) *Reassignment of Phase-in Group.* The Commission may, in its discretion, grant or deny a request by a registrant to participate in a phase-in group other than the group established under (b) (1) or (2) above.

(e) *Required electronic filing for Phased-in Filers.* A registrant that is phased in, under either the mandatory electronic filing provisions of paragraphs (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under rule 100 of Regulation S–T (§ 232.100 of this chapter) and which are made on or after a registrant's phase-in date, *provided, however* that a registrant need not file electronically a filing under rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date.

(f) *Electronic filings involving both a paper filer and an electronic filer.* Filings involving both a paper filer and an electronic filer shall be made as set forth in this section, provided, however, that the following provisions shall not affect a filer's phase-in date for mandatory electronic filing.

(1) *Cash tender offers and proxy contests.* Where a paper filer commences a cash tender offer or proxy contest (including solicitation in opposition) with respect to an electronic filer, submissions by both filers relating to the transaction shall be in electronic format. Where an electronic filer commences a cash tender offer or proxy contest with respect to a paper filer, the electronic filer is permitted, but not required, to submit all filings in electronic format. If the electronic filer elects to file in electronic format in connection with the transaction, all related submissions by the electronic filer must be in electronic format. If the electronic filer elects to file in electronic format, the paper filer is permitted, but not required, to submit all filings in electronic format. Notwithstanding the foregoing, submissions consisting solely of correspondence relating to a registrant not yet phased in shall be submitted in paper.

(2) *Securities Act registered business combinations.* Where a paper filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to an electronic filer, submissions by both parties relating to that transaction shall be in electronic format. Where an electronic filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to a paper filer, the electronic filer shall submit all filings in electronic format. The paper filer is permitted, but not required, to submit all filings in electronic format. Notwithstanding the foregoing, submissions consisting solely of correspondence relating to a registrant not yet phased in shall be submitted in paper.

(3) *Schedules 13D and 13G.* Where a paper filer is required to file a Schedule 13D or 13G (§§ 240.13d–101 and 240.13d–102 of this chapter) relating to an electronic filer in accordance with paragraph (b) of this section, the Schedule 13D or 13G shall be filed in electronic format. Where an electronic filer is required to file a Schedule 13D or 13G relating to a paper filer, the Schedule 13D or 13G may be filed in electronic format.

(g) *Conforming Paper Format Documents.* Mandated electronic filers shall submit to the Commission a paper copy of each electronic filing for a period of one year after becoming subject to mandated electronic filing (§ 232.100 of this chapter), or such shorter period as the Commission shall determine, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be received at the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS CONFORMING PAPER FORMAT DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 305(g) OF REGULATION S–T.

(3) Signatures are not required for conforming paper format documents submitted pursuant to paragraph (g) of this section.

(4) EDGAR Pilot participants that elect to participate in advance of their mandatory phase-in date shall not be required to submit a paper copy of each electronic filing until they become subject to mandatory electronic filing.

Section 232.306 Division of Investment Management Electronic Submissions during Transition

In addition to the electronic submission requirements set forth in rule 100 of this Part, the following provisions shall apply during the mandatory electronic filing phase-in period:

(a) *Permitted electronic submissions*—(1) *Filings by Investment Companies.* Prior to its phase-in date, a filer that is a registered investment company or a business development company may, but is not required to, submit Form N–SAR (§ 274.101 of this chapter) in electronic format, provided that, if the filer elects to file Form N–SAR in electronic format, all subsequent amendments to the subject Form N–SAR shall be filed in electronic format.

* * * * *

(3) *Form 13F.* An institutional investment manager required by section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and rule 13f–1 (§ 240.13f–1 of this chapter) under, the Exchange Act to file a report on Form 13F (§ 249.325 of this chapter) with the Commission may file that report on magnetic tape in the format described in Form 13F–E (§ 249.326 of this chapter) provided that, if the filer elects to submit a filing in electronic format, all subsequent amendments to the subject filing shall be filed in electronic format.

(b) *Amendments to Paper Filings*—(1) *Filings by Investment Companies.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings filed in paper prior to the phase-in date of a registrant that is a registered investment company or a business development company shall be submitted in electronic format in accordance with rule 100 of Regulation S–T (§ 232.100 of this chapter). The subject filing, as amended, including any exhibit that has been previously filed only in paper and which is incorporated by reference into the filing, shall be filed electronically in its entirety.

* * * * *

[FR Doc. 92–17963 Filed 8–6–92; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 200, 202, 250 and 259

[Release Nos. 33–6946, 34–30953, 35–25588; File No. S7–23–92]

Rulemaking for EDGAR System—Public Utility Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing for public comment rules and form amendments under the Public Utility Holding Company Act of 1935 (the "1935 Act") to implement the operational phase of its Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. This release discusses operational aspects of the EDGAR system that are unique to public utility holding company systems. Beginning July 15, 1992, the EDGAR Pilot participants were permitted to transfer to the operational EDGAR system under temporary rules as amended on April 20, 1992. The proposed rules would replace the temporary rules now in effect, govern electronic filing for the operational EDGAR system, and would provide for phase-in of mandatory electronic filing beginning in April 1993. Comment is requested on proposed new rules required for the EDGAR system, changes to the existing rules necessary to accommodate electronic filing, and the phase-in procedures and schedule.

DATES: Comments should be received on or before October 6, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–23–92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. To facilitate the processing of comments, commenters are encouraged to provide the Commission, in addition to written comments, a copy of comments on computer diskette.[1]

FOR FURTHER INFORMATION CONTACT: Richard T. Miller, Staff Attorney, (202) 504–2268, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") is proposing for public comment rules covering those aspects of the EDGAR system that are unique to submissions made by Public Utility Filers [2] under the 1935 Act. The Commission also requests comment on the phase-in procedures that will be used to bring Public Utility Filers into the EDGAR system. In a concurrent release (the "General EDGAR Release"),[3] the Commission is seeking comment on proposed rules, rule amendments, and procedures that will apply generally to all electronic filings on EDGAR and proposed rule and form amendments under the Securities Act of 1933,[4] the Securities Exchange Act of 1934 [5] and the Trust Indenture Act of 1939 that will apply to submissions [6] processed by the Division of Corporation Finance. Matters discussed in the General EDGAR Release that are also applicable to electronic submissions by Public Utility Filers are not discussed in detail in this release.

In this release, the Commission is proposing to amend (1) certain Commission rules, regulations, schedules and forms used exclusively by Public Utility Filers and (2) Rule 30–5 of the Rules of Practice [7] to provide the Director of the Division of Investment Management (the "Division") with delegated authority to grant hardship exemptions and take certain other actions in connection with 1935 Act filings on EDGAR. In addition to the areas discussed below, commenters are invited to suggest other areas where rule and form changes are necessary or appropriate to implement electronic filing.

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  E. Rule 29 and Form U5S
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V. Rule and Form Changes
VI. Rescission of Temporary EDGAR Rules; Proposed Permanent EDGAR Forms
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XII. Text of Proposed Rules
Appendix A—List of Filings Required To Be Submitted Electronically
Appendix B—Table Of Contents For General EDGAR Release
Appendix C—Sections of Proposed Regulation S–T of Particular Interest To Public Utility Filers

I. Background

Beginning in May 1984, the Commission operated a pilot program (the "Pilot") to develop and test an electronic disclosure system. Nine registered public utility holding company systems, fifty-seven of their subsidiary companies and twelve

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[1] See Section VIII, *infra*, for the procedure for submitting a copy of comments by computer diskette.

[2] Public utility holding companies, their subsidiaries, and other persons making filings under the 1935 Act are collectively referred to as "Public Utility Filers."

[3] The General EDGAR Release, Release No. 33–6944 requests comment on rules for filings on EDGAR that will affect all registrants and other persons who make electronic filings with the Commission. Among other things, the General EDGAR Release discusses electronic filing generally (*e.g.*, formatting and submission requirements, signatures, filing fees, safe harbors, and hardship exemptions), and proposes rules, including proposed Regulation S–T [to be codified at 17 CFR 232.10 *et seq.*], prescribing the requirements that must be met in order to file electronically and the procedures for making such filings. The General EDGAR Release also discusses the Commission's plan to publish an EDGAR Filer Manual setting out many of the procedures for using EDGAR. (*See* the General EDGAR Release, Section V.A. for a detailed description of the EDGAR Filer Manual.)

In addition, Release No. IC–18863 is being issued to request public comment on proposed rules with respect to filings on EDGAR by investment companies and portfolio managers.

[4] 15 U.S.C. 77a *et seq.*] (the "Securities Act").

[5] 15 U.S.C. 78a *et seq.*] (the "Exchange Act").

[6] The term "submission," as used in this release, means a document (whether or not a filing) or a discrete set of documents (such as a registration statement or periodic report, including exhibits, together with associated correspondence) that is conveyed to the Commission in electronic format. The phrase "to submit electronically" means to convey a document or discrete set of documents to the Commission in electronic format. The phrase "to file electronically" means to convey a filing to the Commission in electronic format and excludes any submission other than a filing. The phrase "electronic format" means the computerized format of a document prepared in accordance with proposed Regulation S–T and the EDGAR Filer Manual. *See* the General EDGAR Release, Section I.

[7] 17 CFR 200.30–5.

Investment Company Act, be made electronically:

* * * * *

Section 232.200 Exhibits

* * * * *

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a registered investment company or a business development company subject to the mandatory electronic filing rules shall file all exhibits included in an electronic filing, including any exhibit previously filed in paper, electronically unless a hardship exemption (§§ 232.101 and 232.102 of this chapter) has been granted.

* * * * *

Section 232.305 Division of Investment Management EDGAR Transition

(a) *Registrant transition to electronic submission via EDGAR.* Registrants whose filings are subject to review by the Division of Investment Management shall be subject to the electronic filing requirements of this Part ("phased-in") in accordance with the phase-in schedule established and published by the Commission, including any amendments thereto (the "Phase-In Schedule"). At the conclusion of phase-in, all remaining registered investment companies or business development companies shall be subject to the electronic filing requirements of this Part.

(b) *Phase-in Rule for Investment Companies.* (1) Each registered investment company or business development company listed on the Phase-In Schedule is deemed to have the phase-in date assigned to the group in which it is included as listed on the schedule, or as may be designated by the Commission.

(2) For any investment company not listed on the Phase-In Schedule (including any company that subsequently registers under the Investment Company Act),

(i) an open-end or closed-end management investment company that has the same investment adviser, or a unit investment trust that has the same depositor, as a registrant that is listed on the Phase-In Schedule shall have the same phase-in date as the registrant listed on the schedule.

(ii) a closed-end management investment company that does not have an investment adviser shall have the same phase-in date as a registrant having an investment adviser that is, or is affiliated with, the principal underwriter of the unlisted registrant.

(3) A registrant not listed on the Phase-In Schedule that has more than one investment adviser shall be deemed to have the same investment adviser as a registrant that is listed on the schedule if any of its investment advisers, other than sub-advisers, are investment advisers to the listed registrant.

(4) A registrant that is not phased-in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is phased-in shall be deemed to be phased in at the time it changes its investment adviser.

(5) A registrant that is phased-in that subsequently changes its investment adviser to one that is the investment adviser of a registrant that is not phased-in shall remain phased-in.

* * * * *

(d) *Reassignment of Phase-in Group.* The Commission may, in its discretion, grant or deny a request by a registrant to participate in a phase-in group other than the group established under (b) (1) or (2) above.

(e) *Required electronic filing for Phased-in Filers.* A registrant that is phased in, under either the mandatory electronic filing provisions of paragraphs (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under rule 100 of Regulation S–T (§ 232.100 of this chapter) and which are made on or after a registrant's phase-in date, *provided, however* that a registrant need not file electronically a filing under rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date.

(f) *Electronic filings involving both a paper filer and an electronic filer.* Filings involving both a paper filer and an electronic filer shall be made as set forth in this section, provided, however, that the following provisions shall not affect a filer's phase-in date for mandatory electronic filing.

(1) *Cash tender offers and proxy contests.* Where a paper filer commences a cash tender offer or proxy contest (including solicitation in opposition) with respect to an electronic filer, submissions by both filers relating to the transaction shall be in electronic format. Where an electronic filer commences a cash tender offer or proxy contest with respect to a paper filer, the electronic filer is permitted, but not required, to submit all filings in electronic format. If the electronic filer elects to file in electronic format in connection with the transaction, all related submissions by the electronic filer must be in electronic format. If the electronic filer elects to file in electronic format, the paper filer is permitted, but not required, to submit all filings in electronic format. Notwithstanding the foregoing, submissions consisting solely of correspondence relating to a registrant not yet phased in shall be submitted in paper.

(2) *Securities Act registered business combinations.* Where a paper filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to an electronic filer, submissions by both parties relating to that transaction shall be in electronic format. Where an electronic filer seeks an exchange offer, merger, or other business combination involving a Securities Act registration statement with respect to a paper filer, the electronic filer shall submit all filings in electronic format. The paper filer is permitted, but not required, to submit all filings in electronic format. Notwithstanding the foregoing, submissions consisting solely of correspondence relating to a registrant not yet phased in shall be submitted in paper.

(3) *Schedules 13D and 13G.* Where a paper filer is required to file a Schedule 13D or 13G (§§ 240.13d–101 and 240.13d–102 of this chapter) relating to an electronic filer in accordance with paragraph (b) of this section, the Schedule 13D or 13G shall be filed in electronic format. Where an electronic filer is required to file a Schedule 13D or 13G relating to a paper filer, the Schedule 13D or 13G may be filed in electronic format.

(g) *Conforming Paper Format Documents.* Mandated electronic filers shall submit to the Commission a paper copy of each electronic filing for a period of one year after becoming subject to mandated electronic filing (§ 232.100 of this chapter), or such shorter period as the Commission shall determine, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be received at the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

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(3) Signatures are not required for conforming paper format documents submitted pursuant to paragraph (g) of this section.

(4) EDGAR Pilot participants that elect to participate in advance of their mandatory phase-in date shall not be required to submit a paper copy of each electronic filing until they become subject to mandatory electronic filing.

Section 232.306 Division of Investment Management Electronic Submissions during Transition

In addition to the electronic submission requirements set forth in rule 100 of this Part, the following provisions shall apply during the mandatory electronic filing phase-in period:

(a) *Permitted electronic submissions*—(1) *Filings by Investment Companies.* Prior to its phase-in date, a filer that is a registered investment company or a business development company may, but is not required to, submit Form N–SAR (§ 274.101 of this chapter) in electronic format, provided that, if the filer elects to file Form N–SAR in electronic format, all subsequent amendments to the subject Form N–SAR shall be filed in electronic format.

* * * * *

(3) *Form 13F.* An institutional investment manager required by section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and rule 13f–1 (§ 240.13f–1 of this chapter) under, the Exchange Act to file a report on Form 13F (§ 249.325 of this chapter) with the Commission may file that report on magnetic tape in the format described in Form 13F–E (§ 249.326 of this chapter) provided that, if the filer elects to submit a filing in electronic format, all subsequent amendments to the subject filing shall be filed in electronic format.

(b) *Amendments to Paper Filings*—(1) *Filings by Investment Companies.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings filed in paper prior to the phase-in date of a registrant that is a registered investment company or a business development company shall be submitted in electronic format in accordance with rule 100 of Regulation S–T (§ 232.100 of this chapter). The subject filing, as amended, including any exhibit that has been previously filed only in paper and which is incorporated by reference into the filing, shall be filed electronically in its entirety.

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[FR Doc. 92–17963 Filed 8–6–92; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Parts 200, 202, 250 and 259

[Release Nos. 33–6946, 34–30953, 35–25588; File No. S7–23–92]

Rulemaking for EDGAR System—Public Utility Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing for public comment rules and form amendments under the Public Utility Holding Company Act of 1935 (the "1935 Act") to implement the operational phase of its Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. This release discusses operational aspects of the EDGAR system that are unique to public utility holding company systems. Beginning July 15, 1992, the EDGAR Pilot participants were permitted to transfer to the operational EDGAR system under temporary rules as amended on April 20, 1992. The proposed rules would replace the temporary rules now in effect, govern electronic filing for the operational EDGAR system, and would provide for phase-in of mandatory electronic filing beginning in April 1993. Comment is requested on proposed new rules required for the EDGAR system, changes to the existing rules necessary to accommodate electronic filing, and the phase-in procedures and schedule.

DATES: Comments should be received on or before October 6, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–23–92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. To facilitate the processing of comments, commenters are encouraged to provide the Commission, in addition to written comments, a copy of comments on computer diskette.[1]

FOR FURTHER INFORMATION CONTACT: Richard T. Miller, Staff Attorney, (202) 504–2268, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") is proposing for public comment rules covering those aspects of the EDGAR system that are unique to submissions made by Public Utility Filers [2] under the 1935 Act. The Commission also requests comment on the phase-in procedures that will be used to bring Public Utility Filers into the EDGAR system. In a concurrent release (the "General EDGAR Release"),[3] the Commission is seeking comment on proposed rules, rule amendments, and procedures that will apply generally to all electronic filings on EDGAR and proposed rule and form amendments under the Securities Act of 1933,[4] the Securities Exchange Act of 1934 [5] and the Trust Indenture Act of 1939 that will apply to submissions [6] processed by the Division of Corporation Finance. Matters discussed in the General EDGAR Release that are also applicable to electronic submissions by Public Utility Filers are not discussed in detail in this release.

In this release, the Commission is proposing to amend (1) certain Commission rules, regulations, schedules and forms used exclusively by Public Utility Filers and (2) Rule 30–5 of the Rules of Practice [7] to provide the Director of the Division of Investment Management (the "Division") with delegated authority to grant hardship exemptions and take certain other actions in connection with 1935 Act filings on EDGAR. In addition to the areas discussed below, commenters are invited to suggest other areas where rule and form changes are necessary or appropriate to implement electronic filing.

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[1] See Section VIII, *infra*, for the procedure for submitting a copy of comments by computer diskette.

[2] Public utility holding companies, their subsidiaries, and other persons making filings under the 1935 Act are collectively referred to as "Public Utility Filers."

[3] The General EDGAR Release, Release No. 33–6944 requests comment on rules for filings on EDGAR that will affect all registrants and other persons who make electronic filings with the Commission. Among other things, the General EDGAR Release discusses electronic filing generally (*e.g.*, formatting and submission requirements, signatures, filing fees, safe harbors, and hardship exemptions), and proposes rules, including proposed Regulation S–T [to be codified at 17 CFR 232.10 *et seq.*], prescribing the requirements that must be met in order to file electronically and the procedures for making such filings. The General EDGAR Release also discusses the Commission's plan to publish an EDGAR Filer Manual setting out many of the procedures for using EDGAR. (*See* the General EDGAR Release, Section V.A. for a detailed description of the EDGAR Filer Manual.)

In addition, Release No. IC–18883 is being issued to request public comment on proposed rules with respect to filings on EDGAR by investment companies and portfolio managers.

[4] 15 U.S.C. 77a *et seq.*] (the "Securities Act").

[5] 15 U.S.C. 78a *et seq.*] (the "Exchange Act").

[6] The term "submission," as used in this release, means a document (whether or not a filing) or a discrete set of documents (such as a registration statement or periodic report, including exhibits, together with associated correspondence) that is conveyed to the Commission in electronic format. The phrase "to submit electronically" means to convey a document or discrete set of documents to the Commission in electronic format. The phrase "to file electronically" means to convey a filing to the Commission in electronic format and excludes any submission other than a filing. The phrase "electronic format" means the computerized format of a document prepared in accordance with proposed Regulation S–T and the EDGAR Filer Manual. *See* the General EDGAR Release, Section I.

[7] 17 CFR 200.30–5.

exempt holding company systems participated in the program and, as of June 1992, made all their filings under the 1935 Act electronically. Certain of the holding company systems and their subsidiaries also participated in the Pilot by making electronic filings under the Securities Act and the Exchange Act.

The Commission and a contractor began to design and build the EDGAR operational system in 1989. EDGAR began to accept test filings on May 1, 1991, and live (non-test) filings on July 15, 1992 from Pilot volunteer filers electing to file electronically on the operational EDGAR system prior to mandatory electronic filing.[8] As explained in this release and the General EDGAR Release, the Commission is proposing to begin the phase in to mandatory electronic filing in April 1993.

II. Phase In

The Commission proposes that existing Public Utility Filers be phased into the EDGAR system (*i.e.*, begin mandatory electronic filing) in groups according to a published schedule. The General EDGAR Release contains the phase-in schedule for registrants [9] making filings under the Securities Act and the Exchange Act. Filers under the 1935 Act will be required to begin mandatory electronic filing under the 1935 Act when they are phased in for purposes of making Securities Act and Exchange Act filings. The proposed phase-in schedule is set forth in appendix E to the General EDGAR Release. After a registrant is phased in, it will be required to submit electronically all filings (and related submissions) required to be electronically filed with (or submitted to) the Commission.

When a public utility holding company is phased in as an EDGAR filer, all of its subsidiary companies would be required to make 1935 Act filings electronically.[10] Requiring subsidiaries of phased-in parent companies to make 1935 Act filings electronically is appropriate for public utility holding company systems and would promote efficiency by converting the parent-subsidiary structure to electronic filing in one step. Public utility holding company systems by their nature operate as coordinated systems, and 1935 Act filings are frequently submitted jointly by the holding company and one or more of its subsidiaries. Moreover, preparation of 1935 Act filings for all companies in a holding company system is usually centralized. Because of the relatively small number of public utility holding companies, this proposed approach would not increase substantially the number of companies filing on EDGAR in the initial stage. Any new subsidiary company of a Public Utility Filer that is created after the parent becomes an electronic filer also would be required to file 1935 Act submissions electronically.

Any Public Utility Filers who do not make Securities Act or Exchange Act filings and are not part of a holding company system previously phased in will begin electronic filing when the last group of registrants is phased in.[11]

All registrants will be required to submit a completed Form ID to the Commission prior to being phased in.[12] Form ID contains basic identifying information required for the Commission to issue the access codes that will enable the registrant to make filings (including test filings) on the EDGAR system. A registrant should file a Form ID between three and four months in advance of its scheduled mandatory phase-in date. Each registrant will be responsible for ascertaining its phase-in date from the phase-in rules and published phase-in list, filing a completed Form ID to obtain its access codes, and beginning electronic filing according to its phase-in date.

When it receives a completed Form ID from a filer, the Commission will send the filer the necessary identification and access codes needed to make filings and, in addition, furnish at no cost a copy of the EDGAR Filer Manual. Prior to its phase-in date, a filer will be able to make only test filings [13] and filings of certain forms designated for acceptance regardless of the filer's phase-in date.

III. Mandatory, Voluntary And Prohibited Electronic Filings

A. General

A phased-in registrant would be required to file electronically all forms that are accepted by EDGAR, including all reports and forms required to be filed with the Commission under the 1935 Act that are accepted by EDGAR. Appendix A sets forth a list of the forms and reports filed by Public Utility Filers that would be required to be filed electronically under the proposed rules.

Generally, unless specific rules or form instructions provide otherwise, all documents associated with a filing, including exhibits, correspondence and supplemental information that an electronic filer is required to file with, or otherwise furnish to, the Commission, will have to be submitted electronically. Initially, requests for no-action or interpretive advice and letters submitted under Rule 52 would be excluded from electronic filing. While the Commission may consider electronic submission of these filings in the future, no plans currently exist for electronic filing of these documents.

In addition, for one year beginning with the commencement of mandatory electronic filing, or until expressly notified otherwise by the Commission, all registrants making filings on EDGAR [14] would be required to furnish the Commission with paper copies of the filings.[15]

The proposed 1935 Act rules generally would require a registrant to file exhibits electronically and would permit a registrant to incorporate by reference into an electronic filing only exhibits that had been filed electronically. Restatement of amended exhibits in electronic format would be required unless the Commission had granted a

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[8] At that time, the Pilot terminated. Any Pilot filers not electing to continue electronic filing during this interval prior to mandatory electronic filing will return to filing on paper until they are required to file electronically with the first mandated group. See Release Nos. 33-6933 (Apr. 20, 1992) [57 FR 16210 (Apr. 29, 1992)], IC-18664 (Apr. 20, 1992) [57 FR 18223 (Apr. 29, 1992)], and 35-25520 (Apr. 20, 1992) [57 FR 18229 (Apr. 29, 1992)].

[9] The term "registrant," as used in this release, includes any person required or permitted to make filings with the Commission under the 1935 Act. A "filer" (sometimes also referred to as an "electronic filer") is any person or entity on whose behalf an electronic submission is made.

[10] In the General EDGAR Release, we request comment on whether these subsidiary companies, if not already phased in according to the Commission's published schedule, should be permitted or required to file Securities Act and Exchange Act filings in electronic format. *See* General EDGAR Release, Section III.A.

[11] See General EDGAR Release, Section III.A and Appendix A, which lists the proposed timetable for implementation of EDGAR.

[12] See proposed Rule 10(b) of Regulation S-T. See also General EDGAR Release, Sections III.D.3 and VI.A, for a description of Form ID.

[13] Prior to their mandatory filing date, proposed electronic filers are encouraged to test file on EDGAR. The procedures for test filing are detailed in the EDGAR Filer Manual. *See* General EDGAR Release, Section III.D.5, for a further discussion of testing.

[14] EDGAR Pilot Participants electing to convert to the operational system in July 1992 and Public Utility Filers submitting 1935 Act forms on a volunteer basis will be required to submit copies of electronic filings to the Commission in paper format once they reach their mandated EDGAR filing date. Before reaching their mandated EDGAR filing date, volunteer filers will not be required to submit paper copies of electronic filings.

[15] Paper copies are required by the Securities and Exchange Commission Authorization Act of 1987, Public Law 100-181 (Dec. 4, 1987) [amending Exchange Act Section 35 (15 U.S.C. 78kk and adding Section 35A (15 U.S.C. 78*l*)] (the "EDGAR Authorization Act"). For a discussion of the requirements for paper copies of electronic filings under the EDGAR Authorization Act, see General EDGAR Release, Section V.D.1.

hardship exemption.[16] As discussed below, an exception would be made for maps and for copies of certain reports filed either under Rule 29 or as exhibits to Form U5S.[17]

Amendments to filings that were filed in paper before the date the registrant commences live electronic filing would have to be submitted electronically after the registrant is phased in.[18] At the time the first such amendment is required to be filed, a complete copy of the entire filing as amended, including all current exhibits to the filing and all other documents filed with the Commission in paper and incorporated by reference into the filing, would have to be filed electronically.[19] This approach should result in a more complete database, facilitating the Commission's administration of its responsibilities under the 1935 Act and enabling EDGAR users to obtain more complete information about registrants through EDGAR. Registrants could apply for a hardship exemption to the extent that converting existing documents to an electronic format would create an undue burden.

Rule 22(b) under the 1935 Act [20] governs incorporation by reference in applications or declarations filed under the 1935 Act. This rule would be amended so that, in general, information contained in any document previously or concurrently filed with the Commission could be incorporated by reference into any application or declaration submitted in electronic format, provided the referenced material had been filed electronically.[21] This requirement would apply both to incorporation by reference to the narrative portions of 1935 Act filings and to exhibits to those filings.[22] To assure that the incorporated document can be located, Rule 22(b) would be amended to require identification of elements such as the name of the form with which it was filed, the filer's name, the file number, and the filing date.

The proposed rules would provide only limited exceptions to the requirement that documents and exhibits be filed electronically. The Commission requests comment on whether there are additional circumstances under which Public Utility Filers filing electronically should be allowed to incorporate by reference exhibits or documents not on file in electronic format. We also request comment as to whether certain other exhibits should be exempt from the mandatory electronic filing requirements so that only paper copies of the exhibits would be filed with the Commission, and, if the exhibits are so exempt from mandatory electronic filing, whether electronic format summaries of these exhibits should be required to ensure the completeness and integrity of the EDGAR database. Commenters recommending exemption of exhibits should identify the type of documents whose physical format may prove difficult for electronic filing, the burden of preparing these documents in electronic format, and what alternative approaches could be used to achieve the Commission's goal of a complete electronic data base.

B. Documents Not Eligible for Electronic Submission

The proposed rules would provide for paper submission of material for which confidential treatment is requested.[23] Under the proposed rules, if a registrant submits a filing under the 1935 Act and wishes to object to the public disclosure of any information contained therein, it would file in paper that portion for which confidential treatment is sought.[24] If the material is filed electronically, it will be disseminated publicly and thus no longer entitled to confidential treatment. If a confidential treatment request is denied, the material for which confidential treatment had been requested would be required to be filed electronically after all appeal rights had been exhausted or had otherwise lapsed without reversal of the denial.

C. 60-Day Letters

A "60-day letter" is used by service company subsidiaries of registered holding companies to notify the Commission of various proposed changes in the organization or functioning of the service company. Under the terms of the Commission orders authorizing these subsidiaries, registrants must notify the Commission of any proposed changes; the Commission notifies the registrant within sixty days if the changes cannot be implemented without formal Commission approval. Because applications for orders to create these subsidiaries will be filed on EDGAR, the proposed rules would give registrants the option to submit 60-day letters through EDGAR as correspondence relating to the original application. However, because EDGAR correspondence is treated as non-public, neither the request nor the response would be disseminated on EDGAR. After the staff has responded, both the request and response would be available on paper through the Commission's Public Reference Room.[25] We request comment on the proposal to allow the electronic filing of 60-day letters as correspondence on EDGAR and on the possibility of replacing the 60-day letter with a new required form that would be filed on EDGAR and disseminated electronically upon filing.

D. Graphic Material

The proposed rules would not require electronic submission of graphic material itself.[26] Filers would be required to attach an appendix to electronic format documents that lists the omitted graphic materials and provides a fair and accurate narrative description of them. If the substantive information in the graphic material is narratively described in all material respects in the body of the electronic filing, the appendix simply would list the omitted material and cross-reference the

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[16] Under the proposed revisions to the Rules of Organization; Conduct and Ethics; and Information and Requests, the Director of the Division of Investment Management would have delegated authority from the Commission to grant hardship exemptions and adjust filing dates under proposed Regulation S–T. Regulation S–T would permit a temporary exemption for an electronic filer that is unable to submit a specific document(s) or filing(s) in electronic format. It would also permit a continuing hardship exemption for a class of documents or form types (where the filer can show impracticality or undue expense) or from all electronic filing (where the filer can show undue hardship). An adjustment of the filing date would be allowed where acceptance of a filing is delayed because of equipment malfunction or a technical problem. The provisions relating to hardship exemptions and filing date adjustments are discussed in detail in the General EDGAR Release, Section III.E.

See General EDGAR Release, Section III.C.1.b, for a discussion of hardship exemptions as they relate to exhibits.

[17] *See* Section III.E, *infra*, for a discussion of the reason annual reports to shareholders will continue to be submitted in paper as an exhibit to Form U5S.

[18] *Cf.* General EDGAR Release, Section III.C.1.

[19] This requirement for holding companies would be different from the procedures described in the General EDGAR Release for other filers. See General EDGAR Release, Section III.C.1.b.

[20] 17 CFR 250.22(b).

[21] An exception to this requirement would be made for maps submitted as exhibits to 1935 Act filings. See Section III.D, *infra*.

[22] This requirement for Public Utility Filers differs from that in the General EDGAR Release, which does not require that all exhibits incorporated by reference be filed electronically. See General EDGAR Release, Section IV.C.

[23] *See* General EDGAR Release, Section III.C.3.a, for a discussion of procedures for confidential treatment and the consequences of a denial of a confidential treatment request.

[24] *See* proposed amendment to 1935 Act Rule 104 [17 CFR 250.104].

[25] Currently, 60-day letters are non-public until a response is provided by the Commission staff, at which time both the letter and the response become publicly available. The same procedures would be followed for 60-day letters filed through EDGAR.

[26] See General EDGAR Release, Section IV.E.

section of the filing that describes it.[27] Graphic material such as maps, which are required to be submitted as exhibits to a number of 1935 Act forms, would be difficult to describe. Thus, the proposed rules would require Public Utility Filers to continue to submit maps in paper. For any other document that includes graphic material for which a narrative description would be ineffective or unduly burdensome, the submitter could apply for a continuing hardship exemption from electronic filing. If the request is granted, the electronic filer would submit the exhibit in paper under cover of Form SE.[28]

E. Rule 29 and Form U5S

Special rules would be provided for documents filed as exhibits, or incorporated by reference, to filings under Rule 29 or on Form U5S. Rule 29 requires that registered holding companies and their subsidiaries file with the Commission copies of reports submitted to stockholders and certain reports submitted to state commissions. Copies of annual reports to stockholders also are required to be filed with Form U5S, the annual report registered holding companies and their subsidiaries file with the Commission.

The information contained in these annual reports is important to the Commission in determining whether registered holding company systems are in compliance with 1935 Act requirements. However, these documents frequently contain graphic material that is not susceptible to electronic filing. Accordingly, a preliminary note would be added to Rule 29 stating that all filings under that rule will be required to be submitted in paper. The instructions to Form U5S would be amended to require that any annual report to shareholders that is filed as an exhibit to the form, or incorporated by reference, be submitted in paper.[29] The Commission requests comment on this approach.

IV. Financial Data Schedule

As explained in more detail in the General EDGAR Release, the Commission is proposing that registrants file electronically as an exhibit to certain registration statements, reports, and proxy materials a Financial Data Schedule that would be available to the public as well as the Commission.[30] A Financial Data Schedule would be required for certain 1935 Act filings. As discussed in the General EDGAR Release, the Commission is proposing a safe harbor provision regarding the liability that could result from information contained in the schedule.[31]

Under the proposed rules for Public Utility Filers, Financial Data Schedules will be required as exhibits to Forms U5S, U–1, U–13–60 and U–3A–2.[32] An instruction explaining this requirement would be added to each form.[33]

The Commission requests comment on the proposed Financial Data Schedule system and the use of schedules to identify financial data for Public Utility Filers.

V. Rule and Form Changes

Current regulations, rules and forms under the 1935 Act would be amended to reflect new procedures necessary for electronic filings.[34] Text would be added to rules stating how the rules would apply differently to electronic filings, and appropriate instructions would be added to forms. In general, the proposed instructions would duplicate current instructions except to require typed signatures in lieu of manual ones and to suspend the requirement to provide multiple copies. In addition, an instruction would be added directing electronic filers to the rules set forth in Regulation S–T and the EDGAR Filer Manual.[35]

In addition, the Commission is proposing to change the form used to amend filings under the 1935 Act. Presently, Form U–A is used to submit amendments to any application, declaration, report, or statement filed under the 1935 Act, other than an application or declaration filed on Form U–1. The Commission proposes that Form U–A be rescinded and that amendments be filed on the original form with the suffix "/A" following the form type.[36] Thus, a Form U–13–1 would be amended by filing a Form U–13–1/A.[37]

VI. Rescission of Temporary EDGAR Rules; Proposed Permanent EDGAR Forms

On April 20, 1992, the Commission adopted temporary rules and forms to permit voluntary filing by Pilot participants on the operational EDGAR system.[38] The proposals in this release, the General EDGAR Release, and Release No. IC–18863 (including proposed Regulation S–T) constitute comprehensive regulations addressing all aspects of electronic submission. Therefore, upon the adoption of Regulation S–T and the other rules proposed in these releases, the temporary rules will be rescinded.

VII. Future Rulemaking

The rules proposed in this release would be adopted on an interim basis for application during the initial stages of registrant phase in to the EDGAR system. After the Congressionally-mandated significant test group has filed successfully for six months, the Commission will adopt permanent EDGAR rules, based on the interim rules as modified appropriately in light of the significant test group's experience with EDGAR. The permanent rules will apply during the later stages of filer phase in to the EDGAR system.

VIII. Request For Comment

Any interested persons wishing to submit written comments on the proposed rule and form changes and additions to requirements relating to electronic or paper submissions of documents to the Commission, as well as on other matters that may have an impact on the proposals contained herein, are requested to do so. Commenters are requested to address the proposed changes and additions from the perspective of both those submitting documents as well as those using such documents.

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[27] Proposed Rule 205 of Regulation S–T.

[28] Proposed Rule 102(c) of Regulation S–T. See General EDGAR Release, Section III.E.3, regarding continuing hardship exemptions.

[29] See proposed amendments to Rule 29 [17 CFR 250.29] and Form U5S [17 CFR 259.5s]. This approach differs from that in the General EDGAR Release. The proposed rules governing submissions under the Exchange Act would eliminate the requirement to submit to the Commission the annual report to securityholders provided that certain information is included in Form 10–K filed electronically. See General EDGAR Release, Section IV.B.

[30] See General EDGAR Release, Section IV.D.

[31] In addition, the proposed rules would provide that Financial Data Schedules are not deemed "filed" for purposes of liability under Section 11 of the Securities Act or Section 18 of the Exchange Act. See proposed Item 601(c)(1) of Regulation S–K. See also General EDGAR Release, Section IV.D.4.

[32] See the relevant forms for instructions as to the information required in each of the Financial Data Schedules. The technical provisions for these schedules are contained in the EDGAR Filer Manual.

[33] See, *e.g.*, proposed amendment to Form U5S [17 CFR 259.5s].

[34] See General EDGAR Release, Section IV.G.

[35] See General EDGAR Release, Section V.A. for a discussion of the EDGAR Filer Manual.

[36] Rules 20(b) and 20(c) under the 1935 Act will be amended to change the prescribed form for submitting amendments either in paper or electronically.

[37] See Appendix A for a complete list of all 1935 Act forms that the Commission is proposing to adapt to EDGAR.

[38] Release Nos. 33–6933 (Apr. 20, 1992) [57 FR 18210 (Apr. 29, 1992)], IC–18864 (Apr. 20, 1992) [57 FR 18223 (Apr. 29, 1992)], and 35–25520 (Apr. 20, 1992) [57 FR 18229 (Apr. 29, 1992)], amending the temporary Pilot rules. See Release No. 33–6539 (June 27, 1984) [49 FR 28044 (July 10, 1984)]; Release No. 35–23704 (May 23, 1985) [50 FR 23287 (June 3, 1985)]; and Release No. IC–14733 (Sep. 23, 1985) [50 FR 40479 (Oct. 4, 1985)].

To facilitate the processing of comments, commenters are encouraged to provide the Commission, in addition to written comments, a copy of the comments in electronic format. The electronic copy of the comments should be in a file on a personal computer diskette, either 3.5 or 5.25 inch. The file should be either a WordPerfect word processing file or a DOS, ASCII, or print image file. A label should be affixed to the diskette giving the name of the commenter, the name of the file, and the file type. If a WordPerfect file is provided, the WordPerfect version number should also be included on the label.

IX. Cost-Benefit Analysis

To evaluate the costs and benefits associated with the proposed rule and form changes contained in this release, the Commission requests that commenters provide views and data as to the costs and benefits associated with these proposals.

The anticipated costs and benefits of EDGAR are discussed in Section VII of the General EDGAR Release. It is expected that EDGAR will benefit Public Utility Filers in a similar manner. Those Public Utility Filers that submit filings by way of direct transmission will also avoid the uncertainty and delay of alternative forms of delivery and will have the ability to file during extended Commission hours. While the transition to mandated electronic filing may involve some incremental initial costs to registrants, we believe that these costs will be reduced by the fact that the great majority, if not all, of the filers are currently using personal computers for document preparation. Moreover, the efficiencies of electronic filing should offset burdens for filers in the long term. Electronic submission would facilitate staff review and response to filings because of the added ease with which filings and other information will be accessible. In addition, the Commission and the public would benefit from the use of electronic filing to the extent that it contributes to more rapid dissemination of information.

X. Summary of Initial Regulatory Flexibility Act Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to (1) Rule 30–5 under the Commission's Rules of Organization and Program Management; (2) Rule 3 under the Commission's Rules of Informal and other Procedures; (3) Rules 16 [39], 20 [40], 21 [41], 22 [42], 29 [43], 104 [44], and 107 [45] under the 1935 Act; (4) Forms ET, ID, and SE under the 1935 Act; and (5) Forms U5A, U5B, U5S, U–1, U–13–1, U–6B–2, U–12–IA, U–12–IB, U–13E–1, U–R–1, U–13–60, U–3A–2, U–3A3–1, and U–7D under the 1935 Act. Also a subject of this analysis is new Regulation S–T, General Rules and Regulations for Electronic Filings, under the 1935 Act.

The analysis notes that the proposed form and rule changes are intended to facilitate filers' preparation to submit and submission of documents to the Commission; investors' access to the documents submitted; and the Commission's retrieval, storage, processing and dissemination of such documents.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that the overall effect of the proposed amendments would be to decrease slightly the impact of reporting, recordkeeping and compliance requirements upon those submitting documents to the Commission. For example, filers would have more flexibility in determining when to submit a filing since submissions may be made by direct transmission over telephone lines during extended hours. In addition, multiple copies of electronic format documents would not need to be submitted, and a part of a filing intended to be inserted in more than one otherwise incomplete subsequent filing could be filed only once as a modular filing.

As the analysis indicates, several possible significant alternatives to the proposals were considered, including among others, establishing different compliance or reporting requirements for small entities, implementing performance standards rather than design standards for such entities, or exempting small entities from all or part of the proposed requirements. As more fully discussed in the analysis, the Commission has designed the EDGAR system to accommodate small entities to the greatest degree possible while still carrying out its mandate to develop a system for the electronic dissemination of information to the public. Small companies will be the last group phased into the system, allowing them to take advantage of the substantial body of experience gained by those who precede them. Even after they are phased in, small entities will not be required to file electronically if they satisfy the requirements of a temporary or permanent hardship exemption. The Commission will provide all filers, at no expense, with the communications software required to make submissions directly to the system, and for those companies that cannot afford a modem, the Commission will allow submissions to be made on diskette. None of the alternatives considered would accommodate small entities without infringing on one of the purposes of the Act to provide to investors access to information relating to public utility holding companies and their subsidiary companies and affiliates in order to allow them to make informed investment decisions.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Richard T. Miller at (202) 504–2288, Division of Investment Management, Stop 10–6, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

XI. Statutory Basis For Rule and Form Proposals

The amendments to 17 CFR part 200, Organization; Conduct and Ethics; and Information and Requests, are being proposed under section 20 of the 1935 Act. The amendment to 17 CFR part 202, Informal and Other Procedures, is proposed under section 20 of the 1935 Act. The amendments to the general rules and regulations under the 1935 Act are being proposed under sections 3 and 20 of the 1935 Act. The amendments to the 1935 Act Forms are proposed under sections 5, 6, 7, 10, 12, 13, 14, 17, and 20 of the 1935 Act.

List of Subjects

17 CFR Part 200

Authority delegations (Government agencies).

17 CFR Part 202

Administrative practice and procedure.

17 CFR Part 250

Utilities.

17 CFR Part 259

Utilities.

[39] 17 CFR 250.16.
[40] 17 CFR 250.20.
[41] 17 CFR 250.21.
[42] 17 CFR 250.22.
[43] 17 CFR 250.29.
[44] 17 CFR 250.104.
[45] 17 CFR 250.107.

XII. Text of Proposed Rules

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as set forth below.

Note: Forms ET (§ 259.601), ID (§ 259.602) and SE (§ 259.603) referenced in chapter II are proposed to be revised as set forth in the appendix to Securities Act Release No. 33–6944 and will not appear in the Code of Federal Regulations

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Subpart A—Organization and Program Management of Part 200 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 7811(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 200.30–5 by adding paragraphs (m) and (n) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(m) With respect to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) and Regulation S–T (§ 232.10 *et seq.*), to grant or deny a request to adjust the filing date of a filing submitted under Regulation S–T.

(n) With respect to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) and Regulation S–T (§ 232.10 *et seq.*), to grant or deny applications for and set the terms of temporary and continuing hardship exemptions under rules 101 and 102 of Regulation S–T, respectively (§§ 232.101 and 232.102 of this chapter).

PART 202—INFORMAL AND OTHER PROCEDURES

3. The authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 7811(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

4. By revising the fifth sentence of paragraph (a) of § 202.3 to read as follows:

§ 202.3 Processing of filings.

(a) * * * A similar procedure is followed with respect to filings under the Investment Company Act of 1940 and certain filings relating to investment companies under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939, which are routed to the Division of Investment Management, and filings under the Public Utility Holding Company Act of 1935 which are also routed to the Division of Investment Management. * * *

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PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

5. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t unless otherwise noted.

6. By amending § 250.16 by adding a note following paragraph (c) to read as follows:

§ 250.16 Exemption of non-utility subsidiaries and affiliates.

* * * * *

(c) * * *

Note: Exhibits filed under paragraph (c) shall be submitted to the Commission in paper only, whether or not the registrant is otherwise required to file in electronic format. An electronic filer must submit paper exhibits under cover of Form SE (§ 259.603).

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7. By amending § 250.20 by revising paragraph (b), adding a sentence at the end of paragraph (c), and adding paragraph (f) to read as follows:

§ 250.20 Prescribed forms and amendments.

* * * * *

(b) *Amendments.* Amendments to any such document, other than amendments to applications or declarations filed on Form U–1, shall comply with the requirements of the original document and shall state the complete text of each item amended. Amendments shall be filed under cover of the form amended, and shall be marked with the suffix "/A" to designate the document as an amendment, *e.g.*, "U–7D/A."

(c) * * * Amendments shall be marked either "U–1/A" to designate the document as a pre-effective amendment or "POS AMC" to designate the document as a post-effective amendment.

* * * * *

(f) *Electronic Filings.* (1) Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) The terms "EDGAR," "EDGAR Filer Manual," "electronic filer," "electronic filing," "electronic format," "electronic submission," "paper format," and "signature" shall have the meanings assigned to such terms in Regulation S–T—General Rules for Electronic Filings (§ 232.10 *et seq.* of this chapter).

8. By amending § 250.21 by designating the current text as paragraph (a), adding the paragraph heading "*General provision*" to the beginning of paragraph (a) and adding paragraph (b) to read as follows:

§ 250.21 Filing of documents.

(a) *General provision.* * * *

(b) *Electronic Filings.* (1) All documents required to be filed with the Commission under the Act or the rules and regulations thereunder shall be filed at the principal office in Washington, D.C. via EDGAR by delivery to the Commission of a magnetic tape or diskette, or by direct transmission.

(2) The date of filing of documents shall be determined in the manner set forth in rule 12 of Regulation S–T (§ 232.12 of this chapter).

(3) Signatures shall be in typed form rather than manual format. *See* rule 13 of Regulation S–T (§ 232.13 of this chapter).

9. By amending § 250.22 by redesignating the text after the paragraph heading as paragraph (b)(1), and adding paragraph (b)(2) and paragraph (g) to read as follows:

§ 250.22 Applications and declarations.

* * * * *

(b) *Incorporation by reference.*

(1) * * *

(2) *Electronic Filings.* Any application or declaration filed in electronic format may incorporate by reference any information contained in any document previously or concurrently filed with the Commission under any Act administered by it, provided that the document has been filed in electronic format. Such information shall be incorporated by specific reference to the electronic filing in which it was filed, including the filer's name, the file number, the form type and the date filed.

* * * * *

(g) *Electronic Filings.* Notwithstanding the requirements of any rule, the following provisions shall be applicable to all applications, declarations, certificates and statements, or other documents filed under the Act, and any amendments thereto, that are submitted in electronic format:

(1) An electronic format document, submitted in the manner prescribed by the EDGAR Filer Manual, shall satisfy the requirement that more than one copy of such document be filed with or provided to the Commission.

(2) The requirements as to size, quality and color of paper are

suspended for documents in electronic format. The requirement for a copy to be bound in one or more parts shall be satisfied by including in a single submission in electronic format all documents required to be so bound.

(3) Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

10. By amending § 250.29 by adding a preliminary note to read as follows:

§ 250.29 Filing of reports to stockholders and State Commissions.

Preliminary Note: Reports to stockholders and State Commissions shall be submitted to the Commission in paper only, whether or not the filer is otherwise required to file in electronic format.

* * * * *

11. By amending § 250.104 by adding a preliminary note to read as follows:

§ 250.104 Public disclosure of information and objections thereto.

Preliminary Note: If any person wishes to object to the public disclosure of any information contained in a filing with the Commission under any provision of the Act then that portion thereof which contains such information shall be submitted in paper format only, whether or not the filer is an electronic filer.

* * * * *

12. By amending § 250.107 by adding a Note at the end of the section to read as follows:

§ 250.107 Payment of fees.

* * * * *

Note: § 202.3a of this chapter sets forth procedures for payment of fees with respect to a filing that is submitted electronically.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

13. The authority citation for part 259 is revised to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

Note.—The text of the following forms and the amendments will not appear in the Code of Federal Regulations.

14. By amending Form U5A (§ 259.5a) by adding Instruction 4 to read as follows:

Instructions and Form

Form U5A—Notification of Registration Filed under Section 5(a) of the Public Utility Holding Company Act of 1935

* * * * *

Instructions for Form U5A

* * * * *

4. Electronic Filers

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Requirements as to paper size and multiple copies required to be filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

15. By amending Form U5B (§ 259.5b) by adding Instruction 6 and removing the "." and adding a phrase to the end of Instructions for Exhibits E, F and G to read as follows:

Instructions and Form

Form U5B—Registration Statement Filed Pursuant to Section 5 of the Public Utility Holding Company Act of 1935

* * * * *

Instructions

* * * * *

6. Electronic Filers

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Electronic filers may incorporate by reference only documents filed in electronic format, except that maps that are incorporated by reference shall be submitted in paper under cover of Form SE (§ 259.603).

Attention is directed to Instructions to Exhibits E, F, and G that are required to be submitted in paper, even if submitted by an electronic filer.

Data that appears in tabular or columnar format shall be marked as prescribed in the EDGAR Filer Manual.

Requirements as to paper size and multiple copies required to be filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Exhibits

* * * * *

Instructions

* * * * *

Exhibit E. * * *; *provided that* all maps shall be filed in paper under cover of Form SE (§ 259.603) if submitted by an electronic filer.

Exhibit F. * * *; *provided that* electronic filers shall submit such reports in paper format only under cover of Form SE (§ 259.603).

Exhibit G. * * *; *provided that* electronic filers shall submit such reports in paper format only under cover of Form SE (§ 259.603).

* * * * *

16. By amending Form U5S (§ 259.5s) by removing the "." and adding a phrase to the end of General Instruction 3, adding General Instruction 8, removing the "." and adding a phrase to the end of Exhibit A to Item 9 and adding Exhibit G to Item 9 to read as follows:

Instructions and Form

Form U5S—Annual Report

* * * * *

General Instructions

* * * * *

3. * * *; *provided that* electronic filers may incorporate by reference only documents filed in electronic format.

* * * * *

8. Electronic Filers

Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Attention is directed to Item 601(c) of Regulation S–K (Financial Data Schedule) for certain items of financial information that may be required.

Data that appears in tabular or columnar format shall be marked as prescribed in the EDGAR Filer Manual.

Requirements as to paper size and multiple copies required to be filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Item 9. Financial Statements and Exhibits

* * * * *

Exhibit A. * * *; *provided that* the annual report to shareholders shall be included in the duplicate copy of the Form U5S and shall be filed in paper, even if submitted by an electronic filer.

* * * * *

Exhibit G. Financial Data Schedule

If, at the time an annual report on this form is filed, the registrant is required to submit this report and any amendments thereto electronically via EDGAR, the registrant shall furnish Financial Data Schedules. The Schedule shall set forth the financial and other data specified below that are applicable to the registrant, each subsidiary and the consolidated system.

Item No.	Caption heading
1	Total Net Utility Plant.
2	Other Property and Investments.
3	Total Current Assets.
4	Total Deferred Charges.
6	Balancing amount for Total Assets.

Item No.	Caption heading
6	Total Assets.
7	Common Stock.
8	Capital Surplus, Paid In.
9	Retained Earnings.
10	Total Common Stockholders Equity.
11	Preferred Stock Subject To Mandatory Redemption.
12	Preferred Stock Not Subject To Mandatory Redemption.
13	Long Term Debt, Net.
14	Short Term Notes.
15	Notes Payable.
16	Commercial Paper.
17	Long Term Debt—Current Portion.
18	Preferred Stock—Current Portion.
19	Obligations Under Capital Leases.
20	Obligations Under Capital Leases—Current Portion.
21	Balancing amount for Capitalization and Liabilities.
22	Total Capitalization and Liabilities.
23	Gross Operating Revenue.
24	Federal and State Income Taxes Expense.
25	Other Operating Expenses.
26	Total Operating Expenses.
27	Operating Income (Loss).
28	Other Income (Loss), Net.
29	Income Before Interest Charges.
30	Total Interest Charges.
31	Net Income.
32	Preferred Stock Dividends.
33	Earnings Available For Common Stock.
34	Common Stock Dividends.
35	Total Annual Interest Charges on All Bonds.
36	Cash Flow From Operations.
37	Earnings Per Share—Primary.
38	Earnings Per Share—Fully Diluted.

* * * * *

17. By amending Form U–1 (§ 259.101) by adding General Instruction G; and removing the "." and adding a phrase to the end of Instruction E and adding Instruction G to Instructions as to Exhibits to read as follows:

Instructions and Form

Form U–1—Application or Declaration Under the Public Utility Holding Company Act of 1935

* * * * *

General Instructions

* * * * *

G. Electronic Filers.

Electronic filers are subject to Regulation S-T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Requirements as to multiple copies filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Instructions as to Exhibits

* * * * *

E. * * *; *provided that* the map shall be filed in paper under cover of Form SE (§ 259.603) if submitted by an electronic filer.

* * * * *

G. Financial Data Schedule

If, at the time an application or declaration on this form is filed, the registrant is required to submit this report and any amendments thereto electronically via EDGAR, the registrant shall furnish Financial Data Schedules. The Schedules shall set forth the financial and other data specified below on a per book and pro forma basis by registrant, each subsidiary and the consolidated system, where applicable. The Financial Data Schedules are also applicable to post-effective amendments to Form U–1 ("POS AMC") by registrant, each subsidiary and the consolidated system, where applicable.

Item No	Caption heading
1	Total Net Utility Plant.
2	Other Property and Investments.
3	Total Current Assets.
4	Total Deferred Charges.
5	Balancing amount for Total Assets.
6	Total Assets.
7	Common Stock.
8	Capital Surplus, Paid In.
9	Retained Earnings.
10	Total Common Stockholders Equity.
11	Preferred Stock Subject To Mandatory Redemption.
12	Preferred Stock Not Subject To Mandatory Redemption.
13	Long Term Debt, Net.
14	Short Term Notes.
15	Notes Payable.
16	Commercial Paper.
17	Long Term Debt—Current Portion.
18	Preferred Stock—Current Portion.
19	Obligations Under Capital Leases.
20	Obligations Under Capital Leases—Current Portion.
21	Balancing amount for Capitalization and Liabilities.
22	Total Capitalization and Liabilities.
23	Gross Operating Revenue.
24	Federal and State Income Taxes Expense.
25	Other Operating Expenses.
26	Total Operating Expenses.
27	Operating Income (Loss).
28	Other Income (Loss), Net.
29	Income Before Interest Charges.
30	Total Interest Charges.
31	Net Income.
32	Preferred Stock Dividends.
33	Earnings Available For Common Stock.
34	Common Stock Dividends.
35	Total Annual Interest Charges on All Bonds.
36	Cash Flow From Operations.
37	Earnings Per Share—Primary.
38	Earnings Per Share—Fully Diluted.

* * * * *

18. By amending Form U–13–1 (§ 259.113) by revising the form heading and adding Instruction 7 to read as follows:

Instructions and Form

Form U–13–1—Application for Approval of Mutual Service Company Pursuant to Rule 88 or Declaration with Respect to Organization and Conduct of Business of Subsidiary Service Company Pursuant to Rule 88

* * * * *

Instructions for Form U–13–1

* * * * *

7. Electronic Filers

Electronic filers are subject to Regulation S-T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Requirements as to paper size and multiple copies required to filed with the Commission do not apply to electronic format documents.

Data that appears in tabular or columnar format shall be marked as prescribed in the EDGAR Filer Manual.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

19. By amending Form U–6B–2 (§ 259.206) by adding an Instruction to the end of the form to read as follows:

Instruction and Form

Form U–6B–2—Certificate of Notification

* * * * *

Instruction

Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

20. By amending Form U–12(I)–A (§ 259.212a) by adding Item 7 to Instructions to read as follows:

Instructions and Form

Form U–12(I)–A

Statement Pursuant to Section 12(i) of Public Utility Holding Company Act of 1935 by a Person Employed or Retained by a Registered Holding Company or a Subsidiary Thereof

* * * * *

Instructions

* * * * *

Item 7. Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10 – 232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Data that appears in tabular or columnar format shall be marked as prescribed in the EDGAR Filer Manual.

Requirements as to multiple copies filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

21. By amending Form U–12(I)–B (§ 259.212b) by revising the form heading and adding Item 7 to Instructions to read as follows:

Instructions and Form

Form U–12(I)–B

Statement Pursuant to Section 12(i) of Public Utility Holding Company Act of 1935 by a Person Regularly Employed or Retained by a Registered Holding Company or a Subsidiary Thereof and Whose Employment Contemplates Only Routine Expenses as Specified in Rule 71(b)

* * * * *

Instructions

* * * * *

Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10 -232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Data that appears in tabular or columnar format shall be marked as prescribed in the EDGAR Filer Manual.

Requirements as to multiple copies filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

22. By amending Form U–13E–1 (§ 259.213) by revising the form heading and adding a new paragraph to Instructions to read as follows:

Instructions and Form

Form U–13E–1

Report to be Filed Pursuant to Rule 95 Under the Public Utility Holding Company Act by an Affiliate Service Company or a Company Principally Engaged in the Performance of Services

* * * * *

Instructions for Form U–13E–1

* * * * *

Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10 - 232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Requirements as to paper size and quality and multiple copies required to be filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

23. By amending Form U-R–1 (§ 259.221) by revising the form heading and adding an Instruction at the end of the form to read as follows:

Instructions and Form

Form U–R–1—Declarations as to Solicitations Pursuant to Rule 62

* * * * *

Instruction to Form U–R–1

Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10 -232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Requirements as to multiple copies filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

* * * * *

Schedule XIX. Financial Data Schedule

If, at the time an annual report on this form is filed, the registrant is required to submit this report and any amendments thereto electronically via EDGAR, the registrant shall furnish a Financial Data Schedule. The Schedule shall set forth the financial and other data specified below that are applicable to the registrant on a consolidated basis.

Item No.	Caption heading
1	Net Service Company Property.
2	Total Investments.
3	Total Current and Accrued Assets.
4	Total Deferred Debits.
5	Balancing Amount For Total Assets and Other Debits.
6	Total Assets and Other Debits.
7	Total Proprietary Capital.
8	Total Long-Term Debt.
9	Notes Payable.
10	Notes Payable to Associate Companies.
11	Balancing Amount For Total Current and Accrued Liabilities.
12	Total Deferred Debits.
13	Accumulated Deferred Income Taxes.
14	Total Liabilities and Proprietary Capital.
15	Services Rendered to Associate Companies.
16	Services Rendered to Nonassociate Companies.
17	Miscellaneous Income or Loss.
18	Total Income.
19	Salaries and Wages.
20	Employee Pensions and Benefits.
21	Balancing Amount For Total Expenses.
22	Total Expenses.
23	Net Income (Loss).
24	Total Expenses (Direct Costs).
25	Total Expenses (Indirect Costs).
26	Total Expenses (Total).
27	Number Of Personnel End Of Year.

* * * * *

25. By amending Form U–3A–2 (§ 259.402) by revising the form heading and adding Exhibit B and Instruction 6 to read as follows:

Instructions and Form

Form U–3A–2—Statement by Holding Company Claiming Exemption Under Rule 2 from the Provisions of the Public Utility Holding Company Act of 1935

* * * * *

Exhibit B. Financial Data Schedule

If, at the time a report on this form is filed, the registrant is required to submit this report and any amendments thereto electronically via EDGAR, the registrant shall furnish a Financial Data Schedule. The Schedule shall set forth the financial and other data specified below that are applicable to the registrant on a consolidated basis.

Item No.	Caption heading
1	Total Assets.
2	Total Operating Revenues.
3	Net Income.

* * * * *

Instructions for Form U–3A–2

* * * * *

6. Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Requirements as to paper size do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

28. By amending Form U–3A3–1 (§ 259.403) by revising the form heading and adding General Instruction 9 to read as follows:

Instructions and Form

Form U–3A3–1—Twelve-Month Statement by Bank Claiming Exemption as a Holding Company, or Exemption from Section 9(a)(2) of the Public Utility Holding Company Act of 1935 under Rule 3 of the General Rules and Regulations under the Act

* * * * *

General Instructions for Form U–3A3–1

* * * * *

9. Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Data that appears in tabular or columnar format shall be marked as prescribed in the EDGAR Filer Manual.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

27. By amending Form U–7D (§ 259.404) by adding Instruction 11 to read as follows:

Instructions and Form

Form U–7D—Certificate Pursuant to Rule 7(d) Public Utility Holding Company Act of 1935

* * * * *

Instructions to Form U–7D

* * * * *

11. Electronic Filers. Electronic filers are subject to Regulation S–T (§§ 232.10–232.306 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of this form.

Requirements as to multiple copies filed with the Commission do not apply to electronic format documents.

Signatures shall be in typed form rather than manual format. See rule 13 of Regulation S–T (§ 232.13 of this chapter).

§ 259.50 [Removed]

28. By removing § 259.501 and Form U–A.

29. By revising § 259.603 to read as follows:

§ 259.603 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by any electronic filer for the submission of any required paper format exhibit pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940, *provided that* submission of such paper format exhibit is permitted pursuant to rule 101 or rule 102 of Regulation S–T (§ 232.101 and § 232.102 of this chapter).

By the Commission.

Dated: July 23, 1992.

Note: The appendices will not appear in the Code of Federal Regulations.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—List of Filings Required To Be Submitted Electronically

Registration and Annual Supplements

Form U5A (Notification of registration filed under Section 5(a) of the 1935 Act)
Form U5B (Registration statement filed under Section 5 of the 1935 Act)
Form U5S (Annual Report for Each Registered Holding Company)

Applications and Declarations

Form U–1 (Application or declaration under the 1935 Act)
Form U–13–1 (Application for approval of mutual service company pursuant to rule 88)

Statements and Reports

Form U–6B–2 (Certificate of notification pursuant to rule 20(d))
Form U–12(I)–A (Statement pursuant to Section 12(i) of the 1935 Act)
Form U–12(I)–B (Annual statement pursuant to Section 12(i) of the 1935 Act)
Form U–13E–1 (Report by affiliate companies and independent service companies pursuant to rule 95)
Form U–R–1 (Declaration as to solicitations pursuant to rule 62)

Periodic Accounting Reports

Form U–13–60 (Annual report for mutual and subsidiary service companies pursuant to rule 94)

Statements and Reports from Non-Registered (Exempt) Companies

Form U–3A–2 (Statement by holding company claiming exemption under rule 2 from provisions of the 1935 Act)
Form U–3A3–1 (Twelve-month statement by bank claiming exemption from the 1935 Act pursuant to rule 3)
Form U–7D (Certificate pursuant to rule 7(d))

Other Filings

POS AMC (Post-effective amendment to Form U–1)
45B–3 (Transactional notification pursuant to rule 45(b)(3))
35 APP (Statement concerning proposed transaction pursuant to rule 20(e) for which no form of application is prescribed)
35–CERT (Certificate required from declarant or applicant under rule 24)

In addition to the forms listed above, any amendments to these forms will be required to be submitted electronically. Amendments submitted electronically shall be filed under cover of the form amended and shall be marked with the suffix "/A" to designate the document as an amendment, *e.g.*, "U–1/A."

The only form listed above that would not have a corresponding amendment form number would be "POS AMC", which is already designated as a post-effective amendment to Form U–1.

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Part 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

* * * * *

Section 232.200 Exhibits.

* * * * *

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, persons submitting filings electronically under the 1935 Act shall file all exhibits, including any exhibit previously filed in paper, electronically unless a hardship exemption (§§ 232. 101 and 232. 102 of this chapter) has been granted or the specific form provides otherwise.

* * * * *

Section 232.305 Division of Investment Management EDGAR Transition.

(a) *Registrant transition to electronic submission via EDGAR.* Registrants whose filings are subject to review by the Division of Investment Management shall be subject to the electronic filing requirements of this Part ("phased-in") in accordance with the phase-in schedule established and published by the Commission, including any amendments thereto (the "Phase-In Schedule"). At the conclusion of phase-in, all remaining registered investment companies or business development companies shall be subject to the electronic filing requirements of this Part.

* * * * *

(c) *Phase-in Rule for Public Utility Act Filers.* When a Public Utility Filer is phased-in to electronic filing in accordance with the Commission's published phase-in schedule, it will be considered phased-in for purposes of all filings submitted to the Commission under the 1935 Act, except as otherwise provided, and all such filings shall be submitted electronically, absent a hardship exemption granted by the Commission. In addition, a subsidiary company of a phased-in public-utility holding company shall be required, absent a hardship exemption granted by the Commission, to submit all required filings under the 1935 Act electronically. Any Public Utility Filer that does not make Securities Act or Exchange Act filings and is not part of a holding company system previously phased in will be deemed to have the same phase-in date for electronic filing as the final phase-in group of registrants whose filings are subject to review by the Division of Corporation Finance.

* * * * *

(e) *Required electronic filing for Phased-in Filers.* A registrant that is phased in, under either the mandatory electronic filing provisions of paragraph (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under rule 100 of Regulation S–T (§ 232.100 of this chapter) and which are made on or after a registrant's phase-in date, provided, *however* that a registrant need not file electronically a filing under rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date.

* * * * *

(g) *Conforming Paper Format Documents.* Mandated electronic filers shall submit to the Commission a paper copy of each electronic filing for a period of one year after becoming subject to mandated electronic filing (§ 232.100 of this chapter), or such shorter period as the Commission shall determine, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be received at the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy: THIS CONFORMING PAPER FORMAT DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 305(g) OF REGULATION S–T.

(3) Signatures are not required for conforming paper format documents submitted pursuant to paragraph (g) of this section.

(4) EDGAR Pilot participants that elect to participate in advance of their mandatory phase-in date shall not be required to submit a paper copy of each electronic filing until they become subject to mandatory electronic filing.

* * * * *

Section 232.306 Division of Investment Management Electronic Submissions during Transition.

In addition to the electronic submission requirements set forth in rule 100 of this Part,

the following provisions shall apply during the mandatory electronic filing phase-in period:

(a) *Permitted electronic submissions.*

* * * * *

(2) *Public Utility Act Filings.* Prior to its phase-in date, a filer submitting filings under the Public Utility Act may, but is not required to, submit those filings in electronic format provided that, if the filer elects to submit a filing in electronic format, all subsequent amendments to the subject filing shall be filed in electronic format.

* * * * *

(b) *Amendments to Paper Filings.*

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(2) *Public Utility Act Filings.* Unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form, amendments to filings under the Public Utility Act filed in paper prior to the phase-in date of the filer shall be submitted in electronic format in accordance with rule 100 of Regulation S–T (§ 232.100 of this chapter). The subject filing, as amended, including any exhibit that has been previously filed only in paper and which is incorporated by reference into the filing, shall be filed electronically in its entirety.

[FR Doc. 92–17986 Filed 8–6–92; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Parts 202 and 260

[Release Nos. 33–6947; 34–30954; 35–25588; 39–2286; IC–18964; File No. S7–24–92]

RIN 3235–AF55

Instructions for Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment a proposed revision of temporary rule 3a of the Commission's Rules Relating to Informal and Other Procedures that permits filing fees to be remitted to a U.S. Treasury designated lockbox depository in Pittsburgh, Pennsylvania, and the addition of a new rule 7a–10 of the Commission's General Rules and Regulations, Trust Indenture Act of 1939 concerning fees required under the Act. The Commission is required by the Budget Deficit Reduction Act of 1984 and Department of the Treasury regulations implementing that law to achieve same day or next day deposit of monies payable to the Commission. Use of a lockbox depository is the most effective method of complying with these requirements. New rule 3a, which would be a permanent rule, would make lockbox depository use mandatory for all electronic filers. Therefore, as entities and individuals begin filing on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR), they will be required to make all filing fee payments to the lockbox depository. Use of the lockbox depository will continue to be optional until a filer begins making EDGAR filings, although the Commission encourages all filers to use this payment system.

DATES: Comments should be received on or before October 6, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–24–92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jessica L. Kole, Special Counsel (202 272–2700), Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Since August 1984, the Commission has granted filers the option of remitting filing fees to a U.S. Treasury designated lockbox depository in Pittsburgh, Pennsylvania. The temporary amendment to rule 3a [1] was published on June 27, 1984 [2] and its period of applicability has been extended on five occasions.[3] It is currently effective through September 1, 1992.[4] The temporary rule permits filing fees to be remitted either directly to the Commission, or to the lockbox depository. Fees may be remitted to the lockbox depository by wire transfer, mail, or hand delivery. Participants in the pilot phase of the Commission's EDGAR project who file by direct electronic transmission have been required to use the lockbox depository for those filings.[5]

The permanent rule 3a, when adopted, would revise the temporary rule as of its effective date.[6] Under the proposal, filers would be required to remit filing fees directly to the lockbox depository in Pittsburgh, Pennsylvania, according to the procedures in this rule in connection with electronic filings on EDGAR, whether the filings are made by direct transmission, magnetic tape, or diskette.[7] As entities are phased onto EDGAR, the use of the lockbox depository would be required for fees payable for electronic filings made by those entities, as well as filings made by third parties with respect to those entities.[8] Use of the lockbox depository would continue to be optional for fees payable in connection with filings made in paper, although in the future, payment through the lockbox depository may be required for such filings as well.

Under the proposed rule, entities filing via EDGAR would be required to remit fees to the U.S. Treasury designated lockbox depository at the Mellon Bank in Pittsburgh, Pennsylvania. Filing fees will be accepted on behalf of the Commission at the Mellon Bank depository by any of three methods: Wire transfer, mail, or hand delivery. Payments in the form of money order, certified check, cashier's check, cash, wire transfer, or personal check [9] will

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[1] 17 CFR 202.3a.

[2] See Release No. 33–6540 (June 27, 1984) [49 FR 27308 (July 3, 1984)].

[3] See Release Nos. 33–6623 (January 30, 1986) [51 FR 4160 (February 3, 1986)], 33–6674 (November 5, 1986) [51 FR 40791 (November 10, 1986)], 33–6733 (August 31, 1987) [52 FR 33796 (September 4, 1987)], 33–6795 (August 23, 1988) [53 FR 32890 (August 29, 1988)], and 33–6873 (August 14, 1990) [55 FR 34010 (August 21, 1990)].

[4] In February 1986, the Commission issued for notice and comment a release proposing permanent adoption of a rule that would require filings fees to be remitted to designated lockbox depositories. See Release No. 33–6625 (February 13, 1986) [51 FR 6287 (February 21, 1986)]. The rule was not adopted since the Commission determined it was not the appropriate time to make lockbox filing mandatory.

[5] The same is true for Pilot participants who began filing on the operational system July 15, 1992. See, e.g., temporary rule 499(d)(1)(ii) [17 CFR 230.499(d)(1)(ii)], as amended, effective July 15, 1992.

[6] This proposed rule will not apply to fees paid by national securities exchanges under section 31 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C 78ee]. Pursuant to directions issued by the Commission's Office of the Comptroller, those fees must be wired to the Federal Reserve Bank of New York. In addition, fees paid pursuant to Commission rules 80 [17 CFR 200.80], 80e [17 CFR 200.80e], 310 [17 CFR 200.310], 508 [17 CFR 200.508] of the Commission's Rules of Organization and, Program Management, and 4 [17 CFR 203.4] of the Commission's Rules Relating to Investigations, will continue to be paid in accordance with the directions in those rules. These rules generally establish charges for records services such as searching and attestation, facsimile copies of documents, public reference copying, subscription services and microfiche copies. Privacy Act [5 U.S.C. 552a] and Freedom of Information Act [5 U.S.C. 552] searches, and copies of transcripts.

[7] *See* Release Nos. 33–6944, 35–25588, and IC–18863, published today containing the Commission's proposals of new rules to mandate and accommodate electronic filing via EDGAR, including proposed phase-in lists.

[8] The lockbox requirement would be applicable to any electronic filings made after the commencement date of mandated electronic filing, anticipated to be in April 1993. If a person or entity otherwise required to file on EDGAR received a hardship exemption and was permitted to file in paper, the use of the lockbox would be optional for that filing.

[9] As is currently the case, personal checks will not be accepted for payment of fees associated with Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a *et seq.*] registration statements, Exchange Act business combination filings subject to the fee specified by Rule 0–11 [17 CFR 240.0–11], or filings under the Trust Indenture Act of 1939.

be considered received by the Commission at the time of their receipt at the lockbox depository. The Commission will verify fee payments made by wire transfer on a real time basis. Fees paid in any other manner will be verified on a daily basis. Securities Act registration statements will not be accepted and, therefore, will not be deemed filed until the receipt of payment at the lockbox depository has been verified. Accordingly, filers may wish to pay fees with respect to time-sensitive Securities Act registration statements by wire transfer in order to expedite acceptance processing.[10]

To expedite fee processing and improve cash management procedures, the Commission will assign account numbers to every filer required to pay filing fees. Account numbers will be assigned to filers prior to the effective date of this proposed rule.[11] The proposed rule requires that the assigned account number be included with all fee payments.[12]

The Commission also proposes to add a new rule 7a–10 [13] that addresses fee payments made pursuant to the Trust Indenture Act of 1939. This rule, like existing rules under the other federal securities statutes,[14] would inform filers that the payment of fees required by the Act shall be made in accordance with the directions set forth in rule 3a.

Cost-Benefit Analysis

The Commission believes that mandating use of the lockbox depository for EDGAR filings will minimize processing time and result in substantial interest earnings and cost savings for the government. It is also the most efficient and least burdensome way, for both the Commission and filers, to meet the requirements of the Budget Deficit Reduction Act of 1984 and Department of the Treasury regulations implementing that law to achieve same day or next day deposit of monies payable to the Commission. Comment is solicited on the costs and benefits to filers.

[10] *See* Release No. 33–6944, Section III.D.7, published today, for further information concerning acceptance processing.

[11] A filer's account number will be the same as the filer's CIK number. See Release No. 33–6944, Section III.D.3.

[12] Non-registrant third parties should contact the Filer Support Unit at (202) 272–7171 to receive an account number prior to submitting the first filing for which a fee is to be paid from the third party's account. Fees incurred by a third party for a filing made with respect to a registrant will not be paid from the registrant's account.

[13] 17 CFR 260.7a–10.

[14] See, e.g., Securities Act Rule 111 [17 CFR 230.111].

Request For Comment

The Commission finds, in accordance with the Administrative Procedure Act,[15] that the new rules relate solely to agency organization, procedure or practice and that advance notice and opportunity for comment are not necessary. Nonetheless, the Commission believes that it is in the public interest to solicit and accept public comments and will do so until October 6, 1992. Any interested persons wishing to submit written comments on the proposed rules, as well as on other matters that may have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[16]

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and Trustees.

Text of Proposed Rules

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 7811(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

2. Section 202.3a is revised to read as follows:

§ 202.3a Instructions for filing fees.

Payment of filing fees specified by the following rules shall be made according to the directions listed in this part: § 230.111 (17 CFR 230.111), § 240.0–9 (17 CFR 240.0–9), § 250.107 (17 CFR 250.107), § 260.7a–10 (17 CFR 260.7a–10), § 270.0–8 (17 CFR 270.0–8), and § 275.203–3(b) (17 CFR 275.203–3(b)). All such fees payable with respect to filings made through the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system shall be remitted to the U.S. Treasury designated lockbox depository at the Mellon Bank in Pittsburgh, Pennsylvania, by wire transfer, mail or hand delivery. Fees payable with respect to other filings may be either remitted to the lockbox depository, or remitted directly to the Commission at 450 Fifth Street, NW., Washington DC 20549. Personal checks cannot be accepted for fees with respect to Securities Act of 1933 registration statements, Trust Indenture Act of 1939 filings, and fees required by § 240.0–11 (Rule 0–11 under the Securities Exchange Act of 1934). All filers must include their assigned account numbers on fee payments. If a third party submits a fee payment, the fee payment must specify the third party's account number to which the fee is to be applied. Filing fees paid pursuant to the Securities Act of 1933 or pursuant to Section 307(b) of the Trust Indenture Act of 1939 should be designated as "restricted" in order to ensure prompt processing of filings made under these Acts. Specific instructions on the various methods of making fee payments to the lockbox depository are as follows:

(a) Wire Transfer: Those who wish to wire fee payments may use any bank or wire transfer service to initiate the transaction. All remitters must follow standard Federal Reserve instructions to ensure that fees transferred are received and identifiable. Specific information required for transmission to the Mellon Bank is listed below. Where an item is in **boldface type**, the entry should be made exactly as indicated. Where an item is in *italics*, the filer-specific information should be included.

- Receiving Bank's ABA Number (field two): **043000261**
- Type Code (field three): **1040**
- Name of registrant and name of payor, if different (field nine): **ORG**=*registrant's name/payor's name (if different)*
- Receiving Bank's Name (field ten): **MELLONBANK**
- Transaction Code (field eleven): **CTR/**
- Beneficiary of payment (field twelve): **BNF=SEC/AC–9108739/WRE**
- Reference for Beneficiary (field thirteen): **RFB**=*account number to which the fee is to be applied*
- Payment Details (field fourteen): To designate funds as restricted: **OBI=R** Otherwise: **OBI=N**

(b) Mail and Hand Delivery: Checks and money orders are to be made payable to the Securities and Exchange

[15] 5 U.S.C. 553(b)(A).

[16] 15 U.S.C. 78w(a).

Commission, omitting the name or title of any official of the Commission. The account number and a notation of "R" (restricted), as applicable, are to be written on the front of the check or money order. Fees transmitted by mail must be addressed to the Securities and Exchange Commission, Post Office Box 360055M, Pittsburgh, PA 15252. Fees that are hand delivered must be brought to the Mellon Bank, 27th floor, Three Mellon Bank Center, Fifth Avenue at William Penn Way, Pittsburgh, PA. Hand deliveries will be accepted weekdays from 7:30 a.m. to 4 p.m. (eastern time) except on federal holidays. All hand deliveries must be in a sealed envelope, with the Commission's lockbox number, 360055M, and the Commission's account number, 910–8739, written on the outside. Cash payments must be accompanied by a separate sheet of paper providing the same information specified for checks and money orders.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

3. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss.

4. Section 260.7a–10 is added to read as follows:

§ 260.7a–10 Payment of fees.

All payments of fees for applications under the Act shall be made in cash, by wire transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. There will be no refunds. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

By the Commission.

Dated: July 23, 1992

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17967 Filed 8–6–92; 8:45 am]

BILLING CODE 8010–01–M

federal register

Friday
August 7, 1992

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Proposed Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1992-93 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting: Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1992-93 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes special migratory bird hunting regulations that would be established for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands for the 1992–93 migratory bird hunting season.

DATES: The comment period for these proposed regulations will end August 24, 1992.

ADDRESSES: Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634—Arlington Square, Washington, DC 20240. Comments received, if any, on these proposed special hunting regulations and tribal proposals will be available for public inspection during normal business hours in Room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION:

In the May 8, 1992 **Federal Register** (57 FR 19863), the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1992–93 hunting season, under the guidelines described in the June 4, 1985 **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

Because of recent questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, there is a need to provide clarification here. The Service routinely provides **Federal Register** copies of published proposed and final rulemakings and other documents to all State Directors, tribes and others. It is the responsibility of the States, tribes and others to bring any objectionable features of regulations to the attention of the Service. Consultation will be initiated at the point in time at which the Service is made aware of a concern. The Service cannot presume to know beforehand what, if any, concerns will be voiced regarding rulemakings.

The guidelines provide for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource.

For the past several hunting seasons, 1987–88 through 1991–92, the Service has reached an agreement with the Mille Lacs Band of Chippewa Indians in Minnesota for hunting by tribal members on their lands. Similar agreements have been reached with other tribes in other hunting seasons. Tribes are encouraged to work with the Service in developing agreements for management of migratory bird resources on tribal lands.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird populations, the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservations is normally too small to have significant impacts on the migratory bird resource when compared with the larger off-reservation sport harvest by non-Indians.

An area of concern relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse harvest impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, because tribal proposals must include: (a) Details on the harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending

evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes they have been tested adequately and they were made final beginning with the 1988–89 hunting season (53 FR 31612). It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

The Service notes that duck numbers again last year were not substantially changed from those of the previous two years, largely because of poor reproduction caused by a long period of drought in the Prairie Pothole Region of Canada and the United States. The extended drought has been especially severe, and for conservation pruposes, duck hunting regulations were again restrictive during the 1991–92 hunting season. Although ground water conditions have improved somewhat, preliminary results of recent breeding population surveys indicate little overall improvement in duck population status, and restrictive hunting regulations can be expected again for the 1992–93 season.

Hunting Season Proposals From Indian Tribes and Organizations

For the 1992–93 hunting season, the Service received requests from twelve tribes and Indian organizations that followed the 1985 proposal guidelines and were appropriate for publication in the **Federal Register** without further and/or alternative actions. In addition, the Service received proposals or other correspondence from the Klamath Tribe (Oregon), the Seminole Tribe of Florida and the Mille Lacs Band of Chippewa Indians (Minnesota). The Mille Lacs Band forwarded a copy of the Memorandum of Understanding between the Service and the tribe with regard to migratory bird hunting during the upcoming 1992–93 season. The Service intends to seek further dialogue with the other two tribal groups to develop mutually acceptable hunting regulations and/or to formalize Service-tribal agreements for multi-year tribal formulation of regulations and management of the migratory bird resource. The Service actively solicits regulatory proposals from other tribal groups that have an interest in working cooperatively in the interest of waterfowl and other migratory game birds.

It should be noted that this proposed rule includes generalized regulations for both early and late season hunting. As with last year, there will be a final rule published later in an August 1992 **Federal Register** that will include tribal regulations for early hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. Then, there will be a final rule published in a September 1992 **Federal Register** that will include regulations for late season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species. In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information is not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for ducks on some areas are shown as "Same as permitted Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same that will be permitted the State(s) in which the tribal hunting area is located. The proposed frameworks for early season regulations are scheduled for July publication in the **Federal Register**, and these final Federal frameworks will be published in mid-August. Proposed late season frameworks for waterfowl and coots will be published in mid-August, and the final Federal frameworks for the late season will be published in a mid-September **Federal Register**. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established.

As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

The proposed regulations for the twelve tribes with proposals that meet the Service's criteria are shown below.

1. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both Penobscot tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applies only to tribal members. At the Service's request, the tribe has monitored black duck and other waterfowl harvest during each sustenance season and has confirmed that it is negligible in size. The waterfowl harvest in the 1991–92 sustenance season was low, and similar to that of the previous season.

In a June 2, 1992, memo, the Penobscot Nation outlined their 1992–93 migratory bird hunting season proposal to the Service. The tribe requests special regulations for tribal members in Penobscot Indian Territory, an area of trust lands that includes but is much larger than the reservation. These additional lands were acquired by the tribe as a result of 1980 Maine Indian Claims Settlement. The tribe is proposing a 1992–93 sustenance hunting season of 74 days (September 19–November 30), with a daily bag limit of 4 ducks including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl seasons overlap, the daily bag limit for tribal members would be only the larger of the two daily bag limits. All other Federal regulations, including those for nontoxic shot, would be observed by tribal members, except that shooting hours would be from one-half hour before sunrise to one-half hour after sunset. However, if the Tribal Council approves the proposal, the final rulemaking for the Penobscot Indian Territory will show a shooting hour closure to sunset, rather than one-half hour after. Nontribal members hunting within Penobscot Indian Territory would adhere to the waterfowl hunting regulations established by the State of Maine.

The regulations put forward by the Penobscot Nation are more conservative than those established last year and the Service proposes to approve them.

2. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. The

proposed seasons and bag limits would be more conservative than allowed by the Federal frameworks of last season. As previously stated, Federal frameworks for this current season have not been determined due to the fact that 1992 waterfowl production figures are not known at present. However, based on existing information they are unlikely to be less conservative than those of the 1991–92 season.

In a May 20, 1992, proposal, the tribe requested the earliest opening date permitted Pacific Flyway States for ducks for the 1991–93 hunting season and a closing date of November 30, 1992. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. However, it is proposed again that no canvasbacks be allowed in the bag. Also, the tribe requested that the goose season continue to be closed. The tribe conducts a harvest survey each year, and the duck harvest has been small.

The requested regulations are the same as were established last year, and the Service proposes to approve the tribe's request for the 1991–93 hunting season.

3. Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. In the past, the tribe has observed the waterfowl hunting regulations established by the State of South Dakota. However, the tribute is continuing to develop a wildlife management program, and in a May 12, 1992, proposal, requested special waterfowl hunting regulations for the 1992–93 hunting season. The regulations would apply to both tribal members and nonmembers hunting on tribal and trust lands within the external boundaries of the reservation. The tribe requests a continuous duck season, beginning on October 17 and ending on November 29, 1992, and the same daily bag and possession limits permitted in the Low Plains portion of South Dakota, under final Federal frameworks to be announced. The requested hunting season dates would be within Federal frameworks. The harvest is expected to be low because of the small number of hunters.

The tribe requested that the goose hunting season begin on October 10, 1992, and extend through January 3, 1993. The daily bag and possession limits would be as established for South Dakota in the Missouri River Zone.

The Service proposes to approve the tribal proposal and to continue the requested duck hunting regulations on an experimental basis. The Service asks that the tribe continue to survey and report the harvest to ensure that hunting activity and harvest stay as low as anticipated.

4. Yankton Sioux Tribe, Marty, South Dakota

On June 1, 1992, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1992–93 season. The Yankton Sioux tribal waterfowl hunting season is open to both tribal members and nonmembers. All hunters must be in possession of a valid tribal license while hunting on Yankton Sioux trust lands.

The tribe has requested a continuous Canada, snow and white-fronted goose hunting season, beginning on October 17, 1992, and ending on January 10, 1993. Goose daily bag and possession limits would be the same as those for the State of South Dakota, except for the special extended goose season. A special extended goose season is proposed within the Yankton Sioux Reservation. This season would begin at the close of the regular goose season. During this extended season, hunting for geese would be allowed only in the special hunting zone established by the Yankton Sioux Tribe in the area commonly known as the Chalk Rock Colony. Bag limit and other regulations information, as well as maps, for this zone will be available at the Bureau of Indian Affairs Office in Wagner, South Dakota.

The duck, coot and swan hunting regulations proposed by the Yankton Sioux Tribe, including seasons and bag limits, are in accordance with those set by the State of South Dakota. The possession limits for ducks, coots and geese would be twice the daily bag limits.

The Service proposes to approve the Yankton Sioux proposal for the 1992–93 hunting season, with a requirement that the tribe continue to monitor and report the harvest of Canada and white-fronted geese.

5. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. In a May 22, 1992, letter, the tribe requested regulations that are essentially unchanged from those proposed last hunting year.

The hunting zone for waterfowl continues to be restricted to a more limited area than before the 1991–92 hunting year. The open area is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. All other waters of the reservation would be closed to waterfowl hunting.

The tribe is proposing a continuous duck, coot, merganser, gallinule and moorhen hunting season for 1992–93, with an opening date of November 14, 1992, and a closing date of January 3, 1993. The tribe requested a daily duck bag limit of 6, of which 2 could be either redheads or canvasbacks, or 1 of each. In addition, 1 pintail and 3 mallards, only 1 of which may be a hen, could be taken as part of the daily bag limit. The daily bag limit for coots, gallinules and moorhens would be 25 singly, and in the aggregate.

For geese, the season is proposed to extend from November 14, 1992, through January 3, 1993. Hunting would be limited to Canada geese, and the daily bag limit is 2.

There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through September 30, 1992, in Wildlife Management Units 7 and 10, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 5 and 10, respectively.

Possession limits for the above referenced species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

The regulations requested by the tribe are similar to those approved last year. However, as outlined later in the *Public Comments* section, the Service admits to an oversight last year that resulted in duck bag limits (for both tribal and non-tribal hunters) that were above Pacific Flyway frameworks.

The Service erroneously approved last year's request from the tribe despite the poor continental population status of many species of ducks which migrate through or winter on the White Mountain Apache Reservation. Pacific Flyway duck populations do not appear to have substantially recovered in 1992. Therefore, the Service proposes to approve a maximum 4-duck bag limit, for both tribal and non-tribal hunters, on White Mountain Apache lands.

6. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide additional protection to mallards and pintails; the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1992–93 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. In a May 15, 1992, proposal, for the 1992–93 hunting season, the Shoshone-Bannock Tribes have requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks to be announced. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribal proposal for the above seasons was stated such that if the same number of hunting days are permitted as last year (59) the season would run continuously with a later opening (October 24, 1992) and a later closing (December 21, 1992).

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as in previous years (93), the season would have a later opening (October 10, 1992) and a later closing date (January 10, 1993) than last year.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

The Service notes that the requested regulations are nearly identical to those of last year and proposes to approve the tribes' request for the 1992–93 hunting season.

7. The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority.

In a letter dated June 2, 1992, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1992–93 seasons as follows:

For ducks and coot, the proposed season for tribal members would be from September 1, 1992, through February 1, 1993. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Federal frameworks, to be announced. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail and wood duck the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks, to be announced. It would be necessary for non-tribal hunters to check with the Tulalip tribal authorities for additional conservation measures which may apply for specific species managed within the "region."

For geese, tribal members are proposed to be allowed to hunt from September 1, 1992, through February 1, 1993. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks, to be announced. For tribal hunters, the goose daily bag and possession limits are proposed to be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established in accordance with final Federal frameworks for the State of Washington, to be announced. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington, to be announced.

For snipe, the proposed open seasons follow those regulations for ducks, coot and geese given above. For both tribal and non-tribal hunters, snipe daily bag and possession limits are proposed to be set at 6 and 12, respectively.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other regulations enforced by the tribe.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, a rough estimate of past harvests indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually. The Service proposes to approve the Tulalip Tribes' request for the above seasons and requests that the harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

8. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority. Beginning with the 1985 hunting season, the Service, as requested by the tribes, has established the same migratory bird hunting regulations on the reservation as in the Colorado River Zone in California.

In the June, 1992, proposal, the tribes requested split dove seasons with regulations as follows. The early season is proposed to begin on September 1 and end on September 15, 1992, with the bag limits being ten (10) mourning or ten (10) white wing doves singly or in the aggregate. The late season for doves is proposed to open on November 17 and close on December 31, 1992, with the bag limit being ten (10) mourning doves. A possession limit is twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to sunset, and other special tribally set regulations would apply.

The duck regulations proposed are the same as those approved last year. Again this year, as manifested by survey data, the population status of ducks appears to be insecure. Consequently, while the regulations frameworks for ducks have not been announced, it is likely that restrictive regulations will be necessary for the 1992–93 hunting season. Therefore, the Service proposes to

establish the same migratory bird hunting regulations on the reservation as will be established for California's Colorado River Zone. As in the past, the regulations would apply both to tribal and non-tribal hunters.

9. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. By mutual agreement, waterfowl hunting regulations on the reservation have been the same as established for the Montana area of the Pacific Flyway and included provision for the customary early closure of the goose season on a portion of the reservation.

In a May 26, 1992, letter, the Service was reminded by the Confederated Salish and Kootenai Tribes that, in 1990, a four-year agreement had been signed with the State of Montana regarding fishing and hunting management and regulation that will enable all hunters to utilize waterfowl hunting opportunities on the reservation.

In the May 26 letter, the tribes requested that the Service approve special regulations for the 1992–93 waterfowl hunting season. As in the past, the regulations for non-tribal hunters would be at least as restrictive as for the Pacific Flyway portion of the State and, if circumstances warrant, would provide for early closure of goose hunting.

The requested season dates and bag limits are similar to the regulations of the past few years and it is anticipated there will be no significant changes in harvest levels. A large majority of the harvest is by non-tribal hunters. The Service proposes to approve the tribes' request for special migratory bird regulations for the 1992–93 hunting season.

10. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a June 4, 1992, communication, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 1992–93 hunting season: for ducks (including mergansers), Canada geese, coots, band tailed pigeons, and mourning doves. The Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits permitted Pacific Flyway States under final Federal frameworks to be announced.

In addition, the tribe proposes to require tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation. The Service proposes to approve the Navajo Nation request for these special regulations for the 1992–93 migratory bird hunting seasons.

11. Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin

This current hunting season marks the second year that the Service and the Oneida Tribe have cooperated to establish uniform regulations for migratory bird hunting by tribal hunters within the original reservation boundaries. Since 1985, the Oneida Conservation Department has enforced their own hunting regulations within those original reservation limits. However, the Oneida Tribe has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same.

In a June 15, 1992, letter to the Service, the tribe proposed special waterfowl hunting regulations. For ducks, the tribe proposed that, due to recent poor production from the prolonged drought, duck regulations would coincide with those of the State of Wisconsin.

The goose season is proposed to run from September 1 through November 11, 1992. Bag limits would be two (2) tribally tagged Canada geese per day; the tribe will reissue 2 tags as each 2 birds are registered. The Oneida Conservation Department is recommending a season quota of 150 geese taken. If that quota is attained before the season concludes, the Department recommends closing the season early.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

12. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (which represents the various bands). Beginning in 1986, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service has approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the Great Lakes Indian Fish and Wildlife Commission requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. The Service believes that this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, and the fact that tribal harvest has been small, the Service has approved special regulations since the 1987–88 hunting season on ceded lands in all three States.

For the past (1991–92) waterfowl hunting season, the Great Lakes Indian Fish and Wildlife Commission requested season and bag limit regulations, the same as for the State of Michigan under final Federal frameworks to be announced, for the Bay Mills Community. These regulations were requested under the aegis of asserted reserved hunting rights resulting from the 1836 Treaty between the Federal Government and the Chippewa and Ottawa. The Service approved the requested regulations, and the State of Michigan protested the Service's

actions. A more detailed discussion of this matter is contained in the *Public Comment* section following.

On June 5, 1992, the Great Lakes Indian Fish and Wildlife Commission again requested off-reservation special migratory bird hunting regulations for the ceded areas, and copies of the proposal were mailed to officials in the affected States of Michigan, Minnesota and Wisconsin. The proposed regulations are shown below. The proposal contains only minor season date changes from 1991–92 for the treaty areas located in Michigan, Minnesota and Wisconsin. These changes would move opening and closing dates to the same weekday as in the 1991–92 season, and are not expected to increase harvest levels. Again, regulations proposed for the Bay Mills Indian Community, Michigan, in the 1836 Treaty area would parallel those for the State of Michigan.

Because of depressed population numbers and drought-related habitat problems in 1991, the Service believes there is a need to continue to provide protection for duck populations. Preliminary survey results for 1992 indicate that duck numbers will remain at depressed levels, and it is likely that restrictive duck regulations will be necessary again in the 1992–93 season. The Service believes that a final decision on the appropriate opening date of the duck season should be deferred until ongoing surveys of duck populations have been completed. In their letter of June 5, the Great Lakes Indian Fish and Wildlife Commission, because of these concerns, has deferred proposing daily bag limits pending results of breeding ground surveys.

The Commission and the Service are parties to a Memorandum of Agreement designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. The Memorandum of Agreement is intended to have long-term application.

Also, as in the 1991–92 season, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. In effect, Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this change in reference.

The Commission's proposed 1992–93 waterfowl hunting season regulations are as follows:

Ducks:

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 21 and end November 1, 1992.
Daily Bag Limit: Deferred pending results of breeding ground surveys.

B. *Michigan, 1842 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

C. *Michigan, 1836 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

Mergansers:

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 21 and end November 1, 1992.
Daily Bag Limit: The daily bag limit would be 5, including no more than 1 hooded merganser.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

Geese:

Canada geese

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 14 and end December 1, 1992.
Daily Bag Limit: The daily bag limit would be 5.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Geese:

Blue, snow and white-fronted geese

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 14 and end December 1, 1992.
Daily Bag Limit: The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

Other migratory birds:

Coots and common moorhens (common gallinules)

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 21 and 3nd November 1, 1992.
Daily Bag Limit: The bag limit would be 20, singly or in the aggregate.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

C. *Michigan, 1836 Treaty Zone:* Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Sora and Virginia rails:

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 21, and end November 1, 1992.
Daily Bag Limit: The daily bag limit is 25 singly, or in the aggregate. The possession limit would be 25.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25 singly, or in the aggregate. The possession limit would be 25.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25, singly or in the aggregate. The possession limit would be 25.

Common snipe:

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 21 and end November 1, 1992.
Daily Bag Limit: The daily bag limit would be 8.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

Woodcock:

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 8 and

end November 30, 1992.

Daily Bag Limit: The daily bag limit would be 5.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

D. *General Conditions*

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.
2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Oreilles* v. *State of Wisconsin* regarding migratory bird hunting. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements, 50 CFR part 20 and shooting hour regulations in 50 CFR part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.
3. Nontoxic shot will be required for all off-reservation hunting by tribal members.
4. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.
5. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.
6. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to M.S. 100.29, subd. 18 (duck blinds and decoys). Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

Public Comment

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Public comments provided to the Service for the Notice of Intent published on May 8, 1992, to promulgate a rulemaking with regard to regulations for migratory bird hunting by American Indian tribal members are as follows:

In a June 1, 1992, letter to the Service, apparently in response to the May 8, 1992, Notice of Intent and an out-of-frameworks bag limit approval that occurred in the 1991–92 season, the Arizona Game and Fish Department (AGFD) advised that the Service had violated the 1985 guidelines for establishment of migratory bird harvest regulations on Indian lands. It was also stated that the action was apparently a unilateral one by the Service without consultation with or notification to the AGFD. The AGFD quoted two of the guidelines, one concerning on-reservation hunting by both tribal and non-tribal members, with hunting by nontribal members on some reservations taking place within Federal frameworks, but on dates different from those selected by the surrounding State(s), and the other concerning on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag limits. The AGFD cited the 6-duck bag limit approved by the Service for the White Mountain Apache Tribe and the above guidelines that address Federal frameworks and their relation to tribal and non-tribal regulations possibilities. In this case, we feel the latter guideline to be the relevant one. Nevertheless, the Service does not take issue with the criticism of the AGFD in regard to the violation of the guidelines in approval of this bag limit. Approval was an oversight and the Service intends not to approve the current year request because of the guidelines and, more importantly, the continuing situation with regard to depressed duck population numbers. However, we do take issue with the charge that the AGFD was not informed of the proposed and/or final rulemaking. As described earlier in this rulemaking, the States and others are promptly and specifically provided with copies of published rulemakings and are expected to make their concerns known at the earliest possible date so that if time permits a regulations correction can be published. The Service did not catch the mistake. However, it would appear that the AGFD neither noted the problem nor advised the Service of the mistake until well after the season was concluded.

In a June 2, 1992, letter, in response to the May 1992 Notice of Intent, the State of Michigan Department of Natural Resources (MIDNR) advised the Service that "Michigan strongly objects to the adoption of off-reservation Indian migratory bird hunting regulations for the lands ceded by the 1836 Treaty. Michigan has not recognized reserved Indian, off-reservation, hunting rights under the 1836 Treaty, and no Federal court has addressed this issue." Since the last waterfowl hunting season, the Service and the MIDNR have corresponded on the issue of separating out off-reservation regulations for the Bay Mills Community under an 1836 Treaty section. The MIDNR has also charged that the Service failed to initiate consultation with the State of Michigan on this action.

On May 11, 1992, the Service advised the MIDNR that "The position of the Service, with regard to this matter, is that the Federal Government does recognize the Treaty of 1836 as reserving to the affected Chippewa tribes or bands hunting rights in the ceded territory. The Federal courts have already confirmed the retention of reserved fishing rights in the territory ceded by the Treaty of 1836 in *United States* v. *Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *remanded*, 623 F.2d 448 (6th Cir. 1980), *order modified*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). That case and cases dealing with other treaty cessions, such as *Lac Courte Oreilles* v. *Wisconsin* (i.e. both the 1837 and the 1842 Treaties), provide persuasive precedent for the belief that hunting as well as fishing rights were reserved by the Chippewa in the Treaty of 1836." The Service has not altered its position on this matter and

the request by the Great Lakes Indian Fish and Wildlife Commission for special off-reservation migratory bird hunting regulations in the 1836 Treaty area is proposed to be approved.

With regard to the charge that the Service did not consult with the MIDNR on this concern, the reader is referred to the earlier discussion in this rulemaking regarding the process by which the consultation process is initiated.

Comment Procedure

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comment. Two considerations compress the time in which this rulemaking process must operate: the need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1992, and on the other hand, the unavailability before late July of specific reliable data for each year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 24, 1992, is impracticable in terms of publishing timely rulemakings and contrary to the public interest.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA 22203. All relevant comments on the proposals received no later than August 24, 1992, will be considered.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On Monday, May 13, 1991 (at 56 FR 22100), the Service published the final rulemaking on nontoxic shot zoning for the current and future years. This rule, titled "Nationwide Requirement to Use Nontoxic Shot for the Taking of Waterfowl, Coots and Certain Other Species Beginning in the 1991–92 Season" provides that all of the waterfowl harvest after the 1991–92 season will occur in nontoxic shot zones. This final rule also reminded hunters that nontoxic shot use is required in all U.S. offshore territorial waters, by muzzleloading waterfowl hunters and for the taking of captive-reared mallards on shooting preserves, in field trials and for bona fide dog training activities. All of the proposed hunting regulations covered by this proposed rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed migratory bird hunting seasons including that which occurs on Federal Indian reservations and ceded lands. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in and/or are available to the public from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291, the Paperwork Reduction Act and the Civil Justice Reform Executive Order (E.O. 12778)

In the **Federal Register** dated May 9, 1992 (57 FR 19865), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that this rule will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240. As noted in the **Federal Register**, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Authorship

The primary author of this proposed rulemaking is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Based on the results of recently completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1992.

on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

Date: June 19, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–18716 Filed 8–6–92; 8:45 am]

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H.R. 479/P.L. 102-328

To amend the National Trails System Act to designate the California National Historic Trail and Pony Express National Historic Trail as components of the National Trails System. (Aug. 3, 1992; 106 Stat. 845; 2 pages) Price: $1.00

H.R. 5343/P.L. 102-329

To make technical amendments to the Fair Packaging and Labeling Act with respect to its treatment of the SI metric system, and for other purposes. (Aug. 3, 1992; 106 Stat. 847; 2 pages) Price: $1.00

S. 2938/P.L. 102-330

To authorize the Architect of the Capitol to acquire certain property. (Aug. 3, 1992; 106 Stat. 849; 2 pages) Price: $1.00

S.J. Res. 92/P.L. 102-331

To designate July 28, 1992, as "Buffalo Soldiers Day". (Aug. 3, 1992; 106 Stat. 851; 2 pages) Price: $1.00

S.J. Res. 295/P.L. 102-332

Designating September 10, 1992, as "National D.A.R.E. Day". (Aug. 3, 1992; 106 Stat. 853; 2 pages) Price: $1.00

S.J. Res. 310/P.L. 102-333

To designate August 1, 1992, as "Helsinki Human Rights Day". (Aug. 4, 1992; 106 Stat. 855; 3 pages) Price: $1.00

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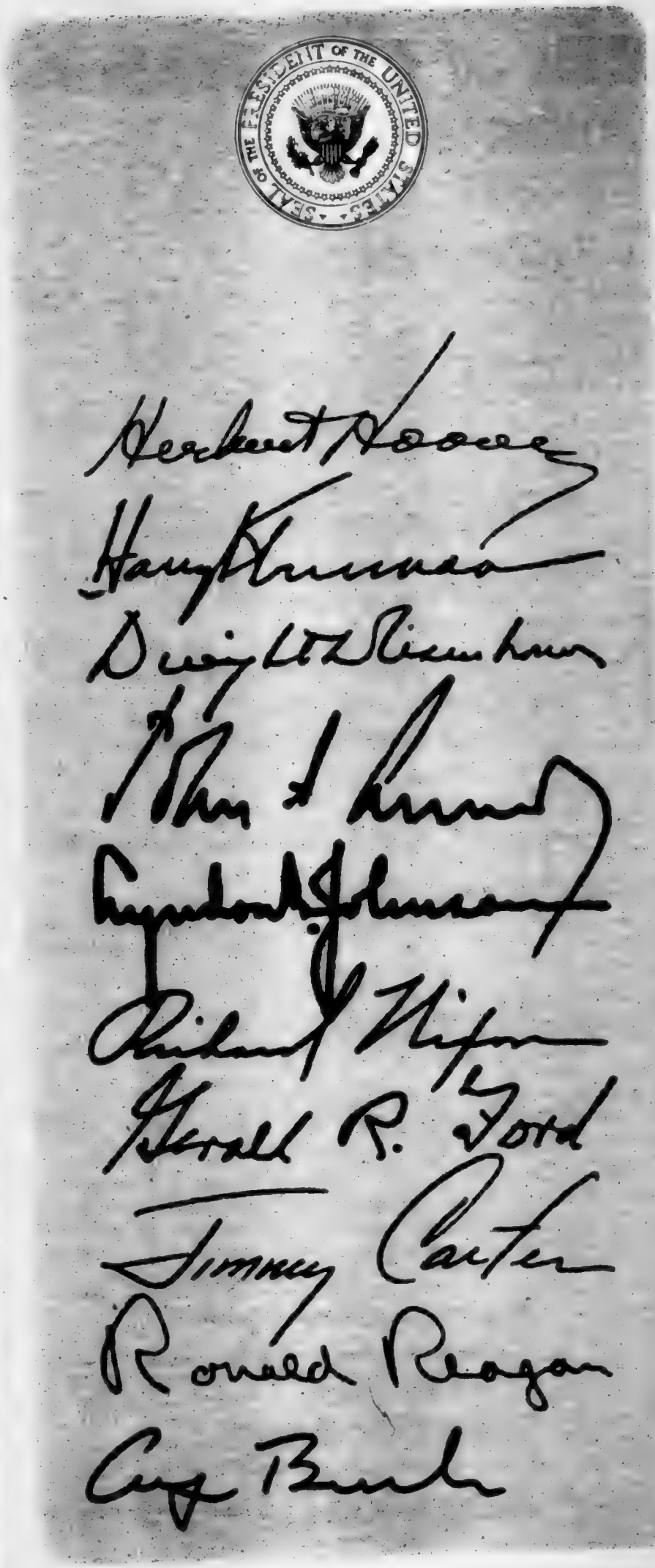

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Vol. 57 No. 154
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federal register

Monday
August 10, 1992

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Rules and Regulations

Federal Register
Vol. 57, No. 154
Monday, August 10, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Availability and Adequacy of Design Bases Information at Nuclear Power Plants; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission is issuing this policy statement on availability and adequacy of design information at nuclear power plants. This policy statement describes the Commission's expectations and future actions with regard to the availability of design information and emphasizes the Commission's view that facilities should not be modified without a clear understanding of the applicable engineering design bases.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Eugene V. Imbro, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2967.

SUPPLEMENTARY INFORMATION: NRC inspection findings have demonstrated that some licensees have not adequately maintained their design bases information as required by NRC regulations. Both the problems identified during the NRC inspections and those identified by licensees have prompted most power reactor licensees to initiate, over the past several years, design bases reconstitution programs. To implement a reconstitution program, licensees seek to identify missing design documentation and to selectively regenerate missing documentation as required.

In 1989, Nuclear Utilities Management and Resources Council, Inc., (NUMARC) began developing their "Design Basis Program Guidelines," NUMARC 90–12. While developing these guidelines, NUMARC discussed them at several public meetings held with the NRC. The staff has concluded the NUMARC guidelines provide a useful standard framework for implementing design reconstitution programs. The staff also agrees no single approach would enable utilities to best accomplish the reconstitution task. The NUMARC guidance appeared to provide sufficient flexibility for individual utilities to structure their programs to respond most efficiently to their unique needs and circumstances.

The staff sent comments on the guidelines to NUMARC on November 9, 1990. Commission paper SECY–90–365 informed the Commissioners in advance about the staff response to NUMARC.

The staff requested NUMARC consider making the design bases effort a NUMARC initiative. NUMARC concluded they would not pursue a formal initiative, but would forward the guidelines to their members to use on a voluntary basis. Their reason for not pursuing an initiative was that most of their members were already conducting or evaluating the need to conduct design bases reconstitution programs.

The Commission's evaluation of the status of reconstitution programs clearly indicates the licensees' substantial investment in these programs should yield positive safety benefits for a majority of sites. The NRC commends those licensees that are acting to ensure technically adequate and accessible design bases documentation is maintained.

However, the Commission is concerned some situations exist where licensees have not critically examined their design control and configuration management processes to identify requisite measures to ensure the plant is operating within the design bases envelope. Therefore, the Commission is articulating its expectations with regard to design information and elaborating on its planned activities to confirm the integrity of the as-configured plant with respect to the plant design bases.

Policy Statement

Position

The Commission has concluded that maintaining current and accessible design documentation is important to ensure that (1) the plant physical and functional characteristics are maintained and are consistent with the design bases as required by NRC regulation, (2) systems, structures, and components can perform their intended functions, and (3) the plant is operated in a manner consistent with the design bases. The Commission believes the regulatory framework already exists to address the need for accessible design bases and control of design information. The availability of current design and licensing bases will also expedite the license renewal process.

The Commission believes, as a result of NRC inspections and licensees' self-assessments, that all power reactor licensees should assess the accessibility and adequacy of their design bases documentation. The results of this self-assessment should form the basis for a licensee's decision whether a design reconstitution program is necessary and the attributes to be included in the program. The Commission recognizes the need for a design reconstitution program to be tailored to meet the unique needs of a particular utility. The structure and content of the design document reconstitution program will be influenced by various factors, such as the utility's organizational structure, the availability or unavailability of design documentation, and the intended users of the documentation. The Commission expects that after completing a reconstitution program, or as a basis for concluding that such a program is unnecessary, the licensee will have current design documents and adequate technical bases to demonstrate that the plant physical and functional characteristics are consistent with the design basis, the systems, structures, and components can perform their intended functions and the plant is being operated in a manner consistent with the design basis.

NUMARC has developed guidance for the conduct of design bases reconstitution programs. The guidance outlines a framework to organize and collate nuclear power plant design bases information. This information provides the rationale for the design bases consistent with the definition of design bases contained in 10 CFR 50.2. NUMARC 90–12, "Design Basis Program Guidelines," was issued in October 1990 for voluntary use by NUMARC member organizations as a reference point from which licensees would review their

existing or planned efforts to collate supporting design information. The Commission believes NUMARC's approach provides a useful framework and worthwhile insights to those utilities undertaking design basis programs.

The Commission believes a licensee should be able to show that it has sufficient documentation, including calculations or pre-operational, startup or surveillance test data to conclude the current facility configuration is consistent with its design bases. The Commission further believes the design bases must be understood and documented to support operability determinations and 10 CFR 50.59 evaluations that may need to be made quickly in responding to plant events. The design bases related information should be retrievable within a reasonable period of time, however, it is not necessary for all design basis documentation to be organized in one place. The information used solely to support the development of a modification package would not need to be able to be retrieved as expeditiously as information needed to support an operability determination.

In the event the design bases information is found technically inadequate or not accessible, licensees should consider whether remedial action is warranted. A methodology should be developed and implemented to ensure licensee resources are focused on design information regeneration in a timeframe commensurate with the safety significance of the missing or erroneous information.

The Commission also emphasizes it is very important that modifications to a facility be made after a thorough review has been conducted and an understanding of the applicable underlying design bases has been gained in order to ensure appropriate design margins are preserved.

Future Actions

The Commission will continue to inspect routinely the adequacy of design control program effectiveness. The Commission concludes that ensuring the design bases and configuration of a facility are well understood and controlled in plant documents will also ensure that those parts of the current licensing bases of most safety significance are understood and controlled. Other aspects of the current licensing bases, such as emergency preparedness and security plans, should also be appropriately examined to ensure their validity for the life of the facility, including any renewal period.

In order to ensure the Commission is appraised of industry's activities, the NRC will take the following actions.

(1) The staff will issue a generic letter requesting all licensees to describe the programs that are in place to ensure design information is correct, accessible, and maintained current. Those licensees that are not implementing a design reconstitution program will be requested to provide their rationale for not doing so. If a reconstitution program is under way, the schedule for implementation and completion will be requested.

(2) The staff will prioritize NRC inspections of licensee's management of design and configuration using SSFI-type techniques based upon responses to the generic letter and other plant specific information known to the NRC. Additional staff guidance will be developed, where needed, for the design bases aspects of these inspections.

(3) The NRC systematic assessment of licensee performance (SALP) process will be modified to explicitly address assessment of licensee programs to control design bases information that reflect NRC inspection activity in this area and assure consistent evaluations.

(4) The staff will continue to encourage self-identification of design bases issues through application of the provisions of the Commission's enforcement policy. The staff will, however, pursue enforcement actions for engineering deficiencies whose root cause lies in the inadequacy or unavailability of design bases information and which are identified during NRC inspections.

Paperwork Reduction Act Statement

This final policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Dated at Rockville, Maryland, this 4th day of August, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–18895 Filed 8–7–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[92–195]

RIN 1550–AA38

Registration, Examination and Reports; Statements, Applications, Reports and Notices To Be Filed

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is hereby amending its regulations pertaining to holding company reporting requirements. In updating existing forms to reflect changes necessitated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the OTS has combined several forms to streamline the reporting process and ease the regulatory burden on savings and loan holding companies. In particular, the reporting requirements set forth in Forms H–(b)3, H–(b)4, H–(b)5 and H–(b)10 Registration Statements are now contained in one body of instructions for all Registrants, the H–(b)10. In addition, the H–(b)11 Annual Report and the H–(b)12 Current Report have been merged into one set of instructions requiring an annual filing with quarterly updates informing the OTS of any changes. The H–(f) Dividend Notification has been rescinded, since the requirements contained in the Capital Distributions regulation are sufficient for the OTS's monitoring and supervision purposes.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Michael P. Scott, Program Manager, (202) 906–5748, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is today issuing a final rule amending its holding company reporting requirements. This amendment affects the registration, annual, and current reporting requirements.

Registration Statements

As previously structured, holding companies were required to choose from four separate registration statements. These separate statements were originally deemed necessary to accommodate special types of holding companies (i.e., companies that became savings and loan holding companies as

a result of being secured creditors, voting trusts, or corporate trustees).

The OTS has combined the four forms into one package to minimize the confusion that often resulted for registrants from trying to determine the appropriate registration statement and obtaining a separate set of instructions to meet regulatory reporting requirements. The reporting requirements still vary depending on the type of entity registering as a savings and loan holding company. However, instructions for all registrants are now contained in one form, the H–(b)10 Registration Statement (OMB No. 1550–0020).

Annual/Current Reports

Section 10(b) of the Home Owners' Loan Act (Act) as implemented by part 584 of the Regulations states that each savings and loan holding company and its subsidiaries, other than a savings association, are required to file reports with the OTS as may be required by the Director. The Director has determined that the filing of annual and current reports fulfills this requirement.

The required information was previously gathered through two separate forms that established reporting requirements. The H–(b)11 Annual Report was required to be filed within 120 days of a savings and loan holding company's fiscal year end. In addition to the H–(b)11, all savings and loan holding companies were required to file H–(b)12 Current Reports within 15 days of the end of a month when certain specified and material events had occurred (primarily changes in information reported in the H–(b)11).

To streamline and consolidate reporting requirements, the OTS eliminated the H–(B)12 and modified the H–(b)11 to accommodate reporting on both an annual and current basis. This change eliminates duplicate information requests contained in the two separate forms and, thereby, eases the burden on respondents as well as regulatory staff.

The surviving form, the Annual/Current Report H–(b)11 (OMB No. 1550–0060), is used to collect information on an annual and quarterly basis. Each savings and loan holding company is required to file an annual report within 90 days of its fiscal year end. This coincides with the submission by publicly traded holding companies of the 10–K filing with the Securities and Exchange Commission (SEC). However, instead of the former monthly reporting requirements, holding companies are now required to notify the agency on a quarterly basis (except for the fourth quarter of the holding company's fiscal year) regarding any material changes in the information presented in its H–(b)11 Annual Report. However, if material changes occur during the fourth quarter with respect to certain items described in the form instructions, an H–(b)11 report for such quarter must be filed within 45 days of the end of the fourth quarter.

Dividend Notification

Section 10(f) of the Act as implemented by part 584 of the Regulations states that every subsidiary savings association of a savings and loan holding company is required to provide the OTS with not less than 30 days advance notice of a proposed dividend declaration. The H-(f) Dividend Notification has been used by subsidiary savings associations to fulfill this requirement.

Using its authority to issue regulations to provide for the safe and sound operation of savings associations under sections 3(b)(2), 3(e)(1) and 4 of the Act, the OTS issued the Capital Distributions regulation (12 CFR 563.134). This regulation became effective in August, 1990. As discussed below, the issuance of this regulation has rendered the H-(f) Dividend Notification obsolete.

Prior to the issuance of the Capital Distributions regulation, only savings associations in a holding company structure were required to provide the OTS with not less than 30 days advance notice of a proposed dividend. This notification was provided to the OTS through the submission of a H–(f) Dividend Notification. With the exception of recently converted savings associations wishing to exceed the limitations imposed by 12 CFR 563b.3(g), savings associations not in a holding company structure were not required to provide the OTS with prior or subsequent notice of the payment of a dividend.

The Capital Distributions regulation requires all savings associations to file at least a 30-day advance notice of all proposed capital distributions whether or not OTS approval is required. Capital distributions are defined in 12 CFR 563.134(a)(1) to include, among other things, dividends, stock repurchases, and cash-out mergers.

Since the provisions of the Capital Distributions rule are sufficient for the OTS's monitoring and supervision purposes, the H-(f) Dividend Notification form has been rescinded. A new form may be developed to capture the information required by 12 CFR 563.134. If it is developed, this form would be used by all savings associations in providing advance notice to the OTS of all proposed capital distributions.

II. Summary of Comments

A. General Summary

On September 23, 1991, the OTS published a notice of proposed rulemaking in the **Federal Register** describing amendments to holding company reporting requirements. The public comment period on the proposal closed on October 23, 1991.

The OTS received a total of 7 letters of comment including 2 from savings and loan holding companies; 2 from law firms; and 3 from savings association trade associations. Generally, the commenters supported the proposal. Of the 7 commenters, 4 requested clarification or specific changes as further described below.

B. Specific Issues Discussion

1. Filing Requirements—Annual/Current Report H-(b)11

The OTS published a notice regarding the Annual/Current Report H-(b)11 in the **Federal Register** on January 16, 1991. The form originally contained a provision requiring that quarterly filings be submitted 30 days after the end of the quarter. The form also required that companies filing with the SEC simultaneously file a copy of that filing with the OTS. Thus, companies reporting to the SEC were required to file with the OTS both 30 days after the end of the quarter and 45 days after the end of the quarter. One late commenter requested that the OTS extend the 30 day filing requirement to 45 days so that the timing of filings with the OTS would coincide with SEC submissions. Although this comment was received subsequent to the conclusion of the public comment period for the form, we considered it in our review of the comments received during the part 584 revision project and have concluded that quarterly filings shall be submitted within 45 days of the end of the quarter. In addition, any filing that a savings and loan holding company submits to the SEC must simultaneously be filed with the OTS.

One commenter requested clarification as to whether the 45 day and 90 day filing requirements for quarterly and annual filings, respectively, applied to receipt of the submission by the Washington, DC office or by the appropriate Regional Office. Since supervision and examination authority primarily rests with the Regional Director, or his designee, we clarify that the Annual/Current Report H–(b)11 should be received by the appropriate Regional Office no later than 90 days after the

end of the fiscal year and 45 days after the end of the quarter.

One commenter indicated that the proposed regulation required companies to file forms at different locations than those required by the form itself. The H–(b)11 form, therefore, has been revised to specifically set forth the filing procedures and such instructions have been deleted from this final rule.

2. Modification of Requirements

One commenter suggested that the rule mirror the SEC's Exchange Act filing provision permitting an extension of time of up to 15 days to file forms 10–Q or 10–K. Under paragraph 8 of the H–(b)11's General Instructions, the Regional Director or his designee has the authority to modify reporting requirements. It is under this authority that the Regional Director or his designee may extend the period of time for filing.

One commenter suggested that the final rule should permit the Director to waive annual and current reports on a case-by-case basis. As stated above, under paragraph 8 of the H–(b)11's General Instructions, the Regional Director or his designee has the authority to modify reporting requirements. Items of the Report may be waived or modified at the discretion of the Regional Director or his designee. However, submission of the filing may not be waived.

One commenter requested clarification that preliminary proxy materials filed with the SEC do not trigger an H–(b)11 filing pursuant to Item 17 of the form since the OTS does not review proxy materials for holding companies. Since such materials are an important part of the OTS's general oversight of holding companies, the OTS will continue to require that such materials be filed concurrently with the SEC and the OTS unless a modification is approved by the Regional Director, or his designee, on a case-by-case basis.

One commenter suggested that quarterly filings should only be required if a material change occurs. The OTS has considered this comment and believes that the management and directorate of a holding company have the responsibility to either disclose material changes or to certify that such changes have not occurred.

3. Dividend Notification

One commenter suggested that a new form should be developed to replace the H–(f) Dividend Notification form. As stated above and in the proposed rule, the OTS is considering developing a new form to be used by all savings associations. However, a form has not yet been developed.

Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends part 584, subchapter F, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 584—[AMENDED]

1. The authority citation for part 584 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

2. Section 584.1 is amended by revising paragraphs (a) and (e) to read as follows:

§ 584.1 Registration, examination and reports.

(a) *Filing of registration statement and other reports*—(1) *Filing of registration statement.* Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the OTS by filing a registration statement H–(b)10.

(2) *Filing of annual/current reports.* Each registered savings and loan holding company, including subsidiary savings and loan holding companies, shall file an annual/current report H–(b)11, except that such report need not be filed by a savings and loan holding company that is a trust (other than a business trust), secured creditor, or corporate trustee. The H–(b)11 report must be filed no later than 90 days after the close of the fiscal year. Quarterly filings must also be submitted on the H–(b)11 report within 45 days of the end of each quarter (except for the fourth quarter of the holding company's fiscal year) and should describe any material changes from the most recently filed H–(b)11 report or should indicate that no such changes have occurred. However, if material changes have occurred during the fourth quarter with respect to certain items described in the form instructions, an H–(b)11 report for such quarter must be filed within 45 days of the end of such quarter.

(3) *General.* Registration statements and annual/current reports are to be filed with the OTS in accordance with the instructions contained in each form. In addition, multiple savings and loan holding companies must file conformed copies with any area office that has supervisory authority over a subsidiary savings association. Copies of the forms to be used in submitting registration statements or annual/current reports may be obtained from any Regional Director, or designee.

* * * * *

(e) *Reports.* Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the OTS such reports as may be required by the OTS. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the OTS may prescribe. Each report shall contain information concerning the operations of such savings and loan holding company and its subsidiaries as the OTS may require.

* * * * *

§§ 584.5 and 584.10 [Removed]

3. Sections 584.5 and 584.10 are removed.

Dated: May 13, 1992.

By the Office of Thrift Supervision:

Timothy Ryan,

Director.

[FR Doc. 92–18841 Filed 8–7–92; 8:45 am]

BILLING CODE 6720–01–M

Customs Service

19 CFR Part 24

[T.D. 92—73]

Charges for Returned Checks

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement a $30.00 charge for any check returned unpaid which was presented for payment of duties on noncommercial importations for which formal entry was not required, or for payment in connection with any other Customs transaction not backed by a Customs bond. Although Customs proposed to amend the Customs Regulations to

establish a $100.00 charge for each such returned check, Customs has determined that the amount should be changed to $30.00 in order to be more consistent with amounts currently charged by financial institutions.

EFFECTIVE DATE: September 9, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Branch, Revenue Branch, National Finance Center, U.S. Customs Service (317) 298–1307).

SUPPLEMENTARY INFORMATION:

Background

In a Notice published in the **Federal Register** on December 6, 1988 (53 FR 49207), the Customs Service set forth for public comment a proposal to amend the Customs Regulations to establish a $100.00 charge for each check which is returned by a financial institution to the Customs Service unpaid if that check had been presented for payment of duties or other charges on noncommercial importations for which a formal entry is not required or for payments in connection with any other transaction not backed by a Customs bond. The purpose of the charge is to offset the substantial additional operating costs to Customs generated in connection with the control and collection of returned items. The charge was designed to reflect the actual cost to Customs in connection with the activities of the National Finance Center in monitoring and collecting checks as well as costs incurred in connection with other Customs operations which are impeded by returned checks. Currently, no charge is assessed to cover the considerable extra expenditures incurred in connection with collections of returned checks.

In response to Customs invitation for comments on its proposal, one comment was received from the public. The point raised in that comment has been considered in developing this final rule.

While public comment on the proposal was minimal, Customs has conducted an internal review of the proposed charge. This review has led Customs to the determination that a charge is definitely warranted in instances where checks are returned by financial institutions, but that the fee should be set at $30.00 rather than $100.00. While this amount may not totally reflect all of the actual costs incurred by Customs in processing the returned items, it is consistent with amounts currently being charged by financial institutions. Additionally, Customs anticipates having to process fewer checks in the future, thereby reducing its exposure to these expenses. This expectation is based upon the increasing ability of persons to use credit cards to pay amounts owed Customs.

Analysis of Comment

The single comment that was received objected to the proposal to the extent that the amendment would not allow for an exception from the charge when the return of the check was the result of an error by the bank over which the maker of the check had absolutely no control. We agree that the charge should not be imposed absolutely in all cases without providing the check's maker the opportunity of showing he was not at fault because of other factors over which he had no control. Accordingly, the proposal as published in this final rule contains a minor change to add language allowing the Customs Service to waive a fee for a returned check when the maker is shown to be not at fault for the return.

Regulatory Flexibility Act and Executive Order 12291

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. Because this document does not result in a "major rule" as defined by Executive Order 12291, the regulatory analysis and review prescribed by the Executive Order is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Taxes, Wages.

Amendment to the Regulations

Part 24 Customs Regulations (19 CFR part 24) is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURES

1. The authority citation for part 24 continues in part to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a—58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, 26 U.S.C. 4461—4462.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1684.

* * * * *

2. Section 24.1 is amended by adding a new paragraph (e) at the end thereof to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other changes.

* * * * *

(e) Any person who pays by check any duties, taxes, fees or other charges or obligations due the Customs Service which are not guaranteed by a Customs bond shall be assessed a charge of $30.00 for each check which is returned unpaid by a financial institution for any reason, except the charge will not be assessed if it is shown that the maker of the check was not at fault in connection with the return of the check. This charge shall be in addition to any unpaid duties, taxes and other charges.

Carol Hallett,

Commissioner of Customs.

Approved: July 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–18849 Filed 8–7–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC66

Supplemental Security Income for the Aged, Blind, and Disabled Resources and Exclusions; Definition of Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule excludes from the definition of resources in the Supplemental Security Income (SSI) Program, for 1 calendar month following their receipt, certain retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual. This rule also clarifies the policy regarding the commingling of funds paid to an eligible individual for approved medical or social services or paid to an eligible spouse or parent for the provision of such services for purposes of defining resources.

EFFECTIVE DATE: This rule is effective August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Irv Darrow, Esq., Legal Assistant, Office of Regulations, 3–B–1 Operations

Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–0512.

SUPPLEMENTARY INFORMATION: This rule was published as a notice of proposed rulemaking in the **Federal Register** on February 26, 1991 (56 FR 7821). A 60-day comment period was provided. Comments received in response to the notice of proposed rulemaking are discussed under the heading "Discussion of Comments".

Certain cash payments specifically to enable people to pay for medical or social services as defined in § 416.1103(a) and (b) are not income for SSI purposes because they are assumed not to be available for support and maintenance. Recognizing that the recipient is not always able to use the cash for payment of medical or social services in the month of receipt, we published a final rule in the **Federal Register** on June 21, 1988 (53 FR 23230). That rule, § 416.1201(a)(3), provides that for 1 full calendar month following the month of receipt, cash, which is not income under § 416.1103(a) or (b) because it is paid to an individual to enable the individual to pay for medical or social services, is not a resource. The rule does not encompass cash received as reimbursement for medical or social service bills the individual had already paid.

The June 1988 rule recognized that it was not reasonable to expect an individual to use certain funds for support and maintenance when the funds are clearly needed to pay for approved services which themselves are neither income nor resources. To use such funds for support and maintenance tends to thwart the purpose of the payer program and could result in an individual's having to do without needed services. The rule change simply provided a grace period to individuals for the disbursement of funds as intended by the payer program without the cash having an adverse effect on their SSI eligibility.

In describing medical or social services payments that would not be considered resources for 1 month following receipt, the June 1988 regulation omitted one category: retroactive cash payments (other than reimbursements) made to an ineligible spouse or parent for providing medical or social services to the eligible individual to whom their resources could be deemed. Such payments are income when received by the ineligible spouse or parent care provider, but not excluded from the income deeming process under § 416.1161(a)(16). However, under the current regulation, if these funds are retained into the month following the month of receipt, they become resources which are subject to deeming and could, therefore, cause ineligibility.

In limited circumstances, governmental programs will pay a parent or spouse to provide a disabled child or spouse with certain services under a medical or social services program. Such care providers are able to give care and services with an exceptionally high and supportive level of personal dedication but their provision is so time-consuming that the spouse or parent has to give up (or severely curtail) work outside the home which might otherwise provide needed household income. Since the medical or social services payments are targeted to compensate for services given and lost household income, they are not deemed as income so that the intended benefit of having the services provided by caregivers in the home can be realized. For this reason, and to avoid SSI ineligibility due to excess deemed resources, we will provide a period of 1 full calendar month for the expenditure of retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual. This type of retroactive payment will not be a resource until an opportunity has been given for its expenditure, that is, for 1 full calendar month after receipt. When such retroactive payments are made, we will assume that the care provider's first priority of expenditure is the personal and household bills which could not be paid without these payments. Therefore, we will not consider the care provider's retroactive payments to be resources until the second calendar month following their receipt in order to give the ineligible spouse or parent the same length of time for expenditure that we would give the care recipient. This new resource treatment applies only to retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual.

In addition to the foregoing, § 416.1201(a)(3) is amended to clarify our policy that this exclusion from the definition of resources applies only to the unspent portion of the cash payments described therein and that the unspent portion must be identifiable from other resources for this resource treatment to apply. This policy does not preclude the commingling of funds, but separate identification must be possible through the use of personal records in order for the amount to be excluded from the definition of resources for the calendar month following the month of receipt.

Discussion of Comments

Comments were received from 2 organizations, a State agency, and an individual in response to the notice of proposed rulemaking published in the **Federal Register** on February 26, 1991 (56 FR 7821). A summary of the comments submitted and our responses follow.

Comment

Three commenters suggested that we clarify that "retroactive cash payment," as used in 20 CFR 416.1201(a)(3), includes any interest/delay component that is part of the payment.

Response

The term "retroactive cash payment," as used in 20 CFR 416.1201(a)(3), includes any interest/delay component that is part of the payment. We feel this is implied in the language and does not need further clarification.

Comment

One commenter requested that the final rule clarify the meaning of "retroactive cash payment," as used in 20 CFR 416.1201(a)(3), with respect to a payment received by a care provider in the month due, but following the month in which services are rendered.

Response

For purposes of 20 CFR 416.1201(a)(3), a "retroactive cash payment" is one that is paid to the care provider after the month in which it was due. If payment is made in the month due, but following the month in which services were rendered, such payment is not considered to be "retroactive" for purposes of this rule.

We have made several technical changes in the final regulation. We have substituted the word "provision" for "exclusion" where the latter appeared in the proposed rules at 20 CFR 416.1201(a)(3)(i), (ii), and (iii). In addition, we have deleted the word "exclusion" from the second sentence in paragraph (a)(3)(ii). These changes are meant to preserve the distinction between a resource "exclusion" (which can be created only through statutory change) and an asset which does not meet the regulatory definition of a resource. With these changes, the regulation, as proposed, is adopted.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive

Order 12291 since the program and administrative costs of this regulation will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This regulation will impose no additional reporting and recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practices and procedures, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: February 10, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 27, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1201 is amended by revising paragraph (a)(3) to read as follows:

§ 416.1201 Resources; general.

(a) * * *

(3) Except for cash reimbursement of medical or social services expenses already paid for by the individual, cash received for medical or social services that is not income under § 416.1103(a) or (b), or a retroactive cash payment which is income that is excluded from deeming under § 416.1161(a)(16), is not a resource for the calendar month following the month of its receipt. However, cash retained until the first moment of the second calendar month following its receipt is a resource at that time.

(i) For purposes of this provision, a retroactive cash payment is one that is paid after the month in which it was due.

(ii) This provision applies only to the unspent portion of those cash payments identified in this paragraph (a)(3). Once the cash from such payments is spent, this provision does not apply to items purchased with the money, even if the period described above has not expired.

(iii) Unspent money from those cash payments identified in this paragraph (a)(3) must be identifiable from other resources for this provision to apply. The money may be commingled with other funds, but if this is done in such a fashion that an amount from such payments can no longer be separately identified, that amount will count toward the resource limit described in § 416.1205.

* * * * *

[FR Doc. 92–18874 Filed 8–7–92; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Science Board to the Food and Drug Administration; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment by the Commissioner of Food and Drugs of the Science Board to the Food and Drug Administration in the Office of the Commissioner. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice requesting nominations for membership on this committee. This document adds the Science Board to the agency's list of standing advisory committees.

DATES: This rule becomes effective August 10, 1992. Authority for the committee being established will end on June 26, 1994, unless the Commissioner of Food and Drugs formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 394) as amended by the Food and Drug Administration Revitalization Act (Pub. L. 101–635), and 21 CFR 14.40(b), FDA is announcing the establishment by the Commissioner of Food and Drugs of the Science Board (the board) to the Food and Drug Administration.

The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Because this is a technical amendment to 21 CFR Part 14, the Commissioner of Food and Drugs finds, under 21 CFR 10.40(c), (d), and (e), that notice and public procedure in § 10.40(b) are unnecessary and contrary to the public interest. Therefore, the agency is revising paragraph (a) of 21 CFR 14.100 as set forth below.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by revising paragraph (a) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(a) *Office of the Commissioner*—(1) *Board of Tea Experts.*

(i) Date established: March 2, 1897.

(ii) Function: Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

(2) *Science Board to the Food and Drug Administration.*

(i) Date established: June 26, 1992.

(ii) Function: The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

* * * * *

Dated: August 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18816 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 178

[Docket No. 88F-0113]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium *N*-cyclohexyl-*N*-palmitoyl taurate; chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; elemental iodine and hydriodic acid; and calcium chloride, as components of a sanitizing solution to be used on food-processing equipment and utensils, including dairy-processing equipment. This action responds to a petition filed by West Agro, Inc.

DATES: Effective August 10, 1992; written objections and requests for a hearing by September 9, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 26, 1988 (53 FR 19046), FDA announced that a food additive petition (FAP 7B4010) had been filed by West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153-1222. The petition proposed that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of sodium *N*-cyclohexyl-*N*-palmitoyl taurate; acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; iodine/hydriodic acid; and calcium chloride, as components of a sanitizing solution to be used on food-contact surfaces.

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are mixtures of chemicals which function together to sanitize food-contact surfaces and are regulated as mixtures. Each listed component in a sanitizing solution has a functional effect. The subject sanitizing solution contains elemental iodine and hydriodic acid; sodium *N*-cyclohexyl-*N*-palmitoyl taurate; chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide; dodecylbenzene sulfonic acid; phosphoric acid; isopropyl alcohol; and calcium chloride. The function and basis for the agency's determination of the safety of each component are described below.

A. Iodine and Hydriodic Acid

The combination of iodine and hydriodic acid functions as the antimicrobial agent in the subject sanitizing solution. This combination is currently regulated as a component in a sanitizing solution listed under § 178.1010(b)(5). On the basis of the data submitted in support of this regulated use and the data contained in the food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of iodine and hydriodic acid is safe in the subject sanitizing solution.

B. Sodium N-Cyclohexyl-N-Palmitoyl Taurate

Sodium *N*-cyclohexyl-*N*-palmitoyl taurate functions as an iodine complexing agent in the subject sanitizing solution. Sodium *N*-cyclohexyl-*N*-palmitoyl taurate is not currently regulated. On the basis of the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of sodium *N*-cyclohexyl-*N*-palmitoyl taurate in the subject sanitizing solution is safe.

C. Chloroacetic Acid, Sodium Salt, Reaction Products With 4,5-Dihydro-2-Undecyl-1H-Imidazole-1-Ethanol and Sodium Hydroxide

Chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide function as a solubilizing agent in the subject sanitizing solution. In this document, the agency is using this preferred nomenclature for the substance identified in the notice of filing as acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide. This substance is not currently regulated. On the basis of the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide in the subject sanitizing solution is safe.

D. Dodecylbenzene Sulfonic Acid

Dodecylbenzene sulfonic acid functions as an iodine complexing agent in the subject sanitizing solution. It is currently regulated for use in several sanitizing solutions under § 178.1010. On the basis of the data submitted in support of regulated uses and the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of dodecylbenzene sulfonic acid in the subject sanitizing solution is safe.

E. Phosphoric Acid

Phosphoric acid functions as an acidulant in the subject sanitizing solution. Phosphoric acid is listed as generally recognized as safe (GRAS) under 21 CFR 182.1073. It is also regulated for use in several sanitizing solutions under § 178.1010. On the basis of the data submitted in support of listed uses, the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, and

other available data, FDA finds that the use of phosphoric acid in the subject sanitizing solution is safe.

F. Isopropyl Alcohol

Isopropyl alcohol functions as a solubilizing agent in the subject sanitizing solution. It is regulated for use as a component in several sanitizing solutions under § 178.1010 and is regulated under many other food additive regulations. On the basis of data submitted in support of regulated uses and the data contained in this food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of isopropyl alcohol in the subject sanitizing solution is safe.

G. Calcium Chloride

Calcium chloride functions as a defoaming agent in the subject sanitizing solution. Calcium chloride is affirmed as GRAS under 21 CFR 184.1192. On the basis of data contained in this food additive petition submitted in support of the listing of this sanitizing solution and other available data, FDA finds that the use of calcium chloride in the subject sanitizing solution is safe.

FDA has evaluated data in the petition and other relevant material. The agency concludes that these data and material establish the safety of the level of use and the effectiveness of the additive as a sanitizing solution and that the regulations should be amended in § 178.1010 as set forth below. The agency also finds that the data in this petition support the use of the subject sanitizing solution on dairy-processing equipment as well as other food-processing equipment and utensils.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before September 9, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be numbered separately, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.1010 is amended by adding new paragraphs (b)(40) and (c)(35) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(40) An aqueous solution prepared by combining elemental iodine (CAS Reg. No. 7553–56–2); hydriodic acid (CAS Reg. No. 10034–85–2); sodium *N*-cyclohexyl-*N*-palmitoyl taurate (CAS Reg. No. 132–43–4); chloroacetic acid, sodium salt reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide (CAS Reg. No. 68608–66–2); dodecylbenzene sulfonic acid (CAS Reg. No. 27176–87–0); phosphoric acid (CAS Reg. No. 7664–38–2); isopropyl alcohol (CAS Reg. No. 67–63–0); and calcium chloride (CAS Reg. No. 10043–52–4). In addition to use on food-processing equipment and utensils, this solution may be used on dairy-processing equipment.

(c) * * *

(35) Solutions identified in paragraph (b)(40) of this section shall provide when ready for use not less than 12.5 parts per million and not more than 25.0 parts per million of titratable iodine; and not less than 2.7 parts per million and not more than 5.5 parts per million of dodecylbenzene sulfonic acid. All components shall be present in the following proportions: 1.0 part dodecylbenzene sulfonic acid to 43 parts sodium *N*-cyclohexyl-*N*-palmitoyl taurate to 7.7 parts chloroacetic acid, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1*H*-imidazole-1-ethanol and sodium hydroxide to 114 parts phosphoric acid to 57 parts isopropyl alcohol to 3.0 parts calcium chloride.

* * * * *

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–18856 Filed 8–7–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS LAKE ERIE (CG 70) is a vessel of the Navy which, due to its special construction and

purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser. The intended effect of this rule is to warn mariners in water where 72 COLREGS apply.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS LAKE ERIE (CG 70) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 3706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained
USS Lake Erie	CG 70	N/A	X	X	38

Dated: July 16, 1992.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 92-18830 Filed 8-7-92; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS PIONEER (MCM 9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a mine countermeasures ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alex., VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PIONEER (MCM-9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex 1, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [AMENDED]

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS PIONEER	MCM 9				64

Dated: July 16, 1992.

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 92-18829 Filed 8-7-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 92-096]

Safety Zone: Narragansett Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Narragansett Bay, RI, during the fireworks display that will take place following the Navy Band Newport's "Salute to Summer" concert on August 28, 1992, at the Naval Education and Training Center in Newport. The safety zone will consist of the waters within a 500 yard radius around the fireworks launch site in approximate position (41-30-25N, 71-19-46W). The safety zone is needed to protect pleasure craft and personnel onboard these vessels from potential hazards associated with a fireworks display.

EFFECTIVE DATE: This regulation is effective at 8 p.m. on August 28, 1992, and will terminate at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the raindate is September 4, 1992, and the safety zone will be effective on September 4, 1992, between the hours of 8 p.m. and 10 p.m. unless terminated sooner by the Captain of the Port Providence.

FOR FURTHER INFORMATION CONTACT: LTJG T.M. Burke of Marine Safety Office Providence at (401) 528-5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG T.M. Burke, Project Officer for the Coast Guard Captain of the Port Providence and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels and personnel in the vicinity of the fireworks display. In addition, the Coast Guard was informed of this event on July 23, 1992, which is insufficient notice to provide for full public participation in this rulemaking effort. This event is significant because it represents a culmination of the Navy Band Newport's annual summer concert series and provides the naval community in Newport, as well as the general public, the opportunity to recognize the Navy Band Newport's contributions to the community. The fireworks are being held in conjunction with the Navy Band Newport's last concert for the summer and delaying the fireworks display would make them meaningless. In addition, as explained below in the regulatory evaluation, this regulation places only minimal burden on vessel traffic. Therefore, good cause exists for not making this rule effective thirty days after publication.

Background and Purpose

On August 28, 1992, the Naval Education and Training Center in Newport is sponsoring a fireworks display to be held following the Navy Band Newport's "Salute to Summer" concert. The "Salute to Summer" is the final concert in the summer 1992 series and the fireworks display serves to pay proper tribute to the ending of summer and to the efforts of the Navy Band Newport throughout the summer season. The concert and the fireworks are open to the public and significant public attendance is expected. The fireworks will be launched from the southwest corner of the Naval War College and the display will take place between the hours of 9 p.m. and 10 p.m. on August 28, 1992. The raindate is September 4, 1992.

The Coast Guard is establishing a safety zone on the waters within a 500 yard radius around the fireworks launch site, approximate position (41-30-25N, 71-19-46W). This regulation is needed to protect the spectator vessels in the vicinity, as well as personnel onboard these vessels, from damage or personal injury due to the potential hazards associated with a fireworks display. These potential hazards include, but are not limited to, personal injury and fire aboard vessels in the area as a result of stray projectiles or hot/burning falling debris. The safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on August 28, 1992. If the fireworks display is postponed due to inclement weather, the safety zone will be in effect from 8 p.m. to 10 p.m. on September 4, 1992.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The Coast Guard expects the economic impact of this regulation to be minimal due to the limited duration of the zone, specifically two hours on one day. Also, the area of water enclosed in the safety zone is close to the shoreline and is not transited by commercial vessel traffic. Spectator vessels that might wish to transit through or to anchor in the waters inside the safety zone will be required to remain at least 500 yards from the launch site at the Naval War College. These vessels are able to transit through alternate areas or to anchor to view the display at any location outside the zone. Therefore these vessels will not experience undue hardship.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this final rule will have no significant impact and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Records and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T01–096 is added to read as follows:

§ 165.T01–096 Safety Zone: Narragansett Bay, RI.

(a) Location: The following area is a safety zone: The area of water within a 500 yard radius of the fireworks launch site, approximate position (41–30–25N, 71–19–46W).

(b) Effective Date: This regulation is effective at 8 p.m. on August 28, 1992. It terminates at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on September 4, 1992, unless terminated sooner by the Captain of the Port Providence.

(c) Regulations: The general regulations governing safety zones contained in § 165.23 apply.

Dated: July 29, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92–18792 Filed 8–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 92–056]

Safety Zone: East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the band of swimmers involved in the 16th annual Swim the Bay, on August 22, 1992, between 9 a.m. and 11 a.m. This zone is needed to protect the swimmers, as well as the rowboats escorting the swimmers, from personal injury or damage due to collision that may result if vessel traffic were allowed to transit the East Passage of Narragansett Bay, in the vicinity of the swim, while the event is in progress.

EFFECTIVE DATE: This regulation is effective between the hours of 9 a.m. and 11 a.m. on August 22, 1992, unless terminated sooner by the Captain of the Port. If the event is postponed due to inclement weather, the safety zone will be in effect between the hours of 9 a.m. and 11 a.m. on August 23, 1992.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke of Marine Safety Office Providence at (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LTJG T. Burke, Project Manager for the Coast Guard Captain of the Port Providence, and LCDR J. Astley, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

On June 22, 1992, the Coast Guard published a notice of proposed rulemaking entitled Safety Zone: East Passage, Narragansett Bay, RI, in the **Federal Register** (57 FR 27721). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held. There is good cause for this final rule to become effective on the dates specified, prior to thirty days after publication. This rule must become effective on the dates specified in the interest of marine safety, to ensure the safety of persons involved in Swim the Bay as well as the safety of other marine interests that may be transiting the East Passage of Narragansett Bay during the event. The public was given adequate notice of the event by the notice of proposed rulemaking, which encompassed a full comment period. By affording the public the proper opportunity to comment (comment period ended July 22, 1992), it is impracticable to publish this final rule thirty days prior to the event. Therefore, good cause exists for not making this temporary final rule effective thirty days after publication.

Background and Purpose

On August 22, 1992, the Save the Bay organization will be sponsoring the 16th annual "Swim the Bay." For this event, approximately 130 people will swim across the East Passage of Narragansett Bay, from the Coaster's Harbor Island Beach, Newport, to Jamestown Island in the vicinity of Potter's Cove. Each swimmer will be escorted by a rowboat with a spotter onboard, and orange pylons will be placed along the swim route, outside of the main ship channel, to facilitate swimming/rowing a straight course. The swim will take place between 9 a.m. and 11 a.m. on August 22, 1992. All swimmers will be limited to these two hours to complete the swim. In the event of fog or lightning, the swim will be postponed until August 23, 1992, during the same time period. Approximately 10 spectator craft are expected to attend.

The Coast Guard is establishing a temporary moving safety zone around the band of swimmers and escort craft involved in Swim the Bay. The zone will encompass a three hundred yard radius around the swimmers participating in the event and the associated craft as they cross the East Passage from

Coaster's Harbor Island Beach (position 41–31N, 071–19.8W) to Potter's Cove (position 41–31N, 071–22W). The safety zone will be in effect between the hours of 9 a.m. and 11 a.m. on August 22, 1992. If the event is postponed due to fog or lightning, the same safety zone will be established on August 23, 1992, during the same time period. This safety zone is necessary to protect the participants and associated craft involved in Swim the Bay from inherent dangers (personal injury or property damage due to collision) associated with vessels transiting the area of such an event.

Discussion of Comments and Changes

None.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Although the proposed safety zone affects the main shipping channel through the East Passage of Narragansett Bay, the impact is expected to be minimal for several reasons. First, the large commercial vessel traffic interests that would normally use the affected waterway have been given 2½ months advance notice of the event and the pending safety zone/channel closure. This is more than sufficient time for these entities to schedule commercial ship transits around the safety zone time period. Second, the other interests to be affected, the recreational vessels, spectator craft, small passenger vessels, and perhaps fishing vessels, will not endure any undue hardship because they have an unlimited amount of alternate water, outside the limits of the safety zone, in which they may safely operate. Lastly, the impact of the proposed safety zone on any particular area of the waterway will be of limited duration due to the short time frame of the event and also due to the nature of a moving safety zone. Once the moving zone has passed, vessels desiring to use the channel will have the opportunity to transit.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined under REGULATORY EVALUATION, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1:05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A § 165.T01–056 is added to read as follows.

§ 165.T01–056 Safety Zone: Rhode Island; Lower Narragansett Bay, East Passage

(a) Location: The following area is a safety zone: A moving safety zone encompassing a three hundred yard radius around the swimmers and associated craft participating in Swim the Bay, as they transit from Coaster's Harbor Island Beach (position 41–31N, 071–19.8W) to Potter's Cove (position 41–31N, 071–22W).

(b) Effective Date: This regulation is effective between the hours of 9 a.m. and 11 a.m. on August 22, 1992, unless terminated sooner by the Captain of the Port. If the event is postponed from August 22, 1992, due to weather, this regulation will be effective between the hours of 9 a.m. and 11 a.m. on August 23, 1992, unless terminated sooner by the Captain of the Port.

(c) Regulations: The general regulations governing safety zones contained in § 165.23 apply.

Dated: July 29, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92–18790 Filed 8–7–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6939

[AK–932–4214–10; AA–53289]

Revocation of Executive Order No. 8597, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety an Executive order which established the Kodiak Naval Airspace Reservation for defense purposes for the Department of the Navy at Kodiak, Alaska. The Kodiak Naval Airspace Reservation is no longer needed for the purpose for which it was established. This order is for record clearing purposes.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 8597, as amended, which established an airspace reservation for national defense and other governmental purposes is hereby revoked insofar as it affects the airspace over the following described area:

Kodiak, Alaska

U.S. Survey No. 2539.

The area described contains approximately 34,700 land and water acres.

Dated: July 22, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-18814 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6940

[AK-932-4214-10; AA-2793]

Partial Revocation of Public Land Order No. 829, as Amended, for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 76.50 acres of National Forest System land withdrawn for use by the Forest Service, Department of Agriculture, for the Colorado Creek Recreation Area. The land is located adjacent to the Seward-Anchorage Highway. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 829, as amended, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Located within the N½ of Sec. 5, T. 6 N., R. 1 W. (unsurveyed), and Sec. 32, T. 7 N., R. 1 W. (unsurveyed), more particularly described as:

A tract of land which lies adjacent to the Seward-Anchorage Highway, 9.00 chains in width, on the west right-of-way line, parallel to and 50 feet from the center line of the highway, and 85.00 chains in length, between Station 924 and 980+10, approximate latitude 60°39' N., longitude 149°30' W.

The area described contains approximately 76.50 acres.

2. Subject to valid existing rights, and any other withdrawal of record, the land described above is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. The State of Alaska application for selection made pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of the Chugach National Forest reservation and any other withdrawal of record.

Dated: July 22, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-18813 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-434; FCC 92-262]

Network-Cable Cross-Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission in this Report and Order modifies § 76.501(a)(1) of its rules, which prohibits common ownership of cable television systems and national television networks (the "network-cable cross-ownership rule"). In light of significant changes that have occurred in the video marketplace since the rule's adoption in 1970, the Commission concludes that the rule in its current form is no longer needed to achieve its original objectives: To curb network dominance of the video marketplace and to protect the cable industry in its incipient stage of development. In addition, we believe that substantial public benefits—such as healthier, more diversified network operations and increased cable competition—could occur through relaxing the cross-ownership restriction. As a result, the Commission will revise the rule to permit networks to own cable systems, provided that no such combination exceeds 10% of homes passed by cable nationwide, and 50% of homes passed by cable within an ADI. We will not apply the local limit to instances where the network-owned cable system faces a "competing" system.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jim Coltharp, Mass Media Bureau, Policy and Rules Division, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 92-434 adopted June 18, 1992, and released July 17, 1992. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Synopsis of Report and Order

1. This Report and Order relaxes § 76.501(a)(1) of our rules, which prohibits common ownership of cable television systems and national television networks (the "network-cable cross-ownership" rule). In light of significant changes that have occurred in the video marketplace since the rule's adoption in 1970, we conclude that the rule in its current form is no longer needed to achieve its original objectives: To curb network dominance of the video marketplace and to protect the cable industry in its incipient stage of development. In addition, we believe that substantial public benefits—such as healthier, more diversified network operations and the potential for increased cable competition—could occur through relaxing the cross-ownership restriction. Therefore, we decide to allow significant network entry into cable television ownership subject to judicious structural constraints. Accordingly, we will permit networks to own cable systems, provided that no such combination exceeds (i) 10% of homes passed by cable nationwide, and (ii) 50% of homes passed by cable within an ADI. We will not apply the local limit to instances where the network-owned cable system faces a "competing" system. These measures should effectively prevent potential abuses by network-cable owners by reducing those owners' incentives to pursue various discriminatory practices. However, as an additional measure, we will entertain petitions for special relief in order to remedy any individual instances of anticompetitive action in deleting or repositioning local broadcast signals on network-owned cable systems. Where we find that anticompetitive conduct has occurred, we will order the cable operator to carry the station, or to carry it on its former channel, as appropriate.

Finally, in three years we will review the continued necessity of retaining these restrictions on the broadcast networks' participation in the cable industry.

2. When the Commission adopted the rule prohibiting network-cable cross-ownership in 1970, it expressed a general concern that: (i) Network ownership of cable systems could inhibit the cable industry's growth and competitiveness during a critical stage of development, (ii) the networks already dominated the video marketplace, and (iii) the networks could restrict the amount of competing programming supplied by their cable systems or refuse to carry a rival network's programming. In the early 1980's, several studies questioned the necessity of the cross-ownership rule and emphasized the increasing competition within the video marketplace. The earlier Notices in this proceeding cited these studies and proposed to eliminate the rule because of growth in the video marketplace as well as cable television's development. At the same time, the Commission solicited comments on any intervening economic and regulatory developments in the video marketplace that were relevant to the continued validity of the rule.

3. In December 1991, in response to continuing fundamental changes within the video marketplace, the Commission's Second Further Notice of Proposed Rulemaking (57 FR 868, January 9, 1992) observed that eliminating the rule could enhance network efficiency and generate public benefits. However, we also recognized concerns raised in this proceeding by various parties that repealing the cross-ownership restriction could undermine competition and diversity in local and national video markets. Therefore, we invited comment on the rule's continued validity, as well as on options that would permit cross-ownership subject to various constraints, including allowing networks to own cable systems (i) in "large" or "competitive" markets, or where second competitive cable systems exist; (ii) up to a national subscriber limit, or (iii) according to must carry and discrimination safeguards.

4. Throughout this proceeding, we, as well as many of the commenting parties, have questioned the continued validity of the rule's original justification: To prevent network dominance or undue concentration in the video marketplace, and to promote growth in the infant cable industry. Given the competitive conditions of the contemporary video marketplace, we believe that this rationale has been seriously undermined. Indeed, we observe that most commenters agree that the rule's rationale is no longer sufficient to sustain a *per se* prohibition against network-cable cross-ownership. In particular, the changing structure of the video marketplace is well-documented, with over 10,000 cable systems now operating in the United States, compared to 2,490 systems in 1970. Meanwhile, the broadcasting industry has grown from 962 to nearly 1500 television stations between 1976 and 1991. As viewer choices have increased, the broadcast networks' audience shares and real advertising revenues have fallen significantly in the last decade. These developments convince us that the rule is no longer needed to protect a struggling cable industry, as it was originally designed to do, because the video marketplace now includes broadcast and cable industries that are both large and mature.

5. We further conclude that allowing networks to own cable systems in certain situations could affirmatively promote competition in the video marketplace and provide other public interest benefits. First, network ownership of cable systems would create opportunities for the broadcast networks to diversify their operations and to gain access to additional revenue sources. In addition, the public is likely to benefit from network entry as a result of the networks' related expertise in distributing programming to consumers, producing news broadcasts and other programming, and coordinating operations with affiliated stations. Although parties have questioned the extent of the networks' expertise in operating cable systems, we believe that their experience is sufficiently related to place the networks among the most likely potential entrants into cable delivery. Moreover, as the networks develop more viable operations by adding another stable revenue source, we believe that the video marketplace could benefit from a more secure broadcast network structure, which again could enhance the quality and diversity of video programming available to viewers.

6. Significant network entry into cable ownership are also important in view of the many technological and service innovations that appear imminent in the cable industry, which will enable the broadcast networks to compete more effectively in the rapidly evolving video marketplace of the future. Such innovations not only will permit cable operators of offer video-on-demand, but they may also enable cable systems to offer a wide range of advanced video, voice, data, and other telecommunications services. The Commission has also previously observed that cable service has benefited from vertical integration between system operators and programmers, and the earlier Notices in this proceeding supported proposals to eliminate the rule by stating that similar economies could occur through network entry. Specifically, we have stated that cable subscribes have benefited from MSO investment that has generated more original programming and a wealth of new viewing options for consumers. Furthermore, vertical integration enables cable operators to improve the quality of their existing program services through increased program payments, if they believe that such investments will increase their market penetration.

7. We recognize that parties seeking to retain the rule raise arguments that large cable MSOs and the broadcast networks control many of the outlets for distributing programming in the video marketplace. We do no believe, however, that we must maintain an absolute prohibition against network-cable cross-ownership in order to protect competition and diversity. Indeed, while the networks remain a significant force in the video marketplace, we have accumulated substantial evidence that documents the increasing competitive pressures that they face, as well as the vast changes in the market that have occurred since the cross-ownership rule was established. We thus conclude that network participation in the cable industry is unlikely to cause networks to create an undue concentration of power in the video marketplace, particularly in view of the large number of cable MSOs that now operate nationwide, as well as the conditions we impose on network entry that are described below.

8. The arguments to retain the rule also focus on concerns that network-cable combinations could harm broadcasters in the local marketplace through various discriminatory practices, thus restricting competition and diversity in the video marketplace. Although the various scenarios for discrimination and bypassing could conceivably occur, we believe that their merit as arguments to retain the rule is questionable because the strategies are inconsistent with one another and are contrary to the economic interests of network-cable owners. In addition, any abuses by network-cable owners would most likely occur in limited instances, which we could address through more

specific measures rather than by retaining the current prohibition on cross-ownership.

9. We have concluded in this Report and Order that the rationale for the network-cable cross-ownership rule is no longer sufficient to sustain a *per se* prohibition against network entry into cable ownership. The Commission relied upon this same rationale when it adopted a rule to prohibit cross-ownership of broadcast television stations and cable systems that reach areas within the broadcast station's area of service. Therefore, for the reasons detailed above, we believe that the rationale for an absolute prohibition on broadcast-cable cross-ownership is no longer valid in light of the ongoing changes in the video marketplace. We also agree with Chris-Craft that the networks, local broadcasters, and cable operators each compete for viewers, advertising, and programming, and thus, that local broadcasters should have opportunities to enter the cable industry to the same extent as broadcast networks. We recognize, however, that the Cable Communications Policy Act of 1984 codified the Commission's broadcast-cable cross-ownership rule, and we accordingly lack jurisdiction to alter it in any way. Therefore, we recommend that Congress repeal the broadcast-cable cross-ownership rule to permit us to allow local broadcasters to own cable systems in their service areas.

10. Based on this proceeding's record, we adopt a 10% national limit on homes passed by cable systems owned by a network in order to foreclose the potential national dominance of network-cable owners and, thereby, to promote diversity in the video marketplace. The broadcast networks have already established a significant ownership presence in the video marketplace through their owned-and-operated stations, and we believe that a national ownership limit will allow the networks to complement their existing operations without accumulating an undue portion of the outlets for delivering video programming. We note that commenters generally agree that any restrictions imposed in place of the cross-ownership rule should include a national ownership cap. We believe that the 10% limit on homes passed is a reasonable threshold that will not only permit opportunities for network entry into cable, but will also allow for growth to increase the potential benefits to the public from diversified network investments. We recognize that a national base of "cable subscribers" is more readily measurable than the "homes passed" base. However, we believe that, unlike a "homes passed" approach, a subscriber test—especially in the context of applying both national and local ownership standards—could discourage network-owned cable systems from adding subscribers. In addition, because a threshold measured according to "subscribers" is fundamentally less stable than a measure defined by "homes passed," we will use a "homes passed" standard for applying the new ownership standards.

11. We will adopt a 50% local limit on homes passed in an ADI by cable systems that are owned by networks. As described above, we will not apply any local limit to instances where the network-owned cable system faces a "competing" system. We note that the affiliates and INTV believe that a limit on homes passed in an ADI, in addition to national limits, would prevent bypassing because a network could not purchase enough cable systems in a market to reach an area equivalent to the reach of the local broadcast station. This restriction would thus address one of the major concerns of parties seeking to retain the rule. In addition, we believe that the local ownership cap could provide a competitive constraint to address carriage and channel positioning concerns. Specifically, network-cable operators that encompass only a portion of an ADI market—or an area smaller than the affiliate's coverage—would arguably have incentives to treat affiliates and other local broadcast stations no less favorably than non-network owned cable systems. We recognize that some parties contend that local caps are redundant if behavioral restrictions are used. However, we believe that local caps are necessary at the outset of this rule change and preferable to the other behavioral restrictions proposed in the Second FNPRM and the additional measures suggested by commenters.

12. We also proposed in the Second FNPRM to permit networks to own local cable systems subject to must carry requirements or other anti-discrimination measures. We believe that the local ownership limit adopted in this Report and Order will mitigate most carriage and channel positioning concerns by preventing network-cable operators from acquiring cable systems that encompass an entire ADI. We also reiterate our belief that deliberate anticompetitive action by a network-cable entity against local broadcast television stations would undermine the value of the network's cable system. Nevertheless, even with the local limits in place, we recognize the possibility that specific, isolated instances of anticompetitive practices against individual local stations could occur. In order to deal with any such situations, we will adopt a narrowly-drawn remedy that requires network-owned cable operators who have dropped or repositioned a local station for anticompetitive reasons to restore the station to its prior carriage status. We will take this action upon an appropriate showing by the local station that a failure to restore carriage or channel position would engender significant harm to the station. Therefore, we will entertain complaints from local broadcasters alleging harm as a result of anticompetitive conduct by a network-owned cable system with respect to non-carriage or channel repositioning.

13. We set forth the following procedures for the complaint process. First, an operator of a network-owned cable system must provide 30 days' notice to any local station when the operator proposes to drop the station from the system or reposition it to another channel. This notice will allow the local broadcaster time to assess the competitive impact of the action, and to prepare itself and its viewers for the change should it have no objection. Where the local station is dissatisfied with the cable operator's proposed action, we expect that the parties will utilize this period to reach a mutually agreeable resolution prior to the scheduled date for non-carriage or repositioning. Failure to comply with this notice requirement may be construed as evidence of anticompetitive intent by the system in taking the action against the station. Next, whenever a local broadcast station judges that it has suffered, or will suffer, competitive harm as a result of being dropped or repositioned by a network-owned cable system, the station may seek special relief from the Commission pursuant to § 76.7 of our Rules. We will confer standing upon trade associations to file such petitions on behalf of member stations that have been dropped or repositioned by network-owned cable systems.

14. The petition, in accordance with § 76.7 of our Rules, must state that: (1) A network-owned cable system has taken adverse action against the station (*i.e.*, it has dropped or repositioned the station's signal against the station's wishes), or conclusively indicated that it will take such action, and (2) the station has been or will be significantly harmed by the adverse action. In pleading this second element of the *prima facie* case against a cable operator, the complainant must provide factual

evidence showing that the station has lost or will lose access to a significant part of its audience as a result of the cable operator's adverse action. The complainant must also provide any evidence that would indicate that the cable operator's action was taken as a means of unfairly inhibiting competition for viewers, advertisers, and programming from the broadcaster in the local video market, rather than for legitimate business purposes. In its opposition, the network-cable operator may rebut the allegations by demonstrating that its actions were based not on anticompetitive reasons, but rather on legitimate efforts to serve the needs and interests of its subscribers.

15. In evaluating the request for special relief, we will consider, *inter alia*, the following factors: (i) The station's past and present ratings; (ii) whether the cable operator's programming decision was supported by subscriber surveys or other data; (iii) whether the cable operator replaced the station's signal with another broadcast station or cable channel in which the cable operator holds an equity interest, or whether the network owning such cable system has also bypassed the local station by providing network programming through its cable system; (iv) whether the cable operator can sell a significant amount of local advertising on the replacement channel; (v) the ratings and format of the replacement channel compared with the dropped or repositioned station; (vi) the cable system's channel capacity; (vii) whether the cable operator provided adequate notice to the broadcast station; (viii) whether the cable operator provided its subscribers with prior notice or received a substantial number of subscriber complaints; (ix) whether the station was moved to a channel that is not easily reached by the system's subscribers; and (x) whether other cable systems in the market had dropped, repositioned or refused to carry the station, and any justifications for such actions. We stress that this list of factors is merely illustrative and does not foreclose the Commission from weighing any other relevant factor in evaluating an individual broadcaster's complaint. Moreover, no single factor will necessarily be determinative; rather, we will reserve the discretion to weigh all pertinent factors in light of the particular circumstances of each case. Where we find that special relief is warranted, we will order the cable operator to restore the carriage or channel position of the local station.

16. We adopt the above measures rather than imposing other possible restrictions that were recommended by parties to remedy concerns that could result from repealing the rule. First, we believe that the above measures will adequately address problems regarding carriage and channel positioning. In addition, we recognize that NASA and INTV recommend several broad behavioral restrictions in addition to must carry and bypass protection, but we find that these measures are unnecessary in light of the other measures that we adopt in this Report and Order. Furthermore, these additional measures would essentially reimpose the cross-ownership rule by removing incentives for—or erecting substantial barriers to—network entry.

17. The restrictions implemented in this Report and Order are designed to address possible concerns regarding competition and diversity stemming from present conditions in the video marketplace. We believe that after a period of transition and further change in the marketplace, the limitations may prove unwarranted. Accordingly, three years from the adoption of this Report and Order, we will institute a proceeding, which will conclude within one year, to review the continuing necessity of retaining the revised rules on network participation in the cable industry. As part of our review, we will take particular interest in any evidence that network-owned cable operators have acted anticompetitively toward local broadcast stations.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of This Action

This action is taken in response to questions regarding the continued validity of the network-cable cross-ownership ban in the midst of continuing fundamental changes and increased competition with the video marketplace. This Report and Order relaxes the rule to permit broadcast television networks to own cable systems, provided that such combinations do not exceed (i) 10% of homes passed by cable nationwide, and (ii) 50% of homes passed by cable within an ADI. We will not apply the local limit to instances where the network-owned cable system faces a "competing" system. We will also consider complaints from local broadcast stations that claim to have experienced competitive harm by a network-owned cable system with respect to non-carriage or channel repositioning. Where we find that anticompetitive conduct has occurred, we will take remedial action, including ordering the cable operator to carry the station, or to carry it on a given channel, as necessary. In three years, we will review the continued necessity of retaining these restrictions on the broadcast networks' participation in the cable industry, given that the measures may prove unwarranted after a period of transition and further change in the video marketplace. Network ownership of cable systems in defined circumstances will serve the public interest by promoting healthier, more diversified network operations and increased competition to incumbent cable systems, and the limited structural restrictions will alleviate concerns of possible anticompetitive conduct by network-cable combinations.

II. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

CCA/SBA states that the initial regulatory flexibility analysis did not uncover the significant potential harm that the proposed changes to the rule could impose on independent television stations and small businesses that advertise on them, small cable operators, wireless cable systems, and program producers.

B. Assessment

This Report and Order recognizes concerns raised by parties seeking to retain the cross-ownership rule, which claim that network-cable operators could use enhanced leverage to harm local broadcast stations through various discriminatory practices. The Commission concludes that the concerns regarding such possible practices are not sufficient to retain the rule, but, out of an abundance of caution, believes that some measured structural restrictions and complaint procedures are warranted to alleviate the potential harm to competition and diversity in the video marketplace.

C. Changes Made as a Result of Such Comments

The Commission modifies the cross-ownership rule to permit networks to own cable systems, provided that such combinations do not exceed the national and local standards for homes passed. The local unit will not apply to instances where the network-owned cable system faces a "competing" system. We are convinced that any lingering concerns

regarding competition and diversity in the video marketplace are best addressed through these measured structural constraints, which are readily applied and enforced. Moreover, we believe that these measures will mitigate the need for adopting broad behavioral measures to prevent potential abuses by network-cable owners because their incentives to pursue discriminatory practices would be greatly reduced. Nonetheless, in the event that such practices should occur, we will consider complaints from local broadcast stations that claim to have experienced competitive harm by a network-owned cable system with respect to non-carriage or channel repositioning. Where we find that anticompetitive conduct has occurred, we will take remedial action, including ordering the cable operator to carry the station, or to carry it on a given channel, as necessary.

III. Significant Alternatives Considered and Rejected

The Commission considered all the alternatives presented in the Second FNPRM and considered all the comments directed to the various issues in the Second FNPRM. Alternatives proposed by commenters that were less burdensome on network-cable operators, and which would not detract from the Commission's goal of ensuring that quality service is provided to the public, were adopted.

18. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981)).

Ordering Clauses

19. Accordingly, *It is ordered* That, pursuant to sections 2(a), 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303(r), part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth below, effective August 31, 1992.

20. *It is further ordered* That MM Docket No. 82–434 is terminated.

List of Subjects in 47 CFR Part 76

Cable Television.

Rule Changes

Part 76 of chapter I of title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 76 continues to read as follows:

Authority 47 U.S.C. 154, 303.

2. Section 76.7 is amended by adding a new sentence to the end of paragraph (e) to read as follows:

§ 76.7 Special relief.

* * * * *

(e) * * * With respect to petitions filed relating to discontinuance of carriage of a broadcast signal, or repositioning a signal to another channel, by parties subject to § 76.501(b)(1), comments or opposition filings shall be due within fifteen (15) days and replies thereto within seven (7) days.

* * * * *

3. A new § 76.63 is added to read as follows:

§ 76.63 Notification.

Where the signal of a local television broadcast station, as described in § 76.5(gg)(1–3), is carried by a cable television system that is subject to the provisions of § 76.501(b)(1), the operator of such cable system shall provide written notice to the licensee of a local television station at least 30 days prior to either discontinuing carriage of the station's broadcast signal or carrying that signal on a different cable channel.

4. Section 76.501 is revised to read as follows:

§ 76.501 Cross-ownership.

(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

(b)(1) A cable television system (including all parties under common control) may directly or indirectly own, operate, control, or have an interest in a national television network (such as ABC, CBS, or NBC) only if such a system does not pass more than:

(i) 10 percent of homes passed on a nationwide basis when aggregated with all other cable systems in which the network holds such a cognizable interest, and

(ii) 50 percent of homes passed within any one ADI, except that a cable television system facing a competing system will not be counted toward this 50-percent limit.

(2) The requirements of paragraph (b)(1) of this section are applied at the acquisition date, except that a party with no prior attributable interests in a broadcast network or cable systems may exceed these limits in connection with a purchase of these operations from a party with such existing network-cable interests. Paragraph (b) will not be applied so as to require divestiture of existing facilities.

(3) For purposes of paragraph (b) of this section:

(ii) "Homes passed" is defined as the number of homes to which cable service is currently available whether or not a given household subscribed to the service.

(ii) "ADI" is defined as the Arbitron Area of Dominant Influence.

(ii) A "competing system" is faced by a network-owned cable system where the cable system provides service in the same area as another independently owned, multichannel video delivery system, as specified in § 76.33(a)(2)(ii). In order to be counted, such multichannel competitor must be capable of providing a package of local broadcast signals integrated within the service.

(c) Effective date. The provisions of paragraph (a) of this section are not effective until November 8, 1987, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970, (e.g., if franchise were in existence on or before July 1970), and will be applied to cause divestiture as to ownership interests proscribed herein only where the cable system is directly or indirectly, owned, operated, controlled by, or has an interest in a non-satellite television broadcast station which places a principal community contour encompassing the entire community and there is no other commercial non-satellite television broadcast station placing a principal community contour encompassing the entire community.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18121 Filed 8–7–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 332 and 333

Acquisition Regulation; Incremental Funding and Protests

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), title 48, Code of Federal Regulations, chapter 3, to make two administrative changes.

EFFECTIVE DATE: August 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Senior Procurement Analyst, Division of Acquisition Policy, telephone (202) 690-7590.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to clarify and update the policy regarding the application of the concept of incremental funding, and to correct an erroneous reference concerning protest procedures. The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have the opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that neither amendment in this rule will have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department is not requesting comments on these acquisition regulations, and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.); therefore, no regulatory flexibility statement has been prepared. Furthermore, this document does not contain information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 332 and 333

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR chapter 3 as set forth below.

Dated: August 3, 1992.

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, chapter 3 of title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for parts 332 and 333 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 332—[AMENDED]

332.702 [Amended]

2. Section 332.702 is amended by revising paragraph (a) to read as follows:

332.702 Policy.

* * * * *

(a) Incremental funding may be applied to cost-reimbursement type contracts for the acquisition of research and development and other types of nonpersonal, nonseverable services. It shall not be applied to contracts for construction services, architect-engineer services, or severable services. Incremental funding allows nonseverable cost-reimbursement contracts, awarded for more than one year, to be funded from succeeding fiscal years.

* * * * *

PART 333—[AMENDED]

333.103 [Amended]

3. Section 333.103 is amended by correcting the reference in paragraph (a)(4) to read "333.103(a)(3)."

[FR Doc. 92-18823 Filed 8-7-92; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Retention of Threatened Status for the Continental Population of the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service announces its final decision on a February 16, 1989 petition requesting that all populations of the African elephant (*Loxodonta africana*) be elevated to endangered status under the U.S. Endangered Species Act. The Service has determined, based on the most current data available, that the most appropriate classification of the continental population of the African elephant is that it remain listed as threatened. The Service has also modified the current special rule to prohibit the import of African elephant ivory into the United States (this effectively reenforces the June 9, 1989 moratorium on the importation of African elephant ivory into the United States under authority of the African Elephant Conservation Act); to not prohibit the possession of or interstate commerce in legally imported elephants or their products or parts; and to allow the importation of sport-hunted elephant trophies into the United States under prescribed conditions.

EFFECTIVE DATE: September 9, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703-358-1708, FAX 703-358-2276).

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) was petitioned by Fund for Animals on August 18, 1977, to list the African elephant (*Loxodonta africana*) as endangered under the Endangered Species Act (Act), based primarily on the threat resulting from the commercial trade in elephant ivory. The Service, in response to that petition, conducted a status review and published a final rule on May 12, 1978 (43 FR 20499-20504) determining that the African elephant more appropriately met the criteria for a threatened species. The Environmental Impact Assessment prepared for that final rule stated that even though "the African elephant had been eliminated from much of its original range and is subject to severe overexploitation, there still are relatively large populations, some of them stable and well protected. An endangered classification thus would not accurately express the situation of this species * * *" A special rule provided for the importation of African elephants and products thereof into the United States, for primarily commercial purposes, in accordance with an ivory control system established under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The continental elephant population at that time was believed to total about 1.3 million animals with some populations stable and well-protected. Elephant populations in west Africa were considered fragmented, as populations occurred in remote border areas and/or in small isolated patches of suitable habitat. Elephant populations throughout the rest of Africa were

considered to be progressively losing land to expanding human populations and associated agricultural development. The offtake of elephants in 1978 clearly exceeded recruitment and the continental elephant population was diminishing. Few elephant management plans were developed or implemented and elephant protection and the ivory marketing control mechanisms were clearly inadequate.

The Service was again petitioned, on February 16, 1989, by the Humane Society of the United States, Animal Welfare Institute, International Wildlife Coalition, Animal Protection Institute, Society for Animal Protective Legislation, Friends of Animals, Inc., with support from other organizations, to reclassify the African elephant from threatened to endangered. The petition described continued declines in elephant populations because of continued illegal killing of elephants for the ivory trade and argued that the African elephant was endangered because of the continued threats resulting from that trade.

A variety of conservation efforts to curtail the illegal killing of elephants were initiated before and shortly after the petition was filed. Those actions, described below, included increased efforts by individual range countries to curtail poaching; ivory importation moratoria imposed by the United States, much of western Europe and Japan; and the transfer of the African elephant to CITES appendix I, which became effective in January 1990 and continues in effect.

The Service, in response to the February 1989 petition, conducted a status review and published a proposed rule (56 FR 11392–11401, March 18, 1991) stating that most populations of the African elephant (except for those in Botswana, South Africa and Zimbabwe, which remained as threatened) appeared endangered. Based on information available to the Service during its initial status review, the Service determined in the proposed rule that overutilization of the African elephant for commercial purposes was of sufficient threat to warrant reclassification of most populations to endangered. The Service evaluated this threat on a state by state basis, even though it was well-understood that elephants were not confined to political boundaries, because the level of protection provided to elephants and consequently the likelihood of overutilization varied between range states. The proposed rule indicated that the illegal killing of elephants to satisfy a worldwide demand for ivory severely impacted and endangered many elephant populations. Both elephant population and tusk weight data indicated or suggested population declines, although it was pointed out that many data sets were anecdotal accounts of former populations and somewhat precise statements of present populations. Records of ivory commerce indicated that the kill of elephants in the 1970s and 1980s was at levels that could not be sustained by the continental elephant population. It was pointed out that overutilization was both a cause for placing a population in an endangered status and a factor which if controlled could result in that population being retained in a threatened status.

A second major threat identified in the proposed rule was the inadequacy of existing regulatory mechanisms within the range states. It was pointed out that the establishment and implementation of elephant conservation plans to help develop management and enhance the protection of elephants would benefit many populations. The Service additionally acknowledged that information describing the effects of the most recent actions to control the ivory trade was not available at the time that the status review was conducted, and that the Service required additional information about those effects before preparing the final rule. The Service indicated that if substantial new information became available during the comment period the final rule could be substantially different from the proposed rule. In order to facilitate this process, the comment period on the proposed rule was extended, and because substantial conflicts existed in the newly acquired information, the Service extended the 12-month deadline for making the final determination on the proposed rule.

During the extended comment period, over 50,500 comments were received including: Extensive new information from African elephant conservation plans and the African Elephant Conservation Review of elephant management in 30 range states; extensive materials provided by several African range states; updated editions of the African Elephant Database; current information about the extent of the illegal killing of African elephants after enhanced elephant protection measures and the January 1990 CITES international ivory trade ban were implemented; and reports of the CITES Panel of Experts on the African Elephant on their evaluation of the management of the species in southern Africa.

The final rule is different from the proposed rule. Foremost, the elephant population is considered on a continental basis and it is determined that its most appropriate classification is threatened. In 1992, the continental elephant population totals about 600,000 but the critical factor of overexploitation seems to be controlled because of: (1) Enhanced anti-poaching activities, (2) the CITES appendix I listing, and (3) various ivory import moratoria. There is substantial evidence that the illegal offtake of elephants on a continent-wide basis is significantly reduced and is probably somewhat less than recruitment. At present, several elephant populations remain stable and well-protected and other elephant populations seem to be increasing and perhaps are beginning to recolonize their former range. Elephant conservation plans have been developed for most range states and some plans are presently being implemented. Elephant protection has been enhanced in many areas and the ivory control mechanisms in the form of import moratoria and the control of international trade through CITES is determined to be functional and adequate. Generally, the same habitat threats exist in 1992 as existed in 1978 and continue to threaten the continental population of the African elephant. The west African elephant populations remain fragmented in isolated habitats and habitat loss still occurs throughout the remainder of the elephant's range because of expanding human populations and the increasing encroachments of agricultural development. Although elephant populations in 1992 are less than half those of 1978, a substantial elephant population of 600,000 still exists and the protection and management of those elephants is superior in 1992 to the conditions that existed in 1978, when the species was classified as threatened, and in 1989, when the Service was petitioned to reclassify. Just as in 1978, an endangered classification would not accurately express the situation of this species.

Summary of Comments and Recommendations

The initial 90-day comment period in the proposed rule published on March 18, 1991 (56 FR 11392–11401) was extended for 13 months (56 FR 33241, July 19, 1991; 57 FR 658–659, January 8, 1992; and 57 FR 9681–9682, March 20, 1992), to allow for receipt of information for development of a final rule and to resolve issues of conflicting data. State Department cables were sent to

American embassies in 26 range countries asking that the appropriate agencies in the range countries be officially notified of the proposed rule and requesting official comments. Copies of the proposed rule were also sent to each range country by diplomatic pouch. Representatives from 19 range countries in attendance at the African Elephant and Rhino Specialist Group Meeting in Gaborone, Botswana, on July 2–5, 1991, were also personally notified about the proposed rule.

A total of over 50,500 comments were received about a variety of issues pertinent to elephants. Most comments expressed concern and requested that the Service: (1) Provide endangered status for all populations of the African elephant (13,020 comments); (2) retain the importation ban on ivory and ivory products into the United States (17,625); (3) provide endangered status for all populations of the African elephant and keep the species on appendix I of CITES at the March 1992 CITES Conference (9,570); (4) retain the importation ban on ivory and ivory products and keep the species on appendix I of CITES (1,415); (5) provide endangered status for all populations of the African elephant and retain the importation ban on ivory and ivory products (270); (6) retain legally imported pre-ban (June 9, 1989) ivory in unrestricted interstate commerce and pre-empt individual states from enacting more restrictive regulation than those of the Federal government (630); (7) not place further restrictions on captive elephants (105); (8) retain threatened status for all populations of the African elephant (185); and (9) provide for the legal sport-hunting of African elephants (105). In addition, the Service received over 7,500 comments on the unrelated issue of retaining the African elephant on Appendix I at the March 1992 CITES Conference of Parties. The specific issues of interest varied through time. For example, the preponderance of responses received 2–4 months after publication of the proposed rule addressed listing preferences for the African elephant under the Act while most responses received eight or more months after the publication of the proposed rule addressed listing preferences for the African elephant under CITES.

A second and much smaller group of comments provided biological information that could be used in formulating this final rule (they are identified in References Cited) or which raised specific issues that required individual responses. The format of the final rule is substantially different from that of the proposed rule and many comments that pertained to the logic used to develop the assessment process or the assessments made for individual countries in the proposed rule are only generally addressed in the following responses.

Comment 1.—Several comments criticized the proposed rule because it treated elephant populations as if they were contained within the borders of individual range states when in fact populations frequently move to or within two or more range states. They further argued that the Service should treat the continental elephant population as a single entity and provide a single classification that best represents the overall status of the elephant. The continental elephant population was said to face common threats and should be evaluated with regard to those threats.

Service Response.—The Service agrees the elephant population should be considered at the continental level. The proposed rule treated elephant populations on a range state by range state basis because the extent of exploitation and the quality of regulatory mechanisms varied among range states. It was an attempt to emphasize differences that existed at that time between states. Best data available at the time of the proposed rule indicated that only Botswana, South Africa and Zimbabwe had sufficient capabilities to control the overexploitation of elephants. Best data currently available suggest that overexploitation generally is controlled throughout the continent. Elephant conservation plans have been developed for most range states and have been implemented in varying degrees throughout the continent.

There is precedent for treating the African elephant on a continental basis. The 1978 final rule (43 FR 20499–20504), for example, treated the continental population as a single entity and found a threatened classification for the continental African elephant population. An additional reason for treating the African elephant as a single population is that controversy still exists about the systematics of the African elephant. For example, Smithers (1983) reviews taxonomic opinions on African elephants that variously describe (1) the forest elephant (*L. cyclotis*) as specifically distinct from the savannah, or bush, elephant (*L. africana*); (2) the two forms as conspecific because intergrading occurs where distributions overlap; and (3) a single species of African elephant with two subspecies, *L. a africana* and *L. a. cyclotis*. Ansell (1971) states there may be five surviving subspecies of *L. africana*. These are *cyclotis* in the forested areas of central Africa and four subspecies of the *L. africana* section: *africana* in southern Africa, *knochenhaueri* in eastern Africa, *orleans* which may still occur in Ethiopia, and *oxyotis* south of the Sahara and north of the equatorial lowland forest zones where *cyclotis* occurs. The Service, because of the imprecision in defining the range of individual elephant populations, the dissention about the taxonomy of the African elephant, and the new information available since the publication of the proposed rule, has assessed the African elephant as a single entity within the African continent.

Comment 2.—Several commentators questioned the accuracy of population estimates and the stated population levels within individual range states.

Service Response.—The Service used the best information available to develop the proposed rule. Significant new information has since become available and has been used to develop the final rule. The Service has, in the final rule, relied on data from the African Elephant Database (GRID, 1991; Douglas-Hamilton *et al.*, 1992) and from the conservation plans for individual range states for numerical estimates of populations. The African Elephant Database is coordinated by the European Commission African Elephant Survey and Conservation Project, in collaboration with the United Nations Environment Programme, the African Elephant Specialist Group and the World Conservation Monitoring Centre at Cambridge. The elephant conservation plans for individual states were produced with assistance from the African Elephant Conservation Coordinating Group with financial assistance from the U.S. Agency for International Development, the European Commission, the World Wildlife Fund and the U.S. Fish and Wildlife Service. It is generally accepted that these data sources are the best estimates of elephant populations currently available.

Comment 3.—The final rule under the Endangered Species Act should be consistent with the CITES classification.

Service Response.—The CITES appendix I listing for the African elephant was determined by an international vote under rules governing an international trade agreement. Appendix I status was maintained at the Kyoto, Japan, meeting in March 1992 because it did not seem possible, to a majority of the voting members, to market elephant products in a manner

that would not cause endangerment to the species. The listing of the African elephant under the Act is a biological assessment of the present threats to the species. CITES and the Endangered Species Act listings are not necessarily joined actions. The African elephant is being retained as threatened under the Act partly because of the effectiveness of the CITES appendix I listing in reducing pressures causing overexploitation of the African elephant resource.

Comment 4.—Several comments questioned the finding in the proposed rule that elephant populations in Botswana, South Africa, and Zimbabwe were threatened.

Service Response.—The elephant population in the three southern African countries was found to be threatened in the proposed rule using the best information then available. Since the publication of the proposed rule, the CITES Panel of Experts on the African Elephant (1991) found the South African elephant population to be viable, stable and under no current threat. The elephant population in Kruger National Park was acknowledged as one of the best monitored elephant populations in Africa and the resources and measures deployed to combat the illegal killing of elephants were found to be effective. The CITES Panel of Experts on the African Elephant (1992) found that Botswana's elephant population was viable and the panel identified no specific risks. Botswana was additionally found to have an acceptable population sampling system, a low level of poaching activity, and current anti-poaching measures that successfully kept poaching at low levels. Botswana's past and intended levels of offtake were found to be sustainable and the current illegal offtake was found to be negligible. Zimbabwe's national elephant population was also considered viable and the potential risks to that population were negligible (CITES Panel of Experts on the African Elephant, 1992). The panel found that Zimbabwe's Department of National Parks and Wild Life Management had a qualified staff and its aerial survey techniques were of high quality. Zimbabwe's current anti-poaching measures were considered the best in the region. Their effectiveness is indicated by the generally low numbers of elephants reported illegally killed over the last few years. The continuing stability of the southern African elephant populations and the reduced levels of overexploitation in other elephant populations are basic to the decision to retain the current continental elephant population as threatened.

Comment 5.—Comments in petition forms were received from Zimbabwe and South Africa to delist the populations of African elephants within their borders.

Service Response.—The Office of the Solicitor has determined that petitions received on a species during an open comment period established for that species should be treated as comments. Consequently, the Service utilized the substantial information submitted about the status of elephants in Zimbabwe and South Africa in the formulation of the final rule but made no individual listing decision for elephants within those two range states. The Service has chosen not to evaluate populations in individual range countries in this finding. This action is consistent with the Service position described in response to Comment 1.

Comment 6.—The continental elephant population should be classified as endangered because it may only be about one half of that which existed in 1978 when the continental population was listed as threatened and/or its current range is only about 25 percent of its historic range.

Service Response.—About six hundred thousand elephants still occur on over 5 million square kilometers (2 million square miles) of suitable habitat, there is no substantial evidence that current offtake on a continental basis exceeds rates of elephant recruitment, and elephant management in individual range states varies from inadequate to very good across the continent. Populations with these characteristics are best classified as threatened.

Comment 7.—Some comments opposed the retention of a domestic United States interstate trade in legal pre-ban ivory.

Service Response.—The Service has no evidence that the continued interstate trade within the United States of legally imported African elephants and their parts and products will lead to ivory smuggling into the United States or fuel elephant poaching in Africa. The lack of a prohibition against interstate commerce does not imply support by the Service either for the resumption of the import of ivory into the United States or for the resumption of ivory trade in the world market.

Comment 8.—No sale of elephant products should be considered beneficial to conservation because realized funds are usually returned to the general treasury rather than directly applied to elephant management.

Service Response.—The most beneficial use of funds generated from the sale of any elephant product is their direct application to elephant management. Benefits also accrue to conservation, however, if monies returned to the general treasury cause governments to support effective elephant management in order to generate needed foreign exchange.

Comment 9.—The Service should support the nonconsumptive use of elephants throughout Africa by promoting ecotourism.

Service Response.—The Service supports both non-consumptive uses of African elephants as well as certain carefully regulated consumptive uses of African elephants as mechanisms for attaining revenues to enhance elephant and wildlife management throughout the African continent.

Comment 10.—Endangered species status is necessary because any other listing will lead to a reopening of the world trade in elephant products, especially ivory, which will lead to the extinction of the species. A threatened status would encourage the international trade in elephant products.

Service Response.—Maintaining threatened status for the African elephant under the Act effectively prohibits the importation of ivory or any elephant product into the United States unless an exception to that prohibition is provided by a special rule. The importation of worked or raw elephant ivory (except for sport-hunted trophies) into the United States is specifically prohibited by the moratorium established under the African Elephant Conservation Act (54 FR 24758–24761) and the present final rule creates no exceptions to the import prohibition. Neither a threatened nor an endangered listing under the Act would have any direct impact on international commerce that is not under United States jurisdiction. International commerce in African elephant products is regulated by the CITES appendix I listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened on the basis of one or more of the five following evaluation factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) over utilization for commercial, recreational,

scientific, or educational purposes; (c) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

The following assessment is largely based on new information that has become available to the Service since the publication of the proposed rule.

A. Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range.

Elephant range may at one time have extended over 21,250,000 square kilometers (8,202,500 square miles) of the African continent. This assumes that the 9,000,000 square kilometers (3,475,000 square miles) of Sahara Desert was never elephant habitat but assumes that all other land areas of the continent could have been elephant habitat. Ansell (1971) states that within the last three centuries the species occupied virtually all of sub-saharan Africa except the very dry sub-desert steppe of the Sudanese Arid zone, the desert and sub-desert parts of the Somali Arid zone and the coastal desert of the South West Arid Zone. The petitioners note (Humane Society of the United States *et al.*, 1989:29) that by the Middle Ages elephants had been exterminated from their habitats in North Africa by ivory hunters. Ansell (1971) states that the species became extinct north of the Sahara by the sixth century A.D. Douglas-Hamilton (1987) states that most elephants were eradicated from West Africa in the early years of the twentieth century. The ivory trade may have caused a population crash in west Africa by 1914. These conditions for northern and western Africa also existed in 1978 when the continental population of the African elephant was classified as threatened. The present elephant range is estimated to be about 5,188,000 square kilometers (2,002,500 square miles) (Douglas-Hamilton *et al.*, 1992) so the present elephant range is about 25 percent of the range that existed before the sixth century A.D. The present elephant range is still a vast area, nearly the size of the 39 states ranging from North and South Dakota, Wyoming, Colorado, Oklahoma and Texas east to the eastern coast of the United States. This is an area elephants can be expected to occur, not the bounds of an area containing fragments of habitats suitable for elephants. This vast area also contains a variety of cover types used by elephants. For example Douglas Hamilton *et al.* (1992) state that forest and forest-grasslands are the dominant habitat types in central Africa, bushland-thicketed mosaic and miombo woodlands predominate in eastern Africa, miombo woodland and woodland mosaics predominate in southern Africa and Sudanian woodland and forests predominate in west Africa.

Cumming *et al.* (1990) describe the history of the elephant in Africa and link the historical decline of the elephant to the following three major factors: (1) The demand for ivory, which has often been at a level that is totally unsustainable; (2) desertification which has clearly been a major cause for the disappearance of the species in North Africa and the Sahara and continues to impact the small remaining populations in the Sahel; and (3) conflicts between elephant and humans for the use of the land. Although factor 3 may ultimately come to limit elephant populations, it is the ivory trade that historically has had the greatest impact on elephants.

Any assessment of the habitat of the continental population of the African elephant must consider the question of scale. Types of impacts are discussed below but often no quantifiable mention is made of the extent of an impact. The inability to discuss rates and extent of deforestation or rates and extent of habitat loss to agriculture, etc., further justifies evaluating the status of the African elephant on a continental basis. The discussion indicates that man's impact on the environment and elephant habitat is widely evident. Still, habitat destruction, modification or curtailment does not presently endanger the continental population of the African elephant. Expanded elephant populations could and probably would be tolerated in many African habitats.

East Africa

Seven eastern African countries presently have an estimated 96,000–134,000 elephants on about 1.1 million square kilometers (about 425,000 square miles) of habitat (Douglas-Hamilton *et al.*, 1992). A significant portion of this extensive habitat is in National Parks, Game Reserves and other protected areas.

Perhaps 2,000–2,450 elephants occur on about 119,000 square kilometers (46,000 square miles) of habitat mostly in forested areas in southwestern Ethiopia (AECCG Ethiopia, 1991). Elephants were widely distributed until the turn of the century so the present distribution is much reduced from historical levels. Problems of land-use conflicts between people and elephants are complicated by rapidly increasing human populations, poverty, civil unrest, inadequate protection and management of elephants, and a lack of public awareness of the need for conservation. Land degradation has occurred because the dense human populations have put extensive pressures on natural resources and because of outdated agricultural practices.

About 25,800 elephants (Poole, 1992) presently occur in Kenya on about 413,000 square kilometers (159,000 square miles) of habitat. Elephants in some areas may become confined in Parks and Reserves surrounded by cultivation so that some populations may eventually have to be regulated (AECCG Kenya, 1991). Elephant range is extensive in Kenya and several communal lands, National Parks and Game Reserves provide important habitats for elephants. A new Community Wildlife Program has been initiated to enhance acceptance and management of wildlife species on private lands and communal lands around parks and Reserves. Kenya can probably support an elephant population twice the present population without adversely impacting available habitats or rural Kenyans.

National parks and reserves occupy more than 10 percent of the land area of Rwanda (AECCG Review, 1991). GRID (1991) lists the total protected area as about 2,700 square kilometers (about 1,050 square miles) and the Elephant Conservation Plan for Rwanda lists an elephant population of 80–100 animals. Rwanda is one of the most densely populated countries in Africa. The pressure of human populations and demands for cultivatable lands threaten the security of protected lands and the long term future of elephants in Rwanda.

Somalia represents the eastern extremity of the range of the African elephant. Elephant range has been significantly reduced since 1979 so that elephants now occur in about 56,000 square kilometers (21,600 square miles) of habitat in southern Somalia (AECCG Somalia, 1991). The surviving population of elephants numbering between 1,000–2,000 animals live within a 100 km-wide strip along the Kenyan border. The present range includes four dry season concentration areas and the swampy creeks of Bush Bush National park. This part of Somalia still contains sizeable areas of good habitat with adequate forage, water and shade that can support far larger elephant populations than presently occur.

Sudan is the largest country in Africa with 2.5 million square kilometers (965,000 square miles) of desert, savanna, bush, forest, mountain and swamp (AECCG Sudan, 1991). Sudan has a population of 27 million people and an elephant population that is variously estimated at 22,000–44,600. Several set-aside areas are protected by

remoteness, harsh climate and rugged terrain. Other areas are impacted by grazing, firewood harvesting, agriculture and general human encroachment. Sudan still provides extensive habitat for elephants, has ample set-aside areas that could be useful for elephant protection and management, and remains a potentially important habitat for elephants and other wildlife in the northern portion of Africa.

Elephant range presently occupies about 50 percent (501,000 square kilometers or 193,400 square miles) of the land area of Tanzania. About 25 percent of the total land area (245,000 square kilometers, 94,560 square miles) is designated to provide some degree of protective status to wildlife species like elephants (AECCG Tanzania, 1991). The growth of human populations and of agricultural developments around conservation areas have led to increased levels of human-elephant interactions and crop depredation which in turn directly leads to elephant mortality. The present elephant population in Tanzania is estimated at 44,000–57,000. The Wildlife Division believes it is appropriate to manage about 70,000 elephants in Tanzania (Mlay, 1992).

The political and conservation situation in Uganda has improved significantly since 1986 and efforts are being made to restore protected areas and the tourist industry based on those protected areas (AECCG Uganda, 1991). The Ugandan elephant population is believed to number 1,200–1,900 animals and to include both savanna and forest elephants. The preservation of habitat for the two forms will preserve habitat for many species. The intended policy of the government is to transfer the ownership of wildlife outside of reserves to the local people so they may manage their wildlife, with government advice, along the tenets of Zimbabwe's CAMPFIRE program.

Central Africa

About 268,000 elephants (Douglas-Hamilton *et al.*, 1992) are estimated to occur in Central Africa. GRID (1991) lists 1.7 million square kilometers of forest habitat and 1.2 million square kilometers of savanna habitat within the 7 countries of central Africa, a total habitat area equal to about 1.12 million square miles. More current data (Douglas-Hamilton *et al.*, 1992) indicate that the total elephant habitat in Central Africa is 2,560,000 square kilometers (988,000 square miles). Central Africa presents great potential but poses some serious problems for elephant management. Barnes (1991a) states that in the long term, threats to forest elephants include: The expansion of roads, railways and pipelines; commercial plantations; logging; mining; and an expanding human population with its subsistence agriculture. Barnes (*op. cit.*)states that all these activities destroy potential elephant habitat, compete with elephants for land, fragment elephant habitats or provide access for poachers into otherwise inaccessible habitats. He considers the elephant to be a vital part of the forest ecosystem because it influences the structure and floristic composition of the forest and promotes biological diversity within the forest.

Cameroon has an area of 475,000 square kilometers (183,000 square miles) and a human population of 11.6 million (AECCG Cameroon, 1991). About 7,000 savanna elephants (Douglas-Hamilton *et al.*, 1992) may dwell in the thorny wooded savannas of middle Cameroon and in the grasslands of the floodplain south of Lake Chad in northern Cameroon. Perhaps 20,000 forest elephants (Douglas-Hamilton *et al.*, 1992) inhabit the dense, humid evergreen forest of extreme western Cameroon and the dense humid Congo forest of southern Cameroon. The evergreen Atlantic zone of low and mid-level forests in extreme western Cameroon has been extensively impacted by logging and human population pressures which have fragmented elephant habitats and reduced elephant populations. The evergreen cameroon-congolese zone of medium altitude forest in southern and southeastern Cameroon which covers about 111,000 square kilometers (42,800 square miles) remains a stronghold for a substantial population of forest elephants.

Information about the status of the elephant in the Central African Republic (CAR) is fragmentary. The CAR contains 304,000 square kilometers (117,300 square miles) of savanna habitat and 40,000 square kilometers (15,500 square miles) of suitable forest habitat (GRID 1991). That publication lists an estimated elephant population of 14,500 in the CAR. Douglas-Hamilton *et al.* (1992) lists a population of 18,500. The CAR is subject to the same habitat problems as are other states in central Africa.

Elephant range formerly extended throughout much of southern Chad. Chad is one of the more northerly limits of present elephant habitat in Africa and shares savanna elephant populations with northern Cameroon and the Central African Republic. Fewer than 2,500 elephants are estimated to occur in 202,000 square kilometers (78,000 square miles) of potential habitat. Human population pressures and desertification associated with the southward extension of the Sahara have pushed agriculture into southern Chad where human-elephant conflicts are increasing (AECCG Review, 1991).

The elephant historically occurred throughout the Congo but at present is found is only about 40 percent of the country. The present elephant population is estimated at about 49,000 animals and perhaps 40,000 of these are forest elephants that occur in the northern forest massif bordering Gabon, Cameroon and Zaire (AECCG Review, 1991). Human populations are low and concentrated along communication corridors in the dense, humid, evergreen forest. Principal threats to elephants in the Congo include growing human populations in the south and timber exploitation and habitat fragmentation associated with oil exploration and development. Timber exploitation is not now a threat but logging is increasing and could become a threat in the future.

Equatorial Guinea is a small country of 28,000 square kilometers (10,800 square miles) with a sparse human population (350,000) living within dense forest habitats. Most persons depend on traditional agricultural activities with major commercial products being cocoa, coffee, palm oil, cassava and timber. The country lies within the Congo rainforest and much of the forest remains intact as logging has not yet made serious impacts on forest resources (AECCG Equatorial Guinea, 1991). Elephants are concentrated in southern Equatorial Guinea in areas of primary forest. Elephants have shifted from the northern portion of the country because of agricultural practices and logging activities which have modified elephant habitat and created disturbances. The elephant population is listed at about 600 animals by Douglas-Hamilton *et al.* (1992).

Gabon probably has one of the largest populations of elephants (50,000–87,000) in Africa (AECCG Gabon, 1991). Approximately 85 percent of Gabon's 267,000 square kilometers (103,000 square miles) is covered in tropical forests. Lahm and Barnes (1991) state that elephants are found in large forested blocks unpopulated by humans in the center of the country. The vast forests are largely uninhabited by man because the sparse human population is concentrated along the main roads. The forests have a potential to support a very large elephant population. Deforestation rates are very low (<0.1 percent per annum) and Gabon is expected to lose a smaller portion of its forested area than will any other

African country within the next 50 years.

The construction of the trans-Gabon railway has opened up virgin forests for logging, and planned or actual mineral and oil exploitation activities have introduced roads and human disturbances into areas that were formerly isolated and uninhabited. Slash and burn agricultural practices minimally impact protected areas and overall habitat. Rural human population densities are low so community oriented elephant management programs have been slow to evolve.

Zaire formerly was the most important habitat of the African elephant on the continent. Even today this country may provide 600,000 square kilometers (231,000 square miles) of habitat for the savanna elephant and 886,000 square kilometers (334,000 square miles) of habitat for the forest elephant (GRID 1991). The AECCG Review (1991) lists 25,000 elephants occurring in savanna habitats and 65,000 elephants living in forest habitats. That plan also states that these population figures may grossly underestimate the elephant population of Zaire because the elephants in the forest habitats have been little studied. On the other hand, Douglas-Hamilton *et al.* (1992) quote studies that suggest Zaire's total elephant population may only be 63,000. Barnes (1991a) states that the greatest threats to the extensive habitats of Zaire are forest fragmentation and deforestation caused by logging activities.

Southern Africa

Eight southern African countries provide 1,300,000 square kilometers (502,000 square miles) of elephant range and support between 169,000 and 245,000 (Douglas-Hamilton *et al.*, 1992).

Angola is one of the largest countries in sub-saharan Africa and is presently in a transition mode from civil war to democratic government (AECCG Angola, 1991). Wildlife habitats are varied, ranging from lowland rainforests, deserts, and miombo woodlands phasing into forest-savanna in the north and mopane woodlands in the south. Angola possesses great biotic diversity and is in the paradoxical situation of possessing one of the richest and most varied, yet least well known wildlife resources in Africa. Angola is the only elephant range in Africa to include desert and rainforest biomes and the savanna, forest and rare desert-dwelling elephant. Information about elephants in Angola is indirect, crude and unreliable. This is reflected in estimates of elephant range as between 200,000–400,000 square kilometers and of the elephant population as being between 10,000 and 50,000. Habitat loss or conflicts over land-use are not expected to be near-future threats to Angola's elephants.

The major elephant range in Botswana encompasses an area of 80,000 square kilometers (30,800 square miles) north of latitude 20 degrees (Department of Wildlife and National Parks, Botswana, 1991). This area contains an elephant population estimated at 54,600 (46,000–63,000) which is about 99 percent of the country's total African elephant population. Seventy-five percent of the population withdraws into about 16 percent of this northern range during the dry season. These dry season core areas contain riverine habitats which are the rarest and most diverse habitats in the country. These elephant concentrations may produce sufficient foraging pressures to cause significant habitat damage. Botswana believes it is necessary to pursue the active management of elephants so that important habitats will not be destroyed.

Botswana's elephant management policy is to maintain elephants at their 1990 population level (about 55,000), maintain the quality of elephant habitat at an acceptable state, preserve biodiversity within major habitats and to reduce conflicts between elephants and humans. Botswana may develop watering points to try and lure elephants from riverine habitats and to reduce habitat degradation.

Malawi's elephant range is about 9,000 square kilometers (3,400 square miles) which is restricted to protected areas in national parks, game reserves and forest reserves (AECCG Malawi, 1991) Malawi has a rapidly increasing human population, a shortage of agricultural land and one of the highest human population densities in Africa. There is a growing conflict in Malawi over land-use, the major problem facing protected area management and elephant conservation. A sustainable population of perhaps 2,500 elephants could be maintained within the established protected areas if effective fencing was installed to separate elephant habitats and agricultural activities.

The total elephant population in Mozambique was estimated at perhaps 13,350 animals in 1990 (AECCG Mozambique, 1991). Potential elephant range is extensive and habitat is contiguous in large areas of Mozambique. All protected areas, however, have been severely impacted by the continuing civil conflict which has now lasted for 26 years. Negotiations are ongoing with South Africa to establish a large common national park that will include Kruger and a comparable area in the Limpopo Valley in Mozambique.

Elephants were formerly distributed throughout much of Namibia but agricultural settlements and unrestricted hunting in the late 19th century and agricultural developments in the early and mid-20th century forced elephant populations into their present distribution. The elephant populations and their distribution patterns have been largely unchanged in the last two decades (AECCG Namibia, 1991). More elephants occur outside protected areas than within and elephants generally move freely in and out of parks and reserves. The future of elephants outside parks and reserves and the key to enlarging protected areas lies in allowing local communities to utilize elephants or share in revenues from the harvest of elephants. The Ministry of Wildlife, Conservation and Tourism is striving to initiate a community outreach program to promote programs of sustainable utilization of wildlife. Habitats available to elephants can be substantially increased in the future by introducing elephants into suitable protected areas outside the present elephant range, by establishing additional areas of protection, and by allowing the introduction of elephants into privately owned nature reserves and game farms.

The Caprivi strip and northern and northeastern Namibia share borders and elephant populations with Angola, Zambia, and Botswana. Some elephant passage corridors in the Caprivi are protected and Namibia has already established regional coordination efforts with Botswana. The continued existence of the northeastern portion of Namibia's elephant population may well depend on the success of game management programs in neighboring countries.

Seventy-five percent of the elephant range and 85 percent of the elephants in South Africa are within Kruger National Park (National Parks Board of South Africa, 1991a). Other elephant ranges are composed of state and private lands located both near Kruger and in small scattered blocks elsewhere in South Africa. Range available to elephants has increased by about 3,900 square kilometers (1,500 square miles) since 1979.

Management for elephants in Kruger National Park has provided a water stabilization program by building dams on watercourses and providing wind driven water pumping devices. Facilities are in place to control wildfires and to

allow for controlled burning of vegetation. Kruger has an elephant proof fence along the boundary with Mozambique and a variety of cross fences and boundary fences to control movements and foraging pressures.

Zambia provides about 211,000 square kilometers (81,400 square miles) of elephant habitat and possess a population of 32,000 elephants (GRID 1991). The AECCG Zambia (1992) estimates the African elephant population to be less than 25,000 with 50 percent occurring within the National Parks in the Luangwa Valley. Most human-elephant conflicts center around agricultural areas, although mining also impacts elephant habitat. Recent efforts have indicated that wildlife management and the acceptance of wildlife as a legitimate land use are enhanced when local residents share in management responsibilities (Lewis *et al.*, 1990).

Zimbabwe provides 113,000 square kilometers (43,500 square miles) of elephant habitat and has an elephant population estimated at 51,700 (GRID 1991). The Zimbabwe Department of National Parks and Wild Life Management believes the present elephant population may be about 70,000 and has stated that their elephant management goal is about 43,000 animals (Nduku 1991). Douglas-Hamilton *et al.* (1992) list an elephant population of 49,700–68,400. Over 12 percent of Zimbabwe's surface area is dedicated to national parks, safari areas, sanctuaries, recreational parks, botanic reserves and botanic gardens. The management objectives in these lands are to: Manage wildlife species including elephants; preserve representative examples of Zimbabwe's aquatic and terrestrial flora and fauna and their physical environments; protect areas of scenic beauty and special interest; preserve rare, endangered and endemic species; conserve water catchments; and to provide opportunities for public education and the advancement of scientific knowledge. All significant physical developments in these areas require an environmental impact assessment, and careful environmental planning is undertaken to minimize environmental impacts when development is inevitable (Zimbabwe Department of National Parks and Wild Life Management, 1991).

An additional 20 percent of the surface area of Zimbabwe has become dedicated to wildlife management since 1980 because of the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). This program is an important new-political-economic-sociological institution that has developed an environmental ethic, restored the perception of wildlife as a valuable resource, advocated wildlife management as an adjunct to subsistence agriculture, and encouraged the conservation of natural ecosystems and wildlife habitats on tribal trust lands (Anon, 1990).

West Africa

An estimated 10,000–16,000 African elephants presently dwell in a series of highly fragmented habitats that are estimated to total about 229,000 square kilometers (88,400 square miles) throughout western Africa (Douglas-Hamilton *et al.*, 1992). Increasing human population pressures and declining natural productivity (two decades of drought) in dry savanna habitats have confined remaining elephant populations to isolated pockets of habitat largely in parks and other reserves (Cumming *et al.*, 1990). Douglas-Hamilton (1987) indicated that most elephants were eradicated from west Africa in the early twentieth century. The 1978 **Federal Register** notice (43 FR 20503) listing the continental African elephant population as threatened indicated that the elephant in west Africa occurred in remote border areas or in small isolated patches of suitable habitat. That is essentially the present condition.

Agricultural development and logging are serious agents of habitat destruction in Sierra Leone (AECCG Sierra Leone, 1991), Togo (AECCG Review, 1991), Liberia (AECCG Liberia, 1991), Guinea (AECCG Review, 1991), Ghana (AECCG Ghana, 1991), and the Ivory Coast (AECCG Review, 1991). The AECCG Review (1991) cites desertification as an important agent of habitat destruction in Burkina Faso, Mali and Niger. Drought and bush burning have adversely impacted habitats in northern Nigeria and deforestation and mineral exploitation have adversely impacted habitats in southern Nigeria (AECCG Review, 1991). That publication also states that habitat destruction is not considered the major limiting factor in Benin, Guinea Bissau and Senegal at this time. The small regional population of African elephants has apparently remained stable throughout most of this century and is not expected to increase in the foreseeable future. Habitat destruction and modification provide a greater threat to elephants in west Africa than to any other portion of the continental African elephant population.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The present estimate of the continental African elephant population is 549,000–652,000. The methods for estimating these elephant numbers are described in detail in GRID (1991) and by Douglas-Hamilton *et al.* (1992), and those authors have carefully expressed the reservations associated with different data sources. Some critics have suggested that the estimates of the continental elephant population are too high. Douglas-Hamilton *et al.* (1992) state that there are no better estimates of elephant populations that are based on field measurements than those recorded in the African Elephant Database. They indicate (Douglas-Hamilton *et al.*, 1992:7) that the lower estimates proposed by their critics seem to be pure guess-work. Douglas-Hamilton *et al.* (1992) acknowledge the problems associated with building the African Elephant Database. The vastness of the elephant range and the difficulty of assessing numbers in forest habitats and in range states with political unrest have made data collection arduous and expensive and have limited the quantity of high quality data available for analysis. The latest edition of the African Elephant Database (Douglas-Hamilton *et al.*, 1992) lists only 54 percent of the elephant numerical data entries as being of quality "1" or "2" (best or medium quality).

Elephant populations seem to have fluctuated wildly through time because man has periodically been a persistent and proficient predator. Ansell (1971) stated that the elephant was exterminated from north of the Sahara by the sixth century AD and Douglas-Hamilton (1987) stated that most elephants were eradicated from west Africa by 1914.

Populations in west Africa were reduced to fragments of their former size and range and they have remained stable since that time (Cumming *et al.*, 1990). An historical account of elephant numbers in South Africa (National Parks Board of South Africa, 1991a) indicates that elephants occupied much of present day South Africa, especially in the high rainfall areas, in the mid-seventeenth century. A hundred thousand elephants may have existed in the country in 1650. The decline in the elephant population between 1650 and 1790 is believed due to human settlement and population growth. Later declines from 1790 to 1870 were due to a massive elephant kill for the ivory trade, and from 1870–1920

were caused because occasional elephants were killed because of crop depredation. Possibly only 100 elephants remained in 1920 when protective and management policies were established and enforced. Elephant populations in South Africa have since recovered to the presently managed population of about 8,000 animals. Similar trends in elephant populations have occurred in other areas of Africa as well.

Cumming *et al.* (1990) indicate that the combination of legislation, a fall in the price of ivory, and a drop in the demand for ivory associated with World War I allowed elephant populations to recover. Elephant populations had substantially recovered, by mid-century, in eastern, central and southern Africa so that some culling had to be undertaken to prevent habitat damage and human-elephant conflicts. The ivory trade increased substantially in the early 1970s as demand and supply pressures soared so that ivory exports from Africa reached pre-1914 levels. Douglas-Hamilton (1988) stated that the wave of elephant killing for ivory in the 1970s and 1980s was the second of its kind in recorded history. The first essentially wiped out elephants in much of east Africa by the end of the nineteenth century. Douglas-Hamilton (1988) stressed that in 1930, when it was feared that the elephant would become extinct, game laws were enforced and populations began to increase.

There were several conservation efforts implemented in the 1970s when it was realized that the illegal killing of elephants was widespread and that many elephant populations, especially in east Africa, were in decline. The elephant was put on appendix II of CITES in 1977 and was classified as threatened by the Service in 1978 which at that time issued regulations that allowed the importation of ivory into the United States in accordance with the CITES ivory control system (43 FR 20499–20504). The elephant was also listed as vulnerable by the International Union for Conservation of Nature and Natural Resources (IUCN) in 1978. There conservation efforts were deemed as failures in the late 1980s when the illegal killing of elephants for ivory commerce was considered out-of-control. Many elephant populations were believed to be in substantial decline and alternative conservation measures were necessary when the petition to reclassify the African elephant as endangered was filed in February 1989. The petitioners identified the ivory trade as the single most important factor threatening the elephant. This was supported by Douglas-Hamilton (1988) who stated that even a very cautious scientist would (at that time) recognize that the elephant would become an endangered species if the offtake of ivory continued at the rate observed from the 1970s through his reporting period. His assessment was based on: (1) Population trends from throughout the continent (except in parts of southern and western Africa) that showed declines in elephant numbers coupled with high carcass counts; (2) ivory export curves that collapsed after the mid-eighties because elephants were becoming scarce which suggested overutilization; and (3) a diminished average tusk weight that also suggested overutilization. It seemed likely that one-half the elephant population, perhaps 700,000 animals, was lost in the decade 1979–1988.

Several conservation efforts to curtail the illegal killing of elephants were initiated in 1989. Individual range countries increased their efforts to protect elephants and the international community began to contribute substantially to anti-poaching campaigns. Tanzania organized Operation Uhai in 1989 to deal forcefully with elephant poaching activities and Kenya substantially reorganized its conservation agency into a more effective Kenya Wildlife Service in 1990. The United States, on June 9, 1989, established a moratorium on the importation of raw and worked African elephant ivory from all ivory producing and intermediary nations (54 FR 24758–24761). The action was taken under authority of sections 2202(a) and 2202(b) of the African Elephant Conservation Act. A number of other major ivory consuming nations, most notably those in western Europe and Japan, enacted similar legislation.

The African elephant was transferred from appendix II to appendix I at the seventh meeting of the Conference of Parties to CITES (October 1989). This occurred after a provision was approved that provided for a panel of experts to convene after a proposal had been received to transfer any elephant population back to appendix II. The panel of experts would recommend to the Parties whether specific biological and trade criteria were met for any populations later nominated for downlisting to appendix II. The change in status for the African elephant became enforceable on January 18, 1990 (55 FR 5847–5851, February 20, 1990; corrected March 5, 1990, 55 FR 7714–7716). The appendix I listing was continued by the Conference of the Parties to CITES that convened in Kyoto, Japan, in March 1992.

The Service based its proposed rule on the best information then available. Few data were available to judge whether the conservation actions undertaken in 1989–90 were effective. The 12-month finding (February 16, 1990) was made eight months after the United States ivory importation moratorium was imposed and one month after the elevation of the elephant to appendix I became enforceable. The proposed rule indicated that levels of protection and quality of management varied widely among individual range states and that most range state populations seemed best classified as endangered because they might still be subject to overutilization. New information available since publication of the proposed rule indicates that most populations of the African elephant presently are not being overutilized.

The following review is chronological and describes an increasing tendency toward control of the illegal killing of elephants throughout Africa. Many populations of the elephant are currently stabilized or perhaps are increasing. The steep rate of decline observed from the 1970s up to the mid-or late-1980s has been halted for most populations.

The several conservation activities that were implemented just before and just after the February 1989 petition was filed seem to be working as intended. The United States Government queried 33 American embassies in African range states in April 1990 to determine, among other things, if elephant poaching had slowed, increased or remained unchanged since the implementation of the CITES ban in January 1990. Embassy officials in May-July 1990, reported that elephant poaching was undiminished in Cameroon, Niger, Sudan and Zaire, while officials in Burundi, Ethiopia, Kenya and Zambia believe that poaching was diminished since the appendix I classification. Poaching may have increased but was still low in Botswana, and was low and remained so in Burkina Faso, Gabon, Liberia, Mali, Togo, Uganda and Zimbabwe. Poaching still occurred, but was likely more for meat than ivory, in Benin, Equatorial Guinea, Ghana, Cote d' Ivorie and Nigeria. No pertinent responses were received from other embassies.

O'Connell and Sutton (1990) state that although some illegal killing continued, elephant poaching seemed to be decreasing in many African countries because of a lack of financial incentives and an increased vigor and effectiveness of government anti-poaching activities. They further state that if these trends hold, depleted

populations can reasonably be expected to begin recovery.

Dougherty (1991) evaluated the status of elephant conservation in 10 African range states. Elephant poaching was never intense in Burkina Faso except near the borders with Ghana and the Ivory Coast where poaching may frequently be for meat. There is a prohibition against ivory commerce because elephant populations are fragmented and could be subject to extinction even under low poaching intensities. There are no reports of poaching where law enforcement is good but poaching may occur where protection is poor.

Elephant conservation in Cameroon varies by province. Overall, there was a significant decline in poaching in 1990. This trend is believed due to the reduced price for ivory. Elephants are still poached for ivory in extreme northern Cameroon but anti-poaching efforts may keep illegal killing below recruitment levels. The elephant is not in trouble where anti-poaching efforts are substantial.

There is no way to quantify and statistically compare poaching level before and after the ban in the Central African Republic (CAR). Improved conservation may be expected to occur in southwest CAR because of the strengthening of protection capabilities, new conservation initiatives stressing the sustained use of wildlife, and the ivory trade ban. The elephant appears safe where anti-poaching protection is good. Elephants in forest habitats may have fared better than those in savanna habitats although some poaching of elephants especially for meat still occurs within forest habitats. Large-scale conservation efforts, rural development and monitoring programs occur in northern CAR where poaching is presently under control.

The number of elephants in Ghana diminished in the past because of ivory poaching. Elephants is southwestern forests continue to be poached. The level of poaching within protected populations has dropped since 1988 and these elephant populations are currently slowly expanding.

Kenya's capability to conserve elephants is among the best in Africa. There is a general political stability which provides a good environment for the uninterrupted support of conservation, and wildlife and protected areas are perceived as important to the country's economy and balance of trade. The appendix I listing is believed responsible for the reduction in poaching, and elephants seem well protected from poaching at this time.

An ivory trade may still exist in Nigeria and poaching may still impact some populations especially those near the border with Chad.

Elephant poaching for ivory is now at insignificant levels throughout Tanzania. Operation Uhai was initiated in 1989 and was very effective. Present anti-poaching efforts also seem to be effective.

Poaching has been curtailed under the present government in Uganda and elephant numbers are slowly recovering.

Poaching has not stopped in Zaire but is possibly slowed.

More recently, Dublin and Jachmann (1992) evaluated the impact of the ivory ban on elephant poaching in six target states. Zambia experienced an overall decline in poaching in 1990–1991 compared to levels observed from 1987–1989. Although poaching rates were at the same rate or higher in some areas there have been significant reductions in poaching in the more important populations. These dramatic drops were due to increased law enforcement actions funded by external donors before the ban was established.

Dublin and Jachmann (1992) agreed with Dougherty (1991) that poaching in Tanzania was diminished because of Operation Uhai and because of an increased law-enforcement capability.

Illegal hunting decreased in three of seven, but increased in four of seven, conservation areas in Malawi. One significant cause of increased poaching may be the one million Mozambican displaced persons now living in southern Malawi. Illegal killing and culling of elephants for crop damage are harvesting some populations at unsustainable rates.

There has been a minor effect of the ban on the illegal killing of elephants in Cameroon. The illegal killing of elephants continues in the northern savanna zone because an ivory market remains in Nigeria. A domestic but limited ivory market may also exist in Cameroon. Poaching rates are somewhat reduced in the forest zone where most elephants occur in Cameroon.

The illegal hunting of elephants in savanna habitats in the Ivory Coast continues at the same low levels as during the pre-ban era. Poaching in that country's forest zone is probably reduced because of increased law enforcement efforts.

Elephant populations in Zaire have declined by about 75 percent since 1981 and the ivory harvested from that country was sufficient to supply 30–40 percent of the ivory on the world market during the decade of the 1980s. Elephant poaching is still a major problem in the unprotected savanna zones of Zaire. Elephant poaching was reduced to low levels in protected savanna areas by the mid-1980s. The poaching situation has improved substantially in some forest zones in the last two years. The infusion of substantial funds from external sources in the mid-1980s has resulted in a rapid but localized reduction in illegal activity. The present illegal hunting of elephants seems lower in the rainforest zone than in unprotected savanna areas.

A major co-signatory to the February 16, 1989, petition (Humane Society of the United States, 1992) provided comments on January 30, 1992, on proposals by several southern African range states to transfer their populations of the African elephant from CITES appendix I to II.

The Humane Society quoted sources that indicated that the poaching of elephants had been greatly reduced in Kenya, Tanzania, Chad, Gabon, Burkina Faso, Zaire and the Congo. They especially emphasized the very substantial reductions in illegal killing in Kenya and Tanzania. The Environmental Investigation Agency (1992) also reported that elephant poaching has steeply fallen in east and central Africa and that elephants have started to re-colonize their former ranges.

Douglas-Hamilton *et al.* (1992) indicated that Gabon has retained relatively undisturbed populations of forest elephants because organized poaching has never become a way of life in that sparsely populated country. They also state that recent censuses in Kenya, Uganda and Tanzania show an arrest in rates of population decline. Sightings of carcasses declined in Tsavo National Park which contains one-third of Kenya's elephants. Similarly, poaching levels are reported to have decreased since 1989 in Tanzania. The positive change in population trends is attributed to massive investments in security as well as a reduction in the demand for ivory following the appendix I listing. Elephant populations in west Africa could still be declining because of the encroachment into elephant habitat because of human population increases and the hunting of elephants for bush meat. Poaching for ivory has been a problem in the past but this stimulus to poaching seems reduced compared to years prior to 1989. Elephant populations in South Africa, Namibia, Botswana and Zimbabwe were believed to have been increasing even during the decade of the 1980s.

The CITES Panel of Experts on the African Elephant (1991, 1992) evaluated several southern African elephant populations. The African elephant populations in Botswana, South Africa,

and Zimbabwe were found to be viable, and potential risks or threats to those populations were found to be negligible. Malawi's elephant populations were found to be viable only in the short or medium term, and Namibia's elephant population was found to be subject to fluctuations as a result of natural mortality due to periodic drought and disease. The Panel found that Zambia's national elephant population had declined dramatically but three potentially viable sub-populations remained. The greater Luangwa Valley population numbering some 10,000 elephants shows no evidence of significant poaching over the past three years and its prospects are good if poaching remains contained. The other two sub-populations still have significant numbers of elephants but have experienced heavy poaching.

There is also a question of scale when evaluating Factor B. The fact that some legal and illegal killing of elephants continues to exist does not constitute overutilization of the species if total mortality does not exceed recruitment. Man has historically been the chief predator of elephants. Barnes (1991b) has pointed out that many rural Africans, especially in central Africa, are hunters and not pastoralists. Hunting is a cultural heritage of many native Africans. Opportunistic hunting often to provide meat or to protect agricultural crops can impact fragmented or local elephant populations but does not endanger the continental elephant population.

The Service finds that the present rate of utilization, because the several conservation measures instituted in 1989 and thereafter appear to be effective, does not endanger the continental population of the African elephant at the present time. This evaluation could change if a large scale illegal killing of elephants to satisfy an unregulated ivory trade once again occurred.

C. Disease or Predation

Some reports exist of lion predation on very young calves and of anthrax as an agent controlling some specific elephant populations, perhaps most notably the elephant population in Etosha National Park, Namibia. Namibia's elephant population may be considered to be subject to fluctuations as a result of natural mortality due to periodic drought and disease (CITES Panel of Experts on the African Elephant, 1992). Disease or predation, however, are not factors that threaten the continental population of the African elephant.

D. The Inadequacy of Existing Regulatory Mechanisms.

Information available to the Service at the time of the 12-month finding and of the publication of the proposed rule indicated that the management infrastructure in most range countries was inadequate to control the overutilization of the elephant. New information since the publication of the proposed rule indicates the increased effectiveness of enhanced anti-poaching activities and the effectiveness of the various ivory importation moratoria and of the CITES appendix I ban in dampening the international demand for elephant ivory. The African elephant is not being overutilized at the present time because of the adequacy of these international, continental, regional, and state regulatory mechanisms.

Most range countries have now developed elephant conservation plans. Five range countries (South Africa, Namibia, Zimbabwe, Botswana and Tanzania) have individually described a specific long-term population goal for elephants and determined planned actions to achieve those goals. The five countries are each members of CITES and believe they can eventually support a population that could total about 191,000 elephants without destroying agricultural based economies, habitat quality, or threatening human populations. These five countries already have substantial investments in wildlife management but will continue to need external aid to purchase additional elephant habitat; provide, improve and maintain anti-poaching equipment; improve salaries for wildlife personnel; and to generally improve the infrastructure associated with elephant management. These countries possess some of the greatest opportunities for consumptive and non-consumptive tourism in Africa.

The potential maximum elephant population in South Africa is about 13,000 if funds become available for purchasing additional habitats and improving present habitats (National Parks Board of South Africa, 1991b). Namibia has established a provisional elephant goal of 10,000 animals which will require the establishment of additional protected areas, the establishment of sustainable wildlife management programs with native persons, and perhaps the introduction of elephants into suitable habitats outside the present elephant range. Several thousands of the 10,000 animals could be seasonal visitors only, as is true for the present elephant herd in Namibia (AECCG Namibia, 1991). Zimbabwe could support 43,000 elephants and sustain a desired degree of woodland cover (Nduku 1991). Botswana's elephant management objectives include maintaining elephant populations at their 1990 levels which total about 55,000 animals (Department of Wildlife and National Parks, Botswana, 1991). Zimbabwe and Botswana could presently have elephant populations in excess of their respective management goals. Tanzania's elephant management goal is about 70,000 animals (May 1992).

A sixth country, Kenya, also has extensive regulatory mechanisms in place. Kenya is unwilling to commit to a numerical elephant management goal but seems to want to attain and maintain elephant numbers that are about double the present elephant population. Conflicts between people and elephants already exist in some areas of the country because of a rapidly growing human population (Poole, 1992). Kenya plans to maintain elephants at present levels where people and elephants coexist and to allow elephants to increase in numbers, especially in those protected areas where poaching severely reduced elephant numbers in the 1970s and 1980s.

Perhaps the most significant difference in an elephant management program in these six African range states and a big game management program in North America is that African elephant management programs are usually significantly underfunded. Otherwise the quality of management and science seems comparable.

The remaining range states may presently support about 400,000 elephants (Douglas-Hamilton *et al.*, 1992). Most of these states have established game departments, are developing an environmental ethic, and intend to develop wildlife conservation as a legitimate land use. Their management infrastructure suffers because of inadequate funding. Indeed, the under-funding of Africa's wildlife departments is the most pervasive and fundamental problem facing the elephant at the present time (AECCG Review, 1991).

Elephant management in most states in 1992 is equal or superior to that which existed in 1978 when the elephant was classified as threatened. The knowledge base about elephants and techniques for censuring and protecting elephants are superior to 1978 conditions. The recently developed conservation plans have helped range states develop their elephant management programs and to compete for funding from external donors. A fundamental priority within the elephant conservation plans is for

range states to increase their operating capability and their professional proficiency.

All legal international trade in elephant products virtually ceased as of January 1990. The global demand and the price of ivory has virtually collapsed (AECCG Review, 1991). Many range states outside of southern Africa favored retention of the elephant on CITES Appendix I because that action would lead to a diminished international demand for ivory and to reduced poaching pressures on elephants within their countries. More effective law enforcement has also had a great influence on the suppression of poaching (Dublin and Jachmann 1992). Financial support for wildlife departments to increase protective actions is considered an action that can go an enormous way towards curing Africa's wildlife conservation crisis, at least in the short and medium terms (AECCG Review, 1991).

Willdlife departments in several range states realize the need to further codify the traditional rights of rural people to make use of wildlife and to profit from its presence. A basic common deficiency in the enforcement of present status has been weak support from the judiciary and a lack of support from customs officials and the police (AECCG Review, 1991).

The short term aims in the elephant conservation plans are to protect elephants from illegal killing, to improve the management of protected areas and to strengthen the management capability of wildlife departments. The AECCG Review (1991) suggests these are feasible when political stability exists and if sufficient financial support arises. The long term goals are to balance wildlife and human needs. This requires that sufficient returns be realized from the sustainable utilization of wildlife so that wildlife conservation is easily perceived as an important land use. The CAMPFIRE program in Zimbabwe is an excellent example of a social program built on values obtained from the sustainable utilization of wildlife resources.

E. Other Natural or Manmade Factors Affecting its Continued Existence.

The African elephant, like many terrestrial species, is adversely impacted by natural factors such as desertification and periodic drought. Desertification associated with the southward extension of the Sahara and periodic drought like that presently impacting many habitats in southern Africa may cause elephant mortality, limit recruitment, cause local or regional range contraction, and may increase competition among other wildlife species and man for dwindling resources. Civil unrest in several range states also adversely affects elephant populations. Both political unrest and environmental stresses may impact local or regional elephant populations but neither threatens the continental elephant population at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat.

If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Because the African elephant is presently listed as threatened, it is already fully covered by section 7(a), and no new requirements are added by the present listing action.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel, and assistance for research, conservation, management, or protection of the species.

These actions are also conducted under the authorization of section 2101 of the African Elephant Conservation Act (AECA) that provides, through the African Elephant Conservation Fund, a means to provide financial assistance for elephant conservation to African government agencies responsible for African elephant conservation and protection. This fund provides significant financial assistance to range states to develop scientific information for habitat conditions and elephant numbers and trends, to control the take of African elephants, and to implement conservation programs to provide for healthy and sustainable populations of African elephants.

Permits may be issued to carry out otherwise prohibited activities involving threatened species, including individuals, their parts and products thereof, under certain circumstances. Regulations governing permits for threatened species on CITES Appendices are listed in 50 CFR parts 13, 17, and 23, and must be met before the permit can be issued.

Revision of the Special Rule

The final revised special rule provides for basically the same prohibitions and exceptions as did the proposed revised special rule (56 FR 11399–11401). The current special rule (50 CFR 17.40(e)) provides exceptions which allowed for the import and export of raw and worked ivory and other parts from threatened populations for commercial and other purposes under certain conditions. These exceptions were superseded by the June 9, 1989 ivory moratorium (54 FR 23758) imposed under the AECA and the January 18, 1990 transfer of the African elephant to CITES appendix I. Neither the proposed revised special rule nor the final revised special rule have provided general exceptions to the prohibition against the import of raw and worked ivory into the United States. The Service believes the general prohibitions against the ivory trade can help reduce any future overutilization of the African elephant resource. The final revised special rule does contain limited exceptions that allow the import of ivory that is either bona fide antique, or that has first been registered with the U.S. Fish and Wildlife Service, legally exported, and is being legally reimported. No exception is granted to the prohibition against the export from the United States of any African elephant raw ivory for commercial purposes. The exception granted for the export of worked ivory requires that permit criteria in 50 CFR parts 13 and 23 be met.

The AECA specifically allows individuals to import sport-hunted elephant trophies that have been legally taken in an ivory producing country that has submitted an ivory quota, even if a moratorium on ivory imports from that country has been established under the

AECA. The Service notes that both this form of consumptive utilization, as well as forms of non-consumption utilization, as well as forms on non-consumptive utilization, provide important revenues for elephant conservation to range states. The proposed revised special rule allowed the import of sport-hunted elephant trophies from threatened populations if general Act permit procedures and CITES requirements were met. CITES requirements included a determination that the killing of elephants for sport-hunting enhances the survival of the species by providing financial support programs for elephant conservation. This requirement is retained in the final revised special rule for the import of sport-hunted trophies from threatened populations that are on CITES appendix I. A CITES appendix I import permit is required and can only be issued after the Service has determined that the import is non-detrimental to the species and that the killing of the animal whose trophy is intended for import would enhance the survival of the species. A separate permit under the Act is not required. No specific criteria for satisfying the CITES I import requirements are listed in the final revised special rule and the criteria listed in the proposed revised special rule have been deleted. The final revised special rule contains an exception to the import prohibition which allows the import of sport-hunted trophies when the following conditions have been met: (1) The trophy was taken in a country that has established a sport-hunting quota for the year of export; (2) a CITES appendix I import permit has been provided after all necessary requirements have been fulfilled; and (3) the trophy has been legibly marked. The sale or offer for sale of such trophies is prohibited by permit conditions.

The proposed revised special rule included an exemption from general prohibitions in the Act regarding interstate transactions in non-antique ivory from endangered populations. This was included because of the split-listing status that was proposed for the African elephant. The Service has no evidence that the continued interstate commerce within the United States in legally imported African elephant ivory contributes in any way to illegal killing and the overutilization of the African elephant resource. Consequently, the Service, in the final revised special rule, includes an exemption from the general prohibitions to allow the possession and interstate commerce of legally imported African elephants and their products and parts. This remains unchanged from the existing special rule, and includes not only ivory but also live animals and all African elephant parts and products that were legally imported.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 492440).

References Cited

AECCG Angola. 1991. Elephant conservation plan for Angola. Instituto de Desenvolvimento Florestal, Ministerio da Agricultura e do Desenvolvimento Rural. Luanda, Angola. 49pp.

AECCG Cameroon. 1991. Elephant conservation plan for Cameroon. Ministere du Tourisme, Direction de la Faune et des Parcs Nationaux. Yaounde, Cameroon. 89pp.

AECCG Equatorial Guinea. 1991. Elephant conservation plan for Equatorial Guinea. Ministry of Agriculture, Livestock, Fisheries and Forestry. Malabo, Equatorial Guinea. 44pp.

AECCG Ethiopia. 1991. Elephant conservation plan for Ethiopia. Ministry of Agriculture, Nature Conservation and Development, Ethiopian Wildlife Conservation Organisation. Addis Ababa, Ethiopia. 49pp.

AECCG Gabon. 1991. Elephant conservation plan for Gabon. Ministere des Eaux et Forets, Direction de la Faune et de la Chasse. Libreville, Gabon. 77pp.

AECCG Ghana. 1991. Elephant conservation plan for Ghana. Department of Game and Wildlife, Ministry of Lands and Natural Resources. Accra, Ghana. 49pp.

AECCG Kenya. 1991. Elephant conservation plan for Kenya. Kenya Wildlife Service. Nairobi, Kenya. 90pp.

AECCG Liberia. 1991. Elephant conservation plan for Liberia. Forestry Development Authority. Monrovia, Liberia. 47pp.

AECCG Malawi. 1991. Elephant conservation plan Malawi. Department of National Parks, Wildlife and Tourism. Lilongwe, Malawi. 55pp.

AECCG Mozambique. 1991. Elephant conservation plan for Mozambique. Ministerio de Agricultura, Direccao Nacional de Florestas e Fauna Bravia. Maputo, Mozambique. 45pp.

AECCG Namibia. 1991. Elephant conservation and management plan for Namibia. Ministry of Wildlife, Conservation and Tourism. Windhoek, Namibia. 100pp.

AECCG Review. 1991. The African elephant conservation review. Oxford, England. 66pp.

AECCG Sierra Leone. 1991. Elephant conservation plan for Sierra Leone. Ministry of Agricuture, Natural Resources and Forestry. Freetown, Siera Leone. 66pp.

AECCG Somalia. 1991. Elephant conservation plan for Somalia. Ministry of Livestock, Range and Forestry. National Range Agency. Mogadishu, Somalia. 47pp.

AECCG Sudan. 1991. Elephant conservation plan for Sudan. Wildlife Conservation and National Parks Forces. Central Administration. Khartoum, Sudan. 39pp.

AECCG Tanzania. 1991. Elephant conservation plan for Tanzania. Wildlife Division, Ministry of Tourism, Natural Resources and the Environment. Dar-es-Salaam, Tanzania. 152pp.

AECCG Uganda. 1991. Elephant conservation plan for Uganda. Uganda National Parks. Kampala, Uganda. 55 pp.

AECCG Zambia 1992. Elephant conservation plan for Zambia. Ministry of Lands and Natural Resources, National Parks and Wildlife Service. Chilanga, Zambia. 31pp.

Anon. 1990. People, wildlife and natural resources—the CAMPFIRE approach to rural development in Zimbabwe. Zimbabwe Trust and the Department of National Parks and Wild Life Management. Harare, Zimbabwe. 25pp.

Ansell, W.F.H. 1971. Order Proboscidea. Part 11, pages 1–5 *in* J. Meester and H.W. Setzer (eds). The Mammals of Africa: an identification manual. Smithsonian Institution Press. Washington, D.C.

Barnes, R.F.W. 1991a. Forest elephants in central Africa. Comments in relation to the proposal to change the status of certain populations of elephants. Comments submitted to U.S. Fish and Wildlife, 26 June 1991.

Barnes, R.F. W. 1991b. Letter submitted to U.S. Fish and Wildlife Service, 26 August 1991.

CITES Panel of Experts on the African Elephant. 1991. Report of the CITES Panel of Experts on the African Elephant on the proposal of South Africa to transfer the population of *Loxodonta africana* of South Africa from CITES appendix I to appendix II. Report to the CITES Secretariat. 23pp.

CITES Panel of Experts on the African Elephant. 1992. Report of the CITES Panel of Experts on the African Elephant on the proposals to transfer from CITES appendix I to appendix II the populations of *Loxodonta africana* of Botswana, Malawi, Namibia Zambia and Zimbabwe. Unpublished Report to the CITES Secretariat. 44 pp.

Cumming, D.H.M., R.F. Du Toit, and S.N. Stuart, 1990. African elephants and rhinos. Status survey and converstaion action plan. IUCN/SSC African Elephant and Rhino Specialist group. Gland, Switzerland, 72pp.

Department of Wildlife and National Parks, Botswana. 1991. The conservation and management of elephants in Botswana. Ministry of Commerce and Industry, Department of Wildlife and National Parks. Gaborbone, Botswana 13pp.

Dougherty, N.C. 1991. An appraisal of the status of elephant conservation in ten African countries. Ele-Drive Charitable Trust. Final Report. Nairobi, Kenya. 183p.

Douglas-Hamilton, I. 1987. African elephants: population trends and their causes. Oryx 21(1):11–24.

Douglas-Hamilton, I. 1988. The great east African elephant disaster. SWARA 11(2):8–12.

Douglas-Hamilton, I., F. Michelmore, and A. Inamdar. 1992. African elephant database. United Nations Environment Programme. Nairobi, Kenya. 165pp.

Dublin, H.T., and H. Jachmann. 1992. The impact of the ivory ban on illegal killing of elephants in six range states in Africa. World Wildlife Fund International. Research Report. 75pp.

Environmental Investigation Agency. 1992. Under fire—elephants in the front line. The Environmental Investigation Agency. London 57pp.

GRID. 1991. Technical Report on the African elephant database. Global Resource Information Database. Case studies Series No. 5. United Nations Environment Programme. Nairobi, Kenya. 173pp.

Humane Society of the United States. 1992. Comments of the HSUS regarding proposals by Zimbabwe, Botswana, South Africa, Namibia, Malawi, and Zambia to transfer populations of the African elephant from CITES appendix I and II. 30 January 1992. 20pp + addenda.

Humane Society of the United States *et al.* 1989. Petition to upgrade the African elephant (*Loxodonta africana*) from threatened to endangered status. 16 February 1989. Washington, D.C. 39pp + 11 Appendices.

Lahm, S.A., and R.F.W. Barnes. 1991. The status of elephants in Gabon. Comments submitted to U.S. Fish and Wildlife Service, June 1991.

Lewis, D., G.B. Kaweche, and A. Mwenya. 1990. Wildlife conservation outside protected areas—lessons from an experiment in Zambia. Conservation Biology 4:171–180.

Mlay, C.A. 1992. Letter to Henry L. Short. 4 February 1992.

National Parks Board of South Africa. 1991a. Draft elephant conservation plan for South Africa. Kruger National Park, Skukuza, South Africa. 29pp.

National Parks Board of South Africa. 1991b. Proposed endangered status for certain populations of the African elephant and revision of special rule (56 FR 11392–11401). Comments submitted Dec. 13, 1991. National Parks Board, Kruger National Park, Skukuza, South Africa. 44pp.

Nduku, W.K. 1991. Response to request for comments FR 56(52): African elephant and submission of petition. Comment submitted to U.S. Fish and Wildlife Service, 2 July 1991. 13pp + 20 Annexes.

O'Connell, M.A., and M. Sutton. 1990. The effects of trade moratoria on international commerce in African elephant ivory. World Wildlife Fund and the Conservation Foundation. Washington, D.C. 36pp.

Poole, Joyce H. 1992. Letter to Henry L. Short. 18 March 1992.

Smithers, R.H.N. 1983. The mammals of the southern African subregion. University of Pretoria, Pretoria, South Africa. xxii + 736pp.

Zimbabwe Department of National Parks and Wild Life Management. 1991. Policy for Wild Life. 5th draft. Department of National Parks and Wild Life Management. Harare, Zimbabwe. 39pp.

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

1. The Authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201– 4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.40 is amended by revising paragraph (e) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) African elephant (*Loxodonta africana*)—(1) *Definitions.* For the purposes of this paragraph (e):

(i) *African elephant* shall mean any member of the species *Loxodonta africana*, whether live or dead, and any part or product thereof.

(ii) *Raw ivory* means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

(iii) *Worked ivory* means any African elephant tusk, and any piece thereof, which is not raw ivory.

(iv) *Lip mark area* means that area of a whole African elephant tusk where the tusk emerges from the skull and which is usually denoted by a prominent ring of staining on the tusk in its natural state.

(2) *Prohibitions.* Except as provided in the exceptions in paragraph (e)(3) of this section, it shall be unlawful for any person to:

(i) Import or export any African elephant,

(ii) Possess, sell or offer for sale, receive, deliver, transport ship, or export any African elephant which was illegally imported into the United States,

(iii) Sell or offer for sale any sport-hunted trophy imported into the United States in violation of permit conditions.

(3) *Exceptions.* (i) African elephants, other than sport-hunted trophies and raw and worked ivory, may be imported or exported provided all permit requirements of 50 CFR parts 13 and 23 have been complied with.

(ii) *Ivory.* (A) Raw or worked ivory (other than sport-hunted trophies) may be imported only if:

(*1*) it is a bona fide antique of greater than 100 years of age on the day of import, or

(*2*) It was exported from the United States after being registered with the U.S. Fish and Wildlife Service.

(B) Worked ivory may be exported in accordance with the permit requirements of 50 CFR parts 13 and 23.

(C) Raw ivory may not be exported from the United States for commercial purposes under any circumstances.

(iii) Sport-hunted trophies may be imported into the United States provided:

(A) The trophy originates in a country for which the Service has received notice of that country's African elephant ivory quota for the year of export;

(B) All of the permit requirements of 50 CFR parts 13 and 23 have been complied with;

(C) A determination is made that the killing of the animal whose trophy is intended for import would enhance survival of the species; and

(D) The trophy is legibly marked by means of punch-dies, under a marking and registration system established by the country of origin, that includes the following information: Country of origin represented by the two-letter code established by the International Organization for Standardization (see appendix A to chapter I) followed by the registration number assigned to the last two digits of the year of registration and the weight of raw ivory to the nearest kilogram. Any mark must be placed on the lip mark area and indicated by a flash of color which serves as a background for such mark.

Dated: July 10, 1992.

John Turner,

Director.

[FR Doc. 92–18861 Filed 8–7–92; 8:45 am]

BILLING CODE 4310 55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 920402-2102]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Withdrawal of rule and issuance of new final rule.

SUMMARY: NMFS withdraws the rule published at 57 FR 33902 on July 31, 1992, and issues a new final rule prohibiting federally permitted U.S. vessels from fishing in the Central Bering Sea in an area called the "Donut Hole," and from possessing on board fish harvested from the Donut Hole as long as that vessel is in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). This rulemaking is necessary to reduce the further exploitation of the Aleutian Basin pollock stock (*Theragra chalcogramma*), which is found in both the Donut Hole and in the EEZ. The rulemaking will:

(1) Promote the goals and objectives of the North Pacific Fishery Management Council (Council) regarding the management of pollock stocks off Alaska, and (2) Further U.S. efforts regarding the negotiations with Japan, Poland, China, Korea, and the Russian Federation to establish an international conservation regime on the living resources of the Central Bering Sea.

EFFECTIVE DATES: The withdrawal of the rule published on July 31, 1992, beginning at 57 FR 33902 is effective August 10, 1992. The amendments made by this final rule are effective August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK, 99802, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION: On July 31, 1992, NMFS issued a rule at 57 FR 33902 to amend parts 672 and 675. That rule was to become effective on August 14, 1992. The rule as published at 57 FR 33902 was incorrect. It is therefore withdrawn and replaced by the issuance of a new rule.

The domestic and foreign groundfish fisheries in the EEZ of the GOA and the BSAI are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plans (FMPs) for Groundfish of the GOA and the BSAI. These FMPs were prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. *et seq.*) and are implemented by regulations at 50 CFR parts 611, 620, 672, and 675.

Two measures are implemented by this final rule. First, §§ 672.4 and 675.4, which govern the issuance of Federal fishing permits, are amended by prohibiting fishing in the Donut Hole by a federally permitted fishing vessel. Second, §§ 672.7 and 675.7, which govern general prohibitions, are amended to prohibit fishing in the Donut Hole by a U.S. fishing vessel and possession by such a permitted vessel in the EEZ of fish that were caught in the Donut Hole.

U.S. fishermen, who displaced foreign fleets of those nations that had a traditional fishery presence in the EEZ off Alaska, now fully utilize the groundfish resources of the EEZ off Alaska. Foreign fishermen have redirected their fishing effort to other fishing grounds, namely the Donut Hole. By the mid-1980s, catches in the Donut Hole were reported to exceed catches in the U.S. EEZ or the economic zone (EZ) of Russia. (Table 1.)

TABLE 1.—REPORTED POLLOCK CATCHES (1,000 S METRIC TONS (MT) IN THE DONUT HOLE AND IN THE U.S. EEZ AND THE EZ OF RUSSIA

Year	Donut hole	U.S. EEZ	Russian federation
1985	336	1,179	662
1986	1,061	1,189	871
1987	1,325	1,253	812
1988	1,396	1,229	1,327
1989	1,399	1,366	1,119
1990	876	1,353	814

The Donut Hole encompasses deep waters of the Aleutian Basin. The Aleutian Basin extends south into that part of the U.S. EEZ known as the Bogoslof District, defined at 50 CFR 675.2 as statistical area 518. Commercial fisheries data and scientific investigations on comparisons of age, size composition, size-at-age and genetic structure demonstrate that pollock found in the Donut Hole and the Bogoslof District are from the same Aleutian Basin stock.

The status of the Aleutian Basin pollock stock is depressed. Even though the abundance of this stock was estimated at about 5 million mt in 1987, it has declined to a low of about 0.5 million mt in 1990. The current low level of pollock abundance is consistent with catch per unit of effort (CPUE) information obtained from the commercial fishery, as well as from NMFS stock survey data.

The Secretary implemented specifications for acceptable biological catch and total allowable catch (TAC) amounts for pollock in the Bogoslof District for 1992 equal to 25,000 mt and 1,000 mt, respectively at 57 FR 3952 (February 3, 1992). The Secretary implemented these specifications as recommended by the Council at its December 1991 meeting in response to the decline in the Aleutian Basin pollock stock.

Notwithstanding this action in the U.S. EEZ to conserve the Aleutian Basin pollock stock, U.S. vessels might continue to over-exploit this stock by fishing in the Donut Hole. Because the Aleutian Basin pollock stock moves between the EEZ and the Donut Hole, fishing in both areas will expose this stock to greater fishing effort and result in overfishing. To protect the Aleutian Basin pollock stock from over-exploitation, the Council recommended that the Secretary prohibit federally permitted U.S. fishing vessels from (1) fishing in the Donut Hole and (2) possessing or retaining on board in the EEZ off Alaska, fish caught in the Donut Hole. Even though pollock comprise more than 90 percent of the total harvests in the Donut Hole, NMFS decided that to promote efficient enforcement, a federally permitted U.S. vessel should be prohibited from fishing in the Donut Hole.

On November 18, 1991, the Third Conference on the Central Bering Sea was held in Washington, DC. At that conference, delegations from the United States, the Russian Federation, the People's Republic of China, the Republic of Korea, Poland and Japan discussed measures relating to the conservation and management of living marine resources of the Central Bering Sea, and specifically the pollock resources. The United States indicated that it would take strict measures in 1992 to conserve the depressed Aleutian Basin pollock stock.

Unbridled exploitation in the Alaska pollock fishery in the "Donut Hole" by foreign vessels during the past few years has raised serious concerns about overfishing. Overfishing of the pollock resource not only adversely affects the U.S. commercial fishing industry, but also has far-reaching consequences for other valuable species that interact with pollock in the Bering Sea ecosystem. Because of the serious conservation and environmental problems posed by the

Donut Hole pollock fishery, Presidents Bush and Gorbachev issued a joint statement during the summit meeting held in June 1990 on behalf of the United States and the Soviet Union. This statement called for cooperative efforts in the development of international conservation and management measures for the Donut Hole area. In line with this statement, the United States and Russia are seeking agreement from the other fishing nations to a moratorium on such fishing. However, there are known to be U.S. vessels that have transferred, or will transfer, fishing effort to the "Donut Hole." In order to preserve its credibility during its negotiations with foreign nations on the joint U.S./Russian proposal for a moratorium, the United States must take appropriate action as quickly as possible to ensure that its vessels do not engage in fishing in the "Donut Hole." The United States reiterated its strong support for a proposal made at the Second Conference by the Soviet delegation that all countries agree to a moratorium on pollock fishing in the Central Bering Sea in 1992. At the Third Conference, the Soviet Union contended once again that a moratorium on further pollock fishing in the Donut Hole is urgently needed to conserve the Aleutian Basin pollock stock and indicated its readiness to reduce substantially the fishing effort on pollock in its EZ. Also noted at the Third Conference was the fact that continuation of the pollock fishery in the Central Bering Sea would lead to a further disastrous decline of the resource.

In keeping with the U.S. policy of a moratorium on Donut Hole fishing, NMFS is issuing this final rule. The delayed effective date is to provide time for a vessel with a 1992 Federal fisheries permit (permit) for the EEZ off Alaska to surrender it to NMFS if that vessel will continue or if it plans to fish in the Donut Hole, or to carry or transship Donut Hole resources in the EEZ off Alaska. Permit holders that surrender permits to NMFS prior to or on August 24, 1992, in order to (1) continue fishing operations in the Donut Hole, (2) begin fishing operations in the Donut Hole or (3) carry or transship Donut Hole resources in the EEZ will be permitted to do so. However, that vessel will not be permitted to fish in the EEZ groundfish fisheries off Alaska for the remainder of the 1992 fishing year. Permit holders who do not surrender their permit but continue or begin to conduct fishing operations in the Donut Hole or carry or transship Donut Hole resources in the EEZ after August 24, 1992, will be in violation of these regulations and subject to penalties authorized by the Magnuson Act.

Permits may be surrendered only during the time and in the manner specified in §§ 672.4(j) and 675.4(j). For the remainder of 1992 and subsequent fishing years, a U.S. fishing vessel that wishes to fish in, or possess in the EEZ fish harvested from, the Donut Hole must not apply for a permit for the Alaska groundfish fisheries.

NMFS anticipates that U.S. fishing vessels will fish for pollock in the Donut Hole during 1992 following the closure of the directed pollock fishery in the EEZ. Such U.S. vessels will be subject to the provisions of this rule.

Classification

This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) because these regulations are issued with respect to a foreign affairs functions of the United States. This action is not subject to section 553 of the Administrative Procedure Act because it involves a foreign affairs function, and is, therefore, not subject to the provisions respecting a 30-day delay of its effective date.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this rule and concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see **FOR FURTHER INFORMATION CONTACT**).

NMFS has determined that implementation of this rule is not likely to affect listed species in a manner or to an extent not already considered in formal consultations on these fisheries completed on April 19, 1991, June 5, 1991, and September 20, 1991. This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, and Recordkeeping requirements.

Dated: July 31, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the amendments to 50 CFR parts 672 and 675 published on July 31, 1992, beginning at 57 FR 33902 are withdrawn effective August 10, 1992; and parts 672 and 675 are amended effective August 24, 1992, as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2 the definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Donut Hole means the waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States, and seaward of the outer boundary of the economic zone of the Russian Federation.

* * * * *

3. In § 672.4, paragraph (j) is added to read as follows:

§ 672.4 Permits.

* * * * *

(j) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit was issued. However, if a permit issued to a vessel in 1992 is surrendered in accordance with this section, that vessel may be used to fish in, or possess fish caught from, the Donut Hole. A permit issued in 1992 will be deemed to be surrendered only if all copies of it are mailed to, and received by, the Alaska Regional Director, NMFS, P.O. Box 21668, Juneau, AK 99802, on or before August 24, 1992. To surrender a vessel's 1992 permit prevents participation by that vessel in the groundfish fisheries in the EEZ off Alaska for the remainder of 1992.

4. In § 672.7, paragraphs (h) and (i) are added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) Fish in the Donut Hole while on board a vessel for which a permit has been issued under § 672.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such fishing if its 1992 permit has been surrendered to NMFS in accordance with § 672.4(j).

(i) Possess fish harvested from the Donut Hole while in the EEZ on board a vessel for which a permit has been issued under § 672.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such possession if its 1992 permit has been surrendered to NMFS in accordance with § 672.4(j).

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2 the definition of "Donut Hole" is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Donut Hole means the waters of the Central Bering Sea seaward of the outer boundary of the EEZ of the United States, and seaward of the outer boundary of the economic zone of the Russian Federation.

* * * * *

7. In § 675.4, paragraph (j) is added to read as follows:

§ 675.4 Definitions.

* * * * *

(j) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (c)(1) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit was issued. However, if a permit issued to a vessel in 1992 is surrendered in accordance with this section, that vessel may be used to fish in, or possess fish caught from, the Donut Hole. A permit issued in 1992 will be deemed to be surrendered only if all copies of it are mailed to, and received by, the Alaska Regional Director, NMFS, P.O. Box 21668, Juneau, AK 99802, on or before August 24, 1992. To surrender a vessel's 1992 permit prevents participation by that vessel in the groundfish fisheries in the EEZ off Alaska for the remainder of 1992.

8. In § 675.7, paragraphs (i) and (j) are added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) Fish in the Donut Hole while on board a vessel for which a permit has been issued under § 675.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such fishing if its 1992 permit has been surrendered to NMFS in accordance with § 675.4(j).

(j) Possess fish harvested from the Donut Hole while in the EEZ on board a vessel for which a permit has been issued under § 675.4 of this part during any fishing year for which the permit was issued, except that during 1992 a vessel may be used for such possession if its 1992 permit has been surrendered to NMFS in accordance with § 675.4(j).

[FR Doc. 92-18704 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish by vessels using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this area.

DATES: Effective 12 noon, Alaska local time (A.l.t.), August 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the Western Regulatory Area, which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 2,000 metric tons.

Under § 672.24(c)(3)(i), the Director of the Alaska Region, NMFS, has determined that the share of the sablefish TAC assigned to hook-and-line gear in the Western Regulatory Area will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by operators of vessels using hook-and-line gear in the Western Regulatory Area, effective from 12 noon, A.l.t., August 5, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-18877 Filed 8-5-92; 1:03 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment, rescission of closure, request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that amounts of Pacific herring (herring) designated as the prohibited species catch (PSC) limit, and as fishery allowances specified for trawl fisheries of the Bering Sea and Aleutian Islands Area (BSAI), have been misspecified. NMFS is adjusting the size of the herring PSC limit, and redistributing the additional amounts among trawl fisheries, as needed. Revision of the herring allowance for the

yellowfin sole fishery necessitates rescission of a closure to the Herring Savings Areas (HSA) of the BSAI for directed fishing of yellowfin sole with trawl gear established earlier in 1992.

DATES: Effective 12 noon, Alaska local time (A.l.t.), August 3, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments are invited until August 20, 1992.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9100 Mandenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION:

Respecification of herring PSC limit

Regulations implementing the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI at § 675.21(a)(6) establish a PSC for herring of 1 percent of the annual Eastern Bering Sea herring biomass. In 1992, this amount is 956 metric tons (mt) (57 FR 3952, February 3, 1992. It is apportioned to certain BSAI target trawl fisheries, which are defined at § 675.21(g). Target fisheries, the herring PSC limit, and allowances to the target fisheries were subsequently modified by an emergency interim rule (57 FR 11433, April 3, 1992), which was further revised (57 FR 14667, April 22, 1992) and extended (57 FR 29223, July 1, 1992).

An inseason recalculation of herring biomass prepared in July 1992 by the Alaska Department of Fish and Game indicates that the original biomass estimate is substantially below 230,752 mt, the biomass estimate indicated by current scientific information. Based on this new information, NMFS finds that the herring trawl PSC limit for 1992 was misspecified. NMFS makes an inseason adjustment of the 1992 herring PSC limit for trawl gear in the BSAI to 2,308 mt, as authorized by regulations at § 675.20(e)(1)(iii). This adjustment satisfies required conditions under §§ 675.20(e)(2)(ii) and (e)(5) because the best available scientific information of herring biomass now shows that a limit of 956 mt is incorrect and a limit of 2,308 mt is appropriate.

Respecification of Trawl Fishery Allowances

Fishery categories established for the purpose of allocating herring PSC limits as bycatch allowances among trawl target fisheries were most recently defined in an extension of an emergency rule (57 FR 29223, July 1, 1992). Fisheries established include: midwater pollock, yellowfin sole, rocksole/other flatfish, Greenland turbot/arrowtooth flounder/sablefish, rockfish, Pacific cod, and non-midwater pollock/Atka mackerel/squid/"other species" ("other fishery"). These fishery categories were assigned allowances of the herring PSC limit in accordance with expected bycatch needs for 1992. Adjustment of the herring limit from 956 to 2,308 mt necessitates adjustment of trawl fishery allowances.

Of the five 1992 BSAI trawl fishery categories that have herring allowances, only those allowances for midwater pollock and yellowfin sole require adjustment, as many fisheries are closed, and remaining amounts of herring are deemed sufficient for others. At present, directed fisheries are closed to trawl gear in the BSAI for the remainder of 1992 for Greenland turbot, arrowtooth flounder, sablefish, Pacific cod, and for all rockfishes. The rock sole/other flatfish category is closed in Zones 1 and 2H. In the "other fishery," Atka mackerel and fishing for pollock with trawls other than pelagic trawls are closed. Remaining amounts of herring allowance specified for the "other fishery" and rock sole/other flatfish fishery categories are expected to be sufficient for the rest of the 1992 fishing year. Therefore, NMFS is apportioning the entire increase in herring PSC, 1,352 mt, to midwater pollock and yellowfin sole fisheries in the same proportion as existed in the specifications established in the emergency rule, as shown in Table 1.

Rescission of Closure

The herring allowance specified for the trawl yellowfin sole fishery in the emergency interim rule, 134 mt, was reached earlier in 1992. As required by regulations at § 675.21(h)(2), the directed fishery for yellowfin sole with trawl gear in the HSA of the BSAI was closed, effective June 29, 1992 (57 FR 29656, July 6, 1992). Because the herring allowance for this directed fishery is increased to 391 mt, the Regional Director finds that the directed fishery closure is no longer warranted. Therefore, NMFS rescinds the closure of the HSA to vessels participating in the directed fishery for yellowfin sole with trawl gear, effective 12 noon, A.l.t., August 3, 1992. The closure will be reimplemented if and when the respecified allowance for the yellowfin sole fishery is reached, later in 1992.

Classification

This action is taken under § 675.20(e)(iii) and (e)(5) and complies with Executive Order 12291.

This inseason adjustment is categorically excluded from the requirement to prepare an environmental assessment (EA) by NOAA Administrative Order 216–6. The environmental impacts of this action have already been analyzed in the EA for Amendment 16a to the BSAI FMP. Based on this analysis, the Assistant Administrator has determined that there will be no significant impact on the environment as a result of this action. A copy of the EA for Amendment 16a can be obtained from the Regional Director (see "**ADDRESSES**").

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior public notice and comment on the inseason adjustment or rescission of closure. Immediate effectiveness of this notice is necessary to prevent foregone revenue to the yellowfin sole fishery, which would otherwise be prevented from conducting operations in nearshore areas of the BSAI. Interested persons are invited to submit comments in writing (see "**ADDRESSES**") on or before August 20, 1992.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(**Authority:** 16 U.S.C. 1801 *et seq.*)

Dated: August 5, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—RESPECIFICATION OF THE PACIFIC HERRING PSC LIMIT AND OF ALLOWANCES TO BSAI TRAWL FISHERIES FOR 1992

Trawl target	Previous allowance	Change this notice	New allowance
Midwater pollock	573	+1,095	1,668
Yellowfin sole	134	+257	391
Rocksole/O. Flatfish	0	0	0
G. turbot/arrowtooth/sablefish	0	0	0
Rockfish	10	0	10
Pacific code	29	0	29
Pick/Amck/other	210	0	210
Total	956	+1,352	2,308

[FR Doc. 92–18876 Filed 8–5–92; 1:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 154
Monday, August 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

RIN 3206–AF03

Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (the Office) proposes to revise its regulations regarding disclosure of records covered by the Privacy Act of 1974. This regulatory change will clarify that such records are not to be disclosed in response to attorney-issued or clerk-issued subpoenas, unless the subpoena has the specific approval of a judge of a court of competent jurisdiction. The Office has concluded that such disclosures should no longer be made because they are inconsistent-with the exception to the Privacy Act's disclosure prohibition at 5 U.S.C. 552a(b)(11).

DATES: Comments must be received by October 9, 1992.

ADDRESSES: Comments should be sent or delivered to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Room 7494, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, (202) 606–1955.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, at 5 U.S.C. 552a(b), states that "no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains," unless disclosure of the record would be pursuant to one of the Act's 12 exceptions. Under the exception to the Privacy Act's disclosure prohibition at 5 U.S.C. 552a(b)(3) for a "routine use," the Office previously has disclosed Privacy Act-covered records in response to an "attorney-issued" or "clerk-issued" subpoena. The Office has concluded that such disclosures should no longer be made because they are inconsistent with the exception to the Privacy Act's disclosure prohibition at 5 U.S.C. 552a(b)(11). See *Doe* v. *Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).

Therefore, the Office's proposed change to its regulation will make it clear that, where the Government is not a party to litigation or administrative action, records will only be disclosed pursuant to an order signed by a judge. The Office considers a subpoena signed by a judge of a court of competent jurisdiction to be a court order as described in section (b)(11) of the Privacy Act. See, *e.g. Moore* v. *United States Postal Service*, 609 F. Supp. 681 (E.D. N.Y. 1985).

In a notice appearing elsewhere in this issue of the **Federal Register**, the Office is planning to change the routine use applicable to several published systems of records that permits a Federal agency to disclose information via subpoena to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency. This projected change to those Privacy Act system notices, which the public also has an opportunity to comment on, will limit nonconsensual disclosures in response to a subpoena only to those circumstances where the Government is in a proceeding before a court, adjudicative body, or other administrative body and for which it has been determined that the disclosure of the record is compatible with the purpose for which the records were collected.

E.O. 12291, Federal Regulation

The proposed regulatory change does not meet the standards set forth in Executive Order 12291 for classification as a major rule, and no regulatory analysis statement is required.

Regulatory Flexibility Act

I certify that the proposed regulatory change will not have a significant impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354, because it applies only to Federal employment and personnel records.

List of Subjects in 5 CFR Part 297

Administrative practice and procedure, Privacy, Records.

Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend part 297 of title 5 of the Code of Federal Regulations as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

1. The authority citation for part 297 continues to read as follows:

Authority: Sec. 3, Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In § 297.402, an introductory paragraph and paragraphs (d), (e), (f), (g), (h), and (i) are added to read as follows:

§ 297.402 Disclosure pursuant to a compulsory legal process served on the Office.

For purposes of this section, the Office considers that a subpoena signed by a judge is equivalent to a court order.

* * * * *

(d) Before responding to the order or subpoena signed by a judge, an official with authority to disclose records under this subpart in consulting with legal counsel will ensure that—

(1) The requested material is relevant to the subject matter of the related judicial or administrative proceeding;

(2) Motion is made to quash or modify an order that is unreasonable or oppressive;

(3) Motion is made for a protective order when necessary to restrict the use or disclosure of any information furnished for purposes other than those of the involved proceeding; or

(4) Request is made for an extension of the time allowed for response, if necessary.

(e) If an order or subpoena signed by a judge for production of documents also requests appearance of an Office employee, the response should be to furnish certified copies of the appropriate records. In those situations where the subpoena is not signed by a judge, the Office will return the document to the sender and indicate that no action will be taken to provide the records until the subpoena is signed by a judge.

(f) If oral testimony is requested by the order or subpoena signed by a judge, an explanation, which sets forth the testimony desired, must be furnished to the Office system manager. The individual who has been ordered or subpoenaed to testify should consult with counsel to determine the matters about which the individual may properly testify.

(g) In all situations concerning an order, subpoena signed by a judge, or other demand for an employee of the Office to produce any material or testimony concerning the records that are subject to the order, that are contained in the Office's systems of records, and that are acquired as part of the employee's official duties, the employee shall not provide the information without prior approval of the appropriate Office official.

(h) If it is determined that the information should not be provided, the individual ordered or subpoenaed to do so should respectfully decline to comply with the demand based on the instructions from the appropriate Office official.

(i) Notice of the issuance of the ex parte order or subpoena signed by a judge is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) pursuant to 5 U.S.C. 552a(j) by a Notice of Exemption published in the **Federal Register**.

§ 297.403 [Removed]

§ 297.404 [Redesignated as § 297.403]

3. Section 297.403 is removed. Section 297.404 is redesignated as § 297.403.

[FR Doc. 92-18734 Filed 8-7-92; 8:45 am]
BILLING CODE 6325-01

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-90-018]

RIN 0581-AA45

Grading and Inspection, General Specifications for Approved Plants and Standards For Grades of Dairy Products; Proposed Revision of Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations proposed for revision, with the exception of periodic user fee increases and minor administrative changes, have not been updated since December 1, 1976. This document proposes a general revision of the regulations to reflect more desirable ways of carrying out the diary inspection and grading program. A major thrust of this revision is to strengthen those regulations that pertain to program integrity. These latter changes are not expected to have any major impact on program participants, however, because most participants are already operating in a manner that is consistent with the proposed changes.

DATES: Comments must be submitted on or before October 9, 1992.

ADDRESSES: Comments should be sent to: Director, USDA/AMS/Dairy Division, room 2968-S, P.O. 96456, Washington, DC 20090-6456. All comments received in response to this proposed rule will be available for public inspection in room 2750-S between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: F. Tracy Schonrock, Chief, Dairy Grading Branch, USDA/AMS/Dairy Division, room 2750-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-3171.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified as a "non-major" rule under the criteria contained therein.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. section 601 et seq. The Administrator, Agricultural Marketing Service, has determined that it will not have a significant impact on a substantial number of small entities. The program is voluntary and funded entirely by user fees. The proposed rule will not affect the cost of inspection and grading services or limit or impede voluntary participation.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agricultural to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of diary products they desire. This proposed rule provides for a general revision of the regulations to reflect more desirable ways of carrying out the dairy inspection and grading programs, including strengthening the regulations that pertain to program integrity. This document proposes the following changes in the regulations for the Diary Inspection and Grading program (the section numbers referenced reflect the proposed renumbering of subpart A):

The information collection requirements contained in this proposed have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581-0126.

1. Extensive restructuring of the regulations' sections, the addition of new provisions, and the deletion of unnecessary or outdated information and sections.

2. Expansion of § 58.1, Meaning of words. This section will be expanded to incorporate many previously undefined or new terms proposed in the revision. The expanded definitions will be clearer and will make the regulations more readable. Terms have been deleted which no longer accurately reflect the Department's organizational structure or the services available. Where appropriate, editorial changes have been made to the remaining regulations to reflect these changes in terminology.

3. Consolidation of § 58.10, Filing of application, and 58.11, Approval of the application. There will be no change in the intent of this requirement.

4. Expansion of § 58.15, Accessibility and condition of product. This section will be expanded to require an applicant for inspection or grading services to give access to its plant facilities and equipment to grading personnel. The additional wording will clarify the requirements necessary to protect the integrity of the Dairy Grading Branch's inspection and grading services.

5. Expansion of § 58.18, Inspection or grading certificates, memoranda, or reports. This section will be expanded to add two additional management and program integrity control devices: Product control tags, which will allow rejected or suspect commodities to be identified and controlled pending investigation, analysis, or disposition; and an inspector identification number, which has been incorporated within the official shield stamp used to identify graded or inspected products.

6. Addition of § 58.20, Issuance of take-off certificates. This addition will

clarify the conditions under which a take-off certificate can be issued. A take-off certificate is a certificate which incorporates the information from one or more valid certificates on a new certificate without requiring the applicant to submit the product for additional inspection or grading.

7. Addition of § 58.23, Reserve, sample for inspection or grading. This addition will clearly define for the users of the service the selection and appropriate uses of reserve samples.

8. Addition of § 58.24, Who may request retest service, 58.25. How to request retest service, and 58.26, Issuing certificates for retest service results. These sections will establish the criteria for retest services. The creation of the Science Division within the Agricultural Marketing Service has resulted in changes in the procedures for laboratory analyses and retesting of results questioned by an applicant. The new sections provide specific information regarding who may request a retest, how to apply for a retest, when a request for retesting will be accepted, and the issuance of certificates documenting the results of the retest. This addition is necessary to fully inform the users of the services available.

9. Expansion of § 58.27 through 58.34, which govern appeals of inspections, gradings, and retest services. These sections will set forth more clearly the criteria for conducting appeals for the various types of service provided. The expansion includes new criteria for the appeal of a retest service, which has been added to the regulations (see proposed change 8).

10. Revision of wording for § 58.35 through 58.37 covering reinspections and regardings. This revision will clarify the interrelationship between the various options for retest service, reinspections, and appeal inspections.

11. Revision of wording and addition of § 58.39 through 58.45. This revision will set forth licensing requirements regarding who may be licensed, the duration of a license, renewal of a license, suspension or revocation of a license, surrender of a license card, and the proper identification of a licensed inspector or grader.

12. Deletion of § 58.44, Fees for laboratory analyses. The Science Division now has responsibility for establishing laboratory fees and changes which will be set forth in other regulations.

13. Addition of § 58.53 covering certain fees. This addition provides for imposing fees on applicants for the collection and testing of samples to determine conformance with the regulations and to monitor the inspection and grading program.

14. Addition of a depiction of a U.S. Grade B shield to Section 58.58, Approval and form of official grade label or quality identification. This grade shield is available to the users of the service.

15. Expansion of § 58.62, Keeping quality samples. This expansion will strengthen the criteria for evaluating keeping quality, which will enhance the integrity of the grade label program.

16. Addition of § 58.65, Nondiscrimination. This addition will reinforce the Dairy Division's commitment to providing all services and the licensing of inspection, grading, or sampling personnel without discrimination as to age, race, marital status, color, religion, sex, or national origin.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58, be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Subpart A of part 58 is revised as follows:

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

Definitions

Sec.
58.1 Meaning of words.
58.2 Designation of official certificates, memoranda, marks, identifications and devices for the purpose of the Agricultural Marketing Act of 1946.

Administration

58.3 Authority.

Inspection or Grading Service

58.4 Basis of service.
58.5 When service may be provided.
58.6 Supervision of service.
58.7 Who may obtain service.
58.8 How to file an application.
58.9 Form of application.
58.10 Approval of the application.
58.11 When an application may be rejected.
58.12 When an application may be withdrawn.
58.13 Authority of the applicant.
58.14 Who shall provide service.
58.15 Accessibility and condition of product and plant facilities.
58.16 Disposition of samples.
58.17 Order of service.
58.18 Inspection or grading stamps, tags, certificates, memoranda, or reports.
58.19 Issuance of inspection or grading certificates and reports.
58.20 Issuance of take-off certificates.
58.21 Disposition of inspection or grading certificates or reports.
58.22 Advance information.
58.23 Reserve sample for inspection or grading.

Retest Service

58.24 Who may request retest service.
58.25 How to request retest service.
58.26 Issuing certificates for retest service results.

Appeal of Inspection, Grading or Retest Service

58.27 When an appeal inspection, grading or retest service may be requested.
58.28 How to request an appeal inspection, grading or retest service.
58.29 Record of filing date.
58.30 When an application for appeal inspection, grading or retest service may be refused.
58.31 When an application for an appeal inspection, grading or retest service may be withdrawn.
58.32 Order in which appeal inspections, gradings or retest service are performed.
58.33 Who shall conduct appeal inspections, gradings or retest service.
58.34 Appeal inspection, grading or retest service certificate or report.

Reinspection or Regrading

58.35 Application for reinspection or regrading.
58.36 Inspection of reworked or reconditioned lots.
58.37 Reinspection or regrading certificate.

Superseded Certificates

58.38 Superseded certificates.

Granting Authority to Inspectors and Graders to Perform Official Duties

58.39 Who may be authorized to perform official duties.
58.40 Duration of license validation.
58.41 License renewal.
58.42 Suspension or revocation of license.
58.43 Surrender of license.
58.44 Identification.
58.45 Financial interest of licensees.

Fees and Charges

58.46 Payment of fees and charges for inspection and grading services.
58.47 Fees for holidays or other non-regular workdays.
58.48 Fees for retest service.
58.49 Fees for appeal inspection, or grading.
58.50 Fees for additional copies of certificates or inspector reports.
58.51 Traveling expenses and other charges.
58.52 Fees for inspection, grading, and sampling.
58.53 Fees for conformance and monitoring samples.
58.54 Fees for continuous resident service.
58.55 Reimbursement for service performed under cooperative agreement.

Marking, Branding, and Identifying Product

58.56 Authority to use official identification.

Sec.
58.57 Forms or types of official identification.
58.58 Approval and form of official grade label or quality identification.
58.59 Information required on official grade label or quality identification.
58.60 Time limit for packaging inspected or graded products with official grade label or quality identification.
58.61 Applicant responsibilities for packaging products with official grade label or quality identification.
58.62 Keeping quality samples.
58.63 Product not eligible for packaging with official identification.

Violations

58.64 Debarment of service.

Miscellaneous

58.65 Employee conduct and responsibilities.
58.66 Nondiscrimination.
58.67 Political activity.
58.68 Report of violations.
58.69 Other applicable regulations.
58.70 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

Definitions

§ 358.1 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form will apply to the plural form and vice versa, and any use of the masculine form will apply to the feminine form and vice versa, as the case may be. Unless the context otherwise requires, the following terms are defined as follows:

Act means the applicable provisions of the Agricultural Marketing Act of 1946 (7 United States 1621–1627), or any other act of Congress conferring like authority.

Administrator means the Administrator of the Agricultural Marketing Service, or any other officer or employee of the Agricultural Marketing Service to whom authority may be, or has been, delegated to act in the Administrator's stead.

Adulteration means the admixture of a foreign or baser substance to a product or the preparation for sale of a product with an ingredient which is not part of the professed product. Adulteration of a product also means the absence of an essential ingredient, a defect artificially concealed, or a product exposed to disease, or unwholesome or unsanitary conditions.

Agricultural Marketing Service or *AMS* means the Agricultural Marketing Service of the Department.

Appeal grading or *appeal inspection* means the subsequent grading or inspection of a previously graded or inspected product because an interested party disputes the finding of the original grading/inspection that was determined according to the provisions of this subpart.

Applicant means any interested party who requests inspection or grading service.

Approved laboratory means a laboratory that operates under a USDA approval or monitoring program, as set forth by the Administrator, and whose facilities and equipment used for official testing have been approved by the Administrator to perform such official tests in accordance with this subpart.

Approved plant means a processing plant, composed of one or more buildings, or parts thereof, at one location, at which the facilities and methods of operation are surveyed and approved by the Branch Chief as eligible for inspection or grading service in accordance with this subpart and Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service.

Approved process means a dairy or related product process which has been surveyed and determined to be of sanitary design, construction and operation and thus adequate to produce wholesome quality products in accordance with this subpart and Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. That a process is determined to be an "approved process" under this subpart does not mean that the USDA guarantees the condition, quality or origin of any product produced thereby.

Approved product means a dairy or related product which has been processed or manufactured in an approved plant from dairy ingredients which have also been produced by an approved plant. Only approved products are eligible for inspection and grading services.

Branch Chief means the Chief of the Dairy Grading Branch, or any officer or employee of that branch to whom authority may be, or has been, delegated to act in the Branch Chief's stead.

Business day means the established National Field Office working hours, Monday through Friday, except holidays.

Condition of container means the degree to which a container is free from defects which would affect its usefulness, which may include defects in appearance.

Condition of product or *condition* means the degree to which a product is defective or free from defects which affect its use, including without limitation the state of preservation, cleanliness, soundness, wholesomeness, and fitness for human food.

Continuous resident service or *resident service* means inspection or grading service performed by an inspector or grader assigned to a dairy plant on a continuous, year-round, resident basis.

Dairy Grading Branch means the Dairy Grading Branch of the Dairy Division, AMS.

Days means the calendar days unless specifically modified.

Department or *USDA* means the United States Department of Agriculture.

Director means the Director of the Dairy Division, AMS, or any officer or employee of the Division to whom authority may be, or has been, delegated to act in the Director's stead.

Division means the Dairy Division of the Agricultural Marketing Service.

Grade or *class* means any classification assigned to a product based on the evaluation of identified, essential physical, chemical or microbiological characteristics.

Holiday means the legal public holidays specified in 5 U.S.C. 6103(a) and any other day declared to be a holiday by Federal Statute or Executive Order. Under 5 U.S.C. 6103, as amended, if a specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if a specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

Inspection or grading office means the office of any inspector or grader.

Inspection or grading service or *service* means the initial inspection of a dairy plant's facilities, equipment and operations (such as processing, manufacturing, packaging and repackaging, and quality controls), so that the following inspection and grading services may be performed:

(1) drawing samples of any product;

(2) determining the class, grade, quality, composition, size, quantity, suitability for intended use, or condition of any product by examining each unit or representative samples;

(3) determining the condition of product containers;

(4) authorizing a product or packaging to carry an official identification;

(5) regrading or appeal grading a previously graded product;

(6) inspecting the packaging of a previously inspected or graded product;

(7) reinspection or appeal inspection;

(8) denaturing of products determined to be unfit for human consumption;

(9) reviewing and inspecting dairy processing equipment and facilities design; and

(10) issuing inspection or grading certificates, or sampling, inspection or other reports, related to any of the services rendered.

Inspector or *grader* means any Federal employee or cooperating State employee with a license issued by the Branch Chief to perform one or more types of inspection or grading services.

Instructions, guidelines and procedures means the instructions, guidelines and procedures issued by the Dairy Grading Branch for the implementation of this subpart.

Interested party means any person, firm or agency financially interested in a transaction involving any inspection or grading service.

Keeping quality test means a test to determine the storage characteristics of products either by simulating storage conditions or by accelerating defect development by elevated storage temperatures and shorter holding times.

National Field Director means the director of the Dairy Grading Branch's field operations, or any officer or employee of the Branch to whom authority may be, or has been, delegated to act in the Director's stead.

Non-regular workday means any Saturday, Sunday or holiday or work hours in excess of the established tour of duty.

Person means any individual, partnership, association, business, trust or corporation, or any organized group of persons, whether incorporated or not.

Plant survey or *plant inspection* means an appraisal of the plant or a part of the plant to determine the extent to which the facilities, equipment, method of operation, sanitation and incoming raw material are in accordance with the provisions of this subpart and Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. A plant survey shall determine the plant's eligibility for inspection or grading service.

Product means butter, butteroil, cheese (whether natural or processed), margarine, milk, cream, milk products (whether dried, frozen, evaporated, stabilized, fractionated, concentrated or condensed), frozen desserts, casein and caseinates, lactose and any other food product which is prepared or manufactured, in whole or in part, from any of the aforesaid products, or any product the Administrator may designate.

Quality means the relative degree of excellence of any product as determined by its inherent properties.

Random sampling means selecting samples in an indiscriminate pattern to ensure that each member of a lot has the same chance of being selected.

Regrading or *reinspection* means the grading or inspection of a previously graded or inspected product after a period of time or after discovery by a supervisor of an improper or incorrect grading procedure or result during the earlier grading session, or when there has been a change in product location or conditions under which the product is stored or handled.

Regular workday means an established tour of duty, Monday through Friday, except a holiday.

Regulations means the provisions of this subpart.

Reserve samples means a duplicate set of samples taken from the same lot during the original inspection or grading.

Retest or *retest service* means the subsequent testing of a previously tested sample because an interested party disputes the original laboratory analysis, as determined according to provisions of this subpart.

Reworked or *reconditioned lot* means a lot which failed the original inspection for any reason, and has been altered and submitted for inspection again in accordance with section 58.38.

Sampling report means a document issued by an inspector or grader which identifies the samples taken for inspection or grading service.

Take-off certificate means an official certificate created by combining all or portions of one or more official certificates onto one document.

Tour of duty means the hours of a work day (daily tour of duty) or the regular or non-regular workdays of a week (weekly tour of duty) that cover a scheduled workweek.

Wholesomeness means a product's freedom from adulteration or defects that would render the product unfit for human consumption.

§ 58.2 Designation of official certificates, memoranda, marks, identifications and devices for the purpose of the Agricultural Marketing Act of 1946.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended, provides criminal penalties for specific offenses related to the misuse of official certificates, memoranda, marks or identifications, and devices for making such marks or identifications, issued or authorized under section 203 of the Act, and to certain misrepresentations about the inspection or grading of agricultural products under section 203 of the Act. For the purposes of subsection 203 (h) of the Act and the provisions of this subpart, the following definitions shall apply:

(a) *Official certificate* means any form of certification, written or printed (including that prescribed in § 58.18), used under the regulations of this subpart to certify the following:

(1) Inspection of a dairy processing plant or equipment,

(2) Class, grade, quality, size, quantity, or condition of product; and

(3) Conformance of products and packaging material to applicable specifications.

(b) *Official memorandum* means any initial record of findings, processing or plant-operation reports, and other supporting documentation made by an authorized person in the process of inspecting, grading, determining compliance, or sampling pursuant to the regulations in this subpart.

(c) *Official identification* or *official mark* means any form of identification or mark (including, but not limited to, printed labels, identification tape, product control tags, and those described in §§ 58.56 through 58.59) approved by the Branch Chief and authorized to be affixed to or printed on the packaging material of any product. The official identification certifies the inspection, grade, quality, size, quantity, or condition of the product and the conformance of the product to the applicable requirements specified in this subpart. It also identifies products for which service is provided under the regulations in this subpart.

(d) *Official device* means a stamping or branding device, or any other mechanically or manually operated tool, stencil, evidence tape, tag, or printed label approved by the Branch Chief for use in applying an official mark or other identification to any product or packaging material.

Administration

§ 58.3 Authority.

The Branch Chief is charged with the administration, under the general supervision and direction of the Director, of the regulations and the Act insofar as they relate to this subpart.

Inspection or Grading Service

§ 58.4 Basis of service.

Inspection or grading services shall be performed in accordance with the provisions of this subpart, the instructions, guidelines and procedures issued or approved by the Branch Chief, the U.S. standards for grades, the Federal specifications, and the specifications defined in a specific purchase contract.

§ 58.5 When service may be provided.

Subject to the provisions of this subpart, inspection or grading services shall be performed only when a qualified inspector or grader is available, and when the plant facilities and conditions, as determined by the Branch Chief, are suitable for

conducting such inspection or grading service.

§ 58.6 Supervision of service.

(a) All inspection or grading services are subject to supervision by a supervisory inspector or grader, the Assistant National Field Director, the National Field Director, the Branch Chief, or any employee of the Branch designated by the Branch Chief to act in a supervisory capacity.

(b) Whenever there is evidence that the inspection or grading service has been incorrectly performed, the supervisor shall immediately conduct or arrange for a reinspection or regrading. The results of the reinspection or regrading shall supersede those of the previous inspection or grading and a new certificate or report shall be issued to that effect.

§ 58.7 Who may obtain service.

Any interested person or party may apply for inspection or grading service.

§ 58.8 How to file an application.

(a) *Fee basis.* Applications for inspection or grading services should be made to the National Field Director. An applicant for such services should apply as early as possible, but no later than seven days before the date of such inspection or grading. The National Field Director may, however, approve applications made later than seven days before the inspection or grading date. The National Field Director may require written confirmation of any verbal request for inspection or grading services.

(b) *Continuous resident service basis.* An application for inspection or grading service on a continuous resident service basis, as provided in section 58.54, shall be made in writing. Written application forms shall be approved by and filed with the Branch Chief.

§ 58.9 Form of application.

(a) Applications for inspection or grading service shall include all information that the Branch Chief requires as to the type of service requested, the kind of products to be graded, the place of manufacture, processing, or packaging and the location where the inspection or grading service is to be performed, in accordance with the provisions of this subpart.

(b) Each application for inspection or grading service, whether verbal or written, shall be deemed to include a verification by the applicant that the products to be graded are properly identified and meet all regulations and composition requirements, and that all plant facilities, equipment and records will be made available for inspection in accordance with all instructions, guidelines, and procedures issued by the Branch Chief. The information on the application shall, to the best of the applicant's knowledge, be complete and accurate, and not factually misleading as to the product or its condition.

§ 58.10 Approval of the application.

The Branch Chief may approve an application for inspection or grading service if:

(a) It is filed pursuant to the provisions of this subpart;

(b) A qualified inspector or grader is available;

(c) The plant facilities and conditions are suitable for conducting the inspection or grading service; and

(d) The product has been manufactured or processed in an approved plant.

§ 58.11 When an application may be rejected.

(a) The Branch Chief may reject an application for inspection or grading service if:

(1) The applicant fails to meet either the application requirements prescribed in this subpart or the conditions for receiving such service;

(2) The product is owned by, or located on the premises of, a person currently denied the benefits of the Act;

(3) The applicant has substantial financial ties to a person who is currently denied the benefits of the Act, or who has been adjudged, in an administrative or judicial proceeding, responsible in any way for a current denial of benefits of the Act to any other person.

(4) The applicant is currently denied inspection or grading services under the Act.

(5) The product was produced from unwholesome raw material or under unsanitary or otherwise unsatisfactory conditions as determined by the USDA;

(6) The product is adulterated;

(7) The product is of illegal composition under federal law, or has inferior keeping quality;

(8) The product was produced in a plant that is not currently approved for inspection or grading service by the Dairy Grading Branch.

(9) Any fees billed to the applicant are not paid within 30 days; or

(10) The applicant has failed to comply with the Act or this subpart or with the instructions, guidelines or procedures issued hereunder.

(b) The National Field Director or his or her designated representative shall provide notice to an applicant whose application is rejected, and shall explain the reason(s) for the rejection. If such notification is made verbally, written confirmation may be provided.

§ 58.12 When an application may be withdrawn.

The applicant may at any time withdraw an application for inspection or grading services. The applicant shall be responsible for any expenses incurred by AMS in connection with the withdrawn application.

§ 58.13 Authority of the applicant.

The Branch Chief has discreton to require proof of the authority of the person applying for any inspection or grading services.

§ 58.14 Who shall provide service.

Inspection and grading services shall be performed by a Federal or cooperating State inspector or grader assigned by the National Field Director or the National Field Director's designated representative. Only the assigned inspector or grader, except as provided in § 58.6 and § 58.27 through 58.37, is authorized to assign official grade designations, product acceptance or rejection, plant approval, and equipment design acceptance or rejection according to instructions, guidelines or procedures provided for in this subpart and the purchase contract specifications.

§ 58.15 Accessibility and condition of product and plant facilities.

(a) The applicant must ensure that each lot of product for which inspection or grading service is requested is readily accessible, so the inspector or grader can select representative samples of the product to determine its class, grade, quality, quantity and condition. Product that has been damaged or stored in unsanitary conditions will not be inspected or graded. If the Dairy Grading Branch allows the applicant to present sample packages for inspection or grading, the samples must be representative of the lot, and the remainder of the lot must be accessible, so the inspector or grader can select additional samples.

(b) The applicant shall provide a room or area where the inspection or grading service will be performed. The room or area shall be acceptable to USDA: It shall be clean and sanitary, free from foreign odors, excessive noise or traffic, and have adequate lighting, ventilation, and temperature control. The applicant is required to provide or arrange for assistance for the grading activities.

(c) Applicants who request inspection service for manufacturing, processing,

packaging or storage facilities, by virtue of their request, agree:

(1) To submit to unannounced inspections of their facilities;

(2) To provide access to all areas of the facilities;

(3) To provide access to interior surfaces of processing equipment compatible with equipment design for inspection of product contact surfaces; and

(4) To provide access to plant quality control records and other records identified in this subpart as pertinent to the inspection.

§ 58.16 Disposition of samples.

Any sample of the product used for inspection or grading may be returned to the applicant if he or she so requests. Such request must be made at the time of the application. The sample will be returned at the applicant's expense. If the applicant makes no such request, the product samples will be destroyed, given to a charitable organization, or disposed of by any other method prescribed by the Administrator.

§ 58.17 Order of service.

Inspection or grading services will be performed in the order in which the applications are received unless efficient management or the availability or qualified inspectors or graders dictates otherwise. Precedence may be given to applications for appeal inspection or grading.

§ 58.18 Inspection or grading stamps, tags, certificates, memoranda or reports.

(a) A shield bearing the words "U.S.D.A. LOT NUMBER" and "OFFICIALLY INSPECTED," and the code identification number of the grader performing the service, as shown in Figure 1, is one form of official identification under the regulations for the inspection and grading of dairy and related products.

Figure 1

(b) A rectangular, serial-numbered tag, on which appears a shield bearing the letters "U.S.D.A." and the words "Product Control," as shown in Figure 2, is another form of official identification under the regulations for inspection and grading of dairy and related products. Official graders, inspectors and supervisors may use such tags or other means as approved by the Branch Chief to identify and control dairy and related products that do not conform with the regulations, or are on hold. Such products shall not be used, moved, or altered in any manner, and the official control identification shall not be removed without the permission of the USDA.

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U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
DAIRY DIVISION

USDA
Product Control

DO NOT REMOVE TAG
OR
USE PRODUCT
WITHOUT AUTHORIZATION

(SEE REVERSE)

NO

PRODUCT TAGGED

NO OF CONTAINERS

The product(s) or container(s) to which this tag is attached is (are) controlled under authority of the Agricultural Marketing Act and is (are) not to be used moved or altered in any manner without the expressed permission of an authorized representative of the United States Department of Agriculture. The unauthorized removal or alteration of this tag or utilization of the tagged product(s) is a violation of the Agricultural Marketing Act of 1946, as amended and regulations issued thereunder

REMARKS

AUTHORIZED EMPLOYEE DATE

PRODUCT CONTROL

LOCATION AND REMARKS

AUTHORIZED EMPLOYEE DATE

FORM DA-147 Reverse

Figure 2

BILLING CODE 3410-02-C

(c) Inspection or grading certificates and sampling, plant survey, and other memoranda, reports, or worksheets shall be issued on forms approved by the Branch Chief.

§ 58.19 Issuance of inspection or grading certificates and reports.

(a) An inspection or grading certificate for a product which has been inspected or graded shall be issued in accordance with instructions, guidelines and procedures issued by the Branch Chief.

(b) A plant survey or equipment design review report for each inspection or review conducted shall be issued in accordance with instructions, guidelines and procedures issued by the Branch Chief.

(c) The inspector or grader shall sign the official memorandum as defined in § 58.2(b). The official memorandum is used as a basis for preparing and issuing the inspection or grading certificate. The inspection or grading certificate shall be signed by an inspector or grader who participated in the inspection or grading, however, an inspector or grader may give to another person a power of attorney to sign on his or her behalf, with the approval of the Branch Chief: *Provided,* that whenever a certificate is signed by a person other than the inspector or grader, under a power of attorney, the certificate must so indicate. The signature of the person who holds the power of attorney must appear along with the name of the grader or inspector who personally graded or inspected the product.

§ 58.20 Issuance of take-off certificates.

An interested party may request that the information on two or more officially-issued certificates be consolidated, and a new, third certificate issued. The new certificate shall state that it is a "take-off certificate" and shall include the dates and numbers of all the certificates used, in whole or in part, to create the take-off certificate. A "take-off certificate" shall not be issued if composite laboratory analysis samples are no longer representative of the product to be certified.

§ 58.21 Disposition of inspection or grading certificates or reports.

The Dairy Grading Branch shall deliver or mail to the applicant or the applicant's designee, the original and up to four copies of the inspection or grading certificate or report issued pursuant to § 58.19. A copy shall also be filed in the National Field Office. All other copies shall be filed as prescribed by the Branch Chief. Additional copies of reports or certificates will be supplied as provided in § 58.50.

§ 58.22 Advance information.

All or part of the inspection or grading results contained in a certificate or report may be given out in advance at the request of the applicant and at the applicant's expense.

§ 58.23 Reserve sample for inspection or grading.

Reserve samples may be inspected, graded or analyzed only if the USDA determines that the original samples have been lost, damaged or altered during shipment to the laboratory or are no longer representative of the long-term stored product due to repetitive regrading of the original samples.

Retest Service

§ 58.24 Who may request retest service.

(a) Any interested party may request a retest of any laboratory analysis on inspected or graded commodities. Only one retest is allowed for each original inspection or grading service.

(b) A retest service may be requested for any or all quality factors tested.

(c) The retest shall be limited to analysis of the originally-tested file sample. If such file sample is not available, the request for retest service will be denied.

§ 58.25 How to request retest service.

Any interested party may file an application for retest service with the National Field Director. If the application is verbal, written confirmation may be requested.

§ 58.26 Issuing certificates for retest service results.

(a) Immediately after a retest service has been completed, a certificate shall be issued in accordance with § 58.18 through 58.21 and the applicable instructions, guidelines and procedures. The new certificate shall supersede the original certificate (See § 58.38) and shall clearly state that it is a "Retest Certificate." The retest certificate shall include the results of the retest, the original results of tests that were not retested, shall indicate the factor(s) upon which the retest was based, and shall state that all other factors were part of the original inspection or grading service.

(b) If an original certificate has not been issued at the time of the retest, that original shall be designated as the "Retest Certificate", and shall include the results of the retest, the results from the original testing of analyses that were not retested, shall indicate which factors are affected by the retest, and shall state that all other factors remain the same.

Appeal of Inspection, Grading or Retest Service

§ 58.27 When an appeal inspection, grading or retest service may be requested.

(a) Any interested party who is not satisfied with the results of the original inspection or grading, may request an appeal inspection, grading or retest service, provided that the indentity of the inspected or graded samples or the product has not been lost and the conditions under which the original inspection or grading service was performed have not changed. An application for an appeal inspection, grading, or retest service shall be made within 2 days after the day of the original service or notification of laboratory results. The Branch Chief may approve a late application for an appeal.

(b) Only one appeal inspection or grading service is allowed for each original inspection, grading, or retest service. The scope of the appeal inspection or grading shall be limited to the scope of the original inspection.

(c) An appeal inspection or an appeal of laboratory analysis shall be limited to a review of the sampling procedures used in the original inspection. If it is determined that the sampling procedures used in the original inspection were improper, a new sample(s) shall be obtained and inspected or tested for all factors originally tested.

(d) An appeal grading shall include a review of all grade factors or purchase specifications for all samples reported on the original grading certificate.

§ 58.28 How to request an appeal inspection, grading or retest service.

Any interested party may request an appeal inspection, grading or retest service by filing a request with the Branch Chief or the National Field Director. The application for appeal inspection, grading or retest service shall set forth the reasons for the appeal and shall include a copy of the original grading certificate or report, or any other information which the applicant may have regarding the product or the service upon which the appeal is based. If the request is verbal, written confirmation may be required.

§ 58.29 Record of filing date.

The date when each application for appeal inspection, grading or retest service is received shall be recorded and maintained in such manner as the Branch Chief may prescribe.

§ 58.30 When an application for appeal inspection, grading or retest service may be refused.

(a) The Branch Chief may refuse an application for an appeal inspection, grading or retest service if:

(1) The quality or condition of the product has undergone a material change since the original inspection or grading service,

(2) The products that were originally inspected, graded or retested are not available or accessible for reinspection or regrading,

(3) The conditions under which the original inspection or grading service was performed have changed,

(4) The reasons for an appeal of inspection or grading are frivolous or not substantial,

(5) The sampling procedures used during the inspection or retest service being appealed are determined to have been properly followed in the original inspection,

(6) The product is found to be contaminated with filth, decomposed material, foreign material, or offensive substances, or is found to be adulterated,.

(7) The applicant has not complied with the act or this subpart.

(b) The Branch Chief or National Field Director shall promptly notify the applicant of the reason for such refusal. If the notification is verbal, written confirmation may be provided.

§ 58.31 When an application for an appeal inspection, grading or retest service may be withdrawn.

The applicant may withdraw his application for appeal inspection, grading or retest service at any time before the appeal inspection or grading is performed. The applicant is responsible for all expenses incurred by AMS in connection with such withdrawn application.

§ 58.32 Order in which appeal inspections, gradings and retest service are performed.

Appeal inspections, gradings or retest service shall be performed in the order in which the applications are received, unless efficient management or the availability of qualified inspectors or graders dictates otherwise. Appeal applications may be given precedence over all other applications pursuant to § 58.17.

§ 58.33 Who shall conduct appeal inpections, gradings or retest service.

An appeal inspection, grading or retest service of an product shall be conducted by any inspector or grader designated for this purpose by the Branch Chief or National Field Director and, whenever practical, the appeal inspection or grading may be conducted jointly by two such inspectors or graders. The inspector or grader who conducted the original inspection or grading shall not be present during the appeal inspection, grading or retest service.

§ 58.34 Appeal inspection, grading or retest service certificate or report.

(a) Immediately after an appeal inspection, grading or retest service has been completed, a certificate or report shall be issued in accordance with § 58.18 through 58.21 and the applicable instructions, guidelines and procedures. The certificate or report shall supersede the original certificate or report (See § 58.38). It shall clearly state it is an "Appeal Certificate" and will be deemed effective as of the date of the original certificate or report. The appeal certificate or report shall include the number and the date of the superseded certificate or report.

(b) If the original certificate has not yet been issued, it shall be designated as the appeal certificate. It shall clearly state that it is an "Appeal Certificate" and shall include the results of the factor(s) appealed.

Reinspection or Regrading

§ 58.35 Application for reinspection or regrading.

Any interested party may at any time apply for reinspection or regrading of any previously inspected or graded product. An application for reinspection or regrading shall not be considered an application for retest service § 58.24 through 58.26) or application for appeal inspection, grading or retest service (§ 58.27 through 58.34).

§ 58.36 Inspection of reworked or reconditioned lots.

Any interested party may at any time file an application for inspection or regrading of a reworked or reconditioned lot of a product that failed an earlier inspection. The provisions of this subpart on inspection or grading service shall also apply to the inspection of reworked or reconditioned lots, except that the sampling and testing amount will be twice that used in an original inspection or grading, unless otherwise specified by the U.S. Standards for the Condition of Food Containers. It is the applicant's responsibility to clearly identify lots offered for inspection and grading as reworked or reconditioned lots.

§ 58.37 Reinspection or regrading certificate.

(a) Immediately after a reinspection or regrading has been completed, a new certificate shall be issued in accordance with § 58.18 through 58.21 and the applicable instructions, guidelines and procedures. A certificate issued pursuant to this section shall supersede the inspection or grading certificate previously issued (See § 58.38). Each such certificate shall clearly state it is a "Reinspection Certificate", or "Regrade Certificate" and shall include the number and date of the original certificate.

(b) If the original certificate has not been issued, it shall be designated as the reinspection or regrading certificate. It shall clearly state it is a "Reinspection Certificate" or "Regrade Certificate", and include the results of such reinspection or regrading and a statement that the reinspection or regrade certificate was issued in lieu of the original certificate.

Superseded Certificates

§ 58.38 Superseded certificates.

(a) When any inspection, grading or retest service certificate is superseded in accordance with this subpart, that certificate becomes null and void and no longer represents the class, grade, quality, quantity, or condition of the product it describes.

(b) If all copies of the superseded certificate are in the custody of the Dairy Grading Branch, each copy shall be marked "VOID." If all copies of the superseded certificate are not in the custody of the branch at the time a new one is issued, the new certificate shall include a statement that the original certificate has not been surrendered.

Granting Authority to Inspectors or Graders to Perform Official Duties

§ 58.39 Who may be authorized to perform official duties.

AMS may authorize any qualified federal or cooperating state employee (as so determined in a competency review by the Branch Chief) to perform specified inspection or grading services. A license issued and signed by the Branch Chief or his or her designee shall be evidence of such authorization.

§ 58.40 Duration of license validation.

A license is valid for a period of time determined by the Branch Chief as appropriate for inspection and grading needs, but in no case shall any such license be valid for more than four years.

§ 58.41 License renewal.

A license may be renewed in accordance with the provisions of this subpart and as prescribed by the Branch Chief.

§ 58.42 Suspension or revocation of license.

The Branch Chief may suspend any license issued under the regulations in this subpart by giving notice of the suspension and a statement of reasons to the employee involved. The employee may then file an appeal in writing with the Branch Chief within 10 days after receiving the notice of suspension, and shall, upon request, be granted an oral hearing. The Branch Chief shall then take such action as the appeal may warrant. If no appeal has been filed with the 10-day period, the license will be suspended or revoked.

§ 58.43 Surrender of license.

An employee whose license is suspended or revoked, or whose services are terminated, must immediately surrender the license to his or her supervisor.

§ 58.44 Identification.

The licensee shall carry his or her license when performing any function under the regulations in this subpart and shall use the license for his or her identification.

§ 58.45 Financial interest of licensees.

The licensee shall not render any inspection or grading services on any product or at any facility in which he or she has a financial interest.

Fees and Charges

§ 58.46 Payment of fees and charges for inspection and grading services.

(a) The applicant must pay in full all fees and charges for any service (whether the request was withdrawn, cancelled, postponed, denied or completed), in accordance with the applicable provisions of this section and § 58.47 through 58.55. The Dairy Grading Branch may require prepayment of such fees and charges.

(b) Fees and charges for any inspection or grading service performed by any inspector or grader shall be paid by check, draft or money order payable to the USDA and remitted promptly to the office indicated on the bill for such inspection or grading service.

§ 58.47 Fees for holidays or other non-regular workdays.

If an applicant requests that inspection or grading service be performed on a holiday, Saturday or Sunday, or outside the established tour of duty hours, the applicant shall be charged 1½ times the rate of service performed during normal working hours.

§ 53.48 Fee for retest service.

The fees for any retest service shall be the same as provided in §§ 58.51 and 58.52. In addition, the applicant will be charged for the additional laboratory analysis or resident laboratory time necessary to conduct the retest service, and for the preparation of the new certificate; provided, however, that the applicant has already paid or been billed for the original inspection. If not, then the retest service certificate shall reflect the charges for both the original inspection and the retest service.

§ 58.49 Fees for appeal inspection, or grading.

The fees to be charged for any appeal inspection, grading or retest service are the same as the fees specified in sections 58.51 and 58.52.

§ 58.50 Fees for additional copies of certificates or inspector reports.

Additional copies of any inspection or grading certificates, including take-off certificates (§ 58.20), or inspection reports other than those provided for in § 58.21, will be supplied to any interested party for a fee based on the time required to prepare such copies as specified in § 58.52.

§ 58.51 Travel expenses and other charges.

The applicant shall be charged for the cost of travel and other expenses incurred by AMS in connection with the performance of inspection or grading services.

§ 58.52 Fees for inspection, grading, and sampling.

Except as otherwise provided in § 58.46 through 58.55, an hourly rate of $44.60 shall be charged for any inspection, grading, and sampling service performed between 6 a.m. and 6 p.m., and $49.00 for service performed between 6 p.m. and 6 a.m. The time shall be calculated to the nearest 15-minute period and shall include time spent preparing certificates and reports and travel time in connection with the performance of the service. There will be a minimum half-hour charge for each request.

§ 58.53 Fees for conformance and monitoring samples.

Fees and charges associated with the collection and testing of samples for determining compliance with regulations, and the monitoring of inspection and grading programs and procedures shall be paid by the applicant in accordance with the applicable provisions of § 58.47 through 58.55.

§ 58.54 Fees for continuous resident service.

In addition to any fees and charges pursuant to §§ 58.47 and 58.53 fees for an inspector or grader in a continuous resident program shall be $39.60 an hour for services performed during the assigned tour of duty. Charges for service performed outside of the assigned tours of duty shall be 1½ times the hourly rate stated in this section.

§ 58.55 Reimbursement for service performed under cooperative agreement.

The reimbursement for services performed under a cooperative agreement shall be as provided in such agreement.

Marking, Branding, and Identifying Product

§ 58.56 Authority to use official identification.

(a) Federal employees and licensed cooperating State employees are granted the sole authority by the Branch Chief to affix official identifying marks, stamps or brand on commodities presented for official inspection or grading, except as provided in paragraph (c) of this section.

(b) Federal employees and licensed cooperating State employees shall be responsible for the storage, care and protection from abuse or unauthorized use of all accountable items, (e.g., grading stamps, evidence tape, grip lock seals, random seed numbers, etc.) in their care, in accordance with this subpart and the applicable instructions, guidelines and procedures.

(c) The Branch Chief may authorize any person to use an official grade label or quality identification on a product package if the product is inspected or graded pursuant to this subpart.

§ 58.57 Forms or types of official identification.

Forms or types of official identification used in connection with official inspection or grading services include, without limitation, "Officially Inspected" stamps, product control tags, "USDA DAIRY OFFICIAL SAMPLES" evidence tape, USDA-supplied keys, lock boxes, certificates, and random sample number generator seed numbers.

§ 58.58 Approval and form of official grade label or quality identification.

(a) Any package label or packaging material that bears any official grade level or quality identification shall only be used as prescribed by the Branch Chief, and such official grade label or quality identification shall be in a form or of a type and contain only that information authorized by the Branch Chief. A label or packaging material

with the official identification shall not be used without prior approval by the Branch Chief.

(b) An official inspection or grade mark label approved for use on packages of inspected or graded dairy products shall appear in a shield with a form and design shown in Figures 3, 4, 5, 6 and 7. Other forms, designs or wording may be used with the approval of the Branch Chief.

The official grade labels or quality identification shown in Figures 3, 4 and 5 are designed to be used on graded products that are packed under USDA inspection. The grade label in Figure 6 is designed for graded products that are processed and packed under USDA inspection. The grade label in Figure 7 is designed for inspected products (for which U.S. standards for grades are not established) that are processed and packed under USDA quality control service.

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Figure 3

Figure 4

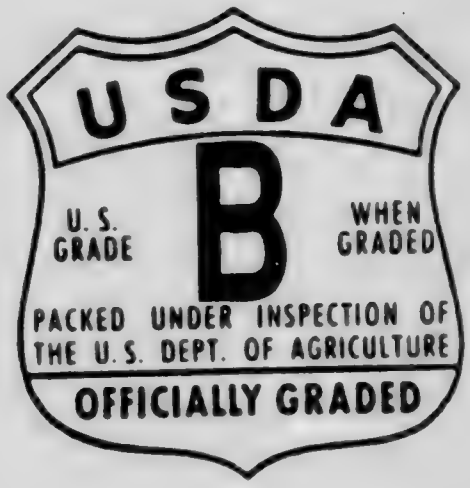

Figure 5

Figure 6

Figure 7

(c) The official grade label or quality identification shall be printed on the package label or on a nonremovable adhesive label. It shall be printed or applied on a main panel of the following:

(1) The primary wrapper or covering of the product, including without limitation parchment, waxed or foil paper and cover laminates for thermoformed cups, plastic films or cup-and-lid units; and

(2) The carton, overwrap or sleeve that is placed over one or more primary wrappers to create a unit intended for retail sale.

(d) The official grade level or quality identification may be printed or applied on shipping cases if all packaging materials within the cases also bear an official grade label or quality identification.

(e) The shield identification shall be as large as possible on 1-pound or larger cartons or wrappers, but in no case shall be smaller than the ¾ inch by ¾ inch in size. The Branch Chief may consider the use of a smaller-size shield on special smaller packages. The shield, however, must be identifiable and legible.

(f) An official grade label under this subpart shall be used only for U.S. Grade B or higher or U.S. Standard Grade or higher. An official "Quality Approved" label under this subpart shall be used only for products for which there are no U.S. grade standards.

(g) an applicant shall submit to the Branch Chief of the Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, a sketch, proof or photocopy of the proposed label or packaging material with the official grade label or quality identification for review and tentative approval before the applicant orders a supply of material.

(h) The firm that is to package the product shall provide to the Branch Chief three copies of the printed labels and packaging materials bearing official grade label or quality identification for final approval.

(i) Printed labels and packaging materials bearing an official grade label or quality identification that have received final approval may not be moved to and from packaging firms without prior notice to and approval of the Dairy Grading Branch. Such notice and approval may be verbal or written. If verbal, written confirmation may be required.

§ 58.59 Information required on official grade label or quality identification

Each official grade level or quality identification shall clearly indicate the U.S. grade of the product or any other such terminology as may be approved by the Branch Chief, and shall also include the phrase, "Officially Graded," or "Officially Inspected" where appropriate. When the Branch Chief so requires, the package label, carton, or wrapper bearing official identification shall be stamped or perforated with at least the last six digits of the certificate number.

§ 58.60 Time limit for packaging inspected or graded products with official grade label or quality identification.

Any lot of butter that is graded and intended for packaging with the official grade label identification shall be packaged within 10 days of the date of grading. Any lot of natural cheese or dry milk shall be packaged within 30 days of the date of grading. In both cases, the product shall be properly stored during the 10-day or 30-day period. The time requirement for packaging other inspected or graded products shall be as set by the Branch Chief.

§ 58.61 Applicant responsibilities for packaging products with official grade label or quality identification.

(a) Each applicant who receives approval to package a product with an official grade label or quality identification must ensure that only products that were produced in a plant approved by the Dairy Grading Branch are packaged with such approved labels.

(b) Each applicant approved to package a product with an official grade label or quality identification shall maintain control over such products until the official grade has been established. Products packaged in such approved labels shall not be distributed from the direct control of the applicant.

(c) The applicant is responsible for preventing the distribution of products bearing the official grade label or quality identification that do not meet the criteria of the declared official grade.

§ 58.62 Keeping quality samples.

(a) Samples to determine if a product possesses satisfactory keeping quality shall be taken if:

(1) Required by the Branch Chief,

(2) Requested by an applicant,

(3) An applicant has been granted authority to package the product with an official grade label or quality identification, or

(4) The products offered for grading are covered by a purchase specification requiring a keeping quality test.

(b) Keeping-quality samples of the product offered for grading may be taken from:

(1) The lot of product that has been submitted for inspection or grading and packaged with an official identification,

(2) Any lot of product submitted for inspection or grading for which an interested party or a purchase specification requires the performance of a keeping-quality test.

(c) The applicant shall maintain suitable equipment for the incubation of product samples for keeping-quality testing. Such equipment includes a keeping-quality cabinet that has a lock and contains a minimum seven-day temperature recording device that is battery or spring-activated.

(d) Issuance of the inspection or grading certificate may be withheld pending completion of the keeping quality tests.

§ 58.63 Product not eligible for packaging with official identification.

(a) When a lot of inspected or graded product shows unsatisfactory keeping quality, other lots from the same manufacturing plant may not be used for packaging with official grade or quality identification unless:

(1) The keeping quality of each churning is determined to be satisfactory in accordance with provisions of this subpart; and

(2) The manufacturing plant submits, as soon as practicable, to an official inspection to determine and correct all potential causes for the unsatisfactory keeping quality.

(b) Any product from a manufacturing or processing plant that has not been surveyed and approved for inspection or grading service may not carry the official grade label or quality identification.

Violations

§ 58.64 Debarment of service.

The Administrator may debar any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rule of practice governing withdrawal of inspection and grading services in formal adjudicatory proceedings instituted by the Secretary (7 CFR part 1, subpart H) shall be applicable to such debarment action. Commission of any of the following acts may constitute cause for debarment:

(a) *Fraud or misrepresentation.* Any willful misrepresentation or deceptive or fraudulent practice or act committed by any person in connection with:

(1) Filing any application for any inspection or grading service, appeal reinspection, or regrading service;

(2) Making a product accessible for inspection or grading service;

(3) Making, issuing, manufacturing, selling, distributing or using any inspection or grading certificate issued pursuant to the regulations in this subpart;

(4) Using any official stamp, evidence tape, USDA-supplied keys, lock boxes, random number generator for seed numbers, label or identifications;

(5) Removing, tampering with or manipulating products labeled with evidence tape or product control tags or removing or tampering with the tape or tag itself;

(6) Using terms like "United States," "U.S.," "Officially Graded," "Officially Inspected," "USDA Approved", "USDA Approved plant" or "Government graded" or similar terms to label or advertise any product without the official U.S. grade of the product; or

(7) Using any of the aforesaid terms or an official stamp, label, or identification to label or advertise any product that has not been inspected or graded or that has failed to meet the criteria of the grade designation.

(b) *Use of facsimile form.* The attempted or actual use of any unofficial or unauthorized form of identification as an official identification under this section, or the unauthorized us of a facsimile form as an official inspection or grading certificate or report, stamp, label, or other official inspection mark.

(c) *Mislabeling.* The use of any word, numeral, letter, or facsimile to assign a grade to a product that does not conform to or has not been officially inspected or graded according to, any recognized U.S. standard.

(d) *Willful violation of the regulations in this subpart.* Any willful violation of the provisions in this subpart or the Act, or the instructions or specifications issued thereunder.

(e) *Interfering with an inspector or grader.* Any interference or obstruction, attempted or otherwise, of any inspector or grader in the performance of his or her duties, such as intimidation, threat, bribery, or assault.

(f) *Willful failure to respond to follow-up requests to test for potentially health-threatening contaminations.* The willful failure to respond to USDA requests to, e.g., identify product, remove product from distribution, present product for follow-up testing, or monitor the disposal of contaminated product, which failure would inhibit or prevent the USDA's performance under any memorandum of understanding with the Food and Drug Administration or any other federal agency.

Miscellaneous

§ 58.65 Employee conduct and responsibilities.

All inspectors, graders, and cooperating State employees shall conduct their activities in a professional and courteous fashion so as to present a favorable impression of the service, agency and Department. Employee activities shall be consistent with the provisions of this subpart and all applicable instructions, guidelines and procedures issued or approved by the Branch Chief.

§ 58.66 Nondiscrimination.

The conduct of all services and the licensing of inspection, grading, or sampling personnel under these regulations shall be accomplished without discrimination as to age, race, martial status, color, religion, sex, or national origin.

§ 58.67 Political activity.

All inspectors or graders are forbidden during the period of their respective appointments or licenses to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or on behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees including without limitation temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 58.68 Report of violations.

All inspectors, graders and cooperating State employees shall report, in the manner prescribed by the Branch Chief, any violation or failures to comply with the Act and this subpart.

§ 58.69 Other applicable regulations.

Compliance with the provisions of this subpart shall not excuse a failure to comply with any other Federal, State, or municipal laws or regulations.

§ 58.70 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The following control number has been assigned to the information collection requirements in 7 CFR part 58, subpart A, by the office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511.

7 CFR section where requirements are described	Current OMB control No.
58.8(a)(b)	0581–0126
58.9(a)(b)	0581–0126
58.13	0581–0126
58.24	0581–0126
58.28	0581–0126
58.35	0581–0126
58.56	0581–0126
58.58(g)(h)	0581–0126
58.59	0581–0126

Signed at Washington, DC, on July 20, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92–17538 Filed 8–7–92; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 87–027P]

RIN 0538–AA79

Use of Sorbitol in Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to expand the list of products in which sorbitol is permitted to include cured pork products, such as Canadian style bacon and smoked pork shoulder picnic roll. This action is in response to a petition from Quality Sausage Company, Inc., to allow the use of up to 2 percent sorbitol in such meat food products to flavor, to reduce caramelization and charring of such products when they are used in other products subject to severe heat treatment, and to facilitate removal of casings from the product. In addition, the Agency is proposing to remove a prohibition against the use of sorbitol in combination with corn syrup and/or corn syrup solids. This action is based on the current availability of reliable laboratory procedures to measure the amount of sorbitol present in such combinations, so that the prohibition is no longer needed.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See

also "Comments" under "SUPPLEMENTARY INFORMATION.")

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 205-0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" within the scope of Executive Order 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal would permit the use of sorbitol in cured pork products to flavor, to facilitate removal of casings from such products, and to reduce caramelization and charring of such products. The proposal would also permit the use of sorbitol in combination with corn syrup and/or corn syrup solids. Manufacturers, both large and small, opting to use sorbitol in cured pork products or in combination with corn syrup and/or corn syrup solids would be required to revise the ingredient statement on product labels to show the presence of the sorbitol. The average cost of a modified label is approximately $1,000. Of this amount, only about $150 is incurred for administrative costs in preparing and submitting the label application form to FSIS. This administrative cost would not impact significantly upon small entities and is covered under existing approved paperwork burdens of FSIS's prior label approval process.

The use of sorbitol may increase product marketability by improving the flavor and aesthetic qualities of the products in which it is used. Decisions by individual manufacturers on whether to use sorbitol in cured pork products or in combination with corn syrup and/or syrup solids would be based on their conclusions that the benefits would outweigh any costs of including these substances in their formulations.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to Docket Number 87-027P. All comments submitted in response to this action will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Quality Sausage Petition

FSIS has been petitioned by the Quality Sausage Company, Inc., Dallas, Texas, to approve the use of sorbitol in meat and meat food products other than cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst in the same amount currently approved for those products. Meat food products for which use of sorbitol is petitioned include those that (1) contain sugar or a sweetener as a common component, and (2) are subjected to a severe heat treatment either during manufacture or prior to consumption by the consumer. Examples of such products are two cured pork products commonly used in pizza toppings that char when cooked at high temperature—Canadian style bacon and smoked pork shoulder picnic roll.

The petitioner is requesting a regulatory change that would allow use of sorbitol in meat food products commonly used as pizza toppings, based on the fact that the fast food industry now finds it advantageous to use ovens that cook at high temperatures. Such ovens often char meat toppings cured with sugars or sweeteners other than sorbitol. This is objectionable to the industry and to consumers. The petitioner's data show that the use of sorbitol as a flavoring agent and protector in meat food products commonly used as pizza toppings reduces caramelization and charring of pizza toppings.

Current Regulations

Sorbitol is currently listed in 9 CFR 318.7(c)(4) for use in cooked sausages labeled frankfurter, frank, furter, wiener, and knockwurst to flavor, to facilitate the removal of casings from product, and to reduce carmelization and charring. Such use is permitted at levels not to exceed 2 percent of the weight of the formula, excluding the formula weight of water or ice. Further, the use of sorbitol is prohibited in combination with corn syrup and/or corn syrup solids (9 CFR 318.7(c)(4)).

Sorbitol is listed in 21 CFR 184.1835 as a substance generally recognized as safe (GRAS) as an anti-caking agent, flavoring agent, and various other uses when used in accordance with good manufacturing practices. In a November 5, 1987, opinion letter, the Food and Drug Administration (FDA) advised the Agency that the proposed sorbitol use conditions and permitted level would not conflict with FDA regulations.[1]

The Proposal

After a review of the information and data provided by the petitioner, the Administrator believes that (1) the proposed use of sorbitol would be in compliance with applicable FDA requirements, (2) its use would be functional and suitable for the products intended, (3) the substance would be used at the lowest level necessary to accomplish its intended technical effect, and (4) the use of this substance in products would not render them

[1] A copy of FDA's letter is available, without charge, from the FSIS Hearing Clerk.

adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act.

FSIS has noted that certain cured pork products commonly used for pizza toppings that contain sugar and/or corn syrup may char under conditions of severe heat. These products include various preparations of hams, shoulders, picnics, butts, and loins, such as Canadian style bacon and smoked pork shoulder picnic roll.

Therefore, FSIS is proposing to allow the use of sorbitol in cured pork products (9 CFR 319.104) at a level not to exceed 2 percent of the formula weight, excluding the weight of water or ice, to flavor, to facilitate the removal of casings from product, and to reduce caramelization and charring, when used in accordance with 21 CFR 184.1835. Although the petitioner's primary request was to use sorbitol to reduce charring of meat products used as pizza toppings, the data submitted by the petitioner also support the proposed use of sorbitol in cured pork products for flavoring and for facilitating removal of casings from products, as currently allowed for various other meat products.

In addition, FSIS is proposing to permit the use of sorbitol in combination with corn syrup and/or corn syrup solids. When current uses for sorbitol were promulgated in the regulations in 1972, the Agency prohibited the use of sorbitol in combination with corn syrup and/or corn syrup solids because there were no effective laboratory procedures at that time to measure the amount of sorbitol present when used in combination with corn syrup. Effective laboratory procedures are now available for determining the individual quantity of sorbitol, corn syrup, and corn syrup solids. Therefore, 9 CFR 318.7(c)(4) would be amended to delete the prohibition of combining these substances.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspections.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4) under the Class of substance "Flavoring agents; protectors and developers," the substance "Sorbitol" would be revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
* * *	* * *	* * *	* * *	* * *
Flavoring agents; protectors and developers	Sorbitol	To flavor, to facilitate the removal of casings from product, and to reduce caramelization and charring.	Cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst; cured pork products, as provided in Part 319 of this subchapter.	Not to exceed 2 percent of the formula, excluding the formula weight of water or ice, when used in accordance within 21 CFR 184.1835.

* * * * *

Done at Washington, DC, on: July 15, 1992.

H. Russell Cross,

Food Safety and Inspection Service.

[FR Doc. 92–18894 Filed 8–7–92; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 92–13]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 AND 225

[Docket No. R–0764]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AA15

Risk-Based Capital Standards

AGENCIES: Federal Deposit Insurance Corporation (FDIC); Office of the Comptroller of the Currency (OCC), Treasury; and Board of Governors of the Federal Reserve System (Board).

ACTION: Joint advance notice of proposed rulemaking.

SUMMARY: The FDIC, the OCC, and the Board (the Banking Agencies) solicit comments on a proposed framework for revising their risk-based capital guidelines to take adequate account of interest rate risk. The Banking Agencies are also soliciting comments on how their risk-based capital guidelines may be revised to take account of concentration of credit risk and the risks of nontraditional activities. These revisions are required by section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Commenters may respond to any or all of the Banking Agencies. All comments will be shared among all the Banking Agencies.

FDIC: Hoyle L. Robinson, Executive Secretary, Attention: Room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. [FAX number (202) 898–3838]. Comments will be available for inspection and photocopying in room F–400 between 8:30 a.m. and 5 p.m. on business days.

OCC: Written comments should be submitted to Docket No. 92–13, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board of Governors: Comments, which should refer to Docket No. R–0764, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr.

Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT:

FDIC: For issues relating to interest rate risk, William A. Stark, Assistant Director (202/898-6972) or Susan Dingilian, Capital Markets Specialist (202/898-7327), Division of Supervision; for issues relating to concentration of credit risk and the risks of nontraditional activities, Daniel M. Gautsch, Examination Specialist (202/898-6912), Division of Supervision; For legal issues, Claude A. Rollin, Counsel (202/898-3985), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OCC: Christina Benson, Capital Markets Specialists (202/874-5070) or Kurt Wilhelm, National Bank Examiner (202/874-5070). Office of the Chief National Bank Examiner; Kevin Jacques, Financial Economist, Economic and Regulatory Policy Analysis (202/874-5220), and Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division (202/874-5330), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board of Governors: James V. Houpt, Assistant Director (202/452-3358), James Embersit, Supervisory Financial Analyst (202/452-5249), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452-3583), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

Section 305 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), Public Law 102-242, requires the federal banking agencies to revise their risk-based capital guidelines to ensure that those standards take adequate account of (1) interest rate risk, (2) concentration of credit risk, and (3) the risks of nontraditional activities. See, 12 U.S.C. 1828 note. The agencies must publish final regulations implementing section 305 by June 19, 1993, and establish reasonable transition rules to facilitate compliance with those regulations.

The Banking Agencies are issuing this advance notice of proposed rulemaking to seek public comment that will enable them to develop a proposed rule. The Banking Agencies solicit comments on all aspects of a proposed method for incorporating an interest rate risk (IRR) component into the current risk-based capital guidelines for banking institutions and, more generally, on ways that they may revise their risk-based capital guidelines to account for the risks created by concentration of credit and nontraditional activities. The Banking Agencies also request comment on any or all of the specific numbered questions presented below, though commenters may address any aspect of the proposal and need not confine their remarks to the numbered questions.

A. Proposal on Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates might adversely affect a bank's financial condition. As financial intermediaries, banks and other depository institutions accept interest rate risk as a normal part of their business. They assume this risk whenever the interest rate sensitivity of their assets does not match the sensitivity of their assets does not match the sensitivity of their liabilities or off-balance-sheet positions.

While mismatched positions often permit institutions to profit from favorable changes in interest rates, they also expose a bank's earnings and capital to potential losses. For a bank with more interest-sensitive liabilities than assets, a rise in interest rates can reduce net interest income by increasing the institution's cost of funds relative to its yield on assets. Conversely, a bank with assets that reprice faster than liabilities may experience a decline in net interest income if interest rates decline in net interest income if interest rates decline.

Changes in interest rates may affect not only an institution's current earnings but also its future earnings and the economic value of its capital. These effects are reflected in changes in the present value of an institution's financial instruments. For the bank with liabilities repricing faster than assets, the present value of its assets will decline by more than the present value of its liabilities should interest rates rise. Hence, the economic value of its capital will decline if rates increase.

An objective of the IRR framework described herein is to ensure that banks with high levels of IRR have sufficient capital to cover their exposure. IRR exposures would be quantified using a measurement system that weights an institution's assets, liabilities and off-balance sheet positions by risk factors that approximate each instrument's price sensitivity to changes in interest rates. The net amount of these weighted values, the "Net Risk-Weighted Position," would serve as the basis for measuring an institution's IRR exposure for capital adequacy purposes.

Under the proposal, institutions with IRR exposures in excess of some "threshold" level of IRR would be required to hold capital proportional to that excess risk. A supervisory decision regarding what constitutes an acceptable absolute level of measured IRR exposure would be used in conjunction with an industry distribution of measured exposures to specify the threshold level.

The proposed measurement system is designed to minimize reporting burdens while meeting regulatory needs. In view of the number of simplifying assumptions the system employs, the Banking Agencies do not intend for it to replace other, more sophisticated procedures that banks may use in their asset and liability management process.

B. Issues Concerning the Risks of Concentration of Credit and Nontraditional Activities

The Banking Agencies are not presenting a proposal for revising current risk-based capital guidelines to account for concentration of credit risk and the risks of nontraditional activities. Before proceeding with a proposal for these two risks, the Banking Agencies are seeking guidance on how these risks should be defined and on the factors that should be considered when incorporating these risks into capital guidelines. These comments will be considered in proposing any changes to the risk-based capital guidelines.

C. Relationship of Section 305 to the Basle Accord

Section 305 reflects an awareness by Congress that capital standards are an

international issue. Section 305(b)(2) requires the federal banking agencies to discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements. In implementing section 305, the Banking Agencies seek to create a workable system for measuring the risks identified by section 305, while at the same time continuing to work with international organizations to develop consistent capital standards.

The three distinctive types of risk addressed by section 305 of FDICIA are not explicitly incorporated in the Basle Accord on risk-based capital that was implemented by the three federal banking agencies in 1989.[1] The Basle Accord tailors a bank's minimum capital requirement to broad categories of credit risk embodied in its assets of off-balance-sheet instruments. Overall, the Basle Accord requires banks to have total capital equal to at least 8 percent of their risk-weighted assets by the end of 1992.[2] Banks with high or inordinate levels of risk are expected to operate well above minimum capital standards.

The Basle Accord makes a bank's minimum capital requirements sensitive to the risk of its assets and off-balance-sheet positions. The Basle Accord, however, focuses primarily on credit risk. It does not impose explicit capital charges tied to other factors that can affect a bank's financial condition, including interest rate risk.

With current risk-based capital guidelines based primarily on credit risk, institutions may have an incentive to substitute interest rate risk for credit risk in structuring their balance sheets. Recognizing this possibility, the Basle Committee on Bank Supervision, under the aegis of the Bank for International Settlements (BIS), has been working to address the treatment of interest rate risk.

The Banking Agencies are actively participating in that international effort. However, several factors suggest the need for developing a separate "domestic" approach for addressing interest rate risk. One consideration is that the time frame involved in developing and implementing an international standard is, as yet, uncertain. Accordingly, an international standard would, most likely, not be available to meet the deadline of June 19, 1993 specified in section 305 of FDICIA. Moreover, an international standard that is designed for a myriad of financial instruments, often present at only the largest and most internationally active banks, may be needlessly complex for many of the nearly 12,000 small and medium-size U.S. banks. Finally, once an international framework emerges for the assessment of interest rate risk, every country may need to tailor it to the specific characteristics and structure of its own banking system.

In view of these considerations, and pursuant to section 305 of FDICIA, the Banking Agencies will be proposing a system for incorporating an interest rate risk component into the current risk-based capital guidelines. The objective of this proposal is to make a bank's capital requirement responsive to significant levels of IRR. The proposal is designed to ensure that banks with high levels of IRR have capital commensurate with that risk, thereby reducing the exposure of the federal depository institution insurance funds. The proposed approach uses a measure of interest rate risk that is consistent with—although not identical to—that being pursued internationally. As such, the measure should be adaptable to any international agreement that may emerge.

II. Interest Rate Risk—General Framework of Proposal

An underlying principle of the proposal for incorporating IRR into the risk-based capital guidelines is that a certain amount of IRR is inherent and appropriate in commercial banking. In addition, the proposal acknowledges that the level of IRR in banks is difficult to measure with a high degree of confidence. Finally, the approach takes into consideration the fact that, to date, IRR has not been a principal threat to the financial health of commercial banks. Accordingly, the proposal targets the identification of institutions with high or significant levels of risk. Institutions identified as having IRR exposure greater than a supervisor-determined threshold would be required to allocate additional capital to support their higher level of measured risk.

The proposal focuses on estimating the effect that changes in market interest rates might have on the net economic value of an institution. Exposures would be measured in terms of the interest rate sensitivity of the net present value of a bank's on- and off-balance-sheet positions. Specifically, the change in an institution's net economic value attributable to IRR would be computed as the change in the present value of its assets minus the change in the present value of its liabilities and off-balance sheet positions for an assumed 100 basis point parallel shift in market interest rates.

A measurement methodology using data submitted on an expanded Consolidated Report of Condition and Income (Call Report) schedule would be used to approximate the change in the present value of an institution's assets, liabilities and off-balance-sheet positions for the assumed change in rates. The methodology involves assigning risk weights to both on- and off-balance-sheet positions. The risk weights approximate the price volatility of the positions in relation to changes in interest rates and would be established by the Banking Agencies. The resulting estimate of the change in net economic value for the 100 basis point shift, expressed as a percent of total assets, would be used as the primary measure of an institution's level of IRR.

The proposed measurement system is designed to minimize reporting burdens while meeting the regulatory need for identifying basic asset and liability mismatches that can materially affect a bank's financial condition. The system is not designed to derive precise measures of IRR exposure, but rather to provide an index that identifies relative orders of magnitude of IRR exposure among banks. Accordingly, the proposed measurement system is not intended to replace other, more sophisticated procedures that banks may use in their asset and liability management process.

Under the proposal, an institution with IRR exposure in excess of a threshold level would be required to allocate additional capital equal to the dollar amount of the estimated change in its net economic value that is in excess of that level. This would provide complete coverage of any incremental exposures above the established

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[1] The "Basle Accord" refers to the Agreement on International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision. The Basle Accord has been implemented by the twelve member industrial countries participating in the Basle Committee on Banking Supervision under the auspices of the Bank for International Settlements, in Basle, Switzerland (Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) as well as other countries that have assented to apply the principles of the Basle Accord. In the United States, the Banking Agencies implemented the Basle Accord through the promulgation of risk-based capital guidelines. See 12 CFR part 3, appendix A (national banks); 12 CFR part 208, appendix A (state member banks); 12 CFR part 225, appendix A (bank holding companies); 12 CFR part 325, appendix A (state nonmember banks); 54 FR 4168, January 25, 1989. Interim requirements became effective at the end of 1990, and final requirements will take effect at the end of 1992.

[2] As defined, risk-weighted assets include credit exposures contained in off-balance-sheet instruments.

threshold. For example, if threshold levels of IRR exposure were set at 1.00 percent of total assets, an institution with a measured exposure of 1.50 percent of assets would be required to allocate a dollar amount of capital equal to 0.50 percent of total assets.

The distribution of the exposures of individual institutions across the banking industry would be used to help identify a threshold level of IRR. However, in identifying what constitutes the threshold level, the Banking Agencies will focus greater attention on what absolute level of IRR is consistent with safety and soundness. The amount of potential measurement error will also be considered. It is envisioned that the identified threshold level of IRR would remain relatively stable over time. With a stable definition of the threshold level of IRR, changing risk patterns within the industry would not cause shifts in the level of risk that would require capital coverage. Nevertheless, the Banking Agencies may need to adjust periodically the definition of the threshold level of IRR in order to account for changing market conditions, improvements in the proposed measurement system, and other factors.

The amount of any additional capital required under the proposed quantitative approach would represent the minimum capital requirement for IRR assuming that adequate internal controls and management are in place. On-site reviews could lead to higher assessments for IRR than the proposed quantitative measure would suggest if an institution's specific positions differed sufficiently from those assumed by the measure. In addition, qualitative factors such as a bank's asset/liability policies, procedures, systems and management expertise would also be considered. To the extent that such qualitative factors are determined to be inadequate during the examination process, institutions may be required to hold additional capital beyond that implied by their quantitative measure and may also be required to correct any noted deficiencies.

Section 305(b)(3) requires each federal banking agency to establish reasonable transition rules to facilitate compliance with regulations issued under section 305. The Banking Agencies envision that their proposed regulation will specify implementation of the IRR component in phases over a suitable transition period. Once implemented, institutions would need to meet capital requirements for IRR contemporaneously with the reporting date.

A. Proposed Interest Rate Risk Measurement System

1. Overview

The methodology for measuring an institution's IRR exposure applies the principles of duration to a standard maturity gap report in order to approximate the net change in the economic value of the institution arising from a change in interest rates.[3] Institutions would slot their assets, liabilities and off-balance-sheet positions into a maturity ladder report based upon their remaining maturities or nearest repricing dates. The positions reported in each maturity range would then be multiplied by an IRR weight that represents the interest rate sensitivity of the respective positions. The IRR weights would be established by the Banking Agencies and would be based on the modified duration of instruments with maturities, cash flows, coupons and yields that are assumed to be representative of the position being weighted.

Modified duration measures the sensitivity of the present value of a financial instrument to changes in market rates. Specifically, modified duration measures the percentage change in the present value of an instrument for small changes in yields. The mathematical relationship is as follows:

$$\text{Percentage change in price} = -\text{Modified duration} \times \frac{\textit{BP change in yield}}{100}$$

The greater the duration of the instrument, the more sensitive is its value to changes in market rates.[4]

The duration-based risk weights used in the proposed measurement system are expressed in percentage terms, and the basis point change in rates is assumed to be 100 basis points. Therefore, the weighting of assets, liabilities and off-balance-sheet positions results in an approximation of the nominal change in the present value of the reported position for an assumed one percentage point change in rates. Netting these weighted positions both within and across time bands (weighted assets minus weighted liabilities plus (or minus) weighted net off-balance-sheet instruments) results in a "Net Risk-Weighted Position" that serves as a rough approximation of the nominal change in an institution's net economic value that would arise from a one percentage point change in rates. This net risk-weighted position, expressed as a percent of total assets, is the primary quantitative measure that would be used to evaluate an institution's exposure to IRR.

The Banking Agencies recognize that the proposed measurement system may not provide a precise measure of IRR and that errors may exist.[5] Nevertheless, several factors argue for a relatively simple measure of IRR over other, more complex methodologies. One factor is the potential for spurious precision that can be introduced by complex models. Often, the complexity of a methodology and the precision of the data collected are dominated by the underlying assumptions used to derive an IRR exposure measure. Even the most sophisticated measures of IRR require certain assumptions that can materially affect the results. For banks, many of these assumptions relate to assets and liabilities with embedded options that make their interest rate sensitivity difficult to estimate; the interest rate sensitivity of core deposits is an important example. The overriding influence of such assumptions suggests caution in trying to estimate absolute levels of IRR across the entire industry using complex, but still generalized, measurement systems.

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[3] The proposed measurement system was presented in preliminary form in "A Method for Evaluating Interest Rate Risk in U.S. Commercial Banks," Federal Reserve Bulletin, August 1991, p. 625–637.

[4] The duration of an instrument is the weighted average maturity of an instrument's cash flows, where the present values of the cash flows serve as the weights. It is calculated by first multiplying the time until the receipt of each cash flow by the ratio of the present value of that cash flow to the instrument's total present value. The sum of these weighted time periods is known as the Macaulay duration of the instrument. This measure can be modified to express the price sensitivity of an instrument to a given change in rates. This is known as modified duration. Modified duration is derived by dividing an instrument's Macaulay duration by the quantity (1+Yield/K) where K is the number of times per year that interest is compounded. This division adjusts the Macaulay duration for the noncontinuous compounding of interest and increases the accuracy of duration as a measure of interest rate sensitivity.

For small changes in rates, the percentage change in the value of an instrument is equal to minus duration times the percentage point change in rates. The minus sign reflects the inverse relationship of bond prices and interest rates.

[5] For example, the relationship between an instrument's duration and changes in value is exact only for infinitesimal changes in rates and is only approximate for larger changes in rates. Duration is only a linear approximation of interest rate sensitivity and its convexity limits duration's explanatory ability. Moreover, its use within the measurement system assumes parallel shifts in the yield curve. These and other factors can result in estimation errors of the change in economic value when compared to similar measures derived using more complex techniques.

An additional factor supporting a relatively simple approach is the need to minimize reporting requirements while meeting regulatory needs. In general, bank supervisors do not need the same level of precision that bank management may need. The Banking Agencies also do not with to become involved in the day-to-day operations of the institutions they regulate. Rather, regulators are concerned principally with identifying significant threats to a bank's solvency and understanding the nature of its business; they are less concerned with small changes to its earnings.

By focusing supervisory attention and capital requirements on banks with high levels of IRR, supervisors hope to avoid developing and administering date-intensive models. Although some estimation errors may exist under the proposed measurement system, the imprecision of the measure and the use of some underlying assumptions are not likely to mask the exposures of banks facing the highest risk or cause truly low-risk institutions to appear as having high levels of IRR. The most significant errors are expected to be introduced by the treatment of core deposits, for which no measure is precise. Accordingly, because of its simplicity, the #proposed measurement system is not intended to replace other, more sophisticated procedures that banks use in their asset and liability management process.

2. Information Requirements

Table 1 illustrates the repricing schedule that could be used in the proposed IRR measurement system. Summary instructions for compiling this information in an expanded Call Report schedule are presented in the Appendix. Institutions would slot their interest bearing assets, interest bearing liabilities, demand deposits and off-balance-sheet items across six maturity ranges or time bands based on the instrument's remaining maturity or next repricing date. For illustrative purposes, lines for "Other Assets" and "Other Liabilities" are included in Table 1 to allow the schedule to "foot" to an institution's balance sheet (Call Report Schedule RC). However, only positions distributed across the time bands would be risk-weighted. All institutions would be expected to submit the proposed reporting schedule on a quarterly basis.

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BILLING CODE 4810-33-C 6210-01-C 6714-01-C

TABLE 1: INTEREST RATE RISK REPORTING SCHEDULE

REPORTING INSTITUTION: EXAMPLE BANK REPORTING DATE: 12/31/92

$ Thousands

	REMAINING TIME BEFORE MATURITY OR INTEREST RATE ADJUSTMENT						
	TOTAL	UP TO 3 MONTHS	> 3 MO. <= 1 YR.	> 1 YR. <= 3 YRS	> 3 YRS <= 7 YRS	> 7 YRS <=15 YRS	OVER 15 YRS
I. INTEREST-BEARING ASSETS							
1. Cash & Balances Due	$13,200	$13,200					
2. Securities (Including Trading)							
a) Amortizing	$42,169		$1,950	$4,050	$4,332	$12,907	$18,930
b) Non-Amortizing	$32,099	$1,234	$4,478	$7,533	$8,654	$5,250	$4,950
c) Deep Discount Coupons							
d) High Risk Mortgage Securities	$3,000						
3. Fed. Funds Sold & Sec Purch For Resale	$500	$500					
4. Loans, Leases & Acceptances							
a) Amortizing	$37,053	$1,536	$10,444	$10,812	$6,442	$5,569	$2,250
b) Non-Amortizing	$52,766	$10,202	$13,510	$12,791	$6,359	$6,854	$3,050
5. Total Interest Bearing Assets	$180,787	$26,672	$30,382	$35,186	$25,787	$30,580	$29,180
II. ALL OTHER ASSETS	$2,463						
III. TOTAL ASSETS	$183,250						
IV. INTEREST-BEARING LIABILITIES							
1. Interest-bearing Deposits							
a) NOW Accounts	$27,405		$19,183	$8,222			
b) MMDA Accounts	$26,270		$18,389	$7,881			
c) Savings	$14,398			$10,079	$4,319		
d) Time Deposits	$71,023	$23,083	$42,853	$5,087			
2. Fed. Funds Purch & Sec Sold For Repurch.							
3. Other Borrowed Funds	$127				$127		
4. Total Interest-Bearing Liabilities	$139,223	$23,083	$80,425	$31,269	$4,446		
V. NONINTEREST-BEARING LIABILITITES							
1. Demand Deposits	$26,611	$4,050	$14,578	$7,983			
2. Other Liabilities	$860						
VI. TOTAL LIABILITIES	$166,694						
VII. EQUITY CAPITAL	$16,556						
VIII. NET OFF-BALANCE-SHEET POSITIONS							
1. Amortizing		$100		($100)			
2. Non-Amortizing			$50	$50			

MEMORANDA	Carrying Value	Market Value	Mkt Value +100 BPs	Mkt Value -100 BPs
High Risk Securities Evaluated:	$2,000	$2,000	$2,160	$1,800
High Risk Securities Not Evaluated:	$1,000			

In order to lessen reporting burdens, no coupon data would be collected on the reported positions. Rather, assumptions regarding coupon rates on assets and liabilities and other features of financial contracts would be made by the Banking Agencies in developing the risk weights.

By definition, an instrument's modified duration is determined by the timing of the instrument's cash flows, which are a function of its maturity, coupon rate, amortization, and other factors. The cash flows of most bonds and commercial loans consist of periodic payments of interest, plus repayment of all principal at maturity. Mortgages and consumer loans, in contrast, generally amortize; that is, their periodic payments include both principal and interest. Still other instruments such as zero coupon bonds defer all payments (both principal and interest) until maturity. These distinctions can cause the durations of instruments with similar maturities to be significantly different.

For example, A 30-year Treasury bond with a 10 percent semiannual coupon and a yield of 10 percent (priced at par) has a modified duration of about 9.5 years. However, the duration of a 30-year, 10 percent amortizing mortgage yielding 10 percent (assuming no prepayment) is about 8 years, but could be as short as 4–6 years if common levels of prepayment are considered. The modified duration of a 30-year zero coupon bond yielding 10 percent is 28.6 years because the holder must wait for the instrument's maturity to receive its entire cash flow.[6]

To capture the effect of these different payment streams, the report categorizes all loans, securities, and off-balance-sheet items into one of three groups according to their payment characteristic: (1) Amortizing instruments that pay both principal and interest periodically, (2) non-amortizing instruments that involve periodic payments of interest and the payment of principal at maturity, and (3) deep discount instruments with either no periodic interest payments (zero coupons and other securities quoted on a discount basis) or interest coupons of less than 3 percent. Interest bearing balances not specifically distributed into one of these categories are almost always non-amortizing and would be treated as such. Securities held in Trading Accounts would be reported together with the institution's investment securities.

To minimize reporting burdens, the balances of loans and most types of securities would be distributed across the time bands on the basis of their remaining contractual maturities or repricing dates. Anticipated prepayments on amortizing instruments, such as residential mortgages and mortgage pass-through securities, would be incorporated in the duration risk weights using standardized assumptions and market expectations. Only mortgage derivative products would be treated differently. Under the recently adopted Federal Financial Institution Examination Council (FFIEC) policy statement on securities activities, mortgage derivative products are defined as interest-only and principal-only stripped mortgage-backed securities (IOs and POs), branches of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), CMO and REMIC residual securities and other instruments having the same characteristics as these securities. In general, mortgage derivative products would be reported differently depending on whether they were "high-risk" or "nonhigh-risk." Securities that meet the definition of a "high-risk mortgage security" under current supervisory policies on securities activities, regardless of acquisition date, would not be slotted across the time bands of the reporting schedule.[7] Only their total book value would be reported in the main body of the schedule. A special Memorandum item (described in Section II.A.4. below) would be used to collect information on the interest rate sensitivity of these instruments. All other mortgage derivative products would be classified as "nonhigh-risk" and would be distributed across the time bands according to their current average life as calculated by bank management.[8]

3. Liability Reporting and Core Deposits

All time deposits and other liabilities with well-defined maturities would be distributed across the time bands of Table 1. However, the indefinite maturities of core deposits (demand deposits, negotiable order of withdrawal (NOW) accounts, money market deposit accounts (MMDAs), and savings deposits) pose several measurement problems. From a liquidity standpoint, such funds can be viewed from two extremes. On the one hand, they can be viewed as very short-term funds since they can be withdrawn at any time. On the other hand, an institution's core deposit base can act as a stable long-term source of funds. From a repricing viewpoint the effective interest rate sensitivity of core deposits lies somewhere between these two extremes. Although they generally move with short-term market indices, interest rates on MMDAs and NOW accounts tend to lag changes in market rates and can vary form bank to bank according to each institution's geographic location, pricing strategies, and depositor base. Moreover, while demand deposits involve no explicit payment of interest, the adjustment of earnings credit rates on compensating balances, minimum balances and service charges indicates the periodic repricing of implicit liability costs.

Because of the uncertain and unique interest rate sensitivities of each bank's core deposits, the proposed measurement system employs uniform rules for distributing these deposits across the time bands, while still providing institutions with some flexibility. The rules would specify the longest time band that could be used for each type of core deposit and a maximum percent that could be slotted

[6] While the Macaulay duration for a 30-year zero coupon bond is 30, its modified duration is calculated as the value (Maturity/(1 + Yield/Number of Compounding Periods)). Since zero coupon yields are quoted in terms of semi-annual yields the modified duration for this example instrument is (30/(1 + .10/2)).

[7] Effective February 10, 1992 the federal banking agencies and the Office of Thrift Supervision adopted revised supervisory policies on securities activities that were developed under the auspices of the FFIEC. The revised policies established a framework for identifying "high-risk mortgage securities" which must be reported as securities held for sale or for trading. A "high-risk mortgage security" is defined as any mortgage derivative product that, at the time of purchase, or at a subsequent date, meets any of the following tests:

(1) *Average Life Test*—The mortgage derivative product has an expected weighted-average life greater than 10.0 years.

(2) *Average Life Sensitivity Test*—The expected weighted average life of the product:

(a) extends by more than 4.0 years, assuming an immediate and sustained shift in the yield curve of plus 300 basis points, or

(b) shortens by more than 6.0 years, assuming an immediate and sustained shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test*—The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained shift in the yield curve of plus or minus 300 basis points.

In general, a mortgage derivative product that does not meet any of the three tests is considered to be a "nonhigh-risk mortgage security."

[8] All underlying assumptions used in calculating the average life of these instruments must be reasonable and available for examiner review. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use these median prepayment assumptions in determining the appropriate average life of the instrument.

into that time band. Institutions would slot core deposits according to their individual assumptions and experience, subject to the following constraints:

(i) Under the assumption that transaction accounts fund a bank's non-interest-bearing balances and currency and coin, both this cash balance and an equal amount of demand deposits would be slotted in the shortest time band. If demand deposit balances were insufficient, other core deposits would be used.

(ii) Residual demand deposit, MMDA and NOW account balances could be distributed across any of the first three time bands provided that no more than 30 percent of the total of these balances were slotted in the "1–3 year" time band.

(iii) Savings account balances could be distributed across any of the first four time bands provided that no more than 30 percent of the total of these balances were slotted in the "3–7 year" time period.

4. Off-Balance-Sheet Positions and "High Risk" Securities

Off-balance-sheet positions would be summarized in the lines provided for "Net Off-balance-Sheet Positions" on the proposed IRR reporting form. As with bank assets, off-balance-sheet items would be grouped into amortizing and non-amortizing categories on the basis of their underlying instruments. Futures, forwards, options and firm commitments to buy or sell loans and securities would be reported using one entry in the time band corresponding to the maturity of the underlying instrument and the appropriate sign: positive for a long position and negative for a short position. In general, the value of options would be reported using their delta equivalent value. This value is equal to the option's current delta multiplied by its principal or notional value.[9]

Interest rate swaps and options on swaps would be reported based on notional principal values using two separate entries: one entry in the time band corresponding to the next repricing period of the floating side of the swap and an offsetting entry in the time band corresponding to the maturity of the swap. The sign of each entry would denote what the bank receives (positive sign) and what it pays (negative sign). Options on interest rate swaps would be reported similarly using delta equivalent values. The proposed reporting treatment for off-balance-sheet instruments is detailed in the appendix.

Under revised supervisory policies on securities activities that became effective on February 10, 1992, institutions must evaluate at least quarterly whether their holdings of high-risk mortgage securities reduce interest rate risk. The reporting form takes advantage of the availability of this information by allowing an institution to report, in a memorandum item, the current market value of high-risk mortgage derivative products along with their estimated market values for a 100 basis point increase and decrease in market rates. Such data would be used directly in calculating an institution's IRR exposure.

Mortgage derivative securities that were purchased prior to February 10, 1992 and that meet the high-risk tests are subject to previously existing supervisory policies and are, therefore, not subject to the quarterly IRR risk evaluation criteria. For such holdings, institutions would have the option to: (1) Report the interest rate sensitivity of these holdings in a similar fashion as post-February 10, 1992, purchases, or (2) report only the current book value of those securities. Balances reported under the second option would be assumed to have price sensitivity characteristics similar to long-dated, deep discount instruments and would receive the same risk weight that is applied to long-term, deep discount instruments. For illustrative purposes, the example bank in Table 1 has reported interest rate sensitivity data on $2 million in high-risk mortgage derivative securities and has elected to report only the current book value for $1 million of securities that would otherwise meet the current high-risk tests but were purchased prior to February 10, 1992.

5. Derivation of Risk Weights

In the proposed measurement system, each position reported on the IRR repricing schedule (summarized in the top panel of Table 2) is multiplied by a risk weight representing its price sensitivity or modified duration. The system employs four sets of risk weights: one for each of the three types of assets (amortizing, non-amortizing, and deep discount) and one for all liabilities (middle panel of Table 2).

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[9] The delta is the ratio of the change in the value of the option to the change in price of the underlying instrument. For example, if the price of a security changed by 0.05 for a 1 basis point change in market rates and the value of an option on that security changed by 0.025, the delta for this option would be 0.025/0.05 or 0.5. Delta can take values ranging from 0 to 1.

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TABLE 2: INTEREST RATE RISK WEIGHTING CALCULATIONS

BALANCE SHEET SUMMARY (from reporting schedule)	REMAINING TIME BEFORE MATURITY OR INTEREST RATE ADJUSTMENT						
	TOTAL	UP TO 3 MONTHS	> 3 MO. <= 1 YR.	> 1 YR. <= 3 YRS	> 3 YRS <= 7 YRS	> 7 YRS <=15 YRS	OVER 15 YRS
1. TOTAL ASSETS	$183,250						
2. Other Assets & High Risk Sec Evaluated	$4,463						
3. Total Interest Bearing Assets:	$178,787	$26,672	$30,382	$35,186	$25,787	$30,580	$30,180
4. Amortizing Assets:	$79,222	$1,536	$12,394	$14,862	$10,774	$18,476	$21,180
5. Non-Amortizing Assets:	$98,565	$25,136	$17,988	$20,324	$15,013	$12,104	$8,000
6. Deep Discount Assets:	$0	$0	$0	$0	$0	$0	$0
7. High Risk Sec. Not Evaluated:	$1,000						$1,000
8. TOTAL LIABILITIES	$166,694						
9. Other Liabilities & DDAs:	$27,471	$4,050	$14,578	$7,983			
10. Interest Bearing Liabilities:	$139,223	$23,083	$80,425	$31,269	$4,446	$0	$0
11. NET WORTH (Gap)	$16,556	($461)	($64,621)	($4,066)	$21,341	$30,580	$30,180
12. OFF-BALANCE-SHEET POSITIONS:							
13. Amortizing OBS Items:		$100	$0	($100)	$0	$0	$0
14. Non-Amortizing OBS Items:		$0	$50	$50	$0	$0	$0

IRR WEIGHTS

15. Amortizing Assets:	0.08%	0.25%	0.90%	2.15%	3.20%	4.30%
16. Non-Amortizing Assets:	0.12%	0.55%	1.75%	3.85%	6.60%	8.90%
17. Deep Discount Assets:	0.12%	0.60%	1.90%	4.75%	10.50%	21.40%
18. Liabilities:	0.12%	0.55%	1.80%	4.10%	7.50%	11.00%

WEIGHTED POSITIONS

19. Weighted Amortizing Assets:	$1,899.58	$1.23	$30.99	$133.76	$231.64	$591.23	$910.74
20. Weighted Non-Amortizing Assets:	$2,573.63	$30.16	$98.93	$355.67	$578.00	$798.86	$712.00
21. Weighted Deep Discount Assets:	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22. Weighted High Risk Sec. Not Evaluate	$214.00						$214.00
23. Total Risk Weighted Assets:	$4,687.22	$31.39	$129.92	$489.43	$809.64	$1,390.10	$1,836.74
24. Total Risk Weighted Liabilities:	$1,443.90	$32.56	$522.52	$706.54	$182.29	$0.00	$0.00
25. Risk Weighted Off-Bal.-Sheet Pos.:	$0.33	$0.08	$0.28	($0.02)	$0.00	$0.00	$0.00
26. High Risk Sec. Evaluated (+100 BPs):	($160.00)						
27. Net Risk Weighted Position	$3,083.65	($1.09)	($392.32)	($217.13)	$627.36	$1,390.10	$1,836.74

IRR MEASURE

Net Risk Weighted Position As a Percent of Assets	=	1.68%	=	Level of IRR

The hypothetical instrument used to estimate the modified durations for amortizing instruments with remaining contractual maturities beyond 15 years would be a 30-year mortgage pass-through security with the composite characteristics (gross and net coupons, original and remaining maturity, etc.) of currently outstanding 30-year government and conventional mortgage pass-through securities. Similarly, a composite 15-year mortgage pass-through security would be used to estimate the risk weights for amortizing instruments with maturities between 7 and 15 years. For instruments with maturities less than 7 years, a standard monthly amortizing instrument would be used that had:

(1) An original maturity equal to the end point of the specific time band, (2) a remaining maturity equal to the midpoint of the time band, and (3) a coupon and yield equal to the effective yield on the industry's earning assets.

An important consideration in estimating the IRR of amortizing instruments is the potential for prepayments. In calculating the modified durations or risk weights for amortizing instruments with maturities greater than 7 years, market consensus prepayment estimates for the hypothetical composite instrument would be used to adjust the cash flows. Amortizing instruments with maturities of less than 7 years would be assumed to be consumer installment loans and adjustable rate mortgages with prepayment profiles that only marginally influence their modified duration.[10] Under the proposed measurement system, the risk weights for amortizing instruments may be adjusted in the event of significant changes in market interest rates, outstanding coupon distributions, and other factors.

The risk weights or modified durations for the non-amortizing assets are calculated assumed semi-annual interest payments, a maturity equal to the mid-point of each time band, and an assumed coupon and yield equal to the effective yield on the industry's earnings assets. The deep discount risk weights are based on the modified durations of a zero coupon instrument with the same yield. Only one set of risk weights would be used for liabilities—the modified durations for a semi-annual interest bearing instrument with an assumed coupon and yield equivalent to the effective yield on interest bearing liabilities.[11]

6. Calculation of the Interest Rate Risk Measure

Under the proposed measurement system, the weights are expressed in percentage points to approximate the percentage change in the value of the hypothetical instrument for a 100 basis point change in rates. For example, the $1.536 million of amortizing assets reported in the up-to-3-month time band (top panel of Table 2) when multiplied or "weighted" by 0.0008 (or .08% as shown in the middle panel) results in an estimated $1,230 change in the present value of that position. If the estimated dollar change is assumed to be in response to a 100 basis point increase in rates, this estimated amount would represent a decline in the present value of those assets. Conversely, the estimated dollar change would represent an increase in present value for an assumed 1 percent decline in rates. The sum of the results of all such multiplications produces an overall duration-based estimate of the institution's interest rate risk: the reduction (increase) in the present value of all positions that would follow a 1 percentage point increase (decline) in market interest rates. From a supervisory perspective, the past volatility of interest rates on U.S. Treasury securities of various maturities suggests that a 100 basis point change in market rates would cover 1 to 1.5 standard deviations of quarterly changes in market yields, depending on the time period chosen for the analysis.[12]

Remaining maturity	Jan. 1962–Dec. 1990 standard deviation basis point change	Jan. 1984–Dec. 1990 standard deviation basis point change
3 Month	125 bp	69 bp
1 Year	115 bp	79 bp
3 Year	91 bp	80 bp
5 Year	81 bp	78 bp
10 Year	68 bp	73 bp
30 Year	na	68 bp

As shown in Table 2, a 1 percentage point increase in market rates is estimated to reduce the present value of the example bank's assets by $4.687 million (bottom panel, left hand column), lower the present value of its liabilities by $1.444 million, and reduce the value of its off-balance-sheet items by $330. The interest rate sensitivity data reported for high-risk mortgage derivative products suggests that their value would increase by $160,000, given a 1 percentage point increase in rates. The net result, called the "Net Risk-Weighted Position" in Table 2, is an estimated decline of $3.083 million in the net economic value of this institution. This net risk-weighted position, when expressed as a percent of assets, is the primary measure of the level of interest rate sensitivity for an institution. When calculated for all banks, it also provides a general indication of the industry's sensitivity to changing rates and can serve as a basis for identifying those banks that appear to have the highest exposures.

B. Identifying Institutions With Significant Interest Rate Risk

The proposed approach recognizes that a certain amount of IRR is inherent and appropriate in commercial banking. In addition, it acknowledges that the level of IRR in banks is difficult to measure with a high degree of confidence. Finally, the approach takes into consideration the fact that, to date, IRR has not been a principal threat to the financial health of commercial banks.

In view of these considerations, it appears appropriate first to consider the level of IRR exposure taken by the industry and then to determine a threshold level of measured exposure that should be considered "high" and

[10] Prepayment estimates represent the expected rate of prepayment over the life of the mortgage assuming no changes in current interest rates. In general, consensus prepayment estimates for 15-year government and conventional pass-through securities would be used to derive prepayment expectations for the 7–15 year amortizing asset and estimated prepayments for 30-year mortgage pass-through securities would be used to derive expected prepayments for the over 15 year amortizing asset.

The amortizing risk weights shown in Table 2 for the two longest time bands are the modified durations of hypothetical mortgage securities that were constructed using data on outstanding mortgage pass-through securities, consensus prepayment estimates and market prices as of May 29, 1992. Specifically, the hypothetical instrument used for the greater-than-15-year time band is a 9 percent mortgage security with a gross coupon of 9.7 percent, an original maturity of 30 years, a remaining maturity of 25.4 years and an assumed conditional prepayment rate (CPR) of approximately 12 percent. The hypothetical instrument used for the 7–15 year time band is an 8.5 percent mortgage security with a gross coupon of approximately 9.12 percent, an original maturity of 15 years, a remaining maturity of 12.2 years and an assumed conditional prepayment rate of approximately 14 percent. No prepayment rates were used in calculating the amortizing risk weights under 7 years.

[11] The specific non-amortizing and deep discount risk weights shown in Table 2 are based on an assumed 10.0 percent coup, which approximates the average effective yield on earning assets at all commercial banks during 1991. For the liability weights in Table 2, a 7.25 percent coupon is assumed, which approximates the effective yield on interest bearing liabilities at all commercial banks during 1991.

[12] The standard deviations of quarterly changes in U.S. interest rates for different time periods are as follows.

should be supported by a capital charge. This approach would require additional capital only for those institutions taking relatively larger risks and would avoid imposing a costly reporting and risk monitoring system on the commercial banking system.

The present Call Report contains insufficient detail to produce an industry distribution of IRR sensitivities that would be as accurate as one produced using the proposed measurement system. For example, maturity and repricing data currently are reported for only four time bands, and the longest band contains all positions repricing in more than five years. In addition, little information is available on off-balance-sheet items. These constraints, and similar ones regarding information about the classification of assets into various cash flow categories, require that certain assumptions be made in order to use existing information. Available Call Report data as been used under these assumptions to develop rough industry distributions in order to identify, on a preliminary basis, the relative orders of magnitude of IRR exposure across the industry.

The distribution of the industry's exposure to changing rates, like the measured exposure of individual banks, is dependent upon the treatment of core deposits. Using the core deposit slotting rules outlined in Section II.A.3. above, an industry distribution of individual bank exposures has been constructed using each bank's estimated net risk-weighted position expressed as a percent of total assets (Chart 1). The industry's median institution is estimated to have a positive net risk-weighted position and therefore appears to have assets with maturities slightly longer than those of its liabilities, making the bank slightly exposed to rising interest rates. As a percentage of assets, its economic value would change an estimated 0.52 percent for each percentage point change in rates.

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CHART 1
ESTIMATED LEVELS OF IRR AS OF 12/31/91
11,916 Banks

Core Deposit Assumptions = Cash Offset With DDA's; MMDA's, Nows & DDA's Up to 1-3 Yr.; Savings Up to 3-7 Yr.
No More Than 30% Of Core Deposit Balances In The Maximum Allowable Time Band

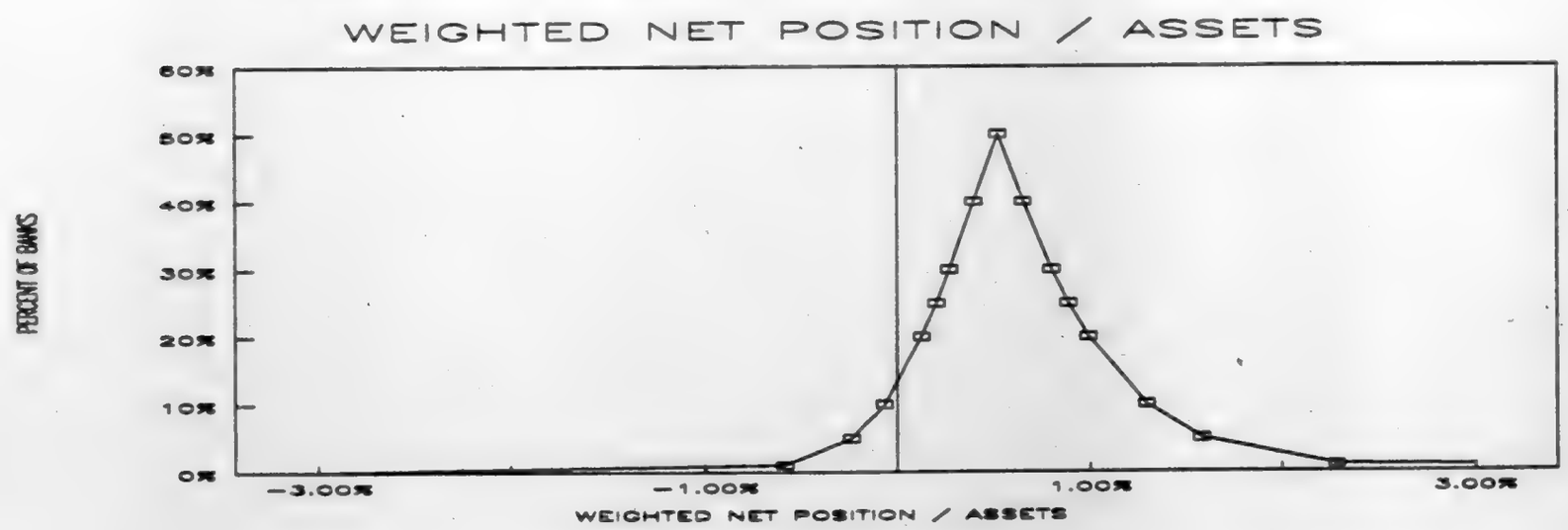

PERCENTILES	1%	5%	10%	20%	25%	30%	40%	50%	60%	70%	75%	80%	90%	95%	99%
IRR LEVELS	-0.59%	-0.24%	-0.07%	0.13%	0.20%	0.27%	0.40%	0.52%	0.65%	0.80%	0.89%	0.99%	1.30%	1.58%	2.29%

MEAN = 0.58%	STD. DEV. = 0.58%

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To recognize exposures to both rising and declining rates, institutions with the highest levels of IRR would be identified in both tails of the industry distribution curve using an absolute level of IRR exposure as measured from zero. Considering the potential for measurement error, the supervisory experience to date with IRR, and the absolute level of IRR which would be considered "high" on the basis of safety and soundness considerations, a risk-weighted position of 1.0 percent of assets, on an absolute basis, may be a reasonable threshold at which to begin assessing capital. The sign of the risk-weighted position would indicate whether an institution is exposed to rising or falling interest rates. For example, a risk-weighted position of −1.0 percent would indicate an exposure to falling interest rates, while a risk-weighted position of +1.0 percent would indicate an exposure to rising rates. The estimated distribution in Chart 1 suggests that a cut-off point at the 1 percent level would affect about 20 percent of the industry with virtually all of the institutions affected being exposed to rising rates. It is expected, however, that most of these institutions already have sufficient capital in excess of regulatory minimums to meet their IRR requirements without raising additional funds.

C. Capital Requirements for IRR

Once identified, institutions with high levels of IRR would be required to cover their "excess" exposure by allocating capital in the amount of that excess. For threshold levels of IRR defined at 1 percent of assets, a bank with a measured IRR exposure of 1.68 percent (Table 2) would be required to allocate capital sufficient to compensate for the estimated change in economic value above 1 percent of assets. Its IRR capital requirement would be calculated as shown below:

Risk Measure − Threshold Level = Excess Position
1.68% − 1.00% = .68% of total assets.
Excess Position × Total Assets = Additional Capital Required
.68% × $183,250,000 = $1,246,100

It is proposed that any capital requirement for IRR be based on Tier 1 capital rather than total capital since subordinated debt, a significant component of Tier 2 capital, is incorporated into the measurement of an institution's IRR exposure. In addition, it is proposed that any capital allocated for IRR would not be available for meeting other risk-based capital requirements not related to interest rate risk. However, because risk-based capital components for other types of risk are being considered, the Banking Agencies would retain the flexibility to revisit this proposal and other aspects of the risk-based capital guidelines in the future.

D. Supervisory Application of the Risk Measure

Bank supervision entails both off-site surveillance and on-site examinations. If adopted, the procedures described herein for measuring interest rate risk would enable bank supervisors to screen banks off-site to identify institutions with relatively high levels of measured interest rate risk and to evaluate the institutions' level of capital adequacy. Because the procedures are relatively simple, banks could monitor their own positions and their continuing conformance to capital standards. Indeed, under the proposal, banks would be expected to maintain sufficient capital to cover their IRR and other requirements on a daily basis.

Additional capital requirements derived under the proposed measurement system would be regarded as the minimum capital required for IRR and would be subject to examiner review. Higher assessments would be possible if a bank's specific positions differed sufficiently from those assumed in the measurement system. Such adjustments might be particularly appropriate in the case of high-risk mortgage derivative products. In general, institutions would be expected to demonstrate the risk-reducing properties of these holdings using more sophisticated measurement systems than those entailed in the proposal. Failure to demonstrate such properties could result in the disallowance of their use in computing the institution's IRR exposure for capital adequacy purposes.

Qualitative factors such as a bank's asset/liability policies, procedures, systems, and management expertise would also be considered as part of the examiner review. To the extent that such qualitative factors are determined to be inadequate during the examination process, institutions could be required to allocate additional capital beyond that implied by their quantitative measure and could also be required to correct or strengthen their practices.

Supervisors would also use the proposed measurement system as a means of allocating examination resources. During an examination of any commercial bank, examiners would use the interest rate risk measure as an indicator of how they should allocate their time and resources. Institutions with apparently high interest rate risk would be more likely to receive more detailed reviews of their asset and liability management procedures than would those with lower risk profiles.

E. Foreign Currency Positions

For banks that have non-U.S. dollar denominated financial instruments, it is proposed that such positions be converted to U.S. dollars and reported along with all other on- and off-balance-sheet positions on the same reporting form. Each currency would be converted into the equivalent U.S. dollar amount, using market exchange rates prevailing on the reporting date.

The Banking Agencies seek comment on the complete degree of offsetting among instruments in different currencies that is implied in this treatment. The issue here is whether different currencies exhibit broadly similar interest rate movements with any degree of regularity, such that opposing interest rate positions in different currencies could be regarded as hedging one another. An exact measurement based on the correlation of all rates in all currencies could be extremely complex and difficult to incorporate into the measurement system. A conservative solution would be to permit no offsetting between positions in different currencies and require separate reporting of "significant" positions denominated in foreign currencies. Such a solution may be overly harsh, as it implies that interest rate movements in different currencies demonstrate perfect negative correlation. On the other hand, the proposed approach of allowing full offsetting may be too generous, by implying that rates have perfect positive correlation.

F. Issues For Consideration

The Banking Agencies request comment on all aspects of the proposal for incorporating IRR into the risk-based capital guidelines, including comments on the costs and benefits of this proposal, the estimation methodology and the manner in which additional capital would be required.

In addition, the Banking Agencies request specific comments on the following topics:

Comment 1: The proposed IRR reporting schedule employs six time bands and three cash flow categories. The Banking Agencies request comment on the reporting burden entailed in slotting assets (both loans and securities) and liabilities among the six time bands and three cash flow categories.

(a) Does the reporting burden increase substantially if the number of time

bands is increased to improve the availability of data for both regulatory and internal bank management purposes?

(b) Would the reporting burden be reduced if more specific cash flow categories were used instead of the three broad categories of amortizing, non-amortizing, and deep discount?

(c) What reporting burden would be imposed by collecting average coupon and yield data?

(d) What reporting burden would be imposed by having institutions report positions using daily, weekly, or monthly average balances rather than the proposed quarter-end balances?

Comment 2: In the proposed measurement system, the risk weights for amortizing instruments are developed from composite instruments and consensus prepayment expectations. Having institutions report their own estimates of the expected cash flows on these instruments might improve the accuracy of the proposed measure and could eliminate the need for separate amortizing risk weights.

(a) Would institutions prefer to report their own anticipated cash flows, average lives, or durations on certain types of assets rather than reporting data based on an instrument's remaining contractual maturity or its next repricing period?

(b) In this context, to what extent can institutions estimate the expected cash flows for consumer loans, home equity loans, and other assets where prepayment expectations are difficult to obtain?

(c) If institutions are permitted to use their own cash flow estimates for reporting, what types of documentation and analysis should be required to support those estimates?

Comment 3: Under the proposed system, trading account assets would be reported with investment securities.

(a) To what extent should such assets be reported separately and treated differently by, for example, limiting their ability to hedge nontrading positions?

(b) Is a separate treatment for off-balance-sheet instruments that are held for trading purposes or held on an intermediary basis necessary in order to distinguish them from instruments used to hedge nontrading positions?

Comment 4: The proposed core deposit slotting rules specify the longest time band that could be used to slot each type of core deposit and the maximum allowable amount that could be slotted into that time band.

(a) Do the proposed slotting rules provide sufficient flexibility to reflect an institution's actual core deposit repricing behavior? If not, how should the rules be devised to reflect repricing behavior while limiting the potential for unrealistic assumptions being used to reduce additional capital charges?

(b) How do the implied liability costs of banking services affect the interest sensitivity of core deposits?

Comment 5: The reporting format used for off-balance-sheet items (described in the Appendix) involves a one-legged reporting approach for futures, forwards and options, and a two-legged reporting approach for interest rate swaps.

(a) To what extent would reporting burdens be reduced if a one-legged reporting approach for interest rate swaps were used? Such an approach would eliminate the floating-rate leg under the assumption that swaps are sufficiently short-term and would receive small risk weights.

(b) To what extent would reporting burdens be increased if a two-legged approach for futures, forwards, and options were used? Such an approach would add an offsetting leg at the settlement date/exercise date.

Comment 6: The proposed measurement system specifies the use of delta equivalent values in reporting options and allows this reporting framework for interest rate caps and floors.

(a) What is the reporting burden involved in using delta equivalent values in reporting options?

(b) Are institutions able to report interest rate caps and floors as a series of options using delta equivalent values?

(c) Should institutions be allowed to use options pricing models to estimate the market value changes of options positions in a manner similar to that proposed for high-risk mortgage securities? For example, institutions could value options transactions (e.g., caps, floors, and options) for interest rate changes of plus or minus 100 basis points holding volatility constant.

Comment 7: How should mortgage servicing rights be treated in the proposed measurement system?

Comment 8: Should an exemption from the proposed interest rate risk test be allowed for institutions which can clearly be identified as having low interest rate risk?

(a) If an exemption is granted, what alternative measurement methodology could be used to determine low interest rate risk? Please provide quantitative and analytical support for the method recommended.

(b) How often should an institution have to perform the exemption test?

(c) How could the concept of static gap be used to develop certain thresholds that would, in turn, be used to determine whether an institution is exempt from reporting requirements?

Comment 9: In the proposed measurement system, the interest rate risk weights are developed from composite instruments.

(a) What assumptions should be used in developing the interest rate risk weights?

(b) Should the risk weights be adjusted to account for the reduced volatility of yields on longer term instruments? This adjustment could be done by scaling down the risk weights as maturity lengthens.

(c) What changes in market conditions or other factors would require revision of the risk weights? How could such revisions be incorporated as an automatic mechanism in the proposed measurement system?

Comment 10: As proposed, the IRR measure uses the following conceptual framework:

$$(Da \times \$Assets) - (Dl \times \$Liabilities) = (De \times \$Equity) = \text{net risk-weighted position}$$

Where:

Da = Duration of Assets
Dl = Duration of Liabilities
De = Duration of Equity

Under this measure, the net risk-weighted position increases as a bank's capital ratio grows. Therefore, to the extent that an institution is required to hold additional capital to support high levels of IRR, this additional capital will have the net result of marginally increasing the institution's measured IRR exposure. While this effect is undesirable and correctable, its significance may be relatively small and its impact may be limited to those institutions with IRR exposures close to the defined threshold level of risk. The effect could be corrected by "normalizing" each institution's risk-weighted liabilities (lower panel of Table 2) by the following factor prior to calculating the institution's net risk-weighted position.

$$\text{Adj. RWL} = \text{RWL} \times (A/L) \times s$$

Where:

Adj. RWL = Adjusted Risk-weighted Liabilities
RWL = Risk-weighted Liabilities
A = total assets
L = total liabilities
s = the industry average ratio of total liabilities to total assets.

The effect of this adjustment is to assign all institutions with the same durations of assets and liabilities an identical risk measure by slightly increasing the measure of institutions with net worth ratios lower than the industry average and slightly reducing the measure for those with higher than

average ratios. Does the added precision provided by this adjustment merit the additional complexity introduced by its use?

Comment 11: The proposal uses the regulatory parameters of an assumed 100 basis point change in interest rates and a plus or minus 1 percent ratio for the net risk-weighted position as a percentage of assets for identifying outliers.

(a) Is the assumed 100 basis point change in rates sufficient in light of the historical volatility of interest rates, the quarterly reporting time frame, and the relative complexity of alternative assumptions? If not, what change in rates should be assumed and what adjustments would need to be made to the proposed measurement system?

(b) On a preliminary basis, does the proposed plus or minus 1 percent ratio for the net risk-weighted position as a percent of assets entail sufficient supervisory coverage? If not, what level of exposure should be covered?

Comment 12: Are there other ways, besides additional capital charges, to address IRR and still meet the requirements of section 305 of FDICIA?

Comment 13: Under the proposal, data would be collected and risk measured for individual banks. However, it must also be recognized that many bank holding companies manage their interest rate risk at levels other than individual banks by offsetting positions held by one bank with positions of another bank or nonbank affiliate. In addition to reviewing individual bank positions, to what extent should the Banking Agencies also consider consolidated positions of the parent holding company or, alternatively, the aggregate position of only its affiliated banks?

Comment 14: As discussed in Section II.E., how should instruments denominated in different currencies be treated in the proposed measurement system?

III. Concentration of Credit Risk

As with interest rate risk, section 305 requires each federal banking agency to revise its risk-based capital guidelines to take adequate account of concentration of credit risk. Currently, this risk is considered when performing an overall evaluation of an institution's capital adequacy. In making this revision, the Banking Agencies must consider an appropriate definition for concentration and must also assess whether current risk-based capital guidelines take adequate account of concentration of credit risk. In this regard, the Banking Agencies seek industry comments on the following questions and issues:

Comment 15: What factors should be taken into account in defining concentration of credit risk for risk-based capital purposes—e.g. industry, geography, collateral, loan type or all of these characteristics?

Comment 16: How should risk-based capital guidelines be revised, if at all, to take adequate account of concentration of credit risk?

Comment 17: Should there be a requirement for additional capital based on an objective formula that increases with asset concentrations, or should capital be based on an overall evaluation of an institution's capital adequacy?

How should an objective formula be specified? What factors should be considered when performing an overall evaluation of an institution's capital adequacy?

Comment 18: What other factors should be considered in revising capital guidelines for concentration of credit risk?

IV. Nontraditional Activities

Finally, section 305 also requires each federal banking agency to revise its risk-based capital guidelines to take account of the risks of nontraditional activities. Since risk-based capital standards were formulated in the mid-80s, banks have commenced certain activities, such as commodity-linked transactions, that were not directly identified or explicitly treated in the risk-based capital guidelines. These activities have been monitored by the Banking Agencies and are currently considered as part of the overall evaluation of an institution's capital adequacy. New or nontraditional activities have been reviewed for their appropriate treatment in the risk-based capital framework. If a new activity has not appeared to fit readily within the existing risk-based capital definitions, interpretations have been made to clarify the new activity's appropriate treatment for capital purposes.

In implementing section 305, the Banking Agencies would formalize this process to ensure that institutions hold capital commensurate with the risks of nontraditional activities. Risk-based capital guidelines would be amended to incorporate the risks of nontraditional activities. In this regard, the Banking Agencies seek industry comments on the following questions and issues:

Comment 19: What should the Banking Agencies consider to be a nontraditional activity?

Comment 20: Should there be a requirement for additional capital based on a general, objective formula, or should additional capital be required based on a case-by-case evaluation of the risks of the nontraditional activity in the context of an institution's risk profile and capital adequacy? How should an objective formula be structured?

Comment 21: How should risk-based capital guidelines be revised to take adequate account of the risks of nontraditional activities? Should the Banking Agencies consider such factors as whether the nontraditional activity is conducted directly in the institution or indirectly through a subsidiary?

Comment 22: What factors should be considered when evaluating the risks of nontraditional activities?

Appendix—Summary Instructions for Compiling the Interest Rate Risk Reporting Schedule

The IRR Reporting Schedule spans six maturity/repricing time bands. Unless specified otherwise, the dollar balances of fixed-rate assets, liabilities and off-balance-sheet positions should be slotted in the time band that corresponds to the instrument's remaining contractual maturity. The dollar balances of floating-rate assets, liabilities, and off-balance-sheet positions should be slotted in the time bands that correspond to the instrument's next repricing date or, if the instrument does not reset again, its maturity date. Floating-rate loans or securities whose reset index rate is within 100 basis points of the instrument's lifetime cap or ceiling should be slotted according to their remaining contractual maturity.

Securities and loans are reported in one of three basic asset categories based on their cash flow characteristics: Amortizing, Non-amortizing and Deep Discount. With the exception of mortgage derivative securities, which have separate slotting rules, amortizing instruments are those assets that involve a periodic payment of both principal and interest more frequently than once a year. Non-amortizing instruments are all other assets with coupons greater than 3 percent, while deep discount instruments are all other interest bearing assets with coupons of 3 percent or less. Exhibit 1 summarizes how specific assets might be classified in the proposed reporting system. Note that certain classes of assets, such as asset-backed securities, could be classified in one of several categories depending upon their payment characteristics.

EXHIBIT 1.—EXAMPLE CLASSIFICATIONS OF BANK ASSETS BY GENERIC CATEGORIES FOR REPORTING PROPOSES

Assets	Non-amortizing	Amortizing	Deep Discount
Securities:			
Treasury & Agency	X		X
GNMA, FNMA, FHLMC Mortgage Pass-through Securities		X	
"Nonhigh-Risk" CMO's, REMIC's	X		
Municipal	X	X	X
Other Mort. Pass-Through Sec.		X	
Foreign Securities	X	X	X
Asst Backed Securities	X	X	
Loans:			
Real Estate:			
Construction & Development	X		
Farmland	X	X	
Residential Revolving Lines	X	X	
Residential Mortgages		X	
Multi-Family Mortgages		X	
Non-Farm & Non-Residential	X	X	
Depository Institutions	X		
Agricultural Loans	X	X	
Commercial & Industrial Loans	X		
Banker's Acceptances			X

EXHIBIT 1.—EXAMPLE CLASSIFICATIONS OF BANK ASSETS BY GENERIC CATEGORIES FOR REPORTING PROPOSES—Continued

Assets	Non-amortizing	Amortizing	Deep Discount
Consumer:			
Revolving Lines	X		
Other	X		
Municipal	X		
All Other	X		

Non-U.S. dollar denominated financial instruments should be converted to U.S. dollars and reported along with all other on- and off-balance-sheet positions on the reporting form. Each currency should be converted into the equivalent U.S. dollar amount, using market exchange rates prevailing on the reporting date.

Line-by-Line Instructions

In general, the items requested on the IRR reporting schedule coincide with items reported in the institution's Consolidated Report of Condition and Income (Call Report). For most items, the dollar balances in the "Total" column on the IRR Reporting Schedule will coincide with the dollar balances on the referenced Call Report schedule.

The instructions below follow the IRR Reporting Schedule (Table 1) line by line.

I. Interest-Bearing Assets

(Slot by contractual maturity or next repricing date unless otherwise indicated)

1. Cash and Interest-Bearing Balances Due

Slot Call Report Schedule RC, Item 1.a, "noninterest bearing balances and currency and coin," in the 0–3 month time band and distribute Call Report Schedule RC, Item 1.b., "interest- balances," accordingly.

2. Securities (Including Trading)

Fixed income Trading Account and Investment Securities should be reported together.

(a) Amortizing

Slot dollar balances of mortgage pass-through securities using their remaining contractual maturity assuming no prepayments. The interest rate risk weights are adjusted for expected prepayments. Pass-through securities include:

- FNMA and FHLMC Securities (Schedule RC–B, Item 2.a.(1))
- GNMA Securities (Schedule RC–B, Item 2.a.(2))
- All other pass-throughs (Schedule RC–B, Item 4.a.)
- Pass-throughs in Trading Account

Dollar balances of adjustable-rate mortgages (ARMs) should be slotted according to their next repricing date unless the loan rate, as of the reporting date, is within 100 basis points of the instrument's lifetime cap. Only when this latter event occurs should ARMs be slotted according to their contractual maturity. Include any other security that involves a periodic payment of principal more frequently than once a year (e.g., asset-backed securities backed by installment loans).

(b) Non-Amortizing

All non-amortizing fixed income securities with coupons greater than 3 percent. These securities include:

- U.S. Treasuries, agency debentures, municipal bonds, domestic and foreign bonds.

Callable bonds should be slotted in the time band corresponding to the call date associated with the current market price.

Example: The institution owns $1 million (book value) of a corporate bond with a remaining maturity of 6 years, a current market price of 101.0 and the following call schedule:

Callable in	1 year	2 years	3 years	4 years	5 years	6 years
At a price of	105	104	103	102	101	100

Based on the current price of 101 and a call price of 101 in 5 years, the bond would be slotted in the 3–7 year time band.

Floating-rate securities whose reset index is within 100 basis points of the instrument's lifetime cap should be slotted according to their contractual maturity.

Mortgage derivative products (CMOs, REMICs, etc.) that meet the following definition of "nonhigh-risk" securities, regardless of acquisition date, should be reported based on their current remaining average life. A mortgage derivative product that does not meet any of the following three tests is considered to be a "nonhigh-risk mortgage security."

(1) *Averge Life Test*—The mortgage derivative product has an expected weighted average life greater than 10.0 years.

(2) *Averge Life Sensitivity Test*—The expected weighted average life of the product:

(a) extends by more than 4.0 years, assuming an immediate and sustained shift in the yield curve of plus 300 basis points, or

(b) shortens by more than 6.0 years, assuming an immediate and sustained shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test*—The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained shift in the yield curve of plus or minus 300 basis points.

(c) Deep Discount Coupons

All fixed income securities with coupons of 3 percent or less not reported in the amortizing and non-amortizing categories above. Such securities include: zero coupon securities, securities quoted on a discount basis, and low coupon U.S. Treasuries, agency debentures, municipal bonds, and domestic and foreign bonds.

(d) High-Risk Mortgage Securities

Report the current carrying value of all mortgage derivative products (CMOs, REMICs, etc.) that meet the following definition of "high-risk" securities, regardless of acquisition date. Do not slot these instruments across the maturity ladder. (See

Memorandum item below.) A mortgage derivative product that meets any of the following three tests is considered to be a "high-risk mortgage security."

(1) *Average Life Test*—The mortgage derivative product has an expected weighted average life greater than 10.0 years.

(2) *Average Life Sensitivity Test*—The expected weighted average life of the product:

(a) extends by more than 4.0 years, assuming an immediate and sustained shift in the yield curve of plus 300 basis points, or

(b) shortens by more than 6.0 years, assuming an immediate and sustained shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test*—The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained shift in the yield curve of plus or minus 300 basis points.

3. Federal Funds Sold & Securities Purchased for Resale

Federal Funds Sold & Securities Purchased with Agreements to Resale (Schedule R, Items 3.a. and 3.b.)

4. Loans, Leases & Acceptances

Slot the dollar balances of loans and leases excluding those in nonaccrual status but including any unearned income on the loans.

The total of amortizing loans and non-amortizing loans including leases and acceptances should correspond to the sum of the dollar balances on Schedule RC–C Memoranda Item 3.c. (2.c. for banks filing FFIEC 034) and Schedule RC, Item 9.

(a) Amortizing

All amortizing loans including:

• Residential, single-family and multifamily mortgages, consumer installment loans.

Include any other loans and leases that involve a scheduled periodic repayment of principal more frequently than once a year.

(b) Non-Amortizing

All other loans and leases not slotted under amortizing loans including the dollar balances of Customers' Liability to Bank on Acceptances Outstanding (Schedule R, Item 9). Credit card receivables and other loans with indefinite maturities should be slotted based on management's determination of their effective repricing sensitivity.

5. Total Interest-Bearing Assets

Calculated as the sum of Items 1, 2, 3, and 4 above.

II. All Other Assets

Calculated as the difference between Total Interest-Bearing Assets calculated in Item I.5. above and the institution's Total Assets as reported on Schedule RC, Item 12. This item is included for illustrative purposes to allow the IRR reporting schedule to "foot" to Schedule RC.

III. Total Assets

Equal to Schedule RC, Item 12. This item is included to illustrate how the IRR reporting schedule "foots" to Schedule RC.

IV. Interest-Bearing Liabilities

1. Interest-Bearing Deposits

Institutions should slot interest-bearing core deposits (Items IV 1.a. through IV 1.c. on the IRR reporting schedule) across the maturity ladder within the following constraints:

(a) To the extent that demand deposit balances are insufficient to offset the cash balances reported in Item I.1. above, (see Item V.1. below) NOW account balances should be slotted in the first time band. Remaining NOW account balances can be distributed across any of the first three time bands with no more than 30 percent of these balances slotted in the 1–3 year time band.

(b) To the extent that both demand deposit and NOW account balances are insufficient to offset the cash balances reported in Item I.1., (see Item V.1. below) MMDA account balances should be slotted in the first time band. Remaining MMDA (Schedule RC–E Memoranda, Item M.2.a.(1)) account balances can be distributed across any of the first three time bands with no more than 30 percent of these balances slotted in the 1–3 year time band.

(c) Savings account balances (Schedule RC–E Memoranda Item 2.a.(2)) can be distributed across any of the first four time bands with no more than 30 percent of these balances slotted in the 3–7 year time band.

(d) *Time Deposits.* Slot dollar balances of all time deposits, regardless of size, in the time band corresponding to their remaining contractual maturity. These balances should equal sum of items from Schedule RC–E Memoranda Items M.2.b., M.2.c., and M.2.d.

(e) *Foreign Interest-Bearing Deposits.* Interest-bearing deposits in foreign offices, Edge and Agreement subsidiaries and International Banking Facilities (IBFs) (FFIEC 031, RC13.b(2)) should be slotted into the appropriate depository category using the same rules as outlined above.

2. Federal Funds Purchased & Securities Sold for Repurchase

(Schedule R, Items 14.a. and 14.b.)

3. Other Borrowed Funds

Such liabilities include:

• Demand Notes Issued to the U.S. Treasury (Schedule RC, Item 15).

• Other Borrowed Money (Schedule RC, Item 16).

• Mortgage Indebtedness and Obligations Under Capitalized Leases (Schedule RC, Item 17).

• Bank's Liability on Acceptances Executed and Outstanding (Schedule RC, Item 18).

• Subordinated Notes and Debentures (Schedule RC, Item 19).

• Limited-life Preferred Stock and Related Surplus (Schedule RC, Item 22).

4. Total Interest-Bearing Liabilities

Calculated as the sum of Items 1, 2, and 3 above.

V. Noninterest-Bearing Liabilities

1. Demand Deposits

Under the assumption that cash in process of collection and currency and coin balances are funded by transaction accounts, an amount of demand deposits equal to the cash balances reported in Item I.1. above should be slotted in the shortest time band. Remaining demand deposit account balances can be distributed across any of the first three time bands with no more than 30 percent of these balances slotted in the 1–3 year time band. This category should also include non-interest-bearing deposits in foreign offices, Edge and Agreement subsidiaries, and IBFs (FFIEC 031, RC 13.b(1)).

2. Other Liabilities

Schedule RC, Item 20.

VI. Total Liabilities

Calculated as the sum of IV.4., V.1. and V.2. above and should equal sum of Schedule RC, Items 21 and 22.

VII. Equity Capital

Calculated by subtracting Total Liabilities (above Item VI) from Total Assets (above Item III).

VIII. Net Off-Balance-Sheet Positions

Off-balance-sheet positions should be reported as either amortizing or non-amortizing based on the cash flow characteristic of the underlying instrument. For example, an interest rate swap whose notional amount decreases by a fixed rate per quarter would be categorized as amortizing. A futures contract whose underlying instrument is a GNMA mortgage-backed security would be similarly categorized.

Report only the net position appropriate for each time band after following the instructions outlined below for each type of instrument.

• Interest Rate Swaps

An interest rate swap contract obligates an institution to both receive and remit interest payments that are based on the notional amount of the swap contract. According to the contract, the institution will either receive fixed-rate and pay floating-rate payments, or it will receive floating-rate and pay fixed-rate payments. To represent the institution's receipt of payments, the notional value of the swap (positive sign) is slotted either according to the maturity of the swap (payments received are fixed) or to the next repricing period (payments received are floating). To represent the intitution's obligation to remit payments, the notional value of the swap (negative sign) is also slotted according to its maturity or repricing date depending on whether the payments are fixed or floating. Options on interest rate swaps would be handled similarly, with the option being valued by multiplying the option's current delta by its principal or notional value.

Example: The institution has entered into an interest rate swap contract with another party for a notional amount of $125 million where the institution receives fixed payments and pays floating payments. The floating-rate resets monthly (thus, the negative $125 million in the less than or equal to 3-month time band), and the swap matures in two

years (thus, the positive $125 million in the 1–3 year time band).

Off-balance-sheet item (Dollars in thousands)	Total	<=3 Months	>3 Months <=3 years	>1 Year <=3 years	>3 years <=7 years	>7 years <=15 years
Swaps						
Longs (+)	$125,000	$0	$0	$125,000	$0	$0
Shorts (−)	(125,000)	(125,000)	0	0	0	0
Net Position	0	(125,000)	0	125,000	0	0

• Futures Contracts, Forward-Rate Agreements, and Firm Commitments to Buy or Sell Loans or Securities

• A futures contract (bought or sold) and a forward-rate agreement (FRA) are slotted in the same manner on the IRR Reporting Schedule using only one entry in the time band corresponding to the maturity of the underlying position. A purchased futures contract is slotted as a positive dollar amount while a sold contract is slotted with a negative sign.

Commitments to buy loans or securities should be slotted as a positive value in the time band corresponding to the maturity of the underlying asset. Conversely, commitments to sell loans or securities should be slotted as a negative value in the time band corresponding to the maturity of the underlying asset.

Example: An institution has sold 10 Treasury bill futures contracts for delivery in one month. Each contract is for a 3-month, $1,000,000 face amount Treasury bill. The institution has also purchased 100 Treasury note futures contracts for delivery in one month. Each of these purchased contracts is for $100,000 face amount of a 5 year Treasury note. The face value of the shorted contracts would be slotted with a negative sign in the less than 3-month time band while the face amount of the purchased contracts would be slotted as a positive value in the 3-7 year time band.

Off-balance-sheet item (Dollars in thousands)	Total	< = 3 Months	> 3 Months, < = 1 year	> 1 year, < = 3 years	> 3 Years, < = 7 years	> 7 Years, < = 15 years
Futures:						
Longs (+)	$10,000	$0	$0	$0	$10,000	$0
Shorts (−)	($10,000)	($10,000)	0	0	0	0
Net Position	0	(10,000)	0	0	(10,000)	0

• Options

The delta equivalent value should be reported for exchange-traded and OTC options (except as outlined below for interest rate caps and floors). The delta represents the change in the value of an option relative to the change in the value of the instrument on which the option is written. An option's current delta times the notional value equals the delta equivalent value, and this value should be slotted in the time band corresponding to the maturity/repricing period of the underlying instrument. Purchased calls and written puts should be slotted using positive delta notional values while purchased puts and written calls should be slotted using negative notional values.

Example: An institution bought call options with a delta value of $56 million on the 2 year Treasury note. A positive amount equal to the delta value is reported in the same time band as the maturity of the underlying instrument (thus, the positive $56 million in the 1-3 year time band).

Off-balance-sheet item (Dollars in thousands)	Total	< = 3 Months	> 3 Months, < = 1 year	> 1 year, < = 3 years	> 3 Years, < = 7 years	> 7 Years, < = 15 years
Options of Futures:						
Longs (+)	$56,000	$0	$0	$56,000	$0	
Shorts (−)	0	0	0	0	0	0
Net Position	(56,000)	0	0	56,000	0	0

• Caps, Floors and Collars

Interest rate caps and floors represent a series of options with consecutive expiration dates equal to the repricing date of the underlying index. Caps represent a series of calls on a short term interest rate, and can be used to create an upper limit on the cost of floating-rate liabilities. Floors are a series of consecutive puts on a short term rate and can be used to protect floating-rate assets from declining rates. Each option in the series could be treated individually using delta weights. Institutions wishing to do so may elect to use such a treatment by reporting the delta weighted average notional value of caps or floors in the time band corresponding to the delta weighted average maturity of the instrument. Recognizing that most institutions may not be able to report such a treatment, a simpler approach to valuing caps and floors is permitted.

For purchased caps, if the index rate (the underlying rate upon which the cap is based) is within 100 basis points of the cap strike rate (or "in the money") the notional value of the cap (negative sign) is slotted according to the maturity of the cap. In essence, the floating-rate liability is converted into a fixed-rate liability; hence, the negative entry at the longer maturity (long a fixed-rate liability). Purchased caps which are not within 100 basis points of the cap strike rate are not reported.

For purchased floors, if the index rate is within 100 basis points of the floor strike rate, the nominal value of the floor (positive sign) is slotted according to the maturity of the floor. In essence, the floating-rate asset is converted into a fixed-rate asset; hence, the positive entry at the longer maturity (long a fixed-rate asset).

Collars should be handled by reporting the cap and floor as specified above. Treat each position separately.

Example: An institution purchased a cap with a notional amount of $10 million which

matures in two years. The index is 3-month London Inter-Bank Offered Rate (LIBOR), which is currently 6 percent and the cap strike rate is 6.5 percent. A negative notional amount is slotted according to the maturity of the cap (the negative $10 million in the 1–3 year time band).

Off-balance-sheet item (Dollars in thousands)	Total	< = 3 Months	> = 3 Months, < = 1 year	> = 1 Year, < = 3 years	> = 3 Years, < = 7 years	> 7 Years < = 15 years
Caps:						
Longs (+)	($10,000)	$0	$0	($10,000)	$0	$0
Shorts (–)	$0	0	0	$0	0	0
Net Position	($10,000)	0	0	($10,000)	0	0

Memoranda Items

Under revised supervisory policies on securities activities that became effective on February 10, 1992, institutions must evaluate at least quarterly whether their holdings of high-risk mortgage securities reduce interest rate risk. Institutions should report the current market value of high-risk mortgage derivative products along with their estimated market values for a 100 basis point increase and decrease in market rates in the lines provided. The methodologies used to estimate these changes in market values should be the same as used to conduct the "high-risk mortgage derivative product" tests. The reported data will be used directly in calculating the institution's IRR exposure.

Mortgage derivative securities purchased prior to February 10, 1992, that meet the high-risk tests are subject to previously-existing supervisory policies and are, therefore, not subject to the quarterly IRR risk evaluation criteria. For such holdings, institutions have the option of: (1) Reporting the interest rate sensitivity of these holdings in a similar fashion as post February 10, 1992, purchases, or (2) reporting only the current book value of those securities. Balances reported under the second option would receive high positive risk weights in calculating the institution's exposure.

By order of the Board of Directors, dated at Washington, DC this 28th day of July, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

Office of the Comptroller of the Currency.

Dated: July 29, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

By Order of the Board of Governors of the Federal Reserve System.

Dated: July 28, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–18540 Filed 8–7–92; 8:45 am]

BILLING CODE 4810-33-M, 6210-01-M, 6714-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM92–13–000]

Revisions to Regulations Governing NGPA Section 311 Construction and the Replacement of Facilities; Proposed Rulemaking

August 3, 1992.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its regulations to require a pipeline to notify the Commission 30 days prior to commencing: Any construction, or abandonment with removal of facilities, pursuant to section 311 of the Natural Gas Policy Act of 1978; and any replacement of facilities pursuant to § 2.55(b). The purpose of this rulemaking is to re-promulgate regulations recently vacated on procedural grounds by the U.S. Court of Appeals for the D.C. Circuit in *Tennessee Gas Pipeline Co.* v. *FERC*, No. 90–1618 (July 14, 1992). Such advance notification would enable the Commission to review these proposed activities before construction commenced and, where warranted, to intervene.

DATES: Comments are due on or before August 25, 1992.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM92–13–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Paul W. Schach, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–2246.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing regulations to require companies constructing natural gas facilities to transport natural gas pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA),[1] or replacing natural gas facilities pursuant to § 2.55(b) of the Commission's regulations, to notify the Commission at least 30 days prior to commencing the construction or replacement activity.

The proposed regulations are virtually identical to those previously adopted as an interim rule in Order No. 525.[2] That

[1] 15 U.S.C. 3301–3432 (1988).

[2] Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, FERC Stats. & Regs., Regulations Preambles [illegible]–1990 ¶ 30,895, *clarified*, 52 FERC ¶ 61,252, *reh'g denied*, 53 FERC ¶ 61,140 (1990).

interim rule recently was vacated by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Tennessee Gas Pipeline Company* v. *FERC* (*Tennessee*).[3] The purpose of this rulemaking proceeding is to re-promulgate the interim rule's 30-day advance notification requirement to enable the Commission to review section 311 construction and § 2.55(b) replacement activities before they commence.

II. Public Reporting Requirement

The Commission estimates the public reporting burden for the collection of information sought in the proposed rule to average approximately four hours per response. It is anticipated that these respondents would submit on average four filings each. The annual reporting burden for the collection of information is estimated to be 880 hours. The industry burden is based on the average number of hours per response for the 55 pipeline companies complying with this filing. This includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, complete and review the collection of information, and file the information with the Commission.

Interested persons may comment on this burden estimate or other aspects of this collection of information, including suggestions for reducing the burden, by sending written comments to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Mr. Michael Miller, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Background

Section 2.55(b) of the Commission's regulations permits a natural gas pipeline company to replace existing facilities without prior authorization pursuant to section 7(c) of the Natural Gas Act (NGA).[4] Section 284.3(c) of the regulations provides automatic authorization for the construction of facilities to be used for the transportation of natural gas pursuant to NGPA section 311. Section 284.11 requires any pipeline constructing under § 284.3(c) to comply with the terms and conditions of § 157.206(d), involving compliance with the governing environmental statutes and regulations.

On August 2, 1990, the Commission issued an interim rule in Order No. 525, without notice and comment.[5] On the same day, it issued a Notice of Proposed Rulemaking (NOPR) in a proceeding that has come to be known as the "construction rule" proceeding.[6]

The interim rule required natural gas pipelines to notify the Commission 30 days before commencing any replacement of facilities pursuant to § 2.55(b), or any section 311 construction or abandonment with removal of facilities pursuant to § 284.3(c). The notification must include the following information: (1) A brief description of the facilities; (2) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities; and (3) a description of the procedures to be used for erosion control revegetation and maintenance, and stream and wetland crossings. Additionally, for section 311 construction the pipeline also must provide evidence of having met the Commission's environmental compliance procedures at § 157.106(d) of its regulations.

The purpose of the interim rule was to give the Commission a temporary procedure, pending adoption of a final rule in the construction rule proceeding, for reviewing section 311 construction activities under § 284.3(c), and replacement activities under § 2.55(b), before any construction commenced. The Commission believed that the opportunity for prior review would allow it to take appropriate action where necessary to ensure compliance with the applicable environmental statutes and Commission regulations.[7]

On September 20, 1991, the Commission issued a final rule in the construction rule proceeding, in Order No. 555.[8] For § 2.55(b) replacement activities, the Commission eliminated the 30-day advance notification requirement but significantly narrowed the definition of exempt replacement activities, and added two new conditions, that together it believed would adequately minimize any potential adverse environmental impacts.[9] For section 311 construction, Order No. 555 adopted, at § 284.11(b) of the regulations, essentially the same 30–day advance notification requirement previously adopted as an interim rule.

Order No. 555 was scheduled to take effect on November 19, 1991, but on November 13, 1991, the Commission postponed the effective date of the rule until 30 days after publication in the **Federal Register** of an order on rehearing.[10] Rehearing currently is pending, thus causing the interim rule adopted in Order No. 525 to remain in effect.

On July 14, 1992, as stated, the D.C. Circuit issued its decision in *Tennessee* vacating the interim rule. The court found that the Commission had "failed to provide a sufficient basis for invoking the good cause exception" of the APA,[11] which permits an agency to promulgate regulations without notice and comment under certain circumstances. The court's mandate is scheduled to issue on August 28, 1992. Until it issues, Order No. 525's interim rule remains in effect. When the mandate issues, the pre-Order No. 525 regulations will be reinstated.

IV. Discussion of the Proposed Regulations

The Commission is mandated by the National Environmental Policy Act of 1969 (NEPA)[12] to weigh carefully the potential environmental impact of its decisions.[13] Section 311 construction activities are subject to the environmental requirements at § 157.206(d) of the regulations, which enable the Commission to meet its obligations under the various environmental statutes and regulations. As discussed below, § 2.55(b) replacement activities are not subject to the § 157.206(d) environmental requirements. Nevertheless, for the reasons stated therein, we reaffirm our finding in Order No. 525 that it is necessary for the Commission to receive

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[3] No. 90–1618 (July 14, 1992).

[4] 15 U.S.C. 717–717z (1988).

[5] The Commission invoked the good cause exception of the Administrative Procedure Act (APA), which permits rulemaking without public notice and comment when an agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B) (1988).

[6] Revisions to Regulations Governing Certificates for Construction, IV FERC Stats. & Regs. ¶ 32,477 (1990). The construction rule proceeding involved numerous matters in addition to the one addressed by the interim rule.

[7] See Order No. 525, FERC Stats. & Regs., Regulations Preambles 1986–1990, at 31,812.

[8] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991).

[9] Specifically, Order No. 555 defined exempt replacement activities as involving "[f]acilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable to comply with Department of Transportation regulations * * *." In addition, the final rule required that: (1) Service through the replaced facilities not result in a reduction or abandonment of service; (2) the new facilities have a substantially equivalent designed delivery capacity as the old facilities; (3) the replacement occur within the pipeline's existing right-of-way; and (4) the old facilities be abandoned in compliance with the guidelines of the U.S. Environmental Protection Agency for facilities exposed to PCB contamination greater than 50 ppm.

[10] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928A (1991).

[11] *Tennessee*, slip op. at 2.

[12] 42 U.S.C. 4321–4370c (1988).

[13] Order No. 525, FERC Stats. & Regs., Regulations Preambles 1986–1990, at 31,812–813.

advance notification of proposed construction activities under section 311, as well as proposed replacement activities under § 2.55(b).[14]

Originally, the Commission believed that only very minor facilities, such as taps and interconnections, would be constructed under section 311, and that stringent Commission review was therefore unnecessary. The Commission did not anticipate that extensive facilities would be constructed under section 311. However, in actuality, pipelines have viewed section 311 as a vehicle for constructing more extensive projects.[15] In several instances, such construction has presented potentially serious environmental repercussions.[16] Without advance notification of section 311 construction projects, the Commission has no established means, other than through the press, of being informed of potential environmental harm resulting from such construction.

Like section 311 construction, the replacement of facilities under § 2.55(b) may be extensive. However, § 2.55(b) was adopted over 40 years ago.[17] At that time, there were fewer pipeline construction projects and the majority of those projects involved relatively short lengths of small diameter pipeline. Since then, an integrated and sophisticated national pipeline grid has developed. Today, the replacement of facilities can involve hundreds of miles of large diameter pipeline. And the environment where a pipeline originally was laid may very well have changed completely by the time replacement is necessary.[18] For these reasons, we believe that advance notification of 2.55(b) replacement projects is as necessary as advance notification of section 311 construction projects.

Accordingly, we are proposing to re-adopt the 30-day advance notification requirement that the D.C. Circuit recently struck down on procedural grounds in *Tennessee*. Specifically, the proposed rule would require a pipeline to notify the Commission 30 days prior to commencing: (1) any section 311 construction, or abandonment with removal of facilities, pursuant to § 284.3(c) of the regulations; and (2) any replacement of facilities pursuant to § 2.55(b). Such advance notification would enable the Commission to review planned activities before construction commenced and, where warranted, to intervene.

Concerning section 311 construction, the advance notification requirement would apply to both interstate and intrastate pipelines proposing such construction. Under § 284.11 of the regulations, an intrastate pipeline constructing facilities to be used for section 311 transactions always has been held to the same environmental standards as an interstate pipeline in like circumstances.[19]

Under proposed § 284.11(b), then, the advance notification of section 311 construction would include the following information:

(1) A brief description of the facilities to be constructed or replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each of the environmental terms and conditions contained in § 157.206(d) of the regulations;

(3) U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

Under proposed § 2.55(b), the advance notification of proposed replacement activities would include the information described in (1), (3), and (4) above. Because § 2.55(b) does not require compliance with § 157.206(d), we would not require pipelines undertaking replacement activities to produce evidence of having complied with that section.

In this regard, we note that the replacement of facilities pursuant to § 2.55(b) is an activity that is categorically excluded from the general environmental review process. Under § 380.4(b) of our regulations, however, where certain circumstances are present the Commission may require the submission of an environmental report or the preparation on an Environmental Assessment (EA) or Environmental Impact Statement (EIS). We emphasize that we do not intend the proposed 30-day advance notification requirement to be tantamount to a determination that an EA or EIS automatically will be required for all categorically excluded replacement facilities. Rather, the information submitted as notification merely would provide the Commission with a basis for reviewing individual projects to determine whether additional environmental review was appropriate in a particular instance.

Because a pipeline might be unable to determine precisely before pigging or hydrostatic testing what portions of a pipeline needed to be replaced, a pipeline could submit, before it began pigging and testing, its 30-day advance notification of a § 2.55(b) replacement activity. In that notification, it would have to: (1) Identify and describe the portion of the line it intended to inspect; (2) provide the Commission with a list of repairs, organized by type of repair, that might be required; (3) provide the topographical maps covering the length of pipeline to be inspected and on which repairs would occur if necessary; (4) describe generally the procedures it would initiate to manage erosion control, revegetation and maintenance, and stream and wetland crossings; and (5) make a good faith estimate of the length of pipe to be replaced and the cost thereof.[20]

We do not believe that any of the information proposed to be required in the advance notification of section 311 construction and §2.55(b) replacement activities would be burdensome. All of the information should be readily available to the pipeline. Any minor inconvenience to the pipeline that might be caused by the preparation of the advance notification would be negligible when notification would be neglible when measured against the environmental concerns that we are seeking to protect.

Further we do not believe that requiring pipelines to notify the Commission 30 days before commencing section 311 construction and § 2.55(b) replacement activities would be onerous, principally because most such

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[14] *Id.*, at 31,813.

[15] *See, e.g.*, Arkla Energy Resources, a Division of Arkla, Inc., 54 FERC ¶ 61,033 (1991), where the Commission granted Arkla NGA section 7(c) authority to operate Line AC, a large diameter, 225-mile pipeline that Arkla previously had constructed pursuant to NGPA section 311.

[16] *See, e.g.*, Questar Pipeline Co., 57 FERC ¶ 61,058 (1991), 58 FERC ¶ 61,157 (1992); Transcontinental Gas Pipe Line Corp., 48 FERC ¶¶ 61,132 and 61,189 (1989).

[17] *See* Order No. 148, 14 FR 681 (Feb. 16, 1949).

[18] For example, what was once a rural area may now be densely populated.

[19] *See* Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities, ■ FERC at 61,471.

[20] There is one circumstance, however, where a pipeline could precisely notify the Commission of the facilities to be replaced before it began replacement activities. The U.S. Department of Transportation (DOT) has implemented regulations, at 49 CFR 192.607–192.629, that prescribe minimum requirements for the operation of pipeline facilities. These regulations are complex but, in essence, require that pipelines operate at varying percentages of maximum operating pressures depending on the population density around ghe pipeline and that, as population increases in the vicinity of a pipeline the operating pressure must be decreased or the wall thickness of the pipeline increased. In situations where population density increases and the pipeline decides to replace the pipe with activities it will perform. Under these circumstances, we would require the pipeline to describe precisely in its 30-day notification the facilities to be replaced.

activities are scheduled in advance of that time. However, we emphasize that the proposed 30-day advance notification requirement would not conflict with the obligation placed on pipeline operators by DOT's regulations that require operators to take prompt action to correct safety related conditions. The proposed rule would not override other Commission regulations that permit interstate pipelines to take prompt corrective actions to address conditions that constitute a safety hazard. Subpart I of part 284 of the Commission's regulations exempts emergency situations from the provisions of NGA section 7 and permits a pipeline to take immediate action to alleviate an emergency situation, subject to a subsequent 48-hour reporting requirement. Thus, in an emergency situation, as defined by the Commission,[21] a pipeline could take immediate remedial action without regard to the proposed 30-day advance notification requirement.

Additionally, upon an appropriate petition by a pipeline the Commission would consider waiving the 30-day advance notification requirement where warranted to avoid an undue delay or interruption in replacement activities.[22] And a pipeline also may be able to perform a replacement activity under its part 157, subpart F blanket construction certificate if the activity involves an eligible facility, as defined at § 157.202(b)(2) of the regulations.

We realize that the regulation we are proposing here as § 2.55(b) is somewhat different from the one we adopted in Order No. 555 (which we described above, and which was stayed pending rehearing generally of Order No. 555). Nevertheless, we believe that the purpose and ultimate result of both versions of § 2.55(b) are substantially the same—to protect the environment. We are proposing the instant regulation here because the rehearing of Order No. 555 is pending, and because we need to react quickly to the court's decision in *Tennessee* to ensure that a mechanism is in place to enable us to review both section 311 construction and § 2.55(b) replacement activities. We will not consider in this proceeding any of the issues raised on rehearing of Order No. 555 concerning the § 2.55(b) regulation adopted there. Those issues we will address at the appropriate time in that proceeding.

We note that the regulations that we are proposing here would take effect, if adopted, 30 days after a final rule is published in the **Federal Register**. If, as expected, the court's mandate in *Tennessee* issues on August 28, 1992, Order No. 525's interim rule will be vacated prior to this final rule's taking effect here. During the intervening hiatus, the governing regulations will be those in effect prior to Order No. 525.[23]

The Commission still has a vital interest in section 311 construction and § 2.55(b) replacement activities taking place during the hiatus. While advance notification of such projects is not required, we are proposing, at § 2.55(b)(2) and § 284.11(c) of the regulations, to require pipelines to submit, within 30 days of the effective date of a final rule in this proceeding, a report informing the Commission of all such construction commenced during the hiatus. This one-time report is intended to avoid a gap in the Commission's knowledge of such projects.

V. Environmental Analysis

Commission regulations require that an EA or EIS be prepared for any Commission action that may have a significant adverse effect on the human environment.[24] The Commission has categorically excluded certain actions from these requirements on the ground that they do not have a significant effect on the human environment.[25]

The proposed rule, if adopted, would require a pipeline to notify the Commission prior to commencing certain construction activities. However, the proposed rule would not alter the inherent nature of the activities or their impact upon the human environment. Accordingly, an EA is unnecessary and will not be prepared.

VI. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the APA [26] to publish a NOPR, it also is required by section 603 of the Regulatory Flexibility Act of 1980 (RFA) [27] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies, pursuant to the RFA, that the proposed rule would not have a "significant economic impact on a substantial number of small entities." [28] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens on small entities.

We do not believe that this proposed rule, if adopted, would have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities, largely because we do not believe that most of the entities that would be affected by it fall within the RFA's definition of "small entity." [29] However, even if the proposed rule, if adopted, were to affect a substantial number of small entities, we do not believe that its impact would be substantial. Both the time needed to prepare an advance notification and the cost of doing so would be modest.

VII. Information Collection Requirements

The regulations of the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rules.[30]

The information collection form that would be affected by the proposed rule is FERC–577(A), Gas Pipeline Certificates: Environmental Impact

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[21] Section 284.262(a)(1)(iii) of Subpart I defines emergency as "[a]ny situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for the protection of life or health or for maintenance of physical property."

[22] The Commission has granted dozens of waivers of the interim rule's 30-day advance notification requirement. See, *e.g.*, Panhandle Eastern Pipe Line Co., 58 FERC ¶ 61,015 (1992); Northern Natural Gas Co., 57 FERC ¶ 61,092 (1991); Transwestern Pipeline Co., 57 FERC ¶ 61,114 (1991); Williams Natural Gas Co., 57 FERC ¶ 61,229 (1991); National Fuel Gas Supply Corp., 57 FERC ¶ 61,352 (1991).

[23] The governing regulations will be:

§ 2.55 Definition of term used in section 7(c). For purposes of section 7(c) of the Natural Gas Act, as amended, the word "facilities" as used therein shall be interpreted to exclude: * * *

(b) *Replacement of facilities.* Facilities which constitute the replacement of existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable: *Provided,* That such replacement will not result in a reduction or abandonment of service rendered by means of such facilities: *Provided further,* That such replacement shall have substantially equivalent designed delivery capacity as the particular facilities being replaced.

§ 284.11 Environmental compliance. any authorization granted under Subparts B, C and H of this part that involves construction or abandonment with removal of facilities is subject to the terms and conditions of § 157.206(d) of this chapter.

[24] See Order No. 486, Regulations Implementing National Environmental Policy Act of 1969, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,783 (1987); 18 CFR part 380.

[25] See 18 CFR 380.4.

[26] 5 U.S.C. 553 (1988).

[27] 5 U.S.C. 601–612 (1988).

[28] 5 U.S.C. 605(b) (1988).

[29] Section 601 of the RFA defines "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. In turn, a "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[30] 5 CFR part 1320.

Statement, (1902–161). This information collection is required to enable the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. As previously discussed, the information required by the proposed rule, if adopted, would permit the Commission to review and take action, where necessary, prior to certain construction and replacement activities.

An estimated 55 respondents would be affected by the proposed rule, if adopted. The respondents would consist mostly of large interstate pipeline companies (approximately 50), with a few (approximately 5) medium to large intrastate pipeline companies.

As stated, the public reporting burden with respect to the proposed environmental filing requirements (FERC–577(A)) is estimated to average approximately four burden hours per response.

VIII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this NOPR. An original and 14 copies of the written comments must be filed with the Commission no later than 15 days after publication of this NOPR in the **Federal Register**. In light of the need to adopt a final rule as quickly as possible after the court's mandate in *Tennessee* issues, and given the industry's and public's significant experience operating under these regulations, reply comments will not be permitted and no extension of the comment period will be granted.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM92–13–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, electric power, environmental impact statements, natural gas, pipelines, reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, natural gas, reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend parts 2 and 284 of chapter I, title 18, *Code of Federal Regulations*, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–1717w, 3301–3432; 16 U.S.C. 792–825r, 2601–2645; and 42 U.S.C. 4321–4361, 7101–7352.

2. In § 2.55, paragraph (b) is revised to read as follows:

§ 2.55 Definition of terms used in section 7(c). * * *

* * * * *

(b) *Replacement of facilities.*

(1) Facilities which constitute the replacement of existing facilities that have or will soon become physically deteriorated or obsolete, to the extent that replacement is deemed advisable, if:

(i) The replacement will not result in a reduction or abandonment of service through the facilities;

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity as the particular facilities being replaced; and

(iii) At least 30 days prior to commencing any related construction or replacement activity, the company files notification of such activity with the Commission. The notification must include the following information:

(A) A brief description of the facilities to be replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction):

(B) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities to be replaced; and

(C) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(2) For any replacement activity authorized under § 2.55(b) of this chapter and commenced between August 28, 1992 and _____, 1992 [the effective date of a final rule in this proceeding], a pipeline must file a one-time report with the Commission, by _____, 1992 [30 days after the effective date of a final rule in this proceeding], that includes all of the information required in paragraph (b)(1)(iii) of this section.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717z; 15 U.S.C. 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

4. Section 284.11 is revised to read as follows:

§ 284.11 Environmental compliance.

(a) Any authorization granted under Subpart B or C of this Part that involves the construction of, or the abandonment with removal of, facilities is subject to the terms and conditions of § 157.206(d) of this chapter.

(b) At least 30 days prior to commencing any construction or abandonment with removal of facilities, as authorized under subpart B or C of this part and described in paragraph (a) of this section, the company must file notification of such activity with the Commission. The notification must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilities (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each provision of § 157.206(d) of this chapter;

(3) U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(c) For any construction or abandonment with removal of facilities, as authorized under subpart B or C of this part and described in paragraph (a) of this section, that is commenced between August 28, 1992 and _____, 1992 [the effective date of a final rule in this proceeding], a company must file a one-time report with the Commission, by _____, 1992 [30 days after the effective date of a final rule in this proceeding], that includes all of the information required in paragraph (b) of this section.

[FR Doc. 92–18848 Filed 8–7–92; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Consolidation of Norfolk and Newport News, and Richmond-Petersburg, Virginia, for Marine Purposes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule, solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to consolidate the ports of entry of Norfolk and Newport News, and Richmond-Petersburg, Virginia for marine purposes only. This change, if adopted, would enable Customs to obtain more efficient use of its personnel, facilities and resources. It would eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. Moreover, it would simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Comments (preferable in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Margaret Reyen, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 566–8157.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by consolidating, for marine purposes only, the port of entry of Norfolk and Newport News, and the port of entry of Richmond-Petersburg, Virginia, located in the Norfolk District in the Southeast Region.

Inasmuch as theses two ports are located within approximately seventy-five miles of one another on the James and Elizabeth Rivers, it is estimated that the proposed consolidation will significantly reduce expenses for the public without impairing Customs ability to provide services to area businesses or to the general public.

Under this proposal, the laws and regulations administered and enforced by Customs relating to the entry of merchandise would continue to apply at Norfolk and Newport News and at Richmond-Petersburg, with each of the ports retaining its port codes as well as its current geographical limits. However, the two ports would be considered to be one port for the purposes of the navigation laws. All of the requirements prescribed by the navigation laws administered and enforced by Customs, such as reporting arrival and making formal entry of vessels arriving at the consolidated marine port from a foreign or another U.S. port (depending on the vessel's nationality); and obtaining a permit to proceed between the consolidated port and other U.S. ports, would have to be complied with, as is not the case in existing consolidated ports.

It is anticipated that the proposed consolidation also will result in reducing penalties incurred under the navigation laws if carriers fail to enter and properly clear merchandise being shipped in a residue cargo movement within the consolidated marine port (i.e., the port of Norfolk and Newport News, and the port of Richmond-Petersburg), and will reduce paperwork for carriers, importers, and Customs, because of the reduction of penalty cases.

If this proposal is adopted, there would be no change in the current geographical limits of either port. However, it will be necessary to amend the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), to reflect the consolidation of these ports for the purposes of the navigation laws.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: July 24, 1992.

Carol Hallett,

Commissioner of Customs.

Nancy L. Worthington,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92–18850 Filed 8–7–92; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 146

Petroleum Refineries in Foreign Trade Subzones

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by adding special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of section 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act, to make specific provision for petroleum refinery subzones.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs

Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:
Legal aspects: Cari Berdut, Entry Rulings Branch (202–566–5856).

Operational aspects: Louis Hryniw, Office of Regulatory Audit (202–566–2812).

SUPPLEMENTARY INFORMATION:

Background

The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–u) ("the FTZA"), provides for the establishment and regulation of foreign trade zones, the purpose of which is to attract and promote international trade and commerce. Part 146, Customs Regulations (19 CFR part 146), governs the admission of merchandise into a zone, its removal from the zone, and, among other things, its manipulation, manufacture, or exhibition while in the zone.

Under the FTZA, the Foreign Trade Zones (FTZ) Board has authority to grant to public and private corporations, as defined in 19 U.S.C. 81a (e) and (f), the privilege of establishing, operating, and maintaining foreign trade zones in or adjacent to Customs ports of entry. 19 U.S.C. 81b(a). This Board, in 1952, promulgated regulations under 19 U.S.C. 81h to allow the establishment of "zones for specialized purposes" or "subzones" in areas distinct from existing general purpose zones "for one or more of the specialized purposes of storing, manipulating, manufacturing or exhibiting goods," should the Board determine that existing general purpose zones would not satisfactorily serve the convenience of commerce in relation to the proposed purposes. 17 FR 5316 (June 11, 1952).

Generally, under section 3 of the Act, as amended, 19 U.S.C. 81c(a), imported and domestic merchandise may be brought into a zone for the purposes enumerated without being subject to the Customs laws of the U.S., but if imported merchandise is so sent from a zone into Customs territory, it would then be subject to the laws and regulations of the U.S. affecting such merchandise.

More specifically, the first proviso to 19 U.S.C. 81c(a) provides that foreign merchandise in a zone, which has not been manipulated or manufactured so as to effect a change in tariff classification, may be taken under Customs supervision and be appraised and its taxes determined and duties liquidated or fixed thereon. Such merchandise is administratively characterized as "privileged foreign". 19 CFR 146.41. If this merchandise is manufactured in the zone, duties and taxes are payable on the quantity of such merchandise used in the manufacture of the entered article, with due allowance for recoverable and irrecoverable waste. Furthermore, where two or more products result from the manufacture of privileged foreign merchandise in a zone, the liquidated duties and determined taxes must be distributed to the resulting products in accordance with their relative value upon their respective separation in the manufacturing process, again with due allowance for waste.

In addition, the second proviso to 19 U.S.C. 81c(a) provides in effect that foreign merchandise which has been imported, duty-paid or duty-free, and merchandise which is the growth, product or manufacture of the U.S., may be taken into a zone from the Customs territory, placed in "domestic" zone status, 19 CFR 146.43, and, regardless of whether it has been used in manufacture in the zone, could be subsequently brought back into Customs territory free of duty. In this connection, however, under the third proviso to 19 U.S.C. 81c(a), domestic status merchandise which loses its identity as such in a zone would be treated as foreign, and be subject to duty accordingly, upon reentry into Customs territory.

Hence, an article manufactured from domestic status merchandise in a zone, as noted above, would only be entitled to be removed therefrom, duty-free, if the specific physical content resulting from the domestic merchandise could be established therein. Likewise, the first proviso to 19 U.S.C. 81c(a) fairly requires that the entered article be specifically and strictly identified with particular privileged foreign merchandise for duty assessment to be permissible in accordance therewith, and, as already stated, where more than one product is separated from such merchandise, the manufacturer must calculate the relative value of such products at the time they are separated from the whole, in order to distribute the duty and taxes thereto on this basis.

The foregoing provisions worked well with durable goods where one could physically observe the manufacturing process and count its products/by-products. In recent years, however, oil refineries have increasingly been approved by the FTZ Board to operate as special-purpose zones or subzones. In this regard, the distillation of crude petroleum and derivatives thereof, called feedstocks, presents a unique challenge in that the process is masked from view and involves liquids which change volume and weight. Also, the nature of petroleum is such that multiple products can be concurrently refined from various feedstocks, thereby further complicating the matter of duty assessment.

In this context, the first and second provisos, as outlined, essentially impeded the efforts of Customs and refiners alike to develop inventory methods (1) which could account for or attribute domestic or privileged foreign merchandise as being used to produce petroleum products removed from a subzone refinery, and (2) which could practicably establish the relative value of multiple products separated from given privileged foreign status merchandise, with duty assessment accordingly.

As a result, to address this situation, § 9002 of the Technical and Miscellaneous Revenue Act of 1988, enacted in Public Law 100–647, amended the FTZA, by adding a special provision, codified as 19 U.S.C. 81c(d), to deal with the unique problems posed by oil refinery subzones. This special provision states that in regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary that protects the revenues.

The amendment thus redefines the time of separation, with respect to the refining of multiple products, as the entire manufacturing process from which they are produced. As such, the amendment obviates the need to determine exactly when and where in the pipeline crude and other feedstocks introduced into the refining process become another product. Rather, it permits refiners as well as Customs to assess relative value at the end of the entire manufacturing period from which such products were produced, when the actual quantities of products resulting from the process, such as kerosene, diesel oil, gasoline, and the like, can be measured with certainty.

Moreover, the amendment permits the products refined in a subzone during a manufacturing period to be attributed to given crude or other feedstocks introduced into production during the period, to the extent that such products

were producible (could have been produced) therefrom in the quantities removed from the subzone. This inventory method, known as producibility, calls for objective production standards to govern its application. Such standards, called industry standards of potential production on a practical operating basis, have already been established and adopted, for petroleum drawback purposes, and published in T.D. 66–16. For example, according to T.D. 66–16, the percentage of motor gasoline producible from a stated quantity of class III crude petroleum (defined by American Petroleum Institute (API) specific gravity ranges) is 91%.

Accordingly, to further define, elaborate upon, and implement, the provisions of 19 U.S.C. 81c(d), concerning petroleum refinery subzones, this rulemaking has been initiated, which proposes to add a new subpart H to the Customs foreign trade zone regulations in part 146 (19 CFR part 146).

Customs is also interested in public comments regarding a specific definition for what constitutes a "petroleum refinery", for purposes of the proposed subpart H. To this end, commenters should provide reasons in support of any recommended definitions.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is in §§ 146.93–146.99. The respondents would be businesses.

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

Estimated total annual reporting and/or recordkeeping burden:

Estimated average annual burden per respondent and/or recordkeeper:

Estimated number of respondents and/or recordkeepers:

Estimated annual frequency of responses:

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control number assigned by OMB would be amended accordingly if the proposal is adopted.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Proposed Amendment

It is proposed to amend part 146, Customs Regulations (19 CFR part 146), as set forth below.

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 would continue to read as follows:

Authority: 19 U.S.C. 66, 81a–u, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. It is proposed to amend part 146 by adding a new subpart H thereto to read as follows:

Subpart H—Petroleum Refineries in Foreign Trade Subzones

Sec.

146.91 Applicability.
146.92 Definitions.
146.93 Inventory control and recordkeeping system.
146.94 Records concerning establishment of manufacturing period.
146.95 Feedstock inventories.
146.96 Subzone activity reports.
146.97 Producibility.
146.98 Relative value.
146.99 Methods of attribution.

Subpart H—Petroleum Refineries in Foreign Trade Subzones

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery engaged in refining petroleum in a foreign trade subzone. This subpart also applies only to merchandise (crude petroleum and derivatives thereof) which are introduced into production in a refinery subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart.

§ 146.92 Definitions.

The following definitions are applicable to this Subpart H:

(a) *Assay.* "Assay" means the recorded specifications of a feedstock received by a refiner. It constitutes the analysis of crude petroleum or other feedstock in terms of American Petroleum Institute (API) specifications, and includes the expected yields of final products therefrom under each refiner's anticipated operating conditions.

(b) *Attribution.* "Attribution" means the association of a final product with its source material by application of the producibility concept, using the industry standards of potential production set forth in T.D. 66–16, or other inventory control method approved by Customs.

(c) *Cumulative entry activity report.* "Cumulative entry activity report" means the report which shows the cumulative entry activity for each feedstock received into the subzone to date including duties and user fees paid or avoided thereon.

(d) *Duty and user fee report.* "Duty and user fee report" means the report which shows the duty and user fees paid or avoided by receipt and type of entry for the period covered by the report.

(e) *Feedstock.* "Feedstock" means crude petroleum or intermediate product

(including blendstock) that is used in a subzone refinery.

(f) *Final product.* "Final product" means any petroleum derivative listed in T.D. 66–16 that is produced in the refinery subzone and thereafter removed therefrom.

(g) *Fungible merchandise.* "Fungible merchandise", as defined in § 146.1(b)(14) of this part, is further defined as merchandise which has comparable assay reports and anticipated intermediate yields.

(h) *Inventory disposition report.* "Inventory disposition report" means the report which shows the activity for each feedstock receipt for the period covered by the report. All information will be in relative value equivalent feedstock volumes.

(i) *Manufacturing period.* "Manufacturing period" means the period beginning with the introduction of feedstock into the production process and ending with the removal of the final product from the subzone. "Manufacturing period" coincides with "time of separation" (see § 146.92(p)).

(j) *Price of products.* "Price of products" means the average per unit market value of each final product for a given manufacturing period.

(k) *Producibility.* "Producibility" means the industry standards of potential production on a practical operating basis, as approved by Customs and published in T.D. 66–16.

(l) *Product shipment report.* "Product shipment report" means the report which shows, by type of entry, the quantity of final products which are shipped from the subzone for the period covered by the report.

(m) *Protection of the revenue.* "Protection of the revenue" means an accounting method under which any deviation from actual events is resolved in favor of Customs collection and retention of revenue.

(n) *Relative value.* "Relative value" means the value of a final product divided by the total value of all final products produced from a given feedstock. Where two or more products result from the manufacture of a privileged foreign feedstock in a subzone, the liquidated duties and determined taxes thereon shall be distributed to the several products in accordance with their relative value at the time of separation.

(o) *Stock in process.* "Stock in process" means intermediate products which are carried over from one manufacturing period to the next, and includes products which were reintroduced into the refining process before removal from the refinery subzone as a final product.

(p) *Time of separation.* "Time of separation" means the period beginning with the start of production and ending with the removal of the final product from the refinery subzone. The "time of separation" of a final product coincides with its "manufacturing period" (see § 146.92(i)).

(q) *Unique identifier.* "Unique identifier", as defined in § 146.1(b)(19) of this part, must include:

(1) An alpha digit denoting zone status. Domestic feedstock shall be denoted with the letter "D", privileged foreign feedstock with the letter "P", nonprivileged foreign feedstock with the letter "N", and zone-restricted feedstock with the letter "Z" and,

(2) A six-digit number showing the date of receipt (month, day, and year).

§ 146.93 Inventory control and recordkeeping system.

(a) *General.* The refiner must maintain an inventory control and recordkeeping system on a current basis, in conformance with this subpart and the applicable requirements of subpart B of this part. Records for each receipt shall be kept by class, type and unique identifier for each receipt or foreign and domestic feedstock.

(1) *Unique identifier.* Once the numerical sequence of the date of receipt contained in the unique identifier is selected (see § 146.92(q)), the refiner must use this sequence consistently.

(2) *Audit trail.* The records must provide a clear audit trail, showing the actual movement of feedstock through each stage of the inventory and refining process, that is, from admission, through introduction to the distillation or processing unit, to the removal of the final product from the subzone.

(b) *Foreign status feedstock*—(1) *Admission to subzone.* The subzone refiner shall prepare and file with the district director an application and permit for admission on Customs Form 214 for each receipt of foreign status feedstock, giving its date of admission, the type and class of feedstock admitted, and assigning a unique identifier to it. The admission form for each receipt of foreign status feedstock must also include at least the following additional information:

(i) The estimated or actual total quantity received (in barrels), and temperature converted to a weight measurement;

(ii) Country of origin;

(iii) Cost per barrel (supported by an invoice);

(iv) Harmonized Tariff Schedule of the United States (HTSUS) number and duty rate; and,

(v) Zone status designation code.

(2) *Inventory loss or gain.* Following the manufacturing period, inventory records shall be kept, which show the amount of loss or gain with respect to the production of final products.

(c) *Domestic status feedstock.*—(1) *Adminission to subzone.* Each subzone refiner shall maintain a record of each receipt of domestic status feedstock, containing at least the following information:

(i) Admission date and unique identifier assigned;

(ii) Feedstock type and class;

(iii) Total quantity received (in barrels); and

(iv) Zone status.

(2) *Weekly reporting.* The subzone refiner shall file with the district director a weekly report on Customs Form 214, listing the receipts of domestic feedstock into the subzone for the previous calendar week.

(d) *Attribution*—(1) *Producibility.* The producibility method of attribution, the industry standards of potential production for which are contained in the tables published in T.D. 66–16, requires that records be kept to attribute final products to those feedstocks identified by unique identifier, which have entered the production process during the current or prior manufacturing periods, and must convert volume measurements therefore to weight measurements in order to account for all feedstocks put into process (see §§ 146.97 and 146.99(a)).

(2) *Other inventory method.* A refiner may request approval of a different inventory control method. Customs will consider such request under the rulemaking procedures set forth in 5 U.S.C. 553.

(3) *Stock in process.* The method of recording and attributing stock in process in a subzone refinery must be included in the refiner's procedures manual together with examples illustrating the method.

(4) *Feedstock not eligible for attribution.* Feedstock or intermediate product which is admitted to a refiner subzone, but which is not used in the refinery, is not eligible for attribution to any final product.

(e) *Removal of final product.* Each final product removed from the subzone shall have relative value assigned, and be attributed to a feedstock which has been shown to have entered into the production process during the manufacturing period from which such product was produced.

§ 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock introduced into production.* The refiner must record the date and amount of each freedstock actually introduced into the production process of the refinery in order to establish the start of the manufacturing period for that feedstock. If a feedstock is not introduced into the refinery's crude distillation unit, the refiner must record the processing unit into which the feedstock is first introduced, the date of introduction, and the actual amount introduced. The unique identifier must be used in this connection in the refiner's records.

(b) *Final product removed from subzone.* The refiner must record the date and amount of each final product that is removed from the refiner's subzone. This date establishes the end of the manufacturing period. The refiner must record the unique identifier of the feedstock attributed to the final product.

(c) *Removals during calendar week.* Any removals of final product during a calendar week will be considered to have occurred on the last day of that week for purposes of attribution as well as for the calculation of the relative value of two or more final products attributed to a given receipt of privileged foreign feedstock.

§ 146.95 Feedstock inventories.

(a) *Accountability.* Feedstock inventories must be accounted for by type, class and unique identifier. Attribution of inventory to production must be made for feedstock within each type, class and zone status by means of the unique identifier, and, under the producibility method, shall not exceed the industry standards of potential production published in T.D. 66–16. If using producibility, the refiner must convert volume measurements to weight measurements using American Petroleum Institute (API) conversion factors.

(b) *Fungible feedstocks.* Fungible feedstock must be attributed by means of a unique identifier on a First-In-First Out (FIFO) basis, that is, the oldest such identifier for feedstock of the same type, class and zone status, must be selected and its inventory quantity reduced accordingly, unless through some alternate means of identification approved in advance by customs, specificity or identity of the Product can otherwise be shown.

§ 146.96 Subzone activity reports.

The subzone refiner shall prepare an activity report for the period covered by an entry summary (CF 7501), which lists all admissions to, and transfers from, the subzone. The refiner shall retain the report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. While there is no form specified for the report, it should include the following information:

(a) Product shipment report;
(b) Inventory disposition report;
(c) Duty and user fee report; and,
(d) Cumulative entry activity report.

§ 146.97 Producibility.

(a) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility inventory method are contained in tables published in T.D. 66–16. With these tables, a subzone refiner may attribute final products removed from the subzone to feedstocks, by means of their unique identifiers, which have entered the production process during the current or a prior manufacturing period on a converted weight basis.

(b) *Attribution to product or feedstock not listed in T.D. 66–16.* For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66–16, the refiner must submit a proposed attribution schedule, supported by a technical memorandum, to Customs. Customs will review the submission to determine whether amendment of T.D. 66–16 is warranted. Such requests for amendment of T.D. 66–16 shall be submitted to the Assistant Commissioner, Office of Commercial Operations prior to liquidation of any entry of final product or its removal from the subzone for exportation, in accordance with such attribution. If a refiner elects to show attribution on a producibility basis, but fails to keep records on that basis, Customs shall use the refiner's actual production records to determine attribution and any necessary relative value calculation.

Example

Day 1

Transfer, within the refinery subzone, from one or more storage tanks to the crude distillation unit:
50,000 pounds privileged foreign (PF) class II crude oil.
50,000 pounds PF class III crude oil.
50,000 pounds domestic status class III crude oil.

Day 20

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 20. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.D. 66–16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds (50,000×.30). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds (50,000×.40). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported. 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21

Transfer, within the refinery subzone, from one or more storage tanks to the crude oil distillation unit:
50,000 pounds PF status class I crude oil.
50,000 pounds PF status class IV crude oil.

Day 40

Removal from the refinery subzone:
30,000 pounds of motor gasoline for consumption.
10,000 pounds of jet fuel sold to the U.S. Air Force for use in military aircraft.
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.
10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 40, the period of manufacture is Day 1 to Day 40. If the refiner chooses to attribute the crude oils that entered production on Day 21 as the designated sources of the products removed on Day 40 using the production standards published in T.D. 66–16, the manufacturing period is Day 21 to Day 40. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 40 and the manufacturing period from Day 21 to Day 40, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production

of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that entered production on Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66–16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000×.20). Likewise, the class IV crude oil could produce aviation gasoline in an amount up to 8,500 pounds (50,000×.17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000—5,000×.91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the U.S. Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil (32,300×.65). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. § 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of 9,812 pounds of jet fuel (22,300×.44). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000×.50).

§ 146.98 Relative value.

(a) *Required.* A relative value calculation is required by law for privileged foreign merchandise (see § 146.92(n)), when two or more products are separated therefrom. The refiner must determine whether the final product could have been produced from the foreign or domestic feedstock actually used during the manufacturing period of that product. If the final product is determined to be produced from a privileged foreign feedstock, the refiner must calculate its applicable relative value.

(b) *Acceptable methods for computing relative value.* The following are acceptable methods for computing relative values for final products removed from a refinery subzone:

(1) *Relative value at time of shipment.* Under this method, only products that have been refined and removed from the subzone during the manufacturing period are used in the relative value computation.

(2) *Relative value for the manufacturing period.* Under this method, only products produced during the manufacturing period are used in the relative value computation. This method requires stacking relative values within each unique identifier until time of removal.

(3) *Relative value at time of reconciliation.* Under this method, products attributed to a unique identifier over its life would be used in a relative value computation, and adjustments made for the duty and user fees paid at time of entry. This method requires a relative value calculation at time of shipment or production to determine the estimated duties and user fees to be paid. This method allows use of one set of product values during the life of the foreign feedstock receipt. Values are adjusted to reflect average values for the applicable manufacturing period, with duty/fee refunded or paid as appropriate.

(c) *Consistent Use Required.* The refiner must use the selected method consistently.

§ 146.99 Methods of attribution.

(a) *Producibility*—(1) *General.* A subzone refiner must attribute the source of each product removed. The refiner is limited in this regard to feedstocks actually used during the manufacturing period for the final product, and only to the extent that the quantity of such product removed could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66–16. Once attribution is made for a particular removed product, that attribution is binding and may not be changed. Subsequent attributions of feedstock to product removed must take prior attributions into account. Each refiner shall keep records showing how each attribution was made.

(2) *Attribution to privileged foreign feedstock; relative value.* If a removed product is attributed to a privileged foreign status feedstock receipt, and that removed product is the result of a process that involved the separation of that feedstock into one or more other products, the refiner must distribute the liquidated duties and determined taxes on the feedstock to each such product removed for each manufacturing period. Because the time of separation is legally defined as the entire manufacturing period (see § 146.92 (i) and (p)), products attributed to one receipt of privileged foreign status feedstock, and removed during two or more manufacturing periods, will require successive relative value calculations if the average per unit value of each product differs among the respective manufacturing periods (see § 146.98(b)).

(b) *Actual production records.* A refiner may use his actual refinery production records to attribute the feedstocks used to the removed products. Customs shall accept the refiner's recordation conventions to the extent that the refiner demonstrates that it actually uses the conventions in its refinery operations. Whatever convention is elected by the refiner, it must be used consistently in order to be acceptable to Customs.

Example. If the refiner mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials.

If, in the alternative, the refiner assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

(c) *Other inventory control methods.* Customs will consider any other inventory control methods that protect the revenue. Protection of the revenue requires that any doubt be resolved in favor of the Government. No other method will be approved unless the refiner can demonstrate that the method will protect the revenue, that it will be less cumbersome for Customs to administer than either the producibility method (T.D. 66–16), or the actual production records of the refiner, and that it will meet generally accepted accounting principles (GAAP). Any

request shall be approved by rulemaking under 5 U.S.C. 553.

Carol Hallett,

Commissioner of Customs.

Approved: June 16, 1992.

Dennis M. O'Connell,

Acting Assistant Secretary of the Treasury (Enforcement).

[FR Doc. 92-18759 Filed 8-7-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[EE-6-92]

RIN 1545-AQ76

Nondiscrimination Requirements for Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend final regulations under sections 401(a)(4), 410(b), and certain related nondiscrimination requirements. The proposed amendments delay the effective date of the final regulations in order to provide the public with additional time to comply with the regulations and to provide the Service and Treasury with additional time to consider comments on further simplification and clarification of the regulations. These proposed amendments will affect sponsors of and participants in tax-qualified retirement plans.

DATES: Written comments must be received by October 9, 1992.

ADDRESSES: Send written comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE-6-92), Washington, DC 20044. In the alternative, comments may be hand delivered to: Internal Revenue Building, room 5228, 1111 Constitution Ave., NW., Attention: CC:CORP:T:R (EE-6-92), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson at 202-622-4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Final regulations under sections 401(a)(4), 401(a)(5), 401(a)(17), 401(l), 410(b), and 414(s) of the Internal Revenue Code (Code) were published in the **Federal Register** on September 19, 1992 (56 FR 47524). Final regulations under sections 401(a)(26) and 414(r) were published in the **Federal Register** on December 4, 1991 (56 FR 63410). Final regulations under section 401(k), 401(m), and 402(a) were published in the **Federal Register** on August 15, 1991 (56 FR 40507).

Explanation of Provisions

These proposed regulations extend the effective date of the final regulations under sections 401(a)(4), 401(a)(5), 401(a)(17), 401(l), 410(b), 414(r), and 414(s) of the Code to the first day of plan years beginning on or after January 1, 1994. These regulations are proposed to be effective as if they were published with the final regulations on September 19, 1991.

For plans maintained by organizations exempt from income taxation under section 501(a), these proposed regulations extend the effective date of the final regulations listed in the preceding sentence to the first day of plan years beginning on or after January 1, 1996. For governmental plans, within the meaning of section 414(d), these proposed regulations provide that the relevant nondiscrimination requirements, including sections 401(a)(26), 401(k), and 401(m), are deemed to be satisfied until the first day of plan years beginning on or after the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. Once the deemed satisfaction period is over, governmental plans must comply with the relevant nondiscrimination regulations. It should be noted that the deemed satisfaction period for sections 401(a)(26), 401(k), and 401(m) (and the coordinating change to the regulations under section 402(a)) applies only to governmental plans, and the effective dates of regulations under those sections are not changed for any other plans.

For plan years beginning before the extended effective dates, these proposed regulations provide that taxpayers may rely on a reasonable, good faith interpretation of sections 401(a)(4), 401(a)(5), 401(a)(17), 401(l), 410(b), 414(r), and 414(s). A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of those sections if it is operated in accordance with the final regulations. To facilitate reliance on these proposed regulations, the Service is issuing Notice 92-36, 1992-35 I.R.B., dated Aug. 31, 1992, which extends the expiration date of the remedial amendment period under section 401(b) and the relief provided in Notice 91-38, 1991-2 C.B. 636, until the end of the first plan year in which these regulations are proposed to be effective.

In addition, the Notice provides special rules for determining whether a plan is maintained by an organization exempt from income taxation under section 501(a), and thus eligible for the extended effective date under these proposed regulations.

As stated in prior guidance, the Service and the Treasury, in the near future, will propose additional modifications to simplify the final regulations (see Announcement 92-81, 1992-22 I.R.B. 56; Notice 92-31, 1992-29 I.R.B. 6). The proposed regulations published here, however, are intended solely to extend the effective dates in the final regulations, and no inferences should be drawn from these proposed regulations as to the nature of future modifications. When finalized, these proposed regulations and all other proposed modifications to the regulations will be coordinated.

In addition, these proposed regulations do not specifically amend any examples in the final regulations that include dates. These examples are deemed to be amended, however, as necessary to conform to the effective dates in these proposed regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Written Comments

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal author of these regulations is Rebecca Wilson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the

Service and Treasury Department participated in their development.

List of Subject in 26 CFR 1.401–0 through 1.419A–2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. THe authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401–4 is amended by revising the section heading and paragraph (d) to read as follows:

§ 1.401–4 Discrimination as to contributions or benefits (before 1994).

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, the provisions of this section do not apply to plan years beginning on or after January 1, 1994. For rules applicable to plan years beginning on or after January 1, 1994, see §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(2) In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), the provisions of this section do not apply to plan years beginning on or after January 1, 1996. For rules applicable to plan years beginning on or after January 1, 1996, See §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

Par. 3. Section 1.401(a)–4 is amended by revising the section heading and paragraph A–6(a) to read as follows:

§ 1.401(a)–4 Optional forms of benefit (before 1994).

* * * * *

A–6: (a) *General effective date*—(1) *In general.* Except as otherwise provided in this section, the provisions of this section are effective January 30, 1986, and do not apply to plan years beginning on or after January 1, 1994. For rules applicable to plan years beginning on or after January 1, 1994, see §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), except as otherwise provided in this section, the provisions of this section are effective January 30, 1986, and do not apply to plan years beginning on or after January 1, 1996. For rules applicable to plan years beginning on or after January 1, 1996, see §§ 1.401–(a)(4)–1 through 1.401(a)(4)–13.

* * * * *

Par. 4. Section 1.401(a)(4)–0 is amended by:

(1) Adding an entry for § 1.401(a)(4)–7, paragraph (b)(4)(ii)(C) as set forth below; and

(2) Revising the entry for § 1.401(a)(4)–13, paragraph (a), and adding entries for paragraphs (a)(1), (2), and (3) as set forth below.

§ 1.401(a)(4)–0 Table of contents.

* * * * *

§ 1.401(a)(4)–7 * * *

* * * * *

(b) * * *
(4) * * *
(ii) * * *
(C) Applicable plan years.

* * * * *

§ 1.401(a)(4)–13 * * *

(a) Effective dates.
(1) In general.
(2) Plans of tax-exempt organizations.
(3) Compliance during transition period.

* * * * *

Par. 5. In § 1.401(a)(4)–6, paragraphs (b)(3)(ii), (b)(6), and (c)(4)(iii) are revised to read as follows:

§ 1.401(a)(4)–6 Contributory defined benefit plans.

* * * * *

(b) * * *
(3) * * *

(ii) *Minimum benefit requirement.* This requirement is satisfied if the plan provides that, in plan years beginning on or after the effective date of these regulations, as set forth in § 1.401(a)(4)–13(a) and (b), each employee will accrue a benefit that equals or exceeds the sum of—

(A) The accrued benefit derived from employee contributions made for plan years beginning on or after the effective date of these regulations, determined under the plan benefit formula without regard to that portion of the formula designed to satisfy the minimum benefit requirement of this paragraph (b) (3)(ii).

* * * * *

(6) *Cessation of employee contributions.* If a contributory DB plan provides that no employee contributions may be made to the plan after the last day of the first plan year beginning on or after the effective date of these regulations, as set forth in § 1.401(a)(4)–13(a) and (b), the plan may treat an employee's total benefit as entirely employer provided.

(c) * * *
(4) * * *

(iii) All employees in the plan are permitted to make employee contributions under the plan at a uniform rate with respect to all compensation, beginning no later than the last day of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)–13(a) and (b); and

* * * * *

Par. 6. Section 1.401(a)(4)–7(b)(4)(ii)(B) is revised and paragraph (C) is added to read as follows:

§ 1.401(a)(4)–7 Imputation of permitted disparity.

* * * * *

(b) * * *
(4) * * *
(ii) * * *

(B) *Cumulative permitted disparity limit.* Notwithstanding paragraph (b)(4)(ii)(A) of this section, the permitted disparity rate is zero for an employee who has benefited under a defined benefit plan taken into account under § 1.401(l)–5(a)(3) for a plan year described in paragraph (b)(4)(ii)(C) of this section if imputing permitted disparity would result in a cumulative disparity fraction for the employee, as defined in § 1.401(l)–5(c)(2), that exceeds 35. An employee is not treated as benefiting under a defined benefit plan for a plan year described in paragraph (b)(4)(ii)(C) of this section if the employer can establish that for that plan year the defined benefit plan was not a section 401(l) plan and did not impute permitted disparity under this section. For purposes of this paragraph (b)(4)(ii)(B), a DB/DC plan (as described in § 1.401(a)(4)–9(a)) and a target benefit plan (that satisfies § 1.401(a)(4)–8(b)(3)) are treated as defined benefit plans, but a cash balance plan (that satisfies § 1.401(a)(4)–8(c)(3)) is treated as a defined contribution plan. Thus, for example, if, for any plan year described in paragraph (b)(4)(ii)(C) of this section, an employee benefits under a defined contribution plan that is included in a DB/DC plan that imputes permitted disparity under this section, the employee is treated as benefiting under a defined benefit plan.

(C) *Applicable plan years.* In applying paragraph (b)(4)(ii)(B) of this section, for purposes of determining whether an employee benefits under a defined benefit plan, the applicable plan years are all plan years that begin on or after

one year from the first day of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)–13 (a) and (b).

* * * * *

Par. 7. In § 1.401(a)(4)–12, under the definition for "QSUPP," paragraph (2)(iv), the last sentence is revised to read as follows:

§ 1.401(a)(4)–12 Definitions.

* * * * *

QSUPP * * *

(2) * * *

(IV) * * * If, by the end of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)–13 (a) and (b), an amendment is made to a social security supplement in existence on September 19, 1991, the employer may treat the accrued portion of the social security supplement, as determined under the plan without regard to amendments made after September 19, 1991, as included in the employee's accrued social security supplement, provided that the remainder of the social security supplement is accrued under the otherwise applicable method.

* * * * *

Par. 8. Section 1.401(a)(4)–13 is amended by: (1) Revising paragraph (a) as set forth below;

(2) Revising the first sentence of paragraph (b) as set forth below; and

(3) Revising paragraph (d)(6)(ii)(A) as set forth below.

§ 1.401(a)(4)–13 Effective dates and fresh-start rules.

(a) *Effective dates.* (1) *In general.* Except as otherwise provided in this section, §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraphs (a) (1) and (2) of this section, and on or after the first day of the first plan year to which the amendments made to section 410(b) by section 1112(a) of the Tax Reform Act of 1986 ("TRA '86") apply, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4), taking into account pre-existing guidance and the amendments made by TRA '86 to related provisions of the Code (including, for example, sections 401(*l*), 401(a)(17), and 410(b)). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) will generally be determined on the basis of all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) if it is operated in accordance with the terms of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(b) *Effective date for governmental plans.* In the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), section 401(a)(4) is considered satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously.

* * *

* * * * *

(d) * * *

(6) * * *

(ii) * * *

(A) Select a single plan year beginning after the fresh-start date but beginning not later than the last day of the first plan year to which these regulations apply under paragraph (a) or (b) of this section.

* * * * *

Par. 9. Section 1.401(a)(5)–1 is amended by: (1) Removing paragraph (e)(7);

(2) Redesignating paragraph (e)(8) as paragraph (e)(7); and

(3) Adding a new paragraph (h) as set forth below.

§ 1.401(a)(5)–1 Special rules relating to nondiscrimination requirements.

* * * * *

(h) *Effective date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section is effective for plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), this section is effective for plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraphs (h)(1) and (h)(2) of this section, and on or after the first day of the first plan year to which the amendments made to section 401(a)(5) by section 1111(b) of the Tax Reform Act of 1986 ("TRA '86") apply, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(5), taking into account pre-existing guidance and the amendments made by TRA '86 to related provisions of the Code. Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(a)(5) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(a)(5) if its is operated in accordance with the terms of this section.

Par. 10. Section 1.401(a)(17)–1 is amended by:

(1) Revising paragraph (d)(1)(iii) as set forth below;

(2) Removing the first two sentences of paragraph (d)(2) and adding three sentences in their place as set forth below; and

(3) Revising paragraph (e)(2)(iii) as set forth below.

§ 1.401(a)(17)–1 Limitation on annual compensation.

* * * * *

(d) * * *

(1) * * *

(iii) *Exception for governmental plans.* In the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), section 401(a)(17) is considered satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph (d)(1)(iii), the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

(2) *Regulatory effective date.* This § 1.401(a)(17)–1 applies to plan years beginning on or after January 1, 1994. However, in the case of a plan maintained by an organization that is exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), this § 1.401(a)(17)–1 applies to plan years beginning on or after January 1, 1996. For plan years beginning before the effective date of these regulations

and on or after the first day of the first plan year to which section 401(a)(17) applies, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(17). * * *

* * * * *

(e) * * *

(2) * * *

(iii) "Section 401(a)(17) fresh-start date" means a fresh-start date as defined in § 1.401(a)(4)–12 not earlier than the last day of the last plan year beginning before the statutory effective date, as set forth in paragraph (e)(2)(i) of this section, and not later than the last day of the last plan year beginning before the first plan year to which this § 1.401(a)(17)–1 applies.

* * * * *

Par. 11. Section 1.401(a)(26)–9(b)(1) is revised to read as follows:

§ 1.401(a)(26)–9 Effective dates and transition rules.

* * * * *

(b) * * *

(1) *Governmental plans and certain section 403(b) annuities.* Section 401(a)(26) is treated as satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, in the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans). For purposes of this paragraph (b)(1), the term "governing body with authority to amend the plan" means the legislature, board commission, council, or other governing body with authority to amend the plan.

* * * * *

Par. 12. Section 1.401(k)–O is amended by revising the entry for paragraph (h)(4)(ii) of § 1.401(k)–1 to read as follows:

§ 1.401(k)–0 Certain cash or deferred arrangements, table of contents.

* * * * *

§ 1.401(k)–1 * * *

(h) * * *

(4) * * *

(ii) Plan years beginning before January 1, 1996.

* * * * *

Par. 13. Section 1.401(k)–1 is amended by revising paragraph (h)(4)(ii) to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(h) * * *

(4) * * *

(ii) *Plan years beginning before January 1, 1996.* The following rules apply for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, to a governmental plan described in section 414(d) that is not a collectively bargained plan and includes a nonqualified cash or deferred arrangement. For purposes of this paragraph (b)(1), the term "government body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

* * * * *

Par. 14. Section 1.401(*l*)–O is amended by:

(1) Adding entries for § 1.401(*l*)–5, paragraphs (c)(1) (v) and (vi), as set forth below;

(2) Revising the entries for § 1.401(*l*)–6, paragraphs (a) through (c), as set forth below; and

(3) Removing the entry for § 1.401(*l*)–6, paragraph (d).

§ 1.401(l)–0 Table of contents.

* * * * *

§ 1.401(l)–5 * * *

* * * * *

(c) * * *

(1) * * *

(v) Applicable plan years.

(vi) Transition rule for defined contribution plans.

* * * * *

§ 1.401 (l)–6 * * *

(a) Statutory effective date.

(1) In general.

(2) Collectively bargained plans.

(b) Regulatory effective date.

(1) In general.

(2) Plans of tax-exempt organizations.

(3) Defined contribution plans.

(4) Defined benefit plans.

(c) Compliance during transition period.

Par. 15. Section 1.401(l)–5, paragraphs (c)(1)(i) through (iii), are revised and new paragraphs (c)(1) (v) and (vi) are added to read as follows:

§ 1.401(l)–5 Overall permitted disparity limits.

* * * * *

(c) *Cumulative permitted disparity limit*—(1) *In general*—(i) *Employees who benefit under defined benefit plans.* In the case of an employee who has benefited under one or more defined benefit plans for a plan year described in paragraph (c)(1)(v) of this section, the cumulative permitted disparity limit is satisfied if the employee's cumulative disparity fraction, as defined in paragraph (c)(2) of this section, does not exceed 35.

(ii) *Employees who do not benefit under defined benefit plans.* In the case of an employee who has not benefited under a defined benefit plan for any plan year described in paragraph (c)(1)(v) of this section, the cumulative permitted disparity limit is satisfied.

(iii) *Certain plan years disregarded.* For purposes of this paragraph (c), an employee is not treated as benefiting under a defined benefit plan for a plan year described in paragraph (c)(1)(v) of this section if the employer can establish that for that plan year the defined benefit plan was not a section 401(1) plan and did not impute permitted disparity under § 1.401(a)(4)–7

* * * * *

(v) *Applicable plan years.* In applying paragraphs (c)(1) (i), (ii), and (iii) of this section, for purposes of determining whether an employee benefits under a defined benefit plan, the applicable plan years are all plan years that begin on or after the regulatory effective date, as set forth in § 1.401(*l*)–6(b), or, in the case of governmental plans, as set forth in § 1.401(a)(4)–13(b).

(vi) *Transition rule for defined contribution plans.* A defined contribution plan is deemed to satisfy the cumulative permitted disparity limit for the first plan year to which these regulations apply, as set forth in § 1.401(*l*)–6(b), or, in the case of governmental plans, as set forth in § 1.401(a)(4)–13(b)..

* * * * *

Par. 16. Section 1.401(l)–6 is revised to read as follows:

§ 1.401(l)–6 Effective dates and transition rules.

(a) *Statutory effective date*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, section 401(a)(5)(C) is effective for plan years beginning on or after January 1, 1989, and section 401(l) is effective with respect to plan years, and benefits attributable to plan years, beginning on or after January 1, 1989. The preceding sentence is applicable to a plan without regard to whether the plan was in existence as of a particular date.

(2) *Collectively bargained plans.* (i) In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, sections 401(a)(5) and 401(l) are applicable for

plan years beginning on or after the later of—

(A) January 1, 1989; or

(B) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986). However, notwithstanding the preceding sentence, sections 401(a)(5) and 401(l) apply to plans described in this paragraph (a)(2) no later than the first plan year beginning after January 1, 1991.

(ii) For purposes of paragraph (a)(2)(i)(B) of this section, a change made after October 22, 1986, in the terms or conditions of a collectively bargained plan, pursuant to a collective bargaining agreement ratified before March 1, 1986, is not treated as a change in the terms and conditions of the plan.

(iii) In the case of a collectively bargained plan described in paragraph (a)(2)(i) of this section, if the date in paragraph (a)(2)(i)(B) of this section precedes November 15, 1988, then the date in this paragraph (a)(2) is replaced with the date on which the last of any collective bargaining agreements in effect on November 15, 1988, terminates, provided that the plan complies during this period with a reasonable, good faith interpretation of section 401(l).

(iv) Whether a plan is maintained pursuant to a collective bargaining agreement is determined under the principles applied under section 1017(c) of the Employee Retirement Income Security Act of 1974. See H.R. Rep. No. 1280, 93d Cong., 2d Sess. 266 (1974). In addition, a plan is not treated as maintained under a collective bargaining agreement unless the employee representatives satisfy section 7701(a)(46) of the Internal Revenue Code after March 31, 1984. See § 301.7701–17T of this chapter for other requirements for a plan to be considered to be collectively bargained.

(b) *Regulatory effective date*—(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section, §§ 1.401(l)–1 through 1.401(l)–6 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by an organization exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(l)–1 through 1.401(l)–6 apply to plan years beginning on or after January 1, 1996.

(3) *Defined contribution plans.* A defined contribution plan satisfies section 401(l) with respect to a plan year beginning on or after the effective date of these regulations, as set forth in paragraphs (b)(1) and (b)(2) of this section, if it satisfies the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 for the plan year.

(4) *Defined benefit plans.* A defined benefit excess plan or offset plan satisfies section 401(l) with respect to all plan years, and benefits attributable to all plan years, beginning on or after the effective date of these regulations, as set forth in paragraphs (b)(1) and (b)(2) of this section, by satisfying the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 and the requirements of § 1.401(a)(4)–13(c), using as the fresh-start date the last day of any plan year ending on or after December 31, 1988, and beginning before the effective date of these regulations. A defined benefit excess plan or offset plan that does not satisfy section 401(l) with respect to all plan years, and benefits attributable to all plan years, beginning on or after the effective date of these regulations may, under the rules of § 1.401(a)(4)–13(c), satisfy section 401(l) for plan years beginning after a fresh-start date by satisfying the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 after the fresh-start date. See § 1.401 (a)(4)–13 (c)(5)(iii) and (d), which allows increases in each employee's benefit accrued as of the fresh-start date to reflect increases in the employee's compensation if the plan uses a fresh-start date before the effective date applicable to the plan under § 1.401(a)(4)–13 (a) or (b).

(c) *Compliance during transition period.* For plan years beginning on or after January 1, 1989, and before the effective date of these regulations, as set forth in paragraph (b) of this section, a plan must be operated in accordance with a reasonable good faith interpretation of section 401(l). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(l) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(l) if it is operated in accordance with the terms of §§ 1.401(l)–1 through 1.401(l)–5.

Par. 17. Section 1.401(m)–1(g)(4) is revised to read as follows:

§ 1.401(m)–1 Employee and matching contributions.

* * * * *

(g) * * *

(4) *State and local government plans.* A governmental plan described in section 414(d), including a plan subject to section 403(b)(12)(A)(i) (nonelective plan), is treated as satisfying section 401(m) for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph (g)(4), the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

* * * * *

Par. 18. Section 1.402(a)–1 is amended by:

(1) Revising the heading and text of paragraph (d)(3)(iv) as set forth below; and

(2) Adding a paragraph (d)(3)(v) as set forth below.

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

* * * * *

(d) * * *

(3) * * *

(iv) *Special rule for collectively bargained plans.* For plan years beginning before January 1, 1993, a nonqualified cash or deferred arrangement will be treated as satisfying section 401(k)(3) solely for purposes of paragraph (d)(2)(i) of this section if it is part of a plan (or portion of a plan) that automatically satisfies section 401(a)(4) under § 1.401(k)–1(a)(7), relating to certain collectively bargained plans.

(v) *Special rule for governmental plans.* For plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, in the case of governmental plans described in section 414(d), a nonqualified cash or deferred arrangement will be treated as satisfying section 401(k)(3) solely for purposes of paragraph (d)(2)(i) of this section if it is part of a plan adopted by a state or local government before May 6, 1986. For purposes of this paragraph (d)(3)(v), the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

Par. 19. Section 1.410(b)–0 is amended by revising the headings for §§ 1.410(b)–1, 1.410(b)–2, and the entries for 1.410(b)–10, paragraphs (a) through (c), and removing the entries for 1.410(b)–10,

paragraphs (d) and (e), to read as follows:

§ 1.410(b)–0 Table of contents.

* * * * *

§ 1.410(b)–1 Minimum coverage requirements (before 1994).

* * * * *

§ 1.410(b)–2 Minimum coverage requirements (after 1993).

* * * * *

§ 1.410(b)–10 Effective dates and transition rules.

(a) Statutory effective dates.
(1) In general.
(2) Special statutory effective date for collective bargaining agreements.
(i) In general.
(ii) Example.
(iii) Plan maintained pursuant to a collective bargaining agreement.
(3) Governmental plans.
(i) Plans subject to section 403(b)(12)(A)(i).
(ii) Other governmental plans.
(b) Regulatory effective dates.
(1) In general.
(2) Plans of tax-exempt organizations.
(c) Compliance during transition period.

Par. 20. Section 1.410(b)–1 is amended by revising the section heading to read as follows:

§ 1.410(b)–1 Minimum coverage requirements (before 1994).

Par. 21. Section 1.410(b)–2 is amended by:

(1) Revising the section heading as set forth below;

(2) Revising the last sentence of paragraph (d) as set forth below; and

(3) Revising the last sentence of paragraph (e) and adding a sentence at the end of paragraph (e) as set forth below.

§ 1.410(b)–2 Minimum coverage requirements (after 1993).

* * * * *

(d) * * * For plan years beginning before the effective date set forth in § 1.410(b)–10(a)(3)(i), any plan described in section 410(c)(1)(A) (regarding governmental plans) satisfies the requirements of this section.

(e) * * * For plan years beginning before the effective date set forth in § 1.410(b)–10(a)(3)(ii), any plan described in section 410(c)(1)(A) (regarding governmental plans) satisfies the requirements of this section and is thus treated as satisfying the requirements of section 401(a)(3) as in effect on September 1, 1974. See § 1.410(b)–10(b)(2) for a special rule for plans of tax-exempt organizations.

* * * * *

Par. 22. Section 1.410(b)–6 is amended by:

(1) Revising the last sentence in paragraph (d)(2)(ii)(A) as set forth below; and

(2) Adding a sentence at the end of paragraph (d)(2)(ii)(B) as set forth below.

§ 1.410(b)–6 Excludable employees.

* * * * *

(d) * * *
(2) * * *
(ii) * * *
(A) * * * For plan years beginning before January 1, 1995 (or, in the case of a plan described in § 1.410(b)–10 (a)(3) or (b)(2), for any plan year beginning before one year after the applicable effective date of these regulations), any employee may be treated as a collectively bargained employee for a plan year if a collective bargaining agreement required the employee to benefit, for that year, under a multiemployer plan maintained pursuant to the collective bargaining agreement.

(B) * * * For plan years beginning before January 1, 1995 (or, in the case of a plan described in § 1.410(b)–10 (a)(3) or (b)(2), for any plan year beginning before one year after the applicable effective date of these regulations), any employee may be treated as a collectively bargained employee for a plan year if a collective bargaining agreement required the employee to benefit, for that year, under a multiemployer plan maintained pursuant to the collective bargaining agreement.

* * * * *

Par. 23. Section 1.410(b)–10 is revised to read as follows:

§ 1.410(b)–10 Effective dates and transition rules.

(a) *Statutory effective dates*—(1) *In general.* Except as set forth in paragraph (a)(2) of this section, the minimum coverage rules of section 410(b) as amended by section 1112 of the Tax Reform Act of 1986 apply to plan years beginning on or after January 1, 1989.

(2) *Special statutory effective date for collective bargaining agreements*—(i) *In general.* As provided for by section 1112(e)(2) of the Tax Reform Act of 1986, in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, the minimum coverage rules of section 410(b) as amended by section 1112 of the Tax Reform Act of 1986 do not apply to employees covered by any such agreement in plan years beginning before the earlier of—

(A) January 1, 1991; or

(B) The later of January 1, 1989, or the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986). For purposes of this paragraph (a)(2), any extension or renegotiation of a collective bargaining agreement, which extension or renegotiation is ratified after February 28, 1986, is to be disregarded in determining the date on which the agreement terminates.

(ii) *Example.* The following example illustrates this paragraph (a)(2).

Example. Employer A maintains Plan 1 pursuant to a collective bargaining agreement. Plan 1 covers 100 of Employer A's noncollectively bargained employees and 900 of Employer A's collectively bargained employees. Employer A also maintains Plan 2, which covers Employer A's other 400 noncollectively bargained employees. The collective bargaining agreement under which Plan 1 is maintained was entered into on January 1, 1986, and expires December 31, 1992. Because Plan 1 is a plan maintained pursuant to a collective bargaining agreement, section 410(b) applies to the first plan year beginning on or after January 1, 1991. In applying section 410(b) to Plan 2, the 100 noncollectively bargained employees in Plan 1 must be taken into account. The deferred effective date for plans maintained pursuant to a collective bargaining agreement is not applicable in determining how section 410(b) is applied to a plan that is not maintained pursuant to a collective bargaining agreement.

(iii) *Plan maintained pursuant to a collective bargaining agreement.* For purposes of this paragraph (a)(2), a plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, if one or more of the agreements were ratified before March 1, 1986. Only plans maintained pursuant to agreements that the Secretary of Labor finds to be collective bargaining agreements and that satisfy section 7701(a)(46) are eligible for the deferred effective date under this paragraph (a)(2). A plan will not be treated as a plan maintained pursuant to one or more collective bargaining agreements eligible for the deferred effective date under this paragraph (a)(2) unless the plan would be a plan maintained pursuant to one or more collective bargaining agreements under the principles applied under section 1017(c) of the Employee Retirement Income Security act of 1974. See H.R. Rep. No. 1280, 93rd Cong. 2d Sess. 266 (1974).

(3) *Governmental plans*—(i) *Plans subject to section 403(b)(12)(A)(i).* In the case of a plan subject to section 403(b)(12)(A)(i) (nonelective plans) that is maintained for an educational organization described in section

403(b)(1)(A)(ii), section 410(b) is considered satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of his section, the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan. See § 1.410(b)–2(d).

(ii) *Other governmental plans.* Any governmental plan described in section 414(d) that is not subject to section 403(b)(12)(A)(i) (nonelective plans) satisfies the requirements of section 410(b) and is treated as satisfying the requirements of section 401(a)(3) as in effect on September 1, 1974, for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. See § 1.410(b)–2(e).

(b) *Regulatory effective dates*—(1) *In general.* Except as otherwise provided in this section §§ 1.410(b)–2 through 1.410(b)–9 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.410(b)–2 through 1.410(b)–9 apply to plan years beginning on or after January 1, 1996, to the extent such plans are subject to section 410(b).

(c) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraph (b) of this section, and on or after the statutory effective date as set forth in paragraph (a) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 410(b). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 410(b) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. If a plan's classification has been determined by the commissioner to be nondiscriminatory and there have been no significant changes in or omissions of a material fact, the classification will be treated as nondiscriminatory for the relevant plan year. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 410(b) if it is operated in accordance with the terms of §§ 1.410(b)–2 through 1.410(b)–9.

Par. 24. Section 1.411(d)–4 is amended by revising the sentence at the end of paragraph A–1(b)(1) to read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–1: * * *

(b) * * *

(1) * * * See § 1.401(a)(4)–4(d) for the definition of an optional form of benefit for plan years beginning on or after January 1, 1994 (or January 1, 1996, in the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans)).

* * * * *

Par. 25. Section 1.414(r)–1 is amended by revising paragraph (d)(9)(i) to read as follows:

§ 1.414(r)–1 Requirements applicable to qualified separate lines of business.

* * * * *

(d) * * *

(9) * * *

(i) *General rule.* The provisions of this section and of §§ 1.414(r)–2 through 1.414(r)–11 apply to plan years and testing years beginning on or after January 1, 1994 (or January 1, 1996, in the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans)).

* * * * *

Par. 26. Section 1.414(s)–1 is amended by revising paragraph (i) to read as follows:

§ 1.414(s)–1 Definition of compensation.

* * * * *

(i) *Effective date and transition rules*—(1) *Statutory effective date.* Section 414(s) applies to years beginning on or after January 1, 1987.

(2) *Regulatory effective date*—(i) *In general.* Except as otherwise provided in paragraph (i)(2)(ii) of this section, §§ 1.414(s)–1(a) through (h) apply to years beginning on or after January 1, 1994.

(ii) *Plans of tax-exempt organizations.* In the case of a plan maintained by an organization that is exempt from income taxation pursuant to section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.414(s)–1 (a) through (h) apply to plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraph (i)(2) of this section, and on or after the statutory effective date as set forth in paragraph (i)(1) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 414(s). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 414(s) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 414(s) (1) and (2) if it is operated in accordance with the terms of §§ 1.414(s)–1 (a) through (h). For years beginning before the effective date of these regulations and on or after the statutory effective date, a definition of compensation is also deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if the definition satisfies the requirements of §§ 1.414(s)–1 (a) through (h) or if the definition satisfies the prior regulation provisions of § 1.414(s)–1T. (See § 1.414(s)–1T as contained in the CFR edition revised as of April 1, 1991.) In addition, for those transition years, a definition of compensation is deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if, based on all the relevant facts and circumstances in effect for the year, use of the definition does not cause discrimination in favor of highly compensated employees.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–18872 Filed 8–7–92; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FDL–4193–1]

RIN 2060–AA96

National Ambient Air Quality Standards for Ozone; Proposed Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed decision.

SUMMARY: In accordance with the provisions of sections 108 and 109 of the

Clean Air Act (Act), as amended, the EPA has conducted a review of the criteria upon which the existing national ambient air quality standards (NAAQS) for ozone (O_3) are based. The revised criteria and supplement are being published simultaneously with the issuance of this proposed decision. The level of the existing primary and secondary standards for O_3 is currently set at 0.12 parts per million (ppm). The standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than 1, as determined by 40 CFR part 50, Appendix H. As a result of the review of health and welfare criteria, the Administrator proposes under section 109(d)(1) that revisions of the primary and secondary standards are not appropriate at this time. In view of ongoing research on the health and welfare effects of O_3 the EPA Plans to proceed as rapidly as possible with the next review of the air quality criteria and standards for O_3.

DATES: The EPA will hold a public hearing on September 1, 1992, 9:30 a.m. to 4:30 p.m. (e.d.t.) Written comments on this proposed decision must be received by October 9, 1992.

ADDRESSES: The public hearing will be held in the EPA Education Center Auditorium, 401 M Street SW., Washington, DC.

Submit comments on the proposed action to: Central Docket Section (A–130), Environmental Protection Agency ATTN: Docket No. A–92–17, 401 M St. S.W., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3 p.m. on weekdays, and a reasonable fee may be charged for copying. For availability of related documents, see Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, MD–12, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: 919–541–5533.

SUPPLEMENTARY INFORMATION:

Public Hearing

Individuals planning to make oral presentations at the hearing should notify John H. Haines, at the above address, at least 7 days prior to the date of the hearing. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements (duplicate copies preferred) should be submitted to the Central Docket Section, Attention: Docket Number A–92–17 at the address in the **ADDRESSES** section.

Availabilty of Related Information

Certain documents are available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Available documents include: Air Quality Criteria for Ozone and Other Photochemical Oxidants (five volumes, EPA 600/8–84–020aF thru eF, August 1986, NTIS No. PB–87–142949, $168.00 paper copy); and the 1989 Staff Paper, Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information (EPA–450/2–92–001, June 1989, NTIS No. PB–92–190446, $43.00 paper copy and $17.00 microfiche). (Add a $3.00 handling charge per order.) The Criteria Document Supplement, Summary of Selected New Information on Effects of Ozone on Health and Vegetation: Supplement to 1986 Air Quality Criteria for Ozone and Other Photochemical Oxidants (EPA/600/8–88–105F) is available at no cost from The Center for Environmental Research Information (CERI), telephone (513) 569–7562. A limited number of copies of other documents generated in connection with this standard review, such as documents pertaining to control techniques for volatile organic emissions from stationary sources, are available and can be obtained from: U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, NC 27711, telephone (919) 541–2777. These and other related documents are also available in the EPA docket identified in the **ADDRESSES** section.

The contents of today's preamble are listed in the following outline.

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I. Background

A. Legislative Requirements

1. The Standards

Two sections of the Act govern the establishment and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which "may reasonably be anticipated to endanger public health and welfare" and to issue air quality criteria for them. These air quality criteria are to accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of a pollutant in the ambient air.

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, is requisite to protect the public health. A secondary standard, as defined in section 109(b)(2), must specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria, is requisite to protect the public welfare from any known or anticipated adverse affects associated with the presence of the pollutant in the ambient air. Welfare effects as defined in section 302(h) [42 U.S.C. 7602(h)] include, but are not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

The U.S. Court of Appeals for the District of Columbia Circuit has held that the requirement for an adequate margin of safety for primary standards was intended to address uncertainties

associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied*, 101 S. Ct. 621 (1980); *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1177 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1737 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, by selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that he finds may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree.

In selecting a margin of safety, the EPA considers such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition only comes into play where no conclusive showing of adverse effects exists, such factors, which involve unknown or only partially quantified risks, have their inherent limits as guides to action. The selection of any numerical value to provide an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1161–62.

Section 109(d)(1) of the Act requires that "not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards and shall make such revisions in such criteria and standards as may be appropriate. Section 109(d)(2)(A) and section 109(d)(2)(B) require that a scientific review committee be appointed and provide that the committee shall complete a review of the criteria and the national primary and secondary ambient air quality standards and shall recommend to the Administrator any revisions of existing criteria and standards as may be appropriate.

The process by which the EPA has reviewed the existing air quality criteria and standards for O_3 under section 109(d) is described in a later section of this notice.

2. Related Control Requirements

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once the EPA has established them. Under title I of the Act (42 U.S.C. 7410), States are to submit, for EPA approval, State implementation plans (SIP's) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with the EPA, also administer the prevention of significant deterioration program (42 U.S.C. 7470–7479) for these pollutants. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal Motor Vehicle Control Program under title II of the Act (42 U.S.C. 7521–7574, which involves controls for automobile, truck, bus, motorcycle, and aircraft emissions; the new source performances standards under section 111 (42 U.S.C. 7411); and the national emission standards for hazardous air pollutants under section 112 (42 U.S.C. 7412).

B. Existing Standards for Ozone

The principal focus of this standard review is on the health and welfare effects of O_3. Ozone produced in the ambient air is commonly referred to as tropospheric O_3. It is chemically identical to stratospheric O_3, which is produced miles above the earth's surface and provides a protective shield from excess ultraviolet radiation. In contrast, tropospheric O_3 produces harmful effects due to its oxidative properties and its proximity to humans, plants, and materials. Ozone is not emitted directly from mobile or stationary sources but, like other photochemical oxidants, commonly exists in the ambient air as an atmospheric transformation product. Ozone formation is the result of chemical reactions of volatile organic compounds (VOC's), nitrogen oxides (NO_x, and oxygen (O_2) in the presence of sunlight and generally at elevated temperatures.

Ozone is a highly reactive gas which at sufficient concentrations can produce a wide variety of harmful effects. At elevated concentrations, O_3 can adversely affect human health, vegetation, materials, economic values, and personal comfort and well-being. Hourly average ambient O_3 levels range from 0.03 ppm in the most remote rural areas to 0.30 ppm and higher in the most polluted urban areas. A detailed discussion of formation, concentrations, and effects of O_3 can be found in the 1986 Air Quality Criteria Document (U.S. EPA, 1986), the Criteria Document Supplement (U.S. EPA, 1992), and the Staff Paper (U.S. EPA, 1989).

On April 30, 1971, the EPA promulgated primary and secondary NAAQS for photochemical oxidants under section 109 of the Act (36 FR 8186). These were set at an hourly average of 0.08 ppm total photochemical oxidants not to be exceeded more than 1 hour per year. On April 20, 1977, the EPA announced (42 FR 20493) the first review and updating of the 1970 Air Quality Criteria Document for Photochemical Oxidants in accordance with section 109(d)(1) of the Act. In preparing the Air Quality Criteria Document, the EPA provided a number of opportunities for external review and comment. The EPA made two drafts of the document available for public comment, and these drafts were peer reviewed by the Subcommittee on Scientific Criteria for Photochemical Oxidants of the EPA Science Advisory Board. The EPA published the final revised Air Quality Criteria for Ozone and Other Photochemical Oxidants on June 22, 1978.

Based on the 1978 revised Air Quality Criteria Document and taking into account the advice and recommendations of the Subcommittee, on June 22, 1978, the EPA proposed (43 FR 16962) revisions to the then-current primary and secondary NAAQS for photochemical oxidants. The proposed changes included raising the primary standard to 0.10 ppm, retaining the 0.08 ppm secondary standard, changing the chemical designation of the standards from photochemical oxidants to O_3, and switching to standards with a statistical (i.e., expected exceedances) form rather than a deterministic form (i.e., not to be exceeded more than x number of times per year).

After taking into account public comments, the EPA announced its final decision on the proposed revisions to the 1971 standards. On February 8, 1979 (44 FR 8202), the final rulemaking revised the level of the primary standard from 0.08 ppm to 0.12 ppm, set the secondary standard identical to the primary standard, changed the chemical designation of the standards from photochemical oxidants to O_3, and revised the definition of the point at which the standard is attained to "when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one as determined by Appendix H."

C. Review of Air Quality Criteria and Standards for Ozone and Other Photochemical Oxidants

In response to requirements of section 109(d) of the Act, on March 17, 1982 (47 FR 11561), the EPA announced that it was undertaking plans to revise the existing 1978 Air Quality Criteria Document for Ozone and Other Photochemical Oxidants and on August 22, 1983, announced (48 FR 38009) that review of primary and secondary standards for O_3 had been initiated. The EPA provided a number of opportunities for review and comment on revised chapters of the Air Quality Criteria Document by organizations and individuals outside the Agency. On November 24, 1982 (47 FR 53119), the EPA announced that its Environmental Criteria and Assessment Office (ECAO) would conduct a public workshop on December 15-17, 1982 for authors and scientific peer reviewers to discuss working draft chapters of a third revision of the Air Quality Criteria Document pertaining to effects of O_3 and other photochemical oxidants on vegetation and materials damage. The EPA announced (48 FR 50157) that a second public workshop to discuss draft chapters on health effects of O_3 was to be held on November 16–18, 1983. The EPA carefully considered comments made at both workshops in preparing the first external review draft, made available (49 FR 29845) on July 24, 1984 for a 90-day public review. On August 6, 1984 (49 FR 31337), the Agency extended the comment period to November 19, 1984. Due to the length and complexity of the document and requests for more time to review it, on November 1, 1984, the Agency further extended the comment period to January 4, 1985 (49 FR 44019).

On February 13, 1985 (50 FR 6049) and on April 2, 1986 (51 FR 11339), the EPA announced two public meetings of the Clean Air Scientific Advisory Committee (CASAC) to be held on March 4–6, 1985 and on April 21–22, 1986, respectively. At these meetings, the CASAC reviewed external review drafts of the Air Quality Criteria Document for Ozone and Photochemical Oxidants. Many individuals and representatives of organizations provided comments for consideration. The EPA placed transcripts of the CASAC meetings in the docket for the 1986 Air Quality Criteria Document (ECAO–CD–81–1). The EPA considered comments received from the public and the CASAC members in preparing the final document. The CASAC sent the Administrator a "closure letter" dated October 22, 1986 indicating that it was satisfied with the final draft of the Air Quality Criteria Document. The letter outlined key issues and recommendations; it is in the docket for today's decision (A–92–17). The EPA released the five-volume 1986 draft final Air Quality Criteria Document in August 1986.

After the CASAC meeting on March 4–6, 1985, the EPA's Office of Air Quality Planning and Standards (OAQPS) began work on the first draft of the Staff Paper (Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—OAQPS Staff Paper). (The Staff Paper is an assessment of scientific and technical information contained in the 1986 draft final Air Quality Criteria Document and other related exposure and risk assessment documents, and it presents staff recommendations to the Administrator regarding primary and secondary standards.) At a public meeting on April 21–22, 1986, the CASAC reviewed the first draft of the Staff Paper. The CASAC recommended prior to closure that OAQPS staff consider new information on prolonged exposure effects of O_3 in a second draft of the Staff Paper. The CASAC reviewed this second draft in a public meeting of the CASAC held on December 14–15, 1987. Staff of the EPA's Health Effects Research Laboratory (HERL) and Corvallis Environmental Research Laboratory (CERL) made presentations on new and emerging information on health effects of prolonged exposures to O_3 and on alternative indicators of impacts on crops. The CASAC concluded that sufficient new information existed to recommend incorporation of relevant new information into a supplement to the 1986 Air Quality Criteria Document (Supplement) and in a third draft of the Staff Paper.

In early 1988, the EPA began working concurrently on a Supplement and a third draft of the Staff Paper. The ECAO staff prepared a draft Supplement titled "Summary of Selected New Information on Effects of Ozone on Health and Vegetation: Draft Supplement to Air Quality Criteria for Ozone and Other Photochemical Oxidants." The EPA made available copies of both the draft Staff Paper and draft Supplement to the CASAC and the public in November 1988.

The CASAC held a public meeting on December 14–15, 1988 to review the draft Supplement and draft Staff Paper. Major issues included: the definition of adverse health effects of O_3, the significance of health studies suggesting that exercising individuals exposed for 6 to 8 hours to O_3 levels at or below 0.12 ppm may experience transient decreases in pulmonary indicators (including increases in symptom rates), the possibility that chronic irreversible effects may result from lifetime exposures to elevated levels of O_3, and the importance of considering analyses which indicate agricultural crop damage may be better defined by a cumulative seasonal average than by a 1-hour peak level of O_3. In its "closure letter" of May 1, 1989 (reprinted as Appendix I to this notice), the CASAC indicated that the draft Supplement and draft Staff Paper "provide an adequate scientific basis for the EPA to retain or revise primary and secondary standards for ozone." The CASAC concluded that it would be some time before enough new information on the health effects of multihour and chronic exposure to O_3 would be published in scientific journals to receive full peer review and, thus, be suitable for inclusion in a criteria document. The CASAC further concluded that such information could better be considered in the next review of the O_3 standards. The CASAC also noted that the form of the secondary standard was of critical importance in protecting against O_3 effects on vegetation and that a cumulative seasonal average would be more appropriate than a 1-hour standard. The CASAC went on to add that if a more approriate form could not be developed, the Committee was of the opinion that serious consideration be given to lowering the secondary standard to 0.10 ppm. The CASAC strongly endorsed the need for accelerated and expanded research related to multiple hour, seasonal, and lifetime human exposures to O_3, as well as research related to effects of O_3 on forests and ecosystems.

D. Decision Docket

On March 17, 1992, the EPA created a docket (Docket No. A–92–17) for this proposed decision. The docket incorporates by reference the standard review docket (Docket No. OAQPS A–83–04), created in 1983, and the separate docket established for criteria document revision (Docket No. ECAO–CD–81–1), created in 1981.

E. Pending Litigation

On October 22, 1991, the American Lung Association and other plaintiffs filed suit under section 304 of the Act to compel the EPA to complete its review of the criteria and standards for O_3 under section 109(d)(1) of the Act. *American Lung Association* v. *Reilly*, No. 91–cv–4114 (JRB) (E.D.N.Y.). The

U.S. District Court for the Eastern District of New York subsequently issued an order requiring the EPA to sign a **Federal Register** notice announcing its proposed decision on whether to revise the standards for O_3 by August 1, 1992 and to sign a **Federal Register** notice announcing its final decision by March 1, 1993. The order also requires the EPA to use rulemaking procedures in making the proposed and final decisions.

II. Rationale for Proposed Decision

This proposed decision would complete the EPA's review of information on health and welfare effects of O_3 assembled over a 7-year period and contained in the 1986 Air Quality Criteria Document and its Supplement. This review includes an evaluation of key studies published through early 1989, the 1989 Staff Paper assessment of the most relevant information in these documents, and the advice and recommendations of the CASAC as presented both in the discussion of these documents at public meetings and in the CASAC's 1988 and 1989 "closure letters."

Under section 109(b) of the Act, primary and secondary NAAQS are to be based on the air quality criteria issued under section 108, and the EPA must periodically conduct a "thorough review" of the criteria under section 109(d), taking into account the advice and recommendations of the CASAC, as the basis for periodic decisions on whether revisions of NAAQS are appropriate. When Congress enacted the latter requirement in 1977, it was well aware that implementation of the NAAQS can have profound economic and social, as well as environmental, consequences. Understandably, it required that the Administrator's periodic decisions on whether to revise the NAAQS be based on scientific studies that had been rigorously assessed and incorporated in to air quality criteria, and whose implications for public health and welfare had been carefully considered by both the EPA and the CASAC. In practice, the statutory scheme necessarily involves some delay, often a substantial delay, between completion of a criteria document and a final decision on whether to revise the corresponding NAAQS; studies published after completion of the criteria document are ordinarily considered in the next round of review. Otherwise, review and revision of criteria documents would be an endless process because of the continuous need to incorporate new studies, and decisions on whether to revise the standards would never be made.

In the present case, the Administrator has not taken into account a number of recent studies on the health and welfare effects of O_3. Although the EPA is aware of the results reported in many of these studies and has initiated preliminary evaluations of a number of them, the studies were not assessed in the 1986 Air Quality Criteria Document nor its Supplement, nor have they undergone the rigorous review process, including CASAC review, required to incorporate them into a new criteria document. The EPA estimates that up to 1,000 new studies may be involved. Although a substantially smaller number may prove to be important for decision-making purposes, it would be premature to draw conclusions on either the scientific merit or the ultimate implications of particular studies prior to a rigorous and comprehensive assessment of the studies by the EPA and CASAC. As illustrated by the discussion of key studies in this section and by the contents of the five-volume 1986 Air Quality Criteria Document, its Supplement and the 1989 Staff Paper, the nature of such studies, their findings, and the issues to which they are relevant are highly technical and complex. The process for assessing their scientific merit, their relevance, and their ultimate implications for decision making on the NAAQS, as illustrated by the summary of the current review in Section I.C. above, is correspondingly complex.

As discussed in Section III, the EPA estimates that 2 to 3 years will be necessary to incorporate the new studies into a revised criteria document, to evaluate the significance of the key information for decision-making purposes, to develop staff recommendations for the Administrator, and to provide appropriate opportunities for CASAC review and public comment. Having missed both the 1985 and the 1990 deadlines for completion of review cycles under section 109(d), the EPA believes it would be inappropriate and, indeed, does not have unlimited discretion to delay completion of the current review further for these purposes. See *Environmental Defense Fund* v. *Thomas*, 870 F.2d 892 (2d Cir.), *cert. denied sub nom. Alabama Power Co.* v. *Environmental Defense Fund*, 110 S.Ct. 537 (1989). As a practical matter, there is insufficient time to do so under the court order in the *American Lung Association* case. As discussed in Section III, however, the EPA plans to proceed as rapidly as possible with the next review of criteria and standards for O_3.

Based on the 1986 Air Quality Criteria Document, the subsequent Supplement, and the 1989 Staff Paper, and taking into account the CASAC's advice and recommendations, the Administrator focused on a discrete range of policy options for revising or not revising the current O_3 standards. The options included addressing the following questions:

(1) Is sufficient health effects information available to warrant the replacement (or supplementation) of the current 1-hour primary standard with a new 6- to 8-hour standard to protect against prolonged exposures and to provide additional protection for the most sensitive group(s)?

(2) Is sufficient health effects information available to provide the basis for the establishment of a seasonal or other long-term standard to protect against possible chronic effects in the exposed population?

(3) Should the level of the current 1-hour primary standard be revised from 0.12 ppm to 0.10 ppm?

(4) Should the level of the current 1-hour secondary standard be revised from 0.12 ppm to 0.10 ppm, or should a new seasonal standard be established?

A. The Primary Standard

1. Basis for the Existing 1-Hour Standard

In selecting the level for the current 1-hour primary standard in 1979, the Administrator made judgments regarding lowest reported effect levels, sensitive populations, nature and severity of health effects, and margin of safety. The judgment of the lowest observed effect level was based largely on several human clinical studies. The key study was by DeLucia and Adams (1977), who reported symptoms of discomfort and small but statistically-nonsignificant lung function decrements in vigorously-exercising healthy subjects acutely exposed to O_3 at concentrations as low as 0.15 ppm O_3. The principal sensitive group of concern in setting the 1979 O_3 primary standard was asthmatics, although the EPA recognized that nonasthmatic individuals engaged in exercise are also potentially vulnerable to acutely-irritating effects of O_3. In addition, impaired pulmonary function and symptoms were recognized as the best-documented effects in human clinical studies. More severe effects such as decreased resistance to respiratory infection, induction of chronic respiratory disease, and possible carcinogenic/mutagenic effects also had been reported in animal

toxicology studies, and some limited epidemiology studies raised concern about possible aggravation of preexisting chronic respiratory disease. However, uncertainties regarding these data limited their usefulness.

Finally, in selecting a standard level intended to provide an adequate margin of safety, the Administrator noted that the available quantitative information on human health effects of O_3 was quite limited. For that reason and because the more qualitative information in the health criteria suggested the possibility of adverse effects occurring below 0.15 ppm O_3, the Administrator concluded "that a standard of 0.12 ppm is necessary and prudent unless and until further studies demonstrate reason to doubt that it adequately protects public health."

2. Health Effects Information Since 1979

Since 1979, the available information on health effects caused by acute (1- to 3-hour) exposures to O_3 has expanded greatly. Additional new information on prolonged (6- to 8-hour) exposures began to appear in the scientific literature during the late 1980's and continues to be published at this time. Although some information on chronic effects was available in 1979, a significant body of data from animal studies has been published during the past decade confirming damage in animals caused by chronic O_3 exposures. All key information available up to early 1989 has undergone careful review for incorporation in the 1986 Air Quality Criteria Document, the Supplement, and the 1989 Staff Paper.

a. *Effects of 6- to 8-hour exposure.* Reports of enhanced effects from prolonged exposures to O_3 began to appear in 1985. Lioy et al. (1985) and Spektor et al. (1988a,b) conducted summer camp field studies of children engaged in outdoor activity for periods of several days to weeks, during which they were exposed to ambient O_3 for several hours per day. These studies reported that statistically-significant, short-term pulmonary function decrements, compared to initial baseline values, could be measured even when the O_3 NAAQS were not exceeded. The effects increased with exposure to increasing levels of O_3. Pulmonary function decrements reported in the summer camp studies could be attributed in part to factors such as other pollutants or heat. Moreover, the health significance of pulmonary function decrements of the duration and magnitude reported in these studies is unclear.

Multihour human exposure studies were conducted to assess the effects of prolonged exposure to O_3 alone in a controlled environment. These studies (Folinsbee et al., 1989; Horstman et al., 1988, 1989) exposed subjects engaged in intermittent, moderate to heavy exercise (minute ventilation, $\dot{V}_E = 40$ liters/minute; e.g., brisk walking or easy cycling) for 6.6 hours to O_3 levels of 0.08, 0.10, and 0.12 ppm. They reported small but statistically-significant group mean decreases in lung function, measured as forced expiratory volume ($FEV_{1.0}$), at all three exposures compared to filtered air. Respiratory systems (e.g., cough, pain on deep inspiration) increase with increasing O_3 levels. (The exposure protocol was designed to simulate a normal workday for a construction worker.) Again, the public health significance of the reported lung function decrements needs further evaluation.

Biochemical indicators of pulmonary inflammation (i.e., cells and other mediators of a lung inflammatory response) were also reported to increase in healthy subjects exposed for 6.6 hours to 0.10 ppm O_3 while engaging in intermittent, moderate to heavy exercise ($\dot{V}_E = 40$ liters/minute) (Koren et al., 1988a). More specifically, this and other research (Koren et al., 1988b,c) demonstrate that cells and soluble mediators suggestive of possible danger to pulmonary tissue are increased as a result of prolonged O_3 exposures. The potential significance of these results lies in the fact that they represent indicators of inflammation in humans and potential for damage in lower airways from prolonged O_3 exposures.

The CASAC "closure letter" of May 1, 1989 stated, "While reaching closure at this time, the Committee did note an emerging data base on the acute health effects resulting from 6–plus hours of O_3 exposure, providing evidence of the possible need for a standard with a 6–8 hour averaging time. However, it was the Committee's view that it would be some time before enough of this developing information would be published in scientific journals to receive full peer review and, thus, be suitable for inclusion in a criteria document. The CASAC concluded such information can better be considered in the next review of the ozone standards." Although the studies cited above are of concern to the EPA, they have not yet been confirmed in other laboratories. Similar research is currently under way in other laboratories and should be available for a subsequent review of air quality criteria. For these reasons, the Administrator concurs with the CASAC that this information should be considered in the next review of the O_3 standards.

b. *Effects of seasonal or chronic exposures.* Evidence concerning possible seasonal or chronic effects of O_3 has accumulated in the animal toxicology literature. Chronic and subchronic effects such as inflammation, structural changes in respiratory tissue, and increased collagen content in the lungs have been reported after exposure to O_3 in the range of 0.12 to 1.0 ppm and higher. Impaired ability to resist respiratory infection has been reported after exposure to 0.10 ppm O_3. Quantitative extrapolation of these effects reported in animals to human health effects remains limited by inadequate knowledge of dosimetry and species sensitivity differences.

Although the 1989 CASAC "closure letter" expressed concern for the possibility that chronic, irreversible effects may result for people exposed to O_3 over a lifetime, the CASAC concluded that such changes have not yet been demonstrated. The CASAC also concluded that "there is not an adequate data base on the effects of multiple hour or seasonal exposures to O_3, especially as regards whether such exposures may produce chronic health effects. This is especially troubling since such long-term exposures to O_3 occur in many parts of the United States and involve many millions of people * * *. It is critical that the data base on health and welfare effects related to multiple hour, seasonal and lifetime exposures of O_3 be increased through an accelerated and expanded research effort."

Several chronic animal studies by the EPA, the National Toxicology Program (NTP), and the Health Effects Institute (HEI) are expected to be available in time for the next O_3 criteria review cycle. Animal toxicology studies at the EPA are assessing the health effects in rats of chronic exposure to O_3, and a cooperative effort between the NTP and the HEI is focused on potential carcinogenic and cocarcinogenic, as well as morphological, effects of chronic O_3 exposures. The EPA, in cooperation with New York University, is also conducting an epidemiological field study to investigate the effects of chronic exposure to O_3 and other irritants on lung function development in healthy young adults. Results of many of the above studies should elucidate some, but not all, of the chronic effects issues in the next criteria review cycle.

c. *Effects of 1- to 3-hour exposures.* The 1986 Air Quality Criteria Document reflected a greatly expanded data base on effects from short-term exposures to O_3 of 1 to 3 hours in healthy individuals. Controlled human exposure studies (McDonnell et al., 1983; Cong et al., 1986)

reported small, but statistically-significant, transient declines in pulmonary function (e.g., reductions in lung volume and air flow), which in some cases were accompanied by symptoms (e.g., cough, chest pain, throat irritation, shortness of breath) during exposures to O_3 in the range of 0.12 to 0.15 ppm. These effects, however, were reported only when subjects engaged in very heavy exercise (V_E=66–69 liters per minute). Such exercise levels typically occur when a person engages in activities like running or cycling. It should be noted, however, that without heavy exercise even the most sensitive subjects will not experience statistically-significant decrements in lung function ($FEV_{1.0}$) at low-level O_3 exposures (around 0.12 ppm after 1 to 3 hours); and furthermore, the magnitude of effects which can be measured at these exposure levels, even with heavy exercise, is not generally considered to be adverse to health. A generally accepted relationship is that for any given individual, the greater the exercise level during exposure to O_3, the greater the short-term pulmonary function response experienced (U.S. EPA, 1986, p. 12–81).

One of the key issues that emerged during review of these and other studies was the high degree of variability in responsiveness between individuals exposed to similar O_3 levels. This was evident from the number of studies (Gibbons and Adams, 1984; Linn et al., 1986; Avol et al., 1984; Schelegle and Adams, 1986) that found no statistically-significant response at exposures (0.12 to 0.15 ppm O_3 and exercise levels (V_E=55 to 56 liters per minute) similar to those in the above-cited studies. In two of these studies (Avol et al., 1984; Linn et al., 1986), statistically-significant changes in $FEV_{1.0}$ began to appear at 0.16 ppm O_3.

Although the group mean lung function decrements may be only 1 to 4 percent for the lower level O_3 exposures, the 1986 Air Quality Criteria Document (U.S. EPA, 1986, p. 12–22) concluded that between 5 and 20 percent of otherwise healthy individuals may be more responsive to O_3 during exercise and, therefore, would be at higher risk to O_3 exposures. For example, McDonnell et al. (1983) analyzed intersubject variability in a study involving 135 healthy young males who were exposed to various O_3 levels (0.12 ppm to 0.4 ppm) during 2 hours of intermittent, very heavy exercise. When the subjects were exposed to 0.18 ppm, the study reported changes in $FEV_{1.0}$ ranging from 0 to −23 percent, with a group mean of −6 percent. Subjects exposed to 0.12 ppm O_3 experienced changes ranging from +7 to −16 percent, with a group mean decrement in $FEV_{1.0}$ of −4 percent. Kulle et al. (1985) exposed each of their 20 subjects to various O_3 concentrations for 2 hours with heavy, intermittent exercise. They reported changes in $FEV_{1.0}$ of +10 to −4 percent, with a group mean of +1 percent at 0.10 ppm O_3. The response increased to +3 to −9 percent (group mean of −1 percent) at 0.15 ppm O_3. At 0.2 ppm O_3, the $FEV_{1.0}$ decrements increased to +3 to −16 percent, with a group mean response of −3 percent. At concentrations below 0.18 ppm O_3, these effects would not be noticed by most healthy individuals. For these studies, the effects experienced by even the most sensitive individuals acutely exposed to 0.12 to 0.15 ppm O_3 ranged from −9 to −16 percent decline in $FEV_{1.0}$ with few, if any, symptoms; these effects would be considered only mild to moderate by many health experts (U.S. EPA, 1989, p. VII–53).

The EPA staff made several other observations regarding health effects from short-term exposures to O_3. Exercise performance is reportedly not affected in very heavily-exercising (V_E=86–88 liters per minute) individuals exposed to 0.12 ppm O_3 for 1 hour. Measurable effects were seen in individuals exposed to levels of 0.18 an 0.24 ppm O_3. At exposures of 0.18 and 0.24 ppm, some subjects were not able to complete the protocol (Schelegle and Adams, 1986; Cong et al., 1988). Increased airway reactivity to brochoconstrictors has been observed in heavily-exercising (V_E=70 liters per minute) individuals after 2-hour exposures to 0.18 ppm O_3 (McDonnell et al., 1987). Increased presence of cells and other mediators of lung inflammation have been reported at 18 hours post exposure in heavily-exercising (V_E=64 liters per minute) subjects exposed for 2 hours to 0.4 ppm O_3 (Koren et al., 1988a,b,c). These studies of inflammatory response prompt concern that repeated or chronic exposures to high levels of O_3 may result in permanent lung tissue damage.

Finally, although epidemiological evidence (Whittemore and Korn, 1980; Holguin et al., 1985; Bates and Sizto, 1987, 1989; Lebowitz et al., 1982, 1983) has suggested that O_3 and other photochemical oxidants may be associated with increased asthma attack rates, excess respiratory hospital admissions, and lung function decrements in asthmatics, uncertainty associated with these data make it difficult to determine a clear cause-effect relationship or an appropriate exposure averaging time for the reported responses.

3. Proposed Decision on the Primary Standard

The Administrator is proposing to determine that revisions of the existing O_3 primary standard are not appropriate at this time. In reaching this proposed decision, the Administrator has fully considered the health effects information assessed in the 1986 Air Quality Criteria Document, the Supplement that updated that information, the 1989 Staff Paper, and the advice and recommendations of the CASAC in its 1989 "closure letter."

The Administrator agrees with the staff and CASAC conclusions that the preliminary information on effects of prolonged exposures to O_3 contained in the 1986 Air Quality Criteria Document and the Supplement is not sufficient to support the establishment of a new 6–8 hour standard to protect against prolonged exposures, or a seasonal or other long-term standard to protect against chronic effects. In reaching this proposed decision, the Administrator recognizes that a number of new studies, particularly on 6–8 hour exposures to O_3, have been published in the scientific literature since completion of the air quality criteria that serve as the basis for today's decision. As discussed in Section III, the EPA intends to proceed with the next periodic review of the air quality criteria as rapidly as possible so that the implications of these new studies can be given early consideration. The Administrator is also mindful that there is research in progress on the chronic effects of O_3 that should become available in the next 1 to 2 years. When this new information has been incorporated into the air quality criteria, a more informed decision can be made as to whether adding a new 6–8 hour standard and/or a seasonal or other long-term standard would be appropriate.

The Administrator also carefully considered the health effects information on short-term exposures to O_3 contained in the 1986 Air Quality Criteria Document and its Supplement. As contrasted to the limited information on health effects of O_3 available in 1979, by 1989 information on 1- to 3-hour exposures had expanded greatly. The EPA staff and the CASAC identified several factors that the Administrator should consider in reaching a decision on whether or not to revise the current primary standard to protect against short-term exposures to O_3. These include: (a) The sensitive populations affected by O_3, (b) the nature and

severity of the effects and (c) the protection afforded by the current standards.

a. *Sensitive populations affected.* There are two groups identified as being at potential risk from acute exposures to O_3 (U.S. EPA, 1986, p. 1–164). As discussed in the 1986 Air Quality Criteria Document, the first is that group in the general population characterized as having preexisting respiratory disease (e.g., asthma or chronic obstructive lung disease). These individuals are not more responsive than healthy individuals in terms of the magnitude of pulmonary function decrements seen at typical exposure levels and durations. The EPA is mindful of possible risks to this group because the impact of O_3-induced responses in their already-compromised respiratory systems may more noticeably impair their ability to function adequately, although this has not been fully investigated. Also, limitations on using such individuals in experimental studies have prevented an adequate assessment of the full range of potential responses to O_3 or their health significance in these individuals.

The second group that may be at increased risk to acute O_3 exposures is that subset of the general population of healthy individuals who show an unusual responsiveness to O_3, and who engage in moderate to heavy exercise during elevated O_3 levels. Exercise increases the amount of O_3 entering the airways and can cause O_3 to penetrate to peripheral regions of the lung where lung tissue is more sensitive. Individuals who are unusually responsive to O_3 experience greater decrements in lung function from exposure to O_3 than the average response of the groups studies. As yet, there are no means to determine in advance which persons will be unusually responsive to O_3, but estimates based on subjects already studied suggest 5 to 20 percent of the general population may show a substantially greater response than average. It is not clear whether these individuals constitute a population subgroup with a specific risk factor or simply represent the upper 5 to 20 percent of the O_3 response distribution (U.S. EPA, 1989, p. III–12).

b. *Nature and severity of effects.* Ozone acts as a pulmonary irritant when it comes into contact with the mucous or surfactant layer lining the respiratory tract. Because O_3 is chemically quite reactive, it tends to react rapidly with the mucous layer, thus causing increased total absorption in the upper airways and a reduction in O_3 reaching the more sensitive tissues deeper in the lungs. Exercise, particularly heavy exercise, will increase the total mass of O_3 inhaled per unit time and will change patterns of O_3 deposition in the lungs, thereby causing responses in persons who otherwise might not be affected.

(1) Respiratory Function Decrements and Symptoms. The principal responses associated with acute exposures to O_3 are respiratory function decrements and symptoms. As discussed above, individuals exposed to lower levels of O_3 (e.g., 0.12 to 0.15 ppm) typically experience only mild and transient functional decrements. The available data also suggest that many responders would experience only mild to moderate reductions in lung function which may be accompanied by symptoms such as cough, chest tightness, pain on deep inspiration, and throat irritation. At levels above 0.15 ppm O_3, reductions in lung function and symptoms become more pronounced.

Most healthy individuals experiencing mild to moderate O_3-induced lung function decrements may not notice such effects due to their substantial reserve capacity; however, individuals who have preexisting respiratory disease or have hyperreactive airways may respond to O_3 exposure sufficiently to restrict normal activity or impair their performance in carrying out tasks. While such possible outcomes are a matter of concern, the staff concluded that the data on individuals with preexisting respiratory disease were limited and should only be considered in developing a margin of safety (U.S. EPA, 1989, p. VII–28).

(2) Decreased Resistance to Respiratory Infection. This effect of O_3 has been demonstrated in experimental animal studies. The biological basis for this response appears to be that O_3 or one of its reactive products impairs or suppresses normal bactericidal functions of the pulmonary defense system components (e.g., alveolar macrophages). This results in prolonging the life of the infectious agent, thus permitting its multiplication and ultimately resulting in death in this animal infectivity model. Because these effects have been reported in several species of animals and are potentially serious, the EPA remains concerned about the possibility of increased susceptibility to respiratory infection in humans in response to ambient O_3 exposures. Quantitative extrapolation of these effects reported in animals to human health effects remains limited by inadequate knowledge of dosimetry and species sensitivity differences.

(3) Pulmonary Inflammation and Structural Changes in Respiratory Tissue. Pulmonary inflammation and structural changes in respiratory tissue have also been a focus of concern. One series of studies (Koren et al., 1988 a,b,c) reported biochemical and cellular indicators of pulmonary inflammation in healthy adult males exposed for 2 hours to 0.4 ppm O_3 during intermittent, heavy exercise ($\dot{V}_E$=70 liters per minute); however, acute exposures involving lower concentrations have not been tested. While these studies of inflammatory response prompt concern that repeated or chronic exposures to high levels of O_3 may result in permanent lung tissue damage, such a linkage has not been fully investigated and, therefore, remains hypothetical.

c. *Proposed decision.* Based on the staff's assessment of the health information discussed above and taking into account the advice and recommendations that the CASAC provided in 1989, the Administrator proposes to determine under section 109(d)(1) that revisions of the existing 1-hour primary standard are not appropriate at this time. The standard level is below those levels where controlled human exposure studies found substantial changes in pulmonary function and symptoms. In reaching this conclusion, the Administrator is mindful that the mean group response observed in the controlled human studies up to 0.15 ppm O_3 would at most be characterized as mild, and that most of the responders within this population of normal healthy individuals reportedly experienced only mild to moderate responses under very heavy exercise. Although there is a difference of opinion among the EPA's scientific advisors as to the significance of decrements in lung function in the range of 10 to 20 percent when accompanied by symptoms, it is the Administrator's judgment that the lesser effects associated with exposure to O_3 in the range of 0.12 ppm to 0.15 ppm observed in the controlled human studies do not constitute adverse effects for purposes of section 109 of the Act.

The Administrator also considered other sensitive population groups whose response to O_3 has not been fully characterized. Although some epidemiology studies considered in the 1986 Air Quality Criteria Document and its Supplement suggest that exposure to O_3 at ambient concentrations may result in the aggravation of asthma and preexisting respiratory disease, the Administrator concurred with the staff view that these studies are limited by uncertainties about individual exposure levels and the role of other pollutants

and, therefore, should not be generalized to the entire population. In addition, although individuals with preexisting lung disease are not more responsive to O_3 than healthy persons, the same small change in pulmonary function may have more impact on people whose lung function is already compromised. While all of these studies suggest that these sensitive groups may be at somewhat greater risk at levels of 0.12 ppm O_3 and higher, compared to normal healthy individuals in controlled human exposure studies, in the Administrator's judgment these studies do not provide a sufficient basis for lowering the existing standard.

As discussed above, the emerging information on 8-hour and chronic or seasonal exposures is also of concern. In view of this, the Administrator considered to what extent attainment of the current standard would reduce 8-hour and longer-term seasonal averages. Air quality relational analyses indicate that multihour averages of O_3 would be reduced if the current 1-hour standard is attained (see U.S. EPA, 1989, Appendix A). As control programs are implemented to reduce 1-hour O_3 peak levels, 8-hour and longer-term seasonal averages also will be reduced because most control strategies aimed at attaining the existing 1-hour standard are not time-of-day specific. Such programs will affect every hour of the day to a greater or lesser extent and, thus, lower the entire distribution of O_3 air quality and not just peak concentrations. As a result, the Administrator believes the major control programs required by the 1990 Clean Air Act Amendments will result in notable progress towards bringing the country into attainment with the existing 1-hour standard and should also lower O_3 levels associated with 8-hour and seasonal averaging periods.

Given the above, and the preliminary nature of the information currently assessed in the air quality criteria on 6- to 8-hour exposures, the Administrator is proposing to determine under section 109(d)(1) that revision of the existing 1-hour NAAQS is not appropriate at this time. The Administrator also intends (1) to proceed as rapidly as possible with assessment of the new studies so that a more informed decision can be made on the need for additional protection from 6- to 8-hour and chronic exposures, and (2) to focus on fully implementing the control programs mandated by the Clean Air Act Amendments of 1990.

For the above reasons, the Administrator proses to determine under section 109(d)(1) that revisions of the existing 1-hour primary standard are not appropriate at this time. As discussed more fully above, this proposed determination is based on the EPA's review of the health effects information contained in the 1986 Air Quality Criteria Document and its Supplement, which includes an evaluation of key studies published through early 1989; the 1989 Staff Paper; and the advice and recommendations of the CASAC on these documents. The Administrator has not taken into account more recent studies on the health effects of O_3, which have not undergone the rigorous and comprehensive assessment, including the CASAC review, necessary to incorporate them into a new criteria document. As discussed previously, it would be premature to draw conclusions on either the scientific merit or the ultimate implications of these studies prior to such an assessment, which could not be completed in the time available under the court order in the *American Lung Association* case.

The Administrator also considered and concurs with the staff recommendations that O_3 should remain as the surrogate for controlling ambient concentrations of photochemical oxidants and that the existing form of the standard should be retained.

B. The Secondary Standard

The Administrator also proposes to determine that revisions of the existing 1-hour secondary standard are not appropriate at this time. The rationale for this action is threefold: (1) the appropriate form and level for a new standard to protect crops and forest ecosystems are difficult to determine, given the data currently reviewed by the CASAC; (2) new research is currently under way to reduce this uncertainty for forest ecosystems; and (3) tightening the current 1-hour standard as an interim measure would provide only marginal improvement because a 1-hour averaging period is not the most appropriate exposure indicator, as discussed below, for the full range of exposures (e.g., long-term, repeated peaks) and will be seriously reconsidered in the next review. Section 109(b)(2) of the Act requires the EPA to set a secondary NAAQS at a level that, in the judgment of the Administrator, is requisite to protect the public welfare from any known or anticipated adverse effects. The term "public welfare," which is defined in section 302(h) of the Act, includes, among other things, effects on soils, water, crops, vegetation, wildlife, visibility, manmade materials, animals, hazards to transportation, and climate, as well as effects on economic values and on personal comfort and well-being.[1]

During the first review of O_3 NAAQS in the late 1970's, the EPA carefully examined the scientific and technical information evaluated in the then-revised air quality criteria concerning O_3-related damage to vegetation, crops, materials, and visibility. As part of this process, the EPA developed a staff assessment entitled "Evaluation of Alternative Secondary Ozone Air Quality Standards." Based on this assessment and other relevant factors, the EPA promulgated a revised secondary standard on February 8, 1979 (44 FR 8202) that was identical to the revised primary standard of 0.12 ppm in all respects. In reaching this decision, the Administrator concluded that a secondary standard more stringent than the primary standard was not necessary to adequately protect public welfare.

The current review has focused mainly on effects of O_3 on agricultural crops and forests. Consideration has also been given to the effects of O_3 on materials and on personal comfort and well-being.

1. Effects of Agriculture and Forests

a. *Effect on crops.* The 1979 decision to revise the secondary O_3 NAAQS resulted largely from a lack of evidence adequate to retain a standard more stringent than the primary. The 1978 Air Quality Criteria Document identified the need for "a set of standard equations that would relate plant response to pollutant concentration and duration of exposure and would also incorporate the effects of all other factors that control the responses of plants." The 1978 Air Quality Criteria Document also recognizes that "Development of such equations requires a data base sufficient to relate a given dose (concentration of pollutant times duration of exposure) of oxidant (e.g., O_3, PAN) to some meaningful plant effect" and that "Such equations are not yet available." (U.S. EPA, 1978, p. 264).

To address this fundamental deficiency, in 1980 the EPA initiated a 5-year research program titled the National Crop Loss Assessment Network (NCLAN) to define the relationships between yields of major agricultural crops and O_3 exposure, to assess national economic consequences

[1] It should be emphasized that the relevant statutory goal is the protection of public welfare, and that effects on soils, water, crops, and so forth, even if negative, do not necessarily constitute "adverse" effects on public welfare for purposes of section 109(b)(2). The finding that an effect is adverse is ultimately a judgment to be made by the Administrator.

of the exposure of major agricultural crops to O_3, and to advance the understanding of the cause-effect relationships that determine crops responses to pollutant exposure. Damage to crops is relevant under section 109(b) to the extent it affects public welfare. The NCLAN research program on crops, completed in 1985, provided valuable exposure-response information on a variety of crops and strengthened the evidence for O_3-induced yield reductions in important commercial crops species.

Because of this, the NCLAN data base became a principal focus of the current assessment of yield reductions in commercially-important crops exposed to O_3. Yield reduction or loss is defined as impairment of, or decrease in, the value of the intended use of the plant. This definition includes reduction in aesthetic values, changes in crop quality, and occurrence of foliar injury when foliage is a marketable part of the plant, as well as loss in weight or bulk.

The EPA has analyzed data from the NCLAN to develop predictive equations relating 7-hour seasonal mean O_3 exposures, the indicator used in the NCLAN studies, to crop yield loss. These analyses suggest that a 10 percent mean yield loss occurs for several species when the 7-hour seasonal mean concentration of O_3 exceeds 0.04–0.05 ppm, that grain crops are generally less sensitive to O_3 than other crops, and that sensitivity differences within a species may be as large as a difference between species. In addition to differences in sensitivity among species and cultivars, the available data also suggest the presence of year-to-year variations in plant responses to O_3 (U.S. EPA, 1989, p. X–7).

The scientific community well recognizes that the NCLAN data provide valuable exposure-response information for a variety of crops. However, the adequacy of the 7-hour seasonal mean as an exposure index has been questioned. This seasonal exposure statistic is based on the mean 7-hour daily concentration measured from 9:00 a.m. to 4:00 p.m. averaged over the growing season. The use of a seasonal mean to characterize exposures implies that all exposures over the course of the daylight period are equally effective in inducing plant responses. Several analyses, however, indicate that constant concentrations have less effect on plant growth responses than variable or episodic exposures at equivalent cumulative doses (Musselman et al., 1983; Hogsett et al., 1985). Thus, it is possible for two sites with the same daytime arithmetic mean O_3 concentration to have different estimated crop reductions (Larsen and Heck, 1984). The 7-hour seasonal mean also fails to account for phenological stages of plant development, the impact of peak concentrations, length of episodes, and days between peaks.

In addition to the NCLAN data, the 1986 Air Quality Criteria Document and 1989 Staff Paper also assessed data on the effects of O_3 on crop yield both under more controlled conditions and under ambient air exposures. Data from the controlled studies generally seem to indicate that O_3 concentrations of 0.10 ppm (frequently the lowest concentration used in the studies) for a few hours a day, over a period of several days to several weeks, induce yield loss of 10–55 percent (U.S. EPA, 1989, pp. X–13—X–15). These studies further demonstrate that peak O_3 concentrations cause an effect. Because these studies were conducted in greenhouses or growth chambers, it is difficult to extrapolate the data to field conditions. However, ambient air exposure studies that have been reviewed also confirm that current ambient O_3 levels in many parts of the country can reduce plant yield for some crops. As the current standard is attained, lesser reductions should occur.

b. *Forest ecosystems.* In addition to effects of O_3 on crops, there is evidence, although regionally limited, that some forest ecosystems have been adversely affected by ambient levels of O_3. Among the susceptible areas are the mixed conifer forests of the San Gabriel and San Bernardino mountain ranges east of Los Angeles, where O_3 has been identified as the agent responsible for the slow decline and death of the ponderosa pine and the injury of the Jeffrey pine. The decline of pines in the mixed conifer forest in the San Bernardino Mountains suggests that a potential consequence of O_3 stress is a change in the successional patterns and composition of the forest (Miller et al., 1982). Oxidant injury of eastern white pine and other native vegetation has also been observed in the Eastern United States (U.S. EPA, 1989, p. X–25). Several studies have attributed reductions in the growth of annual rings in eastern white pine to the exposure of the trees to O_3 over a period of 10 to 20 years (Mann et al., 1980; McLaughlin et al., 1982; Benoit et al., 1982).

Dendrochronological studies of the decline of red spruce in the northeast and of reduced growth rates of red spruce, balsam fir, and fraser fir in central West Virginia and western Virginia, also provide further evidence that the reductions in growth and mortality measurable today probably began at least 20 years ago (Johnson and Siccama, 1983; Adams et al., 1985). In addition, reductions in growth rates of loblolly and short leaf pine have been reported in the piedmont regions of the Southeastern United States (McLaughlin, 1985). The magnitude of the role of O_3 in these cases is unclear.

In regard to these most recent declines in growth, there is currently no agreement as to the trigger factor that precipitated the dieback, mortality, and decreased growth. A number of stresses have been identified, including both natural processes and air pollution (Johnson and Siccama, 1983). Given the regional distribution of O_3 in North America and the frequent occurrence of elevated O_3 concentrations, the potential influence of O_3 on forest ecosystems is of concern. The success and composition of producer species within a community are the keys to "maintaining the integrity of an ecosystem * * *. Any significant alterations in producers, whether induced by O_3 or other stresses, can potentially affect the consumer and decomposer populations of the ecosystem, and can set the stage for changes in community structure by influencing the nature and direction of successional changes * * *" (U.S. EPA, 1986, p. 7–51).

While some of the same plant processes are affected in trees and agriculture crop species, perennial plants, because they live longer, must cope with both short- and long-term stresses, the effects of which can be cumulative, lasting over the years, or can be delayed, not becoming apparent for many years. Likewise, effects can possibly be mitigated through short- or long-term recovery or replacement (U.S. EPA, 1986, p. 7–76). As a result, the permanent vegetation in natural ecosystems receives much greater chronic exposure than the short-lived vegetation that makes up agroecosystems. The single agroecosystem has little resilience to pollutant stress; the natural ecosystem is initially more resistent to pollutant stress because of species diversity, but the longer chronic exposures can disrupt the system. As discussed more fully in the next section, this difference between natural ecosystems and agroecosystems raises a key issue when selecting an appropriate exposure indicator for the secondary standard (U.S. EPA, 1989, p. X–26).

In the CASAC's 1989 closure letter in the 1989 Staff Paper, "the Committee took note of the lack of information on the effects of O_3 on forest ecosystems

and urged support for research to remedy this deficiency."

In response to the CSAAC comments and the deficiencies in the data, the EPA's CERL began a Forest O_3 Research Program to develop a data base on O_3 effects on forests and to review alternative exposure indices for use in formulating an appropriate O_3 secondary standard. The major objectives of the Forest O_3 Research Plan are to (1) Identify the most critical aspects of O_3 exposure dynamics (i.e., level, frequency, duration, time of day) through mechanistic studies of O_3 uptake and the relevance of environmental, genetic and cultural factors; (2) develop exposure-response functions for seedlings, saplings, and mature trees exposed to current and changing O_3 levels and assess the role of size and age in their responses; (3) parameterize a process model of tree growth using the data developed in (1) and (2) to be used in stand-level models to enable prediction of forest or stand-level response to changing O_3 levels; and (4) produce an assessment of risk to forest species of O_3 in the presence of multiple stresses. The long-term chronic exposure research for forest tree species is scheduled to be completed in 1995.

Additional forest tree species O_3 response data will soon be available from several ongoing and future research efforts, including the Southern Commercial Forest Research Program begun under the National Acid Precipitation Assessment Program to look at the combined effects of O_3 and acid rain on forest tree species; the Southern Oxidant Study, which is investigating the atmospheric chemistry behind O_3 formation and the effects of regional O_3 on urban O_3 levels; the 1990 Clean Air Act Spatial Trends Network, which will monitor a suite of atmospheric pollutant levels in a nationwide network; and the Environmental Monitoring and Assessment Program, which will monitor species selected to serve as indicators of forest health to determine the current status of forest ecosystems and determine whether or not changes are taking place.

c. *Averaging times and exposure patterns of concern.* In terms of protecting agricultural crops and forests, research has demonstrated that there are many factors of O_3 exposure dynamics that must be considered when formulating an appropriate exposure index, and thus, specification of an appropriate averaging time and form of a secondary standard is complex. These factors include short-term peaks, long-term chronic exposures, duration between peaks, and diurnal and seasonal timing of peaks. In the initial draft of the 1989 Staff Paper, the EPA staff recommended that consideration be given to setting both a 1-hour and a longer-term secondary standard because the relationship between peak values and seasonal averages was generally not predictable with a high degree of confidence; therefore, the enforcement of a 1-hour standard was not believed to adequately reduce high chronic exposure at a particular location. While the CASAC (1989) endorsed the judgment that repeated peak exposures were critical in eliciting responses in agriculture crops, the CASAC's views regarding the appropriateness of a separate long-term standard were less clear. Instead, the CASAC challenged the EPA to identify a single standard formulation that offered protection from both repeated peaks of concern and long—term exposures. The EPA agreed with the CASAC's recommendation to identify a single standard formulation and as a first step analyzed alternative monthly forms of a secondary standard (U.S. EPA, 1989, Appendix A) based on air quality data. The EPA found that the maximum monthly mean of the daily maximum 1-hour averages related well to both repeated peaks and long-term air quality indicators of concern. However, there are little or no effects data for a monthly exposure period.

Subsequently, researchers at the CERL undertook additional analyses of the NCLAN data set. In an extensive retrospective analysis of NCLAN data, Lee et al. (1988a) fit over 600 single-index and general phenologically weighted cumulative impact (GPWCI) indices to response data from seven crop studies. The criterion established for determining "best" exposure indices was that they display the smallest residual sums of square error when the yield-response data were regressed for the various O_3 exposure indices using the Box-Tidwell model.

Lee et al. (1988a) concluded that the top-performing exposure indices were those that (1) cumulate the hourly O_3 concentrations over time, (2) emphasize concentrations of 0.06 ppm and higher, and (3) place the greatest weight on exposures that occur during the plant growth stage. These findings illustrated the importance of including exposure duration, repeated peaks, and periods of increased plant sensitivity when assessing the impact of O_3 on plant growth. Although peak concentrations should be given greater weight, the authors suggested that lower concentrations were important and should also be included in the calculation of an exposure index.

In response to the CASAC recommendations (CASAC, 1987), Lee et al. (1988b) conducted additional retrospective analyses of the NCLAN data in order to evaluate selected exposure indicators. The results indicated that while the GPWCI indices best related plant response to O_3 exposure, there were other indices that were near optimal. These indices included a sigmoid-weighted integrated index (SIGMOID) centered at 0.062 ppm, which the staff concluded was too complex for use as an ambient air quality standard, and cumulative indices that sum all concentrations of 0.06 (or 0.07) ppm or higher (SUM06 and USM07). These latter indices performed well, suggesting that lower, longer-term ambient O_3 levels are important in triggering plant response and should be included in an exposure index. These results support the conclusions reached by Lefohn et al. (1988) and Lee et al. (1987), who used the NCLAN data and cumulation indices with sigmoid and allometric weights in demonstrating the importance of peak concentrations in determining plant response.

The integrated exposure indices (SUM06 and SUM07) are functions of exposure duration and concentration that relate various yield losses calculated from experimental data to exposure "seasons." Lee et al. (1988c) believe experiments replicated in time and/or space that differ in exposure duration but have the same SUM06 or SUM07 values should produce identical predicted relative yield losses. Because these integrated indices capture key components of exposure, they are more adequate than a 7-hour mean as descriptors of plant response; they are also attractive from a regulator perspective because they are simple and easy to implement.

Lee et al. (1988b) also examined the relationships among the various air quality indicators, in response to the CASAC's interest in finding an indicator that correlates well with short-term peak, multiple peak, and long-term averages. Results indicate that fair to strong associations exist between the two cumulative indices (SUM06 and SUM07) and the peak and mean indices: second highest daily maximum (HDM2) and 7-hour seasonal average (M7). The integrated indices, SUM06 and SUM07, are strongly related to M7 and less related to HDM2, because the relationship between SUM07 and HDM2 falls just below the level defined by the authors (Lee et al., 1988b) as indicative of a strong association. These

results suggest that SUMO6 and SUMO7 have potential for a standard that protects against adverse effects from repeated peak and long-term exposures. It should be noted, however, that this assessment is based solely on agricultural corps because of the lack of information to fully assess forest effects. Crop species are more sensitive to high level, short-term peaks of O_3 than perennial plants, which appear to be affected more by chronic exposures to lower levels of O_3 or a combination of both short-term peaks and long-term exposures. Therefore, it is not clear that exposure indices based only on agricultural crops are appropriate in relating ambient concentrations and exposure to the response of perennial plants.

2. Other Welfare Effects

a. *Materials.* Ozone effects on materials have been studied for the last 3 decades. This broad data base has identified several types of materials that are sensitive to O_3 exposure.

The effects of O_3 on elastomers (e.g., automobile tires, protective electrical coverings, etc.) have been the best documented. Ozone causes elastomers to harden, become brittle or cracked, and lose physical integrity. These effects increase in a dose-related fashion (i.e., the product of concentration and exposure duration) and have been shown to be accelerated by the presence of mechanical stress, high humidity, atmospheric pressure, sunlight, and other pollutants. In response, manufacturers have reformulated their products to withstand greater doses of O_3, thus mitigating the effects of O_3 on elastomers.

The reaction of dyes to O_3 is a complex function of O_3 concentration, relative humidity, the presence of other gaseous pollutants, the type of dye and the resistance of the material in which the dye is incorporated. The degradation of fibers from exposure to O_3 is poorly characterized. In general, most synthetic fibers such as modacrylic and polyester are relatively resistant; and cotton, nylon, and acrylic fibers show variable sensitivities to the gas. Anthraquinone dyes incorporated into cotton and nylon fibers appear to be the most sensitive to O_3 damage.

Paint is another material that has been investigated for O_3 damage. In comparison to other materials, the effect of O_3 on paints is small and has a negligible effect on the useful life of the material coated.

Upon reviewing the available scientific technical information on effects of O_3 on materials, the 1989 Staff Paper concluded that "There appears to be no threshold level below which materials damage will not occur; exposure of sensitive materials to any non-zero concentration of O_3 (including natural background levels) can produce effects if the exposure duration is sufficiently long. However, the slight acceleration of aging processes of materials which occurs at the level of the NAAQS is not judged to be significant or adverse. Consequently, the staff concludes that materials data should not be used as a basis for defining an averaging time and concentration for the secondary standard and that the secondary standard should be based on protection of vegetation." (U.S. EPA, 1989, pp. XI–16 to XI–17). The Administrator agrees wit this staff conclusion.

b. *Personal comfort and well-being.* Effects on personal comfort and well-being, as defined by human symptomatic effects, have been observed in controlled human exposure studies at O_3 levels in the range of 0.12–0.15 ppm for 1–3 hours of exposure at very heavy exercise, and at somewhat lower levels in prolonged human exposure studies (at moderate exercise), and in field studies. These effects include nose and throat irritation, chest discomfort, and cough. As recommended by the CASAC and the EPA staff, these effects have been considered health effects and have been taken into account during the review of the primary standard for O_3.

3. Proposed Decision on the Secondary Standard

As previously noted, the Administrator is proposing to determine under section 109(d)(1) that revision of the existing 1-hour secondary standard is not appropriate at this time. In reaching this proposed decision, the Administrator has carefully considered the welfare effects information assessed in the 1986 Criteria Document and its Supplement, the 1989 Staff Paper assessment, and the advice and recommendations of the CASAC (CASAC, 1989). A principal reason for this proposed decision is the absence of sufficient information in the 1986 Criteria Document and its Supplement to specify a new form, averaging period, and level of a secondary standard. Research currently under way will provide significant information on key aspects of O_3 exposure dynamics that are important for assessing the effects of O_3 on forest ecosystems. When this information becomes available and is incorporated into the air quality criteria during the next review, a more informed judgment can be made as to whether revision of the secondary standard is appropriate.

The Administrator also carefully considered the available information on the effects of O_3 on agricultural crops alone. Although the NCLAN studies have provided extensive data on the effects of O_3 on crops, the appropriateness of the seasonal mean exposure indicator used in these studies has been subject to much criticism during the development of revised air quality criteria. Because of this and the other shortcomings of this exposure index that are discussed above, the direct use of the NCLAN data for standard-setting purposes would be inappropriate. The CASAC recognized this and recommended that retrospective analyses be undertaken in order to identify a more appropriate exposure index that would offer protection from both repeated O_3 peaks of concern and long-term O_3 exposures. While these analyses have identified several indicators that show promise, the Administrator concurs with the staff's view that it would be premature to base a change in the form and averaging time of the secondary standard on the preliminary results presented in the Supplement to the 1986 Criteria Document and the Staff Paper. The CASAC also recognized in its closure letter (CASAC, 1989) that further work would be necessary to develop a more appropriate form and averaging period for the secondary standard.

The Administrator also considered tightening the current secondary standard as an interim measure. Throughout the review of the air quality criteria and staff assessment, however, no consensus was reached on an appropriate range of alternative 1-hour standards. The staff had great difficulty throughout the review in developing and justifying alternative levels below that of the current standard due to the lack of data (U.S. EPA, 1989, p. XI–13). In the end, while the staff relied on the preliminary results of the Lee et al. (1988b) study to conclude that the upper-end of the proposed range (0.12 ppm) offers little protection for vegetation (U.S. EPA, 1989, p. XI–14), the staff also determined that the study was too preliminary to serve as a basis for recommending changes in the form and averaging time of the standard. Even if the results of the Lee study provided a sufficient basis for revising the standard downward from 0.12 ppm to 0.10 ppm, as some have suggested, it is the Administrator's judgment that such a change would provide only marginal improvement because a 1-hour averaging period is not the most

appropriate exposure indicator for the full range of exposures, as discussed above, and will be seriously reconsidered during the next standard review. In the interim, it would have imposed a disproportionate and largely meaningless burden on States to review and make appropriate revisions in applicable SIP's.

Given the above information, the Administrator proposes to determine under section 109(d)(1) that revision of the current secondary standard is not appropriate at this time.

III. Continuing Review of Air Quality Criteria and Standards

As previously noted, a large number of new studies on the health and welfare effects of O_3 have been published in the scientific literature, since completion of the 1986 Air Quality Criteria Document, its Supplement, and the 1989 Staff Paper that serve as the basis for today's decision. Among the most pertinent of the new studies are those which address: The effects of prolonged O_3 exposures in controlled human experiments; the impact of O_3 on susceptible subpopulations (e.g., individuals with preexisting respiratory disease), chronic exposure effects in animals; analysis of indicators of yield loss in agricultural crops; and effects of O_3 on forest tree species.

Because of the potential significance of these studies, as well as other ongoing research efforts, the EPA is planning to proceed as rapidly as possible with the next periodic review of the air quality criteria and standards for O_3. Under the process established in sections 108 and 109 of the Act and refined by the EPA and the CASAC, the EPA will begin by announcing the commencement of the review in the **Federal Register**. After carefully assessing and evaluating the pertinent new studies, the EPA will then prepare a preliminary draft of a revised criteria document and subject it successively to review at expert peer-review workshops, by the public, and by the CASAC. Once the CASAC has reviewed the first external review draft of the revised criteria document, thus providing a preliminary basis for review of the existing standards, the EPA staff will prepare a draft staff paper evaluating the most significant information contained in the draft criteria document and develop recommendations for revisions, if appropriate, to the standards. The first draft of the staff paper and the second external review draft of the criteria document will then be made available for public and CASAC review. Typically at this point, the criteria document is of sufficient quality for the CASAC to reach "closure" and will provide the basis for completing the staff paper that in turn will be reviewed by the CASAC. The CASAC will then submit its advice and recommendations to the Administrator. The overall process will take an estimated 2–3 years. Although the process is lengthy and rigorous, the EPA believes it is both necessary and appropriate given applicable statutory requirements, the volume of material requiring careful evaluation, and the extraordinary environmental, economic, and social importance of O_3 NAAQS.

IV. Federal Reference Method

The EPA is not proposing any revisions to the Federal reference measurement method for O_3 described in appendix D to 40 CFR part 50, as amended on February 18, 1975 (40 FR 7042) and further amended on February 8, 1979 (44 FR 8221).

V. Regulatory and Environmental Impact Analysis

Under Executive Order 12291, the EPA must judge whether an action is a "major" regulation for which a Regulatory Impact Analysis (RIA) is required. The EPA has judged the proposed O_3 NAAQS decision is not a major action because there are no additional costs or environmental impacts as a result of not revising the standards. The EPA, therefore, has deemed unnecessary the preparation of either a RIA or an Environmental Impact Statement.

VI. Impact on Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 35 seq., the EPA must prepare initial and final regulatory flexibility analyses assessing the impact of certain rules on small entities. These requirements are inapplicable to rules or other actions for which the EPA is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., or other law to publish a notice of proposed rulemaking (5 U.S.C. 603(a), 604(a)). The EPA is following rulemaking procedures in deciding whether to revise the O_3 standards in light of the court order in the *American Lung Association* case and the importance of the issue. Under section 307(d) of the Act, as the EPA interprets it, neither the APA nor the Act requires rulemaking procedures where the Agency decides to retain existing NAAQS without change. Accordingly, the EPA has determined that the impact assessment requirements of the RFA are inapplicable to this proposed decision.

VII. Other Reviews

This proposed decision was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and the EPA written responses to these comments are available for public inspection at the EPA's Central Docket Section (Docket No. A–92–17), South Conference Center, room 4, Waterside Mall, 401 M Street SW., Washington, DC.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 1, 1992.

William K. Reilly,

Administrator.

References

Adams, H.S.; Stephenson, S.L.; Blasting, T.J.; Duvick, D.N., (1985) Growth trend declines of spruce and fir in mid-Appalachian subalpine forests. Environ. and Exptl. Bot. 25:315–325.

Avol, E.L.; Linn, W.S.; Venet, T.G.; Shamoo, D.A.; Hackney, J.D. (1984) Comparative respiratory effects of ozone and ambient oxidant pollution exposure during heavy exercise. J. Air Pollut. Control Assoc. 34: 804–809.

Bates, D.V.; Sizto, R. (1987) Air pollution and hospital admissions in southern Ontario: the acid summer haze effect. Environ. Res. 43: 317–331.

Bates, D.V.; Sizto, R. (1989) The Ontario air pollution study: identification of the causative agent. In: International symposium on the health effects of acid aerosols: addressing obstacles in an emerging data base; October 1987; Research Triangle Park, NC. Environ. Health Perspect. 79: 69–72.

Benoit, L.F.; Skelly, J.M.; Moore, L.D.; Dochinger, L.S. (1982) Radial growth reductions in *Pinus strobus* L. correlated with foliar ozone sensitivity as an indicator of ozone-induced losses in eastern forests. Can. J. For. Res. 12: 673–678.

Clean Air Scientific Advisory Committee Meeting, held in Washington, D.C. on December 14–15, 1987.

Clean Air Scientific Advisory Committee (1989) Closure Letter to William K. Reilly, May 1, 1989.

Costa, D.L.; Hatch, G.E.; Highfill, J.; Stevens, M.A.; Tepper, J.S. (1989) Pulmonary function studies in the rat addressing concentration versus time relationships of ozone. In: Schneider, T.; Lee, S.D.; Wolters, G.J.R; Grant, L.D. eds. Atmospheric ozone research and its policy implications: proceedings of the 3rd US-Dutch international symposium: May 1988; Nijmegen, The Netherlands. Amsterdam, The Netherlands; Elsevier Science Publishers; pp. 733–743. (Studies in environmental science 35).

DeLucia, A.J.; Adams, W.C. (1977) Effects of O 3 inhalation during exercise on pulmonary function and blood biochemistry. J. Appl. Physiol.: Respir. Environ. Exercise Physiol. 43: 75–81.

Folinsbee, L.J.; Hazucha, M.J. (1989) Persistence of ozone-induced changes in lung function and airway responsiveness. In: Schneider, T.; Lee, S.D.; Wolters, G.J.R.; Grant, L.D.; eds. Atmospheric ozone research and its policy implications: proceedings of the 3rd US-Dutch international symposium; May 1988; Nijmegen, The Netherlands. Amsterdam, The Netherlands: Elsevier Science Publishers; pp. 483–492. (Studies in environmental science 35).

Gibbons, S.I.; Adams, W.C. (1984) Combined effects of ozone exposure and ambient heat on exercising females. J. Appl. Physiol. 57: 450–456.

Gong, H., Jr.; Bradley, P.W.; Simmons, M.S.; Tashkin, D.P. (1988) Impaired exercise performance and pulmonary function in elite cyclists during low-level ozone exposure in a hot environment. Am. Rev. Respir. Dis. 134: 726–733.

Grose, E.C.; Stevens, M.A.; Hatch, G.E.; Jaskot, R.H.; Selgrade, M.J.K.; Stead, A.G.; Costa, D.; Graham, J.A. (1989) The impact of a 12-month exposure to a diurnal pattern of ozone on pulmonary function, antioxidant biochemistry and immunology. In: Schneider, T.; Lee, S.D.; Wolters, G.J.R.; Grant, L.D.; eds. Atmospheric ozone research and its policy implications; proceedings of the 3rd US-Dutch international symposium: May 1988; Nijmegen, The Netherlands. Amsterdam, The Netherlands: Elsevier Science Publishers; pp. 535–544. (Studies in environmental science 35).

Hayes, S.R.; Rosenbaum, A.S.; Wallsten, T.S.; Whitfield, R.G.; Winkler, R.L. (1987) Assessment of Lung Function and Symptom Health Risks Associated with Attainment of Lung Function and Symptom Health Risks Associated with Attainment of Alternative Ozone NAAQS (Draft Final Report). San Rafael, CA: Systems Applications, Inc.

Hayes, S.R.; Moezzi, M.; Wallsten, T.S.; Winkler, R.L. (1987b). An Analysis of Symptom and Lung Function Data from Several Human Controlled Ozone Exposure Studies (Draft Final Report). San Rafael, CA: Systems Applications, Inc.

Hogsett, W.E.; Tingey, D.T.; Holman, S.R. (1985) A programmable exposure control system for determination of the effects of pollutant exposure regimes on plant growth. Atmos. Environ. 19: 1135–1145.

Holguin, A.H.; Buffler, P.A.; Contant, C.F., Jr.; Stock, T.H.; Kotchmar, D.J.; Hsi B.P.; Jenkins, D.E.; Gehan, B.M.; Noel, L.M.; Mei, M. (1985) The effects of ozone on asthmatics in the Houston area. In: Proceedings of an international specialty conference on the evaluation of the scientific basis for an ozone/oxidant standard; November 1984; Houston, TX. Pittsburgh, PA: Air Pollution Control Association; pp. 262–280. (APCA international specialty conference transactions: v. 4).

Horstman, D.; McDonnell, W.; Folinsbee, L.; Abdul-Salaam, S.; Ives, P. (1989) Changes in pulmonary function and airway reactivity due to prolonged exposure to typical ambient ozone (O_3) levels. In: Schneider, T.; Lee, S.D.; Wolters, G.J.R.; Grant, L.D., eds. Atmospheric ozone research and its policy implications: proceedings of the 3rd US–Dutch international symposium; May 1988; Nijmegen, The Netherlands. Amsterdam, The Netherlands: Elsevier Science Publishers; pp. 755–762. (Studies in environmental science 35).

Huang, Y.; Chang, L.Y.; Miller, F.J.; Crapo, J.D. (1988) Lung injury caused by ambient levels of ozone. J. Aerosol Med. 1:180–183.

Johnson, A.H. and T.G. Sicamma (1983). Acid deposition and forest decline. Environ. Sci. Technol. 17: 294A–305A.

Koren, H.S.; Devlin, R.B.; Graham, D.E.; Mann, R.; Horstman, D.H. (1988a) Cellular and biochemical changes in the lower airways of subjects exposed to ozone. Research Triangle Park, NC: U.S. Environmental Protection Agency, Health Effects Research Laboratory; report no. EPA/600/D–88/031. Available from: NTIS; Springfield, VA; PB88–170048.

Koren, H.S.; Devlin, R.B.; Graham, D.E.; Mann, R.; Horstman, D.H.; Kozumbo, W.J.; Becker, S.; McDonnell, W.F. (1988b) Cellular and biochemical changes in the lower airways of subjects exposed to ozone. In: Sorg, C., ed. The alveolar macrophage. Local Immunity 4: 36–49.

Koren, H.S.; Devlin, R.B.; Graham, D.E.; Mann, R.; McDonnell, W.F. (1989a) The inflammatory response in human lung exposed to ambient levels of ozone. In: Schneider, T.; Lee, S.D.; Wolters, G.J.R.; Grant, L.D., eds. Atmospheric ozone research and its policy implications: proceedings of the 3rd US–Dutch international symposium; May 1988; Nijmegen, The Netherlands. Amsterdam, The Netherlands: Elsevier Science Publishers; pp. 745–753. (Studies in environmental science 35).

Koren, H.S.; Devlin, R.B.; Graham, D.E.; McGee, M.P.; Horstman, D.H.; Kozumbo, W.J.; Becker, S.; House, D.E.; McDonnell, W.F.; Bromberg, P.A. (1989b) Ozone-induced inflammation in the lower airways of human subjects. Am. Rev. Respir. Dis. 139: 407–415.

Kulle, T.J.; Sauder, L.R.; Hebel, J.R.; Chatham, M.D. (1985) Ozone response relationships in healthy nonsmokers. Am. Rev. Respir. Dis. 132: 36–41.

Larsen, R.I. and W.W. Heck (1984) An air quality data analysis system for interrelating effects, standards, and needed source reductions: Part 8. An effective mean O3 crop reduction mathematical model. J. Air Pollut. Control Assoc. 34: 1023–1034.

Lebowitz, M.D.; O'Rourke, M.K.; Dodge, R.; Holberg, C.J.; Corman, G.; Hoshaw, R.W.; Pinnas, J.L.; Barbee, R.A.; Sneller, M.R. (1982) The adverse health effects of biological aerosols, other aerosols, and indoor microclimate on asthmatics and nonasthmatics. Environ. Int. 8: 375–380.

Lebowitz, M.D.; Holberg, C.J.; Dodge, R.R. (1983) Respiratory effects on populations from low level exposures to ozone. Presented at: 34th annual meeting of the Air Pollution Control Association; June; Atlanta, GA. Pittsburgh, PA: Air Pollution Control Association; paper no. 83–12.5.

Lee, E.H.; Tingey, D.T.; Hogsett, W.E. (1987) Selection of the best exposure-response model using various 7-hour ozone exposure statistics. Report submitted to U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

Lee, E.H.; Tingey, D.T.; Hogsett, W.E. (1988a) Evaluation of ozone exposure indices for relating exposure to plant production and for estimating agricultural losses. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C.

Lee, E.H.; Tingey, D.T.; Hogsett, W.E. (1988b) Evaluation of ozone exposure indices in exposure-response modeling. Environ. Pollut. 53:43–62.

Lee, E.H.; Tingey, D.T.; Hogsett, W.E. (1988c) Interrelationship of Experimental Exposure and Ambient Air Quality Data for Comparison of Ozone Exposure Indices and Estimating Agricultural Losses. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C.

Lefohn, A.S. (1984) Exposure considerations associated with characterizing ozone ambient air quality monitoring data. Paper presented at the APCA Specialty Conference in Houston.

Lefohn, A.S.; Laurence, J.A.; Kohut, R.J. (1988) A comparison of indices that describe the relationship between exposure to ozone and reduction in the yield of agricultural crops. Atmos. Environ. 22:1229–1240.

Linn, W.S.; Avol, E.L.; Shamoo, D.A.; Spier, C.E.; Valencia, L.M.; Venet, T.G.; Fischer, D.A.; Hackney, J.D. (1986) A dose-response study of healthy heavily exercising men exposed to ozone at concentrations near the ambient air quality standard. Toxicol. Ind. Health 2: 99–112.

Lloy, P.J.; Vollmuth, T.A.; Lippman, M. (1985) Persistence of peak flow decrement in children following ozone exposures exceeding the National Ambient Air Quality Standard. J. Air Pollut. Control Assoc. 35: 1068–1071.

Mann, L.K.; McLaughlin, S.B.; Shriner, D.S. (1980) Seasonal physiological responses of white pine under chronic air pollution stress. Environ. Exp. Bot. 20: 99–105.

McCurdy, T. (1987) Descriptive statistical analyses of ozone air quality indicators in rural/remote and metropolitan areas. Research Triangle Park, N.C.: U.S. Environmental Protection Agency.

McDonnel, W.F.; Horstmann, D.H.; Hazucha, M.J.; Seal, E., Jr.; Haak, E.D.; Salaam, S.; House, D.E. (1983) Pulmonary effects of ozone exposure during exercise: dose-response characteristics. J. Appl. Physiol: Respir. Environ. Exercise Physiol. 54: 1345–1352.

McDonnell, W.F.; Horstman, D.H.; Abdul-Salaam, S.; Raggio, L.J.; Green, J.A. (1987) The respiratory responses of subjects with allergic rhinitis to ozone exposure and their relationship to nonspecific airway reactivity. Toxicol. Inc. Health 3: 507–517.

McLaughlin, S.B.; McConathy, R.K.; Duvick, D.; Mann, L.K. (1982) Effects of chronic air pollution stress on photosynthesis, carbon allocation, and growth of white pine trees. For. Sci. 28: 60–70.

McLaughlin, S.B. (1985) Effects of air pollution on forest: A critical review. J. Air Pollut. Assoc. 35: 512–534.

Miller, P.R.; Taylor, O.C.; Wilhour, R.G. (1982) Oxidant air pollution effects on a western coniferous forest ecosystem. Corvallis, OR: Corvallis Environmental Research Laboratory; EPA report No. EPA–600/D–82–276.

Musselman, R.C.; Oshima, R.J.; Gallavan, R.E. (1983) Significance of pollutant concentration distribution in the response of 'red kidney' beans to ozone. J. Am. Soc. Hortic. Sci. 108: 347–351.

Schelegle, E.S.; Adams, W.C. (1986) Reduced exercise time in competitive simulations consequent to low level ozone exposure. Med. Sci. Sports Exerc. 18: 408–414.

Spektor, D.M.; Lippmann, M.; Lioy, P.J.; Thurston, G.D.; Citak, K.; James, D.J.; Bock, N.; Spelzer, F.E.; Hayes, C. (1988a) Effects of ambient ozone on respiratory function in active normal children. Am. Rev. Respir. Dis. 137: 313–320.

Spektor, S.M.; Lippmann, M.; Thurston, G.D.; Lioy, P.J.; Stecko, J.; O'Connor, G.; Garshick, E.; Speizer, F.E.; Hayes, C. (1988b) Effects of ambient ozone on respiratory function in healthy adults exercising outdoors. Am. Rev. Respir. Dis. 138: 821–828.

U.S. Environmental Protection Agency (1978) Air Quality Criteria for Ozone and Other Photochemical Oxidants: Office of Research and Development, Washington, D.C.; EPA Report No. EPA–600/8–78–004.

U.S. Environmental Protection Agency (1988) Air quality criteria for ozone and other photochemical oxidants. Draft Final. Environmental Criteria and Assessment Office; EPA Report No. EPA–600/8–84/020a to 020e. Available from: NTIS, Springfield, VA; PB 87–142949.

U.S. Environmental Protection Agency (1989) Review of the National Ambient Air Quality Standards for Ozone Assessment of Scientific and Technical Information: OAQPS Staff Paper. Research Triangle Park, NC: Office of Air Quality Planning and Standards; EPA Report No. 450/2–92–001.

U.S. Environmental Protection Agency (1992) Summary of Selected New Information on Effects of Ozone on Health and Vegetation: Supplement to Air Quality Criteria for Ozone and Other Photochemical Oxidants. Research Triangle Park, NC: Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office; EPA/600/8–88/105A. Available from NTIS, Springfield, VA.

Whittemore, A.S.; Korn, E.L. (1980) Asthma and air pollution in the Los Angeles area. Am. J. Public Health 70: 687–696.

Woodwell, G.M. (1974) Success, succession, and Adam Smith. BioScience 24: 81–87.

Appendix I

May 1, 1989.

The Honorable William K. Reilly,
Administrator
U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dear Mr. Reilly: I am pleased to transmit via this letter the advice of the Clean Air Scientific Advisory Committee (CASAC) concerning the National Ambient Air Quality Standards for Ozone. CASAC has reviewed and offered comments directly to EPA staff on the EPA criteria document "Air Quality Criteria for Ozone and Other Photochemical Oxidants (1986)," the draft "Criteria Document Supplement (1988)," and the Office of Air Quality Planning and Standards staff position paper "Review of the National Ambient Air Quality Standards for Ozone Assessment of Scientific and Technical Information (1988)" and related support documents.

CASAC previously reached closure on the 1986 Criteria Document. At a meeting held on December 14–15, 1988, CASAC came to closure on the "Criteria Document Supplement (1988)" and the 1988 Staff Position Paper and concluded that they provide an adequate scientific basis for EPA to retain or revise primary and secondary standards for ozone. While reaching closure at this time, the Committee did note an emerging data base on the acute health effects resulting from 6-plus hours of ozone exposure, providing evidence of the possible need for a standard with a 6–8 hour averaging time. However, it was the Committee's view that it would be some time before enough of this developing information would be published in scientific journals to receive full peer review and, thus, be suitable for inclusion in a criteria document. CASAC concluded such information can better be considered in the next review of the ozone standards.

CASAC did not reach a consensus opinion on endorsement of the staff position paper recommendation that "the range of 1-hour average ozone levels of concern for standard setting purposes is 0.08–0.12 ppm for a primary standard."

The opinion of the CASAC Ozone Review Committee was divided with regard to the upper range of the standard with eight individuals favoring a range with an upper value of 0.12 ppm, three individuals favored an upper bound in the range of 0.10–0.12 ppm, four individuals favored an upper bound value no higher than 0.10 ppm, and one individual abstained from offering an opinion. Several individuals who supported an upper value of 0.12 ppm as well as all of the other individuals who favored a lower value for the upper end of the range expressed the view that at 0.12 ppm there was little or no margin of safety. As you are aware, the margin of safety is intended to provide protection against adverse effects which have not yet been uncovered by research and effects whose medical significance is a matter of disagreement. Finally, several members of the subcommittee favored development of a standard with a more statistically robust upper bound on the annual distribution of ozone concentrations rather than reliance on the current expected exceedance form of the standard. While the Committee offers no further advice on what form the Agency should consider, we would caution you against any form which alters the degree of health protection afforded by the current standard.

CASAC had substantial discussion of the issue of what are or are not adverse health effects. This discussion was aided by the presentation of this issue in the staff position paper. Within CASAC there was diversity of opinion; some members felt that healthy individuals experience adverse effects when ozone exposure induced any of the responses categorized as moderate (i.e., >10% decrement in FEV_1 or mild to moderate respiratory symptoms) in the staff position paper, while a few members believed that adverse effects would not be experienced until ozone induced more severe effects (i.e., >20% decrement in FEV_1 and moderate to severe respiratory symptoms). The view of some individuals on this matter was influenced by recognition that resolution of the adverse health effect issue represents a blending of scientific and policy judgments and, thus, we feel it appropriate to inform you of the range of our views on this matter.

Of particular concern to CASAC is the potential for effects arising from exposures to ozone with daily peak concentrations at or near 0.12 ppm for periods of 6–8 hours and with co-exposure to other pollutants. This concern is due to air quality analyses which have shown that even in areas which do not repeatedly exceed the ozone standard, ozone concentrations can remain close to 0.12 ppm for several hours per day for extended periods of time in summer. There was concern based on recent controlled human exposure, epidemiology and toxicology studies, that such prolonged exposures could result in increased respiratory impairment. Further, for people exposed to these ozone concentrations over a lifetime, the possibility that chronic irreversible effects may result is

of concern, although such changes have not been demonstrated.

The Committee noted that the Criteria Document Supplement failed to cite and discuss a group of "ecological" epidemiological studies of the effects of ozone on various measures of human health such as hospitalizations for respiratory illnesses or exacerbation of chronic respiratory problems. Although these studies have obvious limitations in establishing cause and effect relationships, they have certain strengths which can aid in regulatory decision-making. Studies of this type should be discussed and evaluated in future criteria documents as a complementary source of information.

While reaching closure on the staff position paper recommending a 1-hour standard, CASAC urged that the Agency provide increased support for research that will prove an improved scientific basis for evaluating the need for standards with multi-hour or seasonal averaging times. Clearly, the obvious, research on this critical environmental health issue must be supported now in order for results to be available for consideration in the next 5-year review cycle. CASAC has enumerated these research needs in some detail in a September 1987 submission to the Agency. The Committee feels these research recommendation are still valid and should be incorporated as expeditiously as possible into the Agency research program.

CASAC did not reach a consensus opinion on endorsement of the staff position paper recommendation of "a 1-hour averaging time standard in the range of 0.06–0.12 ppm" for a secondary standard. The CASAC Ozone Welfare Effects Subcommittee that considered this matter reached a divided opinion; two favored a range with an upper value of 0.12 ppm, three favored an upper value of less than 0.12 ppm, and five favored an upper value of 0.10 ppm. The Committee noted that the form of the standard was of critical importance in protecting against ozone effects on vegetation. The Committee was of the opinion that a cumulative seasonal standard would be more appropriate than a 1-hour standard and felt that such a standard could be developed. CASAC favored issuance of a cumulative seasonal standard form assuming its development would not further delay the standard setting process. If this form of standard cannot be developed in time for the current review, the Committee is of the opinion that you should give serious consideration to setting a 1-hour secondary standard with a maximum of 0.10 ppm. The Committee took note of the lack of information on the effects of ozone on forest ecosystems and urged support for research to remedy this deficiency.

In closing, I would like to briefly comment on CASAC's failure to reach a consensus as to the appropriate range for setting the ozone standards. This lack of consensus is reflective of major deficiencies in our knowledge regarding health and welfare effects of long-term exposure (beyond a few hours) to ozone. The data base is very large and adequate for knowledgeable individuals to reach agreement on the effects of acute exposure to ozone in the range appropriate for setting a 1-hour standard. However, there is not an adequate data base on the effects of multiple hour or seasonal exposures to ozone, especially as regards whether such exposures may produce chronic health effects. This is especially troubling since such long-term exposures to ozone occur in many parts of the United States and involve many millions of people and thousands of acres of crop and forest lands. As a result, there continues to be concern for the public health and welfare threat which may be posed by chronic exposure to ozone. It is critical that the data base on health and welfare effects related to multiple hour, seasonal and lifetime exposures of ozone be increased through an accelerated and expanded research effort. This must be done so that future considerations of ozone standards will derive from a stronger scientific base.

CASAC recognizes that your statutory responsibility to set standards requires public health policy judgments in addition to determinations of a strictly scientific nature. While the Committee is willing to further advise you on the ozone standards, we see no need, in view of the already extensive comments provided, to review the proposed ozone standards prior to their publication in the **Federal Register**. In this instance, the public comment period will provide sufficient opportunity for the Committee to provide any additional comments or review that may be necessary.

CASAC would appreciate being kept informed of progress on establishing revised or new ozone standards and plans for research on ozone effects. Please do not hesitate to contact me if CASAC can be of further assistance on this matter.

Sincerely,

Roger O. McClellan,

Chairman, Clean Air Scientific Advisory Committee.

[FR Doc. 18932 Filed 8–7–92; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 10)]

Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services—1992 Update

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rules.

SUMMARY: In this proceeding, the Commission proposes the 1992 user fee update. The fee increases here result from the implementation of the update formula set forth in 49 CFR 1002.3(d). Because final rules have been adopted in Safety Fitness Policy, 8 I.C.C.2d 123 (1991), the Commission now is proposing to implement the filing fee increases for the permanent and emergency temporary motor carrier operating authority applications and motor carrier finance proceedings which were deferred in Regulations Governing Fees for Services—1990 Update, 7 I.C.C.2d 3 (1990), and Regulations Governing Fees For Services—1991 Update, 8 I.C.C.2d 13 (1991). The Commission also is proposing to eliminate the caps on the fees for rail finance and abandonment proceedings and complaint and complaint-type declaratory proceedings, which were adopted in Regulations Governing Fees For Services—1989 Update, 5 I.C.C.2d 817 (1989).

DATES: Comments must be received by September 9, 1992.

ADDRESSES: Send an original and 10 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202–927–5493 (TDD for hearing impaired: 202–927–5721).

SUPPLEMENTARY INFORMATION:

The Commission preliminarily concludes that these proposed fee increases will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for the waiver of filing fees when the required showing of financial hardship or public interest criteria is established.

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5921.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: July 1, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald commented with a separate expression. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of

Federal Regulations is proposed to be amended as follows:

PART 1002–FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701, and 49 U.S.C. 10321.

2. Section 1002.1 is amended by revising paragraph (b) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $20.00 per hour.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$6.23
2	6.78
3	7.65
4	8.58
5	9.61
6	10.70
7	11.90
8	13.18
9	14.55
10	16.03
11	17.61
12	21.10
13	25.09
14	29.65
15 and over	34.88

* * * * *

3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certification of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	$250
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64	2,400
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number	40
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	200
(6) An application to remove restriction or broaden unduly narrow authority	250
(7) An application for authority to deviate from authorized regular-route authority under 49 U.S.C. 10923(a)	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	100
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	80
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	20
(11) Request for name change of carrier, broker, or household goods freight forwarder	9
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.2	60
(13) A notice of intent to operate under the agricultural cooperative exemption in 49 U.S.C. 10526(a)(5)	60
(14) Reserved)	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	25
(16) [Reserved].	
Part II: Non-Rail Applications To Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908	10,000
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved].	
Part III: Non-Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic	1,900
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	900
(22) An application for approval of a non-rail rate association agreement, 49 U.S.C. 10706	12,200
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	2,000
(ii) Minor amendment	40
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	200
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license under 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	250
(26) [Reserved].	
(27) A petition for exemption under 49 U.S.C. 11343(e)	250
(28)–(32) [Reserved].	
Part IV: Rail Application for Operating Authority	
(33)(i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	3,200
(ii) Exempt transaction under 49 CFR 1150.31	1,700
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	3,900
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	2,200
(36)–(37) [Reserved].	
Part V: Rail Applications To Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act [Subtitle E of Title XI of Pub. Law 97–35], bankrupt railroads, or exempt abandonments under 49 CFR 1152.50)	7,100
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	200
(40) Abandonments filed by bankrupt railroads 49 CFR 1152.40	800
(41) Exempt abandonments. 49 CFR 1152.50	4,100
(42) A notice or petition to discontinue passenger train service	10,000
(43) [Reserved].	
Part VI: Rail Applications To Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	8,400
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	4,500
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343:	
(i) Major transaction	164,700
(ii) Significant transaction	32,900
(iii) Minor transaction	2,700
(iv) Exempt transaction [49 CFR 1180.2(d)]	650
(v) Responsive application	2,700
(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	164,700
(ii) Significant transaction	32,900
(iii) Minor transaction	2,700
(iv) Exempt transaction [49 CFR 1180.2(d)]	650
(v) Responsive application	2,700
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
(i) Major transaction	164,700
(ii) Significant transaction	32,900
(iii) Minor transaction	2,700

Type of proceedings	Fees
(iv) Exempt transaction [49 CFR 1180.2(d)]	650
(v) Responsive application	2,700
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	164,700
(ii) Significant transaction	32,900
(iii) Minor transaction	2,700
(iv) Exempt transaction [49 CFR 1180.2(d)]	650
(v) Responsive application	2,700
(50) An application for a determination of fact of competition, 49 U.S.C. 11321(a)(2) or (b)	32,900
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	31,000
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	5,700
(ii) Minor amendment	40
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	300
(54)(i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization for competitive bidding requirements of Ex Parte No. 158, 49 CFR Part 1175. 49 U.S.C. 11301	1,400
(ii) An exempt transaction under 49 CFR Part 1175	650
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505:	
(i) Financial exemption petitions	4,100
(ii) Abandonment exemption petitions	5,600
(iii) Construction, extension, acquisition, or operation of a rail line	7,200
(iv) Other exemption	3,500
(56)–(59) [Reserved].	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers, or freight forwarders of household goods	5,900
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares, or charges. 49 U.S.C. 10705(f)(1)(A)	3,900
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	7,000
(ii) All other petitions for declaratory order	1,200
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases	6,800
(64) A petition for exemption from filing tariffs by bus carriers	250
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	3,100
(66) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate rail carriers. 49 U.S.C. 11501	1,800
(67) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate bus carriers. 49 U.S.C. 11501	1,900
(68)–(71) [Reserved].	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster)	550
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	50
(74) The filing of tariffs, rate schedules, contracts and/or contract summaries, including supplements	[1] 9
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less)	60
(76) Informal complaint about rail rate application	250
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD)	3,300
(ii) An application for original qualification as self-insurer for cargo insurance	300
(78) A service fee for insurer, surety or self insurer accepted certificate of insurance, surety bond, or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity	[2] 10
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR part 1057	350
(80) A petition for reinstatement of revoked operating authority	60
(81)–(82) [Reserved].	
(83) Petition for reinstatement of a dismissed operating rights application	350
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	[3] 16
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding	1,200
(86) Informal opinions about rate applications (all modes)	40
(87)–(95) [Reserved].	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	[4] 12
(97) Request for service list for proceedings	[5] 6
(98) Requests for copies of the one-percent carload waybill sample	100
(99) Verification of surcharge level pursuant to Ex Parte No. 399, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	[6] 17
(100) Application fee for Interstate Commerce Commission Practitioners' Exam	80

[1] Per series transmitted.
[2] Per accepted certificate or other instrument submitted in lieu of a broker surety band.
[3] Per document.
[4] Per delivery.
[5] Per list.
[6] Per movement verified.

[FR Doc. 92–18949 Filed 8–7–92; 8:45 am]

BILLING CODE 7035–01–M

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 17)]

Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, "Significant" Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise the definition of "significant transaction" in rail carrier consolidation cases, and to eliminate certain requirements presently applicable to applications seeking approval of significant transactions. The revision of the definition will rationalize the rail carrier consolidation scheme, and the elimination of the requirements will relieve rail carriers of the burden of submitting information not relevant to the statutory standard applicable to such cases.

DATES: Comments must be submitted by September 9, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 17) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

Environmental and Energy Considerations

We preliminarily conclude that the he proposed action will not significantly effect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant impact on a substantial number of small entities.

To the limited extent that the proposed action will have an impact on small entities, that impact will be

positive one. The primary purpose of the proposed action is to eliminate, in most cases, certain burdensome financial information requirements now imposed on applicants seeking approval for significant transactions. The lessening of the regulatory requirements now applicable to the transactions entered into by these applicants should reduce the expenses these applicants must incur to process these transactions. A secondary purpose of the proposed action is to bring the definition of "significant transaction" in line with the applicable statutory standard.

We invite public comments on the issue of the economic impact of our proposal on small entities.

List of Subjects in 49 CFR Part 1180

Railroads.

Decided: July 21, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Vice Chairman McDonald and Commissioner Simmons commented with separate expressions.

Sidney L. Strickland, Jr.

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of February Regulations is proposed to be revised as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, and 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Section 1180.0 is proposed to be amended by removing the 7th and 8th sentences and by adding in lieu thereof three new sentences to read as follows:

§ 1180.0 Scope and purpose.

* * * A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7, 1180.8(a), and 1180.9. A *signifiant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7, and 1180.8(a). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(b).* * *

3. In § 1180.2, paragraph (b) is proposed to be revised to read as follows:

§ 1180.2 Types of transactions.

* * * * *

(b) A *significant* transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11345(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:

(1) That the transaction clearly will not have any anticompetitive effects; or

(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

A transaction not involving the control or merger of two or more class I railroads is significant if neither such determination can clearly be made.

* * * * *

4. In § 1180.4, paragraph (b)(1)(iv) is proposed to be revised to read as follows:

§ 1180.4 Proceudres.

* * * * *

(b) * * *

(1) * * *

(iv) Indicate why the transaction is *major* or *significant.*

* * * * *

5. In § 1180.6, the introductory text of paragraph (b) is proposed to be revised, and a new paragraph (c) is proposed to be added, to read as follows:

§ 1180.6 Supporting information.

* * * * *

(b) In a *major* transaction, submit the following information:

* * * * *

(c) In a *significant* transaction, submit the information specified in paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) of this section.

6. In § 1180.9, the introductory text is proposed to be revised to read as follows:

§ 1180.9 Financial information.

The following information shall be provided for *major* transactions, and for carriers shall conform to the Commission's Uniform System of Accounts, 49 CFR part 1201:

* * * * *

[FR Doc. 92–18941 Filed 8–7–92; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 57, No. 154
Monday, August 10, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee; Working Group on Risk Assessment

In accordance with the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meeting of a working group of the Agricultural Biotechnology Research Advisory Committee (ABRAC):

The Working Group on Risk Assessment will meet in the Georgetown Room, Rosslyn Westpark Hotel, 1900 N. Fort Myer Drive, Arlington Virginia, 22209 on August 25, 1992 from 9 a.m. to approximately 5 p.m. The Working Group will consider risk assessment issues in connection with field trials involving genetically engineered plants. Other risk assessment issues (e.g., experimental use of exotic pest and disease agents as challenge organisms in the development of pest and disease resistant plants) will also be discussed.

The meeting is open to the public. Persons may participate in the meeting as time and space permit.

Further information may be obtained from Ms. Maryln Cordle, Senior Regulatory Specialist, Office of Agricultural Biotechnology, room 1001, Rosslyn Plaza East, 14th Street and Independence Avenue SW., Washington, DC, 20250. Telephone (703) 235–1510.

Done at Washington, DC, this 4th day of August, 1992.

Duane Acker,

Assistant Secretary, Science and Education.

[FR Doc. 92–18845 Filed 8–7–92; 8:45 am]

BILLING CODE 3410-22-M

Food and Nutrition Service

National Advisory Council on Commodity Distribution; Meeting Announcement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Council on Commodity Distribution is scheduled for August 18–19, 1992. The council, established by the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237) meets biannually to advise the Secretary of Agriculture regarding the development of commodity specifications and other program improvements.

DATES: The meeting will take place on August 18–19, 1992, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly King, Deputy Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305–2680.

SUPPLEMENTARY INFORMATION: This is the seventh meeting of the National Advisory Council and Commodity Distribution, as established by section 3(a)(3) of Public Law 100–237. The purpose of the council is to provide guidance to the Secretary of Agriculture on regulations and policy development for the Food Distribution Programs with primary emphasis on specifications for commodities. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Ms. Alberta C. Frost, Executive Secretary, National Advisory Council on Commodity Distribution, USA, Food and Nutrition Service, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302. Comments may be filed with Alberta C. Frost before or after the meeting.

Dated: August 4, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92–18893 Filed 8–7–92; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Long Creek Watershed, Mississippi

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Long Creek Watershed, Panola County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965–5205.

SUPPLEMENTARY INFORMATION: An environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The Project Plan provides land treatment measures to cropland throughout the watershed. The planned works of improvement consists of land treatment, 3 floodwater retarding structures, 19 intermediate size dams, 47 debris basis dams, rehabilitation of 19 existing dams, 70 minor (pipe) grade control structures, 4 major channel grade control structures, 5.4 miles of stream channel bank stabilization, and strengthen and/or repair of 11 bridges.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

The Watershed Plan/Environmental Assessment is on file and may be reviewed by contacting L. Pete Heard at the location shown herein.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: July 23, 1992.

L. Pete Heard,

State Conservationist, SCS, Jackson, Mississippi.

[FR Doc. 92-18931 Filed 8-7-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 920895-2195]

Request for Comments on the Proposed Options for Incorporating Information From the Post-Enumeration Survey Into the Intercensal Population Estimates Produced by the Bureau of the Census

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice and request for comments and scheduling of public hearing.

SUMMARY: The purpose of this notice is to inform the public about the alternatives available to the Director of the Census Bureau for potential improvement in the intercensal estimates of population and to seek comment on the alternatives.

This notice also announces the scheduling of a public hearing on this matter.

DATES: The public hearing will be held on August 31, 1992 from 9 a.m. to 4 p.m. Written comments from the public should be received no later than August 31, 1992.

ADDRESSES: The hearing will be held in room 2412, Federal Office Building #3, U.S. Census Bureau, Suitland, Maryland from 9 a.m. to 4 p.m.

For those who wish to submit written comments, comments should be addressed to: Dr. Barbara Everitt Bryant, Director, Bureau of the Census, Washington, DC 20233-0100.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Bounpane, Assistant Director, Bureau of the Census, Telephone (301) 763-5613.

SUPPLEMENTARY INFORMATION

Background

During its long history, the Census Bureau has continuously sought to improve the statistics it collects and disseminates. As part of this effort, the Census Bureau has improved its population counts in the decennial census each decade leading up to the 1990 census, which current estimates indicate achieved 98.4 percent accuracy. Despite this improvement, certain population sub-groups continue to be undercounted at a higher rate than the national population. This phenomenon is referred to as "differential undercount."

The Census Bureau measured the coverage of the 1990 census by a program called the Post-Enumeration Survey (PES) and considered whether incorporating the results of the PES into the census counts would make the counts more accurate. In July 1991, Secretary of Commerce Robert Mosbacher concluded that there was not sufficient evidence to support using the PES results to adjust the 1990 census. (For a fuller description of the decision whether to adjust the 1990 census, see 56 FR 33582-92.)

While Secretary Mosbacher concluded that an adjustment of the 1990 census would not make the counts more accurate at all levels for which decennial census data are used, he remained concerned about the differential undercount. He therefore instructed the Census Bureau to determine whether information gleaned from the PES could be used to improve the intercensal estimates produced in years between decennial censuses.

Since that time, the Census Bureau has conducted extensive research to refine the PES. That research has shown that the estimates of undercount reported in July 1991 were too high. (See the section below—Results of Post-Census Research.) That research has also shown that even with the additional year of research and removing one of the causes of concern in July 1991 (the smoothing operation), some of the problems of the PES as a tool for adjustment cannot be resolved. For example, the level of bias in the national level of undercount is as large now as it was in July 1991 even though the level of the national undercount has been reduced by 0.5 percent. While research on the issues surrounding the PES continues, because the schedule for release of the intercensal estimates, the Census Bureau now must decide whether to include the results of the PES into the base used to calculate intercensal estimates.

The decision on whether to incorporate results from the PES into the intercensal estimates is separate and distinct from the decision whether to adjust 1990 census. One reason for that distinction is the functional differences between the census and intercensal estimates. Unlike the census, the intercensal estimates are not used for apportionment and redistricting. A principal purpose of a census is to produce statistics for each and every jurisdiction. The census is the only source for sub-jurisdiction data, (tracts, blocks, etc.), whereas intercensal estimates are used at various geographic levels. Many important uses of intercensal estimates are at the national and state levels. There are also major differences in the methods used to collect the census and those to make intercensal estimates. The census is a large scale actual enumeration. Intercensal estimates have an additional component of population change over time which is estimated by procedures that require numerous professional judgments. Therefore, intercensal estimates are also subject to error in trying to estimate population change over time while the census error is restricted to whatever error occurs in the actual enumeration.

If there is a decision to incorporate results from the PES into intercensal estimates, there is no intention to adjust the full 1990 decennial census because there is no statistical justification to do so. Based on its revised analysis, the Census Bureau could not conclude that incorporating results from the PES would improve intercensal estimates at the sub-state level. Thus, the relative distribution of population counts from the 1990 census can be considered generally more accurate at sub-state levels.

Calculation of Intercensal Estimates

In the years between each decennial census, the Census Bureau updates its population counts with estimates of change based on demographic data. These are called intercensal estimates or post-censal estimates. Intercensal estimates are made by updating the census base with estimates of population changes due to births, deaths and net migration. These estimates are calculated and reported at the national, state and county level every year and at the incorporated place (city, village, etc.) level every other year.

At the national level, intercensal estimates are produced by age and sex for major race groups and for persons of Hispanic origin. At the state level, they are produced by age and sex. For counties and cities, the Census Bureau only produces total population estimates. There also exists an experimental program that produces estimates by age, sex, race and Hispanic origin at the state and sub-state levels.

If the results of the 1990 PES are included in calculating the 1992 intercensal estimates, the base population would be changed not only to reflect the demographic changes since the 1990 decennial census, but also to reflect the number of persons estimated to have been undercounted or overcounted in the 1990 census. The inclusion of the net undercount figures would constitute a one-time addition which would remain constant throughout the decade. Thus, unlike changes due to demographic data, additions based on incorporating the results of the PES would not reflect any aging, death, or relocation of the additional persons during the decade.

Uses of Intercensal Estimates

The intercensal estimates have three major uses. They are used to calibrate many of the sample surveys conducted throughout the decade. Since sample surveys generally have poorer coverage than a census, estimates from sample surveys are often controlled to an independent total, such as intercensal estimates. Second, intercensal estimates are also used as the denominator for many important per capita statistics throughout the decade. (For example, number of crimes per 1,000 people, incidence of health conditions per 1,000 people, etc.) Third, the estimates are used in Federal and state funding allocations.

About one-third of Federal funding dollars are based on the use of intercensal estimates of population as part of their funding formula, rather than using the census count for ten years. The General Accounting Office (GAO) has estimated that about 10 billion Federal dollars a year are allocated based on funding formulas that use intercensal estimates. (See Federal Formula Programs—Outdated Population Data Used To Allocate Most Funds [GAO/HRD–90–145, September, 1990]). The GAO has also reported that a small percentage of that total would be reallocated among states if the PES results were incorporated into the census counts. (See Formula Programs—Adjusted Census Data Would Redistribute Small Percentage of Funds to States [GAO/GGD–92–12, November, 1991]). The latter GAO report also indicates that an increase in population in a given area through the incorporation of PES data would not necessarily result in an increase in federal funding in that area. Census Bureau research confirms these findings.

Results of Post-Census Research

During its analysis of the PES, the Census Bureau discovered a significant computer processing error in the system used to determine the undercount estimates. As a result of this error, the estimated national undercount rate of 2.1 percent was overstated by 0.4 percent. After correction of the error, the national level undercount was estimated to be about 1.7 percent. After making other refinements and corrections, the Bureau of the Census now estimates the national undercount to be about 1.6 percent.

In recent weeks, a committee of Census Bureau statisticians, in consultation with other statistical experts, reviewed the revised estimates of undercount in the 1990 census to determine if these estimates could be used to improve the accuracy of the intercensal estimates. This committee reported that, on average, use of the PES results would lead to improvement in accuracy for intercensal estimates at the national and state levels only. There were exceptions to this general finding for some states. (Assessment of Accuracy of Adjusted Versus Unadjusted 1990 Census Base for Use in Intercensal Estimates: Report of the Committee on Adjustment of Postcensal Estimates). Below the state level, the committee reported that using the 1990 census counts as the base would lead to more accurate intercensal estimates than counts which incorporate the PES results. However, if the state estimates included the PES results but sub-state estimates did not, the sub-state estimates would not add up to the state level estimates. A system of intercensal estimates that is not additive is generally regarded as undesirable by users of intercensal estimates, particularly where funding formulas are tiered.

The Decision on Intercensal Estimates

The Director of the Census Bureau will make the decision whether to adjust the base for intercensal estimates and, if so, by what method. The decision must be made by early September 1992 in order to implement the procedure in time for release of the 1992 state estimates before the end of calendar year 1992.

Five options have been identified by the Census Bureau for consideration by the Director. None of these options is optimal for all uses of intercensal estimates. There is no option available to the Director which is fully consistent with the statistical findings of the Census Bureau, evenly balances the needs of diverse users of the intercensal estimates, and produces equivalent accuracy at various levels of geography. Therefore, the director must weigh the relative merits and disadvantages of these options and exercise informed judgment in her final decision. The options available to the Director are described below.

Options

Option #1 Incorporate the results of the PES into the base for intercensal estimates at all levels of geography.

Based on Census Bureau findings, this option would result in intercensal estimates that are generally more accurate at the national and state levels, but generally less accurate at sub-state levels than counts without the PES results. This option would produce a set of additive estimates.

Option #2 Incorporate the PES results into the intercensal base at the national and state levels. At the sub-state level, use a simple synthetic estimate based on the percentage of state-level estimated undercount. (Example: If a state has an estimated undercount of 1% as measured by the PES, then the base for every sub-state area is increased by 1% regardless of the actual PES estimate of undercount for each area.)

Based on Census Bureau findings, this option results in intercensal estimates that are generally more accurate at the state and national levels, while accuracy at sub-state levels may be improved or diminished depending upon the relationship between the measured undercount at the state and sub-state levels. The Census Bureau does not have a detailed evaluation of the technical merits of population counts for this option at the sub-state levels. However, for the proportional distribution of sub-state areas within a state, under this option, a city's population as a percentage of the total state population would be the same using either the census counts or the synthetic counts. This option would produce a set of additive estimates.

Option #3 Incorporate the results of the PES into the intercensal base for national and state level estimates, but not for sub-state levels (counties, cities, etc.).

Based on Census Bureau findings, this option would result in intercensal estimates that are generally more accurate at the national and state levels, and retain the relative accuracy of the 1990 census counts at sub-state levels. As a result of the inclusion of the PES results at the state level and exclusion at sub-state levels, this option would produce a series of estimates that are not additive from sub-state to state.

Option #4 The base for intercensal estimates for all levels of geography would be a simple average of the 1990 census count and an estimate incorporating the results of the PES.

Under this option, the Census Bureau would attempt to achieve some improvements in the accuracy of intercensal estimates by including PES results averaged with the 1990 census counts. While this option would produce intercensal estimates less accurate than options #1, 2, and 3 at the national level and for some states, it would produce sub-state level estimates that are potentially more accurate. Within the Census Bureau, there has been prior use of composite data developed by averaging two different estimates. Because the Census Bureau has not completed a thorough investigation into the technical merits of averaging in this case, this option is based on limited technical findings. This option would produce a set of additive estimates.

Option #5 Do not incorporate the PES results into the intercensal estimates for any jurisdiction.

This option would not address the potential to improve generally the state and national level estimates based on the PES. It would retain the relative accuracy of the 1990 decennial census counts, which the Census Bureau determines cannot be improved upon, at the sub-state level. this option would produce a set of additive estimates.

Request for Comments/Public Hearings

The Census Bureau invites the public to participate in the public hearing on August 31, 1992 to discuss these issues, or to submit written comments by August 31, 1992. The purpose of the hearing is to give the Census Bureau the opportunity to hear the comments of interested parties and not to debate the alternatives available to the Director. Both written and oral comments (as transcribed) will be made part of the public record, and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover building, 14th & Constitution Avenue, NW. Washington, DC 20230.

For a copy of the Report of the Committee on Adjustment of Postcensal Estimates call (301) 763–5813.

Dated: August 5, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–18943 Filed 8–5–92; 3:06 pm]

BILLING CODE 3510–07–M

Bureau of Export Administration

Action Affecting Export Privileges; Yuzo Oshima and The Sound You Company, Ltd.; Order Renewing Temporary Denial of Export Privileges

In the Matter of: Yuzo Oshima and The Sound You Co. Ltd., both with an address at: Tatsuno-Nishitenma Building 3–1–6, Nishitenma Kita-ku, Osaka, Japan, Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (1991)) (Act),[1] has asked the Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Yuzo Oshima (Oshima) and The Sound You Company, Ltd. (Sound You). The initial temporary denial order (TDO was issued on February 11, 1991 for 180 days (56 1991 for 180 days (56 FR 40599, August 15, 1991) and again, for 180 days, on February 4, 1992 (57 FR 5126, February 12, 1992). Without renewal, the TDO is scheduled to expire on August 2, 1992.

In its renewal request of July 13, 1992, the Department asserts, as it did in its initial request for a TDO, that, as a result of its investigation, the Department has reason to believe that, during the period from February 20, 1990 to February 5, 1991, Oshima and Sound You tried to obtain microprocessors manufactured by the Intel Corporation, controlled for reasons of national security at all relevant times, so that they could export that equipment from the United States to North Korea, a country against which the United States has a virtually complete embargo, without first obtaining the required validated license.

In its renewal request of July 13, 1992, the Department also stated that nothing the Department had learned since the time of that initial request has given it reason to believe that its initial suspicions were inaccurate. Indeed, the Department noted that, on February 6, 1991, it separately charged Oshima and Sound You with violating the Regulations based on the same set of facts as those that originally formed the basis for the original and subsequent TDOs. The Department further noted that, although no final decision had yet been issued in connection with the charges against Oshima and Sound You, it continues to believe that the violations Oshima and Sound You are suspected of having committed were deliberate and covert and are likely to occur again unless the TDO naming Oshima and Sound You as denied parties is renewed. In addition, the Department believes that, pending final resolution of the administrative actions the Department has initiated against Oshima and Sound You, renewal of the TDO is necessary to give notice to companies in the United States and abroad that they should cease dealing with Oshima and Sound You in transactions involving U.S.-origin goods.

No opposition was filed in response to the Department's request for renewal. Therefore, based on the showing made by the Department, I find that an order temporarily denying the export privileges of Yuzo Oshima and The Sound You Company Ltd. is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United states and abroad to cease dealing with Yuzo Oshima and the Sound You Company, Ltd. in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that Yuzo Oshima and The Sound You Company, Ltd. will continue to engage in activities that are in violation of the Act and the Regulations.

Accordingly, it is hereby: ordered

I. All outstanding individual validated licenses in which Oshima or Sound You appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Oshima's and Sound You's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days from the effective date of this order, Yuzo Oshima and The Sound You Company Ltd., both with an address at Tatsuno-Nishitenma Building, 3–1–6, Nishitenma, Kita-ku, Osaka, Japan, and all successors, assignees officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1991)).

technical data exported or to be exported from the United States, in whole or in part, or that is otherwise subject to the Act and the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodity or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c), any person, firm, corporation, or business organization related to Oshima or Sound You by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective on August 2, 1992 and shall remain in effect for 180 days from that date.

VII. In accordance with the provisions of Section 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 day before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register.**

Dated: July 31, 1992.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 92-18832 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-DT-M

Office of the General Counsel

[Docket Number 920653-2153]

Commercial Law Development Program for Central and Eastern Europe ("CLDP")

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice of the availability of funds for the CLDP Legal Internship Program.

SUMMARY: The Department of Commerce ("Department") Office of the General Counsel established the Commercial Law Development Program for Central and Eastern Europe ("CLDP") in January 1992 as part of the Administration's ongoing efforts to assist Central and Eastern Europe, and the Baltic States, in the development of a commercial infrastructure consistent with free market principles. The CLDP will support the political and economic reforms being undertaken in the countries of the region by providing technical assistance in the evaluation and revision of their commercial legal systems, with a focus on investment law, commercial dispute resolution, real and intellectual property rights, and government procurement. The legal internship component of the CLDP will provide an opportunity for law students and practicing attorneys, with no more than five years of legal experience, from the region to serve as interns in U.S. law firms and legal offices of U.S. companies, accounting firms, and trade associations for a period of six weeks to four months in order to learn U.S. legal structures and procedures. Only English speaking attorneys with no more than five years of legal experience and law students proficient in English and in their last year of law school or enrolled in a graduate legal program are eligible for the internship program. To ensure that the program's goals will be met, each applicant will be required to submit a plan for utilizing the U.S. experience to support commercial law reform in his or her country. The goal of the program is to provide these law students and recent law school graduates with the expertise necessary to participate in the establishment and implementation of free market legal frameworks in their countries. In addition, host firms will benefit from the program by learning more about these countries and their legal and commercial climates.

Under the CLDP legal internship program, qualified U.S. law firms and the general counsel offices of companies, accounting firms, and trade associations will be eligible under specified circumstances to receive funds through cooperative agreements with the Department to help defray the cost of hosting an intern in the U.S. Participating U.S. firms will be expected to provide the legal interns with instruction in any of the following areas of commercial law: Commercial or financial transactions, corporate law, foreign investment law, commercial dispute resolution, real property and intellectual property or government procurement policies and procedures.

The CLDP will endeavor to place law students and recent law school graduates from each of the countries in the region. CLDP also may place interns with the Eastern European legal offices of U.S. firms. U.S. firms with Eastern European legal offices interested in providing legal internships to law students and recent law school graduates from the region are invited to participate in CLDP's "matchmaker" service. CLDP will interview candidates and recommend eligible interns for in-country placement. However, no Department funding is available for such placements, and such host firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. In addition, U.S. firms operating

in the U.S. who wish to utilize the CLDP's "matchmaker" service without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

DATES: Applications should be submitted no later than 3 p.m., on September 9, 1992.

ADDRESSES: Applications should be sent, along with two self-addressed mailing labels, to Susan Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Susan Gurley, Deputy Director, Commercial Law Development Program, Office of the General Counsel, room 3845, U.S. Department of Commerce, Tel: (202) 377–5362, Fax: (202) 377–3244.

SUPPLEMENTARY INFORMATION: In addition to the program description contained in the summary, the following information also applies:

I. Funding Availability

Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended, (the "Act"), funding for the program will be provided by the Agency for International Development (AID). The Department will award financial assistance and administer the program pursuant to the authority contained in section 632(b) of the Act. The maximum amount of the financial assistance available for the legal internship portion of the CLDP program is $60,000.

II. Funding Instrument and Project Duration

Federal assistance will be awarded pursuant to a cooperative agreement between the Department and the recipient U.S. firm or company located in the U.S. With funds provided by AID, the Department will reimburse companies for the roundtrip coach airfare of each intern between the intern's home country and the U.S. internship site upon submission to the Department of the travel invoice (Fly America Act provisions apply). The Department will reimburse companies a stipend of $30 per intern per day in the U.S. for up to four months. Disbursement of funds for reimbursement of the stipend will be made upon certification by the companies that the internship program has been completed and the intern has returned to his or her country. Each award will have a cap of $6,000 for total cost of airline and stipend per intern. There are no specific matching requirements for the awards. Companies are expected to bear the costs beyond those covered by the award, including payment for housing and medical insurance, as well as for any food and incidental costs beyond $30 per day. Companies also are responsible for sponsoring the intern for the appropriate U.S. visas. Awards will be provided for this program on a rolling basis. All awards are expected to be made prior to March 1993. Individual internships are expected to run from six weeks to four months.

U.S. firms wishing to utilize CLDP assistance in identifying prospective interns for placement with their U.S. or Eastern European offices and requiring no financial support from the Department may do so without competing for the grant program described below. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern.

III. Request for Applications

To obtain a Competitive Application Kit, please send a written request with two self-addressed mailing labels to Susan Gurley, Deputy Director, Commercial Law Development Program, room 3845, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester. A signed original and two copies of the application (Standard Form 424 (Rev. 4–88)) and supplemental materials must be submitted to CLDP at the address designated in the Application Kit in order for the application to be considered. Awards are expected to be made on a rolling basis prior to March 1993.

IV. Eligibility

Applicants for the CLDP internship program may be any for-profit or non-profit U.S. law firm, corporation, accounting firm, or trade association, or organization or other public or private entity. Each application will receive an objective review by a three-member review panel. Applications will be evaluated on a competitive basis, as they are received in accordance with the selection criteria set forth below. The Department reserves their right to reject any application, to limit the number of items per applicant, and to consider other non-competitive procedures to distribute assistance under this program as appropriate and in accordance with law.

A. Selection Criteria

Consideration for financial assistance will be given to CLDP proposals which:

1. Demonstrate a commitment to the intent and goals of the program to provide appropriate instruction in the areas of commercial law, including commercial or financial transactions, corporations law, contract law, foreign investment law, commercial dispute resolution, real property or intellectual property, and government procurement practices and procedures by presenting a realistic workplan detailing the instruction to be provided to the CLDP intern, with emphasis on how the instruction will assist the law student and/or practicing attorney in utilizing the training received to lead in his or her country's establishment and implementation of a free market system;

2. Are proposed by applicants with the financial capacity to successfully undertake the intended activities of hosting an intern (including the provision of providing housing and medical insurance); and

3. Improve the U.S. geographic diversity of placements.

Selection criteria 1 and 2 will be weighted equally. In addition, those Applicants that meet selection criteria 3 will receive preferential consideration.

If funds remain available after the award of financial assistance to qualified firms pursuant to this notice the Department may later announce the offer of the remaining funds through further notices in the **Federal Register**.

B. Conditions

All Applicants are advised of the following:

1. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

A. The delinquent account is paid in full;

B. A negotiated repayment schedule is established and at least one payment is received; or

C. Other arrangements satisfactory to the Department are made. 1. Applicants need to be aware that prior unsatisfactory performance on another award may be grounds for ineligibility. 3. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and applicants are advised that:

A. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

B. *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, Section 605), are subject to 15 CFR part 26, subpart F, "Government Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

C. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriate funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

D. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

4. False statements on the application may be grounds for denial or termination of funding, as well as potential civil and criminal liability.

5. Awards under this program shall be subject to Federal and Department regulations, policies, and procedures, applicable to financial assistance awards.

6. The Standard Form 424 (Rev. 4–88) mentioned in this notice is subject to the Paperwork Reduction Act and has been approved by OMB under Control No. 0348–0006.

7. The Grant Officer is the only individual who may legally commit the Government to the expenditure of public funds. No costs chargeable to the proposed grant may be incurred before receipt of either a fully executed grant or a specific written authorization from the Grants officer.

8. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the discretion of the Department of Commerce.

9. Executive Order 12372 Intergovernmental Review of Federal Programs" does not apply to this program.

Dated: August 4, 1992.

Lynn S. West,

Deputy General Counsel.

[FR Doc. 92–18925 Filed 8–7–92; 8:45 am]

BILLING CODE 3510–BW–M

National Oceanic and Atmospheric Administration

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for Modification of Permit No. 738 (P77#51).

Notice is hereby given that the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, request a modification to Permit No. 738, issued on May 16, 1991 (56 FR 14087), under the authority of the Marine Mammal Protection Act of 1972 (16 USC 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 738 currently authorizes the collection of biopsy samples from several species of small, non-endangered cetaceans, and the biopsy sampling, photo-ID and low-level monitoring of bottlenose dolphins (*Tursiops truncatus*) throughout the NMFS Southeast Region.

The applicant now requests authorization to add aerial surveys and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys over the remaining two and a half-year period.

It is also requested that the following additional species may be taken by harassment during approach of vessels or during the course of aerial surveys to be conducted at altitudes of 750 feet or above, except when greater resolution is required for positive identification, at which time the animals may be approached at altitudes of 300–500 feet (this lower altitude is not requested for *Physeter macrocephalus* or for baleen whales):

Up to 2500 right whale (*Eubalaena glacialis*); 250 blue whale (*Balaenoptera musculus*); 2500 fin whale (*B. physalus*); 1250 Sei whale (*B. borealis*); 2500 Bryde's whale (*B. edeni*); 2500 minke whale (*B. acutorostrata*); 2500 humpback whale (*Megaptera novaeangliae*); 2500 sperm whale (*Physeter macrocephalus*); 2500 beaked whale, including Cuvier's beaked whale (*Ziphius cavirostris*); Blainville's beaked whale (*Mesoplodon densirostris*); Sowerby's beaked whale (*M. bidens*); and Gervais' beaked whale (*M. europaeus*).

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: July 31, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–18834 Filed 8–7–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan on Duck Fabric

August 5, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the

quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 27, 1992, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to duck fabric in Category 219 at a level of 1,246,467 square meters.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 219, the Government of the United States has decided to control imports during the ninety-day period which began on July 27, 1992 and extends through October 24, 1992.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of duck fabric in Category 219, produced or manufactured in Pakistan and exported during the prorated period beginning on October 25, 1992 and extending through December 31, 1993, of not less than 794,003 square meters.

A summary market statement concerning Category 219 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 219, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in Category 219, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 219. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 219—Duck Fabric

July 1992

Import Situation and Conclusion

U.S. imports of duck fabric, Category 219, from Pakistan reached 3,786,042 square meters in the year ending May 1992, 25 percent above the 3,027,019 square meters imported a year earlier. In the first five months of 1992, duck fabric imports, Category 219, from Pakistan surged to 2,415,052 square meters, 58 percent above their January-May 1991 level and 63 percent of their total calendar year 1991 level. Pakistan became the fourth largest supplier of duck fabric to the U.S. market, accounting for 6 percent of Category 219 imports during the January-May 1992 period. In calendar year 1991, Pakistan was the sixth largest supplier of duck fabric to the U.S., accounting for 4 percent of total Category 219 imports.

The sharp and substantial increase in Category 219 imports from Pakistan is causing a real risk of disruption in the U.S. market for duck fabric.

Import Penetration and Market Share

U.S. production of duck fabric dropped from 63,436,000 square meters in 1989 to 49,534,000 square meters in 1991, a 22 percent decline. In the year ending in March 1992, U.S. duck fabric production fell to 45,784,000 square meters, 12 percent below the comparable period in 1991. In contrast, U.S. imports of duck fabric, Category 219, increased from 70,982,000 square meters in 1989 to 80,275,00 square meters in 1991, a 13 percent increase. Category 219 imports surged in 1992, increasing by 33 percent in the first five months of 1992 over the January-May 1991 level.

The U.S. producers' share of the U.S. duck fabric market dropped 9 percentage points, falling from 47 percent in 1989 to 38 percent in 1991. The drop in the U.S. producers' market share continued in 1992, falling to 34 percent during the year ending March 1992. The ratio of imports to domestic production increased from 111 percent in 1989 to 162 percent in 1991, and reached 194 percent during the year ending March 1992.

Duty-Paid Value and U.S. Producers' Price

All of Category 219 imports from Pakistan during the year ending May 1992 entered the U.S. under HTSUSA numbers 5209.11.0090—85 percent or more by weight cotton, unbleached duck fabric of plain weave, weighing more than 200 grams per square meter and 5209.19.0060—85 percent or more by weight, unbleached cotton duck fabric other than plain weave, weighing more than 200 grams per square meter.

These fabrics entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable duck fabrics.

Committee for the Implementation of Textile Agreements

August 5, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 12, 1992, entry into the United States for consumption and

withdrawal from warehouse for consumption of duck fabric in Category 219, produced or manufactured in Pakistan and exported during the period beginning on July 27, 1992 and extending through October 24, 1992, in excess of 1,246,467 square meters. [1]

Textile products in Category 219 which have been exported to the United States prior to July 27, 1992 shall not be subject to the limit established in this directive.

Textile products in Category 219 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-18878 Filed 8-7-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: August 25, 1992.

Time: 0830-1630 Hours.

Place: Arlington, Virginia.

Agenda: The Army Science Board's Logistics and Sustainability Issue Group will meet to discuss the work assignment involving a documentation review from the Strategic Logistics Agency to develop a plan to complete the assignment and to begin the actual work. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703)695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18928 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-08-M

[1] The limit has not been adjusted to account for any imports exported after July 26, 1992.

Army Science Board; Close Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 28-29 September 1992.

Time: 0900-1700 Daily.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Material Command (AMC), Research, Development and Engineering Centers (RDEC), will analyze the collected data and information, develop and finalize recommendations and conclusions, and prepare an exit briefing for the Study Sponsor and draft a report for the Secretary of the Army. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (2) and (9) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18930 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Commission Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 27 August 1992.

Time: 0900-1700 Daily.

Place: Pentagon, Washington DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Material Command (AMC) Research, Development and Engineering Centers (RDEC) will meet to finalize the structure and content of the review process, including the follow-up ASB visits to the RDECs. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (2) and (9) thereof, and title 5, U.S.C. appendix 2, subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclosure information the premature disclose of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18938 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 27 August 1992.

Time: 0800-1630 Daily.

Place: Stratford, CT.

Agenda: The Army Science Board Ad Hoc Subgroup on the "Commanche International" will meet 27 August with the primary contractors for the Comanche helicopter, Sikorsky Helicopters and Boeing Helicopters, to brief their findings and recommendations published in the report for the Secretary of the Army. The report will address the mission of the group, potential cooperation for future helicopter programs and issues surrounding the development of the Comanche (RAH-66) and the Tiger helicopters. Classified and proprietary information will also be discussed. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18939 Filed 08-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 2-4 September 1992.

Time: 0900-1700 Daily.

Place: Pentagon, Washington DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup reviewing the U.S. Army Materiel Command (AMC), Research, Development and Engineering Centers (RDEC), Technical Directors will brief their "Business Plans" to the group. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (2) and (9) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The matters to be discussed will relate solely to the internal personnel rules and practices of the Army, and would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action thereby precluding opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-18940 Filed 8-7-92; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Amend Record Systems

AGENCY: Defense Logistics Agency, DOD.

ACTION: Amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend four existing record systems to the DLA inventory of record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective without further notice on September 9, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617-7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DOD Compilation, changes follow)
50 FR 51898, December 20, 1985
51 FR 27443, July 31, 1986
51 FR 30104, August 22, 1986
52 FR 35304, September 18, 1987
52 FR 37495, October 7, 1987
53 FR 4442, February 16, 1988
53 FR 9965, March 28, 1988
53 FR 21511, June 8, 1988
53 FR 26105, July 11, 1988
53 FR 32091, August 23, 1988
53 FR 39129, October 5, 1988
53 FR 44937, November 7, 1988
53 FR 48708, December 2, 1988
54 FR 11997, March 23, 1989
55 FR 21918, May 30, 1990 (Updated Mailing Addresses)
55 FR 32284, August 8, 1990
55 FR 32947, August 13, 1990
55 FR 34050, August 21, 1990
55 FR 42755, October 23, 1990
55 FR 53178, December 27, 1990
56 FR 5806, February 13, 1991
56 FR 8987, March 4, 1991
56 FR 11207, March 15, 1991
56 FR 19638, April 30, 1991
56 FR 31392, July 10, 1991 (Updated Index)
56 FR 35852, July 29, 1991
56 FR 52017, October 17, 1991
56 FR 55910, October 30, 1991
56 FR 56065, October 31, 1991
56 FR 65245, December 16, 1991
57 FR 2715, January 23, 1992
57 FR 13718, April 21, 1992
57 FR 20471, May 13, 1992
57 FR 28490, June 25, 1992
57 FR 29294, July 1, 1992

The amendments are not within the purview of subsection (r) of the Privacy Act which requires the submission of an altered system report. The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, in their entirety.

Dated: August 5, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AMENDMENTS
S153.10 DLA-T

SYSTEM NAME:

Personnel Security Files, (50 FR 22902, May 29, 1985).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.10 DLA-I".

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100 and Command Security Offices, Defense Logistics Agency (DLA), Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In the first sentence, delete "(NAC)" and replace with "with Written Inquiries (NACI)".

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Evidence of security eligibility determinations and security clearances granted to individuals. Certifications of security briefings and debriefings signed by individuals. Reports of investigations conducted by the Office of Personnel Management, the Defense Investigative Service, the investigative units of the Army, Navy and Air Force, and other Federal investigative organizations containing unfavorable information requiring a security eligibility determination by the DLA Central Adjudication Board."

* * * * *

PURPOSE(S):

Delete entry and replace with "The records and reports are used by the HQ DLA Central Adjudication Board, Command Security Officers and other designated officials as a basis for determining a person's eligibility to occupy a sensitive position, perform sensitive duties, or for access to classified information."

* * * * *

RETRIEVABILITY:

In the first sentence, delete "Reports" and replace with "Records."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records of security eligibility determinations, evidence of security clearances and related documents are retained as long as the person is employed or assigned to DLA. After the person leaves DLA, the reports are placed in an inactive file for two years, and then destroyed. Reports of investigations are destroyed 90 days after a security eligibility determination is made."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and PLFAs Command Security Offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for access will contain the full name, SSN, date and place of birth, current address, and telephone number of the requester.

Written requests must either be notarized or contain an identity declaration penalty statement. If executed **within** the United States, its territories, possessions, or commonwealths the statement must read:

'I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed **outside** the United States, its territories, possessions, or commonwealths the statement must read:

'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

The identity declaration statement must be signed and dated.

For personal visits, the requester must be able to provide some acceptable identification (e.g., driver's license, identification card), parent's name, date and place of birth, dates and place(s) of employment with DLA, if applicable."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(k)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and published in 32 CFR part 323. For additional information contact the system manager."

* * * * *

S500.10 DLA-I

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100 and Command Security Offices, Defense Logistics Agency (DLA), Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees and military personnel who have been the subject of a National Agency Check with Written Inquiries (NACI); a Background Investigation (BI); Special Background Investigation (SBI); or other personnel security investigation pertaining to their qualifications and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evidence of security eligibility determinations and security clearances granted to individuals. Certifications of security briefings and debriefings signed by individuals. Reports of investigations conducted by the Office of Personnel Management, the Defense Investigative Service, the investigative units of the Army, Navy and Air Force, and other Federal investigative organizations containing unfavorable information requiring a security eligibility determination by the DLA Central Adjudication Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

PURPOSE(S):

The records and reports are used by the HQ DLA Central Adjudication Board, Command Security Officers and other designated officials as a basis for determining a person's eligibility to occupy a sensitive position, perform sensitive duties, or for access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Records are retrieved alphabetically by name. No indices are used to retrieve individual records from the system.

SAFEGUARDS:

As a minimum, records are stored in locked containers wherever authorized DLA personnel are not present to control access to them.

Any of these files containing classified documents are maintained in security containers approved by HQ DLA for storage of classified information.

RETENTION AND DISPOSAL:

Records of security eligibility determinations, evidence of security clearances and related documents are retained as long as the person is employed or assigned to DLA. After the person leaves DLA, the reports are placed in an inactive file for two years, and then destroyed. Reports of investigations are destroyed 90 days after a security eligibility determination is made.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and PLFAs Command Security Offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Staff Director, Command Security Office, ATTN: DLA-I, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, or the PLFAs Command Security Office. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for access will contain the full name, SSN, date and place of birth, current address, and telephone number of the requester.

Written requests must either be notarized or contain an identity declaration penalty statement. If executed within the United States, its territories, possessions, or commonwealths the statement must read:

'I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States, its territories, possessions, or commonwealths the statement must read:

'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

The identity declaration statement must be signed and dated.

For personal visits, the requester must be able to provide some acceptable identification (e.g., driver's license, identification card), parent's name, date and place of birth, dates and place(s) of employment with DLA, if applicable.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports of investigations conducted by the Office of Personnel Management, Federal Bureau of Investigations, Defense Investigative Service, investigative units of the Army, Navy, and Air Force, as well as other Federal investigative organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under Title 5 U.S.C. 552a(k)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and published in 32 CFR part 323. For additional information contact the system manager.

* * * * *

S160.50 DLA-I

SYSTEM NAME:

Criminal Incidents/Investigations File, (55 FR 32947, August 13, 1990).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.20 DLA-I".

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records in the primary system are destroyed 5 years after the receipt of a final report except

(a) Criminal investigation reports generated and entered into the Defense Central Investigation Index by DLA criminal investigators, detectives, and command security officers are retained for 25 years;

(b) Reports of polygraph examinations are destroyed within 3 months after close of the investigation which included the examinations; and

(c) Documents related to legal or disciplinary actions are transferred to the appropriate file documenting such actions. Records at decentralized segments are destroyed 1 year after the receipt of a final report."

* * * * *

S500.20 DLA-I

SYSTEM NAME:

Criminal Incidents/Investigations File.

SYSTEM LOCATION:

Primary system: Command Security Office and Office of General Counsel, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100 for case files on all incidents of known or suspected criminal activity or other serious incidents.

Decentralized segments: Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) for above described files and files of minor nature. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel of DLA, contractor employees, and other persons who committed or are suspected of having committed a felony or misdemeanor on DLA controlled activities or facilities; or outside of those areas in cases where DLA is or may be a party of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, messages, statements of witnesses, subjects and victims, photographs, laboratory reports, data collection reports, and other related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Congress); DoD Directive 5105.22, "Defense Logistics Agency" (32 CFR part 359); DoD Instruction 5240.4, "Reporting of Counterintelligence and Criminal Violations"; DoD Directive 5105.42, "Defense Investigative Service" (32 CFR part 361); and DoD Instruction 5505.2, "Criminal Investigations of Fraud Offenses".

PURPOSE(S):

Information is maintained for the purpose of monitoring the progress of investigations, identification of crime conducive conditions, crime and loss prevention, and preparation of statistical data required by higher authority.

Information in this system is used by DLA Security and General Counsel personnel to monitor progress of cases and to develop non-personal statistical data on crime and crime investigative support for the future. DLA General Counsel also uses data to review cases, determine proper legal action, and coordinate on all available remedies. DLA managers use the information to determine actions required to correct the causes of loss and to take appropriate action against DLA employees in cases of their involvement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of DLA's compilation of

record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Combination of paper and automated files.

RETRIEVABILITY:

Hardcopy records filed chronologically by DLA case number and cross-indexed to individual or file name. Automated records are retrievable by name of the individual or firm, DLA case number, PLFAs number or activity code.

SAFEGUARDS:

Records, as well as computer terminals, are maintained in areas accessible only to DLA Security and Office of General Counsel personnel. In addition, access to computerized files is limited to authorized users and is password protected.

RETENTION AND DISPOSAL:

Records in the primary system are destroyed 5 years after the receipt of a final report except

(a) Criminal investigation reports generated and entered into the Defense Central Investigation Index by DLA criminal investigators, detectives, and command security officers are retained for 25 years;

(b) Reports of polygraph examinations are destroyed within 3 months after close of the investigation which included the examinations; and

(c) Documents related to legal or disciplinary actions are transferred to the appropriate file documenting such actions. Records at decentralized segments are destroyed 1 year after the receipt of a final report.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, and all DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Staff Director, Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the DLA PLFA where employed. Official mailing addresses are published as an appendix to the DLA's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Staff Director, Command Security Office, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100, or the DLA PLFAs where employed. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

Individual must provide full name, current address and telephone numbers.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports of investigations by DLA investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under 5 U.S.C. 552a(k)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3)(c) and (e) and is published at 32 CFR part 323. For more information contact the system manager.

* * * * *

S161.20 DLA-T

SYSTEM NAME:

Visitors and Vehicle Temporary Passes and Permits File, (50 FR 22904, May 29, 1985).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.30 DLA-I."

* * * * *

STORAGE:

Delete entry and replace with "Records are stored in paper and computerized form."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "For areas under maximum security, records are destroyed after 5 years; for other areas, records are destroyed after 2 years."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Command Security Officers, DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name and identity of DLA activity to which access was granted; and if individual is or was a DLA employee, identity of employing DLA activity."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves in this system should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests should contain the full name, current address and telephone number of the individual. For personal visits, the individual should be able to provide some acceptable identification card, and give some verbal information that could be verified from his file."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager."

* * * * *

S500.30 DLA-I

SYSTEM NAME:

Visitors and Vehicle Temporary Passes and Permits File.

SYSTEM LOCATION:

Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons requiring temporary access to DLA activities and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, surrendered passes, permits, and related papers relating to temporary visitor and vehicle passes or permits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781, et seq.) and Department of Defense Directives 5200.8 and 5105.22 (32 CFR part 359) which assign to the Director, DLA the responsibility for protection of property and facilities under his/her control.

PURPOSE(S):

Information is maintained to provide adequate controls on movement of vehicles and persons on DLA activities and facilities.

Information is used by DLA security personnel to ensure that only authorized persons and vehicles enter DLA activities and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

For areas under maximum security, records are destroyed after 5 years; for other areas, records are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Command Security Officers, DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name and identity of DLA activity to which access was granted; and if individual is or was a DLA employee, identity of employing DLA activity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves in this system should address written inquiries to the Command Security Office, DLA PLFA where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests should contain the full name, current address and telephone number of the individual. For personal visits, the individual should be able to provide some acceptable identification card, and give some verbal information that could be verified from his/her file.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals applying for passes or permits and Security Office personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S162.60 DLA-T

SYSTEM NAME:

Police Force Records. (50 FR 22897, May 29, 1985).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S500.40 DLA-I".

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Defense Logistics Agency (DLA) Primary Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

* * * * *

RETENTION AND DISPOSAL:

Change "5 years" to "1 year".

* * * * *

S500.40 DLA-I

SYSTEM NAME:

Police Force Records.

SYSTEM LOCATION:

Defense Logistics Agency (DLA) Primary Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA Security Police personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to operation and use of security police, their security clearances, weapons qualification, training, uniforms, weapons, shift assignments and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21 of the Internal Security Act of 1950 (50 U.S.C. 781, et seq.) and Department of Defense Directive 5200.8 and 5105.22 (32 CFR part 359) which assign to the Director, DLA the responsibility for protection of property and facilities under his/her control.

PURPOSE(S):

Information is maintained and used by DLA Security Officers and Police Supervisors to maintain control of property, weapons and ammunition; to ensure proper training; to develop schedules and procedures to improve efficiency. Records are used to determine if an individual is qualified in the use of firearms and if he/she has a security clearance which would authorize him/her to handle classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, weapon cards, and property receipts. Computer magnetic tapes or discs, and computer paper printouts.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA security supervisory personnel.

RETENTION AND DISPOSAL:

Destroy after 1 year or when superseded or obsolete, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

The Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) who are responsible for the operation of base or facility security forces. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) where individual is employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs) where individual is/was employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for information should contain the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, such as, driver's license, employing office identification card, and give some verbal information that could be verified from his/her file.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DLA Security Officers and Security Police personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc.92-18875 Filed 8-7-92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF EDUCATION

National Center or Centers for Research in Vocational Education

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On July 10, 1992, a notice inviting applications for new awards under the National Center or Centers for Research in Vocational Education Program was published in the **Federal Register** (57 FR 30836-30850).

In the title of the program on page 30836, the words "Fiscal Year (FY) 1992" should be deleted and replaced with the words "Fiscal Year (FY) 1993." On page 30837, second column, under the Selection Criteria heading, the date "August 28, 1992" should be deleted and replaced by the date "September 4, 1992." In the third column, on the same page, 13 lines from the top of the column, the word "performance" should be deleted and replaced by the word "preference".

FOR FURTHER INFORMATION CONTACT: Jackie L. Friederich, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4525—MES), Washington, DC 20202-7242. Telephone (202) 205-9071. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2404.

Dated: August 3, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 92-18846 Filed 8-7-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Research, Development, and Demonstration for Coke Oven Emission Control

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of Financial Assistance Program Solicitation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.9, it intends to issue a program solicitation entitled "Research, Development and Demonstration for Coke Oven Emission Control".

DATES: The scheduled release date for the solicitation is on or about August 31, 1992. The scheduled closing date is one year after issuance of the solicitation.

ADDRESSES: Copies of the solicitation may be obtained by writing to the Department of Energy, Pittsburgh Energy Technology Center, Attention James W. Huemmrich, Contract Specialist, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: James W. Huemmrich (Contract Specialist), 412-892-6597 or Dale A. Siciliano (Contracting Officer), 412-892-6208.

SUPPLEMENTARY INFORMATION:

Program Solicitation No.: DE-PS22-92PC92838.

Title of Solicitation: Research, Development and Demonstration for Coke Oven Emission Control.

Term of Assistance Effort: Approximately one to five years.

Scope

The purpose of this announcement is to solicit applications for cost-shared Cooperative Agreements that would develop and demonstrate technologies to reduce hazardous coke oven emissions. Proposed projects should be designed to enable the coke industry to meet coke oven emission regulations that will be promulgated by the EPA in accordance with the 1990 Clean Air Act Amendments. These regulations include proposed 1998 and 2010 LAER standards, proposed MACT standards for pushing, quenching, and stack emissions, and standards aimed at further reduction of health risks.

This Program Solicitation calls for applications in the following four areas: (1) Coking Emission Control, (2) Product Recovery Emission Control, (3) Combustion Stack Gas Treatment, and (4) Residual Risk Reduction. Projects in

Coking Emission Control should provide technologies that would allow the industry to meet the 1998 and 2010 LAER standards by reducing charging emissions and leaks from oven doors, lids and offtakes. These projects may include charging emissions control, improved door designs or door sealing techniques, improved supplemental sealants or luting materials, improved work practices, pressure controls for individual ovens, leak detection and measurement systems, and other innovations. Projects in Product Recovery Emission Control should demonstrate work practices and technologies to reduce or eliminate pushing and quenching emissions in either recovery or non-recovery ovens. Such technologies may include enclosed systems to receive and cool the coke product, instruments to measure the maturity of coke inside the oven, instruments and methods to measure product recovery emissions, and others. Projects in Combustion Stack Gas Treatment should reduce the emissions that result from the combustion of gases produced in either recovery or non-recovery coke ovens. These projects my include characterization and monitoring of hazardous air pollutants in combustion stack emissions, and development of technologies and work practices for the reduction or treatment of combustion stack gases. Projects in Residual Risk Reduction should deal with the reduction of any health risks still remaining after the established MACT and LAER standards have been met. This includes reduction of fugitive and point source emissions anywhere in the coke producing facility. Projects in this area may focus on prevention of oven crack formation, including novel oven construction methods; reduction or elimination of leaks in the recovery-gas processing plant; more rigorous control of coking, product recovery, and stack gas emissions; accurate detection and measurement of various coke oven emissions; the use of flares to control bypass or bleeder-stack emissions; and evaluation of alternative coke oven operations and battery designs.

Each proposed project must be cost-shared, with Federal funding not exceeding 50% of the cost of any project, as directed by the 1990 Clean Air Act Amendments. This Program Solicitation will be available as stated in the effective date caption of this announcement. The closing date for submission of applications of applications is one year after the solicitation becomes available, as stated in the closing date caption of this announcement, and applications may be submitted any time within this one year period. Each application, upon receipt within this one year period, shall be submitted for peer review. Awards will be made periodically on selected applications that have received a favorable evaluation. Copies of this solicitation may be obtained by writing to the address listed in this announcement.

Dated: July 31, 1992.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 92-18194 Filed 8-7-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-492-000, et al.]

Virginia Electric and Power Company, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 31, 1992.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Co.

[Docket No. ER92-492-000]

Take notice that on July 10, 1992, Virginia Electric and Power Company (VEPCO) tendered for filing an amendment to its filing filed on April 29, 1992 in this docket.

Comment date: August 14, 1992, in accordance with Standard Paragraph E end of this notice.

2. Green Mountain Power Corp.

[Docket Nos. ER92-103-000, ER92-104-000, ER92-105-000, ER92-106-000, ER92-107-000, ER92-108-000]

Take notice that on July 24, 1992, Green Mountain Power Corporation (GMP) tendered for filing supplemental information regarding sales of system energy, system power, and unit power pursuant to sales agreements previously submitted in each of the above-captioned proceedings, including copies of transaction letters which have been conducted pursuant to the sales agreements filed in these dockets, and information previously filed in Docket No. ER92-460-000. GMP also filed an Opportunity Transaction Tariff, which provides for sales of system and unit power, and would supersede the sales agreements filed in the above-captioned dockets. Information filed in support of the Tariff includes cost support for GMP's tariff ceiling rates, and unexecuted service agreements for a number of utilities in the northeastern United States.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services

[Docket No. ER92-517-000]

Take notice that on July 24, 1992, Southern Company Services, Inc. acting on behalf of Alabama Power Company and Mississippi Power Company submitted, pursuant to Staff request, additional information concerning the Long Term Transmission Service Agreement dated April 27, 1992 between Entergy Power, Inc. and Alabama Power Company, Mississippi Power Company and Southern Company Services, Inc.

Southern Company Services, Inc. requests an effective date of July 1, 1992.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Co.

[Docket No. ER92-740-000]

Take notice that on July 23, 1992, Wisconsin Electric Power Company (Wisconsin) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 87.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Power, Inc.

[Docket No. ER92-750-000]

Take notice that on July 27, 1992, Entergy Power, Inc. (Entergy Power) tendered for filing an extension of a capacity sale agreement between Entergy Power and the Tennessee Valley Authority in Docket No. ER92-601-000, and a cap on an energy pricing provision in Docket No. ER92-674-000. Entergy requests an effective date of July 20, 1992 for the extensive letter, June 1, 1992 for the energy cap in Docket No. ER92-601-000, and July 1, 1992 for the energy cap in Docket No. ER92-674-000. Entergy Power also requests waiver of the notice requirements under Section 35.11 of the Commission's regulations.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Co.

[Docket No. ER92-749-000]

Take notice that on July 24, 1992, Puget Sound Power & Light Company (Puget) tendered for filing an amendment of the Transmission Service Agreement among Puget and the City of Seattle and Supplement Nos. 3-6 to the Transmission Service Agreement.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Oklahoma Gas & Electric Company

[Docket No. ER92-731-000

Take notice that on July 20, 1992, Oklahoma Gas & Electric Company (OG&E) tendered for filing a Notice of Cancellation for FERC Rate Schedule Nos. 24, 35, 56, 61, 93, 98, 117 and 127.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation.

[Docket No. ER92-746-000]

Take notice that on July 27, 1992, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 35.13 of the regulations under the Federal Power Act, a proposed rate schedule change to the borderline sales agreement between NYSEG and Central Hudson Gas & Electric (CHG&E) presently designated as Rate Schedule FERC No. 32. The proposed changes would increase NYSEG revenues from borderline sales to CHG&E by $196,671 based on the 12 month period ending December 31, 1991. CHG&E revenues from borderline sales to NYSEG would increase $84.474 for the same time period.

The proposal sets the rate for energy delivered at an effective, non-jurisdictional tariff rate of the selling company. Additionally, the supplement provides cost recovery for the construction of distribution facilities in accordance with the filed line extension policy or each company.

NYSEG has sent a copy of this filing to both ChG&E and the Public Service Commission of the State of New York.

Comment data: August 14, 1992, in accordance with Standard Paragraph E end of this notice.

9. Ocean State Power II

[Docket No. ER92-747-000]

Take notice that on July 27, 1992 Ocean State Power II (Ocean State II) tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission)

Supplement No. 11 to Rate Schedule FERC No. 5

Supplement No. 11 to Rate Schedule FERC No. 6

Supplement No. 10 to Rate Schedule FERC No. 7

Supplement No. 10 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of Ocean State II's proposed rate of return on equity for the period beginning on April 28, 1992, the requested effective date of the Supplements, and ending on the effective date of Ocean State II's updated rate of return on equity to be filed in February of 1993. Ocean State II is filling the Supplements pursuant to Section 7.5 of each of Ocean State II's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, and the Commission's order in *Ocean State Power II*, 59 FERC ¶ 61,360 (1992). The Supplements constitute a rate decrease.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhodes Island Public Utilities Commission and TransCanda PipeLines Limited.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Power, Inc.

[Docket No. ER92-516-002]

Take notice that on July 27, 1992, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment dated: August 14, 1992, in accordance with Standard Paragraph E at the end this notice.

11. Tucson Electric Power Co.

[Docket No. ER92-389-000]

Take notice that on July 23, 1992, Tucson Electric Power Company (Tucson) tendered for filing an amended filing of an agreement entitled 1992 Short Term Power Sale Agreement (the Agreement) between Tucson and Citizens Utilities Company (Citizens). The Agreement established the terms for the sale of capacity and energy by Tucson to Citizens for the period commencing may 15, 1992 and ending September 30, 1992.

An amended filing is being made to include Tucson's response to data requests received from the Commission's Staff.

The parties request an effective date of May 15, 1992, and therefore request waiver of the Commission's regulations regarding filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: August 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be file on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18900 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8282-006 North Carolina]

Alternative Energy Resources, Inc.; Availability of Environmental Assessment

August 4, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of exemption for the Steele's Mill Hydroelectric Project.

The amendment includes the reinstallation of 4-foot-high flashboards on the existing Steele's Mill Dam. The addition of flashboards would increase the surface area of the existing 2-acre impoundment by ½ acre, and increase the volume by 9 acre-feet. The project is located on Hitchcock Creek, a tributary of the Pee Dee River in Richmond County, North Carolina.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of exemption would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's

Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18921 Filed 8-7-92; 8:45 am]

BILLING CODE 6171-01-M

[Docket No. TM92-10-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on July 30, 1992, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's Regulations, and Section 12 of the General Terms and Conditions of CNG's tariff, tendered for filing the following proposed sheets for First Revised Volume No. 1 of its FERC Gas Tariff:

Substitute Eighth Revised Sheet No. 44

CNG requests an effective date for the proposed tariff sheet of July 31, 1992.

CNG states that the purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by Tennessee. On June 29, 1992, Tennessee filed tariff sheets to implement the Stipulation and Agreement in Docket Nos. RP88-119, *et al.*, effective July 1, 1992. The Commission has approved Tennessee's settlement by order dated June 25, 1992. Tennessee's June 29, 1992 compliance filing is pending Commission approval. In the June 29 compliance filing, Tennessee seeks to recover existing take-or-pay costs, plus "new transition costs" of $2.2 million.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18899 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-211-000]

El Paso Natural Gas Co.; Tariff Filing

August 4, 1992.

Take notice that on July 30, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the National Gas Act, Thirteenth Revised Sheet No. 101 and Third Revised Sheet Nos. 250 and 251 to El Paso's FERC Gas Tariff, Second Revised Volume No. 1.

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, will provide for the elimination of the maximum rate under Rate Schedule IS-1, applicable to interruptible sales, and in place thereof establish a negotiated gas cost rate. El Paso requests elimination of the maximum IS-1 rate in order to operate competitively in the market.

El Paso requests that the tendered tariff sheets be accepted by the Commission and permitted to become effective on September 1, 1992, which is not less than thirty (30) days following the date of the filing.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and all interested state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18908 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1110-000, and -001]

Colorado Interstate Gas Company; Environmental Site Visits

August 3, 1992.

This is to inform all parties to the proceeding in the above docket that the environmental staff of the Federal Energy Regulatory Commission (FERC) will conduct a number of site visits along the route of the Colorado Interstate Gas Company (CIG) Uinta Basin Lateral Project. These site visits will enable FERC environmental staff to evaluate CIG's site-specific construction techniques, as well as to monitor CIG's compliance with the environmental conditions attached to its FERC Certificate. The first of these visits will occur on August 17 and 18, 1992.

Although future site visits will not be noticed, parties can obtain a schedule of proposed site visits to be conducted during a specific month by contacting the FERC Environmental Project Manager at the beginning of that month. All parties may attend the proposed site visits; however, parties must provide their own transportation and should pre-register with the FERC Environmental Project Manager. For further information, contact Mr. Laurence J. Sauter, Jr., Environmental Project Manager, at (202) 208-0205.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18910 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that K N Energy, Inc. ("K N") on July 31, 1992 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revision Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$0.1533	$0.1533
D1 Demand	(0.0007)	(0.0010)
D2 Demand	(0.0113)	(0.0102)
WPS Demand	(0.0014)	(0.0020)
IOR Commodity	0.1413	0.1421

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1992. The proposed effective date for the rate changes is September 1, 1992.

K N states that copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before August 11, 1992, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18916 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-24-000; TM92-3-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

August 4, 1992:

Take notice that Equitrans, Inc. (Equitrans) on July 30, 1992 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective August 1, 1992:

First Revised Thirty-Sixth Revised Sheet No. 10

First Revised Twenty-Sixth Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect increased gas costs charged by Texas Eastern Transmission Corporation under its Rate Schedule ED-1 filed in Docket No. TQ92-7-17 on July 30, 1992 to be effective August 1, 1992.

Also reflected in this filing is a monthly demand charge of $3.62 per Dth of converted contract demand payable to Tennessee for twelve months beginning July 1, 1992 pursuant to Tennessee's compliance filing implementing the Commission's approval of its comic settlement. The reconciliation charge, or exit fee, is being billed to Equitrans for the 65,134 Dth per day which it converted from firm sales to firm transportation on Tennessee's system.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand costs of $1.7849 per dekatherm (Dth) and an increase in the commodity cost of $1.0911 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.7942 per Dth.

Pursuant to Section 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on August 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18901 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

August 4, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on July 31, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) an Out-of-Cycle PGA filing, which includes Thirty-Ninth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1992. The revised tariff sheet reflects a current increase of $0.4478 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.5847 per Dth.

Kentucky West states that effective August 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $1.5800 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Pursuant to § 154.51 of the Commission's regulations, Kentucky West requests waiver of the thirty day notice requirement to permit the tariff sheet attached hereto to become effective on August 1, 1992. In addition, Kentucky West requests waiver of § 154.304 of the Commission's regulations and any other provisions of the Commission's regulations necessary to permit the attached tariff sheet to become effective on August 1, 1992.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18909 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

August 4, 1992.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on July 31, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the Tariff Sheet and proposed effective date as set forth below:

1st Rev. Ninety-First. Rev. Sheet No. 3a
Superseding Ninety-First Revised Sheet No. 3a, August 1, 1992.

Mid Louisiana states that the purpose of the filing of 1st Rev. Ninety-First Rev. Sheet No. 3a is to reflect current gas costs for the month beginning August 1, 1992, in compliance with the Commission's Regulations issued in Order Nos. 483 and 483-A.

Mid Louisiana states that 1st. Rev. Ninety-First Rev. Sheet No. 3a is to reflect an increase of $0.4957 in Mid Louisiana's current cost of gas, exclusive of surcharge.

Mid Louisiana states that the tariff sheet was filed as an out-of-cycle PGA to reflect the latest estimated gas cost to Mid Louisiana from its various suppliers. Mid Louisiana states that the majority of these suppliers have contracts with Mid Louisiana which contain pricing provisions which are tied to the spot market price of gas.

Mid Louisiana states that copies of this filing have been mailed to each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions of protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18917 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-13-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

August 4, 1992.

Take notice that on July 31, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-Ninth Revised Sheet No. 4, and Thirty-Eighth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective August 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Seventy-Ninth Revised Sheet No. 4 and Thirty-Eighth Revised Sheet No. 4.1 reflect an increase of 40.49 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective July 1, 1992, in Docket No. TQ92-12-25-000. MRT also states that since the June 29, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18905 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-14-25-000]

Mississippi River Transmission Corp; Rate Change Filing

August 4, 1992.

Take notice that on July 31, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing Eightieth Sheet No. 4 and Thirty-Ninth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective September 1, 1992.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that it is also adjusting the level of Account No. 858 expenses included in the average commodity cost of gas pursuant to the Transportation Cost Recovery Mechanism set forth in Article V of the Stipulation and Agreement in Docket No. RP89-248 approved by Commission order dated August 7, 1991. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is an increase of 3.59 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA effective August 1, 1992 in Docket No. TQ92-13-25-000.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18920 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that on July 30, 1992, National Fuel Gas Supply Corporation ("National") tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on August 1, 1992:

Twenty-First Revised Sheet No. 5

The purpose of this filing is to implement an Out-of-cycle Purchased Gas Cost Adjustment ("PGA") to be effective as of August 1, 1992.

Twenty-First Revised Sheet No. 5 reflects a positive current adjustment of 54.04 cents per dekatherm ("Dt"), from National's July Out-of-cycle PGA on June 30, 1992, in Docket No. TQ92-6-16-000. The revised RQ and CD sales commodity rate of 244.25 cents per Dt is based upon a current average cost of purchased gas of 200.24 cents per Dt (in unit of purchases), or 212.25 cents per Dt (in unit of sales).

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18919 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-10-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that Northern Natural Gas Company (Northern), on July 31, 1992 tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 843-A. The instant filing reflects a Base Average Gas Purchase Cost of $2.4259 per MMBtu to be effective August 1, 1992.

Northern states that copies of the filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18903 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[RP92-210-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that on July 30, 1992, Northern Border Pipeline Company (Northern Border) requested a waiver of § 4.83(a) of its General Terms and Conditions in its F.E.R.C. Gas Tariff, Original Volume No. 1, pursuant to Rule 101 of the Commission's Rules of Practice and Procedure, 18 CFR 385.101(e).

Northern Border plans to add approximately $158 million to its rate base on or about November 1, 1992 with the completion of its expansion project, certificated in Docket No. CP91-967-002. Because Northern Border's tariff uses the beginning and end of month balances to calculate an average balance for gross plant, the significant additions scheduled to be added to gas plant in service will not be recognized until the end of month balance. The averaging process in Northern Border's tariff will result in recognition of those asset additions for only one-half of the month if the in-service date is November 1 or for one-half of the month of October if the facilities are placed in-service on October 31. On the other side of the cost of service allocation equation, the increase in volumes will be automatically reflected on the in-service date. In order to match rate base with the volumes, Northern Border requests that for the in-service month of the CP91-967-002 facilities, the gross plant components of rate base be calculated using a daily weighted average balance approach rather than the two point average balance method described in the tariff.

Northern Border has requested approval of this waiver by September 18, 1992.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 11, 1992. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18918 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-28-000 and TM92-4-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 31, 1992, tendered for filing the following revised tariff sheets listed on Appendix A to the filing, to its FERC Gas Tariff, Original Volume Nos. 1 and 2, to be effective September 1, 1992.

Panhandle states that the revised tariff sheets filed herewith reflect a commodity rate decrease of (44.77)¢ per Dt. for customers served under the sales rate schedules. This decrease includes:

(1) A (12.81¢) per Dt. decrease in the projected purchased gas cost component computed in accordance with Section 18.2 of the General Terms and Conditions of Panhandle's tariff; and

(2) A (16.19¢) per Dt. decrease pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

(3) A (15.77¢) per Dt. decrease pursuant to Section 27 of the General Terms and Conditions of Panhandle's tariff (Transportation Cost Adjustment).

Panhandle further states that the revised tariff sheets filed herewith also reflect the following changes to Panhandle's demand rates for customers served under sales rate schedules:

(1) An increase of $1.20 per Dt. pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) A decrease of ($0.01) per Dt. pursuant to Section 27 of the General Terms and Conditions of Panhandle's tariff (Transportation Cost Adjustment); and

(3) A decrease of ($0.60) per Dt. to reflect a decrease pursuant to § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (Quarterly PGA Filing) of the Commission's Regulations and pursuant to §§ 18.1, 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers), Section 22 (ANGTS tracking mechanism) and Section 27 (Transportation Cost Adjustment) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional sales rates effective September 1, 1992.

Panhandle state the revised tariff sheets filed herewith also reflect the following changes to Panhandle's transportation rates for transportation service provided under Rate Schedules PT-Firm, PT-Interruptible and SCT:

(1) An increase of $0.06 per Dt. pursuant to Section 6.18 of Rate Schedule PT-Firm.

(2) An increase of 0.20¢ per Dt. pursuant to Section 6.16 of Rate Schedule PT-Interruptible.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18922 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-55-000]

Questar Pipeline Co.; Rate Change

August 4, 1992.

Take notice that on July 31, 1992, Questar Pipeline Company (Questar) tendered for filing and acceptance to be effective September 1, 1992, Twentieth Revised Sheet No. 12, to Original Volume No. 1 of its FERC Gas Tariff.

Questar states that the purpose of this filing is to adjust the purchased gas cost under its sale-for-resale Rate Schedule CD-1 effective September 1, 1992.

Questar states that the Twentieth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.82432/Dth which is $0.35829/Dth lower than the currently effective rate of $3.18261/Dth. The demand base cost of purchased gas as adjusted decreased $0.00429/Dth, from $0.00675/Dth to $0.00246/Dth.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18906 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-212-000]

Questar Pipeline Co.; Tariff Filing

August 4, 1992.

Take notice that Questar Pipeline Company, on July 30, 1992, tendered for filing and acceptance to be effective August 29, 1992, First Revised Sheet Nos. 25 and 28 to Original Volume No. 2-A of its FERC Gas Tariff.

Questar states that this filing revises certain storage-service request procedures reflected in §§ 2.2, 2.3 and 2.7 of the General Terms and Conditions to Original Volume No. 2-A of its FERC Gas Tariff.

Questar states further that this filing was served upon the Wyoming and Utah public service commissions as well as all other parties designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules and Regulations 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18909 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-213-000]

Tennessee Gas Pipeline Co.; Filing

August 4, 1992.

Take notice on July 31, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Fourth Revised Volume No. 1 of its FERC Gas

Tariff to be effective on September 1, 1992:

First Revised Sheet No. 163
First Revised Sheet No. 175
Second Revised Sheet No. 267

Tennessee states that this filing is being made (1) to amend certain provisions concerning how gas is routed for billing purposes and (2) to change the location where prepayments are made for service under Rate Schedules FT-A and FT-B.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 384.214. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18907 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 30, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets is August 1, 1992.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and pursuant to Order No. 483 issued November 10, 1987 in Docket No. RM86-14. As contemplated in Docket No. RM86-14 and Order No. 483, this filing constitutes an out-of-cycle PGA rate increase.

Texas Eastern states that in compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542-PGA (Revised) and FERC's NOTICE OF CRITERIA FOR ACCEPTING ELECTRONIC PGA FILINGS dated April 12, 1991.

Texas Eastern states that the change proposed in this out-of-cycle PGA filing is a commodity sales rate increase of $0.2745/dth based upon the change in Texas Eastern's projected August 1992 through October 1992 quarterly cost of purchased gas from Texas Eastern's August 1, 1992 quarterly PGA in Docket No. TQ92-6-17 filed on July 1, 1992. Texas Eastern states that the projected commodity gas costs reflected in this filing are the result of the ongoing efforts by Texas Eastern, in both the short term and long term, to secure gas supplies at the lowest reasonable cost consistent with contractual obligations and security of supply for the customers.

Texas Eastern states that on April 15, 1992 the Commission approved Texas Eastern's August 19, 1991 Stipulation and Agreement, as supplemented December 10, 1991, in Docket Nos. RP90-119-010 and RP91-119-006 which resolved cost of service issues in those dockets. As a result, Texas Eastern filed tariff sheets on June 15, 1992 reflecting the settlement rates as prescribed in Article II of such Stipulation and Agreement.

Texas Eastern states that on July 8, 1992 the Commission issued an order approving Texas Eastern's June 15, 1992 filing. Texas Eastern states that the substitute tariff sheets listed on Appendix A reflect Texas Eastern's settlement rates adjusted for the PGA change proposed herein as recalculated pursuant to the settlement to be effective August 1, 1992. Texas Eastern states that since settlement rates are anticipated to be billed commencing September 1, 1992, the substitute tariff sheets will be used (1) for determining refunds for the month of August, 1992 and (2) for billing purposes commencing September 1, 1992.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18923 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-8-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on July 30, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-ninth Revised Sheet No. 10
Fifty-ninth Revised Sheet No. 10A
Fortieth Revised Sheet No. 11
Thirtieth Revised Sheet No. 11A
Thirtieth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective August 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.0018 per MMBtu, a D-1 demand rate increase of $.1100 per MMBtu, and an SGN Standby rate increase of $.0090 per MMBtu from the rates set forth in the Quarterly PGA filed June 30, 1992 (Docket No. TQ92-7-18).

Texas Gas states that copies of the filing were served upon Texas Gas's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18911 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

August 4, 1992.

Take notice that Valero Interstate Transmission Company ("Vitco"), on July 31, 1992 tendered for filing the following tariff sheet as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, First Revised Volume No. 2
5th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $0.6401 per MMBtu as compared to the previously scheduled annual PGA filing.

The proposed effective date of the above filing is September 1, 1992. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18904 Filed 8-7-92; 8:45 am]

BILLING CODE 6717-01-M

Issuance of Decisions and Orders

Office of Hearings and Appeals During the Week of June 15 Through June 19, 1992

During the week of June 15 through June 19, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Murphy Oil Corporation, et al., 6/17/92 *KRO-0460*

Murphy Oil Corporation (Murphy), Murphy Oil, U.S.A., Inc. (Murphy, U.S.A.), Ocean Drilling and Exploration Company (Ocean Drilling), and ODECO Oil and Gas Company (ODECO) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to them on December 15, 1986. The PRO alleged that during the period September 1973 through December 1979 (the audit period), the respondents violated the price regulations in sales of crude oil from certain of their producing properties in Texas, Montana, Mississippi, and Louisiana. On the basis of these alleged violations, the PRO found that the respondents are liable for a total of $13,366,664.60 in overcharges, plus interest on that amount. In considering the respondents' objections, the DOE found that the regulatory definition of "property" was valid and had been properly applied in the PRO. On the basis of extensive evidentiary submissions, the DOE determined that portions of ODECO's ship Shoal Unit did not qualify for separate property treatment on the basis of its underlying geological structures. The DOE also found that the PRO properly treated ODECO's OCS-043 Lease and Murphy's Trimble Assignment and Weaver Unit as single properties. The DOE next found that the PRO had properly applied the stripper well regulation to three Murphy properties and that Murphy's W.A. Moncrief Unit did not qualify as a marginal property. With respect to posted price issues, the DOE found that the PRO had applied the correct posted price to three Murphy properties and properly found that ODECO violated the regulations when it required purchasers of crude oil from its offshore leases to pay transportation costs in addition to the posted price. The DOE further found that ODECO's shifting of transportation costs to its customers violated the Normal Business Practices Rule. The DOE next determined that the PRO properly computed the overcharges against each respondent and that additional offsets of overcharges to reflect Murphy's refiner banks were not proper. The DOE modified the PRO to find Murphy and Murphy Oil, U.S.A., liable for the overcharges of the other PRO respondents, and Ocean Drilling liable for the overcharges for ODECO. Finally, at the suggestion of the ERA, the DOE modified the PRO's self-audit requirements to limit the self-audit to respondent-designated properties where there is a substantial likelihood that regulatory violations occurred. The DOE also required the ERA to issue a Supplemental Proposed Remedial Order for any overcharges it seeks to collect as a result of the self-audit.

Refund Applications

Big Chief Roofing Company, Daingerfield Manufacturing Company, 6/18/92, RR272-86, RR272-87

The DOE issued a Decision and Order granting Motions for Reconsideration filed on behalf of two companies in the subpart V crude oil refund proceeding. The original Applications were denied because the applicants had not documented their purchase volumes. As a general rule, Motions for Reconsideration filed after the June 30, 1988 deadline in the crude oil refund proceeding, even though involving Applications filed before the deadline, would be considered as past—June 30, 1988 submissions. However, due to the circumstances of these cases, an exception was made, and the Motions were considered as having been filed before June 30, 1988 for the purposes of receiving additional refunds.

Nox-Crete, Inc., 6/17/92, RF272-67171

The DOE issued a Decision and Order denying an Application for Refund submitted by Nox-Crete, Inc., in the subpart V crude oil refund proceeding. The applicant requested a refund based on neutral oil that it had purchased and blended with other materials so that 60 percent of the total volume of the blend was neutral oil. In its Application, the applicant claimed that blending the neutral oil substantially changed it and that the applicant was therefore not a reseller of oil. The DOE found that the applicant, by selling the blend, fell within the class of firms comprised of refiners, resellers, and retailers. Applicants from this class of firms must submit specific evidence of injury to receive a refund in the subpart V crude oil overcharge refund proceeding. The DOE denied the Application because the

applicant did not submit the required specific evidence of injury.

Standard Oil Co. (Indiana)/Nebraska, 6/19/92, RM21–258, RM251–259

The DOE issued a Decision and Order granting a Motion for Modification of previously-approved second-stage refund plans filed by the State of Nebraska in the Amoco special refund proceeding. Oklahoma requested permission to use $150,000 of Amoco I and Amoco II monies which the State received for other second-stage refund plans to create a state-wide energy information service. The DOE found that the program would provide restitution by educating injured Nebraskans on ways to conserve energy and reduce energy costs, thus providing immediate, tangible benefits to consumers of refined petroleum products. Accordingly, the State's Motion for Modification was granted.

United Refining Company/Major Oils, 6/17/92, RF333–19

The DOE issued a Decision and Order denying the Application for Refund submitted by Energy Refunds, Inc., on behalf of Major Oils in the United Refining Company refund proceeding. On two occasions, the DOE requested that the applicant submit sample records that substantiated its refund claim. Moreover, the DOE indicated that if no records existed, it might accept a clear and complete explanation of how it estimated its gallonage claim. However, the applicant never submitted these records nor provided an explanation of its estimation technique. Accordingly, because the information provided by Major Oils was insufficient to demonstrate the volume of its United petroleum product purchases, the DOE denied its Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/ Alcorn Fence Co. et al.	RF304–12979	06/19/92
Atlantic Richfield Company/ Harsco Corporation et al.	RF304–12851	06/19/92
Atlantic Richfield Company/ John Quill Automotive et al.	RF304–12690	06/19/92
Atlantic Richfield Company/ Ron's Party Store.	RF304–7049	06/15/92
Christy's Arco #1.	RF304–8822	.....
Canterbury School District et al.	RF272–87519	06/19/92
Dahlen Transport, Inc.	RF272–18997	06/19/92
Dahlen Transport, Inc.	RF272–18997	.....
Darrington School District et al.	RF272–80505	06/19/92
Foresee Farm & Equipment et al.	RF272–65659	06/15/92
Gulley Trucking, Inc.	RF272–65827	.....
Hofferber Truck Lines, Inc.	RF272–68846	.....
Gulf Oil Corporation/ City of High Point.	RF300–20237	06/18/92
Gulf Oil Corporation/ Del Cook Lumber Co., et al.	RF300–15065	06/17/92
Gulf Oil Corporation/ Double Eagle Lubricants, Inc. et al.	RF300–12793	06/19/92
Gulf Oil Corporation/ G&M Service Center.	RF300–20236	06/18/92
Gulf Oil Corporation/J. Smith Gulf et al.	RF300–17001	06/18/92
Gulf Oil Corporation/ Skipper's Gulf #2 et al.	RF300–14421	06/18/92
Henderson County et al.	RF272–86002	06/19/92
Knowlton Township School District et al.	RF272–80016	06/15/92
Linden Unified et al.	RF272–88008	06/19/92
MTD Products, Inc.	RF272–64595	06/18/92
Searcy School District et al.	RF272–78810	06/19/92
Swiss Valley Farms Co.	RF272–159	06/19/92
Swiss Valley Farms Co.	RF272–160	.....
Texaco Inc./ Drinkwater Texaco et al.	RF321–8442	06/19/92
Texaco Inc./ Larry McCoy's Texaco.	RF321–18691	06/17/92
Texaco Inc./ Royal Texaco.	RF321–18704	06/18/92
Texaco Inc./ Vicksburg LP Gas Co. et al.	RF321–13203	06/19/92
Township of Ohio et al.	RF272–86210	06/19/92
Triway Local School District.	RF272–86174	06/17/92
Hampden Public Schools.	RF272–86182	.....
City of Norwich	RF272–86189	.....
United Refining Company/Erie Oil.	RF333–6	06/19/92
United Refining Company/R.L. Gaude CO., Inc.	RF333–4	06/17/92
Export Fuel Co., Inc.	RF333–20	.....

Dismissals

The following submissions were dismissed:

Name	Case No.
A.J. Beninato & Sons, Inc.	RF321–18597
Atwood Hammond C.U. School District 39.	RF272–81022
Beck's Texaco	RF321–6106
Beyer & Fortner, Inc	RF333–3
Blind Brook-Rye School District	RF272–80455
Brumfield's Gulf Station	RF300–12499
C.E. Motsinger Gulf	RF300–14535
Chun Tuk Yi	RF304–13034
E.R. Coleman	RF321–18524
Economy Rentals, Inc.	RF321–18574
Energy Petroleum Co.	RF300–12785
Ferner Bros. Bridge Co.	RF321–18569
Grammer's Gulf	RR300–116
John's Gulf Service	RF300–11620
Marathon Garbage Service, Inc	RF321–18582
New Waverly ISD	RF272–87125
Pembroke Central Schools	RF321–18550
Pender Shook's Gulf	RF300–14522
Petra Cruise Lines	RF272–86368
Pine Valley Texaco	RF321–4247
Randolph & Vincent University Gulf	RF300–12299
Roberts Texaco At 1401	RF321–3347
Roy W. Dunn	RF321–18551
Seaquist Freeway Texaco	RF321–3924
Silvestri Service Gulf	RF300–12875
Sims Oil Co	RF300–14519
Teague Industries, Inc	RF300–12769
Texas Trucking Co., Inc.	RF300–12489
Turner Bros. Co., Inc	RF321–18526
U.S. Fuel Company	RF321–18566
Vince Stein, Inc	RF333–7
Young's Industries, Inc	RF321–18564

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–18915 Filed 8–7–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4192-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces OMB responses to Agency PRA clearance requests.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1062.04; NSPS Monitoring for Coal Preparation Plants—Subpart Y; was approved 06/01/92; OMB No. 2060–0122; expires 06/30/95.

EPA ICR No. 1607.01; Survey of Wood Furniture Manufacturers; was approved 06/03/92; OMB No. 2060–0236; expires 06/30/95.

EPA ICR No. 1569.01; Development and Approval Guidance for Coastal Nonpoint Pollution Programs (CZARA Section 6217); was approved 06/10/92; OMB No. 2040–0153; expires 06/30/95.

EPA ICR No. 1572.01; Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types; was approved 06/22/92; OMB No. 2050–0050; expires 06/30/93.

EPA ICR No. 1612.01; Low-Cost, Small System Technology Data Collection; was approved 06/24/92; OMB No. 2040–0154; expires 06/30/95.

EPA ICR No. 0827.03; Construction Grants Program Information Collection Request; was approved 06/30/92; OMB No. 2040–0027; expires 06/30/95.

EPA ICR No. 0596.04; Application and Summary Report for an Emergency Exemption for Pesticides; was approved 07/07/92; OMB No. 2070–0032; expires 07/31/95.

EPA ICR No. 1063/05 NSPS for Sewage Treatment Plant Incineration (Subpart O) Reporting and Recordkeepng Requirements; was approved 07/09/92; OMB No. 2060–0035; expires 07/31/95.

OMB Partial Approval

EPA ICR No. 1061.05; Standard of Performance for the Phosphate Fertilizer Industry (NSPS subparts T, U, V, W, X); this collection of information was approved except for the requirement to record daily the amount of phosphorus pentoxide (p205) stored; OMB No. 2060–0037; expires 06/30/95.

Conditional Approval

EPA ICR No. 1158.04; Standards of Performance for new Stationary Sources, Rubber Tire Manufacturing Industry; was approved 07/10/92; OMB 2060–0156; expires 07/31/95. This collection of information received a conditional approval from OMB. For a copy of the notice containing the conditions, please call Sandy Farmer on (202) 260–2740.

OMB Extensions of Expiration Dates

EPA ICR No. 1276; Reporting and Recordkeeping for Asbestos Ban and Phase-Out Rule; OMB No. 2070–0082; expiration date extended to 12/31/92.

EPA ICR No. 0138; Modification of Secondary Treatment Requirements for Discharges into Marine Waters; OMB No. 2040–0088; expiration date extended to 08/31/92.

Agency Withdrawal

EPA ICR No. 1567.01; Duplication of Work; was withdrawn at the request of the Agency.

Dated: July 24, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–18933 Filed 8–7–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL-4192-6]

Clean Air Act; Contractor Access To Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized that two subcontractors receive access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended. The Radian Corporation, 3200 E. Chapel Hill Road, Research Triangle Park, North Carolina is the primary contractor. The following are subcontractors that will provide technical assistance to Radian; (1) Energy Environmental Research Corporation, 3710 University Drive, Suite 160, Durham, North Carolina, contract number 68D10117; (2) Alpha-Gamma Technologies, Inc. 900 Ridgefield Drive, Suite 350, Durham, North Carolina, contract number 68D10117.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than August 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gene W. Smith, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5439.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that EPA may provide the above mentioned subcontractors access to these materials on a need-to-know basis. The contractor with the assistance of the subcontractors will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in source assessment or with a source category survey and proceed through development of standards for a Federal Air Pollution Control Regulation or Control Techniques Guidelines (CTG).

In accordance with 40 CFR 2.305(h), EPA has determined that each subcontractor requires access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactory under the above noted contracts. The subcontractors' personnel will be given access to information submitted under Section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All access to CAA CBI under these contracts will take place at the subcontractors' facility. Clearance for access to CAA CBI under each contract is scheduled to expire on August 1, 1996.

Dated: August 3, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–18934 Filed 8–7–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL-41932]

Revision of the Nevada National Pollutant Discharge Elimination System (NPDES) to Authorize the Issuance of General Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of the National Pollutant Discharge

Elimination System General Permits Program of the State of Nevada.

SUMMARY: On July 27, 1992, the Regional Administrator for the Environmental Protection Agency (EPA), Region 9, approved the State of Nevada's National Pollutant Discharge Elimination System (NPDES) General Permits Program. On April 24, 1992, the Nevada Department of Conservation and Natural Resources (DCNR) submitted a formal request for approval to revise its NPDES Permit Program to authorize the issuance of general NPDES permits. This action authorizes the State of Nevada to issue general permits in lieu of individual NPDES permits. EPA has determined this program modification to be non-substantial because general permit program modifications have traditionally been viewed as non-substantial; and in addition, during the development of the State's regulations for implementing the program, commenters were supportive of the program modification. The finalization of this program approval should also be expedited in order to facilitate implementation of the NPDES storm water program in the State of Nevada.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, U.S. Environmental Protection Agency, Region 9 (W–5–1), 75 Hawthorne Street, San Francisco, CA 94105, 415–744–1906.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate the discharge of wastewater which results form substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring and are more appropriately controlled under a general permit rather than by individual permits.

Nevada was authorized to administer the NPDES program in September, 1975. As previously approved, the State's program did not include provisions for the issuance of general permits. There are a number of categories of discharges which could be appropriately regulated by general permits. For these reasons, the Nevada DCNR requested a revision of the State's NPDES program to provide for the issuance of general permits. Storm water discharges are the discharges which are currently under consideration for the general permit program. However, additional categories could be considered in the future.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Nevada submitted in support of its request, copies of the relevant statutes and regulations for implementing the program. The State has also submitted a statement dated April 24, 1992, by the Attorney General certifying, with appropriate citations to the statutes and regulations that the State will have adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. The State has also submitted an Amendment to the Memorandum of Agreement between the State of Nevada DCNR and EPA, Region 9 specifying the procedures through which general permits will be issued and administered by the State. Based upon Nevada's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Nevada's authority to issue general permits.

STATE NPDES PROGRAM STATUS

	Approved state NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74			
Georgia	06/28/74	12/06/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/04/92
Kansas	06/28/74	08/28/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	06/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78		07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80		
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/28/83	07/27/83	

STATE NPDES PROGRAM STATUS—Continued

	Approved state NPDES permit program	Approved to regulate federal facilities	Approved state pretreatment program	Approved general permits program
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82	
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73		09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81		09/24/91
Totals	39	34	27	31

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits) = 22

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Nevada NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Nevada NPDES State General Permits Program merely provides a simplified administrative process.

Dated: July 21, 1992.

Daniel W. McGovern,

Regional Administrator Region 9.

[FR Doc. 92-18935 Filed 8-7-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Maryland Port Administration and Premier Automotive Services, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200891.

Title: Maryland Port Administration and Premier Automotive Services, Inc., Marine Terminal Agreement.

Parties: The Maryland Port Administration ("MPA"), Premier Automotive Services, Inc. ("Premier").

Synopsis: The Agreement provides for Premier to rent from MPA 6.53 acres in Area 90 and approximately 16.19 acres in Areas 202 and 94 located at the Dundalk Marine Terminal. The term of the Agreement is for five years.

Agreement No.: 232-011184-005.

Title: Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione, S.p.A. and Compagnie Maritime Space Charter and Sailing Agreement.

Parties: Compagnie Generale Maritime ("CGM"), Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione S.p.A.

Synopsis: The proposed amendment will revise the Membership and Withdrawal provision of the Agreement to provide that CGM may withdraw from the Agreement upon ten days' written notice to the other parties, as long as such notice is not tendered before September 1, 1992.

Agreement No.: 203-011382.

Title: Agreement for Settlement and Release of Columbus Line Claims Relating to the Argentina/U.S. Atlantic Pool Agreement.

Parties: American Transport Lines, Inc., Hamburg Sudamericanische Dampfschiffahrt Geesellschaft (Columbus Line).

Synopsis: The proposed Agreement would settle disputes between the parties over revenue pool accounting payments for the years 1990-1991 under pooling Agreement No. 212-010386 (the Argentina/U.S. Atlantic Coast Agreement).

Dated: August 4, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-18824 Filed 8-7-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade

Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072092 AND 073192

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Don Tyson, Arctic Alaska Fisheries Corporation, Arctic Alaska Fisheries Corporation	92-1227	07/20/92
Service Corporation International, John Farias, Jr, JHF/JFJ, Inc.	92-1228	07/20/92
Service Corporation International, John Henry Felix, JHF/JFJ, Inc.	92-1229	07/20/92
Francis L. Miller, Don Tyson, Tyson Foods, Inc.	92-1233	07/20/92
Cintas Corporation, David E. Maryatt, American Linen Supply Co.d/b/a Maryatt Industries	92-1112	07/22/92
Robert T. Shaw, NACOLAH Holding Corporation, NACOLAH Holding Corporation	92-1245	07/22/92
American Re Associates, L.P., Aetna Life and Casualty Company, American Re-Insurance Company	92-1127	07/23/92
Lubrizol Corporation (The), Mycogen Corporation, Mycogen Corporation	92-1161	07/23/92
Petrofina S.A., Hoechst Aktiengeaseilschaft, Hoechst Celanese Corporation	92-1163	07/23/92
W. Galen Weston, Maplehurst Group Inc., Maplehurst Group, Inc.	92-1193	07/23/92
Hoechst AG, Hoechst AG, Cape Industries	92-1207	07/23/92
Pan-American life Insurance Company, Charlotte Liberty Mutual Insurance Company, Charlotte Liberty Mutual Insurance Company	92-1237	07/23/92
Allied-Signal Inc., Westinghouse Electric Corporation, Fortin, Inc., Fortin S.A., and Fortin Ltd.	92-0885	07/24/92
National Service Industries, Inc., H. David Abelove, Associated Textile Rental Services, Inc.	92-1219	07/24/92
Fred B. Anschutz Trust, Philip F. Anschutz, Block 175 Corporation	92-1239	07/24/92
Forest Oil Corporation, Transco Energy Company, Transco Exploration and Production Company	92-1248	07/24/92
Tele-Communications, Inc., Southwest Cablevision, Ltd., Southwest Cablevision, Ltd.	92-1249	07/24/92
K-III Communications Corp., Harold and Marianne Mantell, husband and wife, Films for the Humanities, Inc.	92-1251	07/24/92
General Electric Company, Transco Energy Company, TXP Operating Company	92-1254	07/24/92
Hartstone Group PLC (The), Bain Venture Capital, Mutterperl Group, Ltd.	92-1255	07/24/92
Hartstone Group PLC (The), Tyler Capital Fund, L.P., Mutterperl Group, Ltd.	92-1256	07/24/92
Walter J. Brown, General Electric Company, Pegasus Broadcasting of Augusta, Georgia, Inc.	92-1105	07/27/92
Warburg, Pincus Capital Company, L.P., Marine Drilling Companies, Inc., Marine Drilling Companies, Inc.,	92-1241	07/27/92
Peter Kiewit Sons, Inc., ME Holding Inc., ME Holding, Inc.	92-1208	07/28/92
GroupCare, Inc., MedCenters Health Care, Inc., MedCenters Health Care, Inc.	92-1025	07/29/92
GroupCare, Inc., Group Health Plan, Inc., Group Health Plan, Inc.	92-1027	07/29/92
Voting Trust/Hallmark Cards, Incorporated, Housatonic Cable Vision Company, Housatonic Cable Vision Company	92-1152	07/29/92
Homedco Group, Inc., BOC Group plc, Glasrock Home Health Care, Inc.	92-1181	07/29/92
Danka Business Systems PLC, Waller Brothers, Inc, Waller Brothers, Inc.	92-1258	07/29/92
Act III Cinemas, Inc., Cineplex Odeon Corporation, Pitt Theatres, Inc.	92-1102	07/30/92
SCI Systems, Inc., Tandem Computers Incorporated, Tandem Computers Incorporated	92-1118	07/30/92
Blue Cross and Blue Shield of Massachusetts, Inc., Bay State Health Care, Inc., Bay State Health Care, Inc.	92-1196	07/31/92
N-W Group, Inc., Herbert Skidmore, Glenayre Electronics, Inc.	92-1264	07/31/92
N-W Group, Inc, Arthur Skidmore, Glenayre Electronics, Inc.	92-1265	07/31/92
Brown-Forman Corporation, Fetzer Vineyards, Fetzer Vineyards	92-1269	07/31/92
Noel Group, Inc., Livio Borghese, Curtis Industries, Inc.	92-1271	07/31/92
Cascades Inc., Dennis Mehiel, The Fonda Group, Inc.	92-1275	07/31/92
Taihei Shokuhin Kogyo Kabushiki Kaisha, Eugene J. Long, Dove Canyon Country Club, Ltd.	92-1279	07/31/92
Northwestern Memorial Corporation, Carlyle Real Estate Limited Partnership—XV, Lasalle National Trust	92-1281	07/31/92
Thorn EMI plc, C. Howard Wilkins, Jr., Racord, Inc. and Norac, Inc.	92-1284	07/31/92
Continental Bank Corporation, Plastic Engineered Components, Inc., Plastic Engineered Components, Inc.	92-1290	07/31/92

FOR FURTHER INFORMATION CONTACT; Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-18891 Filed 8-7-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901-3111]

Mobil Oil Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Virginia-based manufacturer and seller of plastic bags from making unsubstantiated degradability and environmental benefit claims.

DATES: Comments must be received on or before October 9, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580, (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Mobil Oil Corporation, a corporation, and it now appearing that Mobil Oil Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is Hereby Agreed by and between Mobil Oil Corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Mobil Oil Corporation is a Delaware corporation with its office and principal place of business at 3225 Gallows Road, Fairfax, Virginia 22037–0001.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other then the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the following definition shall apply: "Mobile pastic bag" means any plastic grocery bag, or any plastic "disposer" bag, including but not limited to trash bags, lawn bags, and kitchen bags, that is offered for sale, sold, or distributed to the public by respondent, its successors and assigns, under the "Hefty," "Kordite," or "Baggies" brand name or any other brand name of respondent, its successors and assigns; and also means any such plastic bag sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

I.

A. *It is Ordered* That respondent Mobil Oil Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Mobil plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any such plastic bag is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of "degradable," "biodegradable," "photodegradable," or any other substantially similar term or expression, that the degradability of any such plastic bag offers any environmental benefits when disposed of as trash in a sanitary landfill,

unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided,* However, respondent will not be in violation of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of plastic grocery bags, if it prints a diamond-shaped symbol on such bags in compliance with Florida state law, and/or truthfully states that such bag "Complies with Florida law."

C. *Provided,* Further, respondent will not be in violation of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of plastic bags, if it truthfully represents that its plastic bags are designed to degrade or break down, and become part of usable compost, along with the bag's contents, when disposed of in programs that collect yard or other waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such bags and any advertising referring to the degradability of such bags discloses clearly, prominently, and in close proximity to such representation:

(1)(a) That such bags are not designed to degrade in landfills, or

(1)(b) In those states in which compositing facilities are required for yard waste, that composting bags are only designed to degrade in such composting facilities; and further discloses

(2)(a) That yard waste composting programs may not be available in the consumer's area, or

(2)(b) The approximate percentage of the U.S. population having access to yard waste composting programs.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package. If such representation appears in more than one place on a package, it shall be sufficient if the above-required disclosures appear only on the principle display panel of the package, as "principal display panel" is defined in the Fair Packaging and Labeling Act, 15 U.S.C. 1459(f)(1988).

If the advertising and labeling of respondent's plastic bags otherwise complies with subpart A of part I of this Order, respondent will not be in violation of this Order if it does not make the disclosures in this proviso (subpart C).

II.

It is Further ordered That respondent Mobil Oil Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising or labeling of any Mobil plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the terms "safe for the environment," "no harm to the environment," "no injury to the environment," "no risk to the environment," "friendly to the environment," or any rearrangement of such terms, e.g., "environmentally safe," "environmentally harmless," "environmentally risk-free" or "environmentally friendly," unless: (1) respondent discloses clearly, prominently, and in close proximity thereto with reasonable specificity what is meant by such term, and (2) at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package.

III.

Nothing in this Order shall prevent respondent from using any of the terms cited in Parts I and II, or similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV.

It is Further ordered That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All test reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

V.

It is Further ordered That respondent shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast, and cable advertisements covered by this Order.

VI.

It is Further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance objections under this Order.

VII.

It is Further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Mobil Oil Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the package labeling of "Hefty Degradable" plastic bags and plastic grocery store bags. The Commission's complaint charges that the respondent's labeling contained unsubstantiated representations concerning the bags' alleged degradability and the environmental benefits that could be obtained when they were disposed of as trash. The complaint alleges that the respondent represented that its products offer a significant environmental benefit when consumers dispose of them as trash, and that they will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondent to cease representing that any of its plastic trash or grocery bags, or plastic bags it manufactures and sells to third parties for further sale or distribution to the public, are "degradable," "photodegradable," or "biodegradable," or more specifically, through the use of such terms or substantially similar terms, that the degradability of such plastic bags offers any environmental benefits when disposed of as trash in a sanitary landfill, unless the respondent has a

reasonable basis for such representations at the time they are made.

Part I also contains a proviso that allows the respondent to advertise and label plastic grocery store bags with a diamond-shaped symbol, and/or the statement, "Complies with Florida law," without violating Part I. Under Florida law, all plastic shopping bags must meet certain Florida standards for photodegradation, or breaking down when exposed to sunlight. Florida requires that such bags be printed with a diamond-shaped symbol indicating that the bags comply with Florida's standards.

Part I contains an additional proviso allowing the respondent to advertise and label plastic products as "compostable" or "degradable" without violating Part I of the proposed order. The respondent may use the terms in labeling, and in advertising that refers to the bags' "degradability," if the bags will in fact degrade or break down, along with leaf and grass yard waste, into usable compost (soil-conditioning material) in yard waste composting programs. In addition, to avoid possible confusion about the benefit of a compostable product degrading in sanitary landfills, the proviso also requires the respondent to disclose clearly, prominently, and in close proximity to such claims that the bags are not designed to degrade in landfills. In those states in which composting facilities are required for yard waste, the respondent may alternatively disclose that its bags are only designed to degrade in yard waste composting facilities. Furthermore, the respondent must also disclose either that yard waste composting programs may not be available in the consumer's area, or the approximate percentage of the U.S. population having access to such programs.

Part II of the proposed order provides that if the respondent uses in advertising or labeling such terms as "Safe for the Environment" or "Environmentally Friendly," or rearrangements of those terms or certain similar terms, it must have a reasonable basis consisting of competent and reliable scientific evidence that substantiates its representations. Further, to ensure compliance with this provision, the order requires the respondent to clearly disclose, with reasonable specificity, what it means by such terms.

Part III of the proposed order allows the respondent to use the terms cited in Parts I and II, or substantially similar terms, and not be in violation of the proposed order, if it is necessary for the respondent to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen, in Which Commissioner Mary L. Azcuenaga and Commissioner Roscoe B. Starek, III Join

The complaint in this case alleges that Mobil Oil Corporation ("Mobil") made certain unsubstantiated environmental claims about its plastic bags. The focus is on claims of degradability. Paragraph Four of the complaint lists certain statements taken from package labeling and from grocery bag labeling. Paragraph Five of the complaint alleges that through these statements, and others, Mobil Oil "represented, directly or by implication" two claims concerning the environmental benefits of its bags:

a. Compared to other plastic bags, respondent's plastic bags offer a significant environmental benefit when consumers dispose of them as trash; and

2. Respondent's plastic bags will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

These claims are subsequently alleged in Paragraphs Six and Seven to be unsubstantiated.

Paragraph Four of the complaint contains one statement taken from Mobil's grocery bag labels that clearly relates to the issue of degradability: "degrades in sunlight." It also contains other statements that do not directly relate to the issue: "non-toxic when incinerated," "recyclable," and "no ground water contamination." Including the entire label in the complaint is useful for purposes of demonstrating the context in which the degradability claims were made. However, I would not want my vote in favor of this case to be construed as a determination, one way or the other, as to the latter claims. Based on the evidence presented in this case, I do not understand the Commission's action there to preclude truthful claims relating to toxicity, ground water contamination, or recyclability, or to necessarily require, with respect to such claims, substantiation for both of the presentations in Paragraph Five. I would prefer that complaints distinguish more clearly between statements that are the basis of Commission action, and contextual material.

[FR Doc. 92-18892 Filed 8-7-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 261]

HIV-Related Tuberculosis Preventive Therapy Regimen (PTR) Demonstration Cooperative Agreements

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for a cooperative agreement program for tuberculosis (TB) and human immunodeficiency virus (HIV) preventive therapy regimen (PTR) demonstration projects.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of **Healthy People 2000**, see the section Where to obtain Additional Information).

Authority

This program is authorized under sections 301(a) and 317(k) of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)), as amended. Applicable program regulations are found in 42 CFR 51b, subpart A, which contains general provisions relating to this program.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, alcohol and

substance abuse agencies, and small, minority- or women-owned businesses are eligible for these cooperative agreements. Applicants must be able to locate, monitor and evaluate a minimum of 75 dually-infected (TB/HIV) persons per year who can be administered the appropriate rifampin/pyrazinamide TB preventive therapy according to a prescribed regimen to be provided by CDC. A copy of the prescribed regimen will be included in the application kit.

Availability of Funds

Approximately $1,200,000 is available in Fiscal Year 1992 to fund three to five awards. It is expected that the average award will be $250,000, ranging from $200,000 to $450,000. Awards are expected to begin on or about September 28, 1992, for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is to improve preventive treatment regimens for HIV-related *M. tuberculosis* through demonstration projects and applied research. Applied research, as used in the context of this announcement, means the process of the development and evaluation of practical operational approaches and solutions to HIV-related TB problems *and* the evaluation of new technology (e.g., new drugs, new drug regimens, new methods of testing drug feasibility, and applicability.)

Specific objectives of this project are to:

A. Determined the efficacy of a rifampin/pyrazinamide drug regimen (as prescribed by CDC) in preventing the development of TB in HIV-infected persons at risk of developing TB.

B. Describe the host factors that affect the efficacy of TB preventive therapy.

C. Evaluate the acceptability and toxicity of the drug regimen in the prevention of TB.

National Goals

The ultimate goal of TB prevention and control efforts is disease elimination (a case rate of less than 0.1 per 100,000 population) by the year 2010, with an interim target goal of no more than 3.5 cases per 100,000 population by the year 2000.

The Healthy People 2000 national goals relating to TB and HIV infection are:

A. Assess the impact of HIV infection on TB morbidity and mortality.

B. Develop more effective tools for the diagnosis of TB infection and disease in persons with HIV infection.

C. Determine optimal drug regimens for the treatment of TB in persons with HIV infection.

D. Develop optimal TB preventive therapy regimens for dually-infected (TB/HIV) persons.

E. Prevent TB disease among dually-infected (TB/HIV) persons.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., and CDC shall be responsible for conducting activities under B.

A. Recipient Activities

1. Develop and implement strategies that are applicable to TB/HIV-infected persons in the United States including: (a) methods and strategies to successfully identify, enroll, and administer appropriate preventive drug therapy to HIV-infected persons also infected with *M. tuberculosis*; and (b) methods to actively monitor and insure compliance with drug therapy, assess toxicity, and appropriately evaluate patients for up to 2 years after completion of preventive therapy.

2. Identify and enroll a minimum of 75 dually-infected (TB/HIV) persons into the prescribed preventive therapy regimen.

3. Implement specified follow-up procedures to monitor, for both efficacy and toxicity, in dually-infected (TB/HIV) persons receiving the prescribed preventive therapy.

4. Develop and implement methods for the follow-up of dually-infected (TB/HIV) individuals identified but not receiving preventive therapy.

5. Develop and implement an evaluation plan that measures the effectiveness of the trial regimen employed.

6. Compile and disseminate findings.

B. CDC Activities

1. Provide consultation and technical assistance in planning, developing, operating, and evaluating strategies.

2. Provide and explain, to each of the recipients, the preventive therapy regimen designated for this study. A copy of the prescribed regimen is included in the application kit.

3. Provide up-to-date scientific information and coordinate the exchange of information among recipients.

4. Assist in data management, analysis, and the evaluation of programmatic activities.

5. Assist recipients in collaborating with state and local health departments and other PHS-supported tuberculosis and HIV/AIDS projects.

6. Assist in the preparation and publication of findings.

Evaluation Criteria

Each application will be reviewed and evaluated individually according to the following criteria (100 total points maximum):

A. The ability of the applicant to determine the extent of TB and HIV infection in their area to include: (1) The number of TB cases; (2) the number of AIDS cases; (3) the number of persons with TB and AIDS/HIV infection; (4) the estimated prevalence of HIV seropositivity in various population groups; and (5) the realistic estimated prevalence of tuberculin reactivity among AIDS risk groups. (10 points)

B. The ability of the applicant to satisfactorily identify, using epidemiologic information, the number of dually infected (TB/HIV) persons and to have realistic expectations as to the numbers of persons (must have a minimum of 75) that will be enrolled into the TB preventive therapy regimen. (10 points)

C. The ability of the applicant to perform active follow-up procedures on all participants who receive preventive therapy (defined as persons who are currently receiving drugs or those who have completed the drug therapy portion of their treatment) including methods to deal with noncompliant patients; and the extent to which qualified and experienced personnel are available to carry out the proposed follow-up activities. (30 points)

D. The extent to which the applicant's short- and long-term objectives are realistic, measurable, time-phased, and consistent with the purpose of the program. (15 points)

E. The overall potential effectiveness of the applicant's proposed activities and methods for meeting the stated objectives. (20 points)

F. The adequacy of the proposed plans to evaluate progress in implementing methods and achieving objectives. (15 points)

In addition, consideration will be given to the extent to which the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Numbers are 93.947, Tuberculosis Demonstration, Research, Public and

Professional Education; and 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Other Requirements

Confidentiality

Applicants must have in place systems to ensure the confidentiality of all patient records.

Pre- and Post-test Counseling and Partner Notification

Recipients are required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with state laws and regulations and CDC guidelines regarding pre- and post-test counseling and partner notification of HIV-seropositive patients, a copy of which will be included in the application kit. Recipients must also comply with state and local health department requirements relating to specific reportable diseases or conditions. Recipients must provide referrals for HIV diagnosis and treatment.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

The applicant must comply with the Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.113, which also will be included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application and Submission Deadline

The original and two copies of the application (Form PHS–5161–1) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, GA 30305 on or before September 11, 1992.

A. Deadline

Applications shall be considered as meeting the deadline if they are:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

B. Late Applications

Applications that do not meet the criteria in A.1. or A.2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description and information on application procedures, an application package, and business management technical assistance may be obtained from Lynn Mercer, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6814.

Programmatic technical assistance may be obtained from Lawrence J. Geiter, Division of Tuberculosis Control, National Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–2530.

Please refer to Announcement 261, HIV-Related Tuberculosis Preventive Therapy Regimen (PRT) Demonstration Cooperative Agreements, when requesting information or submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the introduction of this document through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: August 4, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–18857 Filed 8–7–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92C–0293]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cosmetic, Toiletry, and Fragrance Association (CTFA) has filed a petition proposing that the color additive regulations be amended to provide for the safe use of FD&C Yellow No. 5 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0205) has been filed by CTFA, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1705 *FD&C Yellow No. 5* and 74.2705 *FD&C Yellow No. 5* (21 CFR 74.1705 and 74.2705) to provide for the safe use of FD&C Yellow No. 5 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be

published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18854 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0285]

Mitsui Toatsu Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed on behalf of Mitsui Toatsu Chemicals, Inc., proposing that the food additive regulations be amended to provide for the expanded safe use of bis(*p*-ethylbenzylidene) sorbitol as a clarifying agent for polypropylene articles intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4330) has been filed on behalf of Mitsui Toatsu Chemicals, Inc., c/o 1001 G St. NW., Suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the expanded safe use of bis(*p*-ethylbenzylidene) sorbitol as a clarifying agent for polypropylene articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18855 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

Request for Nominations for Members on Public Advisory Committees; Science Board to the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for 10 members to serve on the Science Board (the board) to the Food and Drug Administration in the Office of the Commissioner. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule announcing the establishment of this committee.

DATES: Nominations should be received on or before September 9, 1992.

ADDRESSES: All nominations for membership except for the consumer-nominated members should be sent to Susan L. Crandall (address below). All nominations for the consumer-nominated members should be sent to Phyllis Weller (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for the consumer-nominated members: Susan L. Crandall, Office of the Commissioner (HF-33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5839.

Regarding all nominations for the consumer-nominated members: Phyllis Weller, Office of Consumer Affairs (HFE-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for 10 members to serve on the board. The function of the board is to provide advice primarily to the agency's Senior Science Advisor and, as needed, the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in academia and industry. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of the agency sponsored intramural and extramural scientific research programs.

FDA is notifying the public that the agency's Senior Science Advisor, Elkan Blout, has prepared a list of prospective candidates from academia and industry. These individuals will be considered along with other nominations submitted to the agency in response to this **Federal Register** notice.

Persons nominated for membership shall be knowledgeable in the fields of chemistry, pharmacology, toxicology, clinical research, and other scientific disciplines. Members shall represent academia and industry. The committee may include one technically qualified member who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. Members shall be invited to serve for overlapping 4-year terms except for the first members appointed: Three shall serve for a term of 2 years, three for a term of 3 years, and four for a term of 4 years as designated at the time of appointment.

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Selection of a representative of consumer interests is conducted through procedures that include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's selection. Candidates, like all other candidates for membership on the committee, should possess appropriate qualifications to understand and contribute to the committee's work.

FDA has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR Part 14, relating to advisory committees.

Dated: August 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-18817 Filed 8-7-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the twenty-second meeting of the Fogarty International Center (FIC) Advisory Board, September 22, 1992, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 2:30 p.m. The morning agenda will include a report by the Director, FIC, a report on the meeting of the Advisory Committee to the NIH Director, a presentation on planning for future directions of the FIC, and a report on international collaboration in vaccine development.

The afternoon agenda will include a presentation by the Director, NIH.

In accordance with the provisions of secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 2:30 p.m. to adjournment for the review of applications for International Research Fellowships, Senior International Fellowships, and Fogarty International Research Collaboration Awards.

Myra Halem, Committee Management Assistant, Fogarty International Center, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for International Legislation and Advisory Activities, Fogarty International Center (Executive Secretary), Building 31, room B2C08, telephone 301-496-1491, will provide substantive program information.

Catalog of Federal Domestic Assistance Program No. 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome and No. 93.989, Senior International Awards Program.

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-18883 Filed 8-7-92; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c) (4) and 552b(c) (6), title 5, U.S. Code and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: September 9-11, 1992.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: September 9, 6:45 p.m. until recess, Planning and Agenda Subcommittee, Building 12A, room 4007. September 10, 9 a.m. until recess, Conference Room 6, Building 31C.

Closed: September 11, 8 a.m. until 10 a.m., Conference Room 6, Building 31C.

Open: September 11, 10 a.m. until adjournment, Conference Room 6, Building 31C.

Mr. James J. Doherty, Information Office, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Deputy Director for Extramural Research Resources, NCRR, Building 12A, room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health.)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-18884 Filed 8-7-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

The meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of each meeting. Attendance by the public will be limited to space available. The meetings will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7548, will furnish summaries of the meetings and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: Institutional Short-Term Training for Minority Students (T35-M).

Scientific Review Administrator: Dr. Dennis Lang, Telephone 301-496-8818.

Dates of Meeting: August 17, 1992.

Place of Meeting: Westwood Building, room 550 (Telephone Conference).

Time of Meeting: 9 a.m.
Name of Panel: Institutional Short-Term Training for Minority Students (T35–M).
Scientific Review Administrator: Dr. Dennis Lang, Telephone 301–496–8818.
Dates of Meeting: August 18, 1992.
Place of Meeting: Westwood Building, room 550 (Telephone Conference).
Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institute of Health.)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–18881 Filed 8–7–92; 8:45 a.m.]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 22–23, 1992, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on October 22 from 9 a.m. to 5 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., sec. 10(d) of Public Law 92–463, the Council meeting will be closed to the public on October 23 from approximately 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–18885 Filed 8–7–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of a teleconference meeting of the National Advisory Council on Aging, National Institute on Aging, September 17, 1992, to be held at the National Institutes of Health, Building 31, Conference Room 7, Bethesda, Maryland. This meeting will be open to the public on Thursday, September 17, from 1 p.m. until 2 p.m. for a status report by the Acting Director, NIA; for discussion of the NIA budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the teleconference meeting of the Council will be closed to the public on September 17 from 2 p.m. to adjournment for the review, discussion and evaluation of grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–18887 Filed 8–7–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging (NIA), National Aeronautics and Space Administration (NASA); Sensory Motor Integration and Disintegration

Notice is hereby given of a meeting, "Sensory Motor Integration and Disintegration". this meeting is being co-sponsored by the National Institute on Aging and the National Aeronautics and Space Administration. It will be held on August 19 from 7 to 9:30 p.m. at the Hyatt Regency, Bethesda, on August 20 from 8:30 a.m. to 5:30 p.m. and on August 21 from 8 a.m. to 12 noon, at the National Institutes of Health, Building 31C, Conference Room 6, at 9000 Rockville Pike, Bethesda, Maryland 20892.

The objective is to explore certain areas of research in the neurosciences relevant to the missions and responsibilities of both agencies. More to the point, it is to identify research opportunities and needs in adaptive and pathogenetic mechanisms associated with sensorimotor and sensorisensory difficulties that are common to both aging populations and to humans exposed to low gravity environments. The Working Groups will recommend research strategies to NIA and NASA. These recommendations will be the bases for research initiatives for joint agency funding.

Attendance at the meeting is by invitation only.

Further information on the program may be obtained from: Dr. Robert Rabin, Lew Evans Foundation, c/o Lockheed Engineering and Sciences Company, (202) 863–5240, or to Dr. Andrew Monjan, NIA/NNA, Gateway Building Suite 3C307, 7201 Wisconsin Avenue, Bethesda, MD 20892; (301) 496–9350.

Dated: August 4, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92–18888 Filed 8–7–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on September 10, 1992, Shannon Building, Wilson Hall, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public September 10 from 8:30 a.m to 9 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on September 10 from 9 a.m. to adjournment at approximately 5 p.m. in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, rm. 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: July 30, 1992.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 92–18886 Filed 8–7–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3482]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What member of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 29, 1992.

John T. Murphy,

Director, Information Resources, Management Policy and Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Direct Endorsement Underwriter/HUD Reviewer Analysis of Appraisal Report.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–54114 is necessary to provide the reviewer with a consistent method of documenting the analysis and acceptability of the approval report. The information collected is used by HUD in monitoring the quality of the lenders analysis of the appraisal report, identify areas of weakness for future training, and to remove lenders that consistently exhibit careless underwriting and subsequently affect a potential risk to the Department.

Form Number: HUD–54114.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–54114	375,000		1		.05		18,750

Total Estimated Burden Hours: 18,750.

Status: New.

Contact: Roxanne Zimmerman, HUD, (202) 708–2700; Dick Manual, HUD, (202) 708–2700; Jennifer Main, OMB, (202) 395–6880.

Dated: July 29, 1992.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Project Implementation Schedule.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The project Implementation Schedule assists Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) in planning the implementation of their approved Comprehensive Improvement Assistance Program (CIAP). To expedite the modernization pipeline and reduce the time between fund approval by HUD and fund obligation (construction contract award) by HAs, HAs are required to prepare and submit a Project Implementation Schedule for each development approved for CIAP funding in a fiscal year. The Project Implementation Schedule is also used by HUD Field offices as a monitoring tool.
Form Number: None.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	600		1.5		1		900

Total Estimated Burden Hours: 900.
Status: Reinstatement.
Contact: Pris P. Buckler, HUD, (202) 708–1640; Jennifer Main, OMB, (202) 395–6880.

Dated: July 29, 1992.

[FR Doc. 92–18838 Filed 8–7–92; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N–92–3483]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, rein-statement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 29, 1992.

John T. Murphy,
Director, Information Resources Management Policy and Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Housing Self-Help Program-Application and Development Program Requirements (FR–2544).
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The purpose of this reporting requirement is to implement a self-help program which will permit participants in the Indian Housing Mutual Help Program to substantially construct their own homes. The information will also be used to select Indian Housing Authorities (IHAs) as an Indian Housing Self-Help component to the Mutual Help Program.
Form Number: None.
Respondents: Non-Profit Institutions.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications	10		1		30		300
Development Programs	6		1		75		450

Total Estimated Burden Hours: 750.
Status: Reinstatement.
Contact: Dominic Nessi, HUD, (202) 708–1015; Jennifer Main, OMB, (202) 395–6880.

Dated July 29, 1992.

[FR Doc. 92–18839 Filed 8–7–92; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N–92–3484]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 31, 1992.

Kay Weaver,

Acting Director, Information Resources, Management Policy and Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Hope for Homeownership of Single Family Homes (HOPE 3)—(FR–2968).

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information collection described is required to assist HUD in selecting applicants to be awarded funds for: (Planning Grants) to establish or increase their capacity to apply for and carry out a HOPE 3 program; and (Implementation Grants) to provide homeownership opportunities to low-income homeowners under a HOPE 3 program. Grantees will be required to submit program and property information to HUD in order to receive grant funds through the Cash and Management Information (C/MI) System.

Form Number: SF–424, HUD–40086, 40086–A, 40102–A, 40102–B, 40103, 40104 and 40105.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	700		1		27.86		19,500
Recordkeeping	350		1		72.33		25,314

Total Estimated Burden Hours: 44,814.

Status: Revision.

Contact: John Garrity, HUD, (202) 708–0324; Jennifer Main, OMB, (202) 395–6880.

Dated: July 31, 1992.

[FR Doc. 92–18840 Filed 8–7–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–92–3485; FR–3312–N–01]

Announcement of Project Mortgage Auction Winner

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Project Mortgage Auction is authorized by the National Affordable Housing Act. The Department conducted the first auction in April 1992. This notice complies with the statutory requirement of publication of the accepted bid.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street SW., room 6164, Washington, DC 20410; telephone (202) 708–3555, or (202) 708–4594 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 221 of the National Housing Act (12 U.S.C. 17151) (Act) authorizes the Secretary to insure eligible mortgages, and is designed to assist private industry in providing housing for low- and moderate-income families and displaced families. Under conditions prescribed by subsection (g)(4)(A), certain mortgages insured under section 221 may be assigned, transferred, and delivered to the Secretary, in exchange for insurance benefits. Upon conveyance the Secretary is to issue debentures to the mortgagee, under terms provided in the section.

Subsection (g)(4)(C)(i) provides that in lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument as described above, the Secretary shall arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale. The auction would determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and mortgage (see subparagraph (c)(ii)(I)).

Following an announcement of the auction to all HUD-approved mortgagees, and the advanced publication of mortgage descriptions, the Department conducted the first Project Mortgage Auction on April 21, 1992. As required by section 221(g)(4)(C)(ii)(IV) of the Act, by this notice the Secretary is publishing the accepted bids for the mortgages in this auction, as follows:

Ninety-three project mortgages in the auction were sold to one bidder, First Boston Mortgage Capital Corporation. The winning bid was 8.43 percent. Two additional mortgages were in default at closing, and will be assigned to HUD.

Authority: 12 U.S.C. 17151; 42 U.S.C. 3535(d).

Dated: July 31, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-18837 Filed 8-7-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-4380-12]

Wyoming; Motor Vehicle Use Restrictions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure and restriction of motor vehicle use and requirements for permitting/entering Spirit Mountain Cave (also known as Frost Cave), in Park County, Wyoming.

SUMMARY: Notice is hereby given that effective immediately, Spirit Mountain Cave (Frost Cave) located on Cedar Mountain, west of Cody, in Park County, Wyoming, on public lands administered by the Bureau of Land Management (BLM), Worland District, Cody Resource Area is restricted to permitted entry only and the access trail off the Cedar Mountain Road is closed to motorized vehicle use to the mouth of the cave. This action is being taken for visitor safety and resource protection of a potential significant cave. Individuals wanting access to Spirit Mountain Cave for recreational pursuits must contact the BLM, Cody Resource Area for the necessary requirements, permit forms, and key for the entrance gate to the cave.

EFFECTIVE DATE: This closure will be in effect August 10, 1992 and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Bob Dieli, Outdoor Recreation Planner, or Duane Whitmer, Area Manager, Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, (1002 Blackburn Avenue after late August 1992) Cody, Wyoming 82414, (307) 587-2216.

SUPPLEMENTARY INFORMATION: The Cody Resource Area is responsible for the management of Spirit Mountain Cave (Frost Cave) and other cave systems located throughout the Bighorn Basin, Wyoming. These cave resources are covered under the Cody Resource Management Plan, which was signed on November 8, 1990. All caves within the Worland District, Cody Resource Area are within the Worland Caves Special Recreation Management Area. Cave resources are protected under the Federal Cave Resources Protection Act of 1988; Archaeological Resources Protection Act of 1979, as amended; Native American Graves Protection and Repatriation Act of 1990; and the Federal Land Policy and Management Act of 1976.

Spirit Mountain Cave was discovered in the early 1900s and was developed into a "show cave" shortly thereafter. The commercial cave operations had interruptions over the years. For a period of time the cave was managed as a National Monument, however, that action was rescinded and the management of the cave was turned over to the city of Cody. In 1978 the city of Cody returned the management of the cave to the BLM. In 1984 a locked gate was installed at the mouth of the cave and it has been managed as a "wild cave." All evidence of the "show cave" features have been removed. Past authorized and unauthorized recreational use has threatened the integrity of the cave and the access trail (road) is steep and cannot be maintained for vehicle use. Authority for closure and restriction orders is provided under 43 CFR subpart 8341.2 (a and b), 8364.1, 8372.0-7, 8372.1-2. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: July 30, 1992.

Darrell Barnes,

District Manager, Worland District.

[FR Doc. 92-18810 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-4214-13; GP-355; OR-45339]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 40 acres of public land out of Federal ownership. This action will also open 53.35 acres of reconveyed lands to surface entry. The minerals are not in Federal ownership.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 40 acres in Lane County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

Revested Oregon and California Railroad Grant Lands

T. 17 S., R. 3 E.,
Sec. 3, lot 4;
Sec. 9, lot 5.

The areas described aggregate 53.35 acres in Lane County.

3. At 8:30 a.m., on September 14, 1992, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 14, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: July 30, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-18812 Filed 8-7-92; 8:45 am]

BILLING CODE 4310-33-M

[CO-070-92-7408-13; C-50654]

Exchange of Lands in Eagle, Moffat, Pitkin, and Routt Counties, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of exchange of lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs and Little Snake Resource Areas, has identified parcels of public and private

land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602 and the Little Snake Resource Area Office at 1280 Industrial Avenue, Craig, Colorado 81625.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Selected Public Land—Federal Surface Ownership

T. 9 N., R. 89 W., 6th P.M.
Sec. 20: Lots 22 and 24
Sec. 21: Lot 18
Sec. 29: Lots 1, 2, 5, and 7
Sec. 30: Lots 7, 9, 11, and 12
T. 9. N., R. 90 W., 6th P.M.
Sec. 18: Lots 5, 6, 11, and 12
Sec. 29: Lot 18
Sec. 32: Lots 1–3, 6–8, and 10
T. 8. N., R. 91 W., 6th P.M.
Sec. 1: Lot 4, SW¼NW¼
Sec. 2: Lots 1–4, S½N½, N½SE¼
Sec. 3: Lot 1
T. 9. N., R. 91 W., 6th P.M.
Sec. 5: Lots 7–10, 15–18
Sec. 26: Lots 11–14
Sec. 34: Lots 1–10, 15, and 16
Sec. 35: Lots 3, 6, 12, and 13
T. 8. N., R. 93 W., 6th P.M.
Sec. 5:NW¼SW¼
Sec. 6: Lots 3, 4, and 8
T. 8. N., R. 94 W., 6th P.M.
Sec. 1: Lot 13, W½SW¼
Sec. 2: Lots 1, 6, 15 and 16
Sec. 3: Lot 4
Sec. 4: S½SW¼
Sec. 5: Lots 12–15, S½
Sec. 6: Lots 8, 13–17, NE¼SW¼, N½SE¼
Sec. 8: N½NW¼
Sec. 11: NE¼NE¼
Sec. 12: NW¼NW¼
Sec. 16: All
T. 9. N., R. 94 W., 6th P.M.
Sec. 28: W½
T. 8. N., R. 95 W., 6th P.M.
Sec. 1: Lots 12 and 13, N½SW¼
Sec. 2: SE¼
Sec. 5: SW¼SW¼
Sec. 8: N½
Sec. 9: S½NE¼, SW¼
Sec. 11: NE¼
Sec. 13: SW¼SW¼
Sec. 16: All
Sec. 19: NE¼NE¼
Sec. 22: E½SE¼
Sec. 23: NW¼
Sec. 27: E½NE¼
T. 9. N., R. 96 W., 6th P.M.
Sec. 16: Lot 26
Sec. 31: Lot 5
T. 8. N., R. 97 W., 6th P.M.
Sec. 11: N½SW¼NE¼, W½NW¼SE¼NE¼
T. 4. S., R. 83 W., 6th P.M.
Sec. 31: NE¼NE¼
Sec. 32: NW¼NE¼,N½NW¼
T. 9. S., R. 85 W., 6th P.M.
Sec. 7: Lots 16 and 17
T. 9. S., R. 86 W., 6th P.M.
Sec. 14: Lots 2, 4, and 5
Sec. 23: Lots 1 and 4
Sec. 25: Lot 15
Sec. 27: Lot 3
Sec. 35: Lot 1

Selected Public Land—Federal Subsurface Ownership (Locatable Minerals Only)

T. 8. N., R. 91 W., 6th P.M.
Sec. 1: SW¼
Sec. 10: NE¼
T. 9. N., R. 91 W., 6th P.M.
Sec. 21: Lots 14–16
Sec. 23: Lots 3–6
Sec. 27: Lots 1, 2, 7, and 8
Sec. 28: Lot 1
Sec. 29: Lots 7, 10–12, 14, and 15

Offered Private Land

T. 1 N., R. 84 W., 6th P.M.
Sec. 19: NE¼SE¼
Sec. 20: N½SW¼, SW¼SW¼
Sec. 21: SE¼NE¼, E½SE¼
Sec. 22: SW¼NE¼, S½NW¼, S½
Sec. 23: SW¼SW¼
Sec. 26: That portion of the NW¼ lying Northerly and Westerly of Colorado State Highway 131
Sec. 27: W½; Those portions of the NE¼, N½SE¼, and W½SW¼SE¼ lying Northerly and Westerly of Colorado State Highway 131
Sec. 28: E½, SW¼
Sec. 29: SE¼SW¼, S½SE¼
Sec. 30: Lots 2–4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼
Sec. 31: All
Sec. 32: All
Sec. 33: N½NE¼, W½W½
Sec. 34: N½NW½

Except a tract and right-of-way described in and conveyed by deed recorded in Book 231, Page 126, and in Book 256, Page 68, of the Routt County, Colorado records.

T. 1 N., R. 85 W., 6th P.M.
Sec. 25: SE¼SW¼, SE¼

It is anticipated any adjustments to the selected public land to equalize values would be made in T. 4 S., R. 83 W., T. 9 S., R. 85 W., or T. 9 S., R. 86 W.

These 7,559.63 acres of federal surface ownership and 1,040.04 acres of federal subsurface ownership under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and the Visintainer Sheep Company.

In the proposal, 4,284.12 acres of offered private land with public values would be exchanged for 8,599.67 acres of public land and interests in land which have been identified for disposal. The exchange proposal has been made to consolidate public and private land holdings, to resolve unauthorized occupancies on public lands, to provide legal access to federal lands, and to increase resource values and benefits available on public lands.

The values of the lands to be exchanged will be approximately equal. At the time of closing, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in patents issued for public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 US.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. Reservations for public access on State Highway 13; Moffat County Roads 6, 8, 8A, 19, 21, 27, 71, 89, and 103; and Pitkin County Road 11, as existing.

4. Reservations to the United States of all significant archeological, historical, and paleontological resources.

5. Reservations for power line rights-of-way COC–28472, COC–36301, COC–50754, and COC–50859.

6. Reservations for irrigation ditch rights-of-way COC–0123780 and COC–50473.

7. Reservation for access road rights-of-way COC–44222, COC–50474, and COC–50744.

8. Reservations for telephone line rights-of-way COC–31204, and COC–50879.

9. Reservations for oil and gas pipeline rights-of-way COD–053725, COC–18423, COC–50077, and COC–52705.

10. A reservation for water pipeline right-of-way COC–50864.

11. Reservations for oil and gas leases COC–0123066, COC–17368, COC–29402, COC–30566, COC–36522, COC–36522A, COC–37303, COC–38125, COC–41964,

COC–42482, COC–43517, COC–44035, COC–45014, COC–45530, COC–45538, COC–46015, COC–46786, COC–47017, COC–47022, COC–47407, COC–48774, COC–48835, COC–48842, COC–48844, COC–48881, COC–50995, COC–51707, COC–51954, and COC–52014.

12. Reservations for all existing and valid land uses, including grazing leases, unless waived.

The public lands in T. 8 N., and T. 9. N., R. 89 W. to R. 97 W., described above were segregated from appropriation under the public land laws, including the general mining laws, under CO–50854, published in the **Federal Register** on March 11, 1991, as amended on June 7, 1991. The publication of this notice in the **Federal Register** will segregate the public lands in T. 4 S., R. 83 W., and T. 9 S., R. 85 W. and R. 86 W., described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for disposal for exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. The segregative effect will terminate upon issuance of a patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever occurs first.

Dated: July 30, 1992.

Tim Hartzell,

District Manager, Grand Junction District.

[FR Doc. 92–18811 Filed 8–7–92; 8:45 am]

BILLING CODE 4310–JB–M

[ID–010–02–4212–24; IDI–25544]

Idaho; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; IDI–25544; lease of public land for airport purposes in Owyhee County, Idaho.

SUMMARY: The following described public lands have been examined and found suitable for lease to the Idaho Bureau of Aeronautics for airport purposes under the Act of May 24, 1928, as amended:

Boise Meridian, Idaho

T. 16 S., R. 10 E.,
Sec. 18, lot 12, SW¼SE¼ (within);
Sec. 19, lots 1, 5, 6, 7, 8, 11, NW¼NE¼, NW¼SW¼NE¼ (within);
Sec. 30, lots 1, 2 (within).

Containing 96 acres.

DATES: The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of one year from the date of publication of this notice in the **Federal Register** or until issuance of the lease, whichever occurs first.

On or before September 24, 1992, interested parties may submit comments to the District Manager, Bureau of Land Management, at the address shown below.

ADDRESSES: Copies of the Environmental Assessment and lease terms are available for public inspection upon request at the Bureau of Land Management, 2620 Kimberly Road, Twin Falls, Idaho 83301.

FOR FURTHER INFORMATION CONTACT: Mike Austin, at the above address or by telephone at (208) 736–2350.

SUPPLEMENTARY INFORMATION: This airport lease will authorize an existing airstrip and access road near Murphy Hot Springs, Idaho, to the Idaho Bureau of Aeronautics. The lease will be issued under the Act of May 24, 1928, as amended (49 U.S.C. app. 211–213). The proposed action is administrative and involves no changes in management nor any new environmental impacts.

Objections to this notice of realty action will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 29, 1992.

Barry C. Cushing,

Acting District Manager.

[FR Doc. 92–18815 Filed 8–7–92; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Bureau for Research and Development; University Center—Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC)

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the twenty-ninth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) to be held on August 19th and 20th, 1992.

The purpose of the meeting is to review the plan proposed to the Agency for International Development (AID) for a Collaborative Research Support Program (CRSP) in Integrated Pest Management (IPM), and to consider the conclusions and recommendations of JCARD's Work Group on the subject. JCARD will develop recommendations to BIFADEC on the proposed plan. JCARD will also discuss other relevant agenda items, including a review of its role during the period of its existence, November 1982 to August, 1992. JCARD will discuss future plans for a Joint Committee on Research and Development (JCORD), endorsed by BIFADEC and AID to succeed JCARD.

JCARD will meet from 8:30 a.m. to 4:30 p.m. on August 19th and 20th, 1992. The Meeting will be held in the Diplomatic Conference Room of the State Plaza Hotel, across Virginia Avenue from the Department of State Building. The address of the State Plaza Hotel is 2117 E. Street NW., Washington, DC 20037.

Mr. William Frederick Johnson, BIFADEC Support Staff, is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the University Center, BIFADEC Support Staff, Washington, DC 20523–3801 or telephone him on (703) 816–2075.

Dated: July 30, 1992.

William Frederick Johnson,

A.I.D. Advisory Committee Representative.

[FR Doc. 92–18828 Filed 8–7–92; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Insurance Related Criminal Referral Form.

(2) Criminal Division.

(3) On occasion.

(4) State or local governments. The information is used to encourage state insurance departments to refer significant criminal activity for Federal prosecution. It will enable the Department of Justice to ensure that all cases are being investigated appropriately, and that all related investigations are coordinated.

(5) 200 annual responses at 1.0 hour per response.

(6) 304 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: August 5, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–18853 Filed 8–7–92; 8:45 am]

BILLING CODE 4410–14–M

[AAG/A Order No. 69–92]

Privacy Act of 1974 as Amended by Computer Matching and Privacy Protection Act of 1988

This notice is published in the **Federal Register** in accordance with the requirements of 5 U.S.C. 552a(e)(12). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in a computer matching program with the Massachusetts Department of Employment and Training (MA–DET) (the recipient agency). The matching program entitled "Systematic Alien Verification for Entitlements (SAVE)" will permit MA–DET to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance (i.e., unemployment compensation insurance) as required by section 121 of the Immigration and Reform Control Act (IRCA) of 1986 (Public Law 99–603).

Notice of the matching program was originally published in the **Federal Register** on January 29, 1990 (55 FR2890); the program was effective on February 28, 1990. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2) (O) and (D). The one-year extension will expire August 28, 1992. Thus, the following notice represents the approval of a new agreement by the Department of Justice Data Integrity Board to continue (on the effective date as indicated below) computer matching activities which will permit the recipient agency to confirm immigration status as required by Section 121 of IRCA.

Section 121(c) of IRCA amends section 1137 of the Social Security Act and requires agencies which administer the Federal benefit programs designated within IRCA to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from MA–DET may electronically access the data base of an Immigration and Naturalization Service Privacy Act system of records entitled "Alien Status Verification Index, JUSTICE/INS–009." From its automated records system, MA–DET may enter electronically into the INS data base the alien registration number of the applicant or recipient. This action will initiate a search of the INS data base for a corresponding alien registration number. Where such number is located, MA–DET will receive electronically from the INS data base the following data upon which to determine eligibility: alien registration number; last name; first name; date of birth; country of birth; social security number (if available); date of entry; immigration status data; and employment eligibility data. In accordance with 5 U.S.C. 55a(p), MA–DET will provide the alien applicant with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigration status as established through the computer match.

Matching activity will be effective September 9, 1992, and will continue for a period of 18 months from the effective date unless extended for one year by the Data Integrity Board of the Department of Justice.

The matching agreement and the required report have been provided to the Office of Management and Budget and the Congress in accordance with 5 U.S.C. 552a(o)(2) (A) and (r). Inquiries may be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 5031, CAB Building).

Dated: August 4, 1992.

Harry H. Flickinger

Assistant Attorney General, for Administration.

[FR Doc. 92–18844 Filed 8–7–92; 8:45 am]

BILLING CODE 4410–10–M

Immigration and Naturalization Service

[INS No. 1400BOS–92; AG Order No. 1610–92]

RIN 1115–AC 30

Designation of Bosnia-Hercegovina Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) ("the Act"), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states (or parts thereof) upon a finding that such foreign states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. Under section 304(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102–232, 105 Stat. 1733, December 12, 1992 ("the Technical Amendments"), an alien having no nationality is also eligible for benefits under the Temporary Protected Status Program if he or she last habitually resided in a designated state. This notice by the Attorney General designates Bosnia-Hercegovina pursuant to section 244A(b) of the Act.

EFFECTIVE DATES: This designation is effective on August 10, 1992 and ends on August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, room 5250, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

Notice of Designation of Bosnia-Hercegovina Under Temporary Protected Status Program

By the authority vested in me as the Attorney General under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) (the "Act"), I find that (a) there exists an ongoing armed conflict in Bosnia-Hercegovina, and that a return of aliens who are nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, would pose a serious threat to their personal safety as a result of the armed conflict in that nation and (b) there exist extraordinary and temporary conditions in Bosnia-Hercegovina that prevent aliens that are nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, from returning to Bosnia-Hercegovina in safety and that permitting nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) Bosnia-Hercegovina is designated under section 244A(b) of the act. Nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, and who have been continuously physically present and have continuously resided in the United States since August 10, 1992 may apply for Temporary Protected Status within the registration period which begins on August 10, 1992, ends on August 10, 1993.

(2) I estimate that there are no more than 5,000 nationals of Bosnia-Hercegovina and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, applications for Temporary Protected Status by nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, must be filed pursuant to the provisions of 8 CFR part 240. Aliens who wish to apply for Temporary Protected Status must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on August 10, 1922 and ends on August 10, 1993.

(4) A fee of fifty dollars ($50) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1) will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not request employment authorization must file Form I–765 together with Form I–821 for information purposes, but in such cases Form I–765 will be without fee.

Dated: July 29, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–18831 Filed 8–7–92; 8:45 am]

BILLING CODE 4410–01–M

Office of the Attorney General

Certification of the Attorney General; Randolph County, GA

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Randolph County, Georgia. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: August 6, 1992.

William P. Barr,

Attorney General of the United States.

[FR Doc. 92–19099 Filed 8–7–92; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANTIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory panel (Multi-Music Presenters and Festivals Section) to the National Council on the Arts will be held on August 24–27, 1992 from 9 a.m.–5:30 p.m. and August 28 from 9 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 28 from 3 p.m.–5 p.m. the topic will be policy discussion.

The remaining portions of this meeting on August 24–27 from 9 a.m.–5:30 p.m and August 28 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: August 4, 1992.

Yvonne M. Sabine, Director,

Panel Operations, National Endowment for the Arts.

[FR Doc. 92–18825 Filed 8–7–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Collections Submitted to OMB for Approval

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is submitting the following proposed collections of information to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320.

1. *Information collection:* Statistical research in archival records containing personal information

Respondents: Individuals who request access to privacy-restricted archival records in the National Archives under the provisions of 36 CFR 1256.4 for the purpose of biomedical statistical research. We estimate that we will receive no more than 3 requests per year; no requests have been received in the past 5 years.

Purpose: NARA evaluation of qualifications of researcher and proposed safeguards for protection of personal information in the records.

Frequency of response: Once per research project involving restricted records.

Estimated burden per response: 7 hours.

Current OMB approval: None.

2. *Information collection:* NHPRC Budget Form (NA Form 17001).

Purpose: Evaluation of grant applications.

Respondents: Public and private organizations and institutions applying for National Historical Publications and Records Commission (NHPRC) grants in support of projects for documentary editing and historical records preservation and planning. The NHPRC makes approximately 200 grants per year for these purposes.

Frequency of response: One-time with grant application.

Estimated burden per response: 3 hours.

Current OMB approval: 3095–0004. The current approval expires on September 30, 1992.

DATES: NARA invites the public to comment on the proposed information collections. Comments should be submitted by September 9, 1992.

ADDRESSES: Copies of the proposed information collections and supporting documentation can be obtained from the Program Planning and Congressional Liaison Division (NAA), room 409, National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408. Telephone requests may be made to (202) 501–5110.

Comments should be sent to Director, Program Planning and Congressional Liaison Division (NAA), National Archives and Records Administration, Washington, DC 20408. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at (202) 501–5110.

Dated: July 31, 1992.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 92–18828 Filed 8–7–92; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Portland General Electric Co.; Trojan Nuclear Plant

[Docket No. 50–344]

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption to Facility Operating License No. NPF–1 issued to Portland General Electric Company, et al., (PGE or the licensee), for operation of Trojan Nuclear Plant located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a schedular exemption to title 10, Code of Federal Regulation, part 50, appendix E, paragraph VI.4.d concerning implementation of the Emergency Response Data System (ERDS). The licensee requests a delay from the required February 13, 1993 date to June 4, 1993, a period of less than 4 months, for implementation of ERDS.

The proposed action is in accordance with the licensee's application dated June 24, 1992.

The Need for the Proposed Action

The proposed scedular exemption is required to provide the licensee the time to properly install, test, and implement ERDS at Trojan. Originally, it was scheduled to be installed during the 1992 refueling outage but, due to the extensive outage in 1991, the 1992 outage was cancelled. Moreover, the 1992 economy outage was too short to accommodate ERDS implementation. The 1993 refueling outage is scheduled to start on March 3, 1993, and ERDS installation, testing, and implementation is scheduled for this outage. Otherwise, meeting the required ERDS implementation date would reduce operational flexibility and create an undue burden on plant resources.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed schedular exemption. Since the purpose of ERDS is to enhance the ability of the NRC to monitor the licensee's actions during an emergency at Trojan, and to supplement the existing system of voice transmission, as implemented by procedures, the delay of ERDS implementation will not affect the environment from a radiological standpoint. In fact, the plant will be shut down during most of the schedular exemption timeframe. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed schedular exemption involves an onsite process computer system only. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the schedular exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested schedular exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility and create an undue burden on plant resources.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Trojan Nuclear Plant dated August 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the

proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed schedular exemption.

For further details with respect to this action, see the licensee's application for amendment dated June 24, 1992, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 2055 and at the local public document room at the Branford Price Millar Library, Portland State University, 934 SW., Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 3d day of August, 1992.

For The Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-18896 Filed 8-7-92; 8:45 am]

BILLING CODE 7590-01-M

Application for a License to Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A Copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 109 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

Name of applicant, Date of appl., Date received, Application number	Description	Value	End use	Country of destination
General Atomics: 07/17/92—07/20/92—XR157/01.	Two (2) Complete Control Rods and Various Equipment.	$188,547	For use in TRIGA Research Reactor.....	Japan.

Dated this 31st day of July 1992 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, Office of International Programs.

[FR Doc. 92-18897 Filed 8-7-92; 8:45 am]

BILLING CODE 7590-01-M

Guidance on Fire Protection for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Guidance to applicants and licensees for preparing license applicants and conducting operations.

SUMMARY: This notice provides guidance on fire protection for fuel cycle facilities in the form of a Technical Position. The Technical Position will be administered by the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

FOR FURTHER INFORMATION CONTACT: Amar Datta, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, (301) 504-2536.

SUPPLEMENTARY INFORMATION: In the **Federal Register** (54 FR 11590-98) dated March 21, 1989, the NRC published for comment four Branch Technical Positions—Guidance on Management Controls/Quality Assurance, Requirements for Operation, Chemical Safety, and Fire Protection for Fuel Cycle Facilities. After consideration of the comments received and the experience gained in using these Technical Positions, the NRC has decided to revise and reissue the Technical Position on Five Protection for Fuel Cycle Facilities. It is the NRC's intent that this revised Technical Position would serve as a source of information for applicants and licensees on the features of equipment, facilities, and procedures that can be used to provide reasonable assurance of fire safety for fuel cycle facilities. It would provide guidance for implementing fire protection programs at these facilities that would be acceptable to the NRC staff as having the elements necessary to protect health and minimize danger to life or property. It would thus also provide information to the staff in reviewing applications and inspection facilities.

The information contained herein reflects the NRC staff's views concerning good industry practice. However, the provisions of this Technical Position do not constitute requirements. Other approaches to the selection of equipment, design of facilities, and operational procedures are acceptable, provided that they grant equal or higher levels of protection of health and safety.

Technical Position on Fire Protection for Fuel Cycle Facilities

I. Introduction

To be approved by the NRC, any application for a license to possess and use licensed materials at a fuel cycle facility must provide information showing that the applicant's proposed equipment, facilities, and procedures are adequate to protect health and minimize danger to life or property. In the area of fire protection, the staff has in the past generally accepted compliance with local building codes and proof of insurance as sufficient information for approval of license applications. In addition, ad hoc measures have been taken in response to the staff's inspection findings relating to specific facilities. However, following an accident at a uranium hexafluoride production facility, the NRC undertook a major review of the operational safety of fuel cycle facilities. Both the recommendations of the Materials Safety Regulation Review Study Group,[1] appointed by the NRC, and an independent staff action to assess operational safety at each of 12 major fuel cycle facilities licensed by the NRC,[2] led the staff to the finding that fire protection is one of the most important safety concerns.

This finding, coupled with the experience of the applicants and the staff in their respective roles of operation and regulation of fuel cycle

facilities, led to the formulation of this Technical Position (TP), which is intended to provide guidance to applicants and staff in the area of fuel cycle facility fire protection. This TP provides recommendations and guidelines for implementing acceptable fire protection programs at fuel cycle facilities and has elements that are intended to ensure protection of health and minimize danger to life and property. The guidance should not, however, be considered mandatory, and nothing should preclude a licensee from adopting a program that is prudent and employs other techniques of fire protection that meet or exceed these guidelines.

II. Discussion

1. Fire Protection Concept

The concept of fire protection presented by this TP consists of measures that will achieve a balance among the following:

- Prevention of fires,
- Detection of fires, and
- Containment and suppression of fires.

A discussion of these three levels of fire protection follows:

a. *Fire Prevention*: Fire prevention measures at a fuel cycle facility should start with the design of the buildings, structures, systems, components, and processes involved in the storage, handling, and processing of the radioactive materials and chemicals used in the processes. The processes should be designed and physically laid out so as to minimize the possibility of overheating, over-pressurization, leakage, and the confluence of combustibles and ignition sources except where required by the process. Even with the most well-designed facility, prevention of fires depends to a great extent on following good housekeeping practices and operating personnel scrupulously following safety instructions.

b. *Fire Detection:* The best fire prevention measures may occasionally fail, in which case an effective fire detection system would detect the occurrence of fire and activate alarm systems so that measures for containment and suppression of the fire and personnel evacuation may start promptly. The type and location of the detectors would depend on the type of hazard. The installation of a fire detection and alarm system is especially important where personnel presence is infrequent and the fire hazard is moderate or high.

c. *Containment and Suppression of Fire:* Containment of fire in its area of origin and prevention of its spread to new areas and new combustibles is one of the first steps to be taken upon detection of a fire. This is achieved by activating systems such as barriers, ventilation dampers, exhaust fans, and drainage pumps to prevent migration of gases, hot combustion products, and flammable liquids to new areas. Fire suppression activities should start at the same time as barrier systems are activated. The media employed in the suppression and the means of their delivery to the fire source and to heated areas and substances depend on the plant area and the processes and equipment protected. The concerns for nuclear criticality safety, chemical safety, and the danger to personnel from non-life-supporting extinguishing media, such as carbon dioxide, should all be taken into account in planning a fire suppression system.

2. Fire Hazard Analysis

A number of fuel cycle facilities already in operation may not have all of the design and construction features considered desirable for fire protection. For such facilities, it is prudent to perform systematic fire hazard analyses of their operations. Such analyses could be expected either to reveal fire protection weaknesses or to confirm the adequacy of the protection measures. Where weaknesses are indicated, they may be corrected by a judicious combination of facility modification and additional fire protection measures. Also, the licensed activities, processes, or buildings of operating facilities may from time to time be modified. Whenever this happens, the fire hazard analyses should be updated. Otherwise, these should be reviewed and updated at regular intervals of time.

III. Position

1. Fire Protection Program

The licensee should establish and implement a Fire Protection Program. The program should reflect a commitment to perform tasks to ensure that the equipment and facilities are maintained in proper condition to prevent fires from occurring, maintain awareness of fire safety procedures among the employees and ensure compliance with those procedures, and maintain a readiness, if a fire does occur, to implement emergency procedures to suppress it and mitigate the consequences.

The program would be expected to include an appropriate set of the following components:

a. Establishment of a Fire Safety Review Committee and a definition of its duties, frequency of meetings, frequency of plant audits, and responsibilities for reporting and recordkeeping. (A plant safety committee may function as the Fire Safety Review Committee.)

b. Initiation of a Fire Hazard Analysis of the facility and its periodic updating.

c. Maintenance of the facility and equipment in proper condition to prevent fires from occurring.

d. Review and control of modifications of the facility or processes to minimize fire hazard.

e. Review and control of hazardous operations, such as welding and torch-cutting, and any nonroutine use of flammable or combustible materials.

f. Routine inspection, testing, and maintenance of all fire protection equipment.

g. Training of all employees in basic fire safety and of a selected group to respond to fire emergencies. (The latter group may be part of the plant emergency response team.)

h. Reporting and investigation of fire incidents.

i. Periodic performance of fire drills.

j. Rules for good housekeeping with a view to minimizing fire danger.

2. Administrative Controls

2.1 Program Management

The licensee should ensure adequate management and supervisory attention to fire protection. The overall management of an adequate program would be expected to be under the direction and control of a senior level individual, who should be given the authority and staff assistance to implement measures relating to fire protection throughout the facility. Actual implementation of the day-to-day tasks of the program should be supervised by an individual having sufficient qualifications and practical experience in fire protection.

2.2 Plant Audits

Plant audits of fire protection should be performed at two levels as follows:

a. Monthly audits (walk-downs) to detect and correct departures from good housekeeping practices or operating procedures that may impact fire safety.

b. Annual audits by the Fire Safety Review Committee, including plant walkdowns, to review proper functioning of the Fire Protection Program and generally the overall fire safety of the facility.

3. Building Construction

3.1 Construction Standard

Type I construction, as classified by NFPA 220, Types of Building Construction, is considered adequately firesafe for the process buildings of the facility. (The National Fire Protection Association (NFPA) documents cited in the text are listed in the reference section in the order of their NFPA numbers.) This standard specifies that the structural members of the buildings, including walls, columns, beams, floors, and roofs, are to be constructed of approved noncombustible or limited combustible materials and have specified minimum fire resistance ratings. If nonprocess areas are housed in the same or adjoining buildings, the entire building complex should be the equivalent of a Type I construction.

3.2 Fire Areas

To confine fire in its area of origin and prevent its spread, areas containing processes or materials involving fire hazards should be separated by structural barriers into fire areas. In particular, solvent extraction areas, boiler rooms, incinerators, warehouses, control rooms, switchgear rooms, computer rooms, maintenance shops, fire pump areas, and office areas should be separate fire areas.

Structural barriers, including walls, floors, ceilings, and roofs, that bound fire areas should have appropriate fire resistance ratings. Boundaries of such fire areas may coincide with zones the facility is divided into, based, where such zoning exists, on radiotoxicity of the materials handled therein.

Openings in the barriers that are boundaries of the fire areas should have devices, such as fire doors and fire stops, installed in them. Such devices should have at least the same fire resistance ratings as the barriers in which they are installed.

3.3 Exposure Fire Risk

When a process building is close to other buildings or installations with flammable, combustible, or reactive liquid or gas storage, the risk of exposure fires originating in those installations to the process building concerned should be evaluated and appropriate protection measures should be taken. NFPA 80A, Protection of Buildings from Exterior Fire Exposures, provides guidance on protection from such exposures. NFPA 30, Flammable and Combustible Liquids Code, lists minimum separation distances from tank storages.

3.4 Personnel Egress

The building design should provide for safe means of egress for personnel in the event of a fire emergency. Egress routes should be clearly marked. NFPA 101, Safety to Life from Fire in Buildings and Structures, provides guidance on egress design and protection of egress routes.

3.5 Smoke Vents

If the building has undivided floor areas that are not provided with means of automatic fire suppression and are large enough that hose streams directed from outside may not reach all parts of the areas, mitigating features, such as smoke vents and curtain boards, should be provided. NFPA 204M, Smoke and Heat Venting, may be consulted.

3.6 Hidden Spaces

Concealed spaces should be devoid of combustibles as far as practicable. Suspended ceilings and their supports, insulation for pipes and ducts, and sound-attenuating materials should be noncombustible. All cracks or openings in floors leading to inaccessible under-floor spaces should be sealed.

3.7 Lightning Protection

Provisions should be made for protecting the facility from lightning damage. Guidance for the installation of such protection is provided by NFPA 78, Lightning Protection Code.

3.8 Drainage Provisions

Floor drains, sized to remove anticipated quantities of fire-fighting water, should be provided in process areas. Drainage from areas containing hazardous chemicals or radioactive materials should be collected in sumps for sampling and treatment before release to the environment.

3.9 Electric Installatings

All electrical wiring and installations should be made, used, and maintained in accordance with industry standards, such as NFPA 70, National Electrical Code, and other standards that apply to special situations, such as NFPA 70E, Electric Safety Requirements for Employee Work-places; NFPA 79, Electrical Standard for Industrial Machinery; and NFPA 75, Electrical Computer/Data Processing Equipment.

4. Ventilation System

4.1 Ventilation System Design

The ventilation system should be designed to isolate affected areas during fire accidents and to provide channels for exhausting fire products, through filters if necessary, to outside the plant. NFPA Standard 90A, Air Conditioning and Ventilating Systems, may be consulted on ventilation design for fire protection.

4.2 HEPA Filters

When a ventilation system is required to prevent the release of radioactive material to the atmosphere, all materials of construction for the system should be noncombustible. HEPA filters should conform with industry standards, such as Underwriters Laboratories Standard UL–586 (also designated ANSI B 132.1), High Efficiency Air Filtration Units.

4.3 Barrier Penetrations

Whenever the ventilation duct system penetrates a fire-rated barrier, a fire damper, having a fire resistance rating at least equal to that required of the barrier, should be installed in the duct. Guidance will be found in UL 555, Standard for Fire Dampers and Ceiling Dampers.

4.4 Automatic Closing

All fire doors, fire dampers, and ceiling dampers should close automatically, and should remain closed, upon operation of a fusible link or other heat-actuated device.

4.5 Heating Furnaces

Heating furnaces that are combined with ventilation systems should be installed in accordance with industry standards, such as NFPA 54 (ANSI Z223), National Fuel Gas Code, if gas fired, or NFPA 31, Oil Burning Equipment, if oil fired. Guidance for the installation of electrical duct heaters will be found in NFPA 70, National Electrical Code.

5. Process Fire Safety

5.1 Some Chemicals and Their Fire Hazards

The process chemicals listed below are those that are used in bulk quantities in fuel cycle facilities and also are fire hazards.

5.1.1 Nitric Acid

Nitric acid is itself noncombustible, but under certain conditions, it nitrates cellulosic and other organic materials, making them easily ignitible. A nitric acid spill thus constitutes a fire hazard, in addition to being a corrosion and toxicity hazard.

5.1.2 Sulfuric Acid

In addition to its corrosion and toxicity hazard, this chemical has the property of absorbing water from organic materials accompanied by exothermic reaction, which may ignite the organic materials.

5.1.3 Anhydrous Ammonia

One of the uses of this chemical is as a source material for the production of hydrogen for use in reduction processes. It is a flammable gas, which is stored and pumped in the liquified state, and undergoes dissociation into hydrogen and nitrogen in a high-temperature dissociator at about 1650 °F. Anhydrous ammonia is flammable and presents, if ignited in a confined space, an explosion hazard. It also presents a toxicity hazard.

5.1.4 Hydrogen

Hydrogen has a high burning velocity and also a wide flammable range in mixtures with air. A small hydrogen flame, as at a leak from a pipe, is bluish and almost invisible. The hazards of fire and explosion are high in the event of a leak from any equipment that contains or uses hydrogen. Additionally, there is the hazard of explosion in vessels and furnaces were explosive mixtures of hydrogen and an oxidizer may form inadvertently.

5.1.5 Fluorine

Fluorine is one of the most reactive elements known. Apart from its being highly corrosive and toxic, it reacts violently with hydrogen and many organic materials and causes fires, even though it is itself nonflammable. Fluorine may also cause explosion in contact with metallic powders and water vapor.

5.2 Processes Involving Use of Flammable Liquids and Gases

5.2.1 Processes involving solvents or other chemical substances, that may be classified as flammable liquids according to NFPA 321, Classification of Flammable and Combustible Liquids, should be isolated from each other and from the remainder of the facility by locating them either in separate buildings or in spaces enclosed by barriers having a minimum fire resistance rating of 1 hour.

5.2.2 All electric motors, switchgears, lighting, and other electrical installations in these process areas should be of the explosive-proof type. NFPA 70, National Electrical Code, provides guidance.

5.2.3 No open flame should be permitted in these areas. Construction or maintenance work involving torch-cutting or welding may be permitted only when the process is shut down, the inventory of flammable and combustible materials is at a minimum, and safety measures, such as fire watches, are implemented. NFPA 51B, Fire Prevention in the Use of Cutting and Welding, provides guidance.

5.2.4 The process areas should be provided with automatic fire detection and automatic explosion prevention/suppression systems. NFPA 69, Explosion Prevention Systems, provides guidance on design, selection, and installation of such systems.

5.2.5 Ovens or furnaces that use hydrogen as atmosphere and have a hydrogen burner (and usually also have a natural gas pilot burner) should have a flame-supervision system. Such a system should activate a visual and/or an audible alarm and should shut off the hydrogen supply upon loss of flame. NFPA 86C, Industrial Furnaces Using a Special Processing Atmosphere, provides guidance.

5.2.6 Where a process involving a flammable liquid or gas must be in the same fire area as an ignition source, such as an open flame, one or more analyzers should be installed strategically to monitor the flammable or combustible vapor or gas concentration in the air. The analyzers should activate both visible and audible alarms whenever the vapor concentration exceeds a set limit, for example 10 percent of the lower flammable limit. Simultaneously, ignition and heat sources in the area should be turned off automatically.

5.3 Fire Hazard in the Handling of Uranium Oxides

Uranium oxide powder, usually following a calcining or a blending process and sometimes when heated by process machinery, may undergo spontaneous exothermic chemical reaction. Such "unstabilized" powder is known to have ignited combustible components of transfer passages and mechanical handling machinery, such as vinyl pipes, flexible neoprene boots and parts of valves, and nylon parts of conveyors. Such components should be made of noncombustible materials, as far as practicable, or of materials having sufficiently high ignition temperatures and resistance to heat-degradation.

5.4 Machining Operations of Combustible Metals

5.4.1 Metals, such as uranium, magnesium, titanium, and zirconium, and their alloys, are known to be combustible, especially when in a finely divided form. Machining operations in the facilities should, therefore, be evaluated for the potential for combustible dust cloud formation and combustible scrap and swarf accumulation from operations, such as sawing, grinding, machining, and abrasive cutting. Fire protection measures for all of these metals are similar. NFPA 480, NFPA 481, and NFPA 482, Standards for the Production, Processing, Handling and Storage of Magnesium, Titanium, and Zirconium, respectively, provide guidance.

5.4.2 No open flames should be permitted in the areas where machining operations of combustible metals are performed. If maintenance operations, such as welding, are to be performed in the vicinity, machining operations should be halted and metal scraps should be removed.

5.4.3 Machining operations producing fine particles of combustible metals should be performed in enclosures with a dust collection system in operation. The dust-laden air should be ducted to a dust collector and, if required, a HEPA filter for removal of radioactive particles. The collection hood and duct leading to the filter should be designed to minimize deposition of the fines and to facilitate cleaning. A liquid precipitation separator is the preferred type of dust collector.

5.4.4 Each dust-producing machine should be equipped with its own dust separator unit, as far as practicable.

5.4.5 Scrap and swarf generated by machining operations, and accumulated in the immediate area, and dust and sludge collected in the dust separators and ducts should be removed as often as necessary, but at least once a day.

5.4.6 Extinguishing agents suitable for the particular metal fire, as well as suitable scoops or applicators for the purpose, should be readily available to the operator performing the machining.

5.5 Incinerators

5.5.1 Incinerators should be separated from the remainder of the facility by fire barriers having a minimum 1-hour fire resistance rating.

5.5.2 If the incinerator is to burn radioactive-contaminated waste, its exhaust should be ducted to a sampling and filtration system before releasing it to the environment. The exhaust may be ducted also to the facility off-grass system. Such ducts should be designed to minimize deposition of particulate effluent and to facilitate cleaning.

5.5.3 Depending on the temperature of the exhaust, a cooling water spray or passage through a liquid precipitation separator may be needed for both cooling and dust separation.

5.6 Boilers and Boiler-Furnaces

5.6.1 Boilers for the supply of steam for process operations and boiler-furnaces should be separated from the remainder of the facility by fire barriers

that have a minimum 1-hour fire resistance rating.

5.6.2 The construction and operation of the boiler-furnaces should comply with industry standards, such as the relevant standards in the NFPA 85 series, depending on the type of furnace and the fuel used.

5.6.3 The fuel storage tanks should be separated from the furnace area by fire barriers that have a minimum 1-hour fire resistance rating. The fuel lines should be laid out to minimize the possibility of damage and should be clearly marked.

5.7 Stationary Combustion Engines

5.7.1 Stationary combustion engines, if located in part of a structure housing fuel cycle processes, should be in enclosures that have a fire resistance rating of at least 1 hour.

5.7.2 Rooms housing stationary combustion engines should be of noncombustible construction or, if combustible materials are used, should be protected by automatic fire suppression systems.

5.7.3 Process-generated dust or flammable vapors should be limited in the room when the engine is operating.

5.7.4 Fuel storage tanks, except for day tanks, should be located outside the room and should be constructed in accordance with industry standards, such as NFPA 30, Flammable and Combustible Liquids Code. Guidance on the construction and capacities of unenclosed day tanks will be found in NFPA 37, Stationary Combustion Engines and Gas Turbines.

5.7.5 The engine exhaust system should be designed to prevent ignition of any combustible material by contact with the hot metal surfaces or by leaking exhaust gases or sparks.

5.7.6 The stationary combustion engine room should be ventilated effectively to minimize accumulation of combustible vapor and the possibility of explosion. NFPA 37 provides guidance.

5.8 Storage and Handling of Flammable and Combustible Liquids and Gases

5.8.1 The construction, installation, operation, and maintenance of combustible liquid storage and the related loading and dispensing systems should comply with industry standards, such as NFPA 30, Flammable and Combustible Liquids Code.

5.8.2 Indoor storage of flammable and combustible liquids may be permitted in limited quantities in approved closed containers for day use and maintenance work or for diesel engine operation. Appropriate portable fire extinguishers should be on hand at such locations.

5.8.3 Steel supports of aboveground storage tanks should be protected from exposure fires, if dictated by the proximity of other flammable or combustible liquid storage tanks, location in a common diked area, or proximity of a tank-truck loading and unloading area.

5.8.4 In addition to normal operating vents, some aboveground storage tanks may require emergency relief venting. NFPA 30 provides guidance on this matter.

5.8.5 The construction, installation, operation, and maintenance of bulk gas (including liquified gas) storage and the related loading and dispensing systems should comply with good industry practice, such as NFPA 50, Bulk Oxygen Systems at Consumer Sites; NFPA 50B, Liquified Hydrogen Systems at Consumer Sites; and NFPA 54, National Fuel Gas Code.

5.9 Hot Cells

5.9.1 The construction materials for hot cells should be noncombustible. The internal surface coatings should be noncombustible or limited combustible.

5.9.2 The liquid-filler windows should contain a noncombustible medium. Hydraulic fluids in the master-slave manipulators should be nonflammable.

5.9.3 Where process materials and equipment present a fire hazard, the quantities of combustible materials and the sources of ignition should be maintained at the absolute minimum. If flammable gases or vapors may be present in explosive proportions, an inert atmosphere should be provided when operating the hot cell.

5.9.4 If combustible materials are used in a hot cell, extinguishing agents that are compatible with the materials handled should be provided within the hot cell, together with their delivery systems. Nuclear criticality concerns should be considered in selecting extinguishing media.

5.9.5 Filters for the exhaust air from a hot cell should be of noncombustible construction.

5.9.6 Further guidance for hot cell fire protection is provided in NFPA 801, Facilities Handling Radioactive Materials.

5.10 Glove Boxes

5.10.1 The construction materials for glove boxes may be of the limited combustible type if only noncombustible process materials are used within them. Otherwise, except for the gloves, the glove box should be of noncombustible construction.

5.10.2 If combustible materials are used or if there is the possibility of an explosive mixture forming within the glove box, the relevant guidance provided for hot cells should also apply to glove boxes.

5.10.3 If a number of glove boxes are operated in series, fire dampers should be provided at intervals to impede propagation of fire.

5.11 Laboratories

The fire protection methods of laboratories handling radioactive materials are similar to those of chemical laboratories. Guidance is provided in NFPA 45, Fire Protection for Laboratories Using Chemicals.

6. Fire Detection and Alarm Systems

6.1 Automatic Fire Detectors

Automatic fire detectors of appropriate types should be installed in all areas with substantial combustibles that are infrequently visited or occupied only part of the 24-hour day, unless such areas are covered by automatic fire suppression systems.

6.2 Vapor and Gas Detectors

Automatic flammable vapor and gas detectors should be installed in areas where there is a potential for leakage of flammable liquids or gases.

6.3 Audible and Visible Alarms

Automatic fire detectors and flammable vapor or gas detectors should actuate audible and visible alarms in the area of origin of the alarm, as well as at a central monitoring station that is constantly supervised. Actuation of any fire suppression system, such as flow through a sprinkler system, should also actuate visible and audible alarms. The central monitoring stations should have continuous information on the status and functioning of the fire detection systems, combustible vapor/gas detection systems, and automatic fire suppression systems, including a zone indication of the origin of an alarm. These systems should comply with industry standards, such as NFPA 72G, Installation, Maintenance, and Use of Notification Appliances for Protective Signaling Systems; and NFPA 72E, Automatic Fire Detectors.

6.4 Manual Fire Alarms

Manual fire alarm actuators (pull-boxes) or telephones should be available at strategic locations, for example, near exits from the various facility areas.

7. Fire Suppression Equipment

7.1 Selection of Equipment

The selection of the specific equipment for suppression of fire in an area should take into account the severity of the hazard, type of activity performed in the area, nuclear criticality concerns, the consequences of a fire (e.g., the risk of release of radioactive material), and the consequences of spurious actuation of an automatic suppression system.

7.2 Automatic Sprinkler Systems

Automatic water-sprinkler coverage is the preferred method of fire suppression for most areas that have significant fire hazard. The notable exceptions are areas where accidental nuclear criticality is a concern and areas with a concentration of energized electric equipment, including computer installations and control rooms. NFPA 13, Installation of Sprinkler Systems, provides guidance on selection and design of sprinkler systems.

7.3 Gas or Foam Suppression Systems

Plant areas that have a significant fire hazard, but where water is unsuitable as a suppression agent, should be protected by other systems that employ fire suppression agents such as inert gases, carbon dioxide, halon, and high- or low-expansion foam. Guidance on carbon dioxide and halon systems is provided in NFPA 12 and NFPA 12A, respectively. Guidance on the selection and design of foam systems is provided in NFPA 11 and NFPA 11A. Selection of gaseous suppression systems should take into account protection of personnel and possible pressurization of the enclosure.

7.4 Standpipe and Hose Systems

Standpipe and hose systems should have readily accessible hose outlet locations. Guidance on standpipe and hose systems is provided in NFPA 14, Installation of Standpipe and Hose Systems.

7.5 Portable Fire Extinguishers

Portable fire extinguishers, suitable in capacity and type of suppression agent used, should be available throughout the facility, regardless of the availability of any other fire suppression system. The number and capacity of such extinguishers and their deployment should be in accordance with industry standards, such as NFPA 10, Portable Fire Extinguishers.

8. Fire Protection Water System

8.1 Water Supply

An adequate supply of water for the installed fire protection systems should be ensured. Additional fire-fighting water that may be needed by an offsite fire department should be planned for in consultation with them. Compatible connections should be provided for offsite fire department use. The fire-water distribution system should be designed and constructed for high reliability. NFPA 24, Private Fire Service Mains and Their Appurtenances, should be used for guidance.

8.2 Fire Pump Installation

The fire pump installation should be adequate to deliver water at full design pressure to the farthest hydrant, standpipe and hose station, or sprinkler system. The installation should be in accordance with industry standards, such as NFPA 20, Installation of Centrifugal Fire Pumps.

8.3 Alternative Power for Pumps

Provision should be made for alternative sources of power for fire pumps, so that failure of one source will not disable the installation. A diesel engine-driven pump is typically used as an alternative to an electrically driven one.

8.4 Water Distribution System

The water distribution system should be designed so that the failure of a single component (e.g., a pump or valve) will not hamper the ability to deliver fire-fighting water to any part of the facility.

9. Fire Hazard Analysis

9.1 A Fire Hazard Analysis of the facility should be performed. Such a systematic analysis should divide the facility into "fire areas," and evaluate the fire safety of each area and of the facility as a whole. The analysis should, for each fire area:

a. Account for all radioactive and combustible materials, including estimates of their heat content;

b. Describe the processes performed and their potential for fire or explosion;

c. Account for the sources of heat and flame;

d. List the fire detection and suppression equipment; and

e. Consider credible fire scenarios and evaluate the adequacy of the fire protection measures.

The analysis should then either conclude that the facility as a whole is adequately protected or list the deficiencies that should be corrected.

9.2 The deficiencies identified by the Fire Hazard Analysis should be corrected expeditiously. The analysis should then be reviewed by the responsible management official and revised to indicate that it is acceptable.

9.3 The Fire Hazard Analysis should be updated at periodic intervals (for example, every 2 years) and whenever there has been a significant modification of the facility, processes, or inventories.

10. Pre-Fire Plan

10.1 Purpose

The facility should have on file, and ready to use, a Pre-Fire Plan. Fire emergency planning is sometimes encompassed in the general radiological emergency planning required by license condition. However, a Pre-Fire Plan is different from a Radiological Contingency Plan in that it provides information needed by fire-fighting personnel responding to an emergency. Often, the same team of employees is trained to respond to both fire and radiological emergencies. This is acceptable, since a fire emergency may turn out to be a radiological emergency as well.

10.2 Contents

The Pre-Fire Plan should assign individual and alternate responsibilities for responding to a fire alarm or call; assessing the situation; suppressing incipient fires; assembling the site Fire Emergency Response Team and, if necessary, requesting offsite fire department assistance; personnel evacuation; orderly shutdown of processes; and safeguarding and control of radioactive material. The plan should clearly indicate, preferably with the help of site plans and drawings, the locations of the fire department-compatible connections and fire-fighting equipment, such as portable extinguishers, automatic fire suppression systems, sectional valves, standpipes, hydrants, and hoses. It should also indicate the areas of concentration of combustibles, storages of flammable and combustible liquids, and areas where use of water for fire suppression is restricted because of nuclear criticality or other concerns.

10.3 Coordination with the Offsite Fire Department

The Pre-Fire Plan should be prepared in consultation and coordination with the offsite fire department(s) most likely to respond to a call for assistance. The offsite fire department personnel should be given familiarization tours of the facility at least once a year.

11. Fire Emergency Response Team

11.1 Organization

The organization, training, and equipment of the Fire Emergency Response Team should be adequate to respond to any credible fire emergency.

with assistance from offsite fire departments where such assistance is available. NFPA 600, Private Fire Brigades, should be used for guidance.

11.2 Training

All members of the Fire Emergency Response Team should receive training adequate to perform their duties of responding to a fire emergency in the facility. NFPA 600 provides guidance on training and the frequency of refresher sessions and drills.

IV. References

U.S. Nuclear Regulatory Commission Documents

1. **Federal Register** (51FR45122), Report of the Materials Safety Regulation Review Study Group, December 17, 1986.

2. Results of Operational Safety Assessments at the Major Fuel Cycle Facilities: Memorandum from Hugh L. Thompson Jr., Director, Office of Nuclear Material Safety and Safeguards, to Victor Stello, Jr., Executive Director for Operations, U.S. Nuclear Regulatory Commission, July 1, 1987.

3. NUREG 0800, Standard Review Plan 9.5.1, Guidelines for Fire Protection for Nuclear Power Plants, Revision 2, July 1981.

4. **Federal Register**, Vol. 54, No. 53, Guidance on Management Controls/ Quality Assurance, Requirements for Operation, Chemical Safety, and Fire Protection for Fuel Cycle Facilities, March 1989.

National Fire Protection Association Documents

5. NFPA 10–1990, Portable Fire Extinguishers.

6. NFPA 11–1988, Low Expansion Foam and Combined Agent Systems.

7. NFPA 11A–1988, Medium- and High-Expansion Foam Systems.

8. NFPA 12–1989, Carbon Dioxide Extinguishing Systems.

9. NFPA 12A–1989, Halon 1301 Fire Extinguishing Agent Systems.

10. NFPA 12B–1990, Halon 1211 Fire Extinguishing Systems.

11. NFPA 13–1989, Installation of Sprinkler Systems.

12. NFPA 14–1990, Installation of Standpipe and Hose Systems.

13. NFPA 15–1990, Water Spray Fixed Systems for Fire Protection.

14. NFPA 16–1991, Deluge Foam-Water Sprinkler and Foam-Water Spray Systems.

15. NFPA 20–1990, Installation of Centrifugal Fire Pumps.

16. NFPA 24–1987, Private Fire Service Mains and Their Appurtenances.

17. NFPA 30–1990, Flammable and Combustible Liquids Code.

18. NFPA 31–1987, Oil Burning Equipment.

19. NFPA 37–1990, Stationary Combustion Engines and Gas Turbines.

20. NFPA 45–1986, Fire Protection for Laboratories Using Chemicals.

21. NFPA 50–1990, Bulk Oxygen Systems at Consumer Sites.

22. NFPA 50B–1989, Liquified Hydrogen Systems at Consumer Sites.

23. NFPA 51B–1989, Fire Prevention in Use of Cutting and Welding Processes.

24. NFPA 54–1988, ANSI Z223.1–1988, National Fuel Gas Code.

25. NFPA 69–1986, Explosion Prevention Systems.

26. NFPA 70–1990, National Electrical Code.

27. NFPA 70E–1988, Electrical Safety Requirements for Employee Workplaces.

28. NFPA 72G–1989, The Installation, Maintenance and Use of Notification Appliances for Protective Signaling Systems.

29. NFPA 72E–1990, Automatic Fire Detectors.

30. NFPA 75–1989, Electronic Computer/Data Processing Equipment.

31. NFPA 77–1988, Recommended Practice on Static Electricity.

32. NFPA 78–1989, Lightning Protection Code.

33. NFPA 79–1987, Industrial Machinery.

34. NFPA 80–1990, Fire Doors and Windows.

35. NFPA 80A–1987, Protection of Buildings from Exterior Fire Exposures.

36. NFPA 85D–1989, Prevention of Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces.

37. NFPA 86C–1987, Industrial Furnaces Using a Special Processing Atmosphere.

38. NFPA 90A–1989, Air Conditioning and Ventilating Systems.

39. NFPA 90B–1989, The Installation of Warm Air Heating and Air Conditioning Systems.

40. NFPA 101–1991, Safety to Life from Fire in Buildings and Structures.

41. NFPA 204M–1991, Smoke and Heat Venting.

42. NFPA 220–1985, Types of Building Construction.

43. NFPA 251–1990, Fire Tests of Building Construction and Materials.

44. NFPA 321–1991, Classification of Flammable and Combustible Liquids.

45. NFPA 600–1986, Private Fire Brigades.

46. NFPA 801–1991, Facilities Handling Radioactive Materials.

47. NFPA 803–1988, Recommended Fire Protection Practices for Light Water-Cooled Nuclear Reactors.

Other Documents

48. American National Standards Institute (ANSI) N665–1985, Facilities for Fabricating Fuel for Light Water Reactors (LWR)—Fire Protection.

49. ANSI/ASHRAE 15, Safety Code for Mechanical Refrigeration.

50. American Society for Testing Materials (ASTM) E–84, Surface Burning Characteristics of Building Materials (1976).

51. ASTM E–119, Fire Test of Building Construction and Materials (1976).

52. Factory Mutual System Approval Guide—Equipment, Materials, Services for Conservation of Property.

53. National Fire Protection Association, Fire Protection Handbook.

54. Underwriters Laboratories (UL) 555, Standard for Fire Dampers and Ceiling Dampers.

55. UL 586 (ANSI B 132.1), High Efficiency Air Filtration Units.

56. UL Building Materials Directory.

Dated at Rockville, Maryland, this 29th day of July 1992.

For the Nuclear Regulatory Commission

John W. N. Hickey,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92–18898 Filed 8–7–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs

Dated: July 23, 1992.

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed revision and expansion of OMB Circular No. A–94.

SUMMARY: Notice is hereby given that the Office of Management and Budget (OMB) proposes to revise Circular A–94. The revised Circular includes expanded guidance for the conduct of benefit-cost and cost-effectiveness analysis. It also includes guidelines for lease-purchase analysis that were formerly provided in OMB Circular A–104, which has been rescinded. A draft of the revised Circular is available on request from the Office of Management and Budget.

Circular A–94 was last revised in 1972. At that time, the Circular specified a 10 percent real discount rate for use in most benefit-cost and cost-effectiveness analyses. An exception was subsequently provided, in Circular A–

104, for analysis of lease-purchase decisions, where nominal Treasury interest rates were specified as the discount rates to use. The newly revised Circular modifies its guidance in two main ways.

• General guidelines for benefit-cost and cost-effectiveness analysis are provided for the first time.

• The base case discount rate is lowered from a real rate of 10 percent to 7 percent. For lease-purchase and other analyses where costs and benefits are confined to changes in Government cash outlays or receipts, Treasury interest rates are recommended as discount rates.

A section by section guide to the revised Circular follows:

1. Sections 1 to 4 present the purpose, authority and scope of the Circular. The purpose is to provide an outline or checklist that could be used to evaluate a completed benefit-cost or cost-effectiveness analysis. The intention is not to instruct the agencies in how to perform such analyses, but to outline basic standards that such analyses must meet. The older version of the Circular did this only with respect to the discount rate.

Since 1972 the scope of Circular A–94 has been expanded to include regulatory impact analysis. More recently the President's April 29, 1992, memorandum requiring benefit-cost analysis of legislative proposals further expands its scope.

2. Section 5 reviews the basic principles of benefit-cost and cost-effectiveness analysis. Section 6 reviews basic issues in the identification and measurement of benefits and costs. The material in these sections is standard practice for professional-quality economic analysis.

3. Section 7 describes how to treat inflation. Recommended inflation projections are based on the Administration's semi-annual economic assumptions that are published with the Budget and in the Mid-Session Review of the Budget. Credible private sector forecasts can be used for sensitivity analysis.

4. Section 8 presents the new discount rate guidance. A base case real discount rate of 7 percent is recommended for public investments that have benefits external to the Federal Government and for regulations. Sensitivity analysis around this rate is recommended.

• The 7 percent rate approximates the average real pretax return to capital in the private sector.

• The 7 percent rate is also more consistent rate with a variety of other discounting principles than a 10 percent rate is. These other principles include, under some assumptions, the shadow price of capital approach.

Treasury rates are recommended for discounting internal Government investments and lease-purchase decisions where the main consideration is minimizing Government costs. Use of the Treasury rate in these cases is supported by the principles of the shadow price of capital approach.

5. Section 9 sets guidelines for the treatment of uncertainty. Analysts are urged to characterize the probability distributions of benefits and costs while using expected values as the base case. Sensitivity analysis of major assumptions is recommended.

6. Section 10 suggests that any significant distributional effects of policies be reported. The importance of recognizing the actual economic incidence of Government programs is emphasized.

7. Section 11 requires a supplementary sensitivity analysis to reflect the excess burden of tax-financed Government expenditures. The sensitivity analysis is required for any proposal with Federal costs in which benefits accrue directly to the public. The sensitivity analysis would multiply most Federal expenditures by an adjustment factor of 1.25. This is a reasonable estimate well within the range of recent estimates of the Government's marginal cost of funds (1.15 to 1.50 percent per dollar of Federal revenue). Net present value of benefits should be reported both with and without the adjustment.

8. Section 13 provides general guidance for lease-purchase analysis. Previously, this guidance was included in Circular A–104, which was recently rescinded in anticipation of issuance of a revised Circular A–94.

DATES: Persons who wish to comment on the proposed revision of Circular A–94 should submit their comments no later than September 1, 1992.

ADDRESSES: Comments should be addressed to: Robert B. Anderson, Office of Economic Policy, OMB, room 9002 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, OMB, telephone (202) 395–3381 or Randolph M. Lyon, Office of Economic Policy, OMB, telephone (202) 395–5800. Copies of the draft Circular are available at the address above.

James C. Murr,

Associate Director, Legislative Reference and Administration, Office of Management and Budget.

[FR Doc. 92–18928 Filed 8–7–92; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30982; File No. SR–Amex–92–21]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Approval on an Accelerated Basis of a Proposed rule change Relating to Additional Delivery Periods

July 31, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on July 13, 1992, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–Amex–92–21) as described in Items I, II, and III below, which Items have been prepared mainly by Amex, a self-regulatory organization ("SRO"). The Commission is publishing this notice and order to solicit comments from interested persons and to approve the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to implement on a permanent basis procedures under Amex Rule 124(e) to provide for additional periods for delivery of securities, including delivery on the second, third, and fourth days after trade date. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Amex Rule 124(e), bidders and offerors may specify that an order is subject to any additional settlement periods as the Exchange may from time to time determine. On February 1, 1990, the Commission approved, on a eighteen month pilot basis, procedures under Rule 124(e) for the delivery of Amex securities on the second, third, and fourth days following trade date ("T").[2] Subsequently, the Commission approved two six-month extensions of the pilot to January 31, 1992 [3] and to July 31, 1992,[4] respectively. The Commission previously had approved on a permanent basis next day ("T+1") deliveries under Amex Rule 124(b).[5] The Amex now proposes that the pilot procedures to accommodate the additional settlement periods (*i.e.*, T+2 through T+4) be approved on a permanent basis.

The Amex has reviewed operation of the T+1 through T+4 delivery periods during the pilot program of almost two and one-half years and has concluded that member firm clearance and settlement procedures have adequately accommodated such non-regular way settlement. The Amex is aware of no difficulties resulting from settlement of such transactions directly between the parties involved and outside of the facilities of a registered clearing agency. In addition, such additional delivery periods (*i.e.*, T+1 through T+4) have afforded greater flexibility to members and their customers in structuring investment strategies and advancing their investment objectives.

(2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and that it furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Amex has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal meets the requirements of the Act and, in particular, the requirements of section 6(b) of the Act.[8] Specifically, section 6(b)(5) of the Act [9] requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that additional delivery periods will afford Amex members greater flexibility in formulating their investment strategies and in accommodating the investment needs or their customers. Moreover, the Commission notes that Amex has been using these additional settlement time frames for approximately two and one-half years under temporary approval orders. During this time, the commission has monitored Amex's data on the use of the additional settlement time frames and has found their use to be rather modest with no indication of any disruption or other effect on regular-way settlement.[10] Further, the additional time frames are similar to non-regular way settlement time frames that currently are available at certain other national securities exchanges.[11]

The Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice. Without accelerated approval, the Amex would be required to stop using its T+2 through T+4 settlement procedures as of the close of business on July 31, 1992, which is the expiration date of the current pilot program. The Commission believes that it is in the public interest for the existing Amex settlement procedures to continue without interruption and without needless inconvenience to Amex members and their customers. Accordingly, the Commission finds that good cause exists for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the Federal Register.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR-Amex-92-21 and should be submitted by August 31, 1992.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change referenced above (File No. SR-Amex-92-21) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan Katz,
Secretary.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18869 Filed 8-7-92; 8:45 am]
BILLING CODE 8010-01-M

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[2] Securities Exchange Act Release No. 27665 (February 1, 1990), 55 FR 4503 [File No. SR-Amex-88-20].

[3] Securities Exchange Act Release No. 29511 (July 31, 1991), 56 FR 37735 [File No. SR-Amex-91-19].

[4] Securities Exchange Act Release No. 30336 (February 4, 1992), 57 FR 5030 [File No. SR-Amex-92-02].

[5] Securities Exchange Act Release No. 26127 (September 29, 1988), 53 FR 39388 [File No. SR-Amex-88-20].

[6] 15 U.S.C. 78f(b) (1988).

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] 15 U.S.C. 78f(b) (1988).

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] "Regular-way" means settlement on the fifth business day after the trade date. *E.g.*, New York Stock Exchange Rule 64(3).

[11] Such settlement time frames have been in operation at the New York Stock Exchange, Midwest Stock Exchange, and Boston Stock Exchange since 1987. Securities Exchange Act Release No. 24161 (March 2, 1987), 52 FR 7350 [File Nos. SR-NYSE-85-37, SR-MSE-86-04, and SR-BSE-85-06].

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30994; File No. SR-CSE-92-05]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Relating to Approval of Membership Applications

August 3, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend Article II, Section 6(c) of its Code of Regulations ("By-Laws") regarding the processing of membership applications to specify that approval by the Membership Committee is final and to eliminate the requirement of further review by the Board of Trustees ("Board").

The following is the text of the proposed rule change [1] (new material italicized; deletions bracketed):

Article II Section 6 Application Procedures for Admission as a Member or an Associated Person of a Member

(c) Applications received by the Exchange's Secretary shall be referred to the Exchange's Membership Committee and, if a majority of the Committee is satisfied that the applicant is qualified for membership pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, [both the Board of Trustees and] the applicant of the Committee's determination, [. Within 30 days of such notification, the Board of Trustees may reverse the determination of the Membership Committee that the applicant is qualified for membership; provided, however, that at the end of the 30-day period] *and* the applicant shall be admitted to membership. [unless a majority of the Board specifically rejects the applicant and the Secretary of the Exchange notifies the applicant, in writing, of the grounds for the Board's rejection no later than 5 days after the Board's determination.]

[1] The Commission notes that in conjunction with this proposal the CSE withdraws File No. SR-CSE-92-03.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expedite new member access to Exchange facilities. After an applicant has been approved by the Membership Committee, the Board has 30 days under the current procedures to reverse that decision. Rarely, if ever, has the Board done so. The Exchange believes that this delay has impeded the Exchange's business without demonstrating countervailing benefits and should be removed.

The proposed changes are consistent with Section 6(b) of the Act, and in particular with section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed changes should have no adverse impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was adopted by written consent of the members. No comments apart from votes were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-92-05 and should be submitted by August 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18871 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30981; File No. SR-MSTC-92-06]

Self-Regulatory Organizations; Midwest Securities Trust Company; Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Establishing the Institutional Participant Services Program

July 31, 1992.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] notice is hereby given that on July 22, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1) (1988).

change as described in Items I, II, and III below, which Items have been prepared by MTSC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through January 31, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes (i) the Institutional Participant Services Program ("Program") and (ii) a new category of participants ("Institutions").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission has approved the proposed rule change on a temporary basis until July 31, 1992 ("Temporary Approval Period").[3] The rationale for initially approving the rule change on a temporary basis was to provide MSTC with the opportunity to formulate more definitive financial and operational standards for Institutions that desire to participate in the Program. Subsequently, on December 26, 1990, MSTC filed a proposed rule change (SR-MSTC-90-10) which requested permanent approval of the Program and proposed more definitive standards of participation and of financial and operational capabilities for Institutions.[4] In order to provide the Commission with the opportunity to continue its study of these standards while providing continuity of service to Institutions that currently participate in the Program, this proposed rule change requests that the Commission extend the Program under the terms of the Temporary Approval Orders through January 31, 1993. MSTC believes that the proposed rule change is consistent with section 17A of the Act [5] because it will promote the prompt and accurate clearance and settlement of securities transactions and help perfect the national system for the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MSTC has not received any comments from participants of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of sections 17A(b)(3) (A) and (F) of the Act.[6] Those sections require that the rules and organizational structure of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism for the national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MSTC's proposal will help achieve these requirements by providing Institutions with the opportunity to participate directly in the national market system through MSTC.

MSTC requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit MSTC to offer continuity of service to Institutions that participate in the Program while providing the Commission with sufficient time to analyze the more definitive standards of participation and of financial and operational capability recently proposed by MSTC.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments were received on the proposals approved in the Temporary Approval Orders, which were identical in substance to this proposed rule change. Furthermore, the Commission notes that the Program has operated without incident during the Temporary Approval Period. Thus, accelerated approval of the proposed rule change on a temporary basis will permit MSTC to provide continuity of service to those Institutions that currently participate in the Program while the Commission continues to study MSTC's proposed permanent standards of participation and of financial and operational capabilities for such Institutions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR-MSTC-92-06 and should be submitted by August 31, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-MSTC-92-06) be, and hereby is, approved on a temporary basis through January 31, 1993.

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[2] Attached as exhibit A and exhibit B, respectively, to Securities Exchange Act Release No. 28844 (February 1, 1991), 56 FR 5035 [File No. SR-MSTC-91-01], are the text of the proposed rule change and MSTC's procedures for the Program.

[3] Securities Exchange Act Release Nos. 27752 (March 1, 1990), 55 FR 8271 [File No. SR-MSTC-89-05]; 28844 (February 1, 1991), 56 FR 5035 [File No. SR-MSTC-91-01]; 29403 (July 26, 1991, 56 FR 36854 [File No. SR-MSTC-91-03]; and 30328 (January 31, 1992), 57 FR 4783 [File No. SR-MSTC-92-01] (collectively "Temporary Approval Orders").

[4] For a complete description of the services offered under the Program and the current standards of financial and operational capabilities for Institutions under the Program, refer to Temporary Approval Orders.

[5] 15 U.S.C. 78q-1 (1988).

[6] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[7] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18868 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30983; [File No. SR-MSE-92-07]

Self-Regulatory Organizations; Midwest Stock Exchange; Withdrawal of a Proposed Rule Change Amending Its Certificate of Incorporation

July 31, 1992.

On May 26, 1992, Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change that would amend its Certificate of Incorporation.

Notice of the proposed change was published on June 30, 1992 to solicit comment from interested persons.[2] No letters of comment were received by the Commission. Only July 27, 1992, MSE withdrew the proposal.[3]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[Rel. No. IC-18875; 812-7945]

Bell Atlantic Financial Services, Inc.; Application

July 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission".

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Bell Atlantic Financial Services, Inc. ("Financial").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a-5 under the Act.

SUMMARY OF APPLICATION: Applicant seeks an order under section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a-5 in connection with the offer and sale of applicant's securities to raise funds for the business operations of its parent corporation and certain subsidiaries thereof without registering as an investment company.

FILING DATE: The application was filed on June 19, 1992, and amended on July 21, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 25, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 501 Carr Road, Wilmington, Delaware 19809.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Financial, a wholly-owned subsidiary of Bell Atlantic Investments, Inc. ("Bell Investments"), which is a wholly-owned subsidiary of Bell Atlantic Corporation ("Bell Atlantic"), was incorporated under Delaware law on November 22, 1983.

2. Bell Atlantic was incorporated in 1983 under Delaware law. On January 1, 1984, pursuant to a consent decree, AT&T transferred to Bell Atlantic its 100% ownership in seven telephone companies (the "Telephone Subsidiaries"). In addition, Bell Atlantic and Ameritech Corporation each own approximately 34% of the outstanding stock of Telecom Corporation of New Zealand Limited ("Telecom"). Bell Atlantic is subject to the reporting requirements of the Securities Exchange Act of 1934.

3. The Telephone Subsidiaries provide telecommunications services and certain related services. They are subject to regulation by the Federal Communications Commission with respect to interstate services and certain related matters, and also are subject to regulation by the public utility commissions in the respective jurisdictions in which they operate with respect to intrastate rates, services, and other matters.

4. Bell Investments directly or indirectly holds 100% of the stock of a number of subsidiaries that engage in lines of business that are primarily unregulated (the "Unregulated Companies"). These lines of business include providing wireless communications products and services; servicing and repairing computers; marketing and maintaining customer premises equipment; providing software for telecommunications and computer networking; lease financing of commercial, industrial, medical, and high-technology equipment; and real estate investment and development.

5. Financial was formed for the primary purpose of providing short-term financing for Bell Atlantic and the Unregulated Companies and to keep cash flows for the Unregulated Companies and to keep cash flows for the Unregulated Companies separate and distinct from those of the Telephone Subsidiaries. Presently, funds are made available to Financial through unsecured lines of credit with a number of banks. Financial also provides centralized cash management services to the Unregulated Companies, and temporarily invests available funds on behalf of Bell Atlantic and the Unregulated Companies in short-term money market instruments including, but not limited to, Treasury bills, time deposit instruments, and commercial paper.

6. Financial intends to issue short-term, intermediate-term, and long-term debt securities ("Debt Securities"). The Debt Securities will be offered and sold in public offerings registered under the Securities Act of 1933 (the "1933 Act") or in transactions exempt from the registration requirements of the 1933 Act.

7. In the case of an offering of securities not requiring registration under the 1933 Act, Financial will provide each offeree with disclosure materials which will include a description of the business of Bell Atlantic and its subsidiaries and other data of the character customarily supplies in such offerings. In the event of a subsequent offering, these materials will be updated at the time thereof to reflect material changes in the financial condition of Bell Atlantic and its subsidiaries, taken as a whole.

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[8] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 30844 (June 19, 1992) 57 FR 29106 (June 30, 1992).

[3] Letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE to Jonathan Kallman, Associate Director, Division of Market Regulation, SEC, dated July 27, 1992.

8. All loans made by Financial to Bell Atlantic and the Unregulated Companies will bear interest at least equal to that Financial is required to pay to obtain funds through its corresponding borrowings. The amounts and maturity of these loans will allow Financial to make timely payments of principal, interest, and premium, if any, on its borrowings.

9. Financial's proposed financing activities will comply with all of the provisions of rule 3a–5 under the Act except for the requirement that Financial's parent unconditionally guarantee the Debt Securities. Instead of an unconditional guarantee, Bell Atlantic and Financial will enter into and keep in force a support agreement prior to the issuance of any Debt Securities (the "Support Agreement").

10. Pursuant to the Support Agreement, Bell Atlantic will agree to cause Financial to maintain a positive tangible net worth as determined in accordance with generally accepted accounting principles and, if Financial requires funds to pay principal, interest, and premium, if any, when due in connection with the Debt Securities, and such funds are not obtainable by Financial from other sources on commercially reasonable terms, Bell Atlantic shall provide funds to Financial to assure that Financial will be able to pay such principal, interest, and premium, if any, when due.

11. The Support Agreement also will provide that holders of Debt Securities or, if applicable, a trustee acting on their behalf, shall be entitled to proceed directly against Bell Atlantic without first proceeding against Financial to enforce Financial's rights under the Support Agreement or to obtain payment of any defaulted interest, principal, or premium owed to the holders of Debt Securities, but no such holder will have recourse to or against the stock or assets of any Telephone Subsidiary, Telecom or any other operating telephone company which may be owned directly or indirectly by Bell Atlantic.

12. Funds available to satisfy Bell Atlantic's obligations under the Support Agreement will include dividends paid by the Telephone Subsidiaries, as well as all revenue, stock, and assets of Bell Atlantic's other subsidiaries, including the Unregulated Companies. As of December 31, 1992, Bell Atlantic's interest in companies other than the Telephone Subsidiaries and Telecom was approximately $5 billion. In the year ended December 31, 1992, the Telephone Subsidiaries collectively declared approximately $1.2 billion in cash dividends to Bell Atlantic.

Applicant's Legal Analysis

1. Financial was formed for the purpose of providing financing to Bell Atlantic and the Unregulated Companies, and Financial will not engage in a general program of investment. While the activities contemplated may bring Financial within the definition of an investment company contained in section 3(a) of the Act, Financial believes it is a finance subsidiary intended to be excepted from the definition by rule 3a–5 under the Act.

2. Financial represents that Bell Atlantic has determined to enter into the Support Agreement instead of an unconditional guarantee because it wishes to separate entirely the financing of its unregulated activities from the regulated Telephone Subsidiaries. As a result of the separation of these activities, the assets of any operating telephone company which may be owned directly or indirectly by Bell Atlantic will not be subject to the claims of any holder of Debt Securities. Excluding these assets from the Support Agreement is intended to satisfy the state agencies that have jurisdiction over the Telephone Subsidiaries that the customers of the Telephone Subsidiaries do not and will not subsidize or support the non-regulated activities of Bell Atlantic. Nevertheless, the Support Agreement proposed as a functional equivalent of an unconditional guarantee will provide substantially the same protections to the holders of Debt Securities as an unconditional guarantee.

3. In adopting rule 3a–5 under the Act, the Commission did not rule out the use of alternatives to the unconditional guarantee but stated that such alternatives would be evaluated on a case-by-case basis (Investment Company Act Release No. 14275 (Dec. 14, 1984) (the "Adopting Release")).

4. The Support Agreement satisfies the purposes behind the unconditional guarantee in rule 3a–5, as such purposes are described in the Adopting Release. Notwithstanding that a considerable portion of Bell Atlantic's assets would not be subject to claims of the holders of Debt Securities, Bell Atlantic has other assets, valued at approximately $5 billion, that ensure its ability to meet its obligations under the Support Agreement.

5. Granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Financial agrees that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Financial has entered into, and will keep in force (except as set forth below), the Support Agreement, which is and shall continue to be the functional equivalent of an unconditional guarantee. The Support Agreement provides, and will continue to provide, as follows:

a. Bell Atlantic owns and shall continue to own all of the outstanding voting stock of Financial;

b. Bell Atlantic will provide to Financial funds (as capital, or if Bell Atlantic and Financial agree, as a subordinated loan) as required if Financial is unable to make timely payment of interest, principal, or premium, if any, on any Note issued by Financial;

c. Bell Atlantic will cause Financial to have at all times a positive net worth (net assets less intangible assets, if any) as determined in accordance with generally accepted accounting principles; and

d. any holder of the Debt Securities issued by Financial may proceed directly against Bill Atlantic without first proceeding against Financial to enforce Financial's rights under the Support Agreement, or to obtain payment of any defaulted interest, principal or premium, owed to such holders, so long as no holder of the securities issued by Financial will have recourse to or against the stock or assets of the Telephone Subsidiaries, Telecom, or any other operating telephone company which may be owned directly or indirectly by Bell Atlantic.

2. The Support Agreement may be modified or amended in a manner that adversely affects the rights of the holders of Financial's Debt Securities only if all affected holders of the Debt Securities consent in advance and in writing to such modification or amendment. In addition, no modification or amendment to the Support Agreement relating to the four provisions set forth in the preceding paragraph shall be made unless Financial applies for and receives an amended order.

3. The Support Agreement may be terminated only after all Debt Securities issued by Financial are paid in full. After termination of the Support Agreement, no additional Debt Securities will be issued by Financial without an additional order, unless a new support agreement is entered into that is identical in all material respects

to the Support Agreement described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18884 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18878; International Series Rel. No. 430; 812-7976]

Columbia International Stock Fund, Inc.; Application

July 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Columbia International Stock Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the Act and rule 12d3-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) of the Investment Company Act of 1940 exempting is from the provisions of section 12(d)(3) of the Act and rule 12d3-1 thereunder to the extent necessary to permit applicant to invest in equity and convertible securities issued by foreign companies that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser, provided such investments meet the conditions in the proposed amendments to rule 12d3-1.

FILING DATE: The Application was filed on July 8, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 25, 1992, and should be accompanied by proof of services on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1301 SW Fifth Avenue, PO Box 1350, Portland, Oregon 97207.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an Oregon corporation and an open-end diversified management investment company registered under the Act. Applicant's investment adviser is Columbia Funds Management Company.

2. Applicant seeks relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to be able to invest in the equity or convertible securities of foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("Foreign Securities Companies").

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 provides an exemption from section 12(d)(3) of the Act for investment companies acquiring securities of an issuer that, in its most recent fiscal year, derived more than fifteen percent of its gross revenues from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3-1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." "Margin Security" status is generally available only to securities traded in the United States. Because applicant proposes to invest in equity securities, as defined in section 3(a)(11) of the Securities Exchange Act of 1934, of Foreign Securities Companies that are not "margin stocks" within the meaning of Regulation T, applicant is unable to take advantage of the exemption provided by rule 12d3-1.

3. Under the proposed amendments to rule 12d3-1, an investment company would be permitted to acquire the equity securities of a Foreign Securities Company that are not "margin securities" if the securities meet liquidity and other criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendment, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989)

Applicant's Condition

Applicant agrees that the following condition be imposed in any order of the SEC granting the requested relief:

Applicant will comply with the provisions of the proposed amendments to rule 12d3-1, [Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)], and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18883 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18879; 811-1340]

MidAmerica High Growth Fund, Inc.; Application

August 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MidAmerica High Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 28, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On November 15, 1965, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on November 15, 1965. The registration statement was declared effective and the initial public offering commenced on April 4, 1966.

2. On June 20, 1990, in reliance upon rule 17a–8 of the Act, applicant's board of directors approved a merger into AEGON USA Capital Appreciation Portfolio ("Aegon"). On September 24, 1990, applicant mailed proxy materials to its shareholders. At a meeting held on October 30, 1990, applicant's shareholders approved the merger.

3. On December 1, 1990, the outstanding shares of applicant were converted into shares of Aegon on the basis of their relative net asset value, and the assets and liabilities of applicant became assets and liabilities of Aegon. Each share of common stock of applicant which was issued and outstanding immediately prior to the merger was converted by the merger into one share of common stock of Aegon, with the same net asset value.

4. Expenses incurred in connection with the merger totalled approximately $150,256, and were borne by MidAmerica Management Corporation, the investment adviser of applicant.

5. There are no security holders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on November 29, 1990.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18865 Filed 8–7–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18877; 811–4153]

MidAmerica High Yield Fund, Inc.; Application

August 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MidAmerica High Yield Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 26, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On January 31, 1985, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on January 31, 1985. The registration statement was declared effective and the initial public offering commenced on June 14, 1985.

2. On June 20, 1990, in reliance upon rule 17a–8 of the Act, applicant's board of directors approved a merger into AEGON USA High Yield Portfolio ("Aegon"). On September 24, 1990, applicant mailed proxy materials to its shareholders. At a meeting held on October 30, 1990, applicant's shareholders approved the merger.

3. On December 1, 1990, the outstanding shares of applicant were converted into shares of Aegon on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Aegon. Each share of common stock of applicant which was issued and outstanding immediately prior to the merger was converted by the merger into one share of common stock of Aegon, with the same net asset value.

4. Expenses incurred in connection with the merger totalled approximately $150,256, and were borne by MidAmerica Management Corporation, the investment adviser of applicant.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on November 29, 1990.

7. Applicant is not now engaged, nor

does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18887 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18878; 811-4217]

MidAmerica Tax-Exempt Bond Fund, Inc.; Application

August 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MidAmerica Tax-Exempt Bond Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 28, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On November 9, 1984, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on November 9, 1984. The registration statement was declared effective on March 1, 1985, and public offering commended on April 1, 1985.

2. On June 20, 1990, in reliance upon rule 17a-8 of the Act, applicant's board of directors approved a merger into AEGON USA Tax-Exempt Portfolio ("Aegon"). On September 24, 1990, applicant mailed proxy materials to its shareholders. At a meeting held on October 30, 1990, applicant's shareholders approved the merger.

3. On December 1, 1990, the outstanding shares of applicant were converted into shares of Aegon on the basis of their relative net asset value per share, and the assets and liabilities of applicant became assets and liabilities of Aegon. Each share of common stock of applicant which was issued and outstanding immediately prior to the merger was converted by the merger into one share of common stock of Aegon, with the same net asset value.

4. Expenses incurred in connection with the merger totalled approximately $150,256, and were borne by MidAmerican Management Corporation, the investment adviser of applicant.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. The applicant ceased to have any legal existence under the laws of Maryland upon the filing of articles of merger with the state of Maryland on November 29 1990.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18886 Filed 8-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25596]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 31, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 24, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation et al. (70-7942)

General Public Utilities Corp. ("GPU"), a registered holding company, General Portfolios Corp. ("GPC"), a wholly owned subsidiary company of GPU, Energy Initiatives, Inc. ("EII"), a wholly owned subsidiary company of GPC, Geddes Cogeneration Corp. ("Geddes"), a wholly owned subsidiary of EII, and Onondaga Cogeneration Limited Partnership (the "Partnership"), a wholly owned subsidiary of Geddes and a New York limited partnership (collectively, "Applicants"), all located at One Gatehall Drive, Parsippany, New Jersey, 07054, have filed with the Commission a post-effective amendment under sections 6 and 7 to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

By order dated June 15, 1992 (HCAR No. 25555) ("June Order"), the Commission authorized the Applicants,

among other things, to undertake certain financings related to construction of a 79.9 MW cogeneration facility being constructed in Geddes, New York ("Project"), that is a qualifying facility under the Public Utility Regulatory Policies Act of 1978. Pursuant to the June Order, the Partnership entered into a financing agreement ("Financing Agreement") for Project construction on June 17, 1992 with Mellon Bank, N.A., Westpac Banking Corporation (the "Bank Lenders"), and John Hancock Mutual Life Insurance Company and John Hancock Variable Life Insurance Company (the "Institutional Lenders"). On that date, the Institutional Lenders, as provided in the Financing Agreement, made an initial advance ("Initial Advance") of $38 million of the total borrowings under the Financing Agreement of $89.5 million through the acquisition of an equal amount of project notes by the Onondaga County Industrial Development Authority ("OCIDA"). The balance of the construction financing will be provided through loans made by the Bank Lenders.

Under the Financing Agreement, the Bank Lenders have committed to provide 53.66% (29.18% for Mellon Bank and 24.48% for Westpac Banking Corporation) and the Institutional Lenders have committed to provide 46.34% of the construction and term loan advances. To date, the Institutional Lenders, by providing the Initial Advance, have met their initial commitments under the Financing Agreement. In order to insure that, in the event of a default under the project financing agreements, the Institutional Lenders and the Bank Lenders assume their *pro rata* share of the total loans then outstanding—notwithstanding a disproportionate amount of Institutional Advances which may be outstanding—the Bank Lenders have agreed to provide the Institutional Lenders with letters of credit ("True-Up LOCs"). The purpose of the True-Up LOCs is to secure the Bank Lenders' commitment to fund their *pro rata* share of the aggregate loans made in the event of a default by the Partnership, to the extent the Bank Lenders have not yet made such loans. Thus, in the event of a default, the Institutional Lenders would be entitled to draw on the True-Up LOCs, to the extent of the Bank Lenders unfunded, *pro rata* share of their commitments. The proceeds of any True-Up LOC drawing would be applied by the Institutional Lenders to prepay a like amount of Institutional loans, i.e., loans made to OCIDA which are guaranteed by the Partnership.

Accordingly, the Partnership now proposes to enter into True-Up LOC repayment agreements with the Bank Lenders ("Repayment Agreement"). Under the Repayment Agreement, if the Institutional Lenders do draw on the True-Up LOCs, the Partnership would be obligated to repay the Bank Lenders in the amount of any such draw. The total repayment obligations of the Partnership under the Financing Agreement to the Institutional and Bank Lenders would, however, remain unchanged.

In the event of a default under the Financing Agreement, the letter of credit provided by Geddes to secure its equity commitments in the Partnership ("Equity LOC"), in the amount $13.5 million, would be available to the Bank Lenders to repay a portion of the Initial Advance. Accordingly, the maximum aggregate face amount of the True-Up LOCs will be $13.15 million ($7.15 million for Mellon Bank and $6 million for Westpac Banking Corporation), which represents the Bank Lenders' aggregate percentage commitment (53.66%) of the portion of the $38 million Initial Advance (i.e., $24.5 million) not secured by the Equity LOC provided by Geddes.

Each True-Up LOC would expire by its terms at such time as the Bank Lenders have made construction loan advances in an amount equal to the Initial Advance (i.e. $38 million) made by the Institutional Lenders and, in any event, not later than December 31, 1994. The Partnership would pay an annual True-Up LOC commission to each Bank Lender in the amount of 1.25% of the amount available to be drawn on such Bank Lender's True-Up LOC. Drawings under the True-Up LOC would bear interest at 3% above the Mellon Bank, N.A. prime rate, as in effect from time to time.

In addition, in order to take advantage of short-term interest cost savings, the Partnership proposes to enter into a short-term swap arrangement with the Bank Lenders ("Short-Term Swap") for the amount of the Initial Advance ($38 million). The Short-Term Swap will allow for conversion of the fixed interest on the Initial Advance into a variable rate which will be not in excess of the London Inter-bank Offering Rate ("LIBOR") plus 5⅛%. The Short-Term Swap would be established for a period of up to 24 months after which the fixed rate of 10.10% would become effective for the remainder of the term. Based upon the LIBOR in effect on June 26, 1992 (3.875%), the Short-Term Swap rate would be 9.375%. On this basis, the interest cost savings resulting from the Short-Term Swap would be approximately $550,000.

System Fuels, Inc., et al. (70–8001)

System Fuels, Inc. ("SFI"), 225 Baronne Street, New Orleans, Louisiana 70112, a fuel supply company jointly owned by Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company, 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company, 308 East Pearl Street, Jackson, Mississippi 39201 and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112 (all companies collectively, "Applicants"), each an electric public utility subsidiary of Entergy Corporation, a registered holding company, have filed a post-effective amendment to their application filed under sections 9(a) and 10 of the Act.

By order dated July 7, 1992 (HCAR No. 25576) ("July 1992 Order"), the Commission authorized AP&L to assume SFI's existing rights and obligations under several leases of coal railroad cars. The Applicants now request that the Commission issue a supplemental order extending the effectiveness of the July 1992 Order for a period of one year.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18882 Filed 8–7–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of the International Air Transport Association for Approval of Revised Traffic Conference Provisions

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Procedural Order 92–8–9, in Docket 46928.

SUMMARY: The Department of Transportation has issued an order ruling on various procedural motions filed in Docket 46928. The Department granted the motions of the U.S. Department of Justice and the International Organization of Consumers' Unions to file otherwise unauthorized documents in the form of Reply Comments, filed on May 14 and June 2, 1992, respectively. The Department granted interested persons 75 days to file responsive pleadings to

these Reply Comments. The Department also granted all parties and potential parties interim access to the materials submitted by the Department of Justice in Confidential Appendix to its Reply Comments, upon the filing of affidavits to protect their confidentiality and to use them only for the purpose of participating in this proceeding. The materials are available in the Department's Documentary Services Division in Washington, DC.

DATES: Persons wishing to file responsive comments should do so no later than October 19, 1992.

ADDRESSES: Responsive Comments should be filed in Docket 46928 and addressed to the Documentary Services Division, (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

Dated: August 4, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–18884 Filed 8–7–92; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 4, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0155.
Form Number: None.
Type of Review: Reinstatement.
Title: Approval of Commercial Gaugers and Accreditation of Commercial Laboratories.
Description: Individuals or companies desiring Customs recognition as approved commercial gaugers or accredited commercial testing laboratories may apply to Customs by letter. This recognition is required for acceptance of certain gauge or test results by Customs.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 10.
Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 119 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–18879 Filed 8–7–92; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 3, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1148.
Regulation ID Number: EE–113–90 Temporary and Final.
Type of Review: Extension.
Title: Employee Businesses Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances (T.D. 8324).
Description: These temporary and final regulations provide rules concerning the taxation of and reporting withholding on employee business expense reimbursements and other expense allowance arrangements.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Recordkeepers: 1,419,456.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 709,728 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–18880 Filed 8–7–92; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Joined Colors: Meaning and Decoration in Chinese Porcelain" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institute, Washington, DC, from on or about November 16, 1992, to on or about December 31, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Alberto J. Mora,

General Counsel.

[FR Doc. 92–18913 Filed 8–7–92; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619–5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 9, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Supplemental Physical Examination Report, VA Form 29–8100 (Series).
2. The forms are used to obtain complete information as to physical and/or mental condition of a veteran who has submitted an application for insurance or reinstatement.
3. Individuals or households.
4. 1,080 hours.
5. 45 minutes.
6. On occasion.
7. 1,440 respondents.

[FR Doc. 92–18936 Filed 8–7–92; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

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DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 9, 1992.

Dated: July 30, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Entitlement Certification (Under chapter 30, 32, or 35, title 38 U.S.C. or chapter 106, title 10, U.S.C., VA Forms 22–1999, 22–1999–1, and 22–1999–2.
2. These forms are used by schools and employers to report the enrollment of veterans, servicepersons, selected reservists, and other eligible persons in approved programs or education training. The information requested is necessary to determine the correct rate of payment.
3. Individuals or households; States or local governments; Farms; Business or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.
4. 128,873 hours.
5. 10 minutes.
6. On occasion; School term or semester.
7. 7,435 respondents.

[FR Doc. 92–18937 Filed 8–7–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 154
Monday, August 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 10, 17, 24, and 31, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 10

Wednesday, August 12

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Petition for Late Intervention and Motion to Reopen the Record in the Comanche Peak Proceedings (Tentative)
b. City of Cleveland's Appeal of the Atomic Safety and Licensing Board's Prehearing Conference Order (LBP-91-38) (Tentative)
c. Safety Light Corporation—Review of Licensing Board Decision to Consolidate Proceedings (Tentative)

Week of August 17—Tentative

Tuesday, August 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 24—Tentative

Wednesday, August 26

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 31—Tentative

Tuesday, September 1

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 3

1:00 p.m.
Briefing by EPRI on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: August 5, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-19049 Filed 8-6-92; 2:41 pm]

BILLING CODE 7590-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 9:00 a.m., Tuesday, August 11, 1992.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Comments submitted pertaining to the Commission's proposed revision of certain of its Rules of Procedure, published on May 12, 1992 at 57 FR 20220-20234.

CONTACT PERSON FOR MORE INFORMATION: Earl R. Ohman, Jr., (202) 634-4015.

Dated: August 6, 1992.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 92-19055 Filed 8-10-92; 2:42 pm]

BILLING CODE 7600-01-M

Corrections

Federal Register
Vol. 57, No. 154
Monday, August 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 91-094]

Fruits and Vegetables From Hawaii, Puerto Rico, and the Virgin Islands

Correction

In proposed rule document 92-16149 beginning on page 31130 in the issue of Tuesday, July 14, 1992, make the following corrections:

1. On page 31133, in the first column, the sentence beginning in the 8th line from the bottom, should read as follows:

"Typically, however, sea containers are not designed to be transloaded into aircraft, and we are unaware of any situation where loading from a ship directly into an aircraft, or an aircraft directly into a ship is possible."

2. On page 31134, in the second column, in the third line from the bottom, "5" should read "7".

§ 318.13-17 [Corrected]

3. On page 31139, in the first column, in § 318.13-17(m), in the ninth line insert "transloads," between "unloads," and "transports".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

RIN 0575-AB28

Rural Business Enterprise Grants and Television Demonstration Grants

Correction

In rule document 92-17597 beginning on page 33097 in the issue of Monday, July 27, 1992, make the following correction:

§ 1942.305 [Corrected]

On page 33099, in the third column, in § 1942.305(a)(3), in the third line, "and" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Adminstration

50 CFR Parts 611 and 685

[Docket No. 920776-2176]

RIN 0648-AE36

Pelagic Fisheries of the Western Pacific Region

Correction

In proposed rule document 92-17376 beginning on page 32952 in the issue of Friday, July 24, 1992, make the following corrections:

1. On page 32954, in the first column, in the second full paragraph, in the ninth line, after "NMFS" insert "Southwest" and in the fifth line from the bottom of this paragraph, after "**ADDRESSES**" the quotes should be removed.

§ 611.81 [Corrected]

2. On page 32955, in the 1st column, in § 611.81(b), the 14th line, should read "*Mahimahi* means "dolphin fish" " and in the 16th line, "*Equisetis*" should read "*equisetis*".

BILLING CODE 1505-01-D

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Regulatory Treatment of Deferred Tax Assets

Correction

In notice document 92-18245 beginning on page 34135 in the issue of Monday, August 3, 1992, make the following correction:

On page 34135, in the second column, under **DATES:**, in the second line, "September 2, 1990." should read "September 2, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0136]

Proposed Implementation of International Conference on Harmonisation Consensus Regarding New Drug Applications; Proposed Implementation Document; Availability

Correction

In notice document 92-8401 beginning on page 13105 in the issue of Wednesday, April 15, 1992, make the following correction:

On page 13106, in the first column, in the sixth line from the bottom, "(20" should read "(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6932

[AK-932-4214-10; F-14223]

Modification of Public Land Order No. 5150, as Amended, for Selection of Lands by the State of Alaska; AK

Correction

In the correction document 92-13983 appearing on page 31404 in the issue of Wednesday, July 15, 1992, make the following corrections:

1. On page 31404, in the second column, under paragraph designation c., in the fifth line, "third" was misspelled.

2. On the same page, in the same column, under paragraph designation 2.a., in the last line, "read Tps. N.," should read "read Tps. 1 N.,".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1109

[Ex Parte No. 55 (Sub No. 873)]

Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Those in Which the Commission is a Party

Correction

In rule document 92-17290 beginning on page 32451 in the issue of Wednesday, July 22, 1992, make the following correction:

§ 1109.2 [Corrected]

On page 32452, in the first column, in § 1109.2, in the eighth line "refered" should read "referred".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE46

Veterans Education; the Veterans Education and Employment Amendments of 1989 and Dependents' Educational Assistance

Correction

In rule document 92-15673 beginning on page 29798 in the issue of Tuesday, July 7, 1992, make the following correction:

§ 21.4270 [Corrected]

On page 29804, in the second column, in § 21.4270(b)(6), in the third line, remove "40".

BILLING CODE 1505-01-D

federal register

Monday
August 10, 1992

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Occupational Exposure to 4,4' Methylenedianiline (MDA); Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H040]

Occupational Exposure to 4,4' Methylenedianiline (MDA)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: By this document, the Occupational Safety and Health Administration is promulgating new standards regulating exposure to MDA. The basis for this action is a determination by the Assistant Secretary, based on animal and human data, that exposure to MDA at the current occupational exposure levels causes adverse effects on employee health including an increased risk of cancer and that limiting occupational exposure to MDA to an eight-hour time-weighted average (TWA) of 10 parts per billion (ppb), establishing a short-term exposure limit (STEL) of 100 ppb, and implementing associated provisions will significantly reduce this risk. In addition to establishing permissible exposure limits (PELs) for MDA, this regulation includes requirements such as medical surveillance, exposure monitoring, hygiene facilities, engineering controls and work practices, proper respirator use, and recordkeeping. An action level of 5 ppb is included in this final standard as a mechanism for exempting employers from the obligation to comply with certain requirements, such as employee exposure monitoring, in instances where the employer can demonstrate that employee exposures are at or below the action level.

The standards apply to all industries covered by the OSH Act including general industry, construction, and maritime.

For the most part, the provisions adopted by OSHA in these final regulations were recommended by the MDA Mediated Rulemaking Advisory Committee (Committee).

EFFECTIVE DATE: These final rules shall become effective on September 9, 1992.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Any such petitions for review must be filed not later than the 59th day following the promulgation of the standard. See section 6(f) of the OSH Act; 29 CFR 1911.18(d) and *United Mine Workers of America* v. *Mine Safety and Health Administration*, 900 F.2d 384 (D.C. Cir. 1990).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director Office of Public Affairs, OSHA, rm. N-3641, 200 Constitution Avenue, NW., Washington, DC, 20210, Telephone (202) 523-8151. Copies of this document may be obtained two weeks after the publication date from the OSHA Publication Office, rm. N-3101, at the above address, or by calling (202-523-9667) or at any OSHA regional or area office.

SUPPLEMENTARY INFORMATION:

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General Industry

Appendix A to § 1910.1050—Substance Data Sheet For 4,4'-Methylenedianiline
Appendix B to § 1910.1050—Substance Technical Guidelines, MDA
Appendix C to § 1910.1050—Medical Surveillance Guidelines for MDA
Appendix D to § 1910.1050—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures
Appendix E to § 1910.1050—Qualitative and Quantitative Fit Testing Procedures

Construction Industry

Appendix A to § 1926.60—Substance Data Sheet For 4,4'-Methylenedianiline
Appendix B to § 1926.60—Substance Technical Guidelines, MDA
Appendix C to § 1926.60—Medical Surveillance Guidelines for MDA

MDA

Appendix D to § 1926.60—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures
Appendix E to § 1926.60—Qualitative and Quantitative Fit Testing Procedures

I. Introduction

The standards apply to all occupational exposures to MDA and include a standard in 29 CFR 1910 and 29 CFR 1926. Occupational exposure to MDA in construction is covered by a separate standard. Coverage includes exposures which occur in maritime, primary chemical manufacture, reprocessing, filament winding, potting and encapsulation, etc.

The standard excludes mixtures containing less than 0.1% MDA and also excludes "finished articles containing MDA" as defined.

II. Pertinent Legal Authority

Authority for issuance of this standard is found primarily in sections 4, 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 653, 655(b), 657(c), and 657(g)(2). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as:

> * * * a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

The Supreme Court has said that section 3(8) applies to:

> * * * all permanent standards promulgated under the Act and requires the Secretary, before issuing any standard, to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

The "significant risk" determination constitutes a finding that, absent the change in practices mandated by the standard, the workplaces in question would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. *Id.* at 642. A significant risk finding, however, does not require mathematical precision or anything approaching scientific certainty if the "best available evidence" does not warrant that degree of proof. *Id.* at 655-656; 29 U.S.C. 655(b)(5). Rather, the Agency may base its finding largely on policy considerations and has considerable leeway with the kinds of assumptions it applies in interpreting the data supporting it. *Id.* 655-656; 29 U.S.C. 655(b)(5). The Court's opinion indicates that risk assessments, which may involve mathematical

estimates with some inherent uncertainties, are a means of demonstrating the existence of significant risk.

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health * * *". Section 6(b)(5) of the Act. The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard necessary to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981). The Court held that "cost-benefit analysis is not required by the statute because feasibility analysis is." *Id.* at 509.

Authority to issue this standard is also found in section 8(c) of the Act. In general, this section requires the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposure to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the making and maintenance of records of medical examinations, exposure monitoring, and the like are issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary to "prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under this Act"—in this case as part of or ancillary to a section 6(b) standard. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1));

Setting mandatory occupational safety and health standards applicable to business affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act (29 U.S.C. 651(b)(3));

Building upon advances already made through employee and employer initiative for providing safe and healthful working conditions (29 U.S.C. 651(b)(4));

Providing for the development and promulgation of occupational safety and health standards (29 U.S.C. 651(b)(9));

Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem (29 U.S.C. 651(b)(12));

Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * *. (29 U.S.C. 651(b)(6));

Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13)); and

Developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)).

Because the MDA standards are reasonably related to these statutory goals, the Secretary finds that these standards are necessary to carry out her responsibilities under the Act.

III. Events Leading to the Final Standard

EPA issued a notice under Section 4(f) of the Toxic Substances Control Act (TSCA) on April 27, 1983 (48 FR 19078) which indicated that MDA presents a significant cancer risk to humans. EPA was then required to either initiate "appropriate action" or announce that the risk was not "unreasonable."

The Section 4(f) notice was based on a draft study undertaken by the National Toxicology Program (NTP). The study demonstrated that the dihydrochloride salt of MDA is carcinogenic in both sexes of rats and mice at two oral dose levels. This study plus the following factors formed the basis for the Section 4(f) notice: (1) A lack of any mandatory workplace standard; (2) the apparent inadequacy of protection afforded at the American Conference of Governmental Industrial Hygienists (ACGIH) recommended threshold limit value (0.1 parts per million (ppm)); (3) evidence that some processors may be exceeding even the ACGIH limit; and (4) evidence that several thousand workers may be exposed.

The "appropriate action" taken by EPA was the issuance of an Advance Notice of Proposed Rulemaking (ANPR) on September 20, 1983 (48 FR 42898). The ANPR announced the joint effort by EPA and OSHA to initiate regulatory action to determine and implement the most effective means of controlling occupational exposure to MDA. At the time of the issuance of the ANPR, only limited data were available on exposure levels and the number of workers potentially exposed. The ANPR requested detailed information on the operations used to manufacture and process MDA; the potential for exposure at each stage, including air and work surface monitoring data; and descriptions of workplace practices. The second area of inquiry was the production and use of MDA. Detailed descriptions of the uses of MDA and updated information of the identity of processors and users was sought. The third area of inquiry was the availability, costs, and the suitability, and toxicity of substitutes for MDA. Finally, information was sought on methods of controlling exposure. The ANPR invited views and data from interested parties in any of these areas.

In response to the ANPR, comments were received from four parties: Diamond Shamrock; National Resources Defense Council, Inc.; DuPont; and CMA. These comments have been analyzed and where appropriate are reflected in this document.

On July 5, 1985, EPA published a **Federal Register** notice, in accordance with section 9 TSCA provisions (50 FR 27674) which described the occupational risks associated with worker exposure to MDA and requested that OSHA respond to EPA and indicate what regulatory activity would be implemented, if any. Under section 9(a)(2) of TSCA, EPA was prohibited from taking any regulatory action pending a response from OSHA.

In response (51 FR 6748, February 26, 1986), OSHA determined that there is a reasonable basis to believe that the manufacture and use of MDA presents a significant risk to the health of exposed workers and that the risk described by EPA may be eliminated or reduced to a significant extent by a workplace standard which regulates workers exposure. Further, OSHA determined on the basis of preliminary data, that the adoption of an occupational standard for worker exposure to MDA is economically and technologically feasible.

In the course of considering an appropriate regulatory action under the Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 655) ("OSH Act"), OSHA examined various

regulatory scenarios before determining the process which might be followed in developing a comprehensive regulation for occupational exposure to MDA. The Administrative Conference of the United States (ACUS) had recently studied the rulemaking process of various federal agencies and found that:

> The complexity of government regulation has increased greatly compared to that which existed when the Administrative Procedure Act [APA] was enacted, and this complexity has been accompanied by a formalization of the rulemaking process beyond the brief, expeditious notice and comment procedures envisioned by section 553 of the APA. Procedures in addition to notice and comment may, in some instances, provide important safeguards against arbitrary or capricious decisions by agencies and help ensure that agencies develop sound factual basis for the exercise of the discretion entrusted them by Congress, but the increased formalization of the rulemaking process has also had adverse consequences. The participants, including the agency, tend to develop adversarial relationships with each other causing them to take extreme positions, to withhold information from one another, and to attack the legitimacy of opposing positions. Because of the adversarial relationships, participants often do not focus on creative solutions to problems, ranking of the issues involved in a rulemaking, or the important details involved in a rule. Extensive factual records are often developed beyond what is necessary. Long periods of delay result and participation in rulemaking proceedings can become needlessly expensive. Moreover, many participants perceive their roles in the rulemaking proceeding more as positioning themselves for the subsequent judicial review than as contributing to a solution on the merits at the administrative level. Finally, many participants remain dissatisfied with the policy judgments made at the outcome of rulemaking proceedings.

(Recommendation 82–4 "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 18, 1982).

Therefore, ACUS recommended that agencies consider using regulatory mediation, in which the parties in interest identify the major issues, gauge their importance, identify the information necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the regulatory agency's statute.

In considering whether this approach would be suitable in developing regulations controlling workplace exposure to MDA, OSHA considered the selection criteria adopted by the Environmental Protection Agency. (See 49 FR 17576, 17579; April 24, 1984.) OSHA concluded that MDA met the selection criteria for mediation: the regulatory effort was at the pre-proposal phase of development; affected parties were relatively few in number and readily identifiable; there were indications that affected parties would mediate in good faith; and sufficient information was available to resolve key issues. Thus, OSHA employed mediated rulemaking in developing an occupational standard for worker exposure to MDA.

A number of parties interested in OSHA affairs have expressed concern regarding the use of mediated rulemaking in developing complex health regulations. Strictly speaking, it appears inappropriate to suggest that human suffering and lives become the trade off items in a mediation attempt. The Agency's use of mediated rulemaking in this instance did not anticipate that would be the methodology of these endeavors. Instead, OSHA expected to produce a consensus recommendation on the various aspects or issues involved in developing a complex health standard. This differs from the typical labor-management negotiations where a limited number of issues must be resolved and bargaining or trade-off become the method to form a compromise. The key difference involves the final product expected. On the one hand, a compromise is reached; on the other hand, a consensus is achieved.

OSHA indicated in its **Federal Register** notice of October 22, 1985 (50 FR 42789) that Mediated Rulemaking would be used to assist OSHA in its MDA rulemaking activities. This notice also set forth the basic concepts of negotiated rulemaking and outlined the participant selection criteria which OSHA expected to use in establishing an MDA Advisory Committee.

OSHA established the committee in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. app. I); and section 7(b) of the Occupational Safety and Health Act (OSH Act; 29 U.S.C. 656 (b)) to mediate issues associated with the development of a Notice of Proposed Rulemaking (NPRM) on MDA.

This notice also solicited participants for the mediation process. As a result of the request for participants, three unions, the United Auto Workers (UAW), the United Steelworkers of America (USWA) and the Oil, Chemical, and Atomic Workers (OCAW) offered names of potential representatives for the Committee. OSHA selected representatives from the UAW and Steelworkers to participate in these mediation activities. The International Association of Machinists and Aerospace Workers (IAM) submitted a request for representation on the Committee and a representative from this group was appointed. Later, as a result of scheduling conflicts, the UAW representative resigned and was replaced by a labor representative from the United Brotherhood of Carpenters and Joiners of America.

In addition to the unions that nominated participants, three trade associations representing employer groups also expressed an interest in participating in this rulemaking effort: the National Electrical Manufacturers Association (NEMA), the Suppliers of Advanced Composite Materials Association (SACMA) and the Chemical Manufacturers Association (CMA). Representatives from these groups reflect employer interest in primary and secondary manufacturing and, to some extent, downstream use of MDA in the construction industry. The other recommendations for representation came from the Department of Energy, Brookhaven National Laboratory, Sandia National Laboratories, the National Institute for Occupational Safety and Health (NIOSH), EPA, and the Occupational Safety and Health Administration for the State of California. A list of the candidates selected, the date of the first meeting, and the agenda for the first meeting were published in the **Federal Register** on July 3, 1986 (51 FR 24452).

OSHA also clearly denoted, in the October 22nd notice, the relevance which the Mediated Rulemaking efforts would have in the development of its proposed rule for occupational exposure to MDA:

> While the Committee's work product will likely serve as the basis for a proposed rule, it will not negate the need for adherence to traditional rulemaking procedures. This negotiated rulemaking procedure is supplemental to the normal section 6(b) rulemaking procedures specified in the OSH Act and is intended to aid OSHA in developing a proposed standard for occupational exposure to MDA (at 42790).

Furthermore, OSHA's participation in these mediated rulemaking endeavors was clearly delineated and was, in fact, to be substantial. OSHA would be an active participant in these efforts. An OSHA representative provided draft regulatory text and the necessary expertise in standard drafting which the Committee needed.

To the extent that OSHA could not accept the Committee's recommendations as its notice of proposed rulemaking, OSHA agreed to publish its rationale for such non-acceptance. OSHA, for the most part, based its NPRM on the Committee's recommendations.

In addition, OSHA's approach entailed the Agency setting forth the issues on which the Committee must come to consensus. OSHA had the knowledge and experience needed to develop complex health standards. Furthermore, OSHA is cognizant of its own legal requirements and limitations. Thus, OSHA provided the Committee with the issues to be resolved, the record evidence accumulated to date, and the suggested draft regulatory language. The Committee used the record evidence and draft language provided by OSHA, along with information supplied by some of its members and, of course, the personal expertise of its members to achieve its consensus recommendations. The recommendations developed by the Committee reflect the consensus reached regarding the risk associated with occupational exposure to MDA, the PELs and standard provisions necessary to reduce this risk, and the technological and economic feasibility of implementing these standards. The Committee's products were comprehensive regulations with accompanying rationales.

The Committee also agreed that *unanimous agreement* on all the issues was not necessary for consensus to be reached. This is different than typical negotiations in which all the issues must be resolved in order to culminate successfully.

OSHA also required that the Committee be established in accordance with, and that it follow the requirements established by, the Federal Advisory Committee Act. The Mediated Rulemaking Committee was set up in the fashion that OSHA previously had established Advisory Committees under section 7(b) of the OSH Act. Thus, all the Committee's meetings, unlike typical labor/management negotiations, were open to the public and a record was kept and made available to the public.

Further, representation of the interests involved was mandatory; not representation of all the parties, but of all the interests. The recommendations proposed by this consensus building group were developed by representatives from labor, management, and state and federal interests.

The Committee met formally on seven occasions. The first meeting consisted of organizational activities (defining consensus, establishing agendas and topics for discussions). The subsequent meetings were used to develop consensus recommendations. The last meeting ended on May 21, 1987. In this meeting the Committee made and rendered its final recommendations on the proposed standards regulating occupational exposure to MDA in both general industry and the construction industry to the Assistant Secretary. These recommendations were published on July 16, 1987 (50 FR 26776).

OSHA based its NPRM primarily upon the recommendations made by the Committee. Furthermore, in the infrequent situations where the Committee's recommendations could not be used by OSHA in its NPRM, OSHA, as agreed, provided its rationale for this non-acceptance.

OSHA also consulted, as required by section 107(e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333(e)) and 29 CFR 1912.3, with the Construction Advisory Committee concerning this proposed rule for Construction. This meeting took place on November 3, 1987. This Committee advised that OSHA adopt the recommendations made by the MDA Mediated Rulemaking Advisory Committee for the construction industry and use such as the basis for its NPRM for construction.

On May 12, 1989, OSHA published a Notice of Proposed Rulemaking (NPRM) which proposed new standards regulating occupational exposure to MDA (54 FR 20672). The comment period and the time for requesting a hearing was extended to July 11, 1989. OSHA received twenty-six comments including two hearing requests; one from the A.O. Smith Co. and the other from United Technologies. Accordingly, pursuant to section 6(b)(3) of the OSH Act, OSHA held hearings on the proposal on March 20 and 21, 1990. In response to the Notice of Hearing published on January 22, 1990 (55 FR 2101), OSHA received eleven comments and twelve Notices of Intention to Appear (NOIA) indicating the participants at the hearing. Interestingly, neither party who had requested the hearing filed a NOIA or participated at the hearing in any way. During the two day hearing, the Administrative Law Judge admitted twelve exhibits and established post-hearing comment periods that ran until May 23, 1990. OSHA has received eight timely post-hearing comments. The hearing record was certified by the Administrative Law Judge on October 10, 1990.

The final standard, like the proposed rule, is based primarily on the recommendations made by the MDA Mediated Rulemaking Committee. In those few instances where OSHA has amended the proposal and established different requirements in the final standard, these changes have been noted.

IV. Physical Properties, Manufacture, and Uses of MDA

Methylenedianiline (CAS 101–77–9) (MDA) is a light brown, or tan, crystalline solid with a faint amino-like odor. MDA is slightly soluble in water and very soluble in alcohol and benzene. MDA is produced commercially by the condensation of aniline and formaldehyde. Crude MDA (40–60% MDA) is a liquid or a hard wax-like substance. Purified (99%) MDA is in the form of either light yellow crystalline flakes or white granules.

Ninety-eight percent of the MDA produced is used directly in the manufacture of methylenediphenyl diisocyanate (MDI). The remaining two percent is used as a precursor for the manufacture of plastic fibers, antioxidants, dyestuff intermediates, corrosion preventatives, and special polymers.

The MDI is produced in two grades, monomeric (pure) and polymeric. Ninety percent of the crude MDA is used to produce polymeric MDI, and another 8% of the crude MDA is converted to monomeric MDI. MDI is used to produce flexible and rigid polyurethane foams, elastomers, coatings, thermoplastic resins, foundry core binders, adhesives, sealants, and spandex fibers.

The remaining MDA is produced in the pure form for other uses: epoxy resin curing agents, wire coating applications, polyurethane co-reactants, in pigments and dyes, and defense applications.

There are eleven principal industry sectors where workers are potentially exposed to MDA. These sectors are: (1) MDA Production for MDI Synthesis/ MDA Sale and Import; (2) Reprocessing; (3) Filament Winding; (4) Potting and Encapsulation; (5) Molding/Bonding of Tools and Specialty Small Parts; (6) Wire Coating; (7) Application of Coatings; (8) Intermediate for TGMDA and PACM–20 Production; (9) Polyurethane Curing; (10) Advanced Composite Materials Production; and (11) Use of PMR–15 Pre-preg Materials. There are also seven other industrial sectors where MDA was once used and may still be used on a limited basis. These minor sectors are: (1) Coatings (Polybismalimides) of Printed Circuit Boards and Fabrication of Airplane Parts; (2) Dyes and Pigments; (3) Quiana Yarn; (4) Intermediate for Pharmaceuticals, Herbicides, etc.; (5) Rubber Processing; (6) Anti-Oxidants; and (7) Ketamine Production. Maintenance workers have been separately identified from each of these sectors for purposes of analysis. Occupational exposure to MDA also

occurs in the Construction and Maritime industries.

There are six firms which produce MDA for MDI production, MDA for sale, or which import MDA. MDA is manufactured by 6 companies at 7 locations in four states: Dow Chemical Co. (LaPorte, Texas); BASF (Geismar, LA); E.I. Dupont (Belle, WV); Mobay Chemical (New Martinsville, WV and Baytown, TX); Rubicon Chemical (Geismar, LA); and Uniroyal Chemicals division of Avery (Naugtuck, CT). Three of these companies, Mobay, Rubicon, and Dow account for over 90% of the MDA production. It is estimated that approximately 600 million pounds of MDA are produced for MDI conversion, 4,474,000 pounds are produced domestically for sale, and an additional 1.8 million pounds are imported. In addition, it is estimated that the percentage of MDA in the product made domestically ranges from 40–70% while the percentage in the imported product is approximately 98%.

V. Health Effects of Exposure to MDA

A. Summary of the Committee's Recommendations

1. Introduction

The Committee reviewed the record evidence concerning the acute and chronic effects of exposure to MDA in both animals and humans and concluded that MDA should be treated as a hepatotoxic agent and as a suspect human carcinogen. The Committee also concluded that an occupational standard regulating worker exposure to MDA should be developed. The following discussion provides the Committee's findings with respect to the hepatotoxic and carcinogenic hazards posed by occupational exposure to MDA.

2. Acute Effects of Exposure to MDA

A. Hepatotoxicity. The record evidence on the acute effects of occupational exposure to MDA indicates that occupational exposure to MDA may result in hepatotoxicity (poisoning of the liver). The Committee relied on an abundance of human and animal data to support this finding. (See Hepatotoxicity Section of the Committee's Document, ex. 9).

The Committee found that one or a few exposures to high doses of MDA may result in toxic hepatitis. However, in all cases the clinical signs and symptoms of hepatitis produced by this exposure were reversible. The Committee's discussion concerning the acute effects resulting from acute exposures can be found at 52 FR 26779 and 26780. In summary the Committee stated clearly that "The predominance of data reflect the induction of disease as a result of dermal absorption of MDA" and further provides a data analysis from Kopelman, McGill and Motto, and Brooks et al. An analysis of the data did not rule out the possibility that liver toxicity might result from low doses. Furthermore, the analysis did not determine the effects long term low doses might have on liver function. However, the Committee tentatively did conclude that at the present occupational levels the clinically observed non-neoplastic effects of exposure to MDA appear to be totally reversible. This conclusion was based solely on review of the data found in the acute human studies (human chronic exposure studies are not available). Animal data however, did indicate that long term MDA dosing at low levels produced various levels of liver damage. Thus while making a finding that occupational exposure to MDA may result in liver toxicity, the Committee was unable to develop dose-response data which could predict with some certainty the exposure necessary to produce liver toxicity. More precisely, the Committee was unable to conclude that at 5 ppb, liver toxicity would not occur.

In an effort to make these findings, the Committee extensively reviewed the record evidence to determine the levels of exposure at which a No Observed Effect Level (NOEL) for the clinical observation of hepatitis could be expected to occur in a worker population. The available literature on workers occupationally exposed to MDA provided limited data on the occupational doses to which the workers were exposed. This is due in part to a lack of ambient sampling data but more often because the primary mode of exposure was through the skin and not through inhalation. The Committee further acknowledged that in the case of MDA, unlike many acutely toxic chemicals which are associated with acute inhalation effects such as irritation and pulmonary edema, the primary effect has been liver damage following ingestion or skin absorption. The only available data the Committee could use to estimate a NOEL for liver toxicity due to occupational exposure to MDA are the data reported by Kopelman et al. from the Epping Jaundice incident. This data suggested that levels in excess of 100 ppb would be necessary to produce acute hepatitis in worker populations. The Committee relied on these findings in making its recommendations for the TWA and the STEL.

B. Dermal Irritation. The Committee believed that the ability of MDA to induce contact sensitization has not been studied sufficiently to conclude that MDA causes sensitization.

C. Retinal Effects. The Committee reviewed the record evidence concerning the effects which might result from eye contact with MDA. The Committee concluded that direct contact between MDA and the eye should be avoided. In addition, the Committee noted that ingestion of MDA might also result in damage to the eye and as such should also be avoided.

3. Chronic Effects of Exposure to MDA

A. Hepatotoxicity. The Committee found that at the present occupational levels, the observed or clinical non-neoplastic effects resulting from exposure appear to be totally reversible (ex. 9). This conclusion is based on review of the data found in the acute human studies. Animal data indicate that long term MDA dosing at low levels produces various levels of liver damage, but since most of the studies have involved the dosing of the animals until sacrifice, it is difficult to determine if the observed effects would or could have been reversed if sufficient time had been allotted for healing.

B. Carcinogenicity. The Committee concluded that MDA is a carcinogen in F344/N rats and B6C3F1 mice of each sex. Furthermore, it appears that carcinogenicity is induced either through ingestion, inhalation, or dermal absorption of the substance.

The Committee considered extensively the type of data needed to determine carcinogenicity in animals and to relate the observed effects in animals with that expected in humans. The Committee generally accepted the policy set forth by public health agencies, that test results in mammalian species (including the mouse), are acceptable data for predicting potential hazards to exposed humans.

The Committee also recognized that confounding factors associated with long term bioassays could cause carcinogenicity findings to be questioned. First, the Committee recognized the need to use control groups, as was done in the NTP and ORNL bioassays, and to validate the carcinogenic findings in rodent species that normally exhibit a high spontaneous incidence of tumors.

Second the Committee also discussed the effect that high dosing and subsequent acute toxicity may have on the production of liver and thyroid tumors found in the female mice of the NTP study. The Committee determined

that the observed incidence of tumors found in the female mice of the NTP study did not occur as a result of high dosing but occurred from exposure to MDA.

Third the Committee noted that the presence of tumor viruses in mice does not necessarily invalidate the identification of MDA as a carcinogen. In making this determination, the Committee made use of the policies advocated by numerous health agencies, including OSHA, which requires that, to make a viral etiology finding, the virus must be established to be the sole direct mechanism producing the carcinogenic effect. Not finding this necessary evidence, the Committee agreed that the carcinogenic response was not the result of viral etiology.

The Committee found that the NTP study was conducted properly, and therefore used this study as the principal basis for its carcinogenicity findings.

In addition, a majority of the Committee members concluded that MDA induces cancer by a genotoxic rather than a non-genotoxic mechanism and, as such, a threshold level for the carcinogenic response did not exist. The Committee concluded that the evidence offered for the existence of thresholds for this carcinogen was insufficient to overcome the extant evidence for a genotoxic mechanism. The Committee relied on two basic concepts to make this decision. First, the members required that if a threshold was to be considered, data indicating at what level a threshold would occur must be provided. Secondly, once a threshold is established in experimental animals, the threshold must be shown to be applicable to any exposed group of workers. No evidence was offered which meets these minimum criteria and thus the Committee made a recommendation that a no-threshold-effect be used to predict the risk associated with occupational exposure to MDA. In addition, the Committee believed that, even if a threshold for specific carcinogens could be demonstrated in experimental test animals or even in a specific human population, it might not be applicable to any given human population at risk. No data were furnished which equated a threshold observed in animals with that expected in humans.

Other concerns raised by some of the Committee members involve the use of MDA dihydrochloride rather than MDA itself as the administered dose in the NTP bioassays. The Committee noted that test animals in the Oak Ridge National Laboratories study were exposed dermally to MDA and not the hydrochloride as in the NTP study. Furthermore, the Committee noted that in the Oak Ridge test animals the carcinogenic response seen in the female mouse livers was approximately double that noted in the NTP study. Thus, the Committee concluded that exposure to MDA produced the carcinogenic effect, and not exposure to the salt.

The Committee also examined supportive evidence of carcinogenicity derived from short term mutagenicity tests. The Committee recognized that the various short-term tests do not measure the same mutagenic endpoint; thus positive and negative findings are not uncommon, since no single short-term test can measure all the events which might lead to mutagenesis. The Committee agreed that there is a wide variety of opinions on the reliability of using short-term studies as indicators of potential carcinogenicity. Many of the Committee members believed, however, that such tests provide meaningful indicative results and that substances which give positive results in well validated systems are likely to be carcinogenic. Further, it appears that the probability of a false-positive result for a chemical which is positive in one well conducted bioassay and one well validated short term-test is extremely small. Thus, based on record evidence consisting of both bioassays and short-term tests the Committee concluded that MDA causes cancer in experimental animals.

The Committee also analyzed the data to relate the findings of "pooled tumors" incidence in mice to some common site in man. The Committee acknowledged that scientific investigations have shown that target sites for the carcinogenic action of a substance in humans are not necessarily the same as those found in animal experiments. There were basically three pieces of suggestive evidence examined by the Committee to link the carcinogenic response in animals to the expected response in humans (bladder cancer):

(1) The NIOSH-Vertol Health Hazard Evaluation (HHE) study (Ex. 1–255);
(2) The presence of bladder transitional cell papillomas in three MDA treated rats in the NTP-Bioassay (Ex. 1–36); and
(3) Some structure-activity links with the proven human and animal bladder carcinogen, benzidine, and the dog bladder carcinogen, methylenebis-(2-chloroaniline) (MBOCA).

The only available human data implicating MDA as a human carcinogen were from the HHE. The Committee reviewed these data thoroughly before concluding that the data were insufficient to positively identify MDA as a human bladder carcinogen or to use the data contained in this report to establish permissible exposure limits. However, the Committee did not exclude the fact that the report did develop a hypothesis regarding MDA exposure and bladder cancer which warrants further investigation using the more rigorous epidemiologic methods.

The Committee also found that the development of bladder transitional cell papillomas in the female rats in the NTP bioassays to be significant. These relatively rare tumors were benign although progression to malignancy in this class of tumors may occur. Furthermore, the Committee recognized that the appearance of transitional cell papillomas in MDA treated rats was unique and demonstrated the chemical specificity of the results observed.

The Committee analyzed the structure activity relationships between MDA and several other substances identified by EPA as structural analogs. A majority of the Committee members maintained that there are significant structural differences between benzidine and MDA and that a strong analogy does not exist. The Committee generally believed, however, that while the structural analogy data are not conclusive, nonetheless these data should be relied upon to suggest that MDA may cause bladder cancer in humans. Although the Committee could not positively link occupational exposure to MDA with bladder cancer in workers, the Committee recommended stringent standard provisions to protect workers against the carcinogenic potential posed by MDA regardless of the target site.

4. Reproductive Effects

The majority of the Committee members concluded that, while the data suggest that there may be hormonal changes at relatively high doses, the occupational significance of these changes could not be assessed.

5. Teratogenic Effects

The Committee has reviewed the data on the teratogenic effects of exposure to MDA and could not relate the significance of these observed effects in animals with those anticipated in the occupational setting.

6. Absorption, Distribution, and Deposition

The majority of the Committee members agreed that where sufficient data exist which are MDA specific (e.g., dermal absorption data), these data should be used to determine the biological activity of the chemical.

However, the Committee found that data obtained through the El-Hawari study (ex. 1–251) were not sufficient to make determinations concerning the gastrointestinal and respiratory absorption of MDA. The Committee anticipated that future research on the gastrointestinal and respiratory absorption of MDA will also substantiate the findings made from the structural analogue comparisons and demonstrate that these assumptions are also conservative.

The Committee agreed that a 100% absorption through the gastrointestinal tract of the mouse be used in generating the risk assessment model rather than 50% absorption proposed by EPA. The Committee realizes that this is a conservative approach because it assumes that the observed effect is a result of absorption of the entire dose administered and not a result of the absorption of a lesser portion of the administered dose. This assumption has the effect of reducing the expected risks predictable from occupational exposure to MDA by 50%.

The Committee agreed, however, with EPA's assumption that absorption through lung tissue is roughly equivalent to gastro-intestinal absorption (50%), especially if MDA is in the vapor phase or has a particle size of less than 2 microns.

The Committee also concluded that MDA is actually dermally absorbed at approximately 2% per hour and not 1% as previously assumed (ex. 1–251). Therefore, an absorption rate of 2% can also be applied to MDA exposure which occurs through dermal deposition and absorption.

The Committee also stressed the significance which the hazard of dermal exposure posed. Data from the Oak Ridge National Laboratory study (ex. 8) heightened the Committee's concern over these hazards. The Committee concluded that when a chemical is ingested, it is transported through the hepatocellular detoxification system and is not generally diluted as a result of passing through the general circulatory system. In the case of chemicals applied to the skin, however, a significant dilution takes place as a result of the absorbed chemical passing through the general circulatory system before passing through the hepatocellular detoxification system. Compared with the findings of the NTP study in which animals were exposed through ingestion, the Oak Ridge data reported almost a two-fold increase in the liver tumor incidence observed in the female test animals dermally exposed to MDA. These findings are additional evidence that occupational dermal exposure to MDA should be prevented.

In addition, the Committee was concerned with the findings of El-Harawi (ex. 1–251) indicating that once deposited on the skin, MDA cannot be completely removed by cleansing. The data suggest that the use of solvents to remove MDA from the skin actually increases the absorption of MDA. It also appears that soap and water provide the best medium for removing the substance from the skin, but only remove approximately 80% of the material deposited on the skin. These findings support the provisions of the final standard which require the use of personal protective clothing and equipment to prevent MDA exposure and medical surveillance to assure that the integrity of the protective equipment and clothing is being maintained.

B. OSHA's Findings

The following discussion of the health effects associated with occupational exposure to MDA is merely a summary account of the extensive analysis and findings made by [the Committee and] OSHA. Complete discussions of the health effects conclusions reached by the Committee [and accepted by OSHA] are found at 52 FR 26779 *et seq.* (July 16, 1987) [and 54 FR 20677 *et seq.* (May 12, 1989), respectively]. All of these health effects findings were essentially unchallenged by commenters and parties at the hearing.

The record evidence on the acute effects of occupational exposure to MDA indicates that exposure may result in hepatotoxicity (poisoning of the liver). These findings are based on an abundance of human and animal data. (52 FR 26779).

Evidence also indicates that direct contact between MDA and the eye as well as ingestion might result in damage to the retina of the eye. (52 FR 26780).

OSHA also finds that at the present occupational levels, the observed non-neoplastic effects on the liver resulting from exposure appear to be reversible (ex 9). This conclusion is based on review of the data found in studies of acute liver disease in humans.

OSHA concludes that MDA is a carcinogen based on studies of F344/N rats and B6C3F1 mice of each sex. Furthermore, it appears that carcinogenicity is induced either through ingestion, inhalation, or dermal absorption of the substance. There were basically three pieces of evidence examined by OSHA which related the carcinogenic response of MDA in animals to the expected response in humans (bladder cancer):

(1) The NIOSH-Vertol Health Hazard Evaluation (HHE) study which demonstrated a significantly elevated PCMR for bladder cancer among workers exposed to MDA (ex. 1–255);

(2) The presence of bladder transitional cell papillomas in three MDA treated rats in the NTP-Bioassay (ex. 1–36); and

(3) Some structure-activity links with benzidine, a proven human and animal bladder carcinogen, and with methylenebis-(2-chloroaniline) (MBOCA) a substance known to cause bladder cancer in the dog and suspected of causing bladder cancer in humans (52 FR 26787).

Although the evidence was not conclusive in demonstrating a causal link between occupational exposure to MDA and bladder cancer, OSHA nonetheless developed standard provisions to protect workers against the carcinogenic potential posed by MDA regardless of the target site.

OSHA also finds that, while the data suggest that there may be hormonal changes at relatively high doses, the occupational significance of these changes cannot be assessed. (52 FR 26783).

Furthermore, OSHA has reviewed the data on the teratogenic effects of exposure to MDA and cannot relate the significance of these observed effects in animals with those anticipated in the occupational setting. (52 FR 26784).

OSHA has also determined that the available data on the ability of MDA to induce contact sensitization has not been studied sufficiently to conclude that MDA causes sensitization. (52 FR 26786).

In reviewing the record evidence concerning the acute and chronic effects of exposure to MDA in both animals and humans, OSHA concludes that MDA must be regulated as both a hepatotoxic agent and a human carcinogen. OSHA tentatively made these findings in its NPRM and the Agency's conclusions remain unchanged. In fact, there was no evidence submitted in response to the NPRM which would cause OSHA to amend its earlier conclusions that MDA should be treated as a hepatotoxic agent and a suspect human carcinogen.

VI. Risk Assessment

OSHA's approach to risk assessment is guided by Supreme Court interpretations of the OSH Act, namely decisions involving benzene (*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980)); and cotton dust (*American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981)). The Court

has ruled that OSHA may not promulgate a standard unless it has determined, based on substantial evidence in the record considered as a whole, that there is a significant risk of health impairment at existing permissible exposure levels and that issuance of a new standard is necessary to achieve a significant reduction in that risk. Although in the cotton dust case the Court rejected the use of cost-benefit analysis in setting OSHA standards, it reaffirmed its earlier holding in the benzene case that a risk assessment relating to worker health is not only appropriate, but is, in fact, required in order to identify a significant worker health risk and to determine whether a proposed standard will achieve a reduction in that risk. Although the Court did not require OSHA to perform a quantitative risk assessment in every case, the Court implied, and OSHA as a policy matter agrees, that such assessments should be put in quantitative terms to the extent possible (48 FR 17292).

Several approaches can be used to estimate cancer risk from exposure to toxic agents. A standard approach uses mathematical models to describe the relationship between dose (such as airborne concentration) and response (e.g., cancer). Generally, curves are fit to the data points observed at different exposure levels and these curves are used to predict the risk that would occur at exposure levels which were not observed. The shape of these curves is varied, ranging from linear extrapolations from the observed points through the origin (zero exposure and zero risk) to curves which may deviate far from linearity at the very highest and very lowest doses. The use of a particular model or curve can be justified in part by a statistical measure of "fit" to available data points, that is, a statistical test which measures how closely a predicted dose-response curve is to the actual observed data.

In all cases it is assumed that the mathematical curves are reflective of biological processes that control the biological fate and action of the toxic compound. To date, many of these factors have not been quantitatively linked to the mathematical models. Biological factors which may play important roles in the risk assessment are: (1) Dose of the material at the sensitive tissue; (2) the sensitive tissue(s) itself; (3) the nature of the response(s); (4) rates and sites of biotransformation; (5) toxicity of metabolites; (6) chronicity of the compound (cumulative nature of the material or its actions); (7) pharmacokinetic distribution of the material (especially effects of dose on the distribution); (8) the effect of biological variables such as age, sex, species and strain of test animal; and (9) the manner and method of dosing the test animals (48 FR 45989).

It is clear that all of these factors cannot be easily incorporated into a single mathematical model. Therefore, careful selection of the data and general assumptions necessary for evaluation in the model is important to the risk assessment in order to make use of as much information as possible.

In doing its risk assessment for MDA, OSHA has considered various assumptions that it believes to be the most reasonable. The risk estimates are found in Table 1 below (table 1, ex. 1–247). Some of the underlying assumptions used in predicting these risks are: (1) 100% GI absorption; (2) two 4-hour work shifts; (3) 2% dermal absorption rate; (4) body weight scaling factor; and (5) upper body absorption as set forth in table 1. A body weight scaling factor is a quantitative adjustment of the dose used in the NTP study to account for the differences in weight between humans and rodents.

Using these estimates of risk, approximately 6 to 30 per 1000 workers may be at risk of developing cancer when exposed at worst case existing conditions to MDA over a working lifetime (table 1, scenario 1). OSHA also notes that these estimates of risk are not based on the application of a scaling factor based upon surface area. When this surface area scaling factor is applied, the estimates of risk significantly increase to ten times the risk levels shown in table 1. OSHA did not adopt this scaling factor because there was no evidence that this was a more appropriate approach to use than the traditional body weight conversions used by OSHA.

In addition, OSHA notes that in making the estimates of risk, OSHA has gone beyond the traditional regulatory methodology and added to this assessment the estimates of risk which can be expected from dermal deposition. OSHA recognizes that substantial exposure may occur through deposition and subsequent absorption of MDA on the upper body, neck, etc., and has considered these confounding factors in assessing risk (in certain situations approximately 95% of exposure results from dermal absorption).

While OSHA was able to make estimates of risk which might result from dermal exposure, OSHA was unable to establish allowable dermal exposure limits. There are a number of reasons why this is impractical, among which are the difficulty of quantifying dermal exposures, the inability to select a reliable biological indicator, and finally the difficulty in correlating the amount absorbed with a precise adverse health effect. OSHA has not quantified risks resulting from dermal exposure in other toxic substance standards. In order, to adequately regulate dermal exposure to MDA, OSHA requires adherence to permissible exposure limits (which reduces surface contamination by MDA thereby reducing the opportunity for skin contact and reduces potential for re-entrainment into the air) and the use of personal protective clothing and equipment and the other standard provisions, all of which aid in preventing dermal exposure.

No evidence was provided subsequent to the issuance of the NPRM which would cause OSHA to change any of the findings herein stated.

VII. Significance of Risk

OSHA previously made a preliminary finding of significant risk resulting from occupational exposure to MDA in responding to EPA's referral (51 FR 6748), and in the proposed rule at 54 FR 20682. In making this determination, OSHA was guided by a number of factors that are consistent with recent court interpretations of the OSH Act and rationale, and policy formulation regarding significance of risk. As prescribed by section 6(b)(5) of the OSH Act, the Agency examined the body of "best available evidence" on the toxic effects of MDA to determine the nature and extent of possible health consequences resulting from workplace exposure. The quantitative risk assessment found in Table 1 was used with other relevant information by OSHA to determine whether establishing a permissible exposure limit and other standard provisions would substantially reduce the risk.

For guidance in determining whether regulatory activity would substantially reduce the risk, OSHA followed general guidance given to the Agency by the Court for arriving at findings of the significance of an occupational health risk. The Court stated as follows:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person

might well consider the risk significant and take appropriate steps to decrease or eliminate it (*IUD* v. *API*, 448 U.S. at 655).

Although the Court's example is based on a quantitative expression of the risk, the Court indicated that the significant risk determination required of OSHA is not "a mathematical straitjacket," and that "OSHA is not required to support the finding that a significant risk exists with anything approaching scientific certainty." The Court ruled that:

> . . . a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and] . . . the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of overprotection rather than underprotection (448 U.S. at 655, 656).

OSHA largely bases its findings that a particular level of risk is "significant" on policy considerations (*IUD* v. *API*, 448 U.S. 655, 656, n. 62). As part of the significant risk determination, OSHA examined a number of factors consistent with its policy (see Arsenic, 48 FR 1864, January 14, 1983; Ethylene Oxide, 48 FR 17284, April 21, 1983; Asbestos, 51 FR 22611, June 20, 1986); and Formaldehyde, 52 FR 46167, December 4, 1987. These include the type of risk presented, the quality of the underlying data, the reasonableness of the risk assessments, and the statistical significance of risk. Table 1 was adopted by the Committee from the OSHA MDA risk assessment found in the Docket at exhibit 1–247.

TABLE 1.—ESTIMATED CANCER RISKS FOR WORKER EXPOSURE TO MDA

Case	Airborne level mg/m³ (ppb)	Dermal deposition ug/cm²/hr	Inhalational exposure kg/day	Dermal exposure kg/day	Total exposure kg/day	Cancer risk MLE (U95CL) excess	Comments
I(a)	0.57(70)	9.0 (palms) and 2.5 (upper body)	0.021	0.0749	0.096	6(7)/1000	Worst existing case for manufacturing.
(b)	0.38 (47)	250 (palms) 27 (upper body)	0.014	0.4186	0.43	3(3)/100	Worst existing case for processing.
II(a)	0.00	4.2 (palms)	0.00	0.0041	0.0041	3(3)/10,000	Hypothetical case to show palm exposure.
(b)	0.00	2.1 (palms)	0.00	0.0021	0.0021	1(2)/10,000	Hypothetical case to show palm exposure.
III(a)	0.01(1)	0.03 (upper body)	0.00036	0.00087	0.0012	8(9)/100,000	Regulatory alternative considered.
(b)	0.001(12)	0.003 (upper body)	0.000036	0.000087	0.00012	[1]7(9)/M	Regulatory alternative considered.
(c)	0.0001(.012)	0.0003 (upper body)	0.0000036	0.0000087	0.000012	7(9)/10M	Regulatory alternative considered.
(d)	0.16 (20)	0.6 (upper body)	0.0072	0.0175	0.025	2(2)/1000	Regulatory alternative considered.
(e)	0.1 (10)	0.3 (upper body)	0.0036	0.00875	0.012	8(9)/10,000	Regulatory alternative adopted.

[1] M designates 1,000,000.

OSHA reviewed the toxicological and epidemiological literature and the record evidence on MDA described in the Health Effects section. The record, as summarized herein, shows that MDA exposure is associated with a number of adverse health effects. The NTP study indicates that MDA is carcinogenic in both rats and mice (ex. 1–36). The study appears to have been conducted in accordance with good laboratory practices and is adequate for use as the basis for quantitative risk assessment. The Oak Ridge National Laboratories data also support the findings that MDA is a carcinogen in test animals (52 FR 26782). The ability of MDA to induce tumors in animals, evidence that MDA induces cancer in humans, and data indicating that MDA interacts with genetic material lead to the conclusion that this chemical is an animal carcinogen and is probably carcinogenic to humans.

In animals, MDA has also been associated with genotoxicity, retinopathy, allergic dermatitis, and hepatotoxicity. In addition, human studies strongly indicate that MDA causes a characteristic acute toxic hepatitis.

The quantitative risk assessment, which is used to estimate risk in humans is based on animal studies by NTP. This correlation is achieved by reliance upon generally accepted health policies, which indicate that carcinogenicity demonstrated by a chemical in mammalian species is sufficient to conclude that carcinogenicity is possible to humans. The fit of the experimental cancer data to the model used in making the extrapolations is good and the risk assumptions are reasonable. Therefore, the resulting assessment appears appropriate.

Currently, there is no OSHA standard regulating occupational exposure to MDA. The estimates of occupational risk resulting from inhalation and dermal contact with MDA were made from data (approximately 1983) collected by NIOSH, EPA, and CMA which indicate that current ambient exposures are in the range of 50 to 70 ppb (scenarios I(a) and I(b) of table I). The estimates of lifetime risk resulting from these ambient exposures together with dermal deposition were approximately 6–30 per 1000. OSHA concludes that the exposure data and the data used to make risk predictions are appropriate and finds that occupational exposure to MDA constitutes a significant risk of harm to workers. These findings are consistent with OSHA determinations from other rulemakings such as: Ethylene Oxide (April 21, 1983; 48 FR 17284, 17295); Benzene (September 11, 1987; 52 FR 34460, 34497); and Formaldehyde (December 4, 1987; 52 FR 46168, 46223). Those estimates per 1000 employees for a working life-time exposure were 63–109 excess cancer deaths from ethylene oxide; 95 excess leukemia deaths from benzene; and .4–18 excess cancer deaths from formaldehyde, based on the PEL's which applied prior to the completion of new lower standards.

In evaluating significant risk a framework is provided by an examination of occupational risk rates and legislative intent. For example, in the high risk occupations of fire fighting and mining and quarrying the average risk of death from an occupational injury or an acute occupationally related illness from a lifetime of employment (45 years) is 27.45 and 20.16 per 1,000 employees respectively. Typical lifetime occupational risks of death in occupations of moderate risk are 2.7 per 1,000 for all manufacturing and 1.62 per 1,000 for all service employment. Typical lifetime occupational risks of death in occupations of relatively low risk are 0.48 per 1,000 in electric equipment and 0.07 per 1,000 in retail clothing. These rates are derived from 1979 and 1980 Bureau of Labor Statistics data from employers with 11 or more employees adjusted to 45 years of employment for 46 weeks per year.

In light of the above, OSHA concludes that the estimates of risk associated with occupational exposure to MDA (6 to 30 per 1000) fit well within the range of other risks which OSHA has previously concluded are significant. These estimates are higher than risks of fatality in occupations of average risk, and are substantially higher than the examples presented by the Supreme Court (*IUD* v. *API, Id.*).

OSHA finds that the implementation of the final standards will substantially reduce the risks associated with occupational exposure to MDA. OSHA estimates that the risks associated with the PEL of 10 ppb in conjunction with other provisions of the standard will be reduced to less than 0.8 excess cancer deaths per 1000 workers exposed over a working life-time (See table 1, scenario III(e)). This represents an 87 to 98 percent reduction in risk. OSHA considers such a reduction to be substantial. Although OSHA is not able to quantify the reduction in the incidence of other diseases that would occur with the implementation of the standard, OSHA finds that these would also be reduced.

OSHA believes that the presence of the additional provisions in the MDA standards act together to reduce the risks associated with occupational exposure to MDA. Provisions, such as annual training, medical surveillance, hazard communication, emergency plans, housekeeping, and exposure monitoring, work together in an inextricable manner to provide additional protection to workers both from cancer and from other toxic effects (52 FR 46234).

No evidence was provided as a result of the issuance of the NPRM which would cause OSHA to change any of the risk assessment analyses or conclusions. A more complete discussion of the significant risk of occupational exposure to MDA can be found in the NPRM (54 FR 20672, May 12, 1989) and the Committee's Recommendations (52 FR 26776, July 16, 1987).

VIII. Summary of the Regulatory Impact Analysis and Regulatory Flexibility Analysis

General Industry

OSHA examined the following three regulatory alternatives in the analysis: (1) a 20 ppb (0.160 mg/m ^{3}) PEL with a 10 ppb action level, (2) a 10 ppb (0.08 mg/m ^{3}) PEL with a 5 ppb action level, and (3) a 1 ppb (0.008 mg/m ^{3}) PEL with a 0.5 ppb action level. The technological feasibility of implementing a STEL was assumed to be feasible for any of the TWA/PEL alternatives examined, in that the same controls needed to reduce the TWA would also assure that the STEL is met. OSHA's findings are as follows:

- It is technologically feasible for industry to comply with a 10 ppb PEL by installing some readily available engineering controls and incorporating some new work practices. Although it may also be feasible for some industry sectors to achieve 1 ppb as an exposure level, that level is not feasible for major sectors of industry.
- Lowering the PEL from the present levels to 10 ppb, in conjunction with other provisions of the standard, would result in annualized compliance costs of approximately $10 million and save an estimated 1.8 to 18 production workers lives per year of exposure. In addition, compliance with the new standard will cost an estimated $ 0.7 million and save an estimated 0.5 maintenance workers' lives per year of exposure.
- The standard is economically feasible for the sectors studied and will not significantly affect either the competitive structure or the long-term profitability of these sectors.
- The standard is economically feasible and will not result in significant

or differential impacts on small business establishments covered under the scope of the standard.

• There are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with MDA exposure. A summary of the benefits and costs estimated by the Committee for the recommended PEL of 10 ppb and two other alternative PELs (20 ppb and 1 ppb) is provided in exhibit 12, OSHA's PRIA.

a. Industry and Exposure Profiles

There are eleven principal industry sectors (maintenance workers for each sector have been separately identified for purposes of analysis) where workers are potentially exposed to MDA. These sectors are: (1) MDA Production for MDI Synthesis/MDA Sale and Import; (2) Reprocessing; (3) Filament Winding; (4) Potting and Encapsulation; (5) Molding/Bonding of Tools and Specialty Small Parts; (6) Wire Coating; (7) Coatings; (8) Intermediate for TGMDA and PACM-20 Production; (9) Polyurethane Curing; (10) Advanced Composite Materials Production; and (11) use of PMR-15 Prepreg Materials. Further, there are also seven other industrial sectors where MDA was once used and may still be rarely found. These minor sectors are: (1) Coatings (Polybismalimides) of Printed Circuit Boards and Fabrication of Airplanes Parts; (2) Dyes and Pigments; (3) Quiana Yarn; (4) Intermediate for Pharmaceuticals, Herbicides, etc.; (5) Rubber Processing; (6) Anti-Oxidants; and (7) Ketamine Production.

OSHA also finds that MDA is made primarily to serve as an intermediate in the production of methylenediphenylisocyanate (MDI) and MDI is used in a wide variety of products. However, one to two percent of all MDA produced is sold for uses such as epoxy or polyurethane curing, or production of polyamides. In addition, some MDA is imported and used to produce a crude MDI known as PAPI or used for other non-MDI uses such as tetraglycidyl methylenedianiline (TDGMA) or PMR-15 manufacture. Occupational exposure to MDA occurs in the Construction and Maritime industries, as well.

OSHA also finds that there are six firms which produce MDA for MDI production, MDA for sale, or which import MDA. MDA is manufactured by six companies at seven locations in four states. Dow Chemical Co. (LaPorte, Texas); BASF (Geismar, LA); E.I. Dupont (Belle, WV); Mobay Chemical (New Martinsville, WV and Baytown, TX); Rubicon Chemical (Geismar, LA); and Uniroyal Chemicals division of Avery (Naugtuck, CT). Three of these companies, Mobay, Rubicon, and Dow, account for over 90% of the MDA production. Further, OSHA estimates that approximately 600 million pounds of MDA are produced for MDI conversion, 4,474,000 are produced domestically for sale, and an additional 1.8 million pounds are imported. In addition, it is estimated that the percentage of MDA in the product made domestically ranges from 40-70%, while the percentage in the imported product is approximately 96%.

Uses of MDI are far reaching and include areas of construction, refrigeration, transportation, tank and pipe insulation, packaging, casting systems for solid products, and systems for microcellular products. Consumer products include polyurethane foams (rigid, and flexible), elastomers, coatings, thermoplastic resins, foundry core binders, adhesives and sealants, and spandex fibers. Thus, because MDA is the reactant chemical in the production of MDI, the significance of and the need for MDA depends upon the need to produce MDI. However, since there are so many products containing MDI and the extent of MDI use is increasing, it can be assumed that MDA use will also continue to increase. In addition, the non-MDI uses of MDA (2% of total MDA consumption) are also expected to increase as product demand in the areas of nuclear energy, weapons manufacture, and space exploration increases.

OSHA estimated that the number of exposed production workers is 3,836 in the eleven principal industry sectors and an additional 169 maintenance workers are also exposed in these sectors. The average weighted exposure levels ranged from 1 ppb in PMR-15 use to 19 ppb in Filament Winding. For maintenance workers the estimated average exposure level is 250 ppb. The average days of MDA exposure per year ranged from 47 for Advanced Composite Manufacture to 250 for Production and some of the other sectors.

b. Benefit Analysis

The major benefit of the standard would be a reduction in the occurrence of occupational illnesses. Some aspects of these benefits can be quantified, such as the reduced risk of cancer due to direct exposure to MDA. The number of cancer deaths that may be prevented because of the MDA regulation is based on the model for quantitative assessment of the risk of cancer deaths resulting from occupational exposure to MDA in conjunction with the estimates of the number of workers exposed to MDA levels in various operations. The model and the exposure estimates are generally based on "realistic worst-case" assumptions; yet, in some respects, the use of the model also tends to underestimate the true benefits of the final regulation, because the only benefits quantified in the analysis are those resulting from a reduced incidence of cancer. They do not include an estimate of the reduction in the incidence of other adverse health effects potentially associated with MDA exposure such as liver disease or dermatitis. Because of data limitations, OSHA could not quantify these additional benefits. OSHA's benefit analysis reflects the estimated number of lives saved that will occur when the standards are implemented. OSHA used risk estimates to determine benefits. OSHA is cognizant of the fact that many regulatory agencies, such as EPA, recommend using the surface area scaling factor because application of this factor makes the correlation between dose in animal and dose in man more precise. The application of the surface area scaling factor increases the benefits by one order of magnitude.

OSHA estimates, using "realistic worst case" assumptions, that implementing a 10 ppb PEL and the associated duty provisions may result in 2.3 cancer deaths averted per year of exposure. In addition, if the surface area scaling factor is applied, OSHA estimates that 23 cancer deaths per year could be averted.

c. Technological Feasibility

OSHA has determined that the final standard is technologically feasible. The methods that can be used to reduce employee exposure to MDA include conventional technologies such as general and local exhaust ventilation, pneumatic feed systems, glove boxes, and work practices. Such technologies are commonly known and currently used in the affected industries. In addition, provisions of the standard that are not related to the PEL, such as medical surveillance and training, are judged to be feasible.

d. Costs of Compliance

OSHA made estimates of the compliance costs that would be incurred by employers in the eleven principal industry sectors which handle MDA and would be primarily affected by the standard. Because there are industry-specific differences in exposure characteristics and equipment usage, cost estimates for each sector were developed separately.

A baseline of current industry practice was identified for each sector. This baseline was derived from information on current production methods, exposure levels, and hazard control techniques. The costs of the controls which would be needed to achieve each successively lower PEL were then estimated based on the assumption that new controls could be added to those controls already in place.

It should be noted that the lower the target PELs, the higher the uncertainty associated with estimates of the effectiveness of control technology and housekeeping practices and their related costs. OSHA is confident that a 10 ppb PEL can generally be reached and maintained on an 8-hour TWA basis but is unsure that all industry sectors could generally achieve a 1 ppb PEL.

OSHA has estimated the total annualized compliance cost (for production workers) as $10 million for the 10 ppb permissible exposure limit. The major component of the estimated costs for production workers are the costs of hygiene facilities and practices, which constitute approximately 50% of the total estimated costs for the 10 ppb PEL. The second major element of cost is for protective clothing and equipment, which is approximately 30% of the total cost of compliance of achieving the 10 ppb PEL. Housekeeping costs constitute approximately 10% of the total estimated costs. The estimated costs of engineering controls constitute only a small percentage (4%) of the total estimated annualized costs of compliance for production workers.

e. Economic Feasibility Analysis

The overall conclusions reached by OSHA regarding economic impact assessment are: (1) Most, if not all, of the affected industries ought to be able to pass the regulation's costs through to product purchasers (because of market and other considerations described below); (2) any price increases required are not likely to be very large, relative to the pre-regulation prices of the products; and (3) to the extent that prices of products do not rise (so that pass-through of these regulatory costs to product purchasers does not occur), the regulatory costs are not large relative to the other production costs and the net income of the companies examined. Consequently, OSHA has concluded that the final regulations will not pose a substantial burden to the affected industries, their employees, or consumers of their products.

Hence, OSHA's conclusion is that it is economically feasible for the eleven principal industry sectors to comply with the provisions of the MDA standard and that none of the sectors studied by OSHA would experience significant economic impacts.

f. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 stat. 1164 [5 U.S.C. 601 *et seq.*], OSHA has given special consideration to the mitigation of the economic impacts of the final standard on small entities. OSHA does not anticipate that the standard would adversely affect small entities.

In developing a standard for occupational exposure to MDA, OSHA carefully considered size factors such as number of employees, total assets, and gross revenues to ensure that the final standard would minimize the impact on small firms while continuing to protect workers. Furthermore, OSHA determined in the economic feasibility analysis that most, if not all, of the affected industries would be able to pass the regulatory costs through to product purchasers reasonably rapidly. Thus, most of the affected firms probably will not have to bear all of the compliance costs for these regulations.

Finally, OSHA examined the financial conditions of a sample of firms affected by the regulations and determined that even if these firms were to bear the compliance costs of the regulations, these would not impose substantial burdens for these firms. Therefore, OSHA concluded that the regulation will not significantly affect small entities.

g. Assessment of Nonregulatory Alternatives

OSHA believes that there are no nonregulatory alternatives that would adequately protect most workers from the adverse health effects associated with MDA exposure. The tort liability and Workers' Compensation systems do not provide adequate worker protection due to their unpredictability and inconsistency from state to state. Other government regulations do not provide adequate worker protection due to their limited scope. OSHA does not have a current workplace standard for occupational exposure to MDA; thus, no regulatory protection is currently being provided [Note: many employers offer voluntary protection e.g. personal protective equipment, showers, change rooms, etc.].

Summary. In the NPRM OSHA discussed the economic and technological feasibility of implementing the proposed standard for occupational exposure to MDA. OSHA found that the 10 ppb PEL the 100 ppb STEL, and the accompanying standard provisions will substantially reduce the risk to worker health; and that the standard is feasible. OSHA's findings regarding the economic and technological feasibility of implementing the proposed standard were not challenged. In light of the above, OSHA concludes that this final standard is feasible.

Construction Industry

OSHA examined the following three regulatory alternatives in the analysis: (1) A 20 ppb (0.160 mg/m ^{3}) PEL with a 10 ppb action level, (2) a 10 ppb (0.08 mg/m ^{3}) PEL with a 5 ppb action level, and (3) a 1 ppb (0.008 mg/m ^{3}) PEL with a 0.5 ppb action level. Implementing a STEL was assumed to be technologically feasible for any of the TWA/PEL alternatives examined because the controls needed to reduce the TWA would also assure that the STEL is met. OSHA's findings are as follows:

- It is technologically feasible for the construction industry to comply with a 10 ppb PEL by installing some readily available engineering controls and incorporating some new work practices. Although it may also be feasible for some construction applications to achieve lower limits, this is greatly dependent upon the technique for application. The method for achieving the PEL is dependent on the method of application. If roll-on application is being used, it is easier to reduce exposures below the required PELs through use of very limited technology. On the other hand, when application is through spray technique it may be that a respirator, in addition to engineering controls and workpractices, would be necessary to achieve compliance with the PEL. Use of a respirator, because the type required for spray application is the most effective, would result in exposures below the required PEL.
- Lowering the PEL from the present exposure levels in the workplace to 10 ppb, in conjunction with other provisions of the standard, would result in annualized compliance costs of approximately $355,428/year.
- The standard is economically feasible for the construction industry and will not significantly affect either the competitive structure or the long-term profitability of these sectors.
- The standard is economically feasible and will not result in significant or differential impacts on small business establishments covered under the scope of the standard.
- There are no nonregulatory alternatives that adequately protect most workers from the adverse health effects associated with MDA exposure. A summary of the benefits and costs estimated for the PEL of 10 ppb and two

other alternative PELs (20 ppb and 1 ppb) is provided in exhibit 12, OSHA's PRIA. The remainder of this discussion summarizes the analyses upon which these findings are based.

a. Industry Profile

For the purposes of estimating costs, risks, and benefits, OSHA made a number of reasonable assumptions in order to estimate the number of potentially exposed employees. These assumptions are based on the amount of MDA which reportedly goes into paints and coatings, the rate (lbs/hr) of paint application under spray and roll-on conditions, and the average hours of work of a typical painter. Assuming that 200,000 lbs of MDA are used yearly in coatings [1], and that it constitutes 20% by weight of the final product, OSHA estimated that one million pounds of MDA-containing coatings are applied each year. Estimates provided to OSHA by the International Brotherhood of Painters and Allied Trades suggest that the average application rate of spray methods is 20 lbs/hr, while that for the roll-on methods is 30 lbs/hr. OSHA combined these estimates with the assumption that a typical painter spends only four hours/day painting [2], with the rest of the time taken up by preparation, set-up and clean-up of work areas. OSHA assumed, in the absence of any available data, that a typical painter would spend only 10% of his work time (25 days) each year using MDA-containing coatings [3]. The result of these assumptions is that a typical painter would spend some 100 hours/year applying MDA coatings.

For spray applications, each painter would thus apply 2000 lbs/yr; and for roll-on application, 3000 lbs/yr [4]. Since an estimated 400,000 lbs of MDA paint are consumed each year in spray operations and 600,000 lbs in roll-on operations, the sum of these assumptions yields an estimate of 200 potentially exposed workers (400,000 lbs/yr divided by 2000 lbs/worker year) in spray operations and 200 workers (600,000 lbs/year divided by 3000 lbs/worker-year) in roll-on applications. These estimates are obviously tenuous, but OSHA considers them the best available evidence and a reasonable basis to estimate costs, risks, and benefits. OSHA believes that both spray and roll-on application methods entail risk of airborne and dermal exposure. Spray applications, in the view of OSHA, are especially likely to pose potentially serious hazards. In addition, OSHA is aware of two reported cases involving acute hepatitis after application of MDA-containing coating products, and sources in the scientific literature and at least one trade union have reported that skin problems are common among painters using epoxy paints (52 FR 26847). The latter reports confirm the common occurrence of dermal exposures, and thus the potential for skin absorption of MDA.

For the purpose of risk estimation in spray operations, OSHA assumed that TWA airborne levels of exposure to MDA could reasonably be estimated to be similar to those experienced by maintenance workers, 250 ppb (2 mg/m ^{3}) [5]. Dermal exposure levels were also assumed to be 0.50 mg/cm ^{2}-hr for the palms and 0.00134 mg/cm ^{2}-hr for the forearms and upper body. These are twice that expected for maintenance workers. OSHA believes that the spray applications presented twice the potential for skin deposition and absorption as would be expected for maintenance workers. For manual roll-on applications, it is reasonable to assume lower levels of both airborne and dermal exposures. OSHA estimated that airborne and dermal exposures would be comparable to those estimated for the polyurethane curing sector, or 0.160 mg/m ^{3} (airborne), 0.25 mg/cm ^{2}-hr for the palms, and 0.00067 mg/cm ^{2}-hr for the forearms and upper body.

OSHA has estimated that 400 workers are exposed to MDA-containing paints and coatings, 200 in spray applications and 200 in roll-on applications. Based on the limited data available, an average of 6 painters per employer or firm was assumed. The total number of potentially affected firms would thus be approximately 66 (400 workers/6 workers per firm). Spray applications were assumed to entail higher exposure, both airborne and dermal, than roll-on applications. Data describing exposure levels, number of employers, or number of employees were not available to OSHA, so that the exposure profiles were constructed with the use of reasonable assumptions.

b. Benefits

In this section, OSHA estimated the potential benefits (in terms of deaths avoided) accruing as a result of its standard for the Construction Industry. The analysis of this section demonstrates that as a result of the standard approximately .042 painters applying MDA containing coatings through spray applications and .019 painters applying MDA containing coatings through roll-on applications will be saved for every year of reduced exposure by establishing a permissible exposure limit of 10 ppb and by establishing requirements to limit dermal exposure to MDA. A significant proportion of the estimated lives saved are the result of the reduction in dermal exposure, whereas the reduction in airborne exposure levels makes a much smaller contribution to the reduction in risk.

While OSHA was able to estimate the benefits from reducing the risks due to occupational cancer, it was unable to quantify the effects that the standard's provisions would have on reducing other occupational risks resulting from MDA exposure (e.g., reduced incidence of dermatitis, liver toxicity, etc.).

c. Technological Feasibility

This section assesses the technological feasibility of achieving the alternative levels. OSHA has reviewed the technological feasibility and believes that while it may be feasible and necessary in some instances to use local or general exhaust ventilation to reduce exposures, these controls alone will not provide adequate protection for painters (applying coatings through spray application). These controls in conjunction with the use of respiratory protection will be necessary to ensure that workers applying paints through a spray technique are adequately protected. In many instances, OSHA believes that it will not be feasible to use local or general exhaust ventilation, and in these cases only respiratory protection will be used. OSHA recognizes that many coating applications in the Construction Industry will be to concrete structures,

[1] ICF, Inc. provided this estimate for OSHA in its preliminary technological and economic analysis. Thus the Committee made use of the 200,000 lbs. per year figure in its computations. The International Brotherhood of Painters and Allied Trades provided the estimates that the paint was composed of 20% MDA and 80% other products. (ex. 9)

[2] The number of hours per day engaged in painting operations was furnished by Research Triangle Institute in a document prepared for OSHA in 1980 entitled "Economic Impact Statement for Abrasive Blasting." (ex. 9)

[3] Estimated from discussions with representatives of the International Brotherhood of Painters and Allied Trades. Since approximately 1 million pounds of this are MDA coatings, the Committee conservatively estimated that MDA containing coatings are approximately 10% of the applied coatings and should require 10% of the workers time to be applied. (ex. 9)

[4] The estimate of 2000 lbs/yr for spray painters and 3000 lbs/yr for roll-on application came from the discussions with the International Brotherhood of Painters representative. (ex. 9)

[5] Support for OSHA's assumptions is provided in a spray painting evaluation by NIOSH which found that paint mist concentrations ranged from 2.0–43.3 mg/m. Assuming 20% MDA by weight, then the mist would range from 0.4–8.7 mg/m ^{3} respirable MDA.

pipes, flooring, etc. These surfaces may be located inside or outside of buildings but are usually outdoors. It is oftentimes difficult to use traditional control technologies in these instances. However, OSHA acknowledges that some of these construction activities may be conducted inside of facilities or perhaps in confined spaces (e.g., tanks, pipes). In these instances, OSHA expects that employers will provide the usual and necessary engineering controls in addition to the necessary respiratory protection. OSHA also recognizes that the use of engineering controls in these instances is mandated by existing OSHA regulations (e.g. confined spaces, spray painting).

For purposes of feasibility, OSHA believes that compliance will be achieved primarily through the use of the appropriate respiratory equipment and not through the use of engineering controls. OSHA makes these conclusions based on its findings that in the construction sector MDA appears to be used exclusively in coating application. No other use was identified. While workers applying coatings through roll-on techniques were not expected to need respirators, those engaged in spray application would be required to use a respirator.

Based on the analysis discussed above, the following determination of feasibility in these sectors was reached by OSHA:

- It is technologically feasible for the painters applying MDA-containing coatings to achieve compliance with a PEL of 10 ppb or less through the use of the appropriate engineering controls and workpractices along with the use of respiratory protective equipment for spray operations.
- It is also considered feasible to limit dermal exposure by the use of appropriate personal protective equipment and clothing, and through other means as required under the final standard.

d. Costs of Compliance

This discussion presents estimates of the compliance costs that would be incurred by employers in the Construction Industry subsequent to the promulgation of a PEL of 10 parts per billion (0.08 mg/m³), with an action level of 5 parts per billion. The cost to achieve this PEL would be the result of the use of personal protective equipment, hygiene measures, education, and other measures. The costs of engineering controls are not included in the analysis, since such controls would only occasionally be implemented. The total estimated cost of compliance is $355,428/year for the entire sector to achieve compliance with any of the PELs whether it be 1, 10, or 20 ppb.

e. Economic Feasibility and Regulatory Flexibility Analysis

In accordance with Executive Order No. 12991 (46 FR 13193, February 19, 1981), OSHA has assessed the potential economic impacts of the MDA standard. The final determination is that the regulatory requirement limiting MDA exposure in the workplace, including PEL levels reduced to 10 ppb, will not result in significant adverse economic impact on any of the industry sectors for which detailed financial and compliance data are available.

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 stat. 1164 (5 U.S.C. 601 *et seq.*)), consideration has been given to the mitigation of the economic impacts of the final standard on small entities. Based on the available data, it is not anticipated that the final standard would significantly affect a substantial number of small entities.

The final standard limiting exposure to MDA in the construction industry affects workers in approximately 66 firms. OSHA conducted an assessment of the economic impact on these 66 firms and has determined that it is minimal based on the nature of the applications involved and the probability that these compliance costs will be passed through to the purchasers of their services. The supporting analysis for this finding is presented below, and is based on the same methodology for determining economic impacts used to assess the impact of the proposed regulations on the producers and primary users of MDA.

The annualized compliance costs faced by the affected construction firms will be approximately $5,450. Several factors suggest that these costs will be passed through to the purchasers of the services of these construction firms. First, the purchasers of these firms' services are large firms and government entities managing large projects (e.g., chemical plants, reactors, and defense-related activities). As such, the incremental costs associated with limiting worker exposure to MDA are likely to be extremely small relative to the economic size of these projects. Second, in many cases, contractual and engineering specifications may require that the MDA-related products be used for their desirable physical properties. In these cases, the incremental compliance cost will certainly be passed through to these purchasers. Given these considerations, it is likely that these compliance costs will be fully passed through in a relatively short period of time.

If these compliance costs are passed through to purchasers of these firms' services, the increase in the price of these services is likely to be extremely small. The annual compliance costs per firm are quite low, and constitute a small portion of each firm's total operating cost. Thus the compliance costs of several thousand dollars per year are unlikely to result in price increases leading to contractor failures or employment contractions.

Finally, if the compliance costs are not passed through to the purchasers of the services of these affected firms, given the size of the incremental costs, it is highly unlikely that these costs would pose a significant burden to the firms involved. Relative to the workers' salaries and other costs of construction activities affected by the regulations, the incremental compliance costs of $5,450 per firm are extremely small.

Based on these considerations OSHA concludes that the final standard will not cause significant economic impacts to the affected construction firms because the compliance costs are small relative to the economic size of the affected firms and the activities into which these construction services are inputs.

Summary. OSHA has reviewed the economic and technological feasibility of implementing the final standard for occupational exposure to MDA in the construction industry. OSHA finds that the 10 ppb PEL, the 100 ppb STEL, and the accompanying standard provisions will substantially reduce the risk to worker health, and it is feasible. OSHA's findings regarding the economic and technological feasibility of implementing the proposed standard were not challenged. In light of the above, OSHA concludes that this final standard is feasible.

IX. Summary and Explanation of the Standard for General Industry

Paragraph (a). Scope and Application

(a)(1) OSHA's final standard applies to all "occupational exposures" to MDA with the specific exceptions set forth in the scope and application section and would apply to all workplaces in all industries, except for construction, where MDA is produced, released, stored, handled, used, or transported, and over which OSHA has jurisdiction.

OSHA developed a separate standard for the construction industry, § 1926.60. The two standards, general industry and construction, do, however, cover all industries covered by the Act. The general industry standard covers all activities and operations including ship

repair and rebuilding, manufacturing, secondary processing, and downstream use of MDA. Employees of the Construction Industry are covered by the construction standard. Construction activities are defined in 29 CFR 1910.12(b) as work for construction, alteration and/or repair, including painting and decorating.

As noted above, ship repair and shipbreaking activities are covered by the general industry standard. OSHA believes the provisions of the general industry standard are appropriate for the operations involving MDA which will occur on ships. (See the new 29 CFR 1910.19(i) that is promulgated below.)

(a)(2) This paragraph contains exclusions for workplaces that process, handle, or use products containing MDA where initial monitoring data show that the product cannot release MDA at or above the action level and where no "dermal exposure to MDA" can occur (see discussion under Paragraph (b), Definitions, as to what constitutes "dermal exposure to MDA"). The criterion for exemption under paragraph (a)(2) requires monitoring data that show that the material is incapable of releasing airborne MDA at or above the action level under the expected conditions of processing, handling or use. The material also must not be a material that results in "dermal exposure to MDA," as defined. Paragraphs (a)(8) and (e)(5) are exceptions to this exemption. Since the exemption is based on initial monitoring, paragraph (a)(8) requires that these monitoring records be maintained. Similarly, paragraph (e)(5) requires additional monitoring when changes occur that might affect employee exposure.

This exemption and the underlying rationale for this exemption were adopted by OSHA from the Mediated Rulemaking Committee's recommendations (exhibit 9). During the Committee's deliberations, various situations were discussed pertaining to this exemption which the Committee believed should be excluded from the requirements of any final regulations. For example, MDA based epoxy resins are often shelved in hardware stores. Unless the containers are broken, these resins pose no hazard for employees stocking shelves etc. In this situation, it is clear that handling these materials does not result in exposures above the action level nor will dermal contact with the MDA material occur. A second example involved the mechanical transportation of MDA through an automated piping system. Unless the pipe ruptures, the Committee believed that it was not possible for employees to be exposed to MDA transported in this manner. Thus dermal exposure was not expected. Therefore, the Committee believed that this type of situation should also be excluded from the standard.

In both of the examples described above, the Committee only addressed worker exposure which resulted from either ambient exposure above the action level or the potential for dermal exposure to non-airborne forms of MDA. Consideration was not given to any dermal exposure which might result from ambient exposure and subsequent "fall out" (airborne particles or vapors settling on the skin). It was the Committee's belief that dermal absorption hazards resulting from this "fall out" of airborne MDA had already been adequately addressed by establishing very low permissible exposure limits and action level. OSHA fully concurs with the Committee on these points. The exemption, under paragraph (a)(2), therefore, is available when two conditions exists, i.e. exposure above the action level does not occur and "dermal exposure to MDA," as defined, is not possible.

(a)(3) This paragraph allows the employer to rely on objective data as the basis for an exemption when the data indicate that MDA is not capable of being released ambiently and where no "dermal exposure to MDA" can occur. OSHA believes that the primary and intermediate users will be in the best position to test their products and to supply the necessary objective data. The final standard would not require downstream employers to generate their own objective data on the MDA levels likely to be released from a product if they can obtain it from producers or other processors. There was no objection to the proposed allowance of the use of "objective data" as exemption criteria. Thus, the final standard contains this provision as specified in the proposed rule.

(a)(4) The final standard also exempts the storage, transportation, distribution, or sale of MDA in intact containers sealed in such a manner as to contain the MDA dusts, vapors, or liquids, except for the provisions of 29 CFR 1910.1200 as incorporated into this standard and the emergency provisions of this standard. Containers are covered by the Hazard Communication standard, 29 CFR 1910.1200 (52 FR 31852; Aug. 24, 1987), which requires, in conjunction with the MDA standard, labeling containers to indicate that they contain MDA (a suspect carcinogen), employee training specifying what to do if the container was opened or broken, and supplying material safety data sheets to users/employees.

The basis for this exemption is that sealed containers are unlikely on a regular basis to leak sufficient MDA to expose employees over the action level or pose a dermal exposure problem. The labeling and training provisions of the Hazard Communication standard provide sufficient protection in those situations where a container breaks so that employees will know how to handle and clean up a spill safely. The intention of this exemption is to cover most warehouses, distributors, supply rooms, and similar operations where chemical containers are stored, transported, or sold, and not normally opened. However, operations where the containers are opened and the contents used or tested would be covered by the standard because of the possibility of exposure in excess of the action level or dermal exposure.

Other than the concerns over the omission of the 0.1% exclusion, there was no comment on this paragraph. The 0.1% exclusion is addressed in relation to paragraph (a)(6) and that discussion applies to this paragraph as well.

(a)(5) This paragraph contains provisions establishing a separate standard for construction and excluding construction activities from the scope of the general industry standard.

(a)(6) This paragraph was not contained in the NPRM. It establishes a *de minimis* exclusion for MDA mixtures or materials which contain MDA in concentrations of less than 0.1% by weight or volume. OSHA implicitly incorporated a *de minimis* exclusion in its NPRM as recommended by the Committee. In OSHA's notice of hearing found at 55 FR 2101 (January 22, 1990), OSHA clearly states,

> The exclusion found in the proposed MDA rule, although not explicit, implicitly states that a 0.1% exclusion will be part of the MDA rule.

OSHA was guided in adopting this exclusion by the data furnished by the Mediated Rulemaking Committee. In the recommendations rendered by the Committee, data were provided which indicated that worker exposure to mixtures or materials of MDA containing less than 0.1% MDA did not create any hazards other than those expected from worker exposure beneath the action level (ex. 9). Additionally, the requirements found in 29 CFR 1910.1200 (d)(5) state,

> * * * that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or

greater which is considered to be a carcinogen . . .

Thus, having given consideration to both the Committee's recommendations and OSHA's Hazard Communication standard provisions, OSHA decided in the NPRM to be consistent with the Hazard Communication requirements. This exclusion was the basis for the majority of the concerns expressed by the commenters to the NPRM. As a result of these concerns OSHA, in its Federal Register notice of January 22, 1990, invited testimony on,

• • • the appropriateness of expressly establishing a 0.1% exclusion by weight or volume for all operations involving mixtures containing MDA from the proposed regulation. (Id.)

In addition, several commenters and hearing participants recommended a *de minimis* percentage exclusion of 0.1% be adopted, thus reflecting the Hazard Communication standard (Lockheed, Ex. 11–22; United Technologies, Ex. 11–23; Monsanto, Ex. 11–28; United States Air Force, Tr. II–5; etc). On the other hand, no data were furnished by any of the hearing participants or in the post-hearing comments which would suggest that establishing a 0.1% exclusion, as suggested in the hearing notice, would not be appropriate. Thus, OSHA has added to the scope and application section of both the general industry and the construction standards a paragraph adding this percentage exclusion.

(a)(7) The final standard contains an exemption for "finished articles containing MDA". (See discussion under Definitions)

(a)(8) This paragraph requires that the employer appropriately document the information which supports any exemption, and the employer must maintain a record of this information. There was no comment made to the provisions contained in this paragraph. The final standard contains this paragraph as originally proposed.

Paragraph (b). Definitions

Paragraph (b) of the final MDA standard for general industry defines a number of terms used in the standard. In some instances, the definitions are consistent with those found in other OSHA standards, e.g., "Director," "Assistant Secretary," and "Authorized person". However, certain other terms will be discussed to clarify their meanings in this standard.

Action Level

OSHA establishes an "action level" of one-half of the established TWA in the final standard. The purpose of the action level is to relieve the burden on employers by providing a cut-off point for required compliance activities under the standard.

The statistical basis for determining the action level is discussed in connection with several other OSHA health standards (see, for example, Acrylonitrile, 43 FR 4794). In brief, although all measurements on a given day may fall below the permissible exposure limit, some possibility exists that on unmeasured days the employee's actual exposure may exceed the permissible limit. Where exposure measurements are above one-half of the permissible exposure limit, i.e. the action level, the employer cannot reasonably be confident that the employee may not be overexposed. (Leidel, N.A. *et al.*, "Exposure Measurement Action Level and Occupational Environmental Variability." DHEW, PHS, DCD, NIOSH, DLCK (August 1975)). Therefore, requiring periodic employee exposure measurements to begin at the action level provides the employer with a reasonable degree of confidence in the results of the measurement program.

In the absence of a demonstrated safe level of exposure for a carcinogen, it is appropriate to begin some protective actions, for example monitoring provisions, shower requirements and medical surveillance, at one-half the PEL or, in the case of MDA, 5 parts per billion. Establishing an action level serves such a purpose, as well.

Emergency

The final standard includes a definition of an emergency. Emergency is defined to mean any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which results in an unexpected and potentially hazardous release of MDA. Sections of the final standard that include provisions to be met in case of emergencies include respiratory protection, medical surveillance, and employee information and training.

There was some comment on the NPRM regarding the definition of an emergency situation. Objectors argue that the courts have restricted the requirement for implementing an emergency plan to circumstances where the probability of harm is present rather than requiring emergency provisions be triggered by the potential for a hazardous release. They argue that the definition contained in the proposed rule, because of the over inclusive nature of the term "potential," requires that an emergency plan, including alarms, evacuation, and all other elements specified in § 1910.38, be implemented in situations which are questionably emergencies.

General Dynamics (ex. 11–9), on the other hand, reads the definition of emergency very narrowly to mean that only primary manufacturers need establish emergency programs.

OSHA reviewed all of the comments regarding the definition of an emergency and believes that the language recommended by the MDA Mediated Rulemaking Committee and proposed by OSHA in the NPRM is the appropriate language. OSHA acknowledges that every spill or leak does not constitute an emergency situation. The exposure to employees must be significant and pose a hazard. OSHA believes that this is a performance oriented provision relying on judgement and that it is not possible to specify detailed circumstances which constitute an emergency. Further, OSHA believes that the definition as proposed allows the employer sufficient flexibility in exercising judgement as to which situations constitute an emergency. In addition, the emergency provisions of this standard are consistent with similar provisions of other OSHA toxic substance standards (See for example, 29 CFR 1910.1003–.1016, 1910.1017(i), 1910.1045(i), and 1910.1047(h)).

Employers must provide emergency plans and employees must be trained to implement these plans. The definition is promulgated as proposed.

Employee Exposure

OSHA's final regulation also defines "employee exposure" to mean that exposure which would occur if the employee were not using a respirator or personal protective equipment. The employee's exposure measurements would be made without regard to any use of personal protective equipment. OSHA believes that exposure monitoring is not a single-purpose activity. It is necessary to know employee exposure levels without the use of respiratory protection or personal protective equipment to evaluate the effectiveness of engineering and work practice controls and to determine whether additional controls must be instituted. In addition, monitoring is necessary to determine which respirator, if any, must be used by the employee. This definition is consistent with OSHA's previous use of the term "employee exposure" in other health standards.

Finished Articles Containing MDA

The final standard exempts "finished articles containing MDA" from the regulation. A "finished article containing MDA" is defined as a manufactured

item: (i) Which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or part upon its shape or design during end use; and (iii) where applicable, is an item which is fully cured by virtue of having been subjected to the conditions (temperature, time) necessary to complete the desired chemical reaction.

As discussed below, OSHA is basing this action on testimony by rulemaking participants that end use articles, including cured articles, do not present a hazard with respect to exposure to MDA; on quantitative data evaluating the extent to which unreacted residual MDA remains on or within finished articles; and on experience gained by OSHA during development of its Hazard Communication standard (48 FR 53280).

The Air Force, in its testimony, recommended "* * * exempting finished articles from the standard, and the definition of 'finished article' should including fully cured products, that is, those that a user may only have to drill assembly holes or finish sand and this goes back to the hazard communication standard" (TR. 2–5). The Air Force further commented that:

> In our testimony we recommended finished articles be exempted from the MDA ruling [sic] and further recommended the definition of finished article included cured products. Our definition of a cured product is any item which has been subjected to the conditions [necessary] to complete the desired chemical reaction. The purpose of this definition is to exempt those composite parts which only require final machining (limited to debarring and final hole drilling) but not exempt prepreg materials which can be further cut and shaped to form a final product. (ex. 35).

Exemption for cured, MDA products was also supported by Dr. JoAnne Pigg, a technical health professional member of the OSHA Mediated Rulemaking Advisory Committee:

> I recommend that all cured materials utilizing MDA including adhesives, encapsulates, coatings, etc., in addition to composites, be exempted from requirements of the proposed standard. It is agreeable that finite, but undetectable levels of MDA can exist in those materials, but no health hazards from employee exposure exist. (ex. 20).

With respect to the question of why curing eliminates concern over MDA exposure, Brunswick testified that:

> During the curing process the MDA is cross linked chemically with the epoxy resin or polymerized with the polyamide resins. The cross linking results in a formation of a solid epoxy product. The raw components, MDA, epoxy resins and polyamide resins lose their identity in the process that is not reversible. The resulting mass of cured resin is considered to be a non-hazardous product as defined by the EPA (tr. 1–194).

The CMA pointed out that "* * * curing procedures and times and temperatures are all designed * * * to * * * [result in products that are] * * * essentially MDA-free," and "* * * if they are improperly cured * * * then they're not going to have the physical properties that the supplier was trying to impart to them." (tr. 1–205).

Sampling data submitted to the record substantiates the assertion that it is appropriate to exempt cured MDA materials from the standard. Data were submitted by Sandia National Laboratories (ex. 20B) on three cured materials: An epoxy containing 25% MDA, a polyurethane containing 10% MDA and a polyamide formulation containing 4% MDA. Wipe sampling performed on the products after full completion of the curing processes revealed no free or unreacted MDA at the detection method limits of 0.2 micrograms per hundred square centimeters. Sandia indicated that these materials were tested for unreacted surface MDA because "* * * when it's cured it certainly * * * would be physically bound inside but we wanted to make sure there was nothing on the outside * * *" (tr. 1–185).

In addition to surface sampling for MDA, Sandia analyzed dust generated from drilling of a finished cured circuit board derived from the polyamide formulation containing 4% MDA. Analyses revealed the dust to be free of MDA at the limit of detection of 2 ppb (tr. 1–182). Rhone-Poulene, Inc. testified that "* * * final products produced from our resins do not contain detectable MDA. For example, test efforts to detect free MDA in copper clad cured laminates to a detection level of 0.0001 percent had been unsuccessful." (tr. 1–134).

Finally, the Air Force cited data showing "* * * swipe samples averaging 0.4 micrograms per 100 centimeters squared used in an epoxy putty which air cures." (tr. 2–7). Although measurable surface MDA was detected on this material, the Air Force submitted calculations illustrating the relative degree of health hazard associated with such exposure. The Air Force estimated that a surface contamination of 2,400 micrograms per 100 square centimeters would be required in order to pose a health risk equivalent to that of the proposed 10 ppb airborne exposure. The Air Force asserted that it is unlikely that cured products would ever have surface contamination approaching this level. (ex. 35).

Based on comment and data in the record, such as that cited above, OSHA concludes that it is appropriate to exempt finished articles containing MDA, including cured products, from the requirements of the MDA standard. OSHA is convinced that finished articles do not present a health hazard to employees to the extent that it is necessary to regulate such hazards under the MDA standard. OSHA believes that the health benefits derived from compliance with this rule will best be served by obligating employers to focus resources on control of employee exposure to MDA forms and uses only in those instances where a health hazard exists.

The specific language in the definition of "finished articles containing MDA" is derived from two sources. Items (i) and (ii), discussed further below, are taken from the definition "article" in the Hazard Communication standard which defines items exempt from that rule. Item (iii) has been adopted from language recommended by the Air Force (ex. 35) for use in identifying what a cured product is (e.g. "* * * subjected to the conditions necessary to complete the desired chemical reaction.")

OSHA believes that the language in item (iii) is sufficiently explicit that employers know at what stage their products can be considered fully cured for the purposes of this regulation. The term "* * * subjected to the conditions * * *" clearly means that the article must experience its full curing time at the temperatures designed to effectuate the curing process. The article will be considered cured if the desired chemical reaction has been completed as a result of it having been subjected to the specified curing time(s) and temperature(s). Items (i) and (ii) under the definition are derived from OSHA's Hazard Communication standard, as was suggested during the rulemaking hearing (tr. 2–6). The Hazard Communication standard exempts any "article" which, defined in part, is a "* * * manufactured item: (i) which is formed to a specific shape or design during manufacture; [and] (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use." For example, pre-pregs, by their very design and application, would ordinarily not be exempted by the "Finished Article" criteria. (See ex. 11–24, ex. 19A, tr. 1–136.) The preamble to the Hazard Communication standard explains the rationale underlying this exemption as follows:

> Several commenters suggested that OSHA exempt "articles" from the scope of the standard. The purpose of this exemption is to

ensure that items which may contain hazardous chemicals, but in such a manner that employees won't be exposed to them, not be included in the hazard communication programs. Examples of such items would be nuts and bolts or tools. The exemption has been added to the final standard and a definition was added as well. It was further suggested that OSHA adopt the definition for "article" used by the Environmental Protection Agency (EPA) under the Toxic Substances Control Act (TSCA). OSHA found that the definition used by EPA was appropriate for this standard in part. The EPA definition in part is essentially as follows: "article" means a manufactured item: (i) which is formed to a specific shape or design during manufacture; and (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use. 48 FR 53280

For the same reasons cited under the Hazard Communication standard, parts (i) and (ii) of EPA's definition of "article" is being adopted by OSHA under the MDA standard.

Dermal Exposure to MDA

The final standard requires the employer to take certain protective actions where employees, engaged in the handling application or use of mixtures or materials containing MDA, are subject to dermal exposure to MDA. "Dermal exposure to MDA" can occur with any of the following non-airborne forms of MDA: (i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and (ii) materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume. In situations where employees handle, apply or use any MDA mixtures or materials as defined above, dermal exposure to MDA is considered to occur. The agency believes that correlating dermal exposure with handling, applying or using specific forms of MDA removes the confusion that has arisen from using such terms as "likelihood of dermal exposure." Simply put, dermal exposure to MDA is assumed to occur when employees handle, apply or use any MDA falling under the definition of "Dermal exposure to MDA." Where such exposure occurs employers must do the following: provide affected employees with appropriate protective equipment, as required under paragraph (i) of this section; establish regulated areas, as required under paragraph (f) of this section; establish hygiene practices and lunch areas, as required under paragraph (j) of this section; and implement a medical surveillance program for affected employees as required under paragraph (m) of this section.

OSHA believes that the protective measures prescribed under the paragraphs cited above are necessary in order to minimize the adverse health effects associated with dermal exposure to MDA. OSHA's risk assessment analyzed the risk associated with dermal exposure and found that a 20 fold increase in risk could be prevented by not allowing dermal contact with MDA. MDA is easily absorbed through the skin at the rate of 2 $\mu g/cm^2$ per hour. In addition, recent studies by El-hawari (ex. 1–251) indicate that the absorption of MDA peaks 5 hours after the end of the work shift and that 80% of the substance is cleared from the body within 24 hours of exposure. It is difficult to correlate the amount deposited on the skin with a biological indicator, such as the amount found in the urine, because of the characteristics of MDA absorption and elimination in humans. MDA easily enters the body through the skin. Once deposited on the skin absorption continues although the worker may have long since left the work place and the apparent exposure area. Once absorbed into the body the chemical is rapidly eliminated so that using a biological indicator, such as urine measurement, may not detect the apparent exposure. All in all, MDA can be considered a chemical with poor biological warning properties or biological indicators of exposure. The best protective measures which can be taken are to prevent skin contact and subsequent absorption by regulating the handling, applying or using of forms of MDA which can result in "dermal exposure to MDA." This will in turn reduce both the risk of cancer and the potential for hepatotoxicity.

Regulated Areas

Regulated areas are defined as areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling, application, or use of MDA that can result in "dermal exposure to MDA."

Definition of MDA

The final standard includes a definition of MDA. Included in the definition are the salts of MDA. The rationale for including the salts in the definition of MDA was not challenged in the response to the NPRM. Thus the compounds covered by the proposed definition remains the same in the final standard.

The NPRM definition contained an exclusion for finished products which is now part of the scope and application section of this final rule.

Paragraph (c). Permissible Exposure Limit (PEL)

The final standard will limit exposure to MDA by establishing a PEL of 10 ppb as an 8-hour TWA. In addition, OSHA believes that airborne exposure will be further reduced by establishing a STEL for airborne MDA exposures of 100 ppb determined in any 15-minute sampling period. (See discussions at 52 FR 26858 and 54 FR 20702). The requirements contained in the final standard are supported by OSHA's findings that occupational exposure to MDA under current occupational conditions poses a significant risk to the health of employees and that the final standard can achieve a substantial reduction in that risk. The permissible exposure limits proposed by OSHA have not been challenged by the rulemaking participants. Thus, the requirements in the final standard remain the same as proposed.

While the permissible exposure limits were not challenged, many of the commenters suggested a biological indicator as a permissible exposure limit. Specifically, the commenters recommend that OSHA adopt an acceptable level of MDA which can be detected in the urine as a permissible exposure limit. Additionally, they contend that the absence of any detectable level of MDA in the urine or a level below the established standard should be used to exclude an employer from coverage of the standard. This concept is similar to that of using the action level as a point below which compliance with specific provisions of the standard is not required. Dr. James Hathaway, the corporate medical director for Rhone-Poulenc Inc. states this position very precisely:

> OSHA (should) include in the standard an option for employers to demonstrate lack of likelihood of significant dermal exposure through biological monitoring. Consistent findings at the end of the shift, end of work week levels of MDA in the urine of less than 160 micrograms per liter should exempt employers from provisions of the standard, other than the ones that would relate to an accidental exposure where, you know, I think it's logical then that certain things would have to be done. (tr. I, 132)

Dr. Hathaway made this recommendation based on earlier calculations which he had made in which he estimates the 5 ppb action level could be comparable to MDA urine levels of 160 ug/l. Thus, since the exposures were nearly comparable, he suggests that the risks were also comparable. (tr. I, 117–133)

The Boeing Co. through the written comments of James Vinson also urged

that OSHA make use of biological monitoring as a means of exempting the employer from the requirements of the standard. He states:

> The regulation provides an exemption from the requirements where the likelihood of dermal exposure does not exist. It does not, however, provide a mechanism of determining the likelihood of dermal exposure. It is therefore proposed that OSHA require medical monitoring if the "no likelihood of dermal exposure" exemption is to be used. Urine MDA below 100 ppb, for example, would indicate no likelihood of dermal exposure and would allow an exemption from the requirements (ex. 14–7).

The use of urinary monitoring results to establish a biological PEL was considered by the Mediated Rulemaking Committee. The Committee's discussions were provided to OSHA as well as its recommendations (ex. 9). OSHA summarized the Committee's recommendations at 54 FR 20694 as follows:

> It is difficult to correlate the amount deposited on the skin with a biological indicator, such as the amount found in the urine. There are many confounding factors which lead to these findings. Firstly, through absorption rates it is apparent that MDA easily enters the body. Secondly, once deposited on the skin absorption continues although the worker may have long since left the work place and the apparent exposure area. Thirdly, once absorbed into the body the chemical is rapidly eliminated so that using a biological indicator, such as urine measurement, may not detect the apparent exposure. All in all MDA can be considered a chemical with poor biological warning properties or biological indicators of exposure.

During the hearings, the Chemical Manufacturer's Association pointed out that the sampling protocol for MDA urinary monitoring is not sufficiently developed at this time to demonstrate a correlation between levels of MDA or its metabolites in the urine and disease development. Furthermore, they contend that there is no correlation between amount of metabolite found in the urine and the total body burden which can be attributed to this form of exposure. (tr. II, 173)

OSHA believes that the recommendations made by the Committee and the testimony provided by CMA regarding the use of biological monitoring are sound and for these reasons is not including a biological PEL in the standard. OSHA, on the other hand, agrees with NIOSH that biological monitoring has some practical application in the standard setting process. NIOSH states at tr I, 25–28 that:

> In regard to biological monitoring, NIOSH recommends biological monitoring to assess the degree of protection offered by the use of recommended protective clothing and equipment, and to assess the effectiveness of other controls such as work practices * * * It may be noted that biological monitoring assesses exposure by all routes * * * dermal, inhalation and ingestion.

OSHA also recognizes that the recommendations made by NIOSH regarding the use of biological monitoring in the standard setting process are the same recommendations made by the Mediated Rulemaking Advisory Committee, i.e., biological monitoring can be effectively used to determine the effectiveness of personal protective clothing and equipment, engineering controls, or work practices. OSHA recognizes as did both these groups that if a positive urine sample is found and the worker is wearing personal protective equipment that some or all of the equipment is not operating effectively. The employer armed with this information can then attempt to determine the source of the exposure. Although OSHA does not require that the employer conduct biological monitoring to determine the effectiveness of engineering controls, work practices, or personal protective clothing or equipment, the employer can voluntarily use biological monitoring to supplement the safety and health program. OSHA will continue to review any technological developments regarding biological monitoring for MDA exposure. Additionally, OSHA will consider changes to the standard that involve the establishment of a biological PEL if evidence sufficient for regulatory purposes becomes available.

Paragraph (d). Emergency Situation

OSHA believes that the available health data suggest that elevated short-term exposure to MDA should be viewed with concern. OSHA believes that an unexpected high exposure must be viewed as an emergency situation. The final standard requires that a written plan be developed where there is a possibility of an emergency and that written procedures be developed for alerting employees in the event that an emergency occurs.

The standard provisions also include a requirement to alert employees other than those who have the potential to be directly exposed in an emergency situation. Such employees may be employees from neighboring work sites who may inadvertently approach the emergency site. They may also include employees from other work shifts or employees who may be later exposed to work surfaces or equipment contaminated as a result of the emergency.

OSHA also requires the development of a written plan for each workplace where there is a possibility of an emergency. The plan shall include the elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

OSHA believes that the performance language of the emergency situation paragraph will give employers the flexibility to choose any effective method of alerting employees, including communications systems, voice communication, or a bell or other alarm. OSHA believes that emergency plans are necessary and must be made a part of every standard.

In response to the NPRM, some of the commenters expressed concern with the difficulties expected from implementing the emergency provisions of the standard. United Technologies (ex.11–17) commented that emergency plans should only be required when there is a reasonable probability of MDA release in an emergency situation. They contend that the broadness of the term "possibility" makes every situation a potential emergency and thus becomes economically prohibitive. They commented that changing the term "possibility" to "probability" makes it easier to determine what is an emergency and when planning is required.

Many other commenters suggested that OSHA amend the requirement by changing the term "possibility" to "probability." The Brunswick Company states:

> "Possibility" is an open-ended term that is defined in a legal term as presenting unlimited liability. "Probability" limits the scope of the intent of the requirements for the need to develop emergency plans to define parameters. The ideal legal terminology would be to include "reasonable probability" in the wording of the regulation to specify the development of an emergency plan which requires alarms and evacuation plans.(ex. 15–4)

The basis for their contentions is that in small operations, such as those conducted by the Brunswick Company, the use of a full-scale emergency plan does not seem warranted. Further they urge OSHA to establish some action levels or criteria for developing and implementing an emergency plan.

United Technologies (ex. 11–17) further states that the Courts have held that OSHA cannot require employers to abate the mere possibility of hazard but that there must be a reasonable probability of harm. Further they state that almost any situation can present the possibility of an emergency but it is difficult to imagine an emergency

involving pre-pregs that is likely to present a significant risk to employees. Therefore, they argue, to be consistent with the Court's interpretation, the word "possibility" in this paragraph should be changed to "reasonable probability."

In addition, Chemical Manufacturer's Association (CMA) commented that an emergency plan should be required where there is a reasonable possibility of an emergency. (ex. 11–13).

OSHA reviewed these written comments and finds that supportive evidence was not furnished which suggests that changing the term possibility to probability would facilitate compliance without compromising the benefits afforded the worker through these emergency planning provisions. Additionally, no hearing participant provided information supportive of United Technologies contentions. Finally, since United Technologies did not appear as a hearing participant, OSHA was unable to discover through cross-examination what, if any, probative evidence exists to support such a change.

OSHA, however, has the written recommendations of the Mediated Rulemaking Committee and the supportive rationale for the provisions contained in the NPRM. George Robinson, representing the IAM, testified during the Mediated Rulemaking Committee deliberations on the appropriateness of using the term "possibility" to trigger the emergency situations provisions. He provided the Committee with his experiences regarding workers who died as a result of the lack of emergency planning (ex. 9). He felt that the broadest term, e.g. possibility, must be used when describing an emergency situation. His testimony convinced the entire Mediated Rulemaking Committee and subsequently OSHA when the NPRM was developed. OSHA agrees with the Committee's findings and, for the reasons stated in those recommendations, has adopted the term "possibility" as part of the emergency planning requirements.

Other commenters expressed concerns with what they believed to be a requirement to have two sets of duplicate written plans. Specifically, McDonnell Aircraft Company (ex. 11–6) provided a written submission which stated that the requirements for two written plans, § 1910.1050 (d) and (g)(2) are not necessary. They were referring to the requirement to have (1) a written emergency plan and (2) the requirement to develop a written plan for compliance with the PEL. The two requirements do not overlap. As previously mentioned, OSHA relied on the recommendations of the Mediated Rulemaking Committee in adopting the provisions contained in the NPRM. The rationale in support of a written emergency plan can be found in exhibit 9, the Committee's recommendations. No evidence was provided by McDonnell Aircraft to support its assertions. Furthermore, in their written submission, they acknowledge that hazardous chemicals are present in most large manufacturing facilities and in abundant supply and diversity. Given the abundant supply and diversity expressed by the commenter, it hardly seems inappropriate to have a written plan which identifies the chemical and the emergency procedures. Furthermore, OSHA notes that the emergency provisions contained in the final standard are consistent with what OSHA has required in other standards. In light of the above, OSHA promulgates the emergency requirements as proposed.

Paragraph (e). Exposure Monitoring

Section 6(b)(7) of the Act (29 U.S.C. 655) mandates that any standard promulgated under section 6(b) shall, where appropriate, provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees.

OSHA believes that it is appropriate for employers to measure employee exposure to MDA for the following reasons. First, exposure monitoring informs the employer whether the employer's legal obligation to keep employee exposure below the permissible exposure levels is being met. Second, exposure monitoring evaluates the effectiveness of engineering and work practice controls and informs the employer whether additional controls need to be instituted. Third, exposure monitoring is necessary to determine whether respiratory protection is required at all and, if so, which respirator is to be selected. Fourth, section 8(c)(3) of the Act (29 U.S.C. 657) requires employers to notify promptly any employee who has been or is being exposed to toxic materials or harmful physical agents at levels which exceed those prescribed by an applicable occupational safety or health standard, and to inform such employee of the corrective action being taken. Finally, the results of exposure monitoring constitute a vital part of the information which must be supplied to the physician and may contribute information on the causes and prevention of occupational illness.

The final standard requires that the employer determine the exposure for each employee exposed to MDA. It is not necessary to provide separate measurements for each employee. If a number of employees perform essentially the same job under the same conditions, it may be sufficient to monitor only some of such employees to obtain data that are representative of the remaining employees. Representative personal sampling for employees engaged in similar work and exposed to similar MDA levels can be achieved by measuring that member of the exposed group reasonably expected to have the highest exposure. This result would then be attributed to the remaining employees of the group.

In many specific work situations, the representative monitoring approach can be more cost-effective in identifying the exposures of affected employees.

Because of the nature of the MDA exposure hazard, it is necessary that the scope of the final standard be as broad as possible to protect potentially exposed employees. However, many employers will be required only to perform initial monitoring to determine employee exposures. If the results of initial monitoring demonstrate that an employee's exposure to MDA is below the action level, the employer is allowed to discontinue monitoring and other activities under this provision of the standard for that employee. OSHA established this provision to reduce the burden on employers, while providing them with an objective means of determining whether they must take additional steps for compliance with the standard.

The final standard also contains provisions for periodic monitoring. The more frequent the measurement, the higher the accuracy of the employee exposure profile. Selecting an appropriate interval between monitoring efforts is a matter of judgment. Where exposure measurements are determined to be above the permissible exposure limits, the employer is required to monitor every 3 months. Where exposure measurements are above the action level but at or below the PELs, monitoring is required only at 6 month intervals. Additional monitoring is also required for a particular job position if any changes in production, processes, control measures, or personnel result in new or additional exposure to MDA. The redetermination of employee exposure is necessary to assure that the most recent results accurately represent existing exposure conditions. This is necessary so the employer may take appropriate action such as instituting

additional engineering controls or providing appropriate respiratory protection.

The final standard also contains provisions for visual monitoring of exposed skin areas. The employer would be required to make routine inspections of the face, hands, and forearms of employees potentially exposed to MDA. If the inspection reveals yellow staining or other abnormalities associated with dermal exposure to MDA or if the employee attests to such abnormalities elsewhere on the employee's body, the employer shall send the employee to a medical professional for evaluation. If the employer determines that the employee has been exposed to MDA the employer shall:

(a) Determine the source of exposure;

(b) Implement protective measures to correct the hazard; and

(c) Maintain records of the corrective actions in accordance with paragraph (n) of this section.

Many of the commenters presented testimony regarding the difficulty anticipated from implementing the visual monitoring requirements. The testimony was in three general areas: establishing responsibilities for the employer which are non-performable, invasion of privacy associated with the employer conducting visual monitoring of workers' skin and the specificity of the yellow staining.

Regarding the first issue, non-performable responsibilities, Westinghouse Electric Corporation (ex. 11–11) argued that the requirement in the proposed rule to make routine inspections of employee dermal areas potentially exposed would be difficult to do. They contend that this requirement would make the first line supervisor a diagnostician. Furthermore, they contend that if the first line supervisors are not medically experienced, they can not be adequately trained to examine the skin surfaces sufficiently to detect exposure from MDA or any other dermal conditions. General Dynamics (ex. 11–3), although not concerned with the non-performability aspects of this provision, argued that some guidelines on what constitutes an employee skin inspection (presumably signs of yellow or red-itchy cracked skin) are necessary.

OSHA believes that the first line supervisor can conduct visual monitoring. OSHA is guided in making this decision by the recommendations made by the Mediated Rulemaking Committee. In the rationale provided by the Committee, it is clear that the first line supervisor is responsible only for examining the skin and looking for abnormal conditions such as yellow staining, red-cracked skin, browning of the finger tips, or whatever can be noticed by a simple visual inspection (ex. 9). It should be noted that the purpose of this requirement is to determine whether or not personal protective equipment should be worn by the worker and, if so, is effective. The first line supervisor needs only to detect a change and then the worker must be referred to a physician for follow-up and determination. The Committee's rationale was that visual monitoring should be the first line of defense used when exposure to a skin absorbable substance is apparent. OSHA agrees with the Committee's rationale and has not been provided with any conflicting evidence. Thus, the requirement for the employer to conduct visual monitoring remains in the final standard.

Regarding the second issue, invasion of privacy, McDonnell Douglas (ex. 11–6) stated that the visual monitoring requirements must delicately avoid invasion of privacy. They state:

> It must clearly state that the employer may inspect face, hands, and forearms, and send the employee to a medical professional if other areas of contamination are suspected or attested to by the employee.

OSHA agrees that the privacy aspects of conducting dermal monitoring must be strictly adhered to. OSHA believes that if an employer follows the recommendations given by McDonnell Douglas as stated above that workers privacy will not be invaded. For example, the hands, face, forearms or in general the exposed areas of the body can be viewed without removing any clothing. The employer can examine the hands to determine if MDA exposure has occurred. The employee is capable of identifying staining on other parts of the body and should be referred to a physician for follow-up. During the Committee's deliberations, one of the employer groups presented data which indicated that yellow staining of lower body parts had been noted in his work force. The question of conducting visual monitoring in this instance was discussed at length for this particular situation. The Committee agreed and OSHA agrees with the Committee's conclusions that the best thing to do in this situation was to refer the worker to the appropriate medical personnel for follow-up.

Once the determination has been made that skin contact has occurred the appropriate corrective actions must be taken. Thus, the visual monitoring requirements contain the obligations of the employer for conducting this type of monitoring.

Many of the commenters stated that pure MDA does not produce yellow staining but that the staining results from handling of specific MDA mixtures. The Department of Energy (ex. 11–8) contended that:

> Visual monitoring of exposed body areas needs further consideration. Often meta-phenylene diamine (MPDA) is present in MDA liquid mixtures. While MDA alone does not stain skin or clothing significantly, MPDA stains both skin and clothing much more intensely. Thus with MDA–MPDA mixtures there could be considerable visible staining of skin and clothing resulting in unwarranted alarm if MDA is the major concern.

OSHA agrees that these concerns of the hearing participants are well founded. However, OSHA did not propose the provisions to conduct visual monitoring of workers' skin based solely on the belief that yellow staining could be used as a positive indicator of exposure. Instead, it was OSHA's view and that of the Committee that if a worker was wearing personal protective clothing, e.g. gloves, that dermal contact to whatever chemical was being handled should not occur. Therefore, if such exposure did not occur, then any noticeable changes in the skin, be it yellow stain, redness, cracked hands, etc. should not occur. OSHA believes, however, that yellow staining can be used as one of the indicators of exposure. This view is based on OSHA's analysis of a control study which reported that MDA produced yellow staining (ex. 9). Later, during the MDA hearings, an additional study, conducted by the same examiner, was presented which indicated that it was not pure MDA but instead a mixture which caused yellow staining. While OSHA now agrees that yellow staining may result from exposure to a MDA mixture, OSHA also recognizes that MDA skin exposure can occur without skin staining. What remains apparent is that if there are noticeable changes to the skin and the worker is wearing personal protective equipment, these changes may be the result of the failure of the personal protective clothing to prevent exposure. The fact that visual monitoring helps to make this determination is the reason that this provision was recommended by the Committee, included in the NPRM, and is now part of the final standard.

Paragraph (f) Regulated Areas

The final standard requires that the employer establish regulated areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling,

application, or use of MDA that can result in "dermal exposure to MDA." The regulatory text in the final standard was modified to conform to the definition of regulated area (See 52 FR 26857).

The final standard requires that regulated areas are to be demarcated, in any manner that minimizes the number of employees exposed to MDA within these areas. To increase the performance orientation of the standard and minimize recordkeeping, no detailed requirements were specified regarding the demarcating of an area. Unauthorized employees are restricted from entering the regulated areas. Employees working in regulated areas are required to wear the appropriate type of personal protective equipment and are prohibited from activities such as smoking and eating. Other purposes of this section are to designate those areas where precautionary signs are to be posted and to designate areas where employees may be subject to three-month monitoring when their exposure is above the PEL.

Regulated areas are required where airborne exposures exceed or can reasonably be expected to exceed the PEL and where dermal exposure to MDA can occur. Establishing regulated areas at all worksites where the potential exists for exposure above the permissible exposure limits is a regulatory approach that has been adopted by OSHA in many occupational health standards. This approach covers areas within worksites where there are frequent leaks, or where exposures may be of high concentration but of short duration, e.g., maintenance operations. Where only dermal exposure to MDA can occur, a regulated area shall be established where employees are engaged in routine or non-routine processes requiring the handling, application, or use of MDA. OSHA recognizes that where the potential for dermal contact and inadvertent exposure to non-airborne forms of MDA is great, a mechanism to prevent incidental exposure of employees not actively engaged in the process is very much needed. The purpose of a regulated area is to ensure that employers make employees aware of the presence of MDA and attempt to restrict access. By limiting access, the number of employees inadvertently splashed and subsequently exposed to MDA can be minimized.

The establishment of regulated areas is an effective means of limiting the risk of exposure to as few employees as possible. This is consistent with good industrial hygiene practice when exposure to a toxic substance can cause serious health effects. Access to the regulated areas is restricted to "authorized persons"; that is, those persons required by their job duties to be present in the area. More specifically, access is restricted to those authorized entry by the employer, this final standard, or the OSH Act. By limiting access to these areas to authorized persons only, the additional obligation imposed by the final standard when PPE is used will be limited to as few persons as possible, thus reducing the economic implications of compliance with this standard.

The reasons that regulated areas are to be established in all work areas where the PEL is exceeded, including maintenance operations, is that the existence of a hazard, rather than the type of operation or work being performed, should be the basis for establishment of a regulated area. Areas where exposures are temporarily over the PELs while maintenance is being performed need to be demarcated to warn employees not performing the repairs, and access needs to be temporarily restricted. Further, employees who enter the area are thereby warned to wear the appropriate protective equipment when entering.

There were several other concerns expressed during the hearings regarding how to regulate and deregulate an area. The performance language which is used in the requirement to establish a regulated area allows the employer to establish a regulated area based on the handling, application, or use of non-airborne MDA and to deregulate this area when these activities stop.

Some of the commenters expressed concern with triggering the establishment of regulated area based on the handling, application, or use of non-airborne MDA. More specifically, they argue that the requirement as written would force even the use of small quantities of MDA to be done in regulated areas. The Department of the Air Force (ex.11–19) states that:

> . . . consideration must be given to operational uses of small quantities of MDA containing materials versus large scale manufacturing processes. This specifically applies to regulated areas for repair processes. We anticipate the use of small MDA-containing patches for repairing aircraft structures. By the definition of regulated area, a certain area of the hangar or repair dock would become a regulated area during the application of a small (2–6 square inch) pre-preg patch. Recommend (sic) a use quantity be established below which either a regulated area is not required or less stringent regulated area requirements are specified.

During the hearings, OSHA questioned the representatives from the Air Force extensively concerning the requirement to establish a regulated area. OSHA clearly stated during the presentation made by the Air Force that it was not the Agency's intent to require that an entire facility become a regulated area just to patch on a 2 inch square on one airplane's wing. The regulated area should be confined to prevent access by unauthorized workers and should establish limits for workers engaged in work activities within these areas. In this instance, this could easily be accomplished without making the entire plant a regulated area.

In fact, OSHA questioned Col. Bishop from the Air Force on precisely this example. After Col. Bishop had agreed that establishing a regulated area in the situation described above was feasible and not difficult, the OSHA attorney summarized Col. Bishop's actual concerns as follows:

> I mean you're not suggesting that a compliance officer would come in after reading this language just like you've just read it and assume because your two workers are putting this patch on an airplane wing—there's one on the wing and there's one down handling materials—that that entire hanger will be considered a regulated area because of the dermal exposure situation . . . (tr. II, 48)

Colonel Bishop responded: "We have our fears." (tr. II, 48).

OSHA believes that the concerns expressed by Col. Bishop and other hearing participants regarding the difficulties in establishing regulated areas when small amounts of MDA are being used or small repair projects are being done are unfounded. The rationale provided in this preamble for establishing regulated areas will serve as guidance in determining if compliance with these provisions have been achieved. Clearly, in instances when small operations are taking place, it is not the agency's intent to require entire facilities to become regulated areas.

Paragraph (g). Methods of Compliance

The standard requires that feasible engineering and work practice controls be used to reduce employee exposures to or below the permissible limits. In situations where engineering controls that can be instituted will not reduce exposures to the permissible exposure limits, these controls must nonetheless be used to reduce exposures to the lowest feasible level and be supplemented by the use of respirators. In addition, a compliance program to reduce exposures to within the

permissible exposure limits solely by means of engineering and work practice controls must be developed and implemented. Written plans for this program must be developed and furnished upon request for examination and copying to representatives of the Assistant Secretary, representatives of the Director, and affected employees. These plans must be reviewed and updated annually to reflect the current status of the program.

OSHA believes that there are certain activities, often involving certain maintenance and repair operations, as well as in emergency situations, in which the use of engineering controls to control exposures will not be feasible, regardless of the permissible exposure limits in the standard. Where the employer can show that engineering controls for such operations are not feasible, respirators shall be permitted as a means of control.

It has been OSHA policy to require that employers use feasible engineering and work practice controls to prevent excessive employee exposures and that respirators be used as an alternative only when other methods are not adequate, are not feasible, or have not yet been installed. The compliance hierarchy proposed by OSHA was not challenged and as such appears as proposed in the final standard. Nonetheless, it should be noted that OSHA is conducting a separate generic rulemaking on methods of compliance (OSHA Docket No. H–160; 54 FR 23991 (June 5, 1989)). The outcome of that rulemaking may have some future effect on this paragraph.

Paragraph (h). Respiratory Protection

OSHA requires that where respirators are necessary to limit employee exposures to below the permissible exposure limits, the employer must provide the respirators at no cost to the employee, and require that the employees use them.

A table of respirators for use with MDA is included in the standard provisions. The table is similar to those used in other standards and reflects current OSHA policy and is generally used in standard development.

Respirator use is required during the time necessary to install or implement feasible engineering and work practice controls. Further, respirators must be used in: (1) Operations in which engineering and work practice controls are not feasible (e.g., certain maintenance operations); (2) work operations for which the feasible engineering and work practice controls are not sufficient to reduce exposures to or below the PEL; and (3) emergency situations.

The final standard also requires that each employee be properly trained to wear a respirator, to know why the respirator is needed, and to understand the limitations of the respirator. An understanding of the hazard involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform to that set forth in 29 CFR 1910.134. This provision contains basic requirements for proper selection, fit, use, cleaning, and maintenance of respirators.

The final standard also contains provisions for emergency respirator use. OSHA believes that emergencies are situations where respirators must be used to protect employees. Since it is unrealistic to predict the expected contaminant concentrations to which an employee may be exposed in all emergencies, OSHA requires the use of respirators of the type approved for protection against unknown concentrations. If an employee is working in an area and using an approved respirator of the type appropriate for the existing concentration, and an emergency occurs, the employee of course should continue using the respirator during his escape. Provisions to provide proper protection for emergency personnel assigned to enter vessels or workplaces containing an unknown concentration to rescue workers or to control the release of the contaminant or perform any necessary repairs will be required to be a part of the emergency plan. This paragraph requires that respirators be made available to employees in these operations.

The final standard also requires the use of qualitative or quantitative fit tests. When negative pressure respirators are used, proper fit is especially critical to prevent leakage of contaminated air into the facepiece.

The employer must ensure that the employees' respirators fit properly and that leakage is minimal. A rapid qualitative fit test can be performed as either a positive-pressure test, in which the exhalation valve is closed and the wearer exhales into the facepiece to produce a positive pressure, or a negative pressure test, in which the inhalation valve is closed and the wearer inhales so that the facepiece collapses slightly. Employees could be trained to perform this test.

The final standard also requires that the employer use the fit testing appendix (appendix E) to ensure that the employer conducts the proper testing to achieve adequacy of fit testing.

Paragraph (i). Protective Work Clothing and Equipment

The employer is required to provide and the employee to wear the appropriate protective clothing to prevent eye and dermal exposure to MDA. The requirements for the use of personal protective clothing and equipment are consistent with those found in §§ 1910.132 and 1910.133. The equipment is to be provided at no cost to the employee, and includes the use of those items that may be necessary to protect employees at each particular work situation from exposure to MDA, including, where appropriate, such items as face shields, gloves, aprons, coveralls, or footwear.

Contact with liquid MDA irritates the eyes and may result in corneal burns if the MDA is splashed in the eyes. When there is a reasonable possibility of splashing the eyes, precautions are needed. Eye and face protection is currently required by 29 CFR 1910.133, and the types of safety goggles and face shields required by this section to prevent eye and face injury are readily available from safety products companies nationwide.

OSHA's standard is performance-oriented and requires the employer to survey the work situation in determining the type of protective equipment needed. For example, when handling solid materials the employee may be required to wear full body coveralls and gloves, which must be removed at the end of the shift and laundered before being worn again. This employee would also be required to shower at the end of the work shift. Employees required to work only with non-airborne forms of MDA which can result in "dermal exposure to MDA," may not be required to wear full body coveralls but instead may be required to wear an apron, and gloves. If the employee does become splashed with MDA or other substances containing MDA, the employee must be directed to immediately remove the clothing, wash the affected area, and put on clean clothing if necessary. The employer may require employees to discard gloves when removed and use a new pair of gloves after breaks, lunch, etc. The employee's gloves must be sufficiently protective or changed often enough so that MDA-wetted material is not kept in contact with the skin.

The performance approach grants an employer flexibility to achieve the goal of minimizing MDA contact with the skin in a manner the employer finds most effective. However, being

performance oriented, it is of necessity more general and requires the employer to consider the work process in order to achieve the desired goal in the manner that the employer believes is most efficient. This provision is designed to prevent the employee from coming in contact with MDA or MDA contaminated substances that may result in "dermal exposure to MDA."

The employer must be aware that maintaining the effectiveness of the protective equipment and clothing used is also of great importance. Exposure occurs by (1) bulk penetration through pinholes, rips, zippers, seams, etc.; (2) material failure through chemical degradation; or (3) permeation through the material.

While not specifically required, OSHA believes that the employer can use permeation data to determine the effectiveness of protective clothing. Permeation depends on MDA concentration, type of protective material, thickness of protective material, temperature, and age of protective clothing. Liquid MDA that may be spilled on aprons, coveralls, or footwear or protective clothing other than gloves can be wiped off within a few minutes time. Therefore, the materials used to make these types of protective clothes need to be impervious to MDA only for a few minutes. However, the liquid MDA permeability rate for materials used to make gloves needs to be less than that for other protective equipment since it is less likely that gloves will be wiped off when liquid contact occurs. Breakthrough times of MDA through various protective clothing materials differ widely, and the choice of material for protection against MDA breakthrough depends on the type of operation involved and length of time of contact, other solvents present, and other factors. Because of the uncertainty associated with requiring this sort of testing, OSHA chose to adopt regulations which give the employer the option of choosing the methodology relied upon to assure that the effectiveness of protective clothing is achieved. Nonetheless, although there have been limited tests of protective clothing and devices conducted for various toxic materials, OSHA recognizes that all clothing and equipment are not equally protective; and in some cases may actually provide no effective protection. Data analysis indicated that polyvinyl chloride (PVC), natural latex, and polyethylene are currently the best candidates for protection against solutions containing MDA.

Under this provision, employers are obligated to take the appropriate measures to ensure that workers are not dermally exposed to MDA, and to choose the protective clothing or equipment which will achieve this goal. How much clothing and the type of protective clothing needed will depend on the potential for exposure and the conditions of use. The employer in exercising his reasonable judgment in the workplace should be able to select the appropriate clothing or equipment in accordance with the criteria of this paragraph which satisfies the legal obligation defined by this paragraph.

The employer can also use any appropriate method available to determine that the personal protective equipment is functioning properly. For example, the employer may rely on staining of the skin, MDA in the urine, or may conduct dermal monitoring under the protective clothing to determine potential for absorption and consequently the ineffectiveness of personal protective equipment. In addition, the medical surveillance provisions required by OSHA would detect workers who were adversely affected as a result of occupational exposure to MDA.

OSHA also allows the worker to remove some protective clothing outside of the change room. The regulatory text regarding removal of MDA-contaminated protective work clothing and equipment has been slightly modified, both to clarify the provision and to better reflect the Committee's intent (52 FR 26882). These changes also respond to comments that led to Issue #15 in the Notice of Hearing (55 FR 2104). Workers can remove some items like gloves and aprons and discard disposable contaminated protective clothing before leaving a regulated area. Of course, the employer who allows the employee to dispose of contaminated clothing in areas outside of the change rooms is still obligated to comply with the requirements for the proper disposal of MDA contaminated materials. In addition, OSHA requires that clothing not routinely removed throughout the day must be removed at the end of the shift in change rooms.

Paragraph (j). Hygiene Facilities and Practices

The final standard contains a variety of provisions for the use of shower and change room facilities and lunch rooms for employees exposed to MDA.

For example, whenever food or beverages are consumed at the worksite and employees are exposed to MDA at or above the PEL or are subject to "dermal exposure to MDA" the employer shall provide readily accessible lunch areas. Lunch facilities located in areas where MDA exposures are at or above the PEL must be equipped with a positive pressure filtered air supply. In addition, lunch facilities may not be located in areas where "dermal exposure to MDA" can occur.

Showers are required to be provided for workers exposed to dusts or vapors in concentrations in excess of the action level. Workers subjected only to "dermal exposure to MDA" must be instructed to immediately wash exposed areas with soap and water or any media which does not increase the absorption properties of MDA. This particular requirement was given much consideration by OSHA.

OSHA is concerned with the appropriate manner in which MDA should be removed from the skin. However, OSHA did not want to require that only soap and water be used to remove MDA impregnated resin or accumulations on the skin because something better might be developed in the future. In fact, OSHA believes that it is better, should exposure occur, to remove the hardened resin or other MDA material as soon as possible even if a solvent must be used. OSHA believes that if the employer can demonstrate that a particular solvent does not increase the absorption properties of MDA it should be used to remove MDA from the skin. The final standard also requires that the employer ensure that all employees who have been exposed to MDA at or above the PEL wash their hands and face with soap and water prior to eating, drinking, smoking or applying cosmetics, and taking breaks. This requirement is intended to prevent the accidental ingestion of MDA.

Paragraph (k). Communication of Hazards to Employees

Signs and Labels

The final standard requires that the employer post and maintain legible signs demarcating regulated areas and entrances or access ways to regulated areas with the following legend:

DANGER: MDA MAY CAUSE CANCER, LIVER TOXIN; AUTHORIZED PERSONNEL ONLY; RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED TO BE WORN IN THIS AREA

These signs are intended to supplement the training which employees are required to receive under the standard. Even trained employees will need to be reminded of the locations of regulated areas and the

dangers of entering these areas. In addition, other personnel, such as employees of independent maintenance contractors authorized to enter regulated areas, need to be informed of the locations of regulated areas, the dangers of entering these areas, and the need to use protective equipment. OSHA has determined that both signs and training are necessary to apprise employees adequately of the hazards associated with MDA exposure.

OSHA also requires specific wording of the warning signs for regulated areas to assure that the proper warning is given to employees. The word "danger" is used to attract the attention of workers, alert them to the fact that they are in a hazardous area and to emphasize the importance of the message that follows. In addition, the use of the word "danger" is consistent with recent OSHA health standards dealing with carcinogens. The sign legend: "Respirators and Protective Clothing May Be Required to Be Worn In This Area," recognizes that there may be a difference between the MDA concentrations in air or the potential to be splashed with liquid mixtures, (the bases which determine when a regulated area must be established), and a particular employee's likely exposure.

The standard also requires labelling of containers of MDA. The labels must state, for (a) MDA:

DANGER: CONTAINS MDA MAY CAUSE CANCER, LIVER TOXIN

and for (b) Mixtures containing MDA:

DANGER: CONTAINS MDA; CONTAINS MATERIAL WHICH MAY CAUSE CANCER, LIVER TOXIN

The final standard is consistent with section 6(b)(7) of the Act, which prescribes the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed.

It is required that labels remain affixed to containers leaving the workplace. The purpose of this requirement is to assure that all affected employees, not only those of a particular employer, are apprised of the hazardous nature of MDA exposure.

It is OSHA's view that informing employees of the hazards to which they are exposed is an important element in reducing occupational disease and injury and one of the significant purposes of the Act. Section 6(b)(7) of the Act does not limit an employer's obligation to inform employees of hazardous conditions, to the employer's own employees. When an employer manufactures, formulates, or sells a product, the employer may create exposures not only to his or her own employees, but also to the employees of other employers involved in handling, transporting, or using the product.

Material Safety Data Sheet (MSDS)

The final standard also requires statements to be incorporated into a material safety data sheet. Information to assist in the preparation of a MSDS can be found in appendices A and B.

Employee Information and Training

OSHA requires that all employers provide a training program for all employees exposed to MDA, initially at the time of assignments and at least annually thereafter. OSHA also requires an information and training program to inform employees of the hazards to which they are exposed and to provide employees with the necessary understanding of the degree to which each employee can contribute toward minimizing health hazard potentials.

The content of the training program is intended to inform employees of: (1) The hazards to which they are exposed; (2) the necessary steps to protect themselves, including those to be taken during emergency situations; (3) limitations and the proper use of respirators and protective equipment; (4) a description of medical examinations and their purpose; (5) implementation of work practices and the use of available engineering controls; and (6) the contents of this standard. Section 6(b)(7) of the Act makes it clear that these are appropriate goals for an employee training program, and the final standard includes such provisions.

OSHA requires the employer to make a copy of the standard and its appendices available to affected employees and their representatives. This requirement, in combination with the review provided for as part of the training program, is intended to ensure that employees understand their rights and duties under this standard.

The employer is also required to provide, upon request, all materials relating to the training program to affected employees, the Assistant Secretary and the Director. This is intended to provide an objective check of compliance with the requirements under this paragraph. The regulatory text reflecting these access provisions, found in the final standard in paragraph (k)(4), were inadvertently omitted in both the Committee document and the proposal. The preamble discussion in both documents, however, was complete. Also, the regulatory text was included in the construction standard. Since the construction text and the preamble discussions generated no comment and since these requirements are entirely consistent with other OSHA single substance standards, the access provisions are included in the final standard.

OSHA recognizes that MDA may be only one of a number of substances to which an employee may be exposed simultaneously in the workplace. The education and training requirements in this standard contain those elements OSHA has determined to be basic. The format and content of the required training and information program are neither rigid nor extensive.

Paragraph (l). Housekeeping

The final standard requires that employers institute a program to detect leaks, spills and discharges of MDA which includes visual inspections. When leaks, spills, or discharges of MDA are detected, the final language requires the employer to repair promptly all leaks and clean up all spills. These work practices aid in minimizing the number of employees exposed, as well as the extent of any potential for MDA exposure.

Prevention and removal of accumulations of liquid MDA on all surfaces are critically important aspects of minimizing employee exposure. The liquid, if allowed to remain on the floor or work surfaces, will slowly evaporate and contribute to a possible airborne hazard, or it may become a dermal hazard through inadvertent skin contact. MDA's low vapor pressure which results in slow evaporation will contribute to and prolong the hazard. The requirement to clean up spills and drips refers to the prevention and removal of visible accumulations of liquid MDA on all surfaces.

In addition to the hazards of exposure to MDA in its liquid forms, hazards also result from exposure to the dusts of MDA. Thus, the final language contains provisions for maintaining surfaces as free as possible of accumulations of dusts and waste containing MDA. Surfaces contaminated with dusts may not be cleaned by the use of compressed air. The final standard requires HEPA-filtered vacuuming equipment for vacuuming. This equipment must be emptied in a manner which minimizes the reentry of MDA dusts into the workplace.

Paragraph (m). Medical Surveillance

The final standard requires that each employer institute a medical surveillance program for all employees exposed to MDA under the following circumstances:

(1) Employees exposed at or above the action level to dusts or vapors for 30 or more days per year;

(2) Employees who are subject to "dermal exposure to MDA" for 15 or more days per year;

(3) Employees who have been exposed in an emergency situation;

(4) Employees whom the employer, based on results from compliance with paragraph (e)(8), has reason to believe are being dermally exposed; and

(5) Employees who show signs or symptoms of MDA exposure.

The standard requires that the medical surveillance program provide each covered employee with an opportunity for a medical examination. Further, all examinations and procedures must be performed by or under the supervision of a licensed physician and be provided without cost to the employee. Clearly, a licensed physician is the appropriate person to supervise and evaluate medical examinations. However, certain parts of the required examination do not necessarily require the physician's expertise and may be conducted by another person under the supervision of the physician.

The standard also requires that examinations be given at a reasonable time and place. It is necessary that examinations be convenient and be provided without loss of pay to the employee to assure that they are taken.

The final standard allows the examining physician to prescribe the specific tests to be included in the medical surveillance program. While unable to make findings regarding the use of bladder cancer testing in the NPRM and therefore not requiring such tests in the regulatory text, OSHA asked for public comment concerning the appropriateness of such a requirement (54 FR 20704). No comments were received in response and OSHA is not including such a requirement in the final rule. Nonetheless some specific requirements are included, such as:

(i) comprehensive medical and work histories with special emphasis directed to an evaluation of other carcinogens to which the employee is exposed, and smoking and alcohol use;

(ii) comprehensive physical examination, with particular emphasis given to symptoms related to skin disease and liver dysfunction;

(iii) urinalysis;

(iv) screening for liver damage.

It is important to note that the employer is required to make any prescribed tests available more often than specified if recommended by the examining physician.

OSHA also requires that the employer provide examinations advised by the physician to any employee exposed to MDA under emergency conditions. Due to the effects of high short-term exposures, it appears prudent to monitor such affected employees in light of existing health data. However, trivial exposure, for example, to a single drop of an MDA-containing mixture would not trigger the emergency examination requirement, particularly if the employee were able to remove the MDA immediately after exposure.

The employer is also required to provide the physician with the following information: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee exposure level; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment.

The employer is required to obtain a written opinion from the examining physician that contains the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material health impairment from exposure to MDA; any recommended restrictions upon the employee's exposure to MDA or upon the use of protective clothing or equipment such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to MDA, and a copy of the opinion must be provided to the affected employee.

The requirement that a physician's opinion be in written form will ensure that employers have had the benefit of this information. The requirement that an employee be provided with a copy of the physician's written opinion will ensure that the employee is informed of the results of the medical examination. The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure to MDA not be included in the written opinion is to encourage employees to take the medical examination by removing the concern that the employer will obtain information about their physical condition that has no relation to present occupational exposures.

The standard also includes a multiple physician review mechanism in paragraph (m)(6). In recommending this provision, the Committee relied heavily on the experiences of its members regarding a similar provision under the OSHA lead standard. OSHA accepted this recommendation in the NRPM. Since the provision generated no comment or controversy, other than a limited request for clarification, the provision is substantively promulgated as proposed (52 FR 26865).

This provision is triggered where an employee disagrees with the opinion of a physician, selected by the employer, whose examination disclosed signs or symptoms of occupational exposure to MDA, when the opinion could affect the employee's job status.

In paragraph (m)(9), the standard also contains provisions for removing an employee from exposure in certain circumstances, following a medical examination. In recommending this provision, again the Committee relied heavily on the experiences of its members regarding a similar provision under the OSHA lead standard. OSHA accepted this recommendation in the NRPM. In addition, the regulatory text regarding removal of employees from exposure at or above the action level for MDA or where dermal exposure to MDA may occur has been slightly modified, both to clarify the provision and to better reflect the Committee's intent (52 FR 26865). Since the provision generated no comment or controversy the provision is substantively promulgated as proposed. OSHA believes that employees whose health has been adversely affected as a direct result of occupational exposure to MDA should be removed from exposure and should receive medical removal benefit protections.

Paragraph (n). Recordkeeping

The standard's requirements are consistent with Section 8(c)(3) of the Act which provides for the promulgation of regulations requiring employers to maintain accurate records of employee exposures to potentially toxic or harmful physical agents which are required to be monitored or measured.

The final standard allows that objective data be used for any exemptions from the standard. Records of objective data must be maintained to demonstrate that employees will not be exposed to airborne MDA concentrations and that no "dermal exposure to MDA" can occur.

The standard also requires that records be kept to identify the employee monitored and to reflect the employee's

exposure accurately. Specifically, records must include the following information: (a) The names and social security numbers of the employees sampled; (b) the number, duration, and results of each of the samples taken, including a description of the representative sampling procedure and equipment used to determine employee exposure where applicable; (c) a description of the operation involving exposure to MDA which is being monitored and the date on which monitoring is performed; (d) the type of respiratory protective devices, if any, worn by the employee; and (e) a description of the sampling and analytical methods used, and evidence of their accuracy.

The final standard also includes a provision for requiring the employer to keep an accurate medical record for each employee subject to medical surveillance. Section 8(c) of the Act authorizes the promulgation of regulations requiring any employer to keep such records regarding the employer's activities relating to the Act as are necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. OSHA believes that medical records, like exposure monitoring records, are necessary and appropriate to both the enforcement of the standard and the development of information regarding the causes and prevention of illness.

The employer is also required to keep a record of any employee's medical removal and return to work status.

The standard requires that all records required to be kept shall be made available upon request to the Assistant Secretary and the Director of NIOSH for examination and copying. Access to these records is necessary for the agencies to monitor compliance with the standard. These records may also contain information needed by the agencies to carry out their other statutory responsibilities.

The standard would also provide for employees, former employees, and their designated representative to have access to mandated records upon request. Section 8(c)(3) of the Act explicitly provides "employees or their representatives" with an opportunity to observe exposure monitoring and to have access to the records of monitoring procedures and results; several other provisions of the Act contemplate that employees and their representatives are entitled to play an active role in the enforcement of the Act.

Access to exposure and medical records by employees, designated representatives, and OSHA shall be established in accordance with 29 CFR 1910.20. By its terms, it applies to records required by specific standards, such as this MDA standard, as well as records which are voluntarily created by employers. In general, it provides for unrestricted employee and designated representative access to exposure records. Access to medical records is also provided to employees and, if the employee has given specific written consent, to the employee's designated representatives. The standard requires that unrestricted access to both kinds of records be allowed, but access to personally identifiable records is made subject to rules of agency practice and procedure concerning OSHA access to employee medical records, which have been published at 29 CFR 1913.10. An extensive discussion of the provisions and rationale for § 1920.20 may be found at 45 FR 35312; the discussion of § 1913.10 may be found at 45 FR 35384.

It is necessary to keep records for extended periods because of the long latency periods commonly observed for carcinogens. Cancer often cannot be detected until 20 or more years after onset of exposure. The extended retention period is therefore needed for two purposes. Diagnosis of disease in employees is assisted by having present and past exposure data as well as the results of the medical exams. Retaining records for extended periods also makes it possible at some future date to review the adequacy of the standard.

The time periods recommended for retention of exposure records and medical records are thirty years, and period of employment plus thirty years, respectively. These retention periods are consistent with those found in other OSHA health standards.

The standard would also require certain employers to notify the Director in writing at least 3 months prior to the disposal of the records. Section 1910.20(h) also contains requirements regarding the transfer of records.

Paragraph (o). Observation of Monitoring

The standard also includes a provision for observation of exposure monitoring. This provision is in accordance with section 8(c) of the OSH Act which requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. Any observer must be provided with the personal protective clothing and equipment that is required to be worn by the employees who are working in the area. The employer is required to assure the use of such clothing and equipment or respirators and is responsible for requiring that the observer complies with all other applicable safety and health procedures.

Paragraph (p) Effective Dates

The standard becomes effective September 9, 1992. The effective date established in the final standard remains the same as the date which appeared in the proposed rule.

Paragraph (q). Appendices

Five appendices have been included at the end of this final standard. Appendices A, B, C, and D have been included primarily for purposes of information. None of the statements contained in appendices A, B, C, and D should be construed as establishing a mandatory requirement not otherwise imposed by the standard, or as detracting from an obligation which the standard does impose. However, the protocols for respiratory fit testing in appendix E are mandatory.

Appendix A contains information on the description and exposure levels of MDA. Also provided in appendix A is information on the health hazards associated with exposure, descriptions of protective clothing and equipment, emergency and first aid procedures, medical requirements, provisions for the observation of monitoring, access to exposure and medical records, and precautions for the safe use, handling, and storage of MDA.

Appendix B contains "substance technical guidelines" for MDA, including physical and chemical data, spill and leak procedures, including waste disposal methods, and other miscellaneous precautions for the safe handling of MDA.

Appendix C contains the medical surveillance guidelines for MDA. Included in these guidelines are the description of the routes of entry, the toxicology and symptoms and signs associated with MDA exposure, information on the treatment of acute toxic effects, and surveillance and preventive considerations, including hematology guidelines which may be useful to physicians in conducting the medical surveillance program required by paragraph (m) of this final standard.

Appendix D gives details of the sampling and analytical methods for use in monitoring employee exposures to MDA.

Appendix E gives detailed fit testing procedures that are to be followed for qualitative or quantitative fit testing of negative pressure respirators. Various protocols for qualitative and

quantitative fit tests are outlined in detail.

All the appendices are designed to aid the employer in complying with the requirements of the standard. Paragraph (k) of this final standard on the "communication of MDA hazards to employees" specifically requires that the contents of the standard and appendices A and B be made available to affected employees. Information contained in appendix C on medical surveillance is to be explained to affected employees. Appendix C also provides information needed by the physician to evaluate the results of the medical examination.

Paragraph (r) Start-Up Dates

The final standard contains start up dates for the various standard provisions. The dates originally proposed in the MDA rule have been modified to reflect a more logical schedule for compliance. These dates are based on economic and technological considerations discussed in the regulatory impact analysis.

X. Summary and Explanation of the Standard for the Construction Industry

Paragraph (a). Scope and Application

A separate standard for occupational exposure to MDA in the construction industry was developed. OSHA took this action based primarily on the recommendations of the MDA Mediated Rulemaking Committee which recommended that a separate standard be developed for the construction industry. OSHA also consulted, as required by section 107 (e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333 (e)) and 29 CFR 1912.3, with the Construction Advisory Committee concerning this rule for Construction. This meeting took place on November 3, 1987. This Committee advised that OSHA adopt the recommendations made by the MDA Mediated Rulemaking Advisory Committee for the construction industry and use such as the basis for its standard for construction. The Committee made this recommendation because they felt that the specialized use of MDA in the construction sector could best be addressed through the development of a separate construction standard. OSHA agreed with the recommendations of both committees and has developed a separate standard for the construction industry.

The final standard uses § 1910.12 (b) to define "construction work" as work for construction, alteration, and/or repair, including painting and decorating. Accordingly, the final standard applies to all occupational exposures to MDA in the construction industry. Depending on the nature and extent of exposure, certain provisions of the standard rule may not be applicable in certain situations or may have limited applicability. The applicability of many provisions of the standard is based on the results of initial employee monitoring conducted by the employer or on the availability of other objective data concerning employee exposures or product characteristics. The construction operations listed in paragraph (a)(1) include construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof that contain MDA; the installation or finishing of surfaces with MDA containing products; the removal of MDA spills or emergency clean-up on site; and transportation, disposal, or storage of contaminated products.

MDA spill and emergency situations are included within the scope of the standard, because these events clearly have the potential for serious employee and bystander exposures. MDA spills might occur during the handling of bags or containers of MDA-containing materials to be used at the construction site. The final group of activities listed in the scope and application paragraph includes the transportation, disposal, storage, or containment of MDA or MDA-containing products on the worksites at which construction operations occur. These operations are included because they have considerable potential for excessive employee exposure to MDA, and, if not closely supervised and properly conducted, may lead to serious bystander exposure as well. The Environmental Protection Agency (EPA) has specific requirements for the disposal of hazardous waste, and the MDA standard contemplates compliance with EPA provisions for the safe disposal and handling of MDA-containing wastes and of MDA-contaminated clothing.

The final standard has been carefully structured to relate the stringency of the requirements to the extent and duration of employee exposures. OSHA therefore believes that a compliance burden will not be placed on construction employers who either do not use, handle, or apply MDA-containing products or who maintain MDA exposures in their workplaces at levels below the action level or where dermal exposure to MDA does not exist. In addition, the exemptions found in paragraphs (a)(2) through (a)(6) are identical to exemptions found in the general industry standard. Full discussions regarding the rationale for these exemptions can be found in the general industry preamble and apply equally well here. Essentially, these exemptions apply to workplaces where MDA is present but in such a way as to not present a significant risk of harm to the employee.

Paragraph (b). Definitions

Paragraph (b) of the MDA standard for the construction industry defines a number of terms used in the standard. In some instances, the definitions used are consistent with those of other OSHA standards to be used in the general industry standard, e.g., "Director," "Assistant Secretary," and "Authorized person." However, certain other terms require definition because they are used in accordance with their meanings in the construction industry.

Action level is defined as one-half of the PEL. If employers are engaged in MDA work causing worksite levels of MDA above the action level for 30 or more days per year, they must also institute a medical surveillance program for all employees. In addition, on sites where food and beverages are consumed and the airborne MDA level exceeds the PEL, the standard requires employers to provide lunch areas that have airborne MDA levels below the action level.

Definition of MDA. The final construction standard includes a definition of MDA. Included in the definition are the salts of MDA. The rationale for including the salts in the definition of MDA was not challenged in the response to the NPRM. Thus the compounds covered by the proposed definition remains the same in the final standard.

The NPRM definition contained an exclusion for finished products which is now part of the scope and application section of this final rule.

Employee exposure is defined as that exposure to airborne MDA that would occur if the employee were not using respiratory protective equipment or personal protective clothing or equipment. OSHA believes it is essential to determine employee exposure levels without the use of respiratory protection in order to gauge the efficacy of mandated work practice and engineering controls.

Decontamination area is defined as an area outside of but as near as practical to the regulated area, consisting of an equipment storage area, wash area, and clean change area, which is used for the decontamination of workers, materials, and equipment contaminated with MDA. For more discussion see the hygiene facility section.

Dermal exposure to MDA occurs where employees are engaged in the handling, application or use of mixtures or materials containing MDA, with any of the following non-airborne forms of MDA: (i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and (ii) materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume. The final standard requires the employer to take certain protective actions where employees, engaged in the handling, application or use of mixtures or materials containing MDA, are subject to dermal exposure to MDA. In situations where employees handle, apply or use any MDA mixtures or materials as defined above, dermal exposure to MDA is considered to occur. The agency believes that correlating dermal exposure with handling, applying or using specific forms of MDA removes the confusion that has arisen from using such terms as "likelihood of dermal exposure." Simply put, dermal exposure to MDA is assumed to occur when employees handle, apply or use any MDA falling under the definition of "Dermal exposure to MDA."

Historical monitoring data is defined as monitoring data for construction jobs that are substantially similar. The data must be scientifically sound, the characteristics of the MDA containing material must be similar and the environmental conditions comparable. See the monitoring discussion below and the Committee discussion at 52 FR 26868.

Regulated areas are defined as areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling, application, or use of MDA that can result in "dermal exposure to MDA."

Paragraph (c) Permissible Exposure Limit

The final standard requires that the PEL for the construction industry be set at 10 parts of MDA per billion parts of air as an 8-hour time-weighted average (TWA) limit and at 100 ppb as a short term exposure limit (STEL). This is consistent with the final standard for general industry. The requirements contained in the final standard are supported by OSHA's findings that occupational exposure to MDA under current occupational conditions poses a significant risk to the health of employees and that the final standard can achieve a reduction in that risk.

As with the final standard for general industry, the standard for construction establishes a ceiling or short-term exposure limit of 100 ppb (sampled over a 15-minute period) for MDA.

Biological monitoring was also recommended by many of the hearing participants for inclusion into the construction standard. OSHA's rationale for not including biological monitoring provisions in the construction standard are the same reasons stated in the general industry standard.

Paragraph (d) Communication Among Employers

Paragraph (d) of the rule requires that, on multi-employer construction worksites, employers performing MDA work requiring the establishment of a regulated area inform other employers on the site of the nature of their work with MDA and of the existence of and requirements pertaining to regulated areas. OSHA recognizes that several different operations involving workers from numerous trades may simultaneously take place on the same construction site and that the exposures of these workers to MDA should be minimized to the extent possible. OSHA believes that requiring employers who are directly involved in MDA-related activities to inform other employers working nearby on a multi-employer worksite of the existence of hazardous levels of MDA, regulated areas, and the rules pertaining to such areas will contribute substantially to the protection of these nearby employees.

Paragraph (e) Emergency Situations

OSHA believes that available health data suggest that elevated short-term exposure to MDA should be viewed with concern. An unexpected high exposure must be viewed as an emergency situation. A written plan is required for each construction operation where there is a possibility of an emergency. The plan shall include the applicable elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans." OSHA believes that there is no substitute for proper planning for an emergency situation. In the construction industry where the work force and the job sites are constantly changing, the importance of proper emergency planning can not be overstated.

The standard provisions also include a requirement to alert employees other than those who have the potential to be directly exposed in an emergency situation. Such employees may be employees from neighboring work sites who may inadvertently approach the emergency site. They may also include employees of other employers or from other work shifts or employees who may be later exposed to work surfaces or equipment contaminated as a result of the emergency.

OSHA believes that the performance language of the emergency situation paragraph will give employers the flexibility to choose any effective method of alerting employees, including communications systems, voice communication, or a bell or other alarm.

There was considerable testimony provided regarding the difficulty with implementing the proposed emergency requirements for the construction industry. The major difficulty was with the written plan which was proposed at 54 FR 20730 as follows:

> (1) *Written plan.* (i) A written plan for emergency situations shall be developed *for each workplace* where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency. (Emphasis added.)

The Dow Chemical Company (ex. 11–20) states that the requirement that a written emergency plan be developed for each construction worksite is infeasible for jobs of short duration. They recommend that OSHA establish a generic emergency plan approach. The Society of the Plastics Industry, Inc. (ex. 11–16) agrees that it is not feasible to have a specific emergency plan for every work site. Specifically, they state:

> Such a requirement is not practical for all worksites of the construction industry. For example, a work crew may apply epoxy floor coverings containing MDA to three or four different worksites in a single day. To develop a written emergency plan for each of these sites could require more time than is necessary to carry out the work. (page 3).

SPI believes that construction employers who have MDA related jobs of short duration should be permitted to develop a written emergency plan that covers emergency situations, typical of a work operation, rather than a particular site. For example, instruction to don respirators in certain described situations, to locate the nearest exit upon arrival at each worksite, and to use that exit to depart from the work area in specified circumstances would provide practical and effective worker protection in an emergency, without imposing a burden far out of proportion to any benefit.

OSHA has reviewed the comments regarding the difficulties expected with implementing the emergency provisions in the construction industry. In addition, OSHA has reviewed both the preambular portion of the Committee's recommendations (52 FR 26868) and the substantive requirements of 29 CFR 1910.38. OSHA believes that the

Committee had intended to tailor this provision to better fit the nature of the changing worksites of the construction employee as it did in other areas of the standard. Examples of this are the use of historical monitoring data to satisfy the initial monitoring requirements for substantially similar construction operations, and the portable decontamination areas in the hygiene facilities paragraph. Looking also at the substantive elements found in the existing Employee emergency plan standard cited above, it appears that the only required element that would always be site specific is the emergency evacuation route. In light of these considerations, the language of paragraph (e)(1)(i) of the final construction standard reads as follows:

(i) A written plan for emergency situations shall be developed for each *construction operation* where there is a possibility of an emergency. *The plan shall include procedures where the employer identifies emergency escape routes for his employees at each construction site before the construction operation begins.* Appropriate portions of the plan shall be implemented in the event of an emergency. (Emphasis added.)

OSHA believes that this language will satisfy the concerns of the commenters and give effect to the Committee's intent without compromising the protection of the employee.

Paragraph (f). Exposure Monitoring

The standard also requires that the employers conduct monitoring to determine employee exposures to MDA. The standard requires initial determinations of employee exposures using frequencies and patterns of monitoring sufficient to represent with reasonable accuracy the exposures of employees. The standard would also require that monitoring be conducted no less frequently than once every 3 months if MDA exposure exceeds the PELs and once every 6 months if exposure is between the action level and the PELs. Section 6(b)(7) of the Act mandates that standards promulgated shall, where appropriate, "provide for monitoring or measuring employee exposures at such locations and intervals, and in such a manner as may be necessary for the protection of employees" (29 U.S.C. 655(b)(7)). Based on the recommendations made by CACOSH in its "Report on Occupational Health Standards for the Construction Industry," May 16, 1980, CACOSH Docket (pp. 35–37), and the provisions of the Act, OSHA requires that the construction industry do the same sort of monitoring that is required of the general industry sectors.

Accordingly, the standard for construction includes several monitoring requirements, i.e., employers must perform monitoring of their employees' breathing zones that will accurately reflect and be representative of their exposures to MDA. In paragraph (f)(2), construction employers are required to conduct initial monitoring of employee exposures, unless: (1) The employer can demonstrate, on the basis of objective data, that the MDA-containing product or material being handled cannot cause exposures above the standard's action level, even under worst-case release conditions; or (2) the employer has historical monitoring or other data demonstrating that exposures on a particular job will be below the action level. Periodic monitoring is addressed in paragraph (f)(3) and is consistent with the toxicity of MDA. In recognizing the unique circumstances of working in a regulated area on a construction site, OSHA allows employers who are conducting MDA operations within a regulated area to forego periodic monitoring if the employees are all wearing supplied-air respirators while working in the regulated area.

Monitoring may be terminated when, in accordance with paragraph (f)(4), employers obtain confirmation by means of periodic monitoring that their employees' exposures are below the action level. Paragraph (f)(5) requires the employer to conduct additional monitoring when there has been a change in production process, chemical present, control equipment, personnel, or work practices which may result in new or additional exposures to MDA, or when the employer has any reason to suspect a change which may result in new or additional exposures. Paragraph (f)(6) provides the accuracy and precision requirements for the sampling methodology selected by the employer. The requirements in paragraph (f)(7) pertain to employee notification of monitoring results.

Although employers are required to determine the exposure of each employee exposed to MDA, this determination is not required to be based on separate measurements taken for each employee. Instead, the standard permits employers to use a "representative" measurement to characterize the exposures of more than one employee when these employees perform essentially the same job under the same conditions. For these types of situations, it may be sufficient for the employer to monitor one or a few of these employees to obtain data that are "representative" of the exposure of the remaining employees in the group. As permitted in paragraph (f)(1)(iii), representative personal sampling for employees engaged in similar work and exposed to similar concentrations of MDA can be achieved by measuring the exposure of that member of the exposed group who can reasonably be expected to have the highest exposure and then attributing this exposure level to the remaining employees in the group. In many work situations, this representative monitoring approach may be more cost-effective than individual monitoring of all employees to determine the exposures of affected employees. However, employers are free to use any monitoring approach that will correctly identify the breathing-zone exposures of their employees to airborne MDA.

Paragraph (f)(2) of the final rule contains requirements for initial monitoring for construction employees exposed to MDA. In this paragraph OSHA requires employers to conduct initial monitoring at the start of each new MDA job in order to assess the effectiveness of existing engineering controls and to provide information necessary for the proper selection of appropriate respirators.

OSHA believes that initial monitoring is essential for protecting employee health because it provides the employer with information for determining the necessity for using engineering controls, instituting or modifying work practices, and selecting appropriate respiratory protection. Recognizing the varied nature of construction projects, OSHA has required that initial monitoring for employee exposures be conducted at the start of each new construction project that involves the handling of MDA-containing materials.

Furthermore, however, Paragraph (f)(2) allows employers to dispense with initial monitoring if they can demonstrate by means of objective data that MDA-containing products or material cannot release airborne MDA in concentrations exceeding the action level. OSHA believes that employers may be able to obtain data from the manufacturers of MDA-containing products that demonstrate that these materials will not release MDA at levels that exceed the action level, even under worst case conditions. This exemption would relieve employers from monitoring when employees are handling MDA containing products that are not capable of releasing a significant amount of MDA.

OSHA also has included in paragraph (f)(2) an exemption from initial monitoring for employers who have historical monitoring data. OSHA included this exemption in recognition

of the fact that many employers are currently conducting exposure monitoring on construction sites; this exemption would prevent these employers from having to repeat monitoring activity for construction jobs that are substantially similar to previous jobs for which monitoring was conducted.

However, such monitoring data must have been obtained from projects conducted by the employer that meet the following conditions:

(1) The data upon which judgments are based are scientifically sound and collected using methods that are sufficiently accurate and precise.

(2) The processes and work practices in use when the historical monitoring data were obtained are essentially the same as those to be used during the job for which initial monitoring will not be performed.

(3) The characteristics of the MDA-containing material being handled when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed.

(4) Environmental conditions prevailing when the historical monitoring data were obtained are the same as for the job for which initial monitoring will not be performed.

Paragraph (g). Regulated Areas

The standard requires that signs be posted to alert employees to the existence of areas where MDA concentrations exceed or can be reasonably expected to exceed the permissible exposure limits or where employees are engaged in the handling, application, or use of MDA that can result in "dermal exposure to MDA." Paragraphs (g)(2) and (g)(3) require that the regulated area be demarcated in a manner that restricts entry to the area to authorized persons only. Respirators must be supplied to persons entering regulated areas as specified in paragraph (g)(4) and eating, drinking, smoking, and applying cosmetics are prohibited in such areas by paragraph (g)(5). These requirements are consistent with similar provisions in previous OSHA standards (Acrylonitrile, 29 CFR 1910.1045; Inorganic Arsenic, 29 CFR 1910.1018; Ethylene Oxide, 29 CFR 1910.1047; and Vinyl Chloride, 29 CFR 1910.1017) and with the general industry standard regulating occupational exposure to MDA.

Paragraph (h). Methods of Compliance

The standard governing occupational exposure to MDA requires that a combination of engineering controls and work practices be used to meet the exposure limits contained in the standard. The engineering control methods outlined in the standard include isolation, enclosure, exhaust ventilation, and dust collection. Work practices are also necessary for maintaining exposures at or below the PELs.

Local exhaust ventilation systems that are equipped with HEPA-filtered dust collection systems are required for use in the general industry standards and are likewise being required for use in the construction industry.

OSHA believes that in some instances but not as a general rule, that general exhaust ventilation systems may also be effective in reducing employee exposure to MDA in construction. Such systems are useful for reducing the concentration of MDA-containing materials and removing potentially harmful MDA particulates from the air through a HEPA filtration system. OSHA cautions employers, however, that the use of general exhaust ventilation will tend to spread MDA airborne contaminants unless the return air is passed through a HEPA filter. Vacuum cleaners that are equipped with HEPA filters are effective controls for cleaning MDA spills and performing clean-up, since the HEPA-filtered vacuum systems collect MDA-containing material and prevent it from becoming airborne.

Isolation and enclosure of operations where MDA-containing materials are being applied to surfaces during construction activities is an effective means of containing exposures. The burden would be on the Assistant Secretary, in a particular enforcement proceeding to demonstrate the feasibility of engineering controls required by paragraph (h)(1)(i)(D).

The prompt disposal of MDA-containing materials in leak-tight containers can be an effective work practice because MDA-containing materials sealed in disposal containers while they are still wet are less likely to pose a dermal exposure problem.

OSHA also notes the significance which respirator use has in controlling worker exposure to MDA resulting from spray application. In fact, OSHA believes that, in this instance, for the most part, a properly selected and functioning respirator serves as the only feasible control for ultimately separating the worker from his environment. OSHA recognizes that application of MDA through spray techniques would result in the potential for very high worker exposures and thus in these instances requires that respirators, in addition to the use of feasible engineering, controls be used.

Further, OSHA requires that compressed air not be used to remove MDA-containing materials. Using compressed air to clean MDA dust from surfaces results in the formation of large dust clouds that lead to excessive exposures of the worker and bystanders unless local exhaust ventilation is used. There was no indication, however, that using compressed air to blow MDA-containing dust from surfaces was a current practice.

Paragraph (i). Respiratory Protection

The standard for the construction industry requires that employers provide respirators at no cost to employees:

(1) During the interval necessary to install or implement feasible engineering and work practice controls;

(2) In operations such as maintenance and repair activities and spray application processes for which engineering and work practice controls are not feasible;

(3) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PELs; and

(4) In emergencies.

Employers are required under paragraph (i)(2) of the final rule to select appropriate respirators based on employee exposure levels that exist in the workplace. The required respirators range from half-mask air-purifying respirators equipped with high-efficiency filters for concentrations that do not exceed 10 times the PEL, to full-facepiece supplied-air respirators or SCBA when the concentration of MDA exceeds 1000 times the PEL. Employers are required to select respirators from those that are approved jointly by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration under the provisions of 30 CFR part 11.

Under paragraph (i)(3), employers are required to institute a respiratory protection program as required under 29 CFR 1910.134. The required program is to include among other things, (1) criteria for changing filter elements for air-purifying respirators, and (2) a policy permitting employees time to leave work areas to wash their faces and respirator facepieces to prevent skin irritation. Under paragraph (i)(5), the final standard requires that employers conduct qualitative or quantitative fit testing for all employees required to wear a negative-pressure respirator. The requirements for the use, selection, program elements, and fit testing of respirators are the same as those contained in the general industry standard.

Paragraph (j). Protective Work Clothing and Equipment

The construction standard, like the general industry standard, requires that all workers exposed to MDA be provided with personal protective clothing and equipment: i.e., coveralls, aprons, gloves, boot covers, and goggles. OSHA has imposed stringent provisions for the use of personal protective clothing because of the hazards associated with dermal absorption of MDA or MDA-containing materials. When non-disposable protective clothing is used, the employer is required by paragraph (j)(3) to launder the clothing in a manner that prevents the release of airborne MDA in excess of the PEL and to notify the person responsible for laundering. Paragraph (j)(2) requires employers to transport contaminated clothing in sealed impermeable bags or other impermeable containers. The requirements of paragraphs (j)(2) and (j)(3) are identical to the requirements of the general industry standard.

In addition, a requirement has been included that the personal protective equipment worn by employees be examined periodically to detect rips or tears, and that when rips or tears are detected in clothing they must be immediately mended, or the worksuit must be immediately replaced.

Also, OSHA allows disposable work suits to be used by construction workers handling MDA or MDA-containing products. OSHA believes that this type of clothing provides sufficient protection to the worker but eliminates the problems that may be involved in laundering and storing MDA-contaminated clothing on non-fixed work sites. OSHA recognizes that while disposable overalls may not be as durable and comfortable as cotton work clothes, they do not require laundering which would expose another workforce or the worker's family to MDA. OSHA, however, believes that non-disposable work clothes similar to those regulated in the general industry standard will provide sufficient protection for employees engaged in construction activities, provided that such clothing is properly cleaned after work and then laundered. OSHA, nonetheless, chooses to require performance language in its regulatory text which would allow the employer to choose the clothing which is appropriate.

OSHA also recognizes that heat stress is a concern when disposable protective clothing is used in hot environments. However, the use of protective clothing is necessary to protect employees from MDA exposure that may result from contaminated clothing. In situations in which heat stress is a concern, OSHA believes that employers should use appropriate work-rest regimens and provide heat stress monitoring that includes measuring employees' heart rates, body temperatures, and weight loss. If such measures are used to control heat stress, disposable protective clothing can be safely worn to provide the needed protection against MDA exposure.

Paragraph (k). Hygiene Facilities and Practices

The hygiene facilities requirements of the construction standard are similar to those in the general industry standard. For example, shower facilities are required wherever the possibility of employee exposure to airborne levels of MDA in excess of the action level exists. All workers required to wear personal protective equipment must have a place to change their street clothes and to store them separately from their work clothes.

Paragraph (k)(1)(i) of the construction standard modifies the language of the general industry standard to allow "decontamination areas," in recognition of the fact that the place where employees change from street clothing to work clothing and back again to street clothing is not always a separate room but may be merely a separate area of a larger space. This difference recognizes that it may not be feasible at some construction sites to provide a separate room with physical barriers.

"Decontamination area" is defined in the final standard to mean an area outside of but as near as practical to the regulated area, consisting of an equipment storage area, wash area, and clean change area, which is used for the decontamination of workers, materials, and equipment contaminated with MDA.

OSHA also requires "separate storage facilities" in recognition of the fact the employers must use portable storage facilities that can be transported from job to job. OSHA's intent in this provision is to ensure that street clothes are sufficiently separated from work and protective clothing and equipment in order to prevent contamination of employees' street clothing, and this can be accomplished by separate lockers, baskets, or other containers.

OSHA also requires the provision of clean lunch areas: i.e., areas that have airborne concentrations of MDA below the action level, where employees may consume food or beverages on site. This addition was recommended by CACOSH in its 1980 report. CACOSH recognized that permanent lunch rooms, such as exist on fixed worksites, were probably not feasible for the construction industry, due to the nonfixed nature of construction project worksites. See "Report on Occupational Health Standards for the Construction Industry," May 16, 1980, CACOSH Docket. The term "lunch area" is adopted by OSHA to indicate that a temporary facility, such as a separate trailer, would serve the purpose of protecting employee health.

Paragraph (l). Communication of MDA Hazards to Employees

In paragraph (l) of the standard, includes requirements to ensure that the dangers of MDA-containing materials are communicated to employees by means of signs, labels, and employee information and training. The requirements for the signs and labels mandated in this section parallel those in OSHA's Hazard Communication standard (29 CFR 1910.1200).

(1) *Signs and Labels.* The construction standard includes specifications for signs to be posted at all locations where regulated areas have been established to indicate that concentrations of airborne MDA exceed or can be reasonably expected to exceed the PEL or where employees are engaged in activities that can result in "dermal exposure to MDA"; such signs are to bear the same legend as that required in the general industry standard.

The purpose of such signs is to minimize the number of employees in a regulated area by alerting them to the fact that they must have authorization from their employer and take the appropriate protective measures before entering. Furthermore, as discussed in the summary and explanation section for the standard for general industry, signs serve to apprise employees of the hazards to which they are exposed in the course of their employment, and foster cooperation between the employee and employer in controlling workplace hazards. The standard also requires that all MDA products and containers of MDA products, including waste containers, be labeled with appropriate information and with a warning statement against inhalation or dermal contact with MDA. These labelling requirements are consistent with those found in 1910.1200.

(2) *Employee Information and Training.* The training requirements are consistent with those found in 1910.1200, except that annual training is required in both the general industry and construction standards. The standard requires that training be provided to all employees prior to or at the time of initial assignment and at least yearly

thereafter. Component areas to be covered in the training program include: (1) Methods for recognizing MDA; (2) the health effects associated with MDA exposure; (3) the importance of necessary protective measures to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping and protective clothing, and any necessary instruction in the use of these controls; (4) the purpose, proper use, fitting instructions, and limitations of respirators, as described in 29 CFR 1910.134; (5) the appropriate work practices for performing the MDA related job; and (6) the medical surveillance program requirements. The employer may design and implement his own training program that contains these elements, or rely on third-party training programs. Finally, the standard requires that the employer make readily available to affected employees and provide to OSHA and NIOSH all written materials regarding the employee information and training program.

OSHA strongly believes that informing and training employees can reduce the incidence of work-related diseases caused by exposure to hazardous workplace conditions.

Paragraph (m). Housekeeping

The standard for the construction industry includes a housekeeping provision stipulating that (1) when vacuuming is used for cleanup, only HEPA-filtered equipment may be used; and (2) all waste, scrap, debris, bags, containers, equipment, and contaminated clothing must be collected and disposed of in sealed impermeable bags or in other closed impermeable containers. OSHA believes that these housekeeping practices reflect advances in vacuum filter technology and good hygiene practices, and are essential parts of any effective MDA control program. OSHA believes that the use of HEPA-filtered vacuums and proper disposal practices will considerably diminish the risk of generating airborne MDA during cleanup—a potentially high-exposure activity—and minimize the potential for dermal absorption of MDA. The required use of high-efficiency particulate air filters on vacuums employed for cleanup is not intended to preclude the use of other complementary cleanup methods, such as wet methods (where applicable). OSHA believes that the housekeeping requirements will aid in minimizing worker contact with MDA.

Paragraph (n). Medical Surveillance

Section 6(b)(7) of the OSH Act requires that, where appropriate, medical surveillance programs be included in OSHA health standards to aid in determining whether the health of workers is adversely affected by exposure to toxic substances. The medical surveillance requirements contained in this final MDA construction standard are designed to detect changes in liver function and signs or symptoms of acute liver disease.

OSHA requires that each employer must institute a medical surveillance program for all employees exposed to MDA as follows:

(1) Employees exposed at or above the action level to dusts or vapors for 30 or more days per year;

(2) Employees who are subject to dermal exposure to MDA for 15 or more days per year;

(3) Employees who have been exposed in an emergency situation;

(4) Employees whom the employer, based on results from compliance with (g)(8), has reason to believe are being dermally exposed; and

(5) Employees who show signs or symptoms of exposure.

The final language requires that the medical surveillance program provide each covered employee with an opportunity for a medical examination. Further, all examinations and procedures must be performed by or under the supervision of a licensed physician and be provided without cost to the employee. Clearly, a licensed physician is the appropriate person to supervise and evaluate a medical examinations. However, certain parts of the required examination do not necessarily require the physician's expertise and may be conducted by another person under the supervision of the physician.

OSHA also requires that exams be given at a reasonable time and place. It is necessary that exams be convenient and be provided without loss of pay to the employee to assure that they are taken.

The final standard allows the examining physician to prescribe the specific protocols to be included in the medical surveillance program. There are, however, some specific requirements, such as:

(i) comprehensive medical and work histories with special emphasis directed to an evaluation of other carcinogens to which the employee is exposed, and smoking and alcohol use;

(ii) comprehensive physical examination, with particular emphasis given to symptoms related to eye and skin irritation, and liver dysfunction;

(iii) complete urinalysis; and

(iv) screening for liver damage.

It is important to note that the employer is required to make any prescribed tests available more often than specified if recommended by the examining physician. OSHA also requires that the employer provide examinations recommended by the physician to any employee exposed to MDA under emergency conditions. Due to the effects of high short-term exposures, it appears prudent to monitor medically such affected employees. However, trivial exposures which are peripherally related to an emergency do not trigger the requirement.

The employer is also required to provide the physician with the following information: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee exposure level; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment.

The employer is required to obtain a written opinion from the examining physician that contains the results of the medical examinations; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material health impairment from exposure to MDA; any recommended restrictions upon the employee's exposure to MDA or upon the use of protective clothing or equipment, such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any MDA-related medical conditions which require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to MDA, and a copy of the opinion must be provided to the affected employee.

The requirement that a physician's opinion be in written form will ensure that employers have had the benefit of this information. The requirement that an employee be provided with a copy of the physician's written opinion will ensure that the employee is informed of the results of the medical examination. The purpose of requiring that specific findings or diagnoses, unrelated to occupational exposure to MDA, not be included in the written opinion is to encourage employees to take the medical examination by removing the concern that the employer will obtain

information about their physical condition that has no relation to present occupational exposures.

Like the general industry standard this standard would also include a multiple physician review mechanism. This mechanism is required because OSHA believes this would aid in ensuring that employees take physical examinations. Finally, the standard contains provisions for removing an employee from exposure who has suffered reversible material impairment to health as a result of being exposed to MDA. OSHA believes that employees whose health has been adversely affected as a direct result of occupational exposure to MDA must be removed from exposure and must receive medical removal benefit protections. For a fuller discussion of the multiple physician review mechanism and the medical removal provisions, see the general industry summary above.

Paragraph (o) Recordkeeping

The final standard's requirements are consistent with Section 8(c)(3) of the OSH Act which provides for the promulgation of regulations requiring employers to maintain accurate records of employee exposures to potentially toxic substances or harmful physical agents which are required to be monitored or measured.

OSHA permits the use of objective data in order to be exempted from the standard. Records of objective data must be maintained to demonstrate that employees are not exposed to excessive airborne MDA concentrations or "dermally exposed to MDA", as defined.

For this final construction standard, OSHA also permits the use of historical monitoring data in order to meet the requirements for initial monitoring found in paragraph (f)(2) of this section. Records of historical monitoring data must be maintained to demonstrate that employees are not exposed to airborne concentrations of MDA in excess of the action level. While this specific recordkeeping language was not in the NPRM its substantive basis is found both in paragraph (f)(2) found at 54 FR 20731 and the definition of "Objective and historical data" found on the page before. In addition, this language is taken *verbatim* from the Committee's preamble at 52 FR 26869. OSHA believes that this language will help to clarify what is expected from an employer who chooses to use historical monitoring data to satisfy his initial monitoring obligations under the standard.

OSHA also requires that records be kept to identify the employee monitored and to reflect the employee's exposure accurately. Specifically, records must include the following information: (a) The names and social security numbers of the employees sampled; (b) the number, duration, and results of each of the samples taken, including a description of the representative sampling procedure and equipment used to determine employee exposure where applicable; (c) a description of the operation involving exposure to MDA which is being monitored and the date on which monitoring is performed; (d) the type of respiratory protective devices, if any, worn by the employee; and (e) a description of the sampling and analytical methods used, and evidence of their accuracy.

OSHA also includes a provision for requiring the employer to keep an accurate medical record for each employee subject to medical surveillance. Section 8(c) of the Act authorizes the promulgation of regulations requiring any employer to keep such records regarding the employer's activities relating to the Act as are necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. OSHA believes that medical records, like exposure monitoring records, are necessary and appropriate to both the enforcement of the standard and the development of information regarding the causes and prevention of illness.

As explained above, it is necessary to relate employees' medical conditions to their exposures to develop information regarding cause and prevention. Medical records are necessary and appropriate for this purpose. In addition, medical records are necessary for the proper evaluation of the employee's health.

The employer is also required to keep a record of any employee's medical removal and return to work status.

The standard requires that all records required to be kept shall be made available upon request to the Assistant Secretary and the Director of NIOSH for examination and copying. Access to these records is necessary for the agencies to monitor compliance with the standard. These records may also contain essential information which is necessary for the agencies to carry out their other statutory responsibilities.

The standard also provides for employees, former employees, and their designated representatives to have access to mandated records upon request. Section 8(c)(3) of the Act explicitly provides "employees or their representatives" with an opportunity to observe monitoring and to have access to the records of monitoring and exposures to toxic substances; and several other provisions of the Act contemplate that employees and their representatives are entitled to play an active role in the enforcement of the Act. Employees and their representatives need to know relevant information concerning employee exposure to toxic substances and their health consequences if they are to benefit fully from these statutory rights.

In addition, access to exposure and medical records by employees, designated representatives, and OSHA is to be provided in accordance with 29 CFR 1910.20. Section 1910.20 is OSHA's generic standard for access to employee exposure and medical records (45 FR 35212). By its terms, it applies to records required by specific standards, such as this MDA standard, as well as records which are voluntarily created by employers. In general, it provides for unrestricted employee and designated representative access to exposure records. Unrestricted access to both kinds of records is allowed, but access to personally identifiable records is made subject to rules of agency practice and procedure concerning OSHA access to employee medical records, which have been published at 29 CFR 1913.10. An extensive discussion of the provisions and rationale for § 1920.20 may be found at 45 FR 35312; the discussion of § 1913.10 may be found at 45 FR 35384.

It is necessary to keep records for extended periods because of the long latency periods commonly observed for carcinogens. Cancer often cannot be detected until 20 or more years after onset of exposure. The extended retention period is therefore needed for two purposes. Diagnosis of disease in employees is assisted by having present and past exposure data as well as the results of the medical exams. Retaining records for extended periods also makes it possible at some future date to review the adequacy of the standard.

The time periods required for retention of exposure records and medical records are thirty years, and period of employment plus thirty years, respectively. These retention periods are consistent with those in the OSHA records access standard.

The standard requires certain employers to notify the Director in writing at least 3 months prior to the disposal of the records. Section 1910.20(h) contains further requirements regarding the transfer of records.

To increase the effectiveness of training goals the standard requires that the training material be made available, without cost, to all affected employees or their representatives.

OSHA recognizes the transient nature of the construction industry and the difficulties which this industry may have with recordkeeping requirements; it is for this reason that OSHA would not mandate the specific methods of recordkeeping. Employers are free to use the services of competent organizations such as industry trade associations and employee associations to maintain the required records. To reduce the costs and facilitate the recordkeeping some groups currently use centralized medical recordkeeping financed through employer contributions. Centralized recordkeeping could be instrumental in alleviating the problem of lost records associated with the transient nature of the construction workforce and the frequency of business closures in this sector.

Paragraph (p). Observation of Monitoring

The final standard also includes a provision for observation of exposure monitoring. This provision is in accordance with section 8(c) of the OSH Act which requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. Observation procedures are set forth which require the observer, whether it be an employee or a designated representative, to be provided with the personal protective clothing and equipment that is required to be worn by the employees who are working in the area. The employer is required to assure the use of such clothing and equipment or respirators and is responsible for requiring that the observer complies with all other applicable safety and health procedures.

Paragraph (q). Effective dates

The standard becomes effective September 9, 1992. The effective date established in the final standard remains the same as the date which appeared in the proposed rule.

Paragraph (r). Appendices

Five appendices have been included at the end of this final standard. Appendices A, B, C, and D have been included primarily for purposes of information. None of the statements contained in appendices A, B, C, and D should be construed as establishing a mandatory requirement not otherwise imposed by the standard, or as detracting from an obligation which the standard does impose. However, the protocols for respiratory fit testing in appendix E are mandatory.

Appendix A contains information on the description and exposure levels of MDA. Also provided in appendix A is information on the health hazards associated with exposure, descriptions of protective clothing and equipment, emergency and first aid procedures, medical requirements, provisions for the observation of monitoring, access to exposure and medical records, and precautions for the safe use, handling, and storage of MDA.

Appendix B contains "substance technical guidelines" for MDA, including physical and chemical data, spill and leak procedures, including waste disposal methods, and other miscellaneous precautions for the safe handling of MDA.

Appendix C contains the medical surveillance guidelines for MDA. Included in these guidelines are the description of the routes of entry, the toxicology and symptoms and signs associated with MDA exposure, information on the treatment of acute toxic effects, and surveillance and preventive considerations, including hematology guidelines which may be useful to physicians in conducting the medical surveillance program required by paragraph (n) of this final standard.

Appendix D gives details of the sampling and analytical methods for use in monitoring employee exposures to MDA.

Appendix E gives detailed fit testing procedures that are to be followed for qualitative or quantitative fit testing of negative pressure respirators. Various protocols for qualitative and quantitative fit tests are outlined in detail.

All the Appendices are designed to aid the employer in complying with the requirements of the standard. Paragraph (l) of this final standard on the "communication of MDA hazards to employees" specifically requires that the contents of the standard and appendices A and B be made available to affected employees. Information contained in appendix C on medical surveillance is to be explained to affected employees. Appendix C also provides information needed by the physician to evaluate the results of the medical examination.

Paragraph (s). Start-Up Dates

The final standard contains start up dates for the various standard provisions. Compliance with these dates are based on the effective date. The dates originally proposed in the MDA rule have been modified to reflect a more logical schedule for compliance. These dates are based on economic and technological considerations discussed in the regulatory impact analysis.

XI. Environmental Assessment; Findings of No Significant Impact

OSHA has reviewed the environmental impact in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR part 1500), and OSHA's NEPA compliance procedures (29 CFR part 11).

As a result of this review, OSHA has determined that these regulations will have no impact on air, water or soil quality, plant or animal life, or the use of land or aspects of the external environment. Therefore, OSHA concludes there will be no significant impact on the general quality of the human environment outside the workplace, particularly in terms of ambient air quality, water quality, or solid waste disposal. No comments made at the public hearing or submitted to the record contradict this conclusion.

XII. State Plan Requirements

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standards or show OSHA why there is no need for action, e.g., because existing state standards are already "at least as effective" as the new Federal standards. These States are: California, Connecticut (State and local government workers only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government workers only), North Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

XIII. Federalism

The standards have been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear constitutional authority and the presence of a problem of national scope. Additionally, the Order provides for preemption of State law only if there

is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federally promulgated MDA standard is drafted so that workers in every State would be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities that could alter work practices, States with occupational safety and health plans approved under section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems. Moreover, the performance nature of this final standard, of and by itself, allows for flexibility by States and contractors to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety and health of workers. While the individual States, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment if the OSH Act. Those States which have elected to participate under section 18 of the OSHA Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

XIV. Clearance of Information Collection Requirements

5 CFR 1320 sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The final MDA standards require the employer to allow OSHA access to records. In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection to OMB for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to average five minutes per response to allow OSHA compliance officers access to the employer's records. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs Management and Budget, Washington, DC 20503.

XV. Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR part 1911; 29 CFR part 1910 and 1926 are amended as set forth below.

List of Subjects in 29 CFR Parts 1910 and 1926

Health, Occupational safety and health, Protective equipment, Respiratory protection, Carcinogen.

Signed at Washington, DC this 20th day of July, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

XVI. Regulatory Text

General Industry

PART 1910—[AMENDED]

1. The authority citation for subpart Z of 29 CFR part 1910 continues, in part, to read as follows:

Authority: Secs. 4, 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657, Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90(55 FR 9033) as applicable; and 29 CFR part 1911.

* * * * *

2. By revising a new paragraph (i) to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(i) *4,4'-Methylenedianiline (MDA).* Section 1910.1050 shall apply to the exposure of every employee to MDA in every employment and place of employment covered by §§ 1910.13, 1910.14, 1910.15, or 1910.16, in lieu of any different standard on exposure to MDA which would otherwise be applicable by virtue of those sections.

* * * * *

3. By adding a new § 1910.1050 to read as follows:

§ 1910.1050 Methylenedianiline.

(a) *Scope and application.* (1) This section applies to all occupational exposures to MDA, Chemical Abstracts Service Registry No. 101–77–9, except as provided in paragraphs (a)(2) through (a)(7) of this section.

(2) Except as provided in paragraphs (a)(8) and (e)(5) of this section, this section does not apply to the processing, use, and handling of products containing MDA where initial monitoring indicates that the product is not capable of releasing MDA in excess of the action level under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(3) Except as provided in paragraph (a)(8) of this section, this section does not apply to the processing, use, and handling of products containing MDA where objective data are reasonably relied upon which demonstrate the product is not capable of releasing MDA under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(4) This section does not apply to the storage, transportation, distribution or sale of MDA in intact containers sealed in such a manner as to contain the MDA dusts, vapors, or liquids, except for the provisions of 29 CFR 1910.1200 and paragraph (d) of this section.

(5) This section does not apply to the construction industry as defined in 29 CFR 1910.12(b). (Exposure to MDA in the construction industry is covered by 29 CFR 1926.60).

(6) Except as provided in paragraph (a)(8) of this secton, this section does not apply to materials in any form which contain less than 0.1% MDA by weight or volume.

(7) Except as provided in paragraph (a)(8) of this section, this section does not apply to "finished articles containing MDA."

(8) Where products containing MDA are exempted under paragraphs (a)(2) through (a)(7) of this section, the employer shall maintain records of the initial monitoring results or objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in the recordkeeping provision of paragraph (n) of this section.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

Action level means a concentration of airborne MDA of 5 ppb as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees, for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (o) of this section, or any other person authorized by the Act or regulations issued under the Act.

Container means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, commercial packaging or the like, but does not include piping systems.

Dermal exposure to MDA occurs where employees are engaged in the handling, application or use of mixtures or materials containing MDA, with any of the following non-airborne forms of MDA:

(i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and

(ii) Materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which results in an unexpected and potentially hazardous release of MDA.

Employee exposure means exposure to MDA which would occur if the employee were not using respirators or protective work clothing and equipment.

Finished article containing MDA is defined as a manufactured item:

(i) Which is formed to a specific shape or design during manufacture;

(ii) Which has end use function(s) dependent in whole or part upon its shape or design during end use; and

(iii) Where applicable, is an item which is fully cured by virtue of having been subjected to the conditions (temperature, time) necessary to complete the desired chemical reaction.

4,4' Methylenedianiline or MDA means the chemical, 4,4'-diaminodiphenylmethane, Chemical Abstract Service Registry number 101-77-9, in the form of a vapor, liquid, or solid. The definition also includes the salts of MDA.

Regulated areas means areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits, or where dermal exposure to MDA can occur.

STEL means short term exposure limit as determined by any 15 minute sample period.

(c) *Permissible exposure limits (PEL).* The employer shall assure that no employee is exposed to an airborne concentration of MDA in excess of ten parts per billion (10 ppb) as an 8-hour time-weighted average or a STEL of 100 ppb.

(d) *Emergency situations*—(1) *Written plan.* (i) A written plan for emergency situations shall be developed for each workplace where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with the appropriate personal protective equipment and clothing as required in paragraphs (h) and (i) of this section until the emergency is abated.

(iii) The plan shall specifically include provisions for alerting and evacuating affected employees as well as the elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

(2) *Alerting employees.* Where there is the possibility of employee exposure to MDA due to an emergency, means shall be developed to alert promptly those employees who have the potential to be directly exposed. Affected employees not engaged in correcting emergency conditions shall be evacuated immediately in the event that an emergency occurs. Means shall also be developed and implemented for alerting other employees who may be exposed as a result of the emergency.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of each employee's exposure to airborne MDA over an eight (8) hour period. Determination of employee exposure to the STEL shall be made from breathing zone air samples collected over a 15 minute sampling period.

(ii) Representative employee exposure shall be determined on the basis of one or more samples representing full shift exposure for each shift for each job classification in each work area where exposure to MDA may occur.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer shall only be required to determine representative employee exposure for that operation during one shift.

(2) *Initial monitoring.* Each employer who has a workplace or work operation covered by this standard shall perform initial monitoring to determine accurately the airborne concentrations of MDA to which employees may be exposed.

(3) *Periodic monitoring and monitoring frequency.* (i) If the monitoring required by paragraph (e)(2) of this section reveals employee exposure at or above the action level, but at or below the PELs, the employer shall repeat such representative monitoring for each such employee at least every six (6) months.

(ii) If the monitoring required by paragraph (e)(2) of this section reveals employee exposure above the PELs, the employer shall repeat such monitoring for each such employee at least every three (3) months.

(iii) The employer may alter the monitoring schedule from every three months to every six months for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to below the TWA but above the action level.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (e)(2) of this section reveals employee exposure to be below the action level, the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(ii) If the periodic monitoring required by paragraph (e)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(5) *Additional monitoring.* The employer shall institute the exposure monitoring required under paragraphs (e)(2) and (e)(3) of this section when there has been a change in production process, chemicals present, control equipment, personnel, or work practices which may result in new or additional exposures to MDA, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of MDA.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results, in writing, either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (e)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce the employee exposure to or below the PELs, wherever the PELs are exceeded.

(8) *Visual monitoring.* The employer shall make routine inspections of employee hands, face and forearms potentially exposed to MDA. Other potential dermal exposures reported by the employee must be referred to the appropriate medical personnel for observation. If the employer determines that the employee has been exposed to MDA the employer shall:

(i) Determine the source of exposure;

(ii) Implement protective measures to correct the hazard; and

(iii) Maintain records of the corrective actions in accordance with paragraph (n) of this section.

(f) *Regulated areas*—(1) *Establishment*—(i) *Airborne exposures.* The employer shall establish regulated areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits.

(ii) *Dermal exposures.* Where employees are subject to dermal exposure to MDA the employer shall establish those work areas as regulated areas.

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in a manner that minimizes the number of persons potentially exposed.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Personal protective equipment and clothing.* Each person entering a regulated area shall be supplied with, and required to use, the appropriate personal protective clothing and equipment in accordance with paragraphs (h) and (i) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas.

(g) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to MDA at or below the PELs except to the extent that the employer can establish that these controls are not feasible or where the provisions of paragraph (g)(1)(ii) or (h)(1) (i) through (iv) of this section apply.

(ii) Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protective devices which comply with the requirements of paragraph (h) of this section.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposure to or below the PELs by means of engineering and work practice controls, as required by paragraph (g)(1) of this section, and by use of respiratory protection where permitted under this section. The program shall include a schedule for periodic maintenance (e.g., leak detection) and shall include the written plan for emergency situations as specified in paragraph (d) of this section.

(ii) Upon request this written program shall be furnished for examination and copying to the Assistant Secretary, the Director, affected employees, and designated employee representatives. The employer shall review and, as necessary, update such plans at least once every 12 months to make certain they reflect the current status of the program.

(3) *Employee rotation.* Employee rotation shall not be permitted as a means of reducing exposure.

(h) *Respiratory protection*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PEL; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a positive pressure respirator or any supplied-air respirator operated in the continuous flow or pressure demand mode.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b), (d), (e), and (f).

(4) *Respirator use.* (i) Where air-purifying respirators (cartridge or canister) are used, the employer shall replace the air purifying element as needed to maintain the effectiveness of the respirator. The employer shall ensure that each cartridge is dated at the beginning of use.

(ii) Employees who wear respirators shall be allowed to leave the regulated area to readjust the facepiece or to wash their faces and to wipe clean the facepieces on their respirators in order to minimize potential skin irritation associated with respirator use.

TABLE 1.—RESPIRATORY PROTECTION FOR MDA

Airborne concentration of MDA or condition of use	Respirator type
a. Less than or equal to 10×PEL	(1) Half-Mask Respirator with HEPA [1] Cartridge.[2]
b. Less than or equal to 50×PEL	(1) Full facepiece Respirator with HEPA [1] Cartridge or Canister.[2]
c. Less than or equal to 1000×PEL	(1) Full facepiece powered air-purifying respirator with HEPA [1] cartridges.[2]
d. Greater than 1000×PEL or unknown concentrations	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive pressure demand supplied-air respirator with auxiliary self-contained air supply.
e. Escape	(1) Any full facepiece air-purifying respirator with HEPA [1] cartridges; [2] (2) Any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood.
f. Firefighting	(1) Full facepiece self-contained breathing apparatus in positive pressure demand mode.

NOTE: Respirators assigned for higher environmental concentrations may be used at lower concentrations.
[1] High Efficiency Particulate in Air filter (HEPA) means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.
[2] Combination HEPA/Organic Vapor Cartridges shall be used whenever MDA in liquid form or a process requiring heat is used.

(5) *Respirator fit testing.* (i) The employer shall perform and record the results of either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which provides the required protection as prescribed in Table 1.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

(i) *Protective work clothing and equipment*—(1) *Provision and use.* Where employees are subject to dermal exposure to MDA, where liquids containing MDA can be splashed into the eyes, or where airborne concentrations of MDA are in excess of the PEL, the employer shall provide, at no cost to the employee, and ensure that the employee uses, appropriate protective work clothing and equipment which prevent contact with MDA such as, but not limited to:

(i) Aprons, coveralls or other full-body work clothing;

(ii) Gloves, head coverings, and foot coverings; and

(iii) Face shields, chemical goggles; or

(iv) Other appropriate protective equipment which comply with § 1910.133.

(2) *Removal and storage.* (i) The employer shall ensure that, at the end of their work shift, employees remove MDA-contaminated protective work clothing and equipment that is not routinely removed throughout the day in change rooms provided in accordance with the provisions established for change rooms.

(ii) The employer shall ensure that, during their work shift, employees remove all other MDA-contaminated protective work clothing or equipment before leaving a regulated area.

(iii) The employer shall ensure that no employee takes MDA-contaminated work clothing or equipment out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iv) MDA-contaminated work clothing or equipment shall be placed and stored in closed containers which prevent dispersion of the MDA outside the container.

(v) Containers of MDA-contaminated protective work clothing or equipment which are to be taken out of change rooms or the workplace for cleaning, maintenance, or disposal, shall bear labels warning of the hazards of MDA.

(3) *Cleaning and replacement.* (i) The employer shall provide the employee with clean protective clothing and equipment. The employer shall ensure that protective work clothing or equipment required by this paragraph is cleaned, laundered, repaired, or replaced at intervals appropriate to maintain its effectiveness.

(ii) The employer shall prohibit the removal of MDA from protective work clothing or equipment by blowing, shaking, or any methods which allow MDA to re-enter the workplace.

(iii) The employer shall ensure that laundering of MDA-contaminated clothing shall be done so as to prevent the release of MDA in the workplace.

(iv) Any employer who gives MDA-contaminated clothing to another person for laundering shall inform such person of the requirement to prevent the release of MDA.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with MDA of the potentially harmful effects of exposure.

(vi) MDA-contaminated clothing shall be transported in properly labeled, sealed, impermeable bags or containers.

(j) *Hygiene facilities and practices*—(1) *Change rooms.*

(i) The employer shall provide clean change rooms for employees, who must wear protective clothing, or who must use protective equipment because of their exposure to MDA.

(ii) Change rooms must be equipped with separate storage for protective clothing and equipment and for street clothes which prevents MDA contamination of street clothes.

(2) *Showers.* (i) The employer shall ensure that employees, who work in areas where there is the potential for exposure resulting from airborne MDA (e.g., particulates or vapors) above the action level, shower at the end of the work shift.

(A) Shower facilities required by this paragraph shall comply with § 1910.141(d)(3).

(B) The employer shall ensure that employees who are required to shower pursuant to the provisions contained herein do not leave the workplace wearing any protective clothing or equipment worn during the work shift.

(ii) Where dermal exposure to MDA occurs, the employer shall ensure that materials spilled or deposited on the skin are removed as soon as possible by methods which do not facilitate the dermal absorption of MDA.

(3) *Lunch facilities*—(i) *Availability and construction.* (A) Whenever food or beverages are consumed at the worksite and employees are exposed to MDA at or above the PEL or are subject to dermal exposure to MDA the employer shall provide readily accessible lunch areas.

(B) Lunch areas located within the workplace and in areas where there is the potential for airborne exposure to MDA at or above the PEL shall have a positive pressure, temperature controlled, filtered air supply.

(C) Lunch areas may not be located in areas within the workplace where the potential for dermal exposure to MDA exists.

(ii) The employer shall ensure that employees who have been subjected to dermal exposure to MDA or who have

been exposed to MDA above the PEL wash their hands and faces with soap and water prior to eating, drinking, smoking, or applying cosmetics.

(iii) The employer shall ensure that employees exposed to MDA do not enter lunch facilities with MDA-contaminated protective work clothing or equipment.

(k) *Communication of hazards to employees*—(1) *Signs and labels.* (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER MDA MAY CAUSE CANCER LIVER TOXIN AUTHORIZED PERSONNEL ONLY RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED TO BE WORN IN THIS AREA

(ii) The employer shall ensure that labels or other appropriate forms of warning are provided for containers of MDA within the workplace. The labels shall comply with the requirements of 29 CFR 1910.1200(f) and shall include the following legend:

(A) For Pure MDA

DANGER CONTAINS MDA MAY CAUSE CANCER LIVER TOXIN

(B) For mixtures containing MDA

DANGER CONTAINS MDA CONTAINS MATERIALS WHICH MAY CAUSE CANCER LIVER TOXIN

(2) *Material safety data sheets* (MSDS). (i) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) for MDA. In meeting this obligation, employers shall make appropriate use of the information found in Appendices A and B.

(ii) Employers who are manufacturers or importers shall:

(A) Comply with paragraph (k) (1) (ii) of this section as appropriate, and

(B) Comply with the requirement in OSHA's Hazard Communication standard, 29 CFR 1910.1200, that they deliver to downstream employers an MSDS for MDA.

(3) *Information and training.* (i) The employer shall provide employees with information and training on MDA, in accordance with 29 CFR 1910.1200(h), at the time of initial assignment and at least annually thereafter.

(ii) In addition to the information required under 29 CFR 1910.1200, the employer shall:

(A) Provide an explanation of the contents of this section, including appendices A and B, and indicate to employees where a copy of the standard is available;

(B) Describe the medical surveillance program required under paragraph (m) of this section, and explain the information contained in Appendix C; and

(C) Describe the medical removal provision required under paragraph (m) of this section.

(4) *Access to training materials.* (i) The employer shall make readily available to all affected employees, without cost, all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Assistant Secretary and the Director, upon request, all information and training materials relating to the employee information and training program.

(l) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of visible accumulations of MDA.

(2) The employer shall institute a program for detecting MDA leaks, spills, and discharges, including regular visual inspections of operations involving liquid or solid MDA.

(3) All leaks shall be repaired and liquid or dust spills cleaned up promptly.

(4) Surfaces contaminated with MDA may not be cleaned by the use of compressed air.

(5) Shoveling, dry sweeping, and other methods of dry clean-up of MDA may be used where HEPA-filtered vacuuming and/or wet cleaning are not feasible or practical.

(6) Waste, scrap, debris, bags, containers, equipment, and clothing contaminated with MDA shall be collected and disposed of in a manner to prevent the re-entry of MDA into the workplace.

(m) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees exposed to MDA:

(A) Employees exposed at or above the action level for 30 or more days per year;

(B) Employees who are subject to dermal exposure to MDA for 15 or more days per year;

(C) Employees who have been exposed in an emergency situation;

(D) Employees whom the employer, based on results from compliance with paragraph (e)(8) of this section, has reason to believe are being dermally exposed; and

(E) Employees who show signs or symptoms of MDA exposure.

(ii) The employer shall ensure that all medical examinations and procedures are performed by, or under the supervision of, a licensed physician, at a reasonable time and place, and provided without cost to the employee.

(2) *Initial examinations.* (i) Within 150 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (m)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed history which includes:

(*1*) Past work exposure to MDA or any other toxic substances;

(*2*) A history of drugs, alcohol, tobacco, and medication routinely taken (duration and quantity); and

(*3*) A history of dermatitis, chemical skin sensitization, or previous hepatic disease.

(B) A physical examination which includes all routine physical examination parameters, skin examination, and signs of liver disease.

(C) Laboratory tests including:

(*1*) Liver function tests and

(*2*) Urinalysis.

(D) Additional tests as necessary in the opinion of the physician.

(ii) No initial medical examination is required if adequate records show that the employee has been examined in accordance with the requirements of this section within the previous six months prior to the effective date of this standard or prior to the date of initial assignment.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered by this section with a medical examination at least annually following the initial examination. These periodic examinations shall include at least the following elements:

(A) A brief history regarding any new exposure to potential liver toxins, changes in drug, tobacco, and alcohol intake, and the appearance of physical signs relating to the liver, and the skin;

(B) The appropriate tests and examinations including liver function tests and skin examinations; and

(C) Appropriate additional tests or examinations as deemed necessary by the physician.

(ii) If in the physicians' opinion the results of liver function tests indicate an abnormality, the employee shall be removed from further MDA exposure in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on advice of the physician.

(4) *Emergency examinations.* If the employer determines that the employee has been exposed to a potentially hazardous amount of MDA in an emergency situation as addressed in paragraph (d) of this section, the employer shall provide medical examinations in accordance with paragraphs (m)(3)(i) and (ii) of this

section. If the results of liver function testing indicate an abnormality, the employee shall be removed in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and; on the advice of the physician, no additional testing is required.

(5) *Additional examinations.* Where the employee develops signs and symptoms associated with exposure to MDA, the employer shall provide the employee with an additional medical examination including a liver function test. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and, on the advice of the physician, no additional testing is required.

(6) *Multiple physician review mechanism.* (i) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, and the employee has signs or symptoms of occupational exposure to MDA (which could include an abnormal liver function test), and the employee disagrees with the opinion of the examining physician, and this opinion could affect the employee's job status, the employee may designate an appropriate, mutually acceptable second physician:

(A) To review any findings, determinations, or recommendations of the initial physician; and

(B) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informing the employer that he or she intends to seek a second medical opinion, and

(B) The employee initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to resolve quickly their disagreement, then the employer and the employee through their respective physicians shall designate a third physician;

(A) To review any findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) The employer shall act consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(7) *Information provided to the examining and consulting physicians.* (i) The employer shall provide the following information to the examining physician:

(A) A copy of this regulation and its appendices;

(B) A description of the affected employee's duties as they relate to the employee's potential exposure to MDA;

(C) The employee's current actual or representative MDA exposure level;

(D) A description of any personal protective equipment used or to be used; and

(E) Information from previous employment-related medical examinations of the affected employee.

(ii) The employer shall provide the foregoing information to a second physician under this section upon request either by the second physician, or by the employee.

(8) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain, and provide the employee with a copy of, the examining physician's written opinion within 15 days of its receipt. The written opinion shall include the following:

(A) The occupationally-pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to MDA;

(C) The physician's recommended limitations upon the employee's exposure to MDA or upon the employee's use of protective clothing or equipment and respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from MDA exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(9) *Medical removal*—(i) *Temporary medical removal of an employee*—(A) *Temporary removal resulting from occupational exposure.* The employee shall be removed from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, following an initial examination (paragraph (m)(2) of this section), periodic examinations (paragraph (m)(3) of this section), an emergency situation paragraph (m)(4) of this section, or an additional examination (paragraph (m)(5) of this section) in the following circumstances:

(*1*) When the employee exhibits signs and/or symptoms indicative of acute exposure to MDA; or

(*2*) When the examining physician determines that an employee's abnormal liver function tests are not associated with MDA exposure but that the abnormalities may be exacerbated as a result of occupational exposure to MDA.

(B) *Temporary removal due to a final medical determination.* (*1*) The employer shall remove an employee from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, on each occasion that there is a final medical determination or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(*2*) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the physician review mechanism used pursuant to the medical surveillance provisions of this section.

(*3*) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to MDA, the employer shall implement and act consistent with the recommendation.

been exposed to MDA above the PEL wash their hands and faces with soap and water prior to eating, drinking, smoking, or applying cosmetics.

(iii) The employer shall ensure that employees exposed to MDA do not enter lunch facilities with MDA-contaminated protective work clothing or equipment.

(k) *Communication of hazards to employees*—(1) *Signs and labels.* (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER MDA MAY CAUSE CANCER LIVER TOXIN AUTHORIZED PERSONNEL ONLY RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED TO BE WORN IN THIS AREA

(ii) The employer shall ensure that labels or other appropriate forms of warning are provided for containers of MDA within the workplace. The labels shall comply with the requirements of 29 CFR 1910.1200(f) and shall include the following legend:

(A) For Pure MDA

DANGER CONTAINS MDA MAY CAUSE CANCER LIVER TOXIN

(B) For mixtures containing MDA

DANGER CONTAINS MDA CONTAINS MATERIALS WHICH MAY CAUSE CANCER LIVER TOXIN

(2) *Material safety data sheets* (MSDS). (i) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) for MDA. In meeting this obligation, employers shall make appropriate use of the information found in Appendices A and B.

(ii) Employers who are manufacturers or importers shall:

(A) Comply with paragraph (k) (1) (ii) of this section as appropriate, and

(B) Comply with the requirement in OSHA's Hazard Communication standard, 29 CFR 1910.1200, that they deliver to downstream employers an MSDS for MDA.

(3) *Information and training.* (i) The employer shall provide employees with information and training on MDA, in accordance with 29 CFR 1910.1200(h), at the time of initial assignment and at least annually thereafter.

(ii) In addition to the information required under 29 CFR 1910.1200, the employer shall:

(A) Provide an explanation of the contents of this section, including appendices A and B, and indicate to employees where a copy of the standard is available;

(B) Describe the medical surveillance program required under paragraph (m) of this section, and explain the information contained in Appendix C; and

(C) Describe the medical removal provision required under paragraph (m) of this section.

(4) *Access to training materials.* (i) The employer shall make readily available to all affected employees, without cost, all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Assistant Secretary and the Director, upon request, all information and training materials relating to the employee information and training program.

(l) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of visible accumulations of MDA.

(2) The employer shall institute a program for detecting MDA leaks, spills, and discharges, including regular visual inspections of operations involving liquid or solid MDA.

(3) All leaks shall be repaired and liquid or dust spills cleaned up promptly.

(4) Surfaces contaminated with MDA may not be cleaned by the use of compressed air.

(5) Shoveling, dry sweeping, and other methods of dry clean-up of MDA may be used where HEPA-filtered vacuuming and/or wet cleaning are not feasible or practical.

(6) Waste, scrap, debris, bags, containers, equipment, and clothing contaminated with MDA shall be collected and disposed of in a manner to prevent the re-entry of MDA into the workplace.

(m) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees exposed to MDA:

(A) Employees exposed at or above the action level for 30 or more days per year;

(B) Employees who are subject to dermal exposure to MDA for 15 or more days per year;

(C) Employees who have been exposed in an emergency situation;

(D) Employees whom the employer, based on results from compliance with paragraph (e)(8) of this section, has reason to believe are being dermally exposed; and

(E) Employees who show signs or symptoms of MDA exposure.

(ii) The employer shall ensure that all medical examinations and procedures are performed by, or under the supervision of, a licensed physician, at a reasonable time and place, and provided without cost to the employee.

(2) *Initial examinations.* (i) Within 150 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (m)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed history which includes:

(*1*) Past work exposure to MDA or any other toxic substances;

(*2*) A history of drugs, alcohol, tobacco, and medication routinely taken (duration and quantity); and

(*3*) A history of dermatitis, chemical skin sensitization, or previous hepatic disease.

(B) A physical examination which includes all routine physical examination parameters, skin examination, and signs of liver disease.

(C) Laboratory tests including:

(*1*) Liver function tests and

(*2*) Urinalysis.

(D) Additional tests as necessary in the opinion of the physician.

(ii) No initial medical examination is required if adequate records show that the employee has been examined in accordance with the requirements of this section within the previous six months prior to the effective date of this standard or prior to the date of initial assignment.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered by this section with a medical examination at least annually following the initial examination. These periodic examinations shall include at least the following elements:

(A) A brief history regarding any new exposure to potential liver toxins, changes in drug, tobacco, and alcohol intake, and the appearance of physical signs relating to the liver, and the skin;

(B) The appropriate tests and examinations including liver function tests and skin examinations; and

(C) Appropriate additional tests or examinations as deemed necessary by the physician.

(ii) If in the physicians' opinion the results of liver function tests indicate an abnormality, the employee shall be removed from further MDA exposure in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on advice of the physician.

(4) *Emergency examinations.* If the employer determines that the employee has been exposed to a potentially hazardous amount of MDA in an emergency situation as addressed in paragraph (d) of this section, the employer shall provide medical examinations in accordance with paragraphs (m)(3)(i) and (ii) of this

section. If the results of liver function testing indicate an abnormality, the employee shall be removed in accordance with paragraph (m)(9) of this section. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and; on the advice of the physician, no additional testing is required.

(5) *Additional examinations.* Where the employee develops signs and symptoms associated with exposure to MDA, the employer shall provide the employee with an additional medical examination including a liver function test. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and, on the advice of the physician, no additional testing is required.

(6) *Multiple physician review mechanism.* (i) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, and the employee has signs or symptoms of occupational exposure to MDA (which could include an abnormal liver function test), and the employee disagrees with the opinion of the examining physician, and this opinion could affect the employee's job status, the employee may designate an appropriate, mutually acceptable second physician:

(A) To review any findings, determinations, or recommendations of the initial physician; and

(B) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informing the employer that he or she intends to seek a second medical opinion, and

(B) The employee initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to resolve quickly their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(A) To review any findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) The employer shall act consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(7) *Information provided to the examining and consulting physicians.* (i) The employer shall provide the following information to the examining physician:

(A) A copy of this regulation and its appendices;

(B) A description of the affected employee's duties as they relate to the employee's potential exposure to MDA;

(C) The employee's current actual or representative MDA exposure level;

(D) A description of any personal protective equipment used or to be used; and

(E) Information from previous employment-related medical examinations of the affected employee.

(ii) The employer shall provide the foregoing information to a second physician under this section upon request either by the second physician, or by the employee.

(8) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain, and provide the employee with a copy of, the examining physician's written opinion within 15 days of its receipt. The written opinion shall include the following:

(A) The occupationally-pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to MDA;

(C) The physician's recommended limitations upon the employee's exposure to MDA or upon the employee's use of protective clothing or equipment and respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from MDA exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(9) *Medical removal*—(i) *Temporary medical removal of an employee*—(A) *Temporary removal resulting from occupational exposure.* The employee shall be removed from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, following an initial examination (paragraph (m)(2) of this section), periodic examinations (paragraph (m)(3) of this section), an emergency situation paragraph (m)(4) of this section, or an additional examination (paragraph (m)(5) of this section) in the following circumstances:

(*1*) When the employee exhibits signs and/or symptoms indicative of acute exposure to MDA; or

(*2*) When the examining physician determines that an employee's abnormal liver function tests are not associated with MDA exposure but that the abnormalities may be exacerbated as a result of occupational exposure to MDA.

(B) *Temporary removal due to a final medical determination.* (*1*) The employer shall remove an employee from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, on each occasion that there is a final medical determination or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(*2*) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the physician review mechanism used pursuant to the medical surveillance provisions of this section.

(*3*) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to MDA, the employer shall implement and act consistent with the recommendation.

(ii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(*1*) When the employee no longer shows signs or symptoms of exposure to MDA, or upon the advice of the physician.

(*2*) When a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iii) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee, or end any special protective measures provided to an employee, pursuant to a final medical determination, when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(iv) *Employer options pending a final medical determination.* Where the physician review mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to MDA, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, and end any special protective measures provided to the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions.

(*1*) If the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; or

(2) If the employee has been on removal status for the preceding six months as a result of exposure to MDA, then the employer shall await a final medical determination.

(v) *Medical removal protection benefits*—(A) *Provisions of medical removal protection benefits.* The employer shall provide to an employee up to six (6) months of medical removal protection benefits on each occasion that an employee is removed from exposure to MDA or otherwise limited pursuant to this section.

(B) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority, and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to MDA or otherwise limited.

(C) *Follow-up medical surveillance during the period of employee removal or limitations.* During the period of time that an employee is removed from normal exposure to MDA or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(D) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a MDA-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment-related expenses.

(E) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from non-MDA-related employment with any employer made possible by virtue of the employee's removal.

(F) *Employees who do not recover within the 6 months of removal.* The employer shall take the following measures with respect to any employee removed from exposure to MDA:

(*1*) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(*2*) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and, if not, what steps should be taken to protect the employee's health;

(*3*) Where the final medical determination has not yet been obtained, or, once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status; and

(*4*) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status, despite what would otherwise be an abnormal liver function test, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the MDA removal criteria provided by this section.

(vi) *Voluntary removal or restriction of an employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to MDA or otherwise places limitations on an employee due to the effects of MDA exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (m)(9)(v) of this section.

(n) *Recordkeeping*—(1) *Monitoring data for exempted employers.* (i) Where as a result of the initial monitoring the processing, use, or handling of products made from or containing MDA are exempted from other requirements of this section under paragraph (a)(2) of this section, the employer shall establish and maintain an accurate record of monitoring relied on in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the monitoring data (e.g., was monitoring performed by the employer or a private contractor);

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption (e.g., are the monitoring data representative of the conditions at the affected facility); and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Objective data for exempted employers.* (i) Where the processing, use, or handling of products made from or containing MDA are exempted from other requirements of this section under paragraph (a) of this section, the employer shall establish and maintain an accurate record of objective data relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(3) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (e) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) Identification of the sampling and analytical methods used;

(C) A description of the type of respiratory protective devices worn, if any; and

(D) The name, social security number, job classification and exposure levels of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 30 years, in accordance with 29 CFR 1910.20.

(4) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (m) of this section, in accordance with 29 CFR 1910.20.

(ii) This record shall include:

(A) The name, social security number and description of the duties of the employee;

(B) The employer's copy of the physician's written opinion on the initial, periodic, and any special examinations, including results of medical examination and all tests, opinions, and recommendations;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to MDA;

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of this standard and its appendices, except that the employer may keep one copy of the standard and its appendices for all employees provided the employer references the standard and its appendices in the medical surveillance record of each employee;

(B) A copy of the information provided to the physician as required by any paragraphs in the regulatory text;

(C) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to the information;

(D) A copy of the employee's medical and work history related to exposure to MDA; and

(iv) The employer shall maintain this record for at least the duration of employment plus 30 years, in accordance with 29 CFR 1910.20.

(5) *Medical removals.* (i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to MDA pursuant to paragraph (m) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date of each occasion that the employee was removed from current exposure to MDA as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating the reason for the removal.

(iii) The employer shall maintain each medical removal record for at least the duration of an employee's employment plus 30 years.

(6) *Availability.* (i) The employer shall assure that records required to be maintained by this section shall be made available, upon request, to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records required by this section shall be provided upon request for examination and copying to employees, employee representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i).

(iii) Employee medical records required by this section shall be provided upon request for examination and copying, to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary in accordance with 29 CFR 1910.20.

(7) *Transfer of records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1910.20(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least 90 days prior to disposal, and transmit the records to the Director if so requested by the Director within that period.

(o) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to MDA conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to MDA requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(p) *Effective date.* This standard shall become effective September 9, 1992.

(q) *Appendices.* The information contained in appendices A, B, C and D of this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation. The

protocols for respiratory fit testing in appendix E of this section are mandatory.

(r) *Startup dates.* Compliance with all obligations of this standard commence on the effective date except as follows:

(1) Initial monitoring under paragraph (e)(2) of this section shall be completed as soon as possible but no later than December 8, 1992.

(2) Medical examinations under paragraph (m) of this section shall be completed as soon as possible but no later than February 8, 1993.

(3) Emergency plans required by paragraph (d) of this section shall be provided and available for inspection and copying as soon as possible but no later than January 7, 1993.

(4) Initial training and education shall be completed as soon as possible but no later than January 7, 1993.

(5) Hygiene and lunchroom facilities under paragraph (j) shall be in operation as soon as possible but no later than September 9, 1993.

(6) Respiratory Protection required by paragraph (h) of this section shall be provided as soon as possible but no later than January 7, 1993.

(7) Written compliance plans required by paragraph (g)(2) of this section shall be completed and available for inspection and copying as soon as possible but no later than January 7, 1993.

(8) OSHA shall enforce the permissible exposure limits in paragraph (c) of this section no earlier than January 7, 1993.

(9) Engineering controls needed to achieve the PELs must be in place September 9, 1993.

(10) Personal protective clothing required by paragraph (i) of this section shall be available January 7, 1993.

Appendix A to Section 1910.1050.—Substance Data Sheet, for 4,4'-Methylenedianiline

I. Substance Identification

A. Substance: Methylenedianiline (MDA)

B. Permissible Exposure:

1. Airborne: Ten parts per billion parts of air (10 ppb), time-weighted average (TWA) for an 8-hour workday and an action level of five parts per billion parts of air (5 ppb).

2. Dermal: Eye contact and skin contact with MDA are not permitted.

C. Appearance and odor: White to tan solid; amine odor

II. Health Hazard Data

A. Ways in which MDA affects your health. MDA can affect your health if you inhale it, or if it comes in contact with your skin or eyes. MDA is also harmful if you happen to swallow it. Do not get MDA in eyes, on skin, or on clothing.

B. Effects of overexposure. 1. Short-term (acute) overexposure: Overexposure to MDA may produce fever, chills, loss of appetite, vomiting, jaundice. Contact may irritate skin, eyes and mucous membranes. Sensitization may occur.

2. Long-term (chronic) exposure. Repeated or prolonged exposure to MDA, even at relatively low concentrations, may cause cancer. In addition, damage to the liver, kidneys, blood, and spleen may occur with long term exposure.

3. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms which you suspect are caused by exposure to MDA including yellow staining of the skin.

III. Protective Clothing and Equipment

A. Respirators. Respirators are required for those operations in which engineering controls or work practice controls are not adequate or feasible to reduce exposure to the permissible limit. If respirators are worn, they must have the joint Mine Safety and Health Administration and National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridges or canisters must be replaced as necessary to maintain the effectiveness of the respirator. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

MDA does not have a detectable odor except at levels well above the permissible exposure limits. Do not depend on odor to warn you when a respirator canister is exhausted. If you can smell MDA while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Protective Clothing. You may be required to wear coveralls, aprons, gloves, face shields, or other appropriate protective clothing to prevent skin contact with MDA. Where protective clothing is required, your employer is required to provide clean garments to you, as necessary, to assure that the clothing protects you adequately. Replace or repair impervious clothing that has developed leaks.

MDA should never be allowed to remain on the skin. Clothing and shoes which are not impervious to MDA should not be allowed to become contaminated with MDA, and if they do, the clothing and shoes should be promptly removed and decontaminated. The clothing should be laundered to remove MDA or discarded. Once MDA penetrates shoes or other leather articles, they should not be worn again.

C. Eye protection. You must wear splashproof safety goggles in areas where liquid MDA may contact your eyes. Contact lenses should not be worn in areas where eye contact with MDA can occur. In addition, you must wear a face shield if your face could be splashed with MDA liquid.

IV. Emergency and First Aid Procedures

A. Eye and face exposure. If MDA is splashed into the eyes, wash the eyes for at least 15 minutes. See a doctor as soon as possible.

B. Skin exposure. If MDA is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of soap and water immediately. Wash contaminated clothing before you wear it again.

C. Breathing. If you or any other person breathes in large amounts of MDA, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the MDA concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. Swallowing. If MDA has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to MDA at a concentration at or above the action level for more than 30 days per year, or exposed to liquid mixtures more than 15 days per year, your employer is required to provide a medical examination, including a medical history and laboratory tests, within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to MDA (either by ingestion, inhalation, or skin/eye contact) under conditions known or suspected to constitute toxic exposure to MDA, your employer is required to make special examinations and tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to MDA and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you and your representative must also be provided with, and must wear, the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to MDA upon written request to your employer. Your medical examination records can be furnished to your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

A. Material is combustible. Avoid strong acids and their anhydrides. Avoid strong oxidants. Consult supervisor for disposal requirements.

B. Emergency clean-up. Wear self-contained breathing apparatus and fully clothe the body in the appropriate personal protective clothing and equipment.

Appendix B to Section 1910.1050—Substance Technical Guidelines, MDA

I. Identification

A. Substance identification.

1. Synonyms: CAS No. 101-77-9. 4,4'-methylenedianiline; 4,4'-methylenebisaniline; methylenedianiline; dianilinomethane.

2. Formula: $C_{13}H_{14}N_2$

II. Physical Data

1. Appearance and Odor: White to tan solid; amine odor

2. Molecular Weight: 198.26

3. Boiling Point: 398–399 degrees C at 760 mm Hg

4. Melting Point: 88–93 degrees C (190–100 degrees F)

5. Vapor Pressure: 9 mmHg at 232 degrees C

6. Evaporation Rate (n-butyl acetate = 1): Negligible

7. Vapor Density (Air=1): Not Applicable

8. Volatile Fraction by Weight: Negligible

9. Specific Gravity (Water=1): Slight

10. Heat of Combustion: −8.40 kcal/g

11. Solubility in Water: Slightly soluble in cold water, very soluble in alcohol, benzene, ether, and many organic solvents.

III. Fire, Explosion, and Reactivity Hazard Data

1. Flash Point: 190 degrees C (374 degrees F) Setaflash closed cup

2. Flash Point: 226 degrees C (439 degrees F) Cleveland open cup

3. Extinguishing Media: Water spray; Dry Chemical; Carbon dioxide.

4. Special Fire Fighting Procedures: Wear self-contained breathing apparatus and protective clothing to prevent contact with skin and eyes.

5. Unusual Fire and Explosion Hazards: Fire or excessive heat may cause production of hazardous decomposition products.

IV. Reactivity Data

1. Stability: Stable

2. Incompatibility: Strong oxidizers

3. Hazardous Decomposition Products: As with any other organic material, combustion may produce carbon monoxide. Oxides of nitrogen may also be present.

4. Hazardous Polymerization: Will not occur.

V. Spill and Leak Procedures

1. Sweep material onto paper and place in fiber carton.

2. Package appropriately for safe feed to an incinerator or dissolve in compatible waste solvents prior to incineration.

3. Dispose of in an approved incinerator equipped with afterburner and scrubber or contract with licensed chemical waste disposal service.

4. Discharge treatment or disposal may be subject to federal, state, or local laws.

5. Wear appropriate personal protective equipment.

VI. Special Storage and Handling Precautions

A. High exposure to MDA can occur when transferring the substance from one container to another. Such operations should be well ventilated and good work practices must be established to avoid spills.

B. Pure MDA is a solid with a low vapor pressure. Grinding or heating operations increase the potential for exposure.

C. Store away from oxidizing materials.

D. Employers shall advise employees of all areas and operations where exposure to MDA could occur.

VII. Housekeeping and Hygiene Facilities

A. The workplace should be kept clean, orderly, and in a sanitary condition.

The employer should institute a leak and spill detection program for operations involving MDA in order to detect sources of fugitive MDA emissions.

B. Adequate washing facilities with hot and cold water are to be provided and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of MDA from the skin.

VIII. Common Operations

Common operations in which exposure to MDA is likely to occur include the following: Manufacture of MDA; Manufacture of Methylene diisocyanate; Curing agent for epoxy resin structures; Wire coating operations; and filament winding.

Appendix C to Section 1910.1050—Medical Surveillance Guidelines for MDA

I. Route of Entry

Inhalation; skin absorption; ingestion. MDA can be inhaled, absorbed through the skin, or ingested.

II. Toxicology

MDA is a suspect carcinogen in humans. There are several reports of liver disease in humans and animals resulting from acute exposure to MDA. A well documented case of an acute cardiomyopathy secondary to exposure to MDA is on record. Numerous human cases of hepatitis secondary to MDA are known. Upon direct contact MDA may also cause damage to the eyes. Dermatitis and skin sensitization have been observed. Almost all forms of acute environmental hepatic injury in humans involve the hepatic parenchyma and produce hepatocellular jaundice. This agent produces intrahepatic cholestasis. The clinical picture consists of cholestatic jaundice, preceded or accompanied by abdominal pain, fever, and chills. Onset in about 60% of all observed cases is abrupt with severe abdominal pain. In about 30% of observed cases, the illness presented and evolved more slowly and less dramatically, with only slight abdominal pain. In about 10% of the cases only jaundice was evident. The cholestatic nature of the jaundice is evident in the prominence of itching, the histologic predominance of bile stasis, and portal inflammatory infiltration, accompanied by only slight parenchymal injury in most cases, and by the moderately elevated transaminase values. Acute, high doses, however, have been known to cause hepatocellular damage resulting in elevated SGPT, SGOT, alkaline phosphatase and bilirubin.

Absorption through the skin is rapid. MDA is metabolized and excreted over a 48-hour period. Direct contact may be irritating to the skin, causing dermatitis. Also MDA which is deposited on the skin is not thoroughly removed through washing.

MDA may cause bladder cancer in humans. Animal data supporting this assumption is not available nor is conclusive human data. However, human data collected on workers at a helicopter manufacturing facility where MDA is used suggests a higher incidence of bladder cancer among exposed workers.

III. Signs and Symptoms

Skin may become yellow from contact with MDA.

Repeated or prolonged contact with MDA may result in recurring dermatitis (red-itchy, cracked skin) and eye irritation. Inhalation, ingestion or absorption through the skin at high concentrations may result in hepatitis, causing symptoms such as fever and chills, nausea and vomiting, dark urine, anorexia, rash, right upper quadrant pain and jaundice. Corneal burns may occur when MDA is splashed in the eyes.

IV. Treatment of Acute Toxic Effects/ Emergency Situation

If MDA gets into the eyes, immediately wash eyes with large amounts of water. If MDA is splashed on the skin, immediately wash contaminated skin with mild soap or detergent. Employee should be removed from exposure and given proper medical treatment. Medical tests required under the emergency section of the medical surveillance section (M)(4) must be conducted.

If the chemical is swallowed do not induce vomiting but remove by gastric lavage.

Appendix D to Section 1910.1050—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to MDA are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

There are a number of methods available for monitoring employee exposures to MDA. The method OSHA currently uses is included below.

The employer, however, has the obligation of selecting any monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for the select PEL.

OSHA Methodology

Sampling Procedure

Apparatus

Samples are collected by use of a personal sampling pump that can be calibrated within ±5% of the recommended flow rate with the sampling filters in line.

Samples are collected on 37 mm Gelman type A/E glass fiber filters treated with sulfuric acid. The filters are prepared by soaking each filter with 0.5 mL of 0.26N H_2SO_4. (0.26 N H_2SO_4 can be prepared by diluting 1.5 mL of 36N H_2SO_4 to 200 mL with deionized water.) The filters are dried in an oven at 100 degrees C for one hour and then assembled into two-piece 37 mm polystyrene cassettes with backup pads. The cassettes are sealed with shrink bands and the ends are plugged with plastic plugs.

After sampling, the filters are carefully removed from the cassettes and individually transferred to small vials containing approximately 2 mL deionized water. The vials must be tightly sealed. The water can be added before or after the filters are transferred. The vials must be sealable and capable of holding at least 7 mL of liquid. Small glass scintillation vials with caps containing Teflon liners are recommended.

Reagents

Deionized water is needed for addition to the vials.

Sampling Technique

Immediately before sampling, remove the plastic plugs from the filter cassettes.

Attach the cassette to the sampling pump with flexible tubing and place the cassette in the employee's breathing zone.

After sampling, seal the cassettes with plastic plugs until the filters are transferred to the vials containing deionized water.

At some convenient time within 10 hours of sampling, transfer the sample filters to vials.

Seal the small vials lengthwise.

Submit at least one blank filter with each sample set. Blanks should be handled in the same manner as samples, but no air is drawn through them.

Record sample volumes (in L of air) for each sample, along with any potential interferences.

Retention Efficiency

A retention efficiency study was performed by drawing 100 L of air (80% relative humidity) at 1 L/min through sample filters that had been spiked with 0.814 µg MDA. Instead of using backup pads, blank acid-treated filters were used as backups in each cassette. Upon analysis, the top filters were found to have an average of 91.8% of the spiked amount. There was no MDA found on the bottom filters, so the amount lost was probably due to the slight instability of the MDA salt.

Extraction Efficiency

The average extraction efficiency for six filters spiked at the target concentration is 99.6%.

The stability of extracted and derivatized samples was verified by reanalyzing the above six samples the next day using fresh standards. The average extraction efficiency for the reanalyzed samples is 98.7%.

Recommended Air Volume and Sampling Rate

The recommended air volume is 100 L.

The recommended sampling rate is 1 L/min.

Interferences (Sampling)

MDI appears to be a positive interference. It was found that when MDI was spiked onto an acid-treated filter, the MDI converted to MDA after air was drawn through it.

Suspected interferences should be reported to the laboratory with submitted samples.

Safety Precautions (Sampling)

Attach the sampling equipment to the employees so that it will not interfere with work performance or safety.

Follow all safety procedures that apply to the work area being sampled.

Analytical Procedure

Apparatus: The following are required for analysis.

A GC equipped with an electron capture detector. For this evaluation a Tracor 222 Gas Chromatograph equipped with a Nickel 63 High Temperature Electron Capture Detector and a Linearizer was used.

A GC column capable of separating the MDA derivative from the solvent and interferences. A 6 ft X 2 mm ID glass column packed with 3% OV-101 coated on 100/120 Gas Chrom Q was used in this evaluation.

A electronic integrator or some other suitable means of measuring peak areas or heights.

Small resealable vials with Teflon-lined caps capable of holding 4 mL.

A dispenser or pipet for toluene capable of delivering 2.0 mL.

Pipets (or repipets with plastic or Teflon tips) capable of delivering 1 mL for the sodium hydroxide and buffer solutions.

A repipet capable of delivering 25 µL HFAA.

Syringes for preparation of standards and injection of standards and samples into a GC.

Volumetric flasks and pipets to dilute the pure MDA in preparation of standards.

Disposable pipets to transfer the toluene layers after the samples are extracted.

Reagents

0.5 NaOH prepared from reagent grade NaOH.

Toluene, pesticide grade. Burdick and Jackson distilled in glass toluene was used.

Heptafluorobutyric acid anhydride (HFAA). HFAA from Pierce Chemical Company was used.

pH 7.0 phosphate buffer, prepared from 136 g potassium dihydrogen phosphate and 1 L deionized water. The pH is adjusted to 7.0 with saturated sodium hydroxide solution.

4,4' -Methylenedianiline (MDA), reagent grade.

Standard Preparation

Concentrated stock standards are prepared by diluting pure MDA with toluene. Analytical standards are prepared by injecting uL amounts of diluted stock standards into vials that contain 2.0 mL toluene.

25 uL HFAA are added to each vial and the vials are capped and shaken for 10 seconds.

After 10 min, 1 mL of buffer is added to each vial.

The vials are recapped and shaken for 10 seconds.

After allowing the layers to separate, aliquots of the toluene (upper) layers are removed with a syringe and analyzed by GC.

Analytical standard concentrations should bracket sample concentrations. Thus, if samples fall out of the range of prepared standards, additional standards must be prepared to ascertain detector response.

Sample Preparation

The sample filters are received in vials containing deionized water.

1 mL of 0.5N NaOH and 2.0 mL toluene are added to each vial.

The vials are recapped and shaken for 10 min.

After allowing the layers to separate, approximately 1 mL aliquots of the toluene (upper) layers are transferred to separate vials with clean disposable pipets.

The toluene layers are treated and analyzed.

Analysis

GC conditions

Zone temperatures:
Column—220 degrees C
Injector—235 degrees C
Detector—335 degrees C
Gas flows, Ar/CH_4, Column—20 mL/min (95/5) Purge—40 mL/min
Injection volume: 5.0 uL
Column: 6 ft X 1/8 in ID glass, 3% OV-101 on 100/120 Gas Chrom Q
Retention time of MDA derivative: 3.5 min

Chromatogram

Peak areas or heights are measured by an integrator or other suitable means.

A calibration curve is constructed by plotting response (peak areas or heights) of standard injections versus ug of MDA per sample. Sample concentrations must be bracketed by standards.

Interferences (Analytical)

Any compound that gives an electron capture detector response and has the same general retention time as the HFAA derivative of MDA is a potential interference. Suspected interferences reported to the laboratory with submitted samples by the industrial hygienist must be considered before samples are derivatized.

GC parameters may be changed to possibly circumvent interferences.

Retention time on a single column is not considered proof of chemical identity. Analyte identity should be confirmed by GC/MS if possible.

Calculations

The analyte concentration for samples is obtained from the calibration curve in terms of ug MDA per sample. The extraction efficiency is 100%. If any MDA is found on the blank, that amount is subtracted from the sample amounts. The air concentrations are calculated using the following formulae.

$\mu g/m^3 = (\mu g \text{ MDA per sample})(1000)/(L \text{ of air sampled})$

ppb=(μg/m³) (24.46)/(198.3)=(μg/m³) (0.1233) where 24.46 is the molar volume at 25 degrees C and 760 mm Hg

Safety Precautions (Analytical)

Avoid skin contact and inhalation of all chemicals.

Restrict the use of all chemicals to a fume hood if possible.

Wear safety glasses and a lab coat at all times while in the lab area.

Appendix E to Section 1910.1050—Qualitative and Quantitative Fit Testing Procedures

Qualitative Fit Test Protocols

I. Isoamyl Acetate (banana oil) Protocol

A. Odor threshold screening.

1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated so that circulation of the test solution does not occur and cross contaminate the testing different sites.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator Selection.

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a comfortable fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. All donning and adjustments of the facepiece shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points in #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator after donning:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall perform the conventional negative or positive-pressure fit checks (e.g., see ANSI Z88.2–1980A7). Before beginning the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If the respirator has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and to be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit Test.

1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2-foot diameter frame, so that the top of chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or canisters shall be replaced as necessary to maintain the effectiveness of the respirator.

3. After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and Rainbow Passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it aloud will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jog in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at a least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA.

The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject must break the faceseal and take a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL. In atmospheres greater than 10 times, and less than 50 times the PEL (up to 50 ppm), the subject must pass the IAA test using a full face negative pressure respirator. (The concentration of the IAA inside the test chamber must be increased by five times for QLFT of the full facepiece.)

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as a powered air-purifying respirator, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping.

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator Selection.

Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste Threshold Screening.

1. An enclosure placed over the head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C 7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to fully expand.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test.

1. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

2. The test subject shall don and adjust the respirator without assistance from any person.

3. The fit test uses the same enclosure described in IIB above.

4. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

(a) This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation and, the purpose for the head exercises; or to demonstrate some of the exercises.

(b) The test subject shall perform the conventional negative or positive pressure fit tests (See ANSI Z88.2 1980 A7).

5. The test subject shall enter the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B8 through B10 above.)

10. After generation of the aerosol read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. Talk. Talk aloud and slowly. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement.

vi. Jog in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C9.

12. The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

13. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

14. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of MDA. In other words this protocol may not be used to assign protection factors higher than ten.

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping.

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection.

Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a combination of high-efficiency and acid-gas cartridges.

B. Fit Test.

1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are deep and regular.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in Place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B8, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents

12. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of MDA.

13. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

14. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

15. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

16. Qualitative fit testing shall be repeated at least every 12 months.

17. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping.

A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

Quantitative Fit Test Procedures

1. *General.*

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign an individual (with help as needed) who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. *Definition.*

a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.*

a. *Instrumentation.* Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. *Test chamber.* The test chamber shall be large enough to permit all test subjects to freely perform all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible. The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. *Procedural Requirements.*

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfr II–M, Norton M, Survivair M A–O M or Scott–M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive pressure test.* With the exhaust port(s) blocked the negative pressure of slight inhalation should remain constant for several seconds.

(2) *Negative pressure test.* With the intake port(s) blocked the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d., and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit by as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. *Exercise Regime.* Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

d. *Moving head up and down (UD).* Standing in place, the subject shall slowly move his head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

e. *Reading (R).* The subject shall read out slowly and loud so as to be heard clearly by the test conductor or monitor. The test subject shall read the "rainbow passage" at the end of this section.

f. *Grimace (G).* The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least one minute.

h. *Jogging in place (J).* The test subject shall perform jog in place for at least one minute.

i. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. *Termination of Tests.* The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test

subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h.).

7. *Calculation of Fit Factors.*

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. *Interpretation of Test Results.* The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. *Other Requirements.*

a. The test subject shall not be permitted to wear a half-mask or full facepiece if the minimum fit factor of 250 or 1,250, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the subject with the following information:

(1) Name.

(2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media.

Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. *Retesting.* In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

11. *Recordkeeping.*

a. A summary of all test results shall be maintained for three years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

b. A copy of all test data including the strip chart and results shall be kept for at least five years.

Construction Standard

PART 1926—[AMENDED]

4. The authority citation for part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Standards Act) (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 6–76 (41 FR 25059), 9–83 (48 FR 35736), (or 1–90 (55 FR 9033)) as applicable; and 29 CFR part 1911.

5. By adding a new § 1926.60 to read as follows:

§ 1926.60 Methylenedianiline.

(a) *Scope and application.* (1) This section applies to all construction work as defined in 29 CFR 1910.12(b), in which there is exposure to MDA, including but not limited to the following:

(i) Construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain MDA;

(ii) Installation or the finishing of surfaces with products containing MDA;

(iii) MDA spill/emergency cleanup at construction sites; and

(iv) Transportation, disposal, storage, or containment of MDA or products containing MDA on the site or location at which construction activities are performed.

(2) Except as provided in paragraphs (a)(7) and (f)(5) of this section, this section does not apply to the processing, use, and handling of products containing MDA where initial monitoring indicates that the product is not capable of releasing MDA in excess of the action level under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(3) Except as provided in paragraph (a)(7) of this section, this section does not apply to the processing, use, and handling of products containing MDA where objective data are reasonably relied upon which demonstrate the product is not capable of releasing MDA under the expected conditions of processing, use, and handling which will cause the greatest possible release; and where no "dermal exposure to MDA" can occur.

(4) Except as provided in paragraph (a)(7) of this section, this section does not apply to the storage, transportation, distribution or sale of MDA in intact containers sealed in such a manner as to contain the MDA dusts, vapors, or liquids, except for the provisions of 29 CFR 1910.1200 and paragraph (e) of this section.

(5) Except as provided in paragraph (a)(7) of this section, this section does not apply to materials in any form which contain less than 0.1% MDA by weight or volume.

(6) Except as provided in paragraph (a)(7) of this section, this section does not apply to "finished articles containing MDA."

(7) Where products containing MDA are exempted under paragraphs (a)(2) through (a)(6) of this section, the employer shall maintain records of the initial monitoring results or objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in the recordkeeping provision of paragraph (o) of this section.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

Action level means a concentration of airborne MDA of 5 ppb as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (p) of this section, or any other person authorized by the Act or regulations issued under the Act.

Container means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, commercial packaging or

the like, but does not include piping systems.

Decontamination area means an area outside of but as near as practical to the regulated area, consisting of an equipment storage area, wash area, and clean change area, which is used for the decontamination of workers, materials, and equipment contaminated with MDA.

Dermal exposure to MDA occurs where employees are engaged in the handling, application or use of mixtures or materials containing MDA, with any of the following non-airborne forms of MDA:

(i) Liquid, powdered, granular, or flaked mixtures containing MDA in concentrations greater than 0.1% by weight or volume; and

(ii) Materials other than "finished articles" containing MDA in concentrations greater than 0.1% by weight or volume.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which results in an unexpected and potentially hazardous release of MDA.

Employee exposure means exposure to MDA which would occur if the employee were not using respirators or protective work clothing and equipment.

Finished article containing MDA is defined as a manufactured item:

(i) Which is formed to a specific shape or design during manufacture;

(ii) Which has end use function(s) dependent in whole or part upon its shape or design during end use; and

(iii) Where applicable, is an item which is fully cured by virtue of having been subjected to the conditions (temperature, time) necessary to complete the desired chemical reaction.

Historical monitoring data means monitoring data for construction jobs that meet the following conditions:

(i) The data upon which judgments are based are scientifically sound and were collected using methods that are sufficiently accurate and precise;

(ii) The processes and work practices that were in use when the historical monitoring data were obtained are essentially the same as those to be used during the job for which initial monitoring will not be performed;

(iii) The characteristics of the MDA-containing material being handled when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed;

(iv) Environmental conditions prevailing when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed; and

(v) Other data relevant to the operations, materials, processing, or employee exposures covered by the exception are substantially similar. The data must be scientifically sound, the characteristics of the MDA containing material must be similar and the environmental conditions comparable.

4,4' Methylenedianiline or MDA means the chemical; 4,4'-diaminodiphenylmethane, Chemical Abstract Service Registry number 101-77-9, in the form of a vapor, liquid, or solid. The definition also includes the salts of MDA.

Regulated Areas means areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits, or where "dermal exposure to MDA" can occur.

STEL means short term exposure limit as determined by any 15-minute sample period.

(c) *Permissible exposure limits.* The employer shall assure that no employee is exposed to an airborne concentration of MDA in excess of ten parts per billion (10 ppb) as an 8-hour time-weighted average and a STEL of one hundred parts per billion (100 ppb).

(d) *Communication among employers.* On multi-employer worksites, an employer performing work involving the application of MDA or materials containing MDA for which establishment of one or more regulated areas is required shall inform other employers on the site of the nature of the employer's work with MDA and of the existence of, and requirements pertaining to, regulated areas.

(e) *Emergency situations*—(1) *Written plan.* (i) A written plan for emergency situations shall be developed for each construction operation where there is a possibility of an emergency. The plan shall include procedures where the employer identifies emergency escape routes for his employees at each construction site before the construction operation begins. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with the appropriate personal protective equipment and clothing as required in paragraphs (i) and (j) of this section until the emergency is abated.

(iii) The plan shall specifically include provisions for alerting and evacuating affected employees as well as the applicable elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

(2) *Alerting employees.* Where there is the possibility of employee exposure to MDA due to an emergency, means shall be developed to promptly alert employees who have the potential to be directly exposed. Affected employees not engaged in correcting emergency conditions shall be evacuated immediately in the event that an emergency occurs. Means shall also be developed for alerting other employees who may be exposed as a result of the emergency.

(f) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of each employee's exposure to airborne MDA over an eight (8) hour period. Determination of employee exposure to the STEL shall be made from breathing zone air samples collected over a 15 minute sampling period.

(ii) Representative employee exposure shall be determined on the basis of one or more samples representing full shift exposure for each shift for each job classification in each work area where exposure to MDA may occur.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer shall only be required to determine representative employee exposure for that operation during one shift.

(2) *Initial monitoring.* Each employer who has a workplace or work operation covered by this standard shall perform initial monitoring to determine accurately the airborne concentrations of MDA to which employees may be exposed unless:

(i) The employer can demonstrate, on the basis of objective data, that the MDA-containing product or material being handled cannot cause exposures above the standard's action level, even under worst-case release conditions; or

(ii) The employer has historical monitoring or other data demonstrating that exposures on a particular job will be below the action level.

(3) *Periodic monitoring and monitoring frequency.* (i) If the monitoring required by paragraph (f)(2) of this section reveals employee exposure at or above the action level, but at or below the PELs, the employer shall repeat such monitoring for each such employee at least every six (6) months.

(ii) If the monitoring required by paragraph (f)(2) of this section reveals

employee exposure above the PELs, the employer shall repeat such monitoring for each such employee at least every three (3) months.

(iii) Employers who are conducting MDA operations within a regulated area can forego periodic monitoring if the employees are all wearing supplied-air respirators while working in the regulated area.

(iv) The employer may alter the monitoring schedule from every three months to every six months for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to below the PELs but above the action level.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (f)(2) of this section reveals employee exposure to be below the action level, the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (f)(5) of this section.

(ii) If the periodic monitoring required by paragraph (f)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (f)(5) of this section.

(5) *Additional monitoring.* The employer shall institute the exposure monitoring required under paragraphs (f)(2) and (f)(3) of this section when there has been a change in production process, chemicals present, control equipment, personnel, or work practices which may result in new or additional exposures to MDA, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of MDA.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results, in writing, either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (f)(7)(i) of this section shall contain the corrective action being taken by the employer or any other protective measures which have been implemented to reduce the employee exposure to or below the PELs, wherever the PELs are exceeded.

(8) *Visual monitoring.* The employer shall make routine inspections of employee hands, face and forearms potentially exposed to MDA. Other potential dermal exposures reported by the employee must be referred to the appropriate medical personnel for observation. If the employer determines that the employee has been exposed to MDA the employer shall:

(i) Determine the source of exposure;

(ii) Implement protective measures to correct the hazard; and

(iii) Maintain records of the corrective actions in accordance with paragraph (*n*) of this section.

(g) *Regulated areas*—(1) *Establishment.* (i) *Airborne exposures.* The employer shall establish regulated areas where airborne concentrations of MDA exceed or can reasonably be expected to exceed, the permissible exposure limits.

(ii) *Dermal exposures.* Where employees are subject to "dermal exposure to MDA" the employer shall establish those work areas as regulated areas.

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in a manner that minimizes the number of persons potentially exposed.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Personal protective equipment and clothing.* Each person entering a regulated area shall be supplied with, and required to use, the appropriate personal protective clothing and equipment in accordance with paragraphs (i) and (j) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas.

(h) *Methods of compliance*—(1) *Engineering controls and work practices and respirators.* (i) The employer shall use one or any combination of the following control methods to achieve compliance with the permissible exposure limits prescribed by paragraph (c) of this section:

(A) Local exhaust ventilation equipped with HEPA filter dust collection systems;

(B) General ventilation systems;

(C) Use of workpractices; or

(D) Other engineering controls such as isolation and enclosure that the Assistant Secretary can show to be feasible.

(ii) Wherever the feasible engineering controls and work practices "which can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protective devices which comply with the requirements of paragraph (i) of this section.

(2) *Special Provisions.* For workers engaged in spray application methods, respiratory protection must be used in addition to feasible engineering controls and work practices to reduce employee exposure to or below the PELs.

(3) *Prohibitions.* Compressed air shall not be used to remove MDA, unless the compressed air is used in conjunction with an enclosed ventilation system designed to capture the dust cloud created by the compressed air.

(4) *Employee rotation.* The employer shall not use employee rotation as a means of compliance with the exposure limits prescribed in paragraph (c) of this section.

(5) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposure to or below the PELs by means of engineering and work practice controls, as required by paragraph (h)(1) of this section, and by use of respiratory protection where permitted under this section.

(ii) Upon request this written program shall be furnished for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives. The employer shall review and, as necessary, update such plans at least once every 12 months to make certain they reflect the current status of the program.

(i) *Respiratory protection*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances.

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations such as maintenance and repair activities and spray application processes for which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PELs; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure

that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a positive pressure respirator or any supplied-air respirator operated in the continuous flow or pressure demand mode.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b), (d), (e), and (f).

(4) *Respirator use.* (i) Where air-purifying respirators (cartridge or canister) are used, the employer shall replace the air purifying element as needed to maintain the effectiveness of the respirator. The employer shall ensure that each cartridge is dated at the beginning of use.

(ii) Employees who wear respirators shall be allowed to leave the regulated area to readjust the face piece or to wash their faces and to wipe clean the face pieces on their respirators in order to minimize potential skin irritation associated with respirator use.

TABLE 1.—RESPIRATORY PROTECTION FOR MDA

Airborne concentration of MDA or condition of use	Respirator type
a. Less than or equal to 10 × PEL	(1) Half-Mask Respirator with HEPA [1] Cartridge.[2]
b. Less than or equal to 50 × PEL	(1) Full facepiece respirator with HEPA [1] Cartridge or Canister.[2]
c. Less than or equal to 1000 × PEL	(1) Full facepiece powered air-purifying respirator with HEPA [1] cartridges.[2]
d. Greater than 1000 × PEL or unknown concentration	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive pressure demand supplied-air respirator with auxiliary self-contained air supply.
e. Escape	(1) Any full facepiece air-purifying respirator with HEPA [1] cartridges; [2] (2) Any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood.
f. Firefighting	(1) Full facepiece self-contained breathing apparatus in positive pressure mode.

Note: Respirators assigned for higher environmental concentrations may be used at lower concentrations.

[1] High Efficiency Particulate in Air filter (HEPA) means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.

[2] Combination HEPA/Organic Vapor Cartridges shall be used whenever MDA in liquid form or a process requiring heat is used.

(5) *Respirator fit testing.* (i) The employer shall perform and record the results of either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which provides the required protection as prescribed in Table 1.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

(j) *Protective work clothing and equipment*—(1) *Provision and use.* Where employees are subject to dermal exposure to MDA, where liquids containing MDA can be splashed into the eyes, or where airborne concentrations of MDA are in excess of the PEL, the employer shall provide, at no cost to the employee, and ensure that the employee uses, appropriate protective work clothing and equipment which prevent contact with MDA such as, but not limited to:

(i) Aprons, coveralls or other full-body work clothing;

(ii) Gloves, head coverings, and foot coverings; and

(iii) Face shields, chemical goggles; or

(iv) Other appropriate protective equipment which comply with 29 CFR 1910.133.

(2) *Removal and storage.* (i) The employer shall ensure that, at the end of their work shift, employees remove MDA-contaminated protective work clothing and equipment that is not routinely removed throughout the day in change areas provided in accordance with the provisions in paragraph (k) of this section.

(ii) The employer shall ensure that, during their work shift, employees remove all other MDA-contaminated protective work clothing or equipment before leaving a regulated area.

(iii) The employer shall ensure that no employee takes MDA-contaminated work clothing or equipment out of the decontamination areas, except those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iv) MDA-contaminated work clothing or equipment shall be placed and stored and transported in sealed, impermeable bags, or other closed impermeable containers.

(v) Containers of MDA-contaminated protective work clothing or equipment which are to be taken out of decontamination areas or the workplace for cleaning, maintenance, or disposal, shall bear labels warning of the hazards of MDA.

(3) *Cleaning and replacement.* (i) The employer shall provide the employee with clean protective clothing and equipment. The employer shall ensure that protective work clothing or equipment required by this paragraph is cleaned, laundered, repaired, or replaced at intervals appropriate to maintain its effectiveness.

(ii) The employer shall prohibit the removal of MDA from protective work clothing or equipment by blowing, shaking, or any methods which allow MDA to re-enter the workplace.

(iii) The employer shall ensure that laundering of MDA-contaminated clothing shall be done so as to prevent the release of MDA in the workplace.

(iv) Any employer who gives MDA-contaminated clothing to another person for laundering shall inform such person of the requirement to prevent the release of MDA.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with MDA of the potentially harmful effects of exposure.

(4) *Visual Examination.* (i) The employer shall ensure that employees' work clothing is examined periodically for rips or tears that may occur during performance of work.

(ii) When rips or tears are detected, the protective equipment or clothing shall be repaired and replaced immediately.

(k) *Hygiene facilities and practices*—(1) *General.* (i) The employer shall provide decontamination areas for employees required to work in regulated areas or required by paragraph (j)(1) of this section to wear protective clothing. *Exception:* In lieu of the decontamination area requirement specified in paragraph (k)(1)(i) of this section, the employer may permit employees engaged in small scale, short duration operations, to clean their protective clothing or dispose of the protective clothing before such employees leave the area where the work was performed.

(ii) *Change areas.* The employer shall ensure that change areas are equipped with separate storage facilities for protective clothing and street clothing, in accordance with 29 CFR 1910.141(e).

(iii) *Equipment area.* The equipment area shall be supplied with impermeable, labeled bags and containers for the containment and

disposal of contaminated protective clothing and equipment.

(2) *Shower area.* (i) Where feasible, shower facilities shall be provided which comply with 29 CFR 1910.141(d)(3) wherever the possibility of employee exposure to airborne levels of MDA in excess of the permissible exposure limit exists.

(ii) Where dermal exposure to MDA occurs, the employer shall ensure that materials spilled or deposited on the skin are removed as soon as possible by methods which do not facilitate the dermal absorption of MDA.

(3) *Lunch Areas.* (i) Whenever food or beverages are consumed at the worksite and employees are exposed to MDA the employer shall provide clean lunch areas were MDA levels are below the action level and where no dermal exposure to MDA can occur.

(ii) The employer shall ensure that employees wash their hands and faces with soap and water prior to eating, drinking, smoking, or applying cosmetics.

(iii) The employer shall ensure that employees do not enter lunch facilities with contaminated protective work clothing or equipment.

(l) *Communication of hazards to employees*—(1) *Signs and labels.* (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER
MDA
MAY CAUSE CANCER
LIVER TOXIN
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED TO BE WORN IN THIS AREA

(ii) The employer shall ensure that labels or other appropriate forms of warning are provided for containers of MDA within the workplace. The labels shall comply with the requirements of 29 CFR 1910.1200(f) and shall include one of the following legends:

(A) For pure MDA

DANGER
CONTAINS MDA
MAY CAUSE CANCER
LIVER TOXIN

(B) For mixtures containing MDA

DANGER
CONTAINS MDA
CONTAINS MATERIALS WHICH MAY CAUSE CANCER
LIVER TOXIN

(2) *Material safety data sheets* (MSDS). Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) for MDA.

(3) *Information and training.* (i) The employer shall provide employees with information and training on MDA, in accordance with 29 CFR 1910.1200(h), at the time of initial assignment and at least annually thereafter.

(ii) In addition to the information required under 29 CFR 1910.1200, the employer shall:

(A) Provide an explanation of the contents of this section, including appendices A and B of this section, and indicate to employees where a copy of the standard is available;

(B) Describe the medical surveillance program required under paragraph (n) of this section, and explain the information contained in appendix C of this section; and

(C) Describe the medical removal provision required under paragraph (n) of this section.

(4) *Access to training materials.* (i) The employer shall make readily available to all affected employees, without cost, all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Assistant Secretary and the Director, upon request, all information and training materials relating to the employee information and training program.

(m) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of visible accumulations of MDA.

(2) The employer shall institute a program for detecting MDA leaks, spills, and discharges, including regular visual inspections of operations involving liquid or solid MDA.

(3) All leaks shall be repaired and liquid or dust spills cleaned up promptly.

(4) Surfaces contaminated with MDA may not be cleaned by the use of compressed air.

(5) Shoveling, dry sweeping, and other methods of dry clean-up of MDA may be used where HEPA filtered vacuuming and/or wet cleaning are not feasible or practical.

(6) Waste, scrap, debris, bags, containers, equipment, and clothing contaminated with MDA shall be collected and disposed of in a manner to prevent the re-entry of MDA into the workplace.

(n) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees exposed to MDA under the following circumstances:

(A) Employees exposed at or above the action level for 30 or more days per year;

(B) Employees who are subject to dermal exposure to MDA for 15 or more days per year;

(C) Employees who have been exposed in an emergency situation;

(D) Employees whom the employer, based on results from compliance with paragraph (f)(8) of this section, has reason to believe are being dermally exposed; and

(E) Employees who show signs or symptoms of MDA exposure.

(ii) The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician at a reasonable time and place, and provided without cost to the employee.

(2) *Initial examinations.* (i) Within 150 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (n)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed history which includes:

(*1*) Past work exposure to MDA or any other toxic substances;

(*2*) A history of drugs, alcohol, tobacco, and medication routinely taken (duration and quantity); and

(*3*) A history of dermatitis, chemical skin sensitization, or previous hepatic disease.

(B) A physical examination which includes all routine physical examination parameters, skin examination, and examination for signs of liver disease.

(C) Laboratory tests including:

(*1*) Liver function tests and (*2*) Urinalysis.

(D) Additional tests as necessary in the opinion of the physician.

(ii) No initial medical examination is required if adequate records show that the employee has been examined in accordance with the requirements of this section within the previous six months prior to the effective date of this standard or prior to the date of initial assignment.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered by this section with a medical examination at least annually following the initial examination. These periodic examinations shall include at least the following elements:

(A) A brief history regarding any new exposure to potential liver toxins, changes in drug, tobacco, and alcohol intake, and the appearance of physical signs relating to the liver, and the skin;

(B) The appropriate tests and examinations including liver function tests and skin examinations; and

(C) Appropriate additional tests or examinations as deemed necessary by the physician.

(ii) If in the physician's opinion the results of liver function tests indicate an abnormality, the employee shall be removed from further MDA exposure in accordance with paragraph (n)(9) of this section. Repeat liver function tests shall be conducted on advice of the physician.

(4) *Emergency examinations.* If the employer determines that the employee has been exposed to a potentially hazardous amount of MDA in an emergency situation under paragraph (e) of this section, the employer shall provide medical examinations in accordance with paragraphs (n)(3) (i) and (ii) of this section. If the results of liver function testing indicate an abnormality, the employee shall be removed in accordance with paragraph (n)(9) of this section. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and on the advice of the physician, no additional testing is required.

(5) *Additional examinations.* Where the employee develops signs and symptoms associated with exposure to MDA, the employer shall provide the employee with an additional medical examination including liver function tests. Repeat liver function tests shall be conducted on the advice of the physician. If the results of the tests are normal, tests must be repeated two to three weeks from the initial testing. If the results of the second set of tests are normal and on the advice of the physician, no additional testing is required.

(6) *Multiple physician review mechanism.* (i) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, and the employee has signs or symptoms of occupational exposure to MDA (which could include an abnormal liver function test), and the employee disagrees with the opinion of the examining physician, and this opinion could affect the employee's job status, the employee may designate an appropriate and mutually acceptable second physician:

(A) To review any findings, determinations or recommendations of the initial physician; and

(B) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informing the employer that he or she intends to seek a second medical opinion, and

(B) The employee initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(A) To review any findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) The employer shall act consistent with the findings, determinations, and recommendations of the second physician, unless the employer and the employee reach a mutually acceptable agreement.

(7) *Information provided to the examining physician.* (i) The employer shall provide the following information to the examining physician:

(A) A copy of this regulation and its appendices;

(B) A description of the affected employee's duties as they relate to the employee's potential exposure to MDA;

(C) The employee's current actual or representative MDA exposure level;

(D) A description of any personal protective equipment used or to be used; and

(E) Information from previous employment related medical examinations of the affected employee.

(ii) The employer shall provide the foregoing information to a second physician under this section upon request either by the second physician, or by the employee.

(8) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain, and provide the employee with a copy of, the examining physician's written opinion within 15 days of its receipt. The written opinion shall include the following:

(A) The occupationally pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to MDA;

(C) The physician's recommended limitations upon the employee's exposure to MDA or upon the employee's use of protective clothing or equipment and respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from MDA exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(9) *Medical removal*—(i) *Temporary medical removal of an employee*—(A) *Temporary removal resulting from occupational exposure.* The employee shall be removed from work environments in which exposure to MDA is at or above the action level or where dermal exposure to MDA may occur, following an initial examination (paragraph (n)(2) of this section), periodic examinations (paragraph (n)(3) of this section), an emergency situation (paragraph (n)(4) of this section), or an additional examination (paragraph (n)(5) of this section) in the following circumstances:

(*1*) When the employee exhibits signs and/or symptoms indicative of acute exposure to MDA; or

(*2*) When the examining physician determines that an employee's abnormal liver function tests are not associated with MDA exposure but that the abnormalities may be exacerbated as a result of occupational exposure to MDA.

(B) *Temporary removal due to a final medical determination.* (*1*) The employer shall remove an employee from work having an exposure to MDA at or above the action level or where the potential for dermal exposure exists on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical

condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(2) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the physician review mechanism used pursuant to the medical surveillance provisions of this section.

(3) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to MDA, the employer shall implement and act consistent with the recommendation.

(ii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(1) When the employee no longer shows signs or symptoms of exposure to MDA, or upon the advice of the physician.

(2) When a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to MDA.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iii) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(iv) *Employer options pending a final medical determination.* Where the physician review mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to MDA, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of the physician who has reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, and end any special protective measures provided to the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions:

(1) If the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; or

(2) The employee has been on removal status for the preceding six months as a result of exposure to MDA, then the employer shall await a final medical determination.

(v) *Medical removal protection benefits*—(A) *Provisions of medical removal protection benefits.* The employer shall provide to an employee up to six (6) months of medical removal protection benefits on each occasion that an employee is removed from exposure to MDA or otherwise limited pursuant to this section.

(B) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority, and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to MDA or otherwise limited.

(C) *Follow-up medical surveillance during the period of employee removal or limitations.* During the period of time that an employee is removed from normal exposure to MDA or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(D) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a MDA-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment-related expenses.

(E) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with any employer made possible by virtue of the employee's removal.

(F) *Employees who do not recover within the 6 months of removal.* The employer shall take the following measures with respect to any employee removed from exposure to MDA:

(1) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(2) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and, if not, what steps should be taken to protect the employee's health;

(3) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status; and

(4) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status despite what would otherwise be an unacceptable liver function test, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the MDA removal criteria provided by this section.

(vi) *Voluntary removal or restriction of an employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to MDA or otherwise places limitations on an employee due to the effects of MDA exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (n)(9)(v) of this section.

(o) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the employer has relied on objective data that demonstrate that products made from or containing MDA are not capable of releasing MDA or do not present a dermal exposure problem under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) The record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of MDA;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Historical monitoring data.* (i) Where the employer has relied on historical monitoring data that demonstrate that exposures on a particular job will be below the action level to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of historical monitoring data reasonably relied upon in support of the exception.

(ii) The record shall include information that reflect the following conditions:

(A) The data upon which judgments are based are scientifically sound and were collected using methods that are sufficiently accurate and precise;

(B) The processes and work practices that were in use when the historical monitoring data were obtained are essentially the same as those to be used during the job for which initial monitoring will not be performed;

(C) The characteristics of the MDA-containing material being handled when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed; and

(D) Environmental conditions prevailing when the historical monitoring data were obtained are the same as those on the job for which initial monitoring will not be performed; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exception.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such historical monitoring data.

(3) The employer may utilize the services of competent organizations such as industry trade associations and employee associations to maintain the records required by this section.

(4) *Exposure measurements.* (i) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to MDA.

(ii) This record shall include at least the following information:

(A) The date of measurement;

(B) The operation involving exposure to MDA;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of protective devices worn, if any; and

(F) Name, social security number, and exposure of the employees whose exposures are represented.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1910.20.

(5) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (n) of this section, in accordance with 29 CFR 1910.20.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee;

(B) A copy of the employee's medical examination results, including the medical history, questionnaire responses, results of any tests, and physician's recommendations.

(C) Physician's written opinions;

(D) Any employee medical complaints related to exposure to MDA; and

(E) A copy of the information provided to the physician as required by paragraph (n) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1910.20.

(iv) A copy of the employee's medical removal and return to work status.

(6) *Training records.* The employer shall maintain all employee training records for one (1) year beyond the last date of employment.

(7) *Availability.* (i) The employer, upon written request, shall make all records required to be maintained by this section available to the Assistant Secretary and the Director for examination and copying.

(ii) The employer, upon request, shall make any exposure records required by paragraphs (f) and (n) of this section available for examination and copying to affected employees, former employees, designated representatives, and the Assistant Secretary, in accordance with 29 CFR 1910.20(a)–(e) and (g)–(i).

(iii) The employer, upon request, shall make employee medical records required by paragraphs (n) and (o) of this section available for examination and copying to the subject employee, anyone having the specific written consent of the subject employee, and the Assistant Secretary, in accordance with 29 CFR 1910.20.

(8) *Transfer of records.* (i) The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1910.20(h).

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least 90 days prior to disposal and, upon request, transmit them to the Director.

(p) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to MDA conducted pursuant to paragraph (f) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to MDA requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(q) *Effective date.* This standard shall become effective on September 9, 1992.

(r) *Appendices.* The information contained in appendices A, B, C and D of this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation. The protocols for respiratory fit testing in appendix E of this section are mandatory.

(s) *Startup dates.* Compliance with all obligations of this standard commence September 9, 1992, except as follows:

(1) Initial monitoring under paragraph (f)(2) of this section shall be completed as soon as possible but no later than December 8, 1992.

(2) Medical examinations under paragraph (n) of this section shall be completed as soon as possible but no later than February 8, 1993.

(3) Emergency plans required by paragraph (e) of this section shall be provided and available for inspection and copying as soon as possible but no later than January 7, 1993.

(4) Initial training and education shall be completed as soon as possible but no later than January 7, 1993.

(5) Decontamination and lunch areas under paragraph (k) of this section shall be in operation as soon as possible but no later than September 9, 1993.

(6) Respiratory Protection required by paragraph (i) of this section shall be provided as soon as possible but no later than January 7, 1993.

(7) Written compliance plans required by paragraph (h)(5) of this section shall be completed and available for inspection and copying as soon as possible but no later than January 7, 1993.

(8) OSHA shall enforce the permissible exposure limits in paragraph (c) of this section no earlier than January 7, 1993.

(9) Engineering controls needed to achieve the PELs must be in place September 9, 1993.

(10) Personal protective clothing required by paragraph (j) of this section shall be available January 7, 1993.

Appendix A to Section 1926.60—Substance Data Sheet, for 4–4'-Methylenedianiline

I. Substance Identification

A. Substance: Methylenedianiline (MDA)

B. Permissible Exposure:

1. Airborne: Ten parts per billion parts of air (10 ppb), time-weighted average (TWA) for an 8-hour workday and an action level of five parts per billion parts of air (5 ppb).

2. Dermal: Eye contact and skin contact with MDA are not permitted.

C. Appearance and odor: White to tan solid; amine odor

II. Health Hazard Data

A. Ways in which MDA affects your health. MDA can affect your health if you inhale it, or if it comes in contact with your skin or eyes. MDA is also harmful if you happen to swallow it. Do not get MDA in eyes, on skin, or on clothing.

B. Effects of overexposure. 1. Short-term (acute) overexposure: Overexposure to MDA may produce fever, chills, loss of appetite, vomiting, jaundice. Contact may irritate skin, eyes and mucous membranes. Sensitization may occur.

2. Long-term (chronic) exposure. Repeated or prolonged exposure to MDA, even at relatively low concentrations, may cause cancer. In addition, damage to the liver, kidneys, blood, and spleen may occur with long term exposure.

3. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms which you suspect are caused by exposure to MDA including yellow staining of the skin.

III. Protective Clothing and Equipment

A. Respirators. Respirators are required for those operations in which engineering controls or work practice controls are not adequate or feasible to reduce exposure to the permissible limit. If respirators are worn, they must have the joint Mine Safety and Health Administration and National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridges or canisters must be replaced as necessary to maintain the effectiveness of the respirator. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

MDA does not have a detectable odor except at levels well above the permissible exposure limits. Do not depend on odor to warn you when a respirator canister is exhausted. If you can smell MDA while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Protective Clothing. You may be required to wear coveralls, aprons, gloves, face shields, or other appropriate protective clothing to prevent skin contact with MDA. Where protective clothing is required, your employer is required to provide clean garments to you, as necessary, to assure that the clothing protects you adequately. Replace or repair impervious clothing that has developed leaks.

MDA should never be allowed to remain on the skin. Clothing and shoes which are not impervious to MDA should not be allowed to become contaminated with MDA, and if they do, the clothing and shoes should be promptly removed and decontaminated. The clothing should be laundered to remove MDA or discarded. Once MDA penetrates shoes or other leather articles, they should not be worn again.

C. Eye protection. You must wear splashproof safety goggles in areas where liquid MDA may contact your eyes. Contact lenses should not be worn in areas where eye contact with MDA can occur. In addition, you must wear a face shield if your face could be splashed with MDA liquid.

IV. Emergency and First Aid Procedures

A. Eye and face exposure. If MDA is splashed into the eyes, wash the eyes for at least 15 minutes. See a doctor as soon as possible.

B. Skin exposure. If MDA is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of soap and water immediately. Wash contaminated clothing before you wear it again.

C. Breathing. If you or any other person breathes in large amounts of MDA, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the MDA concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. Swallowing. If MDA has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to MDA at a concentration at or above the action level for more than 30 days per year, or exposed to liquid mixtures more than 15 days per year, your employer is required to provide a medical examination, including a medical history and laboratory tests, within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to MDA (either by ingestion, inhalation, or skin/eye contact) under conditions known or suspected to constitute toxic exposure to MDA, your employer is required to make special examinations and tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to MDA and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn; you and your representative must also be provided with, and must wear, the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to MDA upon written request to your employer. Your medical examination records can be furnished to your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

A. Material is combustible. Avoid strong acids and their anhydrides. Avoid strong oxidants. Consult supervisor for disposal requirements.

B. Emergency clean-up. Wear self-contained breathing apparatus and fully clothe the body in the appropriate personal protective clothing and equipment.

Appendix B to Section 1926.60—Substance Technical Guidelines, MDA

I. Identification

A. Substance identification.

1. Synonyms: CAS No. 101–77–9. 4,4-methylenedianiline; 4,4'-methylenebisaniline; methylenedianiline; dianilinomethane.

2. Formula: $C_{13}H_{14}N_2$

II. Physical Data

1. Appearance and Odor: White to tan solid; amine odor

2. Molecular Weight: 198.26

3. Boiling Point: 398–399 degrees C at 760 mm Hg

4. Melting Point: 88–93 degrees C (190–100 degrees F)

5. Vapor Pressure: 9 mm Hg at 232 degrees C

6. Evaporation Rate (n-butyl acetate=1): Negligible

7. Vapor Density (Air=1): Not Applicable

8. Volatile Fraction by Weight: Negligible

9. Specific Gravity (Water=1): Slight

10. Heat of Combustion: −8.40 kcal/g

11. Solubility in Water: Slightly soluble in cold water, very soluble in alcohol, benzene, ether, and many organic solvents.

III. Fire, Explosion, and Reactivity Hazard Data

1. Flash Point: 190 degrees C (374 degrees F) Setaflash closed cup.

2. Flash Point: 226 degrees C (439 degrees F) Cleveland open cup.

3. Extinguishing Media: Water spray; Dry Chemical; Carbon dioxide.

4. Special Fire Fighting Procedures: Wear self-contained breathing apparatus and protective clothing to prevent contact with skin and eyes.

5. Unusual Fire and Explosion Hazards: Fire or excessive heat may cause production of hazardous decomposition products.

IV. Reactivity Data

1. Stability: Stable.

2. Incompatibility: Strong oxidizers.

3. Hazardous Decomposition Products: As with any other organic material, combustion may produce carbon monoxide. Oxides of nitrogen may also be present.

4. Hazardous Polymerization: Will not occur.

V. Spill and Leak Procedures

1. Sweep material onto paper and place in fiber carton.

2. Package appropriately for safe feed to an incinerator or dissolve in compatible waste solvents prior to incineration.

3. Dispose of in an approved incinerator equipped with afterburner and scrubber or contract with licensed chemical waste disposal service.

4. Discharge treatment or disposal may be subject to federal, state, or local laws.

5. Wear appropriate personal protective equipment.

VI Special Storage and Handling Precautions

A. High exposure to MDA can occur when transferring the substance from one container to another. Such operations should be well ventilated and good work practices must be established to avoid spills.

B. Pure MDA is a solid with a low vapor pressure. Grinding or heating operations increase the potential for exposure.

C. Store away from oxidizing materials.

D. Employers shall advise employees of all areas and operations where exposure to MDA could occur.

VII. Housekeeping and Hygiene Facilities

A. The workplace should be kept clean, orderly, and in a sanitary condition.

The employer should institute a leak and spill detection program for operations involving MDA in order to detect sources of fugitive MDA emissions.

B. Adequate washing facilities with hot and cold water are to be provided and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of MDA from the skin.

VIII. Common Operations

Common operations in which exposure to MDA is likely to occur include the following: Manufacture of MDA; Manufacture of Methylene diisocyanate; Curing agent for epoxy resin structures; Wire coating operations; and filament winding.

Appendix C to Section 1926.60—Medical Surveillance Guidelines for MDA

I. Route of Entry

Inhalation; skin absorption; ingestion. MDA can be inhaled, absorbed through the skin, or ingested.

II. Toxicology

MDA is a suspect carcinogen in humans. There are several reports of liver disease in humans and animals resulting from acute exposure to MDA. A well documented case of an acute cardiomyopathy secondary to exposure to MDA is on record. Numerous human cases of hepatitis secondary to MDA are known. Upon direct contact MDA may also cause damage to the eyes. Dermatitis and skin sensitization have been observed. Almost all forms of acute environmental hepatic injury in humans involve the hepatic parenchyma and produce hepatocellular jaundice. This agent produces intrahepatic cholestasis. The clinical picture consists of cholestatic jaundice, preceded or accompanied by abdominal pain, fever, and chills. Onset in about 60% of all observed cases is abrupt with severe abdominal pain. In about 30% of observed cases, the illness presented and evolved more slowly and less dramatically, with only slight abdominal pain. In about 10% of the cases only jaundice was evident. The cholestatic nature of the jaundice is evident in the prominence of itching, the histologic predominance of bile stasis, and portal inflammatory infiltration, accompanied by only slight parenchymal injury in most cases, and by the moderately elevated transaminase values. Acute, high doses, however, have been known to cause hepatocellular damage resulting in elevated SGPT, SGOT, alkaline phosphatase and bilirubin.

Absorption through the skin is rapid. MDA is metabolized and excreted over a 48-hour period. Direct contact may be irritating to the skin, causing dermatitis. Also MDA which is deposited on the skin is not thoroughly removed through washing.

MDA may cause bladder cancer in humans Animal data supporting this assumption is not available nor is conclusive human data. However, human data collected on workers at a helicopter manufacturing facility where MDA is used suggests a higher incidence of bladder cancer among exposed workers.

III. Signs and Symptoms

Skin may become yellow from contact with MDA.

Repeated or prolonged contact with MDA may result in recurring dermatitis (red-itchy, cracked skin) and eye irritation. Inhalation, ingestion or absorption through the skin at high concentrations may result in hepatitis, causing symptoms such as fever and chills, nausea and vomiting, dark urine, anorexia, rash, right upper quadrant pain and jaundice. Corneal burns may occur when MDA is splashed in the eyes.

IV. Treatment of Acute Toxic Effects/ Emergency Situation

If MDA gets into the eyes, immediately wash eyes with large amounts of water. If MDA is splashed on the skin, immediately wash contaminated skin with mild soap or detergent. Employee should be removed from exposure and given proper medical treatment. Medical tests required under the emergency section of the medical surveillance paragraph (n)(4) of this section must be conducted.

If the chemical is swallowed do not induce vomiting but remove by gastric lavage.

Appendix D Section 1926.60—Sampling and Analytical Methods for MDA Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to MDA are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same chance of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

There are a number of methods available for monitoring employee exposures to MDA. The method OSHA currently uses is included below.

The employer however has the obligation of selecting any monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for the select PEL.

OSHA Methodology

Sampling Procedure

Apparatus

Samples are collected by use of a personal sampling pump that can be calibrated within ±5% of the recommended flow rate with the sampling filter in line.

Samples are collected on 37 mm Gelman type A/E glass fiber filters treated with sulfuric acid. The filters are prepared by soaking each filter with 0.5 mL of 0.26N H_2SO_4. (0.26 N H_2SO_4 can be prepared by diluting 1.5 mL of 36N H_2SO_4 to 200 mL with deionized water.) The filters are dried in an oven at 100 degrees C for one hour and then assembled into two-piece 37 mm polystyrene cassettes with backup pads. The cassettes are sealed with shrink bands and the ends are plugged with plastic plugs.

After sampling, the filters are carefully removed from the cassettes and individually transferred to small vials containing approximately 2 mL deionized water. The vials must be tightly sealed. The water can be added before or after the filters are transferred. The vials must be sealable and capable of holding at least 7 mL of liquid. Small glass scintillation vials with caps containing Teflon liners are recommended.

Reagents

Deionized water is needed for addition to the vials.

Sampling Technique

Immediately before sampling, remove the plastic plugs from the filter cassettes.

Attach the cassette to the sampling pump with flexible tubing and place the cassette in the employee's breathing zone.

After sampling, seal the cassettes with plastic plugs until the filters are transferred to the vials containing deionized water.

At some convenient time within 10 hours of sampling, transfer the sample filters to vials.

Seal the small vials lengthwise.

Submit at least one blank filter with each sample set. Blanks should be handled in the same manner as samples, but no air is drawn through them.

Record sample volumes (in L of air) for each sample, along with any potential interferences.

Retention Efficiency

A retention efficiency study was performed by drawing 100 L of air (80% relative humidity) at 1 L/min through sample filters that had been spiked with 0.814 μg MDA. Instead of using backup pads, blank acid-treated filters were used as backups in each cassette. Upon analysis, the top filters were found to have an average of 91.8% of the spiked amount. There was no MDA found on the bottom filters, so the amount lost was probably due to the slight instability of the MDA salt.

Extraction Efficiency

The average extraction efficiency for six filters spiked at the target concentration is 99.6%.

The stability of extracted and derivatized samples was verified by reanalyzing the above six samples the next day using fresh standards. The average extraction efficiency for the reanalyzed samples is 98.7%.

Recommended Air Volume and Sampling Rate

The recommended air volume is 100 L.

The recommended sampling rate is 1 L/min.

Interferences (Sampling)

MDI appears to be a positive interference. It was found that when MDI was spiked onto an acid-treated filter, the MDI converted to MDA after air was drawn through it.

Suspected interferences should be reported to the laboratory with submitted samples.

Safety Precautions (Sampling)

Attach the sampling equipment to the employees so that it will not interfere with work performance or safety.

Follow all safety procedures that apply to the work area being sampled.

Analytical Procedure

Apparatus: The following are required for analysis.

A GC equipped with an electron capture detector. For this evaluation a Tracor 222 Gas Chromatograph equipped with a Nickel 63 High Temperature Electron Capture Detector and a Linearizer was used.

A GC column capable of separating the MDA derivative from the solvent and interferences. A 6 ft × 2 mm ID glass column packed with 3% OV-101 coated on 100/120 Gas Chrom Q was used in this evaluation.

A electronic integrator or some other suitable means of measuring peak areas or heights.

Small resealable vials with Teflon-lined caps capable of holding 4 mL.

A dispenser or pipet for toluene capable of delivering 2.9 mL.

Pipets (or repipets with plastic or Teflon tips) capable of delivering 1 mL for the sodium hydroxide and buffer solutions.

A repipet capable of delivering 25 μL HFAA.

Syringes for preparation of standards and injection of standards and samples into a GC.

Volumetric flasks and pipets to dilute the pure MDA in preparation of standards.

Disposable pipets to transfer the toluene layers after the samples are extracted.

Reagents

0.5 NaOH prepared from reagent grade NaOH.

Toluene, pesticide grade. Burdick and Jackson distilled in glass toluene was used.

Heptafluorobutyric acid anhydride (HFAA). HFAA from Pierce Chemical Company was used.

pH 7.0 phosphate buffer, prepared from 136 g potassium dihydrogen phosphate and 1 L deionized water. The pH is adjusted to 7.0 with saturated sodium hydroxide solution.

4,4'-Methylenedianiline (MDA), reagent grade.

Standard Preparation

Concentrated stock standards are prepared by diluting pure MDA with toluene. Analytical standards are prepared by injecting μL amounts of diluted stock standards into vials that contain 2.0 mL toluene.

25 μL HFAA are added to each vial and the vials are capped and shaken for 10 seconds.

After 10 min, 1 mL of buffer is added to each vial.

The vials are recapped and shaken for 10 seconds.

After allowing the layers to separate, aliquots of the toluene (upper) layers are removed with a syringe and analyzed by GC.

Analytical standard concentrations should bracket sample concentrations. Thus, if samples fall out of the range of prepared standards, additional standards must be prepared to ascertain detector response.

Sample preparation

The sample filters are received in vials containing deionized water.

1 mL of 0.5N NaOH and 2.0 mL toluene are added to each vial.

The vials are recapped and shaken for 10 min.

After allowing the layers to separate, approximately 1 mL aliquots of the toluene (upper) layers are transferred to separate vials with clean disposable pipets.

The toluene layers are treated and analyzed.

Analysis

GC conditions

Zone temperatures:
Column—220 degrees C
Injector—235 degrees C
Detector—335 degrees C
Gas flows, Ar/CH_4 Column—28 mL/min (95/5)
Purge—40 mL/min
Injection volume: 5.0 uL
Column: 6 ft × 1/8 in ID glass, 3% OV-101 on 100/120 Gas Chrom Q
Retention time of MDA derivative: 3.5 min

Chromatogram

Peak areas or heights are measured by an integrator or other suitable means.

A calibration curve is constructed by plotting response (peak areas or heights) of standard injections versus μg of MDA per sample. Sample concentrations must be bracketed by standards.

Interferences (Analytical)

Any compound that gives an electron capture detector response and has the same general retention time as the HFAA derivative of MDA is a potential interference. Suspected interferences reported to the laboratory with submitted samples by the industrial hygienist must be considered before samples are derivatized.

GC parameters may be changed to possibly circumvent interferences.

Retention time on a single column is not considered proof of chemical identity. Analyte identity should be confirmed by GC/MS if possible.

Calculations

The analyte concentration for samples is obtained from the calibration curve in terms of μg MDA per sample. The extraction efficiency is 100%. If any MDA is found on the blank, that amount is subtracted from the sample amounts. The air concentrations are calculated using the following formulae.

$\mu g/m^3$ = (μg MDA per sample) (1000)/(L of air sampled)

ppb = $(\mu g/m^3)(24.46)/(198.3) = (\mu g/m^3)$ (0.1233)

where 24.46 is the molar volume at 25 degrees C and 760 mm Hg.

Safety Precautions (Analytical)

Avoid skin contact and inhalation of all chemicals.

Restrict the use of all chemicals to a fume hood if possible.

Wear safety glasses and a lab coat at all times while in the lab area.

Appendix E to Section 1926.60—Qualitative and Quantitative Fit Testing Procedures

Qualitative Protocols

I. Isoamyl Acetate (Banana Oil) Protocol

A. Odor threshold screening. 1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated so that circulation of the test solution does not occur and cross contaminate the testing different sites.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor free water.

7. The odor test and test blank jars shall be labelled 1 and 2 for jar identification.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator Selection. 1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a comfortable fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. All donning and adjustments of the facepiece shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points in #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator after donning:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall perform the conventional negative or positive-pressure fit checks (e.g., see ANSI Z88.2–1980A7). Before beginning the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If the respirator has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and to be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit Test. 1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2-foot diameter frame, so that the top of chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or canisters shall be replaced as necessary to maintain the effectiveness of the respirator.

3. After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and Rainbow Passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it aloud will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jog in place.

vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c (4) through c (8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject must break the faceseal and take a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL. In atmospheres greater than 10 times, and less than 50 times the PEL (up to 50 ppm), the subject must pass the IAA test using a full face negative pressure respirator. (The concentration of the IAA inside the test chamber must be increased by five times for QLFT of the full facepiece.)

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as a powered air-purifying respirator, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prosthesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator Selection. Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste Threshold Screening. 1. An enclosure placed over the head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with open mouth with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 grams of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C 7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to fully expand.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin scan be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test. 1. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

2. The test subject shall don and adjust the respirator without assistance from any person.

3. The fit test uses the same enclosure described in IIB above.

4. Each test subject shall wear the respirator for a least 10 minutes before starting the fit test.

(a) This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of cooperation and, the purpose for the head exercises; or to demonstrate some of the exercises.

(b) The test subject shall perform the conventional negative or positive pressure fit tests (See ANZI Z88.2 1980 A7).

5. The test subject shall enter the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B8 through B10 above.)

10. After generation of the aerosol read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. Talk. Talk aloud and slowly. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement.

vi. Jog in place.
vii. Breathe normally.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C9.

12. The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

13. If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

14. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of MDA. In other words this protocol may not be used to assign protection factors no higher than ten.

15. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

16. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

17. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

18. Qualitative fit testing shall be repeated at least every 12 months.

19. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection. Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a combination of high-efficiency and acid-gas cartridges.

B. Fit Test. 1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two end apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in Place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of MDA.

13. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

14. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

15. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

16. Qualitative fit testing shall be repeated at least every 12 months.

17. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prosthesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping. A summary of all test results shall be maintained by the employer for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

Quantitative Fit Test Procedures

1. *General.* a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign an individual (with help as needed) who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. *Definition.* a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.* a. *Instrumentation.* Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. *Test chamber.* The test chamber shall be large enough to permit all test subjects to freely perform all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particular filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible. The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. *Procedural Requirements.* a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfr II–M, Norton M, Survivair M A–O M or Scott-M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive pressure test.* With the exhaust port(s) blocked the negative pressure of slight inhalation should remain constant for several seconds.

(2) *Negative pressure test.* With the intake port(s) blocked the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d. and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit by as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. *Exercise Regime.* Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his head from side to side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

d. *Moving head up and down (UD).* Standing in place, the subject shall slowly move his head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least five complete cycles.

e. *Reading (R).* The subject shall read out slowly and loud so as to be heard clearly by the test conductor or monitor. The test subject shall read the "rainbow passage" at the end of this section.

f. *Grimace (G).* The test subject' shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least one minute.

h. *Jogging in place (J).* The test subject shall perform jog in place for at least one minute.

i. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

Rainbow Passage

When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. *Termination of Tests.* The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h.).

7. *Calculation of Fit Factors.* a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber

concentration at the beginning and of the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. *Interpretation of Test Results.* The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. *Other Requirements.* a. The test subject shall not be permitted to wear a half-mask or full facepiece if the minimum fit factor of 250 or 1,250, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the these subject with the following information:

(1) Name.

(2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. *Retesting.* In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e.; multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

11. *Recordkeeping.* a. A summary of all test results shall be maintained for three years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

b. A copy of all test data including the strip chart and results shall be kept for at least five years.

[FR Doc. 92-18531 Filed 8-7-92; 8:45 am]

BILLING CODE 4510-26-M

federal register

Monday
August 10, 1992

Part III

Office of Personnel Management

Privacy Act of 1974; Systems of Records; Notice

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Routine Uses

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of notices of various systems of records, proposed routine uses for various systems of records, and renaming a system of records.

SUMMARY: This notice provides an accurate and complete text with administrative changes of the Office of Personnel Management's notices for its eight Governmentwide systems of records and for two of its most widely used Central systems of records. This notice also proposes new routine uses for several systems of records and proposes a change to one routine use found in all the notices published. This action effects the administrative changes and makes readily available in one issue of the **Federal Register** an accurate and complete text of the Office notices most widely used by individuals and by agency Privacy Act officers.

DATES: The notices with the administrative (non-substantive) changes are effective on August 10, 1992. The proposed routine uses will become effective, without further notice, on October 9, 1992 unless comments dictate otherwise.

ADDRESSES: Written comments may be sent or delivered to: Assistant Director for Workforce Information, Room 7494, U.S. Office of Personnel Management, 1990 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor (202) 606–1955.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (the Office) last published its systems notices in 1990. To be in conformance with case law, the Office is proposing to amend one of its routine uses found in all of its Governmentwide notices and the two republished Central notices in this publication regarding the disclosing of information when complying with the issuance of a subpoena. As presently written, this routine use allows the system manager to provide information when served with a subpoena, even if the Government is not a party to the litigation or to the administrative proceeding. In light of case law, the Office has decided that the issuance of a subpoena no longer qualifies as a valid routine use and is in opposition to the allowable disclosures under subsection (b) of the Privacy Act. Therefore, the Office will no longer make disclosures in response to a subpoena unless the Government is a party to the judicial or administrative proceeding. In those situations where the Government is not a party to the proceeding, records may be disclosed if a judge has actually signed the subpoena. In those cases, the disclosure will be made in accordance with subsection (b)(11) of the Privacy Act.

Other changes in this notice result from a more accurate description of the retention schedules, changes in the designation of systems managers and location of records, changes in the title of one system, the slight alteration to the category of records in one system, and the addition of routine uses to specified systems of records.

A brief description of the major changes follows:

OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, Routine use "o" is amended as described above. Disclosures under this routine use will be made to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding. Routine use "mm" is proposed to allow the disclosure of information to a State or local government, or private individual or association engaged in volunteer work, for the purpose of developing an application as a representative payee for an annuitant or survivor annuitant who is mentally incompetent or under some other legal disability. This will allow the Office to take a more active role in the development of an appropriate payee when there are incompetent beneficiaries and beneficiaries under other legal disability. The Office has statutory authority under 5 U.S.C. 8345(e) and 5 U.S.C. 8466(c) to pay the benefits to a court-appointed fiduciary or a person who, in the judgment of the Office, is otherwise responsible for the care of the beneficiary.

OPM/CENTRAL–9, Personnel Investigations Records. Routine use "j" has been amended as described above. In addition, the retrievability section has been amended to state that records are retrieved by combinations of name, birth date, and social security numbers of the individual on whom they are maintained.

OPM/GOVT–1, General Personnel Records. Routine use "p" has been amended as described above. Routine use "11" is proposed to respond to an inquiry from a spouse or dependent child (or court-appointed guardian) of a Federal employee enrolled in the Federal Employees Health Benefits Program, whether the employee has changed from a self-and-family to a self-only health benefits enrollment. In some instances a Federal employee changes health enrollment from a self-and-family plan to a self-only enrollment plan without informing his or her spouse or child(ren). The family members do not know that they are without health coverage until they file a claim and the insurance company will not pay it because the claimant is no longer covered under the Federal employee's policy. To remedy this situation, routine use "11" is proposed. This will enable family members, who have a legitimate right to know whether they do have health coverage, to be advised of this very important information. The retention and disposal section has been modified slightly to delete the reference in paragraph "a" to medical records. Those records are part of the OPM/GOVT–10 system and, therefore, the reference to medical records is not appropriate in this system notice.

OPM/GOVT–2, Employee Performance and File Systems Records. Routine use "i" has been amended as described above.

OPM/GOVT–3, Records of Adverse Actions and Actions Based on Unacceptable Performance. The system name is changed to "Records Based on Adverse Actions and Performance Based Reduction in Grade and Removal Actions." The categories of records section is amended to delete records based on unacceptable performance and to include records involving performance based reduction in grade and removal actions. Routine use "f" has been amended as described above. Routine use "p" is proposed to allow records within this system to be made available to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government. This will enable individuals who do not meet the definition of a Federal employee, but who have a legitimate right to deal with these records in order to accomplish that responsibility, to have access to the records. For example, a student volunteer who is not a Federal employee, but is working in a personnel office and reviews these records technically could not review such records as the volunteer does not come within the "need to know" provision of the Privacy Act (5 U.S.C. 552a(b)(1)). This proposed routine use, which was

added to OPM's other Governmentwide systems of records (OPM/GOVT–1, OPM/GOVT–2, and OPM/GOVT–10) in 1990, is also being added to OPM/GOVT–5 as routine use "r," to OPM/GOVT–6 as routine use "i," to OPM/GOVT–7 as routine use "i," and to OPM/GOVT–9 as routine use "n."

OPM/GOVT–5, Recruiting, Examining, and Placement Records. The title of the office listed in the system location section is changed to reflect the current title. Note 2 in the categories of records section is changed slightly to better state that records filed by vacancy announcement number or some other key that is not a unique personal identifier are not considered to be included in the system of records. Routine use "h" is amended as described above.

OPM/GOVT–6, Personnel Research and Test Validation Records. The system location and system manager identification are changed to reflect the current title. Routine use "f" is changed as described above.

OPM/GOVT–7, Applicant Race, Sex, National Origin, and Disability Status Records. The system location and system manager identification are changed to reflect the current title. Routine use "f" is changed as described above,

OPM/GOVT–9, File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals. Routine use "f" is amended as described above.

OPM/GOVT–10, Employee Medical File System Records. Routine use "c" is amended as described above. In addition, paragraph "c" of the categories of records section concerning drug test results is amended by deleting the phrase "lists of who has been tested" from this system notice. The Office concludes that a list of employees who have undergone a randomly-assigned drug test is not proper for coverage in a Privacy Act system of records such as OPM/GOVT–10. An individual's drug test result can still be made part of this system of records. The retention and disposal section is amended to indicate that drug test results can be retained for three years which is in accordance with the National Archives and Records Administration General Records Schedule for this type of record.

The new proposed routine uses for the specified systems of records meet the compatibility criteria, since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosures will not result in any unwarranted adverse effects on personal privacy.

A complete text of these ten Office systems of records is published below.

Office of Personnel Management.

Constance Berry Newman,

Director.

OPM/CENTRAL–1

SYSTEM NAME:

Civil Service Retirement and Insurance Records.

SYSTEM LOCATION:

Associate Director for Retirement and Insurance, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Certain records pertaining to State income tax withholdings from annuitant payments are located with State Taxing Offices. Certain information concerning enrollment/change in enrollment in a health plan under the Federal Employees Health Benefits Program may be located at other agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former Federal employees and members of Congress who performed service subject to the Civil Service Retirement (CSR) or Federal Employees Retirement (FERS) system.

b. Current Federal employees who have:

(1) Performed Federal service subject to the CSR system other than with their present agency; or

(2) Filed a designation of beneficiary for benefits payable under the CSR system; or

(3) Requested the Office to review a claim for health benefits made under the Federal Employees Health Benefits Program; or

(4) Enrollment/changed enrollment in a plan under the Federal Employees Health Benefits Program; or

(5) Filed a service credit application in connection with former Federal service; or

(6) Filed an application for disability retirement with the Office and are waiting final decision, or whose disability retirement application has been disapproved by the Office.

c. Former Federal employees who died subject to or who retired under the CSR or FER system, or their surviving spouses and/or children, who have received or are receiving CSR or FER benefits, Federal Employees Group Life Insurance benefits, or Federal Employees Health Benefits.

d. Former Federal employees who died subject to or who retired under a Federal Government retirement system other than CSR or FER system, or their surviving spouses and/or children, who have received or are receiving Federal Employees Group Life Insurance benefits and/or Federal Employees Health Benefits.

e. Applicants for Federal employment found unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises those retirement service history records of employees' service in the Federal Government other than for the agency in which they may presently be employed. Also included in the system are current personnel data pertaining to active United States Postal Service employees who, by virtue of the provisions set forth in 5 U.S.C. 2105(e), are not considered civil service employees. It also contains information concerning health benefit enrollment/change in enrollment, and information developed in support of claims for benefits made under the retirement, health benefits, and life insurance programs for Federal employees that the Office administers. Also included are medical records and supporting evidence on those individuals whose application for disability retirement has been rejected. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or the Office, are included in this system. These records contain the following information:

a. Documentation of Federal service subject to the CSR or FER system.

b. Documentation of service credit and refund claims made under the CSR or FER system.

c. Documentation of voluntary contributions made by eligible individuals.

d. Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims (after receipt by the Office), and designations of beneficiary.

e. Claim review files pertaining to requests that claims made under the Federal Employees Health Benefits program be reviewed by the Office.

f. Enrollment and change in enrollment information under the Federal Employees Health Benefits Program.

g. Documentation of continuing coverage for life insurance and health benefits for annuitants and their survivors under a Federal Government retirement system other than the CSR or FER system, or for compensationers and

their survivors under the Office of Workers, Compensation Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Section 3301 and chapters 83, 84, 87, and 89 of title 5, United States Code; Pub. L. 83–598, 84–350, 86–724, and 94–455; and Executive Order 9397.

PURPOSES:

These records provide information and verification on which to base entitlement and computation of CSR or FER and survivors, benefits, Federal Employees Health benefits and enrollments, and Federal Employees Group Life Insurance benefits, and to withhold State income taxes from annuitant payments. These records also serve to review rejection of applicants for Federal employment on medical suitability grounds. These records also may be used to locate individuals for personnel research. These records also provide information and verification concerning enrollment/change in enrollment in a plan under the Federal Employees Health Benefits Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under the Office's or the recipients's benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers Compensation Programs; Veterans Administration Pension Benefits Program; HHS' Social Security Old Age, Survivor and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian employee retirement programs (other than the CSR or FER system); or other national, State, county, municipal, or other publicly recognized charitable or social security administrative agency.

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, Social Security Numbers, and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom a department or agency maintains retirement or insurance records, the fact that an individual is or is not on the retirement rolls, and, if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954, as amended.

g. To disclose to the Department of the Treasury information necessary to issue benefit checks.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains, and who is found by a court or the Office Medical Officers to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant, or former employee, for enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under:

(1) Medical examination procedures; or

(2) Agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence other than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Office becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested relevant to the Office determination on an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefits program, to the extent necessary to identify the individual and the type of information requested.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

n. To disclose information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

o. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

p. To disclose to a Federal agency, in response to its request, information in connection with (1) the hiring, retention, separation, or retirement of an employee; (2) the issuance of a security clearance; (3) the reporting of an investigation of an employee; (4) the letting of a contract; (5) the classification of a job; or (6) the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the Office determines that the information is relevant and necessary to the requesting party's decision on the matter.

q. By the National Archives and Records Administration in records management and inspections.

r. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies to support the function for which the records were collected and maintained.

s. By the Office, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are

collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

u. To disclose to another agency, or to an instrumentality of any governmental jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Office specifying the particular portion(s) of the record desired (including an address) and the law enforcement activity for which the record is sought.

v. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information to provide consideration in connection with the collection of a debt due the United States.

w. To disclose information in valid emergency situations when consent cannot readily be obtained and instant action is required, to persons who have a need to know, if the particulars of the disclosure then are transmitted to the subject's last known address.

x. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

y. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission.

z. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

aa. To disclose to a Federal agency, in response to its request, the present address of a former employee and any other information the agency needs to contact the former employee concerning a possible threat to his or her health or safety.

bb. To disclose to an allottee, as defined in 5 CFR 831.1501, the name, address, and the amount withheld from an annuitant's benefits, pursuant to 5 CFR 831.1501 *et seq.* as an allotment to that allottee to implement the program of voluntary allotments authorized by 5 U.S.C. 8345(h) or 8465.

cc. To disclose to a State agency responsible for the collection of State income taxes the information required by an Agreement to Implement State Income Tax Withholdings from Civil Service Annuities entered pursuant to section 1705 of Pub. L. 97–35 or 5 U.S.C. 8469 to implement the program of voluntary State income tax withholding required by 5 U.S.C. 8345(k) or 8469.

dd. To disclose to the Social Security Administration, the social security numbers of civil service annuitants to determine (1) their vital status as shown in the Social Security Master Records; (2) whether recipients of the minimum annuity are receiving at least the Special Primary Insurance Amount benefit from the Social Security Administration; and (3) whether civil service retirees with post-1956 military service credit are receiving benefits from the Social Security Administration.

ee. To disclose to a requesting agency, organization, or individual, the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from, a health hazard while employed in the Federal workforce to protect the health and safety of the affected employees.

ff. To disclose information contained in the Retirement Annuity Master File; including the name, social security number, date of birth, sex, the Office's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees to agencies to help eliminate fraud and abuse in the benefit programs administered by agencies within the Federal Government and to collect debts and overpayments owed to the Federal Government.

gg. To disclose information contained in the Retirement Annuity Master File, including the name, social security number, date of birth, sex, the Office's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees and their survivors to requesting States to help eliminate fraud and abuse in the benefit programs administered by the States (and those States to local governments) and to collect debts and overpayments owed to those governments and their components.

hh. To disclose to a Federal agency, a person or an organization contracting with a Federal agency for rendering collection services within the purview of section 13 of the Debt Collection Act of 1982, in response to a written request from the head of the agency or his or her designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (1) The debtor's name, address, social security number, and other information necessary to establish the identity of the individual; (2) the amount, status, and history of the claim; and (3) the agency or program under which the claim arose.

ii. To disclose information contained in the Retirement Annuity Master File, upon written request, to State tax administration agencies, for the express purpose of ensuring compliance with State tax obligations by persons receiving benefits under the Civil Retirement System or the Federal Employees Retirement System, and to prevent fraud and abuse, but only the following data elements: Name, correspondence address, date of birth, sex, social security account number, annuity rate, commencing date of benefits, and retirement code (type of retirement).

jj. To disclose information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or child support obligation.

kk. To disclose to a former spouse when necessary to explain how that former spouse's benefit under 5 U.S.C. 8341(h), 8345 (j), 8445, or 8467 was computed.

ll. To disclose to a Federal or State agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal agency, State or local agency, or by a financial institution or similar institution.

mm. To disclose to a State or local government, or private individual or association engaged in volunteer work, identifying and address information and other pertinent facts, for the purpose of developing an application as

representative payee for an annuitant or survivor annuitant who is mentally incompetent or under other legal disability.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, discs, and in folders.

RETRIEVABILITY:

These records are retrieved by the name, social security number, date of birth, and/or claim number of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, life insurance, health benefits, and tax withholdings are maintained permanently. Medical suitability records are maintained for 18 months. Requests for review of health benefits claims are maintained up to 3 years. Disposal of manual records is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Retirement and Insurance, Office of Personnel Management, 1900 E Street, NW., Washington, DC.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social security number.
d. Name and address of office in which currently and/or formerly employed in the Federal service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social security number.
d. Name and address of office in which currently and/or formerly employed in the Federal Service.
e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

a. The individual to whom the information pertains.
b. Agency pay, leave, and allowance records.
c. National Personnel Records Center.
d. Federal civilian retirement systems other than the CSR/FERS systems.
e. Military retired pay system records.
f. Office of Workers' Compensation Benefits Program.
g. Veterans Administration Pension Benefits Program.
h. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.
i. Health insurance carriers and plans participating in the Federal Employees Health Benefits Programs.
j. The Office of Federal Employees Group Life Insurance.
k. Office Personnel Folders.
l. The individual's co-workers and supervisors.
m. Physicians who have examined or treated the individual.
n. Former spouse of the individual.
o. State courts or support enforcement agencies.

OPM/CENTRAL–9

SYSTEM NAME:

Personnel Investigations Records.

SECURITY CLASSIFICATION:

None for the system. However, items or records within the system may have national security/foreign policy classifications up through record secret.

SYSTEM LOCATION:

a. Privacy system: Assistant Director for Federal Investigations, Investigations Group, Office of Personnel Management, Washington, DC 20415, and the Federal Records Center, Suitland, Maryland.

b. Decentralized segments: Copies of these records may exist temporarily in agencies on current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for suitability, security clearance, access, or hiring determination on the individual. ("Agency" as used throughout this system is deemed to include legislative and judicial branch establishments as well as those in the Executive Branch.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees or applicants for employment in the Federal service, including agency offices or establishments in the executive, legislative, and judicial branches, and in the Government of the District of Columbia or annuitant survivors.

b. American citizens who are current or former employees or applicants for employment with International Organizations.

c. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, instructors, and consultants to Federal programs.

d. Individuals considered for assignments as representatives of the Federal Government in volunteer programs.

e. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative assignment or under a similar agreement.

f. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in matters related to the administration of the merit system.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with the subject of the investigation and with the present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position and correspondence relating to adjudication matters; reports of inquiries with law enforcement agencies, employers, educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; and other information developed from the above.

Note.—This system does not include those agency records of a personnel investigative nature that do not come to the Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintenance of the system include the following with any revisions or amendments:

a. Section 2, Civil Service Act of 1883—original authority.

b. Title 5, U.S.C., sections 1303, 1304, 3301, and 7701.

c. Title 5, CFR, part 5.

d. Title 22, U.S.C., sections 1434, 2519, and 2585.

e. Title 32, U.S.C., section 686.

f. Title 42, U.S.C., sections 1874(c), 2165, and 2455.

g. Pub. L. 82–298, and 92–261.

h. Executive Orders 9397, 10422, as amended; 10450, sections 7, 8(b), 8(c), and 14.

i. OMB Circular No. A–130.

j. In addition to the authorities cited above, there are various acts of Congress that contain implied authority for the Office to investigate, such as laws prohibiting the purchase and sale of office, holding of two offices, conspiracy and other prohibitory statutes.

PURPOSES:

a. To provide investigatory information for determinations concerning compliance with Federal personnel regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances, evaluations of qualifications, loyalty to the United States, and evaluations of qualifications for performance of contractual services for the U.S. Government.

b. To document such determinations.

c. To provide information necessary for the scheduling and conduct of the required investigations.

d. To otherwise comply with mandates and Executive orders.

e. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE FOR SUCH USES:

These records and information in these records may be used in disclosing information:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government and/or a security clearance or access determination.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

c. To designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the Federal Government, having the responsibility to grant clearances to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

d. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation for use in intelligence activities.

e. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

f. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

j. To another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

k. To the National Archives and Records Administration for records management inspections.

l. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

m. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

n. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

o. To disclose information to the Equal Employment Opportunity Commission when requested in

connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment program, or other functions vested in the Commission.

p. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations or unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, in a computerized electronic database, and on microfilm.

RETRIEVABILITY:

Records are retrieved by combinations of name, birth date, and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Folders and microfilm are maintained in secured with manipulation proof combination locks and intrusion alarm systems; or in metal file cabinets secured by three position combination lock. The index to the system and those records which are maintained on the computer database are in a limited access room with a keyless cipher lock. All employees are required to have an appropriate security clearance before they are allowed access to the records.

RETENTION AND DISPOSAL:

a. The computerized data base which shows the scheduling or completion of an investigation and investigative files, if any, is retained for 15 years, plus the current year from the date of the most recent investigative activity, except for investigations involving potentially actionable issue(s) which will be maintained for 25 years plus the current year from the date of the most recent investigative activity. Other index cards which show no investigative record other than the completion of a clear National Agency Check or a clear National Agency Check and Inquiry, and where no investigative file folder exists, are retained for two years plus the current year.

b. Hard copy records are destroyed by burning and computerized records are destroyed by electronic erasure.

SYSTEM MANAGER AND ADDRESS:

a. Assistant Director for Federal Investigations, Investigations Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system contains information about them should contact the Federal Investigations Processing Center, FOI/P, Boyers, PA, 16018 in writing.

Individuals must furnish the following for their records to be located and identified:

a. Full name.
b. Date and place of birth.
c. Social Security number.
d. Signature.
e. Any available information regarding the type of record involved.
f. The category of covered individuals under which the requester believes he or she fits.
g. The address to which the record information should be sent.

RECORD ACCESS PROCEDURES:

a. Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c) (3) and (d), regarding access to records. The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the Federal Investigations Processing in writing. Requests should be directed only to the Federal Investigations Processing Center whether the record sought is in the primary system or in an agency's decentralized segment.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date and place of birth.
c. Social Security number.
d. Signature.
e. Any available information regarding the type of record involved.
f. The category of covered individuals under which the requester believes he or she fits.
g. The address to which the record information should be sent.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

a. Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records. The section of this notice titled Systems exempted from certain provisions of the Act, which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment.

Individuals wishing to request amendment to their non-exempt records should contact the Federal Investigations Center in writing. Requests should be directed only to the Federal Investigations Processing Center, whether the record sought is in the primary system or in agency's decentralized segment.

Individuals must furnish the following information for their records to be located and identified:

a. Full Name.
b. Date and place of birth.
c. Social Security Number.
d. Signature.
e. Any information regarding the type of record involved.
f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

Note.—Where an agency retains the decentralized copy of the investigative report provided by OPM, requests for access to or amendment of such reports, will be forwarded to the Federal Investigations Processing Center for processing.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the following categories of sources:

a. Applications and other personnel and security forms and personal interview furnished by the individual.
b. Investigative and other record material furnished by Federal agencies.
c. Notices of personnel actions furnished by Federal agencies.
d. By personal investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureau, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes in connection with the administration of the merit

system. The Privacy Act, at U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the U. S. Code. The Privacy Act, at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment and Federal contact or access to classified information. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

(1) Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

(2) Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552a(k)(6) permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

The Office of Personnel Management has claimed these examinations from the requirements of 5 U.S.C. 552a(c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual who the records are about and access to and amendment of the records.

OPM/GOVT–1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Office and with Personnel Officers or other designated offices of the local installation of the department or agency that currently employs the individual. When agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPF) are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebago Street, St. Louis, Missouri 63118. Records not considered long-term records, but which may be retained in the OPF or elsewhere during employment, and which are also included in this system, may be retained by agencies for a period of time after the employee leaves service. The use of the phrase "long-term" to describe those records filed on the right-hand-side of OPFs is used throughout this notice because these records are not actually permanently retained. The term "temporary" is used when referencing short-term records filed on the left-hand-side of OPFs and all other records not filed in the OPF, but covered by this notice.

Note 1.—The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home address, mailing address, social security number, and home telephone. This system includes contents of the OPF as specified in Federal Personnel Manual Supplement 293–31. Records in this system are—

a. Records reflecting work experience, educational level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, Office approval of disability retirement applications, retirement, and removals.

c. Records on enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employees Health Benefit Program, as well as forms showing designation of beneficiary.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note 2.—Some of these records may also become part of the OPM/CENTRAL–5, Intergovernmental Personnel Act Assignment Record system.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

Note 3.—Some of these records may also become part of the OPM/CENTRAL–3, Federal Executive Development Records; or OPM/CENTRAL–13, Senior Executive Service Records systems.

f. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel program designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by OPM and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 292–1.

h. Records on the Senior Executive Service (SES) maintained by agencies for use in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to OPM for implementing OPM's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note 4.—Alternatively, such records may be retained by an agency payroll office and thus be subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT–1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency automated personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance appraisal and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT–2 system) maintained by agencies at field/administrative offices remote from where the original records exist are considered part of this system.

Note 5.—It is not the intent of OPM to limit this system of records only to those records physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system.

k. Records relating to designations for lump sum death benefits.

l. Records relating to classified information nondisclosure agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Executive Orders 9397, 9830, and 12107.

PURPOSES:

The OPF and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and the agencies for the Office in accordance with Office regulations and instructions. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may pertain to a formal action but do not constitute a record of it nor make a substantial contribution to the employee's long-term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used—

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to education institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under Cooperative Education, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or to TSP election change and designation of beneficiary.

f. To disclose, to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To consider employees for recognition through quality-step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

m. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful

statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual.

p. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

q. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

r. By the National Archives and Records Administration in records management inspections and its role as Archivist.

s. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

u. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual s record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

v. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

(1) Fitness-for-duty examination procedures; or

(2) Agency-filed disability retirement procedures.

w. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of civil service retirees for national emergency mobilization purposes.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

aa. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206 or as may be authorized by law.

bb. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

cc. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised, and in connection with matters before the Federal Service Impasses Panel.

dd. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

ee. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (e.g., to comply with law, rule, or regulation, to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval, or to obtain accreditation or other approval rating). Disclosure is to be made only to the extent that the information disclosed is relevant and necessary for that purpose.

ff. To disclose information to any member of an agency's Performance Review Board or other panel when the member is not an official of the employing agency; information would

then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance appraisal rating, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

gg. To disclose, either to the Federal Acquisition Institute (FAI) or its agent, information about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the information shall only be used for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the Federal Register of February 7, 1980 (45 FR 8399).

hh. To disclose relevant information with personal identifiers of Federal civilian employees whose records are contained in the Central Personnel Data File to authorized Federal agencies and non-Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include, but is not limited to, the name, social security number, date of birth, sex, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational series, health plan code, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan service area, special program identifier, and submitting office number of Federal employees.

ii. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty, in order to obtain information relevant to an Agency decision concerning the hiring retention or termination of an employee or to inform a Federal agency or licensing boards of the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

jj. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

kk. To disclose information to a Federal, State, or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal, State, or local agency, or by a financial or similar institution.

ll. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of a Federal employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from a self-and-family to a self-only health benefits enrollment.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The OPF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency.

a. Long-term records. The OPF is maintained by the employing agency as long as the individual is employed with that agency.

For non-SES employees, transfer performance ratings of record 4 years old or less and the performance plan on which the most recent rating was based from the Employee Performance File to the OPF, if the ratings and plans are not maintained by the agency in the OPF.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule (GRS–1).

b. Other records. Other records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

c. Records contained on computer processable media within the CPDF (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS–1, such records should not be used in making decisions concerning employees.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate Office or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees should contact the Office's St. Louis office (address cited in "Records Access Procedure" below), or as explained in the Note in the "Records Access Procedure" below, the National Personnel Records Center (Civilian), 111

Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

Note 6.—An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) for a copy of a specific OPF document or for a transcript of his or her own employment history compiled from documents in the OPF. The transcript includes the individual's name; date of birth; social security number; all past grades held, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request to NPRC for access to copies of all records maintained in his or her OPF. Though NPRC stores and services the OPFs of former Federal employees covered by this system, that record remains the property of the Office, and such requests will be handled and processed by the: OPF/EMF Access Unit, Office of Personnel Management, P.O. Box 18673, St. Louis, Missouri 63118.

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager and not the Office. Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297).

Note 7.—Under no circumstances shall former employees direct a request for amendment to records in the OPF to the NPRC or to the Office's OPF/EMF Access unit in St. Louis, Missouri. NPRC only stores and services the OPFs on former Federal employees covered by this system, and the Office's office in St. Louis processes only access requests. Processing under the amendment provisions of the Privacy Act will be handled only by the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by—

a. The individual on whom the record is maintained.

b. Physicians examining the individual.

c. Educational institutions.

d. Agency officials and other individuals or entities.

e. Other sources of information for long-term records maintained in an employee's OPF, in accordance with Federal Personnel Manual, Chapter 293, and the Federal Personnel Supplement 293–31.

OPM/GOVT–2

SYSTEM NAME:

Employee Performance File System Records.

SYSTEM LOCATION:

Records maintained in this system may be located as follows:

a. In an Employee Performance File (EPF) maintained in the agency office responsible for maintenance of the employee's Official Personnel Folder (OPF) or other agency-designated office. This includes those instances where the agency uses an envelope within the OPF in lieu of a separate EPF folder.

b. In the EPF of Senior Executive Service (SES) appointees where the agency elects to have the file maintained by the Performance Review Boards required by 5 U.S.C. 4314(c)(1), or the administrative office supporting the Board.

c. In any supervisor/manager's work folder maintained in the office by the employee's immediate supervisor/manager or, where agencies have determined that records management is better served, in such folders maintained for supervisors/managers in a central administrative office.

d. In an agency's automated personnel records system.

e. In an agency microformed EPF.

Note 1.—Originals or copies of records covered by this system may be located in more than one location, but if they become part of an agency internal system (e.g., administrative or negotiated grievance file), those copies then would be subject to the agency's internal Privacy Act implementation guidance regarding their use within the agency's system.

Note 2.—The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee for access to the records within this system, such a request should be honored.

CATAGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees (including SES appointees).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system, wherever they are maintained, may include any or all of the following:

a. Annual summary performance appraisals issued under employee appraisal systems and any document that indicates that the appraisal is being challenged under administrative procedures (e.g., when the employee files a grievance on the appraisal received).

b. A document (either the summary appraisal form itself or a form affixed to it) that identifies the job elements and the standards for those elements upon which the appraisal is based.

c. Supporting documentation for employee appraisals, as required by agency appraisal systems or implementing instructions, and which may be filed physically with the appraisal of record (e.g., productivity and quality control records, records of employee counseling, individual development plans, or other such records as specified in agency issuances) and maintained, for example in a work folder by supervisors/managers at the work site.

d. Records on SES appraisals generated by Performance Review Boards, including statements of witnesses and transcripts of hearings.

e. Written recommendations for awards, removals, demotions, denials of within-grade increases, reassignments, training, pay increases, cash bonuses, or other performance-based actions (e.g.,

nominations of SES employees for Meritorious or Distinguished Executive), including supporting documentation.

f. Statements made (letter on or appended to the performance appraisal document) by the employee (e.g., a statement of disagreement with the appraisal or recommendation), in accordance with agency performance appraisal plans and implementing instructions, regarding an appraisal given and any recommendations made based on them.

Note 3.—When a recommendation by a supervisor/manager or a statement made by the employee regarding the appraisal issued (or a copy) becomes part of another Governmentwide system or internal agency file (e.g., an SF 52 filed in an OPF when the action is effected or when documents or statements of disagreement are placed in a grievance file), that document then becomes subject to that system's notice and appropriate Office or employing agency Privacy Act requirements, respectively, for the system of records covering that file.

g. Records created by Executive Resource Boards regarding performance of an individual in an executive development program.

h. Records concerning performance during the supervisory or managerial probationary period, the SES appointment probationary period, or the employee's initial period of probation after appointment.

i. Notices of commendations (which are not considered a permanent OPF document), recommendations for training, such as an Individual Development Plan, and advice and counseling records that are based on work performance.

j. Copies of supervisory appraisals used in considering employees for promotion or other position changes originated in conjunction with agency merit promotion programs when specifically authorized for retention in the EPF or work folder.

k. Performance-related material that may be maintained in the work folder to assist the supervisor/manager in accurately assessing employee performance. Such material may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee duties, and other such records that agencies determine to be appropriate for retention in the work folder.

l. Standard Form 7B cards.

Note 4.—To the extent that performance records covered by this system are maintained in either an EPF, supervisor/manager work folder, or an agency's automated or microform record system, they are considered covered under this system of records. Further, when copies of records filed in the employee's OPF are maintained as general records related to performance (item k above), those records are to be considered as being covered by this system and not the OPM/GOVT–1 system.

This notice does *not* cover these records (or copies) when they become part of a grievance file or a 5 CFR parts 432, 752, or 754 file (documents maintained in these files are covered by the OPM/GOVT–3 system of records, while grievance records are covered under an agency-specific system), or when they become part of an appeal or discrimination complaint file as such documents are considered to be part of either the system of appeal records under the control of the Merit Systems Protection Board (MSPB) or discrimination complaints files under the control of the Equal Employment Opportunity Commission (EEOC).

When an agency retains copies of records from this system in another system of records, not covered by this or another OPM, MSPB, or EEOC Governmentwide system notice, the agency is solely responsible for responding to any Privacy Act issues raised concerning these documents.

The Office has adopted a position that when supervisors/managers retain personal "supervisory" notes, i.e., information on employees that the agency exercises no control and does not require or specifically describe in its performance appraisal system, which remain solely for the personal use of the author and are not provided to any other person, and which are retained or discarded at the author's sole discretion, such notes are not subject to the Privacy Act and are, therefore, not considered part of this system. Should an agency choose to adopt a position that such notes are subject to the Act, that agency is solely responsible for dealing with Privacy Act matters, including the requisite system notice, concerning them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Sections 1104, 3321, 4305, and 5405 of title 5, U.S. Code, and Executive Order 12107.

PURPOSE:

These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) to agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and other functions as promulgated in 5 U.S.C. 1205, 1206, and 1209 or for such other functions as may be authorized by law.

b. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal Affirmative Action programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

c. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

d. To consider and select employees for incentive awards, quality-step increases, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted. This may include disclosure to public and private organizations, including news media, which grant or publicize employee awards or honors.

e. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

f. To disclose to an agency in the executive, legislative, or judicial branch, or to the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with hiring or retaining of an employee; issuing a security clearance; conducting a security or suitability investigation of an individual; classifying jobs; letting a contract; issuing a license, grant, or other benefits by the requesting agency; or the lawful statutory, administrative, or investigative purposes of the agency to the extent that the information is relevant and necessary to the decision on the matter.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to

the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to a congressional office from the record or an individual in response to an inquiry from that congressional office made at the request of the individual.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

j. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

k. By the National Archives and Records Administration in records management inspections and its role as Archivist.

l. By the Office or employing agency to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency maintaining the record becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

n. To disclose information to private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions. Such disclosures may be made only when the disclosing agency determines that the records are properly constituted in accordance with the Office or agency requirements; are accurate, relevant, timely, and complete; and the disclosure is in the best interest of the Government (e.g., where the agency's cooperation with the private sector entity, through the exchange of individual records, directly benefits the agency's completion of its mission, enhances the agency's personnel management functions, or increases the public confidence in the agency's or the Federal Government's role in the community). Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity, are to be furnished.

o. To disclose information to any member of an agency's Performance Review Board or other board or panel when the member is not an official of the employing agency. The information would then be used for approving or recommending performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

p. To disclose to Federal, State, local, and professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of an individual seeking to be licensed.

q. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, envelopes, and on magnetic tapes, disks, microfilm, or microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in file folders or envelopes, on magnetic tape, disks, or microforms and are stored in locked desks, metal filing cabinets, or in a secured room with access limited to those whose official duties require access. Additional safeguarding procedures include the use of sign-out sheets and restrictions on the number of employees able to access automated records through use of access codes and logs.

RETENTION AND DISPOSAL:

Records on former non-SES employees will generally be retained no longer than 1 year after the employee leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. 4314.

a. Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and on other employees for 4 years, except as shown in paragraph b below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the individual.

b. Appraisal of unacceptable performance and related documents, pursuant to 5 U.S.C. 4303(d), are destroyed after the employee completes 1 year of acceptable performance from the date of the proposed removal or reduction-in-grade notice. (Destruction to be no later than 30 days after the year is up.)

c. When a career appointee in the SES accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder remains active so long as the employee remains employed under the Presidential appointment and elects to have certain provisions of 5 U.S.C. relating to the Service apply.

d. When an incumbent of the SES transfers to another position in the Service, ratings and plans 5 years old or less shall be forwarded to the gaining agency with the individual's OPF.

e. Some performance-related records (e.g., documents maintained to assist rating officials in appraising performance or recommending remedial actions or to show that the employee is currently licensed or certified) may be destroyed after 1 year.

f. Where any of these documents are needed in connection with administrative or negotiated grievance procedures, or quasi-judicial or judicial proceedings, they may be retained as needed beyond the retention schedules identified above.

g. Generally, agencies retain records on former employees for no longer than 1 year after the employee leaves.

Note 5.—When an agency retains an automated or microform version of any of the above documents, retention of such records longer than shown is permitted (except for those records subject to 5 U.S.C. 4303(d)) for agency use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact their servicing personnel office, supervisor/manager, Performance Review Board office, or other agency designated office maintaining their performance-related records where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).
b. Social Security number.
c. Position occupied and unit where employed.

RECORDS ACCESS PROCEDURE:

Individuals wishing access to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).
b. Social security number.
c. Position occupied and unit where employed.

Individuals requesting access to records must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).
b. Social security number.
c. Position occupied and unit where employed.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from: a. Supervisors/managers.

b. Performance Review Boards.

c. Executive Resource Boards.

d. Other individuals or agency officials.

e. Other agency records.

f. The individual to whom the records pertain.

OPM/GOVT-3

SYSTEM NAME:

Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers.

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service (SES) employees) against whom such an action has been proposed or taken in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on: (1) The processing of adverse actions, performance based reduction in grade and removal actions, and (2) the termination of employees serving initial appointment probation and return to their former grade of employees serving supervisory or managerial probation. The records include, as appropriate, copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witness, hearing notices, reports, and agency decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 3321, 4303, 7504, 7514, and 7543.

PURPOSE:

These records result from the proposal, processing, and documentation of these actions taken either by the Office or by agencies against employees in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the National Archives and Records Administration in records management inspections and its role as Archivist.

i. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 5 U.S.C. 7513(e), or as may be authorized by law.

l. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

o. To disclose information to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commissions. Such disclosures may be made only when the disclosing agency determines that the records are properly constituted in accordance with Office or employing agency requirements; the records are accurate, relevant, timely, and complete; and the disclosure is in the best interests of the Government. When the agency's cooperation with the private sector entity, through the exchange of individual records, directly benefits the agency's completion of its mission, enhances the agency's personnel management functions, or increases the public confidence in the agency's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity, are to be furnished.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the names and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets or in automated media to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action, performance-based removal or demotion action, or covered actions against probationers are disposed of not sooner than four years nor later than seven years after the closing of the case in accordance with each agency's records disposition manual. Disposal is by shredding, or erasure of tapes (disks).

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 for actions taken under parts 432, 752 (subparts A through D only), and 754. Assistant Director for Executive and Management Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 for actions taken against SES appointees under subparts E and F, of part 752. Associate Director for Career Entry, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 for actions taken under part 315.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the agency personnel or designated office where the actions were processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By supervisors/managers.
b. By the individual on whom the record is maintained.
c. By testimony of witnesses.
d. By other agency officials.
e. By other agency records.
f. From related correspondence from organizations or persons.

OPM/GOVT-4 [Reserved]

OPM/GOVT-5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Associate Director for Career Entry, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and on certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as—

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared on, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results) or by a contractor laboratory (e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1.—Only Routine Use "p" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency.

generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

Note 2.—The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personnel identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 3.—To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3305, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 4.—With the exception of Routine Use "p," none of the Other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within that agency, generally only to the agency Medical Review Officer (MRO), the administrator of the agency's Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to a judicial or administrative proceeding.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections and its role as Archivist.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines or Employee Selection

Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

q. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, in order to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entity about the health care practice of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

r. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years, e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Career Entry, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C.(c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where the application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where the application was made or the examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

Note 5.—In responding to an inquiry or a request for access or amendment, resource specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and Office records, and

vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific material exempted include, but are not limited to, the following:

a. Answer keys.

b. Assessment center exercises.

c. Assessment center exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.

h. Item analyses and similar data that contain test keys.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Rating sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

OPM/GOVT-6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Assistant Director, Office of Personnel Research and Development, Career Entry, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; the Office's regional offices and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees, and applicants for sample comparison groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1303, 3301, and 4702.

PURPOSES:

These records are collected, maintained, and used by the Office or other Federal agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies. Agencies and the Office may provide each other with data collected in support of these functions. Such research includes studies extending over a period of time (longitudinal studies). Private sector data are used in research only, to evaluate Federal study results against non-Federal comparison groups. Race and national origin data are used by the Office or other agencies to evaluate the role and effects of selection procedures in the total employee staffing process. Use of these race and national origin data is limited to such evaluation, oversight and research projects conducted by the employing agencies or the Office. The records may also be used by the Office or other Federal agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the OPM or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with actions by offices relating to

allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. the United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

h. To provide aggregate data to non-Federal organizations participating in workforce studies. These data will be limited to individuals associated with the organization requesting the data or to data aggregated for all organizations in a study.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETENTION AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards disks, and magnetic tape.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Records collected for longitudinal studies will be maintained indefinitely. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel Research and Development, Career Entry, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the State where they employed, or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Individual applicants and employees; supervisors; assessment center assessors; and agency or Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOVT–1 and OPM/GOVT–7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which

relates to access to and amendment of records.

This system contains records required to be maintained and used solely for statistical purposes. The Privacy Act, at 5 U.S.C. 552a(k)(4), permits an agency to exempt all such statistical records from certain provisions of the Act, when the disclosure of the material would compromise the objectivity and fairness of these records. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.

b. Assessment center and interview exercises.

c. Assessment center and interview exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center and interview summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, interviews, and reports.

h. Item analyses and similar data that contain test keys.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Ratings sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

o. Those portions of research and development files that could specifically reveal the contents of the above exempt documents.

OPM/GOVT–7

SYSTEM NAME:

Applicant Race, Sex, National Origin, and Disability Status Records.

SYSTEM LOCATION:

Records in this system may be located in the following offices:

a. Office of Personnel Research and Development, Career Entry Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. Office of Affirmative Recruiting and Employment, Career Entry Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

c. The Office's regional offices and any register-holding area offices under the jurisdiction of a regional office.

d. Agency Personnel, Equal Employment Opportunity, or Federal Equal Opportunity Recruitment Program offices or other designated offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including—

a. Applicants for examinations administered either by the Office or by employing agencies.

b. Applicants on registers or in inventories by the Office and subject to its regulations.

c. Applicants for positions in agencies having direct hiring authority and using their own examining procedures in compliance with the Office regulations.

d. Applicants whose records are retained in an agency's Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups).

e. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's name; social security number; date of birth; statement of major field of study; type of current or former Federal employment status (e.g., career or temporary); applications showing work and education experience; and race, sex, national origin, and disability status data.

Note.—The race and national origin information in this system is obtained by three alternative methods: (1) Use of the Office's form on which individuals identify themselves as to race and national origin; or (2) by visual observation (race) or knowledge of an individual's background (national origin); or (3) at the agency's option, from the OPM/GOVT–1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 256, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 7201, Sections 4A, 4B, 15A(1) and (2), 15B(11), and 15D(11); Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38297 *et seq.* (August 25, 1978); 29 CFR 720.301; and 29 CFR 1613.301.

PURPOSES:

These records are used by OPM and agencies to—

a. Evaluate personnel/organizational measurement and selection methods.

b. Implement and evaluate agency affirmative employment programs.

c. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files).

d. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.

e. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the Authority section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979.)

f. Enable reports to be prepared regarding breakdowns by race, sex, and national origin of applicants (by exams taken, and on the selection of such applicants for employment).

g. To locate individuals for personnel research.

Note 1.—These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities in connection with agency Equal Employment Opportunity programs.

b. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and

analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is party to a judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on magnetic tape and disks.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in locked metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for 2 years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. When records are needed in the course of an administrative procedure or litigation, they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes and disks are erased.

Note 2.—When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel Research and Development, Career Entry Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information about them should contact the system manager; the Office's regional offices covering the State where the application for Federal employment was filed; or the personnel, Equal Employment Opportunity, or Equal Employment Opportunity Recruitment office or other designated office where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

An individual requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified.

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

An individual requesting amendment must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on such forms as Personnel Research Questionnaire 79–1 (OPM Form 1377), Background Survey Questionnaire 79–2 (OPM Form 1386), or equivalent forms, or is obtained directly from other agency or OPM records (e.g., race, sex, national origin, and disability status data may be obtained from the OPM/GOVT–1, General Personnel Records system).

OPM/GOVT-8 [Reserved]

OPM/GOVT-9

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

SYSTEM LOCATION:

These records are located at the Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM regional offices, agency personnel offices (or other designated offices), and Federal records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have filed a position classification appeal or a job grading appeal with Agency Compliance and Evaluation, Office of Personnel Management; an OPM regional office; or with their agency.

b. Current and former Federal employees who have filed a retained grade or pay appeal with OPM's Agency Compliance and Evaluation; or an OPM regional office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. The records may include information and documents regarding a personnel action of the agency involved and the decision or determination rendered by an agency regarding the classifying or grading of a position or whether an employee is to remain in a retained grade or pay category. This system may also include transcripts of agency hearings and statements from agency employees.

Note 1.—This system notice also covers agency files created when: (a) An employee appeals a position classification or job grading decision to OPM or within the agency regardless of whether that agency appeal decision is further appealed to OPM; and (b) an employee files a retained grade or pay appeal with OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 5112, 5115, 5346, and 5366.

PURPOSE:

These records are primarily used to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, OPM may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating a position classification appeal, job grading appeal, or retained grade or pay appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retaining or assigning of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, and classifying positions, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the Office or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. By the National Archives and Records Administration in records management inspections and its role as Archivist.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, SAFEGUARDS, AND RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, disks, and microfiche.

RETRIEVAL:

These records are retrieved by the subject's name, and the name of the employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or automated media in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records related to position classification appeal, job grading appeal, and retained grade or pay appeal files are maintained for 7 years after closing action on the case. Records are destroyed by shredding, burning, or erasing as appropriate.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should—

a. For records pertaining to retained grade or pay appeals, contact the system manager or the appropriate OPM regional office.

b. For records pertaining to a position classification appeal or job grading appeal, where the appeal was made only to OPM, contact the system manager or the OPM regional office, as appropriate.

c. For records pertaining to a position classification appeal or a job grading appeal filed with both the agency and OPM, contact the agency personnel officer, other designated officer, or the system manager, or the OPM regional office, as appropriate.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

RECORD ACCESS PROCEDURE:

Individuals who have filed a position classification appeal, job grading appeal, or a retained grade or pay appeal, must be provided access to the record. However, after the appeal has been closed, an individual may request access to the official copy of the records by writing the official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or OPM records relating to the action.

c. Statements from employees or testimony of witnesses.

d. Transcript of hearings.

OPM/GOVT-10

SYSTEM NAME:

Employee Medical File System Records.

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, or contractors performing a medical function for the agency.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal Records Storage Centers operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 3 years) some records on former employees.

Note 1.—The records in this system of records are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include—

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employee;

b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

c. Records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (e.g., by the agency Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and documents

related to the reasons for testing or other aspects of test results.

d. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

e. All other medical records, forms, and reports created on an employee during his/her period of employment, including any retained on a temporary basis (e.g., those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (i.e., those retained for the entire duration of Federal service and for some period of time after).

Note 2.—Records maintained by an agency dispensary are included in this system only when they are the result of a condition of employment or related to an on-the-job occurrence.

Note 3.—Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Program established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

Note 4.—Only Routine Use "u" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

Executive Orders 12107, 12196, and 12564 and 5 U.S.C. chapters 11, 31, 33, 43, 61, 63, and 83.

PURPOSE:

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 5.—With the exception of Routine Use "u," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

These records and information in these records may be used—

a. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry

from the congressional office made at the request of that individual.

i. To disclose information to the Merit System Protection Board or the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

k. To disclose information to the National Archives and Records Administration in records management inspections and its role as Archivist.

l. To disclose information to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-decision, or other written communications issued to the employee, in connection with an examination ordered by "the agency under—

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the insurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

v. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in automated record systems, and on file cards, x-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona need for the records.

RETENTION AND DISPOSAL:

The EMF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage, or as appropriate, to the next employing Federal agency. Other medical records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration's records schedules or destroyed when they have served their purpose or when the employee leaves the agency. Within 30 days after the individual separates from the Federal service, the EMF is sent to the National Personnel Records Center for storage. Destruction of the EMF is in accordance with General Records Schedule–1(21). Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 3 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. Current Employees. Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. Former employees. Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to: OPF/EMF Access Unit, Office of Personnel

Management, P.O. Box 18673, St. Louis, Missouri 63118.

Requests to the Office's OPF/EMF Access Unit in St. Louis, Missouri, must submit the following information for their records to be located and identified:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, for access to their EMF. When submitting a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, the individual must furnish the following information to locate and identify the record sought:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.
5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing, but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should—

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from—a. The individual to whom the records pertain.

b. Agency employee health unit staff.

c. Federal and private sector medical practitioners and treatment facilities.

d. Supervisors/managers and other agency officials.

e. Other agency records.

[FR Doc. 92-18735 Filed 8-7-92; 8:45 am]
BILLING CODE 6325-01-M

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Monday
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Part IV

Resolution Trust Corporation

12 CFR Part 1617

Minority and Women Outreach and Contracting Program; Interim Final Rule

RESOLUTION TRUST CORPORATION

12 CFR PART 1617

RIN 3205-AA08

Minority and Women Outreach and Contracting Program

AGENCY: Resolution Trust Corporation.

ACTION: Interim final rule.

SUMMARY: The Resolution Trust Corporation (RTC) hereby promulgates an interim final rule pursuant to the requirement of section 1216(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The intent of the rule is that RTC identify, promote, and certify eligible firms for inclusion in its contracting activities, at the same time assuring that RTC utilization of the services of the private sector is accomplished in a practicable and efficient manner. In order to accomplish this objective of maximizing the inclusion of minorities and women, and firms owned by minorities and women, RTC has deemed it appropriate to design a program which will aggressively reach out to minorities and women and firms owned by minorities and women to enable them to participate more fully in RTC contracting activities through the use of joint venture agreements and other devices. In addition, pursuant to a recent statute, the RTC will provide incentives (i.e., cost and technical bonuses) in evaluating competitive offers to contract, to firms owned by minorities and women.

As well as covering contracting in general, the rule governs the identification, promotion, and certification of eligible law firms for inclusion in the RTC legal services contracting process.

Comment is solicited on all matters pertaining to this interim final rule.

DATES: This interim final rule is effective August 10, 1992. Comments must be received by October 9, 1992.

ADDRESSES: Written comments regarding the interim final rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001. Comments may be hand-delivered to Room 314 on business days between 9 a.m. and 5 p.m. Comments may be inspected in the Public Reading Room, 801 17th Street, NW. between 9 a.m. and 5 p.m. on business days. (Phone number: 202–416–6940; FAX 202–416–4753.)

FOR FURTHER INFORMATION CONTACT: On issues relating to non-legal contracting, Johnnie B. Booker, Assistant Vice President, Department of Minority and Women's Programs, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001, 202–416–6925; on issues relating to contracting with law firms, Mary A. Terrell, Legal Division, 202–736–3073. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

FIRREA, enacted on August 9, 1989, amended the Federal Home Loan Bank Act (12 U.S.C. 1421, *et. seq.*) by adding section 21A, which established the RTC. Section 21A(b) (11) (A) (ii) provides that, in carrying out the duties of the RTC, the services of independent contractors shall be utilized if deemed practicable and efficient by RTC. FIRREA, at section 1216 (12 U.S.C. 1833e) additionally required RTC to prescribe regulations to establish and oversee a minority and women outreach program to ensure inclusion, to the maximum extent possible, of minorities and women and entities owned by minorities and women in contracting activities of RTC.

On August 15, 1991, (56 FR 40484) the RTC published in the **Federal Register** an interim final rule (12 CFR part 1617) to govern the outreach portion of the program. The Interim Final Rule also provided standards for qualifying as a minority- or women-owned business (MWOB) or minority- or women-owned law firm (MWOLF) for purposes of the program. Public comment was solicited, and 57 comments were received.

In November of 1991, Congress passed the RTC Refinancing, Restructuring, and Improvement Act of 1991 (RRIA). The RRIA required, among other things, that in evaluating contract offers, the RTC provide technical preferences of at least 10 percent and cost preferences of at least 5 percent to MWOBs. The RRIA also gave the RTC authority to adjust the level of those preferences as necessary.

B. The August 15, 1991 Interim Final Rule (1991 Rule)

The 1991 Rule set forth the scope of the RTC's Minority and Women Outreach and Contracting Program (MWOC) and set out as its mission the identification, promotion, and certification of appropriate entities for inclusion in RTC contracting activities. In adopting the interim final rule, the RTC observed that the interim final regulation was not intended to govern RTC's procedures regarding preferences in the evaluation of contract proposals by MWOB firms. However, subsequent to the comment period, Congress, through the RRIA, mandated that the RTC adopt cost and technical bonus provisions, or other measures to increase the number of contracts awarded to MWOB firms. Accordingly, this current interim final rule incorporates such measures.

The RTC's outreach efforts to minorities and women include other matters beyond contracting. They also include outreach to potential purchasers of assets from savings associations under the RTC's control, and to potential acquirors of such savings associations. The regulation, however, addresses only the RTC's contracting program.

C. Discussion of Comments

The following discussion summarizes comments and provides the RTC's response to those comments. All comments were considered, even if not specifically addressed.

1. Methods for Increasing Awards to MWOBs

Virtually all commenters stated that the regulation must contain cost and technical bonuses in order to be effective. No commenter opposed the use of bonuses. A bank proposed raising the cost bonus to 5 percent. A minority contractor proposed increasing the cost and technical bonus to 10 percent. An accounting firm proposed increasing the cost bonus to 5 percent. The Rainbow Coalition stated that there is an imbalance in awards. To correct this, the Coalition proposes increasing the technical bonus to 15 percent for minorities, while giving a 10 percent bonus to contractors owned and controlled by white women. The Coalition proposes that the cost bonus be increased to 10 percent, the level assertedly granted by other Federal agencies including the Department of Defense. Other commenters generally support the use of bonuses.

Due to the mandate of the RRIA, the RTC is incorporating cost and technical bonuses in the final rule. In addition to being statutorily mandated, the RTC believes that bonuses are a reasonable measure to correct imbalances in the award of contracts to MWOBs vis-a-vis other segments of the contracting community, and can be reasonably tailored to maintain opportunities for other contractors who are capable of performing RTC contracts. Through devices such as awarding bonuses to joint ventures that include MWOBs, and awarding bonuses to prime contractors that subcontract significant portions of contracting work to MWOBs, the bonus system that is incorporated in the final rule is designed to provide incentives for both MWOBs and others to work

together to meet the RTC's statutory obligations.

A law firm proposes expanding the bonus system to majority contractors who have minority and women principals or have their own outreach program for minorities and women. This firm states that its program has progressive goals for increasing the percentage of women as shareholders. Without such a bonus system, the commenter argues, qualified women and minority professionals in majority firms will be effectively penalized. A female contractor argues that RTC should give bonuses to contractors who have significant levels of minorities and women as employees. Management is not the relevant determination as whether a firm is fostering participation of minorities or women.

The RTC agrees with the thrust of this comment. While it is not empowered to award bonus points to such firms, it is setting a goal to foster the use of law firms that use minorities or female lawyers on RTC related legal work.

Several commenters support bonuses for majority firms that use minority subcontractors. The contractor asserts that the 25 percent threshold should include mandatory subcontracts, and that some subcontracts should be non-competitively awarded to MWOBs.

The RTC agrees that one of the more efficient means of fostering MWOB participation is through subcontracting. The interim final rule contains several provisions that provide incentives for contractors to subcontract substantial amounts of work (with commensurate fees) to MWOBs. In addition, contractors are reminded that subcontracting to MWOBs, wherever feasible, is an RTC policy, and the evaluation of each contractor's performance will in part be based upon compliance with this policy.

Several commenters assert that the bonus system needs to be more rational. The commenters argue that the percentage of the bonus should be derived from the effect of bonuses to date, and should correlate with the scores that minority firms have been receiving on their contract offers. A commenter recommends a two tier or a sliding scale bonus system, with larger bonuses for MWOBs that qualify on their own than for joint ventures or subcontracting arrangements.

The RTC agrees with this comment. The interim final rule contains a tiered bonus system that is designed to reflect different levels of MWOB participation. Consistent with its augmented authority under the RRIA, the RTC may periodically adjust the bonus points to correlate to the results of its program.

2. Non-Competitive Awards

Several commenters assert that the RTC should place substantial reliance on sole source awards to increase MWOB participation. Another commenter asserts that a certain percentage of contracts (30 percent is suggested) be set aside for MWOB contractors. The Rainbow Coalition recommends that minority vendors be given right of first refusal on any noncompetitive contract below $25,000. The Coalition recommends that, if such a contract is awarded to a non-minority, there must be a written justification and a record of the attempts that were made to contract with minorities first. Another commenter argues that the RTC should develop portfolios for direct award to minorities.

In the new interim final rule, the RTC reserves the right to award non-competitive contracts in appropriate circumstances, using established RTC contractor selection procedures. However, the RTC intends to rely upon preferences and goals as much as possible to stimulate MWOB participation in a competitive environment.

3. Other Proposals to Increase MWOB Participation

Commenters support targeting minority contracting goals to equal the percentage of MWOBs in the database. It is asserted that, if such an approach is followed, contracting goals should be changed periodically to reflect changes in the number of registered firms. One commenter recommends that any contractor awarded a contract worth more than one million dollars should be required to have mandatory MWOB participation, and that the successful bidder should be required to document its effort to employ minorities and report this information at least twice a year.

4. RTC Response to Comments Regarding Increasing MWOB Participation

The RTC closely monitors the progress in the percentage of contracts and fees awarded to MWOBs, and is committed to increasing current levels of participation. The RTC expects that implementation of its augmented outreach program and authority to award cost and technical preference points will increase that percentage to 30 percent over the next year. The RTC expects that the percentage of awards will be commensurate with the percentage of fees paid to MWOBs. It is expected that, over the next year, the Division of Legal Services will increase the level of legal fees paid on new assignments to MWOLFs to at least 20 percent. In addition, it is expected that at least 10 percent of the fees paid over the next year to law firms will be for services performed by minorities or women in non-MWOLF firms. The RTC understands that these projections may represent a substantial increase in the amounts paid to these firms. However, the RTC believes that there is a substantial pool of qualified MWOBs, MWOLFs, or minorities or women in non-MWOLF firms, and that this pool can competently perform the higher levels of work that the RTC would assign to them.

5. Joint Ventures

Most commenters suggested improvements to the Joint Venture program. One MWOB suggested that the joint venture definition include two different types of contractors, such as a property manager and a loan underwriter. A minority contractor and a woman-owned contractor suggested that the joint venture concept might actually be detrimental in that non-minority contractors are given a false incentive to deal with MWOBs. An association of minority contractors elaborated on this point by asserting that no contract should be awarded unless 25 percent of the work is to be performed by MWOBs, and that performance of asset managers and other contractors should be evaluated by their use of MWOB firms. They added that outside firms should be used to audit the use of MWOBs. Several commenters suggested that bonuses should be correlated to the percentage of work performed by MWOBs. The MWOB contractor asserted that "stand alone" minority firms should be awarded a bonus twice that awarded to joint ventures. To be eligible for a bonus, a joint venture should have at least 40 percent minority participation. Treating a contractor who gives 25 percent of the contractual duties to minority subcontractors as a joint venture is "repugnant and insulting." This provision will have the unintended effect of preventing participation of minorities as prime contractors. The Rainbow Coalition suggested that the minimum level of MWOB participation in joint ventures be raised from 25 percent to 33 percent. They also recommended that there be a sliding scale for bonuses up to 50 percent participation. A group of three MWOBs and a trade association recommended that joint ventures be at least 51 percent controlled by minorities or women.

In the RRIA, Congress directed the RTC to award bonuses (described in the

statute as "preference points") to joint ventures that include at least 25 percent MWOB participation. However, the RTC agrees with the commenters that MWOB participation should be increased by creating greater incentives for higher levels of MWOB participation in joint ventures and subcontracting arrangements. Accordingly, the interim final rule provides for greater bonuses for MWOBs that qualify on their own, and for contractors who commit to significant levels of subcontracting to MWOBs, than for joint ventures or subcontracting arrangements with lower levels of MWOB participation.

6. RTC Performance

Several MWOBs asserted that the program has been ineffective to date in giving meaningful amounts of work to MWOBs or MWOLFs. The Rainbow Coalition asserts that of the SAMDA contracts awarded to date, a disproportionate number have gone to women, particularly white women, as opposed to minorities. Assertedly, white women received ⅓ of the awards from August 1989 through May 1991; only 1.7 percent of the contracts went to black males, and none to black females. Two MWOBs assert that RTC problems are attributable to a lack of clear policies and the lack of a formal internal structure. A minority trade association asserts that MWOBs that have received contracts are subject to slow payment and that there is insufficient time to respond to contract solicitations. Also they assert that the RTC Consolidated Field Offices are inconsistent in structuring their solicitations, and that this discourages MWOBs from bidding and raises questions of fairness.

Commenters suggested some ways to improve performance. Several commenters advocated using outside contractors to monitor the RTC's compliance. Commenters stated that the regulations must be more clear and consistent. Commenters suggested that the most effective, and possibly the only way for RTC to increase minority participation, is to hire minorities to high level positions within the RTC. Better training of employees was also suggested, as was removal of employees who don't carry out the mandate of the program.

A group of MWOBs assert that the scope of the activities covered by the regulation should be clarified. The contractual services included in the program should specifically include managing agent services, auditing services, the national sales program and other asset disposition activities, and financially-assisted sales of insolvent institutions.

While the RTC's efforts to increase MWOB participation have achieved a level of success, the RTC recognizes the need for continuing improvement in its efforts. The RTC has taken steps, which are reflected in the new interim final rule, to increase the profile of its MWOC Program, to facilitate the roles of the program officials and staff, and to increase the training and accountability of all RTC staff.

7. Certification

Several commenters noted that the certification affidavit should require 51 percent ownership and control. A minority contracting specialist asserts that the program needs clear consistent certification requirements but allows that some flexibility is warranted, such as allowing sole proprietorships to use tax return information.

Three commenters addressed the need for verification of certifications. One commenter suggests onsite inspection during the certification process and a recertification every 2 or 3 years, or anytime the company structure has significantly changed. One contractor argues that the regulation should contain a provision regarding de-certification.

The RTC has corrected apparent discrepancies between the 1991 Rule and the requirements of the certification affidavit. The new interim final rule reflects the RTC's recognition of the need for more effective verification procedures.

8. Subcontracting

A commenter argues that sole source subcontracts to MWOBs would be beneficial if limited to firms not affiliated with the contractor and if the services have a readily determinable market price. The prime contractor would have the option of awarding such sole source subcontracts. The commenter also argues that the regulation should clarify whether the award of the subcontracting preference will be as strictly monitored as the preference for joint ventures. The commenter also requests clarification of whether mandatory subcontracting counts towards the 25 percent subcontracting threshold.

The new interim final rule contains provisions to ensure that the subcontracting preference will not be awarded unless the offeror has firmly committed to utilizing MWOB subcontractors. The RTC believes that, for the present, its use of outreach and preferences will be sufficient to increase MWOB participation. On many contracts where subcontracting is feasible, the prime contractor is not required to follow RTC's competitive contracting procedures to award subcontracts. However, if qualified MWOB subcontractors are available, the RTC would encourage the contractor to hire such contractors and provide incentives for the prime contractor to do so.

9. Eligibility Criteria and Definitions

A commenter argues that to qualify as a member of one of the minority categories, at least "one-half parentage" must be in the relevant group. Another commenter argues there should be a more objective bench mark for experience in running a business to qualify as a MWOB, such as a minimum of 2 years as President of the firm. Two commenters argue that to receive contracts, majority firms should have significant direct involvement from their minority or women associates or partners. Two Congressmen argue that the ownership requirements are too burdensome. The owner should not have to control the Board of Directors and should be allowed to delegate responsibilities.

The new interim final rule contains eligibility criteria that meet the mandates of the RTC's governing legislation and are an attempt to ensure that MWOB participation is indeed increased. They may be modified in the future if they prove, through the RTC's experience, to be unduly restrictive or easily circumvented.

10. RTC Outreach

Several commenters feel there is a need for better communication with minority contractors. Suggestions included using minority trade associations, non-profit organizations, and daily news journals such as The Commerce Business Daily as conduits for information. A commenter complains that it is too difficult to get information about potential contracting opportunities, especially for MWOBs who want mandatory subcontracts. They recommend a posting mechanism for pending solicitations. The information would be posted in RTC Field Offices. A national bank suggests the establishment of a "MWOB Bank" which would maintain a list of eligible MWOBs, with consideration given to the MWOB experience in serving the minority community. Commenters also feel the need for better training by RTC in regard to its contracting.

Four commenters asserted that the program needs goals to be successful. According to these commenters, the Government Accounting Office reported that only 15 percent of RTC's asset

management solicitations went to minority firms. The commenters assert that not enough minority firms are being invited to bid, raising questions whether they are being invited on a proportional basis.

Commenters also recommended that the RTC should use minority contractors with ties to local or regional communities to help identify and foster participation by minority contractors; to monitor compliance with the program; and to prepare quarterly reports regarding the RTC performance. Commenters assert that bidding contracts on a more localized basis will help MWOBs cut their costs and be more competitive.

The RTC is intensifying its efforts to communicate with potential contractors, and to provide effective training. It is compiling a database of qualified MWOBs, and will use a variety of other media resources to increase the level of MWOB participation. The new interim final rule reflects a strengthening of the RTC's outreach efforts, using in-house resources to the extent possible.

Special Programs

Special initiatives will be established by the Washington Office to ensure minorities and women are represented not only in contracting, but in other aspects of RTC activities. These efforts will target and promote minorities and women as potential investors, acquirors of thrift institutions, advisors, and joint venture partners. The Washington Office will establish the following programs.

Asset Sales—Minority Institutions

In an effort to enhance the viability prospects of minority institutions, and in conformance with § 403 of the RTC RRIA of 1991, the RTC will provide for the segregation of loans or other earning assets to be made available to minority institutions or branches under the interim capital assistance provisions of the Act. Such loans or other earning assets will be priced at market price as determined by the RTC.

In general, the RTC will make available loans or other earning assets, on an option basis, in an amount sufficient to offset the liabilities to be capitalized according to the plan submitted by the minority institution to the appropriate regulators, taking into account requirements for liquidity and other regulatory considerations. In no instance will brokered deposits be considered when calculating the amount of liabilities to be assumed or acquired. In implementing this policy, the RTC will coordinate with the appropriate regulators and, upon request, furnish written notification to the appropriate regulators of the intent to make earning assets available.

When loans made available under this policy are furnished with standard Representations and Warranties, and if called upon under such Representations and Warranties, the RTC will cure any deficiency or provide for the substitution of assets or payment of cash, as will be provided for in any agreement entered into.

All loans or other earning assets made available under such assistance shall be for the purpose of augmenting the operating earnings of the resultant depository institution and will be assumed and expected to be for the account of the resultant depository institution. It is also assumed that these assets are not being purchased for immediate resale.

Minority Investors

The Department of Minority and Women's Programs, in conjunction with the National Sales Center and the Department of Capital Markets, will develop and implement outreach activities to encourage asset purchases by minority and women investors. The RTC is not authorized to offer any price advantages to minority and women investors in the sale of its assets. The outreach activities will focus on explaining the process and available financing options.

Investor Database

Joint ventures initiated to provide pools of venture capital for purchase of RTC assets will be encouraged and promoted through development of an investor database.

The database will be designed to provide a directory of interested minority and women investors for joint purchases of assets with institutional investors and to promote transactions with the Department of Capital Markets, the Department of Resolution, and the National Sales Center. Policies and guidelines, as well as promotional events, will be developed in conjunction with the other divisions.

11. Other Comments

Eight banks argue that the RTC has not complied with the requirement of § 1216 of FIRREA that minority financial institutions specifically receive preferences in the award of contracts. Several commenters recommend that the program be separated into two distinct programs, one for ethnic minority contractors, and one for non-ethnic women. Several commenters including the Rainbow Coalition argue that the Small Business Administration's (SBA) section 8(a) program (which effectuates 15 U.S.C. 637(a)) should only be used to supplement the RTC's program, not to be a substitute for it. The Rainbow Coalition argues that the Pilot Program should use the SBA definition of minority, and not be more restrictive.

One woman-owned firm commented that the program as presently implemented may constitute reverse discrimination. Two commenters suggested methods of financially assisting MWOBs including advancing them their first month's fees to assist in overcoming cash flow problems; developing a special program for prompt payment to MWOBs; and assigning contracts to financial institutions to permit MWOBs to obtain contract financing. A national bank recommends that the RTC consider investing in MWOB firms that offer to purchase non-minority failed institutions, and that in resolving failed thrift institutions, the RTC should target certain failed institutions for non-competitive acquisition by MWOB financial institutions. The eight banks suggested that to increase minority participation, the RTC should expand utilization of minority- and women-owned financial institutions as depositaries or financial agents to the RTC, consistent with section 1204 of FIRREA. This could purportedly be accomplished through the RTC's Standard Asset Management and Disposition Agreement. Several commenters recommend that contractors, including outside counsel, should not receive waivers of the ethics regulations, and that outside counsel should not receive waivers of the fee caps, unless they have a "significant MWOB subcontracting plan" in place.

While several of these recommendations have some merit, the RTC has determined that it is not necessary to incorporate them into the new interim final rule. However, the RTC is always receptive to suggestions by which it can help MWOBs overcome hurdles to their participation in the RTC's contracting activities. In response to particular comments, the RTC notes that it has never viewed its utilization of participants in the SBA's programs as a panacea for fulfilling its statutory obligations. While the section 8(a) program is a valuable adjunct to the RTC's own programs, the RTC has relied upon its own efforts, which will be augmented through the final rule. The RTC also notes that FIRREA contains no requirement that minority financial institutions receive preferential treatment in contracting activities beyond that provided to other MWOBs.

These offerors will, however, receive every consideration offered to other eligible participants in the program.

12. Issues Relating to Outreach Program for Minority and Women-Owned Law Firms

The above discussion has focused mainly on the RTC's outreach program for contractors providing services other than legal services. The following discussion applies to the RTC's outreach program for hiring law firms owned by minorities and/or women (MWOLFs), and minorities and women in other law firms.

Comments Regarding MWOLFs

Commenters offered extensive suggestions to improve the legal services portion of the program. It is recommended that the organizational commitment be strengthened. For example, it is recommended that there be an entirely new section of the RTC's Division of Legal Services, headed by an Assistant General Counsel, to operate the program, with senior level employees in each RTC Field Office to oversee it, as well as sufficient numbers of staff attorneys and support staff. It is recommended that the MWOLF Director must represent the RTC at conferences and strengthen the RTC's relationship with the bar and other MWOLF organizations; that there be criteria and guidelines for evaluating managers who have contracting authority; and that oversight and evaluation must involve monthly reports and visits to Field Offices.

It is also recommended that outreach efforts be improved in the following ways. Commenters assert that MWOLFs be provided training on new RTC-specific legal issues, and outreach staff must be trained regarding program directives. The MWOLF staff must meet with MWOLF firms to uncover problems. Tracking and reporting of fees to MWOLFs must be improved, and referral patterns must be analyzed. Policies must be improved in correlation to the above analysis. Firm registration must be continued to increase the number of MWOLFs on the RTC List of Counsel. The Washington Pilot Program should be expanded to the RTC Field Offices. New program initiatives should be encouraged, including subcontracting and joint venturing. In addition, commenters recommended that preferences be awarded to non-MWOLF firms that use minority or women lawyers on RTC work, and that have effective programs for promoting minorities and women within the firm.

The RTC believes there is merit in recognizing non-MWOLF firms that provide opportunities to minorities and women. The RTC's statutory goals can be partly achieved by awarding preferences and setting goals, based upon the performance of RTC legal services by minorities and women within non-MWOLF law firms. Therefore, the new interim final rule recognizes that, in the legal services context, individual lawyers may hold a large share of responsibility for the RTC as a client. Therefore, the RTC will track, and will make every effort to increase, the percentage of legal fees attributable to work performed by minority and female lawyers in non-MWOLF firms. As an internal matter, the RTC Division of Legal Services has created the Outside Counsel Management and Minority and Women Outreach Section, to oversee matters relating to outside counsel. One of the top priorities of this section is the implementation of the Minority and Women Outreach Program (MWOP) within the Division of Legal Services. This Division, and the RTC in general, are making necessary administrative and organizational adjustments to ensure that the program is carried out effectively.

Outreach

The RTC has a wide range of needs for legal services in areas such as litigation, transactions, professional liability, and environmental law, among others. In carrying out its responsibilities, the RTC Division of Legal Services and private sector contractors (in particular asset managers) who perform services for the RTC, will engage MWOLFs to the fullest extent possible. The identification and registration of such firms are nationwide in scope and are primarily dependent upon efforts of the RTC legal staff charged with this special effort. All RTC staff responsible for referring matters to legal services providers will be knowledgeable of and promote this effort.

Generally, the RTC Division of Legal Services will identify MWOLFs by:

(a) Obtaining various lists and directories of MWOLFs maintained by other governmental agencies and bar groups;

(b) Targeting appropriate MWOLFs for participation in the RTC's legal services contracting education effort; and

(c) Participating in conventions, seminars, and professional meetings comprised of or attended by MWOLFs.

A major purpose of the MWOLF outreach effort is to reinforce the RTC's commitment to the program and to increase awareness among potential contractors for legal services of the ability to participate in this program.

The RTC Division of Legal Services field office staffs will enhance the efforts of the outreach program through regular reporting and ongoing tracking of legal matters referred to outside counsel, identifying areas in which MWOLFs are underrepresented. The outreach program will then target its efforts in areas where the database indicates MWOLFs are underrepresented.

Referral

The regulation addresses various methods that will be used by the RTC and its private sector contractors to refer legal work to MWOLFs. The FIRREA requires that the RTC utilize the services of the private sector to the extent that it is practicable and efficient. As the RTC does to a large extent rely upon such private sector contractors, and such contractors have significant responsibility regarding the hiring of outside counsel, it is appropriate that those contractors, as well as RTC employees, adhere to the regulation in this regard.

Certification

Law firms claiming status as MWOLFs will be required to provide sworn certification of that status. To preserve the integrity and foster the objectives of the program, the RTC Division of Legal Services must satisfy itself that the ownership requirements of the program are fulfilled.

The RTC will implement a certification policy and procedure for the MWOLF outreach program that is uniform and consistent, and discourages fraudulent representations. Procedures have been established by which the Division of Legal Services will review, evaluate, and approve certification affidavits from MWOLFs prior to their being placed on the RTC List of Counsel.

Monitoring Performance

The RTC Division of Legal Services' field office staff will provide complete and current data on a regular basis regarding legal services contracting activity. Minority and Women Outreach Coordinators will review and evaluate the reporting and registration databases for the extent of MWOLF participation and will prepare such reports as are necessary for the Washington legal staff.

In addition, all RTC legal staff dedicated to this endeavor will continuously monitor the implementation of RTC procedures, policies, and guidelines for compliance

with the goals of FIRREA to ensure maximum inclusion of MWOLFs in the provision of legal services to the RTC by outside counsel.

The RTC recognizes that the success of this program requires commitment and leadership from senior management. The RTC pledges the continuing involvement of all levels of its legal staff in making this Outreach Program a success.

D. Summary

The RTC is adopting these regulations for the Department of Minority and Women's Programs in order to implement the provisions of section 1216 of FIRREA, which requires the establishment of a minority- and women-owned business outreach program (including the MWOLF provisions) to ensure effective and efficient use of those business entities to support all contracting activities of the Corporation and the requirements of the RRIA, which bolster and supplement the requirements of FIRREA. It is imperative that MWOB enterprises are given fair and equitable opportunities to contract with the RTC. Strict conformance to this regulation shall be enforced.

In light of the passage of the RRIA, which occurred after the issuance of the 1991 Rule, the RTC has decided to issue this rule as an interim final rule. Comment is solicited on all issues pertaining to this interim final rule, as well as to the issues raised in the RRIA.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, comments were specifically sought on an initial regulatory flexibility analysis. No comments were specifically filed in response. The following analysis is provided.

a. Reasons, Objectives, and Legal Bases Underlying the Interim Final Regulations

These elements have been discussed elsewhere in the Supplementary Information. Specifically, it has been noted that the RTC is statutorily mandated to provide an outreach contracting program for a certain segment (minority- and women-owned) of small business firms, including law firms. By publishing this interim final regulation the RTC intends to have aggressive outreach to minorities and women and firms owned by minorities and women to enable them to participate more fully in RTC contracting activities.

b. Small Entities to Which the Interim Final Regulations Would Apply

This element is discussed elsewhere in the Supplementary Information.

c. Impact of the Interim Final Regulations on Small Businesses

Participation in the program is purely voluntary, and is beneficial to the participants. Projected reporting, recordkeeping, and other compliance requirements fall upon the RTC, as described above in the preamble. All MWOB firms will need only to certify as to their status prior to contract award. This requirement will entail only the filling out of a certification form and will not require the use of professional skills for the preparation of special reports or records. The RTC seeks comments on alternative methods of compliance, or reporting requirements.

The RTC expects to increase the volume of legal services performed by MWOLFs. Projected reporting, recordkeeping, and other compliance requirements fall upon the RTC, as described above in the preamble. The MWOLFs will need to complete the law firm application materials and the MWOLF certification. The RTC seeks comments on alternative methods of compliance or reporting requirements.

d. Overlapping or Conflicting Federal Rules

There are no known Federal rules which overlap, duplicate, or conflict with the interim final regulation.

e. Alternatives to the Interim Final Regulation

The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the interim final regulation. The RTC has made every attempt to bear the administrative burdens rather than shifting them to prospective contractors.

List of Subjects in 12 CFR Part 1617

Government contracts, Government employees, Lawyers, Legal services, Minority businesses, Savings associations, Women.

For the reasons set out in the preamble, the RTC hereby revises part 1617, title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1617—MINORITY AND WOMEN OUTREACH AND CONTRACTING PROGRAM

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1617.100 Identification of MWOLFs.
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Subpart L—Law Firm Direct Referral, Joint Venture, and Other Arrangements

1617.110 General.
1617.111 Direct referral.
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1617.113 Other arrangements.

Subpart M—Law Firm Oversight and Monitoring

1617.120 Oversight and monitoring.

Authority: 12 U.S.C. 1441a(t) and 1833e.

Subpart A—General Provisions

§ 1617.1 Purpose.

(a) Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 1833e, requires the Resolution Trust Corporation (RTC or the Corporation) to prescribe regulations to establish and oversee a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency.

(b) This part details the procedures that the RTC will follow to ensure the inclusion of firms owned by minorities and firms owned by women in RTC's contracting for goods and services in connection with its management of savings and loan institutions placed under RTC control and disposition of their assets.

(c) This part applies to all contracting activities engaged in by RTC in any of its capacities, including all contracts with private persons and entities for all RTC functions authorized by law.

§ 1617.2 Policy.

It is the policy of the RTC that minorities and women, and firms owned and operated by minorities and firms owned and operated by women, have the opportunity to participate, to the maximum extent possible, in all relevant contracting activities of the Corporation. The RTC's objective in contracting will be achieved through the establishment of goals using RTC contracting procedures. This applies to contracting for the procurement of goods and services, and the contracting activities of conservatorships and receiverships.

§ 1617.3 Contracting objectives.

The RTC has established standards by which it will evaluate its success in maximizing participation of minority- and women-owned businesses (MWOBs) in its contracting activities. The awards and fees will be tracked separately for minorities and for women. The RTC's success in meeting its objectives will be evaluated periodically, and modifications to this part will be made as necessary in light of those results.

(a) Each office, including sales centers, must make every effort to raise MWOB participation in accordance with the RTC's objectives.

(b) Contractors are strongly encouraged to utilize joint ventures and subcontracting arrangements with MWOBs to increase MWOB participation. Bonus consideration will be given to contractors that, through joint ventures or subcontracting, achieve specified levels of MWOB participation.

(c) Within 6 months of the date of conservatorship, each conservatorship must bring its contracting activity into compliance with the RTC's Minority and Women Outreach and Contracting (MWOC) Program's policies and procedures.

(d) Evaluation of performance of contractors will include their efforts and success in meeting MWOC Program goals. The RTC will conduct periodic visits or audits of contractors to assess their compliance with RTC MWOC Program policies.

(e) All annual evaluations of performance for senior officials in each RTC office shall include a review of his or her success in meeting the goals and objectives of the MWOC Program.

§ 1617.4 Definitions.

The following definitions apply to §§ 1617.1 through 1617.83.

(a) *Joint venture* means an association of entities and/or individuals, one of which qualifies as an MWOB, formed by written contract to engage in and carry out a specific business venture for which purpose they combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally.

(b) *Management and daily business operations.* (1) In order for minorities or women to be found to control and manage a business concern, the following must exist:

(i) A minority or woman must hold the position of President or Chief Executive Officer;

(ii) The minority member(s) or woman (women) upon whom eligibility is based shall control the Board of Directors of the firm (if the firm is a corporation);

(iii) The relevant minority member(s) or woman (women) must have directly related managerial or technical experience and competence; and

(iv) Minority group members or women must be directly responsible for the day-to-day management of the business.

(2) To establish such day-to-day management responsibility, all of the following functions must be performed by the minority or woman President or Chief Executive Officer (or functional equivalent):

(i) Establishment of company policies;

(ii) Determination and selection of business opportunities;

(iii) Supervision and coordination of projects;

(iv) Control of major expenditures;

(v) Hiring and dismissing of key personnel;

(vi) Marketing and sales decisions; and

(vii) Signature on major business documents.

(c) *Minority* means any Asian American, Black American, Eskimo, Hispanic American, Native American, or Pacific Islander, who is either a citizen or a permanent resident of the United States.

(1) *Asian American*—A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent.

(2) *Black American (not of Hispanic origin)*—A person having origins in any of the black racial groups of Africa.

(3) *Eskimo*—A person having origin in the Eskimo or Aleutian peoples.

(4) *Hispanic American*—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(5) *Native American*—A person having origins in any of the original peoples of North America.

(6) *Pacific Islander*—A person having origin in any of the nations commonly referred to as the "Pacific Rim Countries," including the Hawaiian Islands.

(d) *Minority-owned business* means a business concern that is owned and controlled by one or more members of a minority group.

(e) *MWOB* means minority- and women-owned business.

(f) *Owned* means a business which is more than 50 percent unconditionally owned by one or more members of a minority group or by one or more women or, in the case of a publicly-owned business, more than 50 percent of each class of voting stock of which is unconditionally owned by one or more members of a minority group or by one or more women, or, in the case of a partnership, more than 50 percent of the partnership interest is unconditionally owned by one or more members of a minority group or by one or more women.

(g) *Controlled* means a business whose management and daily business operations are controlled by one or more such individuals.

(h) *Unconditional ownership* means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, shareholder agreements, or other similar arrangements which serve to allow the primary benefits of program participation to accrue to entities or individuals other than those upon whom eligibility for this program is based.

(i) *Women-owned business* means a business concern in which more than 50 percent is owned by, and the business is controlled by, one or more women and a significant percentage of senior management positions are held by women. These senior management positions are enumerated in the definition of "Management and daily business operations" in paragraph (b) of this section.

§ 1617.5 Scope.

Sections 1617.3 through 1617.83 apply to all contracting activities, with the exception of contracting for legal services, engaged in by RTC, in any of its capacities, for all RTC functions authorized by law. These contracts will typically pertain to services such as asset management, accounting services, appraisals, property management, information systems, property maintenance, surveying, general contracting and subcontracting, architectural/engineering consulting, construction consulting, property tax consulting, title work, financial investigation services, marketing, signage and printing services, and related services. Contracting for legal services is governed by §§ 1617.90 through 1617.120.

Subpart B—Outreach

§ 1617.10 RTC organizational responsibilities and staffing.

(a) *Organization.* The RTC will have staff and resources devoted to this program in each of its offices.

(1) The RTC has established a MWOC Program in Washington with an Assistant Vice President to provide direction, consultation, and training to other RTC offices in order to ensure that this program is being effectively and consistently implemented.

(2) There will be three basic functions in this new office:

(i) Business Program—to deal with contracting, minority and women investors, and minority institution deposits and ownership;

(ii) Legal Program—to establish a liaison and partnership with the Division of Legal Services to ensure that minority- and women-owned law firms (MWOLFs) and minorities and women in non-MWOLF firms receive an equitable share of legal engagements; and

(iii) Policy Development and Evaluation—to include oversight and monitoring activities for the program.

(b) *Role of MWOB Program staff.* In each RTC office, the MWOC Program staff is expected to develop and maintain a direct working relationship with the contract, program and sales offices, oversight managers, and conservatorship staff in order to increase the number of contracts and fees awarded, as well as sales transactions, to minority- and women-owned businesses. The MWOC Program staff will:

(1) Monitor all contracting activities of the RTC and its contractors for compliance with this program;

(2) Implement the MWOB certification process;

(3) Increase the MWOB database, and develop geographically based, potential contractor source lists;

(4) Implement training workshops on contracting to increase access to and award of RTC contracts;

(5) Provide complete and up-to-date information on all contracting activities, investment opportunities, and legal services to appropriate interest groups; and

(6) Develop networking forums among minority and women investor groups to promote sales of RTC assets.

(c) *Reporting Authority.* The MWOC Program staff in the RTC Field Offices will report directly to the Assistant Vice President, Department of Minority and Women's Programs, in Washington. This includes the direct oversight and management of the program's implementation in accordance with RTC policy, directives, and procedures. All MWOC Program personnel decisions which include selections, performance appraisals, promotion, and disciplinary actions shall be made directly by the above mentioned Assistant Vice President of Minority and Women's Programs.

§ 1617.11 Program components.

(a) *Outreach.* A continuing effort of the RTC involves identifying MWOBs capable of providing contracting services to the RTC. This effort is nationwide in scope and focuses on networking and training.

(1) *Networking.* Field staff and the Washington Office will network with Federal, State and local governments; nonprofit organizations; professional and trade organizations; and participate in conventions and seminars sponsored and widely attended by minorities and women. Through these activities, the staff will:

(i) Develop directories of minority- and women-owned firms capable of providing services;

(ii) Target appropriate firms for participation in the RTC's contractor training effort;

(iii) Develop promotional campaigns to inform the minority- and women-owned business community of the Corporation's needs and its commitment to involve such firms in its contracting activities;

(iv) Disseminate information on purchasing RTC assets and thrifts;

(v) Assist program participants in understanding and meeting the RTC's contracting needs, especially as they will be represented in various Solicitations of Services (SOS);

(vi) Determine prospective program participants and identify them as MWOBs in the RTC database, as well as assist them in understanding RTC's regulations governing ethical responsibilities, conflicts of interest, confidentiality, and the certification process as an eligible MWOB.

(2) *Database review.* The Field staff will enhance the efforts of the outreach program through their ongoing review of the MWOB database, identifying geographic and service categories in which firms are underrepresented. The outreach program will target its efforts in areas where the MWOB database indicates MWOBs are underrepresented.

(b) *Training.* The Washington Office will coordinate training initiatives, workshops, and seminars for MWOBs and RTC staff. These activities are designed to increase awareness of the RTC contracting process, regulations, and special initiatives, as well as ensure that all RTC staff who interact with the contracting and investment community are knowledgeable of and support the program. These activities include:

(1) The coordination with Field staff on identifying and targeting technical training needs of MWOB contractors;

(2) The development of training materials and modules for MWOB contractors, and where appropriate, other contractors, to increase MWOB subcontracting;

(3) The coordination with the contracting office on increasing awareness of MWOC Program policies, directives, and program goals and objectives in the contractor training modules for RTC staff; and

(4) The development of an internal education program to promote the awareness of all RTC staff about MWOB firms and the RTC's commitment to their full participation in its activities.

(c) *MWOB media program.* The Department of Minority and Women's Programs will establish a MWOB database program of related information for utilization in promoting training workshops and seminars, procurement and subcontracting opportunities, and the sale of assets.

(d) *Special events.* Special events will be developed to meet needs or concerns of MWOBs. These events may include: "subcontracting trade fairs," "open houses" with SAMDA contractors, investor forums, and coordination of events with the Minority Business Development Agency, Small Business Administration, other governmental entities, and private and nonprofit organizations.

§ 1617.12 Promotion.

(a) The RTC will conduct seminars and workshops within this community. The focus of these encounters will be to provide information regarding the program, its goals and objectives, and companies qualified to participate in the program; facilitate interaction between RTC and this community; and manifest RTC's commitment to doing business with these groups.

(b) Opportunities for MWOBs will be expanded by encouraging both minority- and women-owned firms to form joint venture arrangements and cooperative agreements with majority-owned (i.e. other than MWOB) firms.

§ 1617.13 Certification/verification.

(a) Each firm claiming status as an MWOB will be required to provide certification and verification of that status. To preserve the integrity and foster the objectives of the program, RTC must satisfy itself that the ownership, control, and day-to-day management requirements of the program are fulfilled. On-site visitations/audits will be coordinated with the Office of Contractor Monitoring.

(b) Accordingly, RTC will implement a certification policy and procedure that is uniform and consistent, and discourage fraudulent representations. Procedures will be established by which the Department of Minority and Women's Programs will review, evaluate, and tentatively approve certification affidavits from MWOBs, subject to the verification process, prior to any contract award. Accomplishment of this segment of the program will involve the procedures in paragraphs (b)(1) through (7) of this section.

(1) The RTC will send all firms selected as offerors a certification affidavit to be completed and submitted with the proposal.

(2) The Department of Minority and Women's Programs will review returned certification documents to assure that the potential participant has qualifying status.

(3) When an MWOB firm is selected for an award, verification procedures, through the mechanism of site visit/audit, will be initiated for all contracts with estimated fees of over $50,000. Verification will also be required when an award will result in an accumulation of over $50,000 in estimated fees to a contractor. This process applies to those firms that have not been previously verified. Further, the Department of Minority and Women's Programs reserves the right to perform an onsite visitation to firms with fees under $50,000.

(4) The MWOB firms currently doing business with the RTC are required to complete a new certification affidavit.

(5) The certification confirmation granted MWOB firms will be valid for a period not to exceed 12 months from the date certification/verification is approved. The contractor will be required to inform RTC of any action which changes or affects the MWOB status. Failure to notify RTC of a change in MWOB status will result in adverse actions by the Corporation.

(6) Contracts may be terminated should falsification of self-certification be discovered, with appropriate referrals to the Office of the Inspector General.

(7) Adequate notice will be provided of a determination of ineligibility. An opportunity to respond to such determination will be provided.

Subpart C—Joint Ventures

§ 1617.20 General.

In an effort to encourage and enhance opportunities for MWOBs to gain access and entry to RTC contracting activities, the Corporation supports and promotes the concept of joint ventures. The intention of this promotion is that through such an effort MWOBs will acquire training through the association with a more established or larger firm and will increase resource development opportunities so that MWOB firms may eventually have the expertise and capacity to compete independently.

§ 1617.21 Eligibility.

A joint venture will be eligible for this program if:

(a) Each MWOB is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(b) The MWOB performs at least 25 percent of the duties and is contractually entitled to compensation proportionate to its duties.

§ 1617.22 Establishing joint ventures.

A firm receiving a solicitation from RTC may form a qualifying joint venture with one or more other firms that may or may not have received the solicitation. Each joint venture which is established before receipt of any SOS, and every joint venture engaged by RTC, must have its own Tax Identification Number and must meet RTC's fitness and integrity requirements.

§ 1617.23 Joint venture agreements.

To qualify for bonus considerations the joint venture must provide a copy of its written joint venture agreement to RTC at the time it submits a proposal. That agreement must clearly identify the extent of participation for each firm in the joint venture and address, among other matters, the following:

(a) The purpose of the joint venture;

(b) The management structure of the joint venture;

(c) The percentage of RTC funds earned by the joint venture to be distributed to the MWOB concern and the allocation of losses, if any;

(d) All major equipment, facilities, and other resources to be furnished by each participant to the joint venture;

(e) That each party to the joint venture is jointly and severally liable for the liabilities of the joint venture;

(f) That the MWOB joint venture partner will have the opportunity to represent itself, or will otherwise be represented at all RTC meetings, such as bidders' conferences, debriefings, contract closings and contract oversight reviews; and

(g) That all parties to the joint venture will fully disclose to one another all SOS, task order bids, notices of best and final offers, SOS amendments, notice of awards, contracts and any and all other documents or meetings necessary or relative to the joint venture. Such disclosures must be made to the minority or women venturers before submission of any proposals, bids or offers for contracts with the RTC.

Subpart D—Subcontracting

§ 1617.30 Policy.

(a) The RTC has determined that one of the most effective methods for increasing participation of MWOBs in its contracting activities is the use of

MWOBs as subcontractors. Generally, a suitable level of MWOB subcontracting is 25 percent of the work on a contract. While the ability to subcontract is within the power of the contractor, the RTC will provide incentives, including the award of cost and technical preferences to offerors that commit to subcontracting. Greater incentives will be available to contractors who reach levels of subcontracting greater than 25 percent.

(b) In accordance with RTC's other general requirements for subcontracting activity, the RTC shall satisfy itself that all private sector firms awarded a contract with the RTC will provide the maximum practicable opportunity to minority- and women-owned contractors to participate in subcontracting awards. All RTC contractors must agree to carry out this "maximum inclusion practicable" policy in a manner consistent with RTC's overall contracting policies and procedures.

(c) Bonus considerations are available to any offeror who demonstrates a commitment to subcontract at least 25 percent or more of the work and commensurate fees under a contract to MWOBs. Any offeror that seeks to obtain bonus considerations on a prime contract or task order agreement through subcontracting work to MWOBs must submit with its proposal a subcontracting plan.

(d) The subcontracting plan must include within the proposal:

(1) Specific roles and responsibilities of the MWOB subcontractors;

(2) Separate percentage goals for using minorities and women as subcontractors (how many minorities and how many women);

(3) Previous experience working with MWOB firms;

(4) Estimated dollar amounts of participation of MWOB subcontractors;

(5) The name of an individual employee of the offeror who will be charged with administering the offeror's subcontracting program and a description of the duties of the individual;

(6) A description of the efforts the offeror will make to ensure that minority—and women-owned contractors will have an equitable opportunity to compete for subcontracts; and

(7) Assurances that the offeror will cooperate in any oversight, review, study or surveys as may be required.

(e) Implementation factors:

(1) After contract award, names of contractors firms that will receive work through subcontracting must be provided, as well as the amount of work and compensation.

(2) The Department of Minority and Women's Programs shall act as liaison to RTC oversight managers for consultation on MWOB issues.

(3) The Department of Minority and Women's Programs shall monitor, oversee, and provide assistance to RTC contractors to carry out the subcontracting policy.

(4) The contractor will be required to submit periodic reports to the contracting office in order to allow RTC to determine the extent of compliance by the contractor with the subcontracting plan. Summary subcontracting reports will be required in accordance with RTC instructions.

(5) The contractor's subcontracting plan shall apply throughout the life of the specific task order.

(6) The RTC will evaluate as part of the contractor's performance the utilization of minority- and women-owned contractors in the contractor's subcontracting program. This evaluation will be used by RTC to recommend the contractor for monetary incentives. When using any contractual incentive provisions based upon rewarding the contractor for exceeding goals, RTC must ensure that the goals are realistic and any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended.

Subpart E—Solicitation and Contract Award Guidelines

§ 1617.40 Inclusion in solicitations.

RTC policies and guidelines will ensure to the maximum extent possible that MWOB firms are included in each contract solicitation. This may be achieved by, among other methods, soliciting proposals for asset managers to manage small, homogeneous, geographically concentrated asset pools. For noncompetitive contracts under $5,000, MWOB firms shall be given first consideration.

§ 1617.41 Right to award contracts reserved.

The RTC reserves the right to award a contract directly to a MWOB either by technical competition or by non-competitive award.

§ 1617.42 Participation by the Department of Minority and Women's Programs in solicitation and award process.

(a) The Department of Minority and Women's Programs' staff will have the opportunity to participate in the initial review and Statement of Work meeting with the requesting program office and Legal Division to establish milestones, specific task descriptions, and contractor responsibilities. The Department of Minority and Women's Programs will have the opportunity to participate in the Source Selection Plan process to assure inclusion of MWOB firms. The Department of Minority and Women's Programs will assure:

(1) Selection criteria for notices or issuance of SOSs;

(2) Advertising language; and

(3) The contract parameters are fair, equitable, and consistent with the contract requirements. This includes reasonable standards for most important, more important, important factors, and scoring criteria.

(b) The contracts office shall receive questions either in written form or by offerors' meetings from offerors and develop answers in consultation with the Program Office, Legal Division, and MWOC Program representatives.

(c) The Department of Minority and Women's Programs staff will have the opportunity to participate or have concurrence in the Technical Evaluation Process. After the technical evaluation, scoring material shall be available for review and concurrence by the Program Office, Legal Division, and the Department of Minority and Women's Programs.

(d) The Department of Minority and Women's Programs shall concur on the assignment of technical and cost bonus points prior to selection to the competitive range.

(e) In the post award phase, the Department of Minority and Women's Programs shall participate in MWOB debriefings and contractor performance evaluations.

(f) The Department of Minority and Women's Programs, in conjunction with the contracting monitoring office, will conduct quarterly and annual site visitations to Standard Asset Management and Disposition Agreement (SAMDA) contractors to review for contractor compliance with MWOC Program policy and procedures.

(g) In order to diversify the contractor base and increase competition among MWOBs, the RTC will implement smaller contract assignments, such as the reduced portfolio size for SAMDAs.

Subpart F—Liaison With Division of Legal Services

§ 1617.50 Legal programs unit.

(a) The Department of Minority and Women's Programs will establish a Legal Programs Unit to provide oversight and monitoring of legal referrals to MWOLFs and minorities and women in non-MWOLFs. This unit will

coordinate activities with the Division of Legal Services' Outside Counsel Management Section to identify MWOLFs and enhance contracting opportunities through direct referrals, joint venture/co-counsel referrals, or other arrangements.

(b) The Department of Minority and Women's Programs will coordinate with the Division of Legal Services the monitoring of RTC SAMDA contractors to ensure that SAMDA contractors are aware of, adopt and adhere to, all RTC policies and procedures to contract with MWOLFs approved by the Division of Legal Services.

(c) The Department of Minority and Women's Programs will have the opportunity to participate on the Legal Services Committee to ensure that the evaluation of MWOLFs for potential outside counsel engagements is fair and follows RTC's policies and procedures. Where applicable to the method of engagement, technical and cost bonuses will be allocated to MWOLFs, and non-MWOLFs that joint venture with other MWOLFs.

Subpart G—Cost and Technical Bonuses

§ 1617.60 Policy.

In the review and evaluation of proposals submitted by firms eligible as MWOBs, or MWOB joint ventures with an eligible subcontracting plan, the Corporation shall provide additional incentives in the technical and cost relating process.

§ 1617.61 Application of technical and cost bonus points.

(a) Technical bonus points will be awarded as a percentage of the total technical points achievable in the rating process in addition to each offeror's technical score.

(b) Cost bonus points will be awarded as a percentage of the total cost points achievable in the rating process in addition to each offeror's cost score.

(c) Beginning May 1, 1992, the technical and cost bonus points shall be allocated as follows:

Firm type	Technical (percent)	Cost (percent)
MWOB	10	5
Joint Venture (JV) with 40% and above MWOB participation	10	5
JV with at least 25% MWOB participation	5	2.5
Non-MWOB firms with subcontracting plan of 40% MWOB participation	10	5
Non-MWOB firms with subcontracting plan of at least 25% MWOB participation	5	2.5

(d) The Department of Minority and Women's Programs will review bonus points assignment upon conclusion of the technical evaluation by the technical evaluation panel and the cost evaluation by the contracts office, prior to determining the competitive range. All MWOB issues will be resolved by the Director, Office of Contracts, and the Assistant Vice President, Department of Minority and Women's Programs.

§ 1617.62 Authority to adjust technical and cost bonus points.

(a) The Department of Minority and Women's Programs will evaluate the Corporation's application of bonus points annually. This annual review will determine if the Corporation is meeting the mandate to ensure the maximum participation possible for MWOBs and the need to adjust the bonus points.

(b) The Assistant Vice President of the Department of Minority and Women's Programs may grant authority to adjust upward the technical and cost bonus points applicable in evaluating proposals to the extent necessary to ensure the maximum participation for MWOBs.

Subpart H—Conservatorship Contracting

§ 1617.70 Policy and application.

(a) The RTC recognizes the role of the conservatorships in ensuring inclusion of MWOBs in the RTC contracting and disposition activities to the maximum extent possible. Within 6 months after the institution has been placed into conservatorship, each conservatorship shall comply with RTC MWOC Program policies and procedures.

(b) Accordingly, it is the responsibility of the conservatorship and contracting department to provide the Department of Minority and Women's Programs with an opportunity to review and concur on:

(1) Requests for contracting services;

(2) SOS lists;

(3) SOS, contract, Statement of Work;

(4) Other contracting documents;

(5) Application of MWOB bonus points; and

(6) Certification/verification of contractor's MWOB status.

(c) In addition, the Department of Minority and Women's Programs will have the opportunity to participate in conferences, debriefings, negotiation meetings, best and final interviews, and any other meetings between RTC and MWOB contractors.

(d) Because of the large number of small awards emanating from conservatorships, the conservatorships are encouraged in all sole source contracts to give preference to local MWOBs. The MWOC Program staff at the RTC Field Office shall be notified if the conservatorship contracting office cannot locate qualified MWOBs for contracting purposes prior to soliciting for services.

Subpart I—Oversight and Monitoring

§ 1617.80 Oversight.

(a) The RTC recognizes that the success of this program involves commitment and leadership from senior management. The RTC pledges the continuing involvement of all levels of its staff in making this program a success. The Department of Minority and Women's Programs, Office of Policy, Evaluation and Field Management will have responsibility for oversight and monitoring functions.

(b) In order to achieve the objectives in paragraph (a) of this section, all offices will report the extent of their involvement in the program, including the number of contractors participating in the SOS process and the number of contracts awarded. Further, all offices in RTC shall review an RTC contractor's MWOB subcontracting activities on a quarterly basis. The contractor must demonstrate a good faith effort to follow the objectives of the MWOC Program and such effort shall be evaluated as part of the RTC contract performance evaluation conducted by RTC oversight managers. Determination as to conformance shall be the right and sole responsibility of RTC.

(1) Field Office staff will provide complete and current data regarding RTC contracting activity;

(2) The MWOC Program staff in the field will review and evaluate the reporting and MWOB databases for the extent of MWOB participation and will prepare such reports for the Washington staff;

(3) The Washington Department of Minority and Women's Programs will prepare reports for dissemination to management, Congress, and the public.

§ 1617.81 Monitoring.

(a) Policy Development and Evaluation staff dedicated to this effort will continuously monitor the usage of RTC policies, procedures, and guidelines for compliance with the goals of FIRREA to ensure maximum inclusion of

MWOBs in the management and disposition of assets of failed thrift institutions. A site visitation program will be established utilizing a uniform assessment process. Each RTC Field Office will be visited periodically by the Policy and Evaluation staff to:

(1) Assess effectiveness of the MWOC Program;

(2) Conduct interviews concerning the program and procedures; and

(3) Make recommendations to facilitate uniform attainment of the MWOC Program goals and objectives.

(b) Adherence to and assistance with MWOC Program policies shall be reflected in RTC Personnel Appraisals to encourage performance and maintain individual accountability.

§ 1617.82 Performance appraisals.

(a) *Supervisory performance appraisal.* All annual evaluations of performance for Washington and Field Office supervisors shall include a review of his/her level of participation in and enhancement of the Corporation's efforts of including MWOBs in all aspects of the Corporation's business opportunities, to the maximum extent possible.

(b) *Annual performance appraisal.* All annual evaluations of senior officials shall include a review of his/her ability and willingness to work with both internal staff members promulgating the importance of the MWOC Program, as well as with MWOBs, including investors, goods/service contractors, and law firms, capable of assisting in the management and disposition of RTC assets.

§ 1617.83 Incentive awards.

(a) *Award criteria.* The granting of incentive awards and bonuses to senior staff will take into consideration in significant part the senior manager's ability to show during the calendar year:

(1) A significant percentage increase in the number of contracts awarded to MWOBs;

(2) A significant percentage increase in the number of MWOB subcontractors on SAMDA contracts;

(3) A significant percentage increase in the number of MWOBs on SOS lists; and

(4) A significant percentage increase in the fees paid to MWOBs.

(b) *Special MWOC Program Award.* In conjunction with the RTC's Director of the MWOLF Program, a special MWOC Program award will be created for presentation during the Annual Awards Ceremony in December for any outstanding contribution to the Program during the calendar year.

Subpart J—General Provisions Applicable to Law Firms

§ 1617.90 Policy and scope.

(a) It is the policy of the RTC to ensure that MWOLFs and minorities and women in non-MWOLFs, have the opportunity to participate, to the maximum extent possible, in all legal services contracted for by the RTC Division of Legal Services, including legal services contracted for the RTC by private sector contractors. Every employee of the RTC has the affirmative duty to identify and seek to remove any barrier to the maximum possible participation by MWOLFs, and minorities and women in non-MWOLFs, in the RTC's legal services contracting activities.

(b) This policy applies to all contracting for legal services engaged in by the RTC Division of Legal Services (including contracting by private sector contractors for the RTC) including services provided directly to the Corporation, and services provided to conservatorships and receiverships. It applies to legal services including, but not limited to, litigation, transactions, bankruptcy, bond claims, director and officer liability, and other areas of law specific to the RTC Division of Legal Services.

§ 1617.91 Definitions.

The following definitions apply for the purposes of §§ 1617.91 through 1617.120.

(a) *List of Counsel.* The list of performing law firms that are on the RTC Division of Legal Services, computer database and are eligible to perform legal services for the RTC. Only law firms on this list may have legal matters referred to them.

(b) *Minority.* See the definitions of § 1617.4(c) of subpart A of this part.

(c) *Minority-owned law firm.* A law firm with more than 50 percent of the ownership or control that is held by one or more members of a minority group, all of whom are attorneys in good standing with the bar licensing authority of the pertinent State or other jurisdiction.

(d) *Minority and Women Outreach Coordinator (L–MWOC).* A person in each RTC Division of Legal Services field office designated to serve as liaison with MWOLFs and minorities and women in non-MWOLFs within the pertinent geographical area.

(e) MWOLF. A minority- or women-owned law firm.

(f) *Private sector contractor.* Any person or entity that performs services on behalf of the RTC pursuant to contract, including, but not limited to, an asset manager.

(g) *Women-owned law firm.* Any law firm or practice wherein:

(1) More than 50 percent of the ownership or control is held by one or more women;

(2) More than 50 percent of the net profit or loss accrues to one or more women;

(3) A significant percentage of senior management positions are held by women; and

(4) All attorneys within the firm are in good standing with the respective licensing authority of the State or other jurisdiction.

Subpart K—Law Firm Outreach

§ 1617.100 Identification of MWOLFs.

(a) *General.* The RTC will design and implement a program, nationwide in scope, to identify MWOLFs capable of meeting the legal services contracting needs of the RTC. Program personnel will network with State and local bar associations, and other entities, and will participate in professional conventions and seminars sponsored and widely attended by MWOLFs.

(b) *Specific elements.* The identification effort will:

(1) Identify MWOLFs nationwide.

(2) Update firm profiles for all MWOLFs on the List of Counsel.

(3) Conduct surveys to determine the distribution of matters referred to MWOLFs.

§ 1617.101 Promotion of MWOLFs.

(a) *General.* The RTC will conduct and participate in seminars and workshops for MWOLFs with a focus on providing information on the MWOLF outreach program, its goals, and objectives. The RTC will train its employees and private sector contractors regarding the program. Furthermore, RTC employees will participate in seminars and workshops conducted by others regarding relevant topics.

(b) *Specific elements.* The promotional effort will include:

(1) Development of a promotional campaign to inform the legal community, and in particular the women and minority legal community, of the RTC Division of Legal Services' needs and its commitment to the MWOLF outreach program.

(2) Networking with national, State, and local bar organizations to facilitate interaction between the RTC Division of Legal Services and MWOLFs.

(3) Expansion of contracting opportunities by encouraging MWOLFs to form joint ventures/co-counsel or other affiliations with non-MWOLFs or other MWOLFs.

(4) Fostering referral of legal matters to MWOLFs by RTC private sector contractors.

(5) Provision of law firm application materials and guidance regarding their completion to firms that have been identified as MWOLFs.

(6) Ensuring that all RTC staff that interface with the legal services contracting community are knowledgeable of, and adhere to, the principles stated in this part.

§ 1617.102 Compliance.

Compliance with this part will be achieved by the designation of individuals as L-MWOCs in each Field Office to ensure that the policies and goals of the program are fulfilled. The L-MWOCs in the field will report jointly to their respective field supervisors and to the Senior Counsel for the Minority and Women Outreach Unit in Washington. At the RTC Legal Division Headquarters Office, the Senior Counsel for the Minority and Women Outreach Unit will be directly responsible for the overall implementation of the program. The objectives of the outreach program will be made part of those individual's job description.

§ 1617.103 Certification.

(a) Firms claiming status as MWOLFs will be required to provide certification of that status.

(b) A certification affidavit will be sent to all MWOLFs on the List of Counsel, to be completed under oath and returned to the RTC Division of Legal Services.

(c) The RTC Division of Legal Services will review the certification affidavit to ensure qualifying status.

Subpart L—Law Firm Direct Referral, Joint Venture, and Other Arrangements

§ 1617.110 General.

(a) The RTC's goal is to increase the use of existing expertise and experience possessed by MWOLFs, and to enable MWOLFs to develop expertise in areas that are new to them. The ultimate goal is that each MWOLF achieve self-sufficiency in all matters. These goals will be achieved through direct referrals, joint venture/co-counsel referrals, and other arrangements.

(b) When work is assigned to law firms based upon competitive solicitations, law firms will be eligible for cost and technical preference points to the same extent as set forth for non-legal contracts in § 1617.51 of this part. The General Counsel (or designee) will determine whether firms are eligible for cost and technical preference points. The General Counsel shall periodically determine whether the level of cost and technical preference points set forth in § 1617.51 of this part are sufficient to maximize MWOLF participation, and if not, shall make a general adjustment to the points to be assigned in competitive solicitations.

§ 1617.111 Direct referral.

Direct referral of a legal matter to an MWOLF by an RTC attorney or a private sector contractor will be used when the MWOLF has both the capacity and the experience to handle the matter. It is the MWOC's responsibility to identify MWOLFs with the capacity and experience to handle particular matters, or in the case of Headquarters Office matters, it is the responsibility of the General Counsel (or designee).

§ 1617.112 Joint venture/co-counsel referral.

(a) A joint venture/co-counsel referral will be used to combine the resources of two or more law firms. This arrangement pairs MWOLFs with some experience in the area of referral with other MWOLFs or with non-MWOLFs more experienced in the same area or with greater capability to handle the matter.

(b) The goal with respect to the division of work and the allocation of fees for these matters is that, as a general rule, at least 25 percent of the substantive work be performed by MWOLFs, and at least 25 percent of the projected total fee billings be generated by MWOLFs. The RTC expects that as MWOLFs become more proficient in RTC legal issues, their level of participation in matters referred pursuant to the Joint Referral Program, as well as the fees they generate, shall increase.

(c)(1) The RTC Division of Legal Services will review the joint venture/co-counsel arrangement, which must set forth the degree of participation of each firm, and provide for liability to be maintained by each firm for its share of the work. These arrangements must be in conformance with Division of Legal Services Policy 92-02 (the Joint Referrals and Representation Program).

(2) Copies of the document referred to in paragraph (c)(1) of this section are available from the RTC Public Reading Room, 801 17th Street, NW., room 100, Washington, DC 20434-0001.

§ 1617.113 Other arrangements.

(a) Other forms of affiliation between less experienced MWOLFs and more experienced MWOLFs or non-MWOLFs are available and are encouraged to be utilized for work on a particular matter or for a specified period of time.

(b) All arrangements must be approved by the RTC Division of Legal Services' attorney overseeing the matter, in coordination with the L-MWOC, and if necessary, the General Counsel (or designee).

(c) The overriding objective of these arrangements is that for work allocated in such a manner, the less experienced MWOLF receives sound training in the relevant issues while pursuing the matter as cost effectively as possible.

Subpart M—Law Firm Oversight and Monitoring

§ 1617.120 Oversight and monitoring.

Various standardized reports will be prepared by the RTC Division of Legal Services to indicate, among other things, the total number and type of legal matters referred to MWOLFs, the dollar amounts of fees paid to MWOLFs, a breakdown of various affiliations of MWOLFs with non-MWOLFs, and the local outreach efforts made within Field Offices, as well as the Headquarters Office.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 24th day of July, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92-18730 Filed 8-7-92; 8:45 am]

BILLING CODE 6714-01-M

federal register

Monday
August 10, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Forest County Potawatomi Community of Wisconsin; Notice

DEPARTMENT OF THE INTERIOR

Indian Gaming; Forest County Potawatomi Community of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710 of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Forest County Potawatomi Community of Wisconsin and State of Wisconsin Gaming Compact of 1992, enacted June 3, 1992.

DATES: This action is effective August 10, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: August 4, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–18842 Filed 8–7–92; 8:45 am]

BILLING CODE 4310–02–M

Federal Register

Monday
August 10, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Menominee Indian Tribe of Wisconsin; Notice

DEPARTMENT OF THE INTERIOR

Indian Gaming; Menominee Indian Tribe of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710 of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Menominee Indian Tribe of Wisconsin and the State of Wisconsin Gaming Compact of 1992, enacted June 3, 1992.

DATES: This action is effective August 10, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street, NW.,Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: August 3, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–18843 Filed 8–7–92; 8:45 am]

BILLING CODE 4310–02–M

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

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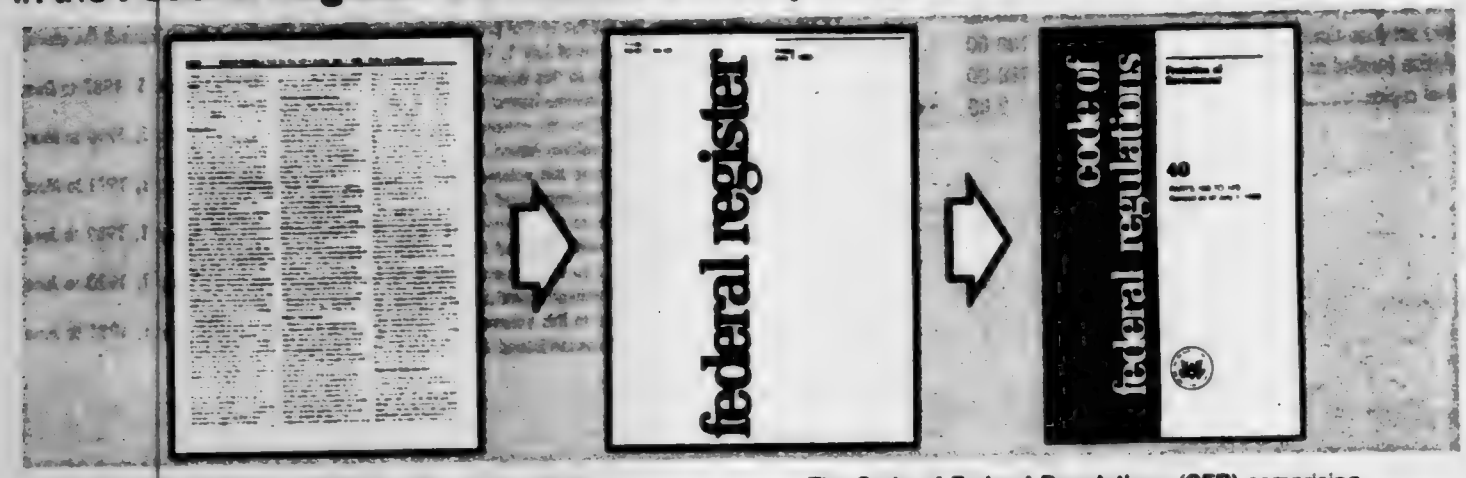

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Pages 35745-35980

federal register

Tuesday
August 11, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE82

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Imperial, California, Nonappropriated Fund (NAF) Wage Area and define it as an area of application to the Yuma, Arizona, NAF wage area. The Imperial County, California, survey area does not have the required minimum of 26 NAF wage employees, and no local activity has the capability to conduct a wage survey.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts (202) 606-2848.

SUPPLEMENTARY INFORMATION: On December 6, 1991, OPM published an interim rule (56 FR 63865) to abolish the Imperial, California, wage area and define it as an area of application to the Yuma, Arizona, NAF wage area. Imperial County, California, was previously defined as a separate wage area for NAF pay-setting purposes. The Department of Defense notified OPM that Imperial County, California, no longer meets the regulatory criteria for an established NAF wage area under § 532.219 of title 5, Code of Federal Regulations. The Imperial County, California, survey area does not have the required minimum of 26 NAF wage employees, and no local activity has the capability to conduct a wage survey. Since the Imperial wage survey was due to begin, it was necessary to take immediate action and issue an interim rule.

OPM received one comment in response to the interim rule. The comment, from a Member of Congress, opposed the redefinition because of possible recruitment and retention problems and the hardship that pay caps have placed upon employees. For the following reasons, we have not modified the interim regulations based upon these concerns. Eligible permanent employees with higher previous rates on the Imperial, California, wage schedule (in comparison to the new Yuma, Arizona, wage schedule) will retain their current rates of pay. These employees will also receive 50 percent of any wage increase in the maximum rate of their grades until such time as their retained pay rate is equal to or less than the maximum rate of their grade on their new wage schedule. Also, we note that agencies may request OPM approval of pay cap exceptions or special rates to alleviate significant recruitment or retention problems.

Since the Imperial, California, wage area is correctly abolished and defined as an area of application to the Yuma, Arizona, wage area under the regulatory criteria for establishing and combining wage areas, the interim rule is being adopted as a final rule.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM adopts its interim regulation amending 5 CFR part 532 published on December 6, 1991 at 56 FR 63865 as final without change.

[FR Doc. 92-18950 Filed 8-10-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-91-459IFR]

Olives Grown in California; Establishment of Grade and Size Requirements for Olives Authorized for Limited Use Styles During the 1992-93 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the use of smaller sized olives in the production of limited use styles during the 1992-93 crop year and establishes minimum grade and size requirements for such olives in the order's rules and regulations. The 1992-93 crop year begins August 1, 1992, and ends July 31, 1993. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. This action would help the California olive industry meet the increasing market needs of the food service industry by making smaller olives available for use in the production of limited use styles and improve returns to growers. This action was unanimously recommended by the California Olive Committee (committee), which works with the Department of Agriculture (Department) in administering the marketing order program for olives grown in California.

DATES: This action is effective August 1, 1992. Comments which are received by September 10, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Written comments concerning this interim final rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 6 handlers of California olives will be subject to regulation under the order during the current season, and there are approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most but not all of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 146,500 tons during the 1982–83 crop year. The committee indicated that 1990–91 production totalled about 126,872 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Preliminary estimates of 1991–92 production total approximately 57,192 tons. It is too early to estimate 1992–93 production. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1992–93 crop year to meet market requirements for limited use styles of canned olives. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the marketing order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the Secretary. The sizes authorized herein are the same as those established for the 1991–92 crop year.

The minimum sizes which could previously be authorized for limited uses were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of for less profitable non-canning uses such as crushing for oil. Returns to producers are lower on smaller fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was instituted in 1965.

Since the 1971 amendment, there have been substantial changes within the olive industry. In spite of the annual limited use authorization, in recent years the industry has not been able to meet market requirements for its products, especially the limited use styles used primarily by the food service industry. The demand for processed olives and for limited use styles is expected to continue to increase. At the same time, the industry has not been able to increase production to meet market needs for canned ripe olives.

The committee conducted a study during the 1990–91 crop year to determine the feasibility of utilizing smaller sized olives in the production of limited use styles and to determine which sizes could be efficiently processed into such styles. All olive handlers within the industry participated in the study. All handlers reported that smaller sizes can be efficiently processed into limited use styles. Advanced technology in the form of better processing equipment is currently available. The new technology allows handlers to process smaller olives into limited use styles more efficiently than was possible in the past.

This action would help growers and handlers meet the growing market

requirements for limited use style olives based upon current conditions. The size requirements allow the use of sizes which would otherwise have to be disposed of for non-canning use. In turn, growers would receive a larger return from such olives.

This action establishes grade and size regulations for 1992–93 crop olives to be used for limited use styles pursuant to paragraph (a)(3) of § 932.52 of the order. The grade requirements are the same as established in recent seasons. The specific sizes for the variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles would allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers would be able to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supplies and facilitate market expansion, thereby increasing returns to growers. In the absence of this action, the smaller fruit would have to be disposed of for less profitable, non-canning uses.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This action allows smaller olives for limited use styles under the marketing order. Thus a corresponding change would be needed in the olive import regulation. Such a change would be addressed in a separate rulemaking action.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities and that the proposal would benefit both producers and handlers of California olives.

After consideration of all relevant matter presented, including information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relieves handling requirements, and to be of maximum benefit for the 1992–93 season should be effective by August 1; (2) olive handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) there is no special preparation required by affected handlers; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of grade and size requirements for processed 1992–93 crop year olives for limited uses.

(a) *Grade.* On and after August 1, 1992, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1992, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1992, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1992, through July 31, 1993, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1992, or after July 31, 1993.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh at least 1/105 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/105 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh at least 1/150 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/150 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh at least 1/205 pound: *Provided*, That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/205 pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh at least 1/150 pound: *Provided*, That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/150 pound.

Dated: August 5, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–19027 Filed 8–10–92; 8:45 am]

BILLING CODE 3410–02–M

Agriculture Marketing Service

7 CFR Part 944

[Docket No. FV–91–460IFR]

Olives Imported into the United States; Authorization To Import Smaller Sized Olives for Limited Uses and Establishment of Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the importation of certain bulk olives into the United States to be used in the production of limited use styles of olives such as wedges, halves, slices, or segments. Such olives would not be required to meet the minimum size requirements established for olives used in the production of whole and whole pitted canned ripe olives. This rule also establishes alternative minimum size requirements for such olives during the 1992–93 season. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the olive import regulation into conformity with the requirements established under the California olive marketing order.

DATES: This action is effective August 1, 1992. Comments which are received by September 10, 1992 will be considered before the issuance of any final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments submitted will be

made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which would include olive importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. The majority of olive importers may be classified as small entities.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in Olive Regulation 1 (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This interim final rule modifies paragraph (b)(12) of the olive import regulation (7 CFR 944.401(b)(12)) to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles for the 1992–93 season which begins August 1, 1992. This rule also establishes size regulations for such olives in paragraph (b)(12).

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the California Olive Committee (committee) to change the requirements for olives for limited use styles grown in California. The committee works with the Department in administering the marketing order program for California olives.

Paragraph (a)(3) of § 932.52 of the California olive marketing order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles.

On December 2, 1991, the committee recommended the establishment of minimum sizes that would be authorized for use in the production of limited use styles during the 1992–93 season. These minimum sizes would be the same as those established for the 1991–92 season. The size requirements are based on a study conducted by the committee during the 1990–91 crop year. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes are as follows:

Variety Group I, except the Ascolano, Barouni, or St. Agostino varieties.	1/105 pound
Variety Group I of the Ascolano, Barouni, or St. Agostino varieties.	1/180 pound
Variety Group 2, except the Obliza variety.	1/205 pound
Variety Group 2 of the Obliza variety.	1/80 pound
Olives not identifiable as to variety or variety group.	1/205 pound

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

This action is necessary because section 8e of the Act provides that when domestically produced olives are regulated under a Federal marketing order, imported olives must meet the same or comparable grade, size, quality, and maturity requirements. Thus, authorizing the use of smaller sized California olives in the production of limited use styles and establishing size regulations for such olives requires that the same or comparable regulations be issued for imported bulk olives. Domestic requirements for California olives are being revised in a separate rulemaking action.

Permitting the use of smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to

import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this action, the smaller fruit could not be imported for limited uses, and would have to be disposed of for less profitable, non-canning uses under the supervision of the inspection service or exported.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good, cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This relaxation provides importers the opportunity to import additional supplies of olives to meet market needs for limited use styles; (2) no useful purpose would be served by providing preliminary notice before implementation; and (3) this rule provides a 30–day comment period and any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives and Oranges.

PART 944—FRUITS: IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.401 is amended by revising paragraph (b)(12) to read as follows:

Note: This section will appear in the annual code of Federal Regulations.

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period August 1, 1992, through July 31, 1993, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/105 pound (4.3 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(v) Whole ripe olives not identifiable as the variety or variety group of size that not more than 35 percent of olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

Dated: August 5, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–19028 Filed 8–10–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 903

[Docket No. 920663–2163]

Public Information

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: NOAA is revising its regulations at 15 CFR part 903 to remove superseded regulations regarding the public's access to NOAA information materials under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, and instead reference the regulations followed by NOAA—the applicable Department of Commerce-wide regulations governing the public's access to information under FOIA found at 15 CFR part 4. The intended effect of this action is to update NOAA's FOIA regulations.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Marie Marks, Chief, Paperwork Management Branch, National Oceanic and Atmospheric Administration, 6020 Executive Blvd., room 714, Rockville, MD 20852, (301–443–8967).

SUPPLEMENTARY INFORMATION: The NOAA FOIA regulations at 15 CFR part 903 have been superseded by Department of Commerce-wide regulations governing the public's access to information under FOIA found at 15 CFR part 4. Furthermore, the NOAA regulations have not been updated to reflect amendments to the FOIA that have been incorporated in the Department-wide regulations. 15 CFR part 4 provides an updated explanation of the scope, purpose, policies, and guidelines for making certain records publicly available pursuant to the FOIA. As an agency of the Department of Commerce, NOAA follows 15 CFR part 4. Accordingly, NOAA is revising 15 CFR part 903 to state that the rules and procedures regarding public access to NOAA records are found at 15 CFR part 4.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule. These APA requirements are unnecessary because NOAA merely is removing superseded regulations and instead referencing the applicable existing regulations.

Because a notice of proposed rulemaking is not required by section 553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

List of Subjects in 15 CFR Part 903

Freedom of information, Organization and functions (Government Agencies).

D.E. Humpries,

Deputy Director, Office of Administration.

For the reasons set forth in the preamble, 15 CFR part 903 is revised to read as follows:

PART 903—PUBLIC INFORMATION

Authority: 5 U.S.C. 552 as amended by Pub. L. 93–502; 5 U.S.C. 553; Reorg. Plan No. 2 of 1965, 15 U.S.C. 311 note; 32 FR 9734, 31 FR 10752.

§ 903.1 Access to information.

The rules and procedures regarding public access to the records of the National Oceanic and Atmospheric Administration are found at 15 CFR part 4.

[FR Doc. 92-18736 Filed 8-10-92; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 92-74]

Unlading of Foreign Vessels Allowed Prior to Entry at U.S. Ports Subsequent to Initial U.S. Port of Arrival

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that it is within the discretion of the district director to issue a permit to unlade to allow a foreign vessel that has already made formal entry at its first port of arrival in the U.S. to unlade foreign residue cargo at subsequent coastwise ports without the necessity of making preliminary entry and prior to the vessel making formal entry at those ports. If the district director deems it necessary, however, before allowing unlading prior to the vessel's formal entry, he may require the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to a Customs officer who boards the vessel and require delivery of the manifest prior to issuing the permit to unlade. All foreign vessels are still required to report arrival and make formal entry at all coastwise ports. This amendment will expedite the discharge of cargo without diminishing Customs enforcement effectiveness.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Leo Morris, Office of Inspection and Control (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1992, a document was published in the **Federal Register** (57 FR 2859) soliciting comments regarding a Customs proposal to amend the Customs Regulations regarding preliminary entry.

Customs proposed to amend § 4.8, Customs Regulations (19 CFR 4.8) to clarify that preliminary entry is required for both U.S. and foreign vessels arriving from a foreign port or place that wish to discharge cargo, passengers or baggage or take on cargo, passengers or baggage before the vessel has been formally entered. Further, the document proposed to amend § 4.30, Customs Regulations (19 CFR 4.30) to provide that permits to unlade or lade may be issued by the district director to a foreign vessel arriving at a U.S. port from another U.S. port prior to formal entry and without the vessel having to make preliminary entry at the second port and to a U.S. vessel arriving at a U.S. port from another U.S. port without requirement of entry at the second port. If he deems it necessary, the document proposed, the district director may require the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest to a Customs officer who boards the vessel prior to issuing the permit.

Conforming amendments were also proposed to §§ 4.1, 4.7, 4.10, 4.13, 4.81, 4.85 and 4.87, Customs Regulations (19 CFR 4.1, 4.7, 4.10, 4.13, 4.81, 4.85 and 4.87) to reflect the changes proposed to §§ 4.8 and 4.30.

The reason for these proposed amendments is that Customs believes that by easing the requirement that preliminary entry be made before a foreign vessel may be issued a permit to lade or unlade when arriving from another U.S. port, but by retaining the right to board and examine manifests if necessary, Customs efficiency regarding the discharge of cargo, passengers and baggage will be improved without a diminution in enforcement effectiveness.

Discussion of Comments

Nine comments were received in response to the proposal. While five commenters fully supported the proposal, certain concerns were raised. A discussion of specific comments follows.

Comment: The regulations should be clarified to state that the district director need not grant preliminary entry whenever it is requested.

Response: Customs totally agrees with the commenter that it is within the district director's discretion to determine whether to allow preliminary entry when it is requested. Section 4.1(b), Customs Regulations is accordingly amended.

Comment: The regulations should list various scenarios when preliminary entry is not required.

Response: Customs disagrees. Regulations are not the proper forum for listing every permutation of vessel arrival and cargo lading or unlading. The different scenarios can be examined individually using these and other regulations and the relevant statutes as guidelines. If preliminary entry is not required, but is requested, the district director should instruct the requesting carrier that preliminary entry is not necessary prior to the lading or unlading of passengers, cargo or baggage.

Comment: The regulations should include a provision that carriers who are not participants in the Automated Manifest System must present their cargo manifest to Customs 24 hours prior to arrival.

Response: Customs disagrees. The statute that discusses the delivery of the manifest to Customs, 19 U.S.C. 1439, requires the manifest to be delivered immediately upon arrival of the vessel. The statute does not support requiring the manifest in advance.

Comment: Do these amendments alter manifest discrepancy reporting requirements?

Response: No. These regulations do not affect or address manifest discrepancy reporting requirements.

Comment: The proposed amendments are in violation of 19 U.S.C. 1447, 1448 and 1449 which require a vessel carrying merchandise, persons or baggage originating in a foreign place to make entry prior to unlading. This will adversely affect Customs enforcement efforts.

Response: Customs disagrees with the commenter's interpretation of these statutes. Two of the cited statutes, 19 U.S.C. 1447 and 1449, are not the statutory authority for these amendments. Nor do they say what this commenter alleges them to say. These statutes address where entry and unlading may take place and under what conditions exceptions may be granted. They do not address the authority to unlade or lade cargo or make preliminary entry.

The statute that covers preliminary entry and unlading or lading of vessels is 19 U.S.C. 1448. The commenter interprets the language in this statute to imply preliminary entry is required if a vessel wishes to discharge cargo originating in a foreign place. However, the statute clearly addresses the entry and origin of the vessel and not the cargo.

Customs already permits U.S. vessels to unlade merchandise, passengers or baggage at coastwise ports without an entry because the statute requiring entry of U.S. vessels, 19 U.S.C. 1434, and the statute addressing unlading only requires entry when arriving from foreign ports. Foreign vessels are required to make entry at each port under 19 U.S.C. 1435, but once again, the unlading statute only requires preliminary entry of vessels arriving

from a foreign port that wish to discharge cargo prior to formal entry.

These amendments do not adversely affect any of Customs enforcement actions. Customs still has the authority to board any vessels when it believes it necessary. The statutes and regulations giving Customs the authority to board and search vessels and review ships' documents are not affected by these amendments.

Comment: These amendments will not benefit West Coast vessel arrivals because the amendments will require Customs to board two to three times more vessels.

Response: Customs disagrees. The obvious result of these amendments will be to reduce the number of ship arrivals that will require preliminary entry and, therefore, a boarding. There will certainly not be a twofold or threefold increase in vessel boardings.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modification discussed above, should be adopted.

Executive Order 12291

This document does not meet the criteria for a major rule as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Carrier, release of merchandise, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations, 19 CFR Part 4 is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 and the specific authority citations for §§ 4.7, 4.8, 4.10, 4.81 and 4.85 continue to read as follows and the relevant specific authority citations for §§ 4.1 and 4.30 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

§ 4.1 also issued under 19 U.S.C. 1581(a), 46 U.S.C. App. 158, 163;

* * * * *

§ 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583; 46 U.S.C. App. 883a, 883b;

§ 4.8 also issued under 19 U.S.C. 1448, 1486;

* * * * *

§ 4.10 also issued under 19 U.S.C. 1448, 1451;

* * * * *

§ 4.30 also issued under 19 U.S.C. 288, 1433, 1446, 1448, 1450–1454, 1490;

* * * * *

§ 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486; 46 U.S.C. App. 251, 313, 314, 883;

* * * * *

§ 4.85 also issued under 19 U.S.C. 1439, 1442, 1443, 1444, 1623;

* * * * *

2. Section 4.1(b) is revised to read as follows:

§ 4.1 Boarding of vessels; cutter and dock passes.

* * * * *

(b) Every vessel arriving within a Customs district directly from a point outside the Customs territory of the United States shall be boarded and shall be subject to such supervision while in port as the district director deems necessary. Boarding is required also whenever there is a preliminary entry. When he deems it desirable, the district director may detail Customs officers to remain on board a vessel to secure the enforcement of this part. Except as provided in paragraph (a) of this section, boarding of a vessel arriving within a Customs district directly from another port in the United States shall not be required.

* * * * *

3. Footnote 16 from Part 4 is removed.

4. Section 4.7 is amended by revising the second sentence of paragraph (b) and paragraph (d)(3) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form.

* * * * *

(b) * * * The master shall deliver the original and one copy of the manifest to the Customs officer who shall first demand it. * * *

* * * * *

(d) * * *

(3) The declaration shall be ready for production on demand for inspection and shall be presented as part of the original manifest when formal entry of the vessel is made.

5. Footnote 18 is removed from Part 4.

6. Section 4.8 is revised to read as follows:

§ 4.8 Preliminary entry.

Preliminary entry allows a U.S. or foreign vessel arriving from a foreign port or place to discharge cargo, passengers or baggage or take on additional cargo, passengers or baggage prior to making formal entry at the customhouse by allowing the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest and deliver the manifest to the customs officer who boards the vessel. Customs officers are required to board a vessel before preliminary entry is permitted. Preliminary entry shall be made by compliance with § 4.30 and execution by the master of the Master's Certificate on Preliminary Entry on Customs Form 1300.

7. Section 4.10 is amended by revising the first sentence to read as follows:

§ 4.10 Request for overtime services.

Request for overtime services in connection with entry or clearance of a vessel, including the boarding of a vessel in accordance with § 4.1 shall be made on Customs Form 3171.

* * * * *

8. Footnote 22 is removed from Part 4.

9. Section 4.13(a) is amended by revising the first sentence to read as follows:

§ 4.13 Alcoholic liquors on vessels of not over 500 net tons.

(a) When a vessel of not over 500 net tons which arrives from a foreign port or a hovering vessel has on board any alcoholic liquors, a certificate respecting the importation of any spirits, wines, or other alcoholic liquors on board, other than sea stores, shall be delivered to the appropriate Customs officer with the inward foreign manifest. * * *

* * * * *

9a. Footnote 25 is removed from Part 4.

10. Section 4.30 is amended by revising paragraphs (a) and (d) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288, no passengers, cargo, baggage or other article shall be unladen from a vessel which arrives directly from any port outside the

Customs territory of the United States or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or a place outside the Customs territory of the United States if Customs supervision of such lading is required until the district director shall have issued a permit or special license therefore on Customs Form 3171.

(1) U.S. and foreign vessels arriving at a U.S. port directly from a foreign port or place are required to make entry, whether it be formal or, as provided in § 4.8, preliminary, before the district director may issue a permit or special license to lade or unlade.

(2) U.S. vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to unlade or lade without having to make either preliminary or formal entry at the second and subsequent ports. Foreign vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade at the second and subsequent ports prior to formal entry without the necessity of making preliminary entry. In these circumstances, after the master has reported arrival of the vessel, the district director may issue the permit or special license or may, in his discretion, require the vessel to be boarded, the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to the Customs officer who boards the vessel, and require delivery of the manifest prior to issuing the permit.

* * * * *

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival.

* * * * *

11. Footnotes 55 through 58 are removed from Part 4.

12. Section 4.81 (d) and (e) are amended by removing the words "the boarding officer" where they appear and inserting in their place the words "the appropriate Customs officer" and by removing the words "the Customs boarding officer" in § 4.81(e) and inserting in their place the words "the appropriate Customs officer".

13. Section 4.85 is amended by removing the words "the Customs boarding officer" appearing in the last sentence of paragraph (b) and inserting in their place the words "the appropriate Customs officer" and by revising paragraph (d) to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

* * * * *

(d) If boarding is required before the district director will issue a permit or special license to lade or unlade, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer.

* * * * *

14. Section 4.87(c) is amended by removing the words "the Customs boarding officer" and inserting in their place the words "the appropriate Customs officer".

Carol Hallett,

Commissioner of Customs.

Approved: June 22, 1992.

Nancy L. Worthington,

Acting Assistance Secretary of the Treasury.

[FR Doc. 92-18851 Filed 8-10-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215-AA67

Claims for Compensation Under the Federal Employees' Compensation Act, as Amended

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: On December 26, 1991, the Secretary of Labor published notice of a rule proposing to change the way lump sum payments of compensation under the Federal Employees' Compensation Act (FECA) are considered. Lump sum payments of wage-loss compensation benefits would no longer be made and new standards for considering lump sum payments of schedule awards were announced. The comment period closed February 10, 1992, and the comments received during that period have been considered. The rule is now published in final substantively unchanged from the proposed rule. The rule sets forth the Secretary's determination that, in the exercise of discretion afforded the Secretary in section 8135(a), lump sum payments of compensation benefits will no longer be made except for payments of schedule awards. In making this determination, the Secretary has considered a number of factors, including the fact that FECA is intended as income replacement and lump-sum payments are not a fiscally responsible method of fulfilling the government's obligations under the FECA for wage-loss compensation. The rule also indicates that it will generally not be in the best interest of the claimant to make lump-sum payment of schedule award benefits where the schedule award is a substitute for lost wages.

EFFECTIVE DATE: The rule is effective on September 10, 1992, and will apply to all pending cases.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S-3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION:

Introduction

The preamble to the proposed rule published December 26, 1991 (56 FR 66817), set forth the basis for the Secretary's determination that lump sum payments of wage-loss benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, will no longer be considered. None of the comments received undercuts the validity of the Secretary's reasoning and therefore such rationale is incorporated in this document.

The FECA, which is the workers' compensation law for Federal employees, provides a range of benefits for covered work-related injuries, including payment of wage loss compensation, schedule awards for permanent loss or loss of use of specified members of the body, and related medical costs. Under section 8135 of the FECA, the wage-loss and schedule award obligations of the government may be met through a lump sum payment of benefits, an amount determined by multiplying the yearly benefits by the number of years the beneficiary is expected to live and discounting at four percent. The decision to make a lump sum payment is completely at the discretion of the Secretary of Labor, who has delegated this authority to the Director of the Office of Workers' Compensation Programs (OWCP).

The discretion is twofold: First, whether or not to fulfill the government's obligation through a lump sum payment, since the statute only authorizes but does not require that such a form of payment be made; and second (if it is determined that a lump sum payment may be made) whether or not the payment may be made in the individual case. The statute does not

limit the Secretary's discretion in the first instance, but in the second, it limits the Secretary's authority to make such payments to only three situations: Where the monthly payment is less than $50; where the individual is about to become a nonresident of the United States; or where the Secretary determines that it is for the best interest of the beneficiary.

Over the life of the program, lump sum payments have rarely been made and, until now, the initial determination of whether or not to fulfill the government's obligation through a lump sum has been made on a case-by-case basis. Effective with this rule, however, lump sum payments will not be substituted for periodic wage-loss benefits under any circumstances. Where lump sum payment of compensation is required by statute pursuant to section 8135(b) (that is, where a surviving spouse entitled to compensation remarries before age 55), such payment shall be made. The Secretary has determined that a request for a lump sum payment for a schedule award will still be considered on a case-by-case basis, using the statutory criterion of whether the payment would be in the best interest of the claimant. It will generally not be considered in the claimant's best interest to grant a lump sum payment where the individual depends on the schedule award as a substitute for wage-loss.

The Secretary has made the determination that lump sum payments will not be made in cases involving periodic wage loss benefits based on several factors. Foremost among these is that regular periodic payments, providing for cost-of-living increases safe from speculation or economic fluctuations and free from creditors, generally more nearly provide the measure of security that the Act was designed to afford, and more closely approximates the lost wages that the Act is designed to replace. Lump sum payments are not in any way required in order to fulfill the purposes of the Act. In addition, periodic payments are also consistent with government accounting and budgeting practices, while lump sum payments are directly counter to those practices. This rule also represents sound fiscal policy, since the cost of lump sum payments is generally greater than periodic payments where interest rates are above four percent and the claimant does not live longer than the life tables project.

As noted, section 8135(a) merely authorizes lump sum payments and gives the Secretary broad discretion to determine whether to grant a request for lump sum payments. While the Secretary has until now chosen to exercise that discretion by deciding that each individual request should be reviewed, the proposed rule pointed out that such discretion can be exercised by deciding that no lump sum payments will be made. Since the Secretary has now determined that the government will fulfill its obligation for wage-loss benefits only by means of periodic rather than lump sum payments, there is no need to exercise further discretion in an individual case. See *International Union, UAW* v. *Dole*, 919 F.2d 753 (D.C. Cir. 1990). The administrative resources of the Secretary will thus be conserved, as the increasing number of lump sum requests may be dealt with on the basis of the regulation instead of on a case-by-case basis which required factual and medical development of each individual case.

Analysis of Comments

Eight comments were received: Three from Federal employing agencies, two from Federal employee unions, two from individuals and one from an association of injured workers. Two of the agency comments (both from the same agency) supported the rule, and a third noted that periodic payments most closely resemble the wages the compensation is designed to replace and stressed the adverse affect which a large jump in the FECA chargeback bills have on agencies' ability to meet their salary and expense obligations.

The two employee unions opposed the change. One stated that the rule would nullify the intent of Congress that lump sum payments should be considered, characterized the action as arrogant since it assumes that all applications so lack merit as to warrant summary rejection, and stressed that the interpretation of the discretionary authority upon which this rule is based was too broad, and could set a precedent in other areas of the FECA which are discretionary. The other union characterized this action as an abuse of the discretionary authority granted by Congress. Both unions urged the Department to continue considering such requests on a case-by-case basis.

The Department believes that the concerns expressed by the unions were anticipated and fully addressed in the preamble to the proposed rule. There, the Department carefully considered the legislative history surrounding the lump sum provision, described how the lump sum authority has been acted upon since 1916, and discussed in detail the scope of the discretionary authority granted the Secretary. The Department also carefully considered the option of continuing to consider such applications on a case-by-case basis, but rejected it, noting in part that the current practice has led many individuals to incur considerable expense in the hopes of getting a lump sum payment. The limited resources of the Department to accomplish its mission of adjudicating claims and administering the program are increasingly strained by more lump sum requests. The adverse effect of the expenditure of administrative resources on this discretionary function now far outweighs the benefit of continuing to consider each lump sum request on a case-by-case basis.

Two individuals also commented. A former assistant secretary for the Department, opposed the change because it was unnecessary given "the longstanding policy of not approving lump sum benefit payments * * *." The costs associated with case-by-case consideration, it is argued, are worth it in the interests of justice. The commentor also points out that the rule limits the authority given the Department by Congress and questions why the Department would choose to do so. The Department has stated the basis for this rule and believes that the benefits to both the claimants and the government far outweigh the advantage while continuing to exercise that discretion on a case-by-case basis affords.

Another individual termed the rule presumptuous because it assumes workers are not able to handle large sums of money, and questioned whether lump sum payments are a burden to employing agencies. That individual also noted that a detailed cost/benefit analysis had not been performed. The Department does not presume that every individual would be unable to properly invest large sums of money to ensure an adequate income in the future. The rule is not predicated on that basis, although a statement from an annual report of the Employment Compensation Commission was quoted which contains language to this effect. Instead, the Department points to the fact that periodic payments most closely resemble the wages which are lost because of an injury and that benefits are not intended to enrich an individual. The Department believes that its analysis of the costs and benefits of borrowing funds to make lump sum payments versus making periodic payments is sufficiently detailed.

The final comment came from an association of injured workers. In general, these comments contained the following arguments:

1. The General Accounting Office, at the request of the House Education and Labor Committee, is conducting a comprehensive study of the FECA and OWCP's administration, and that any decision on this rule should await the outcome of the study;

2. The proposed rule was unethical and illegal because it failed to cite the Employees' Compensation Appeals Board (ECAB) decisions in *Billy G. Reeder* (Docket No. 91–699), and thus was misleading; the rule ignores ECAB precedent (including *Reeder*), undermining another section of the Secretary's regulations (20 CFR 10.150);

3. The rule sets an unfortunate precedent for the rest of those sections of the FECA which give discretion to the Secretary; the rule violates the due process rights of claimants.

Each of these arguments will be addressed in turn. First, the commentor contends that the GAO audit should be completed before this rule is made final. The GAO has begun its study of the FECA and its administration by OWCP. While the scope of the study is broad, no aspect of the study requires OWCP to suspend its normal operations or, more particularly, its consideration of the instant regulation. The Department notes, however, that in 1987–88, the GAO conducted a study entitled "Federal Employees' Compensation Act Cost Growth and Workplace Safety", GAO/GGD–89–4 (October 1988). While noting that OWCP maintained no data on lump sum payments, the GAO report expressed some concern that such payments may be "Another reason for the real increase in FECA costs." The final rule in no way conflicts with past GAO findings and there is no indication that lump sum payments are currently being examined by GAO. Therefore, there is no basis for the postponing of this rule until the GAO audit is complete.

Secondly, the commentor attacks the failure of the Department to discuss the Employees' Compensation Appeals Board (ECAB or the Board) decisions in *Billy G. Reeder*. In discussing *Reeder*, the commentor argues first that the Director erred in not referring to the Board's decisions in *Reeder* and that this omission was both unethical and illegal. The second contention is more complex, but (briefly stated) asserts that since the proposed rule is in conflict with the Board's ruling, and the Secretary's regulations at 20 CFR 10.150(b) provide that the Director follow the principles of workers' compensation law as determined by the Board, then proposing rules which are in conflict with Board law *de facto* modified an existing rule in violation of the Administrative Procedures Act. Both contentions are without merit. The comments fail to recognize that at the time the proposed rule was published, the *Reeder* case was still being considered by the Board. Furthermore, the interpretation of the decisions assigned by the commentor is erroneous.

In the first *Reeder* decision, issued July 19, 1991, the Board found that the Director had abused his discretion in denying the lump sum application and remanded the case to the office for a *de novo* decision. The Director filed a timely petition for reconsideration with the Board, which by decision dated November 13, 1991, granted the petition and modified its prior decision. The Director then timely filed another petition for reconsideration, which was not responded to until January 15, 1992. Although the second petition for reconsideration was eventually denied by the Board, at the time the proposed rule was published on December 26, 1991, the Board was still considering the petition for reconsideration in *Reeder*. Discussion in proposed rules of a particular case still pending before the Board would have been inadvisable, and so the Department was silent on this case.

The Department believes that the final rule is fully consistent with the Board's decision in *Reeder*. In *Reeder*, the ECAB held that the Office could not consider factors such as cost to the government and extraordinary circumstances in deciding whether a lump sum payment was in the claimant's best interest. In its Order Denying Petition For Reconsideration, the Board noted that the Office could consider such factors when it was considering, in the first instance, whether to consider the application. See Billy G. Reeder, Docket No. 91–699 (issued July 18, 1991; Order Granting Petition For Reconsideration & Modifying Prior Decision (issued November 13, 1991); Order Denying Petition For Reconsideration (issued January 15, 1992). In a decision issued subsequent to Reeder, the Board stated that the Director was not required by statute, regulation, or Board case law to undertake any development of any application for a lump sum payment or to make any determination on an applicant's best interest merely upon application. See Thelma R. Bushnell, Docket No. 91–1764 (issued April 3, 1992). Promulgating this regulation in no way conflicts with these holdings of the Board.

The commentor also alleges that the Department engaged in criminal activity. These allegations appear mainly to be based on the commentor's belief that the *Reeder* cases were deliberately concealed and thus the proposed rules constituted a fraudulent misrepresentation to the public via an official government publication. As the Department has explained its position that a discussion of the case in the **Federal Register** at a time when a petition for reconsideration was under consideration by the ECAB would have been inadvisable, no further comment on these allegations is necessary.

The third contention made by this commentor is similar to that made by employee unions: that the enactment of this rule would set a "dangerous precedent" for the exercise of discretion granted in other parts of the FECA which would "virtually dismantle" the FECA. As noted earlier, the Department believes that the authority for this action is clear, and has fully explained why this action is appropriate in this matter.

The commentor further contends that the Secretary's failure to exercise discretion under section 8135 is a violation of due process. As previously stated, the Department believes that the promulgation of this regulation constitutes a proper exercise of discretion in describing the manner of payment of compensation benefits.

Conclusion

Based on the reasons set out in the preamble to the proposed rule, as amplified and clarified above in addressing the comments received, the Department has determined to adopt the proposed rule as final. This rule will apply to all pending cases.

Cost Benefit Analysis

The rule should bring no additional costs to the government. The benefits prescribed by the FECA must be paid where appropriate. By making clear that lump sum payment of wage loss benefits will not be considered, considerable administrative savings may be expected.

Classification—Executive Order 12291

The Department of Labor has concluded that the regulatory proposal does not constitute a "major rule" under Executive Order 12291, because it is unlikely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule applies only to Federal employees, their

families and the Federal agencies which employ them. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

None.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The proposed regulations apply primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subject in 20 CFR Part 10

Administrative practice and procedure, Claims, Courts, Fraud, Government employees, Health care, Health professions, Law enforcement officers, Peace Corps, Penalties, Reporting and recordkeeping requirements, Volunteers, Wages, Workers' compensation.

For the reasons set out in the preamble, part 10 of chapter I of title 20 of the Code of Federal Regulations is amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for 20 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 301, Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263, 5 U.S.C. 8145, 8149; Secretary's Order 1–89; Employment Standards Order 90–02.

2. Section 10.311 is revised to read as follows:

§ 10.311 Lump-sum awards.

(a) (1) In exercise of the discretion afforded by section 8135(a), the Director has determined that lump-sum payments will no longer be made to individuals whose injury in the performance of duty as a federal employee has resulted in a loss of wage-earning capacity. This determination is based on, among other factors:

(i) The fact that FECA is intended as a wage-loss replacement program;

(ii) The general advisability that such benefits be provided on a periodic basis; and

(iii) The high cost associated with the long-term borrowing that is necessary to pay out large lump sums.

(2) Accordingly, where applications for lump-sum payments for wage-loss benefits under section 8105 and 8106 are received, the Director will not exercise further discretion in the matter.

(b) Notwithstanding the determination set forth in paragraph (a) of this section, a lump sum payment may be made to a claimant whose injury entitles him or her to a schedule award under section 8107. Even under these circumstances, a claimant possesses no absolute right to a lump-sum payment of benefits payable under section 8107, and such a payment may be granted only where the Director determines, acting within his or her discretion, that such a payment is in the claimant's best interest. Lump-sum payments of schedule awards generally will not be considered in the claimant's best interest where the compensation payments are relied upon by the claimant as a substitute for lost wages.

(c) On remarriage before age 55, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

Signed at Washington, DC, this 4th day of August 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–18796 Filed 8–10–92; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 191

The DoD Civilian Equal Employment Opportunity Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is changing the name of the DoD Handicapped Individuals Program to "the DoD Program for People with Disabilities." In addition, the language in the regulation establishing the DoD Civilian Equal Employment Opportunity Program is being updated to reflect the current usage preference of the disability community. The term "handicap" is being changed to "disability" throughout, except in proper names and titles. Similarly, the term "handicapped individuals" is being changed to "people with disabilities," and the term "handicapped employees" is being changed to "employees with disabilities".

EFFECTIVE DATE: April 17, 1992.

FOR FURTHER INFORMATION CONTACT: Judith C. Gilliom, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity), The Pentagon, Washington, DC 20301–4000. Telephone 703–697–8661.

SUPPLEMENTARY INFORMATION:

This document is not a major rule as defined by E.O. 12291. Its only effect is to update language and citations in the existing regulation. There is effect on the economy, prices, or related matters such as competition and productivity. There is no effect on small entities within the meaning of Public Law 96–354. There are no new information requirements within the meaning of Public Law 96–511. None of the changes are substantive.

List of Subjects in 32 CFR Part 191

Aged, Equal employment opportunity, Government employees, Handicapped, Religious discrimination, Sex discrimination.

Accordingly, 32 CFR part 191 is amended as follows:

PART 191—THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

1. The authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 191.1 [Amended]

2. Section 191.1 is amended in paragraph (a) by revising "Order ADM 5420.71" to read "Order ADM 5420.71A" and in paragraph (c) by revising "Handicapped Individuals Program (HIP)" to read "Program for People with Disabilities (PPD)."

3. In § 191.3, the definition *Discrimination* is amended by revising "handicap" to read "disability"; by revising the term *Handicapped individual* to read *People with disabilities*, and placing it in alphabetical order and revising the first sentence of the introductory text of that definition; and in the definition *Special Emphasis Program (SEPs)* by revising "handicapped persons" to read "people with disabilities."

§ 191.3 Definitions.

* * * * *

People with disabilities. People who have physical or mental impairments that substantially limits one or more major life activities, has a record of such

impairment, or is regarded as having such an impairment. * * *

* * * * *

§ 191.4 [Amended]

4. Section 191.4 is amended in paragraphs (b), (c), and (f) by revising "handicapped individuals" to read "people with disabilities" and paragraph (e) by revising "handicap" to read "disability."

§ 191.5 [Amended]

5. Section 191.5 is amended in paragraph (a)(14) by revising "Interagency Committee for Computer Support of Handicapped Employees" to read "Council on Accessible Technology" and "Order ADM 5420.71" to read "Order ADM 5420.71A"; in paragraphs (a)(6), (a)(11), (b)(2), (b)(9), (b)(10), and (b)(13) by revising "handicapped individuals" to read "people with disabilities"; and in paragraph (b)(5) by revising "HIP" to read "PPD."

§ 191.6 [Amended]

6. Section 191.6 is amended in paragraphs (b)(2), (b)(5), (b)(9), (b)(10), (b)(12), and (b)(14) by revising "handicapped individuals" to read "people with disabilities"; paragraphs (b)(3) and (b)(9) by revising "HIP" to read "PPD"; paragraph (b)(12) by revising "National Employ the Handicapped Week" to read "National Disability Employment Awareness Month"; paragraph (b)(13) by revising "handicap" to read "disability"; and paragraph (b)(15) by revising "handicapped employees" to read "employees with disabilities" and by revising "Interagency Committee for Computer Support of Handicapped Employees" to read "Council on Accessible Technology" and "Order ADM 5420.71" to read "Order ADM 5420.71A."

§§ 191.8 and 191.9 [Amended]

7. Sections 191.8(a) and 191.9(b)(2) are amended by revising "handicapped individuals" to read "people with disabilities."

§ 191.9 [Amended]

8. Section 191.9(b)(3) is amended by revising "handicapped employees" to read "employees with disabilities."

Dated: August 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-19034 Filed 8-10-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore Regulation 92-05-26]

Safety Zone Regulation: Patapsco River, East Channel, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the 178th Annual Defenders Day Celebration. A shore based artillery unit will be firing mock bombardment charges out over the Patapsco River. Fireworks will be launched from a barge anchored approximately 300 feet east of Fort McHenry Range Front Light, Patapsco River, East Channel, Baltimore, Maryland. The safety zone is necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Entry into the safety zone is prohibited unless otherwise authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on September 13, 1992, at 6 p.m. and terminates that same day at 11 p.m.

FOR FURTHER INFORMATION CONTACT: LT Cynthia L. Stowe, U.S.C.G. Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, A notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Specifically, the sponsor's application to hold the event was not received until July 13, 1992, leaving insufficient time to publish a NPRM in advance of the event. Publishing a NPRM and delaying its effective date would be contrary to the public interest. Immediate action is needed to prevent vessel damage and bodily injury as a result of the fireworks explosives and any concussion injury associated with mock artillery charges.

Drafting Information

The drafters of this regulation are LT Cynthia L. Stowe, project officer for the Captain of the Port, Baltimore, Maryland, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The circumstances requiring this regulation arose on July 13, 1992, when the National Park Service submitted an application to hold a mock bombardment and fireworks display, to take place on September 13, 1992. As part of their application, the National Park Service requested that the Coast Guard provide control of spectator and commercial vessel traffic.

Fireworks will be launched from a barge anchored approximately 300 feet east of Fort McHenry Range Front Light, Patapsco River, East Channel, Baltimore, Maryland. A shore based artillery unit will fire out over the river along the southeast grounds of Fort McHenry. The Safety Zone will consist of a circle, with a radius of 1,000 feet having its center located at Fort McHenry Range Front Light. The safety zone will provide for the safety of life and property during the fireworks display and protect individuals from concussion injury associated with the mock bombardment charges. A portion of the East Channel will be closed during the fireworks display. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Regulatory Evaluation

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165. This regulation is considered not major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the emergency rule does not raise sufficient federalism implications to warrant the preparation of a Federal Assessment. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In conclusion of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T0549 is added to read as follows:

§ 165.T0549 Safety Zone: Patapsco River, East Channel, Baltimore, Maryland

(a) *Location:* The following area is a safety zone: The waters of the Patapsco River, East Channel, bounded by the arc of a circle with a radius of 1,000 feet around its center located at Fort McHenry Range Front Light.

(b) *Effective Date:* This regulation becomes effective on September 13, 1992, at 6 p.m. and terminates that same day at 11 p.m., unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

(c) *Regulation:*

(1) In accordance with the general regulations in § 165.23, entry into the safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5105.

(2) The Coast Guard Patrol Commander and each Coast Guard vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

Dated: July 31, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92–19079 Filed 8–10–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

33 CFR Part 222

[ER 1110–2–240]

Engineering and Design; Water Control Management

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Army Corps of Engineers is revising 33 CFR 222.7(g)(2) to expand the Corps requirements for public meetings and public involvement in water control issues. Recent Federal statutes relating to public involvement have created a need for updating this regulation.

EFFECTIVE DATE: September 10, 1992.

ADDRESS: HQ, USACE (CECW–EH–W) WASH, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles H. Sullivan, Chief, Water Control/Water Quality Section (202 272–8509).

SUPPLEMENTARY INFORMATION: This final rule updates paragraph (g)(2) of § 222.7, Water Control Management (ER 1110–2–240). The addendum to paragraph (g)(2) delineates the Army Corps of Engineers responsibilities concerning public involvement in developing of modifying water control manuals, especially those parts subject to section 310(b) of the Water Resources Development Act of 1990 (Pub. L. 101–640, 104 Stat. 4639).

Section 310(b) uses the term "reservoir operating manuals." An Army Corps of Engineers water control manual for a given reservoir has two components, one of which is used to operate the reservoir, and the other is administratively or informational in nature. The reservoir operating chapter referred to as the "water control plan" contains the guidelines by which the agency regulates the storage and release of water under all hydrologic conditions ranging from flood to drought. The administrative and informational chapters provide background such as the project's authorization, history, watershed characteristics, pertinent data about project features, the climatic and hydrologic setting of the drainage basin, and chain of command of personnel positions with phone numbers and similar type of non-regulatory information. Changes to the former component of a water control manual that involve "proposed management decisions for operating reservoirs" pursuant to section 310(b) require public participation, but changes to the latter component do not require public participation. Section 310(b) uses the term "public hearing." Conducting public meetings is consistent with the intent of the law to "provide significant public participation."

1. This part is not a major rule within the meaning of E.O. 12291 requiring preparation of a regulatory impact analysis because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices.

2. Pursuant to 5 U.S.C. 605(b), I hereby certify that this regulation will not have a significant economic impact on a substantial number of entities.

3. We have determined that a notice of proposed rulemaking in this matter is unnecessary since it involves general statements of policy and agency practice and procedures.

List of Subjects in 33 CFR Part 222

Bridges, Dams, Water Resources, Reservoir, Transportation, Rivers, Fish, Wildlife, Records.

For the reasons set out in the preamble, 33 CFR part 222 is amended as follows:

PART 222—ENGINEERING AND DESIGN

1. The authority citation for 33 CFR part 222 is established to read as follows and authority citations following each section are removed.

Authority: 23 U.S.C. 116(d); delegation in 49 CFR 1.45(b); 33 U.S.C. 467 et seq; 33 U.S.C. 701, 701b, and 701c–1 and specific legislative authorization Acts and Public Laws listed in appendix E of § 222.7.

2. Section 222.7(g)(2) is revised to read as follows:

§ 222.7 Water Control Management (ER 1110–2–240).

* * * * *

(g) * * *

(2) *Public involvement and information*—(i) *Public meeting and public involvement.* The Corps of Engineers will sponsor public involvement activities, as appropriate, to appraise the general public of the water control plan. In developing or modifying water control manuals, the following criteria is applicable.

(A) Conditions that require public involvement and public meetings include: Development of a new water control manual that includes a water control plan; or revision or update of a water control manual that changes the water control plan.

(B) Revisions to water control manuals that are administratively or informational in nature and that do not change the water control plan do not require public meetings.

(C) For those conditions described in paragraph (g)(2)(i)(A) of this section, the Corps will provide information to the public concerning proposed water control management decisions at least 30 days in advance of a public meeting. In so doing, a separate document(s) should be prepared that explains the recommended water control plan or change, and provides technical information explaining the basis for the recommendation. It should include a description of its impacts (both monetary and nonmonetary) for various purposes, and the comparisons with alternative plans or changes and their effects. The plan or manual will be prepared only after the public involvement process associated with its development or change is complete.

(D) For those conditions described in paragraph (g)(2)(i)(A) of this section, the responsible division office will send each proposed water control manual to the Army Corps of Engineers Headquarters, Attn: CECW-EH-W for review and comments prior to approval by the responsible division office.

(ii) *Information availability.* The water control manual will be made available for examination by the general public upon request at the appropriate office of the Corps of Engineers. Public notice shall be given in the event of occurring or anticipated significant changes in reservoir storage or flow releases. The method of conveying this information shall be commensurate with the urgency of the situation and the lead time available.

* * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-18976 Filed 8-10-92; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-12-13-5502; FRL-4153-1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

In the matter of Bay Area Air Quality Management District; Kern County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District; Ventura County Air Pollution Control District.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on March 5, 1992 (57 FR 7900) and on March 6, 1992 (57 FR 8104). The revisions concern rules from the following districts: the Bay Area Air Quality Management District (BAAQMD), the Kern County Air Pollution Control District (KCAPCD), the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), the South Coast Air Quality Management District (SCAQMD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). The revised rules control VOC emissions from several different industries. Both Federal Registers 57 FR 7900 and 57 FR 8104 provided 30-day public comment periods, and EPA received one minor comment on its proposals to approve these revisions. Thus, EPA is finalizing the approval of these revisions into the California SIP under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA.

EFFECTIVE DATE: This action is effective September 10, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Northern California, Nevada and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 K Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Kern County Air Pollution Control District, 2700 M Street, Suite 275, Bakersfield, CA 93301

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182

Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Doris Lo, Northern California, Nevada and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1202

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1992 in 57 FR 7900, EPA proposed to approve the following rules into the California SIP: SJVUAPCD's Rule 460.2, Motor Vehicle and Mobile Equipment Refinishing Operations, and KCAPCD's Rule 410.4A, Motor Vehicle and Mobile Equipment Refinishing Operations. Rule 460.2 was adopted by SJVUAPCD on April 11, 1991, and Rule 410.4A was adopted by KCAPCD on May 6, 1991. Both rules were submitted by the California Air Resources Board (CARB) to EPA on May 30, 1991.

On March 6, 1992 in 57 FR 8104, EPA proposed to approve the following rules into the California SIP: BAAQMD's Rule 8-37, Natural Gas and Crude Oil Production Facilities; SCAQMD's Rule 465, Vacuum Producing Devices or Systems; SCAQMD's Rule 1123, Refinery Process Turnarounds; and VCAPCD's Rule 71, Crude Oil and Reactive Organic Compound Liquids. Rule 8-37 was adopted by BAAQMD on October 17, 1990; Rules 465 and 1123 were adopted by SCAQMD on December 7, 1990; and Rule 71 was adopted by VCAPCD on September 11, 1990. VCAPCD's Rule 71 was submitted by CARB to EPA on April 5, 1991, and the other three rules were submitted by CARB to EPA on May 13, 1991.

These rules were submitted in response to EPA's 1988 SIP-Call and the section 182(a)(2)(A) RACT fix-up requirement of the CAA. Both EPA's 1988 SIP-Call and the section 182(a)(2)(A) required nonattainment areas to fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. Section 182(a)(2)(A) also established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in 57 FR 7900 and 57 FR 8104.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 57 FR 7900 and 57 FR 8104.

EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 57 FR 7900 and 57 FR 8104 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated February 7, 1992 for Rule 460.2 and 410.4A, October 23, 1991 for Rule 8–37, October 23, 1991 for Rule 465, October 23, 1991 for Rule 1123 and October 29, 1991 for Rule 71).

A 30-day public comment period was provided in 57 FR 7900 and 57 FR 8104. EPA received one minor comment from the VCAPCD on Rule 71. VCAPCD commented that an administrative error was made in the documentation for Rule 71 that was submitted to EPA. EPA has evaluated and agrees with VCAPCD's comment. The comment does not effect the EPA's proposal to approve Rule 71 into the SIP.

EPA Action

In today's notice, EPA takes final action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1992.

Dated: June 18, 1992.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(183)(i)(B)(*2*), (c)(184)(i)(B)(*2*), (c)(184)(i)(c)(*1*), (c)(185)(i)(A)(*3*) and (c)(185)(i)(c)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(B) * * *

(*2*) Rule 71, adopted on September 11, 1990.

(184) * * *

(i) * * *

(B) * * *

(*2*) Rule 465, adopted on December 7, 1990 and Rule 1123, adopted on December 7, 1990.

(C) Bay Area Air Quality Management District.

(*1*) Rule 8–37, adopted on October 17, 1990.

(185) * * *

(i) * * *

(A) * * *

(*3*) Rule 410.4A, adopted on May 6, 1991.

* * * * *

(C) * * *

(*2*) Rule 460.2, adopted on April 11, 1991.

* * * * *

[FR Doc. 92–18298 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[VA 6–2–5565; A–1–FRL–4193–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Withdrawal of Final Rule Pertaining to the Virginia Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rulemaking.

SUMMARY: On May 6, 1992, EPA published approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (57 FR 19378). This revision would have amended the motor vehicle inspection and maintenance (I/M) program in Northern Virginia. The intended effect of the action was to eliminate I/M operating problems identified in a June, 1984 audit of Virginia's program and to provide for the achievement of minimum emission reduction requirements (MERR) for hydrocarbons and carbon monoxide required in the Virginia SIP.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period. If adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register**, the action would be withdrawn by publishing two notices—one to withdraw the action and a second to announce proposal of a new rulemaking and establishing a public comment period.

Notice of intent to adversely comment was submitted to EPA within the prescribed comment period. Therefore, EPA is withdrawing the May 6, 1992 final rulemaking and is today publishing a notice of proposed rulemaking to incorporate the amendments to Virginia's I/M program.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 597–4554.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 23, 1992.

Edwin B. Erickson,

Regional Administrator Region III.

PART 52—AMENDED

For the reasons set out in the preamble subpart VV, part 52 of chapter, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by removing paragraph (c)(97).

[FR Doc. 92–19060 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 420

[BPO–102–CN]

RIN 0938–AF59

Medicare Program; Carrier Jurisdiction for Claims for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) and Other Issues Involving Suppliers, and Criteria and Standards for Evaluating Regional DMEPOS Carriers; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: **Federal Register** document 92–14044, published on Thursday, June 18, 1992, beginning on page 27290, amended 42 CFR parts 405, 420, 421, and 424 to modify Medicare rules applicable to claims for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) covered under Part B of Medicare. The document designated regional carriers to process DMEPOS claims, established certain standards for suppliers who submit DMEPOS claims which included certain supplier disclosure requirements; and established criteria and standards for evaluating the performance of the designated regional DMEPOS carriers. This notice corrects an error made in that document.

EFFECTIVE DATE: This correction is effective August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Lindsay (410) 966–4673.

SUPPLEMENTARY INFORMATION:

In the June 18, 1992 **Federal Register** document 92–14044 that we published as final rule with comment period we failed to take into account a change made to part 420 by a final rule with comment period published on June 12, 1992 in the **Federal Register** at 57 FR 24961. In the definition of "disclosing entity" under § 420.201, we inadvertently omitted text from the June 12, 1992 final rule that included a rural health clinic and a Federally qualified health center as part of this definition.

Accordingly, we are correcting FR doc. 92–14044 as follows:

§ 420.201 [Corrected]

On page 27306, in § 420.201, in the second column, in the third line, "disease facility, or health maintenance" is corrected to read "disease facility, a rural health clinic, a Federally qualified health center, or a health maintenance".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–19021 Filed 8–10–92; 8:45 am]

BILLING CODE 4120–01–M

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42 CFR Part 493

[HSQ–179–CN]

RIN 0938–AE60

Medicare Program; Medicare and Laboratory Certification Program; Enforcement Procedures for Laboratories

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: In the February 28, 1992 issue of the **Federal Register** (FR Doc. 92–4050) (57 FR 7218), we established rules for sanctions that HCFA may impose on laboratories that are found not to meet Federal requirements. This notice corrects both typographical and technical errors made in that document.

EFFECTIVE DATE: These regulations are effective on September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (410) 966–6768.

SUPPLEMENTARY INFORMATION: On February 28, 1992 we published in the **Federal Register**, at 57 FR 7218, rules which established sanctions that HCFA may impose on laboratories that are found not to meet Federal requirements relating to the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We also published on that date and in that issue of the **Federal Register** two related rules which set forth the test performance requirements for laboratories that are subject to CLIA requirements and established the fees that HCFA charges laboratories for issuance of various CLIA certificates based on test complexity. A number of typographical errors occurred. The complexity and interrelationship of these three documents also resulted in some technical errors and inadvertent omissions in the enforcement regulation. This notice corrects all errors in FR Doc. 92–4050.

I. Explanation of Technical Corrections

In the preamble, the last sentence in the response to comment #21 on page 7224 concerning the phase-in of proficiency testing (PT) was missing several words and did not make sense as written. Our intent was to specify that the phase-in of sanctions against laboratories with unsuccessful participation in PT would apply only to laboratories with noncompliance that does not pose immediate jeopardy. We are adding the date of January 1, 1994 to be consistent with the regulation on test performance requirements (57 FR 7002), which specified January 1, 1994 as the date on which PT requirements will be effective for previously unregulated laboratories. We also are adding January 1, 1993 as the date on which PT requirements for previously regulated laboratories will be effective, because PT enrollment follows a calendar year cycle, and previously regulated laboratories will be expected to be enrolled in PT by this date (a year earlier than for previously unregulated laboratories, since these laboratories are more familiar with PT than previously unregulated laboratories).

Also in the preamble, on page 7226, in the discussion of the phase-in of alternative sanctions for a laboratory with unsuccessful participation in PT, we stated that alternative sanctions will not be imposed at the time of the first citing of unsuccessful participation in PT. We are revising this language to specify that sanctions will be phased in only during a laboratory's first year of PT; in other words, the first series of three consecutive testing events. This serves to offer a one-time "window" through which laboratories may remain operational without sanction if they are out of compliance with CLIA requirements for PT, since they are becoming newly familiar with these requirements. Any subsequent noncompliance may be subject to sanction.

In the response to the comments concerning limitation of certificates

based on the test level rather than the specialty or subspecialty level, on page 7232, we inadvertently referenced procedures at § 493.1832(b)(2). We are removing the phrase "according to the procedures at § 493.1832(b)(2)" because we do not explicitly mention the voluntary cessation of testing of a specific analyte in that section.

In the regulations text, on page 7236, in § 493.2, in the definition of "certificate," we are clarifying that a laboratory may be issued a certificate not only if all CLIA conditions are met, but also if it is noncompliant with one or more conditions, as long as HCFA has imposed an alternative sanction. We are making this change to be consistent with § 493.1814 which permits laboratories with CLIA certificates to continue to operate even if they are noncompliant with one or more conditions, provided an alternative sanction is in place.

On page 7238, in the text of § 493.1809, we are clarifying that a laboratory may receive payment under Medicaid if it holds any type of CLIA certificate (which would include the case in which a laboratory could hold a certificate even if it does not meet all of the applicable CLIA conditions, but has an alternative sanction in place) or is exempt from CLIA by virtue of its being licensed by a State whose licensure program has been approved by the Secretary.

We are also making corrections in the regulations text so that specific terminology more faithfully reflects the underlying statute, to correct obvious typographical errors, and to remove redundancy.

II. Corrections to the Preamble of the February 28, 1992 Final Rule With Comment Period (57 FR 7218)

1. On page 7219, in the first column in the third full paragraph, line 7 is corrected by replacing the word "not" with the word "now".

2. We make the following corrections on page 7220, in the second column in the first paragraph:

(a) Beginning on line 18, the phrase "the effective date of all CLIA requirements, published elsewhere in this issue of the **Federal Register**" is corrected to read "January 1, 1993";

(b) Line 24 is corrected by replacing the phrase "the first citation of" with the phrase "within the first series of three consecutive testing events";

(c) Line 28 is corrected by replacing the word "will" with the word "may".

3. On page 7224, in the first column in the second Response, beginning on line 14, "some prior to the effective date of the applicable PT requirements" is corrected to read "those laboratories that were previously regulated under CLIA are subject to PT requirements as of January 1, 1993. Previously unregulated laboratories will not be required to meet PT requirements until January 1, 1994. In both cases, the first citation of unsuccessful PT participation during the first PT cycle (in other words, the first series of three consecutive testing events) will not result in the imposition of a sanction, unless the noncompliance with CLIA requirements constitutes immediate jeopardy."

4. On page 7225, column three, in the first full Response, beginning on line 1, the first two sentences are corrected to read, "Both this regulation and Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA), identified as HSQ–176–FC, (the rule delineating the conditions that laboratories must meet to operate under CLIA), published today, are effective as specified in the respective preambles. These effective dates will afford the laboratory community ample time to become familiar with these requirements prior to the commencement of inspections under CLIA."

5. On page 7226, column one, line 7, "at the time of the first citing of such unsuccessful participation in proficiency testing." is corrected to read, "as the result of unsuccessful proficiency testing participation within the first series of three consecutive testing events. As always, however, the Secretary will take any action that may be necessary in cases of immediate jeopardy."

8. On page 7227, column two, in the first full Comment, line 3 is corrected by replacing the term "Medicaid" with "Medicare".

9. On page 7232, column two, beginning on line 13, "according to the procedures at § 493.2832(b)(2)" is removed.

III. Corrections to the Regulations Text of the February 28, 1992 Final Rule With Comment Period

PART 493—[CORRECTED]

§ 493.2 [Corrected]

1. We make the following corrections to § 493.2:

(a) On page 7236, column two, in the definition of *CLIA certificate*, in paragraph (1) under *certificate*, "requirements." is changed to read "requirements, or to be out of compliance with one or more condition level requirements and has an alternative sanctions imposed."

(b) On page 7236, column three, in the definition of *Immediate jeopardy*, "to the public health" is added after the word "hazard".

(c) On page 7236, column three, in the definition of *Party*, "or HCFA or the OIG," is corrected to read "by HCFA or the OIG,".

(d) On page 7237, column one, in the definition of *Unsuccessful participation in proficiency testing*, "micobacteriology" is corrected to read "mycobacteriology".

§ 493.1804 [Corrected]

2. On page 7237, column three, in § 493.1804(c)(1), "in lieu of the principal sanctions" is corrected to read "in lieu of, or in addition to principal sanctions".

§ 493.1809 [Corrected]

3. On page 7238, column two, in § 493.1809, "meets CLIA conditions." is corrected to read "has a CLIA certificate or is licensed by a State whose licensure program has been approved by the Secretary under this part."

§ 493.1826 [Corrected]

4. On page 7239, column three, in § 493.1826(a)(1)(ii), "Chooses to agree" is corrected to read "Agrees".

§ 493.1834 [Corrected]

5. On page 7240, column two, in § 493.1834(b), "civil money penalty in lieu of" is corrected to read "civil money penalty in lieu of, or in addition to".

§ 493.1844 [Corrected]

6. On page 7242, column two, in § 493.1844(c)(1), "subparts G through O" is corrected to read "subparts H, J, K, M, P, and Q".

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–18966 Filed 8–10–92; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 520, 550, and 580

[Docket No. 92–26]

Filing of Tariffs by Terminal Barge Operators in Pacific Slope States

AGENCY: Fedeal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission removes 46 CFR part 520, Filing of Tariffs by Terminal Barge

Operators in Pacific Slope State, and amends 46 CFR parts 550 and 580 to exempt certain marine terminal barge operators from the tariff filing requirements of the Shipping Act, 1916, and the Shipping Act of 1984, inasmuch as such filing requirements have become obsolete.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") administers, *inter alia*, section 3 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 804 ("Section 3"). Section 3 requires the filing of tariffs by certain terminal barge operators in Pacific Slope States.[1] Section 3 was added to the 1916 Act to clarify the jurisdictional roles of the Commission and the Interstate Commerce Commission concerning barge movements on one particular inland waterway.

The Commission's regulations implementing section 3 are at 46 CFR part 520. In general terms, section 3 and these regulations require tariffs to be filed by terminal barge operators in Pacific Slope States moving containers or containerized cargo between points in the United States, on the one hand, and points in foreign countries or non-contiguous political jurisdictions of the United States, on the other.

Part 520 has been in effect since 1975. There is, however, no record of any recent filing of tariffs thereunder.

The Commission initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on June 4, 1992 (57 FR 23564). The NPR solicited comments on a proposal to remove 46 CFR part 520 and to provide terminal barge operators who may be subject to Section 3 an exemption under 46 CFR Parts 550 and 580 from the tariff filing requirments of the 1916 Act, and the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.*[2] No comments were received on the NPR.

Section 35 of the 1916 Act, 46 U.S.C. app. 833a, and section 16 of the 1984 Act, 46 U.S.C. app. 1715, provide that the Commission may by order or rule exempt for the future any specified activity of persons subject to the 1916 Act or the 1984 Act from any requirement of the 1916 Act, the 1984 Act, or the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 *et seq.*, where the Commission finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition (1984 Act only) or be determinal to commerce. The Commisson finds that the exemptions provided for in the proposed ruie will meet these criteria.

The Commission is therefore adopting the proposed rule as its final rule in this matter and is thus removing Part 520 and amending 46 CFR parts 550 and 580 to exempt terminal barge operators in Pacific Slope States from filing tariffs for the services provided under the conditions set forth in section 3.[3]

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. The final rule provides for an exemption from a filing requirement that appears to have become obsolete.

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 520

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 580

Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers, Rates; Reporting and recordkeeping requirements; Surety bonds; Water carriers; Water transportation.

Therefore, pursuant to 5 U.S.C. 553; sections 3, 18(a) and 43 of the Shipping Act, 1916, 46 U.S.C. app. 804, 817(a) and 841a; section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; and sections 8, 10, 11, 12, 13, 17 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1709, 1710, 1711, 1712, 1716 and 1722; the Commission renames part 520, and amends parts 550 and 580 of Title 46 of the Code of Federal Regulations as follows:

PART 520—[REMOVED]

1. Part 520 is removed.

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. Section 550.1(a)(9) is added to read as follows:

§ 550.1 Exemptions.

(a) * * *

(10) Transportation provided by terminal barge operators in Pacific Slope

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[1] Section 3 provides, in pertinent part:

Notwithstanding part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 et seq.), or any other provision of law, rates and charges for the barging and airfreighting of containers and containerized cargo by barge between points in the United States, shall be filed solely with the Federal Maritime Commission in accordance with rules and regulations promulgated by the Commission where (a) the cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States, (b) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading, (c) such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of the date of enactment thereof, and (d) such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service. The terminal operator providing such services shall be subject to the provisions of the Shipping Act, 1916.

[2] The Commission's regulations for the filing of tariffs in the domestic offshore commerce of the United States are at 46 CFR 550, while the regulations for tariffs in the foreign commerce are at 46 CFR 580.

[3] In the near future this final rule will be incorporated into new Part 514, which, when finalized, will provide for the Automated Tariff Filing and Information system. See §§ 514.1(c)(3)(ii) and 514.3(a)(7) of the proposed rule of September 9, 1991, 56 FR 46055 and 46061.

States barging containers and containerized cargo by barge between points in the United States where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

* * * * *

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1722.

2. Section 580.1(c)(9) is added to read as follows:

§ 580.1 Exemptions and exclusions.

* * * * *

(c) * * *

(9) Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–19015 Filed 8–10–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–140, FCC 92–351]

Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; deferral of effective date.

SUMMARY: This action defers the effective date of the rule changes in the Report and Order in MM Docket No. 91–140, 57 FR 18089 (April 29, 1992). Various parties requested that the effective date adopted in the Report and Order be deferred or stayed for 60 days or pending action on petitions for reconsideration. The Commission agrees with the parties' contention that it could be disruptive to the industry and the public for the new rules to take effect before reconsideration has been completed. Therefore, the August 1, 1992 effective date of rules adopted in the Report and Order is deferred pending action on the petitions for reconsideration.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jane Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order Deferring Effective Date

Adopted: July 30, 1992.

Released: July 30, 1992.

By the Commission:

1. On April 10, 1992, the Commission released a Report and Order in the above captioned proceeding. Various parties, including Nashville Partners, L.P., National Association of Black Owned Broadcasters, National Black Media Coalition, Telecommunications Research and Action Center, and KVEN Broadcasting Corporation have requested that the effective date of the rule changes adopted in that Report and Order be deferred or stayed for 60 days or pending action on petitions for reconsideration.

2. We agree with the parties' contention that it could be disruptive to the industry and the public for the new rules to take effect before reconsideration has been completed. Good cause accordingly exists for delaying the effective date of the new rules and the filing of applications for the acquisition of stations that could be granted only under the new rules. To achieve the earliest possible benefits from the new rules, we intend to act promptly on the petitions for reconsideration.

3. Accordingly, *it is ordered*, That the August 1, 1992, effective date of the rules adopted in the Report and Order in Docket 91–140, 7 FCC Rcd 1755 (1992), is deferred pending action on the petitions for reconsideration of that Report and Order.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18951 Filed 8–10–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte No. MC–200]

Special Transportation Arrangements for Passengers With Disabilities; National Bus Traffic Association, Inc., Petition for Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules, removing regulations governing transportation of passengers with disabilities that have been rendered obsolete by enactment of the Americans with Disabilities Act (ADA).

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610 or James L. Brown (202) 927–5303. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On November 5, 1991 (56 FR 56490), the Commission published a proposed rule in this proceeding. The Commission's decision contains additional information. To obtain a copy of the decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services: (202) 927–5721.]

Environmental and Energy Consideration

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We certify that this action will have no significant negative impact on small

businesses and other small organizations. All significant burdens relevant to this action are imposed by statute in the ADA (Pub. L. 101–336). This action eliminates conflicting, obsolete, and redundant regulations, dealing with matters now within the jurisdiction of the U.S. Department of Justice and the U.S. Department of Transportation.

List of Subjects in 49 CFR Part 1063

Aged, Blind, Buses, Handicapped, Motor carriers.

Decided: July 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioner Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1063, of the Code of Federal Regulations, is amended as follows:

PART 1063—ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

1. The authority citation for part 1063 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559 and 49 U.S.C. 10102, 10321, 10701, 10702–10705, 10708, 10721, 10722, 10723, 10724, 10730, 10741, 10761, 10762, 10764, 10922, 11101, 11141–11145, 11701, 11702, 11707, 11708, 11901, 11904, 11906, 11909, 11910, and 11914.

2. Section 1063.8 is revised to read as follows:

§ 1063.8 Transportation of passengers with disabilities.

Service provided by a carrier to passengers with disabilities is governed by the provisions of 42 U.S.C. 11201 *et seq.*, and regulations promulgated thereunder by the Secretary of Transportation (49 CFR parts 27, 37, and 38) and the Attorney General (28 CFR part 36), incorporating the guidelines established by the Architectural and Transportation Barriers Compliance Board (36 CFR part 1191).

[FR Doc. 92–19051 Filed 8–10–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412–2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the recreational salmon fishery in the three subareas from Cape Alava, Washington, to Cape Falcon, Oregon, will be open from 0 to 200 miles off shore beginning August 2, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined that the preseason area restrictions (open only inside 6 miles between Cape Alava and Leadbetter Point, Washington, and open only inside 3 miles between Leadbetter Point, Washington, and Cape Falcon, Oregon) should be rescinded because the preseason objectives of dampening catch rates to extend the fishing season have been met. These adjustments are intended to provide additional fishing opportunity to recreational fishermen and maximize the harvest of chinook and coho salmon without exceeding the ocean share allocated to the recreational fishery in these subareas.

DATES: Effective at 0001 hours local time, August 2, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 26, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Willilam L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery in the three subareas between Cape Alava, Washington, and Cape Falcon, Oregon, would be subject to the following area restrictions: (1) From Cape Alava to the Queets River, Washington, open only inside 6 miles, (2) from the Queets River to Leadbetter Point, Washington, open only inside 6 miles, and (3) from Leadbetter Point, Washington, to Cape Falcon, Oregon, open only inside 3 miles.

Based on the best available information through July 26, 1992, recreational catches as percentages of the quotas are as follows: 23.2% of the overall chinook salmon quota north of Cape Falcon; for the Cape Alava to Queets River subarea—30.9% of the subarea quota; for the Queets River to Leadbetter Point subarea—19.6% of the subarea quota; and for the Leadbetter Point to Cape Falcon subarea quota—63.2% of the subarea quota. The preseason objectives for implementing the area closures included reducing catch per unit of effort and extending the fishing season for as long as possible. Recreational fishing representatives expressed their concerns that these objectives have been met and that additional fishing opportunity should be provided to recreational fishermen to increase access to coho and chinook salmon thereby maximizing the harvest of the remaining quotas. Therefore, the recreational fishery in the three subareas from Cape Alava, Washington, to Cape Falcon, Oregon, will be open from 0 to 200 miles off shore effective 0001 hours local time, August 2, 1992. Modifications of boundaries and closed areas are authorized by regulations at 50 CFR 661.21(b)(1)(v). All other restrictions that apply to this fishery remain in effect as announced in the notice of 1992 management measures (57 FR 19388), including the closure of

Conservation Zone 1 at the Columbia River mouth.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fisherman of this action was given prior to 0001 hours local time, August 2, 1992, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and wildlife regarding these adjustments affecting the recreational fishery between Cape Alava and Cape Falcon. The States of Washington and Oregon will manage the recreational fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This action does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19016 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 911176–2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting the directed fishery for groundfish by vessels using trawl gear, except for pollock with pelagic trawl gear, in the Gulf of Alaska (GOA). This action is necessary because the third seasonal allocation of Pacific halibut prohibited species catch (PSC) established for trawl gear in the GOA has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), August 5, 1992, until 12 noon, A.l.t., September 30, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone of the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final notice of 1992 initial specifications for the GOA (57 FR 2844, January 24, 1992) established the 1992 Pacific halibut PSC limit for trawl gear at 2,000 metric tons (mt) and set seasonal allocations as follows:

First—January 1 through March 31—600 mt;
Second—April 1 through June 30—600 mt;
Third—July 1 through September 29—400 mt; and
Fourth—September 30 through December 31—400 mt

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(i), that trawl vessels in the GOA have caught the third seasonal bycatch of Pacific halibut. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear, except for pollock with pelagic trawl gear when that directed fishery is open, in the GOA from 12 noon, A.l.t., August 5, 1992, through 12 noon, A.l.t., September 30, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: August 5, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18969 Filed 8–5–92; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date; correction.

SUMMARY: NMFS corrects an error in the preamble to the extension of the emergency interim rule, which extends for another 90 days the effective date of the emergency interim rule to allocate Pacific whiting between vessels that deliver to shoreside and to at-sea processors, published July 21, 1992 (57 FR 32181).

FOR FURTHER INFORMATION CONTACT: Robert Gorrell at 301–713–2341.

SUPPLEMENTARY INFORMATION: In the emergency rule extension document 92–17113 beginning on page 31281 in the issue of Tuesday, July 21, 1992, make the following correction:

On page 32181, in the third column, under the heading **"DATES"**, on the second line, "October 19" should read "October 14".

Dated: July 31, 1992.

Joe P. Clem,

Acting Director of Office, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–18990 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM92-9-000]

Regulations Governing Blanket Marketer Sales Certificates

August 3, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes a rule that would issue blanket certificates of public convenience and necessity authorizing jurisdictional gas sales for resale at market negotiated rates to all persons who are not interstate pipelines. The authorization granted by this rule will become effective for an affiliated marketer when its affiliated pipeline's Order No. 636 compliance filing is approved by the Commission.

DATES: Comments must be in writing and received by the Secretary of the Commission on or before September 24, 1992. Commenters should file an original and fourteen copies.

ADDRESSES: All filings should refer to Docket No. RM92-9-00 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Gollomp, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 9 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing a rule that would issue blanket certificates of public convenience and necessity authorizing jurisdictional gas sales for resale at market negotiated rates, with pregranted abandonment, to all persons who are not interstate pipelines. The proposed rule would complement the regulations recently promulgated by the Commission's Order No. 636,[1] further fostering a competitive market where merchants of natural gas are influenced by market forces. In addition, the proposed rule advances those objectives previously delineated by the Commission in orders granting marketing certificates, *e.g.*, facilitating the sale of surplus gas that might otherwise be shut-in; giving natural gas producers broader access to markets; increasing pipeline throughput; and providing potential buyers with alternative supply sources.[2]

In Order No. 636 the Commission asserted that one of the purposes of that rule was "to enable the [open-access interstate] pipelines to compete directly with *other gas sellers* on the same terms at prices determined in a competitive market." [3] The Commission found that the "promotion of competition among gas suppliers will benefit all gas consumers and the nation by 'ensur[ing] an adequate and reliable supply of [clean and abundant] natural gas at the lowest reasonable price'." [4] To that end, Order No. 636 issues "pipelines holding a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations, or performing transportation under Subpart B, a blanket certificate authorizing firm and interruptible sales for resale * * * at prices determined in competitive market." [5]

While Order No. 636 spoke to the restructuring of the natural gas industry as a whole, its provisions pertain specifically to open-access interstate pipelines. The rule proposed in this notice concerns the "other gas sellers" alluded to above. In issuing blanket sales certificates as proposed in this notice, the Commission will place gas merchants who are not interstate pipelines on an equal footing with the interstate pipeline merchants afforded blanket sales certificates pursuant to Order No. 636. Thus, the goal of the proposed rule—in conjunction with the regulations promulgated in Order No. 636—is to provide the "level playing field" for all merchants of natural gas that the Commission continually strives to promote. Further, and most importantly, the proposed rule will foster a truly competitive national wellhead market in which purchasers of natural gas will have access to multiple sources of natural gas and the opportunity to make gas purchasing decisions in accord with market conditions. In Order No. 636-A, addressed contemporaneously herewith in Docket No. RM91-11-002 *et al.*, we reaffirmed, *inter alia*, that our "policy of relying, to the maximum extent possible, on competitive market forces to balance the supply and demand for natural gas at reasonable prices should be extended to all sales markets." [6] That policy is

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[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992).

[2] See footnotes 13-16, *infra*.

[3] Order No. 636, 57 FR 13267, at 13295 (emphasis added).

[4] *Id.*, at 13268 (citing S. Rep. No. 39, 101st Cong., 1st Sess., at p. 1 (1989) and H.R. Rep. No. 29, 101st Cong., 1st Sess., at p. 2 (1989).

[5] *Id.*, at 13295.

[6] Order No. 636-A, Slip Op. at page 252.

equally tenable in this Notice of Proposed Rulemaking and forms the basis of our proposal to issue the subject certificates authorizing sales of natural gas at market negotiated rates.

The proposed rule's blanket certificates would be limited jurisdiction certificates, which would not subject the holders of such certificates to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of transactions under the certificate.

II. Background

On April 8, 1992, the Commission issued Order No. 636. The conditions and circumstances leading to the Commission's adoption of Order No. 636 are the same ones prompting the Commission's actions herein. Because this background was comprehensively laid out in the Preamble to Order No. 636, it will not be repeated verbatim in this notice, except to the extent it specifically relates to the marketing of natural gas. However, suffice it to say that Order No. 636—upon its implementation—will fundamentally change the natural gas industry by causing open-access pipelines to unbundle their sales service from their transportation services such that the open-access interstate pipelines' role in the industry will be distinctly two-fold: that of a merchant of natural gas and of a transporter of natural gas. This dichotomy of roles on the part of the pipelines creates a wholly distinct industry as to interstate gas sales for resale.

That facet of the natural gas industry involving the marketing of gas for resale—and the Commission's issuance of certificates authorizing such sales—has burgeoned due, in part, to (1) the Federal court holding in *Maryland People's Counsel* v. *F.E.R.C.*,[7] (2) the issuance of Order No. 436,[8] and (3) the advent and increased use of new gas sources,[9] *e.g.*, imported natural gas and liquefied natural gas.

In *Maryland People's Counsel*, the court rendered invalid the basis for the Commission's authorization of "special marketing programs" (SMP). In general terms, these programs entailed an agreement by a pipeline and its producers to amend high-priced gas purchase contracts entered into by the parties prior to the NGPA's partial wellhead decontrol.[9] These agreements permitted producers to sell committed gas elsewhere at current market prices. In return, the pipeline would receive a credit against its purchase obligations, thus providing the pipeline with a measure of "take-or-pay" relief.[10] The problem with these programs, as the court viewed them, was the discriminatory and anti-competitive component of the SMP which provided for the exclusion of the pipeline's "core market" from the category of authorized purchasers of released gas under the SMP.

Subsequent to *Maryland People's Counsel*, the Commission issued the first marketing certificate resembling the currently effective marketing certificates in *Tenneco Oil Company, et al.*[11] The Commission issued this post-*Maryland People's Counsel* marketing certificate to be consistent with the then new Order No. 436 and its nondiscriminatory, open access provisions.

As was pointed out in Order No. 636, Order No. 436 succeeded in developing "an active and viable spot market" for gas and facilitating the transformation of the pipelines' role "from primarily merchants of natural gas * * * to both merchants of natural gas and nondiscriminatory transporters of natural gas owned by others."[12] By affording non-pipeline merchants of gas open access to transportation service on pipelines holding blanket certificates, Order No. 436 brought about an increase in the number of entities seeking authorization to market gas. Also, with the rise of gas imports and use of LNG peak shaving facilities came the demand for certificate authorization to cover the resale of these additional resources.

The Present Status of the Commission's Marketing Authorizations

In issuing marketing certificates pursuant to section 7 of the Natural Gas Act (NGA) in response to individual applications for certificates, the Commission has, heretofore, specifically tailored such authorizations to the marketers' request. Therefore, the marketing certificate authorizations have been characterized by the specific types of natural gas sought to be sold. These categories of gas include (1) imported gas including liquefied natural gas (LNG),[13] (2) surplus gas sold by interstate pipelines on an interruptible basis (ISS gas),[14] (3) gas purchased from intrastate pipelines and local distribution companies (LDC),[15] (4) gas purchased from interstate pipelines under case specific authorizations,[16] and (5) gas purchased from industrial and congeneration facilities.[17]

In most cases the Commission issued authority to sell "all Natural Gas Policy Act (NGPA) categories of gas subject to the Commission's NGA jurisdiction."[18] This broad category of gas refers to gas which is currently subject to Title I of the Natural Gas Policy Act of 1978 (NGPA) and which has not been removed from the Commission's NGA jurisdiction by section 601 of the NGPA.[19] Briefly stated, the NGPA removed from the Commission's NGA jurisdiction certain categories of wholesale gas. While creating statutory rates for other categories of wholesale gas. Collectively, these wholesale transactions are labeled in section 2(21) of the NGPA as "first sales" and, generally, refer to gas sale[s] that occur prior to a pipeline's receipt of said gas. However, pursuant to the Natural Gas Wellhead Decontrol Act of 1989, all remaining "first sales" of gas subject to the NGA will be exempted from price controls by January 1, 1993.[20]

III. Proposed Rule

As reflected above, the Commission's case specific treatment of marketing certificates offers an array of jurisdictional gas categories that has the effect—from a regulatory perspective (in

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[7] 761 F.2d 768 (D.C. Cir. 1985).

[8] Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (October 18, 1985), FERC Stats. & Regs. (Regulations preambles 1982–1985) ¶ 30,665 (1985), *vacated and remanded*, Associated Gas Distributors v. FERC, 824 F. 2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. & Regs. (Regulations Preambles, 1986–1990) ¶ 30,761 (1987), *remanded*, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52344 (Dec. 21, 1989), FERC Stats. & Regs. (Regulations preambles, 1986–1990) ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990 FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,880 (1990), *aff'd in part and remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[9] For examples of SMPs see Yankee Resources, Inc., 30 FERC ¶ 61,201 (1985); Tenneco Oil Company, *et al.*, 28 FERC ¶ 61,383 (1984).

[10] Yankee Resources, 30 FERC ¶ 61,201, at p. 61,405.

[11] 33 FERC ¶ 61,134 (1985).

[12] Order No. 636, 57 FR at 13271.

[13] See Salmon Resources Ltd., *et al.*, 50 FERC ¶ 61,101 (1990), *rehg denied* 51 FERC ¶ 61,148 (1990); Pan National Gas Sales, Inc., 49 FERC ¶ 61,199 (1989).

[14] See ANR Supply Company, *et al.*, 50 FERC ¶ 61,422 (1990); Vesta Energy Company, 53 FERC ¶ 61,242 (1990).

[15] See LaSER Marketing Company, *et al.*, 54 FERC ¶ 61,362 (1991).

[16] See Providence Gas Company and Prov Energy Investments, Ltd., *et al.*, 57 FERC ¶ 61,102 (1991).

[17] See Western Gas Marketing, Inc., *et al.*, 58 FERC ¶ 61,365 (1992).

[18] See Entrade Corporation, *et al.*, 38 FERC ¶ 61,344 (1987).

[19] 15 U.S.C. 3301–3432.

[20] Natural Gas Wellhead Decontrol Act of 1989, Public Law No. 101–60, 103 Stat. 157 (1989).

the Order No. 636 era)—of creating an unnecessary index of authorizations. Therefore, to simplify the regulatory scheme for gas sales, the proposed rule will unify the categories of gas subject to the marketing certificates and refer to them as "all gas subject to the Commission's jurisdiction." [21]

In addition to the various categories of gas subject to the marketing certificate authorizations, the applicants for marketing certificates have also been varied and have included end-users; local distribution companies (LDC); intrastate pipelines; affiliates of end-users, LDCs, or intrastate pipelines; producers, and marketers. The proposed rule will unify this group of applicants under the generic heading of "all persons who are not natural gas interstate pipelines." Because the proposed rule provides that affiliated marketers will receive their blanket certificates contingent upon their affiliated pipelines coming into full compliance with Order No. 636, marketers who are affiliated with non-open access interstate pipelines not subject to Order No. 636 are removed from the class of persons eligible for blanket marketer certificates issued by this proposed rule.

Of particular note in the proposed rule is the removal of the Commission's distinction between those marketers affiliated with open access interstate pipelines and independent or nonaffiliated marketers. The Commission's practice has been to limit the term of the affiliated marketers' blanket certificates to one year or eighteen months in order to enable the Commission to periodically review the pipeline-marketing affiliate relationship to detect anticompetitive practices. The term limitation on marketing affiliate certificates stemmed from the Commission's pre-Order No. 636 concern that pipelines affiliated with marketers would afford these marketers an undue preference in terms of transportation service.[22] Similarly, the Commission was concerned that the affiliated marketer could favor its affiliated interstate pipeline(s) by giving gas sales preferences to purchasers who would utilize the pipeline's transportation service.[23] In both scenarios, the Commission's concern was that a pipeline and its marketing affiliate could act in concert to benefit the corporate whole, and in so doing, would invoke discriminatory practices proscribed by Commission regulations.

Another concern which gave rise to the rate restrictions imposed on affiliated marketers by the Commission was that prior to Order No. 636's directive to issue complying pipelines blanket certificates for firm and interruptible sales service, the principle vehicle through which pipelines could market gas was the so-called ISS certificates [24]—which are to be supplanted by the aforementioned blanket certificates.[25] ISS certificates authorized a pipeline to make interruptible sales for resale of surplus system supply subject to Commission imposed rate restrictions. In the various marketing certificates, the Commission authorized affiliated marketers to sell ISS gas purchased from nonaffiliated pipelines without rate restrictions but required that sales of gas purchased from their affiliated pipelines be made at the price the marketer paid for the gas.[26] Thus, the pipeline would be prevented from circumventing the rate restrictions placed on its ISS certificate by merely creating a marketing "alter ego" which could tack on an additional cost for the gas without any corresponding benefit to the customers. Limiting the term of the affiliated marketer certificates enabled the Commission to periodically review the practices of the marketer to ensure that anticompetitive activities described above did not occur. However, the implementation by a pipeline of Order No. 636 will eviscerate these concerns regarding the potential for anti-competitive practices on the part of pipelines and their affiliated marketers because complying pipelines will be issued blanket sales certificates to effectuate firm and interruptible sales at market based rates. By removing the Commission's sales restrictions and authorizing open access interstate pipelines to make sales for resale in the same competitive manner as its affiliated marketer, the potential for anticompetitive practices with respect to the sale of gas is removed.

On June 16, 1992, the Commission issued two orders concerning marketing authorizations: *O&R Energy, Inc. et al.*, 59 FERC ¶ 61,318 (1992), and *New England Power Company and The Narragansett Electric Company et al.*, 59 FERC ¶ 61,317 (1992). These orders—which either issued, extended, or amended marketing authorizations—pertained to marketers (both affiliated and nonaffiliated), end-users, LDCs, intrastate pipelines, and affiliates thereof. In contemplation of full implementation of Order No. 636 by the fall of 1993, the aforementioned certificate authorizations for marketers who are LDCs, intrastate pipelines, or end-users and who are not affiliated with open access interstate pipelines were limited to a term ending September 30, 1993, at which time the certificates will automatically convert to unlimited term certificates, unless the Commission establishes a new term limitation on or before September 30, 1993. With regard to marketers affiliated with open access interstate pipelines, the certificate authorizations were limited to a term the earlier of September 30, 1993 or the effective date of the affiliated interstate pipeline's compliance filing pursuant to Order No. 636. This term limitation does not conflict with the proposed regulations set forth herein because upon effectiveness of this rule, all prior marketing authorizations will be supplanted. This proposed rule will be effective as to affiliated marketers when their affiliated pipelines come into full compliance with Order No. 636.

IV. Environmental Analysis

Commission regulations require that an Environmental Assessment or an Environmental Impact Statement be prepared for any Commission action that any have a significant adverse effect on the human environment.[27] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[28] The subject action here will not have a significant adverse impact on the human environment and falls within the categorical exemption provided in the Commission's regulations for sales of natural gas that require no construction of facilities.[29] Therefore, an

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[21] We note that on July 16, 1992, the Commission issued Order No. 543, Regulations Government Vehicular Natural Gas, 60 FERC ¶ 61,052 (1992). Order No. 543 issued generic blanket certificates authorizing the sale of Vehicular Natural Gas (VNG) for resale in interstate commerce. A final rule in the instant proceeding, together with the sales certificates issued pursuant to Order No. 636, would, in large measure, subsume the authorization issued in Order No. 543. However, codifications relevant specifically to VNG are only addressed in Order No. 543.

[22] Western Gas, 58 FERC ¶ 61,385, at p. 62,253.

[23] Enron Gas Marketing, Inc., 57 FERC ¶ 61,257, at p. 61,804 (1991).

[24] See, *e.g.*, Northern Natural Gas Company, 42 FERC ¶ 61,303 (1988); Transwestern Pipeline Company, 43 FERC ¶ 61,240 (1988); CNG Transmission Corporation, 45 FERC ¶ 61,406 (1988).

[25] See Arkla Energy Resources, Inc. *et al.*, 59 FERC ¶ 61,173 (1992).

[26] See ANR Supply Company, *et al.*, 50 FERC ¶ 61,422 (1990).

[27] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783, *codified* at CFR Part 380.

[28] 18 CFR 380.4.

[29] 18 CFR 380.4(a)(27).

environmental assessment is unnecessary and will not be prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the Administrative Procedures Act [30] to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [31] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies, pursuant to the RFA, that the proposed rule would not have a "significant economic impact on a substantial number of small entities." [32] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm or burdens on small entities.

The Commission does not believe that this rule would have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities. This rule would (1) issue blanket certificates to market gas to all persons who are not interstate pipeline, thereby eliminating the necessity of such persons having to apply for case-specific marketing authority, and (2) would limit the Commission's jurisdiction over the holders of the certificates to the extent of their actions performed pursuant to these certificates.

In view of the nature of the proposals, the Commission concludes that there will not be a significant impact on a significant number of small entities.

VI. Information Collection Requirement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[33] However, this proposed rule contains no information collection requirements and therefore is not subject to OMB approval.

VII. Comment Procedures

The Commission invites all interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commentors may wish to discuss. An original and 14 copies of the written comments must be filed with the Commission on or before September 24, 1992. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM92–9–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, room 3104, 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 284

Continental Shelf, Natural Gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1131–1356.

2. In part 284, subpart L is added to read as follows:

Subpart L—Certain Sales for Resale by Non-Interstate Pipelines

Sec.
284.401 Definitions.
284.402 Blanket marketing certificates.

Subpart L—Certain Sales for Resale by Non-Interstate Pipelines

§ 284.401 Definitions.

(a) *Affiliated marketer.* For purposes of this subpart, an "affiliated marketer" is a person engaged in the "marketing" of natural gas that is an "affiliate" of an interstate pipeline as those terms are defined in § 161.2 of this chapter.

§ 284.402 Blanket marketing certificates.

(a) *Authorization.* Any person who is not an interstate pipeline is granted a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the certificate holder to make sales for resale at market negotiated rates in interstate commerce of any gas that is subject to the Commission's Natural Gas Act jurisdiction. A blanket certificate issued under subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of transactions under the certificate.

(b) The authorization granted in paragraph (a) of this section will become effective on [insert date that is 30 days after publication in the **Federal Register**] except as otherwise provided in paragraph (c) of this section.

(c) The authorization granted in paragraph (a) of this section will become effective for an affiliated marketer when its affiliated pipeline's compliance filing under § 284.14(b) is approved by the Commission. Should a marketer be affiliated with more than one pipeline, the authorization granted in paragraph (a) of this section will not be effective for transactions involving other affiliated interstate pipelines until such other pipelines' compliance filings under § 284.14(b) are approved by the Commission. The authorization granted in paragraph (a) of this section is not extended to affiliates of non-open access interstate pipelines.

(d) Abandonment of the sales service authorized in paragraph (a) of this section is authorized pursuant to section 7(b) of the Natural Gas Act upon the expiration of the contractual term or upon termination of each individual sales arrangement.

[FR Doc. 92–19018 Filed 8–10–92; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 6–2–5565; A–1–FRL–4193–4]

Approval and Promulgation of Air Quality Implementation Plans; Revision to the Virginia Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision amends the motor vehicle inspection and maintenance (I/M) Program. On March 9, 1987, EPA officially notified the Governor of the Commonwealth of Virginia that the Northern Virginia I/M program was not operating at a level that provided for achievement of the minimum emission reduction requirements (MERR) for hydrocarbons and carbon monoxide as required in the Virginia SIP. EPA

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[30] 5 U.S.C. 553.
[31] 5 U.S.C. 601–612.
[32] 5 U.S.C. 605(b).
[33] 5 CFR part 1320.

requested that the operating problems be corrected by developing and implementing a corrective action plan. In response, the Commonwealth significantly revised and improved the program by adopting new regulations for governing the I/M program operation and new emission analyzer specifications. These changes became effective on January 1, 1989. The intended effect of this action is to propose approval of the regulations that the Commonwealth has adopted in an effort to eliminate the I/M operating problems and to fulfill the I/M emission reduction commitments made in its currently approved Northern Virginia ozone attainment plan. This SIP revision was not submitted to satisfy the I/M requirements of the Clean Air Act Amendments of 1990. Virginia must make further amendments to its SIP to satisfy the Clean Air Act Amendments (CAAA) of 1990 requirements for I/M. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: Comments must be received on or before September 10, 1992. Public comments on this document are requested and will be considered before taking final action on this Inspection and Maintenance SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460; and Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond Virginia 23240.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 597–4554.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1989, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of Regulation VR 120–99–01, Regulation for the Control of Motor Vehicle Emissions; Regulation VR 120–99–02, Regulation for Vehicle Emission Control Program Analyzer Systems; and the Motor Vehicle Emissions Control Law. Also submitted as part of the revision was information concerning the Northern Virginia 1982 SIP emission reduction shortfall. On January 18, 1990, the Commonwealth formally requested that the portion of the submittal addressing the SIP shortfall be removed from the SIP revision.

Section 172(b)(11)(B) of the Clean Air Act required a motor vehicle I/M program as an element of the 1979 SIP revisions for major urban areas which required an extension beyond 1982 for attainment of the National Ambient Air Quality Standards (NAAQS) for ozone or carbon monoxide. The Commonwealth of Virginia requested an extension of the deadline beyond 1982 and consequently included I/M as an element in its 1979 SIP revision. This I/M program was implemented on December 11, 1981.

The Virginia program was audited by EPA in June of 1984. The audit revealed serious operating problems related to improper testing and excessive issuance of cost waivers. EPA determined that, based on the law failure rate of 2% and the high waiver rate of 32%, the program failed to meet the minimum level of performance originally required in the approved SIP. On March 9, 1987, EPA sent a letter to the Governor of Virginia requesting that a corrective action plan be developed and implemented to eliminate the operating problems.

The SIP revision which is the subject of today's rulemaking was not submitted to satisfy the Clean Air Act Amendments of 1990. The Virginia Department of Air Pollution Control is fully aware that revisions to the Commonwealth's SIP for I/M are required pursuant to the amended Clean Air Act. This revision was submitted on September 28, 1989 and serves to strengthen the current SIP. This revision in no way relieves the Commonwealth of the requirements of the 1990 Clean Air Act Amendments for I/M.

Evaluation of Submitted Revision

The House of Representatives Committee report on the 1977 Clean Air Act Amendments required I/M programs to meet minimum emission reduction requirements (MERR). The report identified MERR as the level of effectiveness of the New Jersey I/M program at the time. The New Jersey I/M program design included the following: a start year of 1983, a pre-1981 model year failure rate of 20%, a 20 model year coverage, a zero percent waiver rate for both pre and post 1981 model year vehicles, a compliance rate of 100%, an annual, centralized program design, coverage of light duty vehicles up to 6,000 pounds, and an idle test.

As specified in the January 22, 1981 (46 FR 7182) notice titled, "State Implementation Plans, Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension", EPA requires that the following elements be included as part of an I/M program in order to achieve the minimum emission reduction requirements:

(1) Inspection test procedures,
(2) Emissions standards,
(3) Inspection station licensing requirements,
(4) Emission analyzer specification and maintenance/calibration requirements,
(5) Recordkeeping and record submittal requirements,
(6) Quality control, audit, and surveillance procedures,
(7) Procedures to assure that noncomplying vehicles are not operated on public roads,
(8) Any other official program rules, regulations, and procedures,
(9) A public awareness plan, and
(10) A mechanics training program if additional emission reduction credits are being claimed for mechanics training.

In addition, as discussed in an EPA I/M policy memorandum dated July 17, 1978, all decentralized programs, of which Virginia is one, must also comply with the following requirements:

1. All official inspection facilities must be licensed. Provisions for the licensing of inspection facilities must insure that the facility has obtained, prior to licensing, analytical instrumentation which has been approved for use by the appropriate state, local, or regional government agency. A representative of the facility must have received instructions in the proper use of the instruments and in vehicle testing methods, and must have demonstrated proficiency in these methods. The facility must agree to maintain records and to submit to inspection of the facility. The appropriate government agency must have provisions for penalties for facilities which fail to follow prescribed procedures and for misconduct.

2. Records required to be maintained should include the description (make, year, license number, etc.) of each vehicle inspected, and its emissions test results. Records must also be maintained on the calibration of testing equipment.

3. Summaries of these inspection records should be submitted on a periodic basis to the governing agency for auditing.

4. The governing agency should inspect each facility periodically to check the facilities' records, check the

calibration of the testing equipment and observe that proper test procedures are followed.

5. The governing agency should have an effective program of unannounced/unscheduled inspections both as a routine measure and as a complaint investigation measure. It is also recommended that such inspections be used to check the correlation of instrument readings among inspection facilities.

6. The governing agency should operate a "referee" station where vehicle owners may obtain a valid test to compare to a test from a licensed station. At least one "referee" station must be present in each I/M metropolitan area.

A summary of the major changes made to the Virginia I/M program to fulfill the above listed requirements can be found in the technical support document (TSD) related to this action. A copy of that TSD may be obtained, upon request, from the EPA Regional Office listed in the **ADDRESSEES** section of this notice. In addition, the TSD contains the results of EPA's MOBILE4 analyses which demonstrate that the program meets MERR. As for making up the shortfall from the program that began in 1983, the carbon monoxide (CO) credits obtained from the 1989 program from 1989 to 1992 must be applied to make up the CO shortfall and the hydrocarbon (HC) credits obtained from 1989 to 1991 must be applied to make up the HC shortfall. Conseqently, these credits cannot be applied toward any future attainment demonstrations or toward meeting future I/M emission reduction requirements.

This revision to the Virginia SIP was adopted by the State Air Pollution Control Board on October 28, 1988 and April 28, 1989. As required by 40 CFR 51.102, the Commonwealth of Virginia has certified that, after adequate public Notice, on October 18, 1988, a public hearing was held in respect to this SIP revision.

EPA originally approved this SIP revision as a direct final rulemaking without prior proposal because the Agency viewed this as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the May 6, 1992 **Federal Register**. Notice of intent to submit adverse comment was submitted to EPA within the 30 day comment period provided in the direct final rule. A **Federal Register** notice is being issued elsewhere today withdrawing the final rule as published in the May 6, 1992 **Federal Register** and announcing the publication of this proposed action.

EPA is proposing to approve the Commonwealth of Virginia SIP revision amending the motor vehicle inspection and maintenance program, which was submitted on September 28, 1989. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA proposes to approve this revision to the Virginia SIP, which amends the Northern Virginia Motor Vehicle I/M program by adopting new regulations for governing the I/M program operation (Regulation VR 120–99–01) and new emission analyzer specifications (Regulation VR 120–99–02). This SIP submittal was not submitted to satisfy the Clean Air Act Amendments of 1990. The Virginia Department of Air Pollution Control is aware that further revisions to Virginia's SIP are necessary to meet the I/M requirements of the amended Clean Air Act. This revision was submitted on September 28, 1989 and serves to strengthen the current SIP, but in no way does it relieve the Commonwealth of the requirements set forth in the Clean Air Act Amendments of 1990.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision approving revisions to the Virginia I/M program will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K), 110(a)(3), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 23, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 92–19059 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[PA 2-5361; A-1-FRL-4192106]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Correction of Reasonably Available Control Technology Regulations for Certain Sources of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions make the changes required by section 182(a)(2)(A) of the Clean Air Act, as amended in 1990, pertaining to the correction of State volatile organic compound (VOC) regulations consistent with the EPA guidance provided in the Control Technique Guidelines (CTGs). The intended effect of this action is to propose approval of the revisions to the Pennsylvania SIP pertaining to gasoline marketing, recordkeeping, surface coating, graphic arts, deletion of the generic bubble regulation, seasonal operation of auxiliary incineration equipment, compliance schedules and synthesized pharmaceutical products. This action is being taken in accordance with the section 110 of the 1990 Clean Air Act Amendments (1990 CAAA).

DATES: Comments must be received on or before September 10, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Toxics, and Radiation Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air,

Toxics, and Radiation Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 2357, Executive House—2d & Chestnut Streets, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, (215) 597–9337.

SUPPLEMENTARY INFORMATION: On August 15, 1991, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). On May 26, 1988, EPA issued a SIP call to Pennsylvania notifying the State that its SIP was inadequate to assure attainment and maintenance of the primary National Ambient Air Quality Standard (NAAQS) for ozone. See 53 FR 34500 (September 7, 1988). In a June 14, 1988 follow-up letter, EPA notified Pennsylvania of deficiencies in its VOC regulations which needed to be corrected in order to make the regulations consistent with EPA policy and guidance. EPA issued an additional SIP call to Pennsylvania on November 8, 1989 which advised the State that additional counties failed to attain the NAAQS for ozone. See 55 FR 30973 (July 30, 1990). A SIP call is a finding made by EPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) in which EPA identifies a SIP to be inadequate to attain and maintain the NAAQS. The changes to the regulations submitted on August 15, 1991 represent Pennsylvania's partial response to EPA's 1988 and 1989 SIP calls. Although the 1988 and 1989 SIP calls were made prior to the 1990 CAAA, section 182(a)(2)(A) of the Clean Air Act as amended, 42 U.S.C. 7511(a)(2)(A), requires States to respond to pre-Amendment SIP calls which require the addition or correction of SIP provisions concerning reasonably available control technology (RACT).

The SIP revision under review consists of changes to 25 Pennsylvania Code chapters 121 and 129, pertaining to the regulation of VOC sources. Specifically, these changes are:

(1) The geographic expansion of the Stage I vapor recovery regulations and the removal of certain exemptions in the Stage I regulations (Section 129.61);

(2) Improved recordkeeping and a requirement that any alternative compliance methods not specified by the regulations must be approved by EPA as SIP revisions (Section 129.51);

(3) The removal of certain exemptions for bulk terminals and bulk plants (Sections 129.59 and 129.60, including the corresponding definitional changes in Section 121.1);

(4) The lowering of certain applicability levels for certain surface coating processes and expanded geographic applicability of the surface coating regulations (Section 129.52);

(5) Removal of the generic bubble provision (Section 129.53);

(6) The change in the regulation pertaining to the seasonal operation of incineration equipment (Section 129.54);

(7) Compliance schedules (Section 129.66);

(8) Graphic arts applicability levels (Section 129.67); and,

(9) The corrections to the regulation for the manufacture of synthesized pharmaceutical products (Section 129.68).

This submittal was part of a larger package which also included the definitions and emission standards for wood furniture coating. On October 11, 1991, EPA returned the wood furniture regulation portion of the package to Pennsylvania because adequate technical support had not been provided with the submittal and was, consequently, determined to be incomplete. Therefore, this notice addresses the August 15, 1991 submittal with the exception of the wood furniture regulations and applicable definitions.

Summary of the SIP Revisions

Section 129.61—Stage I Control

The regulations applicable to Stage I vapor recovery are changed to apply statewide. As part of the Ozone Transport Region established by Congress in the 1990 CAAA, Pennsylvania is required to adopt and implement RACT regulations, of which Stage I vapor recovery is a part, by November 15, 1992. In making the Stage I regulation effective statewide now, Pennsylvania is meeting its obligation earlier than mandated by the Act. In addition, the exemptions in this regulation are modified to be consistent with EPA Control Technique Guidelines (CTG) pertaining to Stage I vapor recovery. The old Pennsylvania exemption for facilities with annual throughput of less than 60,000 gallons is deleted and the exemption for stationary storage tanks with a capacity less than 2,000 gallons is limited to tanks installed before January 1, 1979. An exemption for stationary storage tanks with capacities less than 250 gallons installed after January 1, 1979 is added. A specific provision requiring that the dispensing delivery tank must remain vapor tight at all times is also added to this regulation. The accompanying technical support document discusses the EPA Stage I applicability requirements in more detail.

EPA has received some information from Pennsylvania Department of Environmental Resources (DER) regarding the feasibility of controlling vapors from gasoline tanks which are less than or equal to 2000 gallons in capacity. This information was generated by the Pennsylvania Petroleum Association (PPA) in a survey it conducted among its members. EPA has advised DER that additional information is needed in order for EPA to determine whether a higher tank size capacity applicability level for Stage I vapor recovery in Pennsylvania would be appropriate. Pennsylvania would be making such a demonstration under the "Five Percent Equivalency Rule". The 5% rule permits States to allow higher applicability levels for source regulations if it can be demonstrated that the sources being controlled between the proposed applicability level and CTG applicability level for that source category represents less than 5% of the total emissions of the sources in that source category.

If Pennsylvania desires to revise this regulation after reviewing the additional information requested by EPA, it may submit a further revision to 25 Pa. Code § 129.61 for SIP approval (after meeting the SIP submittal requirements). EPA will, however, continue the rulemaking process for the present regulation as it appears to comport with EPA guidance and has been submitted in response to a SIP call.

Section 129.51—General

The equivalency provision in this regulation now requires that compliance with the regulations may be achieved through alternative methods provided that the method is approved by Pennsylvania, the emissions are equal to or less than those which would have been allowed using the specified methods, all calculations are performed on a solids basis, capture efficiency and emissions testing are conducted in accordance with methods approved by EPA, adequate records are kept to determine compliance and all alternative compliance methods are approved by EPA through a SIP revision. Pennsylvania did not adopt the test methods for capture efficiency because they consider such compliance methodology to be an alternative to the emission standards in the SIP, which

would require EPA approval. The changes to the regulations are consistent with EPA guidance and address the concerns with recordkeeping and test methods raised in the 1988 SIP call.

Section 121.1—Definitions

The definitions of bulk terminal and bulk plant are modified to eliminate averaging to determine daily throughput. The regulation now requires that a facility with a daily throughput of 20,000 gallons or more of gasoline in any single day will be defined as a bulk gasoline terminal. Facilities which never exceed a daily throughout of less than 20,000 gallons of gasoline in any single day are defined as a bulk gasoline plant. Elimination of the averaging makes this regulation more enforceable since source and regulatory personnel can determine on the basis of any single day's throughout whether this regulation is applicable.

The definition of clear coat, applicable primarily to the miscellaneous metal parts and products regulations, is added to this section. The definition is consistent with that found in EPA's guidance documents and excludes those coatings which would be defined as extreme performance coatings.

Sections 129.59 and 129.60—Bulk Gasoline Terminals and Plants

A daily throughput recordkeeping requirement is added to each of these regulations, as required by EPA. The exemption for bulk gasoline plants with average daily throughputs of less than 12,000 gallons is reduced to 4,000 gallons, making it consistent with EPA's CTG for bulk gasoline plants. The only minor deviation from EPA's guidance is that regulation requires that the average throughput of 4000 gallons be determined as of January 1, 1987. Although EPA did not recommend that Pennsylvania establish a baseline date from which sources are to evaluate their emissions, this is acceptable. EPA agreed to allow Pennsylvania to use a baseline date because it was sufficiently historical so as to capture the majority of the target source population and because Pennsylvania had a detailed emissions inventory for the chosen year. The accompanying technical support document discusses this subject in more detail.

Section 129.52—Surface Coating Processes

Section 129.52(a) clearly establishes the applicability level for all surface coating processes (graphic arts processes are not included in this group) at 3 pounds (lbs) per hour, 15 lbs per day or 2.7 tons per year of VOC. Facilities which emit or have emitted this level of VOC emissions since January 1, 1987 and are located in Allegheny, Armstrong, Beaver, Bucks, Butler, Carbon, Chester, Delaware, Fayette, Lehigh, Montgomery, Northampton, Philadelphia, Washington or Westmoreland Counties must meet the emission standards in this regulation.

Section 129.52(b) is modified to require that the RACT emission standards be met either on a coating by coating basis or through add-on control equipment such that calculation of the required emission reduction is performed on a solids basis. VOC calculations which are not performed on a solids basis could give credit for VOC emission reductions which are not actually obtained. Solids-based calculations are those where the emission standard is converted to its equivalent solids based standard using the standard solvent density of 7.36 lbs/gallon and actual solvent densities of the coatings is used to determine the VOC content of the sources' coatings. The standard solvent density of 7.36 lbs/gallon was used by EPA when the surface coating and graphic arts CTGs were developed. Any compliance calculations, however, must use the sources' coatings' actual solvent densities. The equation in the Pennsylvania regulation which is to be used for sources which expect to comply with the applicable emission standard using an add-on control device is now a solids based equation and is acceptable to EPA. An additional recordkeeping requirement in this section requires all facilities, regardless of each facility's annual emissions, to keep records sufficient to determine applicability and compliance.

The emission standard under miscellaneous metal parts pertaining to topcoats for locomotives and heavy-duty trucks and the standard for hopper cars and tank car interiors is each reduced to the miscellaneous metal parts—extreme performance coating standard of 3.5 lbs. VOC/gallon coating less water. The coating properties required for coatings used to paint locomotives, heavy-duty trucks, hopper cars and tank car interiors are such that these coatings meet the definition of an extreme performance coating. The changes made to the emission standards for these sources are consistent with EPA's guidance documents on the appropriate coating limits for these kinds of sources.

Section 129.53—Generic Bubble Regulation

This regulation is deleted. Any alternative standards or methods of compliance must meet the requirements in § 129.51. See the discussion above regarding § 129.51.

Section 129.54—Seasonal Operation of Auxiliary Incineration Equipment

This regulation has been changed to limit the seasonal operation of auxiliary incineration equipment to those facilities using natural gas as the auxiliary fuel. The previous regulation had allowed all facilities using any kind of auxiliary fuel to obtain an exemption under this regulation. The modified regulation is now consistent with the EPA requirements.

Section 129.66—Compliance Schedules and Final Compliance Dates

This regulation generally requires that all affected sources must comply with the modified regulations immediately. Only those sources which became newly subject to the regulations because of lower applicability levels or more stringent emission standards would be allowed up to one year from the effective date of the Pennsylvania regulation (until August 3, 1992) to comply with the modified regulations. This regulation is consistent with EPA's policies interpreting the requirements of the Clean Air Act.

Section 129.67—Graphic Arts Systems

This regulation now clearly subjects all graphic arts sources which have the potential to emit or which had emitted 100 tons per year or more of VOC since January 1, 1987 to the requirements of Section 129.67. The definition of potential emissions was already in the Pennsylvania regulations and means the maximum emissions of the source in the absence of pollution control equipment. Graphic arts sources are defined as those which do rotogravure and/or flexographic printing. In addition, the requirements of the graphic arts regulation now prohibit a source from operating unless it meets one of several emission standards. In order to comply with the regulation, the source's applicable press inks may be waterborne inks which are defined as 25% or less VOC and 75% or more water by volume of the volatile fraction of the ink. Alternatively, the inks may be high-solids which is defined as 60% or more by volume of solid material. For sources which use add-on control equipment, the applicable emission standard is a 75% overall emission reduction for publication rotogravure presses, 65%

overall emission reduction for other rotogravure presses, and 60% overall emission reduction for flexographic presses. Each of these overall emission reduction requirements are reductions from the VOC input to the press, rather than an emission reduction from a historical baseline. Presses used to check product quality and which do not emit more than 400 pounds of VOC in a 30 day running period are exempt from this regulation. This regulation is consistent with EPA's CTG document for the graphic arts industry.

Section 129.68—Manufacture of Synthesized Pharmaceutical Products

This regulation is changed to require that the overall emission reduction from air dryers and production equipment exhaust be 90% rather than 85%. In addition, the 50 ton per year exemption is deleted. These changes are consistent with EPA's CTG document for the manufacture of synthesized pharmaceutical products.

EPA's Evaluation of the SIP Revision

The changes being made with this revision to the Pennsylvania SIP make significant improvements in the applicability and enforceability of the regulations. These changes, pertaining to Stage I vapor recovery, surface coating, graphic arts, recordkeeping, gasoline marketing, pharmaceutical products, and compliance schedules, are submitted by Pennsylvania in response to EPA's SIP calls. A detailed evaluation of these SIP revisions has been performed by EPA in a Technical Support Document (TSD) for this action. A copy of this TSD is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve the changes in the Pennsylvania VOC regulations, Chapters 121 and 129, pertaining to Stage I vapor recovery, surface coating, graphic arts, recordkeeping, gasoline marketing, pharmaceutical products, and compliance schedules because they are consistent with the 1990 Clean Air Act Amendments. These changes represent Pennsylvania's partial response to the May 26, 1988 and the November 8, 1989 SIP calls.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

This rulemaking action, proposing to approve changes to Chapters 121 and 129 of the Pennsylvania regulations pertaining to Stage I vapor recovery, surface coating, graphic arts, deletion of the generic hubble regulation, recordkeeping, gasoline marketing, pharmaceutical products, and compliance schedules, has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 100(a)(2)(A)–(K), 110(a)(3) and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: U.S.C. 7401–7671q.

Dated: June 26, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 92–19061 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 122

[FRL 4190–1]

RIN 2040–AA79

National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Industrial Activity on Indian Lands in Oregon and Water Quality Certification

AGENCY: Enironmental Protection Agency [EPA].

ACTION: Proposed rule and draft general NPDES permit.

SUMMARY: This document announces EPA-Region 10's proposal to issue a general National Pollutant Discharge Elimination System (NPDES) permit for facilities on Indian Lands in Oregon that discharge storm water associated with industrial activities, and a certification that the discharges will comply with section 401 of the Clean Water Act (CWA). This general permit, when issued, will authorize storm water discharges in accordance with the CWA section 402(p).

DATES: Written comments must be received by September 10, 1992. Persons wishing to request that a public hearing be held, may do so in writing, by September 10, 1992. A request for a public hearing shall state the nature of the issues to be raised as well as the requester's name, address, and telephone number.

ADDRESSES: The public should send an original and two copies of their comments on the general permit to Kevin Weiss, Permits Division [EN–336], Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This public record is located at EPA Headquarters, EPA Public Information Reference Unit, Rm. 2402, 401 M Street SW., Washington, DC 20460. A reasonable free may be charged for copying. Comments on EPA-Region 10's water quality 401 certification must be sent to Steve Bubnick, EPA-Region 10, Water Permits Section (WD-134), 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Jeanette Carriveau, EPA-Region 10, [206) 553–1214.

SUPPLEMENTARY INFORMATION: Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the CWA which requires EPA to develop a phased approach to regulating storm water discharges under the NPDES program. EPA published a final regulation on November 16, 1990 (55 FR 47990), establishing permit application

requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program.

On August 16, 1991 (59 FR 40948), EPA proposed a general permit to authorize the discharge of storm water associated with industrial activities in several states where EPA has permitting jurisdiction. EPA inadvertently omitted to include permit coverage for facilities on Indian lands in the state of Oregon. The purpose of this notice is to clarify EPA's intent to extend this permit to Indian lands in Oregon. Therefore, EPA incorporates all provisions of the draft general permit and accompanying fact sheet as published on August 16, 1991 (56 FR 40948). This notice is not soliciting additional comments on the general permit conditions, but rather on its application to Indian lands in Oregon.

EPA-Region 10 has certified pursuant to Section 401 of the CWA that the subject discharges will comply with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307.

Copies of the draft general permit are also available from EPA-Region 10.

Dated: July 22, 1992.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 92-18948 Filed 8-10-92; 8:45 am]

BILLING CODE 6560-60-M

ACTION

45 CFR Part 1224

Implementation of the Privacy Act of 1974

AGENCY: ACTION.

ACTION: Notice of proposed rulemaking.

SUMMARY: ACTION proposes to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a ("Privacy Act"), to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records to be exempted contains the investigative files of the Office of the Inspector General of ACTION.

DATE: Written comments must be received on or before September 10, 1992.

ADDRESS: Written comments should be sent to Thomas C. Buchanan, Counsel to the Inspector General, ACTION, 1100 Vermont Avenue, NW, Suite 12100, Washington, DC 20525. To ensure prompt attention, please indicate "Comments to Proposed Privacy Act Exemption" on the outside envelope.

FOR FURTHER INFORMATION CONTACT: Thomas C. Buchanan, Counsel to the Inspector General, at the above address, or by telephone at (202) 606-4804; or Edward F. Carey, Privacy Act Officer, ACTION, 1100 Vermont Avenue, NW, Suite 3200, Washington, DC 20525, (202) 606-5242.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 1991, ACTION, published a "Notice of Systems of Records" in the **Federal Register** (56 FR 67576). Included in this notice is system number "ACTION-15," the Office of the Inspector General Investigative Files. This system contains investigatory material pertaining to the enforcement of criminal laws and compiled for law enforcement purposes. ACTION proposes to exempt this system of records from specified provisions of the Privacy Act. (A clarification of one of the system's routine uses is provided in section III, below.)

II. Discussion of Proposed Exemption

Section (j)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), if the system of records is—

maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws * * * and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiles for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiles at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Section (k)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from sections 552a(c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f), if the system of records is "investigatory material compiled for law enforcement purposes."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Account for disclosures; permit individuals access to their records; permit individuals to request amendment to their records; collect information directly from the subject individual; publish information in the **Federal Register** about access to records; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigation.

The Office of the Inspector General Investigative Files contain information of the type described in the above mentioned exemptions to the Privacy Act. The Inspector General Act of 1978, as amended, 5 U.S.C. app. 3, authorizes the Inspector General of ACTION to conduct investigations to detect fraud and abuse in the programs and operations of ACTION and to assist in the prosecution of participants in such fraud or abuse. The Office of the Inspector General of ACTION maintains information in this system of records pursuant to its law enforcement and criminal investigation functions. Exemptions under section 552a(j)(2) and (k)(2) are necessary to maintain the integrity and confidentiality of the investigative files and to protect individuals from harm. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations. Knowledge of such investigations also could enable subjects of the investigation to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses, investigative personnel, or their families The imposition of certain restrictions on the manner in which information is collected, verified, or retained could significantly impede the effectiveness of

the investigations of the Office of the Inspector General and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Section 1224.1–14 of the ACTION regulations (45 CFR part 1224) previously was promulgated to exempt various investigatory records from certain requirements of the Privacy Act. In connection with the establishment of the system of records containing the Office of the Inspector General Investigative Files, ACTION proposes to amend Part 1224 by adding a new section, 45 CFR 1224.1–19, Inspector General Exemptions, pursuant to section 552a(j)(2) and (k)(2) of the Privacy Act.

III. Clarification of Routine Use

In the December 31, 1991, **Federal Register** notice, the Systems of Records for the Office of the Inspector General Investigative Files listed as one of its routine uses "Referral to Federal, state, local and professional licensing authorities * * *." This is not intended to permit, in every instance, disclosure of investigative files to Governmental and professional licensing authorities conducting background investigations of employees who may have been the subject of an Inspector General investigation. In instances where the Inspector General investigation has not substantiated the allegations against the individual, or where no criminal prosecution or administrative action was taken against the individual, fundamental fairness would dictate that the record not be identified or released to the licensing authority without the subject's knowledge and prior written permission. (In such situations, the individual may not even be aware that an Inspector General investigation was conducted.)

The Inspector General must be free, of course, to advise cognizant licensing authorities when an investigation reveals conduct that impugns the honesty, integrity, or professional competence of a licensed individual. (*See*, e.g., Rule 8.3 of the American Bar Association Model Rules of Professional Conduct.) In such instances, however, the Inspector General will advise the individual of disclosure concurrent with such information release.

IV. Regulatory Flexibility Act; Executive Order 12291

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Director of ACTION certifies that the amendments to part 1224 will not, if adopted, have a significant impact on a substantial number of small entities. The Director further finds that the proposed rules is not a "major rule" under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more.

List of Subjects in 45 CFR Part 1224

Privacy, reporting and recordkeeping requirements.

For the reasons stated in the preamble, chapter XII, subtitle B, title 45, Code of Federal Regulations, is proposed to be amended as follows:

PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 1224 continues to read as follows:

Authority: Pub. L. 93–579, 5 U.S.C. 552a

2. Section 1224.1–19 is added to read as follows:

§ 1224.1–19 Inspector General exemptions.

Pursuant to sections (j) and (k) of the Privacy Act of 1974, ACTION has promulgated the following exemptions to specified provisions of the Privacy Act:

(a) Pursuant to, and limited by, 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to, and limited by, 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and 45 CFR 1224.1–12, 1224.1–13, 1224.1–15, 1224.1–16, 1224.1–17, and 1224.1–18, insofar as it contains investigatory materials compiled for law enforcement purposes.

Dated: July 24, 1992.

Mary Jane Maddox,

Acting Director, ACTION.

[FR Doc. 92–19029 Filed 8–10–92; 8:45 am]

BILLING CODE 6050–28–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

Below 1 GHz LEO Negotiated Rulemaking Committee

August 4, 1992.

AGENCY: Federal Communications Commission.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public law 92–463, as amended, this notice advises interested persons of the second and third meetings of the Below 1 GHz LEO Negotiated Rulemaking Committee (11Committee"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: August 18, 1992 at 9:30 a.m.—August 24, 1992 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Federal Communications Commission, at (202) 634–1817.

SUPPLEMENTARY INFORMATION: The agenda for the second meeting of the Committee is as follows:

1. Approval of agenda.
2. Opening remarks.
3. Report on progress of informal working groups.
4. Discussion of informal working group reports.
5. Discussion of additional/revised tasks, if any, for informal working groups.
6. Update agenda for next meeting.
7. Other business.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC Docket 92–76 following the Committee's first meeting on August 10, 1992.

The agenda for the third meeting of the Committee is as follows:

1. Approval of agenda.
2. Opening remarks.
3. Report on progress of informal working groups.
4. Discussion of informal working group reports.
5. Discussion of additional/revised tasks, if any, for informal working groups.
6. Formation of informal editorial working group to prepare the Committee's report to the Federal Communications Commission.
7. Agenda for the next meeting.

8. Other business.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC Docket 92–76 following the Committee's second meeting on August 18, 1992.

Members of the general public may attend these meetings. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Thomas S. Tycz, the Committee's designated Federal Officer, before the meeting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18952 Filed 8–10–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Statements: Availability, etc.: Lassen National Forests, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of the proposed final environmental impact statement and land and resource management plan for the Lassen National Forest, including Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Tehama Counties, California.

SUMMARY: The Forest Supervisor announces the availability of the Lassen National Forest's proposed final Environmental Impact Statement and Land and Resource Management Plan for public review. A 60-day public comment period will begin August 10 and end October 9, 1992. Individuals interested in a general introduction to the proposed final Plan are invited to attend an open house in one of the following locations:

August 10—Susanville: Forest Supervisor's Office, 55 South Sacramento Street.
August 11—Chico: Pleasant Valley High School, 1475 E Avenue.
August 13—Burney: Intermountain Community Center, 37477 Main Street.
August 14—Chester: Chester Memorial Hall, corner of Stone and Gay Streets.

All open houses will be held from 4:30 p.m. to 8:30 p.m.

People who would like to receive a copy of these documents can contact the Lassen National Forest, Land Management Planning, 55 South Sacramento Street, Susanville, CA 96130. Public comments should be sent to the same address by October 9, 1992. Public comments should focus on substantive new or additional factual information not previously considered in the analysis of the Plan. All public comments will be considered before the issuance of the Record of Decision implementing the Plan.

FOR FURTHER INFORMATION CONTACT: Questions or requests for additional information about the proposed final Environmental Impact Statement and Land and Resource Management Plan should be addressed to: Leonard Atencio, Forest Supervisor, or Elizabeth Norton, Director of Public Service, Lassen National Forest, at the address above. The phone number is (916) 257–2151.

Dated: August 4, 1992.

Leonard Atencio,
Forest Supervisor.

[FR Doc. 92–19038 Filed 8–10–92; 8:45 am]
BILLING CODE 3410–11–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of loans to the Republic of Indonesia ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Indonesia. At this time, the Government of Indonesia has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $25 Million Dollars ($25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Indonesia

Project: 497–HG–001—$25,000,000
Loan Guaranty Authorization No: 497–HG–004–A01

1. Attention: Mr. Benjamin Parwoto, Director General of Budget, Ministry of Finance, Jalan Lapangan Banteng Timur No. 2, Jakarta, Indonesia
Telex No.:
46415 DJMLNIA or
44319 DEPKEU
Telfax No.: 62–21–372758, 365859
Telephone No.:
62–21–358289, 372758
or 3842234 or 3848294
2. Attention: Mr. Binhadi, Bank of Indonesia, Jalan M.H. Thamrin No. 2, Jakarta, Indonesia
Telex No.:
44200 BISIR IA or
46611 BISIR IA
Telefax No.: 62–21–352892
Telephone No.: 62–21–367972
3. Attention: Mr. Ahmad Darsana, Bank of Indonesia, One World Financial Center, 200 Liberty Street, 6th Floor, New York, NY 10281
Telefax No.: 212/945–1316
Telephone No.: 212/945–1310 or 1315

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to all of the Borrower's representatives by Tuesday, August 25, 1992, 12 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date.

Copies of all bids should be simultaneously sent to the following:

Mr. William Frej, Housing and Urban Development Officer, USAID/Indonesia Box 4, APO AP 96520 (Street address: J1 Medan Merdeka Selatan No. 5 Jakarta, Indonesia)
Telex No.: 44218 AMEMB IA
Telefax No.: 62–21–380–6694 (preferred communication)
Telephone No.: 62–21–360–360 Ext. 2309
Mr. David Grossman, Agency for International Development, Office of Housing and Urban Programs, PRE/H, room 401, SA–2, Washington, DC 20523–0214
Telex No.: 892703 AID WSA
Telefax No.: 202/663–2552 (preferred communication)
Telephone No.: 202/663–2557

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25 million.

(2) *Term:* Up to 30 years.

(3) *Grace Period:* Ten years on repayment of principal. If variable interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining life of the loan. If fixed interest rate, semi-annual level payments of principal and interest.

(4) *Interest Rate:* Alternatives of fixed and variable rates are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond such as the 8% U.S. Treasury Bond due November 15, 2021. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:* Offers should include options for prepayment and mention prepayment premiums, if any.

(6) *Fees:* Offers should specify the placement fees and expenses, including A.I.D. fees, Paying and Transfer Agent fees, out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA–2, Washington, DC 20523–2014, Telephone: 202/663–2530.

Dated: August 7, 1992.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 92–19176 Filed 8–10–92; 8:45 am]

BILLING CODE 6116–01–M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the Delaware State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware State Advisory Committee previously announced at FR Doc. 92–17602, Vol. 57 #144 will convene at 10:30 a.m. and adjourn at 1 p.m. on Friday, August 14, 1992, at J.C. Boggs Federal Building, General Services (GSA) Conference Room 3207–09, 844 King Street, Wilmington, DE 19801.

Dated at Washington, DC, August 4, 1992.

Carol-Lee Hurley,

Chief Regional Programs Coordination Unit.

[FR Doc.92–19043 Filed 8–10–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Instrubel, N.V. and OIP, N.V.

In the matter of Instrubel, N.V., Westerring 19, B–9700 Oudenaarde, Belgium and OIP, N.V., Westerring 21, B–9700 Oudenaarde, Belgium.

Order Revoking Temporary Denial Order

On February 22, 1991, then Assistant Secretary for Export Enforcement, Quincy M. Krosby, issued a temporary denial order (TDO) for 180 days naming Delft Instruments N.V., located in the Netherlands, also known as Oldelft, Old Delft, Olde Delft, Oude Delft (hereinafter referred to as Delft); Delft Instruments Electro-Optics, Delft Electronische Products and Optische Industrie Oude Delft; OIP Instrubel, a Delft subsidiary located in Belgium, and Franks & Co. Optik GmbH [1] a Delft subsidiary located in Germary, as persons temporarily denied all U.S. export privileges. 56 FR 8321 (February 28, 1991).

On August 21, 1991, then-Acting Assistant Secretary for Export Enforcement, Kenneth A. Cutshaw, renewed that TDO for 90 days and modified it to name specifically all of Delft's 47 subsidiaries as persons related to Delft and, as such, also denied export privileges. 56 FR 42977 (August 30, 1991).[2] On November 19, 1991, I renewed the TDO for an additional 90 days, limiting it, however to seven of Delft's defense-related subsidiaries. 56 FR 60085 (November 27, 1991). On February 13, 1992, I renewed the TDO for 180 days, limiting it to only two of Delft's defense-related subsidiaries, Instrubel, N.V. and OIP, N.V. 57 FR 6583 (February 26, 1992).

On August 4, 1992, the Department entered an Order, pursuant to section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991)) (Act),[3] denying the export privileges of Instrubel, N.V. and OIP, N.V. for a period of 7 years. The section 11(h) Order continues in effect for seven years the denial of export privileges imposed pursuant to the TDO.

In view of the foregoing, I find that the TDO is no longer necessary in the public interest to prevent an imminent violation of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)).

Accordingly, *it is hereby Ordered.*

First, effective August 4, 1992, the TDO presently in effect against Instrubel, N.V. Westerring 19, B–9700 Oudenaarde, Belgium and OIP NV Westerring 21, B–9700 Oudenaarde, Belgium, is hereby revoked, having been effectively replaced by an Order pursuant to Section 11(h) of the Act.

Second, a copy of this Order shall be served on Instrubel, N.V. Westerring 19, B–9700 Oudenaarde, Belgium and OIP NV Westerring 21, B–9700 Oudenaarde, Belgium.

Third, a copy of this Order shall be published in the **Federal Register.**

This order is effective immediately.

Entered this 4th day of August, 1992.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 92–19044 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–DT–M

[1] Since the time the TDO was originally issued, I have learned that the correct spelling of "Franks & Co. Optik GmbH" is "Franke & Co. Optik GmbH."

[2] The TDO was modified again on October 19, 1991 to delete B.V. Enraf-Nonius Ermelo as a person related to Delft, based on evidence proffered by Delft that it had sold that entity. 56 FR 55491 (October 28, 1991).

[3] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

Action Affecting Export Privileges; Instrubel, N.V. and OIP, N.V.

In the matter of Instrubel, N.V., Westerring 19, B–9700 Oudenaarde, Belgium and OIP, N.V., Westerring 21, B–9700 Oudenaarde, Belgium.

Order Denying Permission To Apply For or Use Export Licenses

On July 17, 1992, Delft Instruments, N.V. (hereinafter referred to as Delft) was convicted in the U.S. District Court for the District of Columbia of two counts of violating the Arms Export Control Act, 22 U.S.C. 2778. The conviction followed Delft's plea of guilty to a criminal indictment charging it with, *inter alia*, reexporting certain articles from Belgium to Iraq and Jordan without having obtained the required authorizations from the Department of State. Delft pleaded guilty to the indictment despite the fact that the acts giving rise to the charges contained therein were committed by certain employees of two Delft subsidiaries (hereinafter referred to as Instrubel, N.V. and OIP, N.V.), because, pursuant to United States law and the facts and the circumstances of the criminal case, Delft is criminally responsible for the actions charged in the indictment.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. §§ 2401–2420 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked. Further, under section 11(h), the Secretary of Commerce may also exercise the authority granted thereunder with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of violating the EACA, upon a showing of such a relationship with the convicted person.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations, and shall determine whether to revoke any export license previously issued to such a person. In addition, after notifying, through the Chief Counsel for Export Administration, a person related to the convicted party of the intent of the Director, Office of Export Licensing, to deny that person permission to apply for or use any export license, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may apply any such denial or revocation to the related person or persons.

I have been notified of Delft's conviction for violating the AECA based on the acts of employees of Instrubel, N.V., and OIP, N.V., and I have consulted with the Director, Office of Export Enforcement, regarding action to be taken consistent with Section 11(h) of the EAA. I have decided that the purposes of Section 11(h) of the EAA will be served by denying the permission of Instrubel, N.V. and OIP, N.V. to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations for a period of seven years from the date of Delft's conviction. That period ends on July 17, 1999. I take this action against Instrubel, N.V. and OIP, N.V. as parties related to Delft, the convicted party, through affiliation, ownership, control, or position of responsibility and, as the Delft subsidiaries directly involved in the activity leading to the conviction. I have also decided to revoke all export licenses issued pursuant to the EAA in which Instrubel, N.V. and OIP, N.V. had an interest at the time of Delft's conviction. I have decided not to extend the denial to Delft because it did not directly commit the acts which gave rise to the charges in the indictment and because it has instituted an export control system that I believe, if adhered to, should prevent future violations like those alleged in the indictment.

This action is in accordance with an agreement between the Department and Delft.

Accordingly, *it is hereby Ordered.*

I. All outstanding individual validated licenses in which either Instrubel, N.V. or OIP, N.V. appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Instrubel, N.V.'s and OIP, N.V.'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until July 17, 1999, Instrubel, N.V., Westerring 19 B–9700 Oudenaarde, Belgium, and OIP, N.V., Westerring 21 B–9700 Oudenaarde, Belgium, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to any export license application submitted to the Department;

(ii) In preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining from the Department or using any validated or general export license, reexport authorization or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and

(v) In financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. As provided in §787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

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[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(b) In any reexport thereof; or

(c) In any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

IV. This order is effective immediately and shall remain in effect until July 17, 1999.

V. A copy of this Order shall be delivered to OIP Instrubel, N.V. and OIP, N.V. This Order shall be published in the **Federal Register**.

Dated: August 4, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-19045 Filed 8-10-92; 8:45 am]

BILLING CODE 3510-DT-M

Disposition of Section 232 National Security Import Investigation of Gears and Gearing Products

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, Commerce.

SUMMARY: The Secretary of Commerce has determined that imports of gears and gearing products do not present a threat to U.S. national security. Therefore, the President will not take any action to adjust imports under the terms of section 232. Also included is an Executive Summary of the Department's Section 232 investigation report to the President.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Deputy Assistant Secretary for Industrial Resource Administration, Room H3878, U.S. Department of Commerce, Washington, DC 20230, (202) 377-4506.

SUPPLEMENTARY INFORMATION: On October 31, 1991, the Bureau of Export Administration initiated an investigation of the impact of imports of gears and gearing products on the national security. The Department announced this action in the **Federal Register** on November 6, 1991 (56 FR 56626) and solicited public comments at that time. This investigation was made pursuant to a petition brought by the American Gear Manufacturers Association under the terms of Section 232 of the Trade Expansion Act of 1962, as amended. The Department had 270 days (in this case until July 27, 1992) to submit a report of its investigation to the President.

On July 24, 1992, the Department submitted its investigation report to the President. The investigation found that gears and gearing products were not being imported into the United States in such quantities or under such circumstances as to represent a threat to the national security. Therefore, the President will not take any action to adjust imports under the terms of section 232. The Department reached this determination based on: (1) Anticipated substantial decreases in defense gear requirements; (2) the low and relatively stable level of defense gear imports; (3) the U.S. industry's continuing technological competitiveness; and (4) DOD's continuing efforts to address sector-specific national security gear supply concerns when they have occurred.

The Department recommended, however, that the following actions be taken to address other issues that arose during this investigation: (1) That (in fulfillment of President Bush's April 1990 policy on Military Offsets) consultations be initiated with foreign governments to examine the extent to which offset and/or coproduction commitments have mandated increased defense gear imports and raised national security concerns about the future viability of U.S. defense gear suppliers; (2) that the Department of Defense continue its significant effort to support defense-critical gear industry research, and that it continue to encourage its contracts and their independent gear suppliers to develop a cooperative sustainable partnership; and (3) made a number of other technical recommendations discussed in detail in the Executive Summary below.

Commerce's Bureau of Export Administration (BXA) organized an interagency team of experts for this study effort, and conducted a comprehensive survey of all identifiable gear producers and importers. The survey covered such topics as shipments, employment, R&D, investment, and defense capabilities. We supplemented this information with additional independent research, and a review of earlier public- and private-sector industry studies.

From a military perspective, we found that gears are critical to both the construction and performance of nearly all weapon systems, either as components of the many different machines required to produce a particular weapon system, or as components of the weapon system themselves. Our investigation focused on the aerospace and marine gear sectors. These sectors represent only about 10 percent of gear industry shipments, but about 85 percent of defense gear shipments.

The text of the Commerce report (excluding business proprietary information) will be made available for public review and duplication in the Bureau of Export Administration's Public Reference Room, room 4525, U.S. Department of Commerce, Washington, DC 20230, (202) 377-2593. The Executive Summary follows below.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

Executive Summary

On October 17, 1991, the American Gear Manufacturers Association (AGMA) petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of gears and gearing products on the national security. Under the terms of section 232, the President has authority to "adjust imports," should he concur with a DOC finding that a national security threat is present.

In its petition, the AGMA asserted that "the U.S. gear industry has filed (its) petition to illustrate the importance of our industry to the nation as a whole and promote action to ensure its continued viability." AGMA requested that "the entire range of remedies available under (section 232) be examined and appropriate measures implemented," and further stated that "the U.S. gear industry seeks to avoid further deterioration by establishing a partnership with government to gain an equal footing with foreign competitors."

Section 232(d) of the Act directs us to review the "domestic production for projected national defense requirements" and "the capacity of domestic industries to meet such requirements," among other factors. To meet these criteria, we focused our investigation on the Department of Defense's (DOD) statement that it requires an internationally competitive technically advanced gear production base able to participate in the development and production of state-of-the art weapon systems.

BXA organized an interagency team of experts for this study effort, and conducted a comprehensive survey of all identifiable gear producers and importers. Due to the indefinite lapse of the Defense Production Act, we conducted this survey without mandatory data collection authority. As a result, some of the most important gear producers and importer/end-users

chose not to provide the requested information.

As basic components of most industrial machinery and equipment construction and agricultural equipment, motor vehicles, ships, and aircraft of all types, gear are critical to the industrial base. From a military perspective, gears are critical to both the construction and performance of nearly all weapon systems, either as components of the many different machines required to produce a particular weapons system, or as components of the weapon systems themselves.

The gear industry is customarily divided into four sectors: motor vehicle, general industrial, aerospace, and marine. The latter two sectors represent only about 10 percent of gear industry shipments, but about 85 percent of defense gear shipments. Captive producers represent about 75 percent of gear industry shipments, but only about 25 percent of marine gear and 40 percent of aerospace gear shipments.

Competitive Factors

U.S. gear industry performance has declined markedly since the early 1980s. This decline can be explained based on a combination of factors including: the relative competitiveness of the U.S. gear industry; the decline of U.S. gear end-users (*i.e* increased gear 'imports' embedded in foreign-built finished products); technological advances that have led to the decreasing use of gears in end-products; lagging investment in R&D and foreign government activities in support of their domestic gear industries. Recent exchange rate movements have, however, worked in a countervailing direction to increase the relative competitiveness of U.S. gear producers.

Gear producers responding to our industry survey are notably optimistic about their future competitiveness. Sixty-five percent of companies responding believe their competitive prospects will improve over the next five years, 18 percent believe competitiveness will "stay the same," and only an additional 18 percent believe that competitive prospects will decline. Further, about half of U.S. companies responding to our gear producers survey reported that their companies possessed technology equal to or better than their major foreign competitors.

Commerce gear industry experts believe that it is unlikely that alternative technologies will replace gears in the most critical defense applications any time in the foreseeable future. For the larger market, it is likely that worldwide gear consumption will continue modest growth, despite the development of alternative technologies, as new markets replace the old.

Gear research and development (R&D) is critical to maintaining both the technical superiority and cost-effectiveness of U.S. weapon systems. Joint DOD/industry funding of a very active aerospace gear R&D program, for example, has allowed us to maintain technical leadership for gear systems used in helicopters and other aerospace systems. U.S. gear R&D has, however, trailed significantly behind the industry's international competitors, and also behind the average for all U.S. manufacturers.

Our foreign trading partners also maintain a series of trade barriers that can potentially pose impediments to U.S. gear exports. Although most foreign governments claim that they offer no support targeted to their domestic gear industries, other broad-based industry supports and/or support to major gear-consuming industries may be detrimental to the viability of the U.S. gear industry.

Economic and Trade Data

Overall gear industry shipments followed a downward trend over the 1988 to 1991 period. In contrast, the marine sector showed strong growth in 1991 over very low 1988 levels, and the aerospace sector showed only a modest decline.

Industry-wide imports accounted for a growing percentage of new gear supply (domestic shipments plus imports), rising from 13.5 percent to 18.0 percent over the four year period. In the aerospace and marine sectors, however, imports were flat over this period.

Defense shipment data were reported by companies responding to our producer and importer/end-user surveys. Due to the intermediate nature of gear products—*i.e.*, they are incorporated into finished goods, it is likely that many producers are unaware of the ultimate end-use of their products. It is, therefore, probable that the reported defense share of gear shipments and imports is understated.

Reported defense shipments represented a substantial majority of gear shipments by the aerospace and marine gear sectors, but only around two percent of shipments by the automotive and industrial sectors. The reported import share of defense new supply was less than five percent, and stable over the survey period.

Although the gear industry has shown a steady decline in production worker employment, there has been a continuous increase in total output and productivity (measured as output per employee hour) as reported for the more aggregate Standard Industrial Classification code 35 (machinery, except electrical).

The Department of Labor cautions that continued declining employment in the gear industry will accelerate the loss of skills. While the supply of unskilled workers available to the gear industry is adequate to meet current and anticipated needs, the availability of skilled workers in a national security emergency is problematic.

Government Programs

The United States government has several programs and regulations in place that affect the gear industry. DOD, in particular, operates several grant programs through which it has provided significant support for gear industry R&D required to support the DOD's national security objectives.

A variety of other government programs available to assist the gear industry's revitalization efforts include: DOC/International Trade Administration export promotion, DOC/Economic Development Administration efforts to assist communities in adjusting to decreased defense procurements, and Small Business Administration business loans, among others.

The majority of gear producers responding to our survey stated that their competitiveness had been affected by the need to adjust their firm's business practices in response to U.S. government policies. Company concerns focused on procurement-specific problems, as well as on broader issues.

When producers were asked what adjustments should be made in U.S. Government policies, the largest number of companies suggested the reinstatement of tax incentives for capital investment. A large number of companies also asked for the institution of "Buy American" preferences on government gear procurements, and for tougher enforcement of the unfair trade laws.

National Security Analysis

Due to recent substantial changes in the national security challenges facing the United States, it was not possible to develop a quantitative estimate of national security requirements for gears and gearing products to be incorporated into this investigation.

In lieu of such requirements, DOD was able to inform us that it anticipates that gear requirements will be substantially decreased in the near future as procurement is cut back by as much as half. Defense officials emphasized that

the most likely contingencies would be for 'come as you are' regional conflicts such as Desert Storm, which would require that DOD be able to rely on a 'warm' industrial base prepared to meet unpredictable increases in short-term defense requirements.

Surge production capacity for a given year is defined as the maximum realistic level of production that a manufacturing establishment can achieve during a twelve month period. In the more defense-intensive aerospace and marine sectors, estimated surge production capacity increased only 54 percent and 53 percent respectively during the twelve month period. In the less defense-intensive gear sectors, industrial and automotive gear producing establishments reported an ability to increase capacity 135 percent and 132 percent respectively over twelve months.

Gear products and processes are, however, generally not fungible between the various gear sectors. This is particularly relevant for the defense-intensive marine and aerospace sectors which require greater precision and a great commitment of capital, labor and time than the industrial and automotive sectors.

Total reported lead times (from initial receipt of a customer's gear order to delivery) ranged from just seven weeks to more than three years. Generally, the higher the precision, the longer the lead time. The average lead time for defense gear orders was nearly 28 weeks, with marine gears having the longest lead times.

Companies responding to our producer survey were asked to identify and rank in order the top five bottlenecks affecting their ability to ramp-up to production capacity. Heat treatment was the bottleneck mentioned most often, followed closely by gear grinding and gear blank production. In a period of long-term declining demand for defense gears, it becomes increasingly difficult to justify maintaining excess capacity able to meet highly-demanding, and more costly defense specifications.

For the automotive and industrial gear sectors, defense gear usage is small, and it is likely that ample gear capacity would be available to meet needs during a national security emergency. In the more defense-intensive aerospace and marine gear sectors, however, it is possible that sufficient capacity may not be available to meet national security gear requirements.

However, it is unlikely that imports have significantly impacted the gear industry's ability to meet national security gear requirements. Imports as a percentage of new supply have been stable over the 1988–91 period in the aerospace gear sector, and have actually declined over this period in the marine gear sector. Imports as a share of defense new supply for these sectors have been even lower and have also been stable over this period.

The decline of the commercial gear sector, combined with the prospect of significant decreases in defense procurement, increases the economic pressure on U.S. gear producers. If these trends continue, the United States may become dependent on foreign countries for defense-critical gears in some industry sectors. There are both benefits and costs to relying on foreign suppliers for gears and other defense-critical components.

Allegations were made by U.S. gear producers that U.S. bidders had been disqualified from European gear procurements based upon their nationality. Details of these allegations have been provided to the appropriate DOD official who intends to seek resolution from his European counterparts.

Several independent gear producers further alleged that particular U.S. prime contractors have informed them that they will stop sourcing gears from independent U.S. producers by the end of 1994. U.S. primes denied that they intend to change their gear supplier mix, but emphasized that they must be certain of the long-term viability of gear suppliers.

U.S. primes further noted that some foreign gear suppliers have both sufficient financial resources to provide the necessary financing (*i.e.* to become risk/revenue sharing partners), and the production capability to reliably produce other low-compression aircraft engine components. Primes caution that it would take an average of two years to qualify new gear sources at Federal Aviation Administration and DOD standards if forced to abandon joint venture relationships with offshore producers.

We conclude that the substantial cost of system development leaves U.S. prime contractors with little alternative to seeking offshore risk/revenue sharing partners. In attempting to alleviate the national security concerns raised by the declining gear production base, we should ensure that we do not weaken prime contractors and thereby impose a substantial national security cost. However, it is at the same time important for the U.S. to maintain a competitive and technologically viable domestic gear production base.

Findings and Recommendations

The Department of Commerce does not find that gears and gearing products are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

The Department reached this finding based on: (1) Anticipated substantial decreases in defense procurements which will likely lead to significantly decreased defense gear requirements; (2) the low and relatively stable level of imports in the defense-intensive aerospace and marine gear markets; (3) the U.S. industry's continuing technological competitiveness and its optimism about its future competitiveness; and (4) the Department of Defense's proven record and continuing commitment to address sector-specific national security gear supply concerns when they may occur.

In light of the negative finding above, we do not include any recommendations to "adjust imports." We recommend the following, however, to address ancillary issues that arose during this investigation:

1. In fulfillment of President Bush's April 1990 Policy on Offsets in Military Exports, we recommend that consultations be initiated with foreign governments to examine the extent to which offset and/or coproduction commitments have led U.S. prime contractors to source gear products from foreign suppliers to the extent of raising national security concerns about the future viability of U.S. defense gear suppliers.

2. We encourage the Department of Defense to carefully consider the national security issues raised within this report, and recommend that it continue its significant effort to support defense-critical gear industry research.

3. We recommend that the Department of Defense continue to encourage its contractors and their independent gear suppliers to develop a cooperative sustainable partnership. This is particularly significant in light of assertions that important U.S. prime contractors intend to cease purchasing gears from independent U.S. gear producers by the end of 1994. These assertions could not conclusively be either confirmed or denied during the Section 232 investigation.

4. We urge the DOD-led Defense Conversion Commission to study the impact of declining military budgets and major weapons system terminations on domestic gear producers and other key subcontractor industries. In addition, the Commission should examine the

potential to convert excess defense-dedicated production lines and employees to commercial products.

5. We recommend that the DOC's Economic Development Administration continue its contacts with the U.S. gear industry to provide technical assistance to the industry in its defense conversion efforts.

6. We reiterate the recommendation in our January, 1991 National Security Assessment of the U.S. Gear Industry that the industry take the initiative to consolidate into larger more technologically efficient firms that can both afford and justify investment in the latest technologies.

7. We further reiterate our recommendation that U.S. government and AGMA statistical representatives continue to work to rectify current data shortcomings and to explore the need for better government monitoring of the U.S. gear industry's performance.

[FR Doc. 92-19032 Filed 8-10-92; 8:45 am]
BILLING CODE 3510-DT-M

International Trade Administration

[C-533-807]

Preliminary Affirmative Countervailing Duty Determination: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3530 or (202) 377-4162, respectively.

PRELIMINARY DETERMINATION:

Case History

On June 3, 1992, the Department published its notice of initiation of the countervailing duty investigation on sulfanilic acid from India (57 FR 23384). Since initiation of this investigation, the following events have occurred. On June 9, 1992, we presented questionnaires to the Government of India. On June 22, 1992, the United States International Trade Commission (ITC) issued its preliminary determination that imports of sulfanilic acid from India threaten material injury to a U.S. industry. On July 20, 1992, we received a response to our questionnaire from the Government of India. On July 29, 1992, we received a response from one Indian producer/exporter of sulfanilic acid.

Scope of Investigation

The products covered by this investigation are all grades of sulfanilic acid, which includes technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and refined sodium salt or sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades relate to the amount of undesirable, residual aniline and alkali insoluble materials that are present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classified under the subheading 2921.42.20 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid classified under HTS subheading 2921.42.24.20 contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Refined sodium salt or sulfanilic acid (sodium sulfanilate), classified under HTS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this investigation is dispositive.

Analysis of the Programs

We did not receive responses to our questionnaire from any producer or exporter of sulfanilic acid from India until July 29, 1992, when we received one response. Due to the lateness of the questionnaire response, we are unable to analyze and use it for purposes of this preliminary determination. Therefore, in accordance with 19 CFR 355.37, best information available was used to calculate the estimated net subsidy conferred upon the production and exportation of sulfanilic acid from India.

We used information provided by the petitioner in its petition as best information available. Petitioner estimated that the net subsidy conferred on the production and exportation of sulfanilic acid was 43.71 percent *ad valorem*. Petitioner based this estimation on the Preliminary Affirmative Countervailing Duty Determination: Bulk Ibuprofen From India (*Ibuprofen*) (56 FR 66432, December 23, 1991). In support of this estimation, petitioner stated that "ibuprofen and sulfanilic acid are similar in that they are both organic chemicals requiring similar manufacturing facilities and chemical synthesis steps to arrive at the finished product." Petitioner further stated that it is "reasonable to expect that if these subsidies are available to ibuprofen production and exportation in India that the same subsidies are available to the production and exportation of sulfanilic acid."

Although the petitioner's estimation of the subsidy was based on a preliminary determination, the Department believes that the *Ibuprofen* determination constitutes the best information available to determine the estimated net subsidy conferred upon the production and exportation of Indian sulfanilic acid. Both products, ibuprofen and sulfanilic acid, are part of the chemicals industry, while other recently completed Department investigations and administrative reviews focused on products which are part of the steel and metals industry. The major subsidy program in those investigations was the "International Price Reimbursement Scheme (IPRS)," which provided Indian companies with rebates based on the difference between higher domestic and lower international prices for steel inputs. Clearly, this program is not applicable to the chemicals industry.

More importantly, there are similarities in the manufacturing facilities and processes for ibuprofen and sulfanilic acid which suggest that the level of subsidization found in *Ibuprofen* is the most appropriate source of best information available. The major subsidy program found in *Ibuprofen* was the "Import Duty Exemptions Available Through Advance Licenses," a program also alleged in the present investigation. Under this program, advance licenses are available to exporters to enable them to import raw material inputs used in the production of exports duty-free. In *Ibuprofen*, we found that some of the chemicals imported duty-free by producers or ibuprofen were not physically incorporated into the product. We calculated the subsidy for this program to be 33.72 percent. Information on the record of this investigation indicates that producers of sulfanilic acid use this program to import an input, aniline, duty-free. In addition,

information on the record of this investigation indicates that aniline is not physically incorporated into sulfanilic acid for purposes of the countervailing duty law. Therefore, the program used in *Ibuprofen* which accounted for approximately 80 percent of the duty deposit rate appears also to be providing a similar benefit to Indian producers of sulfanilic acid.

For these reasons, we believe that the estimated net subsidy calculated in *Ibuprofen* constitutes best information available. Therefore, we determine an estimated net subsidy of 43.71 percent *ad valorem* for all producers and exporters in India of sulfanilic acid.

Suspension of Liquidation

In accordance with section 703(d) of the Tariff Act of 1930, as amended (the Act), we are directing the U.S. Customs Service to suspend liquidation of all entries of sulfanilic acid from India which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for all entries of this merchandise equal to 43.71 percent *ad valorem* for sulfanilic acid from all producers and exporters in India.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Our final determination is scheduled for October 15, 1992. If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department's final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, on September 24, 1992, at 10:30 p.m. in Room 1617M–4, to afford interested parties the opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than September 14, 1992. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than September 21, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal brief. Written arguments should be submitted in accordance with 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)) and 19 CFR 355.15.

Dated: July 31, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–18960 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 920488–2088]

RIN 0693–AB02

Proposed Procedures for Registering Computer Security Objects

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the proposed General Procedures for Registering Computer Security Objects. The Registration Procedures will apply to the development of a Computer Security Objects (CSO) Register. Computer security objects are resources, tools, or mechanisms used to maintain a condition of security in computerized environments. Initially, only two families of CSOs will be registered, network security labels and cryptographic algorithms. The CSO Register will assist in:

—Establishing unique names for managed Computer Security Objects (CSO) that will be used in Distributed Information Processing Systems;

—Providing a means of specifying parameters, and semantics associated with named CSOs;

—Encouraging the implementation and support of widely used CSOs, thus promoting interoperability.

Future Federal Information Processing Standards (FIPS) on computer security, such as a Standard Security Label, will rely on the establishment of the CSO Register.

Prior to adoption of these procedures, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of the procedures for registering computer security objects from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on the proposed procedures must be received on or before November 9, 1992.

ADDRESSES: Written comments concerning the proposed procedures should be sent to: Director, Computer Systems Laboratory, ATTN: Computer Security Objects Register, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Noel Nazario, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2837.

SUPPLEMENTARY INFORMATION: The need for a Computer Security Objects Register arises from the complexity of the communications process between computers. Communications protocols that enable two systems to support different options provided to meet a variety of applications and requirements. The two systems that

wish to communicate must agree in advance on the communication options within the protocols that will be used. In secure communications, the two systems that wish to communicate also must establish the conditions related to the security aspects of the communications before the process takes place.

If data encipherment is required for a communications process, various encryption algorithms could be used depending upon the type of information processed and the level of security required. For instance, if Federal government unclassified information is exchanged, the Federal Information Processing Standard 46–1, Data Encryption Standard (DES) should be used. Since the DES has three different modes of operation (as described in Federal Information Processing Standard 81), the appropriate mode of operation must be specified as well.

The Computer Security Objects Register will assign an unique name to DES encryption algorithm and to each mode of operation. These unique names will be used in the establishment of communications parameters process to specify the proper encryption algorithm and mode of operation. The register will support flexibility and modularity within communication protocols and will provide for unambiguous references to the proper process and parameters needed for secure data exchanges.

Dated: August 4, 1992.

John W. Lyons,

Director.

[FR Doc. 92–18958 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–CN–M

Computer System Security and Privacy Advisory Board Meeting

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer system Security and Privacy Advisory Board will meet Tuesday, September 15, 1992, Wednesday, September 16, 1992, and Thursday, September 17, 1992, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on September 15 through 17, 1992, from 9 a.m to 5 p.m.

ADDRESSES: The meeting will take place at National Institute for Standards and Technology, Quince Orchard and Clopper Road, Gaithersburg MD 20899. Please contact the individual in the "for further information" section to obtain specific building and conference room assignment. Inquiries regarding the Board meeting should not be directed to the conference facility.

AGENDA

—Welcome and Meeting Overview
—Cryptographic Technology Overview
—Cryptographic Review Issues
—Public Participation
—Updates of NIST Security Work
—Discussion of Board's CY–93 Workplan
—New Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by September 9, 1992. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: August 4, 1992.

John W. Lyons,

Director.

[FR Doc. 92–18959 Filed 8–10–92; 8:45 am]

BILLING CODE 3510–CN–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive field of use license in the United States and certain foreign countries to practice the inventions embodied in U.S. Patent Nos. 4,851,291 (Serial No. 7–055,476), 4,871,615 (Serial No. 6–818,567) and 4,908,238 (Serial No. 7–371,779), and U.S. Patent Application S.N. 6–876,015, each titled "Temperature Adaptable Textile Fibers and Method of Preparing Same," to Bayshore Holdings, Inc., having a place of business in New York, NY. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this publication Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present inventions consist of temperature adaptable textile fibers in which phase-change or plastic crystalline materials are filled within hollow fibers or impregnated upon non-hollow fibers. The fibers are produced by applying solutions or melts of the phase-change or plastic crystalline materials to the fibers. Cross-linked polyethylene glycol is especially effective as the phase change material, and, in addition to providing temperature adaptability, it imparts improved properties as to soil release, durable press, resistance to static charge, abrasion resistance, pilling resistance and water absorbency.

The availability of S.N. 7–055,476 and S.N. 6–818,567 for licensing were published in the **Federal Register**, Vol. 55, No. 138, p. 29255 (July 18, 1990). The availability of S.N. 6–876,015 for licensing was published in the **Federal Register**, Vol. 54, No. 63, p. 13549 (April 4, 1989). S.N. 7–371,779 is a division of S.N. 7–055,476.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1–800–553–NTIS or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161. The issued patents are available for $3. each (payable by check or money order) from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L.

Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS is response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-18974 Filed 8-10-92; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,616,316 (Serial No. 6-458,312), titled "Medication Compliance Monitoring Device Having Conductive Traces upon a Frangible Backing of a Medication Compartment," to Compliance Products, having a place of business in St. Louis, MO. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a medication compliance monitoring system consisting of a blister pack having an array of plastic blisters defining compartments for medication, with a frangible nonconductive backing sheet having conductive traces behind the compartments which are respectively ruptured when the medication doses are removed. The blister pack is detachably connected to an electronic memory circuit via a multi-terminal male connector tab on the backing sheet, wired to the conductive traces, and a corresponding female connector with terminals wired to the electronic memory circuit. The electronic memory circuit addresses each individual trace periodically at a constant time interval over a predetermined extended period of time to determine if it is intact. The electronic memory circuit detects the ruptures and stores the time data thereof over said extended period of time. During the patient's follow-up visit a microcomputer is employed to retrieve the dose-removal-time data from the memory circuit; it processes the data and provides a display of the compliance information. A socket adapter is used to alternately configure the electronic memory circuit for data acquisition and extraction. The socket adapter is in the form of a multiple-pin jumper plug engageable in a multi-contact socket connected to the memory circuit. Insertion of the plug configures the memory circuit for data acquisition. Removal of the plug configures the memory circuit for data retrieval and processing by the microcomputer. In a typical embodiment there are 42 blisters whose associated conductive traces are addressed every 15 minutes over an extended time period which may be as much as 85 days.

The availability of S.N. 6-458,312 for licensing was published in the **Federal Register**, Vol. 48, No. 54, p. 11483 (March 18, 1983).

A copy of the instant patent is available for $3 (payable by check or money order) from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-18975 Filed 8-10-92; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 20(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,616,316 (Serial No. 6-458,312), titled "Medication Compliance Monitoring Device Having Conductive Traces upon a Frangible Backing of a Medication Compartment, "to Compliance Products, having a place of business in St. Louis, MO. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. the prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a medication compliance monitoring system consisting of a blister pack having an array of plastic blisters defining compartments for medication, with a frangible nonconductive backing sheet having conductive traces behind the compartments which are respectively ruptured when the medication doses are removed. The blister pack is detachably connected to an electronic memory circuit via a multi-terminal male connector tab on the backing sheet, wired to the conductive traces, and a corresponding female connector with terminals wired to the electronic memory circuit. The electronic memory circuit addresses each individual trace periodically at a constant time interval over a predetermined extended period of time to determine if it is intact. The electronic memory circuit detects the ruptures and stores the time data thereof over said extended period of time. During the patient's follow-up visit a microcomputer is employed to retrieve the dose-removal-time data from the memory circuit; it processes the data and provides a display of the compliance information. A socket adapter is used to alternately configure the electronic memory circuit for data acquisition and extraction. The socket adapter is in the form of a multiple-pin jumper plug engageable in a multi-contact socket connected to the memory circuit. Insertion of the plug configures the memory circuit for data acquisition. Removal of the plug configures the memory circuit for data retrieval and processing by the microcomputer. In a typical embodiment there are 42 blisters whose associated conductive traces are addressed every 15 minutes over an extended time period which may be as much as 85 days.

The availability of S.N. 6-458,312 for licensing was published in the **Federal Register**, Vol. 48, No. 54, p. 11483 (March 18, 1983).

A copy of the instant patent is available for $3 (payable by check or money order) from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 92-18975 Filed 8-10-92; 8:45 am]

BILLING CODE 3510-04-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by ERA, S.E. From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

By letter dated January 23, 1992, Mr. Edward M. Borges filed with the Secretary of Commerce (Secretary) a notice of appeal on behalf of ERA, S.E. (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification that its proposal to reconstruct an existing wooden dock, 8 feet wide by 45 feet long, in Cabeza de Perro, Culebra, Puerto Rico, for which a U.S. Army Corps of Engineers permit must be obtained, is consistent with Puerto Rico's coastal zone management program.

The CZMA provides that a timely objection by a state, including Puerto Rico, to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the PRPB's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that:

(1) The proposed activity further one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA;

(2) The adverse effects of the proposed activity do not outweigh its contribution to the national interest;

(3) The proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and

(4) No reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the PRPB and the Office of the Assistant General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Angelica Fleites, Law Clerk, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235 at (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: August 6, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-19046 Filed 8-10-92; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information Systems Agency Scientific Advisory Group (SAG)

AGENCY: Defense Information Systems Agency.

ACTION: Notice of closed meeting.

The DISA Scientific Advisory Group will hold a closed meeting on September 2-3, 1992, at the Center for Naval Analysis Building, 4401 Ford Avenue, Alexandria, Virginia 22302. The purpose of the meeting is to address technology and management planning issues relating to DoD's information management initiative and DISA's roles and missions. Any persons desiring information about the Advisory Group may telephone, 703-746-3643, or write Associate Director, Defense Information Systems Agency, 701 South Courthouse Road, Arlington, Virginia 22204. This is a closed meeting due to the discussion of classified material which requires protection in the interest of National Defense. (5 U.S.C. 552(c)(1)).

Dated: August 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-19033 Filed 8-10-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Intent to Grant Exclusive Patent License

AGENCY: Department of the Navy, DoD.

ACTION: Intent to Grant Exclusive Patent License; Adaptive Digital Systems, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Adaptive Digital Systems, Inc. A revocable, nonassignable, exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,238,746, "Adaptive Line Enhancer" issued December 9, 1980.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, Telephone (703) 696-4001.

Dated: July 31, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-18977 Filed 8-10-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 10, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above

Dated: August 5, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: State Annual Performance Report for Dwight D. Eisenhower Mathematics and Science Education Act.
Frequency: Annually.
Affected Public: State or local governments; federal agencies or employees.
Reporting Burden: Responses: 104, *Burden Hours:* 3,420.
Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.
Abstract: State agencies for higher education and State educational agencies that have participated in programs under the Dwight D. Eisenhower Mathematics and Science Education Act are required to submit this report. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Institutional Quality Control Project Workbook.
Frequency: Annually, Quarterly.
Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
Reporting Burden: Responses: 200, *Burden Hours:* 39,200.
Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.
Abstract: The Institutional Quality Control Workbook will be used by financial aid administrators in coordination with the performance of quality control activities related to the institutions' administration of Federal student financial aid programs.

Office of Human Resources Administration

Type of Review: New.
Title: Demands for Testimony or Records in Legal Proceeding.
Frequency: Other.
Affected Public: Individuals or households; State or local governments; farms; businesses or other for-profit; non-profit institutions; small businesses or organizations.
Reporting Burden: Responses: 25; *Burden Hours:* 25.
Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.
Abstract: This information collection affects people submitting subpoenas to the Department in legislative or administrative proceedings or in litigation in which the United States is not a party. The Department uses the information to determine if compliance is in the interests of the United States and whether employees should comply.

Office of Educational Research and Improvement

Type of Review: New.
Title: Finance Surveys for the National Assessment of Vocational Education.
Frequency: One time.
Affected Public: State or local governments.
Reporting Burden: Responses: 3,598; *Burden Hours:* 17,990.
Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.
Abstract: This survey will be used to collect data on the financing of vocational education at the secondary and postsecondary state and local level. The Department will use the information to report to Congress.

Office of Educational Research and Improvement

Type of Review: New.
Title: Survey of Vocational Student Organizations for the National Assessment of Vocational Education.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden: Responses: 3,396; *Burden Hours:* 2,038.
Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.
Abstract: This survey will be used to collect data on the involvement of minority students in vocational student organizations. The Department will use the information to report to Congress.

[FR Doc. 92–19014 Filed 8–10–92; 8:45 am]
BILLING CODE 4000–01–M

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting

is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: August 21, 1992—9 a.m. to 5 p.m.

ADDRESSES: The Ritz-Carlton Hotel, 2100 Massachusetts Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202–7588. Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12729.

The Commission is established to advise the Secretary of Education on the Education status of Hispanic Americans, including the progress of Hispanic Americans towards achievement of the national educational goals, and on Federal efforts to promote quality education for Hispanic Americans.

On August 21, the Commission will meet in an open session from the 9 a.m. to 5 p.m. The agenda will include: (1) A report on old business; (2) Report on activities from around the nation; and (3) Review and discussion of the draft of the Commission's preliminary report.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, S.W., Washington, DC 20202–7588 from the hours of 8:30 a.m. to 5 p.m.

Dated: August 4, 1992.

Daniel Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–19136 Filed 8–10–92; 8:45 am]

BILLING CODE 4000–01–M

Office of Human Resources and Administration

AGENCY: Department of Education.

ACTION: Notice of membership of the Performance Review Board (PRB).

SUMMARY: Notice is hereby given of the names of members of the Department of Education's PRB.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Staff, Personnel Management Service, Office of Human Resources and Administration, Department of Education, room 1187–A, FOB–6, 400 Maryland Avenue SW., Washington, DC 20202, telephone: (202) 401–0546.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 4, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

The PRB is also responsible for providing recertification recommendations for career SES appointees in accordance with section 3393a of title 5, U.S.C. and 317.504(f) of title 5, Code of Federal Regulations.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Donald A. Laidlaw, Chair, Thomas Skelly, Co-chair, Michael Vader, Mary Jean LeTendre, Alicia Coro, Steven McNamara, John Higgins, Neal Peden-Jones, Barry Stern, Charles Karelis, Carol Cichowski, Maureen McLaughlin, William Smith, Susan Craig, John Haines, Philip Link, Dick Hays, Michelle Easton, J. Bruce Holmberg, and Daniel Bonner. The following executives have been selected to serve as alternate members of the Performance Review Board: John Kristy, Gary Rasmussen, Carl O'Riley, Jeanne Griffith and Richard Komer.

Dated: July 31, 1992.

Donald A. Laidlaw,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 92–19013 Filed 8–10–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Proposed York County Pennsylvania Cogeneration Facility

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of the proposed York County Cogeneration Facility in West Manchester Township, York County, Pennsylvania, and to conduct a public scoping meeting.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a project proposed by York County Energy Partners (YCEP) in Pennsylvania. The proposed project involves the construction and operation of a new coal-fired 250-megawatt electric (MWe) (2,000 tons/day) single-train circulating fluidized bed (CFB), a pollution control train consisting of selective non-catalytic reduction (SNCR) for reducing emissions of nitrogen oxides, and a baghouse for reducing emissions of particulates. This facility would be constructed adjacent to The J.E. Baker Company quarry and brick manufacturing operations on land currently owned by the Baker Company. The Baker Company would be the purchaser of the steam generated by this proposed project. The produced electricity would be delivered to Metropolitan Edison Company (Met-Ed).

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE regulations for compliance with NEPA (57 FR 15122, April 24, 1992). The purpose of this notice is to invite public participation in the process that DOE will follow to comply with NEPA, and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT AND DATES: To ensure that the full range of issues related to this proposal is addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by September 15, 1992. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The location, date, and time of the scoping meeting are provided in the section of this Notice entitled SCOPING MEETING. Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the **Federal Register**, and public comments

will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Dr. Suellen A. Van Ooteghem at the address noted below.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meeting, or questions concerning the project, should be directed to: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 284–5443.

Envelopes should be labeled "Scoping for the York EIS."

FOR FURTHER INFORMATION: For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Tel. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under terms of Public Law No. 99–190, Congress provided approximately $400 million to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's Clean Coal Technology (CCT) Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following in common: (1) All are intended to increase the use of coal in an environmentally acceptable manner, and (2) all are ready to be proven at the demonstration scale.

On February 17, 1986, DOE issued Program Opportunity Notice (PON) Number DEPSO1–86FE60966 for Round I of the CCT program, soliciting proposals to conduct cost shared projects meeting the above criteria. In response to the solicitation, 51 proposals were received. From these proposals, 9 projects were selected by DOE for negotiation in July 1986. As originally envisioned, this project would have repowered one of the City of Tallahassee's municipally-owned natural gas boilers with advanced circulating fluidized bed combustion "clean coal technology." DOE determined that an EIS would need to be prepared for the project, and published a **Federal Register** Notice of Intent on October 15, 1990 (55 FR 41747). A public scoping meeting was held in the City of Tallahassee on October 30, 1990, and public comments were received. However, in the fall of 1991, the City chose to not move forward with the project based upon economic conditions specific to the proposed repowering. Accordingly, preparation of the EIS was cancelled, and other potential hosts for the project were considered. The City of Tallahassee indicated its willingness to cooperate with the effort to relocate the project.

Subsequently, DOE agreed to reassign the project to York County Energy Partners, LP. (YCEP), a subsidiary of Air Products and Chemicals Inc. of Allentown, Pennsylvania. The new sponsors would relocate the proposed project from Tallahassee, Florida, to an industrial site in York County, Pennsylvania, where it would operate as a cogeneration facility. All other major aspects of the project, including the technology, the technology supplier (Foster-Wheeler Energy Corporation), the 250 megawatt plant size, and the federal contribution of nearly $75 million would remain unchanged from the original project.

YCEP has requested financial assistance from DOE for the design, construction and operation of the 250–MWe (2, 000 tons of eastern coal per day) single-train circulating fluidized-bed (CFB) facility. This project would use coal from eastern United States mines and have as the project objective the large scale demonstration of CFB technology. The proposed site for this "grass roots" independent power plant project is in West Manchester Township, York County, southeastern Pennsylvania. The proposed project would be located on a 47-acre site currently owned by the J.E. Baker Company, adjacent to their quarry and brick manufacturing operations. The Baker Company would sell the site to Air Products and Chemicals Inc., and enter into a contract for the purchase of the steam produced by the proposed cogeneration facility for use in their brick manufacturing operation. This proposed site, which is zoned for General Industrial use, is currently being used for agricultural purposes.

As noted in the section of this notice entitled Identification of Environmental Issues, DOE will evaluate cumulative impacts within the EIS for all important issues in the vicinity of the sites. Cost, environmental, and technical data from the project would be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative. After the anticipated 24-month demonstration period of operation is concluded, YCEP plans to operate the facility on a commercial basis.

Proposed Action

The proposed Federal action is for DOE to provide cost-shared financial assistance to YCEP for the design, construction, and operation of a 250–MWe (2,000 tons of eastern coal per day) single-train CFB facility, known as York County Energy Partners cogeneration facility, to be located adjacent to the J.E. Baker Company quarry and brick manufacturing operations in York County, Pennsylvania. The objective of the proposed project would be to demonstrate large scale (250–MWe) single boiler CFB cogeneration technology, while incorporating a pollution control train for reducing emissions of nitrogen oxides, and a baghouse for reducing emissions of particulates.

The total cost of the proposed project, including the demonstration period, is projected to be over $370 million, with DOE's share being less than 20% percent, or nearly $75 million. The project would last approximately 97 months, including design, construction, and demonstration. If the outcome of the NEPA review process is favorable, construction currently is projected to start about December 1993. Operation of the project during the anticipated 24-month demonstration period would provide the information and experience needed to successfully demonstrate CFB technology as a preferable new alternative to conventional coal-fired power plant technologies. Once DOE's involvement is completed, YCEP would continue to operate the facility on a commercial basis.

The proposed York County Energy Partners cogeneration would be located on a 47-acre site in West Manchester Township. The triangular site is bounded to the south by an active Yorkrail, Inc., railroad line, along its eastern edge by Emigs Mill Road, and along it western boundary by the Briarwood Golf Course. The proposed site is vacant and currently used for agricultural purposes. Topography of the proposed site is generally flat, with elevations gradually increasing to the northwest. Substantial landscaping and berming would be incorporated into the facility design to enhance the appearance of the completed facility. The area is zoned for General Industrial uses, and the proposed use is consistent with community plans for the area, although various land use approvals would be required from West Manchester Township.

The proposed site currently is owned by The J.E. Baker Company; however,

YCEP would exercise its option to purchase the site prior to construction. The proposed facility would include the following major subsystems and key components:

- Turbine Building
- Switch Yard,
- Water Treatment Building,
- Boiler Room Building,
- Enclosed Coal Storage Area and Coal Unloading Building,
- Raw Water and Condensate Tanks,
- Limestone and Ash Storage Silos,
- Cooling Tower, and
- Bag House and Stack.

The proposed project would require an electric interconnection system. Several alternative interconnection arrangements are currently being evaluated by York County Energy Partners and the Metropolitan Edison Company.

Alternatives

Under its authority pursuant to Public Law No. 99–190, DOE is presented with only two alternatives: (1) To cooperatively fund the proposed project; or (2) to decline to fund it (the "no action" alternative). In the latter case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. The facility probably would not be constructed and operated; therefore, neither potential environmental impacts related facility construction and operation, nor potential environmental benefits resulting from commercialization of the technology, would occur.

DOE acknowledges its obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the proposed York County Cogeneration Facility CFB Demonstration Project.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and oxides of nitrogen controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Identification of Environmental Issues

The following issues associated with the construction and operation of the proposed York County Energy Partners cogeneration facility will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality: The effects of air emissions within the region surrounding the site.

(2) Water Resources and Water Quality: The qualitative and quantitative effects on water resources and other water users in the region.

(3) Wetlands: Wetlands potentially impacted by potential wastewater discharges. No wetlands have been identified on-site.

(4) Socioeconomics: Potential bearing on communities that might be affected by the project, as well as consumer costs associated with this project.

(5) Land Use: The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project as well as issues related to prime farmlands.

(6) Solid Waste: The environmental effects of generation, treatment, transport storage, and disposal of solid wastes.

(7) Biological Resources: Potential disturbance or destruction of species, including the potential effects on threatened or endangered species of flora and fauna. However, neither threatened nor endangered species have been identified thus far to be associated with the proposed project area. DOE will consult with the U.S. Fish and Wildlife Service of the U.S. Department of the Interior regarding potentially threatened or endangered species.

(8) Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites.

(9) Cumulative Impacts: NEPA requires that the EIS evaluate the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site.

Issues that are significant will be addressed in detail; issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508) and DOE regulations for compliance with the NEPA (57 FR 15122, April 24, 1992).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7). DOE NEPA regulations require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a propose action. The scope of issues to be addressed in a Draft EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at a public scoping meeting (see below). The results of the scoping process will be incorporated into a document called an Implementation Plan (IP), which provides guidance for the preparation of the EIS.

The above preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. DOE identified the reasonable alternatives and potential environmental issues shown above based on its experience with similar concerns that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the scene that alternatives other than those given above may warrant examination, and new matters may be identified for potential evaluation. The scoping process will involve all interested agencies (Federal, State, County, and local), groups, and individual members of the public. Interested parties are invited to participate in the scoping process by providing comments on both the alternatives and the issues to be addressed in the EIS. DOE will consider all comments in preparing the IP, which

will specify the reasonable alternatives, identify the significant environmental issues to be analyzed in depth, and eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. When complete, the IP will be available for public review at the locations identified below.

Scoping Meeting

A public scoping meeting will be held at the location, on the date, and at the time indicated below. This scoping meeting will be informal, with a presiding officer designated by DOE who will establish procedures governing the conduct of the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. They will be called on to present their comments as time permits. Oral and written comments will be given equal weight by DOE. Written comments may also be submitted after the scoping meeting, but should be postmarked by September 15, 1992, and forwarded to Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, as provided in the **ADDRESS** section of this Notice. Written comments postmarked after that date will be considered to the degree practicable.

The meeting is scheduled as follows:

Date: Wednesday, August 26, 1992.
Time: 7 p.m. (Registration opens at 6 p.m.)
Place: West York Area Senior High School Auditorium, 1800 Bannister Street, York, Pennsylvania 17404, (717) 845–6634.

Complete transcripts of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, and at the Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcript will also be made available during normal business hours at the following locations:

1. West Manchester Township Municipal Building, 2501 Catherine Street, York, Pennsylvania 17404, (717) 792–3505.
2. York County Library, 118 Pleasant Acres Road, York, Pennsylvania 17401, (717) 757–9685.
3. York County Court House, 28 E. Market Street, York, Pennsylvania 17401, (717) 771–9675.

In addition, copies of the public scoping meeting transcript will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, at the address given in the **ADDRESS** section of this Notice.

Signed in Washington, DC, this 6th day of August 1992, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92–19083 Filed 8–10–92; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

[FR Docket No. 92–48–NG]

Direct Energy Marketing Limited; Application To Transfer Natural Gas Import Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to transfer authorization.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 3, 1992, of an application filed by Direct Energy Marketing Limited (DEML) requesting the transfer of its blanket authorization to import natural gas from Canada, 1 ERA ¶ 70,681 (DOE/ERA Opinion and Order No. 158), be transferred to DEML's new U.S. subsidiary, Direct Energy Marketing Inc. (DEMI).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 26, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: DEMI, a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, is wholly owned and controlled by DEML. Order 158 authorized DEML to import up to 200 Bcf of natural gas from Canada over a two-year term that, according to the application, commenced February 1, 1992. Import volumes under the proposed transfer of authority would remain the same as currently authorized and the specific terms of each import arrangement would continue to be determined by competitive factors in the markets served.

The application for import authority will be reviewed pursuant to Section 3 of the National Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. Since the only change in the existing authorization is the proposed transfer of the import authority to DEMI, DOE believes that the sole relevant issue in this case is the impact of the transfer on DEMI's customers. The competitiveness of the import arrangements, need for the imports, and security of the gas supply are not expected to be issues in this proceeding. Consequently, we are establishing a shortened comment period of 15 days. Parties, that may oppose this application, bear the burden of overcoming a presumption the requested transfer is not inconsistent with the public interest.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should filed with the Office of Fuels Programs at the address listed above. It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedures is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of DEMI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on August 5, 1992.

Charles Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19081 Filed 8-10-92; 8:45 am]

BILLING CODE 6450-01-M#

[FE Docket No. 92-59-NG]

IGI Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting IGI Resources, Inc. (IGI) blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after July 31, 1992, the date which IGI's current blanket authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 5, 1992

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19082 Filed 8-10-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-34-NG]

Long Island Lighting Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Long Island Lighting Company blanket authorization to import up to 25 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19084 Filed 8-10-92; 8:45 am]

BILLING CODE 6450-01-M

Alaska Power Administration

Snettisham Power Marketing Plan

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Alaska Power Administration (APA) is publishing its Draft Marketing Plan—Snettisham Project to start the process to establish new allocations of power and long-term power sales contracts for the Snettisham Project. The new contracts will replace contracts which have been in place since 1973 and which expire at the end of December 1993. APA is publishing the draft plan to provide an opportunity for public review and comment. The Marketing Plan and the new contracts are fully compatible with the Department of Energy legislative proposal on APA divestiture which was submitted to Congress in June 1992.

DATES: Written comments must be submitted on or before September 10, 1992.

A public information and comment forum will be held August 20, 1992, at 7 p.m., at the office of Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, Alaska.

ADDRESSES: Written comments should be submitted to: Mr. Robert Cross, Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Willis, Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, AK 99801, (907) 586-7405.

SUPPLEMENTARY INFORMATION:

Draft Marketing Plan—Snettisham Project.

A. General

APA is starting the process to establish new allocations of power and long-term power sales contracts for the Snettisham Project. The new contracts will replace contract which have been in place since 1973 and which expire at the end of December, 1993.

The Snettisham Project authorization (Section 204 of the 1962 Flood Control Act) establishes the general criteria for marketing project power and energy. The marketing plan will describe APA's implementation policies for these legislated marketing criteria.

APA also plans an Environmental Assessment on the marketing plan and allocations to be finalized before new contracts are agreed to. The Environmental Assessment will meet requirements of the Department of Energy's NEPA guidelines.

Presently, APA sells a small amount of power to the State of Alaska Department of Fish and Game (ADF&G) for its Snettisham Hatchery. These power sales are under a long-term agreement between APA and ADF&G. This plan and subsequent allocations will not alter availability of power for sale to ADF&G.

B. Background

APA markets power and energy from the Snettisham Project. The Long Lake and Crater Lake divisions of the Snettisham Project were authorized by Congress in 1962. Construction of the Long Lake phase began in 1967 and was completed in 1973. The original power sales contracts signed at that time had 20-year terms and expire at the end of 1993. The Juneau area had a surplus of hydroelectric energy until 1985 when area loads exceeded the hydro resource. Construction of the Crater Lake phase of the project began in 1984 with commercial power production beginning in 1991. With the completion of the Crater Lake phase, the Juneau area once again has a surplus of hydroelectric energy.

The Juneau area is electrically isolated and retail customers are served by a single utility, Alaska Electric Light and Power (AELP). About 80% of the area energy requirement comes from purchase of Snettisham energy with the remaining 20% provided by AELP's own generation. While AELP is the only utility customer purchasing Snettisham energy, APA also markets a small amount of energy to the State of Alaska for operation of a fish hatchery at Snettisham.

Studies have been made in the past of the feasibility of interconnecting the various load and generation centers in Southeast Alaska with themselves and ultimately with Canada to the north and south. These interties are technically feasible, but significant portions have not yet proven to be economically feasible.

An important consideration in the Juneau area electrical power market is the potential for the addition of relatively large industrial loads. A number of mining projects are in various stages of development in the Juneau area. The Green's Creek mine began operation in 1988 on Admiralty Island, and studies are currently proposed to determine the feasibility of connecting this project to the area power grid. Echo Bay Exploration is pursuing permits for development of two large mining projects in the area, one of which, the A–J mine, is located only four miles from downtown Juneau. Other mining projects are also being proposed which could conceivably be linked to the Juneau electrical system. The energy requirements for these potential mining loads would greatly exceed the present hydroelectric surplus.

In 1986, the Federal government formally proposed the sale of the Snettisham Project. A purchase agreement for Snettisham was negotiated and signed with the State of Alaska in 1989. The divestiture of this Federal project is awaiting Congressional approval.

The Marketing Plan and the subsequent power sales contracts will be compatible with the divestiture proposal. Under terms of the Snettisham Purchase Agreement, the new owners will take over APA's rights and obligations under the new power sales contracts when they acquire ownership of the project.

C. Objectives

The objectives of this plan are to establish the criteria and process for allocating power from APA's Snettisham project in accordance with provisions set forth in the Snettisham Project authorizing legislation, Such provisions include instructions to market power so as to (1) Encourage the most widespread use; (2) do so at lowest possible rates to consumers consistent with sound business principles: and (3) give preference to Federal agencies, public bodies, and cooperatives. An additional objective of this plan is to facilitate implementation of the divestiture if and when Congress approves the measure.

D. Process

The Steps APA intends to follow in this process are:

1. Publish the draft marketing plan and accept comments during a 30-day period.

2. Hold a public information and comment forum during the comment period.

3. Consider the comments received, modify the plan as appropriate, and finalize and publish the marketing plan.

4. Invite requests for allocations of Snettisham power and energy in accordance with the plan.

5. Complete an Environmental Assessment of this action as required by Department of Energy NEPA guidelines.

6. Allocate power and energy in accordance with the plan.

7. Sign long-term power sales contracts with customers receiving allocations.

E. Marketable Resources

The entire output of Snettisham Project power and energy is available for allocation, less government camp loads, losses, and service to ADF&G. The energy production and generation capacity available for allocation is:

Firm energy	275 gWh
Secondary energy	50 gWh
Capacity	72 mW

Firm energy is the energy available from the project in approximately 9 out of 10 years. In most years energy will be available over and above the firm amount. This energy is secondary or surplus energy. On the average, APA expects to have 50 gwh of secondary energy available, though in some years there will be more and in some years there will be less. In unusually dry years there will be no secondary energy at all.

APA proposes to offer allocations of firm energy, secondary energy, and capacity, but will consider proposals for other classes of service.

APA offers no commitment which would require APA to purchase energy or capacity.

F. Market Area and Allocation policies

The market area for power from the Snettisham Project is the Juneau area, i.e. the AELP service area. Proposals have been advanced for interconnecting other communities in Southeast Alaska or large mining loads with the Juneau market area. The following section describes APA policy for allocating Snettisham power and energy in these circumstances.

1. Policy for Possible Service to Additional Southeast Alaska Communities

Power and energy in excess of the needs of the Juneau market area will be available for export to other communities. No power will be allocated for such exports absent firm plans to finance and build the necessary transmission facilities.

2. Policy for Preference in Sale of Power to Public Bodies and Cooperatives

In allocating power surplus to Juneau's needs, APA will give

preference to public bodies and cooperatives who conduct utility-type operations.

3. Policy for Possible Service to Existing and Proposed Mining Developments in the Juneau Vicinity

Power and energy in excess of the needs of the Juneau market area will be considered available to serve major industrial customers. APA prefers to serve such customers through AELP rather than as direct service customers of APA.

APA encourages such customers to work directly with AELP so that AELP's request for allocation of Snettisham power and energy will reflect their needs. APA will consider requests for allocations from major industrial customers only if it is demonstrated that service through the utility is infeasible.

4. Policy To Allocate Power in the Event That Requests for Allocation Exceed the Supply

The mining developments, most notably the proposed A–J development and Green's Creek, including its expansion could easily result in requests substantially exceeding the available supply. In that case, there will need to be determinations as to what part of and which of the proposed mining loads would receive Snettisham power and energy.

APA intends that such determinations be made as a part of the AELP process for deciding AELP's allocation request, that the determinations fully consider impacts to other classes of AELP customers, and that AELP's request for allocations demonstrate that proposed AELP service to one or more mining developments works to the benefit of other classes of AELP customers.

5. Policy To Allocate Power in the Event the Available Supply Exceeds Requests for Allocation of the Resource

If there is additional firm energy/capacity remaining after the initial allocations, APA will offer firms surplus energy for allocation in accordance with the marketing plan. If firm surplus energy is available, it will probably be in declining amount over time.

G. Integrated Resource Plans

Requests for allocations must be accompanied by a statement outlining the requestor's intended activities under Integrated Resource Planning (IRP) or an equivalent process. A requirement for developing and updating IRP or equivalent plans will be incorporated into the long-term power sales contracts. IRP or an equivalent process is one which gives equal consideration to supply and demand side alternatives and methods of funding the appropriate investments to assure high levels of efficiency in all energy uses.

H. Contract Arrangements

Entities receiving an allocation of Snettisham resources will be offered an electric service contract for the allocated resource based on this plan. Contracts will be for a period of up to twenty years and will include "take or pay" provisions of other arrangements subject to the integrity of the project and availability of the resource.

Delivery points will be on the Snettisham transmission system. Normal delivery will be made at Snettisham transmission voltages. Deliveries may continue to be made at subtransmission voltages at powerplant, substation, and

I. Reallocations

Resources made available for marketing because an allocation has been reduced or withdrawn may be administratively reallocated by APA's Administrator without further public process.

Issued at Juneau, Alaska, August 5, 1992.

Robert J. Cross,

Administrator.

[FR Doc. 92–1908 Filed 8–10–92; 8:45 am]

BILLING CODE 6450–01–M1

Bonneville Power Administration

Final Environmental Impact Statement; 1992 Columbia River Salmon Flow Measures Options Analysis

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) 1992 Columbia River Salmon Flow Measures Options Analysis (1992 Flow Options EIS).

SUMMARY: BPA has decided to implement a proposed action in 1992 as part of an ongoing effort to improve the survival of anadromous fish stocks, especially weak stocks, including the Pacific salmon that National Marine Fisheries Service (NMFS) has listed as endangered or threatened (Snake River sockeye salmon and spring/summer and fall chinook salmon). BPA will store up to 3.0 Million Acre Feet (MAF) of water, above the existing Water Budget of 3.45 MAF, in Grand Coulee and Arrow reservoirs to augment flows in the lower Columbia River during May and June 1992. In addition, BPA will acquire, if necessary, the power lost through this action and the actions to be taken by the U.S. Army Corps of Engineers (Corps) and the Bureau of Reclamation (BR) in 1992 at Snake River system projects and at John Day project to benefit salmon. BPA also will implement those actions in 1992 that the NMFS recommended BPA, BR, and The Corps take to improve survival of Snake River sockeye, spring/summer chinook, and fall chinook salmon.

The proposed action, including actions aimed at improving survival of salmon and steelhead, e.g., improved bypass facilities, improved transportation, expanded predator control, increased law enforcement, water diversion screening, spill, and a captive rearing program for Snake River sockeye salmon, is aimed at improving survival of salmon and steelhead in the Columbia River Basin. Some of the actions also evaluate or test ways to improve survival of listed salmon stocks. After consideration of the best available scientific evidence, BPA concludes that the proposed action is not likely to jeopardize the continued existence of Snake River sockeye or chinook salmon. The proposed action is also the environmentally preferred alternative. This ROD is based on the results of evaluations addressed in the draft and final 1992 Flow Options EIS, public meetings held after the issuance of the draft and final EIS, consideration of all public and regulatory agency comments received on the draft and final EIS, BPA's Biological Assessment and Supplement to the Biological Assessment, and consultation with NMFS and the U.S. Fish and Wildlife Service (FWS) as required by the Endangered Species Act (ESA) of 1973, as amended.

The 1992 Flow Options EIS was a cooperative effort of BPA, BR, and the Corps. The Corps was the lead agency. The 1992 Flow Options EIS has been adopted by the U.S. Department of Energy (DOE) (Memorandum dated February 10, 1992, from Paul L. Ziemer to Randy W. Hardy) as the National Environmental Policy Act (NEPA) of 1969 compliance document addressing storage and power acquisition actions that BPA will implement in 1992. The 1992 Flow Options EIS addressed the effects of implementing a No-Action Alternative and three action alternatives (each containing a number of different options) to improve in-river migration conditions (flows and temperature) for juvenile and adult salmon in the lower Snake and lower Columbia Rivers in 1992. The scope of the 1992 Flow Options EIS was limited to flow improvement measures that could be implemented in 1992. Measures

requiring major structural modifications at exiting projects were not evaluated because they could not be completed in time to benefit salmon passing through the system in 1992. In accordance with this decision, the 1992 plan of reservoir regulation and project operations is summarized as follows:

I. Crops Actions

Operate the four lower Snake River projects near minimum operating pool (MOP) from April 1 to July 31, 1992;

Operate John Day project near elevation 262.5 feet from May 1 to August 31, 1992, unless higher pool levels are required to avoid impacts to irrigation intake facilities on the reservoir;

Augment lower Snake River flows with release of 900 Thousand Acre Feet (KAF) or more from Dworshak reservoir between April 15 and June 15, 1992. This water is in addition to any minimum flow release at Dworshak. In addition, 200 KAF will be released from Dworshak in September 1992 to assist migration of adult salmon;

Conduct field studies of a drawdown of Lower Granite and Little Goose pools to elevations below MOP in March 1992, and of the effects of real time water shaping between April 15 and August 30; and

Operate the lower Snake and Columbia River projects as described in the annual Fish Passage Plan and the Project Improvements for the ESA.

II. BPA Actions

Augment lower Columbia River flows at The Dalles for the months of May and June with Water Budget releases and releases from Arrow and Grand Coulee reservoirs of up to 3.0 MAF, as determined by the April 1 final volume-of-runoff forecast;

Request, and the Corps will implement, continued spill in 1992 at Lower Monumental and Ice Harbor beyond that described in the Fish Spill Memorandum of Agreement (MOA). These spills will be continued in the spring during fish guidance testing. The summer spills, to assist adult migration, will be based on the assumption that the 1992 migration will be similar to that observed in 1991. At John Day, The Dalles, and Bonneville Dams, spill will continue as specified in the MOA and in the Corps' Fish Passage Plan.

BPA will purchase power or forego nonfirm sales, on an as needed basis, to replace the power lost through water storage, flow augmentation or spill for fish.

III. BPA, BR, and Corps Action

BPA and BR will seek to acquire up to 400 KAF of water from the upper Snake River Basin for release between June 16 and August 30, 1992. The difference between water that is available and the target 400 KAF will be made up by releases from Dworshak. Thus, the contribution to flows from the upper Snake River or Dworshak can vary from 0 to 400 KAF depending on water availability in the upper Snake River Basin.

FOR FURTHER INFORMATION CONTACT: John Rowan, Chief, Environmental Compliance Section, PGA, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; Telephone (503) 230–4238. For copies of the 1992 Flow Options EIS, you may contact BPA's document request line: toll-free 800–622–4520, or BPA's Public Involvement office in Portland. Telephone numbers, voice/TTY, for BPA's Public Involvement office are: 503–230–3478 in Portland; and toll-free 800–622–4519 nationwide.

For general information on NEPA process contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy. 1000 Indpendence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K Rodewald, Wenatchee District Manager, P.O. Box 741, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 91809–1030, 206–553–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Ms. Ruth Bennett, Acting Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. James R. Normandeau, Boise District Manager, Room 450, 304 N. 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Decision

BPA has decided to implement a proposed action in 1992 that improves the survival of weak anadromous fish stocks including Snake River sockeye and chinook salmon. BPA will increase the amount of water stored in Arrow Reservoir in British Columbia, Canada and in Grand Coulee Reservoir, in Washington State, in order to augment flows in the lower Columbia River in May and June 1992 for the benefit of Snake River salmon. The amount of additional water to be stored varies from 0 to 3 MAF as determined by the adjusted April forecast of the January through July runoff. Since this water is in addition to an existing 3.45 MAF of Water Budget, the total amount of water that could be available for flow augmentation for fish in the lower Columbia in May and June of 1992, would be 6.45 MAF.

In addition, BPA has decided to continue the Spill Agreement for Lower Monumental, Ice Harbor, John Day, The Dalles, and Bonneville Dams in 1992, and work with BR to attempt to acquire up to 400 KAF of water from the upper Snake River Basin to augment flows between June 16 and August 30, 1992. BPA will also support the actions being taken by BR and the Corps to benefit fish in the lower Snake and lower Columbia Rivers in 1992.

Finally, BPA has decided to acquire an equivalent amount of power in 1992 from alternative sources to replace, on an as needed basis, that which would have been generated if the additional water to be stored in Arrow, Grand Coulee, and Dworshak had been available for optimal power production. BPA has also decided to acquire an equivalent amount of power in 1992 to replace, on an as needed basis, the power lost due to drawdown of John Day Reservoir and the lower Snake River projects, and spill at Lower Monumental and Ice Harbor.

Nothing in this decision forecloses modifications of the manner in which water is managed should the region experience emergency conditions or if changed conditions warrant an operational modification. Nothing in this decision prescribes the manner in which non-Federal projects in the United States are to be operated. To the extent practicable, this decision only affects the operation of Arrow, Grand Coulee, and Dworshak storage reservoirs and the eight Federal run-of-river dams and reservoirs downstream of Lewiston, Idaho. Any water acquired form projects in the upper Snake River Basin will be acquired on a willing seller willing buyer basis and its management determined by specific agreement.

II. Background

The Shoshone-Bannock Indian Tribes of Idaho petitioned NMFS on April 2, 1990, to list the Snake River sockeye salmon as a endangered species under the ESA. A group of conservation organizations filed separate petitions on June 7, 1990, to list the Snake river spring, summer, and fall chinook salmon and lower Columbia coho salmon as threatened under the ESA. In response, Senator Mark Hatfield of Oregon convened a regional assembly of organizations and interests concerned with the plight of the Snake-Columbia River salmon. These interests included public agencies responsible for water management, power production and marketing, and fisheries management; representatives of affected states, and potentially affected economic interests and members of the public concerned with conservation of Pacific Northwest salmon. This assembly known as the "Salmon Summit" held its first formal meeting on June 30, 1990. The mission of the Salmon Summit was to produce a salmon management plan in response to petitions to list the five salmon stocks under ESA. This plan was to include actions related to salmon harvest, production, habitat and water management.

Although the Salmon Summit reached no consensus on a long-term plan of action, it did agree on an action plan for 1991 that could be implemented under existing authorities. That plan called for increasing the Water Budget for 1991, drawing down certain reservoirs in the lower Snake River and lower Columbia River, and extending the time the Corps operates its program to transport juvenile salmon downstream by barge and truck. In addition, the Salmon Summit requested the corps "undertake the process necessary to design a study for Snake River reservoir drawdown during operational year 1992 that would improve the passage of migrants (juveniles) without impeding the upstream migration (adults)." Subsequent agency discussions expanded the original request to include all practical water management measures to improve salmon passage.

NMFS proposed on April 5, 1991, that the Snake River sockeye salmon be listed as an endangered species under ESA. NMFS announced on June 7, 1991, the proposed listing of Snake River spring/summer and fall chinook as threatened species (56 FR 29542; 56 FR 29547). NMFS declared on November 20, 1991, the Snake River Sockeye salmon endangered, effective December 20, 1991 (56 FR 58619). On April 22, 1992, NMFS decided to list Snake River Spring/summer chinook and fall chinook salmon as threatened species (57 FR 14653).

The listings create additional responsibilities for all persons whose actions affect these fish. Federal agencies must avoid jeopardy to and support recovery of these species. To enable recovery, NMFS is developing a recover plan. All persons must also avoid unlawful takings of these fish. A "taking" includes actions that harass or harm the fish.

Snake River sockeye and chinook salmon are born in fresh water, migrate as smolts down the Snake and Columbia rivers to the Pacific Ocean, and later return to their places of birth to spawn. During this life-cycle, these fish encounter a multiplicity of harmful conditions resulting from human activity.

Improvement of these conditions requires a comprehensive solution addressing all stages of the species' life-cycles. An effective approach toward avoiding jeopardy and achieving recovery cannot concentrate upon only one cause or one stage.

Actions that can be changed to improve conditions for fish include those in the following list.

A. Hydroelectric Dams

Forty-eight—including 29 Federal—multipurpose dams were built in the Columbia River Basin beginning in 1912. The multipurpose dams were built to control floods, hold irrigation water, allow navigation and recreation, and produce power.

Some of these dams blocked habitat for the currently listed fish. Idaho Power Company's Hells Canyon Dam blocked chinook salmon historic spawning grounds in the Snake River and its tributaries further upstream. In addition, the Corps Dworshak Dam blocked chinook habitat on the Clearwater River. Before its removal, Sunbeam Dam blocked access by sockeye salmon to Redfish Lake in Idaho.

Dams inhibit juvenile and adult anadromous fish migration. Snake River sockeye and chinook must traverse eight Federal dams as they migrate to the ocean and return to their spawning grounds. In the Snake River, juvenile fish will first pass Lower Granite, and then Little Goose, Lower Monumental, and Ice Harbor dams, after which they enter the Columbia River. In the Columbia River, these juveniles will first pass McNary, and then pass John Day, the Dalles, the Bonneville Dams.

Changes in reservoir operations and structural modification of the dams can improve survival of anadromous fish. However, an effective solution requires more than improvements at dams. A report in the March-April 1991 edition of the American Fisheries Society Journal states that 214 stocks of salmon are in trouble. More than half of these fish live in areas without dams: Coastal streams, the Puget Sound, or the lower Columbia River. Only 76 of the salmon stocks identified by the report have to migrate past Federal hydroelectric dams on the Columbia River.

In addition, NMFS and Idaho Department of Fish and Game Studies show that 40 to 60 percent of Snake River salmon die before they reach the first dam on the Snake River: Lower Granite. In addition, many smolts die after they have passed Bonneville Dam. These facts indicate that many juveniles die due to causes other than the hydroelectric system: Predators, poor water quality, and poor health. Some of the fish transported and released below Bonneville Dam die from unknown causes.

To the extent that additional water is sought for fish, it is also significant to note that the two large storage dams in the Snake River Basin-the Corps' Dworshak Dam and Idaho Power Company's Brownlee Dam—control only 3 million acre-feet of Snake River average annual flow of 35 million acre-feet. In contrast, 16 million acre-feet, or 46 percent of the Snake River's average annual flow, is diverted for irrigation. Of this, 6 million acre feet, or 17 percent of the Snake River's average annual flow, is consumed, and 10 million acre-feet returns to the river at a later time.

B. Land Use

Cattle grazing, real estate developments, logging, farming, road building, and other land uses have destroyed some salmon habitat. A recent U.S. Forest Service study shows that such practices removed 50 to 75 percent of the pool habitat in the Columbia River Basin. Pools are vital to the survival of both adult and young salmon.

C. Pollution

Effluents from cities and industries, along with silt and chemicals from farms, have impaired the quality of the salmon's water.

D. Irrigation

Of the average 35 million acre-feet that flows down the Snake River each year, 16 million acre-feet are diverted for irrigation. Only 10 million acre-feet returns to the river. Six million acre-feet are consumed. In addition, diversion dams, dead-end irrigation canals, low flows and high temperatures have

blocked salmon from parts of some rivers such as Idaho's Lemhi River. In addition, unscreened irrigation diversions are a source of juvenile anadromous fish mortality.

E. Mining

In 1910, miners in Idaho built Sunbean Dam on the Salmon River. The dam blocked sockeye runs. Mining dams, silt, and chemicals leaching from mines have blocked or polluted streams.

F. Hatcheries

In 1991, the Columbia Basin's 51 hatcheries produced an estimated 83 million young salmon. Many biologists worry that the large number of hatchery fish take food and living space away from wild fish. They are also concerned that hatchery fish interbreed with wild fish, thereby diluting the wild fish's genetic characteristics, and spread disease.

G. Harvest

Hatcheries produce 80 percent of the Columbia Basin's annual run of 2.5 million adult salmon. Because harvest levels have been based upon the overall numbers of fish, instead of wild fish, harvest levels have been higher than they should be if wild salmon are to be protected. For example, more than 90,000 sockeye entered the Columbia River's mouth each year between 1980 and 1990. But the Snake River's mouth each year between 1980 and 1990. But the Snake River's part of the run was only approximately 73 fish per year. Some estimates show that as much as 41 percent of the sockeye and 74 percent of the fall chinook have been harvested in recent years. Ocean fishing also consumes a great number of salmon. Some estimates show that about 75 percent of all fish harvested are caught offshore.

BPA has actively worked with regional interests to achieve a comprehensive, biologically based, and coordinated approach toward improving troubled fish runs. For its part, BPA has developed a proposed action for river operations that improves survival of fish during downstream and upstream migration. With respect to the listed species, BPA has engaged in extensive consultation with the NMFS and in extensive analyses of the impact of the operations of hydroelectric projects upon fish and how hydroelectric operations can avoid jeopardy. This analysis included preparation of a biological assessment and participation as a cooperating agency in preparation of the 1992 Flow Options EIS.

BPA's analysis includes projections over the long term: it assesses whether declining populations of the listed species would level off and indeed increased if operations of the type proposed for 1992 were continued into the future. The analysis leads BPA to this record of decision that the proposed action is not likely to jeopardize the Snake River sockeye or chinook salmon.

In addition, the BPA, Corps, and BOR have commenced the System Operation Review, an environmental analysis that is evaluating potential major changes in Columbia River system operations. These include development of a multiple-use operating strategy for the rivers system, and renegotiation and renewal of the Pacific Northwest Coordination Agreement and other agreements related to the Columbia River Treaty between the United States and Canada.

III. Alternatives Considered

Four alternatives were considered in the 1992 Flow Options EIS as ways in which the downstream movement of juvenile salmon could be improved. The "No-Action" Alternative assumed the normal operation of the dams, reservoirs, and fish programs in the Columbia River Basin typical of the years 1985 through 1990.

A number of fish research and management actions are a part of the No-Action Alternative. The Juvenile Fish Transportation Program would continue as the primary method of moving juvenile salmonids downstream during April through mid-September on the lower Columbia River. Mainstream reservoirs would continue to be operated within normal ranges. Migration of juvenile salmon in the mainstream Columbia would be enhanced by releases of up to 3.45 MAF of water in May and June from Grand Coulee reservoir for the benefit of fish (Water Budget). Flow in the lower Snake River during April, May, and June would be augmented by releases from Dworshak and Brownlee (Idaho Power Co.). Water would be spilled at lower Snake and lower Columbia River projects in spring and summer to enhance movement of juveniles over dams instead of through turbines. Juvenile and adult fish passage facilities at all eight run-of-river Federal projects would continue to operate. Monitoring of juvenile and adult migration at Federal projects would continue.

A second alternative method of increasing water velocity, hence, potentially improving the movement of juvenile salmon, was to lower the elevations of the mainstem reservoirs. This action would reduce the cross-sectional area of the reservoir, thereby increasing the velocity of a given amount of water. Five different drawdown options were considered in the 1992 Flow Options EIS for lower Snake and lower Columbia River projects. The drawdown options considered for the lower Snake River projects were: Draft all four projects to minimum operating pool (MOP); draft all four projects to near spillway crest; draft Lower Granite 710 feet elevation and the remaining three projects to MOP. Only two drawdown options were considered for the lower Columbia River project. These were drawing all four lower Columbia River projects down to MOP and drawing McNary and John Day down to 337 and 262.5 feet, respectively, and the Dalles and Bonneville to MOP.

A third alternative for increasing velocity was to augment the amount of water flowing through the system. Flow augmentation would increase water velocity and presumably stimulate more rapid downstream migration. Eleven different flow augmentation options were considered for the Snake River and two different options were considered for the Columbia River. The options for the Snake River projects ranged from a discharge of 600 KAF from Dworshak to unlimited discharge from Dworshak and Brownlee reservoirs.

The two flow augmentation options considered for the Columbia River were similar. They differed in the manner in which water was to be stored and the manner in which water was to be released. These options were defined as the Target 200 option and the Northwest Power Planning Council's Plan. Both options called for the storage of additional water (up to 3 MAF) in Arrow and Grand Coulee Reservoirs for release in May and June. This water is in addition to the existing Water Budget of 3.45 MAF. Target 200 established a target flow. The Council's plan did not. However, the flows under both of these options would, on the average, provide flow at the Dalles during May and June that would vary from about 170 to 270 kcfs. Since the two options would have similar environmental effects, on average, they were treated in the 1992 Flow Options EIS as one option.

The fourth alternative (includes proposed action) considered various combinations of drawdown and flow augmentation. Three different combinations were evaluated. All included Target 200 flow augmentation of the lower Columbia River. The flow augmentation from Dworshak ranged from 600 to 900 KAF. Most included drawdown of the lower Snake River and lower Columbia River projects to near MOP.

The proposed action is the environmentally preferred alternative. It will result in improved conditions for salmon in the Snake and Columbia Rivers. This alternative represents actions whose environmental, social, and economic impacts have been found acceptable by local, State, regional and Tribal governments. It is not likely to jeopardize the continued existence of Snake River sockeye, spring/summer chinook, or fall chinook salmon in 1992.

IV. Decision Factors

The decision to implement the proposed action (including the purchase of power from alternative sources that would be associated with the storage of additional water for flow augmentation, drawdown of run-of-river projects, continued spill at Lower Monumental and Ice Harbor, and the acquisition of additional water from upper Snake River Basin projects), is based on the following factors: Legal, environmental, Section 7 consultation with NMFS, analytic, and economic.

A. Legal Factors

NEPA provides that BPA, prior to deciding to undertake a major Federal action significantly affecting the environment, analyze the potential environmental impacts of the proposed action (43 U.S.C. 4332(a)). BPA participated in the requisite analysis in the 1992 Flow Options EIS. In this ROD, BPA announces its decision after considering associated environmental impacts.

ESA requires that Federal agencies, in consultation with NMFS, and on the basis of the best available scientific evidence, ensure that their actions are not likely to jeopardize endangered or threatened species (16 U.S.C. 1536(a)(2)). Consistent with this provision and with regulations describing the consultation process, BPA prepared a Biological Assessment and engaged in formal consultation with NMFS with regard to Snake River sockeye, spring/summer chinook and fall chinook salmon. See 50 CFR part 402. After the conclusion of consultation and issuance of a biological opinion by NMFS, BPA, as an action agency, must then determine whether its actions are likely to jeopardize these species (50 CFR 402.15(a)). BPA describes its determination in this ROD.

B. Environmental Factors

The 1992 Flow Options EIS focused on those actions that could be implemented in 1992 to improve the migration of juvenile salmon by increasing water velocity in the lower Snake and lower Columbia Rivers during low flow conditions. The evaluation of the proposed action and alternatives in the 1992 Flow Options EIS is part of an ongoing effort to improve the survival of declining stocks of Pacific salmon originating in the Snake River Basin.

The increases in water particle travel time that are associated with construction and operation of the run-of-river projects of the Columbia River Basin have been a source of concern to fishery managers for years. The delays that are associated with low flow years have been of particular concern. Many believe that some improvement in water velocity during low flow conditions will result in a reduction in the time it takes juvenile salmon to migrate past the eight dams and reservoirs in the lower Snake and lower Columbia rivers and, thereby, reduce the time salmon smolts are exposed to predation and other adverse factors and reduce the opportunity for residualism. However, reductions in particle travel time do not necessarily mean reductions in fish migration time. Factors other than flow levels, such as the level of smoltification and water temperatures, also affect travel time. There is disagreement among experts as to the relationships among increased flows, improved travel time, and improved fish survival for juvenile salmon.

The available data are very limited. Additional survival data is needed for salmon and steelhead. To address this need, extensive efforts will be made to collect data and information that will contribute to a long-term plan for the recovery of threatened and endangered Columbia River Basin salmon.

Most regional scientists agree that the limited survival studies on yearling chinook and steelhead show increased smolt survival with increased flow up to approximately 85 to 100 kcfs in the Snake River and 200 to 220 kcfs in the lower Columbia River. There is disagreement among scientists as to whether existing data supports survival benefits for flows above these levels.

For subyearling chinook migrants, the limited studies have been interpreted by different scientists to show: (1) No effect on travel time; (2) some effects on travel time; and (3) some effect only when smolts reach an active migration size. Based on predation studies, models have been developed that assume both a relationship and no relationship between travel time through reservoirs and predation losses. No conclusive studies exist on the relationship between flow and survival for subyearling chinook salmon.

The potential environmental effects that were evaluated in the 1992 Flow Options EIS were: (1) Flow augmentation effects at storage projects associated with a change in storage and release quantities and schedules; (2) the effects at run-of-river projects that would be associated with increased water velocities, increased spill, and reduced pool elevations (drawdown effects in run-of-river projects); and (3) the combined effects of augmentation and drawdown actions.

Potential environmental effects of flow augmentation options at storage projects were determined not to be significant. This is because, in most instances, the proposed storage and release actions were constrained by the operational limits of the affected projects. For example, the flood control and refill objectives that have been established for these projects were met in most options. Only in those cases in which the operational constraints of the storage projects were ignored (e.g., evaluating the effects of unrestricted release to meet some targeted flow) were significant environmental effects predicted.

The principal effect of flow augmentation options on storage projects was how the schedules for filling and drafting were modified during the months of April through June. The constraints to this change were flood control limitations during April through June and the need for the pools to be at or near summer conservation pool elevation by July 31. Unrestricted releases from storage projects would adversely impact resident fish by exposing spawning areas, flushing nutrients out of the pools and entraining resident fish in the discharge. Since unrestricted releases would empty the storage reservoirs, flood areas downstream, and impact refill, these options were eliminated from consideration early in the study process. Augmentation from non-Federal reservoirs in the Snake River Basin was not considered a viable option in the EIS since contributions from these reservoirs would be dependent on complex negotiations that would not be completed in time for the 1992 migration season.

The most significant potential environmental effects would be those associated with measures taken to increase water velocity and flow in the lower Snake and lower Columbia Rivers. Flow augmentation had fewer environmental effects that did reservoir drawdown. This is because any augmentation during low runoff years would result in flows that are less than or equal to the flows observed during years of higher runoff. Thus, potential effects of higher flows due to augmentation would not be much

different from effects of flows during wetter years. Further, the operational limits of discharge from storage projects limit the maximum amount that river flows can be augmented. For example, the maximum discharge from Dworshak is 25 thousand cubic feet per second (kcfs). Thus, the maximum augmentation that can be expected from Dworshak would be somewhere in the range of 20 kcfs, if it were discharging 5 kcfs under normal operations.

In contrast, the effects of drawing down the elevations of run-of-river reservoirs to increase water velocity (reducing the cross-sectional area of the reservoirs) would be significant and directly related to magnitude of the drawdown. For example, the effects of drawing the projects down to run-of-river spillway crest (a 20 to 30-foot drawdown) would be much greater than drawing the projects down to MOP (a reduction of 3 to 5 feet). This is because increasing velocities by drawdown of the mainstem projects is directly related to changes in pool elevations.

Drawdown would have a number of environmental impacts. Riparian habitat would be lost or impacted by the loss of available water. In turn, wildlife and resident fish would be impacted by the loss of these habitats. Banks and shallow water areas would be exposed and erosion would increase. This in turn would degrade water quality by increasing turbidity and resuspending pollutants and would degrade air quality by increasing the opportunity for wind blown dust from dried out shallow areas. In addition, exposed banks and shallow areas would expose cultural and historical resources to damage and unauthorized removal. Recreation and aesthetics would be adversely impacted by the loss of surface water and the exposure of large expanses of mud flats.

Potential environmental effects are also related to the magnitude of the drawdown. All of the facilities of existing run-of-river projects are designed to be operated at greatest effectiveness in the narrow range of full pool to MOP. Accordingly, the effectiveness of turbines, navigation facilities, fish bypass systems, adult passage systems, and flip lips decrease as pool levels are reduced. Thus, if run-of-river projects are to be operated at pool elevations below MOP, substantial modifications to mitigate environmental effects would be required.

The combination of flow augmentation and drawdown would increase water velocity in direct proportion to the magnitude of the flow augmentation and drawdown. For example, it would be possible to reduce the time it takes a particle of water to travel from the mouth of the Clearwater to just below Bonneville Dam to less than 15.1 days. This would be done by drawing the lower Snake River projects down to near spillway crest, drawing the lower Columbia River projects down to MOP and augmenting existing Water Budget flows (total of about 4.2 MAF).

Reservoir drawdown entails drawing the lower Snake River projects down to near spillway crest. However, it is associated with a number of adverse impacts on the species it is proposed to benefit. Drawing down the Snake River projects to near spillway crest would result in high nitrogen supersaturation levels, eliminate the operation of existing juvenile bypass facilities, disrupt or eliminate the operation of existing adult passage facilities, and eliminate the opportunity to transport juveniles by barge. Since it was not possible to redesign and retrofit projects to compensate for these adverse effects in time for the 1992 fish migration season (some redesign and retrofit could require several years to complete), drawdown to near spillway crest was eliminated as an option for 1992.

C. ESA, Section 7 Consultation

The actions evaluated in the 1992 Flow Options EIS are designed to improve conditions for fish listed and proposed for listing under ESA. Thus, while the EIS is a relevant tool for evaluating the relative impacts of different alternatives and options, ESA considerations will play a determining role in deciding which actions are to be implemented in 1992. Accordingly, biological assessments were prepared by BPA and the Corps pursuant to Section 7 of ESA.

One assessment, addressing the effects of the alternatives on bald eagles and peregrine falcons was evaluated by the U.S. Fish and Wildlife Service (USFWS). The USFWS reported a finding of no adverse effect on these two species in a letter dated February 10, 1992.

The assessments developed by BPA and the Corps for Snake River sockeye, spring/summer chinook, and fall chinook salmon were evaluated by NMFS. The approach NMFS used to evaluate the 1992 operations is illustrated on pages 15 and 16 (Section IV.A.1) of the Biological Opinion prepared April 10, 1992.

During consultation, NMFS recommended a number of additional actions. In NMFS' view, these additional actions, when coupled with the actions already in place and changes recommended by the 1992 Flow Options EIS, would avoid jeopardizing the continued existence of Snake River sockeye and chinook salmon in 1992. These changes are:

1. Extend the duration of the 900 KAF Water Budget from Dworshak by 15 days (from April 15–May 31, 1992 to April 15 to June 15, 1992);

2. Replace the temperature control test with a summer flow augmentation action in which 400 KAF of water would be released from either the upper Snake River projects or from Dworshak, or in some combination, to augment Snake River flows between June 16 and August 30, 1992. Any release from Dworshak would be over and above the minimum discharge of 1.2 KCFS;

3. Monitor and evaluate real time flow and fish migration throughout the 1992 fish passage season;

4. Provide 40 percent of the instantaneous flow at Lower Monumental as spill for 12 hours a day from April 15, 1992, until results from the Fish Guidance Efficiency (FGE) tests are available. The 1992 FGE results will then be used to determine appropriate spill, if any, to achieve 70 percent fish passage efficiency through May 31, 1992. Sixty percent of the instantaneous flow at Ice Harbor from April 15 to May 31, 1992, will be spilled for 12 hours per day; and

5. Provide 43 percent of the instantaneous flow as spill for 12 hours per day from June 1 to August 15, 1992, at Lower Monumental and 30 percent of the instantaneous flow at Ice Harbor as spill for 12 hours per day from June 1 to August 22, 1992. If new information indicates that the 1992 migration is not similar to that observed in 1991 and more spill is needed, then consultation with NMFS will be reinitiated.

BPA believes that, although the modifications are conducive to improvement of the listed species, the actions proposed for 1992, even without these modifications, are not likely to jeopardize Snake River sockeye and chinook salmon. This conclusion results from analyses performed in BPA's Biological Assessment for proposed 1992 river operations, and by additional analyses performed through consultation with NMFS (see supplement to BPA's Biological Assessment, July 1992).

The analysis described in BPA's Biological Assessment shows that improvements in migration survival and the captive rearing program are expected to increase the size and productivity of sockeye salmon populations. With regard to the spring/summer chinook salmon species, the analysis described in the Biological Assessment shows an increasing spawning escapement (i.e., increased

adult spawning population) trend for the spring component and a relatively stable trend in spawning escapement for the summer component. A combination of the components shows an increasing spawning escapement trend for spring/summer chinook salmon. With regard to the fall chinook species, the analysis described in the Biological Assessment also shows an increasing spawning escapement trend for fall chinook salmon.

The additional analysis described in the July 1992 supplement to the Biological Assessment used juvenile passage conditions within the Columbia River Salmon Passage Model (CRiSP) recommended by NMFS. The results show improved sockeye and chinook salmon juvenile survival for 1992 conditions. The life-cycle analyses for chinook salmon show increasing escapement trends for Snake River fall chinook and spring/summer chinook salmon. The analysis also shows low probabilities of spawning numbers below 50 adults. The summer component of the spring/summer chinook salmon species unit shows a continuing downward trend in escapement. However, when combined with the much higher numbers of the spring component, which is increasing in population trend, the aggregate spring/summer chinook species unit shows an increasing escapement trend and very low probability of population numbers below 50 adults. By showing increasing juvenile survival and adult population numbers, and a decreasing probability of low adult population numbers, this additional analysis supports our conclusion of no jeopardy for 1992 operations.

With regard to the flow modifications recommended by NMFS, there is a lack of data regarding the responses of salmon to incremental changes in flow or velocity. Consequently, scientists differ with respect to the benefits that these changes in flow or velocity provide. However, provision of these flow modifications is not likely to adversely affect the availability of water for fish in 1993. The recommended 400 KAF of flow augmentation for June 16 to August 30, 1992, could reduce the probability of refill of Dworshak and thereby impact the water budget in 1993 or later if the entire 400 KAF were to come from Dworshak. However, use of Dworshak will be limited so that it does not affect the probability or refill in 1993.

BPA's proposed river operations for 1992 included the release of cool water from Dworshak reservoir in August and September to reduce water temperatures in the lower Snake River. This would test whether lower river water temperatures help adult Snake River fall chinook salmon pass upstream. Although NMFS believed that releasing this water would benefit adult fall chinook, it preferred that when available water was insufficient to benefit both juvenile fall chinook in July and adult fall chinook in August, the juveniles should receive priority. That is, the water that would have been used in August for the temperature control test should instead be used in July for juvenile fall chinook migration. BPA biologists believe that (1) returning adult fall chinook would benefit from lower water temperatures in reservoirs and dam ladders, especially in low water years, and (2) flow modification, as proposed by NMFS, would not improve survival of juvenile fall chinook. However, recognizing that scientists differ with respect to the use of this water for adults as opposed to juveniles, BPA has decided to act consistently with NMFS' prioritization. BPA is hopeful that, as we get more information on water availability, some aspects of the temperature control test can still be performed in 1992. BPA also believes that, especially if the experiment is not performed this year, it should be performed in future years. The experiment is necessary to resolve differences in opinion and assess how water temperature affects adult migration. In addition, even if water is not released for temperature control this year, other aspects of the temperature control experiment should continue, including model development and temperature monitoring. These activities are essential for future water management decisions and should proceed.

Flow modifications can be implemented under existing authorities of BPA, BR, and the Corps, and most of the modifications are consistent with the conditions outlined in the Fish Spill MOA of 1989 among BPA, fisheries agencies, and Indian Tribes. Because these modifications may provide benefits to anadromous fish and will not impair provision of water in 1993, and legal authority to provide these changes exists, BPA has decided to include these changes in river operations proposed for 1992.

D. Analytical Factors

1. Scope of Analysis

The scope of BPA's consideration of how its proposed actions for 1992 would affect the environment, and whether its proposed actions are likely to jeopardize Snake River salmon listed or proposed for listing as threatened or endangered, is broad. With respect to environmental impacts, BPA participated in the analysis described in the 1992 Flow Options EIS and considered all public comments. With respect to impacts upon species listed or proposed for listing under ESA, BPA prepared its Biological Assessment and engaged in extensive consultation with NMFS. As a result of these consultations, BPA supplemented its analysis, modified the actions that it initially proposed for 1992, and studies NMFS' analysis of its modified proposed actions in NMFS' recently issued Biological Opinion.

The key to avoiding jeopardy and achieving recovery of Snake River sockeye and chinook salmon is increased survival of adults returning to spawn (spawning escapement). Spawning escapement depends upon actions taken by various entities at all stages of the salmon's life-cycle. Consequently, the extent to which a proposed action affects a listed species, in part, depends upon how previous actions have affected it and subsequent actions will affect it. For example, the extent to which changes in river operations for juvenile migration result in increased adult escapement and, thereby, avoid jeopardy and contribute to recovery, depends, in part, upon habitat conducive to hatching and rearing of smolts prior to their migration, and to a harvest-free or harvest-restricted environment allowing adults to return to spawn. Consequently, BPA has analyzed how hydrosystem operations for 1992, when combined with other effects at various stages of the species' life-cycles, affect survival of anadromous fish. This approach is consistent with NMFS' request that the Biological Assessment evaluate the effects of river operations in terms of survival (NMFS 1991)

As an action agency, BPA has independently performed its analysis and used its own modeling to assess the potential environmental impacts of the proposed action and to determine whether the proposed action is likely to cause jeopardy to listed species. The analysis entails the exercise of professional judgment of BPA's biologists, after consideration of extensive modeling and additional qualitative factors. For a detailed description of this analysis, please see the Biological Assessment and the "Analytical Tools" section of this ROD.

Using its own analysis, NMFS concludes that the proposed action is not likely to cause jeopardy to Snake River sockeye or chinook salmon. This fact shows that two different

approaches have reached the same result.

BPA's analysis takes into consideration some Federal actions for which consultation has not been completed, such as the Snake River sockeye salmon captive rearing program. Such actions are designed to improve conditions for fish and are likely to occur. Inclusion of these actions in BPA's analysis is consistent with NMFS' request that the assessment address all three "phases" of this consultation: (1) Specific flow measures described in the EIS; (2) other river system operations, including transport, flows not addressed in the EIS, and predation control; and (3) hydroelectric project operation and maintenance activities. (December 23, 1991, Letter from Regional Director Rolland Schmitten to Corps Director of Planning and Engineering Robert P. Flanagan.) It is also consistent with the direction that appropriate consideration by given to beneficial actions taken by the action agency (50 CFR 402.14(g)(8)).

BPA's analysis takes into consideration harvest activities. Ocean fishing outside the 3-mile limit is regulated by the Federal government under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq).* Consideration of the adverse effects of harvest is important to considering how river operations affect the survival of Snake River sockeye and chinook salmon. Consequently, BPA incorporates analysis of ocean harvest.

BPA's analysis also considers in-river harvest. Consideration of the adverse effects of in-river harvest is important to considering how river operations affect the survival of Snake River sockeye and chinook salmon. Consequently, BPA's analysis includes study of in-river harvest.

2. Analytical Tools Used

BPA has used state-of-the-art models and best available scientific information to evaluate the 1992 proposed river operations and mitigation conditions. These models provide information on juvenile passage survival for chinook and sockeye, and multigeneration spawning escapement trends for chinook. They are an essential tool for a comprehensive evaluation of the many factors that combine to affect juvenile system survival to below Bonneville Dam and the long-term population viability of the listed salmon stocks. A comprehensive analysis (relative to a narrower focus on individual actions or life stages) is critical to a jeopardy/no jeopardy determination.

In order to determine whether the proposed hydro operations for 1992 are likely to jeopardize the continued existence of listed species or species proposed for listing, BPA believes it is necessary to analyze available information and data in two ways. First, we have looked at the 1992 hydro operations relative to the 1990 baseline to determine if the operations decrease, effect no change in, or increase survival of juveniles in 1992. Second, where possible we have employed the use of the Stochastic Life Cycle Model (SLCM) (see Biological Assessment, 1992 Operation of the Federal Columbia River Power System, January 13, 1992, Appendix B) to determine the expected spawning escapement trend of each population over the next 40 years if the proposed 1992 hydro operations were continued into the future. Also included in the analyses are actions that are certain to occur, or that have a high probability of occurring in the near term. These include actions such as installation of additional bypass improvements, better control of predators, extended transportation periods, and reductions in harvest.

BPA believes that the employment of the SLCM or comparable comprehensive life-cycle models is of extreme importance in determining the eventual fate of a population of andromous fish because of the temporal and spatial distribution of the population. Since in any given year fish from 4 or more brood years are distributed throughout the species' range as rearing juveniles, outmigrants, subadults, or adults, it is extremely unlikely that a single adverse event could jeopardize the species. However, while for any single year it is possible to demonstrate improvement in survival of one or more life stages resulting from a proposed action it is also possible that such improvement alone could be insufficient to reverse a long-term downward trend in the population. We believe life-cycle modeling must be employed to judge the overall effect of a set of actions on a species. We believe this is appropriate since BPA views the actions proposed for 1992 hydro operations as long-term objectives—unless they are shown to be ineffective or unnecessary.

A fish passage model was used to evaluate juvenile sockeye survival. The development of a life-cycle model to project sockeye salmon escapement trends was not complete at the time of this analysis. Sockeye salmon abundance is estimated by calculations of expected sockeye salmon production from captive breeding programs and the natural environment. (See Appendix F of BPA's Biological Assessment for a complete description of the methodology for estimating sockeye salmon production.)

BPA recognizes the concerns expressed by NMFS in their Biological Opinion regarding the use of CRiSP and SLCM. We realize that the existing data necessary to predict impacts can be improved and that there is a significant level of uncertainty and variability inherent in biological systems. The analyses have attempted to capture some of this uncertainty. BPA has noted in its Biological Assessment that the results of the models should not be used as absolute or specific predictions of future population numbers. Instead, the model results should and can be used to assess the relative change in the passage survival level or in the population trend between the 1990 baseline operation and alternative future conditions. Additional, rigorous analysis will continue to be performed by BPA as we attempt to address the uncertainty in the data. The models are the best available scientific method for a quantitative assessment of the relative effect of the proposed actions. The results of the analyses are valuable and necessary to help determine a jeopardy or no jeopardy conclusion for 1992 river operations.

To assess improvements to survival, NMFS seeks reductions in mortality from baseline levels (Biological Opinion, p. 16). Although NMFS' methodology is different from BPA's, NMFS' approach reaches a similar conclusion and, thereby, corroborates BPA's analysis.

E. Economic Factors

The potential economic effects of the various options considered were a significant issue to a number of different water resource users. Like environmental effects, economic effects were directly related to the magnitude of the augmentation and drawdown proposal. For example, reserving water (storing in winter and early spring) for the purpose of augmenting flows in spring or summer reduces the amount of water that will be available for hydropower production in winter (the period of highest power demand in the Pacific Northwest) and increases generation at a time when the power has less value.

Drawdown of the lower Snake River and lower Columbia River projects to below MOP would significantly impact most river users since project facilities are typically designed to operate within the range of MOP to full pool. Navigation facilities would be eliminated since there would be insufficient water depth to operate the locks. Loss of navigation would impact

other transportation services. Irrigation would be impacted since most operators set the intake ports just below the lowest normal pool level in summer (usually MOP). Loss of irrigation water would result in crops losses, lost capital investments, and secondary and tertiary losses.

Power production would also be impacted since operation of the generators below MOP can be accomplished only at reduced efficiencies. Since operating the generators at reduced efficiencies results in higher mortality of the salmon that pass through the generators, it was assumed in the EIS that the generators would not be operated when the pools were drafted below MOP. Finally, power production will be affected by refill requirements at both storage and run-of-river projects, the duration of the drawdown, and the requirement to hold the run-of-river pool elevations within a narrow daily range (e.g., 12 to 18 inches). Power production is reduced when the opportunity to vary the daily discharge to meet the variation in daily load is reduced and the longer a pool is held at a lower than normal elevation. Finally, if the pools are held at a low elevation into late summer when inflow is low, power production will be further degraded when discharges are reduced to refill the projects.

BPA has estimated the costs of replacing the energy losses due to the various options to range from $200-$240 million in 1991 dollars for the most severe run-of-river drawdown option to about $78-149 million for the proposed action. These estimates are based on the following assumptions: (1) Firm Energy Load Carrying Capability replacement costs would be about 35 mills/kwh; (2) capacity replacement costs in May and June would be about $4 kilowatt (kW)/month for losses of 1000 to 3000 Megawatts (MW) and about $10 kW/month for capacity losses above 3,000 MW. Capacity replacement costs in other months would be about $4 kW/month; and (3) nonfirm replacement costs would be about 15 mills/kilowatthours. Because of the difficulty of estimating power replacement costs, these numbers should be used as a relative index of power costs, not firm estimates of costs.

V. Mitigation, Monitoring, and Research

Since the proposed action will improve conditions for endangered and threatened salmon species, no mitigation is required.

In addition to the monitoring called for in the 1992 Flow Options EIS and in the NMFS Biological Opinion, monitoring is an ongoing activity of a number of Federal, State, Tribal, and regional authorities.

The Corps monitors adult and juvenile fish passage past Federal projects, conducts or sponsors ongoing research on anadromous fish and participates in similar research programs of other organizations. The Corps also operates 17 stations along the river system that monitor water quality. BPA sponsors a wide variety of fish research and enhancement evaluation programs related to reservoir mortality, hatchery production, disease, spawning habitat and numerical modeling of system fish survival. The Fish Passage Center, funded by BPA, monitors each year's juvenile out migration, system operations, fish passage, and power generation data from BPA and the Corps. NMFS, state fish and wildlife agencies and Indian Tribes conduct fish research and monitoring studies.

In 1992, ongoing work under a number of contracts will continue to address the near term needs for measuring survival of both smolts and adults in relation to flow and other environmental variables. For juvenile salmon this work includes: (1) Developing the statistical frameworks for survival estimation and analysis; (2) compilation and further analysis of existing travel time and survival data sets to extract additional information; (3) identifying protocols for estimating smolt survival in the Columbia and Snake Rivers; (4) studying the relationship between smolt travel time and flow, physiological condition, stock origin, time of migration, and other environmental factors, through use of existing Passive Integrated Transponder (PIT) tag detectors and other methods; and (5) installation of additional PIT tag facilities. For adult salmon this work includes performing the multivariate analysis of the survival rates of Columbia River hatchery stocks from coded-wire tag analysis to evaluate flow-related and other environmental effects.

Improved protocols for survival experiments will be available for testing in 1992 including statistical methods powerful enough to reliably examine the causal relationships between river flow and other environmental factors on survival differences. However, implementation in 1992 is dependent upon the support of regional fish and wildlife agencies and Indian Tribes and the return of PIT tag-detected juvenile fish back into the Snake River at Lower Granite Dam using existing PIT tag facilities.

For 1993 and beyond we will have the ability to make individual estimates of smolt survival within selected reaches in the Snake River System and relate these estimates to travel time and other environmental and biological variables. As more PIT tag facilities become operational, we will be able to expand the scope of investigations to study the relationship between smolt survival and flow, fish health, physiology, travel time, and other factors. For adult salmon, we will have the analytical capability to combine estimates of juvenile and adult survival to characterize the relationship between smolt and adult survival and biological and environmental parameters including flow.

Improved analytical techniques will permit us to integrate the concept of survival over the entire life-cycle of Snake and Columbia River salmon stocks. Such improvements will facilitate development of ways to increase adult returns of anadromous fish.

VI. Conclusion

The proposed plan for improving flow conditions for salmon in the Columbia River Basin in 1992, as developed by the separate actions of BPA and the Corps, is the environmentally preferred alternative of the 1992 Flow Options EIS. It satisfies the request made by the Salmon Summit to recommend a set of actions that would improve passage of juvenile salmon in 1992 without impeding the passage of adults. It is also in general agreement with the recommendations of state and regional agencies in the Columbia River Basin, with the Power Planning Council's Phase II Fish and Wildlife Program Amendments, and with the recommendations presented in the Biological Opinion developed by NMFS. In selecting the preferred alternative, BPA has adopted all practicable means to avoid or minimize environmental harm. Most importantly, using the best available scientific evidence, BPA concludes that its proposed action is not likely to jeopardize Snake River sockeye or chinook salmon.

Issued in Portland, Oregon, on July 8, 1992.

Randall W. Hardy,

Administrator.

[FR Doc. 92-19088 Filed 8-10-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 10, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, Please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–523.
3. 1902–0043.
4. Application for Authorization of the Issuance of Securities or the Assumption of Liabilities.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 60 respondents.
10. 1 response.
11. 120 hours per response.
12. 7200 hours.
13. This applies to any issuance of a security or assumption of obligation or liability by public utility or licensee for which approval must be obtained by this Commission.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC., August 5, 1992.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 92–19086 Filed 8–10–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–616–000; et al.]

Louisville Gas & Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 3, 1992.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas & Electric Company

[Docket No. ER92–616–000]

Take notice that Louisville Gas and Electric Company, by letter dated July 28, 1992, tendered for filing an amendment to its filing dated June 4, 1992. The original filing was a new Unit Power Purchase Agreement, along with the First Supplemental Agreement to the Interconnection Agreement, dated February 7, 1989, between Louisville and Indiana Municipal Power Agency.

This amendment to the Unit Power Purchase Agreement provides clarification on the issues of Substitute Energy and costs related to Trimble County, and requires LG&E to file with the Commission for a change in rate should its charges to IMPA be adjusted pursuant to certain provisions of the Agreement.

Copies of the amended filing were served upon IMPA, the Kentucky Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Company

[Docket No. ER92–754–000]

Take notice that on July 29, 1992, Consumers Power Company (Consumers) tendered for filing five Facilities Agreements with the Michigan Public Power Agency (MPPA), the Cities of Harbor Springs, Petoskey and Charlevoix (the Cities). The filed Facilities Agreements provide for Consumers, the MPPA and the Cities to construct and own various electric lines, substation, metering and telemetering equipment at various points of interconnection in order to facilitate formation of a new operating entity called the Municipal Cooperative Coordinated Pool. Certain facilities costs incurred by Consumers are to be reimbursed by the MPPA and the Cities. A copy of the filing was served upon the MPPA, the Cities, and the Michigan Public Service Commission.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. San Diego Gas & Electric Company

[Docket No. ER92–752–000]

Take notice that on July 29, 1992, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.13, and Umbrella Agreement with BPA which provides for the purchase and sale of surplus energy, and/or surplus capacity, power exchanges, and/or other services which the Parties may agree from time to time to make available and purchase for short-term periods not to exceed 12 months.

SDG&E requests waiver of the Commission's prior notice requirements and an effective date of June 30, 1988.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER92–751–000]

Take notice that on July 29, 1992, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, the Coordination of Services Agreement (Agreement) between SDG&E and the City of Seattle, City Light Department.

SDG&E requests that the Commission allow the Agreement to become effective August 1, 1992 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Seattle.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER92-337-000]

Take notice that on July 28, 1992, Florida Power Corporation (Florida Power) filed a letter as a result of discussions with the Commission's Staff, stating that Florida Power hereby agrees that its total charges under Section 14 of the April 20, 1967 Operation and Maintenance Agreement between Florida Power and Seminole Electric Cooperative, Inc., will not exceed the charges resulting from the application of the formula attached thereto. Florida Power requested that this letter and the attached formula be accepted as supplements to the Agreement.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Western Systems Power Pool

[Docket No. ER91-195-004]

Take notice that on July 15, 1992, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 order (55 FERC ¶61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 388.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's information filing are on file with the Commission, and the non-privileged portions are available for public inspection.

7. Central Power and Light Company

[Docket No. ER92-755-000]

Take notice that on July 29, 1992, Central Power and Light Company (CPL) tendered for filing an Interchange Agreement, a letter supplementing such Interchange Agreement and an Interconnection Agreement between CPL and South Texas Electric Cooperative, Inc. (STEC). The Agreements establish two new points of interconnection between the transmission systems of CPL and STEC.

CPL requests an effective date of September 30, 1992, for both Agreements. Copies of the filing were served on STEC and the Public Utility Commission of Texas.

Comment date: August 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18997 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

July 21, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 11120-001.

c. *Date filed:* June 23, 1992.

d. *Applicant:* Cameron Gas and Electric Company.

e. *name of Project:* Middleville Hydroelectric Water Project.

f. *Location:* on the Thornapple River, Thornapple Township, Barry County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Jan Marie Evans, Cameron Gas and Electric Company, 4572 Sequoia, Okemos, MI 48864, (517) 351-5400.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Comment Date:* August 24, 1992.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) A existing concrete gravity dam 12 feet high and 80 feet long; (2) an existing reservoir with a storage capacity of approximately 30 acres and a normal maximum surface elevation of 708.5 feet mean sea level; (3) an existing penstock approximately 25 feet by 25 feet; (4) an existing powerhouse with one generating unit having a capacity of 350 kW; (5) an existing transmission line approximately 100 feet long; and (6) appurtenant facilities. The owner of the dam is Middleville Power Company. The applicant estimates that the average annual generation would be 1,400,000 kilowatthours, and the estimated cost of the project is $88,000.

1. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19019 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-621-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

August 3, 1992.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP92-621-000]

Take notice that on July 30, 1992, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-621-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate facilities permitting FGT to add a new delivery point for Peoples Gas System, Inc. (Peoples), under its blanket certificate issued in Docket No. CP82-553-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new meter station in Orange County, Florida, referred to as the Orlando Turnpike delivery point, to accommodate jurisdictional gas sales to

Peoples under two existing sales service agreements (Rate Schedules G and I).

FGT states that the proposed construction was requested by Peoples to accommodate the geographic shift of its market requirements within its traditional service territories. FGT proposes to deliver up to 23,600 million Btu on a daily basis, and 5,509,580 million Btu on an annual basis to Peoples through the new delivery point for commercial, industrial and residential end uses. FGT also states that the proposed construction would not affect the maximum daily quantities or the maximum annual contract quantity in the Rate Schedule G service agreement nor would it affect the annual volumetric entitlement in the Rate Schedule I service agreement. Also, it is indicated that the gas deliveries would be served from the total firm entitlements currently assigned to the Orlando Division and would not impact FGT's peak day or annual deliveries.

It is indicated that the Orlando Turnpike delivery point would include a 6-inch turbine meter, a regulator, a relief valve, and any other necessary appurtenant facilities to accommodate the measurement of gas up to 1,095 million Btu per hour. FGT also proposes to construct two new 6-inch hot taps on FGT's existing 24-inch and 26-inch mainlines, as well as approximately 750 feet of 6-inch line to connect the proposed meter station to FGT's 24-inch and 26-inch mainlines. FGT estimates cost of construction of $421,760. FGT also indicates that Peoples would reimburse FGT for all costs directly and indirectly incurred by FGT for all proposed construction.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP92-623-000]

Take notice that on July 30, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-623-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for service to Mobil Natural Gas, Inc. (Mobil), in St. Mary Parish, Louisiana, under United's blanket certificate issued in Docket No. CP82-430-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate the delivery point, consisting of a tap and meter station including regulating and appurtenant facilities, and to install approximately 257 feet of 2-inch line at Mobil's intracoastal loading dock facility near Burns, Louisiana. It is stated that the facilities are required for United to deliver an estimated daily volume of 1,048 MMBtu to Mobil under an open-access transportation agreement pursuant to the terms of United's ITS Rate Schedule. It is estimated that the cost of installing the facilities would be $51,925, and it is asserted that Mobil would reimburse United for the cost.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP92-611-000]

Take notice that on July 24, 1992, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP92-611-000, an application pursuant to section 7(b) and section 7(c) of the Natural Gas Act to abandon 48 horizontal engine compressors, three intermediate compressor stations, and approximately 18.88 miles of the original 24" Amarillo No. 1 mainline in Kansas, and to replace these facilities by the construction and operation of four compressor engines and by upgrading another compressor station in order to increase the horsepower at those same stations at an estimated cost of $2.7 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Natural indicates that the facilities proposed are necessary because the upgrade reduces operating costs by eliminating or replacing parts of the system that are obsolete and require high operation and maintenance costs. Natural also states that the proposed facilities would allow for it to maintain the required market deliverability from all supply sources connected to its system.

Comment date: August 24, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. East Tennessee Natural Gas Company

[Docket No. CP92-622-000]

Take notice that on July 30, 1992, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-622-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point, consisting of a 2-inch hot tap and meter to accommodate the delivery of natural gas to Virginia Gas Company (Virginia Gas) in Russell County, Virginia, under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee states that it has entered into an amendment to a gas transportation agreement with Virginia Gas, effective July 1, 1992, to establish a new delivery point so as to transport up to 5,000 dekatherms per day on an interruptible basis under East Tennessee's Rate Schedule IT. It is said that Virginia Gas requested East Tennessee to construct these facilities and that all costs associated with the construction would be reimbursed to East Tennessee.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP92-617-000]

Take notice that on July 28, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-617-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a segment of its Baton Rouge-New Orleans mainline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to abandon approximately 4.48 miles of 18-inch pipeline and appurtenant facilities located in St. Charles and Jefferson Parishes, Louisiana. United proposes to abandon the facilities by removal, with the exception of 1,756 feet, consisting of highway and railway crossings and a segment crossing a trailer park subdivision, which would be abandoned in place. It is stated that the pipeline is 60 years old and obsolete. It is asserted that United has a 16-inch loop line parallel to the segment proposed for abandonment and that this loop line has sufficient capacity to make up for that being abandoned. It is estimated that the cost of removal would be $125,368 and that the salvage value would be $94,618.

Comment date: August 24, 1992, in accordance with Standard Paragraph F at the end of the notice.

6. Northern Natural Gas Company

[Docket No CP92-615-000]

Take notice that on July 27, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-551-000, a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for authority to install and operate one new delivery point, to upgrade seven existing delivery points, and to construct approximately 2.5 miles of looping on the existing Elk River 20" Branchline and 4 miles of looping on the existing Minnesota 12" Branchline, all located in Minnesota to accommodate natural gas deliveries and transportation service to Midwest Gas Company (Midwest Gas), all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the upgrade of these facilities is necessary due to load growth and expansion of their distribution system to new areas and that the end use of the gas will be commercial, industrial and residential. Northern estimates the proposed facilities would initiate a volume increase of 11,005 Mcf/d and 730,000 MMcf/yr and the cost of the facilities to be $804,000.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP92-610-000]

Take notice that on July 24, 1992, Arkla Energy Resources (AER), a division Arkla, Inc. (Arkla), Post Office Box 21734, Shreveport, Louisiana 71151, filed a prior notice request with the Commission in Docket No. CP92-610-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate certain facilities as jurisdictional facilities, under AER's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, all as more fully set forth in the application which is open to public inspection.

AER proposes to operate the interconnection between AER and LGS Intrastate (LGS) in Ouachita Parish, Louisiana, as a jurisdictional facility to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations. AER constructed and completed the LSG interconnection in February 1987 solely to provide services authorized under section 311 of the Natural Gas Policy Act of 1978 and subpart B, part 284, of the Regulations at a cost of $306,057.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corporation

[Docket No. CP92-616-000]

Take notice that on July 27, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314 filed in Docket No. CP92-616-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish an additional point of delivery to an existing wholesale under the blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that it requests authorization to provide to Piedmont Natural Gas Company, PNG—Nashville Gas Company, a division of PNG, a total of 500 Dth/d of contract demand sales service and 1,000 Dth/d of Winter Service at an existing interconnection of Columbia Gulf Transmission Company (Columbia Gulf) and PNG to serve Nashville Gas Company, a division of PNG.

Columbia also states that the quantities of natural gas to be provided through the additional delivery point are within Columbia's currently authorized service level to PNG which is 5,000 Dth/d of contract demand with an Annual Entitlement of 1,472,826 Dth and 10,000 Dth/d of Winter Service with 600,000 Dth of Winter Contract Quantity as authorized in Docket No. CP90-679-000.

Columbia further states the proposed service will be rendered by establishing a new point of delivery from Columbia Gulf to Columbia at an existing interconnection between the facilities of Columbia Gulf and PNG. Columbia also states that Columbia Gulf would provide Transportation service for Columbia of the quantities of PNG's CDS and WS Service under Columbia Gulf's existing T-1 Rate Schedule.

No new or additional facilities are required by Columbia or PNG to render the service proposed herein.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

9. K N Energy, Inc.

[Docket No. CP92-618-000]

Take notice that on July 29, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92-618-000 a request pursuant to §§ 157.205(b) and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and § 157.211) for authorization to construct and operate sales taps for the delivery of gas to end users and under K N's blanket certificate issued in Docket No. CP83-140-000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to various end users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company

[Docket No. CP92-612-000]

Take notice that on July 27, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP92-612-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an emergency standby service for Southwestern Public Service Company (SWPS), successor in interest to New Mexico Electric Service Company (New Mexico Electric), at its Maddox Electric Generating Station located near Hobbs, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it was authorized in Docket No. CP67-138 to provide only emergency service to New Mexico Electric pursuant to an agreement dated March 14, 1968. Northern asserts that SWPS has recently removed all pipeline facilities downstream of Northern's measurement facilities and, therefore, can no longer receive service from Northern under the agreement. Northern

further states that SWPS has, by letter dated July 22, 1992, agreed to the abandonment.

Northern does not propose to abandon any facilities.

Comment date: August 24, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP92-613-000]

Take notice that on July 27, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-613-000 a request pursuant to § 157.205 of the Commission's Regulations to expand an existing delivery point in Morgan County, Ohio to increase capacity for interruptible transportation services that Tennessee currently provides to M&B Industrial Development Corporation (M&B) under Tennessee's blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to expand the Brown's Run meter station (Brown's Run) in Morgan County, Ohio to increase its capacity to 120,000 dth of natural gas per day by installing an 8-inch hot tap assembly on its existing right-of-way. Tennessee states that the existing facilities would be expanded to accommodate increased natural gas deliveries to Southeastern Natural Gas Company (Southeastern), a Hinshaw pipeline and affiliate of M&B, for the account of M&B. M&B has requested increased deliveries from 40,000 dth to 120,000 dth of natural gas per day from Tennessee at Brown's Run and has agreed to reimburse Tennessee for the cost of the expanded facilities which are estimated to cost $35,369, it is stated. Tennessee states that the total quantities to be delivered to M&B through the new expanded facilities would not exceed presently authorized quantities and the changes proposed are not prohibited by Tennessee's tariff. Tennessee has sufficient capacity in its system to accomplish the increased delivery of natural gas at Brown's Run without detriment or disadvantage to any of Viking's other customers, it is stated.

Comment date: September 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 18998 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-1-000]

Alabama-Tennessee Natural Gas Co; Proposed PGA Rate Adjustment

August 5, 1992.

Take notice that on July 31, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of August 1, 1992:

33rd Revised Sheet No. 4

Alabama-Tennessee states that this filing is an out-of-cycle purchase gas adjustment ("PGA") filing, the purpose of which is to correlate more accurately Alabama-Tennessee's projected gas costs with the rates of its upstream pipeline supplier, Tennessee Gas Pipeline Company ("Tennessee"). Alabama-Tennessee states that on July 27, 1992, it received the Transition Gas Inventory Charge ("TGIC") commodity cost of natural gas purchases for the month of August, 1992 from Tennessee in accordance with the so-called "Cosmic Settlement" which the Federal Energy Regulatory Commission ("Commission") approved in Docket Nos. RP88-228, et al. According to Alabama-Tennessee, this information shows that Tennessee's sales commodity rates will increase substantially from the rates that have been in effect since July 1, 1992, and upon which Alabama-Tennessee's recent out-of-cycle quarterly PGA filing submitted on July 1, 1992 in Docket No. TQ92-5-1-000 ("July 1 Filing") was based. Alabama-Tennessee states that, as a result, the commodity gas costs shown in Alabama-Tennessee's July 1 Filing are significantly understated.

In addition to the increase in Tennessee's TGIC commodity sales rates, Alabama-Tennessee's filing reflects the impact of Tennessee's reconciliation charge which is not applicable to conversions by Tennessee's customers from firm sales to firm transportation service under the Cosmic Settlement. Alabama-Tennessee has also adjusted its filing to reflect the elimination by Tennessee of its Order No. 94 surcharge.

In addition to a waiver of § 154.22 of the Commission's Regulations so that its revised tariff sheet can be made effective as of August 1, 1992, Alabama-Tennessee has requested any other waivers of the Commission's Regulations that may be necessary to

permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 or rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19000 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-20-000 & TM92-18-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 5, 1992

Take notice that Algonquin Gas Transmission Company ("Algonquin") on July 31, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets, to be effective September 1, 1992:

Primary Tariff Sheets

13 Rev Sheet No. 21
13 Rev Sheet No. 22
9 Rev Sheet No. 25
13 Rev Sheet No. 26
13 Rev Sheet No. 27
13 Rev Sheet No. 28
13 Rev Sheet No. 29
Sub 13 Rev Sheet No. 21
Sub 13 Rev Sheet No. 22
Sub 9 Rev Sheet No. 25
Sub 13 Rev Sheet No. 26
Sub 13 Rev Sheet No. 27
Sub 13 Rev Sheet No. 28
Sub 13 Rev Sheet No. 29

Alternate Tariff Sheets

Alt 13 Rev Sheet No. 21
Alt 13 Rev Sheet No. 22
Alt 9 Rev Sheet No. 25
Alt 13 Rev Sheet No. 26
Alt 13 Rev Sheet No. 27
Alt 13 Rev Sheet No. 28
Alt 13 Rev Sheet No. 29
Alt Sub 13 Rev Sheet No. 21
Alt Sub 13 Rev Sheet No. 22
Alt Sub 9 Rev Sheet No. 25
Alt Sub 13 Rev Sheet No. 26
Alt Sub 13 Rev Sheet No. 27
Alt Sub 13 Rev Sheet No. 28
Alt Sub 13 Rev Sheet No. 29

Algonquin states that the revised alternate and primary tariff sheets listed above are being filed as part of Algonquin's regularly scheduled Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") pursuant to Sections 17 and 39, respectively, of the General Terms and Conditions of Algonquin's FERC Gas Tariff. The sales demand rate reflects an increase of 25.9¢ per MMBtu in the primary sheets and a decrease of 93.8¢ in the substitute sheets from the rates contained in Algonquin's last Quarterly PGA filing, which was made in Docket No. TQ92-3-20-000 on April 30, 1992. This adjustment to the sales demand rate is based upon the latest available rates from Algonquin's various suppliers.

Algonquin also states that the primary tariff sheets listed above reflect the continuation in effect of the prior commodity rate, unadjusted, and the alternate sheets compute a rate based on Algonquin's projected cost of purchasing spot supplies, its unit cost of transporting such supplies to the Algonquin's system, upstream pipeline standby charges, the commodity surcharge established in Algonquin's latest annual PGA filing, and the unit inventory charge incurred as a result of Algonquin's decision to purchase supplies from nontraditional sources rather than upstream pipelines. Algonquin states that the substitute sheets filed herein reflect substitute tariff sheets filed by Texas Eastern in its latest filing.

Algonquin further states that Texas Eastern's latest filing also included changes in the rates underlying Algonquin's Rate Schedule ATAP. Pursuant to Section 4 of Algonquin's Rate Schedule ATAP, Algonquin is filing primary and substitute Sheet Nos. 63 to track the changes made by Texas Eastern in the underlying rates. Pursuant to § 4.2(c) of Rate Schedule ATAP, the proposed effective date of Sheet 63 is August 1, 1992, which coincides with the effective date of Texas Eastern's filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19001 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-32-000]

Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment

August 5, 1992

Take notice that on July 31, 1992, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect an annual purchased gas adjustment ("PGA"):

Sixth Revised Sheet No. 7.1
Sixth Revised Sheet No. 7.2
Sixth Revised Sheet No. 8.1
Sixth Revised Sheet No. 8.2

CIG requests that these proposed tariff sheets be made effective on October 1, 1992.

The tariff rates underlying Sixth Revised Sheet Nos. 7.1 through 8.2 reflect a net 1.04 cent decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1, and PS-1 Rate Schedules, which includes a 0.61 cent increase in the current adjustment attributable to projected purchased gas costs for the quarter beginning October 1, 1992, and a 1.65 cent decrease attributable to the expiration of the current "credit" surcharge (4.57 cents) on September 30, 1992. CIG states that there is no change in the Demand-1 or Demand-2 rates because it does not incur "as billed" charges from its suppliers. CIG states that the proposed rates compare with those it filed on July 14, 1992 in compliance with Commission order issued June 29, 1992 in Docket No. TQ92-3-32-001, which rates are currently pending Commission action.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19002 Filed 8–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–215–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1992:

Twenty-second Revised Sheet No. 26
Fourteenth Revised Sheet No. 26.1
Twenty-second Revised Sheet No. 26A
Fourteenth Revised Sheet No. 26A.1

Columbia states that the sales rates set forth on Twenty-second Revised Sheet No. 26 and Fourteenth Revised Sheet No. 26.1 reflect a WACOG surcharge of 8¢ per Dth in the Commodity rate.

Columbia states that copies of the filing is being mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19003 Filed 8–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–8–21–000]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

August 5, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1992.

Twenty-first Revised Sheet No. 26
Thirteenth Revised Sheet No. 26.1
Twenty-first Revised Sheet No. 26A
Thirteenth Revised Sheet No. 26A.1
Twenty-first Revised Sheet No. 26B
Twelfth Revised Sheet No. 26B.1
Twentieth Revised Sheet No. 26C
Sixth Revised Sheet No. 26C.1
Eleventh Revised Sheet No. 26D
Twenty-first Revised Sheet No. 163

Columbia states the sales rates set forth on Thirteenth Revised Sheet No. 26.1 reflect an increase of 15.32¢ per Dth in the commodity rate when compared with the total CDS rates reflected in Columbia's quarterly PGA filing which was filed on July 1, 1992 with a proposed effective date of August 1, 1992. In addition, the transportation rates set forth on Sixth Revised Sheet No. 26C.1 and Eleventh Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.36¢ per Dth.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19004 Filed 8–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–4–22–000, TM92–11–22–000]

CNG Transmission Corporation, Proposed Changes in FERC Gas Tariff

August 5, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on July 31, 1992, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and sections 12, 15 and 16 of the General Terms and Conditions of CNG's tariff, tendered for filing the following proposed sheets for First Revised Volume No. 1 of its FERC Gas Tariff:

First Rev. Twentieth Revised Sheet No. 31
First Rev. Twelfth Revised Sheet No. 32
First Rev. Sixteenth Revised Sheet No. 34
First Rev. Eleventh Revised Sheet No. 35

CNG requests an August 1, 1992, effective date for these proposed tariff sheets.

CNG states that the purpose of this filing is to reflect significant increases in natural gas spot market prices, as well as to incorporate rate and service changes brought about by Tennessee Gas Pipeline Company's Cosmic Settlement.

CNG states that its filing would increase ACD/CD/RQ commodity rates by $0.4487 per Dt and the D–1 demand rate by $0.33 per Dt. CNG states that other sales rates will change accordingly. CNG states that its fuel charge will increase form 4.71¢ per Dt.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19005 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-153-001]

Delmarva Power and Light Company; Petition to Amend

August 5, 1992.

Take notice that on August 4, 1992, Delmarva Power and Light Company (Delmarva), 800 King Street, Wilmington, Delaware 19899, filed in Docket No. CP92-153-001 a petition to amend the certificate of public convenience and necessity issued June 29, 1992, in Docket No. CP92-153-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Delmarva proposes to change the route of two segments of the 4.04 miles of 16-inch pipeline authorized by the June 29, 1992, order. Delmarva states that both segments of the pipeline to be rerouted were designed to cross the property of Sun Oil Company (Sun). The first segment is located at Market Street, Delaware County, Pennsylvania and involves 472 feet of pipeline and two new landowners, it is stated. The second segment, located on Sun property in Delaware County, Pennsylvania, would involve 900 feet of pipeline, it is stated.

Delmarva asserts that Sun has requested the relocation of the pipeline to provide for Sun's future growth and expansion.

No other changes from the original authorization are proposed.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 17, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19006 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-214-000]

El Paso Natural Gas Company; Change in Rates

August 5, 1992.

Take notice that on July 31, 1992, EL Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates for natural gas service rendered to all customers contained in EL Paso's FERC Gas Tariff, First Revised Volume No. 1-A and Second Revised Volume No. 1 and certain rate schedules contained in EL Paso's FERC Gas Tariff, Third Revised Volume No. 2. El Paso is tendering the tariff sheets for filing and acceptance to become effective September 1, 1992.

El Paso states that based upon the test period cost of service and throughput volumes, El Paso projects a deficiency in annual revenues of approximately $116.3 million under its currently effective rates. As a consequence, El Paso is proposing to increase rates by an amount sufficient to eliminate the revenue deficiency and recover its full cost of service. El Paso states that it also has reduced the Weighted Average Cost of Gas ("WACOG") component and non-gas component of the rate for sales under the WACOG Option of Rate Schedules ABD-1 and PA-1 and has revised the rates for Contract Storage Service under Rate Schedules CSF and CSI.

El Paso states that Order No. 636, issued April 8, 1992 at Docket Nos. RM91-11-000 and RM87-34-065, among other things, mandates that pipelines recover transportation costs under the straight fixed variable ("SFV") method of assigning all fixed costs related to transportation to the reservation charge. In the notice of change in rates, El Paso has used the SFV method to classify and design rated for mainline transportation and storage function costs. El Paso states that although to this extent consistent with Order No. 636, the notice of change in rates is not intended as the vehicle to implement Order No. 636 on El Paso's system. Rather, El Paso states that it will file tariff sheets implementing Order No. 636, to the extent not already reflected in its rates and tariffs, in a compliance filing to be made in Docket No. RS92-60-000 on or before December 31, 1992.

El Paso states that copies of the notice were served upon all of El Paso's interstate transportation and sales customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19007 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-7-24-000, TA92-1-24-001]

Equitrans, Inc.; Revision to Proposed Tariff Changes

August 5, 1992.

Take notice that Equitrans, Inc. (Equitrans) on July 31, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective September 1, 1992:

Substitute Thirty-Seventh Revised Sheet No. 10

Substitute Twenty-Seventh Sheet No. 34

Equitrans states that it submitted this filing pursuant to § 154.305(c)(4) of the Commission's PGA Regulations, 18 CFR 154.305(c)(4), in order to update its current adjustment filed with its Annual PGA on July 1, 1992. The changes proposed in this filing to the purchased gas adjustment under Rate Schedule PLS is a decrease in the commodity cost of $0.2459 per dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.1356 per dth. The GIC demand surcharge for Rate Schedule PLS is $1.0126 per dth, and is designed to recover an estimated $6,244,615 in Texas Eastern Transmission Corporation (TETCO) GIC charges.

The proposed changes reflect (1) increased Account No. 858 costs, collected under section 19.15 of

Equitrans' PGA clause of its FERC Gas Tariff, and a reconciliation charge, or exit fee, both effective July 1, 1992 on the system of Tennessee Gas Pipeline Company (Tennessee) based on implementation of Tennessee's amended "cosmic" settlement approved by Commission Orders in Docket Nos. RP88–288 *et al;* (2) increased gas costs charged by TETCO under its Rate Schedule CD–1 filed in Docket No. TQ92–7–17 on July 30, 1992 and Kentucky West Virginia Gas Company's (Kentucky) Rate Schedule PLS–1 filed in Docket No. TQ92–6–46 on July 31, 1992 both filings are to be effective on August 1, 1992; and (3) increases in the purchased gas costs of spot market purchases and Southwest supply purchases.

The increase in Tennessee's Account No. 858 costs is attributable to the conversion of Equitrans' firm sales entitlements on Tennessee's system of 65,134 dth per day to firm transportation entitlements. Tennessee's reconciliation charge is a fixed monthly demand charge of $3.62 per dth of converted contract demand, including the 65,134 dth per day converted by Equitrans, for twelve months beginning July 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchases and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19008 Filed 8–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–12–4–000]

Granite State Gas Transmission, Inc.

August 5, 1992.

Take notice that on July 31, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5309 tendered for filing with the Commission Seventeenth Revised Sheet No. 21 in its FERC Gas Tariff, Second revised Volume No. 1, containing changes in rates for effectiveness on August 1, 1992.

According to Granite State, it is submitting this out-of-cycle purchased gas cost adjustment because its projected gas costs for the balance of the third quarter have increased substantially above the projected gas costs in its revised quarterly adjustment filing in Docket Nos. TQ92–11–4–000 and TM92–17–4–000 on July 1, 1992. Granite State further states that the current prices for its spot market purchases and the volumetric rate for its purchases from Tennessee Gas Pipeline Company (Tennessee) under Rate Schedule CD–6 have increased above the projected level of such costs reflected in its current rates.

Granite State further states that it has included the demand costs for the Rate Schedule SS–NE service it receives from Tennessee in deriving its adjusted sales rates. It is further stated that Granite State has pending a request for a temporary waiver of the purchased gas cost regulations in Docket No. RP92–197–000 to permit it to reflect the Rate Schedule SS–NE demand costs in its purchased gas accounts, until Commission action on its application for a temporary and permanent certificate in Docket No. CP92–552–000.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19009 Filed 8–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2030–015, et al.]

Hydroelectric Applications [Portland General Electric Co., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. Type of Application: Upgrading Transmission Line.

b. Project No.: 2030–015.

c. Date Filed: 06/08/92.

d. Applicant: Portland General Electric Co., and Confederated Tribes of the Warm Springs Reservation, Oregon.

e. Name of Project: Pelton Hydroelectric Project.

f. Location: On the Deschutes River, in Jefferson County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Gary W. Hackett, Portland General Electric Co., 121 S.W. Salmon Street, Portland, OR 97204, (503) 464–7545.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: September 8, 1992.

k. Description of Amendment: Licensee proposes to let PacifiCorp rebuild and upgrade Portland General Electric's existing distribution line within project's boundaries.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. Type of Application: Transfer of License.

b. Projects Nos.: 2389–013.

c. Date Filed: April 8, 1992.

d. Applicant: Edwards Manufacturing Company, Inc. and The City of Augusta, Maine.

e. Name of Project: Augusta Project.

f. Location: On the Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Donald H. Clark, Wilkinson, Barker, Knauer, & Quinn, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783–4141.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: September 25, 1992.

k. Description of Project: License was issued to Edwards Manufacturing Company, Inc. (Licensee), to operate and

maintain the Augusta Project No. 2389. The Licensee intends to transfer the license to the Edwards Manufacturing Company, Inc. and the City of Augusta, Maine (Transferee), to facilitate the continued operation, maintenance, and relicensing of the projects. The Transferee intends to takeover the project and agrees to accept the terms and conditions as if it were the original licensee.

The Augusta Project No. 2389 is subject to the New License proceedings and the transfer will result in a substitution of the transferee for the licensee as applicant in the New License applications.

The transfer application was filed within five years of the expiration of the license for Project No. 2389, which is the subject of a pending relicensing application. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutizine all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.* at p. 31,438 n. 318). The transfer application, and the development agreement between the transferor and transferee appended to the transfer application, state that the transferee and the transferor intend to add the transferee as an applicant in the subject relicensing proceeding.

l. This notice also consists of the following standard paragraphs: B and C.

3. a. Type of Application: Amendment of License.

b. Project No.: 2655–021.

c. Date Filed: June 23, 1992.

d. Applicant: Eagle & Phenix Hydro Company, Inc.

e. Name of Project: Eagle & Phenix Mills Hydro.

f. Location: On the Chattahoochee River, in Muscogee County, Georgia and Russell County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Ralph H. Walker, Jr., President, Eagle & Phenix Hydro Company, Inc., P.O. Box 512, Greenville, SC 29602, (803) 233–8567; Kathryn C. Dority, FERC Coordinator, Eagle & Phenix Hydro Company, Inc., P.O. Box 512, Greenville, SC 29602, (803) 233–8567 or (803) 244–5406.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Comment Date: September 4, 1992.

k. Description of the Request: The licensee requests that its license be amended for the purpose of relocating the new powerhouse from its previously proposed location adjacent to the existing downstream powerhouse in the middle of the river to the west side of the dam.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4. a. Type of Application: Amendment of License.

b. Project No.: 2713–014.

c. Date Filed: 06/25/92.

d. Applicant: Niagara Mohawk Power Corp.

e. Name of Project: Oswegatchie River Project.

f. Location: On the Oswegatchie River, in St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Sam S. Hirschey, Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474–1511.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: September 8, 1992.

k. Description of Amendment: Licensee proposes to install a new 60 cfs, 236–kW unit at the South Edwards minimum flow bypass. Licensee proposes to increase the minimum flow release from 40 cfs to 60 cfs.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. Type of Application: Amendment of Conduit Exemption.

b. Project No.: 4303–001.

c. Date Filed: 07/14/92.

d. Applicant: Georgetown Divide PUD (GDPUD).

e. Name of Project: Georgetown Divide PUD Conduit Hydro Project.

f. Location: On the District's Water Supply, Tunnel and Conduit System, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles F. Gierau, Georgetown Divide PUD, P.O. Box 4240, Georgetown, CA 95634, (916) 333–4356.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: September 12, 1992.

k. Description of Amendment: GDPUD proposes to delete two developments—Buffalo Hill and Kaiser—which have not been constructed. The exemption order issued June 30, 1981, authorized four developments: Tunnel Hill, Buckeye, Buffalo Hill, and Kaiser. Only Tunnel Hill and Buckeye were constructed and are currently operational.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6. a. Type of Application: Transfer of License.

b. Project No.: 5946–004.

c. Date filed: June 16, 1992.

d. Applicant: Massachusetts Hydro Associates, The Commonwealth of Massachusetts for the University of Massachusetts, Lowell.

e. Name of Project: Lowell Atlantic Project.

f. Location: At Lawrence Canal, on the Lowell Canal System, adjacent to the Merrimack River, in Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Richard A. Norman, Massachusetts Hydro Associates, One State Street, suit 1200, Boston, Massachusetts 02109, (617) 367–0032.

i. FERC Contact: Mary Golato (202) 219–2804.

j. Comment Date: September 7, 1992.

k. Description of Project: Massachusetts Hydro Associates proposes to transfer the Lowell Atlantic Project No. 5946 to the Commonwealth of Massachusetts for the University of Massachusetts, Lowell. On December 7, 1990, the Commonwealth of Massachusetts had taken the project lands, equipment and facilities by eminent domain for the planned expansion of the University of Massachusetts at Lowell. The University plans to rehabilitate the project.

l. This notice also consists of the following standard programs: B & C.

7. a. Type of Application: Minor License.

b. Project No.: 11213–000.

c. Date filed: December 11, 1991.

d. Applicant: Thomas Hobman.

e. Name of Project: Barberville Hydroelectric Project.

f. Location: On the Poestenkill River, in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Mr. Thomas Hohman, 4 Cloverdale Road, Wyantskill, NY, (518) 283–6326.

i. FERC Contact: Mary Golato (dt) (202) 219–2804.

j. Deadline Date: September 28, 1992.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph D8.

l. Description of Project: The proposed project would consist of: (1) A natural forebay pool at the top of Barberville Falls; (2) a new intake structure in the forebay, including a trashrack oriented about 45 degrees to the direction of flow; (3) a new steel penstock 36 inches in diameter and about 90 feet long,

connecting the intake to a new surge tank; (4) two new steel penstocks, each 24 inches in diameter and about 225 feet long, between the surge tank and the powerhouse; (5) a new reinforced concrete powerhouse containing two generator units each rated at 150 kW and one generator unit rated at 35 kW, for a total installed capacity of 335 kW; (6) a new overhead transmission line; and (7) appurtenant facilities. The applicant intends to seek PURPA benefits.

m. Propose of Project: All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard programs: A2, A9, B1, and D8.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Thomas Hohman, 4 Cloverdale Road, Wyantskill, NY 12198 (518) 283–6326.

8. a. Type of Application: Preliminary Permit.

b. Project No.: 11303–000.

c. Date filed: June 18, 1992.

d. Applicant: Beltzville Hydro Associates.

e. Name of Project: Beltzville Project.

f. Location: On the Pohopoco Creek, in Franklin, Carbon County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Kenneth R. Broome, Beltzville Hydro Associates, 15 Fawn Drive, Reading, PA 19607, (215) 775–9399.

i. FERC Contact: Mary Golato (dt) (202) 219–2804.

j. Comment Date: September 28, 1992.

k. Description of Project: The proposed project would utilize the existing Corps dam and would consist of the following facilities: (1) An existing intake tower consisting of four pairs of turbine-generator units for a total capacity of 1,000 kilowatts; (2) a proposed 2-mile-long, 12-kilovolt transmission line; (3) appurtenant facilities. The average annual generation would be 4,550,500 kilowatthours. The cost of work under permit is $1,500.

l. This notice also consists of the following standard paragraphs: A3, A7, A9, A10, B, C, and D2.

9. a. Type of Application: Preliminary Permit.

b. Project No.: 11305–000.

c. Date Filed: June 29, 1992.

d. Applicant: Carrob Energy Development, Inc.

e. Name of Project: Sears Pond.

f. Location: On the east branch of the Deer River in the town, of Montague, Lewis County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms. Carmel A. Foltan, P.O. Box 284, North Waterboro, ME 04061, (207) 247–4938.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: September 25, 1992.

k. Description of Project: The proposed project would consist of: (1) The existing Sears Pond dam owned by the State of New York; (2) the existing Sears Pond with a surface area of 80 acres and a storage capacity of 500 acre-feet at elevation 1735 NGVD; (3) a proposed concrete gravity intake structure; (4) a 3-foot-diameter, 4,600-foot-long penstock; (5) a powerhouse containing one generating units with a rated capacity of 250 kW; (6) a 100-foot-long tailrace; and, (7) a 3,000-foot-long transmission line. The estimated average annual energy production of the project is 1,400 MWh and the cost of the studies performed under the permit would be $10,000.

l. Purpose of Project: The power produced would be sold to a local utility company.

m. This notice also consists of the following standard paragraphs: A3, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the

appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice Of Intent To File Competing Application", "Competing Application", "Protest", "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 5, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-18999 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-209-000]

Northern Natural Gas Company; Petition for Limited Waiver of Tariff Provisions

August 5, 1992.

Take notice that on July 29, 1992, Northern Natural Gas Company (Northern), petitioned the Commission for a limited waiver of Northern's FERC Gas Tariff in order to allow Northern to reannounce its Monthly Declared Price (MDP).

Northern requests waiver of section 23.5 on Sheet No. 74M of its Volume No. 1 Tariff. Such section provides that Northern shall announce its MDP at least six work days prior to the beginning of the month. Northern states that on July 24, 1992, Northern did announce an MDP of $2.76/MMBTU for August in accordance with the tariff provision, but since that time the natural gas market and the cost basis of Northern's supply has changed dramatically.

Northern states that since it announced its MDP for August, market prices have increased about 30¢ increase Northern utilized in its price announcement on July 24, 1992. Northern requests waiver of the referenced tariff provisions to allow the revised MDP of $2.90/MMBTU to be effective August 1, 1992.

Northern further states that it will file on or before July 31, 1992, an out-of-cycle quarterly PGA filing reflecting the change in the July 1, 1992 price of $2.28 to the reannounced price of $2.90 versus the originally announced price of $2.76.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19010 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-229-010]

Panhandle Eastern Pipe Line Company; Compliance Filing

August 5, 1992.

Take notice that on July 31, 1992, in compliance with the Commission's order of June 1, 1992, in the above-referenced proceeding, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the tariff sheets as listed on appendix A to the filing, to its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2.

Panhandle states that in its Order Terminating Technical Conference Proceeding, Granting Rehearing in Part and Denying Rehearing in Part (June 1, 1992) the Commission required Panhandle to alter the functionalized cost of service underlying the rate applicable to its gathering service, and if warranted, to also reflect changes associated therewith. Additionally, in a June 1, 1992 Order on Report Filed Pursuant to Opinion No. 369 and Motion Rate and Compliance Filing the Commission required Panhandle's backhaul rate for certain specific transportation services to equal one-half the forward haul rate. Panhandle's filing reflects the functionalization of certain costs of facilities as gathering, rather than transmission, and compliance respecting the backhaul rate for certain specific transportation services.

Panhandle has included workpapers setting forth the refunctionalized cost of service resulting from the Commission's orders. Panhandle also has provided workpapers setting forth the resulting

and associated cost classification, cost allocation and rate design.

In addition to these changes, Panhandles also has reflected the results of the related Commission Order on Complaint of July 1, 1992 in Docket No. RP92-145-000. The supporting materials reflect the result of removing the costs and volumes for the transactions involving Natural Gas Clearinghouse and ONG Western, Inc. as determinants for the development of gathering rates.

Panhandle states that copies of the filing are being mailed to the customers, interested state regulatory agencies, and parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19011 Filed 8-10-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of July 6 Through July 10, 1992

During the week of July 6 through July 10, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Robert Condra, 7/8/92, LFA-0216

On June 9, 1992, Robert Condra filed an Appeal from a determination issued to him on May 24, 1992 by the Division of Human Resources Management (DHRM) of the DOE's Bonneville Power Administration (BPA). In that determination, the DHRM denied Mr. Condra's request for information filed pursuant to the Freedom of Information Act (FOAI) and the Privacy Act. Specifically, pursuant to Exemption 5 of the FOIA, the DHRM denied Mr. Condra's request for a copy of his "personal files" and other documents concerning him in the possession of the BPA. In considering the Appeal, the DOE found that the determination to withhold the requested documents was consistent with Exemption 5. However, the DOE noted that the DHRM did not address Mr. Condra's Privacy Act request and that additional documents were in the possession of the BPA. Accordingly, the DOE remanded the matter to the DHRM for consideration of the additional documents and a determination on Mr. Condra's request under the Privacy Act. The Appeal was denied in all other respects.

Refund Applications

Atlantic Richfield Company/USA Petroleum Corp., 7/7/92, FR304-9236, RF394-9237, RF304-9238

The DOE issued a Decision and Order granting a refund of $50,000 in principal plus $27,767 in accrued interest for a total of $77,767 to USA Petroleum Corporation, based upon the mid-level resellers and retailers presumption of injury established in the Atlantic Richfield Company (ARCO) proceeding. The DOE determined that the applicant was ineligible for a full volumetric refund due to the firm's inability to provide cost bank data for the entire consent order period. The DOE rejected the applicant's argument that industry-wide gross profit margin date be accepted in lieu of the firm-specific information required by the ARCO refund procedures.

Dole Fresh Fruit Company, 7/9/92, RF272-27811, RD272-27811

The DOE issued a Decision and Order granting an Application for Refund filed by Dole Fresh Fruit Company, a producer of fresh fruits, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. The States asserted that Dole enjoyed increased revenues, earnings, profits and dividends during the refund period, and that increased input costs were offset by corresponding increases in prices. In addition, the States cited a study finding that firms in the food industry passed on higher input costs in the form of higher prices to consumers and that the industry was able to increase output in response to price increases. Finally, the States submitted an affidavit of a consulting economist stating that because the demand for food is likely to be inelastic, it is very likely that firms in this industry would have been able to pass on a very high percentage of increased energy costs to customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $111,458.

Texaco Inc./General Gas & Oil Company, 7/6/92, RF321-11812, RF321-13673

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund that were filed with respect to purchases made by General Gas & Oil Company, a corporation that was a distributor of Texaco products. One application was filed by Milton and Gertrude Lambert, the former owners of the firm who claimed the refund because the subsequent owner, Brian Flisk, owed them a substantial amount of the purchase price. The other application was filed by General and asked that the refund be paid to Capitol Bank, a creditor of the firm. The DOE noted that, generally, where the purchases were made by a corporation, the right to the refund remains with the corporation. The DOE found that the Lamberts did not retain any right to the refund upon their sale of the shares of the corporation and that their dispute between them and Flisk over payment of the purchase price did not affect the corporation's right to the refund. The DOE determined that General was entitled to the refund. Capitol Bank's claim was based upon a security agreement that gave it a security interest in General's accounts receivable. However, the DOE noted that refunds are not accounts receivable. Accordingly, the DOE found that the payment should be made payable General, since the bank had not demonstrated a clear right to the refund.

Texco Inc./Stewart's Texaco, 7/10/92, RF321-112, RF321-18816

On July 10, 1992, the Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning a Motion for Reconsideration that was filed by Edward Stewart. In the Motion, Mr. Stewart requested that we reconsider an earlier determination that divided the refund for Stewart's Texaco equally between Mr. Stewart and his former wife. In the Decision, the OHA determined that although the right to a

refund for purchases made by Stewart's Texaco during the course of the Stewart's marriage was community property, it was awarded in its entirety to Mr. Stewart pursuant to the terms of the Stewarts' divorce decree. The OHA therefore concluded that the partial refund granted to Ms. Stewart should be rescinded, and that an additional refund of $675 should be granted to Mr. Stewart.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Clyde Melton Inc. *et al*	RF304-12649	07/08/92
Atlantic Richfield Company/The Car Wash, Great West Car Wash	RF304-9226 RF304-9232	07/09/92
Big Rivers Electric Corp., Sikeston Board of Municipalutilities	RF272-86518 RF272-87097	07/06/92
Gulf Oil Corporation/Anderson Gulf *et al*	RFRF300-17242	07/06/92
Gulf Oil Corporation/Burch Oil Company, Inc., Rupp Oil Company, Inc., Standish Oil Company	RR330-51 RR300-158 RR300-164	07/06/92
Gulf Oil Corporation/Hendrix Gulf Station *et al*	RF300-17000	07/07/92
Gulf Oil Corporation/Marion County Sheriff *et al*	RF300-13321	07/07/92
Gulf Oil Corporation/Suburban Gulf *et al*	RF300-17202	07/07/92
James C. Lansdowne, James C. Lansdowne, Conagra Poultry Company, Conagra Poultry Company	RF272-28359 RD272-28359 RF27228455 RD272-28455	07/09/92
Reinauer Petroleum Co./West Paterson Quik Stop	RF341-17	07/08/92
Tesoro Petroleum Corporation/Lowell's Service Station, Vanguard Petroleum Corp.	RF326-308	RF326-325 07/08/92
Texaco Inc./Ayers Village Texaco *et al*	RF321-5087	07/07/92
Texaco Inc./Elmer's Texaco *et al*	RF321-9917	07/07/92
Texaco Inc./Gail Melton Texaco S.S. *et al*	RF321-10256	07/07/92
Texaco Inc./Mike's Texaco *et al*	RF321-11705	07/08/92
Transpo International, Inc., Transpo International, Inc.	RF272-38138 RD272-38138	07/07/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Albertson Service Center	RF321-18693
Cloverleaf Texaco	RF321-13719
Cote's Texaco #1	RF321-14652
Cote's Texaco #1	RF321-14652
Country Club Hills Sch. Dist. 160	RF272-81384
David K. Cox	LFA-0219
E.C. Wilson Texaco	RF321-1947
Fort Washington Car Wash	RF304-1142
Fort Washington Car Wash	RF304-1359
Fort Washington Enterprises I	RF304-1248
Goodman Arco	RF304-3719
Hamlet Texaco	RF321-18513
Helena Flats Elementary	RF272-88163
Hilton-Davis Chemical Co.	RF321-16492
Katonah Lewisboro U. F. S.	RF272-80327
Kensett School District	RF272-78859
L & L Texaco	RF321-1663
Nueces Vacuum Service, Inc.	RF321-18694
R & W Gas Co., Inc.	RF321-1752
Teer Plating Co., Inc.	RF321-18695
Tesoro Petroleum Distribution Co.	RF333-10

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings an Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holiday. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reported system.

Dated August 5, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-19087 File 8-10-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4193-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et.seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before September 10, 1992

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) Subpart N, Na for Iron and Steel Plants (Basic Oxygen Processing Furnaces) (ICR 1069.04; OMB No. 2060-0029).

Abstract: This ICR is for an extension of an existing information collection in support of the Clear Air Act, as described under the general NSPS at 40 CFR 60.7-60.8, and the specific NSPS for particulate matter (PM) emissions from the Basic Oxygen Processing Furnace (BOPF) at 40 CFR 60.14 and at 40 CFR 60.140. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction,

reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial performance test data and results; and (4) notification of any physical or operational change to a facility which could increase the PM emission rate. Those existing facilities that deviate from the emissions standards set forth in Subparts N and Na must submit semiannual excess emission reports and monitoring systems performance reports.

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) the time and duration of each steel production cycle and exhaust gas diversion from the main stack; and (3) pressure loss, opacity, and exhaust flow rate data.

Presently there are 14 facilities subject to the regulation with an estimated annual growth of 0.6 facilities over the next three years. All subject facilities must maintain records related to complaince for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 19.3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 91.3 hours annually.

Respondents: Owners or operators of subject basic oxygen processing furnaces that have undergone construction, reconstruction, or modification after January 20, 1983.

Estimated Number of Respondents: 7 reporters, 14 recordkeepers.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 1547 hours.

Frequency of Collection One-time notifications for new facilities; semiannual reporting, as appropriate, for existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460 and

Chris Woz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St, NW., Washington, DC 20503.

Dated: August 4, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–19064 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4193–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1992. For further information, or to obtain a copy of this ICR, contact: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Survey of Consumer and Commercial Product Manufacturers under section 183(e) of the Clean Air Act (EPA ICR #1621.01). This is a request for approval of a new information collection.

Abstract: EPA proposes to conduct a census survey of the manufacturers of consumer and commercial products in order to develop an inventory of volatile organic compounds (VOC's) emitted from these products. The results of the survey will be used to develop baseline estimates of VOC emissions from consumer and commercial products. These estimates and other information pertaining to consumer and commercial products will be documented in a report to Congress required under Section 183(e) of the Clean Air Act. The baseline estimates will also be used to develop the regulatory agenda required under Section 183(e).

The affected industry has been closely involved in the developed of the survey questionnaire for the proposed information collection. Respondents will be asked to provide EPA with the 1990 sales (in pounds) and the VOC content (in weight percent) of each product produced or marketed, as well as the individual VOC ingredients. Respondents will have the option of using personal-computer-based software for direct data entry and quality assurance monitoring.

Burden Statement: The public reporting burden for this collection of information is a one-time response estimated to average 11 hours for a 1-product company, 31.5 hours for a 10-product company, and 144.5 hours for a 100-product company. These estimates include the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Manufacturers of consumer and commercial products that emit volatile organic compounds.

Estimated No. of Respondents: 5,000.

Estimated No. of Responses per Respondent: One.

Estimated Total Burden on Respondents: 316,750 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460 and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

August 4, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–19063 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

(FRL–4193–6)

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to RMC Lonestar (EPA Project Number NCC 86–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 31, 1991, the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to RMC Lonestar to increase SO_2 emissions at their Davenport portland cement plant and rescinds the NO_x portions of their existing PSD permit. The permit is subject to certain conditions, including an allowable emission rate as follows: 40 lb/hr (2-hr average) or TSP from the main stack, 250 lb/hr (24-hr running

average) or 300 lb/hr (2-hr running average) of SO_2 from the main stack.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request: address request to: Linda Barajas (A–5–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1244, FTS (415) 744–1244.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: an alkaline slurry injection system for control of SO_2 emissions to be operated at all times the raw mill is not operating.

The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by 60 days after publication in the **Federal Register.**

David P. Howekamp,

Director Air and Toxics Division Region 9.

Dated: July 28, 1992.

[FR Doc. 92–19065 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4192–1]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of distribution of funds for reallotment under Municipal Wastewater Treatment Works Construction Grants program.

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1990 funds subject to reallotment after September 30, 1991, under the Clean Water Act (CWA), 33 U.S.C. 1285 *et seq.* and explains the reallotment and distribution procedures.

The construction grants program operates under authority of the CWA Public Law No. 92–500, as amended. Section 205(d) of the Act requires that funds allotted to a State which have not been obligated by the end of the second year of availability shall be immediately reallotted by the Administrator. Section 104(q)(4) of the CWA requires that notwithstanding section 205(d) the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse to disseminate information on innovative and alternative wastewater treatment processes for communities.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Fitch, Program Management Branch, Municipal Support Division, Office of Wastewater Enforcement and Compliance (202) 260–5858.

SUPPLEMENTARY INFORMATION: Section 104(q)(4) requires the Administrator to make available to the National Small Flows Clearinghouse (NSFC), notwithstanding the reallotment provisions of section 205(d), from unobligated funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1,000,000, whichever is less. Pursuant to section 202(a)(2) a portion of construction grants funds were set aside to increase the Federal share of grants for construction of treatment plants using innovative or alternative wastewater treatment processes.

For the fiscal year 1992 reallotment, the States have obligated all of their fiscal year 1990 funds except for an amount of section 205(i) set-asides totalling $88,568. This fiscal year these set-asides will be reallotted from two territories and the District of Columbia. The total amount of $88,568 is comprised of Puerto Rico ($82,533); Virgin Islands ($2,498); and the District of Columbia ($23,537).

In fiscal year 1990 there were both State Revolving Fund (SRF) and construction grant funds available. States with SRF programs had the option of transferring all of their construction grants including set-asides to their SRFs. But because the District of Columbia and the Virgin Islands are not required to establish SRF programs, they did not have an SRF in which to transfer their 205(i) funds. This was not the case for Puerto Rico which has an SRF program. Puerto Rico had proposed an innovative portion of a project that at the end of the fiscal year did not qualify for innovative funding, resulting in the loss of funds. Because the determination of the innovative portion occurred very close to the end of the fiscal year, Puerto Rico did not have time to transfer the funds into its SRF program. The Northern Mariana Island (NMI) ($611,300) do not lose funds to reallotment due to an exception.

Unavailability of Funds for Reallotment to States

The total balance of the unobligated funds remaining after the period of availability and subject to reallotment under section 104(q)(4), is $88,568 which is less than the maximum of $1,000,000 that can be made available to fund the NSFC. This is the second year in which funds will only by available for distribution to the NSFC and no funds are available for reallotment to the States under section 205(d).

Dated: July 29, 1992

William K. Reilly,

Administrator.

[FR Doc. 92–19062 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4194–1]

Public Notice; Review of Lake Michigan Lakewide Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) has prepared a proposed lakewide management plan (LaMP) for Lake Michigan as required by the Great Lakes Critical Programs Act of 1990. Based on current information, the Lake Michigan LaMP describes the pollutants impacting Lake Michigan on a lakewide basis and inform as the public of the variety of actions that Federal, State, Tribal, and local governments and private organizations are taking, will take, or could take to reduce the amount of these pollutants entering Lake Michigan. Due to its length and format, the Lake Michigan LaMP is summarized in this notice, rather than published in full. As described in this notice, EPA is making copies of the entire Lake Michigan LaMP available to the public. Furthermore, EPA is soliciting comments on all aspects of the proposed LaMP. In particular, EPA seeks comments regarding the proposed list of Critical Pollutants for Lake Michigan and the actions available to Federal, State, and local agencies, as well as the public, to reduce the release of Critical Pollutants [1] from all sources and the presence of these substances in the Lake Michigan ecosystem. Nothing in the proposed LaMP constitutes a final Agency action or decision.

DATES: Comments must be submitted on or before December 9, 1992.

ADDRESSES: To obtain a copy of the Lake Michigan LaMP or to provide oral

[1] "Critical pollutants" are defined by Annex 2 of the Great Lakes Water Quality Agreement as substances that persist at levels that, singly or in synergistic or additive combination, are causing, or are likely to cause, impairment of beneficial uses despite past application of regulatory controls due to their: (1) Presence in open lake waters; (2) ability to cause or contribute to a failure to meet Agreement objectives through their recognized threat to human health and aquatic life; or (3) ability to bioaccumulate (i.e., collect in the tissues of aquatic life, wildlife, and humans to concentrations much higher than those in the lake water).

or written comments, please contact Jeanette Morris-Collins, Environmental Protection Assistant, U.S. Environmental Protection Agency—Region 5 (WQ–16J), 77 West Jackson, Chicago, Illinois 60604, 312/886–0152. Copies of the proposed Lake Michigan LaMP may also be obtained from the following offices:

Illinois Environmental Protection Agency, Attn: Bob Schacht, 1701 S. First Avenue, suite 600, Maywood, Illinois 60153, 708/531–5900.

Indiana Department of Environmental Management, Attn: David Dabertin, Gainer Bank Building, 504 N. Broadway, suite 418, Gary, Indiana 46402, 219/881–6712.

Michigan Department of Natural Resources, Attn: Robert Day, P.O. Box 30028, Lansing, Michigan 48909, 517/335–3314.

Water Resources Management, Wisconsin Department of Natural Resources, 101 S. Webster Street, P.O. Box 7921, Madison, Wisconsin 53707, 608/266–9238.

Lake Michigan Federation, 59 E. Van Buren Street, suite 2215, Chicago, Illinois 60605, 312/939–0838.

Lake Michigan Federation, 1270 Main Street, Green Bay, Wisconsin 54302, 414/432–5253.

Lake Michigan Federation, 647 W. Virginia, Milwaukee, Wisconsin 53204, 414/271–5059.

Lake Michigan Federation, 425 Western Avenue, suite 201, Muskegon, Michigan 49440, 616/722–5116.

The LaMP document will also be available for review at public libraries throughout the Lake Michigan basin.

FOR FURTHER INFORMATION CONTACT: Constance Hunt, Region V LaMP Coordinator, 312/886–0271.

SUPPLEMENTARY INFORMATION: This notice of availability of the proposed Lake Michigan LaMP and period of public review is provided in accordance with Section 118(c)(4)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1268) as amended by Section 101 of the Great Lakes Critical Programs Act of 1990. Annex 2, section 6 of the Great Lakes Water Quality Agreement (GLWQA or Agreement), as amended by Protocol on November 18, 1987, calls for the development of a LaMP for Critical Pollutants for each of the Great Lakes. The purpose of a LaMP is to reduce loadings of Critical Pollutants from all sources, including point and non-point sources, in order to restore beneficial uses of the open lake waters.

Participation

The development and implementation of a LaMP for Lake Michigan is an enormous undertaking in terms of the technical complexity of the issues, the geographic area involved, and the extensive coordination needed at the Federal, State, Tribal and local level and with the public. As a result, EPA is developing the LaMP with full participation by all interested parties.

To assist in Lake Michigan LaMP development and implementation, EPA has convened a Management Committee with representatives from the Fish and Wildlife Service, the Forest Service, the Army Corps of Engineers, the Geological Survey, the Soil Conservation Service, representatives of Lake Michigan basin Tribes, and the States of Illinois, Indiana, Michigan and Wisconsin. The purposes of the Management Committee are to: (1) Ensure public participation in the LaMP process; (2) identify the necessary participants and convene ad hoc technical committees to develop options and recommendations for reducing loads of Critical Pollutants; (3) develop policies, commit resources, and review the LaMP prior to public notice and submittal to the International Joint Commission; and (4) work through the respective agencies' budget processes to secure the resources necessary to develop and fully implement the LaMP.

Public participation in the development and implementation of the Lake Michigan LaMP will be accomplished though three tiers of activity: (1) General public education through workshops, public presentations, and the distribution of fact sheets (a general education program focussing on Lake Michigan water quality is being developed in conjunction with the Lake Michigan LaMP by the Great Lakes Sea Grant Program under the National Oceanic and Atmospheric Administration); (2) formal public notices to provide the opportunity for broad public review of the LaMP and progress on its implementation on a periodic basis; and (3) formation of a forum to solicit advice from interested parties in the Lake Michigan basin. The forum will provide a mechanism for individual comments by constituent groups, and is not intended to provide consensus recommendations or advice. This forum consists of representatives from a broad spectrum of Lake Michigan interests and reflects the concerns of large segments of the basin population. The forum representatives will be given the opportunity to observe and participate in both Management Committee and technical-level committee meetings. the forum members may review and comment on recommendations and documents developed for the LaMP. The forum does not substitute for the public process. Representatives to the forum are expected to inform their constituencies of activities carried out under the LaMP program and to provide the Management Committee with their constituencies' views and concerns on those activities. EPA has invited the following organizations to participate on the Lake Michigan forum:

- Great Lakes Sportfishing Council
- Great Lakes Association of Counties
- Council of Great Lakes Governors
- American Metropolitan Sewerage Agencies
- Lake Michigan Federation
- National Wildlife Federation
- Northwest Indiana Forum
- Grand Cal Task Force
- Chemical Manufacturers Association
- Council of Great Lakes Industries
- Great Lakes United
- Greenpeace Action
- National Association of Metal Finishers
- American Paper Institute
- Illinois Farm Bureau
- Lake Carriers Association
- National Association of Conservation Districts
- West Michigan Environmental Action Council
- Michigan Manufacturing Association
- Michigan State Chamber of Commerce
- Motor Vehicle Manufacturers Association of the United States
- League of Women Voters of Indiana
- Atlantic States Legal Foundation
- Center for the Great Lakes
- American Farm Bureau Association

Process

The Lakewide Management Plan for Lake Michigan embodies a process for implementing an ecosystem-focussed approach to environmental protection. The process consists of the following steps: assessment of environmental problems or impairments in the Lake Michigan ecosystem, translation of the problem statements into a set of goals that a coalition of agencies and non-government organizations can work together to achieve, adoption of a set of criteria and indicators by which to gauge progress towards achievement of the goals, development and implementation of action plans to move towards achievement of the goals, and monitoring of the environmental criteria and indicators in order to evaluate progress towards achievement of the goals and to detect emerging problems. Based on the information fed back and the environment via the monitoring programs, the process and action plans are adjusted as necessary to ensure continued progress.

The LaMP serves as a coordination and prioritization mechanism for ongoing programs and activities. Where

regulatory programs exist, the LaMP process helps agencies to identify areas where efficiency and effectiveness can be improved through coordination and information sharing. Where no regulatory program exists to address problems of importance to the health of the Lake Michigan ecosystem, the LaMP program will help to identify opportunities for voluntary activities and technical assistance to reduce risk. Thus, the LaMP process provides a vehicle for plugging gaps in systems to protect the environment. The LaMP provides a context within which to assess the degree of risk posed to the health of the Lake Michigan ecosystem by one cause of impairments relative to other causes. In taking a holistic approach to pollution reduction, the LaMP allows agencies to weigh risks and opportunities for success in deciding where pollution reduction and prevention dollars should be targeted.

As required by the Critical Programs Act, EPA will prepare a revised LaMP document for review by the International Joint Commission by January 1, 1993. That draft will be more complete than the current proposal and address gaps identified in the present draft. It will also be made available for public comment thereby representing a reproposal of the LaMP.

Environmental Goals

EPA proposes to work in cooperation with other Federal, State, Tribal and local agencies, with the public, and with the regulated community to direct existing programs and establish new programs as necessary to accomplish two primary environmental goals. The first goal is to achieve specific reductions in the release and deposition of Critical Pollutants into the Lake Michigan ecosystem on established time tables, and to isolate, treat, and/or remove sediments contaminated by Critical Pollutants, so that: (1) the Lake's water quality and sediments are capable of sustaining communities to sensitive living resources (aquatic and terrestrial); and (2) the health risks posed to humans and wildlife in drinking Lake water or consuming lake fish and wildlife are minimal. The second goal is to virtually eliminate the release of persistent, toxic, and/or bioaccumulative pollutants within the Lake Michigan basin in order to prevent any further degradation of Lake Michigan and to avoid costly remedial actions in the future.

EPA requests specific comments on the appropriateness, scope, and definition of these environmental goals.

Critical Pollutants

EPA proposes that pollutants exceeding State or Federal water quality standards and/or criteria, or exceeding FDA action levels in Lake Michigan fish, and judged by EPA and the LaMP Management Committee as impairing beneficial uses as defined in the GLWQA, Annex 2 (1)(c), and having lakewide implications, be designated Critical Pollutants. In addition, any pollutant which EPA and the LaMP Management Committee have judged to be strongly associated with beneficial use impairment on a lakewide (i.e. greater than local) basis will be designated a Critical Pollutant.

The strength of association between the presence of a pollutant in the environment and evidence of impairments varies greatly, depending on the complexity of the problem and the degree to which the problem has been studied both in the environment and in laboratories. EPA therefore proposes that Critical Pollutant designations be tiered along a spectrum related to the degree of association with use impairments and that management activities undertaken in accordance with the LaMP program be tiered in a similar manner. For example, where a strong degree of association [2] exists between a pollutant and an ecological impairment, management actions should be focussed towards removing that pollutant from the ecosystem. Where a weak degree of association exists, management actions should be focussed on further evaluation of the cause/effect relationship. In cases of weak degrees of association, the LaMP program should also encourage and provide incentives for activities geared towards reducing concentrations of the subject pollutants, such as pollution prevention programs, to ensure that the pollutants do not become causes of impairment. The proportion of human and financial resources within the LaMP program to be dedicated towards addressing any given pollutant should be determined by the strength of association with use impairments, severity of the perceived problem, geographic distribution of the perceived problem, and potential for success.

[2] The Council of Great Lakes Research Managers has adopted the following criteria for inferring causality:

(a) time order;
(b) strength of association;
(c) specificity;
(d) consistency on replication;
(e) coherence; and
(f) predictive performance.

EPA recommends that these criteria be considered in the evaluation of a pollutant for inclusion on the LaMP Critical Pollutant list.

EPA proposes that the Critical Pollutant list for the Lake Michigan LaMP be based primarily on environmental data. The list should also have the effect of catalyzing management activities based on the availability of data and strength of association between the presence of pollutants and documentation of ecosystem impairments, and be dynamic in nature so that as the risk to the ecosystem is diminished by reductions in pollutant concentrations, the pollutants may be removed from the Critical Pollutant list, and other pollutants may be added as the strength of association with use impairments increases.

Based on an interagency meeting of the Lake Michigan ad hoc work group on Critical Pollutants, EPA proposes that the listing system contain four levels. Levels I and II list those pollutants which are considered to be Critical Pollutants necessitating immediate LaMP action. These pollutants are considered to be Critical Pollutants because (1) they exceed the most stringent State water quality standards and/or criteria, or exceed FDA action levels in Lake Michigan fish, and have been judged by EPA and the LaMP Management Committee as impairing ecological functions and having lakewide implications, or (2) the pollutants are strongly associated with ecological impairments, including unacceptable risks to humans or non-aquatic wildlife, in Lake Michigan. Only those pollutants listed in Levels I and II are considered to be Critical Pollutants.

Levels III and IV list pollutants which, although not presently considered to be Critical Pollutants, may in the future be listed as Critical Pollutants. Level III lists those pollutants for which a moderate body of evidence has been established and for which the LaMP will act as a forum to encourage load reductions as additional information is being established regarding the severity of ecological impacts associated with Level III pollutants. These activities will focus on finding load reduction and pollution prevention opportunities for specific pollutants on the Level III list; i.e., such activities will be pollutant-focused. Level IV consists of those pollutants present in the Lake Michigan basin which have characteristics that indicate they may cause impairments, but for which no substantial evidence linking them with impairments in the Lake Michigan basin exists. More evidence demonstrating that these pollutants are posing risks to the ecological integrity of Lake Michigan must be established before the LaMP

process addresses each pollutant individually. While information is being developed, however, EPA will encourage the development of pollution prevention activities for *any* of the pollutants on the Level IV list; i.e., an opportunity-focused approach will be taken.

Although the level of effort dedicated by the LaMP process to problems associated with particular pollutants will be dictated largely by the tiering system, EPA and the LaMP Management Committee will have to prioritize activities even within the proposed levels. This prioritization will be based on the potential for significantly reducing risk by focusing on a load reductions of a given pollutant, and on the perceived severity of the risk posed by each pollutant.

Based on the available information regarding the pollution of Lake Michigan and the effects or potential effects of the pollutants on acquatic life, wildlife, and humans, EPA is proposing the following pollutants as Critical Pollutants (Level I and II) for Lake Michigan: total polychlorinated biphenyls (PCBs), dieldrin, chlordane, DDT and degradation products (DDD and DDE isomers), polychlorinated dibenzo-para-dioxins (dioxins), and mercury. Proposed pollutants for Levels III and IV include polychlorinated dibenzofurans (furans), hexachlorobenzene, toxaphene, polycyclic aromatic hydrocarbons (PAHs), lead, copper, zinc, selenium, cadmium, and chromium.

The Lake Michigan LaMP calls for the LaMP Management Committee to annually review available scientific information, source monitoring data, and ambient fish tissue, sediment, and water monitoring data for the purpose of assisting in the revision of the critical pollutant (i.e., adding to and/or deleting chemicals from the list) as new information becomes available. EPA proposes to continue the development and implementation of a monitoring program to detect bioconcentratable substances in fish tissue, sediments and wastewater discharges to detect chemicals that are entering Lake Michigan but that, heretofore, may have gone undetected. EPA views the listing of Critical Pollutants for Lake Michigan as a dynamic, flexible process which must accommodate the availability of new information.

EPA requests specific comments on its proposal to designate the substances listed above as Critical Pollutants and Level III and IV pollutants for Lake Michigan and the process for revising the list. EPA requests proposals for pollutants other than those listed above to be added to the Critical Pollutant and Level III and IV pollutants lists. EPA further requests that any information concerning the concentration of a substance in the water or sediments of Lake Michigan, or in the tissues of the acquatic life, wildlife, or humans that are dependent on Lake Michigan for food or water, which suggests that a substance should be considered a critical pollutant for Lake Michigan, be provided to the Agency during the comment period. In addition, EPA requests any additional information on sources and release rates on these and any other substances that may persist in the environment and cause deleterious effects on the Lake Michigan ecosystem.

Development of Criteria and Indicators

The development of chemical criteria and ecosystem indicators is essential for the Lake Michigan LaMP to demonstrate success. The ambient criteria—i.e. specific concentrations of pollutants in biota, sediments, or the water column—will serve as indicators of progress towards chemical integrity. Biological indicators are likely to consist of statistics related to species compositions and fitness; e.g. invertebrate and fish populations in tributaries and harbors, reproductive success in small, fish-eating birds.

EPA anticipates that the criteria generated by the Great Lakes Water Quality Initiative (Initiative) will provide criteria in the form of chemical concentrations. The LaMP will rely on them as interim goals for all pollutant sources discharging or emitting Critical Pollutants or Level III and IV pollutants into the Lake Michigan drainage basin. The ultimate goal of the Great Lakes Water Quality Agreement is the virtual elimination of persistent toxic substances from the Great Lakes basin ecosystem.

Source Identification and Release of Critical Pollutants

The proposed Critical Pollutants identified above are toxic at very low concentrations. Monitoring for the above substances has proven difficult because of the specialized and expensive techniques required for sampling and analysis. As a result, sampling of these substances at the source and in the environment has been sporadic and not comprehensive. Therefore, little information is available on the sources or the rate of loading of the proposed pollutants into Lake Michigan.

To address this deficiency, EPA in cooperation with other Federal and State agencies, is investing in increased monitoring for toxic substances both at the source and in the environment. Beginning during the spring of 1992, toxic chemicals will be monitored in both wet and dry deposition from the atmosphere, in the major tributaries to Lake Michigan, and in the open lake waters. In addition, EPA is currently reviewing all available information and developing a general mass balance model to estimate the total loads of the proposed Critical Pollutants to Lake Michigan. These estimates will be available by April of 1992.

EPA, the States and local authorities have accelerated activities to identify sources of the proposed Critical Pollutants to Lake Michigan and to initiate load reduction activities. To further this effort, the proposed Lake Michigan LaMP recommends that EPA and the States:

- Develop total maximum daily loads/wasteload allocations/load allocations for tributaries and near shore areas impacted by Critical Pollutants on a priority basis;
- Monitor and take enforcement actions against any point source wastewater discharge that is releasing a critical pollutant in violation of permit limits, monitoring requirements, or the conditions necessary for control;
- Review storm water information available or to be submitted by industrial and municipal facilities to identify the presence of Critical Pollutants and to expeditiously issue permits ensuring that appropriate treatment or management practices are implemented to reduce loads;
- Ensure that Publicly Owned Treatment Works suspected of releasing Critical Pollutants have conducted user inventories to identify sources and implement load reduction actions through controls, treatment, or pretreatment;
- Inventory air sources of Critical Pollutants and initiate the early load reduction provisions under the Clean Air Act;
- Inventory contaminated sediments within the Lake Michigan basin and prioritize and target for remedial action those sites contaminated with Critical Pollutants;
- Target tributaries to Lake Michigan identified in State non-point source management plans and assessments with significant non-point sources of Critical Pollutants and initiate the installation of best management practices;

• Initiate a state-sponsored, basin-wide "clean sweep" program to collect and safely dispose of existing stocks of Critical Pollutants, with an emphasis on canceled, suspended, or restricted-use pesticides;

• Identify and close or eliminate the discharge of Critical Pollutants to Class V underground injection wells within the basin. These wells are the most likely to contaminate surface waters within the basin;

• Inventory those treatment, storage, or disposal facilities regulated under the Resource Conservation and Recovery Act (RCRA) and National Priorities List sites regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that are likely to contribute toxic pollutants to major tributaries or directly to the Lake;

• Accelerate closure and clean-up at any RCRA or CERCLA site with off-site transfers of Critical Pollutants to surface waters of the Lake Michigan basin;

• Coordinate with ongoing Remedial Action Planning activities in the Lake Michigan Areas of Concern to ensure that Critical Pollutant sources are identified and load reduction activities undertaken; and

• Initiate voluntary pollution prevention projects with key municipal and industrial facilities to reduce or eliminate the release of persistent, toxic substances.

EPA requests public comment on the scope, adequacy, and timing of the actions described in the Lake Michigan LaMP. In particular, EPA requests that persons with knowledge of any sources or ongoing releases of Critical Pollutants to surface waters within the Lake Michigan basin provide this information during the public comment period.

In accordance with the Critical Programs Act of 1990, the proposed Lake Michigan LaMP will be revised following the public comment period to incorporate the comments received. On January 1, 1993, the revised LaMP document will be submitted to the International Joint Commission for review. Although not specifically required by the Critical Programs Act, EPA will also take public comment on revised LaMP document. On January 1, 1994, a final LaMP document will be published in the **Federal Register**.

Dated: July 31, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-19058 Filed 8-10-92; 8:45 am]

BILLING CODE 6560-01-M

[FRL-4193-8]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Acme Printing Ink Company, et al.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) notice is hereby given of a proposed administrative settlement concerning the first operable unit at the Organic Chemicals, Inc. site in Grandville, Kent County, Michigan. the agreement was proposed by EPA Region V on February 13, 1992. Subject on review by the public pursuant to this Notice, the agreement was approved by the United States Department of Justice on June 26, 1992.

DATES: Comments must be provided on or before September 10, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region, V, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, and should refer to: In Re Organic chemicals, Inc., Site in Grandville, Michigan, U.S. EPA Docket No. V-W-92-C-149.

FOR FURTHER INFORMATION CONTACT: James Morris, U.S. Environmental Protection Agency, Office of Regional Counsel, CS-3T, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, 312/886-6632.

SUPPLEMENTARY INFORMATION: Below are listed the parties who have executed binding certifications of their consent to participate in the settlement: INX International Ink Company for Acme Printing Ink Company; Acorn Building Components for Acolor Company; AFCO Industries, Inc.; American Seating; Metal Components, Inc.—Flexible Furniture Division; Apex Rack & Coating Co.; Applied Arts; Ashland Chemical, Inc.; North American Philips for Baker Furniture and Milling Road Furniture—a division of Baker Furniture; Bissell, Inc. Brandywine F.R.P., Inc. for AAA Associates; By-Pass Paint Shop, Inc.; Cambridge Mfg. Co. Inc.; Camfield Fiberglass Plastics; Carbonneau Industries, Inc.—a division of Rockford Corporation; Environmental Coatings, Inc. for Chemical Specialties, Inc.; Chemetron Investments, Inc. for Chemetron Corporation; Crown Beverage Packaging, Inc. for Continental Can Company, Inc.; Kent Plastics Finishing for Kent Decorative and Kent Finishing; CTS Corporation; JSJ Corporation for DeKalb Molded Plastics and Michigan Plastic Products Company; Don Seelve Ford, Inc.; Dow Corning Corporation; Eagle Ottawa Leather Co.; Elastodyne—a subsidiary of ITT Corporation; Elmer's Body Shop; Enamelite Industries, Inc.; Clarcor for EPC Industries; Evans Tempcon, Inc.; Expert Coating Co., Inc.; Federal-Mogul Corporation; Ferro Corporation; Fisher Body—General Motors Corporation; Fastener Coatings, Inc.; Gallmeyer & Livingston Co.; Colwell/General, Inc. for General Color Graphics, Inc.; Grand Rapids Label Company; White Consolidated Industries, Inc. for White Consolidated (GR Manufacturing), Kelvinator, Inc., and Greenville Products Corp.; Lear Plastics Corporation for Lear Siegler, Inc. and Lear Siegler, Inc.—Haas Division; Harlo Products Corporation; Harris Manufacturing; Hastings Fiber Glass Products, Inc.; Hexcel Chemical; Highland Chrysler; TNT Holland Motor Express; Howmet Turbine Components Corporation; Hussey Seating Co. for Ideal Seating; Patrick Industries, Inc. for ILC, Inc.; Internal Grinding Abrasives, Inc.; Irwin Seating Co.; James Heddon's Sons, Inc.; Johnson Furniture Co.; Kellogg Company; Kindel Furniture Company; Cooper Industries, Inc.—Kirsch Division; Knape Industries, Inc., Tomkins Industries, Inc.—Lasco Industries Division; Harrow Products, Inc. for Leigh Products; Leon Plastics, Inc. for Leon Chemical & Plastics; Charlotte Co., Inc. for Luvan, Inc.; Magic Finishing; Knape & Vogt for Modar, Inc.; Oliver Machinery Company; Orson Coe Pontiac Body Shop; Panel Processing of Coldwater, Inc.; Paw Paw Plating; Allied-Signal, Inc. for Prestolite Corp.; Pullman Industries, Inc.; Rapid Finishing, Inc.; Refrigeration Manufacturing Company; Regal Finishing Company; Reliable Past & Chemical Co.; Reliance Finishing Company; Robroy Industries, Inc. for Robroy Industries and Stahlin Brothers; Rowe International; Four Winns, Inc.; Seaver Industrial Finishing Co.; Serviscreen, Inc.; The Sherwin-Williams Company; Stephenson & Lawyer, Inc.; Ameriscribe Corporation for Story & Clark Piano; Superior Industrial Products, Inc.; Technical Systems, Inc.; Teledyne Industries, Inc. for Teledyne Diecast; Thermotron; Thierica, Inc.; Tri-River Industries, Inc.; Valley City Planting Co. (Avien Corp.); Coachmen Industries, Inc. for Viking Boat Co., Inc.; Warner Fiberglass Products; Wealthy Body Shop; Wolverine World Wide;

Zeeland Industries, Inc.; Glastec, Inc.—a division of Eljer Manufacturing, Inc.

These one hundred parties will pay $1,384,714 in settlement payments for the first operable unit under the agreement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. Of this amount, $197,415 would reimburse EPA for a portion of its past response costs at the Organic Chemicals, Inc. site. The remaining $1,187,299 would be available for reimbursement of the major potentially responsible parties (PRPs) for their implementation of the first operable unit at the site, pursuant to the terms of the Unilateral Administrative Order (UAO) that was issued to all the PRPs on January 3, 1992.

EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties for the first operable unit at the Organic Chemicals, Inc. site who are responsible for less than 1.0 percent of the total amount of solvents sent to the site between 1968 and 1980. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of February 13, 1992. Settling Parties will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs for the first operable unit at the site. Settling parties will also be required to pay a settlement premium of 0.6 (i.e., a 1.6 multiplier) of the estimated future response costs for the first operable unit, based on the potential for cost overruns in implementing the remedy and the potential for remedy failure. In exchange, Settling Parties will receive a complete release from further civil or administrative liabilities for the first operable unit at the site. The settlement, as it is now proposed, includes several minor adjustments to the identity of settling parties and the volumetric shares of settling parties, which were made after the proposal was sent to all eligible parties on February 13, 1992, in response to additional information provided by those parties. The affected parties are: Hussey Seating Company (Ideal Seating Company), North American Philips (Milling Road Furniture), and Robroy Industries, Inc. (Stahlin Brothers).

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601–9675.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 92–19066 Filed 8–10–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 92–1053]

Comments Invited on Oklahoma Public Safety Plan

The Commission has received the public safety radio communications plan for Oklahoma (Region 34).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 8–112, Region 34 consists of the State of Oklahoma. General Docket No. 87–112, 3 FCC Rcd 2113 (1988).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before September 9, 1992 and reply comments on or before September 24, 1992. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92–171 Oklahoma-Public Safety Region 34.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–18953 Filed 8–10–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: New collection.

Title: Evaluation Form for Fallen Firefighters Survivors Grief Seminar.

Abstract: The United States Fire Administration will sponsor the 11th Annual National Fallen Firefighters memorial Service. In conjunction with this service, the USFA will conduct an educational grief seminar October 10, 1992, to assist families of fallen firefighters in dealing with loss of their loved ones in the line of duty. Participants of the seminar will be asked to evaluate the seminar. The USFA will use the evaluations to evaluate the effectiveness of the speakers, facilitators, materials, and program format to determine whether the seminar is helpful and should be continued in the future.

Type of Respondents: Individuals and housenolds.

Estimate of Total Annual Reporting and recordkeeping Burden: 37.5 Hours.

Number of Respondents: 150.

Estimated Average Burden time per Response: 15 Minutes.

Frequency of Response: One-Time.

Dated: July 29, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18954 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: New Collection.

Title: "Success Stories" Based on Accomplishment of Graduates of Emergency Management Institute's (EMI's) Professional Development Series (PDS).

Abstract: FEMA seeks success stories from graduates of EMI's PDS curriculum. This curriculum provides participants with fundamental emergency management and leadership skills and abilities required to mitigate against, prepare for, respond to, and recover from emergencies and disasters, including natural disasters, technological calamities, and national security crises. Local, county, and State emergency management personnel will respond by showing the value of the PDS training program and the improvements community's have made in developing programs or projects that reduce loss of life and property caused by emergencies and disasters. Submissions will be compiled into a booklet for distribution to emergency management communities for information and replication of programs or projects.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 250 Hours.

Number of Respondents: 50.

Estimated Average Burden Time per Response: 5 Hours

Frequency of Response: One-Time.

Dated: July 24, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18955 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collection Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: New collection.

Title: Survey to Develop a Prototype National System Using Local Emergency Managers at Major Disasters.

Abstract: FEMA is asking State and local emergency managers to complete the survey to provide data indicating interest, availability, experience and background, and other factors that may affect the development of a prototype national system to use emergency managers at major disaster sites. FEMA will use the data to evaluate the feasibility of developing the prototype system to identify and mobilize experienced State and local emergency management personnel during major disasters and emergencies.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 995 Hours.

Number of Respondents: 2,116.

Estimated Average Burden Time Per Response: 28 Minutes.

Frequency of Response: One-Time.

Dated: July 24, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18956 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 13, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395-7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2624.

Type: Revision of 3067-0192.

Title: Disaster Housing Post Assistance Survey.

Abstract: The Disaster Housing Post Assistance Survey is used by FEMA to identify trends that indicate the success or failure of the Temporary Housing Assistance Program delivery process and to measure how well the program is

meeting its objectives. The program provides temporary housing assistance to eligible victims of major disasters or emergencies. The survey is completed by all pre-disaster homeowners who receive rental assistance under the program. A sample is conducted of homeowners who receive assistance to make minimal repairs to their property and of renters who receive rental assistance.

Type of Respondents: Individuals and households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,500 Hours.

Number of Respondents: 6,000.

Estimated Average Burden Time per Response: 15 Minutes.

Frequency of Response: One-time.

Dated: July 27, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-18957 Filed 8-10-92; 8:45 am]

BILLING CODE 6718-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for September 24, 1992 at 10 a.m. in the Commission's offices in the Pension building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC August 3, 1992.

Charles H. Atherton,

Secretary.

[FR Doc. 92-18973 Filed 8-10-92; 8:45 am]

BILLING CODE 6330-01-M

GENERAL SERVICES ADMINISTRATION

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

Announcement is hereby given that the General Services Administration has adopted the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Office of Management and Budget Circular No. A-102.

Persons requiring further information on this adoption, should contact: Ms. Ada Rairigh, Branch Chief, Contracting Branch, Public Buildings Service, General Services Administration, (202) 501-0907 Extension 41.

Dated: August 4, 1992.

Sharon Jenkins,

Director, Contract Management Division.

[FR Doc. 92-19042 Filed 8-10-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Personnel Administration; Privacy Act of 1974; Revision to Existing System of Records

AGENCY: Employee Assistance Program, Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, HHS.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act, HHS is giving notice that it is revising one of its system of records, 09-90-0010—Employee Assistance Program (formerly Employee Counseling Services), HHS/OS/ASPER. It was most recently published on July 18, 1989. The notice is being revised to clarify the notification procedures and update the list of system managers. Records in this system contain information on employees and their family members who have been counseled by the Employee Assistance Program for all types of personal problems.

EFFECTIVE DATE: This amendment is effective on August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Manager, Human Resources Development Policy Group, room 5-35E, 200 Independence Ave., SW., Washington, DC 20201. Telephone number (202) 690-7322.

SUPPLEMENTARY INFORMATION: The previously published notice did not describe the mediated access procedures allowed by the Privacy Act. This notice makes those procedures clear. In addition, the list of system managers has been updated.

The notice is published below in its entirety, as amended.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

09-90-0010

SYSTEM NAME:

Employee Assistance Program Records HHS/OS/ASPER/OPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Designated offices providing counseling and/or referral for counseling for employees and their family members (see Appendix 1).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers HHS employees, employees of other organizations serviced by the HHS EAP, or family members of any of these employees who have been counseled and/or referred by the EAP for counseling and/or other assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of each employee and family member who utilized the EAP. Examples of information which may be found in each record are employee or family member name, date of birth, grade, job title, home address, telephone numbers, and supervisor's name and telephone number. In addition to the demographic data, certain clinical information is normally maintained in each record including a psychosocial history, assessment of personal problem, information regarding referrals to treatment facilities in the community, and intervention outcomes. Finally, if an employee is referred to the EAP by a supervisor, the record may contain information regarding the referral such as leave record, reasons for referral, and outcomes of supervisory interventions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7361, 7362, 7901, 7904, 44 U.S.C. 3101.

PURPOSE(S):

These records are used to document the nature and extent of the employee's or family member's personal problem and the background information necessary for formulating an intervention plan in an effort to resolve the personal problem and return the employee to full productivity. The record is also used to document, when

appropriate, where the employee or family member has been referred for treatment or rehabilitation and the progress in such treatment.

Anonymous information from these records is also needed for the purpose of preparing statistical reports and analytical studies in support of the EAP's management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) HHS contemplates that it will contract with a private firm, individual, or other group such as a Federal Employee Assistance Program consortium for the purpose of providing the EAP functions. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor will surrender to the EAP all of these records as well as any new records at the time of contract termination.

(2) HHS may disclose information from this system of records for litigation purposes when

(a) HHS, or any of its components, or

(b) Any HHS employee in his or her official capacity, or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components

is a party to litigation, and HHS determines that such use of records is relevant and necessary to the litigation and would help in the effective representation of the government party. The disclosure may be made to the Department of Justice. Where the records are *not* covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2), disclosures may also be made to a court or other tribunal, or to another party before such tribunal. Any disclosure of such patient records must be pursuant to a qualified service organization agreement that meets the requirements of 42 CFR part 2 *and* must also comply with all other aspects of these regulations. The Director of the Employee Assistance Program (in ASPER) must personally approve any disclosure made under this routine use based on his or her determination that it is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Employee records are maintained in folders, on index cards and on computer readable media. Computer systems are discrete, for EAP use only, and/or are password protected.

RETRIEVABILITY:

Records are retrieved by a case code number, unique to the employee or family member utilizing the program. These numbers are cross indexed by name.

SAFEGUARDS:

(1) *Authorized Users:* Access to these records is limited to EAP Administrators who work directly with employees and family members in each program location (see Appendix 1) and their immediate staffs (including staff counselors, staff secretaries, contract or consortia counselors and secretaries). All EAP Administrators, whether or not they directly provide clinical services, may access the records for the purposes of program evaluation, destroying records at the end of their period of maintenance, and transferring records from one contractor to another.

(2) *Physical Safeguards:* All records are stored in a metal filing cabinet equipped with at least a combination lock, and preferably a locking bar. This file cabinet is in a secured area, accessible only to the EAP staff, and is locked when not in use. Computer readable information is maintained in discrete systems and/or is password protected. Computers are also stored in secured areas, accessible to only the EAP staff. These records are always maintained separate from any other system of records.

(3) *Procedural Safeguards:* All persons having access to the records shall have previous training in the proper handling of records covered by the Privacy Act and 42 CFR part 2 (confidentiality of Alcohol and Drug Abuse Patient Records). These acts restrict disclosures to unique situations, such as medical emergencies, except when the employee or family member has consented in writing. Furthermore, employees, and family members who utilize the EAP will be informed in writing of the confidentiality provisions; and secondary disclosure of information is prohibited without employee consent.

RETENTION AND DISPOSAL:

Records are retained until three years after the employee or family member has ceased contract with the EAP or until any litigation is resolved. However, if an employee has been terminated from HHS employment, records are retained for at least three years after the official date of termination and until any litigation is resolved. Files are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The records of individuals participating in the EAP are managed by the EAP Administrations in the various regional and headquarters offices (Appendix1).

NOTIFICATION PROCEDURES:

Inquiries to determine whether the system contains a record about the requester should be addressed to the system manager where the counseling was provided (see Appendix 1). The individual should provide his or her name, grade, organization where employed, date of birth, and location and approximate date of counseling. An individual who request notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Upon receiving a request, the EAP Administrator shall weigh the need for disclosure against the potential injury to the patient, to the physician-patient relationship, and to the treatment services. The EAP Administrator will then determine whether to disclose the record directly to the individual or to disclose it to the representative.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the EAP Administrator at the address found in Appendix 1, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in this system of records is: (1) Supplied directly by the individual, or (2) supplied by a member of the employee's family, or (3) derived from information supplied by the individual, or (4) supplied by sources to whom the employee and/or family member has been referred for assistance, or (5) supplied by Department officials, or (6) supplied by EAP counselors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

Regional Offices

Region I

Employee Assistance Program Administrator, HHS Regional Personnel Office, JFK Federal Building, Room 1503, Boston, Massachusetts 02203

Region II

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 39–120, 26 Federal Plaza, New York, New York 10278

Region III

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 9400, 3535 Market Street, Philadelphia, Pennsylvania 19104

Region IV

Employee Assistance Program Administrator, HHS Regional Personnel Office, 101 Marietta Tower, Room 1604, Atlanta, Georgia 30323

Region V

Employee Assistance Program Administrator, HHS Regional Personnel Office, 22nd Floor, 105 West Adams Street, Chicago, Illinois 60603

Region VI

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 930, 1200 Main Tower, Dallas, Texas 75202

Region VII

Employee Assistance Program Administrator, HHS Regional Personnel Office, P.O. Box 15458, 601 East Twelfth Street, Kansas City, Missouri 64106

Region VIII

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 1062, 19th & South Streets, Denver, Colorado 80294

Region IX

Employee Assistance Program Administrator, HHS Regional Personnel Office, Room 118, 50 United Nations Plaza, San Francisco, California 94102

Region X

Employee Assistance Program Administrator, HHS Regional Personnel Office, Mail Stop RX–05, 2201 Sixth Avenue, Seattle, Washington 98121

Other Offices

Centers for Disease Control, Employee Assistance Program Administrator, Personnel Management Office, Centers for Disease Control, 1600 Clifton Road, NE., Mail Stop D01, Atlanta, Georgia 30333

Health Care Financing Administration, Employee Assistance Program Administrator, G–21 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207

National Institutes of Health, Employee Assistance Program Administrator, Building 31, Room 1C02, 9000 Rockville Pike, Bethesda, Maryland 20892

Public Health Services, Employee Assistance Program Administrator, Room 13–35 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Social Security Administration, Employee Assistance Program Administrator, 3120 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235

Southwest Complex, Employee Assistance Program Administrator, Room 1036 Switzer Building, 330 C Street, SW., Washington, D.C. 20201

[FR Doc. 92–18978 Filed 8–10–92 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Family Assistance, HHS.

Notice

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an extension of an existing information collection entitled "Participation Rate Statistical Report", OMB Control Number 0970–0098. This request for OMB clearance is made by the Office of Family Assistance (OFA) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Participation Rate Statistical Report, Form FSA–103.

OMB No.: 0970–0098

Description: The Job Opportunities and Basic Skills Training (JOBS) program was established under title II of the Family Support Act for the purpose of amending title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives.

Section 201(c)(2) of title II of the Statute requires the Administration for Children and Families (ACF) to reduce the Federal Financial Participation (FFP) rate to 50% if a specified percent of those individuals required to participate do not participate. Consequently, ACF must collect information necessary to determine that each State has met the participation rate requirements specified in the Statute. If the State fails to provide the requested information, FFP rates may be established and paid that are incorrect.

Annual Number of Respondents: 51.

Annual Frequency: 4.

Average Burden Hours Per Response: 12.

Total Burden Hours: 2448.

Dated: August 1, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92–19031 Filed 8–10–92; 8:45 am]

BILLING CODE 4130–01–M

Revised Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs for Fiscal Year 1993.

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Correction Notice: Revised Notification of the Fiscal Year 1993 Federal Allotments to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth the revised Fiscal Year 1993 individual allotments to States administering the Basic Support and Protection and Advocacy programs, pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). This revision is required to correct the amounts published in the **Federal Register** on March 13, 1992, (57 FR 8877) which were a result of an administrative error of excluding the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia from the formula under the Basic Support program. There is no change in the amounts published for the Protection

and Advocacy program. The allotments to the States published herein are based upon Fiscal Year 1992 funding levels, and are contingent upon Congressional appropriations for FY 1993. If Congress enacts and the President approves an amount different from the Fiscal Year 1992 funding levels, the allotments will be adjusted accordingly. The revised amounts published herein supersede those published in the **Federal Register** on March 13, 1992.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 245-7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2) of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities updated the data elements for issuance of Estimated Fiscal Year 1993 allotments for the Developmental Disabilities formula grant programs. The data elements are the same as those published in the **Federal Register** on March 13, 1992, which are:

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1990, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1991" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under 'Abroad' in the Table, were obtained from the Social Security Administration;

B. State data on Average Per Capita Income, 1985-90, are from Table 1, page 30 of the "Survey of Current Business," August 1991, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. States and Territories population data are from the 1990 Census Population Counts. Data for the States were issued in the U.S. Department of Commerce, Bureau of the Census report entitled, "Census Population—Housing" (CPH-L-4, Summer 1991); and the Territories Data were issued individually by "Census Bureau Press Releases" (CB91-142, CB91-242, CP91-243, CB91-244, CB91-263, and CP91-276, July, 1991). State data for the working population (ages 18-64) are also based upon the 1990 Census Population Counts. The Territories' working populations were issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

REVISED ESTIMATED FY 1993 ALLOTMENT—ADMINISTRATION ON DEVELOPMENT DISABILITIES

	Basic support	Protection and advocacy
Total	$67,706,000	$22,500,000
Alabama	1,299,892	401,558
Alaska	420,475	214,470
Arizona	894,518	274,948
Arkansas	743,927	234,689
California	5,851,706	1,772,122
Colorado	720,357	233,168
Connecticut	655,941	221,549
Delaware	420,475	214,470
District of Columbia	420,475	214,470
Florida	2,872,840	896,590
Georgia	1,635,129	515,908
Hawaii	420,475	214,470
Idaho	420,475	214,470
Illinois	2,584,387	815,810
Indiana	1,437,587	453,714
Iowa	771,149	243,511
Kansas	602,525	214,470
Kentucky	1,214,052	371,577
Louisiana	1,346,232	424,947
Maine	420,475	214,470
Maryland	928,081	291,535
Massachusetts	1,271,806	389,474
Michigan	2,351,391	740,846
Minnesota	1,004,499	316,925
Mississippi	920,281	287,401
Missouri	1,309,096	413,173
Montana	420,475	214,470
Nebraska	420,475	214,470
Nevada	420,475	214,470
New Hampshire	420,475	214,470
New Jersey	1,491,838	453,677
New Mexico	454,839	214,470
New York	4,116,396	1,238,861
North Carolina	1,791,568	565,409
North Dakota	420,475	214,470
Ohio	2,834,863	894,966
Oklahoma	883,384	267,313
Oregon	696,773	225,257
Pennsylvania	3,094,210	955,945
Rhode Island	420,475	214,470
South Carolina	1,025,074	323,305
South Dakota	420,475	214,470
Tennessee	1,410,519	445,179
Texas	4,244,082	1,264,836
Utah	517,143	214,470
Vermont	420,475	214,470
Virginia	1,370,527	432,540
Washington	1,071,818	327,227
West Virginia	782,693	241,219
Wisconsin	1,282,576	404,973
Wyoming	420,475	214,470
American Samoa	220,750	114,741
Guam	220,750	114,741
Marshall Islands [1]	220,750	0
Micronesia [1]	220,750	0
Palau [1]	220,750	0
Puerto Rico	2,386,924	725,863
Trust Territories [2]	0	114,741
Virgin Islands	220,750	114,741
Northern Mariana Islands	220,750	114,741

[1] The 1990 Amendments to the Developmental Disabilities Assistance and Bill of Rights Act (the Act) provided that the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau (formerly the Trust Territories of the Pacific Islands (TTPI)) each would receive a minimum allotment under the Basic Support formula program.

[2] Prior to the Act, TTPI had been eligible for a single minimum allotment under both programs, Basic Support and Protection and Advocacy. Under the 1990 Amendments, TTPI continues to be eligible for a single minimum amount under the Protection and Advocacy program; however, under the Compact of Free Association, (Public Law 99-239, only the Republic of Palau continues to be eligible to receive funds under the Protection and Advocacy program. Therefore, the Republic of Palau will receive its proportional share of the TTPI allotment, and the remainder will be withheld for reallotment in accordance with section 142(b)(1) of the Act.

Dated: August 4, 1992.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 92-19024 Filed 8-10-92; 8:45 am]

BILLING CODE 4130-01-M

Intent To Reallot Part B—Basic Support and Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of intent to reallot fiscal year 1992 Funds.

SUMMARY: Pursuant to section 125(d) of the Developmental Disabilities Assistance and Bill of Rights Act, as amended, the Administration on Developmental Disabilities herein gives notice of intent to reallot funds which are: (1) released for reallotment by a State or Territory under the Basic Support and Protection and Advocacy programs; and (2) not available to the Federated States of Micronesia and the Republic of Marshall Islands (formerly part of the Trust Territories of the Pacific Islands) under the terms of the Compact of Free Association under the Protection and Advocacy program. Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1992 should notify Bettye J.

Mobley, Chief, Family Support Branch, Office of Financial Management, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, D.C. 20447, in writing within thirty (30) days of this promulgation.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley on (202) 690–7220.

No funds are available for reallotment under the Basic Support program unless a State or Territory releases funds for reallotment. The proposed reallotment for Part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1992 REALLOTMENT

	Protection and advocacy	Reallotment	Revised allotment
Total	$22,500,000	$0	$22,500,000
Alabama	411,140	1,796	412,936
Alaska	214,470	937	215,407
Arizona	264,813	1,157	265,970
Arkansas	239,857	1,048	240,905
California	1,731,102	7,645	1,738,747
Colorado	235,364	1,028	236,392
Connecticut	223,119	975	224,094
Delaware	214,470	937	215,407
District of Columbia	214,470	937	215,407
Florida	875,370	3,825	879,195
Georgia	517,232	2,260	519,492
Hawaii	214,470	937	215,407
Idaho	214,470	937	215,407
Illinois	829,355	3,624	832,979
Indiana	457,365	1,998	459,363
Iowa	248,569	1,086	249,655
Kansas	214,470	937	215,407
Kentucky	376,734	1,646	378,380
Louisiana	441,445	1,929	443,374
Maine	214,470	937	215,407
Maryland	289,068	1,263	290,331
Massachusetts	387,058	1,691	388,749
Michigan	736,457	3,218	739,675
Minnesota	314,498	1,374	315,872
Mississippi	292,802	1,279	294,081
Missouri	413,986	1,809	415,795
Montana	214,470	937	215,407
Nebraska	214,470	937	215,407
Nevada	214,470	937	215,407
New Hampshire	214,470	937	215,407
New Jersey	455,156	1,989	457,145
New Mexico	214,470	937	215,407
New York	1,249,745	5,461	1,255,206
North Carolina	567,251	2,478	569,729
North Dakota	214,470	937	215,407
Ohio	896,164	3,916	900,060
Oklahoma	272,780	1,192	273,972
Oregon	225,631	986	226,617
Pennsylvania	971,531	4,245	975,776
Rhode Island	214,470	937	215,407
South Carolina	330,595	1,444	332,039
South Dakota	214,470	937	215,407
Tennessee	450,760	1,969	452,729
Texas	1,269,820	5,549	1,275,369
Utah	214,470	937	215,407
Vermont	214,470	937	215,407
Virginia	429,145	1,875	431,020
Washington	320,784	1,401	322,185
West Virginia	238,500	1,042	239,542
Wisconsin	401,192	1,753	402,945
Wyoming	214,470	937	215,407
American Samoa	114,741	501	115,242
Guam	114,741	501	115,242
Puerto Rico	701,447	3,065	704,512
Virgin Islands	114,741	501	115,242
Northern Mariana Islands	114,741	501	115,242
Trust Territories consists of:			
Palau	16,855	0	16,855
Micronesia	63,268	−63,268	0
Marshall Islands	34,618	−34,618	0

Dated: August 4, 1992.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 92-19025 Filed 8-10-92; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control

Meeting on Revisions of the AIDS Surveillance Case Definition and Subsequent Comment Period

SUMMARY: The Centers for Disease Control (CDC) announces an open meeting to review research findings on illnesses that have been suggested for addition to the AIDS surveillance case definition. Data relevant to expansion of the AIDS surveillance case definition and to public health reporting and surveillance will be heard. Information from this meeting will be considered by CDC in completing the proposed expansion of the case definition which was made available for public comment on November 15, 1991. Subsequent written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before September 18, 1992.

TIME AND DATE: 8:30 a.m.–5 p.m., September 2, 1992.

PLACE: Centers for Disease Control, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

STATUS: Open to the public, limited only by the space available.

NOTIFICATION OF ATTENDANCE: If you plan to attend the meeting, please provide name(s), organization, address, and telephone and FAX numbers to the meeting organizer, PACE Enterprises, 17 Executive Park Drive, suite 200, Atlanta, Georgia 30329, telephone 404/633–8610, FAX 404/633–8745, by August 28, 1992.

SUPPLEMENTARY INFORMATION:

A. Background

CDC has proposed to revise the classification system for HIV infection to emphasize the clinical importance of the CD4+ T-lymphocyte count in the categorization of HIV-related clinical conditions. This revised system provides a framework for educating health care providers about the clinical and immunologic manifestations of HIV infection and replaces the classification system published in 1987. Consistent with this revised classification system, CDC has also proposed an expansion of the AIDS surveillance case definition to include all HIV-infected persons who have less than 200 CD4+ T-lymphocytes/μ1, in addition to those persons having any of the 23 clinical conditions in the 1987 surveillance case definition. From November 15, 1991, through February 14, 1992, CDC solicited public comment on the proposed revision of the HIV classification system and expansion of the AIDS surveillance case definition for adolescents and adults (56 FR 58059; 56 FR 65906). In general, the respondents supported expanding AIDS surveillance criteria, although opinions varied concerning optimal approaches for achieving this objective. In particular, some respondents recommended adding more clinical conditions to the AIDS surveillance definition, including conditions commonly diagnosed in HIV-infected women. This public meeting will allow a review of available scientific information regarding the question of whether or not additional diseases should be considered indicative of AIDS.

B. Meeting

CDC will hold an open meeting on September 2, 1992, to review research findings on illnesses that have been suggested for addition to the CDC AIDS surveillance case definition. Information from this meeting will be considered in completing the proposed expansion of the case definition which was made available for public comment on November 15, 1991. Subsequent written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before September 18, 1992.

C. Transcript

The proceedings of this meeting will be transcribed. Any interested person may, consistent with the orderly conduct of the meeting, record or otherwise make a transcript of the meeting.

D. Subsequent Comment Period

Written comments containing research findings, relevant data, or responses to the information presented during this open meeting will be considered by CDC if received on or before September 18, 1992. Comments should be submitted in writing to the meeting organizer, PACE Enterprises.

CONTACT FOR ADDITIONAL INFORMATION: Persons who wish to obtain background materials for the meeting may contact the meeting organizer, PACE Enterprises.

Dated: August 6, 1992.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-19141 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90C-0406]

Bausch & Lomb, Inc.; Filing of Color Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a color additive petition filed by Bausch & Lomb, Inc., to indicate that the petitioner has also requested that the regulation be amended to clearly identify the color additive as the reaction product of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone (C.I. Reactive Blue 246) copolymerized with other monomers to form a contact lens material. Currently, the regulation indicates that the color additive consists only of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone. This action is in response to a request in a petition filed by Bausch & Lomb, Inc.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1990 (55 FR 52099), FDA announced that a petition (CAP 1C0229) had been filed by Bausch & Lomb, Inc., 1400 North Goodman St., Rochester, NY 14692–0450. The petition proposed to amend § 73.3106 *1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone* (21 CFR 73.3106) to provide for the additional safe use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (C.I. Reactive Blue 246) copolymerized with hydroxyethyl methacrylate/N-vinyl pyrrolidone copolymers to color contact lenses.

Upon further review of the petition, the agency notes that the color additive is the reaction product of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone with the contact lens monomers; in this case, hydroxyethyl methacrylate and N-vinyl pyrrolidone.

The dye covalently bonds with the monomers at the time of polymerization and becomes an integral part of the lens material. The petitioner, in a letter dated June 8, 1992, has also requested that § 73.3106 be modified to more accurately reflect that the color additive currently in § 73.3106 is 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone copolymerized with hydroxyethyl methacrylate. FDA, therefore, is amending the filing notice of December 19, 1990, to reflect that the petitioner has requested that § 73.3106 of the color additive regulations be amended to list the color additive as the copolymer formed as a reaction product of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone with the contact lens monomers, either hydroxyethyl methacrylate or a blend of hydroxyethyl methacrylate and N-vinyl pyrrolidone.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-19037 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92C-0292]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Cosmetic, Toiletry, and Fragrance Association has filed a petition proposing that the color additive regulations be amended to provide for the safe use of FD&C Red No. 40 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0203) has been filed by The Cosmetic, Toiletry, and Fragrance Association, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1340 *FD&C Red No. 40* and 74.2340 *FD&C Red No. 40* (21 CFR 74.1340 and 74.2340) to provide for the safe use of FD&C Red No. 40 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18962 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92C-0295]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cosmetic, Toiletry, and Fragrance Association (CTFA) has filed a petition proposing that the color additive regulations be amended to provide for the safe use of FD&C Blue No. 1 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0206) has been filed by CTFA, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1101 *FD&C Blue No. 1* and 74.2101 *FD&C Blue No. 1* (21 CFR 74.1101 and 74.2101) to provide for the safe use of FD&C Blue No. 1 and its lakes for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18961 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92C-0294]

The Cosmetic, Toiletry, and Fragrance Association; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cosmetic, Toiletry, and Fragrance Association (CTFA) has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Green No. 5 for coloring drugs and cosmetics intended for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Wesley Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 6C0204) has been filed by CTFA, 1101 17th St. NW., Suite 300, Washington, DC 20036. The petition proposes to amend the color additive regulations in §§ 74.1205 *D&C Green No. 5* and 74.2205 *D&C Green No. 5* (21 CFR 74.1205 and 74.2205) to provide for the safe use of D&C Green No. 5 for coloring drugs and cosmetics intended for use in the area of the eye.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be

published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18964 Filed 8-10-92; 8:45 am

BILLING CODE 4160-01-F

[Docket No. 92P-0205]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 8, 1992 (57 FR 30224), that announced that a temporary permit had been issued to Land O'Lakes, Inc., to market test a product designated as "no-fat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Robin F. Thomas, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

In FR Doc. 92-15996, appearing on page 30225, in the **Federal Register** of Wednesday, July 8, 1992, the following correction is made: On the same page, in the first column, at the end of the document, the title "Director, Center for Veterinary Medicine" is corrected to read "Director, Center for Food Safety and Applied Nutrition".

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-18963 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 89G-0217]

Kraft, Inc.; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition from Kraft, Inc., requesting that the agency affirm that the use of modified protein texturizers in frozen dessert-type products is generally recognized as safe (GRAS). The agency has determined that the petition is unnecessary because the subject of the petition is simply a mixture of ingredients that are already listed as GRAS or are food additives authorized for this use.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 1989 (54 FR 33295), FDA published a notice that a petition (GRASP 9G0351) had been filed by Kraft, Inc., 801 Waukegan Rd., Glenview, IL 60024. The petition requested that the agency affirm that the use of modified protein texturizers in frozen-dessert type products is GRAS.

FDA has determined that the provisions of 21 CFR 184.1498, issued after this petition was received, provide for the use of these modified protein texturizers as a direct food ingredient in frozen dessert-type products. Therefore, Kraft, Inc., has withdrawn the petition without prejudice to a future filing.

I. Background

In the **Federal Register** of February 23, 1990 (55 FR 6384), FDA issued a final rule that affirmed the use of microparticulated protein product prepared from egg whites or milk protein as a direct food ingredient in frozen dessert-type products in § 184.1498 (21 CFR 184.1498). This regulation responded to a petition filed by The NutraSweet Co. In the preamble to the final rule, FDA discussed the steps of the microparticulation process and concluded that these steps were nothing more than commonly used food processing steps that have been shown through published studies not to change the nutritional value or the safety of food, including egg whites and milk protein. In a subsequent exchange of correspondence with The NutraSweet Co., FDA expressed no objection to the marketing of a microparticulated protein product prepared from whey protein concentrate, so long as that product complies in all respects with the whey protein concentrate regulation (21 CFR 184.1979c) (Ref. 1).

According to information in the Kraft petition, the modified protein texturizers are manufactured from either a combination of egg whites and whey protein concentrate or of egg whites and skim milk. The milk or egg proteins are mixed with xanthan gum in accordance with § 172.695 (21 CFR 172.695) and diluted with water. Food-grade hydrochloric acid is added to the solution to adjust the pH. The protein solution is processed in an auger pump to produce fibers. The fibers are then rinsed, washed, steamed, boiled, and cooled. The boiled, washed fibers are sheared to reduce the particle size. The resulting particles are subjected to a second shearing to further reduce their size. Following the second shearing, the solution contains about 5 percent solids. Depending on the desired use of the material, the solution is then concentrated to between 7 and 20 percent solids using a swept-surface vacuum evaporator.

Based on the available data, FDA concludes that egg whites and milk protein treated by the described process meet the conditions specified under the current regulation in § 184.1498. Furthermore, consistent with § 184.1498(a), FDA concludes that the xanthan gum is used in accordance with § 172.695 and the hydrochloric acid is used in accordance with 21 CFR 182.1057.

In the August 14, 1989, filing notice, FDA gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. FDA received two comments in response to the published notice. One comment was from a law firm and the other comment was from a food manufacturer. The law firm commented that there was insufficient information in the petition to permit a thorough evaluation of safety. The food manufacturer, which had submitted a petition on a microparticulated protein product, commented that it did not want action on its petition delayed because of the similarity of their product to the Kraft product. A law firm representing Kraft, Inc., also responded to the issues raised by the other two comments. The issues raised by the comments and the agency's responses are discussed below. The agency is not discussing the petitioner's response because it is simply part of the petition that is being withdrawn and raises no issues contrary to this withdrawal.

II. Comments and Agency's Response to the Comments

A. The First Comment

The first comment contended that the information provided by the petitioner (Kraft, Inc.) lacked sufficient detail for FDA to make a GRAS determination. The comment listed three general areas and some specific areas in which, the comment contended, additional

information would be needed by the agency before a GRAS determination could be made.

1. Protein/gum complexes

The first general area of concern was the composition of the protein/xanthan gum complexes. The comment raised five specific issues about the composition and characteristics of the complexes which are stated below followed by FDA's response.

(a) The comment asserted that the protein/gum complex does not represent a fully dissociable complex of the original ingredients.

This issue would be relevant if the complexes were new distinct entities, the use of which is not authorized by a regulation permitting the use of the individual components. However, chemical tests establish that the complex is stable in a pH range of 3.0 to 4.0, but as the pH increases, as it does during intestinal digestion, the components of the complex repel each other and dissociation occurs. An in vivo digestibility study showed that the digestion of the ingredients is the same whether fed in the complexed or uncomplexed form. The petitioner's method of detecting its product (protein/xanthan gum complex) in food is based upon finding dissociated protein in the finished dessert.

The agency concludes that evidence presented in the petition demonstrates that dissociation occurs throughout processing, use, and digestion, and therefore, that the complexes are simply mixtures of ingredients, all of which are already permitted for this use in foods.

(b) The comment also asserted that information does not exist in the published literature to show that these complexes are safe for consumption by humans.

As discussed above, the complexes are temporary associations of separate components shown to be safe for use in food and dissociate to such safe substances. The comment presented no facts contrary to that conclusion. Therefore, there is no need for additional data on the complexes themselves.

(c) The comment asserted that it was particularly concerned about the potential for allergenicity of the complexes. The comment stated that no data were provided from the literature nor were experiments performed on the product's potential for allergenicity. The comment did not, however, provide evidence from chemical characterization of the modified protein texturizer that new proteins or antigenic sites are produced in the petitioned product.

The agency reviewed information on the allergenicity of microparticulated egg and/or milk proteins in its decision promulgating § 184.1498 (55 FR 6384). In that **Federal Register** document, the agency stated: "Given the fact that microparticulated protein products will produce allergic-type reactions in sensitive individuals, FDA has concluded that the use of microparticulated egg and milk protein product must be labeled * * * and the source of the protein be included on the name of the product." Because of the labeling requirement of § 184.1498(b)(3), persons who are allergic to egg white and milk proteins will be made aware of the presence of the constituent ingredients in these frozen dessert-type products. Thus, the agency concludes that there is sufficient information concerning allergenicity of these products to protect the public health.

(d) The comment stated that the results of the protein electrophoresis data are inconclusive because the description of the methods does not provide adequate detail.

Because these ingredients are already authorized for this use, FDA has concluded that there is no need for electrophoresis data.

(e) The comment alleged that if additional information regarding the processing conditions were provided, it might be possible to relate such conditions to other products made by similar methods that are GRAS. It stated that the process that is used to produce the protein/xanthan gum complexes is not specified.

The agency finds that the production process involves ingredient mixing, draining, boiling, washing, particle size reduction, and concentration. The starting materials are conventional dried egg whites, whey protein concentrate, xanthan gum, and hydrochloric acid, all of which are approved food additives or are GRAS for use in food. Although the process used results in a product material with special properties, the agency finds that the processing techniques do not raise an issue because common dairy processing equipment and routine manufacturing conditions are used to prepare finished food with the ingredients.

2. Adequacy of feeding studies

The second area of concern was the adequacy of Kraft's animal feeding studies. With regard to these studies, the comment raised three points: (a) The effect of spray drying and milling of the complex prior to incorporation in animal feed; (b) the absence of statistical testing between animals in the gum treatment levels, the lack of a control protein group not receiving xanthan gum, and the inability of the data to demonstrate a no effect level of xanthan gum mixed with these proteins; and (c) clarification of the results of the animal study with respect to the soft abnormally formed feces observed in the middle and high dose complex treatment groups.

The agency finds this comment to be irrelevant to the regulatory status of the petitioned product because, as discussed above, the complexes are not new distinct entities. The ingredients are already listed as GRAS or are food additives authorized for the petitioned use. The agency finds that the levels of use of xanthan gum proposed for use in frozen desserts is consistent with the regulation permitting use of xanthan gum and would not cause adverse effects. Even though animal bioassays were submitted, the agency finds that they raise no new issues of toxicological concern and that they are unnecessary. Therefore, this comment raises no issue.

3. Proposed labeling

The comment asserted that the labeling found in the petition is false and misleading because the starting materials are listed, not the final composition.

Ingredients must be listed on the label by their common or usual name. This is not changed by the petition. The ingredients are the names described in §§ 172.695 and 184.1498.

This comment concluded by stating that "it would be inappropriate for the FDA to affirm GRAS status for the modified protein texturizers until additional information is provided and reviewed."

The agency has determined that § 184.1498 already provides for the use of modified protein texturizers as a direct food ingredient in frozen dessert-type products, including the use of safe and suitable ingredients authorized in Parts 172, 182, or 184. Thus, FDA need not consider whether sufficient information exists in the petition to make a GRAS determination. Accordingly, the agency has determined that the petition is not necessary.

B. The Second Comment

The main issue addressed by the second comment was how Kraft's petition would affect the GRAS affirmation of the commenter's petition for a microparticulated protein product. The commenter requested that action on its petition not be delayed. The administrative record shows that the Kraft petition did not delay the petition.

III. Conclusions

The agency has evaluated the comments and all available information and finds, based on the evidence discussed above, that egg whites and milk protein treated by microfragmentation processing meet the conditions specified under the provisions of § 184.1498 and other applicable regulations. The petition (GRASP 9G0351) to affirm the use of modified protein texturizers in frozen dessert-type products submitted by Kraft, Inc., has, therefore, been withdrawn.

IV. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter to Jerry J. Hjelle from Alan M. Rulis, dated August 12, 1991.

Dated: August 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-19036 Filed 8-10-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[BPD-710-CN]

RIN 0938-AE95

Medicare Program; Update of Ambulatory Surgical Center Payment Rates and Additions to and Deletions From the Current List of Covered Surgical Procedures; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period; correction.

SUMMARY: In the December 31, 1991 issue of the **Federal Register** (FR Doc 91-31166) (56 FR 67666), we published a notice with comment period to update the payment rates for ambulatory surgical center (ASC) procedures and the list of covered ASC procedures. This notice corrects errors made in the December 31, 1991 document.

DATES: *Effective Date:* January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Joan H. Sanow—Payment issues, (410) 966-5723. Robert Cereghino—Coverage issues, (410) 966-4645.

SUPPLEMENTARY INFORMATION: In a notice with comment period published in the **Federal Register** on December 31, 1991 (FR Doc. 91-31166) (56 FR 67666), we set forth the updated payment rates for ambulatory surgical center (ASC) services furnished on or after December 31, 1991 and announced additions to and deletions from the list of surgical procedures for which facility services are covered when the procedures are performed in an ASC. In the notice, we inadvertently omitted 13 procedures from the ASC list. These procedures were proposed in the December 7, 1990 **Federal Register** at 56 FR 50591-50592. We also omitted a discussion of a comment received on one of the codes and provided an incorrect response to another comment. In addition, the December 31, 1991 notice contained typographical and technical errors.

Accordingly, we are making the following corrections to the December 31, 1991 notice.

1. On page 67669, in the first column, under "2. Proposed Additions", the following "Comment" and "Response" are inserted after the first paragraph:

Comment: One commenter opposed the addition of CPT code 36522, extracorporeal photopheresis. The commente stated that CPT code 36522 should not be added to the list since no ASC is currently performing the procedure, although it may be peformed in an ASC in the future.

Response: The inclusion of this procedure in the list of covered ASC procedures was the result of general correspondence with the medical community. Therefore, we continue to believe the procedure should be added to the list.

2. On page 67671, in the first column, in the fifth "Response", following the "Comment" concerning male genital systems, the "Response" is revised to read as follows:

Response: A code was created and added January 1, 1991 to the CPT-4. Since it is a new code, we have no Medicare billing data relative to site of service and therefore must await annual data on which to make an ASC coverage determination.

3. On page 67679, in the first column, in the chart at the bottom of the column, CPT codes "15820", "15821", "15822" and "15823" and their descriptions are removed. These codes were inadvertently included in the list of "Proposed Additions Not Accepted" on page 67679. An explanation of why these codes are considered inappropriate to the ASC list is given on page 67672, in the second column, the "Response" under "Suggested Procedures that are Sometimes Cosmetic",

4. On page 67684, under "Head", under "Fracture and/or Dislocation", the following procedure is inserted after CPT code 21339:

Payment group	CPT code	Description
5	21343	Open treatment of closed or open depressed frontal sinus fracture.

5. On page 67685, under "Back and Flank", in the fourth line, the CPT code "21953" is changed to "21935".

6. On page 67686, under "Humerus (Upper Arm) and Elbow", under "Repair, Revision and Reconstruction", the following procedure is inserted after CPT code 24361:

Payment group	CPT code	Description
5	24362	Arthroplasty, elbow; with implant and fascia lata ligament reconstruction.

7. On page 67686, under "Humerus (Upper Arm) and Elbow", under "Fracture and/or Dislocation", in the fourth line, the payment group for CPT code 24587 is changed from "1" to "5".

8. On page 67686, under "Humerus (Upper Arm) and Elbow", under "Amputation", the payment group for CPT code 24925 is changed from "1" to "3".

9. On page 67687, under "Hand and Fingers", under "Excision", the following procedure is inserted above CTP code 26117:

Payment group	CPT code	Description
4	26037	Decompressive fasciotomy, hand (excludes 26035).

10. On page 67687, under "Hand and Fingers", under "Excision", in the last line, the payment group for CPT code 26262 is changed from "3" to "2".

11. On page 67687, under "Hand and Fingers", under "Repair, Revision or Reconstruction", the following procedure is inserted after CPT code 26548:

Payment group	CPT code	Description
2	26550	Pollicization of a digit.

12. On page 67687, under "Hand and Fingers", under "Repair, Revision or Reconstruction", the following procedure is inserted after CPT code 26580:

Payment group	CPT code	Description
5	26585	Repair bifid digit.

13. On page 67688, under "Pelvis and Hip Joint", under "Fractures and/or Dislocations", in the last line, the payment group for CPT code 27266 is changed from "1" to "2".

14. On page 67690, under "Excision" (which begins on page 67689), in the last line, the payment group for CPT code 28150 is changed from "2" to "3".

15. On page 67690, under "Arthroscopy", in the second line, the CPT code "20819" is changed to "29819".

16. On page 67690, under "Arthroscopy", the following procedure is inserted after CPT code 29825:

Payment group	CPT code	Description
3	29826	Arthroscopy, shoulder, surgical; decompression of subcranial space with partial acromioplasty with or without coracoacromial release.

17. On page 67691, under "Accessory Sinuses", under "Incision", in the last line, CPT code "30190" is changed to "31090".

18. On page 67691, under "Trachea and Bronchi", under "Endoscopy", the following procedures is inserted above CPT code 31629:

Payment group	CPT code	Description
3	31611	Construction of tracheoesophageal fistula and subsequent insertion of an alaryngeal speech prosthesis (e.g. voice button, Blom-Singer prosthesis).

19. On page 67692, under "Lungs and Pleura", under "Incision", the following procedure is inserted after CPT code 32000:

Payment group	CPT code	Description
2	32002	Thoracentesis with insertion of tube with or without water seal (e.g., for pneumothorax (separate procedure)).

20. On page 67692, under "Arteries and Veins", under "Venous", the following procedure is inserted after CPT code 36497:

Payment group	CPT code	Description
2	36522	Photopheresis, extracorporeal.

21. On page 67694, under "Rectum", under "Excision", in the last line, the payment group for CPT code 45150 is changed from "1" to "2".

22. On page 67696, under "Bladder", under "Transurethral Surgery (Ureter and Pelvis)", the payment group for CPT code 52336 is changed to from "3" to "4".

23. On page 67696, under "Testis", in the first line, the CPT code "54550" is changed to "54500".

24. On page 67696, under "Endoscopy-Laparoscopy-Hysteroscopy", the following procedure is inserted above CPT code 58990:

Payment group	CPT code	Description
5	58988	Laparascopy, surgical; with removal of adnexal structures (partial or total oophorectomy and/or salpingectomy).

25. On page 67696, under "Endoscopy-Laparoscopy-Hysteroscopy", the following procedures are inserted after CPT code 58990:

Payment group	CPT code	Description
2	58992	Hysteroscopy, with lysis of intrauterine adhesions or resection of intrauterine septum (any method).
3	58994	Hysteroscopy, with removal of submucous leiomyomata (any method).

26. On page 67699, under "Anterior Segment-Anterior Chamber", the payment group for CPT code 65850 is changed from "2" to "4".

27. On page 67700, under "Middle Ear", under "Repair", the following procedure is inserted after CPT code 69605:

Payment group	CPT code	Description
5	69662	Revision of stapedectomy or stapedotomy.

28. On page 67701, under "Deletions To Covered Procedures In ASCs", in the second line, CPT code "31078" is changed to "31708".

29. On page 67701, in the heading, following the list of "Deletions To Covered Procedures In ASCs", the word "Addemdum" is changed to "Addendum". In the same heading, in the second line, the date "September 30, 1991" is changed to "December 30, 1991" because the chart refers to procedures covered prior to the effective date of the notice, which was December 31, 1991.

30. On page 67701, in the footnote to "Addendum A.1.", in the second line, the date "September 30, 1991" is changed to "December 30, 1991" because the chart refers to procedures covered prior to the effective date of the notice, which was December 31, 1991.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–18968 Filed 8–10–92; 8:45 am]

BILLING CODE 4120-01-M

Health Care financing Administration

[HSQ–201–CN]

Medicare Program; Peer Review Organizations: Revised Scopes of Work for the District of Columbia, Puerto Rico, the Virgin Islands, and All States Except Delaware, Florida, Missouri, Montana, Nebraska, Nevada, Oklahoma, Rhode Island, South Carolina, Washington and Wyoming

AGENCY: Health Care Financing Administration (HCFA). HHS.

ACTION: Correction notice.

SUMMARY: This notice replaces the **"EFFECTIVE DATES"** section with a **"DATES"** section and replaces the **"ADDRESSES"** section in the notice we published on revised scopes of work on June 16, 1992 (57 FR 26871). The purpose of these corrections is to state the date by which comments solicited on information collection requirements must be submitted in order to be considered timely and to give the HCFA address to which those comments should be addressed. These items of information were inadvertently omitted.

EFFECTIVE DATE: This correction is effective August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Julie Brown, (410) 966–4669.

SUPPLEMENTARY INFORMATION: In document number 92–14034, published June 16, 1992 (57 FR 26871) titled, "HSQ–201–N, Peer Review Organizations for the District of Columbia, Puerto Rico, the Virgin Islands and all States except Delaware, Florida, Missouri, Montana, Nebraska, Nevada, Oklahoma, Rhode

Island, South Carolina, Washington and Wyoming," make the following changes:

In the third column of page 26871, replace the sections entitled EFFECTIVE DATES and ADDRESS with the following:

DATES: Effective dates: The effective dates of this notice are as follows:

For PROs in	On
Alaska, Arizona, California, District of Columbia, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, South Dakota and Vermont.	July 16, 1992
Arkansas, Colorado, Illinois, Kansas, Mississippi, New Hampshire, Ohio, Oregon, Tennessee, Utah and West Virginia.	Oct. 1, 1992
New York and Pennsylvania	Dec. 1, 1992
Alabama, Connecticut, Iowa, Massachusetts, North Carolina, North Dakota, Puerto Rico, Texas, Virginia and Wisconsin.	Apr. 1, 1993
Hawaii and the Virgin Islands	July 1, 1993

Comment date: Comments on the information collection requirements found in section V of this notice will be considered if we receive them at the appropriate addresses, as provided below, by 5 p.m. on September 10, 1992.

ADDRESSES: Mail comments to the following addresses:

Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–201–N, P.O. 26676, Baltimore, MD 21207.

Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Allison Herron Eydt, HCFA Desk Officer, Room 3001, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code HSQ–201–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Because of the large numbers of items of correspondence we normally receive on notices, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified and, if we revise the content of this revised third scope of work, we will respond to the comments in that subsequent notice.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program)

Dated: August 4, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92–18967 Filed 8–10–92; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is requesting nominations to fill three vacancies on the National Vaccine Advisory Committee. The Committee advises the National Vaccine Program and was established by title XXI, subtitle I, Sec. 2105 of the Public Health Service Act, enacted by Public Law 99–660, The National Vaccine Injury Compensation Act of 1986 (42 U.S.C. 300AA–1 *et seq.*).

DATES: Nominations are to be submitted by October 30, 1992.

ADDRESSES: All nominations for membership should be sent to Dr. Kenneth Bart (address below).

FOR FURTHER INFORMATION CONTACT: Kenneth J. Bart, M.D., M.P.H., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, Office of the Assistant Secretary for Health, room 13A–56, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0715; Fax number: (301) 443–3386.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for three vacancies on the National Vaccine Advisory Committee. Nominated individuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, or public health organizations. Members will be invited to serve four-year terms.

The National Vaccine Advisory Committee (1) studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommends research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advises the Director of the Program in the implementation of sections 2102, 2103, and 2104 of the Public Health Service Act, and (4) identifies annually for the Director of the Program the most important areas of government and nongovernment cooperation that should be considered in implementing these sections.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

NOMINATION PROCEDURES: Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. The nominee should be aware of the nomination, willing to serve as a member of the committee, and appear to have no conflict of interest that would preclude committee membership. A curriculum vitae of the nominee should be submitted with the nomination.

Dated: August 4, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92–19022 Filed 8–10–92; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Meeting of the Take Pride in America Advisory Board

AGENCY: Take Pride in America, Office of the Secretary, United States Department of the Interior.

ACTION: Notice of meeting of the Take Pride in America Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Take Pride in America Advisory Board will be held on August 24th and August 25th, 1992 at the Skyland Lodge in the Shenandoah National Park at Luray, Virginia. The Take Pride in America Advisory Board will convene on Monday, August 24, 1992. The General Business Session will

begin at 12:30 p.m. and conclude at 5 p.m. that day.

The Advisory Board will reconvene for a second day of meetings on Tuesday, August 25th, 1992 at the Skyland Lodge. The Board's three Subcommittees will meet prior to the general business meeting. Subcommittee meetings will be held from 8:30 a.m. until 9:30 a.m., at the Skyland Lodge Conference meeting center. The General Business Meeting will begin at 9:45 a.m. and conclude at 12 noon. The afternoon General Business Meeting will begin at 1 p.m. and conclude at 4 p.m. that day.

The fifth official meeting of the Take Pride in America Advisory Board will focus on three main topics: Presentations by the officials of the Department of the Interior; Presentation on Long Range Planning issues for the Take Pride in America Program; Recommendations to be submitted to the Secretary of the Interior; and Reports and Recommendations by the Board's Subcommittee chairmen.

The general business meetings will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-serve basis. Anyone may file with the Advisory Board a written statement concerning matters to be discussed. The Chairman of the Board will allow for public commentary, but may restrict the length of presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Ms. Mary Ann Gomez, Take Pride in America, U.S. Department of Interior, Room 5129, 1849 C Street, NW., Washington, DC 20240, telephone number is (202) 208–3726.

A copy of the minutes of the meeting will be available for public inspection about five weeks after the meeting, in the Take Pride in America office, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Mary Ann Gomez,

Advisory Board Coordinator.

[FR Doc. 92–19078 Filed 8–10–92; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Availability of Bird and Mammal Carcasses Recovered Following the Exxon Valdez Oil Spill to Qualified Applicants for Scientific, Educational or Public Display Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and application period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that bird and mammal carcasses recovered following the *Exxon Valdez* oil spill will be incinerated prior to September 30, 1992. Prior to incineration, the Service shall make carcasses available to qualified applicants wishing to obtain carcasses for scientific, educational or public display purposes.

DATES: Applications for carcasses must be received on or before September 10, 1992.

ADDRESSES: Applications for carcasses should be addressed to the Office of the Oil Spill, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska, 99503. Applications may also be sent by telefax to 907/786–3625.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Oakley at the above address (907/786–3579).

SUPPLEMENTARY INFORMATION:

Background

Thousands of bird and mammal carcasses were recovered following the grounding of the *T/V Exxon Valdez* on Bligh Reef in Prince William Sound, Alaska, on March 24, 1989. These carcasses have been stored in 5 freezer vans in Anchorage, Alaska, and held, until April 22, 1992, as evidence in the consolidated *Exxon Valdez* litigation. On April 22, 1992, the Federal District Court for Alaska issued Federal Court Order No. 77 excepting, on two conditions, these carcasses from the pre-trial order preserving evidence. Consistent with this order, the Service plans to dispose of the carcasses by incineration prior to September 30, 1992.

The Service has determined that the carcasses are not hazardous wastes as defined by the Resource Conservation and Recovery Act. As required by 40 CFR 262.11, a hazardous waste determination has been made and is on file with the Alaska Department of Environmental Conservation, Hazardous Waste Program, 410 Willoughby, Suite 105, Juneau, Alaska, 99801.

The Service has determined that incineration is the most appropriate means of disposing of the carcasses because incineration will render the waste non-toxic and non-putrescible and reduce the volume of material for ultimate disposal by an order of magnitude. Incineration of the carcasses is consistent with model waste management guidelines published by the American Veterinary Medical Association.

History and Condition of the Carcasses

Following the spill, fishermen and local residents under contract to Exxon and personnel from several government agencies were deployed in the spill area to retrieve dead birds and mammals. Most carcasses collected were transported to temporary morgues established in Valdez, Seward, Homer and Kodiak, Alaska, At the morgues, the carcasses were examined, placed in plastic bags and stored in freezer vans. Carcasses were collected from late March through mid-September, 1989. In the fall of 1989, the vans were transported to Anchorage, Alaska.

The "carcasses" include: Whole, intact carcasses; lightly to heavily scavenged carcasses; carcasses only consisting of bones; and single, identifiable parts, such as wings, legs, and skulls.

The degree of oiling on the carcasses varies. Some of the birds recovered, particularly those found later in the summer, were unoiled and were believed to have died from causes not directly related to the spill. The carcasses that were most likely to have been recovered without oiling were those of puffins, gulls and tubenoses.

At various times during the period of storage, the freezing units on the vans have failed, and the carcasses have been thawed and refrozen several times. Thus, all carcasses, even those that were originally recovered in fresh condition, have decomposed to some degree. In general, the carcasses, once thawed, will be highly putrescible and oily and will therefore require special handling by persons preparing the carcasses for preservation.

About 900 sea otter carcasses were recovered after the spill. In contrast to the birds, which were placed in the freezer vans after relatively cursory examination, each sea otter carcass was necropsied. Skulls from all otter carcasses, and the reproductive tracts of all female otters were removed.

Each of the five vans contains carcasses from a specific morgue and thus a specific geographic area, as follows: Valdez van—Prince William Sound; Seward van—Kenai Peninsula; Homer van—Barren Islands; 2 Kodiak vans—Kodiak Island and Alaska Peninsula. Because the oil moved from north to south, the morgues in the northern part of the spill area, the Valdez and Seward morgues, tend to contain birds collected during the early response to the spill, and the morgues in the southern part of the spill area, the Homer and Kodiak morgues, tend to contain birds collected later.

Generally, the bird carcasses were not placed in individual bags, and each bag typically contains from 5 to 30 carcasses frozen together. Labelling of the bags varies among the vans. Reconciling the number of carcasses logged into the morgues precisely with the number of carcasses in the bags is not possible because carcass parts from several locations or time periods were often placed together.

In the Homer and Seward vans, the bags of carcasses are stored in fish totes that are stacked two totes high. The bags in these vans are frozen together. In the other vans, the bags are simply piled on the floor. The bags are often frozen together and stuck to the floor. Because the carcasses in each bag and the bags of carcasses are frozen together, the vans will have to be thawed to allow sorting and further identification of the carcasses.

Species Available

The estimated number of bird carcasses of various species in the freezer vans is: Red-throated Loon *Gavia stellata*, 5; Pacific Loon *Gavia pacifica*, 18; Common Loon *Gavia immer*, 216; Yellow-billed Loon *Gavia adamsii*, 87; Unidentified loon *Gavia sp.*, 69; Horned Grebe *Podiceps auritus*, 277; Red-necked Grebe *Podiceps grisegena*, 120; Unidentified grebe, 65; Northern Fulmar *Fulmarus glacialis*, 426; Sooty Shearwater *Puffinus griseus*, 360; Short-tailed Shearwater *Puffinus tenuirostris*, 2,460; Unidentified shearwater, 579; Fork-tailed Storm-petrel *Oceanodroma furcata*, 363; Leach's Storm-petrel *Oceanodoma leucorhoa*, 12; Unidentified petrel *Oceanodroma sp.*, 69; Double-crested Cormorant *Phalacrocorax auritus*, 38; Pelagic Cormorant *Phalacrocorax pelagicus*, 418; Red-faced Cormorant *Phalacrocorax urile*, 161; Unidentified cormorant *Phlalcrocorax sp.*, 219; Great Blue Heron *Ardea herodias*, 1; Unidentified swan *Cygnus sp.*, 3; Emperor Goose *Chen canagica*, 2; Brant *Branta bernicla*, 3; Canada Goose *Branta canadensis*, 1; Green-winged Teal *Anas crecca*, 5; Mallard *Anas platyrhynchos*, 11; Northern Pintail *Anas acuta*, 4; Greater Scaup *Aythya marila*, 27; Lesser Scaup *Aythya affinia*, 2; Unidentified Scaup *Aythya sp.*, 4; Common Eider *Somateria mollissima*, 17; King Eider *Somateria spectabilis*, 9; Steller's Eider *Polysticta stelleri*, 4; Unidentified eider, 3; Harlequin Duck *Histrionicus histrionicus*, 213; Oldsquaw *Clangula hyemalis*, 185; Black Scoter *Melanitta nigra*, 132; Surf Scoter *Melanitta perspicillata*, 175; White-winged Scoter *Melanitta fusca*, 342; Unidentified scoter *Melanitta sp.*, 162; Common Goldeneye *Bucephala clangula*, 6; Barrow's Goldeneye *Bucephala islandica*, 33; Unidentified goldeneye, 25; Bufflehead *Bucephala albeola*, 21; Common Merganser *Mergus merganser*, 2; Red-breasted Merganser *Mergus serrator*, 33; Unidentified merganser, 3; Ruddy Duck *Oxyura jamaicensis*, 1; Unidentified seaduck, 112; Unidentified duck, 30; Bald Eagle *Haliaeetus leucocephalus*, 125; Peregrine Falcon *Falco peregrinus*, 2; Unidentified raptor, 7; Willow Ptarmigan *Lagopus lagopus*, 1; Sandhill Grane *Crus canadensis*, 2; Lesser Golden-Plover *Pluvialis dominica*, 1; Black Oystercatcher *Haematopus bachmani*, 9; Lesser Yellowlegs *Tringa flavipes*, 2; Unidentified turnstone *Arenaria sp.*, 1; Surfbird *Aphriza virgata*, 3; Selmipalmated Sandpiper *Calidris pusilla*, 1; Western Sandpiper *Calidris mauri*, 5; Least Sandpiper *Calidris minutilla*, 4; Baird's Sandpiper *Calidris bairdii*, 1; Short-billed Dowitcher *Limnodromus griseus*, 1; Common Snipe *Gallinago gallinago*, 1; Red-necked Phalarope *Phalaropus lobatus*, 7; Red Phalarope *Phalaropus fulicaria*, 2; Unidentified sandpiper, 11; Long-tailed Jaeger *Stercorarius longicaudus*, 1; Mew Gull *Larus canus*, 33; Herring Gull *Larus argentatus*, 8; Glaucous-winged Gull *Larus glaucescens*, 555; Unidentified gull, 99; Black-legged Kittiwake *Rissa tridactyla*, 1,225; Arctic Tern *Sterna paradisaea*, 3; Aleutian Tern *Sterna aleutica*, 1; Common Murre *Uria aalge*, 10,428; Thick-billed Murre *Uria lomvia*, 669; Unidentified murre *Uria sp.*, 8,851; Pigeon Guillemot *Cepphus columba*, 614; Marbled Murrelet *Brachyramphus marmoratus*, 612; Kittlitz's Murrelet *Brachyramphus brevirostris*, 67; Ancient Murrelet *Synthliboramphus antiquus*, 311; Unidentified murrelet, 413; Cassin's Auklet *Ptychoramphys aleuticus*, 48; Parakeet Auklet *Cyclorrhynchus psittacula*, 31; Least Auklet *Aethia pusilla*, 5; Rhinoceros Auklet *Cerorhinca monocerata*, 141; Tufted Puffin *Fratercula cirrhata*, 361; Horned Puffin *Fratercula corniculata*, 139; Unidentified puffin, 46; Unidentified alcid, 173; Great-horned Owl *Bubo virginianus*, 3; Unidentified owl, 1; Unidentified woodpecker, 1; Violet-green Swallow *Tachycineta thalassina*, 1; Cliff Swallow *Hirundo pyrrhonota*, 3; Steller's Jay *Cyanocitta stelleri*, 1; Black-billed Magpie *Pica pica*, 7; Northwestern Crow *Corvus caurinus*, 34; Common Raven *Corvus corax*, 18; Hermit Thrush *Catharus guttatus*, 1; American Robin *Turdus migratorius*, 2; Varied Thrush *Ixoreus naevius*, 1; yellow Warbler *Dendroica petechia*, 3; Unidentified warbler, 1; Savannah Sparrow *Passerculus sandwichensis*, 1; Golden-crowned Sparrow *Zonotrichia atricapilla*, 4; Unidentified sparrow, 15; Pine Grosbeak *Pinicola enucleator*, 1; White-winged Crossbill *Loxia leucoptera*, 8; Unidentified passerine, 9; Unidentified bird, 2,927.

Applicants are advised that, based on a study of the bird carcasses in the Kodiak morgue vans, about 2 percent of the bird carcasses were misidentified, and about 11 percent of the bird carcasses could have been identified to a higher taxonomic level (Ecoloical Consulting Inc., 2735 NE Weidler Street, Portland OR, June 1991, Assessment of Direct Seabird Mortality in Prince William Sound and the Western Gulf of Alaska Resulting from the *Exxon Valdez* Oil Spill, 153 pp + appendices).

The estimated number of mammal carcasses in the freezer vans is: sea otter *Enhydra lutris*, 900; sitka black-tailed deer *Odocoileus hemionus*, 1; steller sea lion Eumatopias jubatus, 1; harbor seal *Phoca vitulina*, 1.

Applicant Requirements

The Service shall only donate carcasses to parties that meet the following requirements:

(a) Applicants must demonstrate the ability to provide adequate care and security for the carcasses, including

(1) The applicant shall be present in Anchorage, Alaska, at the incineration facility to sort and identify desired carcasses at the time the carcasses are being thawed prior to incineration;

(3) The applicant shall properly transport selected carcasses from Anchorage to the applicant's location, including

(i) The applicant shall ensure that thawed and partially thawed carcasses are refrozen prior to transport;

(ii) The applicant shall properly label and package carcasses for transport;

(iii) The applicant shall arrange for and prepay the costs of shipping by a same-day air freight carrier, if carcasses are to be transported outside of Alaska;

(3) The applicant shall properly store the carcasses prior to any work required to prepare the carcasses for scientific, educational or public display use;

(4) The applicant shall appropriately dispose of oily wastes generated by preparing or handling the carcasses;

(5) The applicant shall appropriately handle and dispose of putrescible and possibly pathogenic waste generated by preparing or handling the carcasses;

(6) The applicant shall pay all costs associated with the transfer of the carcasses.

(b) Applicants shall sign a waiver relieving the Service of liability

stemming from donation of the carcasses by the Service to the applicant.

(c) Applicants shall demonstrate that the carcasses donated to them will be used for scientific, educational or public display purposes.

(d) Applicants shall provide a list, in phylogenetic order, of the species desired by the applicant which shows the approximate number of carcasses of each species desired.

(e) Applicants shall cooperate with other qualified donees to agree upon an amicable method of distributing carcasses among the qualified donees.

(f) Applicants shall submit their applications to the Service no later than September 10, 1992.

Application Procedure

Persons interested in obtaining carcasses must submit an application to the Service at the address listed above no later than September 10, 1992. Application forms are available from the Service at the address listed above. Applicants may apply using the application form provided by the Service or by submitting a letter that provides information demonstrating that the applicant meets the requirements for donees listed above. Applications may be sent by mail or telefax.

Additional Information

The Service will allow qualified donees to use the freezer vans for refreezing of thawed or partially thawed carcasses prior to the transport.

The exact date that the disposal process will begin is dependent on contract negotiations with the vendor that will be providing incineration services. However, the disposal process is expected to begin no sooner than August 1, 1992 and no later than September 1, 1992. The entire disposal process, including sorting and identification of salvageable carcasses and incineration of the remaining carcasses, is expected to be completed by September 30, 1992.

Applicants interested in obtaining the steller sea lion, the harbor seal and any other pinnipeds found in the freezer vans are advised that the approval of the National Marine Fisheries Service is required. Interested applicants are advised to contact Dr. Steven T. Zimmerman, Chief, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska, 99802–1668, 907/586–7233, for specific information.

Applicants interested in obtaining bird carcasses are advised that a Migratory Bird Permit under 50 CFR 21.1–21.46 may be required. Any applicant that is not specifically exempted from the permit requirements by 50 CFR 21.12 will need to obtain a Migratory Bird Permit to become a qualified donee.

Authority: The authority of this action is 50 CFR 12.30–12.39.

Dated: June 25, 1992.

David B. Allen,

Acting Regional Director.

[FR Doc. 92–18981 Filed 8–10–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the Sacramento Mountains Thistle for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Ntice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Sacramento Mountains thistle (*Cirsium vinaceum*) which the Service listed as a threatened species on June 16, 1987 (52 FR 22938). The plant, the Sacramento Mountains thistle, occurs in the Sacrament Mountains, Otero County, New Mexico. There are 62 known populations, primarily distributed on the Lincoln National Forest, with several on The Mescalero Apache Indian Reservation and on private land. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 25, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the raft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3530 Pan American, NE., suite D, Albuquerque, New Mexico 87107. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully, U.S. Fish and Wildlife Service Botanist; telephone (505) 883–7877 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. The help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Sacramento Mountains thistle is a threatened plant species occurring only on wet deposits of travertine (calcium carbonate) at 62 springs and streams in the Sacramento Mountains of south-central New Mexico. Major threats to the continued existence and recovery of this species include water development, land use impacts from grazing, road building, recreation, logging, and the invasion of exotic plants.

The Sacramento Mountains thistle recovery plan has been reviewed by the appropriate Service staff in Region 2 and experts on the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comment Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 30, 1992.

Lynn B. Starnes,

Regional Director.

[FR Doc. 92–18979 Filed 8–10–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of the Draft Environmental Assessment and Land Protection Plan and Proposed Establishment of Mandalay National Wildlife Refuge Terrebonne Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment and land protection plan for the proposed establishment of Mandalay National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Terrebonne Parish, Louisiana. The purpose of the proposed refuge is to protect and manage approximately 15,000 acres of nationally significant freshwater marshes and wetlands in the Bayou Penchant Basin of southcentral Louisiana for the benefit of migratory waterfowl and other wildlife. A Draft Environmental Assessment and Land Protection Plan for the proposed refuge has been developed by Service biologists in coordination with the Louisiana Department of Wildlife and Fisheries, the U.S. Army Corps of Engineers, The Nature Conservancy, and other federal and state agencies and private conservation organizations. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates five alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment will be available to the public for review and comment on August 14, 1992. Written comments must be received no later than September 28, 1992, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, S.W., room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposed refuge are to provide (1) wintering habitat for migratory waterfowl, (2) production habitat for wood ducks and mottled ducks, (3) habitat for a natural diversity of wildlife, (4) habitat for nongame migratory birds, (5) habitat for threatened and endangered species, and (6) opportunities for environmental education, interpretation, and wildlife-oriented recreation. The proposed refuge would also serve as a focal point for the overall protection and management of the Bayou Penchant Basin in cooperation with other federal and state agencies, conservation organizations, and the private sector.

The proposed refuge area is located in Terrebonne Parish, Louisiana, about 5 miles west of Houma and 20 miles east of Morgan City. The proposed area is bisected by the Gulf Intracoastal Waterway and lies south of the Bayou Black Ridge between Houma and Morgan City near U.S. Highway 90. Three major oil and gas fields are located within the boundary of the proposed refuge.

The area's biological diversity is high. Thousands of migratory waterfowl are attracted to the area's freshwater marshes, including mallard, blue- and green-winged teal, gadwalls, wigeons, and mottled ducks. Wood ducks are common, both as migrants and breeders, and mottled ducks commonly nest throughout the area. American coots heavily use this part of coastal Louisiana, as do several other species of rails and gallinules. Pintails, lesser scaups, geese, and shovelers also winter in the area. It is not uncommon for this area to reach peaks of 75,000 or more ducks.

In addition, the proposed refuge area provides critical spring and fall habitat for neotropical migratory birds. Wading birds also use the area in significant numbers and several rookeries are present. One major rookery consists of several thousand pairs of white ibis, great egrets, little blue herons, snowy egrets, and tricolored herons. A few roseate spoonbills also nest in the area.

Bald eagles use the proposed refuge heavily and at least four active nests have been documented. One nest near Hansons Canal in the proposed refuge area fledged two young in 1989. The proposed refuge area represents the primary core nesting area for bald eagles west of Florida. The area's marshes also support high populations of other wildlife, including nutria, alligators, and white-tailed deer. Freshwater fishing for largemouth bass, crappie, and catfish is popular in the canals and open water areas.

The draft environmental assessment was developed by the Service in consultation with representatives from the Louisiana Department of Wildlife and Fisheries, The Nature Conservancy, the U.S. Army Corps of Engineers, Ducks Unlimited, the USDA Soil Conservation Service, the Environmental Protection Agency, and the National Marine Fisheries Service. The biological, environmental, and socioeconomic effects of acquiring approximately 15,000 acres of freshwater marshes and wetlands for the establishment of the refuge have been considered. Five alternatives and their potential impacts on the environment are presented and evaluated. The Service believes the preferred alternative, Protection and Management of Approximately 15,000 Acres by the U.S. Fish and Wildlife Service, is a positive step in preserving a nationally significant wetland ecosystem for the benefit of migratory waterfowl, neotropical migrant birds, endangered species, and other native wildlife.

Dated: July 17, 1992.

John R. Eadie,

Acting Regional Director.

[FR Doc. 92-18980 Filed 8-10-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-623 (Preliminary)]

Hairbrushes and Certain Parts and Components Thereof From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-623 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from the People's Republic of China of hairbrushes [1] and certain parts and

[1] For purposes of this investigation, "hairbrushes" consists of hairbrushes for use on the person, provided for in subheadings 9603.29.40 and 9603.29.80 of the Harmonized Tariff Schedule of the United States (HTS). The subject merchandise includes, but is not limited to, hairbrushes imported

Continued

components thereof [2] that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 17, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on August 3, 1992, by Goody Products, Inc., Kearny, NJ.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 24, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202–205–3183) not later than August 20, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 27, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony c9ontain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: August 6, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–19039 Filed 8–10–92; 8:45 am]

BILLING CODE 7020–02–M

from the People's Republic of China in single units, in sets (e.g., brush and comb sets packaged together), or in kits.

[2] "Certain parts and components thereof" consists of handles, pads, and molded bristles, however provided for in the HTS, that may be imported separately for use in the domestic manufacture or assembly of hairbrushes, excluding natural bristles or extruded synthetic bristles imported separately.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32111]

The Indiana & Ohio Central Railroad Co., Inc.—Trackage Rights Exemption—South Charleston Railroad Co; Exemption

South Charleston Railroad Company (SCRR) has agreed to grant local trackage rights to The Indiana & Ohio Central Railroad Company, Inc. (IOCR) over 1.08 miles of line between milepost 35.00 and milepost 36.08 in South Charleston, OH, that SCRR is acquiring from Consolidated Rail Corporation (Conrail).[1] The trackage rights will enable IOCR to serve Clark-Landmark, Inc., a shipper of agricultural commodities located on the 1.08-mile segment, facilitating the routing of its traffic, inbound and outbound, for prior or subsequent movement over the lines of Conrail and other class I rail carriers. The transaction was to be consummated on or about July 31, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, 1025 Connecticut Avenue, suite 1000, Washington, DC 20036.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), as clarified in Wilmington Term. RR, Inc.—Pur & Lease—CSX Transp., Inc., II I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *ICC*, 930 F.2d 511 (6th Cir. 1991).

Dated: August 5, 1992.

[1] On July 24, 1992, SCRR filed a notice of exemption under 49 CFR 1150.31 to acquire the segment from Conrail. See Finance Docket No. 32110, South Charleston Railroad Co.—Acq. Exemption—Consolidated Rail Corp. Line in South Charleston, OH.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19052 Filed 8-10-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32110]

South Charleston Railroad Co.; Acquisition Exemption, Consolidated Rail Corporation Line in South Charleston, OH

South Charleston Railroad Company (SCRR) has filed a notice of exemption to acquire approximately 1.08 miles of Consolidated Rail Corporation's Exenia Secondary Track. The segment extends between milepost 35.00 and milepost 36.08 in South Charleston, Clark County, OH. Currently a noncarrier, SCRR will become a class III carrier upon consummation of the transaction, which was to have occurred on or about July 31, 1992.

The segment to be acquired by SCRR will be operated by The Indiana & Ohio Central Railroad Company (IOCR), a subsidiary of Indiana & Ohio Rail Corp. IOCR has filed a notice of exemption in Finance Docket No. 32111, The Indiana & Ohio Central Railroad Company, Inc.—Trackage Rights Exemption—South Charleston Railroad Company, with regard to the operation.

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 225 W. Washington Street, 15th Floor, Chicago, IL 60606-3418.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 5, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19053 Filed 8-10-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32082]

South Kansas and Oklahoma Railroad Inc.—Lease Exemption—the Atchison, Topeka and Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the assignment to South Kansas and Oklahoma Railroad, Inc., by the Atchison, Topeka and Santa Fe Railway Company of its lease with the Port of Catoosa Facilities Authority for a 7.3-mile line of railroad between Owasso and Catoosa, OK. The exemption is subject to standard employee protective conditions.

DATES: The exemption is effective on August 21, 1992. Petitions for stay must be filed by August 18, 1992 and petitions to reopen must be filed by August 31, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32082 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: A. J. Wachter, 506 North Pine, Post Office Box V, Pittsburg, KS 66762; and Karl Morell, or Louis E. Gitomer Suite 210, 919 18th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660, (TDD for hearing-impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing-impaired is available through TDD services (202) 927-5721).

Decided: August 3, 1992.

By the Commission, chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett, Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19054 Filed 8-10-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Copenhagen* v. *United States of America*, No. CIV-90-0755L (W.D.N.Y.), has been lodged with the United States District Court for the Western District of New York.

The proposed Consent Decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the alleged unlawful discharge of pollutants on or near the shore of Lake Ontario, in Greece, New York, constituting "waters of the United States." The proposed Consent Decree also concerns alleged violations of the Rivers and Harbors Act, 33 U.S.C. 403, as a result of the alleged unlawful placement of structures and fill in Lake Ontario, in Greece, New York, constituting "navigable waters." The Consent Decree requires Plaintiff and Counterclaim-Defendant, Paul H. Copenhagen, to pay a $5,000 civil penalty, remove all steel framework in place below the "Settlement Line" agreed to by the parties, and dispose of all materials removed from the site at an upland location removed from navigable waters and waters of the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Dpartment of Justice, Attention: Joshua M. Levin, P.O. Box 23986, Washington, DC 20026-3986 and should refer to *Compenhagen* v. *United States of America*, DJ Reference No. 90-5-1-1-4008.

The Consent Decree may be examined at the Clerk's Office, United States District Court, 282 U.S. Courthouse, 100 State Street, Rochester, New York 14614.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-18984 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum

Notice is hereby given that, on July 17, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that Alberta Energy Company Ltd., Alberta, CANADA and Sun Refining & Marketing Co., Wallingford, PA have terminated their membership in PERF.

No other changes have been made in either the membership or planned activities of PERF.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 Fed. Reg. 8903). On May 6, 1986, May 27, 1988, June 23, 1986, February 3, 1989, March 21, 1989, October 31, 1989, April 19, 1990, June 25, 1990, May 13, 1991, August 29, 1991, and April 3, 1992, PERF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 9, 1986 (51 FR 20897), June 19, 1986 (51 FR 22365), July 17, 1986 (51 FR 25957), March 1, 1989 (54 FR 8607), April 20, 1989 (54 FR 16014), December 8, 1989 (54 FR 50661), May 30, 1990 (55 FR 21951), July 19, 1990 (55 FR 29432), June 20, 1991 (56 FR 28416), September 25, 1991 (56 FR 48581, and May 6, 1992 (57 FR 19443), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18986 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Investigation of the Potential Effects of Lubricating Oil on Diesel Flowthrough Catalysts

Notice is hereby given that, on June 30, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of two parties to its group research project regarding "Investigation of the Potential Effects of Lubricating Oil on Diesel Flowthrough Catalysts." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Ford Motor Company, Dearborn, MI (effective March 19, 1992), and PSA Etudes ET Recherches and Peugot S.A., Paris, FRANCE (effective May 12, 1992) have become parties to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On July 26, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 29, 1991, 56 FR 42758-42759.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18987 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—"Feasibility Study on Using Molecular Sieves for Diesel NO_x Control"

Notice is hereby given that, on July 2, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its project entitled "Feasibility Study on Using Molecular Sieves for Diesel NO_x Control". The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that Ford Motor Company, Dearborn, MI (effective March 25, 1992) has become a party to the project.

No other changes have been made in either the membership or planned activity of the project.

On July 1, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("The Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act of July 29, 1991, 56 FR 35887. On September 19, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on November 5, 1991, 56 FR 56528. On November 25, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on January 14, 1992, 57 FR 1493-1494. On February 28, 1992, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on April 23, 1992, 57 FR 14850-14851. On May 7, 1992, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on June 11, 1992, 57 FR 24817. Additionally, a correction notice to the November 5, 1991, notice was published on December 17, 1991, 56 FR 65541.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18988 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—"United States Automotive Manufacturers Crash Test Dummy Consortium"

Notice is hereby given that, on July 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation filed written notification simultaneously with the Attorney General and the Federal Trade Commission of a joint venture entitled "United States Automotive Manufacturers Crash Test Dummy Consortium." The notification discloses (1) the identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture and its general areas of planned activities are: Chrysler Corporation, Highland Park, MI; Ford Motor Company Dearborn, MI; and General Motors Corporation, Detroit, MI.

The parties intend to identify opportunities for joining aspects of their independent research and development efforts pertaining to crash test dummies and related areas such as modelling, instrumentation, data management and reduction and test dummy subsystem safety test development. The objectives are to avoid inefficient duplication of effort and expense while conducting or directing research in this area; collect, exchange, and, where appropriate, license or otherwise disseminate the results of the research; work closely with various governmental and private agencies; and perform further acts allowed by the National Cooperative

Research Act that would advance the joint venture's objectives.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-18985 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Corrections

Announcement of Grants, Services, and Training

The National Institute of Corrections (NIC), U.S. Department of Justice, has published its Annual Program Plan for Fiscal Year 1993. The document describes the grants, programs, and services to be made available to the corrections field during the next fiscal year, which begins October 1, 1992 and ends September 30, 1993.

A separate document, the Schedule of Training and Services for Fiscal Year 1993, describes NIC's training programs and services to be conducted by its National Academy of Corrections for state and local corrections practitioners.

Both documents contain relevant application forms and may be obtained by contacting the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534 (telephone 202-307-3106; fax 202/307-3361); or the NIC Logmont, Colorado, offices (1960 Industrial Circle, suite A, Longmont, Colorado 80501) (telephone 303/682-0382; fax 303/682-0469); TDD 202/307-3156.

M. Wayne Huggins,

Director.

[FR Doc. 92-18989 Filed 8-10-92; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Employment and Training Administration

Emergency Unemployment Compensation; General Administration Letter for Implementing Title I of the Emergency Unemployment Compensation Act of 1991

On November 15, 1991, the President signed into law the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102-164), which is Title I created the Emergency Unemployment Compensation (EUC) program. On December 4, 1991, the President signed into law Pub. L. 102-182, which provided amendments to the Emergency Unemployment Compensation Act of 1991, as if such amendments were included in that Act, as of its effective date (weeks of unemployment beginning on and after November 17, 1991). On February 7, 1992, the President signed into law Pub. L. 102-244, further amending the Emergency Unemployment Compensation Act of 1991, effective for weeks of unemployment beginning after the date of enactment. Only July 3, 1992, the President signed into law Pub. L. 102-318, which not only amended the Emergency Unemployment Compensation Act of 1991, but the Federal-State Extended Unemployment Compensation Act of 1970, which amended provisions are applicable to the EUC program. With certain exceptions, the amendments are effective for weeks of unemployment beginning after July 3, 1992.

In its role as principal in the EUC program, the Department of Labor issued controlling guidance for the States and cooperating State agencies in the operating instructions set forth in the Attachments to GAL 4-92, dated November 27, 1991. Based on issues raised by the States and cooperating State agencies, GAL 4-92, Change 1 was issued February 10, 1992, providing changes to, and clarifications of, the operating instructions set forth in the Attachments to GAL 4-92. In order to assure knowledge to the public of these operating instructions, both of these documents were published in the **Federal Register** on February 14, 1992 (57 FR 5472).

GAL 4-92, Change 2 was issued February 13, 1992, providing changes to the operating instructions set forth in the Attachments to GAL 4-92 because of the amendments enacted February 7, 1992 (Pub. L. 102-244). GAL 4-92, Change 2 was published in the **Federal Register** on March 11, 1992 (57 FR 8683).

GAL 4-92, Change 3 was issued June 4, 1992, which revised Section III.M., Fraud and Overpayment., in Attachment A to GAL 4-92. Changes and clarifications were needed in order to assure uniform application of the provisions by the States and cooperating State agencies. GAL 4-92, Change 3 was published in the **Federal Register** on June 24, 1992 (57 FR 28188).

GAL 4-92, Change 4 was issued on July 9, 1992, providing substantive changes in the operating instructions set forth in Attachments A, B, and C to GAL 4-92 because of the amendments enacted July 3, 1992 (Pub. L. 102-318).

Therefore, GALs 4-92; 4-92, Change 1; 4-92, Change 2; 4-92, Change 3; and 4-92, Change 4 (or any subsequent or supplemental operating instructions) provide the essential operating instructions to the States, which administer the EUC program pursuant to agreements between the States and the Secretary of Labor.

Since the States and cooperating State agencies may not vary from the operating instructions in GALs 4-92; 4-92, Change 1; 4-92, Change 2; 4-92, Change 3; and 4-92, Change 4 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor, GAL 4-92, Change 4 is published below as a continuation of assuring public notification of the required procedures.

Signed at Washington, DC, on August 4, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

Classification: UI/EUC.

Correspondence Symbol: TEUMI.

Date: July 9, 1992.

Directive: General Administration Letter No. 4-92, Change 4.

To: All State Employment Security Agencies.

From: Donald J. Kulick, Administrator for Regional Management.

Subject: Emergency Unemployment Compensation Act of 1991, As Amended by Public Law 102-318 (H.R. 5260).

1. *Purpose.* To provide amended operating instructions for States and State employment security agencies (SESAs) for the administration of the provisions of Title I of the "Emergency Unemployment Compensation Act of 1991", as amended by Public Law 102-318, the "Unemployment Compensation Amendments of 1992" (which was enacted into law with the President's signature on July 3, 1992).

2. *References.* Title I of the "Emergency Unemployment Compensation Act of 1991", Public Law 102-164, as amended by Public Law 102-182, Public Law 102-244, and the "Unemployment Compensation Amendments of 1992" (Public Law 102-318); the Federal-State Extended Unemployment Compensation Act of 1970 (the EB Act), as amended by the "Unemployment Compensation Amendments of 1992" (Public Law 102-318); 20 CFR part 615; GAL 4-92 and Changes; UIPL 9-92 and Changes; the Trade Act of 1974 (19 U.S.C. 2271 et seq.); 20 CFR part 617; and GAL 10-92.

3. *Background.* a. *Amendment of the Act.* Title I of the "Emergency Unemployment Compensation Act of 1991" created the Emergency Unemployment Compensation (EUC) program. The "Unemployment Compensation Amendments of 1992" (Public Law 102-318), enacted on July 3, 1992, amended a number of the provisions of Title I of the EUC Act. These amendments and the various

effective dates of the amendments to the EUC program are described in the Attachments to this GAL. The Employment and Training Administration issued controlling guidance for the States and State agencies in operating instructions in GAL 4–92, dated November 27, 1991; GAL 4–92, Change 1, dated February 10, 1992; GAL 4–92, Change 2, dated February 13, 1992; and GAL 4–92, Change 3, dated June 4, 1992.

Based on the enactment of Public Law 102–318, this Change 4 to GAL 4–92 includes changes to, and clarifications of, the operating instructions set forth in the Attachments to GAL 4–92.

b. *Key Changes to the EUC Program in the Amendments.* Public Law 102–318, provides for the following changes to the EUC program:

(1.) *Extension of the Program.* Section 101(a) of Public Law 102–318 amends Sections 102(f)(1) and 106(a)(2) of the EUC Act to extend the EUC from July 4, 1992, to March 6, 1993. This extension is effective for weeks of unemployment beginning after June 13, 1992.

(2.) *Weeks of Benefits during the Extension.* Section 101(b) of Public Law 102–318 amends Section 102(b)(2)(A) of the EUC Act to provide, for new EUC claims effective for weeks beginning after June 13, 1992, a maximum of 20 or, in the case of a State triggered "on" a "high unemployment period," a maximum of 26 weeks of EUC through a week of unemployment including March 6, 1993. New claims effective prior to June 13, 1992, remain or are redetermined to the applicable limit (i.e., up to 26 or 33 weeks).

Section 101(b) of Public Law 102–318 also provides for reductions in the maximum number of weeks of EUC payable (new claims) when the average rate of total unemployment (seasonally adjusted) for all States declines to less than 7.0 percent and less than 6.8 percent but eliminates the two requirements of consecutive weeks of entitlement for a continuing claimant to avoid reduction of the maximum number of weeks of EUC entitlement.

(3.) *Modification of EUC Program Phase-out.* Section 101(c) of Public Law 102–318 amends Section 102(f)(2) of the EUC Act to provide that the transition period for the phase-out of the EUC program will be from the first week beginning after March 6, 1993, to the week ending on June 19, 1993, and that no EUC will be payable for any week beginning after June 19, 1993.

(4.) *Effect of Extended Benefits (EB) during the EUC Program Phase-out Period.* Section 101(d) of Public Law 102–318 amends Section 101(e) of the EUC Act to provide that the Governor's election to trigger "off" EB in a State in order to provide for the payment of EUC is not applicable with respect to any EB period beginning after March 6, 1993. Section 101(d) further amends Section 101(e) of the EUC Act to provide that an individual in a State that is triggered "on" for EB after March 6, 1993, and who has a balance of EUC entitlement remaining after March 6, 1993, shall receive payments under the program (EUC or EB) in which the individual's entitlement is greater. This amendment is effective for weeks of employment beginning after March 6, 1993.

(5.) *Effect of Subsequent Entitlement to Regular Compensation.* Section 102(a) of Public Law 102–318 amends Section 101 of the EUC Act by adding a new subsection (f) providing that an individual's rights to EUC shall be determined without regard to regular compensation for a subsequent benefit year if such individual does not file a claim for regular compensation for such subsequent benefit year. This amendment is effective for weeks of unemployment beginning after July 3, 1992.

(6.) *Recovery of Certain Overpayments (Section 102(b) (2) (A) of Public Law 102–318).* Section 102(b)(2)(A) of Public Law 102–318 provides that, on and after July 3, 1992, no repayment of any outstanding EUC overpayment shall be required under Section 105 of the EUC Act if the individual would have been entitled to EUC had the amendment in paragraph 5. above been in effect for all weeks since the beginning of the EUC program.

(7.) *Waiver of Rights to Certain Regular Benefits.* Section 102(b)(2)(B) of Public Law 102–318 provides that certain individuals may elect to defer their rights to regular compensation in a subsequent benefit year until they have exhausted their rights to EUC in respect of the previous benefit year. This section is effective for weeks of unemployment beginning after July 3, 1992.

(8.) *Persian Gulf Reservists.* Section 104 of Public Law 102–318 provides that certain Persian Gulf Reservists called-up to active duty in a reserve status shall be entitled to receive an EUC weekly benefit amount not less than the weekly amount of the reservist's claim for regular compensation, EB, or trade readjustment allowances during the week of call-up to active duty.

(9.) *Earnings Test.* Section 202(a)(1) of Public Law 102–318 amends Section 202(a) (5) of the EB Act to provide that States shall provide which one or more of the three specified methods of measuring employment and earnings for EB (and EUC) qualifying purposes shall be used in that State. The effective date of this amendment is for weeks of unemployment beginning on or after July 3, 1992, "[n]otwithstanding any other provision of law."

(10.) *Recovery of Certain Overpayments (Section 202(a)(2)(B) of Public Law 102–318.* Section 202l(a)(2)(B) of Public Law 102–318 provides that on and after July 3, 1992, no repayment of any outstanding EUC overpayment shall be required under Section 105 of the EUC Act if the individual would have been entitled to EUC had the amendment in paragraph 9. above been in effect for all weeks since the beginning of the EUC program.

(11.) *Suspension of Certain EB Eligibility Requirements.* Section 202(b) of Public Law 102–318 suspends the requirements of EB work search (including suitable work) provisions and the EB reemployment requirement to purge certain disqualifications (Sections 202(a) (3) and (4) of the EB Act). These suspensions are effective for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and no provision of State law in conformity with paragraphs (3) and (4) of Section 202(a) of the EB Act shall be applied during the period of suspension. This provision of Public Law 102–318 is applicable to EUC claimants for weeks of unemployment beginning after March 6, 1993, and before June 19, 1993.

c. *Controlling Guidance.* The provisions in Titles I and II of Public Law 102–318, as interpreted in these operating instructions, supersede the prior provisions of Federal law, regulations at 20 CFR Parts 615 and 617, and prior operating instructions issued by this Department to the extent that they are inconsistent with Titles I and II of Public Law 102–318 or these operating instructions.

The operating instructions in GAL 4–92, GAL 4–92, Change 1, Change 2, Change 3, and this Change 4 (including Attachments A, B, and C) are issued to the States and the cooperating State agencies and constitute the controlling guidance provided by the Department of Labor in its role as the principal in the EUC program. As agents of the United States, the States and the cooperating State agencies may not vary from the operating instructions in GAL 4–92 and GAL 4–92, Change 1, Change 2, Change 3, or this Change 4 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor.

d. *State Agreements.*

The EUC agreement entered into pursuant to P.L. 102–164 (as modified) between a State and the Secretary of Labor under which the State agency

makes payments of EUC in accordance with the Act as interpreted by the Secretary or the Department of Labor as set forth in instructions issued by the Department remains in effect and further modification is not required.

4. *Attachment A—Changes to Section I.*

a. On page 1 of Attachment A, change the heading of Section I. to read:

"I. *Section-by-Section Explanation of Title I of Public Law 102–164, as amended by Public Laws 102–182 and 102–244 and further amended by P.L. 102–318.*".

b. In Section I.B.5. of Attachment A, entitled "Election.", strike such heading and insert the following new heading, "*Election by States; Weeks of Benefits During Phase-Out.*". In addition, add the following new paragraph heading before the word "Subsection"; "a. *Election by States.*—(i)", and add the following new subparagraph (ii) and the following new paragraph b.:

"(ii) The preceding sentence shall not be applicable with respect to any EB period which begins after March 6, 1993, nor shall the special rule in Section 203(b)(1)(B) (i.e., no EB period may begin before the fourteenth week after the end of a previous EB period) of the Federal-State Extended Unemployment Compensation Act of 1970 (or similar provision of State law) operate to preclude the beginning of an EB period after March 6, 1993, because of the ending of an earlier EB period under the preceding sentence (i.e., Governor's waiver).

"b. *Weeks of Benefits During Phaseout.*—"Notwithstanding the requirement that an individual must have no rights to compensation under Section 101(b)(1)(B) of the EUC Act or any other provision of law, if for any week beginning after March 6, 1993, an EB period is triggered on with respect to a State, an individual entitled to EB, whether claiming benefits or not, in the State for such week and any following week shall be paid either EUC or EB under the State law, whichever is greater, but in no case may both be paid.".

c. In Section I.B. of Attachment A, add the following new paragraph 6. before Section I.C.

"6. *Certain Rights to Regular Compensation Disregarded.*

"If an individual exhausts his/her rights to regular compensation for any benefit year, such individual's eligibility to receive EUC with respect to such benefit year shall be determined without regard to any rights to regular compensation for a subsequent benefit year if the individual does not file a claim for regular compensation for such subsequent benefit year.

Note: The individual is given the choice after explanation of the advantages and disadvantages of filing for regular compensation for a subsequent benefit year. An individual who does file such a claim for regular compensation will not be eligible for any further EUC based on the previous benefit year. This amendment applies to all weeks of unemployment beginning after July 3, 1992.".

d. In Section I.C.3. of Attachment A, entitled "*Applicable Limit.*", replace paragraph c. and the flush paragraph (at the end) with the following new paragraph c. and add new paragraphs d., e., f. and g.

"c. *Reduction for Weeks After June 13, 1992.*—In the case of weeks beginning after June 13, 1992—

"(i) substitute 26 for 33 in paragraph a. and 20 for 26 in paragraph b. and

"(ii) substitute 100 percent for 130 percent in paragraph a. in Section I.C.2.

"d. *Reduction for Weeks in 7-Percent Period.*—In the case of weeks beginning in a 7-percent period—

"(i) paragraph c. shall not apply,

"(ii) substitute 15 for 33 in paragraph a. and 10 for 26 in paragraph b., and

"(iii) substitute 60 percent for 130 percent in paragraph a. in Section I.C.2.

"e. *Reduction for Weeks in 6.8-Percent Period.*—In the case of weeks beginning in a 6.8-percent period.—

"(i) paragraphs c. and d. shall not apply,

"(ii) substitute 13 for 33 in paragraph a. and 7 for 26 in paragraph b., and

"(iii) substitute 50 percent for 130 percent in paragraph a. in Section I.C.2.

"f. *7-Percent Period; 6.8-Percent Period.*—For purposes of this paragraph—

"(i) A 7-percent period means a period which begins with the second week after the first week for which the requirements of clause (ii) are met, and a 6.8-percent period means a period which begins with the second week after the first week for which the requirements of clause (iii) are met.

"(ii) The requirements of this clause (ii) are met for any week if the average rate of total unemployment (seasonally adjusted) for all States for the period consisting of the most recent 2-calendar month period (for which data are published before the close of such week) is at least 6.8 percent, but less than 7 percent.

"(iii) The requirements of this clause (iii) are met for any week if the average rate of total unemployment (seasonally adjusted) for all States for the period consisting of the most recent 2-calendar month period (for which data are published before the close of such week) is less than 6.8 percent.

"In no event shall a 7-percent period occur after a 6.8-percent period occurs, and a 6.8-percent period, once begun, shall continue in effect for all weeks thereafter for which benefits are provided under the EUC Act.

"g. *Limitations on Reductions.*—In the case of an individual who is receiving EUC for a week preceding the first week for which a reduction applies under paragraphs c., d. or e., such reduction shall not apply to such individual for any week thereafter for which the individual is otherwise eligible for EUC.

"Note: The above provision means that if an individual is eligible for EUC for any week prior to the week a reduction is to occur, his or her account balance is not reduced thereafter except for amounts actually paid, even though the individual is not paid for every week. If the individual claims a week for which he/she is not eligible, such individual's account is not subject to reduction unless there is an overpayment. But depending on the circumstances, the individual may be subject to an applicable disqualification and liable for any overpayment.".

e. In Section I.C.4. of Attachment A, entitled "*No Reduction of Applicable Limit.*", change the phrase "Except as provided in 3.c.," to read "Except as provided in paragraphs 3.c. d. and e. in Section I.C.3.,".

f. In Section I.C.10. of Attachment A, entitled "*Effective Dates.*", replace the language in paragraph b. with the following:

"b. No new EUC claims may be made effective for any week which begins after March 6, 1993. In the case of an individual who is receiving EUC for a week prior to or including March 6, 1993, EUC shall continue to be payable to such individual for any week thereafter for which the individual is otherwise eligible. No EUC shall be payable however, for any week beginning after June 19, 1993.

"Note: The above provision means that if an individual is eligible for EUC for any week prior to or including March 6, 1993, his or her account balance is not reduced thereafter except for amounts actually paid even though the individual is not paid for every week. If the individual claims a week for which he/she is not eligible, such individual's account is not subject to reduction unless there is an overpayment. But depending on the circumstances, the individual may be subject to an applicable disqualification and liable for any overpayment.".

g. In Section I.E.2. of Attachment A, entitled "*Authorization.*", add the following sentence at the end of the paragraph:

"New Subsection (e) directs the Secretary of Treasury to transfer general revenue funds from the Treasury to the EUCA account to make payments under the EUC Act by reason of the amendments made to Sections 101 and 102 of the EUC Act of 1991 and to the employment security administration account such sums as may be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments made by Sections 101, 102, 201 and 202 of the "Unemployment Compensation Amendments of 1992" (Pub. L. 102–318).".

h. In Section I.G.2 of Attachment A, entitled "*Period of Eligibility.*", change the date in paragraph b. from "July 4, 1992" to "March 6, 1993".

i. In Section I. of Attachment A, add the following new Subsection H.:

"H. *Other Provisions of the "Unemployment Compensation Amendments of 1992" (P.L. 102–318).*

"1. *Section 102(b)—Modification of Eligibility Requirements—Transition Rules.*

"a. *Prohibition of Recovery of Certain Overpayments.*

"On and after the date of enactment of Pub. L. 102–318 (July 3, 1992), no repayment of any EUC shall be required under section 105 of the EUC Act of 1991 if the individual would have been entitled to EUC had the amendment to the requirement that a new claim for regular compensation be filed (now changed by the addition of paragraph (f) to Section 101) been in effect since the beginning of the EUC Act of 1991.

"Note: The application of Section 102(b(2)(A) creates a statutory bar prohibiting the States from taking action under section 105 to enforce recovery of outstanding overpayment balances as of July 3, 1992, for individuals who would have been entitled to EUC had the amendment made by section 102(a) of Pub. L. 102–318 been in effect since the start of the EUC program. Any overpayment determinations issued by the States to individuals under the law as in effect before the amendment in Section 102(a) are valid and shall not be changed. This means that liability for the overpayment remains unchanged, but that enforcement of the liability to repay the balance of the outstanding overpayment on and after July 3, 1992, is changed. The application of Section 102(b)(2)(A), in actuality, is not a waiver in that there are no "equity and good conscience" tests applied to each individual's situation; rather it is a blanket withdrawal of authority to enforce recovery of the overpaid amount. Overpayments for which enforcement of recovery is prohibited will be reflected as write-offs on line 205 of the ETA 227 report.

"Section 102(b)(2)(A) prohibits the recovery of EUC non-fraudulent overpayments solely if the individual would have been entitled to EUC had the amendment made by Section 102(a) of Pub. L. 102–318 been in effect since the start of the EUC program. States should apply the following guidelines and procedures in implementing this provision—

"• No EUC overpayment determination for any reason other than for the amendment made by section 102(a) of Pub. L. 102–318 is subject to the write-off because of Section 102(b)(2)(A).

"• Recovered amounts received by the State before July 3, 1992, are not subject to the write-off in Section 102(b)(2)(A) and will not be returned to the individual by the State.

"• As of July 3, 1992, States shall cease all section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to the prohibition in Section 102(b)(2)(A) of Pub. L. 102–318. This means that States shall return any repayments received from an individual on and after July 3, 1992, if the individual is subject to the amendment made by Section 102(a) and the indivfdual has not been notified that repayment is not required. If an individual subject to the amendment made by Section 102(a) voluntarily repays the State, all or part of the outstanding overpayment balance on or after July 3, 1992, after notification that repayment is nor required, the State shall accept the repayment for return to the EUCA. In no event shall an individual recieve duplicate payments under different programs for the same week.

"• States shall not issue a redetermination implementing the amendment made by Section 102(a) if a previous determination waiving the recovery of an overpayment under Section 105(b) of the EUC Act was issued to an individual who is subject to the amendment made by Section 102(a) of Pyb. L. 102–318.

"b. *Waiver of Rights to Certain Regular Benefits.* If—

"(i) before the date of enactment of Pub. L. 102–318, an individual exhausted his/her rights to regular compensation for any benefit year, and

"(ii) such individual was not eligible to receive EUC because of being entitled to regular compensation for a subsequent benefit year, such individual may elect to defer his/her rights to regular compensation with respect to weeks beginning after the date of enactment of Pub. L. 102–318 until such individual has exhausted his/her rights to EUC. Such individual shall be entitled to receive EUC for such weeks in the same manner as if he/she had not been entitled to regular compensation on the subsequent benefit year claim.

"2. *Section 104—Persian Gulf Reservists.*

"a. *Application.*

"This section is a free-standing addition not affecting any other provision of law. This section is only applicable to reservists called-up to active duty in a reserve status in the Armed Forces after August 2, 1990 and before March 1, 1991, and, subject to the provisions in this section, affects the reservist's EUC weekly benefit amount payable after exhaustion of regular UCX benefits, and for weeks beginning after enactment of Pub. L. 102–318. The application of this section has no effect on the reservist's maximum amount of EUC payable as determined under the provisions of Section 102(b)(1) of the EUC Act.

"b. *Provisions.*

"If a reservist, as described in paragraph a. above, was receiving regular compensation, extended compensation, or trade readjustment allowances for the week he/she was called-up to active duty (for at least 90 continuous days), and, if the reservist was entitled to regular compensation on the basis of such active duty in the Armed Forces at a weekly amount that was less than the amount to which he/she was entitled for the week of call-up, the reservist will receive an EUC weekly benefit amount (after exhaustion of the regular compensation based on the active duty) equal to the weekly amount of the claim in effect during the week of call-up to active duty.

"Note: The provisions discussed above in new paragraph b. of section I.B. of Attachment A and new Section I.H.1.b. of Attachment A shall also be applicable to such Persian Gulf Reservists.

"3. *Section 202—Modification of Extended Benefits Eligibility Requirements.*

"a. *Earnings Test.*

Section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended to provide that a State may use one or more of the three specified methods of determining extended benefits eligibility, i.e., 20 weeks of work, 1½ times high quarter wages or 40 times the individual's weekly benefit amount. Prior to July 3, 1992, only one specified method was permitted.

"b. *Application to EUC.*

"Notwithstanding any other provision of law (which includes section 101(d)(12) of the EUC Act of 1991 and corresponding provisions of State law), the provisions of paragraph a. are

applicable to EUC for weeks of unemployment beginning after the date of enactment of Pub. L. 102–318 (July 3, 1992).

"Note: This means that conforming amendments to State laws are not necessary to put this provision into effect for EUC.

"c. *Prohibition of Recovery of Certain Overpayments.*

"On and after July 3, 1992, no repayment of any EUC shall be required under Section 105 of the EUC Act if the individual would have been entitled to benefits had the "earnings test" amendment mentioned in paragraph a. of this section applied to all weeks beginning on or before July 3, 1992.

"Note: The application of Section 202(a)(2)(B) creates a statutory bar prohibiting the States from taking action under section 105 to enforce recovery of outstanding overpayment balances as of July 3, 1992, for individuals who would have been entitled to EUC had the amendment made by section 202(a)(1) of Pub. L. 102–318 been in effect since the start of the EUC program. Any overpayment determinations issued by the States to individuals under the law as in effect before the amendment in Section 202(a)(1) are valid and shall not be changed. This means that liability for the overpayment remains unchanged, but that enforcement of the liability to repay the balance of the outstanding overpayment on and after July 3, 1992, is changed. The application of section 202(a)(2)(B), in actuality, is not a waiver in that there are no "equity and good conscience" tests applied to each individual's situation; rather it is a blanket withdrawal of authority to enforce recovery of the overpaid amount. Overpayments for which enforcement of recovery is prohibited will be reflected as write-offs on line 205 of the ETA 227 report.

"Section 202(a)(2)(B) prohibits the recovery of EUC non-fraudulent overpayments solely if the individual would have been entitled to EUC had the amendment made by Section 202(a)(1) of Pub. L. 102–318 been in effect since the start of the EUC program. States should apply the following guidelines and procedures in implementing this provision—

"• No EUC overpayment determination for any reason other than for the amendment made by Section 202(a)(1) of Pub. L. 102–318 is subject to the write-off because of Section 202(a)(2)(B).

"• Recovered amounts received by the State before July 3, 1992, are not subject to the write-off in section 202(a)(2)(B) and will not be returned to the individual by the State.

"• As of July 3, 1992, States shall cease all Section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to the prohibition in Section 202(a)(2)(B) of Pub. L. 102–318. This means that States shall return any repayments received from an individual on and after July 3, 1992, if the individual is subject to the amendment made by section 202(a)(1) and the individual has not been notified that repayment is not required. If an individual subject to the amendment made by Section 202(a)(1) voluntarily repays the State, all or part of the outstanding overpayment balance on or after July 3, 1992, after notification that repayment is not required, the State shall accept the repayment for return to the EUCA. In no event shall an individual receive duplicate payments under different programs for the same week.

"• States shall not issue a redetermination implementing the amendment made by Section 202(a)(1) if a previous determination waiving the recovery of an overpayment under Section 105(b) of the EUC Act was issued to an individual who is subject to the amendment made by Section 202(a)(1) of Pub. L. 102–318."

5. *Attachment A—Changes to Section II.*

At the end of Section II.F.2., entitled "*Trigger Notice Format.*", add the following:

"In addition, the national seasonally adjusted total unemployment rates (TUR) for the applicable two months will be shown. The change to a 7-percent period or to a 6.8-percent period begins with the second week after the first for which rates are published. Therefore, the TURs shown will have the appropriate lag.".

6. *Attachment A—Changes to Section III.*

a. In Section III.A., definition 1, "*Act*", delete "approved November 15, 1991, as amended by H.R. 1724" and insert "as amended by Public Laws 102–182 and 102–244, and further amended by Pub. L. 102–318".

b. In Section III.A., definition 3, "*Period of Eligibility*", change the date of "July 4, 1992" to "March 6, 1993".

c. In Section III.B., "*Beginning and Ending of the EUC Program*", change the dates in the first sentence of the third paragraph from "July 4, 1992" to "March 6, 1993." and substitute the following for the second sentence in paragraph three: "Individuals who become eligible for EUC before March 6, 1993 will continue to be eligible for any week thereafter for which the individual is otherwise eligible for EUC. However, no EUC shall be payable for any week beginning after June 19, 1993.".

d. In Section III.C.1, "*Basic eligibility Requirements.*", replace existing paragraph b. with the following:

"b. have no rights to any compensation with respect to that week under such law or any other State unemployment compensation law, the Railroad Unemployment Insurance Act, or, under any other Federal law administered by the State agency.

"An individual will be considered to meet the requirements of the above paragraph if the week began subsequent to July 3, 1992 and such individual has not filed a claim for regular unemployment benefits to establish a subsequent benefit year which included such week, or

"An individual who exhausted his rights to regular compensation for any benefit year before July 3, 1992 and after such exhaustion, such individual was not eligible to receive EUC by reason of being entitled to regular compensation for a subsequent benefit year, and elects to defer his rights to regular compensation for such subsequent benefit year with respect to weeks beginning after July 3, 1992, such an individual is entitled to receive EUC until his rights to EUC are exhausted in respect to the previous benefit year. No EUC is payable for any week the individual is paid any amount as regular compensation.".

In addition, replace existing paragraph e. with the following:

"e. have at least 20 weeks of employment (as defined in State law) during the base period, or during such base period earned its equivalent under State law or at least one and one-half times the high quarter wages, or of forty times the most recent weekly benefit amount. For purposes of this requirement, "weekly benefit amount" means the weekly benefit amount, including dependents' allowances, payable for a week of total unemployment (before any reductions because of earnings, pensions or other requirements) which applied to the most recent week,".

Also, delete the period at the end of paragraph i. and add the following: "except as provided in these operating instructions with regard to the amendments in Public Law 102–318.

"Note: the requirements of section 202(a)(3) (and corresponding provisions of State law) referenced in paragraphs g. and h. above are not applicable for weeks of unemployment beginning after March 6, 1993.".

e. In Section III.C.2., entitled "*Determining Exhaustees.*", at the end of paragraph b. insert the following language:

"*Provided* that, an individual shall be considered to be an exhaustee for the purposes of EUC if the individual had

sufficient employment and wages on the basis of which a subsequent benefit year could be established under any State or Federal law after July 3, 1992, and the individual elects not to file a new claim for regular benefits to establish such a subsequent benefit year, after being fully informed of his/her rights, or

"An individual who exhausted all rights to regular compensation for any benefit year before July 3, 1992 and after such exhaustion, such individual was not eligible to receive EUC by reason of being entitled to regular compensation for a subsequent benefit year, and elects to defer his rights to regular compensation for such subsequent benefit year with respect to weeks beginning after July 3, 1992 until such individual has exhausted his rights to EUC in respect to the previous benefit year. No payment of EUC may be made for any week for which an individual is paid any amount as regular compensation.".

f. In Section III.C.3., entitled "*Determination of "Period of Eligibility".*", change the date of "July 4, 1992" to "March 6, 1993".

g. In Section III.C.4, entitled *"20-Weeks of Work Requirement.*, change the heading to read "*Work Qualifying Requirements.*" and insert at the beginning of the first paragraph the following language: "For weeks of unemployment beginning before July 3, 1992," and insert the following at the end of the Section:

"*Provided* that effective for weeks of unemployment beginning after July 3, 1992, Section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 has been amended to provide for States to utilize one or more specified methods of determining an individual's monetary eligibility for extended benefits (and now EUC):

"a. One and one-half times the high quarter wages; or

"b. Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reductions because of earnings, pensions or other requirements) which applied to the most recent week; or

c. Twenty weeks of full-time insured employment as defined in the State law.

"Note: This change shall be applied to all EUC claims "[n]otwithstanding any other provisions of [State or Federal] law.".

h. In Section III.D., entitled "*Weekly Benefit Amount.*", add a new Subsection as follows:

"3. *Persian Gulf Reservists.*

Subject to the provisions of Section 104 of Public Law 102–318 the EUC weekly benefit amount of a Persian Gulf Reservist will be not less than the weekly benefit amount to which the individual was entitled for regular compensation, extended compensation, or trade readjustment allowances for the week in which the reservist was called-up to active duty in the Armed Forces. Section 104 of Public Law 102–318 is effective for EUC payments for weeks beginning after July 3, 1992.

Therefore, States and cooperating State agencies will make monetary redeterminations on the claims of reservists who have established EUC entitlement before the effective date of Section 104 of Public Law 102–318 and who have an EUC monetary balance remaining for a week beginning after the effective date of this Section. The application of this Section to the reservists' EUC claim affects only the computation of the weekly benefit amount and has not affect on computation of the maximum benefit amount.

Note: The application of this section requires SESAs to increase the eligible reservist's EUC weekly benefit amount for all weeks of unemployment beginning after July 3, 1992, but SESAs shall not increase the eligible reservist's EUC maximum amount. The result is that the eligible reservist will exhaust EUC entitlement sooner.

The contents of section 102(b)(1) of the EUC Act and Section 104 of Public Law 102–318 do not permit an increase to the reservist's EUC maximum amount. Section 102(b)(1) prescribes that the EUC weekly and maximum amounts are to be based on the claim for regular compensation in respect to the benefit year to which the EUC claim is based. In the application of section 104 of Public Law 102–318, the reservist's EUC claim is based on regular compensation (including UCX) based all or in part on the reservist's Persian Gulf "Federal service" and is not based on the claim in effect at the time of the reservist's call-up to active duty. Section 104 of Public Law 102–318 only provides that the reservist's EUC weekly benefit amount be increased, not the reservist's EUC maximum amount. Consequently, there is no statutory authority for an increase in the reservist's EUC maximum amount to effect the application of Section 104 to Persian Gulf Reservists.".

i. In Section III.E.1, entitled "*Accounts.*", add new paragraphs c. and d. as follows:

"c. "*For EUC claims filed for a week after a National 7-percent period is in effect.*"

"(i) 60 percent of the total entitlement to regular benefits (including dependents" allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

"(ii) The maximum EUC payable in the State as prescribed by the applicable limit.

"(d. *For EUC claims filed for a week after a National 6.8-percent period is in effect.*

"(i) 50 percent of the total entitlement to regular benefits (including dependents" allowances) payable to the individual with respect to the most recent benefit year, from which the individual received benefits, or

"(ii) the maximum EUC payable in the State as prescribed by the applicable limit amount.".

j. In Section III.E.2., entitled "*Maximum EUC Payable in a State—Applicable Limit.*", amend subparagraph (a)(iii), and paragraph b. and add new paragraphs c., d., e., f. and g. as follows:

"(iii) *No Reduction after June 13, 1992.* An individual who has established an EUC account effective with respect to a week which ends on or before June 13, 1992, shall not be subject to any reduction in the maximum amount in such account by reason of the amendments to Section 102(b)(2)(A). Any individual whose account was reduced by reasons of the prior provisions of clause (ii) of Section 102(b)(2)(A). Any individual whose account was reduced by reason of the prior provisions of clause (ii) of Section 102(b)(2)(A) shall be redetermined and the account restored to the appropriate level as of June 14, 1992.

"b. *For EUC Claims Filed for a Week Beginning after June, 13, 1992.*

"(i) *Thirteen Weeks.* The maximum amount of EUC payable is up to 20 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are not in high unemployment period.

(ii) *Twenty-six Weeks.* The maximum amount of EUC payable is up to 26 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are in a high unemployment period.

"c. *For EUC claims filed for weeks after a National 7-percent period is in effect.*

"(i) *Ten weeks.* The maximum amount of EUC payable is up to 10 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that are not in a State "high unemployment" period.

"(ii) *Fifteen weeks.* The maximum amount of EUC payable is up to 15 times

the individual's weekly benefit amount as computed under 20 CFR 615.6, in all States that *are* in a State "high unemployment" period.

"d. *For EUC claims filed for weeks after a National 6.8-percent period is in effect.*

"(i) *Seven weeks.* The maximum amount of EUC payable is up to 7 times the individual's weekly benefit amount, as computed under 20 CFR 615.6, in all States that *are not* in a State "high unemployment" period.

"(ii) *Thirteen weeks.* The maximum amount of EUC payable is up to 13 times the individual's weekly benefit amount as computed under 20 CFR 615.6, in all States that *are* in a State "high unemployment" period.

"e. *7-percent Period; 6.8-percent Period.* In no event shall a 7-percent period occur after a 6.8-percent period occurs, and a 6.8-percent period, once begun, shall continue in effect for all weeks thereafter for which benefits are provided under the EUC.

"f. *Limitations on Reductions.* In the case of an individual who is receiving EUC for a week preceding the first week for which a reduction applies under paragraphs b., c. or d., such reduction shall not apply to such individual for any week thereafter for which the individual is otherwise eligible for EUC.

"g. *Modification to Final Phase-out.* If an individual is receiving EUC for a week prior to or including March 6, 1993, and meets the eligibility requirements of the EUC Act, as amended, the individual shall continue to be paid EUC for any week thereafter for which the individual meets the eligibility requirements of the Act until the individual's account is exhausted or until June 19, 1993. No EUC is payable for any week beginning after June 19, 1993, even if the individual still has a balance.".

k. In Section III.E.4., entitled "*Beginning of an Extended Benefit Period After the Effective Date of the Act.*", designate the existing first two paragraphs beginning with the word "States" as "a. States", and delete the phrase "in a 13-week period or 20-week period", and add the following new paragraph b.:

"b. If for any week beginning after March 6, 1993, an extended benefit period is triggered on with respect to a State, individuals claiming benefits in such State for such week and any following week shall be eligible to receive compensation under this Act or extended compensation benefits under State law, whichever is greater.

"The election by the Governor, as described in paragraph a., is neither authorized nor in effect for any EB period beginning after March 6, 1993.".

l. In Section III.E.7, entitled "*Combined Wage Claims.*", between the second and third paragraphs, insert the following heading:

"a. *Procedures before July 1, 1992.*".

Before the last sentence in the fourth and last paragraph insert the following heading and text:

"b. *Procedures on and after July 1, 1992.* The paying State will bill all benefits paid on or after July 1, 1992, directly to the Federal government. The transferring State will not charge the EUCA account for benefits paid on or after July 1, 1992, by the paying State.".

m. After Section III.E.8, "*Changes in Account.*", *insert a new section III.E.9. which reads as follows:*

"9. *Changes Due to Provisions in Public Law 102–318.* The EUC maximum amount payable to a claimant may change as the result of the following sections of PL 102–318, which amend provisions of Public Law 102–164 (as amended by Public Law 102–182 and Public Law 102–244):

"—Section 101(b), which amends Section 102(b)(2)(A) of Pub. L. 102–164, as amended;

"—Section 202(a)(2)(A), which is applicable to EUC claimants via Section 101(d)(2) of Pub. L. 102–164, as amended.

"The application of these sections of Pub. L. 102–318 may result in the issuance of monetary redeterminations changing the maximum amount of EUC payable to a claimant.".

n. In Section III.F.1., entitled *Trade Readjustment Allowances (TRA).*", add the following new paragraph after the second paragraph:

"The controlling guidance and operating instructions for implementing the amendment to section 231(a)(2) of the Trade Act of 1974 contained in section 106 of Pub. L. 102–318 are included in GAL 10–92, dated July 6, 1992.".

o. In Section III.H.2., entitled "*Interstate Initial Claims.*", delete the first paragraph which reads"Interstate EUC claimants are filed on the same forms . . ." and insert the following:

"Interstate EUC claims are filed on the same forms and in the same manner as interstate claims for EB. Before accepting an initial EUC claim, the agent State must review the claimant's work history, examine potential entitlement and advise the claimant of all filing options. If the claimant has sufficient employment and wages to establish a new benefit year under any State or Federal program or under the combined wage arrangement, the right to file under the EUC program must be explained. At the time of the initial EUC claim, the agent State will:"

In addition, replace the existing paragraph b. with the following:

"Review the claimant's work history and advise the claimant of all filing options;".

p. In Section III.K., entitled "*Applicability of State Law Provisions.*", change the period at the end of the first sentence (after the word "State") to a comma, and add, "except that any State law provision limiting computation of monetary eligibility to one method under section 202(a)(5) (20 weeks of work or equivalent), is not applicable for weeks of unemployment beginning after July 3, 1992. More than one of the methods specified in such Section may be utilized for EUC purposes.".

q. In Section III.L., entitled "*Claimstaking Procedures.*", change the heading of section III.L.1. to read "*Notification.*". Then insert the following heading before the words "The "SESA" that begin the existing paragraph:

"a. *Notification of Potential EUC Claimants.*".

In addition, add the following new paragraph b.:

"b. *Notification of Media.*

In order to assure public knowledge of the status of the EUC program, the SESA shall notify all appropriate news media having coverage throughout the State of the beginning of, or changes to, the EUC program. This includes, but is not limited to, changes in benefit levels because of "triggering" up or down; the effects of law changes, such as an extension of the EUC program; and the effects of termination of the program.".

r. In Section III.L.2., entitled *Initial Claim.*, add the following phrase at the end of paragraph b. after the comma:

"including rights to EUC while not filing a claim to establish regular benefit entitlement, and/or rights to elect to defer rights to regular compensation until exhaustion of EUC,".

s. In Section III.L.3., "*Notification of Responsibility.*", insert the following heading before the existing first paragraph:

"a. *General EUC Notification to Claimants.*".

In addition, add the following new paragraph b. after the existing second paragraph:

"b. *Claimant Notification—Election to Defer Rights to Regular Compensation in a Subsequent Benefit Year.* In order to effect the implementation of Section 102(b)(2)(B) of P.L. 102–318 for weeks of unemployment beginning after July 3, 1992, the SESAs will provide individuals with a full explanation of their rights to EUC and regular compensation before

the individuals elect whether or not to defer their rights to regular compensation until they have exhausted their rights to EUC in respect to the previous benefit year. This explanation shall include the proviso that once the individual makes the election whether or not to defer the rights to regular compensation, that election shall not be retracted by the individual until he/she has exhausted all rights to benefits under the choice made (EUC or regular compensation). This proviso means that, if the individual elects to claim regular compensation in the subsequent benefit year, the individual shall not be eligible to later receive EUC in respect to the previous benefit year. However, this election scenario would not preclude the individual from receiving EUC after exhaustion of all rights to unemployment compensation in respect to the current benefit year. Alternatively, if the individuals elects to claim EUC, the individual may be entitled to receive regular compensation in the subsequent (current) benefit year after exhaustion of EUC. However, under no circumstances will an individual receive both EUC and regular compensation for the same week.

"SESAs may wish to consider implementing this required notification procedure as part of the SESA's on-going EUC eligibility review program.".

t. In Section III.L.4., entitled "*EUC Eligibility Requirements.*", add the following "**Note**" at the end of the Section:

"**Note:** The amendments made by Section 202(b)(1) of Pub. L. 102–318, which suspend, for the period beginning after March 6, 1993 and before January 1, 1995, the EB active search for work requirements and the requirement for subsequent employment to satisfy a regular compensation denial before an individual may be determined eligible for EB, also apply to any weeks of unemployment for EUC eligibility that overlaps such dates. During such period of time, State law provisions for regular compensation apply to both the EB and EUC programs.".

u. In Section III.L.5., entitled "*Work Registration.*", add the following sentence at the end of the first paragraph:

"Also, registration requirements apply to individuals for which the State is acting as an agent State under the IBPP.".

v. In Section III.M.2., entitled "*Recovery of Overpayments.*", delete the first paragraph and insert the following in its place:

"Under Section 105(b) of the Act each State shall require repayment from individuals who have received any payment of EUC to which they are not entitled (whether fraudulent or non-fraudulent), unless such repayment is prohibited by section 102(b)(2) or section 202(a)(2)(B) or unless the State, under the optional language of Section 105(b), elects to have a program under which it will waive recovery of overpayments. A State may elect to have an EUC waiver program even if it has no waiver provisions under State law for regular compensation. If the State elects to have an EUC waiver program and has a waiver program under State law, no State law waiver provisions for regular compensation apply to EUC, and the State shall follow the guidelines outlined in this section III.M.2.

"The recovery of certain overpayments is now prohibited. On and after July 3, 1992, no recovery of any EUC shall be required under Section 105 if the individual would have been entitled to receive such compensation had the amendment made to the EB earnings test applied to all weeks beginning on or before July 3, 1992. Under section 102(b)(2) overpayments are required to be established; and those overpayments should be written off.".

In addition, insert "or recovery prohibited" after "or is waived under paragraph (2) of this Section" in paragraph M.w.b.(4) and "or prohibited" after "is waived" in paragraph M.2.b.(9).

w. After Section III.M.2., entitled "*Recovery of Overpayments.*", insert a new Section III.M.3., which reads as follows:

"3. *P L 102–318—Prohibition on Recovery of Certain Overpayments.*

"Sections 102(b)(2)(A) and 202(a)(2)(B) of Pub. L. 102–318 prohibit the enforcement of recovery of certain non-fraudulent overpayments. State are reminded that these sections only apply to outstanding balances of non-fraudulent overpayments as of July 3, 1992. See Sections I.H.1.a. and I.H.3.c..".

x. In Section III.N., entitled "*Payment to States.*", add a new heading after the second paragraph:

"1. *Determination and Billing Requirements for CWC Claims Before July 1, 1992.*".

After the fourth paragraph, add a new heading:

"2. *Determination and Billing Requirements for CWC Claims On or After July 1, 1992.*"

and add the following paragraph:

"Effective after June 30, 1992, the paying State will not bill the transferring State for its full pro rata share for all EUC paid on CWC claims, including UCFE and UCX. Instead, the paying State will bill the Federal Government for sufficient monies to cover its pro rata share and that of the transferring State. See the revised fiscal reporting instructions provided in Attachment B to this GAL."

7. *Attachment B—Changes to Fiscal Instructions*

a. In Section 1.a., entitled "*EUC (Benefits).*", delete the last paragraph which begins "Under the interstate arrangement for combining employment and wages (CWC), . . ." and add the following new paragraphs:

"Funds to pay EUC benefits authorized by Public Law 102–164, as amended by Public Law 102–182 and Public Law 102–244, except for benefits for employees of non-profit and governmental entities, are paid from Federal unemployment trust funds in EUCA. Funds for benefits for employees of non-profit and governmental entities, and the new EUC benefits authorized by Public Law 102–318 will be appropriated from general revenue funds in the U.S. Treasury and transferred to EUCA.

"From a State perspective, although the source of funds differs, all EUC benefit funds are withdrawn from EUCA and State drawdown procedures from EUCA are not impacted (except for funds for benefits paid under the interstate arrangement for combining employment and wages (CWC) as addressed below). However, beginning with the July reporting period, States will be required to identify separately on the ETA 2112 EUC payments for weeks of unemployment attributable to initial claims filed on or before July 4, 1992, and for weeks of unemployment attributable to initial claims filed after July 4, 1992 so that the appropriate general revenue reimbursement to EUCA can be estimated and requested. (See Attachment C, Reporting Instructions.)

"Under the CWC, a State should include in EUC drawdowns 100 percent of the amount it expects to disburse to claimants (as a paying State) and the amount necessary to reimburse other States (as a transferring State) for benefits paid through June 30, 1992. (Only the paying State will drawdown for CWC EUC benefits paid after June 30, 1992.) All future requisitions must be adjusted for reimbursement received from other states under the CWC program".

b. In Section 1.b., entitled "*EUC Administrative Funds.*", delete the second and third paragraphs and insert the following paragraphs in their place:

"Funds to pay UI administrative costs related to the processing of EUC workloads resulting from Public Law 102–164 as amended by Public Law 102–182 and Public Law 102–241 are

provided through the FY 1992 Labor/HHS Appropriations Act using the new contingency reserve language which made available additional funds automatically based on a formula tied to the Average Weeks of Insured Unemployment (AWIU) level. Funds to pay UI EUC administrative costs resulting from Public Law 102–318 are provided through general revenue funds in the U.S. Treasury and appropriated to the Employment Security Administration Account (ESAA) in the Unemployment Trust Fund.

"The amount of funds to be transferred from general revenues to the ESAA account will be estimated by the Employment and Training Administration. Thus, even though the funding sources are different, the process is designed to make it transparent to the States. No separate or different reporting or accounting for administrative workload costs associated with this legislation will be required.

"The procedures for handling all above-base workload, including that generated by this new legislation, are the same from the States' perspective; administrative costs associated with EUC claims will be paid out of contingency associated with EUC claims will be paid out of contingency through the regular process. States may request increases in their contingency advances for the 4th quarter, based on the impact of this legislation.

"Since both the contingency reserve fund and the "such sums" language in Public Law 102–318 provide for the availability of the necessary funds without going through the Congressional appropriations process, adequate and timely administrative funding is assured, regardless of the workload level."

In addition, in paragraph 4, add "and Pub. L. 102–318" after "Pub. L. 102–244".

c. In Section 2.c., entitled "*Accounting for EUC Payments (Benefits).*", replace existing subparagraph (1) with the following:

"(1) EUC advances to the States' UTF accounts, amounts received as reimbursement from other States for EUC–CWC payments made prior to July 1, 1992, and disbursements for EUC benefit payments will be reported on the monthly ETA 2112. Do not use a separate form for this report. (See Attachment C, Reporting Instructions.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with UIS records; balances are subject to constant congressional and public inquiries.".

8. *Attachment C—Changes to Reporting Instructions*

a. In Section 1., entitled "*General.*", insert "Except for the ETA 2112," at the beginning of the third sentence of paragraph 1.

b. In Section 2.c., entitled "*ETA 227.*", insert at the end thereof, the following sentence: "Overpayments for which recovery is prohibited by Section 102(b)(2) or Section 202(a)(2)(B) of P.L. 102–318 should be reflected as write-offs on line 205.".

c. Section 2.f., entitled "*ETA 2112.*", is amended to read as follows:

"Do not use a separate form for this report. Amounts received as advances for EUC should be reported on line 22 in columns C and E. Amounts received as reimbursement from other States for EUC–CWC payments made prior to July 1, 1992 should be included on either line 24 or 25 in columns C and F with an explanation under "Comments".

"Total disbursements for EUC payments are to be included on line 39 in columns C and F with explanations under "Comments" as follows:

"1. *Disbursements* For weeks of unemployment attributable to initial claims filed on or before July 4, 1992.

"Amounts included on line 39 are to be broken out by four categories and shown in the "Comments" section. For example: "EUC weeks attributable to initial claims filed on or before 7/4/92, line 39: Regular=$1,473, UCFE=$452, UCX=$389, Other=$122.

"2. *Disbursements* for weeks of unemployment attributable to initial claims filed after July 4, 1992.

"Because of the common funding source for all weeks of unemployment attributable to initial claims filed after July 4, 1992, regardless of program category, a breakout by program for such weeks is not required. Amounts included on line 39 should be noted in the "Comments" section. For example: "EUC weeks attributable to initial claims filed after 7/4/92, line 39=$1,000,000."

"Note: Residual activity from previous Federal emergency programs must continue to be reported on line 39 and, therefore, must also be noted in the "Comments" section. Because of limited space in the comments section of the ETA 2112, clear abbreviations may be used. For example: Ln.39–EUC on/before 7/4/92: Reg=$1,473, FE=$452, X=$389, Other=$122; Ln.39–EUC after 7/4/92: $1,000,000; Ln.39–FSC: $107.".

9. *Redeterminations.* The authority to issue redeterminations to EUC claimants covered under sections 101(b), 104, and 202(a)(2)(A) of P. L. 102–318 is contained in Federal law and the operating instructions contained in this GAL, and any supplemental operating instructions issued by this Department, rather than applicable provisions of State law. this means that State law redetermination time limitation provisions are not applicable to the redetermination of EUC claims to implement the above sections of Pub. L. 102–318 contained in this section of this directive.

Redeterminations of EUC claims will continue to be made in the established manner, applying State law on procedural matters (except where inconsistent with the provisions of Federal law, applicable regulations at 20 CFR part 615, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the regulations at 20 CFR part 615 and operating instructions issued by this Department.

For these purposes, the State UI law includes judicial decisions of the courts of the State in comparable UI cases as well as State statutory provisions, and thus is the same as the "State law" which is relevant for conformity and compliance purposes under Title III of the Social Security Act and the Federal Unemployment Tax Act. However, the authority to issue redeterminations applying the provisions of the above sections of Pub. L. 102–318 contained in this directive derives from the Federal law rather than State law. No departure from these rules shall be undertaken in any circumstances without prior approval of the Department of Labor.

10. *Action Required.* States are required to implement the Unemployment Compensation Amendments of 1992 (Pub. L. 102–318) in accordance with the operating instructions contained in this GAL. States are required to:

a. Inform all appropriate staff of the requirements of this GAL.

b. Take appropriate actions to implement the operating instructions contained in this directive for all EUC claims, including claims for week beginning on June 14, 1992, and thereafter.

c. As of July 3, 1992, cease all Section 105 actions to enforce recovery of outstanding balances of overpayments which are subject to prohibitions in Sections 102(b)(2)(A) and 202(a)(2)(B) of Pub. L. 102–318.

d. Take appropriate actions to identify and inform EUC claimants of the provisions of Pub. L. 102–318 that will result in the redeterminations of certain categories of EUC claims. It is important that all claimants subject to the statutory prohibition against the use of

Section 105 actions to enforce recovery of certain overpayment balances (Sections 102(b)(2)(A) and 202(a)(2)(B) of Pub. L. 102–318), be promptly and fully informed of the appropriate statutory prohibition in order to avoid repayment of outstanding overpayments that the State cannot legally enforce after July 3, 1992.

e. Announce in a newspaper of general circulation and appropriate media and the effective dates of Sections 101(b), 104, and 202(a)(2)(A), of Pub. L. 102–318 which will result in the redeterminations of EUC claims to applicable claimants. The announcements shall include the effect that these provisions have on previously determined EUC claims, including changes made to benefit levels because of the amendments made to Section 102 of the EUC Act. It is important that the newspaper and media announcements include information that State law redetermination time limitation provisions are not applicable to EUC claims redeterminations involving claimants affected by the Sections of Pub. L. 102–318 mentioned in this paragraph.

f. Take appropriate actions to redetermine the EUC claims of claimants covered under the sections of Pub. L. 102–318 mentioned in paragraph e. above.

g. Take appropriate action to review the three specified earnings test methods and select one or more for EUC eligibility purposes. Inform the Regional Office, within 30 days after receipt of this directive, of the State's election.

11. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 92–19048 Filed 8–10–92; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 15, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the first calendar quarter of 1992. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

Three abnormal occurrences involving medical therapy misadministrations at NRC-licensed facilities are discussed in this report. There were no abnormal occurrences at a nuclear power plant, and none were reported by NRC's Agreement States. The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 15, No. 1 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD, this 5th day of August 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–19050 Filed 8–10–92; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL SPACE COUNCIL

Meeting of the Space Industrial Base Capability Review Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting.

SUMMARY: The Space Industrial Base Capability Review Task Group of the Vice President's Space Policy Advisory Board will meet August 26 and 27, 1992.

DATES: August 26 and 27, 1992.

ADDRESSES: 2350 East El Segundo Boulevard, El Segundo, California.

FOR FURTHER INFORMATION CONTACT: Eva Czajkowski, (703) 685–3568, Joe Scifers, or Courtney Stadd, National Space Council, Executive Office of the President, Washington, DC (202) 395–6175.

SUPPLEMENTARY INFORMATION: The Space Industrial Base Capability Review Task Group of the Vice President's Space Policy Advisory Board will meet between 8:00 AM and 5:00 PM on August 26 and 27, 1992, at the Aerospace Corporation, Building A1, 2350 East El Segundo Boulevard, EL Segundo, California. Persons interested in attending should contact Eva Czajkowski, ANSER, (703) 685–3568.

Joe Scifers,

Committee Action Officer.

[FR Doc. 92–19089 Filed 8–10–92; 8:45 am]

BILLING CODE 3128-01-M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Notice of Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the National Commission on America's Urban Families will hold site visits in Atlanta, Georgia, on Monday August 24, 1992. For exact time and locations, please contact the Commission two days prior to the event at 202–690–6462.

The purpose of the visits is to gather information about programs and approaches that work to strengthen families.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW. room 305–F, Washington, DC 20201.

Anna Kondratas,

Exective Director.

[FR Doc. 92–19151 Filed 8–10–92; 8:45 am]

BILLING CODE 4150-04-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee's Certification.

(2) *Form(s) submitted:* G–346.

(3) *OMB Number:* 3220–0140.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 18,000.

(9) *Total annual responses:* 18,000.

(10) *Average time per response:* .08333 hours.

(11) *Total annual reporting hours:* 1,500.

(12) *Collection description:* Under section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains from the employee information about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–19041 Filed 8–10–92; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Self-Employment Questionnaire.

(2) *Form(s) submitted:* AA–4.

(3) *OMB Number:* 3220–0138.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 450.

(9) *Total annual responses:* 450.

(10) *Average time per response:* .3467 hours.

(11) *Total annual reporting hours:* 156.

(12) *Collection description:* Section 2 of the Railroad Retirement Act provides for payment of annuities to qualified employees and their spouses. Work for a railroad, work for "Last pre-retirement non-railroad employer" (LPE), and work in self-employment affect payment in different ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–19047 Filed 8–10–92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30986; File No. SR–DTC–92–01]

July 31, 1992.

Self-Regulatory Organizations; The Depository Trust Company; Order Approving DTC's Proposed Rule Change Relating to Implementation of Commercial Paper Program

On February 10, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will make permanent DTC's current commercial paper ("CP") program in its Same-Day Funds Settlement ("SDFS") service. Notice of the proposal was published in the **Federal Register** on March 4, 1992.[2] Eight comment letters were received.[3] In response to these comments, DTC filed Amendment No. 1 to the proposed rule change, which was published in the **Federal Register** on July 9, 1992.[4] One comment letter to Amendment No. 1 was received.[5] As discussed below, the Commission is approving DTC's proposal.

I. Description

DTC is proposing to make permanent SDFS processing for eligible CP issuances. As more fully described below, DTC's SDFS CP program will be substantially similar to the system that was approved temporarily in October, 1990.[6]

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[1] 15 U.S.C. Sec. 78s(b)(1).

[2] Securities Exchange Act Release No. 30410 (February 25, 1992), 57 FR 7826.

[3] *See* letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 13, 1992); letter from C. Amos Mitchim, Director—Cash Management, BellSouth Corporation, to Jonathan G. Katz, Secretary, Commission (March 17, 1992); letter from R.L. Walton, Assistant Treasurer, Unocal Corporation, to Jonathan G. Katz, Secretary, Commission (March 19, 1992); letter from Kathleen M. Gibson, Attorney, Bell Atlantic Network Services, Inc., to Jonathan G. Katz, Secretary, Commission (March 20, 1992); letter from C. Amos Mitchim, Director—Cash Management, BellSouth Corporation, to Jonathan G. Katz, Secretary, Commission (March 24, 1992); letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 25, 1992); letter from Ronald M. Thalmeier, Vice President, The First National Bank of Chicago, to Jonathan G. Katz, Secretary, Commission (March 25, 1992); letter from George Brakatselos, Vice President, Public Securities Association, to Jonathan G. Katz, Secretary, Commission (March 25, 1992).

[4] Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30518.

[5] Letter from Roger W. Heinz, Chair, Governmental Relations Committee, Treasury Management Association, to Jonathan G. Katz, Secretary, Commission (July 24, 1992).

[6] See Securities Exchange Act Release No. 28518 (October 5, 1990), 55 FR 42114 (Order temporarily approving the SDFS CP program until April 30, 1992). See also, Securities Exchange Act Release No. 28424 (September 11, 1990), 55 FR 38428 (raising the adjustable net debit cap multiplier to 15 times the required and voluntary contributions to the SDFS portion of the Participants Fund ("SDFS fund") from 10 times the required and voluntary contributions); the adjustable net debit cap multiplier was later amended in Securities Exchange Act Release No. 29604 (August 23, 1991), 56 FR 43048, to its present formula described in the text; Securities Exchange Act Release No. 28515 (October 3, 1990), 55 FR 41401 (permitting families of accounts in the SDFS system, permitting participants to pledge securities against payment in SDFS, and capping the SDFS Fund at $400 million). This was temporarily extended until April 30, 1992, in Securities Exchange Act Release No. 30555 (April 3, 1992), 57 FR 12533. These proposed rule changes were approved temporarily until July 31, 1992 in Securities Exchange Act Release No. 30849 (April 29, 1992), 57 FR 19319.

A. Eligibility Criteria

CP eligible for the DTC program generally will be CP rated in one of the top two rating categories by two of five nationally recognized statistical rating organizations ("NRSROs").[7] If only one of these NRSROs rates an issuer's CP in one of the two top rating categories, DTC may make such issues eligible if at least one other agency gives the issuer's program an investment-grade rating.[8]

If, after CP becomes eligible, an NRSRO warns that a particular issuer's CP may be downgraded, DTC nevertheless will continue accepting new issuances of such CP. For SDFS collateral valuation purposes, however, DTC will devalue paper of that issuer in the DTC system to zero if a downgrading of one notch by the NRSRO issuing the warning would cause the CP to fall below DTC's eligibility criteria. To prevent such an action from creating liquidity concerns for its participants, DTC will devalue the CP to zero on the day after such downgrading occurs. If CP is actually downgraded below the rating for eligibility, DTC will discontinue accepting new issuances of such CP, but will allow existing CP of the issuer to remain eligible for depository services until it matures.

B. SDFS Controls

The fundamental risk in the SDFS system is that a participant will default on its payment obligation. To minimize this risk, DTC proposes to subject CP transactions to the following controls and safeguards currently incorporated into the SDFS system: (1) Net debit collateralization, (2) SDFS fund, (3) net debit caps, (4) receiver-authorized deliveries, (5) net and net-net settlement, (6) families of accounts, and (7) valued pledges. Moreover, DTC will continue to monitor its SDFS service and controls and, if necessary, will modify its SDFS service and controls and add further safeguards to minimize systemic risks associated with a CP issuer's default. These safeguards are discussed below.

1. Net Debit Collateralization. This control requires a participant to maintain in its account at all times during the processing day until settlement is completed, collateral at least equal in value to the participant's net settlement debit. The chief source of collateral is the securities received versus payment from other participants that created the net settlement debit. Additional sources are the participant's contribution to the SDFS fund and any securities in the participant's account other than those received versus payment that day that have been designated as collateral by the participant (*e.g.*, a dealer participant's inventory). In the event the collateral in the account is insufficient to permit completion of the proposed delivery or receipt, DTC will block the delivery and recycle the transaction until the participant has collateral with value sufficient to cover any net debit in its account. The value of collateral is based on current market values of the securities comprising the collateral less a "haircut" of generally 2%.[9] With respect to transactions versus payment, DTC always stands between the deliverer and designated receiver as a purchaser of the securities, to protect deliverers and establish its legal basis to pledge the collateral securities if necessary.

2. SDFS Fund. The SDFS fund is a ready source of cash or collateral for DTC to draw upon in the event of a participant default. Each participant in the SDFS system must contribute to the SDFS fund an amount equal to the greater of $250,000 or 5% of its average daily gross SDFS debits and credits during the prior month. At a minimum, $200,000 of the deposit must be in cash, and the remainder may be in certain types of liquid securities.[10] In addition to required deposits, participants may deposit more cash or securities in order to increase their SDFS collateral and adjustable net debit cap ("voluntary contributions"). DTC pays interest on required and voluntary cash deposits according to the rate it earns on overnight repurchase agreements, and passes through interest received on deposited securities. In October, 1990, the Commission approved, on a temporary basis, a proposal by DTC to cap the SDFS fund at $400 million. Under this proposal, the level of a participant's required contribution to the SDFS fund may fall below the 5% level described above in the event the dollar amount of the gross daily activity in the SDFS system exceeds $8 billion.[11]

In addition to providing liquidity, the SDFS fund also "self-insures" risks in the SDFS system, but only to the extent of participants' required deposits. In the event of participant default in which DTC suffers a loss, DTC may allocate the loss among certain participants by assessing the SDFS fund on a pro-rata basis. Participants' required deposits can be used repetitively for this purpose, and they must replace their required deposit to cover the loss and restore the fund.[12]

3. Net Debit Caps. In order to protect against the potential risk of participant default, DTC will establish a "net debit cap" for each participant. DTC will set each participant's net debit cap at the lesser of:

(1) An adjustable fund-based cap that is:

- Calculated as a multiple of the participant's required and voluntary contributions to the SDFS fund;[13] and

(2) A fixed credit-based cap that itself is the lesser of:

- 75% of DTC's liquidity resources, including lines of credit with potential lenders;
- An amount, if any, determined by the participant's settling bank; and
- An amount, if any, determined by DTC.

The adjustable fund-based cap protects against abnormal intra-day net debit peaks that are out of line with a participant's prior month's average daily activity level, the basis for the participant's required deposit to the

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[7] The term "nationally recognized statistical rating organization" is used in the Commission's uniform net capital rule [17 CFR 240.15c3-1(c)(2)(vi)(E), (F), and (H) (1990)]. The Commission's Division of Market Regulation ("Division") responds to requests for NRSRO designation through no-action letters. Currently, the Division has designated five NRSROs: Standard and Poor's Corp. ("S&P"); Moody's Investors Service Inc. ("Moodys"); Fitch Investor Services, Inc.; Duff and Phelps, Inc.; and, with respect to debt issued by banks, bank holding companies, United Kingdom building societies, broker-dealers, broker-dealers' parent companies, and bank-supported debt, IBCA Limited and its affiliate, IBCA Inc.

[8] For example, S&P's and Moodys' investment grade ratings for CP range from A-1 to A-3 and from P-1 to P-3, respectively.

[9] DTC will determine the fair market value of the CP being processed through the SDFS system on a daily basis by monitoring the interest rates at which CP is being issued on a particular day.

[10] Under DTC's rules, a participant's contribution to the participants fund may be satisfied by depositing unmatured debt obligations of the United States or instrumentalities of the United States, municipal general obligation bonds that are rated in the top two rating categories by an NRSRO, or non-convertible corporate debt rated in the highest category by an NRSRO. However, the first $200,000 of such deposits must be made in the form of cash. See DTC Rule 4.

[11] For a more detailed explanation of this proposal and its potential effect on DTC and its participants, see Securities Exchange Act Release No. 28515 (October 3, 1990), 55 FR 41401. That order was reaffirmed and extended until April 30, 1992, in Securities Exchange Act Release No. 28515 (April 3, 1992), 57 FR 12533 and again until July 31, 1992, in Securities Exchange Act Release No. 30649 (April 29, 1992), 57 FR 19319.

[12] Participants may limit their liability by withdrawing from DTC, provided they do so within the time frames and in the manner specified by DTC's rules and procedures. Participants who exercise their right to withdraw from DTC can limit their liability for pro-rata assessments to twice the amount of their required contributions to the SDFS fund.

[13] *See* Securities Exchange Act Release No. 29604 (August 23, 1991), 56 FR 43048.

SDFS fund. An underwriter's distribution of an unusually large new securities issue is a typical cause of such peaks. Participants whose net debits approach or reach their caps during the processing day can lower their net debits and thus stay under their caps by wiring fed funds to DTC. Alternatively, they can raise their adjustable caps as appropriate by making voluntary deposits to the SDFS fund.

The first element of the fixed credit-based cap reduces the possibility that failures to settle by more than one participant would cause DTC to exceed its lines of credit. That element presently equals 75% of (a) a $150 million line of credit with Bankers Trust Company (as yet unused), (b) a $50 million internal line of credit against DTC's unclaimed dividend and interest account, and (c) $220 million cash deposits to the SDFS fund. Thus the "liquidity cushion" between the fixed cap ($315 million) and DTC's liquidity resources ($420 million) is presently $105 million. For any individual participant, this liquidity cushion is in addition to the cushion between its actual net debit and the fixed cap.[14]

4. Receiver-Authorized Deliveries. The receiver-authorized delivery ("RAD") control permits each SDFS participant to control transfers of securities and funds to its account. Under RAD, a participant may set a dollar limit on securities deliveries and payment orders which are directed to its account by any other participant. If the delivery or payment order exceeds this limit, DTC will not post the debit or credit to the participant's account until the participant approves the delivery or payment order. A participant can set a different dollar level for each other participant, thus establishing a bilateral credit limit within SDFS. Thus, the RAD control enables the participant to exercise its own credit judgment of each other participant. It also reduces the need for the participant to reclaim (return) erroneous transactions to originators after they are posted to its account. This, in turn, reduces the incidence and financial impact of reclamations attempted by the participant.

5. Net and Net-Net Settlement. The SDFS system provides three levels of debit reduction in the course of daily money settlement. On the first level, a participant's gross settlement debits due to its "receive versus payment" obligations from other participants are reduced by its gross settlement credits due to its "delivery versus payment" obligations to other participants. The resulting net settlement debit is that of the participant as a counterparty. On the second level, the participant's counterparty net settlement debit is reduced due to transactions not involving any other participant. These transactions serve as settlement progress payments made by the participant itself and, to a much lesser, sporadic extent, securities principal payments made to it by issuers' redemption agents.[15] The resulting final net debit is the participant's settlement obligation to DTC, and is the net debit DTC would have to deal with should the participant fail to settle.

On the third level, the participant's final net settlement debit is merged with the final net settlement debits or credits of other participants who use the same settling bank for end of day settlement with DTC. The resulting final net-net settlement debit is the settling bank's obligation to DTC at end of day. It is the net-net debit DTC would have to deal with should the settling bank fail to settle on time.[16]

6. Family of Accounts. DTC's SDFS service permits participants with multiple SDFS accounts to organize such accounts into one or more families of accounts. Under this service, those participants that organize their accounts into a family of accounts are permitted to aggregate the collateral and net debit caps relating to each of such accounts.[17] This, in turn, may reduce the possibility that a participant's transactions may be blocked for reasons unrelated to the risk exposure associated with such transactions.

7. Valued Pledges. DTC's SDFS service permits participants to effect a pledge versus payment transaction through SDFS. Prior to implementation of this option, DTC participants effecting pledge transactions in the SDFS system could not deliver securities for pledge against payment at DTC. Instead, the funds associated with the pledge had to be paid ex-DTC or as a distinct payment order transaction at DTC.

C. Special CP Modifications

DTC will continue its modification of its standard SDFS controls by prohibiting participants from transferring a CP "received-versus-payment" transaction that day in a free-of-payment transaction unless the participant either has paid its net settlement debit or is in a net credit position that day. This restriction assures DTC that a participant's CP received versus payment transactions remain available to be resold or pledged to deliverers until the participant settles with DTC. Although CP trades normally range in size from $5 million to $50 million, CP trades often can range up to $100 million to $200 million. To reduce the chance of CP transactions being blocked and recycled, DTC will limit the maximum size of valued CP deliveries, pledges and releases in the SDFS system to $50 million, the limit on government securities deliveries in the Federal Reserve's book-entry system.[18] If a participant inadvertently enters a valued transaction with a face value of more than $50 million, DTC will reject it.

D. Redemption Processing

DTC will process CP redemptions in the following manner. The night before the date CP matures, DTC will sweep maturing CP from participants' accounts and will initiate book-entry deliveries of matured CP for payment from the accounts of participants holding the CP at the close of business on the day before maturity date to the accounts of participants acting as paying agents for that issue.[19] DTC will sweep matured CP whether or not it is pledged or segregated, but will hold in escrow the maturity proceeds collected on pledged CP until its release from that status.

A maturity presentment will not be posted to a participant's account if the PA bank's collateral monitor or net debit

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[14] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judy Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[15] These intraday deliveries serve to reduce participants' debits to keep each participant's debit levels below its individual net debit cap. In doing so, they also reduce the probability of systemic gridlock and reduce participant, end of day net debits owed to DTC.

[16] The daily average results for 1991 were as follows: (1) all participants' counterparty net settlement debits were $3.453 million, or 12.4% of all participants' gross settlement debits of $27.822 million;(2) all participants' final net settlement debits were $1.236 million, or 4.5% of all participants' gross settlement debits; and (3) all settling banks' final net-net settlement debits were $260 million, or less than 1% of all participants' gross settlement debits.

[17] A DTC participant that maintains a family of accounts is liable to DTC as a principal for activity in each of those accounts. DTC will not permit a transaction to proceed if the participant's available collateral in the entire family of accounts is insufficient to offset the resulting debits, on an aggregate basis, in the family of accounts.

[18] *See* Board of Governors of the Federal Reserve System, Interim Policy Statement Regarding Risks on Large-Dollar Wire Transfer Systems, 52 FR 29255 at 29261 (August 6, 1987). DTC chose this limit to mirror the Federal Reserve's book-entry system limitation, although they were not bound to it. Any future change in this $50 million limit, however, would require Commission and Federal Reserve Board approval.

[19] Under DTC's proposal, an issuer must designate one DTC participant as its paying agent ("Paying Agent" or "PA") to whom CP will be presented at maturity.

cap does not allow it to be posted. The RAD procedure, however, will not be available to PAs in connection with maturity presentment processing. If a PA bank's collateral monitor or net debit cap prevents a maturity presentment from being posted, the maturity presentment will pend in the SDFS system in accordance with the standard SDFS procedures and as discussed below.

DTC will recycle maturity presentments until approximately five minutes after the cutoff time for approval of deliveries under RAD procedures. Maturity presentments not posted to participant accounts by the recycle cutoff time will be dropped from the SDFS system and reported to the affected participants. DTC will not clear matured CP from its records at the end of the processing day if it is still in presenting participants' accounts. Instead, DTC automatically will initiate valued maturity presentments of the matured CP the next day to the PA bank's account.

If a PA bank determines to refuse payment on maturity presentments because of an issuer default, the PA must notify DTC before 3 p.m. (Eastern Time), the traditional deadline for such decisions, and DTC will inform its participants through a PTS broadcast message. In this case, or if DTC confirms an issuer's bankruptcy before 3 p.m., DTC will recredit the maturity presentments to presenting participants' accounts, thus offsetting settlement credits in those accounts without regard to SDFS controls. In the event of an issuer default or bankruptcy after 3 p.m., DTC will look to the PA, as principal, to satisfy the issuer's payment obligation. In the event the PA fails to satisfy its payment obligations, including the payment of the defaulting CP issuer's maturity presentments, DTC will deem the PA participant to be in default, and DTC will follow special default procedures.[20] Assuming the PA pays DTC for the matured CP, the PA would be required to claim against the issuer who defaulted.

Consistent with DTC's proposed cap on the dollar value of any single delivery, when initiating maturity presentments, DTC will break down a participant's maturing position with a face value of more than $50 million into multiple maturity presentments with $50 million face values and a maturity presentment for any remaining face value.[21] DTC will allot each maturity presentment's settlement value in the same proportion that each maturity presentment's face value bears to the total face value.

E. Participant Default Procedures

Under its rules, DTC will not transfer securities free or for payment if the deliverer's and receiver's collateral monitor level, as a result of the transfer, would result in a negative number and if such transfer exceeded their net debit caps.[22] If the transaction occurs after DTC's cut-off time (*i.e.*, after 4:40 p.m.) the counterparty must be the deliverer's or receiver's settling bank.[23]

Even if a transaction for value meets all of these requirements, it will not be deemed to be final under DTC's rules until: (a) DTC determines that the receiver has a credit balance at the end of the day; (b) the receiver pays its negative settlement balance; or (c) the receiver transfers, withdraws or pledges the securities and all of the other tests described above are satisfied. Until a transaction is final, DTC retains intraday title to securities in transfer.

In general, if a DTC participant fails to pay its net settlement debit at the end of the day,[24] DTC will attempt to manage the default to reduce the potential for a cascade of other participant defaults. Among other things, DTC will attempt to cover or finance the amount of the default on the day of the default and, the next day, allocate any losses that may result if the default has not been cured. More specifically, DTC may: (a) pledge any or all net additions (*i.e.*, SDFS securities subject to incomplete transactions and SDFS securities finally credited to a participant to the extent they do not comprise its minimum amount)[25] to non-defaulting participants (up to the amount of their credit balances) or a bank to secure a loan to DTC or (b) resell any of the defaulting participant's net additions that are subject to incomplete transactions to the deliverer, to the public, or to DTC.

Even though a defaulting participant may have converted an incomplete transaction into a complete transaction by redelivering the securities, DTC may take other securities from the defaulting participant equivalent to the securities so coverted ("deemed net additions") that are subject to incomplete transactions and resell them to the deliverer.[26] In that case, DTC will increase the defaulting participant's gross debit balance by the greater of (a) the settlement value of the resale; or (b) 100% of the fair market value of such securities. After this action, DTC may buy-in the redelivered securities and charge any loss or pass through any gain to the defaulting participant.[27]

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[20] *See* note 27, *infra*.

[21] This $50 million limit on maturity presentments was intended initially to equal the Fedwire limit of $50 million for any single Fedwire transfer. There is no Federal Reserve Bank of New York requirement, however, that DTC limit maturity presentments to $50 million. *See* note 18, *supra*.

[22] See DTC Rule 10.

[23] This allows participants to raise funds by pledging securities to their settling bank.

[24] A participant fails to settle its net debit when DTC receives a refusal message from the participant's settling bank or when the settling bank fails to settle its net-net debit on time.

[25] A participant's minimum amount with respect to any issue of securities is equal to such amount as DTC may determine, or as the participant may inform DTC, constitutes customer securities. See DTC Rule 9.

[26] DTC may not take any securities in the opening daily balance in the account except for those securities the participant has designated as available for collateral. DTC also may not take any securities in the segregated account.

[27] More specifically, in the event of participant default, DTC will take the following steps in order to achieve settlement: (1) Use the participant's cash deposit to the SDFS fund, (2) use all participant's cash deposits to the SDFS fund, (3) use mandatory and voluntary securities deposits to the SDFS fund and pledge them to a line of credit bank, (4) use SDFS securities collateral in the defaulting participant's account (other than securities that are the subject of incomplete deliveries to the account that day which might be resold to deliverer the next day) and pledge it to a line of credit bank (DTC will not use securities in the participant's segregated account or minimum account), and (5) finally, DTC will use SDFS securities that are the subject of incomplete deliveries to the defaulting participant's account which might be resold to deliverers the next day and pledge them to a line of credit bank.

If DTC's line of credit is not adequate to cover the default or if DTC knows the defaulting participant is insolvent, DTC will make net credit reductions for participants who initiated SDFS securities deliveries to the defaulting participant that day. DTC will limit the reduction to the amount of the net credit due to transactions with the defaulting participant.

As an alternative to net credit reductions, DTC will resell to deliverers SDFS securities that are the subject of incomplete deliveries to the defaulting participant, charge the deliveries' settlement accounts, and credit the defaulting participant's settlement account. DTC will resell on a last-in, first-out ("LIFO") basis incomplete-delivery securities where all of the securities remain in the defaulting participant's account. Then, as necessary, DTC will resell incomplete-delivery securities where only a portion of the securities remain in the defaulting participant's account in a sequence based on the percentage of securities remaining and their market value.

If the resales would occur late in the day, DTC will attempt not to disrupt the SDFS settlement process by reselling securities that would transform participants' net credits into net debits, or by reselling securities to participants already in net debit positions. Instead, DTC may borrow from participants who initiated deliveries to the account of the defaulting participant that day. Such borrowing will be secured by the pledge of the securities previously delivered to the defaulting participant. DTC will take this step only after determining in accordance with the sell sequence described in the preceding paragraph that it will resell the securities or return payment orders to deliverers the next day if the participant has not cured its default.

If the defaulting participant is solvent and wires Fed funds to DTC by 10 a.m. the next business day, DTC will repay the loan from the line of credit bank, obtain the release of any pledged SDFS securities that were pledged to the bank, restore the SDFS fund, and deliver the pledged SDPS securities to the defaulting participant. DTC will charge interest to the defaulting participant and pay the interest to the SDFS fund (since participants earn interest on their cash deposits to the SDFS fund) and, if applicable, to the line of credit bank. If emergency net credit reductions were necessary on the day of defualt, DTC will credit the SDFS accounts of participants whose net credits were reduced the prior day and will pay interest to those participants whose net credits were reduced the prior day.

If the defaulting participant does not wire Fed funds to DTC by 10:00 a.m. or is insolvent, DTC will allocate any losses resulting from the default to those participants who delivered securities to the defaulting participant. DTC will effect this loss allocation by reselling to deliverers SDFS securities which are the subject of incomplete deliveries to the defaulting participant's account (to the extent DTC did not effect such resales in the prior afternoon), and will charge the deliverers' settlement accounts and credit the defaulting participant's settlement account accordingly. If necessary, DTC may pledge securities to its line of credit banks to fund the default pending settlement of liquidation transactions in the defaulting participant's account.

F. Issuer Notification Upon Failure of Issuer Paying Agent

Under SDFS failure-to-settle procedures, if on the business day following the failure of an SDFS participant to settle its net debit obligation to DTC, the participant is still unable to settle, DTC could eliminate the new debit by reselling to the deliverers securities whose receipt for value by the failing participant had resulted in its net settlement obligation to DTC. If the failing participant were a PA of a CP issuer, it is possible that under DTC's SDFS procedures, matured CP could be resold to the DTC participants that had presented (*i.e.*, delivered) it to the failing PA for payment the previous day and who would presumably present the CP to the issuer for payment. To help minimize the risk of the need for double payment by a CP issuer, Amendment No. 1 to the proposed rule filing [28] established the following procedures:

1. DTC will notify CP issuers if their PA has failed to settle, as follows:

a. If by not later that 12:00 noon (all times are Eastern Time) on the DTC business day following the settlement day for which a PA has failed to settle, the PA has not yet settled with DTC, DTC will begin to contact each issuer of DTC-eligible CP identified on DTC's files with that PA via facsimile transmission.[29]

b. The facsimile transmission notice will advise the issuer that its PA has failed to settle and invite any issuer desiring information concerning the impact of the failure-to-settle on the presentment of its matured paper to contact DTC at special telephone number(s) beginning at 4 p.m. that day.

c. Beginning at 4 p.m., DTC will respond to telephone inquiries from each issuer contacted earlier, with information on the aggregate dollar amount of maturity presentments of its CP for which the PA failed to pay DTC.[30] DTC will arrange also to send to issuers (via facsimile, mail, or physical pick up at DTC) detailed information on each CP maturity transaction not settled, including the identity of the DTC participant to which the matured CP was resold.

2. DTC will establish and maintain a complete file of contact information for CP issuers. To do so, DTC will require each PA to povide DTC with the following information concerning each CP issuer for which it acts, at the time the issuer's CP program is sought to be made DTC-eligible:

a. The name and telephone number *and* facsimile transmission number of a senior official in the treasurer's office of the issuer and,

b. A backup contact name and telephone number.[31] Periodically, the PA will be asked to confirm the accuracy of information previously provided.

G. Concurrent Issuer and Participant Default

The particular risk to DTC in processing CP is an issuer's default combined with a participant's failure to settle deliveries for payment of that issuer's CP. In this event, DTC will modify the sequence in which it allocates collateral and reduces net settlement debits in a defaulting participant's account. As described above, in the event of a participant default, DTC will resell securities and return payment orders to deliverers on a LIFO basis. In the event of an issuer default on the same day, DTC will resell and sell out securities other than a defaulting issuer's CP before reselling the defaulting issuer's CP or returning payment orders. This sequence attempts to reduce the possibility of multiple failures to settle after an issuer's default by returning to participants marketable collateral to the maximum extent possible.

Second, in the event of an issuer's default before 3:00 p.m. DTC will automatically recredit devalued maturity presentment CP to the presenter and new issuance CP to the issuing agent, and participants will then settle this matter outside DTC. DTC will not automatically recredit devalued secondary market CP to the delivering participant.

In the event of an issuer's default after 3 p.m., DTC will not automatically recredit devalued maturity presentment CP, new issuance CP or secondary market CP, but will expect the PA to pay DTC amounts due on the presented CP, even though the issuer has defaulted. If the PA fails to settle its payment obligation, DTC will apply its default procedures, as modified to limit the potential for other participant defaults. DTC will simulate application of the default procedures it will use the next day in the event the default is not cured. DTC will determine from this simulation whether it will be able to eliminate completely the participant's net debit the following morning by reselling to deliverers and selling out securities other than the defaulting issuer's CP, or whether it will have to resell some or all of the defaulting issuer's CP return payment orders as well.

For the portion of the participant's net debit that DTC would be able to eliminate the next day by reselling to

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[28] Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30516.

[29] DTC will notify promptly CP issuers affected by a PA failure in situations where DTC has actual knowledge that the PA's failure to settle is caused by that PA's insolvency rather than due to an operational or communications problem as generally is the case. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (July 29, 1992).

[30] DTC will review its ability to respond to issuer questions prior to four hours after issuers have been notified on the PA's failure to settle with DTC. In particular, DTC will review its ability to respond to issuer inquiries in situations where the PA's failure to settle is due to the insolvency of that PA. *Id.*

[31] DTC will also keep on file a second telephone and fax number, most likely the home telephone and fax numbers, of each such senior official, to be used in situations where the senior official cannot be reached at the office. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (July 29, 1992).

deliverers and selling out securities other than the defaulting issuer's CP, DTC will borrow overnight against its credit lines, secured by the pledge of those securities. If some net debit remains that DTC would be able to eliminate only by reselling the defaulting issuer's CP and returning payment orders to deliverers, DTC will borrow overnight from the deliverers, with such loans collateralized by the pledge of the defaulting issuer's CP.

If the defaulting participant settles the following morning, DTC will repay the delivering participants. If the defaulting participant cannot cure the default, DTC will allocate any loss incurred by reselling the defaulting issuer's securities to the delivering participants.

H. Phased Implementation and Disaster Recovery Capabilities

DTC's proposal recognizes that DTC cannot, at this time, assure participants that DTC's CP processing services will be available in spite of a disaster affecting DTC's primary processing site. Accordingly, the proposal would limit eligible CP to prevent participants from relying on DTC for CP services to the exclusion of existing CP clearance and settlement procedures. In this manner, existing CP clearance and settlement procedures will serve as a primary back-up to DTC facilities in the event a disaster disables those facilities.

DTC's capabilities to recover from a disaster such as a fire or flood disabling its computer center are thorough and frequently tested.[32] They involve switching external and internal communication lines for all DTC systems from its New York City location to a back-up facility in Philadelphia. DTC believes any catastrophe disabling its computer center should be transparent to its participants after an 18 to 24 hour recovery period required to move data files to Philadelphia.[33]

DTC has been developing the means to reduce the recovery period for the SDFS system to three hours or less by the fourth quarter of 1992. It currently is building a back-up data center, which DTC expects to become fully operational during the fourth quarter of 1992, at a site in New York City different from the current location of its operations center. Until this disaster recovery site is fully operational, DTC will operate its CP program to encourage PAs to retain the ability to make physical delivery of CP if necessary.

Until implementation of DTC's same-day disaster recovery facility, DTC and its participants will use interim recovery procedures developed by DTC. Under these interim procedures, depending upon the time of day a disaster occurs and the volume of CP already processed in SDFS up to that time, either DTC will complete settlement for the transactions then processed in SDFS with the expectation that participants will settle any remaining business physically, or participants will settle all business that day physically.[34]

II. Written Comments Received

As stated above, the Commission received eight comment letters responding to DTC's initial version of the proposed rule change and one response to DTC's Amendment No. 1. Two letters supported permanent approval of the CP program, generally noting positive results since it was first implemented.[35] The other six letters, citing the complexity of the program and the different relationship between CP issuers and trustees under the DTC system versus the physical certificate system, expressed concern that the DTC CP program could pose greater liability to CP issuers due to PA failure than the current physical certificate system. These issuers therefore requested more time to comment on DTC's proposal.[36]

The primary concern of these CP issuers is that a DTC participant, acting as PA for that issuer, could fail prior to making payments on matured CP, thus leaving the issuer responsible to make those payments, even if the issuer already has forwarded funds to the failing PA.[37] A related concern of the issuers involves finality of settlement on matured CP.[38] Because DTC will reverse payments made on settlement date on a LIFO basis,[39] the issuers believe this causes greater uncertainty about finality of settlement than the physical certificate system and therefore serves as a disincentive to participating in DTC's system.

DTC spoke with issuer representatives about these concerns.[40] As a result of these conversations, DTC amended its proposal to include issuer notification procedures to be followed in the event of a participant failure to settle.[41] As described above, these proposed procedures include, among other things, next day notification of each issuer identified on DTC's files as associated with a PA that has failed to settle.[42]

The Treasury Management Association ("TMA") responded to DTC's proposed issuer notification procedures by suggesting that DTC provide issuers with same day notice of PA failure to settle and by stating their belief that DTC's CP settlement procedures inequitably placed the risk of PA failure on the issuer.[43] In

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[32] In the event of a power blackout, DTC utilizes diesel powered generators and an uninterrupted power supply to maintain its transaction processing operations.

[33] DTC currently maintains a separate back-up facility in Philadelphia and tests the transfer of its operations from its main site to its back-up facility on a quarterly basis.

[34] For a more complete description of DTC's interim disaster recovery procedures, *see* Securities Exchange Act Release No. 28518 (October 5, 1990), 56 FR 42114. Once the One Liberty Plaza facility becomes fully operational, the time of day at which a disaster occurs will not dictate the procedures to be followed by PAs.

[35] Letter from Ronald M. Thalmeier, Vice President, The First National Bank of Chicago, to Jonathan G. Katz, Secretary, Commission (March 25, 1992); letter from George Brekateelos, Vice President, Public Securities Association, to Jonathan G. Katz, Secretary, Commission (March 25, 1992).

[36] Letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 13, 1992); letter from C. Amos Mitchim, Director-Cash Management, BellSouth Corporation, to Jonathan G. Katz, Secretary, Commission (March 17, 1992); letter from R. L. Walton, Assistant Treasurer, Unocal Corporation, to Jonathan G. Katz, Secretary, Commission (March 19, 1992); letter from Kathleen M. Gibson, Attorney, Bell Atlantic Network Services, Inc., to Jonathan G. Katz, Secretary, Commission (March 20, 1992); letter from C. Amos Mitchim, Director-Cash Management, BellSouth Corpration, to Jonathan G. Katz, Secretary, Commission (March 24, 1992); letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commisson (March 25, 1992).

[37] Such a scenario could occur where (1) a CP issuer pays its PA on the day its CP matures, and (2) the PA fails before it pays the note holders. Letter from Arthur L. Herold, Partner, Webster, Chamberlain & Bean, to Jonathan G. Katz, Secretary, Commission (March 25, 1992).

[38] *Id.*

[39] In the event a DTC participant fails to settle, DTC will borrow from its liquidity resources the funds necessary to make settlement. If by 12:00 noon on the day after settlement, the participant still has not settled with DTC, DTC will begin reversing transactions completed on settlement day.

[40] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judy Poppalardo, Assistant Director, Division, Commission (March 26, 1992).

[41] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Ester Saverson, Branch Chief, Division, Commission (June 15, 1992). These procedures were published as Amendment No. 1 to the proposed rule change in Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30518.

[42] Securities Exchange Act Release No. 30863 (June 26, 1992), 57 FR 30518.

[43] Letter from Roger W. Heins, Chair, Government Relations Committee, Treasury Management Association, to Jonathan G. Katz, Secretary, Commission (July 24, 1992).

particular, the TMA requested that DTC retain home contacts for each CP issuer, notify promptly upon PA failure to settle, respond to issuer telephone inquiries one hour after such notice is given, and provide computer-based on-line access to information related to settlement problems.[44] In addition, the TMA stated that if failure occurs after the netting settlement with DTC, all transfers should be final.[45]

III. Discussion

Section 17A of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions.[46] Section 17A also provides that such rules must promote the safeguarding of funds and securities in the possession or control of a clearing agency, or for which it is responsible.[47] As discussed below, the Commission believes that DTC's proposal is consistent with these goals.

Current CP issuance, clearance, and settlement procedures, outside of DTC's CP program, are costly, inefficient, and labor-intensive. For example, in the case of dealer-placed CP, an issuer typically will inform the dealer of the total dollar amount of CP that it desires to sell on the morning of the day of issuance. The dealer's sales force then will sell the issuer's CP until approximately 12:30 p.m. (Eastern Time). After completing such sales, the dealer will inform the issuer's agent bank of the total dollar amount and maturity of CP sold, identify the various purchasers of the CP, and instruct the bank to deliver the CP via messenger to the dealer's clearing bank. The dealer's clearing bank typically will receive the CP by 2:15 p.m. (Eastern Time), and will deliver the CP via messengers to investors' custodial banks by 3:00 p.m. (Eastern Time).

The Commission believes DTC's CP program will reduce the costs and inefficiencies associated with the physical clearance and settlement of CP transactions by bringing the benefits of centralized, automated book-entry clearance and settlement to the CP market. The proposal was created to centralize book-entry settlement of CP, eliminate the need for issuers to print physical CP certificates, and to eliminate the need for dealers' clearing banks to check that they received the correct number of certificates in the proper denominations and that such certificates are in good deliverable form. The proposal also will eliminate many labor intensive functions and thereby reduce labor costs. For example, issuers and dealers will not be required to messenger physical certificates to various bank within a short period of time. Because many CP dealers already participate in the SDFS system, their CP-related money settlement obligations could be netted with their other SDFS-related money settlement obligations, thus reducing the number and dollar amount of these obligations.

The Commission also believes that DTC's proposal promotes the safeguarding of funds and securities by reducing the potential for participant default. In the physical processing environment, CP issuers, dealers, and investors are subject to a substantial degree of credit risk.[48] For example, issuing agent banks typically deliver CP before receiving payment from the dealer's clearing bank. Similarly, the dealer's clearing bank usually delivers CP to investors' custodial banks before it receive payment from these banks. This exposes these banks to the risk that dealers' and investors' banks will become insolvent before making payment to the issuing agent bank or dealer's clearing bank, or may refuse to pay these banks. The proposal provides a book-entry environment that effects transactions on a delivery-versus-payment basis, reducing the credit risk that issuers and dealers incur as a result of delivering securities before payment for such securities is received.

Other safeguards built into the SDFS system, as modified by DTC's proposal, also protect CP issuers, dealers, and investors against financial loss. For example, DTC establishes participation standards and prevents participants from incurring net debits that are unusually large in relation to their prior month's settlement activity by imposing adjustable net debit caps on their activity.[49] The system's fixed net debit cap is limited to not more than 75% of DTC's liquidity resources, including lines of credit with potential lenders.[50] The Commission believes DTC's current limits to it debit caps are adequate to prevent excessive exposure to DTC in the event of a participant default.

In addition, by requiring all transactions versus payment in the SDFS system to be fully collateralized, and by maintaining a participants fund composed of cash and liquid securities, DTC ensures that it has a sufficient amount of liquid collateral to draw upon in the event of a participant default. The Commission, however, remains concerned, for the reasons discussed below, about the cap on the SDFS fund and the increased risk exposure to DTC in the event of participant default as the volume of CP processed in the SDFS system increases. Although all transactions versus payment in the SDFS system are fully collateralized, the Commission is concerned that as the CP program expands, the SDFS fund may be insufficient to meet DTC's liquidity needs.

As DTC's CP program grows, so too does the risk of a concurrent participant failure and issuer default that could place significant demands on DTC's liquidity resources. The Commission understands, however, that since the CP program began, DTC has monitored worst case scenarios of participant failure and issuer default on each settlement date. DTC's liquidity cushion (*i.e.*, the difference between required deposits to the SDFS fund and the fixed net debit cap) was examined to determine dates when that "liquidity cushion" would have been penetrated if such a participant failure and issuer default had occurred. During the CP program's first fifteen months of operation, the fixed net debit cap was found to cover fully these failures over 99.9% of the participant failure and issuer default combinations. The liquidity cushion was exceeded in less than .003% of these participant failure and issuer default combinations.[51]

Although the percentage of the combinations of participant failure and issuer default that would penetrate DTC's liquidity cushion is small, the possibility of a combined large participant failure and large issuer default on the same date remains. To address this concern, DTC has represented that it will seek approval from the Commission prior to increasing its fixed net debit cap.[52] Finally, to

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[44] *Id.*

[45] *Id.*

[46] 15 U.S.C. 78 q-1(b)(3)(F) (1988).

[47] *Id.*

[48] Credit risk is the risk that the credit quality of one party to a transaction deteriorates to the extent that it is unable to fulfill its obligations on settlement date.

[49] DTC's net debit cap on participant activity is based on the participant's effective rate of contribution to the SDFS fund. Securities Exchange Act Release No. 29804 (August 23, 1991), 56 FR 43048.

[50] Securities Exchange Act Release No. 29804 (August 23, 1991), 56 FR 43048.

[51] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judy Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[52] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Ester Saverson, Branch Chief, Division, Commission (July 23, 1992). If, and when, DTC seeks to increase its fixed net debit cap, the Commission will review the adequacy and liquidity of DTC's available resources.

mitigate the systemic risk concerns that may arise in the event a CP issuer defaults on the same day that a participant fails to pay for the issuer's CP, DTC has altered the order in which deliveries made to the defaulting participant will be repledged to deliverers on the day of default.[53]

Additionally, as noted in a prior Commission order temporarily approving DTC's CP program in its SDFS service, [54] DTC believes that another safeguard against participant default is the quality of CP eligible for deposit at DTC. At the time of that order, the Commission stated that it would revisit DTC's CP eligibility standards in light of DTC's experience with the CP program and in light of the Commission's more stringent proposed rules defining securities eligible for mutual fund investment.[55]

During the first fifteen months of DTC's CP program, four issuer programs previously eligible for DTC's CP program were downgraded by an NRSRO to a level below DTC's eligibility standards.[56] In each case, on the day following announcement of the downgrading, DTC monitored its system to prevent any new CP issuances through DTC in these issues. Also, in each of those cases, DTC's procedures operated as they were designed, and end-of-day settlement was not disrupted.[57]

In light of DTC's experience with its CP program, and after considering the revised Commission Rule 2a–7, the Commission believes DTC's current eligibility standards for CP are adequate. Unlike the eligibility standards for securities in which a mutual fund may invest, DTC's CP program in its SDFS service should be designed to include the largest volume of high quality CP with the smallest risk posed to DTC. The Commission's concern with a mutual fund's investments is the risk to individual investors from funds seeking higher yields.[58] The Commission's concern with DTC's CP program in its SDFS system is that of systemic risk. Because DTC's procedures worked as they were intended during the temporary approval period, preventing downgraded CP from disrupting the service, and because of the expensive, labor intensive physical certificate alternative to DTC's system, the Commission believes DTC's current eligibility standards strike the correct balance between safety and the need to progress towards better methods of clearance and settlement of CP. If in the future DTC intends to expand its CP program to include a larger number of CP issues, the Commission will then revisit this issue.

The Commission continues to believe that DTC's proposal to phase CP into the SDFS system and to tie this phase-in to DTC's progress in establishing an off-site disaster recovery facility that can become fully operational within three hours after a system failure is prudent. As the Commission has previously stated in its first Automation Review Policy Statement, because of the impact systems failures have on public investors and broker-dealer risk exposure, it is appropriate for self-regulatory organizations to take certain steps to ensure that their automated systems have the capacity to accommodate present and reasonably anticipated volume levels, are not susceptible to internal or external threat, and respond adequately to localized emergency conditions, such as a power outage.[59] By developing its soon to be operational second site disaster recovery facility and by tying the expansion of the CP program to its progress in establishing such a facility, the Commission believes DTC is acting in an appropriate and prudent manner.

The Commission acknowledges concerns raised in the comment letters about a CP issuer's responsibility to make payments on matured CP if a DTC participant, acting as PA for that issuer, would fail prior to making payments to DTC on the matured CP. As a result of these issuer concerns, DTC proposed issuer notification procedures to be followed in the event of a participant failure to settle. In response, the TMA suggested further changes to the procedures, including same-day notification of a PA failure to settle. The TMA also restated its members' belief that CP settlement is less certain under DTC's CP program than under the physical certificate system.

The Commission believes DTC's notification procedures reasonably address concerns raised by the TMA. During the first eighteen months of CP operation, PAs failed to effect timely settlement with DTC on CP 74 times. None of these delays was the result of a PA insolvency, and in no case did DTC fail to receive payment by the morning of the day following the failure to settle.[60] DTC therefore believes and the Commission agrees that notification to issuers each time a PA fails to effect timely settlement on CP would be inappropriate. Instead, DTC has

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[53] The commission also notes that DTC's proposal may reduce the risk to the payments system created by intraday overdrafts associated with the current method of issuing and redeeming CP. For example, issuers redeem CP in the morning but are not paid for CP sold that day until later in the afternoon. This disparity in payment flows may create a daylight overdraft in the paying agent's bank account at its Federal Reserve Bank. In the interval between payment of redemption amounts and receipt of issuance proceeds, the Federal Reserve Bank is, in effect, extending credit to the paying agent bank. Thus, the Federal Reserve Bank is exposed to the risk that the paying agent bank may become insolvent before it repays the Federal Reserve Bank.

[54] Securities Exchange Act Release No. 28518 (October 5, 1990), 55 FR 42114.

[55] Investment Company Act Release No. 17589 (July 17, 1990), 55 FR 30329. In February, 1991, the Commission's Division of Investment Management adopted revised rule 2a–7 [17 CFR 240.270.2(a)(7) (1991)], which defined the term "eligible quality" to mean (i) in respect of a rated security, to mean a security which has been rated (or the issuer of which has been rated) by all NRSROs which have issued a rating with respect to the security (or issuer) in one of the two highest rating categories and (ii) in respect of an unrated security, to mean a security which has not been rated and whose issuer's other securities have not been rated less than eligible quality.

[56] The downgraded securities include USF&G, Mutual Benefit Life Insurance, United Telecommunications, and Columbia Gas. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[57] Although their CP program previously had been eligible, at the time of their downgrading and thereafter, no CP issued by USF&G or Mutual Benefit Life Insurance was on deposit at DTC. Following its downgrading, the total of $50 million United Telecommunications CP on deposit at DTC was routinely presented on six separate maturity dates by means of DTC's book-entry maturity presentment ("MP") procedures, and payment was made.

Columbia Gas first defaulted on a maturity payment of $6 million due on the day following its downgrading. Prior to 3 p.m., DTC was informed by the paying agent of its refusal to pay, and the MP procedures were implemented and worked as they were designed to. A total of $267,920,000 overdue Columbia Gas CP remains on DTC's books. The company is operating under the protection of the Federal Bankruptcy Code. Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (March 13, 1992).

[58] Specifically, the Commission believed the amendments to Rule 2a–7 were "necessary to ensure that money market funds meet investors' expectations for safety, soundness and convenience by maximizing the likelihood that these funds will be able to maintain a stable net asset value under the pricing procedures they are permitted to use." Investment Company Act Release No. 18005 (February 21, 1991), 56 FR 8113.

[59] See Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703.

[60] Letter from Richard B. Nesson, General Counsel and Senior Vice President, DTC to Judith Poppalardo, Assistant Director, Division, Commission (July 29, 1992). Of the 74 delays reported to the Commission, approximately one-third were caused by processing problems at a Federal Reserve Bank, a few were caused by processing problems at DTC, and the remainder were related to processing or communications problems at either the participant or settling bank level (*e.g.*, failure to assign the wire to DTC a higher priority than other wire traffic, misdirected wires, or natural disasters such as Hurricane Hugo). *Id.*

represented to the Commission that promptly upon learning that a PA failure to settle is due to insolvency, DTC will begin the issuer notification procedures that otherwise would not begin until 12:00 noon on the day after settlement date.[61] DTC also has agreed to accept alternative telephone and fax numbers by which to alert affected issuers upon such PA failure.

Nevertheless, the TMA continues to believe that permanent approval of the CP program should be withheld until criteria for terminating CP issuer liability can be established. The Commission notes that DTC's CP program is not designed to eliminate completely issuer risk resulting from a PA failure any more than the physical certificate system was so designed. Instead, DTC's CP program is designed to reduce risk substantially to all participants and CP issuers through the system's many safeguards and controls. DTC's CP program is collateralized fully, has a significant SDFS fund, and permits bilateral net debit caps between participants. In addition, the Federal Reserve Board and the Federal Reserve Bank of New York have reviewed DTC's procedures and found these procedures to be consistent with the Federal Reserve's payment system policies. Moreover, the Public Securities Association's ("PSA") CP Task Force was in close consultation with DTC throughout the development of the CP program. The PSA CP Task Force is comprised of representatives of CP dealers and PAs, as well as issuers of CP.

Accordingly, the Commission believes that the safeguards and controls DTC has established under the SDFS service and the CP program achieve a reasonable balance between the potential risk to DTC and CP program participants and the cost to the industry, including the cost of reduced liquidity to minimize such risk, and that the proposal is consistent with DTC's obligations under section 17A of the Act to assure the safeguarding of securities and funds which are in its custody or control.[62]

[61] *Id.*

[62] The Commission previously has urged DTC to consider prohibiting free pledges in both the SDFS service and in DTC's Next-Day-Funds Settlement ("NDFS") service in circumstances where a participant's net debit exceeds its participants fund deposit and available, nonpledge assets. In connection with DTC's proposed conversion of its NDFS service to SDFS, DTC has requested comments from participants on the merits of precluding free pledges. DTC will continue to monitor the relative costs and benefits of such a policy as it continues towards the conversion to SDFS.

IV. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–92–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 18991 Filed 8–10–92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

China Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8858)
Emerging Germany Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–8859)
GTECH Holdings Corp.
Common Stock, $.01 Par Value (File No. 7–8860)
John Nuveen Co.
Class A Common Stock, $.01 Par Value (File No. 7–8861)
Latin American Dollar Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8862)
Royal Appliance Manufacturing Co.
Common Stock, No Par Value (File No. 7–8863)
Ultramar Corp.
Common Stock, $.01 Par Value (File No. 7–8864)
Wellcome Plc
American Depositary Shares, Common Stock, No Par Value (File No. 7–8865)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protections of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–18992 Filed 8–10–92; 8:45am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Sunrise Energy Services, Inc.
Common Stock, $1.00 Par Value (File No. 7–8882)
Sunrise Medical, Inc.
Common Stock, $1.00 Par Value (File No. 7–8883)
Wellcome Plc
American Depositary Shares (representing the right to receive one Ordinary Share of 25p each) (File No. 7–8884)
Fleet Mortgage Group, Inc.
Common Stock, $.01 Par Value (File No. 7–8885)
Smith Barney Municipal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–8886)
RHI Entertainment, Inc.
Common Stock, $.01 Par Value (File No. 7–8887)
Horn & Hardart Company
Common Stock Subscription Rights (File No. 7–8888)
International Thoroughbred Breeders, Inc.
Common Stock, Subscription Rights (File No. 7–8889)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92–18993 Filed 8–10–92; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Royal Appliance Manufacturing Co.
Common Stock, No Par Value (File No. 7–8866)
Wellcome Plc
Ordinary Shares (in the form of American Depository Shares or Ordinary Shares) (File No. 7–8867)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-reference application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92–18994 Filed 8–10–92; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 4, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Freeport McMoran Copper & Gold, Inc.
Dep. Shares Cv. Exch. Special Preference $0.10 Par Value (File No. 7–8868)
Wellcome Plc
American Depositary Shares (File No. 7–8869)
BankAmerica Corporation
Dep. Shares, Cum. Pfd Stock (File No. 7–8870)
First Republic Bancorp, Inc.
Common Stock, $.01 Par Value (File No. 7–8871)
Merrill Lynch & Co. Inc.
S&P 500 Market Index Target Term Securities Due 1997—Units (File No. 7–8872)
Sunrise Medical, Inc.
Common Stock, $1.00 Par Value (File No. 7–8873)
Patriot Global Dividend Fund
Shares of Beneficial Interest, No Par Value (File No. 7–8874)
Teleconcepts Corporation
Common Stock, $.10 Par Value (File No. 7–8875)
Automated Security Holding Plc
American Depositary Shares (File No. 7–8876)
Managed Municipal Portfolio, Inc.
Common Stock, $.001 Par Value (File No. 7–8877)
Banco Commercial Portuguese S.A.
American Depositary Shares (File No. 7–8878)
Enron Liquids Pipelines L.P.
Common Units Representing Limited Partner Interests (File No. 7–8879)
RHI Entertainment, Inc.
Common Stock, $.001 Par Value (File No. 7–8880)
Fleet Mortgage Group, Inc.
Common Stock, $.01 Par Value (File No. 7–8881)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92–18995 Filed 8–10–92; 8:45 am]
BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted by September 10, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.
OMB Reviewer: Gary Waxman Office of Information and Regulatory Affairs Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Sources of Innovation Survey.
SBA Form No.: SBA Temporary Form 1845.
Frequency: One-time.
Description of Respondents: Small and Large Businesses.
Annual Responses: 480.
Annual Burden: 385.
Title: Disaster Business Loan Application.
SBA Form Nos.: SBA Forms 5, 739A, 1368, 1632.
Frequency: On occasion.
Description of Respondents: Small Businesses.
Annual Responses: 10,500.
Annual Burden: 43,995.

Dated: August 3, 1992.

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 92-19068 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2574 & #2575]

Alabama (and a Contiguous County in Mississippi); Declaration of Disaster Loan Area

Colbert County and the contiguous counties of Franklin, Lauderdale, and Lawrence in the State of Alabama, and Tishomingo County in the State of Mississippi constitute a disaster area as a result of damages caused by flooding which occurred on June 12, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 24, 1992 and for economic injury until the close of business on April 26, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308

or other locally announced locations.
The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 257406 for Alabama and 257506 for Mississippi. For economic injury the numbers are 767300 for Alabama and 767400 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 57002 and 59008).

Dated: July 24, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19074 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2572]

Kansas; Declaration of Disaster Loan Area

Cloud County and the contiguous counties of Clay, Jewell, Mitchell, Ottawa, Republic, and Washington in the State of Kansas constitute a disaster area as a result of damages caused by high straight line winds and severe rain storms which occurred on July 8 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 21, 1992 and for economic injury until the close of business on April 22, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155

or other locally announced locations.
The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 257211 and for economic injury the number is 767100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 22, 1992.

[FR Doc. 92-19069 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2564]

Minnesota; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 7, 1992, to the President's major disaster declaration of June 26, to include McLeod County, Minnesota, as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes which occurred June 16 through 20, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 26, 1992, and for economic injury until the close of business on March 26, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 17, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-19072 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2573]

Ohio; Declaration of Disaster Loan Area

Franklin and Logan Counties and the contiguous counties of Auglaize, Champaign, Delaware, Fairfield, Hardin, Licking, Madison, Pickaway, Shelby, and Union in the State of Ohio constitute a disaster area as a result of damages caused by severe thunderstorms and flooding beginning on July 12 and continuing through July 17, 1992. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 24, 1992 and for economic injury until the close of business on April 26, 1993 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308

or other locally announced locations.
The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500

For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 257306 and for economic injury the number is 767200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 24, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19075 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2569]

Texas; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated July 9, 1992, to the President's major disaster declaration of July 2, to include Moore County, Texas, as a disaster area as a result of damages caused by severe thunderstorms and tornadoes which occurred on June 27, 1992.

In addition, small businesses located in the contiguous counties of Dallam, Hartley, and Oldham in the State of Texas may file applications until the specified date at the aforementioned location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 1, 1992, and for economic injury until the close of business on April 2, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 17, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-19071 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2561]

Virginia; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated June 25, 1992, to the President's major disaster declaration of May 19, to include Bath County in the State of Virginia as a disaster area as a result of damages caused by severe storms and flooding on April 21-22, 1992.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Greenbrier and Pocahontas in the State of West Virginia may be filed until the specified date at the previously designated location.

Because the Notice of Amendments was issued less than 30 days before the deadline for filing applications for physical damage, applications from victims located in the above-named counties will be accepted until July 27, 1992. For all others, the deadline for filing applications for physical damage remains July 17, 1992. For economic injury the deadline is February 19, 1993.

The economic injury number for West Virginia is 763000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 2, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-19070 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0218]

Cambridge Ventures, L.P., Issuance of a Small Business Investment Company License

On October 21, 1991, a notice was published in the **Federal Register** (56 FR 52567) stating that an application had been filed by Cambridge Ventures, L.P. with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1991)) for a license as a small business investment company.

Interested parties were given until close of business November 20, 1991, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0218 on July 6, 1992, to Cambridge Ventures, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 28, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-19073 Filed 8-10-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1670]

Secretary of State's Advisory Committee on Private International Law; Study Group on Judgments; Meeting

The first meeting of the recently established Study Group on Judgments of the Secretary of State's Advisory Committee on Private International Law will take place at 10:15 a.m. on Wednesday, September 2, 1992 in the main building of the Department of State in Washington, DC. Members of the general public may attend up to the capacity of the meeting room and participate in the discussions subject to the instructions of the Chair.

The Study Group will discuss the recent proposal by the United States that the Hague Conference on Private International Law seek between 1993 and 1996 to prepare a convention (multilateral treaty) on the recognition and enforcement of court judgments. The Study Group will also be asked for guidance with regard to the draft of a paper further explaining the U.S. proposal being prepared for submission to the Hague Conference in connection with a meeting of experts from several Member States of that organization in late October to examine the U.S. proposal in detail and to discuss the changes that the Hague Conference will be able to prepare a useful and potentially successful convention. A final decision on the U.S. proposal will be reached at the Hague Conference's 17th session in May 1993.

The meeting will be held on September 2, 1992 in A.I.D. conference room 5951 at the main State Department building. Entry to the building should be via the entrance at 21st Street and Virginia Avenue, N.W. (and not at the Diplomatic Entrance). As access to the Department is controlled, members of the general public planning to attend should notify Ms. Rosalia Gonzales by telephone at (202) 653-0853 or by mail at the office indicated below not later than close of business August 27 of their name, affiliation, social security number date of birth, address and telephone number. Persons interested may request to be provided with information documents in advance of the meeting. Persons interested but unable to attend the meeting may submit comments or proposals by telefax to (202) 632-5283 or by writing to the Office of the Assistant Legal Adviser for Private International

Law (L/PIL), 2100 K Street, NW.—suite 501, Washington, DC 20037–7180.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 92–19056 Filed 8–10–92; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 1671]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Electronic Commerce

A Study Group on International Electronic Commerce of the Secretary of State's Advisory Committee on Private International Law has been formed and will hold a meeting on Friday, August 28, 1992 at the Department of State in Washington, DC. The Study Group will provide technical advice and recommendations on developments in new electronic and computer-assisted commercial technology and methods; whether such developments would be facilitated internationally by modifications to existing or formulation of new commercial laws, rules or regulations; and the degree of U.S. interest in seeking harmonization or unification of laws in this field at the international level. The Study Group will review activities of various international organizations underway in this field in order to develop its recommendations.

The Study Group will have before it a Report of the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Electronic Commerce which met in January 1992. At its annual Plenary Session in May, 1992, UNCITRAL authorized the Working Group to proceed in this field and report in what areas, if any, preparation of international rules would be of assistance and whether they should be in the form of a treaty, uniform law or otherwise. The next meeting of the UNCITRAL Working Group is scheduled for January, 1993. The Study Group will develop recommendations for U.S. positions for that meeting.

Subjects to be considered include whether basic legal principles as applied to electronic data interchange (EDI) need to be reconsidered and possibly restated in international rules form. This may include the formation and execution of contracts utilizing EDI, authorization, offer and acceptance, transfer of rights, evidence and applicable legal standards for rights and liabilities of commercial parties in electronic and computer-assisted transactions. The legal implications of standardized messaging, of central data managers, rights in data and other issues may also be considered.

In addition, the Study Group will review related activities of other organizations such as the U.N. Economic Commission for Europe (ECE) Working Party on Trade Facilitation (WP IV), the U.N. Conference on Trade and Development (UNCTAD), the International Chamber of Commerce (ICC), and others. These activities include legal aspects of standardization of computer messaging, preparation of draft trading partner and interchange agreements, a revision of the Uniform Rules for Interchange of Trade Data by tele-transmission (UNCID), development of EDI customs clearance systems and other matters.

For copies of United Nations documents relevant to the meeting or information on the Department of State's program on private international law, please contact Harold S. Burman, Office of the Legal Adviser (L/PIL) at the address below.

The meeting will be held from 9:30 a.m. until 4:30 in room 4825 in the Bureau of Consular Affairs, U.S. Department of State. The public may participate in the meeting up to the capacity of the conference room and subject to the instructions of the Chair. As access to the Department is controlled, members of the public wishing to attend should notify Ms. Rosalia Gonzales of the office indicated below not later than close of business August 24th of their name, affiliation, social security number, date of birth, address and telephone number. Persons interested but unable to attend the meeting may submit comments or proposals to Harold S. Burman by telefax to L/PIL at (202) 632–5283 or by writing to the Office of the Assistant Legal Adviser for Private International Law (L/PIL), 2100 "K" Street, NW.—suite 501, Washington, DC 20037–7180.

Peter H. Pfund,

Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 92–19057 Filed 8–10–92; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 1668]

Shipping Coordinating Committee; International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 10 a.m., on Wednesday, September 2, 1992, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The primary purpose of this meeting is to prepare for the 67th Session of the International Maritime Organization (IMO) Legal Committee, which will be held in London, England, September 28–October 2, 1992, and to begin preparations for the Diplomatic Conference on a Draft Convention on Maritime Liens and Mortgages which is scheduled to be held in Geneva, Switzerland, April 19, 1993 through May 7, 1993.

Two principal subjects are on the agenda for the SHC public meeting. First, to discuss the Legal Committee deliberations concerning the question of liability and compensation related to the maritime carriage of hazardous and noxious substances (HNS), which will be taken up at the 67th Session. Second, to review and discuss the Draft Convention on Maritime Liens and Mortgages that was developed by a joint group of legal experts working from 1986 through 1989 under the auspices of the IMO and the United Nations Conference on Trade and Development (UNCTAD). A work program for the SHC will be established in order to prepare for the upcoming Diplomatic Conference.

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be addressed at the SHC meeting, contact either Captain David J. Kantor or Lieutenant Commander Mark J. Yost, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax 267–4163.

Dated: July 31, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–19040 Filed 8–10–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. 92–G]

Section 16 Circular Revision

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Transit Administration (FTA) is revising Circular 9070.1B: Section 16(b)(2) Capital Assistance Program Guidance. Before the circular is finalized, we seek comments from interested parties on the draft changes. This notice announces the availability of the circular for review.

DATES: Written comments will be accepted by FTA until September 2, 1992.

ADDRESSES: All requests for the draft circular should be addressed to Sue Masselink, Office of Grants Management, Federal Transit Administration, 400 Seventh Street, SW., room 9301, Washington, DC 20590. Comments on the circular should be submitted to the FTA Docket Clerk, same address but room 9316.

FOR FURTHER INFORMATION CONTACT: Sue Masselink, Section 16 Program Manager, Office of Grants Management, Federal Transit Administration, (202) 366–2053.

SUPPLEMENTARY INFORMATION: Section 16 of the Federal Transit Act, as amended, provides for a program of formula capital assistance to meet the special transportation needs of elderly persons and persons with disabilities. Funds are apportioned annually to the States, which then apply to FTA for approval of a program of projects. Eligible recipients include private non-profit organizations, and under certain circumstances, public bodies.

Program guidance for the Section 16 program currently is contained in FTA Circular 9070.1B, dated July 1, 1988, "Section 16(b)(2) Capital Assistance Program Guidance." FTA is revising the circular to incorporate new provisions included in the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, October 28, 1991), particularly the provisions making public bodies eligible subrecipients.

FTA values the experience of the States which administer the Section 16 program and of the many providers of Section 16 service at the local level. The ISTEA introduces a new group of potential recipients of assistance. FTA is making the draft circular available for comment by those affected by the changes in the program guidance. All comments received will be reviewed by FTA Section 16 program staff and taken into consideration in refining the guidance included in the final revised circular. We hope to issue to new circular, FTA C 9070.1C, before the end of the current fiscal year (September 30, 1992).

Parties interested in reviewing the draft may request a copy by writing to the Office of Grants Management, at the address listed in the "**ADDRESSES**" section of this document. The draft circular will be sent as soon as it is available. (Anyone who previously requested the Section 16 draft circular, in response to the Notice of availability published in the **Federal Register** on June 26, 1992, will be sent both draft circulars. No further request is required.) Comments should be sent to the FTA docket, also at the address listed in the **ADDRESSES** section of this document.

Issued On: August 5, 1992.

Roland J. Mvoss,

Deputy Administrator.

[FR Doc. 92–19030 Filed 8–10–92; 8:45 am]

BILLING CODE 4910–57–M#

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 27–92]

Treasury Bonds of August 2022 (CUSIP No. 912810 EM 6)

Washington, August 5, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Bonds. The Bonds will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Bonds are stated in the offering announcement. The Bonds will accrue interest from August 15, 1992. Payment for the bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from August 15, 1992, to August 17, 1992. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Bonds will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. and 2.2. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.4. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketplace securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g.,

7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Bonds being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For non-competitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bibs submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Bonds to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.00 and a lowest accepted price above the original issue discount limit. The stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer

submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Bonds specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from August 15, 1992, to August 17, 1992. The amount of accrued interest per $1,000 will be determined in the auction. Settlement on Bonds allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7 must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's Strips Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate Strips components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment B to this circular.

6.2. Attachment B also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment C to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.6. Detached physical interest coupons, coupons held under the Cubes Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary Strips components in the appropriate amounts will not be accepted.

6.7. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.8. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal transfer, principal and interest on the Bonds.

7.4. Attachments A, B, and C, and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) *Partnerships—*

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries—*

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts—*

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions—*

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds—*

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds—*

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers—*

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds—*

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

Attachment B—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2022, CUSIP No. 912810 EM 6

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2022 due August 15, 2022, CUSIP No. 912803 AZ 6.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 8
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6
February 15, 2000	CB 4
August 15, 2000	CC 2
February 15, 2001	CD 0
August 15, 2001	CE 8
February 15, 2002	CF 5
August 15, 2002	CG 3
February 15, 2003	CH 1
August 15, 2003	CJ 7
February 15, 2004	CK 4
August 15, 2004	CL 2
February 15, 2005	CM 0
August 15, 2005	CN 8
February 15, 2006	CP 3
August 15, 2006	CQ 1
February 15, 2007	CR 9
August 15, 2007	CS 7
February 15, 2008	CT 5
August 15, 2008	CU 2
February 15, 2009	CV 0
August 15, 2009	CW 8
February 15, 2010	CX 6
August 15, 2010	CY 4
February 15, 2011	CZ 1
August 15, 2011	DA 5
February 15, 2012	DB 3
August 15, 2012	DC 1
February 15, 2013	DD 9
August 15, 2013	DE 7
February 15, 2014	DF 4
August 15, 2014	DG 2
February 15, 2015	DH 0
August 15, 2015	JT 8
February 15, 2016	KG 4
August 15, 2016	KJ 8
February 15, 2017	KL 3
August 15, 2017	KN 9
February 15, 2018	KQ 2
August 15, 2018	KS 8
February 15, 2019	KU 3
August 15, 2019	KW 9
February 15, 2020	KY 5
August 15, 2020	LA 6
February 15, 2021	LC 2
August 15, 2021	LE 8
February 15, 2022	LG 3
August 15, 2022	LJ 7

Attachment C—Minimum Face Amounts Which are Multiples of $1000 Required in Order to Produce Interest Payments That Are Multiples of $1000

Coupon (%)	Minimum Face ($)	Interest Payment ($)
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00

Coupon (%)	Minimum Face ($)	Interest Payment ($)
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	1,600,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	1,600,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.357	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	16,000.00
20.250	800,000.00	81,000.00

Treasury August Quarterly Financing

The Treasury will raise about $15,225 million of new cash and refund $20,784 million of securities maturing August 15, 1992, by issuing $15,000 million of 3-year notes, $11,000 million of 10-year notes, and $10,000 million of 30-year bonds. The $20,784 million of maturing securities are those held by the public, including $1,908 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $36,000 million are being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,033 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 QUARTERLY FINANCING

[August 5, 1992]

Amount Offered to the Public	$15,000 million	$11,000 million	$10,000 million.
Description of Security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series Q–1995 (CUSIP No. 912827 G4 8).	Series B–2002 (CUSIP No. 912827 G5 5).	Bonds of August 2022 (CUSIP No. 912810 EM 6).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	August 17, 1992	August 17, 1992 (to be dated August 15, 1992).	August 17, 1992 (to be dated August 15, 1992).
Maturity date	August 15, 1995	August 15, 2002	August 15, 2022.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	February 15 and August 15	February 15 and August 15	February 15 and August 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of Sale:			
Method of sale	Yield auction	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 QUARTERLY FINANCING—Continued

[August 5, 1992]

Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key Dates:			
Receipt of tenders	Tuesday, August 11, 1992	Wednesday, August 12, 1992	Thursday, August 13, 1992.
(a) noncompetitive	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST	Prior o 12:00 noon, EDST.
(b) competitive	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST.
Settlement (final payment due from institutions):			
(a) funds immediately available to the Treasury.	Monday, August 17, 1992	Monday, August 17, 1992	Monday, August 17, 1992.
(b) readily-collectible check	Thursday, August 13, 1992	Thursday, August 13, 1992	Thursday, August 13, 1992.

[FR Doc. 92-18970 Filed 8-6-92; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 26-92; (CUSIP No. 912827 G5 5)]

Treasury Notes of August 15, 2002, Series B-2002

Washington, August 5, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from August 15, 1992. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from August 15, 1992, to August 17, 1992. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. and 2.2. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.4. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of Public Debt, Washington, DC 20239-1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as

described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(B)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1 Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from August 15, 1992, to August 17, 1992. The amount of accrued interest per $1,000 will be determined in the auction. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7 must be made or completed on or before the issue date. Payment in full must

accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment B to this circular.

6.2. Attachment B also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment C to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.6. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.7. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.8. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A, B, and C, and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) *Partnerships—*

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries—*

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts—*

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Politica Subdivisions—*

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds—*

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds—*

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers—*

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds—*

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Attachment B—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 2002, Series B–2002, CUSIP No. 912827 G5 5

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B–2002 due August 15, 2002, CUSIP No. 912820 BE 6.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due—	
February 15, 1993	BM1
August 15, 1993	BN9
February 15, 1994	BP4
August 15, 1994	BQ2
February 15, 1995	BR0
August 15, 1995	BS8
February 15, 1996	BT6
August 15, 1996	BU3
February 15, 1997	BV1
August 15, 1997	BW9
February 15, 1998	BX7
August 15, 1998	BY5
February 15, 1999	BZ2
August 15, 1999	CA6
February 15, 2000	CB4
August 15, 2000	CC2
February 15, 2001	CD0
August 15, 2001	CE8
February 15, 2002	CF5
August 15, 2002	CG3

Attachment C—Minimum Face Amounts Which Are Multiples of $1,000 Required in Order To Produce Interest Payments That Are Multiples of $1,000

Coupon (%)	Minimum face ($)	Interest payment ($)
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1,600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1,600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1,600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
13.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00

Coupon (%)	Minimum face ($)	Interest payment ($)
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
18.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

Treasury August Quarterly Financing

The Treasury will raise about $15,225 million of new cash and refund $20,784 million of securities maturing August 15, 1992, by issuing $15,000 million of 3-year notes, $11,000 million of 10-year notes, and $10,000 million of 30-year bonds. The $20,784 million of maturing securities are those held by the public, including $1,908 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $36,000 million are being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,033 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 Quarterly Financing

[August 5, 1992]

Amount Offered to the Public:	$15,000 million	$11,000 million	$10,000 million.
Description of Security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series Q–1995 (CUSIP No. 912827 G4 8).	Series B–2002 (CUSIP No. 912827 G5 5).	Bonds of August 2022 (CUSIP No. 912810 EM 6).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	August 17, 1992	August 17, 1992 (to be dated August 15, 1992).	August 17, 1992 (to be dated August 15, 1992).
Maturity date	August 15, 1995	August 15, 2002	August 15, 2022.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	February 15 and August 15	February 15 and August 15	February 15 and August 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of Sale:			
Method of sale	Yield auction	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key Dates:			
Receipt of tenders	Tuesday, August 11, 1992	Wednesday, August 12, 1992	Thursday August 12, 1992
(a) noncompetitive	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST.
(b) competitive	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST.
Settlement (final payment due from institutions):			
(a) funds immediately available to the Treasury.	Monday, August 17, 1992	Monday, August 17, 1992	Monday, August 17, 1992.
(b) readily-collectible check	Thursday, August 13, 1992	Thursday, August 13, 1992	Thursday, August 13, 1992.

[FR Doc. 92–18971 Filed 8–6–92; 8:45 am]
BILLING CODE 4810–40–M

[Department Circular—Public Debt Series—No. 25–92;

Treasury Notes of August 15, 1995, Series Q–1995 (Cusip No. 912827 G4 8)]

Washington, August 5, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement

through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For non-competitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in sections 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the

weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue day. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions.

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (included his or her spouse, and any unmarried adult children, having a common addressed and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit

tenders individually, or jointly with an adult-bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *partnership*—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—

A money market fund (including all funds that have a common management).

(12) *Investment Agents/Money Managers*—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Note: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Treasury August Quarterly Financing

The Treasury will raise about $15,225 million of new cash and refund $20,784 million or securities maturing August 15, 1992, by issuing $15,000 million of 3-year notes, $11,000 million of 10-year notes, and $10,000 million of 30-year bonds. The $20,784 million of maturing securities are those held by the public, including $1,908 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $36,000 million are being offered to the public, and any amount tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,033 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 Quarterly Financing

[August 5, 1992]

Amount Offered to the Public	$15,000 million	$11,000 million	$10,000 million.
Description of Security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series Q–1995 (CUSIP No. 912827 G4 8).	Series B–2002 (CUSIP No. 912827 G5 5).	Bonds of August 2022 (CUSIP No. 912810 EM 6).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	August 17, 1992	August 17, 1992 (to be dated August 15, 1992).	August 17, 1992 (to be dated August 15, 1992).
Maturity date	August 15, 1995	August 15, 2002	August 15, 2022.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	February 15 and August 15	February 15 and August 15	February 15 and August 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of Sale:			
Method of sale	Yield Auction	Yield Auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key Dates:			
Receipt of tenders	Tuesday, August 11, 1992	Wednesday, August 12, 1992	Thrusday, August 13, 1992.
(a) noncompetitive	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST	Prior to 12:00 noon, EDST.
(b) competitive	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST	Prior to 1:00 p.m., EDST
Settlement (final payment due from institutions):			

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC, AUGUST 1992 Quarterly Financing—Continued

[August 5, 1992]

(a) funds immediately available to the Treasury.	Monday, August 17, 1992	Monday, August 17, 1992	Monday, August 17, 1992.
(b) readily-collectible check	Thursday, August 13, 1992	Thursday, August 13, 1992	Thursday, August 13, 1992.

[FR Doc. 92-18972 Filed 8-6-92; 8:45 am]
BILLING CODE 4810-40-M

[Number: 27-02]

Directive

Date: August 3, 1992.

Subject: Organization and Functions of the Fiscal Service.

1. *Purpose.* This directive describes the organization and functions of the Fiscal Service, which administers the Government's financing operations and fiscal affairs.

2. *Organization Structure.* In accordance with 31 U.S.C. 306, the Fiscal Service consists of the Office of the Fiscal Assistant Secretary; the Financial Management Service, which has as its head a Commissioner; and the Bureau of the Public Debt, which has as its head a Commissioner. The Fiscal Assistant Secretary is the head of the Fiscal Service and is appointed by the Secretary of the Treasury, in accordance with 31 U.S.C. 301(d).

3. *Office of the Fiscal Assistant Secretary.* The officials, organizations and functions of the Office of the Fiscal Assistant Secretary are as follows.

a. *The Fiscal Assistant Secretary reports to the Under Secretary for Finance and is responsible for the following functions.*

(1) Provides general supervision, policy oversight, management, and coordination of the Financial Management Service and the Bureau of the Public Debt.

(2) Oversees the development of policies, programs, and systems for the collection, disbursement, management and security of public monies in the United States and in foreign countries and the related governmentwide reporting and accounting for such funds.

(3) Oversees the development of policies, programs, and systems for financing and accounting for the public debt.

(4) Provides general supervision and policy oversight of the Department of the Treasury's role as lead agency in improving cash management, credit administration, and financial management systems on a governmentwide basis.

(5) Provides policy advice and general oversight regarding international cash management activities and improvements, including the agreements to purchase foreign currencies and the holding and disbursement of these funds.

(6) Ensures the timely consolidation and publication of information on the Federal Government's financial operations for use by policy makers and decisions makers in the Government and in the private sector financial markets.

(7) Directs the implementation of security enhancements to ensure the authentication and integrity of data affecting electronic funds transfers.

(8) Oversees the administration and investment of the major Federal Government accounts and trust funds, such as the Social Security Trust Funds, Civil Service Retirement and Disability Fund, and the Highway Trust Fund.

(9) Oversees the management of the Treasury's daily cash position and the investment of Treasury's excess operating cash balances.

(10) Provides estimates of the Treasury's future cash position for use by the Department in connection with its financing activities and other financial operations.

(11) Oversees the performance of fiscal agency functions by the Federal Reserve banks as fiscal agents of the Treasury.

(12) Approves new and revised governmentwide principles and standards and system designs for Treasury's fiscal accounting systems operated and maintained by the Financial Management Service and Bureau of the Public Debt, and coordinates efforts to review, improve and report such systems in accordance with Section 4 of the Federal Managers' Financial Integrity Act (FMFIA), Public Law 97-255 (31 U.S.C. 3512(d)(2)(B)).

(13) Approves, in accordance with applicable Treasury directives, regulations pertaining to the Government securities market and participates in the development of policy issues affecting the liquidity, integrity and efficiency of the market.

(14) Provides policy advice to the Department's Office of the Assistant Secretary (International Affairs) regarding terms and conditions of agreements for borrowing from foreign international monetary authorities.

(15) Directs the Treasury's participation in the Joint Financial Management Improvement Program for improvement of all aspects of financial management in the Federal Government.

(16) Represents the Secretary on various interdepartmental commissions, boards, and committees.

b. *The Deputy Fiscal Assistant Secretary* shares fully in carrying out the functions and responsibilities of the Fiscal Assistant Secretary and works closely with the Fiscal Assistant Secretary in managing program areas for which the latter is responsible.

c. *The Senior Advisor for Fiscal Management* undertakes projects at the specific direction of the Fiscal Assistant Secretary and is the principal staff level policy coordinator of fiscal management initiatives within and among Treasury bureaus and other Federal departments. The incumbent is responsible for the following functions.

(1) Modernizes and synthesizes bureau and Federal agency program initiatives and practices and combines diverse conceptions into a coherent whole.

(2) Develops overall policy after identifying alternatives.

(3) Coordinates governmentwide and with the private sector on fiscal management policy issues, changes and improvements.

d. *The Assistant Fiscal Assistant Secretary* serves as the principal advisor to the Fiscal Assistant Secretary and the Deputy Fiscal Assistant Secretary on matters relating to:

(1) Designation and performance of depositaries for public funds and the safety of the funds while they remain on account with commercial financial institutions;

(2) Governmentwide cash management and credit administration;

(3) The Federal Tax Deposit System and the Treasury Tax and Loan Program;

(4) Federal Reserve fiscal agency operations;

(5) Fiscal aspects of programs involving foreign countries, including foreign currency purchases;

(6) Legislative initiatives and congressional issues related to Treasury's fiscal or financial operations;

(7) Coordination of the Fiscal Assistant Secretary's efforts for the

review, improvement and reporting of the governmentwide accounting systems for the Financial Management Service and the Bureau of the Public Debt in accordance with Section 4 of the FMFIA, 31 U.S.C. 3512 (d)(2)(B); and

(8) Managing Office of the Fiscal Assistant Secretary administrative matters.

e. *The Director, Office of Cash and Debt Management* is the principal advisor to the Fiscal Assistant Secretary and the Deputy Fiscal Assistant Secretary on matters relating to:

(1) Treasury cash and debt position management;

(2) Cash flow forecasting and reconciliation to the administration budget;

(3) Treasury borrowing;

(4) Foreign and domestic market activities;

(5) Investment of Government accounts and trust funds;

(6) Direct borrowing from Treasury;

(7) Treasury Financing Group activities; and

(8) Cash management operations and systems.

4. *The Financial Management Service.* The organization and functions of the Financial Management Service are as follows.

a. *Organization.* The Financial Management service is comprised of the Washington headquarters and seven Regional Financial Centers. In the Washington headquarters, the Office of the Commissioner consists of the Commissioner, the Deputy Commissioner, the Office of Planning and policy Analysis, and the Office of Legislative and Public Affairs. The headquarters office also includes the Chief Counsel, who resides in the Office of the Commissioner. The Chief Counsel is an official of the Department's Legal Division and under the supervision of the General Counsel of the Treasury. The Commissioner and Deputy Commissioner direct the activities of the bureau through six Assistant Commissioners: Management/Chief Financial Officer, Regional Operations, Financial Information, Federal Finance, Agency Services, and Information Resources. Regional Financial Centers are located in Austin, Birmingham, Chicago, Kansas City, Philadelphia, San Francisco, and Washington, D.C.

b. *Functions.* The Financial Management Service acts as the Government's financial manager and central accountant and is responsible for improving the quality of government financial management through the following functions.

(1) Develops and implements programs to improve Government financial management, including cash management, credit management, and debt collection.

(2) Coordinates governmentwide efforts to review, improve, and report on financial management systems.

(3) Issues electronic funds transfer payments and Treasury checks, reconciles all payments, and settles claims for Treasury checks cashed under forged endorsements or lost, stolen or destroyed.

(4) Operates and maintains the systems for the deposit of Government receipts, and designates and oversees the performance of Government depositaries.

(5) Maintains the central system that accounts for the monetary assets and liabilities of the Treasury and tracks Government collection and payment operations.

(6) Invests Government accounts and trust funds where directed by statute.

(7) Provides financial management information to Government decision makers with value-added analysis for better decision making by providing financial information systems, financial analysis, and by preparing financial reports that show budget results and the Government's overall financial status, such as the Daily Treasury Statement, the Monthly Treasury Statement, the Quarterly Treasury Bulletin, the Annual Report of the U.S. Government, and the Consolidated Financial Statement.

(8) Performs the review, improvement and reporting for the governmentwide accounting systems it maintains in accordance with Section 4 of the FMFIA, 31 U.S.C. 3512(d)(2)(B).

(9) Performs a wide range of financial services for Government agencies including accounting cross-servicing, providing financial advice and guidance, consulting on financial management services, assisting with financial systems, and training of accounting and finance staffs.

(10) Provides direction, guidance, and instructions to Federal Reserve Banks as fiscal agents pertaining to the acceptance of Government receipts and disbursement of Government payments.

5. *The Bureau of the Public Debt.* The organization and functions of the Bureau of the Public Debt are as follows:

a. *Organization.* The Bureau of the Public Debt is comprised of the Washington headquarters and operations facilities in Washington and in Parkersburg, West Virginia. In the Washington headquarters, the Office of the Commissioner consists of the Commissioner, the Deputy Commissioner, the Government Securities Regulations Staff, and the Program Advisory Staff. The headquarters office also includes the Office of the Chief Counsel. The Chief Counsel is an official of the Department's Legal Division and under the supervision of the General Counsel of the Treasury. The Commissioner and Deputy Commissioner direct the bureau's activities through six Assistant Commissioners: Securities and Accounting Services: Public Debt Accounting; Administration; Automated Information Systems; Savings Bond Operations; and Financing.

b. *Functions.* The Bureau of the Public Debt borrows the money needed to operate the Federal Government and accounts for the resulting public debt, and is responsible for the following functions.

(1) Maintains accounting controls over public debt receipts and expenditures, securities and interest costs, and publishes the Monthly Statement of the Public Debt of the United States.

(2) Participates with the Assistant Secretary (Domestic Finance) in the development of policies and plans pursuant to the Government Securities Act of 1986 and, on a day-to-day basis, carries out duties pursuant to the Act.

(3) Issues regulations and instructions pertaining to public debt securities, such as commercial and direct access book-entry securities, definitive securities, savings-type securities, and other special purpose securities.

(4) Prepares Department of the Treasury announcements and offering circulars for public debt securities, including savings bonds.

(5) Directs the auction and final allotment of subscriptions for public debt securities and issues such securities.

(6) Provides policy direction and exercises general oversight responsibility for the commercial book-entry system for Treasury marketable securities, and ensures the availability of an efficient mechanism for the conduct of secondary market transactions.

(7) Maintains accounts, processes transactions, and authorizes payments for investors whose book-entry, registered and/or savings bond accounts are held directly with the Treasury.

(8) Conducts or directs the conduct of transactions in outstanding definitive securities.

(9) Adjudicates claims on account of lost, stolen, destroyed or mutilated securities.

(10) Redeems securities and matured interest coupons, and performs final audit and subsequent destruction.

(11) Provides policy direction and exercises general oversight

responsibility for the nationwide network of institutions authorized to issue and redeem savings bonds.

(12) Maintains accounting and transaction records for all United States savings bonds printed, issued and retired.

(13) Provides direction, guidance, and instruction to Federal Reserve Banks as fiscal agents pertaining to public debt securities.

(14) Performs the review, improvement, and reporting for the governmentwide accounting systems it maintains in accordance with Section 4 of the FMFIA, 31 U.S.C. 3215(d)(2)(B).

6. *Authority.* Treasury Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

7. *Cancellation.* Treasury Directive 27–02, "Organization and Functions of the Fiscal Service," dated April 18, 1990, is superseded.

8. *Office of Primary Interest.* Office of the Fiscal Assistant Secretary.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–19012 Filed 8–10–92; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, August 12, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Labeling Requirements for Art Materials.

The staff will brief the Commission on issues concerning labeling requirements for art materials presenting chronic hazards. The staff will discuss a draft **Federal Register** notice containing the final codification of ASTM D-4236, final chronic hazard guidelines, and final supplemental definition of "toxic."

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: August 5, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-19168 Filed 8-7-92; 2:58 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 13, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Pride in Public Service Award

The Commission will present the Pride in Public service award to August's recipient.

2. Voluntary Standards/International Affairs Activities

The staff will brief the Commission on voluntary standards and international affairs activities carried out by staff.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: August 5, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-19169 Filed 8-7-92; 2:58 pm]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week August 10, 1992.

A closed meeting will be held on Wednesday, August 12, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed meeting scheduled for Wednesday, August 12, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: August 5, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-19167 Filed 8-7-92; 2:57 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 155
Tuesday, August 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Geological Survey, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 92-16656 beginning on page 31353 in the issue of Wednesday, July 15, 1992, on page 31354, in the third full paragraph, in the ninth line, "μ1" should read "μl".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 910835-2137]

RIN 0693-AA76

Technical Interpretation No. 1, Invalid Arguments in Intrinsic Functions, for Federal Information Processing Standard (FIPS) 21-3, COBOL

Correction

In notice document 92-17920 beginning on page 33492 in the issue of Wednesday, July 29, 1992, make the following corrections:

1. On page 33493:

a. In the first column, in the fifth line, insert "data" after "incompatible".

b. In the same column, under *Discussion of the Issues*, in the fifth line, "(85)" should read "(3)".

c. In the 2d column, in the 11th line from the bottom, "date" should read "data".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

New Standard Technical Specifications (Proof and Review); Availability

Correction

In notice document 92-18118 appearing on page 33979 in the issue of Friday, July 31, 1992, in the 2d column, in the 3rd paragraph, in the 12th and 13th lines, the phone number should read "(301) 504-1778".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Tallahassee Regional Airport, Tallahassee, FL

Correction

In notice document 92-18449 appearing on page 34333 in the issue of Tuesday, August 4, 1992, make the following correction in the second column, in the **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the sixth line, "improve" should read "approve".

BILLING CODE 1505-01-D

federal register

Tuesday
August 11, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, et al.

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 61, 91, 121, 125, 135, 141, 142

[Docket No. 26933; Notice No. 92-10; and Special Federal Aviation Regulation No. 58]

RIN 2120-AA83

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes new regulations that would contain certification and operating rules for training centers that would provide additional use of aircraft flight simulators and flight training devices for pilot training, testing, and checking. This proposed rulemaking would increase the use of flight simulators and flight training devices by persons other than air carrier certificate holders and would reduce the number of exemptions for the use of flight simulators. The new rules also would add regulations enabling Category III Instrument Landing System (ILS) operations.

DATES: Comments must be received on or before December 9, 1992.

ADDRESSES: Comments on this proposal may be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-10), Docket No. 26933, 800 Independence Avenue SW., Washington, DC. 20591. Comments delivered must be marked "Docket No. 26933." Comments may be examined at Room 915G weekdays between 8:30 a.m. and 5 p.m. (except on Federal holidays).

FOR FURTHER INFORMATION CONTACT: Warren Robbins or Ron Myres, Manager, Regulations Branch, (AFS-850), General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC. 20591, Telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals contained in this NPRM are invited. The comments should identify the regulatory docket or notice number and should be submitted in triplicate to the address above. All comments received on or before the closing date will be considered by the Administrator before taking action on the proposed rules. The proposals contained in this NPRM may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26933." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future proposed rules should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Flight simulation technology has shown enormous advancement during the past 30 years. The FAA has permitted greater use of aircraft flight simulators and flight training devices in training, testing, and checking airmen. The increased complexity and operating costs of the modern turbine-powered aircraft and the current operating environment have created an even greater need for the use of flight simulators and flight training devices. In many cases, flight simulators have proven to provide more in-depth training than can be accomplished in the aircraft. The use of flight simulators and flight training devices in lieu of aircraft has resulted in a reduction in air traffic congestion, noise and air pollution, and training costs. The increased use of flight simulators is also consistent with the national policy for fuel conservation. Flight simulators provide a safe flight training environment and may reduce the number of training accidents by allowing training for emergency situations that cannot be safely conducted in flight. The FAA has traditionally recognized the value of flight simulators and flight training devices and has awarded credit for the completion of certain required training, testing, and checking in such devices.

The first aircraft flight simulators approved by the FAA were relatively unsophisticated and were authorized for only a limited number of maneuvers and procedures. As flight simulator technology developed, the FAA expanded the use of flight simulators but still required students to perform a number of maneuvers in an aircraft. Among these were takeoffs, landings, taxiing, and some approaches.

In Amendment No. 121-55 (35 FR 84; January 3, 1970), the FAA revised parts 61 and 121 to authorize the use of flight simulators and flight training devices for airman training, testing, and checking. This use applied only to part 121 air carriers.

In Amendment No. 61-60 (38 FR 3156; February 1, 1973), the FAA authorized the § 61.58 proficiency check for the pilot of an aircraft requiring more than one pilot to be accomplished in its entirety either in an airplane or in a flight simulator or flight training device. In alternating 12-month periods, the proficiency check needed only to consist of maneuvers and procedures that could be performed in a flight simulator or flight training device as set forth in appendix F of part 121.

Subsequently, the FAA issued Amendments 61-62 and 121-108 (38 FR 35443; December 28, 1973), effective December 19, 1973. These amendments, in part, revised parts 61 and 121 by authorizing certain maneuvers and procedures of the pilot-in-command proficiency check to be performed in an approved visual flight simulator, if the pilot being checked accomplished two landings in an airplane of the same type.

The FAA issued Amendments 61-69 and 121-161 (45 FR 44176; June 30, 1980), effective July 30, 1980, that further expanded the use of advanced flight simulators for air carriers. Amendments 61-69 and 121-161 formed the basis of the Advanced Simulation Plan, which included Phase I, II, IIA, and III flight simulators (Part 121, Appendix H).

Currently, there are approximately 32 holders of exemptions for the use of flight simulators for part 61 training, and the FAA regularly receives new petitions for exemption to expand the use of flight simulator training. The first exemption was approved in November 1974; the first advanced simulation

exemption was issued in 1983. Since the first exemptions were issued, the training roles of several elements of the aviation community have expanded, most notably those of part 121 and part 135 certificate holders providing training for other certificate holders, and aircraft manufacturers providing training. This expansion led to an ever-increasing number of exemptions. The proposed rules are needed to reduce or eliminate the administrative burden of issuing numerous exemptions.

In June 1988, the FAA received from a joint industry/FAA task force [1] several recommendations on the expanded use of flight simulators in new and innovative training programs. The recommendations included: (1) Establishing a training center certificate for a separate training entity certificated to conduct training, testing, and checking under FAR parts 61, 63, 91, 121, 135, 141, etc.; (2) centralizing an approved process for course programs and check airmen at the national level, with local approvals only for speciality (local or unique) courses; and (3) expanding and standardizing the use of flight simulators and flight training devices, while at the same time providing relief from certain provisions of part 121, appendix H. The task force recommended single point oversight of a certificate by the FAA (instead of separate Flight Standards District Offices approving centers in their geographic areas), defining training center recordkeeping requirements, and providing relief from the medical certificate requirements for instructors and check airmen conducting training in only flight simulators and flight training devices. The task force submitted aircraft manufacturer recommendations as an addendum that included allowing a manufacturer's training center to provide the initial operating experience (IOE) for air carriers.

In April 1989, this task force examined the role of training centers in air carrier and general aviation contract training, particularly training using flight simulators and flight training devices. Comprised of aviation representatives from special interest groups, aircraft manufacturers, air carriers, university flight departments, and training centers such as SimuFlite, Flight Safety, and Northwest Aerospace Training Corporation, this task force examined flight simulator instructor and evaluator issues, including prerequisites; initial and recurrent training; requirements for current medical certificates; necessary in-flight experience; training center issues such as recordkeeping, facilities, and equipment; and the training program approval process. The formal recommendations of this task force were forwarded to the FAA in October 1989. Essentially, the task force recommended that the FAA standardize the use of flight simulators and flight training devices, provide a means to certificate entities called training centers, and permit the training centers to apply for national approval of core training programs that could be used by individuals receiving training under parts 61, 121, 125, and 135. Following receipt of the recommendations, the FAA appointed an internal working group to consider the recommendations.

The FAA working group concurred with most of the recommendations of the task force and recommended that the FAA undertake a rulemaking project that would include the certificate training center concept. The FAA working group further recommended the establishment of an organization to implement and manage policy related to training centers and the increased use of flight simulators and flight training devices. This FAA national office would function as a single program manager for certificated training centers.

Related Activity

Two other FAA rulemaking projects address some of the same sections of part 61 that are covered in this NPRM. Phase I of a part 61/part 141 review, Pilot, Flight Instructor, and Pilot School Certification, Amendments 61–490 and 141–4, became effective April 15, 1991. Phase II, affecting parts 61, 141, and 143, is in the developmental stage. Although some of the sections of part 61 involved in Phases I and II of the comprehensive review of parts 61, 141, and 143 are the same as those addressed in this project, the issues are different.

A third project, Special Federal Aviation Regulation (SFAR) No. 58, "Advanced Qualification Program," (Amendment 61–88, effective October 2, 1990) allows air carriers conducting training under part 121 or part 135 to develop innovative approaches to training.

Restructuring of the affected regulatory sections to resolve any discrepancies among the three projects would occur in the final rule based on this NPRM and in Phase II of the review of parts 61, 141, and 143.

[1] This task force was later subsumed by the Air Transportation Personnel Training and Qualifications Advisory Committee, established by FAA Order 1110.115, May 2, 1990. Today it continues to function as a subcommittee by the same name under the Aviation Rulemaking Advisory Committee.

Discussion of the Proposal

General

In addition to proposing new rules pertaining to Category III authorizations, this NPRM generally addresses the following: (1) The creation of a new part 142 that would contain certification rules and operating rules for training centers; and (2) an expanded use of, and credit for, training, testing, and checking conducted in flight simulators and flight training devices in accordance with approved programs conducted at training facilities and training centers operated or certificated under SFAR 58, part 121, part 125, part 135, or proposed part 142.

The advantage of the proposed training center concept is that it would provide a common source for standardized, quality training accessible to any individual, operator, or air carrier. Training center certification would establish training rules separate from those for operations conducted under authority of certificates issued under other parts of this chapter. Program approval would be standardized through a national office, which should prove especially helpful for training centers operating in different FAA regions. The rules applicable to training centers would apply nationwide, and training programs would not be subject to approval by local FAA offices.

The proposed rules would not take away any of the uses for flight training devices currently allowed by the FAR, and would have virtually no adverse impact on the airmen who use flight simulator training services. Providers of flight simulation training under proposed part 142 would come under new regulatory controls that would enhance the use of qualified flight simulation in approved training programs. The proposed changes are consistent with a state-of-the-art training concept, and they recognize industry recommendations for the expanded use of sophisticated flight simulation. The FAA believes that, if a student has prerequisite experience, a qualified flight simulator or flight training device used in an approved training program will provide for an effective transfer of skills to the actual aircraft.

The FAA proposes to implement the joint industry/FAA task force recommendations concerning training centers by using an operational concept that would require a training center to obtain a certificate plus a training specification (similar to an operating specification for part 121 and part 135

operators). It is believed that this would add flexibility to accommodate changing conditions without changing the certificate itself.

Proposed part 142 would allow training centers that do not hold a part 121 or part 135 operating certificate to use approved flight simulators and approved flight training devices for airman training, testing, and checking. The FAA proposes to change parts 61, 121, 125, and 135 to provide a mechanism for crediting training in flight simulators toward the aeronautical experience, testing, and checking requirements of the FAR. Under the proposed rules, part 121 and part 135 certificate holders could continue to train personnel under those parts; however, training would be limited to training aircrew personnel employed by the certificate holder. Those certificate holders would be required to acquire a part 142 training certificate in order to conduct training for other persons or companies.

Under the proposed rules, the authority to issue pilot certificates and the provisions permitting certain training in a flight simulator or flight training device, rather than in an aircraft, would remain in part 61.

Proposed part 142 would regulate training center certification and operation to ensure that qualified flight simulators or flight training devices are used in conjunction with approved courses and curricula. The benefits of completing a course of standardized instruction in a training environment, and in a timeframe that allows for a building-block approach to learning, has been recognized and is reflected in the part 141 flight experience prerequisites for pilot certificates. Thus, part 141 flight experience requirements were used as the basis for many of the proposed part 142 initial requirements.

Category III Operations

This proposal recognizes that technological advances permit aircraft operated under part 91 to conduct Category III extreme reduced visibility landing approaches. As a result, part 91 would be amended to authorize such approaches in appropriately equipped aircraft. Part 61 would be amended to specify the training and testing requirements for Category III operations. Current § 61.67, Category II pilot authorization requirements, and Advisory Circular 120–28, *Criteria for Approval of Category III Landing Minima*, were consulted to develop the proposed amendments.

The FAA is not proposing to amend part 61 or part 91 to establish equipment requirements for Category III operations. Those requirements are established at the time of aircraft certification by means of the type certificate, or at the time of certification of after-market equipment by means of a supplemental type certificate.

Part 141 Pilot Schools

As proposed, pilot schools currently certificated under part 141 would be permitted to continue to operate as they do now. Certification of new pilot schools would also be permitted under part 141. A part 141 pilot school wishing to use a Level A through Level D flight simulator for more than the hours currently allowed in a pilot ground trainer as described in § 141.41(a)(1), however, would have to become certificated under proposed part 142.

This proposal does not include an increase in credits for use of simulators except in the structured environment created by part 142. Part 141 pilot schools that desire to become training centers certificated under part 142 would apply for certification and course approval under proposed part 142 in the same manner as other applicants.

Flight Training Devices

In several proposed sections in this NPRM, flight training devices are listed with aircraft and flight simulators as permitted equipment for various training, testing, or checking, although no flight training device may exist for that particular task. The FAA proposes to allow the possibility of approving flight training devices for training, testing, and checking a wide variety of tasks to allow and encourage the development of flight training devices in the future. By proposing the possibility of a wide variety of uses for flight training devices, which are generally less expensive than flight simulators, the FAA hopes to encourage the growth of simulation.

Terms

Part 1

Section 1.1 Category III Operations

A new section would be added to include a definition for Category III operations. The proposed definition would add the subcategories of Category IIIa, Category IIIb, and Category IIIc, which have been authorized for several years but not defined in the FAR. In addition to defining these operations, the FAA has set forth in § 61.68 of the NPRM the proposed requirements for pilot authorization to perform them.

SFAR 58

SFAR 58.2 *Definitions.* The definition of training centers would be revised to make it compatible with the definition of proposed § 142.3.

SFAR 58.11. *Approval of Training Qualification, or Evaluation by a Person Who Provides Training by Arrangement.* This section would be revised to include an expiration date. Two years after (the effective date of this amendment), a person who provides training by contract or similar arrangement would have to meet the training, qualification, or evaluation requirements set forth in proposed part 142. When adopting this SFAR, the FAA intended that it remain in effect for a short period of time only. By its own terms, it expires on October 2, 1995, unless sooner terminated. The FAA is proposing to remove it before this termination date because its provisions are covered under proposed §§ 142.85, 142.89, 142.91, and 142.93.

Part 61

Section 61.1a Definition of Terms

This proposed section would define several terms, including "authorized instructor," "flight simulator, airplane," "flight simulator, rotorcraft," and "flight training device." In the past, the terms "simulator" and "training device" have created confusion, so they would be more clearly defined under this section. As defined, the terms would make it clear that certain devices are not considered a flight simulator or a flight training device for purposes of this part. For example, devices such as airborne ILS simulators, ground trainers, instrument trainers, and flight trainers are not considered flight simulators or flight training devices under this part unless specifically evaluated and approved as such by the Administrator.

Flight Simulator

Proposed § 61.1a defines a flight simulator. It is defined as a full-sized replica of a specific type or make, model, and series aircraft cockpit, including the assemblage of equipment and programs necessary to represent the aircraft in ground and flight operations. As defined, a flight simulator would also include a force cueing (motion) system providing cues at least equivalent to a three-degree of freedom motion system. Under the definition, a flight simulator is a device that is approved by the Administrator for uses that would lead to credit for aeronautical experience, required training, checking, or testing.

Flight Training Device

Section 61.1a defines a flight training device as a replica of an aircraft's instruments, equipment, panels, and controls that is located in an open flight deck area or in an enclosed aircraft cockpit. This definition includes the equipment and programs necessary to represent the aircraft in ground operations and flight conditions. As defined, a flight training device would not be required to have a force cueing or visual system. However, like a flight simulator, a flight training device is a device that requires approval by the Administrator for all uses that would lead to credit for aeronautical experience, required training, checking and testing.

Simulated IFR Conditions

Some airmen have expressed concern about the meaning of the expressed terms "simulated IFR conditions" or "simulated instrument conditions" in part 61. There appears to be confusion over whether these conditions can be achieved by the use of hood devices only. These terms are used throughout the FAR to mean that instrument conditions may be simulated by artificially limiting pilot visibility outside the cockpit. Pilot visibility can be limited by a hood device, by artificially limiting visibility in an approved flight simulator or flight training device, or by other appropriate means. Proposed § 61.45 would permit the artificial limitation of visibility by these various means.

Tests and Checks

Generally, this notice uses the term "test" in lieu of the term "check." The notice uses the terms "initial test," "recurrent test," and "practical test." These terms refer to an examination, whatever its nature, on which the applicant receives a grade, even though the grade may only be "pass" or "fail."

An exception is found in proposed § 61.58 that would require a "proficiency check" for a pilot in command of an aircraft. A "proficiency check" is one type of periodic review of a pilot's proficiency as a pilot in command, rather than an initial test to determine that pilot's qualification to be a pilot. Thus, when referring to this type of requirement, the FAA believes that the word "check" is more appropriate.

Aircraft

Currently, the only flight simulators referred to in the FAR are airplane simulators. However, the word "aircraft" is used throughout this proposal to indicate that the proposed rules apply to training, testing, and checking in helicopters as well as in airplanes. When a proposed requirement is meant to apply to only a particular category or class of aircraft, the appropriate category or class, such as "airplane", "rotorcraft", or "helicopter", is specified.

Normal Landings and Normal Takeoffs

The terms "normal landing" and "normal takeoff" are used in several places in the proposed new sections of part 61. "Normal" is meant to describe maneuvers that are not emergency maneuvers or those that are not done with abnormal conditions. A "normal" takeoff or landing may include those: (1) With different flight path angles, from steep to shallow; (2), with different configurations, such as flaps down or up; (3) to or from different surfaces, such as sod, concrete, and wet or slushy surfaces, or (4) with various other differences that may be described in an aircraft flight manual. An emergency takeoff or landing is not a "normal" takeoff or landing. A takeoff or landing is not "normal" if it is labeled "abnormal" by the aircraft flight manual.

Easily Reached Controls

There has been some question about the meaning of the term "easily reached and operable in a normal manner" which appears in § 61.45. Under this proposal, controls that are "easily reached" are those that can be reached by any airman or applicant seated in a designated pilot seat, with seat belts, shoulder harness, or other provided restraints fastened.

Conventional Manner

This notice also proposes to change the term "normal manner", as it refers to the operation of an aircraft, to "conventional manner" and to define this term. This new definition should eliminate potential confusion associated with the use of such terms as "normal," "abnormal," or "emergency" performance. These different terms currently appear in many aircraft flight manuals and training programs.

As used in this proposed rule, in order to perform a normal, abnormal, or emergency maneuver in a "conventional manner," an applicant must use an aircraft that is equipped with one of the following: (1) A control wheel, stick, yoke, or cyclic control that in cruise flight, and in a forward movement, causes a decrease in pitch attitude, and rearward pressure causes an increase in pitch attitude; a left movement causes a bank to the left, and a movement to the right causes a bank to the right; and (2) rudder pedals or antitorque pedals which, when depressing the left pedal, cause the aircraft nose to yaw left and, when depressing the right pedal, cause the nose to yaw right.

Under this proposal, aircraft with controls that operate differently than described above may still be used for a practical test, if the examiner determines that the flight test can be conducted safely in the aircraft.

Section-by-Section Summary

Section 61.2 Certification of Foreign Pilots and Flight Instructors

This revised section would permit training centers and their satellite training centers, within the authority granted by the Administrator to those training centers, to add additional ratings and endorsements to U.S.-issued certificates, including adding ratings and endorsements to U.S. certificates issued to foreign pilots. It also would permit them to issue certificates to U.S. citizens, including U.S. citizens residing outside of the United States.

Since part 142 training centers located outside the United States would provide the same structured training (subject to FAA approval) as those within the United States, and since they would employ the same state-of-the-art training methods, the FAA believes that they would be qualified to add additional ratings and endorsements to U.S. certificates.

By proposing to permit training centers to issue certificates to U.S. citizens residing outside the United States, the FAA is fomenting the establishment of satellite training centers abroad. These centers would promote safety and economy by making advanced simulator training available to persons, such as U.S. certificated pilots living abroad, to whom it would not otherwise be readily available.

Section 61.3 Requirement of Certificates, Ratings, and Authorizations

This revised section would authorize instructors employed by a training center certificated under proposed part 142 to provide instruction and endorsements for Category III pilot-in-command and second-in-command authorizations, which previously have been allowed by exemption only. This proposal would eliminate the administrative burden associated with the issuance of exemptions for this purpose.

The following instruction and endorsements currently authorized by the Administrator under this section

would continue to be authorized: (1) Instruction in lighter-than-air aircraft given by an appropriately rated commercial pilot as authorized under § 61.139; (2) instruction in air transportation service as authorized under § 61.169 and given by the holder of an ATP certificate; and (3) instruction and associated endorsements given by a person authorized under § 61.41 (foreign and military).

Under this proposed section, a pilot would be required to gain a Category III pilot authorization in order to perform Category III operations, similar to the way a pilot is required to hold a Category II pilot authorization under the current rules to conduct Category II operations. Currently, only pilots operating under part 121, and authorized to perform Category III approaches, can perform those approaches. However, as discussed above, the technology is now available for aircraft operating under several parts of the FAR, including part 91, to conduct Category III approaches. This proposed section would recognize the advances in aircraft and airport navigation and guidance systems and would provide a means to authorize airmen to take advantage of them. The FAA believes that it is now safe to extend Category III authorizations to pilots operating under several parts of the FAR, so long as the pilots have demonstrated the ability to perform these operations and the aircraft is certified and equipped to perform Category III operations.

Section 61.4 Qualification and Approval of Flight Simulators and Flight Training Devices

Under this proposed section, flight simulators and flight training devices must be qualified and approved by the Administrator for training, testing, and checking. In addition, each particular maneuver, procedure, or crewmember function to be performed would be subject to the approval of the Administrator. Lastly, the Administrator must qualify and approve the representation of the specific category and class of aircraft, a particular variation within type of aircraft, or set of aircraft, in the case of some flight training devices.

Section 61.13 Application and Qualification

This section would be revised to permit the use of an authorized flight simulator or authorized flight training device for simulated instrument conditions. As discussed above, some airmen have expressed concern about the meaning of the current terms "simulated IFR conditions" or "simulated instrument conditions." Because a hood and other view limiting devices are not the only means of artificially limiting visibility, this section would be changed to recognize that visibility may be artificially limited in flight simulators and flight training devices. In addition, proposed § 61.13(i) would require that a pilot hold a Category III pilot authorization prior to conducting a Category III operation. In view of the complexities and perils associated with Category III approaches, the FAA believes it is essential that a pilot demonstrate the capability to perform those approaches before conducting a Category III operation.

Section 61.21 Duration of Category II and Category III Pilot Authorizations

In addition to a change in the title, this section would be revised to provide that Category II and Category III pilot authorizations would expire 6 months after last issued or renewed. The FAA believes that this authorization should be renewed 6 months after issuance in order to ensure that a pilot has a continuing capability to perform Category III operations. The FAA believes that critical skills may be lost if not reviewed and retested within 6 months after being last demonstrated.

Section 61.39 Prerequisites for Flight Tests

A 60-calendar-day time limit for completion of all increments of the practical test (i.e., the oral increment, the flight simulator increment, and the flight increment) is proposed under this section.

In the event that the entire practical test were not completed within the prescribed 60 calendar days, an applicant would have to retake the entire practical test, including those increments satisfactorily completed more than 60 calendar days previously.

The FAA believes that all elements of this test must be satisfactorily completed within 60 days to ensure that all skills are current at the time the test is passed. If all skills being tested are not satisfactorily demonstrated within that period of time, the FAA believes that those not demonstrated may be lost (due to memory loss) before being retested.

Section 61.45 Flight Tests: Required Aircraft and Equipment

Paragraph (a) of this revised section would clarify that an applicant could use a flight simulator or a flight training device for those tasks of a practical test for which the flight simulator or flight training device has been approved. Currently, under part 61 a flight simulator or flight training device may be used to demonstrate second-in-command qualifications and also may be used to train and test for the ATP certification test. However, currently this section does not clearly permit the use of flight simulators or flight training devices for practical tests.

Air carrier training and certification program and simulator exemptions have allowed flight simulators and flight training devices to be used to meet the testing requirements and flight experience requirements for ATP certification. Based on its evaluation of these exemptions and their results, the FAA believes that, under certain conditions, the entire flight increment of the practical test can be successfully performed in an approved flight simulator or flight training device. It further believes that all or part of the flight increment can be successfully performed in a flight simulator or flight training device for all certificates and ratings issued under this section. Accordingly, it is proposed to revise this section in order to permit this practice.

Section 61.51 Pilot Logbooks

This revised section would permit the logging of flight simulator and flight training device time by adding them to paragraph (b)(1)(iv), which currently permits logging of time in aircraft only. This section already provides for logging of instrument flight time in an aircraft. Paragraphs (b)(3)(iii) and (c)(4)(ii) would be revised to permit the logging of instrument flight time in an approved flight simulator or flight training device. Paragraph (b)(1)(ii) and (b)(2)(viii) would be revised to permit the logging of flight instruction in a flight simulator or flight training device. These revisions are needed to permit the logging of simulated flight time that is authorized by other sections of this proposal.

Proposed § 61.51(c)(5) provides that all time logged as instruction time must be certified by the authorized instructor from whom it was received. This proposal is intended to ensure that an applicant's logbook reflects all required instruction which was provided by an authorized instructor.

Section 61.55 Second-in-Command Qualifications

This proposed section would permit most second-in-command training, testing, and checking, for both airplanes and helicopters, to be demonstrated in a flight simulator if the demonstration is made in an approved course conducted by a training center certificated under proposed part 142. However, under

proposed § 61.55(b)(iv), initial second-in-command qualification tests for a particular category and class or type of aircraft would require at least one takeoff and one landing to be satisfactorily completed in an aircraft of that category, class, and type as applicable.

The FAA believes that some minimal experience with the category, class, and type of aircraft, if applicable, is required for those second-in-command applicants not previously qualified in any capacity in an aircraft requiring a crew of more than one person. With the exception of the takeoff and landing that would have to be performed in the aircraft, the FAA believes that, based on its evaluation of the results of training in flight simulators, the training, testing, and checking for second-in-command qualifications can be satisfactorily demonstrated in a part 142 training course that is subject to FAA approval.

Section 61.56 Flight Review

Under current § 61.56, the flight review can be performed only in an aircraft.

Proposed § 61.56(g) would permit the use of flight simulators or flight training devices for the flight review if: (1) The flight simulator or flight training device is approved by the Administrator for that purpose; and (2) the flight review is accomplished in an approved course conducted by an appropriately rated training center certificated under proposed part 142. All maneuvers that might be included in a flight review have been conducted in flight simulators under exemptions previously granted by the FAA. Based on its evaluation of the results, the FAA believes that the flight review can be successfully accomplished in an appropriate flight simulator or flight training device.

Currently, landing maneuvers, which likely would be required during a flight review, can be conducted only in a flight simulator qualified as Level B or higher. This is because an applicant can demonstrate landing capability in those simulators. Under proposed § 61.57(g)(3), however, the review could be accomplished in a Level A flight simulator or in a flight training device, provided that the Level A flight simulator or flight training device is qualified for all other maneuvers and procedures included in an approved flight review course and provided that the applicant is current in accordance with § 61.57(c) . Therefore, under the proposed rule, the flight review could be conducted in a Level A simulator only if the applicant has previously demonstrated the capability to land the aircraft during a flight review conducted in aircraft.

Section 61.57 Pilot in Command Currency

In addition to a change in the title of this section to indicate that it contains pilot-in-command currency requirements, the proposed revision to paragraph (c)(4) would permit airmen to accomplish required takeoffs and landings in a flight simulator qualified and approved by the Administrator for that purpose. The airman would have to accomplish the takeoffs and landings in an approved course conducted by a training center certificated under proposed part 142.

For night experience, § 61.57(d)(1) would require that the visual system of the authorized flight simulator be adjusted to represent the period from 1 hour after sunset to 1 hour before sunrise.

Also, under the proposal, paragraph (e) would be revised to permit pilots to meet instrument currency requirements in an approved flight simulator or flight training device.

Section 61.58 Pilot-in-Command Proficiency Check: Operation of Aircraft Requiring More Than one Required Pilot

FAA proposes to revise this section to permit airmen, under certain conditions, to accomplish required pilot-in-command proficiency checks entirely in a qualified and approved flight simulator. In addition, § 61.58(d) would allow several other practical tests to be credited toward the requirements for the required pilot-in-command proficiency check. Proposed § 61.58(f) would require that, in order to accomplish the recurrent check entirely in a flight simulator, the pilot must have performed the 12-and-24-month proficiency checks in an aircraft, as described in proposed § 61.58(a) (1) and (2). If the pilot were not current in accordance with § 61.58(a) (1) and (2), a portion of the check test would have to be accomplished in an aircraft.

If a flight simulator qualified as Level B or higher is not used to satisfy the requirements of proposed § 61.58, the pilot also would have to perform the landings required by proposed § 61.57 (c) and (d) in an aircraft, since only a Level B or higher flight simulator can be used for landing. If, because of limitations of the flight simulator used for a proficiency check, the pilot receiving the proficiency check cannot demonstrate proficiency in a required maneuver during the flight simulator increment of the proficiency check, § 61.58(e)(1) proposes that the omitted maneuver be annotated in the pilot's training record. The pilot would be required to demonstrate proficiency in that maneuver to the Administrator before performing that maneuver as pilot in command.

For example, a proficiency check requiring circle-to-land maneuvers would have to be accomplished in a flight simulator equipped with a visual system that permits accomplishment of the circling approach task. If the flight simulator used is not qualified for circling approaches and the applicant does not demonstrate circling approaches at the training center, proposed § 61.58(e)(3) would require that the training center annotate the applicant's records with the statement, "Proficiency in circling approaches not demonstrated." In addition, proposed § 61.58(e)(2) would restrict the applicant from performing circling approaches as pilot in command, during conditions less than basic VFR weather minimums. This restriction would remain until proficiency in circling approaches in either an aircraft or a flight simulator qualified for circling approaches is demonstrated to a person authorized by the Administrator to conduct the required check.

Under exemptions granted by the FAA, and pursuant to approved air carrier training programs, pilot-in-command proficiency checks have been performed for years in approved flight simulators. The FAA has evaluated the performance of pilots who have received their flight checks in this manner. Based on this evaluation, it believes that these required checks can be successfully performed in an approved flight simulator.

Section 61.63 Additional Aircroft Ratings for Other Than Airline Transport Pilot Certificate (for Ports 121 and 135 use Only)

The FAA proposes to revise this section to make it applicable only to applicants who are pilot crewmember employees of a part 121 or part 135 certificate holder. This section would continue to set forth the requirements for adding additional aircraft ratings to pilot certificates other than ATP certificates. The requirements for adding additional aircraft ratings to ATP certificates are addressed in existing § 61.157.

The FAA proposes to create new §§ 61.64 and 61.158. These proposed sections contain requirements for airmen other than pilot crewmember employees of part 121 certificate holders and part 135 certificate holders. Section 61.158, for example, would provide for

additional ratings for ATP certificate holders who are not applying as aircrew employees of air carriers.

These proposed revisions are clarifying in nature. They would make clear which requirements are applicable to aircrew employee applicants of air carriers and which are applicable to other applicants.

In addition, under the proposed sections, required flight instruction and testing could be performed in qualified and approved flight simulators and flight training devices.

Section 61.64 Additional Aircraft Ratings for Other Than Airline Transport Pilot Certificates (for Other Than Parts 121 and 135 use)

Under this proposed section, an applicant for any additional rating would have to comply with the requirements applicable to the class and category for which the rating is sought. For example, an applicant who holds a commercial pilot certificate with a rotorcraft category rating and a helicopter class rating, and who is seeking a particular airplane type rating, would have to satisfy the requirement for the airplane category rating and class rating (such as a multiengine land class rating) sought.

Under this proposed section, an applicant for an additional rating could obtain the training for that rating in a flight simulator if the training is given in an approved course conducted by a training center certificated under proposed part 142. This practice has been permitted for years pursuant to exemptions granted by the FAA, and the training received has proven to be effective.

Section 61.65 Instrument Rating Requirements

References in the current rule to the terms such as "instrument ground trainer" and "airborne ILS simulator" are outdated and, therefore, would be deleted. The requirements of this section could be met in a flight simulator or flight training device, provided that the flight training device or flight simulator is qualified and approved by the FAA for the rating for which application is made.

Proposed § 61.65(e)(2)(ii) would allow the 20 hours of instrument instruction by an authorized instructor in a flight simulator or flight training device, currently allowed under part 61, to be increased to 30 hours of instruction in a flight simulator or flight training device if the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142. The FAA believes that this increase is justified because the instruction would be conducted pursuant to an FAA-approved course that would prevent unneeded duplication of some tasks and the omission of others, and that would provide continuity of training.

For similar reasons, this section would be revised to permit the total pilot aeronautical experience requirement for the instrument rating to be reduced from 125 hours of pilot flight time as currently required by § 61.65(e)(1) to 95 hours of pilot flight time, which could include 35 hours of simulated or actual instrument flight time if the entire instrument curriculum were accomplished under an approved part 142 course.

A provision would be added that would permit a part 142 certificate holder to give a student an instrument rating if that student has fewer than the 95 hours of pilot flight time and fewer than the 35 hours of simulated or actual instrument experience time currently required. However, in order to gain this privilege, the training center would be required to demonstrate that it can provide proper training in fewer hours than currently required. To accomplish this, it would have to propose a method of tracking graduates and collecting data to validate training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. Training centers would have to present historical data covering at least 1 year (or other period of time approved by the Administrator) before it could be granted a reduction in the minimum hours prescribed in this proposed section. Data covering performance over this period of time is considered necessary to properly evaluate student performance. Data covering a shorter term would not be sufficient to allow the FAA to evaluate performance during varying seasonal conditions.

Section 61.67 Category II Pilot Authorization Requirements

This section would be revised to permit the use of a flight simulator or flight training device to meet Category II pilot authorization requirements. The 25 hours of instrument flight time currently allowed in a flight simulator could be increased to 40 hours if the training is accomplished in an approved course conducted by a training center certificated under proposed part 142. In addition, the requirement for 50 hours of night flight time under VFR conditions as pilot in command would be changed to 50 hours of night flight time as pilot in command regardless of the weather conditions or flight rules observed during those hours. This revision would correct an apparent error, namely, the requirement that the 50 hours be flown under VFR conditions. As revised, this section would permit this requirement to be met under either VFR or IFR conditions.

Section 61.68 Category III Pilot Authorization Requirements

This new section would set forth the requirements for Category III approaches. The requirements could be demonstrated in a qualified flight simulator or qualified flight training device approved as part of a course conducted by a training center certificated under proposed part 142.

Section 61.109 Airplane Rating: Aeronautical Experience

Credit for instruction received in approved flight simulators and approved flight training devices would be authorized under this proposed section. Currently, 20 hours of flight instruction are required, and all of that instruction must be received in an airplane. The flight instruction received in a flight simulator or flight training device would have to be accomplished in a flight simulator or flight training device representing an airplane.

Under this proposed section, a maximum of 2.5 hours of flight simulator or flight training device instruction from an authorized instructor would be creditable toward the 20 hours of flight instruction required for a private pilot certificate. The 2.5 hours of instruction time could be increased to 5 hours of instruction in a flight simulator or flight training device, provided the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142.

Current § 61.109 requires at least 40 hours of flight instruction and solo flight time. Under this proposed section, the 40 hours of aeronautical experience could be reduced to 35 hours provided that the entire private pilot curriculum is accomplished under an approved part 142 course.

The 35 hours of aeronautical experience could be further reduced under paragraph (i) of this proposed section if the applicant completes an approved private pilot course and if the Administrator determines that a further reduction is appropriate based on data validating training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. Training centers would have to present historical data covering at least 1 year of student

performance before a further reduction could be considered.

Section 61.113 Rotorcraft Rating: Aeronautical Experience

Under current § 61.113 an applicant for a private pilot certificate with a rotorcraft category rating must have at least 40 hours of flight instruction and solo flight time in aircraft. Instruction in flight simulators or flight training devices currently is not authorized.

Proposed § 61.113 would authorize credit for instruction received in flight simulators and flight training devices approved by the Administrator. To be credited, however, the instruction would have to be accomplished in a flight simulator or flight training device representing a rotorcraft. Unless accomplished in a proposed part 142 training center, a maximum of 2.5 hours of flight simulator or flight training device instruction from an authorized instructor would be creditable toward the total aeronautical experience requirement for the private pilot certificate.

Proposed § 61.113(a)(3) would increase the 2.5 hours of instruction time to 5 hours, provided the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142.

In addition, revised § 61.113(e) would permit the total aeronautical experience requirement for the private certificate to be reduced to 35 hours if the entire private curriculum were accomplished under an approved part 142 course. A provision to allow a further reduction is included in paragraph (e) of this proposed section. The Administrator could approve a further reduction based on the considerations discussed above under proposed § 61.109(i).

Section 61.129 Airplane Rating: Aeronautical Experience

Under current § 61.129(b), an applicant for a commercial pilot certificate with an airplane rating must have at least 250 hours of flight time as a pilot, which may include not more than 50 hours of instruction in a ground trainer acceptable to the Administrator.

Under proposed § 61.129(b)(1)(ii), up to 100 hours of flight simulator instruction or flight training device instruction may be credited toward the 250 hours of total flight time if the instruction is accomplished in an approved course conducted by a training center certificated under proposed part 142. To be credited toward the total flight time requirement for a commercial pilot certificate, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing an airplane.

In addition, proposed § 61.129(c) would permit the total fight time for the commercial certificate to be reduced to 190 hours if the entire commercial curriculum were accomplished in an approved course conducted by a training center certificated under proposed part 142.

Several years ago, the 250-hour total flight time requirement of part 61 was reduced to 190 hours if the applicant for a commercial pilot certificate received his or her training for that certificate from a pilot school certificated under part 141. This reduction was authorized because these schools offer FAA-approved training programs which use a building-block approach and provide continuity of training. Based on its evaluation of the results, the FAA believes that 190 hours of flight time has proven to be adequate and safe under these circumstances.

Since training centers certificated under part 142 would offer advanced simulation training, and because of demanding course approval criteria and rigorous oversight of part 142 training centers, the FAA believes that the total flight time required for a commercial pilot certificate may be reduced even below 190 hours, if the applicant receives his or her training from a training center certificated under proposed part 142.

Accordingly, a provision to allow further reduction of the 190 hours, based on a demonstrated ability to accomplish training requirements in less time, is set forth in proposed § 61.129(c). The Administrator could approve a further reduction based on the considerations discussed above under proposed § 61.109(i).

Section 61.131 Rotorcraft Rating: Aeronautical Experience

Under current § 61.131, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter.

Under this proposed section, the applicant could obtain 35 hours of credit toward the 150 hour flight time requirement in a flight simulator or flight training device, or a credit of up to 50 hours of the total required flight time in a flight simulator or flight training device if the flight simulator time or flight training device time is obtained from a training center certificated under proposed part 142. There is no current provision for crediting flight simulation time toward this rating. To be credited toward the 150-hour flight time requirement, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

A provision to allow a further reduction of the 150-hour flight time requirement, based on demonstrated ability to accomplish training requirements in less time, would also be added under this proposed section. The Administrator could approve a further reduction based on the considerations discussed above under proposed § 61.109(i).

Section 61.155 Airplane Rating: Aeronautical Experience

Under current § 61.155(b)(2), an applicant for an airline transport pilot certificate with an airplane rating must have had at least 1,500 hours of flight time as a pilot, including, among other things, at least 75 hours of actual or simulated instrument time, at least 50 hours of which were in actual flight. Since 50 hours must have been in actual flight, up to 25 hours could be obtained in a simulator.

Under this proposed section, the 25 hours of simulated instrument time currently allowed could be increased to 50 hours if accomplished in an approved course conducted by a training center certificated under proposed part 142. To be credited toward the total flight time requirement, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing an airplane.

Section 61.157 Airplane Rating: Aeronautical Skill (for Parts 121 and 135 use Only

The FAA proposes to revise this section to make it applicable to applicants for an ATP certificate (with an airplane rating) who are pilot crewmember employees of an air carrier certificated under part 121 or part 135. The FAA proposes a new § 61.158 that would apply to other applicants, as discussed below.

Section 61.158 Airplane Rating: Aeronautical Skill (for Other Than Parts 121 and 135 use)

This proposed new section contains the broad areas of skill requirements for an ATP certificate with a single-engine or multiengine class rating or type rating for applicants who are not participants in an air carrier training program. An applicant for any added rating would have to comply with the requirements for that rating. For example, an

applicant who holds an ATP certificate with a rotorcraft category rating and a helicopter class rating, and who is seeking a particular airplane type rating, would have to satisfy the requirement for the airplane category and multiengine land class ratings.

Under paragraph (c) of this proposed section, an applicant for an ATP certificate (other than an air carrier employee) with a single engine or multiengine class rating or type rating may perform the tasks required for these ratings in an approved flight simulator or flight training device. However, the flight simulator or flight training device could not be used to perform those tasks unless the applicant uses them as part of an approved course conducted by a training center certificated under proposed part 142. The FAA believes that the required tasks for these ratings can be satisfactorily demonstrated in a flight simulator or flight training device used by a training center. These tasks currently are being successfully demonstrated by simulation under exemptions.

Proposed § 61.158(a)(2) would incorporate Amendment No. 61–90 (56 FR 11326; March 15, 1991) which adopted certain requirements for an ATP certificate with single-engine or multiengine class rating or type rating. The required areas of operation are set forth in this proposed section rather than in an appendix.

Section 61.161 Rotorcraft Rating: Aeronautical Experience

Under current § 61.161(b), an applicant for an ATP certificate with a rotorcraft category and helicopter class rating must have at least 1,200 hours of flight time as a pilot, including 75 hours of instrument time, 25 hours of which may be simulated instrument time in a flight simulator or flight training device.

The 25 hours of simulated instrument flight time allowed under this section could be increased to 50 hours if accomplished in an approved course at a training center certificated under proposed part 142. To be credited toward the total flight time requirement, flight simulator or flight training device instruction would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

Section 61.163 Rotorcraft Rating: Aeronautical Skill

Under current § 61.163, an applicant for an ATP certificate with a rotorcraft category and helicopter class rating, or additional aircraft rating, must pass a practical test on certain maneuvers in a helicopter.

This proposed section would permit an airman to perform the practical test showing competence in the skill areas set forth in this section in either a helicopter, a flight simulator, or flight training device used as part of an approved course conducted by a training center certificated under proposed part 142.

Simulator exemptions have allowed flight simulators to be used for all or part of the pilot certification tests for several years. Based on its evaluation of the results, the FAA believes that the required maneuvers can be satisfactorily demonstrated in an approved flight simulator. Flight training devices are included in the proposal to allow the possibility that a flight training device may be developed and qualified for all or part of the maneuvers that must be demonstrated during this practical test.

Section 61.169 Instruction in Air Transportation Service

This section would require that airline transport pilots giving instruction in Category II or Category III operations be trained and checked in Category II or Category III operations, as applicable.

Section 61.187 Flight Proficiency

The proposed change to paragraph (a) of this section would permit an applicant for the flight instructor certificate to receive the required instruction for a flight instructor certificate in a flight simulator or flight training device used as part of an approved course conducted by a training center certificated under proposed part 142. At present, there is no provision for accomplishing the practical test in anything other than an aircraft.

The FAA believes that the subject areas can be effectively taught and learned in a structured course that includes ground instruction and simulation. Although the required instruction has not been accomplished previously in a flight simulator pursuant to exemptions, the FAA nevertheless believes that it can be successfully accomplished in an approved flight simulator or flight training device.

Section 61.191 Additional Flight Instructor Ratings

This section would permit an airman to accomplish the required practical tests for these ratings in a flight simulator or flight training training device used as part of an approved course conducted by a training center certificated under proposed part 142. At present, there is no provision for accomplishing the practical test in anything other than an aircraft. The FAA believes that the test can be effectively accomplished and evaluated in an approved flight simulator or flight training device.

Section 61.195 Flight Instructor Limitations

This section would be revised to require flight instructors giving instruction in Category II or Category III operations to be trained and checked in Category II or Category III operations, as applicable. The FAA believes that this measure is necessary in order to ensure that flight instructors are qualified in the subjects that they teach.

Section 61.197 Renewal of Flight Instructor Certificates

This section would be amended to permit an applicant for renewal of a flight instructor certificate to conduct the required practical test in a flight simulator or flight training device in an approved course conducted by a training center certificated under proposed part 142. At present, there is no provision for accomplishing the practical test in anything other than an aircraft. The FAA believes that the practical test can be effectively accomplished and evaluated by using simulation.

Appendix A to Part 61

The FAA proposes that appendix A to part 61 be retitled to read "Practical Test Requirements For Airplane Airline Transport Pilot Certificate and Associated Class and Type Ratings (For part 121 and part 135 Use Only)." Practical testing standards for applicants other than aircrew employees of part 121 and part 135 operators are specified in proposed § 61.158. This change is largely editorial in nature, and is necessary due to the proposed revisions to § 61.157 that are discussed above.

Integration of Appendix B to Part 61 Into Practical Test Standards

The FAA proposes to delete appendix B to part 61. That appendix contains the practical test requirements for rotorcraft ATP certificates with a helicopter class rating and associated type ratings. The use of Practical Test Standards (PTS) has essentially rendered Appendix B obsolete. The FAA used the PTS for several years to detail those areas of operation subject to testing for certificates and ratings. The PTS lists the specific tasks, conditions, and performance standards required to demonstrate competence.

Appendix B would no longer be necessary since proposed § 61.163 sets forth the broad areas of operations that contain maneuvers and procedures that would have to be demonstrated by an applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating or a type rating.

Sections 61.65, 61.67, 61.109, 61.113, 61.129, 61.131, 61.155, 61.161 Flight Simulator and Flight Training Device Authorizations

Figure 1, included in the **SUPPLEMENTARY INFORMATION**, compares flight simulator and flight training device authorizations currently allowed under part 61 to proposed flight simulator and flight training device authorizations. Expanded flight simulator and flight training device credit would be permitted under approved courses of training conducted by a training center certificated under part 142. Airmen may gain maximum credit for the use of flight simulators and flight training devices by completing entire curricula at training centers.

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Figure 1

FLIGHT HOUR SUMMARY - FLIGHT SIMULATOR AND FLIGHT TRAINING DEVICE AUTHORIZATION

Rating or Authorization	Current FAR Reference	NPRM FAR Reference	Current Requirement (See Note 1)	NPRM Requirement (See Note 2)	
				Basic and with simulator training completed at training center	Entire curriculum completed at training center (See Notes 3 and 4)
Instrument	61.65	61.65	(1) 125 hrs. flight time including 50 hrs. PIC cross country (2) 40 hrs. actual or simulated instrument time including maximum of 20 hrs. in simulator (3) 15 hrs. instrument flight time including at least 5 hrs. in airplane or helicopter	(1) Same (2) Same, except 20 hrs. in simulator increased to 30 hrs. (3) Same	95 hrs. flight time including maximum of 35 hrs. of simulated or actual instrument time
Category II Pilot Authorization	61.67	61.67	(1) 50 hrs. night flight time, VFR, as PIC (2) 75 hrs. instrument time including maximum of 25 hrs. in simulator (3) 250 hrs. of cross country as PIC	(1) Same (2) Same, except 25 hrs. in simulator increased to 40 hrs. (3) Same	As approved by the Administrator
Category III Pilot Authorization		61.68		(1) 50 hrs. of night flight time as PIC (2) 75 hrs. instrument time including maximum of 25 hrs in simulator (may be increased to 40 hrs.) (3) 250 hrs. cross country as PIC	As approved by the Administrator
Private Pilot Airplane	61.109	61.109	(1) 40 hrs. of flight instruction (2) 20 hrs. solo flight	(1) Same except new basic authorization of 2.5 hrs. in simulator, with increase to 5 hrs. (2) Same	35 hrs. flight time in aircraft or simulator
Private Pilot Rotocraft	61.113	61.113	40 hrs. flight time	Same, except new basic authorization of 2.5 hrs. in simulator, with increase to 5 hrs.	35 hrs. flight time in aircraft or simulator
Commercial Pilot Airplane	61.129	61.129	250 hrs. flight time including maximum of 50 hrs. in simulator	Same, except 50 hrs. simulated time increases to 100 hrs.	190 hrs. flight time in airplane or simulator
Commercial Pilot Rotocraft, Helicopter	61.131	61.131	150 hrs. flight time including 50 hrs. in helicopter	Same, except new basic authorization of 50 hrs. in simulator, including 35 hrs. of helicopter in simulator	150 hrs. flight time in helicopter or simulator
ATP Airplane	61.155	61.155	1,500 hrs. flight time including maximum of 25 hrs in simulator	Same, except 25 hrs. in simulator increases to 50 hrs	As approved by the Administrator
ATP Rotocraft	61.161	61.161	1,200 hrs. flight time including maximum of 25 hrs in simulator	Same, except 25 hrs. in simulator increases to 50 hrs.	As approved by the Administrator

Notes: (1) Current regulation refers to simulator time as "instrument ground trainer" or "sythetic trainer," or "ground trainer"
(2) All simulator time must be in a "flight simulator" or "flight training device" in NPRM
(3) Flight time hours, including simulator time, may be reduced by the Administrator when Part 142 training center requests reduction and provides evidence that training can be satisfactorily accomplished in fewer hours
(4) The requirements for the issuance of certificates or ratings will be contained in the training center's curriculum, as approved by the Administrator.

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Part 91

Section 91.191 Category II and Category III Manual

In this proposed section, the title would be changed to include Category III manuals. The text would set forth the proposed requirements for Category III manuals for civil aircraft conducting those operations. This section has specified the requirements for a Category II manual for several years. This proposed section would provide similar information to those operators desiring to conduct Category III operations. At present, there is no regulatory guidance for part 91 operators who might anticipate Category III operations.

Section 91.205 Powered Civil Aircraft With Standard Category U.S. Airworthiness Certificates: Instrument and Equipment Requirements

This revised section would include reference to instrument and equipment requirements for Category III operations. The discussion under proposed § 91.191 applies to this proposal as well.

Part 121

Section 121.1 Applicability

This section would be amended (after 2 years from the effective date of part 142) to be made applicable to all persons who train, check, or qualify air carrier personnel. This would include, among others, instructors authorized under SFAR 58.

Section 121.400 Applicability and Terms Used

This section would be amended to require a part 121 certificate holder to obtain part 142 certification in order to train persons other than employees of the certificate holder. However, part 121 certificate holders operating under an exemption to provide training for crewmembers, aircraft dispatches, or personnel other than those employed by the certificate holder, and training facilities operating under an exemption to part 121 to provide training for a part 121 certificate holder, would be given 2 years from the effective date of the amendment based on this NPRM to obtain certification under part 142.

Subpart N of part 121 requires an air carrier subject to that part to have a training program for its employees subject to that part. The FAA proposes that all training provided to air carriers by trainers other than an air carrier training its own aircrew employees, as required by subpart N, be provided by a training center certificated under part 142.

At present, there is no regulatory provision for such training; however, there are exemptions permitting training of air carrier aircrew employees by other air carriers and by training entities that are not air carriers. This proposed change would replace those exemptions. The training currently provided by one carrier for another tends to emphasize tasks that are tailored to suit the unique needs of the carrier providing the training. This training may not be entirely suitable or effective to meet the unique needs of other carriers. Therefore, the FAA believes that crewmembers and others employed by part 121 certificate holders (other than their own) should be given standardized training that would prepare them to perform their functions effectively (without a need for retraining) for any carrier. The FAA believes that the training standards contained in proposed part 142 are sufficiently comprehensive to accomplish this purpose.

The FAA also believes that a part 121 certificate holder that trains crewmembers and other personnel (other than its own) is conducting a function that is both unrelated to its primary function—the carriage of passengers for compensation or hire—and significant enough to warrant certification as a separate function. Accordingly, under the proposed rules, a part 121 certificate holder would have to obtain certification as a part 142 training center in order to train the employees of other carriers.

These rules propose a 2-year grace period to permit part 121 certificate holders to make necessary arrangements in order to obtain part 142 certification. This 2-year period would also provide the FAA sufficient time to review and approve applications for certification under the new part.

Section 121.401 Training Program: General

This section would be amended to require that operators subject to this part provide or require a used training center to provide certain training and evaluation personnel, facilities, and courseware and to make competency certification. Under paragraph (c) of this proposed section, instructors and others would have to certify to the competency of crewmembers and others whom they have trained or checked. These provisions would ensure that a training center providing training to an air carrier would meet the same standards in these areas that the air carrier currently is required to meet.

Section 121.402 Training Program: Special Rules

Under this proposed section, a part 121 certificate holder could provide training, testing, and checking services to others by contract. To provide these services, the certificate holder would have to hold appropriate ratings and specifications issued under part 142 and would have to meet certain other requirements. This proposed section should promote the use of training centers. It also clarifies that an air carrier does not have to repeat the training program elements for which it contracts.

Section 121.403 Training Program: Curriculum

This section would be amended to require that each certificate holder include in each curriculum a list of flight simulators and flight training devices that will be used in that curriculum, and a list of maneuvers, procedures, and functions approved for each flight simulator and flight training device.

Section 121.405 Training Program and Revision: Initial and Final Approval

This section would be amended to allow an air carrier to arrange with a training center for required training before the carrier's training program is given final approval by the FAA. The FAA believes that the standards set forth in proposed part 142 are comprehensive and appropriate for the training needs of all air carriers. Accordingly, it believes that training can commence by contract with a certificated training center before the carrier's training program is given final approval.

Section 121.407 Training Program: Approval of Flight Simulators and Other Training Devices

This section would be amended to specify that a flight simulator or flight training device used in a training program approved under this part must be used to satisfy the requirements of the certificate holder's low-altitude windshear training program that is required by § 121.409(d). This proposed section would allow a training center to conduct this training, and it would allow an air carrier to use a training center to satisfy this requirement.

Section 121.431 Applicability

This section would be amended to permit training centers to provide testing and checking services by contract or otherwise to persons subject to the requirements of part 121.

Section 121.432a Training, Testing, and Checking Conducted by Training Centers: Special Rules

This proposed new section would provide a means for crediting the training, testing, and checking conducted under part 142 toward the requirements of part 121.

Section 121.439 Pilot Qualification: Recent Experience

This section would be amended to indicate that pilot aircrew members may accomplish recency of experience requirements in certain flight simulators, and that evaluators who are employed by a training center certificated under part 142 may observe the required takeoffs and landings and certify that the person observed is proficient. This same function has been successfully performed by evaluators of part 121 training programs.

Section 121.441 Proficiency Checks

This section would be amended to permit required proficiency checks to be given by a pilot evaluator who is authorized to give the checks under proposed part 142.

Part 121, *Appendix H.* This appendix would permit advanced simulator training to be conducted by training centers certificated under part 142. Under this appendix, holders of advanced simulation plans would have to ensure that all instructors and evaluators would have to participate in either an approved regularly scheduled line-flying program or an approved line-observation program.

Part 121, *Appendix I, paragraph III. Employees who must be tested.* This appendix would be revised to include persons performing simulated flight instruction.

Part 125

Section 125.285 Pilot Qualifications: Recent Experience

The term "visual simulator" would be changed to "qualified and approved flight simulator." "Visual simulator" is an obsolete term.

Section 125.296 Training, Testing, and Checking Conducted by Training Centers: Special Rules

This section would be added to permit a crewmember to credit the training, testing, and checking received under part 142 toward the training, testing, and checking required by part 125.

Section 125.297 Approval of Flight Simulators and Flight Training Devices

The title of this section would be changed from "Approval of airplane simulators and other training devices" to the title indicated above. The terminology used in the new title is consistent with that used elsewhere in these proposed rules.

This section also would permit the performance of required checks in flight simulators and flight training devices used by training centers certificated under part 142.

Part 135

Section 135.1 Applicability

This section would be amended to be made applicable to (after 2 years from the effective date of part 142) part 142 certificate holders who, by contract or otherwise, train, check, or qualify air carrier personnel.

Section 135.291 Applicability

This section would be amended by adding a subparagraph (2) enabling training centers to provide the testing and checking requirements of subpart G.

Section 135.292 Training, Testing, and Checking Conducted by Training Centers: Special Rules

A new § 135.292 would be added to permit a crewmember who completes training, testing, or checking under part 142 to credit the completed training, testing, or checking toward that required by part 135.

Section 135.293 Initial and Recurrent Pilot Testing Requirements

This section would be revised to include the term "pilot evaluator", to facilitate the use of this position in training centers.

Section 135.297 Pilot in Command: Instrument Proficiency Check Requirements

This section would be revised to include reference to a training center pilot evaluator, as discussed in § 135.293.

Section 135.299 Pilot in Command: Line Checks: Routes and Airports

This section would be revised to include reference to a training center pilot evaluator, as discussed for the two previous sections.

Section 135.321 Applicability and Terms Used

This section would be revised to require part 135 certificate holders to obtain a part 142 certificate in order to train persons other than their own aircrew employees. However, a part 135 certificate holder operating under an exemption to provide training for crewmembers, aircraft dispatchers, or other personnel other than those employed by the certificate holder, would be given 2 years from the effective date of the amendment based on these proposed rules to obtain certification under proposed part 142. The basis for this proposed rule is discussed above under § 121.400.

Section 135.323 Training Program: General

This section would be revised to allow the use of a training center to accomplish the requirements of the training program.

Section 135.324 Training Program: Special Rules

A new paragraph would be added to this section to permit a certificate holder to use a training program conducted in accordance with an approved course conducted by a rated training center certificated under proposed part 142 to satisfy the training program requirements of Part 135 in order to prevent duplication of training facilities, recordkeeping, etc. The rationale is the same as discussed under § 121.402.

Section 135.325 Training Program and Revision: Initial and Final Approval

This section would be revised to allow a training center to begin training by contract or other arrangement upon initial approval of a training program for the air carrier certificate holder.

Section 135.327 Training Program: Curriculum

This section would be revised by adding a new subparagraph to provide that flight simulators and flight training devices used in a curriculum would have to be listed in each approved curriculum.

Part 141

Section 141.26 Training Agreements

This proposed new section would be added to permit training arrangements between pilot schools certificated under existing part 141 and training centers certificated under proposed part 142. This arrangement would provide a means for pilot schools to benefit from simulation training at certificated training centers, and would provide a means for training centers without aircraft to offer prospective students training programs that include aircraft flight time. A more detailed discussion is set forth below under § 142.33.

Part 142

Subpart A

Proposed part 142 would have a general subpart, subpart A, which sets

forth the proposed requirements necessary to obtain and maintain certification as a part 142 training center.

Section 142.1 Applicability

This section specifies the training to which part 142 applies and that to which it does not apply.

Section 142.3 Definitions

This proposed section defines terms used in part 142.

Section 142.5 Certificate and Training Specifications Required

This proposed section would provide that no person may operate a training center without a training center certificate and training specifications, as described by this proposed part. Paragraph (b) further provides that a training center certificate applicant would be issued a training center certificate and training specifications if the applicant complies with the applicable sections of proposed part 142.

Section 142.7 Duration of a Certificate

Under this proposed section, a training center certificate would have no expiration date, but it may be suspended, revoked, or otherwise terminated by the Administrator. Further, under paragraph (b) of this proposed section, a certificate holder would have to return its certificate to the Administrator if that certificate is suspended, revoked, or terminated. The FAA believes that these provisions are necessary to ensure compliance with part 142 requirements.

Section 142.9 Deviations or Waivers

This proposed section would establish deviation and waiver procedures. The FAA believes that provisions should be included to permit deviations from, and waivers of, part 142 rules under appropriate circumstances.

Section 142.11 Training Center Ratings

This proposed section would require that, in addition to a training center certificate, a training center certificate holder would have to obtain a rating to conduct each course of training. This proposed requirement is similar to requirements for part 141 Pilot Schools. Since each training course is unique and tailored to a specific need, the FAA believes that each course should be evaluated and rated separately.

Section 142.13 Application for Issuance or Amendment

Paragraph (a) of this proposed section would require that an application for a training center certificate would have to be made on a form and in a manner prescribed by the Administrator. The FAA believes that this proposed requirement is necessary in the interest of standardization and would expedite application processing. Paragraph (a)(3) proposes timeframes that have been found necessary for processing similar applications.

Paragraph (b) proposes that each application provide information about, but not limited to, each management position, facilities, recordkeeping, and curriculum of the proposed training center. The FAA has found that these items of information are necessary in order for it to properly evaluate the capabilities of proposed air agencies.

Proposed paragraph (c) would require that facilities actually be in place at the time of application, and not simply planned or expected. This proposed requirement is intended to preclude expenditure of FAA resources on frivolous or tentative plans that may never come to fruition due to changed business plans. It would also permit the FAA to evaluate actual facilities rather than those that are merely planned and subject to later change. The FAA believes that these proposals are necessary in order to conserve public resources and in order to maintain the highest standard of facilities in training centers.

Paragraph (d)(2) of this proposed section outlines the content of proposed training specifications. This is a new concept for training entities, but experience with similar "operating specifications" issued to air carrier certificate holders has shown that the procedure should allow maximum administrative convenience. The FAA believes that training specifications will be stored by training centers in an automated data base. If so, they can easily and rapidly be accessed for revision and review by the FAA when the center desires to add a new training program or amend an existing one.

Paragraph (e) proposes circumstances, such as the submission of inaccurate information, that could lead to the denial, suspension, or revocation of a training center certificate. The FAA believes that this proposed section is needed to ensure that training centers employ properly qualified persons and meet the standards for the certification and operation of training centers.

Proposed paragraph (f) would establish administrative procedures under which the Administrator might amend a training center certificate. Such an amendment may be necessary, for example, to add a satellite training center to a certificate.

Section 142.15 Management and Personnel Requirements

Under this proposed section, a training center would have to show that it has and maintains a sufficient number of qualified instructors, evaluators, and management personnel competent to perform required duties. The FAA needs this information, along with the other information required by this part, to approve applications for certification under part 142.

Section 142.17 Facilities

Paragraph (a) of this proposed section would require a training center applicant to establish and maintain facilities designed to accommodate the type of training, testing, and checking it plans to conduct. The proposed requirements for facilities are designed to ensure a high quality learning environment. Under § 142.17(b)(3) of the proposed rule, a training center would have to establish and maintain a principal business office that may not be shared with a part 121, 135, 141, or 142 certificate holder. The purpose of this proposal is to prevent co-mingling of records, facilities, students, and instructors. Co-mingling is considered undesirable because different standards apply to entities certificated under these several parts.

Under proposed § 142.17(c), the principal business office could not have a mailing address that is a post office box only. The FAA cannot properly evaluate the performance of entities that use a post office box as an address, but seem to have no geographically-fixed base of operations. The principal business office could be located outside the United States.

Under paragraph (b)(2) of § 142.17, records required by part 142 would have to be kept at the principal business office. This proposed rule would permit the FAA to locate and periodically review records in order to determine compliance with part 142 standards.

Training centers certificated under proposed part 142 would be permitted to provide ground instruction as well as training in flight simulators, flight training devices, and aircraft; however, in order to be certificated under proposed part 142, a training center would be required to own or lease at least one FAA-approved flight simulator. The FAA believes that flight training in aircraft and in flight training devices is adequately covered by Part 141 Pilot Schools and that the primary emphasis of part 142 training centers will be training with flight simulators. In order to ensure the availability of proper

equipment, therefore, the FAA believes that a training center should own, or have a lease for, at least one flight simulator. Under proposed § 142.17(e), a satellite training center could be located within or outside the United States; however, a satellite training center located outside the United States would have limited privileges, as described under § 142.20.

Section 142.19 Satellite Training Centers

Under proposed § 142.19(a), training centers would be permitted to establish satellite training centers. A satellite training center might be a geographically separate facility, and would not be required to have separate management personnel. Under proposed § 142.19(a)(1), however, a satellite training center would have to meet the facility, equipment, personnel, and course curriculum requirements of §§ 142.39 or 142.77, or both, of proposed part 142. The purpose of these proposed satellite centers is to facilitate the establishment of additional training centers in areas where a demand for them develops. These additional centers could be located within or outside the continental United States.

As proposed in § 142.19(a)(3), a satellite training center may provide training, testing, and checking in accordance with the training center certificate holder's training specifications, provided the FAA has been notified at least 60 calendar days prior to the proposed commencement of operations at the satellite training center. Sixty calendar days is considered the minimum time necessary to process the application for a certificate and for the training specifications.

Under proposed § 142.19 (a)(4) and (b), a training center certificate holder's training specifications would have to reflect the name and address of the satellite training center and the approved courses to be offered at the satellite training center, to allow FAA surveillance.

Section 142.20 Foreign Training Centers: Special Rules

Under proposed § 142.20(b), a satellite training center located outside the United States could issue United States pilot certificates to United States citizens only and could add ratings and endorsements to all pilot certificates issued by the FAA. For example, in proposed § 142.20(b), a person who is not a United States citizen, but who has an FAA-issued private pilot certificate with an airplane single-engine land rating, could add to that private pilot certificate an instrument rating, a multiengine rating, a single-engine or multiengine sea rating, or a rotorcraft rating. However, this proposed section would not permit that person to train or test for a commercial pilot certificate or an ATP certificate. The FAA believes that the above restriction is appropriate, since it would be improper for the FAA to award pilot certificates to citizens of another country within that country.

Section 142.21 Prohibited Drugs

A training center would be subject to the requirements of an anti-drug program, as described in appendix I to part 121, and the drug testing requirements associated with such a program. The proposed requirements are consistent with anti-drug regulations of other parts of the FAR that were developed in response to concerns about the degradation of safety that has been shown to be attendant to illicit drug use. In addition, a training center certificate holder that permits any aircraft owned or leased by it to be engaged in any operation that the certificate holder knows to be in violation of § 91.12 of the FAR, "Carriage of narcotic drugs, marijuana, and depressant or stimulant drugs or substances," could lose its certification.

Section 142.23 Testing for Prohibited Drugs

The purpose for this proposed section is the same as that discussed above under § 142.21.

Section 142.25 Refusal To Submit to a Drug Test

The comments under the summary for § 142.21 apply to this section.

Section 142.27 Display of Certificate

This proposed section would require a training center to prominently display its certificate and to make it available upon request by the FAA. The FAA believes that this is necessary to aid in compliance determination and enforcement action, if necessary.

Section 142.29 Inspections

This proposed section would require training centers to permit inspections by the FAA at reasonable times and places. The FAA believes that recurrent inspections and unannounced inspections are necessary to determine compliance with the FAR. These proposals are similar to inspection requirements applicable to other air agencies which are subject to FAA regulation.

Section 142.31 Advertising Limitations

This proposed section would restrict advertising to that training that has been approved by the Administrator. Paragraph (b) would require a training center to promptly and totally cease advertising after surrender, suspension, revocation, or termination of its certificate. The FAA believes that these requirements are necessary to help ensure that only the highest quality of training is offered to the aviation community.

Section 142.33 Training Agreements

This proposed section would permit training centers to establish training agreements with pilot schools certificated under part 141. A pilot school certificated under part 141 would be allowed to contract with a training center certificated under proposed part 142 for an entire course or for a block of ground or flight training. The course of instruction for which the school contracts, however, would have to be an approved course of training identified in the training center's training specifications. The pilot school's training course outline (TCO) would have to reflect training conducted at the pilot school, contain an outline of the block of training conducted at the training center, and include the name, address, and certificate number of the training center that conducted the training. These proposed requirements would allow the FAA to determine that all required areas of instruction were covered by either the pilot school or the training center. Curricula for such a course would fall under § 141.57, Special Curricula, and would be approved under that section like other curricula.

A training center certificated under proposed part 142 would also be allowed to contract with a pilot school certificated under part 141 for an entire course or only part of a course; however, a training center would not be permitted to contract with a pilot school certificated under part 141 for training or testing required by part 121 or part 135. Pilot schools cannot now conduct training or testing for air carriers certificated under part 135 or part 121 either under the FAR or by exemption.

If a training center desired to contract with a pilot school for a particular course or block of training, the pilot school would be required to have authorization under part 141 to provide the type of training, testing, or checking requested. For example, under proposed § 142.33(c), if a certificated training center wanted a certificated pilot school to provide a ground school course, the

pilot school would have to have a flight ground school course rating and an approved TCO to provide the type of training requested. Under proposed § 142.33(b), if the training were a block of aircraft time required for private pilot certification, the pilot school would be required to have either a part 141 private pilot certification course rating or a private pilot test course rating.

Before a training center certificated under proposed part 142 could contract with a pilot school certificated under part 141 for a block of training, the entire course curriculum, including the contracted block of training, would have to be approved under proposed part 142. In addition, under proposed § 142.33(b) the training center certificate holder's training specifications would have to be amended to reflect the contracted block of training as well as the name, address, and certificate number of the pilot school that would administer the training. The FAA believes these measures are necessary to allow monitoring and quality control and to facilitate compliance determination.

Under proposed § 142.33(d), after completion of a contracted block of training, the pilot school that provides the training would keep a copy of the student's training record and forward a copy to the training center that contracted for the training.

Subpart B

Proposed Subpart B, "Aircrew Curriculum, Training Course Outline, and Syllabus (other than air carrier)," proposes curriculum, course outline, and syllabus requirements for those training center applicants and certificate holders planning to offer training to persons other than aircrew employees of an air carrier or an aircrew employee of a part 125 certificate holder.

Section 142.35 Applicability

This proposed section would specify that the training programs proposed by this subpart would apply to that segment of aviation frequently called "general aviation" that operates under part 91, and that is not required by regulation to have a training program.

Section 142.37 Approval of Flight Aircrew Training Program

Paragraphs (a) and (b) of this section would provide that each applicant for training program approval would be required to file an application with the FAA Flight Standards District Office that has jurisdiction over the area in which the applicant's principal business office will be located.

Proposed § 142.37(c) would require the applicant to submit a training program identifying segments that are core training programs and speciality training programs. Core training programs and speciality training programs are defined in proposed § 142.3. Core training programs would be forwarded to the central national office for approval. Specialty training programs would be forwarded to the FAA inspector with primary responsibility for training surveillance at the center at which the specialty training is to occur. Because specialty training programs are designed to consider local factors, such as geography and climate, these programs could be conducted only at the center for which the specialty training program is approved. Core courses approved at the national levels, however, would be approved for use by the training center certificate holder at any of its training centers and its satellite training centers. The FAA believes that this procedure would provide maximum standardization of training.

Proposed § 142.37(c) would require applicants, when filing an application for training program approval, to indicate which FAR requirements the training program curriculum would satisfy and which FAR requirements the training program curriculum would not satisfy.

Proposed § 142.37(e) would require that a certificate holder make revisions to its approval training program upon request by the Administrator. Revisions may be necessary when, upon review of a curriculum, the FAA discovers a deficiency in it. If a certificate holder fails to make necessary revisions upon request, the Administrator could suspend, revoke, or terminate its certificate.

Section 142.39 Training Program Curriculum Requirements

Each training program curriculum submitted for approval would have to contain a syllabus and course outline, minimum flight training equipment requirements, and minimum instructor and evaluator qualifications for each proposed course of training. The FAA believes that approval of a curriculum under SFAR 58, Advanced Qualification Program (AQP), should, for that applicant, constitute complete approval of that curriculum for use by a training center certificated under part 142, since the AQP application contains curriculum criteria at least as detailed as the part 142 curriculum requirements set forth in proposed §§ 142.39 and 142.77.

Proposed § 142.39(a)(4) would require that each training program contain initial qualification and continuing qualification curriculum for each instructor or evaluator employed to instruct in a proposed course of training.

Paragraph (a)(4) would require training centers to issue annually a letter of authorization to each instructor for each course that instructor would teach. These proposed revisions should ensure that instructors and evaluators retain necessary skills.

Many of the proposed requirements for a training center are derived from years of experience with approved training programs for "de facto" training centers, and training programs that included flight simulator use in accordance with subpart N and appendix H of part 121. Because that experience has shown that there is a greater efficacy in structured training using high fidelity simulation than in traditional airplane-only training, proposed § 142.39(a)(5) would allow a further reduction of the applicable flight experience requirements of part 61 or part 141 based on demonstrated performance of graduates.

A training center seeking approval to train toward, or test for, a certificate or rating in fewer than the minimum hours prescribed in part 61 for that certificate or rating would be required to demonstrate the ability to accomplish such training in fewer hours than prescribed. In addition, the training center or training center applicant would have to propose a method of tracking students and collecting data to validate the effectiveness of its training for the certificate or rating under its proposed program. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. The proposal would require such tracking for 1 year, or other period approved by the Administrator, following course completion. The basis for these proposed rules is discussed above under § 121.109(i).

Subpart C

Subpart C "Personnel and Flight Training Equipment Requirements (other than air carrier)," of proposed part 142 would establish instructor and evaluator eligibility requirements, address instructor and evaluator privileges and limitations, and address instructor and evaluator training, testing, and qualification for training programs approved under Subpart B. This subpart also prescribes the rules governing flight training equipment requirements.

Section 142.45 Applicability

This proposed section indicates that proposed Subpart C sets forth the personnel and equipment requirements

required for training that is applied toward the requirements of part 61.

Section 142.47 Training Center Instructor Eligibility Requirements

Proposed § 142.47(a)(1) would set the minimum age for training center instructors at 18, which is consistent with the minimum age currently required for a commercial certificate. Proposed § 142.47(a)(2) would require that, to be eligible to instruct at a training center, an instructor would have to be able to read, write, and converse fluently in English. This standard of English language proficiency has been required for airline transport pilots and flight instructors for years, and experience has shown that the complexities of the airspace rules and air traffic environment demand this standard of language proficiency. English is the international language in aviation, and training courses must be taught in English so commonly used terminology is understood.

To permit the maximum number of potential instructors, the FAA proposes in § 142.47(a)(3) that all training center instructors would have to meet one of the following standards: (1) Hold a flight instructor certificate and at least a commercial pilot certificate with an instrument rating; (2) at the time of accepting employment, be currently qualified to instruct under SFAR 58, part 121 or part 135; or (3) hold a ground instructor certificate with instrument rating and meet at least the commercial pilot aeronautical experience requirements. Under exemptions previously issued, the FAA has required that simulator flight instructors meet these standards. Since the training provided under these exemptions has proven effective, these standards have been included in this proposed section.

Experience with numerous simulator training centers over several years has shown the present instructor cadre to be effective. Therefore, the FAA proposes in § 142.47(b) that an instructor who has been employed as a simulator instructor by a training facility operating under an exemption to part 61 (prior to the date of the amendment based on this NPPM) may continue to instruct for that training facility provided the facility obtains certification under proposed part 142, the instructor maintains continuous employment with the training center, and the instructor instructs only in flight simulators in which that instructor has previously been authorized to instruct.

The FAA recognizes that there are a number of highly experienced persons who might be potential training center instructors, including former military pilots who never gained an FAA flight instructor certificate, and former air carrier pilots beyond the maximum age to continue in that capacity. Some of these persons may be unable to hold an airman medical certificate, which the FAR currently requires for instructors. Accordingly, under this proposed section, a training center may employ a person as a training center instructor if that person: (1) Holds a ground instructor certificate with an instrument rating, and (2) has at least the aeronautical experience certification requirements for a commercial certificate (ATP experience requirements in some cases).

Section 142.49 Training Center Instructor Privileges and Limitations

To instruct in an aircraft, a training center instructor would have to hold a current flight instructor certificate with certificates and ratings applicable to the aircraft used for instruction, hold at least a valid second class medical certificate, and meet the recency of experience requirements of part 61. These proposed requirements for aircraft flight instructors are those currently required by part 61. The FAA believes that the current requirements for aircraft flight instructors are necessary to ensure that an instructor is qualified to properly teach required course curricula.

Section 142.51 Qualifications to Instruct in a Flight Simulator or a Flight Training Device

Under this proposed section, to instruct in a flight simulator or flight training device that represents an airplane an instructor would have to meet at least the aeronautical experience requirements of § 61.129 that must be met by the applicant for a commercial pilot certificate with an airplane rating, except for the required hours of instruction for the practical test. Further, each instructor who instructs in a flight simulator or flight training device that represents an airplane requiring a type rating, or in a course of training leading to the issuance of an airline transport certificate with an airplane category rating (or the addition of an airplane category rating to an existing airline transport certificate), would have to meet the ATP aeronautical experience requirements of § 61.155. Training center instructors would have to meet similar aeronautical experience requirements in helicopters in order to instruct in a flight simulator or in a flight training device that represents a helicopter.

Section 142.53 Training Center Instructor Training and Testing Requirements

The importance of the instructor's role in providing quality training has been highlighted by a number of national inspection programs in recent years. This point has been emphasized in reports of the General Aviation Safety Audit (Unnumbered, Flight Standards Service internal audit), and most recently in the National Aviation Safety Inspection Program (FAA Order 8000.270). Various National Transportation Safety Board and National Airspace Review recommendations also reference the need for increased instruction of instructors. Simulator training exemptions for several years have required initial and recurrent instructor training, and the performance of instructors in training centers operating under exemption has been satisfactory. Section 142.53 proposes that all training center instructors would be required to successfully complete initial and annual recurrent training in specific areas. The basis for this requirement is discussed above under § 142.39.

Section 142.55 Training Center Evaluator Requirements

Paragraph (a) of this proposed section sets forth the proposed requirements for an evaluator, including recurrent training requirements that would have to be met within each 12-month period. An evaluator is a person who would perform tests for certificates and ratings authorized by the training center certificate holder's training specifications.

Many years of experience in evaluating training in air carrier training programs, pilot schools, and de facto simulator training centers have shown that evaluators must be proficient in all areas required of an instructor. In addition, an evaluator must have the special skills required to evaluate. Therefore, § 142.55 proposes that training center evaluators be subject to the same eligibility, qualification, authorization, and initial and recurrent training and testing requirements as proposed for training center instructors in §§ 142.47, 142.49, 142.51, and 142.53. In addition to other required subjects, § 142.55(a)(3) proposes that training center evaluators would have to successfully complete additional training unique to pilot evaluator duties. The FAA has found these subjects to be necessary and adequate to prepare evaluators and keep them current in evaluation skills and techniques.

Section 142.55(b) would allow evaluators to complete recurrent training requirements within a 60-day window, without changing the next due date. This practice allows maximum convenience in scheduling training.

Section 142.57 Aircraft Requirements

Proposed paragraph (a) of this section would require training center aircraft used for instruction to be civil aircraft of the United States if used in the United States, and would allow satellite training centers located outside the country to use aircraft registered in the host country. Paragraph (a)(3) proposes airworthiness requirements for training centers within and outside of the United States. The FAA believes that these proposed registration and airworthiness requirements satisfy international aviation agreements and will ensure a reasonable standard of safety for training aircraft.

Proposed paragraph (a)(4) would require that training centers maintain and inspect training aircraft in accordance with the requirements of Subpart E of part 91 and an approved program. Paragraphs (a)(5) and (6) propose that all aircraft used for instrument instruction be equipped and maintained for IFR operations, and in accordance with the requirements of the approved training program.

Under proposed in § 142.57(b), aircraft used for instruction would have to be at least a two-place aircraft with flight controls that are easily reached by both pilots and that operate in a conventional manner. Based on its experience with flight tests required by § 61.45, the FAA believes that these proposed requirements generally are necessary to ensure safety during in-flight instruction. However, in recognition that certain uniquely configured aircraft can be safely operated with flight controls that do not meet the above standards, paragraph (c) of this proposed section would permit a training center to authorize the use of such aircraft upon a finding that flight instruction can be safely conducted in them.

Section 142.59 Flight Simulators and Flight Training Devices

Under proposed § 142.59(a), flight simulators and flight training devices used in an approved training program would have to be qualified by the National Simulator Program Manager (NSPM). Simulation has benefit only if behaviors learned can be transferred to the aircraft. No effective transfer of learning has been demonstrated except from flight simulators and flight training devices that accurately replicate the performance of an aircraft. The FAA determines accurate replication of an aircraft by evaluation and qualification of flight simulators and flight training devices by its NSPM. Therefore, flight simulators and flight training devices used in proposed part 142 training centers would be subject to qualification by the NSPM.

Paragraph (a) of this section also would require that a flight simulator or flight training device be approved for use in a training center training program curriculum. Approval is separate from evaluation and qualification by the NSPM. Approval for simulation use in a specific training program is a requirement now for all aircrew training programs subject to FAA approval.

Under proposed § 142.59 (a)(1), a training center certificate holder would have to ensure that the flight simulators and flight training devices the certificate holder plans to use for a particular maneuver or procedure are qualified for that maneuver or procedure. If part 61, for example, requires landing in a particular make, model, and series aircraft, then a flight simulator used to simulate that aircraft would have to be qualified and approved both for the visual landing and to simulate the make, model, and series of aircraft.

Proposed § 142.59(c)(1) would require that flight simulators and flight training dices used by training centers be maintained to ensure the reliability of the performances, functions, and all other characteristics that were required for initial qualification of the equipment.

Proposed § 142.59(c)(2) would require that flight training devices and flight simulators be modified to conform with any modification to the aircraft being simulated, if that modification results in changes to performance, function, or other characteristics of the aircraft.

Proposed § 142.59(c)(3) would require that flight simulators and flight training devices used under proposed part 142 be given a functional check before being used. Further, this paragraph would require that training center instructors would have to keep a discrepancy log, and enter all discrepancies in that log at the end of each training session or check. The FAA believes that these measures are necessary to enable it to determine compliance with the approved simulator component inoperative guide (SCIG) discussed in the next paragraph.

Proposed § 142.59(d) would provide that, unless otherwise authorized by the Administrator in a SCIG, all components on a flight simulator or flight training device used by a training center would have to be operative to insure faithful replication of aircraft capabilities. A flight simulator or flight training device SCIG is a guide approved by the Administrator that indicates the specific training or testing tasks that are authorized if a component becomes inoperative. The use of a flight simulator or flight training device with one or more inoperative components may be limited by the principal operations inspector (POI), on a case-by-case basis. The POI would not authorize maneuvers or procedures that involve the use of an inoperative component; however, he or she may allow the use of the simulator for other maneuvers and procedures for which it has been previously qualified and approved.

The authorization to use the simulator with an inoperative component would be valid for a period not to exceed 4 months unless an extension is approved by both the POI and the NSPM. Four months is the maximum period currently permitted under training programs using flight simulators, and it is the period of time established for reoccurring evaluation and qualification of each simulator and advanced training device. Experience has shown that 4 months is sufficient time to repair or replace an inoperative component of a simulator.

Proposed § 142.59(e) would allow training centers to use flight simulators in approved courses without specific route or terminal aids and visual scenes. The FAA believes that the use of specific route and terminal aids and visual scenes has not been shown to have a significant advantage over the use of selected or generic route and terminal aids and visual scenes.

To facilitate compliance with this proposed section, § 142.59(f) would allow a training center to request evaluation and qualification of a flight simulator or flight training device without having an air carrier certificate or any special relationship with an air carrier. Currently, the only entity specified in the FAR that may request flight simulator evaluation is an air carrier certificate holder.

Subpart D

Subpart D, "Operating Rules (other than air carriers)," of proposed part 142 sets forth proposed operating rules for training centers that would provide training in accordance with Subpart B of proposed part 142.

Section 142.61 Applicability

This section provides that the operating rules proposed in this subpart would apply to training centers providing training to clients other than air carrier clients.

Section 142.63 Privileges

Proposed § 142.63 would permit training center instructors and evaluators who provide training in flight simulators and flight training devices to use flight simulators and flight training devices only to accomplish recency of experience requirements. Simulator training exemptions allowed this alternative for maintaining recency of experience on a trial basis, and the FAA found this practice to be acceptable.

Section 142.65 Limitations

Because the FAA intends that flight simulators used in testing, checking, or line-oriented flight training (LOFT) provide the same time constraints and sequential, or overlapping, circumstances that occur in an actual aircraft, § 142.65 would prohibit the use of flight simulator or flight training device repositioning, freeze, or slow motion features during testing, checking, and LOFT.

Additionally, proposed § 142.65(b)(1) would require a crewmember qualified in the aircraft category, class, and type, if a type rating is required, to occupy each crewmember position during testing, checking, or LOFT. During Category II and Category III testing, the copilot position would have to be occupied by a pilot qualified to perform the duties of a second in command for Category II or Category III operations, as applicable. The FAA believes that this proposed requirement is necessary because these operations are essentially crew tasks, and the capability of a lone pilot cannot be determined accurately without a complete crew. An unqualified substitute copilot, or a simulator instructor filling the role of both instructor/simulator operator and copilot is not believed to be adequate.

Notwithstanding the general proposed prohibition against the use of unqualified crewmembers, proposed § 142.65(b)(2) would permit a student enrolled in a specific training course to occupy a required crewmember position for training, checking, or testing conducted in a particular training course without holding the pilot certificates and rating necessary to qualify for that crewmember position. This provision is proposed in order to allow crews undergoing training as a crew to more fully benefit from crew coordination and training and crew management. Experience learned from exemptions and from air carrier training programs has shown this practice to be beneficial.

Proposed § 142.65(d) would prohibit training center certificate holders from recommending a trainee for a certificate or rating unless that trainee has satisfactorily completed the training specified in an approved course of training and has passed the required final tests. Training center certificate holders would also be prohibited from graduating a student from a course of training unless the student has satisfactorily completed the curriculum requirements of that course. The FAA believes that completion of all training curriculum is required to ensure safety.

Proposed § 142.65(c) would allow students to transfer from a pilot school certificated under part 141 to a training center certificated under proposed part 142, and be given aeronautical experience credit for all training successfully completed at the part 141 pilot school. Placement within a particular program, however, would be based upon a student's demonstration of aeronautical knowledge and skill. An authorized evaluator, as defined in part 142, would assess the aeronautical knowledge and skill of students transferring from a pilot school to a training center and would make a subjective judgement about the amount of aeronautical experience to credit and about where a transferring student should be placed in a particular program. Transfers of training center students to or from a pilot school would require that a copy of each student's training records be transferred to the gaining institution to become part of the student's training records.

Subpart E

Subpart E "Recordkeeping (other than air carrier and part 125) would prescribe the records that a training center certificate holder would have to maintain.

Section 142.71 Applicability

Subpart E, "Recordkeeping (other than air carrier)," prescribes the records that a training center certificate holder would have to maintain for students who are not aircrew employees of operators under parts 121, 125, or 135, and the records that would have to be maintained for instructors and evaluators authorized in accordance with subpart C of proposed part 142.

Section 142.73 Recordkeeping Requirements

A training record would have to be maintained for each student. Among other things, student records would be required to contain the name of the student, a copy of the student's pilot certificate and medical certificate, the name of the approved course attended by the student, and, if applicable, the type of flight simulator or flight training device used in that approved course. In addition, the training center would have to keep a record of the student's aeronautical experience, the amount of time it takes the student to complete the approved course of training, the student's performance on each lesson, and the name of the instructor who provided the training. The center also would have to keep a record of the date of each end-of-course practical test, the name of the evaluator who conducted the test, the result of that practical test, and a record of any additional training required. Student records would have to be maintained for 1 year, or other period as approved by the Administrator.

Proposed § 142.73(b) would require that, for each instructor or evaluator employed to instruct or evaluate an approved course of training, each center would have to keep records that demonstrate compliance with the instructor and evaluator eligibility, qualification, and recurrent training requirements of subpart C of proposed part 142. The FAA believes that this section proposes minimum records that it will need to properly evaluate the performance of students, instructors, and others. This information will facilitate necessary changes in a number of areas, including curriculum, equipment, and facilities.

Subparts F Through I

Subparts F through I of proposed part 142 contain the rules governing training, testing, or checking that a training center would have to meet to satisfy the requirements of parts 63, 121, 125, and 135 of the FAR.

Subpart F

Subpart F, "Aircrew Curriculum, Training Course Outline and Syllabus (Air carrier)," proposes curriculum and course outline requirements for the issuance of a training center certificate and rating for training conducted to meet the requirements of parts 63, 121, 125, and 135. The training program curriculum requirements and approval process contained in subpart F of proposed part 142 is basically the same as that contained in subpart B because of commonality in general aviation and air carrier training needs.

Section 142.75 Applicability

This section provides that proposed subpart F prescribes the curriculum and course outline requirements for a training center certificate and ratings for training to meet the requirements of part 63, part 121, part 125, or part 135.

Section 142.77 Approval of Flight Aircrew Training Program

Except as indicated below, the discussion under proposed § 142.37 applies to this proposed section.

Under proposed § 142.77(c) (2) and (3), if a holder of a certificate under one of the above parts plans to train aircrews other than its own employees, the certificate holder would have to file an application for training center training program approval under subpart F. The application would have to indicate which requirements of part 61, part 63, part 121, part 125, or part 135, as applicable, the part 142 training program curriculum would satisfy and which requirements it would not satisfy. If the certificate holder plans to train persons not subject to part 121, 125, or 135, it would apply as discussed above under subpart B.

Section 142.79 Approval of Training, Qualification, or Evaluation by a Training Center

Under proposed § 142.79(b), an air carrier certificate holder not wishing to become a training center, but wishing to use the services of a training center, would be allowed to contract with an appropriately rated training center for training. An air carrier certificate holder would be allowed to contract for an entire part 121 or part 135 curriculum, a curriculum segment, or a portion of a curriculum.

Subpart N of part 121 requires an air carrier subject to that part to have a training program for its employees subject to that part. The FAA proposes that all training provided to air carriers by trainers, other than an air carrier training its own aircrew employees pursuant to subpart N, be provided by an approved training center. The basis for this proposal is set forth above under the discussion pertaining to part 121.

Under proposed § 142.79(b), a training center certificate holder offering a course designed to meet the pilot training, checking, and testing requirements of part 121, part 125, or part 135 would have to ensure that the part 125 operator or air carrier certificate holder that has contracted for training has notified its POI of its intent to use a training program curriculum or training course approved under part 142. The notification would be required in writing at least 30 calendar days before contracted training is scheduled to begin.

Under this proposed section, training centers could contract to present programs from a list of approved courses in the training center's approved training curriculum. Those courses would have to appear in the training center's training specifications.

Paragraph (b)(1) of this proposed section would require that the training center facilities used to meet the requirements of part 121, 125, or 135 must be approved by the Administrator for planned training, qualification, or evaluation required by part 121, part 125, or part 135. This proposed requirement would allow the FAA to provide necessary monitoring and quality control.

Proposed § 142.79(b)(1)(ii) would require a training center to have FAA approval to use a training program curriculum or a training course for a particular air carrier or part 125 operator.

Proposed paragraph (c) would permit the Administrator to require modification of training programs to insure that the training provided to an air carrier certificate holder or part 125 operator continues to meet that client's needs. The proposed authority to require modification of training programs from time to time, if needed, is similar to the Administrator's authority in connection with other approved training programs.

Subpart G

Subpart G "Personnel and Flight Training Equipment Requirements (air carrier and part 125)" proposes the personnel and flight training equipment requirements for training center certificate holders.

Section 142.83 Applicability

This section would prescribe the personnel and flight training requirements for training center certificate holders engaged in training for a part 121 or part 135 certificate holder or a part 125 operator.

Section 142.85 Training Center Instructor Eligibility Requirements

The proposals set forth in this section are similar to those of proposed § 142.47.

Section 142.87 Training Center Instructor Privileges and Limitations

The proposals set forth in this section are similar to those of proposed § 142.49. Under proposed § 142.87(c)(4)(iv), however, a training center instructor could meet the requirements of § 121.411 or § 135.339, as applicable, as an alternative to having to meet the proposed requirements of subpart C, in order to provide training in an aircraft. This alternative would continue the practice of using instructors qualified under § 121.411 or § 135.339 to instruct in air carrier training programs.

Proposed § 142.87(c)(5) would require an instructor to hold the airman certificate and ratings required to serve as a pilot in command or a flight engineer, as applicable to the instruction to be provided, in the type aircraft in which he or she will instruct. In addition, an instructor would have to have completed an initial, transition, recurrent, or differences flight training course, as applicable, within the preceding 12 months.

Proposed § 142.87(c)(5)(v) would require the training center to notify an air carrier certificate holder's POI that an instructor is employed to provide instruction for the air carrier.

Section 142.89 Training Center Instructor Training and Testing Requirements

The proposals contained in this section are similar to those contained in § 142.53.

Section 142.91 Qualifications To Instruct in a Flight Simulator or in a Flight Training Device

The proposals contained in this section are similar to those contained in § 142.51.

Section 142.93 Training Center Evaluator Requirements

The proposals contained in this section are similar to those contained in proposed § 142.55.

Section 142.95 Aircraft Requirements

The proposals contained in this section are similar to those contained in proposed § 142.57, except that the discussion regarding flight controls (those that are easily reached and that operate in a conventional manner) does not apply to this proposed section.

Section 142.97 Flight Simulators and Flight Training Devices

The proposals contained in this section are similar to those contained in § 142.59.

Subpart H

Subpart H, "Operating Rules (Air Carrier)," prescribes the proposed operating rules applicable to training centers certificated under part 142 that provide training to air carrier clients in accordance with subpart F of that part. This subpart proposes the same operating rules as discussed above under subpart D.

Section 142.101 Applicability

This section provides that subpart H prescribes the operating rules for training centers providing training to air carrier clients under proposed subpart F.

Section 142.103 Privileges

The proposed privileges outlined in this section are essentially the same as those discussed under § 142.63.

Section 142.105 Limitations

The proposed limitations outlined in this section are essentially the same as those discussed under § 142.65, except that provisions for student transfers between training centers and pilot schools would not apply to training programs conducted for air carrier clients.

Subpart I

Subpart I, "Recordkeeping (Air Carrier)," proposes the requirements for records a training center certificate holder would have to maintain for clients operating under part 121, part 125, or part 135, and the records that would have to be maintained for instructors and evaluators authorized in accordance with subpart G of proposed part 142.

Section 142.111 Applicability

This section provides that subpart I (Recordkeeping) is applicable to training centers providing training to air carrier clients.

Section 142.113 Recordkeeping Requirements

Section 142.113 proposes that a certificate holder would have to keep a record for each student. Training records would have to contain the name of the individual student and the student's employer, the date of training, the results of all training and any tests undertaken by the student, the name of the approved course attended by the student, and, if applicable, the type of flight simulator or flight training device used in that approved course.

Proposed § 142.113 also would require that records be kept for each instructor or evaluator employed to instruct or evaluate an approved course of training. These records would have to demonstrate compliance with the instructor and evaluator eligibility, qualification, and recurrent training requirements of subpart F of proposed part 142.

Section 142.114 Record of Training Recipients

Proposed § 142.114 would require a training center that provides training for air carrier certificates to keep a list of all carriers for whom it conducts, or has conducted within the last year, training, checking, or testing. The list would have to include the name of the air carrier certificate holder and the courses and types of tests or checks accomplished for that certificate holder. A copy of this list would have to be forwarded to the Flight Standards District Office that has jurisdiction over the area in which the training center's principal business office is located and to the POI for the training center facility that provides the training for an air carrier.

Subpart J

Subpart J, "Other Approved Courses" proposes that training centers or training center applicants (other than pilot crew members) may apply for approval to conduct courses and that such courses would be approved by the Administrator upon a finding that the application provides a curriculum that is equal to, or better than, that required by the applicable part of the FAR.

Section 142.115 Conduct of Other Approved Courses

The primary emphasis of proposed part 142 is expected to be flight training, although the regulatory structure is intended to be flexible enough to permit a certificate holder or certificate applicant to provide training in other areas such as cockpit resource management, carriage and handling of hazardous materials, and instruction relating to job functions such as flight engineer, flight attendant, dispatcher, and ramp agent.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under DOT NO: *new;* OMB NO: *new;* Title: *Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers;* Need for Information: *To adhere to the requirements for records that would need to be generated and maintained under proposed part 142.* Proposed use of Information: *To provide surveillance capability over proposed training centers to insure compliance with airman training, testing, and certification requirements.* Frequency: *Records would have to be kept of the training center initial application, of each student, of each instructor or evaluator, and of all air carrier certificate holder clients. These records would have to be annotated subsequent to any training, testing or checking.* Burden Estimate: *$45k for total annual burden;* Respondents: *Part 142 certificate holders and certificate holder applicants;* Form(s): *to be determined;* Average Burden Hours per Respondent: *The FAA estimates that there will be 32 certificate applicants during the first year. The average burden hours are estimated as follows:*

(1) To file an application—50 hours per application.

(1) To maintain a record for each student and provide that record once per student—1 hour per record.

(2) To maintain a record for each instructor and evaluator and provide that record once per instructor or evaluator, excluding the initial certificate application—1 hour per record.

(3) To provide a record to each POI for each course being instructed and the instructor's name—.25 hour per record.

For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington DC 20590, (202) 366–4735 or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Regulatory Evaluation Summary

The FAA has conducted a detailed regulatory evaluation of the proposed amendments. A copy of that evaluation has been filed in the regulatory docket of the NPRM. The FAA has evaluated the benefits and costs of the proposed regulatory changes and has concluded that the proposed amendments will not have a significant economic impact on the affected parties. The proposal would establish part 142 training centers at which flight simulators and flight training devices could be used, but it would not require the use of flight simulators or flight training devices in the training, testing, and checking of aircrew members.

Commenters are encouraged to respond to this assessment and to submit economic and trade data supporting any beneficial or adverse impacts that might occur if the proposed amendments are adopted. In addition, the FAA solicits recommendations for better methods of achieving the objective of the rule and rule changes in this NPRM.

Costs and Benefits

Organizations that currently provide training, testing, and checking in flight simulators and flight training devices are expected to incur costs in qualifying and applying for a part 142 certificate. The government could incur additional costs by creating a branch to accomplish the initial certification of proposed part 142 training centers, and to provide surveillance of training centers.

A number of provisions of the NPRM are not expected to create costs. These

items principally integrate the proposal into existing regulations or update existing regulations. A list of these provisions is found in the regulatory docket of this NPRM.

The proposed part 142 rule is expected to create several monetary and non-monetary benefits.

Costs

Estimated costs would include the cost for exemption holders to qualify and apply for the proposed part 142 certificate, and the cost for the government to establish and maintain a nationally centralized office to approve training centers, certificate applicants, training specification, and training programs. Holders of exemptions from part 61 requirements are expected to incur a one-time cost of approximately $8,000 each, or a total of approximately $200,000, to apply and qualify for the proposed part 142 certificate. The estimated annual cost for the government to establish and maintain a training center nationally centralized office is $537,600.

As with any other certificate issued by the FAA, organizations would incur costs in qualifying and applying for the certificate. If the proposal is adopted as proposed, organizations that hold exemptions from part 61 requirements to allow simulator use, aircraft manufacturers providing aircrew training, and air carriers training other than their own pilot aircrew employees would be required to apply for the proposed part 142 certificate in order to continue such operations. Other organizations would not need to apply for the proposed part 142 certificate; therefore, they are not considered in the FAA's cost estimates.

Because the proposed requirements for a part 142 certificate are similar to the current requirements for holders of exemptions from part 61 simulator requirements, organizations that hold such exemptions are expected to incur only limited costs in qualifying for the proposed part 142 certification. Currently, these organizations are required to have a training program curriculum, a recordkeeping system, facilities, and a system for training, testing, and checking instructors. (Any assumption that a cost or no cost would be incurred does not consider the expansion of a course that is currently approved under exemption.)

Costs incurred in qualifying for the proposed part 142 certificate would stem from adjusting instructor training and establishing evaluator requirements. Exemption holders would be required to do two things: (1) Amend their instructor training and testing requirements to include cockpit resource management in required ground training; and (2) ensure that each instructor has completed ground and flight instruction in normal and abnormal situations, including training in emergency situations likely to develop in training.

The FAA estimates that adjustments to the instructor training program would require 16 hours from two flight employees and 8 hours from one clerical support employee. With an estimate of $65 per hour in salary and benefits for the two flight employees, $10 per hour in salary and benefits for the clerical support employee, and $80 in miscellaneous costs, the FAA expects that the total one-time cost of adjusting instructor training requirements would be approximately $2,200 per organization. With a total of 32 exemption holders, the total cost would be approximately $70,400. The FAA estimates that any present evaluator training program would need to be revised. The FAA estimates that such revisions would require 32 hours from two high-level flight employees and 32 hours from one clerical support employee. By applying the same salary and benefit rates, plus $200 in miscellaneous costs, the FAA estimates that the one-time cost to revise evaluator training requirements would be $4,700 per organization, with a total cost of $150,400.

Part 121 or part 135 certificate holders are required to establish and maintain an approved training program for crewmembers, check airmen, instructors, and other operations personnel they employ. This training program could also be approved under SFAR 58. The current regulations permit these operators to use flight simulators and flight training devices for training, testing, and checking, and many of the requirements in proposed part 142 parallel current requirements in part 121 or part 135 as well as in SFAR 58. Under the proposal, a part 121 or part 135 certificate holder would be required to obtain a part 142 certificate to implement and maintain a training program for crewmembers, check airmen, instructors, and other operations personnel other than those they employ. Such a training program is permitted under SFAR 58. The FAA estimates that, at this time, few operators train personnel they do not employ. If a part 121 or part 135 operator desires to train crewmembers, check airmen, instructors, and other flight personnel they do not employ, the cost to obtain the proposed part 142 certificate could be conveyed to the operator's customer(s).

The costs incurred in applying for a part 142 certificate would include the administrative cost of application. This cost would include the development of the training specifications and the composition of the actual application. Because an operator would obtain the proposed part 142 certificate over a 2-year period after adoption of the proposal, the cost to adjust advertising and other business expenses (new letterhead, business cards, etc.) is not included. Such modifications could be made as new items are required.

The FAA estimates that completing the necessary adjustments and developing the necessary documents would require 8 hours from two flight employees and one clerical support employee. With the same salary and benefit estimates discussed above, plus $100 in miscellaneous costs, the FAA estimates that the total one-time cost for the holder of a part 61 exemption to apply for the proposed part 142 certificate would be approximately $1,200. If organizations that currently hold part 61 exemptions apply for part 142 certificates, the one-time cost to the industry would be approximately $38,400.

Under the proposal, a central office would approve applications and alterations to the proposed part 142 certificate. This central office might be established in conjunction with an existing central office that has oversight responsibility for another aircrew training program. The FAA estimates that the central office would include one manager, five assistants, and one secretary. The FAA estimates that each assistant would travel approximately 30 days per year. Based on government salary and benefit rates, the annual cost of this branch is estimated to be approximately $537,600. Any costs for FAA publications and advisory material would be considered part of the FAA's periodic update of the regulations.

Benefits

The removal of regulatory constraints could advance the development of flight simulator technology, especially in general aviation. In addition to potential safety benefits, the removal of regulatory constraints would provide numerous benefits to the general public, students, training institutions, aircraft manufacturers, and operators of aircraft for hire, and it would stimulate the development and manufacture of flight simulators and flight training devices.

Exemptions permitting the use of flight simulators to meet the requirements of part 61 in lieu of aircraft often mention benefits to the public. These benefits

include reduced air traffic, reduced noise and air pollution, and reduced high-risk, low-altitude flight operations.

As proposed, part 142 training centers would provide students with at least five benefits: (1) Training in emergency situations not safely duplicated in an aircraft; (2) increased diversity in training options; (3) training, testing, and checking in flight simulators and flight training devices; (4) exposure to innovative and diverse training programs; and (5) all or part of the necessary training for a particular certificate or rating.

The FAA expects that as part 142 training centers, if created, mature, the use of flight simulators, flight training devices, and innovative programs could become more common in general aviation training and thus would also provide benefits to those students. The FAA believes however that, based on current conditions, most general aviation flight simulators and flight training devices are likely to replace complex aircraft used in training, testing, and checking rather than aircraft used in primary training; the cost to develop a flight simulator or a flight training device for a single-engine, non-complex airplane used for primary training may not be cost-effective at this time. As proposed, a student could enroll in a complete training program with ground, flight, and flight simulator instruction at a proposed part 142 training center. That same student could also enroll at a part 141 pilot school that has contracted a block of training to a part 142 training center. (The block would not have to consist only of training in a flight simulator or flight training device.) If all of a student's training for a certificate or rating was acquired at a part 142 training center, the maximum number of hours that could be accomplished in a flight simulator or flight training device would depend on the training center's approved program. If a portion of the training for a certificate or rating is provided by a part 142 training center, only the maximum number of hours listed in the proposed part 61 amendments could be applied to the minimum requirements for the certificate or rating.

The following example illustrates how the use of a flight simulator or flight training device would lower the training costs for an applicant for a particular certificate. Existing § 61.129(b) requires that an applicant for a commercial pilot certificate with an airplane category rating have 250 hours of flight time, 50 hours of which could be in a flight simulator or flight training device. Proposed § 61.129(b) would permit the applicant to accomplish 100 of these hours in a flight simulator or flight training device. If an applicant for a commercial pilot accomplished an additional 50 of the permitted 100 hours in a flight simulator or flight training device, the costsavings would be significant. Based on FAA values of the operational cost of airplanes, the savings for one applicant would range from approximately $2,000 to approximately $5,500, depending on whether the hours would have been spent in a single-engine or multiengine piston airplane. From 1985 through 1989, the FAA issued an average of approximately 10,000 original commercial certificates per year. If only 100 applicants, or 1 percent, would be able to save the cost of operating an airplane, the total savings per year would range from $200,000 to $550,000 per year.

As proposed, part 142 offers several benefits to pilot schools that wish to gain a training center certificate: (1) A training center certificate issued under a central office rather than a decentralized local offices; (2) the ability, under certain provisions, described earlier in the preamble, to provide training programs with fewer than the minimum number of hours required in part 61 or part 141; (3) the opportunity to establish satellite training centers; (4) a certificate with no reoccurring requirement for certificate renewal; (5) provisions to develop innovative training programs; (6) provisions to provide all or partial training, testing, and checking for certificates and ratings in flight simulators or flight training devices; and (7) elimination or reduction of petitions for exemptions for the performance training, testing, and checking in a flight simulator or flight training device.

As an example of the diversity available under the proposal, a part 142 training center could provide a training program in a flight simulator and a flight training device for an instrument rating (for either an airplane or a helicopter). A student could accomplish flight training (for example, initial certification and cross-country requirements) at several different training institutions, then accomplish the instrument portion of the training, and the instrument rating, in a flight simulator or flight training device at a part 142 training center.

An aircraft manufacturer could apply for a proposed part 142 training center certificate. Proposed § 142.103 would permit an aircraft manufacturer's training center to provide initial operating experience (IOE) to a training cadre of air carrier certificate holders. Such an arrangement could be beneficial to customers, especially when a new aircraft model is introduced.

As proposed, a part 142 training center would provide two benefits to operators under part 121 or part 135. These operators could (1) contract with a part 142 training center to provide training, testing, and checking; or (2) apply for a part 142 training center certificate to provide training, testing, and checking for persons they do not employ. An operator that desired to use a flight simulator or a flight training device in training, testing, or checking its aircrew employees could utilize either of the above options. The operator could train, test, or check its aircrew employees at a part 142 training center; or, if the operator desired to invest in a flight simulator or a flight training device, the operator could maximize the investment by obtaining a part 142 certificate to train, test, or check aircrews it does not employ, as well as its own aircrew employees.

The relaxation and expansion of present requirements as well as the establishment of proposed part 142 training centers could stimulate growth in the development and manufacture of flight simulators and flight training devices. At present, many of these devices have been developed for air carrier, commuter, and corporate operations. If adopted, the proposal could stimulate demand for more flight simulators and flight training devices that represent additional aircraft.

Benefits to flight safety include the removal of training aircraft from airspace, including the congested airport traffic environment, the ability to better focus the flightcrew's attention on the training situation versus the flight environment, and reduced accident rates. Other benefits include a reduction, essentially elimination, of fuel consumed, and a reduction of engine emissions and noise pollution. Flight simulators and flight training devices provide more focused, in-depth, efficient training than do actual aircraft. Maneuvers and procedures can be halted for analysis by the student and the instructor. A broader range of operational and environmental situations can be used.

As the use of flight simulators and flight training devices expands in all aspects of training, safety benefits that would result would include a lower accident rate for instructional training. Because flight simulators and flight training devices enable aircrews to practice maneuvers and procedures that are more difficult or unsafe to duplicate,

and sometimes impossible to practice, in an aircraft, the expansion of these devices would contribute to fewer accidents and incidents.

In the 5 years from 1983 through 1987, the general aviation accident rate for instructional flying increased from 6.51 per 100,000 aircraft hours flown to 6.87 per 100,000 aircraft hours flown. The fatal accident rate rose from 0.45 to 0.61 per 100,000 aircraft hours flown. Even though many of these accidents occurred in single-engine airplanes, the FAA expects that this rate would decrease as the use of part 142 training centers increases.

In addition, greater use of flight simulators and flight training devices could benefit aviation safety by allowing more frequent and more extensive reviews of emergency procedures. Because of airspace complexity and general safety practices, some emergency procedures are not practiced either as often or as extensively as is desirable. The pilot was cited as a cause in approximately 2,055 of the 2,277 fatal accidents that occurred in general aviation airplanes from 1983 through 1987. The pilot was cited as a cause in approximately 145 of the 175 fatal accidents that occurred in general aviation rotorcraft during that period. Based on the average number of fatalities per fatal accident, the FAA estimates that during the 5-year period, more than 4,100 fatalities occurred in airplane and rotorcraft accidents in which the pilot was cited as a cause.

Based on the current value of a statistical fatality avoided, $1.5 million, the benefit of statistical fatalities avoided would be approximately $6,200 million over 5 years, or an average of approximately $1,200 million per year.

The FAA estimates that only 10 percent of fatal accidents occur in aircraft for which emergency training in flight simulators or flight training devices could improve safety. Because flight simulator technology is still developing, an increase in the number of statistical fatalities avoided would probably not appear until at least 3 years after the adoption of the proposal. If only 1 percent of the fatal accidents were averted through emergency training in flight simulators or flight training devices, the cost benefit would amount to $1.2 million per year.

Reduced general aviation accidents are not the only safety benefit that would result from this proposal. As proposed, part 142 would also expand the use of flight simulators and flight training devices for training persons who are employed by part 121 or part 135 certificate holders. An FAA review of NTSB reports of accidents and incidents that occurred from 1983 through 1987 in all part 121 and 135 operations found examples of accidents and incidents in which training in a flight simulator or flight training device could have improved safety. These occurrences included emergency landings, landing gear failures, and windshear encounters.

FAA guidance provides an estimated cost to replace destroyed aircraft and restore substantially damaged aircraft and on the estimated values of a statistical fatality avoided ($1.5 million), a serious injury avoided ($640,000), and a minor injury avoided ($2,300). Using these values, the FAA estimates that the average total potential safety benefit is approximately $180 million per year. This includes approximately $33 million, in 1990 dollars, for the average annual cost of replacing and restoring aircraft, and approximately $150 million for the average annual cost of statistical fatalities and injuries avoided. Even if the increased use of flight simulators and flight training devices decreases such occurrences by 0.5 percent, the savings would be approximately $900,000 per year.

Comparison of Costs and Benefits

The proposal to establish a part 142 training center certificate with the opportunity for additional training, testing, and checking is anticipated to become cost-beneficial after approximately 3 years. After 10 years, the annual cost for the training center national office and the one-time cost for organizations that currently hold exemptions is expected to be approximately $3.5 million, discounted. Because the benefits of this proposal are contingent on the establishment of proposed part 142 training centers and the training, testing, and checking of pilots at those training centers, and because such instruction is currently performed under exemption, the FAA expects that benefits would not appear until the third year after the adoption of the proposal; however, the total benefits after 10 years are expected to be approximately $11 million, discounted. According to the FAA's estimates, the benefits of the proposal to establish the part 142 training center would exceed costs by 3 to 1 after 10 years.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules that may have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

This proposal could affect various organizations that engage in the training, testing, and checking of aircrews. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, provides criteria for rulemaking officials to apply when determining if a proposal will have a significant economic impact on a substantial number of small entities. Organizations that could be affected by the proposal include parts 121 and 135 operators of aircraft for hire. The size threshold for these organizations to be considered small entities is a fleet size of nine aircraft or fewer. The threshold annualized cost levels for small entities are approximately $4,200 to $108,000 in 1990 dollars for operators of aircraft for hire. (The actual threshold annualized cost levels vary with the size of aircraft and whether operations are scheduled or unscheduled.) The FAA believes that a significant number of training organizations that are not certificated under part 141 employ fewer than ten persons and are therefore considered small entities. According to FAA records, 2,900 operators of aircraft for hire, most of which are unscheduled operators, have a fleet size of nine aircraft or fewer and are therefore considered small entities.

The proposal would incorporate into the FAR practices that are currently permitted by exemption. Any costs that would be incurred would stem from the application for the proposed part 142 certificate. The organizations that currently hold exemptions from part 61 requirements are pilot schools and other entities (i.e., manufacturers, corporations) that perform training, testing, or checking of aircrews; however, none of these exemption holders is considered to be small entities. Compliance with the proposed part 142 certificate is voluntary. Therefore, based on the FAA's initial regulatory evaluation of the proposal, the FAA has determined that the proposal would not have a significant economic impact on part 121 operators or part 135 operators that are considered to be small entities.

International Trade Impact Analysis

The FAA has determined that the proposed rules would not have a significant impact on international trade. The revised rules primarily affect the training of individual pilots and the operations of pilot training. The FAA is of the opinion that the proposal would not affect operators in training foreign

citizens who accomplish pilot training in the United States.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291 and that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 61

Aircraft, Airmen, Reporting and recordkeeping requirements.

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

14 CFR Part 142

Administrative practice and procedure, Aircraft, Airmen, Drug testing, Educational facilities, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend SFAR 58 and parts 1, 61, 91, 121, 125, 135, and 141 of the Federal Aviation Regulations (14 CFR parts 1, 61, 91, 121, 125, 135, and 141) and to add part 142 (14 CFR part 142) as follows:

Special Federal Aviation Regulation 58

1. SFAR 58 2. is amended by revising the definition of *training center* to read as follows:

SFAR No. 58—Advanced Qualification Program

* * * * *

2. Definitions. As used in this SFAR:

* * * * *

Training center means an independent organization certificated under part 142 of this chapter, or an organization approved by the Administrator, to operate under this SFAR prior to [The Effective Date of the Final Rule], that provides training under contract to other arrangement to part 121 or part 135 certificate holders. A training center may be a part 121 or part 135 certificate holder that provides training to another part 121 or part 135 certificate holder, an aircraft manufacturer that provides training to a part 121 or part 135 certificate holder, or any non-certificate holder that provides training to a part 121 or part 135 certificate holder.

* * * * *

2. SFAR 58 11. is amended by adding paragraph (d) to read as follows:

Special Federal Aviation Regulation No. 58—Advanced Qualification Program

* * * * *

11. Approval of Training, Qualification, or Evaluation by a Person who Provides Training by Arrangement.

* * * * *

(d) Approval for the training, qualification, or evaluation by a person who provides training by arrangement authorized by this section expires 2 years from [The Effective Date of the Final Rule]. The requirements for approval of training, qualification, or evaluation by a person who provides training by arrangement are as stated in part 142 of this chapter.

* * * * *

PART 1—DEFINITIONS AND ABBREVIATIONS

3. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97–449, Jan. 12, 1983).

4. Section 1.1 is amended by adding the following definitions following the definition of "category III operations":

§ 1.1 General definitions.

* * * * *

(1) Category IIIa. An ILS approach and landing with no decision height (DH), or a DH below 100 feet (30 meters), and controlling runway visual range not less than 700 feet (200 meters).

(2) Category IIIb. An ILS approach and landing with no DH, or with a DH below 50 feet (15 meters), and controlling runway visual range less than 700 feet (200 meters), but not less than 150 feet (50 meters).

(3) Category IIIc. An ILS approach and landing with no DH and no runway visual range limitation.

* * * * *

PART 61—CERTIFICATION: PILOTS FLIGHT INSTRUCTORS

5. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449; January 12, 1983).

6. Section 61.1a is added to read as follows:

§ 61.1a Definition of terms.

For the purpose of this part:

(a) *Authorized Instructor* means—

(1) An instructor who has a valid ground instructor certificate or current flight instructor certificate with appropriate ratings issued by the Administrator;

(2) An instructor authorized under SFAR 58, part 121, part 135, or part 142 of this chapter to give instruction under those parts; or

(3) Any other person authorized by the Administrator to give instruction under this part.

(b) *Flight Simulator, Airplane* means a device that—

(1) Is a full-sized airplane cockpit replica of a specific type of airplane, or make, model, and series of airplane;

(2) Includes the hardware and software necessary to represent the airplane in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree of freedom motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and a 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(c) *Flight Simulator, Helicopter* means a device that—

(1) Is a full-sized helicopter cockpit replica of a specific type of aircraft, or make, model, and series of helicopter;

(2) Includes the hardware and software necessary to represent the helicopter in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree of freedom motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(d) *Flight Training Device* means a device that—

(1) Is a full-sized replica of instruments, equipment, panels, and controls of an airplane or rotorcraft, or set of airplanes or rotorcraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for systems installed, necessary to simulate the airplane or rotorcraft in ground operations and flight operations;

(2) Does not require a force (motion) cueing or visual system; and

(3) Has been evaluated, qualified, and approved by the Administrator.

(e) *Set of airplanes or rotorcraft* means airplanes or rotorcraft which all share similar performance characteristics, such as similar airspeed and altitude operating envelope, similar handling characteristics, and the same number and type of propulsion system or systems.

7. Section 61.2 is revised to read as follows:

§ 61.2 Certification of foreign pilots and flight instructors.

(a) A person who is neither a United States citizen nor a resident alien may be issued a pilot certificate or flight instructor certificate under this part (other than under § 61.75 or § 61.77), outside the United States, only when the Administrator finds that—

(1) The pilot certificate is needed for the operation of a U.S.-registered civil aircraft; or

(2) The flight instructor certificate is needed for the training of students who are citizens of the United States.

(b) Training centers, and their satellite training centers certificated under part 142 of this chapter, may, outside the United States—

(1) Add additional ratings and endorsements to certificates issued by the Administrator under the provisions of this part; and

(2) Issue certificates to United States citizens within the authority granted to that training center by the Administrator.

8. Section 61.3 is amended by revising the introductory text of paragraph (d) and by adding a new paragraph (i) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

* * * * *

(d) Unless otherwise authorized by the Administrator, no person other than the holder of a flight instructor certificate issued in accordance with Subpart G of this part, with an appropriate rating on that certificate, may—

* * * * *

(i) Category III pilot authorization.

(1) No person may act as pilot in command of a civil aircraft during Category III operations unless—

(i) That person holds a current Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category III operations.

(2) No person may act as second in command of a civil aircraft during Category III operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category III operations.

9. A new section 61.4 is added to read as follows:

§ 61.4 Qualification and approval of flight simulators and flight training devices.

Each flight simulator and each flight training device used for training, testing, and checking under this part must be qualified and approved by the Administrator for—

(a) The training, testing, and checking for which it is used;

(b) Each particular maneuver, procedure, or crewmember function performed; and

(c) The representation of the specific category and class of aircraft, type of aircraft, particular variation within type of aircraft, or set of aircraft in the case of some flight training devices.

10. Section 61.13 is amended by revising paragraph (e) to read as follows:

§ 61.13 Application and qualification.

* * * * *

(e) The following requirements apply to a Category II pilot authorization and to a Category III pilot authorization:

(1) The authorization is issued by a letter of authorization as a part of the applicant's instrument rating or airline transport pilot certificate.

(2) Upon original issue the authorization contains a visibility limitation—

(i) For Category II operations, the limitation is 1,600 feet RVR and a 150-foot decision height; and

(ii) For Category III operations, each initial limitation is specified in the authorization document.

(3) Limitations on an authorization may be removed as follows:

(i) In the case of Category II limitations, a limitation is removed when the holder shows that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions.

(ii) In the case of Category III limitations, a limitation is removed as specified in the authorization.

(4) For the practical test required by this part for a Category II or a Category III authorization, a flight simulator or flight training device may be used for simulated instrument conditions, if approved by the Administrator for simulated instrument conditions.

* * * * *

11. Section 61.21 is amended by revising the section heading and the first sentence to read as follows:

§ 61.21 Duration of Category II and Category III pilot authorization.

A Category II pilot authorization and a Category III pilot authorization expire

on the last day of the sixth month after the month last issued or renewed. * * *

12. Section 61.39 is amended by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 61.39 Prerequisites for flight tests.

* * * * *

(a) * * *

(6) If all increments of the practical test for a certificate or rating are not taken on one date, all remaining increments of the test must be completed not more than 60 calendar days after the date on which the applicant begins the test.

(7) If all increments of the practical test are not satisfactorily completed within 60 calendar days as required by paragraph (a)(6) of this section, the applicant must retake the entire practical test, including those increments satisfactorily completed.

* * * * *

13. Section 61.45 is amended by revising the section title and paragraphs (a), (c), and (d) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

(a) *General.* Except when an applicant for a certificate or rating under this part is permitted to accomplish the entire flight increment of the practical test in a qualified and approved flight simulator or in a qualified and approved flight training device, the applicant—

(1) Must furnish for each required test, except as provided by paragraph (a)(2) of this section, an aircraft of United States registry—

(i) Of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating; and

(ii) That has a current standard or limited airworthiness certificate.

(2) At the discretion of the person authorized by the Administrator to conduct the test, the applicant may furnish—

(i) An aircraft that has a current airworthiness certificate other than standard or limited, but that otherwise meets the requirement of paragraph (a)(1) of this section;

(ii) An aircraft of the category and class, and type aircraft, if applicable, of foreign registry that is certificated by the country of registry; or

(iii) A military aircraft of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating.

(b) * * *

(c) *Required controls.* An applicant must furnish for each practical test an aircraft—

(1) (Other than lighter-than-air) listed in paragraph (a) of this section.

(2) That has engine controls and flight controls—

(i) That are easily reached; and

(ii) Unless the evaluator conducting the test accepts otherwise, that can be operated in a conventional manner by both the applicant and the evaluator.

(d) *Simulated instrument flight equipment.* An applicant for any practical test involving flight maneuvers and flight procedures accomplished solely by reference to instruments, must furnish equipment that—

(1) Excludes the applicant's visual reference to objects outside the aircraft; and

(2) Is otherwise acceptable to the Administrator.

* * * * *

14. Section 61.51 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iv), (b)(3)(iii), (c)(2)(i), (c)(4), and (c)(5), and by adding new paragraphs (b)(2)(viii) and (c)(2)(iv) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(b) * * *

(1) * * *

(ii) Total time of flight or lesson.

(iii) * * *

(iv) Type and identification of aircraft, flight simulator, or flight training device.

(2) * * *

(viii) Instruction in a flight simulator or instruction in a flight training device.

(3) * * *

(iii) Simulated instrument conditions in actual flight, in a flight simulator, or in a flight training device.

(c) * * *

(2) * * *

(i) A private or commercial pilot may log as pilot-in-command time that flight time when the pilot is—

(A) The sole manipulator of the controls of an aircraft for which the pilot is rated; or

(B) Acting as pilot in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulation under which the flight is conducted.

* * * * *

(iv) A recreational pilot may log as pilot-in-command time only that time when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated.

* * * * *

(4) Instrument flight time.

(i) Except as provided in paragraph (c)(4)(iv) of this section, a pilot may log as instrument flight time only that time when the pilot operates an aircraft solely by reference to instruments under actual or simulated instrument flight conditions.

(ii) For simulated instrument conditions a qualified and approved flight simulator or qualified and approved flight training device may be used.

(iii) Each entry in the pilot logbook must include—

(A) The place and type of each instrument approach completed; and

(B) The name of the safety pilot for each simulated instrument flight conducted in flight.

(iv) An instrument flight instructor conducting instrument flight instruction in actual instrument weather conditions may log instrument time.

(5) Instruction time. All time logged as instruction time must be certified by the authorized instructor from whom it was received.

* * * * *

15. Section 61.55 is amended by revising paragraphs (b)(2)(ii) and by adding new paragraphs (b)(3)(1), (b)(3)(ii), and (b)(4) to read as follows:

§ 61.55 Second-in-command qualifications.

* * * * * *

(b) * * *

(2) * * *

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command.

(3) The requirements of this paragraph (b) may be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for such purposes; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(4) An applicant for an initial second-in-command qualification for a particular category and class of aircraft, and type of aircraft, if applicable, shall satisfactorily complete during the qualification test a minimum of one takeoff and one landing in an aircraft of the same category and class of aircraft, and type of aircraft, if applicable, for which the qualification is sought.

* * * * *

16. Section 61.56 is amended by revising paragraph (e) and adding a new paragraph (h) to read as follows:

§ 61.56 Flight review.

* * * * *

(e) An applicant who has, within the period specified in paragraphs (c) and (d) of this section, satisfactorily completed a test for a pilot certificate, rating, or operating privilege, need not

accomplish the flight review required by this section if the test was conducted by a person authorized by the Administrator, or authorized by a United States Armed Force, to conduct the check.

* * * * *

(h) A flight simulator or flight training device may be used to meet the flight review requirements of this section subject to the following conditions:

(1) The flight simulator or flight training device must be approved by the Administrator for that purpose.

(2) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(3) Unless the review is undertaken in a flight simulator that is approved for landings, the applicant must meet the takeoff and landing requirements of § 61.57 (c) or (d) of this part.

(4) The flight simulator or flight training device used must represent an aircraft, or set of aircraft, for which the pilot is rated.

17. Section 61.57 is amended by revising the section heading and paragraphs (c), (d), and (e) to read as follows:

§ 61.57 Pilot-in-command currency.

* * * * *

(c) *General experience.*

(1) Except as otherwise provided in this paragraph (c), no person may act as pilot in command of an aircraft carrying passengers, or of an aircraft certificated for more than one required pilot flight crewmember, unless that person meets the following requirements—

(i) Within the preceding 90 calendar days, that person must have made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type of aircraft.

(ii) If the aircraft operated under paragraph (c)(1)(i) of this section is a tailwheel airplane, that person must have made to a full stop the landings required by that paragraph.

(2) For the purpose of meeting the requirements of this section, a person may act as pilot in command of a flight under day visual flight rules (VFR) or day instrument flight rules (IFR) if no persons or property are carried other than as necessary for compliance with this part.

(3) This paragraph (c) does not apply to operations conducted under part 121 or part 135 of this chapter.

(4) The takeoffs and landings required by paragraph (c)(1) of this section may be accomplished in a flight simulator or flight training device subject to the following—

(i) The flight simulator or flight training device must have been qualified and approved by the Administrator for landings; and

(ii) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(d) *Night experience.*

(1) No person may act as pilot in command of an aircraft carrying passengers at night (the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, that person has made not fewer than three takeoffs and three landings to a full stop, at night, as the sole manipulator of the flight controls in the same category and class of aircraft.

(2) Paragraph (d)(1) of this section does not apply to operations conducted under part 121 or part 135 of this chapter.

(3) The takeoffs and landings required by paragraph (d)(1) of this section may be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for takeoffs and landings, if the visual system is adjusted to represent the time of day described in paragraph (d)(1) of this section; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(e) *Instrument currency.*

(1) No person may act as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, unless, within the preceding 6 calendar months, that person has—

(i) In the case of an aircraft other than a glider—

(A) Logged at least 6 hours of instrument time including at least six instrument approaches under actual or simulated instrument conditions, at least 3 hours of which must have been in aircraft other than gliders; or

(B) Passed an instrument competency test as described in paragraphs (e)(2) and (e)(3) of this section; or

(ii) In the case of a glider, the person must have logged at least 3 hours of instrument time, at least half of which was in a glider or an airplane, except that the person may not carry a passenger in the glider until that person has completed at least 3 hours of instrument flight time in a glider.

(2) A person who does not meet the recent instrument experience requirements of paragraph (e)(1) of this section during the prescribed time, or within 6 calendar months thereafter, may not serve as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, until that person passes an instrument competency test in the category and class of aircraft involved, given by a person authorized by the Administrator to conduct the test.

(3) The Administrator may authorize the conduct of all or part of the test required by paragraph (e)(2) of this section in a qualified and approved flight simulator or flight training device.

18. Section 61.58 is revised to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as otherwise provided in this section, to serve as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, a person must—

(1) Within the preceding 12 calendar months, complete a pilot-in-command check in an aircraft that is type certificated for more than one required pilot crewmember; and

(2) Within the preceding 24 calendar months, complete a pilot-in-command check in the particular type of aircraft in which that person will serve as pilot in command.

(b) This section does not apply to persons conducting operations subject to Subparts N and O of part 121, SFAR 58, part 125, part 127, part 133, part 135, or part 137 of this chapter.

(c) The pilot-in-command checks given in accordance with the provisions of part 121, part 125, part 127, or part 135 of this chapter may be used to satisfy the requirements of this section.

(d) The pilot-in-command checks required by paragraph (a) of this section may be accomplished by satisfactory completion of one of the following:

(1) A pilot-in-command check conducted by a person authorized by the Administrator, consisting of the maneuvers and procedures required for a type rating.

(2) The practical test required for a type rating.

(3) The initial or periodic practical test required for the issuance of a pilot examiner or a check airman designation; or

(4) A military flight check required for a pilot in command with instrument privileges, in an aircraft that the military

requires to be operated by more than one pilot.

(e) Except as provided in paragraphs (f) and (g) of this section, if an applicant for a check required by this section has satisfactorily completed a pilot-in-command check within the period required by paragraph (a)(1) or (a)(2) of this section, a check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) If an otherwise qualified and approved flight simulator used for a pilot-in-command proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as pilot in command, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

(2) Except as provided in paragraph (e)(3) of this section, the circling approach maneuvers of the proficiency check must be accomplished in a qualified and approved flight simulator equipped with a visual system that permits accomplishment of the circling approach task.

(3) If the flight simulator used pursuant to this paragraph is not qualified and approved for circling approaches—

(i) The applicant's record shall be annotated with the statement, "Proficiency in circling approaches not demonstrated;" and

(ii) The applicant may not perform circling approaches as pilot in command when weather conditions are less than the basic VFR conditions described in § 91.155 of this chapter, until proficiency in circling approaches has been successfully demonstrated in an approved simulator or aircraft to a person authorized by the Administrator to conduct the check required by this section.

(f) If a pilot has not completed a pilot-in-command proficiency check within the period required by paragraph (a)(1) or (a)(2) of this section, that pilot must complete the required pilot-in-command proficiency check in an aircraft.

(g) The first pilot-in-command proficiency check required by paragraph (a)(1) and (a)(2) of this section must be completed in an aircraft.

(h) For the purpose of meeting the check requirements of paragraph (a) of this section, a person may act as pilot in command of a flight under day VFR conditions or day IFR conditions if no person or property is carried, other than as necessary to demonstrate compliance with this part.

(i) If a pilot takes the check required by this section in the calendar month before, or the calendar month after, the month in which it is due, the pilot is considered to have taken it when due, and the future proficiency check due dates do not change.

19. Section 61.63 is amended by revising paragraph (a) and the section heading to read as follows:

§ 61.63 Additional aircraft ratings for other than airline transport pilot certificates (for parts 121 and 135 use only).

(a) General. To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is a pilot crewmember employee of a part 121 certificate holder or a part 135 certificate holder must meet the requirements of paragraphs (b) through (d) of this section, as applicable to the rating sought.

* * * * *

20. A new section 61.64 is added to read as follows:

§ 61.64 Additional aircraft ratings for other than airline transport pilot certificates (for other than parts 121 and 135 use).

(a) *General.* To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is not a crewmember employee applicant of a part 121 training program or a part 135 training program must meet the requirements of paragraphs (b) through (i) of this section, applicable to the rating sought.

(b) *Category rating.* An applicant who holds a pilot certificate and applies to add a category rating must meet the following requirements:

(1) Present a record of training certified by an authorized flight instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft category and class rating sought;

(ii) Received flight training on the areas of operation applicable to the pilot certificate and aircraft category and class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas required for the pilot certificate to which the added aircraft category rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation required for the pilot certificate to which the added aircraft category rating would apply.

(2) Pass the required knowledge test, applicable to the pilot certificate and aircraft category and class rating sought; and

(3) Pass a practical test—

(i) Required for the pilot certificate held; and

(ii) Required for the category and class rating sought.

(c) *Class rating.* An applicant who holds a pilot certificate and applies to add a class rating must meet the following requirements:

(1) The applicant must present a record certified by an authorized flight instructor showing that the applicant has—

(i) Received flight instruction in the class of aircraft on the areas of operation applicable to the pilot certificate and aircraft class rating sought;

(ii) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas applicable to the pilot certificate to which the category and class rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation applicable to the pilot certificate to which the aircraft class rating would apply;

(2) Pass a knowledge test, appropriate to the pilot certificate and aircraft class rating sought; and

(3) Pass a practical test—

(i) Required for the pilot certificate held; and

(ii) Required for the category and class rating sought.

(d) *Type rating.* An applicant who holds a pilot certificate and applies to add a type rating must meet the following requirements—

(1) Present a record of training certified by an authorized ground or flight instructor that shows that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the type rating sought;

(ii) Received flight training on the areas of operation applicable to the type rating sought; and

(iii) Been found competent by the certifying flight instructor in the areas of operation required for the issue of the pilot certificate for which the aircraft type rating is sought.

(2) Passed a required practical test on the areas of operation listed in § 61.158

or § 61.163 of this part, as applicable, for the aircraft type rating sought.

(3) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (d)(2) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g) of this part.

(e) The tasks required by paragraphs (b), (c), and (d) of this section shall be performed in—

(1) An airplane of the same type, for which the type rating is sought; or

(2) Subject to the limitations of paragraph (e)(3) of this section, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought.

(3) The flight simulator or flight training device use permitted by paragraph (e)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or

(4) In another manner approved by the Administrator.

(f) An applicant for a type rating who provides an aircraft not capable of the instrument maneuvers and procedures required by § 61.158 or § 61.163 of this part for the practical test may—

(1) Obtain a type rating limited to "VFR only;" and

(2) Remove the "VFR only" limitation for each aircraft type in which the applicant demonstrates compliance with the instrument requirements of § 61.158 or § 61.163 or the requirements of § 61.73(e)(2) of this part.

(g) An applicant for a type rating may be issued a certificate with the limitation "VFR only" for each aircraft type not equipped for the applicant to show instrument competency.

(h) An applicant for a type rating in a multiengine, single-pilot-station airplane may meet the requirements of this part in another multiengine airplane.

(i) An applicant for a type rating in a single-engine, single-pilot-station airplane may meet the requirements of this part in another single-engine or multiengine airplane if the applicant meets the instrument currency requirements of § 61.57(e) of this part.

21. Section 61.65 is amended by removing and reserving paragraphs (d) and (f); revising paragraph (b) introductory text, paragraph (c) introductory text and (c)(1), (c)(3), (c)(4), and (c)(5), paragraph (e) introductory text and (e)(2) and (g); and adding paragraphs (c)(6) and (h) to read as follows:

§ 61.65 Instrument rating requirements.

* * * * *

(b) *Ground instruction and written test.* An applicant for the written test for an instrument rating must have received ground instruction or have logged home study in, and passed a written test on, at least the following areas of aeronautical knowledge applicable to the rating sought:

* * * * *

(c) *Flight instruction.* Except as otherwise provided in this paragraph, an applicant for the practical test for an instrument rating must present a record certified by an authorized flight instructor showing instrument flight instruction and competency in an aircraft of the same category for which the instrument rating is sought, in each of the following areas of operations:

(1) Control and accurate maneuvering of the aircraft solely by reference to instruments.

(2) * * *

(3) Instrument approaches to published minimums using two different nonprecision approach systems and one precision approach system.

(4) Cross-country flight in an aircraft in simulated or actual IFR conditions, on Federal airways or as routed by air traffic control (ATC), subject to the following:

(i) The flight must be at least 250 nautical miles (100 nautical miles for helicopters) including a minimum of one precision instrument approach and two nonprecision instrument approaches.

(ii) Each instrument approach must be accomplished at a different airport.

(iii) If the departure and final destination airports are the same airport, the destination airport may be considered as the third airport.

(iv) No approach need be done more than once.

(5) Simulated emergencies involving equipment or instrument malfunctions, missed approach procedures, deviations to unplanned alternates, recovery from unusual attitudes, loss of communications, and simulated loss of power on at least one-half of the engines if a multiengine aircraft is used.

(6) Flight instruction required by paragraphs (c)(1), (c)(2), (c)(3), and (c)(5) of this section may be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device.

(d) [Reserved]

(e) *Flight experience.* Except as provided in paragraph (h) of this section, an applicant for an instrument rating must have at least the following flight time as a pilot:

(1) * * *

(2) 40 hours of simulated or actual instrument time, which may include—

(i) Not more than a combined total of 20 hours of instrument instruction by an authorized instructor in a qualified and approved flight simulator or in a qualified and approved flight training device; or

(ii) Not more than 30 hours of instrument instruction accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(3) * * *

(f) [Reserved]

(g) *Practical test.* An applicant for an instrument rating must pass a practical test consisting of an oral increment and a flight increment.

(1) The flight increment required by this paragraph (g) may be accomplished in any category, class, and type aircraft that is certificated for flight in instrument conditions, or in a qualified and approved flight simulator or qualified and approved flight training device.

(2) The practical test required by this paragraph (g) must include instrument flight procedures, selected by the person authorized by the Administrator to conduct the practical test, to determine the applicant's ability to perform competently the IFR operations described in paragraph (c) of this section.

(3) The following requirements of the practical test must be accomplished in an aircraft or in a qualified and approved flight simulator:

(i) At least one published precision, nonprecision, and circling approach.

(ii) At least one landing.

(iii) At least one cross-country flight.

(h) *Training qualifications.* An applicant for the instrument rating who has satisfactorily completed an approved course of training conducted at a training center certificated under part 142 of this chapter must have—

(1) A total of at least 95 hours of pilot flight time, including at least 35 hours of simulated or actual instrument flight time; or

(2) Satisfactorily completed the requirements of an approved instrument rating course at a part 142 certified training center that has received approval from the Administrator to conduct a course of training satisfying the requirements of the instrument rating in—

(i) Fewer than 95 hours of pilot flight time; or

(ii) Fewer than 35 hours of simulated instrument time or actual instrument time.

22. Section 61.67 is amended by revising paragraphs (a)(2), (b), (b)(1), (b)(2), (c)(1) (ii) and (c)(2), (d)

introductory text, (d)(1) introductory text, and (d)(2), and by adding paragraphs (c)(3) through (c)(6), (d)(3) and (e) to read as follows:

§ 61.57 Category II pilot authorization requirements.

(a) * * *

(2) A type rating for an aircraft that requires a type rating.

(b) *Experience requirements.* An applicant for a Category II authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) 75 hours of instrument time during actual or simulated instrument conditions that may include not more than a combined total of—

(i) 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; or

(ii) 40 hours of simulated instrument flight time if accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

* * * * *

(c) * * *

(1) * * *

(ii) An applicant for the addition of another type aircraft to a previously held authorization received within the preceding 24 months.

(2) To be eligible for the practical test, an applicant must—

(i) Meet the requirements of paragraphs (a) and (b) of this section;

(ii) Hold the appropriate class rating; and—

(iii) Within the preceding 12 calendar months, pass a practical test that includes Category II operations; or

(iv) Meet the following recent experience requirements—

(A) The requirements of § 61.57(e); and

(B) At least six ILS approaches since the beginning of the sixth month before the test, subject to the following:

(1) The approaches must be conducted under actual or simulated instrument flight conditions.

(2) The approaches must be conducted down to the minimum decision height for the ILS approach in the type aircraft in which the practical test is to be conducted.

(3) The approaches may be accomplished in a flight simulator that—

(i) Represents an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, as the aircraft in which the authorization is sought;

(ii) Is used in accordance with an approved course conducted by a training center certificated under Part 142 of this chapter.

(3) The approaches may be accomplished in an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, as the aircraft in which the practical test is to be conducted.

(4) The approaches need not be conducted down to the alert height or decision height, as applicable, authorized for Category II operations only if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(5) At least three of the approaches required by paragraph (c)(2)(iv)(B) of this section must be conducted manually, without the use of an approach coupler.

(6) The flight time acquired in meeting the requirements of paragraph (c)(2)(iv)(B) of this section may be used to meet the requirements of paragraph (c)(2)(iv)(A) of this section.

(d) *Practical test procedures.* The practical test consists of two increments:

(1) Oral increment. The applicant must demonstrate knowledge of the following:

* * * * *

(2) Flight increment. The flight increment shall consist of the following:

(i) At least two ILS approaches to 100 feet AGL including at least one landing and one missed approach.

(ii) All approaches must be made with the approved flight control guidance system, except that if an approved automatic approach coupler is installed, at least one approach must be hand flown using flight director commands.

(iii) If a multiengine airplane with the performance capability to execute a missed approach with one engine inoperative is used, one missed approach must be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle marker.

(iv) If a flight simulator is used, the missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(v) For authorizations for aircraft that require a type rating, the test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

(3) Oral questioning may be conducted at any time during the practical test.

(e) *Duration of authorization.*

(1) A Category II authorization expires at the end of the sixth month after it was last issued or renewed.

(2) Renewal of either a Category II authorization or a Category III authorization shall be considered Category II authorization renewal for each type aircraft for which an authorization is held, subject to the limitation of paragraph (e)(3) of this section.

(3) A renewal for any particular type aircraft shall not extend the expiration date of a Category II authorization for any other type aircraft.

(4) An authorization renewed in the month before expiration is considered to have been renewed in the month in which the authorization would have expired.

23. Section 61.68 is added to read as follows:

§ 61.68 Category III pilot authorization requirements.

(a) General. An applicant for a Category III pilot authorization must hold—

(1) A pilot certificate with an instrument rating or airline transport pilot certificate;

(2) A valid medical certificate;

(3) A category and class rating, for the aircraft for which the authorization is sought; and

(4) A type rating for the aircraft for which the authorization is sought, if that aircraft requires a type rating.

(b) *Experience requirements.* An applicant for a Category III authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) Except as provided in paragraph (c) of this section, 75 hours of instrument flight time during actual or simulated instrument conditions that may include not more than a combined total of 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; and

(3) 250 hours of cross-country flight time as pilot in command.

(c) The instrument flight time allowed in flight simulators or flight training devices under paragraph (b)(2) of this section may be increased to not more than 40 hours if accomplished in an approved course conducted by a training center certificated under Part 142 of this chapter.

(d) *Practical test required.* (1) An applicant for a Category III authorization must pass a practical test, including both an oral and a flight increment—

(i) For issue of an authorization or renewal of an authorization; and

(ii) For the addition of another type aircraft to a previously held authorization.

(2) An applicant for a Category III authorization required by paragraph (d)(1) of this section must:

(i) Comply with the requirements of § 61.57(e) of this part.

(ii) Conduct at least six ILS approaches since the beginning of the sixth month before the practical test, which must be—

(A) Conducted under actual or simulated instrument flight conditions and flown down to the minimum altitude for the ILS approach;

(B) Accomplished in a flight simulator or flight training device that—

(*1*) Represents an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, as the aircraft in which the authorization is sought; and

(*2*) Is used in accordance with an approved course conducted by a training center certificated under Part 142 of this chapter; or

(C) Accomplished in an aircraft of the same category and class of aircraft, and type of aircraft, as applicable, in which the practical test is to be conducted.

(D) Conducted down to the alert height or decision height, as applicable, authorized for Category III operations only if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(e) *Practical test procedures.* The practical test consists of two increments:

(1) Oral increment. The applicant must demonstrate knowledge of the following:

(i) Required landing distance.

(ii) Determination and recognition of the alert height or decision height, as applicable, including use of a radar altimeter.

(iii) Recognition of and proper reaction to significant failures encountered prior to and after reaching the alert height or decision height, as applicable.

(iv) Missed approach procedures and techniques using computed or fixed attitude guidance displays and expected height loss as they relate to manual go-around or automatic go-around and initiation altitude, as applicable.

(v) The use and limitations of RVR, including determination of controlling RVR and required transmissometers.

(vi) The use, availability, or limitations of visual cues and the altitude at which they are normally discernible at reduced RVR readings including—

(A) Unexpected deterioration of conditions to less than minimum RVR during approach, flare, and rollout;

(B) Demonstration of expected visual references with weather at minimum conditions; and

(C) The expected sequence of visual cues during an approach in which visibility is at or above landing minima.

(vii) Procedures and techniques for making a transition from instrument reference flight to visual flight during a final approach under reduced RVR.

(viii) Effects of vertical and horizontal wind shear.

(ix) Characteristics and limitations of the ILS and runway lighting system.

(x) Characteristics and limitations of the flight director system auto approach coupler (including split axis type if so equipped), auto throttle system, if applicable, and other Category III equipment, as applicable.

(xi) Assigned duties of the second in command during Category III approaches, unless the aircraft for which authorization is sought does not require a second in command.

(xii) Recognition of the limits of acceptable aircraft position and flight path tracking during approach, flare, and, if applicable, rollout.

(xiii) Recognition of, and reaction to, airborne or ground system faults or abnormalities, particularly after passing alert height or decision height, as applicable.

(2) Flight increment. The flight increment shall consist of the following:

(i) At least two ILS approaches to 100 feet AGL, including one landing and one missed approach initiated from a very low altitude that may result in a touchdown during the go-around maneuver.

(ii) All approaches must be made with the approved automatic landing system or an equivalent landing system approved by the Administrator.

(iii) If a multiengine aircraft with the performance capability to execute a missed approach with one engine inoperative is used, a missed approach shall be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle or outer marker.

(iv) If a flight simulator or flight training device is used, a missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(v) Subject to the limitations of paragraph (e)(2)(vi) of this section, for Category IIIb operations predicated on the use of a fail-passive rollout control system, the test shall include at least one manual rollout using visual reference or a combination of visual and instrument references.

(vi) The maneuver required by paragraph (e)(2)(v) of this section shall be initiated by a fail-passive disconnect of the rollout control system—

(A) After main gear touchdown;

(B) Prior to nose gear touchdown;

(C) In conditions representative of the most adverse lateral touchdown displacement allowing a safe landing on the runway; and

(D) In weather conditions anticipated in Category IIIb operations.

(3) For authorizations for aircraft that require a type rating, the test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

(4) Oral questioning may be conducted at any time during the practical test.

(f) Duration of authorization.

(1) A Category III authorization expires at the end of the sixth month after it was last issued or renewed.

(2) Renewal of a Category III authorization shall be considered an authorization renewal for each type aircraft for which an authorization is held, subject to the limitation of paragraph (f)(3) of this section.

(3) The renewal of a Category III authorization for any particular type aircraft shall not extend the expiration date for an authorization for any other type aircraft.

(4) An authorization renewed in the month before expiration is considered to have been renewed in the month the authorization expired.

24. Section 61.109 is revised to read as follows:

§ 61.109 Airplane rating: Aeronautical experience.

Except as provided in paragraph (i) of this section, an applicant for a private pilot certificate with an airplane category rating must have at least the following aeronautical experience:

(a) At least 20 hours of flight instruction from an authorized instructor, including at least—

(1) 3 hours of cross-country flight.

(2) 3 hours of flight at night, including ten takeoffs and ten landings for applicants seeking night flying privileges.

(3) 3 hours in airplanes in preparation for the private pilot practical test within 60 calendar days prior to that test.

(b) At least 20 hours of solo flight time, including at least—

(1) 10 hours of flight in airplanes;

(2) 10 hours of cross-country flight; and

(3) Three solo takeoffs and landings to a full stop at an airport with an operating control tower.

(c) Each flight required by paragraph (b)(2) of this section must include—

(1) A landing at a point more than 50 nautical miles from the original departure point; and

(2) One flight of at least 300 nautical miles with landings at a minimum of three points, one of which is at least 100 nautical miles from the original departure point.

(d) An applicant who does not meet the night flying requirement of paragraph (a)(2) of this section may be issued a private pilot certificate bearing the limitation "night flying prohibited."

(e) The limitation required by paragraph (d) of this section may be removed if the holder of the certificate shows that he or she has met the requirements of paragraph (a)(2) of this section.

(f) Except as provided in paragraph (g) of this section, a maximum of 2.5 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a flight simulator or in a flight training device representing an airplane.

(g) A maximum of 5 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(h) Flight simulator or flight training device instruction must be accomplished in a flight simulator, or in a flight training device, representing an airplane.

(i) Except as otherwise approved by the Administrator, an applicant for a private pilot certificate with an airplane rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

25. Section 61.113 is revised to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

Except as provided in paragraph (e) of this section, an applicant for a private pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) For a helicopter class rating, 40 hours of flight instruction and solo flight time including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and 10 landings, each of which must be separated by an en-route phase of flight;

(iii) 3 hours in helicopters in preparation for the private pilot practical test within 60 calendar days before that test;

(iv) A flight in a helicopter with a landing at a point other than an airport; and

(2) 20 hours of solo flight time, 15 hours of which must be in a helicopter, including at least—

(i) 3 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other landing points; and

(ii) Three takeoffs and three landings in helicopters at airports or heliports with operating control towers, each separated by an en-route phase of flight.

(3) Except as provided in paragraph (a)(4) of this section, a maximum of 2.5 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hour requirement of paragraph (a) of this section if the instruction is accomplished in a flight simulator or in a flight training device representing a helicopter.

(4) A maximum of 5 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a course conducted by a training center certificated under Part 142 of this chapter.

(b) The applicant for a gyroplane class rating must have a total of at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including at least the following—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including ten takeoffs and ten landings; and

(iii) 3 hours in gyroplanes in preparation for the private pilot flight test within 60 calendar days before that test.

(2) 20 hours of solo flight time, 10 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and three landings in gyroplanes at an airport with an operating control tower.

(3) Except as provided in paragraph (b)(4) of this section, a maximum of 2.5 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hours required by paragraph (b)(1) of this section if accomplished in a flight simulator or in a flight training device representing a gyroplane.

(4) A maximum of 5 hours of flight simulator or flight training device instruction may be credited toward the total hours required by paragraph (b)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(c) An applicant who does not meet the night flying requirements of paragraph (a)(1)(ii) or paragraph (b)(1)(ii) of this section will be issued a private pilot certificate bearing the limitation "night flying prohibited."

(d) The limitation required by paragraph (c) of this section may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(ii) or paragraph (b)(1)(ii) of this section, as applicable.

(e) Except as otherwise approved by the Administrator, an applicant for a private pilot certificate with a rotorcraft category rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

26. Section 61.129 is amended by revising paragraph (b) introductory text and (b)(1) and (b)(2) introductory text, and by adding paragraphs (b)(4) and (c) to read as follows:

§ 61.129 Airplane rating: Aeronautical experience.

* * * * *

(b) *Flight time as pilot.* Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with an airplane rating must

have at least the following aeronautical experience:

(1) A total of at least 250 hours of flight time as a pilot that may include not more than—

(i) Except as provided in paragraph (b)(1)(ii) of this section, a maximum of 50 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hours required by paragraph (b) of this section; or

(ii) A maximum of 100 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (b) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(2) The flight time required by paragraph (b)(1) of this section must include—

* * * * *

(4) Flight simulator instruction and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device representing an airplane.

(c) Flight time as pilot: Approved commercial pilot training program conducted under part 142. Except as otherwise approved by the Administrator, an applicant for a commercial pilot certificate with an airplane rating who has satisfactorily completed an approved commercial pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 190 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

27. Section 61.131 is amended by revising the introductory text, paragraph (b) introductory text and (b)(1) introductory text, and by adding paragraphs (a)(3), (a)(4), (b)(3), (b)(4), and (c) to read as follows:

§ 61.131 Rotorcraft rating: Aeronautical experience.

Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) * * *

(3) Except as provided in paragraph (a)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hour requirement for a pilot certificate.

(4) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a)(1) of this section if the instruction is accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

(b) For a gyroplane class rating:

(1) An applicant must have at least 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

* * * * *

(3) Except as provided in paragraph (b)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total requirement for a pilot certificate if the instruction is accomplished in a flight simulator or in a flight training device representing a gyroplane.

(4) A maximum of 50 hours of flight simulator instruction or flight training device if instruction may be credited toward the total hours required by paragraph (b)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(c) Except as otherwise approved by the Administrator, an applicant for a commercial pilot certificate with a rotorcraft rating and a helicopter class rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 150 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

28. Section 61.155 is revised to read as follows:

§ 61.155 Airplane rating: Aeronautical experience.

(a) Except as provided in paragraph (d) of this section, an applicant for an airline transport pilot certificate with an airplane category and class rating must have at least 1,500 hours of total time as a pilot that includes at least:

(1) 500 hours of cross-country flight time;

(2) 100 hours of night flight time;

(3) 75 hours of instrument time in actual or simulated instrument time, subject to the following—

(i) Except as provided in paragraph (a)(3)(ii) of this section, an applicant may not receive more than 25 hours of simulated instrument time in flight simulators and flight training devices.

(ii) A maximum of 50 hours of flight simulator or flight training device instruction may be credited toward the total hours required by paragraph (a)(3) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(iii) Flight simulator instruction or flight training device instruction must be accomplished in a qualified and approved flight simulator, or in a qualified and approved flight training device, representing an airplane.

(4) 250 hours of flight time in an airplane as a pilot in command or as a second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least—

(i) 100 hours of cross-country flight time; and

(ii) 25 hours of night flight time.

(b) An applicant who has performed at least twenty night takeoffs and landings to a full stop may substitute each additional night takeoff and landing to a full stop in excess of the minimum twenty accomplished takeoffs for 1 hour of night flight time to satisfy the requirements of paragraph (a)(2) of this section, for a total credited time of no more than 25 hours.

(c) A commercial pilot may credit the following second-in-command and flight engineer flight time (or a combination of either crewmember position flight time) toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section:

(1) All second-in-command time acquired in an airplane required to have more than one pilot by the airplane's flight manual or hype certificate;

(2) All second-in-command time acquired in an airplane for a part 121 or part 135 certificate holder for which a second in command is required.

(3) Flight engineer time, provided the time—

(i) Is acquired while operating under part 121 of this chapter;

(ii) Is acquired in an airplane that is required to have a flight engineer by the airplane's flight manual or type certificate;

(iii) Is acquired while the applicant is participating in a pilot training program approved under part 121 of this chapter; and

(iv) Does not exceed more than 1 hour of flight time to be credited for each 3 hours of flight engineer time, for a total credited time of no more than 500 hours.

(d) An applicant who does not meet the aeronautical experience requirements of the section may be issued an airline transport pilot

certificate with the limitation "Holder does not meet the pilot-in-command aeronautical experience requirements of ICAO" as prescribed by Article 39 of the Convention on International Civil Aviation, as provided in § 61.165(b) of this part.

29. Section 61.157 is amended by revising the section heading and paragraph (a) to read as follows:

§ 61.157 Airplane rating: Aeronautical skill (for Parts 121 and 135 use only).

(a) An applicant who is a pilot crewmember employee of an air carrier certificated under part 121 or part 135 of this chapter—

(1) When applying for an airline transport pilot certificate with a single-engine or multiengine class rating, or an additional type rating, must pass a practical test that includes the items set forth in appendix A of this part.

(2) The FAA inspector or designated examiner may modify any maneuver required by appendix A of this part, where necessary for the reasonable and safe operation of the airplane being used and, unless specifically prohibited in appendix A of this part, may combine any required maneuvers and may permit their performance in any convenient sequence.

* * * * *

30. Section 61.158 is added to read as follows:

§ 61.158 Airplane rating: Aeronautical skill (for other than Parts 121 and 135).

(a) *Practical test.* An applicant for an airline transport pilot certificate with a single engine or multiengine class rating or type rating, not applying as a pilot crewmember employee of an air carrier certified under part 121 or Part 135, must—

(1) Pass a practical test based on the following areas of operation:

(i) Preflight procedures.

(ii) Cockpit resource management.

(iii) Takeoff and departure maneuvers.

(iv) In-flight maneuvers.

(v) Instrument procedures.

(vi) Landings and approaches to landings.

(vii) Normal and abnormal procedures.

(viii) Emergency procedures.

(ix) Postflight procedures.

(2) Present a record of training certified by an authorized flight instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas required by this section applicable to the aircraft category, class, and class rating sought;

(ii) Received flight training on the areas of operation applicable to the aircraft category, class, and type rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas required for the added aircraft type rating; and

(iv) Been found competent by the certifying flight instructor in the areas of operation required for the added aircraft type rating.

(b) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (a)(1) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g) of this part.

(c) The tasks required by paragraphs (a) and (b) of this section shall be performed in—

(1) An airplane of the same class, and, if applicable, an airplane of the same type, for which the class rating or type rating is sought; or

(2) Subject to the limitations of paragraph (c)(3) of this section, a flight simulator or a flight training device that represents the airplane type, for which the type rating is sought, or set of airplanes if the airplane for which the class rating is sought does not require a type rating.

(3) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or

(4) In another manner approved by the Administrator.

31. Section 61.161 is amended by revising paragraph (b)(4) and by adding a new paragraph (b)(5) to read as follows:

§ 61.161 Rotorcraft rating: Aeronautical experience.

* * * * *

(b) * * *

(4) 75 hours of actual or simulated instrument time under actual or simulated conditions of which at least 50 hours are completed in flight with at least—

(i) 25 hours in helicopters as pilot in command;

(ii) 25 hours in helicopters as second in command performing the duties of a pilot in command under the supervision of a pilot in command; or

(iii) Any combination of paragraph (b)(4)(i) and (b)(4)(ii) of this paragraph that totals 25 hours in helicopters.

(5) Flight simulator or flight training device instruction may be credited toward the total hour requirement of paragraph (b)(4) of this section subject to the following:

(i) Flight simulator and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device, representing a rotorcraft.

(ii) Except as provided in paragraph (b)(5)(iii) of this section, an applicant may receive credit for not more than a combined total of 25 hours of simulated instrument time in flight simulators and flight training devices.

(iii) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (b)(4) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

32. Section 61.163 is revised to read as follows:

§ 61.163 Rotorcraft rating: Aeronautical skill.

(a) *Practical test.* An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating or a type rating must pass a practical test based on the following areas of operation:

(1) Preflight procedures.

(2) Cockpit resource management.

(3) Takeoff and departure procedures.

(4) In-flight maneuvers.

(5) Instrument procedures.

(6) Landings and approaches to landings.

(7) Normal and abnormal procedures.

(8) Emergency procedures.

(9) Postflight procedures.

(b) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (a) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g) of this part.

(c) The tasks required by paragraphs (a) and (b) of this section shall be performed in—

(1) The helicopter for which the class rating or type rating is sought; or

(2) A flight simulator or flight training device that represents the helicopter for which the class rating or type rating is sought.

(d) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section must be conducted in accordance with an approved course by a training center certificated under part 142 of this chapter.

(e) Unless the Administrator requires certain or all tasks to be performed, the person authorized by the Administrator

to conduct the practical test for an airline transport pilot certificate may waive any of the tasks for which the Administrator approves waiver authority.

33. Section 61.169 is revised to read as follows:

§ 61.169 Instruction in air transportation service.

(a) An airline transport pilot may instruct—

(1) Other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the airline transport pilot is rated;

(2) Only as provided in this section, unless the airline transport pilot also holds a flight instructor certificate, in which case he or she may exercise the instructor privileges of subpart G of part 61 for which he or she is rated; and

(3) Only in aircraft with functioning dual controls, when instructing under the provisions of this section.

(b) An airline transport pilot may not instruct—

(1) For more than 8 hours in 1 day;

(2) For more than 36 hours in any 7 consecutive day period; or

(3) In Category II or Category III operations unless the airline transport pilot has been trained and checked under Category II or Category III operations, as applicable.

34. Section 61.187 is amended by revising paragraph (a) to read as follows:

§ 61.187 Flight proficiency.

(a) An applicant for a flight instructor certificate must have received flight instruction in an aircraft, a flight simulator, or in a flight training device—

(1) Used in accordance with an approved course at a training center certificated under part 142 of this chapter; and

(2) Appropriate for the instructor rating sought in the subjects listed in this paragraph by a person authorized by paragraph (b) of this section to provide instruction to other flight instructors.

* * * * *

35. Section 61.191 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 61.191 Additional flight instructor ratings.

* * * * *

(c) Pass the written and practical test prescribed in this subpart for the rating sought.

(d) If accomplished in accordance with an approved course conducted by a training center certificated under part 142 of this chapter, the practical test may be conducted in—

(1) An aircraft;

(2) A flight simulator; or

(3) A flight training device.

36. Section 61.195 is amended by adding paragraph (h) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(h) A flight instructor may not give instruction in Category II or Category III operations unless the flight instructor has been trained and checked in Category II or Category III operations, pursuant to § 61.67 of this part.

37. Section 61.197 is revised to read as follows:

§ 61.197 Renewal of flight instructor certificates.

(a) The holder of a valid flight instructor certificate may renew that certificate for an additional period of 24 calendar months if that individual—

(1) Except as provided by paragraph (a)(2) of this section, holds at least a valid third class medical certificate issued under part 67 of this chapter;

(2) For the renewal of a flight instructor-glider or flight instructor-free balloon rating only, certifies on the application for renewal that he or she does not have any known medical deficiencies; and

(3) Except as provided in paragraph (b) of this section, satisfactorily completes a practical test for—

(i) Renewal of the flight instructor certificate and rating sought; or

(ii) An additional flight instructor rating.

(b) The holder of a flight instructor certificate may renew that certificate and its ratings without accomplishing a practical test, by presenting to an FAA Flight Standards District Office evidence of one of the following—

(1) A record showing that during the preceding 24 calendar months, the instructor has—

(i) Endorsed at least five students for a practical test for a certificate or rating; and

(ii) At least an 80 percent pass rate for students passing their practical test on the first attempt;

(2) A record showing that, during the preceding 24 calendar months, the instructor served—

(i) As a company check pilot;

(ii) As a chief flight instructor;

(iii) As a company check airman, or flight instructor in a part 121 or part 135 operation; or

(iv) In a comparable position involving the regular evaluation of pilots, providing that the FAA Flight Standards District Office with jurisdiction—

(A) Is acquainted with the instructor's duties and responsibilities; and

(B) Has determined that the instructor has satisfactory knowledge of current pilot training, certification, and standards; or

(3) A graduation certificate from an approved flight instructor refresher course, provided—

(i) The course was completed prior to the expiration date of the flight instructor certificate;

(ii) The course consists of not less than 24 hours of ground training or flight training, or both; and

(c) An applicant for renewal of a flight instructor certificate must show that the method of renewal described in paragraph (b)(3) of this section has not been used for more than two consecutive renewals.

(d) If an instructor satisfactorily completes the requirements of this section within 90 days prior to the expiration date of the flight instructor certificate, the instructor is considered to have completed the requirements of this section in the month in which they are due, and the certificate will be renewed for an additional 24 calendar months beyond the expiration date.

(e) The practical test required by paragraph (a)(3) of this section may be conducted in an aircraft, a flight simulator, or a flight training device, if accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

38. Appendix A to part 61 is amended by revising the title to read as follows:

Appendix A to Part 61—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings (for Parts 121 and 135 Use Only)

39. Appendix B to part 61 is removed and reserved.

PART 91—GENERAL OPERATING AND FLIGHT RULES

40. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 thorough 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

41. Section 91.191 is revised to read as follows:

§ 91.191 Category II and Category III manual.

(a) Except as provided in paragraph (c) of this section, no person may operate a U.S.-registered civil aircraft in a Category II or a Category III operation unless—

(1) There is available in the aircraft a current and approved Category II or Category III manual, as appropriate, for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in each respective manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II or Category III operation have been inspected and maintained in accordance with the maintenance program contained in the manual.

(b) Each operator must keep a current copy of each approved manual at its principal base of operations and must make each manual available for inspection upon request by the Administrator.

(c) This section does not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

42. Section 91.205 is amended by revising paragraph (f) and adding new paragraphs (g) and (h) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(f) *Category II and Category III operations.* The requirements for Category II operations are the instruments and equipment specified in—

(1) Paragraph (d) of this section; and

(2) Appendix A to this part.

(g) The instruments and equipment required for Category III operations are specified in paragraph (d) of this section.

(h) This paragraph does not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT.

43. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

44. Section 121.1 is amended by revising (c)(2), and adding new (c)(4) to read as follows:

§ 121.1 Applicability.

(c) * * *

(2) Until (2 years after the effective date of Part 142), each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58; and

(3) * * *

(4) Except as provided in paragraph (c)(2) of this section, each person, including those persons employed or used by that person who provides training, checking, or qualification functions under contract or other arrangement for air carrier and commercial operator crewmembers, aircraft dispatchers, other operations personnel, instructors, and check airmen.

* * * * *

45. Section 121.400 is amended by revising paragraph (a) and by adding paragraphs (c)(7), (c)(8), and (c)(9) to read as follows:

§ 121.400 Applicability and terms used.

(a) This subpart prescribes the requirements applicable to—

(1) Each training center that performs training, testing, and checking functions by contract or other arrangement for certificate holders subject to the requirements of this part;

(2) Each certificate holder for establishing and maintaining a training program for crewmembers, aircraft dispatchers, and other operations personnel employed or used by that certificate holder; and

(3) Each certificate holder for the qualification, approval, and use of flight simulators and flight training devices in the conduct of the program.

(b) * * *

(c) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking services under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Facility.* The physical environment required to conduct training, testing, and checking activities; e.g., buildings, classrooms.

(9) *Courseware.* Instructional material developed for each curriculum. This is the information in lesson plans, flight event descriptions, computer software programs, workbooks, and handouts.

46. Section 121.401 is amended by revising paragraphs (a)(2), (a)(3), (a)(4), and (c).

§ 121.401 Training Program: General.

(a) * * *

(2) Provide or ensure that an eligible training center provides adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart;

(3) Provide and keep current or ensure that an eligible training center provides and keeps current with respect to each airplane type and, if applicable, the particular variations within that airplane type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this part; and

(4) Provide or ensure that an eligible training center provides enough flight instructors, simulator instructors, and approved check airmen (evaluators under part 142) to conduct required flight training and flight checks, and simulator training courses permitted under this part.

(b) * * *

(c) Each instructor, supervisor, or check airman, including each instructor or evaluator under part 142 of this chapter, who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this part shall certify as to the proficiency and knowledge of the crewmember, aircraft dispatcher, flight instructor, or check airman concerned upon completion of that training or check. That certification shall be made a part of the crewmember's or dispatcher's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, check airman, or Part 142 instructor or evaluator must be identified with that entry; however, the signature of the certifying instructor, supervisor, check airman, or Part 142 instructor or evaluator is not required for computerized entries.

* * * * *

47. Section 121.402 is added to read as follows:

§ 121.402 Training program: Special rules.

(a) A training center is eligible under this subpart to provide training, testing, and checking services under contract or

other arrangement to those persons subject to the requirements of this subpart provided—

(1) It holds applicable ratings and training specifications issued under part 142 of this chapter;

(2) It has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) It has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) It has sufficient instructor and evaluator (check airmen) personnel qualified either under the applicable requirements of Part 142 of this chapter or under the applicable requirements of §§ 121.411 or 121.413 of this part to provide training, testing, and checking services to persons subject to the requirements of this subpart.

48. Section 121.403 is amended by revising paragraph (b)(4) as follows:

§ 121.403 Training program: Curriculum.

* * * * *

(b) * * *

(4) A list of airplane simulators or other training devices approved under § 121.407 and § 142.97 of this chapter, including approvals for particular maneuvers, procedures, or functions.

* * * * *

49. Section 121.405 is amended by revising paragraph (b) to read as follows:

§ 121.405 Training program and revision: Initial and final approval.

* * * * *

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in writing after which the certificate holder may conduct or arrange to conduct the training in accordance with that program. The Administrator then evaluates the effectiveness of the training program and advises the certificate holder of deficiencies, if any, that must be corrected.

* * * * *

50. Section 121.407 is amended by revising the section heading and paragraphs (c)(1) and (d) as follows:

§ 121.407 Training program: Approval of flight simulators and other training devices.

(c) * * *

(1) Is approved under this section or § 142.97 of this chapter and meets the simulator requirements of Appendix H of this part; and

* * * * *

(d) A flight simulator approved under this section or § 142.97 of this chapter must be used instead of the airplane to satisfy the pilot flight training requirements prescribed in the certificate holder's approved low-altitude windshear flight training program set forth in § 121.409(d) of this part.

51. Section 121.431 is amended by revising paragraph (a) to read as follows:

§ 121.431 Applicability.

(a) This subpart:

(1) Prescribes crewmember qualifications for all certificate holders except where otherwise specified; and

(2) Permits training center personnel under § 121.402 of this part to provide testing and checking services under contract or other arrangement to those persons subject to the requirements of this subpart.

* * * * *

52. Section 121.432a is added to read as follows:

§ 121.432a Training, testing, and checking conducted by certificated training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this subpart, including Appendixes E and F of this part, as appropriate, and that is conducted in accordance with an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter, is considered to meet applicable part 121 requirements.

53. Section 121.439 is amended by revising paragraphs (a), (b)(1), and (e) as follows:

§ 121.439 Pilot qualification: Recent experience.

(a) No certificate holder may use any person nor may any person serve as a required pilot flight crewmember unless, within the preceding 90 days, that person has made at least three takeoffs and three landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a Level A flight simulator approved under § 121.407 or § 142.97 of this chapter to include takeoff and landing maneuvers. In addition, any person who fails to make the three required takeoffs and landings within any consecutive 90-day period must reestablish recency of experience as provided in paragraph (b) of this section.

(b) * * *

(1) Under the supervision of a check airman or an evaluator under § 121.402 of this part, make at least three takeoffs and three landings in the type airplane in which that person is to serve or in an advanced flight simulator or Level A simulator. When a Level A simulator is used, the requirements of paragraph (c) of this section must be met.

* * * * *

(e) A check airman or an evaluator under § 121.402 of this part, whichever is applicable, who observes the takeoffs and landings prescribed in paragraphs (b)(1) and (c) of this section, shall certify that the person being observed is proficient and qualified to perform flight duty in operations under this part and may require any additional maneuvers that are determined necessary to make this certifying statement.

54. Section 121.441 is amended by revising (b)(2) as follows:

§ 121.441 Proficiency checks.

* * * * *

(b) * * *

(2) It must be given by the Administrator, an authorized check pilot check airman, or an authorized pilot evaluator under § 121.402 of this part.

* * * * *

55. Appendix H to part 121 is amended by revising the introductory text and paragraphs (3), (4), and (5) following the undesignated center heading reading "ADVANCED SIMULATION TRAINING PROGRAM" to read as follows:

Appendix H To Part 121—Advanced Simulation Plan

* * * * *

ADVANCED SIMULATION TRAINING PROGRAM

For an operator to conduct Phase II or III training under this Appendix, all required simulator instruction and checks must be conducted under an advanced simulation training program which is approved by the Administrator for the operator. This program must also ensure that all instructors, check airmen, and instructors and evaluators under § 121.402 of this part used in appendix H training and checking are highly qualified to provide the training required in the training program. The advanced simulation training program shall include the following:

* * * * *

3. Unless otherwise authorized by the Administrator, for newly certificated air operators under part 119 of this chapter and newly certificated training centers under part 142 of this chapter, documentation that each instructor, check airman, and evaluator under § 121.402 has been employed by the certificate holder or training center, as applicable, for at least 1 year in that

capacity or as a pilot in command or second in command in an airplane of the group in which that pilot is instructing or checking.

4. A procedure to ensure that each instructor, check airman, and evaluator under § 121.402 actively participates in either an approved regularly scheduled line-flying program as a flight crewmember or an approved line-observation program in the same airplane type for which that person is instructing or checking.

5. A procedure to ensure that each instructor, check airman, and evaluator under § 121.402, is given a minimum of 4 hours of training each year to become familiar with the operator's advanced simulation training program, or changes to it, and to emphasize their respective roles in the program. Training for simulator instructors, check airmen, and § 121.402 evaluators shall include training policies and procedures, instruction methods and techniques, operation of simulator controls (including environmental and trouble panels), limitations of the simulator, and minimum equipment required for each course of training.

* * * * *

56. Appendix I to Part 121 is amended by revising paragraph III(c) to read as follows:

Appendix I To Part 121—Drug Testing Program

* * * * *

III. Employees who must be tested.

* * * * *

(c) Flight instruction, simulated flight instruction, or ground instruction duties.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

57. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

58. Section 125.285 is amended by revising the first two sentences of paragraph (a) and paragraph (c) introductory text to read as follows:

§ 125.285 Pilot qualifications: Recent experience.

(a) No certificate holder may use any person, nor may any person serve, as a required pilot flight crewmember unless within the preceding 90 calendar days that person has made at least three takeoffs and landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a flight simulator if the flight simulator is qualified and approved by the Administrator for such purpose. * * *

(b) * * *

(c) A required pilot flight crewmember who performs the maneuvers required by paragraph (b) of this section in a qualified and approved flight simulator, as prescribed in paragraph (a) of this section, must—

* * * * *

59. Section 125.296 is added to read as follows:

§ 125.296 Training, testing, and checking conducted by training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this part and that is conducted in accordance with an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter, is considered to meet applicable requirements of this part.

60. Section 125.297 is amended by revising the section heading and paragraph (a) and (b) introductory text to read as follows:

§ 125.297 Approval of flight simulators and flight training devices.

(a) Flight simulators and flight training devices approved by the Administrator may be used in training, testing, and checking required by this subpart.

(b) Each flight simulator and flight training device that is used in training, testing, and checking required under this subpart must be used in accordance with an approved training course conducted by an appropriately rated training center certificated under part 142 of this chapter, or meet the following requirements:

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

61. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

62. Section 135.1 is amended by revising paragraph (a)(4) and adding a new paragraph (a)(6) to read as follows:

§ 135.1 Applicability.

(a) * * *

(4) Until [2 years after the effective date of the final rule], each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58; and

(5) * * *

(6) Except as provided in paragraph (a)(4) of this section, each person, including those persons employed or used by that person, who provides training, checking, or qualification functions under contract or other arrangement for air carrier and commercial operator crewmembers, other operations personnel, instructors, and check airmen.

* * * * *

63. Section 135.291 is revised to read as follows:

§ 135.291 Applicability.

This subpart:

(a) Prescribes the tests and checks required for pilot and flight attendant crewmembers and for the approval of check pilots in operations under this part; and

(b) Permits training center personnel under § 135.324 of this part to provide testing and checking services under contract or other arrangement to those persons subject to the requirements of this subpart.

64. Section 135.292 is added to read as follows:

§ 135.292 Training and checking conducted by certificated training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this part and that is conducted in accordance with an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter, is considered to meet applicable part 135 requirements.

65. Section 135.293 is amended by revising paragraph (a) introductory text to read as follows:

§ 135.293 Initial and recurrent pilot testing requirements.

(a) No certificate holder may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator, an authorized check pilot, or a pilot evaluator authorized under § 135.324 of

this part, on that pilot's knowledge in the following areas—

* * * * *

66. Section 135.297 is amended by revising paragraph (a) to read as follows:

§ 135.297 Pilot in command: Instrument proficiency check requirements.

(a) No certificate holder may use a pilot, nor may any person serve as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator, an authorized check pilot, or a pilot evaluator, under § 135.324 of this part.

* * * * *

67. Section 135.299 is amended by revising paragraph (a)(1) to read as follows:

§ 135.299 Pilot in command: Line checks: Routes and airports.

(a) * * *

(1) Be given by the Administrator, an approved check pilot, or a pilot evaluator authorized under § 135.324 of this part.

* * * * *

68. Section 135.321 is amended by revising paragraph (a) and by adding paragraph (b)(7), (b)(8), and (b)(9) to read as follows:

§ 135.321 Applicability and terms used.

(a) This subpart prescribes the requirements applicable to—

(1) Each training center that performs training, testing, and checking functions by contract or other arrangement for certificate holders subject to the requirements of this part;

(2) Each certificate holder for establishing and maintaining an approved training program for crewmembers, check airmen and instructors, and other operations personnel employed or used by that certificate holder; and

(3) Each certificate holder for the qualification, approval, and use of aircraft simulators and other training devices in the conduct of the program.

(b) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking services under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Facility.* The physical environment required to conduct training, testing, and checking activities; e.g., buildings, classrooms.

(9) *Courseware.* Instructional material developed for each curriculum. This is the information in lesson plans, flight event descriptions, computer software programs, workbooks, and handouts.

69. Section 135.323 is amended by revising paragraphs (a)(2), (a)(3), (a)(4), and (c) to read as follows:

§ 135.323 Training program: General.

(a) * * *

(2) Provide or ensure that an eligible training center provides adequate ground and flight training facilities and properly qualified ground instructors for the training required by this subpart;

(3) Provide and keep current or ensure that an eligible training center provides and keeps current with respect to each airplane type and, if applicable, the particular variations within that aircraft type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this part; and

(4) Provide or ensure that an eligible training center provides enough flight instructors, simulator instructors, and approved check airmen (evaluators under part 142) to conduct required flight training and flight checks, and simulator training courses permitted under this part.

(b) * * *

(c) Each instructor, supervisor, or check airman, including each instructor or evaluator under part 142 of this chapter, who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this part shall certify as to the proficiency and knowledge of the crewmember, aircraft dispatcher, flight instructor, or check airman concerned upon completion of that training or check. That certification shall be made a part of the crewmember's or dispatcher's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, check airman, or part 142 instructor or evaluator must be identified with that entry. However, the signature of the certifying instructor, supervisor, check airman, or part 142 instructor or evaluator is not required for computerized entries.

* * * * *

70. Section 135.324 is added to read as follows:

§ 135.324 Training program: Special rules.

A training center is eligible under this subpart to provide training, testing, and checking services under contract or other arrangement to those persons subject to the requirements of this subpart provided—

(a) It holds applicable ratings and training specifications issued under part 142 of this chapter;

(b) It has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(c) It has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(d) It has sufficient instructor and evaluator (check airmen) personnel qualified either under the applicable requirements of part 142 of this chapter or under the applicable requirements of §§ 135.337 or 135.339 of this part to provide training, testing, and checking services to persons subject to the requirements of this subpart.

71. Section 135.325 is amended by revising paragraph (b) to read as follows:

§ 135.325 Training program and revision: Initial and final approval.

* * * * *

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in writing after which the certificate holder may conduct or arrange to conduct the training in accordance with that program. The Administrator then evaluates the effectiveness of the training program and advises the certificate holder of deficiencies, if any, that must be corrected.

* * * * *

72. Section 135.327 is amended by adding paragraph (b)(4) to read as follows:

§ 135.327 Training program: Curriculum.

* * * * *

(b) * * *

(4) A list of aircraft simulators or other training devices approved under §§ 135.335 and 142.97 of this chapter, including approvals for particular maneuvers, procedures, or functions.

PART 141—PILOT SCHOOLS

73. The authority citation for part 141 continues to read as follows:

Authority: Secs. 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427), and Sec. 6(c) of the Dept. of Transportation Act (49 U.S.C. 1655(c)).

74. Section 141.26 is added to read as follows:

§ 141.26 Training agreements.

A training center certificated under part 142 of this chapter may provide the training, testing, and checking for pilot schools certificated under part 141 of this chapter and is considered to meet the requirements of part 141 provided—

(a) There is a training agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated training center is approved and conducted under part 142;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the training, testing, and checking to be conducted under part 141 and the training, testing, and checking to be conducted under part 142; and

(d) Upon completion of the training, testing, and checking conducted under part 142, a copy of each student's training record is forwarded to the part 141 school and becomes part of the student's permanent training record.

75. Part 142 is added to read as follows:

PART 142—TRAINING CENTERS

Subpart A—General

Sec.
142.1 Applicability.
142.3 Definitions.
142.5 Certificate and training specifications required.
142.7 Duration of a certificate.
142.9 Deviations or waivers.
142.11 Training center ratings.
142.13 Application for issuance or amendment.
142.15 Management and personnel requirements.
142.17 Facilities.
142.19 Satellite training centers.
142.20 Foreign training centers: Special rules.
142.21 Prohibited drugs.
142.23 Testing for prohibited drugs.
142.25 Refusal to submit to a drug test.
142.27 Display of certificate.
142.29 Inspections.
142.31 Advertising limitations.
142.33 Training agreements.

Subpart B—Aircrew Curriculum, Training Course Outline and Syllabus [Other Than Air Carrier and Part 125]

142.35 Applicability.
142.37 Approval of flight aircrew training program.
142.39 Training program curriculum requirements.

Subpart C—Personnel and Flight Training Equipment Requirements [Other Than Air Carrier and Part 125]

142.45 Applicability.
142.47 Training center instructor eligibility requirements.
142.49 Training center instructor privileges and limitations.
142.51 Qualifications to instruct in a flight simulator or a flight training device.
142.53 Training center instructor training and testing requirements.
142.55 Training center evaluator requirements.
142.57 Aircraft requirements.
142.59 Flight simulators and flight training devices.

Subpart D—Operating Rules [Other Than Air Carrier and Part 125]

142.61 Applicability.
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Subpart H—Operating Rules [Air Carrier and Part 125]

142.101 Applicability.
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Subpart I—Recordkeeping [Air Carrier and Part 125]

142.111 Applicability.
142.113 Recordkeeping requirements.
142.114 Record of training recipients.

Subpart J—Other Approved Courses

142.115 Conduct of other approved courses.

Authority: Sections 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427), and Section 6(c) of the Department of Transportation Act (49 U.S.C. app. 1655(c)).

PART 142—TRAINING CENTERS

Subpart A—General

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this rule provides an alternative means to accomplish training required by parts 61, 63, 121, 125, 127, 135, and 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 121, 125, 127, 135, and 137 for an operator's own employees;

(2) Approved under SFAR 58, Advanced Qualification Programs, for the applicant's own employees; or

(3) Conducted under part 61 unless that part requires certification under this part.

§ 142.3 Definitions.

As used in this part:

Core Training Program means a set of courses approved by the Administrator, for use by a training center and its satellite training centers. The core training program includes training for tasks and circumstances common to all training center users but does not include training for tasks and circumstances unique to a particular user.

Course means—

(a) A program of instruction to obtain pilot certification, qualification, authorization, or currency;

(b) A program of instruction to meet a specified number of requirements of a program for pilot training, certification, qualification, authorization, or currency; or

(c) A curriculum, or curriculum segment, as defined in SFAR 58 of this chapter.

Courseware means instructional material developed for each course or curriculum, including lesson plans, flight event descriptions, computer software programs, audiovisual programs, workbooks, and handouts.

Evaluator means a person employed by a training center certificate holder who performs tests for certification and rating that are authorized by the certificate holder's training specification, and who is authorized by the Administrator to administer such checks and tests.

Flight Training Equipment means flight simulators, as defined in § 61.1(a) of this chapter, flight training devices, as

defined in § 61.1(a) of this chapter, and aircraft.

Instructor means a person employed by a training center and authorized to provide instruction in accordance with Subpart C or Subpart G of this part.

Line-Oriented Flight Training (LOFT) means simulation conducted using operational-oriented flight scenarios that accurately replicate interaction among flightcrew members and between flightcrew members and dispatch facilities, other crewmembers, air traffic control (ATC), and ground operations. LOFT simulations are conducted for training and evaluation purposes and include random, abnormal, and emergency occurrences.

Specialty Training Program means a set of courses approved by the Administrator for use by a particular training center or satellite training center, including training requirements and functions unique to one or more training center clients which are in addition to the core training program training requirements and functions common to all training center clients.

Training Center means an organization certificated under this part to provide aviation training.

Training Program Curriculum means a set of courses that comprise a training center's training program. The training program may consist of a core training program, or a core training program and a specialty training program.

Training Specifications means a document issued to a training center certificate holder by the Administrator that prescribes that center's training, checking, and testing authorizations and limitations, and specifies training program requirements.

§ 142.5 Certificate and training specifications required.

(a) No person may operate a certificated training center without, or in violation of, a training center certificate and training specifications issued under this part.

(b) An applicant will be issued a training center certificate and training specifications with appropriate limitations if the applicant shows that adequate facilities, equipment, personnel, and courseware required by § 142.13 of this part are available to conduct training approved under §§ 142.37 or 142.77 of this part.

§ 142.7 Duration of a certificate.

(a) A training center certificate issued under this part is effective until the certificate is surrendered or until the Administrator suspends, revokes, or terminates it.

(b) If the Administrator suspends, revokes, or terminates a training center certificate, the holder of that certificate shall return the certificate to the Administrator.

§ 142.9 Deviations or waivers.

(a) Deviations or waivers from any of the requirements of this part may be approved only by the Administrator.

(b) A training center applicant requesting a deviation or waiver under this section must provide the Administrator with information acceptable to the Administrator that shows—

(1) Justification for the deviation or waiver; and

(2) That the deviation or waiver will not adversely affect the quality of instruction or evaluation.

§ 142.11 Training center ratings.

A training center certificate holder may obtain a rating to conduct training to meet the requirements of part 61, part 63, part 121, part 125, part 127, part 135, or part 137 of this chapter.

§ 142.13 Application for issuance or amendment.

(a) An application for a training center certificate and training specifications shall—

(1) Be made on a form and in a manner prescribed by the Administrator;

(2) Be filed with the FAA Flight Standards District Office that has jurisdiction over the area in which the applicant's principal business office is located; and

(3) Be made at least 120 calendar days before the beginning of any proposed training or 60 calendar days before effecting an amendment to any approved training, unless a shorter filing period is approved by the Administrator.

(b) Each application for a training center certificate and training specification shall provide—

(1) For each management position, the minimum qualification requirements for each position necessary to comply with the training specifications;

(2) A statement acknowledging that the applicant shall notify the Administrator within 10 working days of any change made in the assignment of persons in the required management positions;

(3) The proposed training authorizations and ratings requested by the applicant;

(4) The proposed evaluation authorization;

(5) A description of the flight training equipment proposed to be used;

(6) A description of the applicant's training facilities, equipment, qualifications of personnel to be used, and proposed evaluation plans;

(7) A training program curriculum, including syllabi, outlines, courseware, procedures, and documentation to support the items required in subpart B or subpart F of this part;

(8) A description of a recordkeeping system that will identify and document the details of training, qualification, and certification of students, instructors, and evaluators;

(9) A description of quality control measures proposed; and

(10) A method of demonstrating the applicant's qualification and ability to provide training for a certificate or rating in fewer than the minimum hours prescribed in part 61 of this chapter if the applicant proposes to do so.

(c) The facilities and equipment described in paragraph (b)(6) of this section shall be in place at the location of the proposed training center for inspection by the Administrator at the time the application required under paragraph (a) of this section is submitted.

(d) An applicant who meets the requirements of this part and is approved by the Administrator is entitled to—

(1) A training center certificate containing all business names included on the application under which the certificate holder may conduct operations and the address of each business office used by the certificate holder; and

(2) Training specifications, issued by the Administrator to the training center certificate holder, containing—

(i) The type of training authorized, including—

(A) Training center ratings; and

(B) Approved courses;

(ii) The category and class of aircraft that may be used for training;

(iii) Registration numbers and types of aircraft that are—

(A) Subject to an airworthiness maintenance program required by parts 91, 121, 125, 135, or any other part of this chapter; and

(B) Suitable for the type of training, testing, or checking being conducted;

(iv) For each flight simulator or flight training device, the make, model, and series of airplane or the set of airplanes being simulated and the qualification level assigned, or the make, model, and series of rotorcraft, or set of rotorcraft being simulated and the qualification level assigned;

(v) For each flight simulator and flight training device subject to qualification

evaluation by the National Simulator Program Manager, the serial number assigned by the manufacturer;

(vi) The name and address of all satellite training centers, and the approved courses offered at each satellite training center;

(vii) Authorized deviations or waivers from this part; and

(viii) Any other items the Administrator may require or allow.

(e) The Administrator may deny, suspend, revoke, or terminate a certificate under this part if the Administrator finds that—

(1) Any certificate the Administrator previously issued to the applicant for, or holder of, a training center certificate, was revoked, suspended or terminated within the previous 5 years;

(2) An applicant for, or holder of, a training center certificate employs or proposes to employ a person who—

(i) Was previously employed in a management or supervisory position;

(ii) Exercised control over any certificate holder whose certificate has been revoked, suspended, or terminated within the last 5 years; and

(iii) Contributed materially to the revocation, suspension, or termination of that certificate and who will be employed in a management or supervisory position, or who will be in control of or have a substantial ownership interest in the training center.

(3) The information required to be provided by this part by the applicant for, or holder of, a training center certificate is incomplete, inaccurate, fraudulent, or false;

(4) The applicant for, or holder of, a training center certificate has violated any provision of § 142.21 of this part; or

(5) The issuance or continuance of such certificate would not foster aviation safety.

(f) At any time, the Administrator may amend a training center certificate—

(1) On the Administrator's own initiative, under Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), as amended, and part 13 of this chapter; or

(2) Upon timely application by the certificate holder.

(g) The certificate holder must file an application to amend a training center certificate at least 60 calendar days prior to the applicant's proposed effective amendment date unless a different filing period is approved by the Administrator.

§ 142.15 Management and personnel requirements.

An applicant for a training center certificate must show that—

(a) For each proposed course of training, the training center has, and shall maintain, a sufficient number of instructors who are qualified in accordance with subpart C or subpart G of this part, as applicable, to perform the duties to which they are assigned;

(b) The training center has, and shall maintain, a sufficient number of approved evaluators to provide required checks and tests to graduation candidates within 7 calendar days of training completion for any curriculum leading to airman certificates or ratings, or both;

(c) The training center has, and shall maintain, a sufficient number of management personnel who are qualified and competent to perform required duties; and

(d) A management representative, and all personnel who are to conduct direct student training, are able to understand, read, write, and fluently speak the English language.

§ 142.17 Facilities.

(a) An applicant for, or holder of, a training center certificate shall ensure that—

(1) Each room, training booth, or other space used for instructional purposes is heated, lighted, and ventilated to conform to local building, sanitation, and health codes; and

(2) The facilities used for instruction are not routinely subject to significant distractions from flight operations and maintenance operations at the airport.

(b) An applicant for, or holder of, a training center certificate shall establish and maintain a principal business office that—

(1) Has a mailing address in the name shown on its training center certificate application, or training center certificate, after it is issued; and

(2) Has facilities adequate to maintain the records required by this part.

(3) Is not shared with another certificate holder; however, automated recordkeeping systems approved by the Administrator may be shared by more than one training center or certificate holder.

(c) The principal business office address may not be a Post Office box.

(d) An applicant for, or holder of, a training center certificate must have exclusive use, at a location approved by the Administrator, of adequate flight training equipment and courseware appropriate for the training to be conducted.

(e) A training center certificate may be issued to an applicant having a business office or training center located outside the United States.

§ 142.19 Satellite training centers.

(a) The holder of a training center certificate may conduct training in accordance with an approved training program at a satellite training center if—

(1) The facilities, equipment, personnel, and course content of the satellite training center meet the applicable requirements of this part;

(2) The instructors and evaluators at the satellite training center are under the direct supervision of management personnel approved for each training course;

(3) The Administrator is notified in writing that a particular satellite is to begin operations at least 60 days prior to proposed commencement of operations at the satellite training center; and

(4) The training center certificate holder's training specifications reflect the name and address of the satellite training center and the approved courses offered at the satellite training center.

(b) The training center certificate holder's training specifications shall prescribe the operations required and authorized at each satellite training center.

§ 142.20 Foreign training centers: Special rules.

(a) A training center or satellite training center may be located outside the United States only if it is in a location approved by the Administrator.

(b) A training center or satellite training center located outside the United States is permitted to issue certificates to United States citizens and to add ratings and endorsements to FAA-issued certificates to the extent authorized and approved by the Administrator.

§ 142.21 Prohibited drugs.

(a) An applicant for, or holder of, a training center certificate may not knowingly permit any aircraft owned or leased by that applicant or holder to be engaged in any operation that is in violation of § 91.12(a) of this chapter.

(b) The following requirements apply to persons who perform a function listed in appendix I to part 121 of this chapter for the training center certificate holder, including persons who perform such a function pursuant to a contract with the training center certificate holder:

(1) No training center certificate holder may knowingly use any person to perform, nor may any person perform for a training center certificate holder, either directly or by contract, any function listed in appendix I to part 121 of this chapter while that person has a prohibited drug, or drug metabolite, as

defined in appendix I, in his or her system.

(2) Except as provided in paragraph (c) of this section, no training center certificate holder may knowingly use any person to perform, nor may any person perform for a training center certificate holder, either directly or by contract, any function listed in appendix I to part 121 of this chapter if that person has failed a test or has refused to submit to a test that is required by that appendix and that is given by a training center certificate holder.

(c) Paragraph (b)(2) of this section does not apply to a person who has received—

(1) A recommendation to be hired or to return to duty from a Medical Review Officer in accordance with appendix I to part 121 of this chapter; or

(2) A special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with part 67 of this chapter.

§ 142.23 Testing for prohibited drugs.

(a) Each training center certificate holder must test each of its employees who performs a function listed in appendix I to part 121 of this chapter in accordance with that appendix.

(b) No training center certificate holder may use a contractor to perform a function listed in appendix I to part 121 of this chapter unless that contractor tests each employee performing that function for the training center certificate holder in accordance with that appendix.

§ 142.25 Refusal to submit to a drug test.

(a) Each training center certificate holder must conduct drug testing for each of its employees who performs a function listed in appendix I to part 121 of this chapter.

(b) A certificate holder may not employ any person who refuses to take a drug test as required by paragraph (a) of this section. Refusal to take a drug test is grounds for termination of authority to perform the functions listed in part 121, appendix I, of this chapter.

(c) Refusal to take a drug test, as required in paragraph (b) of this section, means refusal to take a drug test when requested by—

(1) The training center certificate holder;

(2) A local law enforcement officer under his or her own authority; or

(3) An FAA inspector, under the circumstances specified in appendix I to part 121 of this chapter.

§ 142.27 Display of certificate.

(a) Each holder of a training center certificate must prominently display that certificate in a place accessible to the public in the principal business office of the training center.

(b) A training center certificate and training specifications must be made available for inspection upon request by—

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) Any Federal, State, or local law enforcement agency.

§ 142.29 Inspections.

Each training center certificate holder must allow the Administrator to inspect training center personnel, facilities, equipment, and records at any reasonable time and in any reasonable place in order to determine compliance with or to determine initial or continuing eligibility under the Federal Aviation Act of 1958, as amended, the Federal Aviation Regulations, and the training center's certificate and training specifications.

§ 142.31 Advertising limitations.

(a) A training center certificate holder may not conduct, and may not advertise to conduct, any training that is not approved by the Administrator.

(b) A training center certificate holder whose certificate has been surrendered, suspended, revoked, or terminated must—

(1) Promptly remove all indications, including signs, wherever located, that the training center was certificated by the Administrator; and

(2) Promptly notify all advertising agents, or advertising media, or both, employed by the training center certificate holder to cease all advertising indicating that the training center is certificated by the Administrator.

§ 142.33 Training agreements.

A pilot school certificated under part 141 of this chapter may provide training, testing, and checking for a training center certificated under this part if—

(a) There is a training, testing, and checking agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated pilot school is approved and conducted in accordance with this part;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the portion of the training, testing, and checking to be conducted under part 141; and

(d) Upon completion of training, testing, and checking conducted under part 141, a copy of each student's training record is forwarded to the part 142 training center and becomes part of the student's permanent training record.

Subpart B—Aircrew Curriculum, Training Course Outline, and Syllabus [Other Than Air Carrier and Part 125]

§ 142.35 Applicability.

This subpart prescribes the curriculum and course outline requirements for the issuance of a training center certificate and ratings for training, testing, and checking conducted to meet the requirements of part 61 of this chapter.

§ 142.37 Approval of flight aircrew training program.

(a) Each applicant for, or holder of, a training center certificate must apply to the Administrator for training program curriculum approval.

(b) Application for training program curriculum approval shall be made in a form and in a manner acceptable to the Administrator.

(c) Each application for training program curriculum approval must indicate—

(1) Which courses of the training program curriculum are part of the core training program and which courses are part of the specialty training program;

(2) Which requirements of part 61 would be satisfied by the training program curriculum; and

(3) Which requirements of part 61 would not be satisfied by the training program curriculum.

(d) If, after a training center certificate holder begins operations under an approved training program curriculum, the Administrator finds that the certificate holder is not meeting the provisions of its approved training program, the Administrator may require the certificate holder to make revisions to that training program.

(e) If the Administrator requires a training center certificate holder to make revisions to an approved training program curriculum and the certificate holder does not make those required revisions, the Administrator may suspend, revoke, or terminate the training center certificate under the provisions of § 142.13(e) of this part.

§ 142.39 Training program curriculum requirements.

Each training program curriculum submitted to the Administrator for approval must meet the applicable

requirements of this part and must contain—

(a) A syllabus and course outline for each proposed course of training;

(b) Minimum aircraft and flight training equipment requirements for each proposed course of training;

(c) Minimum instructor and evaluator qualifications for each proposed course of training;

(d) A training program curriculum for initial authorization and continuing authorization of each instructor or evaluator employed to instruct in a proposed course of training; and

(e) For each training program that provides for the issuance of a certificate or rating in fewer than the minimum hours prescribed by part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter—

(1) A means of demonstrating the ability to reduce the minimum hours prescribed in part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter; and

(2) A means of tracking student performance.

Subpart C—Personnel and Flight Training Equipment Retirements [Other Than Air Carrier and Part 125]

§ 142.45 Applicability.

This subpart prescribes the personnel and flight training equipment requirements for a part 142 training center certificate holder that are required for training that is applied toward the requirements of part 61 of this chapter.

§ 142.47 Training center instructor eligibility requirements.

(a) A training center may not employ a person as an instructor unless that person—

(1) Is at least 18 years of age;

(2) Is able to read, write, and converse fluently in English; and

(3) Except as provided in paragraph (b) of this section—

(i) Holds a current flight instructor certificate and at least a commercial pilot certificate with an instrument rating or Airline Transport Pilot (ATP) certification;

(ii) Is currently qualified to instruct under part 121 or Part 135 of this chapter at the time of accepting employment; or

(iii) Holds a ground instructor certificate with an instrument rating and meets at least the aeronautical experience requirements in § 61.129(b) or § 61.131(a) of this chapter for either an airplane or rotorcraft rating, respectively, except for the required hours of instruction in preparation for the commercial pilot practical test.

(b) A training facility operating under an exemption to part 61 prior to [the effective date of the final rule] may allow a person who has been employed as a simulator instructor for that training facility to continue to instruct provided the training facility—

(1) Is certificated under this part;

(2) Assures that the person:

(i) Maintains continuous employment with the training center after it is certificated under this Part; and

(ii) Instructs only in qualified and approved flight simulators in which that person has been authorized by the Administrator to instruct within the 12 months immediately preceding certification of the employing training center.

§ 142.49 Training center instructor privileges and limitations.

(a) A part 142 certificate holder may not allow an instructor to provide instruction in any course of training, testing, or checking for which that instructor is qualified unless that instructor is qualified under the requirements of this subpart.

(b) A training center, whose instructor is authorized in accordance with the requirements of this subpart to conduct training, testing, or checking in a qualified and approved flight simulator or in a qualified and approved flight training device, may allow its instructor to give endorsements required by part 61 of this chapter if that instructor is authorized by the Administrator to instruct in a part 142 course of training that requires such endorsements.

(c) A training center may not allow an instructor to—

(1) Conduct more than 8 hours of instruction in any 24 consecutive hour period;

(2) Provide flight simulator or flight training device instruction unless that instructor meets the requirements of §§ 142.51, 142.53 (a)(1) through (a)(4), and 142.53(b) of this part, as applicable; or

(3) Provide flight instruction in an aircraft unless that instructor—

(i) Meets the requirements of § 142.53 (a)(1), (a)(2), and (a)(5) of this part;

(ii) Is qualified and authorized in accordance with subpart G of part 61 of this chapter;

(iii) Holds certificates and ratings specified by part 61 of this chapter appropriate to the category, class, and type aircraft in which instructing;

(iv) Holds at least a valid second class medical certificate; and

(v) Meets the currency requirements of part 61 of this chapter.

§ 142.51 Qualifications to instruct in a flight simulator or a flight training device.

A training center certificate holder must ensure that—

(a) Except as required by paragraph (b) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents an airplane meets the aeronautical experience requirements of § 61.129 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(b) Each instructor meets the aeronautical experience requirements of § 61.155 of this chapter, if instructing—

(1) In a qualified and approved flight simulator or flight training device that represents an airplane requiring a type rating;

(2) In a course of training that permits the issuance of an ATP certificate with an airplane category rating; or

(3) In a course which permits the addition of an airplane category rating to an existing ATP certificate.

(c) Except as required by paragraph (d) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents a rotorcraft, meets the applicable aeronautical experience requirements of § 61.131 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(d) Each instructor meets the aeronautical experience requirements of § 61.161 of this chapter, if the instructor—

(1) Instructs in a qualified and approved flight simulator that represents a rotorcraft requiring a type rating;

(2) Instructs in a course of training leading to the issuance of an ATP certificate with a rotorcraft category rating; or

(3) Instructs in a course which permits the addition of a rotorcraft category rating to an existing ATP certificate.

§ 142.53 Training center instructor training and testing requirements.

(a) Prior to authorization to instruct a course of training, testing, and checking, and except as provided in paragraph (c) of this section, every 12 calendar months beginning the first day of the month following an instructor's initial authorization, a training center certificate holder must ensure that each of its instructors meet the following requirements:

(1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing each course of training for

which that instructor is authorized to instruct under this part.

(2) Each instructor must satisfactorily complete an approved course of ground instruction in at least—

(i) The fundamental principles of the learning process;

(ii) Elements of effective teaching, instruction methods, and techniques;

(iii) Instructor duties, privileges, responsibilities, and limitations;

(iv) Training policies and procedures;

(v) Cockpit resource management and crew coordination; and

(vi) Evaluation.

(3) Each instructor who instructs in a qualified and approved flight simulator or flight training device must satisfactorily complete an approved course of flight simulator training and an approved course of ground instruction applicable to the training courses the instructor is authorized to instruct.

(4) The course required by paragraph (a)(3) of this section must include—

(i) Proper operation of flight simulator and flight training device controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Limitations of the flight simulator or flight training device; and

(iv) Minimum equipment requirements for each course of training.

(5) Each flight instructor who provides training in an aircraft must satisfactorily complete an approved course of ground instruction and flight training in an aircraft, flight simulator, or flight training device.

(6) The approved course of ground instruction and flight training required by paragraph (a)(5) of this section must include instruction in—

(i) Performance and analysis of flight training procedures and maneuvers applicable to the training courses that the instructor is authorized to instruct;

(ii) Technical subjects covering aircraft subsystems and operating rules applicable to the training courses that the instructor is authorized to instruct;

(iii) Emergency operations; and

(iv) Emergency situations likely to develop during training and appropriate safety measures.

(b) In addition to the requirements of paragraphs (a)(1) through (a)(6) of this section, each training center certificated under this part must ensure that each instructor who instructs in a qualified and approved flight simulator in an advanced simulation training program has met the following requirements:

(1) Except as provided in paragraph (b)(2) of this section, the instructor must have performed 2 hours in flight that includes three takeoffs and three landings as the sole manipulator of the controls of an aircraft of the same category and class, and, if a type rating is required, of the same type replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct.

(2) An instructor who is unable to hold a medical certificate may not instruct in a qualified and approved flight simulator that represents an airplane requiring two flight crewmembers unless that instructor has—

(i) Participated in an approved line observation program under part 121 or part 135 of this chapter, in the same airplane type as the airplane represented by the qualified and approved flight simulator in which that instructor is authorized to instruct; or

(ii) Participated in an in-flight observation training course, that includes at least three takeoffs and three landings, and that—

(A) Consists of at least 2 hours in an airplane of the same class and, if a type rating is required, of the same type, as the airplane replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct; and

(B) Includes performing at least 1 hour of LOFT as the sole manipulator of the controls in a flight simulator that replicates an aircraft of the same class and, if a type rating is required, of the same type as the aircraft represented by the qualified and approved flight simulator in which that instructor is authorized to instruct.

(c) An instructor who satisfactorily completes a course of training required by paragraph (a) or (b) of this section in the calendar month before or after the month in which it is due is considered to have taken it when due, and future authorization due dates do not change.

§ 142.55 Training center evaluator requirements.

(a) In order to authorize a person as an evaluator, a training center must ensure that the person—

(1) Is approved by the Administrator;

(2) Is in compliance with §§ 142.47, 142.49, 142.51 and 142.53 of this part; and

(3) Prior to authorization, and except as provided in paragraph (b) of this section, every 12-calendar-month period following initial authorization satisfactorily completes a course of training provided by the training center that includes the following:

(i) Pilot evaluator duties, functions, and responsibilities;

(ii) Methods, procedures, and techniques for conducting required checks;

(iii) Evaluation of pilot performance; and

(iv) Management of unsatisfactory checks and subsequent corrective action.

(b) An instructor who satisfactorily completes a course of training required by paragraph (a) of this section in the calendar month before or the calendar month after the month in which it is due is considered to have taken it when due, and future authorization due dates do not change.

§ 142.57 Aircraft requirements.

(a) An applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction and solo flights meets the following requirements:

(1) The aircraft must be registered as a civil aircraft of the United States if it is operated in the United States by a training center or satellite training center located in the United States.

(2) The aircraft must meet the aircraft registration requirements of the country in which it is operated, if it is operated outside the United States by a training center or satellite training center located outside the United States.

(3) Except for flight instruction and solo flights in a course of training for agricultural aircraft operations, external load operations, and similar aerial work operations, the aircraft must have—

(i) An FAA standard airworthiness certificate if it is operated in the United States by a training center or satellite training center located in the United States; or

(ii) A foreign equivalent of an FAA standard airworthiness certificate if it is operated outside the United States by a training center or by a satellite training center located outside the United States.

(4) The aircraft must be maintained and inspected in accordance with—

(i) The requirements of part 91, subpart E, of this chapter; and

(ii) An approved program for maintenance and inspection.

(5) The aircraft must be equipped and maintained for IFR operations if it is to be used for IFR en route operations or for instrument approaches, or both.

(6) The aircraft must be equipped as provided in the approved course for which it is used, if it is used for instruction in the control of an aircraft by reference to instruments.

(b) Except as provided in paragraph (c) of this section, an applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction is at least a two-place aircraft with engine power controls and flight controls that are easily reached

and that operate in a conventional manner from both pilot stations.

(c) Airplanes with controls such as nose-wheel steering, switches, fuel selectors, and engine air flow controls that are not easily reached and operated in a conventional manner by both pilots may be used for flight instruction if the training center certificate holder determines that the flight instruction can be conducted in a safe manner considering the location of controls and their nonconventional operation, or both.

§ 142.59 Flight simulators and flight training devices.

(a) An applicant for, or holder of, a training center certificate must show that each flight simulator and flight training device used for training, testing, and checking is specifically qualified and approved by the Administrator for—

(1) Each maneuver and procedure for the make, model, and series of aircraft or set of aircraft simulated, as applicable; and

(2) Each training program curriculum or training course in which the flight simulator or flight training device is to be used.

(b) The approval required by paragraph (a)(2) of this section must include—

(1) The set of aircraft, or type aircraft; and, if applicable,

(2) The particular variation within type, for which the training, testing, or checking is being conducted; and

(3) The particular maneuver, procedure, or crewmember function to be performed.

(c) Each qualified and approved flight simulator or flight training device used by a training center must—

(1) Be maintained to ensure the performances, functions, and all other characteristics that were required for approval;

(2) Be modified to conform with any modification to the airplane being simulated if the modification results in changes to performance, function, or other characteristics required for approval;

(3) Be given a functional preflight check before being used; and

(4) Have a discrepancy log in which the instructor or evaluator, at the end of each training session, enters each discrepancy.

(d) Unless otherwise authorized by the Administrator, all components on a qualified and approved flight simulator or flight training device used by a training center must be operative.

(e) Training centers shall not be restricted to specific—

(1) Route segments during LOFT scenarios; and

(2) Visual data bases replicating a specific customer's bases of operation.

(f) Training centers may request evaluation, qualification, and continuing evaluation for qualification of flight simulators and flight training devices without—

(1) Holding an air carrier certificate or

(2) Having a specific relationship to an air carrier certificate holder.

Subpart D—Operating Rules [Other Than Air Carrier and Part 125]

§ 142.61 Applicability.

This subpart prescribes the operating rules applicable to a training center certificated under this part and operating a course or training program curriculum approved in accordance with subpart B of this part.

§ 142.63 Privileges.

A training center certificated under this part may employ flight simulator instructors and evaluators who meet recency of experience requirements through the use of a qualified and approved flight simulator or flight training device, if the qualified and approved flight simulator or flight training device is used in a course approved in accordance with subpart B or subpart F of this part, as applicable.

§ 142.65 Limitations.

(a) A training center certificate holder shall ensure that a flight simulator or flight training device freeze, slow motion, or repositioning feature is not used during testing, checking, or LOFT.

(b) When flight testing, flight checking, or LOFT is being conducted, the training center certificate holder must ensure that:

(1) Except as provided by paragraph (b) (2) of this section, a crewmember qualified in the aircraft category, class, and type, if a type rating is required, occupies each crewmember position; or

(2) A student enrolled in a specific course for training, checking, testing, or LOFT occupies each required crewmember position for those functions in that course without holding the pilot certificates and ratings necessary to qualify for that crewmember position.

(c) The holder of a training center certificate may not recommend a trainee for a certificate or rating, unless the trainee—

(1) Has satisfactorily completed the training specified in the course approved under § 142.37 of this part; and

(2) Has passed the final tests required by § 142.37 of this part.

(d) The holder of a training center certificate may not graduate a student from a course unless the student has satisfactorily completed the curriculum requirements of that course.

Subpart E—Recordkeeping [Other Than Air Carrier and Part 125]

§ 142.71 Applicability.

This subpart prescribes the training center recordkeeping requirements for trainees enrolled in a course, and instructors and evaluators authorized to instruct a course, approved in accordance with subpart B of this part.

§ 142.73 Recordkeeping requirements.

(a) A training center certificate holder must maintain a record for each trainee that contains—

(1) The name of the trainee;

(2) A copy of the trainee's pilot certificate and medical certificate;

(3) The name of the course and the make and model of flight training equipment used;

(4) The trainee's prerequisite experience and course time completed;

(5) The trainee's performance on each lesson and the name of the instructor providing instruction;

(6) The date and result of each end-of-course practical test and the name of the evaluator conducting the test; and

(7) The number of hours of additional training that was accomplished after any unsatisfactory practical test.

(b) A training center certificate holder shall maintain a record for each instructor or evaluator authorized to instruct a course approved in accordance with subpart B of this part that indicates that the instructor or evaluator has complied with the requirements of §§ 142.13, 142.45, 142.47, 142.49, 142.51, and 142.53 of this chapter, as applicable.

(c) The certificate holder shall maintain the records required by paragraphs (a) and (b) of this section for at least 1 year following the completion of required training for each trainee, instructor, and evaluator.

(d) The certificate holder must provide to the Administrator, upon request and at a reasonable time and in a reasonable place, the records required by paragraphs (a) and (b) of this section.

(e) The certificate holder shall provide to a trainee, upon request and at a reasonable time, a copy of his or her training records.

Subpart F—Aircrew Curriculum, Training Course Outline, and Syllabus [Air Carrier and Part 125]

§ 142.75 Applicability.

This subpart prescribes the curriculum and course outline requirements for the issuance of a training center certificate and ratings for training conducted to meet the requirements of part 63, part 121, part 125, or part 135 of this chapter.

§ 142.77 Approval of flight aircrew training program.

(a) Each applicant for, or holder of, a training center certificate must apply to the Administrator for training program curriculum approval.

(b) Application for training program curriculum approval shall be made in a form and in a manner acceptable to the Administrator.

(c) Each application for training program curriculum approval must—

(1) Indicate which courses of the training program curriculum are part of the core training program and which courses are part of the specialty training program;

(2) Indicate which requirements of part 61, part 63, part 121, part 125, or part 135, as applicable, would be satisfied by the training program curriculum; and

(3) Indicate which requirements of part 61, part 63, part 121, part 125, or part 135, as applicable, would not be satisfied by the training program curriculum.

(d) If, after a training center certificate holder begins operations under an approved training program curriculum, the Administrator finds that the training center certificate holder does not meet the provisions of its approved training program, the Administrator may require that the training center certificate holder make appropriate revisions to its training program.

(e) If the Administrator requires a training center certificate holder to make revisions to an approved training program curriculum and the certificate holder does not make those required revisions, the Administrator may suspend, revoke, or terminate the training center certificate under the provisions of 142.13(e) of this part.

§ 142.79 Approval of training, qualification, or evaluation by a training center.

(a) Each training program curriculum submitted to the Administrator for approval must meet the applicable requirements of this part and, for each proposed course of training, contain—

(1) A syllabus and course outline;

(2) Minimum flight training equipment requirements that identify the specific make, model, and series aircraft (or variant) and crewmember position for which the course is designed;

(3) Minimum instructor and evaluator qualifications; and

(4) A training program curriculum for initial authorization and continuing qualification of each instructor or evaluator employed to instruct that course.

(b) For each course designed to meet requirements of part 121, part 125, or part 135 of this chapter, a training center certificate holder must ensure that—

(1) The Administrator has approved the training center's—

(i) Facilities for planned training, qualification, or evaluation required by part 121 or part 135 of this chapter;

(ii) Training program curriculum, or course, for use by each air carrier certificate holder, or operator under Part 125 of this chapter for whom it is to be used; and

(2) Each air carrier certificate holder, or operator under part 125 of this chapter, that has contracted for training with the training center certificate holder, has—

(i) Notified the Administrator of its intent to use a training program curriculum, or course, approved under part 142 of this chapter; and

(ii) Submitted the notification required by paragraph (b)(2)(i) of this section, in writing, at least 30 days prior to the date that training for that air carrier certificate holder or operator is scheduled to commence.

(c) If the Administrator requires modification of an approved training program curriculum or course to ensure that the curriculum or course is suitable for a specific air carrier certificate holder's training program requirements, the training center certificate holder must make the required modification.

Subpart G—Personnel and Flight Training Equipment Requirements [Air Carrier and Part 125]

§ 142.83 Applicability.

This subpart prescribes the personnel and flight training equipment requirements for a training center certificate holder engaged in training for a part 121 or part 135 certificate holder, or an operator under part 125 of this chapter.

§ 142.85 Training center instructor eligibility requirements.

(a) A training center may not employ a person as an instructor unless that person—

(1) Is at least 18 years of age;

(2) Is able to read, write, and converse fluently in English; and

(3) Except as provided in paragraph (b) of this section—

(i) Is currently qualified to instruct under Part 121 or Part 135 of this chapter at the time of accepting employment; or

(ii) Holds a ground instructor certificate with an instrument rating and meets at least the aeronautical experience requirements in §§ 61.129(b) or 61.131(a) of this chapter for either an airplane rating, if instructing in a simulator representing an airplane, or rotorcraft rating, if instructing in a simulator representing a rotorcraft, except for the required hours of instruction in preparation for the commercial pilot practical test.

(b) A training center operating under an exemption to part 61 of this chapter before [the effective date of the final rule] may allow a person who has been employed as a simulator instructor for that training center to continue to instruct provided the training center—

(1) Is certificated under this part;

(2) Assures that the person—

(i) Maintains continuous employment with the training center after it is certificated under this part; and

(ii) Instructs only in qualified and approved flight simulators and flight training devices in which that instructor has previously been authorized by the Administrator to instruct within the 12 months immediately preceding certification of the employing training center.

§ 142.87 Training center instructor privileges and limitations.

(a) A part 142 certificate holder may allow an instructor to instruct each course of training, testing, and checking conducted under this part for which that instructor is qualified in accordance with the requirements of this subpart.

(b) A training center certificated under this part may allow an instructor authorized in accordance with the requirements of this subpart to conduct training, testing, and checking in a qualified and approved flight simulator or flight training device to give endorsements required by part 61 of this chapter, if that instructor is authorized to instruct in a part 142 course which requires such endorsements.

(c) A training center certificated under this part may not allow an instructor to:

(1) Conduct more than 8 hours of instruction in any 24 consecutive hour period.

(2) Provide flight simulator or flight training device instruction unless that instructor meets the requirements of §§ 142.89 and 142.91(a)(1) through (a)(4) of this part.

(3) Provide flight instruction in an aircraft unless that instructor meets the requirements of paragraphs § 142.91 (a)(1), (a)(2), and (a)(5) of this part.

(4) Notwithstanding the provisions of part 121 and part 135 of this chapter, provide flight instruction in an aircraft unless that instructor—

(i) Holds at least a valid second class medical certificate issued under part 67 of this chapter;

(ii) Holds the appropriate certificates and ratings specified by subpart G of part 61 of this chapter; and

(iii) Meets the currency requirements of part 61 of this chapter; or

(iv) As applicable to the instruction being provided, meets the requirements of § 121.411 or § 135.339 of this chapter;

(5) Provide instruction in a training center training program established under subpart F of this part for an air carrier unless—

(i) The instructor holds an airman certificate and ratings required to serve as a pilot in command, or flight engineer, as appropriate to the instruction, in the type aircraft in which he or she will instruct;

(ii) The instructor completes an initial, transition, recurrent, or differences flight training course, as appropriate, within the preceding 12 months;

(iii) The instructor has been trained and qualified to instruct in the courses of the training program curriculum that he or she will instruct;

(iv) The FAA has approved the training program curriculum for use in accordance with subpart F of this part; and

(v) The training center has notified the air carrier certificate holder's Principal Operations Inspector (POI) that the instructor is providing instruction for the air carrier.

§ 142.89 Qualifications to instruct in a flight simulator or a flight training device.

A training center certificate holder must ensure that—

(a) Except as required by paragraph (b) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents an airplane meets the aeronautical experience requirements of § 61.129 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(b) Each instructor meets the aeronautical experience requirements of § 61.155 of this chapter, if instructing—

(1) In a qualified and approved flight simulator or flight training device that represents an airplane requiring a type rating;

(2) In a course of training that permits the issuance of an ATP certificate with an airplane category rating; or

(3) In a course which permits the addition of an airplane category rating to an existing ATP certificate.

(c) Except as required by paragraph (d) of this section, each instructor who instructs in a qualified and approved flight simulator or flight training device that represents a rotorcraft, meets the applicable aeronautical experience requirements of § 61.131 of this chapter, except for the required hours of instruction in preparation for the commercial pilot practical test; or

(d) Each instructor meets the aeronautical experience requirements of § 61.161 of this chapter, if the instructor—

(1) Instructs in a qualified and approved flight simulator that represents a rotorcraft requiring a type rating;

(2) Instructs in a course of training leading to the issuance of an ATP certificate with a rotorcraft category rating; or

(3) Instructs in a course which permits the addition of a rotorcraft category rating to an existing ATP certificate.

§ 142.91 Training center instructor training and testing requirements.

(a) Prior to authorization to instruct a course of training, testing, and checking, and except as provided in paragraph (c) of this section, every 12 calendar months beginning the first day of the month following an instructor's initial authorization, a training center certificate holder must ensure that each of its instructors meet the following requirements:

(1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing each course of training for which that instructor is authorized to instruct under this part.

(2) Each instructor must satisfactorily complete an approved course of ground instruction in at least—

(i) The fundamental principles of the learning process;

(ii) Elements of effective teaching, instruction methods, and techniques;

(iii) Instructor duties, privileges, responsibilities, and limitations;

(iv) Training policies and procedures;

(v) Cockpit resource management and crew coordination; and

(vi) Evaluation.

(3) Each instructor who instructs in a qualified and approved flight simulator or flight training device, must satisfactorily complete an approved course of flight simulator training and ground training applicable to the courses that the instructor is authorized to instruct.

(4) The course required by paragraph (a)(3) of this section must include—

(i) Proper operation of flight simulator and flight training device controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Limitations of the flight simulator or flight training device; and

(iv) Minimum equipment requirements for each course of training.

(5) Each flight instructor who provides training in an aircraft must satisfactorily complete an approved course of ground instruction and flight training in an aircraft, flight simulator, or flight training device.

(6) The approved course of ground instruction and flight training required by paragraph (a)(5) of this section must include instruction in—

(i) Performance and analysis of flight training procedures and maneuvers applicable to the training courses that the instructor is authorized to instruct;

(ii) Technical subjects covering aircraft subsystems and operating rules applicable to the training courses that the instructor is authorized to instruct;

(iii) Emergency operations; and

(iv) Emergency situations likely to develop during training and appropriate safety measures.

(b) In addition to the requirements of paragraphs (a)(1) through (a)(6) of this section, each training center certificate holder must ensure that each instructor who instructs in a qualified and approved Level C or Level D flight simulator has met the following requirements:

(1) Except as provided in paragraph (b)(2) of this section, the instructor must have performed 2 hours in flight including three takeoffs and three landings as the sole manipulator of the controls of an aircraft of the same category and class, and, if a type rating is required, of the same type replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct.

(2) An instructor who is unable to hold a medical certificate may not instruct in a qualified and approved flight simulator that represents an airplane requiring two flight crewmembers unless that instructor has participated in—

(i) An approved line observation program under part 121 or part 135 of this chapter, in the same airplane type as the airplane represented by the qualified and approved flight simulator in which that instructor is authorized to instruct; or

(ii) An in-flight observation training course, that includes at least three takeoffs and three landings, and that—

(A) Consists of at least 2 hours in an airplane of the same class and, if a type rating is required, of the same type, as the airplane replicated by the qualified and approved flight simulator in which that instructor is authorized to instruct; and

(B) Includes performing at least 1 hour of LOFT as the sole manipulator of the controls in a flight simulator that replicates an airplane of the same class and, if a type rating is required, of the same type as the qualified and approved flight simulator in which that instructor is authorized to instruct.

(c) An instructor who satisfactorily completes a course of training required by paragraph (a) or (b) of this section in the calendar month before or the calendar month after the month in which it is due is considered to have taken it when due, and future authorization renewal dates do not change.

§ 142.93 Training center evaluator requirements.

(a) In order to authorize a person as an evaluator, a training center must ensure that the person—

(1) Is approved by the Administrator;

(2) Is in compliance with §§ 142.13, 142.85, 142.87, 142.89 and 142.91 of this part; and

(3) Prior to initial authorization, and every 12-calendar-month period following initial authorization, satisfactorily completes a course of training given by the employing training center which includes the following:

(i) Pilot evaluator duties, functions, and responsibilities;

(ii) Methods, procedures, and techniques for conducting required checks;

(iii) Evaluation of pilot performance; and

(iv) Management of unsatisfactory checks, and subsequent corrective action.

(b) A person who satisfactorily completes a course of training required by paragraph (a) of this section in the calendar month before or after the month in which it is due is considered to have taken it when due.

§ 142.95 Aircraft requirements.

An applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction meets the following requirements:

(a) If the aircraft is operated in the United States by a training center or satellite training center located in the United States, the aircraft must—

(1) Be registered as a civil aircraft of the United States; and

(2) Have an FAA standard airworthiness certificate.

(b) If the aircraft is operated outside the United States by a training center or satellite training center located outside the United States, the aircraft must—

(1) Meet the aircraft registration requirements of the country in which it is operated; and

(2) Have a foreign equivalent of a standard airworthiness certificate.

(c) The aircraft must be maintained and inspected in accordance with the requirements of subpart E of part 91 of this chapter unless maintained in accordance with a continuous airworthiness maintenance program as provided in part 121, part 125, part 127, part 129, or part 135 of this chapter.

§ 142.97 Flight simulators and flight training devices.

(a) An applicant for, or holder of, a training center certificate must show that each flight simulator and flight training device used for training, testing, and checking—

(1) Is qualified by the Administrator for each maneuver and procedure for the make, model, and series of aircraft, or set of aircraft, simulated, as applicable; and

(2) Is approved by the Administrator for use in each course or training program curriculum in which the flight simulator or flight training device is to be used.

(b) The approval described in paragraph (a)(2) of this section includes the set of aircraft, or category, class and type aircraft, and the variation within type, as applicable, for which the training, testing, or checking is being conducted and the maneuver, procedure, or crewmember function involved.

(c) Each qualified and approved flight simulator or flight training device used by the training center must—

(1) Be maintained to ensure the performances, functions, and all other characteristics that were required for approval;

(2) Be modified to conform with any modification to the airplane being simulated that results in changes to performance, function, or other characteristics required for approval;

(3) Be given a functional preflight check before being used; and

(4) Have a discrepancy log in which each discrepancy is entered by the using instructor or evaluator at the end of each session.

(d) Unless otherwise authorized by the Administrator, all components on a qualified and approved flight simulator or flight training device used by a training center must be operative.

(e) The holder of a training center certificate shall not be restricted to specific—

(1) Route segments during LOFT scenarios; and

(2) Visual data bases replicating a specific customer's bases of operation.

(f) Training centers may request evaluation, qualification, and continuing evaluation for qualification of flight simulators and flight training devices without holding an air carrier certificate and without having a specific relationship to an air carrier certificate holder.

Subpart H—Operating Rules [Air Carrier and Part 125]

§ 142.101 Applicability.

This subpart prescribes the operating rules applicable to a training center certificated under this part and operating a course or training program curriculum approved in accordance with subpart F of this part.

§ 142.103 Privileges.

(a) Training center flight simulator instructors and evaluators may meet recency of experience requirements in a qualified and approved flight simulator or flight training device, if the flight simulator or flight training device is used in a course approved in accordance with subpart B, or subpart F, of this part, as applicable.

(b) Aircraft manufacturer's training centers may provide Initial Operation Experience to training cadre of air carrier certificate holders.

(c) Aircraft manufacturer's instructor pilots may satisfy the recency of experience requirements of § 61.57 of this chapter through revenue service flights, flight training, or production and engineering test flights, if those pilots meet the requirements of § 142.89 applicable to training center check airmen.

§ 142.105 Limitations.

(a) A training center certificate holder shall ensure that a flight simulator or flight training device freeze, slow motion, or repositioning feature is not used during testing, checking, or LOFT.

(b) When flight testing, flight checking, or LOFT is being conducted, the training center certificate holder must ensure that:

(1) Except as provided by paragraph (b)(2) of this section, a crewmember qualified in the aircraft category, class, and type, if a type rating is required, occupies each crewmember position; or

(2) A student enrolled in a specific course for training, checking, testing, or LOFT occupies each required crewmember position for those functions in that course without holding the pilot certificates and ratings necessary to qualify for that crewmember position.

(c) The holder of a training center certificate may not recommend a trainee for a certificate or rating, unless the trainee—

(1) Has satisfactorily completed the training specified in the course approved under § 142.77 of this part; and

(2) Has passed the final tests required by § 142.77 of this part.

(d) The holder of a training center certificate may not graduate a trainee from a course unless the trainee has satisfactorily completed the curriculum requirements of that course.

Subpart I—Recordkeeping [Air Carrier and Part 125]

§ 142.111 Applicability.

This subpart prescribes the training center recordkeeping requirements for trainees enrolled in a course, and instructors and evaluators authorized to instruct a course, approved in accordance with subpart F of this part.

§ 142.113 Recordkeeping requirements.

(a) A training center certificate holder must maintain the records required for this subpart for each trainee who receives training, testing, or checking under this part for part 121, part 125, or part 135 of this chapter.

(b) The records required by paragraph (a) of this section must contain—

(1) The name of the trainee;

(2) The name of the trainee's employer;

(3) The name of the course and the make and model of flight training equipment used;

(4) The name of each evaluator who conducts a required test or check.

(5) The date and result of all training, tests, or checks undertaken; and

(6) The date of training and the name of the instructor providing training.

(c) A training center must maintain a record for each instructor or evaluator authorized to instruct a course approved in accordance with subpart F of this part, indicating that the instructor or evaluator has complied with the requirements of §§ 142.13, 142.85, 142.87, 142.89, 142.91, and 142.93, of this part, as applicable.

(d) The certificate holder shall maintain the records required by paragraphs (a) through (c) of this section for at least 1 year following the completion of training.

(e) The certificate holder must provide to the Administrator, upon request and at a reasonable time and in a reasonable place, the records required by paragraphs (a) through (c) of this section.

(f) The certificate holder shall provide to a trainee, upon request and at a reasonable time, a copy of his or her training records.

§ 142.114 Record of training recipients.

(a) A training center must maintain a list of air carrier certificate holders for whom it conducts training, testing, or checking, including the names of the courses and type of tests or checks accomplished for each certificate holder.

(b) A training center must forward, within 30 days of any change or addition, the report required by paragraph (a) of this section to—

(1) The FSDO having responsibility for the training center; and

(2) The air carrier certificate holder's POI.

Subpart J—Other Approved Courses

§ 142.115 Conduct of other approved courses.

(a) An applicant for, or holder of, a training center certificate may apply for approval to conduct a course for which a curriculum is not prescribed by this part.

(b) The course for which application is made under paragraph (a) of this section may be for flight crewmembers other than pilots, airmen other than flight crewmembers, material handlers, ground servicing personnel, and security personnel, and others approved by the Administrator.

(c) An applicant for course approval under this subpart must comply with the applicable requirements of subpart B or subpart F of this part.

(d) The Administrator shall approve the course for which the application is made if the training center or training center applicant shows that the course contains a curriculum that will achieve a level of competency equal to, or greater than, that required by the appropriate part of the Federal Aviation Regulation.

Issued in Washington, DC on July 15, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 92–18798 Filed 8–10–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Tuesday
August 11, 1992

Part III

Environmental Protection Agency

40 CFR Parts 268 and 271
Land Disposal Restrictions "No Migration" Variances; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[FRL-3763-4]

RIN 2050-AC44

Land Disposal Restrictions "No Migration" Variances

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and notice of availability.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing its interpretation of the "no migration" variance to the Congressionally mandated restrictions on land disposal of hazardous waste, and also is proposing a minor modification to the Land Disposal Restrictions regulations to reflect this interpretation. The Environmental Protection Agency also is proposing new procedural and substantive requirements for petitioning the Agency and demonstrating that there will be "no migration" from a land disposal unit, as well as the Agency's criteria for evaluating such "no migration" petitions. Additionally, the Agency is proposing under the authority of RCRA Section 3004(n), standards that would limit organic air emissions from land treatment, landfill, and waste pile units that, having successfully demonstrated "no migration" and received the variance, are allowed to dispose hazardous wastes that do not meet the Best Demonstrated Available Technology (BDAT) treatment standards, which are normally required prior to land disposal. In this action the Agency also is announcing the availability of a draft guidance manual for petitioners making the no migration demonstration entitled No Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners (U.S. EPA, Draft, July, 1992). These actions are in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

DATES: Comments on the proposed rule must be received on or before September 25, 1992.

ADDRESSES: Comments should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (Room 2427) (OS-305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified at the top by regulatory docket reference number F-92-NMVP-FFFFF. The Docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials, and should call the docket clerk at (202) 260-9327 for appointments. The public may copy, at no cost, a maximum of one hundred pages of material from any one regulatory docket. Additional copies are $0.15 per page.

Copies of the guidance manual for no migration petitioners can be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: No Migration Guidance (NTIS #PB 92-207 695).

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rulemaking, contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (tollfree) or (703) 920-9810 in the Washington, DC, metropolitan area.

For information on aspects of this proposed rule pertaining to No Migration, contact Dave Reeves, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4692.

For information on aspects of this proposed rule pertaining to control of organic air emissions from no migration units under RCRA Section 3004(n), contact Kent C. Hustvedt, Office of Air Quality Planning and Standards (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, (919) 541-5395.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3001, 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, (42 U.S.C. 6905, 6912(a), 6921, 6924, 6925, and 6935).

II. Background

Sections 3004 (d), (e), and (g) of RCRA provide that land disposal of hazardous waste that does not meet Best Demonstrated Available Technology (BDAT) treatment standards is prohibited, unless the Administrator determines that prohibition of one or more disposal methods is not required to protect human health and the environment for as long as the wastes remain hazardous. This determination must take into account such factors as long-term uncertainties of land disposal, the goal of proper management of hazardous wastes, and the persistence, toxicity, mobility, and bioaccumulative potential of the wastes and their constituents. These provisions indicate that in order to satisfy this standard, a hazardous waste management facility owner or operator must demonstrate in a petition to the Agency to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit (or injection zone) for as long as the wastes remain hazardous. This is known as the "no migration" variance. Throughout this preamble, when the term "no migration" is used, it is intended to mean "no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous," as written in the statute and as interpreted in the regulatory language proposed at 40 CFR part 268 in today's notice.

The Agency codified this language in existing regulations under 40 CFR 268.6 on November 7, 1986 (51 FR 40572). These regulations were corrected on June 4, 1987 (52 FR 21010). Paragraph (k) of 268.6 was added on August 8, 1987 (52 FR 25160) requiring that liquid hazardous wastes containing PCB's in concentrations above 500 ppm cannot be the subject of a no migration variance. 40 CFR 268.6 was further amended on August 17, 1988 (53 FR 31138) to add additional procedural requirements for no migration petitions and for compliance with the terms of a variance.

once granted. These additional requirements are as follows: (1) Demonstrating compliance with other applicable Federal, State, and local laws; (2) submittal of monitoring plans for land disposal units; (3) reporting changes in operating conditions from the ones described in the variance application, and, (4) reporting detection of migration of hazardous constituents, and suspending receipt of prohibited hazardous wastes. Final regulations for underground injection of hazardous waste published in the **Federal Register** on July 26, 1988 (53 FR 28118) further clarified EPA's interpretation of "no migration" as it applies to underground injection of hazardous waste. It should be noted that today's proposed rulemaking is not intended to supersede these standards already promulgated for underground injection wells.

III. Summary of Proposed Rule

A. Interpretation of the Statutory Language

Today's notice explains the Agency's interpretation of the "no migration" statutory standard expressed in sections 3004 (d), (e), and (g) of RCRA and proposes minor amendments to section 268.6(a) to reflect this interpretation. Sections 3004 (d), (e), and (g) of RCRA provide that land disposal of hazardous waste that does not meet BDAT treatment standards is prohibited, unless the Administrator determines that the prohibition of one or more disposal methods is not required to protect human health and the environment for as long as the wastes remain hazardous, taking into account such factors as long-term uncertainties of land disposal, the goal of proper management of hazardous wastes, and the persistence, toxicity, mobility, and bioaccumulative potential of the wastes and their constituents. These provisions indicate that in order to satisfy this standard, an interested person must demonstrate to the Agency "to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." EPA interprets this statutory language to require that petitioners demonstrate that hazardous waste constituents will not migrate from the land disposal unit (i.e. landfill, surface impoundment, waste pile, injection zone, land treatment unit, salt dome formation, salt bed formation, underground mine, cave, vault, or bunker) in hazardous concentrations for as long as the wastes remain hazardous. These concentrations must be met at the unit boundary for all environmental media: Ground water, surface water, soil, and air. The statute explicitly provides that the standard applies to migration from a unit or injection zone: "* * * there will be no migration of hazardous constituents from the disposal unit or injection zone * * *" (RCRA Sections 3004 (d), (e), and (g)) Therefore, the Agency proposes that consideration of attenuation of hazardous waste constituents beyond the boundary of the disposal unit or injection zone would not be acceptable as a basis for successfully making a petition demonstration.

The Agency thus would grant petitions where owners or operators demonstrate (to a reasonable degree of certainty) that hazardous waste constituents will not migrate at hazardous levels, or, put another way, where only non-hazardous levels of waste constituents migrate. This interpretation of the statute was recently upheld in *NRDC* v. *EPA*, 907 F.2d 1146 (D.C. Cir. 1990). In the *NRDC* case, the court noted that under EPA's interpretation, "hazardous constituents may migrate so long as the wastes immediately surrounding them at the border are no longer hazardous, or putting it slightly differently, so long as they do not migrate in high enough concentrations to be hazardous waste." *Id* at 1159–1160. The court examined EPA's interpretation and affirmed EPA's decision finding that Congress had made no clear determination in section 3004 that hazardous constituents must not migrate regardless of the hazard and that EPA's policy choice was reasonable. 907 F.2d at 1162.

Based on this interpretation of the statutory language provided above, the Agency proposes to clarify and amend § 268.6(a) to define the term "no migration of hazardous constituents from the disposal unit or injection zone" (or simply, "no migration") to mean that concentrations of hazardous constituents do not and shall not exceed Agency-approved health-based or environmental-based levels, in any environmental medium, at the boundary of the unit or injection zone. Under this approach, possible migration pathways for each medium are as follows: Concentrations of hazardous constituents in ground water in the vicinity of the unit could not exceed the appropriate ingestion health-based levels for drinking water. Surface water concentrations, both in surface water bodies in the vicinity of the unit and in storm runoff from the unit, likewise could not exceed appropriate health-based levels for drinking water or ambient water quality criteria.[1] Similarly, concentrations in soil (including, but not limited to silt, loam, sand, gravel, and in some cases, rock) outside the unit could not exceed health-based levels for ingestion. Finally, air emissions of hazardous constituents from the unit, either in the form of particulates or volatilized organics, could not exceed the appropriate health-based levels for inhalation exposure. (Health-based levels for each medium are discussed in more detail in Section B of this preamble.)

In addition, the Agency proposes to modify § 268.6(a)(4) to require monitoring of all environmental media, i.e., ground water, surface water, soil, and air. Where petitioners can conclusively demonstrate that monitoring of any medium is unnecessary or technically infeasible or impractical, the Agency may determine on a site-specific basis to waive the monitoring requirement for one or more media. The point of compliance for both modeling and monitoring measurements will be at (or as near as possible to) the unit boundary (without compromising the integrity of the unit). For the air medium, compliance will be measured at the downwind edge of the unit boundary at a height of 1.5 meters. (The point of compliance for demonstrating "no migration" is discussed in more detail in Section C of this preamble.)

B. Hazardous Levels

The Agency will be using EPA-approved health-based levels for ground water, surface water, soil, and air to designate "hazardous levels of hazardous constituents." The Agency currently is using peer-reviewed health and environmental effects data in several areas including clean closure, delisting, and proposed trigger levels for corrective action. Such data for each medium of concern are based, for the most part, on the drinking water Maximum Contaminant Levels (MCLs), surface water quality criteria (Ambient Water Quality Criteria 45 FR 79318, November 18, 1980; 49 FR 5831, February 15, 1984; 50 FR 30784, July 29, 1985), verified Reference Doses (RfDs) for systemic toxicants developed by the Agency's Risk Assessment Forum, and

[1] Note, however, that where the petitioning unit has complied with permit design requirements to prevent run-on or run-off from a 24-hour, 25-year storm, and a storm of even greater magnitude results in run-on or run-off from the unit, the Agency would consider this an exceptional or unpredictable event. EPA therefore would consider allowing continued operation of the unit under the no migration variance once any damage that affects the unit's operation has been corrected.

Risk-Specific Doses (RSDs) for carcinogens developed by the Agency's Carcinogen Assessment Group. These dose levels are used with standard exposure assumptions for each medium (ground water, surface water, soil, and air) to obtain allowable health and environmental levels. The maximum residual risk level would be the same for Class A and B carcinogenic constituents, 1×10^{-6}. For Class C carcinogens the maximum residual risk level would be 1×10^{-5}. Detailed information on the exposure assumptions and lists of the applicable concentration levels for ground water, surface water, soil, and air for some hazardous constituents are contained in the RCRA Facility Investigation (RFI) Guidance (U.S. EPA, Interim Final, May, 1989), and in the proposed Subpart S Corrective Action Rule (55 FR 30798; July 27, 1990). Additional information on health-based levels is available on EPA's Integrated Risk Information System (IRIS, On-line database, U.S. EPA, 1991), EPA's "Carcinogenic Risk Assessment Verification Endeavor (CRAVE) Risk Estimate for Carcinogenicity" (U.S. EPA, 1990), and in the Superfund Public Health Evaluation Manual (U.S. EPA, 1986).

EPA proposes to use appropriate levels such as those described in the above references for approving or disapproving a no migration petition. Maximum Contaminant Levels (MCLs) for drinking water and Ambient Water Quality Criteria (AWQC) would receive first priority for use as appropriate levels, where they exist. Reference Doses and Risk-Specific Doses would be used secondarily in the absence of MCLs and AWQCs.

The Agency realizes, however, that Agency-approved levels do not exist for every hazardous constituent in Appendix VIII. In addition, the Agency acknowledges that existing health and environmental effects data available for some hazardous constituents have not been formally promulgated by EPA. In most cases, EPA believes it will be possible to develop reasonable estimates, based on best professional judgement, or to eliminate minor constituents from consideration because only trace levels exist in the waste. Where health-based levels are not available or cannot be estimated, and where more than very minor trace levels of a hazardous constituent are present in the waste, EPA believes background or analytical detection limits should be used. (EPA notes that it has adopted the above approach to setting health-based levels in the RCRA delisting program and the proposed Subpart S corrective action rule.) No migration petitioners also may wish to propose their own levels for constituents of concern, using reasonable worst-case assumptions. Petitioners should submit to the Agency data of sufficient quantity and quality for the Agency to determine the environmental and health effects of the constituent. Thus, there will be opportunity for notice and comment on each such level within the context of each petition. Data submitted for the purposes of determining an appropriate level should follow established EPA protocols to ensure the acceptability of the test data. (For example, following the toxicity testing guidelines of 40 CFR Parts 797 and 798 (50 FR 39252, September 27, 1985), would be considered *prima facia* evidence of the acceptability of the data.) Petitioners who choose to propose their own levels for constituents should consider that Agency review of such information may require additional time and could delay a determination on their no migration petitions.

The Agency believes that human health-based levels will be protective of both human health and the environment. Nevertheless, the Agency may determine that a unit boundary level for a constituent should be lowered from the human health-based standard in order to protect against detrimental environmental effects around the unit (e.g., those that may pose a threat to endangered species, or sensitive ecosystems).

The Agency realizes that many of the peer-reviewed human health-based levels are below an analytical detection limit. In these cases, where modeling is possible, the petitioner must demonstrate that no migration will occur above the human health-based levels using modeling and analysis. As stated in 40 CFR 268.6, any models must be verified and calibrated to the site. In demonstrating compliance with the terms of the petition during the life of the unit, the petitioner will, of necessity, use analytical detection limits as the basis for compliance. Use of analytical detection limits should be based upon methodology prescribed in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, (EPA Publication No. SW–846, 1986, third edition), with the lowest possible detection level indicated therein for each hazardous constituent.

Finally, the Agency considered, but is not proposing as a general rule to take into account, the effects of additivity of hazardous constituents within a single environmental medium in setting the levels that the petitioner must meet to demonstrate no migration. Similarly, the Agency also considered but rejected an approach that would assess additivity across two or more media (e.g., ground water and air). Guidelines for using additivity in assessing the risks posed by multiple contaminants are contained in "Guidelines for the Health Risk Assessment of Chemical Mixtures" (51 FR 34014, September 24, 1986). The Agency does not currently intend to use this approach, because it believes that a determination of additive effects of two or more chemicals or across two or more media would be exceedingly difficult, would involve too many uncertainties, and would be unnecessarily conservative. For example, a constituent ingested via the ground water exposure route may have a different mechanism of action and different target organ(s) from those of the same constituent when inhaled; similarly, two different chemicals ingested by the same route might have different target organs. Furthermore, the exposure routes considered under this rule are projected and hypothetical, rather than actual, exposures. Therefore, EPA believes that consideration of additivity for two or more hypothetical exposure routes is generally unnecessary, especially given the conservatism of its exposure assumptions in the current approach. (In some cases, however—e.g., where actual rather than hypothetical long-term exposure is involved—EPA may take a more conservative approach, and consider additivity, where technically feasible.) The Agency believes that assessing effects of different constituents individually within one hypothetical exposure medium is both consistent with the statutory no migration standard and fully protective of human health and the environment.

1. Consideration of Ambient Concentrations

As discussed above, the Agency believes the statutory concern is over the hazardousness of contaminants that may cross the unit boundary. EPA has previously interpreted the unit boundary as the point of compliance for no migration petitions and specifically rejected an approach that would have considered attenuation factors for movement of contaminated groundwater outside the unit boundary. [51 FR 40638, November 7, 1986.] Similarly, EPA does not believe ambient or background concentrations of constituents outside the unit boundary should be considered in evaluating migration out of the unit. With these factors in mind, the Agency is considering three options for addressing no migration in situations

where ambient contaminant concentrations exist.

In the first option, existing concentrations in ground water would only affect no migration variances to the extent they indicate that a unit may already be contributing to those levels through contamination. EPA would not accept possible dilution of releases when they flow into the aquifer as the basis for a less stringent standard on the level of concentration allowed to leave the unit. Nor would it make the standard more stringent because the receiving ground water is already above ambient levels. Rather, the no migration determination would continue to be based upon whether the concentrations of the constituents migrating from the unit itself exceed hazardous (i.e., health-based) levels.

For example, assume ground water upgradient from the petitioning unit has a concentration of 10 mg/l of hazardous constituent A and the health-based level for constituent A is 5 mg/l for drinking water. The no migration standard EPA proposes to apply in this case would nonetheless require that any release from the unit not contain concentrations of constituent A above 5 mg/l. Depending on the leachate concentration, the volume of leachate that reaches the ground water, and the degree of mixing that occurs between the leachate and the underlying ground water, a monitoring well located downgradient from the petitioning unit could contain varying concentrations of hazardous constituent A. The Agency recognizes that the aforementioned variables raise some uncertainty in estimating leachate concentrations released from the unit on the basis of upgradient and downgradient ground water measurements.

There are also instances, however, where migration of any level of constituent A from a unit might add the same amount to the ambient background concentration of a given environmental medium. An example is volatilization of hazardous constituents from liquid or solid material in the unit to ambient air outside the unit. In this situation, unlike that of fluids, every molecule added from the unit to the air will incrementally increase the concentration in the air at the unit boundary above pre-existing background levels. Again, EPA's proposed approach is not to consider the pre-existing background levels in the air but, instead, to focus on the incremental increases at the point of compliance that are attributable to migration from the unit. The Agency recognizes that this approach allows total concentrations at the unit boundary above the pre-existing background such that the sum may, in fact, be above health-based levels.

Inherent in any determination of background levels is a consideration of statistical variability. This variability results from the sampling distribution of the measurements, as well as the sampling and analysis variability, and variability due to spatial and temporal factors. General RCRA ground water monitoring guidance recommends the use of confidence intervals for comparison to a fixed compliance standard. For all options presented in this section, the Agency is proposing a similar approach where a 95% confidence interval is constructed around the mean background concentration. (For normal distributions, this confidence interval calculation is as follows:

$$\bar{x} \pm t_{(0.95,n-1)}\, s/\sqrt{n}$$

Where $\bar{x}$ is the mean, $t_{(0.95,n-1)}$ is obtained from the Student's t-Distribution, S is the standard deviation of sample values, and n is the sample size.) For more information on statistical variability and construction of confidence intervals, see the "Guidance Document on the Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities," (EPA/530–SW–89–026; April 1989; NTIS: PB89–151–047).

For the first option, discussed above, EPA proposes that the upper limit of this confidence level be used to define background (i.e., ambient levels), and that Agency-approved health-based levels would be added to the upper confidence limit in determining no migration limits at downgradient points of measurement. Any downgradient measurement that exceeds this sum would be considered migration.

A second option in situations of existing ambient concentrations is not to allow the contribution at the unit boundary from background levels and the contribution from the unit, together, to exceed the health-based standard. This second option would be more stringent than the first option; in effect, it also would be a type of locational requirement. For example, in relatively pristine areas a unit could meet the no migration demonstration as long as the resulting level at the unit boundary is below the applicable health-based standards. In areas where pre-existing background concentrations are elevated, the unit would be less likely to meet the no migration standard. If background concentrations are already above the health-based levels, a unit could not meet the no migration demonstration. The ultimate determination of compliance would be the downgradient measurement, which, very simply, could not exceed the health-based level used as the no migration standard.

A third option in situations where background levels of a hazardous constituent exist would be to set some *de minimis* level of allowable constituent addition from the unit. For example, where the ambient air is already above the health-based level, the unit could release an additional level of constituents measured at the unit boundary, but the contribution from the unit must not increase the overall risk level beyond a small (statistically insignificant) increment. In contrast to Option 1, the amount of allowable increase would not be set by reference to existing health-based levels, but by establishing a level for this purpose only. The Agency proposes for this third option that the *de minimis* level be determined based on the statistical variability associated with the background concentrations. For example, the background concentration would be determined as discussed previously, by constructing a 95% confidence interval around the mean concentration of the background sample measurements.

In this third option, the upper limit of the confidence interval constructed from background sample measurements would be used for no migration purposes. Measured values downgradient would be compared to this upper limit to evaluate whether a statistically significant increase above background concentrations had occurred. Where any downgradient sample measurement was found to fall above the upper 95% confidence limit, it would be statistically significant and migration would be considered to have occurred.

EPA solicits comments on these three or any other approaches. In particular, we are seeking input from commenters as to the relative burden that may be imposed, either on petitioners or the reviewing Agency, in implementing any one of the three options. Also, are there exceptional technical difficulties associated with implementing a specific option? The Agency requests comments from the public on whether the *de minimis* approach (Option 3) is more difficult to implement than the other options, for instance, due to the lack of standard monitoring protocols for air.

C. Point of Compliance for No Migration

The statutory standard requires that there will be no migration of hazardous constituents from the unit or injection zone. As discussed above, the Agency interprets this to mean that hazardous

constituents will not migrate at hazardous levels from the unit (or injection zone). Thus, the point of compliance for making this demonstration is the unit boundary (or the boundary of the injection zone; see 53 FR 28118, July 26, 1988 for a discussion of "injection zone"). For land disposal units, a "hazardous waste management unit" as defined in 40 CFR 260.10, is a "contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area."

For the purposes of demonstrating no migration from the unit, the Agency believes that, where an engineered barrier (e.g., a liner) exists for surface impoundments, landfills, waste piles, or land treatment units, the unit boundary consists of the outermost extent of the engineered barrier of the unit. The outermost extent of the engineered barrier also constitutes the point of compliance for each medium. For example, in demonstrating no migration from the unit via ground water or subsurface soil, the unit boundary would consist of the outer liner present in a surface impoundment, landfill, land treatment unit, or waste pile. In demonstrating no migration from such a unit via surface water runoff or surface soil, the outer limits of any dikes, ditches, or berms present at the edge of the "hazardous waste management unit" constitute the point of compliance. In demonstrating no migration from the unit via the air pathway, the outer extent of any engineered barrier over the unit (roof, dome, etc.) would constitute the point of compliance.

While engineered barriers form a useful way to delineate the boundary of a hazardous waste management unit, the Agency recognizes that these engineered components do not always exist. For example, most units are not enclosed to protect from migration via air. In this case, the Agency proposes that the downwind edge of the unit at a height of 1.5 meters constitutes the point of compliance for demonstrating no migration via air. (A height of 1.5 m corresponds with a typical inhalation height. This height also is proposed because it would facilitate monitoring of particulate emissions, which cannot be accurately monitored close to the soil surface without effectively vacuuming large and small particles into the apparatus.) For air demonstration purposes, any berms, dikes, or ditches that surround the area of waste placement define the "edge" of the unit. (However, for determining the point of compliance for the air medium or other media, the Agency does not intend to allow the inclusion of unreasonable buffer zones between the area of waste placement and a perimeter dike, berm, or ditch.)

In cases where units are unlined (e.g., a unit obtaining an exemption from liner requirements under § 264.221 (b) or (d)), the petitioner and the petition reviewer must use best professional judgement to set the unit boundary. Unlined land treatment units have a subsurface point of compliance at the base of the maximum treatment zone (not exceeding a depth of 5 feet from the initial soil surface), or immediately outside of any liner that may exist. Finally, for some miscellaneous units such as those regulated under subpart X (e.g., geologic repositories), the unit boundary should be decided on a site-specific basis. In all cases where a no migration petition is filed, however, the Agency will demarcate the unit boundary and point of compliance for demonstrating and evaluating no migration via all media in a suitably stringent manner.

Although engineered barriers are used to define the unit boundary, EPA believes (and Congress in the legislative history indicated) that engineered barriers such as liners cannot be assumed to be adequate to prevent migration of hazardous wastes from a land disposal unit or injection zone. S. Rep. No. 284, 89th Cong. 2d. Sess. at 15. Consequently, EPA proposes that, except for temporary storage units, the no migration demonstration must rely upon other assurances to demonstrate no migration of waste from the unit. (For temporary storage units, the no migration demonstration may be based upon removal of the waste prior to failure of the engineered barrier.) This approach, of course, does not exempt an owner or operator who has a no migration variance from parts 264 and 265 design requirements for liners and other engineered barriers.

D. Petitions to Demonstrate No Migration

The Agency intends to limit the approval of petitions for a no migration demonstration to those that can demonstrate compliance with the conditions outlined in today's interpretation to a reasonable degree of certainty. The Agency also recognizes that site-specific factors can be relevant to consideration of a petition and to a no migration determination. Owners and operators who believe they have land disposal units that will qualify for approval, should submit petitions to the Administrator. At the date of issuance of this notice, EPA has already received a number of petitions and is reviewing them under existing regulations and guidance.

For underground injection wells, separate requirements exist for the development and review of no migration petitions as outlined in the rule promulgated July 26, 1988 (53 FR 28118).

Specific existing requirements for the development and processing of no migration petitions for land disposal units are outlined in 40 CFR 268.6. The Agency believes that a petition to demonstrate no migration should include (but is not limited to) two essential components in its approach: (1) Sufficient site-specific, theoretical, long-term projections about the unit, waste, and environmental conditions to insure that migration at hazardous levels will not occur from the unit to any medium (or, for temporary units, as long as the waste remains in the unit); and (2) current data derived from monitoring, sampling, and analysis of the unit, waste, and environmental conditions that both confirm the models and describe current conditions.

The assumptions and input data used in site-specific modeling projections should be based on site conditions. Models, input data, and relevant documentation should be available to EPA upon request and without restriction. EPA is discouraging the use of proprietary models, as the models selected will have to be closely scrutinized to determine their reasonableness and accuracy, and will be subject to public comment.

Furthermore, in today's proposed amendment to 40 CFR 268.6(a)(4), no migration variances will require, as a condition of their approval, monitoring of all environmental media (ground water, surface water, soil, and air) to detect migration of hazardous constituents from the unit at the earliest practicable time. In certain cases the Administrator may determine, based upon waste- and site-specific characteristics, that monitoring of one or more media is unnecessary at an individual site, because migration to that medium (those media) clearly is not a realistic concern (e.g., ambient air monitoring at some types of underground geologic repositories). Similarly, the Administrator may determine that conventional monitoring of one or more media immediately at the unit boundary is technically infeasible or impractical. However, in most cases of technical infeasibility or impracticality, the Agency still will require some type of monitoring or modified monitoring as near as possible to the unit boundary without

compromising the integrity of the unit. (For more information on no migration monitoring in situations of technical infeasibility or impracticality, see the "Land Disposal Restrictions for First Third Scheduled Wastes; Final Rule" (53 FR 31189, August 17, 1988). The Agency also may determine in certain situations that modeling of a particular medium likewise is unnecessary or infeasible (e.g., air modeling for a covered waste pile). However, where an engineered control such as a cover exists for which modeling is infeasible, the Agency may require the petitioner to assess the performance of the engineered system in lieu of modeling. Petitioners who believe that one of these situations applies to their unit should include in the petition information that clearly demonstrates why modeling or monitoring of any medium is unnecessary or technically infeasible. (For more discussion of monitoring requirements and monitoring plans that should be included in a no migration petition, see the Land Disposal Restrictions for First Third Scheduled Wastes, Final Rule, August 17, 1988, 53 FR 31139).

The Agency proposes to add new petition provisions at 40 CFR § 268.6(c)(3) to require that, for existing units that are receiving hazardous waste prior to submittal of the no migration petition, monitoring data for ground water, surface water, soil, and air be included as part of the petition. The Agency recognizes, however, that monitoring data may be difficult to collect, or may be nonexistent, for new units. Therefore, the Agency also is proposing additional petition requirements at 40 CFR § 68.6(c)(3) such that for both existing and new units, variance approval is conditioned upon Agency review and approval of monitoring data, gathered subsequent to unit operation, which confirms no migration. (Where subsequent monitoring data reveals migration, the Agency would revoke the variance.) However, at its discretion, EPA additionally may require that monitoring data for one or more media be submitted for a new unit prior to granting of the variance, as part of the petition, where such data are reasonably available (for example, monitoring data already generated as a result of the field test plot for the land treatment demonstration required under 40 CFR 264.272).

The Agency proposes that in most cases, in addition to initial monitoring to demonstrate no migration, detection monitoring to confirm no migration for ground water, surface water, and soil be conducted at regular intervals (for example, semiannually for ground-water monitoring to coincide with part 264 subpart F monitoring). However, for the air medium EPA is proposing a slightly different monitoring approach. Except for those units where the Agency has determined that air modeling or monitoring is unnecessary or technically infeasible, petitioners would be required to conduct a one-time, reasonable worst-case ambient monitoring program to confirm modeling estimates and to provide a correction factor for the modeling where necessary. (Air monitoring under reasonable worst-case conditions is proposed, because it would facilitate detection of hazardous constituents, which may be at low concentrations near detection limits.) Subsequent to granting of the variance, however, rather than performing regular ambient air monitoring during the operation of the unit, the Agency proposes that the owner or operator regularly sample the waste stream entering the unit to confirm that the modeled annual quantity of a hazardous constituent is not exceeded. The Agency proposes this approach because it believes that ambient air monitoring performed at the unit boundary may involve too many uncertainties and too much variability to be reliable in detecting migration. EPA requests comments on the proposed approach for air monitoring. Additional guidance for making the no migration demonstration for all environmental media is provided in the guidance manual made available in today's notice entitled No-Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners. (U.S. EPA, Draft, July, 1992).

No migration variances may be issued for existing facilities having interim status or part B permits under RCRA, or for new facilities seeking a permit. Because much of the information that must be included in a RCRA part B application must also accompany the petition for a "no migration" variance, facility owners and operators are encouraged to submit petitions with the relevant part B data summarized and referenced, with copies of critical part B materials attached as needed. Petitions should be submitted to EPA Headquarters. Petitions will be reviewed by EPA Headquarters with assistance from Regional and State personnel.

Variances will be effective only after issuance; submittal of a petition will not exempt a facility from complying with applicable land disposal prohibitions. Variances will be valid for up to 10 years, but not longer than the term of the facility's RCRA permit, and they will automatically expire upon expiration, termination, or denial of a RCRA permit, or when the volume of waste for which the variance was issued is reached. Owners and operators desiring to renew expired variances must repetition the Agency. Petitions to renew must undergo the same notice and comment procedure as did the original petition.

EPA also is proposing today to amend § 268.6(f)(3) such that, subsequent to notification from the owner or operator, if the Administrator determines that migration is occurring or has occurred from the unit, the Administrator will revoke the variance. This approach is based upon the belief that, with the exception of the air medium, once a single verified migration event has been detected, the no migration demonstration has failed. (Note also the exception in the case of run-on or runoff resulting from an unpredictable future event, as identified previously in this preamble at footnote 1.) Variance holders have 10 days in which to re-sample to verify detection of migration from their unit. Verified migration events require suspension of receipt of waste at the unit and notification of EPA. For more information on detection of hazardous constituent migration and verification, see the "Land Disposal Restrictions for First Third Scheduled Waste; Final Rule" (53 FR 31189–31190; August 17, 1988).

For the air medium the Agency proposes to base the no migration standard upon an annual average air concentration. EPA proposes to interpret migration to the air medium as exceeding the health-based level for a hazardous constituent on an annual average basis, not on a single verified event. The Agency believes this approach is protective, since air health-based levels are based upon long-term exposure assumptions, and are not appropriate for use in an acute air exposure scenario. Furthermore, air concentrations are highly dependent upon dispersive and temporal factors, and therefore differ from the ground water, surface water, and soil media, where these factors are less significant. Acute air exposure scenarios would be addressed under § 268.6(a)(5), which requires compliance with other Federal, State, and local laws, and which would require compliance with OSHA short-term air exposure standards at 29 CFR part 1910 as a condition of the variance. EPA requests comments on this approach.

The Agency also today is proposing additional provisions at § 268.6(r) providing that the Agency will revoke a

unit's no migration variance if, on the basis of any information, the Agency at any time determines that migration from the unit has occurred, or that such a variance is no longer protective of human health and the environment.

The Agency should caution potential petitioners that the burden of proof in demonstrating no migration will be substantially greater for facilities with a history of continuing mismanagement of hazardous waste and serious compliance problems, as evidenced by State or EPA monitoring and inspection reports. (Minor infractions in compliance should not affect EPA's review of a petition.) This does not mean such facilities will be required to meet a more stringent standard, but that more information and analysis may be necessary, both in the petition and during operation under the variance, to confirm to the Agency's satisfaction that migration is not occurring and will not occur in the future. For example, more frequent waste stream analysis, or even sampling by an independent party could be required under the terms of the variance. Given that EPA must find "to a reasonable degree of certainty" that the test is satisfied, it obviously is reasonable for EPA to regard such facilities with special scrutiny.

Similarly, for a unit that has experienced releases (migration) in the past, the owner or operator petitioning for a variance will be under a greater burden of proof to demonstrate both: (1) That the same type of release will not occur in the future, and (2) that past and future releases can be separated for modeling and monitoring purposes. The second item could be particularly relevant for the ground water medium, for example, where contamination already detected in ground water could continue to appear in monitoring wells after a variance has been granted. It would be difficult to prove whether the contamination was from a past or present release. Likewise, for a unit located in a waste management area where releases have occurred from other units, it also could be difficult to differentiate between releases, particularly if the other units contained the same hazardous constituents as the unit for which a variance is sought.

In either case, the owner or operator is discouraged from submitting a no migration petition unless he or she can conclusively demonstrate not only that future migration will not occur, but also that past releases detected through monitoring either are not from the unit for which a variance is sought, or that they will not obscure or interfere with the ability of monitoring devices to detect future releases. If there is uncertainty, the assumption will be that the release is from the unit for which a variance is sought, and the variance likely will be denied or, if already granted, revoked.

E. Conditional Requirements of a No Migration Variance

EPA proposes that for certain land disposal units, no migration variances may be granted based upon conditional requirements. These conditions will be specified in the variance, and are as follows:

1. Land Treatment Units.

Land treatment units, under 40 CFR 264.272, are required to complete, and receive Agency approval of, a Land Treatment Demonstration. This Land Treatment Demonstration focuses on waste application rates and degradation rates, and it requires the owner or operator to demonstrate that hazardous constituents in the waste may be applied and completely degraded, transformed, or immobilized, without overloading the soil degradational capacity or causing migration of hazardous constituents outside of the treatment zone. Because the no migration variance will be granted based upon certain basic monitoring and modeling data, the Land Treatment Demonstration need not be complete in order to receive a no migration variance. Therefore, EPA today is proposing new requirements at § 268.6(j) providing that, for land treatment units, the variance will be conditioned upon completion of the Land Treatment Demonstration within two years after the date of granting of the no migration variance, or the variance will be revoked. This provision is intended to ensure completion of the Land Treatment Demonstration in a timely fashion, while nevertheless recognizing that the land treatment unit must operate in order to generate the relevant information and data. However, it should be clarified that this provison is not intended to provide any time extension of the requirement to have an approved no migration variance prior to land disposal of prohibited hazardous waste. Land treatment units would all be required to have an approved no migration variance prior to receipt of prohibited waste, regardless of whether the Land Treatment Demonstration is complete or not. Furthermore, petitioners with incomplete Land Treatment Demonstrations would also have to meet all of the same information requirements to fulfill no migration petition criteria.

The Agency also proposes to add new requirements for land treatment units at § 268.6(k) in order to assure that the no migration standard will continue to be met after the conclusion of the post-closure care period. The first situation of concern would occur if accumulations within the unit of nondegradable hazardous constituents exceed health-based levels for ingestion at closure and during the post-closure care period. If this occurs, the no migration standard could be exceeded via an ingestion, air dispersion, or surface runoff pathway. To ensure that migration would not occur, the Agency is proposing to require either that the unit be capped with clean soil at the end of the post-closure care period, or that hazardous constituents be removed at closure to concentrations below health-based levels. (If the petitioner were to choose the clean soil cap option, then a vegetative cover would have to be established on the unit, as required by § 264.280(c)(2). In addition, the petitioner would not be relieved of the existing requirement to provide a vegetative cover during the closure and post-closure care period.) The Agency proposes that the clean soil cap be installed at the end of the post-closure care period, rather than at closure, in order to allow the biodegradation process to continue without being smothered and inactivated by anaerobic conditions resulting from the soil cover.

The second situation of concern would occur if, at closure and at the end of the post-closure care period, non-degradable hazardous constituents present in the unit are capable of leaching at levels exceeding health-based levels. To ensure no migration, EPA is proposing that where the unit contains nondegradable hazardous constituents above health-based levels at closure, the facility owner must perform a leaching test or modeling procedure that the Agency determines is valid for the particular types of constituents present to determine their leachability. If modeling or test results show a potential for migration from the unit above the health-based levels, then at closure the petitioner must remove hazardous constituents to below health-based levels.

All existing closure and post-closure requirements under parts 264 and 265 are still applicable, and would in no way be superseded by today's proposed requirements at § 268.6(k). Rather, today's proposed variance conditions would add to existing parts 264 and 265 requirements. In particular, it should be noted that land treatment units (and other land disposal units) that will close

with hazardous constituents in place at concentrations above health-based levels must comply with 40 CFR 264.119(b) requirements for a deed notice that the site has been used for hazardous waste management, and consequently that future use is restricted. EPA expects that this provision will prevent future human intrusion into the site after the post-closure care period has ended.

2. Temporary Storage Units

Under Section 3004(k) of RCRA, land disposal is defined as placement (including temporary storage) of prohibited wastes in any land-based unit. Placement of prohibited wastes in a land-based unit can occur only after the unit owner or operator has been granted a no migration variance. Land-based units include: Landfills, surface impoundments, waste piles, injection wells, land treatment units, salt dome formations, salt bed formations, underground mines, caves, vaults, and bunkers. Use of a non-land-based unit to manage prohibited waste does not require a no migration variance. Non-land-based units include: Incinerators, tanks, and container storage areas. However, under 40 CFR 268.50, certain restrictions are placed on the use of tanks and containers for storage of prohibited wastes: These units can be used to store such wastes only for the purpose of accumulating waste to facilitate its proper recovery, treatment, or disposal. Readers are advised to review the requirements of 40 CFR 268.50.

There may be circumstances under which owners or operators wish to store prohibited wastes in land-based units. As stated, doing so will require a no migration variance. The Agency indicated in the preamble to regulations promulgated on November 7, 1986 (51 FR 40572) its belief that an indoor waste pile with a concrete liner, used for temporary storage, might be a good candidate for a no migration variance. EPA wishes to caution potential petitioners that it does not consider all types of land-based units, nor all waste types, to be good candidates for a no migration variance for temporary land-based storage. The petition for such a unit would have to demonstrate that there would be no migration for as long as the wastes remain in the unit (assuming they remain hazardous for that time). A number of factors, including (but not limited to) the characteristics of the unit and the waste, the duration of storage, and locational factors, will be considered by the Agency in making a decision on a no migration petition for temporary land-based storage. As mentioned previously in this preamble the Agency proposes that, for land-based storage purposes, the containment of hazardous waste within engineered barriers (meeting minimum technology requirements) will be considered in making the no migration demonstration, provided that wastes are to be removed after a reasonably short storage period that may be conservatively projected to be well before the failure of the engineered barrier system.

The Agency today proposes to add provisions § 268.6 (l)(1) and (l)(2) to require the following as conditions of a no migration variance for temporary land-based storage units:

a. *Clean closure.* As part of the variance, the unit's closure plan must provide for clean closure, both technically and with adequate financial assurance, within a specified time period. The Agency proposes this approach to assure that no hazardous waste or hazardous constituent concentrations above health-based levels remain after closure that could migrate from the unit in the future.

b. *Management of wastes at closure.* The variance also must require that, at closure, the waste removed from the unit be managed in accordance with the prohibitions on land disposal, including meeting the treatment standards where appropriate. This provision is proposed to ensure that hazardous waste from a temporary land-based no migration storage unit is not merely transferred to another land-based storage or disposal unit in an effort to circumvent the treatment requirements.

3. Other Demonstrations

In certain cases, conditional variances may also be appropriate for performance assessments in units other than land treatment and temporary storage. For example, a petitioner seeking a variance for a subpart X unit such as a geologic repository may need to test waste in-situ to determine that migration will not occur over the long term. In this case, the petition would have to show that waste would not migrate during the period of the demonstration. No migration variances for such test demonstrations would be issued unless the Agency believes that a subpart X unit has a reasonable chance of successfully demonstrating no migration over the long term. Furthermore, the petition also must assure that all waste would be removed if the test demonstration failed.

4. Monitoring for New Units

As discussed earlier in this preamble, the Agency is proposing at § 268.6(c)(3) that approval of a no migration variance for a new unit shall be conditioned upon Agency review and approval of monitoring data, gathered subsequent to unit operation; these data must show that no migration of hazardous constituents is occurring. The Agency is proposing this approach because it recognizes that monitoring data on potential releases usually will not be available for new units. (However, where any monitoring data are available for a new unit, as a result of field test plots, etc., such data may be required as part of a no migration petition.) Similarly, an existing unit must also continue to demonstrate no migration through monitoring data collected during its operation. Approval of the no migration variance for an existing unit likewise is conditioned upon such operational monitoring data confirming no migration. The Agency requests comments on this approach.

F. Additional Demonstrations for the Air Medium

In addition to demonstrating no migration of hazardous constituents from the unit, petitions also are required, under current regulations at 40 CFR 268.6, to demonstrate compliance with other laws. For the air medium, this requirement necessitates that petitioners provide a certification of compliance with OSHA workplace air standards and the benzene NESHAP, and, once promulgated, provide data demonstrating compliance with the RCRA Section 3004(n) standards for controlling air emissions from hazardous waste treatment, storage, and disposal facilities.

1. OSHA Standards

OSHA workplace air standards may be found at 29 CFR part 1910. These standards include short-term (1-hour and an 8-hour average) air concentrations which must not be exceeded, or protective breathing apparatus must be worn by workers.

2. NESHAP for Benzene

Similarly, successful petitions also must include a certification of compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for benzene at 40 CFR part 61, published March 7, 1990, 55 FR 8292. This regulation requires certain facilities that manage greater than 10 Mg/yr of benzene in their waste to control certain waste streams, normally those with greater than 10 ppmw benzene in the waste. Facilities subject to the benzene NESHAP control requirements would be required to treat the waste to lower

benzene concentrations to a maximum of 10 ppmw prior to land disposing in an open (uncovered) unit.

3. 3004(n) Standards

a. *Introduction.* The EPA is proposing today to amend 40 CFR 268.6 to include an additional condition that the applicant for a no migration variance must satisfy. This condition would require that the applicant demonstrate in the no migration petition that the particular land treatment unit, landfill, or waste pile meets certain organic air emission standards proposed by EPA under 40 CFR part 264 subpart CC in a separate rulemaking, and would be imposed pursuant to RCRA section 3004(n) as well as sections 3004(d), (e), and (g). Specifically, as a condition for a no migration variance to dispose a waste having a volatile organic concentration equal to or greater than a certain action level, proposed as 500 ppmw,[2] in a land treatment unit, landfill, or waste pile, an owner or operator would need to install and operate on the land disposal unit a cover or enclosure connected through a closed vent system to a control device. As an alternative to using the control equipment, the owner or operator could elect to treat the waste (by a means other than by waste dilution) to reduce the volatile organic concentration to a level less than the proposed 500 ppmw action level before land disposal occurs.

b. *Background.* Section 3004(n) of RCRA directs EPA to "* * * promulgate regulations for the monitoring and control of air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF), including but not limited to open tanks, surface impoundments, and landfills, as necessary to protect human health and the environment." To implement the Congressional directive of RCRA section 3004(n), EPA decided to use a phased approach so that standards could be implemented for certain TSDF emission sources as quickly as possible. In rulemakings separate from today's proposal, EPA first promulgated air emission standards for certain hazardous waste treatment processes (i.e., distillation, fractionation, thin-film evaporation, solvent extraction, steam stripping, and air stripping) to coincide with the development of regulations under RCRA section 3004(m) restricting the land disposal of untreated hazardous wastes (55 FR 25454; June 21, 1990). These final air emission standards apply to certain TSDF treatment unit process vents (Subpart AA in 40 CFR parts 264 and 265) and TSDF equipment leaks (Subpart BB in 40 CFR parts 264 and 265). For the second phase EPA has proposed standards, to be added to 40 CFR parts 264 and 265 as Subpart CC, that would require owners and operators of TSDF subject to the RCRA Subtitle C permitting requirements to install and operate organic emission controls on certain tanks, surface impoundments, containers, and miscellaneous units (56 FR 33490; July 22, 1991). These proposed standards are referred to in the remainder of this section as the "Subpart CC rulemaking."

The TSDF air emission standards established by the first and second phase rulemakings under RCRA section 3004(n) will control emissions of not only air toxics but also organic compounds that react photochemically with other chemical compounds in the atmosphere to form ambient ozone. Elevated ambient ozone concentrations are a major air pollution problem in most large cities in the United States. The EPA estimates that more than 100 million people live in areas in which ambient ozone concentrations exceed acceptable health-based levels defined by the national ambient air quality standards. Ozone is a pulmonary irritant that can impair normal human respiratory functions and can aggravate pre-existing respiratory diseases. Exposure to ozone also increases the susceptibility to bacterial infections. In addition, ozone can reduce the yields of citrus, cotton, potatoes, soybeans, wheat, spinach, and other crops as well as damage conifer forests, and cause a reduction in the fruit and seed diets of wildlife. Thus, EPA believes that organic emissions from land disposal units and other TSDF sources must be limited to levels that not only will adequately protect the public from the risk resulting from exposure to air toxics (by demonstration of no migration of hazardous constituents from the disposal unit), but also will adequately protect human health and the environment from exposure to elevated levels of ambient ozone.

The EPA considered and decided not to include land treatment units, landfills, and waste piles in the Subpart CC rulemaking. Estimates of existing nationwide organic emissions from land treatment units, landfills, and waste piles (based on data for the year 1985) are approximately 113,000 megagrams per year (Mg/yr). To characterize organic air emissions from TSDF sources to determine the applicability of the Subpart CC rulemaking, it first was necessary for EPA to make certain assumptions about how the hazardous waste management industry would respond to the land disposal restrictions. The EPA assumed that all hazardous waste would be treated to meet the BDAT treatment standards prior to placement of the waste in a land disposal unit. Furthermore, EPA assumed that compliance with the BDAT treatment standards would remove or destroy organics in the waste and, consequently, reduce the organic content of the wastes placed in land disposal units. Based on these assumptions, EPA estimated that nationwide organic emissions from land treatment units, landfills, and waste piles would be reduced to approximately 2,000 Mg/yr. Because the estimate results indicated that a large reduction in organic emissions would be achieved by treating wastes to BDAT levels prior to land disposal, EPA decided to defer developing standards for land treatment units, landfills, and waste piles to a time when the protectiveness of the land disposal restrictions with respect to TSDF air emissions could be better assessed.

Since this decision was made, EPA has developed and clarified in this notice procedural and substantive requirements in 40 CFR part 268 for petitioning EPA and demonstrating that there will be no migration of hazardous constituents from a land disposal unit. In accordance with the no migration petition requirements specified under 40 CFR 268.6, an owner or operator of a particular TSDF would be allowed upon approval from EPA to dispose in a land treatment unit, landfill, or waste pile specific hazardous wastes that are untreated or otherwise do not meet the BDAT treatment standards. Because the possibility now exists that some hazardous wastes may not be treated to meet BDAT treatment standards prior to disposal in land treatment units, landfills, and waste piles, EPA reassessed the need to apply air emission controls to these units for the purpose of limiting emissions of those organic compounds which react photochemically in the atmosphere to form ambient ozone (referred to here as "ozone precursors").

As previously discussed in this preamble, a condition for approval of a no migration variance is a demonstration by the applicant that no

[2] This level is not yet finalized. On July 22, 1991 (56 FR 33490), EPA proposed a level of 500 parts per million by weight (ppmw) as the action level for organic air emissions from TSDFs. This proposed level is subject to change as a result of public comments on the proposed rule. However, for the remainder of this discussion, the action level shall be referred to as the proposed 500 ppmw level. See elsewhere in this preamble for more discussion of EPA considerations in proposing this 500 ppmw action level.

migration of hazardous constituents will occur from the disposal unit into the air for as long as the waste remains hazardous. However, air emissions from land treatment units, landfills, and waste piles contain individual organic compounds which have been identified as ozone precursors but have not been listed as hazardous constituents. For a land treatment unit, landfill, or waste pile operated under a no migration varance in accordance with requirements established under authority of RCRA sections 3004 (d), (e), and (g), the owner or operator would demonstrate no migration of only those ozone precursors which are also listed as hazardous constituents but not all ozone precursors. Consequently, significant quantities of ozone precursors could be emitted from a land disposal unit granted a no migration variance. Therefore, EPA concluded that organic emission standards are needed for land treatment units, landfills, and waste piles operated under a no migration variance to provide ambient ozone protection.

c. *Regulatory approach.* Section 3004(n) of RCRA provides EPA with broad authority to control air emissions from TSDF sources as necessary to protect public health and the environment. This authority allows control of all types of ozone precursors to provide ambient ozone protection, and, thus, is the authority EPA is using to propose the organic emission standards for TSDF land treatment units, landfills, and waste piles operated under a no migration variance. Because these standards will be narrowly applied to these units, the standards are being proposed as part of the no migration variance rules in 40 CFR 268.6 even though they are under the authority of RCRA section 3004(n). In addition, as noted in a recent opinion, EPA retains residual authority to control non-hazardous constituents under the section 3004 (d), (e), and (g) variance process by virtue of the general protectiveness finding contained in the opening clause of those provisions. *NRDC* v. *EPA* No. 88–1657 (D.C. Cir. June 29, 1990).

The need to apply air emission controls to a particular TSDF waste management unit can be determined by the emission potential of the particular hazardous waste that is placed in the unit. For the subpart CC proposal, EPA evaluated possible formats and decided that the concentration of volatile organics in the waste is an appropriate indicator of the emission potential for a TSDF waste management unit. The volatile organics concentration (expressed in parts per million by weight (ppmw) as measured by the proposed EPA reference method 25D) is the total quantity of organics in a liquid or solid state that is likely to volatilize and, consequently, could be emitted to the atmosphere if not controlled. Therefore, the concentration of volatile organics in the waste is an appropriate indicator of the emission potential for a TSDF land treatment unit, landfill, or waste pile.

The EPA evaluated different volatile organic concentration action levels for the subpart CC proposal (i.e., 0 ppmw, 500 ppmw, 1,500 ppmw, and 3,000 ppmw) above which waste would need to be managed in units equipped with a cover vented to a control device or, for some quiescent sources, only a cover. Based on an evaluation of the options, a volatile organic concentration action level of 500 ppmw was proposed for the subpart CC organic emission standards for TSDF tanks, surface impoundments, and containers. For standards such as these that apply to interrelated sources to be effective, they must have uniform coverage of applicability from the point of waste generation through the point where the organics in the waste are either recycled, removed, or destroyed. When only a cover is applied to a tank, surface impoundment, or container, the volatilization of the organics in the waste is inhibited, but the organics are neither removed or destroyed. When a cover vented to a control device is applied to a tank, surface impoundment, or container, only that portion of the organics in the waste which are actually emitted from the waste management unit and vented to the control device are removed or destroyed. Organics still remain in the waste and can potentially be emitted from subsequent waste management units located downstream of the controlled waste management unit. Until organics in the waste are removed, recycled, or destroyed, they will still be emitted to the atmosphere from uncontrolled downstream waste management units. Selecting a higher or lower action level for land disposal units than was selected for the storage and treatment units that would be regulated by the subpart CC rulemaking would alter the effectiveness of the proposed standards. A higher action level would allow a portion of the organics retained in the waste by the use of suppression controls (i.e., covers) on the upstream waste management units to be emitted from the uncontrolled land disposal unit. A lower action level would require that controls be used on land disposal units receiving wastes from upstream waste management units using no controls. Therefore, to maintain the effectiveness of the proposed subpart CC standards and avoid improper application of controls, it is necessary to apply the same action level through disposal of the waste. Thus, EPA also is proposing in today's rule a volatile organic concentration action level of 500 ppmw for land treatment units, landfills, and waste piles, to be consistent with the proposed approach for subpart CC. In the final rule, this value may change to maintain consistency with the final subpart CC rule.

To establish the specific control requirements for a land treatment unit, landfill, or waste pile, EPA first reviewed the different emission control methods that can be used to reduce organic emissions from these land disposal units. These methods include using: (1) A cover to suppress the release of organics from the waste; (2) a closed vent system and control device in combination with the cover to capture and control the organic emissions released from the waste; or (3) treatment of the waste to remove or destroy the organics in the waste prior to placement of the waste in a land disposal unit.

Organic emissions can be suppressed by applying a cover that directly contacts or encloses the waste medium thereby creating a physical barrier over the waste surface which inhibits the volatilization of organics. The EPA has already proposed standards under the Subpart CC rulemaking that would require the application of covers to surface impoundments. Since surface impoundments can be many acres in size, and even larger than land treatment units, landfills, and waste piles, the certain covers suitable for surface impoundments could be installed on these land disposal units as well. The covers can be fabricated from either rigid material panels that are essentially impervious to organic permeation or from flexible, synthetic membrane sheets that have a high resistance to permeation of many types of organic compounds frequently contained in wastes managed at TSDF. Also, with proper installation and maintenance, leakage from cover seams and fittings can be limited to very low levels. Thus, covers are appropriate for controlling organic emissions from certain types of waste management units holding the waste for relatively short periods of time such as for temporary storage of the waste. However, waste that is placed in a land disposal unit remains in the unit for many years. Consequently, if the organics are not removed or destroyed

prior to placement in the land disposal unit, the potential still remains that the organics in the waste will be released to the atmosphere over the long term as the organics in the waste slowly escape by permeation of the cover material or through small leaks in cover seams and fittings. Therefore, using only a cover would not effectively control organic emissions from a land disposal unit.

To effectively reduce organic emissions from a covered land disposal unit, the cover needs to be vented to a control device. Using this control combination, the organic vapors released from the waste are captured in the enclosed space beneath the cover and then the captured gas stream is vented to a control device where the organics are removed or destroyed. A variety of control devices are available that are capable of achieving high organic emission control efficiencies. Organic removal control devices such as carbon adsorbers and condensers extract the organics from the gas stream and recover the organics for potential recycling or reuse. Organic destruction control devices such as vapor incinerators destroy the organics in the gas stream by oxidation of the organic compounds, primarily to carbon dioxide and water. The type of control device best suited for reducing emissions from a particular covered land treatment unit, landfill, or waste pile depends on the size of the unit and the characteristics of the organic vapor stream vented from the unit. To achieve the maximum potential control device organic emission reduction efficiency, the vent system used to convey the organic vapors from the covered unit to a control device must be closed so that no organic vapors can escape directly to the atmosphere prior to the gas stream entering the control device. A closed vent system consists of piping, connections, and, in some cases, a flow inducing device (e.g., a fan or blower) to transport the gas stream to the control device.

An alternative to using a cover vented to a control device would be to treat the waste by a means other than by waste dilution that reduces the volatile organic concentration to a level less than the proposed 500 ppmw. In this case, the owner or operator could select from a number of treatment processes that are effective in reducing the organic content of the waste below the proposed 500 ppmw action level but would not necessarily meet the specific BDAT treatment standards applicable to the waste. Treating the waste in this manner may offer significant cost savings to a TSDF owner or operator compared to the cost of installing and operating a cover vented to a control device on the affected land disposal unit, and thus may be the preferred way to comply with standards.

Given the need to limit organic emissions from TSDF land disposal units, and the suitability of applying the air emission controls selected for surface impoundments to other types of land disposal units, EPA is proposing today to include an additional condition for obtaining a no migration variance. This condition would require that each land treatment unit, landfill, or waste pile receiving the waste be managed in compliance with the air emission standards for certain surface impoundments as specified in the 40 CFR 264 subpart CC proposal. To comply with these standards, the owner or operator would either install and operate the specified air emission control equipment, or elect to treat the waste before land disposal by a means other than by waste dilution to reduce the volatile organic concentration to a level less than the proposed 500 ppmw. The remainder of this section summarizes the specific proposed requirements of 40 CFR part 264 subpart CC that EPA proposes to include in 40 CFR 268.6 as a condition for obtaining a no migration variance.

d. *Proposed requirements.* The proposed control equipment requirements are to install, operate, and maintain either a cover or enclosure connected through a closed vent system to a control device. These requirements would apply to any land treatment unit, landfill, or waste pile granted a no migration variance, including units for which a variance had already been granted. The cover (i.e, flexible membrane cover, air-supported structure, or any other type selected by the owner or operator) and all openings on the cover are to be designed and operated with no detectable emissions as determined by Reference Method 21 specified in 40 CFR part 60 appendix A. All openings in the cover such as hatches and access doors would need to be sealed (e.g., gasketed, latched) and kept closed at all times except when necessary to use the opening for waste loading, inspection, or sampling or for equipment inspection, maintenance, or repair. The closed vent system would be required to be designed, installed operated, and maintained so that there are no detectable emission as determined by monitoring the system using Reference Method 21. Each control device would be required to reduce the organics in the gas stream vented to it by at least 95 percent or, if an enclosed combustion device is used, to a total organic concentration of 20 ppm by volume as compounds determined by Reference Method 18 specified in 40 CFR part 60 appendix A. To document that a control device achieves this performance level, the owner or operator would be required to use either detailed design specifications for the control device or results of control device performance testing.

Determination that a waste contains less than the proposed 500 ppmw would be made by either direct measurement or knowledge of the waste at the point of waste generation. Direct measurement of the waste volatile organic concentration would be performed using the proposed EPA Reference Method 25D (56 FR 33490; July 22, 1991). Knowledge of the waste would constitute documentation that conclusively shows that the waste volatile organic concentration is below the specified limit under all conditions. For example, a company that generates a hazardous waste as a result of manufacturing a product could provide EPA with evidence that no organic chemicals are used in the manufacturing process. The waste determinations would need to be performed initially and repeated at least annually and, additionally, whenever the process or operation generating the waste has changed in such a manner that the volatile organic concentration may be increased.

The proposed standards would require the owner or operator to include certain emission control equipment items as part of the weekly inspections the owner or operator is already conducting to comply with existing RCRA standards (e.g. 40 CFR 264.273 for land treatment units, 40 CFR 264.303 for landfills, 40 CFR 264.254 for waste piles). For example, covers would need to be checked once per week by the facility workers to ensure that equipment is being used properly (e.g. covers are closed and latched except when workers require access to the unit) and the equipment is being maintained in good condition (e.g. no holes or gaps have developed in covers).

Continuous monitoring of control device operation would be required. This would involve the use of instrumentation to measure and record operating parameters that indicate whether the control device is operating correctly or is malfunctioning. Semiannual leak detection monitoring using Reference Method 21 would also be required for, certain cover components to ensure gaskets and seals are in good condition, and for closed

vent systems to ensure all fittings remain leak-tight.

The proposed recordkeeping requirements would require the owner or operator to record certain information documenting emission control equipment performance and maintenance in the on-site facility operating logs or files. This information would be available for review by EPA enforcement personnel during an on-site compliance inspection. The information to be collected and recorded would include: the results of all waste determinations for volatile organic concentration and organic vapor pressure; design specifications for closed vent systems and control devices; and emission control equipment inspection and monitoring records.

The proposed reporting requirements would require the owner or operator to submit a report to EPA only when: (1) A control device malfunction is not corrected within 24 hours of detection; or (2) a waste placed in an open land disposal unit exceeds the proposed 500 ppmw volatile organic concentration. If either of these events (referred to here as "exceedances") occur, the owner or operator would be required to maintain a record of the exceedance. For waste exceedances, the owner or operator would be required to submit a report to EPA within 30 days after the waste determination explaining why the waste was not managed in accordance with the requirements of the standards. For control device exceedances, the owner or operator would be required to submit a report to EPA on a semiannual basis describing any exceedances that occurred during the past 6-month period and explaining why each exceedance occurred.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have independent enforcement authority.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Today's propoed no migration rule, which also limits organic emissions from land treatment, landfill, and waste pile units operating under a no migration variance, is proposed pursuant to sections 3004 (d), (e), (g), and (n) of RCRA (42 U.S.C. 6924 (d), (e), (g), and (n)), provisions added by HSWA. Therefore, the Agency is proposing to add the requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in this section of the preamble.

As noted above, EPA will implement today's rule in the authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because this rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or section 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see 40 CFR 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadlines by which a State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule, in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

A State that submits its official application for final authorization less than 12 months after the effective date of these standards is not required to include standards equivalent to these standards in its application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

In addition to meeting the requirements in 40 CFR part 271, a State seeking authorization for today's rules must demonstrate the ability to capably implement the base RCRA program, as well as the additional HSWA elements. EPA's assessment of a State's capability will reflect an evaluation of the State's entire authorized program. The assessment will examine not only whether a State is effectively implementing the base program, but also how that State may implement additional program areas.

States with authorized RCRA programs (but which are not yet authorized for the requirements in today's rule) may already have requirements under State law similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

As of the date of this proposal, no States have received authorization to act on HSWA no migration petitions pursuant to the initial codification of sections 3004(d), (e), and (g) at 40 CFR 268.6 (51 FR 40572, November 7, 1986). The November 7, 1986 Codification Rule explains that a State's authorization status may change in response to further implementation of HSWA, i.e., when EPA publishes regulations which further define initially codified rules. Had any States been authorized for no migration under the November 7, 1986 Codification Rule, they would no longer be authorized under RCRA to implement these no migration rules when finally promulgated. (No migration regulated as a matter of State law is, of course, not affected.) This is because today's rules are more stringent than the initial codification of no migration requirements and, as explained above, the authorized State's regulations have not been assessed against the new standards. A State previously authorized for no migration may, of course, apply for and receive authorization for today's requirements.

States are not required to adopt the existing no migration regulation (§ 268.6), since it is a variance provision, and not adopting results in a more stringent State program. However, any State that has adopted the no migration regulation (§ 268.6) and is seeking authorization under part 271, must adopt the revisions to § 268.6 proposed in today's rule, since these revisions result in § 268.6 being more stringent.

Similarly, as of the date of this proposal, no States have received authorization to act on HSWA section 3004(n) air emission standards for hazardous waste landfill, waste pile, or land treatment units, proposed today at § 268.6(b)(6). States may also apply for and receive authorization for today's proposed 3004(n) requirements.

V. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that today's proposed rule is not a major rule, because it does not meet the above criteria. Today's action is an interpretation of existing statutory and regulatory language and will not impose further resource burdens on the regulated community, other than the voluntary and already existing costs of compiling the no migration petitions themselves. In fact, no migration variances granted by the Agency provide relief from the costs of meeting BDAT treatment standards prior to land disposal, as required under the land disposal restrictions. Therefore, since this proposed rule is part of the overall program for no migration variances for land disposal of prohibited hazardous waste, reduced costs to the regulated community result. The national cost savings for units receiving a no migration variance, which allows land disposal of prohibited hazardous waste, are estimated to be substantial when compared with the costs to owners and operators of meeting the BDAT treatment standards for the same wastes. The Agency requests comments today on the estimated costs to the regulated community of preparing no migration petitions consistent with the existing procedural requirements as proposed to be amended, and also comments on the estimated cost savings to be realized from receipt of a variance.

The Office of Management and Budget (OMB) has reviewed today's proposed rule as required by Executive Order 12291.

B. Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities. The regulations pertain to an optional variance, and impose no new regulatory or economic requirements on small businesses.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act 44 U.S.C. 3501 et. seq. and have been assigned OMB control number 2050–0062.

VI. References

(1) U.S. EPA, 1991. Integrated Risk Information System (IRIS). On-line. Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

(2) U.S. EPA, 1990. Carcinogenic Risk Assessment Verification Endeavor (CRAVE) Risk Estimate for Carcinogenicity. Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, OH.

(3) U.S. EPA, 1986. Superfund Public Health Evaluation Manual.

(4) U.S. EPA, Draft, July, 1992. No-Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners.

(5) U.S. EPA, 1986. Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, EPA SW–846, Third Edition.

(6) U.S. EPA, May, 1989. No Migration Cost Analysis.

List of Subjects

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 12, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR part 268 is proposed to be amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6924.

Subpart A—General

2. In 40 CFR part 268, subpart A, it is proposed to amend § 268.6 by revising paragraph (a) introductory text; by adding a semicolon at the end of paragraph (a)(3) in place of the period, by removing "and," at the end of paragraph (b)(4) and by adding a semicolon at the end of paragraph (b)(5) in place of the period; by revising paragraphs (a)(4) and (f)(3); by redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(4) through (c)(6), and paragraphs (j) through (n) as paragraphs (m) through (q), respectively; by removing the words ", and" at the end of newly designated paragraph (c)(4) and adding in their place a period; and by adding new paragraphs (b)(6), (c)(3), (j), (k), (l), and (r) to read as follows:

§ 268.6 Petitions to allow land disposal of a waste prohibited under subpart C of part 268.

(a) Any person seeking an exemption from a prohibition under subpart C of this part for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the Administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the land disposal unit or injection zone for as long as the wastes remain hazardous. For the purposes of this demonstration, "no migration of hazardous constituents from the land disposal unit or injection zone" (or simply, "no migration") shall be interpreted to mean that concentrations of hazardous constituents released from the unit do not and shall not exceed Agency-approved health-based (or environmental-based, where the Agency determines to be appropriate) levels at the unit boundary and beyond. A petition must demonstrate that no migration is occurring or shall occur to the ground water, surface water, soil, or air media. The demonstration must include the following components:

* * * * *

(4) A monitoring plan that detects any migration of hazardous constituents from the unit to the ground water, surface water, soil, or air at the earliest practicable time, unless the Administrator determines that monitoring of one or more media is unnecessary or technically infeasible or impractical;

* * * * *

(b) * * *

(6) Each land treatment unit, landfill, or waste pile receiving the hazardous waste(s) in accordance with a variance granted under this section must be managed in compliance with the air emission standards for Surface impoundments in §§ 264.1081, 264.1082, 264.1084(b)(1), 264.1086, 264.1087, 264.1088, and 264.1089 of this chapter.[1]

(c) * * *

(3) For an existing unit at the time a no migration petition is submitted for that unit, the monitoring data collected according to the monitoring plan specified under paragraph (c)(1) of this section must be submitted to the Administrator prior to granting of the variance, as part of the petition, for his review and consideration. For new and existing units, granting of a variance under this section shall be conditioned upon Agency review and approval of monitoring data, gathered subsequent to unit operation, that confirm no migration of hazardous constituents from the unit. For a new unit, the Agency may require that monitoring data for one or more media, where reasonably available, be submitted to the Administrator prior to granting of the variance, as part of the petition, for his review and consideration.

* * * * *

(f) * * *

(3) Following receipt of the notification the Administrator will determine, within 60 days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. Should the Administrator determine that migration of hazardous constituents from the unit is occurring or has occurred (i.e., that a release from the unit exceeds Agency-approved health-based or environmental-based levels), the Administrator shall revoke the variance. The Administrator shall also determine whether further examination of any migration is warranted under applicable provisions of part 264 or part 265 of this chapter.

* * * * *

(j) For land treatment units that have not completed the land treatment demonstration required under 40 CFR 264.272, granting of a variance under this section shall be conditioned upon completion of the land treatment demonstration on or before the date two years after the date of granting of this variance, or the Administrator shall revoke the variance.

(k) For land treatment units where concentrations of hazardous constituents in the treatment zone exceed Agency-approved health-based levels for soil ingestion at closure, the facility owner or operator must perform a modeling procedure or a test procedure, which the Agency determines is valid for each type of hazardous constituent present, to demonstrate leachability Dependent on the results of these analyses, the unit's closure and post-closure plans must require either:

(1) Capping with clean soil at the end of the post-closure care period, if the procedures show no reasonable potential for migration of hazardous constituents from the unit at concentrations exceeding Agency-approved health-based levels; or

(2) Removal of hazardous constituents at closure, to concentrations at or below Agency-approved health-based levels for soil ingestion, if hazardous constituents may potentially be released from the unit at concentrations exceeding Agency-approved health-based levels.

(l) For land disposal units that are used to temporarily store prohibited waste, a variance granted under this section shall be conditioned upon the following requirements:

(1) The unit's closure plan must provide for clean closure, both technically and with adequate financial assurance, within a specified time period; and

(2) At closure, the waste must be managed in accordance with the requirements of this part.

* * * * *

(r) On the basis of any information, should the Administrator at any time determine that migration of hazardous constituents from the unit is occurring or has occurred (i.e., that a release from the unit exceeds Agency-approved health-based or environmental-based levels), or that a variance previously granted under this section is for any other reason no longer protective of human health and the environment, the Administrator shall revoke the variance.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.1(j) is proposed to be amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register** to read as follows:

271.1 Purpose and scope.

* * * * *

(j) * * *

[1] These sections were proposed at 56 FR 33490, July 22, 1991. EPA will finalize these sections before the No Migration final rule is published.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Insert date of final publication]	Land Disposal Restrictions "No Migration" Variances.	[Insert page citation of final rule.]	[Insert effective date of final rule.]

* * * * *

[FR Doc. 92-18561 Filed 8-10-92; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
August 11, 1992

Part IV

Department of Education

Educational Research Grant Program—State Systemic Educational Reforms; Notice

DEPARTMENT OF EDUCATION

Educational Research Grant Program—State Systemic Educational Reforms

AGENCY: Department of Education

ACTION: Notice of proposed priorities for fiscal years 1993 and 1994

SUMMARY: Under the Educational Research Grant Program the Secretary proposes priorities for fiscal years 1993 and 1994. This proposal would give priority to projects to assist in research, development, and demonstration related to State curriculum frameworks, kindergarten through grade 12 (K–12), in English, mathematics, science, history, geography, civics, and the arts. The Secretary takes this action to focus Federal financial assistance on State curriculum frameworks, tied to world-class standards, as the basis for systemic reform.

DATES: Comments must be received on or before September 10, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Paul Gagnon, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Shirley Steele or Jaymie Lewis, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1490. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Educational Research Grant Program supports scientific inquiry designed to advance educational theory and practice. The program is authorized under 20 U.S.C. 1221e. The results of scientific inquiry can help move the Nation toward the achievement of the National Education Goals. One of the six National Education Goals calls for students to leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography. The President's AMERICA 2000 strategy for helping the Nation achieve the National Education Goals calls for the creation of world-class national standards for student achievement and for a system of improved assessments tied to the standards. The Secretary believes this strategy should be expanded beyond the core subjects to include civics and the arts.

The National Council on Education Standards and Testing, a congressionally created group of 32 individuals charged with investigating the desirability and feasibility of national standards and improved assessment, issued its report on January 24, 1992. The report called for the development of world-class national standards and a national system of voluntary assessments as urgently needed steps in reforming American education.

The feasibility of setting national standards and their effectiveness in encouraging State and local reform have been demonstrated by a number of national professional organizations. Recently the National Council of Teachers of Mathematics developed national standards for what students should know and be able to do in mathematics. While there do not exist fully developed national standards for K–12 in English, science, history, geography, civics, and the arts, considerable work has been done by a variety of organizations toward development of these standards.

World-class standards that define what students should know and be able to do provide the foundation for systemic reform. State curriculum frameworks serve as the bridge between these standards and the classroom by providing guidelines for the content of the curriculum and for how that content should be organized and presented. They provide the guidelines for curriculum and course design at the district, school, and classroom levels. New or improved assessments of student performance will indicate how well students are doing relative to the standards.

Defining what students in a State should learn is a critical step in the process of ensuring that the State's students are prepared to meet world-class standards. Using research supported by the Department's Research and Development Centers Program and other programs, States are developing curriculum frameworks in one or more subjects that embody high standards and provide guidelines to local schools and districts for the content of what should be taught. Engaging more and more States in this process would help to achieve national consensus on world-class standards for American students and would prepare the way for all students to reach these standards.

Under the proposed priorities, the Secretary proposes that States, or States working with other entities of their own choice, may apply for funding to support projects in one or more of the disciplines cited in this notice. States must participate as lead agents in the design and demonstration of State curriculum frameworks because States bear central responsibility in matters of education. States have the primary responsibility for coordinating efforts to raise general standards, disseminating curriculum frameworks, influencing new directions in teacher education and professional development, and establishing appropriate criteria for teacher certification. A State curriculum framework, accompanied by closely-related plans for teacher education and certification, as well as for professional development and recertification, forms the basis of State systemic reform.

The legislative authority for the Educational Research Grant Programs expires at the end of fiscal year 1992. Congress is now considering reauthorization of this program. However, the Secretary is publishing this notice of proposed priorities to demonstrate his strong support for research that would further the development of State curriculum frameworks. The publication of the notice of final priorities will await the outcome of the reauthorization process.

The Secretary will announce the final priorities in a notice in the **Federal Register.** The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities; nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priorities 1–8

Proposed Priority 1—State Curriculum Frameworks for English

Proposed Priority 2—State Curriculum Frameworks for Mathematics
Proposed Priority 3—State Curriculum Frameworks for Science
Proposed Priority 4—State Curriculum Frameworks for History
Proposed Priority 5—State Curriculum Frameworks for Geography
Proposed Priority 6—State Curriculum Frameworks for Civics
Proposed Priority 7—State Curriculum Frameworks for the Arts
Proposed Priority 8—State Curriculum Frameworks for Two or More of the Disciplines in Proposed Priorities 1–7

These priorities support projects in which States, or States in collaboration with other entities, carry out one or more of the following activities:

(a) Research to support the development of State curriculum frameworks, kindergarten through grade 12 (K–12). The curriculum frameworks must be tied to world-class standards. The results of this research must be made available to others developing curriculum frameworks.

(b) Development of coherent, non-repetitive research-based curriculum frameworks designed to ensure that all children study challenging subject material in every grade, K–12. These curriculum frameworks must—

- Be made available for local schools and districts to implement, or to adapt, for themselves; and
- Form the basis for new approaches to teacher pre-service and in-service education, certification, and recertification.

(c) Demonstration and documentation of the use of curriculum frameworks so that other States, districts, or schools might use them as a basis for developing frameworks suited to their needs.

Projects must involve in their activities college and university subject matter scholars and specialists in pedagogy, as well as teachers and administrators from public or private schools working together as equal collaborators.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Part 700

Program Authority: 20 U.S.C. 1221e.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research Grant Program)

Dated: August 4, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19017 Filed 8–10–92; 8:45 am]

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federal register

Tuesday
August 11, 1992

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 718 and 720

Adoption of State Standards; State Enforcement Activities; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 718 and 720

RIN 1029-AB58

Adoption of State Standards; State Enforcement Activities

AGENCY: The Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to remove parts 718 and 720 from the initial regulatory program under the Surface Mining Control and Reclamation Act of 1977 (the Act). Part 718 contains procedures for adoption of State laws and regulations when they prescribe more stringent standards of performance than the general or special performance standards of the initial regulatory program. Part 720 sets forth the regulations governing enforcement activities to be carried out by the States during the initial regulatory program. The provisions in these Parts have been rendered redundant or unnecessary by enactment of the permanent regulatory program.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on October 13, 1992.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC at 9:30 a.m. local time on September 25, 1992. OSM will accept requests for public hearings until 5 p.m. Eastern time on September 10, 1992. Individuals wishing to attend, but not testify at any hearings should contact the person identified "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 1951 Constitution Avenue NW., Washington DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington DC.

Request for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT**" by the time specified under "**DATES.**"

FOR FURTHER INFORMATION CONTACT: James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone: (202) 208-2634 (Commercial) or 268-2634 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "**DATES**") or delivered to an address other than those listed above (see "**ADDRESSES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule by request only. The times, dates and addresses scheduled for hearings are specified previously in this notice (see "**DATES**" and "**ADDRESSES**").

Any person interested in participating at a hearing at a particular location should inform Mr. Hedglin (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time September 10, 1992. If no one has contacted Mr. Hedglin to express an interest in participating in a hearing at a given location by the end of that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber with a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, was enacted August 3, 1977. Two principal purposes of the Act are to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and to assist the States in developing and implementing a program to achieve the purposes of the Act.

The scheme designed by Congress to implement the requirements of the Act consisted of two district regulatory programs on non-Federal and non-Indian lands, one transitional and one permanent. The transitional program, known as the initial program, took effect six months after the enactment of the Act and created a dual inspection and enforcement role for OSM and the States in ensuring compliance with certain key provisions of the Act at all surface coal mining and reclamation operations. The permanent program became effective upon approval by the Secretary of the Interior (the Secretary) of a State regulatory program which demonstrated that a State had the capability of carrying out the provisions of the Act, or where a State did not submit an application for a State program, upon promulgation and implementation of a Federal program meeting the requirements of the Act. The initial program effectively ended upon approval of a State program by the Secretary or when a Federal program was implemented. All coal producing States had either received full or conditional approval of their permanent programs or a Federal program had been implemented by 1983.

To implement the requirements of Sections 502 and 503 of the Act, the Secretary promulgated regulations on December 13, 1977 (42 FR 62639) and March 13, 1978 (44 FR 14902) for the initial and permanent programs respectively. Among the numerous performance standard related and procedural regulations promulgated for the initial program were 30 CFR Part 718—Adoption of State Standards, and Part 720—State Enforcement Activities, both of which are the subject of this rulemaking.

III. Discussion of the Proposed Rule

This proposal to remove Parts 718 and 720 of the initial regulatory program arises as a result of the periodic review of OSM's regulations required by the Department of the Interior Manual 318 DM 9 and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Agencies must

review their regulations and where regulations are identified which are unnecessary or duplicative, they are required to be removed. Parts 718 and 720 have been identified by OSM as unnecessary for the reasons discussed below.

Part 718—Adoption of State standards

Section 718.1 provided that States could request the Secretary to review any State surface coal mining performance standard in relation to the Federal initial program counterpart to determine which is more stringent and whether the State standard should through rulemaking procedures be adopted as the Federal standard in that State. Since the effective date of the initial program, in 1977, no State has ever made a request to the Secretary under this Section. Sufficient authority exists under the approved State program for a regulatory authority to request a more stringent performance standard determination. Accordingly, OSM believes this Section is no longer necessary.

Section 718.10 sets forth administrative data pertaining to the Paperwork Reduction Act. Removal of part 718 will result in the elimination of the associated burden hours currently charged to the agency.

Part 720—State enforcement activities

Section 720.10 sets forth administrative data pertaining to the Paperwork Reduction Act. Removal of part 720 will result in the elimination of the associated burden hours currently charged to the agency.

Section 720.11 specifies that a State may continue to exercise its authority to enforce State laws, regulations, and permit conditions in place during the interim program so long as compliance with State law, regulations or permit conditions does not preclude compliance with the initial program performance standards. This section is no longer applicable nor has any meaning to initial program minesites since all States where initial program permits remain either adopted regulations that contained the performance standards of the Federal initial regulatory program or became subject to direct regulation by the Office of Surface Mining through a Federal program. Thus, once the States adopted these regulations or came under a Federal program, the possibility of conflict between State laws and regulations and the Federal performance standards became nonexistent.

The requirement under § 720.12 that States incorporate terms in initial program permits that comply with the initial program performance standards is unnecessary because, in accordance with 30 CFR 701.11, any person who conducts surface coal mining operations on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. Thus, issuance of permits pursuant to the initial regulatory program ended in all States upon the adoption of State or Federal permanent programs.

Section 720.13 specifies certain initial regulatory program reporting requirements regarding the condition of mine sites and the issuance of permits. These reporting requirements are obsolete and no longer necessary since the requirements of the initial program ended with the adoption of State or Federal permanent programs. Moreover, the requirements of this section have been carried over into § 840.14 of the permanent program regulations. This section requires that each State make available to OSM upon request, copies of all documents relating to applications for and approvals of existing, new or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions. The specified information is currently being made available to all local OSM offices for both initial and permanent program minesites as necessary to evaluate the administration of each State program.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981), and has determined that it is not a major rule within the standards established by the Executive Order. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule requiring review by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

OSM has prepared a draft environmental assessment, and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft environmental assessment is on file in the OSM Administrative Record at the address previously specified (see "ADDRESSES"). A final environmental assessment will be completed and a finding made of the significance of any resulting impacts prior to promulgation of the final rule.

Executive Order No. 12778

The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12778.

Author

The author of this proposed rule is James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington DC 20240; telephone (202) 208–2634 (Commercial) or 268–2634 (FTS).

List of Subjects

30 CFR Part 718

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 720

Intergovernmental relations, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to remove 30 CFR parts 718 and 720.

Date: June 11, 1992.

Richard Roldan,

Deputy Assistant Secretary for Land and Minerals Management.

Subchapter B—Initial Program Regulations

PART 718—ADOPTION OF STATE STANDARDS

1. Part 718 is removed.

Authority: Secs. 201 and 501, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)

PART 720—STATE ENFORCEMENT ACTIVITIES

2. Part 720 is removed.

Authority: Secs. 201, 501 and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)

[FR Doc. 92–19020 Filed 8–10–92; 8:45 am]

BILLING CODE 4310–05–M

federal register

Tuesday
August 11, 1992

Part VI

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880-AA54

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). These amendments are needed to implement a provision of the Crime Awareness and Campus Security Act of 1990. These proposed regulations would allow institutions of postsecondary education to disclose to an alleged victim of a crime of violence the results of a related disciplinary proceeding instituted against the alleged perpetrator of that crime.

Additionally, the amendments are needed to reflect a change in the enforcement provisions of the existing regulations. Specifically, the Secretary designates a new review board within the Department for the purpose of reviewing and adjudicating complaints of violations of FERPA. Further, several technical amendments are incorporated in the regulations, including a definition of a "timely complaint" and a change in the provision pertaining to the circumstances under which the office designated to administer FERPA notifies the complainant and the educational agency or institution that a complaint has been received and an investigation initiated.

DATES: Comments must be received on or before September 25, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ellen Campbell, Family Policy Compliance Office, Office of Human Resources and Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-4605. Telephone: (202) 732-1807.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, (202) 732-1807. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The current FERPA regulations allow educational agencies and institutions to disclose personally identifiable information from a student's education records without the student's consent only under certain conditions. The proposed amendment creates another condition under which an institution of postsecondary education may disclose information from a student's education records without the student's prior written consent. Specifically, this new condition would allow disclosure of the results of a disciplinary proceeding conducted by the institution against an alleged perpetrator of a crime of violence to the alleged victim of that crime. This new condition was created by section 203 of the Crime Awareness and Campus Security Act of 1990, (Public Law 101-542, Title II, section 203; 20 U.S.C. 1232g(b)(6)) which amended FERPA to allow for such a disclosure.

Additionally, the Secretary proposes to amend the regulations to reflect changes in the enforcement provisions under 34 CFR part 99, subpart E. FERPA provides that the Secretary shall designate a review board within the Department for the purpose of reviewing and adjudicating violations of FERPA. In the current regulations, the Education Appeal Board (EAB) serves as the designated review board. Because the EAB is being phased out, the Secretary designates the Office of Administrative Law Judges to act as the review board required to enforce the Act with respect to all "applicable program[s]," as that term is defined in section 400 of the General Education Provisions Act.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies and institutions of postsecondary education. However, these regulations will not have any significant economic impact on the entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the Family Policy Compliance Office, 490 L'Enfant Plaza, SW., 2100 Corridor, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: April 21, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 is revised to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.5 is amended by revising the section heading to read as follows:

§ 99.5 What are the rights of students?

* * * * *

§ 99.6 [Amended]

3. In § 99.6, paragraph (a)(5) is amended by removing "maiintained" and adding, in its place, "maintained".

4. Section 99.30 is amended by revising the section heading and paragraph (a) to read as follows:

§ 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the

student's education records, except as provided in § 99.31.

* * * * *

5. Section 99.31 is amended by adding a new paragraph (a)(13), revising paragraph (b), and revising the authority citation to read as follows:

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) * * *

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B) and (b)(6))

6. Section 99.60 is amended by revising the heading and paragraphs (a) and (c) to read as follows:

§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

* * * * *

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

7. Section 99.63 is revised to read as follows:

§ 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, DC 20202–4605.

(Authority: 20 U.S.C. 1232g(g))

8. Section 99.64 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 99.64 What is the complaint procedure?

* * * * *

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

9. Section 99.65 is revised to read as follows:

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution—

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64.

(Authority: 20 U.S.C. 1232g(g))

10. Section 99.67 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may, in accordance with Part E of the General Education Provisions Act—

(1) Withhold further payments under any applicable program;

(2) Issue a complaint to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

* * * * *

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

[FR Doc. 92–18996 Filed 8–10–92; 8:45 am]
BILLING CODE 4000–01–M

VOL
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federal register

Tuesday
August 11, 1992

Part VII

Department of the Interior

Bureau of Land Management

43 CFR Part 3100

Promotion of Development, Reduction of Royalty on Stripper Wells; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO-610-02-4110-24 1A; Circular No. 2644]

RIN 1004-AC00

Promotion of Development, Reduction of Royalty on Stripper Wells

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends 43 CFR 3103.4–1 relating to waiver, suspension, or reduction of rental, royalty, or minimum royalty. The purpose of this amendment is to establish conditions under which an operator or an owner of a stripper oil well property can obtain a reduction in the royalty rate. This action is necessary in order to encourage operators of Federal stripper oil properties to place marginal or currently uneconomical shut-in oil wells back in production and to provide the economic incentive to increase production by reworking such wells, drilling new wells, and/or by implementing enhanced oil recovery projects. It contains procedures for operators to follow in determining whether a property qualifies and in calculating a royalty rate. It also contains a form with which to notify the Minerals Management Service (MMS) of participation in this program.

EFFECTIVE DATE: September 10, 1992.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, room 501 L Street Building, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 653–2127.

SUPPLEMENTARY INFORMATION: A proposed rule for royalty reduction of stripper oil properties was published in the Federal Register on March 11, 1992 (57 FR 8605), with a 30-day comment period. Comments were received from 71 sources, which included 6 industry associations, 41 industrial entities, 10 individuals, and 14 Government entities.

The majority of the comments stated that the proposal was beneficial. Fifty-three—over two-thirds of the respondents—supported the proposed rule. Five of the comments opposed the rule. The remainder primarily requested clarifications.

Several correspondents stated that they did not understand the calculations used to establish the qualifying production rate. However, several other comments stated that the calculations and procedures were simple to understand. No change is made in the final rule, but, to help alleviate confusion, additional guidance concerning the calculations and procedures will be provided at workshops the Bureau of Land Management (BLM) and MMS will conduct upon final implementation of this rule.

Many comments suggested that the proposed rule be expanded to include stripper gas wells. The Department is currently considering a similar royalty rate reduction for stripper gas well properties. However, stripper gas wells are not part of this rule.

Several comments expressed uncertainty whether the proposed rule was applicable to Indian leases. This rule applies only to Federal properties. Indian leases are not considered Federal properties for purposes of this rule, and Indian leases are not covered.

Several comments noted that the notification procedures for discontinuing the royalty reduction when oil prices reach $28 per barrel in section 3103.4–1(d)(4) were vague. We agree, and therefore the rule has been amended to provide that BLM and MMS will do the calculations and notify the affected parties if and when this price provision becomes applicable.

Several comments expressed confusion on the notification process for royalty rate calculations. The rule has been amended by adding as an appendix a sample MMS Form Identification Number MMS–4377, Stripper Royalty Rate Reduction Notification, which is to be used for this notification, and providing the appropriate address to which it should be sent.

One comment stated that the description of eligible wells in section 3103.4–1(c)(2) was not specific enough. The rule has been amended to make it clear that only wells integral to production can be counted.

Several comments indicated misunderstanding of what constitutes an injection well, as provided in section 3103.4–1(c)(4) and particularly the use of the term "fluid" in this context. "Fluid" for purposes of this regulation includes both gas and liquid and the provision has been expanded by inserting "including reservoir pressure maintenance operations" at the end of the provision.

Several comments expressed confusion concerning the term "oil well" versus "completion" as described in section 3103.4–1(c)(3). The final rule has been changed to clarify this by redefining "oil well" as an oil completion.

Several comments expressed uncertainty as to the requirements for qualification and time frames for subsequent qualification periods. The final rule has been amended at section 3103.4–1(d)(3)(i)(B) to clarify the definition of qualifying properties and the use of subsequent qualifying periods.

Several comments stated that the definition of oil well should match that of State regulatory agencies. In the interest of national uniformity, these comments are rejected. One comment stated that the definition of oil well (completion) was too restrictive and that marginal wells producing casinghead gas where the energy equivalent exceeds that of oil would not qualify under the proposed rule. Section 3103.4–1(c)(3) has been amended to include oil completions that produce less than 60 MCF of gas per day.

Some comments asked whether new wells drilled on the property would benefit from the reduced royalty rate. The intent of the rule is that all wells on a stripper well property are to be included in any royalty reduction. Reduced royalty rates are not for individual stripper oil wells but for stripper oil well properties.

Several comments asked the types of lease to which the proposed rule applies. The rule applies to every lease regardless of the royalty schedule attached to the lease. Section 3103.4–1(c)(1) has been amended to make this clear.

Several comments requested clarification of the term "producing/injection day." If a completion produces oil or injects fluids for any portion of a day, it is counted as a whole producing day. Section 3103.4–1(d)(2) has been amended to make this point clear.

Several comments suggested either an increase or a decrease in the 15-barrel threshold stated in section 3103.4–1(c)(1). Many pointed to definitions in State law or the now-repealed crude oil Windfall Profits Tax Act. The threshold is appropriate and conforms to the latest relevant congressional enactment, the Omnibus Budget Reconciliation Act of 1990, which defined marginal wells for tax purposes as those producing less than 15 barrels per day. Therefore, the 15-barrel threshold is retained in the final rule.

Several comments stated that the 5-year test period was too short for the royalty rate reduction to be effective, while another suggested that it is unnecessarily long. The 5-year period is sufficient to see whether the royalty reduction results in additional oil

production or an increase in activity. Any shorter period would unduly reduce the incentive to develop additional reserves, or engage in costly enhanced recovery. Therefore, no change was made.

Several comments questioned MMS and BLM capabilities to administer this program. The BLM and MMS are cooperating closely in the administration of the royalty rate reduction program. The MMS will have principal monitoring responsibilities. The MMS is analyzing the impacts and outlining the internal processing of the applications that it will receive. Additionally, the personnel and system resource impacts have been identified. The majority of monitoring to be done by the MMS will use existing computerized financial processing and accounting systems. The MMS and the BLM understand their respective roles and responsibilities and are confident that the program will be successfully administered.

Several comments addressed mixed ownership in properties and how this would be handled under the rule. Although all eligible wells on the property will be used in considering whether the property qualifies for royalty rate reduction, only Federal lands within a qualifying property will be eligible for the royalty reduction. Section 3103.4–1(d)(3)(ii) has been amended to clarify this issue.

A comment suggested that total production referred to in section 3103.4–1(d)(2) should include production used on the lease. The provision for calculation of total production has been amended to make it clear that it refers to all production regardless of its disposition.

Another comment was concerned that the proposal would extend to properties producing significant quantities of gas. Applicable wells include only those classified as oil wells and those producing less than 60 MCF of gas per day. However, the royalty rate reduction is only applicable to oil production. Well classifications can change during the life of a well, and BLM will review for proper well classification and production rates during the program.

One comment suggested that the rule allow for the use of Form MMS–4054 (Oil and Gas Operations Report) in lieu of Form MMS–3160 for determining the property average daily production rate. The final rule has been amended to allow the use of either Form MMS–3160 or Form MMS–4054, whichever is appropriate.

Several comments suggested that the notification and filing requirements need to be further clarified. The final rule includes specific notification instructions in section 3103.4–1(d)(3)(iii)(B) and a notification form to facilitate the filing of notices by the operators.

Some comments asked whether condensate production from oil wells, which is normally included in the oil volume as reported on Form MMS–3160, must now be excluded and reported separately. Condensate production will continue to be considered part of the oil volume for reporting purposes on Form MMS–3160. However, only oil is eligible for the royalty rate reduction.

One comment opposed this type of incentive for only a limited or special segment of the oil and gas industry, and suggested that the incentive should apply to all Federal oil properties. A royalty rate reduction for stripper oil properties is warranted in order to encourage the greatest ultimate recovery of oil from those properties. Section 39 of the Mineral Leasing Act allows royalty reduction only in cases where it is necessary to promote development or where leases cannot be successfully operated at the current royalty rate. There has been no demonstration that royalty reduction is necessary for all Federal leases, regardless of their rate of production, for these purposes.

One comment asked if the reduced royalty applicable to the Federal leases within communitization agreements or unit participating areas would be based on the qualifying status of the entire unit or communitization agreement as a property. This is correct. The property may include Indian and/or non-Federal lands for qualification purposes, but the reduced royalty only applies to the Federal leases in those agreements. Section 3103.4–1(d)(3)(ii) has been amended in the final rule to make this clear.

Several comments were received on the royalty rate formula stated in section 3103.4–1(d)(3)(ii). One comment suggested amending the formula by including oil price and operating costs differentials. This recommendation is not adopted in the final rule, because it would be overly complex and administratively cumbersome.

One comment questioned why the proposed rule counted injection wells in calculating the qualifying production rate. Injection wells are included in these calculations because, like producing oil wells, injection wells are an integral part of production operations and are used to enhance oil recovery. Therefore, they are appropriately included when computing the royalty rate.

One comment questioned the procedure for calculating applicable daily property production rates through "rounding down," exemplified in section 3103.4–1(d)(ii). Truncating decimals is an appropriate procedure, because it is consistent with the objective of providing an incentive and will be insignificant in the overall results.

One comment asked the rationale for reducing the royalty rate 0.8 percent for each barrel below 15 barrels of oil per day. The 0.8 percent represents a straight line per unit rate of decline of production from 12.5 percent to 0.5 percent; i.e., 11.7 percent is paid on 14 barrels, 10.9 percent is paid on 13 barrels, and so on. A gradual straight line reduction in royalty rate is simple to administer and should discourage manipulation of the qualifying production volumes.

One comment asked why the royalty rate was proposed in section 3103.4–1(d)(3)(iii)(C) to be capped at a reduced rate as determined from the initial qualifying period. The royalty rate will not increase beyond the rate established in the qualifying period, regardless of the amount of future production, in order to provide a continuing incentive to operators to increase investment in their oil properties and to obtain additional oil production over the entire life of the program.

One comment asked about the possibility of manipulation of lease operations in order to obtain the benefits of a royalty rate reduction. Manipulation of lease operations is possible. In coordination with MMS, BLM will be monitoring production and investigating anomalies. Lessees found to have manipulated production figures will be dropped from the program as provided in section 3103.4–1.(d)(3)(iv).

One comment asked why there is no regulatory language limiting the program to 5 years. The intent of the rule is not to limit this program to 5 years but merely to review it after 5 years. However, a provision has been added to the final rule in section 3103.4–1.(d)(3)(iv) allowing the Secretary to terminate the royalty reduction program at any time after 5 years.

Several comments questioned why the threshold for royalty rate reduction is set at $28 a barrel. This amount is an appropriate economic cutoff for the royalty rate reduction; it was used in the Omnibus Budget Reconciliation Act of 1990 tax revisions for marginal wells that had similar objectives.

Several comments asked why we did not address the deficiencies in the current royalty rate reduction process found at 43 CFR 3103.4–1 instead of proposing an across-the-board royalty rate reduction. Streamlining the current

process was considered, but the method adopted in the final rule will provide more of an incentive to operators to continue to produce these stripper oil properties by allowing them to make a profit and not just break even as required by the current regulations.

Several comments requested clarification of the term "routine operational and economic factors" as used in section 3103.4–1(d)(3)(iv). The Department interprets these as normal activities related to oil field operations and clearly not being conducted for the purpose of manipulating production. There is no need for further clarification of this provision, as the words used are used in their common, everyday meaning.

Several comments were received from State agencies about the possible Federal and State revenue losses that will result from the proposed royalty rate reduction. These comments typically reflected concern that the royalty rate reduction will merely generate a large initial Federal and State royalty loss with little offsetting royalty and tax gain from a projected subsequent increase in production. The comments also indicated the related concern that administrative costs and problems will be greater than anticipated and that these costs will be passed on to the States. The following are examples of these concerns. One agency calculated the most favorable combined Federal and State revenue loss at a substantial $20 million and did not consider offsetting this with Federal and State tax gains. Similarly, another predicted that the combined royalty loss will be around $29 million because it does not expect offsetting royalty and tax revenues from production increases. It also predicted that the costs of administering the program will be much larger than expected. A third State official stated that the projected increase in crude oil production as a result of the royalty reduction will not occur as predicted, so that the royalty reduction will fail to produce tax and royalty increases to help offset the initial loss.

Likewise, another State office stated that the projections of production increases from the royalty rate reduction were too optimistic and predicted less tax and revenue offsets to the initial royalty loss. It noted, for example, that a substantial part of the royalty reduction in one State will go to a few old, large oil fields that cannot be expected to increase oil production over what is currently, being produced.

The Department of the Interior recognizes that there will be some royalty losses to Federal and State Governments and estimated these losses to determine their possible magnitude. The Secretary chose to use royalty reduction specifically in order to increase recovery of the oil and gas resource to benefit the public interest rather than to maximize revenues to the Federal and State governments, and is fully authorized to do so by Section 39 of the Mineral Leasing Act, which was amended in 1946 to increase the Secretary's discretion in this regard. The Department estimated there to be a likely Federal gain from the royalty reduction program of $3.3 million, the States' loss to be $6 million and the benefit to the industry, largely from increased production, to be $49.1 million. The accuracy of these estimates is dependent on the production response of the industry, but the estimates are believed to be reasonable based on the results of simulating a similar royalty reduction for the Federal portion of the New Mexico reservoirs in the Department of Energy's (DOE) Tertiary Oil Recovery Information System (TORIS) model. The difference in impact on the State and Federal governments is not a product of any feature of the rule. The net State losses, from their share of the reduced Federal royalties, are not offset to the same extent as Federal losses, because State tax rates are generally lower than Federal rates. Furthermore, the indirect benefits associated with increased production, such as continued or increased employment in local communities, will help offset losses.

In the face of this disagreement over estimates between the comments and Department, the estimates have been re-examined. After further review, we find our estimates reasonable and find no reason to revise them. There is a risk that the losses will come in higher (or lower) than our estimates, but we view this as an acceptable risk in attempting to stimulate the production of Federal stripper oil leases and ensure that the maximum amount of economically recoverable oil is obtained from the reservoir.

One comment suggested that the abandonment rate described in the proposal was not significant enough to justify the proposed relief. The abandonment rate alone may not serve as an accurate indicator of the economy of the industry because many wells are shut-in while awaiting abandonment and are not counted as abandoned: There are 6,000 shut-in wells and 3,000 temporarily abandoned wells on Federal lands as of September 30, 1991, accounting for over 25 percent of all wells on Federal lands. The increases in recoverable reserves and production indicated by the DOE's "TORIS" model demonstrate that development would be promoted through this relief.

One comment questioned the statement in the preamble of the proposed rule that money currently spent in abandoning wells can instead be used toward production, noting that operators will eventually need to abandon wells and will retain funds therefor. It is true that the reduction will not eliminate the ultimate need to abandon the well. However, it will allow for increased cash flow at the present time by avoiding simultaneous abandonment of many wells and by generating revenue from additional production.

One comment stated that the Department proposes to count all wells "drilled in the earth" in determining the eligibility of a property. The rule provides for counting only those wells that produced or that had fluid injected into them during the qualifying or subsequent 12-month period.

Some comments stated that the proposal to use historical information to determine eligibility would allow operators who are currently economically healthy to be eligible for relief. There may be some isolated cases that can fall into this category, but it is unlikely that there would be a significant change in production in the brief time from the qualifying period to the present. Furthermore, the use of the qualifying period is administratively simple, can be implemented without any new administrative mechanism, and discourages manipulation.

One comment stated that on the one hand, the proposal served to discourage, not encourage, increased production, while on the other hand, it also locks in relief to properties that may have future production increases such that they no longer meet initial qualification production levels. Operators would not likely reduce their production and subsequent revenues to obtain a lower royalty rate, because the use of a linear sliding scale minimizes any gains from lower royalties, and the cost of such manipulation of production would outweigh those small royalty gains. Additionally, a property will enjoy the benefit of the relief even when its production rose above the stripper level. The rationale for this relief is to encourage investment to promote development and sustain increased production.

One comment stated that the rule provided no justification for allowing the lessee to retain the reduced rate for 6 months after the market has reached $28.00/bbl, as provided in section

3103.4–1(d)(4). A 6-month period is necessary to allow the lessee to adjust operations to take into account the higher royalty rate.

One comment stated that the royalty reduction would not minimize the necessity of drilling new wells. The proposed rule did not imply that new wells may not be needed for extension of current reservoirs or the development of new reservoirs, but rather proposed a royalty reduction that will allow existing wells to have extended production lives, and will minimize the need to drill replacement wells in existing reservoirs.

One comment expressed concern that some major producers who have de-emphasized their investment in domestic exploration and production would receive substantial benefits under the proposed royalty reduction rate. The proposed royalty reduction rate will provide incentives for current domestic producers to increase production as well as an incentive for a continued emphasis on domestic exploration and production. The analysis undertaken by the Department of Energy found the royalty reduction will stimulate a 29 percent increase in production from stripper wells on Federal lands.

One comment suggested that relief to Federal leaseholders alone in unfair to private stripper well operators. It is beyond the Department's authority to provide relief to private holdings. The relief provided to Federal lessees will not affect the competitive position of any other producer, the production from Federal stripper well properties not being large enough to affect the world price of oil or other costs of production.

One comment noted that lessees would be entitled to relief even if they chose to shut-in or abandon wells. The Department never intended to prevent all abandonment, but the role provides an incentive to producers for more complete recovery of remaining reserves.

One comment noted that the use of the 12-month period ending July 31, 1991, as the initial qualifying period in section 3103.4–1(d)(3)(i)(B) may permit lessees to use shut-in wells to determine their eligibility even if they currently would not meet the definition of well properties. The number of properties in which such shut-ins have occurred is not significant in comparison to the benefits afforded by using historical data.

One comment stated that the average cost savings per property would be insufficient to promote development. Another stated that other factors, such as pricing and environmental concerns, have a greater impact on the operator's decision to continue production. The Department's estimate, based on DOE's TORIS Model, is that there will be an increase of 4.7 million barrels in the oil produced per year. While this rule does not address all of the relevant factors, it will have a very significant impact.

One comment noted that the rule does not assert that all Federal stripper well properties qualify for relief under the standards of Section 39. The class of eligible wells defined in this rule reasonably approximates the class in which there is a substantial probability that recoverable reserves will be produced that otherwise would not be produced because of the margin of profitability at the market price and current royalty rates that have prevailed over the last 5 years. Therefore, the relief provided by the rule encourages the greatest ultimate recovery and promotes development of marginal properties, so that this rule is consistent with the statute. Further, timely achievement of this increased recovery would not be possible if royalty reduction requests for these well properties are processed on a property-by-property basis under the existing regulations, because many of the operators may have to shut-in wells before all such requests could be prepared, analyzed, and approved.

One comment questioned the Department's ability to detect manipulation due to the current MMS audit procedures focusing on larger producing properties. The strategy for detecting manipulation does not depend on royalty audit, but it will be focused on identifying anomalies in production levels.

Two comments stated that the finding in the regulatory preamble is insufficient to support the exercising of the Secretary's authority under section 39 of the Mineral Leasing Act (MLA), as amended. One comment questioned the Department's authority for granting royalty relief simultaneously to all stripper well properties. The royalty rate reduction is necessary to promote development of the substantial majority of stripper oil well properties that cannot economically be fully developed at the current royalty rate and market price. As noted in the preamble of the proposed rule, stripper well production is important to maintaining United States production, which has been declining during the last 5 years. Also, there has been an increase in the number of shut-in and abandoned wells. In light of this, and the modeling of the Department of Energy, the Department estimates that the royalty rate reduction will increase production from stripper well leases by 4.7 million barrels of oil per year over the test period. These findings meet the requirements in Section 39 of the MLA, which allows the Secretary to grant royalty rate reductions "for purposes of encouraging the greatest ultimate recovery of * * * oil * * * and in the interest of conservation of natural resources * * * whenever in his judgment it is necessary to do so in order to promote development * * *."

One comment challenged the adequacy of the Secretary's findings to support "nationwide" royalty rate reductions, citing the Interior Board of Land Appeals (IBLA) decision in *Peabody Coal Co.*, 93 IBLA 317 (1986), for the proposition that there must be a showing of "a reasonable probability operation would cease or development, recovery, or conservation of the resources would be jeopardized." 93 IBLA at 327. The rule does not comprise a nationwide royalty rate reduction, but rather provides for reductions targeted on properties with marginal production in which the economics of operating at today's oil prices while paying full royalties dictate abandonment before technically recoverable resources have been produced. There is a reasonable probability that recovery would be jeopardized or operations cease, based on actual experience and projections of the DOE TORIS model. The correspondent's interpretation of *Peabody* was rejected by the Interior Board of Land Appeals in *State of Wyoming*, 117 IBLA 316, 322, affirmed U.S. Dist. Ct. (Wyo.) No. CV–0097–B, filed December 16, 1991, in which IBLA stated:

> The State has also urged that the Department has consistently interpreted 30 U.S.C. 209 (1988) to allow a royalty reduction to promote development *only when the development could not otherwise economically occur.* * * * Neither the statute nor the regulations limit the Secretary's discretion to this criterion. Nor did we hold in *Peabody* or any other Board decision that the *only* circumstance authorizing royalty reduction to promote development is when development cannot otherwise economically occur. To so hold would render the section 209 language "whenever * * * necessary * * * to promote development" meaningless. As noted in Solicitor's Opinion, M–36920, 87 I.D. at 73, this language was added to section 209 "as an *alternative* to finding that the lease 'cannot be successfully operated' " and gave the Secretary "*greater* discretion in granting relief." (Emphasis added.)

A comment suggested that it may be in the national interest to allow wells to remain shut-in to await better economics to resume production. The comment also faulted the Department for not showing what percentage of Federal leases are at risk of permanent

loss of production or the "break point" for economic survival of a lease. The comment further accused the Department of seeking the reduction to test the effect of royalty reduction without a rational basis at this time for determining the amount of reduction "necessary" for development. The comments are not adopted in the final rule. The national interest is not served by shutting in wells prematurely. Either such wells are left unplugged with the attendant risk to the environment, or they are permanently plugged making re-entry a proposition far too expensive for stripper well production rates. Leaving wells shut-in for long periods of time increases the risk of damaging the reservoir and fresh water zones because of possible casing deterioration or other factors, as well as possibly making it cost prohibitive to re-enter either to resume production or to plug and abandon the well permanently. The proposed rule did show that an appreciable percentage of producing Federal leases (15,500 of 23,000) were stripper wells at risk of permanent loss of production under current market conditions. The breakpoint for such stripper properties varies with the level of production, and therefore the Secretary has decided to adopt a sliding scale for determining the appropriate royalty at each level of production.

A comment suggested that the Secretary is limited to reducing royalties on a property-by-property basis upon application of the lessee and a specific showing of hardship or need, because otherwise the power to reduce royalties would infringe the responsibility of Congress to establish minimum royalty rates. For this proposition, the comment relied on provisions of the original section 17 of the Mineral Leasing Act concerning stripper wells that have since been repealed. The comment also relied heavily on the legislative history of a 1982 amendment of section 30 creating a royalty reduction mechanism for relinquished leases. The reduction is approved on the terms of a 1946 amendment of section 39 authorizing reductions the Secretary determines to be necessary to promote development. Neither provisions long since repealed nor provisions added to another part of the law 35 years later provide guidance, much less govern, with respect to the meaning of the 1946 language of section 39. Section 39 itself does not limit the Secretary to lease-by-lease determinations. Nor, as suggested by the comment, should the existing regulations establishing one mechanism for royalty rate reduction be read to limit the Secretary to that mechanism alone, when the Secretary finds a determination for a class or group of leases to be appropriate in the interest of maximizing ultimate recovery from those leases. In exercising discretionary authority under section 39, the Secretary is not bound to observe the minimum royalties specified in statute. *Solicitor's Opinion, Reduction of Production Royalties Below Statutory Minimum*, M–36920, 87 I.D. 69 (1979).

Determination

After consideration of the comments received, it is determined that a royalty reduction on oil from low production leases is necessary to promote development, encourage the greatest ultimate recovery of oil, and serve the interest of conserving natural resources. The national interest would be served, in a time of increasing dependence on imported fuel and a weak domestic oil industry, by greater production from present Federal oil leases of the oil that it is technically feasible to produce. A significant number of leases with production averaging less than 15 barrels per well-day contain wells that have been shut in or abandoned over the last 5 years from which additional oil could have been recovered. The expected cumulative effect of premature abandonments and foregone investments in enhanced recovery or new drilling on stripper well properties will diminish United States production 4.7 million barrels below what can be achieved by adoption of this rule. At the low market prices for crude oil that have prevailed for the last 5 years and that are expected in the next few years, the current royalty rate does not permit a profit margin on low production wells that makes it economical to maximize oil recovery. In addition, the incentive to produce incremental oil declines as the average daily production falls.

This determination is based on an analysis of the DOE's Tertiary Oil Recovery Information System modeling of certain reservoirs with stripper oil properties undertaken at the request of the Department of the Interior. The modeling indicated that there will be an increase in production of 4.7 million barrels per year if this royalty reduction initiative is adopted. Accordingly, establishing sliding scale royalty reduction rates, progressively reducing the royalty rate as average production declines below 15 barrels a day, will delay the abandonment of stripper wells, secure additional production therefrom, and increase the level of production from stripper properties by creating incentives for additional drilling and enhanced recovery programs. This determination is consistent with Congress' decision in the 1990 Omnibus Budget Reconciliation Act to afford tax relief to operators of stripper well properties. Furthermore, timely action to prevent premature abandonment, with the attendant risks of damage to reservoirs and costs of re-entry, requires immediately offering relief to all properties producing less than 15 barrels per well-day rather than relying on property-by-property determinations.

The principal author of this final rule is Joe Lara of the Division of Fluid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, BLM, and the MMS.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and appendix 5, Item 5.4.B(6), and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic

impact on a substantial number of small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not allow or require the taking of any property without due process. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement(s) contained in § 3103.4–1 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers 1004–0145 and 1010–0090.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 1(a) and 2(b)(2) of Executive Order 12778.

List of Subjects for 43 CFR Part 3100

Land Management Bureau, Public Lands—Mineral resources, Oil and gas production, Mineral royalties.

For the reasons stated in the Preamble, and under the authorities cited below, part 3100, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: August 4, 1992.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

PART 3100—ONSHORE OIL AND GAS LEASING; GENERAL

1. The authority citation for part 3100 is revised to read as follows:

Authority: 30 U.S.C. 181, *et seq.*, 30 U.S.C. 351–359.

Subpart 3103—Fees, Rentals and Royalty

2. Section 3100.0–9 is added to read as follows:

§ 3100.0–9 Information collection.

(a)(1) The collections of information contained in § 3103.4–1(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and are among the collections assigned clearance number 1004–0145. The information will be used to determine whether an oil and gas operator or owner may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for the information collections assigned clearance number 1004–0145 is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0145, Washington, DC 20503.

(b)(1) The collections of information contained in § 3103.4–1(c) and (d) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0090. The information will be used to determine whether an oil and gas lessee may obtain a reduction in the royalty rate. Response is required to obtain a benefit in accordance with 30 U.S.C. 181, *et seq.*, and 30 U.S.C. 351–359.

(2) Public reporting burden for this information is estimated to average ½ hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service (Mail Stop 2300), 381 Elden Street, Herndon, VA 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project, 1010–0090, Washington, DC 20503.

3. Section 3103.4–1 is amended by redesignating paragraphs (c) and (d) as paragraphs (b)(3) and (e) respectively, revising paragraph (b)(1), and adding new paragraphs (c) and (d) to read as follows:

§ 3103.4–1 Waiver, suspension, or reduction of rental, royalty, or minimum royalty.

* * * * *

(b)(1) An application for the above benefits on other than stripper oil well properties shall be filed in the proper BLM office. It shall contain the serial numbers of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of lands by legal subdivision and a description of the relief requested.

* * * * *

(c)(1) A stripper well property is any Federal lease or portion thereof segregated for royalty purposes, a communitization agreement, or a participating area of a unit agreement, operated by the same operator, that produces an average of less than 15 barrels of oil per eligible well per well-day for the qualifying period.

(2) An eligible well is an oil well that produces or an injection well that injects and is integral to production for any period of time during the qualifying or subsequent 12-month period.

(3) An oil completion is a completion from which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced (including the entrained liquid hydrocarbons) or any completion producing oil and less than 60 MCF of gas per day.

(4) An injection well is a well that injects a fluid for secondary or enhanced oil recovery, including reservoir pressure maintenance operations.

(d) Stripper oil well property royalty rate reduction shall be administered according to the following requirements and procedures.

(1) An application for the benefits under paragraph (a) of this section for stripper oil well properties is not required.

(2) Total oil production (regardless of disposition) for the subject period from the eligible wells on the property is totaled and then divided by the total number of well days or portions of days, both producing and injection days, as reported on Form MMS–3160 or MMS–4054 for the eligible wells to determine the property average daily production rate. For those properties in communitization agreements and participating areas of unit agreements that have allocated (not actual) production, the production rate for all eligible well(s) in that specific communitization agreement or participating area is determined and shall be assigned to that allocated property in that communitization agreement or participating area.

(3) Procedures to be used by operator:

(i) Qualifying determination.

(A) Calculate an average daily production rate for the property in order to verify that the property qualifies as a stripper property.

(B) The initial qualifying period for producing properties is the period August 1, 1990, through July 31, 1991. For the properties that were shut-in for 12

consecutive months or longer, the qualifying period is the 12-month production period immediately prior to the shut-in. If the property does not qualify during the initial qualifying period, it may later qualify due to production decline. In those cases, the 12-month qualifying period will be the first consecutive 12-month period beginning after August 31, 1990, during which the property qualifies.

(ii) Qualifying royalty rate calculation. If the property qualifies, use the production rate rounded down to the next whole number (e.g., 6.7 becomes 6) for the qualifying period, and apply the following formula to determine the maximum royalty rate for oil production from the Federal leases for the life of the program.

Royalty Rate (%) = 0.5 + (0.8 × the average daily production rate)

The formula-calculated royalty rate shall apply to all oil production (except condensate) from the property for the first 12 months. The rate shall be effective the first day of the production month after the Minerals Management Service (MMS) receives notification. If the production rate is 15 barrels or greater, the royalty rate will be the rate in the lease terms.

(iii) Outyears royalty rate calculations.

(A) At the end of each 12-month period, the property average daily production rate shall be determined for that period. A royalty rate shall then be calculated using the formula in paragraph (d)(3)(ii) of this section.

(B) The new calculated royalty rate shall be compared to the qualifying period royalty rate. The lower of the two rates shall be used for the current period provided that the operator notifies the MMS of the new royalty rate. The new royalty rate shall not become effective until the first day of the month after the MMS receives notification. Notification shall be received on Form MMS–4377 and mailed to Minerals Management Service, P.O. Box 17110, Denver, CO 80217. If the operator does not notify the MMS of the new royalty rate within 60 days after the end of the subject 12-month period, the royalty rate for the property shall revert back to the royalty rate established as the qualifying period royalty rate, effective at the beginning of the current 12-month period.

(C) The royalty rate shall never exceed the calculated qualifying royalty rate for the life of this program.

(iv) Prohibition. For the qualifying period and any subsequent 12-month period, the production rate shall be the result of routine operational and economic factors for that period and for that property and not the result of production manipulation for the purpose of obtaining a lower royalty rate. A production rate that is determined to have resulted from production manipulation will not receive the benefit of a royalty rate reduction.

(v) Certification. The applicable royalty rate shall be used by the operator/payor when submitting the required royalty reports/payments to MSS. By submitting royalty reports/payments using the royalty rate reduction benefits of this program, the operator certifies that the production rate for the qualifying and subsequent 12-month period was not subject to manipulation for the purpose of obtaining the benefit of a royalty rate reduction, and the royalty rate was calculated in accordance with the instructions and procedures in these regulations.

(vi) Agency action. If a royalty rate is improperly calculated, the MMS will calculate the correct rate and inform the operator/payors. Any additional royalties due are payable immediately upon notification. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102. The BLM may terminate a royalty rate reduction if it is determined that the production rate was manipulated by the operator for the purpose of receiving a royalty rate reduction. Terminations of royalty rate reductions will be effective on the effective date of the royalty rate reduction resulting from the manipulated production rate (i.e., the termination will be retroactive to the effective date of the improper reduction). The operator/payor shall pay the difference in royalty resulting from the retroactive application of the unmanipulated rate. Late payment or underpayment charges will be assessed in accordance with 30 CFR 218.102.

(4) The royalty rate reduction provision for stripper well properties shall be effective as of October 1, 1992. If the oil price, adjusted for inflation by BLM and MMS, using the implicit price deflator for gross national product with 1991 as the base year, remains on average above $28 per barrel, based on West Texas Intermediate crude average posted price for a period of 6 consecutive months, the benefits of the royalty rate reduction under this section may be terminated upon 6 months' notice, published in the Federal Register.

(5) The Secretary will evaluate the effectiveness of the stripper well royalty reduction program and may at any time after September 10, 1997, terminate any or all royalty reductions granted under this section upon 6 months notice.

(6) The stripper well property royalty rate reduction benefits shall apply to all oil produced from the property.

(7) The royalty for gas production (including liquids produced in association with gas) for oil completions shall be calculated separately using the lease royalty rate.

(8) If the lease royalty rate is lower than the benefits provided in this stripper oil property royalty rate reduction program, the lease rate prevails.

(9) The minimum royalty provisions of § 3103.3–2 apply.

(10) Examples.

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Royalty Rate (RR) Reduction
Example 1: Immediate Qualification

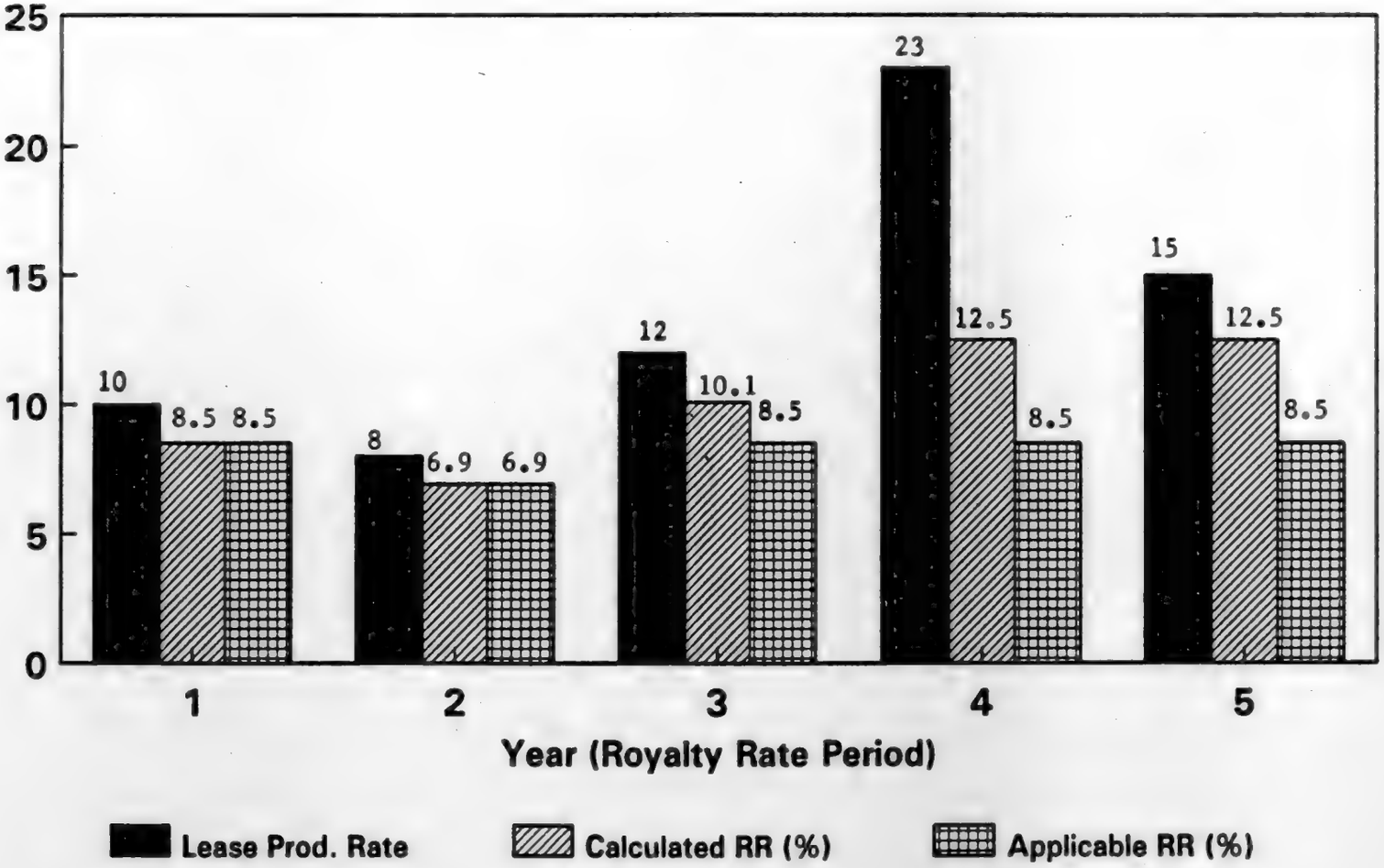

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Explanation, Example 1

1. Property production rate per well for qualifying period (August 1, 1990–July 31, 1991) is 10 barrels of oil per day (BOPD).

2. Using the formula, the royalty rate for the first year is calculated to be 8.5 percent. This rate is also the maximum royalty rate for the life of the program.

$8.5\% = 0.5 + (0.8 \times 10)$

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated at 6.9 percent. Since 6.9 percent is less than the first year rate of 8.5 percent, 6.9 percent is the applicable royalty rate for the second year.

$6.9\% = 0.5 + (0.8 \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 8.5 percent first year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 8.5 percent.

$10.1\% = 0.5 + (0.8 \times 12)$

7. Production rate for the third year is 23 BOPD.

8. Since the production rate of 23 BOPD is greater than the 15 BOPD threshold for the program, the calculated royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the property rate, the royalty rate for the fourth year is 8.5 percent.

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the property royalty rate. However, since the 8.5 percent first year royalty rate is less than the lease rate, the royalty rate for the fifth year is 8.5 percent.

BILLING CODE 4310-84-M

Royalty Rate (RR) Reduction
Example 2: Subsequent Qualification

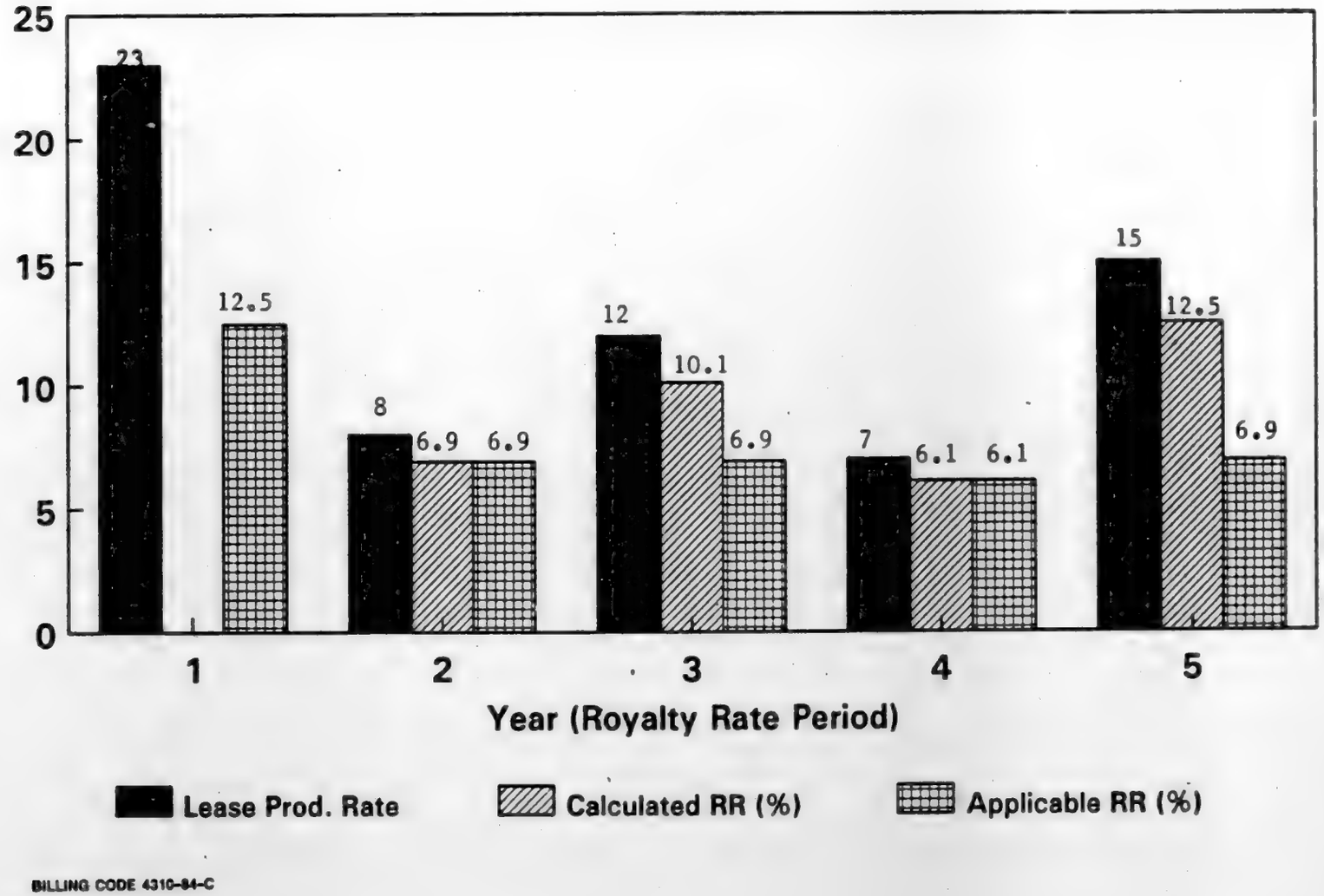

BILLING CODE 4310-84-C

Explanation, Example 2

1. Property production rate of 23 BOPD per well (for the August 1, 1990–July 31, 1991, qualifying period prior to the effective date of the program) is greater than the 15 BOPD which qualifies a property for a royalty rate reduction. Therefore, the property is not entitled to a royalty rate reduction for the first year of the program.

2. Property royalty rate for the first year is the rate as stated in the lease.

3. Production rate for the first year is 8 BOPD.

4. Using the formula, the royalty rate is calculated to be 6.9 percent for the second year. This rate is also the maximum royalty rate for the life of the program.

$6.9\% = 0.5 + (0.8 \times 8)$

5. Production rate for the second year is 12 BOPD.

6. Using the formula, the royalty rate is calculated at 10.1 percent. Since the 6.9 percent second year royalty rate is less than 10.1 percent, the applicable royalty rate for third year is 6.9 percent.

$10.1\% = 0.5 + (0.8 \times 12)$

7. Production rate third year is 7 BOPD.

8. Using the formula, the royalty rate is calculated at 6.1 percent. Since the 6.1 percent third year royalty rate is less than the qualifying (maximum) rate of 6.9 percent, the royalty rate for the fourth year is 6.1 percent.

$6.1\% = 0.5 + (0.8 \times 7)$

9. Production rate for the fourth year is 15 BOPD.

10. Since the production is at the 15 BOPD threshold, the royalty rate would be the lease royalty rate. However, since the 6.9 percent second year royalty rate is less than the lease rate, the royalty rate for the fifth year is 6.9 percent.

Appendix:

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U.S. DEPARTMENT OF THE INTERIOR

STRIPPER ROYALTY RATE REDUCTION NOTIFICATION

NOTE: Reduced Royalty Rate is not effective until the month after this notification is received by the Minerals Management Service. See 43 CFR Part 3100 for complete instructions.

OPERATOR NAME: _____ DATE SUBMITTED _____

OPERATOR NUMBER: _____

PERSON TO CONTACT _____ (AREA CODE) _____ (TELEPHONE NUMBER) _____ (EXTEN.)

LEASE NUMBER(S)	AGREEMENT NUMBER \1	QUALIFYING OR CURRENT PERIOD \2	QUALIFYING ROYALTY RATE	CURRENT ROYALTY RATE \3	EFFECTIVE DATES

VOL
57
SS
1
5
5
AG
11
992
UMI

Rea

INFOR

Federa
Index,
Public
Correct
Docum
Machin

Code o
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Printing

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The Un
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TDD fo

FEDERA

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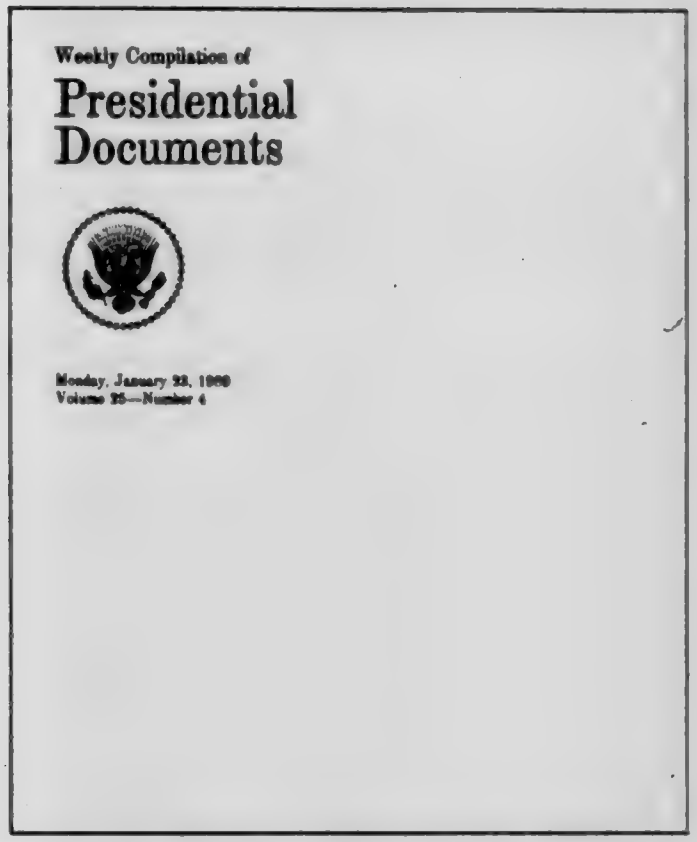

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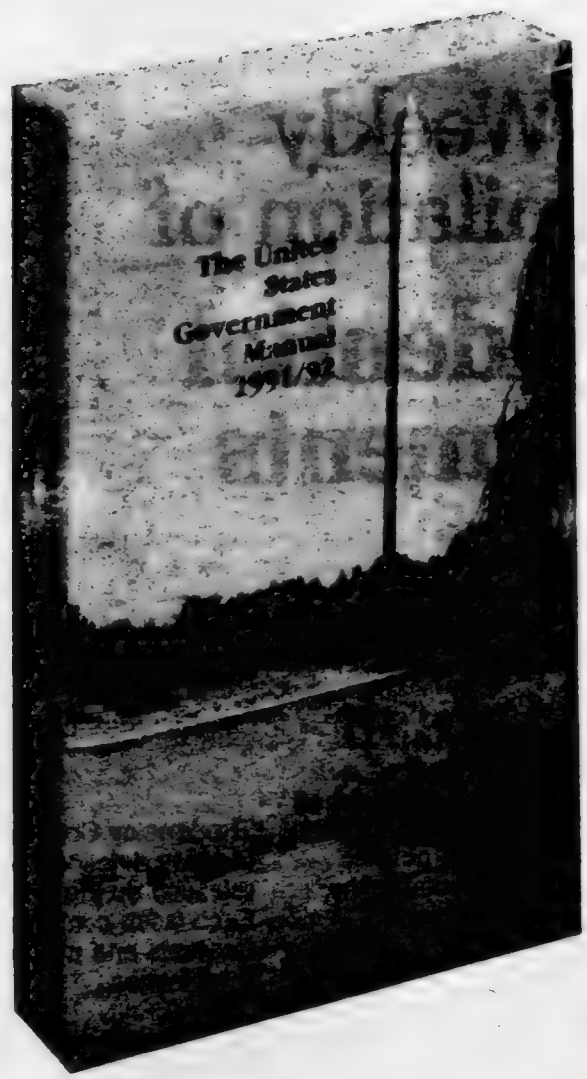

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Vol. 57 No. 156
Pages 35981-36350

federal register

Wednesday
August 12, 1992

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Rules and Regulations

Federal Register
Vol. 57, No. 156
Wednesday, August 12, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 088CE, Special Condition 23-ACE-57]

Special Condition; Slingsby T67-M260 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition.

SUMMARY: This special condition is being issued for the Slingsby T67-M260 airplane. The airplane will have a novel and unusual design feature when compared to the state of technology envisaged in the airworthiness standards of 14 CFR part 23 of the Federal Aviation Regulations (FAR). This novel and unusual design feature is the use of composite materials for primary flight structure, for which the regulations do not contain adequate or appropriate airworthiness standards. This final special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 23.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Type Certification Basis

The type certification basis for the Slingsby T67-M260 is: part 21 of the FAR, § 21.29; part 23, effective February 1, 1965, as amended by amendments 23-1 through 23-42, effective February 4, 1991; part 36, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any; and this special condition.

Background

On December 19, 1989, Slingsby Aviation, of Kirkbymoorside, Yorkshire, United Kingdom, made application to the FAA for a type certificate for the Slingsby T67-M260 airplane. The T67-M260 is a single-engine, two place, side-by-side, low wing, all composite airframe, fixed landing gear airplane to be certificated in the acrobatic category.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Slingsby T67-M260 airplane contains a novel and unusual design feature not envisaged by the applicable part 23 airworthiness standards. A special condition is considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the airplane.

The Slingsby T67-M260 airframe is made of advanced composite material and is assembled by the extensive use of bonding. Composite materials as used in airplane airframes at this time are typically more susceptible, than commonly used aluminum structure, to damage from intrinsic and discrete sources that might adversely influence strength properties. Because of this and other factors, it is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Furthermore, because of the lack of a service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as (a) residual strength load with large area manufacturing defects (e.g., understrength bonds) and impact damage from discrete sources, and (b) ability to carry ultimate load with realistic impact damage below the threshold of detectability and material environmental exposure effects.

Discussion of Comments

Notice of Proposed Special Condition, Docket No. 088CE, Notice No. 23-ACE-57 (57 FR 12242, April 9, 1992) proposed a special condition for the Slingsby T67-M260 airplane. The comment period closed May 11, 1992.

No comments pertaining to the notice were received. The special condition, as proposed by Notice No. 23-ACE-57, is issued without change except to revise paragraph 1(f) to correct inadvertent omissions in the notice.

Conclusion

In view of the design feature discussed above, the following special condition is issued for the Slingsby T67-M260 airplane, under the provisions of § 21.16, to provide a level of safety equivalent to that intended by the applicable regulations. This action is not a rule of general applicability and affects only the model of airplane identified in the special condition.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for this special condition is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49(b).

Adoption of the Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Slingsby T67-M260 airplane:

1. Evaluation of Composite Structure

Instead of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in a catastrophic loss of the

airplane, in each wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) Each wing, wing carry-through, wing attaching structure, vertical stabilizer horizontal stabilizer, horizontal stabilizer carry-through and attaching structure, wing flaps, and all movable control surfaces, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) Instead of a non-destructive inspection technique that assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

Issued in Kansas City, Missouri on August 4, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19223 Filed 8–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–08–AD; Amendment 39–8317; AD–92–16–08]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes equipped with certain emergency escape system packboards, that requires replacing the plastic pulley guards installed on the emergency escape slide system packboards with metal ones. This amendment is prompted by a recent emergency evacuation, during which a broken plastic pulley guard caused the release cable to come loose from the pulley before the escape system released from the packboard; this caused the passenger door to jam in the partially open position, preventing the exit door from being used. The actions specified by this AD are intended to prevent jamming of the passenger door, which could delay the egress of passengers in the event of an emergency evacuation.

DATES: Effective September 16, 1992

ADDRESSES: The service information referenced in this AD may be obtained from Air Cruisers Company P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2784; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 747 series airplanes equipped with certain emergency escape system packboards was published in the **Federal Register** on March 12, 1992 (57 FR 8734). That action proposed to require replacing the plastic pulley guards installed on the emergency escape slide system packboards with metal ones.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter asks that the rule permit operators to use a new service bulletin, recently released by Air Cruisers Company, as a source of service information for procedures relevant to replacing the plastic pulley guards on slides/rafts installed in accordance with Supplemental Type Certificate (STC) SA1215EA. The FAA concurs. The FAA has reviewed and approved Air Cruisers Service Bulletin 25–139, Revision 1, dated September 18, 1991, that describes procedures for replacing the plastic pulley guards on slides/rafts installed in accordance with STC SA1215EA. A new paragraph (b) has been added to the final rule to address this STC installation and the Air Cruisers service document.

One commenter states that Boeing has indicated to operators that it is developing a new service bulletin with specific procedures for replacing the plastic pulley guards with metal ones.

The commenter states that Boeing Service Bulletin 747–25–2996 is scheduled for release on November 5, 1992, and that the required replacement parts will not be available until February 1993. The commenter requests that the compliance time be extended from the proposed 9 months to at least 24 months, so that the compliance time can match up with parts availability. The FAA concurs in part. Boeing has advised the FAA that Boeing Service Bulletin 747–25–2996 will be ready for release on September 24, 1992, and that the required replacement parts will be available on October 28, 1992. When this service bulletin is approved and available, the FAA may consider approving its use as an alternative method of compliance with this AD. In the meantime, the FAA has determined that extending the compliance time to 20 months will alleviate potential parts availability problems and will not adversely affect safety. The final rule has been revised to specify a compliance time of 20 months.

Two commenters note that the applicability statement of the notice contains a typographical error. The referenced service bulletin number was cited incorrectly as Boeing Service Bulletin "747–25–2131." The correct service bulletin number is "747–25–2132." The FAA acknowledges the error and has corrected the applicability statement accordingly.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 200 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $487,500. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–16–08. Boeing: Amendment 39–8317. Docket 92–NM–08–AD.

Applicability: Model 747 series airplanes; equipped with escape slides listed in Boeing Service Bulletin 747–25–2132, dated September 17, 1971; or equipped with escape systems installed in accordance with Supplemental Type Certificate SA574GL, SA575GL, SA744GL, SA745GL, or SA1215EA; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of an emergency exit door, accomplish the following:

(a) For airplanes equipped with escape slides listed in Boeing Service Bulletin 747–25–2132, dated September 17, 1971; and for airplanes equipped with escape systems installed in accordance with Supplemental Type Certificate (STC) SA574GL, SA575GL, SA744GL, or SA745GL: Within 20 months after the effective date of this AD, replace the plastic pulley guards on the emergency slide system packboard release mechanism, Boeing part number (P/N) 69B51507–1 and –2, with metal pulley guards, Boeing P/N 69B54562–1 and –2, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) For airplanes equipped with escape systems installed in accordance with STC SA1215EA: Within 20 months after the effective date of this AD, replace the plastic pulley guards on the emergency slide system packboard release mechanism, Boeing part number (P/N) 69B51507–1 and –2, with metal pulley guards, Boeing P/N 69B54562–1 and –2, in accordance with Air Cruisers Service Bulletin 25–139, Revision 1, dated September 18, 1991; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on September 16, 1992.

Issued in Renton, Washington, on July 10, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19226 Filed 8–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–5]

Establishment of Control Zone, Greenville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Greenville, NC Control Zone. This action lowers the floor of controlled airspace from 700 feet above the surface to the surface in vicinity of the Pitt-Greenville Airport to provide additional controlled airspace for Instrument Flight Rules (IFR) aeronautical operations. The airspace below 200 feet MSL within a .25

NM radius of the Pitt County Memorial Hospital Heliport and the airspace below 200 feet MSL between the 200° and 260° bearings from the heliport is excluded from the control zone in the final rule to accommodate Emergency Medical Service (EMS) operations in/out of the heliport.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On May 13, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Greenville, NC Control Zone (57 FR 20433). The proposed action would lower the base of controlled airspace from 700 feet above the surface to the surface in vicinity of the Pitt-Greenville Airport to provide additional controlled airspace for IFR aeronautical operations. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments were received from representatives of the Pitt County Memorial Hospital and Rocky Mountain Helicopters, Inc., the certificate holder for EMS helicopter operations at the hospital.

The Pitt County Memorial Hospital serves as the only Level One Trauma Center in Eastern North Carolina and reportedly, the majority of patients being flown in are in very critical condition. The hospital heliport (NC91) is located within the proposed control. Concern was expressed by both respondents that there be no delays in administering life-saving treatment due to conflicts with IFR traffic or delay in obtaining IFR or Special Visual Flight Rules (SVFR) clearances. This amendment is the same as that proposed in the original notice except that the airspace below 200 feet MSL within a .25 NM radius of the hospital heliport and the airspace below 200 feet MSL between the 200° and 260° bearings from the heliport has been excluded from the original proposal. This will permit time critical EMS helicopter flights ingress/egress to/from the Pitt County Memorial Hospital Heliport without undue delay. Control Zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Greenville, NC Control Zone. This action lowers the base of controlled airspace from 700 feet above the surface to the surface in vicinity of the Pitt-Greenville Airport to provide additional controlled airspace for IFR aeronautical operations. In order not to impose delay on EMS helicopter operations at the Pitt County Memorial Hospital Heliport during periods instrument flight rules are in effect in the control zone, that airspace below 200 feet MSL within a .25 NM radius of the heliport and below 200 feet MSL between the 200° and 260° bearings from the heliport is excluded from the zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control Zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

ASO NC CZ Greenville, NC [New]
Pitt-Greenville Airport, NC
(lat. 35°38'04"N, long. 77°23'09"W)
Pitt County Memorial Hospital Heliport, NC
(lat. 35°38'24"N, long. 77°23'58"W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.4-mile radius of the Pitt-Greenville Airport, excluding the airspace below 200 feet MSL within a .25-mile radius of the Pitt County Memorial Hospital Heliport and below 200 feet MSL between the 200° and 260° bearings from the heliport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in East Point, Georgia, on August 4, 1992.

Don Cass,

Acting Manager, Air Traffic Div., Southern Region.

[FR Doc. 92–19111 Filed 8–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26938; Amdt. No. 1504]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment as based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

All traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on July 31, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Public Law 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
07/16/92	MD	Oakland	Garrett County	FDC 2/4066	VOR RWY 26 AMDT 3...
07/16/92	NH	Manchester	Manchester	FDC 2/4089	VOR/DME-3 RWY 17 ORIG... This replaces 2/3846 IN TL 92-16
07/22/92	AR	Lake Village	Lake Village Muni	FDC 2/4176	VOR-A AMDT 6A...
07/22/92	KS	Newton	Newton-City County	FDC 2/4166	ILS RWY 17 AMDT 2A...
07/22/92	NE	North Platte	Lee Bird Field	FDC 2/4181	NDB RWY 30L AMDT 9...
07/23/92	MO	Boonville	Jesse Viertel Memorial	FDC 2/4193	VOR-A AMDT 4...
07/27/92	MO	Gideon	Gideon Memorial	FDC 2/4273	VOR RWY AMDT 1...
07/27/92	MO	Kennett	Kennett Memorial	FDC 2/4272	NDB RWY 18 AMDT 2...

NFDC Transmittal Letter Attachment

Lake Village

Lake Village Muni
Arkansas
VOR-A AMDT 6A...
Effective: 07/22/92
FDC 2/4176/M32/ FI/P Lake Village Muni, Lake Village, AR. VOR-A AMDT 6A....CAT D MDA 700, HAA 575, VIS 2. This becomes VOR-A AMDT 6B.

Newton

Newton-City County
Kansas
ILS RWY 17 AMDT 2...
Effective: 07/22/92
FDC 2/4166/EWK/ FI/P Newton-City County, Newton, KS. ILS RWY 17 AMDT 2A...Change ALSTG Note to read... If LCL ALSTG not received, use Wichita ALSTG and increase all DH/MDAS 100 feet. This is ILS RWY 17 AMDT 2B.

Oakland

Garrett County
Maryland
VOR RWY 26 AMDT 3...
Effective 07/16/92
FDC 2/4066/2G4/ FI/P Garrett County, Oakland, MD. VOR RWY 26 AMDT 3...CAT D MINS NA. This is VOR RWY 26 AMDT 3A.

Boonville

Jesse Viertel Memorial
Missouri
VOR-A AMDT 4...
Effective: 07/23/92
FDC 2/4193/VER/ FI/P Jesse Viertel Memorial, Boonville, MO. VOR-A AMDT 4...MDA 1640, HAA 926 CATS A/B/C, VIS CAT A/B 1¼, C 2¾. This becomes VOR-A AMDT 4A.

Kennett

Kennett Memorial
Missouri
NDB RWY 18 AMDT 2...
Effective: 07/27/92
FDC 2/4272/TKX/ FI/P Kennett Memorial, Kennett, MO. NDB RWY 18 AMDT 2...CHG Note to read...Use Eaker AFB ALSTG, if not received use Dyersburg, TN ALSTG and increase all MDAS 40 FT. This becomes NDB RWY 18 AMDT 2A.

Gideon

Gideon Memorial
Missouri
VOR RWY 15 AMDT 1...
Effective: 07/27/92
FDC 2/4273/M85/ FI/P Gideon Memorial, Gideon, MO. VOR RWY 15 AMDT 1...CHG Note to read...Use Eaker AFB ALSTG. If not received, use Dyersburg, TN ALSTG and increase all MDAS 40 feet. This becomes VOR RWY 15 AMDT 1A.

North Platte

Lee Bird Field
Nebraska
NDB RWY 30L AMDT 9...
Effective: 07/22/92
FDC 2/4181/LBF/ FI/P Lee Bird Field, North Platte, NE. NDB RWY 30L AMDT 9...SI MINS NA at night except by prior arrangement for RWY LGTS. This is NDB RWY 30L AMDT 9A.

Manchester

Manchester
New Hampshire
VOR/DME-3 RWY 17 ORIG...
Effective: 07/16/92
This replaces 2/3846 IN TL 92-16.
FDC 2/4089/MHT/ FI/P Manchester, Manchester, NH. VOR/DME-3 RWY 17 ORIG...Change S-17 MIN TO... MDA 720, HAT 491 all cats, VIS cats A/B 1, C 1-¼, D 1-½. Change Concord ALSTG S-17 MIN TO... MDA 780, HAT 551 all cats, VIS cats A/B 1, C 1-½, D 1-¾. This is VOR/DME-3 RWY 17 ORIG A.

[FR Doc. 92-19107 Filed 8-11-92; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26937; Amdt. No. 1503]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date of each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 31, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective October 15, 1992

Winfield/Arkansas City, KS—Strother Field, VOR Rwy 35, Orig.
Winfield/Arkansas City, KS—Strother Field, NDB Rwy 35, Amdt. 3
Winfield/Arkansas City, KS—Strother Field, ILS Rwy 35, Amdt. 3
Winfield/Arkansas City, KS—Strother Field, VOR/DME RNAV Rwy 35, Amdt. 3
Clarksdale, MS—Fletcher Field, NDB–A, Orig.
Clarksdale, MS—Fletcher Field, NDB Rwy 18, Amdt. 6, Cancelled
Clarksdale, MS—Fletcher Field, NDB Rwy 36, Amdt. 7
Marshall, MO—Marshall Meml Muni, NDB Rwy 36, Amdt. 1, Cancelled
Bradford, PA—Bradford Regional, RNAV Rwy 5, Orig., Cancelled
Bradford, PA—Bradford Regional, RNAV Rwy 23, Orig., Cancelled
Washington, PA—Washington Co, LOC Rwy 27, Amdt. 1
El Campo, TX—El Campo Metro Airport Inc, VOR/DME Rwy 17, Amdt. 2, Cancelled
El Campo, TX—El Campo Metro Airport Inc, VOR/DME Rwy 35, Amdt. 4, Cancelled
El Campo, TX—El Campo Metro Airport Inc, NDB Rwy 35, Amdt. 3, Cancelled
Manassas, VA—Manassas Muni/Harry P. Davis Field, VOR–B, Amdt. 3
Manassas, VA—Manassas Muni/Harry P. Davis Field, NDB–A, Amdt. 8
Manassas, VA—Manassas Muni/Harry P. Davis Field, ILS Rwy 16L, Amdt. 3
Manassas, VA—Manassas Muni/Harry P. Davis Field, RNAV Rwy 16R, Amdt. 7
Portsmouth, VA—Hampton Roads, NDB Rwy 2, Amdt. 5
Williamsburg, VA—Williamsburg-Jamestown, VOR–B, Amdt. 2

. . . Effective September 17, 1992

Dover/Cheswold, DE—Delaware Airpark, VOR Rwy 27, Amdt. 6
Jacksonville, FL—Jacksonville Intl, LOC BC Rwy 31, Amdt. 8
Jacksonville, FL—Jacksonville Intl, NDB Rwy 31, Orig.
Plant City, FL—Plant City Muni, NDB Rwy 9, Orig.

Auburn-Lewiston, ME—Auburn-Lewiston Muni, VOR-A, Orig.
Auburn-Lewiston, ME—Auburn-Lewiston Muni, VOR/DME-A, Amdt. 3, Cancelled
Auburn-Lewiston, ME—Auburn-Lewiston Muni, NDB Rwy 4, Amdt. 8
Auburn-Lewiston, ME—Auburn-Lewiston Muni, ILS Rwy 4, Amdt. 7
Park Rapids, MN—Park Rapids Muni, VOR/DME Rwy 13, Amdt. 7
Park Rapids, MN—Park Rapids Muni, VOR Rwy 31, Amdt. 12
Park Rapids, MN—Park Rapids Muni, NDB Rwy 31, Amdt. 3, Cancelled
Park Rapids, MN—Park Rapids Muni, NDB Rwy 31, Orig.
Park Rapids, MN—Park Rapids Muni, ILS Rwy 31, Orig.
Southhampton, NY—Southhampton, COPTER VOR/DME RNAV 187, Orig.
Linden, NJ—Linden, VOR-C, Orig.
Linden, NJ—Linden, VOR/DME-D, Orig.
Siler City, NC—Siler City Municipal, NDB Rwy 21, Orig.
Lewisburg, WV—Greenbrier Valley, NDB Rwy 4, Amdt. 4
Lewisburg, WV—Greenbrier Valley, ILS Rwy 4, Amdt. 7
Rhinelander, WI—Rhinelander-Oneida County, VOR/DME Rwy 23, Amdt. 9
Cheyenne, WY—Cheyenne, NDB Rwy 26, Amdt. 13
Cheyenne, WY—Cheyenne, ILS Rwy 26, Amdt. 33

. . . Effective August 20, 1992

Ames, IA—Ames Muni, LOC Rwy 1, Orig.
Ames, IA—Ames Muni, LOC Rwy 31, Amdt. 5, Cancelled
Ames, IA—Ames Muni, NDB Rwy 1, Orig.
Ames, IA—Ames Muni, RNAV Rwy 31, Amdt. 5, Cancelled
Peoria, IL—Greater Peoria Regional, VOR or Tacan Rwy 13, Amdt. 23
Peoria, IL—Greater Peoria Regional, ILS Rwy 13, Amdt. 6
Peoria, IL—Greater Peoria Regional, RADAR-1, Amdt. 12
Chatham, MA—Chatham Muni, NDB-A, Orig.
Keene, NH—Dillant-Hopkins, LOC Rwy 2, Amdt. 1, Cancelled
Keene, NH—Dillant-Hopkins, ILS Rwy 2, Orig.
Dallas, TX—Dallas Love Field, ILS Rwy 13R, Amdt. 2
Barre-Montpelier, VT—Edward F. Knapp State, VOR/DME Rwy 35, Orig.
Barre-Montpelier, VT—Edward F. Knapp State, VOR Rwy 35, Amdt. 2
Barre-Montpelier, VT—Edward F. Knapp State, LOC Rwy 17, Amdt. 5, Cancelled
Barre-Montpelier, VT—Edward F. Knapp State, NDB Rwy 35, Amdt. 3
Barre-Montpelier, VT—Edward F. Knapp State, ILS Rwy 17, Amdt. 4

Note: Remove and destroy the following procedure listed in TL 92-12 EFF for 20 AUG 92:

Fayetteville, AR—Drake Field, VOR-A, Amdt. 24.

[FR Doc. 92-19108 Filed 8-11-92; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Lambert-Kay; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the correct name, address, and drug labeler code for Lambert-Kay, A Division of Carter-Wallace, Inc. This action is being taken to improve the accuracy of the regulations.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Judy M. O'Haro, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8737.

SUPPLEMENTARY INFORMATION: Lambert-Kay, A Division of Carter-Wallace, Inc., P.O. Box 1001, Half Acre Rd., Cranbury, NJ 08512-0181, has informed FDA that the current drug labeler code assigned to Lambert-Kay, A Division of Carter-Wallace, Inc., in the animal drug regulations is incorrect. The existing regulations in § 510.600(c)(1) and (c)(2) (21 CFR 510.600(c)(1) and (c)(2)) list "011614" as the drug labeler code for Lambert-Kay, A Division of Carter-Wallace, Inc. However, the correct drug labeler code is "011615." The name and address for Lambert-Kay, A Division of Carter-Wallace, Inc., was also incorrectly listed in § 510.600(c)(1) and (c)(2). Accordingly, FDA is amending § 510.600(c)(1) and (c)(2) to reflect the correct name, address, and drug labeler code. FDA is also amending 21 CFR 520.580(b)(1) to reflect the correct drug labeler code for Lambert-Kay, A Division of Carter-Wallace, Inc.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "Lambert Kay, A Division of Carter-Wallace, Inc.," and in the table in paragraph (c)(2) by removing the entry for "011614" and adding a new entry for "001615" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *
(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Lambert-Kay, A Division of Carter-Wallace, Inc., P.O. Box 1001, Half Acre Rd., Cranbury, NJ 08512-0181	011615
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
011615	Lambert-Kay, A Division of Carter-Wallace, Inc., P.O. Box 1001, Half Acre Rd., Cranbury, NJ 08512-0181
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.580 [Amended]

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "011614" and adding in its place "011615".

Dated: August 4, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-19035 Filed 8-11-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1212

[NHTSA Docket No. 91-17; Notice 2]

RIN 2127-AE10

Drug Offender's Driver's License Suspension

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Adminstration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements a new program enacted by the Department of Transportation and Related Agencies Appropriations Act for FY 1991, as amended. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense. This final rule sets forth the manner in which States must certify that they are not subject to this withholding, and the disposition of funds that are withheld.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. William Holden, Office of Alcohol and State Programs, Traffic Safety Programs, Room 5130, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-2722; or Ms. Sharon Y. Vaughn, Office of Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1834.

In FHWA: Mr. Warren Harper, Office of Highway Safety, room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2172; or Mr. Wilbert Baccus, Office of Chief Counsel, room 4230, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-0780.

SUPPLEMENTARY INFORMATION: The Department of Transportation and Related Agencies Appropriations Act for FY 1991, Public Law 101-516, was signed into law on November 5, 1990. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act (Public Law 91-513, as amended) or any drug offense. If a State decides not to enact such legislation, the section stipulates a procedure by which the State can avoid the withholding of funds.

On October 7, 1991 (56 FR 50536), NHTSA and FHWA issued a Notice of Proposed Rulemaking (NPRM) seeking comments on their proposal to implement section 333 of the Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1991.

NHTSA and FHWA received over 40 comments to the docket in response to the NPRM. These comments were received from Senator Frank R. Lautenberg, 22 States, the National Association of Governors' Highway Safety Representatives (HAGHSR), National Conference of State Legislatures (NCSL), National Transportation Safety Board (NTSB), American Civil Liberties Union (ACLU), Chrysler Motors Corporation (Chrysler), Federal Bureau of Investigation (FBI), Drug Enforcement Agency (DEA) and an interested individual.

The Department of Transportation and Related Agencies Appropriations Act, for FY 1992, Public Law 102-143, was signed into law on October 28, 1991. Section 333 of that Act in effect repealed section 333 of Public Law 101-516 and replaced it with a provision that was virtually the same. The new section 333 amended title 23 United States Code by adding a new section 159. That corrected a technical error in the old section 333 which had incorrectly amended section 104 of title 23, United States Code.

Also, subsequent to the NPRM the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA of 1991), Public Law 102-240 was signed into law on December 18, 1991. Section 1006 redesignated the old Federal-aid systems as the National Highway System and the Interstate System. Section 1007 added the Surface Transportation Program. The FHWA has determined sections 104(b)(2) (the Federal-aid primary system), 104(b)(2) (the Federal-aid secondary system), 104(b)(5) (the Interstate System), and 104(b)(6) (the Federal-aid urban system) of the old title 23, United States Code, which were cited in the above appropriations acts, correspond to 23 U.S.C. 104(b)(1), the interim National Highway System, 104(b)(3), the Surface Transportation Program, and 104(b)(5), the Interstate System of the new title 23, United States Code.

General Comments

The agencies received general comments in support of the NPRM from such commenters as NTSB, the Governor of Michigan and Chrysler. NTSB, for example, commented that it believes the loss of a driver's license, particularly a commercial driver's license, for a non-traffic drug offense conviction, may act as a deterrent to drug use by motor vehicle operators (especially those who are not habitual drug users). Accordingly, NTSB supports the intent of the rule. The Governor of Michigan stated "[I] support this ruling because it will serve as a catalyst to strengthen our drugged driving laws." Chrysler commented that it "fully agrees with the agency in its efforts to promote a safer driving environment and supports this notice of proposed rulemaking."

The agencies also received some general comments of caution. Specifically, Virginia commented that, as a matter of policy, the use of suspensions of the driving privilege should be applied prudently. An interested individual asserted that this rule "not only will do nothing to resolve the drug problem, forcing states to adopt laws to revoke licenses of drug offenders is an unnecessary infringement on the freedoms of individual motorists." North Dakota commented that sanctions upon highway funds negatively impact highway safety.

Kansas considered the statute to be unfair. The State commented, "since the Department of Revenue is the licensing agency in Kansas, this law and rulemaking puts the Department of Transportation in the position of not being able to control its own destiny. We would be the agency that is penalized if Kansas does not enact and enforce the legislation, but we would not be responsible for the enforcement of the legislation."

While they share some of these concerns, some commenters recognized

that the agencies are merely implementing a Congressional mandate. NAGHSR stated, "we understand, however, that NHTSA had little to do with the requirement's authorization and is only responsible for its implementation." Similarly, Nevada commented, "Although we understand this rulemaking is only to clarify how the Act will be implemented and not whether the Act will be implemented, we feel it is important to express our disappointment [with] this federal law."

Some commenters' concern about the Federal law went beyond disappointment. According to the ACLU, a driver's license is "property" within the meaning of the Due Process clause of the U.S. Constitution, and any legislation affecting its use must be rationally related to a legitimate state interest. The ACLU argued that implementation of section 159 violates the Due Process clause, and indicated that it "opposes any state law based on the rule that would violate the Due Process clause."

The State of Illinois pointed out that, in *People* v. *Lindner*, 127 Ill.2d 174, 535 N.E.2d 829 (1989), its State Supreme Court found that an Illinois law which imposed driver licensing sanctions against persons convicted of sex offenses failed to meet this rational basis test, and declared the law (which also included certain drug offenses) to be unconstitutional. The Court explained:

> In applying this test, we identify the public interest that the statute is intended to protect, examine whether the statute bears a reasonable relationship to that interest, and determine whether the method used to protect or further that interest is reasonable. *Id.* at 178, 535 N.E. 2d at 833.
>
> * * * * *
>
> [W]e conclude that the public interest the statute was intended to protect is the interest in keeping the roads free of two kinds of drivers: those who threaten the safety of others, and those who have abused the privilege to drive by doing so illegally * * * or by using a vehicle to commit a criminal act. In short, the public interest is the safe and legal operation and ownership of motor vehicles.
>
> Having identified the public interest at stake, we next examine whether the statute bears a reasonable relationship to that interest. We readily conclude that it does not * * * *Id.* at 177, 535 N.E.2d at 832.

Kansas suggested, in its comments, that a State law based on a different stated statutory purpose may be more likely to survive constitutional challenge. According to Kansas:

> Under the rational-basis test, a legislative enactment must bear a reasonable relationship to the public interest intended to be protected, and the means adopted must be a reasonable method of accomplishing the desired objective. As long as the statute is not arbitrary or irrational, and is reasonably related to a legitimate state purpose, it must be upheld. Some States have upheld statutes which revoke or suspend a driver's license as a rational exercise of a legitimate state purpose while others have not.
>
> * * * * *
>
> A statute which complies with § 333 is most likely to be upheld if the stated statutory purpose is to deter the commission of drug offenses [rather than to deter drug usage or to promote highway safety], because it is reasonable that a legislature might believe that the deprivation of driving privilege would be a deterrent to the commission of drug offenses.

In addition, the opinions expressed by the majority of the Supreme Court of Illinois in *Lindner* are not held universally. *Lindner* itself was a divided decision. In *State of New Jersey v. Kathy Smith*, 58 N.J. 202, 276 A.2d 369 (1971), for example, the New Jersey Supreme Court found a law which imposed driver's licensing sanctions against persons who unlawfully used narcotic drugs to be constitutional. The Court explained:

> Defendant contends that to take away her driver's license automatically for a single incident of marihuana use which was unconnected with actual driving is to visit arbitrary and unusual punishment upon her. Forfeiture under such circumstances, she claims, has no rational relation to her unlawful act. We cannot agree. *Id.* at 204, 276 A.2d at 371.
>
> * * * * *
>
> [W]e hold the view that whether the specified license forfeiture be deemed a punitive sanction for narcotics use or a regulation to protect motorists on public highways from dangers associated with such use, the statute cannot be deemed unconstitutional on any of the grounds advanced by defendant. *Id.* at 208, 276 A.2d at 375.

NHTSA and FHWA do not accept the ACLU's position that implementation of section 159 violates the Due Process clause of the U.S. Constitution and that any State law enacted thereunder should be opposed on constitutional grounds. Section 159 was passed by Congress to encourage States to enact and enforce laws to deter drug offenses and, as Kansas states, it is reasonable that State legislatures might believes that the deprivation of driving privileges would be a deterrent to both the commission of drug offenses and to the operation of vehicles while under the influence of drugs. The agencies encourage the States to consider Kansas' analysis as they contemplate the enactment of legislation. Of course, as explained in further detail below, if a State legislature determines that such a law would not serve the public interests in that jurisdiction, the legislature may instead pass a resolution opposing such a law.

The Michigan Department of Transportation recommended that the final rule require that individuals convicted of drug offenses notify their employers of the suspension as a condition of their sentence and certify that they will notify their employers of any drug convictions prior to employment. These comments are outside the scope of this rulemaking action. NHTSA and FHWA wish to point out, however, that employers of motor vehicle operators and commercial drivers are already authorized to receive certain driver license information (including information about suspensions) concerning their employees and prospective employees through the National Driver Register and the Commercial Driver's License Information System.

Finally, NAGHSR requested that NHTSA extend the comment period established in the NPRM. NHTSA denied this request on January 27, 1992, for a number of reasons. The agency explained that no other commenters requested an extension, that the agencies had received comments after the closing date and considered them and that, to the extent possible, the agencies would continue to consider future comments as they were received. Finally, NHTSA expressed the agencies' belief that an extension of the comment period would delay issuance of the final rule.

NAGHSR had itself, as had several other commenters, expressed a strong interest in the agencies' issuing a final rule as expeditiously as possible. NHTSA and FHWA have attempted to do so. The agencies regret that the final rule was not published early in the 1992 State legislative sessions, as we had initially hoped. However, the agencies attempted to provide sufficient information in the NPRM, to enable State legislatures to begin deliberations based on that document, and with today's publication of this final rule, States will have sufficient time to take action in their 1993 legislative sessions. Every State, except one, is scheduled to hold a regular legislative session in 1993, and that State has the power to call a special session of its legislature, if the need arises. Furthermore, that State has introduced legislation during this session and believes the legislation meets the criteria established by this rule.

Adoption of Drug Offender's Driver's License Suspension

The legislation specifically provides that the Secretary must withhold a portion of Federal-aid highway funds from any State that does not meet certain statutory requirements. To avoid such withholding, a State must have enacted and be enforcing a law that provides for the revocation or suspension of the driver's license of any individual who is convicted for any violation of the Controlled Substances Act of any drug offense. Alternatively, a State can avoid the withholding of funds by submitting to the Secretary a written certification stating that the Governor is opposed to the enactment or enforcement of such a law and that the legislature has adopted a resolution expressing its opposition to such a law.

As explained in the NPRM, the requirements of the Commercial Motor Vehicle Safety Act of 1986 would remain unaffected by any such resolution. Specifically, a State may not waive the requirement of 49 CFR 383.51 without facing a reduction in Federal-aid highway funds. Section 383.51 requires that a person who is convicted of either driving a commercial motor vehicle (CMV) while under the influence of a controlled substance or using a CMV in the commission of a controlled substance-related felony must be disqualified from operating a CMV for a period of from one year to life, depending on the specific offense(s).

Any State that does not enact and enforce a law that provides for the revocation or suspension of the driver's license of drug offenders or submit to the Secretary written certification from the Governor that he or she is opposed to the enactment or enforcement of such a law in the State will be subject to withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if a State does not meet the statutory requirements by October 1, 1993, five percent of its FY 1994 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3), and 104(b)(5) shall be withheld. These sections relate to the apportionments for the National Highway Systems, the Surface Transportation Program and the Interstate System (including interstate construction and interstate resurfacing, restoration, rehabilitation and reconstruction (4R) funds). Five percent will be withheld also in FY 1995 if the State does not meet the requirements by October 1, 1994. If the State does not meet the statutory requirements by October 1 of any subsequent fiscal year (beginning with FY 1996), ten percent of its Federal-aid highway apportionments under these sections will be withheld.

Compliance Criteria

As the agencies explained in the NPRM published on October 7, 1991, to avoid the withholding of Federal-aid highway funds, a State has two alternatives, the first of which is to enact and enforce a law that meets the statutory criteria in section 159(a)(3):

> A State meets the requirements of this paragraph if—
> (A) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception—
> (i) the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—
> (I) any violation of the Controlled Substances Act, or
> (II) any drug offense, and
> (ii) a delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted. * * *

Some of the commenters requested that the agencies provide the States with as much flexibility as possible, within the confines of the language and spirit of the Federal statute, and NHTSA and FHWA have attempted to do so in this implementing regulation.

1. Statutory Definitions

Section 159(c)(1) defines the term "driver's license" to mean "a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways." This definition has been adopted in this final rule, and encompasses licenses that permit individuals to operate any type of motor vehicle, including motorcycles and commercial motor vehicles.

The term "drug offense" is also defined in the statute (section 159(c)(2)). The term covers any criminal drug offense including "the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or * * * the operation of a motor vehicle under the influence of such a substance." As noted in the NPRM, while section 519 requires that States take a driver licensing action against violators of these drug offenses, the offenses covered by this definition are not limited to moving violations. In fact, to be covered, these offenses need not be motor vehicle-related at all.

A number of comments were received relating to this issue. California raised some concern because some state statutes prohibiting drug activities do not mirror exactly the federal Controlled Substances Act. The State questioned whether there would be some latitude afforded in the case of differences. Similarly, Oregon's Department of Transportation commented that the NPRM is not clear as to whether "criminal" drug offense is determined by federal or state law. For example, under Oregon law, possession of less than one ounce of marijuana is a "violation," not a "criminal" offense.

As the agencies explained in the NPRM, the Act does not require a State to enact any particular drug offense law. In other words, the Act does not require a State to amend its drug offenses to mirror those found under the Federal Controlled Substances Act, to proscribe new drug offenses covered by the agencies' regulation but not currently found in the State statute or to criminalize acts that are considered only violations under State law. The Act requires only that if a particular drug offense enumerated in the agencies' definition of that term is proscribed by a State and an individual is convicted for a violation of that offense, the State must suspend, revoke or delay the issuance of that individual's driver's license.

In addition, section 159 requires that, if a State resident is convicted of a covered drug offense in another State or under the Federal Controlled Substances Act, the resident's State law must authorize the State to take a licensing action against that drug offender. The State must have authority to suspend or revoke a State resident's driver's license for an out-of-state drug conviction or a drug conviction under the Federal Controlled Substances Act.

Based on a preliminary review of State statutes currently on the books, it is unclear to the agencies whether any State law fully meets this criterion. NHTSA and FHWA are unaware of any State law, for example, that specifically authorizes the State to take licensing actions based on a Federal Controlled Substances Act conviction. Any State that believes its law provides sufficient authority to meet this criterion may demonstrate compliance by submitting a regulation or binding policy directive interpreting its statute, if the statute is not clear on its face.

The Minnesota Department of Public Safety commented that the term "drug offense" is defined too broadly. The

State suggested that the definition should be limited to include only gross misdemeanor and felony drug offenses. Similarly, Montana commented that when its 1990 legislature passed a law designed to meet the Federal requirement, it felt that only felony drug convictions needed to be suspended or revoked. According to Montana's comments, its legislature felt that the driver license sanctions would not be effective for minor drug offenses since the current drug laws carry a severe criminal sanction.

The agencies do not believe the statute affords this measure of flexibility. In addition, we believe it would be impracticable, if not impossible, to delineate certain classifications of crimes that must result in driver licensing sanctions and those that are not covered, since States classify crimes on different bases. Accordingly, under the regulation, in the absence of compelling circumstances (as discussed further below), a criminal conviction for any covered drug offense (discussed above) must result in the suspension, revocation or delayed issuance of an offender's driver's license. If a State classifies an "offenses" as a mere violation and no criminal conviction results, then that State would not be required to take action against the violator's driver's license.

Accordingly, the agencies have adopted the proposed definition of "drug offense," as set forth in the NPRM, without change.

Since the statutory definition of "drug offense" includes manufacturing among the activities that are unlawful, the agencies proposed, in the NPRM, that this term would cover not only controlled and counterfeit substances but also listed chemicals, the possession of which was made unlawful by the Chemical Diversion and Trafficking Act of 1988, Public Law 100–690.

In response to the agencies' proposal, the DEA explained that, unlike the Controlled Substances Act, which makes it unlawful merely to possess controlled and counterfeit substances, the Chemical Diversion and Trafficking Act creates no similar offense regarding listed chemicals. Since all listed chemicals (such as acetone or ether) have legitimate uses in commerce and industry, it would be impossible to make it unlawful simply to possess such chemicals.

Accordingly, based upon the DEA comments, NHTSA and FHWA have decided to delete the reference to listed chemicals from the proposed definition of the term "substance the possession of which is prohibited under the Controlled Substances Act." This definition has otherwise been adopted without change.

Section 159(c)(3) provides that the term "convicted" includes "adjudicated under juvenile proceedings." In other words, the statute requires State laws to provide that juveniles who are adjudicated for drug offenses outside of criminal proceedings must also be subject to revocation or suspension of their driver's licenses. If these individuals do not have driver's licenses, then the State must delay issuance of driving privileges to them.

Consequently, in cases where a juvenile court finds that a drug offense has been committed by a juvenile offender and decides to take jurisdiction of that offender, such a decision must be considered to be a conviction for the purpose of this regulation and must result in the revocation, suspension or delay in issuance of that offender's driver's license.

Texas stated that it assumed that the term "conviction" means final conviction only, and that the State would not be required to revoke, suspend or delay the issuance of the license of an individual that has been placed on probation prior to conviction or whose judgment has been deferred. The agencies agree that this regulation does not cover such cases, since the individual in question has not yet been convicted. Of course, if States wish to impose a license revocation, suspension or delayed issuance during the probationary or deferral period, they would not be prohibited from doing so under this regulation.

2. Compelling Circumstances

Section 159(a)(3)(A) provides that, to meet the statutory requirements, the State law must require the revocation, suspension or delay in issuance of driver's licenses for drug offenders "in all circumstances" or "in the absence of compelling circumstances warranting an exception." The statute does not specify what circumstances would warrant an exception.

In the NPRM, the agencies expressed their belief that this language provides States with flexibility to issue restricted licenses to individuals in certain limited circumstances, but the agencies did not propose to define which circumstances would warrant an exception for the States.

Oregon took exception to the agencies' view that the "compelling circumstances" exemption in Section 333 would apply only to the issuance of restricted or hardship licenses. Rather, the State believes Congress intended, by this provision, to permit States to decide, in the presence of "compelling circumstances," not to revoke, suspend or delay issuance of an individual's driving privileges at all. After further consideration of the statutory language and in light of Oregon's comments, NHTSA and FHWA have decided to accept State laws, under this provision, that provide for any of the following, upon a finding of "compelling circumstances": the issuance of restricted or hardship licenses; that driving privileges will not be revoked or suspended or their issuance delayed; or a reduction to less than six months in the term of suspension, revocation or delay.

With regard to the circumstances that would warrant an exception, the comments were somewhat varied. The Minnesota Department of Public Safety agreed with the agencies that "States should have discretion to define 'compelling circumstances' and to determine how those compelling circumstances will be addressed by the driver licensing agency." The State asserted that, "The states remain the experts in determining which conditions are warranted within their jurisdictions, and therefore that discretion should be retained within the final rule."

Some commenters, however, requested additional guidance. NAGHSR, for example, stated that "[w]hile we applaud NHTSA's willingness to maximize state discretion on an important definitional issue, the Agency's stance is problematic for states. In effect, the Agency has created a guessing game for states on the issue of compelling circumstances, and states must guess what the drafters had in mind." This was certainly not the agencies' intention.

To rectify this problem, NAGHSR recommends that the agencies provide some examples, guidance or criteria regarding the circumstances that would be acceptable under the regulation.

As the agencies explained in the NPRM, when NHTSA originally promulgated its regulation implementing section 408 of the Highway Safety Act of 1966, Incentive Grant Criteria for Alcohol Traffic Safety Programs, the agency defined the particular conditions for which restricted or hardship licenses could be issued to drunk drivers. Over time, however, NHTSA found these conditions to be overly restrictive for the States and amended the regulation by deleting them. Under the revised Section 408 regulation, the issuance of restricted, hardship or conditional licenses is permissible, provided they are issued in accordance with a State law, regulation, binding policy directive or Statewide published guidelines

establishing the conditions for issuing such a license and in exceptional circumstances specific to the offender. It is up to each State to decide what those conditions will be.

For the purpose of clarification, these same criteria have been incorporated into § 1212.4(d) of this drug offender regulation. In other words, it would be permissible for a State to decide to issue a restricted, hardship or conditional license, or to decide not to revoke, suspend or delay issuance of a driver's license or to decide to reduce the period of suspension, revocation or delay, provided the decision is made in accordance with a State law, regulation, binding policy directive or Statewide published guidelines establishing the conditions for making such a decision and in exceptional circumstances specific to the offender. It is up to each State to decide what the conditions will be. Since this language has been modeled after NHTSA's section 408 regulation, the agencies agree with Kansas' suggestion that, when drafting a drug offender law, a State could use its DUI law as a model. If a State models the exceptions in its drug offender law after those found in its DUI law, and the State's DUI law has been found to be acceptable under NHTSA's section 408 program, the State can expect that its drug offender law would not be found to be in non-compliance on the basis of the exceptions allowed.

In response to New York's request for clarification, the regulation will permit the review of an individual's specific circumstances against a uniformly applied set of standards.

Missouri indicated, in its comments, that it considered proposed legislation that does not allow drug offenders to receive limited or restricted driving privileges at all. Of course, this regulation does not require States to provide for any exceptions in their laws. States may comply with the regulation by choosing to revoke, suspend or delay issuance of drug offenders' licenses in all circumstances, without exception.

3. Enforcement

Section 159 requires not only that States enact drug offender's driver's license suspension statutes, but also that they enforce such statutes. The Act does not explain, however, how States are to satisfy this enforcement requirement. The Senate Report for the measure states:

> The requirement * * * is satisfied so long as the State is attempting in good faith to enforce the law. If a State resident is convicted of a drug offense in another State, and officials of the State of residence are unaware of the conviction, the failure of the State of residence to revoke or suspend the offender's driver's license would not, by itself, be a sufficient basis to find the State of residence in noncompliance with the bill's requirements. Similarly, if State officials are unaware of the conviction of a resident under the Controlled Substances Act, the failure to revoke or suspend the resident's license is not, by itself, a sufficient basis to find the State in noncompliance. S. Rep. No. 298, 101st Cong., 1st Sess. 5 (1989).

The Senate Report suggests that a State could show good faith efforts to enforce its law by entering into agreements with other States or with Federal officials to inform each other of drug offense convictions. The report indicates, however, that such agreements are not required by the Act. Id.

The agencies proposed that, in order to comply with the enforcement criterion, States with qualifying laws would be required to submit a description of the steps they are taking to enforce their law with regard to within-State convictions, out-of-State convictions, Federal convictions and juvenile adjudications.

The NPRM expressed the agencies' intent to accept good faith efforts and not mandate that States meet any particular condition as a prerequisite. It proposed that States would be permitted to show good faith in a number of ways. With regard to out-of-State and Federal convictions, for example, as suggested by the Senate Report, the agencies proposed that States could show good faith by entering into agreements with Federal officials and with other States to inform each other of drug offense convictions. The agencies suggested that such agreements could be modeled after the Driver License Compact, under which States report convictions for major moving violations to a driver's home State. The agencies also suggested that States could establish procedures for submitting inquiries to the National Crime Information Center (NCIC) prior to issuing or renewing an individual's driver's license.

The comments on this aspect of the proposal raised several concerns. NAGHSR, Missouri and Oregon, for example, asserted that requiring use of the NCIC would create new difficulties for the States, and comments received from the FBI, outlining the procedures States would be required to follow to receive NCIC information, confirm their apprehension. Missouri and Oregon also urged that States should not be required to enter into new compacts to meet the requirements of section 333; that currently available systems, such as the Driver License Compact, should be modified as necessary and used instead. Additionally, with regard to Federal convictions, Missouri recommended that "the federal government [should] be responsible for reporting [federal] convictions to the states. If Federal convictions are not received by the states they should not be penalized."

NHTSA and FHWA have reconsidered this aspect of the NPRM in light of these comments, and have revised the proposed regulation to provide clarification. The agencies agree that States should not be penalized for matters which are beyond their control. Accordingly, this rule has been revised to clarify that a State will not be out of compliance with the enforcement criterion if it fails to receive information from Federal or out-of-State courts. Rather, compliance will be based on whether the State is reporting drug convictions to other States and on whether the State is taking licensing actions on Federal, within-State and out-of-State information it does receive.

To meet this criterion, a State must demonstrate that, upon receiving notification that a State driver has been convicted of a within-State, out-of-State, Federal conviction, or juvenile adjudication, the State is revoking, suspending or delaying the issuance of that drug offender's driver's license (in the absence of compelling circumstances warranting an exception). The State must also demonstrate that, when the State convicts an individual of a drug offense, it is notifying (or is taking steps to establish procedures to notify) the appropriate State office or, if the offender is a non-resident driver, the appropriate office in the driver's home State.

The agencies agree with the commenters that the Driver License Compact is probably the best vehicle for States to use for disseminating this information. Accordingly, with regard to the dissemination of information, the agencies intend to consider State membership in and use of the Driver License Compact as an indication of good faith. If a State is not a member of the Driver License Compact, then that State may show good faith by joining the Compact or entering into agreements with other States to exchange conviction information.

The agencies recognize that it may require some time for non-member States to become members of the Compact or to develop these agreements. As NAGHSR pointed out in its comments, it has taken many years for the Driver License Compact to obtain the level of State participation it currently enjoys. Accordingly, this final rule provides that a State which is not

yet disseminating conviction information to other States may show good faith by submitting a plan that describes the steps it is taking to establish procedures for doing so.

There is some question as to whether the Driver License Compact can be used to exchange information concerning all drug offenses. It is clear that the exchange of information concerning drug offenses which involve moving violations does not present a problem under the Compact. However, it is possible that a modification may be required to the Driver License Compact and, consequently, to State enabling legislation, to cover information relating to drug offenses that do not involve a vehicle. Virginia suggested that drug convictions could be treated in the same way as driving while intoxicated convictions to allow these records to be exchanged through the Driver License Compact. The agencies recommend that the Driver License Compact Commission review this issue and advise the States on how best to proceed.

With regard to Federal records, the agencies intend to initiate discussions with appropriate officials regarding the dissemination of these records to the States.

NAGHSR raised a number of issues relating to this portion of the agencies' proposal. NAGHSR asserted that the availability, reliability and completeness of conviction records varies considerably from court to court. According to NAGHSR's comments:

> In many states, * * * conviction information is not routinely conveyed to the state licensing agency. A new data linkage system would have to be developed within the state just to convey in-state conviction information to the licensing agency.
>
> Additionally, states generally do not have the capability to undertake state-to-state exchanges of drug conviction-related data. While the states are in the process of improving their criminal justice data bases in response to a number of federal legislative mandates, it will be many years before complete and accurate conviction information is available in a uniform format that is easily transferable between states.

The agencies recognize that it will take some time for many States to become fully capable of exchanging drug offense conviction information with other States and that, in some cases, States must take action even to ensure that drug offense conviction information can be conveyed internally to the State's licensing agency. In light of these circumstances, the agencies will accept from States either a showing that the State is making the necessary notifications (to the State licensing agency for resident drug offenders or to another State for non-resident offenders) or a plan describing the steps it is taking to establish the procedures for doing so.

NAGHSR also commented that many States are prohibited from circulating arrest information without data relating to disposition, making state-to-state transfers difficult if not impossible. The agencies believe this concern is unfounded, since the regulation only requires that States exchange drug offense conviction records, not arrest information.

California stated that the issue of retention and reportability of drug offenses is not addressed in the NPRM. Specifically, the State asked whether its inclusion of conviction information on public driver records would violate Federal requirements regarding confidentiality of information and suggested that the rule specify the length of time that such conviction information should be retained on these records.

California need not be concerned that its inclusion of conviction information on its public driver records would violate the Federal Privacy Act. The Federal statute pertains only to Federal, not State systems of records. Accordingly, if there are restrictions on the information maintained by States on their driving records, they would be covered by State not Federal privacy laws.

The Federal Privacy Act would impose restrictions on the maintenance of these State records only if they are reported to a Federal agency and maintained in a Federal system of records. For example, once a State takes a driver licensing action against a drug offender, that State would report the action to the National Driver Register (NDR), as it currently does for other adverse driver licensing actions. Since the NDR is a Federal system of records, once the record is reported to the NDR, it would be maintained in accordance with the requirements of the Privacy Act.

With regard to the retention of records, NHTSA and FHWA believe that States should be permitted to set their own requirements. The agencies do not believe this needs to be addressed in this regulation.

4. Suspension, Revocation or Delay

Section 159(a)(3)(A)(i) requires that States revoke or suspend for at least six months the driver's license of any individual who is convicted of the Controlled Substances Act or any drug offense. The statute is silent about the effect, if any, a prison term would have on the suspension or revocation. A drug offender, for example, may be sentenced to serve one year in prison. The agencies asked for comments on whether that individual should be deprived of his or her driver's license for at least six months after the prison term is completed, or whether the suspension or revocation period could instead run concurrently with the term of imprisonment imposed.

The agencies explained, in the NPRM, that section 159 was enacted in large part to deter drug offenders. It is clear that the section will also reduce the incidence of driving under the influence of drugs by deterring drug offenses. The agencies expressed their belief in the NPRM, that if a drug offender serves the six-month period in prison, such punishment provides a greater degree of deterrence than would the suspension or revocation of the individual's driver's license. NHTSA and FHWA therefore proposed that the license suspension or revocation term would run concurrently with any prison term imposed. If the offender serves less than six months in prison, however, the agencies indicated that the full six-month suspension or revocation would have to be completed.

The ACLU questioned this statement and seemed to interpret it to mean that, under the agencies' proposal, a six-month prison term would be treated differently than a term of shorter length. It would not. To clarify, the agencies meant that, if the offender serves less than six months in prison, the offender's driving privileges would have to be suspended or revoked for the remainder of the six-month period. For example, if an offender serves four months in prison, that person's driving privileges would have to be suspended or revoked for a minimum of two additional months after being released from jail. In other words, regardless of the length of the prison term, the license suspension or revocation must be for a six-month period.

Every other commenter that addressed this issue supported the agencies' proposal to allow States to provide that the license suspension or revocation term would run concurrently with any prison term imposed. Accordingly, the agencies have adopted this aspect of the NPRM without change.

If the drug offender does not have a driver's license or if the offender's driver's license is suspended at the time the individual is convicted, Section 159(a)(3)(A)(ii) requires that the State law must provide for a delay in the issuance or reinstatement of the individual's driver's license for at least six months after the individual applies for issuance or reinstatement of his or her driving privileges. The agencies

indicated, in the NPRM, that the statute seems to provide that the six-month period would not begin to run until the individual initiates the issuance or reinstatement process by submitting an actual application.

The agencies requested comments from the States regarding whether this would impose unnecessary burdens on driver licensing operations, and whether there is a preferable method for marking the beginning of the six-month period within the meaning of the statute.

Specifically, the agencies requested comments on whether it would be preferable instead to require that issuance or reinstatement of the individual's driver's license be delayed for at least six months after the individual otherwise would have been eligible to have his or her driver's license issued or restored.

In general, the commenters agreed that a strict reading of the statute would result in the imposition of unnecessary burdens for State driver licensing operations and were in favor of the agencies' approach. Accordingly, today's final rule modifies the regulatory language proposed in the NPRM to make it clear that individuals need not apply for issuance or reinstatement of their driving privileges for the six-month period to begin to run.

Several related comments were raised as well. Montana argued that imposing a six-month delay in the future, rather than immediately at the time of conviction, is not sensible in the case of very young offenders. The State pointed out that these individuals, if convicted of drug offenses at a young age, will be denied a license when they otherwise would have been eligible to receive a driver's license for offenses they committed years earlier.

This is precisely what Congress had in mind when it enacted section 159. The Act was passed largely to deter youths from committing drug offenses. If States were to suspend or revoke the privilege to drive or apply for a license at the time of the offense for youths not yet eligible to apply for a driver's license, as suggested by Montana, much of the deterrent value of the Act would be lost. Moreover, the statutory language compels this result, since the Act specifically includes a separate provision that requires this six-month delay. Accordingly, States must provide for a six-month delay to qualify under the statute. Of course, States may also authorize their courts to determine in compelling circumstances specific to an offender that a suspension in certain cases is unwarranted.

Similarly, Wisconsin recommended that the delayed suspension should not be mandatory. The State instead supported giving the courts the option. To the extent that courts may decide not to impose a licensing sanction upon a finding of compelling circumstances, courts would have an option under the law.

Oregon stated that most, if not all, States require the suspension, revocation or denial of a person's driving privileges for a conviction of driving while under the influence and that the NPRM creates a separate reason for denying driving privileges to individuals who already have had their driving privileges suspended. Virginia suggested that the regulation specifically provide that States may treat the suspension of an individual's driver's license due to conviction of a drug offense in the same way it treats conviction (or administrative suspension) of the driver's license for operation of a motor vehicle in a drunk or drugged condition. The agencies do not fully understand these comments.

Under this final rule, an individual convicted of driving while under the influence of drugs must be subject to a six-month suspension or revocation of driving privileges. If the individual currently has no driver's license, the individual must wait an additional six months, beyond the date he or she would otherwise have been eligible to apply for a license, before receiving driving privileges. If the individual's driver's license is currently under suspension or revocation, the period of suspension or revocation must be extended by an additional six months. The regulation does not mandate the procedures the State must use to impose these sanctions.

The agencies believe Oregon and Virginia may be concerned about a situation in which an individual loses driving privileges administratively for driving while under the influence of drugs. Upon conviction, that individual's driver's license would already be under suspension and a literal reading of the statute would require that the suspension period must be extended for an additional six months. The agencies do not believe the statute should be interpreted in this manner. To satisfy the requirements of section 159, an individual need only be subject to one suspension period, which lasts not less than six months, for any single drug offense.

5. Certification

To avoid the withholding of Federal-aid highway funds, the NPRM proposed that each State would be required to submit a certification on an annual basis. The proposal provided further that States would be required to submit their certifications by April 1, 1993, to avoid the withholding of funds in fiscal year 1994. Thereafter, States would be required to submit certifications by January 1 of each year (beginning with January 1, 1994) to avoid the withholding of funds in the following fiscal year (beginning with FY 1995).

The National Conference of State Legislatures commented that the April 1 deadline in 1993 might pose a problem for States, particularly those that meet only in odd-numbered years. Under section 159, the withholding of funds from noncomplying States must take place on October 1, 1993. While any State found to be in compliance prior to the October 1st date would not have its funds withheld, the agencies encourage each State to meet the April 1, 1993 deadline, to ensure that NHTSA and FHWA have adequate time to review the State's certification demonstrating compliance with the statutory requirements. The submission of a certification after that date could result in the delayed release or temporary withholding of funding.

The NPRM indicated that States could submit their certifications along with their Certifications of Speed Limit Enforcement, which are required to be submitted annually in accordance with 23 CFR Part 659. Texas went further, and suggested combining also other NHTSA and FHWA certifications. The agencies have no objection, if a State wishes to submit these certifications together. However, we caution States to consider the additional coordination that may be required both within the State and among DOT officials for combined submissions. Some States may conclude that this additional coordination would be too time and resource-consuming to be beneficial.

The NPRM proposed also that the agencies would accept a certification by either the Governor of a State or an official designated by the Governor. However, Senator Lautenberg, who sponsored section 159 in Congress, expressed strong opposition to this aspect of the agencies' proposal, particularly with respect to States that comply with section 159 by passing resolutions, or "opting out" of enacting and enforcing a complying law. Senator Lautenberg stated in his comments:

> Authorizing Governors to delegate the right to "opt out" would be inconsistent not only with the language of the law, but with the clear legislative intent underlying the statute. The committee report on the legislation states that the "opt out" provision "is designed to ensure that State leaders (a) give serious consideration to the concept of license

suspension for all drug offenders, (b) make an affirmative decision about whether to adopt the approach, and (c) can then be held accountable to their constituents for that decision." Senate Report 101-298 at page 3. These goals can be achieved only if State political leaders—both Governors and legislatures—personally and explicitly go on record in opposition to compliance.

Today's final rule has been amended in response to the Senator's comments.

As explained in the NPRM, the certifications required to be submitted under this Part will provide the agencies with the basis for finding States in compliance with the Drug Offender's Driver's License Suspension requirements. Accordingly, until a State has been determined to be in compliance with these requirements, the agencies proposed that the certification must consist of a certifying statement and also supporting documentation. Once a State has been determined to be in compliance with the requirements, the NPRM provided that the State would then be required to submit a certifying statement, but would no longer be required to submit supporting documentation, unless the State's law or enforcement efforts had changed significantly enough so as to warrant an amendment of the State's supporting material. A State would be required to amend its supporting material, for example, if it had qualified under the enforcement criterion of this regulation by submitting a plan and had failed to make progress under its plan in subsequent years.

The NPRM explained that if a State believes that it has a law that revokes or suspends the driver's license of drug offenders in conformance with the statutory and regulatory requirements, the State would be required to submit a certifying statement to this effect. With the certification, the State would be required to submit a copy of its conforming law and, as discussed earlier, a description of the steps the State is taking to enforce the law. Once a State is determined to be in compliance, it would be required to submit only the certifying statement. It would not be required to resubmit its law or describe again its enforcement efforts. If the State's law or its enforcement efforts were to change significantly, or the State had failed to make progress under its plan, the State would be required to amend or supplement its original submission.

If a State has not enacted or is not enforcing a conforming law, the NPRM proposed that it can avoid the withholding of funds by submitting, not earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification signed by the Governor stating that he or she is opposed to the enactment or enforcement in the State of a drug offender's driver's license suspension law. The Governor would also be required to submit written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to such a law and a copy of the resolution.

Once such a State is determined to be in compliance, the NPRM proposed that it would be required to submit only the Governor's certifying statement. The State legislature would not be required to pass a resolution each successive year, and the State would not be required to resubmit a copy of the resolution.

Commenters from four States expressed the opinion that, once a State's certification has been accepted, the State should no longer be required to submit the annual certification, except to show or demonstrate adequate enforcement or unless the State's laws or position had changed. One commenter objected, in particular, in cases where the State had passed a resolution in opposition of the law.

With regard to States that comply with section 159 by enacting and enforcing complying laws, we believe the State submission of annual certifications is the only way to ensure that the agencies are cognizant of changes to State laws and enforcement efforts. With regard to States that comply with section 159 by passing resolutions, we believe that State submission of annual certifications is the only way to ensure that leaders in these States continue to, as Senator Lautenberg stated in his comments, "give serious consideration to" the passage of drug offender's driver's license suspension laws. Additionally, the agencies believe the certification requirements proposed in the NPRM impose only a minimal burden on the States. Accordingly, today's final rule will continue to require the submission of annual certifications from the States.

West Virginia objected altogether to the requirement that, in States that do not enact and enforce a complying law, the legislature must pass a resolution expressing its opposition to such a law. In West Virginia's view, a statement from the Governor should be sufficient. The agencies have not adopted this recommendation because section 159(a)(3)(B)(ii) specifically requires that the legislature in such States adopt a resolution.

The proposed regulatory text in the NPRM included certification statements for use both by States that believe they meet section 159(a)(3) on the basis that they have enacted and are enforcing a conforming law and by States that instead pass a resolution. The agencies received no comments on the content of the proposed certification statement for States that enact and enforce conforming laws. Comments were received, however, on the content of the other proposed certification.

The State of Washington, for example, asserted that States should be permitted to express their own reasons for not supporting conforming legislation. The National Conference of State Legislatures (NCSL) sought assurance that a State would not be unduly penalized if it has a drug offender license suspension law, but the law does not comply in all respects with the statutory requirements. NCSL suggested that the certification should accommodate the needs of these States by providing that the State is opposed to the enactment or enforcement of "a law which conforms to all federal compliance criteria."

The agencies' inclusion of certification statements in the proposed regulation was intended to facilitate the certification process for the States, not to create new difficulties in achieving compliance. To provide additional flexibility and ensure that these certification statements do not themselves become an impediment for compliance with section 159, the agencies have modified these statements in today's final rule, in response to NCSL's concern. We have also amended the regulation to permit States to submit certification statements that are similar to those included in the regulation, but do not use precisely the same words. In addition, the agencies wish to clarify that the certification statements in the regulation are for the Governor's use in preparing a submission to DOT. State legislature are not bound to use this language. If they oppose enactment or enforcement of a law that meets the section 159 criteria, they may express their opposition in their own words.

Illinois requested a special allowance to cover its particular circumstances. According to its comments, the State of Illinois had enacted and was enforcing a statute that imposed a driver's license sanction for a conviction of certain drug offenses. The Illinois Supreme Court, however, found this law to be unconstitutional. The State's comments claimed, "As a result of the ruling, Illinois driver's license sanctions can only be imposed for offenses which directly relate to operating or being in

actual physical control of a motor vehicle." The State also expressed its belief that "the Illinois General Assembly would be reluctant to pass a resolution expressing opposition to a law requiring the suspension or revocation of an individual's driver's license for drug-related offenses."

On this basis, Illinois requested that it be excused from the requirement that its legislature must pass a resolution. The state suggested instead that, if a State enacts a law as required and that State's Supreme Court finds the law unconstitutional, the State would be exempt from sanctions.

The agencies are not convinced that the *Lindner* decision necessarily precludes Illinois from imposing driver licensing sanctions for any offence which is not directly related to operating or being in actual physical control of a motor vehicle. We believe that the Illinois Supreme Court's decision was much more narrowly drawn. As explained earlier, we believe *Lindner* found the State law unconstitutional because it did not sufficiently further the public interest it was intended to benefit; namely, the safe and legal operation and ownership of motor vehicles. The Supreme Court in Illinois, or another State, may uphold the constitutionality of a similar law, however, if it were enacted for a different purpose, such as deterring the commission of drug offenses.

The agencies understand Illinois' concern that its General Assembly may be reluctant to pass a resolution expressing opposition to a drug offender driver license suspension law. However, we do not believe the language or intent of section 159 allows for the exemption suggested by Illinois. As explained above, the agencies have attempted to make the requirements regarding certification and the passage of resolutions as flexible as possible. In response to comments from NCSL, we have modified the regulation concerning the language to be contained in State certifications and we have clarified that State legislatures may express their opposition to enacting or enforcing a complying law in their own words. The agencies hope that these changes provide sufficient flexibility to cover unusual circumstances, like those which exist in the State of Illinois.

The Illinois Office of the Secretary of State suggested alternatively that, where a State's highest court deems a drug offender's driver's license suspension law to be unconstitutional, the State should be able to use the compelling circumstance exception to justify the State's suspension of a driver's license only when the drug offense is connected to the operation of a motor vehicle. As stated earlier, the agencies have not defined compelling circumstances. It is up to each State to develop its own definition. A State law may, under today's final rule, provide courts with authority to make exceptions, and not take licensing actions against an individual convicted of a drug offense that is unrelated to the operation of a motor vehicle. However, as explained previously, such exemptions must be made in accordance with State law, regulation, binding policy directive or statewide published guidelines establishing the conditions for making such a decision and in exceptional circumstances specific to the offender. In other words, the exceptions must be clearly set forth on a Statewide basis and compelling circumstances must be applied as an exception, not as the rule. If a State, for example, does not provide at all for driver's license suspensions upon a conviction of non-motor vehicle related drug offense convictions that are covered by this regulation, the agencies will not accept such a State's law under the compelling circumstances exception. Such a State must change its law or pass a resolution.

On August 13, 1991, the Governor of Main expressed his opposition to the enactment or enforcement in Maine of a law that would comply with section 159, and submitted a copy of a resolution opposing such a law that was adopted by both Houses of the Maine legislature. On October 2, 1991, the Secretary of Transportation responded, "Your letter and the joint resolution by the Maine Legislature, which are now on record, appear to meet the statutory requirements." With today's publication of the agencies' joint final rule, the agencies have determined that Maine's certification is acceptable. Maine will be formally notified of its compliance in FY 1994 through FHWA's normal certification of apportionments process. As explained in detail below, to avoid the withholding of funds in subsequent fiscal years, the State will be required to submit certification on an annual basis, by January 1 of each year.

Notification of Compliance

The agencies received no comments about the proposed notification procedures. They have, therefore, been adopted without change. For each fiscal year beginning with FY 1994, NHTSA and FHWA will notify States of their compliance or noncompliance with Section 159, based on a review of certifications received. This notification will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to the requirements of section 159 and this implementing regulation, the agencies will make an initial determination that the State is in noncompliance. States that are determined to be in noncompliance with section 159 will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

Each State determined not to comply will have an opportunity to rebut the initial determination. These States will be notified of the agencies' final determination of compliance or noncompliance as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

NHTSA and FHWA recognized, in the NPRM, that States may want to know as soon as possible whether their laws satisfy the requirements of section 159 or want assistance in drafting conforming legislation. States were, therefore, encouraged to request preliminary reviews and assistance from NHTSA's or FHWA's Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590 and to request assistance from NHTSA and FHWA regional offices.

The agencies have already received some requests for preliminary reviews and the agencies have been doing their best to respond as quickly and thoroughly as possible, within the constraints of responding during the pendency of a rulemaking action. Now that this final rule has been published, it will be easier for the agencies to respond.

Because the agencies believe it may be helpful for the States, we have summarized below the elements that State laws must satisfy to be determined in compliance with section 159:

1. Time Period

a. Suspension or revocation for six (6) months.

b. Delay for six (6) months if offender is under suspension or has no license.

2. Drug Offense

a. Violation of Federal Controlled Substances Act.

b. Possession, distribution, manufacture, cultivation, sale, transfer, or attempt or conspiracy to do the same of any substance * * * in any State, or

c. Operation of a motor vehicle under the influence of any substance * * * in any State.

3. Conviction—Includes Juvenile Adjudications

Based on a preliminary review of State laws, the following elements seem to be among the most problematic: (1) Not providing specific authority to take licensing actions for violations of the Federal Controlled Substance Acts; (2) not providing specific authority to take licensing actions for out-of-State convictions; (3) not providing for a 6-month suspension or revocation period, particularly for convictions for driving while under the influence; (4) not specifically providing that juvenile adjudications are covered or for a delay for offenders who are under suspension or have no license or for a delay for offenders who are under suspension or have no license; (5) providing that only certain offenders (such as those under a set age) are covered by the State's statute; and (6) limiting covered drug offenses to include felonies (and in some cases, also gross misdemeanors).

Period of Availability for Funds

Sections 1212.6–.9 of this regulation, which pertain to the period of availability for funds, have also been adopted without change. As explained in the NPRM, section 159 provides an incremental approach to the withholding of funds for noncompliance. If a State is found to be in noncompliance in fiscal years 1994 or 1995, the State will be subject to a five percent withholding. If a State is found to be in noncompliance in any subsequent fiscal year, beginning with FY 1996, the State will be subject to a ten percent withholding.

In addition, if a State is found to be in noncompliance in fiscal years 1994 or 1995, the funds withheld from apportionment to the State will remain available for apportionment to that State for a period of time, prescribed in the statute. If a State is found to be in noncompliance in any subsequent fiscal year, the funds withheld from apportionment will no longer be available for apportionment.

Section 159(b)(1)(B) provides that, "No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State." The disposition of these funds will be made in accordance with section 159(b)(4).

Section 159(b)(1)(A) identifies the period of time during which funds withheld on or before September 30, 1995, remain available for apportionment, and when they are to be restored if the State complies with the Federal requirements before the fund lapse. Section 159(b)(3) establishes the period of time during which these subsequently apportioned funds will remain available to a State for expenditure. If the withheld funds lapse before they are restored, their disposition will be made in accordance with section 159(b)(4).

These sections are virtually identical to those found in the National Minimum Drinking Age Act, as amended, 23 U.S.C. 158. For a full discussion of how these provisions have been applied in practice, interested parties are encouraged to read the agencies' joint final rule published in the **Federal Register** on August 18, 1988 (53 FR 31318).

This final rule does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring the revocation or suspension of an individual's driver's license upon conviction for certain drug offenses, through the potential withholding of Federal-aid highway funds. Any withholding of funds would not take place until FY 1994, and States can avoid the withholding of funds by either enacting and enforcing conforming legislation or submitting a certification that the Governor is opposed to such legislation and that the State legislature has adopted a resolution expressing its opposition to such a law. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not warrant the preparation of a federalism assessment. States can choose to enact and enforce a law that requires the suspension or revocation of driver's licenses for drug offenders in conformance with section 159(a)(3), and thereby avoid the withholding of Federal-aid highway funds. Alternatively, States can choose not to enact and enforce this type of law, and still avoid such withholding. To avoid the withholding of funds in such cases, the Governor must submit a certification that he or she is opposed to the enactment or enforcement in the State of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. The specific criteria that State laws must meet are mandated by section 159.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures. A preliminary regulatory evaluation of the impacts of the NPRM was prepared and placed in Docket 91–17; Notice 1. This preliminary evaluation provided information regarding the expected costs and benefits of the agencies' proposal and requested information demonstrating that license suspensions or revocations for drugged driving or illegal possession convictions deter drug use or reduce driver's future involvement in crashes. It also requested comments on methods that States could use and the costs to develop systems for providing Federal, out-of-State and juvenile records to State Departments of Motor Vehicles. No comments were received responding directly to these questions.

NAGHSR expressed concern in its comments that the drug conviction records requirement will be an enormous financial burden on a state at a time when states can ill afford new financial demands. Illinois estimated that implementation of this regulation will result in an additional 50,000 driver licensing actions that will have to be processed at a cost of $300,000 each year. Arizona estimated such a law would result in approximately 10,000 additional suspensions each year. While California said there is no reasonable way to estimate the costs at this time, the State also expressed concern about the cost to implement a new drug offender suspension law, which would entail extensive modifications to computer programs and changes to automated court reporting systems.

A Final Regulatory Evaluation has been prepared, which addresses the costs and benefits of the agencies' joint final rule. This document has been placed in Docket 91–17; Notice 1. Persons interested in additional information regarding these costs and benefits are encouraged to request a copy of the Regulatory Evaluation from NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366–4949.

California asked whether any Federal funds will be available to States to implement such a law. While section 159 does not create a separate grant program, States are permitted to use section 402 grant monies for the purposes of implementing this rule.

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this final rule on small entities. Based on the evaluation, we certify that this rule will not have a significant economic impact on a substantial number of small entities. Any withholding of funds under the regulation will be from States. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This collection of information has been assigned OMB Control Number 2127–0003 ("Federal Aid Agreement and Cost Summary Forms for the Highway Safety Plan") and has been approved for use through July 31, 1995.

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1212

Driver licensing, Grant programs—Transportation, Drug abuse, Highway safety, Reporting and recordkeeping requirements.

In accordance with the foregoing, part 1212 of title 23 of the Code of Federal Regulations is added to read as follows:

PART 1212—DRUG OFFENDER'S DRIVER'S LICENSE SUSPENSION

Sec.

1212.1 Scope.
1212.2 Purpose.
1212.3 Definitions.
1212.4 Adoption of drug offender's driver's license suspension.
1212.5 Certification requirements.
1212.6 Period of availability of withheld funds.
1212.7 Apportionment of withheld funds after compliance.
1212.8 Period of availability of subsequently apportioned funds.
1212.9 Effect of noncompliance.
1212.10 Procedures affecting states in noncompliance.

Authority: Pub. L. 101–516; Pub. L. 102–143; delegation of authority at 49 C.F.R. §§ 1.48 and 1.50.

§ 1212.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. § 159, which encourages States to enact and enforce drug offender's driver's license suspensions.

§ 1212.2 Purpose.

The purpose of this part is to specify the steps that States must take in order to avoid the withholding of Federal-aid highway funds for noncompliance with 23 U.S.C. 159.

§ 1212.3 Definitions.

As used in this part:

(a) *Convicted* includes adjudicated under juvenile proceedings.

(b) *Driver's license* means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(c) *Drug offense* means:

(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

(2) The operation of a motor vehicle under the influence of such a substance.

(d) *Substance the possession of which is prohibited under the Controlled Substances Act* or *substance* means a controlled or counterfeit chemical, as those terms are defined in subsections 102 (6) and (7) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802 (6) and (7) and listed in 21 CFR §§ 1308.11–.15.

§ 1212.4 Adoption of drug offender's driver's license suspension.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23 of the United States Code on the first day of fiscal years 1994 and 1995 if the States does not meet the requirements of this section on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23 of the United States Code on the first day of fiscal year 1996 and any subsequent fiscal year if the State does not meet the requirements of this section on that date.

(c) A State meets the requirements of this section if:

(1) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of

(A) Any violation of the Controlled Substances Act, or

(B) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual otherwise would have been eligible to have a driver's license issued or reinstated if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

(2) The Governor of the State:

(i) Submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification stating that he or she is opposed to the enactment or enforcement in the State of a law described in paragraph (c)(1) of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) Submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in paragraph (c)(1) of this section.

(d) A State that makes exceptions for compelling circumstances must do so in accordance with a State law, regulation, binding policy directive or Statewide published guidelines establishing the conditions for making such exceptions and in exceptional circumstances specific to the offender.

§ 1212.5 Certification requirements.

(a) Each State shall certify to the Secretary of Transportation by April 1, 1993 and by January 1 of each subsequent year that it meets the requirements of 23 U.S.C. 159 and this regulation.

(b) If the State believes it meets the requirements of 23 U.S.C. 159 and this regulation on the basis that it has enacted and is enforcing a law that suspends or revokes the driver's license of drug offenders, the certification shall contain:

(1) A statement by the Governor of the State that the State has enacted and is enforcing a Drug Offender's Driver's License Suspension law that conforms to 23 U.S.C. 159(a)(3)(A). The certifying statement may be worded as follows: I, (Name of Governor), Governor of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted is enforcing a Drug Offender's Driver's License Suspension law that conforms to section 23 U.S. C. 159(a)(3)(A).

(2) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 159 and this regulation, the certification shall include also:

(i) A copy of the State law, regulation, or binding policy directive implementing or interpreting such law or regulation relating to the suspension, revocation, issuance or reinstatement or driver's licenses of drug offenders, and

(ii) A statement describing the steps the State is taking to enforce its law with regard to within State convictions, out-of-State convictions, Federal convictions and juvenile adjudications. The statement shall demonstrate that, upon receiving notification that a State driver has been convicted of a within State, out-of-State or Federal conviction or juvenile adjudication, the State is revoking, suspending or delaying the issuance of that drug offender's driver's license; and that, when the State convicts an individual of a drug offense, it is notifying the appropriate State office or, if the offender is a non-resident driver, the appropriate office in the driver's home State. If the State is not yet making these notifications, the State may satisfy this element by submitting a plan describing the steps it is taking to establish notification procedures.

(c) If the State believes it meets the requirements of 23 U.S.C. 159(a)(3)(B) on the basis that it opposes a law that requires the suspension, revocation or delay in issuance or reinstatement of the driver's license of drug offenders that conforms to 23 U.S.C. 159(a)(3)(A), the certification shall contain:

(1) A statement by the Governor of the State that he or she is opposed to the enactment or enforcement of a law that conforms to 23 U.S.C. 159(a)(3)(A) and that the State legislature has adopted a resolution expressing its opposition to such a law. The certifying statement may be worded as follows: I, (Name of Governor), Governor of the (State or Commonwealth of _____, do hereby certify that I am opposed to the enactment or enforcement of a law that conforms to 23 U.S.C. 159(a)(3)(A) and that the legislature of the (State or Commonwealth) of _____, has adopted a resolution expressing its opposition to such a law.

(2) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 159(a)(3)(B) and this regulation, the certification shall include a copy of the resolution.

(d) The Governor each year shall submit the original and four copies of the certification to the local FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward two copies each to the Regional Administrator of NHTSA and FHWA. The Regional Administrators shall each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington Headquarters, attention of the Chief Counsel.

(e) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded, State legislative changes or changes in State enforcement activity (including failure to make progress in a plan previously submitted) shall be submitted in the same manner as the original.

§ 1212.6 Period of availability of withheld funds.

(a) Funds withheld under § 1212.4 from apportionment to any State on or before September 30, 1995, will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1) or 104(b)(3) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1212.4 from apportionment to any State after September 30, 1995 will not be available for apportionment to the State.

§ 1212.7 Apportionment of withheld funds after compliance.

Funds withheld under § 1212.4 from apportionment, which remain available for apportionment under § 1212.5(a), will be made available to any State that conforms to the requirements of § 1212.4 before the last day of the period of availability as defined in § 1212.5(a).

§ 1212.8 Period of availability of subsequently apportioned funds.

(a) Funds apportioned pursuant to § 1212.7 will remain available for expenditure as follows:

(1) Funds originally apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds originally apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1212.7 and not obligated at the end of the periods defined in § 1212.8(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.9 Effect of noncompliance.

If a State has not met the requirements of 23 U.S.C. 159(a)(3) at the end of the period for which funds withheld under § 1212.4 are available for apportionment to a State under § 1212.6, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

§ 1212.10 Procedures affecting states in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 159, based on NHTSA's and FHWA's preliminary review of its statutes, will be advised of the funds expected to be withheld under § 1212.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 159 based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 159(a)(3), based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1212.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: August 6, 1992.

Marion C. Blakey,

Acting Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

[FR Doc. 92-19102 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8394]

RIN 1545-A037

Proceeds of Bonds Used for Reimbursement; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to the correction to final regulations.

SUMMARY: This document contains a correction to the correction to final regulations (T.D. 8394), which were published Friday, June 26, 1992 (57 FR 28611). The regulations provide guidance as to when the allocation of bond proceeds to reimburse expenditures previously made by an insurer is treated as an expenditure of the bond proceeds.

EFFECTIVE DATE: The regulations and this correction are effective for bonds issued after March 2, 1992.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo (202) 566-3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction to final regulations that is the subject of this document corrects the final rules for allocating proceeds of reimbursement bonds. Reimbursement bonds are bonds the proceeds of which are allocated to reimburse expenditures paid prior to the date of issue of the bonds.

Need for Correction

As published, the correction to final regulations contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to final regulations (T.D. 8394), which were subject of FR Doc. 92-14880, is corrected as follows:

On page 28611, column 2, in § 1.103-18 [Corrected], line 5, the language "defined in § 1.103-8(d)(5))".", is corrected to read "defined in § 1.103-8(a)(5))".".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-19113 Filed 8-11-92; 8:45 am]

BILLING CODE 4830-11-M

26 CFR Parts 1, 5f, and 602

[T.D. 8425]

RIN 1545-AJ63

Information Reporting for Tax-Exempt Bond Issues

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations concerning information reporting requirements for tax-exempt bonds. Changes to the applicable law were made by the Tax Reform Act of 1986. These final regulations affect issuers and purchasers of tax-exempt bonds and provide them with guidance on how to comply with the reporting requirements. This document also contains a minor conforming change to an existing temporary regulation.

DATES: The regulations are effective on January 1, 1987. The regulations apply to bonds issued after December 31, 1986, including bonds issued to refund a prior issue of bonds, with the exception that § 1.149(e)-1(c)(2)(i)(A) applies to bonds issued after December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Eric E. Boody of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622-3960 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0720. The estimated annual burden per respondent varies from 4 hours to 18 hours, depending on individual circumstances, with an estimated average of 11 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations to be added to the Income Tax Regulations (26 CFR part 1) under section 149(e) of the Internal Revenue Code (the Code). The final regulations implement changes made by section 1301(a) of the Tax Reform Act of 1986 (100 Stat. 2602). This document also contains conforming amendments to 26 CFR parts 5f and 602.

On March 11, 1987, the **Federal Register** published a notice of proposed rulemaking (52 FR 7449) by cross reference to temporary regulations published the same day in the **Federal Register** (52 FR 7408) under section 149(e) of the Code. Public comments were received concerning the regulations, and a public hearing was held on June 26, 1987. After consideration of the written comments and those presented at the hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 1301(a) of the Tax Reform Act of 1986 amended the information reporting requirements of sections 103(l) and 103A(j)(3) by adding section 149(e) to the Code. The 1986 Act revised the information required to be reported to the Internal Revenue Service, extended the information reporting requirements to all tax-exempt bonds, and imposed certain requirements under section 149(e). Section 149(e) applies to bonds issued after December 31, 1986 (including bonds issued to refund a prior issue of bonds). The information reporting requirements apply to the issuer of a bond. Thus, the issuer may not rely on another person such as a conduit issuer to comply with these requirements.

The temporary and proposed regulations published on March 11, 1987, provide rules and definitions relating to the expanded reporting requirements under section 149(e). Under the temporary and proposed regulations, an issuer generally must file a separate information return for each issue of tax-

exempt bonds. Issuers of governmental bond issues with issue prices of less than $100,000, however, must file a single, consolidated information return for all of those small issues issued during the calendar year.

Change in Response to Public Comments

Eight commentators requested that issuers of governmental bond issues with issue prices of less than $100,000 be given the option of filing a separate information return for each small issue, instead of being required to file a consolidated annual information return for all small issues. The commentators expressed concern that consolidated reporting imposes increased accounting and recordkeeping burdens on issuers of small governmental bond issues. The commentators argued that permitting issuers to file separate information reports for these small issues will minimize recordkeeping burdens and provide greater certainty to investors that the information reporting requirement has been satisfied.

Section 1.149(e)–1(c)(2) of the final regulation addresses these comments. Issuers of governmental bond issues with issue prices of less than $100,000 are allowed the option of filing a separate information return for each small issue. An issuer must file a consolidated information return for all governmental bond issues with issue prices of less than $100,000 that are issued within the calendar year and that are not reported on a separate information return. The separate filing option applies to bonds issued after December 31, 1991. A special rule extends the date for filing separate information returns for bonds issued during the first and second calendar quarters of 1992.

The final regulations also contain stylistic changes that were made to simplify and clarify the regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Eric E. Boody of the Office of the Assistant Chief Counsel (Financial Institutions & Products), Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and the Treasury Department, however, participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.148–0T Through 1.150–1T

Bonds, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5f

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5f, and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by removing the "T" in the entry for § 1.149(e)–1T to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.149(e)–1 also issued under 26 U.S.C. 149(e); * * *

§ 1.149(e)–1T [Removed]

Par. 2. Section 1.149(e)–1T is removed.

Par. 3. New § 1.149(e)–1 is added to read as follows:

§ 1.149(e)–1 Information reporting requirements for tax-exempt bonds.

(a) *General rule.* Interest on a bond is included in gross income unless certain information with respect to the issue of which the bond is a part is reported to the Internal Revenue Service in accordance with the requirements of this section. This section applies to any bond if the issue of which the bond is a part is issued after December 31, 1986 (including any bond issued to refund a bond issued on or before December 31, 1986).

(b) *Requirements for private activity bonds*—(1) *In general.* If the issue of which the bond is a part is an issue of private activity bonds, the issuer must comply with the following requirements—

(i) Not later than the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued, the issuer must file with the Internal Revenue Service a completed information reporting form prescribed for this purpose;

(ii) If any bond that is part of the issue is taken into account under section 146 (relating to volume cap on private activity bonds), the state certification requirement of paragraph (b)(2) of this section must be satisfied; and

(iii) If any bond that is part of the issue is a qualified mortgage bond or qualified veterans' mortgage bond (within the meaning of section 143 (a) or (b) or section 103A(c) (1) or (3) as in effect on the day before enactment of the Tax Reform Act of 1986), the issuer must submit the annual report containing information on the borrowers of the original proceeds of the issue as required under § 1.103A–2 (k)(2)(ii) and (k)(3) through (k)(6).

(2) *State certification with respect to volume cap*—(i) *In general.* If an issue is subject to the volume cap under section 146, a state official designated by state law (if there is no such official, then the governor or the governor's delegate) must certify that the issue meets the requirements of section 146, and a copy of this certification must be attached to the information reporting form filed with respect to the issue. In the case of any constitutional home rule city (as defined in section 146(d)(3)(C)), the preceding sentence is applied by substituting "city" for "state" and "chief executive officer" for "governor."

(ii) *Certification.* The certifying official need not perform an independent investigation in order to certify that the issue meets the requirements of section 146. For example, if the certifying official receives an affidavit that was executed by an officer of the issuer who is responsible for issuing the bonds and that sets forth, in brief and summary terms, the facts necessary to determine that the issue meets the requirements of section 146 and if the certifying official has compared the information in that affidavit to other readily available information with respect to that issuer (*e.g.*, previous affidavits and certifications for other private activity bonds issued by that issuer), the certifying official may rely on the affidavit.

(c) *Requirements for governmental bonds*—(1) *Issue price of $100,000 or more.* If the issue of which the bond is a part has an issue price of $100,000 or more and is not an issue of private activity bonds, then, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued, the issuer must file with the Internal Revenue Service a completed information reporting form prescribed for this purpose.

(2) *Issue price of less than $100,000*—(i) *In general.* If the issue of which the bond is a part has an issue price of less than $100,000 and is not an issue of private activity bonds, the issuer must file with the Internal Revenue Service one of the following information reporting forms within the prescribed period—

(A) *Separate return.* Not later than the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued, a completed information reporting form prescribed for this purpose with respect to that issue; or

(B) *Consolidated return.* Not later than February 15 of the calendar year following the calendar year in which the issue is issued, a completed information form prescribed for this purpose with respect to all issues to which this paragraph (c)(2) applies that were issued by the issuer during the calendar year and for which information was not reported on a separate information return pursuant to paragraph (c)(2)(i)(A) of this section.

(ii) *Bond issues issued before January 1, 1992.* Paragraph (c)(2)(i)(A) of this section does not apply if the issue of which the bond is a part is issued before January 1, 1992.

(iii) *Extended filing date for first and second calendar quarters of 1992.* If the issue of which the bond is a part is issued during the first or second calendar quarter of 1992, the prescribed period for filing an information reporting form with respect to that issue pursuant to paragraph (c)(2)(i)(A) of this section is extended until November 16, 1992.

(d) *Filing of forms and special rules*—(1) *Completed form.* For purposes of this section—

(i) *Good faith effort.* An information reporting form is treated as completed if the issuer (or a person acting on behalf of the issuer) has made a good faith effort to complete the form (taking into account the instructions to the form).

(ii) *Information.* In general, information reporting forms filed pursuant to this section must be completed on the basis of available information and reasonable expectations as of the date the issue is issued. Forms that are filed on a consolidated basis pursuant to paragraph (c)(2)(i)(B) of this section, however, may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

(iii) *Certain information not required.* An issuer need not report to the Internal Revenue Service any information specified in the first sentence of section 149(e)(2) that is not required to be reported to the Internal Revenue Service pursuant to the information reporting forms prescribed under that section and the instructions to those forms.

(2) *Manner of filing*—(1) *Place for filing.* The information reporting form must be filed with the Internal Revenue Service at the address specified on the form or in the instructions to the form.

(ii) *Extension of time.* The Commissioner may grant an extension of time to file any form or attachment required under this section if the Commissioner determines that the failure to file in a timely manner was not due to willful neglect. The Commissioner may make this determination with respect to an issue or to a class of issues.

(e) *Definitions.* For purposes of this section only—(1) *Private activity bond.* The term "private activity bond" has the meaning given that term in section 141(a) of the Internal Revenue Code, except that the term does not include any bond described in section 1312(c) of the Tax Reform Act of 1986 to which section 1312 or 1313 of the Tax Reform Act of 1986 applies.

(2) *Issue*—(i) *In general.* Except as otherwise provided in this paragraph (e)(2), bonds are treated as part of the same issue only if the bonds are issued—

(A) By the same issuer;

(B) On the same date; and

(C) Pursuant to a single transaction or to a series of related transactions.

(ii) *Draw-down loans, commercial paper, etc.* (A) Bonds issued during the same calendar year may be treated as part of the same tissue if the bonds are issued—

(*1*) Pursuant to a loan agreement under which amounts are to be advanced periodically ("draw-down loan"); or

(*2*) With a term not exceeding 270 days.

(B) In addition, the bonds must be equally and ratably secured under a single indenture or loan agreement and issued pursuant to a common financing arrangement (*e.g.*, pursuant to the same official statement that is periodically updated to reflect changing factual circumstances). In the case of bonds issued pursuant to a draw-down loan that meets the requirements of the preceding sentence, bonds issued during different calendar years may be treated as part of the same issue if all the amounts to be advanced pursuant to the draw-down loan are reasonably expected to be advanced within three years of the date of issue of the first bond.

(iii) *Leases and installment sales.* Bonds other than private activity bonds may be treated as part of the same issue if—

(A) The bonds are issued pursuant to a single agreement that is in the form of a lease or installment sales agreement; and

(B) All of the property covered by that agreement is reasonably expected to be delivered within three years of the date of issue of the first bond.

(iv) *Qualified 501(c)(3) bonds.* If an issuer elects under section 141(b)(9) to treat a portion of an issue as a qualified 501(c)(3) bond, that portion is treated as a separate issue.

(3) *Date of issue*—(i) *Bond.* The date of issue of a bond is the date determined under § 1.150–1(c)(2).

(ii) *Issue.* The date of issue of an issue of bonds is the date of issue of the first bond that is part of the issue. See paragraphs (e)(2) (ii) and (iii) of this section for rules relating to draw-down loans, commercial paper, *etc.*, and leases and installment sales.

(iii) *Bonds to which prior law applied.* Notwithstanding the provisions of this paragraph (e)(3), an issue for which an information report was required to be filed under section 103(l) or section 103A(j)(3) is treated as issued prior to January 1, 1987.

(4) *Issue price.* The term "issue price" has the same meaning given the term by § 1.148–8(c).

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 4. The authority citation for part 5f continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 5. Section 5f.103–3(a) is amended by revising the last sentence to read as follows:

§ 5f.103–3 Information reporting requirements for certain bonds.

(a) *General rule.* * * * For rules concerning bonds issued after December 31, 1986, see § 1.149(e)–1 of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101c [Amended]

Par. 7. Section 602.101(c) is amended by removing the "T" in the entry for § 1.149(e)–1T.

David G. Blattner,

Acting Commissioner of Internal Revenue.

Approved: June 29, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–18533 Filed 8–11–92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–9–2–5582; FRL–4194–8]

Approval and Promulgation of State Implementation Plans; Colorado; Ozone SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: The EPA gives notice that the direct final rule approving the Ozone State Implementation Plan (SIP) revisions for the State of Colorado, submitted by the State on September 27, 1989 and August 30, 1990, has been withdrawn. The document approving the SIP revisions was published on June 26, 1992 (57 FR 28614). This approval is being withdrawn because notice was received by EPA that a party wished to submit adverse or critical comments. EPA will propose approval of the SIP revisions in another **Federal Register** document.

Therefore, the amendment to 40 CFR part 52 (adding a new § 52.320(c)(55)) which appeared at 57 FR 28614, June 26, 1992, and which was to become effective on August 25, 1992, is withdrawn.

EFFECTIVE DATE: This action will be effective on August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch, Environmental Protection Agency, One Denver Place, suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 293–1814.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 3, 1992.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 92–19182 Filed 8–11–92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP–300206A; FRL–4071–8]

RIN 2070–AB78

Captan; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.103 for residues of the fungicide captan (*N*-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) in or on crabapples, cranberries, grapefruit, lemons, limes, oranges, pineapples, quinces, rhubarb, and tangerines. EPA is taking this action because all registered uses of captan on these commodities have been cancelled.

EFFECTIVE DATE: This regulation becomes effective August 12, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300206A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 718I, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5226.

SUPPLEMENTARY INFORMATION: This document announces the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the fungicide captan in or on the raw agricultural commodities crabapples, cranberries, grapefruit, lemons, limes, oranges, pineapples, quinces, rhubarb, and tangerines.

EPA issued a proposed rule, published in the **Federal Register** of March 14, 1990 (55 FR 9467), which proposed the revocation of tolerances for residues of captan in or on the 10 raw agricultural commodities named above.

The Agency's decision to revoke the tolerances for these particular commodities was based on the fact that EPA had previously cancelled all registrations for pesticide products containing captan as an active ingredient for use on these 10 commodities, as well as certain other uses.

In the March 14, 1990 proposed rule, EPA stated that in order not to disrupt the marketing of commodities which had been legally treated (i.e., treated prior to February 24, 1990, with permitted existing stocks), the Agency planned to delay publication of the final rule revoking the tolerances until at least February 24, 1991. The Agency believed that this would allow a reasonable period of time for treated commodities to have left channels of trade. Commenters who thought that the 1991 revocation date would cause them a hardship, or was otherwise inappropriate, were encouraged to submit data in support of their position.

No requests for referral to an advisory committee were received in response to the notice of proposed rulemaking. However, one comment was received from the Government of Mexico requesting that the final revocation be delayed until 1992 to provide sufficient time for growers of the affected commodities to find alternative means of pest control.

Although the Agency did not deliberately decide to delay publication of the final revocation until this particular date, the final rule is being published well after the end of 1991 because of workload and resource constraints. Therefore, no undue hardship is expected to result from this action.

Based on the information considered by the Agency and discussed in detail in the March 14, 1990 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.103 for residues of captan in or on crabapples, cranberries, grapefruit, lemons, limes, oranges, pineapples, quinces, rhubarb, and tangerines.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue

of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291. As explained in the proposal published March 14, 1990, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub.L. 96-354, 94 Stat 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the March 14, 1990 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.103 [Amended]

2. By amending *§ 180.103 Captan; tolerances for residues* in paragraph (a) by removing from the table therein the following commodities: crabapples, cranberries, quinces, and rhubarb; and in paragraph (b) by removing from the table therein the following commodities: grapefruit, lemons, limes, oranges, pineapples, and tangerines.

[FR Doc. 92-19216 Filed 8-11-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 185

[PP 9H5573/R1158; FRL-4081-6]

RIN 2070-AB78

Pesticide Tolerance for the Biochemical Pest Control Agent Hydroprene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: A tolerance is established permitting the use of the insect growth regulator hydroprene, [(R,S)-(Ethyl (2E,4E,)3,7,11-trimethyl-2,4-dodecadienoate)], and (S)-hydroprene, [(S)-(Ethyl (2E,4E,)-3,7,11-trimethyl-2,4-dodecadienoate)], in food handling establishments in accordance with certain prescribed conditions. The Zoecon Corp. submitted a petition requesting this tolerance.

EFFECTIVE DATE: Effective on August 12, 1992.

ADDRESSES: Written objections, identifed by the document control number, [PP 9H5573/R1158], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Philip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 1, 1989 (54 FR 46118), EPA issued a notice which announced that the Zoecon Corp. of Dallas, TX, had submitted a pesticide petition (9H5573) to EPA proposing that 40 CFR part 185 be amended by establishing a tolerance under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a and 348, specifying a tolerance for residues of the insect growth regulator hydroprene in or on food commodities exposed during treatment of food-handling establishments at 1.5 parts per million (ppm). Zoecon Corp. revised the petition on several occasions and on June 30, 1992, submitted its final revision requesting that a tolerance for hydroprene, namely the (R)-hydroprene and (S)-hydroprene racemic mixture, in or on food commodities exposed during spot or crack crevice treatment of food-handling establishments be established at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. An analytical method (gas chromatography/flame ionization detector) along with a confirmatory method (gas chromatography/mass spectrometry) are available for enforcement. Prior to their publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested. By mail: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Rm. 1123, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5937.

The toxicology data considered in support of the tolerance include an (S)-hydroprene two-generation reproduction study in rats with a no-observed-effect level (NOEL) of 300 parts per million (ppm) [15.0 milligrams (mg)/kilogram (kg)/day]; an (S)-hydroprene 3-month dietary feeding study in rats with dietary levels of 0, 50, 250, and 1,000 mg/kg with a NOEL of 50 mg/kg/day; an (S)-hydroprene 7-week reversibility study in rats demonstrating reversal of effects with the exception of vacuolated ovarian luteal cells; an (S)-hydroprene immunotoxicity study in mice demonstrating a lack of immunotoxicity when administered orally at up to 1,200 mg/kg for 30 consecutive days; an (S)-hydroprene teratology study in rats with maternal and developmental toxicity NOELs greater than 1,000 mg/kg/day (the highest dose tested); negative (S)-hydroprene unscheduled DNA synthesis, mouse micronucleus, and rat bone marrow cell *in vivo* cytogenic mutagenicity assays; a negative hydroprene reverse mutation (Ames) assay in *Salmonella typhimurium*, a hydroprene cellular immune response study in the rat demonstrating inflammatory response; a hydroprene teratology study in rabbits with maternal and developmental toxicity NOELs of 30 mg/kg/day; and a hydroprene 28-day feeding study in rats with dietary levels of 0, 5, 50, 250, 500, and 1,000 mg/kg/day with a NOEL of 250 mg/kg/day.

The submitted hydroprene residue study demonstrated residue levels on various commodities below 0.2 ppm as determined by gas chromatography/flame ionization detector. The two optical isomers contained within

hydroprene, (R)-hydroprene and (S)-hydroprene, are racemic and the gas chromatography column is nonchiral. Racemic isomers will not be separated by a nonchiral analytical method, and both will appear as one chromatographic peak. Further, because the proposed label use rate of (S)-hydroprene in food-handling establishments is approximately one half of the use rate proposed for hydroprene, the residue data performed on hydroprene is applicable to (S)-hydroprene.

The dietary risk assessment was performed utilizing a Reference Dose (RfD) of 0.02 mg/kg body weight/day and the 0.2 ppm value derived from the highest value from actual residue trials, 0.14 ppm, as the assumed level in food.

The RfD was based on a No Observable Effects Level (NOEL) of 15 mg/kg/day (derived from the (S)-hydroprene two-generation reproduction study in rats in which parental, reproductive, and developmental toxicity were observed) and an uncertainty factor of 1,000. The RfD was determined to apply both to (S)-hydroprene and hydroprene. This determination was based on data available to the Agency which indicated that the (S)-isomer was generally more toxic than racemic hydroprene containing both the (S)- and the (R)-isomers.

For the general U.S. population (48 States), exposure to hydroprene was estimated to be 0.005439 mg/kg body weight/day or approximately 27 percent of the RfD. The highest estimated exposure for any of the subpopulations analyzed was 0.020941 mg/kg body weight/day for nonnursing infants, or approximately 105 percent of the RfD. These exposure estimates are known to be significantly overstated because it was assumed that all food consumed by an individual came from food-handling establishments, all food-handling establishments use hydroprene or (S)-hydroprene at maximum use rates, and all food contains hydroprene or (S)-hydroprene at a level (0.2 ppm) which is greater than any actual level obtained in residue trials designed to measure maximum possible residues.

Based on the information cited above, the Agency has determined that the use of hydroprene or (S)-hydroprene under the conditions of this regulation will be safe and will protect the public health. The pesticide is considered useful for the purpose for which the tolerance is sought and capable of achieving the intended physical or technical effect. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerancelevels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Dated: July 30, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 185 is amended as follows:

PART 185—[AMENDED]

The authority citation for part 185 is revised to read as follows:

Authority: 21 U.S.C. 346a and 348.

2. By adding new § 185.3625, to read as follows:

§ 185.3625 Hydroprene; tolerances for residues.

A tolerance of 0.2 part per million is established for combined residues of both racemic components of hydroprene, namely [(R)-(Ethyl (2*E*,4*E*,)-3,7,11-trimethyl-2,4-dodecadienoate)] and [(S)-(Ethyl (2*E*,4*E*,)-3,7,11-trimethyl-2,4-dodecadienoate)] on all food items in food-handling establishments in accordance with the following prescribed conditions:

(a) Application shall be limited solely to spot or crack and crevice treatment in food-handling establishments, including food service, manufacturing, and processing establishments such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries where food and food products are held, processed, and served: *Provided*, that the food is removed or covered prior to such use, and food-processing surfaces are covered during treatment or thoroughly cleaned before using.

(b) To assure safe use of the insect growth regulator, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 92-19215 Filed 8-11-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 406, 409, 410, 411, 412, 413, 418, and 489

[BPD-725-FC]

RIN 0938-AF27

Medicare Program; Self-Implementing Coverage and Payments Provisions: 1990 Legislation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule updates Medicare regulations to add or conform them to certain self-implementing provisions on coverage of services and payment requirements under the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). OBRA '90 was enacted November 5, 1990 and the cited changes to the statute are already in effect. Certain related self-implementing provisions of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), and the Medicare

Catastrophic Coverage Act (MCCA) of 1988, are included as necessary for consistency and clarity of the OBRA '90 provisions.

DATES: *Effective date:* These regulations are effective September 11, 1992.

Comment period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 13, 1992.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–725–FC, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Attention: Allison Herron Eydt, Office of Management and Budget, Room 3208, New Executive Office Bldg., Washington, DC 20503.

If you prefer, you may deliver your comments to one of the following locations:

Room 309–G, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC

or

Room 132, East High Rise Bldg., 6325 Security Boulevard, Baltimore, Md.

Due to staffing resource limitations, we cannot accept audio, video, or facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–725–FC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks after publication, in room 309–G of the Departmental offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Sue B. Brown, (410) 966–4658.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1990, Congress enacted the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508. This law contains numerous provisions relating to coverage of services and payments for services furnished to Medicare beneficiaries. Some of these provisions are self-implementing—that is, the provisions are stated in terms that neither require nor permit exercise of discretion in implementing them. Under these circumstances the plain wording of the law causes a conflict with the provisions of several of our existing regulations or causes them to be incomplete. We are, therefore, making the necessary changes to incorporate the self-implementing provisions identified below in the Code of Federal Regulations.

In some cases, before we can amend our rules to reflect the OBRA '90 requirements, it is necessary for us also to incorporate certain self-implementing provisions of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239, and the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360 (in cases where the provisions were not repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 (MCCRA), Pub. L. 101–234) that have been further amended by OBRA '90. A discussion of the individual legislative provisions and the accompanying Federal regulation changes follows.

II. Capital-Related Inpatient Hospital Costs

A. Legislative Provision

Section 1886(g)(3) of the Social Security Act (the Act) provides for certain reductions to capital-related costs of inpatient hospital services of hospitals that are defined in section 1886(d). Section 6002 of OBRA '89 mandated a reduction by 15 percent of payments for capital-related costs of inpatient hospital services identified under section 1886(d) attributable to portions of cost reporting periods or discharges occurring during the period beginning January 1, 1990 and ending September 30, 1990. Section 4001(a) of OBRA '90 extended the 15-percent reduction applicable to prospective payment hospitals to September 30, 1991. These provisions were incorporated into the regulations at § 412.113 in a document issued on August 30, 1991 (56 FR 43448).

B. Changes in the Regulations

In addition to the changes incorporated in the regulations on August 30, 1991, other changes to § 412.113 are necessary to conform the regulations with the statute. Specifically, we are revising § 412.113(a)(2) (B), (C), and (D) to conform the dates and the percentages specified in these paragraphs to the statute.

III. Capital-Related Outpatient Hospital Costs

A. Legislative Provision

Section 6110 of OBRA '89 amended section 1861(v)(1)(S) of the Social Security Act to add a provision stipulating that, in determining the amount of payments that may be made with respect to all the capital-related costs of outpatient hospital services, a reduction of 15 percent be made for payments attributable to portions of cost reporting periods occurring during fiscal year 1990.

Section 4151(a) of OBRA '90 further amended section 1861(v)(1)(S) of the Act to provide for an extension of the reduction to payments for capital-related costs for outpatient hospital services. Under the extension, a 15-percent reduction will be made for portions of cost reporting periods occurring during fiscal year 1991 and a 10-percent reduction will be made for portions of cost reporting periods occurring during fiscal years 1992 through 1995. Sole community hospitals were exempted from any reduction in payments for capital-related outpatient costs under section 6110 of OBRA '89. Section 4151(a) of OBRA '90 exempted rural primary care hospitals from the reduction.

B. Changes in the Regulations

Since we had not published the OBRA '89 reductions provisions in the Code of Federal Regulations, we are amending § 413.130 by adding a new paragraph (j) to incorporate both the OBRA '89 and OBRA '90 provisions in the Medicare regulations.

IV. Non-Capital Related Outpatient Hospital Costs

A. Legislative Provision

Section 4151(b) of OBRA '90 amended section 1861(v)(l)(S)(ii), as added by section 6110 of OBRA '89 and further amended by section 4151(a) of OBRA '90, to add a new subsection (II) to mandate a reduction of non-capital operating costs for hospital outpatient services by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991 through 1995. It also exempted sole community hospitals as defined in section 1886(d)(5)(D)(iii) of the Act and rural primary care hospitals as defined in section 1861(mm)(1) of the Act from this reduction.

B. Changes in the Regulations

We have incorporated the OBRA '90 provision in a new § 413.124.

V. Payment for Physician Pathology Services

A. Legislative Provision

Section 4104 of OBRA '90 amended section 1834(f) of the Social Security Act to provide that the prevailing charge for the professional component of physician pathology services furnished during 1991 is reduced 7 percent below the April 1, 1990 prevailing charge. Section 4104 also

provides that the prevailing charge for a global physician pathology service furnished through an independent laboratory during 1991 is reduced by up to 7 percent from the applicable prevailing charge for the global physician pathology service furnished by independent laboratories on or after April 1, 1990. The reduction cannot result in a prevailing charge that is less than 115 percent of the professional component prevailing charge for physician pathology services.

Section 4104 repeals the provision under section 4050 of OBRA '87 that required HCFA to conduct a study on a relative value scale for physician pathology services.

B. Changes in the Regulations

We have incorporated the provisions of section 4104 of OBRA '90 in § 405.556 of the Medicare regulations. A listing of the physician pathology codes that are being reduced as a result of the provisions of section 4104 has been incorporated in section 8318.2 of the Medicare Carrier's Manual.

VI. Payment for Services of Physicians as Assistants-at-Surgery

A. Legislative Provision

Section 4107(a)(1) of OBRA '90 amended section 1848(i) of the Social Security Act to provide that in the case of a surgical service furnished by a physician, if payment is made separately for the services of a physician serving as an assistant-at-surgery, the fee schedule amount may not exceed 16 percent of the fee schedule amount otherwise determined for the global surgical service involved. (Section 4107(a)(2) specifies that in applying the amendment made under section 4107(a)(1) in 1991, the prevailing charge is substituted for the fee schedule amount.) However, payment is precluded for the services of assistants-at-surgery for procedures that have been determined by the Secretary to involve the services of assistants-at-surgery on average in less than 5 percent of such procedures nationally. (HCFA has published a list of the surgical procedures that are subject to this prohibition under section 5039 of the Medicare Carrier's Manual, appendix A.)

In determining the procedures that are subject to this provision, we used the 1989 Part B Medicare Annual Data (BMAD) procedure file. The OBRA '90 language specifies that we use " * * * the most recent data available * * *" and the 1989 BMAD data are the most recent data available. For every surgical procedure code, we compared the total number of surgical procedures done with the number of times an assistant-at-surgery was shown. If the number of times an assistant-at-surgery was shown was less than 5 percent of the total surgeries performed, it was placed on the list for prohibition of payment for the assistant-at-surgery.

We had received comments from various physicians informing us that some procedures that we had identified as having less than 5 percent performed by assistants-at-surgery were almost always done with an assistant-at-surgery, but that since they were performed in teaching hospitals, the assistants-at-surgery were usually residents or interns and no Medicare Part B claims were made for their services. Residents and interns do not bill part B for their services as assistants-at-surgery.

We do not believe Congress intended to count interns and residents as physicians for purposes of the 5 percent threshold. Moreover, we would note that section 4107 of OBRA '90 states that no payment may be made under part B for services of an assistant-at-surgery when the national average percentage of such procedures "performed under this part" involving the use of a physician as an assistant-at-surgery is less than 5 percent. The phrase "under this part" refers to part B. Since the services of interns and residents are almost always part A services and are not part B physicians' services, they would not be counted for purposes of the assistants-at-surgery provision in most cases. We would modify our list of services if data were presented to show that interns and/or residents provide assistant-at-surgery services on an outpatient (part B) basis and would increase the percent to 5 percent or more nationally.

We also have received some questions about the relationship of section 4107 of OBRA '90 to section 1862(a)(15) of the Social Security Act. As noted above, section 4107 of OBRA '90 enacted a new section 1848(i)(2)(B) of the Social Security Act, which requires that we deny payment for the services of an assistant-at-surgery in connection with a surgical procedure that involves the use of a physician as an assistant-at-surgery less than 5 percent of the time. Section 1862(a)(15) of the Act provides that services of an assistant-at-surgery in a cataract operation are excluded from Medicare coverage unless a Peer Review Organization (PRO) gives prior approval. Thus, section 1862(a)(15) would permit a PRO to give prior approval only in those cases to which section 1848(i)(2)(B) is not applicable. This is confirmed by section 4107(b)(3) of OBRA '90, which amended section 1862(a)(15) of the Act specifically to exclude from Medicare coverage those "services of an assistant-at-surgery to which section 1848(i)(2)(B) applies."

B. Changes in the Regulations

We have revised § 405.502 of the Medicare regulations to incorporate the amendments made by section 4107 of OBRA '90.

VII. Payments for Ambulatory Surgical Procedures in Hospital Outpatient Departments

A. Legislative Provision

Section 4151(c)(1)(A) of OBRA '90 amended section 1833(i)(3)(B)(ii) of the Social Security Act to change the payment rate for ambulatory surgical center (ASC) procedures performed in an outpatient hospital department. Section 4151(c) modified both the cost and ASC proportions of the blended payment amount from a blend based on 50 percent cost and 50 percent ASC payment rates to a blend based on 42 percent cost and 58 percent ASC payment rates. This change is effective for portions of cost reporting periods beginning on or after January 1, 1991.

Section 4151(c)(1)(B) of OBRA '90 extended the effective date for qualified eye and eye and ear specialty hospitals to receive an ASC blended payment based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount. This section extends the benefit of the 75/25 blended payment amount to qualifying eye and ear specialty hospitals beyond the previous September 30, 1990 cut-off date to cost reporting periods beginning before January 1, 1995.

B. Changes in the Regulations

We have incorporated these two OBRA '90 changes under § 413.118(d) of the Medicare regulations.

IX. Payments for Radiology Services Performed in Hospital Outpatient Departments

A. Legislative Provision

Section 4151(c)(2) of OBRA '90 amended section 1833(n)(1)(B)(ii)(I) of the Social Security Act to change the payment rate for radiology services performed in a hospital outpatient department. Section 4151(c)(2) modified both the cost and fee schedule proportions of the blended payment amount from a blend based on 50 percent cost and 50 percent fee schedule to a blend based on 42 percent cost and 58 percent fee schedule amount. This change is effective for portions of cost

reporting periods occurring on or after January 1, 1991.

B. Changes in the Regulations

We have revised § 413.122 of the Medicare regulations to incorporate the changes made by section 4151(c)(2) of OBRA '90.

IX. Hospice Benefit Extension

A. Legislative Provision

Section 4006 of OBRA '90 reinstates an extension of hospice benefits that was included originally under MCCA, and repealed by MCCRA. Section 4006 of OBRA '90 amends sections 1812(a)(4), (d)(1) and (d)(2)(B), and section 1814(a)(7)(A) (i) and (ii) of the Social Security Act, and adds a new section 1814(a)(7)(A)(iii) to the Social Security Act to provide for a subsequent extension period of coverage for hospice care beyond the 210-day limit (that is, two 90-day periods and one subsequent 30-day period) during the individual's lifetime. To be eligible for this additional subsequent extension period, the beneficiary must be recertified as terminally ill by the medical director or the physician member of the interdisciplinary group of the hospice at the beginning of the period.

The amendments made by section 4006 apply to care and services furnished on or after January 1, 1990.

B. Changes in the Regulations

We have amended §§ 418.1, 418.21, and 418.22 of the Medicare regulations to incorporate the legislative changes under section 4006 of OBRA '90.

X. Enrollment of HMO Members in Medicare Part A

A. Legislative Provision

Section 4008(g) of OBRA '90 amended section 1818(c) of the Social Security Act by adding new paragraphs (7) through (9) to provide for a transfer enrollment period for part B-only beneficiaries who are members of Medicare-contracting health maintenance organizations (HMOs) and competitive medical plans (CMPs) to enroll in premium hospital insurance under Medicare part A. The transfer enrollment period is defined as a period that begins in any month during which the individual is enrolled in a Medicare-contracting HMO or CMP and ends with the last day of the 8th consecutive month in which the individual is no longer enrolled in the HMO or CMP. Previously, these individuals were limited to the general enrollment period or a special enrollment period. This sometimes meant a lengthy delay in the start of premium Medicare part A coverage or an increase in the part A premium when they disenrolled from the HMO or CMP. If the individual enrolls in premium hospital insurance while still enrolled in an HMO or CMP or during the first month when no longer enrolled in the HMO or CMP, part A coverage will begin on the first day of the month of hospital insurance enrollment, or at the option of the individual, on the first day of any of the following 3 months. If the individual enrolls in premium hospital insurance during any of the last 7 months of the transfer enrollment period, coverage will begin on the first day of the month after the month of hospital insurance enrollment.

The amendments made by section 4008(g) of OBRA '90 are effective on February 1, 1991.

B. Changes in the Regulations

We have amended §§ 406.21 and 406.33 of the Medicare regulations to incorporate the provisions of section 4008(g) of OBRA '90.

In addition, we have incorporated in § 406.22 a self-implementing provision of section 103 of MCCA. Section 103 of MCCA amended section 1818(d) of the Social Security Act to provide a new formula for computing the basic premium amount for premium hospital insurance of Medicare part A.

XI. Coverage of Ostomy Supplies

A. Legislative Provision

Section 6112(e)(3) of OBRA '89 amended section 1866(a)(1) of the Social Security Act to add a paragraph (P) and section 6112(e) (1) and (2) of OBRA '89 amended sections 1861(m)(5) and 1834(a)(13) to provide for coverage of certain "ostomy supplies" as part of home health medical supplies furnished to Medicare beneficiaries. Section 4153(d) of OBRA '90 further amended section 1866(a)(1)(P), as added by OBRA '89, to expand the term "ostomy supplies" to include specifically catheters, catheter supplies, ostomy bags, and supplies related to ostomy care. The OBRA '90 amendment is effective as if included in OBRA '89—that is, it applies to items furnished on or after January 1, 1990.

B. Changes in the Regulations

We have incorporated the provisions of section 6112(e) (1) and (3) of OBRA '89 and section 4153(d) of OBRA '90 in 42 CFR 409.40 and 489.20. The provisions of section 6112(e)(2) of OBRA '89 are being developed in a separate package.

XII. Coverage of Post-Cataract Eyeglasses

A. Legislative Provision

Section 4153(b)(2)(A) of OBRA '90 amended section 1861(s)(8) of the Social Security Act to provide for Medicare part B coverage of one pair of conventional eyeglasses or conventional contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens. In addition, section 4153(b)(2)(B) of OBRA '90 amended section 1862(a)(7) of the Act to make a conforming amendment to the provision that specifies eyeglasses as an item excluded from Medicare part B coverage. Prior to the effective date of the OBRA '90 amendment, HCFA had covered conventional eyeglasses furnished to cataract patients after surgery as "prosthetic devices" under section 1861(s)(8) of the Social Security Act.

The amendments made by section 4153(b) of OBRA '90 apply to items furnished on or after January 1, 1991.

B. Changes in the Regulations

We have amended § 410.36 on Coverage of Medical supplies, appliances, and devices and § 411.15 on Specific services excluded from coverage to incorporate the provisions of sections 4153(b)(2) (A) and (B) of OBRA '90.

XIII. Application of Preentitlement Stay in Psychiatric Hospital To Limit on Payment for Inpatient Hospital Services

A. Legislative Provision

Section 4008(m)(1) of OBRA '90 amended section 101(b)(1)(B) of MCCRA to provide that the preentitlement psychiatric limitation applicable to an individual at the end of 1989 must carry over into 1990.

Under section 1812 of the Act, a Medicare beneficiary is entitled to have part A payments made on his or her behalf for no more than 150 days of inpatient hospital services in a spell of illness. Of these 150 days, 90 are regular benefit days that can be renewed with each new spell of illness, and 60 are lifetime reserve days that are not renewable. However, section 1812(c) of the Act establishes a special limit for certain inpatient mental health services (i.e., inpatient psychiatric hospital services, and inpatient hospital services for an individual who is hospitalized in a general hospital primarily for diagnosis or treatment of mental illness) If an individual is an inpatient of a psychiatric hospital on the first day of his or her Medicare entitlement, part A payments may not be made for inpatient

mental health services in excess of the following: 150 days minus the number (0 to 150) of days (not necessarily consecutive) in which the individual was an inpatient in a psychiatric hospital during the 150 days immediately preceding his or her first day of entitlement. This limitation is called the preentitlement psychiatric limitation. The pre-MCCA, MCCA, and post-MCCA versions of section 1812(c) were substantially the same.

Under the pre-MCCA provisions, this limitation would cease to apply at the end of the individual's first spell of illness (that is, after a period of 60 consecutive days in which the individual was not an inpatient of either a hospital or a nursing facility). Under the MCCA provisions, this limitation would cease to apply with the passage of 60 consecutive days in which the individual did not receive inpatient mental health services. Under post-MCCA, the pre-MCCA provisions governing the cessation of the limitation are reinstated.

While section 101 of MCCRA reinstated the provisions of section 1812 of the Act as in effect before MCCA, it also included special provisions for the transition from MCCA to these reinstated, post-MCCA provisions. Among these were the following: Under section 101(b)(1)(A), no day before January 1, 1990 may be counted in determining the beginning (or period) of a spell of illness in applying the limitations of section 1812 of the Act to services furnished after January 1, 1990. Under section 101(b)(1)(B), no days of services provided before January 1, 1990, except lifetime reserve days used before January 1, 1989, may be counted in applying the limitations of section 1812 on payment for inpatient hospital services in a spell of illness beginning on or after January 1, 1990.

The preentitlement psychiatric limitation in section 1812(c) of the Act limits payment for inpatient mental health services in a spell of illness. After the enactment of MCCRA, it appeared that if an individual became entitled to part A before 1990, was subject to the preentitlement limitation when he or she became so entitled, and, under the provisions in effect under MCCA, would have remained subject to the limitation on January 1, 1990, that individual would, nevertheless, under section 101(b)(1)(B) of MCCRA, be free of that limitation as of that date. That is because there was no provision in MCCRA for carrying over into 1990 and later years either inpatient mental health services actually furnished before 1990 or preentitlement days in a psychiatric hospital treated as inpatient mental health services under section 1812 of the Act (whereas there was specific provision in MCCRA for carrying over lifetime reserve days used before 1989 into 1990 and later years).

The effect of this interpretation would have been to expand substantially the Medicare program's liability for payment for inpatient mental health services. In the Congressional discussion of the budgetary implications of MCCRA, however, no such expansion of benefits was mentioned. Therefore, we concluded that Congress did not intend to free from the preentitlement psychiatric limitation beneficiaries who became entitled before January 1, 1990 and remained subject to that limitation as of that date. In other words, Congress did not intend that the transition from MCCA to post-MCCA should affect the operation of the preentitlement limitation.

Thus, in interpreting MCCRA in the Medicare Intermediary Manual instructions, we provided that if any individual became entitled to part A before 1990 and, under the provisions in effect before 1990 would still be subject to the preentitlement psychiatric limitation on January 1, 1990, that individual would remain subject to the limitation during his or her first spell of illness beginning after 1989. However, this provision would not apply if the individual has 60 consecutive days, beginning in 1989 or on January 1, 1990, during which he or she does not receive inpatient mental health services before that spell of illness begins.

Similarly, those days of inpatient mental health services actually furnished before 1990 (and which are days for which Medicare payment may have been made) while the individual was subject to the preentitlement psychiatric limitation are counted in determining the extent to which payment may be made for inpatient mental health services furnished after 1989 to an individual who remains subject to that limitation. Those days of inpatient mental health benefits are not restored to the individual while he or she remains subject to the preentitlement psychiatric limitation during his or her first spell of illness beginning after 1989.

Congress ratified this interpretation through the enactment of section 4008(m)(1) of OBRA '90. Section 4008(m)(1) amended section 101(b)(1)(B) of MCCRA by providing that the prohibition against counting days of inpatient hospital services before 1990 in applying the limitation on payment after 1989 does not apply in the case of the limitation on payment under section 1812(c) of the Act, the preentitlement psychiatric limitation. This amendment is effective as though it were part of section 101(b)(1)(B) as enacted on December 19, 1989.

We note that under section 1812(b)(3) of the Social Security Act there is a lifetime limitation of 190 days on payment for inpatient psychiatric hospital services. This limitation was in effect under pre-MCCA and MCCA and remains in effect under post-MCCA. The limitation is separate and distinct from the preentitlement psychiatric limitation.

B. Changes in the Regulations

We have not made any changes in the Medicare regulations relating to the preentitlement psychiatric limitation to reflect the effect of MCCRA or the amendment made to section 101(b)(1)(B) of MCCRA by 4008(m)(1) of OBRA '90. No final regulations containing the preentitlement psychiatric limitation under MCCA were issued. Since the post-MCCA provisions revert to the pre-MCCA provisions, the existing pre-MCCA regulations at § 409.63 reflect the limitation currently in effect. We have issued to intermediaries instructions that reflect the transition from MCCA to post-MCCA as governed by the MCCRA and OBRA '90 provisions.

XIV. Payments to Dialysis Facilities

A. Legislative Provision

Hospitals and free-standing facilities are reimbursed for services furnished to Medicare beneficiaries with end-stage renal disease (ESRD) under a composite rate formula that is weighted to reflect the proportion of patients dialyzing at home and the proportion of patients dialyzing in a facility. Prior to OBRA '90, under the composite rate, the average payment was estimated at $125 per dialysis treatment in free-standing facilities and $129 per dialysis treatment in hospital units. OBRA '89 required the Secretary to maintain these composite rates through October 1, 1990 and prohibited the Secretary from changing the rates in effect as of September 30, 1990 unless such changes are made through notice and comment rulemaking.

Section 4201(a) of OBRA '90 amended section 6203(a)(1) of OBRA '89 to require the Secretary to maintain the composite rate in effect on September 30, 1990 without regard to reductions imposed under section 6201 of OBRA '89, increased by $1.00, for services provided on or after January 1, 1991. The composite rate determined under the formula prescribed under OBRA '89 continues until December 30, 1990.

B. Changes in the Regulations

We have not made any specific in the Code of Federal Regulations to incorporate this provision. The composite rate determined under the formula and any conforming changes have been issued as part of the Medicare Provider Reimbursement Manual.

XV. Payment Rates for Erythropoietin (EPO)

A. Legislative Provision

Section 4201(c) of OBRA '90 amended section 1881(b)(11) of the Social Security Act to provide that an allowance for erythropoietine (EPO) furnished to ESRD patients by providers of services, renal dialysis facilities, and other suppliers of home dialysis supplies and equipment is $11 per 1,000 units, rounded to the nearest 100 units, effective January 1, 1991. (This amount may be increased by the Secretary for each year after 1991.)

Section 4201(d) (2) and (3) of OBRA '90 amended section 1881(b) to specify that payment to supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician will be made at the rate paid to a renal dialysis facility. Payment will be made if it has been determined, in accordance with methods and standards published by the Secretary, that the patient receiving EPO from the supplier can safely and effectively administer it. (HCFA will issue criteria for determining the safe and effective self-administration of EPO as a separate regulation.) If a home dialysis patient is determined not competent to self administer EPO and the drug has been prescribed and the patient must obtain EPO from his or her physician (i.e., the patient cannot obtain EPO from his or her facility), the drug should be administered by the physician who receives the Monthly Capitation Payment (MCP) for furnishing all of the renal related services that the beneficiary may need. In this case, Medicare pays on a reasonable charge basis for the drug, but no additional payment is made to the physician for administration.

B. Changes in the Regulations

We are not making any changes in the regulations at this time. The EPO payment rate is promulgated annually through separate regulations, as required by OBRA '90.

XVI. Medicare Secondary Payer Provision for Individuals With ESRD

A. Legislative Provision

Section 4203(c) of OBRA '90 amended section 1862(b)(1)(C) of the Social Security Act to redefine and to temporarily expand from 12 to 18 months the period during which Medicare is secondary payer for persons entitled to Medicare solely on the basis of end-stage renal disease. We call the period during which Medicare is secondary the "coordination period." Under prior law, Medicare was secondary during a coordination period of from 9 to 12 consecutive months, depending upon whether eligibility was based on a kidney transplant or a course of dialysis.

The amendments made by OBRA '90 are as follows:

- Effective upon enactment, section 4203(c)(1)(A) permanently redefines the 12-month period of section 1862(b)(1)(C) as a period beginning with the individual's first month of Medicare Part A entitlement, or eligibility if earlier, based solely on end-stage renal disease. Anyone who is in a 12-month period, as defined under prior law, and for whom an employer plan therefore was paying primary on November 5, 1990 (the date of enactment), is affected by this change. Thus, this change does not apply to anyone who began dialysis prior to December 1989, because their 12-month period, under prior law, expired before the effective date of OBRA '90. This change makes Medicare the secondary payer, for entitled individuals, during a fixed period of 12 months, and the employer plan the primary payer during a period of between 12 and 15 months, depending upon whether Medicare eligibility was based on a kidney transplant or a course of dialysis.
- Section 4203(c)(1)(B) temporarily expands the modified 12-month period to 18 months, but only for those modified periods beginning on or after February 1, 1990. This means that this extension will apply to those individuals who, with one exception, become eligible for or entitled to Medicare Part A solely on the basis of end-stage renal disease on or after February 1, 1990. The exception: Individuals who began dialysis in November 1989 were subject to a 3-month waiting period and became eligible for or entitled to Medicare on February 1, 1990. These individuals are not affected because their 12-month periods under prior law expired before the effective date of OBRA '90. This change is effective for items and services furnished on or after February 1, 1991 and on or before January 1, 1996.

Under OBRA '90, as under prior law, the period during which an employer plan is primary payer does not necessarily coincide with the period during which Medicare is secondary payer. Under prior law, an employer plan was primary payer for a period of 12 months. However, Medicare was usually secondary only for the last 9 months of this period because, in most cases, the individual was not entitled to Medicare during the first 3 months of this period. Under OBRA '90, it is the employer plan's primary payment responsibility which may vary up to 3 months.

Since Medicare entitlement usually begins with the fourth month of a regular course of maintenance dialysis, the employer group health plan may be primary payer for a period of up to 21 months (the 3-month waiting period plus the first 18 months of Medicare eligibility or entitlement). However, for individuals who undertake a course in self-dialysis training during the 3-month waiting period, the employer group health plan will be primary payer for a total of 18 months, because the effective date of Medicare eligibility or entitlement coincides with the first month of dialysis. Where an individual receives a kidney transplant during the 3-month waiting period, the employer group health plan will be primary payer from 18 to 20 months, depending upon when the individual became entitled or could have been entitled, to Medicare based upon the kidney transplant.

B. Changes in the Regulations

We have amended §§ 411.60 and 411.62 of the Medicare regulations to incorporate the amendment made by section 4203(c) of OBRA '90.

XVII. Prior Authorization Requirement for Certain Durable Medical Equipment

A. Legislative Provision

Section 1834(a) of the Social Security Act establishes payment rules for durable medical equipment, prosthetic devices, orthotics, and prosthetics. Section 4152(e) of OBRA '90 amended section 1834(a) to require that, effective January 1, 1991, items for which payment may be made under section 1834(a) and which are subject to unnecessary utilization must receive prior authorization from Medicare carriers. Section 4152(e) specifies that the Secretary shall develop and periodically update a list of these items on the basis of prior payment experience. The law further specifies that the list developed by the Secretary shall include seat-lift mechanisms,

transcutaneous electrical nerve stimulators, and motorized scooters. Carriers must determine in advance, for items included on the list, whether payment is precluded because of section 1862(a)(1)(A) of the Act. Section 1862(a)(1)(A) precludes payment for items that are not "reasonable and necessary" for the treatment of the patient.

B. Changes in the Regulations

We are not making any changes in the regulations at this time. The specific list of the items of durable medical equipment subject to prior authorization by Medicare carriers that the Secretary develops (and periodically updates) will be issued as a separate document. In the interim, in accordance with the provisions of section 4152(e) of OBRA '90, at a minimum, seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters must receive prior authorization by Medicare carriers before payments under Medicare will be made.

XVIII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking for a regulation in the **Federal Register** to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to the public interest.

As noted earlier, this rule updates our rules to properly reflect explicit statutory requirements which are clear on their face and which we are not interpreting in any way beyond their commonly understood meanings. Without these changes, certain regulation requirements are in conflict with the statute, possibly misleading those who rely on our regulations, and certain statutory requirements are not included, possibly leading some to infer that we will be proposing changes above those required by law. In addition, some of the statutory changes included in these regulations have been enacted with retroactive effective dates or effective dates close to the date of enactment of OBRA '90. Under these circumstances, prompt publication of the correct up-to-date rules best serves those governed by these regulations. In addition, section 4207(j) of OBRA '90 allows for a waiver of the notice of proposed rulemaking to implement these provisions. Therefore, we find good cause to waive the notice of proposed rulemaking prior to issuance of a final rule as impracticable, unnecessary and contrary to the public interest. However, we are providing a 60-day comment period for public comments on the final rule as indicated at the beginning of this rule.

XIX. Technical Amendments—Application of Blood Deductible Under Medicare Part A

Section 102(1) of the MCCA amended section 1813(a)(2)(A) of the Act to make the part A blood deductible applicable on the basis of the calendar year rather than the "spell of illness," which in HCFA regulations is referred to as the "benefit period." According to section 101(a)(2) of MCCRA, MCCRA did not repeal the change made by section 102(1) of the MCCA. Accordingly, we are amending §§ 409.87 and 489.31 to change "benefit period" to "calendar year."

XX. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Comment Period" section of this preamble and respond to them in the preamble to any subsequent rule that we issue.

XXI. Paperwork Burden

These final regulations with comment period do not contain any additional requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

XXII. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis with comment for any regulations that meet one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all Medicare-participating facilities as small entities. Individuals and States are not included in the definition of a small entity.

This final rule with comment period places in regulations numerous self-implementing statutory provisions that are not interrelated. Each provision has individual costs or savings associated with the specific legislative requirement. None of the individual regulations interprets or extends requirements beyond those included in the self-implementing legislation. With one execption, discussed below, we do not believe that any of the legislative provisions that the regulations reflect will produce any effect that will meet any of the criteria of E.O. 12291 for a major rule or will have a significant effect on a substantial number of small entities. For the most part, the legislative provisions incorporated into our regulations by this final rule will provide some extended benefits to patients while incurring incremental costs to hospitals and physicians by reductions in payments previously noted in this preamble.

Section 4203(c)(1) of Public Law 101–508—the provision that amended section 1862(b)(1)(C) of the Act to expand the coordination period during which employer plans must pay benefits primary to Medicare—will result in significant Federal cost savings. The impact of this provision is discussed further below. We do not believe that merely reflecting this provision, which is already in effect, in our regulations will produce any effect that will meet any of the criteria of E.O. 12291 for a major rule or will have a significant effect on a substantial number of small entities. Therefore, we have not prepared a final regulatory impact statement under E.O. 12291 or a regulatory flexibility analysis under the RFA.

To the extent that a legislative provision being incorporated into our regulations by this final rule may have a significant effect on beneficiaries or providers or may be viewed as controversial, we are providing the following discussion:

Section 4008(g) of Public Law 101–508 added sections 1818(c) (7), (8), and (9) to the Act to provide an opportunity for aged individuals who were enrolled in HMOs and CMPs and lost that enrollment, to enroll in premium hospital insurance outside of the usual initial, general, and special enrollment periods. Since encouragement of HMO/CMP enrollment is essential to the goals of the Medicare program, any change that removes disincentives relating to

enrollment in premium hospital insurance from beneficiaries who take advantage of HMO/CMP enrollment is salutary for both the beneficiaries and the Medicare program. Most beneficiaries are eligible for premium-free hospital insurance. However, the number of people taking advantage of the provision should be less than 100 a year. The impact on the program should, therefore, be minimal.

Section 4203(c)(1) of Public Law 101-508 amended section 1862(b)(1)(C) of the Act to expand the coordination period during which employer plans must pay benefits primary for Medicare. Previously, there was a 12-month coordination period, generally beginning with the first month of dialysis. Under the new law, there is an 18-month period, which begins with the first month of Medicare part A eligibility or entitlement. This change is effective for services furnished on or after February 1, 1991 through January 1, 1996, with respect to coordination periods beginning on or after February 1, 1990. After January 1, 1996, the 18-month period reverts to a 12-month period.

Medicare beneficiaries affected by this provision are individuals who are covered by employer group health plans and who also become eligible for or entitled to Medicare, based solely on ESRD, on or after February 1, 1990. Employers/group health plans must pay primary benefits for these individuals for an additional 6 to 9 months. Medicare part A and part B savings estimates are as follows:

MEDICARE SAVINGS

[$ in millions]

	FY1992	FY1993	FY1994	FY1995	FY1996
Part A	$560	$820	$895	$860	$350
Part B	285	425	480	455	185

Section 4203(c)(2) of Public Law 101-508 charges the General Accounting Office (GAO) with studying the effects of the extension of the coordination period from 12 to 18 months on ESRD beneficiaries and their family members, including effects on access to employment and employment-based health insurance. GAO must submit a preliminary report to the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance, not later than January 1, 1993, with a final report due by January 1, 1995.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We have determined and the Secretary certifies, that this final rule with comment period will not have a significant economic impact on the operations of a substantial number of small rural hospitals, and therefore, have not prepared a rural hospital impact statement.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural area, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Recovery against third parties, Reporting and recordkeeping requirements, Secondary payments.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney disease, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as follows:

1. The authority citation for part 405, subpart E, continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842(b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. In § 405.502, the introductory text of paragraph (a) is republished and paragraph (a)(9) is revised to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services services are furnished and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(9) Except as provided in paragraph (a)(10) of this section, in the case of services of assistants-at-surgery as defined in § 405.580 in teaching and non-teaching settings, charges that are not more than 16 percent of the prevailing charge in the locality, adjusted by the economic index, for the surgical procedure performed by the primary surgeon. Payment is prohibited for the services of an assistant-at-surgery in surgical procedures for which HCFA has determined that assistants-at-surgery on

average are used in less than 5 percent of such procedures nationally.

* * * * *

3. Section 405.556 is amended by adding a new paragraph (d) to read as follows:

§ 405.556 Conditions for payment: Physician laboratory services.

* * * * *

(d) *Physician pathology services furnished by physicians or independent laboratories on or after January 1, 1991.*

(1) The prevailing charge for the professional component of physician pathology services furnished by physicians on or after January 1, 1991 is 93 percent of the prevailing charge for the professional component of physician pathology services furnished on or after April 1, 1990.

(2) The prevailing charge for the global physician pathology service furnished through an independent laboratory during 1991 is reduced by up to 7 percent from the applicable prevailing charge for the global physician pathology service furnished by independent laboratories on or after April 1, 1990. The reduction cannot result in a prevailing charge that is less than 115 percent of the professional component prevailing charge for hospital-based physician pathology services.

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

B. Part 406 is amended as follows:

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 202(t), 202(u), 226, 226A, 1102, 1818, and 1871 of the Social Security Act (42 U.S.C. 401(t), 402(u), 426, 426–1, 1302, 1395i–2, and 1395hh) and 3103 of Pub. L. 89–97 (42 U.S.C. 426a) unless otherwise noted.

2. Section 406.21 is amended by revising paragraph (a) and adding a new paragraph (f) to read as follows:

§ 406.21 Individual enrollment.

(a) *Basic provision.* An individual who meets the requirements of § 406.20 (b) or (c) may enroll for premium hospital insurance only during his or her "initial enrollment period", a "general enrollment period", a "special enrollment period", or, for HMO/CMP enrollees, a "transfer enrollment period", as set forth in paragraphs (b) through (f) of this section.

* * * * *

(f) *Transfer enrollment period for HMO/CMP enrollees.* (1) *Terminology. HMO* or *CMP* means an eligible organization as defined in § 417.401 which has a contract with HCFA under part 417, subpart L of this chapter.

(2) *Basic rule.* Effective February 1, 1991, individuals enrolled in an HMO or CMP under part 417, subpart K of this chapter who meet the requirements of § 406.20(b) may enroll in premium hospital insurance during a transfer enrollment period. This transfer enrollment period begins with any month or any part of a month in which the individual is enrolled in an HMO or CMP and ends with the last day of the 6th consecutive month in which the individual is no longer enrolled in the HMO or CMP.

(3) *Effective date of coverage.* (i) If the individual enrolls in premium hospital insurance while still enrolled in an HMO or CMP, or during the first month that he or she is no longer enrolled in the HMO or CMP, part A coverage will begin on the first day of the month of part A enrollment, or, at the option of the individual, on the first day of any of the following 3 months.

(ii) If the individual enrolls in premium hospital insurance during any of the last 7 months of the transfer enrollment period, coverage will begin on the first day of the month after the month of enrollment.

3. Section 406.23 is redesignated as § 406.33, paragraph (a) is revised, and a new paragraph (a)(4) is added to read as follows:

§ 406.33 Determination of months to be counted for premium increase: Enrollment.

(a) *Enrollment before April 1, 1981 or after September 30, 1981.* The months to be counted for premium increase are the months from the end of the initial enrollment period through the end of the general enrollment period, the special enrollment period, or the transfer enrollment period in which the individual enrolls, excluding the following:

* * * * *

(4) Any months that the individual was enrolled in an HMO or CMP under part 417, subpart K of this chapter as described in § 406.21(f).

* * * * *

4. Section 406.32 is amended by revising paragraph (b) to read as follows:

§ 406.32 Monthly premiums.

* * * * *

(b) *Monthly premiums: Determination of dollar amount.*

(1) Effective for calendar years beginning January 1989, the dollar amount is determined based on an estimate of one-twelfth of the average per capita costs for benefits and administrative costs that will be payable with respect to individuals age 65 or over from the Federal Hospital Insurance Trust Fund during the succeeding calendar year.

(2) Before 1989, the dollar amount was determined by multiplying $33 by the ratio of the next year's inpatient deductible to $76, which was the inpatient deductible determined for 1973. (Because of cost controls, the deductible actually charged for that year was $72.)

(3) The amount determined under paragraphs (b) (1) and (2) of this section is rounded to the nearest multiple of $1. (Fifty cents is rounded to the next higher dollar.)

* * * * *

PART 409—HOSPITAL INSURANCE BENEFITS

C. Part 409 is amended as follows:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102, 1812, 1813, 1861, 1862(h), 1871, and 1881 of the Social Security Act (42 U.S.C. 1392, 1395d, 1395e, 1395x, 1395y(h), 1395hh, and 1395rr).

2. In § 409.40, the undesignated introductory text is republished and paragraph (e) is revised to read as follows:

§ 409.40 Included services.

Subject to the requirements and conditions set forth in § 409.42, "home health services" means the following items and services:

* * * * *

(e) Medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, but excluding drugs and biologicals) and the use of durable medical equipment; and

* * * * *

§ 409.87 [Amended]

3. In paragraph (a)(3) of § 409.97, "benefit period" is revised to read "calendar year".

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

D. Part 410 is amended as follows:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861 (r), (s), (aa), and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 13951, 1395m, 1395n, 1395x (r), (s), (aa), and (cc), 1395hh, and 1395rr).

2. In 410.36, the undesignated introductory text is republished and paragraph (b) is revised to read as follows:

§ 410.36 Medical supplies, appliances, and devices: Scope.

Medicare part B pays for the following medical supplies, appliances, and devices:

* * * * *

(b) Prosthetic devices, other than dental, that replace all or part of an internal body organ, including colostomy bags and supplies directly related to colostomy care, including—

(1) Replacement of prosthetic devices; and

(2) One pair of conventional eyeglasses or conventional contract lenses furnished after each cataract surgery during which an intraocular lens is inserted.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

E. Part 411 is amended as follows:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1395x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

2. In § 411.15, the undesignated introductory text is republished, paragraph (b) is revised, and a new paragraph (n) is added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage

* * * * *

(b) *Eyeglasses or contact lenses, except for:*

(1) Post-surgical prosthetic lenses customarily used during convalescence for eye surgery in which the lens of the eye was removed (e.g., cataract surgery);

(2) Prosthetic lenses for patients who lack the lens of the eye because of congenital absence or surgical removal; and

(3) One pair of conventional eyeglasses or conventional contact lenses furnished after each cataract surgery during which an intraocular lens is inserted.

* * * * *

(n) *Certain services of an assistant-at-surgery.*

(1) Services of an assistant-at-surgery in a cataract operation (including subsequent insertion of an intraocular lens) unless, before the surgery is performed, the appropriate PRO or a carrier has approved the use of such an assistant in the surgical procedure based on the existence of a complicating medical condition.

(2) Services on an assistant-at-surgery in a surgical procedure (or class of surgical procedures) for which assistants-at-surgery on average are used in fewer than 5 percent of such procedures nationally.

3. Section 411.60 is amended by adding a definition of "coordination period" in alphabetical order under paragraph (b), *Definitions*, to read as follows:

§ 411.60 Scope and definitions.

* * * * *

(b) *Definitions.* As used in this subpart E—

Coordination period means the period during which Medicare is secondary payer to an employer group health plan.

* * * * *

4. Section 411.62 is revised to read as follows:

§ 411.62 Medicare benefits secondary to employer group health plan benefits.

(a) *General rules.*

(1) Medicare benefits are secondary to benefits payable under an employer plan, for services furnished to an ESRD beneficiary during a coordination period as specified in paragraphs (b) and (c) of this section. An individual who has ESRD but who has not filed an application for entitlement to Medicare is eligible for Medicare based on ESRD for purposes of paragraphs (b)(2) and (c)(2) through (c)(4) of this section if the individual meets the other requirements of § 406.13 of this subchapter.

(2) During the coordination period, the following rules apply:

(i) Medicare makes primary payments only for Medicare covered services that are—

(A) Furnished to Medicare beneficiaries who are not enrolled in the employer plan;

(B) Not covered under the employer plan; or

(C) Covered under the employer plan but not available to particular enrollees because they have exhausted their benefits.

(ii) Medicare makes secondary payments, within the limits specified in §§ 411.32 and 411.33, to supplement the amount paid by the employer plan if that plan pays only a portion of the charge for the services.

(b) *Beginning of coordination period.*

(1) For individuals who start a course of maintenance dialysis or who receive kidney transplant before December 1989, the coordination period begins with the earlier of—

(i) The month in which the individual initiated a regular course of renal dialysis; or

(ii) In the case of an individual who received a kidney transplant, the first month in which the individual became entitled to Medicare, or, if earlier, the first month for which the individual would have been entitled to Medicare benefits if he or she had filed an application for such benefits.

(2) For individuals other than those specified in paragraph (b)(1) of this section, the coordination period begins with the earlier of—

(i) The first month in which the individual becomes entitled to Medicare part A solely on the basis of ESRD; or

(ii) The first month the individual would have become entitled to Medicare part A solely on the basis of ESRD if he or she had filed an application for such benefits.

(c) *End of coordination period.*

(1) For individuals who start a regular course of renal dialysis or who receive a kidney transplant before December 1989, the coordination period ends with the earlier of the end of the 12th month of dialysis or the end of the 12th month of a transplant. The 12th month of dialysis may be any time from the 9th month through the 12th month of Medicare entitlement, depending on the extent to which the individual was subject to a waiting period before becoming entitled to Medicare.

(2) The coordination period for the following individuals ends with the earlier of the 12th month of eligibility or the 12th month of entitlement to Medicare part A:

(i) Individuals, other than those specified in paragraph (c)(1) of this section, who became entitled to Medicare part A solely on the basis of ESRD during December 1989 and January 1990.

(ii) Individuals, other than those specified in paragraph (c)(1) of this section, who could have become entitled to Medicare Part A solely on the basis of ESRD during December 1989 and January 1990 if they had filed an application.

(iii) Individuals who become entitled to Medicare part A solely on the basis of ESRD after January 1995.

(iv) Individuals who can become entitled to Medicare part A solely on the basis of ESRD after January 1995.

(3) The coordination period for the following individuals ends with the earlier of the end of the 18th month of eligibility or the 18th month of entitlement to Medicare part A:

(i) Individuals, other than those specified in paragraph (c)(1) of this

section, who become entitled to Medicare part A solely on the basis of ESRD from February 1990 through July 1994.

(ii) Individuals, other an those specified in paragraph (c)(1) of this section, who could become entitled to Medicare part A solely on the basis of ESRD from February 1990 through July 1994 if they would file an application.

(4) The coordination periods for the following individuals ends January 1, 1996:

(i) Individuals who become entitled to Medicare part A solely on the basis of ESRD from August 1994 through January 1, 1995.

(ii) Individuals who could become entitled to Medicare part A solely on the basis of ESRD from August 1994 through January 1, 1995, if they would file an application.

(d) *Examples.* Based on the rules specified in paragraphs (b) and (c) of this section and the rules specified in § 406.13 of this subchapter, the following examples illustrate how to determine, in different situations, the number of months during which Medicare is secondary payer.

(1) An individual began dialysis on November 4, 1989. He did not initiate a course in self-dialysis training nor did he receive a kidney transplant during the first 3 calendar months of dialysis. Thus, he became entitled to Medicare on February 1, 1990. Since this individual began dialysis before December 1989, the 12-month period began with the first month of dialysis, November 1989, and ended October 31, 1990. The coordination period in this case is 9 months, February 1990 through October 1990.

(2) An individual began dialysis on January 29, 1990. He did not initiate a course in self-dialysis training nor did he receive a kidney transplant during the first 3 calendar months of dialysis. Thus, he became entitled to Medicare on April 1, 1990. Since the individual began dialysis after November 1989, and became entitled to Medicare after January 1990, the coordination period began with the first month of entitlement, April 1990, and ended September 30, 1991, the end of the 18th month of entitlement.

(3) An individual began a regular course of maintenance dialysis on February 10, 1990. He did not initiate a course of self-dialysis training nor did he receive a kidney transplant during the first 3 calendar months of dialysis. Thus, he became entitled to Medicare on May 1, 1990. Medicare is secondary payer from May 1, 1990 through October 1991, a total of 18 months.

(4) The same facts exist as in the example under paragraph (d)(3), except that the individual began a course of self-dialysis training during the first 3 calendar months of dialysis. Thus, the effective date of his Medicare entitlement is February 1, 1990, and Medicare is secondary payer from February 1, 1990 through July 1991, a total of 18 months.

(5) An individual began dialysis on September 15, 1990. He did not initiate a course of self-dialysis training nor did he receive a kidney transplant during the first 3 calendar months of dialysis. Thus, he became entitled to Medicare effective December 1, 1990. Medicare is secondary payer from December 1, 1990 through May 1992, a total of 18 months.

(6) An individual began dialysis on November 17, 1990. He initiates a course of self-dialysis training in January 1991, and thus becomes entitled to Medicare effective November 1, 1990. Medicare is secondary payer from November 1, 1990, through April 1992, a total of 18 months.

(7) An individual began a regular course of dialysis on December 10, 1990. He does not initiate a course of self-dialysis training nor does he receive a kidney transplant. He decides to delay his enrollment in Medicare because his employer group health plan pays charges in full and he does not wish to incur part B premiums at this time. However, in March 1992, he files for part A and part B Medicare entitlement, and stipulates that he wants his Medicare entitlement to be effective March 1, 1992 (one year later than he could have become entitled). Since this individual could have been entitled to Medicare as early as March 1, 1991, Medicare is secondary payer only from March 1, 1992, through August 1992, a period of 6 months.

(While Medicare is secondary payer for only the last 6 months of this period, the Medicare program is effectively secondary payer for the full coordination period, due to the fact that the individual delayed his Medicare enrollment on account of his employer plan coverage and Medicare made no payments at all during the deferred period.)

(8) The same facts exist as in the example under paragraph (d)(7) of this section, except that the individual defers Medicare entitlement beyond August 1992: (For purposes of this example, Medicare entitlement is not retroactive, but rather takes effect after August 1992.) There would be no period during which Medicare is secondary payer in this situation. This is because Medicare entitlement does not begin until after the 18-month period expires as specified in paragraph (c)(3)(ii) of this section.

(9) An individual becomes entitled to Medicare on January 1, 1995. The employer plan is primary payer, and Medicare is secondary payer, from January 1, 1995 through January 1, 1996, a period of 12 months plus 1 day. Medicare becomes primary payer on January 2, 1996, because the extension of the coordination period from 12 to 18 months applies only to items and services furnished on or before January 1, 1996.

(10) An individual becomes entitled to Medicare on September 1, 1995. Medicare is secondary payer from September 1, 1995 through August 31, 1996, a period of 12 months. Medicare becomes primary payer on September 1, 1996, because the coordination period has expired.

(e) *Effect of changed basis for Medicare entitlement.* If the basis for an individual's entitlement to Medicare changes from ESRD to age 65 or disability, the coordination period terminates with the month before the month in which the change is effective.

(f) *Determinations for subsequent periods of ESRD eligibility.* If an individual has more than one period of eligibility based solely on ESRD, a coordination period will be determined for each period of eligibility in accordance with this section.

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

F. Part 412 is amended as follows:

1. The authority citation for part 412 continues to read as follows:

Authority: Sections 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

2. In § 412.113, paragraph (a)(2)(i) is republished and paragraphs (a)(2)(i) (B), (C), and (D) are revised to read as follows:

§ 412.113 Other payments.

(a) *Capital-related costs.*

* * * * *

(2) *Reduction to capital-related payments.*

(i) Except for sole community hospitals as defined in § 412.92, the amount of capital-related payments for cost-reporting periods beginning before October 1, 1991 (including a return on equity capital as provided under

§ 413.157 of this chapter) is reduced by—

* * * * *

(B) Seven percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988 and before January 1, 1988;

(C) Twelve percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988 occurring on or after January 1, 1988;

(D) Fifteen percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989 and beginning on or after January 1, 1990 and ending on or before September 30, 1991; and

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

G. Part 413 is amended as follows:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i) and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100-360 as amended by sec. 608(d)(3) of Pub. L. 100-485 (42 U.S.C. 1395ww (note)) and sec. 101(c) of Pub. L. 101-234 (42 U.S.C. 1395ww (note)).

2. Section 413.118 is amended by revising paragraph (d)(2), redesignating paragraph (d)(3) as paragraph (d)(4) and revising the introductory text of the redesignated paragraph (d)(4), and adding a new paragraph (d)(3) to read as follows:

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

* * * * *

(d) *Blended payment amount.*

* * * * *

(2) For the period of time beginning with the first day of a hospital's cost reporting period that begins on or after October 1, 1988 and ends on December 31, 1990, the blended payment amount is equal to 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

(3) For portions of cost reporting periods beginning on or after January 1, 1991, the blended payment amount is equal to 42 percent of the hospital-specific amount and 58 percent of the ASC payment amount.

(4) For cost reporting periods beginning on or after October 1, 1988 and before January 1, 1995, the blended payments amount is equal to the sum of 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount for a hospital that makes an application to its fiscal intermediary and meets the following requirements.

* * * * *

3. In § 413.122, a new paragraph (b)(4) is added to read as follows:

§ 413.122 Payment for hospital outpatient radiology services and other diagnostic procedures.

* * * * *

(b) *Payment for hospital outpatient radiology services.*

* * * * *

(4) For hospital outpatient radiology services furnished on or after January 1, 1991, the blended payment amount is equal to the sum of 42 percent of the hospital-specific amount and 58 percent of the fee schedule amount.

* * * * *

4. A new § 413.124 is added to read as follows:

§ 413.124 Reduction to hospital outpatient operating costs.

(a) Except for sole community hospitals, as defined in § 412.92, and rural primary care hospitals, the reasonable costs of outpatient hospital services (other than capital-related costs of such services) are reduced by 5.8 percent for services rendered during portions of cost reporting periods occurring on or after October 1, 1990 and before October 1, 1995.

(b) For purposes of determining the blended payment amounts of ambulatory surgical center approved surgical procedures performed in the hospital outpatient setting under § 413.118 and hospital outpatient radiology services and other diagnostic procedures under § 413.122, the reduction is applicable only to the hospital-specific portion of the blended payment amounts.

5. Section 413,130 is amended by adding a new paragraph (j) to read as follows:

§ 413.130 Introduction to capital-related costs.

* * * * *

(j) *Reduction to capital-related costs.*

(1) Except for sole community hospitals and rural primary care hospitals, the amount of capital-related costs of all hospital outpatient services is reduced by—

(i) 15 percent for portions of cost reporting periods occurring on or after October 1, 1989 through September 30, 1991; and

(ii) 10 percent for portions of cost reporting periods occurring on or after October 1, 1991 through September 30, 1995.

(2) For purposes of determining the blended payment amounts for hospital outpatient services under § 413.118 and § 413.122, the reduction is applicable only to the hospital-specific portion of the blended amounts.

PART 418—HOSPICE CARE

H. Part 418 is amended as follows:

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102,1812(a)(4), 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), 1816(e)(5), 1861(dd), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395d(a)(4), 1395d(d), 1395e(a)(4), 1395f(a)(7), 1395f(i), 1395h(e)(5), 1395x(dd), and 1395hh); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

2. In § 418.1, paragraph (c) is revised to read as follows:

§ 418.1 Statutory basis.

* * * * *

(c) Sections 1814(a)(7) and 1814(i) of the Act contain conditions and limitations on coverage of, and payment for, hospice care.

* * * * *

3. In § 418.21, paragraph (a) is revised to read as follows:

§ 418.21 Duration of hospice care coverage—Election periods.

(a) Subject to the conditions set forth in this part, an individual may elect to receive hospice care during one or more of the following election periods:

(1) An initial 90-day period.

(2) A subsequent 90-day period

(3) A subsequent 30-day period.

(4) A subsequent extension period of unlimited duration during the individual's lifetime.

* * * * *

4. In § 418.22, paragraph (a)(l) is revised to read as follows:

§ 418.22 Certification of terminal illness.

(a) *Timing of certification.*—(1) *General rule.* The hospice must obtain written certification of terminal illness for each of the periods listed in § 418.21, even if a single election continues in effect for two, three, or four periods, as provided in § 418.24(c).

* * * * *

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

I. Part 489 is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

2. In § 489.20, the undesignated introductory text is republished and a new paragraph (k) is added to read as follows:

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(k) In the case of home health agencies that provide home health services to Medicare beneficiaries under subpart E of part 409 and subpart C of part 410 of this chapter, to offer to furnish catheters, catheter supplies, ostomy bags, and supplies related to ostomy care to any individual who requires them as part of their furnishing of home health services.

§ 489.31 [Amended]

3. In paragraph (a)(1) of § 489.31, "benefit period" is revised to read "calendar year".

(Catalog of Federal Domestic Assistance Program No. 93.773—Medicare—Hospital Insurance; and Program No. 93.774—Medicare—Supplementary Medical Insurance.)

Dated: May 17, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: July 24, 1991.

Louis W. Sullivan,

Secretary.

Editorial note: This document was received at the Office of the Federal Register July 8, 1992.

[FR Doc. 92-18447 Filed 8-11-92; 8:45 am]

BILLING CODE 4120-01-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution.

DATES: This rule is effective August 11, 1992. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before September 11, 1992.

ADDRESS: Send or deliver comments to Stephanie J. Peters, Attorney, Office of Personnel Management, room 7350, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Stephanie J. Peters, (202) 606-1920.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Randolph County as an additional examination point under the provisions of the Voting rights Act of 1965, as amended. He determined on August 6, 1992, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote, and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject county, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting Rights.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending 45 CFR part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; 7, 9, 79, Stat. 440, 411 (42 U.S.C. §§ 1973e, 1973g).

2. Appendix A to part 801 is amended by adding alphabetically Randolph County of Georgia to read as follows:

Appendix A to Part 801

* * * * *

Georgia

* * * * *

Randolph, Travelers Mini Lodge, Room 2, 949 Blakely Street, Cuthbert, Georgia, 31740; (912) 732-5806 or 5807; August 11, 1992.

* * * * *

[FR Doc. 92-19353 Filed 8-10-92; 3:14 pm]

BILLING CODE 6325-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-348; FCC 92-329]

Radio Broadcast Services; Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order establishes new procedures for resolving conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new FM stations or for changes in FM facilities. The Commission has adopted a cut-off rule that protects FM applications from conflicting rulemaking proposals at the same time that those applications receive protection from mutually exclusive applications. See 56 FR 66006, December 20, 1991.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, Policy and Rules Division, (202) 632–5414.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 91–348, FCC 92–329, adopted July 16, 1992 and released August 4, 1992. The complete text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Synopsis of Report and Order

1. This proceeding was initiated by a Notice of Proposed Rule Making, 56 FR 66006, December 20, 1991, which solicited comment on a number of proposals regarding conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new or modified FM facilities. Currently, the Commission has policies and rules specifying "cut-off" dates with respect to mutually exclusive petitions for rulemaking and with respect to mutually exclusive applications, but none with respect to conflicts between petitions and applications. Since cut-off rules have proven effective in the application and petition contexts in providing certainty to parties and avoiding delays in processing, we solicited comment on whether we should adopt a similar cut-off rule to govern conflicts between FM applications and rulemaking petitions and, if so, the form such a rule should take. Specifically, the Notice proposed to use the deadline for filing Petitions to Deny against new and major change FM applications as the cut-off point for rulemaking petitions that conflict with these applications. Likewise, the Notice proposed that minor change applications would be cut-off 30 days after acceptance of the applications.

2. Based upon the comments filed in the proceeding—all of which support the need for a cut-off rule—and the Commission's experience gained in administering the FM application process in recent years, the Report and Order finds that applicants for new or modified FM facilities should be protected from subsequently filed rulemaking petitions at some point during the application process. The current approach imposes significant and unwarranted risks and uncertainties on applicants and is inconsistent with our treatment of mutually exclusive proposals in both the allotment and application contexts.

3. After reexamining the cut-off rule proposed in the Notice, the Commission determined that FM application should receive protection from conflicting rulemaking proposals at the same time that they receive protection from other mutually exclusive applications. Under this approach, applications for new stations or for major changes in the nonreserved FM band filed during a filing window will be protected from rulemaking petitions at the close of the filing window. Likewise, applications for new FM stations or major changes in the reserved noncommercial band will be protected at the time of the 30-day period for filing mutually exclusive applications as established in periodically and released Commission Public Notices. All other FM applications will be protected from conflicting rulemaking proposals on the date they are received at the Commission. Conflicting rulemaking petitions filed before these cut-off dates will be considered mutually exclusive with FM applications, and the conflicts will be resolved under our existing policy for making substantive choices between conflicting proposals.

4. This rule differs somewhat from our original proposal to cut-off FM applications at a later point in time in the application process. After reviewing the comments, the majority of which favor the approach we are now taking, we believe this approach strikes a more reasonable balance between the procedural rights and expectations of applications and petitioners than our initial proposal because an FM applicant is cut-off from conflicting rulemaking proposals and other applications on the same date.

5. The new cut-off rule will become effective 30 days after publication in the **Federal Register**. Rulemaking petitions already filed, or filed within 30 days after publication in the **Federal Register** of any rule changes in this proceeding, will be handled under the current procedure. The Commission believes that this 30-day period would provide adequate notice to potential rulemaking petitioners while expediting the benefits to the public of the new cut-off procedure.

Final Regulatory Flexibility Analysis Statement

I. Need For and Purpose of This Action

6. This action is taken to establish cut-off procedures governing conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new or changed FM facilities. The Commission believes that these new procedures will reduce the exposure that FM applicants currently have vis-a-vis conflicting rulemaking petitions and the concomitant delays in the processing of their applications.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: None.

III. Significant Alternatives Considered and Rejected

7. The Commission considered a proposal in the Notice of Proposed Rule Making to protect applications for new FM stations or for major changes after the deadline for filing petitions to deny and to protect minor change applications 30 days after release of a notice of acceptance, unless the minor change applications were granted earlier. This proposal was rejected because it did not strike as reasonable a balance between the procedural rights and expectations of applicants and petitioners as the rule that was adopted. Furthermore, the Notice's proposal could have been inequitable to applicants since applications filed on the same date may be accepted for filing on different dates depending upon the staff work involved in reviewing the "tenderability" and "acceptability" of the applications.

8. Accordingly, *It is therefore ordered* That pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, part 73 of the Commission's Rules *Is Amended* as set forth below.

9. *It is further ordered* That the amendments to 47 CFR part 73 adopted in the Report and Order will be effective September 11, 1992.

10. *It is further ordered* That MM Docket No. 91–348 *Is Terminated.*

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Amendatory Text

Part 73 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. sections 154 and 303.

2. Section 73.208 is amended by revising paragraph (a)(1), adding new paragraph (a)(3), redesignating existing

paragraphs (b)(2)–(b)(4) as paragraphs (b)(3)–(b)(5) and adding new paragraph (b)(2) to read as follows:

§ 73.208 Reference points and distance computations.

(a)(1) The following reference points must be used to determine distance separation requirements when petitions to amend the Table of Allotments (§ 73.202(b)) are considered:

(i) First, transmitter sites if authorized, or if proposed in applications with cut-off protection pursuant to paragraph (a)(3) of this section;

(ii) Second, reference coordinates designated by the FCC;

(iii) Third, coordinates listed in the United States Department of Interior publication entitled Index to the National Atlas of the United States of America; or

(iv) Last, coordinates of the main post office.

(The community's reference points for which the petition is submitted will normally be the coordinates listed in the above publication.)

* * * * *

(3) Petitions to amend the Table of Allotments that do not meet minimum distance separation requirements to transmitter sites specified in pending applications will not be considered unless they are filed no later than:

(i) The last day of a filing window if the application is for a new FM facility or a major change in the non-reserved band and is filed during a filing window established under section 73.3564(d)(3); or

(ii) The cut-off date established in a Commission Public Notice under § 73.3564(d) and 73.3573(e) if the application is for a new FM facility or a major change in the reserved band; or

(iii) The date of receipt of all other types of FM applications. If an application is amended so as to create a conflict with a petition for rule making filed prior to the date the amendment is filed, the amended application will be treated as if filed on the date of the amendment for purposes of this paragraph (a)(3).

(b) * * *

(2) Reference coordinates designated by the FCC; or, if none are designated,

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-19126 Filed 8-11-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-88; RM-6981]

Radio Broadcasting Services; West Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Broad Based Communications, Inc., licensee of Station KYEA–FM, Channel 252C2, West Monroe, Louisiana, substitutes Channel 252C1 for Channel 252C2 at West Monroe and modifies Station KYEA–FM's license to specify operation on the higher powered channel. See 55 FR 90148, March 12, 1990. Channel 252C1 can be allotted to West Monroe in compliance with the Commission's minimum distance separation requirements with a site restriction of 46.5 kilometers (28.9 miles) southeast in order to avoid a short-spacing to Station KPCH–FM, Channel 252C, Dubach, Louisiana. The coordinates for Channel 252C1 at West Monroe are 32–11–49 and 91–49–58. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–88, adopted July 17, 1992, and released August 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 252C2 and adding Channel 252C1 at West Monroe.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19204 Filed 8-11-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-566; RM-7421, RM-7656, RM-7657]

Radio Broadcasting Services; Decatur, Petal, and Newton, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C3 for Channel 292A at Petal, Mississippi, and modifies the license for Station WMFM(FM) accordingly and substitutes Channel 250A for Channel 292A at Newton, Mississippi, and modifies the license for Station WMYQ(FM) to specify operation Channel 250A, in response to a petition filed jointly by Thomas William Hickman III and Newton Broadcasting Company, Inc. See 55 FR 49400, November 28, 1990. The coordinates for Channel 292C3, Petal, are 31–32–00 and 89–10–44. The coordinates for Channel 250A, Newton, are 32–19–46 and 89–10–08. The counterproposal filed by Thomas William Hickman III and Newton Broadcasting Company, Inc. (RM–7656) and the counterproposal filed by Vicki Y. Taylor (RM–7657) are dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 90–566, adopted July 16, 1992, and released August 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 292A and adding Channel 292C3 at Petal and by removing Channel 292A and adding Channel 250A at Newton.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19202 Filed 8-11-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-220; RM-7746; RM-7842]

Radio Broadcasting Services; Bishop and Benavides, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Benavides Broadcasting Associates (RM-7842), allots Channel 299C2 to Benavides, Texas. Channel 299C2 can be allotted to Benavides in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.1 miles) west to accommodate Benavides' desired site. The coordinates for Channel 299C2 at Benavides are North Latitude 27-35-18 and West Longitude 98-28-31. Mexican concurrence has been obtained for the allotment of Channel 299C2 at Benavides, Texas. The proposal filed by Cismek Corporation (RM-7746), *see* 56 FR 36752, August 1, 1991, requesting the substitution of Channel 299C3 for Channel 296A at Bishop, Texas, is denied. With this action, this proceeding is terminated.

DATES: *Effective* September 21, 1992. The window period for filing applications will open on September 22, 1992, and close on October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-220, adopted July 15, 1992, and released August 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Benavides, Channel 299C2.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19201 Filed 8-11-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), Commerce.

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, will open for 3 days on August 6-8, 1992, with a possession and landing limit of 44 coho salmon for the open period. The Director, Northwest Region, NMFS (Regional Director), has determined that, following this fishery's third open period on July 31 through August 2, 1992, this fishery should proceed with a 3-day open period and an adjusted possession and landing limit for coho salmon. These adjustments are intended to minimize disruption to the commercial fishery without exceeding the ocean share allocated to the commercial fishery in this subarea.

DATES: Effective at 0001 hours local time, August 6, 1992, through 2400 hours local time, August 8, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 26, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15800-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon, would open July 20 and continue through the earliest of August 31 or attainment of harvest guidelines of either 18,100 coho salmon or 4,400 chinook salmon. The catch during the May 1-June 15, 1992, commercial fishery for all salmon species except coho salmon in the subarea from the U.S.-Canada border to Cape Falcon totaled about 36,800 chinook salmon, leaving 5,300 fish of that fishery's harvest guideline of chinook salmon unharvested. Therefore, these fish were transferred to the July/August commercial fishery and the revised harvest guideline of chinook salmon is 9,700 fish. Associated with this change is the assessment of 500 coho salmon for hooking mortality, resulting in a reduction of the harvest guidelines of coho salmon to 17,600 fish.

Preseason restrictions for the July/August commercial fishery included a cycle of 2 days open and 3 days closed, a possession and landing limit of 30 coho salmon per opening, and gear limited to 6-inch plugs or larger and no more than 4 spreads per line. Inseason actions were taken such that this fishery's second and third open periods were for 3 days each on July 25-27 (57 FR 34085, August 3, 1992) and July 31-August 2 **Federal Register**, August 7, 1992) with a possession and landing limit of 44 coho salmon for each open period.

Based on the best available information on August 4, 1992, the commercial catch in the subarea form the U.S.-Canada border to Cape Falcon during the 3 open periods totaled about 11,800 coho salmon and about 6,300 chinook salmon, and the remainder of the coho salmon harvest guideline is

projected to be harvested during a 3-day fishing period with an appropriate adjustment to the possession and landing limit. By providing another open period of 3 days, disruption to the commercial fishery is minimized. The fishery would otherwise harvest the remaining coho salmon during two open periods of 2 days or less. Therefore, the commercial fishery in the subarea form the U.S.-Canada border to Cape Falcon will open for 3 days, effective 0001 hours local time, August 6 through 2400 hours local time, August 8, 1992. Each vessel may possess, land and deliver not more than 44 coho salmon for this open period. Modifications of fishing seasons and limited retention regulations are authorized by regulations at 50 CFR 661.21(b)(1) (i) and (ii). All other restrictions that apply to this fishery remain in effect as announced in the notice of 1992 management measures (57 FR 19388).

Following this 3-day open period, the commercial fishery in this subarea is closed for 3 days, August 9–11, in accordance with the preseason regulations. During this closed period, catches will be evaluated to determine if sufficient fish remain to reopen this fishery.

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 6, 1992, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM, and 2182 KHZ.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these adjustments affecting the commercial fishery between the U.S.-Canada border and Cape Falcon. The States of Washington and Oregon will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone (EEZ) in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, Nation Marine Fisheries Service.

[FR Doc. 92–19179 Filed 8–11–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 156
Wednesday, August 12, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1992-14]

Transfers of Funds Between Federal Campaign Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission today seeks comments on proposed changes in its regulations regarding the transfer of funds between federal campaign committees. The proposed amendments would require federal campaign committees wanting to transfer funds to other federal campaign committees of the same candidate to obtain written authorization from the contributor of the funds to be transferred. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before September 11, 1992.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is considering amending its regulations regarding the transfer of funds from one federal campaign committee to another federal campaign committee. The amendments under consideration would require a committee undertaking such a transfer to notify the contributors of the funds to be transferred of its intention to make the transfer, and to obtain each contributor's written authorization. This Notice of Proposed Rulemaking ("NPRM") sets out the proposed amendments, and solicits comments on these amendments from the regulated community.

Current regulations allow certain transfers between the federal campaign committees of a candidate. Under 11 CFR 110.3(c)(4), transfers are permitted between a candidate's authorized committee for a past election and his or her authorized committee for a future election, or between the candidate's authorized committees for two past elections, provided that he or she is not a candidate for more than one federal office at the same time. Under § 110.3(c)(5), transfers are permitted between the principal campaign committees of an individual who is seeking more than one federal office during the same election cycle, so long as three conditions are met. The transfer cannot be made if the candidate is actively seeking more than one office, if the transfer would exceed the limitations on contributions, or if the candidate has received matching funds under 26 U.S.C. 9006 or 9037.

Under the proposed amendments, the transferring committee would be required to inform the contributors of the funds to be transferred of its intention to make the transfer, and exclude from the transfer the contributions of any contributor who does not provide written authorization for the transfer. This requirement would be included in both § 110.3(c)(4) and § 110.3(c)(5). It is important to note that these amendments would not apply to transfers from a candidate's primary campaign to his or her general election campaign for the same office in the same year. The amendments apply to transfers between campaigns for elections in different years, and to transfers between campaigns for different offices.

Section 110.3(c)(4) would also be amended to indicate that the contributor's written authorization would operate as a redesignation for the purposes of 11 CFR 110.1(b)(5)(iii). This amendment makes it clear that transferred contributions cannot exceed the limitations on contributions made with respect to the election for which they are redesignated.

As drafted, this rule would require the contributor to affirmatively authorize the transfer. However, the Commission is also considering an alternative formulation. The alternative approach would also require contributor notification, but would allow the transferring committee to transfer the contribution of any contributor who does not object to the transfer. No affirmative authorization of the transfer would be required.

The draft rule incorporates the "affirmative authorization" rather than the "no objection" approach. However, commenters are urged to discuss both approaches in their responses to the NPRM. One additional question that is raised by the "no objection" approach is whether the transferring committee should be required to allow contributors a minimum amount of time to object before making the transfer. If so, how much time should be required?

The Commission welcomes comments on the issues raised by the proposed amendments.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached proposed rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the proposed rule would modify the requirements for transferring funds from one federal campaign committee to another federal campaign committee for use in federal election activity. This does not impose a significant economic burden, because any small entities affected are already required to comply with the Act's requirements if they engage in activity designed to influence a federal election.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees, Political candidates.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.3 is amended by revising the introductory text of paragraphs (c)(4) and (c)(5), by revising (c)(5)(ii), by redesignating paragraph (c)(5)(iii) as paragraph (c)(5)(iv), and by

adding new paragraph (c)(5)(iii), to read as follows:

§ 110.3 Contribution limitations for affiliated committees and political party committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4)).

* * * * *

(c) * * *

(4) Transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee, or between previous Federal campaign committees, provided that the candidate is not a candidate for more than one Federal office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred. Before making any such transfer, the transferring committee shall inform contributors whose contributions are to be transferred of the committee's intention to make the transfer, and shall exclude the contributions of any contributor who does not provide written authorization for the transfer. The contributor's written authorization shall operate as a redesignation for the purposes of 11 CFR 110.1(b)(5)(iii).

* * * * *

(5) Transfers of funds between the principal campaign committees of an individual seeking nomination or election to more than one Federal office, as long as the conditions in 11 CFR 110.3(c)(5) (i), (ii), (iii) and (iv) are met. An individual will be considered to be seeking nomination or election to more than one Federal office if the individual is concurrently a candidate for more than one Federal office during the same or overlapping election cycles.

(i) * * *

(ii) The limitations on contributions by persons shall not be exceeded by the transfer. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act of cover the amount transferred. A contribution shall be excluded from the amount transferred to the extent that such contribution, when aggregated with other contributions from the same contributor to the transferee principal campaign committee, exceeds the contribution limits set forth at 11 CFR 110.1 or 110.2, as appropriate;

(iii) Before making any such transfer, the transferring committee shall inform contributors whose contributions are to be transferred of the committee's intention to make the transfer, and shall exclude the contributions of any contributor who does not provide written authorization for the transfer; and

* * * * *

Dated: August 7, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-19186 Filed 8-11-92; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Docket No. R-0771; Regulation C]

Home Mortgage Disclosure; Proposed Regulatory Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposal to amend Regulation C, which implements the Home Mortgage Disclosure Act. The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) authorizes the Board, in consultation with the Department of Housing and Urban Development (HUD), to develop a new small institution exemption standard for mortgage companies that is comparable to the exemption for depository institutions. Under the Board's proposed standard, a mortgage company with an office in a metropolitan area would be covered if it met either of two tests: the existing asset-size test or lending activity test.

A mortgage company would be covered if its assets exceed $10 million. But regardless of asset size, a mortgage company would also be covered if it originated 100 or more home purchase loans in the preceding calendar year. This dual standard would maintain coverage for all mortgage companies that currently report under HMDA, and would extend coverage to firms that are active home lenders despite their lower asset size.

The Board also proposes to revise the instructions for reporting loan applications received through a broker or loan correspondent to conform the rule for reporting loan approvals to the existing rule for reporting loan denials If an institution makes the credit decision to approve or deny a loan, that institution must report the loan as an origination or as a loan denial, respectively, whether or not the loan closes or would have closed in that institution's name. This revision would apply to all lenders covered by HMDA, not just mortgage companies.

DATES: Comments must be received on or before October 8, 1992. The revised instructions would apply to loan and application data collected by financial institutions beginning January 1, 1993.

ADDRESSES: Comments should refer to Docket No. R-0771 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in § 261.8 of the Board's rules regarding the availability of information (12 CFR 261.8), comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Jane Jensen Gell, or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Home Mortgage Disclosure Act (HMDA) requires lenders that have over $10 million in assets and have offices in metropolitan areas to disclose their housing-related lending activity each year. In 1989, amendments to HMDA extended its scope to include independent mortgage companies—lenders that are unaffiliated with depository institutions or holding companies. As a result of this change, HMDA covered many mortgage companies that make loans in metropolitan areas, but only if their assets exceed $10 million.

Most mortgage companies originate loans and then sell them within a short

period of time, however, and their assets levels often can be relatively low (well under $10 million). These firms' asset size may bear little relation to their residential lending volume. It is estimated that more than 80 percent of mortgage companies—including many active mortgage lenders—are currently exempt from HMDA. Because the 1989 amendments failed to cover as many of these lenders as Congress had intended, Congress amended HMDA again in 1991 to revise the exemption standard.

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) authorizes the Board, in consultation with the Department of Housing and Urban Development (HUD), to establish a new small institution exemption standard for mortgage companies that are "comparable within their respective industries" to depository institutions that are currently exempt. The Board proposed that the new HMDA exemption standard for mortgage companies include an explicit measure of housing-related lending activity together with the existing asset size test. Since asset size may not be related to lending volume, an asset size test alone does not seem appropriate for determining coverage for mortgage companies.

Mortgage companies whose assets (including those of any parent company) exceed $10 million would be covered regardless of lending volume; application of this test would ensure that lenders presently covered would remain subject to HMDA. In addition, firms that have assets of $10 million or less would be covered if they originated 100 or more home purchase loans in the previous calendar year. The Board believes that his proposed dual standard would establish a small-institution exemption for mortgage companies comparable to the exemption for depository institutions.

Mortgage companies specialize in home loans, unlike most small depository institutions which typically may engage primarily in other types of retail lending. Data reported by small depository institutions currently covered by HMDA indicate that small savings and loan associations (the type of depository institution most like mortgage companies in types of lending) extended an average of 50 home loans in 1990. Since mortgage companies focus on home purchase loans, it seems appropriate in defining a small-institution cutoff to set a higher loan volume test for mortgage companies than for depository institutions. The Board solicits comment on whether 100 home purchase loans is the appropriate level for the small-institution exemption applicable to mortgage companies.

In addition, the Board proposes to revise the instructions for reporting loan applications received through broker or loan correspondent. (This change affects all lenders covered by HMDA, not just mortgage companies.) The instructions require institutions to report data for all applications they deny, whether or not the loan would have closed in their name. The Board proposes to conform the rule for reporting loan approvals to the rule for reporting loan denials. If an institution makes the credit decision to approve or deny the loan, that institution must report the loan as a origination or as a loan denial, respectively, whether or not the loan closes or would have closed in the institution's name. This reporting procedure will more accurately reflect an institution's overall home lending activity.

(2) Form of Comment Letters

Comment letters should refer to Docket No. R–0771. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

(3) Explanation of Proposed Regulatory Amendments

The following discussion reviews the proposed amendments to Regulation C section by section.

Section 203.2 Definitions

203.2(g) Home Purchase Loan

The regulation defines a home purchase loan as any loan secured by and made for the purpose of purchasing a dwelling. The Board proposes to specify that—for purposes of the definition of a financial institution under § 203.2(e) or the determination of an exemption under § 203.3(a)—the term "home purchase loan" does not include refinancings. The intention is to implement the small-institution exemption for nondepository lenders in a manner that will cover lenders that originate home purchase loans, and not lenders that may refinance these loans but that are not primarily in the business of making purchase-money mortgage loans. The regulation would continue to require all lenders covered by HMDA to report refinancings as called for by § 203.4(a).

Section 203.3 Exempt Institutions

(a) Exemption Based on Asset Size or Location

The proposed exemption standard for nondepository mortgage lending institutions is based on asset size and number of home purchase loan originations. To better differentiate between the exemption criteria that apply to depository institutions and those that apply to other lenders covered by HMDA, proposed § 203.3(a) sets forth the criteria for exemption in separate subparagraphs.

First, a mortgage company, like a depository institution, would remain covered if its assets exceeded $10 million. Second, regardless of asset size, a mortgage company would now be covered if it made 100 or more home purchase loans in the prior calendar year. The Board solicits public comment on whether this level of loan activity will provide a small-institution exemption standard for mortgage companies that is comparable to the standard for depository institutions.

Appendix A to Part 203

I. Who Must File a Report

The Board proposes to amend Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register—to reflect the proposed exemption standard. The criteria for nondepository institutions have been set forth in a separate paragraph to clearly distinguish this standard from the exemption criteria for depository institutions.

IV. Types of Loans and Applications Covered and Excluded by HMDA

The Board proposes to revise the instructions in paragraph A.3 for reporting loan applications that are received through a broker or loan correspondent. The instructions currently require institutions to report data for all such applications they deny, whether or not the loan would have closed in their name. For applications that they approve, institutions currently report a loan as an origination only if the loan closes in their name. Loans approved by an institution, but closed in the broker's or loan correspondent's name, are reported as loan purchases. Lenders believe this method of reporting does not accurately reflect their lending activity.

The Board proposes to conform the rule for reporting loan approvals to the rule for reporting loan denials. Under

the proposed rule, if an institution makes the credit decision (to approve or deny the application), that institution will report the loan as an origination or as a loan denial, respectively, whether or not the loan closes or would have closed in the institution's name. Institutions that purchase loans from another institution at closing, after having made the credit decision, will report the loans as loan originations, not as loan purchases. (If an institution approves an application for a loan, but does not purchase the loan because the loan is sold to another investor, the institution will report the loan as approved but not accepted.) Paragraph A.1 of this section would also be amended to conform to this standard by deleting the reference to originations as "loans that were closed in your name."

List of Subjects in 12 CFR Part 203

Banks, banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in this proposed rule and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board proposes to amend Regulation C, Home Mortgage Disclosure (12 CFR part 203) as set forth below.

Certain conventions have been used to highlight the proposed changes to the regulation and the instructions. Language to be added is shown inside bold-face arrows, while language that would be removed appears within brackets. The Board is publishing only those sections of the regulation and instructions that would be affected by the changes.

PART 203—HOME MORTGAGE DISCLOSURE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Section 203.2 would be amended by revising paragraph (g) and by republishing the introductory text of the section to read as follows:

§ 203.2 Definitions.

In this regulation:

* * * * *

(g) *Home purchase loan* means any loan secured by and made for the purpose of purchasing a dwelling. ►For the purposes of §§ 203.2(e) (definition of a financial institution) and 203.3(a) (determination of an exemption), "home purchase loan" does not include the refinancing of a home purchase loan.◄

* * * * *

3. Section 203.3 would be amended by revising paragraph (a) and by revising paragraph (c)(1) to read as follows:

§ 203.3 Exempt institutions.

[(a) *Exemption based on asset size or location.* A financial institution is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31—

(1) The institution had neither a home office nor a branch office in an MSA; or

(2) In the case of a bank, savings association, or credit union, the institution's total assets were $10 million or less; or

(3) In the case of a for-profit mortgage lending institution (other than a bank, savings association, or credit union), the total assets of the institution combined with those of any parent corporation were $10 million or less.]

►(a) *Exemption based on location, asset size, or number of home purchase loan originations.* (1) A bank, savings association, or credit union is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31—

(i) The institution had neither a home office nor a branch office in an MSA; or

(ii) The institution's total assets were $10 million or less.

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) is exempt from the requirements of this part for a given calendar year if—

(i) The institution had neither a home office nor a branch office in an MSA on the preceding December 31; or

(ii) The institution's total assets combined with those of any parent corporation were $10 million or less on the preceding December 31; and the institution originated fewer than 100 home purchase loans in the preceding calendar year.◄

* * * * *

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on [asset size or location under] ►the criteria set forth in◄ paragraph (a) of this section shall comply with this part beginning with the calendar year following the year in which it lost its exemption.

* * * * *

4. Appendix A to part 203 would be amended by revising paragraphs I.A. through I.F., by adding a new paragraph I.G., and by revising paragraph IV.A.1. and the first sentence of paragraph IV.A.3. to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA-Loan/Application Register

* * * * *

I. Who Must File a Report

A. ►Depository institutions.◄ Subject to the exceptions discussed below, banks, savings association ►and◄ credit unions [and other mortgage lending institutions] must complete a register listing data about loan applications received, loans originated, and loans purchased if on the preceding December 31 an institution:

1. Had assets of more than $10 million, and

2. Had a home or a branch office in a "metropolitan statistical area" or "primary metropolitan statistical area" (both are referred to in these instructions by the term "MSA").

Example: If on December 31 you had a home or a branch office in an MSA and your assets exceeded $10 million, you must complete a register that lists the home purchases and home improvement loans that you originate or purchase (and also lists applications that did not result in an origination) beginning January 1.

►B. Other lending institutions. Subject to the exceptions discussed below, for-profit lending institutions (other than banks, savings associations, and credit unions) must complete a register listing data about loan applications received, loans originated, and loans purchased if the institution had a home or branch office in an MSA on the preceding December 31, and

1. Had assets of more than $10 million on the preceding December 31, or

2. Originated 100 or more home purchase loans (not including refinancings) during the preceding calendar year, regardless of asset size.◄

[B.] ►C.◄ You need not complete a register—even if you meet the tests for asset size and location—if your institution is a bank, savings association, or credit union that made no first-lien home purchase loans ►(for this purpose, a refinancing does not count as a home purchase loan)◄ on one-to-four-family dwellings in the preceding calendar year. This exception does not apply in the case of nondepository institutions.

[C.] ►D.◄ You need not complete a register—even if you meet the tests for [asset size and] location ►and asset size or number of home purchase loans◄—if your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union) and the home purchase loans that you originated in the preceding calendar year ►(not including refinancings)◄ came to less than 10 percent of your total loan origination volume, measured in dollars.

[D.] ►E.◄ If you are a for-profit mortgage lender (other than a bank, savings association, or credit union), the asset test is based on the combined assets of your institution and any parent corporation.

[E.] ►F.◄ If you are the subsidiary of a bank or savings association, you must complete a separate register for your institution. You will submit the register, directly or through your parent, to the agency that supervises your parent. (See paragraph VI.)

[F.] ►G.◄ Institutions that are specifically exempted by the Federal Reserve Board from complying with the Federal Home Mortgage Disclosure Act because they are covered by a

similar state law on mortgage loan disclosures must use the disclosure form required by their state law and submit the data to their state supervisory agency.

* * * * *

IV. Types of Loans and Applications Covered and Excluded by HMDA

A. Types of Loans and Applications To Be Reported

1. Report the data on home purchase and home improvement loans that you originated [(that is, loans that were closed in your name)] and loans that you purchased during the calendar year covered by the report. Report the data even if the loans were subsequently sold by you institution. Include refinancings of home purchase and home improvement loans.

* * * * *

3. In the case of brokered loan applications or applications forwarded to you through a correspondent, show the data for all applications ►approved or◄ denied by your institution (whether or not the ►closed or◄ would have closed in your institution's name). * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 7, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-19177 Filed 8-11-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 27

[Docket No. 92-ASW-2; Notice No. SC-92-2-SW]

Special Conditions: Eurocopter France Model AS-355N Helicopter, Engine Full Authority Digital Electronic Control

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for the Eurocopter France Model AS-355N helicopter. This helicopter will have a novel or unusual design feature associated with the Turbomeca Arrius 1A engines with a full authority digital electronic control system. The applicable airworthiness regulations do not contain appropriate safety standards for the requirements to protect critical function systems from the effects of external radio frequency energy sources. This notice contains proposed additional safety standards that the Administrator considers necessary to ensure that critical functions of systems in the Eurocopter France Model AS-355N helicopter would be maintained when exposed to the high intensity radiated fields (HIRF) caused by external radio frequency energy sources.

DATES: Comments must be received by September 11, 1992.

ADDRESSES: Submit comments in duplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-2, Fort Worth, Texas 76193-0007, or deliver in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Forth Worth, Texas.

All comments must be marked Docket No. 92-ASW-2. Comments may be inspected in the Office of the Assistant Chief Counsel, at the address specified above, between 8 a.m. and 4 p.m., weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193-0111; telephone (817) 624-5120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special condition proposed in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this special condition will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-ASW-2." The postcard will be date/time stamped and returned to the commenter.

Background

On February 12, 1991, Eurocopter France, Marignane, submitted an application for an Amended Type Certificate for the Model AS-355N helicopter to the FAA Brussels Certification Office through the French Direction Generale de 1'Aviation Civile (DGAC) authorities. The Model AS-355N is an extension of the AS-355F2 version with the following significant changes: (1) The Allison C20F engines will be replaced by Turbomeca Arrius 1A engines with +51 Shaft Horsepower (SHP) increased power and a full authority digital electronic control; (2) the span of the horizontal stabilizer has been doubled to improve handling characteristics about the helicopter pitch axis; and (3) the tail rotor efficiency has been improved by the installation of a 10 degree, 30 mm tab on the trailing edge of each blade.

Type Certification Basis

The certification basis established for the Model AS-355N includes FAR 21.29 and FAR 27 effective February 1, 1965; Amendments 27-1 through 27-20, effective on the date of application to the DGAC; and any FAA compliance findings of equivalent safety plus the following requirements of Amendment 21, including the DGAC Special Conditions:

FAR 27, Amendment 21

FAR 27.21	FAR 27.729
FAR 27.45	FAR 27.35
FAR 27.71	FAR 27.779
FAR 27.79	FAR 27.807
FAR 27.143	FAR 27.1329
FAR 27.151	FAR 27.1413
FAR 27.161	FAR 27.1519
FAR 27.173	FAR 27.1525
FAR 27.175	FAR 27.1555
FAR 27.177	FAR 27.1585
FAR 27.672	FAR 27.1587
FAR 27.673	

DGAC Special Conditions

A—Limit Pilot Forces

B—Engine air intake protection against birds (2 pounds) and hail ingestion

C—Engine governing system

In addition, FAR Part 36 Noise Standards amended by Amendments 36-1 through the latest amendment adopted and in effect when noise tests or analysis are completed.

FAA special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will

become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

The Eurocopter France Model AS–355N helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. A full authority digital electronic control (FADEC) is an electronic device which performs the critical functions of engine control. The control of the engines is critical to the continued safe flight and landing of the helicopter during all operating flight regimes, both visual flights rules (VFR) and instrument flight rules (IFR).

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform functions required for continued safe flight and landing. These advanced systems are responsive to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of the § 29.1309(a) requirement. Higher energy levels radiate from operational transmitters that are currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Exising aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect this helicopter against the adverse effects of exposure to HIRF must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) the adverse service experience of military aircraft using these technologies; and (4) the increase in the number of power of radio frequency emitters and the expected increase in the number of these emitters in the future.

The FAA has recognized the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to: (1) Determine and define the electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have established a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting special conditions for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels in which civilian helicopter system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition requires that the helicopter's electrical/electronic systems and its associated wiring harness be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating IFR.

The defined HIRF environment specified in this proposed special condition is based on many critical assumptions; among these is that, with the exception of takeoff and landing at an airport, the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the given environment by twice or more.

This special condition would require qualification of systems that perform critical functions, as installed in aircraft, to meet either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and the operational capability of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment. FAA has determined that the environment defined in Table I is acceptable for critical functions in helicopters operating not less than 500 feet AGL. For critical functions in helicopters operating at altitudes less than 500 feet AGL, additional considerations must be given.

The applicant may demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions withstand a peak electromagnetic field strength in a frequency range of fd10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the HIRF requirements, no credit would be given for signal attenuation due to installation. A level of 100 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

For helicopters, the primary electronic flight displays are critical for IFR operations and a FADEC is an example of a critical functioning system for all operations (both IFR and VFR).

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis that perform critical functions are the ones that are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements would only apply to the critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental

condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1KH_z sine wave with 80 percent depth of modulation in the frequency range from 10KH_z to 400 MH_z and 1KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should applied.

Acceptable system performance would be attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable but need to be independently assessed by the FAA for each application.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500KH_z	60	60
500–2000	80	80
2–30 MH_z	200	200
30–100	33	33
100–200	150	33
200–400	56	33
400–1000	4020	935
1–2 GH_z	7850	1750
2–4	6000	1150
4–6	6800	310
6–8	3600	666
8–12	5100	1270
12–18	3500	551
18–40	2400	750

Conclusion

This proposed action would affect only certain unusual or novel design features on one series of helicopters. It would not be a rule of general applicability and would affect only the applicant who applied to the FAA for approval of these features on the affected helicopter.

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Eurocopter France Model AS–355N helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on July 29, 1992.

Henry A. Armstrong,

Acting Manager, Rotocraft Directorate, Aircraft Certification Service.

[FR Doc. 92–19225 Filed 8–11–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 29

[Docket No. 92–ASW–5; Notice No. SC–92–5–SW]

Special Conditions: Aerospatiale Model AS 332L2 "Super Puma" Helicopter, 30-Second Contingency Rating

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Aerospatiale Model AS 332L2 "Super Puma" helicopter. This helicopter will have a novel or unique emergency contingency 30-second/2-minute one-engine-inoperative (OEI) rating. The applicable airworthiness regulations do not contain appropriate safety standards that will verify that the special contingency ratings will perform their intended purpose in case of an emergency. This notice proposes special conditions that the Administrator considers necessary to ensure that the Aerospatiale Model AS 332L2 "Super Puma" helicopter will continue to operate safely in the event of the loss of power on one engine.

DATES: Comments must be received on or before September 11, 1992.

ADDRESSES: Comments on this proposed special condition may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Docket No. 92–ASW–5, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Fort Worth, Texas.

All must comments must be marked Docket No. 92–ASW–5. Comments may be inspected in the Office of the Assistant Chief Counsel, at the address specified above, between 8 a.m. and 4 p.m., weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Richter, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193–0112; telephone (817) 624–5125.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special conditions proposed in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Regional Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–ASW–5." The postcard will be date/time stamped and returned to the commenter.

Background

On June 6, 1989, Aerospatiale Helicopter Division applied for an amendment to the AS 332L1 Type Certificate H4EU through the French

Direction General de l'Aviation Civile (DGAC) for the AS 332L2 version of the "Super Puma" helicopter. The Model AS 332L2 is derived directly from the AS 332L1 with the following major modifications:

- Modified main rotor gearbox with new oil cooling system;
- Incorporated new design spheriflex main rotor hub and modified main rotor blades;
- Incorporated new design spheriflex tail rotor hub and new tail rotor blades;
- Modified intermediate and tail rotor gear boxes;
- Extended fuselage containing some composite components and shortened tail boom allowing increased passenger capacity;
- Incorporated advanced technology avionics containing dual duplex Automatic Flight Control System (AFCS) and Electronic Flight Instrument System (EFIS); and
- Upgraded Makila 1A2 engines with full authority digital electronic control (FADEC), increased performance, and unique 30-second/2-minute emergency power ratings.

The Model AS 332L2 "Super Puma" is a twin-engine, 9150 kg (20,175-pound) transport category helicopter.

The Model AS 332L2 "Super Puma" was certified by the French DGAC and was issued the French Type Certificate No. 56 on June 12, 1991. A portion of the French certification basis included compliance with French special requirements for super contingency ratings. The French special requirements are designated "Super Contingency." The special conditions proposed in this notice are equivalent to these French special requirements.

Type Certification Basis

Under the provisions of 14 CFR, FAR 21.101 and the Bilateral Airworthiness Agreement between the United States and France, the Societe National Industrielle Aerospatiale must show that the Model AS 332L2 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. H4EU. The certification bases for the Model AS 332L2 helicopter are:

FAR 21.29 and FAR 29 effective February 1, 1965, including Amendments 29–1 to 29–9 plus §§ 29.305, 29.307, 29.571, 29.603, 29.605, 29.609, 29.610, 29.629, 29.951(c), 29.1183, 29.1305(a)(16) and 29.1529 through Amendment 29.10.

The applicant has elected to comply with:

- FAR 29, Amendments 29–10 through 29–16, except for § 29.397 at Amendment 29–12 as concerns the rotor brake;
- the Airworthiness Criteria for Helicopter Instrument Flight dated December 15, 1978;
- FAR Part 36 Noise Standards amended by Amendments 36–1 through the latest amendment in effect at the time of actual testing; and
- Special Condition No. 29–ASW–1, Docket No. 90 ASW–4, which became effective on January 23, 1991. It was issued as part of the certification basis for the Aerospatiale Model AS 332L2 helicopter for the protection of electrical/electronic systems from high intensity radiated fields (HIRF).

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

The Aerospatiale Model AS 332L2 helicopter, at the time of application, was identified as incorporating up-rated engines with full authority digital electronic controls (FEDEC), increased performance, with unique 30-second/2-minute one-engine-inoperative (OEI) emergency power ratings.

At the present time, the FAA and airworthiness authorities recognize the requirement for the unique 30-second/2-minute OIE power ratings and are in the process of amending the engine and helicopter certification standards as necessary to include provisions for these unique emergency power ratings. While the certification standards are being finalized, the FAA is adopting special conditions for the certification of helicopters that incorporate engines that have been certificated with these unique 30-second/2-minute OIE ratings and that will utilize these rated powers during emergency (loss of power from one of the two engines) situations.

Conclusion

The special conditions proposed herein will be made applicable to the Aerospatiale Model AS 322L2 "Super Puma" helicopter which is the only aircraft that incorporates engines that have been certificated with these unique 30-second/2-minute one-engine-inoperative (OEI) emergency power ratings. This proposed action would affect only certain unusual or novel design features on one series of helicopter. It would not be a rule of general applicability and would affect only the applicant who applied to the FAA for approval of these features on the affected helicopter.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for the Aerospatiale AS 332L2 "Super Puma" helicopter.

Special Emergency, One-Engine-Inoperative, (OEI) 30-Second/2-Minute Power Ratings

The helicopter engines must be certified and meet the 30-second/2-minute (OEI) power ratings. The Makila 1A2 engines must have been certified using the special conditions specified in Docket No. 92–ANE–29; Notice No. SC–92–01–NE.

(a) The 30-second/2-minute OEI power ratings will replace the 2½ minute OEI power ratings.

(b) The power assurance requirements of § 29.45(f) must be met.

(c) Only the 2-minute OEI power rating may be used to demonstrate compliance with § 29.67.

(d) In addition to the 200-hour rotor drive system and control mechanisms test, the takeoff run must be conducted as prescribed in § 29.923(b)(1) except that immediately following any one 5-minute power-on run, each power source must simulate a failure, followed by the application of maximum torque and speed for use with 30-second OEI power to the remaining affected drive system power inputs for not less than 30 seconds, immediately followed by an application of maximum torque and speed for use with 2-minute OEI power for not less than 2 minutes. One of these runs must be conducted from a simulated "flight idle" condition. An affected power input includes all parts of the rotor drive system which can be adversely affected by the application of higher or asymmetric torque and speed. The components for this test must be those used for showing compliance with the remainder of the requirements in § 29.923. These tests may be conducted on a representative bench test facility when engine limitations either preclude repeated use of these powers or would result in premature engine removals during the test. The loads, frequency, and methods of application to the affected rotor

drive system components must be representative of rotorcraft conditions.

(e) A means must be provided to automatically control or otherwise prevent any engine from exceeding the installed engine limits associated with the 30-second power rating.

(f) A means must be provided to indicate to the pilot when the engine is at the 30-second and the 2-minute OEI power levels, when the event begins, and when the time interval expires.

(g) A device or system must be provided which records each usage and duration of 30-second and 2-minute OEI powers. Retrieval of the recorded data must be possible. The recorder must be capable of being reset only by ground maintenance personnel and a means must be provided to verify proper operation of the system or device.

(h) 30-second/2-minute OEI power can only be used for continued operation of the remaining engine(s) after a failure or precautionary shutdown of an engine. It must be shown that, following application of 30-second or 2-minute OEI power, any damage will be readily detectable by inspections and other related procedures which must be furnished in accordance with section A29.4 of appendix A or part 29 and section A33.4 of appendix A of part 33.

(i) The use of 30-second or 2-minute OEI power must be limited to not more than 30 seconds or 2 minutes, respectively, for any period in which those powers are used and must also be limited by the maximum rotational speed that may not be greater than the maximum value determined by the rotor design or the maximum value demonstrated during the type certification tests. Additionally, the use of these OEI ratings is also limited by the maximum allowable gas temperature and the maximum allowable torque.

(j) Each OEI limit or approved operating range must be marked to be clearly differentiated from the markings required in § 29.1549(a) through (d). No marking is required for the 30-second OEI power limit.

The method of training flight crewmembers in the correct procedures and the use of these new OEI power ratings and equipment should be considered during the design and certification process. Training flights utilizing these ratings may be prohibitive based upon possible engine damage and cost; therefore, some form of simulation should be considered for training.

Issued in Forth Worth, Texas, on July 31, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-19224 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AWA-9]

Proposed Airport Radar Service Area in the Vicinity of Newburgh, NY; Results of Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Results of comments and public meeting.

SUMMARY: The Federal Aviation Administration (FAA) held a public meeting on February 26, 1992, to discuss whether to establish an Airport Radar Service Area (ARSA) at the Stewart International Airport, Newburgh, NY. The FAA has determined not to proceed with establishing an ARSA at this time.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION: On February 6, 1992, the Federal Aviation Administration (FAA) issued a notice of public meeting (57 FR 4589) to discuss whether to establish an ARSA at the Stewart International Airport, Newburgh, NY. The informal airspace meeting was held on February 26, 1992, attended by approximately 170 persons. The FAA also received 48 comments on this preliminary proposal. Most commenters and persons attending the meeting opposed establishing an ARSA.

The FAA has completed a review of the regulatory airspace requirements for the proposal to establish an ARSA at Stewart International Airport, Newburgh, NY. Based upon this review and the comments received, the FAA has concluded that further regulatory action to establish an ARSA is not warranted at this time.

Issued in Washington, DC, on July 30, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-19106 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-173-89]

RIN 1545-AN45

Property Exempt From Levy; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations regarding property which is exempt from levy by increasing existing dollar amounts for specific exempt property, adding additional types of property to the list of exempt property, and exempting a taxpayer's principal residence from levy unless jeopardy is determined or unless the levy is approved in writing by the district director or assistant district director.

DATES: The public hearing originally scheduled for Friday, August 21, 1992, beginning at 1 p.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations (26 CFR part 301) under section 6334 of the Internal Revenue Code. A notice appearing in the **Federal Register** for Wednesday, May 27, 1992 (57 FR 22194), announced that the public hearing on the proposed regulations would be held on Friday, August 21, 1992, beginning at 1 p.m. in the Internal Revenue Service Auditorium, Internal Revenue Service Building, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Friday, August 21, 1992, has been cancelled.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-19114 Filed 8-11-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB81

Oil Spill Prevention and Response for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Certain responsibilities and authorities under the Federal Water Pollution Control Act (FWPCA) as amended by the Oil Pollution Act of 1990 (OPA) have been delegated to the Secretary of the Interior (Secretary). These new authorities apply to all offshore areas including State submerged lands and cover oil spill prevention and response for owners of offshore facilities, including associated pipelines. This advance notice of proposed rulemaking informs the public that the Minerals Management Service (MMS) is preparing to develop regulations under this new authority and is soliciting information concerning the development of these requirements.

DATES: Comments must be received or postmarked by September 28, 1992.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070-4817; Attention: Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Engineering and Standards Branch, telephone (703) 787-1600 or (FTS) 393-1600.

SUPPLEMENTARY INFORMATION: In August 1990, Congress passed the OPA containing various provisions aimed at strengthening oil spill prevention efforts and oil spill response capability. The OPA included amendments to FWPCA. To implement the authority under FWPCA as amended by OPA, Executive Order (E.O.) 12777 was signed by the President on October 18, 1991, and published in the **Federal Register** on October 22, 1991 (56 FR 54757). The E.O. 12777 delegated certain responsibilities to the Secretary, including some responsibilities with regard to FWPCA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 delegated to the Secretary those responsibilities under FWPCA that are vested in the President by "* * * Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the [Deepwater Ports Act (DPA)] * * *"; "* * * Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure availability of private personnel and equipment, the review and approval of such response plans, and the authorization of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans * * *"; and "* * * by section 311(j)(6)(A) of FWPCA, respecting the requirement for periodic inspection of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA * * *," respectively.

The new authorities apply to all offshore areas including State submerged lands. Portions of these new authorities and responsibilities are similar to existing MMS authorities and responsibilities for oil and gas operations in the Outer Continental Shelf (OCS). These regulations at 30 CFR part 250 are under the authority of the OCS Lands Act (43 U.S.C. 1331 *et seq.*) and govern all phases of oil and gas operations under a lease.

Oil, gas, and sulphur operations in the OCS are governed by operating regulations at 30 CFR part 250. These regulations have the objectives of safety, protection of the environment, conservation of natural resources, prevention of waste, and protection of correlative rights. Many of the regulations address all of the objectives at the same time. For example, many requirements are directed at prevention of blowouts (uncontrolled flow of hydrocarbons). A blowout is a safety concern, an oil spill resulting from a blowout is an environmental concern, and the oil lost due to a blowout is a concern from the standpoint of conservation of natural resources and prevention of waste. Other requirements, in particular those contained in 30 CFR part 250, subpart C, Pollution Prevention and Control, are primarily directed at the protection of the environment. The requirements in Subpart C that address water pollution (as opposed to air pollution) are generally applicable to the intent of the oil spill response aspects of FWPCA.

Section 250.40, Pollution prevention, establishes both general and specific requirements for prevention of pollution, responsibility for cleanup of pollution, requirements for marking of equipment, and requirements for reporting of items lost overboard. Section 250.41, Inspections and reports, establishes requirements for daily and monthly inspection of the facility and equipment, recording of inspection results, maintenance and repair of equipment based on inspections, and reporting of spills and other pollution events.

Section 250.42, Oil spill contingency plans, requires that blesses in the OCS submit an Oil Spill Contingency Plan (OSCP) for approval by the Regional Supervisor with or prior to submitting an Exploration Plan or a Development and Production Plan. The OSCP is reviewed and updated annually, and all modifications are submitted for approval to the Regional Supervisor for the appropriate Region. An OSCP under existing regulations includes an oil spill trajectory analysis specific to the area of operations, an identification of sensitive areas that may be impacted and strategies to protect these sensitive areas, an identification of response equipment suitable for anticipated environmental conditions and response time for deploying the equipment, and a dispersant-use plan. The OSCP must also address inspection and maintenance of response equipment, early detection and timely notification of an oil spill, specific actions to be taken after discovery of an oil spill, disposal of recovered oil, oil-contaminated material and other oily wastes, and monitoring and predicting spill movement. In the Alaska OCS Region only, the OSCP addresses procedures for ignition of an uncontrollable oil spill and the guidelines to be followed in making the decision to ignite.

Section 250.43, Training and drills, requires that lesses and operators ensure that the oil spill response team is provided with hands-on training classes at least annually in the deployment and operation of the pollution-control equipment and that personnel responsible for supervising the oil spill response operations are trained in directing the deployment and use of all response equipment and know the location and intended use of available response equipment, spill reporting procedures,. and deployment strategies for the facilities under their jurisdiction. Lessees and operators are also required to have annual drills for familiarization

with pollution-control equipment and operational procedures.

The MMS need to determine the extent to which existing regulations governing operations in the OCS meet the new requirements of the FWPCA. One specific area that MMS will address concerns the concept of "worst case." The OPA added a new provision in section 311(j)(5) of FWPCA to require owners or operators of tank vessels and facilities "to submit to the President a plan for responding to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such discharge, of oil or hazardous substance." The FWPCA as amended further provides that the plans shall

"(i) Be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) Identify the qualified individual having full authority to implement removal actions, and require immediate communications between the individual and the appropriate Federal Official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) Identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such discharge;

(iv) Describe the training, equipment, testing periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to prevent the discharge, or the substantial threat of a discharge;

(v) Be updated periodically; and

(vi) Be resubmitted for approval of each significant change."

In developing regulations to implement FWPCA, MMS will need to determine whether current requirements for OSCP's fulfill the responsibilities delegated to MMS under E.O. 12777. In addition, MMS will determine what regulations are needed for facilities in areas under lease by a State and to offshore pipelines on a right-of-way.

The MMS anticipates that regulations implementing MMS's authority under FWPCA will use the framework described in one of the following options.

Option 1

The MMS would expand regulations governing the OCS leases to ensure that requirements under FWPCA were met and would develop regulations for State leases and for all offshore pipelines to parallel regulations governing OCS leases.

Option 2

The MMS would expand regulations governing OCS leases to ensure that requirements under FWPCA were met. The MMS would address oil spill response by establishing regulations governing State leases and offshore pipelines on a right-of-way to parallel regulations governing OSCP requirements for OCS leases and, in addition, would establish regulations to require State lessees and pipeline owners to submit a second plan that addresses the procedure, method, and equipment they will employ to prevent discharge of oil and hazardous substances from offshore facilities. The second plan addressing oil spill prevention would reference any legally enforceable regulations with which the owner of the offshore facility was required to comply (e.g., State or local regulations). The MMS would require additional safeguards, as needed, to ensure that appropriate prevention and response measures were in place.

Option 3

Use Option 1 or Option 2, or portions of those options, in combination with a program with State agencies whereby a State could enter into a Memorandum of Understanding (MOU) with MMS to establish that the State would, under existing State authority, establish requirements for spill prevention and response. To the extent that the State had established a State program meeting the substantive requirements of the MMS program, MMS would exempt State lessees operating in the area offshore from that State from the new requirements. It is expected that MMS would reserve the authority to require additional provisions at any time that such measures were determined to be necessary.

Option 4

The MMS would develop a new set of regulations specifically implementing MMS authority under FWPCA. The new regulations, separate from 30 CFR part 250, would govern all offshore areas including State submerged lands and would cover all facilities including pipelines.

While commenters are invited to address any or all aspects of MMS's implementation of the new authority under FWPCA, respondents are specifically requested to address the following questions:

1. Is one of the options outlined preferable to the other options and why? The MMS requests comments on these four options as well as any other options commenters wish to formulate. It may not be necessary that all offshore activities be regulated in the same manner. For example, MMS may determine that the option most appropriate for State oil and gas leases is not the one most appropriate for offshore pipelines on a right-of-way.

2. What are the costs to State and local governments to implement spill prevention and response programs? How will these costs be affected by initiatives which are expected to occur under State or local statutes? How would cost be expected to change as a result of each of the identified options?

3. What are the costs to industry to comply with current spill prevention and response programs? How are these costs expected to change as a result of and anticipated changes in State or local programs? How would these costs be expected to change as a result of each of the identified options?

4. How should "worst case" be defined for drilling activities, for production operations, and for pipelines? Current regulations governing OCS oil and gas operations require that OSCP's address "continuous oil discharges (e.g., well blowouts) and spills of short duration and limited maximum volume (e.g., tank overflows, hose failures)." How should this definition be changed to address "worst case" as used in OPA?

5. What special requirements are necessary for pipeline contingency plans?

6. Should operators be permitted to submit a single OSCP for nearby State and Federal leases?

7. What role should States have with regard to activity in State waters? Authority under FWPCA will be exercised by MMS; however, in cases where State or local governments have regulations in place, MMS may opt to accept compliance with State or local regulations as full or partial evidence of adequate oil spill prevention or response procedures.

8. Is it appropriate to develop MOU's with State governments or with other Federal agencies? Some MOU's may be appropriate in view of overlapping authorities between FWPCA and other statutes.

9. Of the requirements for spill prevention and response that are currently in place for facilities other than OCS leases, which ones are considered to be most effective?

Persons choosing to respond to this notice should send comments to the address shown in the addresses section.

Following the analysis of comments received proposed rules governing oil spill prevention and response for offshore facilities will be developed and published in the **Federal Register**.

Dated: June 10, 1992.

Richard Roldan,

Deputy Assistant Secretary for Land and Minerals Management.

[FR Doc. 92-19153 Filed 8-11-92; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13 89-03, CGD13 88-09]

Security Zones; Puget Sound, WA; Sinclair Inlet, WA

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Coast Guard is withdrawing two proposed rulemakings to establish security zones for Puget Sound Naval Shipyard, Bremerton, and for other Naval facilities adjacent to the Puget Sound basin. These rulemakings are being withdrawn at the Navy's request because the Navy no longer needs these proposed security zones.

DATES: The proposed rulemakings are withdrawn effective August 12, 1992.

FOR FURTHER INFORMATION CONTACT: CDR W.O. Harper at (206) 553-1711, or by mail to Commander, Thirteenth Coast Guard District (mps), 915 Second Avenue, Jackson Federal Building, Seattle, WA 98174-1067. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This notice withdraws the notice of proposed rulemaking for a security zone at Puget Sound Naval Shipyard, Bremerton, Washington (Sinclair Inlet), published in the **Federal Register** December 8, 1988 (53 FR 94562, CGD13 88-09) and for the security zones proposed for other Naval facilities adjacent to the Puget Sound basin published September 29, 1989 (54 FR 40127, CGD13 89-03). These proposed rulemakings, published under authority of 33 U.S.C. 1231, are being withdrawn at the Navy's request. The Navy no longer has a need for security zones at these locations on an active or inactive basis.

For the reasons stated above the notices of proposed rulemaking, CGD13 89-03 and CGD13 88-09, are withdrawn.

Dated: August 7, 1992.

J.E. Vorbach

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 92-19175 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 179

[CGD 77-115]

1RIN 2115-AA16

Defect Notification and First Purchaser Information

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: On December 29, 1980, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** [45 FR 85475] proposing amendments to the regulations covering Defect Notification.

The purpose of the proposed rulemaking was to increase the numbers of owners of recreational boats and associated equipment (inboard engines, outboard motors, and sterndrive units) who are successfully notified by manufacturers of a failure to comply with an applicable Coast Guard safety standard,, or of the existence of a defect which creates a substantial risk of personal injury to the public. Because of Government-wide constraints on regulations involving information collections and Coast Guard concern about the anticipated reporting and recordkeeping burdens, consideration of comments and publication of a final rule were delayed.

On May 29, 1987, the Coast Guard published a Supplementary Notice of Proposed Rulemaking (SNPRM) in the **Federal Register** [52 FR 20115] because more than six years had elapsed since publication of the NPRM. Once adopted as a final rule, this proposal would have required boat and engine manufacturers to establish and maintain first purchaser lists and would have required marine dealers to furnish the manufacturers with the information necessary to establish those lists: the serial numbers of new boats and engines sold and the names and addresses of retail first purchasers of those products. However, this Supplementary Notice of Proposed Rulemaking never proceeded to final rule stage. Again, the primary reason for not pursuing the proposed amendments was a concern that the proposed information collection requirements would impose an undue paperwork burden upon recreational boat manufacturers and dealers.

The Coast Guard has since investigated other approaches for increasing the availability of first purchaser information for manufacturers. It has examined the availability of other sources for retail purchaser information. Section 12308 of chapter I of title 46, U.S. Code allows a person, including a manufacturer, to request from vessel numbering system records, numbering and registration information for a vessel, when the issuing authority is satisfied that the request is reasonable and related to a boating safety purpose.

This proposed rulemaking is being withdrawn because State vessel numbering and registration information is available to boat manufacturers from most issuing authorities, and it contains retail purchaser information which can be used for defect notification—a boating safety purpose. The Coast Guard will continue to work with the National Boating Safety Advisory Council (NBSAC) and the National Association of State Boating Law Administrators (NASBLA) towards making purchaser information readily available to boat manufacturers from all vessel numbering and issuing authorities. This approach will allow existing records to be utilized instead of increasing information collection, recordkeeping, and other paperwork burdens for boat and engine manufacturers and marine dealers.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Recreational Boating Product Assurance Branch, (202) 267-0981.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-19171 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 920671-2171]

RIN 0651-AA55

Changes in Signature and Filing Requirements for Correspondence Filed in the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend the rules of practice in patent and trademark cases to: Specify the types of correspondence which would no longer require original signatures; provide for facsimile transmission of certain correspondence to the Office; discontinue use of the drop box at Crystal Plaza Building 3 and at the Department of Commerce Building in Washington, DC; and clarify other provisions with respect to practice before the office.

DATES: Written comments must be received on or before October 13, 1992 to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Address written comments to the Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, marked to the attention of Abraham Hershkovitz. Comments may be sent by facsimile to the attention of Abraham Hershkovitz at (703) 305–8825.

FOR FURTHER INFORMATION CONTACT: Abraham Hershkovitz by telephone at (703) 305–9282 or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The specific revisions proposed are discussed below:

(1) Types of Correspondence No Longer Requiring Original Signatures (Section 1.4)

The phrase correspondence is proposed to be utilized since the terms papers, letters and fees all fall within the generic definition of correspondence. Prosecution of some applications has been significantly delayed in the past by the Office requirement that all responses be personally signed. That requirement for a personal signature would prevent the Office from accepting the filing of certain correspondence by facsimile transmission as explained in the discussion of proposed § 1.6(d).

It is therefore proposed that § 1.4(d) be added to specify the types of correspondence which require personal signatures and the manner in which correspondence should be signed. The Office will accept copies of correspondence which do not require an original handwritten signature, including photocopies or facsimile transmissions. For example, a photocopy or facsimile transmission of an amendment signed by the attorney may be submitted to the Office. However, a photocopy or any other reproduction of a signature may not be affixed, by anyone other than the person whose signature is being reproduced, to correspondence requiring a signature. Correspondence submitted to the Office with original signatures should be submitted with signatures in a color of ink different from the printing on the paper so that the Office may easily recognize that the correspondence has been personally signed. Correspondence bearing an original signature, if not submitted to the Office, should be retained by applicants as evidence of proper execution in the event that questions arise as to the authenticity of the photocopy or facsimile-transmitted correspondence. If a question of authenticity arises, the Office may require submission of the correspondence bearing the original signature.

Correspondence submitted in an application filed under the Patent Cooperation Treaty often require an original handwritten signature either by the treaty or the regulations under the treaty. Other examples where original signatures will continue to be required are in patent interference proceedings, enrollment and disciplinary investigations and disciplinary proceedings. Proposed § 1.4(e) identifies the types of correspondence which will continue to require original signatures. Copies, including photocopies or facsimile transmissions, of correspondence which require an original handwritten signature will not be accorded a filing date and may be disposed of. (See § 10.18 for signature requirements of a practitioner). Furthermore, when certified documents must be filed, such as a certified copy of a foreign patent application, pursuant to 35 U.S.C. 119; a certified copy of a foreign trademark registration, pursuant to 15 U.S.C. 1126(e); a certified copy of a final court order, pursuant to 15 U.S.C. 1119; or a certified copy of a U.S. trademark registration, only the original certification is acceptable for filing in the Office. However, this requirement for an original certification of documents does not apply to certifications such as required under §§ 1.8, 1.10 and 1.97(e). The phrase "personal signature" and "personally signed" as used in this section refers to an original handwritten signature.

(2) Identification of Applications (Section 1.5)

Section 1.5(a) is proposed to be amended to make reference to the certificate procedure under § 1.8 consistent with the newly proposed title for § 1.8.

(3) Receipt of Correspondence (Section 1.6)

A descriptive heading is proposed to be added to each paragraph of § 1.6 to identify the content of that paragraph.

The phrase "correspondence" is proposed to be utilized since the terms "papers", "letters" and "fees" all fall within the generic definition of "correspondence".

Section 1.6(a) is proposed to be amended to clarify that correspondence transmitted by facsimile on weekends and Federal holidays within the District of Columbia, will be accorded the next business day as a receipt date.

Sections 1.6 (b) and (c) are proposed to be amended to clarify that weekdays refer to any day except a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 1.6(c) is proposed to be amended to delete reference to the box locations in the lobby of Crystal Plaza Building 3, Arlington, Virginia and at the Department of Commerce Building in Washington, DC. The use of the drop boxes was discontinued on April 21, 1992 and the hours of operation for the attorney's window were extended to midnight, the same hours the drop boxes were available. The public can now deposit correspondence with the Office and receive a receipt after normal business hours. See "Changes in How Papers May Be Filed in the Patent and Trademark Office", 1137 *Off. Gaz. Pat. Office* 7 (April 7, 1992). Use of the drop boxes at Crystal Plaza Building 3 and Department of Commerce Building locations had caused problems for both the public and the Office. It occasionally had been difficult to determine the dates of actual deposit of correspondence in the boxes. On occasion, Office employees and/or members of the public had been denied access to the drop box at the Department of Commerce by building security guards due to a special event taking place at the Department. Additionally, there were instances of correspondence being found outside of the drop boxes (e.g., on the floor of the main lobby of the Department of Commerce Building, on the guard's desk, on a nearby table, etc.). As a result, on occasion, the Office lacked confidence in assigning correct dates of receipt to correspondence deposited in the boxes at Crystal Plaza Building 3 and at the Department of Commerce Building. Given these difficulties, and the fact that the necessity for these boxes is greatly diminished as a result of the facsimile transmission and certificate of transfer (formerly mailing) procedures, § 1.6(c) is

proposed to be permanently amended by deleting reference to the drop boxes at Crystal Plaza Building 3 and the Department of Commerce Building. While this procedural change has already been implemented, the Office welcomes comments regarding the boxes before the procedure is finalized.

A new section 1.6(d) is proposed to be added to specify the types of correspondence which may be transmitted by facsimile and current § 1.6(d) is proposed to be redesignated as § 1.6(e). The widespread use of facsimile transmission and the resulting time saved in correspondence between applicants and the Office prompted the Office to establish a trial program to accept facsimile transmission of certain correspondence. The policy on "Filing of Certain Papers and Authorizations to Charge Deposit Accounts by Facsimile Transmissions" was published at 1096 *Off. Gaz. Pat. Office* 30 (November 15, 1988) and was supplemented in the notice "Filing of Certain Papers with the Board of Patent Appeals and Interferences by Facsimile Transmission" published at 1108 *Off. Gaz. Pat. Office* 15 (November 14, 1989). A comparable policy for trademarks was announced at 1123 *Off. Gaz. Pat. Office* 18 (February 12, 1991). In light of the success of the trial program, a policy on acceptance of facsimile transmission is proposed to be incorporated into § 1.6(d). The exceptions to the use of facsimile-transmitted correspondence have been reduced and are identified in proposed § 1.6(d)(1)–(8). The exceptions cover situations where the correspondence being transmitted are original documents or correspondence requiring original signatures as specified in proposed § 1.4 and situations where accepting a facsimile transmission would be unduly burdensome on the Office. As a courtesy, the Office will attempt to notify senders whenever a facsimile transmission received falls within one of these exceptions. Senders are cautioned against submitting such excepted correspondence by facsimile transmission since such correspondence will not receive a filing date or date of receipt in the Office, and are subject to disposal.

Drawings and other correspondence filed for the purpose of obtaining an application filing date will not be accorded a date of receipt if transmitted by facsimile. Formal drawings may not be filed by facsimile in patent applications because the quality of the drawings received by facsimile transmission is not of a quality sufficient to comply with the drawing requirements set forth in § 1.84. Applicants are therefore encouraged to submit by facsimile transmission only informal drawings or proposed drawing corrections.

As to specimens and drawings in trademark cases, the proposed rule relaxes the requirements set out in the notice entitled Filing of Certain Trademark Papers and Authorizations to Charge Deposit Accounts by Facsimile Transmission, 1123 *Off. Gaz. Pat. Office* 18 (February 12, 1991). The proposed rule continues to prohibit the transmission by facsimile of the original application, the section 8 or section 9 affidavit, the statement of use or the amendment to allege use. However, the proposed rule permits the facsimile transmission of drawings or specimens in response to an Office action. The same standards of drawing clarity and size apply to drawings received via facsimile. In a like manner, facsimile-transmitted specimens must be legible in order to be accepted and examined as specimens.

The date of receipt accorded to any correspondence permitted to be sent by facsimile transmission is the date the complete transmission is received by an Office facsimile unit, unless the transmission is completed on a Saturday, Sunday, or Federal holiday within the District of Columbia. Correspondence for which transmission was completed on a Saturday, Sunday, or Federal holiday within the District of Columbia, will be accorded a receipt date of the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia. As an example, correspondence sent by facsimile from California on a Friday at 8:45 p.m. is completely transmitted at 9:05 p.m. Pacific time. The complete transmission would be received in the Office around 12:05 a.m. Eastern time on Saturday. The receipt date accorded to the correspondence is the date of the following business day, which in this case, would be Monday.

(4) Certificate of Transfer Procedure (Section 1.8)

The title of § 1.8 is proposed to be changed from Certificate of Mailing to the more generic Certificate of Transfer so as to include facsimile transmissions.

Section 1.8(a) presently prescribes procedures for the use of a certificate of mailing to file papers or fees in the Office by first class mail. The phrase "papers or fees" in § 1.8(a) is proposed to be changed to "correspondence" since both "papers" and "fees" fall within the generic definition of "correspondence". Paragraphs (a) and (b) of § 1.8 are proposed to be amended to include correspondence transmitted by facsimile. In the event that correspondence is filed by facsimile transmission, it is recommended that the sending facsimile machine generate a report confirming transmission for each transmission session. This report should be retained by the sender, along with the correspondence used as the original, as evidence of content and date of transfer. Paragraph (a)(2) of § 1.8 is proposed to be amended to include separate headings for correspondence which relate to patents, trademarks and disciplinary proceedings. The sequence of some of the paragraphs found in § 1.8 (a)(2) has been changed in order to have those paragraphs listed under the appropriate heading. The ability to use the Certificate of Transfer procedures has been expanded to the filing of an affidavit under section 15, subsection (3) of the Trademark Act, 15 U.S.C. 1065(3), the filing of a notice of election to proceed by civil action in an inter partes proceeding under 35 U.S.C. 141 or section 21(a)(1) of the Trademark Act, 15 U.S.C. 1071(a)(1), in response to another party's appeal to the Court of Appeals for the Federal Circuit, the filing of a notice and reasons of appeal under 35 U.S.C. 142 or a notice of appeal under section 21(a)(2) of the Trademark Act, 15 U.S.C. 1071(a)(2), and the filing of a statement under 42 U.S.C. 2182 or 42 U.S.C. 2457(c).

Paragraph (a)(2)(vi) of § 1.8 is proposed to be redesignated as paragraph (a)(2)(viii) and amended to refer to section 14(1) or 14(2) of the Trademark Act, 15 U.S.C. 1064, to conform with the numbering of the Trademark Law Revision Act of 1988. Other sections of paragraph (a)(2) of § 1.8 are proposed to be amended to identify the types of correspondence which will not receive the benefit of a certificate of transfer.

Paragraph (b) of § 1.8 outlines procedures to be followed to document the timely filing of correspondence in accordance with § 1.8(a) where such correspondence is not received by the Office. The phrase "correspondence or fees" in § 1.8(b) is proposed to be changed to "correspondence" since "fees" falls within the generic definition of "correspondence". One of the requirements of § 1.8(b) is that the party forwarding the correspondence or fee include a declaration, under §§ 1.68 or 2.20 of this chapter, attesting to the timely transfer. In order to be consistent with other sections in parts 1 and 2 of this chapter, the practice under § 1.8(b) is proposed to be amended to permit a practitioner, as defined in § 10.1(r), to submit a statement rather than an oath

or declaration under §§ 1.68 or 2.20 of this chapter.

New paragraph (c) of § 1.8 is proposed to be added to explicitly provide for a requirement for additional evidence relating to the transfer of correspondence in accordance with paragraph (a) of this section. The Office may invoke this requirement where it is deemed appropriate to establish an actual date of mailing or transmission. See, e.g., *In re Klein*, 6 USPQ2d 1547 (Comm'r Pat. 1987), *aff'd sub nom. Klein v. Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), *aff'd*, 866 F.2d 412, 9 USPQ2d 1558 (Fed. Cir.) *cert. denied*, 490 U.S. 1091 (1989).

(5) Time for Appeal or Civil Action (Section 1.304)

In section 1.304, paragraphs (a) and (c) are proposed to be amended to delete a statement that use of the certificate procedure under § 1.8 is prohibited so as to be consistent with proposed changes to § 1.8. It is also proposed to clarify a cross-reference to § 1.658 in paragraph (a).

(6) Submission of Maintenance Fees (Section 1.366)

Section 1.366(b) is proposed to be amended by deleting the words of mailing due to the proposed new title for § 1.8.

(7) Filing Date of Application for Extension of Patent Term (Section 1.741)

Section 1.741(a) is proposed to be amended to refer to the proposed new title for the certificate procedure under § 1.8.

(8) Signature and Certificate of Practitioner (Section 10.18)

Section 10.18 is proposed to be modified to clarify signature requirements for correspondence signed by practitioners. The reference to § 1.4 of this chapter would make it apparent that copies, including photocopies or facsimile transmissions, of correspondence signed by practitioners will be accepted under appropriate circumstances.

(9) Misconduct (Section 10.23(c))

Section 10.23(c) is proposed to be amended to refer to the proposed new title for the certificate procedure under § 1.8 of this chapter.

Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to incorporate existing Office policy into the regulations, permit the filing of certain correspondence without an original signature and permit the filing of certain correspondence by facsimile transmission.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions because most of the proposed changes reduce procedural burdens. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These proposed rule changes contain collection-of-information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which have previously been approved by the Office of Management and Budget Under Control Nos. 0651–0009 and 0651–0011.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and record keeping requirements.

37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, the Office proposes to amend 37 CFR parts 1 and 10 as follows, wherein deletions are indicated by brackets ([]) and additions by arrows (>><):

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. In Section 1.4, the title is proposed to be revised and paragraphs (d)–(f) are proposed to be added to read as follows:

§ 1.4 Nature of correspondence >and signature requirements<.

* * * * *

>(d) Each piece of correspondence prepared to be filed in a patent or trademark application, reexamination proceeding, patent file or trademark registration file, which requires a person's signature, must be personally signed in permanent ink by that person. The personally signed correspondence containing the original, handwritten signature, or a copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of the personally signed correspondence may be filed in the Patent and Trademark Office, except as provided in paragraphs (e) and (f) of this section. If the personally signed correspondence is filed, the color of ink used for the signature should be different from the printing on the paper. In the event that a copy of the personally signed correspondence is filed, the personally signed correspondence should be retained as evidence of authenticity. If a question of authenticity arises, the Patent and Trademark Office may require submission of the personally signed correspondence. The phrase "personally signed" as used in this section means an original, handwritten signature.

(e) Correspondence requiring a signature and which relates to patent interference proceedings, enrollment and disciplinary investigations, disciplinary proceedings or international patent applications must be submitted with a personally signed, permanent ink signature.

(f) When a certified document must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.<

3. Section 1.5(a) is proposed to be revised to read as follows:

§ 1.5 Identification of application, patent or registration.

(a) No correspondence relating to an application should be filed prior to when notification of the application number is received from the Patent and Trademark Office. When a letter directed to the Patent and Trademark Office concerns a

previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number, e.g., 07/123,456), or the serial number and filing date assigned to that application by the Patent and Trademark Office, or the international application number of the international application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied with a cover letter which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mail date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the [certificate of mailing] >Certificate of Transfer< procedure under § 1.8 or the Express Mail procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. If for some reason returned correspondence is resubmitted with proper identification later than two weeks after the return mailing by the Patent and Trademark Office, the resubmitted correspondence will be accepted but given its date of receipt. In addition to the application number, all letters directed to the Patent and Trademark Office concerning applications for patent should also state "PATENT APPLICATION," the name of the applicant, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

* * * * *

4. In § 1.8, the title is proposed to be revised, each paragraph is proposed to be defined by a separate heading, paragraphs (a)–(c) are proposed to be revised, paragraph (d) is proposed to be redesignated as paragraph (e) and revised and new paragraph (d) is proposed to be added to read as follows:

§ 1.8 Receipt of [letters and papers] >correspondence<.

(a) >*Date of receipt and Express Mail date of deposit.* Correspondence< [Letters and other papers] received in the Patent and Trademark Office [are] >is< stamped with the date of receipt except where such [letters and papers are] >correspondence is< filed in accordance with § 1.10 >or transmitted by facsimile in accordance with paragraph (d) of this section. No correspondence is received in the Patent and Trademark Office on Saturdays, Sundays or Federal holidays within the District of Columbia. Correspondence< [Any such letters and papers] filed in accordance with § 1.10 will be stamped with the date of deposit as "Express Mail" with the United States Postal Service unless the date of deposit is a Saturday, Sunday, or Federal holiday within the District of Columbia in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia. [No papers are received in the Patent and Trademark Office on Saturdays, Sundays or Federal holidays within the District of Columbia. [No papers are received in the Patent and Trademark Office on Saturdays, Sundays or Federal holidays within the District of Columbia.] >Correspondence transmitted by facsimile to the Patent and Trademark Office on a Saturday, Sunday, or Federal holiday within the District of Columbia will be stamped with the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia, as the date of receipt.<

(b) >*Patent and Trademark Office Post Office pouch.*< Mail placed in the Patent and Trademark Office pouch up to midnight on [weekdays, excepting] >any day, except< Saturdays >, Sundays< and >Federal< [federal] holidays >within the District of Columbia<, by the post office at Washington, DC, serving the Patent and Trademark Office, is considered as having been received in the Patent and Trademark Office on the day it was so placed in the pouch >by the U.S. Postal Service<.

(c) >*Correspondence delivered by hand.*< In addition to being mailed >, correspondence may be< [or] delivered by hand during [office] hours >the Office is open to receive correspondenc< [, letters and other papers may be deposited up to the midnight in a box provided at the guard's desk at the lobby of building 3 of the Patent and Trademark Office at Crystal Plaza, Arlington, Virginia and at the main entrance (14th Street) of the Department of Commerce Building, Washington, DC, on weekdays except Saturdays and Federal holidays, and all papers deposited therein are considered as received in the Patent and Trademark Office on the day of deposit].

(d) >*Facsimile transmission.* Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The filing date accorded to the correspondence will be the date on which the complete transmission is received in the Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 1.6(a). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single national application or other proceeding before the Patent and Trademark Office. The application number of a patent or trademark application, the control number of a reexamination proceeding, the patent number of a patent, or the registration number of a trademark should be entered as part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and if submitted, may be disposed of, in the following situations:

(1) Correspondence which must be filed with a personally signed permanent ink signature as specified in § 1.4(e);

(2) Certified documents as specified in § 1.4(f);

(3) Correspondence which cannot receive the benefit of the certificate of transfer as specified in § 1.8(a)(2)(i)–[xi);

(4) Drawings submitted under §§ 1.81, 1.83–1.85, 1.152, 1.165 or 1.174;

(5) A request for reexamination under § 1.510;

(6) Correspondence to be filed in a patent application subject to a secrecy order under §§ 5.1–5.8 of this chapter and directly related to the secrecy order content of the application;

(7) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e); and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e);

(8) Correspondence to be filed with the Trademark Trial and Appeal Board, except the notice of ex parte appeal.

(e) *Interruptions in U.S. Postal Service.*< If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as

filed on a particular date in the Office any [paper or fee] >correspondence< which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such [paper or fee] >correspondence< would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service. Such statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

5. Section 1.8 is proposed to be amended by revising the title and paragraphs (a) and (b) and by adding new paragraph (c) to read as follows:

§ 1.8 Certificate of [mailing] >transfer<.

(a) Except in the cases enumerated below, [papers and fees] >correspondence< required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if:

(1) [They are] >it is transferred prior to expiration of the set period of time by being:

(i) deposited with the U.S. Postal Service with sufficient postage as first class mail< addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 [, and deposited with the U.S. Postal Service with sufficient postage as first class mail] >; or

(ii) transmitted by facsimile as set forth in § 1.6(d) to the Patent and Trademark Office< [prior to expiration of the set period:] ; and

(2) [They] >It< also [include] >includes< a certificate for each [paper or fee] >piece of correspondence< stating the date of [deposit] >transfer<. The person signing the certificate should have reasonable basis to expect that the correspondence would be [mailed] >transferred< on or before the date indicated. The actual date of receipt of the [paper or fee] >correspondence< will be used for all other purposes. This procedure does not apply to >, and the benefit of the date of transfer on the certificate will not be extended to.< the following:

>*Relative to Patents*<

(i) The filing of a national patent application specification and drawing or other [papers] >correspondence< for the purpose of obtaining an application filing date;

[(ii) The filing of trademark applications:]

>(ii) The filing of correspondence in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail";<

(iii) The filing of agreements between parties to an interference under 35 U.S.C. 135(c);

>(iv) The filing of international applications for patent and all correspondence in international applications filed under chapter I and chapter II including the filing of documents and fees for entry into the national stage, see § 1.491;

Relative to Trademarks

(v) The filing of trademark applications;<

[(iv)] >(vi)< The filing of an affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c);

[(v)] >(vii)< The filing of an application for renewal of a [mark] registration under section 9 of the Trademark Act, 15 U.S.C. 1059;

[(vi)] >(viii)< The filing of a petition to cancel a registration of a mark under section 14 [(a)] >, subsection (1)< or [(b)] >(2)< of the Trademark Act, 15 U.S.C. 1064 [(a), 1064(b)];

[(vii) The filing of an affidavit under section 15, subsection (3) of the Trademark Act, 15 U.S.C. 1065;

(viii) The filing of a notice of election to proceed by civil action in an inter partes proceeding under 35 U.S.C. 141 or section 21(a)(1) of the Trademark Act, 15 U.S.C. 1071(a)(1), in response to another party's appeal to the Court of Appeals for the Federal Circuit;

(ix) The filing of a notice and reasons of appeal under 35 U.S.C. 142 or a notice of appeal under section 21(a)(2) of the Trademark Act, 15 U.S.C. 1071(a)(2);

(x) The filing of a statement under 42 U.S.C. 2182 or 42 U.S.C. 2457(c);

(xi) The filing of international applications for patent and all papers and fees relating thereto;

(xii) The filing of a paper in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail"; and

(xiii) Papers filed in connection with a disciplinary proceeding under part 10 of this subchapter.

(xiv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a request under § 2.89 (15 U.S.C. 1051(d)), for an extension of time to file a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xvi) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of an amendment to allege use in commerce under § 2.76 (15 U.S.C. 1051(c)).]

>(ix) In an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c); or the filing of a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1);

(x) In an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), the filing of a request under section 1(d)(2) of the Trademark Act, 15 U.S.C. 1051(d)(2), for an extension of time to file a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1); and

Relative to Disciplinary Proceedings

(xi) Correspondence filed in connection with a disciplinary proceeding under part 10 of this subchapter.<

In the event that correspondence [or fees are] >is considered< timely filed >by being transferred< in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence [or fee] will be considered timely if the party who forwarded such correspondence [or fee]:

(1) Informs the Office of the previous [mailing] >transfer< of the correspondence [or fee] promptly after becoming aware [of] >that< the Office [action] >has no evidence of receipt of the correspondence<,

(2) Supplies an additional copy of the previously [mailed] >transferred< correspondence [or fee] and certificate, and

(3) Includes a [declaration under § 1.68 or § 2.20] >statement< which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely [mailing] >transfer. Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter. If the transfer was by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed<.

6. Section 1.304, paragraphs (a) and (c), are proposed to be revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for reconsideration or modification of the decision is filed within the time period provided under § 1.197(b) or § 1.658 >(b)<, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences, the time for filing a cross-appeal or cross-action expires:

(1) 14 days after service of the notice of appeal or the summons and complaint or

(2) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later. The time periods set forth in this section are not subject to the provisions of §§ 1.136, 1.550(c) or § 1.645 (a) or (b). The Commissioner may extend the time for filing an appeal or commencing a civil action

[(3)] For good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or

[(4)] Upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect. [The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross-appeal. See § 1.8(a)(2)(ix).]

* * * * *

(c) If a defeated party to an interference has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under 35 U.S.C. 141 electing to have all further proceedings conducted under 35 U.S.C. 146 (§ 1.303(c)), the time for filing a civil action thereafter is specified in 35 U.S.C. 141. The time for filing a cross-action expires 14 days after service of the summons and complaint. [The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross appeal. See § 1.8(a)(2)(viii).]

7. Section 1.366(b) is proposed to be revised to read as follows:

§ 1.366 Submission of maintenance fees.

* * * * *

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid and may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362(d), (e) or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The certificate [of mailing] procedures of either § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

* * * * *

8. Section 1.741, paragraph (a), is proposed to be revised to read as follows:

§ 1.741 Filing date of application.

(a) The filing date of an application for extension of patent term is the date on which a complete application is received in the Patent and Trademark Office or filed pursuant to the "Certificate of [Mailing] >Transfer<" provisions of 37 CFR 1.8 or "Express Mail" provisions of 37 CFR 1.10.

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

9. The authority citation for 37 CFR part 10 would continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

10. Section 10.18 is proposed to be revised to read as follows:

§ 10.18 Signature and certificate of practitioner.

(a) [Every paper] >Except where a copy, including a photocopy or facsimile transmission, of a personally signed piece of correspondence is permitted to be filed pursuant to § 1.4 of this chapter, every piece of correspondence< filed by a practitioner >on behalf of himself or herself or< representing an applicant or >a< party to a proceeding in the >Patent and Trademark< Office must bear the signature of, and be personally signed by, such practitioner except >for correspondence< [those papers] which [are] >is< required to be signed by the applicant or party. The signature of >a< practitioner [to] >on correspondence< [a paper] filed by him or her, >regardless of whether the correspondence has an original, handwritten signature or is a copy, including a photocopy or facsimile transmission, of the personally signed correspondence,< constitutes a certificate that:

(1) The [paper] >correspondence< has been read by the practitioner;

(2) The [paper's] filing >of the correspondence< is authorized;

(3) To the best of his or her knowledge, information, and belief, there is good ground to support the [paper] >correspondence<, including any allegations of improper conduct contained or alleged therein; and

(4) It is not interposed for delay.

(b) Any practitioner knowingly violating the provisions of this section is subject to disciplinary action. See § 10.23(c)(15).

11. Section 10.23, paragraph (c)(9), is proposed to be revised to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(9) Knowingly misusing a certificate of [mailing] >transfer< under § 1.8 of this [subchapter] >chapter< or a certificate of "Express Mail" under § 1.10 of this [subchapter] >chapter<.

* * * * *

Dated: August 4, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-19023 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME-2-1-5249; A-1-FRL-4194-4]

Approval and Promulgation of Air Quality Implementation Plans; Maine—Capture Efficiency Test Procedure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of

Maine. This revision corrects deficiencies in the State of Maine. This revision corrects deficiencies the State's volatile organic compound (VOC) regulations in response to EPA's May 25, 1988 Ozone SIP call and the Clean Air Act requirement that States "fix-up" their reasonably available control technology (RACT) rules. The intended effect of this action is to propose approval of this revision to Maine's SIP which incorporates the current federal RACT requirements for VOC. These RACT corrections are a requirement of the Clean Air Act (CAA) as amended in 1990 (section 182 (a)(2)(A). This action is being taken under section 110 and part D of the Clean Air Act.

DATES: Comments must be received on or before September 11, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On June 5, 1991, the Maine Department of Environmental Protection (DEP) submitted a revision to its SIP. This revision corrects deficiencies in Maine's VOC regulations.

Background

Based on monitored ozone exceedances in Maine, EPA sent letters to the Governor of Maine on May 25, 1988 and November 8, 1988, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act, informing him that the Maine SIP was substantially inadequate to achieve the national ambient air quality standard (NAAQS) for ozone in parts of Maine. EPA requested that the State respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call was meant to consist of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the area's base year emission inventory.

On June 16, 1988, EPA sent a follow-up letter to the Maine DEP identifying specific technical inadequacies and inconsistencies in Maine's VOC regulations as compared to the requirements of the CAA as interpreted in EPA guidance. One of the noted deficiencies was the lack of a capture efficiency test method. On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. Sections 7401–7671q.) In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. Portions of Maine are classified as marginal and moderate.[2] Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

Maine's Revision

In response to the first phase of EPA's SIP call and the section 182(a)(2)(A) requirement, and EPA's follow-up letter, on May 22, 1991, Maine adopted a new regulation entitled "Capture Efficiency Test Procedures" (Chapter 126). This new regulation is briefly summarized below.

Chapter 126—Capture Efficiency Test Procedures

This regulation specifies the test procedures required to measure how much of the total VOC emissions from a regulated source is captured and delivered to a control system.

EPA has evaluated this revision and found that it corrects the deficiencies listed in EPA's SIP call follow-up letter and is consistent with EPA's guidance contained in EPA's April 16, 1990 memorandum from John S. Seitz, Director, Stationary Source Compliance Division entitled "Guidelines for Developing a State Protocol for the Measurement of Capture Efficiency" and August 3, 1990 memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch entitled "Model Regulatory Language for Capture Efficiency Testing." In addition, it should be noted that the August 3, 1990 model rule did not address certain issues which the State was given the responsibility to specify. Specifically, these issues are: (1) How often a source should perform a new capture efficiency test, (2) what parameters should be routinely monitored after a test has been conducted and (3) what changes in the parameters would trigger a new test. Regional personnel worked with the State of Maine in order to address these issues in its regulation.

Maine's regulation and EPA's evaluation are detailed in a memorandum, dated May 27, 1992, entitled "Technical Support Document—Maine Capture Efficiency Test Procedures." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is proposing to approve the Maine SIP revision for capture efficiency test procedures and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve Chapter 126 "Capture Efficiency Test Procedures" because it corrects deficiencies listed in EPA's SIP call follow-up letter and is consistent with the above noted EPA guidance.

Under 5 U.S.C. section 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or

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[1] Among other things, the pre-amendment guidance consists of the portions of the Post–87 policy that concern RACT, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[2] These areas were designated as nonattainment prior to enactment of the amended Act. They retained their designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 3, 1992.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 92–19183 Filed 8–11–92; 8:45 am]

BILLING CODE [illegible]

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40 CFR Part 180

[OPP–300251; FRL–4082–2]

Bufencarb; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances for residues of the insecticide bufencarb (a mixture consisting of 25 percent 3-(1-ethylpropyl) phenyl methylcarbamate and 75 percent 3-(1-methylbutyl) phenyl methylcarbamate) in or on the following raw agricultural commodities which are listed in 40 CFR 180.255: corn fodder; corn forage; fresh corn (including sweet corn kernels plus cob with husk removed (K+CWHR)); corn grain; rice grain; and rice straw. EPA is initiating this action because all registered uses of bufencarb on these commodities have been cancelled.

DATES: Written comments, identified by the document control number [OPP-300251], must be received on or before October 13, 1992.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5226.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide bufencarb in or on the raw agricultural commodities corn fodder; corn forage; fresh corn (including sweet corn kernels plus cob with husk removed (K+CWHR)); corn grain; rice grain; and rice straw. These tolerances are listed in 40 CFR 180.255. In April 1986, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing the insecticide bufencarb were cancelled. The tolerances under the FFDCA for residues of bufencarb in or on the raw agricultural commodities discussed above as being proposed for revocation were obtained in conjunction with the FIFRA registrations. EPA has no information to suggest that bufencarb is used on corn, rice, or any other food commodity which is exported to the U.S.

Because bufencarb is no longer registered in the U.S. for use on any food or animal feed crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.255 for residues of bufencarb in or on corn fodder; corn forage; fresh corn (including sweet corn kernels plus cob with husk removed (K+CWHR)); corn grain; rice grain; and rice straw. Since the registrations for bufencarb products were cancelled more than 6 years ago, existing stocks of those products should have been depleted several years ago. Thus, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Further, since bufencarb is not a persistent chemical, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation. Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains bufencarb may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300251]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1128, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations for use of bufencarb on corn and rice were cancelled more than 6 years ago, it is anticipated that little or no economic impact would occur at any level of business enterprises if the related tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.255 [Removed]

2. Section 180.255 *Bufencarb; tolerances for residues is removed.*

[FR Doc. 92-18942 Filed 8-11-92; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300250; FRL-4062-1]

EPN; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances listed in 40 CFR 180.119 for residues of the insecticide EPN (*O*-ethyl-*O*-*p*-nitrophenyl benzene thiophosphonate) in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of EPN on food commodities have been voluntarily cancelled.

DATES: Written comments, identified by the document control number [OPP-300250], must be received on or before October 13, 1992.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5226.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of all tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide EPN in or on food or animal feed commodities. These tolerances are listed in 40 CFR 180.119. On April 30, 1987, EPA issued a Registration Standard for EPN in which the Agency announced its decision to initiate a Special Review based on the determination that the risk criterion for delayed neurotoxic effects had been met. Subsequently, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of technical EPN and formulated products containing EPN were voluntarily cancelled by the registrants; EPA allowed the sale, distribution, and use of existing stocks until August 31, 1988.

In the **Federal Register** of July 21, 1987 (52 FR 27453), EPA issued a Proposed Decision Not to Initiate a Special Review of EPN, since there were no remaining viable registrations for EPN. EPA announced its final decision not to initiate a Special Review of EPN in the **Federal Register** of December 23, 1987 (52 FR 48574).

Tolerances for residues of EPN are listed in 40 CFR 180.119 in or on the following raw agricultural commodities: almonds, apples, apricots, beans, beets (with or without tops) or beet greens alone, blackberries, boysenberries, cherries, citrus fruits, corn, cottonseed, dewberries, grapes, lettuce, loganberries, nectarines, olives, peaches, pears, pecans, pineapples, plums (fresh prunes), quinces, raspberries, rutabagas (with or without tops) or rutabaga tops, soybeans, spinach, strawberries, sugar beets (but not sugar beet tops), tomatoes, turnips (with or without tops) or turnip greens, walnuts, and youngberries. The tolerances under the FFDCA for EPN in or on the RAC's discussed above as being proposed for revocation were obtained in conjunction with the FIFRA registrations. EPA has no information to suggest that EPN is used on food commodities exported to the U.S.

Based on the fact that EPN is no longer domestically registered for use on any food crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.119 for residues of EPN in or on the above-named commodities.

Since all use of EPN was prohibited after August 31, 1988, EPA believes there

has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. EPN is not a persistent chemical; thus, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains EPN may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal to revoke the tolerances for EPN listed in 40 CFR 180.119 be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300250]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1128, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-854, 94 Stat. 1164, 5 U.S.C. 601 et seq.) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations for use of EPN on food crops were voluntarily cancelled by the registrants in mid-1987 and all use of EPN was disallowed by EPA after August 31, 1988, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.119 [Removed]

2. By removing § 180.119 *EPN; tolerances for residues.*

[FR Doc. 92-18944 Filed 8-11-92; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300252; FRL-4062-3]

Acetic Acid and Sodium Diacetate; Proposed Revocation of Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of exemptions from the requirement of a tolerance for residues resulting from postharvest use as a fungicide, as follows: (1) all raw agricultural commodities (RAC's) listed in 40 CFR 180.1029 for residues of acetic acid, and (2) certain RAC's listed in 40 CFR 180.1058 for residues of sodium diacetate. EPA is initiating this action because all registered uses of acetic acid and sodium diacetate on these commodities have been cancelled.

DATES: Written comments, identified by the document control number [OPP-300252], must be received on or before October 13, 1992.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5226.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of exemptions from the requirement of a tolerance established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of acetic acid and sodium diacetate, resulting from postharvest use of these chemicals as fungicides, as follows: (1) Acetic acid in or on the raw agricultural commodities (RAC's) alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue hay, lespedeza hay, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch hay, and wheat grain listed in 40 CFR 180.1029;

and (2) sodium diacetate in or on the RAC's barley grain, cowpea hay, fescue hay, lespedeza hay, lupines, peanut hay, peavine hay, soybean hay, vetch hay, and wheat grain listed in 40 CFR 180.1058.

Before February 1991, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing acetic acid as an active ingredient which were registered for use on food or animal feed commodities were cancelled for various reasons, primarily for failure by affected registrants to respond to a January 1987 generic data call-in or for nonpayment of required annual pesticide registration maintenance fees. Also, before February 1991, all registrations under FIFRA of pesticide products containing sodium diacetate as an active ingredient which were registered for use on food or animal feed commodities were cancelled for nonpayment of required annual pesticide registration maintenance fees, except two sodium diacetate products that are still registered for post-harvest use on alfalfa, clover, field corn, grasses, oats, sorghum, and timothy. The exemptions from the requirement of a tolerance under the FFDCA for acetic acid and for sodium diacetate in or on the RAC's discussed above as being proposed for revocation were obtained in conjunction with the FIFRA registrations. EPA has no information to suggest that acetic acid or sodium diacetate are used as fungicides on food commodities exported to the U.S.

Acetic acid is no longer registered in the U.S. as a pesticide active ingredient for use on any food or animal feed commodities. Sodium diacetate also is no longer registered as an active ingredient for use on any food or animal feed commodities, except alfalfa, clover, field corn, grasses, oats, sorghum, and timothy. Since an exemption from tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the following exemptions from the requirement of a tolerance: (1) All exemptions from the requirement of a tolerance listed in 40 CFR 180.1029 for residues of acetic acid, resulting from post-harvest application, in or on alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch, and wheat grain; and (2) exemptions from the requirement of a tolerance listed in 40 CFR 180.1058 for residues of sodium diacetate, resulting from post-harvest application, in or on barley grain, cowpea hay, fescue hay, lespedeza hay, lupines, peanut hay, peavine hay, soybean hay, vetch hay, and wheat grain. Cancellation orders which are not risk-related generally permit registrants to continue to sell and distribute existing stocks of the cancelled products for a year from the cancellation date or, in the case of non-payment of maintenance fees, until the due date for the next annual registration maintenance fee. Existing stocks already in the hands of dealers or users can generally be used legally until they are exhausted.

The most recent cancellation action for acetic acid and sodium diacetate products involving a food or animal feed use was in January 1991, for non-payment of the annual pesticide registration maintenance fee which was due March 1, 1990. Products cancelled by this action would have been allowed to be sold and distributed only until March 1, 1991. Previous cancellation actions took place in October 1989 or earlier; existing stocks provisions would have expired by the end of 1990.

The registrations for acetic acid and sodium diacetate for use on the commodities listed above were cancelled 1 year ago or more. In order not to disrupt the marketing of commodities which have been or may be legally treated with permitted existing stocks, EPA proposes that the revocation of the exemptions discussed herein not become effective until February 1993. The Agency thinks this will allow a reasonable period of time for treated commodities to have left channels of trade. Commenters who think that the 1993 revocation date would cause them a hardship, or is otherwise inappropriate, are encouraged to submit data in support of their position. The registered post-harvest applications of acetic acid and sodium diacetate to livestock feed crops were primarily within farm facilities so there was limited environmental exposure. Exposure to aquatic environments from runoff would have resulted only in short-term pH changes that would have been counteracted by the natural buffering capacity of the water. Thus, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the acetic acid and sodium diacetate exemptions upon their revocation. Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains acetic acid or sodium diacetate may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300252]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1128, at the Virginia address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticides have been used in an unregistered or illegal manner.

Since all registrations for use of acetic acid and sodium diacetate on the

commodities related to the exemptions listed above were cancelled before February 1991, it is anticipated that little or no economic impact would occur at any level of business enterprises if these exemptions from tolerance were revoked in February 1993.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1029 is revised to read as follows:

§ 180.1029 Acetic acid; exemption from the requirement of a tolerance.

(a) Acetic acid, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch, and wheat grain.

(b) This regulation will expire on February 28, 1993.

3. Section 180.1058 is revised to read as follows:

§ 180.1058 Sodium diacetate; exemption from the requirement of a tolerance.

(a) Sodium diacetate, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa hay, Bermuda grass hay, blue grass hay, brome grass hay, clover hay, corn grain, oat grain, orchard grass hay, sorghum grain, sudan grass hay, rye grass hay, and timothy hay.

(b) Sodium diacetate, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on barley grain, cowpea hay, fescue hay, lespedeza hay, lupines, peanut hay, peavine hay, soybean hay, vetch hay, and wheat grain. The exemptions for these 10 commodities will expire on February 28, 1993.

[FR Doc. 92-18945 Filed 8-11-92; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300254; FRL-4066-1]

RIN 2070-AC18

Endrin; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances established under section 408 of Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, and listed in 40 CFR 180.131 for residues of the insecticide endrin (hexachloroepoxyoctahydro-endo,endo-dimethanonaphthalene) in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of endrin on food/feed commodities have been canceled.

DATES: Written comments, identified by the document control number [OPP-300254], must be received on or before October 13, 1992.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 1128, CM #2, 1921 Jefferson Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5179.

SUPPLEMENTARY INFORMATION: Endrin products had originally been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136, on the basis that no detectable residues were expected to result from the particular uses. Tolerances under the FFDCA for residues of endrin in sugar beets, sugar beet tops, broccoli, Brussels sprouts, cabbage, cauliflower, cotton seed, cucumbers, eggplant, peppers, potatoes, summer squash, and tomatoes were established at a level of zero. However, improved analytical methodology subsequently led to the detection of 0.1 part per million (ppm) residues of endrin in the cole crops, cucumbers, and summer squash, and consequently to cancellation of the FIFRA registration for endrin for use on these crops.

Based on the fact that endrin is no longer domestically registered for use on any food crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.131 for residues of endrin in or on the commodities mentioned above. The Agency has reviewed recent endrin residue monitoring data concerning possible persistence of endrin in the environment, and, based on these data, the Agency will not recommend any action levels for endrin. Refer to the "Policy Statement on Revocation of Tolerances for Canceled Pesticides" in the **Federal Register** of September 29, 1982 (47 FR 42956).

Any person who has registered or submitted an application for registration of a pesticide under FIFRA containing endrin may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal to revoke the tolerances for endrin listed in 40 CFR 180.131 be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300254]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

The Agency has conducted an analysis in order to satisfy requirements as specified by Executive Order 12291

and the Regulatory Flexibility Act. This analysis is available for public inspection in rm. 1128 at the Virginia address given above.

Executive Order 12291

Section 3(b) of Executive Order 12291 requires the Agency to initially determine whether a proposed regulatory action being proposed or issued is a "major" rule as defined by section 1(b) of the Executive Order and therefore subject to the comprehensive procedures for conducting a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action. It will not have an annual effect on the economy of at least $100 million, nor cause a major increase in costs and prices, and it will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign enterprises in domestic or export markets.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on small businesses, small organizations, and small governmental jurisdictions.

Since all domestic registrations for use of endrin have been canceled and the impact of zero tolerances is equivalent to having no tolerance, it is anticipated that little or no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.131 [Removed]

2. By removing § 180.131 *Endrin; tolerances for residues.*

[FR Doc. 92-19214 Filed 8-11-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 92-159, FCC 92-330]

Radio Broadcasting Services; Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application

AGENCY: Federal Communications Commission.

ACTION: proposed rule.

SUMMARY: The Commission requests comments on a proposed one-step processing procedure for certain modifications to existing FM station authorizations. These modifications include upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels.

DATES: Comments must be filed on or before October 5, 1992, and reply comments on or before November 4, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-159, adopted July 16, 1992, and released August 4, 1992. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Synopsis of Notice of Proposed Rule Making

1. The Commission, on its own motion, seeks comment on whether FM licensees and permittees should be allowed to request by application upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels. Currently, the FM licensee or permittee seeking to modify its channel or class of channel must request these changes through a two-step process in which the party first files a petition for rule making. The proposed allotment then undergoes an engineering analysis, and if acceptable, is proposed in a Notice of Proposed Rule Making. After a comment period, if the Commission determines that it is in the public interest, the proposed is granted in a Report and Order. The licensee or permittee is then ordered to file a minor change application specifying the substituted channel. That application also undergoes engineering review prior to its grant. The comprehensive engineering analysis performed with respect to applications in each of the above-named areas subsumes the analysis performed at the rulemaking stage. The Commission proposes to streamline this process by eliminating the rulemaking step in circumstances where it largely duplicates the application process, and instead allow a licensee or permittee to seek such modifications by application alone. Grant of the application would be followed by an amendment to the FM Table of Allotments to reflect the modification. The Commission believes that using this one-step process for each of these classes of actions would serve the public interest by speeding the implementation of service modifications and eliminating redundant staff processing efforts.

2. The Commission believes that it may be desirable to place some limits on the ability to invoke these processes in order to avoid harming core policy objectives. For example, the Commission does not believe that the use of this process to achieve station upgrades on the basis of contour protection is consistent with its allotment policy. In order to prevent the allotment of channels that would conflict with our present allotment standards, the Commission proposes to limit the availability of the new one-step procedure only to those proposals that comply with both its application criteria and its allotment standards. The Commission seeks comment on the best means of reaching this objective. One option would be to require that any application filed pursuant to the new procedure meet minimum distance separation and city grade standards as applied in the allotment context, without making use of less restrictive application standards such as contour protection or substantial compliance, at the site specified in the application. Another option would be to allow an applicant to apply for a station

modification at a site that would not meet allotment standards, so long as the applicant can demonstrate that an available site exists which would comply with allotment standards. The Commission's two-step process generally allows such a result. The Commission invites comment on these issues. The Commission also proposes to limit this procedure to modifications that require no changes to the Table of Allotments other than a change in the allotment of the station seeking the modification, and proposes that this process should exclude non-adjacent channel upgrades.

3. The Commission tentatively concludes that the Ashbacker doctrine does not preclude adoption of the changes contemplated herein. The Commission recognizes that adoption of this proposal may restrict the ability of other parties to file counterproposals seeking competing uses of the spectrum that would be precluded by grant of the application. However, limiting the applicability of the procedure proposed herein only to those modification requests which could meet the requirements of a rulemaking proposal should provide other parties with the ability to predict with certainty any preclusive effect that a potential modification may have on FM spectrum availability in the area. Therefore, the Commission believes that a prospective petitioner could readily predict whether a particular station potentially could seek a modification by application, thereby enabling the petitioner to file a conflicting request in advance of that application. The Commission seeks comment on this tentative conclusive.

4. The Commission proposes that any changes adopted in this proceeding apply only to applications filed after the effective date of the rules. Any rulemaking petitions already filed, or on file on the effective date of the new rules, would be processed under existing procedures. The Commission seeks comment on this approach.

Initial Regulatory Flexibility Statement

I. Reason for the Action

5. This review is initiated to consider whether it is advisable to adopt a new procedure by which a licensee or permittee may request a modified channel or class.

II. Objectives of Action

6. The objective of this proceeding is to reduce the amount of time necessary for approval of certain modifications and speed the implementation of improved FM service, as well as to reduce the amount of duplication of staff effort in processing such requests.

III. Legal Basis

7. Authority for this section may be found in 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping, and Other Compliance Requirements

8. Such requirements will vary according to the actions that are adopted as a result of the record established in response to this Notice of Proposed Rule Making.

V. Federal Rules Which Overlap Duplicate, or Conflict With These Rules

9. There are no rules which would overlap, duplicate, or conflict with these rules.

VI. Description, Potential Impact and Number of Small Entities Involved

10. There are a number of radio licensees and permittees who would be affected by this proceeding.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

11. In initiating this change to our modification procedures, the Commission seeks to relieve parties of the burden of filing duplicate requests, reduce the time necessary for approval of a modification and speed the implementation of improved FM service. In this Notice of Proposed Rule Making, the Commission invites comments on the alternative methods of applying this new process.

Ex Parte Consideration

12. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR § 1.1202, 1.1203, and 1.1206(a).

Comment Information

13. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR § 1.415 and 1.419, interested parties may file comments on or before October 5, 1992, and reply comments on or before November 4, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW. Washington, DC 20554.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 73

Radio broadcasting.

Amendatory Text

It is proposed that parts 1 and 73 of the Code of Federal Regulations be amended to read as follows:

1. The authority citation for Parts 1 and 73 continues to read as follows:

Authority: 47 U.S.C. sections 154 and 303.

2. Section 1.420 is amended by adding Note 1 following paragraph (g) and redesignating the Note following paragraph (h) as Note 2 to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, TV or Air-Ground Table of Allotments.

* * * * *

Note 1: In certain situations, a licensee or permittee may seek an adjacent or co-channel upgrade by application. See Section 73.203(b).

* * * * *

1. Section 73.203 is amended by revising paragraph (b) and adding a Note to read as follows:

§ 73.203 Availability of channels.

(b) Applications filed on a first come, first served basis may propose a lower or higher class channel. Applications for the modification of an existing FM broadcast station may propose a lower or higher class adjacent or co-channel, or an equivalent class adjacent channel. In these cases, the applicant need not file a petition for rule making to amend the Table of Allotments (Section 73.202(b)) to specify the modified channel class.

Note: Changes in channel class, and equivalent channel class substitutions by application are limited to first, second and third adjacent and co-channel modifications which meet the minimum spacing requirements of § 73.207 of the Rules at the site specified in the application, without resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in § 73.213–215 of the Rules, and to requests which require no other changes to the FM Table of Allotments or any change in frequency of any other authorized station.

2. Section 73.3573 is amended by revising paragraph (a)(1), redesignating Notes 1 and 2 as Notes 2 and 3

accordingly and adding a new Note 1 to read as follows:

§ 73.3573 Processing FM broadcast station applications.

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (73.202(b)). Other requests for change in frequency of community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Applications filed on a first come, first served basis may propose a higher or lower class adjacent or co-channel in an application for a new FM broadcast station. A licensee or permittee may seek the higher or lower class adjacent or co-channel or an equivalent class adjacent channel of its existing FM broadcast station by filing a minor change application. For noncommercial educational FM stations, a major change is any change in frequency or community of license or any change in power or antenna location or height above average terrain (or combination thereof) which would result in a change of 50% or more in the area within the station's predicted 1 mV/m filed strength contour. (A change in area is defined as the sum of the area gained and the area lost as a percentage of the original area). However, the FCC may within 15 days after the acceptance of the application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of sections 73.3580 and 1.1111 pertaining to major changes.

Note 1: Applications to modify the channel and/or class of an FM broadcast station to an adjacent or co-channel shall not require any other amendments to the Table of Allotments or change in frequency of any other authorized station. Such applications also must meet the minimum spacing requirements of § 73.207 of the Rules, at the site specified in the application, without resort to the provisions of the Commission's Rules permitting short spaced stations as set forth in §§ 73.213–73.215 of the Rules.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–19127 Filed 8–11–92; 8:45 am]

BILLING CODE 6710–01–M

47 CFR Part 15

[ET Docket No. 92–152; FCC 92–319]

Harmonization of Digital Device Standards With International Standards

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal responds to petitions for reconsideration of the First Report and Order in GEN Docket No. 87–389, 54 FR 17710 (April 25, 1989) filed by the Computer and Business Equipment Manufacturers Association and NCR Corporation. It would permit the manufacturers of digital devices to demonstrate compliance with either the FCC requirements or international standards for radio frequency emissions. The international standards were developed by the International Special Committee on Radio Interference (CISPR) and are used in many other countries, most notably the European Community countries. Harmonization of the standards would permit products manufactured for sale within the U.S. to be marketed in those countries following the CISPR specifications with minimal additional testing and product design modifications.

DATES: Comments must be submitted on or before October 21, 1992, and reply comments on or before November 13, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 653–7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 92–152, adopted July 10, 1992 and released July 30, 1992.

The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Paperwork Reduction

The proposed amendments will not modify the information collection requirements contained in the current regulations.

Summary of the Notice of Proposed Rule Making

1. In the Notice of Proposed Rule Making in this proceeding, the Commission proposes to amend part 15 of its rules to permit the manufacturers of digital devices to demonstrate compliance with either the existing FCC requirements or the international standards for radio frequency emissions.

These international standards were developed by the International Special Committee on Radio Interference (CISPR) and are contained in CISPR Pub. 22. The objective of this proposal is to ensure that U.S. manufacturers have reasonable opportunities to compete fairly and effectively in the international marketplace. Harmonization of the standards would permit products manufactured for sale within the U.S. to be marketed in those countries following the CISPR specifications with minimal additional testing and product design modifications while, at the same time, satisfying the Commission's interference control objectives.

2. Part 15 of the Commission's rules governs the operation of radio frequency (RF) devices within an individual license. Digital devices, such as computers, generate and use RF energy. These devices are subject to the provisions in part 15. However, the standards in part 15 apply only to products used in the United States. Many other countries, most notably the European Community countries, are in the process of requiring digital devices to comply with standards developed by CISPR for controlling interference. CISPR is a voluntary standards-making organization under the auspecies of the International Electrotechnical Commission (IEC). CISPR adopts recommendations for limits and methods of measurement to control radio interference.

3. The current CISPR Pub. 22 was printed in 1985. Since then, the following amendments have been adopted: CISPR/G (Central Office) 2, CISPR/G (Central Office) 9, CISPR/G (Central Office) 11, CISPR/G (Central Office) 12, CISPR/G (Central Office) 13, and CISPR/G (Central Office) 14. it is expected that these amendments will be incorporated into a new Second Edition of CISPR Pub. 22. Comments are invited as to whether compliance with pending changes proposed to CISPR Pub. 22 should be required. However, to ensure that future amendments to CISPR Pub. 22 do not change the standards applicable to digital devices marketed in the U.S. without notice and comment required through rule making, we

propose to reference a specific CISPR Pub. 22 edition and specific amendments, if appropriate. Comments are also invited on the suitability of the measurement procedures in CISPR Pub. 22 or whether we should require that CISPR Pub. 22 measurement be made using the measurements procedures currently specified in part 15 of our rules.

4. We are concerned that the CISPR standards do not specify limits for radio frequency emissions above 1000 MHz. Thus, we also propose that, when necessary, manufacturers of digital devices must continue to demonstrate compliance with the current part 15 emission limits above 1000 MHz. Further, for emissions below 1000 MHz we propose that manufacturers of digital devices be required to demonstrate complete compliance with either the CISPR standards or the part 15 standards. Intermixing between the FCC standards and the CISPR standards will not be permitted.

5. Since these changes to the regulations should not have an adverse impact on any manufacturer of digital devices, we propose that the changes to the rules become effective upon the date the resulting Report and Order is published in the **Federal Register**.

6. In a separate matter, the Commission also proposes to amend part 15 of its rules to incorporate the standards in the digital device measurement procedures regarding AC powerline conducted emissions. For any part 15 devices, including non-digital devices, it is proposed that when the difference between the conducted emission levels measured with a quasi-peak detector and with an average detector is 6 dB or greater, a 13 dB allowance may be added to the part 15 powerline conducted limit.

Initial Regulatory Flexibility Analysis

7. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Reason for Action

This rule making proceeding is initiated to obtain comment as to whether the Commission should amend part 15 of its rules to accept a demonstration of compliance with the CISPR Pub. 22 standards for a digital device as an alternative to the demonstration of compliance with the standards contained in part 15.

Objectives

The objective of this proposal is to facilitate the international marketing of digital devices, particularly computers.

Legal Basis

The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Reporting, Recordkeeping and Other Compliance Requirements

There are no changes to reporting, recordkeeping and other compliance requirements beyond what is already required under the current regulations.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact and Number of Small Entities Involved

The actions proposed in this proceeding should assure reasonable opportunities for U.S. manufacturers of digital devices to compete fairly and effectively in the international marketplace. There should be no adverse impact on any small manufacturers of these products.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives

No adverse impact on small entities is expected.

List of Subjects in 47 CFR Part 15

Computer technology; Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–19128 Filed 8–11–92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92–161, RM–8011]

Radio Broadcasting Services; Glencoe and Le Sueur, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Waite Park Broadcasting Company proposing the substitution of Channel 241C3 for Channel 241A at Le Sueur, Minnesota, and reallotment of Channel 241C3 to Glencoe, Minnesota. The coordinates for Channel 241C3 at Glencoe are 44–46–09 and 94–09–05. Petitioner also requests modification of its construction permit for Channel 241A, Le Sueur, to specify operation on Channel 241C3 at Glencoe.

DATES: Comments must be filed on or before September 28, 1992, and reply comments on or before October 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller 7 Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–161, adopted July 20, 1992, and released August 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19205 Filed 8-11-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-162, RM-8032]

Radio Broadcasting Services; Norwood, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Renard Communications Corp. seeking the allotment of Channel 241A to Norwood, New York, as the community's first local FM service. Channel 241A can be allotted to Norwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.3 miles) north to avoid a short-spacing to Station WVNC, Channel 244A, Canton, New York, at coordinates North Latitude 44-47-51 and West Longitude 74-58-12. Norwood is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, Canadian concurrence in the allotment of Channel 241A as a specially negotiated allotment has been requested because of short-spacings to Stations CBOC-FM, Channel 238A, Cornwall, Ontario, CFMK-FM, Channel 242B, Kingston, Ontario, and CJFM-FM, Channel 240C1, Montreal, Quebec, Canada.

DATES: Comments must be filed on or before September 28, 1992, and reply comments on or before October 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Craig L. Fox, President, Renard Communications Corp., 4853 Manor Hill Drive, Syracuse, New York 13215-1336 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-162, adopted July 17, 1992, and released August 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19203 Filed 8-11-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 5415 and 5452

Defense Logistics Agency

DLA Acquisition Regulation (DLAR); Vendor Rating System

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Logistics Agency (DLA) proposes amending the Defense Logistics Agency Acquisition Regulation (DLAR) 4105.1 parts 15 and 52 to provide regulatory coverage on the DLA Vendor Rating System (DVRS). Comments are hereby requested on the proposed coverage which adds prescriptive language and a solicitation provision to satisfy the specific needs of DLA. The primary objective of the coverage is to provide policy guidance on the use of the DVRS as one means of using performance information in source selection. The proposed coverage is being publicized in the **Federal Register** for informational purposes and to solicit comments on program guidelines.

DATES: Comments should be submitted to the address shown below on or before September 11, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Logistics Agency, Directorate of Contracting, Policy Branch (DLA-PPR), ATTN: LT Dan Smith, SC, USN, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: LT Dan Smith, Defense Logistics Agency, DLA-PPR, (703) 274-6431.

SUPPLEMENTARY INFORMATION:

A. Background

The DLA Vendor Rating System is the result of a three year study. In 1989, DLA-PPR conducted a survey of existing vendor rating systems and selected 13 industry and 6 military systems for analysis. In March of 1991, descriptions of six of these rating systems were sent to DLA field activities for comment.

DLA conducted a feasibility study to determine what elements or programs should be included in an overall DLA program for evaluating a contractor's quality and delivery performance. Additionally, a Study Advisory Group (SAG), made up of over 35 individuals from both headquarters and field activities has participated in the development of the DVRS.

The DLA Vendor System (DVRS) will provide an automated best value buying technique that will allow the contracting officer to make informed business decisions based on both price and performance (delivery and quality). As part of the DLA Pre-Award Contracting System (DPACS), DVRS will analyze a prospective contractor's historical quality and delivery performance and provide a performance rating for each prospective contractor. (Every offeror will be provided the opportunity to verify data maintained on it for DVRS purposes.) This performance rating will be used by the contracting officer in source selection in a comparative analysis of offerors. A prototype of DVRS was completed in January 1992 and is being field tested at the Defense General Supply Center at Richmond, Virginia. DVRS should be ready to be deployed to the Defense Construction Supply Center, the Defense Electronic Supply Center, the Defense Industrial Supply Center, the Defense General Supply Center and the Defense Personnel Supply Center, Medical, in 1993. Expected benefits from DVRS are contractor improvements in performance on DLA contracts, and enhancement of the Agency's ability to acquire quality items from proven

suppliers on time. Improvements in quality and delivery performance will, in turn, decrease the administrative costs associated with contract management actions.

The proposed coverage will be included in the Defense Logistics Agency Acquisition Regulation (DLAR) 4105.1, which implements and supplements the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and other DOD publications and, pursuant to FAR 1.304, establishes DLA procedures relating to the acquisition of supplies and services under the authority of 10 U.S.C. 137. The supplementary coverage, which includes a new provision, is designed to give contracting officers an effective tool to improve quality and delivery performance. The use of the DVRS for individual procurements will be at the discretion of the contracting activity.

B. Regulatory Flexibility Act

Addition of 48 CFR parts 5415 and 5452 will not have a significant economic impact on small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because no additional time or cost on the part of the contractor will be involved. Comments from small businesses concerning the proposed DLAR coverage will be considered in accordance with Section 601 of the Act.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. and, as such, the Paperwork Reduction Act does not apply.

List of Subjects in 48 CFR Parts 5415 and 5452

Government procurement.

Therefore, 48 CFR chapter 54, which was proposed to be added at 56 FR 66008 (December 20, 1991), would be further amended as follows:

1. The authority citation for 48 CFR parts 5415 and 5452 reads as follows:

Authority: 10 U.S.C. 137, FAR subpart 1.3 and DFARS subpart 201.3.

PART 5415—SOURCE SELECTION

2. Part 5415, consisting of Section 5415.613–92, is added to read as follows:

5415.613–92 DLA Vendor Rating System (DVRS).

(a) *Definitions.* Performance Rating means that product of the DLA Vendor Rating System (DVRS) that provides a weighted computation of the quality performance and delivery history indicators of a contractor.

(b) *Scope.* (1) This section prescribes policies and procedures for the DVRS. The DVRS is an objective contractor performance evaluation and rating system.

(2) The DVRS applies to negotiated acquisitions processed through the DLA Pre Award Contracting System (DPACS) that are not subject to other source selection techniques (i.e., formal, streamlined, etc.).

(c) *Objectives.* (1) Through DPACS, the DVRS provides objective performance ratings for all offerors that have performance history with the applicable center. DVRS provides the contracting officer with a numeric performance rating for use in making an award based on best value to the Government.

(2) Expected benefits from the DVRS are contractor improvements in performance on DLA contracts, improvement in the quality of spare and repair parts in the DoD logistics system, and enhancement of the Agency's ability to acquire quality items from proven suppliers on time. Improvements in quality and delivery performance will, in turn, decrease the administrative costs associated with contract management actions.

(d) *Policy.* (1) DVRS analyzes a prospective contractor's historical quality and delivery performance within an applicable FSC; and provides a performance rating for each prospective offeror that has a history.

(2) The performance rating of the offeror represents the aggregate of individual weighted ratings for each performance indicator (data element). These individual ratings are based on the following performance indicators: product quality nonconformances, packaging nonconformances, laboratory test results, and delinquencies. Whenever the contractor's performance on any Contract Line Item Number (DLIN) in the FSC results in a discrepancy, the contractor's rating for that element will be less than 100.

(3) An offeror with no performance history with the respective center in the FSC for the supplies solicited, or who has not established a sufficient minimum volume of business (as determined by the Center) for that FSC, will be rated based on its cumulative performance history in all other FSCs provided to the Center, and the rating flagged on the DPACS screen.

(4) An offeror with no performance history in any FSC procured by the Center will not be rated. However, this does not mean that the contracting officer may not make award to one of these offerors. The offeror's status as a "new contractor" will not be grounds for disqualification for award. Since DLA strongly endorses competition, additional consideration is required in these cases, as described in (d)(7) below.

(5) DVRS does not determine a contractor ineligible for award, determine technical acceptability, or make a negative determination of contractor responsibility; nor does it negate the requirement for an affirmative determination of responsibility on the otherwise successful offeror.

(6) When the solicitation includes the DVRS provision, the contracting officer shall use the DVRS performance rating in a comparative assessment of offers in source selection. The contracting officer should not rely solely on the performace rating and should give consideration to review of data used to construct the performace rating if the circumstances of the procurement dictate.

(7) With regard to performace ratings this policy does not establish any one "acceptable" performance level below which an offeror cannot be considered for award. The DVRS requires the exercise of informed business judgement on the contracting officer's part. DVRS performance ratings pertain solely to performance based factors; DVRS does not rate or rank offered price. The contracting officer must determine the appropriate trade-off of price for performance. Additional factors that need to be taken into account in making these trade-off determinations include: designation of an item as a weapon-system or personnel support item; inventory supply status and required delivery schedule; limited sources of supply and industrial base concerns; absolute dollar differences between the low technically acceptable offer and a higher-priced, higher-rated offeror and the presence of new contractors in the offeror pool. The contracting officer should also consider the volume of business on which the performance rating is based as a measure of the confidence with which the rating indicates performance risk on future contracts. For example, a high rating based on very few deliveries would not provide as clear an indication of low performance risk as would the same rating based on a substantial number of deliveries and would normally not support as large a differential in the trade-off analysis. The contracting officer must justify the basis for award in the contract file except when award is made to the lowest priced, highest rated offeror.

(8) Price related evaluation factors (e.g., Buy American Act evaluation factors, Small Disadvantaged Business (SDV) evaluations preferences, transportation factors, etc.) shall be added to applicable offered prices prior to making the award decision based on a price and past performance trade-off. These evaluated prices must be used in determining the trade-off of price for past performance.

(9) Commerce Business Daily synopses of solicitions made under this subpart shall indicate that, while price is a significant factor in the evaluation of offers, the final contract award decision will be based upon a combination of price and past performance.

(10) An offeror with a superior performance history will be designated a Quality Vendor based on the criteria established by each DSC.

(e) *Responsibilities.* (1) HQ DLA. The Executive Director, Contracting (DLA-P), will Encourage and monitor use of the DVRS by the DSCs (excluding DFSC).

(2) The Executive Director, Quality Assurance (DLA-Q), will:

(i) Provide definition for the maximum development and use of Contractor Assessment—Product Evaluation (CAPE—DLAR 4105.20) information in DVRS.

(ii) Provide definition for the maximum development and use of the System for Analysis of Laboratory Testing (SALT) data base used by DVRS.

(3) The Commanders, Defense Supply Centers (excluding DFSC), will:

(i) Establish DVRS at their respective center, and manage the implementation of this policy.

(ii) Review and measure the effectiveness of DVRS in making award decisions.

(iii) Appoint a DVRS Administrator as DSC focal point for the program responsible for: determining the appropriate weighting of data elements used in the formulation of historical contractor performance ratings; providing and ensuring accurate and valid historical data in, and updating of, the Contractor Depot Complaint System/Quality Evaluation Program (CDCS/QEP), System for Analysis of Laboratory Testing (SALT); the Active Contract File (ACF), and the Contract History File (CHF), as applicable, from which DVRS will draw pertinent contractor performance information; and other DVRS management duties.

(f) *Procedures.* (1) Weighting of the performance indicators may be adjusted by FSC to adjust the relative importance of item conformance and timeliness of delivery.

(2) The contracting officer should take into account more timely past performance information he/she possesses when making sourcing decisions. The DVRS will not process and update information more recently than that from the previous monthly reporting period.

(g) *Data sources.* The DVRS performance rating is computed using a contractor's historical quality performance data as reflected in DLA databases such as CDCS and SALT. Delivery performance (delinquency) is computed using a contractor's historical delivery performance data as reflected in databases such as the Standard Automated Materiel Management System (SAMMS) Active Contract File and the SAMMS Contract History File.

(h) *Data updating and provision.* (1) Performance data will be updated monthly. Delinquencies will be measured starting 60 days prior to the update for a 24 month period. The 60 day offset allows the opportunity to verify late deliveries and determine cause for open contracts. This offset is not a grace period. Verified late deliveries during this offset period will be reflected in the rating when the offset expires. Quality discrepancies and confirmed lab test failures are measured over the exact prior 24 months without an offset. DVRS will compute ratings at the day of update and for five preceding monthly periods.

(2) Each activity must ensure that offerors are provided the opportunity to verify negative data maintained on them for DVRS purposes. Contractors must be given access to their historical past performance data via the most favorable means available (i.e., electronic mail, microfische, written request, etc).

(3) When a discrepancy between contractor and Government data occurs, either because resolution cannot be accomplished immediately, or because a mutually-acceptable solution cannot be achieved, the DVRS Administrator shall program the system to flag the offeror's rating on the DPACS screen. This flag alerts the contracting officer to look beyond DVRS data; it shall not be used to eliminate any offeror from consideration for award.

(4) Center DVRS administrators shall make every effort to correct discrepancies within ten working days. Center DVRS Administrators and Quality Assurance representatives shall provide guidance to prospective offerors on actions necessary to improve their ratings, when so requested. The DSC may choose to eliminate from the DVRS performance rating, certain negative data elements which are over one year old, based on the presentation of convincing evidence by the offeror that changes to management, quality control, etc., render those data elements unrepresentative of the performance risk expected on future contracts. Elimination of data on this basis is at the sole discretion of the DSC and must be approved by the Director or Deputy Director of Contracting.

(5) Each offeror's performance rating is confidential source selection information during the month in which it is effective and, as such, is protected form release under the procurement integrity rules (see FAR 3.104-4 and 3.104-5.). This rating is available only to the business entity to which it applies. The rating and all related data must carry a restrictive legend substantially the same as the following: "CONFIDENTIAL CONTRACTOR INFORMATION—FOR OFFICIAL USE ONLY." This legend must appear on all hard-copy printouts. Release of DVRS information to any other Governmental entity, including any other DSC, must have the concurrence of local Counsel. Release to any other private entity shall be strictly limited, and must be in accordance with Freedom of Information Act (FOIA, 5 U.S.C. 552) guidelines (see FAR part 24, Protection of Privacy and Freedom of Information; DoD Directive 5400.7, DoD Freedom of Information Act Program; and DoD Regulation 5400.7-R, DoD Freedom of Information Act Program). Decisions on releasability of performance data to other contractors under FOIA will be made on a case-by-case basis.

(i) *Reporting.* Records of DVRS use will be compiled automatically on an individual month and a fiscal year basis, cumulative through the end of reporting period.

(j) *Solicitation provision.* The contracting officer shall insert the provision at 52.215-9002, "DLA Vendor Rating System," in all solicitations using DVRS.

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 5452.2—Texts of Provisions and Clauses

3. Section 5452.215-9002 is added to proposed part 5452 to read as follows:

5452.215-9002 DLA Vendor Rating System (DVRS).

As prescribed in 5415.613-92(j), insert the following provision:

DLA Vendor Rating System (Test) (May 1991)—DLAR

(a) Award against this solicitation shall be made using the DLA Vendor Rating System (DVRS) procedure. DVRS is a contractor performance evaluation system which analyzes an offeror's historical quality and delivery performance and provides a performance rating to be used along with price in a comparative assessment of offers.

(b) Price and past performance are the primary evaluation factors. Award may be made to other than the low-priced, technically acceptable responsible offeror. For this award, price and performance factors will be evaluated equally unless a different order of precedence is indicated below:

( ) Price is of greater importance than performance.

( ) Performance is of greater importance than price.

For this award, the performance factor considers quality performance and delivery performance to be of equal value unless otherwise indicated below:

( ) Quality performance is of greater importance than delivery performance.

( ) Delivery performance is of greater importance than quality performance.

(c) Past performance.

(1) The DVRS will be used by the Government as a means of determining the probability of successful accomplishment of the required contract performance. Each offeror will be rated on the basis of its past quality performance over the most recent 24 months and delivery performance over the most recent 24 months, exclusive of the most recent 60 day period prior to issuance of this solicitation, on contracts with the Defense _____ Supply Center. The Government will use the following performance indicators:

Product nonconformances
Packaging nonconformances
Delinquencies
Laboratory test results

(2) Offerors will be rated on the basis of past performance in the same FSC as the supplies being solicited. The Center will establish a minimum volume of business for each FSC below which an offeror will not be rated. An offeror with no Center performance history in such FSC, or which does not meet the minimum volume of business in such FSC, will be rated based on its performance history for all FSCs. The contracting officer may also consider the volume of business on which the performance rating is based as a measure of the confidence with which the rating indicates performance risk.

(3) An offeror with no performance history in any FSC procured by the Center, will be identified as a new offeror and will not be rated. However, offeror status as a new offeror will not be grounds for disqualification for award. New offerors may be considered more favorably than rated contractors with a record of poor performance. In addition, the desirability of expanding the supplier base and possible enhancement of competition in future procurements will be considered in the source selection decision where new offerors are present.

(4) The DVRS rating does not determine a contractor ineligible for award or determine technical acceptability, nor does it make a negative determination of offeror responsibility, or negate the requirement for an affirmative determination of responsibility on the otherwise successful offeror.

(5) Every offeror will be provided the opportunity to review its negative historical performance data maintained in the DVRS. Questions and requests for information on data access should be directed to:

_____

_____

_____

(6) When a discrepancy between offeror and Government data occurs, the Government will make every effort to resolve the discrepancy expeditiously. However, authority for final resolution of disputed data and its use in the source selection decision resides with the Government.

(d) Price. The evaluated price will be used in conjunction with past performance data to determine the proposal that represents the best value to the Government. The Government will evaluate the reasonableness of the offered price in making an award decision.

(e) General Basis for Award. Award will be made to the offeror whose proposal conforms to the terms and conditions of the solicitation and which represents the best value to the Government. In making the best value determination, the Government will make a comparative assessment of proposals. Where the offeror with the best performance history has not also offered the lowest price, the Government will determine the appropriate trade-off of price for past performance. In determining the appropriate trade-off, the government will consider all factors which may have a significant impact on the trade-off decision, such as:

—Whether the item is used in a weapons system or is a personal support item
—Item delivery & quality history
—Inventory status
—Delivery schedule
—Limitations on supply sources
—Industrial base
—Benefits from obtaining new sources.

[End of provision]

By Order of the Director.

Gary C. Tucker,

Colonel, USA, Staff Director, Administration.

[FR Doc. 92-18833 Filed 8-11-92; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC-5; Notice No. 2]

RIN 2130—AA70

Timely Response to Grade Crossing Signal System Malfunctions; Notice of Change of Hearing Date and Extension of Comment Period

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; change of hearing date and extension of comment period.

SUMMARY: FRA is issuing notice that the public hearing scheduled for September 3, 1992 is being changed to Tuesday, September 15, 1992 in order to provide additional time for interested parties to prepare for the hearing. FRA is also extending the period for public comment to September 25, 1992.

DATES: A public hearing will be held at 10 a.m. on Tuesday, September 15, 1992. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing, by telephone or by mail, and to submit three copies of the oral statement that he or she intends to make at the hearing.

ADDRESSES: A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202-366-0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400

Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: On June 29, 1992, FRA published a Notice of Proposed Rulemaking regarding timely response to grade crossing signal system malfunctions. 57 FR 28619. A public hearing was set for September 3, 1992. In order to provide additional time for interested parties to prepare for the hearing, FRA is changing the hearing date to Tuesday, September 15, 1992. FRA is also extending the deadline for public comment from September 11, 1992 to September 25, 1992.

Issued in Washington, D.C. on July 30, 1992.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 92–19206 Filed 8–11–92; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 920543–2199]

RIN 0648–AE21

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement a revised portion of Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This proposed rule would: (1) Prohibit Federally permitted vessels that are fishing commercially from landing summer flounder in a state after the quota allocated for that state has been taken; and (2) prohibit permitted dealers from purchasing such summer flounder. The intent is to keep from exceeding annual quotas of commercially harvested summer flounder. Other measures contained in Amendment 2 are described in a proposed rule published at 57 FR 24577 on June 10, 1992.

DATES: Comments are invited through September 1, 1992.

ADDRESSES: Comments on this proposed rule may be sent to Mr. Richard B. Roe, Regional Director, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, Massachusetts 01930–3799. Copies of the revised amendment, and the environmental impact statement/regulatory impact review may be obtained from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, (508) 281–9324.

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. The Council voted to submit Amendment 2 to the Secretary for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary of Commerce (Secretary) to approve, disapprove, or partially disapprove FMPs or amendments based upon a determination of consistency with the national standards of the Magnuson Act and other applicable law. In the notice of availability for the proposed amendment (57 FR 19874, May 8, 1992) and again in the proposed rule (57 FR 24577, June 10, 1992), the Secretary announced disapproval of one of the measures proposed. The remaining measures were accepted for Agency and public review, are contained in the June 10, 1992, proposed rule, and are still under Secretarial review. This proposed rule would further amend the text of 50 CFR Part 625 as proposed to be amended by the June 10, 1992, proposed rule.

The disapproved measure would have required the Director, Northeast Region, NMFS (Regional Director) to deny access to Federal waters by fishermen of a particular state deemed not in compliance with the FMP. Disapproval of that measure was based on inconsistency with national standard 4, which prohibits measures that discriminate among fishermen based on state of residence.

After receiving notice of disapproval of that measure, the Council adopted a revised measure that would prohibit commercial landings in a state after the state's commercial quota has been used. "State's commercial quota" means that portion of the Federal commercial quota for summer flounder that may be sold annually in a particular state. The proposed prohibition would apply equally to all fishermen whose vessels hold Federal permits to fish for summer flounder, and would not depend on any state's action or inaction. Fishermen would be required to agree to comply with this measure as a condition of receiving a summer flounder permit. Dealers would be prohibited from purchasing summer flounder from a vessel that fished commercially and landed in a state where quota is no longer available.

The Regional Director will monitor landings and, based upon logbook data and other available information, would notify the appropriate State fisheries agency, vessel permit holders and dealers that no quota remains for landings in that State.

Classification

Section 304(b)(3)(B)(iii) of the Magnuson Act, as amended requires the Secretary of Commerce to immediately publish revised proposed regulations together with an explanation of substantive changes. At this time the Secretary has not determined that the revised measure in the amendment this proposed rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental impact statement (EIS) describing the possible impacts of management measures of Amendment 2 on the human and biological environments. This revision would not affect the scope or alter the analysis prepared in the EIS for Amendment 2. A copy of the EIS may be obtained from the Council (see "**ADDRESSES**").

The Assistant Administrator for Fisheries, NOAA, initially determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulatory impact review (RIR) prepared for Amendment 2 demonstrated negative net short-term economic benefits, but positive long-term economic benefits to the fishery under the proposed management measures. This proposed rule, which would implement a minor revision to the amendment, does not alter the economic impacts analyzed in the RIR for Amendment 2. This action is not expected to have: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. A copy of the RIR may be obtained from the Council (see "**ADDRESSES**").

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule would merely provide additional Federal support to the system of allocating quota geographically by state which was contained in the June 10, 1992, proposed rule. That system of quota allocation was assessed under the Regulatory Flexibility Act before NMFS issued the June 10, 1992, proposed rule. The General Counsel of the Department of Commerce determined that it would not have a significant impact on a substantial number of small entities.

The Council determined that this rule, if adopted, would be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. Member states of the Atlantic States Marine Fisheries Commission that would be assigned annual quotas for summer flounder under Amendment 2 have previously voted in favor of this system of management, recognizing the need for numerical limits on the amount of flounder caught annually to rebuild the fish stock. After the annual allocation for any state ("state quota") has been taken, the state will be notified by the Regional Director that its quota has been reached. Under the revised portion of Amendment 2, Federal permit holders in the summer flounder fishery would agree as a condition of holding such a permit not to land summer flounder in a state for sale after that state's annual quota has been reached for the commercial summer flounder fishery.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: August 6, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In addition to amendments contained in the proposed rule published at 57 FR 24577 on June 10, 1992, § 625.4 is proposed to be amended by revising paragraph (a)(3) to read as follows:

§ 625.4 Vessel permits.

(a) * * *

(3) *Condition.* Vessel owners and operators who apply for a fishing vessel permit under this section must agree, as a condition of the permit, that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. All such fishing, catch, and gear will remain subject to all applicable state requirements. If a requirement of this part and a management measure required by state law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a moratorium permit issued pursuant to paragraph (b) of this section must also agree, as a condition of the permit, not to land summer flounder in any state the Regional Director has determined no longer has commercial quota available.

* * * * *

3. In addition to amendments contained in the proposed rule published at 57 FR 24577 on June 10, 1992, in § 625.8, existing paragraphs (a)(5) through (a)(10) are redesignated (a)(6) through (a)(11), respectively; existing paragraphs (c)(5) through (c)(9) are redesignated (c)(6) through (c)(10), respectively; and new paragraphs (a)(5) and (c)(5) are proposed to be added to read as follows:

§ 625.8 Prohibitions.

(a) * * *

(5) Land summer flounder for sale in a state after the effective date published in the **Federal Register** notifying permit holders that commercial quota is no longer available in that state;

* * * * *

(c) * * *

(5) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the **Federal Register** notifying permit holders that commercial quota is no longer available in that state;

* * * * *

4. In addition to amendments contained in the proposed rule published at 57 FR 24577 on June 10, 1992, § 625.21 is proposed to be amended by revising paragraph (c) to read as follows:

§ 625.21 Closure.

* * * * *

(c) *State quotas.* The Regional Director will monitor state commercial quotas based on logbook data and other available information and shall determine the date when a state commercial quota has been harvested. The Regional Director shall publish a notice in the **Federal Register** advising a state that its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

* * * * *

[FR Doc. 92-19090 Filed 8-6-92; 4:07 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 156
Wednesday, August 12, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 7, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Food and Nutrition Service
7 CFR part 215—Special Milk Program for Children
Recordkeeping; Monthly; Quarterly; Annually
State or local governments; businesses or other for-profit;
Non-profit institutions; Small businesses or organizations; 181,850 responses; 835,879 hours
Angella Love/Winnie McQueen (703) 305–2807

New Collection

Animal & Plant Health Inspection Service
Scrapie Flock Certification and Animal Identification
Procedures—Addendum 1
Recordkeeping; On occasion
State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 227 responses; 678 hours
Daniel E. Harpster (301) 436–6954

Donald E. Hulcher,
Deputy Departmental Clearance Officer.
[FR Doc. 92–19131 Filed 8–11–92; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Notice of Exemption; Plumas National Forest, CA

AGENCY: Forest Service, USDA.
ACTION: Notice of Exemption from Appeal, Milford Ranger District, Salvage, Rehabilitation, and Fire Hazard Reduction Projects, Plumas National Forest.

SUMMARY: The Forest Service is exempting from appeal the decisions to sell trees being killed by the conbined effects of severe drought and bark beetles attacks. Forest rehabilitation and fire hazard reduction projects will be included in the sale contracts and/or accomplished using portions of the receipts from the sales. Environmental analysis for these decisions will be documented in Milford Range District Salvage, Forest Rehabilitation, and Fire Hazard Reduction Project, Environmental Assessments. The first and largest project will be the Ross Salvage Project in the Management Area 41, Ferris, as described in the Plumas National Forest Land and Resource Management Plan (FLMP), approved by the Regional Forester, August, 1988, which includes intensive timber management practices on commercial forest lands. Project objectives would be to salvage the timber products and value from the dead trees, to rehabilitate the affected area and to reduce the fire hazard. The area is located southeast of Susanville and north of Portola, California.

Tree mortality in all forests of the Sierra Nevada Mountains is high as a result of six years of below-normal precipitation. The drought has reduced tree vigor and weakened natural defense mechanisms of trees in young, over-stocked stands and in older, mature trees, predisposing them to attack by bark beetles. On the Plumas National Forest, most of the mortality is concentrated in the Eastside Pine and Mixed Conifer forest types located on the east side of the mountains at elevations between 5,000 and 7,500 feet. White fir, representing 25 to 40 percent of the species in these stands, is experiencing the greatest mortality. In many of these stands, white fir is considered an off-site species. It is not tolerant of the drought conditions which frequent these types. It has encroached as a result of logging practices and aggressive fire protection.

Fir trees deteriorate very rapidly after death and become unsuitable for lumber and other forest products. Trees which could provide valuable lumber, wood products, and jobs, quickly become a fire hazard. The increased fire potential is a threat to other forest values including recreation, watersheds, and wildlife.

The District Ranger believes there is good cause to expedite these projects based on preliminary environmental assessment and public involvement. Signs of mortality are visible on approximately 4,000 acres of the project assessment area. It is estimated that 50 percent or more of the trees in some stands are dead or dying. The environmental analysis will include several sales proposed to implement project objectives including in addition to the Ross project above; Galeppi, Crystal, Brownville, Grigsby, and three to five other timber sales. These project areas are located in Management Area 40, Last Chance; Management Area 42, Frenchman; and Management Area 43, Escarpment as described in the Plumas FLMP, which includes intensive timber management parctices on commercial forest land. The number of sales will reflect the dynamics of the increasing mortality and the sale sizes will consider usual factors related to transportation and logging systems, and industry's capability and distribution.

Current estimates are that there would be three to ten timber sales in 1992 using both tractor and helicopter logging systems. There is currently about 7.5 million board feet of salvable dead trees in this area which could be

sold in new timber sales. Additional trees are continuing to die which will increase the volume and the problem. The project proposals would include forest rehabilitation and fire hazard reduction projects which are consistent with the direction provided in the Plumas National Forest Land and Resources Management Plan, approved by the Regional Forester, August, 1988. These projects would include some road construction and reconstruction. Planning and analysis to date has identified possible need for approximately five miles of construction and five miles of reconstruction. Some new construction is necessary to provide minimal access, and some is proposed to replace existing roads built years ago in locations typically in or near sensitive streamside areas. These roads currently causing adverse impacts to watersheds and wildlife habitat. Roads being abandoned would be obliterated and revegetated as required in the LMP. The anticipated net effect will be a long term improvement of the watershed and riparian habitat conditions.

Potential for impacts to Spotted owls and/or Spotted owl habitat are being assessed using current Regional guides related to salvage of dead trees. Designation of dead trees suitable for salvage would follow approved forest guidelines to insure that salvage and rehabilitation projects would have no effect on suitability of any existing suitable owl habitat which may exist in the project area or on any owls which may be discovered.

Regional entomologists have visited many similar areas and have stated that with the current drought conditions, the over-stocked stands, and the numerous acres involved, there is no economical or practical means to prevent or control the insect and subsequent mortality. Salvage of the dead trees is not expected to prevent or to control either the insect attacks or the mortality, but it would recover valuable timber, provide employment, and contribute to rehabilitation of the area and to the reduction of the fire hazard. All this is an opportunity made possible by the salvage of dead trees that would otherwise deteriorate and create a severe fire hazard. Delay in the salvage effort would significantly reduce the lumber value and the rehabilitation and fire hazard work which could be accomplished because of the rapid deterioration of the trees for use as products.

The decision related to each of the projects are scheduled in the early part of August, 1992. If projects are delayed through the appeal process, it is unlikely that the projects could be implemented during the 1992 normal operating season (appeal process has caused delays from 100 days up to six months). Access would be difficult for portions of the winter operating season. This would result in substantial monetary loss to the Government and reduced monies returned to the Counties. Because of the small-sized timber involved and its deterioration rate, and unnecessary delays could cause the value to decrease by as much as $1,000,000.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decisions related to the salvage, rehabilitation, and fire hazard reduction projects related to the drought-bark beetle mortality on the Milford Ranger District, Plumas National Forest. The environmental documents being prepared will address the effects of the proposed actions on the environment, document public involvement and address the issues raised by the public.

Revised 36 CFR 217 appeal regulations have been proposed. Project decisions made after revised regulations become effective would be subject to the revised regulations.

EFFECTIVE DATE: This decision will be effective August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648; or to H. Wayne Thornton, Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy City, CA 95971, (916) 283–2050.

ADDITIONAL INFORMATION: Pursuant to 40 CFR 1501.7, scoping was conducted to determine the issues and concerns to be addressed in the assessments. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners, and other known interested parties. In addition the District Ranger, Jeff Withroe has made a number of personal contacts with interested parties explaining the need for the projects and exemption from the appeal process. Copies of the public involvement letters and responses are on file at the Milford Ranger District Office. All project files and related maps also are available for public review at Milford Ranger District Office, Milford, CA 96121.

The catastrophic damage occurring within the salvage analysis area currently involves approximately 4,000 acres and 7.5 million board feet. The value of the Forest Service of the salvage is estimated to be between $1,500,000 and $2,000,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Plumas, Lassen, Yuba, Butte, and Sierra Counties will share 25% of the gross receipts for the timber slavaged in these projects. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fire hazard reduction.

The proposal is not expected to adversely affect snag-dependent wildlife species. Sufficient numbers of hard snags of appropriate size for wildlife and protection of soft snags from potential damage during harvest activities will occur in compliance with management requirements. No Wild and Scenic Rivers, Wilderness areas, or roadless areas are within the proposed project area. Mitigation measures for streamside management zones, meadows, soil productivity, and fuels will follow the Forest-wide Standards and Guidelines. Sensitive areas such as archaeological sites, spotted owl nest sites should they be found, or sensitive plant areas should they be identified, will be avoided. Where appropriate nesting birds would be protected by limiting the operating period in the contracts.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. These delays would result in volume and value losses, and increase the chance of wildfire occurring due to the large additional quantity of standing and down fuels.

Dated: August 6, 1992.

Joyce T. Muraoka,

Deputy Regional Forester.

[FR Doc. 92–19143 Filed 8–11–92; 8:45 am]

BILLING CODE 3410–11–M

Notice of Exemption; Plumas National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of Exemption from Appeal, Greenville Ranger District, Salvage, Rehabilitation, and Fire Hazard Reduction Projects, Plumas National Forest.

SUMMARY: The Forest Service is exempting from appeal the decisions to sell trees being killed by the combined effects of severe drought and bark beetles attacks. Forest rehabilitation and fire hazard reduction projects will

be included in the sale contracts and/or accomplished using portions of the receipts from the sales. Environmental analysis for these decisions will be documented in Greenville Ranger District Salvage, Forest Rehabilitation, and Fire Hazard Reduction Project, Environmental Assessments. The project will be assessed as portions of three Management Areas, as described in the Plumas National Forest Land and Resource Management Plan (FLMP), approved by the Regional Forester, August, 1988, which includes intensive timber management practices on commercial timber lands. Project objectives would be to salvage the timber products and value from the dead trees, to rehabilitate the affected area, and to reduce the fire hazard. The general assessment area suffering mortality is located generally north and west of California Highway 89 in Management Areas 28, Lights Creek; Management Area 29, Antelope; Management Area 30, Ward. The area is South of Susanville, CA and East of Greenville, CA.

Tree mortality in all forests of the Sierra Nevada Mountains is high as a result of six years of below-normal precipitation. The drought has reduced tree vigor and weakened natural defense mechanisms of trees in young, over-stocked stands and in older, mature trees, predisposing them to attack by bark beetles. On the Plumas National Forest, most of the mortality is concentrated in the Eastside Pine and Mixed Conifer forest types located on the east side of the mountains at elevations between 5,000 and 7,500 feet. White fir, representing 25 to 40 percent of the species in these stands, is experiencing the greatest mortality. In many of these stands, white fir is considered an off-site species. It is not tolerant of the drought conditions which frequent these forest types. It has encroached as a result of logging practices and aggressive fire protection. On the Greenville Ranger District the size the areas suffering mortality is generally smaller than on the other east side districts and the mortality is scattered over an extensive area making salvage efforts especially difficult. Fir trees deteriorate very rapidly after death and become unsuitable for lumber and other forest products. Trees which could provide valuable lumber, wood products, and jobs, quickly become a fire hazard. The increased fire potential is a threat to other forest values including recreation, watersheds, and wildlife.

The District Ranger believes there is good cause to expedite these projects based on preliminary environmental assessment and public involvement. Signs of mortality are visible on approximately 1,000 acres scattered over the project assessment area. Still, it is estimated that 50 percent or more of the trees in some stands are dead or dying. The environmental analysis will include several sales generally small in size. They would range between 30 thousand board feet and ½ million board feet. The number of sales will reflect the dynamics of the increasing mortality and the sale sizes will consider usual factors related to transportation and logging systems, and industry's capability and distribution.

Current estimates are that there would be three to ten timber sales in 1992 using both tractor and helicopter logging systems. There is currently about 1.3 million board feet of salvable dead trees in this area which could be sold in new timber sales. Additional trees are continuing to die which will increase the volume and the problem. The project proposals would include forest rehabilitation and fire hazard reduction projects which are consistent with the direction provided in the (FLMP). No new construction or reconstruction is proposed at this time. However, there could be some minor construction to provide landing access for the helicopter portion of the area.

Potential for impacts to Spotted owls and/or Spotted owl habitat are being assessed using current Regional guides related to salvage of dead trees. Designation of dead trees suitable for salvage would follow approved forest guidelines to insure that salvage and rehabilitation projects would have no effect on suitability of any existing suitable owl habitat which may exist in the project area or on any owls which may be discovered.

Regional entomologists have visited many similar areas and have stated that with the current drought conditions, the over-stocked stands, and the numerous acres involved, there is no economical or practical means to prevent or control the insect and subsequent mortality. Salvage of the dead trees is not expected to prevent or to control either the insect attacks or the mortality, but it would recover valuable timber, provide employment, and contribute to rehabilitation of the area and to the reduction of the fire hazard. All this is a opportunity made possible by the salvage of dead trees that would otherwise deteriorate and create a severe fire hazard. Delay in the salvage effort would significantly reduce the lumber value and the rehabilitation and fire hazard work which could be accomplished because of the rapid deterioration of the trees for use as products.

The decision related to each of the projects are scheduled in the early part of August, 1992. If projects are delayed through the appeal process, it is unlikely that the projects could be implemented during the 1992 normal operating season (appeal process has caused delays from 100 days up to six months). Access would be difficult for portions of the winter operating season. This would result in substantial monetary loss to the Government and reduced monies returned to the Counties. Because of the small-sized timber involved and its deterioration rate, any unnecessary delays could cause the value to decreased by as much as $150,000.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decisions related to the salvage, rehabilitation, and fire hazard reduction projects related to the drought-bark beetle mortality on the Greenville Ranger District, Plumas National Forest. The environmental documents being prepared will address the effects of the proposed actions on the environment, document public involvement and address the issues raised by the public.

Revised 36 CFR 217 appeal regulations have been proposed. Project decisions made after revised regulations become effective would be subject to the revised regulations.

EFFECTIVE DATE: This decision will be effective August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2848; or to H. Wayne Thornton, Forest Supervisor, Plumas National Forest, PO Box 11500, Quincy City, CA 95971, (916) 283–2050.

ADDITIONAL INFORMATION: Pursuant to 40 CFR 1501.7, scoping was conducted to determine the issues and concerns to be addressed in the assessments. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners and other known interested parties. Copies of the public involvement letters and responses are on file at the Milford Ranger District Office. All project files and related maps also are available for public review at Greenville Ranger District Office, Greenville, CA 95947.

The catastrophic damage occurring within the salvage analysis area

currently involves approximately 1,000 acres and 1.3 million board feet. The value to the Forest Service of the salvage is estimated to be $380,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Plumas, Lassen, Yuba, Butte, and Sierra Counties will share 25% of the gross receipts for the timber salvaged in these projects.

The proposal is not expected to adversely affect snag-dependent wildlife species. Sufficient numbers of hard snags of appropriate size for wildlife and protection of soft snags from potential damage during harvest activities will occur in compliance with management requirements. No Wild and Scenic Rivers, Wilderness areas, or roadless areas are within the proposed project area. Mitigation measures for streamside management zones, meadows, soil productivity, and fuels will follow the Forest-wide Standards and Guidelines. Sensitive areas such as archaeological sites, spotted owl nest sites should they be found, or sensitive plant areas should they be identified will be avoided. Where appropriate nesting birds would be protected by limiting the operating period in the contracts.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. These delays would result in volume and value losses, and increase the chance of wildfire occurring due to the large additional quantity of standing and down fuels.

Dated: August 6, 1992.

Joyce T. Muraoka,

Deputy Regional Forester.

[FR Doc. 92-19144 Filed 8-11-92; 8:45 am]

BILLING CODE 3410-11-M

Notice of Exemption; Plumas National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of Exemption from Appeal, Beckwourth Ranger District, Salvage, Rehabilitation, and Fire Hazard Reduction Projects, Plumas National Forest.

SUMMARY: The Forest Service is exempting from appeal the decisions to sell trees being killed by the combined effects of severe drought and bark beetles attacks. Forest rehabilitation and fire hazard reduction projects will be included in the sale contracts and/or accomplished using portions of the receipts from the sales. Environmental analysis for these decisions will be documented in Beckwourth Ranger District Salvage, Forest Rehabilitation, and Fire Hazard Reduction Project, Environmental Assessments. The first and largest project will be the Dotta Salvage Project in the Management Area 36, Dotta, as described in the Plumas National Forest Land and Resource Management Plan (FLMP), approved by the Regional Forester, August 1988, which includes intensive lumber management practices on commercial forest land. Project objectives would be to salvage the timber products and value from the dead trees, to rehabilitate the affected area, and to reduce the fire hazard. The area is located north of Portola, California.

Tree mortality in all forests of the Sierra Nevada Mountains is high as a result of six years of below-normal precipitation. The drought has reduced tree vigor and weakened natural defense mechanisms of trees in young, over-stocked stands and in older, mature trees, predisposing them to attack by bark beetles. On the Plumas National Forest, most of the mortality is concentrated in the Eastside Pine and Mixed Conifer forest types located on the east side of the mountains at elevations between 5,000 and 7,500 feet. White fir, representing 25 to 40 percent of the species in these stands, is experiencing the greatest mortality. In many of these stands, white fir is considered an off-site species. It is not tolerant of the drought conditions which frequent these forest types. It has encroached as a result of logging practices and aggressive fire protection.

Fir trees deteriorate very rapidly after death and become unsuitable for lumber and other forest products. Trees which could provide valuable lumber, wood products, and jobs, quickly become a fire hazard. The increased fire potential is a threat to other forest values including recreation, watersheds, and wildlife.

The District Ranger believes there is good cause to expedite these projects based on preliminary environmental assessment and public involvement. Signs of mortality are visible on approximately 32,000 acres in the project assessment areas. It is estimated that 50 percent or more of the trees in some stands are dead or dying. The environmental analysis will include several sales proposed to implement project objectives including; 18,860 acres in Management Area 31, Mt. Engles; 6,000 acres in Management Area 32, Penman; 7,000 acres in Management Area 36, Dotta (Dotta Salvage Project) as described in the Plumas FLMP, which include intensive timber management practices on commercial forest lands. The number of sales will reflect the dynamics of the increasing mortality and the sale sizes will consider usual factors related to transportation and logging systems, and industry's capability and distribution.

Current estimates are that there would be three to ten timber sales in 1992 using both tractor and helicopter logging systems. There is currently about 14.8 million board feet of salvable dead trees in these areas which could be sold in new timber sales. Additional trees are continuing to die which will increase the volume and the problem. The project proposals would include forest rehabilitation and fire hazard reduction projects which are consistent with the direction provided in the (FLMP). Road construction of 3.4 miles for drainage improvement is planned. New construction could be needed to provide short access to landing and reconstruction would be to correct erosion and/or safety problems which has been identified in the planning process.

Potential for impacts to Spotted owls and/or Spotted owl habitat are being assessed using current Regional guides related to salvage of dead trees. Designation of dead trees suitable for salvage would follow approved forest guidelines to insure that salvage and rehabilitation projects would have no effect on suitability of any existing suitable owl habitat which may exist in the project area or on any owls which may be discovered.

Regional entomologists have visited the area and many similar areas and have stated that with the current drought conditions, the over-stocked stands, and the numerous acres involved, there is no economical or practical means to prevent or control the insect and subsequent mortality. Salvage of the dead trees is not expected to prevent or to control either the insect attacks or the mortality, but it would recover valuable timber, provide employment, and contribute to rehabilitation of the area and to the reduction of the fire hazard. All this is an opportunity made possible by the salvage of dead trees that would otherwise deteriorate and create a severe fire hazard. Delay in the salvage effort would significantly reduce the lumber value and the rehabilitation and fire hazard work which could be accomplished because of the rapid deterioration of the trees for use as products.

The decisions related to each of the projects are scheduled in the early part of August, 1992. If projects are delayed through the appeal process, it is unlikely

that the projects could be implemented during the 1992 normal operating season (appeal process has caused delays from 100 days up to six months). Access would be difficult for portions of the winter operating season. This would result in substantial monetary loss to the Government and reduced monies returned to the Counties. Because of the small-sized timber involved and its deterioration rate, any unnecessary delays could cause the value to decrease by as much as $1,000,000.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decisions related to the salvage, rehabilitation, and fire hazard reduction projects related to the drought-bark beetle mortality on the Beckwourth Ranger District, Plumas National Forest. The environmental documents being prepared will address the effects of the proposed actions on the environment, document public involvement and address the issues raised by the public.

Revised 36 CFR 217 appeal regulations have been proposed. Project decisions made after revised regulations become effective would be subject to the revised regulations.

EFFECTIVE DATE: This decision will be effective August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648; or to H. Wayne Thornton, Forest Supervisor, Plumas National Forest, PO Box 11500, Quincy City, CA 95971, (916) 283–2050.

ADDITIONAL INFORMATION: Pursuant to 40 CFR 1501.7, scoping was conducted to determine the issues and concerns to be addressed in the assessments. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners, and other known interested parties. The Portola Reporter published two articles requesting general public input for the salvage sale program. The Feather River Bulletin has published several articles on the general insect problem on the Plumas National Forest and requested concerns be addressed to the appropriate District Rangers. Copies of the public involvement letters and responses are on file at the Beckwourth Ranger District Office. All projects files and related maps also are available for public review at Beckwourth Ranger District Office, Mohawk Road, Blairsden, CA 96103.

The catastrophic damage occurring within the salvage analysis area currently involves approximately 32,000 acres and over 14.8 million board feet. The value to the Forest Service of the salvage is estimated to be between $3,000,000 and $3,500,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Plumas, Lassen, Yuba, Butte, and Sierra Counties will share 25% of the gross receipts for the timber salvaged in these projects. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fire hazard reduction.

The proposal is not expected to adversely affect snag-dependent wildlife species. Sufficient numbers of hard snags of appropriate size for wildlife and protection of soft snags from potential damage during harvest activities will occur in compliance with management requirements. No Wild and Scenic Rivers, Wilderness areas, or roadless areas are within the proposed project area. Mitigation measures for streamside management zones, meadows, soil productivity, and fuels will follow the Forest-wide Standards and Guidelines. Sensitive areas such as archaeological sites, spotted owl nest sites should they be found, or sensitive plant areas should they be identified, will be avoided. Where appropriate nesting birds would be protected by limiting the operating period in the contracts.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. These delays would result in volume and value losses, and increase the chance of wildfire occurring due to the large additional quantity of standing and down fuels.

Dated: August 6, 1992.

Joyce T. Muraoka,

Deputy Regional Forester.

[FR Doc. 92–19142 Filed 8–11–92; 8:45 am]

BILLING CODE 3410–11–M

Establishment of Golden Phoenix Purchase Unit, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of purchase unit.

SUMMARY: The Secretary of Agriculture has created the Golden Phoenix Purchase Unit to include 274 acres, more or less, in Skagit County, Washington. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

DATES: The effective date of this purchase unit was July 13, 1992.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, 4 South, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Secretary of Agriculture under section 17, National Forest Management Act of 1976, Public Law 94–588 (90 Stat. 2949), the Secretary has created the Golden Phoenix Purchase Unit.

Dated: August 5, 1992.

George M. Leonard,

Associate Chief.

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) a purchase unit is being established and is described as follows:

Skagit County, Washington, Willamette Meridian

T.35N., R. 11E.
Sec. 5 SW¼NW¼ and the W½SW¼
Sec. 6 Government Lots 1, 9, 10, 15 and E½SE¼

The area described aggregate 274 acres, more or less, and is adjacent to the Mt. Baker National Forest boundary.

These lands are within the watershed of the Skagit River and are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: July 13, 1992.

John H. Beuter,

Acting Assistant Secretary.

[FR Doc. 92–19154 Filed 8–11–92; 8:45 am]

BILLING CODE 3410–11–M

Management Direction for the John Muir, Ansel Adams, Dinkey Lakes and Monarch Wildernesses

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement which analyses management alternatives for the above contiguous wildernesses. The Sierra and Inyo National Forests administer the John

Muir and Ansel Adams Wildernesses; the Sierra National Forest administers the Dinkey Lakes Wilderness; and the Sierra and Sequoia National Forests administer the Monarch Wilderness. These Wildernesses are located in Fresno, Inyo, Madera and Mono Counties, California. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by September 30, 1992.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to James Boynton, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93612; Dennis W. Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, CA 93514, or Sandra H. Key, Forest Supervisor, 900 W. Grand Avenue, Porterville, CA 93257–2035.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Mike LeFevre, Wilderness Planner, Sierra National Forest, phone (209) 487–5433; or Dick Warren Recreation Planner, Inyo National Forest, phone (619) 873–2483.

SUPPLEMENTARY INFORMATION: Both the Inyo and Sierra National Forests Land and Resource Management Plans (LRMPs) specify that the existing management plans for the John Muir and Ansel Adams Wilderness be reviewed and revised as necessary. The existing wilderness plans were approved in 1979. The Sierra and Sequoia National Forest LRMPs provide direction to prepare a management plan for the Monarch wilderness, and the Sierra LRMP provides direction to prepare a management plan for the Dinkey Lakes Wilderness. There is no existing management plan for the Dinkey Lakes and Monarch Wildernesses. It is anticipated that management direction which is developed will provide direction for all four of the wildernesses, unless the scoping process reveals issues and concerns for the Dinkey Lakes and/or Monarch Wildernesses that are not compatible with those identified for the John Muir and Ansel Adams. If this occurs, separate direction will be prepared for the Dinkey Lakes and/or Monarch Wildernesses.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for managing these Wildernesses. One of these will be a continuation of, or no changes to, existing management direction. Other alternatives will consider various strategies of wilderness management, ranging from a biocentric emphasis to an anthropocentric emphasis. The Limits of Acceptable Change planning process will be utilized. New management direction not contained in the respective LRMPs, or existing LRMP direction that is revised or deleted, will result in amendments to the affected LRMPs.

James Boynton, Supervisor of the Sierra National Forest; Dennis Martin, Supervisor of the Inyo National Forest; and Sandra Key, Supervisor of the Sequoia National Forest will be the responsible officials if all four wildernesses are included in the final environmental impact statement.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1993. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that reviewers participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by October, 1994. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official(s) will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: July 17, 1992.

James L. Boynton,

Forest Supervisor, Sierra National Forest.

Dated: July 23, 1992.

Sandra H. Key,

Forest Supervisor, Sequoia National Forest.

Dated: July 29, 1992.

Dennis W. Martin,

Forest Supervisor, Inyo National Forest.

[FR Doc. 92–19140 Filed 8–11–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 586]

Resolution and Order Approving the Application of the Maine International Foreign-Trade Zone, Inc., Waterville, MA

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Maine International Foreign-Trade Zone, Inc., filed with the Foreign-Trade Zones (the Board) on September 20, 1991, requesting a grant of authority to establish a general-purpose foreign-trade zone in Waterville, Maine, adjacent to the Belfast Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50806, 10/8/91), including section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Maine International Foreign-Trade Zone, Inc. (the Grantee), a Maine non-profit corporation, has made application (filed 9/20/91, FTZ Docket 56–91, 56 FR 50090, 10/3/91) to the Board, requesting the establishment of a foreign-trade zone in Waterville, Maine, adjacent to the Belfast Customs port of entry;

Whereas, notice of said application has been given in the Federal Register and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 186, at the location described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28.

Signed at Washington, DC, this 4th day of August, 1992.

Foreign-Trade Zones Board

Barbara H. Franklin,

Secretary of Commerce.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–19218 Filed 8–11–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than August 31, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

Antidumping duty proceedings	Period
Armenia: Titanium Sponge (A–831–803)	08/01/91–07/31/92
Azerbaijan: Titanium Sponge (A–832–803)	08/01/91–07/31/92
Belarus: Titanium Sponge (A–822–803)	08/01/91–07/31/92
Belgium: Industrial Phosphoric Acid (A–423–602)	08/01/91–07/31/92
Estonia: Titanium Sponge (A–447–803)	08/01/91–07/31/92
France: Industrial Nitrocellulose (A–427–009)	08/01/91–07/31/92
Georgia: Titanium Sponge (A–833–803)	08/01/91–07/31/92
Israel: Industrial Phosphoric Acid (A–508–604)	08/01/91–07/31/92
Italy: Granular Polytetrafluoroethylene Resin (A–475–703)	08/01/91–07/31/92
Italy: Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished (A–475–603)	08/01/91–07/31/92
Japan: Acrylic Sheet (A–588–055)	08/01/91–07/31/92
Japan: Brass Sheet and Strip (A–588–704)	08/01/91–07/31/92
Japan: Cadmium (A–588–035)	08/01/91–07/31/92
Japan: Certain High-Capacity Pagers (A–588–007)	08/01/91–07/31/92
Japan: Granular Polytetrafluoroethylene Resin (A–588–707)	08/01/91–07/31/92
Japan: Personal Word Processors (A–588–818)	04/22/91–07/31/92
Kazakhstan: Titanium Sponge (A–834–803)	08/01/91–07/31/92
Kyrgyzstan: Titanium Sponge (A–835–803)	08/01/91–07/31/92
Latvia: Titanium Sponge (A–449–803)	08/01/91–07/31/92
Lithuania: Titanium Sponge (A–451–803)	08/01/91–07/31/92
Mexico: Gray Portland Cement and Clinker (A–201–802)	08/01/91–07/31/92
Moldova: Titanium Sponge (A–841–803)	08/01/91–07/31/92
Netherlands: Brass Sheet and Strip (A–421–701)	08/01/91–07/31/92
Russia: Titanium Sponge (A–821–803)	08/01/91–07/31/92

Antidumping duty proceedings	Period
Taiwan: Clear Sheet Glass (A-583-023)	08/01/91-07/31/92
Tajikistan: Titanium Sponge (A-842-803)	08/01/91-07/31/92
Thailand: Malleable Cast Iron Pipe Fittings (A-549-601)	08/01/91-07/31/92
The People's Republic of China: Petroleum Wax Candles (A-570-504)	08/01/91-07/31/92
Turkey: Acetylsalicylic Acid (Aspirin) (A-489-802)	08/01/91-07/31/92
Turkmenistan: Titanium Sponge (A-843-803)	08/01/91-07/31/92
Ukraine: Titanium Sponge (A-823-803)	08/01/91-07/31/92
Uzbekistan: Titanium Sponge (A-844-803)	08/01/91-07/31/92
Venezuela: Certain Electrical Conductor Aluminum Redraw Rod (A-307-701)	08/01/91-07/31/92
Yugoslavia: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished (A-479-601)	
Suspension Agreements:	
Japan: Erasable Programmable Read Only Memories (A-588-504)	08/01/91-07/31/92
Countervailing Duty Proceedings:	
Canada: Live Swine (C-122-404)	04/01/91-03/31/92
Israel: Industrial Phosphoric Acid (C-508-605)	01/01/91-12/31/91
New Zealand: Low-Fuming Brazing Copper Rod and Wire (C-614-501)	08/01/91-7/31/92
Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes (C-549-501)	01/01/91-12/31/91
Turkey: Acetylsalicylic Acid (Aspirin) (C-489-603)	01/01/91-12/31/91
Venezuela: Certain Electrical Conductor Aluminum Redraw Rod (C-307-702)	01/01/91-12/31/91
Zimbabwe: Carbon Steel Wire Rod (C-796-601)	01/01/91-12/31/91

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if the producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with §§ 353.31 or 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by August 31, 1992.

If the Department does not receive, by August 31, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: August 4, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-19219 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-098]

Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administration Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the PQ Corporation, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. This review covers Rhone Poulenc Chime deBase, a manufacturer/exporter of this merchandise to the United States, and the period January 1, 1991 through December 31, 1991. The firm failed to respond to our questionnaire. As a result, we have determined to use best information available for cash deposit and appraisement purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert J. Marenick, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 66846) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. On January 24, 1992, the petitioner, the PQ Corporation, requested an administrative review of Rhone Poulenc Chime DeBase (Rhone Poulenc), a manufacturer/exporter of this merchandise to the United States. We initiated the review, covering January 1, 1991 through December 31, 1991, on February 24, 1992 (57 FR 6314). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of ASM, a crystallized silicate ($Na_2 SiO_3$) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Rhone Poulenc and the period January 1, 1991 through December 31, 1991.

Use of Best Information Available

We mailed the antidumping questionnaire to Rhone Poulenc the only manufacturer/exporter of this merchandise to the United States. Rhone Poulenc failed to respond to our questionnaire. The Department has therefore decided to use the best information available (BIA) in determining the rate for this firm.

When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department considers the company uncooperative and generally assigns to that company the higher of: (a) The highest rate assigned to any company in a previous review or the investigation or (b) the highest rate for a responding company with shipments during the review period. See 19 CFR 353.37 (b) and Final Results of Antidumping Duty Administrative Review Portable Electric Typewriters From Japan (November 4, 1991, 56 FR 56393). In this case, for BIA, we used 60 percent, the firm's highest rate from prior review. See final Results of Antidumping Duty Administrative Review, Anhydrous Sodium Metasilicate from France (52 FR 33856, September 8, 1987).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 60 percent exists for Rhone Poulenc during the period January 1, 1991 through December 31, 1991.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of ASM from France, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "All Others" rate established in the final results of this administrative review. These deposit requirements when imposed shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 4, 1992.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-19093 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-038]

Bicycle Speedometers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from an importer, the Department of Commerce has conducted an administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers one manufacturer/exporter of this merchandise sold in the United States for the period November 1, 1990 through October 31, 1991. We preliminarily find that a *de minimis* margin of 0.08 percent exists for the manufacturer/exporter, Cateye Co., Ltd. (Cateye).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Thomas F. Futtner, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-8120/3814.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1972, the Department of Commerce (the Department) published in the **Federal Register** (37 FR 24826) and antidumping finding on bicycle speedometers from Japan. On November 27, 1991, a domestic manufacturer, Avocet, Inc., in accordance with 19 CFR § 353.22(a), requested that we conduct an administrative review. Avocet is an interested party as defined by section 771(9)(C) of the Tariff Act of 1930, as amended (the Tariff Act). We published a notice on initiation of the antidumping duty administrative review on December 23, 1992 (56 FR 66429). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act.

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) items 9029.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cateye, a manufacturer/exporter of bicycle speedometers during the period November 1, 1990 through October 31, 1991.

United States Price

The Department used purchase price, as defined in section 772 of the Tariff Act, to calculate United States price. Purchase price was based on the f.o.b., packed price from the producer or an unrelated Japanese trading company for export to the first unrelated purchaser in

the United States. We made adjustments where applicable, for foreign inland freight, brokerage and handling charges. No other adjustments were claimed or allowed.

Foreign Market Value

For its foreign market value calculation, the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers. We made adjustments where applicable for inland freight, quantity rebates, and differences in credit, advertising, and packing costs. No other adjustments were claimed or allowed.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. However, after comparing the monthly and annualized weighted-average prices for each model, we determined that there was an insignificant amount of variance between the two benchmarks and that there was almost no correlation between price and time during the period reviewed. Therefore, we calculated FMV for each model based on annualized weighted-average prices.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the dumping margin to be:

Manufacturer/exporter	Margin (percent)
Cateye Co., Ltd	0.08

Under 19 CFR § 353.6, this is a *de minimis* weighted-average dumping margin.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or on the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any comments submitted or made during a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning the respondent directly to Customs.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate is the highest rate for any firm with shipments in this administrative review, other than those firms with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available (BIA).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a) of the Tariff Act (19 U.S.C. 1675(a)), and § 353.22 of the Commerce Department's regulations.

Dated: August 4, 1992.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-19217 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-828]

Initiation of Antidumping Duty Investigation: Dry Film Photoresist From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0116.

INITIATION OF INVESTIGATION:

The Petition

On July 16, 1992, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company, Morton International and Hercules Incorporated (the petitioners). A supplement to the petition was received on July 29, 1992. In accordance with 19 CFR 353.12, the petitioners allege that dry film photoresist (DFP) from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are all forms of dry film photoresist from Japan. Dry film photoresist includes all forms and dimensions of solid photosensitive resin film in rolls, without sprocket holes,

designed to be laminated onto a surface to permit etching or plating of a pattern. The majority of DFP is provided for under subheading 3702.43.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). DFP may also be imported into the United States under subheadings 3702.39.00.00, 3702.42.00.00, 3702.44.00.60, 3702.95.00.00, and 3707.90.30.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioners' estimate of U.S. price is based on sales to the second unrelated U.S. customer. Petitioners deducted the first unrelated purchaser's estimated profit, estimated material losses in further manufacture of the DFP, movement charges, rebates, slitting and packing costs, warehousing, imputed credit and selling expenses.

Petitioners estimated foreign market value based on large volume purchases of DFP in Japan. Petitioners made deductions from the home market price for estimated material losses in further manufacture of the DFP for slitting and for packing costs. Based on petitioners' calculations, dumping margins range from 36 to 60 percent. For purposes of this initiation, no adjustments were made to petitioners' calculations. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review all of the bases for the petitioners' estimated dumping margins in determining BIA.

Initiation of Investigation

We have examined the petition on dry film photoresist from Japan and have found that the petition meets the requirements of section 732(b) of the Act and 19 CFR 353.12. Therefore, we are initiating an antidumping duty investigation to determine whether imports of DFP are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by August 31, 1992, whether there is a reasonable indication that imports of DFP from Japan are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: August 5, 1992.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-19097 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-007]

Certain High-Capacity Pagers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to timely requests by Motorola, Inc., the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain high-capacity pagers from Japan. This notice covers two manufacturers/exporters for the periods August 1, 1985 through July 31, 1986 and August 1, 1986 through July 31, 1987.

There were no known shipments of this merchandise to the United States by Matsushita Communications, Industrial Co. (MCI) and NEC Corporation (NEC) during the periods, and there are no known unliquidated entries. The Department of Commerce has preliminarily determined that the rate for MCI is 109.00 percent, and that the rate for NEC is 70.35 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Philip C. Marchal or Maureen A. Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; (202) 377-5505.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 30414) the final results of the 1983-85 administrative review of the antidumping duty order on high-capacity pagers from Japan (48 FR 37058, August 16, 1983). On August 29, 1986, the petitioner, Motorola, Inc. (Motorola), requested, in accordance with § 353.22(a) of the Department's regulations, that we conduct an administrative review for the period August 1, 1985 through July 31, 1986 (the 1985-86 period). We published a notice of initiation of the antidumping duty administrative review on September 16, 1986 (51 FR 32818). On August 31, 1987 Motorola requested that we conduct an administrative review for the period August 1, 1986 through July 31, 1987 (the 1986-87 period). We published a notice of initiation on September 21, 1987 (52 FR 35466). On November 21, 1986 and December 3, 1986, respectively, Matsushita Communications Industrial Co. (MCI) and NEC Corporation (NEC) responded that they had no shipments of the subject merchandise during the 1985-86 period. On November 30, 1987 and December 7, 1987, respectively, MCI and NEC responded that they had no shipments of the subject merchandise during the 1986-87 period. The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of certain high-capacity pagers from Japan. The term "high-capacity pagers" covers tone-only paging signal receivers, 3,000 or more of which can be operated in a paging system on a single radio frequency channel. Prior to January 1, 1989, the merchandise was classified under items 685.1680 and 685.7030 of the Tariff Schedules of the United Stats Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8527.90.80 and 8531.80.00 of the Harmonized Tariff Schedules (HTS). TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers two manufacturers/exporters of certain high-capacity pagers from Japan, and the periods August 1, 1985 through July 31, 1986 and August 1, 1986 through July 31, 1987.

On March 13, 1992, the Department issued the results of a scope inquiry determining that parts and/or subassemblies imported from Japan and used for the manufacturing/assembly of high-capacity pagers are outside the scope of the order.

Preliminary Results of Review

MCI and NEC made no shipments to the United States of the subject merchandise during the periods of review. Consequently, we have preliminarily determined that the following margins exist for the periods August 1, 1985 through July 31, 1986, and August 1, 1986 through July 31, 1987:

Manufacturer/Exporter	Margin (percent)
Matsushita Communications Industrial Co., Ltd.	[1] 109.00
NEC Corporation	[1] 70.35

[1] No shipments during the period; margins are from the last period in which there were shipments.

Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs or at a hearing.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above which received their own rate in the prior review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate, which we have preliminarily determined is 109.00 percent, the rate for MCI in this administrative review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 31, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-19095 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-247-003]

Portland Cement, Other Than White, From the Dominican Republic; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on portland cement, other than white, from the Dominican Republic.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on portland cement, other than white, from the Dominican Republic (28 FR 4507 May 4, 1963) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on April 30, 1992, we published in the **Federal Register** a notice of intent to revoke the finding. We stated in the notice that no later than May 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke the antidumping finding.

Because the Department inadvertently failed to provide a written notification of this notice to all interested parties as required by § 353.25(a)(4)(;;) or the Department's regulations, we extended the period to interested parties to respond to June 30, 1992.

On June 16, 1992, certain interested parties, (BoxCrow Cement; Florida Crushed Stone; Holnam, Inc.; Southdown, Inc.; North Texas Cement; formerly Gifford-Hill & Co.; National Cement Co.; Phoenix Cement and Texas Industries, Inc.,) objected to our intent to revoke this finding. Therefore, because several interested parties object to the revocation, we no longer intend to revoke this finding.

Dated: August 3, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-19092 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-437-601]

Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3793.

Background

On June 5, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 25663) a notice of opportunity to request an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from Hungary (52 FR 23319, June 19, 1987). The respondent, Magyar Gordulocsapagy Muvek ("MGM"), requested that we conduct an administrative review in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review on August 14, 1991 (56 FR 40305). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We sent MGM a questionnaire on December 31, 1991, and received a response on February 14, 1992. We issued a deficiency questionnaire on May 14, 1992. On May 29, 1992, MGM requested an additional 14 days to respond to the deficiency questionnaire. We granted the extension until June 12, 1992. On June 11, 1992, MGM requested that they be allowed to submit their deficiency questionnaire response by June 16, 1992. We granted an extension for the public version until June 15, 1992, the proprietary version remaining due June 12, 1992. We received both the proprietary and the public versions after the June 15, 1992, deadline had expired. In accordance with § 353.31(b)(2) of the Department's regulations, we rejected as untimely both the proprietary and the public versions of the deficiency response.

Scope of Review

Imports covered by this review are shipments of TRBs from Hungary. This merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and covers the period June 1, 1990, through May 31, 1991. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

United States Price

We based the United States Price on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on either FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for brokerage and handling and foreign inland freight charges. The brokerage and handling charges were paid in convertible currency. We valued foreign inland freight deductions using surrogate data based on Mexican freight costs. We selected Mexico as the surrogate country for the reasons explained in the "Foreign Market Value" section of this notice.

Foreign Market Value

In the most recent review of this order, the Department treated Hungary as a non-market economy country. None of the parties to this proceeding are contesting such treatment in this review, so we have calculated foreign market value in accordance with section 773(c) of the Tariff Act and § 353.52 of the Department's regulations. Section 773(c) of the Act requires us to base foreign market value on a valuation of the factors of production in a market economy country that is at a level of development comparable to the non-market economy country and is a significant producer of comparable merchandise.

It is the Department's practice to value factor of production inputs from publicly available sources in a market economy. Where publicly available sources are unavailable, we obtain information for valuing factors of production from actual acquisition from a market economy.

We determined that South Africa, Uruguay, Algeria, Malaysia and Mexico would be the most appropriate surrogates for Hungary. We researched publicly available documents relating to the above-mentioned countries and sent cables requesting documentation relating to the values for the factors of production to the American Embassies in each possible surrogate country. We chose Mexico as the surrogate for valuing the factors of production because we were able to obtain more complete publicly available data pertaining to Mexico than for other potential surrogate countries with comparable economies which produced TRBs.

We utilized factors of production reported by MGM. The material cost for each component was determined by multiplying the gross weight of steel by the unit price less the salable scrap. The scrap factor was reduced to account for waste and burn off. The labor cost for each component was calculated by multiplying the total labor minutes by the surrogate labor rate.

We valued the factors of production as follows:

- Certain raw materials costs were valued based on MGM's imports of steel products from market economies which were paid for in freely convertible currency.
- In the absence of market economy prices paid by MGM, we valued other raw material inputs using National Trade Data Bank information for 1990–1991. We used United States FAS export data to value hot-rolled steel rods, steel strips and steel ally scrap.
- We valued both inland freight for the finished TRBs and inland freight on the steel inputs using publicly available Mexican freight rates. This information was taken from data obtained from the Mexican Freight Transportation Industry Chamber.
- We valued direct labor using a 1990 Mexican labor rate for industrial-commercial machinery obtained from the Bureau of Labor Statistics ("BLS"). The BLA rate includes basic salaries, bonuses and other premiums paid to the industrial-commercial manufacturing industry in Mexico. We used the wage index published by the Bank of Mexico to adjust this figure to account for the 1991 portion of the POR. The specific portion of the wage index used reflects metal products, machinery and equipment manufacturing in Mexico. Therefore, this rate is representative of actual labor rates in Mexico for all categories of employees within the metal products industry.
- We were able to obtain a range of factory overhead and indirect labor rates from a number of roller bearing and steel producers in Mexico. We used a simple average of the range obtained from actual producers of the subject merchandise in Mexico as the most reasonable rate, given that there was no public information available on this subject.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in the Final Determinations of Sales at Less than Fair Value: TRBs From the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), TRBs From the Socialist Republic of Romania, 52 FR 17433 (May 8, 1989), TRBs From the People's Republic of China, 52 FR 19748 (May 27, 1987), Final Results of Antidumping Duty Administration Review: TRBs From the Republic of Hungary, 55 FR 46146 (November 19, 1990) and Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary, 56 FR 41819 (August 23, 1991), the value of packing was based on publicly available data contained in the public file of the investigation of TRBs From Italy, 52 FR 24198 (June 29, 1987).

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the

rates certified by the Federal Reserve Bank or at rates published by the International Monetary Fund in International Financial Statistics.

Preliminary Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margin exists:

Manufacturer/ exporter	Time period	Margin (percent)
Magyar Gordulocsopagy Muvek	6/1/90–5/31/91	1.75

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Interested parties may request a hearing within 10 days of the date of publication of this notice and submit written comments on these preliminary results within 30 days of the date of publication of this notice in the **Federal Register**. We will hold a hearing, if requested, but no later than 44 days after the date of publication, or the first business day thereafter. Interested parties may submit case briefs no later than 14 days before the date of the hearing or the first business day thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed no later than 7 days after submission of the initial round of comments or the first business day thereafter. The Department will publish the final results of this administrative review, including an analysis of all issues raised in any written comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary for the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: August 4, 1992.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–19094 Filed 8–11–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–461–008]

Titanium Sponge From the U.S.S.R.; Transfer of the Antidumping Finding on Titanium Sponge From the U.S.S.R. to the Baltic States and the Former Republics of the Soviet Union

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of transfer of the antidumping finding on Titanium Sponge from the U.S.S.R. to the Baltic States and the Former Republics of the Soviet Union.

SUMMARY: On August 28, 1968, the Bureau of Customs published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (33 FR 12138). In December 1991, the U.S.S.R. divided into fifteen independent states. To conform to these changes, the Department is changing the original antidumping finding into fifteen (15) findings applicable to the Baltic states and the former Republics of the Soviet Union. The substance of each new finding will remain unchanged from the original finding, but the name and case number will be different. Until changed by a final results of administrative review, a uniform cash deposit rate will apply to all entries of the subject merchandise manufactured in what was known as the U.S.S.R. Interested parties who believe that the finding should not apply, in whole or in part, to any of the individual Baltic states or former republics of the Soviet Union may request a changed circumstances review under 19 CFR 353.22(f).

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Bureau of Customs published in the **Federal Register** the antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (USSR). On March 27, 1987, the International Trade Administration (ITA) published in the **Federal Register** the most recent final results of review (52 FR 9323). In December 1991, the USSR divided into fifteen independent states.

To conform to the new situation, we are instituting the following changes in our administrative procedures effective the date this notice publishes in the **Federal Register**:

The Baltic states and each of the former Soviet republics will from henceforth have its own country case number for filing purposes. These case numbers will be as follows:

Armenia	A–831–803
Azerbaijan	A–832–803
Belarus	A–822–803
Estonia	A–447–803
Georgia	A–833–803
Kazakhstan	A–834–803
Kyrgyzstan	A–835–803
Latvia	A–449–803
Lithuania	A–451–803
Moldova	A–841–803
Russia	A–821–803
Tajikistan	A–842–803
Turkmenistan	A–843–803
Ukraine	A–823–803
Uzbekistan	A–844–803

The substance of each new finding will not change from the original finding, and the estimated cash deposit rate established in the most recent administrative review will remain in effect for each of the Baltic states and the former Soviet Republics until changed by a final results of a more recent administrative review.

Any interested party who believes that the finding should not apply, in whole or in part, to any of the individual Baltic states or former republics of the Soviet Union may from henceforth request a changed circumstances review under 19 CFR 353.22(f). The request must be supported by sufficient information justifying initiation of a changed circumstances review.

This notice is published in accordance with section 751(b) of the Tariff Act of 1930, 19 U.S.C. 1673(e) and 19 CFR 353.22(f).

Dated: August 4, 1992.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-19096 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Correction in Public Meeting Date

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date for a public meeting of the Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team originally published in the **Federal Register** at 57 FR 33940 on July 31, 1992, has been corrected as follows. The correction is noted below; all other information originally published on July 31, 1992, remains unchanged.

Date of meeting as published at 57 FR 33940: August 23, 1992.

Changed To: August 14, 1992.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590-5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546-7117.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19271 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in China

August 6, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 6, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 6, 1992, you are directed to amend further the directive dated November 22, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
300/301	3,024,515 kilograms.
347/348	2,511,325 dozen.
352	1,794,024 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19161 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Guatemala

August 7, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348 is being increased for special carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 56986, published on November 7, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated November 9, 1989, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 7, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 14, 1992, you are directed to amend the November 1, 1991 directive to increase the limit for Categories 347/348 to 981,239 dozen [1].

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19221 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

August 6, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348 is being increased for swing and special shift, reducing the limits for Categories 239 and 647/648 to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14563, published on April 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements:

Committee for the Implementation of Textile Agreements

August 6, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 13, 1992, you are directed to amend further the directive dated April 15, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
239	870,461 kilograms.
347/348	539,962 dozen.
647/648	502,397 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19100 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

August 7, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjustinglimits.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6719. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58557, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 7, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 14, 1992, you are directed to amend further the directive dated November 15, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement, as amended, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
611	2,810,422 square meters.
625/626/627/628/629	16,664,930 square meters.
In Group I subgroup	
200	630,017 kilograms.
Sublevels in Group II	
336	123,117 dozen.
338/339	898,288 dozen.
340	1,204,359 dozen.
345	109,577 dozen.
347/348	2,638,492 dozen of which not more than 1,230,215 dozen shall be in Categories 347-W/348-W [2]
359-H/659-H [3]	4,886,747 kilograms.
435	18,512 dozen.
442	37,101 dozen.
444	135,498 numbers.
631	4,625,049 dozen pairs.
638/639	6,527,691 dozen.
640	971,786 dozen of which not more than 281,710 dozen shall be in Category 640-Y [4].
642	788,940 dozen.
647/648	5,585,844 dozen of which not more than 5,087,207 dozen shall be in Categories 647-W/648-W [5].
In Group II subgroup	
333/334/335	267,279 dozen of which not more than 144,776 dozen shall be in Category 335.
342	204,254 dozen.
636	339,464 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 347-W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 359-H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[5] Category 647-W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2040, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648-W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19220 Filed 8-11-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information Systems Agency.

ACTION: Notice of membership of the Defense Information Systems Agency, Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of members of the Senior Executive Service Performance Review Board of the Defense Information Systems Agency. The publication of Performance Review Board membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Information Systems Agency.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela J. Horvath, SES Program Manager, Civilian Personnel Division (BC), Center for Agency Services (BA), Defense Information Systems Agency, Washington, DC 20305-2000, (202) 592-2792.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Senior Executive Service Performance Review Board. The members will serve a one-year renewable term, effective August 1, 1992.

James A. Rhoads,

Chief, Civilian Personnel Division.

Michael F. Slawson,

Director, Center for Agency Services.

George J. Hoffman,

Comptroller.

Benham E. Morriss,

Deputy Manager, National Communications System.

E. William Harding,

Director, Joint Data Systems Support Center.

David T. Signori, Jr.,

Associate Director.

John Hedrick,

Director, Tactical Command, Control and Communications Agency.

Dennis W. Groh,

Deputy Director, Acquisition Management.

Denis Brown,

Director, Center for Information Management.

Clyde Jeffcoat,

Director, Defense Information Technology Services Organization.

[FR Doc. 92-19120 Filed 8-11-92; 8:45 am]

BILLING CODE 3610-05-M

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Homeporting of Fast Combat Support Ships (AOE-6 Class) at Naval Weapons Station Earle, Colts Neck, NJ

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared

and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed homeporting of fast combat support ships (AOE–6 Class) at Naval Weapons Station (WPNSTA) Earle, Colts Neck, New Jersey.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on August 26, 1992, beginning at 7 p.m., in the Pollock Auditorium, Building 500, Monmouth College, West Long Branch, New Jersey.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by September 21, 1992, to become part of the official record.

As discussed during the scoping process, early planning for AOE–6 Class ship acquisition included eight ships with four ships to be homeported on each coast. Due to budget reductions, near-term programming for ship acquisition includes a total of only four AOE–6 Class ships with only two ships scheduled for homeporting on each coast. The DEIS addresses the impacts of homeporting two AOE–6 ships at three alternative homeport sites: WPNSTA Earle, WPNSTA Yorktown, Virginia, and WPNSTA Charleston, South Carolina. The DEIS also addresses interim homeporting at Naval Station Norfolk, Virginia, which would occur during construction activities at the selected homeport site.

Additional information concerning this notice may be obtained by contacting Mr. Robert Schwarz (Code 20), Chesapeake Division, Naval Facilities Engineering Command, Building 212, Washington Navy Yard, Washington, DC 20374, telephone (202) 433–3387.

Dated: August 7, 1992.

Patrick W. Kelley,

Captain, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92–19266 Filed 8–11–92; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Management and Budget/ Chief Financial Officer, Office of Administrative Law Judges; Intent To Compromise a Claim, Iowa Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Iowa Department of Education now pending before the Office of Administrative Law Judges (OALJ), Docket No. 91–85–R. (20 U.S.C. 1234a(j) (1988)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before September 28, 1992.

ADDRESSES: All comments concerning this notice should be addressed to Jeffrey C. Morhardt, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4091, FOB–6, Washington, DC 20202–4013.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Morhardt, Esq. Telephone: (202) 401–3690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of the financial affairs and operations of the Iowa Department of Education (State) for the fiscal year ending June 30, 1989. The audit was performed by the Office of the Auditor of State, State of Iowa, to fulfill the requirements of Office of Management and Budget Circular A–128. The audit included the evaluation of the internal control systems, including applicable internal administrative controls, used in administering Federal financial assistance programs. Among the systems examined was the State's system of maintaining time distribution records for employees who have multi-program responsibilities. Time distribution records show how an employee's time has been divided among his or her different program responsibilities. During the course of the audit, the auditors discovered that the State maintained no system of time distribution records.

Based on this finding, the Director of the Office of Financial and Management Control, Office of Human Resources and Administration (Department) notified the State in a Program Determination Letter (PDL), dated September 30, 1991, that it had to repay a total of $130,280 in Federal grant funds. In failing to maintain time distribution records, the State violated sections 437 and 435(b)(5) of the General Education Provisions Act (GEPA). Section 435(b)(5) of GEPA (20 U.S.C. 1232d(b)(5)) states in relevant part that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program. In addition, the State violated the provisions of 34 CFR 80.20(b) and 34 CFR 80.22 (OMB Circular A–87) (1988), which state in relevant part that salaries and wages of individual employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The State appealed the Department's determination to the OALJ. The parties jointly requested, and the proceedings were stayed for, mediation under the auspices of the Federal Mediation and Conciliation Service.

The Department's original claim of $130,280 was reduced to $112,793 by stipulation, based on documentation submitted by the State during mediation. Specifically, the State submitted alternative documents regarding two of its employees that support the State's salary charges for these individuals, in the amount of $17,487, to Federal education programs.

The Department proposes to compromise the full amount of the outstanding $112,793 claim for $56,000. In its response to the PDL and during the process of mediation, the State gave assurances that it had installed a system of time distribution records. With its assurances, the State also provided the Department with models of the system's documentation and operation. The Department is satisfied that the systemic deficiencies that resulted in the claim have been corrected and will not recur. Future audits will determine whether this system is being used in accordance with Federal requirements. Based on these factors, as well as the percentage of the claim to be repaid and the risk and cost of litigating the claim through the appeal process, the Department has

determined that it would not be practical or in the public interest to continue this proceeding.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Jeffrey C. Morhardt, Esq. at the address given at the beginning of this notice.

Dated: August 7, 1982.

William D. Hansen,

Acting Assistant Secretary for Office of Management and Budget/ Chief Financial Officer.

[FR Doc. 92-19152 Filed 8-11-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2311-001, et al.]

Hydroelectric Applications [James River-New Hampshire Electric, Inc., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2311-001.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* James River-New Hamsphire Electric, Inc.

e. *Name of Project:* Gorham Project.

f. *Location:* On the Androscoggin River, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. George W. Hill James River-New Hampshire Electric, Inc. 650 Main Street, Berlin, NH 03570-2489 (603) 752-4600.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* October 5, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The Gorham Project's principal features consist of a dam, a power canal, a powerhouse, an impoundment, and appurtenant facilities. For the existing condition, the Project has a total nameplate generator capacity of 4.8 megawatts (MW) and an average annual generation of about 29,100 megawatt-hours (MWH). James River is proposing to replace two existing generating exciters with a new unit of a capacity of 1.3 MW. Due to this proposal the average annual generation would increase to 33,500 MWH. In detail, the existing and proposed project is described as follows:

(1) A dam, totaling about 775 feet long, consisting of (a) a west earthen dike, 133 feet long, having a concrete core wall, with a crest elevation of 820.0 feet msl; (b) a 300-foot-long by 16-foot-high rock-filled timber-crib spillway section, with a crest elevation of 807.3 feet mean sea level (msl), topped with flashboards, 6 feet high; (c) a 122-foot-long gate section, having eight operable and two inoperable stoplog gates, each about 7.5 feet wide, with a sill elevation of 795.0 feet msl, topped with a gatehouse, 113 feet long by 16 feet wide, housing eight screw-stem operators; and (d) an east earthen dike, 220 feet long, having a concrete core wall, with a crest elevation of 820.0 feet msl;

(2) A power canal, about 3,350 feet long by 100 feet wide by 18 feet deep, with a normal canal water elevation of 812.8 feet msl, bordered by two earth dikes, with an existing crest elevation of 815.0 feet msl and a proposed crest elevation of 817.0 feet msl;

(3) A brick and steel powerhouse, about 20 feet high by 74 feet wide by 127 feet long, equipped with four existing (each having a capacity of 1,200 kilowatt (kW) and a hydraulic capacity of 550 cubic feet per second (cfs)) and one proposed (1,300 kW, 600 cfs) horizontal Francis hydroelectric totaling (A) a rated capacity of 6,100 kW; (b) a hydraulic capacity of 2,800 cfs; (c) an existing average annual generation of 29,100 MWH and (d) a proposed average annual generation of 33,500 MWH; and (f) each having a designed head of 29 feet;

(4) An impoundment, about 4,700 feet long, having (a) a surface area of about 45 acres (AC); (b) a gross storage capacity of 370 acre-feet (AF), but a negligible useable storage capacity; (c) a normal pool headwater elevation of 813.3 feet msl; and (d) a normal tailwater elevation of 781.6 feet msl in the 370-foot-long tailrace area; and

(5) Appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric power for use in the applicant's pulp and paper mills.

n. This notice also consists of the following standard paragraphs: B1 and E.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at James River-New Hampshire Electric, Inc., 50 Main Street, Berlin, NH, 03570-2489, (603) 752-4600.

2a. *Type of Application:* New License.

b. *Project No.:* 2336-009.

c. *Date filed:* December 17, 1991.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Lloyd Shoals.

f. *Location:* On the Ocmulgee River in Butts, Jasper, and Newton Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, 333 Pedimont Avenue, 16th Floor, Atlanta, GA 30308, (404) 526-7140.

i. *FERC Contact:* James Hunter at (202) 219-2839.

j. *Deadline Date:* October 9, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The project consists of: (1) A reservoir with a surface area of 4,750 acres at normal full pool elevation 530 feel msl; (2) a 105-foot-high dam with a 530-foot-long earth embankment tie-in to the left bank and three concrete gravity sections; a 728-foot-long spillway section, a 198-foot-long gated intake section with six 12-foot by 12-foot octagonal water passageways through the dam connecting to the generating units, and a 143-foot-long non-overflow section at the right bank; (3) a concrete and brick powerhouse attached to the intake section containing six generating units with a total installed capacity of 18 MW; and (4) two step up transformers connecting directly to the applicant's distribution system. The average annual generation is 63.4 GWh. The applicant is not proposing any power-related changes to the existing project works.

m. *Purpose of Project:* Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Georgia Power Company's office at 333 Piedmont Avenue, Atlanta, Georgia, (404) 526-6526.

a. *Type of Application:* New Major License.

b. *Project No.:* 2362-002.

c. *Date filed:* December 30, 1991

d. *Applicant:* Blandin Paper Company.
e. *Name of Project:* Blandin Hydroelectric Project.
f. *Location:* On the Mississippi River in the city of Grand Rapids in Itasca County, Minnesota.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Joseph Maher, Manager of Engineering, Blandin Paper Company, 115 First Street SW., Grand Rapids, Minnesota 55744, (218) 327–6388.
i. *FERC Contact:* Michael Strzelecki at (202) 219–2827.
j. *Comment Date:* October 5, 1992.
k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.
l. *Description of Project:* The run-of-river project as licensed consists of: (1) A 25-foot-high dam on the Mississippi River; (2) a 465-acre impoundment; (3) a powerhouse containing two generating units having a total installed capacity of 2.1 MW; (4) a short transmission line extending from the powerhouse to the Blandin mill; and (5) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 10,565 MWh.
m. *Purpose of Project:* All project energy generated would be utilized by the applicant.
n. This notice also consists of the following standard paragraphs: B1 and D6.
o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Blandin Paper Company referenced above.
4a. *Type of Application:* Subsequent License.
b. *Project No.:* 2396–001.
c. *Date Filed:* December 31, 1991.
d. *Applicant:* Central Vermont Public Service Corporation.
e. *Name of Project:* Pierce Mills Project.
f. *Location:* On the Passumpsic River in Caledonia County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.
i. *FERC Contact:* Mike Dees (202) 219–2807.
j. *Comment Date:* October 5, 1992.
k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.
l. *Description of Project:* The project as licensed consists of the following: A dam structure, a powerhouse, an intake structure with a penstock, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 250 kilowatts (kW), a hydraulic capacity range of 90 to 200 cubic feet per second (cfs), and an average annual generation of about 1,610 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-high of water passing over the spillway and into the 330-foot-long bypass reach. This amount of water is equivalent to a flow of 7.5 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of a spillway section, 93 feet long by 18 feet high, with a crest elevation of 603.5 feet mean sea level (msl), topped with 1.5-foot-high flashboards;

(2) An intake structure, totaling 37 feet long, consisting of (a) a retaining wall, 17 feet long, with a crest elevation of 610.5 feet msl; and (b) a non-overflow section, with a 10-foot-high by 10-foot-wide bulkhead gate, leading to a 6-foot-diameter, 246-foot-long steel penstock;

(3) A powerhouse, 22 feet long by 22 feet wide, equipped with a vertical Francis hydroelectric generating unit, with (a) a rated capacity of 250 kilowatts (kW); (b) a hydraulic capacity range of 90 to 200 cubic feet per second (cfs); (c) an average annual generation of 1,610 megawatt-hour (MWH); and (d) a gross head of 18.3 feet;

(4) An impoundment having (a) a surface area of 24.7 acres (AC); (b) a usable storage capacity of 24.7 acre-feet (AF); and (c) a normal headwater elevation of 605.0 feet msl and tailwater elevation of 586.7 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.
n. This notice also consists of the following standard paragraphs: B1 and E1.
o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701.
5a. *Type of Application:* Subsequent License.
b. *Project No.:* 2397–001.
c. *Date Filed:* December 31, 1991.
d. *Applicant:* Central Vermont Public Service Corporation.
e. *Name of Project:* Gage Project.
f. *Location:* On the Passumpsic River in Caledonia County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Robert de R. Stein Central Vermont Public Service Corporation 77 Grove Street Rutland, VT 05701 (802) 773–2711.
i. *FERC Contact:* Mike Dees (202) 219–2807.
j. *Comment Date:* October 5, 1992.
k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.
l. *Description of Project:* The existing Gage Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 700 kilowatts (kw), a hydraulic capacity range of 170 to 700 cubic feet per second (cfs), and an average annual generation of about 2,766 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. To enhance 1.7 miles of river reach downstream of the project, the applicant also proposed to maintain 3-inch-high of water passing just over the spillway section, rather than the entire dam length. This amount of water is equivalent to a flow of 17 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of three spillway sections: (a) The North section, 176 feet long by maximum height of 13 feet, with a crest elevation of 534.2 feet mean sea level (msl), topped with 6.0-foot-high hinged-flashboards; (b) the concrete-capped Center section, constructed on a rock-ledge island, about 30 feet long, with a crest elevation of 542.1 feet msl; and (c) the South section, 43 feet long by 18 feet high, with a crest elevation of 538.9 feet msl, topped with 1.0-foot-high wooden flashboards.

(2) An intake structure consisting of (a) a 51-foot-wide headgate structure with four headgates; and (b) a 90-foot-long by 44-foot-wide by 16-foot-deep power canal;

(3) A powerhouse, equipped with two vertical S. Morgan Smith hydroelectric generating units: (a) one is rated at 300 kilowatts (kW) and one rated at 400 kW, totaling a plant rated capacity of 700 kW; (b) a hydraulic capacity range of 170 to 700 cubic

feet per second (cfs); (c) an average annual generation of 2,786 megawatt-hours (MWH); and (d) a gross head of 15 feet;

(4) An impoundment having (a) a surface area of 15.2 acres (AC); (b) a useable storage capacity of 13.8 acre-feet (AF); and (c) a normal headwater elevation of 539.9 feet msl and tailwater elevation of 524.9 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Applicant;* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

6 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2399–001.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Arnold Falls Project.

f. *Location:* On the Passumpsic River in Caledonia County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert de R. Stein Central Vermont Public Service Corporation 77 Grove Street Rutland, VT 05701 (802) 773–2711

i. *FERC Contact:* Mike Dees (202) 219–2807.

j. *Comment Date:* October 5, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The existing Arnold Falls Project's principal features consist of a dam structure, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 350 kilowatts (kW), a hydraulic capacity range of 150 to 282 cubic feet per second (cfs), and an average annual generation of about 1,580 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-high of water passing over the spillway and into the 300-foot-long bypass reach. This amount of water is equivalent to a flow of 20 cfs.

In detail, the project is described as follows:

(1) A timber crib dam consisting of two spillway sections: (a) the North dam section, 189 feet long by 18 feet high, with a crest elevation of 572.72 feet mean sea level (msl), topped with 1.5-foot-high flashboards; and (b) the South dam section, 66 feet long by 15 feet high, with a crest elevation of 572.80 msl, topped with 1.5-foot-high flashboards;

(2) A powerhouse, 18 feet long by 21 feet wide, equipped with a vertical S. Morgan Smith hydroelectric generating unit, with (a) a rated capacity of 350 kilowatts (kW); (b) a hydraulic capacity range of 150 to 282 cubic feet per second (cfs); (c) an average annual generation of 1,580 megawatt-hours (MWH); and (d) a gross head of 18 feet;

(3) An impoundment having (a) a surface area of 7.2 acres (AC); (b) a useable storage capacity of 10.8 acre-feet (AF); and (c) a normal headwater elevation of 574.3 feet msl and tailwater elevation of 556.12 feet msl;

(4) A 12.5-kilovolt (kV), transmission line; and

(5) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

7a. *Type of Application:* Subsequent License.

b. *Project No.:* 2400–001.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Passumpsic Project.

f. *Location:* On the Passumpsic River in Caledonia County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701 (802) 773–2711.

i. *FERC Contact:* Mike Dees (202) 219–2807.

j. *Comment Date:* October 5, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The existing Passumpsic Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 700 kilowatts (kW), a hydraulic capacity range of 195 to 460 cubic feet per second (cfs), and an average annual generation of about 3,868 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. To enhance 0.8-acre of bypass reach downstream of the project, the applicant also proposed to maintain 0.5- to 1-inch-high of water passing over the spillway section. This amount of water is equivalent to a flow of 20 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of two spillway sections: (a) the North section, 126 feet long by maximum height of 10 feet, with a crest elevation of 519.98 feet mean sea level (msl), topped with 1.0-foot-high flashboards; and (b) the South section, 122 feet long by maximum height of 10 feet, with a crest elevation of 519.98 feet msl, topped with 1.0-foot-high flashboards;

(2) An intake structure consisting of (a) a 27-foot-wide headgate structure with two headgates, each measuring about 12 feet wide by 8 feet high; and (b) a 87-foot-long by 19- to 22-foot-wide power canal with a ice/waste sluice gate and a 24-foot-long overflow spillway located on the canal's outboard wall;

(3) A powerhouse, equipped with one vertical Francis hydroelectric generating unit with (a) a rated capacity at 700 kilowatts (kW); (b) a hydraulic capacity range of 195 to 460 cubic feet per second (cfs); (c) an average annual generation of 3,868 megawatt-hours (MWH); and (d) a gross head of 24 feet;

(4) An impoundment having (a) a surface area of 18.3 acres (AC); (b) a useable storage capacity of 18.4 acre-feet (AF); and (c) a normal headwater elevation of 520.98 feet msl and tailwater elevation of 496.98 feet msl;

(5) A 12.5-kilovolt (kV), transmission lines; and

(6) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available

for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

8a. *Type of Application:* New Major License.

b. *Project No.:* 2440–002.

c. *Date filed:* December 18, 1991.

d. *Applicant:* Northern States Power Company—Wisconsin.

e. *Name of Project:* Chippewa Falls.

f. *Location:* On the Chippewa River near Chippewa Falls in Chippewa County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2621.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* October 9, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) Two 29-foot-high earth embankment dams; (2) a 572-foot concrete spillway; (3) a reservoir with a surface area of 270 acres at surface elevation 839.5 feet m.s.l. and a storage area of 2,250 acre-feet; (4) a powerhouse containing six generating units with a total rated capacity of 21.6 MW; and, appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 5,422,668 MWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company—Wisconsin, 100 Barstow Street, Eau Claire, WI 54702, or by calling (715) 839–2621.

9a. *Type of application:* Subsequent License.

b. *Project No.:* 2444–002.

c. *Date Filed:* December 20, 1991.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* White River Hydro Project.

f. *Location:* On the White River in Ashland County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2621.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* October 9, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing earthen embankments, a 400 foot long northern section and a 300 long southern section, with a maximum height of 48 feet; (2) an existing reservoir with a surface area of 56 acres and an estimated 391 acre-feet of total storage volume at the normal maximum surface election of 711.2 MSL; (3) an existing reinforced concrete spillway section, 70 feet long, composed of (a) a gated spillway section with two 25 foot long by 26.5 foot tall bays, each housing a radial steel Tainter gate, and (b) a reinforced concrete non-overflow section, approximately 20 feet long, with an intake structure for the 7 foot diameter pipeline; (4) existing intake and outlet works consisting of (a) a 7 foot diameter reinforced concrete pipeline, 1,345 feet long, (b) a steel surge tank, 16 feet in diameter by 62 feet tall, and (c) a 54 inch steel y-shaped penstock that feeds water from the surge tank to the powerhouse; (5) an existing powerhouse, constructed of reinforced concrete and brick masonry, 39 feet by 69 feet and 1 story tall, containing (a) two horizontal Francis turbines with a combined hydraulic capacity of 280 cfs, manufactured by S. Morgan Smith, (b) two Westinghouse generators, rated at 500 kW each for a total of 1,000 kW; (6) and existing apprutenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 5,326 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company, 100 North Barstow Street, Eau Claires, WI or calling (715) 829–2621

10a. *Type of Application:* New License.

b. *Project No.:* 2689–001.

c. *Date Filed:* December 27, 1991.

d. *Applicant:* Scott Paper Company.

e. *Name of Project:* Oconto Falls Hydro Project.

f. *Location:* On the Oconto River in Oconto County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas W. Cosgrove, General Manager, Scott Paper Company, 106 East Central Avenue, Oconto Falls, WI 54154, (414) 846–3411.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* October 9, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) An existing concrete non-overflow dam, 55 feet long with a maximum height of 16 feet; (2) an existing overflow spillway, constructed of rock-filled timber cribs with a concrete cap, 186 feet long by 18 feet high; (3) an existing masonry and concrete non-overflow, 186 feet long and 17 feet high, containing an 18 foot long intake for the west powerhouse (located on the west bank of the river); (4) an existing reservoir with a surface area of 9.2 acres and a total storage volume of 50 acre-feet at the normal maximum surface elevation of 701.7; (5) an existing rectangular concrete flume, 16.0 feet by 8.2 feet and approximately 230 feet long, conveying water to the east powerhouse (located on the east bank of the river); (6) an existing concrete penstock, 50 feet long, conveying water to the west powerhouse; (7) the existing concrete and masonry east powerhouse, 26 feet wide by 41 feet long, containing (a) a horizontal Francis turbine manufactured by Leffel, and (b) a General Electric generator rated at 360 kW; (8) an existing tailrace, excavated from bedrock with a 377 foot long by 6 foot high training wall; (9) the existing concrete and steel west powerhouse, 47 feet wide by 31 feet long, containing (a) a vertical Kaplan turbine, manufactured

by S. Morgan Smith and rated at 2,230 hp (providing a combined project design hydraulic capacity of 770 cfs), and (b) a General Machinery generator rated at 1,500 kW, providing a total project rating of 1,860 kW; (10) an existing tailrace, excavated from bedrock with a 370 foot long by 6 foot high training wall; and (11) existing and proposed appurtenant facilities. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 8,413 MWH. The dam and existing project facilities are owned by the applicant. The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Scott Paper Company, 106 East Central Avenue, Oconto Falls, WI or calling (414) 846–3411.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11307–000.

c. *Date Filed:* July 6, 1992.

d. *Applicant:* City of Marseilles, Illinois.

e. *Name of Project:* Marseilles Hydroelectric Project.

f. *Location:* On the Illinois River, near Marseilles, La Salle County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael A. Etscheid, 2713 North Columbus, Ottawa, IL 61350.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Comment Date:* October 9, 1992.

k. *Competing Application:* Project No. 11297–000.

Date Filed: June 1, 1992.

Competition Due Date: September 10, 1992.

l. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and would consist of: (1) An existing intake canal; (2) a new powerhouse to house four hydropower units with a combined capacity of 10.6 MW; (3) a transmission line 100 feet long; and (4) appurtenant facilities. The estimated annual energy production is 60 GWh. The project energy would be sold to utilities or municipalities. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $200,000. The proposed project site is owned by Illinois Power Company.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

Standard Paragraphs

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 5, 1992 for Project No. 2362–002). All reply comments must be filed with the Commission within 105 days from the

date of this notice. (November 17, 1992 for Project No. 2362–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All findings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All findings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 6, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19132 Filed 8–11–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP86–41–010, RP86–41–009, RP87–14–010 and RP90–22–017]

Algonquin Gas Transmission Company; Technical Conference

August 5, 1992.

In the Commission's order issued on July 22, 1992, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Wednesday, August 19, 1992, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 92–14134 Filed 8–11–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–521–000]

Hartwell Energy Limited Partnership; Order Accepting Agreement for Filing and Granting and Denying Waiver

Issued August 5, 1992.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On May 4, 1992, as amended on July 22, 1992, Hartwell Energy Limited Partnership (Hartwell) submitted for filing a power purchase agreement with Oglethorpe Power Corporation (Oglethorpe),[1] together with a request for waiver of certain filing, accounting and other regulations. The agreement provides that Hartwell will construct, own and operate a 300 MW peaking

[1] Oglethorpe provides wholesale electric service to its 39 retail electric distribution cooperative members. Oglethorpe also states that it is the largest generation and transmission cooperative in the Nation in terms of operating revenues, assets, kWh sales and consumers served

facility which will consist of two 150 MW gas-fired combustion turbine units located near Hartwell, Georgia. The facility is to be operational by June 1, 1994. Hartwell proposes to sell the capacity and energy of the facility to Oglethorpe for a 25-year term at market-based rates.

Hartwell explains that, in 1990, Oglethorpe conducted an all-source, competitive solicitation for 300 MW of capacity and energy. Oglethorpe received proposals for a total of 4,234 MW of capacity—and Oglethorpe also evaluated its own self-build options, which would use natural gas. According to Hartwell, after review of all proposals, Oglethorpe identified its own self-build option as the most cost-effective alternative for the 300 MW of capacity, but designated two proposals offered by Transco Power Company (Transco Power)[2] as sufficiently close in total cost to warrant further negotiations. Oglethorpe then commenced negotiations with Transco Power, which was permitted to improve its bid but was not permitted to change its proposal in any way that, if also adopted by another losing respondent, would have improved the other respondent's ranking. The changes ultimately resulted in Transco Power offering an arrangement that in Oglethorpe's view is more competitive than Oglethorpe's self-build option—the Hartwell/Oglethorpe agreement now at issue.[3]

Hartwell contends that the proposed market-based rates provided for in the power purchase agreement are just and reasonable since it has no market power over Oglethorpe. Hartwell states that Oglethorpe had numerous alternatives to choose from—with its 1990 solicitation drawing responses of approximately 4,234 MW, or a response rate of 14 times its request. Hartwell states that neither it nor its affiliates have generating facilities within the State of Georgia or any adjacent state. Hartwell concludes that it is not a dominant firm in the applicable generation market.

Hartwell also states that neither it nor any of its affiliates own electric transmission facilities within Georgia or within the area of the Southeastern Electric Reliability Council. Hartwell concludes that it could not block competing sellers from transmission access to Oglethorpe.

Additionally, Hartwell states that neither it nor any of its affiliates own or control any other resources which could be used to erect any other barriers to Oglethorpe or other suppliers. Hartwell acknowledges that the facility may from time to time purchase natural gas from an affiliate and that such gas will most likely be transported, at least in part, by an affiliate, Transcontinental Gas Pipe Line Corporation (TGPL). Hartwell contends that these facts do not represent any barriers to entry by non-affiliated competitors because: (1) The agreement provides that Oglethorpe has ultimate control over the fuel supply and transportation arrangements; (2) the site of the facility was moved, at Oglethorpe's request, from a site that would have received gas from a nonaffiliate; (3) TGPL is an open-access pipeline and other gas suppliers would receive the same price and service priority; (4) any gas transportation agreement with Hartwell will be subject to the Commission's approval; (5) Oglethorpe received numerous bids concerning projects which would have been supplied with gas from nonaffiliates; and (6) Oglethorpe received numerous bids involving projects using fuels other than gas. Accordingly, Hartwell concludes that neither it nor any of its affiliates controlled any resources which created any barriers to Oglethorpe or other suppliers.

Hartwell further states that no self-dealing abuses are present here since neither it nor any of its affiliates is affiliated with Oglethorpe, and all transactions between Hartwell and Oglethorpe are at arm's-length. While TGPL is affiliated with Hartwell and may provide gas supply services to Hartwell, according to Hartwell, the purchase agreement gives Oglethorpe ultimate control over fuel supply and transportation, and any gas transportation agreement must be approved by the Commission. Thus, according to Hartwell, TGPL and Hartwell cannot use their relationship to influence the rates paid by Oglethorpe under the fuel adjustment provisions of the agreement. Hartwell also states that, since neither it nor any other affiliate has any other transactions with Oglethorpe, there is no possibility of reciprocal dealing.

Hartwell has also requested: (1) waiver of the Commission's regulations found at section 35.3 (prior notice requirement) and section 35.12 (cost support), parts 41, 101, and 141 (accounting and reporting requirements); part 50 (procurement policy and practice); [4] (2) the right to make abbreviated filings under parts 45 and 46 (filing requirements for interlocking directorates); and (3) blanket approval under part 34 of all future issuances of securities and assumptions of liability. Hartwell believes that the cost support requirements are inapplicable since the rates are not cost-based, and that the other requirements are either unnecessary or unduly burdensome given Hartwell's limited holdings and purpose.

Notice of Hartwell's filing was published in the **Federal Register**,[5] with comments due on or before June 19, 1992. On June 19, 1992, Oglethorpe filed a motion to intervene in support of the filing.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[6] the timely, unopposed motion to intervene serve to make Oglethorpe a party to this proceeding.

In previous instances the Commission has allowed pricing flexibility after finding, among other things, that the seller lacked or had adequately mitigated market power.[7] The seller can demonstrate that it lacks market power (or adequately mitigated its market power) if it can show that neither it nor any of its affiliates: (1) Is a dominant firm in the sale of generation in the relevant market; (2) owns or controls transmission facilities through which the buyer could reach alternative sellers (or, if the seller or any of its affiliates does

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[2] Hartwell is owned 1% by its general partner, Transco Hartwell Energy Company, and 99% by its limited partner, TEVCO Cogeneration Company. Both the general partner and the limited partner are indirect wholly owned subsidiaries of Transco Power, an owner and developer of qualifying facilities and independent power projects. Transco Power, in turn, is a wholly owned subsidiary of Transco Energy Company, a producer and transporter of natural gas. According to Hartwell, Transco Power may sell all or part of its interest prior to commencement of service to avoid Public Utility Holding Company Act implications; in fact, in its July 22, 1992 amendment, Hartwell stated that Transco Power has signed a letter of intent to sell 50 percent of its interest to Destec Energy, Inc. (Destec).

[3] In the July 22, 1992 amendment, Hartwell submitted an executed contract—which is identical, except for the signatures, to the unexecuted contract submitted on May 4, 1992.

[4] Effective May 1, 1992, Part 50 was removed from our regulations by Order No. 541, Deletions of Certain Outdated or Nonessential Regulations, *et al.*, 59 FERC ¶ 61,122 (1992), *reh'g pending on other grounds*, and so compliance with the reporting requirements of Part 50 is no longer required.

[5] 57 FR 24485 (June 9, 1992).

[6] 18 CFR 385.214 (1991).

[7] *See, e.g.*, Enron Power Enterprise Corp., 52 FERC ¶ 61,193 (1990); Commonwealth Atlantic Limited Partnership, 51 FERC ¶ 61,368 (1990); PSI Energy Inc., 51 FERC ¶ 61,367 (1990); Doswell Limited Partnership, 50 FERC ¶ 61,251 (1990); Citizens Power and Light Corporation, 48 FERC ¶ 61,261 (1988); Pacific Gas and Electric Company, 44 FERC ¶ 61,010, *order on reh'g*, 45 FERC ¶ 61,061 (1988), *order on compliance*, 46 FERC ¶ 61,390 (1989); Pacific Gas and Electric Company, 42 FERC ¶ 61,406, *order on reh'g*, 43 FERC ¶ 61,403 (1988).

not own facilities, they have adequately mitigated their ability to block the buyer from reaching other sellers); and (3) can erect or control any other barrier to market entry.[8] Additionally, before allowing non-traditional pricing, the Commission has required a showing that there exists no affiliate abuse or reciprocal dealing.

The Commission has evaluated Hartwell's filing and concludes that Hartwell meets these standards. Oglethorpe received 22 proposals for a total of 4,234 MW of capacity in response to its solicitation, or 14 times the 300 MW of capacity requested (at least 2,734 MW of which did not involve the five bids submitted by Transco Power).[9] This indicates that neither Hartwell nor its affiliates were dominant firms with respect to Oglethorpe's generation alternatives.

Neither Hartwell nor its affiliates own or are affiliated with utilities that own electric transmission facilities in the region. This indicates that neither Hartwell nor its affiliates has market power in transmission.

Hartwell's affiliates do produce and transport natural gas; however, we conclude that this did not constitute a barrier to entry into the wholesale electricity market at issue here. For purposes of our analysis, the relevant time period is the time period of the solicitation and negotiations. As Hartwell notes, its pipeline affiliate was a non-discriminatory, open-access pipeline at the time of the solicitation and negotiations.[10] Moreover, two other non-affiliated proposals in response to Oglethorpe's solicitation relied on transportation by TGPL. The fact that two respondents would have required that natural gas transportation be provided by TGPL suggests that Hartwell's competitors believed such service would be available.

As to the issue of affiliate abuse as a result of the relationship between Hartwell and TGPL, we note that the original proposal involved a site which could not be served by TGPL and it was Oglethorpe itself which moved the site to the present one. Oglethorpe also retains ultimate control over gas supply decisions, including the choice of vendor and transporter. In addition, TGPL and Hartwell cannot charge any more for gas transportation than the Commission-approved rate, and, under the power purchase agreement, all gas supply costs are passed on to Oglethorpe without mark-up.[11]

The Commission concludes that Hartwell's affiliate relationship with TGPL does not allow Hartwell or its affiliates to erect any barriers to entry or to engage in affiliate abuse. Finally, since Oglethorpe, Hartwell, and its affiliates are not involved in any other arrangements, there is also no potential for reciprocal dealing.

Accordingly, the Commission finds that Hartwell lacks market power and the proposed power purchase agreement should be accepted for filing.

Hartwell's requests for waiver of the prior notice requirement of section 35.3; for waiver of the cost support requirement of section 35.12; for waiver of the accounting and reporting requirements of parts 41, 101, and 141; for permission to make abbreviated filings under part 45[12] and for blanket approval under part 34 of all future issuance of securities are consistent with waivers previously granted by the Commission in similar circumstances, and should be granted.[13]

Finally, we note that Hartwell has advised us that Destec has signed a letter of intent to acquire a 50 percent interest in Hartwell. To the extent that this contemplated ownership change does not occur before the date of this order,[14] Hartwell may be required to obtain authorization for such change pursuant to section 203 of the FPA [15] and may request confirmation of its rate schedule at that time.[16]

The Commission orders:

(A) Hartwell's power purchase agreement is hereby accepted for filing to become effective upon initiation of service[17]

(B) Hartwell's request for waiver of the prior notice requirement is hereby granted to permit the power purchase agreement to become effective upon initiation of service. Hartwell shall advise the Commission of that date within 15 days of that date.

(C) The requested waivers of § 35.12 of the Commission's regulations, relating to cost support; part 41 of the Commission's regulations, relating to adjustments of accounts and reports and compliance with accounting regulations; part 101 of the Commission's regulations, relating to accounting; and part 141 of the Commission's regulations, relating to the filing of certain statements and reports, are hereby granted.

(D) Until further order of this Commission, any person now holding or who may hold an otherwise proscribed interlock involving Hartwell is authorized to hold such positions; *provided that* such person files the application required in Ordering Paragraph (E) below.

(E) Until further order of this Commission, the full requirements of part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to those persons subject to Ordering Paragraph (D) above, and those persons shall instead file a sworn application providing the following information:

(1) Full name and business address; and

(2) All jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(F) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlocks addressed above.

(G) Within thirty (30) days of the date of this order, any person desiring to be

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[8] Commonwealth Atlantic Limited Partnership, 54 FERC ¶ 61,268 at 61,821 & n.25 (1991).

[9] Oglethorpe also evaluated building its own generation.

[10] Pursuant to, for example, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 (1985), *vacated and remanded*, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30,334 (Aug. 14, 1987), FERC Stats. & Regs. [Regulations Preambles, 1986–1990] ¶ 30,761 (1987), *remanded*, American Gas Association v. FERC, 888 F. 2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52,344 (Dec. 21, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,880 (1990), *aff'd in part and remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[11] Power Purchase Agreement at p. 32 and Schedule B, pp. B–1 to –3 and B–7 (Oglethorpe's energy payment is "an amount equal to the actual costs incurred by [Hartwell] * * * for natural gas, natural gas transportation, fuel oil, and fuel oil transportation * * *" and Hartwell's recovery of energy costs is also "limited to costs incurred under agreements executed by [Hartwell] having the written approval of the Operating Committee").

[12] We have previously concluded that waivers of Part 46 would not be allowed. City of Vidalia, Louisiana, *et al.*, 52 FERC ¶ 61,199 (1990).

[13] *See, e.g.*, Howell Gas Management Company 40 FERC ¶ 61,336 (1987); Citizens Energy Corporation, 35 FERC ¶ 61,198 (1986).

[14] *See* Ocean State Power, 38 FERC ¶ 61,140 at 61,378 (1987) (public utility status attached on acceptance of rate schedule).

[15] *Id.; see also, e.g.*, Doswell Limited Partnership, 56 FERC ¶ 61,170 (1991); Commonwealth Atlantic Limited Partnership, 57 FERC ¶ 61,193 (1991); Central Vermont Public Service Corporation, 39 FERC ¶ 61,295 (1987).

[16] See 57 FERC at 61,667–68.

[17] The rate schedule designation is:

Hartwell Energy Limited Partnership
Rate Schedule FERC No. 1

heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Hartwell should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 FR 358.211 and 385.214).

(H) Absent a request for hearing within the period set forth in Ordering Paragraph (G) above, Hartwell is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; *Provided* that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Hartwell's issuances of securities or assumptions of liability.

(J) The request for waiver of part 46 of the Commission's regulations, relating to the annual reports to be filed by persons holding interlocking directorates, is hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19133 Filed 8-11-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-64-000]

Northeast Utilities Service Company; Filing

August 6, 1992.

Take notice that on June 18, 1992, Northeast Utilities Service Company submitted for filing information on the settlement filed on March 20, 1992 in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19135 Filed 8-11-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-65-NG]

Saratoga Natural Gas Inc.; Order Granting Blanket Authorization To Export Natural to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Saratoga Natural Gas Incorporated a blanket authorization to export up to 109.5 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 5, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19162 Filed 8-11-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

FRL-4194-7]

Management Advisory Group to the Assistant Administrator for Water; Open Meeting

Under section (1) (a) (2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Management Advisory Group (MAG) to the Assistant Administrator for Water will be held at 7:030 pm on September 9, and 8:30 am on September 10 and 11, 1992, at The Cliff House, Ogunquit, Maine, (207) 361-1000.

The Maine Department of Environmental Protection is hosting the September meeting of the Management Advisory Group (MAG) to the Assistant Administrator for Water in Ogunquit, Maine. The theme for this meeting, as a continuation from the last meeting, will be ecosystem protection. MAG members will hear from University of Maine personnel about watersheds, estuaries, and oceans as ecosystems and how we perceive ecosystems in our daily life. A trip to NASA's Wells Ecological Research Reserve will demonstrate management and regulatory issues surrounding the protection of very small estuary and river systems. The MAG will also hear about special environmental education programs being established nationwide. The proposed agenda includes a report from the Combined Sewer Overflows (CSO) workgroup, working sessions and reports from other workgroups on nonpoint source pollution control recommendations and ecosystem protection recommendations.

The meeting will be open to the public. The MAG encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the MAG by telephone at (202) 260-0643. The petition should include the topic of the proposed statement and the petitioner's telephone number and should be received before September 4, 1992.

Any person who wishes to file a written statement can do so before or after a MAG meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the MAG members for their information.

Prior to the full MAG meeting, EPA's Office of Water and the Office of Water's Management Advisory Group (MAG) will hold a MAG work group meeting with organizations that represent State and municipal governments, environmental and/or wastewater facility organizations and industry on September 8-9, 1992. The purpose of the workgroup meeting is to discuss development of a National Pollutant Discharge Elimination System permitting policy that will expedite implementation of the national Combined Sewer Overflow Strategy.

issued by the EPA in 1989. The public is invited to attend, and at specified times, to contribute comments.

FOR MORE INFORMATION ON THE WORKGROUP MEETING, CONTACT: For more information on substantive matters, please contact Rich Kuhlman, Office of Wastewater Enforcement and Compliance, at (202) 260–7361. For information on administrative matters, or to advise of your intent to attend, please contact Abby Arnold, EPA's co-convener, at (202) 778–9853.

Any member of the public wishing to attend the full MAG meeting, present an oral statement, or submit a written statement, should contact Ms. Michelle Hiller, Designated Federal Official, U.S. Environmental Protection Agency, Office of Assistant Administrator for Water, 401 M Street, SW., WH–556, Washington, DC 20460 or at (202) 260–0643.

Dated: August 3, 1992.

Martha Prothro,

Deputy Assistant Administrator for Water.

[FR Doc. 92–19185 Filed 8–11–92; 8:45 am]

BILLING CODE [illegible]

[OPP–66165; FRL 4080–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. Comments must be received by September 11, 1992.

ADDRESSES: Comments should be submitted to Spencer Duffy, Office of Pesticide Programs (H7508W), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

DATES: Unless a request is withdrawn, all cancellations will be effective September 11, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1)(A) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. Section 6(f)(1)(B) further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** and provide for a 30-day comment period. Section 6(f)(1)(C) provides for a 90-day comment period for certain pesticides registered for a minor agricultural use.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel certain pesticide products containing sodium pentachlorophenate, registered for non-wood biocide uses under Section 3 of FIFRA. These registrations are listed in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
001769-00325	Chem-Aqua 450	Sodium pentachlorophenate
010807-00006	Bal-Cide P	Sodium pentachlorophenate

Before acting on these requests, EPA is providing a 30-day comment period under FIFRA Section 6(f)(1)(B). Comments may be submitted to EPA, but unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued cancelling these registrations. Users of these pesticides or anyone else desiring the retention of a registration should therefore contact the applicable registrant directly during this 30-day period. The following Table 2. includes the names and addresses of record for the registrants of the products in Table 1.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
001769	NCH Corp., 2727 Chemsearch Blvd, Irving, TX 75062.
010667	Water Services, Inc., P.O. Box 22339, Knoxville, TN 37933.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 11, 1992. This written withdrawal of the request for cancellation will apply only to the specific 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. It is EPA's intent that the orders effecting these cancellations will permit a registrant to sell or distribute existing stocks for 1-year after the cancellation request is received. This is in accordance with the Agency's established policy stated in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation order.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: July 30, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-18947 Filed 8-11-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60040; FRL-4080-8]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state

specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Coulston International Corporation	05040400002	Silica Gel	CIC Residual Insecticide Powder No. 1	7/15/92
RSR Laboratories, Inc.	05179300021	Silica Gel	Elite Extra Strength Flea & Tick Powder II	7/15/92
	05179300033	Silica Gel	Elite Aerosol Seven Month Insect Spray	7/15/92
	05179300043	Silica Gel	6 Month Insect Powder	7/15/92
	05179300049	Silica Gel	Elite Roach & Ant Powder II	7/15/92

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
	05179300060	Silica Gel	ELite Roach & Ant Powder I	7/15/92
	05179300118	Silica Gel	Elite Flea & Tick Powder II	7/15/92
Wallace C. Tharp	00633000012	Silicon Dioxide	Perma-Guard Kleen Bin Insecticide D-20	7/15/92
	00633000017	Silicon Dioxide	Perma-Guard Pet Insecticide D-32	7/15/92
	00633000031	Silicon Dioxide	Perma Guard D-20 Professional Insecticide	7/15/92
	00633000032	Silicon Dioxide	Perma-Guard Pet and Animal Insecticide D-20	7/15/92
Vasco Chemical Company Inc.	01056200001	Silica Gel	Vasco Formula 100-G	7/15/92
Sungro Chemicals, Inc.	01147400064	Silica Gel	Sun-Dust Roach Away	7/15/92
Speer Products Inc.	01171500193	Silica Gel	Speer Flea and Tick Powder for Carpets	7/15/92
Smithkline Beecham Animal Health	03742500013	Silica Gel	Adams Flea and Tick Dust II	7/15/92
Grefco Inc.	05480600001	Silicon Dioxide	Dicalite Diacide	7/15/92
Dyn-O-Mite International Inc.	05830000002	Silicon Dioxide	Dyanomite and/or Dynomite 2001 Plus	7/15/92
Chemfree Environment Inc.	05991300001	Silicon Dioxide	Insectigone Crawling Insect Killer	7/15/92
Tru Gen	06387200001	Silicon Dioxide	Tru-Gen White Gold	7/15/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Silica Gel	Hysan Corporation	90-Day Response	5/12/92
	Whitmire Research Laboratories, Inc.	90-Day Response	5/11/92
	Sureco, Inc.	90-Day Response	5/11/92
	Tomic Insecticide Company, Inc.	90-Day Response	5/11/92
	Happy Jach Inc.	90-Day Response	5/11/92
	D-Con Company Inc.	90-Day Response	5/13/92
	ABC Compounding Company, Inc.	90-Day Response	5/11/92
	Pet Chemicals	90-Day Response	5/11/92
	Protexall Products Inc.	90-Day Response	5/12/92
	Vasco Chemical Company Inc.	90-Day Response	5/14/92
	Sungro Chemicals, Inc.	90-Day Response	5/11/92
	Speer Products Inc.	90-Day Response	5/11/92
	Smithkline Beecham Animal Health	90-Day Response	5/11/92
	Coulston International Corporation	90-Day Response	5/11/92
	RSR Laboratories, Inc.	90-Day Response	5/12/92
Silicon Dioxide	Grefco Inc.	90-Day Response	5/11/92
	Dyn-O-Mite International Inc.	90-Day Response	5/12/92
	Chemfree Environment Inc.	90-Day Response	5/11/92
	Tru Gen	90-Day Response	5/11/92
	Wallace C. Tharp	90-Day Response	5/12/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Silica Gel

On February 7, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing silica gel used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Silica Gel Phase 5 Reregistration Eligibility Document Data Call-In Notice dated February 7, 1992, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. Because the Agency has not received a response from you as a Silica Gel registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. Silicon Dioxide

On February 7, 1992, EPA issued the Phase 5 Reregistration Eligibility

Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing silicon dioxide used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Silicon Dioxide Phase 5 Reregistration Eligibility Document Data Call- In Notice dated February 7, 1992, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. Because the Agency has not received a response from you as a silicon dioxide registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: August 3, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92–18946 Filed 8–11–92; 8:45 am]

BILLING CODE 6560-50-F

[OPP–50749; FRL–4082–8]

Receipt of Notification Applications to Conduct Field Testing of Two Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received from Crop Genetics International in conjunction with E.I. DuPont de Nemours & Company four notifications of intent to conduct small-scale field testing using two non-indigenous strains of two insect baculoviruses: Nuclear Polyhedrosis Virus (NPV) and Granulosis Virus (GV). The purpose of the proposed testing is to evaluate one NPV and both GV strains' performance against the diamondback moth, *Plutella xylostella*, and the other NPV strain's performance against the beet armyworm (*Spodoptera exiqua*) on alfalfa, cabbage, collards, garbanzo beans, lettuce, and tomatoes. Test sites, totalling 3 acres, are located in Arizona, California, Illinois, and Maryland.

DATES: Written comments must be received on or before August 26, 1992.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50749 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7690).

SUPPLEMENTARY INFORMATION: Crop Genetics International and E.I. DuPont have submitted to EPA four notifications of intent to conduct small-scale field testing pursuant to the U.S. EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal, Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313). The purpose of the proposed testing is to determine the field activity of two nonindigenous strains of two baculoviruses on the target insect pests: beet armyworm and diamondback moth. Both pests are native to the areas where testing will occur; however, crops may be artificially infested to increase the pest population to a level whereby each baculovirus strain's effectiveness can adequately be evaluated. Of the four strains being tested, one GV and both NVP strains were isolated from feral insects in Taiwan. The other GV strain was isolated from insects originating in China. Field trials will be conducted on the following research and cooperator farms: Crop Genetics and DuPont Research Farms located in Queen Anne's and Cecil Counties, Maryland; and cooperator farms located in Bradenton and Quincy Florida; Yuma, Arizona; Rochelle, Illinois; and Fresno and Modesto, California.

To determine the concentration necessary for pest control, the baculovirus strains will be applied at various spray application rates at 4 to 7 day intervals for up to six applications. The total amount of each strain applied for all locations and crops will not exceed 6×10^{13} viral occlusion bodies. Several chemicals or *Bacillus thuringiensis* preparations in combination with the baculovirus strains also may be applied and analyzed. Directly following the spray applications, insect populations will be monitored and the amount of crop damage assessed. Tests will be conducted from August to October 1992, and upon completion of field testing, all test crops will be destroyed by plowing under. Any plant material or insects brought into the laboratory for analysis will be autoclaved and disposed of when testing has been completed.

Following the review of these four notifications and any comments received in response to this notice, EPA will decide whether or not Experimental Use Permits are required and announce this decision in the **Federal Register**.

Dated: August 3, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–18783 Filed 8–11–92; 8:45 am]

BILLING CODE 6560-50-F

[OPP–34033; FRL 4079–6]

Notice of Receipt of Requests for Amendment to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by

registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 10, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-5761

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pecticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the two pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 10, 1992 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Delete from Label
000802-00488	Lilly/Miller Benomyl DF Systemic Fungicide	Post-harvest uses on apples, pears, stone fruits
034704-00602	Clean Crop Benomyl 50% Systemic Fungicide	Post-harvest uses on apples, citrus, pears, ornamentals, stone fruits turf

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000802	The Chas. H. Lilly Co., 7737 NE Killingsworth, Portland, OR 97218.
034704	Platte Chemical Co., 419 16th Street, P.O. Box 667, Greeley, CO 80632.

II. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: August 4, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-19212 Filed 8-11-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66164; FRL 4030-2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 10, 1992, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 21 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000239-02456	Ortho Garden Weed Preventer	Dimethyl tetrachloroterephthalate
000335 AZ-91-0014	Maneb 80	Manganese ethylenebis (dithiocarbamate)
000499-00299	Whitmire Pt 270 WDO Dursban	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001021-01315	Pyrocide Fogging Concentrate 7219	*N*-Octyl bicycloheptene dicarboximide (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
002935-00139	Red-Top Premium Grade Malathion Grain Protectant	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
003640-00017	Steramine	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
005481-00249	Royal Brand 2% Phosdrin Insecticide Dust	2-Carbomethoxy-1-methylvinyl dimethyl phosphate, alpha isomer and related
005535-00025	Gro-Well Crabgrass and Broadleaf Weed Killer	Octylammonium methanearsonate Dodecylammonium methanearsonate Octylamine 2,4-dichlorophenoxyacetate
006140-00004	Warexin	*n*-Tetradecyl formate
007501-00028	Gustafson Botran-30C	2,6-Dichloro-4-nitroaniline
007501-00062	Gustafson Captan DCNA 60-20	2,6-Dichloro-4-nitroaniline cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
007501 NC-86-0006	Vitavax 75-Captan DCNA 60-20 Blend	2,6-Dichloro-4-nitroaniline cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide 5,6-Dihydro-2-methyl-1,4-oxathiin-3-carboxanalide
007501 VA-86-0007	Vivatax 75-Captan DCNA 60-20 Blend	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
008596-00017	Grain Treet Liquid	Propionic acid
010182-00245	Sutan + /Atrazine 4.4F Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182-00247	Sutazine + 6.25 ME Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182-00309	Atra-Bute Flowable Herbicide	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182-00310	Atrabute II +	*S*-Ethyl diisobutylthiocarbamate 2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
056899-20007	Sodium Hypochlorite	Sodium hypochlorite

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000239	Chevron Chemical Co., Registration & Regulatory Affairs Dept., 940 Hensley Street, Richmond, CA 94804.
000335	Elf Atochem N.A. Inc., Three Parkway, Room 820, Philadelphia, PA 19102.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct Industrial Blvd, St Louis, MO 63122.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
002935	Wilbur Ellis Co., 191 W Shaw Ave, Fresno, CA 93704.
003640	Stearns Packaging Corp., Box 3216, Madison, WI 53704.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
005535	Adikes Inc.J & L, 182-12 93rd Ave, Jamaica, NY 11423.
006140	Guardian Laboratories, Div of United-Guardian, Inc., Box 2500, Smithtown, NY 11787.
007501	Gustafson, Inc., Box 660065, Dallas, TX 75266.
008596	Kemin Industries Inc., Box 70, Des Moines, IA 50301.
010182	ICI Americas Inc., Agricultural Products, New Murphy Rd. & Concord Pike, Wilmington, DE 19897.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
056899	RMI Titanium Co - Sodium Plant, (an Ohio Corp.), Box 269, Niles, OH 44446.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 10, 1992. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: July 31, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-19213 Filed 8-11-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4194-5]

Privacy Act of 1974; New System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, EPA is publishing this notice of the new EPA-30 system of records called "OIG Hotline Allegation System—EPA/OIG." The Office of Inspector General (OIG) will use this system of records to maintain information on complaints received from employees of EPA, employees of other Federal agencies, employees of State and local agencies, and private citizens. These complaints concern the possible existence of activities constituting a violation of law, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety. The records in this system are used to gather information; to evaluate such information to determine whether a complaint should be investigated or audited by the OIG, referred to another part of EPA or to another agency, or closed out; to document complaints received; and to track the resolution of each complaint.

DATES: This notice will be effective without further notice on October 13, 1992, unless EPA receives comments which would result in a contrary determination.

ADDRESSES: Interested persons may submit written comments to: John C. Jones, Assistant Inspector General for Management, Office of Inspector General (A-109), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John C. Jones, (202) 260-4912.

Dated: August 3, 1992.

Christian R. Holmes,

Assistant Administrator for Administration and Resources Management.

EPA-30

SYSTEM NAME:

OIG Hotline Allegation System—EPA/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Assistant Inspector General for Management, Office of Inspector General (A-109), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who report information to the Office of Inspector General (OIG) concerning the possible existence of activities constituting a violation of law, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety, and the subject(s) of such complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain information obtained from complainants who report indications of wrongdoing. Specific data include name and address of the complainant (except for anonymous complainants), date complaint received, program area, nature and subject of complaint, and any additional contacts and specific comments provided by the complainant. In addition, information on the OIG disposition of the complaint is included in the system. As appropriate, the disposition includes investigative case number; preliminary inquiry number; dates of referral, reply, and follow-up; and status and disposition code of the complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. app.; and 5 U.S.C. 301.

PURPOSE(S):

The records contained in the system are used by the OIG in furtherance of the responsibilities of the Inspector General under the Inspector General Act of 1978, as amended, to conduct and supervise audits and investigations relating to programs and operations of the EPA; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud and abuse in such programs and operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record from the system of records may be disclosed, as a routine use:

a. To any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate EPA investigation, audit, or other inquiry.

b. To the appropriate Federal, State, local, foreign, or international agency, if a record indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, where that agency is charged with the responsibility of investigating or prosecuting a violation, or of enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

c. To a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.

d. To a Federal, State, local, foreign, or international agency, or other public authority or professional organization, maintaining civil, criminal, or other relevant enforcement records or other pertinent records, such as current licenses, in order to obtain information relevant to an EPA investigation, audit, or other inquiry, or relevant to an EPA decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action.

e. To a Federal, State, local, foreign, or international agency, in response to its request, in connection with the assignment, hiring, or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (1) EPA or any of its components, (2) an EPA employee in his or her official capacity, (3) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (4) the United States where EPA determines that the litigation is likely to affect EPA. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

g. To a Member of Congress who submits an inquiry on behalf of an individual, when the individual to whom the record pertains has authorized the Member of Congress in writing to have access to the record. In such cases, the Member of Congress has no more right to the record than does the individual who requested it.

h. To the Department of Justice for the purpose of obtaining its advice on Freedom of Information Act matters.

i. To the Office of Management and Budget for the purpose of obtaining its advice regarding EPA obligations under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, or in connection with the review of legislation.

j. In response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies.

k. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (1) EPA or any of its components, (2) an EPA employee in his or her official capacity, (3) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (4) the United States where EPA determines that the litigation is likely to affect EPA.

l. To debt collection contractors for the purpose of collecting delinquent debts as authorized by law.

m. To EPA contractors, grantees, or volunteers who have been engaged to assist ERA in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

n. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

o. To the Department of the Treasury and the Department of Justice when EPA is seeking an *ex parte* court order to obtain taxpayer information from the Internal Revenue Service.

p. To a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

q. To an entity or person, public or private, when disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the EPA, when such recovery will accrue to the benefit of the United States, or when disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of EPA programs or operations.

r. To a "consumer reporting agency," as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), for the purpose of obtaining information in the course of an investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored on hard copy files and computer disks.

RETRIEVABILITY:

The records are retrieved by case number, the name of the complainant,

the name of the subject(s), and the subject matter.

SAFEGUARDS:

Direct access is limited to authorized personnel in the OIG, Office of Management, Technical Assessment and Fraud Prevention Division. Disclosure within EPA is limited to authorized officials and employees on a need-to-know basis. All hard copy files, when not in the possession of an authorized individual, are maintained in locked filing cabinets. Both the hard copy files and the computer disks are maintained in a room protected by door locks in a building with restricted access.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with EPA Records Control Schedules, Inspector General Records, approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management, Office of Inspector General (A-109), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

NOTIFICATION PROCEDURES:

See Exemption section of this notice. EPA claims that this system is exempt from this requirement to the extent that the system contains investigatory material compiled for law enforcement purposes. However, EPA has promulgated rules which establish procedures for notifying an individual at his/her request if the system of records contains a record pertaining to him/her because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his/her records in this system. Requests for notification should be made in writing to the System Manager in accordance with EPA's regulation at 40 CFR part 16.

RECORD ACCESS PROCEDURES:

See Exemption section of this notice. EPA claims that this system is exempt from this requirement. However, EPA has promulgated rules which establish procedures for notifying an individual at his/her request how he/she can gain access to a record in a system of records pertaining to him/her because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his/her records in this system. Requests for access should be made in writing to the System Manager in accordance with EPA's regulations at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures section of this notice. Requests for correction of a record should specify the information which is allegedly incorrect and the justification for the correction.

RECORD SOURCE CATEGORIES:

See Exemption section of this notice. EPA claims that this system is exempt from this requirement. However, EPA is publishing the following generic list of categories of sources of records in this system: Complainants who are employees of EPA; employees of other Federal agencies; employees of State and local agencies; and private citizens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, as amended, subject to the limitations set forth in that subsection: 5 U.S.C. 552a (c)(3); (d); (e)(1); (4)(G); (H); and (I); and (f). Concurrently with this notice, EPA is publishing in the **Federal Register** a proposed regulation to exempt this system of records, in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c), and (e). For additional information, contact the System Manager.

[FR Doc. 92-19161 Filed 8-11-92; 8:45 am]

BILLING CODE 6560-50

[OPPTS-51803; FRL-4160-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 28 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-1212, 92-1213, 92-1214, 92-1215, October 13, 1992.

P 92-1216, October 17, 1992.

P 92-1217, 92-1218, 92-1219, October 13, 1992.

P 92-1220, 92-1221, October 17, 1992.

P 92-1222, 92-1223, 92-1224, 92-1225, 92-1226, 92-1227, 92-1228, October 18, 1992.

P 92-1229, 92-1235, October 19, 1992.

P 92-1238, 92-1239, 92-1240, 92-1241, 92-1242, 92-1243, 92-1244, 92-1245, October 20, 1992.

P 92-1246, October 21, 1992.

Written comments by:

P 92-1212, 92-1213, 92-1214, 92-1215, September 13, 1992.

P 92-1216, September 17, 1992.

P 92-1217, 92-1218, 92-1219, September 13, 1992.

P 92-1220, 92-1221, September 17, 1992.

P 92-1222, 92-1223, 92-1224, 92-1225, 92-1226, 92-1227, 92-1228, September 18, 1992.

P 92-1229, 92-1235, September 19, 1992.

P 92-1238, 92-1239, 92-1240, 92-1241, 92-1242, 92-1243, 92-1244, 92-1245, September 20, 1992.

P 92-1246, September 21, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51803)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET., Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-1212

Importer. Confidential.

Chemical. (G) Aromatic dianhydride.

Use/Import. (G) Intermediate destructive use. Import range: Confidential.

Toxicity Data. Skin irritation: none species (rabbit). Mutagenicity: negative.

P 92-1213

Manufacturer. Confidential.

Chemical. (G) Aromatic nitro compound.

Use/Production. (G) Monomer intermediate - destructive use. Prod. range: Confidential.

P 92-1214

Manufacturer. Confidential.

Chemical. (G) Aromatic amino ether.

Use/Production. (G) Isolated intermediate - destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 11,000 mg/kg species (rat). Eye irritation: moderate species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative.

P 92-1215

Manufacturer. Confidential.

Chemical. (G) Polyimide.

Use/Production. (G) Membranes. Prod. range: Confidential.

P 92-1216

Importer. Toray Marketing Sales of America, Inc.

Chemical. (G) Poly ether ester amide.

Use/Import. (S) Antistatic agent for molding resins. Import range: Confidential.

P 92-1217

Importer. Confidential.

Chemical. (G) Polyester polyether modified polyurethane with basic groups, compound with carboxylic acid.

Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-1218

Importer. Confidential.

Chemical. (G) Silicones and silicones, methyl alkyl, polyether modified.

Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-1219

Importer. Confidential.

Chemical. (G) Silicones and silicones, di-me polyether modified.

Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: slight species (rabbit).

P 92-1220

Manufacturer. Furon Corporation.

Chemical. (G) Polymeric aromatic diimide with substituted tetracarboxylic acid.

Use/Production. (G) Fabrication into articles. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 3,945 mg/kg species (rat). Acute dermal toxicity: > 5,000 mg/kg species (rabbit). Eye irritation: extreme species (rabbit). Skin irritation: minimal species (rabbit).

P 92-1221

Manufacturer. Confidential.

Chemical. (S) Butanedioic acid, hydroxy-, diammonium salt.

Use/Production. (S) Metal deoxidizer and cleaner. Prod. range: 13,600–45,360 kg/yr.

P 92-1222

Manufacturer. Confidential.

Chemical. (S) Isooctadecanoic acid, distn., residues.

Use/Production. (G) Additive for asphalt. Prod. range: Confidential.

P 92-1223

Importer. Ciba-Geigy Corporation.

Chemical. (G) Polymer of 4,4'-isopropylidenediphenol-epichlorohydrin resin, modified 4,4'-isopropylidenediphenol.

Use/Import. (S) Resin component for can and coil coatings. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit).

P 92-1224

Manufacturer. Confidential.

Chemical. (S) Maleic anhydride; butoxyethoxyethanol; diethylene glycol.

Use/Production. (S) A radiation curable coating for industrial use. Prod. range: Confidential.

P 92-1225

Manufacturer. Confidential.

Chemical. (G) Modified styrenated acrylate methacrylate polymer.

Use/Production. (G) Component of dispersive coating. Prod. range: 52,200 kg/yr.

P 92-1226

Manufacturer. Confidential.

Chemical. (G) Modified styrenated acrylate methacrylate polymer.

Use/Production. (G) Component of dispersive coating. Prod. range: 7,800 kg/yr.

P 92-1227

Manufacturer. Confidential.

Chemical. (G) Modified acrylate methacrylate polymer.

Use/Production. (G) Component of dispersive coating. Prod. range: 10,100 kg/yr.

P 92-1228

Manufacturer. Confidential.

Chemical. (G) Halogenated butadiene copolymer.

Use/Production. (G) Industrial adhesive component. Prod. range: Confidential.

P 92-1229

Manufacturer. Rohm & Haas.

Chemical. (G) Polymer of alkyl methacrylate.

Use/Production. (G) Lubrication additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 5 g/kg species (rat). Static acute toxicity: LC50 > 1,000 mg/L 96hr species (rainbow trout). Eye irritation: slight species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-1235

Manufacturer. Eastman Kodak Company.

Chemical. (G) Substituted aniline substituted aromaticing haloaromaticpyrazole.

Use/Production. (G) Contained use in an article. Prod. range: 25,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species (guinea pig). Skin sensitization: negative species (guinea pig).

P 92-1236

Manufacturer. Confidential.

Chemical. (G) Amino substituted heteromonocycle, hydrochloride salt.

Use/Production. (S) Organic synthesis intermediate. Prod. range: 15,000 kg/yr.

P 92-1238

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Carbonic acid, 1,1-dimethyllethyl 4-ethenyl phenylester.

Use/Production. (G) Monomer/comonomer for electrical applications. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: slight species (guinea pig). Mutagenicity: negative. Skin sensitization: positive species (guinea pig).

P 92-1240

Manufacturer. Confidential.

Chemical. (G) Sulfonated polyacrylate, aromatic substituted, sodium salt.

Use/Production. (G) Antiprecipitant, dispersant. Prod. range: 102,648 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: LD50 > 1,000 ppm 96hr species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1241

Manufacturer. Confidential.

Chemical. (G) Sulfonated polyacrylate, aromatic substituted, sodium salt.

Use/Production. (G) Antiprecipitant, dispersant. Prod. range: 102,648 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: LD50 > 1,000 ppm 96hr species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1242

Manufacturer. Confidential.

Chemical. (G) Sulfonated polyacrylate, aromatic substituted, potassium salt.

Use/Production. (G) Antiprecipitant, dispersant. Prod. range: 102,648 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: LD50 > 1,000 ppm 96hr species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1243

Manufacturer. Confidential.

Chemical. (G) Sulfonated polyacrylated, aromatic substituted, potassium salt.

Use/Production. (G) Antiprecipitant, dispersant. Prod. range: 102,648 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: LD50 > 1,000 ppm 96hr species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1244

Manufacturer. Confidential.

Chemical. (G) Sulfonated polyacrylate, aromatic substituted, ammonium salt.

Use/Production. (G) Antiprecipitant, dispersant. Prod. range: 102,648 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: LD50 > 1,000 ppm 96hr species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1245

Manufacturer. Confidential.

Chemical. (G) Sulfonated polyacrylate, aromatic substituted, ammonium salt.

Use/Production. (G) Antiprecipitant, dispersant. Prod. range: 102,648 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: LD50 > 1,000 ppm 96hr species (rainbow trout). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1246

Manufacturer. Confidential.

Chemical. (S) Neopentyl glycol; diphenylmethane diisocyanate; polycaprolactone diol; polycaprolactone triol.

Use/Production. (G) Coating resin. Prod. range: Confidential.

Dated: August 6, 1992.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-19210 Filed 8-11-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59311; FRL-4160-5]

Certain Chemical; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 92-16, August 20, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-59311)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW, Rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 92-16

Close of Review Period. September 3, 1992.

Importer. Basf Corporation.

Chemical. (G) Self-crosslinking butadiene styrene copolymer.

Use/Import. (S) Binder for nonwovens. Import range: Confidential.

Dated: August 6, 1992.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-19211 Filed 8-11-92 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 5, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission, contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of

Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0298.

Title: Part 61—Tariffs (Other than the tariff review plan).

Action: Revision of a currently approved collection.

Respondent: Businesses or other for-profit.

Frequency of Response: On occasion reporting and Other: tariffs required by CC Docket 91–35 (enclosed) must be filed at least 90 days prior to 1/10/93.

Estimated Annual Burden: 2,700 responses; 258.13 hours average burden per response; 696,950 hours total annual burden.

Needs and Uses: Various sections of the Communications Act of 1934, as amended, require that common carriers establish just and reasonable charges, practices, and regulations for the services they provide. The schedules containing these charges, practices, and regulations must be filed with the Commission, which is required to determine whether such schedules are just, reasonable, and not unduly discriminatory. Part 61 of the Commission's rules establishes the procedures for filing tariffs that contain the charges, practices, and regulations of common carriers, supporting economic data, and other related documents. It prescribes the framework for the initial establishment of and subsequent revisions to tariffs. Tariffs that do not conform to part 61 requirements may be rejected. Under section 226(e)(1), the Commission was required to determine in a rulemaking proceeding, whether call aggregators should be required to allow consumers to use equal access ("10XXX") codes to initiate operator-assisted calls through their operator service providers of choice. The FCC adopted such requirements because 10XXX codes are the most efficient access method and their availability enhances the ability of consumers to exercise their right of choice in the operator services marketplace. Section 226(g) of the Act, provides that the FCC "shall require such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud." Upon reconsideration, the FCC determined that potentially fraudulent calling associated with 10XXX dialing sequences could be prevented in part through blocking and screening services designed to control such fraudulent calling. The Commission ordered local exchange carriers to provide such services pursuant to tariff within six months of release of the Order on Reconsideration. The Commission required local exchange carriers to file with the Commission tariffs for the mandatory international blocking services on statutory notice, to be effective to later than six months from the release of this Order. The Commission did not specify tariff filing requirements for the mandatory screening services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–19125 Filed 8–11–92; 8:45 am]

BILLING CODE 6712–01–M

[DA 92–1088]

Database of Multipoint Distribution Service and Multichannel Multipoint Distribution Service; Applications and Licenses Put Out for Public Comment

August 7, 1992.

On April 9, 1992, the Commission adopted a Notice of Proposed Rule Making in PR Docket No. 92–80 (Notice) that contained various proposals intended to reduce delays in processing of applications for stations in the Multipoint Distribution and Multichannel Multipoint Distribution Services (collectively referred to as MDS). The Notice indicated that to expedite processing, we will assemble a consolidated database comprised of all licenses and applications for the 2150–2162 MHz and 2500–2690 MHz bands. Specifically, the consolidated database, which will be published at a later date, will reflect all pending MDS (including H channels), Instructional Television Fixed Service (ITFS) and Operational Fixed Service (OFS) applications, as well as all existing MDS, ITFS and OFS licenses and ITFS registered receive sites.

In order to assemble the consolidated database, we must verify the accuracy of the MDS portion of the database. Therefore, the MDS portion of the database will be available for public comment on August 17, 1992. The database is current as of July 15, 1992 and the addenda is current as of August 3, 1992. Both documents are arranged alphabetically by state and, within each state, by city. All MDS applicants and licensees with licenses granted and applications filed on or before July 15, 1992 should examine the database in order to verify that the information regarding their applications and licenses is listed and is accurate. MDS applicants and licensees are required to report any discrepancies or omissions to the Commission no later than September 17, 1992, so that, where appropriate, corrections to this portion of the consolidated database can be made. This is *not* an opportunity to amend pending applications, and all submissions of this type will be summarily returned, with the possibility of the underlying application being dismissed, and may raise questions regarding the applicant's qualifications. See Notice of Proposed Rule Making, 7 FCC Rcd 3266, 3270 (1992).

All requested corrections to the database must be supported by persuasive evidence that a license was issued or an application was filed. Examples of persuasive evidence include a copy of a valid license; an FCC date-stamp copy of an application; a United States Postal Service Certified mail receipt stapled to a photocopy of the associated application; or a cancelled check that can be directly associated with the payment of an application fee for the filing of a particular application, and is also stapled to a photocopy of that application. As part of each requested correction, every licensee or applicant must certify under penalty of perjury that their submission is true and correct. See 47 CFR 1.16. A bare certification or representation that an application was filed or a license granted will not, however, be considered persuasive evidence that a license was issued or an application was filed. We further remind all those requesting corrections of their unconditional obligation, pursuant to 47 CFR 1.17, to respond truthfully. False and misleading requested corrections will be referred to the Department of Justice for possible criminal prosecution, pursuant to 18 U.S.C. 1001.

Copies of the MDS database will be available for public inspection during regular business hours at the following locations: (1) The Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., room 239, Washington, DC 20554; (2) the Licensing Division Reference Room, Private Radio Bureau Licensing Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245; (3) all Field Locations of the Federal Communications Commission's Field Operations Bureau (see attachment for Field Location addresses); (4) the Authorization and Evaluation Division of the Office of Engineering and Technology, 7435 Oakland Mills Road, Columbia, Maryland 21046; (5) the Field Office of the Common Carrier Bureau, 90 Church Street, room 1309–X, New York, New York 10007; (6) The Consumer Assistance and Small Business Division of the Office of Public Affairs, 1919 M Street, NW, room 259, Washington, DC 20554; (7) The Public Reference Room of the Mass Media Bureau, 1919 M Street.

NW., room 239, Washington, DC 20554; (8) The Federal Communications Commission Library, 1919 M Street, NW., room 639, Washington, DC 20554; and (9) The Public Reference Room of the Domestic Facilities Division, 2025 M Street, NW., room 6218, Washington, DC 20554, Monday–Friday, 8:30 a.m.–3 p.m. except 12:30 p.m.–1:30 p.m.

Copies or excerpts of the database may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Applicants and licensees claiming inaccuracies or omissions in the database must submit to the Commission, in written form and under original signature of the licensee or applicant, all requested corrections no later than 4:30 p.m., EDT, September 17, 1992. Any requested corrections received after that date and time will not be considered for inclusion in the consolidated database. Those applicants claiming to have pending applications but whose applications do not appear in the MDS database, and who fail to timely submit persuasive evidence demonstrating that their applications should have been included, will no longer be considered to have a pending application.

There are no filing fees associated with submission of requested corrections. Requested corrections to the MDS database shall only be submitted directly to the address indicated below, and will not be accepted or forwarded from any other location: Federal Communications Commission, Microwave Branch Database Project, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

By the Chiefs, Common Carrier and Private Radio Bureaus, and by the Office of the Managing Director.

For further information contact the Office of Public Affairs, Consumer Assistance and Small Business Division at (202) 632–7001.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

FCC OFFICE ADDRESSES

ALASKA, Anchorage Office, Federal Communications Commission, 6721 West Raspberry Road, Anchorage, Alaska 99502–1896, Phone: (907) 243–2153.

*ARIZONA, Douglas Office, Federal Communications Commission, P.O. Box 6, Douglas, Arizona 85608–0006, Phone: (602) 364–8414.

CALIFORNIA, San Diego Office, Federal Communications Commission, Interstate Office Park, 4542 Ruffner Street, room 370, San Diego, California 92111–2216, Phone: (619) 467–0349.

*CALIFORNIA, Livermore Office, Federal Communications Commission, P.O. Box 331, Livermore, California 94551–0311, Phone: (510) 447–3614.

CALIFORNIA, Los Angeles Office, Federal Communications Commission, Cerritos Corporate Tower, room 680, 18000 Studebaker Road, Cerritos, California 90701–3684, Phone: (310) 809–2098.

CALIFORNIA, San Francisco Office, Federal Communications Commission, 3777 Depot Road, room 420, Hayward, California 94545–1914, Phone: (510) 732–9040.

COLORADO, Denver Office, Federal Communications Commission, 165 South Union Blvd., suite 860, Lakewood, Colorado 80228–2213, Phone: (303) 969–6497/8.

*FLORIDA, Vero Beach Office, Federal Communications Commission, P.O. Box 1730, Vero Beach, Florida 32961–1730, Phone: (407) 778–3755.

FLORIDA, Miami Office, Federal Communications Commission, Rochester Building, room 310, 8390 N.W. 53rd Street, Miami, Florida 33166–4666, Phone: (305) 526–7420.

FLORIDA, Tampa Office, Federal Communications Commission, 2203 N. Lois Avenue, room 1215, Tampa, Florida 33607–2356, Phone: (813) 228–2872.

GEORGIA, Atlanta Office, Federal Communications Commission, 3575 Koger Blvd., Koger Center-Gwinnett, room 320, Duluth, Georgia 30136–4958, Phone: (404) 279–4821.

*GEORGIA, Powder Springs Office, Federal Communications Commission, P.O. Box 85, Powder Springs, Georgia 30073–0085, Phone: (404) 943–5420.

HAWAII, Honolulu Office, Federal Communications Commission, P.O. 1030, Waipahu, Hawaii 96797–1030, Phone: (808) 677–3318.

ILLINOIS, Chicago Office, Federal Communications Commission, Park Ridge Office Center, room 306, 1550 Northwest Highway, Park Ridge, Illinois 60068–1460, Phone: (312) 353–0195.

LOUISIANA, New Orleans Office, Federal Communications Commission, 800 West Commerce Road, room 505, New Orleans, Louisiana 70123–3333, Phone: (504) 589–2095.

*MAINE, Belfast Office, Federal Communications Commission, P.O. Box 470, Belfast, Maine 04915–0470, Phone: (207) 338–4088.

MARYLAND, Baltimore Office, Federal Communications Commission, 1017 Federal Building, 31 Hopkins Plaza, Baltimore, Maryland 21201–2802, Phone: (410) 962–2728.

*MARYLAND, Laurel Office, Federal Communications Commission, P.O. Box 250, Columbia, Maryland 21045–9998, Phone: (301) 725–3474.

MASSACHUSETTS, Boston Office, Federal Communications Commission, 1 Batterymarch Park, Quincy, Massachusetts 02169–7495, Phone: (617) 770–4023.

*MICHIGAN, Allegan Office, Federal Communications Commission, P.O. Box 89, Allegan, Michigan 49010–0437, Phone: (616) 673–2063.

MICHIGAN, Detroit Office, Federal Communications Commission, 24897 Hathaway Street, Farmington Hills, Michigan 48335–1552, Phone: (313) 226–6078.

MINNESOTA, St. Paul Office, Federal Communications Commission, 693 Federal Bldg. & U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101–1467, Phone: (612) 290–3819.

MISSOURI, Kansas City Office, Federal Communications Commission, 8800 East 63rd Street, room 320, Kansas City, Missouri 64133–4595, Phone: (816) 353–3773.

*NEBRASKA, Grand Island Office, Federal Communications Commission, P.O. Box 1588, Grand Island, Nebraska 68802–1588, Phone: (308) 381–4721.

NEW YORK, Buffalo Office, Federal Communications Commission, 1307 Federal Building, 111 West Huron Street, Buffalo, New York 14202–2398, Phone: (716) 846–4511.

NEW YORK, New York Office, Federal Communications Commission, 201 Varick Street, New York, New York 10014–4870, Phone: (212) 620–3437/8.

OREGON, Portland Office, Federal Communications Commission, 1782 Federal Building, 1220 S.W. Third Avenue, Portland, Oregon 97204–2898, Phone: (503) 326–4114/5.

PENNSYLVANIA, Philadelphia Office, Federal Communications Commission, One Oxford Valley Office Bldg., room 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047–1859, Phone: (215) 752–1324.

PUERTO RICO, San Juan Office, Federal Communications Commission, US Federal Building, room 747, Hato Rey, Puerto Rico 00918–1731, Phone: (809) 766–5567.

TEXAS, Dallas Office, Federal Communications Commission, 9330 LBJ Freeway, room 1170, Dallas, Texas 75243–3429, Phone: (214) 235–3369.

TEXAS, Houston Office, Federal Communications Commission, 1225 North Loop West, room 900, Houston, Texas 77008–1775, Phone: (713) 861–6200.

*TEXAS, Kingsville Office, Federal Communications Commission, P.O. Box 632, Kingsville, Texas 78363–0632, Phone: (512) 592–2531.

VIRGINIA, Norfolk Office, Federal Communications Commission, 1200 Communications Circle, Virginia Beach, Virginia 23455–3725, Phone: (804) 441–6472.

*WASHINGTON, Ferndale Office, Federal Communications Commission, 1330 Loomis Trail Road, Custer, Washington, 98240–9303, Phone: (206) 354–4892.

WASHINGTON, Seattle Office, Federal Communications Commission, 11410 NE. 122nd Way, suite 312, Kirkland, Washington 98034–6927, Phone: (206) 821–9037.

*Licenses and examinations are not available * locations

[FR Doc. 92–19240 Filed 8–11–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-951-DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 4, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA-951), dated August 4, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 4, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms, tornadoes, and flooding on July 12, 1992, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be designated at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Skaroni of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been effected adversely by this declared major disaster:

The counties of Franklin, Logan, Ross, and Shelby for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-19165 Filed 8-11-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Relocation of Commission Headquarters and Shortened Filing Hours

Notice is given that, effective August 17, 1992, the Federal Maritime Commission will relocate from 1100 L Street, NW., Washington, DC 20573-0001 to 800 North Capitol Street, NW., Washington, DC 20573-0001.

Disruptions caused by the relocation will affect the following public services:

1. *Secretary's Office.* The Office of the Secretary will be unable to receive filings at 1100 L Street, NW., after 12 noon on Friday, August 14, 1992. Receipt of filings will resume Monday, August 17, 1992, after 8:30 a.m., at 800 North Capitol Street, NW.

2. *Tariff Library.* The tariff library will be closed from Monday, August 10, 1992, through Friday, August 14, 1992, and will reopen to the public on Monday, August 17, 1992. Tariffs may be filed at the Commission's mail room during business hours from August 10—August 14. The mailroom is located at room 10416, 1100 L Street, NW. After hours filings may continue to be made at the "lock-box" in the lobby of 1100 L Street, NW. until 9 a.m., the morning of August 17, 1992. At that time, the receipts will be emptied and the "lock-box" relocated to 800 North Capitol Street.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19124 Filed 8-11-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean fright forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Transcend Services Inc., 2200 E. College Ave., Suite 2-B, Cudahy, WI 53110, Officer: John A. Bodovinac, President.

Liberty Transfer & Storage, Inc., 5202 Eisenhower Ave., Alexandria, VA 22304, Officer: Mohammed Alhasasneh, Stockholder.

Auto Driveaway Co., 310 S. Michigan Ave., Chicago, IL 60604, Officers: John F. Sohl, Chairman of the Board, Brandon A. Sohl, President, Rose A. Sohl, Director.

Costless Inc., 1901-E Associates Lane., Charlotte, NC 28219, Officers: Pierre Aboukhater, President, Edouard Rassie, Director, Antoine C. Bikhazi, Director, Ziad Korban, Director, Georges E. Majaes, Director.

Arubex International Services Corp., 2315 N.W. 107th Ave., B-35, Miami, FL 33172, Officer: Carlos Reyes, Jr., Treas./Secr./Dir./Stockh.

Astral Freight Services Inc., 1625 N.W. 79th Ave., Miami, FL 33126, Officers: Eliane Lessa, President/Director/Stockholder, Ney Lessa, Vice President/Director/Stockholder.

By the Federal Maritime Commission.

Dated: August 6, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19122 Filed 8-11-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3228.

Name: Mattice Construction, Inc. dba Willis International.

Address: 18 Koger Center, Suite 214, Norfolk, VA 23502.

Date Revoked: June 17, 1992.

Reason: Failed to furnish a valid surety bond.

License Number: 295.

Name: Skyline Shipping Co., Inc.

Address: c/o George Funaro & Co., One Penn Plaza #3515, New York, NY 10119.

Date Revoked: July 7, 1992.

Reason: Surrendered license voluntarily.

License Number: 2918.

Name: Star-Trans International, Inc.

Address: 9 Empire Blvd., South Hackensack, NJ 07606.

Date Revoked: July 9, 1992.

Reason: Failed to furnish a valid surety bond.

License Number: 2626.

Name: R.N. Forwarding Co., Inc..

Address: 305 Broadway, New York, NY 10007.

Date Revoked: July 10, 1992.

Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92-19123 Filed 8-11-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barnett Merger Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 4, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Merger Corporation, Jacksonville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Florida Bank, N.A., Tampa, Florida; Barnett Bank of Central Florida, N.A., Orlando, Florida; Barnett Bank of Highlands County, Sebring, Florida; Barnett Bank of Lake County, N.A., Eustis, Florida; Barnett Bank of Lee County, N.A., Fort Myers, Florida; Barnett Bank of Manatee County, N.A., Bradenton, Florida; Barnett Bank of Naples, Naples, Florida; Barnett Bank of Pasco County, Holiday, Florida; Barnett Bank of Pinellas County, St. Petersburg, Florida; Barnett Bank of Polk County, Lakeland, Florida; Barnett Bank of Southwest Florida, Sarasota, Florida; Barnett Bank of the Suncoast, N.A., Brooksville, Florida; Barnett Bank of Tallahassee, Tallahassee, Florida; Barnett Bank of Tampa, N.A., Tampa, Florida; Barnett Bank of Volusia County, DeLand, Florida; and Barnett Bank of West Florida, Pensacola, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Farmers & Merchants Bancshares, Inc., Burlington, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank & Trust, Burlington, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Catoosa Bancshares, Inc., Catoosa, Oklahoma, and thereby indirectly acquire 1st Bank of Catoosa, Catoosa, Oklahoma.

2. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Security Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Security Bank, Tulsa, Oklahoma.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Second Century Financial Corporation, Perry, Kansas; to become a bank holding company by acquiring 90.6 percent of the voting shares of The Bank of Perry, Perry, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Childress Bancshares, Inc., Childress, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Childress Bancshares of Delaware, Inc., Wilmington, Delaware, which has applied to become a bank holding company by acquiring 100 percent of the voting shares of First Bank & Trust of Childress, Childress, Texas.

Board of Governors of the Federal Reserve System, August 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19147 Filed 8-11-92; 8:45 am]

BILLING CODE 6210-01-F

Caisse Nationale de Credit Agricole; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later thanSeptember 4, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Caisse Nationale de Credit Agricole, Paris, France; to engage *de novo* through its subsidiary, Credit Agricole Securities, New York, New York, in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19146 Filed 8-11-92; 8:45 am]

BILLING CODE 6210-01-F

Phillip B. Eastep, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 1, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. A group comprised of the following 11 shareholders to acquire an additional 51.03 percent for a total of 72.47 percent of the voting shares of Gardner Bancshares, Inc., Gardner, Kansas, and thereby indirectly acquire Gardner National Bank, Gardner, Kansas: *Phillip B. Eastep*, Cherryvale, Kansas (16.69 percent); Jon E. Harrison, Wichita, Kansas (11.64 percent); Michael S. Mitchell, Chanute, Kansas (18.35 percent); Kenneth L. McCoy, Lenexa, Kansas (4.59 percent); Donald C. Demo, Independence, Kansas (2.29 percent); Richard Michael Mendlick, Olathe, Kansas (3.67 percent); Daniel L. Mildfelt, Chanute, Kansas (0.48 percent); Michael J. Mildfelt, Wichita, Kansas (1.01 percent); Paul Walters, Lake Quivera, Kansas (2.29 percent); Warren Gfeller, Linwood, Kansas (6.87 percent); and Ruth Mary Webber, Chanute, Kansas (4.59 percent).

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Herschel Gary Blankenship, Southlake, Texas; to acquire an additional 1.36 percent for a total of 23.90 percent, and Cynthia Lynne Blankenship, Southlake, Texas, to acquire an additional 0.51 percent for a total of 1.90 percent of the voting shares of Greater Southwest Bancshares, Inc., Irving, Texas, and thereby indirectly acquire Bank of the West, Irving, Texas.

Board of Governors of the Federal Reserve System, August 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19150 Filed 8-11-92; 8:45 am]

BILLING CODE 6210-01-F

PNC Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. PNC Financial Corp., Pittsburgh, Pennsylvania; to acquire Flagship Financial Corp., Jenkintown, Pennsylvania, and its wholly-owned subsidiaries, First American Savings, F.A., Jenkintown, Pennsylvania, and Brandywine Savings Bank, PaSA, Downingtown, Pennsylvania, and thereby merge the thrift institutions into its wholly-owned subsidiary, Provident National Bank, Philadelphia, Pennsylvania.

Board of Governors of the Federal Reserve System, August 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19149 Filed 8-11-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Government Auditing Standards Advisory Council; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: The United States General Accounting Office has scheduled a meeting of the Government Auditing Standards Advisory Council on September 14, 1992, from 8:30 a.m. until 5 p.m., and September 15 from 8:30 until 1 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting will consist of review of the minutes of the May meeting, and discussion of the draft proposed changes to the Government Auditing Standards.

Any interested person may attend the meeting as an observer.

FOR FURTHER INFORMATION CONTACT: William J. Anderson, Jr., Project Manager, U.S. General Accounting Office, 441 G St., NW., room 6025, Washington, DC 20548 or call (202) 275-9319.

DATES: September 14-15, 1992.

ADDESSES 441 G St., NW., room 7313, Washington, DC 20548.

Dated: August 7, 1992.
Donald H. Chapin,
Assistant Comptroller General.
[FR Doc. 92-19178 Filed 8-11-92; 8:45 am]
BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement and Proposed Funding Priority and Special Consideration For Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration (HRSA) announces that application for fiscal year (FY) 1993 Grants for Residency Training and Advanced Education in the General Practice of Dentistry and being accepted under the authority of section 785 of the Public Health Service Act (the Act) extended by the Health Professions Reauthorization Act of 1988, Title VI, Public Law 100-607. Comments are invited on the proposed funding priority and special consideration.

This program announcement is subject to reauthorization of this legislative authority and the appropriation of funds.

The Administrations's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this prupose, they can be awarded in a timely fashion consistent with the needs of the program as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 785 of the PHS Act authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

To receive support, programs must meet the requirements of final regulations at 42 CFR part 57, subpart L. The period of Federal support should not exceed 3 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The grant program for Residency Training and Advanced Education in the General Practice of Dentistry is related to the priority area of Oral Health. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Eligible Applicants

To be eligible for a Grant for Residency Training and Advanced Education in the General Practice of Dentistry, the applicant shall:

(a) Be a public or nonprofit private school of dentistry or an accredited postgraduate dental training institution (hospital, medical center, or other entity) and be accredited by the appropriate accrediting body, and

(b) Be located in any one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palua), the Republic of the Marshall Islands, and the Federated States of Micronesia.

Categories of Program Support

There will be no funding preference between residency training programs and advanced educational programs in general dentistry. Grant support will be available for three distinct categories of program development. Applications must address at lest one of these categories.

Category 1: Program Initiation

An applicant may request support to assist in establishing a new program. Support may be for 3 years of program operation, or for up to 1 year of program planning and development, following by 2 years of program operation. An applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1, 1993). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum/and or facilities to enhance the quality of the program.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act.

(2) The degree to which the proposed project adequately provides for meeting the project requirements.

(3) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner.

(4) The extent to which the objectives of the program are consistent with the purposes of the grant program and the extent to which the evaluation methodology will effectively assess the impact of the project.

(5) The extent to which the proposal demonstrates a need for the project.

(6) The extent to which present or potential problems are understood by the applicant and the extent to which solutions to these problems have been developed.

(7) The extent to which the organizational and administrative relationships between institutional and programmatic components of the project enhance the achievement of project objectives.

(8) The extent to which the curriculum will enhance the trainee's ability to

become an efficient, effective competent practitioner of general dentistry.

(9) The qualifications of proposed staff and faculty.

(10) The extent to which the trainee recruitment and selection process assures that highly qualified trainees with a true interest in general practice are enrolled in the program.

(11) The extent to which the facilities and equipment used in the training program are appropriate to the general practice of dentistry.

(12) The potential of the project to continue on a self-sustaining basis after the period of grant support.

(13) The extent to which the budget justification is reasonable and indicates that institutional support to the project is provided to the maximum extent possible.

(14) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Funding Preference

The following funding preference was established in FY 1992 after public comment (57 FR 11325) and the Administration is extending this preference in FY 1993. In determining the order of funding of approved applications, a funding preference will be given to approved applications which propose to establish new Post Graduate Year-1 training positions, whether through the establishment of a new program or the expansion of an existing program.

First funding within this preference will be for approved applications designed to offer substantial clinical experiences for trainees to provide primary care services to underserved and high risk populations. The experiences must include training at one or more of the following entities: PHS 332 health professional shortage area (HPSA); health care facility that draws at least 50 percent of its patients from HPSA designated areas or populations; PHS 329 migrant health center; PHS 330 community health center; health care facility of the Indian Health Service (IHS); State designated clinic/center serving an underserved population, or other rural/urban health clinic that meets grant program requirements.

Applicants may address the funding preference by:

1. Establishing a new accredited advanced general dentistry program in one or more of the prescribed entities:

2. Establishing trainee off-site rotations into one or more of the prescribed entities as part of a new or existing advanced general dentistry program; or

3. Increasing the number of training positions in an existing advanced general dentistry program that currently provides training experiences in one or more of the prescribed entities, either by location of the primary site or by off-site rotations.

The following guidelines must be addressed within the application when requesting the funding preference:

(a) The new training positions must be PGY–1 positions.

(b) In regard to service to underserved and high risk populations, 20 percent of each resident's training time over the course of the training program must occur in one or more of the above eligible settings.

Proposed Funding Priority for Fiscal Year 1993

In determining the order of funding of approved applications, the HRSA is proposing that a funding priority be given to applicants which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas. This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Established Special Consideration

The following special considerations were established in FY 1992 after public comment (57 FR 11325) and the Administration is extending these special considerations in FY 1993. In determining the order of funding of approved applications, special consideration will be given to applicants that:

1. Propose didactic and clinical training experiences concerning ambulatory and inpatient case management of HIV/AIDS infected individuals;

2. Propose multidisciplinary geriatric training experience in ambulatory settings and inpatient and extended care facilities; and/or

3. Propose didactic and clinical training experiences in dental care for the medically compromised, chronically ill and physically or mentally handicapped.

Definitions

The following definitions apply to those training sites/facilities included in the proposed funding preference listed above:

Community health center means an entity as defined in section 330 of the Public Health Service Act and in regulations at 42 CFR 51c.102(c).

Health professional shortage area means an area designated under section 332 of the PHS Act.

Migrant health center means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(1).

Additional Information

Interested persons are invited to comment on the proposed funding priority and special consideration. The comment period is 30 days. All comments received on or before September 11, 1992 will be considered before the final funding priority and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priority and special consideration will be applied. Written comments should be addressed to: Mr. Neil Sampson, Director, Division of Associated, Dental,

and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 am and 5 pm.

Application Requests

Grant application materials are being mailed only in response to requests received. Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Judy Bowen, Grants Management Specialist (D–30), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Completed applications should be sent to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Richard Weaver, Chief, Dental Health Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–15, Rockville, Maryland 20857, Telephone: (301) 443–6837.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785, and 786 for fiscal year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is October 16, 1992. Applications will be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be acceptable as proof of timely mailing. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Grants for Residency Training and Advanced Education in the General Practice of Dentistry is listed at 93.897 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: July 16, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–19161 Filed 8–11–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 10–11, 1992, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 10 from 9 a.m. to 5 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552(c)(6), title 5, U.S.C., sec. 10(d) of Public Law 92–463, the Council meeting will be closed to the public on September 11 from approximately 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and rooster of the council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 30, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–19137 Filed 8–11–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority

Part HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services is amended to reflect the establishment of the Division of Trauma and Emergency Medical Systems. Under HB–20, Organization and Functions amend the functional statements for the Bureau of Health Resources Development (HBB), Health Resources and Services Administration (HB) by adding the following functional statement after the Division of Facilities Loans (HBB7); Division of Trauma and Emergency Medical Systems (HBB8): Plans, directs, coordinates, and monitors a broad range of activities relating to the field of emergency medical services (EMS) and trauma system planning and implementation. Specifically: (1) Develops, implements, and maintains a program of grants to public and nonprofit private organizations for the improvement of trauma care in rural areas and to states for the purpose of developing, implementing, monitoring, and evaluating the trauma care component of a State's EMS plans; (2) manages a program of grants to States for the purpose of developing, implementing, monitoring, and

evaluating the trauma care component of a State's EMS plan; (3) develops a model trauma plan and provides technical assistance to States in implementing their trauma plans based on the model; (4) develops, maintains and disseminates information on trauma systems, providing technical assistance, maintaining an information clearinghouse and sponsoring workshops and conferences; (5) fosters cooperation with other Federal agencies and between state agencies relating to trauma system planning, implementation, and evaluation; (6) establishes and maintains an Advisory Council on trauma care systems; (7) monitors trends and analyzes data on the effectiveness of trauma centers and trauma systems on patient outcome; (8) coordinates collection of information with other units of the Federal Government concerned with EMS and trauma systems (e.g., the Centers for Disease Control and the National Highway Traffic Safety Administration); (9) maintains working relationships with State activities and professional organizations in the field of EMS and trauma systems; (10) maintains and/or fosters new relationships with public and private organizations (e.g., the American Hospital Association, the American College of Surgeons, the American College of Emergency Physicians, the American Trauma Society, and the American Society of Critical Care Nurses) to promote the concepts of trauma services and emergency medical services, to follow trends in trauma and emergency medical services, and to maintain working knowledge of the clinical status of emergency medicine; and (11) develops and provides information on emergency medical services and trauma systems for professional associations, health providers, consumers, health insurers, medical societies, State health departments, and the general public.

Dated: July 28, 1992.

R. G. Harmon,

Administrator, Health Resources and Services Administration.

[FR Doc. 92-19163 Filed 8-11-92; 8:45 am]

BILLING CODE 1160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-013-02-4410-13; GP2-345]

Klamath Falls Resource Area; Availability

AGENCY: Bureau of Land Management, Klamath Falls Resource Area.

ACTION: Notice of availability of draft resource management plan/environmental impact statement for the Klamath Falls Resource Area of the Lakeview District.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a draft resource management plan/environmental impact statement (RMP/EIS) for the Klamath Falls Resource Area (KFRA) of the Lakeview District, Oregon has been prepared and is available for review and comment. The Draft RMP/EIS describes and analyzes future options for managing approximately 212,000 acres of partially forested public land and 21,000 acres of non-federal surface ownership with federal mineral estate administered by the Bureau of Land Management in Klamath County, just east of the Cascade Range in southern Oregon.

Decisions generated during this planning process will supercede land use planning guidance presented in the Lost River and Jackson-Klamath Management Framework Plans (MFPs) including the 1988 Lost River land tenure amendment, as well as land use guidance for the Lost River Resource Area Off-Road Vehicle Implementation Plan, the decision record for the 1981 Lakeview District Geothermal/Oil and Gas Environmental Assessment (EA), and the Klamath Basin EA for Proposal Geothermal Leasing (written in 1975 and supplemented in 1981). The Draft RMP/EIS also will supercede the records of decision for the Klamath Falls Resource Area portions of the 1984 Medford Grazing Management EIS and 1982 Lakeview Grazing Management EIS.

Copies of the Draft RMP/EIS and a summary of it may be obtained from the Klamath Falls Resource Area office. Public reading copies will be available for review at the public libraries in Klamath Falls (Oregon) and Redding (California), the Klamath County Office Building, all government document repository libraries, all BLM State Offices, most BLM District Offices, and at the following locations:

Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW., Washington, DC 20240.

Public Room, Oregon State Office, 1300 N.E. 44th Avenue, Portland, Oregon 97208.

Open houses, which will provide opportunities for the public to discuss the Draft RMP/EIS, will be held at the Klamath Falls Resource Area office. The dates and times will be announced in a separate mailer and through the local media.

DATES: Written comments should be addressed to A. Barron Bail, Area Manager, Klamath Falls Resource Area BLM, 2795 Anderson Avenue, Building 25, Klamath Falls, OR 97603.

FOR FURTHER INFORMATION CONTACT: Cathy Humphrey, RMP Team Leader, Klamath Falls Resource Area office, Phone (503) 883-6916.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS describes and analyzes seven alternatives to resolve the following issues; (1) Timber production practices, (2) old growth forests and habitat diversity, (3) threatened and endangered and other special status species habitat (including habitat for the northern spotted owl), (4) special areas, (5) visual resources, (6) stream/riparian/water quality, (7) recreation resources, (8) wild and scenic rivers, (9) land tenure, (10) rural interface areas, (11) range management, and (12) proposed hydroelectric or alternative energy projects. The issues are analyzed in seven distinct alternatives.

In the BLM's Preferred alternative, water quality would be maintained or improved primarily by a combination of best management practices and exclusion of selected areas from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other important streams, generally third order and larger.

Approximately 4,550 acres would be managed to maintain and strengthen a system of protected habitat areas, which is expected to increase the amount of old growth stands in the planning area from 8,700 acres to 15,160 acres over the next 100 years.

Approximately 51,400 acres would be managed for timber production, with restrictions to protect or enhance other resource values. The annual allowable timber sale quantity would be 1.027 million cubic feet (0.779 mmcf west of Highway 97 and 0.248 mmcf east of Highway 97). To contribute to biological diversity, standing trees, snags, and dead and down woody material would be retained.

Management would provide 13,185 animal unit months in the livestock grazing program.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, BLM would manage habitats of federal candidate, state listed, and Bureau sensitive species to maintain their populations at a level that would avoid endangering the species.

Management would provide for a wide variety of recreation opportunities,

with particular emphasis on enhancement of opportunities for dispersed recreation activities including, hunting, fishing and hiking, as well as providing outdoor recreation activities in areas that are both close to population centers and accessible by vehicles.

One river segment covering 11.0 miles would be found suitable for designation under the National Wild and Scenic Rivers Act, and 23.2 miles of river that were found eligible for designation and studied by the BLM would be found not suitable for designation.

Most BLM-administered lands would remain available for mineral leasing and location, but 300 acres would be closed to leasing for oil and gas and geothermal resources, and 4,300 acres would be closed to location of mining claims.

The RMP/EIS proposes designation of three new areas of critical environmental concern (ACEC). The Preferred alternative would designate the following ACECs with the noted restrictions.

	Area name	Acce	Vegetation harvest	ORV-use	Mineral leasing	Rights of-way
Miller Creek	2,000	R	P	R	R	R.
Yainax Butte	720	R	R	R	R	NC.
Upper Klamath River	4,960	R	R	R	R	R.

NC = No change from existing situation
R = Use is allowed but with restrictions
P = Use is prohibited
NA = Use is not applicable to this area

There were five potential ACEC areas identified that met the Bureau ACEC criteria of relevance and importance that are not included in the Preferred alternative. They include: Surveyor Forest Area, 150 acres; Tunnel Creek, 280 acres; Spencer Creek, 320 acres; The Bumpheads, 50 acres; and Pacific Crest Trail, 620 acres.

This Notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs and the requirements of the final revised Department of the Interior-Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, pg. 39454).

Dated: July 31, 1992.

Terry H. Sodorff,

Acting District Manager.

[FR Doc. 92-19156 Filed 8-11-92; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-01-4332-02]

Phoenix District Advisory Council Meeting

Date: September 18, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets September 18, 1992 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona at 9 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

—Wild Horse and Burro Program.

—Kingman Resource Area Resource Management Plan.

—Mineral Development Issues.

—BLM 2015 Update.

—BLM Management Updates.

—Business from the Floor.

—Comments and Statements.

—Future Meetings and Agenda Topics.

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Dated: July 27, 1992.

David J. Miller,

Associate District Manager.

[FR Doc. 92-19157 Filed 8-11-92; 8:45 am]

BILLING CODE 4320-02-M

National Park Service

Antietam National Battlefield—Notice of Availability of the Record of Decision for the Environmental Impact Statement and General Management Plan, Antietam National Battlefield, Sharpsburg, MD

SUMMARY: This notice announces the availability of the Record of Decision for the final environmental impact statement (FEIS) and General Management Plan (GMP) for Antietam National Battlefield.

Record of Decision; General Management Plan/Antietam National Battlefield

Introduction

In May 1992, the proposed Antietam National Battlefield General Management Plan/Final Environmental Impact Statement (GMP/FEIS) was made available to the public. The GMP/FEIS evaluates the environmental consequences of the proposed plan and its alternatives. The purpose of this record of decision (ROD) is to document the National Park Service's (NPS) determination on how Antietam National Battlefield will be managed and developed for the next 10–15 years. Copies of the ROD are being distributed to federal, state and local government agencies and other interested parties. In addition, the ROD is being printed in the **Federal Register**, and is available at the Washington County Public Library in Hagerstown, Maryland, as well as park headquarters at Antietam National Battlefield in Sharpsburg, Maryland.

Decision and Rationale

After analysis of the proposed plan and alternatives as presented in GMP/FEIS and consideration of public comments on the plan, the NPS has determined that the proposed plan in the May 1992 General Management Plan provides acceptable management direction for Antietam National Battlefield and is the environmentally preferable alternative. Restoration actions will return the landscape to a more historic appearance. Prior to implementation of the plan, the National Park Service will carry out archaeological surveys and test excavations in all areas that will be

affected by proposed ground disturbance. The proposed plan's elements are considered technically and economically feasible and the proposed plan represents a sound balance between protecting resources, providing a suitable visitor experience and cooperation with state, local and private entities to ensure preservation of the rural/agricultural landscape inside and adjacent to the battlefield boundary.

All practicable means will be taken to avoid or minimize environmental harm or harm to cultural and archaeological resources in implementing the plan. This will include close monitoring during construction of new facilities to avoid adverse impacts on cultural and natural resources. Other mitigating measures and compliance requirements incorporated in the plan's implementation that must be adhered to are identified on pages 55–58 of the final environmental impact statement (April 1992).

Summary of Alternatives Considered and Description of the Proposed Action

The alternatives considered in the general management plan were:

- Alternative A—No Action
- Alternative B—(Proposed Action) 1862 Scene Restoration
- Alternative C—Commemorative Period Scene Restoration
- In Alternative B, a net total of seven acres of prime and unique farmlands will be recovered, about 345 acres of limestone forest woodlands will be reforested, habitat diversity will be increased, providing additional habitat for the state-listed and federally proposed endangered loggerhead shrike and the state-proposed threatened white trout-lily, decreasing automobile emissions in the park, and reducing erosion into Antietam Creek at Burnside Bridge.

It provides for restoration of the battlefield landscape to its approximate appearance on the eve of the battle of September 17, 1862. Restoration actions are in keeping with the 1960 legislative mandate "to provide for the maintenance of the site * * * in, or its restoration to, substantially the condition in which it was at the time of the battle: (Pub. L. 86–438)." Other actions under Alternative B include simplifying the automobile tour route so that it focuses on the three main battle phases, incorporating new interpretive features and media to enhance visitor experiences, and cooperating with state, local and private entities to ensure preservation of the rural/agricultural landscape inside and adjacent to the battlefield. Restoration actions under Alternative B return the landscape to a more historic appearance by reestablishing many of the farm fields, woods, orchards, fence lines and historic trace roads that existed in 1862, and restoring the exteriors of several historic farmhouses. Four roads considered of historical significance at the battlefield (representative of the 1890s commemorative period) would be removed, and other 1890s roads would be restored to their 1862 condition. Some new developments (roads, parking areas and interpretive features) would be introduced into the historic landscape, but they would be designed and sited to minimize their intrusion upon the scene. Some modern structures would be removed.

Changes to the Proposed Plan in the Final GMP/FEIS

As per a suggestion from a member of the public, additional trees that would be suitable for use by the loggerhead shrike have been added to the text on page 14.

The NPS will explore the possibility of expanding the boundary to include a Confederate cemetery as described on page 17 under Land Protection.

The path leading from the parking lot at Burnside Bridge will not be realigned as described in the draft plan, due to its historic location. Instead, the surface material will be changed to blend in better with the hillside.

On page 18, the Civil War Sites Advisory Commission that was described in the draft plan, as providing guidance to Antietam National Battlefield managers, has been changed. This commission was formed for a different purpose, and it was pointed out that its function was not to provide guidance at specific park areas. The final plan reflects this change and encourages the Washington County Commissioners to establish a local board that would make suggestions to the NPS on matters relating to historic preservation and activities at the national battlefield.

Section 106 compliance requirements described on pages 56–57 in the final have been modified from the draft, due to comments received from the state historic preservation officer.

Conclusion

It is our determination that the proposed plan for management direction and land protection presented in the May 1992 Antietam National Battlefield General Management Plan and Final Environmental Impact Statement, and changes addressed in this record of decision, are in keeping with Public Law 86–438 which mandated the NPS to restore the historic scene for public understanding, and with other applicable laws and regulations.

Therefore, the proposed plan in the general management plan, As Herein Modified, is accepted and approved today as the management approach to be followed at Antietam National Battlefield.

Recommended:

Susan K. Moore,

Superintendent.

Dated: July 21, 1992.

Approved:

Robert Stanton,

Regional Director, National Capital Region.

Dated: July 30, 1992.

[FR Doc. 92–19096 Filed 8–11–92; 8:45 am]

BILLING CODE 4310–70–M

Sudbury, Assabet and Concord Rivers Wild and Scenic Study; Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app. 1 s 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, August 27, 1992.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. in the Board of Selectmen's Meeting Room, Bedford Town Hall, Bedford, Massachusetts (Bedford Town Hall is on the south side of Great Road where Routes 4, 62, and 225 converge in Bedford Center. From Route 128 take exit for Routes 4/225 West and travel approximately 2.3 miles. Town Hall is on the left. From west, Town Hall is approximately 0.3 miles on right from the intersections of Route 4/225 and 62).

Agenda

1. Welcome, introductions, comments—Bill Sullivan;
2. Approval of minutes from 7/30 meeting;
3. Discussion—Proposed Format for Issues Identification Forums to be held

in September and October as presented by the Public Involvement Subcommittee;

4. Discussion—Proposed Study Committee Procedural Bylaws, based on review of draft Farmington River Study Committee bylaws;

5. Subcommittee Appointments:

A. River Conservation Planning Subcommittee;

B. Instream Flow Study Subcommittee:

6. Opportunity for Public Comment;

7. Other Business;

A. Next Meeting Dates and Location.

Dated: August 3, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-19196 Filed 8-11-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-324]

Certain Acid-Washed Denim Garments and Accessories; Determination That a Violation of Section 337 Exists, Issuance of General Exclusion Order, and Issuance of Consent Orders Covering Seven Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is given that the Commission has: (1) Determined that a violation of section 337 of the Tariff Act of 1930 exists in the above-captioned investigation, (2) issued a general exclusion order, and (3) issued consent orders covering seven respondents. With certain exceptions, the exclusion order prohibits the unlicensed importation from any country of denim garments and accessories made by the acid-washed process of claim 6 of U.S. Letters Patent 4,740,213 (the '213 patent). In determining that a violation of section 337 exists, the Commission reviewed and reversed the finding of the presiding administrative law judge (ALJ) that claim 6 of the '213 patent was invalid on the basis of anticipation and obviousness.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3116. Copies of the Commission's order, the nonconfidential version of the opinion issued in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205-2648.

SUPPLEMENTARY INFORMATION: On January 2, 1991, Greater Texas Finishing Corporation and Golden Trade S.r.L. filed a complaint alleging a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, or sale after importation of acid-washed denim products by reason of infringement of claims 6 and 14 of U.S. Letters Patent 4,740,213. The Commission voted to institute an investigation of the complaint on January 28, 1991, and published notice of institution of the investigation in the **Federal Register**. 56 FR 4851 (Feb. 6, 1991).

On April 6, 1992, the presiding ALJ issued an ID in which he found no violation of section 337. The ALJ found no violation based on his finding that claim 6 of the '213 patent was invalid as anticipated and obvious. Claim 14 of the '213 patent had previously been withdrawn from the investigation. The ALJ also found that: claim 6 of the '213 patent was adequately described in the specification of the U.S. patent application; the remaining respondents have practiced the process at issue abroad, or have imported into the United States products processed abroad according to the process at issue; and there exists a domestic industry in the United States practicing the '213 patent.

The Commission determined to review the portions of the ID in which the ALJ found claim 6 of the '213 patent to the invalid. 57 FR 22484 (May 28, 1992). The Commission's notice of review requested, and parties subsequently filed, submissions and rebuttals on the issue under review and on remedy, the public interest, and bonding. No submissions of government agencies or other members of the public were received.

The Commission held oral argument on July 8, 1992. The Commission investigative attorney (IA) and counsel for complainants and several sets of respondents appeared and presented argument. The Commission requested post-argument submissions regarding whether to exempt respondents subject to consent orders from the coverage of any exclusion order the Commission might issue. Submissions on that question were filed by complainants, the IA, and several respondents.

The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and by Commission Interim rules 210.56 and 210.58 (19 CFR 210.56 and 210.58).

Issued: August 6, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19158 Filed 8-11-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-317]

Certain Internal Mixing Devices and Components Thereof; Commission Determination Not To Review an Initial Determination Extending the Administrative Deadline

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) declaring the above-captioned investigation "more complicated". The Commission notes that this investigation is on remand from the U.S. Court of Appeals for the Federal Circuit, and is therefore not subject to a statutory deadline for its completion. The Commission construes the subject ID as extending the administrative deadline for completion of the investigation, rather than as designating the investigation "more complicated," which designation is inapplicable to an investigation without a statutory deadline. The administrative deadline for completion of the investigation is extended until September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On July 6, 1992, complainant Farrel Corporation and respondents Pomini Farrel S.p.A. and Pomini Inc. jointly moved to have the investigation declared "more complicated," thereby extending the administrative deadline for completion of the investigation by six months. On July 7, 1992, the Commission investigative attorneys (IAs) filed a response in support of the motion. On July 8, 1992, the presiding ALJ issued an ID designating the investigation "more

complicated", and extending the administrative deadline for completion of the investigation by six months, *i.e.*, until September 1, 1993. The ALJ determined that the investigation should be declared more complicated because of the complexity of the subject matter involved in the investigation, and the potential effect of an expected arbitration decision by the International Chamber of Commerce, International Court of Arbitration. No petitions for review or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 5, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–19159 Filed 8–11–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–340]

Certain Specimen Container Systems and Components Including Alignment Indicator Labels, and Method of Use; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 6, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sage Products, Inc., 815 Tek Drive, Crystal Lake, Illinois 60014–9693. Complainant supplemented the complaint by filing a submission dated July 20, 1992. The complaint, as supplemented, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain specimen container systems and components, including alignment indicator labels, by reason of alleged infringement of claims 1–8 and 14 of U.S. Letters Patent 5,048,711, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Gabrielle Siman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2573.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on August 3, 1992, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain specimen container systems or components thereof by reason of alleged infringement of claims 1–8 or 14 of U.S. Letters Patent 5,048,711, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Sage Products, Inc., 815 Tek Drive, Crystal Lake, Illinois 60014–9693.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Starplex Scientific, Inc., 50 Steinway—Unit 2, Etobicoke, Ontario, Canada M9W 6Y3.

(c) Gabrielle Siman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401F, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such a response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 4, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–19160 Filed 8–11–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 426)]

CSX Transportation, Inc.—Abandonment—In Fayette County, PA, and Monongalia and Preston Counties, WV

The Commission has issued a certificate authorizing CSX Transportation, Inc. (CSXT), to abandon 49.89 miles of railroad (1) between milepost 73.0 at Brownfield, PA, and milepost 102.5 at Morgantown, WV, and (2) between milepost 0.0 at Morgantown

and milepost 20.39 at Reedsville, WV, in Fayette County, PA, and Monongalia and Preston Counties, WV. The abandonment certificate will become effective September 11, 1992, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate CSXT.

Any offers of financial assistance must be filed with the Commission and CSXT no later than 10 days from the date of publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 4, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19192 Filed 8–11–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 424X)]

CSX Transportation, Inc.—Abandonment Exemption—in Mason County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts CSX Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903–10904 to permit CSXT to abandon a 0.73-mile line of railroad between mileposts CB–136.50 and CB–137.23, in Mason County, MI, subject to standard labor protection conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 11, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 24, 1992. Petitions for stay must be filed by August 27, 1992. Requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by September 1, 1992. Petitions to reopen must be filed by September 7, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 424X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610; [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: August 4, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19193 Filed 8–11–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 21215 (Sub-No. 5)]

Seaboard Air Line Railroad Company—Merger—Atlantic Coast Line Railroad Company; Petition To Remove Traffic Protective Conditions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reopening a railroad merger proceeding to consider removing traffic protective conditions.

SUMMARY: In *Seaboard Air Line R. Co.—Merger—Atlantic Coast Line*, 320 I.C.C. 122 (1963), as modified in *Seaboard Coast Line R. Co.—Invest. of Control*, 360 I.C.C. 582 (1979), a merger was approved, subject to conditions. The Commission has granted a petition filed by CSX Transportation, Inc. (CSXT), successor in interest, seeking removal of traffic protective conditions numbered 1 through 6 in Appendix XI to the above-cited merger decision.

The proceedings have been reopened under Finance Docket No. 21215 (Sub-No. 5). The modified procedure will be followed. Persons interested in opposing removal of the conditions must submit a notice of intent to participate (an original plus one copy) to the Commission, with a copy of CSXT. CSXT shall serve a copy of its petition on all parties filing notices of intenr t⅛o participate that have not previously been served. A schedule is established for filing evidence and argument in opposition and CSXT's rebuttal.

DATES: Notices of intent to participate are due by September 1, 1992. CSXT shall serve a copy of its petition on parties filing notices of intent to participate who have not been previously served, by September 11, 1992. Evidence and argument in opposition to removal of the conditions (an original plus 10 copies) are due by November 10, 1992. CSXT's rebuttal (an original plus 10 copies) is due by December 10, 1992.

ADDRESSES: Send copies of notices of intent to participate and evidence and argument in opposition to:

(1) Office of The Secretary, Interstate Commerce Commission, Case Control Branch, Washington, DC 20423.

(2) Petitioner's representative: Ronald S. Flagg, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610; [TDD for hearing impaired: (202) 927–5721]

Decided: August 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92–19191 Filed 8–11–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32107]

Yolo Shortline Railroad Company—Purchase and Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the purchase by Yolo Shortline Railroad Company (YSLR) of a 15.00-mile rail line owned by Union Pacific Railroad Company (UP), subject to standard labor protective conditions. UP has also agreed to grant YSLR

[1] See *Exempt. of Rail Line Abandonment—Offers of Finan. Assit.*, 4 I.C.C.2d 164 (1987).

trackage rights over 1.75-miles of connecting line, subject to standard labor protective conditions.

DATES: This exemption is effective on August 19, 1992. Petitions to reopen must be filed by September 8, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32107 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: David Magaw, Yolo Shortline Railroad Company, 3344 Braeburn Street, Sacramento, CA 95821

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610; [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19190 Filed 8–11–92; 8:45 am]

BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Bankruptcy Rules. The meeting will be open to public observation but not participation. The meeting wil commence each day at 9 a.m.

DATES: September 17–18, 1992.

ADDRESSES: Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: August 4, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92–19130 Filed 8–11–92; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is here given that a proposed consent decree in *United States* v. *Chevron U.S.A. Inc.*, Civil Action No. 88–6681, was lodged on August 5, 1992, with the United States District Court for the Eastern District of Pennsylvania. The action was brought pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The action sought civil penalties for the defendant's violation of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene, 40 CFR part 61, subparts A, J, and V, as well as injunctive relief against violation of the benzene NESHAP. In addition to providing for payment of civil penalties in the sum of $1,000,000, the consent decree requires the defendant to take steps to ensure future compliance with the benzene NESHAP, including undertaking a benzene NESHAP compliance audit.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 29530, and should refer to *United States* v. *Chevron U.S.A. Inc.*, (E.D. Pa.), DOJ Ref. No. 90–5–2–1–1124.

The proposed consent decree may be examined at the office of the United States Attorney, Philadelphia Life, Building, 13th Floor, suite 1300, 615 Chestnut Street, Philadelphia, Pennsylvania 19106; or at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $19.00 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–19116 Filed 8–11–92; 8:45 am]

BILLING CODE 4410–01–M

Second Amendment to Consent Order in Action To Enjoin Violations of the Clean Air Act and Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Second Amendment to Consent Order in *United States* v. *Consolidated Rail Corporation, et al.*, (N.D. Ohio), Civil Action No. C–82–2767, was lodged with the United States District Court for the Northern District of Ohio on July 17, 1992. The Second Amendment to Consent Order provides for stipulated penalties for violations of the terms of the original settlement in this matter relating to the control of fugitive air emissions from the coal piles at defendant's Astabula, Ohio facility. The Second Amendment to Consent Order resolves the outstanding claim for stipulated penalties and provides for changes in the coal pile-watering requirements of the original settlement. The Second Amendment to Consent Order also revises other portions of the original settlement, including the termination, stipulated penalties, record-keeping and force majeure sections.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Second Amendment to Consent Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Consolidated Rail Corporation, et al.*, D.O.J. Ref. No. 90–5–2–1–432A.

The Second Amendment to Consent Order may be examined at the Office of the United States Attorney, suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44114–1704; at the Region V office of the U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Second Amendment to Consent Order may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a

copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-19119 Filed 8-11-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095). Comments and questions about the items of this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration
Service Delivery Area Job Training or Modification or Plan
Revocation Appeals
1205-0208
On occasion
State or local governments
25 respondents; 2 hours per response; 50 total burden hours; no forms

The information collected will be used to determine whether the SDA Job Training Plan or Modification or the Plan Revocation disapprovals are in conformance with the Job Training Partnership Act (JTPA).

Signed at Washington, DC, this 7th day of August, 1992.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 92-19195 Filed 8-11-92; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Emergency Unemployment Compensation (EUC) Program; Changes in EUC Periods

This notice announces recent changes in benefit levels under the Emergency Unemployment Compensation Program.

Background

The following trigger changes have occurred in States since publication of the last notice regarding States' EUC status:

- July 12, 1992—New York decreased to 20 weeks
- July 19, 1992—Idaho decreased to 20 weeks.

In addition, Public Law 102-164 permits the Governor of a State to elect to trigger off an Extended Benefit (EB) Period in order to provide payment of EUC benefits to individuals who have exhausted their rights to regular compensation under the State law. Since publication of the last notice, in accordance with section 101(e) of Public Law 102-164, the Governor of Puerto Rico has elected to trigger off EB and instead pay EUC benefits. No compensation will be payable in Puerto Rico for any week beginning after July 18, 1992 in the EB Program while EUC benefits are available.

Information for Claimants

The duration of benefits payable in the EUC Period, and the terms and conditions on which they are payable, are governed by the Act and the operating instructions issued to the States by the U.S. Department of Labor. The State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EUC benefits (20 CFR 615.13(c)).

Persons who believe they may be entitled to EUC benefits, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on August 5, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-19194 Filed 8-11-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Presenting and Commissioning Challenge Section) to the National Council on the Arts will be held on September 2-3, 1992 from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506.

Portions of this meeting will be open to the public on September 2 from 9 a.m.-10 a.m. and September 3 from 5 p.m.-5:30 p.m. The topics will be welcoming remarks, overview of Challenge III, and policy discussion.

The remaining portions of this meeting on September 2 from 10 a.m.-5:30 p.m.

and September 3 from 9 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: August 4, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–19115 Filed 8–11–92; 8:45 am]

BILLING CODE 7537–01–M

Challenge Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Media Arts Challenge Section) to the National Council on the Arts will be held on September 15, 1992 from 9 a.m.–4 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–10 a.m. The topics will be introductory remarks and overview of Challenge III.

The remaining portion of this meeting from 10 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: August 4, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–19117 Filed 8–11–92; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Literature Challenge Section) to the National Council on the Arts will be held on September 10, 1992 from 9 a.m.–1 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–10 a.m. The topics will be introductory remarks and overview of Challenge III.

The remaining portion of this meeting from 10 a.m.–1 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: August 4, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–19116 Filed 8–11–92; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (General Services to the Field Section) to the National Council on the Arts will be held on September 1–2, 1992 from 9 a.m.–7 p.m. and September 3 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 3 from 2:30 p.m.–5 p.m. The topic will be policy discussion.

The remaining portions of this meeting on September 1–2 from 9 a.m.–7 p.m. and September 3 from 9 a.m.–2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the

determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: August 6, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-19189 Filed 8-11-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Investigation Financial Disclosure Policy

AGENCY: National Science Foundation.

ACTION: Extension of comment period for proposed Investigator Financial Disclosure Policy.

SUMMARY: This document extends until October 14, 1992, the deadline for submission of comments on the proposed Investigator Financial Disclosure Policy that was published in the Federal Register on July 16, 1992 (57 FR 31540). Comments were to have been submitted on or before September 14, 1992.

DATES: Written comments on the proposed policy must be postmarked no later than October 14, 1992.

ADDRESSES: Comments may be addressed to Miriam Leder, Assistant General Counsel, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Miriam Leder, 202-357-9435.

SUPPLEMENTARY INFORMATION: The National Science Foundation received a request from a university to extend the period for submission of comments on the proposed policy for one month. The extension was requested to enable faculty members to review and comment on the proposed policy. Many university faculty members are away from their universities in the summer, and do not return until the beginning of the academic year in September. The National Science Foundation found the request reasonable, and has granted the extension.

Vicki L. De Hullu,

Legal Office Administrator, National Science Foundation.

[FR Doc. 92-19145 Filed 8-11-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Fourth Meeting of the SCDAP/RELAP5 Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The SCDAP/RELAP5 Peer Review Committee will hold its fourth meeting to review the technical adequacy of the SCDAP/RELAP5 code.

DATES: September 14-18, 1992.

TIMES: 8:30 a.m. each day.

ADDRESSES: University of Wisconsin in Madison, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Dr. Y.S. Chen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-3566.

SUPPLEMENTARY INFORMATION: The SCDAP/RELAP5 Peer Review Committee will hold its fourth meeting to review the technical adequacy of the SCDAP/RELAP5 code on September 14-18, 1992, in Madison, Wisconsin. The SCDAP/RELAP5 code has been developed for best-estimate transient simulation of light water reactor coolant systems during severe accidents as well as large and small break loss-of-coolant accidents, and operational transients such as anticipated transient without SCRAM, loss of offsite power, loss of feedwater, and loss of flow. The code is based on three separate codes: RELAP5, SCDAP, and TRAP-MELT, which are combined to model the coupled interactions that occur between the Reactor Coolant System (RCS), the core, and the fission products during a severe accident. The newest version of the code is SCDAP/RELAP5/MOD3. A number of organizations inside and outside the NRC are using or planning to use the current version. Although the quality control and validation efforts are seen to be proceeding, there is a need to have a broad technical review by recognized experts to determine the technical adequacy of the SCDAP and TRAP-MELT portions of SCDAP/RELAP5 for the serious and complex analyses it is expected to perform.

This meeting will focus on developing a consensus and completing the review of technical adequacy of the SCDAP/RELAP5 code.

Dated at Rockville, Maryland, this 5th day of August 1992.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 92-19187 Filed 8-11-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30984; File No. SR-PHLX-92-4]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendments Thereto by the Philadelphia Stock Exchange, Inc., To Amend Certain PHLX Rules to Facilitate the Trading of NASDAQ/NMS Securities on the PHLX

July 31, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change for immediate effectiveness, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 13, 1992, the PHLX amended the rule change by withdrawing its request for immediate effectiveness and agreed to abide by the procedure specified in section 19(b)(2) of the Act.[1] On March 24, 1992, the PHLX amended a substantive provision of the proposed rule change,[2] and on June 30,

[1] See Letter to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, from Michele R. Weisbaum, Assistant General Counsel, PHLX, dated March 13, 1992.

[2] See letter to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, from William W. Uchimoto, General Counsel, PHLX, dated March 24, 1992.

1992, submitted a request for accelerated approval.[3] This release requests comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, proposes amendments to certain PHLX rules to facilitate the trading of NASDAQ/National Market System ("NMS") securities on PHLX pursuant to those securities being listed on the exchange or the granting of Unlisted Trading Privileges ("UTP"). This filing is made in connection with the Joint Reporting Plan ("plan") of the National Association of Securities Dealers ("NASD"), the American ("Amex"), Boston ("BSE"), Midwest ("MSE"), and Philadelphia Stock Exchanges, governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NMS securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[4]

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PHLX has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change and amendments thereto is to adapt PHLX rules to accommodate the trading of NASDAQ/NMS securities on the PHLX on a listed or UTP basis. The proposal adds Rule 233 entitled, "Trading in NASDAQ/NMS Securities," and amends the language of existing PHLX rules that would operate in conjunction with proposed Rule 233. Under the proposed rule change, the following PHLX operating rules would be modified to incorporate new language, accommodating the trading of NASDAQ/NMS securities on a UTP basis:

Rule 102: Specifies that all NASDAQ/NMS securities transactions must be conducted during the applicable Exchange floor hours.

Rule 104: Provides authority for appropriate members to trade NASDAQ/NMS securities with non-floor persons under Rule 233.

Rule 105: Declares that NASDAQ/NMS quotations displayed by competing markets shall have no standing in the trading crowds on the Floor under the PHLX recognized quotations rule.

Supplementary Material .01: Includes language requiring that in the event of unusual market conditions, as determined by the Floor Procedure Committee, quotations in a given issue will not be subject to firmness provided that the Exchange also notifies the processor for NASDAQ/NMS securities.

Rule 216: Requires that every specialist trading NASDAQ/NMS securities keep records in accordance with the Commission and Exchange recordkeeping rules.

Rule 225: Incorporates provisional language for dealing with odd-lot orders in NASDAQ/NMS securities.

Rule 226: Incorporates provisional language for dealing with round-lot orders in NASDAQ/NMS securities.

Rule 229: Enables specialists trading in NASDAQ/NMS securities to receive orders over the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"), but provides that such orders will not be subject to automatic parameters set forth by the PACE rule.

These standards are embodied in the goals set forth by the Commission in Securities Exchange Act Release No. 22412 on September 16, 1985. The PHLX also proposed these rules to be consistent with the Commission's stated standards for granting UTP to an exchange in NASDAQ/NMS securities. In particular, proposed PHLX Rule 132 codifies the necessary and appropriate language for exempting NASDAQ/NMS securities from off-board trading restrictions.

In consideration of the existing Commission short sale rule, Rule 10a–1 under the Act, the PHLX, in its original rule filing, proposed to amend its short sale rule, Rule 455, to give the Commission flexibility in determining whether or not the present short sale rule would exempt those NASDAQ/NMS securities being traded on a UTP basis. On Mary 24, 1992, in response to Commission concerns that the short sale rule exemption for all NASDAQ/NMS securities was too broad,[5] the PHLX amended the proposed rule change. The amendment provides an exemption only for non-NMS NASDAQ securities.[6]

Finally, PHLX Rule 606 is being amended to allow telephone access to the PHLX assigned specialist for any NASDAQ system market maker.

The PHLX believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange, specifically, the proposal is consistent with section 6(b)(5) because it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited and reviewed by the Floor Procedure Committee, which included the specialists and brokers who will be trading NASDAQ/NMS securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Exchange makes this request so that its members can begin trading NASDAQ/NMS securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading privileges UTP as soon as possible after the Exchange fulfills the requirements for reporting such securities under the Plan.

The Commission, however, has determined to notice the proposal for public comment pursuant section 19(b)(2) of the Act. Therefore, within 35 days of the date of publication of this

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[3] See letter to Elizabeth MacGregor, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, from William W. Uchimoto, General Counsel, PHLX dated June 30, 1992.

[4] See Securities Exchange Release No. 28146 (June 26, 1990), 55 FR 27917.

[5] See, SR–NASD–92–12 (April 9, 1992), the NASD's proposed short sale rule filing.

[6] See letter to Christine A. Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, SEC, from William W. Uchimoto, General Counsel, PHLX, dated March 24, 1992.

notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 2, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19121 Filed 8-11-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8-92-21]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act [Pub. L. 92-463; 5 U.S.C. App. II) notice is hereby given of the thirtieth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 24, 1992, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M. M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: July 29, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92-19172 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-14-M

[CGD8-92-20]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 3, 1992, in the Blackthorn Pavilion at the U.S. Coast Guard Base Galveston at the end of Ferry Road on Fort Point, Galveston, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: July 29, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92-19173 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-14-M

[CGD-92-19]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 3, 1992, in the Blackthorn Pavilion at the U.S. Coast Guard Base Galveston at the end of Ferry Road on Fort Point, Galveston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 Noon. The agenda for the meeting consists of the following items:

1. Call to Order:
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Mr. M.M. Ledet, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: July 29, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92-19174 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Shreveport Regional Airport, Shreveport, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Shreveport Airport Authority for Shreveport Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing an associated proposed Noise Compatibility Program that was submitted for Shreveport Regional Airport under part 150 and that this program will be approved or disapproved on or before January 25, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is July 29, 1992. The public comment period ends October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dean A. McMath, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0610, (817) 624–5594. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Shreveport Regional Airport are in compliance with applicable requirements of part 150, effective July 29, 1992. Further, FAA is reviewing a proposed Noise Compatibility Program for that airport which will be approved or disapproved on or before January 25, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Shreveport Airport Authority submitted to the FAA on February 13, 1991, and March 4, 1992, noise exposure maps, descriptions and other documentation which were produced during development of the FAR Part 150 Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Shreveport Airport Authority. The specific maps under consideration are Noise Exposure Map—1989 following page I–8 in the Noise Exposure Map document, and Noise Exposure Map—1996 following previously discussed map in the submission.

The FAA has determined that these maps for Shreveport Regional Airport are in compliance with applicable requirements. This determination is effective on July 29, 1992. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the Noise Compatibility Program for Shreveport Regional Airport, also effective on July 29, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 25, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, ASW–610, Forth Worth, Texas 76193–0610.

Shreveport Airport Authority, Shreveport Regional Airport, 5103 Hollywood Avenue, suite 300, Shreveport, Louisiana 71109.

Questions may be directed to the individual named above under the

heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, July 29, 1992.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 92-19227 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 1, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 6, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 22473.
Petitioner: Henson Aviation, Inc.
Sections of the FAR Affected: 14 CFR 93.123, 93.125, and 93.129.
Description of Relief Sought: To extend Exemption No. 3752C, which allows Henson Aviation (operating as a USAir Express carrier) to conduct operational evaluation flights using portions of runways under certain conditions at Washington National Airport.

Docket No.: 22473.
Petitioner: Trans World Express.
Sections of the FAR Affected: 14 CFR 93.123, 93.125, and 93.129.
Description of Relief Sought: To extend Exemption No. 3752C, which allows Trans World Express (operating as RBD) to conduct operational evaluation flights using portions of runways under certain conditions at Washington National Airport.

Docket No.: 26752.
Petitioner: Douglas Aircraft Company.
Sections of the FAR Affected: 14 CFR 43.1.
Description of Relief Sought: To allow minor aircraft damage or malfunction occurrences during the final delivery phase to be handled under the Douglas Quality System approved under Production Certificate No. 27 and not be treated as maintenance under FAR part 43.

Docket No.: 26898.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought: To allow Boeing to use export airworthiness approvals tags (FAA Form 8130-3) for Class II and III products located at non-U.S. locations where Boeing controls the inventory and ensures that the original state of airworthiness for these products is not compromised.

Docket No.: 26912.
Petitioner: Embraer.
Sections of the FAR Affected: 14 CFR 135.178(f)(2).
Description of Relief Sought: To exempt Embraer from the requirement to provide enough space next to each Type I or Type II emergency exit on EMB-120 airplanes to allow a crewmember to assist in the evacuation of passengers without reducing the unobstructed width of the passageway.

Docket No.: 26922.
Petitioner: Boeing.
Sections of the FAR Affected: 14 CFR 25.855(c).
Description of Relief Sought: To exempt petitioner from the requirements of § 25.855(c), Amdt. 25-60, for the non-compliant areas of the forward partition, lower lobe, C cargo compartment, of the B-747-400F airplane.

Dispositions of Petitions

Docket No.: 22441.
Petitioner: United Airlines.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1) and appendix F.
Description of Relief Sought: To amend Exemption 3451, as amended, which allows United Airlines to conduct a Federal Aviation Administration (FAA)-monitored program under which United pilots-in-command, seconds-in-command and flight engineers will be able to meet ground and flight recurrent training and proficiency check requirements through a single annual visit to the training facility. Grant, June 30, 1992, Exemption No. 3451H.

Docket No.: 26101.
Petitioner: America West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.225.
Description of Relief Sought/Disposition: To extend Exemption No. 5133, as amended, which allows America West to operate four special slots at Washington National Airport that were formally operated by Braniff Airlines under FAA Exemption No. 3927. Grant, July 14, 1992, Exemption No. 5133C.

Docket No.: 26214.
Petitioner: Epps Air Service, Inc.
Sections of FAR Affected: 14 CFR 135.165(b)(5), (b)(6), and (b)(7).
Description of Relief Sought/Disposition: To extend Exemption No. 5252, as amended, which allows Epps Air Service, Inc., to operate certain airplanes equipped with one long-range navigation system and one high-frequency communication system in extended overwater operations. Grant, July 14, 1992, Exemption No. 5252A.

Docket No.: 006SW.
Petitioner: Robinson Helicopter Company.
Sections of the FAR Affected: 14 CFR 27.955(a)(7) and 27.1305(q).
Description of Relief Sought/Disposition: Requests an exemption from §§ 27.955(a)(7) and 27.1305(q) applying to the provision of a clogged fuel filter indicator for the R-44 fuel system and instead demonstrate compliance with the provisions of § 23.955(b) using the guidelines of

Advisory Circular 23.955–1. Partial Grant, July 2, 1992, Exemption No. 5437.

[FR Doc. 92–19209 Filed 8–11–92; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–92–23]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief form specified requirements of the Federal Aviation Regulations (14 CR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 1, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 5, 1992.

Denise D. Castaldo,
Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26898.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.343(c).
Description of Relief Sought: To permit ATA member airlines and similarly situated part 121 operators to operate aircraft, after May 26, 1994, that are not equipped with a digital flight data recorder which records 11, rather than 5, parameters of the aircraft operation.

Docket No.: 26914.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.583(a).
Description of Relief Sought: To allow petitioner's member airlines and other qualifying part 121 certificate holders to carry air traffic controllers and technical representatives aboard all-cargo airplanes.

Dispositions of Petitions

Docket No.: 22451.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.613, 121.619, and 121.625.
Description of Relief Sought: To extend Exemption No. 3585, as amended, which allows member airlines of Air Transport Association of America and similarly situated part 121 operators to dispatch an airplane, under IFR, to a destination airport and to list an alternate airport for that destination airport when the weather forecasts for either one or both of those airports indicate by the use of conditional words such as "occasionally," "intermittently," "briefly," or "a chance of," in the remarks section of such reports that the weather could be below authorized weather minimums at the time of arrival. Grant, July 30, 1992, Exemption No. 3585H.

Docket No.: 23543.
Petitioner: Arnautical, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 6163(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); and part 61, appendix A.
Description of Relief Sought/Disposition: To amend and extend Exemption No. 4581B, which allows Arnautical to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, July 28, 1992, Exemption No 4581C.

Docket No.: 25233.
Petitioner: Alaska Air Carriers Association.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: Initiated by FAA to amend Exemption No. 4802, as amended, which allows appropriately trained and certificated pilots employed by the 29 members of the Alaska Air Carriers Association to remove and reinstall aircraft cabin seats in remote areas when to FAA certificated mechanic is available to perform this task. Grant, July 24, 1992, Exemption No. 4802D.

Docket No.: 25252.
Petitioner: North American Airline Training Group.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1) and (e)(2); and part 61, appendix A.
Description of Relief Sought/Disposition: To extend Exemption No. 4959, as amended, which allows petitioner to use FAA-approved simulators to meet certain training and testing requirements of Part 61 of the FAR. Grant, July 28, 1992, Exemption No. 4959B.

Docket No.: 26093.
Petitioner: Aerovesta, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To extend Exemption No. 5215, which allows the appropriately trained and certificated pilots employed by Aerovesta to remove and install aircraft cabin seats and certain stretcher and base assemblies in Aerovesta's Cessna Model 441 aircraft. Grant, July 24, 1992, Exemption No. 5215A.

Docket No.: 26118.
Petitioner: Air Methods Corporation International.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/Disposition: To allow the pilots employed by petitioner to remove and reinstall the passenger seat at station 242 in Cheyenne II XL aircraft when such aircraft are to be used in air ambulance operations. Grant July 24, 1992, Exemption No. 5479.

Docket No.: 26161.
Petitioner: General Electric Government Services.
Sections of the FAR Affected: 14 CFR 121.371(a).
Description of Relief Sought/Disposition: To allow petitioner to

contract with foreign original equipment manufacturers (OEM) for the inspection, repair, and overhaul of selected parts to support its Fairchild FH-227 aircraft program. Grant, July 24, 1992, Exemption No. 5481.

Docket No.: 26188.
Petitioner: Advanced Aviation Training, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); and part 61, appendix A.
Description of Relief Sought: To extend Exemption No. 5205, which allows petitioner to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, July 28, 1992, Exemption No. 5205A.

Docket No.: 26225.
Petitioner: Dale Aviation.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow properly trained pilots employed by petitioner to convert the cabins of its aircraft operated under part 135 of the FAR from passenger to cargo configurations, and the reverse, by removing and replacing passenger seats when such aircraft are specifically designed for that purpose. Grant, July 24, 1992, Exemption No. 5482.

Docket No.: 26495.
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow pilots employed by petitioner to remove and replace aircraft cabin seats when away from their maintenance base. Grant, July 28, 1992, Exemption No. 5483.

Docket No.: 26560.
Petitioner: Stanley Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow properly trained pilots employed by petitioner to convert the cabins of its aircraft operated under part 135 of the FAR from passenger to cargo configurations, and the converse, by removing and replacing passenger seats in aircraft that are designed specifically for that purpose. Grant, July 24, Exemption No. 5480.

Docket No.: 26609.
Petitioner: Jet Exam, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); and appendix A of part 61.
Description of Relief Sought: To amend Exemption No. 5373 to include alternate flight experience in lieu of some of the prerequisite flight experience currently stipulated in Condition 19 of Exemption No. 5373. This relief from Condition 19 is requested to the extent necessary to permit applicants for an ATP certificate to accomplish the entire practical test required by § 61.157 in Phase II or Phase III simulators. Grant, July 24, 1992, Exemption No. 5478.

Docket No.: 26857.
Petitioner: COMAIR, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6) and 121.413(b) and (c).
Description of Relief Sought: To allow petitioner to utilize certain qualified Canadair pilot flight and simulator instructors for the purpose of training petitioner's initial cadre of pilots in the Canadair CL-600-2B19 Regional Jet (CL-600) aircraft in the United States and Canada without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of subpart N of part 121 of the FAR. Partial Grant, July 28, 1992, Exemption No. 5485.

Docket No.: 26923.
Petitioner: Western Airlines, Inc.
Sections of the FAR Affected: 14 CFR part 133.
Description of Relief Sought: To allow petitioner to operate the MI-26 aircraft, with Russian crews, in logging operations in the United States. Denial, July 28, 1992, Exemption No. 5484.

[FR Doc. 92-19222 Filed 8-11-92; 8:45 am]
BILLING CODE 4910-13-M

Passenger Facility Charges; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Correction to notice of intent to rule on application to impose and use passenger facility charge (PFC) at Killeen Municipal Airport, Killeen, Texas.

SUMMARY: This correction reflects a clarification of the proposed class of carrier to be exempted from collecting PFC's at Killeen Municipal Airport.

In notice document 92-15059, beginning on page 28709, in the issue of Friday June 26, 1992, make the following correction:

On page 28710, in the 1st column, under **SUPPLEMENTARY INFORMATION:** in the 57th line, "Air carriers", should read "Part 135 Operators".

Issued in Fort Worth, Texas on July 17, 1992.
John M. Dempsey,
Manager, Airports Division.
[FR Doc. 92-19109 Filed 8-11-92; 8:45 am]
BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Correction to the monthly notice of PFC approvals and disapprovals.

SUMMARY: This is to correct the telephone number of the person to contact regarding the PFC application for the Portland International Airport, Portland, Oregon, and the name of the person to be contacted regarding the PFC application for the city and county of Denver, Colorado.

In notice document 92-12019 on page 21849 in the issue of Friday, May 22, 1992, in the third column, regarding the PFC for the Port of Portland, under "for further information contact", change the telephone number for Wade Bryant to (206) 227-2659. Also; in the third column under "for further information contact", change contact person to: Alan E. Wiechmann, FAA Denver Airports District Office, (303) 286-5537.

Issued in Washington, DC, on June 16, 1992.
Lowell H. Johnson,
Manager, Airports Financial Assistance Division, Office of Airport Planning and Programming.
[FR Doc. 92-19104 Filed 8-11-92; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Winnebago and Outagamie Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Winnebago and Outagamie Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, P.E., District Environmental Coordinator, 4502 Vernon Boulevard, Madison, Wisconsin 53705, telephone: (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of

Transportation and the Winnebago County Highway Department, will prepare an environmental impact statement (EIS) on a proposal to construct a west side arterial in Winnebago and Outagamie Counties, Wisconsin. The proposed improvement would involve the new construction of an 8-mile arterial between CTH JJ, about 1 mile west of USH 41 in Winnebago County and USH 10 in Outagamie County. Approximately 5 miles would be on a new alignment and 3 miles would upgrade existing roadways.

The improvement is considered necessary to accommodate existing and projected traffic demands in the rapidly growing west metropolitan area of the Fox Valley cities of Neenah, Menasha, and Appleton. Also included in this proposal is the construction of a new bridge over the Wisconsin Central LTD. Railroad. Alternatives under consideration include (1) take no action; (2) construct the limited access arterial from CTH JJ about eight miles to USH 10; and (3) construct the limited access arterial from CTH JJ about 10 miles to relocated STH 76. Alternative 3 involves 5.5 miles of construction along a new alignment and 4.5 miles of upgraded existing roadway.

An early coordination meeting of local officials will be held June 12, 1992. An agency scoping meeting will be held June 25, 1992. A public information meeting and a meeting of utility representatives will also be held in the Fox Valley area in July 1992. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed interest in, or are known to have interest in, this proposal. Additional public information meetings will be held prior to completion of the draft EIS. A public hearing on the draft EIS will be held. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing programs and activities apply to this program)

Issued on: August 4, 1992.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 92-19155 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modifications of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of applications have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with that suffix "P" denotes a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 27, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9316-X	Fluoroware, Inc. Chaska, MN (See Footnote 1).	9316
9374-X	Poly Processing Co. & Poly Cal Plastics Monroe, LA (See Footnote 2).	9374
9817-X	Hoover Group, Inc. Beatrice, NE (See Footnote 3).	9817
10084-X	Old Bridge Chemicals, Inc. Old Brodge, NJ (See Footnote 4).	10084
10318-X	Sonoco IBC Lavonia, GA (See Footnote 5).	10318
10340-X	Schutz Container Systems, Inc. North Branch, NJ (See Footnote 6).	10340
10698-X	Chilton Metal Products Division Chilton, WI (See Footnote 7).	10698

(1) To modify exemption to provide for 15 and 30 gallon capacity polyethylene overpack non-DOT specification packaging for use in transporting oxidizers and corrosive material.

(2) To renew and modify exemption to provide for additional tank constructed of plastic for use in transporting corrosive liquids, flammable liquids or an oxidizer and blasting agent.

(3) To authorize cargo vessel as an additional mode of transportation for shipment of certain corrosive and flammable liquids or an ozider in non-DOT specification polyethylene portable tanks.

(4) To convert a manufacture, mark and sell type exemption issued to Composite Trailer, Inc., to an offer type to provide for the shipment of certain hazardous materials an non-DOT specification glass fiber reinforced plastic cargo tanks.

(5) To modify exemption to provide for combustible liquid as an additional class of material for shipment by cargo vessel.

(6) To modify exemption to provide for an alternative overpack with tubular steel frame enclosure for use in transporting corrosive liquids, flammable liquids, and combustible liquids in polyethylene tanks.

(7) To modify exemption to increase the allowable wall stress of the non-DOT specification 48 cylinders to 21,000 psi.

Application No.	Applicant	Parties to exemption
6530-P	Valley Welding Supply Company, Wheeling, WV	6530
6874-P	ICI Canada Inc., North York, Ontario, CN	6874
7052-P	SMTEK, Inc., Newbury Park, CA	7052
7052-P	Magellan Systems Corporation, San Dimas, CA	7052
7268-P	Valley Welding Supply Company, Wheeling, WV	7268
7616-P	Chicago Central & Pacific Railroad Company, Waterloo, IA	7616
7943-P	AB-Chem Industries, El Cajon, CA	7943
8141-P	U.S. Department of Defense, Falls Church, VA (see footnote 1)	8141
8445-P	S&W Waste Inc., South Kearny, NJ	8445
8725-P	Natural Gas Vehicle Systems, Inc., Long Beach, CA	8725
8958-P	Beta Chemicals, Inc., Cerritos, CA	8958
8966-P	AB-Chem Industries, El Cajon, CA	8966
9047-P	Valley Welding Supply Company, Wheeling, WV	9047
9184-P	Timminco Metals, Buffalo Grove, IL (see footnote 2)	9184

Application No.	Applicant	Parties to exemption
9723-P	S&W Waste Inc., South Kearny, NJ	9723
9769-P	S&W Waste Inc., South Kearny, NJ	9769
9783-P	Sanwey Industrial de Containers Ltd., Sao Paulo, Brazil	9783
9847-P	Praxair, Inc., Danbury, CT	9847
10001-P	Valley Welding Supply Company, Wheeling, WV	10001
10138-P	Nalco Chemical Company, Naperville, IL	10138
10184-P	Valley Welding Supply Company, Wheeling, WV	10184
10475-P	Monco, Inc., d/b/a/ Mid West Cylinder, Benson, MN	10475
10480-P	Praxair, Inc., Danbury CT	10480

(1) To authorize party status and modify exemption to provide for DOD packaging for use in transporting cryogenically frozen lithium batteries.
(2) To authorize party status and shipment of substances which in contact with water emit flammable gases, solid, n.o.s. as an additional commodity for shipment in polyethylene lined collapsible bags.

This notice of receipt of application for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.58(e)).

Issued in Washington, DC, on August 6, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-19207 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 11. 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10816-N	Electrical Rebuilders Sitka, AK	49 CFR 176.76(a)(2)	To authorize an additional method of packaging lead acid batteries for use in bulk transportation within freight containers. (Modes 1, 2, 3.)
10818-N	Bionomics, Inc. Providence, RI	49 CFR 173.197	To authorize shipment of regulated medical waste in a bulk shuttle type packaging of 43 cubic yard capacity which is overpacked in a steel trailer. (Mode 1.)
10838-N	Gustafson, Incorporated Dallas, TX	49 CFR 173 Subpart F, 173.114(a)(h)(3), 173.119, 173.256, 173.266, 173.268, 176.415, 176.83, 178.19, 178.253.	To authorize the manufacture, mark and sell of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed with a protective steel frame for shipment of various classes of hazardous materials. (Modes 1, 2, 3.)
10839-N	Ross Aviation, Inc. Albuquerque, NM	49 CFR 172.101, 172.204(c)(3), 173.27, 173.54(j), 175.30(a)(1), 175.320(b), 175.75 Part 107, Appendix B.	To authorize the transportation of Class A, B, and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
10840-N	The Chloramone Company Delaware City, DE.	49 CFR 173.302, 173.304, 173.34	To authorize the use of a non-DOT specification salvage cylinder for overpacking damaged or leaking cylinders containing sulfur dioxide classed as nonflammable gas. (Mode 1.)
10841-N	Georgia-Pacific Corporation Soctia, NY	49 CFR 173.114(Ca), 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245b, 173.365, 173.366, 173.367.	To authorize manufacture, mark and sell of non-reusable, fiberboard bulk boxes having two part woven polypropylene lining bag for use in transporting flammable solids, organic peroxide solids, oxidizers and dry oxidizers. (Modes 1, 2, 3.)
10843-N	Gopher Smelting & Refining Co. Eagan, MN.	49 CFR 173.260	To authorize the bulk transportation of wet electric storage batteries in a non-DOT specification container constructed of polypethylene material with a loaded capacity not to exceed 2000 pounds. (Mode 1.).
10844-N	Passaic Valley Sewerage Commissioners Newark, NJ.	49 CFR 174.67(j)	To authorize chlorine filled tank cars to remain connected during unloading without physical presence of an unloader. (Mode 2.)
10845-N	PPG Industries, Inc. Pittsburgh, PA	49 CFR 173.31(c)	To authorize the one-time shipment of certain rail cars, containing residual amounts of chlorine that have expired test dates. (Mode 2.)
10846-N	Ireco Incorporated Salt Lake City, UT	49 CFR 172.101	To authorize the transportation of ammonium nitrate, liquid (containing 35% or less water) classed as an oxidizer, in 111A100W6 stainless st tank cars. (Mode 2.)
10847-N	Brunswick Corporation Lincoln, NE	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To manufacture, mark and sell composite hooped wrapped aluminum cylinders for use in transporting various gases classed as flammable and nonflammable. (Modes 1, 2, 3.)
10848-N	Plastic Reel Corporation of America Lyndhurst, NJ.	49 CFR 173.183	To authorize the transportation of non-DOT specification plastic packaging for use in transporting flame retardant plastic film. (Modes 1, 4.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10850–N	Ashland Chemical Dublin, OH	49 CFR 173.34(e)(9)	To exempt from hydrostatic testing DOT specification 4BW cylinders used for transporting dimethylethylamine and triethylamine classed as flammable liquids. (Mode 1.)
10851–N	Lincoln Pulp & Paper Company, Inc. Lincoln, ME.	49 CFR 174.67(j)	To authorize chlorine filled tank cars to remain during unloading without the physical presence of an unloader. (Mode 2.)
10856–N	Clean Earth Manufacturing, Inc. Birmingham, AL.	49 CFR 171.8(c)	To authorize the manufacture, mark and sell a roll on/roll off type cargo tank that may be loaded while removed from the motor vehicle for transporting various commodities as authorized by CFR in DOT specification 407 and 412 cargo tanks. (Mode 1.)
10857–N	Ansul Fire Protection Marinette, WI	49 CFR 173.302, 49 CFR 172.400, Part 174 (except section 174.24), Part 177 (except section 177.817), Subpart F of Part 172.	To authorize the transportation of a chemical spill control agent applicator device under conditions that correspond to the exceptions applicable to the transport of fire extinguishers charged with limited quantities of a compressed gas. (Modes 1, 2, 3, 4, 5.)
10858–N	Ashland Chemical, Inc. Columbus, OH	49 CFR 174.67(i)	To authorize tank cars containing various classes of hazardous materials to be exempt from physical presence of unloader during unloading. (Mode 2.)
10859–N	Morton International, Inc. Ogden, UT	49 CFR 177.848	To authorize the transportation of auto inflator propellants, classed as flammable solid, with relief from the segregation table. (Mode 1.)
10860–N	Defense Technology and Procurement Agency CH–3000 Berne 25, Switzerland.	49 CFR 172.101	To authorize the transportation of rocket motors, Class A explosives in metal containers on cargo only aircraft. (Mode 4.)
10861–N	General Chemical Corporation Parsippany, NJ.	49 CFR 173.29(c)(2)	To authorize a one-time shipment of a DOT Specification 111A10()W2 tank car tank which is overdue for retest and contains a residual amount of sulfuric acid, classed as a corrosive material. (Mode 2.)

Note: The comment period for the application filed by the Fibre Drum Technical Council (10836–N) published in the July 8, 1992, FEDERAL REGISTER has been extended to September 4, 1992.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92–19208 Filed 8–11–92; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES TRADE REPRESENTATIVE

Special Expedited Review to Consider Request to Remove Sulfanilic Acid From the List of Articles Eligible for Duty-Free Treatment Under the GSP and Deadlines for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Initiation of expedited GSP review and solicitation of public comment with respect to expedited consideration of request to remove sulfanilic acid from the list of articles eligible for duty-free treatment.

SUMMARY: The purpose of this notice is to announce the initiation of an expedited review to consider the removal of sulfanilic acid from the list of articles eligible for duty-free treatment under the GSP.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents relating to this review will be available for review by appointment with the USTR public reading room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. my calling (202) 395–6186.

SUPPLEMENTARY INFORMATION: On March 27, 1992, R–M Industries (R–M) filed a petition with the GSP Subcommittee of the TPSC seeking the expedited removal from duty-free GSP status of sulfanilic acid classified in subheading 2921.42.24 of the Harmonized Tariff Schedule of the United States (HTS). The TPSC has decided to accept the request for expedited consideration of the petition. Accordingly, this notice initiates an expedited review to consider the request from R–M to remove GSP duty-free treatment from sulfanilic acid provided for in HTS subheading 2921.42.24.

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to the case that is the subject of this notice. All such submissions should conform to 15 CFR 2007.0 et seq. In addition, the TPSC has requested that the United States International Trade Commission provide its advice as to the probable economic effect on United States industries producing like or directly competitive articles and on consumers of the removal of sulfanilic acid provided for in HTS subheading 2921.42.24 from eligibility for duty-free treatment under the GSP.

Interested parties may submit an original and fourteen (14) copies of written briefs or statements, in English, in connection with the article under consideration. This will be the only opportunity to submit written comments.

All submissions should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Comments must be received no later than 5 p.m. on September 16, 1992. Information submitted in connection with the expedited review will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential

version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-19164 Filed 8-11-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 156
Wednesday, August 12, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

TELEPHONE COMMISSION MEETING

DATE AND TIME: Friday, August 14, 1992.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425.

STATUS: Open to the Public.

August 14, 1992

I. Approval of Agenda
II. Announcements
III. Discussion of the draft report *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System*

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Dated: August 10, 1992.

Emma Monroig,

Solicitor.

[FR Doc. 92–19369 Filed 8–10–92; 3:33 pm]

BILLING CODE 6335-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held August 13, 1992, at the offices of the Farm Credit Administration in McLean, Virginia, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Loan Purchase and Sale Participation—Part 614, Subparts A and H (Final).
b. Suspension of Capital (Final).

Closed Session*

A. New Business

1. Enforcement Actions

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Dated: August 7, 1992.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 92–19351 Filed 8–10–92; 2:13 pm]

BILLING CODE 6705-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 Noon, Monday, August 17, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward form a previously announced meeting.

CONTACT PERSONS FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–19352 Filed 8–10–92; 8:45 am]

BILLING CODE 6210-01-M

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federal register

Wednesday
August 12, 1992

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 284

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, and Order Denying Rehearing and Granting Rehearing in Part and Clarification; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM91-11-002 and RM87-34-068; Order No. 636-A

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, and Order Denying Rehearing in Part, Granting Rehearing in Part, and Clarifying Order No. 636

Issued August 3, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing in part, granting rehearing in part, and clarifying order No. 636.

SUMMARY: On April 8, 1992, the Commission issued Order No. 636 (57 FR 13,267 (April 16, 1992), III FERC Stats. and Regs. ¶30,939) in which it changed its regulations to restructure the services provided by interstate natural gas pipelines. The changes are intended to ensure that transportation service is equal in quality for all gas supplies, whether the customer purchases the gas from the pipeline or from another supplier.

This order denies rehearing in part, grants rehearing in part, and clarifies Order No. 636 and makes several significant adjustments to the regulations in response to requests from small volume customers.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

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Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

I. Introduction

On April 8, 1992, the Federal Energy Regulatory Commission issued Order No. 636.[1] It requires significant structural changes in the services provided by natural gas pipelines. As discussed below, this order largely denies rehearing,[2] but grants rehearing in part to make a number of adjustments to Order No. 636 and clarifies Order No. 636.

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[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (April 16, 1992), III FERC Stats & Regs. ¶ 30,939 (1992).

[2] See the appendix for a list of the parties seeking rehearing or clarification or both.

II. Summary of Order No. 636 and Main Changes in This Order

In Order No. 636, the Commission set forth in detail its goals in, and reasons for, restructuring the regulation of interstate natural gas pipeline services. In brief, the Commission found that the pre-Order No. 636 regulatory structure of the pipeline industry has, and will continue to have, a harmful impact on all segments of the natural gas industry and on the Nation. The Commission concluded that it was appropriate to take remedial action to improve the competitive structure of the natural gas industry to further the creation of an efficient national wellhead market for gas without adversely affecting the quality and reliability of the service provided by pipelines to their customers. The Commission believes that its action will result in a modern, viable natural gas industry specifically fashioned to the needs of all gas consumers and the Nation for an adequate and reliable supply of clean and abundant natural gas at reasonable prices.

In brief, the salient aspects of Order No. 636 are as follows:

- Pipelines must unbundle (*i.e.*, separate) their sales and transportation services.
- Pipelines must provide access to storage on an open access contract basis.
- Pipelines must provide open access transportation services that are equal in quality for all gas supplies, whether purchased from the pipeline or elsewhere.
- Pipelines that provided a firm sales service on May 18, 1992, must offer a no-notice firm transportation service under which firm shippers may receive delivery of gas on demand up to their firm entitlements without incurring daily balancing and scheduling penalties.
- Pipelines must provide all shippers with equal and timely access to information relevant to the availability of their open access transportation services. The information must be provided through the use of an electronic bulletin board.
- Pipelines may not include in their tariffs any provision that inhibits the development of market centers.
- Open access pipelines must allow firm transportation customers of downstream pipelines to acquire capacity on upstream pipelines held by downstream pipelines.
- Pipelines must implement a capacity releasing program so that firm shippers can release unwanted capacity to those desiring capacity.
- Pipeline transportation rates must be developed under the Straight Fixed Variable (SFV) method of cost classification, allocation, and rate design unless the Commission permits the pipeline to use some other method; however, measures to mitigate cost shifts are required if the use of SFV will result in a 10 percent or greater increase in revenue responsibility for any historic customer class.
- Pipelines are granted blanket certificates for unbundled sales services and are subject to standards of conduct in connection with those services similar to those applicable to affiliate sales.[3] The unbundled sales services are subject to pregranted abandonment.
- Existing bundled firm sales entitlements are converted to unbundled firm sales entitlements and to unbundled firm transportation rights on the effective date of the particular pipeline's blanket sales certificate. However, effective on that date, pipeline firm sales customers may reduce, in whole or in part, their firm sales entitlements. Pipeline customers may not reduce their firm transportation rights unless the pipeline executes a contract with another shipper for the transportation rights or agrees to the reduction or termination of the contractual rights.

In addition, in Order No. 636, the Commission (1) amended § 284.221(d) of the Commission's regulations in further response to the remand of the United States Court of Appeals for the District of Columbia Circuit in *American Gas Association* v. *FERC*,[4] (2) concluded that pipelines should be able to recover 100 percent of their prudently incurred costs attributable to the transition required by Order No. 636, and (3) adopted measures governing the implementation of Order No. 636.

The Commission is largely upholding the regulations adopted in and requirements of Order No. 636 except for a number of changes in response to the petitions for rehearing. Among other things, as discussed below, the Commission is granting rehearing as follows. First, the Commission is requiring pipelines to maintain their one-part volumetric rates computed at an imputed load factor to determine the transportation rates for "small customers" (as discussed below) and is requiring pipelines, for a one-year period (from the effective date of the blanket sales certificate granted by Order No. 636), to sell gas to the small customers that elect to continue buying gas from the pipeline at a cost-based rate (based upon their actual price paid for gas). Second, the Commission is allowing, subject to certain restrictions, capacity releases for any period of less than one calendar month without prior posting on the electronic bulletin board or bidding for the released capacity. Third, while the Commission is requiring SFV for rate design (billing) and cost allocation purposes, it will allow the parties in the restructuring proceedings to consider the use of other ratemaking techniques to distribute revenue responsibility among customers, such as through the use of seasonal contract quantities or entitlements, if these ratemaking techniques help address significant cost shifts which might result from an allocation based only on peak day entitlements under SFV. Last, the Commission is requiring pipelines to recover 10 percent of their gas supply realignment costs from their part 284 interruptible transportation service.[5] The explanation and rationale for these adjustments are set forth below in the relevant sections.[6]

III. Legal Basis and Rationale for Unbundling

This part III addresses the rehearing requests with respect to the Commission's legal basis and rationale for adopting Order No. 636.

A. The Legal Basis

The Commission, in Order No. 636, concluded that the pipelines' bundled, city-gate, firm sales service contravenes Natural Gas Act (NGA) sections 4(b) and 5. The Commission, therefore, as required, determined the remedial action necessary to remedy the violations of the statutory standards.[7] This remedy consisted, among other things, of altering existing bundled sales contracts into two separate contracts for unbundled sales and transportation.

Various rehearing petitioners argue that the Commission has acted beyond its statutory authority by revoking or modifying certificates of public convenience and necessity for bundled sales service, by mandating new services, and by unbundling direct sales. In addition, a few petitioners argue that the Commission has violated the Administrative Procedure Act (APA) and the U.S. Constitution.

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[3] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988), *order on reh'g*, Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989), *order extending sunset date*, Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990), *order extending sunset date and amending final rule*, Order No. 497–C, 57 FR 9 (Jan. 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (1992), *off'd. in part and remanded in part*, Tenneco Gas v. FERC, No. 89–1768 (D.C. Cir. July 21, 1992).

[4] 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S.Ct. 957 (1991).

[5] As discussed below, the Commission encourages the pipeline and the parties to the restructuring proceedings to be creative in fashioning rate mechanisms, such as appropriate true-up mechanisms, that provide a reasonable opportunity for pipelines to recover (but not overrecover) those costs.

[6] For ease of reference, the organization of this order continues to follow the organization of subjects used in Order No. 636.

[7] Order No. 636, III FERC Stats. & Regs. Preambles ¶ 30,939 at p. 30,408–13.

1. Procedural Arguments

CNG Transmission Corporation (CNG) argues that Order No. 636 violates the Due Process Clause of the Constitution [8] and the procedural safeguards of the APA.[9] CNG asserts that those safeguards required the Commission to provide an opportunity for pipelines to comment on whether they can provide a reliable no-notice transportation service. ANR Pipeline Company (ANR) contends that Order No. 636 violated the APA because parties did not have the opportunity to show the lawfulness of their existing contracts. Southern Indiana Gas and Electric Company (Southern Indiana) also asserts the Commission did not provide due process to those affected by Order No. 636 because it failed to hold an evidentiary hearing, failed to follow the requirements of the NGA, exceeded its statutory authority and jurisdiction, and issued Order No. 636 without evidentiary support. Tenneco Gas (Tenneco) asserts that the Commission violated the notice and comment procedures of the APA by failing to properly address the comments made by the parties and failing to give notice of several aspects of the rule (*e.g.*, no-notice service).[10]

The Commission provided parties with an unprecedented input into the year-long development of the Notice of Proposed Rulemaking (NOPR), and thereafter, the final rule. There was more than an ample opportunity to comment on all aspects of the rule, including no-notice transportation. First, the July 31, 1991 NOPR [11] was, among other things, the outcome of a public conference held on May 10, 1991, where participants in the natural gas industry discussed with the Commission the future role of interstate natural gas pipelines in the natural gas markets. Second, parties submitted initial comments and reply comments to the NOPR.

Some of those comments raised concern about the reliability of unbundled transportation service in meeting the needs of LDCs to serve their customers at peak. For example, in their initial and reply comments, many pipelines and LDCs maintained that unbundling would prevent pipelines from providing the reliable, firm, city gate service, *i.e.*, no-notice service, that they provided in the past. Most producers and marketers, on the other hand, claimed that pipelines could replicate the bundled, firm, city gate service, *i.e.*, no-notice service, in an unbundled environment. In response, on December 27, 1991, the Commission gave notice of a technical conference to discuss operational aspects of the NOPR and specifically the ability of pipelines to provide an unbundled no-notice delivery service as a remedy to the reliability concerns raised in the comments. The December 27th Notice included several specific questions to which the public could respond concerning no-notice transportation service.[12]

The Commission held the technical conference on January 22, 1992. There was a wide-ranging discussion between the participants and the Commission addressing various operational issues, including no-notice transportation service. In addition, parties were given the opportunity to file additional comments as a result of the technical conference. And while the issue of no-notice service may not have been designated as such at the beginning of this proceeding, the parties have focused specifically on operational issues and the need for a reliable no-notice service. Accordingly, the Commission in Order No. 636 required the no-notice transportation service as part of the mandatory unbundling remedy under NGA Section 5(a).[13]

The industry's comments therefore provided the Commission with a great deal of helpful information on what operational controls are required to provide no-notice transportation service in an unbundled environment. A representative of CNG, in particular, appeared at the technical conference and addressed the issue of why CNG needs to control storage hourly in order to provide no-notice service.[14] Furthermore, at the January 22, 1992 technical conference, the witnesses sponsored by the Interstate Natural Gas Association of America (INGAA), which included representatives of various pipelines, conceded that pipelines could provide no-notice transportation service if they retained certain operational controls over their systems. That all these parties commented on all aspects of no-notice service signifies that they had adequate notice of this issue.

The Commission has adequately addressed the comments of the parties. The Commission, in Order No. 636, outlined the proposal in the NOPR on each issue, discussed the comments of the parties on the issue, and gave the reasons why it reached a particular outcome on each issue. The APA does not require an agency to respond to every fact or contention in the comments submitted, but only requires the agency to "respond[s] to significant points raised by the public." [15]

Colorado Interstate Gas Company (CIG) argues that Order No. 636 did not comply with the APA's official notice requirements with respect to the data relied upon by Order No. 636. CIG maintains that it is entitled to a hearing to test the accuracy of the data relied upon by the Commission, and to determine whether the data permit a conclusion other than that drawn by the Commission.

CIG is incorrect in its assertion that the Commission failed to follow the requirements of the APA. CIG relies on 5 U.S.C. 556, which does not apply to this proceeding.[16] This proceeding is a notice and comment rulemaking proceeding governed by 5 U.S.C. 553. That section applies since the Commission is not required by statute to hold a hearing in order to promulgate a rule. Section 553 states:

> After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

Moreover, CIG has offered nothing to warrant the need to hold a hearing about the accuracy of the data used by the Commission in Order No. 636. Those data, garnered from INGAA, the Energy Information Administration (EIA),

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[8] U.S. CONST. amend. V.

[9] 5 U.S.C. 553 (1988).

[10] ANR argues, without specificity, that the Commission contravened the APA by relying on Order No. 636 upon material and conclusions that were not identified in the Notice of Proposed Rulemaking.

[11] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, 56 FR 38372 (Aug. 13, 1991), FERC Statutes and Regulations ¶ 32,480 (1991).

[12] See 57 FR 385 (Jan. 6, 1992), III FERC Stats. & Regs. ¶ 35,022.

[13] See the more detailed discussion in Order No. 636 at pp. 30, 406–30, 409.

[14] Technical Conference Tr. 73–77.

[15] See Home Box Office v. FCC, 567 F.2d 9, 35–36, (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829 (1977). (Footnote omitted).

[16] Section 556(e), which was only partially quoted by CIG, states in full: "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary."

reports filed with the Commission, and other publicly available sources can be assumed to be accurate, especially since CIG has not offered anything to suggest the contrary. CIG merely asserts that the Commission erred by not holding a hearing. Hearings are held to establish disputed facts and are not needed to ventilate comparisons and conclusions.[17]

2. Natural Gas Act Authority

CIG, Arkla, Inc. (Arkla), Tenneco, Cincinnati Gas & Electric Company, *et al.* (Cincinnati Gas),[18] and Natural Gas Pipeline Company of America (Natural), argue that the Commission exceeded its authority under NGA section 5 to modify or revoke a pipeline's certificate issued under NGA section 7. For example, Arkla states that NGA section 5 does not vest the Commission with the authority to cancel unilaterally a certificated service without the pipeline's consent. Similarly, Cincinnati Gas and Natural argue that this change is too fundamental to be viewed as anything but a certificate revocation. Tenneco maintains that the Commission may not revoke a certificate absent a violation of the certificate's conditions. Cincinnati Gas adds that the Commission consistently recognized the limitations of its NGA section 5 authority, and the need for action under NGA section 7 when there is a significant modification in the type or kind of service that a pipeline offers. Finally, Arkla contends that the Commission can satisfy NGA section 5 only by holding a hearing, collecting evidence, and making individualized findings

As the Commission stated in Order No. 636, the Commission rejects contentions that its action under NGA section 5 violates NGA section 7 because the Commission lacks the authority to revoke, suspend, or adversely modify an issued and accepted certificate.[19] To the contrary, the Commission's action is within its authority under NGA section 5 to alter a pipeline's contractual terms and conditions of service to remedy an unlawful practice.[20]

The Commission adheres to its analysis and conclusion in Order No. 636 that its action under NGA section 5 is not an unlawful revocation or modification of a certificate of public convenience and necessity under NGA section 7. Section 7 cannot be read so narrowly as to permanently prevent the Commission from changing the terms and conditions under which a pipeline provides service, especially when the pipeline's obligation to serve and the LDC's entitlement under the certificate remain intact. Such a narrow reading of section 7 would prevent the Commission from making adjustments, contemplated by section 5, to the terms and conditions under which pipelines provide service when the Commission finds it necessary to satisfy the standards of the NGA in light of changing circumstances.

In this case, the regulations retain in an altered manner the LDC's entitlement to service and the pipeline's authorization and obligation to provide service.[21] An LDC and a pipeline are thus presented with two options. First, an LDC and a pipeline may agree upon the price for gas to be sold on an unbundled basis, while the firm transportation of gas to the city-gate under no-notice transportation service would continue to be priced under traditional ratemaking methods. Thus, their relationship would continue under the new terms and conditions of the pipeline's blanket transportation and blanket sales certificates. The pipeline's certificated obligations with respect to individual services are, in essence, merged into or subsumed within the pipelines' blanket certificates. Under the second option, if an LDC and a pipeline do not enter into an agreement pursuant to the procedures in Order No. 636, then and only then would the pipeline's sales service obligation cease as of the effective date of the tariff sheets filed in compliance with this rule. However, the pipeline must continue to provide transportation services to that customer, who, with the equality of transportation principles imposed here, is assured the ability to maintain reliable service.

Finally, Arkla's contention that the Commission can satisfy NGA section 5 only by holding a hearing, collecting evidence, and making individualized findings is without merit. In *Wisconsin Gas Co.* v. *FERC*,[22] the court specifically rejected contentions that the "after a hearing" requirement found in NGA section 5 must be satisfied through a formal, trial-type hearing.

The American Public Gas Association (APGA) contends that the commission has violated NGA section 7(a) by abolishing bundled firm sales service.[23] It argues that the Commission has effectively repealed that section, which grants the Commission the authority to compel sales but not transportation services. Kentucky Ohio Gas Company (Kentucky Ohio) argues that the Commission must make clear that it will exercise its authority under NGA section 7(a) to order pipeline interconnections with an LDC or municipality even when the LDC or municipality does not desire to purchase gas from the pipeline.

Pacific Gas Transmission Company (PGT), ANR, CNG, Tenneco and Arkla argue that the Commission is without authority to compel the pipelines to provide new services, such as open access storage, no-notice transportation, capacity releasing, and unbundled sales. For example, Arkla argues that NGA section 7 implicitly limits the Commission's ability to compel the provision of services. It argues that Congress would have had no reason to authorize the Commission to compel service under section 7(a), if the Commission could compel service under section 5(a). Arkla contends that the Commission's reliance on section 5(a)

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[17] See Cities Service Gas Company v. Federal Power Commission, 553 F.2d 1278, 1290 (D.C. Cir. 1976), where the court stated that it is a "settled rule that where there are no genuine, relevant, material, factual questions in dispute the [Commission] may proceed under sections 4 and 5 of the Natural Gas Act without formal evidentiary hearings." See also Mobil Oil Corp. v. Federal Energy Regulatory Commission, 886 F.2d 1023, 1033 (8th Cir. 1989), where the court stated "FERC is not required to hold evidentiary hearings where only questions of law and policy are matters in controversy[;]" and Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1168 n. 41 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1114 (1986) (court rejected contentions that the "after a hearing" requirement found in NGA section 5 must be satisfied through a formal, trial-type hearing).

[18] Cincinnati, Union Light, Heat and Power Company, Lawrenceburg Gas Company, and Mountaineer Gas Company filed a joint petition.

[19] Order No. 636 at p. 30,422.

[20] *Id.* at p. 30,423, *citing* Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1153 n.9 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1114 (1986); Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378, 389 (1959); and Transwestern Pipeline Co. v. FERC, 820 F.2d 733, 746 (5th Cir. 1987), *cert. denied*, 484 U.S. 1005 (1988).

[21] For example, a pipeline must provide no-notice transportation service to customers receiving a no-notice, bundled, city-gate, firm sales service on the effective date of the rule.

[22] 770 F.2d 1144, 1168 n. 41 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1114 (1986).

[23] NGA Section 7(a) provides: Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural gas or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purpose, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

renders section 7(a) surplusage. Arkla also cites several Commission orders that required NGA section 7 action by pipelines to change service.[24] Similarly, CNG argues that the Commission has no authority under the NGA to order pipelines to provide new services that compel it to share assets (*e.g.* storage facilities).

Under NGA section 7(a), the Commission may order a pipeline to sell gas to a local distributor if the Commission finds it necessary or desirable in the public interest.[25] Contrary to the assertions of the petitioners, the Commission does not read section 7(a) as limiting the Commission's ability to act under section 5, as it has done in this proceeding. Section 7(a) establishes the standards the Commission must apply to require a pipeline to provide sales service to an LDC. The powers granted by Congress to the Commission in sections 7(a) and section 5 are separate and distinct, albeit complementary. Neither the purposes nor the terms of section 7(a) prevent the Commission from assuring, once service to individual markets and territories has been established, that the protection against undue discrimination in service provided by sections 4, 5, and 7 of the NGA are available. First, section 7(a) applies only to new sales. It does not prevent the Commission from requiring changes in existing sales services. Second, the Commission is not compelling service in Order No. 636. The Commission is changing the terms of existing services and establishing through the procedures established by Order No. 636 the terms for future services. Even if the Commission is compelling the pipelines to provide "new" services to its open access transportation customers, it has the authority to do that in order to remedy undue discrimination.[26]

The Commission has exercised its authority under section 5 to find the pre-Order No. 636 regulatory structure, which includes the terms of existing services, unduly discriminatory and anticompetitive. The Commission has the authority under NGA section 5 to authorize the just and reasonable terms and conditions for the interstate transportation and sale for resale of natural gas. The requirements of Order No. 636 are all necessary to ensure that Part 284 transportation is performed on a just and reasonable, nondiscriminatory basis with respect to all gas supplies. Finally, the Commission's authority to compel sales service is discretionary. The Commission sees no reason, at this time, to determine whether at some future time it will compel a new sales service under section 7(a), and under what terms and conditions of service.

Arkla's argument that the Commission's reliance on section 5(a) renders section 7(a) surplusage is incorrect. The purpose of section 7(a) was to make it possible for communities that had no natural gas service to buy natural gas service from unwilling pipelines.[27] Thus, that section only authorizes the Commission to compel a pipeline to provide sales service (and to construct and operate facilities for that purpose). It relates to initiating a new sales arrangement rather than changing existing arrangements. How that section will or should be applied within the regulatory framework adopted in Order No. 636 is an issue the Commission leaves open for another day. Simply stated, section 7(a) does not prevent the Commission from prescribing reasonable terms and conditions of service under NGA section 5 as they relate to existing certificated service including sales and Part 284 transportation services.

The petitioners are incorrect in their assertion that the Commission lacks the authority to require pipelines to provide open access storage. First, the Commission has always regulated storage as part of its jurisdiction over interstate transportation.[28] Second, in Order No. 636, the Commission found the pipelines' bundled, city-gate, firm sales service to be unduly discriminatory under NGA sections 4(b) and 5(a). As part of the remedy the Commission concluded it was appropriate to regulate storage under Part 284 of the regulations. In Order No. 636, the Commission found that the pipelines' superior rights with respect to access and control of storage provide them with advantages over other gas merchants. The pipelines' ability to use storage for seasonal supply management, as a supplement to transmission capacity, and to maintain a constant flow of gas, give pipelines an unfair advantage over other gas merchants because they do not have the flexibility to provide fully a sales service which meets gas purchasers' peak needs. Access to storage is a key component of establishing equality of transportation, without it, pipelines' service will remain superior to other services that can be offered. Because the Commission is requiring the unbundling of pipeline sales and transportation services, pipelines with storage capacity downstream of the place it unbundles will need it only to fulfill their obligations with respect to system management (load balancing) and no-notice transportation service. Pipeline customers, of course, must have access to that storage to build their own gas supply portfolio and determine which services they need to replace pipeline bundled, city-gate, firm sales service. In addition, access to storage for pipeline customers such as LDCs will help them achieve a more efficient load profile between peak and offpeak seasons. For example, an LDC will be in a better position to buy, ship, and store gas in the summer for use in the winter instead of buying that gas from the pipeline in the winter.

The argument that the Commission is unlawfully requiring pipelines to provide new services that compel them to share assets (*e.g.* storage facilities) is without merit because the Commission is not compelling a new service. The no-notice transportation service will be similar to the transportation service imbedded in pipelines' current, bundled, firm sales service. Because, among other things, the Commission is unbundling the sale of gas from existing service by moving the point of sale as far upstream as possible, pipelines will not require the same amount of storage as they have in the past. However, the Commission recognized that pipelines would require a certain amount of storage to provide no-notice transportation service and for load balancing purposes. After the amount of storage capacity needed by the pipeline is determined, the remaining storage capacity must be offered on an open access, nondiscriminatory basis because the Part 284 regulations will include storage within the definition of transportation. Further, it should make good business sense for a pipeline to allow shippers and other gas merchants to obtain the storage capacity that it no longer needs because it will be operating in an unbundled environment. Finally, the petitioners are also incorrect

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[24] *E.g.*, Panhandle Eastern Pipe Line Co., 57 FERC ¶ 61,285 at p. 61,862 (1991) (changes in contract demand level); South Georgia Natural Gas Co., 48 FERC ¶ 61,383 at p. 62,539 (1989) (abandonment of standby service); Alabama Tennessee Natural Gas Co., 53 FERC ¶ 61,032 (1990) (service change from sales to sales-transportation).

[25] See Rural Energy Systems, Inc., 34 FERC ¶ 61,389 at p. 61,723 n. 12 (1986).

[26] Associated Gas Distributors v. FERC, 824 F.2d 981, 1000 (D.C Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988).

[27] See Rural Energy Systems, Inc., 34 FERC ¶ 61,389 at p. 61,722, *citing* Central Illinois Public Service Co. v. FPC, 338 F.2d 682, 687 (7th Cir. 1964).

[28] See Texas Gas Transmission Corporation, 28 FERC ¶ 61,150 at p. 61,385 (1984) ("[W]e have viewed storage to be within the Commission's transportation jurisdiction under the Natural Gas Act and the Natural Gas Policy Act of 1978 (NGPA).").

in their assertion that the Commission lacks the authority to require pipelines to provide no-notice transportation service. The Commission, pursuant to NGA section 5, found bundled, city-gate, firm sales service to be unduly discriminatory and preferential. As a remedy, the Commission determined that a just and reasonable practice would be the separate provision of no-notice transportation service embedded within the bundled sales service. The Commission found that this requirement was necessary so that a customer could receive its natural gas supplies in a fashion as reliable as the customer had been receiving under a bundled, city-gate service, with the added advantage of providing greater opportunities to purchase that supply at competitive prices from other sellers. The Commission is separating existing service into two parts. As discussed above, it is not compelling a new service because it is just separating the sale of gas from the existing service.

3. Direct Sales

Arkla contends that the Commission lacks the authority to cancel or modify nonjurisdictional sales contracts under any circumstances,[29] and therefore, Order No. 636 must be modified to exclude nonjurisdictional, direct sales contracts from mandatory unbundling.

In *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana*,[30] the Supreme Court discussed the Commission's jurisdiction under section 1(b) of the Natural Gas Act. The Court stated:

> Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.[31]

In FPC v. *Louisiana Power and Light Co.*,[32] which concerned pipelines' curtailment plans, the Supreme Court further clarified the Commission's jurisdiction under section 1(b) of the Natural Gas Act. The court stated:

> [T]he prohibition of the proviso of § 1(b) withheld from FPC only *rate-setting* authority with respect to direct sales. Curtailment regulations are not *rate-setting* regulations but regulations of the "transportation" of natural gas and thus within FPC jurisdiction under the opening sentence of § 1(b) that "[t]he provisions of this Act shall apply to the transportation of natural gas in interstate commerce[.][33]

Since the transportation component of a direct sale is within the Commission's jurisdiction, and since the requirement that sales must be unbundled from transportation does not establish a rate for the unbundled direct sale, the Commission has the authority to require pipelines to unbundle their nonjurisdictional direct sales from the jurisdictional transportation service embedded in that sale.[34] The Commission believes that a pipeline's direct sale of gas should be unbundled from the transportation of such gas, just as all other pipeline sales will be unbundled from transportation, because of the possibility that the jurisdictional transportation service embedded in the direct sales transactions may cause direct sales customers to prefer the pipeline's sales over sales from non-pipeline gas merchants. Finally, nothing in Order No. 636 should be read as affecting the rates that pipelines may charge for gas in a direct sales transaction.

4. Contracts

Tenneco argues that the Commission has disregarded private contracts by not showing that the bundled sales contracts adversely affect the public interest. CIG argues that the Commission has shown indifference to the sanctity of contracts that reflects fundamental and long-standing commercial relationships. CNG asserts that the Commission has disregarded the fundamental role of freely negotiated contracts. In addition, ANR and CNG assert that the Commission is unlawfully creating contractual relationships for the parties.

The Commission clearly has the authority to require changes in the contracts between interstate pipelines and their customers. As the Supreme Court held in *United Gas Co.* v. *Mobile Gas Corp.*:[35]

> The basic power of the Commission is that given it by § 5(a) to set aside and modify any rate or contract which it determines, after hearing, to be "unjust, unreasonable, unduly discriminatory, or preferential." . . . It is simply the power to review rates and contracts made in the first instance by natural gas companies and, if they are determined to be unlawful, to remedy them.[36]

The Commission has exercised this authority in Order No. 636 and has found pipeline bundled sales services to be unduly discriminatory and anticompetitive, and accordingly, has, among other things, changed the bundled sales contracts of pipelines into separate contracts for sales and transportation. A contract which is found to be unduly discriminatory by its very nature adversely affects the public interest and must be modified.

Contrary to the assertions of CIG and CNG, the Commission is not disregarding the role of contracts. In fact, one of the goals of the final rule is to allow parties to rely more on private contracts. The Commission stated in Order No. 636 that "[a]s part of the effort to foster competition in the natural gas industry, the Commission, in the final rule, is allowing the industry greater flexibility to control transactions through negotiated contracts."[37] But to achieve this objective in a manner that enables consumers to realize the long term benefits of fair competition, Order No. 636 changes parties' existing unduly discriminatory contracts.[38] As a result, the new regulatory structure created by Order No. 636 will enable parties to rely more on contracts to govern their relationships in the future and thus will occur in a commercial environment where no one segment of the industry has an unfair, regulatory advantage over other market participants. Finally, contrary to the assertions of ANR and CNG, the Commission is not unlawfully creating new contractual relationships for the parties. The Commission, by changing the terms and conditions under which service will be provided, has presented LDCs and pipelines with the option of continuing their relationship under the new regulatory structure or terminating their relationship altogether. Order No. 636 has, however, created a new regulatory structure which will enable parties to enter into new contractual relationships that serve the public interest.

5. Record Evidence

Several petitioners, such as Arkla, ANR, Natural, CNG and Tenneco, assert that the Commission's decision to require pipelines to unbundle and offer no-notice transportation service is not based on substantial record evidence.

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[29] *Citing* Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500-H, FERC Stats. and Regs. ¶ 30,867 at 31,540 (1989), *aff'd.* American Gas Association v. FERC, 912 F.2d 1496, 1507 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991) (The Commission has no authority to abrogate nonjurisdictional producer/pipeline contracts.)

[30] 332 U.S. 507 (1947).

[31] *Id.* at 516.

[32] 406 U.S. 621 (1971).

[33] *Id.* at 637-38.

[34] Mississippi River Transmission Corp. v. FERC, No. 91-1164 (D.C. Cir. July 21, 1992). (The Commission's authority over the transportation of gas in connection with an unregulated direct sale "is beyond dispute." Slip op. at 4).

[35] 350 U.S. 332 (1956).

[36] *Id.* at 341.

[37] Order No. 636 at p. 30,444.

[38] Office of Consumers' Counsel v. FERC, 783 F. 2d 206, 236 (D.C. Cir. 1986).

The Commission disagrees. The Commission's decision to require pipelines to unbundle their sales was based upon facts showing that the market was operating inefficiently, disadvantaging all segments of the industry and the consumer. These facts, which are reflected in the various tables contained in Order No. 636, show that a disproportionate amount of firm pipeline capacity is reserved for firm sales, but that pipeline sales customers prefer to buy their gas from other sellers, and have it transported using interruptible transportation, or inferior firm transportation. The 1991 Part 284 Capacity Reports for major pipelines that made bundled sales show that an average of 64.1 percent of the pipelines' total firm capacity was reserved for firm sales.[39] However, sales only accounted for an average of 18.8 percent of the total throughput on these major pipelines. These facts led the Commission to conclude that bundled sales service was causing the natural gas market to operate inefficiently, and therefore, pipeline sales should be provided separately from transportation.

In addition, as discussed elsewhere in this order and in Order No. 636, the participants in the natural gas industry, including pipelines, generally agreed at the January 22, 1992 technical conference and the comments following that conference, that no-notice transportation service could be provided by pipelines if they retain certain operational controls over their systems. The Commission, therefore, finds that its decision to require unbundling and the provision of no-notice transportation service is based upon substantial evidence and facts in the record of this proceeding.

6. Takings Clause Arguments

CNG argues that Order No. 636 violates the Takings Clause of the Fifth Amendment to the Constitution [40] by effectively terminating sales contracts and requiring the assignment of upstream capacity to downstream firm shippers without just compensation. Natural argues that, by precluding pipelines from making bundled sales when marketers can do so, Order No. 636 is an unlawful taking without compensation because the pipelines are deprived of an ability to act efficiently as sellers.

These arguments are based on a mischaracterization of Order No. 636. First, the Commission is not effectively terminating sales contracts. As discussed above and in Order No. 636, the Commission is separating the components of bundled sales contracts into unbundled sales contracts and firm transportation contracts. Because the regulations retain the LDC's entitlement to service and the pipeline's obligation to serve, an LDC and a pipeline may agree upon the price for gas, and the firm transportation of gas to the city-gate under the no-notice transportation service. Thus, their relationship would continue under the new terms and conditions of the pipeline's blanket transportation and blanket sales certificate.

With respect to the assignment of upstream capacity to downstream firm shippers, those shippers who want upstream capacity will be required to pay for it. If the upstream capacity is valuable to the pipeline now, it will probably be valuable to downstream shippers in the restructured environment. In addition, to the extent downstream pipelines retain unclaimed or unneeded upstream capacity even after the assignment of capacity to firm shippers, the pipeline may file to recover such "stranded" costs in an NGA section 4 filing.

Contrary to Natural's assertion that pipelines cannot act efficiently as gas sellers in an unbundled environment, pipelines will be offering the same services in the same market as other gas sellers and will be able to compete at market prices under their blanket certificates. If a firm sales customer is satisfied with its sales service, it will probably elect to continue its contractual relationship with the pipeline under the new blanket sales certificate. When a pipeline is in full compliance with Order No. 636, it will be permitted to make market-based sales under its blanket certificate. The Commission recognized that market-based pricing for unbundled sales is necessary for pipelines to compete with non-pipeline gas merchants. In addition, pipelines are not on a par with other gas sellers because of the pipelines' monopoly control of essential transportation facilities. A goal of Order No. 636 is to create an environment in which pipelines sell under similar conditions as other gas sellers so that pipelines are unable to prefer their own gas sales because they control the transportation of gas.

In sum, because Order No. 636 does not deprive pipelines of the ability to do business, but, in fact, enhances their opportunities, there is no factual foundation to reach the "takings" argument.

B. The Rationale

In Order No. 636, the Commission concluded that the pipelines' bundled, city-gate, firm sales service violates sections 4(b) and 5(a) of the NGA because of the unreasonable difference between the quality of the transportation embedded within the pipelines' bundled, city-gate, firm sales service and the quality of the pipelines' open access firm transportation service. In Order No. 636, the Commission described the adverse impact of that difference in quality on all segments of the natural gas industry. First, nonpipeline gas sellers are at a disadvantage *vis a vis* pipeline gas merchants' in securing long-term gas supply arrangements because the nonpipeline gas sellers cannot assure delivery at the city-gate in all circumstances. This is so because the nonpipeline gas merchants' gas must move to the city gate through interruptible or inferior firm transportation. However, pipelines do not totally benefit from this situation. Indeed, the Commission showed that pipelines are disadvantaged. Pipelines must stand ready to provide gas on demand at cost-based rates that do not enable the pipelines to successfully compete with unregulated gas sellers for sales customers on an annual basis. Last, gas customers are disadvantaged because they must use interruptible transportation to move their nonpipeline gas purchases even though they are paying firm sales demand charges for the firm transportation that is embedded within the firm sales service.[41]

Only a handful of the rehearing petitioners dispute the Commission's rationale for taking action under NGA sections 4(b) and 5(a). Those objections are discussed below.

1. Antitrust Criteria

CNG and Carnegie Natural Gas Company (Carnegie) argue that the Commission did not perform a proper competition analysis under relevant antitrust criteria to determine whether pipelines possess market power in the relevant markets and whether the

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[39] Table 2 of Order No. 636 at p. 30,399. See discussion below of Table 2.

[40] U.S. CONST. amend. V.

[41] As cited by the Commission in Order No. 636, 51 percent of the pipeline deliveries to market were through interruptible transportation as compared to deliveries to market of 21 percent pipeline sales and 28 percent firm transportation. Interstate Natural Gas Association of America, Issue Analysis: Carriage Through 1991 (May 1992), from: Table A–7, Sales and Firm and Interruptible Transportation as a Percentage of Total Delivered for Market (INGAA May 1992 paper). The INGAA May 1992 paper shows that, in 1991, 54 percent of the deliveries to market used interruptible transportation as compared to deliveries to market of 16 percent pipeline sales and 30 percent firm transportation.

pipelines' bundled sales service is justified by a legitimate business purpose. On the other hand, Tenneco asks the Commission to retract its finding that the bundled city-gate service is an unlawful restraint of trade because Tenneco maintains it unjustly implies a violation of the Sherman Antitrust Act.[42]

The Commission acts under NGA sections 4 and 5 to declare pipeline practices lawful or unlawful and, if unlawful, to prescribe appropriate remedies; the Commission "does not enforce or apply the antitrust laws." [43] In applying the NGA, of course, the Commission considers the policies underlying the antitrust laws, including the anticompetitive effects of interstate pipeline operations.[44] While the Commission may employ an analysis similar to that used in antitrust cases, the Commission does not reach or imply conclusions about violations of the Sherman Antitrust Act or any other antitrust law.

In addition, the Commission's conclusions in Order No. 636 *vis a vis* anticompetitiveness and restraint of trade should not be interpreted to imply for specific transactions any violation of the antitrust laws by pipelines. The Commission's findings and conclusions are made solely under NGA sections 4(b) and 5(a).

Finally, Congress' underlying premise in enacting the NGA was that the pipelines possessed market power in providing services. That remains true today and is the starting point for the Commission's analysis.[45] Any pipeline—including CNG—that wishes to show that it lacks monopoly or market power over its customers in the transportation services it provides is free to do so. CNG has not done so here.

2. Anticompetitive Finding

Tenneco asserts that there is no record support for the Commission's conclusion that "pipelines are exercising monopoly power at the expense of consumers." [46] Tenneco refers to the small amount of pipeline gas sales (21 percent), to the current low price of gas, and to the abundant amount of divertible gas supplies. Tenneco further contends that the failure of sales customers to convert to firm transportation was caused by the Commission's pregranted abandonment policy and not by pipeline monopoly power. Tenneco claims that if the pipelines had monopoly power even fewer conversions would have occurred and that "conversions on individual pipelines offering bundled city-gate sales have been higher than [the] 24%" cited by the Commission.[47]

Even though CNG's contentions, as discussed in the preceding subsection, are inappropriately draped in antitrust criteria, the Commission believes it appropriate to respond to CNG's argument. CNG maintains that the statistics cited by the Commission in Order No. 636, in support of its anticompetitiveness finding, are not relevant and that the Commission has erroneously concluded that pipelines have a competitive advantage via their bundled sales service even though the pipelines are not the beneficiaries.

Atlanta Gas Light Company and Chattanooga Gas Company (Atlanta Gas) contend that the Commission has improperly relied on NGA section 5(a), a consumer protection measure,[48] to protect producers. Citizen Action similarly argues that the Commission is attempting to pass off an anti-residential consumer policy as helping consumers. Citizen Action further maintains that residential and small gas consumers cannot yet make any informed choices about purchasing gas. The National Association of State Utility Consumer Advocates (NASUCA) contends that the order will benefit large industrial and electric utility users.

The Commission adheres to its discussion and analysis in Order No. 636 with respect to its conclusions under NGA sections 4 and 5 and, therefore, will not repeat that detailed discussion and analysis here. The Commission will, however, for emphasis, discuss a few matters.

The Commission's statutory mandate is to protect consumers of natural gas from the exercise of monopoly power by pipelines [49] in order to assure consumers "access to an adequate supply of gas at a reasonable price." [50] In addition, the Commission must protect the interests of the investors in the pipeline by providing the pipeline an opportunity to earn a return which will "be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." [51] As the Commission stated in Order No. 636, those consumer and investor interests must be balanced,[52] in light of the current economic, regulatory, and market realities.[53]

In Order No. 636, the Commission demonstrated that the pre-Order No. 636 structure of the pipeline industry is dysfunctional and impairs the efficient functioning of the natural gas market with respect to all segments of the natural gas industry. That pipelines have a low share of annual sales and have not reaped all of the benefits does not vitiate the Commission's analysis. The Commission's focus is on the bundled, city-gate, firm sales service, and capacity reserved for that service, its unduly discriminatory nature *vis a vis* firm transportation, and the anticompetitive consequences for all segments of the industry and consumers.

The Commission believes that the statistics cited in Order No. 636 are significant because they show that, as a group, pipeline customers have not converted to firm transportation service to satisfy their needs but have, instead, retained the higher quality bundled sales service to meet their peak needs on demand. While the Commission's pregranted abandonment policy may have influenced those customers, that does not detract from the conclusion that pipeline customers have kept the annual bundled sales service to guarantee deliveries to meet their peak needs. As the Commission stated in Order No. 636, this is amply proven by the comments of those opposing mandatory unbundling.[54] Indeed, if true, Tenneco's position underscores the market power pipelines possess in transporting gas to the city-gate. Because pipelines—and only pipelines—under the pre-636 regulatory rules can deliver gas under no-notice bundled service, they, and only they, could offer superior service. Customers may have been reluctant to leave that bundled gas service because they have no other meaningful transportation alternatives. Thus, Tenneco's argument admits by

[42] Petition at 6.

[43] Transwestern Pipeline Co. v. FERC, 820 F.2d 733, 741 (5th Cir. 1987).

[44] *Cf.*, Gulf States Util. Co. v. FPC, 411 U.S. 747, 758–760 (1973).

[45] Pipelines "have market power over transportation service." Tenneco Gas v. FERC, No. 89–1786, slip. op. at 18 (D.C. Cir. July 21, 1992).

[46] Petition at 4.

[47] *Id.* at 5. Tenneco notes that "[o]n Tennessee's system, for example, 94 percent of customers have converted all or a portion of their contract demand, resulting in conversion of 50% of total sales contract demand." *Id.* n. 9.

[48] *Citing* Atlantic Reg. Co. v. Public Service Commission of New York, 360 U.S. 378, 388 (1979).

[49] FPC v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944); Associated Gas Distributors v. FERC, 824 F.2d 981, 995 (D.C. Cir. 2987), *cert. denied*, 485 U.S. 1006 (1988) ("The Natural Gas Act has the fundamental purpose of protecting interstate gas consumers from pipelines' monopoly power.").

[50] Tejas Power Corp. v. FERC, 908 F.2d 998, 1003 (D.C. Cir. 1990).

[51] FPC v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

[52] *Id.* ("The rate-making process under the [NGA] * * * involves a balancing of the investor and consumer interests.")

[53] Order No. 636 at p. 30,392.

[54] *Id.* at p. 30,402.

implication the factual premise that led to the remedy in Order No. 636. The Commission has acted here to ensure that pipeline customers can continue to get guaranteed deliveries to meet their peak needs, but without having to buy from only one seller. The Commission's intent in Order No. 636 was to eliminate the unfair competitive advantage held by pipelines' bundled city-gate, firm sales service because pipelines provide their competitors for gas sales with access to a lower quality firm transportation service than that embedded within their bundled, city-gate, firm sales service.[55] Pipeline customers have chosen to retain their bundled, firm sales service and pay reservation charges to ensure that they can meet their peak needs. This is the case even though most customers prefer to buy gas throughout the year from other gas sellers and have it transported under interruptible transportation service.

Of course, some pipelines have had more conversions than other pipelines. But this is to be expected as part of the evolution of the natural gas industry discussed in Order No. 636. In any event, this does not eliminate the need to take generic action to complete that evolution to maximize the benefits of the Natural Gas Wellhead Decontrol Act (Decontrol Act).[56] It is necessary that the pipeline industry as a whole complete its evolution so as to ensure there is no obstacle to the consumers' access to a natural gas pipeline grid and to the blossoming national gas market.

The Commission rejects the contentions that it is acting to protect only producers or industrials or electric utility users and not residential or other gas consumers. As with Order No. 436, Order No. 636 "seeks to guarantee that the competitive conditions that now obtain in the 'wellhead' or gas-production market will redound to the benefit of gas consumers." [57] This will be accomplished by creating non-discriminatory no-notice transportation so that LDCs can buy gas directly from any seller of natural gas and receive an adequate and reliable supply of gas at reasonable prices in order to serve all of their customers, including residential. In Order No. 636, the Commission created a complete menu of services for all firm shippers, including LDCs, so that they can fashion arrangements best suited to meet their needs based on informed choices about the services that are available. This is in lieu of the pre-Order 636 system that binds together individual services with separate costs into one bundled service.

3. Purpose of Bundled Sales Service

Both CNG and Carnegie further argue that the Commission erred by not considering whether bundled sales service is justified by legitimate business purposes (*e.g.*, enhancing efficiency).

The Commission was not blind to the legitimate business purpose of bundled sales service. Indeed, the Commission recognized that the objective of that service—to allow firm sales customers to receive gas up to their daily contract entitlements on demand without nominating that amount or incurring a penalty—was in the public interest. However, the Commission determined that the legitimate business purpose of bundled sales service was outweighed by its anticompetitive harm because no-notice transportation could be provided for unbundled sales without the harm resulting from the bundled sales service.

Moreover, CNG and Carnegie have made no attempt to quantify the efficiencies that would be lost by the unbundling of pipeline sales from pipeline transportation. It was up to them to come forward with quantifiable data to support their claim.[58] Hence, the Commission remains convinced that its action in Order No. 636 will deter and prevent the anticompetitive abuse of the bundled sales service and, at the same time, preserve the no-notice benefits of that service. That is, the Commission upholds its conclusion that unbundled sales combined with no-notice transportation is an adequate substitute for bundled sales service [59] that also provides additional benefits to the natural gas industry.[60]

4. Cost-Benefit Analysis

CNG, Carnegie, the PEC Pipeline Group (PEC Group),[61] Atlanta Gas, Illinois Power Company and Northern States Power Companies (Illinois Power) contend that the Commission did not weigh the benefits of unbundling against the costs of unbundling. For example, Illinois Power argues that the Commission erred because it did not quantify the alleged benefits of unbundling or factor into the analysis the transition costs likely to result from unbundling sales service. In particular, Illinois Power argues that there is no support for the Commission's assertion that the Commission "does not *anticipate* that pipeline gas supply costs that are incurred as a result of implementing this rule will approach the order of magnitude of the take-or-pay liabilities of * * * [the Order No. 500 and 528] era." [62]

Atlanta Gas and Citizen Action argue that an analysis prepared by the Commission's Office of Economic Policy (OEP) with respect to the benefits of Order No. 636 must be made available and part of this proceeding.

The Commission is not required to "make specific findings of tangible benefits." [63] However, two points should be made. First, in Order No. 636, the Commission demonstrated that the current regulatory structure of the pipeline industry has, and will continue to have, a harmful impact on all segments of the natural gas industry and the Nation.[64] Second, the Commission took action to remedy that situation. The Commission expects that its remedy for the anti-competitive effects of the pipelines' bundled, city-gate, firm sales services will, as described in Order No. 636, have a significant beneficial impact on the natural gas industry by furthering the creation of an efficient national wellhead market, which will yield an adequate and reliable supply of natural gas at reasonable prices. The Commission expects that any costs that may be incurred by the pipelines in implementing this rule will either reflect (1) costs associated with past contractual commitments which the industry was bound to face regardless of Order No. 636 or (2) short-term expenditures to restructure pipeline services so the industry can operate efficiently in the long-run.

The Commission did not rely on a paper prepared by the OEP with respect to the costs and benefits of adopting Order No. 636; that paper is not part of the record for this rulemaking and there is no reason to make it a part of the

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[55] *Cf.* Tenneco Gas v. FERC, *supra*, slip. op. at 27–28, quoting the Department of Justice on the adverse impact of a lower quality access on the ability of competitors of pipelines to compete.

[56] Pub. L. 101–60, 103 Stat. 157 (1989).

[57] Panhandle Eastern Pipe Line Co. v. FERC, 890 F. 2d 435, 436 (D.C. Cir. 1989).

[58] See, generally Tenneco Gas v. FERC, *supra*, slip. op. at 34–35 and the cases cited therein.

[59] See generally Mississippi River Transmission Corp., *supra*, slip. op. at 10.

[60] Order No. 636 at pp. 30, 411–12.

[61] The PEC Pipeline Group consists of Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Algonquin Gas Transmission Company

[62] Petition at 6 (emphasis in original). Illinois Power refers to the INGAA study showing gas supply transition costs of nearly $8 billion, Letter from Gerald V. Halverson of INGAA to Chairman Allday, dated July 1, 1991 and to Natural Gas Pipeline Company of America's April 23, 1992 filing in Docket No RP92–146 to recover at least $754.9 million of gas supply realignment costs.

[63] FCC v. RCA Communications, 346 U.S. 86, 96, 97 (1953), *quoted in* Wisconsin Gas Co. v. FERC, 770 F. 2d 1140, 1158 (D.C. Cir. 1985).

[64] Order No. 636 at pp. 30,398–30,406.

record. However, an OEP paper on this subject has been made available to the public.[65]

5. Generic Versus Individual Action

Cincinnati Gas' Tenneco, CNG, and Carnegie argue that the record does not support a generic or industry-wide response since the finding that pipeline bundled services are unlawful applies only to certain parts of the pipeline industry. Cincinnati Gas supports its contention by arguing that Table 2 in Order No. 636 overstates the percentage of sales capacity to total capacity. Table 2 indicates that percentage to be 64.1 percent. However, Cincinnati Gas maintains that the correct percentage is 39.7 percent. Cincinnati Gas adjusted the Commission's figures to account for four pipelines with no sales service which were not included in Table 2, 50 percent standby service on various pipelines,[66] and conversions subsequent to the Table 2 data.

The Commission may proceed by rulemaking or by adjudication.[67] Here, the Commission has elected to proceed by rulemaking because it views the industry-wide anticompetitive circumstance to be of sufficient breadth and complexity to necessitate industry-wide action in a timely and coordinated manner. The fact that a few pipelines have unbundled their sales and transportation services does not lessen the need to take generic action to complete the evolution of the pipeline industry as a whole to ensure there is the open access to the national gas pipeline grid needed to support the national gas market envisioned by Congress when it enacted the Decontrol Act. Cincinnati Gas' revisions to Table 2 do not undermine the Commission's analysis in that it was appropriate to exclude pipelines with unbundled services to show the magnitude of the problem in the bundled part of the pipeline industry, which is a significant number of pipelines. In addition, the 50 percent standby services should not be included as unbundled sales because the LDC can still take the bundled, city-gate, sales service and the stand-by service is not equivalent to that service. Last, even 39.7 percent is a significant ratio of sales capacity to total capacity when pipeline sales accounted for only 18.8 percent of throughput.[68] In short, under the most conservative estimate, gas customers are paying for more than twice the amount of capacity than they actually need for pipeline sales services.

CNG and Carnegie also argue that the Commission has not shown that its anticompetitiveness finding applies to them. Similarly, PGT argues that there is no record evidence that would substantiate a finding of undue discrimination against PGT's present tariffs or operations, or which would justify the ban against sales by PGT at the interconnection of its facilities with those of its sales customers.

Because the Commission is determining rules of "general, prospective applicability" to solve "systemic problems of the natural gas [industry]",[69] it does not need to examine the circumstances of individual pipelines.[70] Rulemaking is the appropriate vehicle for receiving industry-wide comment and data on rules fashioned to improve the competitive structure of open access transportation on a generic basis.[71] In Order No. 636, the Commission concluded that, in the current environment, pipeline bundled, city-gate, firm sales services on an aggregate basis are unduly discriminatory because the transportation embedded within the firm sales services is superior to firm transportation. This circumstance has an adverse impact on the efficient national interstate gas market and individualized findings are not necessary.[72] Individual circumstances are appropriately considered in the individual restructuring proceedings. Hence, this order will not consider whether certain pipelines should be excepted from any of the requirements adopted by Order No. 636 or resolve issues that are pipeline-specific rather than of a generic nature. Those matters will be considered in the individual restructuring proceedings and compliance filings.[73]

6. No-Notice Transportation

CNG and Carnegie maintain that they cannot provide a reliable no-notice transportation service. Atlanta Gas argues that the Commission should have provided record evidence to demonstrate that pipelines can perform this service. The APGA, and the Tennessee Small General Service Customers Group and the Columbia Small Customer Group (Tennessee and Columbia Small Customers) object to the elimination of bundled, sales service for what they maintain is a hypothetical, theoretical, untested no-notice transportation service. Natural argues that the Commission did not engage in reasoned decisionmaking by mandating an untried no-notice transportation service where there can be no guarantee that the new system will prove as reliable as that currently in place.

The Commission believes it is fully warranted in its prediction that the pipelines can provide a reliable no-notice transportation service. The pipelines themselves individually, and through INGAA, their trade association, provided the evidence at the January 22, 1992 technical conference, that pipelines can provide no-notice transportation service.[74] This is further attested to by INGAA's statement that "INGAA believes that the pipeline and its customers can design a no-notice transportation service to provide customers with the same degree of reliability as previously available from a pipeline's bundled merchant service."[75] The Commission sees no rational basis why, as stated by INGAA, pipelines cannot perform a no-notice transportation service. They provided no-notice service as part of their bundled, city-gate, firm sales service. The changing of the place of sale and, in some instances, the identity of the seller of the gas, should not change the ability of pipelines to deliver the gas on a no-

[65] Costs and Benefits of the Final Restructuring Rule, Office of Economic Policy, FERC (Washington, DC), Spring 1992.

[66] Under 50 percent standby service, a firm sales customer may elect to receive 50 percent of its daily contract demand volumes as firm transportation service for the shipment of gas purchased from any gas suppliers.

[67] Wisconsin Gas Co. v. FERC, 770 F. 2d 1140, 1166 (D.C. Cir. 1985).

[68] Order No. 636 at p. 30,399, Table 2. Cincinnati Gas further states that only 6 out of the 20 pipelines on its revised table have sales contract demand volumes above 50 percent of total capacity. As a result, it claims, the disparity between reserved sales capacity and actual use is a problem that exists only in isolated pockets and does not support an industry-wide solution. Cincinnati misses the major point that the percent of capacity reserved for sales in isolation is meaningless. It is useful only when compared to the percent of capacity actually used for sales. Even on its revised table, 14 out of the 20 ptpelines have a percent of capacity reserved for sales that is higher than the average of about 20 percent of throughput being used for sales. In addition, the reduced percentages result in part from the adjustment for standby service.

[69] Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1166 (D.C. Cir. 1985).

[70] *Id.* at p. 1165–66; Associated Gas Distributors v. FERC, 824 F.2d 981, 1008 (D.C. Cir. 1987).

[71] Wisconsin Gas Co, 770 F.2d at 1166 n. 38.

[72] AGD, 824 F.2d at 1000 n. 4 and 1008 (The Commission is not required to make individualized findings if it exercises its section 5 authority to take generic action because any tariff violating the rule would have an adverse effect on the interstate gas markets).

[73] The Commission has already issued several orders exempting pipelines from Order No. 636. *E.g.*, Freeport Interstate Pipeline Co., 59 FERC ¶ 61,378 (1992).

[74] Technical Conference Tr. 36–38.

[75] INGAA's Petition at 10.

notice basis. Thus, the concerns about no-notice transportation are unsupported and premature.[76] The parties should first address the no-notice transportation mechanics in their restructuring proceedings before a pipeline argues that it is impossible to provide a no-notice transportation service.[77]

7. Different Remedy

Cincinnati Gas suggests that the Commission could have selected a less intrusive remedy by mandating that pipelines implement 100 percent standby transportation service within firm sales entitlement levels.

The Commission believes that Cincinnati Gas' suggested remedy would not be in the public interest. Retaining the bundled, city-gate, firm sales service would mean that other gas sellers would not be competing with the pipeline on an even basis because they could not offer the same sales services on the same basis. For example, the pipeline could make sales at the city-gate while other gas sellers would have to sell at the production area. Even assuming that the standby transportation is no-notice transportation, the pipeline will still have the natural incentive to favor itself in managing the pipeline system. A major purpose of the Commission in adopting Order No. 636 is to design rules to counter that economic incentive to discriminate in favor of a pipeline's own bundled sales service.[78]

Moreover, the implementation of 100 percent standby transportation service would continue the problems that Order No. 636 identified and sought to correct. That is, pipelines would remain liable to provide firm sales service and keep under contract the gas necessary to provide the service, even though the customer is taking the gas from the pipeline only at peak. This would tie up reserves and lead to higher prices and increased pipeline exposure to take-or-pay liability. It is more efficient to unbundle pipeline sales and capacity so that the pipeline can know exactly what are its obligations to its sales customers, maintain the necessary gas supply portfolio to meet those obligations, and fashion its sales rates accordingly.

8. Reliance on the Decontrol Act

Indiana Gas Company, Inc. (Indiana Gas), Tenneco, and Arkla argue that the Commission improperly relied on the Decontrol Act to support its decision to unbundle sales and transportation services. For example, Arkla argues that the Decontrol Act did not change the NGA, did no more than eliminate wellhead price controls on the first sale of natural gas, and does not support the Commission's drastic changes to the present pipeline regulatory structure. Indiana Gas adds that the generalized legislative intent of the Decontrol Act does not support the radical restructuring of Order No. 636.

The Commission recognizes that its mission under the NGA to protect consumers was not changed by the Decontrol Act. Indeed, as the Commission stated in Order No. 636, "[t]he Decontrol Act did not * * * alter the NGA's consumer protection mandate." [79] The Commission cited the legislative background to the Decontrol Act merely to show Congressional intent that the Commission act in accordance with the competitive conditions recognized by Congress in enacting the Decontrol Act, and not as evidence of a new statutory mandate. Indeed, the House Committee Report stated that the Commission's "current competitive, open-access, pipeline system [should be] maintained" and further described the importance of open-access transportation as follows:

> The Committee stresses that these new rules, and especially the wide adoption of blanket certificates for nondiscriminatory open-access interstate transportation of nonpipeline gas, are essential to its decision to complete the decontrol process. All sellers must be able to reasonably reach the highest-bidding buyer in an increasingly national market. All buyers must be free to reach the lowest selling producer, and obtain shipment of its gas to them on even terms with other supplies.[80]

The House Committee Report further urged the Commission "to retain and improve this competitive structure in order to maximize the benefits of decontrol." [81] The Commission exercised its NGA consumer protection mandate by "seek[ing] to guarantee that the competitive conditions that now obtain in the 'wellhead' or gas-production market will redound to the benefit of the gas consumers." [82] The Commission did this by fashioning an open access transportation network where all gas sellers have equal access to that regulated essential service to ensure efficient competition in the gas sales market.[83]

IV. Unbundling

A. Pipeline Access to Capacity

In Order No. 636, the Commission concluded that pipelines must unbundle the sales and transportation components of their bundled, city-gate, firm sales service. On the effective date of the pipeline's Order No. 636 compliance filing, each bundled sales customer's firm sales entitlement will be converted to an equivalent amount of unbundled firm sales service and to an equivalent amount of unbundled firm transportation service,[84] except as adjusted in the pipeline's restructuring proceeding. In addition, the pipeline must provide access to downstream storage and may retain downstream storage only for system management and balancing and no-notice transportation purposes.[85] Furthermore, downstream pipelines must make available capacity they hold on upstream pipelines to the available downstream pipeline's customers, if requested.[86]

Several petitioners argue that the pipelines should be allowed to retain or obtain capacity rights so that they can compete on an equal basis with other gas sellers who can obtain capacity.[87] For example, INGAA argues that "[o]nce a pipeline has fully unbundled, its merchant division should be able to contract for uncommitted capacity, take assignment of capacity under the capacity releasing programs and gain access to the no-notice service not subscribed by LDCs, as long as the pipeline honors the terms and conditions of service quality." [88] Natural is concerned that it cannot make city-gate sales, which puts it at a disadvantage *vis a vis* other marketers in providing a gas delivery service using rebundled transportation and storage.

The Commission concludes that a pipeline cannot retain or obtain capacity downstream of the point of unbundling on its system except for storage as needed for system management and balancing and no-notice transportation

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[76] *Cf.* Northern Indiana Public Service Company v. FERC, No. 90-1528, (D.C. Cir., Jan. 21, 1992).

[77] See *infra* for a discussion of "no-notice" transportation.

[78] *Cf.* Tenneco Gas v. FERC, *supra*, slip. op. at 27-28, discussing the pipeline's "obvious incentive to favor its own marketing affiliate."

[79] Order No. 636 at p. 30,3097.

[80] H.R. Rep. No. 29, 101st Cong., 1st Sess., at p. 6.

[81] *Id.*

[82] Panhandle Eastern Pipe Line Co., 890 F.2d 435, 436 (D.C. Cir. 1989).

[83] *Cf.* Tenneco Gas v. FERC, *supra*, slip. op. at 28, quoting the Department of Justice on the adverse impact on pipeline competitors for gas sales of a lower quality of access to transportation.

[84] Conversions and adjustments are discussed *infra*.

[85] Storage is discussed *infra*.

[86] Upstream Capacity rights are discussed *infra*.

[87] *E.g.*, INGAA, Natural, Marathon Oil Company (Marathon), Tenneco, KN Energy, Inc. (KN), ANR, Texas Gas Transmission Corporation (Texas Gas), and Questar Pipeline Company (Questar).

[88] Petition at 10.

purposes. More importantly, pipelines will be able to make sales in competition with other gas sellers. Assume that a pipeline has uncommitted capacity. Assume further that a gas customer wants to purchase gas from the pipeline. The pipeline then enters into an unbundled gas sales contract with its new customer, and a separate transportation agreement to ship the gas. In addition, the pipeline may act as the gas purchaser's agent and make all arrangements necessary for transportation of the gas. In this manner, the pipeline can compete, while maintaining the competitive and economic benefits that unbundling brings to the market place. And while it is true that their competitors can obtain such capacity either from the pipeline directly or via the capacity releasing mechanism, the Commission believes that on balance any advantage on a generic basis for those competitors will be minimal and does not warrant permitting pipelines to be capacity holders and gain the opportunity to favor themselves as gas sellers in the management of pipeline transportation facilities, including storage.[89]

B. Agency

In Order No. 636 the Commission held that a pipeline or any other merchant may act as the gas purchaser's agent in making all arrangements necessary for the gas to be transported and delivered to the gas purchaser. Order No. 636 also provides that a pipeline acting as agent may receive a negotiated agency fee as part of its unregulated sales service and must act on a nondiscriminatory basis.

Texas Gas asks the Commission to clarify that the pipeline merchant when it acts as a customer's agent in packaging pipeline services may repackage the unbundled sales and unbundled transportation by contract in such a manner that the actual title transfer is at a pooling point or market center, even if the point is downstream of the initial point of unbundling where the transportation service was separated from the sales service. Texas Gas adds that the unbundled transportation service would continue to be provided on a non-discriminatory basis originating at the point of unbundling and that the pipeline merchant service, as agent, would simply be permitted to act in a fashion similar to other merchants aggregating supplies.

The Commission denies Texas Gas' request for clarification. It is not clear why Texas Gas needs to retain title to its gas beyond the point of unbundling. First, all agents (including the pipeline and other gas sellers) act on behalf of their principal, the gas purchaser. It is the principal that holds title to the gas and holds the right to use the pipeline capacity. Hence, all agents are similarly situated. With respect to aggregating supplies, the parties to a particular pipeline's restructuring proceeding may consider and agree to "paper" pooling areas near the production area for the purposes of aggregation and balancing and the determination of penalties for all sellers of gas, including the pipeline.[90] In addition, a pipeline's marketing affiliate could obtain capacity and retain title to gas in the same manner as nonaffiliated gas sellers, subject to Order No. 497's standards of conduct and reporting requirements.[91]

ANR asks for clarification that the non-discrimination standard would not preclude the negotiation of different levels of agency fees, and that there would be no limitation as to the operating division of the pipeline which would be able to act in an agency capacity.

The Commission provided in Order No. 636 that the pipeline can act as an agent as part of its unbundled sales service.[92] In addition, the Commission concluded that the pipeline's fee, if any, was a matter for negotiation between it and the gas purchaser on entering into their sales contract, and that the fee would be received as part of the price for selling gas and not as part of the transportation rate. Last, the Commission stated that the pipeline must act in a non-discriminatory manner in offering agency services.

The Commission clarifies that the pipeline may not discriminate in providing the agency service but that the fee amount is a matter for negotiation. The Commission further clarifies that the pipeline's sales division must provide the agency service. This will ensure that all gas sellers compete on an even basis in connection with the providing of agency services. If a pipeline has no formal sales division, the agency service must be provided by its sales operating employees as an operational unit.[93]

C. Small Customer Service

In Order No. 636, the Commission did not adopt the NOPR's proposal to continue a bundled, city-gate, firm sales service for small customers. The Commission stated that those customers can be served reliably through a combination of unbundled sales, the no-notice transportation service, and the use of the pipeline or some other gas seller as the gas purchaser's agent to make all the arrangements necessary to deliver the gas to the small customer in the same manner as under the bundled, city-gate, firm sales service. In addition, the Commission stated that the small customers could continue to receive firm transportation under a one-part volumetric rate computed at an imputed load factor similar to the manner in which their current sales rates are determined.

APGA, the State of Louisiana, City Gas Company (City Gas), and the Tennessee and Columbia Small Customers argue that the Commission erred in failing to exempt small customers from mandatory unbundling. They maintain that small customers do not have the ability to operate in an unbundled environment to secure their former reliable service at a reasonable, negotiated rate. They are concerned about maintaining service without any supply disruptions and about their disadvantage in bargaining for just and reasonable gas prices.

The Tennessee and Columbia Small Customers also argue that the Commission gave no reason why the continuation of bundled sales service for small customers would interfere in a material way with implementation of Order No. 636.

As discussed below, the Commission is sympathetic to the concerns raised by small customers. The Commission will make several changes to Order No. 636 to address those concerns. As a result, the Commission does not think it is necessary to grant rehearing as to the request to make an exception to unbundling for small customers but will grant rehearing to make other adjustments for small customers (as discussed, *infra*). The Commission does not grant rehearing on this point for several reasons. First, the Commission believes that there should be no exceptions to unbundling. As stated earlier, an exception would mean that

[89] *Cf.* Tenneco Gas v. FERC, *supra*, *slip.* op. at 17, 18, 27, 28 for a discussion of the pipeline's "obvious incentive to favor its own marketing affiliate" (at 27).

[90] At a paper pooling point, title to the gas may transfer to multiple purchasers from one seller even though there are no interconnections with other pipelines at that point. No penalties are assessed to any of the purchasers as long as their aggregate scheduled volumes equal the aggregate volumes transferred at the point from the seller to the multiple purchasers.

[91] See, n.3, *supra*.

[92] 18 CFR 284.284(d) ("A pipeline that provides unbundled sales service under this section may serve as an agent of the sales customer to arrange for any pipeline-provided service necessary to deliver their gas to the customer.")

[93] See 18 CFR 284.286.

all gas sellers would not be competing on an even basis by offering the same sales services in the same production area market. Second, an exception is not needed for small customers because they can be served reliably through a combination of unbundled sales, no-notice transportation, and agency services. Those services will enable the small customers to receive gas when needed to serve their customers on a reliable and timely basis (see *infra* on no-notice transportation service). In addition, the competitive sales market will keep the prices reasonable for gas and agency services of both pipeline and nonpipelines gas merchants. Should the small customers believe that the pipeline prices are not reasonable, because of the exercise of market power, they may seek appropriate relief from the Commission.

Moreover, as discussed below, the Commission is adopting a one-year transitional period (from the effective date of the pipeline's blanket certificate) with respect to pipeline gas prices for small customers only.[94] During that period, the Commission is requiring pipelines, under their blanket sales certificates granted by Order No. 636, to sell gas to those customers that elect to purchase gas from the pipeline at rates that are cost-based. The Commission is doing this in order to give small customers adequate time to make alternate supply arrangements. For example, they may need more time to arrange to aggregate their gas purchases from different suppliers. As discussed below, the Commission will monitor those rates under the blanket sales certificates.[95] And, the Commission recognizes those customers' unique status by requiring pipelines to provide this cost-based service only for the small customers.

City Gas asks the Commission to clarify that pipelines will be required to compute small customer transportation rates on a one-part volumetric basis at the imputed load factor underlying the pipeline's currently effective small customer sales rate. The Commission is granting rehearing to require pipelines that, on May 18, 1992, offered a small customer sales or transportation service on a one-part volumetric basis at an imputed load factor to offer all its firm transportation services, including no-notice transportation, on the same basis, including the same eligibility criteria, to small customers. In addition, the Commission is requiring those pipelines to consider in the restructuring proceedings enlarging the size of the small customer class from its existing size up to 10,000 Mcf or Dth/day. In the Commission's judgment, this will continue to protect the small customers. But the Commission will not give them a special marketing advantage. Therefore, the Commission will preclude the small customer from shipping gas under available interruptible transportation service on the pipeline or from shipping gas as a replacement shipper under the capacity releasing mechanism before it exhausts its firm entitlement to service under a small customer rate schedule.[96] The pipeline's tariff cannot be any more restrictive than the restrictions specified in this Order. The rates revised as part of the compliance filing must continue to maintain existing small customer classes as part of the transportation rates. The rate for the small customer class must be computed using a load factor no less than the load factor used to compute the existing small customer rate (see rate discussion *infra*) because the Commission did not direct the elimination of those rate differentials in Order No. 636.

V. Open Access Transportation Rules

This Part addresses the rehearing and clarification requests with respect to the essential aspects of, and terms and conditions for, open access transportation.

A. Transportation Equality

Order No. 636 adopted new regulations §§ 284.8(b)(2) and 284.9(b)(2) to require an open-access pipeline that offers firm and interruptible service to provide those services on a basis that is equal in quality for all gas supplies, whether purchased from the pipeline or elsewhere. While Order No. 636 did not adopt a uniform code of terms and conditions of service, it did codify two general principles in the regulations and did state that a pipeline must have tariff provisions governing, at least, certain named transportation matters. This part V.A. addresses issues raised with respect to terms and conditions of service.[97]

1. Current Contracts

INGAA asks the Commission to clarify that pipelines can renegotiate with current shippers in order to establish operating terms and conditions and to reflect the new competitive situation. The Commission clarifies that pipelines can, subject to Commission approval in the restructuring proceedings, propose and renegotiate changes to their operating terms and conditions which are related to complying with Order No. 636.

2. Definition of Capacity

Peoples Gas System, Inc. (Peoples Gas) argues that the pipelines must be required to define "capacity" as an operating term in their tariffs so that the parties to the restructuring proceeding have an empirical definition. While the amount of capacity available is important in allocating capacity among shippers, the Commission will not require a definition of capacity in pipeline tariffs. Issues involving the amount of capacity are pipeline-specific matters that will vary by pipeline and by season. Of course, capacity must be decided in light of generally accepted engineering standards. The Commission will require the pipelines to address this issue in the restructuring proceedings.

3. Imbalances Penalties

Destec Energy, Inc. (Destec) asks the Commission to state that to the extent a pipeline has positive and negative imbalances existing simultaneously on its system, that such imbalances should be netted out, for penalty purposes, on a pro rata basis with imbalance penalties imposed only upon those shippers who remain out of balance after such netting out.[98] The Fuel Managers Association makes the same netting out argument: "If the pipeline experiences an excessive net imbalance during a month, only those customers that accrue an excessive monthly imbalance of a similar nature as the pipeline's excessive net imbalance, *i.e.*, a positive or negative imbalance, should be penalized for their monthly imbalances." [99]

Without reaching the merits of this particular argument, the Commission observes that penalties are a matter to be resolved in the restructuring proceedings and not for generic action. The pipelines' penalties are, of course, subject to the equality principle.

The Industrial Groups [100] argue that with the adoption of SFV for rate design,

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[94] This one year transition period will effectively give small customers two years to plan and adjust to their new responsibilities under Order No. 636.

[95] Issues with respect to pregranted abandonment are discussed infra.

[96] These conditions are explained below in the Transportation Rates section.

[97] Flexible receipt and delivery point issues are discussed, *infra*.

[98] The American Paper Institute, Inc. (American Paper Institute) makes the same argument.

[99] Petition at 24.

[100] Process Gas Consumers Group, American Iron and Steel Institute, Georgia Industrial Group, Association of Businesses Advocating Tariff Equity, California Industrial Group, California Manufactures Association, and California League of Food Processors.

pipelines should not be able to retain penalty or cashout revenues that would enable them to profit more from penalties than from throughput. The Commission sees no relationship between SFV and penalties, which are designed to inhibit action that is inimical to the operational integrity of a pipeline system.

Consolidated Edison Company of New York, Inc. (ConEd) is concerned about multiple pipeline imbalance penalties for pipeline to pipeline deliveries where it delivers its scheduled amount into the first pipeline and takes that amount from the last pipeline but intermediate deliveries are over that amount. It argues that pipelines participating in those interactions should bear the responsibility for deliveries from pipeline to pipeline and suggests that the Commission require pipelines to establish in their tariffs scheduling and balancing procedures for multiple pipeline interactions.

Without ruling on the merits of ConEd's argument, the Commission concludes that this is a matter for the restructuring proceedings and not for generic action. The Commission observes, however, that this appears to be a matter between the upstream pipeline and its shipper about the extent of the former's liability for downstream penalties.

4. Interconnection Priority

Amoco Production Company (Amoco) argues that it is necessary to require that a shipper's type of transportation on a downstream pipeline should control access to the downstream pipeline without regard to the type of transportation used on the upstream pipeline.[101] It states that "this principle should be applicable to gathering feeding mainline transportation, to upstream pipeline arrangements interconnecting with downstream pipelines, and to upstream arrangements with one shipper feeding downstream arrangements to another shipper all on the same pipeline." [102]

Brymore Energy, Inc. (Brymore) sets out an elaborate statement of priorities and asks the Commission to either order its suggested priorities to be implemented on all interconnects with interstate pipelines, or, in the alternative, to call a technical conference to establish such priorities.[103]

The Commission will not, as part of this generic rulemaking, mandate interconnection priorities. Those priorities involve terms and conditions of service. As such, they must be developed and established according to the equality principle that pipelines must provide their services on a basis that is equal in quality for all gas supplies transported under that service. However, the details of the terms and conditions of service are matters that must be addressed in the restructuring proceedings.

5. Upstream/Downstream Fuel

ConEd is also concerned about upstream and downstream fuel requirements and their impact on contract quantities. It believes it should be able to adjust contract quantities to reflect changed fuel requirements in order to maintain city-gate quantity levels. It suggests that pipeline tariffs and service agreements should provide firm customers with the right to adjust contract quantities to correspond to changes in upstream and downstream fuel requirements, that such changes should not be treated as part of the pipeline's transportation queue for service, and that the design of pipeline facilities should take such flexibility into consideration.

Without reaching the merits of this argument, the Commission concludes that fuel requirement issues are matters that must be considered in the restructuring proceedings.

6. Multiple Pipeline Gas Quality Specifications

ConEd is also concerned about pipeline gas quality specifications. It states that in multiple pipeline transportation "pipelines are best positioned to resolve differences in quality specifications and in quality levels at pipeline interconnects." [104] It states that "upstream pipelines engaging in multiple pipeline interactions must assume the responsibility of delivering to the downstream pipeline gas which meets the quality specifications contained in the downstream pipeline's tariff [and] * * * pipelines agreeing to provide downstream service must agree not to unilaterally change their quality specifications where such changes would be inconsistent with the quality specifications of the upstream pipeline and would thereby result in rejection of gas tendered." [105]

The Commission concludes that gas quality specification issues are matters that must be considered in the restructuring proceedings.

7. First-Come/First Served Queue

Tejas Power Corporation (Tejas) argues that existing first-come, first-served queues for firm or interruptible transportation queues should be abolished in conformity with the Commission's right of first refusal mechanisms, which are designed to allocate capacity to customers who value it the most. Tejas recommends replacing the first-come, first-serve queue with a "system of bidding for priority of service" or "at a minimum * * * the formation of new queue on a regular basis after implementation of the Rule." [106] It adds this is especially important for interruptible queues.

Northern Indiana Public Service Company (Northern Indiana) argues that interruptible service priority rights based on queue dates must be eliminated. It maintains that the grandfathered queue dates will give certain shippers power over capacity, leaves the door open to unregulated capacity brokering and buy/sell arrangements, and could discourage new entrants into the gas market. It argues that if the Commission does not abolish queue date priorities, it must require pipelines to publish existing queue lists for interruptible transportation and storage services along with a utilization history.

Without reaching the merits of Tejas' or Northern Indiana's arguments, the Commission will not address prematurely here any queue issues as they relate to capacity obtained from the pipeline. The Commission notes that the pipelines must post available firm and interruptible capacity on their electronic bulletin boards so that potential shippers may choose between pipeline and released capacity. How the pipelines allocate their own capacity among multiple aspirants for that capacity is an issue that must be considered in the restructuring proceedings. If a dispute arises during the restructuring discussion that cannot be resolved by the parties, the Commission will resolve those disputes when the pipeline makes its scheduled compliance filing, or earlier, if brought

[101] It provides this example: "if interruptible transportation feeds downstream firm transportation, the priority at the interconnect point would be superior to other interruptible transportation at that point. If firm transportation feeds downstream interruptible transportation, the priority at the interconnect point would be inferior to other firm transportation at that point." Petition at 3.

[102] *Id.*

[103] Brymore's priorities include both scheduling and curtailment and it set forth priorities for interconnections between interstate pipelines and LDCs' interstate pipelines and non jurisdictional supply facilities and interstate pipelines.

[104] Petition at 7.

[106] *Id.* at 7, 8.

[105] Petition at 10.

before the Commission. The Commission further notes that mandatory implementation of capacity release mechanisms on the pipelines may affect queues because released capacity will be a significant alternative transportation option for acquiring transportation capacity.

8. Security of Service

Brooklyn Union Gas Company (Brooklyn Union), *et al.*[107] argue that "security of service" issues must be addressed by the Commission, that is, the "pipeline [must] be responsible for redelivery at the city gate of quantities of gas equivalent to those delivered into the pipeline by or for, each firm transportation shipper, even in the event of overruns by other shippers."[108] They state that the pipeline must use or impose tools to discipline the system, for example, "the installation of real time metering equipment, the development of predetermined allocation procedures, and the availability of dispatchers on a twenty-four hour basis" and "meaningful [overrun] penalty charges."[109]

The Commission agrees with Brooklyn Union, *et al.*, that, as a general matter, pipelines are responsible for delivering to shippers the amount of gas injected into the pipeline. These issues involving this responsibility, such as exceptions and disciplinary tools, must be considered as part of the restructuring proceedings.[110]

B. Electronic Bulletin Boards

Order No. 636 requires pipelines to provide timely and equal access to all information necessary for buyers and sellers to arrange for capacity reallocation and requires this information to be provided on electronic bulletin boards (EBB). American Paper Institute, Brymore, ConEd, Industrial Groups, Kern River Pipeline Co. (Kern River), Mobil Natural Gas Co. (Mobil), Natural Gas Clearinghouse, Natural Gas Supply Association/Indicated Producers (NGSA), New Jersey Natural Gas Co. (New Jersey Natural), PSE&G, and UGI Utilities (UGI) seek rehearing or clarification of the requirements for EBBs.

Several petitioners[111] argue that the Commission erred in failing to adopt uniform national standards for EBBs. These parties assert that uniform standards are necessary to eliminate inefficiencies and promote development of market centers. They assert that without standardization of interfaces and formats, access to many EBBs will be very costly. Brymore Energy asks the Commission to establish a Task Force to act as a catalyst in the process of developing standards, and Natural Gas Clearinghouse asks the Commission to establish a technical conference for this purpose.

During the past year, the Commission's staff has been auditing the performance of and access to pipeline EBBs. Based upon that information, the Commission agrees that standardization of information content, display formats, and software is extremely important and would greatly enhance the efficiency of the capacity release program to the benefit all users of the pipeline system. The Commission believes that the lack of uniform standards can hamper efficient movement of gas across pipelines and can inhibit the development of market centers. The Commission, however, does not have sufficient information at this time to prescribe and mandate uniform standards beyond those contained in Order No. 636. The Commission strongly encourages the industry to develop its own uniform standards and conventions for use of EBBs without Commission intervention. Although the Commission will not initiate a generic proceeding to address appropriate uniform standards at this time, the Commission will hold a technical conference in the near future in order to determine the progress made by the industry in developing interactive, user-friendly EBBs and uniform standards.

American Paper Institute, ConEd, Mobil and NGSA ask the Commission to require the pipeline to include the terms and conditions for access to EBBs in their tariff filings. These parties assert that access agreements are often one-sided and the Commission should review the pipelines' tariffs to assure that they are reasonable and non-discriminatory.

The Commission agrees. The terms and conditions of access to EBBs must be just and reasonable and must be included in the pipeline's tariff. The Commission directs the pipelines to include these provisions in the compliance filings.

American Paper Institute asks the Commission to clarify the EBBs must be operational and meet the Commission's criteria no later than the effective date of the pipeline's tariff filing implementing Order No. 636. Rochester Gas & Electric (Rochester Gas) asserts that the EBBs must be operational as soon as possible, even before the pipeline is in compliance with Order No. 636.

In some cases, pipelines may implement capacity releasing prior to implementing the remainder of the restructuring requirements.[112] The Commission clarifies that the appropriate date for EBBs to go on-line is no later than the effective date of the tariff sheets implementing the capacity releasing mechanism.

The standards of conduct adopted in this rule require that to the maximum extent practicable, the pipeline's transportation employees and its gas marketing employees must function independently of each other.[113] The EBB is part of the transportation function and, thus, the regulations already require that the EBB personnel function independently of the gas marketing personnel to the maximum extent practicable. Because the EBB is an integral part of the transportation operation, further separation is not feasible.

Rochester Gas raises the issue of the proprietary nature of EBB information by stating that it assumes pipelines will permit anyone to access, download, and disseminate data from the EBBs. The Commission clarifies that it does not consider the information that must be on the EBB to be proprietary.

Mobil argues that the EBBs should be interactive, and that a potential capacity buyer should be able to respond to the offer and close the deal on the EBB without intervention of the pipeline. The Commission believes that interactive EBBs will enhance the efficiency of the system and, therefore, directs pipelines to provide for interactive bulletin boards if feasible on the particular system. A pipeline must explain in the restructuring proceeding why it believes that an interactive EBB is not appropriate on its system.

Kern River asks the Commission to clarify that historical information does not have to be accessed on the bulletin board, but can be maintained off-line. The request for clarification is granted. Historical data does not have to be accessed on the EBB. As the Commission stated in Order No. 636, the pipeline must keep daily back-up records of the information displayed on their EBB for at least three years, and

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[107] ConEd and Public Service Electric and Gas Company (PSE&G).

[108] Petition at 7.

[109] *Id.* at 7 n. 7 and 8.

[110] The Commission rejects Cincinnati Gas' request that the Commission impose a Uniform Gas Day, because the Commission has no jurisdiction over most production area gas sales.

[111] American Paper Institute, Brymore, Natural Gas Clearinghouse, NGSA, and New Jersey Natural.

[112] Northern Natural Gas Co., 59 FERC ¶ 61,362 (1992); Northern Border Pipeline Co., 59 FERC ¶ 61,312 (1992).

[113] 18 CFR 284.286.

should permit users to review those records, which should be reasonably accessible.[114] In addition, Order No. 636 provides that pipelines must periodically purge completed transactions from current files so that EBB users do not have to sift through massive amounts of historical data to find current information.[115] Archived information should be available for a reasonable fee in electronic form. Pipelines are directed to include procedures for back-up, archiving, and retrieval in their tariffs.

C. Capacity Reallocation

In Order No. 636, the Commission adopted, in new §§ 284.242 and 284.243, two new capacity reallocation programs. The Commission announced that it will not approve new individually authorized capacity brokering and other capacity assignment mechanisms. The Commission, in a separate order issued April 8, 1992, amended the terms and conditions of existing capacity brokering and other assignment programs to conform to the capacity reallocation regulations adopted in Order No. 636.[116] However, the Commission allowed capacity assignments and reassignments in effect on the effective date of a pipeline's capacity reallocation mechanism to continue in effect, provided the original capacity holder retains its capacity through the restructuring proceeding mechanism. In addition, all capacity assignments must be done under the new mechanisms once they become effective. This includes buy/sell arrangements where an LDC purchases gas in the production area from an end user or merchant designated by an end user, ships the gas on its (the LDC's) own capacity, and sells the gas to the end user at the retail delivery point.[117] The Commission, however, permitted buy/sell arrangements in effect on the effective date of a pipeline's capacity reallocation program to continue in effect provided the LDC retains its capacity through the restructuring mechanism. In addition, the Commission required that the pipeline post particulars of the buy/sell deals on its electronic bulletin board to make those transactions public.

As a general matter, the Commission denies rehearing on these issues. However, the Commission will make several changes on rehearing to the capacity assignment mechanisms. The most significant change is that shippers can release capacity for any period of less than one calendar month without prior posting on the EBB or bidding for the released capacity. Those releases must be announced on the EBB as soon as possible after the transaction commences, but no later than forty-eight hours,[118] and no roll-overs or extensions will be permitted without prior notice and opportunity to bid for the capacity.

1. Jurisdiction Over Capacity Brokering Activities

The Public Service Commission of the State of New York (New York PSC), Atlanta Gas, and UGI maintain that the Commission has no jurisdiction over the assignment of capacity rights by an LDC to a customer on the LDC's system because the LDC is not a jurisdictional transporter of gas. APGA contends that the Commission has no authority to require municipalities to comply with the § 284.243's capacity releasing procedures and limitations because municipalities are not subject to Commission jurisdiction under either the NGA or the NGPA.

The Commission rejects the contention that it lacks jurisdiction over the assignment of capacity by LDCs. In *Texas Eastern Transmission Corp.*,[119] the Commission resolved the jurisdiction question as follows:

> Since the brokering, or assignment, of transportation capacity will control the access to that capacity, the Commission believes that brokering is tantamount to transportation. Therefore, brokering constitutes a new transportation service, subject to the Commission's jurisdiction, that is not covered directly by existing NGA section 7(c) transportation authorizations.[120]

The Commission amplified that analysis in the rehearing order by stating that there will be a movement of gas in interstate commerce by the assignee of capacity rights, "[B]y controlling such capacity, [the assignors] are effectively determining by whom, and under what circumstances gas will be transported" and are using the pipeline's facilities as if they were the assignors' facilities.[121] The Commission added that the NGA does not limit the Commission's jurisdiction to the actual physical transportation or delivery of natural gas and that a narrow construction of the Commission's jurisdiction would create a regulatory gap and a significant dilution of the Commission's regulatory authority over the pipelines themselves.

The Commission adheres to that analysis and conclusion that the Commission has NGA jurisdiction over the brokering or assignment of capacity by LDCs, and this is irrespective of whether the assignee is an LDC customer or, as Atlanta Gas maintains, a replacement shipper within the same state.[122]

The Commission also believes that petitioners have not recognized the essence of a capacity assignment. In effect, the pipeline is temporarily abandoning service to the releasing shipper and instituting service to the replacement shipper. Both of those activities are subject to the Commission's jurisdiction under NGA sections 1(b) and 7 (b) and (c).

The Commission agrees with the APGA that municipalities are beyond the jurisdiction of the Commission.[123] However, this means only that municipalities need not be certificated to transport gas on their own systems [124] or to participate in jurisdictional capacity brokering or releasing mechanisms.[125] However, this does not mean that municipalities are entitled to release capacity on an interstate pipeline without complying with the procedures pertinent to the pipeline's releasing mechanism. It means only that the municipalities need not be certificated to release capacity. The Commission's clarification in *Texas Eastern Transmission Corp*, that "all the conditions imposed upon program participants do not apply to municipalities" is not applicable where the conditions pertain to the mechanics of the release by and through the pipeline.[126] In that circumstance, the

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[114] Order No. 636 at 66.

[115] *Id.*

[116] Algonquin Gas Transmission Co., 59 FERC ¶ 61,032 (1992).

[117] El Paso Natural Gas Co., 59 FERC ¶ 61,031 (1992).

[118] The Commission believes that forty-eight hours is an appropriate and feasible period for requiring posting unless a pipeline can demonstrate that some short extension of the maximum time is necessary for operational reasons.

[119] 46 FERC ¶ 61,248 (1989), *order on reh'g*, 51 FERC ¶ 61,170 (1990).

[120] *Id.*, 46 FERC ¶ 61,248 at p. 61,873.

[121] Texas Eastern Transmission Corp., 51 FERC ¶ 61,170 at p. 61,452 (footnote omitted).

[122] Accordingly, contrary to the United Distribution Companies (UDC) and New York PSC, the Commission's issuance of a limited certificate of public convenience and necessity to firm shippers, to the extent necessary and solely for the purpose of releasing firm capacity, 18 CFR 284.243(g), was appropriate.

[123] Texas Gas Transmission Corp., 55 FERC ¶ 61,206 (1991); and Texas Eastern Transmission Corp., 51 FERC ¶ 61,170 (1990). Nor are municipalities' rates and service regulated by most state Commissions.

[124] Northwest Alabama Gas District, 42 FERC ¶ 61,371 (1988).

[125] Texas Gas Transmission Corp., 55 FERC ¶ 61,206 at p. 61,698 (1991).

[126] Texas Eastern, 51 FERC ¶ 61,170 at p. 61,454 (1990).

capacity releasing mechanism is no different from any other pipeline term or condition of service with which the municipality must comply.

2. Retention of Capacity Brokering

Several petitioners argue that the Commission should have allowed capacity brokering programs to continue [127] or, at least, grandfathered existing programs.[128]

NYSE&G argues that capacity brokering is more in tune with private contractual arrangements and is superior to prearranged deals under capacity releasing because the latter permits preemption by a "better offer," which is an "invitation to controversy." [129] The CNG LDCs argue that capacity brokering is superior because the LDCs "may temporarily broker capacity to their own end users." [130] Several petitioners argue retention of capacity brokering along side of capacity releasing will provide pipelines with the incentive to market released capacity, for example, in competition with their own interruptible transportation.[131] New York PSC argues that capacity brokering should not be replaced because, under releasing, the pipelines are unnecessary middlemen and can underbid the LDCs to keep interruptible service. It also maintains that it is aware of no complaints against the programs on six pipelines serving New York State.

Atlanta Gas, New York PSC, UGI and CNG argue that the capacity releasing mechanism is too time consuming, too administratively complex, imposes additional transaction costs, and reduces flexibility. Hadson Gas Systems, Inc. (Hadson) similarly contends that the new capacity releasing rule will discourage the development of a secondary capacity market because the required posting of prearranged deals raises the possibility of deal stealing which will cause potential assignors to either fashion complicated, ambiguous, and confusing arrangements or just not attempt it at all.

The Commission upholds its decision not to approve new individually authorized capacity brokering and other capacity assignment certificates.[132] The Commission believes it is desirable for efficiency and administrative reasons for all allocations to be effected through the pipeline to avoid the possibility of discriminatory allocations. For example, the possibility exists that LDCs might favor their own end-users in ways that constitute potential undue discrimination. In addition, contrary to the rehearing contentions, the Commission believes that the two new generic capacity allocation mechanisms of §§ 284.242 and 284.243 of the Commission's regulations are adequate substitutes for existing programs and will eliminate the potential for discrimination, while facilitating the development of the secondary transportation market.

The Commission believes that the mechanism for prearranged deals under the capacity releasing program will permit parties to fashion permanent or temporary capacity reallocations in a manner similar to capacity brokering. In that vein, as discussed below, the Commission is permitting releases for less than thirty days (up to 29 days) to be effected without prior posting on the EBB or bidding on the released capacity. Those releases must be announced on the EBB as soon as possible, but no later than forty-eight hours, after the transaction commences and no rollovers or extensions are permitted without prior notice on the EBB and an opportunity to bid.

The opportunity for potential competitors to bid is appropriate because it permits someone to make a better offer and obtain the capacity. This may enable the releasing shipper to receive more revenue for its firm capacity. The posting of the prearranged deal is appropriate in order to keep all deals public so that discrimination can be detected and prevented. The pipelines are not unnecessary middlemen but perform the function of a public clearinghouse for all transactions. In addition, the EBBs should give releasing shippers exposure to more replacement shippers and pipelines will be able to combine releases to make them more marketable. The pipelines will have an adequate incentive to market released capacity because of the fee that they can receive to actively market capacity. Moreover, as open access transporters, the pipelines must accommodate requests for service, if their own or released capacity is available. In addition, the pipelines must offer their own capacity on the EBB. The Commission views the competition between interruptible transportation and capacity releasing as part of a healthy secondary capacity market. The Commission does not believe that the lack of complaints on six pipeline systems is relevant to the devising of a generic capacity reallocation program for the entire pipeline industry.

As discussed further below, the Commission has adjusted the capacity reallocation mechanism to accommodate some of the arguments made by petitioners. However, the Commission has done that without compromising the central purpose of adopting the capacity allocation mechanism in lieu of capacity brokering—notice and oversight of the assignment of pipeline capacity. As modified, the Commission does not believe, based upon its experience with the gas industry, that capacity releasing will be too time consuming, too administratively complex, impose unreasonable costs, or unduly reduce flexibility. Rather, the Commission believes that an efficient, appropriately-priced capacity releasing mechanism can be fashioned to create an efficient, flexible, competitive, and reasonable secondary market for pipeline capacity while, at the same time, avoiding the potential for discrimination. Specific details of capacity releasing are discussed below in the section dealing with specific rehearing requests on those details.

3. Voluntary Reallocation of Firm Transportation Capacity

Under new § 284.243, an open access pipeline must provide a capacity releasing mechanism that lets shippers voluntarily reallocate all or part of their firm transportation capacity to any person. The capacity release mechanism would operate through the pipeline's electronic bulletin board, and the replacement shipper would contract with the pipeline for the reallocated capacity, with the releasing shipper receiving a credit for the proceeds of the release. Except when necessary to respond to petitioners' arguments below, the Commission will not repeat Order No. 636's discussion of the mechanics of capacity releasing.

a. *Exceptions for short term or small volume transactions.* Several petitioners contend that the Commission should not subject short-term (one to three months)

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[127] New York State Electric & Gas Corporation (NYSE&G), New Jersey Natural, CNG LDCs, Wisconsin Distributor Group, PSE&G, the Industrial Groups, and New York PSC.

[128] CNG LDCs. Indiana Gas contends, without supporting argument, that "Order No. 636 should be amended to establish capacity brokering programs." Request for Rehearing at 7.

[129] Petition at 7. "Best Offer" is discussed *infra*.

[130] Petition at 5.

[131] PSE&G and Wisconsin Distributor Group.

[132] The Commission's decision to amend the terms and conditions of existing capacity brokering and other, capacity assignment programs to conform to Order No. 636's capacity allocation mechanisms was effected in Algonquin Gas Transmission Co., 59 FERC ¶ 61,032 (1992). Hence, the Commission will address objections to that decision in the rehearing of that order and not here. That order will be issued contemporaneously with Order No. 636–A.

or small volume transactions (less than 5,000 to 10,000 Dth) to the bidding requirements of the capacity release mechanism.[133] Instead, they contend the Commission should allow parties to consummate these transactions on their own, subject only to posting the deal on the pipeline's electronic bulletin board. They contend that the requirement for advance posting and bidding in Order No. 636 would be too administratively difficult for short term or low volume releases and therefore could inhibit the efficient allocation of capacity.

As a policy matter, the Commission believes that the public interest is served by fostering a robust secondary market in pipeline firm capacity. At the same time, the Commission seeks to ensure that the efficiencies of the secondary market are not frustrated by unduly discriminatory access to this market. To balance these objectives, the Commission will modify the regulations to permit firm shippers to find their own replacement shippers and release capacity to those shippers for any period of less than one calendar month without having to comply with the bidding requirements of § 224.243. The same maximum rate would apply to these transactions as to other capacity release transactions. Releases under this exception must be posted on the electronic bulletin board as soon as possible, but no later than forty-eight hours, after the release transaction begins. Parties will be prohibited from rolling-over such agreements or granting extensions without complying with the requirements for prior notice and bidding.

The exception from the bidding requirements for short-term releases will not relieve the pipeline from its obligation to devise capacity releasing procedures facilitating short-term releases.[134] The Commission expects that, in most instances, capacity release mechanisms can be implemented which will permit releases for one day or less at any time during a month, and provide for release transactions to be finalized within twenty-four hours of posting. The Commission recognizes that meeting such goals may not immediately be achievable by all pipelines. Pipelines proposing significantly greater restrictions need to justify them and explain in their compliance filing when they will be able to adopt less restrictive conditions.

Accordingly, the Commission will modify § 224.243 to add a new paragraph (h) as follows:

(1) A release of capacity by a firm shipper to a replacement shipper for any period of less than one calendar month need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. A firm release under this paragraph must be noticed on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours after the release transaction commences.

(2) A firm shipper may not rollover, extend, or in any way continue a release under this paragraph without complying with the requirements of paragraphs (c) through (e) of this section and may not re-release to the same replacement shipper under this paragraph until thirty days after the first release period has ended.

Given the modification for short term releases, the Commission does not find that a separate exception for low volume releases is needed. The short term modification will permit release of any amount of capacity for less than thirty days. Volumes of up to 10,000 Dth per day for more than this period may be significant and compliance with the notice and bidding requirements should not create any administrative difficulties.

b. *Priority issues*—(1) *Priority for prearranged deals.* The Commission in Order No. 636 established capacity releasing under § 284.243 as a nondiscriminatory vehicle for pipeline transportation customers to release capacity voluntarily on a permanent or temporary basis. In general, capacity would be released to the person offering the highest rate and offering to meet the other terms and conditions of the bid. The Commission recognized, however, that permitting parties to continue to prearrange deals for redistributing capacity would facilitate capacity reallocation. Permitting prearranged deals would provide pipeline customers with an incentive to market their unneeded capacity actively rather than simply posting the capacity on the pipeline's bulletin board. In § 284.243, the Commission therefore gave priority to prearranged deals: The replacement shipper under the prearranged deal would receive the capacity so long as it was willing to match any better offer. Several petitioners argue that the order of priority established in Order No. 636 should be modified.

Several petitioners argue that a releasing LDC should be able to designate replacement shippers without exposure to the bidding process.[135] They argue that such priority would ensure that the released capacity remains on the LDC's system, so that the LDCs would not lose revenues from the diversion of capacity to off-system markets. The Industrial Groups argue that, in the alternative, the Commission should permit releases to be conditioned on the replacement shipper using the released capacity to deliver gas to customers served by the releasing LDC.

American Paper Institute argues that existing end-use customers should have priority to released capacity if they are willing to bid the maximum rate. Peoples Natural Gas Company (Peoples Natural Gas) similarly argues that an end-user behind an LDC should have priority if it matches the price of a third party bidder even though it does not match other terms and conditions.

The Commission does not believe that revising its priority provisions for capacity release is necessary. The purposes of the capacity release provisions were twofold: First, to ensure that notice would be given for all capacity reallocations and second, to give parties an opportunity to bid a higher rate so that allocative efficiency is enhanced by allotting capacity to the shipper placing the highest value on the capacity. As discussed previously, the Commission is excepting short term releases from the bidding requirement. However, the Commission will not permit a general exception for all releases to a designated shipper. Such an exception would involve a large number of significant transactions and therefore would greatly undermine the allocative efficiency goal sought to be achieved by the bidding requirement. Elimination of the bidding requirement also is not necessary to enable LDCs and end-users to consummate beneficial deals to allocate capacity. Under the capacity release mechanism, an LDC can negotiate a prearranged deal with an end user and that end user will receive the capacity as long as it matches the best offer. Thus, an end-user under a prearranged deal meeting these conditions will be assured of receiving the capacity.

(2) *Priority for shippers on the pipeline's firm queue.* Brymore argues that the Commission's priority for prearranged deals at the maximum rate is unfair to shippers that have been on a pipeline's queue for firm capacity, and that shippers on the firm queue should receive priority if they match the best bid. O & R Energy, Inc. (O & R Energy)

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[133] *E.g.*, United Distribution Companies, New York PSC, the Industrial Groups, Northern Distributor Group, New England Gas Distributor Group, Associated Gas Distributors (AGD), and ANR.

[134] Stock and commodity exchanges, for example, consummate such transactions in very short time periods and, with the availability of existing computer technology, pipelines can design workable short term releasing mechanisms.

[135] CNG LDCs, Alabama Gas Corporation (Alabama Gas), and the Industrial Groups.

asserts that, under certain Commission approved tariffs, parties have made transportation prepayments to hold a place in a pipeline's queue, payments which may be refundable if capacity is not available or the buyer withdraws its request. O & R Energy requests that the Commission modify § 284.243 to provide that the pipeline must first discharge its tariff obligations to potential shippers in its firm transportation queue.

The Commission does not believe shippers on a pipeline's firm queue should be accorded priority over prearranged deals. First, as pointed out above, the capacity release mechanism was not intended to prohibit prearranged deals, but to ensure that notice of all such deals was provided.[136] Second, the pipeline's queue applied only to the allocation of the pipeline's own capacity and never to released or brokered capacity. The Commission in Order No. 636 also modified the role of the firm queue by requiring that available pipeline firm capacity must be posted on the electronic bulletin board and allocated to the shipper making the best offer. In the restructuring proceedings, however, the parties should consider whether the existing firm queue or other provisions provide the best method for allocating the pipeline's available firm capacity when identically valued bids for pipeline capacity are received. The Commission will clarify that if a pipeline, firm queue is eliminated, deposits to retain position on the queue must be returned according to the terms of the pipeline's tariff.

(3) *Priority for sale of pipeline capacity.* Order No. 636 did not adopt the NOPR's proposal that the pipeline may sell its own available firm capacity prior to reselling that of a releasing customer.[137] Instead, the pipeline must post its available firm capacity on the electronic bulletin board so that potential shippers can elect whether to purchase the pipeline's or releasing shippers' capacity. Some pipelines have requested the Commission to reinstate the provision allowing pipelines to sell unused capacity ahead of released capacity.[138] ANR and Tenneco, for example, argue that if released capacity is sold prior to pipeline capacity, the pipeline may be unable to sell its firm capacity, thereby raising transportation rates for all customers. They contend that customers unable to release capacity will therefore be paying higher rates which will subsidize customers that can release capacity.[139] CIG asks the Commission to permit pipelines to sell their interruptible capacity prior to the release of firm capacity arguing that otherwise, firm customers that cannot release capacity will not be able to mitigate the reservation fees they pay.

The Commission adheres to the requirement in Order No. 636 that pipeline capacity (firm and interruptible) must compete with released capacity. Competition between pipeline capacity and released capacity helps ensure that customers pay only the competitive price for the available capacity. Granting preferences to pipeline capacity over released capacity could interfere with and frustrate competition and artificially raise the price of pipeline capacity to new shippers. Shippers seeking capacity should be able to select the transportation option (pipeline firm, released firm or pipeline interruptible) with the terms and price that best fits their needs. The pipelines are free to respond to releases of capacity as competition dictates, within the limits and requirements of the Commission's regulations.[140] Affording preference to pipeline capacity over released capacity also could reduce the incentive for shippers to post released capacity.

Further, the capacity release mechanism was intended to create a robust secondary market for pipeline capacity in which unneeded firm capacity would be available to shippers requiring that capacity. This allocation process should forestall the construction of unneeded new capacity, which in turn will result in lower costs for pipelines and all their firm shippers.

c. *Terms and conditions*—(1) *Determination of Best Bid*—i. *Should the pipeline or releasing shippers determine the best bid?* The Commission in Order No. 636 provided that releasing shippers can set the terms and conditions for the release of capacity and that the pipeline must allocate the released capacity to the person offering the highest rate, not over the maximum rate. Recognizing the multiplicity of releasing scenarios that could arise, the Commission determined that the parties in the restructuring proceedings should determine what constitutes the best offer.[141]

Several petitioners[142] request that the Commission clarify that the releasing shipper should be the appropriate party to determine the best offer, not the pipeline. Gas Company of New Mexico suggests that either the releasing shipper be given the ultimate decision to determine best offer or, alternatively, the choice "should be based on the total economic benefit provided to the releasing shipper." It posits that this approach would better deal with situations in which a releasing shipper may be releasing capacity on multiple pipelines. The Northern Distributor Group, Destec, and Fuel Managers Association request clarification that releasing shippers should be able to use criteria other than price to choose replacement shippers. The Industrial Groups supports allowing releasing shippers to determine the best bid, but further argues that regardless of who decides, payment made by customers as part of their retail rates should be taken into account in determining the best bid. It argues that since customers of LDCs have been paying for pipeline capacity through their retail rates, they should not have to pay the effective maximum rate for released capacity.

On the other hand, some petitioners request that the Commission establish specific parameters for determining the best bid.[143] For instance, Spot Market Corporation of the State of Texas. (Spot Market Corporation) is concerned about the operation of capacity release on the PGT system. It maintains that because PGT has a low transportation fee, every potential replacement shipper will bid the maximum amount and that a screen of factors must be used to establish priority.

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[136] By requiring that capacity is to be awarded to the prearranged deal only when no better offer is received, the capacity release mechanism ensures that the capacity goes to the highest valued use.

[137] Order No. 636 at p. 30,419.

[138] *E.g.*, ANR, CIG, Tenneco, and Questar Pipeline Company (Questar).

[139] Tenneco and ANR.

[140] The petitioners suggest that according pipeline capacity a preference over released capacity would result in reduced rates for all customers due to increased sale of pipeline capacity. However, any incremental sales of pipeline capacity would not affect the customers' rates in the short run. A pipeline's current rates are set in its tariff and generally are revised only when the pipeline files for new rates under section 4 of the Natural Gas Act. Thus, even if pipeline capacity was given the requested preference, the pipelines would retain the incremental revenues and would not have to reflect these revenues until an unspecified future date when the pipeline filed to raise its rates generally. In contrast, under the capacity release mechanism the releasing shipper immediately obtains a lower cost by receiving the proceeds from the release.

[141] Order No. 636 at p. 30,418.

[142] *E.g.*, United Distribution Companies, AGD, Long Island Lighting Company (LILCO), CNG LDCs, Wisconsin Distributor Group, UGI, Northern Distributor Group, the Industrial Groups, Destec, the Fuel Managers Association, Midland Cogeneration Venture (Midland Cogeneration), and the Pennsylvania Public Utility Commission (Pennsylvania PUC).

[143] National Independent Energy Producers (NIEP) (recommending objective generic standards such as net present value, first-come/first-served, or pro-rationing, but also giving weight to the opinion of the releasing shipper); Brymore (all other things being equal, *e.g.*, rate and term, the shipper guaranteeing the highest load factor usage should receive capacity).

The Commission will clarify its position with respect to terms and conditions and best bids. Due to the variety of releasing conditions that may exist, the Commission will not establish only one methodology for evaluating best bids, but will use the following approach.

The pipeline's tariff must include an objective and non-discriminatory economic standard for determining best bids. Releasing shippers may rely upon this standard in structuring their capacity releases, but are not required to do so. If a releasing shipper does not specify a standard, the standard in the pipeline's tariff will apply.

Releasing shippers may include in their offers to release capacity reasonable and non-discriminatory terms and conditions to accommodate individual release situations, including provisions for evaluating bids. All such terms and conditions applicable to the release must be posted on the pipeline's electronic bulletin board and must be objectively stated, applicable to all potential bidders, and non-discriminatory. For example, the terms and conditions could not favor one set of buyers, such as end users of an LDC, or grant price preferences or credits to certain buyers. The pipeline's tariff also must require that all terms and conditions included in offers to release capacity be objectively stated, applicable to all potential bidders, and non-discriminatory.

ii. *Pooling and aggregating capacity.* NIEP argues that the Commission's capacity release mechanism should permit pooling arrangements under which a replacement shipper obtains a pool of capacity rights on different pipelines from an LDC. The replacement shipper can use capacity from each pipeline and pays the LDC a weighted average price for the entire pool.

Based on NIEP's description, the average price term may in some instances appear to conflict with the regulations providing that the rate for released capacity cannot exceed a pipeline's maximum rate. As NIEP recognizes, the average price will be higher than the maximum rate on at least one pipeline. However, within the constraints of the regulations, the Commission intends for its capacity releasing program to be as flexible as possible in order to promote efficient releases. A pooling arrangement, such as the one NIEP describes, potentially could be accomplished depending upon how the transaction is structured.

The APGA and Municipal Gas Authority of Georgia request that the Commission clarify that it will permit a program where firm capacity holders aggregate their unused firm capacity for release by the pipeline. They propose that the pipeline receive a commission of ten percent of all revenues, with the remainder credited to the firm capacity holders in proportion to the amounts of unutilized firm capacity that they made available.

The Commission finds nothing in the regulations promulgated by Order No. 636 that would prevent firm capacity holders from aggregating firm capacity on the same or different pipelines to enhance its marketability for release.[144] If more than one shipper is aggregating capacity, the shippers involved would have to determine among themselves how to allocate the credit from the release. The Commission further clarifies that the pipeline would be eligible to receive a negotiated marketing fee only if it actively markets the capacity.

iii. *Length of contract.* American Paper Institute contends that the length of contract should not be taken into account in determining bid value, because not all gas users can commit to long term contracts. The Commission will not eliminate length of contract from the determination of best bid since a releasing shipper may consider contract duration to be an important consideration in releasing capacity.

(2) *Creditworthiness.* Several petitioners contend that the releasing party should have the right to condition its release on the replacement shipper demonstrating its creditworthiness or paying an amount in advance.[145] Because the replacement shipper is contracting with the pipeline for released capacity, it must satisfy all the pipeline's tariff provisions governing eligibility.[146] In the pipeline's restructuring proceedings, however, the pipelines need to develop tariff procedures to effectuate and expedite the capacity releasing mechanism. For example, pipelines may develop tariff provisions permitting bidders to pre-qualify under their eligibility standards.

(3) *Peak day restrictions.* Northern Illinois Gas Company (Northern Illinois Gas), *et al.*[147] is concerned about its ability to ensure that it has adequate gas volume flowing into its system on peak days. To deal with this problem, it asserts that, although replacement shippers generally should be able to make use of flexible delivery points, a releasing shipper should be able to restrict the replacement shipper's use of released capacity to primary delivery points either generally or in certain demand conditions. The Commission is not sure how restricting replacement shippers to primary delivery points would promote adequate gas flows on peak days since the gas flowing would be that of the replacement shipper. However, the Commission clarifies that a releasing shipper may include terms and conditions, such as recall rights, that will ensure it has adequate peak day transportation.[148] The Commission also notes that a party holding capacity to a primary delivery point always will have priority over a firm shipper using that delivery point as a secondary delivery point on an interruptible basis.

(4) *Minimum price.* Western Resources, Inc. (Western Resources) asks for clarification that the releasing shipper may specify a minimum price. The Commission so clarifies.

(5) *Consistency of release conditions with pipeline tariff.* ANR asks the Commission to clarify that any conditions and/or restrictions that may apply to the released capacity must be consistent with ANR's tariff and/or the original agreement between ANR and the releasing shipper. The Commission clarifies that all terms and conditions must not conflict with the pipeline's tariff, but notes that, under § 284.243(f), the pipeline may agree to release the releasing shipper from liability under its contract. In addition, of course, the releasing shipper can establish additional terms and conditions specific to its release, such as providing for recall rights.[149]

(6) *Other preferential terms and conditions.* The American Paper Institute is concerned that potential releasing shippers may attempt to add terms and conditions which will tie the release of capacity to other compensation paid to the releasing shipper, such as an LDC requiring the potential replacement shipper to pay a certain price for local gas transportation service or a producer conditioning the release of capacity on the purchase of the producer's gas. The American Paper

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[144] In Order No. 636, the Commission gave an example of a shipper holding capacity from the Gulf of Mexico to New York being able to release its capacity between those points at up to the maximum rate for the path from the Gulf to New York. Order No. 636 at pp. 30,420–21. Similarly, a shipper holding capacity on an upstream and downstream pipeline, which together provide a path from the Gulf to New York, could aggregate that capacity for a single release. Each block of capacity could be sold at up to the maximum rate on each pipeline and the transaction would have to be posted on each pipeline's electronic bulletin board.

[145] *E.g.* LILCO and New England Gas Distributors.

[146] Order No. 636 at p. 30,419.

[147] Peoples Gas Light and Coke Company, and North Shore Gas Company.

[148] See Order No. 636 at p. 30,418.

[149] Order No. 636 at p. 30,418.

Institute requests the Commission to clarify that such ties will not be permitted. Brymore is concerned about the possibility of abuse by releasing shippers favoring affiliates or requiring compensation outside of the reassignment process.

The Commission shares these concerns. The Commission reiterates that all terms and conditions for capacity release must be posted and nondiscriminatory, and must relate solely to the details of acquiring transportation on the interstate pipelines. Release of pipeline capacity cannot be tied to any other conditions. Moreover, the Commission will not tolerate deals undertaken to avoid the notice requirements of the regulations.

d. *Releasing rights of holders of upstream and downstream capacity.* The Commission in Order No. 636 provided for flexible delivery points, in part, to achieve a broad and meaningful capacity releasing program.[150] The Commission provided that such delivery points must be within the firm transportation capacity to which the shipper is entitled and, as an example, pointed out that a downstream LDC could deliver capacity upstream, but that an upstream LDC could not deliver gas downstream.[151]

Arizona Electric Power Cooperative, Inc. (Arizona Electric) argues that the Commission should not prevent a downstream replacement shipper from using an upstream shipper's capacity and adding additional downstream capacity to complete the journey. Arizona Direct Customers interprets the Commission's discussion as a prohibition on releases by upstream customers and contends that such a rigid interpretation should not prohibit "operational" releases on grid-like transmission networks where, it asserts, substantial deliveries are by displacement. Alabama Gas asks the Commission to modify Order No. 636 to provide that downstream shippers may not reallocate their capacity to shippers seeking upstream receipt points. It argues that permitting downstream shippers to release capacity upstream is unfair because the upstream shippers do not have the reciprocal ability to release capacity in the downstream market. Alternatively, it argues that whenever a downstream shipper releases capacity to an upstream shipper, the "hole" remaining from the unused downstream capacity should be reallocated to an upstream shipper so that it can release capacity further downstream.

The Commission's discussion in Order No. 636 provided an illustration of the point that a shipper can release only that capacity it has a right to use and for which it is paying. Thus, the capacity release mechanism treats all shippers equally. The upstream shipper can release only the transportation capacity it holds by paying a reservation fee and cannot release capacity that it has not reserved.[152] Upstream shippers can, of course, purchase downstream capacity and combine it with other capacity for delivery to downstream points. Ultimately, the determination of the capacity available for release on each pipeline must be determined in the individual restructuring proceedings based on the operational characteristics of each pipeline, including such factors as the availability of flexible delivery points. The Commission will not permit the reallocation of capacity between upstream and downstream shippers as proposed by Alabama Gas. Such a proposal is not only unduly complex, but it would deprive the downstream shipper of the ability to sell capacity which it has reserved by paying the reservation fee.

e. *Rate cap.* The Commission's regulations provide that the pipeline must allocate released capacity to the shipper offering the highest rate, not over the maximum rate.[153] Several petitioners raise questions about the maximum rate for released capacity set by this provision.

(1) *Elimination or modification of the rate ceiling.* Tenneco and Northwest Pipeline Corporation (Northwest) argue that released capacity should not be subject to any price cap. They argue that removing the price cap will permit capacity to be allocated to the user placing the highest value on the capacity and will eliminate the need for determining an allocation method when more than one party bids the maximum rate. Northwest contends that any amounts received above the maximum rate should be shared between the releasing shipper and the pipeline. Alternatively, Tenneco suggests that the rate cap should be based on an estimate of the costs of constructing additional facilities that otherwise would be necessary if capacity was not released.

Based upon the information in this proceeding, the Commission will not remove the rate cap because the market for released capacity has not been established to be sufficiently competitive so that releasing shippers will not be able to exert market power.[154] Thus, the extent of competition in the secondary release market may not be sufficient to ensure that the rates for released capacity will be just and reasonable. The Commission will not permit any replacement shipper to pay more than the Commission established maximum just and reasonable rate for capacity.

Permitting pipelines to share in amounts received above the maximum rate, as Northwest proposes, could permit the pipeline to recover scarcity rents through the release program that it would not ordinarily receive. Northwest's revenue sharing approach might further create an incentive for a capacity constrained pipeline to withhold new construction because of the prospect of deriving additional revenues from the resale of capacity above the maximum rate. The Commission further will not permit the maximum rate for released capacity to be based on construction estimates, because such a rate could exceed the maximum tariff rate on file for the pipeline.

Western Resources requests clarification of the maximum rate provision, contending that the benchmark for released capacity should be the interruptible rate and that some pipelines may not offer interruptible transportation after the restructuring. The Commission will clarify that the maximum rate for released capacity is the maximum firm rate, not the interruptible rate. Under the capacity release provisions of § 284.243, a customer is releasing firm capacity. The replacement shipper pays the pipeline both the usage rate and the reservation fee determined by the bidding process (up to the maximum rate). The releasing shipper then receives a credit for the reservation fee paid by the replacement shipper.[155]

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[150] Order No. 636 at p. 30,429.

[151] As the Commission pointed out, a shipper with transportation capacity from the Gulf of Mexico to New York City could release any transportation capacity between those two points, including transportation for a shorter haul. Order No. 636 at pp. 30,420–21. Thus, the releasing shipper could release capacity from the Gulf of Mexico to Atlanta to one replacement shipper and, if feasible, simultaneously release capacity from Atlanta to New York to a second replacement shipper (or use that capacity to transport its own gas).

[152] For example, a shipper paying a reservation fee for capacity from point A to point B could release only that capacity, because it has not paid a reservation fee for capacity beyond point B.

[153] Section 284.243(c).

[154] See Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486, 1510 (D.C. Cir. 1984) (market forces must be sufficient to hold rates to reasonable levels).

[155] The releasing shipper receives a credit toward its reservation fee because it pays this fee monthly to reserve capacity on the pipeline and the replacement shipper is acquiring the ability to use this reserved capacity. The releasing shipper does not receive a credit related to the usage fee because it has not paid the usage fee in advance. The usage

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(2) *Items included in determining the maximum rate.* Two petitioners raise questions about the items included in the rate cap and about the treatment of refunds. AGD asks whether the rate cap includes all surcharges applicable to the capacity (e.g. transition costs and GRI charges) and the administrative fee and the revenue-sharing amount ("incentive fee"). Phillips Petroleum Company, Phillips Gas Marketing Company and GPM Gas Corporation (Phillips) argue that replacement shippers should share in refunds if the replacement shipper is paying more than the ultimately determined just and reasonable rate. The Commission agrees that the cap should include all fees paid by the releasing shipper, which would include surcharges and transition costs, and that replacement shippers can, in appropriate circumstances, share in refunds if their rate exceeds the just and reasonable rate ultimately determined.

But the Commission does not agree that the capacity can be resold at a rate including the pipeline marketing fee.[156] The marketing fee is not part of the cost of the transportation being released and the replacement shipper should not pay more than the maximum transportation rate for the capacity it is acquiring. The marketing fee represents the cost of finding a replacement shipper and therefore the releasing shipper should pay this fee, since it is the one marketing the capacity.

(3) *Incremental rates.* Midland Cogeneration and Southern California Edison Company (SoCal Edison) raise issues regarding the application of the capacity release mechanism to pipelines with incremental or "vintaged" rate structures and Midland Cogeneration requests a technical conference on this issue. Midland Cogeneration contends that under vintage pricing rate schedules, incremental customers will effectively be shut out from participating in the capacity releasing because they are competing to release capacity with rolled-in customers paying a much lower rate. It asserts that the incremental customer therefore will not be able to mitigate its capacity costs while rolled-in customers will have excellent prospects of recovering all their capacity costs. Midland Cogeneration and SoCal Edison put forward a number of solutions to this problem, including revenue pooling, granting priority to incremental releases, and establishing a single price floor based on the incremental rate or an average rate.

The Commission cannot and will not make a generic determination on the various methodologies proposed by Midland Cogeneration and SoCal Edison since resolution of such issues may depend on the characteristics of the pipeline and the services it offers. The parties in restructuring proceedings involving incremental rates should consider and propose methodologies to ensure that the capacity release mechanism operates efficiently and that all parties are treated fairly and equitably, without undue discrimination.

f. *Credit to releasing shippers*—(1) *Credits exceeding reservation fee.* In § 284.243(f), the Commission provided that releasing shippers will receive a credit towards their reservation fee for the proceeds of any release. A number of petitioners have raised the issue of whether releasing shippers can retain revenues exceeding their reservation fee if they pay discounted rates. Western Resources asks the Commission to clarify that if the rate paid by the replacement shipper is greater than the rate paid by the releasing shipper, the capacity holder should receive a credit for the release revenues and thereby receive the benefit of its bargain in gaining a long-term discounted rate. On the other hand, ANR argues that if the net revenues from the release exceed the releasing shipper's reservation fee, the pipeline should retain the incremental revenues, because that is consistent with the Commission's intent to allow the marketplace to set the price of services and would prevent overcontracting for firm capacity. Northern Natural Gas Company (Northern Natural) contends that the Commission should not permit discounted firm transportation to be released. It contends that the pipeline entered into those contracts based on the needs of the customer and the particular competitive situation with respect to end use markets and suppliers and that it would be inequitable for the discounted shipper to release that capacity. CIG asks that pipelines be allowed to address, in their restructuring proceedings, whether and to what extent capacity releasing shippers must share their revenue with other system users.

The Commission clarifies that a releasing shipper paying discounted rates is entitled to receive proceeds from a release even if such proceeds exceed its reservation fee. This ensures that shippers holding capacity have the incentive to release that capacity when others place a higher value on the capacity than the capacity holders do. The Commission will not limit competition by exempting discounted fixed-rate firm contracts from the capacity release mechanism nor will it permit the pipeline to retain incremental proceeds. Since the pipeline is not releasing the capacity, no efficiency or other procompetitive goal would be furthered by allowing it to retain incremental proceeds. If shippers holding discounted transportation are permitted to release that capacity, the pipeline is no worse off; the pipeline still receives the same total reservation charge for which it contracted with the releasing shipper.

(2) *Credits for capacity not sold.* Brooklyn Union suggests that, even if released capacity of one month or more is not resold, the pipelines should credit the releasing shipper with an amount based on the pipeline's return on equity and related taxes. It argues that its proposal would provide pipelines with an incentive to maximize throughput by placing pipelines at risk for the same proportion of fixed costs as the MFV rate methodology and would therefore obviate the need to mitigate costs in connection with SFV rates. The Commission rejects this proposal. Under the releasing mechanism, the pipeline should not be at risk for selling capacity held by shippers; the releasing shippers have contracted for the capacity and therefore they should bear the risk if the capacity cannot be resold.

g. *Effect of capacity release on interruptible transportation*—(1) *Requirement to provide interruptible transportation.* American Paper Institute claims that one pipeline proposed to discontinue offering interruptible transportation based on Order No. 636 and requests the Commission to clarify that pipelines will still be required to provide interruptible transportation after implementation of Order No. 636. Section 284.9 of the Commission regulations specifically requires that interstate pipelines must "offer transportation service on an interruptible basis."

(2) *Contribution of interruptible transportation to recovery of fixed costs.* A number of petitioners raise questions about the cost allocation and revenue responsibility to be assigned to interruptible transportation after capacity release has been implemented.[157] They point out that the

charge reflects the pipeline's variable cost and is paid on the volume of gas actually shipped. After the release of capacity, the replacement shipper, not the releasing shipper, is the party shipping gas and therefore the replacement shipper is responsible for paying the usage charge to the pipeline.

[156] As discussed later, the Commission is no longer permitting pipelines to recover the costs of operating the capacity release mechanism through an administrative fee.

[157] *E.g.*, Northwest, Western Resources, Questar, NIEP, APGA, New Jersey Natural, Municipal Gas Authority of Georgia, and INGAA.

Commission's traditional approach has required that interruptible transportation customers contribute to the recovery of the pipeline's fixed costs based on an estimated volume of interruptible transportation. However, they contend that once capacity release is implemented, interruptible transportation will face competition from released capacity and that estimating the volume of interruptible transportation that will be sold, and its rate, will be exceedingly difficult, particularly since the parties have no prior experience with a capacity release program. Some petitioners contend that if fixed costs remain in interruptible rates and interruptible volume or average interruptible rates decrease, the pipeline may not be able to recover the costs assigned to interruptible transportation.[158]

Some of these petitioners propose that the Commission depart from its previous practice of projecting interruptible volume and revenues and instead set firm rates without considering interruptible transportation.[159] If the pipeline is able to market interruptible transportation, the pipeline would then have to credit such revenues to the firm capacity holders. They propose, to provide the pipeline with an incentive to market interruptible transportation, the pipeline would retain a portion of the proceeds as a marketing fee.[160]

In Order No. 636, the Commission did not address the manner in which fixed costs should be allocated to interruptible service. However, the Commission recognizes that the implementation of capacity release mechanisms and the potential use of seasonal contract entitlements, discussed below, may affect the level of interruptible transportation and that the throughput mix between firm and interruptible services, therefore, will have to be considered by the parties in the restructuring proceedings.[161] The parties to the restructuring proceedings may agree upon an appropriate allocation of throughput and cost to interruptible transportation. However, when the amount of interruptible transportation is uncertain, the parties should consider some type of a revenue crediting mechanism.[162]

As an example of this potential approach, the pipeline and its firm shippers might decide to attribute no revenue responsibility to interruptible transportation.[163] Since the pipeline's firm shippers would be responsible for all pipeline costs, revenues from the sale of interruptible transportation would be credited to the firm shippers.[164] Under this potential approach, the parties to the restructuring proceedings also may consider whether other methods are needed so that the pipeline would not have an incentive to favor the sale of either interruptible or released capacity over the other service.

(3) *Pipeline preferences.* Several petitioners are concerned about the pipelines giving preference to their own interruptible or repackaged capacity over released capacity and some have requested that the Commission either establish specific remedies for pipeline abuse or require the staffing and facilities for capacity release to be separate from the transportation and gas marketing personnel and facilities.[165] Michigan Gas and New Jersey Natural contend that the pipelines have an inherent advantage in selling interruptible capacity, because the releasing mechanism may not make time-sensitive releases possible and the pipelines may offer an interruptible rate lower than a posted release rate, thereby inducing potential replacement shippers to refrain from bidding for the posted released capacity in the expectation that they could obtain interruptible transportation more cheaply.

The Commission in Order No. 636 has provided, in § 284.8(b)(2) & (3), that pipelines cannot discriminate between released capacity and the pipeline's unsubscribed firm or interruptible capacity. The Commission sought to prevent attempts to circumvent or thwart the process by setting forth specific parameters to govern the capacity release mechanism. For example, the pipeline is required to post all capacity and contract with replacement shippers offering the best bid. In addition, the pipelines should design their restructuring proposals in a way that does not provide them with the financial incentive to favor the sale of their interruptible transportation (or their own repackaged capacity) over the sale of released firm capacity by other shippers.

As a further effort to eliminate requirements that might provide pipeline interruptible transportation with advantages over released firm capacity, the Commission is revising its position on the pipelines' collection of the administrative fee for operating the capacity release mechanism. As discussed below, the Commission is no longer permitting the pipelines to recover the costs of operating the capacity releasing mechanism through a separately stated administrative fee. The pipeline will recover these costs in its rates as part of its cost of service.

At this point, therefore, the Commission sees no necessity to provide for further control over the process, such as requiring further separation of functions or devising specific penalties for pipeline abuse. The Commission also does not believe any changes in the capacity release program are necessary to address the concerns of Michigan Gas about short-term releases or the ability of pipelines to undercut rates for released firm capacity. First, as discussed previously, the Commission is modifying its regulations to ensure that short-term releases can take place by exempting releases of less than thirty (30) days from the bidding requirements of the rule. Second, as discussed above, the Commission will examine restructuring proposals to ensure that the pipelines do not have financial incentives to favor the sale of interruptible transportation over released capacity. Moreover, under the capacity release program, a releasing shipper can design its release with no minimum price term. Thus, the pipeline would not know the final bid rate in advance so that it could undercut that rate. Additionally, a potential replacement shipper that waits for the availability of interruptible transportation is taking a risk that another customer will acquire the released firm capacity, so that interruptible transportation is no longer available.

h. *Administrative issues*—(1) *Administrative fee.* In Order No. 636, the Commission stated that the pipelines could charge a reasonable administrative fee to cover their out of

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[158] Questar and INGAA.

[159] Northwest, Western Resources, NIEP, and APGA.

[160] The American Paper Institute contends that the pipelines need incentives to continue to market interruptible transportation and proposes a revenue crediting approach. On the other hand, Michigan Gas Utilities Division of Utilicorp United Inc. (Michigan Gas) proposes a revenue sharing approach intended to mitigate the pipeline's incentive to prefer its own interruptible capacity over released capacity.

[161] See *e.g.*, Columbia Gas Transmission Corp., 59 FERC ¶ 61,261 (1992); Stingray Pipeline Company, 59 FERC ¶ 61,372 (1992).

[162] See Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295, at 62,057 n.49 (1989) (benefit sharing possible solution to difficulty of estimating amount of discounting).

[163] The pipeline's maximum interruptible rate would be derived from the firm rate, such as by converting the maximum firm rate into a daily rate.

[164] A full credit of all interruptible revenues to firm shippers may not be appropriate if the pipeline has some revenue and cost responsibility (such as GSR costs) allocated to interruptible transportation.

[165] NASUCA, Fuel Managers Association, Public Utilities Commission of the State of California (CPUC) (requesting specific remedies if pipelines seek to thwart the release process), and UGI (separation of personnel).

pocket expenses in connection with establishing and operating capacity releasing programs. It also provided that the pipelines could share in the proceeds of a release when the pipelines take affirmative action to market the released capacity and find the replacement shipper.[166] A number of petitioners request the Commission to clarify various items relating to the administrative fee. They assert that the pipeline should not be able to recover excessive revenues from the administrative fee,[167] the fee should be separately stated,[168] the pipeline should return the administrative fee when it allocates its own capacity,[169] and the pipeline should only be able to share in proceeds when it finds a replacement shipper.[170]

As discussed previously, the Commission will no longer permit the pipelines to recover their costs for operating the capacity release program through a separately stated administrative fee in order to eliminate any potential advantages that interruptible transportation may enjoy relative to released capacity. The pipeline should recover the fixed costs for establishing the bulletin board in its transportation rates as part of its cost of service.[171] The Commission will clarify that the pipeline may receive a marketing fee when the releasing shipper reaches an agreement with the pipeline to actively market its capacity.

(2) *Relationship between releasing and replacement shippers.* Section 284.243(f) provides that the releasing shipper remains liable under its contract with the pipeline unless the pipeline releases it from its contract. The State of Michigan argues that since the replacement shipper must meet all of the pipeline's tariff provisions, the releasing shipper should not remain liable on the contract. Two petitioners request clarification of whether the releasing or replacement shipper ultimately is responsible for certain fees and charges, such as imbalance penalties and overrun charges.[172] Northern Illinois Gas argues that the capacity reallocation program "should automatically establish privity between the assignor and assignees so that the assignor can sue in the event it is billed by a pipeline for service provided to the assignee."

Due to the variety of possible releasing scenarios, the Commission believes that, unless the pipeline agrees otherwise, the releasing shipper must remain liable on its contract with the pipeline for payment of the reservation fee. The Commission will clarify, however, that the releasing shipper should not be responsible ultimately for penalties or other charges incurred by the replacement shipper. These charges are unrelated to the reservation of capacity and primarily are designed to deter shippers from engaging in certain prohibited conduct. No purpose would be served by requiring the releasing shipper to be responsible for these charges, since after the capacity release, it has no control over the conduct of the replacement shipper. The Commission will not establish contractual privity between the releasing and replacement shippers. The releasing shipper's right to be subrogated to the pipeline's claim is a matter to be determined by law and the contract between the releasing shipper and the pipeline.

(3) *Posting of offers to purchase capacity.* Rochester Gas suggests that the Commission require pipelines to post on their electronic bulletin board offers to assume or purchase capacity. The Commission believes that this suggestion should be adopted in order to facilitate communication between buyers and sellers. Accordingly, the Commission will amend § 284.243(d) to require the pipelines to post offers to purchase capacity. In this situation, the shipper seeking capacity would have to pay any posting fee required.[173]

(4) *Individually certificated transportation.* In Order No. 636, the Commission stated that individually certificated non-part 284 transportation arrangements can be released under § 284.243,[174] but did not include this provision in § 284.243. Several petitioners [175] seek clarification that individually certificated transportation can be released or ask that § 284.243 be amended to conform to Order No. 636's text. On reconsideration, the Commission has determined that holders of individually certificated transportation under part 157 should not be able to release capacity under the capacity release mechanism of part 284, since they are not governed by part 284 or affected by the provisions of Order No. 636 which revised the part 284 regulations. Accordingly, the Commission will not amend § 284.243. Holders of individually certificated transportation may convert to part 284 transportation if they wish to release capacity.

(5) *Pregranted Abandonment.* Under § 284.243 (b) and (f), a shipper can release its capacity permanently and, if the pipeline agrees to cancel its contract, the shipper will no longer be liable to the pipeline for reservation fees for that capacity. Texas Gas requests that, in this situation, the Commission clarify that the pipeline has pre-granted abandonment authority to cease firm transportation to the releasing shipper. The Commission will clarify that pre-granted abandonment applies. Section 284.221 (d) provides for pre-granted abandonment upon the "termination of each individual transportation arrangement * * *."

4. Order No. 636—Upstream Pipeline Capacity

New § 284.242 promulgated by the Commission in Order No. 636 provides that an open access upstream pipeline must permit a downstream pipeline to assign its firm transportation (including storage) capacity (whether part 284 or individually certificated) on the upstream pipeline to the downstream pipeline's firm shippers, and that a downstream pipeline must assign its upstream firm transportation (including storage) capacity (whether part 284 or individually certificated) to its firm transportation customers to the extent necessary to provide capacity to those shippers that desire upstream capacity.

a. *Retention of upstream capacity by pipelines.* Tenneco, CNG, Southern Natural Gas Company (Southern), and Carnegie argue that pipelines should be permitted to retain upstream pipeline capacity to perform their merchant role, to avoid transition costs associated with buying out upstream supply contracts, or to perform their no-notice transportation. CNG points out that Order No. 636 permits pipelines to retain a share of storage upstream of the place of unbundling. CNG argues that it is likewise necessary for pipelines to

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[166] Order No. 636 at pp. 30,419–20.

[167] United Distribution Companies, State of Michigan and Michigan Public Service Commission (State of Michigan), and the Iowa, Missouri, and Wisconsin State Commissions.

[168] INGAA.

[169] State of Michigan.

[170] United Distribution Companies.

[171] The pipeline also could charge a fee to parties using the bulletin board that reflects the variable cost of such use (*e.g.*, EBB staff, monthly telephone line charge, maintenance). This fee would ensure that those using the bulletin board more frequently, such as marketers, would be charged an amount relating to their use of the board and that their use would not be subsidized by infrequent users.

[172] LILCO and ANR.

[173] Of course, if the offer to purchase resulted in an agreement to assign capacity, that agreement would be subject to the bidding requirements of the rule.

[174] Order No. 636 at p. 30,416.

[175] *E.g.*, Philadelphia Electric Company (Philadelphia Electric), LILCO, Northeast Energy Associates and New Jersey Energy Associates (Northeast Energy), New England Power Company (New England Power), SoCal Edison, and Questar.

retain a share of pipeline capacity upstream of the place unbundling to avoid a severe competitive disadvantage.[176] Southern also argues that the Commission "has not identified any evidence to support its determination that retention of upstream capacity has prevented other parties from gaining access to upstream supplies."

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia) argues that "[t]he Commission should permit pipelines to negotiate and file a different nondiscriminatory proposal for treatment of upstream capacity if it can demonstrate that the result is superior to mandatory assignment and that the Commission's goals are achieved." [177] In particular, Columbia argues that the Commission should "recognize that mandatory assignment of 'market delivery' contracts may not yield the best result on some pipeline systems." [178] Columbia asserts that those contracts are needed to avoid losing throughput.[179]

The Commission's intent is to afford gas purchasers the opportunity to purchase gas in the production area.[180] Capacity held by downstream pipelines on upstream pipelines is one limiting factor on the downstream pipeline's customers' ability to buy gas in the production area reached by the upstream pipeline. However, the Commission will permit upstream pipelines to retain production area capacity rights upstream of the place of unbundling, but only to the extent the pipelines need those rights in order to make their unbundled sales at their place of unbundling.[181] For example, if an upstream pipeline's unbundling point is at its mainline connection to a production area, it can retain capacity on laterals upstream of the unbundling point, if they are needed for the upstream pipeline to have an adequate opportunity to make unbundled sales at the unbundling point. The allocation of production area capacity upstream of the place of unbundling among the upstream pipeline and others seeking capacity must be done on a nondiscriminatory basis and the costs associated with the upstream capacity allocated to the pipeline must be recovered by the pipeline solely as part of its market-based sales rate.

The Commission will also permit downstream pipelines to retain some upstream pipeline capacity that is downstream of the place of unbundling on the upstream pipeline, but only to the extent such capacity is demonstrated by the downstream pipeline to be necessary for operational management and balancing purposes and the performance of the no-notice transportation service. For example, a downstream pipeline not connected to a production area but connected to an upstream pipeline (*e.g.*, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) and Tennessee Gas Pipeline Company) can retain capacity on the upstream pipeline to ensure that it has access to gas to keep its line pack in balance. However, the Commission will not permit a downstream pipeline to retain transportation or storage capacity on upstream pipelines to perform a sales service at the interconnection with an upstream pipeline. This is necessary to ensure that pipeline sales occur as far upstream on the pipeline grid as possible.

Nothing in this rule is intended to prohibit a transportation customer from contracting with a pipeline to act as its agent in nominating, scheduling, or otherwise managing its activities on the upstream pipeline, provided that the customer retains title to the capacity.

b. *Upstream supply contracts.* As stated above, the Commission is concerned about pipeline obligations under upstream supply contracts and has included costs incurred in connection with those contracts as transition costs to be recovered by the pipelines.[182]

Tenneco argues that to reduce transition costs, "the Commission should require customers taking assignment of the upstream pipeline capacity, to take along with it an assignment of an equivalent amount of supply from the downstream pipeline's current suppliers." [183]

Northern Illinois Gas argues that "pipelines should be allowed to give priority to customers who will take the gas supplies associated with Account No. 858 capacity or who will purchase the inventory associated with the upstream storage." [184] Northern Illinois Gas would limit this conditioning of assignment to the restructuring proceeding but supports it then to reduce transition costs.

Similarly, Atlanta Gas argues that upstream pipeline capacity dedicated to a particular customer's certificated service should be allocated to that customer.

The Commission will not require downstream pipeline customers to take upstream supply along with upstream capacity. While that could limit transition costs, it would unfairly limit gas purchasers in their choice of gas merchants and, therefore, would be unduly anticompetitive. But the Commission encourages parties to voluntarily arrange assignments to minimize transition costs. Hence, Atlanta Gas' more general request is denied.

c. *Length of upstream pipeline assignments.* Order No. 636 provided that upstream capacity assignments under § 284.242 are permanent. CIG asks that the Commission make it clear that the shipper acquiring that capacity does not obtain any extension rights (such as under an evergreen clause) except for the right of first refusal when the original agreement terminates.

The Commission disagrees with CIG. The Commission sees no reason why the downstream pipeline's evergreen rights should not be assigned to downstream customers under § 284.242. The downstream customer should stand in the shoes of the downstream pipeline, if the assignment occurs.

d. *Abandonment.* Texas Gas asks the Commission to provide for pregranted abandonment of the upstream pipeline's service obligation to the downstream pipeline with respect to the capacity assigned to downstream customers under § 284.242. The Commission clarifies such abandonment applies. The assignment is permanent and therefore terminates the contractual arrangement between the upstream and downstream pipeline. Section 284.221(d) provides for pregranted abandonment upon the "termination of each individual transportation arrangement * * *."

e. *Relationship of section 284.242 to restructuring.* Order No. 636 prevents the downstream pipeline from giving up upstream capacity in the restructuring

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[176] See also Texas Gas' argument that upstream pipeline capacity needed to serve existing pipeline purchase contracts for gas to be resold on an unbundled basis should be grandfathered. CNG and Texas Gas are referring to unbundled sales downstream of the product area.

[177] Petition at 20.

[178] *Id.*

[179] Columbia describes "market delivery" contracts as "contracts under which gas is transported from gas supply areas to various locations throughout Columbia Transmission's system." *Id.*

[180] Columbia's request for an exception for "internal capacity" contracts is discussed *infra*.

[181] This is in addition to production area capacity needed for operational management and balancing and "no-notice" transportation.

[182] Texas Gas' argument that it should be relieved of its purchase obligation under stranded gas purchase contracts stemming from the assignment of upstream pipeline capacity is discussed, *infra*.

[183] Petition at 13.

[184] Petition at 29.

proceeding except under 18 CFR 284.242. Northern Illinois Gas requests that the Commission permit those releases with the written consent of the participants in the downstream pipeline's restructuring proceeding of an upstream pipeline.[185]

The Commission's concern was that customers of downstream pipelines have priority access to upstream transportation and storage capacity during the restructuring proceedings.[186] The Commission, therefore, will permit downstream pipelines to relinquish upstream capacity during the restructuring proceedings (see *infra* on restructuring relinquishment), if all of its downstream pipeline's customers consent to the relinquishment and there is someone willing to take the upstream capacity.[187] For example, with that consent, a downstream pipeline could give up upstream capacity under the mechanism established for capacity adjustments in the restructuring proceeding under 18 CFR 284.14(e).

f. *Use of upstream capacity.* CIG asks for clarification that the assigned or released upstream capacity be subject to the receipt and delivery points specified in the existing contracts to prevent sales customers of downstream pipelines from fundamentally changing the use of the capacity. Similarly, Columbia maintains that the Commission failed to consider the relationship among permanent assignment of upstream capacity, flexible delivery points, and its ability to deliver market requirements through the changed delivery point.

As stated above, the downstream pipeline is entitled to retain some upstream capacity below the upstream pipeline's point of unbundling, only if it demonstrates that it is needed for operational management and balancing and no-notice transportation purposes. In that light, the Commission sees no reason why assignees of capacity cannot change receipt and delivery points under the Commission's flexible receipt and delivery point policy, including changing primary points if firm capacity is available. Of course, the assignee must comply with the operational terms and conditions of the pipeline's tariff.

g. *Exemptions.* In Order No. 636, the Commission exempted certain arrangements from § 284.242's requirements with respect to the assignment of upstream capacity, specifically, to interruptible capacity held by downstream pipelines on upstream pipelines, firm capacity held by downstream pipelines on intrastate pipelines, and upstream exchange transactions.[188]

Baltimore Gas and Electric Company (BG&E) argues that the exemption is too broad and asks the Commission to clarify that "the exemption of firm capacity held by downstream pipelines on intrastate pipelines and upstream exchange transactions was not intended to apply to any such capacity that had been used in the past to support any service."[189]

Mobil argues that while there may be exchanges necessary to pipeline operations or no-notice service, this issue should be resolved in the restructuring proceedings where the pipeline should justify the retention of exchanges.

Columbia maintains that the Commission should except "internal capacity" contracts where it delivers gas to the upstream pipeline and the upstream pipeline redelivers the gas back to Columbia at another point in its system. Columbia argues that these "internal capacity" contracts are analogous to exchanges and are needed to meet its delivery obligations without building new pipelines.

The Commission has no authority, in general, to order intrastate pipelines to permit the relinquishment of capacity used for intrastate services by their shippers to downstream customers. Accordingly, the Commission did not intend to subject subpart C (intrastate) pipelines to § 284.242. The Commission encourages intrastate pipelines to participate in the restructuring proceedings and to voluntarily consent to any reassignment proposal in a restructuring proceeding on terms and conditions acceptable to it. This may be especially appropriate if the intrastate capacity, as suggested by BG&E, is needed to support service to a particular customer of the interstate pipeline. If a person believes that this is necessary in a specific case with respect to subpart C capacity, it may petition the Commission to take appropriate action.

The Commission will continue to except exchanges and analogous transactions. Whether Columbia's "internal capacity" contracts qualify for such treatment is an issue for the restructuring proceeding. Those arrangements are too diverse and complex to be subject to a rule designed for upstream pipeline capacity. However, as stated above, the downstream pipeline needs those arrangements only for operational management and balancing and no-notice transportation purposes. In addition, the Commission will not tolerate retention of exchanges and similar arrangements to force downstream sales customers to remain pipeline sales customers.

h. *Application to individually certificated service.* Section 284.242 requires open access pipelines to permit the assignment of upstream pipeline capacity to customers of downstream pipelines. Questar observes that the text of Order No. 636 provides that individually certificated firm transportation (including storage) is subject to § 284.242, but that § 284.242 does not so provide. The Commission is amending § 284.242 to conform to the text of Order No. 636.

5. Buy/sell arrangements.

As stated above, the Commission prohibited buy/sell arrangements once the pipeline's capacity releasing program is effective, but grandfathered such arrangements existing on that date provided they are posted on the electronic bulletin board for informational purposes. Most buy-sell issues will be considered in the rehearing order in *El Paso Natural Gas Co.*, which dealt with certain existing buy-sell arrangements.[190] Here, the Commission will discuss only those issues raised with respect to continuation of existing buy-sell arrangements and posting on the electronic bulletin board.

Cascade Natural Gas Corporation, the Washington Water Power Company (Cascade), and NIEP ask the Commission to confirm in the regulations that buy-sell arrangements survive as stated in the text of Order No. 636 and that surviving buy-sell arrangements continue through any evergreen or rollover period in the buy-sell contract or at least until existing financing arrangements for underlying IPP projects expire.

SoCal Edison states that it is concerned that an existing capacity holder may release capacity involving a

[185] See also National Fuel Gas Supply Corporation (National Fuel)—pursuit of upstream capacity reduction after notice and receipt of no objections.

[186] However, this priority does not extend to customers of customers of downstream pipelines.

[187] Brymore requests clarification that the upstream pipeline assignment policy of section 284.242 is to be a public process during the restructuring proceedings which upstream capacity is assigned in a nondiscriminatory basis and is not a "trading chip." The Commission so clarifies.

[188] Order No. 636 at p. 30,418.

[189] Petition at 7.

[190] 59 FERC ¶61,031 (1992). *E.g.*, the Commission's jurisdiction over buy-sell arrangements will be addressed in the order on rehearing, which is being issued contemporaneously with this order.

buy-sell agreement and that the buy-sell party "may be temporarily without authorization to continue its transportation service pending the ability to retain the capacity (in its own name) as part of the pipeline's capacity releasing program".[191] It asks the Commission to clarify that the party using the grandfathered capacity will be allowed to continue to use it through and until that party decides whether to retain the capacity (in its own name) under the pipeline's capacity releasing program.

NIEP states that some buy-sell arrangements involve the pooling of capacity rights on several pipelines. They ask the Commission to clarify that "buy-sell pooling arrangements are valid and should be grandfathered under the Final Rule" and suggest that "an LDC, participating in an existing buy/sell program or a pre-arranged deal, may simply pro rate the amount of buy/sell or pre-arranged capacity pooled among all of the relevant pipelines, so that every pipeline may post such a pro rated amount on its bulletin board for informational or capacity reservation purposes, subject to change from time to time [or] * * * the LDC could notify its pipeline transporters of the pooling arrangements without attributing any specific buy/sell or pre-arranged volumes to any particular pipeline and simply indicate that part of the LDC's reserved capacity will be used for that purpose." [192] They also ask the Commission to revise the rule to permit the buy/sell customers to pay the weighted average rates of the pipelines.

The Indicated Shippers argue that buy/sell arrangements should be terminated as of the date of the *El Paso* order or the date a capacity release program is instituted or should be subject to the "better offer" rule.

Generally, the Commission denies rehearing on these issues. The Commission will permit all grandfathered buy/sell arrangements to continue pursuant to their terms, including evergreen provisions in the contract in effect on the date of posting on the electronic bulletin board. This will permit the parties to those arrangements to receive the benefits of their bargain. The Commission observes that revised § 284.243(d) requires the pipeline to post offers to purchase capacity. Thus, customers receiving service under a grandfathered buy/sell transaction can use this provision to locate other capacity holders willing to offer a better deal.

[191] Petition at 11.

[192] Petition at 6.

The Commission clarifies that existing buy/sell pooling transactions such as that described by NIEP may be grandfathered. This should be done by posting the complete details of the pooling arrangement on the EBB of each pipeline involved in the pooling of capacity.

Marathon Oil Company (Marathon) argues that the grandfathering of buy/sell arrangements creates an erroneous disparity *vis a vis* sales to pipelines. It argues buy/sell deals should be phased-out. As of the effective date of the pipelines' compliance with Order No. 636, no new buy/sell arrangements can be consummated. The Commission believes this balances all interests involved and provides a suitable transition to the Order No. 636 release program.

The Commission views the problem raised by SoCal Edison as a misunderstanding of releasing. While the LDC releases the capacity for resale, it does not lose its right to use that capacity until the replacement shipper has the right to use that capacity.

The Commission rejects Indicated Shippers' requests that grandfathered buy/sell arrangements be terminated. The Commission believes that the parties to existing buy/sell arrangements should receive the benefit of their bargains and should not be subject to losing those benefits under capacity releasing procedures.

D. No-Notice Transportation Service

New § 284.8(a)(4) adopted by Order No. 636 requires pipelines to provide a no-notice transportation service if they provided a bundled, city-gate, firm sales service on May 18, 1992. The preamble explained that this was required only if the sales service was provided on a no-notice basis.[193] Section 284.8(a)(4) describes no-notice service as "a firm transportation service under which firm shippers may receive delivery up to their firm entitlements on a daily basis without penalty."

1. Nature and Definition of No-notice Transportation

Petitioners raise a variety of questions about the nature and definition of no-notice transportation.

The APGA raises the fundamental question about whether no-notice transportation obligates pipelines to deliver gas or simply to provide capacity. The APGA questions how a transportation service can be as adequate and reliable as a bundled sales service. Similarly, Citizens Gas & Coke Utility (Citizens Gas) argues that no-notice transportation service is not comparable to the currently available no-notice sales service because the Commission has not adopted provisions providing for the necessary gas supply. City Gas asks the Commission to clarify that no-notice transportation service will be available at the same quality level as the no-notice bundled sales service.

For other reasons, the pipeline industry also is concerned about the gas supply issue. INGAA and several pipelines [194] ask the Commission to clarify that the pipeline is not the guarantor of gas supply as was the case under the bundled, city-gate, firm sales service. For example, ANR argues that no-notice shippers must take responsibility that their supplies are adequate with the pipeline covering genuine market swings from nominations but not covering any shortages or imbalances, regardless of the cause or magnitude. PGT and Alabama-Tennessee argue that they cannot perform no-notice service or be the guarantor of adequate gas supplies because they have no storage. ANR states that to provide that back-up, the pipeline would have to "maintain an expensive inventory of redundant gas supply and/or capacity to ensure that deliveries are made to all shippers under all circumstances." [195] Tenneco maintains that the borrowing of gas will not solve any delivery problems at peak if the customers' gas has not been tendered to the pipeline.

The Commission clarifies that the pipeline is required only to provide the capacity and operational flexibility necessary to ensure no-notice delivery of gas supplies owned by the pipeline's customers. It is up to the pipeline's customers to provide the gas for this service. The pipeline is not required to provide a back-up sales service to cover shortages or imbalances other than normal balancing associated with system integrity and efficiency. However, as part of that balancing service, a pipeline offering a no-notice transportation service must establish procedures to accommodate short-term reasonable differences between customer nominations for takes from the pipeline and actual takes of gas from the pipeline.[196] It is up to the pipeline's

[193] Order No. 636 at p. 30,421.

[194] *E.g.*, Southern, Questar, CNG, Carnegie, Northwest, and ANR.

[195] Petition at 8.

[196] The procedures used to accommodate short-term differences between nominations and actual deliveries to the customer can involve several individual services that together provide the no-

Continued

customers to make sure that sufficient gas is tendered to the pipeline to correct such imbalances in a timely fashion. The pipeline is required only to provide physical resources and operational procedures needed to accommodate such imbalances. Because pipeline systems differ, the parties to the restructuring proceedings must define the meaning of short-term reasonable differences and the time in which imbalances must be corrected.

The Commission does not agree that a lack of storage excuses a pipeline from its no-notice obligations. If a pipeline has been able to provide bundled sales service with a no-notice characteristic, the Commission will require that the pipeline use the same physical and operational assets to provide a no-notice transportation service. Even where a pipeline has no storage, it can maintain operational control over gas receipts by issuing operational flow orders or by acting as the scheduling agent for its shippers (if they so choose), if necessary to provide no notice transportation. Such operational control will, for example, enable the pipeline to build line pack in advance to support peak delivery requirements.

The Commission, however, is also encouraging pipeline shippers to cooperate with the pipeline in developing arrangements to efficiently implement no-notice service. For example, this could be accomplished by having contractual arrangements that allow the borrowing of gas by one customer from another customer.

NGSA argues that the definition of no-notice transportation is unclear. NGSA is concerned that the current definition could be viewed as requiring a single, restrictive no-notice service rather than permitting the flexibility needed to ensure optional services. NGSA asks the Commission to clarify that "no-notice transportation service simply entails an optional enhancement of basic firm transportation services which gives the firm transportation customers greater flexibility to meet unscheduled requirements within certain tolerances." [197] NGSA describes "tolerances" as degrees of flexibility above and below the customer's nomination within which it will not be penalized; that is, "an excused nomination inaccuracy." NGSA maintains that the degree of nomination inaccuracy permitted is a matter for negotiation between the pipeline-transporter and its shipper customers. United Distribution Companies asks the Commission to revise the rule to prohibit pipelines from restricting 'no notice' service to limited or 'peak day' periods. The Industrial Groups argue that clarification is needed about whether the customer may demand 100% of its post Order No. 636 firm transportation service, rather than some lesser percentage, to be provided under a no-notice FT rate schedule. ANR argues that pipelines should be entitled to impose daily penalties on a nondiscriminatory basis because flow control installations would be very expensive.

As a general matter, the Commission observes that some of the arguments made concerning alleged problems with no-notice transportation service appear to be thinly veiled arguments by those who favor continued pipeline bundled sales service. The Commission makes it clear that: (1) No-notice transportation service must be offered, as required below, as a pipeline service; (2) no legitimate operational reason has been given why no-notice transportation service cannot be as reliable as no-notice bundled sales service; and (3) the Commission will not tolerate *any* attempt to frustrate the orderly operation of no-notice transportation service. Thus, the pipelines are required to offer 100 percent no-notice service on all days of the year. However, the pipelines are encouraged to offer additional variations of no-notice service, if that suits the needs of their customers as suggested in Order No. 636.[198]

As stated above, several petitioners (e.g., the APGA) refer to the no-notice transportation service as hypothetical or untested or untried. However, the Commission, as stated above, believes it is fully warranted in its prediction that the pipelines can provide a reliable no-notice transportation service.[199] In Order No. 636, the Commission briefly described in general how the pipelines could provide that service to their former sales customers.[200] In the next sections, the Commission will further explain how it envisions no-notice transportation service could be provided.

a. *Example: Production area-to-market pipeline with storage.* Under a no-notice transportation service, a shipper could nominate and schedule its anticipated daily requirement from suppliers attached to the pipeline. During the gas day the shipper could be permitted the flexibility to take delivery of gas greater or less than its scheduled volume, within its maximum daily quantity (MDQ), resulting in a daily imbalance on the pipeline. The pipeline could handle the imbalance by adjusting injections or withdrawals from storage, or to a lesser extent, by increasing or decreasing line pack.

Pipelines could utilize unused contract storage capacity and deliverability to cover a shipper's daily imbalances. Gas withdrawn from storage could be borrowed from or displaced with customer storage accounts and replaced within days when the no-notice shipper corrected its imbalance. To assure that contract storage is available when called upon by the contract storage customer, the pipeline could limit no-notice overtakes when storage customer withdrawal nominations approached maximum storage deliverability or when working gas was below certain levels. If contract storage usage patterns routinely leave contract storage capacity or deliverability unavailable for imbalance management, the pipeline could use retained storage to support the no-notice service. If operating conditions require limitations of no-notice service, these limitations should not be any more restrictive than those that existed for bundled sales service as of May 18, 1992.

b. *Example: Downstream pipeline.* This example applies to no-notice transportation service on a downstream pipeline that currently purchases gas from one or more upstream pipelines. Under the final rule, capacity on upstream pipelines must be assigned to the downstream pipeline's customers wanting that capacity, but, the downstream pipeline can also retain some upstream capacity to support the no-notice service, but only when it has demonstrated the need to hold this capacity to fulfill its no-notice service obligation. If the downstream pipeline does not retain upstream capacity for this purpose, one possible way in which it could provide the no-notice service is for the customers of the downstream pipeline to grant it agency rights to schedule no-notice services on upstream pipelines.

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notice transportation service. For example, the pipeline may offer to provide no-notice transportation where it balances the customer's imbalance out of the customer's gas in contract storage or the pipeline's own storage gas, with the customer making up the use of the pipeline's storage gas in a reasonable period of time.

[197] Petition at 18.

[198] "The pipeline could also offer different daily imbalance management options based on a customer's desired tolerance above expected scheduled quantities and allowed tolerances." Order No. 636 at p. 30,425.

[199] See Mississippi River Transmission Corp. v. FERC, *supra*, ("No legitimate explanation being apparent, we see no reason to question FERC's implicit conclusion that bundled and unbundled service are adequate substitutes for each other." slip op. at 10).

[200] Order No. 636 at p. 30,425.

A no-notice shipper on a downstream pipeline could nominate its daily requirement, specifying volumes to be received from individual upstream pipelines. However, the downstream pipeline could perform the actual nomination and scheduling of the shipper's no-notice service on the upstream pipeline. Thus, when a customer on the downstream system invoked its no-notice right to take more gas, for example, than scheduled on that day, the downstream pipeline could in turn take more no-notice gas from the upstream pipeline than scheduled. When multiple upstream pipelines are involved, the downstream pipeline could follow a prespecified order in selecting the upstream no-notice service, as specified by the downstream shipper. The downstream pipeline could override the preferred priority order, to use different receipt points for example, as necessary to maintain system integrity. Thus, the no-notice imbalance could be handled by adjusting takes from the upstream pipeline as needed to keep the downstream system in balance. Reliance on upstream no-notice services, with operating control in the hands of the downstream pipeline, provides downstream systems the ability to provide no-notice services even if they possess no storage of their own.[201]

2. Availability of No-Notice Service

INGAA, United Gas Pipe Line Company (United), ANR, and CIG ask the Commission to limit no-notice transportation service to existing sales customers at current delivery points with the option to provide the service beyond that on a nondiscriminatory basis if the pipeline has the facilities and delivery capacity.

Northwest asks the Commission to clarify whether pipelines must offer a no-notice transportation service option to customers that have already left the pipelines' traditional sales service for pre-Order No. 636 transportation Northwest states that no-notice service without balancing and scheduling penalties does not now exist on its system and seeks clarification that it does not have to rebundle to a quality level which exceeds traditional bundled sales.

Questar argues that a shipper should be entitled to no-notice transportation service only if it asks for it during the restructuring proceeding.

NASUCA asks the Commission to clarify that "all pipelines should be required to offer a no-notice transportation service in the future regardless of whether they were providing a bundled, city-gate, firm sales service on the effective date of the rule." [202] Similarly, Southwest Gas Corporation (Southwest Gas) states that the Commission must ensure that pipelines already unbundled, such as El Paso Natural Gas Company (El Paso), must be required to perform a no-notice transportation service to avoid any undue discrimination.

The pipelines are required to offer no-notice transportation service only to customers that were entitled to receive a no-notice firm, city-gate, sales service on May 18, 1992. The pipeline must provide no-notice service at flexible delivery points for those customers. Pipelines that did not provide a no-notice sales service on May 18, 1992, are not required, but are strongly encouraged, to offer a no-notice transportation service. The pipeline's sales customers must inform the pipeline in the restructuring proceedings what form of transportation service they want to receive starting on the effective date of the pipeline's compliance filing. This is a one-time right to elect no-notice transportation. The pipelines are not required to offer no-notice service to other customers because they have not been receiving such a service.

A pipeline may, of course, offer no-notice service to transportation customers other than those who qualify for such service. If a pipeline offers to provide this service to a broader group of customers than required, the pipeline is required to do so on a non-discriminatory basis and, to the extent capacity is available, customers may then elect no-notice service at any time. The Commission strongly encourages the pipelines to make no-notice transportation service available to the maximum extent possible.

3. Direct Sales

The Industrial Gas Users Conference asks the Commission to indicate how, if at all, Order No. 636 affects nonjurisdictional direct sales arrangements. It states that the Commission probably intended to unbundle direct sales service. If so, it argues that those customers should have access to the full range of transportation rights and services, including no-notice firm service, traditional open access firm transportation, and storage.

Direct sales must be unbundled under Order No. 636.[203] Direct sales customers are entitled to receive the same type of transportation service that was embedded within their bundled direct sales service.[204] Hence, they are entitled to receive no-notice transportation service only if their direct sales were provided on a no-notice basis. Similarly, they are entitled to an allocation of firm storage only if firm transportation was embedded within their direct sales service.

4. The Meaning of Firm Entitlement

Section 284.8(a)(4) of the regulations promulgated by Order No. 636 provides that:

> An interstate pipeline that provided a firm sales service on May 18, 1992, and that offers transportation service on a firm basis under subpart B or G of this part, must offer firm transportation service under which firm shippers may receive delivery up to their *firm entitlements* on a daily basis without penalty.[205]

The Industrial Groups question what "firm entitlements" refers to and ask whether they are 'firm entitlements' under (1) its existing firm sales contracts, (2) its existing firm sales and transportation contracts combined, or (3) the new firm transportation entitlements in the service agreements to be entered into under the new no-notice FT rate schedules.

The Commission clarifies that "firm entitlements" refers to the firm shippers' daily right to receive transportation service. As stated *supra*, the firm shipper has a right to receive a no-notice transportation service only if it received a no-notice sales service on May 18, 1992. Under § 284.284(b) of the regulations adopted by Order No. 636, the sales customer's firm rights are converted to an equivalent amount of firm transportation service. Hence, firm entitlements means the converted firm entitlements to which a shipper is entitled to receive no-notice transportation service under Order No. 636.

5. The Meaning of Equivalent Amount of Transportation Service

Under new § 284.284(b), a pipeline customer's firm sales entitlements are converted to an equivalent amount of unbundled firm sales service and an equivalent amount of unbundled firm transportation service, except as

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[201] The imputed load factor for the small customers' firm transportation rate applies to "no-notice" transportation as well.

[202] Petition at 33.

[203] 18 CFR 284.284 (b) and (c) convert bundled sales under any service agreement to unbundled service.

[204] See *infra* on storage.

[205] 18 CFR 284.8(a)(4) (Emphasis added.)

adjusted in the restructuring proceedings. Texas Gas sees an ambiguity between § 284.284(b) and the preamble to Order No. 636, which states that pipelines may offer a bundled transportation service consisting of transportation and storage to perform no-notice service. Texas Gas asks for clarification that former bundled sales customers are to receive the same quality and quantity of transportation service they were previously receiving before unbundling.

The Commission clarifies that former bundled sales customers are entitled to receive the same quality and quantity of transportation service they were previously receiving as part of their sales service before unbundling. The Commission's reference to a bundled transportation and storage service was meant to highlight one of several possible ways to achieve that result through use of no-notice transportation service. The Commission notes that the central point is that the no-notice transportation must be at least as reliable as the service the bundled sales customers were actually receiving. On many systems, the pipelines could not deliver their full daily contract demand obligation on every day of the year because that was operationally impossible. The Commission is not requiring the no-notice transportation service to be superior to the bundled sales service in that respect.

6. Timing of Implementation

The Wisconsin Distributor Group states that it is concerned about the difficulties in implementing no-notice service and suggests a transition period where a pipeline would offer both bundled sales and no-notice transportation with an annual conversion process.

Elizabethtown Gas Company (Elizabethtown) argues that the Commission erred by not ordering the implementation on an interim basis, as it did in the case of Transcontinental Gas Pipe Line Corporation (Transco), with a conference on each pipeline after one year's operation.

The requests have not indicated a need for generic interim or transition periods with respect to implementation.

7. Flow Control

CIG asks the Commission to clarify that "imposition of operational conditions requiring that no-notice shippers maintain storage inventory levels and flowing gas supplies in the same relative mix as the pipeline currently relies upon to operate its sales service is consistent with the concept of no-notice delivery service." [206]

ANR asks the Commission to clarify that pipelines "cannot be held liable to producers, shippers, or consumers, as a result of any actions taken pursuant to [operational flow] orders." [207] ANR seeks clarification that for operational reasons it can order shippers located in an area to buy gas, whether their specific market area requires it or not. Last, ANR argues that pipelines should be able to impose daily penalties on a nondiscriminatory basis because flow control installations are very expensive.

Cincinnati Gas argues that allowing parties to craft operational control provisions in the restructuring proceedings is fundamentally inconsistent with pipelines retaining operational control to the degree they have it today.

United Distribution Companies asks the Commission to revise the rules to prohibit pipelines from unilaterally imposing "flow control" or other control devices restricting LDC ability to take gas at city-gate stations.

The Commission clarifies that pipelines have the right to impose reasonable operational conditions and to issue, on a nondiscriminatory basis, operational flow orders without liability, except for negligence or undue discrimination, to be able to provide a no-notice transportation service. The Commission sees no inconsistency between permitting parties to participate in crafting the operational control provisions needed for no-notice service and the pipelines retaining operational control. Of course, the pipeline must include in its tariff all operational terms and conditions related to no-notice transportation service so that the Commission can review the reasonableness of those terms and conditions, and so that shippers will have notice as to what will be asked of them.

The Commission views the control of flow from the pipeline to the city-gate as an important issue to be resolved in the restructuring proceedings. The parties should consider flow control devices as well as other methods, such as the use of overrun penalties. The Commission will not permit penalties for service within daily firm entitlements covered by no-notice service. If a pipeline elects to impose flow control or other control devices, the Commission will consider any opposition to that election in the compliance filing order.

[206] Petition at 15.

[207] petition at 9.

8. Control of Facilities

United asks the Commission to "confirm that each pipeline's own characteristics must be taken into account in the settlement proceedings which will restructure individual proceedings" and to make an explicit statement of the pipeline's need to have adequate control over its operations "because of the bidirectional flow necessary to maintain peak capacity." The Commission so confirms, as long as it is accomplished on a nondiscriminatory basis.

9. Supply Reallocation/Borrowing

In Order No. 636, the Commission suggested the possibility that parties could agree to the borrowing of one customer's gas to ensure no-notice transportation service for another shipper.

NGSA requests clarification with respect to the "borrowing" of a shipper's gas to keep the system in balance and to provide no-notice service. It urges that the LDC may only take gas belonging to the LDC and that once an interruptible shipper's gas is in the system it may not be diverted unless pursuant to a contractual arrangement between the LDC and the interruptible shipper. Phillips similarly argues that pipelines should be able to take producers' supplies for operational and no-notice purposes only pursuant to contract and suitable compensation.

United asks the Commission to explicitly recognize that the pipelines will have no liability for supply curtailment or reallocation among customers conducted under the terms of their individual tariffs.

The State of Louisiana seeks clarification that "a pipeline may [not] 'borrow' gas from some customers to serve others at a time when the customer from which the gas is 'borrowed' itself has need for the gas." [208]

The Commission views the pipeline's rights and obligations in connection with the borrowing of gas as matters to be addressed and resolved in the individual restructuring proceedings. As the above example of no-notice transportation in this part illustrates, it is necessary to balance the pipeline's need to borrow gas with its obligation to return borrowed gas on demand. These matters are pipeline-specific depending on particular pipeline needs and must be included in the pipeline's tariffs so that the Commission can determine if they are reasonable and so shippers will

[208] Petition at 6.

have notice of what might happen. As a general matter, the Commission believes that a borrowing of gas should be pursuant to contract and appropriate compensation.

10. Effects of No-Notice Transportation on Other Services

SoCal Edison asks the Commission to clarify Order No. 636 by adopting a "quality of service" principle to ensure that existing transportation customers are treated in a non-discriminatory fashion when pipelines implement their tariff provisions and operating conditions for no-notice transportation. It argues that this is especially important to ensure that existing transportation customer gas is not curtailed before, or in a discriminatory manner with respect to, no-notice gas.

The Fuel Managers Association seeks clarification that no-notice transportation "may not degrade the 'traditional' firm transportation service." [209] It asks that the Commission clarify that a pipeline may not divert traditional firm transportation gas supplies or interrupt that service to meet the needs of no-notice customers. Similarly, the Industrial Groups are concerned that pipelines may undermine traditional firm service by 'prioritizing firm customers' call on line pack to provide 'no-notice' service.

Brooklyn Union, *et al.*,[210] PSE&G, and AGD ask the Commission to clarify that the operating restrictions of no-notice transportation will not impair other existing firm services or create more onerous conditions on existing firm transportation and contract storage services.

As a general matter, the Commission agrees that existing transportation and storage services should not be diminished in quality. However, as with the borrowing of gas discussed above, the parties to the restructuring proceedings should resolve questions concerning the relationship of no-notice transportation to other pipeline services in each proceeding. Of course, the pipeline must include all of its operational terms and conditions in its tariff so that the Commission can determine if they are reasonable and so that all shippers will know the terms and conditions of the no-notice service.[211]

[209] Petition at 9. See also Destec.

[210] ConEd and PSE&G.

[211] The Commission, as requested by Brooklyn Union, *et al.*, confirms that holders of firm storage capacity have priority to use of that capacity, subject however, to the pipeline's tariff provisions with respect to storage use and the availability of interruptible storage when operationally warranted. Order No. 636 at p. 30,427.

11. Unbundling Options

The APGA asks the Commission to clarify that a sales customer, upon unbundling, can elect either no-notice or traditional transportation service. The Commission clarifies that upon unbundling a sales customer, at its election during the restructuring proceeding, may choose no-notice or traditional firm transportation or a combination of the two. However, as stated above, the customer may elect no-notice transportation only at that time unless the pipeline offers no-notice transportation in the future as a service to all customers.

12. Other Forms of Transportation Service

Tejas, in its supplemental motion for clarification, asks the Commission to clarify that pipelines may offer transportation service in addition to no-notice and traditional firm transportation. Tejas refers to Columbia's "off-peak" firm service.[212] And Tejas suggests that a short-notice service priced between no-notice and traditional service might prove adequate for many customers.

Destec suggests that the Commission require an off-peak firm transportation service that is subject to interruption to provide no-notice transportation.

The Commission clarifies that the pipelines may offer transportation services in addition to no-notice and traditional firm transportation services.

13. Costs

The Industrial Groups argue that, on rehearing, the Commission should specify that all costs, direct or indirect, of providing no-notice service must be recovered in the rates for that service. The matter of the appropriate costs to be allocated to no-notice transportation will be addressed by the Commission in the restructuring proceedings. As required by § 284.14(g) of the regulations, the pipeline must file tariff provisions implementing no-notice transportation service, with separately identified cost components.

14. Instantaneous Service

Gas Company of New Mexico asks the Commission to require pipelines to provide instantaneous delivery service that "would permit a shipper 'instantaneously' to schedule and deliver additional gas without waiting the 1–2 day period generally required by pipeline scheduling procedures." [213] The Commission denies Gas Company of New Mexico's request. While the Commission is requiring pipelines to provide instantaneous transportation service (see 18 CFR 284.14(b)(vii)), it is not mandating any change to pipeline scheduling and delivery requirements for traditional open access transportation service. Gas Company of New Mexico also asks the Commission to require pipelines to provide "instantaneous service" whenever (1) immediate action is required to avoid overpull or similar penalties, and (2) it would not be possible to schedule additional gas in time to avoid the problem. It adds that instantaneous service is a necessary adjunct to no-notice service and like no-notice service should be mandatory. Pipelines must provide instantaneous transportation service (see 18 CFR 284.14(b)(vii)) but, in the case of traditional open access transportation service this is only after the shipper's gas has been scheduled and delivered to the pipeline for transportation pursuant to its tariff requirements. The relationship between instantaneous service and no-notice service must be addressed in the restructuring proceedings.

[212] Columbia Gas Transmission Corp., 54 FERC ¶ 61,226.

[213] Petition at 14.

E. Storage

Order No. 636 amended § 284.1(a) of the Commission's regulations to define transportation as including storage. This means that pipelines must offer their customers firm and interruptible storage on an open-access, contract basis. Order No. 636 stated that pipelines can retain storage capacity downstream of the place of unbundling solely to fulfill their obligations with respect to system management (load balancing) and no-notice transportation. In addition, a pipeline can retain some storage capacity upstream of the place of unbundling in order to perform its sales service as follows:

> The allocation of this capacity between the pipeline, for use to make sales, and others, of course, must be done on a nondiscriminatory basis and the costs associated with the upstream storage capacity allocated to the pipeline must be recovered by the pipeline solely as part of its market-based sales rate. In addition, the pipeline must subject itself to all tariff terms and conditions applicable to holders of firm upstream storage capacity (*e.g.*, injection and withdrawal requirements).[214]

1. Allocation of Downstream Storage Capacity

Order No. 636 stated that the method for allocating downstream storage capacity should be addressed in the

[214] Order No. 636 at p. 30,427.

restructuring proceeding. Order No. 636 only required storage capacity to "be allocated on an even, nondiscriminatory basis among all shippers without regard to the seller of the gas." [215]

Order No. 636 also stated that "[a]ny allocation of storage capacity, however, must take into account pipeline capacity needs for load balancing and system management and the need to reserve some level of storage capacity for the pipeline or *for shippers in connection with the pipeline's no-notice transportation service.*" [216]

Numerous petitioners argue that current bundled sales customers should have priority in the allocation of storage to maintain their level of maximum daily entitlement to service.[217] Memphis Light refers to the queue exemption for conversions from firm sales to firm transportation under § 284.10(c) of the Commission's regulations.[218] The APGA maintains that sales customers with "eligible firm sales service agreements" have automatic rights to storage now that it is defined as transportation. The APGA adds that § 284.10(c) should be revised and expanded to include those sales customers without "eligible firm sales service agreements." Colorado Springs argues that the right to storage for current sales customers should be on an individual storage facility basis. Southern Indiana asserts that the splitting of storage will render it meaningless.[219] ANR contends that the preemptive right to storage should not be tied to no-notice service and that "on an integrated storage network such as ANR's, individual customers should not be permitted to choose which particular storage field the pipeline will utilize to render storage service to them" in order to "avoid a lowering of the overall storage capacity available to the market." [220]

The Commission clarifies that current bundled firm sales customers have a priority right to the storage necessary to maintain their level of maximum daily entitlement to service. This is whether or not they elect no-notice transportation service. This right will enable pre-Order No. 636 customers buying gas under a small customer rate schedule to obtain storage needed to maintain their level of maximum daily entitlement in combination with the transportation service they elect whether it is no-notice or regular firm transportation. APGA's arguments about § 284.10(c) are, therefore, moot. The actual allocation of storage facilities is a matter for the restructuring proceedings.

The Northern Distributor Group, Northern Illinois Gas, and Illinois Power argue that customers that have already converted should be entitled to storage on the same footing as customers converting under Order No. 636, without paying a premium. Northern Illinois Gas adds that system users should have priority over gas sellers for additional capacity. The Commission concludes that previously converted customers should not be entitled to storage on the same footing with customers converting under Order No. 636. This is because the customers that converted earlier were able to do so without storage to meet their needs. If storage is available after converting customers elect their storage levels, the pipeline must offer and allocate the remaining storage among all its shippers on a non-discriminatory basis. That is, current system users will have no priority over new transportation customers for additional storage capacity that is not selected by converting customers.

2. Upstream Storage

Order No. 636 provides that pipelines may retain storage capacity upstream of the place of unbundling to support their unbundled sales service.[221]

NGSA argues on rehearing that there is no justifiable basis for allowing pipelines to reserve upstream storage capacity to support their sales services. NGSA includes within its argument all capacity upstream of the unbundling point. They argue that "[u]pstream storage is equally capable of giving pipeline sales service an unfair competitive advantage" for the same reasons that apply to downstream storage (such as seasonal price arbitrage, transmission capacity supplementation, flow regulations and balancing). They are concerned that a "pipeline can offer any transportation service upstream of this point *unequally* to advantage its sales service." [222]

NGSA also states that "[i]f the Commission clarified on rehearing that all shippers had an equal opportunity to purchase rights on the upstream facilities, the unbundling point distinction would become benign." [223]

On the other hand, Transco and Brooklyn Union argue that pipelines should be able to retain some production area storage downstream of the place of unbundling to avoid gerrymandering the place of unbundling to retain storage for its merchant service, even though unbundling could occur at the wellhead. Both view this issue as appropriate for the restructuring proceedings.

The Commission adheres to the conclusion in Order No. 636 that pipelines may retain a share of production area storage upstream of the point of unbundling to support sales at the unbundling point. As stated in Order No. 636, and *supra* with respect to upstream production area capacity, the pipeline must allocate capacity between it, for use to make unbundled sales, and others on a non-discriminatory basis, and the costs associated with upstream capacity must be recovered by the pipeline solely as part of its market-based rates. In addition, the pipeline must subject itself to all tariff terms and conditions applicable to holders of firm upstream capacity (*e.g.*, storage injection and withdrawal levels).

The Commission disagrees with Transco and Brooklyn Union because title must pass at the unbundling point and, therefore, the pipelines do not have gas to put into storage downstream of that point.

3. Existing Contract Storage Service

In Order No. 636, the Commission stated that "[a]ll current holders of storage capacity will retain that capacity under current contractual provisions." [224]

CNG states that it does not intend to reduce its customers' contract storage capacity under current contractual provisions. However, CNG states that it must have the ability to adjust existing storage operational protocols (*e.g.*, storage injection and withdrawal schedules) to reflect the current status of its system operations as more customers became contract storage customers. It adds that without that ability, it might have to reduce aggregate available storage capacity.[225]

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[215] *Id.*

[216] *Id.* (emphasis added).

[217] Illinois Commerce Commission, Memphis Light, Gas and Water (Memphis Light), Rochester Gas, Citizens Gas, City of Colorado Springs, Colorado (Colorado Springs), Illinois Power, Columbia Gas Distribution Companies, APGA, Citizen Action, Indiana Gas, Alabama Gas, UGI, City Gas, United Distribution Companies, Brooklyn Union, and Questar.

[218] See Order No. 436 at p. 31,516–517. Section 284.10(c) provide firm sales customers with "eligible firm sales service agreements" with the right to convert to firm transportation service under part 284.

[219] Columbia Gas Transmission Corp., 53 FERC ¶ 61,366 (199).

[220] Petition at 19, 20.

[221] Order No. 636 at p. 30,427.

[222] Petition at 10.

[223] *Id.*

[224] Order No. 636 at p. 30,427.

[225] The various answers and responses filed in connection with CNG's clarification request are accepted into the record.

The Commission's intent was that current contract storage customers retain their full right to capacity as specified in their contracts. The Commission did not mean to infer that the terms and conditions associated with their rights could not be changed if they proved unreasonable in light of Order No. 636's requirements of no-notice transportation and open access contract storage. This, of course, is a pipeline specific matter and must be addressed in the restructuring proceeding.

4. Transportation Associated With Storage

ANR asks the Commission to clarify that certain associated transportation is, in effect, operated as an integral part of ANR's storage complex, and therefore should not be "unbundled" to avoid stranding of valuable storage capacity. ANR states that it currently provides open access storage on that basis. ANR maintains that the same principle governs storage released or assigned, that is, the released or assigned storage should be tied to any associated transmission capacity.[226] The Commission believes that this matter should be addressed in ANR's restructuring proceeding.

5. Storage Fields Disconnected From System

ANR states that it "owns certain storage fields that are physically disconnected from its system, but gas is moved to and from those storage facilities by means of transportation and exchange agreements with third party pipelines." [227] It argues that it should be able to treat these arrangements as an "integrated storage network" [228] to avoid "disynchronized allocations of storage, transmission and related transportation and exchange agreements [which] would render the operational continuity of the pipeline network into a meaningless state * * *." [229] The Commission clarifies that storage disconnected from a system should be treated in the same manner as storage connected to the system and be allocated as determined in ANR's restructuring proceeding. However, the mere fact of disconnected storage cannot be used as a basis for discrimination with respect to related exchange or transportation agreements.

6. Leased Storage

ANR requests clarification that "storage capacity provided by leased facilities, and storage capacity provided by storage service agreements, should be treated in a similar fashion with directly owned storage facilities, as part of an integrated market area storage system." [230] The Commission clarifies that leased storage should be treated as if it were pipeline-owned storage.

7. Storage Combined With Other Services

In Order No. 636, the Commission stated that a pipeline is "required to offer the open-access storage on a basis that is unbundled and not in any way tied or linked to the storage customer's purchases of any particular type of sales service." [231] Brooklyn Union argues that the Commission should clarify that the rendition of storage service cannot be tied or linked to a customer's purchase of transportation or any other service offered by the pipeline. It maintains that some storage fields, *e.g.*, Leidy Storage Field, are connected to several pipelines. The Commission agrees that as a general matter pipelines may not tie services. Whether transportation and exchange arrangements can be packaged with the storage service is an issue to be resolved in each proceeding and will depend upon the configuration of the facilities and other operational factors. If, for example, there is no other way to get the gas into or out of a particular storage facility than through a particular transmission lateral, then it may be reasonable to combine the services.[232]

8. Storage Reporting

In Order No. 636, the Commission instituted semi-annual reporting requirements with respect to the new open-access storage. The Independent Petroleum Association of America and Cooperating Associations (IPAA) states that more frequent reports are required and requests that each pipeline update the § 284.106(g) data on a weekly basis and post such report on its electronic bulletin board.

Llano, Inc. (Llano) a pipeline providing Section 311 transportation, argues that semi-annual reporting is not needed in light of the monthly storage data collected by the EIA. It further contends that the required data is commercially sensitive and that the reporting requirements on small intrastate systems is not cost justified.

The Commission concludes that it is appropriate to require semi-annual reporting for all pipelines providing storage. This coincides with the injection and withdrawal cycles for storage activities. Further, the Commission in §§ 284.8(b) (3) and (4) and 284.9(b) (3) and (4) of the regulations is requiring pipelines to post the availability of capacity in storage fields on the EBB. The precise nature of the information is to be developed in the restructuring proceedings. As the Commission gains experience, it may revisit this issue to determine whether more or less reporting is needed.

The Commission notes that the EIA does not collect data by individual customer nor does it collect rate and revenue data. Further, the information to be reported to the Commission on an semi-annual basis is similar to that currently reported by intrastate pipelines on an individual transaction basis for transportation services subject to part 284, subpart C. In addition, the Commission will consider individual requests for waiver from the reporting requirements.

Llano argues that the Commission erred by not providing notice of the new semi-annual storage reporting requirements for intrastate pipelines. The Commission disagrees. First, the Commission requires reporting for transportation and storage that is now transportation so storage reporting is merely an aspect of transportation reporting. Second, even if considered a new reporting requirement, it is intimately connected with the authorization for intrastate pipelines to provide open access, contract storage to which Llano does not object.

F. Market Centers

In Order No. 636, the Commission adopted new regulations, §§ 284.8(b)(5) and 284.9(b)(5), which prohibit any provision in a pipeline tariff that would inhibit the development of market centers. The Commission believes that inter-pipeline market centers will enhance the efficient operation of the natural gas market and aid competition by creating markets where gas sellers from different production areas can meet gas purchasers from different market areas using different pipelines. Section 284.1(c) defined market centers as "an area where gas purchases and sales occur at the intersection of different pipelines."

Peoples Gas argues that the Commission should expand its

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[226] ANR further seeks clarification about whether the storage volumes contained in the storage fields at the time of the release or assignment are required to be released or assigned along with the storage. The Commission also believes that this matter should be addressed in the restructuring proceedings.

[227] Petition at 18.

[228] *Id.*

[229] *Id.*

[230] Petition at 19.

[231] Order No. 636 at p. 30,428.

[232] Tennessee Gas Pipeline Co., 59 FERC ¶ 61,045 (1992).

definition of market center to include market-area in-line transfer points or areas on individual pipeline systems where title can pass between buyers and sellers.

Natural Gas Clearinghouse asks the Commission to amend the market center definition to recognize that "market centers" already exist at both interconnect and non-interconnect points on individual pipeline systems, *e.g.*, at pooling points and plant outlets, as can be seen by a quick review of the "Index" prices published by various trade press publications."[233] Natural Gas Clearinghouse suggests the following definition of market center.

§ 284.1(c) Market center means an area where gas purchases and sales occur, for example, at the intersection of different pipelines or at recognized aggregation areas or pooling points on a specific pipeline.[234]

The Commission will not expand its definition of market center because it is not necessary to achieve the Commission's goal of not inhibiting the development of areas where purchases and sales of gas can occur. For example, the Commission, as stated in Order No. 636, will not permit actions that inhibit the development of pooling areas. While pooling areas and market centers are different concepts, title transfers may occur at pooling areas around the production areas.[235] However, the Commission will not resolve the in-line transfer issue until it has a specific proposal before it.

G. Pooling Areas

In Order No. 636, the Commission stated that it will not mandate production area pooling areas on individual pipelines for the aggregation of supplies by all merchants. The Commission did state, however, that it will not permit actions that inhibit the development of pooling areas.

Natural Gas Clearinghouse states it is willing to address the pooling area issue in the individual restructuring proceedings "*[p]rovided*, however, in order to provide substance to the Commission's requirement that pipelines allow for flexible receipt and delivery points, the Commission should clarify that each pipeline must provide shippers with a workable means to aggregate supplies and markets and should affirmatively state the implementation of pooling or paper pooling is one way to satisfy this requirement."[236]

As the Commission stated in Order No. 636, it is not mandating pooling areas. However, the Commission will not permit any actions that inhibit their development. Pipelines should work with shippers to develop a workable means to aggregate supplies. This is a matter to be considered in the restructuring proceedings. For example, in Order No. 636, the Commission stated that pipelines should consider entering into "operational balancing agreements" with other gas merchants to permit them to balance, in the aggregate, for all of their gas purchasers shipping on the pipeline.

H. Flexible Receipt and Delivery Points

Order No. 636 modified the Commission's policies with respect to flexible receipt and delivery points to provide for more flexibility. Order No. 636 first provided that pipelines must give firm shippers flexible delivery points in the distribution areas. This means that firm shippers will have the right to change firm delivery points and to use other delivery points on a interruptible basis without losing their priority for firm service.

Order No. 636 also expanded shippers' rights with respect to flexible receipt and delivery points outside the production area receipt points and inside the distribution area delivery points by including the right to receive gas from any person at any place on the system and the right to deliver gas to any person at any place on the system on a firm basis, with the flexibility to change firm receipt and delivery points and to use all delivery points on an interruptible basis.[237]

In addition, Order No. 636 stated:

Of course, receipt and delivery points must be within the firm transportation capacity to which the shipper is entitled, and for which it pays. So, for example, an LDC in a downstream region of the country could arrange to deliver gas to an LDC or an industrial in an upstream region, but conversely an LDC in an upstream region could not arrange for delivery in a downstream region.[238]

That is, flexibility is allowed only "within the path" of the shipper's service.

1. Opposition to Flexible Receipt and Delivery Points

Atlanta Gas argues that the Commission "should eliminate its policy mandating flexible receipt and delivery points * * * [and] [t]o the extent flexibility is appropriate, it should be the subject of negotiation among affected parties, with appropriate conditions placed on the exercise of flexible receipt and delivery point rights."[239] Atlanta Gas maintains that the Commission's policy will result in destructive, often one-sided, competition by downstream LDCs and may subject LDCs utilizing flexible delivery points in other states to NGA regulation by transporting in interstate commerce rather than local distribution.

The Commission believes that flexible receipt and delivery points will promote maximum efficient usage of the pipeline system, are necessary to the development of market centers and to the achieving of a meaningful capacity releasing program. Thus, flexible receipt and delivery points should promote competition in the natural gas industry to the benefit of gas consumers.

The Commission does not believe that an LDC, by shipping gas to a delivery point outside its home state subjects itself to NGA jurisdiction. The LDC is not a transporter of gas in interstate commerce because it is not operating the system or controlling access by others any more than under existing transportation arrangements without flexible delivery points.[240]

2. Current Rights to Receipt and Delivery Points

Equitrans, Inc. (Equitrans) asks the Commission to clarify that prior part 284 firm conversions are not terminated or existing firm receipt point capacity reallocated in order to make accommodations for later-in-time conversions under Order No. 636.

CIG similarly asks for clarification that flexible receipt and delivery points do not require existing capacity holders at the changed receipt and delivery points to be "bumped" in order to accommodate a change.

INGAA requests the Commission to clarify that flexible delivery points are subject to availability. It states that "if, for example, the system is fully booked, the pipeline should be allowed to grandfather existing delivery points, or provide flexibility on an as needed basis."[241]

Northern Illinois Gas asks the Commission to promulgate specific guidelines with respect to the use of flexible delivery points within a distribution area. For example, it maintains that the use of a flexible delivery point should never be able to

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[233] Petition at 14.

[234] *Id.*

[235] Order No. 636 at p. 30,420.

[236] Petition at 13 (emphasis in original).

[237] Order No. 636 at p. 30,420.

[238] *Id.*

[239] Request for Rehearing at 14.

[240] *Cf.* Algonquin Gas Transmission Co., 59 FERC ¶ 61,032 (1992) and El Paso Natural Gas Co., 59 FERC ¶ 61,031 (1992).

[241] Petition at 11.

preempt or require curtailment of a preexisting firm delivery point.

The Commission clarifies that current shippers that retain their firm capacity rights during the restructuring proceedings also retain their priorities at designated receipt and delivery points and may not be bumped, preempted, or curtailed under the flexible receipt and delivery point policy.

3. Nature of Flexible Receipt and Delivery Points

Hadson states it is concerned about the priority principles governing flexible receipt and delivery points. It perceives a contradiction in the Commission's statement that firm shipments may displace interruptible shippers on reasonable notice and the statement that alternate firm points may be used on an interruptible basis.

Peoples Gas argues that the Commission "should specify that service in the distribution area to a 'flexible' or alternate delivery point designated by a firm customer is inferior to service rendered to another firm customer that uses the same delivery point as a primary delivery point, but superior to other interruptible services at that delivery point." [242]

Southwest Gas contends that the Commission "must clarify that the ability to designate delivery points on a firm basis under a flexible delivery point policy must be limited by the availability of [firm] capacity at the designated delivery points." [243]

The Gas Company of New Mexico contends that firm service to a primary delivery point should always have a priority over firm service to a flexible delivery point.

The Commission clarifies that firm shippers' use of designated alternate/flexible delivery points is subject to the rights of firm shippers using those points as primary delivery points but is superior to the rights of interruptible shippers to those points.[244] Hence, Order No. 636 was correct in describing the use of alternate/flexible delivery points as interruptible inasmuch as those rights are, as stated, inferior to primary firm delivery points.

4. Reasonable Notice—Priority

Cincinnati Gas asks the Commission to reinforce the absolute priority of firm transportation over interruptible transportation. It adds that the Commission "should make it clear that the 'reasonable notice' required for purposes of bumping interruptible transportation is to be defined in a manner that maximizes the priority of firm capacity." [245]

The Commission agrees that firm transportation has priority over interruptible transportation but cannot establish a generic standard for reasonable notice of bumping interruptible transportation.

ANR asks the Commission "to clarify that delivery point flexibility should not be mandated on a daily basis, and that the parties are free to develop the rules governing delivery point flexibility in their individual restructuring dockets." [246] It states that this is necessary to prevent the dramatic multiplication of operational difficulties that would be caused by the ability to switch no-notice delivery points on a daily basis.

The Fuel Managers Association argues that pipelines should be required to provide flexibility in scheduling receipt and delivery points up to the maximum technical ability if high technology equipment is available, or, if it is not, to make best efforts to provide the maximum flexibility in shipper scheduling.

The Commission endorses the idea that each pipeline should provide for maximum flexibility with respect to receipt and delivery point scheduling in light of the reasonable operational requirements of the pipeline. The Commission directs the parties to fashion procedures governing receipt and delivery point flexibility in the individual restructuring proceedings. If a pipeline, such as ANR, wishes to limit flexibility, it must demonstrate in that proceeding that the limitation is a reasonable operational limitation.

5. Penalties

The Fuel Managers Association maintains that there should be no scheduling penalties for changing scheduled receipt and delivery point locations, volumes, and gas delivery, because FT shippers pay SFV rates which already reflect those charges.

Northern Illinois Gas also argues that a pipeline should not be able to impose a penalty if the LDC rearranges its takes among delivery points so long as the takes within an operational zone are equal to confirmed nominations. It states there is no operational reason to tie specific transportation supplies to specific delivery points within an integrated service area.

Issues involving the provisions governing the use of receipt and delivery points, including appropriate penalties, must be addressed in the restructuring proceedings. The purpose of penalties is to inhibit abusive behavior and so they need not be cost based. At the same time, there must be some valid operational reason for imposing penalties on changes in volumes to delivery points within an interrelated service area.

6. Downstream Delivery Points/Upstream Delivery Points

Southwest Gas argues that a shipper should only be able to designate delivery points at the same points or points upstream of the shipper's own delivery points.

The Gas Company of New Mexico argues that the Commission should deny flexible delivery points to all shippers or provide for upstream shippers to have downstream delivery point flexibility, or, if not, make the downstream shippers pay a higher rate to reflect the higher value of their services.

Brymore suggests that the Commission expand delivery point capabilities to include out-of-path points on a secondary basis to expand the value of upstream capacity. Brymore adds that: "Pipelines can (and should) be kept whole by charging an incremental rate to take gas from the most downstream in-path point to the ultimate delivery point. This charge should be equal to the difference in the demand charge components that would be applied to the reassigned capacity plus the difference in the applicable firm commodity rates." [247]

Hadson argues that Order No. 636's language could be read as limiting rather than increasing flexibility. Hadson asks the Commission to clarify that firm shippers, rights to flexible receipt and delivery points "include the right to receive gas from any person at any place on the system, and the right to deliver gas to any person at any place on the system[.]" [248] without the limitation on upstream shippers using downstream delivery points.

The Commission adheres to the discussion in Order No. 636 with respect to flexible receipt and delivery points along the mainline; that is, between the

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[242] Petition at 13.

[243] Petition at 2, 3.

[244] Peoples Gas asks the Commission to "make clear that use by existing firm customers of existing capacity at distribution area delivery points, including the ability to shift firm entitlements from one division or plant to another, will not be adversely affected." Petition at 12. The Commission clarifies, but only to the extent that the existing firm customers bump interruptible and not firm shippers with primary rights.

[245] Petition at 49.

[246] Petition at 10.

[247] Petition at 17.

[248] Petition at 14.

place of unbundling, including pooling areas, and the place of primary delivery, *e.g.*, the city-gate or distribution areas. Downstream shippers may designate upstream receipt and delivery points. This is because the downstream shipper is using part of the capacity which it has reserved. However, upstream shippers may not designate downstream receipt and delivery points because they have not reserved or paid for that capacity. If the upstream shipper wants to expand its delivery point capability to include "out-of-path" delivery points, it must obtain that capacity from the pipeline or from another shipper via capacity releasing. But an upstream shipper has no right to downstream capacity solely because it already is a firm shipper.

New England Power argues that shippers with upstream delivery points within a zone should be able to select downstream delivery points within the same zone as well as vice versa. It states that operational concerns can be met by making the downstream service an interruptible service.

The Commission agrees with New England Power that shippers with upstream delivery points within a zone can select downstream delivery points within the same zone and that operational concerns can be met by making service to the downstream delivery point interruptible. This is consistent with the general principle that controls here: A shipper gets flexibility in receipt and delivery points for the part of the system for which it pays a reservation charge. Thus, if a pipeline has zone rates, a shipper gets flexibility within its zone. The appropriate rate for the use of a downstream delivery point within a zone should be addressed in the restructuring proceedings. Hadson argues that shipments "within the [contract] path" should be priced no higher than the FT usage charge for the actual path used.[249] The Commission agrees with Hadson and so clarifies because the usage charge includes only variable costs.

7. Distribution Area Limitation

In Order No. 636, the Commission required pipelines to permit firm shippers to designate flexible delivery points in their distribution areas in the same manner as they designate flexible receipt points in the production areas. Hadson states that the Commission has ignored non-LDC business enterprises that take delivery of gas but have no distribution areas.

[249] Petition at 6.

The Commission agrees with Hadson and clarifies that it used "distribution areas" in a broad sense, and not as a term of limitation.

8. Section 7(c) Shippers

New England Power and Transco argue that shippers receiving transportation service under individual section 7(c) certificates should have the same rights to flexible receipt and delivery points as part 284 shippers. The Commission disagrees. Flexible receipt and delivery points are part of part 284 transportation. If New England Power (or similarly situated shippers) wants flexible receipt and delivery points, it should convert to part 284 transportation.

9. Interruptible Transportation

Natural argues that the Commission should permit delivery point flexibility with respect to interruptible transportation. The Commission will permit interruptible transportation flexibility so long as the capacity exists.

10. New Facilities

Southern requests clarification that the flexible delivery point policy of Order No. 636 does not require the construction of delivery point facilities—the "new mandate only refers to available capacity at existing facilities as is the way flexible receipt points are administered on pipelines' systems."[250] Without addressing the merits of any particular case, the Commission clarifies that the flexible delivery point policy by itself does not require the construction of new facilities. However, to the extent pipelines construct new receipt and delivery point facilities, they must do so on a nondiscriminatory basis.

11. Flexible Delivery Points—Pooled Capacity

NIEP asks the Commission to amend the flexible delivery point provisions "to specifically permit such flexibility within the LDCs' pooled capacity, even across pipeline systems. It maintains that LDCs "may need to switch delivery points on a pipeline system, as well as switch pipeline systems, within the pooled arrangement on a periodic basis in order to access changing gas supply services."[251] The Commission regards the right to use of flexible delivery points as applicable only to shippers with capacity on the pipelines. A shipper receives flexibility in its receipt and delivery points for the part of the system for which it pays a reservation charge. Hence, shippers that pool capacity must each arrange for flexible delivery points on the pipelines on which they ship.

12. Bypass

Atlanta Gas asks the Commission to clarify that its discussion of flexible receipt and delivery points in Order No. 636 is not to be read as instituting a mandatory bypass policy for end users to tap into pipelines. The Commission is not instituting a mandatory bypass policy in Order No. 636. But pipelines must permit end users with firm transportation rights under part 284 to use flexible delivery points.

13. Exemption

Southwest Gas asks the Commission to expressly exclude El Paso from any flexible delivery point requirement because under El Paso's system of operation, there is insufficient basis owing to constraint points to adopt a flexible receipt point policy. The Commission believes that issues involving El Paso's constraint points and flexible delivery points must be addressed in El Paso's restructuring proceeding.

I. Curtailment

Several of the parties in their rehearing requests contend that Order No. 636 is in error in not requiring that capacity allocations during periods of capacity curtailment be implemented on an end-use rather than on a *pro-rata* basis.[252] Generally, these parties argue that the high-priority, end-use categories established by title IV of the Natural Gas Policy Act (NGPA),[253] apply to capacity curtailments as well as supply curtailments. APGA, Brooklyn Union, the Fertilizer Institute, the State of Michigan, Rochester Gas, and Washington Gas maintain that the operative statutory language in title IV applies to curtailment of all natural gas "deliveries" and does not distinguish between the curtailment of deliveries caused by supply shortages as opposed to the curtailment of deliveries caused by capacity constraints. APGA argues that Congress did not specifically apply the title IV priorities to capacity curtailments because pipeline services at the time of enactment of the NGPA were bundled. Similarly, Rochester Gas contends that the NGPA was passed in a different regulatory environment and

[250] Petition at 9.

[251] *Id.*

[252] APGA, Brooklyn Union, Cincinnati Gas, Citizens Action, Citizens Gas, the Fertilizer Institute, the State of Michigan, Rochester Gas, and the Washington Gas Light Company (Washington Gas).

[253] 15 U.S.C. 3391–94.

while the Commission has changed the regulatory scheme, this does not eliminate the Congressional intent expressed in title IV that deliveries of gas to high-priority end-users be protected during curtailment. APGA, Citizens Gas, Rochester Gas and Washington Gas further maintain that mandatory unbundling of pipeline sales service combined with *pro-rata* capacity curtailment results in a degradation of service by depriving pipeline sales customers of their title IV curtailment priority in the event of a capacity curtailment.

APGA, Brooklyn Union, the Fertilizer Institute, and Washington Gas further argue that title IV was enacted as a result of Congressional concerns over the effects of natural gas cut-offs to agricultural and other high-priority users and that from the end-user's standpoint supply and capacity curtailments are the same in their effects. Thus, these parties conclude that the Congressional concerns regarding supply cut-offs pertain equally to capacity caused cut-offs and that Congress intended that title IV apply equally to supply and capacity curtailments. APGA also argues that Congress in title IV required the Commission to protect high-priority users to the "maximum extent practicable" and that such policy applies equally to capacity and supply curtailment. Brooklyn Union further asserts that it is illogical to conclude that title IV does not apply to the new national transportation network fostered by other sections of the NGPA.

The Commission is not persuaded by these arguments to depart from its interpretation of the inapplicability of the title IV end-use priorities to capacity curtailments. The Commission has interpreted title IV of the NGPA in this manner since the enactment and initial implementation of the NGPA [254] and since that time has consistently reiterated its position that title IV applies only to curtailment by pipelines of natural gas deliveries caused by supply shortages.[255] Furthermore, the Commission has also consistently rejected arguments similar to those advanced by the parties in this proceeding to the effect that title IV applies to both capacity and supply curtailments.[256] Moreover, we believe that more recent expressions of Congressional intent regarding the structure and operation of the natural gas industry, *i.e.*, the Decontrol Act,[257] support the Commission's curtailment policies as expressed in Order No. 636.

Again, it is the Commission's view, based upon the language of the NGPA itself, the circumstances surrounding the enactment of the NGPA, the legislative history of the NGPA and subsequent court opinions that application of the title IV end-use priorities to capacity curtailments (that is, transportation) was neither intended nor envisioned by the Congress. First, it is beyond dispute that the NGPA was enacted to remedy the natural gas supply shortages facing the nation which became critically apparent in the mid-1970's.[258] Title I of the NGPA was intended to provide investors with adequate incentives to develop new sources of gas supply. Title II of the Act was intended to ameliorate the immediate impact of these incentive prices on certain classes of natural gas users. Title III of the Act was intended to break down the existing barriers between the interstate and intrastate natural gas markets, so that formerly intrastate natural gas supplies could flow freely into the national market place to alleviate the natural gas shortage in the interstate market. In addition, title III vests in the President a broad array of powers to respond to natural gas supply emergencies. In sum, the policy provisions of the NGPA were all enacted in response to the need to increase the supply of natural gas available to fill the nation's energy needs. On the other hand, the issue of pipeline capacity constraints was not part of the Congress' remedial action in its enactment of the supply-oriented NGPA. It is in this context that the petitioners' arguments regarding the intended scope of the applicability of title IV must be viewed.

The petitioners' major argument is that the operative language of title IV speaks in terms of "deliveries" of natural gas, *i.e.*, "curtailment of deliveries for such use," [259] and that no specific distinction between curtailment of deliveries due to supply shortages and those due to capacity constraints is made. It is our view that, in the light of the immediate purpose of the NGPA to provide incentives to prevent gas supply shortages, the petitioners read into the term "deliveries" an application that was not intended by the Congress. At the time the NGPA was enacted, the curtailment plans on file with the Commission generally governed only pipeline sales curtailments resulting from gas supply shortages, not capacity limitations. This resulted from the fact that the Federal Power Commission's (FPC) curtailment policies and regulations from their inception were intended to deal with the "allocation of priorities and rationing of this limited supply of natural gas" available to be sold by interstate pipelines occurring during "gas shortages".[260]

Under the FPC curtailment rules, interstate pipelines were only required to file supply curtailment plans covering natural gas sales and were not required to file capacity curtailment plans covering transportation. Moreover, the FPC's policy statements requiring pipelines to file these sales curtailment plans, like the NGPA, also used the operative term "deliveries" as opposed to "sales" or "transportation".[261] Thus, it is likely that the choice of the operative term "deliveries" in title IV was chosen to correspond to the same operative term found in the existing FPC required supply curtailment plans. This view is in accord with the stated intent of the Congress that for purposes of implementing title IV "the Commission is instructed to reopen curtailment plans that are already in effect under the NGA only to the extent necessary to adjust those plans to bring them into conformity with the new curtailment priority schedule." [262] Had Congress intended also to cover gas only transported by the pipelines or to cover capacity curtailments, then nearly all of these plans would have had to be reopened.

Further, the broad term "deliveries" covers sales for resale as well as transportation for direct sale, both circumstances subject to the FPC's curtailment jurisdiction and pipeline curtailment plans. Moreover, this view of the use of the term "deliveries" is also in accord with Congressional statements of its understanding of the definition and purpose of curtailment plans as expressed in the legislative history of

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[254] See, *e.g.*, Order No. 29–C, FERC Stats. & Regs., Regulation Preambles 1977–1981, ¶ 30,002 (1979).

[255] See, *e.g.*, Order No. 436, FERC Stats. & Regs., Rep. Preambles 1982–1985, ¶ 30,665 (1985).

[256] See, *e.g.*, Order No. 29–C, *supra*; Order No. 436–A, FERC Stat. & Regs., Regulation Preambles 1982–1985, ¶ 30,675 (1985).

[257] Public Law No. 101–60, 103 Stat. 157 (1989).

[258] See, *e.g.*, Process Gas Consumers Group v. United States Department of Agric., 694 F.2d 728, 738 (D.C. Cir. 1980).

[259] See, *e.g.*, 15 U.S.C. 3391(a), (a)(1).

[260] Louisiana Power and Light Co. v. FPC, 483 F.2d 623, 626 (5th Cir. 1973). See also, Pacific Gas & Electric Co. v. FPC, 506 F.2d 33, 35 (D.C. Cir. 1974); State of North Carolina v. FERC, 584 F.2d 1003, 1007 (D.C. Cir. 1978).

[261] See, *e.g.*, Order No. 467, 49 FPC 85 (1973) ("priorities-of-deliveries by jurisdictional pipelines during periods of curtailment"), Order No. 467–B, 49 FPC 583 (1973) ("initial priorities to be followed by jurisdictional pipeline companies during periods of curtailed deliveries").

[262] Joint Explanatory Statement of the Committee of Conference, title IV, section 401, I FERC Stats. & Regs. ¶ 3101 at p. 3121 (1978).

related energy legislation, *i.e.*, the Public Utilities Regulatory Policies Act of 1977.[263] As stated in *Process Gas Consumers* v. *United States Dept. of Agriculture:*

> Since the advent of natural gas scarcities in the early seventies, regulated interstate pipelines have been required to establish elaborate curtailment plans detailing which of their customers will get how much gas in what priority, in times of short supply. In Congress' own words:
>
> "Curtailment plans establish priorities for the delivery of natural gas when supplies are insufficient to meet contract demand * * *. H.R. Rep. No. 1750, 95th Cong., 2d Sess. 112–13 (1978), U.S. Code Cong. & Admin. News 1978, p. 7846.[264]

Thus, as the agency charged with interpreting the NGPA, the Commission remains of the opinion that in enacting title IV, the Congressional intent was to assure that gas supplies for essential agricultural and the other specifically enumerated high-priority end-users would be afforded the highest priorities in then existing pipeline supply curtailment plans in the event of a shortage of the gas supplies sold by interstate pipelines. The Commission further believes that it would be in error for it to infer that if Congress had in fact addressed and considered the then hypothetical issue of capacity curtailments, Congress would have mandated the same end-use curtailment method to be applied to capacity curtailments as that envisioned for supply curtailments. As indicated below, capacity curtailments present problems and issues distinct from those presented by supply curtailments in the context of unbundled, open access transportation, and in the Commission's judgment are not suited to resolution by imposition of end-use priorities.

The petitioners present a literal reading of title IV of the NGPA, viewed apart from the legislative history, contemporaneous industry conditions and historical context in which it was enacted. Even if this view can be squared with a plausible application of the literal words of the statute, the Commission does not believe it can be reconciled with the context in which the NGPA was enacted or with more recent expressions of Congressional intent. For instance, the petitioner's contention that the title IV end-use priorities apply to pipeline capacity curtailments creates a conflict with the more recent expression of Congressional intent embodied in the Decontrol Act. The Decontrol Act "finished off" the then already nearly complete natural gas decontrol process initiated in the NGPA.[265] The Decontrol Act expresses Congressional recognition of a completion of the "transition from the highly controlled, shortage-beset gas industry * * * to today's substantially decontrolled market."[266] It also recognizes the creation by the Commission of "a competitive gas purchasing and transportation market," which in the opinion of Congress would minimize the instability in the natural gas markets which was characteristic of what the Congress acknowledged as being an antiquated regime of stringent regulatory controls.[267] The Congress further found that the Commission's open-access pipeline initiatives had created more competition in the interstate pipeline industry and had brought lower prices to all consumers, including captive residential consumers.

Thus, while the Decontrol Act did not deregulate gas pipelines, the Act is a clear endorsement of the benefits of a pro-competitive regulatory scheme for national gas supplies. Moreover, the Congress in enacting the Decontrol Act expressed its strong belief that the Commission's "current competitive open-access pipeline system [be] maintained" to ensure that captive customer's are not disadvantaged".[268] An integral part of the Commission's "current open-access" pipeline system was that firm, open-access transportation was not required to be allocated on a title IV type end-use basis in the event of curtailment.[269] In addition, the Commission believes that the complexities inherent in end-use capacity curtailment plans and the fact that the Commission has never required capacity curtailments to be implemented on an end-use basis would, if ordered generically, impose a significant regulatory burden. Thus, in the Commission's judgment the curtailment policies set out in Order No. 636 represent a proper reconciliation of the requirements of title IV of the NGPA, the more recent statements of Congressional purpose expressed in the enactment of the Decontrol Act, and the policies underlying Order No. 636.

APGA, Brooklyn Union, and Citizens Gas also argue that not applying end-use priorities to capacity curtailment is inconsistent with the NGA and past Commission policy prior to the enactment of the NGPA. These parties contend that under the NGA the Commission's policy was that end-use curtailment was necessary because private contracts do not necessarily serve the public interest and that the rationale for protecting high-priority customers under the NGA is the same today as it was before. Citizens Gas maintains that the NGA requires assurance of reliable service to high-priority end-users. APGA similarly contends that the public interest under the NGA requires that high-priority end-users be protected from curtailment.

The Commission disagrees with the notion advanced by these parties that because in the 1970's the FPC found that the allocation of scarce gas supplies during curtailment was required to be based upon end-use principles, rather than private contractual arrangements, in order to protect the public interest that the Commission in the 1990's is now restricted to requiring an end-use methodology as the industry's exclusive allocation methodology during both supply and capacity curtailments. First, while it is correct, as the petitioners point out, that the courts have approved end-use as an appropriate consideration for purposes of pipeline supply curtailments,[270] the NGA does not require that allocations of either supply or capacity during curtailment be made exclusively on the basis of end-use principles. Moreover, in the light of the changes in both the regulatory and legislative environment, as well as changes in the natural gas industry which have transpired since the 1970's, as discussed above, the Commission believes that the exclusive reliance on an end-use allocation methodology is not required to protect the public interest. The Commission believes that with deregulated wellhead sales and a growing menu of options for unbundled pipeline service, customers should rely on prudent planning, private contracts,

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[263] Public Law No. 95–617.

[264] 694 F.2d. 728, 772 (D.C. Cir 1980) (Wald, dissenting on other issues).

[265] H. Rep. No. 29, 101st Cong. 2d Sess., at p. 2 (1989).

[266] *Id.* at 3.

[267] *Id.*

[268] *Id.* at 4.

[269] See, *e.g.*, Order No. 436–A; *supra*, FERC Stats. & Reg. Preambles (1982–85) at p. 31,652. While the Commission has required open-access transportation to be curtailed on a *pro-rata* basis, the Commission has approved settlements which also provide differing degrees of end-use allocation. See, *e.g.*, Northwest Pipeline Corp., 39 FERC ¶ 61,109 (1983) (permitted establishment of curtailment priority for essential agricultural and high-priority uses in the absence of adverse comments); Florida Gas Transmission Co., 51 FERC ¶ 61,309 (1990) (curtailment by end-use permitted); United Gas Pipeline Co., 49 FERC ¶ 61,006 (1989) (end-use emergency relief permitted in context of a settlement). Curtailment issues must be considered in the RS proceedings and the parties in the RS proceedings may agree upon similar arrangements if they can be implemented in accordance with the restructured services of a particular pipeline. For the Commission to require such arrangements for all pipelines, however would severely undermine the principles of unbundled, open access transportation.

[270] See, *e.g.*, State of North Carolina v. FERC, *supra* 584 F.2d at 1012.

and the marketplace to the maximum extent practicable to secure both their capacity and supply needs. In today's environment, LDC's and end-users no longer need to rely exclusively on their traditional pipeline supplier. Rather, to an ever-increasing degree they rely on private contracts with gas sellers, storage providers, and others; a more diverse portfolio of pipeline suppliers, where possible; local self-help measures (*e.g.*, local production, peak shaving and storage); and their own gas supply planning through choosing between an increasing array of unbundled service options. In addition, natural gas market conditions are now very different from the 1970's. In contrast to the chronic supply shortages of the 1970's, capacity and supply disruptions in the 1990's, if they occur at all, are likely to be infrequent and short-lived, largely as a result of the changes initiated by the provisions of the NGPA other than title IV and the Commission's policies in Order Nos. 436 and 636.

Given the growing array of unbundled service options, which will be further promoted by Order No. 636, customers are increasingly free to choose different mixes of firm and interruptible pipeline services as well as different sellers, different receipt points, and different market centers or aggregation points. In making such choices, each customer will assume different price and reliability risks. Requiring the generic allocation of pipeline capacity on the basis of end-use rather than *pro rata* based upon each customer's contractual choices would tend unfairly to protect those who took risks at the expense of customers who have undertaken the planning and greater cost of proceeding cautiously. Such a result would be neither just nor reasonable nor consistent with the unbundled, market-oriented gas industry, which both the Congress and the Commission have been encouraging. Accordingly, the Commission finds that neither the NGA nor the public interest require that the Commission on an industry wide basis today extend the end-use curtailment rules applicable to pipeline sales to interstate pipeline transportation, storage, or other services.

APGA, Laclede Gas Company (Laclede), and the State of Michigan argue that the issue of capacity curtailment methodologies aside, Order No. 636 does not adequately provide curtailment protection from supply shortages to high-priority end users. These parties contend that Order No. 636 defeats the purpose of the NGPA Title IV priorities during times of natural gas shortages. APGA and Laclede maintain that given the possibility of a failure of third-party gas supplies, reliance on third party sales makes protection from supply shortages difficult and that market based pricing will not adequately protect high priorities from supply shortages. Laclede argues that the Commission should require that a plan be in place to insure gas availability to high priorities in the event of a shortage in supply.

We disagree with these assertions that Order No. 636 fails to protect high-priority users from supply shortages. The Commission is of the view that the best protection from the specter of a future natural gas supply shortage is the promotion of an open and competitive wellhead market where all natural gas suppliers are able to compete for gas purchasers on an equal footing, unhindered by the possession of any undue competitive advantage by any class of suppliers. By fostering this goal, Order No. 636 aims to ensure that the benefits of wellhead decontrol, including helping "to ensure adequate supplies of reasonably priced gas in the future" [271] will redound to the benefit of consumers of natural gas to the maximum extent as envisioned by the NGPA and the Decontrol Act.

Congress' judgement was that the best protection against, and remedy for, supply shortages was to allow the market to establish the price for gas. If supplies tighten, the price can rise which will stimulate new investment to bring new supplies to market. Since Congress mandated this course, beginning with the enactment of title I of the NGPA, the industry has not experienced shortages beyond isolated, short-lived dislocation. By eliminating the undue competitive advantage inherent in pipeline bundled sales services and by establishing a pipeline rate structure under which all gas merchants will be able to compete in a national market without regard to fixed transportation costs included in usage charges, Order No. 636 will help to achieve Congress' intent in passing the Decontrol Act to "over time force the evolution of a set of lowest-cost producers" which "will yield lower prices and more abundant supplies".[272] Moreover, as we discussed above in regards to capacity curtailments, we believe that the imposition of the industry-wide, end-use supply curtailment scheme envisioned by the petitioners would be inconsistent with the market-oriented policies espoused by the Decontrol Act and given foreseeable supply conditions, would be an unnecessary regulatory burden. Finally, in the event of an unexpected and sudden *force majeure* supply shortage, title III of the NGPA vests in the President ample authority to effectively assure that available gas supplies are allocated and transported to meet critical needs.

Several parties [273] assert the position that the Commission's direction to the parties, to negotiate and develop voluntary plans to deal with emergency shortages due to capacity constraints in the restructuring proceedings, is an abdication of the Commission's statutory responsibilities. APGA and State of Michigan argue that LDC's should not be penalized by having to pay high amounts to lower priority customers in order to be assured of being able to serve their high-priority loads. APGA, Citizens Action, and the State of Louisiana argue that the Commission must require that all pipelines include in their compliance filings an emergency exception from their *pro-rata* curtailment plans to provide gas to residential and small commercial users and to protect life and property in the event of curtailment. The Industrial Groups assert that all pipelines should implement plans to allow their customers to offer voluntary release of capacity for compensation during emergency situations. APGA further maintains that contractual provisions are an inadequate method for protecting human needs customers and other high-priority end users. In addition, the Industrial Groups state that while it supports *pro-rata* curtailment, that the Commission should prescribe specific allocation procedures rather than leaving the parties to negotiate such procedures. The State of Michigan also avers that the Commission has failed to explain the basis of the assertion in Order No. 636 that gas will continue to flow for heating without regard to *pro rata* curtailment plans.

The arguments of the petitioners that object to developing curtailment plans and negotiating plans to implement voluntary contractual emergency supply and transportation arrangements in the restructuring proceedings are grounded on an incorrect premise, *i.e.*, that the NGPA and/or the NGA mandate that the Commission establish a specific set of procedures for end-use allocations applicable to all pipelines. As discussed above, in the Commission's view, this assumption is not accurate.

Order No. 636 allows the pipelines and their customers to develop a

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[271] S. Rep. No. 30, 101st Cong., 1st Sess., at p. 2 (1989).

[272] H.R. Rep. No. 29, *supra*, at p. 7.

[273] APGA, Brooklyn Union, Cincinnati Gas, State of Michigan, and Rochester Gas.

capacity curtailment plan in the restructuring proceedings under the general guideline that the result of such negotiations must be a tariff that sets out the pipelines' supply and capacity curtailment plans in sufficient detail to accommodate the interests of all shippers. The Commission believes that this is in accord with the principles underlying both the NGA and the NGPA. Moreover, such negotiated curtailment plans will result in systems of allocation and the development of voluntary, mutually beneficial, emergency contractual programs and procedures that are best tailored to the individual pipelines and the needs of their customers as expressed in the economic value, *i.e.*, price, which they are willing to pay either to the pipeline itself or, under private contractual arrangements, to other pipeline shippers, to assure that their demand for capacity on the pipeline will be satisfied in the event of curtailment. In this regard, the Commission endorses the suggestion of the Industrial Groups that pipelines include as part of their compliance filings plans to allow their customers to offer voluntary release of capacity for compensation during emergency situations, and encourages the development of similar suggestions which have been made in this proceeding.[274]

Finally, as the State of Michigan points out, the Commission does expect that gas will continue to flow to those who need it for heating or other important needs, notwithstanding a pipeline's *pro rata* curtailment plan. The Commission's expectation is based on experience since the implementation of the NGPA, which shows that gas has always flowed according to the dictates of the market, *i.e.*, to the heat sensitive users who need it most and who are thus willing to pay the prevailing market price for it. It is because the Commission expects that these historical market forces will continue to direct gas supplies and capacity to heating and other important uses, that we have urged the parties to develop flexible tariff mechanisms, whether in the nature of special relief with compensation, voluntary contractual arrangements or some other device, which will allow pipelines and their customers in planning their operations to take into account and provide mechanisms for dealing with these contingencies.

Elizabethtown expresses the view that Order No. 636 should require customers receiving more than a *pro rata* share of pipeline gas during periods of shortage to pay compensation to customers who receive less than a *pro rata* share as a consequence. Rochester Gas maintains that compensation schemes can be developed in the pipelines' restructuring proceedings which can compensate low priority users whose gas is lost to high-priority users as a result of curtailment. In addition, Elizabethtown contends that Order No. 636 should require that a pipeline sales customer exhaust all of its alternative sources of supply before being eligible to receive a pipeline's sales gas supply under its curtailment priority.

The Commission's position on curtailment compensation plans is that the parties in the individual restructuring proceedings must explore the development of such schemes as those suggested by Elizabethtown and Rochester Gas in the context of developing their individual curtailment plans and in the development of voluntary emergency contractual arrangements between shippers. However, the Commission believes that it would be contrary to the concept of the restructuring proceeding process and the negotiation and development of individually tailored curtailment allocation procedures and emergency mechanisms for it to mandate a generic compensation scheme. In addition, in its request for rehearing, Elizabethtown has not presented any argument to persuade the Commission to change its position that it is not appropriate to require high priority customers to exhaust other sources of gas supplies before being entitled to receive more than a *pro-rata* share of available pipeline supplies by application of the NGPA title IV priorities to pipeline sales.

Tenneco claims that the provisions of Order No. 636 requiring parties in the restructuring proceedings to fashion their own curtailment plans constitutes an effective change in prior curtailment plans and policy which requires the preparation of an Environmental Impact Statement (EIS) prior to issuance of the Order.

The Commission is of the opinion that the issuance of the curtailment related provisions of Order No. 636 does not require the preparation of an EIS. First, the Commission has not changed its curtailment policies. Under Order No. 636, as before, pipeline sales during supply curtailments, if they occur, will be implemented according to end-use allocation methodologies which include the title IV priorities. Similarly, as they were under Order No. 436, capacity curtailment plans will generally be developed according to *pro-rata* allocation methodologies with the allowance of end-use measures to provide for emergencies. Furthermore, under the Commission's application of section 380.5(b)(5) of the Commission's Regulations [275] only new natural gas supply curtailment plans, or any amendment to an existing supply curtailment plan that has a major effect on an entire pipeline system has been subject to an environmental assessment. Thus, any determination regarding the necessity of an EIS for any particular pipeline's supply curtailment tariff compliance filing would at this time be speculative and premature.

Finally, Elizabethtown and Tenneco argue that unbundled pipeline sales should not be subject to the Title IV end-use curtailment priorities, but should be treated as all other gas sellers. Elizabethtown contends that the application of sales curtailment to pipeline sales makes pipeline sellers a less reliable supply source. Tenneco contends that Order No. 636 unduly discriminates against pipeline merchants by requiring only pipelines to follow end-use curtailment plans. In the alternative, Tenneco maintains that end-use sales curtailment should not apply to pipeline marketing affiliates.

The Commission agrees with the arguments advanced by Elizabethtown and the observation of Tenneco that for curtailment purposes unbundled pipeline sales should be treated as all other gas sales. However, as the Commission stated in *Transcontinental Gas Pipe Line Corp.*,[276] "[u]ntil Congress changes the [NGPA], the statutory priority [for pipeline sales] must be observed." [277] Thus, Title IV of the NGPA must continue to apply to pipeline sales only. For the same reason, the Commission agrees with Tenneco that end-use sales curtailment does not apply to pipeline marketing affiliates.

VI. Transportation Rates

In Order No. 636, the Commission concluded that the modified fixed variable (MFV) method of cost classification "is not in the public interest, unreasonably hinders competition among gas sellers, and is unjust and unreasonable under NGA Section 5." [278] The Commission adopted SFV in lieu of MFV so that "all gas merchants would be able to compete in a national market without regard to fixed transportation costs included in the usage charge." [279] This competition

[274] See, *e.g.*, Technical Conference Tr. at 282–83.

[275] 18 CFR 380.5(b)(5).

[276] 57 FERC ¶ 61,365 (1991).

[277] *Id.* at 62,117.

[278] Order No. 636 at p. 30,434.

[279] *Id.*

will "maximize the benefits of wellhead decontrol by increasing the nationwide competition among gas merchants (including pipelines)." [280] Further, "[t]his merchant-to-merchant competition should help to achieve Congress' intent in enacting the Decontrol Act to "over time force the evolution of a set of lowest-cost producers" to "yield lower prices and more abundant supplies" to the benefit of all consumers of gas.[281]

The Commission recognized that the shift to SFV, without any adjustments, could result in cost shifting among customer classes. Hence, the Commission directed that pipelines adopt measures to mitigate cost shifts if the use of SFV will result in a 10 percent or greater increase in revenue responsibility for any historic customer class. These mitigation measures are to phase-in any such rate increase over no more than a four year period. The Commission set forth several potential phase-in methods, including the use of a one-part volumetric rate for small customers.

Last, the Commission provided that the determination of rates for interruptible transportation would still be governed by the principles enunciated in the Rate Design Policy Statement.

As discussed below, the Commission is granting rehearing with respect to the designing of rates for small customers. The Commission is retaining SFV for rate design (billing) and cost allocation purposes but will require the use of different ratemaking techniques to distribute revenue responsibility among customers if significant cost shifts occur among pipeline customers, as discussed below, as a result of allocating fixed costs only on the basis of peak entitlements.

A. Rehearing Requests Concerning SFV

A number of petitioners object to the Commission's reasoning in adopting SFV. In brief, they argue that the Commission has rested its decision on invalid goals, has not supported its finding that MFV is not in harmony with those goals if they are valid, and has not supported its finding that SFV is lawful.

As discussed more fully below, the Commission rejects petitioners' contentions. First, as stated above, the Commission is mandating the SFV rate design method for billing (unless the Commission permits otherwise under the exception in 18 CFR 284.8(d)). The Commission believes that its analysis and conclusions in Order No. 636 comport with its responsibility under the NGA to adopt cost classification methods to achieve goals that are pertinent to current conditions. This requires that the Commission use its judgment to "make the pragmatic adjustments which may be called for by particular circumstances." [282] The Commission must exercise its judgment and discretion in light of the prevalent market, economic, and industry circumstances. Hence, a particular distribution of fixed costs between the reservation and usage charges is not inviolate.[283] And, indeed, as chronicled in Order No. 636, the Commission has changed its goals as market conditions have changed over time.[284] The Commission sees no reason in petitioners' arguments for modifying its conclusions in Order No. 636 to adopt a cost classification method that does not impede the operation of the competitive national wellhead market underlying and envisioned by the Decontrol Act, that MFV does not perform that function but rather hinders achieving that goal, and that simply put, SFV is rationally connected to the Commission's goal of achieving an efficient national gas market which will yield reasonable gas prices to benefit gas consumers and which will send proper market signals to maintain adequate gas supplies.

It is true, as also discussed below, that the adoption of SFV in lieu of MFV may well shift costs among different classes of customers and within classes of customers. However, the Commission concludes that petitioners have not shown any undue harm. First, the Commission is providing for mitigation measures to accompany the move to SFV. Second, the Commission has adopted a means for firm customers to shed unwanted firm capacity to those seeking capacity during the restructuring proceedings and thereafter under the capacity reallocation mechanism of § 284.243 of the regulations. Third, the Commission, as discussed below, does not believe that the cost shifts to individual residential gas consumers will be undue in aggregate amount in light of the goals of SFV.

B. Rationale

1. Validity of Goals

The APGA argues that "the Commission's desire to develop a 'competitive, national gas market,' promote competition among gas merchants, and ensure that gas is shipped on even terms are not legitimate rate design goals." [285] It maintains those goals rest outside of the Commission's role because the production end of the natural gas industry is virtually deregulated. The APGA further contends that even if those goals are valid, the Commission may seek to achieve them only subject to its primary responsibility of protecting consumers from the exercise of monopoly power by pipelines. Similarly, Southern California Gas Company (SoCal Gas) maintains that it cannot accept the notion that the Commission has the duty or obligation under the NGA to increase producers' profits at the wellhead, especially after decontrol. Peoples Natural Gas argues that the Commission erred in not applying antitrust law in analyzing the lawfulness of MFV.

The Commission rejects APGA's arguments about the legitimacy of the Commission's goals with respect to rate design. The Commission's interest in the production end of the natural gas industry has not been eliminated by the virtual decontrol of natural gas first sales. True, the Commission has no authority over wellhead gas prices. However, the Commission is still responsible for ensuring that, over the long-term, consumers have access to an adequate supply of natural gas at reasonable prices. It is beyond doubt that the Commission has the authority to regulate pipelines in a manner that fulfills that responsibility. That authority includes the establishing of just and reasonable transportation rates that maximize the benefits of decontrol to gas consumers. The Commission further believes that the rate design goals of Order No. 636 fully comport with the Commission's primary responsibility to protect gas consumers and rejects contentions that it has acted to increase producers' profits. Last, the Commission must apply the antitrust law in analyzing cost classification and rate design methodologies in light of its goals under the NGA. The Commission is not required to analyze rate design, competition, or their relationship under the standards of the antitrust laws.[286]

2. Lawfulness of MFV

Petitioners object to the Commission's conclusion that MFV is unjust and reasonable. The Commission observes that the essence of their objection is to the elimination of MFV as a cost classification method for the purpose of

[280] *Id.*

[281] *Id., quoting,* H.R. Rep. No. 29, *supra,* at p. 7.

[282] FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942).

[283] Consolidated Gas Supply Corp. v. FPC, 520 F.2d 1176 (D.C. Cir. 1975).

[284] Order No. 636 at pp. 30,432–33.

[285] Petition at 80.

[286] See *supra* on the antitrust laws and Transwestern Pipeline Co. v. FERC, 820 F.2d 733 (5th Cir. 1987), *cert. denied,* 484 U.S. 1005 (1988).

allocating costs among customers rather than to the use of SFV for billing purposes only. If there otherwise would be significant cost shifts, the Commission will require the parties in the restructuring proceedings to develop ratemaking methods that result in a distribution of revenue responsibility that reflects different customer load profiles so long as SFV is used for billing purposes.[287] For example, seasonal contract quantities (*i.e.*, seasonal entitlements or CDs) may be used to apportion revenue responsibility among customers. As a general matter, the Commission discourages the creation of customer classes for various transportation services other than the special small customer class provided for in this rule.

The APGA, the Coalition Against Straight Fixed Variable (Coalition), Memphis Light, ConEd, the City of Hamilton!, Ohio (Hamilton), NYSE&G, Northern Illinois Gas, the New England Gas Distributors, the State of Michigan, and Southwest Gas argue that the Commission's conclusion that MFV is unjust and unreasonable because it is not in harmony with the Commission's goals, is unsupported by empirical analysis and is based on faulty assumptions. In particular, they attack, as unsupported, the Commission's conclusion that the shipment of gas on uneven rate terms will inhibit the development of a national gas market by distorting wellhead prices. In particular, the petitioners argue that the following Commission example is unsupported:

> For example, producers in different fields that compete for the market share via different pipelines will often have their competitive positions in that market affected by the amount of fixed costs in the pipelines' respective transportation usage charges and not by the producers' own costs and efficiencies in producing gas.[288]

Petitioners maintain that the Commission has not shown that multiple pipelines serve a given market,[289] that, as with other industries, there is no reason why natural gas wellhead markets should not be affected by their location in relation to consuming markets,[290] that shippers expect rates on different pipelines to be different,[291] that gas purchasers make their purchasing decisions on a total delivered cost analysis,[292] that competition has flourished under MFV as shown by the current low wellhead price of gas,[293] and that MFV cannot be anticompetitive because transportation rates will be the same for all shippers, including the Pipeline's sales division.[294]

The Commission adheres to its conclusion that MFV is unjust and unreasonable when used widely as a billing method because of its adverse impact on the development of a national and competitive gas market. Under MFV, or any method other than SFV, pipeline usage charges vary depending upon the amount of fixed costs recovered in the usage charge. If customers can choose to take gas from two or more pipelines, they will minimize their transportation costs by baseloading the pipeline with the lowest usage rate and swinging on pipelines with higher usage rates. Pipelines with low usage rates consequently would tend to have higher load factors (enabling them to lower their usage charges even further) as compared to pipelines with more fixed costs in their usage charge. Producers whose gas moves to market over pipelines with low usage charges would be able to have higher sales and/or higher prices than otherwise equally efficient producers whose gas moves over pipelines with higher usage charges. Equally efficient producers whose gas gets to market on pipelines with equal total cost would not be on an equal footing because of the differing rate designs of the pipelines. This is inefficient and creates artificial barriers to the production of gas from one basin as compared to another.

A study done by the Commission staff in 1984, of the number of LDCs connected to multiple pipelines, showed that, as of 1980, 431 out of 1,443 LDCs surveyed, or 30%, were served by more than one pipeline.[295] On average this subgroup was served by 3.6 pipelines. Since then the trend has been for LDCs to develop more connections to multiple pipelines.

It is important to emphasize that the goal is a national gas market in which efficient, lowest cost producers will flourish and compete.[296] The Commission believes that "[c]ompetition among this set of efficient producers will yield lower prices and more abundant supplies, than will competition among a group of less efficient higher-cost producers."[297] In addition, the Commission believes that fixed costs in pipeline usage charges inhibit the sending of accurate price signals "at the margin" because the inclusion of those costs in the delivered price of day-to-day gas purchases does not allow producers and consumers to see the marginal price of gas that over the long run is more likely to produce the Commission's goal of an efficient national gas market.

This goal is a national goal and not a local goal of producing sets of efficient producers in one production area without regard to efficiency in other production areas throughout the country. Hence, this national concern vitiates the usual approach where the location of supply is relevant to the ability to compete in consuming markets. The Commission is concerned with the impact of multiple pipeline rates on multiple production areas. An efficient national market requires the actual cost of transportation to be reflected in the delivered prices of the gas, and MFV distorts unit delivered prices.

The Commission also believes that its analysis in Order No. 636 is in harmony with opening up the national pipeline grid to all consumers of gas. The essential point is that multiple producing areas and consuming markets have access to each other, even if the producing areas and consuming markets are each served by a single pipeline, but not the same pipeline. In addition, this multiple access should be enhanced by the programs and policies promulgated by Order No. 636. The new flexible delivery point policy, the new capacity reallocation mechanisms, and the recognition of the role of market centers should further open up the pipeline grid to form a national gas market for the meeting of all gas sellers and gas purchasers in the most efficient manner.

The Commission recognizes that gas purchasers use a total delivered cost analysis to make a decision with respect to entering into new long-term contractual arrangements with pipelines and gas merchants. Some LDCs (such as Brooklyn Union, Cincinnati Gas, and SoCal Gas) are served by more than one pipeline and can purchase gas from different producers with whom they

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[287] In other words, the Commission clarifies that using SFV does not foreclose the parties from developing one-part reservation charges based on both annual and peak demand considerations.

[288] Order No. 636 at p. 40,434.

[289] *E.g.*, NYSE&G.

[290] *E.g.*, Northern Illinois Gas, Alabama Gas. Peoples Natural Gas similarly argues that shippers expect rates on different pipelines to be different.

[291] *E.g.*, Peoples Natural Gas, Southwest Gas.

[292] *E.g.*, Cincinnati Gas, the State of Michigan, Hamilton.

[293] *E.g.*, CPUC, SoCal Gas.

[294] *E.g.*, ConEd, Southwest Gas, Peoples Natural Gas.

[295] David Mead, "Concentration in the Natural Gas Pipeline Industry," FERC Staff Working Paper (1984).

[296] H.R. Rep. No. 29, 101 st Cong., 1st Sess. at p. 7 (1989) (Decontrol Act).

[297] *Id.*

have long-term or spot market arrangements. In making decisions about long-term supply arrangements, it will always be cheaper for LDCs with multiple pipeline connections to baseload the pipeline with the lower usage rate and swing on the pipeline with the higher usage rate. This will affect the long-term contracting decisions of these LDCs both as to the amount of capacity reserved on each pipeline and the long-term gas supply contracts with producers connected to each pipeline. In short, differing usage charges will bias long-term decisionmaking as well as short-term decisionmaking.

The Commission reaffirms its conclusion that MFV rate design is unjust and unreasonable as discussed in Order No. 636. Simply put, MFV rate design hinders, and will continue to hinder, in the unbundled environment created by Order No. 636, and competition by gas sellers in a national gas market based upon their efficiencies, undistorted by varying fixed costs in pipeline usage charges.

APGA and Peoples Natural Gas argue that the Commission erred in stating that continuation of MFV will bias pipeline debt-equity ratios. The Commission's statement that "MFV could bias the debt—equity ratio because pipelines can increase their debt component to lower their usage charges" [298] was an observation of what might happen and was not relied on in finding MFV unjust and unreasonable.

3. Lawfulness of SFV

Petitioners raise several arguments in opposition to SFV. First, Southwest Gas, and Peoples Natural Gas argue that there is no evidence of record to support the Commission's conclusion that SFV will result in the shipment of gas under even terms since each pipeline's costs are different, as the Commission recognized in *Iroquois Gas Transmission System.*[299]

It is true that there are many reasons why pipelines may have rate differentials. The purpose in adopting SFV is to minimize the differentials in the usage charge by shifting fixed transmission and storage costs to the reservation charge. The remaining usage charge (, primarily, to cover fuel costs) is small enough that its impact is insignificant on the Commission's goal.

Hamilton maintains that "[u]ntil the market effects of the service restructuring ordered by the Commission are experienced, and the resulting level and efficiency of competition among gas sellers known, the Commission cannot possibly know whether generic application of SFV is necessary, or even useful, in the promotion of competition among gas sellers." [300]

The Commission believes that it has made reasonable predictions about the effect of SFV on the competitiveness of the gas market. The Commission is not required to act only on the basis of hindsight. The Commission may make predictions about the markets it regulates.[301]

Several Petitioners [302] argue that the Commission should not mandate SFV because it will increase costs for LDCs serving residential consumers and will decrease costs for high load factor customers, primarily industrials.[303] The Commission believes that the mitigation measures of Order No. 636 and the changes made on rehearing adequately respond to any cost shift (see *infra* on mitigation). In addition, the Commission believes that the ability of consumers to acquire gas at reasonable prices in an efficient, competitive wellhead environment is far more important to the development of a national, long-term gas market. That long-term national gas market will produce benefits to balance any short-term cost shift.[304] Further, the Commission has sound ratemaking techniques available to it, such as the use of seasonal reservation quantities, which would adequately treat undue cost shifts in particular cases. Moreover, the Commission has fashioned a viable capacity release program which should further offset any consequences of a cost shift.

SoCal Gas argues that SFV will reduce competition among producers on competing pipelines because the cost to LDCs of retaining firm capacity will be greater under SFV than under MFV. It argues that MFV's lower demand charges moderate the tension between retention of capacity to serve consumers and maximizing gas-on-gas competition.

SoCal Gas can continue to reserve the same amount of capacity under SFV as it did under MFV and continue to purchase gas from producers behind the pipelines on which it has firm capacity. The Commission fully expects those producers to continue to compete for SoCal Gas' business. Moreover, SoCal Gas can release unneeded capacity, if a replacement shipper can be found or if the pipeline agrees, in the restructuring proceeding as discussed above and under the Commission's capacity releasing program established by § 284.243 of the Commission's regulations as discussed below.

The NASUCA maintains that SFV will deprive consumers of the ability to freely select among competitive services of supply and transportation by masking price differentials with respect to competing pipelines. The Commission believes that gas purchasers will be able to compute pipeline price differentials in selecting among competitive services because transportation rates will continue to be stated in pipeline tariffs. In addition, comparisons will be easier because only reservation charges need to be compared. The Commission's goal, in any event, is to eliminate as much as possible those differentials in pipeline usage charges.

Several petitioners argue that the Commission has erroneously relied solely on unproven economic theory and not on facts.[305] Similarly, both Peoples Natural Gas and Southwest Gas contend that SFV, as a system of uniform commodity charges, is the functional equivalent of an illegal "basing point" pricing system, and is, therefore, not respectable economic theory.

The Commission believes that it has relied on sound economics. The development of a competitive national gas market consisting of lowest-cost, efficient producers will in the long run redound to the benefit to consumers and that the inclusion of fixed costs in pipeline firm service usage charges will inhibit that goal by distorting producer to producer competition on a nationwide basis.

The Commission does not agree that SFV may not be adopted because it resembles an illegal "basing point" pricing system where the delivered prices of a product (such as cement) are identical at any given point in order to eliminate price competition. First, the Commission is authorized to establish pipeline transportation rates to achieve the goals it determines are in the public

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[298] Order No. 636 at p. 30,433.

[299] 53 FERC ¶ 61,194 at p. 61,702 (1990).

[300] Petition at 9. Similarly NIEP argues that the Commission should consider the effect of post-restructuring costs on SFV.

[301] Environmental Action, Inc. v. FERC, 939 F.2d 1057 (D.C. Cir. 1991).

[302] *E.g.*, Laclede, Gas Company of New Mexico, Public Service Commission of the Commonwealth of Kentucky (Kentucky PSC) CPUC, Pennsylvania PUC, and Maryland Peoples Counsel. The Pennsylvania PUC maintains that the 10 percent mitigation policy shows that SFV is *per se* unreasonable.

[303] As stated above, the Commission, contrary to some petitioners (*e.g.*, the CPUC, Socal Gas, Peoples Natural Gas, and the Pennsylvania PUC) believes that SFV will benefit consumers by producing an adequate supply of gas at reasonable prices. Use of SFV is not designed to "help producer net-backs."

[304] See Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1161 (D.C. Cir 1985).

[305] *E.g.*, Hamilton and City Gas.

interest. Second, SFV does not mandate a uniform delivered gas price, which is the gas price plus the transportation rate nor does it establish uniform transportation (reservation) charges. The Commission believes that the competitive national gas market will result in vigorous gas on gas competition.

C. Allocation of Costs Among Customers

Alabama Gas argues that the Commission's nationwide gas market rationale does not provide a basis for changing cost classification for allocation purposes. It refers to the Commission's recent opinion in *Panhandle Eastern Pine Line Corp.*, where the Commission used MFV for allocation and SFV for design.[306]

The Gas Company of New Mexico asks the Commission to clarify that it has not mandated a particular basis for allocating costs among customer classes or calculating the demand charge (*e.g.*, peak requirements-annual requirements or two-part demand charge).

Southwest Gas submits that on rehearing the Commission should clarify that it did not intend to prejudice the issues of the appropriateness of the use of a one part demand charge or mandate the use of peak determinants to allocate costs.

CIG asks the Commission to clarify whether demand costs are to be allocated only to peak usage or entitlement and designed into a single part reservation charge or whether it and the parties can base demand-cost allocation and the design of reservation charges on some weighing of annual entitlements to service.

The Commission's primary aim is to institute SFV on a generic basis for rate design (*i.e.*, billing purposes) in order to minimize the costs recovered in the usage charge because of the effect on purchasing decisions. Although the Commission agrees that to achieve this purpose it is not necessary for a pipeline also to use the SFV method for the allocation of costs among its customers,[307] traditionally, the Commission has used the same method for rate design and for the allocation of costs among customers. But, it does not have to be so.

However, the Commission clarifies that it will require the parties to use different ratemaking techniques in connection with the distribution of revenue responsibility among customers to avoid significant cost shifting that may result from the elimination of the two-part demand charge or the allocation of costs based on peak day demand. The pipeline would first use SFV to classify (*i.e.*, assign) all of its fixed transmission and appropriate storage costs to a one-part reservation charge for both allocation and billing purposes. If that classification causes significant cost shifts, the pipeline is required to use some measure, such as seasonal contract quantities (*i.e.*, seasonal entitlements or CDs) as a means to counteract those shifts. This would enable firm customers to lower their daily reservation quantities for the off peak season and keep the higher quantity needed for the peak season.[308] Thus, if significant cost shifts still would occur among customers, due to the allocation of costs on peak day demand, the pipeline is required to use other appropriate techniques, such as seasonal CDs, to allocate costs. However, SFV must still be used for billing so that all fixed costs are recovered in the reservation charge.

Pipelines are required to use, in their compliance filings, SFV to allocate costs between services and zones. The Commission directs the parties in the individual proceedings to develop methods for allocating costs among services and distributing revenue responsibility among customers that will minimize significant cost shifting. The Commission strongly encourages the use of seasonal contract quantities to replicate, in part, the allocation of costs based on peak and annual considerations. The parties can explore other methods, however, a two-part reservation charge is not appropriate for allocation or billing purposes. The D–2 charge was based on usage patterns and is therefore not in harmony with the goal of SFV to minimize charges based on actual usage because usage charges can affect gas purchasing decisions. In addition, as a general matter, the Commission discourages the creation of customer classes, other than the special small customer class provided for in this rule, or if necessary during the four year mitigation period. Rather, the Commission intends for the pipelines and the parties to develop similar rates for similar services, consistent with the requirement set forth in § 284.8(b) of the Commission's regulations.[309]

If at the end of this ratemaking process significant cost shifts still result, the Commission will require a four-year mitigation plan, as discussed below, to phase-in the transition. In all events, the Commission will require the use of SFV for the rate design (billing) unless ordered otherwise in accordance with 18 CFR 284.8(b).

D. Rates for Small Customers

Order No. 636 stated that "the small customers can continue to receive firm transportation under a one-part volumetric rate computed at an imputed load factor similar to the manner in which their current sales rates are determined." [310] The Commission later indicated that the use of a one-part volumetric rate was a potential mitigation method for phasing-in SFV.

City Gas seeks clarification that "pipelines will be required to compute small customer rates on a one-part volumetric basis at the imputed load factor underlying the pipeline's currently effective small customer sales rate." [311]

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[306] 57 FERC ¶ 61,284 (1991), *order on reh'g*, 59 FERC ¶ 61,244 (1992).

[307] In Order No. 636 the Commission explained the five traditional steps in the ratemaking process. Order No. 636 at p. 30,431. In Order No. 636, the Commission addressed the issue of cost classification for cost allocation purposes and billing (rate design) purposes and concluded that SFV is the just and reasonable cost classification method for the assignment of costs to a reservation charge. The Commission did not directly address the fourth task of apportioning (allocating) classified costs among classes of customers or zones. This task allocates the costs, assigned under SFV to the reservation charge, by using various techniques to determine the amount of costs to be assigned to a particular zone or customer class (*e.g.*, contract demand quantities or three day peak volumes).

[308] For example, assume a pipeline with an annual reservation charge revenue requirement of $10 million and two customers A and B, each with a daily reservation quantity of 166,666 Mcf per day. Thus the annual reservation quantity (billing determinants) is 4 million Mcf (2 times 12 times 166,666). The reservation charge would be $2.50 per Mcf and each would pay $5 million. However, if seasonal contract quantities were used the revenue responsibility of each would change as follows. Assume that Customer A elects an off-peak daily reservation quantity of 133,333 for a reservation quantity (billing determinants) of 800,000 Mcf (for a six month period) and an annual total of 1.8 million Mcf. Customer B elects an off-peak daily reservation quantity of 33,333 Mcf for a reservation quantity (billing determinants) of 200,000 Mcf. The result is an annual total of 1.2 million Mcf for Customer B. Thus, the combined reservation quantities (billing determinants) for the two customers would be 3.0 million Mcf and the reservation charge would be $3.33 per Mcf ($10 million divided by 3 million Mcf). Customer A would pay a total of $6 million ($3.33 times 1.8 million Mcf) and Customer B would pay $4 million ($3.33 times 1.2 million Mcf). Under either case, the pipeline will recover its revenue requirement. Use of seasonal CDs only changes the way that the revenue requirement is allocated between the two customers.

[309] Section 284.8(b) provides that an interstate or intrastate pipeline that provides firm service under part 284 must "provide such service without any undue discrimination or preference in the quality of service, the duration of service, the categories, prices or volumes of natural gas to be transported, *customer classification*, or undue discrimination or preference of any kind." (emphasis added).

[310] Order No. 636 at p. 30,411 (footnote omitted).

[311] Petition at 9.

Similarly, the APGA seeks clarification that one-part, volumetric rates are not merely a temporary rate design mitigation mechanism. Atlanta Gas, however, opposes the small customer imputed load factor as an unwarranted subsidization by large customers and inconsistent with the Commission's "distorting factor" analysis.

The Commission here is clarifying this small customer rate issue to preserve the status quo for this particular class of customers. In the Commission's view, this will not have an unreasonable impact on the Commission's goals in adopting SFV. The Commission is requiring all pipelines that, on May 18, 1992, offered a small customer sales or firm transportation service on a one-part volumetric basis at an imputed load factor rate to continue to offer firm and no-notice transportation services on the same basis. In addition, the Commission is requiring those pipelines to consider enlarging the size of the small customer class on their systems to include any customer with the right to transport up to 10,000 Mcf or Dth/day on a firm basis. Whether the small customer class should be enlarged up to 10,000 Mcf or Dth/day on specific pipelines will be resolved by the Commission in the specific restructuring proceedings. The purpose for enlarging the small customer class would be to mitigate the effect, of shifting to the SFV method, on small customers who do not currently qualify for a pipeline's small customer rate schedule. However, the Commission is also requiring eligible small customers that elect to retain or receive small customer service not to ship gas under any interruptible transportation service available from the pipeline or not to ship gas as a replacement shipper under the capacity releasing mechanism of § 284.243 unless the customer has exhausted its daily levels of firm service entitlement for that day. Other eligibility criteria would be based on the pipeline's existing tariff. The Commission is imposing this narrow limitation because the small customers are required to pay only when they use the pipeline. This serves the same functional purpose as sole supplier provisions did in the same customers' contracts to the extent they had those provisions.

In their compliance filings, the pipelines must file rates for the small customer service determined by using a load factor no less than the current imputed load factor. If the pipeline or another party, such as Atlanta Gas, wants to lower the existing imputed load factor or eliminate the use of a one-part rate, it must seek to do so in a new rate proceeding and not in the restructuring proceeding.

E. Costs Shifts to Firm Customers

The Coalition argues that SFV will cause a massive industry-wide shifting of costs from interruptible transportation customers to firm customers. The Coalition claims that a change from Seaboard to SFV will shift $5.9 billion to the demand charge and a change from MFV to SFV will shift $4.3 billion to the demand charge. The Coalition further maintains that approximately 60 percent of total throughput is interruptible industrial transportation, although they do not cite a source for this number.[812] It asserts that this results in shifts of about $3 billion (60%×$5 billion) per year or $60 per year per customer.[813]

The Coalition's study does not present an accurate portrait of the changes effected by Order No. 636. The Commission expects the overall effect of Order No. 636 will benefit generally industry participants by furthering the creation of an efficient national wellhead market. Hence, focusing on cost shifts is to focus on but one aspect of Order No. 636. Moreover, cost shifting is not a generic matter; the key question is how costs are redistributed among customers on a particular pipeline. In addition, the Commission has provided measures to deal with cost shifts (see *infra* on cost allocation and rate design).

Despite its neglect of the benefits from Order No. 636, the Coalition attempts to quantify the possible shift in costs from interruptible customers to firm customers brought about by the shift to SFV rate design. However, the Coalition is mistaken both as to how costs are recovered from interruptible shippers now and how they will be recovered under SFV rates. Moreover, all the numbers the Coalition uses to support its estimate are inappropriate. The Coalition appears to believe that interruptible shippers pay only a portion of the fixed costs that are assigned to the commodity charge, whereas in fact 100 percent load factor interruptible transportation rates are designed to recover some fixed costs in the demand charge. Under SFV, the Coalition appears to believe that interruptible transportation shippers will not pay any portion of the pipeline's fixed costs, whereas in fact neither this order nor Order No. 636 necessarily requires any change to the methods used for setting interruptible rates.

Using certain assumptions the Commission can generally estimate the amount of costs that could shift. Under MFV, costs are split into three categories. First, the pipeline's return on equity and associated taxes go into the usage category. In 1990, these amounted to $1.7 billion,[814] rather than the $4.3 billion estimated by the Coalition.[815] These costs are recovered from each unit of throughput. In 1990, total throughput for the interstate pipeline system was about 19.9 Tcf.[816] Total throughput was almost evenly divided between firm customers (9.9 Tcf) and interruptible shippers (10 Tcf).[817] Thus, interruptible shippers paid about 50 percent of fixed usage costs ($.85 billion). The remaining fixed costs of the pipeline, about $7.8 billion,[818] were split

[812] The Coalition's information may have come from the Energy Information Administration's (EIA) Natural Gas Monthly publication which shows gas consumption by Electric Utilities and Industrial Customers in 1990 of about 56 percent. Energy Information Administration/Natural Gas Monthly (May 1992); DOE/EIA—0310 (92/05), from: Table 3. Natural Gas Consumption in the United States, 1986–1992.

[813] The Coalition has assumed 50 million gas customers.

[814] Energy Information Administration/Statistics of Natural Gas Pipeline Companies 1990; DOE/EIA—0145(90), from: Table 3. Composite Statement of Income and Retained Earnings, Major Pipeline Companies, 1981–1990. Table 3 shows gas operating revenues of $1.685 billion. From this we deduct interest expense of $.504 billion (assuming the company wide ratio of 35.23 per cent of interest expense to net income holds for the transmission function alone) to get a return (after taxes) on equity of $1.09 billion. The federal and state composite tax rate is about 36 per cent, so a pre-tax income of $1.70 billion is necessary to yield an after tax income of $1.09 billion.

[815] The Coalition's figure is overstated because the net income reported in Statistics of Natural Gas Pipeline Companies, EIA–0145(90), Table 3, includes income relating to the pipelines total business, utility and non-utility, and not just to transmission expenses as it should. The tax figure is overstated for similar reasons and does not reflect the income tax allowance as included in rates.

[816] Interstate Natural Gas Association of America, Issue Analysis: Carriage Through 1990 (July 1991), from: Table A–1, which shows carriage for market plus sales of 17.109 Quads. The pipelines in INGAA's survey account for 86 per cent of gas deliveries; the figure in the text was derived by multiplying 17×1.86 and rounding.

[817] *Id.* Table A–7, Sales and Firm and Interruptible Transportation as a Percentage of Total Delivered for Market, shows 51 percent as the share of interruptible transportation.

[818] This was estimated by subtracting total purchased gas costs of $12 billion, Statistics of Natural Gas Pipeline Companies 1990, Table 9, from the revenue from sales of $16 billion *Id.*, recovered from sales customers. Add to this, revenues from transporting gas of others of $5.5 billion, to get the $9.5 billion in the text. The Commission recognizes that there are upstream capacity costs representing inter pipeline sales (Account No. 858 costs) included in the $12 billion.

fifty-fifty between D1 costs ($3.9 billion), which are recovered on the basis of contract demand (CD) with an imputed CD for interruptible customers, and D2 costs ($3.9 billion), which are recovered on the basis of nominated annual throughput for firm customers and projected annual throughput for interruptible shippers. Total contract demand for all interstate customers in 1990 was about 75 Bcf per day or 27.5 Tcf per year.[319] If projected interruptible transportation throughput was assumed equal to the actual of 10 Tcf, then the $3.9 billion per year of D1 costs would have been recovered from each of the 37.5 Tcf reserved per year (27.5 in CD plus 10 Tcf in interruptible transportation imputed CD).[320] Interruptible transportation shippers thus paid 27 percent (10/37.5) of the D1 costs or about $1 billion. Similarly, if one assumes that firm annual D2 nominations are equal to actual firm annual throughput, then the D2 costs of $3.9 billion were recovered from each of 20 Tcf units shipped, and interruptible transportation shippers paid about 50 percent of $1.95 billion.

Thus, the Commission estimates that under MFV, interruptible transportation shippers paid about 40 percent of the total fixed costs, or about $3.8 billion. Shifting to SFV would have put all costs in the D1 category. If there were no changes in the interruptible transportation projected throughput, interruptible transportation customers would have been allocated 27 percent of the total, or about $2.5 billion. There would have been a shift of costs from interruptible transportation shippers to firm customers of about $1.3 billion, rather than $3 billion estimated by the Coalition.

But even this number is too large. Many firm sales customers have been buying gas from non-pipeline sellers and shipping it on an interruptible basis. In 1990, at least 27 percent of the 10 Tcf of interruptible transportation throughput was for LDCs.[321] Thus, non-LDC interruptible transportation shippers paid about $2.8 billion in 1990, not $3.8 billion.[322] If the D1 billing determinants are adjusted to take into account a decrease in interruptible transportation done by LDCs, interruptible transportation would be projected to be 7.3 Tcf, rather than 10 Tcf. Non-LDC interruptible transportation shippers would pay about 21 percent (7.3/(7.3 + 27.5)) of the costs, or about $2 billion. This means the shift from non-LDC interruptible transportation customers to firm customers is about $.8 billion ($2.8–$2).[323]

If $.8 billion [324] was shifted to firm customers from interruptible shippers, how much more would the 50 million residential gas customers pay? Residentials consumed 26 percent of the total gas delivered to consumers in 1990.[325] If they paid a proportionate share of the shift, their annual bill would increase by $.21 billion, or about $4.20 per year or 35 cents per month. If they paid all of the shift (that is, commercial, industrial and electric utility customers of LDCs paid none of the shift), then their annual bill would increase by $16.20 or by $1.35 per month. Since LDCs billed residential gas customers over $25 billion in 1990,[326] or over $500 per customer per year, even this most extreme shift would amount to about a three percent increase in annual bills. While the Commission believes its estimate is reasonable and more accurate than the Coalition's, the Commission recognizes that it is not a precise estimate of potential cost shifts.

F. Mitigation of Cost Shifts

In Order No. 636, the Commission recognized that the change from the use of MFV can result in the shifting of revenue responsibility among classes of customers. The Commission concluded that it was appropriate to require pipelines to mitigate a shift in revenue responsibility if it results in a 10 percent or greater increase in revenue responsibility for any historic customer class. The Commission is requiring each pipeline to develop and implement a plan to phase-in any such rate increase over no more than four years.

Several petitioners make a variety of arguments about why the mitigation measures are not adequate. They argue that the Commission has provided no rationale to support the ten percent or greater bright line test, that mitigation should be by customer rather than by customer class, and that permanent measures are necessary to avoid unjust and unreasonable rates.[327] Some petitioners argue that mitigation should be a restructuring issue without a threshold or phase-in period.[328]

The Industrial Groups maintain that the combination of SFV with mitigation through cost allocation methods will result in different rates for the same service which is discriminatory and, if based on historical usage patterns, unlawful retroactive ratemaking. It adds that there is little basis to assume that historical load factors will remain the same in light of the institution of capacity releasing, flexible delivery points, and open access storage.[329] They suggest phasing-in SFV at the cost classification stage based on current load factors so that all customers are treated equally.

Northern Illinois Gas supports mitigation but not simply to shift costs to other firm customers, "who are already paying all fixed costs properly related to their capacity entitlements." [330]

Several petitioners ask for clarifications. Northwest Pipeline asks the Commission to clarify "how the historical customer class will be defined—by pipeline historic rate schedules, by current pipeline rate schedules, by total yearly throughput, by load factor profile, by individual customer or other criteria." [331]

The KCC is concerned about strict application of use of a pipeline's last approved cost classification and rate design method in performing the mitigation analysis. It cites, for example, Williams Natural Gas Company's one-part commodity firm sales rate.

City Gas asks for clarification about what costs and in what manner the Commission will compare them to determine whether a customer class that no longer exists after Order No. 636 has received increased revenue

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[319] Capacity and Service on the Interstate Natural Gas Pipeline System 1990, EIA–0556, June 1992. Table ES1, p. xi.

[320] This results in a D1 charge of 10.4 cents per mcf reserved per day, or $3.16 per month.

[321] INGAA's Carriage Through 1990, Table B–3, *Supra*, shows that LDCs accounted for 27 percent [17/64] of the total IT throughput, while marketers accounted for 61 percent [39/64]. It is likely that marketers resold some of this gas to LDCs, so the 27 percent figure is probably an underestimate.

[322] This is derived by multiplying 73 percent (non-LDC interruptible shippers throughput) times $3.8 billion, $2.8 billion.

[323] This is derived by multiplying 21 percent (non LDC interruptible transportation share of D1 costs times $9.5 billion, $2 billion, and subtracting $2 billion from $2.8 billion.

[324] Even this number is too large, because D2 costs are far less than the amount assumed since many pipelines have already eliminated them. In addition, some major pipelines are already operating on EFV which puts only half the MFV amount in commodity and none in D2. Moreover, some pipelines already have SFV in effect and the calculation does not take into account any revenue from firm capacity holders releasing capacity.

[325] Natural Gas Monthly, *supra*, Table 3.

[326] Gas Facts, 1990 Data, American Gas Association, Table 7–1.

[327] *E.g.*, Hamilton, Gas Company of New Mexico, Kentucky PSC, Citizen Action, Kansas Corporation Commission (KCC), NASUCA, Tennessee and Columbia Small Customers, Alabama Gas, and Cascade.

[328] *E.g.*, Hamilton, Alabama Gas.

[329] The Industrial Groups also note that mitigative rates will result in different capacity releasing prices.

[330] Petition at 23.

[331] Petition at 10, 11.

responsibility. It asks whether the Commission will compare SFV rates with MFV rates based on the currently effective cost of service and service portfolio, or based on projected, post-Order No. 636 cost of service and service portfolio.

The Commission upholds the mitigation approach set forth in Order No. 636. The Commission believes a fixed mitigation trigger for the industry is appropriate rather than a case-by-case approach, because SFV is being adopted on a generic basis. Based on the Commission's judgment, 10 percent is appropriate for the bright-line test. However, with the changes made in this order, the Commission expects there to be a diminished need to phase-in the changes required by the rule. Small customers are retaining their right to a one-part volumetric rate at an imputed load factor and pipelines will use an apportionment method, such as seasonal reservation quantities, to appropriately allocate costs among individual customers. These changes should minimize the need to use the phase-in mitigation measures.

If needed, however, the Commission continues to believe that the need for mandatory mitigation should be determined by a measure of shifts between historic customer class rather than by individual customer, because rates historically have been set by customer class and not for individual customers.

The Commission believes further that the four-year mitigation plan should be transitional rather than permanent because SFV is a just and reasonable cost classification method. Mitigation is adopted as an equitable matter solely to allow the orderly transition to SFV.

While it is true that four-year mitigation, if needed, may result in varying rates for the same service depending upon the mitigation measure adopted, this discrimination is not undue for this transition period because mitigation is appropriate to soften the impact of the adoption of SFV. Mitigation is not retroactive ratemaking. The pipelines will not be recovering past losses in present rates. Rather, the mitigation formula is similar to any phasing-in or phasing-out of a subsidy.

It is possible, as maintained by the Industrial Groups, that a customer's load factor will change in light of the policies instituted by Order No. 636. But the Commission is mitigating by historic classes of customers to alleviate rate shock among those different classes of customers. Individual changes in load factor are not pertinent to mitigation by classes of customers.

The Commission clarifies that historic customer class refers to classes existing prior to May 18, 1992. For example, if a pipeline has a firm sales customer class existing prior to May 18, 1992, and that class will have an 11 percent increase, the pipeline must mitigate the impact of the change to SFV for all members of that class. A pipeline must use its throughput and cost-of-service underlying the currently effective rates (even if they are subject to refund) to make this mitigation calculation.

G. Other Rate Designs

In Order No. 636, the Commission stated that it will consider alternative rate design proposals when the parties agree to a rate design other than SFV, but stated that those parties supporting a rate design other than SFV bore a heavy burden of persuasion.

New Jersey Natural, Pennsylvania PUC, and National Association of Regulatory Utility Commission (NARUC) object to the "heavy burden" standard. For example, NARUC argues that it is concerned it will become an irrebuttable presumption in favor of SFV. It asks the Commission to provide greater detail about what needs to be shown to meet the heavy burden of persuasion. In addition, the Wisconsin Distributor Group and NARUC maintain that the Commission should clarify that it will accept rather than consider other rate designs. The former contends that the Commission should grant effect to substantially uncontested agreements among interested parties. The Iowa, Missouri, and Wisconsin Commission suggest the following approach:

> If all of the rate case participants wish to implement something other than pure SFV, the Commission should accept the choice. If a substantial majority of rate case participants agree on a rate design which does not implement pure SFV, the Commission should place the burden on the objecting parties to justify why the majority agreement should not be accepted by the Commission.[332]

Columbia Gas Distribution Companies maintain that the Commission has precluded itself from adopting MFV, in giving effect to the parties' agreement to MFV, by its finding that MFV, is unjust and unreasonable, a possible "per se" NGA section 5 violation. They suggest amending Order No. 636 to clarify, "in terms stronger than 'unless the Commission permits otherwise' * * * that the Commission retains the ability to approve non-SFV rate designs, including MFV." [333]

[332] Petition at 16–17.

[333] Petition at 5.

The Commission denies rehearing and adheres to its Order No. 636 discussion that it will carefully consider arguments for and against deviations from SFV, with the advocates against SFV bearing the burden of persuasion. This is not an irrebuttable presumption. At a minimum, opponents of SFV must demonstrate that SFV is not needed to effectuate the goals of Order No. 636. The Commission's finding that MFV is unjust and unreasonable is not a "per se" finding with respect to future individual pipeline rate proceedings, but a generic finding that the impact of MFV for billing purposes is unjust and unreasonable on a generic basis under the present circumstances.[334]

H. Other Matters

1. Alternative Fuels

Southwest Gas argues that there is no record support for the Commission's conclusion that SFV is needed to make gas more competitive vis-a-vis other fuels and to encourage the use of gas (as opposed to foreign oil). It maintains that the delivered price of natural gas is already well below that of heavy oil and well above that of coal.[335] Alabama Gas adds that the Commission has ignored the pipelines' ability to discount rates.

The Commission's conclusion was not that SFV is needed now to make gas more competitive with other fuels, but that SFV will enable gas to compete more readily, on a timely basis, by allowing the price of gas to adjust without regard to transportation fixed costs.

2. Impact on Gas Prices

NYSE&G maintains that the Commission needs to perform an elasticity analysis of the impact of changes in prices for pipeline transportation service on the demand for supplies behind competing pipelines. The Commission is not required to perform impact studies in connection with SFV's impact on the demand and price of gas suppliers.[336] The Commission believes that the effect of SFV on national wellhead competition will be to produce an adequate supply of gas at reasonable prices.

[334] See Freeport Interstate Pipeline Co., 59 FERC ¶ 61,378 (1992) for an example of the retention of MFV based on individual circumstances.

[335] See also Northern Illinois Gas, Atlanta Gas, Peoples Natural Gas, and Alabama Gas.

[336] Cf. Wisconsin Gas Co., v. FERC, 770 F.2d 1144, 1155 (D.C. Cir. 1985).

3. Other Rate Design Goals

Several petitioners argue that the Commission in adopting SFV has ignored past precedents and goals with respect to the designing of rates.

Washington Gas contends that there is no evidence to support the finding that the MFV rate design fails to promote the efficiency goals under Commission regulations or the Rate Design Policy Statement, or that a mandated SFV will improve economic efficiency. It maintains that there is no evidence that the higher demand charge of SFV would better ration firm capacity generally or a connection between MFV and underutilized capacity.

Arizona Electric argues that SFV encourages usage at peak when rationing is needed and, therefore, does not promote efficient utilization, and ignores the market-clearing role of usage charges.

Washington Gas also argues that the Commission should reverse its mandate of SFV and allow particular rate designs to be developed in individual pipeline rate proceedings under the guidance of the Rate Design Policy Statement.

The Commission did not apply the policies enunciated in the Rate Design Policy Statement because in its current assessment of the prevalent economic and market circumstances it believes the goal of achieving an efficient, national gas market is the factor that should control the selection of the appropriate rate design method. This does not mean that rationing capacity and maximizing throughput are not legitimate rate design functions. For example, it may be appropriate to apply the Rate Design Policy Statement in determining whether seasonal rates are appropriate.

The Coalition, Southern Indiana, and the State of Michigan maintain that the Commission ignored precedent by failing to take into account the fact that a pipeline incurs fixed costs to serve all throughput.[337] The Coalition maintains that several costs are the responsibility of total throughput under the "cost responsibility" principle.[338]

The Commission recognizes that a pipeline has throughput throughout the year. The proper allocation of fixed costs between peak and off peak customers presents a difficult issue which regulators have grappled with for many years. This, like all other ratemaking matters, is not an exact science and the Commission must use its judgement and expertise to select ratemaking practices that benefit all gas consumers.

As a result, the Commission believes that the goals to be accomplished via SFV outweigh generally the goal of allocating fixed costs to annual throughput. There are many functions that can be performed by rate design. The allocation of fixed costs to annual throughput is but one of them. The Commission is not bound to adopt a cost classification that performs that function when another function is more appropriate in the prevalent circumstances. However, as discussed above, the Commission is requiring adjustments in connection with the distribution for revenue responsibility among customers to avoid significant cost shifts among pipeline customers.

Several petitioners argue that under SFV pipelines will have no incentive to operate their systems on an efficient basis to control costs and to maximize throughput.[339] Brooklyn Union argues that the "Commission must require pipelines to implement appropriate incentive rate mechanisms at the same time that SFV rates are implemented."[340] Brooklyn Union argues that this is necessary to replace the loss of the tool against excessive pipeline charges of not fully recovering fixed costs unless pipelines minimize costs and operate efficiently. However, other petitioners argue that the Commission should defer the adoption of SFV and consider SFV and incentive ratemaking together in a separate proceeding.[341] United Distribution Companies maintains that incentive ratemaking should not be part of the restructuring process to eliminate a pipeline bargaining chip. It asks the Commission to reject incentive rate filings that do not give the pipeline a stake in throughput. The Commission will address incentive ratemaking matters below. Here, it suffices to state that the Commission will not require incentive ratemaking to be implemented at the same time as SFV in the compliance filings to Order No. 636.

4. Alternative Solutions

Arizona Electric Cooperative argues that "geographic equalization" (*i.e.* producers in different areas) could be achieved by discounting or by volumetric transportation rates based on marginal costs. It maintains that those rates will create demand-responsive volumetric charges which will rise during peak usage periods. It adds that reservation fees would then be set at a much lower level because they would only have to recover any revenue shortfall expected to result from the volumetric charges.

Peoples Natural Gas asserts that the Commission should adopt SFV rates as utilized in the electric industry, where the demand charges apply to customer's actual peak consumption during the given months.

Peoples Natural Gas argues that the Commission could have remedied the distortion by adopting a uniform volumetric rate (including fixed costs) on all pipelines without harming consumers by shifting all costs to them from producers as it claims is done by SFV.

The Industrial Groups agree that MFV is unlawful, but would prefer Enhanced Fixed Variable, which includes 50 percent of a pipeline's equity return and related taxes in its usage charge.

The Commission believes that SFV, as adopted by in Order No. 636, is the best rate design vehicle for achieving the Commission's goals. This is because SFV, unlike the other proposals, best eliminates the distorting impact of pipeline fixed costs on wellhead competition. The other proposals, by recovering fixed costs through usage factors, would not do that.

5. Unallocated Capacity

Several petitioners argue that the pipelines should bear the costs associated with unbooked firm capacity.[342]

Order No. 636 did not address the issue of the appropriate aggregate firm volumes to use in designing the firm transportation reservation charges. This is, therefore, not an Order No. 636 restructuring issue but rather, is an issue for a rate proceeding.

6. New Entrants

SoCal Gas argues that SFV will, like minimum bills, make it substantially more difficult for new pipelines to compete with existing pipelines to provide firm transportation services in existing markets. The Commission believes that new capacity should be

[337] See, *e.g.*, Atlantic Seaboard Corp., 11 FPC 43 (1952) and Texas Eastern Transmission Corp., 30 FERC ¶ 61,144 (1985).

[338] See, *e.g.*, Atlantic Seaboard Corp., 11 FPC 43 (1952) and Texas Eastern Transmission Corp., 30 FERC ¶ 61,144 (1985).

[339] *E.g.*, Northern Illinois Gas, the Industrial Groups, SoCal Gas, Southern Indiana Gas and Electric, the Gas Company of New Mexico, Laclede Gas, Kentucky PSC, the Illinois Commerce Commission, Citizen Action, CPUC, NASUCA, Citizens Gas, and APGA.

[340] Petition at 15.

[341] ConEd, NYSE&G, Peoples Natural Gas, Alabama Gas, New England Gas Distributors, NIEP, and AGD.

[342] Northern Illinois Gas, Illinois Power, Northern Indiana, and City Gas (suggests assigning these costs to commodity charge). United Distribution Companies suggests designing at 110% throughput to introduce the element of competitive risk.

built to meet demand for capacity. If demand exists, SFV should not be a deterrent to new construction.

7. Demand Charge Credits

ConEd, AGD, and Peoples Natural Gas argue that pipelines should be required to provide demand charge credits during service interruption or curtailment to provide an incentive to expeditiously restore service.[343] Because this issue does not pertain to Order No. 636, it should be resolved in individual rate proceedings and not in this order or the restructuring proceedings.

8. Rate of Return/Risk

In Order No. 636, the Commission stated that "pipeline risk is a matter for pipeline-specific analysis in light of all risks." [344]

Several petitioners ask the Commission to reduce the pipelines' rate of return on equity and to reflect the decline in pipeline risk under SFV.[345] The Arizona Direct Customers ask the Commission to clarify "that all other things being equal, a pipeline's move from the MFV to SFV method of cost classification and rate design reduces a pipeline's risk of inadequate revenue recovery, and this reduction in risk is a relevant factor in arriving at an appropriate return on equity." [346] The New England Distributors maintain that the Commission should act in individual NGA section 4 proceedings in order to consider reduced pipeline risks.

The pipelines argue that their risk will increase after restructuring. For example, INGAA submits that "if the Commission considers all risk confronting pipelines after restructuring, it will allow pipelines higher rates of return on equity." [347] INGAA refers to risk related to the "difference between the rate negotiated and the maximum rate" and risk associated with interruptible service because the pipeline may not sell its own capacity first. ANR asks the Commission to clarify that the implementation of the SFV rate design does not itself require a lowering of the return on equity component of a pipeline's rates.

The Commission adheres to Order No. 636's conclusion that "pipeline risk is a matter for pipeline-specific analysis in light of all risks." [348] As such, this is not a restructuring issue but rather is an issue that may be raised in individual pipeline rate proceedings where the Commission examines a pipeline's cost-of-service, including the return on equity.

9. Prospective Basis

The APGA asks for clarification that pipelines may implement SFV increases on a prospective basis only and not retroactively to the effective date of any currently active section 4 proceeding. The Commission so clarifies, unless the pipeline proposed SFV in such a proceeding, then a mitigation measure may be required back to the date the rates became effective in connection with the implementation of SFV.

10. By-Pass

The State of Michigan argues that SFV will create incentives for by-pass. The Commission will discuss by-pass issues below in part IX, B, 13. Here, it suffices to state that SFV's impact on by-pass is a speculative matter dependent on the method for the flow though of fixed costs used by a state commission.

11. Section 7(c) Transportation

National Fuel asks the Commission to require pipelines to adopt SFV for individual NGA section 7(c) transportation services because the Commission's rationale applies with equal force to those services. The Commission agrees that the rationale for SFV applies to all firm transportation. As the Commission has required in the past, the same rates must be charged for individually authorized NGA section 7(c) transportation and for part 284 transportation and will permit individual NGA section 7(c) transportation rates to be so designed. If a party opposes that design for those services, it may raise its objection in the pertinent restructuring proceeding.

12. Vintage Pricing

Great Lakes Gas Transmission Limited Partnership (Great Lakes) requests clarification that equal transportation on even terms requires the elimination of vintage pricing in favor of a uniform, market-based rate for comparable transportation services (constrained by the pipeline's highest cost-based tariff rate applicable to such services). The Commission will address this issue in Great Lakes' own proceedings concerned with vintage pricing rather than here or in the restructuring proceeding.

13. Rate Design Policy Statement Policies

In Order No. 636, the Commission stated that the policies enunciated in the Rate Design Policy Statement continue in effect except for the classification of costs to the reservation and usage charges. The Commission specifically referred to, as examples, the determination of rates for interruptible transportation, the discounting of rates, and mileage-based rates.

The Arizona Direct Customers seeks clarification that "pipelines must unbundle gathering costs from the mainline rates and that all other principles set forth in the Policy Statement and not explicitly modified by the Final Rule Remain in effect." [349] The Commission reiterates that the policies enunciated in the Rate Design Policy Statement continue in effect except for the classification of costs to the reservation and usage charges for billing purposes. For example, as discussed above, pipelines can allocate or apportion costs under other ratemaking techniques, such as seasonal contract entitlements. In contrast, under seasonal rates, peak period reservation charges would be higher than off-peak reservation charges. Cost unbundling is discussed below.

14. Unbundling of Costs

NGSA seeks clarification with respect to Order No. 636's alleged vagueness concerning cost unbundling. NGSA asks the Commission to endorse cost unbundling by expressly amending §§ 284.7(d)(4) (i) and (ii) to insert "unbundled" before service, and by including § 284.7 among the listed regulations subject to implementation in the order No. 636 compliance filing.[350] NGSA also asks the Commission to direct pipelines to unbundle their costs into the smallest service components practicable. NGSA states that without the fullest practicable level of cost unbundling, parties may not be able to detect cross-subsidies and the potential for improper pricing will remain.

The Commission believes that it need not amend its regulations as suggested by NGSA because §§ 284.7(d)(4) (i) and (ii) require rates to be based on the costs which are properly allocated to the service to which the rate applies. This covers all part 284 services offered by

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[343] See Northern Natural Gas Co., 57 FERC ¶ 61,105 at p. 61,400 (1991).

[344] Order No. 636 at p. 30,437.

[345] Pennsylvania PUC, Citizen Action, CPUC, the Industrial Groups.

[346] Petition 10.

[347] Petition 7. See also Natural's Petition at 19.

[348] Order No. 636 at p. 30,437.

[349] Petition at 9.

[350] Petition at 10. It appears that NGSA means §§ 284.7(d)(4) (i) and (ii). For example, the former section as proposed to be amended would read: "Any maximum rate filed under this section must be designed to recover on a unit basis, solely these costs which are properly allocated to the unbundled service to which the rate applies."

the pipeline. Those services are unbundled from sales. Further, in Order No. 636, the Commission required the pipelines to identify the costs associated with the discrete elements of "no-notice" transportation service, such as the cost of any system storage or imbalance services.[351] The Commission believes that these existing requirements are adequate to satisfy NGSA's request and no further requirements are necessary at this time.

Northwest asks the Commission to clarify that customers should only be required to pay for the particular unbundled services (*e.g.*, gathering, transportation, and storage) that the customers use, and that customers should not subsidize services that they are not using. Similarly, Phillips maintains "that a pipeline may not use a cost allocation or rate design methodology for upstream facilities to gain price advantages for the pipeline's merchant function or to gain competitive advantages for pipeline-owned upstream services over third party providers of upstream services."[352]

As stated above, the Rate Design Policy Statement remains applicable to issues other than the apportioning of fixed costs to the reservation and usage charges. Order No. 636 dealt only with that issue and not with issues such as whether gathering and other production area services, such as processing and production area transportation, should be offered as separate services with separately charged rates.[353] That is still a matter for individual pipeline rate proceedings. However, the Commission repeats its strong preference for fully unbundled services.[354]

I. Interruptible Rate Design

The Industrial Groups [355] contend that the Commission erred in leaving the issue of interruptible rate design (particularly the 100% load factor design) to proceedings under the Commission's Rate Design Policy Statement.[356] They argue that fixed costs should not be attributed to interruptible transportation because such costs are incurred to meet firm, not interruptible requirements. They further contend that maintaining historically high maximum interruptible service is unjustified since the quality of interruptible rates will decline due to the increased use of firm transportation under capacity release and mid-month bumping of interruptible transportation by firm transportation. The KCC, on the other hand, requests that fixed costs should still be allocated to interruptible customers when interruptible volumes flow during peak periods on pipelines with excess capacity.[357]

The Commission grants rehearing and directs that issues involving the appropriate rate design for, and allocation of costs to, interruptible transportation must be addressed in the restructuring proceedings.

VII. Pipeline Sales

Order No. 636 issues blanket certificates to open access pipelines authorizing firm and interruptible sales for resale. The pipeline will be able to sell gas at market-based rates because Order No. 636 concludes that pipelines have no significant market power as sellers of gas on a unbundled basis. In addition, pipeline unbundled sales service will be afforded pregranted abandonment, and pipelines will be subject to standards of conduct and reporting requirements similar to those imposed in Order No. 497.

On rehearing, the Commission is modifying Order No. 636 to require pipelines to continue to sell gas to their current small sales customers (only) at a rate that is cost-based, for a transitional one-year period.

A. Blanket Sales Certificate

Order No. 636 issues to pipelines providing open access transportation, a blanket certificate authorizing unbundled firm and interruptible sales. Under the Rule, existing bundled firm sales entitlements of the pipeline's customers will be converted to an equivalent amount of unbundled firm sales service and firm transportation rights. During the restructuring proceedings, a firm sales customer can elect whether to continue its contractual relationship with the pipeline under the blanket certificate. Under the new blanket sales certificate, the pipeline's sales obligation will be coextensive with its contractual obligations and unbundled sales will be afforded pregranted abandonment.

APGA and Citizen Action argue that the Commission erred in eliminating individual sales certificates, agreements, and accompanying rights, including abandonment protection and replacing them with a blanket certificate. The parties assert that unbundled sales under the blanket certificate are inferior to current bundled sales and that the Commission has failed to meet its burden of showing that this is required by the public convenience and necessity as required by section 7 of the NGA. As the Commission explained in sections III and IV above, unbundling is required because bundled sales service violates sections 4 and 5 of the NGA, and the Commission's action here is consistent with those sections of the NGA. The requirements of Order No. 636, including unbundling and pregranted abandonment, are all necessary to assure that part 284 transportation is performed on a just and reasonable basis with respect to all gas supplies. As further explained above, the Commission's action under section 5 is not a revocation of the certificate. The pipeline's certificate obligations with respect to individual services are subsumed into the new blanket certificate with just and reasonable terms consistent with the Commission's findings here.

OkTex Pipeline Company (OkTex) argues that the Commission cannot require a pipeline to accept a certificate of public convenience and necessity [358] and cannot require a pipeline to perform a service it does not seek to perform or that is outside the scope of its business undertaking. OkTex asks the Commission to clarify on rehearing that it will not be required to accept a blanket sales certificate, and will not be subject to the standards of conduct or reporting requirements simply because it could have accepted a certificate or may elect to do so in the future.

The Commission grants the clarification. Order No. 636 does not require a transportation-only pipeline to engage in sales. Because the standards of conduct in section 284.286 address the relationship between a pipeline's transportation service and its merchant function, they are not relevant to a pipeline that does not engage in sales.[359]

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[351] Order No. 636 at p. 30,422.

[352] Petition at 7. See also Natural Gas Clearinghouse, CPUC, and Arizona Direct Customers.

[353] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 at p. 62,059 (1989), *order on reh'g*, 48 FERC ¶ 61,122 (1989).

[354] *Id.* and Panhandle Eastern Pipeline Co., 59 FERC ¶ 61,284 (1991), *order on reh'g*, 59 FERC ¶ 61,244 (1992).

[355] Petition at 25–28.

[356] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 (1989), *on rehearing*, 48 FERC ¶ 61,122 (1989).

[357] Petition at 2.

[358] OkTex cites, *inter alia*, Associated Gas Distributors v. FERC, 824 F.2d 981, 1041 (D.C. Cir. 1987).

[359] If, however, a pipeline chooses to engage in sales in the future, it must file appropriate tariff sheets and comply with the standards of conduct and reporting requirements.

United asks the Commission to clarify that a pipeline will only be required to offer an unbundled sales service to its current sale-for-resale customers up to the currently certificated sales levels applicable to each customer at the delivery points where such service is currently provided. United argues that to go beyond this would be contrary to section 7 of the NGA by imposing certificate obligations which have not been requested by the pipeline and by compelling a service the pipeline is not able to perform.

The Commission clarifies that during restructuring the pipeline's current firm sales customers can elect whether to continue their contractual relationship for gas sales with the pipeline under the blanket sales certificate. The pipeline must continue to provide sales service to its current customers who elect to continue their contractual relationship for gas sales with the pipeline, until the contract expires. This service will be authorized under the pipeline's blanket sales certificate. As such, sales will be unbundled and made at a point upstream and not at the currently certificated delivery points for sales. The obligation to transport gas will go to the existing delivery points, but in accordance with the rules governing flexible delivery points, the pipeline cannot require deliveries only to existing delivery points.

B. Pricing

Order No. 636 permits pipelines offering unbundled sales to adopt a market-based pricing mechanism for their unbundled sales service upon full compliance with the rule. The Commission found market-based pricing would be justified because sales by non-pipeline merchants would be sufficiently competitive with sales by a restructured pipeline to prevent such a pipeline from exercising market power. Requests for rehearing of this portion of the rule were filed by APGA, Gas Company of New Mexico, Northern Distributor Group, Columbia, Tenneco, Citizen Action, National Association of Gas Consumers, the State of Michigan, Marathon, and Industrial Groups.

1. Statutory Authority

APGA, Gas Company of New Mexico, Northern Distributor Group, Citizen Action, National Association of Gas Consumers, and Marathon allege that the Light-handed regulatory approach adopted in Order No. 636 goes too far and constitutes unauthorized deregulation of pipeline sales. These parties point out that the primary purpose of the NGA is to protect consumers from exploitation by natural gas companies [360] and to assure consumers an adequate supply of gas at a reasonable price.[361] While conditions in the natural gas market may have changed, they argue that these statutory responsibilities have not. These parties argue that neither the NGPA nor the Wellhead Decontrol Act deregulates sales for resale and that the Commission cannot lawfully execute its responsibilities in a manner that is tantamount to deregulation.[362]

The Commission has considerable flexibility in selecting the methodology it will use to determine just and reasonable rates.[363] No single rate method need be followed and the Commission does not have to adhere rigidly to a cost-based determination of rates.[364] As the Court stated in *FPC* v. *Hope Natural Gas Co.*, "[u]nder the statutory standard of just and reasonable, it is the result reached, not the method employed, that is controlling." [365]

The courts have recognized that an agency may move from a cost-based approach to ratemaking to a less stringent approach in certain circumstances, and rely on competition to restrain rates.[366] In *Farmers Union Central Exchange, Inc.* v. *FERC (Farmers Union II)*,[367] although the court rejected the Commission's generic rate-making methodology for oil pipelines in that case, the court recognized that changing characteristics of regulated industries may justify an agency's decision to take a new approach to determining just and reasonable rates. As the court stated, "[m]oving from heavy to light-handed regulation within the boundaries set by an unchanged statute can be justified by a showing that under current circumstances, the goals and purposes of the statute will be accomplished through substantially less regulatory oversight." [368] The court further explained that non-cost factors may play a role in setting rates, if the Commission specifies the nature of the non-cost factors and how they justify the rate.[369] These non-cost factors include competitive forces. As the court stated in *Wold Communication. Inc.* v. *FCC*,[370] an agency may allow the marketplace to substitute for direct regulation in appropriate circumstances.

The Commission's action here falls within its discretion, as discussed in these decisions, to change its regulatory methods to allow the marketplace to substitute for direct regulation of sales for resale rates. Consistent with *Farmers Union II*, in the final rule, the Commission identified and discussed in detail the changed conditions in the industry that warrant less oversight of sales rates.[371] As discussed more fully below, the Commission found that, with full open access transportation, pipeline sales markets are or will be sufficiently competitive to prevent pipelines from exercising monopoly power. The Commission reached this conclusion because, under the final rule, pipelines will offer transportation on an equal basis for all gas supplies and because adequate gas supplies exist throughout the nation from a wide variety of sellers And this approach puts the pipelines as merchants on the same basis as other sellers of gas now are, *i.e.*, they have the ability to sell gas at market-based rates.

The final rule puts into effect on an industry-wide basis for natural gas sales, the approach to rate regulation that the Commission has adopted recently on a case-by-case basis. In several recent decisions, the Commission approved market-based unbundled sales rates where the Commission found the market to be sufficiently competitive to prevent the pipeline from exercising monopoly power and to keep rates at a just and reasonable level.[372] In *Transwestern*

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[360] APGA and Gas Company of New Mexico cite FPC v. Tennessee Gas Transmission Co., 371 U.S. 145, 154 (1962).

[361] APGA and Gas Company of New Mexico cite Tejas Power Corp. v. FERC, 908 F.2d 998, 1003 (D.C. Cir. 1990).

[362] APGA cites Maislin Industries, U.S. Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990); Mid-Louisiana Gas Co. v. FERC, 664 F.2d 530, 535 (5th Cir. 1981), vacated and remanded on other grounds, Public Service Comm'n of New York v. Mid-Louisiana Gas Co., 463 U.S. 319 (1983); Public Service Comm'n of New York v. FPC, 511 F.2d 338, 354 (D.C. Cir. 1975); and Texaco, Inc. v. FPC, 474 F.2d 416, 423 (D.C. Cir. 1972), vacated and remanded on other arounds, 417 U.S. 380 (1974).

[363] *E.g.*, FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944); Permian Basin Area Rate Cases, 390 U.S. 747 (1968).

[364] *E.g.*, Wisconsin v. FPC, 373 U.S. 294, 309 (1963); FERC v. Pennzoil Producing Co., 439 U.S. 508, 517 (1979).

[365] 320 U.S. 591, 602 (1944).

[366] *E.g.*, Farmers Union Central Exchange, Inc. v. FERC (Farmers Union II), 734 F.2d 1486 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1034 (1984); Wold Communication, Inc. v. FCC, 735 F.2d 1465, 1475 (D.C. Cir. 1984).

[367] 734 F.2d 1486 (D.C. Cir. 1984).

[368] *Id.* at 1510.

[369] *Id.* at 1503.

[370] 735 F.2d 1465, 1475 (D.C. Cir. 1984); see also FCC v. WNCN Listeners Guild, 450 U.S. 582 (1981) (approving FCC reliance on market forces in entertainment programming); Western Union Telegraph Co. v. FCC, 674 F.2d 160 (2d Cir. 1982) ("newly unleashed market forces" may be a reasonable substitute regulatory tool).

[371] Order No. 636 at p. 30,394–406, 30,406–13, 30,437–41.

[372] See Order No. 636 at p. 30,439 n. 213.

Pipeline Co.,[373] the Commission approved the pipeline's proposal for market-based rates for unbundled sales service because those sales were made in the wellhead market which Congress sought to deregulate.

Again in *El Paso Natural Gas Company*,[374] the Commission approved a settlement providing for market-based rates for unbundled sales. The Commission found that approval of these rates was consistent with its responsibility to assure that rates are just and reasonable. The Commission explained that in the NGPA, Congress determined that the sales market for gas at the wellhead is competitive and that Congress specified that the price of gas sold in that market is just and reasonable.[375] The Commission found that there are adequate divertible supplies of gas in the markets that El Paso serves and that El Paso sales would compete with deregulated sellers in the wellhead market. The Commission concluded that the competitive wellhead market would force El Paso to charge rates at or below the rates of its wellhead competitors, and, therefore, that the market would operate to keep El Paso's unbundled sales rates at a just and reasonable level.[376] Based on the Commission's findings in these proceedings and on its analysis of the current gas sales market discussed in Order No. 636 and below, the Commission has concluded that its policy of relying, to the maximum extent possible, on competitive market forces to balance the supply and demand for natural gas at reasonable prices should be extended to all sales markets.[377]

In arguing that the Commission has exceeded its authority, APGA relies on *Maislin Industries, U.S. Inc.* v. *Primary Steel, Inc.*,[378] where the Supreme Court stated that, although the agency had the experience and expertise generally to adopt new policies when faced with new developments in the industry, "it does not have the power to adopt a policy that directly conflicts with its governing statute." In *Maislin*, the Court rejected an agency decision that was a direct violation of the filed rate doctrine, was contrary to over a century of case law, and permitted the very type of price discrimination that the statute was intended to prevent.

In the Commission's judgement, the situation here is quite different. The final rule does not directly conflict with any statutory mandate. Indeed, the final rule furthers statutory goals by moving toward less stringent regulatory oversight of sales rates within the bounds of the statute. The NGA specifically envisions that individualized contracts will provide terms and conditions for the sale of gas,[379] and this rule returns to reliance on individualized contracts to determine the price provision.

In addition, APGA cites *FPC* v. *Texaco*,[380] as supporting the proposition that the Commission cannot rely solely on market forces to assure that pipeline rates are just and reasonable, non-discriminatory, and non-preferential. In that case, the Supreme Court, in providing guidance on remand, stated that in its view, the prevailing price in the market cannot be the final measure of a just and reasonable rate. That decision was rendered, however, before enactment of the NGPA and the Decontrol Act. As the Commission has explained, those statutes have changed the nature of the wellhead market and its effect on competition in the pipeline sales market. In any event, the Commission is not simply allowing the prevailing market price to be the determinant of just and reasonable rates. As discussed below, the Commission will monitor the operation of the market through reporting requirements and the complaint process. In addition, the Commission is continuing to regulate jurisdictional transportation on a cost basis.

APGA and Gas Company of New Mexico also cite *Mid-Louisiana Gas Co.* v. *FERC*,[381] as standing for the proposition that the agency must administer its statute, and may not alter the statutory scheme, even if its alteration is an improvement. In addition, these parties cite *Public Service Comm'n of New York* v. *FPC*.[382] as holding that where Congress has prescribed regulation, the agency may not "abandon [its] responsibility by acquiescing in a charade or rubber stamping of non-regulation in agency trappings."[383] The Commission has not altered the statutory scheme, but, as explained more fully below, has changed its regulatory methods to police the functioning of the market.

2. Adequate Divertible Supplies

APGA, Citizen Action, Marathon, and State of Michigan argue that the Commission's finding that adequate divertible supplies of gas exist in all markets is not based on substantial evidence. APGA and Marathon assert that there is no record evidence to support this finding. Instead, they argue, the Commission merely concluded generically that, at present, gas supplies in the United States exceed demand and relied on the Decontrol Act. APGA alleges that the Commission made no study of specific gas supply markets, and made no specific findings that there is competition between pipelines and third party suppliers to supply the peaking requirements of temperature sensitive loads. Marathon asserts that a finding of divertible gas supplies on individual pipelines cannot be "scaled-up" to justify an industry-wide finding.

The Commission's finding that there are adequate divertible supplies of gas is based, not only upon its findings in the specific cases discussed above,[384] but also on a detailed analysis of conditions in the natural gas market.[385] The order relies on the Staff Study on Interim Gas Supply Charges and Interim Gas Inventory Charges, Notice of Proposed Policy Statement, "Use of Spot Market Prices for Sales Service and Gas Inventory Charges."[386] In that study of the national spot market, Staff concluded that the natural gas spot market is a well functioning market in

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[373] 53 FERC ¶61,298 (1990).

[374] 54 FERC ¶61,316, *reh'g granted in part*, 56 FERC ¶61,290 (1991).

[375] Section 601(b) NGPA, 15 U.S.C. 3431(b).

[376] See also Transcontinental Gas Pipeline Corp., 55 FERC ¶61,446 (1991), *order on reh'g*, 57 FERC ¶61,345 (1991).

[377] In addition, in Buckeye Pipe Line Company, a case involving oil pipeline transportation rates, the Commission held that clearly identified non-cost factors such as competition or a lack of market power warranted departure from traditional rate review when the substitute ratemaking methodology ensures that resulting rate levels are justified by non-cost factors. 45 FERC ¶61,066 (1988), *reh'g denied*, 45 FERC ¶61,040 (1988). In the area of electric rates, the Commission has also adopted market based pricing when the electric company lacks market power. *E.g.*, Enron Power Enterprise Corp., 52 FERC ¶61,193 (1990).

[378] 497 U.S. 116 (1990)

[379] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1955).

[380] 417 U.S. 380 (1974).

[381] 664 F.2d 530, 535 (5th Cir. 1981), vacated and remanded on other grounds, *Public Service Comm'n of New York* v. *Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983).

[382] 511 F.2d 338, 354 (D.C. Cir. 1975).

[383] APGA also cites *Texaco, Inc.* v. *FPC*, 474 F.2d 416, 423 (D.C. Cir. 1972), vacated and remanded on other grounds, 417 U.S. 380 (1974), for the same proposition, *i.e.*, that only Congress and not the agency can deregulate.

[384] As discussed above, the Commission engaged in a detailed analysis of the gas sales markets in the Transwestern, El Paso, and Transcontinental proceedings.

[385] See Order No. 636 at p. 30,394–406, 30,408–13, 30,437–41.

[386] Order No. 636 at p. 30,396 n.41, citing 47 FERC ¶61,294 Appendix at 62,036–62,040 (1989).

the sense that it is broad, and prices indicate its responsiveness to supply and demand. In addition, Order No. 636 discussed the Staff study on market centers, Importance of Market Centers, Office of Economic Policy, FERC, August 21, 1991).[387] These studies of the natural gas sales market support the Commission's conclusion that there is a significant amount of uncommitted natural gas at competitive prices throughout the country.[388] Further, as part of its analysis, the Commission explained that in passing the NGPA and the Decontrol Act, Congress found that gas sales at the wellhead, or in the field, are competitive.

Thus, the Commission's finding that adequate divertible gas supplies exist in all markets is fully supported by the record in this proceeding. None of the parties has offered any specific evidence to the contrary. Moreover, as discussed more fully below, the Commission has provided parties an opportunity to challenge this generic finding with regard to a specific pipeline in the individual restructuring proceedings.

Marathon also argues that the Commission presented no economic theory or legal justification for its conclusion that the existence of adequate divertible supplies *ipso facto* equates to a lack of market power. Contrary to this assertion, the Commission has explained the legal and economic basis for concluding that the existence of adequate divertible supplies of natural gas will prevent the pipeline from exercising market power over unbundled sales. With high quality, open access, firm transportation available, sellers of uncommitted gas supplies will be able to compete with pipeline sales and, as a result, it will not be profitable for a pipeline to attempt to expand its market power over transportation into sales. Pipelines will have to charge rates that compete with the rates of their unregulated competitors, and their rates will be constrained by the rates of their wellhead competitors at a price that Congress has declared to be just and reasonable.[389]

State of Michigan asks the Commission to clarify what it means for a market to be "sufficiently competitive." Further, State of Michigan asserts that while divertible supplies may exist in the current market, they may not exist in the future.

In the final rule, the Commission stated that a pipeline's sales are made in a sufficiently competitive environment when the pipeline provides transportation service of equal quality with respect to all gas supplies, from whomever purchased, and when adequate divertible gas supplies exist.[390] The relevant determination is whether the pipeline is able to exercise market power by controlling prices or excluding competition. A pipeline has significant market power if it can maintain its price above the competitive level and obtain a monopoly profit.[391] A market is sufficiently competitive if it prevents the pipeline from exercising market power and operates to keep rates at a just and reasonable level.

The final rule is based on an assessment of present market conditions. It is not necessary for the Commission to find that there will be adequate divertible supplies forever into the future in order to substantiate that the natural gas sales market is competitive. Although the Commission cannot guarantee that demand will never exceed supply, a properly functioning market is the best method for correcting such shortages through changes in the price of gas. And more importantly, the Commission's past price control over the gas commodity was equally no guarantor of "adequate divertible supplies forever."[392] The regulatory approach adopted here permits the Commission to monitor the gas sales market and take corrective action if necessary.

3. Small Customer Rate

APGA and Citizen Action argue that the Commission should impose a price cap on the market-based rates.[393] Industrial Groups argue that before instituting market-based pricing, the Commission should provide for a two-year transition period.

In addition, APGA argues that even if the market is competitive as to large buyers, the Commission cannot make such a finding as to smaller LDCs on the basis of the record in this proceeding. APGA maintains that the Commission made no finding that there are adequate supplies and adequate competition to serve small sales customers, who have traditionally had fewer gas supply options. APGA further asserts that the Commission could not make this finding based on a full record in the El Paso global settlement, and therefore cannot do so here. Moreover, APGA argues, the Commission has improperly placed the burden of proof on the small LDCs to challenge this finding in the restructuring proceedings, when the burden should be on the pipelines to show that adequate divertible supplies exist to meet the peak-day needs of these customers. Citizen Action maintains that the Commission failed to address the issue raised in the comments on the proposed rule that there is no real competition between pipelines and third party suppliers to supply firm peaking gas.

In the El Paso proceeding cited by APGA,[394] which involved a GIC to be applied only to the pipeline's five largest customers, the competitiveness of the market with respect to small LDCs was not relevant to the issues before the Commission and, therefore, no findings were made as to the competitiveness of that market.[395] The Commission believes that small customers can benefit from purchasing gas in the competitive market as well as large customers. For example, at the technical conference held on January 22, 1992, Florida Cities pointed out that small customers can band together to purchase gas. In Florida, several municipal utilities banded together with one party buying on behalf of others. The Florida Cities representative at that technical conference reported to the Commission that those utilities have achieved "tremendous economies and urged the Commission to complete the transition to fully unbundled services."[396]

Nonetheless, the Commission recognizes that small customers may require a transitional period to adjust to purchasing gas at negotiated prices. For a one-year period after the effective date of the blanket certificate, the Commission will require pipelines to offer to sell gas to the small customers on their system at cost-based rates. This means that if the customer chooses, the pipeline is obligated to sell gas under the blanket certificate to the small customer on a cost basis for one year from the effective date of the pipeline's blanket sales certificates issued pursuant to § 284.284. Small customer is defined, for the purposes of this provision, as a customer that purchases gas under the pipeline's one-part imputed load factor rate schedule on the effective date of the blanket certificate.

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[387] Order No. 636 at p. 30,427 n.145.

[388] Order No. 636 at p. 30,440.

[389] Section 601(b) NGPA, 15 U.S.C. 3431(b).

[390] Order No. 636 at p. 30,403 n.71.

[391] See El Paso, *supra*, 56 FERC at 62,175 (1991).

[392] See, *e.g.*, Federal Power Commission Order No. 467–B, 49 FPC 583 (1973) (establishing procedures for curtailments during gas shortages).

[393] These parties note that even the FCC, when it found that ATT operated in a fully competitive environment, instituted price cap regulation rather than total deregulation.

[394] 54 FERC ¶61,316 (1991), *reh'g granted in part*, 56 FERC ¶61,290 (1991).

[395] *Id.* at 61,945–46 (1991).

[396] Technical Conference Tr. 277, 291–92, 293. Order No. 636 at p. 30,411.

The small customer must exercise this transitional option to purchase gas at a cost-based rate in the restructuring proceeding and not at a later time within the one-year period.

The Commission will not adopt a particular small customer pricing method, but will leave the development of this mechanism to the parties in the restructuring proceeding. There are a number of ways the parties could develop cost-based rates for sales to small customers. For example, the parties could devise a small customer rate using the spot price index. The pricing mechanism could provide that the sale price to small customers would be equal to the spot price plus a fixed amount, with the price capped at cost.[397] Alternatively, the parties could provide for periodic adjustments to the sales rate, without reference to a pricing index, by establishing a fixed rate that is adjusted periodically to reconcile any difference between that rate and the pipeline's actual gas costs. The Commission, however, will not permit the continued use of the existing PGA mechanisms for this purpose. The accounting and filing requirements of those mechanisms, as well as the detailed Commission review, are far more complicated than necessary for this one-year transitional measure. Another, simpler alternative would be for the pipeline to establish a fixed gas cost rate for the small customers, without any adjustments during the year, based on a projection of the pipeline's actual gas costs for the year. Or, the parties could agree to a "most favored nations" pricing provision so that the small customer's rate is equivalent to the negotiated price at which the pipeline sells to other customers.[398]

Whatever method the parties choose for establishing the cost-based rate, the pipeline is required to include the method in the tariff sheets filed as part of its compliance filing in the restructuring proceeding. However, this provision will terminate automatically after the one year transition period. Also, regardless of the mechanism the parties develop to establish rates for small customers, sales to small customers must be unbundled. However, as explained above, a customer can contract with the pipeline for the pipeline to act as the customer's agent in packaging the separate services.

The purpose of this limited transitional measure is to allow small customers additional time to make alternate supply arrangements, for example, to arrange to aggregate their purchases. Some municipal LDCs may need to obtain authorization from their state legislature to join into alternate purchase arrangements. The one-year transition period (from the effective date of the pipeline's blanket certificate) will afford these customers sufficient time to determine what alternate arrangements are best suited to their needs and to take measures to implement these arrangements. As a practical matter, this provision will give the small customers a transition period of two winter heating seasons to make these arrangements because the implementation schedule makes it unlikely for most pipelines to have a blanket sales certificate that is effective during the 1992–1993 heating season. The blanket certificate issued under § 284.284 of the regulations requires the pipeline to continue sales to its sales customers if they choose to purchase from the pipeline for the duration of their existing contract term, and the provision adopted here establishes that these sales will be capped at cost to the small customers for a one-year transition period. This certificate authority for sales with cost-based rates to small customers, and any associated tariff provisions, shall terminate automatically at the end of the twelve-month period on a self-executing basis. If, at the end of the one-year period, a small customer must still obtain state legislative action or approval to enter into alternative purchase arrangements (for example, to join a gas procurement cooperative), the small customer may petition the Commission for an extension of the certificate authority for sales to it with cost based rates by the pipeline for a period up to an additional twelve months. The extension would allow the small customer additional time to seek such legislative action or approval during the next scheduled session of its state legislature. Other parties, including the pipeline, will be provided an opportunity to respond to such a petition.

It should be observed that a cost-based rate cap may not afford the small customers the protection they believe will occur. Under the NGPA, pipelines are guaranteed passthrough of actual costs, and experience has shown that the pipelines' regulated resale rates, through the PGA, have been above the market price. As the Commission explained in Order No. 636, purchasers of gas from pipelines have been disadvantaged under the current system. The price that pipelines charge for gas has been 20 to 80 cents higher per mcf than the rates available from other sellers. The so-called protections of traditional cost-based rate regulation have become less significant in the more competitive environment where the market operates to keep prices at a competitive level. Hence, the Commission believes that small customers will be better off purchasing gas under the revised regulatory regime of Order No. 636 than under the current regulations. However, given the limited resources many small customers have, the Commission finds it reasonable to allow this transition mechanism.

With regard to other sales customers, the Commission finds that competition in the market monitored by the reporting requirement and the complaint process will assure that rates are at a just and reasonable level. Therefore, the Commission finds that a general rate cap for all sales, or a general transition period for all customers, is not necessary.

In sum, the provisions of this rule, taken together, will assure that small customers will have access to gas supplies at the lowest reasonable prices. For a one-year transitional period, gas supplies can continue to be purchased from the pipeline at cost-based rates (to the extent the small customer chooses to do so.) However, the small customers will have the opportunity to obtain even better prices in the market. Under the capacity releasing provisions,[399] customers will be able to obtain the transportation capacity necessary on connecting pipelines to connect them with a source of gas at the wellhead. During the restructuring proceeding, the pipeline that has been providing these customers with bundled sales service will be required to assign its converting upstream firm transportation capacity to its firm transportation customers. This includes the small customers, who can obtain the firm rights to any capacity necessary to give them a direct path to the production area. In addition, after the restructuring period, the provisions of § 284.243 will give small customers flexibility (acting alone or together, or through a representative) to obtain additional released firm capacity on other pipelines or segments for access to a variety of sources of supply as they become available. Thus, the rule provides sufficient flexibility and safeguards to assure continued reliable service to small customers at reasonable rates.

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[397] See Transwestern Pipeline Company, 55 FERC ¶61,519 (1991), for an example of this approach.

[398] See El Paso Natural Gas Co., 54 FERC at p. 61,958.

[399] Sections 284.242 and 284.243.

4. Regulatory Safeguards

Marathon asserts that in order to assure that light-handed regulation achieves statutory goals, the courts have required certain safeguards. Marathon argues that the Commission erred in failing to provide adequate safeguards to assure that rates will fall within a zone of reasonableness, and failing to provide for an administrative remedy if they do not.[400] Marathon asserts that the complaint procedure is not an adequate safeguard because it places the burden of proof on the party challenging the rate, and because the Commission cannot execute its responsibilities by relying on contesting parties to bring problems to the Commission's attention.[401] Similarly, Northern Distributor Group argues that section 5 is not an effective remedy because of regulatory lag and the prospective nature of the section 5 remedy.

While the Commission has found that market-based rates are appropriate for pipeline sales, the final rule recognizes that there may be some isolated markets that are not sufficiently competitive to support a finding that a particular pipeline lacks significant market power. Thus, the Commission stated that the parties may raise the issue of a particular pipeline's market power in the restructuring proceedings. If a party to the restructuring proceedings demonstrates that the pipeline has significant market power over the sale of gas, the Commission will employ more regulatory control, if the pipeline does not rebut this evidence showing. The market-based rates will not be put into effect prior to a Commission examination of a party's argument, so refunds are not an issue in the restructuring proceedings.

If competitive circumstances on the pipeline change, a customer may file a complaint under section 5 of the NGA to show that the pipeline has attained market power and that greater regulatory control is needed. As Marathon notes, in a section 5 proceeding, the complainant has the burden of proof, remedies are prospective only, and no refunds can be ordered. This, however, has always been part of the regulatory scheme as enacted by Congress, and does not render section 5 ineffective as a remedy. The issue of market power will first be examined in the restructuring proceedings, if raised by the parties, and in the event of changed circumstances, the section 5 procedure is available to an aggrieved party.

Marathon also argues that the Commission has essentially established a rebuttable presumption that all pipelines lack market power, and that this presumption improperly shifts the burden of proof to the contesting party in the restructuring proceedings. Marathon argues that this "ignores the Commission's market power findings in the incentive rate docket and its recent decision to open an investigation of deregulated pipeline transportation." Marathon asserts that in both cases, the Commission observed that market power is an unsettled, largely unexplored issue.

Contrary to Marathon's characterization, the Commission has not instituted an investigation of deregulated pipeline transportation. Instead, a task force has been established to consider how to evaluate competition in transportation markets. Both the task force and the incentive rate proceeding referred to by Marathon involve transportation, not sales, rates. Nothing in the Commission's proposed policy statement on incentive ratemaking[402] or the establishment of a task force on competition in transportation markets evaluates competition in the natural gas sales market or conflicts with the finding that pipelines lack market power over sales of gas.

In addition, Marathon argues, this procedure is inconsistent with the Commission's approach in electric utility cases where the Commission has required the utility to show that it lacks market power. Since the Federal Power Act and the NGA must be read *in pari materia*, Marathon argues, the Commission must provide a reasoned explanation for departing from its electric utility precedents.

Precedent under the Federal Power Act is relevant to NGA proceedings. However, the electric transmission market has characteristics very different from the natural gas sales market. Electric transmission, like natural gas transportation, has characteristics of a natural monopoly, and competition may not be as effective to restrain prices. Thus, the Commission's approach in electric cases, *i.e.*, an individual inquiry into market conditions in each rate proceeding, is appropriate.

In the natural gas sales market, however, the Commission has found that pipelines no longer have a monopoly over the sale of gas. There are other sellers and marketers of gas in the marketplace, and in order to meet that competition, the pipeline will have to charge rates at or below the prices of its wellhead competitors.

Finally, Marathon asserts, the rebuttable presumption is defective because the pipeline is the party in possession of the necessary facts to show lack of market power, and, consistent with evidentiary principles,[403] should bear the burden of proof. While the pipeline is in possession of the facts concerning its own operations, it does not follow that it should bear the burden of proof on all issues where that information is relevant. If that were the case, the pipeline would bear the burden of proof on every issue in rate cases, but that is not consistent with the scheme under the NGA. Moreover, facts concerning adequate divertible supplies would not necessarily be within a pipeline's exclusive possession. The data exchange process established by the Commission will permit the parties to obtain information necessary to substantiate their market power claims.[404]

Marathon also argues that the rule is ambiguous as to what the contesting party must prove. Marathon asks the Commission to clarify that the parties will have a full opportunity to challenge anticompetitive sales and show that the pipeline possesses market power, including market power derived through inadequate divertible gas supplies.

The Commission did not intend to limit the matters the parties may raise in the individual restructuring proceeding and clarifies that the parties may address market power based on inadequate divertible supplies as well as on other conditions. However, the Commission will defer the issue of specific evidentiary standards to case-by-case resolution.

Industrial Groups argues the Commission should review tariff sheets filed by each pipeline to determine whether rates are just and reasonable in

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[400] Marathon cites, *inter alia*, Public Service Company of Indiana, 51 FERC ¶ 61,367 at 62,223 (1990) (where the Commission stated that the Farmers Union II court found that the flaw in the Commission's market based regulation was that "nothing in its regulatory scheme would act as a monitor either to determine whether competition would drive prices down * * * or to check rates if it did not.").

[401] Marathon cites Tejas Power Corp v. FERC, 908 F.2d 998, 1003 (D.C. Cir. 1990).

[402] Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities, Notice of Proposed Policy Statement on Incentive Regulation, Docket No. PL92-1-000, issued March 13, 1992, 56 FERC ¶ 61,287 (1992).

[403] Marathon cites, *inter alia*, XI Wigmore on Evidence § 2486, p. 290.

[404] See the order issued June 24, 1992 in Docket No. RM91-11-000, granting in part the motion filed by Natural Gas Clearinghouse to establish discovery procedures, 59 FERC ¶ 61,351 (1992).

accordance with Order No. 636 standards. Similarly, APGA, ConEd, Michigan Gas, NYSE&G; Northern Distributor Group, New York PSC, Peoples Gas, and the State of Louisiana argue that the Commission should require as part of the less intrusive regulatory scheme, that pipelines file a rate case every three years to evaluate the justness and reasonableness of unbundled sales and transportation rates. Without this requirement, Northern Distributor Group argues, light-handed regulation becomes deregulation.

As discussed more fully below, the Commission will not require the pipelines to file a new rate case every three years. The statute does not require such a filing, and Commission finds no basis for imposing this requirement.

5. Other Matters

Columbia asks the Commission to clarify § 284.14(d)(2) of the regulations which provides that a pipeline may abandon its sales obligations to any purchasers to the extent "[t]he purchaser refuses to pay the rate the pipeline offers for unbundled sales." Columbia maintains that it reads this section as giving pipelines the ability to offer rates that in their sole discretion adequately compensate them for their remaining merchant function. Columbia asks the Commission to clarify that it will not intervene and set a sales rate for a pipeline if any purchaser insists that a pipeline remain a merchant, but refuses to pay the rates proffered by the pipeline.

Columbia's request for clarification is granted. The pipeline will determine whether it wants to sell gas at a particular rate, with the limitation that rates to small customers must be cost-based for a one-year transition period. However, as explained above, the pipeline is subject to the provisions of the NGA, and the Commission will address a customer's complaint that the pipeline is violating the statute.

Tenneco asks the Commission to clarify that pipelines have no more obligations with respect to the sale of gas than other gas merchants. Specifically, Tenneco asks the Commission to clarify that pipelines are free to negotiate all the terms of their sales contracts, and that differences in terms of sales contracts will not constitute undue discrimination.

Individualized contracts between pipelines and customers are permitted under the NGA,[405] and competitive conditions may justify different contractual terms for sales service. However, the pipeline is still subject to the NGA requirement that pipelines must provide service on a non-discriminatory basis. Thus, similarly situated customers must be treated similarly.

Further, Tenneco argues that there is no justification for the Commission's requirement that pipelines perform agency services on a non-discriminatory basis. Tenneco states that non-pipeline sellers are not required to offer agency services on a non-discriminatory basis, and that there is no evidence that customers desiring agency service will find any shortage of sellers willing to provide this service. Further, Tenneco argues, imposition of this requirement on pipeline sellers, when no such restriction exists for non-pipeline sellers, gives non-pipeline sellers an unfair competitive advantage, and thus harms the unfettered competitive market the Commission is trying to foster.

Tenneco's argument ignores a critical difference between pipelines and non-pipeline merchants: the pipelines are in control of the operations of the transportation grid and they are, simply put, different from other merchants, since they are the only merchants in control of pipeline capacity. Pipelines are still subject to the NGA and may not unduly discriminate 'among customers. Pipelines are encouraged to offer an agency service, and this service must be offered on a non-discriminatory basis. Competitive circumstances, however, can justify differences among customers.

Further, Tenneco urges the Commission to clarify that if market-based pricing is not approved by a reviewing court for any reason, then the basis of the entire rule is no longer applicable. Tenneco's request is denied. The Commission will not speculate what action it might need to take in response to a decision by a reviewing court.

c. Standards of Conduct

In Order No. 497, the Commission adopted standards of conduct and reporting requirements for interstate pipelines with marketing affiliates.[406] These regulations implement the Commission's authority to prevent undue discrimination by prohibiting the pipeline from preferring its marketing affiliate over unaffiliated shippers with regard to transportation matters, access to information, and transportation discounts. On July 21, 1992, the U.S. Court of Appeals for the District of Columbia Circuit upheld in substantial part the Commission's decision in Order Nos. 497 and 497-A. The court found that the standards of conduct and reporting requirements are an appropriate exercise of the Commission's authority to prohibit undue preferences, but found that the Commission had not adequately explained its extension of the contemporaneous disclosure requirement to gas sales and marketing information and remanded that issue to the Commission for further explanation.[407]

Order No. 636 does not change the requirements governing the relationship between pipelines and their marketing affiliates. However, Order No. 636 extends the requirements to pipelines providing unbundled gas sales services because the pipeline as merchant will be the functional equivalent of a marketing affiliate. Requests for rehearing of this portion of Order No. 636 were filed by several pipelines [408] and other parties.[409] Generally, the pipelines argue that the Commission erred in continuing the Order No. 497 requirements and applying them to pipelines as merchants, while the other parties maintain that additional protections are required.

CNG argues that the Commission lacks authority to extend the standards of conduct to pipelines because neither the NGA nor the NGPA specifically authorizes the Commission to require the separation of a pipeline's employees or to control the dissemination of business information. However, as the Commission explained in Order Nos. 497 and 636, there is obvious potential for undue discrimination by the pipeline to favor its own merchant function or its marketing affiliate. The Commission's jurisdiction to remedy undue discrimination is broad and is not

[405] United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956).

[406] Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988, FERC Stats. and Regs. [Regulations Preambles 1986-1990] ¶ 30,820 (1988), *order on reh'g*, Order No. 497-A, 54 FR 52781 (December 22, 1989) FERC Stats. and Regs. [Regulations Preambles 1986-1990] ¶ 30,868 (1989), *order extending sunset date*, Order No. 497-B, 55 FR 53291 (December 28, 1990) FERC Stats. and Regs. [Regulations Preambles 1986-1990] ¶ 30,908 (1990), *order extending sunset date and amending final rule*, Order No. 497-C, 57 FR 9 (January 2, 1992) III FERC Stats. and Regs. ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815 (February 8, 1992, 58 FERC ¶ 61,139 (1992). The United States Court of Appeals for the District of Columbia Circuit upheld the Commission's decision in substantial part in Order Nos. 497 and 497-A in Tenneco Gas Co. v. FERC, No. 89-1768 (July 21, 1992).

[407] The Court also found that the Commission erred in finding Order No. 497 applicable to Ozark Gas Transmission System (Ozark).

[408] Alabama-Tennessee, Arkla, CNG, K N Energy, Natural, Northwest, Tenneco, and Texas Gas.

[409] Hadson and IPAA.

limited to specific measures set forth in the NGA or the NGPA.[410] In any event, the court's decision in *Tenneco* v. *FERC* largely answers CNG's jurisdictional argument and establishes that these regulations are within the scope of the Commission's authority.

Further, CNG argues, even if the Commission had authority to impose the requirements, it would need a factual basis to justify their adoption. CNG, Alabama-Tennessee, Arkla, K N Energy, and Tenneco argue that there is no finding based on substantial evidence that anticompetitive practices exist now or will after the restructuring. The parties assert that the Commission's concern that pipelines would favor their own sales is inconsistent with the Commission's finding that pipelines cannot exercise market power over sales and that all sellers will compete on an equal footing after restructuring. Tenneco argues that the rule will not be necessary after restructuring because the Commission's regulations will prohibit discrimination, and because matters addressed in the restructuring proceedings, including nondiscriminatory terms and conditions for unbundled transportation, allocation of receipt and delivery point capacity, and the electronic bulletin board will ensure that pipelines cannot give the merchant arm or their marketing affiliate any undue preference. Similarly, Alabama-Tennessee argues that there is no need for this protection because transportation is rapidly becoming the dominant pipeline service. K N Energy argues the Commission should modify the rule to provide that the standards of conduct will not apply unless the Commission finds that the pipeline is acting in a discriminatory manner.

In explaining the need for the standards of conduct in Order No. 497, the Commission pointed to the potential for abuse, actual instances of anticompetitive practices, and allegations of unlawful practices that had come to its attention. The Commission concluded that the pipelines have economic incentives to show undue preferences toward their affiliates and the court has agreed that this warranted Commission action.[411] Unbundling, as required by Order No. 636 does not eliminate the potential for pipelines to favor their marketing affiliate because, as the Commission explained in Order No. 636, there is no change in the pipeline's control of the transportation function. Further, the same potential for abuse exists with regard to the pipeline merchant function and it is therefore appropriate to apply the standards of conduct to pipelines exercising the merchant function.

The Commission recognizes, however, that abuses in the area of marketing affiliates might not be a perpetual problem, and that increased competition that will result after unbundling may reduce the incentive for abuse. Order No. 497 adopted a sunset provision specifying that the Commission's reporting requirements would expire after one year unless reauthorized. The Commission has extended the sunset date of the regulations three times because it found that Commission monitoring was still necessary. As discussed below, the Commission intends to address this issue in the near future.

Several pipelines argue that the regulations would impose severe administrative, logistical, and financial burdens on the pipelines and would place them at a competitive disadvantage with respect to other sellers of gas. CNG focuses on the requirements that pipelines must make available to all potential shippers any information it gives an affiliate regarding transportation matters and that the pipeline must, to the maximum extent practicable, provide for the independent functioning of operating and marketing personnel. CNG alleges that this could require dissemination of virtually all routine information and require that the pipeline divest itself of in-house sales, in effect driving the pipeline out of the marketing business. The pipelines argue that this deprives consumers of the advantages of integrated firms. Tenneco alleges that the rule would require pipelines to divulge sensitive information.

The regulations are not unduly burdensome on pipelines, but instead establish an appropriate balance between the benefits of integration and the potential for anticompetitive abuses. Contrary to the pipelines' contentions, the regulations will not require the dissemination of all routine business information or sensitive information or drive the pipelines out of the merchant business.[412] In Order No. 497, the Commission specifically rejected a proposal to require pipelines to divest themselves of their marketing affiliates and instead adopted a more flexible standard that, as explained below, permits compliance to conform to the particular characteristics of the individual pipelines.

Arkla argues that the standards adopted by the Commission are too vague because they do not give notice to the pipeline of what is permissible. Arkla asserts that the Commission never provided workable standards for its marketing affiliate rule and makes the same error here. Hadson similarly argues that while the rule requires operating employees of the pipeline transporter and the unbundled merchant to function independently to the maximum extent practicable, it does not define "operating employees," "function independently," or "maximum extent practicable."[413]

The standard adopted by the Commission is designed to permit individual variations in compliance appropriate to the particular characteristics of the pipeline. The application of these standards to the particular pipelines will be considered in the restructuring proceedings. As the Court held in *Tenneco* v. *FERC*, this does not render the standard impermissibly vague.

Northwest is concerned that the regulations governing no-notice service may have the effect of requiring pipelines to offer sales and become bound by Order No. 497 when they have no desire to engage in sales. In addition, Northwest and Tenneco argue the rule could subject pipelines who are engaged in sales to a few small distributors or as back-up to no-notice service to unnecessary and overly burdensome regulation.

These concerns are unfounded. As explained above, a pipeline is not required to continue providing unbundled sales service if its current bundled sales customers do not request and contract for unbundled sales service, nor is the pipeline required to offer sales service incidental to its no-notice service. Further, as explained below, if a pipeline engages in minimal sales, it can seek a waiver of the requirements.

Alabama-Tennessee asserts that, as a small pipeline, it would have to hire additional employees and establish separate and duplicate facilities which

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[410] *E.g.*, FPC v. Louisiana Power & Light Co., 406 U.S. 621 (1972); FPC v. Conway Corp., 426 U.S. 271, 279 (1976); Colorado Interstate Co., 324 U.S. 581 (1945); Associated Gas Distributors v. FERC, 824 F.2d 981, 997–1001 (D.C. Cir. 1987).

[411] Order No. 497, FERC Stats. and Regs. [Regulations Preambles 1986–1988] ¶ 30,820 at p. 31,129 (1988), *aff'd* Tenneco v. FERC, *supra*.

[412] For example, a pipeline could avoid the possibility of being required to divulge sensitive information by separating its sales operations from transmission operations and requiring that the sales operating unit obtain all of its information about service from the electronic bulletin board. This would place the sales operating unit on exactly the same footing as any other seller.

[413] Hadson notes that it argued in its brief to the court in Tenneco v. FERC, No. 89–1788 (D.C. Cir.) that the failure to define these standards will create problems.

could drive it out of the merchant business. Alabama-Tennessee states that the possibility of waivers, as in *Northern Border Pipeline Co.*,[414] will not provide a remedy because even the reduced requirements approved there would be burdensome. It argues that small pipelines should be exempt from the requirement.

As explained in Order No. 636, small pipelines have the same potential for favoring their own sales as do large pipelines, and a general exemption from the requirements for all small pipelines is not warranted. However, the flexible standard of the rule and the Commission's willingness to consider waivers of the regulations in appropriate circumstances assures that the requirements will not be unduly burdensome on small pipelines. Waivers will be considered on an individual basis and Alabama-Tennessee may seek a waiver different in scope than that granted in the *Northern Border* case, *supra*.

Unlike the pipelines, IPAA argues that additional protections are required to prevent affiliate abuse. IPAA argues that the correlative discount requirements of § 161.3(i)[415] now apply to transportation discounts, but that once a pipeline conducts unbundled market-based sales, it could avoid the requirements by selling gas at a loss while charging the maximum transportation rate to deliver the gas. IPAA asks the Commission to clarify the regulations to prevent pipelines from evading the requirements concerning correlative discounts.

The Commission believes that IPAA's concern was adequately addressed in Order No. 636. There, the Commission concluded that "Order No. 497's standards of conduct and reporting requirements should apply to the pipeline when it provides unbundled gas sales services."[416] This included the correlative discount requirements of § 161.3(i). As part of the reporting requirements, pipelines are required to report whether affiliate marketer, or the blanket sales operating unit, sell gas below cost.[417] Also, § 250.16(g)(2) requires pipelines to maintain 24-hour public electronic access to this data. Thus, the Commission believes that pipelines will be unable to conceal such arrangements and, as a result, they should not occur.[418] And, in the unlikely event they do occur, they will be open to public scrutiny and could form the basis for action on a complaint to the Commission.

Further, IPAA asks the Commission to amend the regulations to provide that a pipeline should not discriminate between its own sales customers and its no-notice shippers who purchase from a third party. IPAA states that if capacity is preempted by no-notice service, curtailment should be implemented in a manner which does not favor pipeline affiliate transactions. IPAA urges that this clarification will avoid numerous disputes in the restructuring proceedings.

The Commission will not address this issue here, but will require the parties to address issues related to no-notice service in the restructuring proceedings. However, Order No. 497 with regard to marketing affiliates and Order No. 636 more generally, prohibit discrimination against non-affiliates or preferences for affiliates in the operation of curtailment provisions.

The rule makes pipeline merchants subject to the reporting requirements in § 250.16 of the regulations currently applicable to pipelines with marketing affiliates.[419] Hadson notes that these requirements, by their terms, expire at the end of 1992, before the blanket sales certificates issued under the Restructuring Rule take effect. Hadson suggests that the Commission delete the current provision in § 250.16(d)(1) that eliminates the reporting requirements on December 31, 1992, at least as it relates to the reporting requirement for the instant rule.

As explained above, the Commission recognizes that the potential for anticompetitive abuses may not be a perpetual problem, and, therefore, in Order No. 497 adopted a sunset provision specifying that the Commission's reporting requirements would expire after one year unless reauthorized. The Commission has extended the sunset date of the regulations three times because it found that Commission monitoring was still necessary.[420] As noted above, the court's decision in *Tenneco* v. *FERC* was issued on July 21, 1992, and the rehearing period has not expired. The Commission intends to extend the reporting requirements in the near future when it considers the issues on remand.

Hadson is concerned that there should be a public review process to ensure that the pipeline's procedures comply with the independent functioning standards. Hadson objects to the current process under § 161.3(j), which requires pipelines to file procedures to enable shippers and the Commission to determine how the pipeline is complying with the standards of conduct because, Hadson states, those filings are not noticed in the **Federal Register** or the Commission's daily orders and because the Commission has ruled that these filings are "non-adversarial." Hadson asks the Commission to resolve these problems by clarifying that (a) all filings made to demonstrate compliance with the law will be noticed in the **Federal Register** and the daily orders, with reasonable periods of time for members of the public to review the filings and voice facts or concerns; (b) the Commission will review the filings on the basis of a public record; and (c) the Commission will make a determination on the basis of the facts and advocacy in that public record.

The clarification sought by Hadson is unnecessary. Order No. 636 requires the pipelines to file their proposed procedures for compliance with the standards of conduct as part of their compliance filing and, therefore, the parties will have an opportunity to address these issues in the restructuring proceedings.

D. Reporting Requirements

In Order No. 636, the Commission required pipelines to file annual reports with respect to their sales under the blanket certificate, but waived the provision of section 154 of the regulations with respect to the filing of the sales prices between the pipeline and each of its sales customers. APGA, Citizen Action, and Gas Company of New Mexico allege that in modifying the reporting requirements, the Commission failed to adopt the minimum safeguard necessary to monitor the existence or

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[414] FERC ¶ 61,262 (1991).

[415] This section provides that if a pipeline offers a transportation discount to an affiliated marketer, it must make a comparable discount contemporaneously available to all similarly situated nonaffiliated shippers.

[416] Order No. 636 at p. 30,442.

[417] See 18 CFR 250.16(b)(2)(xiv), which requires a pipeline subject to this rule to file a transportation log containing, *inter alia*, information about whether the affiliated marketer (or blanket sales operating unit) is selling gas at a loss.

[418] However, it is important to note that the pattern suggested by IPAA is not, *per se*, a violation of the Commission's standards of conduct. An affiliated marketer (or blanket sales operating unit) may lose money on a specific sale during a specific period because it misjudged the market. A problem exists only when a pipeline grants an undue preference to an affiliate marketer (or blanket sales operating unit).

[419] 18 CFR 250.16.

[420] Order No. 497–A, 54 FR 52781 (December 22, 1989) FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989) Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. and Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990); Order No. 497–C, 57 FR 9 (Jan. 2, 1992), III FERC Stats. and Regs. ¶ 30,934 (1991), *reh'g denied*, 57 FR 5815 (Feb. 6, 1992), 58 FERC ¶ 61,139 (1992).

abuse of market power. Gas Company of New Mexico maintains that the Commission cannot meet its responsibilities if all it receives is an annual summary of rates.

On the other hand, Tenneco asks the Commission to eliminate all reporting requirements. Tenneco argues that pipelines no longer have a monopoly over the sale of gas so it is unduly discriminatory to impose these reporting requirements only on pipeline sellers of gas.

The final rule requires all pipelines engaging in unbundled sales to file an annual report with the Commission describing the type of service provided, the total volumes sold, and the total revenues received.[421] The Commission waived the requirement that pipelines file sales prices between the pipeline and each of its sales customers. In the Commission's view, the reporting requirement added by this rule satisfies the NGA requirements when the purchaser is on notice of the rate, and the amount of total revenues from each purchaser is eventually filed with the Commission as an average price as required by the reporting requirement. This information will provide an indication of how the market is functioning and whether a pipeline has been able to exercise market power.

The Commission believes that the reporting requirement plus the complaint procedure will be an effective means of monitoring the market to assure that the market functions to keep rates at a just and reasonable level. Additional reporting requirements would not aid in this process and would place an unnecessary burden on the pipelines. The most reliable indicator of whether the market is functioning to restrain rates is whether the customers are satisfied that they are receiving adequate service at reasonable rates. Where the market is not functioning to keep rates at a just and reasonable level, the Commission will consider action under section 5 to investigate and provide a remedy.

Tenneco's request that the Commission eliminate all reporting requirements is denied. As explained above, while the rule gives pipelines more flexibility to price their sales services to compete with other sellers and marketers of gas, the Commission will continue to carefully monitor the pipelines sales because pipelines control transportation.

[421] § 284.288.

VIII. Pipeline Service Obligation (After Restructuring)

Requests for rehearing of the Order No. 636 rules on pregranted abandonment in §§ 284.221(d) and 284.285 have been filed by numerous parties, including industrials, LDCs, pipelines, and state regulatory agencies.[422] On rehearing, the Commission is modifying Order No. 636 to provide that in exercising its right of first refusal to retain capacity, a long-term firm transportation customer must match the price offered by a competing bidder, up to the maximum just and reasonable rate, and the longest contract term offered by a competing bidder, up to a maximum period of 20 years.

A. Interruptible and Short-term Firm Transportation

Section 284.221(d), promulgated by Order No. 636, authorize pregranted abandonment of all interruptible and short-term firm transportation. The Commission explained that the nature of these services is such that customers selecting these options do not rely on continued service at the expiration of the contract. On rehearing, AGD and Peoples Gas state that while they have no objection to the application of pregranted abandonment to short-term firm transportation contracts, they ask the Commission to clarify that under the rule, a customer must actually have the option of taking long-term service. Otherwise, they argue, a pipeline could use its market power to coerce the customer into accepting a short-term contract in order to avoid giving the customer the right of first refusal.

Under part 284 of the Commission's regulations, a pipeline has never been permitted to use its monopoly power to force certain customers to accept short-term service when they prefer long-term service if capacity is available to provide firm service. Withholding capacity violates the pipeline's obligation to provide transportation as embodied in § 284.8(b) of the Commission's regulations, which requires pipelines offering transportation on a firm basis to provide service "without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind."[423]

Peoples Gas also argues that priority interruptible service should receive protection from pregranted abandonment. It notes that some interruptible arrangements between a pipeline and small customers have enjoyed a special status because the Commission has found that these customers depend on these arrangements to meet peak load. Their Authorized Overrun Service from Viking Pipeline is within this group. Peoples Gas states, and has priority over other interruptible service because it is required to meet peak load. Peoples Gas cites *Viking Gas Transmission Company*,[424] where the Commission approved Viking's proposal to include a limited quantity of AOS service in its high priority interruptible service for small customers.

In the *Viking* decision cited by Peoples Gas, the Commission approved the pipeline's proposal because the record in that case showed that Viking was the only pipeline that served the requirements of these customers, that additional firm capacity was not available on the Viking system, and that these customers had historically relied on purchases or transportation of interruptible gas to meet peak demands. There is no basis for concluding that these circumstances will exist on any pipeline after restructuring or that Peoples Gas will be unable to contract for firm transportation service. As explained in Order No. 636 and throughout this rehearing order, the rule will result in increased availability of firm capacity. Therefore, the Commission will not provide an exemption from pregranted abandonment for high priority interruptible service. If a customer requires high priority service to meet peak needs, then the customer should contract for firm service from the pipeline and pay the appropriate rate for firm service.

Northern Indiana Public Service Company asserts that the pre-granted abandonment of interruptible transportation could result in preferential treatment and discrimination if pre-Order No. 636 queue priorities are retained. Northern

[422] American Paper Institute; Industrial Groups; Reynolds Metal Company (Reynolds); APGA; AGD; Atlanta Gas; Cascade; CNG LDCs; ConEd; Elizabethtown; Illinois Power; New England Gas Distributors; New Jersey Natural; NYSE&G; Northern Distributor Group; Northern Illinois Gas; Northwest Natural Gas Company (Northwest Natural); Peoples Natural Gas; PSE&G; Tennessee and Columbia Small Customers; United Distribution Companies; Wisconsin Distributor Group; ANR; CNG; El Paso; Kern River; Natural; Citizen Action; Maryland People's Counsel; NASUCA; Pennsylvania PUC; State of Michigan.

[423] 18 CFR 284.8(b).

[424] 52 FERC ¶ 61,015 at p. 61,106 (1990).

Indiana states that because the rule permits, but does not require pregranted abandonment, it could result in a pipeline's picking and choosing which interruptible shippers might be allowed to continue to use a high priority transportation or storage contract through roll-over or evergreen contract provisions because the pipeline has pre-approved unilateral abandonment rights. Northern Indiana maintains that the way to avoid this problem is to eliminate archaic queue date priority rights.

As the Commission has explained, a pipeline is not required to include a roll-over or evergreen clause in its contracts, but if it does, it must include such clauses on a non-discriminatory basis. Further, pre-Order No. 636 firm transportation queues will not be relevant in determining capacity allocation during the restructuring proceedings. The Commission believes that queues will be less important on the pipelines after restructuring because capacity should become available through the release mechanism. Interruptible capacity will be posted on the electronic bulletin board.

B. Unbundled Sales

The Final Rule adopted pregranted abandonment for unbundled sales service and explained that a "continuing service obligation is no longer necessary to ensure LDC access to gas supply."[425] Although most parties have no objection to this provision, Marathon asserts that this is the first time the Commission has made access to gas supply the sole factor in determining whether the public convenience and necessity requires continuation of the pipeline service obligation. Marathon argues that while the Commission may change its abandonment standard, it must carefully consider and explain the need for a new standard.[426]

Marathon argues that the Commission has failed to explain why there should no longer be a distinction between private contracts and the statutory service obligation. Further, Marathon argues, while "access to gas supplies" was a major component of the public convenience and necessity in previous abandonments, it was not the only factor. Marathon asserts that the Commission has failed to explain why other factors, such as environmental impact, the presumptions of continued service, the impact on competition, and the public interest have been eliminated. Marathon does not oppose pregranted abandonment of unbundled sales, but argues that the Commission must provide a more detailed explanation of its reasoning. Similarly, Gas Company of New Mexico argues that the Commission has failed to justify pregranted abandonment of sales. Gas Company of New Mexico cites *United Gas Pipe Line Company* v. *McCombs*,[427] where the Court stated that in that situation, to leave the abandonment determination in the producer's control would be "at odds with Congress' purpose to regulate the supply and price of natural gas."

Contrary to these assertions, the Commission has explained why it finds pregranted abandonment of unbundled sales upon contract expiration or termination to be permitted by the public convenience and necessity and how the factors cited by Marathon relate to that decision. As explained in the final rule,[428] this finding was based partly on the Commission's determination that sufficient gas supplies exist nationwide to prevent pipelines from exercising market power over gas supply at a contract's termination, and, therefore, that individual abandonment proceedings are unnecessary with respect to the pipeline's sales service to protect LDCs and assure continued access to supplies. The parties to a sales contract can defer pregranted abandonment by including evergreen or roll-over clauses in their contracts. In addition, the Commission's objective of creating an efficient and national gas market that protects all users of natural gas will be better served by pregranting abandonment because it will put pipelines sales on a more even, competitive basis with other suppliers. Finally, in Order No. 636, the Commission found that pregranted abandonment would have no significant environmental impact and, therefore, there is no need to consider this as a factor in authorizing service abandonment.[429]

The *United Gas Pipe Line Co.* v. *McCombs* [430] cited by Gas Company of New Mexico is inapposite because in that case, the producer attempted to abandon service without first obtaining Commission approval under section 7(b). Here, the Commission has pregranted abandonment on a generic basis and made the required findings to support its conclusion.

C. Long-term Firm Transportation

As the Commission explained in the Final Rule, long-term firm transportation service has characteristics different from interruptible and short-term firm transportation and unbundled sales services, and, thus, the Final Rule establishes a procedure for protecting the legitimate needs of customers for continued service. First, the parties may choose to defer application of pregranted abandonment to their arrangement by including roll-over or evergreen clauses in their service contracts. Second, the right of first refusal at just and reasonable, cost-based transportation rates will protect the customer even if a roll-over or evergreen clause is not included in the contract. Under the right of first refusal, the existing customer will be able to retain service at the expiration of the contract by agreeing to match the highest cost-based transportation rate, up to the maximum rate approved by the Commission, and the longest contractual term offered by another bidder seeking the service.[431]

1. Definition of Long-term Services

The regulations governing the right of first refusal apply to firm transportation pursuant to a contract for a term of more than one year.[432] Industrial Groups and Northern Illinois Gas ask the Commission to amend this definition to provide that an arrangement will be considered long-term transportation if the contract is for a period of one year or more. The parties state that this is consistent with business and commercial realities and the industry procedure and billing practices. Northern Illinois Gas states that the calendar month and year are the basis for most transactions, and the introduction of partial months and carryover days is an unnecessary complication.

These requests are consistent with the Commission's intent and the Commission will amend the rule to make it consistent with industry practice. A long-term transportation service is one that is pursuant to a contract for a term of one year or more.

2. Roll-Over and Evergreen Clauses

In the Final Rule, the Commission explained that the parties can defer application of pregranted abandonment to their arrangements by including in the contract for service, an evergreen or roll-over provision. Thus, the

[425] Order No. 636 at p. 30,446.

[426] Marathon cites, *inter alia*, Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971); Consolidated Edison Co. of N.Y. v. FERC, 823 F.2d 630 (D.C. Cir. 1987); and Fairmont Oil Corp. and Essex Offshore, Inc., 33 FERC ¶ 61,333 (1985).

[427] 442 U.S. 529, 539 (1979).

[428] Order No. 636 at 30,446–447.

[429] Order No. 636 at 30,469.

[430] 442 U.S. 529 (1979).

[431] 18 CFR 284.221(d)(2)(ii).

[432] 18 CFR 284.221(d).

Commission explained, in the first instance, the parties will decide whether the service obligations under the contract will be subject to pregranted abandonment.

Several LDCs, industrials, and state regulatory agencies [433] seek rehearing of the Final Rule because it fails to require pipelines to include a unilateral evergreen clause, giving the customer the right to renew the agreement, in all long-term firm transportation contracts. These parties argue that customers, particularly small LDCs with one pipeline supplier, simply do not have the leverage to negotiate inclusion of roll-over clauses in their long-term contracts. The pipelines have market power over transportation, they argue, and have no incentive to give up the monopoly power they would have at the end of the contract. The Commission cannot rely on the availability of evergreen clauses as a justification of its pregranted abandonment proposal, they conclude, because unless such clauses are mandated, they will not in fact be a limit on the pipeline's monopoly power. In addition, Northern Illinois Gas is concerned that the pipelines could have discretion to include these clauses in contracts for incremental customers, but deny them to core customers.

Similarly, AGD asks the Commission to clarify that every firm transportation contract is deemed to carry with it an implicit mutual evergreen provision that the certificated firm transportation service will continue in the absence of notice by either party to discontinue the contract. Cascade asks the Commission to specify that a bilateral evergreen clause in a firm transportation contract of a primary term of one year or more is a contractual right to continue to receive service.

The Commission will not require pipelines to include unilateral evergreen clauses in all their long-term firm transportation contracts. Under current industry practice, evergreen clauses are frequently included in service contracts, and the Commission intended in the Final Rule to make clear that this device will remain available to parties who agree to this method of providing for continued service. However, a pipeline cannot offer evergreen provisions selectively. If it includes evergreen provisions in its contracts, it must do so on a nondiscriminatory basis.[434] Thus, the Commission finds that Northern Illinois Gas' concern is unfounded because pipelines do not have discretion to include evergreen clauses for certain customers and deny them to others.

The Commission will not find an implicit mutual evergreen clause in all firm transportation contracts and will not interpret such a clause, when included in a contract, as a right to continue service, as requested by Cascade. The Commission will not change the agreement of the parties in this way. The right of first refusal discussed below affords the protection necessary for customers that receive service under a contract that does not contain a roll-over clause.

3. The Right of First Refusal

As explained in the Final Rule, even if the parties do not include an evergreen or rollover clause in their contract, the existing customer is still assured of the right to continued service if it exercises its right of first refusal by matching competitive bids for the capacity. The effect and intent of this provision is to ensure against the inefficient or unnecessary retention of capacity at the expiration of the contract. To exercise the right of first refusal, the existing customer must agree to match the highest rate bid, up to the maximum just and reasonable cost-based rate, and the longest contract term offered by another shipper who wants the service.

a. *Rate requirement.* Under the right of first refusal, in order to retain capacity, the existing customer must match the price offered by a competing bidder, up to the maximum just and reasonable cost-based rate. APGA argues that the protection afforded by capping the bidding at the maximum rate authorized by the Commission may be illusory because rates designed on the basis of SFV may be economically out of reach of many small LDCs, and the current contracts of many of these LDCs will expire after the four year mitigation period.

There is no basis for asserting that maximum rates approved by the Commission under the SFV method will be uneconomical for small LDCs. As discussed above, under the special rate provisions adopted by the Commission for small customers, small customers can continue to receive on a permanent basis unbundled transportation service under a one-part rate with an imputed load factor. Thus, rates of small LDCs eligible for this rate provision will be largely unaffected by SFV. Moreover, for customers paying rates based on SFV, Commission rate review will assure that the pipeline's rates are at a just and reasonable level; a just and reasonable rate by definition is not excessive. This argument rests on incorrect assumptions about SFV that are discussed more fully above. The cap on the bidding at the maximum just and reasonable level provides more than adequate protection that pipelines will not be able to charge monopoly rates for their service.

NASUCA asserts that, although the Commission maintains that the maximum rate will be just and reasonable, under an incentive proposal, the rate could increase without the Commission's approval and undermine the Commission's ability to assure just and reasonable rates. APGA also argues that incentive rates will compound the problem. NASUCA argues that the interplay of the right of first refusal and incentive regulation should be considered by the Commission on rehearing.

Under the proposed Incentive Regulation Policy Statement, the Commission would not approve an incentive rate mechanism that would result in unjust and unreasonable rates. Moreover, until the Commission finalizes that proposed policy or approves an incentive rate mechanism, these claims are highly speculative.

On the other hand, ANR Pipeline argues that the right of first refusal could result in allowing customers to renew service at a rate substantially below the maximum rate, resulting in a cost shift to other customers. ANR is concerned that another shipper could bid an unrealistically low rate, even though the existing customer would have been willing to retain service at its higher rate, and all the current shipper would have to do is beat the lower offer. Similarly, El Paso asks the Commission to clarify that the rule does not mean that a customer could retain service by matching a bid that was not accepted by the pipeline, and, thus, force the pipeline to discount.

If customers were able to renew service at less than the maximum rate, as suggested by El Paso and ANR, this would merely be reflective of the competitive market. If no one bids at the maximum rate, that would mean that the capacity is valued at less than the maximum rate. However, pipelines are not required to discount under the rule and are not required to accept any offer at less than the maximum rate. If a lower bid is not acceptable to the pipeline, there is, in effect, no bid to match and, under the terms of the rule, the shipper will receive continued service at a rate, between the minimum and the maximum, negotiated by the shipper and the pipeline.

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[433] Industrial Groups: American Paper Institute; APGA; AGD.. Cascade; New England Gas Distributors; Northern Illinois Gas; Northern Indiana; Northwest Natural; PSE&G; United Distribution Companies; Wisconsin Distributor Group; Citizen Action; State of Michigan.

[434] Order No. 636 at p. 30,450 n.268.

b. *Length of contract term.* A number of LDCs and several industrials and state agencies [435] argue that the Commission erred in adopting the requirement that the existing customer match the longest contract term bid. These parties argue that the requirement will create problems for LDCs and industrials, that there is no rational basis for imposing the requirement, and that it is discriminatory and violates section 7 of the NGA.

Generally, the LDCs seeking rehearing argue that the nature of the services they provide makes it impossible for them prudently to match longer contract terms bid by competitors. AGD asserts that there is a lack of mutuality of obligation between an LDC and its customers, *i.e.*, an LDC has a public service obligation to provide gas to its customers, but the customers have no obligation to buy gas from the LDC. Therefore, the LDC runs the risk of incurring substantial stranded costs if it is forced to match a long-term bid by a competing bidder. Illinois Power and New England Gas Distributors state that because of their public service obligation, LDCs will have no choice but to match the longest bid term for capacity needed to meet their obligations. Moreover, they continue, their decision to enter into a long-term contract can be challenged on prudence grounds at the State and local level. These parties argue that while certain cogenerators and producers can enter into contracts of several decades duration, an LDC's long-term needs will change over that period; an LDC cannot and should not have to match the term bid by cogenerators and producers in order to retain capacity to meet its public service obligations and serve its human needs customers.

United Distribution Companies also argue that this requirement tips the balance in favor of gas producers or marketers interested in obtaining a monopoly over certain customers. If a supplier is able to take firm capacity away from an LDC shipper with a public service obligation, United Distribution Companies argue, the LDC will have no choice but to buy gas from that supplier. United Distribution Companies assert that this would shift monopoly power away from the regulated pipelines to the unregulated suppliers.

Several industrials, American Paper Institute, Industrial Groups, and Reynolds Metals, also argue that not all gas users can commit to long-term contracts. American Paper Institute asserts that the length of time for which different gas users can commit to firm transportation service is often defined by the "life" of the commodity they produce or the process or assets they use in producing it.

The right of first refusal is intended to protect existing customers, and provide them with a right to continued service, while at the same time recognize the role of market forces in determining contract price and term. Bidding on the contract term, within the limits described below, as well as price, is appropriate and is a significant part of the right of first refusal. As explained in Order No. 636, one of the goals of the rule is to permit buyers and sellers to meet in a national marketplace and transact the most efficient deals possible.[436] When a contract has expired, it is most efficient, within regulatory constraints, for the capacity to go to the person who values it the most, as evidenced by its willingness to bid the highest price for the longest reasonable term. Generally, long-term contracts benefit the system as a whole because they provide stability and benefits to all customers.

As explained below, LDCs are not at a disadvantage in this process because all parties have an opportunity to participate in the bidding process. Consistent with section 7 of the NGA, the existing customer has an advantage because it can always retain service by matching the highest bid.

Further, Industrial Groups argue that a customer who absolutely needs the service for two years may be forced to contract for ten years, in effect agreeing to pay far more than the regulated rate for the two years of needed service. Similarly, NYSE&G argues that long-term contracts in effect will require LDCs to pay higher than authorized rates when consideration is given to the added cost of engaging capacity longer than is needed.

No customer will ever pay a rate higher than the maximum just and reasonable rate for service, regardless of the duration of the contract. Those who value the service most should receive the capacity. If one party values the service for two years, but another potential customer values it more and bids ten years, the capacity should go to the highest bidder.

The capacity release mechanism established in the Final Rule will not solve these problems, APGA, NYSE&G, New Jersey Natural, and Northern Illinois Gas argue. NYSE&G maintains that while capacity assignment may provide some relief, it is not clear that assignees will always be available. Further, Northern Illinois Gas argues that if the LDC wants to shed the capacity in order to take advantage of more attractive rates, those rates will also attract the parties to whom the capacity might otherwise be assigned.

The capacity release program does provide a meaningful opportunity for an existing customer to release unused capacity. It does not guarantee that all unused capacity will be sold, but it does give the customer an important means of realigning capacity to meet its needs. If a customer values the service highly enough to bid the longest term, but subsequently does not need all the capacity and is not able to find a substitute shipper, there is no reason to relieve the highest bidder of its decision to contract and shift the risk of loss to the pipeline and its other customers. The result under the rule is consistent with normal commercial practices.

Several other parties, including the State of Michigan, Illinois Power, Northern Distributor Group, United Distribution Companies, and the Wisconsin Distributor Group argue that the effect of this requirement, *i.e.*, tying up capacity for long periods of time, is actually contrary to the goals of Order No. 636. Illinois Power maintains that if an LDC is required to sign up for service for longer than is necessary, it will be unable to obtain competitive transportation or storage from a new or alternate pipeline. Similarly, Northern Illinois Gas argues that the requirement will force pipelines into long-term contracts, resulting in the inflexibility that caused the problems of the 1980's and possibly reducing the demand for natural gas. Many of the parties objecting to this requirement argue that a balance could be struck between the pipeline's need for stability and the customer's need for flexibility by placing a reasonable cap on the contract term which the existing customer must bid. AGD, Industrial Groups, ConEd, NYSE&G, New Jersey Natural, PSE&G and Wisconsin Distributor Group argue that an existing customer should be able to retain service if it meets the maximum rate bid for a term of five years. Reynolds argues that the cap should be at three years, and United Distribution Companies support a cap at between three and five years. Northern Distributor Group believes that, consistent with the definition of long-term transportation, the term should be one year. Cascade argues that the term

[435] *E.g.*, American Paper Institute; Industrial Groups; Reynolds; AGD; APGA; Cascade; CNG LDCs; ConEd; Illinois Power; NYSE&G; New Jersey Natural; Northern Distributor Group; Northern Illinois Gas; Northern Indiana; Peoples Gas; PSE&G; United Distribution Companies; Pennsylvania PUC; and the State of Michigan.

[436] Order No. 636 at p. 30,393.

should be limited to 10 years, consistent with the finding in Order No. 555 that 10 years is sufficient to prove valid markets. State of Michigan also believes that 10 years is an appropriate cap.

The right of first refusal should not result in tying up capacity. Instead, it will permit the market to determine the appropriate contractual length. However, upon consideration of the parties' arguments, the Commission finds that capping the contract term that must be matched by a customer exercising its right of first refusal at a period of 20 years strikes an appropriate balance between the pipeline's need for stability, the customer's need for flexibility, and the Commission's overall goal in Order No. 636 to foster long-term, market driven arrangements in the gas industry. This cap, in the Commission's judgement, ensures that the customer obtaining the service values the service sufficiently to commit to using it for a reasonable period and provides the pipeline with a reasonable level of stability. Twenty years has been the traditional length of long-term contracts in the natural gas industry and a number of recent contracts for new capacity are for a twenty year term.[437]

c. *Legal basis.* Some parties object to the right of first refusal on legal as well as practical grounds, arguing that the procedure violates section 7 of the NGA and is contrary to court decisions interpreting that section. APGA argues that the Commission violates *American Gas Association* v. *FERC (AGA II)* [438] by not addressing the LDCs' concerns that they will have to yield to the pipeline's monopolistic demands to receive service. Further, APGA argues, the Commission erred in stating that the service obligation should first be determined by contract because this ignores legal precedent holding that a pipeline has a service obligation regardless of the contract.[439] APGA concludes that in order to comply with the requirement of section 7, the Commission must give the LDCs some reasonable protections and not make them subject to the superior buying power of others.

The right of first refusal procedure does provide protection to the existing customer and guarantees that the LDCs will not have to yield to the pipeline's monopoly power. Further, the Commission has not ignored legal precedent regarding the pipeline service obligation. Under the right of first refusal procedure, the existing customer can always retain service, but not necessarily at a discount, and not necessarily on a short-term basis, if other potential customers value the service and are willing to pay the maximum just and reasonable rate for a longer term. If there are no other bidders, the pipeline's transportation service obligation continues, and the parties negotiate a new contract. If there are other bidders, the existing customer retains service by matching the price, up to the maximum just and reasonable rate, and the longest bid contractual term. These are not monopolistic demands. They are contractual terms which reflect conditions in the market place. The highest rate the existing customer must match is the maximum just and reasonable cost-based rate, which by definition cannot be a monopoly rate. Nor is the longest bid contractual term a monopolistic demand, but is merely a term other competing customers will bid for the service.

Atlanta Gas also argues that the right of first refusal violates section 7 of the NGA. It asserts that the NGA requires that the Commission make a finding that the present or future public convenience and necessity permit the abandonment, and that this standard does not permit a pipeline to discontinue service to a customer simply because it cannot match an offer made by another would-be customer. Atlanta Gas argues that *Mobil Exploration and Producing Southeast, Inc.* v. *United Distribution Companies* [440] is distinguishable from this case because pipeline purchasers were protected by the ability to obtain gas elsewhere, while here the Commission has not determined that the parties losing transportation capacity will be able to obtain capacity elsewhere.

Similarly, New England Gas Distributors argue that the procedure violates the court's mandate in *AGA II* [441] because the Commission does not explain how pregranted abandonment trumps protection of consumers against the exercise of monopoly power through refusal of service at the end of the contract term. To justify the procedure, New England Gas Distributors argue, the Commission must explain why the right of first refusal protects consumers and meets the Commission's statutory obligations; they contend that this is impossible because the notion of LDCs meeting better offers to retain service is inconsistent with section 7 and ignores that LDCs are public utilities with a public service obligation. Similarly, United Distribution Companies argue that the court in *AGA II* emphasized that the overriding purpose of section 7(b) is to protect consumers from monopoly power and unjustified termination of service.

PSE&G also argues that the Commission has misinterpreted the court decisions interpreting section 7(b). Both *AGA II* and *Mobil Exploration*, they argue, require a finding that the public convenience and necessity permits abandonment, and the Commission has failed to show how customers will be protected from monopoly abuses.

In Order No. 636, the Commission made a generic finding that the public convenience and necessity permits abandonment where the existing customer does not value the service sufficiently to match a competing bid. The right of first refusal will protect customers because it permits the existing customer to retain service. The pipeline is not able to refuse transportation service at the end of the contract term or to make monopolistic demands as a condition for continued service. The pipeline must continue to provide service to the existing customer if there are no competing bids for the service, and if the existing customer matches a competing bid for service, the pipeline must continue transportation service pursuant to those terms.

American Paper Institute argues that the requirement that the existing customer match the longest contractual term bid is discriminatory and violates section 7 of the NGA because the length of time to which a customer can commit is not related to public benefits of the various industries or most efficient use of capacity. American Paper Institute states that the Commission itself has recognized that there should be no discrimination based on duration of service.[442] Similarly, APGA argues that it is error to equate those with the greatest need for service with those who can offer the longest contract term. CNG LDCs also argue that the requirement is discriminatory and distorts the bidding process by reflecting status and

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[437] See, *e.g.*, Pacific Gas Transmission Co., 56 FERC ¶ 61,192 (1991); Iroquois Gas Transmission System, L.P., 53 FERC ¶ 61,194 (1990); *reh'g granted in part and denied in part*, 54 FERC ¶ 61,103 (1991).

[438] 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[439] APGA cites Sunray Mid-Continent, Oil Co. v. FPC, 239 F.2d 97, 101 (10th Cir. 2956), *rev'd and remanded on other grounds*, 353 U.S. 944 (1957); Farmland Industries, Inc. v. Kansas-Nebraska Natural Gas Co., 486 F.2d 315 (8th Cir. 1973); and Sunray Mid-Continent Oil Co. v. FPC, 267 F.2d 471 (10th Cir. 1959), *aff'd*, 364 U.S. 137 (1960).

[440] 111 S. Ct. 615 (1991).

[441] 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[442] American Paper Institute cites 18 CFR 284.8(b), 284.9(b); Arkla Energy Resources, 48 FERC ¶ 61,305 at 61,985 (1989); Arkla Energy Resources, 47 FERC ¶ 61,045 at 61,131 (1989).

bargaining position rather than market forces.

The requirement is not unduly discriminatory. All parties have an equal opportunity to bid for the capacity and, consistent with section 7, if the existing customer matches the bid for the longest term, it retains the capacity. While the LDCs argue that they should have priority because they serve human needs, other customers serve human needs as well. Moreover, the most efficient use of capacity is for it to be used by the party who values it the most. The bidding requirement is intended to help allocate transportation capacity to that party.

United Distribution Companies argue that an LDC should have an express right to a hearing under section 7(b) if it certifies that the capacity is needed to serve core customers. United Distribution Companies assert that including this provision would make Order No. 636 analogous to Order No. 451, which provided that any customer faced with an unjustified loss of gas under the Order's procedures was entitled to a complaint proceeding.

The Commission's complaint procedure is always available to remedy an unjustified loss of service. A hearing is necessary, however, only if there are material facts in dispute. As the Commission has explained, the right of first refusal is an adequate protection for LDCs serving core customers.

d. *Mechanics.* Several parties ask the Commission to clarify or amend the mechanics of the right of first refusal process. ConEd asks the Commission to clarify that a long-term firm transportation customer has the right to extend service at the maximum rate for a period of more than one year where the contract expires, the pipeline gives notice of its intent to terminate, there are no competing bidders for the capacity, and the parties cannot agree to new terms. Otherwise, ConEd asserts, the pipeline could force the customer to accept a short-term contract or an unreasonably long-term contract. AGD also asks the Commission to clarify that where there are no competing bids, the firm transportation holder has a right to extend its contract for a period of more than one year, in order to protect it against pregranted abandonment.

The Commission clarifies that, when there are no competing bidders for the capacity, and the existing shipper agrees to pay the maximum rate, the existing customer is entitled to continue the transportation service for whatever term it chooses.[443] The pipeline may not withhold service at the maximum rate.[444] If there are no competing bids, the existing holder has in effect tendered the "longest" term offered for that capacity.

Elizabethtown asks for clarification of § 284.221(d)(2)(ii) of the regulations which provides that pregranted abandonment does not apply if the individual transportation arrangement is for firm transportation under a contract with a term of more than one year, and the firm shipper:

> Gives notice that it wants to continue its transportation arrangement and will match the longest term and highest rate for its firm service, up to the maximum rate under § 284.7, offered to the pipeline during the period established in the pipeline's tariff for receiving such offers by any other person desiring firm capacity, and executes a contract matching those terms.

Elizabethtown is concerned that the use of the conjunctive in the last clause could be interpreted to mean that the shipper would experience pregranted abandonment if no one submitted a bid for the firm capacity and, therefore, no opportunity was available to the shipper to execute a contract matching an alternate bidder's terms. To avoid confusion, Elizabethtown suggests that the last clause be amended to read as follows:

> and, if such offer was made to the pipeline, executes a contract matching those terms.

To avoid confusion, the Commission will revise the regulation to avoid the construction pointed out by Elizabethtown.

Tennessee and Columbia Small Customers ask the Commission to clarify that only customers in the same rate class will bid against each other and that customers formerly receiving service under rate schedules GS and SGS need not match bids by larger customers for the same capacity. Tennessee and Columbia Small Customers reason that because the Final Rule provides that "the maximum rate that must be matched is the highest rate the pipeline is authorized to charge for the capacity sought,"[445] if the "capacity sought" is firm transportation service that had been converted from former GS or SGS service, larger customers would not be eligible to bid. Further, Tennessee and Columbia Small Customers argue, to permit large customers to bid against small customers would be grossly inequitable and inconsistent with the mitigation measures that the rule required.

Tennessee and Columbia Small Customers have misinterpreted the rule. The rule is not intended to limit the parties who may bid on capacity to those in a single rate class. However, Tennessee and Columbia Small Customers are not disadvantaged under the pregranted abandonment rule in § 284.221(d) because customers must only bid up to the maximum just and reasonable rate the pipeline can charge to them, not the highest rate the pipeline can charge for the capacity.[446]

United Distribution Companies argue that the pipeline should not have the discretion to determine what constitutes the best offer. Procedures for implementing the right of first refusal, including an appropriate method of determining the best offer must be developed in the individual restructuring proceedings, in which LDCs will be able to participate in developing the standard to be used by each pipeline.[447] However, any standard must be an objective one, based on economic factors. The Commission's intent is to permit variations by pipelines but to ensure that whatever objective standard a pipeline chooses would be put in its tariff so that all parties would know the rules in advance.

e. *Bona fide offers.* Industrial Groups argue that the Commission should adopt procedures similar to those adopted in Order No. 451 to assure that bids are *bona fide*, *i.e.*, that bids be in writing, accepted in principle, and achieved in arm's length transactions. Northwest Natural argues that the regulations should preclude the pipeline and affiliates from submitting offers and should provide that a shipper should only have to match an offer from a nonaffiliate. Northwest Natural states that this is required by the policy underlying the affiliated entities rule in the NGPA and that pipelines and affiliates should not be allowed to repackage services into anticompetitive packages.[448] Northwest Natural further argues that the Commission's rationale for not imposing the requirement is inadequate because the parties cannot in fact protect themselves through contractual provisions. The Pennsylvania PUC and New Jersey Natural argue that the matter should not be left to the restructuring proceedings without any direction from the Commission. Rather, they assert, the Commission should establish guidelines and controls.

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[443] Of course, the pipeline could agree to less than the maximum rate in such circumstances.

[444] Order No. 636 at p. 30,449.

[445] Order No. 636 at p. 30,449.

[446] *Id.*

[447] Order No. 636 at p. 30,451.

[448] Northwest Natural cites NGPA section 601(b)(1)(E), 15 U.S.C 3431(b)(1)(E).

Pipelines should adopt procedures similar to those adopted in Order No. 451 to assure that offers are *bona fide*. Additionally, with regard to potential affiliate abuses, and the policy underlying the affiliated entities rule in the NGPA,[449] as raised by Northwest Natural, the Commission notes that Order No. 497 addresses, at least in part, the concerns expressed by the Pennsylvania PUC and New Jersey Natural, and Northwest Natural.[450] Further, it may be appropriate for the Commission to scrutinize carefully transactions where the only competing bidder is an affiliate. However, the Commission is not able to provide specific criteria at this time, and, thus, defers this issue for further consideration if a particular concern is raised in the restructuring proceedings.

f. *Offers for a portion of existing customer's capacity.* AGD asks the Commission to clarify that the holder of firm transportation service may retain any portion of its certificated service that it wishes to retain, subject to the rules governing the right of first refusal, and have the pipeline's pregranted abandonment authority apply to the remainder of the capacity. AGD states that the final rule makes clear that a prospective shipper may bid against a current firm transportation capacity holder with respect to a portion of the capacity held by the existing holder, but does not address what should be the concomitant right of the firm service holder to bid for the right to retain some amount less than the full amount of the capacity subject to pregranted abandonment.

The request for clarification is granted. The rule is intended to permit the existing capacity holder to elect to retain a portion of its capacity subject to the right of first refusal, and permit the pipeline's pregranted abandonment to apply to the remainder of the service.

The Wisconsin Distributor Group, on the other hand, objects to the provisions that a competing bidder may bid for a portion of the capacity. The Wisconsin Distributor Group states that sellers often offer more favorable rates to purchasers of large quantities for long hauls because of the increased efficiencies associated with these transactions, and that Order No. 636 eliminates the benefits of their economies of scale for large purchasers. The Wisconsin Distributor Group argues that competing bids should be for the same capacity that the existing customer seeks to retain, *i.e.*, the same quantity and the same route. The request for rehearing is denied. As explained in Order No. 636, the policy urged here by the Wisconsin Distributor Group would virtually insulate the very largest holders of capacity from the bidding process.

Natural argues that the Commission erred insofar as the rule provides that the existing shipper need only match a bid for its existing transportation path. Under the rule, Natural argues, an existing shipper could preclude a system haul by creating a bottleneck on the system. Natural states that a short haul should not be allowed to preclude a long haul unless the short haul shipper is paying the same total rate as the long haul. Natural argues that the final rule is an unlawful taking in that it prevents a pipeline from obtaining greater revenue associated with long hauls.

The request for rehearing is denied. The Commission has answered the Constitutional arguments against this rule. Section 7 of the NGA provides protection against abandonment for current customers that are not in the public interest, and Order No. 636 merely amends Commission procedure for implementing that protection. The policy advocated by Natural would virtually guarantee that the long-haul shipper could take capacity from the current shipper if the current shipper transported the gas for a shorter distance. Natural has confused the bidding process for released capacity under § 284.243 of the regulations with the right of first refusal which is designed to give the existing customer the right to continued service. Under the capacity releasing mechanism, where two new customers are bidding for the same capacity, the regulations require the pipeline to allocate released capacity to the person offering the highest rate over the maximum tariff rate the pipeline can charge to the releasing shipper. This means that the person seeking to obtain the released capacity can offer up to the pipeline's filed maximum rate for the service received by the releasing shipper, even if the replacement shipper wants the capacity to move gas for a shorter haul.[451] However, under the pregranted abandonment provision, the existing shipper must bid only the maximum rate the pipeline is authorized to charge that shipper.

United Distribution Companies also objects to this provision, arguing that it would permit competitors to fragment the LDCs' needed capacity. As explained above, the procedure guarantees the LDC the right to continued service if it matches the bid of a competing bidder. The capacity will not be fragmented if the LDC exercises its right of first refusal.

g. *Converted sales.* Northwest Natural argues that all converted firm sales service should be protected from pregranted abandonment, including transportation converted outside the stay period. Northwest Natural argues that the rule discriminates against LDCs that converted outside the stay period, and is inconsistent with the decision in *American Gas Association* v. *FERC*.[452] Northwest Natural argues that the proper result is to treat all converted firm transportation the same, and provide that it will never be subject to pregranted abandonment. United Distribution Companies also argue that the exemption for Order No. 500–J conversions is discriminatory and that the exemption should be expanded to include all existing contracts for long-term transportation service in which the pipeline waived its right to pregranted abandonment. United Distribution Companies assert that where LDCs negotiated for protection against pregranted abandonment, they should be able to retain the benefits of their bargain, and pipelines should be held to their bargains.

The exemption for conversions that took place during the Order No. 500–J stay is based on our decision in Order No. 500–J and the expectations of the parties based on that decision. There is no reason to expand the exemption. The effect of specific contractual provisions or specific contracts that contain a waiver of the right to pregranted abandonment should be examined in the restructuring proceedings, not in this generic proceeding.

Cascade asserts that it is unclear whether Northwest's just approved conversions in Docket No. CP92–79–000 meet the requirements of § 284.221(d)(3). Cascade states that while these conversions were approved May 1, 1992, during the stay period, they have not yet been completed because their implementation has been tied to actions

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[449] See, generally, Order No. 269, Tennessee Gas Pipeline Co., 36 FERC ¶ 61,306 (1987).

[450] For example, the standards of conduct (18 CFR 161.3) state, *inter alia*, that a pipeline may not, through a tariff provision or otherwise give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation including, but not limited to, scheduling, balancing, transportation, storage, or curtailment priority (standard (c)); may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper (standard (e)); and, to the extent it provides to its marketing affiliate information related to transportation of natural gas it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system (standard (f)).

[451] Order No. 636 at 30,420–421.

[452] 912 F.2d 1496 (D.C. Cir. 1990).

in other applications. Cascade asks the Commission to clarify that these now approved conversions fall within the § 284.221(d)(3) exemption, or, grant a waiver of the rule for these conversions.

The Order No. 500-J stay applies only to conversions that took place during the period the stay was in effect. The conversions approved in the Northwest proceeding have not yet been implemented and, therefore, the stay does not apply. There is no reason to waive the rule's requirements, and the regulations governing pregranted abandonment will apply to this transportation service on Northwest.

h. *Special circumstances.* Kern River argues that the right of first refusal should not apply to any of its customers because at the time those customers executed their service contracts, the Commission's regulations provided for pregranted abandonment. Therefore, Kern River argues, its customers never expected individual abandonment proceedings and know that their service would cease upon contract expiration.

The Commission will not exempt Kern River from the regulations governing the right of first refusal. Kern River should raise this issue in its restructuring proceeding.

4. Storage

AGD and ConEd ask the Commission to clarify that the rules governing pregranted abandonment apply to open access storage arrangements. The rule promulgated by Order No. 636 defines transportation to include storage. Therefore the rules applicable to transportation apply to storage provided under part 284 as well.

IX. Transition and Implementation in the Restructuring Proceedings

A. Adjustment of Purchase Obligations and Firm Capacity

Under § 284.214(d), as promulgated in Order No. 636, firm sales customers may reduce or terminate their rights or obligations to purchase gas by giving notice to the pipeline during the restructuring proceeding.[453] The pipeline is authorized to abandon the sale of gas to the firm customer to the extent the customer exercises such right, or declines to pay the pipeline's restructured sales rate.

Under § 284.214(e), firm shippers must give notice to the pipeline during the restructuring proceeding of whether they want to retain, reduce, or terminate their contractual rights to firm transportation service, and the pipeline must permit reduction or termination of those rights if another shipper bids for the capacity, or may agree to the reduction or termination of such rights in any event. The pipeline is authorized to abandon service to shippers accordingly. If another shipper is prepared to bid more than the current capacity holder pays for its capacity, the current capacity holder must be willing to match what the competing bidder offers, up to the maximum rate, or release the capacity.

1. Unconditional Right to Cost-Free Release of Capacity

Pacific Gas and Electric Company (PG&E) asserts that the service and rate changes contemplated by Order No. 636 will almost certainly make some existing transportation contracts far more desirable, while making others wholly unnecessary or far less desirable. PG&E points out that in the Rate Design Policy Statement, the Commission directed parties to address and explore various ways to provide a contract demand adjustment in tandem with increased charges for peak service.[454] However, PG&E argues that the Commission's decision in Order No. 636 to require firm capacity holders to bid to retain constrained capacity, while not providing for unilateral contract reduction rights for unneeded or undesirable capacity, is inequitable and inconsistent with reasoned decision-making.

APGA recognizes that an unrestrained release mechanism during restructuring could cause chaos, but urges the Commission to afford all existing firm capacity holders a unilateral right to turn back some excess capacity during the restructuring proceedings, a maximum of 10,000 MMBtu per day or a modest percentage of current CD, whichever is greater. Customers should be permitted to adjust their demand in response to changes in price that will result from implementing SFV. According to APGA, many small customers have contract entitlements in their service agreements that are in excess of their actual current peak day requirements because there are no direct cost consequences of maintaining such levels of entitlements under current rate designs. APGA argues that small customers currently served under a one-part bundled sales rate, under full requirements service, or under two-part schedules with ratcheted demand charges based upon peak deliveries rather than contract entitlements should be authorized to elect an amount of firm transportation capacity during restructuring up to their former contact demand for sales service. APGA argues that pipelines should be at risk to remarket turned-back excess capacity, rather than requiring firm capacity holders to keep and pay for capacity they do not require and for which no other buyer can be found.

As a general matter, pipelines are entitled to recover their legitimate capacity costs, and have designed their rates to do so on the basis of CD levels under their existing firm service contracts. If capacity entitlements are reduced by certain customers and not picked up by others, pipelines will underrecover their capacity costs unless they recover an exit fee from the releasing customer, or until they increase their demand charges under a section 4 rate filing to reflect the net loss of capacity demand. When they increase their demand charges, capacity costs will be shifted to other firm customers that have not reduced their CD levels. Therefore, the Commission cannot give pipelines' firm customers a unilateral right to reduce or terminate their capacity entitlements during the restructuring proceedings, unless another customer contracts for the released capacity and assumes liability for the costs of the capacity, without shifting costs to the pipeline or other firm customers, or both. No reason has been presented why, during the term of the currently effective contract, these capacity costs should be shifted from the customer who has contracted for the capacity to the pipeline or other customers that have no need for the capacity.[455]

On the other hand, the Commission in Order No. 636 *requires* all firm customers to evaluate their capacity needs and notify the pipeline during the restructuring proceedings whether they want to retain, reduce, or terminate their current levels of capacity reservation. Furthermore, pipelines are required to permit their firm customers to permanently reassign their capacity to other parties that are willing to pay for it at the restructured rate. Thus, LDCs are afforded unilateral contract reduction

[453] Northern Indiana states that it does not understand the Commission's use of the phrase "purchase obligations" in describing LDCs' sales contracts with pipelines, since Order No. 380 and subsequent Commission decisions have eliminated "purchase obligations" under such contracts. Northern Indiana's point is well taken. In the absence of minimum bill provisions, sales customers have rights or entitlements to purchase gas, and obligations to pay demand charges, but no obligations to purchase gas.

[454] 47 FERC ¶ 61,295 at p. 62,055 (1989).

[455] Pipelines may, however, permit their customers to adjust their contract demands on a seasonal basis as a means of avoiding cost shifts from the implementation of the SFV rate design.

rights for unneeded capacity, if they are small customers, or if there are replacement shippers, contrary to PG&E's assertion that they are not. Furthermore, the pipeline and LDC may negotiate a bilateral reduction in capacity even if there is no demand for the capacity from other shippers. But the direction in the Rate Design Policy Statement, and in this proceeding, that parties consider mechanisms for implementing capacity adjustments, does not relieve firm capacity holders from liability for the costs of their capacity reservations under their currently effective contracts (unless the pipeline agrees to such relief) where there is no demand for the capacity by other potential shippers.

Northern Indiana argues that the Commission exceeded its power by mandating that sales customers retain excess transportation capacity. According to Northern Indiana, the Commission in Order No. 636 has abrogated the LDCs' bundled sales contracts, and has no jurisdiction to require LDCs to retain and pay for any minimum quantity of transportation capacity under a service arrangement that is grounded in an abrogated contract. Northern Indiana argues that even if the Commission had the power to rewrite LDC contracts and bind them to something they did not sign, LDCs must have the right to contract and pay for only the transmission capacity they want on each of their pipeline suppliers for there to be any real restructuring and true competition. Furthermore, Northern Indiana argues, customers should not remain bound for years to pay demand charges associated with contracts negotiated prior to the open access era.

The Commission has not abrogated LDCs' bundled sales contracts, contrary to Northern Indiana's assertion. The Commission has required pipelines to provide the sales and transportation under such contracts pursuant to separate certificates of public convenience and necessity, and has required that the point of sale be moved upstream from the city gate. The Commission exercised its authority under section 5 of the NGA, and its power to fashion remedies, to permit LDCs to reduce or terminate their sales entitlements under existing sales contracts. However, the fact that LDCs have an opportunity to revise their sales entitlements under existing contracts with their pipeline suppliers does not mean they should also have an unqualified right to reduce or terminate their obligations for the costs of transportation capacity under those contracts.

The CPUC seeks clarification that a firm capacity holder may permanently relinquish a portion of its capacity rights without paying an exit fee, if there is demand for the capacity rights, even if the new shipper is not willing to pay the maximum rate for the capacity. CPUC argues that since the original firm capacity holder might not have been willing to pay the pipeline's maximum rates under an SFV rate design, the Commission should not burden that holder with the full costs of an SFV rate design (*i.e.* through exit fees) simply because others interested in the capacity rights are also unwilling to pay the maximum rates. According to CPUC, a bid at less than the maximum rate reflects what the market is willing to pay for the capacity rights, and permitting a cost-free relinquishment to the bidder who is willing to pay for the capacity would promote the goal of allocative efficiency.[455] Cincinnati Gas argues that existing capacity holders should be permitted to offer a lower rate than the maximum to retain their capacity, even if there are no competing bidders, and to release the capacity cost-free if the pipeline is unwilling to accept the lower rate.

The Commission rejects CPUC's request in order to avoid stranded costs that would have to be absorbed by the pipeline or other customers. However, a pipeline must release an existing capacity holder from its contractual obligations for the capacity if a competing bidder makes an offer for capacity held by the existing firm customer that is equal to or greater than the rate the existing customer is obligated to pay, up to the maximum rate. Of course, the existing capacity holder may offer to pay an exit fee to the pipeline as inducement to release it from those contractual obligations, but that is a matter for negotiation between the parties. Section 284.14(e) provides for automatic abandonment during restructuring when a pipeline agrees to release the existing capacity holder from its contractual obligations, without regard to what inducements are made to the pipeline to secure such agreement. CPUC may be correct that a bid for the capacity at less than the maximum rate reflects current market conditions. But the Commission is not implementing non-cost-based pricing for pipelines' transportation capacity in this proceeding. If CPUC's or Cincinnati Gas's proposed clarifications were adopted, a portion of the costs of the capacity in question would be shifted from the customer that contracted for the capacity to the pipeline or other customers that have no need for it.

Transco also seeks clarification of the same point, but to the opposite effect, namely that an existing holder of firm capacity is not fully relieved of its contractual obligations unless a third party bidder agrees to pay the maximum rate for the capacity to be relinquished. Clarification along these lines, Transco argues, would be consistent with the policy under the temporary capacity release program of the new section 284.243, where the original capacity holder remains liable for the applicable rate for released capacity, even though the replacement shipper pays a lesser rate. El Paso seeks clarification that an existing shipper may not release, and be released from liability for, all of its capacity under its current contract when there is a bid for only a portion of it.

Except to the extent pipelines are "at risk" for unsubscribed firm capacity, they are entitled to seek to recover their capacity costs through a fully allocated cost-based rate. However, a pipeline may have contracted to provide firm service for less than the maximum rate. For the reasons discussed above, a pipeline would underrecover its capacity costs if existing firm capacity holders were fully relieved of their liability under currently effective capacity reservations where a replacement shipper agrees to purchase that capacity at less than the rate the current shipper is obligated to pay. If another creditworthy shipper offers to pay a rate that is equal to or greater than the existing capacity holder's rate, up to the maximum rate, for a part of the capacity that an existing capacity holder seeks to release, the pipeline must release the existing capacity holder from its contractual obligations for the capacity sought by the other. But the pipeline is not required to release the existing capacity holder from liability for capacity for which another bidder offers less than the rate the existing capacity holder is obligated to pay. The pipeline is no worse off when the substitute shipper pays the same rate the releasing shipper is paying, even though that rate is less than the maximum rate.

2. Pipeline Opportunity to Adjust Contracts for Capacity

ANR requests the Commission to clarify that not only shippers, but also pipelines, have opportunities to adjust certain contractual commitments during

[455] Memphis Light also argues that, during restructuring, LDCs should be able to bid on the capacity they already hold at less than the maximum rate, and if they are the highest bidder, or if there are no other bidders, be entitled to receive service at the rate they bid, even if the pipeline does not agree to a discount.

restructuring. ANR asserts that a contract for firm capacity at a substantial discount, entered into when capacity release rights were not available, could become substantially more valuable after implementation of Order No. 636. Unless it is allowed to make adjustments to the contract, ANR asserts that the current shipper may release the discounted transportation to another shipper in different competitive circumstances that might not warrant the discount.

Even if an existing capacity holder's contract for transportation at a discount becomes more valuable because of the capacity release program, the pipeline's ability to increase the rates for the service will depend on whether its contract affords it a right to renegotiate or eliminate the discount. If there is demand for the capacity at higher rates, and the existing capacity holder's discount is not contractually guaranteed, the existing capacity holder will have to match the competing bids, up to the maximum rate, or release the capacity.

3. Reduction or Termination of Transportation Capacity Embedded in Bundled Sales Service

SoCal Edison requests the Commission to clarify that the CD levels of transportation capacity embedded in a bundled sales service can only be reduced or terminated during restructuring under the same conditions that capacity may be released by existing transportation customers. SoCal Edison is correct, and the clarification is accordingly granted. Under Order No. 636, the capacity rights of bundled sales customers are converted into unbundled firm transportation rights. At that point, the sales customers are to be treated no differently from other firm transportation customers.

4. Right of First Refusal During Restructuring Proceedings

Citizens Gas apparently interprets Order No. 636 to provide that existing firm capacity holders are subject to losing their capacity during the restructuring proceedings unless they exercise a "right of first refusal" by agreeing to match any greater rate up to the maximum rate, and the most favorable contract term offered by any other person seeking the capacity.[467] Citizens Gas seeks rehearing of this provision on various grounds. Citizens Gas is mistaken about what Order No. 636 provides. An existing firm capacity holder may have to match a competing rate bid for its capacity during restructuring if it is receiving transportation at a discount, and does not have a contract that guarantees it that discount, but it does not have to match any other term of competing offers to retain its capacity. The final rule differs from the proposal in the NOPR in this respect. Furthermore, the requirements for retaining firm capacity under currently effective contracts during restructuring proceedings are different from those for retaining firm capacity, *i.e.* by exercising a right of first refusal, when a contract has expired.

[467] Cincinnati Gas seeks clarification of this same issue.

5. Permitting Immediate Reduction or Termination of Customers' Sales Entitlements

Marathon seeks rehearing of the Commission's decision in Order No. 636 to permit immediate reduction or termination of pipeline customers' sales entitlements, arguing that it will create significant dislocation and confusion in the natural gas industry. Marathon submits that economic dislocation and the transition costs involved in restructuring long-term supply agreements could be minimized by allowing existing pipeline gas sales contracts to run their course, and suggests the Decontrol Act as a model for an orderly transition. Under that Act, deregulation is phased in as contracts expire or are terminated, and parties may expressly agree to deregulated prices in continuing contracts.

The Commission indicated in Order No. 636 that sales customers may choose not to exercise their right to reduce or terminate their sales entitlements during restructuring to its fullest extent, in order to avoid or minimize transition costs. The Commission's decision allows sales customers the choice of whether to continue their sales contracts with their pipeline suppliers or arrange for other suppliers and bear the consequences of making that choice. At the same time, pipelines are permitted to sell their gas at market-sensitive prices, thus enabling them to offer more competitive rates to retain their sales customers. Marathon is the only party that raises this issue on rehearing. The industry as a whole seems to accept the Commission's judgment that affording pipeline sales customers a right to reduce or terminate their sales entitlements during restructuring is an appropriate remedy for their previous inability to secure reliable service any other way because of the lack of high quality firm transportation. Marathon's request for rehearing on this issue is denied.

6. Revisions to 18 C.F.R. § 284.14(e)

Section 284.14(e)(4) provides that a downstream pipeline may not terminate its capacity rights on an upstream pipeline during restructuring proceedings. National Fuel requests that a downstream pipeline be permitted to pursue capacity reductions on upstream pipelines during the restructuring proceedings if it first gives notice to its historical sales customers and receives no objections that it cannot resolve. According to National Fuel, the lack of opportunity to reduce unneeded capacity will disadvantage downstream pipelines and their customers, where neither has any need for excess capacity on the upstream pipeline. National Fuel also seeks clarification that the prohibition against downstream pipelines releasing upstream capacity during restructuring does not preclude downstream pipelines from converting from sales to transportation on the upstream pipeline during restructuring proceedings.

The Commission will grant National Fuel's request and revise the regulatory text accordingly, to permit a downstream pipeline to pursue capacity reductions on upstream pipelines with the consent of the potentially affected customers of the downstream pipeline. As discussed above, the downstream pipeline's ability to reduce its capacity on upstream pipelines will depend on the willingness of other parties to contract for the upstream capacity or the willingness of the upstream pipeline to agree to a reduction in the absence of another buyer.

The Commission is also revising certain other provisions of § 284.14(e), to conform it to the provisions of the preamble of Order No. 636. Specifically, paragraph (e)(2) is revised to provide firm shippers an explicit right to reduce or terminate their firm service rights and obligations where the pipeline receives an offer for the capacity during the restructuring proceeding from a creditworthy shipper that is equal to or greater than the rate the existing shipper is obligated to pay, up to the maximum rate, or the pipeline otherwise agrees to a reduction or termination. Furthermore, paragraph (e)(3) is revised to permit the pipeline to abandon service to a firm shipper if, during the restructuring proceeding, another shipper offers a higher rate, up to the maximum rate, which the existing shipper (who is not contractually entitled to a discount) declines to match.

B. Transition Costs and Recovery Mechanisms

The Commission recognized in Order No. 636 that pipelines may incur certain transition costs as a direct result of implementing the requirements of that

order. The order envisioned four kinds of such costs: Unrecovered gas costs in a pipeline's Account No. 191, to be recovered by means of a "direct bill" to its former, bundled firm sales customers; gas supply realignment (GSR) costs that result from a pipeline having to reform or terminate existing supply contracts in response to customer decisions during the restructuring proceedings, to be recovered from part 284 firm transportation customers by means of a reservation fee surcharge or a negotiated exit fee; costs that are now incurred in connection with bundled sales service that cannot be directly assigned to customers of unbundled services, called "stranded costs," to be included for recovery in a general rate case under section 4 of the NGA; and the costs of new facilities to physically implement Order No. 636, also to be included for recovery in a general rate case.

About 70 of the requests for rehearing raise issues concerning recovery of transition costs. The requests present a wide range of objections, requests for clarification, and counterproposals to the transition cost provisions of Order No. 636. The major issue is raised by the state commissions, consumer advocates, and LDCs—a charge that the 100 percent passthrough of pipelines, gas supply realignment (GSR) costs through a demand surcharge overburdens the captive customers of LDCs with the costs of restructuring while allotting none of those costs to pipelines, industrial consumers, producers, and marketers—even though the latter groups reap virtually all of the benefits. The Commission has decided on rehearing to respond to this concern by requiring pipelines to recover 10 percent of their GSR costs through their rates for interruptible transportation under their Part 284 blanket certificate.

1. Equitable Allocation of GSR Costs

a. *Proposals to shift costs to other parties.* The New York PSC objects to pipelines being allowed to recover 100 percent of their transition costs, arguing they will thus have little or no incentive to minimize such costs. The New York PSC would have the Commission require a sharing of transition cost responsibility between the pipeline and its customers under the guidelines of Order No. 528 or, at a minimum, require pipelines to absorb 10 percent of those costs. The New York PSC would have the remaining unabsorbed costs spread over a broader industry base by requiring an appropriate percentage or fixed unit amount of transition costs to be recovered on the basis of total throughput. The New York PSC argues that recovering the transition costs through the commodity surcharge would provide pipelines implementing an SFV rate design with an incentive to maximize throughput while more permanent incentive rate mechanisms are under consideration, and significantly mitigate the increased burden being placed on residential consumers by Order No. 636.

Citizen Action argues that the Commission erred in failing to ascertain or even estimate the amount of transition costs that may be incurred as a result of order No. 636, especially the GSR costs.[***] Citizen Action maintains that transition costs under the rule could range between $2 and $6 billion, and argues that the Commission erred in permitting pipelines to recover 100 percent of their GSR costs. According to Citizen Action, these costs ought to be the sole responsibility of producers and pipelines, not pipeline customers and consumers. Citizen Action urges the Commission to use authority under Section 5(a) of the NGA to abrogate all contracts between pipelines and producers that contain onerous take-or-pay provisions, or prices that exceed market levels, or, alternatively, to prohibit any pipeline passthrough of transition costs associated with reforming such contracts. Citizen Action also would not limit recovery of GSR costs to firm Part 284 transportation customers, but would spread such costs over a wider customer base.

Illinois Power thinks that by permitting pipelines to recover 100 percent of eligible, prudently incurred transition costs through a demand charge, producers will likely insist on recovering 100 cents on the dollar. It recommends that the Commission use its authority under section 7 of the NGA to establish a conditioning mechanism under which a pipeline found to be in compliance with Order No. 636 may deny a producer the benefits of open-access transportation, unless the producer agrees to release the pipeline from gas supply contracts for which the pipeline no longer has a market because of Order No. 636. According to Illinois Power, the Commission justifies abrogation of the pipeline sales contracts on the ground that they were entered into during a period when there was not adequate competition. The same holds true, it argues, for the above-market producer contracts. They contend that their proposal is merely a variant on the take-or-pay crediting mechanism instituted under Order No. 500, which the court upheld in *American Gas Association* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990), and that the crediting mechanism did not keep gas from flowing between willing sellers and willing buyers—the only reason stated in Order No. 636 for not adopting such a proposal.

Various commenters on the NOPR submitted estimates of transition costs that might arise from implementation of the final rule. The Commission did not find it necessary to make its own estimate, because most of the costs at issue are costs that pipelines had already incurred or were obligated to incur, and would have been entitled to recover regardless of restructuring. Furthermore, as discussed below, the Commission believes that the costs of realigning contracts should approximately equal the benefits of the realignment.

While many of the LDCs, state commissions, and consumer advocates suggest various regulatory devices for shifting a substantial portion of the GSR costs away from the customers for whom the gas supply was secured and the customers that will receive the benefit of improved open access transportation service, no one presents any good reason for doing so. They generally allege that since Order No. 636 will benefit all segments of the gas industry, all segments should bear the costs. The Commission believes that the benefits of Order No. 636 indeed will be widespread. Furthermore, the costs of restructuring will be borne in one way or another by all that participate. But the question here is, who should bear the specific category of gas supply realignment costs?

All of these requests are based on two premises (1) that Order No. 636 will give rise to potentially enormous GSR costs that would not have been incurred but for Order No. 636, and (2) that it is unfair to require recovery of these costs exclusively from the firm customers for whom the pipelines originally contracted to purchase the gas supplies, and those who will avail themselves of the upgraded, open access transportation services. The Commission does not accept either of these premises.

The 100 percent recovery policy of Order No. 636 provides that, upon full compliance with the rule, pipelines will be entitled to recover their prudently incurred GSR costs necessary to reform gas supply contracts in response to customer purchasing decisions during restructuring. The Commission does not

[***] Alabama Gas and Illinois Power also argue that the Commission erred by not assessing the magnitude of the transition costs and considering whether they were outweighed by the competitive benefits.

accept the premise that the cost of gas under a contract reformed to reflect current demand, together with the costs of reforming that contract, will necessarily exceed the long-term cost of gas under the same contract if it were not reformed.

While pipelines may make lump sum payments to reform such contracts, and such costs will be labeled "Order No. 636 transition costs," the pipelines will presumably receive more favorable prices or other valuable consideration resulting from contract reformation. If the Commission had not issued Order No. 636, and the contracts in question were not reformed, the pipeline would likely have had to pay the higher prices or be subject to the less favorable contract terms, and, assuming the costs were not excessive due to fraud, abuse, or similar grounds, the pipeline (under a pre-Order No. 636 regime) would be legally entitled to recover the prudently incurred costs of such contracts from its customers. Thus, the pipeline's sales customers and former sales customers that will share the costs of realigning gas supply contracts will also stand to benefit from the realignment of those contracts. Based upon the Commission's substantial experience to date, reformed contracts are considerably more market responsive. Even if the pipeline's former sales customers choose to reduce or terminate their sales entitlements under existing contracts and purchase gas supplies from nonpipeline merchants, the more favorable terms under the pipeline's realigned contracts will benefit them indirectly by affecting the prices that competing merchants can charge.[459]

Order No. 636 does not ask producers to forego the benefits of their gas sales contracts that were entered into on terms that were presumably reasonable at the time. Generally, the Commission has no jurisdiction over the prices or terms of pipelines' contracts with producers.[460] The Commission in Order No. 636 does not seek to deprive pipelines of a reasonable opportunity to recover the costs of realigning their gas supply contracts under which full recovery of gas costs was guaranteed by section 601(c) of the NGPA and the Commission's PGA regulations. None of the requests for rehearing is persuasive that such steps should be taken.[461] For one thing, pipelines have already absorbed a substantial amount of take-or-pay and realignment cost under Order Nos. 500 and 528. The Commission's records indicate that as of June 30, 1992, pipelines have made filings under those orders concerning nearly $10 billion, and have agreed to absorb nearly $3.6 billion of such costs (36.6 percent), and sought to passthrough the balance of nearly $6.4 billion (63.4 percent) to consumers. Of the amount to be passed through, approximately $3.5 billion has been directly billed (55.5 percent), and approximately $2.8 billion (44.5 percent) has been billed through a volumetric surcharge. However, the Commission will require pipelines to recover 10 percent of their prudently incurred GSR costs through their interruptible transportation rates under their Part 284 blanket certificate, as described below, thus further spreading some of those costs to the pipeline's interruptible sales and transportation customers, as discussed below.

b. *Contract assignments and prudence reviews.* The Wisconsin Distributor Group asserts that if the Commission ever hopes to get Order No. 636 off the ground, it must develop incentives to minimize transition costs. The Wisconsin Distributors contend that, absent some improvement in Order No. 636's treatment of transition costs, many LDCs will be pushed back to pipelines (because they cannot afford to leave) rather than to a competitive marketplace. The Wisconsin Distributor Group also argues that prudence review will not be a meaningful remedy. They assert that prudence cases are very difficult, complex, expensive, and time-consuming, and the party whose actions are in question controls all the documents. Furthermore, they assert that the Commission has not generally pursued allegations of improper pipeline purchasing practices with vigor.

Nor does the Wisconsin Distributor Group find solace in contact assignments as a remedy to mitigate transition costs, because in most instances, they assert, the purchaser would take over a non-market responsive gas contract. In that event, they conclude, the purchaser's gas costs would increase or remain high, and the purchaser would be precluded from meaningful access to competitive gas markets for the life of the assigned contracts. The Wisconsin Distributor Group urges the Commission to afford pipelines and their customers far greater latitude to negotiate GSR cost recovery mechanisms that will provide effective incentives to producers and pipelines to minimize those costs.

The NASUCA also questions the potential for pipelines to mitigate GSR costs by making assignments of their unneeded gas supply contracts to their customers. NASUCA asserts that a pipeline will have no need to jettison its gas supply contracts with competitive, market-based prices—only their non-market responsive contracts. Thus, they argue, captive LDCs may be presented with a Hobson's choice: either pay for non-market responsive contracts through transition costs or pay for them through contract assignment. NASUCA suggests that the Commission require pipelines to adjust their prices under contracts they seek to directly assign to their customers in order to reflect market-based prices (with any necessary adjustment to reflect the long-term firm nature of the contract) by exercising their rights under any "FERC out" or "government out" clauses. According to NASUCA, Order No. 636 creates a situation for pipelines that makes it financially impossible for them to perform under existing contracts because the Commission has permitted the abrogation of the pipeline/customer sales contracts that initially supported the producer contracts. Therefore, they argue, pipelines' diligence in asserting their rights under any such "FERC out" or "government out" clauses should be a standard for establishing their prudence in incurring any GSR costs.

A pipeline's Part 284 transportation customers, including formerly, bundled firm sales customers, will be presented with various choices for arranging for gas supply and enhanced transportation options when the pipeline implements Order No. 636. The Wisconsin Distributor Group and NASUCA correctly point out that none of the choices avoids the prudently incurred costs of gas supply under the pipeline's existing portfolio of contracts. But, the Commission is attempting to provide pipelines and their customers with equitable means to effectuate a transition, not some device for avoiding existing contracts with no reasonable provision for compensation. Pipelines and producers are encouraged to offer assignments of their unneeded gas supply contracts, and if they do, are required to make such offers on a

[459] Customers that have never been sales customers of the pipeline may also benefit from the availability of the pipeline's portfolio of realigned gas contracts, either by purchasing gas from the pipeline, or as a result of the effect of the prices offered by the pipeline on prices of competing merchants.

[460] The Commission's jurisdiction over most producer/pipeline supply contracts has already been removed under the NGPA. As of January 1, 1993, there will be no remaining vestiges of such jurisdiction by virtue of the Decontrol Act.

[461] Accordingly, the Commission will not respond to each specific proposal for mechanisms to shift GSR costs to producers or pipelines—such as conditioning producer access to open access transportation on making concessions in contract reformation, or requiring pipeline absorption of some percentage of those costs—because the arguments for shifting the costs are not persuasive.

nondiscriminatory basis. But a pipeline's customers are not required to accept such assignments if they conclude that other means of paying the pipeline's GSR costs are more advantageous.

Prudence reviews are intended to provide a meaningful remedy for imprudence, not to force absorption of costs by pipelines for decisions that were prudent under the circumstances. The Commission's past review of prudence challenges is criticized because the Commission has failed to find imprudence in circumstances where the record did not warrant such a finding. But the Commission's responsibility is to find imprudence only when it is shown. Given the importance of prudence challenges in the future, the Commission will consider prudence challenges in a timely and vigorous manner. Simply put, the Commission will carefully examine prudence challenges in proceedings to recover Order No. 636 transition costs to ensure that those costs have been minimized.

If pipelines have rights under their producer supply contracts to adjust the price or terms of those contracts, of course they should exercise those rights for the benefit of their customers. A failure to do so would clearly be imprudent. However, the Commission cannot construe what the contractual rights of parties may be under contract clauses that are not before us, and indeed, the Commission's jurisdiction to construe contracts between pipelines and producers is quite narrow.

c. *Shifting costs to producers.* According to the NASUCA, the Commission has authority under Section 5 of the NGA to abrogate the non-market responsive contracts between pipelines and producers, and should place producers with jurisdictional contracts on notice that any failure to renegotiate such contracts in good faith could result in abrogation. The Commission's decision not to exercise Section 5 abrogation authority in Order Nos. 500–H and 500–I is not dispositive, they argue. Under those orders, the parties sought to circumvent the take-or-pay clauses of producer/pipeline contracts with claims that competitive conditions made compliance with the take-or-pay provisions difficult. However, according to NASUCA, economic and competitive trends in the industry do not form the basis for invoking Section 5 authority against producer contracts in restructuring proceedings. Rather, they argue, the Commission's use of that authority to abrogate contracts between pipelines and their customers mandates equal treatment on the pipelines' supply side.

The Tennessee and Columbia Small Customers argue that a producer's access to additional firm transportation and storage capacity that becomes available as a result of restructuring should be linked with the reformation of the producer's existing gas supply contracts. This linkage is justified, according to these customer groups, because the producers will be enabled to compete in markets from which they are currently excluded as a result of the pipelines' competitive advantages. Furthermore, they assert, implementation of the SFV rate design is likely to increase producer netback prices by shifting costs out of the pipelines' usage charges.

These small customer groups also say that producers will not accept settlements that approach the level of discounts they reportedly agreed to in connection with take-or-pay contract settlements under Order Nos. 500 and 528, because the uncertainties and risks surrounding the enforcement of gas sales contracts at the time of those negotiations no longer exist. Producers may even be able to extract premiums for contract reformation, they argue, because the timetable adopted for compliance with Order No. 636 will severely disadvantage pipelines in negotiating buydowns and buyouts, and may force them to offer "sweeteners" even to renegotiate market-clearing contracts.

In Order No. 636, the Commission stated that pipelines must take all possible steps to minimize transition costs in the course of realigning their gas supply contracts. Many of the LDCs, state commissions, and consumer advocates (and even one pipeline [462]) urge the Commission to afford pipelines additional commercial leverage in these negotiations to extract concessions from producers. Their unstated premise is that if prices under existing, valid, long-term gas supply contracts are higher than current market prices, producers should have to relinquish some part of their benefits under those contracts as a remedy.

If a pipeline entered into an existing gas supply contract in a prudent fashion, even though prices and terms in the market are now more favorable, the Commission strongly urges the pipeline and its supplier to aim for a fair adjustment of the terms of the contract to bring it into line with current and future market conditions. Moreover, as the Commission stated in Order No. 636, the added presumption of prudence afforded to costs filed for recovery under Order Nos. 500 and 528 does not apply to GSR costs.[463] Thus, pipelines have an incentive to renegotiate to minimize costs. And if past practices are a future indicator, producers will recognize that they may not receive the full benefit of a reformation bargain if part of the pipeline's costs are later judged to be imprudent.

d. *Spreading costs to interruptible and 7(c) shippers.* The Iowa, Missouri and Wisconsin Commissions question the wisdom of allowing GSR costs to be recovered through a reservation fee surcharge or exit fee, neither of which will be applicable to interruptible transportation service or transportation under individual NGA section 7(c) certificates. They assert that historic sales customers that might elect to leave the system to pursue a least-cost purchasing strategy will be discouraged from doing so if pipelines are permitted to impose exit fees. A customer leaving one system to purchase gas on another will have to pay an exit fee on the first and reservation charge on the second. They also argue that permitting a pipeline to recover its GSR costs primarily from one group of customers, the LDCs that historically were resellers, will handicap those customers in competing with the pipeline as merchant, independent marketers, and producers—who do not bear these costs—in the competition for sales to prime, high-load factor users. The Iowa, Missouri, and Wisconsin commissions conclude that the solution is obvious: spread transition costs among the full universe of users of the pipeline's services on a strict volumetric basis.

The CPUC also argues that there is no reason why the pipelines' interruptible transportation customers should not have to pay a part of the transition costs, and that excusing them from these costs is a radical and arbitrary departure from the policies of Order No. 528. Furthermore, the CPUC asserts, by singling out firm transportation customers to pay the transition costs, the Commission has encouraged many customers to become interruptible transportation customers, rather than participate in the firm capacity

[462] Tenneco proposes, *inter alia*, that in order to provide an incentive to producers to make concessions in the renegotiation of uneconomic contracts, pipelines should be permitted to collect an additional demand or commodity charge for transportation of gas purchased from producers that have refused to renegotiate such contracts. The Commission has repeatedly rejected such conditioned access in the past and will do so here.

[463] "[T]he policies of Order Nos. 500 and 528 * * * will generally not be applicable to recovery of gas supply realignment costs attributable to this rule * * *." "[Pipelines] will not be afforded protection from challenges to their prudence in this matter." Order No. 636 at p. 30,460.

reallocation programs, thus further concentrating the burden of these costs on firm transportation customers such as LDCs. Like the other state commissions, the CPUC also recommends a volumetric surcharge on transportation service as the mechanism for recovery of GSR costs, asserting that on many pipelines, the amounts of volumetric surcharges under Order Nos. 500 and 528 have diminished to insignificant levels (4¢ / dth for El Paso, 1¢ / dth for Transwestern), and arguing that additional surcharges would not jeopardize producers' revenues and production.

The National Association of Gas Consumers asserts that GSR costs will be caused by decreases in the volume of gas purchased, not the peak demands. Therefore, high load factor customers will cause more gas supply realignment costs per unit of demand, but will pay the same charge per unit of demand. The National Association of Gas Consumers argues that this situation should be remedied by including any allowed transition costs in the transportation commodity charge.

The Commission generally follows the principle that assessment of costs should reflect cost causation principles. The prescribed surcharge on reservation fees for firm transportation under a pipeline's Part 284 blanket certificate is an appropriate means of recovering the bulk of GSR costs, because such a surcharge spreads the costs over a broad group of the pipeline's customers that will benefit from the improved quality of transportation mandated by the final rule. The Commission also recognizes that to effectuate an equitable transition to a more competitive market, it is necessary to allow short-term assessments to be spread over a broader customer base. On rehearing, therefore, the Commission has decided to require pipelines to recover 10 percent of their prudently incurred GSR costs through their interruptible transportation rate for interruptible service under their Part 284 blanket certificates. Pipelines must therefore allocate 10 percent of their GSR costs to their interruptible service to be recovered in their interruptible rates, not in the form of a surcharge, but as a cost allocated to that service. Furthermore, in order to avoid double charging interruptible transportation customers, pipelines must exclude the GSR surcharges on the firm reservation fee in calculating the amount of fixed costs to be recovered through interruptible rates, as in, for example, the derivation of an interruptible rate from the firm reservation fee. This modification of the recovery mechanism for GSR costs will permit collection of a part of the GSR costs from the pipelines' open access interruptible customers—customers that would not have been subject to assessment of any such costs under the final rule.

The Commission recognizes that the uncertainties surrounding any estimates of interruptible throughput after restructuring may make it difficult to design interruptible rates that will assure pipeline recovery of the GSR costs. But the Commission does not intend for pipelines to have to absorb the portion of GSR costs assigned to interruptible transportation, and encourages the pipelines and the parties to the restructuring to be creative in fashioning rate mechanisms, such as an appropriate true-up mechanism, that provide a reasonable opportunity for pipelines to recover (but not overrecover) those costs.

Assessing 10 percent of the transition costs to interruptible rates will be short term, not a permanent feature of pipelines' rates, and constitute a pragmatic adjustment to Order No. 636. The Commission finds this to be a reasonable transitional trade-off in light of the rule's long-term benefits.

2. What Constitues Gas Supply Realignment Costs

The Illinois Commerce Commission requests clarification of what constitutes a pipeline's GSR costs, whether this cost is the difference between the cost of gas under the pipeline's existing portfolio and the cost of a portfolio of gas with similar volumes and durations if purchased today—*i.e.*, the amount by which the portfolio is above market—or the cost of buying out all of the pipeline's above-market contracts. If the latter view is taken, the Illinois Commerce Commission asserts that pipelines will be able to reap a windfall by divesting themselves of all abovemarket contracts, billing their customers for those buy-outs, and marketing the gas under their remaining contracts (with prices at or below market) at market-based prices. The Northern Distributor Group argues that a pipeline's costs of realigning its above-market contracts should be offset against the capitalized or present value of the below-market contracts it retains or assigns to an affiliate.

The Iowa, Missouri, and Wisconsin Commissions question whether a pipeline will be able to "cherry-pick" among its most favorable supply contracts and pass through the costs of selective buyouts of its most onerous above-market contracts. If so, the state commissions assert, capacity users will bear the costs of the contracts that the pipeline's management elects to shed, and the pipeline, as a marketer, will be free to market a choice mix of gas under the better of its contractual arrangements. Philadelphia Electric suggests that a substantial portion of the GSR costs should be recoverable through a volumetric surcharge to prevent pipelines from reforming their portfolio of supply contracts to below market prices and passing all of the costs of such reformations through as demand surcharges.

Pipelines may not use the reservation fee surcharge to recover GSR costs as a tool for reducing their gas supply portfolios to below-market price levels. There may be disputes about how much cost a pipeline may prudently incur to realign its supply portfolio, and to what extent its retained portfolio of contracts should serve to reduce its claims for GSR costs. The Commission will consider these concerns on a case-by-case basis as they arise. In the meanwhile, pipelines must act with prudence, good faith, and due regard to their customers' best interests in this matter.

The Iowa, Missouri, and Wisconsin Commissions also suggest that Order No. 636 failed to establish a "bright line" between GSR costs and take-or-pay costs recoverable (with partial pipeline absorption) under the guidelines of Order No. 528.[444] They argue that the ambiguities of the Commission's discussion of this distinction invite extreme positions and posturing in individual cases, as pipelines seek to recover everything but the kitchen sink under Order No. 636, and customers seek to exclude virtually everything. Tenneco asks for clarification that the costs of realigning gas supply contracts incurred after the issuance of Order No. 636, but before the Commission's approval of the pipeline's compliance filing will qualify for 100 percent recovery.

According to the Kentucky PSC, the Commission properly recognized that pipeline actions to restructure their out-of-line gas purchase contacts to reflect market conditions are not, or should not have been, a new activity, and can by no means be attributed solely to the restructuring requirements of Order No. 636. The Kentucky PSC urges the Commission to make clear that costs and liabilities related to service provided prior to the effective date of

[444] Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs, 53 FERC ¶ 61,163 (1990).

restructuring cannot qualify as Order No. 636 transition costs.

The CPUC argues that the eligibility standard for recovery of GSR costs under Order No. 636 is virtually meaningless, because no basis was provided for distinguishing GSR costs resulting from Order No. 636 from costs that arise independently of that order. The CPUC asserts that PGT has never filed with the Federal Energy Regulatory Commission to recover take-or-pay settlement costs under the equitable sharing mechanism, but is presently faced with numerous take-or-pay types of lawsuits and claims. Moreover, CPUC argues that pipelines such as PGT still have take-or-pay exposure because they have not been diligent during the past ten years in reforming contracts and shedding gas supplies, and is concerned that Order No. 636 will provide an opportunity for such pipelines to evade the equitable sharing mechanism.

Maryland People's Counsel is also concerned that the greatest GSR costs will be incurred by pipelines that have been the most recalcitrant or reluctant in restructuring their supply contracts under Order Nos. 500 and 528. Therefore, the customers who have suffered the financial consequences of their earlier lack of access to competitively priced markets, and their pipeline suppliers' reluctance to allow conversion to transportation, will not bear the full financial brunt of mandatory restructuring and the 100 percent passthrough of their pipelines GSR costs. Maryland People's Counsel concludes it would be grossly unfair to assure 100 percent passthrough of take-or-pay buyout and buydown costs to pipelines that previously failed to take the necessary steps to reform their contracts.

Tejas urges the Commission to clarify that pipelines were obligated to buydown their gas portfolios to a competitive market responsive level under Order No. 436, and to flow those transition costs through under Order No. 528, and that only those additional costs incurred by pipelines to reduce the size of their market responsive portfolios to adjust to a smaller unbundled sales market should be defined as properly recoverable under Order No. 636.

Obviously there are some similarities between take-or-pay settlement costs and GSR costs. On the other hand, there are important differences that now warrant the different policies on absorption. Order No. 436 provided strong incentives to, but did not compel, pipelines to offer open access transportation service, which led in turn to increased take-or-pay liabilities. Under Order Nos. 500 and 528, pipelines were encouraged, although not compelled, to absorb some of the costs of entering into contracts that gave rise to that liability. The policies of Order Nos. 500 and 528 were designed to fairly apportion the substantial portion of buyout and buydown costs without attempting to ascribe blame to any one segment of the industry.

Now, Order No. 636 requires pipelines to restructure their services to afford all consumers with opportunities to fully realize the benefits of a competitive market in natural gas. Pipelines have no choice, however, but to implement the restructuring required under Order No. 636. Pipelines must realign their existing portfolio of gas supply contracts to adjust to their customers' purchasing decisions and to greater competition from other merchants. Order No. 636 requires pipelines to restructure their services and operations to avail their competitors unprecedented access to the pipelines historic sales customers, and permits those sales customers the choice of reducing their obligations under their existing sales contract. In these circumstances, it is not equitable to require pipelines to absorb further the costs that result from those requirements.

Guidelines and policies will be developed to distinguish precisely between Order No. 528 costs and the costs attributable to Order No. 636 costs as the Commission addresses disputes in concrete cases.[465] There may be circumstances that militate against 100 percent recovery of the costs of a contract reformation under Order No. 636, and, as the Commission said in Order No. 636, where the total sum of GSR costs is partially eligible and partially ineligible for 100 percent recovery, the parties should devise an appropriate allocation among the two recovery mechanisms.

Moreover, the Commission will clarify that the use of a surcharge on transportation rates to recover GSR costs will be limited to such costs that arise as a result of customers' decisions as a result of the restructuring proceedings. If sales customers reduce or terminate their sales entitlements upon expiration of their contract terms after restructuring, and the pipeline finds it necessary to further realign supply contracts, the costs of such realignments will not be recoverable through Order No. 636 surcharges on transportation rates, but only through market-based sales rates. Thus, after restructuring is complete, the pipeline should seek to address any future realignment costs in the gas supply agreement with its gas purchasers.

Some parties request that the Commission provide an option for pipelines to voluntarily absorb some portion of their GSR costs to avoid prudence challenges. Nothing in Order No. 636 precludes the pipeline from doing this on a voluntary basis, and the Commission encourages all parties to be flexible in dealing with transition cost recovery issues.[466]

3. Exemptions From Demand Surcharge on Firm Transportation

NGSA requests rehearing of the decision to have surcharges for GSR costs imposed on the reservation fees for all transportation under a pipeline's part 284 blanket certificate. NGSA notes that transportation rates for service under individual Section 7(c) certificates are not subject to the surcharge, presumably because the provision of such services is unrelated to any gas supply realignment costs. However, NGSA argues that firm transportation service under part 284 that commences after a pipeline completes restructuring, and is unrelated to service conversions by the pipeline's sales customers should also be exempt from GSR cost surcharges.[467] According to NGSA, to impose surcharges on such service departs from the principle that cost responsibility should follow cost causation.

The Virginia Electric Power Company (VEPCO) argues that the firm transportation service it receives from Columbia Gas Transmission Corporation under Columbia's part 284 certificate should be exempt from the surcharge for GSR costs because VEPCO was never a sales customer of Columbia, and the facilities used to provide the service were constructed, with an contribution in aide of construction from VEPCO, pursuant to a case-specific section 7(c) certificate. Therefore, VEPCO argues, its service did not displace pipeline sales, and it

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[465] *See, e.g.*, Florida Gas Transmission Company, 59 FERC ¶61,413 (1992) (gas supply realignment costs incurred in December 1991 and January 1992 not eligible for recovery under Order No. 636 recovery mechanisms).

[466] Any costs that would qualify for recovery as GSR costs could be filed for recovery under Order No. 528. Since challenges to a pipeline's prudence in the incurrence of take-or-pay costs are generally avoided when they file for recovery under Order No. 528, pipelines continue to have, at their election, this option.

[467] American Paper Institute argues that GSR costs are attributable solely to those currently being served by the pipelines' merchant function, and the responsibility for such costs should rest solely with those existing sales, customers. See also, Florida Power and Light Company's (Florida Power) request for rehearing.

was not the beneficiary of capacity made available as a part of Columbia's transition from merchant to transporter. Both NGSA and VEPCO point out that many of the firm transportation transactions initiated in the past few years under part 284 blanket certificates are identical in all respects with firm transportation initiated earlier under individual section 7(c) certificates, and argue that they would have been certificated under individual certificates but for the Commission's policy against granting such certificates to pipelines that hold part 284 blanket certificates.

On the other hand, Philadelphia Electric seeks rehearing of the decision to exempt long-haul market-area section 7(c) transportation from any transition cost responsibility. Philadelphia Electric asserts that shippers under individual section 7(c) certificates will reap the same benefits under Order No. 636 as shippers under part 284. Philadelphia Electric asserts that the Commission has consistently required a contribution to take-or-pay costs by individual section 7(c) shippers,[468] and storage customers,[469] and argues that the apparent departure in Order No. 636 from established Commission policy favoring the broadest distribution of such costs among similarly situated customers is unexplained and arbitrary.

The Commission recognizes that any prospective allocation of GSR costs will depart somewhat from traditional cost causation principles. However, given our limited legal flexibility,[470] and the fact that all part 284 shippers will benefit from this rule, GSR costs will not be recovered exclusively from former sales customers. If recovery of such costs were so limited, very few sales customers would find it feasible to choose a nonpipeline merchant. The choices that the final rule offers would be diminished, and the benefits of increasing competition at the wellhead would not be fully realized. The Commission sought in Order No. 636 to authorize recovery of these costs from a broader class of customers, namely, all that utilize firm transportation service under a pipeline's part 284 blanket certificate, and in this order will broaden that class even further to include part 284 interruptible transportation customers. This class will include current sales customers, former sales customers, customers that reduce or terminate sales entitlements during restructuring, and those that do not. It will also include firm and interruptible transportation customers that have never been, and will probably never be, sales customers of the pipeline. However, in the Commission's judgment, this continues the general goal of spreading the costs of industry restructuring.

Moreover, surcharges and exit fees to recover GSR costs will not be permanent features of a pipeline's rate structure. They are one-time-only or short-term assessments necessary to effectuate the transition to a more efficient, competitive natural gas market. Under the circumstances, the Commission believes that spreading the costs of the transition over a broader group of customers than those whose specific choices in restructuring give rise most directly to the pipeline's incurrence of those costs is equitable.

On the other hand, transportation service under individual section 7(c) certificates is not directly affected by Order No. 636. The provision of such service will not give rise to any Order No. 636 transition costs, and the upgraded, open access transportation services required by the final rule generally will not benefit shippers under individual section 7(c) certificates. Accordingly, the Commission will deny Philadelphia Electric's request for rehearing.

4. Recovery (or Refund) of Account No. 191 Balances

ANR requests clarification of the Commission's statement in Order No. 636 that recovery of Account No. 191 costs will be limited to costs accrued after July 31, 1991, the issuance date of the Notice of Proposed Rulemaking in this proceeding, based on the Commission's understanding of the court's decision in *Transwestern Pipeline Co.* v. *FERC*.[471] ANR argues that the Commission's action in eliminating the purchased gas adjustment (PGA) mechanism in Order No. 636 is distinguishable from the situation in *Transwestern* where the pipeline voluntarily sought direct bill recovery of the balance in its Account No. 191. ANR argues for 100 percent recovery of any balance in its Account No. 191 account when its PGA mechanism is eliminated without regard to any "cut off" date for accrual of its purchased gas costs.

Carnegie seeks clarification that pipelines will not be limited to recovery of Account No. 191 costs *incurred* after July 31, 1991, but that the Commission's reference to costs "accrued" after that date means that pipelines may recover the accumulated balance after that date, regardless of when the costs were incurred. According to Carnegie, a substantial portion of the Account No. 191 balances of many pipelines is attributable to costs incurred before July 31, 1991, and preventing pipelines from direct billing those costs would impose severe losses. Furthermore, they argue, an interpretation limiting pipelines' recovery of such costs would be inconsistent with other statements in Order No. 636 and a statement in an April 28, 1992 letter from Chairman Allday to the President describing Order No. 636 as permitting pipelines "to direct bill *any* unrecovered balances in their purchased gas accounts upon converting to market-based pricing for sales."[472]

Peoples Natural Gas argues that under the decision in *Transwestern*, a pipeline may only direct bill Account No. 191 costs that were accrued into the account after the Commission has explicitly adopted a formula that qualifies as a rate under section 4 of the NGA and indicates when it will take effect. According to Peoples Natural Gas, the date of issuance of the NOPR in this proceeding cannot serve as notice of a direct billing formula sufficient to satisfy the filed rate doctrine. The proposal was simply a proposal, Peoples Natural Gas argues, to authorize direct billing as a generic concept, and did not announce any particular allocation methodology or formula, so that customers were not informed in even the most rudimentary way of the consequences of direct billing by any particular pipeline.

When a pipeline terminates the operation of its PGA mechanism, its Account No. 191 balance will either be positive or negative. A positive balance in a pipeline's Account No. 191 is a reflection of unrecovered costs of purchasing gas for a prior period. Customers that purchase gas from a pipeline with a PGA mechanism in its tariff are on notice that they are potentially liable in future periods for payment of unrecovered purchased gas costs that are attributable to current service. If it is negative, the sales

[468] Citing, *inter alia*, Transcontinental Gas Pipeline Corp., 55 FERC ¶ 61,339 at p. 62,004 (1991).

[469] Citing CNG Transmission Corp., 51 FERC ¶61,158 at p. 61,493 (1990).

[470] *See* Associated Gas Distributors v. FERC, 893 F.2d 349 (D.C. Cir. 1989)(AGD–II), *cert. denied sub nom.* Berkshire Gas Company v. Associated Gas Distributors, 111 S.Ct.277 (1990) (use of purchase deficiency method to allocate take-or-pay costs violates filed rate doctrine); Columbia Gas Transmission Corp. v. FERC, 831 F.2d 1135 (D.C. Cir. 1987) (direct billing of deferred production-related costs under order No. 94 violates filed rate doctrine); and Transwestern Pipeline Co. v. FERC, 897 F.2d 570 (D.C. Cir. 1990) (direct billing of unrecovered gas costs in Account No. 191 when PGA mechanism had been terminated violated filed rate doctrine).

[471] 897 F.2d 570 (D.C. Cir. 1990).

[472] CNG makes the same arguments in a request for clarification.

customers are entitled to a refund of the pipeline's overrecovery of its purchased gas costs in prior periods. As long as the PGA mechanism remains in place, refunds are made pursuant to the terms of the mechanism itself. When it is terminated, they are made pursuant to any provisions of the pipeline's tariff that provide for disposition of the Account No. 191 balance, or if there are no such provisions, pursuant to Commission order.

The Commission argued in the *Transwestern* case that if a PGA mechanism is terminated leaving a positive balance of unrecovered gas costs in Account No. 191, the pipeline should be entitled to render a final bill to its sales customers to complete recovery of its gas costs for service rendered in prior periods, even if the pipeline's tariff did not have specific provisions for final disposition of such balances in effect when such costs were accrued. In the Commission's view, Transwestern's PGA mechanism, by its very nature, provided adequate notice of customers' potential liability for a positive balance in Account No. 191 upon termination of the mechanism. The court disagreed, holding that the PGA regulations promulgated in 1972 and certain more recent cases authorizing direct billing of Account No. 191 balances did not provide sufficient notice of customers' liability for such direct billing to satisfy the filed rate doctrine. Accordingly, the court disallowed recovery of Transwestern's unrecovered purchased gas costs that accrued before the date the Commission approved Transwestern's certificate providing for such direct billing upon termination of its PGA mechanism.

The Commission expects pipelines will terminate their PGA mechanisms under Order No. 636 and initiate market-based pricing of gas in order to remain competitive in the sales market after full compliance with restructuring.[473] Accordingly, and in light of the court's decision in *Transwestern*, the Commission gave notice in the NOPR in this proceeding, and again in Order No. 636, to all sales customers of affected pipelines of their liability for any unrecovered balances in those pipelines' Accounts No. 191 upon termination of their PGA mechanisms in connection with restructuring.

Before the Commission's decision in *Transwestern*, pipeline sales customers may not have known that they would be liable for direct bills upon termination of a PGA mechanism. It was the absence of notice of such potential liability, and not the absence of a specific formula for determining the amount of the future direct bills that the court found violated the filed rate doctrine. However, the Commission considers the notice of the Commission's policy on this issue in the NOPR to be adequate notice to permit direct billing of all costs that accrue after that date by all pipelines affected by this proceeding. Furthermore, the Commission does not anticipate that pipelines will have any unrecovered gas costs that accrued before July 31, 1991, by the time they come into full compliance with Order No. 636 and terminate their PGA mechanisms. Most pipelines have already recovered their pre-July 31, 1991 costs, and for those that have not, there is ample opportunity to recover such costs through the operation of their PGA mechanisms before they implement their restructuring filings in time for the 1993–1994 winter heating season.

The Commission stated in Order No. 636 that pipelines must permit customers to pay the direct bill for Account No. 191 costs in either a lump sum, over twelve months, or over some other reasonable period of time, at the customer's option. K N Energy asks for clarification that pipelines will be able to collect carrying charges if the payment of the principal amount of the direct bill is amortized over a period of time. K N Energy asserts that the Commission's consistent practice has been to permit recovery of carrying costs.[474] The Commission grants the requests for clarification by K N Energy. A pipeline will be entitled to collect carrying charges on the unrecovered balance of a direct bill that a customer elects to pay in installments at the same rate that would apply to unrecovered balances in Account No. 191.

United Distribution Companies seek clarification that customers may challenge the level and makeup of the balance remaining in Account No. 191 on its termination apart from the issue of the pipeline's prudence in its purchasing practices. They suggest that a pipeline, recognizing that it will have an opportunity to recover prudently incurred Account No. 191 costs, may be tempted to sell its gas supplies at low cost, thereby inflating the Account No. 191 balance. This would not be prudent, according to United Distribution Companies, and customers should have the right to challenge the content of Account No. 191 in such an event. Northern Indiana argues that pipelines should not be allowed to direct bill Account No. 191 balances to its former sales customers that reflect the costs of gas incurred to balance receipts and deliveries of its transportation customers.

The Commission grants these requests for clarification. Customers of a pipeline terminating its PGA mechanism and proposing to direct bill the unrecovered gas costs in its Account No. 191 will have the same rights to challenge the makeup of contents of the account, including costs attributable to the pipeline's transportation service, as they would have in a review of any annual PGA filing.

The Tennessee and Columbia Small Customers assert that recovery of commodity-related Account No. 191 costs based on gas purchases for the twelve months preceding the effective date of service under the unbundled sales certificate, and the recovery of demand costs based on CD on the day before the effective date of restructured services, will have a disproportionate and unfair impact on small sales customers, because many of the larger customers have converted to transportation in the past several years. The small customer groups argue that unrecovered PGA costs should be recoverable from all customers who were sales customers of the pipeline during the period the costs were actually accrued. The Commission has already indicated in Order No. 636 that pipelines or other parties could propose other mechanisms for allocating the Account No. 191 costs to be direct billed, if the described mechanism is inequitable.[475] Accordingly, there is no need to grant rehearing on this issue.

5. Challenges to a Pipeline's Prudence

In Order No. 636, the Commission stated that a review of a pipeline's prudence in incurring GSR costs would include an examination of whether the contract terms were reasonable in light of the market conditions existing when the contract was negotiated, renegotiated or terminated. NGSA maintains that the language is confusing and could be interpreted to mean that the prudence of contracts renegotiated under the provisions of Order No. 500 or 528 could be challenged in connection with their reformation a second time under Order No. 636. Since pipelines that filed for recovery under Order No. 500 or 528 absorbed a portion of the contract renegotiation costs involved, and were afforded a presumption of prudence in the incurrence of such costs,

[473] However, pipelines are not prohibited from negotiating cost-tracking systems with their customers.

[474] Citing, *inter alia*, Trunkline Gas Company, 58 FERC ¶ 61,340 (1992).

[475] Order No. 636 at p. 30,458, n. 283.

NGSA argues that the renegotiated contracts should also be accorded a presumption of prudence in proceedings to recover GSR costs under Order No. 636.

In Order No. 636, the Commission stated that it was not proposing a new prudence standard for review of a pipeline's GSR costs, but also said that its primary objective in any prudence review of such costs would be to determine that the total amount is as minimal as possible. K N Energy, Inc. is concerned that the "as minimal as possible" standard is not the Commission's historical prudence standard of the "reasonable man" test, and requests the Commission to clarify that the applicable test in prudence reviews of GSR costs will be the "reasonable man" test set forth in *New England Power Company*.[476] If the Commission declines to so clarify, K N Energy seeks rehearing, claiming that the Commission has impermissibly deviated from its consistent practice without reasonable explanation. Marathon raises the same issue, arguing that the Commission must resolve how a contract once deemed reasonable is now subject to a reassessment on the same issue.

Tenneco suggests various regulatory incentives for producers to make concessions in reforming their supply contracts with pipelines. If the Commission does not implement any of these incentives, and does not permit pipelines to implement any of them, Tenneco asks the Commission to explicitly find that pipelines are prudent if they are able to negotiate a buyout or buydown that is equal to or less than a dollar for dollar settlement.

The Commission does not intend for challenges to a pipeline's prudence in incurring GSR costs to reopen prudence issues that have already been resolved. If a contract is renegotiated under Order No. 636 that had not been renegotiated under Order No. 500 or 528, interested parties may challenge the pipeline's prudence in entering into the contract in the first place, the prudence of its purchasing practices under the contract (assuming these issues have not been previously litigated), and the pipeline's prudence in renegotiating the contract under Order No. 636. However, if recovery of the costs of renegotiating a gas supply contract has been allowed under a take-or-pay filing made pursuant to Order No. 500 or 528, the renegotiation of the contract has been found to be prudent. If the same contract is renegotiated again under Order No. 636, interested parties may challenge the pipeline's prudence in the latter renegotiation, but not the former.

The Commission is not changing its historic standard or test for determining the prudence of a pipeline in purchasing gas supplies. However, as the Commission said in Order No. 636, prudence dictates that pipelines in restructuring proceedings negotiate vigorously and at arms length with their producer/suppliers in a *bona fide* effort to minimize transition costs.[477] A pipeline whose prudence is challenged will be judged on the basis of such effort.

6. GICs and Recovery of Gas Supply Realignment Costs

LILCO suggests an additional element for determining the prudence of a pipeline's GSR cost incurrence where the pipeline currently has a gas inventory charge (GIC), namely, whether the pipeline prudently used the dollars it has collected from the GIC to realign its gas supply contracts and thus reduce the GSR costs resulting from restructuring under Order No. 636. LILCO argues that a pipeline should not be permitted to recover 100 cents on the dollar of GSR costs if it has not used the proceeds from its GIC collections wisely and efficiently to reduce its above-market costs.

The Kentucky PSC seeks clarification that pipelines with GICs may not include amounts spent to resolve liabilities accrued when service was provided under the GIC as transition costs under Order No. 636, because GIC mechanisms were supposed to be the sole means for recovering costs necessary to buydown or maintain existing high cost gas supply contracts.

Gas Company of New Mexico asserts that pipelines with GICs had to forego any other method of recovering gas supply costs. Therefore, it argues, any pipeline that has contracts for sales at negotiated rates that include gas inventory charges should not be permitted to charge any otherwise eligible GSR costs to GIC customers unless the customer uses rights provided in Order No. 636 to modify its contract entitlements.

Gas supply costs for which GIC charges have been collected cannot be recovered again as transition costs. For this reason the Commission prohibits a pipeline with a GIC mechanism in place from filing under Order No. 528 to recover take-or-pay costs. However, a pipeline may incur GSR costs as a result of its customers, actions under Order No. 636 that could not have been anticipated in designing the GIC and cannot be recovered through a GIC. For example, a pipeline may presently be incurring take-or-pay costs and recovering those costs with revenues from its GIC. The pipeline may need to shed the gas contract in order to be competitive in the post-restructuring world. Or the pipeline's customers may choose not to buy any gas from the pipeline after restructuring. The prudently incurred GSR costs attributable to terminating that contract would be eligible for 100 percent recovery under Order No. 636 if the pipeline demonstrates that customer actions pursuant to Order No. 636 caused the GSR costs, were not anticipated in the design of the GIC, and cannot be recovered by the GIC.

7. Small Customer Exemption, Mitigation

The Tennessee and Columbia Small Customers request that small customers be exempt from transition costs associated with restructuring under Order No. 636, particularly the costs of contract realignment and extinguishment of Account No. 191. In the alternative, they request their share of transition costs to be reduced by 50 percent in accordance with the policy for reallocating take-or-pay costs away from small customers under Order No. 528-A.[478] These small customer groups argue that they will not significantly benefit from unbundling and comparability of service under Order No. 636, that they are less able to bear transition costs than other, larger customers, and that service to small customers will not cause pipelines to incur material levels of transition costs. These groups assert that because of their purchase levels, load factor characteristics, the small size of their staffs, and the lack of time, training and experience relative to purchasing gas, they will be hard pressed to maintain the same service levels after restructuring without paying much higher rates. These groups predict that the increased rates will prompt many of their customers to switch to alternate fuels—wood, propane, kerosene, and coal—and that other customers that cannot switch will be burdened with undue economic hardship. The National Association of Gas Consumers also requests that small customers be exempt from transition costs because they will

[476] 31 FERC ¶ 61,047 at pp. 61,081–84 (1985), *aff'd. Violet v. FERC*, 800 F.2d 280, 282–83 (1st Cir. 1986).

[477] Order No. 636 at p. 30,459.

[478] Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs, 54 FERC ¶ 61,095 at p. 61,300 (1991).

not benefit from restructuring, and will be harmed by increased rates. According to this association, the Commission should state, at a minimum, that small LDCs are free to negotiate a reduction or elimination of transition costs.

In this order, the Commission has modified the final rule in several ways described above to ensure the ability of small customers to secure the benefits of restructuring and mitigate any adverse effects. In view of these significant modifications—including the shift of 10 percent of GSR costs to be recovered through part 284 interruptible transportation service—small customers should not be unduly burdened by transition costs on most pipeline systems.

8. Special Issues Concerning Downstream Pipelines

National Fuel raises several concerns about recovery of transition costs by downstream pipelines. In general, National Fuel urges that downstream pipelines should be authorized to recover 100 percent of the transition costs billed by upstream pipelines on an "as billed" basis.[479] If a downstream pipeline is direct billed by (or receives refunds from) the upstream pipeline before its own restructuring filing is implemented, National Fuel urges that the downstream pipeline should be authorized to accumulate the amounts billed or refunded for subsequent distribution when its own PGA mechanism is terminated. Conversely, National Fuel notes that PGA balance direct bills or refunds may be received by a downstream pipeline *after* its compliance filing has been acted on by the Commission. In that event, according to National Fuel, the downstream pipeline will need a PGA "trailing" mechanism or alternative flowthrough procedure to recover these amounts from (or make refunds to) its former sales customers.

Various pipelines have tariff mechanisms for tracking changes in their transportation costs (Account No. 858). Since the balances in such tracking accounts reflect costs incurred by the pipeline in its capacity as a provider of bundled merchant service, National Fuel argues that they should be treated the same way the Commission treats the Account No. 191 balances. National Fuel also argues that recovery by downstream pipelines of upstream transition costs should not be delayed pending completion of the downstream pipeline's restructuring proceeding.

The Commission does not intend for downstream pipelines to have to absorb any of the transition costs billed to them by upstream pipelines. Accordingly, downstream pipelines will propose mechanisms for flowing through those costs to their own customers. Account No. 858 balances may be direct billed the same way as Account No. 191 balances. Such mechanisms must be included in the downstream pipeline's compliance filing in its restructuring proceeding. Mechanisms should be devised for application in various scenarios—when the upstream pipeline's restructuring is implemented before or after that of the downstream pipeline. Downstream pipelines may not recover any transition costs from their own restructuring until they have fully complied with the requirements of Order No. 636, but they will not be precluded from flowing through transition costs from upstream pipelines while their own restructuring proceedings are still pending. However, such upstream pipeline transition costs must be clearly identified as such and separately identified on the bills from the downstream pipeline's own Order No. 636 transition costs in order to ensure proper treatment of the latter costs.

9. Challenges to Prudence of LDCs' Actions in Restructuring Proceedings

South Carolina Pipeline Corporation (South Carolina Pipeline) requests the Commission to clarify or retract Order No. 636's language in footnote 288 pertaining to prudence challenges before state regulatory agencies to LDCs, actions in restructuring proceedings. South Carolina Pipeline asks for clarification of several alleged ambiguities in the language of that footnote, and asserts that the Commission erred in inviting states to engage in prudence reviews of the actions of LDCs in restructuring proceedings. South Carolina Pipeline asserts that any attempted review in a state proceeding of an LDC's actions in restructuring proceedings or incurrence of GSR costs is constrained by the Supreme Court decision in *Nantahala Power and Light Co.* v. *Thornburg*,[480] which, according to South Carolina Pipeline, guarantees LDCs passthrough at the retail level of wholesale rates approved by this Commission. South Carolina Pipeline argues that the only potential exception to the pre-emptive effect of FERC-approved rates is the "*Pike County* doctrine,"[481] under which state commissions may consider the wisdom of a utility's purchase from among several alternate sources where the utility initially had a choice. However, according to South Carolina Pipeline, this exception does not apply to the types of costs involved under Order No. 636, because they could not have been nor can they be avoided by the LDC.

PG&E also requests that footnote 288 be deleted because of the likelihood it will be misinterpreted by state commissions in a manner inconsistent with applicable law under *Mississippi Power & Light Co.* and *Nantahala*. PG&E argues that, even though the Commission, for policy or equitable reasons, may not want its order to have the preemptive effect of requiring state regulatory agencies to permit passthrough of Order No. 636 transition costs approved by the Commission, that preemptive effect derives from the filed rate doctrine and the Natural Gas Act, as interpreted by the Supreme Court, and the Commission has no power to waive the doctrine or consequences of its decisions.

Footnote 288 simply stated existing law: State commissions should determine prudence challenges to LDCs under their jurisdiction in accordance with applicable state and federal law. The Commission observes that LDCs will have some critical decisions to make during the restructuring proceedings—*e.g.* whether or not, or to what extent, to exercise their rights to reduce or terminate their sales entitlements under existing contracts, and arrange for alternate gas suppliers. The Commission does not intend to preempt state commissions from determining whether those customers were prudent in making those decisions during restructuring proceedings. This is consistent with the so-called "*Pike County* doctrine" respecting purchasing decisions, not contrary to it.

10. Exit Fees as a Deterrence to Competition

Northern Illinois Gas reminds the Commission that in its comments on the NOPR, it warned that the exit fee process could be used to insulate pipelines from competitive pressures and to defeat the underpinnings of a final rule. Now it alleges that the exit fees proposed in the April 23, 1992 filing by Natural are so high, and for so long a term, that Natural would be able to reap

[479] CNG seeks assurances that the Commission does not expect downstream pipelines to absorb any portion of the transition costs billed to them by upstream pipelines.

[480] 476 U.S. 953, 970 (1986); see also Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354 (1988).

[481] Pike County Light and Power Company v. Pennsylvania Public Utility Commission, 465 A.2d 735, 737–38 (1983).

monopoly profits for its post-Order No. 636 sale services and impose contractual terms that would prevent competition from ever developing on its system. Natural Gas Clearinghouse and Tejas object to exit fees for recovery of GSR costs that are imposed only on those historical sales customers that choose to reduce or eliminate pipeline purchases. According to Natural Gas Clearinghouse, such exit fees eliminate the free nomination rights promised by Order No. 636, place competing suppliers at a distinct disadvantage vis-a-vis the pipeline merchant, and are no different than the minimum bills which have been consistently outlawed by the Commission since the issuance of Order No. 380.[482] Tejas requests clarification that any exit fees must apply to all former pipeline sales customers, irrespective of who they choose to buy gas from in the post-restructuring market.

The Commission will not address Northern Illinois Gas's arguments against Natural's exit fee proposal in this order. Natural's proposal will be considered together with its compliance filing in its restructuring proceeding.[483] In Order No. 636, the Commission provided that pipelines and their customers could negotiate exit fees in lieu of, or in combination with a surcharge on reservation fees for recovering GSR costs.[484] Exit fees were also suggested as a means for a firm capacity holder to compensate a pipeline for the release of capacity during restructuring where there is no other customer willing to assume liability for the maximum rate for the released capacity.[485] The Commission did not, however, authorize the unilateral imposition of exit fees on a customer that is reducing or terminating sales, but is not reducing its reservation of transportation capacity. Accordingly, the fears of Natural Gas Clearinghouse and Tejas that unilaterally imposed exit fees may function as a minimum bill and deter customer selection of alternative suppliers are misplaced.

With Natural's proposal in mind, Northern Illinois Gas requests, among other things, that pipelines not be allowed to recover the costs of buying out of all their gas supply contracts for the purpose of abandoning the merchant function. According to Northern Illinois Gas, buying contracts down to price levels that reflect long-term firm contract prices may be a legitimate need under Order No. 636, but the costs of abandoning the merchant function altogether is not related to Order No. 636.

Pipelines must act prudently to minimize their transition costs. If all customers terminate their sales entitlements during restructuring, a pipeline may have to buy out all of its gas supply contracts and wholly abandon the merchant function, and the prudently incurred costs of such buyouts, to the extent they were attributable to Order No. 636, would be fully recoverable. But a pipeline's costs of buying out of all of its supply contracts, simply because it chooses to get out of the merchant business, and not because its customers so choose, would not be fully recoverable as GSR costs.

11. Columbia's Producer Contract Rejection Costs

Columbia and the Official Committee of Unsecured Creditors of Columbia Gas Transmission Corporation (Columbia Unsecured Creditors) urge the Commission to recognize the recoverability of the costs that Columbia will incur as a result of its rejection of various producer contracts in its pending bankruptcy proceeding. Columbia argues that its producer contract rejection costs should be treated as GSR costs under Order No. 636, because they would have been incurred as such costs in the absence of Columbia's actions in the bankruptcy. Columbia is concerned that the Commission may disallow 100 percent recovery of its producer contract rejection costs because they were incurred before issuance of Order No. 636, and thus independently of the final rule. Columbia Unsecured Creditors seek clarification that the Commission will permit recovery of Columbia's gas supply realignment costs either through existing recovery mechanisms or through the new mechanisms established for GSR costs in Order No. 636. The unsecured creditors argue that Columbia's gas supply realignment costs, in the form of producer contract rejections costs, are attributable to the Commission's ongoing regulatory reforms, including Order No. 636.

UGI takes the position that Columbia's producer contract rejection costs are not the consequences of Order No. 636, but stem solely from Columbia's failure to bring its gas supply into line with pre-Order No. 636 market conditions.

As already discussed above, gas supply realignment costs not attributable to restructuring Order No. 636 cannot be recovered as Order No. 636 transition costs. Since this issue or how to treat costs incurred pursuant to rejections of producer contracts in a bankruptcy proceeding is specific to Columbia, the Commission will not address it in this order on rehearing. The issue may be presented by appropriate pleadings in a Columbia proceeding.[486]

12. Great Plains Synthetic Gas

Several parties raise concerns with respect to the recovery of the cost of synthetic natural gas (SNG) purchased from the Great Plains Gasification Project (Great Plains). In Order No. 636, in response to the comments of the Dakota Gasification Company, the owner of Great Plains, the Commission noted that in the Transco proceeding in Docket No. CP88-391-004, *et al. (Transco)*,[487] the Commission approved a settlement that provided for a volumetric surcharge on system throughput to recover the above-market gas costs and associated transportation costs related to Transco's obligations to purchase synthetic gas from Great Plains. The Commission stated that it would consider any proposals in the restructuring proceedings of the other pipelines that purchase synthetic gas from Great Plains, in addition to Transco, for a special billing mechanism and special treatment for the associated transportation capacity for Great Plains gas consistent with the precedent in Transco's global settlement.

The Industrial Groups request clarification that the Commission has not decided in Order No. 636 how these costs shall be recovered, but has instead left that issue for decision in individual restructuring proceedings. In the alternative, if the Commission does not grant the requested clarification, the Industrial Groups urge the Commission to grant rehearing on this issue and to require recovery from converting sales customers only.

Natural maintains that because of intense competition, it would not recover Great Plains coal gas costs if recovery were through a volumetric surcharge. Consequently, Natural

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[482] Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 FR 22,778 (June 1, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,571.

[483] Natural Gas Pipeline Company of America, 59 FERC ¶ 61,251 (1992).

[484] Order No. 636 at p. 30,457.

[485] Order No. 636 at p. 30,454. As long as a sales customer remains on the system as a firm transportation customer of the pipeline, the pipeline has no need of an exit fee, because it can recover a portion of the GSR costs through the demand surcharge.

[486] Similarly, Columbia's questions concerning the recoverability of its PGA surcharge under a 1985 settlement are not appropriate for resolution in this generic rulemaking.

[487] 55 FERC ¶ 61,446 (1991).

requests the Commission to clarify that Order No. 636, while permitting the *Transco* approach, does not require it. Similarly, Tenneco requests the Commission to clarify that it is not precluding recovery of the above-market premiums under the Great Plains contract through a fixed charge across all services.

On the other hand, the State of Michigan argues that the Commission erred by not foreclosing ratepayer subsidization of uneconomic SNG. Similarly, the Wisconsin Distributor Group maintains that the concept of permitting special cost recovery for above-market, inefficient synthetic gas supply costs is contrary to the goals of Order No. 636 to stimulate the domestic natural gas market and to provide customers access to market-priced gas supply.

The Commission recognizes that providing a special cost recovery mechanism for these gas supplies departs from the market-oriented goals of Order No. 636, but it is consistent with the Commission's goal of providing a smooth transition from the prior regulatory environment to the new market-oriented environment. This is particularly appropriate with respect to Great Plains gas because of the special circumstances and government involvement surrounding the Great Plains project. As in *Transco*, the Commission concludes that it is "reasonable for all of [the pipeline's] customers to share in the above-market costs of the nation's first large-scale synthetic fuels plant, whose technological benefits would have redounded to all future gas users * * * by increasing the supply of available gas." [488] Thus, the Commission adheres to its discussion on this issue. The Commission will consider any proposal by the pipelines for recovery of the costs of Great Plains gas, whether or not modeled on the proposal approved in *Transco*.

13. LDC Bypasses

A number of parties raise various concerns with respect to LDC bypasses. Several parties (United Distribution Companies, Northern Illinois Gas, and the State of Michigan) assert that the Commission should have established a policy or rule requiring that transition costs follow bypassing customers and/or providing LDCs with relief in bypass situations such as a reduction in contract demand with the pipeline. On the other hand, the American Paper Institute and the Fuel Managers Association maintain that the Commission erred in providing an opportunity for LDCs to obtain relief in the event of a bypass. They assert that offering LDCs relief from bypass is protecting them from competitive forces and is contrary to the principles of competition discussed in Order No. 636.

CNG asserts that because pipelines may confront bypass situations identical to those confronting LDCs, the Commission should clarify that pipelines may request the same relief as LDCs.

Finally, the Iowa, Missouri and Wisconsin Commissions maintain that the Commission's proposed burden of proof on LDCs is misplaced. They urge that once an LDC shows that it has historically supplied a customer that is seeking to bypass its system, and has identified a rational method for allocating to that customer a portion of the transition costs that the LDC is required to bear under Order No. 636, then the burden should shift to the customer that is bypassing the LDC system to show that the proposed allocation is unreasonable or inequitable and that another allocation is more equitable under the circumstances.

The Commission adheres to its views on this issue as set out in Order No. 636. The Commission will consider requests for relief on a case-by-case basis in the context of the new regime of this rule, but will not adopt a policy that would grant automatic relief in all circumstances. The factual circumstances surrounding an LDC bypass differ sufficiently that the Commission cannot justify a generic rule that would be appropriate in all circumstances.

Finally, contrary to the assertions of the state regulatory commissions, the Commission believes that it is fair for an LDC seeking relief in a bypass situation to show that there is a direct nexus between the bypass and the pipeline, so that the costs it seeks to avoid should be reallocated to the bypassing customer. On the other hand, the Commission will not allow bypass to be used simply as a means of avoiding the bypassing company's fair share of transition costs.

Finally, the Commission denies CNG's request for clarification. The Commission has provided pipelines a meaningful opportunity to recover their prudently incurred transition costs. The Commission does not believe it is appropriate for pipelines to obtain additional transition cost recovery on a case-by-case basis every time a shipper switches from one pipeline to another.

14. Miscellaneous

a. *Non-cash consideration as GSR costs.* PSE&G requests clarification that if pipelines realign their producer supply contracts by providing for discounted transportation or other non-cash consideration, they will not be allowed to recover the costs of such settlements as GSR costs.

The precedents under Order Nos. 500 and 528 governing recovery of non-cash consideration to reform gas supply contracts are applicable.[489]

b. *Alternative recovery mechanisms.* United Distribution Companies argue that Order No. 636 unduly restricts parties from negotiating alternative methods of transition cost recovery. CNG LDCs agree, and urge the Commission to withdraw its prescribed recovery mechanisms for transition costs, and grant the parties an opportunity to negotiate the means by which transition costs are to be recovered.

Order No. 636 does not preclude parties from voluntarily agreeing to alternative mechanisms on the basis of the pipeline's particular circumstances. However, in the absence of such voluntary agreement between the pipeline and the parties, Order No. 636 will control.

Western Resources (formerly KP&L) asserts that its pipeline supplier, Williams Natural Gas Company, entered into its gas supply contracts to serve both its firm and interruptible customers, and that many current shippers were interruptible sales and non-jurisdictional customers prior to Williams' transition to open-access transportation, and argues that GSR costs should be recovered through a volumetric surcharge to reach those customers.

As discussed above, interruptible shippers under a Part 284 blanket certificate will be subject to an interruptible rate that recovers 10 percent of a pipeline's GSR costs. Furthermore, as discussed below, when a pipeline unbundles its direct, non-jurisdictional sales, the unbundled transportation will be provided under the pipeline's Part 284 certificate, and

[488] 55 FERC ¶ 61,446 at p. 62,341 (1991).

[489] See ANR Pipeline Company, 46 FERC ¶ 61,140 (1989) (non-cash consideration to settle take-or-pay contracts was recoverable through a take-or-pay recovery mechanism if it met the known and measurable standard). However, the only costs of transportation discounts that are recoverable through a take-or-pay mechanism are the costs of discounting below the level of discount that the pipeline is giving other shippers at the time for competitive reasons. Natural Gas Pipeline Company, 51 FERC ¶ 61,190 (1990), and United Gas Pipe Line Company, 51 FERC ¶ 61,320 at p. 62,065 (1990).

will be subject to surcharges to recover Order No. 636 transition costs.

c. *Recovery of GSR costs through direct bill or exit fee.* Phillips urges that 50 percent of GSR costs and stranded facility transition costs should be recoverable through a direct bill or exit fee and that 50 percent should be recoverable through a demand surcharge.[490] Phillips alleges that in today's market, all transportation costs, including demand surcharges, are typically "netted-out" from the prices producers receive at the wellhead. According to Phillips, using a 100 percent demand surcharge mechanism to recover GSR costs and stranded facility costs could leave producers absorbing the lion's share of the two largest elements of transition costs.

For most gas sales, a demand surcharge will have no effect on the purchaser's decision to buy a certain increment of gas and will not affect wellhead prices. A customer that has entered a long-term contract is obligated to pay the monthly demand charges, and any demand surcharges, regardless of whether it purchases any gas, and regardless of what price it pays for the gas. In Order No. 636, the Commission provided that exit fees for recovery of GSR costs could be negotiated. However, the Commission will not require customers to pay exit fees or permit them to direct bill for the recovery of GSR costs.

d. *Effects of existing settlements on transition cost recovery.* Washington Gas seeks clarification that Order No. 636 does not void existing settlements approving restructuring and transition cost recovery, but that the viability of the settlements, in whole or in part, will be tested and determined in the separate pipeline restructuring proceedings. Washington Gas urges the Commission not to dismiss the possibility that existing settlements already reflect the maximum degree of achievable unbundling consistent with certificated firm service levels under section 7(c) of the NGA and prudent and reasonable transition cost levels. Washington Gas argues that any determination of the continued viability of existing settlements, and any findings that they violate section 5, should be made at the end, not at the beginning, of the restructuring proceedings. BG&E also seeks clarification that previously approved Order No. 528 settlements remain binding and govern the treatment of any gas supply realignment or similar costs that fail to pass the Order No. 636 eligibility review.

Atlanta Gas also seek assurances that ceilings under existing take-or-pay settlements will not be disturbed by permitting recharacterization as GSR costs under Order No. 636, nor will the protection against abandonment negotiated in the settlement of Transco's restructuring be disturbed.

As noted in Order No. 636, the relationship between provisions of existing settlements and the provisions of Order No. 636 will have to be examined on a case-by-case basis. The Commission has and will provide all interested parties with an opportunity to present arguments on this issue on a pipeline by pipeline basis. However, as Washington Gas recognizes, settlements, like any other contracts, may be subject to revision if necessary to remedy violations of the NGA. However, Order No. 636 is not intended to affect the provisions of existing settlements governing recovery of take-or-pay costs under Order Nos. 500 and 528.

e. *Credit for taking assignment of supply contracts.* Illinois Power seeks clarification that customers taking assignments of producer contracts will receive a credit against the transition costs otherwise allocable to them.

To avoid transition costs the Commission strongly encourages pipelines and parties to consider assignment of their gas supply contracts in their restructuring proceedings, where such assignments are mutually beneficial as a way of avoiding transition costs. However, the details of how the customers that accept such assignments should be treated in comparison to those that do not, as far as responsibility for transition costs, must be worked out in the restructuring proceedings.

f. *Transition cost recovery and retroactive ratemaking.* The National Association of Gas Consumers argues that GSR costs, Account No. 191 costs remaining when a PGA mechanism is terminated, and "stranded costs" are past costs that will not recur during the period that the restructuring rates will be in effect, and that the ban on retroactive ratemaking prohibits collections of these costs from consumers.

The ban on retroactive ratemaking should not prevent pipelines from recovering any of the transition costs arising from restructuring. GSR costs are the costs of reforming supply contracts under which gas will be available on a current basis. Unrecovered purchased gas costs relate to gas purchases in a prior period, but are recoverable on a deferred basis pursuant to the notice in this proceeding's NOPR (and elsewhere) of pipeline customers' direct bill liability for such costs upon termination of the PGA mechanism. Liability for stranded costs is based on the availability of the pipeline's facilities for future use by the system even though they are not directly assigned for use by a specific customer.

g. *100 percent recovery by pipelines and the "used and useful" principle.* The CPUC argues that requiring a pipeline's customers to bear all of the transition costs is contrary to the "used and useful" principle discussed in Order No. 528–A as a justification for requiring equitable sharing.

The Commission has described the reasons for its different policies for Order No. 528 costs and Order No. 636 costs, *supra*. The analogy described in Order No. 528–A between pipelines' high-cost take-or-pay contracts and certain failed gas supply projects, which the Commission had concluded were not used and useful, does not apply to the transition costs recoverable under Order No. 636, which will be incurred as a result of the options granted to pipelines' customers and the improved quality of transportation services required under the provisions of that order.

h. *Sunset date for GSR costs and Order No. 528 costs.* The Illinois Commerce Commission urges the establishment of a sunset date on GSR cost recovery mechanisms because, it argues, as long as pipelines have the right to retroactively bill customers for these costs, they will be in a preferred position relative to other merchants.

While the Commission in Order No. 636 did not impose a sunset date for making filings to recover GSR costs, it encouraged parties to the restructuring proceedings to establish such dates on a case-by-case basis. Furthermore, the Commission indicated its intention to audit each pipeline's gas supply contracts three years after the effective date of the final rule, to ensure the pipeline's diligent realignment efforts, unless the pipeline had agreed to a sunset date in the interim.[491] The

[490] The Commission in Order No. 636 did not prescribe any generic recovery mechanism for stranded costs, but merely provided that pipelines could propose an appropriate means of recovering all prudently incurred stranded costs in a general rate filing under section 4 of the NGA.

[491] Order No. 636 at p. 30,459, n. 286. The Commission will clarify, as requested by Texas Gas Transmission Corporation, that the Commission audit of a pipeline's recovery of its GSR costs can be avoided if the pipeline and its customers agree to a sunset date for filing for recovery of such costs within three years of the effective date of the pipeline's compliance filing, rather than from the effective date of Order No. 636 itself.

availability of Order No. 636 surcharges on transportation to recover GSR costs is also limited, as noted earlier, to those costs attributable to customers' decisions during restructuring.

Tejas claims that the Commission has apparently determined that, at some future date, the types of costs recoverable under Order No. 528 will become Order No. 636 transition costs, in effect establishing a sunset date for Order No. 528, and argues that the Commission was arbitrary and capricious in establishing such a sunset date *sub silentio*. Tejas urges the Commission to establish a rebuttable presumption that all GSR costs are appropriate for recovery under Order No. 528, rather than under Order No. 636, unless the pipeline proves otherwise by a preponderance of the evidence.

Tejas misunderstands Order No. 636 on this issue. Order No. 528 costs cannot "become" Order No. 636 costs. Furthermore, the Commission has not established a sunset date for filing to recover costs under Order No. 528. Until a pipeline is in full compliance with Order No. 636, it will recover its buyout and buydown costs under Order No. 528.

i. *Firm transportation at fixed rates, discounts, and subject to caps.* Tejas also objects to imposing demand surcharges on firm transportation customers that are not former sales customers. Tejas points out that, under Order Nos. 500 and 528, such customers were liable for volumetric surcharges, but not fixed charges. Under that policy, pipelines have agreed to provide firm transportation at fixed rates, and Tejas argues that the imposition of demand surcharges undermines the economics of those arrangements.

Firm transportation customers under a pipeline's Part 284 blanket certificate who pay more for firm transportation service enjoy the increased flexibility and reliability of the restructured firm service, plus the ability to release capacity more easily and efficiently, whether or not they have ever been sales customers of the pipeline. If a pipeline agreed to provide transportation service at a fixed rate, without a right to passthrough any surcharges or other cost increases, then the pipeline will have to bear the costs of the bargain it made.

Natural asserts that it sometimes has to discount reservation fees and therefore should be permitted to reflect an adjustment for costs which are not recovered due to discounting and to extend the recovery period. ANR asks for authority to direct bill some of its GSR costs, because it has negotiated rate caps with certain firm transportation customers that will preclude recovery of a demand surcharge.

The Commission will not relieve the pipeline of the consequences of the agreements it entered into to provide firm service at a discount or to bear the risk of increased costs for such service by permitting it to shift transition costs to other customers.

j. *LDCs that buy gas from producers whose contracts they have paid to realign.* The Pennsylvania PUC argues that it is inequitable to require LDCs to pay for the contract reformation costs incurred for gas not taken and then require them to go out and buy the same gas directly from the producer.

Customers will not be required to take assignments of gas supply contracts from producers, under Order No. 636. LDCs will have the option to purchase gas directly from producers or continue purchasing from the pipeline, whichever they determine is in their best interests. It is not inequitable for LDCs to pay for some portion of the pipeline's cost of reforming its supply contracts, since they will realize the benefit from the availability of market-sensitive gas prices under the reformed contracts if they continue purchasing from the pipeline, or even if they do not, because of the effects on competition of prices under the pipeline's reformed contracts.

k. *Stranded costs.* The Iowa, Missouri, and Wisconsin Commissions seek clarification that just because a cost fits Order No. 636's definition of a "stranded cost" does not mean that it was prudently incurred. Recovery of such costs should be disallowed, they argue, if they are the product of mismanagement, neglect, imprudence, or the like. The Commission grants this requested clarification.

The NASUCA argues that stranded investment costs are costs associated with physical plant that is no longer used and useful and should therefore no longer be includable in the rate base. On the other hand, Williams seeks clarification that the cost of abandoning certain facilities that will no longer be needed for rendering its restructured services as a result of the capacity reallocation process will be fully recoverable as stranded costs.

LILCO asserts that creative pipelines will have opportunities to abuse Order No. 636's authorization to recover "stranded costs." For example, they can rid themselves of unused gathering facilities in declining production areas, underutilized upstream capacity, and capitalized lease payments on properties held for future development. LILCO asks the Commission to impose a strict eligibility test on stranded costs to preclude recovery of such costs.

Columbia asserts that some pipeline gathering and lateral facilities, and perhaps some products extraction facilities, will no longer be fully subscribed after restructuring, and requests the Commission to declare that the costs of such facilities may be recovered as stranded costs under Order No. 636. Columbia also seeks clarification that the costs of liquidating its system supply storage inventory will be recoverable as transition costs.

In Order No. 636, the Commission said that pipelines had to file to recover stranded costs in a general rate case. The Commission will consider arguments about whether particular facilities are used and useful, or whether the costs should be recoverable as transition costs, in the cases where the issues arise.

l. *Excess royalty reimbursement clauses.* The Minerals Management Service of the Department of the Interior (MMS) requests that pipelines be allowed to recover as GSR costs under Order No. 636 the costs that arise from their contingent liability under earlier agreed to excess royalty reimbursement clauses. MMS says that it has decided to continue its past practice of requiring royalties to be paid on gross proceeds accruing to the producer from production, and that lessees have paid, and MMS has billed, and will bill, lessees of Federal and Indian lands for those portions of the take-or-pay settlement payments by pipelines that accrue to past or future production. Where pipelines included contingent excess royalty reimbursement clauses in their take-or-pay settlements with producers from such leases, they will be liable to reimburse the producers for such excess royalty payments. MMS is concerned that pipelines that have to make such payments to producers under their take-or-pay settlements may not be able to recover them under the provisions of Order No. 528 because of a December 31, 1990 sunset date, and urges the Commission to correct this apparent oversight by permitting recovery of such costs under the mechanism for Order No. 636 GSR costs.

As discussed above, there is no sunset date under Order No. 528. In addition, whether these costs are attributable to Order No. 636 restructuring will be decided on an individual pipeline basis.

m. *Transition cost recovery from direct sales customers.* The Industrial Gas Users Conference seeks clarification that the Commission may not require the imposition of transition costs under Order No. 636 on direct

sales customers of a pipeline, because the Commission has no power to set direct sales rates.

Although the Commission lacks jurisdiction over direct sales of natural gas, it has jurisdiction over the transportation component of direct sales,[492] and exercised that authority in Order No. 636 to require the embedded transportation service to be unbundled from the direct sales service.[493] Thus, transportation of direct sales gas from the unbundling point on pipelines with part 284 blanket transportation certificates will necessarily be under the authority of that certificate and subject to the Commission's jurisdiction over Part 284 transportation rates.[494] Therefore, transition costs recoverable through surcharges on Part 284 transportation rates will be collectible from direct sales customers that use the pipeline's open access transportation service, like any other shipper.

n. *Amortization period for recovery of GSR costs.* The Fuel Managers Association requests the Commission to require pipelines to permit their firm transportation customers to extend their transition cost amortization period for at least fifteen years, subject to liability for the carrying costs. According to the Fuel Managers Association, such an extended amortization period will be very important to cogenerators and independent power producers who entered into long-term transportation contracts at fixed rates without anticipating a demand surcharge for GSR costs.

The Commission will not specify a minimum or maximum period for a pipeline to amortize the collection of its GSR costs, but will leave that as a matter that must be resolved on a case-by-case basis. However, the Commission strongly encourages the parties to use a shorter-term amortization, such as a thirty-six month period, in order not to prolong the transition.

o. *Bankrupt firm shippers and project-financed pipelines.* Ozark Gas Transmission System (Ozark) wants a declaration that if the Commission rejects its other requests concerning existing shipper liability for released capacity, the Commission will permit the costs resulting from Ozark being declared in default of its indenture as a recoverable transition cost. Ozark asserts that the Commission must also address the situation where a firm shipper rejects its T-1 service agreement in a bankruptcy because it no longer needs the capacity as a result of Order No. 636, and Ozark is unable to collect the full amount of the minimum bill through that proceeding.

The Commission is granting the clarification requested by Ozark concerning releasing shippers' liability on project financed pipelines, as discussed below, thus alleviating Ozark's concern about default on its indenture. The question concerning a shipper in bankruptcy rejecting a service agreement can be dealt with when and if it arises in a proceeding.

p. *Maximum bid to exclude demand surcharges.* NGSA argues that firm customers should not be allowed to evade their responsibility for demand surcharges through the capacity reassignment process, and asks the Commission to expressly state that for purposes of capacity reassignment, the maximum bid shall not include the assignor's realignment surcharge.

NGSA's request is denied. For purposes of capacity reassignment, the maximum bid includes the assignor's realignment charge.

q. *Downstream customers' liability for upstream pipelines' transition costs and capacity.*

LILCO requests the Commission to require a downstream pipeline's share of an upstream pipeline's transportation and transition costs to be allocated to downstream customers in proportion to their contract demand sales entitlement on the downstream pipeline. Furthermore, downstream customers choosing not to take the upstream capacity should be required to pay the net present value of their allocable share in the form of an exit fee.

The Commission will address this issue when it arises in individual pipeline restructuring proceedings.

r. *Surcharge to recover new facilities costs.* Questar asks that pipelines be permitted to implement a surcharge based on a balancing account to recover new facilities costs, because most of these costs will be incurred early in the restructuring process and pipelines should not have to defer recovery until they need to file a general rate case.

Pipelines should seek to recover the costs of new facilities necessary to implement restructuring in a general rate case as soon as they need to. The Commission will not adopt a special mechanism for the recovery of new facilities costs and will deny Questar's request.

s. *Liability of pipeline under assigned gas supply contract.* Marathon requests clarification that when a pipeline makes an assignment of a gas supply contract to one of its customers, the pipeline will remain liable on the contract unless the producer releases the pipeline.

Whether a pipeline remains liable to a producer under an assigned gas supply contract depends on the terms of the contract. The Commission's encouragement to pipelines to assign their gas supply contracts would not affect those terms.

c. Schedule and Procedures

1. Notice to All Customers

The APGA requests rehearing of the requirement of Order No. 636 that all LDCs must participate in their pipeline supplier's restructuring proceedings or risk loss of their contracted-for capacity rights. APGA asserts that small publicly owned LDCs generally do not intervene and participate in Commission proceedings. APGA also states that many of the small LDCs will not receive actual notice of the pendency of their pipeline supplier's restructuring proceedings through publication of notice in the **Federal Register**. APGA urges the Commission to require pipelines to serve all of their customers with copies of the Commission's notice of its new restructuring proceedings, along with a clearly drafted letter explaining the extraordinary nature of these proceedings and the capacity rights that will be at stake. Furthermore, APGA requests that small customers be afforded leave to intervene out of time to protect their rights after they receive actual notice of the restructuring proceedings.

Under § 284.214(c), pipelines subject to Order No. 636 were required to initiate discussions by June 8, 1992, concerning restructuring, with all of their customers and other interested parties that had intervened in the restructuring proceedings. On May 22, 1992, the Secretary of the Commission issued a Notice of Procedures in all restructuring proceedings advising pipelines of their obligation under rule 2010 of the Commission's rules of practice and procedure to serve a copy of their compliance filings on each person whose name is on the official service list, and any other person required to be served under law, or Commission rule or order. The Commission will clarify that a pipeline must serve a copy of its compliance filing in its restructuring proceeding on all of its customers, and the state regulatory commissions that regulate its

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[492] Mississippi River Transmission Corp. v. FERC, No. 91-1166 (D.C. Cir. July 21, 1992).

[493] See the discussion of the Commission's legal authority over direct sales at III.A.3. and the clarification of the impact of Order No. 636 on direct sales at V.D.3.

[494] See United Gas Pipe Line Company, 50 FERC ¶ 61,268 (1990).

customers, whether or not they have intervened in that proceeding.[495]

In Order No. 636, the Commission strongly encouraged interested parties to intervene and participate in restructuring proceedings before pipelines file their compliance filings, and indicated that motions to intervene after those filings are made would be viewed with disfavor. Publication of notice of the institution of the restructuring proceedings in the **Federal Register** constitutes sufficient notice to any interested party. Lack of actual notice of the proceedings will not be sufficient grounds for granting late interventions.

2. Extend the Procedural Schedule

APGA asserts that the truncated procedural timetable for implementing Order No. 636 will overwhelm the resources of all segments of the natural gas industry. Many parties will have to participate in restructuring proceedings on several pipelines simultaneously, and APGA asserts that it is not realistic to expect that this can be done well by the end of the year. The brief period for discussions between the pipeline's deadline for serving its implementation plan summary on July 7, 1992, and the deadlines for making compliance filings is the most troubling, according to APGA. Furthermore, APGA argues, the Commission has not allowed itself sufficient time for reviewing, analyzing, and approving or rejecting the compliance filings in time for the 1993–1994 winter heating season. According to the APGA, since the "no-notice" service on that LDCs will have to rely on to guarantee peak-day service to their customers is a new idea, yet to be fleshed out, the inadequate implementation schedule poses a threat to service reliability.

Cincinnati Gas argues that because of the intensely compressed implementation schedule dictated by Order No. 636, LDCs will be effectively deprived of the ability to make informed choices about their gas purchasing decisions, or take advantage of all opportunities for long-term sales contracts in a competitive market—one of the main rationales for mandating restructuring. According to Cincinnati Gas, negotiations with producers and marketers also take considerable time, even when very few LDCs are seeking similar arrangements, and the truncated schedule for implementing Order No. 636 will prompt LDCs to turn to the pipeline for merchant service, thus thwarting the underlying purpose of the order.[496] APGA and Cincinnati Gas both urge the Commission to extend the implementation schedule by at least twelve months.

The Industrial Groups urge the Commission to show more flexibility in implementing the restructuring program, and not to allow pipelines to force their restructuring plans upon unwilling parties to the restructuring proceedings, nor shirk its responsibility to protect the public from unreasonable terms and conditions of service. The Industrial Groups are concerned that unless parties are given reasonable extensions of time to achieve true settlements, pipelines may submit unilateral or minority settlements and leave it to the Commission to sort out the disputes. Tenneco asserts that the changes mandated in Order No. 636 are revolutionary in concept, and parties will need a considerable amount of time to decide on their positions with respect to the issues before they can come to the bargaining table.

After extended public input for over one year, Order No. 636 established certain deadlines for pipelines to initiate the process of implementing that order and stated its intention that pipelines complete the process in time for the 1993–1994 winter heating season. The Commission established deadlines from October 1, 1992 until December 31, 1992, for pipelines to make compliance filings, and expressed its view and expectation that pipelines and interested parties would achieve a consensus on most features of the restructuring filings before they are filed. The Commission also stated that it respects the rights of pipelines and interested parties to differ over how the provisions of Order No. 636 should best be implemented, and would establish procedures to achieve expeditious resolution of any contested issues. Pipelines are required to propose effective dates for the *pro forma* tariff sheets they submit with their compliance filings, but the Commission will determine the effective dates of the tariffs in those filings on a case-by-case basis.

None of the requests for rehearing has presented any compelling reasons for an across-the-board postponement of the deadlines for pipelines making their compliance filings. And it is far too early for the Commission to determine whether there will be good reasons for delaying full implementation of Order No. 636 on a particular pipeline system beyond the 1993–1994 winter heating season. The transition required under Order No. 636 should be made by the entire pipeline industry in tandem, or as close in time as possible. In order to implement Order No. 636 successfully, all segments of the industry, and the Commission and its staff, will need to concentrate on the essential requirements of restructuring. Based on indications of activity in the restructuring proceedings so far, the Commission is confident that the natural gas industry can successfully concentrate its efforts in this regard, and that most pipelines, if not all, will be able to implement their restructured services within the time frame established by the final rule.

3. Implementing Rate Design Changes Under NGA Section 5

The Wisconsin Distributor Group argues that the Commission does not have authority to order pipelines to increase their rates in their restructuring compliance filings to implement the SFV rate design method. They argue that section 5(a) of the Natural Gas Act prohibits the Commission from ordering an increase in any rate in a currently effective schedule, unless in accordance with a new schedule filed by the utility under the provisions of section 4 of the NGA.[497] Furthermore, they argue, a filing to implement SFV should be a major rate case under section 4, requiring a full cost of service study, because implementation of SFV will affect substantially all of the jurisdictional rates, and will affect the pipeline's risk and various other assumptions underlying its current rates.

In Order No. 636, the Commission stated that where changes in rate design result in rate increases in certain components of the rates, or to certain customers or customer classes, even though they do not result in any overall increase in revenues, it would permit the increases in the compliance filing because it is related to a Commission directed modification in the pipeline's rate structure,[498] citing *ANR Pipeline Co.* v. *FERC*[499] as support for this authority. APGA argues that the *ANR* case does not support such authority, noting that the proceeding involved in

[495] See 18 CFR 154.16 (Posting) and 154.22 (Notice requirements). This clarification is also responsive to the concerns raised by the Ohio Consumers' Counsel in its request for reconsideration of the May 22, 1992 notice.

[496] Cincinnati Gas also expresses particular concern about having to begin negotiations regarding restructuring of the Columbia's system, while Columbia's bankruptcy is pending. The Commission has recently denied a motion by Columbia (supported by Cincinnati Gas) for an extension of its deadline for making Order No. 636 compliance filings. Columbia Gas Transmission Corp., 60 FERC ¶ 61,047 (1992).

[497] Atlanta Gas presents similar arguments.

[498] Order No. 636 at p. 30,465.

[499] 883 F.2d 959 (D.C. Cir. 1988).

that case, in which ANR was entitled to certain rate increases in connection with implementing an MFV rate design and eliminating its minimum bill, was initiated by the pipeline under section 4.

In fact, that proceeding began with ANR's filing to implement a rate decrease under section 4, but not to change its rate design. The Commission set the matter for hearing under both section 4 and section 5 of the NGA, which is its standard procedure, and ultimately made findings under the authority of section 5 that ANR's rate design was unjust and unreasonable. ANR was ordered to revise its rates to implement the MFV rate design method and to remove its minimum bill prospectively. When ANR made its compliance filing pursuant to the Commission's findings and order, it submitted an increased fixed-cost commodity charge to reflect the fact that with its minimum bill removed, the test period volumes for which it could bill would be fewer than the billable volumes under the minimum bill. Since ANR would no longer be recovering the minimum bill from one of its largest sales customers from which it collected a minimum bill during the test period, but which did not actually take all the volumes it had paid for under the minimum bill, ANR argued that it was entitled to a higher fixed-cost commodity charge in order to continue to recover all of its costs allocable to that charge from fewer billable volumes.

The Commission rejected ANR's increased commodity charge on the grounds that it was not authorized by the Commission's order requiring removal of the minimum bill and would violate the filed rate doctrine. The Commission further noted that ANR could file for a rate increase to reflect the reduced volumes under NGA section 4.[500] The court of appeals reversed, concluding that the Commission had not rationally explained why its requirement that ANR's minimum bill had to be removed would not authorize the removal of volumes attributable to the minimum bill for purposes of calculating the amount of the fixed-cost commodity charge. In its order on remand, the Commission acknowledged its subsequent recognition of the principle that rate design revisions that require reductions in one component of a pipeline's rates will usually require simultaneous increases in some other component in order for the pipeline to recover its cost of service.[501] On remand, the Commission conceded that ANR should have been entitled to reduce its design volumes and increase its fixed-cost commodity charge to compensate for its loss of revenue from the elimination of its minimum bill, and indicated that, but for the provisions of an intervening settlement, ANR would have been authorized to impose a retroactive surcharge to recover that revenue.[502]

Thus *ANR* stands for the proposition that when the Commission orders a pipeline to implement a different rate design method that requires reductions in one component of the pipeline's rates, it must permit the pipeline to implement offsetting increases in some other component simultaneously in order for the pipeline to recover its cost of service, unless there are good reasons for prohibiting the simultaneous increases and requiring the pipeline to implement the needed increases in a separate section 4 proceeding.

The Commission does not see any good reason for generally prohibiting pipelines from implementing simultaneously the decreases and offsetting increases in rates necessary to effectuate the just and reasonable rate designs required under Order No. 636. The Commission in Order No. 636 specifically required the pipelines to design their rates using the cost of service and total throughput on which their rates in effect on the date of the compliance filing are based. Thus, the Commission is not ordering, but is rather prohibiting, any revenue increases to the pipeline. In ordering pipelines to file *pro forma* tariff sheets indicating how they propose to implement the requirements of Order No. 636, the Commission is not ordering any increase in rates. When the Commission concludes that a pipeline's tariff sheets and schedules are in compliance with Order No. 636, the Commission will generally exercise its discretion to permit, but not order, the pipeline to implement any offsetting increases in rates, or components of rates, simultaneously with the necessary rate decreases, in accordance with the new tariffs and schedules filed by that pipeline. This procedure accords with the plain meaning of section 5, established Commission practice, common sense, and court decisions on the issue.

4. Concurrent Consideration of Section 4 Filing for Transition Costs

INGAA argues that a mechanism for recovery of transition costs needs to be finalized in conjunction with the restructuring proceeding, preferably through a special rate filing, rather than a full blown section 4 rate case. In INGAA's opinion, the final transition cost recovery mechanism developed in the rate proceeding should be part of the restructuring proceedings, and the Commission should not approve the compliance filing or settlement until the transition cost recovery mechanism is ready for implementation. K N Energy also suggests pipelines and their customers should be given an opportunity to reach a satisfactory resolution of the transition costs issues in the context of negotiated settlements in each pipeline's restructuring proceeding, and objects to the requirement that certain transition costs may only be recovered by filing a general rate case under section 4 of the NGA. Southern also argues for concurrent resolution of transition cost recovery issues with all other restructuring issues because customers will not be able to make informed choices about service options until they know the transition costs that will flow from those choices.[503]

CIG asserts that under Order No. 636, pipelines will begin incurring transition costs essentially immediately, and will face immediate and tremendous revenue losses unless they can modify their rates to recover these costs. CIG urges the Commission to allow pipelines to file rates to recover their transition costs to become effective at the same time it accepts the pipelines' compliance tariff filings in their restructuring proceedings.

There are no insurmountable problems raised in these requests for rehearing, but also no simple answers. Pipelines are required to file their estimates of Order No. 636 transition costs and their proposals for recovery mechanisms as part of their compliance filings in the restructuring proceedings.[504] The mechanisms for recovering transition costs will be resolved in the restructuring proceedings, but the amounts to be

[500] ANR Pipeline Company, 40 FERC ¶ 61,067 at pp. 61,204–5 (1987).

[501] ANR Pipeline Company, 46 FERC ¶ 61,004 (1989), *citing* Tennessee Gas Pipeline Company, 46 FERC ¶ 61,113 at p. 61,443 (1989).

[502] 46 FERC ¶ 61,004 at pp. 60,010–11 (1989).

[503] Northern Indiana requests the Commission not to permit transition costs to be recovered under section 4 filings, so that recovery of such costs can be deferred until the Commission has determined they are just and reasonable.

[504] 18 CFR 284.14(b)(3)(iii). The amount of transition costs a pipeline may file to recover will not be limited by the amount of such costs, it *estimates* in accordance with this section. (See CNG's request for rehearing.)

recovered through those mechanisms will not.

Sales customers are permitted to reduce or terminate their sales entitlements during the restructuring proceedings, as well as release unneeded firm capacity if there is demand for it from other shippers, and to decide which of the pipeline's unbundled services they want, and what levels of service. The customers' choices will affect the pipeline's transition costs, and the estimated charges to recover transition costs will affect the customers' choices. Thus, the Commission recognized in Order No. 636 that the restructuring proceedings would necessarily be an iterative process.[505] Pipelines will have to realign their gas supply contracts in view of their sales customers' final choices and will be entitled to recover their prudently incurred costs of realignment pursuant to separate section 4 rate filings. And pipelines may not begin collecting transition costs until after they are in full compliance with Order No. 636. The Commission will consider proposals by pipelines to initiate such recovery on a timely basis when such compliance is achieved. [506]

ANR seeks clarification that GSR costs may be recovered through limited section 4 rate filings, and that such filings will not be suspended for more than one day, consistent with the Commission's practice for take-or-pay filings under Order Nos. 500 and 528. CNG also seeks to be able to file to recover all transition costs in a limited section 4 filing at the time of restructuring or whenever they arise. CNG asserts that pipelines will be under extreme pressure to settle prudence challenges and will be forced to make substantial concessions or engage in costly litigation for the mere possibility of recovering their transition costs. Furthermore, CNG asserts that conditioning the possibility of transition cost recovery on full compliance with Order No. 636 will ensure protracted litigation initiated by consumers who will have virtually no incentive to resolve the dispute through settlement.

Carnegie asserts that it is unlikely to be able to recover 100 percent of its transition costs because only after it has fully implemented Order No. 636 will it be able to file to recover those costs. However, at that point, Carnegie asserts, its customers will have secured all the alleged benefits and will be in a position to challenge all transition costs without fear of losing any of the benefits.

Tenneco requests the Commission to establish streamlined procedures for challenges to prudence of GSR costs. Otherwise, they argue, the Commission will become mired in endless hearings on this issue.

CNG LDCs are concerned that the procedural schedule will not permit adequate time for consideration of challenges to a pipeline's prudence in incurring transition costs. CNG LDCs urge the Commission to follow a careful, case-by-case approach to the review of and subsequent implementation of the recovery of transition costs, even if it means going beyond the pipeline's Order No. 636 compliance filing date.

The Commission clarifies that pipelines may make limited section 4 filings to recover GSR costs.[507] Ordinarily, such filings will be permitted to become effective after a minimum suspension. Long-term suspensions of collection under such filings would not benefit consumers because it would merely postpone the beginning of the amortization period for a fixed amount of recoverable costs, with interest accruable on balances until paid.[508] The Commission does not intend for customers to have to forego legitimate challenges to a pipeline's prudence in order to secure the benefits of restructuring. The possibility of such challenges constitute an important incentive for pipelines to negotiate vigorously to minimize their transition costs. Proceedings on prudence challenges are not constrained by any of the procedural deadlines of Order No. 636.

The Commission expects to develop standards for evaluating pipelines' prudence in restructuring, and will be amenable to proposals for expediting final rulings on challenges to prudence.

Northern Illinois Gas urges the Commission to require each pipeline to file a new general rate case within a fixed period after restructuring in order to ensure that costs and throughput are adjusted to reflect the new services provided. It also argues that, irrespective of any refiling requirement, it is essential that pipeline rates be continuously adjusted to reflect assigned Account No. 858 and storage capacity, the impact on cost-of-service of other transition steps, the allocation of costs to the deregulated pipeline merchant function, and other changes in inputs and outputs produced by Order No. 636 compliance.

The statutory provisions of section 4 and 5 of the NGA and the Commission's regulations are adequate to provide pipelines, as well as interested parties or the Commission, opportunities to initiate rate changes in contemporaneously with restructuring proceedings whenever anyone deems it necessary.

5. Using Current Cost of Service and Throughput for Compliance Filings

Cincinnati Gas asserts that after the restructuring proceedings, the pipelines' costs are likely to be significantly altered, depending on the disposition of such assets as upstream pipeline capacity, storage capacity, gas supply related costs and other factors. Furthermore, their mix of services and, necessarily, their throughput will bear little resemblance to their current throughput. Cincinnati Gas concludes, therefore, that requiring pipelines to base their rates for the restructured services on their current cost of service and throughput levels is completely illogical.

The filings in restructuring proceedings are compliance filings to implement the Commission's rulings under NGA section 5. The requirement that the restructuring filings must be based on the pipeline's currently approved cost of service and throughput provides assurance that the compliance filings reflect only the restructuring required by Order No. 636, and not rate or revenue changes that are not required by the rule. However, as the Commission said in Order No. 636, pipelines may file notices of rate changes under section 4 of the NGA concurrently with their restructuring filings to reflect changes in costs or throughput, or to seek rate increases due to implementation of the rule, so long as they are not filed in the restructuring proceedings.

6. Incentive Regulation

A number of parties requested rehearing with respect to incentive ratemaking. Based upon the Commission's statement "that incentive ratemaking may be a better vehicle than exposure to risk for enhancing pipeline efficiency with respect to transportation costs," [509] the parties mentioned below assert that the issues of SFV rate design and incentive ratemaking are linked and must be considered together. Certain

[505] Order No. 636 at p. 30,455.

[506] As discussed above, pipelines may file to recover GSR costs under the terms of Order No. 528.

[507] Pipelines may also file to direct bill unrecovered balances in Account No. 191 in a limited section 4 filing. Filing to recover stranded costs and new facilities costs must be made in the context of a general rate case. However, the Commission reiterates that there can be no recovery of transition costs until after the pipeline has fully complied with all the requirements of Order No. 636.

[508] See Trunkline LNG Company *et al.* 59 FERC ¶ 61,342 (1992).

[509] Order No. 636 at p. 30,436.

parties (*e.g.*, AGD, ConEd, NIEP, and Peoples Natural Gas) argue that SFV and incentive ratemaking should be considered together in separate proceedings. Certain other parties (Brooklyn Union and the New York PSC) argue that a pipeline should not be allowed to implement SFV unless it also implements an incentive rate program.

On the other hand, several parties (APGA, Illinois Commerce Commission, Marathon, Natural Gas Clearinghouse, Phillips, United Distribution Companies, and UGI) argue that incentive ratemaking proposals should not be part of the restructuring proceedings. They maintain that the proceedings will be difficult enough without the implementation of incentive ratemaking as an issue and that the inclusion of this issue will divert attention from the implementation of the requirements of Order No. 636. The parties are also concerned that incentive ratemaking proposals could be used as a bargaining chip by a pipeline to the detriment of its customers.

In Order No. 636, the Commission recognized that:

> pipelines may want to utilize incentive ratemaking proposals as a competitive tool in the restructuring proceedings. Subject to the Commission's action in the final policy statement on incentive regulation, the pipelines may wish to file an incentive rate proposal along with its restructuring compliance filing. Any such incentive ratemaking proposal filed contemporaneously with the restructuring compliance filing should include sufficient detail to demonstrate the effect of the incentive rates on the straight fixed-variable (SFV) and unbundling objectives discussed above. Additionally, any incentive rate proposal must have the full support of the parties to the restructuring proceedings and be consistent with the Commission's final policy statement. (footnote omitted) [510]

The Commission will not, however, mandate the use of an incentive ratemaking mechanism in conjunction with SFV as requested by Brooklyn Union and the New York PSC because it is not necessary to consider SFV and incentive ratemaking together. While the change to SFV may have some impact on a pipeline's risk, and incentive ratemaking may be a way of encouraging efficiency other than exposure to risk, the Commission found in Order No. 636 that "SFV is but one aspect of risk analysis" and that the appropriate forum for risk analysis is a rate proceeding where all factors affecting risk are examined and the rate of return on equity is established.[511]

[510] Order No. 636 at pp. 30,466–67.

[511] Order No. 636 at p. 30,437.

7. Triennial Rate Review

A number of LDCs (*e.g.*, Con Ed, AGD, Illinois Power, Michigan Gas, APGA) and state agencies (*e.g.*, New York PSC, State of Louisiana), and NASUCA argue that pipelines should continue to be subject to the three-year rate review currently required by § 154.303(e) of the Commission's PGA (purchased gas adjustment) regulations.[512] They assert that the Commission did not give any reason for eliminating the requirement. They maintain that since the pipelines still retain monopoly power over the transportation system, a three-year rate review is essential to ensure that a pipeline's transportation, storage and other non-gas rates continue to be just and reasonable.

The Commission will not require pipelines to be subject to a three-year rate review. Under section 4 of the NGA, the Commission is required to ensure that rate changes filed by a pipeline are just and reasonable. Under section 5 of the NGA, if the Commission finds a rate to be unjust and unreasonable, after a hearing initiated upon complaint or its own motion, it must set the just and reasonable rate. Thus, the Commission examines the justness and reasonableness of rates under these two scenarios. The three-year review was part of the PGA regulatory scheme—in exchange for the ability to change only one cost element pipelines had to agree to a reexamination of all their costs and rates at three-year intervals to assure that gas cost increases were not offset by decreases in other costs. It was not employed only because a pipeline has a monopoly. Since there is no comparable special rate adjustment mechanism here, there is no reason for the three-year review. In the Commission's view the procedures provided under NGA sections 4 and 5, for ensuring that rates are just and reasonable, should provide sufficient protection to a pipeline's customers under ordinary circumstances.

On a different point, Llano argues that the Commission acted arbitrarily and capriciously in maintaining the three-year rate filing requirement for intrastate pipelines providing NGPA section 311 transportation while effectively eliminating the requirement for interstate pipelines.

There may or may not be merit to Llano's arguments, but intrastate rates are beyond the scope of this proceeding.

8. Miscellaneous

a. *Rates in effect subject to refund when restructuring filings are made.*

[512] 18 CFR 154.303(e).

Gas Company of New Mexico requests clarification that if a pipeline's rates in effect at the time the restructuring compliance filings are made are being collected subject to refund, the post-restructuring collections will also be subject to refund pending resolution of the pipeline's pending rate proceeding.

The Commission grants this clarification.

b. *A "reopener" provision in an existing settlement.* LILCO states that a current rate settlement between it and one of its pipeline suppliers includes a "reopener" provision that permits throughput increases resulting from restructuring. LILCO seeks clarification that by requiring that new rates be set based on the currently effective total throughput, the Commission did not intend to abrogate LILCO's rights under the settlement to seek an adjustment in transportation rates based on changes in throughput.

Since this is an issue that apparently pertains to only one settlement involving one pipeline, the Commission will not address it in this order. It may be raised in the pipeline's restructuring proceeding.

c. *Discovery and procedural disputes.* LILCO asserts that it is essential to have a mechanism or procedure in place for resolving disputes that may arise with respect to the exchange of necessary data or information, scheduling issues, and other problems, and recommends that each pipeline's restructuring proceeding be assigned to an administrative law judge. LILCO proposes that the compliance filing be submitted to the judge for an initial finding, after consideration of comments, of whether it complies with Order No. 636.

Tejas asks the Commission that parties to restructuring proceedings will have full discovery rights in order to verify the appropriateness of pipelines' restructuring proposals. Tejas requests that discovery procedures be available immediately, because access to accurate and complete information will greatly facilitate the settlement process.

The Public Service Company of Colorado [513] also request the right to utilize formal discovery procedures under Rule 401 *et seq.* of the Commission's rules of practice and procedure, and that an administrative law judge be appointed to each restructuring proceeding to resolve any discovery disputes.

[513] Public Service Company of Colorado, Western Gas Supply Company, and Cheyenne Light, Fuel and Power Company.

On June 24, 1992, the Commission issued an order in this rulemaking proceeding establishing a discovery procedure for restructuring proceedings in response to a motion by Natural Gas Clearinghouse.[514] The Commission directed its staff in the restructuring proceedings to submit data requests to the pipelines to elicit information that parties would need to evaluate restructuring proposals, and required the pipelines to serve answers to those requests on all parties to the restructuring proceeding. The Commission also directed its staff to assist in resolving informally any disputes regarding such data requests, and provided that parties could present unresolved discovery disputes to the Commission after the pipeline has filed its compliance filing. Thus, the Commission has already addressed these rehearing requests.

d. *Opportunity to develop a record.* Western Resources requests that a pipeline's customers have an opportunity to make a record on contested items in pipeline restructuring proposals, and suggests the Commission encourage the use of alternative dispute resolution devices and set limited issues for hearing and decision on an expedited basis when such devices are not successful in resolving the issue. Western Resources asserts that pleadings on contested issues will not always provide an adequate record, because they do not afford parties the opportunity to test the merits of other parties' arguments through discovery and cross-examination.

Marathon seeks assurance that parties will be entitled to a trial-type evidentiary proceeding on issues in restructuring proceedings that turn on disputed material facts. Specifically, Marathon questions the Commission's statement in Order No. 636 that restructuring proceedings will not be set for hearing before administrative law judges unless they are consolidated with other proceedings already pending before a judge.[515] Marathon argues that petitioners' statutory due process rights under the NGA will be violated if they are denied the right to develop a record through a trial-type hearing.

The Commission will establish appropriate procedures to resolve contested issues in restructuring proceedings. However, the Commission will not routinely set restructuring proceedings for hearing before administrative law judges. It should be possible in most such proceedings to resolve disputed issues on the basis of adequate records without trial-type hearings. But the Commission will determine whether such a hearing is necessary in a particular restructuring proceeding on the basis of the nature of the disputed issues.

e. *Timing of compliance filings by downstream pipelines.* Tenneco asserts that it is unreasonable for the Commission to expect downstream pipelines to restructure their services when they do not know what their upstream pipelines' services will look like, and suggests that downstream pipelines have an additional six to eight months to implement their restructuring initiatives. CNG also seeks rehearing of the requirement that downstream pipelines make compliance filings contemporaneously with those of their upstream pipelines.

The Commission denies these requests. While there may be significant details to be worked out in restructuring proceedings, Order No. 636 provides very specific direction on its major features. Downstream pipelines can prepare their compliance filings with confidence that their upstream pipelines (which are subject to Order No. 636) will be required to comply with the same provisions of that order that the downstream pipelines are required to comply with. The Commission will consider any proposals by downstream pipelines to adjust certain provisions of their own restructuring filings in light of restructuring provisions implemented on their upstream pipelines as they are presented, but no basis has been shown for an across-the-board deferral of compliance by downstream pipelines.

f. *Requests for exemption from Order No. 636.* OkTex asks that Order No. 636 not be applied to it, because it is small (only eight miles of pipe) and provides transportation only. Various other small pipelines and ANR Storage Company (ANR Storage) also seek exemption from Order No. 636. ANR Storage asserts that it neither sells gas, nor transports it on behalf of others, and that it does not have a blanket transportation certificate under part 284.

Pipeline-specific requests of this nature should be raised in pleadings in the pipeline's restructuring proceedings. They will not be addressed in this order. The Commission has terminated certain restructuring proceedings on grounds that pipelines were not jurisdictional [516] or had unique characteristics that render the restructuring requirements inapplicable.[517]

g. *The Commission's staff in restructuring proceedings.* The Public Service Company of Colorado also requests that the Commission's staff be involved in the restructuring proceedings as an active player, and not just as a facilitator. They assert that over the years, many smaller customers of the pipelines have come to rely on the staff's active participation in Commission proceedings as a critical resource.

The Commission's staff is actively involved in restructuring proceedings and will continue to be so, as needed, throughout the course of those proceedings. However, the role of the staff in these proceedings is not the same as that of litigation staff in proceedings set for hearing before an administrative law judge. The staff involved are serving as advisory staff to the Commission and are therefore subject to the *ex parte* rules. They will assist the parties in understanding how to comply with Order No. 636 and will advise the Commission on whether the pipelines and interested parties are implementing Order No. 636 on a timely basis, and whether the filings submitted by the pipelines constitute effective compliance with the final rule.

h. *Coercive settlement provisions.* In Order No. 636, the Commission said it would not tolerate coercive provisions in a pipeline's offer to settle a restructuring proceeding that have the effect of forcing parties to acquiesce in a settlement by threatening the denial of essential services.[518] Marathon argues that such coercive provisions pertaining to transition cost recovery should also be proscribed, citing a decision on a "cosmic" settlement for Tennessee Gas Pipeline Company where the Commission found that transition cost recovery provisions do not pertain to essential services.[519]

As the Commission said in Order No. 636, a party may not be threatened with denial of essential services under restructuring for failure to agree to a settlement offer by the pipeline. However, if a party to a restructuring proceeding does not agree to a pipeline's offer to compromise its contested claim for transition costs, the pipeline may file to recover the costs it claims, subject to Commission rulings on any challenge to

[514] 59 FERC ¶ 61,351 (1992).

[515] Order No. 636 at p. 30,467.

[516] North Penn Gas Company, 59 FERC ¶ 61,258 (1992), Inland Gas Company, Inc., 59 FERC ¶ 61,366 (1992), and Green Canyon Pipe Line Company, 59 FERC ¶ 61,371 (1992).

[517] Freeport Interstate Pipeline Company, 59 FERC ¶ 61,378 (1992).

[518] Order No. 636 at pp. 30,467–68.

[519] Tennessee Gas Pipeline Company, 59 FERC ¶ 61,045 at pp. 61, 171–175 (1992).

its prudence or protests to eligibility of the costs for recovery as Order No. 636 transition costs. The availability of essential services will not be jeopardized by ongoing proceedings on contested transition cost filings.

i. *Precedential effect of rulings on restructuring proceedings.* Marathon requests that the Commission states that rulings in restructuring proceedings will have no precedential effect, similar to the statement usually made in approving settlements. Otherwise, parties that have an interest in these proceedings would have to intervene in or monitor all of the restructuring proceedings to protect their interests. As an alternative, Marathon suggests that the Commission provide public notice and an opportunity for comment whenever an issue of potentially generic applicability arises in a restructuring proceeding.

Commission rulings on contested issues in restructuring proceedings will have value as precedent, just as Commission rulings on the merits in any other type of proceeding. If a ruling in one restructuring proceeding appears to affect parties in other proceedings in which the same or similar issues are pending, the affected parties are free to argue that the precedent established in another proceeding should not be applied in their case.

X. Impact on Project-Financed and ANGTS Prebuild Pipelines

A. Project-Financed Pipelines

Ozark objects to the provisions of the new section 284.242 of the Commission's regulations that require pipelines to offer to assign their firm capacity on upstream pipelines to their firm shippers. Because of the terms of its financing arrangement (indenture), Ozark's lenders have the right to approve any other shippers that take on the minimum bill obligations currently borne by Columbia and Tennessee, and if either of these pipelines is relieved of its liability for its capacity on Ozark without the lenders approval, Ozark will be in default on the terms of its loan. Thus, Ozark seeks a ruling from the Commission that § 284.242 will not work to allow Columbia or Tennessee to assign their firm capacity on Ozark to another shipper until and unless that shipper has been approved by Ozark's lenders in accordance with the terms of the indenture.[520]

A consortium of banks [521] that provided financing for Kern River, also a project-financed pipeline, seek clarification that shippers under existing firm transportation contracts will not be relieved of their contractual obligations as a result of the capacity reallocation process under Order No. 636 without the pipeline's consent.

The Commission will grant the requested clarification. Assignors of capacity on project-financed pipelines whose loan agreements require creditor approval of substitute shippers are not relieved of liability for assigned capacity, unless the project-financed pipeline agrees to release the assignor from such liability. Thus, if creditor approval of the new shipper cannot be secured, the assigning shipper must serve as a guarantor of payments under the existing contract even though another shipper is assigned the capacity.

B. ANGTS Prebuild Pipelines

Foothills Pipe Lines, Ltd. (Foothills), a Canadian pipeline, urges the Commission to exempt the ANGTS prebuild project from Order No. 636 to the extent necessary to ensure that there will be no assignment, release, or reallocation of prebuild pipeline capacity without the prior agreement of all parties to the relevant prebuild import and resale contracts. Foothills is concerned that under § 284.242 of the Commission's regulations, as promulgated in Order No. 636, Northern Natural and Panhandle Eastern Pipeline Company (Panhandle), both of whom are major purchasers of Canadian gas for transport through Northern Border, a component of the ANGTS prebuild project, could be required to assign their capacity on Northern Border to their firm customers, thus arguably excusing Northern Natural and Panhandle from purchasing Canadian gas from Northwest Alaskan Pipeline Company and, indirectly, from Pan-Alberta Gas, Ltd. (Pan-Alberta).

Foothills is also concerned that § 284.14(e) of the new regulations would permit Pacific Interstate Transmission Company an opportunity during the restructuring proceedings to relinquish its prebuild capacity on PGT, Northwest, and El Paso, and permit Pan-Alberta Gas (U.S.) to relinquish its prebuild capacity on Northern Border. Finally, Foothills notes that the capacity release program under new § 284.243 would provide buyers of prebuild gas ongoing opportunities to release their prebuild capacity to other shippers. Foothills asserts that in each of these situations, there could be a decoupling of the prebuild transportation capacity from the prebuild gas purchase obligations which, together, provide the revenues to defray the cost of the Canadian prebuild investment. The Canadian prebuild investment includes not only the Foothills interprovincial pipeline facilities, but also intraprovincial pipeline facilities and substantial gas producing facilities. According to Foothills, permitting pipelines grounds to default on their purchase obligations to Canadian producers would violate various time-honored commitments by the Commission, the U.S.-Canadian Agreement on Principles, and Section 9(d) of the Alaska Natural Gas Transportation Act.[522] Foothills also expresses concern about the possibility that Northern Natural and Panhandle will lose needed capacity on their own systems through the unbundling and conversion process under § 284.284 and 284.8(a)(4) of the new regulations.

Foothills' and Pan Alberta's concerns about the rule's effect on the prebuild shippers' purchase obligations are misplaced. The rule does not alter contracts between shippers and their suppliers. Moreover, nothing in the rule is intended to disturb the United States government's commitment to the ANGTS prebuild. Foothills' concern about Panhandle and Northern Natural's capacity can be addressed in those pipelines' restructuring proceedings.

XI. Effective Date

The amendments to the Commission's regulations adopted in this order on rehearing will become effective September 11, 1992.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural Gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission denies rehearing in part, grants rehearing in part, clarifies Order No. 636 as described above, and amends part 284, chapter I, title 18, *Code of Federal Regulations*, as set forth below.

By the Commission. Commissioner Moler dissented in part with a separate statement

[520] Other pipelines make this same request: Trailblazer Pipeline Company, Northern Border Pipeline Company (Northern Border), Overthrust Pipeline Company (Overthrust), U–T Offshore System (U–TOS), and Wyoming Interstate Company (Wyoming Interstate).

[521] Barclays Bank, PLC, Canadian Imperial Bank of Commerce, Credit Lyonnais, and the Fuji Bank, Ltd. (Barclays).

[522] Pan Alberta makes very similar arguments in its request for rehearing.

attached. Commissioner Terzic concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 43 U.S.C. 1331–1356; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142

2. In § 284.14, paragraph (b)(3)(iii) is redesignated as paragraph (b)(3)(v), new paragraphs (b)(3) (iii) and (iv) are added, and paragraph (e) is revised to read as follows:

§ 284.14 Provisions governing pipeline restructuring.

* * * * *

(b) * * *

(3) * * *

(iii) The compliance filing must include a cost-based sales rate for small customers that are entitled to purchase gas under a pipeline's one-part, imputed-load-factor rate schedule on the effective date of a pipeline's blanket certificate under § 284.284, to apply for a period of one year from that date.

(iv)(A) Except as provided in paragraph (b)(3)(iv)(B) of this section, a pipeline that offered a sales or transportation service to small customers with a one-part volumetric rate at an imputed load factor on May 18, 1992, must include tariff provisions in its compliance filing to charge a rate for firm transportation services under § 284.8 on the same basis and under the same eligibility criteria as the small customer sales or transportation rate under the pipeline's last-approved tariff provisions for those services.

(B) A pipeline may increase the permissible daily service levels for the small customer transportation rate up to 10,000 Mcf or Dth per day. A customer that receives service under its small customer transportation rate may not ship gas under any interruptible transportation rate schedule available from the pipeline or ship gas as a replacement shipper on the pipeline under § 284.243, unless the customer has exhausted its daily levels of firm transportation from the pipeline. A pipeline's firm transportation service for small customers may not contain service conditions more restrictive than the restrictions permitted by paragraph (b)(3)(iv) of this section.

* * * * *

(e) *Adjustments to firm transportation service; automatic abandonment.* (1) Any firm shipper on a pipeline subject to this section must give notice to the pipeline during the pipeline's restructuring proceeding whether the shipper wants to retain, reduce, or terminate its contractual rights to firm transportation service.

(2) Except as provided in paragraph (e)(4) of this section, any firm shipper may reduce or terminate its contractual rights and obligations for firm transportation service subject to this section, if the shipper gives notice of its desire to reduce or terminate service under paragraph (e)(1) of this section, and

(i) The pipeline receives an offer for the available firm transportation service from a creditworthy shipper that is equal to or greater than the rate the existing firm shipper is contractually obligated to pay, up to the maximum rate, or

(ii) The pipeline agrees to the reduction or termination of the existing firm shippers' contractual obligations.

(3) Except as provided in paragraph (e)(4) of this section, a pipeline subject to this section may abandon firm transportation service under a contract with a firm shipper:

(i) To the extent the shipper reduces or terminates its contractual obligations under paragraph (e)(2) of this section, or

(ii) If, during the pipeline's restructuring proceeding, another creditworthy shipper offers a higher rate for the service than the existing firm shipper, up to the maximum rate, which the existing shipper declines to match, and the pipeline is not contractually precluded from charging the higher rate to the existing firm shipper.

(4) Paragraphs (e)(1)–(3) of this section do not apply to the firm transportation service provided for a downstream pipeline subject to subpart B or G of this part on an upstream pipeline subject to subpart B or G of this part, unless the existing firm customers of the downstream pipeline concur in the decision of the downstream pipeline to reduce or terminate its firm transportation service on the upstream pipeline.

(5) The authority to abandon service under this paragraph is effective:

(i) On the effective date of the contract to provide the service to another shipper, or

(ii) On the effective date of the pipeline's agreement to the reduction or termination of the existing firm shipper's contractual obligations.

3. In § 284.221, the introductory text of paragraph (d)(2) is amended by removing the words "more than one year" and adding, in their place, the words "one year or more", and paragraph (d)(2)(ii) is amended by removing the words "those terms" at the end of the paragraph and adding, in their place, the words "the terms of any such offer".

4. In § 284.242, the first sentence is revised to read as follows:

§ 284.242 Assignment of firm capacity on upstream pipelines.

An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must offer without undue discrimination to assign to its firm shippers its firm transportation capacity, including contract storage, on all upstream pipelines, whether the firm capacity is authorized under part 284 or part 157.

* * *

5. In § 284.243, paragraphs (c) and (d) are revised, and a new paragraph (h) is added, to read as follows:

§ 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(c) Except as provided in paragraph (h) of this section, a firm shipper that wants to release any or all of its firm capacity must notify the pipeline of the terms and conditions under which the shipper will release its capacity. The firm shipper must also notify the pipeline of any replacement shipper designated to obtain the released capacity under the terms and conditions specified by the firm shipper.

(d) The pipeline must provide notice of offers to release or to purchase capacity, the terms and conditions of such offers, and the name of any replacement shipper designated in paragraph (b) of this section, on an electronic bulletin board, for a reasonable period.

* * * * *

(h)(1) A release of capacity by a firm shipper to a replacement shipper for any period of less than one calendar month need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.

(2) A firm shipper may not rollover, extend, or in any way continue a release under this paragraph without complying with the requirements of paragraphs (c) through (e) of this section, and may not re-release to the same replacement

shipper under this paragraph until thirty days after the first release period has ended.

8. In § 284.282, a new paragraph (d) is added to read as follows:

§ 284.282 Definitions.

* * * * *

(d) *Small customer* is a customer that purchases gas from a pipeline under the pipeline's one-part imputed load factor rate schedule on the effective date of the blanket certificate.

7. In § 284.284, a new paragraph (e) is added to read as follows:

§ 284.284 Blanket certificates for unbundled sales services.

* * * * *

(e) *Small customer cost-based rate.* A pipeline that provided bundled sales service to a small customer before the effective date of the blanket certificate granted in paragraph (a) of this section is required to offer a sales service to that customer at a cost-based rate for one year from the effective date of the certificate. The obligation to sell at the cost-based rate expires one year after the effective date of the certificate.

Editorial Note: The Appendix and the Commissioner's statements will not appear in the Code of Federal Regulations.

Appendix—Alphabetized Listing of Requests for Rehearing of Order No. 636

Alabama Gas Corporation and
Clarke-Mobile Counties Gas District
Mississippi Valley Gas Company
Mobile Gas Service Corporation
North Carolina Natural Gas Corporation
Public Service Company of North Carolina, Inc.
Wilmut Gas and Oil Company (Alabama Gas)
Alabama-Tennessee Natural Gas Company (Alabama-Tennessee)
American Paper Institute, Inc. (American Paper Institute)
American Public Gas Association (APGA)
Amoco Production Company (Amoco)
ANR Pipeline Company (Correction filed 5–13–92) (ANR)
ANR Storage Company (ANR Storage)
Arizona Electric Power Cooperative, Inc. (Arizona Electric)
Arizona Direct Customers
Arkla, Inc. (Arkla)
Associated Gas Distributors (Request for clarification filed 5–15–92) (AGD)
Atlanta Gas Light Company and
Chattanooga Gas Company (Atlanta Gas)
Baltimore Gas and Electric Company (BG&E)
Barclays Bank, PLC and
Canadian Imperial Bank of Commerce
Credit Lyonnais
Fuji Bank, Ltd. (Barclays)
Brooklyn Union Gas Company (Brooklyn Union)
Brooklyn Union Gas Company
Consolidated Edison Company of New York, Inc.
Public Service Electric and Gas Company (Joint Request)
Brymore Energy, Inc. (Brymore)
Carnegie Natural Gas Company (Carnegie)
Cascade Natural Gas Corporation
and Washington Water Power Company (Cascade)
Centra Gas Manitoba, Inc. (Centra Gas)
Cincinnati Gas & Electric Company
The Union Light, Heat and Power Company
Lawrenceburg Gas Company
Mountaineer Gas Company (Substitute copy with corrections filed 5–11–92) (Cincinnati Gas)
Citizen Action
Citizens Gas and Coke Utility (Citizens Gas)
City Gas Company (City Gas)
City of Colorado Springs, Colorado (Colorado Springs)
City of Hamilton, Ohio (Hamilton)
City of Vicksburg (Vicksburg)
CNG LDCs (East Ohio Gas Company, River Gas Company, West Ohio Gas Company, Peoples Natural Gas Company, Virginia Natural Gas, Inc., and Hope Gas, Inc.)
CNG Transmission Corporation (CNG)
Coalition Against Straight Fixed Variable (Coalition)
Colorado Interstate Gas Company (CIG)
Columbia Gas Distribution Companies
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia)
Consolidated Edison Company of New York, Inc. (Correction filed 5–13–92) (ConEd)
Delta Pipeline Company (Delta)
Department of the Interior,
Minerals Management Service (MMS)
Destec Energy, Inc. (Destec)
Edison Electric Institute (Edison Electric)
Elizabethtown Gas Company (Elizabethtown)
El Paso Natural Gas Company (El Paso)
Equitrans, Inc. (Equitrans)
Fertilizer Institute
Florida Power and Light Company (Florida Power)
Foothills Pipe Lines Ltd. (Foothills)
Fort Pierce Utilities Authority and
City of Vero Beach (Fort Pierce)
Fuel Managers Association
Gas Company of New Mexico
Great Lakes Gas Transmission Limited Partnership (Great Lakes)
Hadson Gas Systems, Inc. (Corrected pages filed 5–12–92) (Hadson)
High Island Offshore System (HIOS)
Illinois Commerce Commission
Illinois Power Company and
Northern States Power Companies (Illinois Power)
Independent Petroleum Association of America and
Cooperating Associations (IPAA)
Indiana Gas Company, Inc. (Indiana Gas)
Indicated Shippers
Industrial Gas Users Conference
Industrial Groups (Process Gas Consumers Group, American Iron and Steel Institute, Georgia Industrial Group, Association of Businesses Advocating Tariff Equity, California Industrial Group, California Manufacturers Association, and California League of Food Processors)
Interstate Natural Gas Association of America (INGAA)
Kansas Corporation Commission (KCC)
Kentucky Ohio Gas Company (Kentucky Ohio)
Kern River Gas Transmission Company (Kern River)
K N Energy, Inc. (K N Energy)
Laclede Gas Company (Laclede)
Llano, Inc. (Llano)
Long Island Lighting Company (LILCO)
Marathon Oil Company (Letter filed 5–11–92) (Marathon)
Maryland People's Counsel
Memphis Light, Gas and Water (Memphis Light)
Michigan Gas Utilities Division of Utilicorp United Inc. (Michigan Gas)
Midcon Marketing Corporation (Midcon Marketing)
Midland Cogeneration Venture Limited Partnership (Midland Cogeneration)
Mobil Natural Gas Inc. (Mobil)
Municipal Gas Authority of Georgia
National Association of Gas Consumers
National Association of State Utility Consumers Advocates (NASUCA)
National Association of Regulatory Utility Commissioners, Inc. (NARUC)
National Fuel Gas Supply Corporation (National Fuel)
National Independent Energy Producers (NIEP)
Natural Gas Clearinghouse
Natural Gas Pipeline Company of America (Natural)
Natural Gas Supply Association/Indicated Producers (NGSA)
New England Gas Distributors
New England Power Company (New England Power)
New England Power Company in support of Northeast Energy Associates, *et al.*
New Jersey Natural Gas Company (New Jersey Natural)
New York State Electric and Gas Corporation (NYSE&G)
Northeast Energy Associates and
North Jersey Energy Associates (Northeast Energy)
Northern Border Pipeline Company (Northern Border)
Northern Distributor Group
Northern Illinois Gas Company and
Peoples Gas Light and Coke Company
North Shore Gas Company (Northern Illinois Gas)
Northern Indiana Public Service Company (Northern Indiana)
Northern Natural Gas Company (Northern Natural)
Northwest Natural Gas Company (Northwest Natural)
Northwest Pipeline Corporation (Northwest)
Official Committee of Unsecured Creditors of the Columbia Gas Transmission Corporation (Columbia Unsecured Creditors)
OkTex Pipeline Company (OkTex)
O&R Energy, Inc. (O&R Energy)
Overthrust Pipeline Company (Overthrust)
Ozark Gas Transmission System (Ozark)
Pacific Gas and Electric Company (PG&E)
Pacific Gas Transmission Company (PGT)
Pan-Alberta Gas Ltd. (Pan Alberta)
PEC Pipeline Group (PEC Group)
Pennsylvania Public Utility Commission (Pennsylvania PUC)

Peoples Gas System, Inc. (Peoples Gas)
Peoples Natural Gas Company (Peoples Natural Gas)
Philadelphia Electric Company (Philadelphia Electric)
Phillips Petroleum Company and Phillips Gas Marketing Company GPM Gas Corporation (Phillips)
Potomac Electric Power Company (PEPCO)
Public Service Commission of the Commonwealth of Kentucky (Kentucky PSC)
Public Utilities Commission of the State of California (CPUC)
Public Service Commission of the State of New York (New York PSC)
Public Service Company of Colorado and Western Gas Supply Company Cheyenne Light, Fuel and Power Company (Public Service Company of Colorado)
Public Service Electric and Gas Company (PSE&G)
Questar Pipeline Company (Questar)
Reynolds Metal Company (Reynolds)
Rochester Gas and Electric Corporation (Rochester Gas)
South Carolina Pipeline Corporation (South Carolina Pipeline)
Southern California Edison Company (SoCal Edison)
Southern California Gas Company (SoCal Gas)
Southern Indiana Gas and Electric Company (Southern Indiana)
Southern Natural Gas Company (Southern)
Southwest Gas Corporation (Southwest Gas)
Spot Market Corporation of The State of Texas (Spot Market Corporation)
State of Louisiana
State of Michigan and Michigan Public Service Commission (State of Michigan)
State Regulatory Commissions (Iowa, Missouri, and Wisconsin) (Iowa, Missouri and Wisconsin Commissions)
Tejas Power Corporation (Supplemental filed 5–20–92) (Tejas)
Tenneco Gas (Tenneco)
Tennessee Small General Service Customer Group Columbia Small Customer Group (Tennessee and Columbia Small Customers)
Texas Gas Transmission Corporation (Texas Gas)
Three State Agencies (Montana Consumer Counsel, South Dakota Public Utilities Commission, and the Montana Public Service Commission) (Montana Agencies and South Dakota Commission)
Trailblazer Pipeline Company (Trailblazer)
Transcontinental Gas Pipe Line Corporation (Transco)
UGI Utilities, Inc. (UGI)
United Distribution Companies
United Gas Pipe Line Company (United)
U–T Offshore System (UTOS)
Virginia Electric Power Company (VEPCO)
Washington Gas Light Company (Washington Gas)
Western Resources, Inc. (Western Resources)
Wisconsin Distributor Group
Wyoming-California Pipeline Company (WyCal)
Wyoming Interstate Company, Ltd. (Wyoming Interstate)

Moler, Commissioner, *dissenting in part:*

I am pleased that in Order No. 636–A we have adopted many changes in response to concerns about requiring straight fixed variable rate design. However, I must dissent from two aspects of the order on rehearing: the level of the transition costs allocated to interruptible customers, and the 20-year contract term "cap" for the right of first refusal.

Order No. 636–A rests on the rationale that the current regulatory climate is unworkable and results in "anticompetitive consequences for *all* segments of the industry and consumers." [1] Thus, the rule is necessary to create "a modern, viable natural gas industry specifically fashioned to the needs of *all* gas consumers and the Nation * * *." [2] Because the rule is aimed at providing benefits to *all* segments of the industry,[3] I believe that *all* segents of the industry should bear an equitable share of the transition costs that will inevitably occur as a result of this rule. Simply put, I do not believe the rule meets that test.

Some state commissions suggested a volumetric surcharge for the recovery of gas supply realignment costs.[4] I believe that adopting their suggestion would have been wiser than the "10 percent solution" adopted by the majority. That approach, a 10 percent allocation of gas supply realignment costs to interruptible customers, does not reflect the benefit that these customers are receiving from the industry restructuring. The figures show that at least half of the pipeline deliveries to market are under IT rate schedules.[5] To require these customers to now bear only 10 percent of the gas supply realignment costs (and these do not encompass all transition costs) is not equitable.[6]

I have come to the conclusion that a volumetric surcharge, with a true-up mechanism, most fairly reflects an equitable sharing of the gas supply realignment costs that will result from the rule among all segments of the industry who will benefit from the rule. I realize that the volumetric surcharge somewhat undercuts the Commission's goal of lowering usage charges, but I find convincing the California Public Utilities Commission's argument that even the 75 percent volumetric surcharge presently in place under Order Nos. 500 and 528 for take-or-pay costs has resulted in only moderate customer impacts (4¢/dth for El Paso and 1¢/dth for Transwestern).[7] If my colleagues are right, most of the costs of contract reformation are behind us. Therefore, gas supply realignment costs should not approach the level of take-or-pay costs under Order Nos. 500 and 528. Thus, I believe that a 25 percent volumetric surcharge on all throughput volumes, with a true-up mechanism, best achieves the goal of spreading gas supply realignment costs among all segments of the industry.

My second problem is the majority's decision to unnecessarily hobble LDCs in exercising their right of first refusal. In Order No. 636, the Commission adopted a requirement that the existing customer match the contract term, without specifying the length of term it must match, as well as the price.[8] In Order No. 636–A, the majority has determined that a 20-year contract term is an appropriate cap on the contract term because it is the "traditional length of long-term contracts," and several recent contracts have been for 20-year terms.[9]

I cannot agree to such a blatantly anti-LDC rule. Almost all of the LDCs requested that the contract term be capped at 5 years because bidders could take capacity away from them by offering a longer contract term, thus endangering their ability to meet their service obligation. The record simply does not support a 20-year term. I believe that basing the selection of the 20-year term upon an "historical" basis is ludicrous—the entire thrust of the rule is toward the future, not the past. Finally, I find that using as precedent cases involving contracts for *new* pipeline capacity not to be compelling support for the 20-year term that *existing* capacity holders on *existing* pipelines must match.

Any generic regulation must, to a certain degree, be procrustean. Here, though, by providing that only 10 percent of the gas supply realignment costs be borne by IT customers, the majority cuts too short and by inflicting a 20-year contract term cap on the right of first refusal, the majority stretches too long. Therefore, I must dissent on these two aspects of Order 636–A.

Elizabeth Anne Moler,
Commissioner.

Terzic, Commissioner, *concurring:*

I must concur in this extensive rehearing order. While I believe that the country needs the certainty inherent in this major and unprecedented order, I continue to believe that the ultimate success of the Order No. 636 process will depend on the level of flexibility the Commission and the staff on its behalf allow in implementation of the substantive provisions of this order. In this regard I reiterate my belief that many of the criticisms leveled at the rule should have been, and could have been, addressed by allowing for more flexibility in the rule.

While the rule adopts some flexibility with respect to historically sensitive issues, such as small customer gas sales and rates, it

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[1] Order No. 636–A, slip op. at 35 (emphasis added).

[2] *Id.* at 2 (emphasis added).

[3] *Id* at 35, 37–38, 40–41.

[4] *E.g.*, CPUC; Illinois; Iowa, Missouri and Wisconsin; State of Michigan; and New York PSC.

[5] Order No. 636–A, slip op. at 30, n.41.

[6] I must point out that, while the 10 percent cost allocation mechanism to IT service provides for some kind of "true-up" mechanism (Order No. 636–A at 5, n.5 and 353), the mechanism is not tied to IT service. Thus, while 10 percent of the costs could be allocated to IT service, if only 5 percent are collected (say over the next 2 years) there is nothing to prevent the pipeline from allocating the remaining 5 percent to firm service in the future. While I support a true-up mechanism to prevent absorption of costs by the pipeline, it should be tied to the service that the costs are allocated to.

[7] Order No. 636–A, slip op. at 351.

[8] Order No. 636 at 30,449–450.

[9] Order No. 636–A, slip op. at 306.

rigidly continues to preclude such requested options as: a minimal level of residual bundled sales service and use of rate designs other than SFV for cost allocation and billing purposes. Further, the rule attempts to decide issues that I think should be left to individual restructuring proceedings (*e.g.*, whether bids for released capacity should be capped at a given number of years), where there is superior expertise and factual basis for a decision as to the specifics. This point comports with the rule's too rigid one-size-fits-all aspects. This I find surprising from the Commission, which should have a lesser rather than greater affinity for "command and control" type regulation, which this rule imitates in its level of detail for some treatments.

Thus, while the rule adopts what can be characterized as an opportunity for flexibility, with respect to a minuscule percentage of the industry's load, it retains inflexibility with respect to major parts of the pipeline industry's operations. The decisions here achieve a level of precision that may leave little left to negotiate in the restructuring process and may, in fact, be wrong for the particular system and its customers.

In sum, a major problem with this rehearing order and its predecessor lies not so much in the substance of the calls, but in a nagging belief that, based on the open meeting discussions and treatment of the companion orders, the 636 orders will be implemented by this Commission and its staff in a procrustean manner. I fear that there may be little room left for true negotiation in the restructuring process. If there is some room left to maneuver, I am not optimistic that this Commission will sanction the results of such negotiations, if they in any way deviate from the particular treatments contemplated and specified in the 636–A order.

I suspect that despite the nods to flexibility in the rehearing order and the rhetoric accompanying the voting process, little room exists to accommodate such things as changes in rate design and other treatments based on pipeline system operational differences and customer wishes.

I hope I am wrong. The situation can possibly be remedied in practice, where it has not been in this document. That is why I can concur. Today's accompanying vote on the ANR settlement in Docket No. RS92–1–001 gives me cause to wonder. It should give the industry and state regulators cause to wonder too. However, dénouement of the Order No. 636 saga is a long way off. Thus, ever optimistic, I will continue to push for flexibility in implementation, keeping in mind that, flexibility in regulation, in this case, is in the public interest.

Branko Terzic,

Commissioner.

[FR Doc. 92–18775 Filed 8–11–92; 8:45 am]

BILLING CODE 6717-01-M

federal register

Wednesday
August 12, 1992

Part III

Department of Transportation

Coast Guard

33 CFR Parts 155 and 157
46 CFR Parts 30 et al.
Double Hull Standards for Vessels Carrying Oil in Bulk; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 157; 46 CFR Parts 30, 32, 70, 90, and 172

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: Pursuant to the Oil Pollution Act of 1990 ("OPA 90" or "the Act"), the Coast Guard is adopting standards for double hulls on vessels carrying oil in bulk as cargo or cargo residue that are constructed or undergo a major conversion under contracts awarded on June 30, 1990 or later. The Coast Guard is also issuing standards for double hulls on vessels carrying oil in bulk as cargo or cargo residue that have been constructed or have undergone a major conversion under earlier contracts. The Act requires these vessels to have double hulls according to a timetable commencing in 1995. This rule provides the shipping and shipbuilding industries with interim standards in order to meet the double hull requirement.

DATES: This interim final rule is effective on September 11, 1992. Comments on this interim final rule must be received on or before October 13, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 90-051), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen M. Shapiro, Merchant Vessel Inspection and Documentation Division (G-MVI-2), telephone (202) 267-1181.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 90-051), the specific section of the rule or related documents to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during this comment period. The rule may be changed in view of the comments.

The Coast Guard plans no public hearing. However, persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**." If it determines that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Stephen M. Shapiro, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 5, 1990, the Coast Guard published a notice of proposed rulemaking entitled "Double Hull Standards for Tank Vessels Carrying Oil" in the **Federal Register** (55 FR 50192). On September 6, 1991, the Coast Guard published a notice in the **Federal Register** (56 FR 44051) to reopen the comment period for this rulemaking. On August 29, 1991, the Coast Guard published a notice in the **Federal Register** (56 FR 42763) announcing a public meeting to obtain the views of interested parties regarding the scope of the environmental assessment. This notice was supplemented with direct mailings of approximately 150 copies of the announcement to various governmental, industrial, and environmental groups. The Coast Guard subsequently held the scoping meeting on September 26, 1991. On January 15, 1992 the Coast Guard published a notice in the **Federal Register** (57 FR 1854) announcing the availability of the Interim Regulatory Impact Analysis (Interim RIA) and Environmental Assessment (EA). In response to these various notices, the Coast Guard received a total of 112 letters commenting on this rulemaking. One letter requested that the Coast Guard conduct public hearings on this rule. The Coast Guard determined that, apart from the scoping meeting for the environmental assessment, the opportunity to make oral presentations would not aid this rulemaking. Therefore, a public hearing was not held.

Background and Purpose

Section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101-380) added section 3703a to title 46 U.S. Code. Section 3703a(a) requires a double hull to be fitted on a vessel carrying oil in bulk as cargo or cargo residue. (Note: hereafter, a "vessel" refers to any vessel carrying any quantity of oil in bulk as cargo or cargo residue; refer to paragraph 1 of the "*Discussion of Comments and Changes*" for a discussion of vessels covered under the Act.) A vessel that is constructed or undergoes a major conversion under a contract placed on June 30, 1990 or later must have a double hull fitted at the time of construction or major conversion (with certain exceptions in the Act). An existing vessel that is constructed or that undergoes a major conversion under an earlier contract must be fitted with a double hull in accordance with a timetable in 46 U.S.C. 3703a(c)(3), which commences in 1995.

Section 3703a does not provide technical standards for a double hull. This rule provides the shipping and shipbuilding industries with standards in order to meet the double hull requirement.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2-90. This NVIC provides policy guidance on double hull construction for a vessel undergoing construction or major conversion under a contract awarded on or after June 30, 1990, but prior to the effective date of this rule. A vessel which is built to plans that have been approved in accordance with NVIC 2-90 under a contract awarded before the effective date of this rule will satisfy the double hull requirements in this rule. NVIC 2-90 may not be used for a vessel which undergoes construction or major conversion under a contract awarded on or after the effective date of this rule.

A substantial amount of oil imported to the United States is transported aboard foreign flag vessels. Since the Act applies to all vessels in U.S. waters, including foreign vessels, the Coast Guard recognized that U.S. double hull regulations would have a significant global impact. Therefore, the Coast Guard has also worked at the international level to establish double hull standards. The International Maritime Organization (IMO) is the specific United Nations agency which oversees international maritime affairs. IMO has been responsible for

developing various international conventions, such as the International Convention for the Safety of Life at Sea, 1974, as amended by the Protocol of 1978 (SOLAS), and the International Convention for the Prevention of Pollution by Ships, 1973, as amended by the Protocol of 1978 (MARPOL). The Coast Guard represents the United States at IMO deliberations. In November 1990, the United States submitted a proposal to IMO's Marine Environment Protection Committee (MEPC) for international standards to require double hulls for tank vessels. This proposal resulted in Regulation 13F of Annex I to MARPOL. At the 31st session of the MEPC in July 1991 (MEPC 31), the Committee approved draft Regulation 13F for circulation to IMO member states for their consideration. In November 1991, a MEPC working group subsequently refined Regulation 13F, which was further refined and formally adopted at MEPC 32 on March 6, 1992. The United States reserved its position during the adoption of Regulation 13F, due to differences from OPA 90 regarding the applicability of double hull requirements to certain categories of vessels and the allowance of the mid-deck concept as an alternative to a double hull. The issue of alternative designs is further discussed in paragraph 12 of the following *"Discussion of Comments and Changes."* The double hull dimensions prescribed in this rule are consistent with those in Regulation 13F as adopted at MEPC 32.

The MEPC also adopted Regulation 13G to Annex I of MARPOL at its 32d session. Regulation 13G contains a schedule for retrofitting (with double hulls) or retiring existing single hull tank vessels 30 years after delivery. This schedule is further discussed in paragraph 11 of the following *"Discussion of Comments and Changes."* Regulation 13G also requires vessels built prior to requirements for protectively located segregated ballast (pre-MARPOL tankers) to convert tanks protecting 30 percent of the sides or 30 percent of the bottom to segregated ballast tanks no later than 25 years after delivery. This provision will be considered in the separate rulemaking on measures for existing vessels, as discussed in paragraph 40 of the following *"Discussion of Comments and Changes."* The United States also reserved its position during the adoption of Regulation 13G of Annex I to MARPOL.

A copy of IMO paper MEPC/32/20, which contains Regulations 13F and 13G, has been placed in the public docket. Regulation 13F, as adopted at MEPC 32, was not significantly revised from the earlier draft reprinted in the **Federal Register** on September 6, 1991 (56 FR 44052). Regulations 13F and 13G, as adopted at MEPC 32, appear as an appendix to this preamble for the convenience of the reader.

Discussion of Comments and Changes

The Coast Guard thanks the many interested parties who submitted a total of 112 documents containing over 350 comments to the public docket. These comments provided very useful information to the Coast Guard and afforded valuable assistance in the development of this rule.

This section discusses the comments received as well as the Coast Guard's responses and changes to the proposed rule. This section is divided into two subsections. The first subsection discusses comments concerning the specific CFR sections, and the second subsection discusses nonspecific comments concerning other issues relating to this rulemaking and double hull requirements in general.

Comments Relating to Specific CFR Sections

All changes to each section of the rule are discussed within the following paragraphs, and the paragraphs are numbered in the order of their appearance in the CFR.

1. *33 CFR 155.390, 46 CFR 70.05, and 46 CFR 90.05.* Three comments addressed the applicability of this rule to a vessel other than a tank barge or a tankship designed primarily to carry oil. One comment requested a clarification on the applicability of this rule to cargo vessels certificated under 46 CFR subchapter I. Another comment strongly opposed the application of this rule to vessels other than oil tankers in general, and to offshore supply vessels (OSV's) specifically, and requested regional public hearings on this issue.

Subject to the exemptions in 46 U.S.C. 3702, the Act applies double hull requirements to a tank vessel, as defined in 46 U.S.C. 2101(39). Section 2101(39) includes a vessel that carries any quantity of oil in bulk as cargo, including a tank barge, a tanker as defined in 46 U.S.C. 2101(38), and a vessel certificated as a cargo or passenger vessel that carries limited quantities of oil in bulk. The Coast Guard has no discretion in this area; cargo tanks on these vessels must be protected in accordance with this rule. Notes have been added to 46 CFR 70.05 and 46 CFR 90.05 to clarify the applicability of this rule to those vessels.

The exemption provisions of section 3702, which are referenced in revised 33 CFR 157.01, apply to certain OSV's and fishing industry vessels within specified size and service limits. However, an OSV or a fishing industry vessel must meet the requirements of this rule if it exceeds the size limits or provides services not specifically exempted in 46 U.S.C. 3702. For example, the fuel tanks on a fishing or fish tender vessel (of not more than 500 gross tons) that are also used to hold excess fuel to be transferred as cargo to another fishing industry vessel or shoreside fishing industry facility would not have to be double-hulled. This rule does not apply to a fish processing vessel of not more than 5,000 gross tons.

Similarly, the fuel supply tanks on an OSV (including fuel tanks that are also used to hold fuel to be transferred as cargo to an offshore facility) would not have to be double-hulled. However, since the exemption in 46 U.S.C. 3702(b) applies only to fuel supply tanks, other tanks on that OSV which carry oil (including drilling mud that contains oil) as bulk cargo must have double hull protection in accordance with this rule.

The Coast Guard considered the request for public hearings on this issue and concluded that no additional substantive input is likely to be received at such hearings beyond the information already submitted to the public docket. Although no hearings on this issue were held or are anticipated, the Coast Guard specifically invites further comments to the public docket.

The original § 155.390 included requirements from Annex I of MARPOL that apply to tank vessels that are not oil tankers as defined in § 157.03. Since 33 CFR part 157 now applies to all tank vessels, the provisions of § 155.390 have been moved to § 157.08.

2. *33 CFR 157.01.* One comment requested clarification of the applicability of this rule to foreign vessels in innocent passage. Title 46 U.S.C. 3702 exempts such vessels from these requirements. This exemption, as well as exemptions for public vessels and for certain offshore supply and fishing industry vessels (discussed in paragraph 1) were already reflected in existing § 157.01(b), which has been clarified.

Although no other comments on this section were received, § 157.01(a), which was based on 46 U.S.C. 2101(39), has been revised to reflect 46 U.S.C. 3703a(a). Title 46 U.S.C. 3703a(a) includes any vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ). Title 46 U.S.C.

2101(39) includes a vessel within the EEZ that transfers cargo. Sections 157.08 and 157.25 have been revised to maintain the applicability in 46 U.S.C. 2101(39) for sections other than those implementing 46 U.S.C. 3703a.

3. *33 CFR 157.03(k).* One comment recommended that the retrofitting of a double hull should not, by itself, constitute a major conversion. This would be consistent with current domestic and international practice regarding the retrofitting of segregated ballast tanks. The Coast Guard concurs and has clarified § 157.03(k) to reflect this interpretation. Additionally, provision for the Commandant (G–MVI) to make general determinations on whether a vessel "is essentially a new vessel" (and has therefore undergone a major conversion) has been added to § 157.03(k). This is consistent with the definition of major conversion in 46 U.S.C. 2101(14a), which was not changed by the Act.

Twelve comments recommended more specific guidance as to the type and extent of modifications that will be considered major conversions under this rule. The Coast Guard did not adopt this recommendation. Since the Act did not change the existing definition of major conversion in section 2101(14a), determinations of major conversion for the application of this rule must be consistent with determinations that have been or will be made under this same definition for the application of other safety or pollution prevention requirements. Furthermore, variations among different vessels as well as the wide range of types and extents of modifications that must be considered would make the issuance of more specific guidance impractical. The Coast Guard will continue to make major conversion determinations on a case-by-case basis, using the definition in § 157.03(k). Owners contemplating future modifications are strongly encouraged to request such a determination from Commandant (G–MVI), through the cognizant Officer in Charge, Marine Inspection (OCMI), at the earliest possible stage.

4. *157.03(n).* One comment requested a clarification on the definition of oil, particularly with respect to animal and vegetable oils. A vessel carrying animal or vegetable oils in bulk is subject to this rule. The definition of oil in 46 U.S.C. 2101(20) was adopted by the Port and Tanker Safety Act (PTSA) and was not amended by OPA 90. The legislative history of the PTSA indicates that "oil" is not limited to petroleum oils. A consistent definition appears in section 311 of the Federal Water Pollution Control Act (FWPCA), which has been applied to spills of animal and vegetable oils.

The PTSA mandated segregated ballast requirements for certain crude oil and product tankers. When the Coast Guard implemented these requirements in 1979, the legislative history supported an interpretation of "product" that includes only petroleum products. However, OPA 90 requires double hulls for a vessel carrying "oil," rather than for a vessel carrying "crude oil" and "products." Even though accidental spillage of animal and vegetable oils may not result in the same degree of environmental damage as the spillage of certain petroleum products, the Coast Guard cannot administratively limit the application of this rule to vessels carrying specific oils, based on the legislative history of the PTSA and OPA 90.

The Coast Guard recognizes that the definition of oil in 46 U.S.C. 2101(20) is inconsistent with the definition of oil under Annex I of MARPOL. Under MARPOL, oils are limited to crude oil and petroleum products. Animal and vegetable oils are specifically designated as Category D noxious liquid substances (NLS) under Annex II of MARPOL. Therefore, the existing regulations applicable to an oceangoing vessel carrying NLS apply to a vessel carrying animal or vegetable oil in bulk, in addition to the new double hull requirements under this rule.

Section 157.03(n) has been clarified to reflect this long-standing interpretation of the definition of oil in 46 U.S.C. 2101(20). However, comments on this section are specifically invited.

5. *33 CFR 157.03(aa).* The Coast Guard has modified § 157.03(aa) to make the definition of cargo tank length for barges consistent with that for ships, even though no comments were received on this issue.

Two comments recommended clarifying or modifying the definition of cargo tank length in § 157.03(aa). One of these comments recommended the adoption of the definition of cargo tank length in Annex I of MARPOL, which the comment interpreted as excluding fuel tanks located within the cargo block. The Coast Guard does not concur with this recommendation or this interpretation. Oil tanks located within the cargo block should not be exempted from this rule only because the oil they hold is fuel, rather than cargo. The environmental consequences of oil outflow are the same, whether the oil is carried as cargo or fuel. The Coast Guard does not interpret Regulation 13F of Annex I to MARPOL as permitting this recommended arrangement. This issue is closely related to the issue of protection for fuel tanks, which is addressed in paragraph 14.

6. *33 CFR 157.03 (ii), (jj), and (kk).* Eleven comments recommended that oil should be explicitly prohibited from being carried in the spaces between the inner and outer hulls. The Coast Guard considers this interpretation to be the clear intent of Congress. This clarification has been incorporated into the definitions for double hulls, double sides, and double bottoms in § 157.03 (ii), (jj), and (kk). Those definitions have also been modified to clarify that the spaces between the inner and outer hulls are to be watertight. These issues are closely related to the issue of non-oil cargoes within these spaces, which is discussed in the following paragraph.

An additional comment requested clarification of the applicability of this rule to non-oil cargoes. This rule applies only to the carriage of oil cargo as defined in § 157.03(n). The definitions of double hulls, double sides, and double bottoms in §§ 157.03 (ii), (jj), and (kk) prohibit the carriage of oil in those spaces. The carriage of other cargoes in those spaces is not addressed in this rule. Carriage requirements for most chemical cargoes are found in 46 CFR part 151, 46 CFR part 153, and 33 CFR 151.31, which are unaffected by this rule.

The "tanks" that are referred to in the terms double sides, double bottom, and double hull in §§ 157.03 (ii), (jj), and (kk) do not include independent tanks mounted on top of the weather deck. However, tanks mounted in holds are included. All tanks are subject to § 157.10d(e).

7. *33 CFR 157.03(11) and 157.08(n)(2).* One comment requested a clarification of the exemption provided in 46 U.S.C. 3703a(b)(1) for vessels responding to oil spills. An oil spill response vessel (OSRV) is defined in new § 157.03(11). This definition includes a vessel that exclusively performs escort service for an oil tanker, since the purpose for such escort is to prevent or minimize oil spills by providing maneuvering assistance to the escorted vessel as needed. An OSRV is specifically exempted from this rule by § 157.08(n)(2).

8. *33 CFR 157.03 (mm), (nn), (oo).* Although no comments on this section were received, the inconsistency between the terms used to apply MARPOL requirements in 33 CFR parts 151 and 155 (which apply MARPOL requirements to "oceangoing" vessels) and part 157 (which applies MARPOL requirements to "seagoing" vessels) has been resolved by applying MARPOL requirements to "oceangoing" vessels in

all three parts. Both terms have been used to implement the Act to Prevent Pollution from Ships (APPS), which applies MARPOL only to "seagoing" vessels in 33 U.S.C. 1903. APPS does not specifically define "seagoing," which is generally interpreted to mean waters beyond the boundary line.

When 33 CFR part 151 was revised in 1983 to implement APPS, the Coast Guard interpreted "seagoing," as used in APPS, to mean "oceangoing" as defined in § 151.05. When 33 CFR part 157 was also revised in 1983 to implement APPS, the undefined term "seagoing" was retained from the regulations existing in part 157 before APPS. The negligible differences between the § 151.05 definition of "oceangoing" and the general interpretation of "seagoing" were considered and discussed when the § 151.05 definition of "oceangoing" was proposed on July 5, 1983 (48 FR 30674). Section 157.03(mm) incorporates this latter definition, which is applied in revised § 157.08.

Another term "inland," is defined in new § 157.03(nn) to include waters inside of "oceangoing" waters, excluding the Great Lakes. This does not change the definition of "inland waters" in § 2.05–20, which applies to other parts.

"Oil tanker" is defined in new § 157.03(oo), which is consistent with the definition of oil tanker in Annex I of MARPOL. This term is more limited than the term "tank vessel," since a vessel designed to carry only limited quantities of oil is a "tank vessel" but not an "oil tanker." This term is broader than the term "tanker," as defined in 46 U.S.C. 2101(38), since a tank barge is an "oil tanker" but not a "tanker." The MARPOL term "oil tanker" has been incorporated in this rule since that term is used in § 157.08 in relation to existing MARPOL provisions and not to the Act.

9. *33 CFR 157.08.* Four comments addressed the applicability of this rule to certain types of tank vessels. One comment recommended that this rule not apply to a small vessel, whereas another comment requested the application of this rule to a vessel of any size. The law does not provide the Coast Guard with discretion to exempt a vessel based on its size. Therefore, § 157.08(a) applies this rule to a tank vessel, regardless of its gross tonnage.

The applicability of certain piping and equipment requirements for tank vessels other than oil tankers, which formerly appeared in § 155.390, now appears in § 157.08(b). The partial exemption for such vessels that have limited cargo capacity has been moved to new § 157.08(e).

One comment requested that this rule be expanded to include certain delivering vessels that offload within lightering zones more than 60 miles offshore. The Coast Guard does not concur with this request. The law specifically describes the locations where delivering vessels engaged in lightering are exempt until January 1, 2015. Section 157.08(n)(3) is consistent with this description in 46 U.S.C. 3703a(b)(3).

Section 157.08(n)(1) has been amended to clarify that the application of this rule is consistent with 46 U.S.C. 3703a(a)(2), which excludes U.S. and foreign flag vessels that operate exclusively outside of U.S. waters and the Exclusive Economic Zone. This rule is not being expanded to include U.S. vessels that operate exclusively overseas, since such requirements could not be equally applied to foreign flag vessels that operate exclusively overseas. Vessels that call at foreign ports in countries that are parties to Annex I of MARPOL will have to meet Regulation 13F to enter those ports. Regulation 13F of Annex I to MARPOL, which is the related international standard, is expected to enter into force on July 6, 1993.

10. *33 CFR 157.10(d).* Even though no comments on this section were received, a conforming amendment has been made to § 157.10(d). The amendment clarifies that the segregated ballast capacity requirements of this section are unchanged. A vessel that must have a double hull must arrange segregated ballast tanks required under this section in accordance with § 157.10d(c)(4). That section applies only to vessels that are required to have segregated ballast tanks under § 157.10(b) and is discussed in paragraph 17. Protective location requirements in § 157.10(d) for existing vessels, which are not immediately required to have a double hull, remain unchanged by this rule.

11. *33 CFR 157.10d(a).* Five comments recommended changes to the schedule for applying double hull requirements to existing vessels in accordance with § 157.10d(a)(4). Three of these comments recommended faster or slower schedules, while two comments recommended schedules based on parameters other than gross tonnage. Since a schedule is specifically mandated in 46 U.S.C. 3703a, the Coast Guard has no discretion to consider modifications. This schedule is provided in new appendix G to part 157, which is discussed in paragraph 29.

Regulation 13G of Annex I to MARPOL contains provisions which will apply double hull requirements to certain existing vessels (crude oil tankers over 20,000 DWT and product tankers over 30,000 DWT) 30 years after delivery. This schedule is in certain instances faster and in other instances slower than the schedule in 46 U.S.C. 3703a. U.S. vessels calling at foreign ports in countries that are parties to Annex I of MARPOL will have to meet Regulation 13G to enter those ports. U.S. and foreign vessels trading between U.S. ports and foreign ports in countries that are parties to Annex I of MARPOL will have to meet Regulation 13G as well as the timetable in 46 U.S.C. 370a. The earlier of the two dates (46 U.S.C. 3703a(c)(3) or 30 years) will apply to those vessels. If the United States does not accept Regulation 13G, oceangoing U.S. vessels on domestic coastwise routes will have to meet the schedule in 46 U.S.C. 3703a, but not Regulation 13G.

The United States has not taken a final position with respect to Regulation 13G, which is expected to enter into force on July 6, 1993. Public comments on Regulation 13G are specifically invited. Appendix G to part 157 reflects only the retirement timetables in 46 U.S.C. 3703a(c)(3).

One comment requested that tonnage, as measured under the U.S. Regulatory Measurement system (46 U.S.C. chapter 145), be used to determine the applicable requirements of this rule. Title 46 U.S.C. 14305(a)(1) permits the use of optional regulatory measurement for this rule.

12. *33 CFR 157.10d(b).* Twelve comments recommended an expansion of § 157.10d(b)(1) to permit alternatives to double hulls. Several of these comments proposed specific alternatives, including the use of bladders or liners, vacuum systems, and the intermediate oil tight (mid-height) deck design. Three additional comments favored research on these concepts, but did not recommend immediate adoption of alternatives. Seven comments opposed adopting the mid-height deck as an alternative. Title 46 U.S.C. 3703a does not provide the Coast Guard with any discretion to implement alternatives for a vessel over 5,000 gross tons. Therefore, this rule does not provide for alternatives to double hulls. The Coast Guard has the discretion to permit an equivalent double containment system for a vessel under 5,000 gross tons, which is discussed in paragraph 36.

The IMO has conducted a study to compare the intermediate oil tight deck concept (also known as the mid-height deck or mid-deck concept) with the double hull design. This study was in keeping with the recommendation for further study in the National Academy of Sciences (NAS) report, "Tanker

Spills, Prevention by Design." The Steering Committee of the IMO study concluded that a mid-height deck tanker is equivalent to a double hull tanker with respect to overall oil outflow. However, the United States reserved its position on this conclusion. The results of the IMO study were considered at the 32d session of the IMO Marine Environment Protection Committee (MEPC 32) in March 1992. Based on those results, the MEPC included the mid-height deck as an alternative to double hulls in Regulation 13F.

The Coast Guard is evaluating the IMO and NAS studies, along with other relevant information on potential alternatives. This includes information on specific alternatives that were submitted to this rulemaking docket as well as other information received by the Coast Guard. The Coast Guard has not completed its evaluation of any alternative, including the mid-height deck tanker.

The Coast Guard does not consider it appropriate to use overall oil outflow as the only basis on which to evaluate the equivalency of alternative hull designs in protecting the marine environment. This would presume a strictly linear (proportional) relationship between the quantity of oil spilled and the resulting impact on the environment for all sizes of spills (i.e. presuming that two spills of half the amount spilled from the Exxon Valdez grounding results in the same environmental damage as a single spill of the full amount spilled from the Exxon Valdez). Overall risk to the environment is a function of the probability and the consequences of various sizes and locations of spills.

Section 4115(e) of the Act requires the Coast Guard to send its evaluation of potential alternatives to Congress, along with recommendations on any alternative concepts that afford environmental protection equivalent to (or better than) double hulls, which the Coast Guard considers to merit adoption. Further legislation would be required to authorize the Coast Guard to implement any such alternative. Any alternatives recommended by the Coast Guard and approved by Congress would be implemented through a future rulemaking. Additionally, the Coast Guard would work through IMO to implement any Congressionally-approved alternatives.

13. *33 CFR 157.10d(c).* Seventy-nine comments addressed the dimensions for double sides and bottoms prescribed in § 157.10d(c)(1) and (2). Most of these comments recommended different dimensions from those proposed. Twenty-seven comments recommended generally larger protective spaces. Seven comments recommended generally smaller spaces. Sixteen comments generally supported the proposed dimensions.

Sixteen comments recommended that the Coast Guard adopt dimensions consistent with Regulation 13F of Annex I to MARPOL. Three comments recommended that the dimensions be consistent with those in Annex 2 of MARPOL for Noxious Liquid Substances. Three comments recommended that the dimensions should vary as a function of scantlings. One comment recommended that allowances for sloped bottoms be permitted. One comment recommended that an additional requirement for clearance for passage between framing be considered. Another comment recommended that channel depths be considered.

The dimensions prescribed for double hull spaces have been a crucial issue in this rulemaking; no other aspect of the proposed rule generated such a substantial number of comments from industry, environmental advocacy groups, and the general public.

The Coast Guard considers the dimensions in this interim final rule to appropriately balance economic and environmental concerns. The next generation of tank vessels, designed in accordance with these dimensions, will have substantial resistance against accidental spillage as mandated by 46 U.S.C. 3703a. These rules reflect the latest, proven shipbuilding technology, as well as the strong public consensus for increased protection of the marine environment. Furthermore, the double hull dimensions in this rule are consistent with those in the international standards for double hulls in Regulation 13F of Annex I to MARPOL, as adopted at MEPC 32. The Coast Guard considers international consistency to be extremely important due to the global nature of the industry. Therefore, the many recommendations for different dimensions as described above have not been adopted. The issue of dimensions is closely related to the issue of protectively locating segregated ballast, which is discussed in paragraph 17.

14. *33 CFR 157.10d(c), continued.* Eighteen comments recommended that the protection required under § 157.10d(c)(1) and (2) be extended to include fuel tanks. One comment opposed such extension. The Coast Guard does not concur with the extension of double hull protection to all fuel tanks. Oil that is carried in fuel tanks represents a relatively small risk to the environment compared with the large amounts of oil contained within the cargo block. Also, integral fuel tanks external to the cargo block are located aft of the cargo block, in way of machinery spaces, which are less vulnerable to damage in a collision or grounding than more forward spaces. An integral tank carrying oil that is within the cargo tank length of the vessel must have double hull protection; this includes fuel tanks. However, a fuel tank aft of the cargo tank length is not required to have double hull protection.

15. *33 CFR 157.10d(c), continued, and 157.10d(d)(3).* Seventeen comments recommended that existing double hull tank vessels be permitted to continue operating, even if the dimensions of such vessels do not meet the dimensions required for new tank vessels. The Coast Guard concurs with this recommendation, which has been incorporated in §§ 157.10d (c)(1)(iii), (c)(2)(iii), and (d)(3). This is consistent with Regulation 13G of Annex I to MARPOL, as adopted at MEPC 32. Requiring existing tank vessels to undergo modification to have existing double sides or bottoms expanded is not justified. One comment recommended that this "grandfather" provision should not be applicable to combination ore-bulk-oil (OBO) vessels. The Coast Guard is not aware of any justification for limiting this provision for any specific class of tank vessels. Therefore, this recommendation is not accepted.

16. *33 CFR 157.10d(c), continued.* One comment recommended that vessels meeting the double hull requirements for chemical tankers be permitted to carry oil. The Coast Guard has incorporated this recommendation for existing double hull tank vessels in §§ 157.10d (c) (1)(iii), (c)(2)(iii), and (d)(3). However, the Coast Guard does not concur with this recommendation for new tank vessels. Tank vessels must currently meet all requirements for each cargo intended for carriage. Prior to the Act, a tanker carrying chemicals (noxious liquid substances) and oil had to meet the cargo segregation requirements of 46 CFR part 153 as well as the existing protectively located segregated ballast tank (PL/SBT) requirements of 33 CFR part 157. The Coast Guard's position is that new double hull tank vessels carrying chemicals and oils should continue to meet the requirements applicable to both types of cargoes.

17. *33 CFR 157.10d(c)(4).* Regulation 13F of Annex I to MARPOL, as adopted at MEPC 32, contains a new provision for protectively locating segregated ballast tanks required by existing § 157.10(b) that have a total capacity which is greater than the volume of double hull spaces based on the double

side width "*w*" and double bottom height "*h*." This new provision, which has been incorporated in § 157.10d(c)(4)(i), requires the combined volume of the forepeak, double side, double bottom, and afterpeak tanks to equal or exceed the volume of SBT capacity required under § 157.10(b). This will require most new tank vessels over 70,000 DWT to enlarge the size of double sides and double bottoms (beyond *w* and/or *h*) so that all required segregated ballast can fit within the double hull (including the forepeak tank) and the afterpeak tank.

Section 157.10d(c)(4) resolves concerns expressed in 25 comments that the dimensions *w* and *h* are inadequate, particularly for large vessels. This section also partly incorporates recommendations in two comments that the volume of double hulls required under this rule should not exceed the volume of required SBT capacity. The double hull requirements for large vessels correspond directly to the volume of required SBT capacity. Most vessels over 70,000 DWT will not need to reserve any additional tankage as non-cargo spaces in order to meet the double hull requirements in this rule. However, the requirements in § 157.10d will result in many smaller vessels having double hull volumes (based on *w* and *h*) that are greater than the SBT capacity required under § 157.10(b). This is particularly true for vessels that have deadweight capacities under the minimums for which SBT requirements apply. Section 157.10d(c)(4) does not apply to such vessels.

Section 157.10d(c)(4)(ii) further requires that double side and double bottom tanks must be located "as uniformly as practicable along the cargo tank length." The purpose of this requirement is to avoid the design of tankers with large SBT located or extending inboard to meet the SBT capacity requirements of § 157.10(b), thereby reducing the width or depth of other double side or double bottom tanks to the minimum dimensions *w* and *h*. Where the SBT capacity required by § 157.10(b) is greater than that provided by a double hull of dimensions *w* and *h*, the SBT must be distributed over the cargo tank length through uniformly wider double sides, a uniformly deeper double bottom, or both. The depth of the double bottom need not equal the width of the double sides. Either or both of these dimensions may be expanded at the owner's discretion to meet § 157.10(b).

Two comments recommended that the Coast Guard incorporate these new requirements for locating SBT. Three comments opposed adopting these requirements, contending that increasing the size of the double hull to accommodate required SBT will not necessarily increase protection against spillage. The Coast Guard does not concur with this contention. Protection against spillage, particularly from low-energy casualties, is a function of the size of protective spaces. Accordingly, SBT must be distributed so as to maximize the size of the double hull. The opposing comments also claimed that these requirements will unduly constrain development of future designs. The Coast Guard understands that these requirements will restrict certain designs. However, the Coast Guard considers these SBT location requirements to be appropriate since they provide a means of expanding cargo tank protection without impacting cargo capacity.

Two comments raised concerns that these requirements for locating SBT could have a detrimental impact on trim, stability, and hull stress. The MEPC working group (tasked to refine Regulation 13F in November 1991 and at MEPC 32 in March 1992) confirmed that distribution of ballast could have an impact on trim, stability, and hull stress. However, the working group determined that these concerns can be satisfactorily addressed during the design process. In some cases, it may be necessary to provide additional ballast in tanks outside of those constituting the double hull to maintain safe levels of trim, stability, and hull stress. However, the provision of such ballast must be in addition to the ballast required under Regulation 13 (SBT capacity for operational purposes) so that appropriate double hull protection is maintained.

18. *33 CFR 157.10d(d) and 157.08(h).* One comment recommended clarification of the phrase "certificated primarily for service on inland routes," as used in § 157.10d(d). This wording is consistent with the current wording in redesignated § 157.08(h), which refers to vessels that are built according to inland structural rules, but are permitted to operate in the Gulf of Mexico from St. Marks to Carrabelle, Florida and in Lake Michigan from Chicago to Burns Harbor, Indiana. Those specific routes in the Gulf of Mexico and Lake Michigan are known as "limited short protected coastwise routes." The Coast Guard has clarified §§ 157.08(h) and 157.10d(d) by removing the reference to "primary" certification.

Additionally, 23 comments addressed the requirements for inland tank vessels in § 157.10d(d). Two comments supported the double hull dimensions as proposed. Four comments recommended expanding the minimum width of double sides to 3 feet, which is the current requirement for Type II inland tank barges. The Coast Guard does not concur with this recommendation. A width of 2 feet is considered sufficient for pollution prevention and inspection for these vessels. However, owners would be permitted to build vessels with wider double sides that could be certificated for both oils and chemicals (hazardous materials regulated under 46 CFR parts 151 and 153). Six comments recommended smaller double bottoms, which are often fitted under current industry practice. Many existing double hull tank barges have double bottoms that slope to a minimum depth of 21 inches or smaller. The Coast Guard does not concur with this recommendation. Double bottoms less than 2 feet deep are too small to inspect effectively and safely.

Seven comments recommended an additional requirement to ensure adequate clearance for passage between framing within the double hull. The Coast Guard concurs and has incorporated this recommendation for inland tank vessels in § 157.10d(d)(4).

Three comments opposed application of the double hull dimensions in Regulation 13F to inland vessels. The Coast Guard concurs that draft Regulation 13F was generally developed for oceangoing vessels. The dimensions for oceangoing vessels are not being applied to inland vessels under 10,000 deadweight tons. The double hull dimensions adopted in § 157.10d(d) of this interim final rule are consistent with the double hull dimensions for inland vessels in the proposed rule.

Regulation 13F also contains a tank size limitation for vessels under 5,000 DWT that do not have double sides and bottoms. This limitation has not been incorporated in this interim final rule, but it is further discussed in paragraph 24. Vessels under 5,000 DWT are required to have double hulls under OPA 90, but only double bottoms under Regulation 13F.

19. *33 CFR 157.10d(e).* Eight comments addressed the requirement concerning carriage of oil near the bow. Four comments supported the concept in § 157.10d(e), with two of these comments recommending that protection in § 157.10d(e)(2)(ii) be increased to 10 percent of vessel length (instead of 5 percent as proposed). One comment opposed this requirement. The vulnerability of the bow during a collision justifies this requirement. The Coast Guard considers 5 percent of

vessel length to be an appropriate requirement that is consistent with collision bulkhead requirements of the American Bureau of Shipping (ABS) and with related international requirements under SOLAS.

One comment recommended that the carriage of oil be permitted in independent tanks on deck forward of the collision bulkhead. Cargo oil is specifically prohibited from being carried forward of the collision bulkhead. However, limited amounts of ship's service fuel oil (for operating nearby deck equipment) may be carried forward of the collision bulkhead in accordance with § 157.10d(e)(3). This incorporates current policy, as reflected in NVIC 9–86, without change.

One comment recommended that this requirement be moved to the closely related requirements on prohibited oil spaces in § 155.470 of this chapter. The Coast Guard has decided to keep this requirement located with the other double hull provisions since § 155.470 primarily concerns the location of fuel tanks.

Two comments recommended that certain oil piping be permitted forward of the collision bulkhead. Piping requirements are addressed in paragraph 22.

20. *33 CFR 157.10d(e), continued.* One comment recommended that § 157.10d(e)(2)(iii) be amended to clarify its applicability to a box or trail barge. Such barges will always be protected by another barge immediately forward, making them less vulnerable to bow damage than the lead barge. The comment recommended that a box or trail barge should not be permitted to operate as a lead barge, since they may be built with less bow protection than a lead barge. The Coast Guard concurs with this interpretation of the proposed rule. A change has been incorporated to this section which clarifies its application solely to a barge that is operated exclusively as a box or trail barge.

21. *33 CFR 157.10d(f).* One comment objected to § 157.10d(f), which requires protection for the aft end of the cargo block. The objection implied that double hull spaces would be required at the stern, regardless of the proximity of oil tanks. However, § 157.10d(f) only addresses protection of the aft end of the cargo block. This section will generally not affect self-propelled vessels that have machinery spaces aft of the cargo block. This section will primarily affect barges, which could otherwise have no separation between the aft end of the cargo block and the stern.

22. *33 CFR 157.11(g) (1) and (3).* Twenty-two comments recommended that cargo piping not be permitted in ballast tanks. One comment opposed further standards for piping locations. The Coast Guard concurs with the recommendations for additional standards to prohibit cargo piping in ballast tanks, which have been incorporated in § 157.11(g)(1). This provision is consistent with Regulation 13F as adopted at MEPC 32. This provision incorporates the exception for short runs of welded pipe that was developed at the November 1991 meeting of the MEPC working group tasked to refine Regulation 13F.

One comment recommended that cargo piping be prohibited in all double hull spaces. The piping requirements in Regulation 13F are primarily based on safety concerns, rather than on environmental concerns. The potential safety hazards of cargo piping are more prevalent in ballast tanks, which are subject to greater corrosion from air and seawater than other spaces. The consensus at MEPC 31 in July 1991 was to limit cargo piping into ballast tanks (but not other double hull spaces) and limit ballast piping into cargo tanks. This limitation was further refined at the November 1991 meeting of the MEPC working group tasked to refine Regulation 13F. The working group extended the limitation to include other types of piping, such as air pipes and sounding tubes, that might otherwise pass between cargo and ballast tanks. The working group also recognized that certain types of cargo piping, such as discharge lines from cargo slop tanks, may have to pass through wing ballast tanks. In such cases, where an alternative arrangement is not practical, cargo lines may pass through ballast tanks as long as such lines are completely welded and the length of passage within the ballast tank is as short as possible. These new requirements on piping were adopted without further revision at MEPC 32. A unilateral requirement in this rule is not justified.

Since most double hull spaces in way of cargo tanks will be used for ballast, the requirements in § 157.11(g)(1) will effectively bar cargo piping from the vast majority of double hull spaces. Also, existing requirements in §§ 157.19(d) and (e) place additional restrictions on cargo piping located near the outer shell of an oceangoing vessel. These restrictions will continue to apply to cargo piping located in double hull spaces other than ballast tanks on an oceangoing vessel. Two comments recommended that this provision be extended to inland vessels. The Coast Guard concurs. Section 157.11(g)(3) incorporates this concept. This new section applies to all oil piping located within the double hull of an inland or Great Lakes (non-oceangoing) tank vessel.

23. *33 CFR 157.11(g)(2).* Twenty-seven comments addressed requirements for suction wells, which appear in § 157.11(g)(2). Four comments opposed new requirements, with two of those comments recommending incorporation of guidance for suction wells in Regulation 23(3)(c) of Annex I to MARPOL. Nine comments recommended that suction wells not be permitted within 2 meters of the bottom, while three comments recommended prohibition of suction wells anywhere within protective spaces. Ten comments generally supported additional requirements for suction wells, while one comment recommended a specific alternative distance from the hull in which they would be prohibited.

Section 157.11(g)(2) is consistent with current U.S. practices (as reflected in Coast Guard NVIC 1–81) as well as with Regulation 13F as adopted at MEPC 32. It is different from MARPOL Regulation 23(3)(c) in that it is mandatory for all vessels, whereas the MARPOL regulation only requires an adjustment to the maximum allowable outflow calculations for an oceangoing vessel that is not in compliance.

24. *33 CFR 157.19.* A provision in Regulation 13F will limit the size of individual cargo tanks on new vessels under 5,000 DWT to no more than 700 cubic meters (4,400 bbls), unless double sides are fitted. This interim final rule requires a vessel of any size to have double sides and bottoms. Therefore, this particular Regulation 13F provision is not included in this interim final rule.

The interim regulatory impact analysis (Interim RIA) of this rulemaking notes that limiting the size of individual cargo tanks is an effective means of mitigating pollution without restricting overall cargo capacity. At present, only a relatively small number of tank vessels do not already meet this requirement.

It is expected that this provision would have negligible economic impact for the following reasons:

(1) It would apply only to new vessels;

(2) Present construction practices for inland barges under 5,000 DWT generally result in cargo tanks smaller than 700 cubic meters (4,400 bbls);

(3) Future vessels less than 5,000 DWT can be designed with tanks that meet the size limitation without incurring additional costs or adversely impacting cargo capacity.

The Coast Guard has already received one comment on this provision, which generally supports the concept of tank size limits. However, the comment questioned (but did not support or oppose) whether these specific numbers (3,000 DWT, since replaced by 5,000 DWT in the final Regulation 13F, and 700 cubic meters) are appropriate for the inland fleet. The comment included data on the potential impact of this provision. The Coast Guard invites further public comment on this provision (see "Request for Comments"), particularly with respect to inland and Great Lakes vessels.

Another comment, which did not address this specific provision, recommended that the maximum potential outflow requirements (which relate directly to tank size) for larger vessels in § 157.19 should be revised. The Coast Guard concurs that these requirements should be reviewed and updated, particularly in light of the Interim RIA results suggesting tank size limits can be a cost-effective measure. This will be accomplished as part of ongoing efforts to revise domestic and international standards based on probabilistic damage criteria. The United States has actively encouraged these efforts through IMO. Substantial progress on probabilistic methods has already been accomplished, particularly with respect to bulk (dry cargo) carriers and passenger vessels. This is a long-term process which requires additional research and development before probabilistic outflow standards for tankers can be implemented. Therefore, it is not practical to accomplish this revision within the scope of this rulemaking.

25. *33 CFR 157.21.* Two comments recommended additional damage stability standards. Current stability regulations for oceangoing and Great Lakes vessels are in 33 CFR 157.21, 46 CFR 42.20–5, 46 CFR 45.35, and 46 CFR 172.065.

Recognizing that double-hulled tank vessels require greater consideration of damage stability than was provided by existing international requirements, Regulation 13F of Annex I to MARPOL contains new requirements. The Coast Guard is implementing new stability requirements under a separate rulemaking (CGD 91–206), and expects to issue a Notice of Proposed Rulemaking (NPRM) later this year. Interim guidance on stability for double hull tankers has been provided in NVIC 4–92.

A similar comment regarding the stability of inland tank vessels, and a clarification of 46 CFR 172.065 are discussed in paragraph 33 of this preamble.

26. *33 CFR 157.24(c).* One comment recommended the adoption of provisions for the submission and review of plans to show compliance with this rule. This recommendation has been incorporated in § 157.24(c). To the extent that Regulation 13F of MARPOL is consistent with this rule, the Coast Guard intends to accept flag administration certification of compliance with Regulation 13F, as evidenced by the International Oil Pollution Prevention (IOPP) certificate, as evidence of compliance with this rule. This follows existing practice under § 157.24, which permits the use of IOPP Certificates to demonstrate compliance with other equivalent domestic and international requirements.

Section 157.04 provides for classification societies to certify the compliance of vessels with certain requirements in 33 CFR part 157. Several classification societies have been authorized to perform certifications under this section, most notably for compliance with § 157.10c. The Coast Guard intends to authorize classification societies to certify the compliance of vessels under their class with the requirements of this rule. Classification societies are invited to request this authorization in accordance with existing § 157.04(b).

27. *33 CFR 157.25(a).* Even though no comments on this section were received, a conforming amendment clarifies that the applicability of subpart C of part 157 is unchanged.

28. *33 CFR 157.28.* Even though no comments on this section were received, a conforming amendment is necessary due to the paragraph predesignations in § 157.08.

29. *33 CFR 157, Appendix A.* Appendix A to part 157 has been revised to make the requirements on maximum allowable tank length consistent for single and double hull vessels. There has been no substantive change to this requirement. This revision is consistent with amendments to Regulation 24 of Annex I to MARPOL which were adopted at MEPC 32.

30. *33 CFR 157, Appendix G.* Appendix G to part 157 has been added to provide the timetable for applying double hull requirements to existing tank vessels. This timetable is consistent with 46 U.S.C. 3703a and has been included for the convenience of the reader. Regulation 13G will require vessels to be retrofitted with a double hull or retired no later than 30 years after delivery. Appendix G, as it appears in this interim final rule, does not reflect Regulation 13G.

The Coast Guard has received several inquiries as to the proper interpretation of this schedule. Each year, from 1995 to 2005, a new set of age limitations applies to vessels within each of the three size categories. For example, a 20,000 gross ton single hull tanker delivered on June 15, 1982 would need a double hull on January 1, 1998. A 20,000 gross ton single hull tanker delivered on June 15, 1982 would need a double hull on June 15, 2007.

31. *46 CFR 32.53.* One comment recommended that the inert gas requirements in 46 CFR 32.53 should apply to double hull spaces. This recommendation was prompted by concerns for fire safety, since any leakage from a cargo tank into a void or ballast space creates a vapor explosion risk. Such leakage could occur through holes or cracks in the inner hull bulkhead separating the cargo tanks from the double hull space. Inert gas would ensure that the atmosphere within the double hull space could not contain sufficient oxygen for an explosion to occur.

Since the oiltight integrity of bulkheads separating voids or ballast tanks from cargo tanks is of paramount importance in preventing leakage into such spaces, vessel owners are expected to monitor the condition of the bulkheads and maintain effective anti-corrosion systems. The bulkheads are also subject to periodic inspection by Coast Guard inspectors and classification society surveyors.

The International Maritime Organization's (IMO) Subcommittee on Fire Protection, in cooperation with the International Association of Classification Societies (IACS), has considered the need for additional fire protection measures in void or ballast spaces. The Subcommittee concluded that such spaces should not be permanently inerted (as are cargo spaces) since inert gas poses a danger to personnel and may also tend to accelerate corrosion. However, the Subcommittee has recommended that vessels should have the capability to sample the atmosphere of and admit inert gas to double hull spaces. The Coast Guard may incorporate this recommendation in a future rulemaking.

32. *46 CFR 32.55–45.* Five comments recommended additional standards for venting protective spaces. Although venting standards were beyond the scope of this rulemaking, they may be considered in the future. Existing standards for ventilation are found in 46 CFR 32.55–45.

33. *46 CFR 32.60–1.* Twenty-seven comments recommended additional structural requirements. Eleven of those comments specifically recommended limitations on the use of high tensile steels. Current structural requirements in 46 CFR 32.60–1 incorporate classification society rules. The Coast Guard considers the classification societies to be the appropriate organizations to review and update structural requirements. The Coast Guard actively participates in this review process through its membership on the ABS Board of Managers and ABS Technical Committees. The Coast Guard intends to relay the structural issues raised in comments to this rulemaking to the appropriate ABS committees for consideration. ABS is a member of IACS, which provides an international forum to review, update, and harmonize classification rules.

34. *46 CFR 172.065.* One comment recommended additional stability requirements for inland tank barges. General stability requirements for inspected vessels are in 46 CFR part 170. There are no current standards specifically addressing inland tank vessels carrying oil. Title 46 CFR part 172, subpart E, contains stability requirements for double hull inland barges carrying cargoes regulated under 46 CFR subchapter O. Even though existing 46 CFR 172.065 has been applicable to all vessels that must comply with 33 CFR part 157, subpart B (Great Lakes and oceangoing vessels), the applicability of § 172.065 is not extended to include inland vessels that are now covered under 33 CFR 157.10d. Title 46 CFR 172.060 has been revised to clarify this applicability. Stability considerations are beyond the scope of this rulemaking. However, additional stability standards for inland tank vessels may be considered in the future. Related stability comments are discussed in paragraph 25.

General Comments (Non-CFR Specific)

35. One comment recommended that the regulatory analysis of this rule investigate the impacts on tankers in domestic service. This has been accomplished in the interim regulatory impact analysis (Interim RIA), which is discussed under "*Regulatory Evaluation.*"

36. Two comments recommended that the Coast Guard evaluate the impact of this rule on small businesses. This issue is addressed in the regulatory flexibility analysis, which was performed as part of the Interim RIA. The results of the flexibility analysis are discussed under "*Small Entities.*"

37. Twelve comments addressed standards for equivalent double containment systems, which the Coast Guard may approve in lieu of double hulls for vessels under 5,000 gross tons. Two comments suggested that the Coast Guard issue standards for designing and evaluating double containment systems. The Coast Guard has not adopted this suggestion because the current state of development of these systems is not yet sufficient to permit the drafting of practical specific regulations for evaluating the wide range of possible vessel designs and applications. IMO guidelines for evaluating the pollution prevention equivalency of alternative designs to double hulls will be drafted at MEPC 33 in October 1992. Such guidelines could form a basis for future double containment regulations.

Three comments recommended that the Coast Guard incorporate specific equipment (such as bladders), design features (such as heavier hull plate), or arrangements (such as the mid-height deck) as double containment systems. These comments did not include sufficient evidence of practicality and effectiveness to support a finding that any of the recommended measures are equivalent to a double hull for a vessel under 5,000 gross tons. The Coast Guard is currently evaluating alternative measures for larger vessels as mandated by Congress and noted in paragraph 12 of this preamble. Results of this evaluation may be applicable to these smaller tank vessels.

Four comments recommended that the Coast Guard encourage the development of alternative systems. The Coast Guard encourages such further research and development, since such efforts are in the public interest. However, prospective systems must be proven to be practical and effective before they can be considered for approval.

An owner desiring approval of a double containment system for a specific vessel under 5,000 gross tons should submit a request to Commandant (G–MVI). Such systems will be evaluated only on a case-by-case basis; generic approvals are not anticipated. Applications must contain appropriate evidence of practicality and proven effectiveness in affording spillage prevention that is equivalent to that of a double hull with dimensions as specified in this rule. Systems or arrangements involving operations that are restricted to a specific location must be forwarded through the local Coast Guard Marine Safety Office.

Three comments recommended that double containment provisions be used to permit lesser double hull dimensions than required by this rule. The Coast Guard does not concur with this concept. Prospective double containment systems must provide equal or greater protection against spillage than a double hull as specified in this rule. Systems providing inferior protection cannot be considered.

38. Eight comments recommended requirements for tank coatings. The Coast Guard strongly encourages owners to apply and maintain effective coatings, particularly in ballast tanks, which are prone to corrosion. The IMO is developing requirements for tank coatings. The Coast Guard is participating in this process and will evaluate the results of these ongoing developments before future regulatory action is considered. In addition, since the issue of tank coatings is closely linked to the issue of hull structure (as discussed in paragraph 33), the classification societies could play a significant role in implementing tank coating requirements.

39. Eight comments requested that a final rule be issued as expeditiously as possible. One comment requested the rule to be finalized after MEPC 31 in July 1991. Another comment recommended that the Coast Guard delay issuing a final rule until after MEPC 32 in March 1992. The Coast Guard has issued this interim final rule as expeditiously as was possible after MEPC 31 (and MEPC 32) to permit plans for the construction of new tank vessels to proceed without further delay. It has been revised since MEPC 32 to incorporate minor technical changes that were made to Regulation 13F at the time of final adoption. This has been done to maintain technical consistency between U.S. regulations and the related international standards.

40. One comment recommended requirements for permanent ballast in order to hydrostatically limit cargo loads on new and existing vessels. The Coast Guard has no authority under the law to permit such systems in lieu of double hulls for new vessels. Such systems were evaluated for supplemental use with a double hull. However, based on the Interim RIA, the Coast Guard does not consider a requirement for such systems, in addition to double hulls, to be justified for new vessels. Requirements for existing vessels are discussed in the following paragraph.

41. One comment recommended that provisions for additional structural and operational measures for existing vessels awaiting double hull retrofit or retirement in accordance with the timetable in 46 U.S.C. 3703a be issued simultaneously with this rule. The Coast

Guard does not concur with this recommendation. The phaseout timetable for existing vessels is incorporated in this rule; other operational and technical measures for existing vessels are being implemented through a separate rulemaking. Delaying this rule pending development of the other provisions for existing vessels would not be in the public interest.

On November 1, 1991, the Coast Guard issued an advance notice of proposed rulemaking (ANPRM) on measures for existing vessels (56 FR 56284). The public comment period on the ANPRM closed on January 31, 1991; a notice of proposed rulemaking (NPRM) is under development. Two comments received under this double hull rulemaking included specific recommendations for existing vessels; these comments have been forwarded to the public docket for the existing vessel rulemaking (CGD 91–045).

Regulation 13G of Annex I to MARPOL includes a requirement that vessels built prior to existing requirements for protectively located segregated ballast (pre-MARPOL tankers) convert tanks protecting 30 percent of the sides or 30 percent of the bottom to non-oil spaces no later than 25 years after delivery. This provision is not included in this interim final rule. However, it will be considered in the separate rulemaking on measures for existing vessels (CGD 91–045). The United States has not taken a final position with respect to Regulation 13G.

42. Two comments recommended that the development of this rule should not necessarily be limited to an extension of existing standards, many of which were developed decades ago. The Coast Guard strongly concurs with this recommendation. These rules, which are applicable to the next generation of tank vessels, reflect the latest available proven technology as well as the public consensus for increased protection for the marine environment. Extensions of existing standards, without consideration of current priorities and technology, would be inappropriate.

43. One comment recommended that this rule be based on the energy absorption capabilities of prospective designs. A related comment recommended that the Coast Guard update its database on marine casualties. The Coast Guard encourages further research on structural failure modes and related energy absorption due to collisions and groundings. However, existing data and engineering analyses of energy absorption phenomena are not sufficiently developed to allow development of design requirements based on those criteria. This issue is closely related to the issue of probabilistic damage standards discussed in paragraph 24.

44. Two comments recommended that non-design measures for preventing accidental pollution be considered. The Coast Guard concurs. Tank vessel arrangement is just one element of the complex system of tank vessel transportation. Many other elements, particularly those relating to human factors, are worthy of further consideration. However, the scope of this rulemaking was limited to implementing the double hull requirements of OPA 90. Other sections of OPA 90, which are being implemented in separate rulemakings, will address some of these other elements.

Regulatory Evaluation

This rulemaking is major under Executive Order 12291 and significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). An analysis of this rule is in the public docket. Implementation is projected to gradually increase the transportation cost of oil by four-tenths of a cent per gallon over the next 25 years.

This double hull rulemaking is one of several rules which will be issued in accordance with titles IV and V of OPA 90. Some of these rules will interact with each other. The overall impact of these rules may not equal the cumulative total impact of each rule considered individually. For example, the beneficial impact of the double hull rule is the reduced amount of oil spilled after certain grounding or collision casualties. However, the impact of this rule will be reduced by future OPA 90 rulemakings that will improve operational and navigational safety of tank vessels. These other rules will reduce the numbers of collisions and groundings and resulting environmental damage or harm which, in turn, will reduce the overall benefits of (or the total spill reduction attributable to) double hull construction.

The Coast Guard intends to conduct a comprehensive, programmatic RIA for all title IV and V OPA 90 rules, once they are all completed and issued. This comprehensive RIA will evaluate the interaction of rules relative to each other, and assess their impacts in total. However, since the rules will be developed and issued individually over several years, each rule will undergo an interim evaluation (Interim RIA) against a baseline that assumes no other OPA 90 requirements are implemented.

Accordingly, an Interim RIA of this rule was prepared and placed in the public docket. The Interim RIA addresses the need for this rulemaking, the standards adopted in this rule, the alternatives to this rule, and the anticipated economic impacts of this action. A Notice of Availability of the Interim RIA was published in the **Federal Register** on January 15, 1992 (57 FR 1854), and public comments on the Interim RIA were invited. Six comments were received; none of the comments resulted in revision of the Interim RIA. An addendum to the Interim RIA has been placed in the public docket to explain a reevaluation of the estimates of the projected benefits of spill prevention. A discussion of oil spill unit values and projected benefits is included in the Summary of the Interim RIA. Summaries of the Interim RIA and the public comments appear in the two following subsections.

Summary of the Interim RIA

The Interim RIA examined the economic costs and benefits of eight hull designs. A design conforming to the current international standards for protectively located segregated ballast (MARPOL tanker), in which a portion of the cargo block is protected by double sides or a double bottom, or both, was used as a base line reference. Other designs analyzed for comparison included a double hull tanker (the design adopted by this rule), a MARPOL tanker with cargo hydrostatically balanced with the surrounding water, a tanker with a double bottom, a tanker with double sides, a tanker with double sides and hydrostatically balanced cargo, and a MARPOL tanker with individual tanks smaller than required under the current maximum tank size standards.

The Interim RIA indicates that the benefit-to-cost ratio for a double hull tanker is comparable to the ratios for the other hull designs that were evaluated. The MARPOL tanker with smaller individual cargo tanks was the only hull design examined with a greater benefit-to-cost ratio than the double hull tanker. Even though the incremental increase in oil transportation costs for a MARPOL tanker with smaller tanks is projected to be half the increase for a double hull tanker, the double hull tanker is estimated to prevent one-third more spillage.

The cost and benefit projections do not vary significantly for variations of double hull designs (i.e. dimensions of protective spaces). The Coast Guard does not have authority to permit the use of an alternative hull design (in lieu of a double hull) for a vessel over 5,000 gross tons.

Worldwide, this rule is projected to increase the total cumulative oil transportation costs during the transition period (1990 to 2015) by $15 billion ($3.5 billion discounted to 1991). This increase is primarily the result of additional construction and maintenance costs of double hull tankers. During this period, the transition to double hull tankers is projected to prevent 86,000 tons of oil spillage in U.S. waters that would have otherwise resulted from groundings and collisions. This corresponds to an average undiscounted cost of $174,000 per ton, or $24,000 per barrel, of prevented spillage.

The economic benefits of spill prevention are the avoided cleanup costs, third party losses, and natural resource damages that would otherwise be incurred. The projected dollar value of these benefits depends upon estimates of future cleanup costs and the valuation of natural resource use and non-use damages. The Interim RIA projected the benefits of spillage prevented by this rule (during the 1990–2015 transition period) to be $1.1 billion ($230 million discounted to 1991), based upon a spill-unit value of $13,000 per ton for cleanup costs and third party damages. This spill-unit value was derived from an analysis of historic cleanup costs and damage claims for major oil spills in U.S. waters during the period 1970 to 1990. Natural resource damages resulting from these oil spills were not quantified or taken into account. Accordingly, the discounted cost of this rule was projected to exceed the discounted benefits by $3.3 billion.

The Coast Guard amended the Interim RIA with addenda on May 6, 1992 and on July 29, 1992 to revise the spill unit values and the estimated benefits, based on an alternative approach. This was done because the spill-unit values used in the initial Interim RIA did not include natural resource damages and because cleanup costs were based upon average costs over a twenty-year period. There have been sharp rises in cleanup costs and damage claims in recent years. Revised cleanup and third-party damage costs of $37,000 per ton were derived from a more current base (1989 to 1991), and natural resources damages of $35,000 per ton were included, based upon the undiscounted dollar value of the recent settlement of claims in the Exxon Valdez case. These changes resulted in a revised total spill unit value of $72,000 per ton. This corresponds to a revised benefit of $6.0 billion ($1.3 billion discounted to 1991), based on the projected 86,000 tons of spillage prevented by this rule during the transition period (1990–2015). Therefore, under this approach, the net discounted cost of this rule would be revised to $2.2 billion, based on the alternative spill unit value.

Both this and the previous approach suffer from potentially serious drawbacks. For example, as discussed above, the first approach omits some important components of the social costs of a spill. The second approach ignores potentially valuable data by excluding from the sample all accidents occurring before 1989. It relies exclusively on data from only one major spill, the *Exxon Valdez* grounding, to estimate the value of natural resource damages. The second approach also assumes that the amount paid by Exxon in its settlement with the State of Alaska and the United States reflects the true social costs of the natural resource damages associated with that accident.

Consequently, the Coast Guard is undertaking further work to refine and expand its database of oil spill cleanup and damage cost information and to further study natural resource damage valuation, which is currently the subject of comprehensive research and evaluation by NOAA. This will facilitate the development of more accurate and representative spill unit values to serve as the basis for reevaluating the benefits estimates in this and other regulatory the benefits estimates in this and other regulatory evaluations undertaken for the implementation of OPA 90. It is the Coast Guard's position, based on currently available data, that the spill unit values of $13,000 per ton and $72,000 per ton represent reasonable and suitable lower and higher values to serve as a range for the interim economic evaluation of this rule.

For the year 2015, when the transition to double hull tankers serving the U.S. is complete, prevented spillage is projected to be 7,800 tons. This corresponds to annual benefits ranging from $100 million to $560 million, based on spill-unit values of $13,000 and $72,000 respectively. The incremental increase in annual transportation costs for the year 2015 is $1.5 billion, which corresponds to a 0.4 cent increase in cost per gallon of oil transported. Therefore, the net annual post-transition cost of this rule will range from $940 million to $1.4 billion, depending upon which spill-unit values are assigned to the benefits.

The overwhelming majority of these costs and benefits are attributable to international crude oil shipments. Most vessels in this trade are larger than 65,000 deadweight tons. Double hull vessels of this size will have only a negligible decrease in cargo capacity from a MARPOL tanker of equivalent dimensions. For smaller vessels, primarily coastal product tankers, an assumed 15 percent reduction in cargo capacity increases the additional (incremental) transportation costs by 50 percent over the base case. This corresponds to a 54 to 80 percent increase in net cost, based on spill-unit values of $13,000 and $72,000 respectively. A standard (195 foot long) inland tank barge of double hull construction can carry only 70 percent of the capacity of a single hull barge of equivalent overall dimensions. However, market conditions predating OPA 90 had already prompted a transition to double hull inland tank barges.

A number of vessels, primarily general cargo break-bulk ships, have carried limited quantities (less than 20 percent of total deadweight) of oil in bulk within deep tanks under the cargo holds. New vessels may not carry oil in those tanks, and existing vessels must discontinue carrying oil in those tanks in accordance with the phaseout timetable for existing vessels in the Act. The Coast Guard anticipates that very few vessels of this type would be constructed in the future, even in the absence of this rule, since most dry cargo is now transported in container ships. Therefore, only vessels primarily designed to carry oil in bulk were considered in this analysis.

The economic impact of this rule will be distributed differently across various sectors of the U.S. marine transportation system. Spread over the 25 year implementation period, the impact on international tanker operators is expected to be small, since their vessels are estimated to have a useful life of 25 years. The ability of a small international tanker operator to raise sufficient capital to construct double hull tankers (15 percent to 20 percent more than for an equivalent MARPOL tanker) is likely to be contingent on projected freight rates adequately covering capital and operating costs. Rates may not rise sufficiently to cover these costs during the early years of the transition period, when new double hull tankers will compete against existing single hull tankers. In the long term, rates are expected to rise as older vessels are retired. This will create more favorable financing conditions for new construction.

Operators of coastal tankers and tank barges will face impacts similar to those of owners of international tankers. The smaller cargo capacity of these double hull vessels, compared with the capacity

of single hull vessels with equivalent outer dimensions, could place existing single hull vessels at a greater advantage during the transition years, particularly on routes where draft and beam are restricted. Some coastal tankers may be retired prior to the end of their useful life, since such vessels have a projected useful life slightly longer than for a tanker in international trade. This could hasten orders for new construction at domestic shipyards.

Large operators of inland barges are not expected to be significantly affected by this rule, since double hull construction had become a trend for this segment of the industry prior to the enactment of OPA 90. Smaller, undercapitalized operators of inland barges, harbor tankers, and non-Alaska trade coastal tankers and barges may be adversely impacted. However, the long term situation of these operators will be impacted to a much greater degree by preexisting economic factors unrelated to this rule. These factors have acted to consolidate the inland tank vessel industry for many years.

Public Comments on the Interim RIA

The Coast Guard received six documents containing nearly 30 specific comments on the Interim RIA. Two comments addressed the adverse economic impact of the double hull requirement on the coastal and inland oil transportation operators. Since these sectors include the small entities within the larger marine oil transportation sector, those particular comments are addressed in the next section under "*Small Entities*." The other comments are discussed in the following paragraphs.

Several comments noted concerns over the high cost of the rule relative to its benefits. This cost results from the transition to double hull construction for new tank vessels. The Coast Guard does not have discretion under OPA 90 to permit any design concept other than a double hull. Therefore, aspects of this rulemaking within the Coast Guard's administrative discretion cannot significantly affect these costs.

One comment suggested that the Interim RIA underestimates the amount of spillage that will be prevented by double hulls because past accidents have demonstrated that double hull construction is much more resistant to hull penetration in high-energy grounding situations than was assumed in the Interim RIA. An opposing comment stated that the Interim RIA overestimates the effectiveness of double hull construction. The Coast Guard believes that the Interim RIA uses a reasonable estimate of the spill prevention effectiveness of double hulls in view of the many variables relevant to each specific grounding situation (such as the speed and size of vessel, nature of bottom, weather conditions, tides, and currents).

One comment contended that the Interim RIA substantially overestimated the costs of double hull construction. Whereas the Interim RIA used 15 percent to 20 percent as the incremental double hull construction cost (relative to an equivalent single hull vessel), the comment asserted that a carefully designed double hull tanker could be built for considerably less. The Coast Guard concludes that, under certain circumstances (innovative design and production engineering, multiple-ship orders and serial production), cost reductions could be achieved. However, these circumstances cannot be assumed for all replacement construction during the 25 year transition period. The 15 percent and 20 percent figures used in the Interim RIA are based upon recent construction orders (including single hull orders with options for double hulls) and a synthesis of a broad canvass of informed industry opinion. They are intended to be sufficiently conservative to account for unforeseen circumstances and minor cost differentials.

One comment discussed hydrostatically-balanced MARPOL tankers (M–HBL). It included data and analyses asserting that existing MARPOL tankers (if operated in a hydrostatically-balanced condition) could be as economically viable as double-hulled vessels, with the added environmental benefit that this alternative could be implemented immediately. The Coast Guard recognizes that M–HBL tankers may be as effective as double hull vessels under certain grounding scenarios, but M–HBL offers minimal protection under collision scenarios. The long-term intent of OPA 90 is to develop hull designs which maximize environmental protection under as many circumstances as possible. The M–HBL design does not meet this long-term goal; however, it may be an appropriate short-term measure for existing vessels. A copy of this comment has been placed in the public docket for that regulatory project (CGD 91–045).

One comment stated that, contrary to the Interim RIA, the U.S. balance of payments would not be affected by foreign-owned vessels, because construction would be in foreign shipyards with foreign capital. While it is correct that the initial construction capital would not necessarily be U.S. money, the increased construction costs (including interest payments) and operating costs are ultimately paid by the U.S. in the form of higher transportation costs over the construction amortization period and service life of the vessel. Thus, the U.S. balance of payments is affected as indicated in the Interim RIA.

One comment questioned whether certain U.S. naval vessels (oilers and tankers) should be included in the analysis, since they may be public vessels and therefore exempted from vessel inspection and pollution prevention regulations by 46 U.S.C. 2109. The exemption in section 2109 applies to a "public vessel," as defined in 46 U.S.C. 2101(24). Determinations of public vessel status are made on a case-by-case basis. This rulemaking does not address determinations under § 2101(24). However, the relatively small number of public tank vessels, and the fact that such vessels cannot be engaged in commercial service, precludes a significant impact on the analysis.

Two comments asserted that the Interim RIA overestimates the double hull benefits because it did not account for an increased number of voyages to made up for lost cargo capacity; this would increase in the probability of casualties. The cost-benefit calculations in the Interim RIA made appropriate adjustments for loss of cargo capacity under several of the design alternatives, including double hulls.

One comment held that both crude oil and product imports to the U.S. will increase higher and faster than forecast by the Department of Energy, particularly as a result of announced refinery closings (due to the Clean Air Act Amendments of 1990). Although the Interim RIA places substantial reliance on Department of Energy import forecasts, they were verified against similar forecasts by other energy institutes and associations. Although refinery closings may affect future import levels and distribution patterns, accurate forecasts cannot be made on the basis of announcements alone.

One comment stated that the Interim RIA did not fully represent costs to barge operators, since it did not mention increased fuel consumption from towing heavier (or extra) double-hulled barges in order to move the equivalent amount of cargo. The Interim RIA analyzes transportation costs on a per-ton basis, which takes into account reduced cargo capacity per voyage (referred to as "voyage productivity" in the Interim RIA).

Small Entities

The Coast Guard has evaluated the impact of this rule on small entities in

accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This evaluation was carried out as part of the Interim RIA for this rule.

For purposes of small entity impact, the inland and coastal barge transportation sectors contain the greatest number of small, independently-owned companies:

—The coastal tank barge industry is comprised of 52 companies which operate 191 barges; however, 35 of those companies operate only one or two barges;

—The inland tank barge industry is comprised of 409 companies which operate 3,461 barges; however, 219 of those companies own just one barge.

It is difficult to quantify the degree to which the small entity barge sector will be impacted by this rule. Market conditions have been depressed for some time, forcing operators to defer replacing older barges. The existing barge fleet is already past middle-age; nearly 50 percent of the fleet is over 20 years old. Assuming that the service life of a tank barge is 30 years, then the industry, as a whole, is faced with replacing this fleet over the next 25 years, regardless of OPA 90.

The Interim RIA acknowledges that coastal and inland operators will face problems of capital cost, replacement timing, and freight rate differentials. Smaller, undercapitalized operators will have particular difficulties in financing new construction. However, these difficulties existed prior to OPA 90 and cannot be fully attributed to this rule.

The economic impact of this rule is nominally associated with the additional construction costs (of double hull over single hull tankers) and operating costs (due to loss of cargo capacity). There is evidence that the industry was already adjusting to these conditions, since there has been a trend towards double hull barge construction which began well before OPA 90. This trend appears to be based upon industry's desire to broaden the cargo flexibility of tank barges, since certain chemical cargoes have long been restricted to double hull barges. It should be noted that double side widths required for most chemical barges are greater than the side dimensions under this rule (3 to 4 feet, vice 2 feet). This rule does not change existing carriage requirements for chemicals.

The Interim RIA recognizes that adjustments to the market structure will be necessary if the smaller, undercapitalized companies are to survive. Such adjustments are possible, such as the development of long-term shipping commitments between operator and customer that will allow contracts to be used as collateral for construction loans (similar to present arrangements for large ship financing).

It must also be noted that the forecast of future inland and coastal transportation of refined oil products is for slow, continued growth above present levels. Thus, there will be a demand for a double-hulled barge fleet comparable to the existing fleet, with comparable crew employment levels. This long-range demand should be adequate to stimulate capital investment opportunities. Financing mechanisms should evolve to meet industry needs over the next 25 years.

Comments With Respect to Small Entities

Two comments on the Interim RIA concerned the adverse economic impact on the coastal and inland vessel operators.

One comment asserted that the Interim RIA substantially underestimates the adverse economic impact on the coastal and inland oil transportation sectors because the phaseout schedule, when viewed against the age of the existing fleet, will result in two brief surges of retirement and replacement (rather than a gradual replacement). It noted that this high-demand construction period, coupled with limited shipbuilding capacity, would result in higher construction costs than assumed in the Interim RIA. The comment further asserted that construction financing may be limited, or available only at high interest costs, since capital markets may be discouraged from investing in replacement construction.

The Coast Guard recognizes that the inland and coastal barge operators will be the most adversely impacted sector since a number of smaller, undercapitalized companies are now engaged in that trade. However, due to the age of the existing barge fleet, this sector is already faced with the need to replace most of the fleet over the next 25 years. The Coast Guard's opinion is that the extended period (until 2015) for the phase out of most single hull barges allows ample time for an orderly transition to double hull barges. Although barge retirements may be in surges, reduced Navy construction programs should make sufficient shipyard capacity available to maintain competitive pricing on replacement construction.

The other comment stated that the Interim RIA did not consider self-propelled vessels smaller than 5,000 gross tons. These vessels include small harbor tankers, typically less than 1,000 gross tons, which refuel commercial ships. The comment alleged that double hull construction costs for this type of vessel would be 60 percent greater than for single hull construction, and that cargo capacity would be reduced by 30 to 50 percent. These conditions would preclude construction of replacements. The Coast Guard has identified 43 existing, self-propelled tank vessels under 1,000 gross tons (excluding oil spill recovery vessels, which are exempted). Under OPA 90, these vessels are allowed to remain in service until 2015. The average age of a vessel in this group is 47 years old; only eight have been built in the last 30 years, and none have been built since 1980. The Coast Guard views this data as a clear indication that the industry has already stopped building such small tankers and has been replacing existing small tankers with tank barges.

Collection of Information

This rule contains collection of information requirements. Section 33 CFR 157 has been revised to require the submission of plans verifying compliance with this rule. No additional information collection burden is anticipated for the owner of a U.S. vessel, since compliance with this rule can be verified from other information that is currently submitted under 33 CFR 157.24 and 46 CFR 31.10. However, the owner of a foreign vessel will have to submit additional information to verify compliance with this rule. Most additional submissions will become unnecessary when related MARPOL amendments enter into force (expected in July 1993), providing for such information on the International Oil Pollution Prevention Certificate (IOPP). The Coast Guard has submitted the information collection requirements in this rule to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section number is 46 CFR 157.24 and the corresponding OMB approval numbers are OMB Control Numbers 2115–0503 and 2115–0106.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

This interim final rule sets standards for the construction of double hull tank vessels. The authority to regulate tank

vessel construction standards is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute.

Since tank vessels move between U.S. ports in the national marketplace, and between U.S. and foreign ports in the international marketplace, tank vessel construction is a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. The Coast Guard received no comments addressing the federalism implications of this rule. Therefore, by adopting this interim final rule, the Coast Guard continues the long-established practice of preempting State action addressing the same subject matter.

Environment

The Coast Guard environmental assessment (EA) for Double Hull Design Requirements for Tank Vessels was prepared in accordance with Commandant Instruction M16475.1B, the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91-190), and the Council of Environmental Quality Regulations of July 1, 1986 (40 CFR parts 1500-1508).

This interim final rule implements the double hull provisions in section 4115(a) of OPA 90 (46 U.S.C. 3703a), and is not expected to result in significant impact on the quality of the human environment, as defined in NEPA. The Coast Guard has placed a Finding of No Significant Impact (FONSI) in the public docket.

Public Participation

Industry, environmental advocacy, and other public comments received in response to the proposed rule were considered in preparation of the EA. A public meeting was held on September 26, 1991 to obtain the views of interested parties regarding the scope of appropriate documentation for compliance with the provisions of NEPA. No comments concerning double hull design standards were received as a result of that meeting. On January 15, 1992, a notice of availability was published in the **Federal Register** (57 FR 1854) inviting public review and comment on the EA. Three documents commenting on the EA were received and are discussed under "*Public Comments on the EA.*"

Discussion of the EA

The EA discusses the need for regulatory action, compares the double hull design with other design alternatives for tank ships and barges, summarizes public comments, and describes the significance of the action. The EA for this rule is summarized as follows:

Owners are required to either retrofit existing tank vessels with double hulls or remove them from service in U.S. waters in accordance with a statutory timetable beginning in 1995. The timetable will result in total conversion of the tank vessel fleet to double hull vessels by 2015. Single hull tank vessels will continue to operate until owners voluntarily retire them from service or until they are prohibited from service in accordance with the timetable.

Double hull construction places a second steel barrier between vessel cargoes and the environment. The second, or inner, hull will be located sufficiently inboard so that the probability of its rupture during a low-energy collision or grounding is relatively low compared to that for a single hull.

U.S. oil imports are expected to increase from 7.61 million barrels per day in 1991 to 12.33 million barrels per day in 2010. This increase in demand is expected to result in a proportional increase in tank vessel traffic with an associated increase in the probability of accidents.

OPA 90 requires the Coast Guard to issue rules implementing various measures to reduce the risk of oil spills in U.S. waters. In order to issue a variety of regulations pertaining to a wide range of issues in a timely manner, a number of individual rulemaking actions will be initiated, each accompanied by its own environmental assessment. The Coast Guard realizes that some of the expected beneficial effects of individual rules may be rendered redundant, or reduced, by the effects of other rules. For example, the benefits of double hull construction are realized from the mitigation of pollution from low energy grounding or collision incidents. Other rules under development to improve the safety of vessel navigation and operation are expected to reduce the occurrence of such incidents, the magnitude of the resulting spills, and the damage from these spills, thus reducing the overall benefits from (total spillage prevented by) double hull construction.

The EA makes only a limited assessment of the specific environmental consequences of the double hull requirement since, even without this rule, double hull construction is required by OPA 90. This rule establishes design standards for use by the shipping and shipbuilding industries in order to comply with the law. The EA also analyzes the environmental consequences of alternative design concepts as well as the existing (pre-OPA 90) standards.

Approximately 65 percent of total major spill volume in U.S. waters each year results from groundings. Collisions account for approximately 18 percent; structural and other failures, 10 percent; and fire and explosions, 8 percent.

In the aftermath of the *Exxon* Valdez oil spill, the Coast Guard commissioned the National Research Council (NRC) of the National Academy of Sciences to assess whether alternative tank vessel designs would improve maritime safety and environmental protection. An NRC committee examined (1) current task vessel designs, operations, and regulations; (2) the rupturing phenomena of structural steel hulls and subsequent oil outflow dynamics; (3) engineering and salvage considerations; and (4) benefits and costs associated with various design alternatives. Their report, *Tanker Spills: Prevention by Design,* described their findings and was a significant resource for the Coast Guard's Interim Regulatory Impact Analysis (Interim RIA) of this rule. The Interim RIA examined seven basic design alternatives and two compound designs combining two basic alternatives evaluated. The Interim RIA is the Coast Guard's basis for comparison of the alternatives in the EA.

Alternatives discussed and compared in the EA included: (1) No Action; (2) Double Bottom; (3) Double Sides; (4) Double Hull; (5) Hydrostatic Balance; (6) Intermediate Oil Tight Deck with Double Sides; and (7) Smaller Tanks. All design alternatives were compared to current, international design and construction standards. Vessels meeting the current standards are known generically as MARPOL tankers.

Oil spills in U.S. waters average approximately 9,000 tons per year, of which an estimated 2,100 to 5,400 tons (23 to 60 percent of the total) could be mitigated by tank vessel design improvements. Estimates of oil spillage reduction for each of the design alternatives were determined by applying a common set of casualty scenarios based on simplified assumptions. The assumptions include a casualty mix of 60 percent groundings and 40 percent collisions, and, that 50 percent of accidents occur at speeds of 5 knots (low energy) and 50 percent occur at speeds of 10 knots (high energy). Based on these assumptions, each alternative examined (except double sides) has the potential to reduce oil outflow under certain casualty conditions. Of the proven designs which were evaluated, a double hull provides

the best overall protection for the range of vessel sizes and casualties considered in the EA.

Due to significant differences in design, operation and service routes, barges were analyzed and discussed separately. Most tank barges serve coastal and inland routes. They are typically smaller than tank ships and carry less cargo. However, they operate primarily in waters close to shore, which have a greater environmental sensitivity and more hazards to navigation than open waters.

Prior to OPA 90, double hulls were not required for tank barges unless they were certified to carry certain hazardous chemicals. However, review of recent tank barge construction orders indicates that the industry has been moving toward double-hull construction for all new barge orders, in order to allow maximum cargo-carrying flexibility. However, barge-building activity has been at low levels in recent years; a substantial increase in barge construction is not likely in the near future. Under OPA 90, existing single-hull tank barges of less than 5,000 gross tons (approximately 10,000 cargo deadweight tons) may continue in service until 2015; approximately 96 percent of the tank barge fleet is below this size limit.

Therefore, this rule will only gradually affect this industry as existing single hull barges are replaced with double hull barges over the next 23 years. Consequently, the environmental benefits associated with this rule will not be significant during this transition period.

Public Comments on the EA

One comment stated that the effectiveness of the possible hull designs were all compared to an existing, MARPOL tanker, even though the "no action" alternative was conversion of the fleet to double hulls without the design standards of this rule. The Coast Guard considers the MARPOL tanker to be an appropriate base line (which was used in the NAS study, the Interim RIA, and the EA) for comparing the relative effectiveness of several possible design alternatives, even though alternatives to double hulls are not permitted by OPA 90.

One comment stated that the EA did not include any assessment of secondary effects of this rule, particularly increased smokestack emissions from the increased vessel traffic. The Coast Guard's position is that this increase in emissions, if any, cannot be realistically quantified.

Two comments stated that the EA did not address the (statistically) increased probability of collisions and groundings due to increased vessel traffic. The Coast Guard recognizes that a reduction of cargo capacity of individual vessels could slightly increase overall traffic and exposure to accident risks, other things being equal. However, the Coast Guard believes this increase would be insignificant compared with the 50 percent increase in traffic projected over the next 25 years due to increasing oil consumption and imports. Large oceangoing vessels will have little or no reduction in cargo capacity (or resulting increase in traffic) due to existing ballast requirements. An increase in coastal traffic could occur if there is retrofitting of existing coastal tankers by replacing the cargo block; however, a significant number of such retrofits are not anticipated. An increase could also occur as a result of limitations on vessel dimensions due to navigational restrictions, such as draft limits and lock dimensions for inland barges. However, barges have been moving toward double hull construction due to influences beyond this rule. Any increase in traffic due to reduced individual capacity will not occur until a significant percentage of the existing fleet is retired and replaced with double-hulled vessels. As stated in the RIA, and other parts of this preamble, other OPA 90 rules addressing a variety of construction, operational, and response planning actions are expected to reduce the probability of casualties, despite any increases in tanker traffic resulting from decreased individual capacity. Since this effect interacts with other OPA 90 provisions, the Coast Guard will incorporate this concept into the final composite RIA.

One comment noted that the diversity of units used in the EA (and Interim RIA), such as barrels, short tons, long tons, and other units, made the analyses difficult to follow. The data used in the studies came from a variety of sources (Department of Energy, Army Corps of Engineers, shipping registers, and similar sources), which published their data in different units. Where the EA and Interim RIA reprinted basic data, the original units were maintained (to allow verification against the sources); appropriate conversions were made for purposes of calculations.

One document containing many detailed comments was received after the expiration of the comment period. These comments contended that the EA does not satisfy the requirements of NEPA and does not justify a FONSI. The Coast Guard does not concur with these comments and has determined that the EA satisfies the requirements of NEPA and justifies issuance of a FONSI. Several of these comments concern the appropriate degree of environmental documentation under NEPA. As previously discussed, a public meeting on that issue was held on September 26, 1991 and no comments were offered at that time. However, these late comments will be further considered along with other comments that are received in response to this interim final rule. Additional comments on the sufficiency of the EA and on the Coast Guard's FONSI are specifically invited.

Significance of this Rulemaking Action

(1) Double hull construction is mandated by law and will occur with associated economic impacts and environmental benefits;

(2) Once the tanker fleet is fully double-hulled, the proposed standards will prevent the discharge of an estimated 1.5–2.5 million gallons (5,000–8,000 tons) per year of oil into U.S. waters;

(3) Environmental benefits of this rule will be negligible until a substantial portion of the tanker fleet has been converted from single hull to double hull;

(4) Inasmuch as single hull vessels will be phased out over a period commencing in 1995 and continuing until 2015, it will take approximately 20 years for the estimated double hull environmental benefits to come into full effect; and

(5) Double hull construction will prevent or mitigate oil outflow in most groundings and collisions. Additional OPA 90 rules that are under development will reduce the number of such casualties, thereby reducing the actual long-term impact of double hull construction on the environment.

Appendix—MARPOL Amendments for the Prevention of Oil Pollution in the Event of Collision or Stranding

Regulations 13F and 13G of Annex I of MARPOL were adopted by the IMO Marine Environment Protection Committee on March 6, 1992.

Regulation 13F of Annex I to MARPOL

(1) This regulation shall apply to oil tankers of 600 DWT and above:

(a) For which the building contract is placed on or after July 6, 1993, or

(b) In the absence of a building contract, the keels of which are laid or which are at a similar stage of construction on or after January 6, 1994, or

(c) The delivery of which are or after July 6, 1996, or

(d) Which has undergone a major conversion:

(i) For which the contract is placed after July 6, 1993; or

(ii) In the absence of a contract, the construction work of which is begun after January 6, 1994; or

(iii) Which is completed after July 6, 1998.

(2) Every oil tanker of 5,000 DWT and above shall:

(a) In lieu of regulation 13E, as applicable, comply with the requirements of paragraph (3) unless it is subject to the provisions of paragraphs (4) and (5); and

(b) Comply, if applicable, with the requirements of paragraph (6).

(3) The entire cargo tank length shall be protected by ballast tanks or spaces other than cargo and fuel oil tanks as follows:

(a) *Wing tanks or spaces:* Wing tanks or spaces shall extend either for the full depth of the ship's side or from the top of the double bottom to the uppermost deck, disregarding a rounded gunwale where fitted. They shall be arranged such that the cargo tanks are located inboard of the molded line of the side shell plating, nowhere less than the distance *w* which as shown in Figure 157.10d(c) at any cross section is measured at right angles to the side shell, as specified below:

(i) $w = 0.5 + (DWT/20{,}000)$ metres; or,

(ii) w = 2.0 m., whichever is the lesser.

(iii) The minimum value of $w = 1.0$ m.

(b) *Double bottom tanks or spaces:* At any cross section the depth of each double bottom tank or space shall be such that the distance *h* between the bottom of the cargo tanks and the molded line of the bottom shell plating measured at right angles to the bottom shell plating as shown in Figure 157.10d(c) is not less than specified below:

(i) $h = B/15$; or

(ii) $h = 2.0$ metres, whichever is the lesser.

(iii) The minimum value of $h = 1.0$ m.

(c) *Turn of the bilge area or at locations without a clearly defined turn of the bilge:* When the distances *h* and *w* are different, the distance *w* shall have preference at levels exceeding $1.5h$ above the base line as shown in Figure 157.10d(c).

(d) *The aggregate capacity of ballast tanks:* On crude oil tankers of 20,000 DWT and above and product carriers of 30,000 DWT and above, the aggregate capacity of wing tanks, double bottom tanks, forepeak tanks, and afterpeak tanks shall not be less than the capacity of segregated ballast tanks necessary to meet the requirements of regulation 13. Wing tanks, spaces, and double bottom tanks used to meet the requirements of regulation 13 shall be located as uniformly as practicable along the cargo tank length. Additional segregated ballast capacity provided for reducing longitudinal hull girder bending stress, trim, etc., may be located anywhere within the ship.

(e) *Suction wells in cargo tanks:* Suction wells in cargo tanks may protrude into the double bottom below the boundary line defined by the distance *h* provided that such wells are as small as practicable and the distance between the well bottom and bottom shell plating is not less than $0.5h$.

(f) *Ballast and cargo piping:* Ballast piping and other piping such as sounding and vent piping to ballast tanks shall not pass through cargo tanks. Cargo piping and similar piping to cargo tanks shall not pass through ballast tanks. Exemptions to this requirement may be granted for short lengths of piping, provided that they are completely welded or equivalent.

(4)(a) Double bottom tanks or spaces as required by paragraph (3)(b) may be dispensed with, provided that the design of the tanker is such that the cargo and vapor pressure exerted on the bottom shell plating forming a single boundary between the cargo and the sea does not exceed the external hydrostatic water pressure, as expressed by the following formula:

$(f)(hc)(Rc)(g) + (100)(dP) < \text{or} = (dn)(Rs)(g)$; where:

hc = height of cargo in contact with the bottom shell plating in metres;

Rc = maximum cargo density in tons/cubic metre;

dn = minimum operating draught under any expected loading conditions in metres;

Rs = density of sea water in tons/cubic metre;

dP = maximum set pressure of pressure/vacuum valve provided for the cargo tank in bars; and,

f = safety factor = 1.1

g = standard acceleration of gravity (9.81 meters/second squared)

(b) Any horizontal partition necessary to fulfill the above requirements shall be located at a height of not less than B/6 or 6 metres, whichever is the lesser, but not more than 0.6D, above the base line, where D is the molded depth amidships.

(c) The location of the wing tanks or spaces shall be as defined in paragraph (3)(a), except that below a level of $1.5h$ above the base line, where *h* is as defined in paragraph (3)(b), the cargo tank boundary line may be vertical down to the bottom plating as shown in figure 2. (not shown).

(5) Other methods of design and construction of oil tankers may also be accepted as alternatives to the requirements prescribed in paragraph (3), provided that such methods ensure the same level of protection against oil pollution in the event of collisions or stranding and are approved in principle by the Marine Environment Protection Committee based on guidelines developed by the Organization.

(6) For oil tankers of 20,000 DWT and above the damage assumptions prescribed in regulation 25(2)(b), shall be supplemented by the following assumed bottom raking damage:

(a) Longitudinal extent:

(i) Ships of 75,000 DWT and above: 0.6 L, measured from the forward perpendicular.

(ii) Ships of less than 75,000 DWT: 0.4 L measured from the forward perpendicular.

(b) Transverse extent: B/3 anywhere in the bottom.

(c) Vertical extent: Breach of the outer hull.

(7) Oil tankers of less than 5,000 DWT shall:

(a) At least be fitted with double bottom tanks or spaces having such a depth that the distance *h* specified in paragraph (3)(b) complies with the following: $h = B/15$(m) with a minimum value of $h = 0.76$ metres; in the turn of the bilge area and at locations without a clearly defined turn of the bilge, the cargo tank boundary line shall run parallel to the line of the mid-ship flat bottom as shown in Figure 157.10d(c)(3)(ii); and

(b) Be provided with cargo tanks so arranged that the capacity of each cargo tank does not exceed 700 cubic metres unless wing tanks or spaces are arranged in accordance with paragraph (3)(a) complying with the following: $w = 0.4 + (2.4\ DWT/20{,}000)$ meters, with a minimum value of 0.76 m.

(8) Oil shall not be carried in any space extending forward of a collision bulkhead located in accordance with regulation II–1/11 of the International Convention for the Safety of Life at Sea, 1974 as amended. An oil tanker that is not required to have a collision bulkhead in accordance with that regulation shall not carry oil in any space extending forward of the transverse plane perpendicular to the centreline that is located as if it were a collision bulkhead located in accordance with that regulation.

(9) In approving the design and construction of oil tankers to be built in accordance with the provisions of this regulation, Administrations shall have due regard to the general safety aspects including the need for the maintenance and inspections of wing and double bottom tanks or spaces.

Regulation 13G of Annex I of MARPOL 73/78

(1) This regulation shall:

(a) Apply to crude oil tankers of 20,000 tons deadweight and above and to product carriers of 30,000 tons deadweight and above, which are contacted, the keels of which are laid, or which are delivered before the dates specified in regulation 13F(1) of this Annex; and

(b) Not apply to oil tankers complying with regulation 13F of this Annex, which are contracted, the keels of which are laid, or are delivered before the dates specified in regulation 13F(1) of this Annex; and

(c) Not apply to oil tankers covered by sub-paragraph (a) above which comply with regulation 13F(3)(a) and (b) or 13F(4) or 13F(5) of this Annex, except that the requirement for minimum distances between the cargo tank boundaries and the ship side and bottom plating need not be met in all respects. In that event, the side protection distances shall not be less than those specified in the International Bulk Chemical Code for type 2 cargo tank location and the bottom protection shall comply with Regulation 13E(4)(b) of this Annex.

(2) The requirements of this regulation shall take effect as from July 6, 1995.

(3) (a) An oil tanker to which this regulation applies shall be subject to an enhanced programme of inspections during special, intermediate and annual surveys, the scope and frequency of which shall at least comply with the guidelines developed by the Organization.

(b) An oil tanker over 5 years of age to which this regulation applies shall have on board, available to the competent authority of any Government of a State party to the present Convention, a complete file of the survey reports, including the results of all scantling measurement required, as well as the statement of structural work carried out.

(c) This file shall be accompanied by a condition evaluation report, containing conclusions on the structural condition of the ship and its residual scantlings, endorsed to indicate that it has been accepted by or on behalf of the flag Administration. This file and condition evaluation report shall be prepared in a standard format as contained in the guidelines developed by the Organization.

(4) An oil tanker, not meeting the requirements of a new oil tanker as defined in regulation 1(26) of this Annex shall comply with the requirements of regulation 13F of this Annex not later than 25 years after its date of delivery, unless wing tanks or double bottom spaces not used for the carriage of oil and meeting the width and height requirements of regulation 13E(4) cover at least 30 percent of *Lt* for the full depth of the ship on each side or at least 30 percent of the projected bottom area *PAs* within the length *Lt*, where *Lt T1and projected area PAs* are as defined in regulation 13E, in which case compliance with Regulation 13F is required not later than 30 years after its date of delivery.

(5) An oil tanker, meeting the requirements of a new oil tanker as defined in regulation 1(26) of this Annex, shall comply with the requirements of regulation 13F of this Annex not later than 30 years after its date of delivery.

(6) Any new ballast and load conditions, resulting from the application of paragraph (4) of this regulation, shall be subject to approval of the Administration who shall have regard, in particular, to longitudinal and local strength, intact stability and, if applicable, damage stability and survival capability.

(7) Other structural or operational arrangements such as hydrostatic balance may be accepted as alternatives to the requirements prescribed in paragraph (4), provided that such alternatives ensure at least the same level of protection against oil pollution in the event of collision or stranding and are approved by the Administration based on guidelines developed by the Organization.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation, Marine safety.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 155 and 157, and 46 CFR parts 30, 32, 70, 90, and 172 as follows:

PART 155—OIL AND HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

§ 155.390 [Removed]

2. Section 155.390 is removed.

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSELS CARRYING OIL IN BULK

3. The authority citation for part 157 is revised to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

4. Section 157.01 is revised to read as follows:

§ 157.01 Applicability.

(a) Unless otherwise indicated, this part applies to each vessel that carries oil in bulk as cargo and that is:

(1) Documented under the laws of the United States (a U.S. vessel); or

(2) Any other vessel that enters or operates in the navigable waters of the United States or the United States Exclusive Economic Zone, as defined in 33 U.S.C. 2701(8).

(b) This part does not apply to a vessel exempted under 46 U.S.C. 2109 or 46 U.S.C. 3702.

5. Section 157.03 is amended by revising paragraphs (k), (n), and (aa), and by adding new paragraphs (ii), (jj), (kk), (ll), (mm), (nn), and (oo) to read as follows:

§ 157.03 Definitions.

* * * * *

(k) *Major conversion* means a conversion of an existing vessel that:

(1) Substantially alters the dimensions or carrying capacity of the vessel, except a conversion that includes only the installation of segregated ballast tanks, dedicated clean ballast tanks, a crude oil washing system, double sides, a double bottom, or a double hull;

(2) Changes the type of vessel;

(3) Substantially prolongs the vessel's service life; or

(4) Otherwise so changes the vessel that it is essentially a new vessel, as determined by the Commandant (G–MVI).

* * * * *

(n) *Oil* means oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. This includes liquid hydrocarbons as well as animal and vegetable oils.

* * * * *

(aa) *Cargo tank length* means the length from the collision bulkhead or, in the absence of a collision bulkhead, from the transverse plane under § 157.10d(e)(2), to the forward bulkhead of the machinery spaces. In the absence of machinery spaces, the cargo tank length is the length to the aft bulkhead of the aftermost cargo tank.

* * * * *

(ii) *Doubles sides* means watertight protective spaces that do not carry any oil and which separate the sides of tanks that hold any oil within the cargo tank length from the outer skin of the vessel.

(jj) *Double bottom* means watertight protective spaces that do not carry any oil and which separate the bottom of tanks that hold any oil within the cargo tank length from the outer skin of the vessel.

(kk) *Double hull* means watertight protective spaces that do not carry any oil and which separate the sides, bottom, forward end, and aft end of tanks that hold any oil within the cargo tank length from the outer skin of the vessel as prescribed in § 157.10d.

(ll) *Oil spill response vessel* means a vessel that is exclusively dedicated to operations to prevent or mitigate environmental damage due to an actual or impending accidental oil spill. This includes a vessel that performs routine service as an escort for a tank vessel, but excludes a vessel that engages in any other commercial activity, such as the carriage of any type of cargo.

(mm) *Oceangoing* has the same meaning as defined in § 151.05 of this chapter.

(nn) *Inland vessel* means a vessel that is not oceangoing and that does not operate on the Great Lakes.

(oo) *Oil tanker* means a vessel that is constructed or adapted primarily to carry crude oil or products in bulk as cargo. This includes a tank barge, a tankship, and a combination carrier, as well as a vessel that is constructed or adapted primarily to carry noxious liquid substances in bulk as cargo and which also carries crude oil or products in bulk as cargo.

6. Section 157.08 is amended by removing the introductory text, adding a note before paragraph (a), revising paragraph (a), redesignating existing paragraphs (e) through (i) as paragraphs (i) through (m) respectively, redesignating and revising existing paragraphs (b), (c), and (d) as paragraphs (f), (g), and (h) respectively, and adding new paragraphs (b), (c), (d), (e), and (n) to read as follows:

§ 157.08 Applicability of subpart B.

Note: An "oil tanker" as defined in § 157.03 includes barges as well as self-propelled vessels.

(a) Sections 157.10d and 157.11(g) apply to each vessel to which this part applies.

(b) Sections 157.11 (a) through (f), 157.12, 157.15, 157.19(b)(3), 157.33, and 157.37 apply to each vessel to which this part applies that carries 200 cubic meters or more of crude oil or products in bulk as cargo, as well as to each oceangoing oil tanker to which this part applies of 150 gross tons or more. These sections do not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

(c) Section 157.21 applies to each oil tanker to which this part applies of 150 gross tons or more that is oceangoing or that operates on the Great Lakes. This section does not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

(d) Sections in subpart B of 33 CFR part 157 that are not specified in paragraphs (a) through (c) of this section apply to each oceangoing oil tanker to which this part applies of 150 gross tons or more, unless otherwise indicated in paragraphs (e) through (m) of this section. These sections do not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

(e) Sections 157.11 (a) through (f), 157.12, and 157.15 do not apply to a vessel, except an oil tanker, that carries less than 1,000 cubic meters of crude oil or products in bulk as cargo and which retains oily mixtures on board and discharges them to a reception facility.

(f) Sections 157.11 (a) through (f), 157.12, 157.13, and 157.15 do not apply to a tank vessel that carries only asphalt, carbon black feedstock, or other products with similar physical properties, such as specific gravity and cohesive and adhesive characteristics, that inhibit effective product/water separation and monitoring.

(g) Sections 157.11 (a) through (f), 157.12, 157.13, 157.15, and 157.23 do not apply to a tank barge that cannot ballast cargo tanks or wash cargo tanks while underway.

(h) Sections 157.19 and 157.21 do not apply to a tank barge that is certificated by the Coast Guard for limited short protected coastwise routes if the barge is otherwise constructed and certificated for service exclusively on inland routes.

* * * * *

(n) Section 157.19d does not apply to:

(1) A vessel that operates exclusively beyond the navigable waters of the United States and the United States Exclusive Economic Zone, as defined in 33 U.S.C. 2701(8);

(2) An oil spill response vessel; or

(3) Before January 1, 2015—

(i) A vessel unloading oil in bulk as cargo at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*); or

(ii) A delivering vessel that is off-loading oil in bulk as cargo in lightering activities—

(A) Within a lightering zone established under 46 U.S.C. 3715(b)(5); and

(B) More than 60 miles from the territorial sea base line, as defined in 33 CFR 2.05–10.

7. Section 157.10 is amended by revising the section heading and paragraph (d) to read as follows:

§ 157.10 Segregated ballast tanks and crude oil washing systems for certain new vessels.

* * * * *

(d) Segregated ballast tanks required in paragraph (b) of this section, voids, and other spaces that do not carry cargo must be distributed:

(1) For a vessel to which § 157.10d applies, in accordance with § 157.10d(c)(4); or,

(2) For a vessel to which § 157.10d does not apply, in accordance with the procedure contained in appendix C to this part.

* * * * *

8. A new § 157.10d is added to read as follows:

§ 157.10d Double hulls on tank vessels.

(a) With the exceptions stated in § 157.08(n), this section applies to a tank vessel—

(1) For which the building contract is awarded after June 30, 1990;

(2) That is delivered after December 31, 1993;

(3) That undergoes a major conversion for which;

(i) The contract is awarded after June 30, 1990; or

(ii) Conversion is completed after December 31, 1993; or

(4) That is otherwise required to have a double hull by 46 U.S.C. 3703a(c).

Note: 46 U.S.C. 3703a(c) is shown in appendix G to this part.

(b) Each vessel to which this section applies must be fitted with:

(1) A double hull in accordance with this section; and

(2) If § 157.10 applies, segregated ballast tanks and a crude oil washing system in accordance with that section.

(c) Except on a vessel to which § 157.10d(d) applies, tanks within the cargo tank length that carry any oil must be protected by double sides and a double bottom as follows:

(1) Double sides must extend for the full depth of the vessel's side or from the uppermost deck, disregarding a rounded gunwale where fitted, to the top of the double bottom. At any cross section, the molded width of the double side, measured at right angles to the side shell plating, from the side of tanks containing oil to the side shell plating, must not be less than the distance w as shown in Figure 157.10d(c) and specified as follows:

(i) For a vessel of 5,000 DWT and above: $w=[0.5+(DWT/20,000)]$ meters; or, $w=2.0$ meters (79 in.), whichever is less, but in no case less than 1.0 meter (39 in.).

(ii) For a vessel of less than 5,000 DWT: $w=[0.4+(2.4)(DWT/20,000)]$ meters, but in no case less than 0.76 meter (30 in.).

(iii) For a vessel to which paragraph (a)(4) of this section applies: $w=0.76$ meter (30 in.), provided that the double side was fitted under a construction or conversion contract awarded prior to June 30, 1990.

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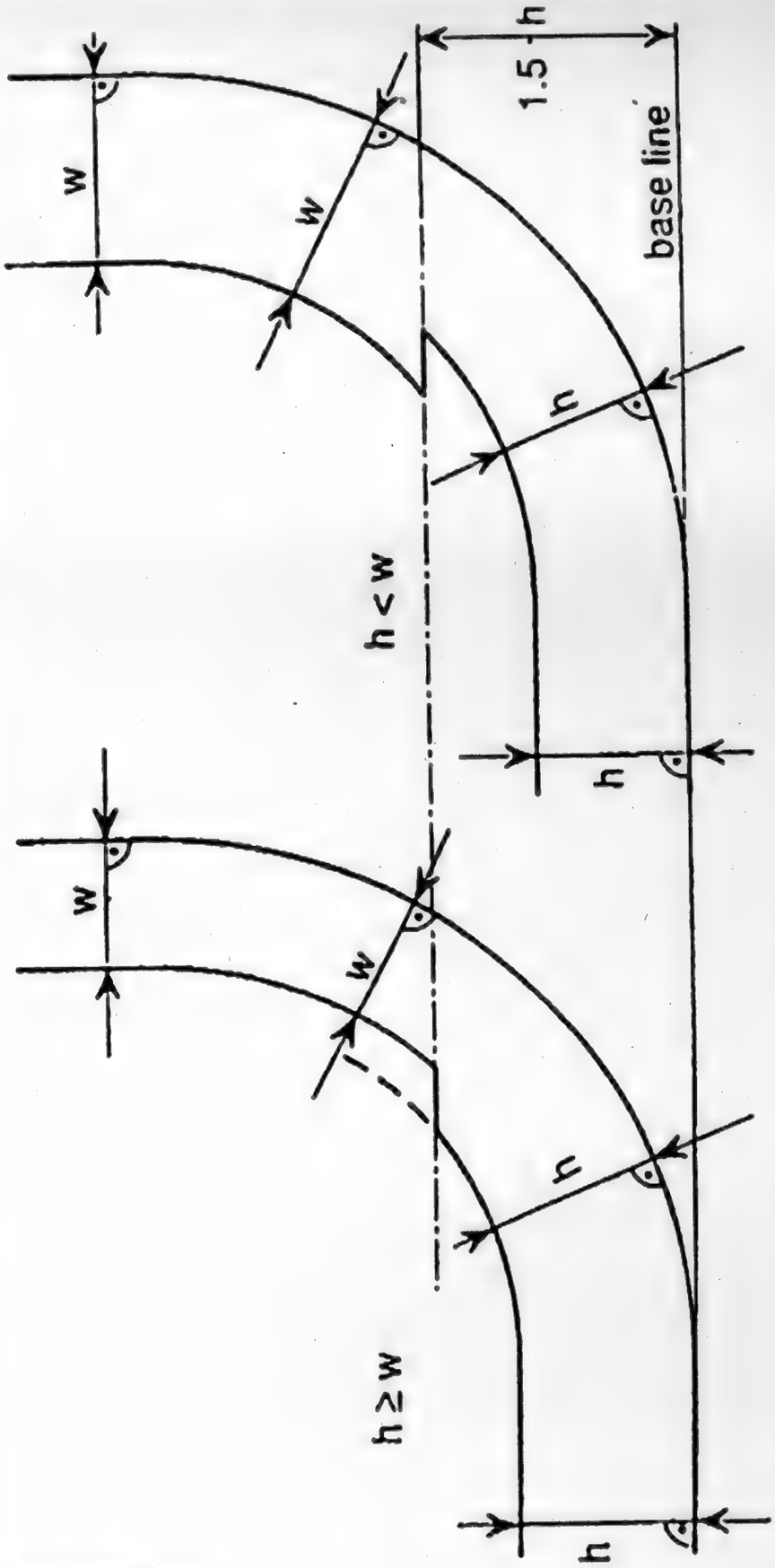

FIGURE 157.10d(c) Minimum Double Hull Dimensions

BILLING CODE 4910-14-C

(2) At any cross section, the molded depth of the double bottom, measured at right angles to the bottom shell plating, from the bottom of tanks containing oil to the bottom shell plating, must not be less than the distance h as shown in Figure 157.10d(c) and specified as follows:

(i) For a vessel of 5,000 DWT and above: $h = B/15$; or, $h = 2.0$ meters (79 in.), whichever is less, but in no case less than 1.0 meter (39 in.).

(ii) For a vessel of less than 5,000 DWT: $h = B/15$, but in no case less than 0.76 meter (30 in.).

(iii) For a vessel to which paragraph (a)(4) of this section applies: $h = B/15$; or, $h = 2.0$ meters (79 in.), whichever is the lesser, but in no case less than 0.76 meter (30 in.), provided that the double bottom was fitted under a construction or conversion contract awarded prior to June 30, 1990.

(3) For a vessel built under a contract awarded after September 11, 1992, within the turn of the bilge or at cross sections where the turn of the bilge is not clearly defined, tanks containing oil must be located inboard of the outer shell—

(i) For a vessel of 5,000 DWT and above: At levels up to $1.5h$ above the base line, not less than the distance h, as shown in Figure 157.10d(c) and specified in paragraph (c)(2) of this section. At levels greater than $1.5h$ above the base line, not less than the distance w, as shown in Figure 157.10d(c) and specified in paragraph (c)(1) of this section.

(ii) For a vessel of less than 5,000 DWT: Not less than the distance h above the line of the mid-ship flat bottom, as shown in Figure 157.10d(c)(3)(ii) and specified in paragraph (c)(2) of this section. At levels greater than h above the line of the mid-ship flat bottom, not less than the distance w, as shown in Figure 157.10d(c)(3)(ii) and specified in paragraph (c)(1) of this section.

BILLING CODE 4910-14-M

Figure 157.10d(c)(3)(ii) - Minimum Double Hull Dimensions

Within the Turn of the Bilge of Vessels Under 5,000 DWT

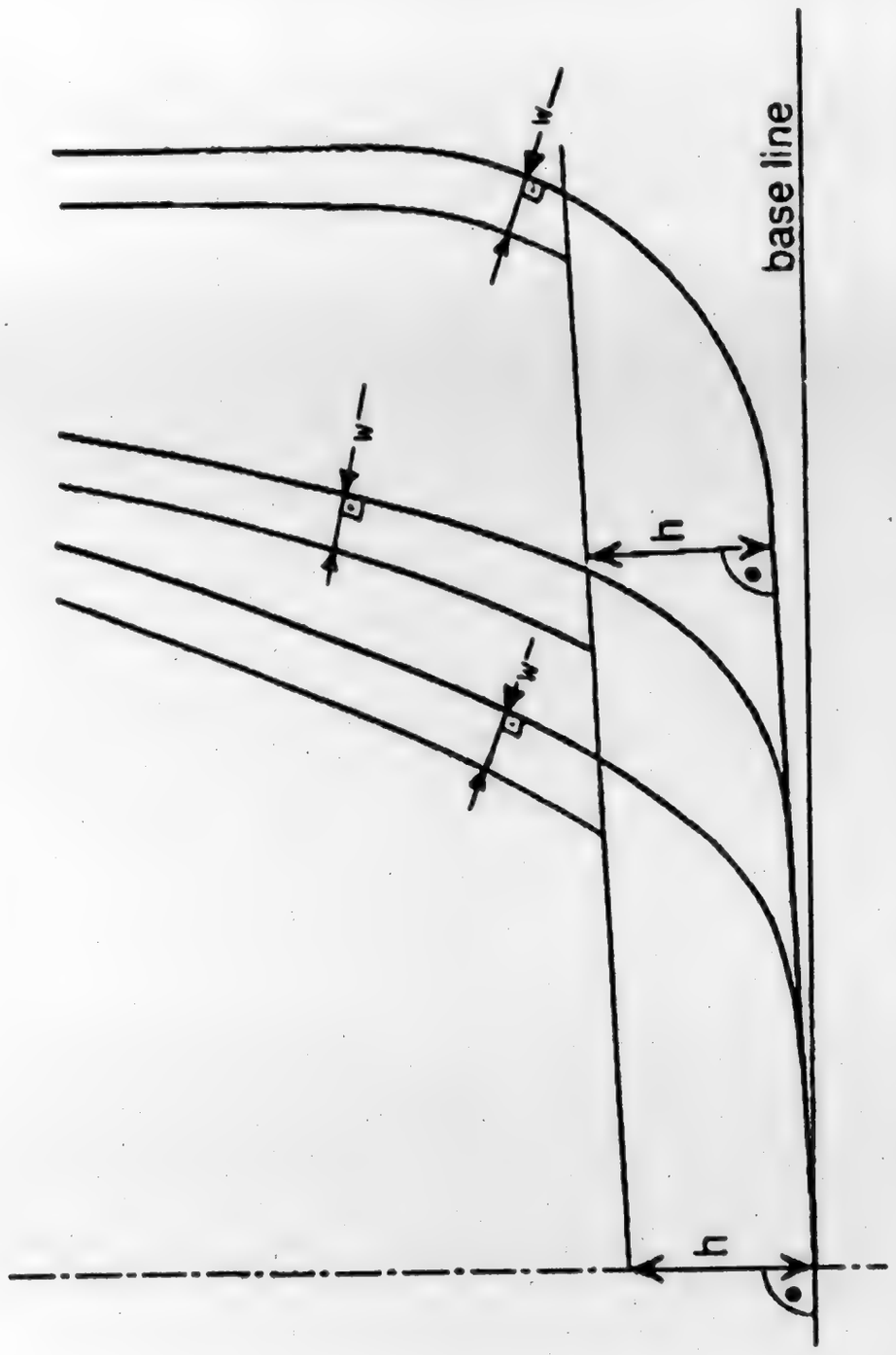

BILLING CODE 4910-14-C

(4) For a vessel to which § 157.10(b) applies that is built under a contract awarded after September 11, 1992.

(i) The aggregate volume of the double sides, double bottom, forepeak tanks, and afterpeak tanks must not be less than the capacity of segregated ballast tanks required under § 157.10(b). Segregated ballast tanks that may be provided in addition to those required under § 157.10(b) may be located anywhere within the vessel.

(ii) Double side and double bottom tanks used to meet the requirements of § 157.10(b) must be located as uniformly as practicable along the cargo tank length. Large inboard extensions of individual double side and double bottom tanks, which result in a reduction of overall side or bottom protection, must be avoided.

(d) A vessel of less than 10,000 DWT that is constructed and certificated for service exclusively on inland or limited short protected coastwise routes must be fitted with double sides and a double bottom as follows:

(1) A minimum of 61 cm. (2 ft.) from the inboard side of the side shell plate, extending the full depth of the side or from the main deck to the top of the double bottom, measured at right angles to the side shell; and

(2) A minimum of 61 cm. (2 ft.) from the top of the bottom shell plating, along the full breadth of the vessel's bottom, measured at right angles to the bottom shell.

(3) For a vessel to which paragraph (a)(4) of this section applies, the width of the double sides and the depth of the double bottom may be 38 cm. (15 in.), in lieu of the dimensions specified in paragraphs (d)(1) and (d)(2) of this section, provided that the double side and double bottom tanks were fitted under a construction or conversion contract awarded prior to June 30, 1990.

(4) For a vessel built under a contract awarded after September 11, 1992, a minimum 46 cm. (18 in.) clearance for passage between framing must be maintained throughout the double sides and double bottom.

(e) Except as provided in paragraph (e)(3) of this section, a vessel must not carry any oil in any tank extending forward of:

(1) The collision bulkhead; or

(2) In the absence of a collision bulkhead, the transverse plane perpendicular to the centerline through a point located:

(i) The lesser of 10 meters (32.8 ft.) or 5 percent of the vessel length, but in no case less than 1 meter (39 in.), aft of the forward perpendicular;

(ii) On a vessel of less than 10,000 DWT tons that is constructed and certificated for service exclusively on inland or limited short protected coastwise routes, the lesser of 7.62 meters (25 ft.) or 5 percent of the vessel length, but in no case less than 61 cm. (2 ft.), aft of the headlog or stem at the freeboard deck; or

(iii) On each vessel which operates exclusively as a box or trail barge, 61 cm. (2 ft.) aft of the headlog.

(3) This paragraph does not apply to independent fuel oil tanks that must be located on or above the main deck within the areas described in paragraphs (e)(1) and (e)(2) of this section to serve adjacent deck equipment that cannot be located further aft. Such tanks must be as small and as far aft as is practicable.

(f) On each vessel, the cargo tank length must not extend aft to any point closer to the stern than the distance equal to the required width of the double side, as prescribed in § 157.10d(c)(1) or § 157.10d(d)(1).

9. Section 157.11 is amended by adding a new paragraph (g) and a note following paragraph (g) to read as follows:

§ 157.11 Pumping, piping, and discharge arrangements.

* * * * *

(g) Each tank vessel to which § 157.10d applies that is built under a contract awarded after September 11, 1992 must be arranged so that:

(1) Except for short lengths of completely welded (or equivalent) piping,

(i) Ballast piping and other piping to ballast tanks, such as sounding and vent piping, do not pass through cargo tanks, and

(ii) Cargo piping and other piping to cargo tanks do not pass through ballast tanks;

(2) Suction wells in cargo tanks that protrude into the double bottom are as small as practicable and extend no closer to the bottom shell plating than 0.5*h*, as specified in § 157.10d(c)(2) or § 157.10d(d)(2), as applicable; and

(3) On a vessel that is constructed and certificated for service exclusively on inland, Great Lakes, or limited short protected coastwise routes, any oil piping that is located within double hull spaces must be placed as far from the outer shell as is practicable and must be fitted with valves at the point of connection to the tank served, to prevent oil outflow in the event of damage to the piping. Such valves must be closed whenever the vessel is underway with any oil in tanks served by the associated piping, except as necessary during transfer operations.

Note: Piping location requirements for an oceangoing vessel are in § 157.19(d). Related operating requirements are in § 157.45.

10. Section 157.24 is amended by revising the introductory text and by revising paragraph (c) to read as follows:

§ 157.24 Submission of calculations, plans, and specifications.

The owner, builder or designer of a new vessel to which this part applies shall submit the documentation specified in this section to the Coast Guard before that vessel enters the navigable waters of the United States. The owner, builder, or designer of a vessel that must comply with § 157.10d shall submit the documentation specified in this section to the Coast Guard before that vessel enters the navigable waters of the United States or the U.S. Exclusive Economic Zone.

* * * * *

(c) Plans and calculations to substantiate compliance with the applicable segregated ballast and double hull requirements in §§ 157.09, 157.10, 157.10a, 157.10b, or 157.10d, or certification from the government of the vessel's flag state that the vessel complies with the segregated ballast and double hull requirements in:

(1) Sections 157.09, 157.10, 157.10a, 157.10b, or 157.10d, as applicable; or

(2) For a vessel to which § 157.10d does not apply, Regulations 13 and 13E of the MARPOL Protocol.

* * * * *

11. Section 157.25 is amended by revising the section heading, redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c) respectively, and adding new paragraph (a) to read as follows:

§ 157.25 Applicability of subpart C.

(a) This subpart applies to each vessel to which this part applies of 150 gross tons or more, unless otherwise indicated, that carries crude oil or products in bulk as cargo. This subpart does not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

* * * * *

12. Section 157.28 is amended by revising the introductory text to read as follows:

§ 157.28 Discharges from tank barges exempted from certain design requirements.

The person in charge of a tank barge exempted under § 157.08(g) from the requirements in §§ 157.11, 157.13, 157.15,

and 157.23 shall ensure that while the barge is proceeding en route:

* * * * *

13. Appendix A to part 157 is amended by revising paragraph 5 to read as follows:

Appendix A—Damage Assumptions, Hypothetical Outflows, and Cargo Tank Size and Arrangements

* * * * *

5. *Allowable length of cargo tanks.*

The length of each cargo tank (*1*a) must not exceed 10 meters or the distance calculated from (a), (b), or (c), as appropriate, whichever is greater:

(a) Where no longitudinal bulkhead is provided inside the cargo tanks: *1*a = [0.5(bi/B) + 0.1] L, but not to exceed 0.2L.

(b) Where a centerline longitudinal bulkhead is provided inside the cargo tanks: *1*a = [0.25(bi/B) + 0.15] L, but not to exceed 0.2L.

(c) Where two or more longitudinal bulkheads are provided inside the cargo tanks:

(1) For wing cargo tanks: *1*a = 0.2L.

(2) For center cargo tanks:

(i) If (bi/B) is equal to or greater than 0.2, *1*a = 0.2L.

(ii) If (bi/B) is less than 0.2:

(A) Where no centerline longitudinal bulkhead is provided, *1*a = [0.5(bi/B) + 0.1] L.

(B) Where a centerline longitudinal bulkhead is provided, *1*a = [0.25(bi/B) + 0.15] L.

(d) "bi" is the minimum distance from the ship's side to the outer longitudinal bulkhead of the tank in question, measured inboard at right angles to the centerline at the level corresponding to the assigned summer freeboard.

14. Appendix G is added to part 157 to read as follows:

Appendix G—Timetables for Application of Double Hull Requirements

1. *Source.* These timetables conform to 46 U.S.C. 3703a(c).

2. *Timetables.*

(a) In this section, the age of a vessel is determined from the later of the date on which the vessel is—

(1) Delivered after original construction;

(2) Delivered after completion of a major conversion; or

(3) Qualified for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. app. 14).

(b) A vessel of less than 5,000 gross tons for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. app. 14) before January 1, 1994, may not operate in the navigable waters or the Exclusive Economic Zone of the United States after January 1, 2015, unless equipped with a double hull or with a double containment system determined by the Coast Guard to be as effective as a double hull for the prevention of a discharge of oil.

(c) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under 46 CFR subpart 67.19 before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull—

(1) In the case of vessel of at least 5,000 gross tons but less than 15,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iv) After Janaury 1, 1998, is the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides;

(vii) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(2) In the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double side;

(iv) After January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 32 years old or older and has a single hull, or is 37 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;

(vii) After January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;

(viii) After January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ix) After January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(x) After Janaury 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(xi) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and

(3) In the case of a vessel of at least 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 24 years old or older and has a single hull, or is 29 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides;

(d) Except as provided in paragraph (b) of this section—

(1) A vessel that has a single hull may not operate after January 1, 2010, and

(2) A vessel that has a double bottom or double sides may not operate after January 1, 2015.

Note: Double sides and double bottoms must meet the relevant requirements in § 157.10d (c) or (d), as appropriate. A vessel will be considered to have a single hull if it has neither double sides nor a double bottom that meets the relevant requirements in § 157.10d(c) or § 157.10d(d).

TITLE 46 CFR

PART 30—GENERAL PROVISIONS

15. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

16. The note preceding the table of contents to part 30 is amended to read as follows:

Note: Parts 151 through 157 in 33 CFR subchapter O contain additional design, equipment, and operations requirements relating to pollution prevention for vessels that carry oil.

* * * * *

17. Section 30.01–5 is amended by adding a note after the heading to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

Note: 33 CFR subchapter O (parts 151 through 157) contains additional design, equipment, and operations requirements relating to pollution prevention for vessels that carry oil.

* * * * *

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

18. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

19. Subpart 32.60 is amended by adding a note after the heading to read as follows:

Subpart 32.60—Hull Requirements for Tank Vessels Constructed on or After July 1, 1951

Note: Requirements for double hull construction for vessels carrying oil, as defined in 33 CFR 157.03, in bulk as cargo are found in 33 CFR 157.10d.

* * * * *

20. A new subpart 32.95 is added to read as follows:

Subpart 32.95—Pollution Prevention

§ 32.95–1 Oil pollution prevention—TB/ALL.

(a) Each tank vessel that carries oil in bulk as cargo must comply with the applicable design, equipment, and operations requirements in 33 CFR subchapter O (parts 151–157).

PART 70—GENERAL PROVISIONS

21. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

22. Section 70.05–30 is amended by revising the section heading and adding a note after the heading to read as follows:

§ 70.05–30 Combustible and flammable liquid cargo in bulk.

Note: Requirements for double hull construction for vessels carrying oil, as defined in 33 CFR 157.03, in bulk as cargo are found in 33 CFR 157.10d.

* * * * *

PART 90—GENERAL PROVISIONS

23. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

24. Section 90.05–35 is amended by revising the section heading and adding a note after the heading to read as follows:

§ 90.05–35 Flammable and combustible liquid cargo in bulk.

Note: Requirements for double hull construction for vessels carrying oil, as defined in 33 CFR 157.03, in bulk as cargo are found in 33 CFR 157.10d.

* * * * *

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

25. The authority citation for part 172 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

26. Section 172.060 is revised to read as follows:

§ 172.060 Specific applicability.

This subpart applies to each U.S. tank vessel that is required to comply with 33 CFR 157.21.

Dated: August 4, 1992.

J. W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 92–18858 Filed 8–11–92; 8:45 am]

BILLING CODE 4910–14–M

federal register

Wednesday
August 12, 1992

Part IV

Federal Maritime Commission

46 CFR Parts 514 et al.
Tariffs and Service Contracts; Interim Rule

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 515, 550, 580 and 581

[Docket No. 90-23]

Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Interim rule; invitation of comments.

SUMMARY: In order to implement the Federal Maritime Commission's Automated Tariff Filing and Information System ("ATFI"), this action establishes regulations and user charges for the electronic filing, processing and retrieval of tariff data, including the essential terms of service contracts, regarding oceanborne transportation in the foreign and domestic offshore commerce of the United States. In addition to providing for transition to an electronic tariff system, the interim rule incorporates all non-obsolete tariff regulations of 46 CFR parts 515, 550, 580 and 581. These parts may eventually be canceled. This action, however, amends each of these older parts to provide notice during the phase-in implementation period that new part 514 must be used for electronic filing, while the old parts should continue to be followed for the filing of traditional paper tariff material, to the extent it is allowed. The action continues previous statutory exemptions and provides for a new exemption whereby statutory publication and posting requirements can be met either electronically or by paper. The electronic system will substantially facilitate filing and retrieval of tariff data by the shipping public. This is an interim rule, so that it can go into effect like a final rule, and also provide opportunity for further public comment (after some experience with electronic tariff filing), like a proposed rule. The implementation schedule for the conversion of tariff materials by trade area, beginning in January 1993, is being published by a separate order in this proceeding.

DATES: *Effective Date:* The effectiveness of section 514.7(m)(2) is stayed until further notice. Sections 514.21(b), (c) and (e) and 514.91 became effective on December 9, 1991. The balance of the interim regulation is effective September 11, 1992.

Comments: Further written comments by the public are invited to be submitted by close of business on: *September 30, 1992* (especially on the electronic filing of the essential terms of service contracts under § 514.17), and also on *September 30, 1993.*

ADDRESSES: Written comments (original and 15 copies) should be sent to: Joseph C. Polking, Secretary, Federal Maritime Commission, Washington, DC 20573, and served on each other party to this proceeding. A copy of the Service List may be obtained from the Secretary.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, Washington, DC 20573, (202) 523–5800.

SUPPLEMENTARY INFORMATION:

The Federal Maritime Commission ("Commission" or "FMC") administers, *inter alia*, the Shipping Act, 1916 ("1916 Act"), and the Shipping Act of 1984 ("1984 Act"), which apply to domestic offshore commerce (e.g., between the mainland and Hawaii or Puerto Rico), and to foreign commerce, respectively, for both inbound and outbound waterborne transportation. The statutes require that common carriers by water in these trades file and keep open to public inspection their "tariffs." Additionally, the 1984 Act requires that service contracts be filed and that their essential terms be made available to the public in tariff format. See 46 U.S.C. app. 817 and 1707.

A freight "tariff" filed at the Commission is a publication of a carrier or conference which contains a *schedule* of rates, charges, and Tariff Rules applicable to its transportation of cargo.[1] A service contract is a special agreement between shipper(s) and carrier(s) that applies in lieu of the freight tariff. Mutual commitments are made in a service contract, with the shipper guaranteeing the carrier a minimum quantity of cargo over a period of time, in consideration for a commitment by the carrier to a certain rate and service level.

Additionally, terminal tariffs are required to be filed by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water in the foreign or domestic offshore commerce.

The statutes and implementing regulations ensure that certain minimum standards are complied with before tariff material is accepted for filing. For example, a tariff, or amendment thereto, must be clear and definite and must not duplicate or conflict with other tariff provisions already in effect. Moreover, tariffs must contain effective date provisions in compliance with the statutes, e.g., a minimum of 30 days' notice for an increase. If a tariff filing is defective in any of these respects, it is rejected and the filer must file again in the proper manner before the desired rate can go into effect. Similarly, service contracts and/or their essential terms may be rejected by the Commission if they do not meet certain statutory and regulatory requirements. See 46 CFR parts 515, 550, 580, and 581.

In order to facilitate compliance with the law, there are substantial penalties for not filing, or if properly filed for not adhering to the provisions of, a tariff or the essential terms of a service contract. See, e.g., 46 U.S.C. app. 812, 815, 818, 1708, and 1709.

The Commission also uses the filed tariff and service contract data for surveillance and investigatory purposes and, in its proceedings, adjudicates related issues raised by private parties. For Commission proceedings, as well as in any court case, the tariff or service contract on file at the Commission and in effect, is official evidence of the applicable rate, charge or Tariff Rule, when so "certified" by the Commission. Currently, tariff-type data is filed with and maintained at the Commission in paper format.

Beginning in 1961, carriers in the U.S. foreign commerce were required to file tariffs containing all the rates, charges, and Tariff Rules applicable to their shipments.[2] The number of tariffs and amendments filed with the Commission has steadily grown until, in fiscal year 1991, there were 1,268,086 tariff pages received and 5,854 service contract filings in the U.S. foreign commerce. At the end of the fiscal year, there were 6,946 tariffs on hand at the Commission.

The enormous amount of paper to be processed by a limited number of employees led the Commission to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry, as well as enhancing the effectiveness of Commission regulation. A systematic exploration of this subject area by the Commission commenced with a series of studies, including an exhaustive Feasibility Study, considered and approved in principle by the Commission's Industry Advisory Committee in 1986. The Feasibility Study developed into a Commission Request for Proposals ("RFP") and award of a contract for the design, development and operation of an Automated Tariff Filing and Information System ("ATFI" or "System").

[1] A Customs "tariff" is a publication of the Government containing a *schedule* of Customs duties.

[2] A relatively small number of carriers in the domestic offshore commerce have been required to file tariffs since the enactment of the Intercoastal Shipping Act, 1933.

I. Introduction and Background

After phases for validation of requirements, design and development, the ATFI system's prototype phase (IV) began in April 1990, but before allowing volunteers from the shipping industry to test their tariffs on the System, the Commission and the Contractor mutually agreed upon a list of desirable changes which was developed through Commission and Contractor user comment. These changes included improvements on both technical and tariff policy matters. In July 1990, the basic contract was modified to incorporate these changes into the System.

On August 1, 1990, the Commission issued a second ATFI Notice of Inquiry ("NOI"),[3] requesting public comment on some of the basic features being considered for ATFI and how they may impact current paper tariff practices. In September 1990, the first public demonstration of the System was held and public comments on the NOI were submitted by 22 firms in October 1990.

On December 26, 1990, the Commission issued a first Interim Report ("First Interim Report"[4]) which considered the comments, resolved the issues raised in the Notice of Inquiry, and appended the ATFI "Batch Filing Guide" (containing, *inter alia*, transaction sets, file transfer formats, data dictionary, and code reference tables). On February 19, 1991, Supplement # 1 to the "Batch Filing Guide" was released (and mailed out) in the form of an Information Bulletin (IB 3–91) and was also distributed to over 100 attenders of public ATFI demonstrations in Washington, D.C. On April 11, 1991, Supplement # 2 to the "Batch Filing Guide" was issued as IB 11–91. Supplement # 3 was issued on July 23, 1991, as IB 20–91, and notice of availability of the full-text, November 11, 1991, Supplement # 4 was issued as IB 26–91 on November 25, 1991.

On March 25, 1991, the Commission issued a Second Interim Report ("Second Interim Report") that responded to concerns of four Electronic Tariff Filer Firms, which were raised in their testimony at the Commission's fiscal year 1992 authorization hearing held on February 28, 1991, before the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries, and which were submitted to the Commission on March 8, 1991. The Second Interim Report clarified the matters raised, established a schedule (to the extent possible) and reiterated that the "Batch Filing Guide" is all that any person needs to begin immediate development of its own batch filing software. IBs 9–91 and 24–91, both containing Technical Questions and Answers, were issued on April 10, 1991, and September 18, 1991 (after a September 12, 1991, technical meeting for the public), respectively.

The Commission's Third Interim Report ("Third Interim Report") was issued on July 23, 1991 (with notice of availability appearing on July 29, 1991, at 56 FR 35847), and finalized most of the remaining issues listed in the August 1990 Notice of Inquiry, so that a notice of proposed rulemaking could be issued. The additional comments of ten of the original commenters in this proceeding were addressed and further comments were invited on the modified approach to the Harmonized System and the proposed transition plan.

The Fourth Report was published on October 25, 1991, with notice of availability appearing on October 30, 1991 (56 FR 55860). This Report responded to October 1990 comments, established an implementation schedule and addressed the requirement that tariff filers use the Harmonized System of commodity coding.

The proposed rule in this proceeding was issued on September 9, 1991 (56 FR 46044), as a new Part 514 of Title 46 CFR, with the original deadline for comments being October 31, 1991. The Supplementary Information to the proposed rule contains tables showing where the Commission's reports addressed the major policy issues listed in the Notice of Inquiry and the sources in the current CFR of portions of proposed Part 514. At the request of commenters, the comment deadline was extended twice, eventually to December 30, 1991. On December 9, 1991, 46 CFR part 514 became effective as an official part after being published on December 2, 1991 (56 FR 61164), in order that user fees contained in § 514.21 could be established for the preliminary activities of registration, certification of batch-filing capability, and purchase of user guides.

By notice of April 23, 1992 (**Federal Register** of April 29, 1992, 57 FR 18122), the Commission invited further comments, both written and oral, on the following matters:

The Commission is particularly interested in further comments regarding the suitability and/or effectiveness of proposed 46 CFR 514.13(a) relating to the use of the Harmonized System, including any benefits and burdens associated therewith. Additionally, filers are requested to address their reasons for delay in filing of tariffs for ATFI testing. The Commission also will accept comment on other aspects of the proposed rules that may be of significant concern to affected parties.

The comments and oral presentations in response to this notice, as more fully described below, were submitted in writing in May 1992, and later, at the oral comment session held on May 19, 1992.

The Commission has considered the entire record in this proceeding and has approved the issuance of this interim rule (with invitation for comments), as further described herein, and an implementation schedule to begin in January 1993, the further details of which are to be developed in a separate Commission report.

In addition to public demonstrations of, and opportunity for informal written comments on, the ATFI system, as well as training, information bulletins and other informal releases, the Commission, as previously described, has used two major vehicles in this proceeding for identifying and addressing the major policy issues. The (interim) reports (three interim reports and a final report) provided opportunity for extensive discussion of the issues, while the traditional rulemaking (proposed, interim and final, as here), is/will be the document for implementation of the policy decisions.

II. The Commenters

Comments in this proceeding have been submitted in response to the Advance Notice of Proposed Rulemaking; to the First Interim Report; to Congress and the FMC, which occasioned the Second Interim Report; and in response to the Third Interim Report and the Fourth Report. Most of the commenters mentioned below submitted previous comments. As more fully described below, 15 written comments on the September 1991 Proposed Rule were submitted in December 1991 on behalf of 31 entities ("1991 comments"); and in May 1992, further comments were submitted by 12 of these 31 entities, as well as by 5 new entities ("1992 comments").

A. Ocean Steamship Conferences

"IAFC" (Inter-American Freight Conferences), comprised of The Inter-American Freight Conference (FMC Agreement No. 202–00968A); Brazil/Puerto Rico and U.S. Virgin Islands

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[3] The NOI was issued (55 FR 31199) to provide advance notice to the public of the proposed refined functionality and associated implementing technology of ATFI. **Federal Register** notices of a previous notice of inquiry on this general subject appeared on December 22, 1987 (52 FR 48504); April 20, 1988 (53 FR 13086); June 13, 1988 (53 FR 22048); and, December 29, 1988 (53 FR 52785).

[4] The Reports in this proceeding can be found in Pike and Fischer, "Shipping Regulation."

conference (FMC Agreement No. 202–00968); River Plate/Puerto Rico and U.S. Virgin Islands conference (FMC Agreement No. 202–010122); and Inter-American Freight Conference—Pacific Coast Area (FMC Agreement No. 202–006400). IAFC submitted three sets of written comments in December 1991, and submitted further comments just before, and at the oral hearing of May 19, 1992.

"IPBCB" (The India, Pakistan, Bangladesh, Ceylon and Burma Outward Freight Conference) submitted written comments in 1991.

"JC" (Joint Conferences/Commenters) submitted written comments in December 1991 for (jointly): Asia North America Eastbound Rate Agreement ("ANERA"); the 8900 Lines Rate Agreement; Israel Trade Conference; Japan-Atlantic and Gulf Freight Conference; North Europe-USA Rate Agreement; South Europe/U.S.A. Freight Conference; Transpacific Freight Conference of Japan; Transpacific Westbound Rate Agreement ("TWRA"); USA-North Europe Rate Agreement; United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference; U.S. Atlantic and Gulf/Australia—New Zealand Conference; United States/East Africa Conference; United States/Southern Africa Conference; and West Coast/Middle East Rate Agreement. Further comments by seven of these conferences were jointly submitted as "TPTAC" for the oral comment session of May 19, 1992.

"TPTAC" (Transpacific and Transatlantic Conferences) submitted written and oral presentations for the May 19, 1992, hearing on behalf of (jointly): Asia North America Eastbound Rate Agreement ("ANERA"); Japan Atlantic & Gulf Freight Conference; Trans-Pacific Freight Conference of Japan; Transpacific Westbound Rate Agreement ("TWRA"); USA-North Europe Rate Agreement; and North Europe-USA Rate Agreement. The South Europe/USA Freight Conference is listed as a participant in these joint comments on the cover page of the written summary, but is omitted in the May 6, 1992, request for participation. Note that all of these conferences are also members of "JC."

"TAAFLO" (Trans-Atlantic American Flag Liner Operators). TAAFLO submitted written comments in 1991 which support and adopt in their entirety the JC comments.

B. Ocean Common Carriers

"Crowley" (Crowley Maritime Corporation Liner Services) made a presentation for the May 1992 oral comment session. Crowley listed substantial benefits from its participation as an ATFI Volunteer and suggested that the Commission establish firm dates for ATFI compliance. This, however, must await a Commission decision in a separate order.

"Matson" (Matson Navigation Company, Inc.), which provides direct service between the mainland United States and Hawaii, and between (1) the mainland United States and Hawaii and (2) the Republic of the Marshall Islands and Johnston Island, submitted written comments in 1991, and also, in lieu of oral presentation, in May 1992.

"Sea-Land" (Sea-Land Service, Inc.) files 62 tariffs with the FMC, and is a member of 15 conferences or agreements, which also file tariffs with the FMC. Sea-Land submitted written comments in 1991, and also, in lieu of oral presentation, in May 1992.

"Waterman" (Waterman Steamship Corporation) submitted written comments in 1991.

"Zim" (Zim-American Israeli Shipping Co., Inc.) submitted written comments in 1991.

C. Associations

"AALL" (American Association of Law Libraries) sent an October 31, 1991, letter to FMC Chairman Koch, which is being treated as a comment in this proceeding.

"ALA" (American Library Association) made a presentation at the May 19, 1992, oral comment session.

"IANVOCC" (International Association of NVOCCs) made an oral presentation on May 19, 1992. Certain IANVOCC comments will be considered when the Commission establishes an ATFI implementation schedule by separate order. Such comments are that technical problems still have to be worked out, that the implementation schedule will impose a hardship for those NVOCCs which file worldwide tariffs with the Commission, and that the ATFI implementation schedule should be staggered, with ocean carriers filing first in each designated trade and NVOCCs filing after them. Further, IANVOCC suggests that implementation should be delayed until the Commission finalizes its decision on exempting certain NVOCCs from tariff filing regulations (Docket No. 92–22; *See* the Federal Register of May 7, 1992 (57 FR 19583)).

"NCBFAA" (National Customs Brokers and Forwarders Association of America, Inc.) made an oral presentation on May 19, 1992.

"The League" (The National Industrial Transportation League) is a voluntary organization of shippers and groups and associations of shippers conducting industrial and/or commercial enterprises, large, medium and small, in all of the United States and in international markets. Its members utilize all of the various modes of transportation, including transportation via ocean carriers regulated by the FMC. The League states that it is the only nationwide organization representing shippers of all sizes and commodities, using all modes of transportation to move their goods in interstate and international commerce. The League submitted written comments in 1991, and also made an oral presentation on May 19, 1992. In its oral presentation, the League stated that it "strongly believes that a truly competitive ocean and surface transportation system requires the elimination of the filing and regulatory enforcement of all tariffs," but, "so long as there is a continuing legal requirement that ocean common carriers maintain their rates in a filed tariff form, the League strongly endorses an ATFI system."

D. Tariff Services

"ITT" (International Trade Tracking) is a tariff filing service for Non-Vessel-Operating Common Carriers (NVOCCs) and submitted written comments in 1991.

"PCTB" (Pacific Coast Tariff Bureau) is a tariff publishing agent for ocean, motor and rail carriers with the FMC, ICC, and state regulatory agencies. PCTB's over 750 clients include conferences, ocean carriers, NVOCCs, and motor carriers. While PCTB submitted written comments only, it also appeared at the May 19, 1992, oral hearing for TPTAC.

"Rijnhaave" (Rijnhaave Information Services, Inc.) provides facilities management, network management, software development and systems integration services to the transportation industry. Rijnhaave views ATFI as "the final link in [its] Shipline Management System." Rijnhaave made an oral presentation on May 19, 1992.

E. Other Commenters

"MSC" (Military Sealift Command, for the Department of the Navy in the United States Department of Defense or "DOD") is the Single Manager Operating Agency for sealift services within DOD. MSC submitted written comments in 1991.

"Tampa" (The Tampa Port Authority) submitted written comments in 1991.

"USDA" (The United States Department of Agriculture, in Kansas City, Missouri). The USDA has an interest in obtaining access to tariff information to be made available in ATFI and utilizes steamship lines to ship a variety of agricultural commodities for various export programs to foreign countries. USDA submitted written comments in 1991.

III. Analysis of the Comments: General

Many of the comments submitted should have been made to one or more of the previous issuances in this proceeding (e.g., Notice of Inquiry, first Interim Report, etc.), or were made to such an issuance and are unnecessarily repeated here. As previously indicated, all of the Commission's earlier actions are affirmed, unless modified herein. Moreover, in issuing this rule, the Commission has considered all comments made, irrespective of whether or not specifically addressed herein.

One commenter indicated that there were legibility problems with the proposed rule in the **Federal Register** small-print page format used for the Commission's official distribution. Accordingly, in conjunction with the traditional **Federal Register** publication, the Commission is using here an adjunct format with larger print for its official issuance within the docket.

Some commenters, including IAFC, suggested that the Commission use a separate rulemaking for "policy" changes that are "not related to ATFI." Others suggested that, in addition to the derivation table (new-from-old sections) published with the proposed rule (56 FR 46050–46053), we make available a distribution table (old-to-new sections). The Commission has considered both of these suggestions and found them unfeasible. With regard to a separate rulemaking, it would unnecessarily duplicate much work and paper, and there would be arguments about what is "related to ATFI" and what is not. Moreover, distribution tables are usually used when the old sections are being repealed. Here, the old and new will continue side-by-side until the proper time(s) for canceling entire part(s).

The 15 weeks provided for comments to the proposed rule should have been sufficient for its appropriate analysis, especially when further comments were invited in May 1992.

A. Legality

JC, IAFC and others have repeated arguments that the Commission does not have the legal authority to require the Harmonized System ("HS"), algorithms or other formatting. As discussed in the third and fourth reports in this proceeding, and the analysis under § 514.13, herein, the Commission believes it does have this authority, notwithstanding its decision to not require HS for other reasons.

In arguing that the Commission lacks jurisdiction to require carriers to use algorithms and HS, JC place great reliance on the Supreme Court's decision in *Interstate Commerce Commission v. Cincinnati, New Orleans and Texas Pacific Railway Company*, 167 U.S. 479 (1897) ("*ICC v. Cincinnati*"). JC Comments at 22–27. The Commission believes that requiring the use of algorithms and the HS is not analogous to the order of the Interstate Commerce Commission ("ICC") that was the subject of the appeal in *ICC v. Cincinnati*. The order under review in that case established the level of various class rates from Cincinnati and Chicago. Although the Supreme Court concluded that the ICC did not have the power to fix rates, it recognized the distinction between the power to fix rates and the power to prescribe the form and manner in which rates were to be filed. The decision states:

> The grant to the commission of the power to prescribe the form of the schedules, and to direct the place and manner of publication of joint rates, thus specifying the scope and limit of its functions in this respect, strengthens the conclusion that the power to prescribe rates or fix any tariff for the future is not among the powers granted to the commission.

167 U.S. at 506. The regulations which are the subject of this proceeding do not prescribe the level of rates to be charged. The right of carriers to establish rates remains unfettered. Moreover, carriers remain free to establish rate items using commodity descriptions of their choice.

The fact that the Shipping Act, 1916, and the Shipping Act of 1984 do not specifically mention ATFI, algorithms or the HS does not mean that the Commission lacks the statutory authority to promulgate regulations on these subjects. The Supreme Court has upheld regulations promulgated by administrative agencies based upon generalized statutory grants of regulatory authority. In *American Trucking Associations, Inc. v. United States*, 344 U.S. 298 (1953), the Supreme Court upheld the ICC's rules abolishing the practice of "trip leasing" even though the Interstate Commerce Act ("ICA") did not specifically grant the ICC the power to regulate leasing practices. It believed that it was unreasonable to expect that the ICA would specify every evil sought to be cured. The Court recognized that one of the reasons administrative agencies such as the ICC were created was because Congress hoped that such agencies would "* * * bring to their work the expert's familiarity with industry conditions which members of the delegating legislatures cannot be expected to possess." 344 U.S. 309–310. The same rationale was expressed by the Supreme Court in *American Trucking Associations, Inc. v. Atchison, Topeka & Santa Fe. Ry. Co.*, 387 U.S. 397 (1967). Likewise, it is unreasonable to expect the 1984 Act to specify all remedies which the Commission may fashion to carry out the purposes of the Act.

Clarity in the application of rates has long been recognized as a valid regulatory objective.

> Tariffs, like statutes, have the force of law; like statutes they must be expressed in clear and plain terms so that those dealing with and governed by them may understand them and act advisedly.

Great Northern Ry. Co. v. Commodity Credit Corp., 77 F. Supp. 780, 786 (D.C. Minn. 1948) *citing Atlantic Coast Line R. Co. v. Atlantic Bridge Co.*, 57 F.2d 654, 655 (5th Cir. 1932). The ratepayer should be able to calculate the total charge for transportation services prior to the shipment.[8] This is hardly a novel principle. For example, in *Alton & S. R. R. v. U.S.*, 49 F.2d 414, 422 (N.D. Cal. 1931), a case decided over sixty years ago which involved an ICC-regulated carrier, the court observed:

> It is obviously intended * * * that the total charge to be paid by the shipper should be clearly ascertainable from the tariff schedules so that one shipper should not have imposed on him auxiliary charges which might not be imposed on others.

See also, Sauers Milling Co. v. Louisville & Nashville Railroad Co., 216 I.C.C. 358, 362 (1936); *Aggregating Express Shipments*, 192 I.C.C. 301, 314 (1933) and *Street Passenger Cars & Railway Cars*, 163 I.C.C. 141, 144 (1930). Tariff provisions should not be so complicated that only the carrier can divine their meaning. While such arcane tariff provisions may be justified by some as providing "flexibility," in truth, they do nothing more than confuse the shipping public.

The problem of misleading and confusing surcharge provisions was recently addressed by the Commission in *Notice of Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences*, Docket No.

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[8] In other words, the shipper should be able to determine the sum of the charges that can be ascertained at the time of the shipment. Obviously, charges such as demurrage cannot be calculated prior to the shipment.

91-14, — F.M.C. —, 26 S.R.R. 108 (1992). The Commission concluded there that the algorithm requirement in ATFI offered the most feasible solution to the problem. The pertinent parts of the Commission's order are as follows:

Effect on clarity of tariffs

The other major category of complaints about surcharges is that of obfuscation and difficulty in discerning the applicable rates. In this regard, shippers alleged that carriers hide surcharges in tariffs; that surcharge tariff provisions are difficult or laborious to compute; that surcharges change rapidly and cannot be anticipated; that rate quotes frequently omit surcharges; that multiple rate components increase the possibility of computation errors; and that misrepresentations as to the need or justification for surcharges are inherently unlawful.

While not all of these complaints are convincing, the Commission shares the concerns of many shippers that current surcharge practices, including the proliferation of new surcharges, do complicate the process of identifying the applicable bottom-line cost to shippers. The question here is not whether carriers are adhering to their "tariff" rates: section 8 of the 1984 Act and the Commission's rules require that all rates and charges, including those at issue in this inquiry, be included in the carrier's or the conference's tariffs filed with the Commission. Rather, the issue is whether those tariffs are readable and meaningful and serve to inform the user of the expected transportation costs. A few shippers suggest that tariffs are, because of surcharges, prohibitively complicated or impossibly confusing. On the other hand, several others state that they do not find surcharges difficult to calculate, but merely question what they represent. Most shippers, however, appear to take the intermediate position that carrier surcharge practices purposely and unnecessarily complicate the rate-determining process by rendering it misleading, confusing and time-consuming.

The Commission is especially concerned that infrequent or less sophisticated users of carrier tariffs may encounter difficulty calculating the bottom-line cost when procuring transportation services. To this end, the Commission has, in its most recent proposal to implement ATFI, provided for the use of algorithms which would make instantly available the bottom-line cost to shippers, as well as a listing of the component parts of that cost. This would substantially alleviate shippers' concerns that surcharge usage renders it difficult to understand and compute accurately their expenses. It would also assist employees of the carriers themselves to give accurate rate quotations, thereby providing greater shipper confidence in telephone rate quotes, and eliminate an apparent source of distrust on the part of shippers.

At the same time, the current ATFI proposals would allow the break-down of those expenses for the scrutiny of interested shippers who benefit from knowledge of the charges for the component parts. Several shippers in this proceeding indicated that they value such information, and expressed their opposition to any proposals which would eliminate the use of break-out rates and mandate or encourage lump-sum rates. These design elements of ATFI have been proposed in the context of a separate rulemaking proceeding, Docket No. 90-23, but the instant Inquiry supports the need for ready shipper and carrier access to this information.

In some respects, the Commission concludes that the complications deriving from surcharge practices have been somewhat overstated by a minority of the shipper participants. We note that a number of shippers specifically represented that surcharges are not difficult to compute; they merely questioned the justification for those charges. Other shippers voiced concern that naive or novice shippers may be bamboozled by deceptive carrier pricing practices. While most shippers expressed some degree of annoyance at the time and care they devote to obtaining accurate price information, no shipper commenters claimed to have had their own naivete so exploited, but several relayed anecdotes about and expressed concern for *other* shippers, allegedly not so sophisticated. The publicity attendant to this Inquiry has, we trust, attracted the notice of any such shippers, who should by now be aware that surcharges exist and are a proper and necessary subject of inquiry when receiving a rate quote. Furthermore, the ATFI algorithms will serve all tariff users, and may of course be used by carrier personnel as well.

Complaints that surcharges are too volatile and are unpredictable appear to disregard the existence of the 30-day notice requirement for increases for all charges, including surcharges. 46 U.S.C. app. 1707(d). No shippers have contended that the Commission has been excessively liberal in granting Special Permission applications for shorter-notice surcharge increases.

That the use of multiple rate components may augment the possibility of calculation errors does not, we believe, justify regulatorily mandated "simplicity" in pricing. The separate listing of services and charges can serve to alert the tariff user of the purported nature of its expenses, an informational device which several shippers insist be preserved. Mandatory simplification of pricing could have the opposite and less desirable effect of providing a more meager basis of discerning carrier pricing factors. ATFI as presently proposed would facilitate the process of discerning the bottom-line cost while preserving the informational value of separate factors for those who wish to consult them.

The foregoing comments are also applicable to domestic offshore commerce.

The algorithm requirement is intended to identify every assessorial applicable to the shipment and to permit the rate-payer to determine the total charge for the service provided. The argument of the Joint Conferences that the algorithm requirement forces them to express their tariffs in a language other than English is not persuasive. JC Comments at 26. The subject rules will not require carriers to express their tariffs in a language other than English; carriers will simply be required to provide a mathematical formula for the application of surcharges, handling charges and other ancillary charges that are ascertainable at the time of the shipment. Carriers will continue to express their tariffs in English, and will remain free to set the level of their rates and charges and determine how they will be applied. Obviously, the difficulty of reducing a given charge to a formula or algorithm increases if the application of the charge is subject to numerous exceptions and qualifications. In this sense, the algorithm requirement provides an incentive to simplify tariff provisions relating to surcharges and ancillary charges. However, simplified tariff provisions are not mandated. Ultimately, the choice is the carrier's alone.

B. Terminal Tariffs

Tampa raises questions about the applicability of various parts of the proposed rules to terminal tariffs. After reviewing different types of terminal tariffs, we find that not all of them are susceptible to the ATFI format. Thus, "origin" and "destination" are not appropriate in terminal tariffs, and, for many such tariffs, even commodity descriptions and TLIs would be inapplicable. Accordingly, the Commission will require terminal tariffs to be electronically filed, but not in the usual format. This will be explained primarily in the section-by-section analysis for § 514.3, *Exemptions and Exclusions*.

C. Basic Design of System

1. General

JC continue to attack ATFI's requirements of using algorithms for certain charges to be added to the basic ocean freight rate, and the Harmonized System for commodity coding. JC have previously submitted comments on these subjects and the Commission has addressed both policy issues in its third and fourth reports.

JC also have complained to the Office of Management and Budget ("OMB") that the Commission's estimates of the public burden to convert to ATFI were understated, especially as a result of the Harmonized System and algorithm requirements, and that OMB's Paperwork Reduction Act approval of the proposed rule, therefore, should be reconsidered and withdrawn. While JC's December 1991 comments for the first

time attack the Commission's burden estimates appearing in the Supplementary Information to the September 1991 proposed rule, they did not propose burden estimates of their own. See the discussion under § 514.91 herein.

2. Technical Argument; Basic

JC accuse the Commission of "simply ignoring substantial evidence presented to it." (Page 27.) To support their argument that ATFI's design is "inappropriate" or "defective," JC append to their comments "An Evaluation of the Efficacy of ATFI in Automating the Federal Maritime Commission's Tariff-Filing System" (herein, the "Evaluation"), an analysis by two experts, which lists documents reviewed by those experts in providing their analysis. The documents listed as those which were consulted during the development of the Evaluation do not include any requirements or requirements-validation documents, against which the criticized design and functionality can be appropriately compared. Moreover, notwithstanding the Evaluation's argument on p. 3, paragraph C.4, ATFI was *not designed* "to emulate the current tariff-filing system," but rather to provide a more effective and efficient system.

Not mentioned in the JC's list of source documents, are:

- Any reference to the 1986 Feasibility Study or minutes of the ATFI (Industry) Advisory Committee which met three times to discuss the Feasibility Study and approve it in principle.
- The previous public Notice of Inquiry proceeding on ATFI functionality. See footnote No. 3.
- The two draft and one final Requests for Proposals ("RFP's") leading to the award of the contract to design and develop ATFI.
- The ATFI contract, itself, which has been modified (e.g., in July 1990) for minor design change and the June 26, 1990, General Services Administration's ("GSA's") delegation of procurement authority for the modification.
- The August 1990 Notice of Inquiry in this proceeding (Docket No. 90–23).
- The Commission's last two annual reports to Congress.
- The ATFI Fundamentals Guide [the other guides are listed].

All of these documents are indispensable to understanding ATFI's design. Without reference to these, there can be no substantial evidence of any technical deficiency.

Accordingly, the Commission is incorporating into the record of this proceeding the official minutes of the three ATFI (Industry) Advisory Committee meetings in 1986, and the February 9, 1987, Interim Report to the Commission; the previous (first) Notice of Inquiry proceeding on ATFI; the ATFI contract (with PRC Inc.); and the ATFI section of the most recent Annual Report to Congress. A copy of any of these materials can be obtained through the Office of the Secretary.

We point out the foregoing omissions in JC's research not as a conclusion in and of itself, but as the foundation for the refutation of JC's major premise, i.e., that ATFI should have been an "electronic filing cabinet," rather than a "database system." Basically, the difference in approach is that an "electronic filing cabinet" provides for retrieval purely by text search, and there is no need for a commodity code or special method of showing assessorials; while in a "database system," data is formatted and entered in such a manner that retrieval is facilitated. This matter was settled by the 1986 ATFI Advisory Committee, in review of the Feasibility Study.

The decision to use a database system was proposed in Deliverable 4 of the Feasibility Study, "Preliminary Assessment of the Feasibility of Tariff Automation" (June 27, 1986). The three options had been: 1. Electronic Filing Cabinet; 2. Standard Database System; and 3. Standard Database System with Commodity and Geographic Codes. The Commission decided for option 3, somewhat modified, and this was reflected in the October 28, 1986, Feasibility Study Final Report, e.g., "the 'system' would be a data base system * * *." The Advisory Committee, the creation and meetings of which were noticed in the Federal Register, met in November 1986 and approved this design approach, and this was reflected in the Advisory Committee's basic decision in November 1986. Moreover, the February 9, 1987, report to the Commission,[6] subscribed to by Advisory Committee members, recommended that tariff automation was feasible and the Commission should proceed with the next phase of the project.

Steamship conferences were well represented on the Advisory Committee which approved the database approach, and included three representatives of two commenters in this proceeding, two of which are now represented by JC. Further, a representative of another member of the JC appeared at the November 19, 1986, meeting and supported the direction in which the Commission was going.[7] JC now modifies the position previously espoused by some of its members, in its comments:

> A "full text" system would have readily accomplished this function. The Commission could simply have arranged to put existing tariffs in a data base * * *. The Commission is procuring a remarkable -- and inordinately -- complicated system and then adding further layers of complexity through the algorithm and Harmonized System requirements. (Page 4.) * * *
>
> It should be noted that if ATFI were designed as a full-text system, rather than a data-based system, this problem would not exist. By creating ATFI in its current design, rather than simply creating an "electronic filing cabinet," the Commission has mandated a system that is too complicated and burdensome for its regulatory purposes. Why the Commission took this approach remains truly puzzling, because virtually all of the defects and burden of ATFI discussed in these comments are traceable to this decision -- which was made without proper notice and comment. (Pages 8–9.)

The Commission is not persuaded to change ATFI's design from one that is basically a database type of system. In fact, that type of system was recommended by the ATFI Industry Advisory Committee, which included in its membership some of JC's members.

The Commission's 1986–87 decision to go with the database format found its way into the functional specifications contained in the two draft and one final RFP's, especially in section C and Attachment J-1 thereof. These RFP provisions became part of the current contract, and several modifications to the contract have not disturbed the basic database approach. While steamship lines and conferences apparently did not participate in the comments on the RFPs, most large tariff services did, several of them later submitting offers to become the contractor (or subcontractor). At that time, these firms also provided tariff filing services to many of the members of JC, but did not challenge the database system in their comments or questions.

In December 1987, at about the same time that the RFPs were being developed, the Commission issued a (previous) notice of inquiry, which referred to the Feasibility Study and invited comments on ATFI's proposed functionality. As described in the notice, the functionality was obviously for a database system. See Footnote 3. In January 1988, several predecessors of current members of the JC commented in

[6] See *MARAD/FMC Authorizations, Fiscal Year 1989, Hearing Before the Subcommittee on Merchant Marine of the Committee on Merchant Marine and Fisheries, House of Representatives*, 100th Cong., 2d Sess., March 23, 1988, including the answer to question # 5 beginning on page 128, and Advisory Committee materials beginning on page 201.

[7] *Id.* at pages 201–202, and 213–213.

that proceeding but had no problem with the basic database approach. Rather, they supported the direction the Commission was taking.[8]

The Commission's last two annual reports to Congress contain fairly detailed histories of the ATFI project, including its current database design. They also provide updates on remote retrieval as directed by Congress. The report for fiscal year 1990, which was filed in March 1991, also states that the off-site host processor is a "minicomputer." The Commission has no reason to believe that the change from a mainframe computer to a minicomputer would be "illegal," as JC contend, especially since this change was approved by GSA in its 1990 delegation of procurement authority.

Finally, in this regard, the August 1990 Notice of Inquiry in this proceeding (Docket No. 90–23), which is not listed as a document consulted by JC's two experts, as well as the subsequent reports which are listed, all describe functions of ATFI that require a database format, rather than text retrieval. Other than the Harmonized System and algorithms, of which JC now complain, the database-type of functions include: standardized location names, rule and essential terms numbers, and other defined terms. These also are not necessary in an electronic-filing-cabinet system, with full-text filing and word-search retrieval.

The Commission decided on a database system because it is a better system. Among other things, rates are more difficult to bury and shippers can more readily retrieve the information that will facilitate their exports and imports. See § 514.8(d)(1) of the proposed rule. The algorithm requirements and commodity coding (with format specifications) are but parts of the approach, but their presence in the system appears necessary to a database design that is to have any integrity at all.

The cost of developing a computer-based tariff filing system can be justified only if the computer-tariff filing system represents a significant improvement over the current paper tariff system. A data base system will dramatically improve the ability of the tariff user to retrieve and compare rates. On the other hand, a computer-based system which is nothing more than an "electronic filing cabinet" will not be an improvement over the current paper tariff system. The Commission could not justify the expenditure of public funds to develop an "electronic filing cabinet" having all of the infirmities of the current paper tariff system. Indeed, if the tariff filing system cannot be improved to meet the needs of the shipping public, then consideration should be given to abolishing tariff filing all together.

[8] *Id.*, Report on Tariff Automation Inquiry, at pages 153, 161–163, 190–191.

3. Technical Arguments; Miscellaneous

Other arguments advanced by JC's technical consultants in the Evaluation are addressed as follows.

Testing (Evaluation, Chapter V). One must agree with the general emphasis on testing expressed in section B of the Evaluation, p. 10. However, system test terms and methodology may differ without degrading the quality of the tests or the system. As stated in the Evaluation, common terms often related to the testing of computer components are "Alpha Testing," "Beta Testing" and "Prototype." Accepted definitions of the terms are:

"Alpha Testing" means trying a new product out on the employees of one's own company before subjecting it to a Beta Test.

"Beta Testing" means pretesting of hardware and software products with selected "typical" users, to discover bugs before the product is released to the general public. The term, "Beta testing" refers almost exclusively to the release of commercial products to a vendor-selected group of users. The use of the Beta product is generally accomplished on user premises without a system link to a vendor location. Beta users are obligated to document all detected problems in a Beta product, and their selection as a Beta site indicates that they have a vested interest in reporting the bugs.

"Prototype" means the first version or model of a software package or computer hardware device or system ready for preproduction testing.

The term most appropriate to the ATFI public test scenario appears to be "Prototype." That term has been used throughout the program to describe the current program phase as well as the system being tested. A prototype phase, rather than "Beta Testing" suggested by the technical consultants as the only possible type of effective testing, was chosen in the Feasibility Study, which was approved by the ATFI Industry Advisory Committee. However, many of the traditional Alpha and Beta Testing activities were accomplished in ATFI design reviews, module testing during development and FMC acceptance testing. Prototype testing may encompass a variety of test participants and/or test activities which provides latitude for FMC decisions in determining test completion criteria and a production start date consistent with test results, prototype activities and industry preparedness for implementation/conversion.

The testing of the system has not been "ad hoc," as alleged in the Evaluation, but rather, has been pursuant to explicit and well-designed plans contained in sections C.3.4.4, C.3.4.5, C.3.5, C.3.7 and E.3 of the contract, which was not shown as being reviewed by the consultants. The testing plan was designed and has been implemented to gather meaningful information about the accuracy, robustness, efficiency, reliability and appropriateness of ATFI, notwithstanding the Evaluation's (page 2) conclusion. Some further comments on this subject follow:

Robustness of the system in handling all properly submitted tariff data in any mix or volume from multiple users continues to be tested in all activities during the extended prototype phase. Additionally, participative testing by industry has been welcomed by FMC to include adding "stress" to prototype test activities.

The ATFI prototype system already has been tested, often demonstrated and available for continued prototype use after each delivery of software that provided the new functionality. The events most directly related to test milestones are as follows:

MAJOR DEMONSTRATIONS AND TESTING OF ATFI

UNIX Interface Demo: User Interface Enhancements.	Aug 1990.
Public System Interface Demo.	Sep 1990.
ATFI Retrieval-Filing Software Test.	Dec 1990.
FMC Retrieval-Filing Training using ATFI.	Feb 1991.
ATFI Demo to Congressional Staffers & U.S. Customs.	Feb 1991.
Public ATFI System Demos.	Feb 1991.
Public Prototype Volunteer Training (Group 1).	Apr 1991.
Public Prototype Volunteer Training (Group 2).	May 1991.
Public Prototype Volunteer Training (Group 3).	Jul 1991.
Public Prototype Volunteer Training (Group 4).	Aug 1991.

MAJOR DEMONSTRATIONS AND TESTING OF ATFI—Continued

ATFI Technical Meeting (System Demo).	Sep 1991.
ATFI Retrieval-Filing Software Enhancements Test.	Sep 1991.
Public Batch Filing Capability Certification Session #1.	Dec 1991.
FMC Examiner-Supervisor Functions Software Test.	Dec 1991.
Public Batch Filing Capability Certification Session #2.	Jan 1992.
FMC Examiner-Supervisor Reports Software Test.	Jan 1992.
Public Batch Filing Capability Certification Session #3.	Feb 1992.
Public Filing of Prototype Test Tariffs ("Parallel" Filings).	1992.
Public Maintenance of Prototype Test Tariffs by Filers.	On-going.

There has been continued public access to the system for interactive retrieval, filing and Computer Based Instruction (CBI) since April 1991. FMC access for these functions began in December 1990 in conjunction with the initial test. All subsequent activities — training, demonstrations, system enhancements (with test), prototype volunteer interactive retrieval/filing, prototype volunteer batch filing and certification, added FMC-specific functionality (with tests) and multiple filings of prototype test tariffs with continuing maintenance that parallels the filing of the same tariffs on paper — have provided continuing testing of the core retrieval/filing software initially tested in December 1990.

The volume of tariffs and tariff data in ATFI continues to grow as the Prototype Phase progresses. Public prototype volunteers have already filed some data and, in the near future, may file more tariff data in any volume, at any time, to ensure ATFI is capable of meeting their filing needs. Batch filing capability provides the opportunity for prototype participants to file tariff data in large quantities from their proprietary systems by simply meeting the ATFI transaction set format.

Several prototype volunteers have stated plans to submit larger quantities of tariff data to "stress test" the ATFI system prior to the start of the operational phase. That participative testing approach and continued use of the ATFI system during the current extended prototype period to include "parallel" filings will provide additional assurance that the prototype system is successful.

The accuracy of data handling is sound; however, continued prototype use will further validate the integrity of data handling including the relationship of all tariff objects and their individual control date parameters. The system ability to apply all "conformity checks" for ATFI acceptance, rejection or additional review appears robust. Additional "robustness" has been demonstrated during training sessions, certification sessions and recurring prototype user access, to exceed sixteen simultaneous users.

The efficiency and reliability of the ATFI system were fully considered in the selection of ATFI hardware and software that utilize open systems and modular, expandable architectures to provide efficient, cost-effective prototyping with assurance of growth and/or applications software transportability to meet operational sizing, responsiveness, maintainability/supportability and reliability needs. The reliability of the computer software is tracked on a continuous basis.

The appropriateness of a user interface should be determined prior to the final design review; the test plan would then verify that the system presentation met design criteria. This was accomplished by FMC and the appropriateness of the user interface was presented to the industry in September 1990.

Prototype users appear comfortable with the ATFI display formats and the mapping of traditional tariff items to the ATFI objects, as presented in the ATFI Fundamentals Guide (not included in the Evaluation reference documents). Current prototype test tariff filings and on-going amendments appear to validate ATFI functionality and the satisfaction of user needs.

Training and Incorporation of Requested Changes (Evaluation, Chapter V, Section C). When originally announced, Prototype Volunteers requested that the planned FMC training classes be reduced from two weeks to one week in duration. The Commission accommodated that request. Now, JC's consultants assert that the training was insufficient. In all classes, however, instructors and the FMC staff volunteered to provide additional system access and assistance to trainees who wished to enter their text-based tariff data into ATFI. Trainees were encouraged to initiate tariff filings that could be used for later prototype activities.

To date, the appropriately filed, substantive comments of all Volunteers concerning Docket No. 90–23, including criticisms and complaints, have been addressed by the Commission. Additionally, many ATFI system-specific issues have been addressed in FMC Information Bulletins and the ATFI Hot Line responds to ATFI technical questions and ensures each call to the Hot Line is "closed" in a timely manner. System users have regularly forwarded correspondence to the FMC requesting system changes. All such correspondence is considered by the Commission. As noted, the FMC has responded to many requests. Examples of changes resulting from industry comments/requests are additional TLI detail (e.g., multiple service types, multiple origins, multiple destinations, etc.), a general-rate increase/decrease (GRI/GRD) utility for interactive filers, numerous additional condition/calculation statement data fields (e.g., container, count, inland modes, etc.), and provisions for TLI "rate-breaks" based on minimum quantities. Many of the changes were presented to the industry in FMC IB 20–91, at the ATFI Technical Meeting on September 9, 1991, and the subsequent FMC IB 24–91 that summarized technical questions and responses.

In June 1992, ten system change requests were approved for development and implementation by the Contractor. Six of those system change requests were generated by comments/requests from firms participating in the prototype activities. The proposed changes will also include consideration of those changes requested by Crowley, IAFC, Rijnhaave, Zim, and other parties in this proceeding.

The addition of new "codes" in ATFI validation tables, such as container types, container sizes, currencies, etc. do not present a system issue since only database-table changes are necessary, i.e., no software changes or "recompiles." However, the FMC must carefully assess common industry usage of codes and attempt to ensure the table entries remain discrete (not overlapping), within and between tables, while industry-wide filing requirements are met.

Algorithms (Evaluation, Chapter VI). The Evaluation's conclusion, adopted by JC and TPTAC, that the creation of algorithms, through the use of condition statements and calculation statements with their related fields, conditions, formats and values, consists of "computer programming" is an overstatement. The use of condition and calculation statements to create an algorithm containing one or more condition sets employs conventions currently used in paper tariffs. The most basic high school mathematics courses cover all ATFI conditions and calculations. ATFI prototype participants currently use employees without college degrees in the creation and filing of tariffs, including algorithms. Similarly, the ATFI user interface requires only computer terminal or work station orientation, not training in the use of sophisticated computer and software systems, as argued in the Evaluation.

The use of the terms "Computer program," "specialized language" and "Computer code," when referring to the use of condition and calculation statements in the creation of condition sets in algorithms, is also an overstatement.

As the Evaluation on page 19 quotes from FMC IB 9–91, the calculation/condition statements/definitions provided are designed to accommodate current pricing practices. There is only one condition statement format and there are only six conditions which a user may employ in comparing a condition field to a value. There are twelve calculation statements; five are the basic arithmetic functions of equal, add, subtract, multiply and divide; two allow basic comparison of values using maximum/minimum; three provide for rounding, as requested by the industry during the early prototype phase; and two accommodate the selection of data from tables (not true calculation functions), if employed.

Use of these 18 basic condition and calculation statement definitions should not be construed as either requiring knowledge of mathematics above high school algebra, or as the employment of "special language," "code" or "computer programming." Moreover, TPTAC, itself, recommend use of another algorithm, i.e., the "Null Linkage" or "Dummy Algorithm" to link text-based material to TLIs and commodities.

As the Evaluation states after example 1, each condition/calculation statement "is very important and must be stated in a particular manner" (format); however, the interactive ATFI system steps the filer through construction and validation of the statements. Additionally, after completion of the algorithm, the ATFI calculation and calculation proof functions may be used by the filer to validate the algorithm.

Example 2 in this section of the Evaluation can be constructed with fewer condition sets in the algorithm by employing a table. This approach could significantly reduce the number of condition statements/sets required for the addition of other locations.

ATFI does provide, in response to industry requests during prototype, a copy function for TLIs, to include algorithms at TLI-level. FMC also expects that many tariff filers/publishers will provide "copy" features in their proprietary systems that may be used to duplicate and/or modify algorithms for use in other tariff objects or other tariffs.

It also is important to note that ATFI provides the filer calculation and calculation proof functions that allow an efficient method for filers to check that their algorithms result in expected assessorial charges. By varying the conditions entered on the calculation screen, the filer may view calculation results for any/all desired/valid combination(s) of TLI conditions. The calculation proof function provides additional detail if the filer needs to determine the reason an expected charge was or was not assessed. This functionality eliminates most of the pencil and paper arithmetic currently used in accumulating assessorial charges.

The ATFI linkage of algorithms to commodity descriptions and TLIs to apply properly filed assessorial charges, where certain conditions are met, precludes a manual search by the filers and retrievers to locate, determine the application, calculate each assessorial, where applicable, and total all assessorial charges and the basic ocean freight to determine the bottom-line-rate. The use of algorithms should no more require changes to operations than the use of pencil and paper; if it does, something is wrong and other changes may be necessary. See also the discussion under § 514.10(d), below.

Harmonized System (Evaluation, Chapter VII). For the reasons set forth in the analysis of § 514.13, the Commission has decided to make the use of the Harmonized System ("HS") voluntary, rather than mandatory. In any event, the Evaluation's discussion of commodity coding in general, including "HS," understates or completely overlooks the following considerations:

The HS (if used on a voluntary basis) is to be applied to the extent possible *after* the desired commodity description is created.

When a commodity mix would not allow use of an HS category at two digit (Chapter level), the mix category of "99" is used. Use of Chapter 99 in conjunction with a commodity key word as search criteria *narrows the search* to only mixed commodities.

If accurate spelling of a keyword is a problem, a search method (slower) using a partial word is still an available option to assist users.

Use of the ATFI commodity index feature for locating desired commodities is not mentioned. This functionality is an especially efficient method of locating commodities within a tariff.

While discussing a key word search in the mixed category, the Evaluation states that "Using the system in this manner is equivalent to not using any indexing scheme to store and retrieve data." This statement should be dismissed as erroneous and misleading. The ATFI functionality to allow word search as a tool for locating desired commodity descriptions augments the user's ability and tools to locate the commodity through knowledge of the tariff and any carrier commodity numbering convention within the 99 category or use of the commodity index.

See also the discussion under § 514.13, below.

Closing Comments (Chapter VIII - The Tractor Trailer Truck). The imprecision of the allegory ordinarily militates against its use in a technical or scientific document, and was not expected in the Evaluation's "closing comments." However, to respond in similar fashion, the Commission would suggest that the "tractor-trailer truck" (ATFI) has been available to the industry since early 1990. Prior to that time, many moving company CEOs (ATFI Industry Advisory Committee members) participated in the conceptual design of the vehicle.

Since early 1990, many moving companies (conferences, carriers, publishers and agents) and their drivers (filers and retrievers) have been trained and have participated in test drives (interactive filings, batch filing and retrievals) over a variety of routes (multiple tariff types and varying mixes of objects within tariffs). During the extended period for the test drives, the manufacturer (FMC) received numerous comments and suggestions from moving companies and drivers for design enhancements (additional condition fields, calculation statements for rounding, TLI copy feature, multiple entries in selected TLI fields, etc.). The majority of these comments and all significant considerations were

discussed in a public forum (Docket No. 90–23). The manufacturer evaluated the comments and in many cases directed the engineers (Contractor) to incorporate changes (ATFI enhancements) based on the comments.

The manufacturer has consistently encouraged moving companies and drivers to increase participation in the test drives, under any load (volume) or route (tariff type, object mix) desired. The garage (ATFI central site) was always available (interactive, on-line batch or bulk batch) and the manufacturer provided economical classroom training (FMC-sponsored ATFI Volunteer Training Classes), access to computer-based instruction (ATFI CBI), instructional and reference materials (ATFI User Guides), and telephone assistance (ATFI Hot Line), as well as unrestricted access (24 hours per day, seven days a week) to the vehicle for any test activity.

All test drivers were encouraged to become familiar with the dashboard control panel (menu driven format, hierarchical/relational structure of tariff objects, screen formats, function keys and first letter selection features, etc.) at their own pace; to try different loads (tariffs and tariff sizes) over various routes; and to try full loads (complete tariffs) and even tandem loads (large tariffs with governing tariffs) over extended periods (weeks or months of tariff maintenance).

The manufacturer feels fortunate that many moving companies have participated in the test drives. Although some moving companies have not demonstrated that their drivers are capable of exiting the present truck (paper filing) and maneuvering the new vehicle (electronic filing in ATFI), many moving companies are now aware of the benefits and economics associated with the new vehicle and a few moving companies have begun routine test drives over existing routes with the same loads (parallel filing of paper and electronic) to ensure future success as one of the leaders in their industry.

We agree with the Evaluation that ATFI needs some further fine tuning, with the help of the industry. Again, rather than attempt to emulate the current paper-based tariff-filing system, the whole purpose of ATFI has been and will continue to be to replace it.

D. Implementation and Interim Rule

The Commission realizes that, initially, compliance with the ATFI formatting requirements, especially algorithms, sometimes may be difficult, while future filings should actually be easier, given the electronic formats, their original implementation, and some experience with the system. However, notwithstanding the complaints about the length of time it takes to format a tariff for algorithms, as well as for conformity with the Harmonized System (before it was voluntary), several tariffs have been converted and put on the system as test tariffs.

Accordingly, the Commission sees no reason from the comments to further postpone the implementation schedule, which is being finalized by separate order of the Commission in this proceeding. For firms having difficulties, petitions for temporary exemptions from electronic filing under new § 514.8(a) may be in order. Where isolated difficulties arise, such as the absence of a package code unique to a particular carrier's operation, we expect that they will continue to be worked out with the Commission staff.

On the other hand, the Commission sees no harm in the interim-rule approach suggested by IAFC, JC, Sea-Land and PCTB. An "interim rule" is a rule that is usually issued without prior notice of proposed rulemaking. It becomes final, like a "final rule," but is often effective immediately without notice and establishes a further round of comments. The interim rule here will become effective at least 30 days after publication. However, comments may be submitted after effectiveness, but before the first implementation window, and again in 1993, after the tariff-filing windows for some trade routes have been completed and fully informed comments can be developed. At the same time, however, the Commission requests that filers not file requests for minor design changes (e.g., addition to a table) as a rulemaking comment.

IV. Section by Section Analysis

For a further explanation of Part 514, as originally proposed, see the Supplementary Information to the Proposed Rule at 56 FR 46044. This section explains the changes from the proposed rule, other than clarifications and corrections of typographical errors.

After the proposed rule was published in September 1990, certain tariff-related provisions have been designated for review under a proposed FMC Rules Review Program ("Rules Review Program"), described in News Release NR 92–04 of April 15, 1992. While affecting primarily existing parts 515, 550, 580, and 581, such new rules growing out of this program would also impact new Part 514 and are briefly referenced herein in the analysis of the appropriate section(s).

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

Section 514.1—Scope, Purpose, Requirements and Penalties

Rules Review Program initiatives could reduce the annual filing requirement for anti-rebate certifications to every two years (Docket No. 92–27, *Filing Requirements for Anti-rebate Certifications*, June 4, 1992, 57 FR 23653). Additionally, in Docket No. 92-26, *Filing of Tariffs by Terminal Barge Operators in Pacific Slope States*, the Commission is removing 46 CFR Part 520 but, at the same time, exempting terminal barge operators in Pacific Slope States from tariff filing requirements. This results in the deletion of § 514.1(c)(3)(ii) of the proposed rule and a corresponding change to § 514.3(a)(7).

Terminal tariffs will be exempted from some format requirements under this rule, but the introductory paragraph of § 514.1(c) accommodates this exemption. Terminal tariffs, however, may be required to contain certain data from agreements exempted from filing under parts 560 and/or 572 (Docket No. 92–33, *Marine Terminal Facilities Agreements—Exemption*, June 10, 1992, 57 FR 24569).

In § 514.1(d)(2), JC object to rejection of matter "which fails in any respect to conform with the applicable shipping statutes," as an "unwarranted substantive extension of § 8(f) of the 1984 Act." The Commission does not agree. Moreover, current Part 580, at § 580.10(d)(1), contains the phrase, "which fails in any respect to conform with the Act," [i.e., 1984 Act]. The Commission fails to see a significant difference between the new language and the old provision, adequately keyed in the derivation table.

PCTB requests clarification in § 514.1(d)(3) to ensure that rejection notices be made available through electronic mail (and later by regular mail) to the actual "filer" or "filing party" which has the specific authority for filing the particular tariff, as opposed to, for example, the "tariff owner," who hires someone else to file the tariff matter. There never has been any question that the authorized filer should get the notice in the first instance, since it will have to take the action to correct the problem. The Commission will keep this in mind, without the necessity of changing the rule language. To the FMC, "filer" means "the party who actually filed the data," and this is further ensured by the structure of the system, passwords and USERIDs.

In § 514.1(d)(4), the Commission accepts JC's suggestion to pinpoint when tariff matter becomes void after rejection, that is, "upon rejection," as currently set forth in § 580.0(c)(1).

Tampa requests clarification of § 514.1(e)(1), i.e., "charging rates not in conformance with such a tariff is unlawful." This section is keyed to the marine terminal operator tariff filing requirement under § 514.1(c)(3), i.e., to file a tariff showing "all its rates, charges," etc. These two new sections come from current §§ 515.2 and 515.3, respectively.

Section 514.2—Definitions

The analysis under this section deals with miscellaneous definitions and related comments. Certain other definitions will be addressed under other sections to which they relate, i.e.,

"Batch filing" under § 514.8(l).
"Combination rate;" "Inland point;" "Intermodal transportation;" "Substituted service;" "Through transportation;" "Transshipment;" and "Via port" under § 514.15. (Several new definitions are added.)
"Filing date" under § 514.8(c).
"Project rates" under § 514.13.

The definition of "assessorial" is revised at JC's suggestion to eliminate the apparent but unintended requirement that the service for which the charge is assessed be "special." The new definition also indicates, however, that the service is not basic ocean transportation, but rather some other additional service.

The definition of "bill of lading" is deleted at JC's request.

Tampa questions the application of the definition of "commodity description number" to terminal tariffs. Here, as elsewhere, the format exemption for terminal tariffs under new § 514.3(a)(9) continues the requirement for electronic filing of terminal tariff matter but exempts such matter from the commodity description and TLI format requirements of part 514, to the extent necessary to permit electronic filing. Thus, if a particular terminal tariff has commodity descriptions, assessorial charges, and/or a commodity index, the term "commodity description" could still apply to the extent the terminal tariff matter conforms with this definition. This obviates the need to create a term other than one in common usage.

Even though only voluntary, the use of HS for commodities contained in terminal tariffs should facilitate both direct access to these commodities, as well as more efficient searches for commodities within HS sections or chapters. Further, without the use of any commodity number and the associated commodity index entries, users of certain terminal tariffs may experience some difficulty in locating desired items/rates.

However, the 10-digit commodity description number used in ATFI is a format requirement which is optional for marine terminal operators. Moreover, whether or not a terminal tariff lends itself to the use of commodity coding, not every definition needs to be amended to specifically provide for the option.

Tampa also questions the definition of the term "conference," as it may apply to marine terminal operators, especially under the final rule in Docket No. 91-20. See the analysis for § 514.3(a)(8). Cross-references to the key terms, "Marine Terminal Conference Agreement" and "Marine Terminal Services Agreement" are added in various places in the definitions.

At the request of JC, the definition of the term, "container" is revised to reflect current usage.

The term "common carrier by water in interstate commerce," as defined in section 1 of the 1916 Act, has never been updated to reflect the changes made by the 1940 amendments to the Interstate Commerce Act, which brought water carriers serving port-to-port between states on the high seas or Great Lakes under the jurisdiction of the Interstate Commerce Commission ("ICC"), and, for that reason, is not used in new part 514. However, the term, "Domestic offshore carrier," which referred in the proposed rule to "common carrier by water in interstate commerce" is revised to conform to current law.

As suggested by JC, the definitions of "equipment interchange agreement" and "equipment interchange tariff" are amended to clarify that they relate only to the use of carrier equipment following interchange at a port or inland point, i.e., by adding the words, "following interchange" after the phrase "that govern the use of carrier-provided equipment" in each of the definitions.

As suggested by JC, the term "free time" is expanded to include practices commonly used by carriers. Also at the suggestion of JC, the definitions of "General Reference Tariffs" and "Governing Tariffs" are deleted, since they are contained in § 514.12.

The definition of "Harmonized System" (now optional) is changed to include a citation reference to where the public may more easily obtain a copy and to properly describe the version being used.

The definitions of "Inland point" and "Inland rate table" are revised to limit the acceptable data to U.S. ZIP CODES, until the "ZIP CODES" of other countries are acceptable through submission for approval and validation.

Definitions are added for the synonymous terms of "Log in" and "Log on," as well as for the synonymous terms of "Log off" and "Log out."

Definitions have been provided for "null linkage" ("dummy algorithm"), a new functionality to label and link assessorial charges in full-text format to other ATFI objects, such as TLIs and commodities.

The definition of "Open for public inspection" is revised to provide that tariff data in foreign commerce need be made available in electronic or paper form at only the main office of the filer (carrier, or carrier and conference). See the discussion under § 514.10(k) and also the definition of "Post, posted, posting (of tariff matter—domestic offshore commerce)."

JC request that the definition of the term "port range" be clarified to ensure that the filer may use the term for the designation of fewer than all ports in a particular country. The Commission believes that the language in the definition, i.e., "those ports in the country * * * that are regularly served * * *," already makes that clear.

As suggested by JC, the definitions of "rate" and "Tariff Line Item (TLI)" are amended to avoid the possible and unintended interpretation that an expiration date is always required by the system. Further, the language which could be interpreted as limiting a "rate" or "Tariff Line Item" to a specific commodity is broadened, without changing the requirement to have some type of commodity description for every Tariff Line Item.

However, JC's request that the terms "rate" and "tariff line item" indicate to what extent they contain assessorials is not accepted because it is unnecessarily limiting. Moreover, JC's assumption that a "rate" is always exclusive, and that a "Tariff Line Item" is always inclusive, of any applicable assessorials, is not correct and could be misleading if reflected in the definition.

The term "Rules (in a tariff, i.e., Tariff Rules)" is amended as suggested by JC to eliminate the words "in conformance with Commission regulations" to avoid the use of a definition as an additional regulatory requirement. However, this change should not be interpreted as a waiver of any requirement imposed by statute or set forth elsewhere in part 514.

The definition of the term "tariff" is revised to accommodate marine terminal tariffs.

As suggested by JC, the definition of "trade name" is amended to permit more than one "d/b/a" and to delete the

word "primary" in reference to the carrier's legal name.

Section 514.3—Exemptions and Exclusions

Under the Rules Review Program, tenders for the carriage of Department of Defense cargo ("military rates"), for which special permission is now provided by § 514.3(b)(4), could be completely exempted from filing, or on the other hand, completely subject to all filing requirements, in Docket No. 92–25, *Regulation of Military Rates Under the Shipping Act of 1984*, June 3, 1992, 57 FR 23368. Moreover, certain Non-Vessel-Operating Common Carriers ("NVOCCs") in foreign commerce could be exempted from tariff filing in Docket No. 92–22, *Tariff Filing by NVOCCs*, May 7, 1992 (57 FR 19583), and/or NVOCCs in the domestic offshore trades could be exempted from the investigation and suspension provisions of 46 U.S.C. app. 845, in Docket No. 92–34, *Domestic Offshore Financial Filing Regulations; Exemption Under Section 35 of the Shipping Act, 1916*, June 12, 1992, 57 FR 25005.

As described in the analysis under § 514.1, terminal barge operators in Pacific Slope States are now exempt from tariff filing requirements. This is effectuated in revised § 514.3(a)(7).

Tampa notes the changes regarding terminal tariffs growing out of Docket No. 91–20, *Exemption of Certain Marine Terminal Services Arrangements*. That part of the final rule in that docket (57 FR 4578 of February 6, 1992), which amended the current marine terminal tariff section (§ 515.3), is now incorporated in revised § 514.3(a)(8). Definitions relevant to the final rule in Docket 91–20 are now crossreferenced in § 514.2, *Definitions*. If there are future changes to any regulation involving tariffs, new part 514 will be appropriately considered and amended, as necessary.

As indicated above, marine terminal tariffs are different in form and content from carrier and conference tariffs, and may not lend themselves to be filed under the ATFI commodity-description or TLI formats, such as for locations. At the same time, however, all tariffs filed at the Commission should eventually be on the ATFI system, as strongly urged in previous comments in this proceeding. See the first Interim Report of December 26, 1990, section 18/23.

The Commission, therefore, will require marine terminal tariffs (which have not already been completely exempted from filing) to be filed in electronic form, with the option of using commodity description and TLI objects. However, if those objects are not employed to file terminal rates, the rates must be filed in full-text form at rules level. Mandatory Tariff Rule 34 (§ 514.15(b)(34)) is designated for this purpose.

While the exemption from the full electronic format requirements is not literally "temporary," since electronic filing is still required, future ATFI design may be developed to accommodate more sophisticated database filing of terminal tariffs and to facilitate retrieval of information contained therein. Such a development may require further rulemaking.

Tampa points out that the exemption for certain commodities under § 514.3(b)(1)(i), applies to terminal tariffs, foreign tariffs and service contracts, while terminal tariffs are not listed under § 514.3(b)(1)(ii), which provides that filers can lose some of the exemption if their tariffs contain provisions otherwise exempt. Tampa's point is well taken and § 514.3(b)(ii) is amended to include terminal tariffs.

Proposed § 514.3(b)(4) relates to Department of Defense cargo and provides for filing of military cargo rates in a specialized format, partially exempted from the form and manner requirements of the part, similar to the scheme provided in existing § 580.1(d). In its comments, MSC stated that it "believes that incorporation of the relevant military rates within the single tariff 'document' will eliminate confusion relating to comparison of government and private rates for transportation of goods over the same routes." The Commission agrees and will attempt to accommodate MSC.

The language in § 514.3(b)(4)(i) is amended by deleting the words "exact copies" to avoid potential confusion with paper filings. Even though MSC suggests consideration of parallel filings of tenders in paper form, the Commission does not think this is necessary or desirable. The purpose of ATFI is to do away with paper filing to the extent possible, and we invite MSC to continue to advise us of any irregularities in the electronic filings.

Section 514.3(b)(4) is further revised to clarify that military rates are to be filed in the applicable foreign commodity tariff, using the commodity description and/or TLI, as applicable. For example, if the commodity is "Tanks," it would probably be an entire, distinct commodity with one or more TLI's; but if it is "sportswear" for military personnel, the military rate would be one or more TLIs under the generic commodity, which would have other TLI's relating to commercial transportation.

The code "*M*" is a filing/amendment code under § 514.9(b)(13), not a tariff type. This "allows the rate to take effect" on less than 30 days' notice, etc. This and other electronic accessories will facilitate retrieval and comparison of rates, as MSC requests. In the future, more sophisticated data retrieval could also be made available to other U.S. Government agencies and departments through Memoranda of Understandings and similar arrangements with the FMC.

The procedure should also facilitate calculation of the bottom line rate, notwithstanding the possibility of several types of commodities with the same first-six-digit commodity code, since ATFI provides for four more commodity-code digits at filer's choice and four more digits assigned by the system at TLI level, plus up to 20 more digits in the "stat code." See § 514.13.

As suggested by MSC, agreement terms and conditions should be filed in the Tariff Rules, i.e., new Rule No. 32, which is added at § 514.15(b)(32) to effectuate this change. As such, all additional terms and conditions contained in the MSC rate agreements will be made applicable to the military cargo and rate, through algorithm linkage, etc.

The Commission believes it has substantially adapted MSC's suggestions to the design and format of the ATFI system. The proposed adaptation would also appear to obviate the need for any further delay in the implementation of this provision, even though MSC has suggested postponing the effective date until the June 1993 effective date of its next Worldwide Agreements. If there are problems, however, further comments can be submitted, and temporary exemptions under § 514.8(a) may be considered for military cargo tenders.

In addition to revising proposed § 514.3(b)(4) to accommodate military cargo tenders, similar provisions also will appear at § 514.9(b)(13).

Section 514.3(d) is amended to incorporate the exemption provided for domestic offshore carriers by the final rule in Docket No. 91–42 (December 20, 1991, 56 FR 65998), i.e., that new or amendatory tariff matter that does not result in an increased cost to the shipper may be published on one-day's notice, as long as it is not part of a "General Decrease in rates," as defined in § 514.2.

Section 514.4—Content, Filing and Cancellation of Tariff Material; General

Paragraph (a) of this section, which provides for 30-day notice for new or initial tariffs, does not apply to terminal

tariffs, Bill-of-Lading tariffs, or Equipment Interchange tariffs.

Section 514.4(b)(3)(i), which prohibits the limitation of liability not authorized by law, is taken almost verbatim from existing § 550.3(p)(2). Nonetheless, the language is clarified at JC's suggestion to prohibit limitation of liability where prohibited by statute or regulation.

Both IAFC and JC are opposed to the incorporation of current § 550.3(p)(1) into § 514.4(b)(3)(ii). Without any intention to change applicable law or regulation, this subparagraph will be deleted at the commenters' suggestion, and the balance of paragraph (b)(3) renumbered.

In response to Tampa's question, the provision in § 514.4(b)(3) dealing with rates in other tariffs, does apply to terminal tariffs and will be retained in its current form. Any tariff must contain all the rates and charges pertaining to the service offered and not be subject to some other tariff. A limited and controlled exception would be governing tariffs under § 514.12.

Section 514.4(d) carries forward provisions from existing parts which prescribe and adapt for electronic system use implementation procedures for the duty and authority to file tariffs, including procedures to be followed in conference-related situations in foreign commerce. IAFC suggest that the procedures not be limited to foreign commerce, "in view of the fact that there may be conferences in U.S. domestic commerce." Since the provisions regarding conferences are derived solely from the current foreign commerce regulations, we will not attempt to apply the conference provisions to domestic commerce in this proceeding. If there is a need in the future, the Commission will consider the initiation of another rulemaking. In the meantime, the procedures in § 514.4(d) could be used for domestic situations, to the extent applicable.

At the suggestion of IAFC, § 514.4(d)(4)(i), relating to duties of a carrier upon admission to conference membership, has been revised in the interest of clarity.

Paragraph (d)(6)(i)(A) of § 514 requires the transferee to submit a written request to procedurally transfer the tariff under change-of-name types of situations. (See also paragraph (d)(1) of this section). JC urge the Commission not to adopt this provision on the ground that it is a "restriction on entry." The Commission does not believe that this provision proposes any real restriction on entry. Rather, it is a reasonable procedure for electronic systems. It is amended, however, to provide that a new, proposed registration form be submitted with the letter, if needed.

Under paragraph (d)(6) of § 514.4, a transfer of operations or change of name may require a new password and USERID for filing control. Accordingly, an application for such a change should include a new registration form and be filed with the proper user fee. Paragraph (d)(6) is amended accordingly and to apply to similar situations involving conference tariffs. Section 514.21(c) is amended to add a cross-reference to paragraph (d).

Sections 514.5 and 514.6—[Reserved]

Subpart B—Service Contracts

Section 514.7—Service Contracts in Foreign Commerce

Section 514.7(b)(1) requires all service contracts to be held in confidence. JC suggest that the words "by the Commission" be inserted after the words "be held." The Commission agrees, but is also adding the words "be filed confidentially" to comport with § 8(c) of the 1984 Act.

Under the Rules Review Program, the Commission is considering several changes in the regulations involving service contracts, such as: allowing such contracts to cover foreign-to-foreign locations (Docket No. 90–20, *Service Contracts in Foreign-to-Foreign Trade*, May 1, 1992, 57 FR 18855); allowing parties to a filed service contract to amend its essential terms (Docket No. 90–21, *Amendments to Service Contracts*, May 4, 1992, 57 FR 19102); and permitting two or more shippers to be signatories, regardless of whether they are members of a shippers' association (Docket No. 92–31, *Service Contracts*, June 8, 1992, 57 FR 24220). Additionally, comments are solicited in Docket No. 92–35, *Notice of Inquiry Concerning Various Regulatory Issues*, (June 5, 1992, 57 FR 23637) on: 1. No longer accepting voluntary filing of tariffs or service contracts covering exempt commodities; 2. simplification of the filing of essential terms; 3. defining "similarly situated shipper;" 4. clarification of carriers' and conferences' duty to deal with shippers' associations on service contracts; 5. permitting service contracts to be based on a percentage of a shipper's cargo; and 6. requiring every conference to establish an ombudsman for shippers' complaints.

Section 514.7(d) provides that, in order to be able to execute a service contract, a non-vessel-operating common carrier ("NVOCC") must have a tariff and a bond. JC suggest that the list of NVOCCs in compliance should be made available as an ATFI menu option. The Commission will look into this suggestion.

The Commission adopts the JC-suggested language to be added to § 514.7(f)(1): "The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same."

In order to accommodate the utilization of an electronic system, § 514.7 of the proposed rule provided that the essential terms of service contracts be electronically filed, while the confidential service contracts, themselves, had to be filed in paper format within 10 days of the electronic filing of their essential terms. JC point out that § 514.7(j)(3) prohibits performance of a service contract until both the contract and its essential terms are on file.

Section 8(c) of the 1984 Act, 46 U.S.C. app. 1707(c), provides for filing of the service contract and its essential terms "at the same time." However, since the statutory scheme of essential terms filing is to make them available to me-too shippers, there appears to be no reason to prohibit implementation of the service contract until it is also on file. If, however, it is not filed within 10 days of the essential terms, both should be rejected. This would require rerating of the cargo under the service contract at applicable tariff terms, as suggested by JC.

Pursuant to § 16 of the 1984 Act, 46 U.S.C. app. 1715, the Commission finds that this partial exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

Accordingly, the Commission will amend § 514.7(j) to allow implementation of a service contract upon electronic filing of its essential terms, but to reject both, if the service contract is not filed within 10 days of the electronic filing of the essential terms. A me-too contract under paragraph (f)(3) of § 514.7 may also be implemented immediately.

JC would not have any service contract or essential terms matter automatically rejected, but suggests that the notice-of-intent-to-reject procedure be applied to all irregularities. However, the failure to timely submit a service contract or essential terms free of major deficiencies is tantamount to no filing at all. See § 514.8(n)(1)(iii)(G). To subject these items to a "notice of intent to reject" would be inappropriate. If

permitted, interactive filing becomes either useless or never ending.

Similarly, JC's theory would require extension of the 30-day me-too period only when an essential term has been modified. This could be unfair to shippers and is not acceptable.

Section 514.7(k)(2)(iii) carries forward current § 581.7(b)(2)(ii), which provides that where a service contract is corrected (through special-case-number procedures), the shipper contract party may elect to continue under the contract with or without the corrected essential term. JC urge the Commission to "reevaluate the equities" of this section. Whatever the merits of this suggestion, it is irrelevant to tariff automation and beyond the scope of this rulemaking proceeding.

As JC point out, the effectiveness of paragraphs (c) and (d) of § 581.10, now incorporated in paragraph (m)(2) of § 514.7, "Recordkeeping and audit," is in a suspended status. This is reflected both on the "Dates" section of the Preamble, and also in paragraph (m)(2) of § 514.7.

Subpart C—Form, Content and Use of Tariff Data

Section 514.8—Electronic Filing

In § 514.8(b), as well as throughout the rule, the name of the "ATFI Interactive Filing Guide" is updated to "ATFI Tariff Filing Guide."

Proposed § 514.8(c) sets forth the procedures for the three types of filing, i.e., interactive, on-line batch, and in-bulk (tape) batch. The most important reason for defining the term, "filing," is to ensure that shippers are given statutory notice of, for example, 30 days for a rate increase. Because of the necessity to physically ensure that new filings are "in the system," the proposed rule utilized the concept of "processing" to provide the basis for determining when "filing" actually occurs. Several commenters disagree with this approach.

IAFC suggest that tariff material "be deemed to have been filed upon receipt," but does not define the term "receipt." IAFC further propose that the "ATFI system must reflect a basis for acceptance of filing date similar to the current process."

PCTB notes the current practices of accepting tariff pages, which include "receipt of tariff filings during other than normal business hours" by a time-stamp procedure in the lobby of the (FMC) building; also, that electronic tariff filings transmitted by electronic modes "will be receipted by a date/time device on the receiving machine." See current §§ 550.3 and 580.3. According to PCTB, the ATFI filing date, as described in the proposed rule, is no longer certain and controlled by the filer, but rather a date assigned by a computer operation and operator(s) who are "unknown and unpredictable to the filer." IAFC propose that the filing date be the day of "physical delivering of the tariff data." IAFC also propose that tapes ("in-bulk batch") be accepted at FMC headquarters, as well as at the computer site, every day until 11:59 p.m.

Sea-Land questions what will happen when a rate (e.g., a decrease), having been timely delivered, cannot be assessed because "processing" did not occur. Its solution is to accept the filing date as the date of receipt, not the date the material is processed.

JC emphasize that on-line bulk (tape) filing will be the major problem. JC suggest that filing of a tape is when the tape is "received." Again, "the filing date must be the date the tape is filed."

The proposed rule will be changed to reflect current practices, to the extent possible. "Filing" will occur when the tariff data is received (on the date when an electronic transmission has begun), not processed, although in most cases, "processing" will usually begin within minutes after proper receipt. (An electronic transmission that has not been successfully completed will not technically be "received.") As under the current system, rejectable matter can be rejected whenever it is found.

For in-bulk (tape) batch filing, however, tapes must be delivered to the designated deposit box(es) by 5 p.m. on a normal Commission workday in order to be considered "filed" on that day. After 5 p.m., and on non work-days, tapes will not be processed, but filers may utilize interactive or on-line batch filing to directly input their tariff data into the electronic system.

In order to accommodate the modified approach, the final rule incorporates changes in § 514.8(c), introductory paragraph, and § 514.8(c)(3). Additionally, it requires modification of the definition of "filing date" in § 514.2, and changes to § 514.10(a)(2).

ATFI's database format is described in paragraph (d)(1) of § 514.8. The genesis and advantages of this major design feature are addressed in Part III of this Supplementary Information, i.e., "Analysis of the Comments: General. C. Basic Design of the System."

Paragraphs (d)(3) and (d)(4) of § 514.8 deal with the Batch Filing Guide and the addition of new data. PCTB questions the need for the Batch Filing Guide, its incorporation by reference in the rule, and whether or not regulatory requirements for such incorporation have been followed. IAFC, JC and Rijnhaave urge that addition of data to the Batch Filing Guide be expedited, but JC suggest that public comments on proposed additions be allowed.

In view of the comments and advice from the Office of the Federal Register, the ATFI Batch Filing Guide will not be incorporated by reference, but merely used as guidance or "how to" material. This should facilitate and expedite necessary changes to the rule, while, at the same time, allow for prompt publication of the changes, both proposed and final.

Several commenters on the proposed rule have requested the addition of new data, such as currencies, place names, etc., or for changing system specifications, such as the number of characters for text lines. While the Commission will consider these requests, such matters are more appropriately addressed in system operations, separately from the formal proceeding.

Paragraph (g) of § 514.8, which describes how to connect to the ATFI system, is revised to provide a citation to the Batch Filing Guide. Paragraph (h) is amended to provide an updated list of major menu selections.

Paragraph (k) retains the requirement that the carrier or conference make tariff data available to the public, but provides the option of making it available in either paper or electronic form. ITT renews the argument for retaining paper tariffs, e.g., "a 'sanctioned' paper copy." Given that the purpose of an automated system is to do away with cumbersome paper, we do not find this argument persuasive.

IAFC, on the other hand, comment that, since the Commission will not itself provide paper tariffs, or a system to accommodate them, the Commission should require that carriers or conferences permit electronic access by the public through a terminal only at their main office. The suggestion is based on IAFC's assumption that paragraph (k) requires that each carrier or conference maintain, "in electronic or paper form at each of its offices and those of its agents, a complete and current set of the tariffs used by the carrier or conference."

Paragraph (k), however, provides that tariff data be made available at each office of a carrier only for domestic offshore commerce, as required by § 2 of the 1933 Act. The 1984 Act governing foreign commerce does not have a comparable provision and foreign commerce conferences need to provide access to their tariff(s) only at the main office(s) of the conference and each carrier party.

In both their 1991 and 1992 comments, IAFC express skepticism about the capabilities of third party vendors in creating parallel paper tariffs for use in places which do not have electronic facilities to access ATFI. At the same time, however, IAFC notes that Crowley is a member of one of its conferences, and Crowley, at the May 19, 1992, oral comment session, indicated that it was successful in converting its tariffs to electronic format. The Commission here notes that Crowley's test electronic tariffs are also "page-based," i.e., they can be readily reproduced in paper form. The technology that IAFC desires appears to be fairly well developed.

Proposed paragraph (k) of § 514.8, however, does not provide for an official tariff in case of long-term breakdown in the ATFI computer or access procedures. Paragraphs (k)(1)(iv) and (k)(1)(v), as well as § 514.15(b)(3), are revised to accommodate such a situation.

PCTB points out that paragraph (l) of § 514.8 provides for certification of batch filing software, but "is silent on the matter of who will perform this certification." While FMC originally intended that a contractor other than its current prime contractor assist the Commission in conducting the certifications, this proved to be unrealistic from an economic standpoint. The Commission, assisted by the prime contractor, has performed certifications and PCTB is one of the firms that has been certified. Moreover, the implementation of ATFI has been postponed due to the relocation of Commission headquarters, which should provide still further time for the industry to prepare for full-scale operation of ATFI.

The certification under paragraph (l), however, is not for batch filing *software*, but of batch filing *capability*, which includes the formatting of tariff data in ATFI transaction set format and submission of that data to the FMC ATFI central site computer. See the final rule of December 2, 1991, § 514.21(e) and section-by-section analysis (56 FR 61164). Accordingly, paragraph (l) and the definition of "batch filing" are revised to reflect this fact.

JC comment that paragraph (n) of § 514.8, dealing with associative checks and FMC examiner review, "fails to alert tariff filers of the true and full potential for rejection, without any opportunity to avoid a rejection" and suggest that rejections should involve some sort of "consultation" process. See also the discussion above of their comments on the rejection of essential terms of service contracts under § 514.7.

To avoid rejections, tariff filers must follow the instructions, just as they do now. For example, current § 580.4 (at 46 CFR) provides, *inter alia*, that tariff pages be plainly printed on durable 8 1/2 x 11 inch paper, with no alterations, using certain margins. If these basic specifications, like those for the receipt of official documents in any Government agency or court, are not complied with, the document is rejected, without consultation (but, perhaps, with prompt notice).

The Batch Filing Guide, along with the shipping statutes and regulations, establishes the specifications for electronic "documents." The associative checks and examiner review, generically described in paragraph (n) of § 514.8, merely describe the *methods* by which ATFI or the Commission identifies non-compliance with the specifications.

Revision of the associative checks results in a deletion of paragraph (n)(1)(iii)(A)(*5*), as well as a change to paragraph (n)(1)(iii)(A)*(3)*, which is changed from "Agent/individual authorized to make filing (§ 514.11(a)(9)(iii))." to "Appropriate publication authority (§ 514.11(a)(9)(iii))." Also deleted is paragraph (n)(1)(iii)(C)(*3*), providing for an associative check for "valid harmonized code," which is now optional. The rule's associative check for "VIA PORT" entries under paragraph (n)(1)(iii)(D)(*4*) has been deleted for reasons described in the discussion under § 514.15. The remaining subparagraphs are appropriately renumbered.

While clarifying the associative check area to the extent done here, the Commission will not provide more specific criteria for the review of tariff data by Commission examiners. Again, rejections will be for non-compliance with major standards or requirements; the *methods* for identification of non-compliance will vary over time and are considered to be internal operating procedures which will usually include non-public investigative methods.

Section 514.9—Filing/Amendment Codes and Required Notice Periods

The language of paragraph (b) of the section is clarified with respect to the use of the symbols or filing/amendment codes.

Tampa questions whether the codes and symbols of § 514.9 conflict with those set forth in "Terminal Tariff Circular No. 1." That document, issued in July 1968, was "an information tariff circular and should not be construed as being binding upon marine terminal operators." The codes in that circular were actually symbols (e.g., tear drop), as opposed to alphabetical letters in the current rules, and were abandoned long ago. The types of tariff material symbolized, however, are basically the same, i.e., reductions, increases, etc. The Commission would prefer that terminal tariffs use the codes in § 514.9 to the extent possible; paragraph (a)(5) indicates that the use of such symbols in marine terminal tariffs is optional.

The League's 1991 comments suggest that paragraph (b)(1) does not adequately cover a situation where the removal of a point or port requires 30 days notice in the event such a removal will require a shipper to use a different port, with a resulting increase in shipping costs. JC suggest that it is unclear whether the deletion of a port or point may become effective immediately.

Paragraph (b)(1) requires the use of filing/amendment code "A" for all increases other than a General Rate Increase in Domestic Offshore Commerce and would, therefore, apply in the situation described by the League in its 1991 comments. It is more specifically addressed in paragraph (b)(16)(ii)(B), which provides:

> (B) A deletion of a port or point from a previously existing origin or destination field may not be coded with a *"P,"* but shall be coded with other appropriate symbol(s) under this section.

If the deletion results in an increase, as the paragraph states, the appropriate symbol, such as "A," must be used and the proper advance notice must be given. The filer has the duty in the first instance to determine whether any action results in an increase or a decrease. The Commission believes the current language is clear enough, without attempting to enumerate every type of situation in which an increase, such as an "A" situation, could occur. See also paragraph (a)(3) of § 514.9.

Paragraphs (b)(3), (b)(9)(i)(A), (b)(18)(i), and (b)(24)(ii) of § 514.9 are amended to reflect the language in new § 514.3(d), which allows certain domestic offshore tariff matter to be filed on one-day's notice. Internal cross-references are corrected correspondingly.

Under the Rules Review Program, the Commission is considering the reduction of the 30-day notice for commodity rate increases on domestic cargo to 7 work days. Docket No. 92–36, *Reduction of Notice Requirements for Tariff Increases in the Domestic Offshore Trades—Exemption under Section 35 of the Shipping Act, 1916*, June 16, 1992, 57 FR 26809.

Paragraph (b)(13) of § 514.9, which deals with military cargo, is revised to conform to the changes in § 514.3(b)(4), described in the analysis of that section.

A new paragraph (b)(23) is added to provide for a filing/amendment code of "W," to be used for same-date withdrawal of an erroneous filing.

PCTB believes paragraph (c) "adequately addresses" how to deal with multiple amendments of the same TLI filed on the same day. However, to accommodate certain commercial practices identified during prototype filing, § 514.9(c) is revised to accommodate an additional situation where a previous filing, whether or not on the same date, is presumed to be erroneous or superseded and void if a later amendment of the same TLI has an *earlier* effective date (unless the later filing incorporates a "thru date" to let the earlier filing continue its effectiveness).

With regard to supplements in paragraph (d) of § 514.9, JC comment that the application of GRI/GRDs (general rate increases and decreases) in lieu of supplements (allowed under the current paper system) eliminates a certain amount of flexibility when the filer wishes to make later "large scale adjustments, roll-backs, postponements, and/or cancellations, reflecting shipper pressures and resulting carrier accommodations." In similar fashion, PCTB complains of the inability of the GRI/GRD utility to allow for postponements, mitigations, and/or cancellations. Zim references time constraints and the loss of rate adjustment flexibility.

The use of assessorials for rate changes in ATFI allows later changes on a selective basis (toggling), or an across-the-board change (using the assessorials until the individual rates are firm).

The use of the GRI/GRD utility "rounding feature," previously requested by the industry, will preclude a return to the exact previous rate due to the mathematical impossibility of "backing out" a rate change that was rounded. However, initial use of assessorials, toggling features, and/or individual rate changes, as more fully described above, should accommodate industry requirements without significant adverse impact upon workload.

Paragraph (d) of § 514.9 is amended to clarify the GRI/GRD functionality.

Section 514.10—Other Items Used Throughout ATFI.

Paragraph (a)(2), Filing date, in § 514.10, has been revised as explained in the discussion under § 514.8(a).

On paragraph (b), IAFC, PCTB and TPTAC expressed concern about the "ATFI glossaries," which will be used to validate spelling of names of places entered by filers. Since the Commission has been informed by the original vendor that it would not support the service sold to the FMC, prototype volunteers have advised that locations they intend to use are not currently in an ATFI glossary. The Commission will replace and/or add to the existing glossary in order to provide an accurate and up-to-date glossary of place names to be used to validate tariff entries.

PCTB suggests that Federal Information Processing Standards ("FIPS") Publication 55 be incorporated by reference in the rule. FIPS PUB 55 is one of the official Government glossaries used for U.S. place names and is required to be used by a Government agency to the extent applicable. For this reason, it is being used in ATFI, to the extent applicable, but it need not be "incorporated by reference," since it contains standards primarily applicable to agencies, and only secondarily applicable to users of those agencies' systems. Moreover, these standards can be readily obtained from the National Institutes of Standards and Technology. See FIRMR subpart 201–20.3 (41 CFR subpart 201–20.3).

The last sentence of paragraph (b)(2) of § 514.10 is revised for accuracy and the illustration for 514.10(b)(2) is updated.

JC urge that the currency conversion function described in paragraph (c) of § 514.10 be deleted because "shippers will argue that the wrong conversion rate was applied notwithstanding the rule provision that it is for comparison purposes only." Sea-Land requests that the currency conversion provisions not be used as "a compliance tool." As indicated, paragraph (c) states that the conversion rates are "for comparison purposes only, not as official conversion rates for booking or billing." As such, they ordinarily would not be used as a "compliance tool," but there could be situations where they would be relevant to an investigation. Accordingly, the Commission will not change the paragraph, and it cannot state that the conversion rates would *never* be used in compliance situations.

The Commission is also aware, however, that changes in the conversion rate alone can make a rate look like an increase or decrease in some situations, when, in effect, it is not. To allay Sea-Land's fears, ATFI will not reject a filing as an improperly filed increase or decrease merely because the unofficial exchange rate was updated in the system.

Paragraph (d) of § 514.10 pertains to assessorials and algorithms, which were covered in Interim Report # 3 of July 23, 1991. See also the discussion under section III of this Supplementary Information.

The subject of the mandatory requirement to put assessorial charges in algorithm format and link them to appropriate items received special emphasis at the May 19, 1991, oral comment session.

Considering both the 1991 and 1992 comments, JC, TPTAC, Matson and ITT did not favor algorithms, while Crowley, SeaLand, and the League supported them. TPTAC's presentation at the oral comment session summarized the perceived problems, as follows:

- ATFI algorithms significantly increase the difficulty of using the ATFI system for both filers and retrievers.
- Using ATFI algorithms has a high likelihood of producing substantial errors in filing tariffs.
- More comprehensive rules and terminology are needed so that ATFI algorithms can cover the full variety of commercial arrangements common in the maritime trade.
- ATFI algorithms are unnecessary for the early implementation of the ATFI system.

The extended implementation schedule and proposed system improvements should alleviate most of these difficulties. Moreover, an assessorial rule which was shown to "explode" into "six pages" of algorithms at the oral comment session, was later actually test-filed into the system, using only a three-column-by-two-row table and 13 condition sets. This shows that some of the algorithm problems are not as difficult as originally perceived.

The alleged errors in the use of algorithms are either human errors, or involve situations where all facts are not known, which would be addressed by the clarification in the rule that charges not determinable before shipment would not be required to be put in algorithm form, but would be linked to objects using yet another algorithm acceptable (after the oral comment session) to TPTAC. Some of the alleged deficiencies may have been the result of confusion between algorithms and the bottom-line functionality.

Accordingly, the Commission has decided to retain the algorithm requirement.

As referred to above, in the Fourth Report of October 25, 1991, the Commission stated that it would provide further guidelines as to which assessorials require algorithms. PCTB and JC request such guidance.

The basic guideline for the use of algorithms is whether or not the application of the assessorial in

question can be determined prior to shipment (or carrier's receipt of cargo). There should be no conflict between an algorithm and the text which describes the assessorial, but, if there is, the algorithm must take precedence. Accordingly, paragraph (d)(1) is amended to reflect these concepts, to provide examples and to add cross-references to §§ 514.12(a), 514.17(b)(2) and 514.17(d)(10).

As requested by the industry, those assessorials which are not pre-determinable, and therefore not susceptible of being put in algorithm format, can and must be set forth in the appropriate place in full-text form. This does not mean, however, that all algorithms may be set forth in full-text, *vis-a-vis* algorithm, format -- only those which cannot be put in algorithm format.

Further, as suggested by the industry, proposed by the ATFI Contractor, and supported by TPTAC in May/June 1992, another type of algorithm is provided for linking assessorials in full-text format to the appropriate TLIs and commodities. This algorithm, i.e., WHEN—ALWAYS; THEN—NOTHING, is the "Null linkage" or "Dummy Algorithm" functionality, and should substantially improve filing and retrieval. This algorithm is provided so that the user of tariff data will know *all* the types of charges potentially applicable to the shipment, whether determinable prior to shipment or not. A new paragraph (d)(1)(iv) is added for this purpose, and paragraph (d)(5) is modified accordingly.

Proposed paragraph (d)(3) listed numerous examples of calculation statements for algorithm purposes. Since the publication of the proposed rule, however, three more types have been added to accommodate industry requests for "rounding" the results of ATFI calculations. See Batch Filing Guide, Appendix B, § 2. Accordingly, paragraph (d)(3) is revised to list only a few such calculations for examples, leaving the rest for the Batch Filing Guide.

Section 514.11—Organization and Tariff Records; Tariff Scope

Paragraph (a) of § 514.11 is revised to clarify that maintenance of the organization record is limited to one authorized individual.

PCTB and several other commenters have proposed questions about the SCAC code in paragraphs (a)(6) and (b)(1)(iii) of § 514.11. The organization record field for Standard Carrier Alpha Code (assigned by the Motor Freight Association) is optional, since many carriers, such as NVOs, may not have one. The SCAC code, however, would be convenient for a carrier to use since it is four characters, while the carrier code is six digits, and the system use of the SCAC code (when supplied) is more descriptive in the "tariff code" under paragraph (b)(1)(iii). Moreover, the Commission understands that a SCAC code ordinarily will be issued by the Association upon application. Accordingly, the Commission recommends that if a filer wishes the shorter SCAC code to be used, that it should obtain one in the near future to use when implementation of ATFI begins. Paragraph (b)(1)(iii) is amended to clarify how the SCAC code may be used.

Section 514.12—Governing and General Reference Tariffs

If the filer creates the appropriate electronic linkage for the essential terms of service contracts, an Essential Terms Publication can be a Governing Tariff for essential terms documents, and, in turn, the "Tariffs of General Applicability" (e.g., commodity tariffs) can be the Governing Tariffs for the Essential Terms Publication. See § 514.12(a)(1)(v) - (vi). Under this design, the Tariffs of General Applicability cannot be linked directly to the essential terms documents as Governing Tariffs, and this appears to present a problem for essential terms filers. Section 514.17 is the generic section for the electronic filing of essential terms and the analysis (below) under that section sets forth various options upon which further comment is invited. As indicated, the governing-tariff functionality, along with electronic linkage, should be considered by commenters.

JC suggest that Equipment Interchange Tariffs be moved from paragraph (b) to paragraph (a). Paragraph (b)(3) indicates that such tariffs may be filed in electronic format or in paper format (depending on the circumstances). To be a Governing Tariff under paragraph (a), the tariff must be filed electronically and must be electronically linked to the governed tariff(s) by the filer. And where any matter directly affects a TLI, it must be filed in electronic form under the initial paragraph of § 514.12. Paragraph (a) of the section is revised for accuracy and, as revised, the Commission is of the opinion that the section is clear enough on this point.

For the same reasons and in response to another question from JC, electronic Governing Tariffs of third parties may be filed as long as they are properly linked to the governed tariffs by the filer. Such a tariff could be a Rules Tariff of a tariff-filing service which governs tariffs "belonging to" many carriers, also, perhaps, filed by the service.

IAFC comments that their FMC #32 tariff does not appear to be included or approved in § 514.12. This tariff, IAFC's U.S. Inland and Terminal Operating Tariff, which included U.S. Terminal Handling Charges, U.S. Inland Zip Codes and Equipment Interchange Agreement rules, appears to be acceptable as a Governing Tariff (for four governed sections) under § 514.12(a). While it is not just one of the types listed, combinations of the types are acceptable, but would be filed as a single tariff type, presumably a Rules Tariff, with the appropriate tariff title. Again, the Governing Tariff must be linked properly to the governed tariffs.

Most of these types of individual questions ordinarily would be handled informally during the prototype phase.

MSC has suggested that common carrier tenders for military cargo be included as a separate and distinct tariff type, but that they be properly linked to the carrier's commercial tariff charges through the governing-tariff mechanism under this section. This would be unnecessary, however, in view of the Commission's changed procedures under §§ 514.3(b)(4) and 514.9(b)(13). See the Commission's discussion under § 514.3. The linkages between military commodities and/or TLIs, on the one hand, to assessorials in algorithm form on the other hand, will be easier and more effective in the same tariff.

Section 514.12(b) is amended by adding "Mileage guide publications" to the sample types of "general reference tariffs," which do not contain assessorials or other matters affecting the TLI, and, on that condition, will be considered "on file" in paper format for cross-referencing in the electronically-filed tariffs.

Section 514.13—Commodities and Tariff Line Items ("TLIs")

The requirement to use a modified version of the Harmonized System of Commodity Coding ("HS") was addressed in the Commission's Fourth Report of October 25, 1991, in this proceeding. See also the Third Interim Report of July 23, 1991, and the discussion herein under III. Analysis of the Comments: General, A. Legality.

As stated above, the notice of the May 19, 1992, oral comment session, indicated that the Commission was particularly interested in further comments regarding the suitability and/or effectiveness of proposed paragraph (a) of § 514.13 relating to the use of the Harmonized System, including any

benefits and burdens associated therewith.

Only Crowley and SeaLand expressed general support for continuation of the requirement. Many other commenters advocated that the HS requirement be completely eliminated, but at a minimum, suggested changes. IAFC, JC, TPTAC, Matson and SeaLand mentioned "optional" or "voluntary" for the HS functionality as one alternative.

At the oral comment session, TPTAC and its experts alleged various perceived difficulties with HS, as provided in the proposed rule. TPTAC argued that:

- HC is *not* needed to make ATFI work.
- Pacific trade experience shows HC has *no* benefits.
- HC creates large costs, both tangible and intangible.
- HC tariffs are less usable than current tariffs
- [Future Question: "Can there be a uniform commodity code?"]

Primarily, it was alleged that the problem with HS is its lack of suitability in classifying ocean freight tariff items. Many types of traditional tariff items would have to be classified in more than one place, depending on how they are made or processed, -- an alleged artificial and needlessly duplicative exercise for a carrier filer. At the same time, however, one conference indicated it would continue to use the HS at the two-digit level, although a 4-digit or 6-digit approach would be unsuitable.

Several conferences suggested the alternative of making the Harmonized System optional or voluntary, instead of mandatory, as provided in the proposed rule. These basic alternatives have been considered and the Commission has determined to adopt the "optional" or "voluntary" alternative. This adoption includes certain other mandatory commodity-coding features described below.

The Commission also has determined that the subject of commodity coding will be revisited in 1993, for the purpose of exploring the basic alternatives, under any new developments by that time, including ATFI implementation.

As further described below, the ATFI system will continue to accept commodity data in HS format and filers are urged to use the HS to the extent possible, in order that some degree of standardization can be incorporated in the system to facilitate retrieval. Moreover, certain features of commodity coding other than HS are retained as mandatory, such as the ten-digit code (of the filer's choice) and certain standard prefix digits for project and mixed commodities.

Paragraph (a) of § 514.13 is revised to incorporate these changes. Many of the commenters' other objections to and suggestions for commodity coding are addressed below.

Some commenters claim that use of the HS is contrary to the intent of Congress. The legislative history of bills preceding the 1984 Act is cited for the proposition that Congress did not intend the Commission to implement uniform commodity descriptions.[9] However, the use of the HS, to the extent it is consistent with the narrative description of the commodity written by carrier, does not amount to imposing a system of uniform commodity descriptions on carriers. Carriers will remain free to describe commodities as they see fit. The carrier, not the HS, determines how a given commodity will be described.

It also is contended that the HS "is intended to be implemented by customs officials" and, to require the carrier's rate clerks to perform similar duties of interpretation would be unreasonable. It is our understanding, however, that the importer, not a Customs official, is responsible for preparing the Customs entry and providing the HS number for the merchandise being imported. 19 CFR 141.61(e)(2). If the information is erroneous on its face, the entry is subject to rejection. 19 CFR 141.61(e)(4).

Under ATFI, the carrier would provide the 10-digit commodity codes for the commodities described in its tariff. Since the HS is voluntary, this could be the filer's own commodity code, the HS, or a mixture of both. If there was an unintended duplication, i.e., the same commodity code for two very different commodities, one of the items would be subject to rejection. However, the carrier would not be subject to penalties just as it is not subject to penalties under the paper tariff system for filing a tariff provision that is rejected.

IAFC also assert that mandating the use of the HS would "violate the rights of carriers to due process under the U.S. Constitution," because a carrier will be liable for penalties if it misinterprets its tariff. The argument is apparently based on the assumption that carriers will be forced to use only those commodity descriptions that are included in the HS and that they will, in essence, be forced to rate cargo under tariff items they did not write. IAFC's argument would also apply to the voluntary use of HS.

As discussed above, this is incorrect. The voluntary HS user retains control over how the rate item is drafted, using only those HS digits that are consistent with the carrier's narrative description. Filers will be responsible for properly rating cargo using the rate items which they have established as they are today.

Use of the HS will not increase the carrier's exposure to penalties for misrating cargo, nor will it make the rate clerk's job more difficult. In rating shipments under a tariff item containing both a narrative description of the commodity and the appropriate HS, the carrier's rate clerks would function in the same manner they do today.

In sum, it is the carrier, not the HS or other type of commodity coding, that determines how a given commodity is described in a rate item. It is not a denial of due process to require carriers to properly rate cargo moving under commodity descriptions which they have drafted.

Zim's suggestion that the FMC make it mandatory that the HS code appear on the Bill of Lading is a substantial change to the regulations and is outside the scope of the proposed rule.

Zim also suggests that it would be helpful for the Commission to make available a dictionary of "real life descriptions and their HS code counterparts." It is not possible to do this at this time but will be given future consideration.

As further explained in the discussion for § 514.3, marine terminal tariffs will not be required to use the standardized commodity coding or tariff line items under § 514.13.

MSC has concerns about the possibility of two different commodities having the same commodity code at the six-digit level. While this is possible, we note that, in addition to the first six digits, the filer can supply four more digits in the commodity code and 20 more digits in the "Stat" code. The potential use of these additional digits also should resolve many problems raised by other commenters, such as IAFC.

With respect to commodities, JC object to the requirement to "include well-known synonyms and alternate names," as well as the prohibition of trade names, trade marks, etc. In view of the elimination of the HS requirement, paragraphs (a)(2)(i)(A) and (a)(2)(i)(D) of the proposed rule are deleted and the remaining provisions of paragraph (a)(2) are appropriately renumbered.

PCTB suggested that several provisions of paragraph (a) of the

[9] The specific document cited is a letter dated March 20, 1980, from the Assistant Secretary for Maritime Affairs of the U.S. Department of Commerce to Senator Daniel K. Inouye, regarding S. 2585, a distant predecessor to the 1984 Act. In it, the Assistant Secretary, voices the Administration's opposition to uniform commodity descriptions. It is unclear what, if any, reaction Congress had to the Administration's views.

proposed rule, when read together, required that the tariff descriptions "shall be the text used in HS." For HS, however, especially as modified for voluntary use, the rewritten paragraph merely requires that the tariff description of a commodity may not be inconsistent with the HS description for the commodity code used.

JC comment that the coding provisions of paragraph (a)(3)(iii) of the proposed rule (renumbered "(a)(4)") for mixed commodities, with a required four zeroes after the first two digits of "99," will not accommodate more than 9,999 mixed commodity items in one tariff. This would allegedly create a problem for several of their tariffs. The paragraph, renumbered as (a)(4), is amended to allow filer utilization of any of the four digits following the first two. This should provide the needed codification for a sufficient number of items in large tariffs.

Similar flexibility is provided for project rates ("98" in renumbered paragraph (a)(5)) and "non-commodities" (e.g., "FAK" situations, for which "00" is used in renumbered paragraph (a)(6)).

The Commission also is aware of current tariff problems with commodities being booked, either "straight" or "mixed." While generally a straight-forward tariff feature providing for flexibility for both shipper and carrier, the use of these terms for one or more commodity descriptions under ATFI could inadvertently lead to duplicating or conflicting rates for the same commodity, shipper specific rates, and/or disputes as to which rate applies. The Commission does not wish to impair commercial flexibility and will not, at this time, attempt to prohibit practices which are not illegal per se. Accordingly, the Commission will delete the requirement in paragraph (a)(3)(iii)(A)(2) of the proposed rule (renumbered as (a)(4)(i)(B) in this interim rule), that all commodities included within a "mixed commodity" description be specifically listed with their individual HS codes.

IAFC, IPBCB, JC and Waterman comment that the definition and procedures for project rates are too limiting and burdensome and should, therefore, be changed to accommodate existing practices. The Commission agrees. Accordingly, paragraph (a)(3)(iv) of the proposed rule and the definition of "project rates" are revised, and a new Tariff Rule 33 (§ 514.15(b)(33)) is created. The new provisions do not require every commodity within a 'project rate' category to be listed in every instance because, as the commenters point out, when a 'project' is established, neither the carrier nor shipper know all the commodities that eventually will be a part of a project. See renumbered paragraph (a)(5).

The ATFI screen for Tariff Line Item Detail has been updated. Thus, the corresponding simulated screen in paragraph (b)(2) of § 514.13 is revised. The new screen requires slight changes to paragraphs (21) and (26), plus a new paragraph (30) for "Hazard Code." Otherwise, the screen is the same as the screen set forth in the proposed rule and, for this reason, the basic numbering of paragraph (b) has been retained.

Regarding paragraph (b)(6) of § 514.13, PCTB comments that the four unique suffix TLI digits are "assigned by the system" only during interactive filing, while off-line batch filers assign this number in their own system. While PCTB is technically correct, there can be no duplication of TLI numbers under the same commodity for different services and a batch filing of such duplicating numbers is subject to rejection. The paragraph and the introductory paragraph of § 514.13 are amended to more accurately describe the assignment of the four suffix digits, which must be unique.

Paragraph (b)(16) of § 514.13, relating to "via ports," is revised to provide greater flexibility, as further explained in the discussion under § 514.15(b)(1). Sea-Land's and IAFC's concern that the use of "Via Port" in the TLI or inland rates table allows the entry of only one port is obviated by the capability of the system (and the filer) to use port groups in the Via Port field. This feature should save time and difficulty in filing and retrieval.

Sea-Land comments that the filer should not have to maintain a table of automobile measurements if the vehicles are carried on a "per vehicle" ("EA") basis. See paragraph (b)(17)(iv)(B) of § 514.13 and § 515.15(b)(22). The proposed rule, however, did not intend this result. See paragraphs (a)(ii) and (b)(17)(ii) of § 514.13, which are modified for further clarification.

Under paragraph (b)(19)(i) of § 514.13, Zim suggests that time/volume rates (in foreign commerce) "should be filed under [HS] Chapter 98 in a similar fashion as Project Cargo (which would contain the commodity, rate terms and conditions)." Unlike project cargo, however, a time/volume rate in ATFI is a TLI for a specific commodity, and a Chapter 98 approach would not be appropriate. For example, under paragraph (b)(19)(i)(A), if a time/volume rate is intended, the appropriate subsidiary TLI (time/volume rate) shall so state in the TLI note. The paragraph is amended accordingly.

IAFC is concerned about the provisions in paragraph (b)(19)(ii) requiring a conference to file a separate open rate tariff. We have, accordingly, revised paragraph (b)(19)(ii)(B) to provide that a conference may file its member's rates (TLIs) on opened items in a separate tariff or in its regular tariff. Members have the option to file their own, individual tariffs for TLIs on opened commodities and TLIs.

Paragraph (c) of § 514.13, "TLI calculation," is revised to update and clarify calculation procedures and to reflect two new, simulated screens, which supersede the obsolete screen in the proposed rule. Paragraph (c) has also been modified to reflect the clarified approach to algorithms (§ 514.10(d)) and the "Dummy algorithm" functionality for assessorial charges which cannot be determined prior to shipment.

Section 514.14—Intermodal and Transshipment Services; Inland Rate Tables

In response to the comments on § 514.14, the entire section is deleted ([Reserved]), and the various provisions are transferred to § 514.15(b)(1), for intermodal services, and § 514.15(b)(13), for transshipment services. Internal cross references also are revised accordingly. See the discussion under § 514.15.

Section 514.15—Tariff Rules

Paragraph (a)(2) of § 514.15 is clarified to indicate that an assessorial in a Tariff Rule can affect either a commodity or TLI and should be properly linked either through an algorithm or null linkage. The algorithm and null linkage functionalities are provided under § 514.10(d). Also, as previously mentioned, the algorithm requirement is optional for marine terminal tariffs.

The introductory paragraph of § 514.15(b) is clarified to indicate that matter found in notes to commodity descriptions and TLIs need not be repeated in the Tariff Rules, but the applicable Tariff Rule(s) shall contain a statement to this effect.

As indicated in the analysis under § 514.14, appropriate provisions regarding intermodal services are moved from that section to paragraph (b)(1) of § 514.15, and the relevant provisions regarding transshipment services are moved to paragraph (b)(13). The two paragraphs are revised to accommodate the additions, which also are clarified in response to the comments.

Under the Rules Review Program, the Commission has eliminated current section 550.8, under which domestic intermodal tariff rates subject to ICC jurisdiction had to be filed with the FMC. Docket No. 92-28, *Elimination of Certain Regulatory Provisions*. This change has been accommodated in § 514.15(b)(1).

As suggested by the commenters, the revisions to the intermodal and transshipment provisions have resulted in the need to add or modify the definitions in § 514.2 of: "alternate port service;" "combination rate;" "inland point;" intermodal transportation;" substituted service;" "through transportation (domestic offshore commerce);" and "via ports." The definition of "transshipment" has been amended to apply both to foreign and domestic offshore commerce. The revised, somewhat more "generic" definitions, coupled with the changes to the new substantive provisions on intermodal service and transshipment, should alleviate the commenters' concerns about flexibility.

Various commenters' concerns about the electronic filing of bills of lading under paragraph (b)(8) of this section were previously addressed in the interim reports in this proceeding.

While the ATFI system, without drastic design changes, cannot accommodate 80 instead of 60 characters per text line, as Zim requests, each title of every mandatory Tariff Rule in § 514.15 is now less than 60 characters, with the change of the title of Tariff Rule 19 to "Shippers requests in foreign commerce."

The introductory paragraph under paragraph (b)(22) of § 514.15 is modified to clarify that automobile cubic measurements need to be provided only when the vehicle is rated on a volume basis. See the discussion under § 514.13(b)(17).

Regarding paragraph (b)(25) of § 514.15, IAFC request that their petition for reconsideration in Docket No. 91–1, Bonding of Non-Vessel-Operating Common Carriers, be considered in this proceeding. On January 29, 1992, the Commission reconsidered its Final Rule in Docket 91–1, but indicated that it did not believe that any modifications to the Final Rule were necessary. See 57 FR 3950, February 3, 1992. Procedures described in the Reconsideration of Final Rule, however, should alleviate any problems.

ITT complains about the filer's charges for public inspection of tariff data that must be described in Tariff Rule 30. This is governed by § 8(a)(2) of the 1984 Act, 46 U.S.C. app. 1707(a)(2), which provides that: "Copies of tariffs shall be made available to any person, and a reasonable charge may be assessed for them."

The official tariff under Tariff Rule 30 and the development of a new Tariff Rule 32 are discussed in the analyses to §§ 514.8(k)(1)(v) and 514.3(b)(4), respectively. The geneses of new Tariff Rules 33 and 34 are explained in the analyses of §§ 514.13(a)(3)(iv) and 514.3(a)(9), respectively.

Section 514.16—[Reserved]

Section 514.17—Essential Terms of Service Contracts in Foreign Commerce

Special Comments Requested

The requirement to electronically file the essential terms of service contracts in the format prescribed by the proposed rule received special attention at the May 19, 1992, oral comment session. Previously, the major problems with the filing of essential terms were expressed primarily in terms of the difficulty of using algorithms. At the oral comment session, TPTAC summarized these algorithm problems as follows:

Algorithms in ETs

- Do not accurately represent Contractual Terms
- Do not convey charge ceilings to retrievers
- Would require hours to prepare and test

As part of Commission-approved testing requested by JC, however, further difficulties were identified, not the least of which were linking essential terms to charges in tariffs of general applicability and attempting to electronically compare charges between different tariffs (essential terms). The correspondence involved in the analysis of two essential terms is included in the record of this proceeding.

One of TPTAC's suggested solutions for the difficulty in filing essential terms was to completely waive the requirement to file them electronically and to continue the paper filing of both service contracts and their essential terms. At the oral comment session, TPTAC argued that essential terms were not that valuable to retrievers and supported this argument with the following screen:

Do ETs Fit the ATFI Model?

- No updates
- Available for only 30 days
- Limited Audience
- Retriever needs a macroscopic view
- Actual rate may be higher or lower than ATFI calculation

Otherwise, TPTAC's displays at the oral comment session made the following comparisons:

ESSENTIAL TERMS FILING

Typical ET

TODAY	ATFI
10–12 pages	750–1,000 TLIs
By-product of contracting process (insures accuracy of information).	Requires rekeying of information (increased opportunity for errors)
Requires less than 1 hour to prepare.	Requires more than 10 hours to prepare
FMC reviews and files at end of ET Publication.	FMC must review 200–300 screens of information.

ESSENTIAL TERMS RETRIEVAL

Typical ET

TODAY	ATFI
10–12 pages	750–1000 TLIs – 200–300 Screens
Available from watching service.	Available by MODEM
Costs less than $10	ATFI charges and telephone costs greater than $10 (on average)
Scan in 10-15 minutes.	Review in 60–90 minutes
Retain hard copy for future reference.	No hard copy – must reconnect to review again.

The Commission believes that some of the essential terms' problems are addressed by the following:

The use of additional rules/subrules and associated algorithms and tables, in conjunction with the toggle feature, allow considerable flexibility, as well as the use of algorithms at commodity description and TLI levels, as appropriate.

An alleged footnote problem described by TPTAC overlooks the setting of the default dates for filing date, effective date and access date to preclude the need for reentry of these dates for use in multiple retrievals or multiple filings in interactive mode (see ATFI Tariff Filing Guide, section 3.1, Modifying System Default Dates). For those who may file via batch mode, this is not an ATFI issue.

The current method of filing large numbers of locations in some ETs may be partially alleviated in ATFI by using location groups. The practice of filing very large numbers of locations in an ET where only limited commodities and a comparatively small number of contract TEUs are allowed appears somewhat contradictory to usual "contractual arrangements." The comments on screen printing and retriever time limits overlook the expected availability of paper tariff products from tariff services firms and the possibility of longer ATFI retriever access windows.

The Commission has determined to continue the requirement to electronically file the essential terms of service contracts. At the same time, however, the Commission believes that there is more than one way to electronically file essential terms, and it seeks input on the best method.

Accordingly, the Commission, while issuing the interim rule with the present requirements for essential terms, is inviting further comments on several, possibly more acceptable options for possible inclusion in the Rule before essential terms have to be electronically filed. The "window" for the mandatory electronic filing of essential terms would be at the end of the implementation period, probably in November or December 1993.

THEREFORE, SPECIAL COMMENTS FROM THE PUBLIC ARE REQUESTED ON THE FOLLOWING MAJOR OPTIONS FOR THE FUTURE ELECTRONIC FILING OF THE ESSENTIAL TERMS OF SERVICE CONTRACTS IN ATFI:

(a) The format in this interim rule, i.e., Essential Terms documents or "ETs" (within an Essential Terms Publication or "ETP"), which contain mandatory terms, commodity descriptions and TLIs [a new paragraph (d)(10) has been added to clarify the application of algorithms];

(b) The format in this interim rule (as described in (a), above), with null linkage (dummy algorithms) to label and link text-only assessorial charge descriptions to commodities and TLIs;

(c) The format in this interim rule, except that all ET commodities, rates and assessorial charges would be in text only (no commodity description(s) or TLIs created as ATFI-formatted objects); or

(d) Suggestion(s) for other format(s) that may be implemented within the existing transaction-set format using existing text-only provisions.

Comments on any or all of the major format options listed above should also address the following features:

(1) Linkage of essential terms to tariffs of general applicability (or other governing tariffs), as set forth in § 514.12 and the analysis of that section above.

(2) Standard numbering and/or positioning of the seven required essential terms under section 8(c) of the 1984 Act (46 U.S.C. app. 1707(c)).

(3) Changes in FMC rules for service contracts in other dockets. See the discussion under § 514.7, above.

Other than comments on the basic procedures for filing essential terms, one relevant comment is addressed here. With respect to § 514.17, Zim suggests that the rule should provide that, "when a Service Contract does not contain specific charges, the Service Contract will still be subject to tariff charges as contained in the Freight Tariffs or Rules Tariffs named in 'tariff of General Applicability.' This will eliminate the need for repeating all rules or charges in the Service Contract which are not altered or modified by the Service Contract."

In the rule, however, as with current part 581 of title 46, CFR, the Commission must be careful in distinguishing the confidential service contract (maintained in paper format) from the statement of the essential terms of the service contract (which may be identical to the service contract, except for the name of the shipper, and is filed in ATFI in electronic format for public access).

What can be incorporated by reference in a service contract is primarily a matter of contract law between the parties and, other than for activity subject to 1984 Act standards, is outside of the Commission's jurisdiction. Where the terms of the service contract are essential, however, the Commission can develop rules for their filing.

The essential terms of a service contract are subject to whatever tariff charges the parties desire. These charges, through algorithms and governing tariffs, can be provided for in the Essential Terms Publication and made applicable to individual statements of essential terms, without the need for repeating all the rules and charges in every statement of essential terms. The way this is done, however, is most important. The filer must provide specific linkage between the governing and governed tariffs/documents, both electronic and textual, so that there is no doubt as to what is being made applicable. The ATFI system and the rule currently facilitate such features, but an addition to the rule providing that a particular governed document will be subject to a particular governing document and/or certain of its terms is neither practical nor desirable.

Section 514.18—Special Permission

With respect to special permissions, IAFC suggest that: "In order to avoid disruptions, it should be provided in § 514.18 or elsewhere that any existing special permission granted prior to the effectiveness of Part 514 will continue in effect and will be assigned an 'S' number for purposes of filings under Part 514." ATFI will accommodate the electronic filing of existing tariff matter with a special case number and letter assigned by the Commission after being shown by the filer that it is required. Therefore, no change to the rule appears to be necessary.

Section 514.19—Suspension of Tariff Matter

JC question the Commission's authority to issue an order suspending tariff matter other than in domestic rate cases or involving controlled carriers. The rule is not intended to give the Commission any additional suspension authority, but only to describe the procedure the Commission will follow to exercise the statutory authority it does have. For example, the Commission can suspend tariffs under § 13(b) of the 1984 Act, 46 U.S.C. app. 1712(b), and under § 10002(e) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a. Also, some rejection situations involve a type of suspension. (If done by the system or by the staff, the rejection can be overturned by *order* of the Commission upon appeal.) Orders of the Commission involving tariffs in foreign commerce are addressed in § 14 of the 1984 Act, 46 U.S.C. app. 1713.

Section 514.20—Retrieval

Both USDA and MSC commented that they would have a need to be retrievers of ATFI data and requested accommodation. As indicated in the analysis under § 514.3, the Commission believes that the best way to handle the individualized needs of other U.S. Government agencies is through memoranda of understanding, to the extent their needs are different from those of public retrievers. Once ATFI begins implementation, such users should contact BTCL at (202) 523–5796.

On the restrictions on remote retrieval, the League's 1991 comments stated:

The League continues to be concerned with several aspects of remote retrieval. Specifically, the limitations of access both as

to a single commodity-type tariff and for a 30-minute time period will significantly limit the ATFI system's usefulness to shippers. The League also expressed appreciation for the Commission's willingness to re-examine the 30-minute time limit once practical experience has been gained. However, the League does not fully understand why a shipper must be limited to searching only one commodity-type tariff, particularly in circumstances where the first tariff searched does not have a tariff line item for the specific commodity sought by the shipper. The requirement that the shipper log-off the system and call again is inconvenient and inefficient. The Commission should explore ways in which there can be multiple tariff access while remaining within the parameters of Congressional policy.

Although the rule uses a 30-minute period as an example, the rule does not and will not contain a particular time for automatic logoff of remote retrievers. The period, whatever it is, may vary too often to be published in the Federal Register and rather, will be published in the ATFI logon bulletin from time to time.

As previously indicated, a retriever may look at only one tariff at a time. This will continue as a system feature. ATFI does not accommodate divided screens, so a person can literally look at only "one tariff at a time." Further, in response to the League's 1991 comments, the system will be modified so as not to inhibit a user from accessing another tariff within the designated time period, whether it be a governing tariff or a different commodity tariff.

The modification to our previous approach continues to comply with the restrictions imposed by Congress in Public Law No. 101–92 (103 Stat. 601), which requires the Commission to impose reasonable controls on the system to limit remote access by any one person. Again, the Commission will continue to closely monitor utilization of ATFI through periodic but detailed electronic reports. If abuses occur, the Commission can take action, including but not limited to reducing the access period before automatic logoff.

Accordingly, the only automatic log offs will be for inactivity for 10 minutes, or a retrieval session after the designated period, such as 30 minutes. Paragraph (c)(2) of § 51.20 is further clarified accordingly.

Paragraph (f) of § 514.20 is amended to distinguish between individuals with "read only" authorization and those with "write" privileges to the tariff being accessed. In order to accommodate filing and editing of electronic tariff data, only individuals with "write" privileges to tariffs have unlimited access to those tariffs, without the necessity of paying a user charge. Individuals who merely wish to access tariff data without making changes are considered to be retrievers subject to the limitations, irrespective of whether they are employed by firms which have certain filing privileges.

Moreover, employees of carriers which have delegated tariff filing authority to conferences, as well as employees of carriers and conferences which have delegated tariff filing authority to third party vendors, must enter the ATFI system as retrievers. Registration of users will be handled accordingly.

Section 514.21—User Charges.

The IANVOCC and NCBFAA are opposed to the imposition of user fees for ATFI. The Commission, however, believes it is required to establish some ATFI user charges under the Independent Offices Appropriation Act and other authorities mentioned in the Supplemental Information to the September 9, 1991, proposed rule (56 FR 46049). Moreover, in their opposition to user fees, at least two commenters were referring to user fees proposed in pending legislation, not those set forth in the proposed rule. In its 1992 comments, the League stated:

> The League would like to reiterate that it supports user fees connected with ATFI services only if they are based strictly upon the cost of service and are aligning cost responsibility with cost causation. The League opposes current efforts by some interests to propose fees for ATFI use which exceed the costs of, and are not to be used to support, the public's use of the ATFI system.

User charges for § 514.21, paragraphs (b), the user manual, (c), registration, and (e), certification of batch filing capability, were finalized, effective December 8, 1991 (56 FR 61164). Paragraphs (c), registration, and (e), certification of batch filing capability, continue in effect to permit registration and further certifications, but are amended for clarification.

IAFC suggest that the user fee schedules (and communications facilities) accommodate differences in locations desiring access, so that there be "adequate access to the ATFI System also for those operating overseas," where the cost for communications will be "far in excess for that of domestic filers." The Commission notes that all persons who remotely access the ATFI system, either for filing or retrieval, will pay their own telephone charges, and there will not be any ATFI system charges that are geared to location. For this reason, among others, the ATFI system will not "know" where the call is coming from. It would appear, however, that overseas users can keep costs at a minimum by hiring a U.S.-based agent.

As indicated in the Supplementary Information to the proposed rule (56 FR 46049–46050), the 50-cents-per-minute connect-time charge for remote retrieval is on the low side of current per-minute charges for access to most other large commercial databases. Nonetheless, because the proposed charge is based on cost estimates, it will be reviewed periodically, as the League's 1991 comments suggest.

AALL also requests that ATFI revenue should be used to maintain the ATFI information dissemination program. User charges collected by the Commission must be deposited into the U.S. Treasury. Moreover, the retrieval charge is based on the marginal cost of dissemination, similar to the FOIA standard, and cannot be used to subsidize or offset filers' costs, (or the costs of the system, itself), as feared by the League in its 1991 comments. This should also address IAFC's concerns about foreign-based retrievers and filers, given the fact that all accessors will be responsible for the costs of their own "telephone calls."

As promised in the Supplementary Information to the final rule of December 2, 1991 (effective December 8, 1991; 56 FR 61164), the Commission has continued to analyze AALL's request that tariff data be furnished free of charge to Federal Depository Libraries. In the May 1992 oral comment session, ALA made similar arguments, i.e., that tariffs were "Government publications," which should be furnished free to Federal Depository Libraries. ALA compared ocean freight tariffs to "tariff schedules, like those of the International Trade Commission." We have seen nothing, however, which would change our earlier analysis:

> The Commission does not believe that ocean freight tariffs of steamship operators which may be filed with the Commission (either in paper or electronic form) are "publications" within the meaning of title 44 of the United States Code. This tariff data is not primarily Government information which vitally affects the general public, but is more akin to a record in the files of the Government which is available through Freedom-of-Information-Act procedures. The data is not created at taxpayer expense, but is carrier data of business interest to only shippers and other carriers. The law and policy considerations which demand more widespread dissemination of government information do not appear to be applicable to ATFI data. See also other Commission reports on ATFI previously appearing in the Federal Register of December 22, 1987 (52 FR 48504), June 13, 1988 (53 FR 22046) and December 28, 1988 (53 FR 52785).

See also the Proposed Revisions to OMB Circular No. A-130 of April 29, 1992 (57 FR 18296).

In order to accommodate the utilization of tapes for the furnishing of databases other than the ATFI database, itself, a new paragraph (k) to § 514.21 is added to provide for reasonable user charges for other data furnished on tape. The basis for the charge is essentially the same as for the ATFI database tapes, i.e., the cost of the tape itself.

The Commission will revisit all user charges after sufficient experience is obtained.

Section 514.91—OMB Control numbers assigned pursuant to the Paperwork Reduction Act

The September 9, 1991, proposed rule, at 56 FR 46054, contained the appropriate notice that the collection of information requirements contained therein had been submitted to OMB for review. On October 30, 1991, no comments from the public had been received and OMB approved Part 514 and Exhibit 1 thereto for use through September 3, 1994. This was noted in the Supplemental Information to the final rule of December 2, 1991 (56 FR 61165), which finalized § 514.91 and published the OMB-assigned control number of 3072-0055. There was no complaint about the information-collection-requirement burdens or the Commission's estimates until the December 30, 1991, comments to the proposed rule.

The commenters, primarily JC, attacked the Commission's September 1991 estimate of "19 hours" per response as too low, but did not attempt to provide estimates of their own. Even now, there is little experience in formatting tariffs for filing with ATFI, and accurate estimates continue to be scarce, either by the industry or the Commission.

At about the same time that the proposed rule was issued in September 1991, Crowley started converting and inputting tariffs into a system similar to that of the ATFI software. As of June 1, 1992, Crowley has been the only filer of substantial tariff data and Crowley's experience, as described in its statement at the oral comment session, appears to be the most reliable guideline to other tariff filers. It advised:

> Crowley publishes independent, or participates as a member of 42 different, tariffs that are presently on file with the FMC. We are converting all of these tariffs and inputting them into the electronic information system for accessibility by all Crowley personnel and for filing, where applicable, with the Federal Maritime Commission.
>
> In addition to the FMC tariffs, Crowley Maritime also is responsible for publishing ICC tariffs. These tariffs as well are being converted and input into the system for electronic dissemination to all Crowley users.
>
> Before automating Crowley's tariffs, our internal distribution exceeded 1,100 hard copies throughout our network, at a cost of over $65,000 in expenses. Those expenses covered mailing, supplies, reproduction and nearly $570,000 for clerical posting and filing under these tariffs and maintaining the tariffs in an updated fashion.
>
> Once all of our tariffs are converted, this expense will be eliminated. We have converted over 16 tariffs, covering trade routes served by Crowley, between U.S. ports and points and locations in Central America, all Caribbean islands served by Crowley, and in the countries located in South America.
>
> The tariffs converted to date total 7,285 pages; 9,513 commodity descriptions; 2,790 rules; and nearly 66,000 tariff line items. Also 418 tables, 202 location groups, and 3,600 algorithms in the tariffs have been converted so far. The tariffs converted to date range in size between 60 pages and 1,400 pages;[10] our experience is that it takes approximately 320 man hours to convert a tariff of 455 pages. Our cost is $2,400 per tariff, at an average cost per page of $5.27.
>
> Conversion of these tariffs is currently being performed by 12 temporary employees under the supervision of three supervisors and one director. The temporary employees are trained by the supervisors to perform harmonization of commodity descriptions, and input rule text and TLI creation -- tariff line item creation.
>
> The construction and input of the algorithms are performed by the supervisors and the director responsible for the project. Having converted and harmonized 9,500 commodity descriptions, we have had little problem in harmonizing to two digits, and often are able to harmonize to four and six digits.
>
> The built-in harmonization utility within the system is generally sufficient to categorize all types of commodities. If commodities do not fit within a single harmonized code number, they can be split into separate commodity descriptions, or listed under Chapter 99 for mixed commodities.
>
> Our experience with the construction of over 3,600 algorithms is that creating these algorithms requires the same thought process that is necessary in interpreting a rule or a charge today. Since the creation of this accessorial is permitted -- is performed by pricing or other tariff management personnel, its application is consistent and does not require interpretation by other tariff users.
>
> The algorithm utilities provided by the system and in ATFI make it simple to select the WHEN and THEN application of the additional charge. It does not take a mathematical wizard or any very trained personnel to master the tables and the selections.
>
> As part of our conversion, we subject the converted tariff data to a rigorous proofing process. This proofing process, in fact, takes longer than the conversion itself. As part of our proofing process, we post audit (using the system) manually-rated bills. This allows us to pick out bugs in the conversion as well as identify in some cases bills that were rated incorrectly in the manual process.
>
> The converted tariffs that Crowley publishes were filed in page-based format compliant with existing regulations. We filed a page-based tariff using the system. The system we're using is able to produce a page from the ATFI system. That tariff is filed with the Federal Maritime Commission, along with the prototype data.
>
> These tariffs are available to both the Commission and authorized, trained ATFI users and provide for comparison by the Commission and trained ATFI users the difference between a page and data. You can actually go into the system and compare the algorithms to the text algorithms that are outlined in the rules. You can compare the harmonized code in the item number of the tariff with the harmonized code in the system. The data in the system is as current as the filing of the paper tariff.
>
> This allows the Commission to train your examiners. It allows the general public access to ATFI data. You don't have steel-toed work shoes, or other strange commodity descriptions, but a live tariff. It allows the Commission to streamline their examination process.
>
> The filing of the tariffs also allows the other carriers, conferences, and general public the ability to get into a live tariff that's being used today to rate, bill and quote rates, and actually examine the harmonized codes that we have employed within our shop and examine the algorithms that we have created and have attached to the TLIs from the rules in the tariff.
>
> Since 1991 or December of 1991, converted tariffs have replaced paper tariffs within our network at Crowley. We presently have over 150 users relying on the automated system to perform rate quotations, bill shipments, perform audits and many other tariff-related functions. These users access the data through a mainframe computer located at our headquarters in San Francisco. This computer receives daily updates from a publishing center in Jacksonville, Florida.
>
> Internally, Crowley has experienced the following improvements since implementing the automated system: Faster, more accurate rate quotations; faster distribution of tariff information and updates; reduced costs of paper distribution; elimination of clerical posting and filing on converted tariffs; less training and knowledge by tariff users.
>
> In the past, when it was required to train a tariff person, it would take at least three, four, several months to train tariff users from a page-based tariff. Today, with the automated system, we train tariff users for retrieval and quotation purposes in two days.
>
> It also creates standard formats. There is no difference between one conference's tariff and another conference's tariff. Trade route

[10] For statistical purposes, including the estimates of burdens under the Paperwork Reduction Act, the Commission continues to use "100 pages" as the size of the average (or perhaps median) tariff.

tariffs will all be the same format and easy to understand.

Crowley Maritime supports the Federal Maritime's decision to eliminate paper tariffs and automate the filing and retrieval of this information.

The Commission can now say that its original, rough estimate was too low. Based upon Crowley's experience (320 man hours to convert a tariff of 455 pages) under the requirements of the September 9, 1991, proposed rule, the burden estimate for the average tariff of 100 pages would have been 71 hours. The requirements of the proposed rule, however, have been further modified, resulting in a different estimate for producing the average tariff, as further described below.

OMB CONTROL NUMBER: The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0055. The first-year public reporting and conversion burden for this collection of information is estimated to average 75 hours per response (tariff), including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed and completing and reviewing the collection of information. After the first year (during the second year), the burden of maintaining each (converted) tariff is estimated to average 70 hours. However, these estimates may ultimately prove to be high, given the expected substantial reductions in burden resulting from the elimination of the harmonized-code requirement, anticipated modification in the procedures for the electronic filing of the essential terms of service contracts, and other changes made in the Rule in response to industry's comments. For the third and subsequent years, the burden should be significantly less as a result of further experience with electronic filing. A supplemental SF-83 (worksheet) statement is being forwarded to OMB to reflect the adjustments from the proposed rule. Comments regarding the revised burden estimates or any other aspect of this collection of information, including suggestions for further reducing the burdens, may be sent to: Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, D.C. 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, D.C. 20503.

Exhibit 1 to Part 514—ATFI User Registration Form

The User Registration Form, FMC 61, finalized in December 1991, is now further revised and instructions are added to accommodate the many types of authority requested, e.g., filing or retrieval, corporate or individual, new or amended.

Cross References in Existing Parts 515, 550, 580 and 581

As previously indicated, once part 514 is enacted in full, it is the Commission's intention to cancel those parts of Title 46 CFR which govern the filing of paper tariff pages because they will be unnecessary. Until then, however, electronic tariffs will be phased into the ATFI system by trade route, and certain filers still will be required to file tariffs in paper form. Accordingly, cross-references to part 514 are added to parts 515, 550, 580 and 581 to indicate that the new part governs ATFI filings and to call BTCL about the phase-in schedule, if there are any questions.

Although the Commission is not subject to the requirements of Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or of the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small government jurisdictions. ATFI will not have a significant economic impact on a substantial number of small businesses because such firms that have traditionally used third party vendors or directly contacted carriers for rate information will most likely continue to use the same sources. Any residual ATFI usage on the part of small entities will be limited and will not involve a substantial number of small entities.

List of Subjects

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and record keeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 515

Barges; Cargo; Cargo vessels; Exports; Freight; Harbors; Imports; Maritime carriers; Motor carriers; Ports; Rates and fares; Reporting and record keeping requirements; Trucks; Water carriers; Waterfront facilities; Water transportation.

46 CFR Part 550

Barges; Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers; Rates; Reporting and record keeping requirements; Water carriers; Water transportation.

46 CFR Part 580

Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers; Rates; Reporting and record keeping requirements; Surety bonds; Water carriers; Water transportation.

46 CFR Part 581

Cargo; Cargo vessels; Exports; Freight; Imports; Maritime Carriers; Rates; Reporting and record keeping requirements; Surety bonds; Water carriers; Water transportation.

For the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and § 2(b) of Public Law 101–92, the Federal Maritime Commission amends title 46, chapter IV, Code of Federal Regulations, as follows:

1. Part 514 is revised to read as follows:

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

Sec.

514.1 Scope, purpose, requirements and penalties.
514.2 Definitions.
514.3 Exemptions and exclusions.
514.4 Content, filing and cancellation of tariff material; general.
514.5 [Reserved]

Sec.

514.6 [Reserved]

Subpart B—Service Contracts

514.7 Service contracts in foreign commerce.

Subpart C—Form, Content and Use of Tariff Data

514.8 Electronic filing.
514.9 Filing/Amendment codes and required notice periods.
514.10 Other items used throughout ATFI.
514.11 Organization and tariff records; tariff scope.
514.12 Governing and general reference tariffs.
514.13 Commodities and tariff line items ("TLIs").
514.14 [Reserved]
514.15 Tariff Rules.
514.16 [Reserved]
514.17 Essential terms of service contracts in foreign commerce.
514.18 Special permission.
514.19 Suspension of tariff matter.
514.20 Retrieval.
514.21 User charges.
514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Exhibit 1 to Part 514—ATFI User Registration Form

Authority: 5 U.S.C 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and sec. 2(b) of Pub.L. 101–92, 103 Stat. 601.

Subpart A—General Provisions

§ 514.1 Scope, purpose, requirements and penalties.

(a) *Scope.* The regulations of this part govern:

(1) The publication and filing of tariffs, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984 (46 U.S.C. app. 1702, et seq.).

(2) The publication, filing, and posting of tariffs for the transportation of property or passengers performed by common carriers by water in interstate commerce which are subject to the Shipping Act, 1916, as amended (46 U.S.C. app. 801, et seq.), including through transportation offered in conjunction with one or more common carriers not subject to said Shipping Act.

(3) The filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

(4) The filing of tariffs by terminal barge operators in Pacific Slope States in the foreign and domestic commerce of the United States. See § 514.3(a)(7).

(5) The formatting of tariff materials for electronic filing, processing and retrieval.

(b) *Purpose.* The tariff format and content requirements of this part reflect the Commission's responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Shipping Act of 1984. The purposes of this part are also to enable the Commission to:

(1) Discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices.

(2) Determine, through the use of information obtained under this part, the propriety of the level of rates, fares, charges, and practices demanded, charged, collected or observed by carriers in the domestic offshore commerce of the United States under the Shipping Act, 1916, as amended by the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, et seq.).

(3) Facilitate, by electronic means, the filing, processing and retrieval of tariff materials to better promote the waterborne commerce of the United States.

(c) *Basic requirements.* Unless exempted or excluded under § 514.3, and as augmented by § 514.8(k)(1), the following are the basic requirements under this part:

(1) *Foreign commerce of the United States.* (i) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, charges, classifications, Tariff Rules and practices for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984.

(ii) Service contracts and their essential terms are also required to be filed by the 1984 Act and shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States.

(iii) *Anti-rebate certification.* (A) An anti-rebating certification shall be filed in paper format, as prescribed by part 582 of this chapter, by every common carrier in foreign commerce as a prerequisite to obtaining password authority to file its initial tariff under this part, and on each succeeding December 31. Except for the initial certification, the certification filed on each succeeding December 31 shall be valid for the calendar year following the December 31 filing date.

(B) Failure of a common carrier to file an anti-rebate certification before filing initial tariffs, as required by this part and part 582 of this chapter, shall result in withholding or suspension of any filing authorization and rejection of that carrier's proposed tariff(s).

(C) Any common carrier who fails to file an annual anti-rebate certification as required by part 582 of this chapter will be notified by **Federal Register** publication and by certified mail that if, within forty-five (45) days from the date the certified notice is mailed, the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter, or file the required anti-rebate certification, its tariff(s) will be canceled and attempted filings rejected.

(D) In the event common carrier rates are published in one or more conference tariffs, the name of every common carrier who did not file an anti-rebate certification will be stricken from the list of carriers participating in those conference tariffs.

(E) The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 505 and 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commission will be notified by **Federal Register** publication and certified mail, return receipt requested, that its tariff(s) have been canceled and/or its name has been stricken from conference tariff(s).

(2) *Domestic offshore commerce of the United States under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933.* (i) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with

other carriers. Such tariffs shall plainly show the places between which freight or passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any Tariff Rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

(ii) Only tariffs of persons engaged in common carriage by water may be filed. Common carriers subject to the Shipping Act, 1916, are those vessel operating and non-vessel-operating carriers providing transportation by water between:

(A) Any of the 48 contiguous states or the District of Columbia and Alaska or Hawaii;

(B) Any state or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(C) Alaska and Hawaii;

(D) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession, or district; and

(E) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia), and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(3) *Both foreign and domestic offshore commerce*—(i) *Terminal operators.* (A) Every person carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities as described in paragraph (a)(3) of this section, including, but not limited to terminals owned or operated by States and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities, shall file, and shall keep open for inspection at all their places of business, a schedule or tariff showing all their rates, charges, Tariff Rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at their terminal facilities,

(B) Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be kept open for public inspection as provided in paragraph (c)(3)(i)(A) of this section.

(C) Persons who file tariffs pursuant to requirements of Commission Orders or agreements, approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, are not relieved of such requirements by this part.

(ii) [Reserved]

(4) *Electronic filing.* All tariffs filed under this part shall be properly formatted as provided in this part and in the ATFI "Batch Filing Guide," under § 514.8(c)(3).

(d) *Rejection of tariff data.* (1) Acceptance of tariff matter does not establish the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the tariff owner or publisher from the obligations of the 1916, 1933 or 1984 Acts or this chapter, regardless of whether these obligations preceded or followed the filing of the tariff in question.

(2) Any tariff matter submitted for filing, including service contracts and their essential terms, which fails in any respect to conform with the applicable shipping statutes, with the provisions of this part, or with a Commission Order, is subject to rejection or partial rejection after filing. Cause for rejection includes failure of the filing domestic offshore carrier to comply with the provisions of Rule 67 of the Commission's Rules of Practice and Procedure (46 CFR 502.67) and/or part 552 of this chapter.

(3) Notices of rejection, with reasons therefor, will be made available to filers through electronic mail and, if not accessed by the filer within a certain period of time, will be sent by regular U.S. mail. For service contracts and/or essential terms, the Commission may also notify the filing party of the Commission's intent to reject within 20 days of filing. See § 514.7(g). (Note: There will be no notice of rejection for attempted filings which are not accepted into the system because they are not syntactically correct for processing.)

(4) Upon rejection, rejected tariff matter is void and its use is unlawful.

(5) After rejection, the filer is responsible for putting its tariff in order. See § 514.9(b)(19)(iv).

(6) The "Status" function on many ATFI screens displays a pop-up window that shows the status of a filed tariff item, including a code that identifies whether it was accepted or rejected, a description of the code, and comments entered by an FMC Examiner regarding a rejected item.

(e) *Penalties; suspension of tariff material.* (1) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful.

(2) Foreign commerce. Pursuant to section 13 of the Shipping Act of 1984, operating without an effective tariff on file or charging rates not in conformance with such a tariff is subject to a civil penalty of not more than $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months. See § 514.19.

(3) Domestic offshore commerce. (i) The Commission may at any time direct the cancellation of tariff matter which does not conform to the 1916 Act or this part. See § 514.19.

(ii) Violations of the provisions of this part are subject to a civil penalty of not more than $1,000 for each day such violation continues.

§ 514.2 Definitions.

The following definitions (in alphabetical order) shall apply to the regulations of this part and to all tariffs and service contracts filed pursuant to them, unless otherwise indicated by the context of this part.

Alternate port service means substituted service whereby the vessel-operating carrier for whom the tariff object is filed uses someone else to perform the transportation between the port of ultimate origin or destination and another port at which the vessel operating carrier actually calls for pickup or delivery. See also "substituted service" and § 514.15(b)(1).

Amendment means any change, alteration, correction or modification of an existing tariff.

Assessorial (accessorial) means a particular service or condition, other than the basic transportation, which is usually described in a commodity description, TLI, or Tariff Rule, and for which a charge may be added to the basic ocean freight rate. See § 514.10(d).

Assessorial charge means the amount determined for an assessorial service or condition that is added to the basic ocean freight rate. See § 514.10(d).

Assessorial charge calculation means an algorithmic representation of the conditions and mathematical steps necessary to calculate an assessorial charge.

Associative check means an automated comparative check of data filed with ATFI to check for logical conformity with Commission tariff filing rules and previously filed tariff matter. See § 514.8(n)(1)(iii).

ATFI means the Commission's Automated Tariff Filing and Information System, a computer-based system for creating, filing, processing and retrieving ocean freight and terminal tariffs and the essential terms of service contracts.

Availability (period of) means the process of offering essential terms of a service contract to all similarly situated shippers who can accept them for the purpose of entering their own service contract (for a period of 30 days or more). See § 514.17(d)(3).

Batch filing means the process by which a tariff filer can transmit to the Commission tariff matter which has been created on the filer's own computer. (Also see "on-line batch filing," "in-bulk batch filing" and "tape batch filing"). See § 514.8 (c), (d)(3), and (l).

Batch Filing Guide means an ATFI user document, available upon request from the Commission, which defines the procedures and technical requirements for batch filing. See § 514.8(d)(3).

BTCL means the Commission's Bureau of Tariffs, Certification and Licensing.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the tariff filing requirements of this part.

Checking means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same. See "terminal services." See § 514.15(b)(23).

Chemical parcel tanker. See "common carrier."

Co-loading (foreign commerce) means the combining of cargo, in the import or export commerce of the United States, by two or more NVOCCs for tendering to an ocean carrier under the name of one or more of the NVOCCs. See § 514.15(b)(14).

Combination rate means a freight rate for a particular shipment, which is computed by the addition of a TLI for a movement to or from a port, combined with freight charge(s) to or from other point(s) on the same route. See also: "through rate." See § 514.15(b)(1).

Commission means the Federal Maritime Commission.

Commodity description means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity, any applicable assessorial charges, and the commodity index entries by which the commodity is referenced. See § 514.13(a).

Commodity description number means a 10-digit number used to identify a commodity description. See § 514.13(a).

Commodity index means an index of the commodity descriptions contained in a tariff. See § 514.13(a).

Commodity rates means rates for shipping to or from specific locations a commodity or commodities specifically named or described in the tariff in which the rate or rates are published. See § 514.13(a).

Common carrier or carrier (foreign commerce) means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker.

As used in this paragraph, "chemical parcel-tanker" means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

Conference means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff. The term shall also include any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts, but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement. For the term "marine terminal conference (agreement)," see § 514.3(a)(8) and §§ 580.307(b) and 572.307(b) of this chapter.

Conformity checks means all types of system checks to determine compliance with the criteria of syntax checks (data form and format), validity checks (reference tables' entries), and associative checks.

Consignee means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

Container means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

Contract party means any party signing a service contract as a common carrier, conference, shipper or shippers' association. See §§ 514.7 and 514.17.

Controlled common carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier. See §§ 514.3(a)(2); 514.3(b); 514.4(c); 514.9(b); and 514.13(b)(7).

Data Element Dictionary (DED) means a list of the data fields and the values, terms, and expressions allowable for each field. The ATFI-specific Data Element Dictionary is a section in the ATFI "Batch Filing Guide." See § 514.8(d)(3).

Destination scope means a location group in a tariff detailing the allowable destinations for TLIs defined in that tariff. See §§ 514.11(b)(10) and 514.13(b).

Dockage means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for

mooring to a vessel so berthed. See also "terminal services."

Domestic offshore carrier means a carrier engaged in the transportation by water of cargo and/or passengers on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District or possession. See § 514.1(c)(2)(ii).

Domestic offshore commerce means commerce that may be engaged in by domestic offshore carriers. See § 514.1(c)(2)(ii).

Domestic offshore tariff means a tariff of port to port rates for transporting in domestic offshore commerce.

Dummy algorithm. See "null linkage."

Edit checks. See "conformity checks."

Effective date means the date (12:01 a.m.) upon which a filed tariff or tariff element is scheduled to go into effect by the filer. See §§ 514.9(a) and 514.10(a)(3).

Equipment interchange agreement means a sample agreement which includes the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment following interchange, including cargo containers, trailers and chassis. It also includes the standard free time allowed, and detention or similar charges assessed. See §§ 514.3(a)(1) and 514.15(b)(21).

Equipment interchange Tariff Rule or *Equipment interchange tariff* means either a Tariff Rule or general reference tariff which contains the terms and conditions, including standard free time and charges, governing the use of carrier equipment following interchange, and may incorporate an equipment interchange agreement and the filer's exceptions thereto. See §§ 514.12(c)(3) and 514.15(b)(21).

Essential terms. See "statement of essential terms."

Essential terms publication means the single publication which is maintained by each carrier or conference for service contract(s) and which contains statements of essential terms for every such contract. See § 514.17(b).

Expiration date means the last day, after which the entire tariff or tariff element (e.g., TLI) is no longer in effect. See "thru date" and § 514.10(a).

File or filing (of service contracts) means actual receipt at the Commission's Washington, DC offices. See § 514.7.

File or filing (of tariff matter) means the electronic entering of tariff matter into the ATFI computer after receipt by electronic means or physical delivery of magnetic tape(s). See § 514.8(c).

Filing date (established by the ATFI system) means the date any tariff matter is electronically transmitted to and entered into the system as a successful transmission, or physically delivered to a designated location(s) and date-time stamped. See §§ 514.8(c) and 514.10(a)(2).

FMC examiner means an employee of the Commission who reviews tariffs to ensure that they conform to the shipping statutes and the regulations set by the Commission.

Foreign commerce means that commerce under the jurisdiction of the 1984 Act.

Forest products means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls and paper in rolls. See §§ 514.3(b)(1) and 514.7(c).

Free time means the specified period during which cargo may occupy space assigned to it on terminal property free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel. See "terminal services" and § 514.15(b)(23). "Free time" is also accorded to cargo at destination rail terminals and destination motor terminals located at inland points, as well as at container freight stations and other off-dock delivery points removed from the terminal. Additionally, "free time" is a term commonly used in connection with use of carrier equipment at both origin and destination under, for example, equipment interchange tariffs.

Freight forwarder. See "ocean freight forwarder."

General decrease (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in a decrease in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in a decrease in gross revenues of said carrier for the particular trade of not less than 3 percent. See § 514.9(b)(7).

General increase (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in an increase in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in an increase in gross revenues of said carrier for the particular trade of not less than 3 percent. See § 514.9(b)(7).

Geographic area means the general location from which and/or to which cargo subject to a service contract will move in through service. See § 514.17.

Handling means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle. See "terminal services" and § 514.15(b)(23).

Harmonized Code means the coding provisions of the Harmonized System. See § 514.13(a).

Harmonized System means the "International Convention on the Harmonized Commodity Description and Coding System," which may be obtained from the Customs Cooperation Council ("CCC") in Brussels, Belgium, or any of its authorized distributors. See § 514.13(a).

Heavy lift means the service of providing heavy lift cranes and equipment for lifting cargo. See "terminal services" and § 514.15 (b)(4) and (b)(23).

In-bulk batch filing means batch filing by tariff publishers using the ATFI transaction sets to create files on magnetic tape for physical delivery to the Commission's ATFI Computer Center. Also referred to as tape batch filing. See § 514.8(c)(3).

Inland point means any city and associated state/province, country, U.S. ZIP code, or U.S. ZIP code range, which lies beyond port terminal areas. (A city may share the name of a port: the immediate ship-side and terminal area is the port, but the rest of the city is considered an inland point.) See § 514.15(b)(1).

Inland rate means a rate specified from/to an ocean port to/from an inland point, for specified modes of overland transportation. See § 514.15(b)(1).

Inland rate table means a structured matrix of geographic inland locations (points, U.S. ZIP code ranges, etc.) on one axis and transportation modes (truck, rail, etc.) on the other axis, with the inland rates specified at the matrix row and column intersections. See § 514.15(b)(1).

Interactive filing means the process by which a tariff filer accesses the ATFI system via dial-up, using telecommunications links, a modem and terminal, and interacts with the system on a transaction by transaction basis to

retrieve its own tariff information, create tariff filings, and verify previous filings. See § 514.8(c)(1).

Interactive retrieval means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal, and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter of carriers, conferences and terminal operators which has been filed in the ATFI database. See § 514.20.

Intermodal transportation means continuous transportation involving more than one mode of service, (e.g., ship, rail, motor, air), for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term "intermodal transportation" can apply to "through transportation (at through rates)" or transportation on through routes using combination rates. See § 514.15(b)(1).

Joint rates means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers. See § 514.15(b)(1).

Loading and *unloading* means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility. See "terminal services" and § 514.15(b)(23).

Local rates means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement. See § 514.15(b)(1).

Location group means a logical collection of geographic points, ports, states/provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that may represent tariff origin and/or destination scope and TLI origin and/or destination. See §§ 514.10(b) and 514.11(b)(10).

Log in or *log on* means entering the ATFI system to perform functions such as filing or retrieving, and requires certain formalities, such as password, ID, etc. See § 514.8(f).

Log off or *log out* means exiting the ATFI system after the user is finished with functions such as filing or retrieving. Automatic log off or logout can occur after certain periods of time. See § 514.20(c)(2).

Loyalty contract (foreign commerce) means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference. See § 514.15(b)(27).

Marine terminal services agreement means an agreement as defined in § 560.308(a) or § 572.310(a). See § 514.3(a)(8).

1984 Act means the Shipping Act of 1984.

1916 Act means the Shipping Act, 1916, as amended (including the Intercoastal Shipping Act, 1933, and the Transportation Act of 1940).

Non-vessel-operating common carrier (or NVOCC) (foreign commerce) means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

Null linkage or dummy algorithm means a functionality to label and link assessorial charges in full-text format to ATFI objects, such as TLIs and commodities. See § 514.10(d).

Ocean common carrier (foreign commerce) means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

Ocean freight forwarder (foreign commerce) means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

On-line batch filing means the process by which a filer transmits tariff information, properly formatted in accordance with published ATFI transaction set formats, to the ATFI system as a "batch" of transactions via dial-up telecommunications links from its own computer. See § 514.8(c)(2).

Open for public inspection means the maintenance, in electronic or paper form, of a complete and current set of the tariffs used by a common carrier, conference or terminal operator, or to which it is a party, in its office(s). See § 514.8(k).

Open rate (foreign commerce) means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rate on such commodity or commodities. See §§ 514.13(b)(19) and 514.15(b)(15).

Organization name means an entity's name on file with the Commission and for which the Commission assigns an organization number. See § 514.11(a).

Organization record means information regarding an entity, including its name, address, organization number, carrier type, and the filing and effective dates of the organization record. See § 514.11(a).

Origin scope means a location group defining the geographic range of cargo origins covered by a tariff. See §§ 514.11(b)(10) and 514.13(b).

Owner (of tariff material) means the carrier, conference or terminal establishing the rates and charges in tariff material and on whose behalf the tariff material is filed. See "publisher (tariff)."

Page-based tariff means the traditional type of tariff in which rates are listed on the pages of a paper document. See § 514.8(k)(2).

Person includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

Point of rest means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading. See § 514.15(b)(23).

Port means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement. See §§ 514.15(b)(1), (b)(13) and (b)(23).

Port range means those ports in the country of loading or unloading of service contract cargo that are regularly served by the contracting carrier or conference, as specified in its tariff of general applicability, even if the contract itself contemplates use of but a single port within that range. See §§ 514.7 and 514.17.

Port terminal facilities means one or more structures comprising a terminal unit, which include, but are not limited to wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers. See § 514.15(b)(23).

Post, posted, posting (of tariff matter—domestic offshore commerce) means the maintenance of a complete, up-to-date tariff, in electronic or paper form, at the office(s) of each carrier party to the tariff under conditions assuring its availability for inspection by members of the public. See § 514.8(k).

Practices. See "tariff."

Project rates means rates applicable to the transportation of materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also including disaster relief projects. See § 514.13(a)(5).

Proportional rates means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement. See § 514.15(b)(1).

Publisher (tariff) means an organization authorized to file or amend tariff information.

Rate means a price quoted in a tariff for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated effective date or within a defined time frame. See § 514.13(b)(19).

Retrieval. See "interactive retrieval."

Round trip excursion voyage means a single voyage in domestic offshore commerce which originates and terminates at the same port, does not permanently disembark passengers at any intermediate port, and does not call at any port outside of the United States, its territories, commonwealths, districts or possessions. See § 514.3(a)(5).

Rules (in a tariff, i.e., Tariff Rules) means the stated terms and conditions set by the tariff owner which govern the application of tariff rates, charges and other matters. See § 514.15.

Scope means the location group(s) (geographic grouping(s)) listing the ports or ranges of ports to and from which the tariff's rates apply. See § 514.11(b)(10).

Service contract means a contract between a shipper or shippers' association and an ocean common carrier or conference, in which the shipper makes a commitment to provide a certain minimum quantity of its cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level -- such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party. See § 514.7.

Service contract records means such documents and information as will enable the Commission to verify compliance with the terms of a service contract and shall include freighted ocean bills of lading or equivalent shipping documents which establish that the terms of the contract are being or have been met. See § 514.7(m).

Shipment means all of the cargo carried under the terms of a single bill of lading.

Shipper means an owner or person for whose account the ocean transportation of cargo is provided and includes the person to whom delivery is to be made (consignee).

Shippers'association (foreign commerce) means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

Special case number means a code number assigned by the Commission to a specific filer for a limited, designated purpose, such as for a particular rate (TLI) increase to go into effect on less than statutory notice by special permission or for other ATFI associative checks to be bypassed. See § 514.9(b)(19).

Special permission means permission, authorized by the Commission, for certain tariff filings that do not conform with applicable regulations, usually involving effectiveness on less than the normal statutory notice.

Specimen bill of lading means a sample bill of lading contained in a tariff for example purposes, which, in ATFI, is achieved by electronically entering the terms contained on the carrier's bill of lading in the appropriate Tariff Rule. See § 514.15(b)(8).

Statement of essential terms means the concise summary of all essential terms of a service contract required to be filed with the Commission and made available to the general public in tariff format by the carrier or conference in its Essential Terms Publication. See § 514.17.

Submit or submission (foreign commerce—service contracts) means "file" or "filing" under this section. See § 514.7.

Substituted service means the use of transportation performed by someone other than the carrier for whom the tariff object is filed. See "alternate port service," "transshipment," and §§ 514.15(b)(1) and (b)(13).

Syntax check means an automatic system review of items in filings to check conformity with data element type and size, and other format requirements outlined in the "Batch Filing Guide." See § 514.8(n)(1)(i).

Tape batch filing. See "in-bulk batch filing."

Tariff means a publication containing the actual rates, charges, classifications, Tariff Rules, regulations and practices of a common carrier, conference of common carriers, or marine terminal operator. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier or marine terminal operator, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

Tariff amendments. See "amendment."

Tariff filing means any tariff or modification thereto which is received by the Commission as properly filed pursuant to these rules. See "file, filing" and § 514.8(c).

Tariff line item (TLI) (with a 14-digit number) means a single freight rate, in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which may move from origin to destination under a single specified set of transportation conditions, such as container size or temperature. See § 514.13(b).

Tariff matter, tariff material, tariff publication means a tariff and the essential terms of service contracts, or any portion and amendment thereof, tendered for filing with the Commission pursuant to this part.

Tariff of general applicability (foreign commerce—service contracts) means the effective tariff, on file at the Commission under this part, that would apply to the transportation in the absence of a service contract. See §§ 514.7(h)(1)(iv) and 514.12(a).

Tariff record means a collection of tariff identification data that include the name and type of the tariff, the tariff number, publishing office, units of weight and measure, and the date the tariff was filed, the date it became effective, and the date it expires. See § 514.11(a).

Tariff Rule. See "rules (in a tariff)" and § 514.15.

Terminal services includes checking; dockage; free time; handling; heavy lift; loading and unloading; terminal storage; usage; wharfage; and, wharf demurrage, as defined in this section. The definition of terminal services set forth in this section shall be set forth in tariffs filed pursuant to this part except that other

definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in terminal tariffs. See § 514.15(b)(23).

Terminal storage means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage, after storage arrangements have been made. See "terminal services" and § 514.15(b)(23).

Termination date means the expiration date of a service contract or the date the service contract is terminated for reasons not specifically set forth in the contract. See § 514.17(d).

Through rate (domestic offshore commerce) means a total charge for transportation from origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates. See § 514.15(b)(1).

Through rate (foreign commerce) means the single amount charged by a common carrier in connection with through transportation. See § 514.15(b)(1).

Through route (domestic offshore commerce) means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by:

(1) A single domestic offshore carrier offering service between port terminal areas;

(2) Two or more domestic offshore carriers; or

(3) One or more domestic offshore carriers in connection with one or more other carriers. See § 514.15(b)(1).

Through transportation (domestic offshore commerce) means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate or combination rate is assessed and which is offered or performed by one or more carriers, at least one of which is a domestic offshore carrier. Through transportation involving joint rates with services subject to ICC jurisdiction is not subject to the jurisdiction of the FMC. See § 514.3(a)(3)(ii).

Through transportation (foreign commerce) means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port. See § 514.15(b)(1).

Thru date means the date (11:59 p.m.) after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. See "expiration date" and § 514.10(a)(5).

Time/volume rate (foreign commerce) means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time. See §§ 514.13(b)(19) and 514.15(b)(26).

TLI. See "tariff line item."

Trade name(s) means a name or names that a tariff filer uses for conducting business, but which is not necessarily its legal name. This is also known as a "d/b/a" (doing business as) name. See § 514.11.

Traditional tariff means a page-based tariff in which all of the tariff components are contained on the pages of a paper document. See § 514.8(k)(2).

Transaction set means a pre-defined, ATFI-compatible data format used for electronic batch filing (electronic data interchange or EDI) of tariff information. When using third-party software for batch filing, all data must be formatted into the appropriate transaction sets before it can be batch filed to the Commission through the ATFI system. The transaction set formats are available to the public in the ATFI "Batch Filing Guide." See § 514.8(d)(3).

Transshipment means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is a vessel-operating carrier subject to the FMC's jurisdiction. See § 514.15(b)(13).

Usage means the use of terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified. See "terminal services" and § 514.15(b)(23).

Validity check means a system review of certain items in filings to check conformity with reference tables outlined in the transaction sets and standard glossaries employed in ATFI, e.g., origin and destination locations must be correctly spelled and be members of the ATFI locations glossary. See § 514.8(n)(1)(ii).

Via port(s) means the port or port group at which a vessel calls for through transportation of cargo from another origin and/or to another destination.

Wharf demurrage means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage. See "terminal services."

Wharfage means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of wharf and does not include charges for any other service. See "terminal services" and § 514.15(b)(23).

§ 514.3 Exemptions and exclusions.

Applications for exemptions are governed by § 502.69 of this chapter. The following exemptions are granted from certain described requirements of this part:

(a) *Certain services involved in the following:*

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers, are exempt from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part. See §§ 514.12(b)(3) and 514.15(b)(21).

(2) *Controlled common carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled common carriers (See § 514.4(c)) when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

(ii) The controlling state subscribed, as of November 17, 1978, to the shipping policy statement contained in note 1, Annex "A" of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established

pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph (see § 514.9(b)(24)(i)(A));

(iv) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States, including its districts, territories and possessions (see § 514.9(b)(24)(i)(B)); or

(v) The controlled common carrier operates in a trade served exclusively by controlled common carriers (see § 514.9(b)(24)(i)(C)).

(3) *Interstate Commerce Commission ("ICC").* Transportation in domestic offshore commerce which is subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Ch. 105 is not subject to the tariff filing requirements of the 1916 Act and the rules of this part.

(4) *Marine terminal operations of DOD.* When the Department of Defense (including the military department and all agencies of the Department of Defense) carries on the business of furnishing wharfage, dock, warehouse, or other terminal facilities, as defined in § 514.2, it shall be exempt from the terminal tariff filing and publication requirements of this part.

(5) *Round trip passenger excursion voyages in domestic offshore commerce.* Round trip passenger excursion voyages in domestic offshore commerce are exempt from the tariff filing requirements of the 1916 Act and the rules of this part.

(6) *Certain small vessels in domestic offshore commerce.* Transportation in domestic offshore commerce by vessels with a cargo carrying capacity of 100 tons or less, or with an indicated horsepower of 100 or less, is exempt from the tariff filing requirements of the 1916 Act and the rules of this part, but only if such vessels:

(i) Are not employed by or under the common control or management of a domestic offshore carrier which operates vessels in excess of these limits;

(ii) Are not operated as part of a through route with another domestic offshore carrier; and

(iii) Are not performing lighterage services in connection with or on behalf of another domestic offshore carrier.

(7) *Terminal barge operators in Pacific Slope States.* Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States are exempt from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part, where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

(8) *Certain terminal services.* (i) The filing requirements of this part do not apply to rates and charges for storage of cargo and services incidental thereto by public warehousemen pursuant to storage agreements covered by issued warehouse receipts.

(ii) Rates, charges, rules and regulations governing terminal services provided to and paid for by common carriers by water pursuant to a marine terminal services agreement as defined in § 560.308(a) or § 572.310(a) of this chapter, need not be separately filed in tariffs for the purposes of this part, on condition that such rates, charges, rules and regulations are not determined through a marine terminal conference agreement, as defined in §§ 560.307(b) and 572.307(b) of this chapter.

(iii) Rates, charges, rules and/or regulations which but for paragraph (a)(8)(ii) of this section would be subject to the tariff-filing requirements of this part may not unilaterally impose exculpatory provisions of a nature prohibited by § 514.4(b)(3)(ii).

(9) *Terminal tariffs; electronic format requirements.* Marine terminal tariffs are exempt from the commodity-description and TLI-object requirements of this part, but only to the extent necessary to accommodate electronic filing of such tariffs in full-text format in Tariff Rule 34 (§ 514.15(b)(34).

(b) *Certain cargo types*—(1) *Bulk, forest products, etc.* (i) Except as provided in paragraphs (b)(1)(ii) and (iii) of this section, this part does not apply to bulk cargo, forest products, recycled metal scrap, waste paper and paper waste in foreign tariffs, terminal tariffs or service contracts.

(ii) Marine terminal operators, carriers or conferences which voluntarily file tariff or service contract provisions covering otherwise exempt transportation thereby subject themselves to all statutory provisions and the requirements of this part, including the requirement to adhere to the filed tariff provisions or service contracts.

(iii) An exempt commodity listed in paragraph (b)(1) of this section may be included in a service contract filed with the Commission only if:

(A) There is a tariff of general applicability for the transportation which contains a specific commodity rate for the exempted commodity; or

(B) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries is exempt from the filing requirements of the 1984 Act and the rules of this part.

(3) *Used military household goods—NVOCCs.* Transportation of used military household goods and personal effects by non-vessel-operating common carriers is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

(4) *Department of Defense cargo in foreign commerce - certain requirements.* Transportation in foreign commerce of U.S. Department of Defense cargo by American-flag common carriers, under terms and conditions negotiated and approved by the Military Sealift Command ("MSC"), is subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the 1984 Act, if all the following conditions are met:

(i) All common carrier quotations or tenders, including amendments thereto, are filed with the Commission as soon as possible after they are accepted and approved by MSC, but no later than on the effective date;

(ii) MSC tenders are filed in the carrier's foreign commodity tariff(s) covering the trade route(s) applicable to the tender(s);

(iii) MSC tenders are filed for distinct commodities or as separate TLI's within a commodity, as applicable, using the filing/amendment code "M" under § 514.9(b)(13);

(iv) The use of the filing/amendment code "M" is understood by the filer to mean that the tariff material filed is submitted in accordance with the requirements of the Shipping Act of 1984 and this part; and

(v) The terms and conditions governing the military rates, as set forth in the applicable MSC rate agreement(s), are included in Tariff Rule 32, § 514.15(b)(32), and assessorials are properly formatted and linked to the commodity description and/or TLI.

(c) *Certain locations in foreign commerce*—(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of the 1984 Act and the rules of this part:

(i) *Prince Rupert and Alaska*—(A) *Vehicles.* Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(*1*) Carriage of property is limited to vehicles;

(*2*) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(*3*) The vessel operator does not move the vehicles on or off the ship; and

(*4*) The common carrier does not participate in any joint rates establishing through routes or in any other type of agreement with any other common carrier.

(B) *Passengers.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, only if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(ii) *British Columbia and Puget Sound Ports; rail cars*—(A) *Through rates.* Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, only if the cargo does not originate in or is not destined to foreign countries other than Canada, but only if:

(*1*) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(*2*) Certified copies of the rate divisions and of all agreements, arrangements or concurrences, entered into in connection with the transportation of such cargo, are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(B) *Bulk; port-to-port.* Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, only if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers, except that:

(*1*) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada; and

(*2*) The carrier will remain subject to all other provisions of the Shipping Act of 1984.

(iii) *Incan Superior, Ltd.* Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario, and Superior, Wisconsin, only if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(d) *Domestic offshore commerce*—(1) *Notice requirements; general.* Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish on one day's notice any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843. See § 514.2.

(2) *Alaska*—(i) *Bethel—Kuskokwim Bay.* Transportation between Bethel, Alaska and points in the Kuskokwim Bay region in the range from Platinum to Mekoryuk is exempt from the filing requirements of the 1916 Act and the rules of this part.

(ii) *Seattle—S.E. Alaska on State-of-Alaska operated vessels.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington, and ports in Southeastern Alaska, is exempt from the filing requirements of the 1916 Act and the rules of this part, only if said personal vehicles and personal effects are not transported for the purpose of sale, lease, or other commercial activities.

(3) [Reserved]

(4) *Puerto Rico.*-(i) *Bulk liquid cargo.* Transportation between the continental United States and Puerto Rico of bulk liquid cargoes in quantities of not less than 200,000 gallons per shipment (i.e., a single shipper to a single consignee) is exempt from the filing requirements of the 1916 Act and the rules of this part, only if such shipments are carried in tank vessels designed exclusively for bulk liquid cargoes and which are certified under regulations approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3306.

(ii) [Reserved]

(5) [Reserved]

(e) *Electronic filing.* A temporary exemption from the electronic filing requirements of this part may be obtained by application under § 514.8(a), but, during the period of such exemption and unless otherwise exempted by this part, tariff material is required to be filed in paper format under parts 515, 550, 580 and/or 581 of this chapter.

§ 514.4 Content, filing and cancellation of tariff material; general.

(a) *Effectiveness of new or initial carrier and conference tariffs in the domestic offshore and foreign trades.* Unless otherwise provided by the Commission or this part, all conference and carrier tariffs tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which permits at least 30 days' notice of the filing. The 30-day notice period between filing date and effective date shall commence at 12:01 a.m. of the day of filing under § 514.10(a)(2). The tariff may take effect at 12:01 a.m. of the 31st day. See §§ 514.9 and 514.10(a). The 30-day notice requirement is not applicable to service contracts and their essential terms under §§ 514.7 and 514.17.

(b) *Prohibitions*—(1) *Foreign language tariffs.* (i) Tariffs and essential terms of service contracts in foreign languages will not be accepted. Filers may, however, include foreign language

commodity descriptions, TLI notes, and commodity index entries, but only if:

(A) The non-English entries follow the English entries; and

(B) The non-English text is precisely translated from the English.

(ii) The English wording shall have precedence in any question of interpretation.

(2) *Ambiguous, duplicating and conflicting provisions.* No person may publish and file any tariff matter which contains ambiguous language or duplicates or conflicts with any other tariff matter on file with the Commission in which such person is a party or participant, whether filed by such person or by an authorized agent.

(3) *Limiting or qualifying provisions*—(i) *Limitation of liability.* Tariffs may not contain Tariff Rules purporting to limit liability for loss or damage in a manner that is prohibited by applicable statute or regulation.

(ii) *Exculpatory tariff provisions.* No terminal tariff may contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

(iii) *Rates in other tariffs.* Except as specifically allowed in this part (see § 514.12):

(A) No rate tariff may require reference to or be governed by another rate tariff; and

(B) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

(iv) *Modification of essential terms.* Essential terms of service contracts may not contain any provision permitting modification by the parties other than in full compliance with this part.

(c) *Controlled common carriers*—(1) *Controlled common carrier rates*—(i) *Level of rates and charges.* Except as provided in § 514.3(a)(2), no controlled common carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, Tariff Rules, or regulations in those tariffs. An unjust or unreasonable classification, Tariff Rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(ii) *Commission disapproval.* The Commission may, at any time after notice and hearing, disapprove any rates, charges, classifications, Tariff Rules or regulations that the controlled common carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled common carrier to demonstrate that its rates, charges, classifications, Tariff Rules or regulations are just and reasonable. Rates, charges, classifications, Tariff Rules or regulations filed by a controlled common carrier that have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

(iii) *Effective date of rates.* The rates, charges, classifications, Tariff Rules or regulations of controlled common carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.

(2) *Classification as a controlled common carrier.* (i) The Commission will notify any common carrier of its classification as a controlled common carrier and enter such classification in ATFI.

(ii) Any common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(iii) The Commission shall review the rebuttal and notify the common carrier of its final decision within 30 days from the date the rebuttal statement was filed.

(d) *Duty and authority to file*—(1) *General procedure.* (i) Except as provided in paragraph (d)(1)(ii) of this section, authority to obtain or delegate authority for using USERID and password under § 514.8(f) for filing and amending particular types of tariff material, as well as authority to change filing and editing authority, must be requested by a responsible official of the tariff owner in writing, using the registration form in exhibit 1 to this part, showing (or attaching) all necessary approvals and paying the appropriate fee under § 514.21.

(ii) In an emergency, a person, already authorized to maintain and edit its firm's organization record under § 514.11(a), may change a "publisher" under § 514.11(a)(9)(iii), verbally notify BTCL, and promptly submit the proper documents.

(2) *Domestic offshore tariffs.* (i) Tariffs in domestic offshore commerce may be filed only by a responsible official of, or a tariff agent appointed by, a domestic offshore carrier participating in the transportation offered therein. When a tariff agent is employed, a delegation of authority from each participating, domestic offshore carrier must be provided.

(ii) The request for filing authority shall state that a tariff agent has been appointed as of a particular date, identify the agent by name and business address, indicate whether and under what circumstances any other person is authorized to serve as an alternate agent, and specifically set forth the agent's powers and duties to act for the carrier in tariff matters. Only one alternate agent may be appointed.

(iii) More than one delegation of authority covering any one tariff is prohibited, except that governing tariffs filed pursuant to § 514.12 may be the subject of separate delegations. Submission of a subsequent delegation of authority covering a tariff, governing tariff or group of tariffs, shall automatically revoke any earlier delegation as to that tariff or tariffs on the day the subsequent delegation is filed, as evidenced by the Commission's receipt notation.

(iv) A delegation of authority to a tariff agent may be revoked in whole or in part by filing a written revocation which clearly identifies the delegation of authority and the particular powers and duties being revoked.

(v) Should a carrier enter receivership, or otherwise come under the control of a trustee, the duty and authority to file tariff material shall be upon the receiver or trustee appointed until the receivership/trusteeship is terminated.

(3) *Foreign tariffs.* (i) Tariffs in foreign commerce shall be filed by an officer or employee of the common carrier or, if a conference tariff, by an officer or employee of the conference. In the alternative, filing may be accomplished through an agent authorized to act for such common carrier or conference.

(ii) A common carrier or conference may delegate authority to a person, not an official or employee of such common carrier or conference, for the purpose of issuing all its tariffs or any particular tariff.

(iii) Whenever there is a delegation of tariff-issuing authority by a common carrier or conference, the request shall set forth the exact limits of the agent's authority.

(4) *Conference-related situations in foreign commerce*—(i) *Admission to membership.* Before a common carrier is admitted to membership in a conference it shall electronically file notice of cancellation of any independent tariff applicable to the trade served by the conference, effective upon the date of admission to conference membership,

making reference to the conference tariff and where the conference tariff may be examined. The filing of the independent tariff(s) and admission to conference membership may become effective upon the date of filing, except that, unless Special Permission is granted pursuant to § 514.18, cancellation of the independent tariff and admission to conference membership requires 30 days' notice if:

(A) The carrier is a controlled carrier, or

(B) The addition of the carrier to the conference would result in a rate change from the carrier's independent tariff which causes an increase in cost to the shipper.

(ii) *Duties of members.* (A) Common carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 8(a)(1) of the 1984 Act with regard to keeping tariffs open for public inspection. See § 514.8(k)(1).

(B) A common carrier's obligation to file tariffs pursuant to section 8(a) of the 1984 Act and this part must be carried out as follows:

(*1*) When the common carrier is not a party to an agreement, by filing its own tariff or tariffs.

(*2*) When the common carrier is party to an agreement, by participation in a single tariff filed by the conference, except that this requirement shall not apply to:

(*i*) Ratemaking agreements either between or among conferences, or between one or more conferences and one or more independent carriers; or

(*ii*) New conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements, until ninety (90) days after the fact, unless special permission to extend that period is granted for good cause shown.

(C) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provisions in the conference tariff.

(iii) *Independent action rates of controlled carriers.* Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(5) *Service contracts and essential terms in foreign commerce.* (i) As further provided in paragraph (d)(5)(ii) of this section, the duty under this part to file service contracts, statements of essential terms and notices, and to maintain an essential terms publication under § 514.17, shall be upon:

(A) A service contract signatory carrier which is not a member of a conference for the service covered by the contract; or

(B) The conference which:

(*1*) Is signatory to the service contract; or

(*2*) Has one or more member carriers signatory to a service contract for a service otherwise covered by the conference agreement.

(ii) When a conference files a service contract for and on behalf of one or more of its member lines and the contract covers service from, to or between ports and/or points not included within the scope of the conference, the complete text of the statement of essential terms shall be simultaneously filed in the essential terms publications of both the conference(s) and carrier(s) involved, which shall comply with all other essential terms publication filing and maintenance requirements under §§ 514.7 and 514.17.

(6) *Transfer of operations or control; changes in name or conference membership.* (i)(A) Whenever a conference or common carrier with an individual tariff on file changes its name or transfers operating control to another entity or person, the person who will thereafter manage the conference or operate the common carrier service shall submit a written application to the FMC. The application shall be accompanied by appropriate completed ATFI User Registration Form(s) (exhibit 1 to this part), if needed, and with the proper user charge under § 514.21(c) (for filer initial registration), to procedurally transfer the tariff to the succeeding person or firm. Subsequent amendments to such tariffs shall be in the name of the new conference or common carrier, as applicable.

(B) Requests to procedurally transfer only part of the service extended under a given rate tariff will not be granted.

(ii) Domestic offshore tariffs naming participating carriers shall be amended within 90 days whenever any participating carrier transfers its operations, transfers control of its business, or changes its name, and the successor carrier continues to participate in the service. The amendment shall delete all references to the transferring carrier (or old name) and substitute references to the successor carrier (or new name) in their place.

(iii) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(iv) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

(e) *Cancellation*—(1) *Tariffs.* (i) An entire tariff may be canceled by the filer, or by the Commission for good cause, by appropriately changing the expiration date in the tariff record. See § 514.11(b).

(ii) Cancellation of a tariff due to a cessation of all service by the publishing carrier between the ports or points listed in the canceled tariff may take effect on the same day it is filed.

(iii) The tariffs and delegations of authority of a carrier which ceases operations in a trade for more than 30 days (other than for seasonal discontinuance) shall be canceled within 60 days after the cessation of operations.

(2) *Essential terms.* The statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired. In the event a contract is terminated under § 514.7(l)(1)(ii), the effective date of the termination shall be used as the date of cancellation (contract termination date under § 514.17(d)(5)).

§ 514.5 [Reserved]

§ 514.6 [Reserved]

Subpart B—Service Contracts

§ 514.7 Service contracts in foreign commerce.

(a) *Scope and applicability.* Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves (incorporating mandatory essential terms as described in § 514.17 and confidential names of shippers, etc.), as well as certain related notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality*—(1) *Service contracts.* All service contracts shall be filed confidentially with the Commission and shall, to the full extent permitted by law, be held by the Commission in confidence.

(2) *Amendments to non-essential terms.* Amendments to *non-essential* terms of a service contract shall be accorded similar confidential treatment. (*Essential* terms may not be amended but may be corrected under paragraph (k) of this section.)

(c) *Exempt commodities.* Except as provided in paragraphs (c)(1) and (c)(2) of this section, this section does not apply to contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper or paper waste.

(1) *Inclusion in service contracts.* An exempt commodity listed in this paragraph may be included in a service contract filed with the Commission, but only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the exempted commodity; or

(ii) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Waiver of exemption.* Upon filing under this paragraph, the service contract and essential terms shall be subject to the same requirements as those for contracts involving non-exempt commodities.

(d) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference may execute or file any service contract in which a contract party, an affiliate of such contract party, or a member of a shippers' association, entitled to receive service under the contract, is an NVOCC, unless such non-vessel-operating common carrier has a tariff and a bond as required by sections 8 and 23 of the 1984 Act and Commission regulations under this part and part 583 of this chapter.

(e) *Certification of shipper status*—(1) *Certification.* The shipper contract party shall certify on the signature page of the service contract its shipper status, e.g., owner of the cargo, shippers' association, NVOCC, or specified other designation, and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the contract. The certification shall be signed by the contract party.

(2) *Proof of tariff and bond.* If the certification completed by the contract party under paragraph (e)(1) of this section identifies the contract party or an affiliate or member of a shippers' association as an NVOCC, the ocean common carrier or conference shall obtain proof that such NVOCC has a tariff and a bond as required under section 8 and 23 of the 1984 Act before signing the service contract. An ocean common carrier or conference can obtain proof of an NVOCC's compliance by consulting a current list published by the Commission of NVOCCs in compliance with the tariff and bonding requirements or by reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24).

(3) *Joining shippers' association during term of contract.* If an NVOCC joins a shippers' association during the term of a service contract and is entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier or conference the proof of compliance required by paragraph (e)(2) of this section prior to any shipments under the contract.

(4) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier or conference executing a service contract shall be deemed to have complied with section 10(b)(15) of the 1984 Act upon meeting the requirements of paragraphs (e)(1) and (e)(2) of this section, unless the ocean common carrier had reason to know such certification or documentation of NVOCC tariff and bonding was false.

(f) *Availability of essential terms.* A statement of the essential terms of each service contract as set forth in tariff format shall be made available for inspection by the general public pursuant to the requirements of this section and § 514.17.

(1) *Availability of terms.* The essential terms of an initial service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the service contract under § 514.17, as may be adjusted under paragraph (j)(4) of this section. The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same.

(2) *Me-too requests and replies.* (i) Whenever a shipper or shippers' association desires to enter into a service contract with the same essential terms as in another existing service contract, a request shall be submitted to the carrier or conference in writing.

(ii) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier or conference may require the contract offer to be accepted within a specified period of time.

(3) *Filing of me-too contracts.* The service contract resulting from a request under this section may be implemented as described in paragraph (j)(3) of this section. No additional statement of essential terms need be filed.

(4) *Changes in me-too contracts.* In the case of any expressly described subsequent event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 514.17(d)(8)(vi), the new essential term(s) shall be immediately made available in writing to other shippers and shippers' associations which have entered into a contract with the same, original essential terms, and which are similarly affected by the event. Copies shall also be submitted to the Commission under paragraph (g)(2)(i) of this section.

(g) *Filing of service contract materials.* Authorized persons under § 514.4(d)(5) shall file with BTCL the following:

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in a double envelope, which contains no other material, as follows:

(i) The outer envelope shall be addressed to: "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573."

(ii) The inner envelope shall be sealed, contain only the executed contract, and shall state: "This Envelope Contains a Confidential Service Contract."

(iii) The top of each page of a filed service contract shall be stamped "Confidential."

(2) *Notices of: change to contract, contract party or rate; availability of changed terms to similarly-situated shippers; and settlement of account.* There shall be filed with the Commission, pursuant to the procedures of paragraph (g)(1) of this section, a detailed notice, within 30 days of the occurrence, of:

(i) The making available of contingent essential terms to similarly situated shippers under paragraph (f)(4) of this section;

(ii) Termination under paragraph (l)(1)(ii) of this section by mutual agreement, breach or default not covered by the service contract;

(iii) The adjustment of accounts, by rerating, liquidated damages, or otherwise under paragraph (l) of this section;

(iv) Final settlement of any account adjusted as described in paragraph (g)(2)(iii) of this section; and

(v) Any change to:

(A) The name of a basic contract party under paragraph (h)(1)(v) of this section; or

(B) The list of affiliates under paragraph (h)(1)(vi) of this section of any contract party entitled to receive or authorized to offer services under the contract.

(h) *Form and content.* Every service contract shall clearly, legibly and accurately set forth in the following order:

(1) *On the first page, preceding any other provisions:* (i) A unique service contract number bearing the prefix "SC" (see § 514.17(d)(2));

(ii) The ATFI number ("Tariff # ————") of the carrier's or conference's essential terms publication (See §§ 514.11(b) and 514.17(b));

(iii) A reference to the statement of essential terms ATFI number ("ET Number ————") as provided in § 514.17(d)(2);

(iv) The ATFI number(s) ("Tariff # ————") of the tariff(s) of general applicability;

(v) The names of the contract parties. Any further references in the contract to such parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.); and

(vi) Every affiliate of each contract party named under paragraph (h)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information.

(2) *On the second and subsequent pages:* (i) The complete terms of the contract, including:

(A) All essential terms as required under § 514.17, preferably in the order and format prescribed by § 514.17(d); and

(B) Other terms of the contract;

(ii)(A) A description of the shipment records which will be maintained to support the contract; and

(B) The address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under paragraph (m) of this section; and

(iii) The number of free days and charges for use of carrier or conference provided equipment. The carrier or conference may reference its tariff of general applicability or equipment interchange tariff. In those instances, reference need be made to Tariff Rule 21 (§ 514.15(b)(21)) and the applicable tariff number only.

(3) *On the signature page:* (i) Signatures of all necessary contract parties; and

(ii) A certification of shipper status in accordance with paragraph (e) of this section.

(i) [Reserved]

(j) *Contract rejection and notice; implementation*—(1) *Initial filing and notice of intent to reject*—(i) Within 20 days after the initial filing of the contract, the Commission may reject, or notify the filing party of the Commission's intent to reject a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(ii) Except for rejection on the ground that the service contract was not filed within ten days of its essential terms, or other major deficiencies, such as not containing an essential term, the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract (in paper form under paragraph (g) of this section) and/or statement of essential terms (in electronic form under § 514.17), modified to satisfy the Commission's concerns.

(2) *Rejection.* The Commission may reject the contract and/or statement of essential terms if:

(i) The service contract is not filed within 10 days of the electronic filing of its associated essential terms;

(ii) A mandatory essential term or 30-day me-too notice is missing; or

(iii) Under a notice of rejection pursuant to paragraph (j)(1) of this section, if the objectionable contract or statement of essential terms:

(A) Is not resubmitted within 20 days of the notice of intent to reject; or

(B) Is resubmitted within 20 days of the notice of intent to reject as provided in paragraph (j)(1)(ii) of this section, but still does not conform to the form, content or filing requirements of the Act or this part.

(3) *Implementation; prohibition and rerating.* (i) Performance under a service contract may begin without prior Commission authorization on the day its associated statement of essential terms is electronically filed, except for rejection under paragraph (j)(3)(ii) of this section;

(ii) When the filing parties receive notice that the service contract or statement of essential terms has been rejected under paragraph (j)(2) of this section:

(A) Further or continued implementation of the service contract is prohibited;

(B) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper or shippers' association within 30 days of the date of rejection; and

(C) Detailed notice shall be given to the Commission under paragraph (g)(2) of this section within 30 days of:

(*1*) The rerating or other account adjustment resulting from rejection under this paragraph; and

(*2*) Final settlement of the account adjusted under paragraph (j)((3)(ii)(C)(*1*) of this section.

(4) *Period of availability.* The minimum 30-day period of availability of essential terms required by paragraph (f)(1) of this section shall be suspended on the date of the notice of intent to reject a service contract and/or statement of essential terms under paragraph (j)(1)(i) of this section, or on the date of rejection under paragraph (j)(1)(i) of this section, whichever occurs first, and a new 30-day period shall commence upon the resubmission thereof under paragraph (j)(1)(ii) of this section.

(k) *Modification, correction and cancellation of service contract terms.* The essential terms originally set forth in a service contract may not be amended but may be corrected pursuant to this section and § 514.17.

(1) *Request for correction.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the service contract to be corrected;

(ii) A paper copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(2) *Filing and availability of corrected materials.* (i) If the request for correction is granted, the carrier or conference shall file the corrected contract provisions under this section and/or a corrected statement of essential terms under § 514.17, using a special case number under § 514.9(b)(19). Corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected essential terms. The provisions of paragraphs (f)(1) to (f)(3) of this section shall otherwise apply.

(ii) The provisions of paragraph (k)(2)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms publication.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(3) *Cancellation.* See paragraph (l) of this section and § 514.4(e)(2).

(l) *Accounting adjustments; rerating; notice*—(1) *Account adjustment; rerating*—(i) *Events and damages covered by contract.* An account shall be adjusted when there is either liability for liquidated damages under § 514.17(d)(8)(v), or the occurrence of an event described in § 514.17(d)(8)(vi).

(ii) *Mutual termination or shipper failure to meet cargo minimum not covered by the contract.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper or shippers' association has failed to tender the minimum quantity required by the contract:

(A) Further or continued implementation of the service contract is prohibited; and

(B) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of each shipment.

(2) *Notice to contract party.* A proposed final accounting or rerating under this section shall be issued to the appropriate contract party within 60 days of termination, discontinuance, breach or default of the service contract, for:

(i) Liability for liquidated damages under § 514.17(d)(8)(v);

(ii) The occurrence of an event under § 514.17(d)(8)(vi); or

(iii) Termination, breach or default not covered by the contract.

(3) *Notice to Commission.* Detailed notice of any termination, rerating, and/or account adjustments, as well as final settlement of an adjusted account, shall be given to the Commission under paragraph (g)(2) of this section.

(m) *Record keeping and audit*—(1) *Records retention for five years.* Every common carrier or conference shall maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(2) [Paragraph (m)(2) is stayed until further notice.] *Where maintained.* (i) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (m)(3) of this section.

(ii) If service contract records are not made available to the Commission as provided in paragraph (m)(3) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United States pursuant to the certification procedure of paragraph (m)(2)(i) of this section.

(3) *Production for audit within 30 days of request.* Every common carrier or conference shall, upon written request of the FMC's Director, Bureau of Investigations, or the Director of any FMC District Office, submit requested service contract records within 30 days from the date of the request.

Subpart C—Form, Content and Use of Tariff Data

§ 514.8 Electronic filing.

(a) *Exemptions.* (1) All tariffs required to be filed by this part shall be filed in the proper electronic form and manner unless specifically exempted by the Commission.

(2) A petition for a temporary exemption from the electronic filing requirements of this part shall be filed with the Secretary of the Commission under § 502.69 of this chapter and § 514.21. Unless a complete exemption from filing tariff material is warranted, the petitioner obtaining the exemption will still be required to file tariffs in paper format during the period of the exemption.

(b) *User manual.* A user manual for electronic filing (and/or retrieval) may be purchased from BTCL for a fee set forth in § 514.21. The user manual contains the following:

(1) *ATFI Fundamentals Guide,* which provides the basic ATFI concepts and the general system background to understand the procedures for ATFI use.

(2) *ATFI System Handbook,* which describes system use characteristics, provides high-level introduction to users' interfaces, i.e., menus and screens, outlines the information contained in the guides, and is a quick reference source for experienced users.

(3) *ATFI Tariff Retrieval Guide,* which provides complete instructional detail on the retrieval procedures to access all components of a tariff using the ATFI central site system in interactive mode.

(4) *ATFI Tariff Filing Guide,* which provides complete instructional detail on the interactive filing procedures to create and maintain all components of a tariff using the ATFI central site system in interactive mode.

(5) *ATFI "Batch Filing Guide"* (see paragraph (d)(3) of this section), which presents information to tariff filers who prepare new tariff submissions or modifications in an "off-line" or batch mode, and then submit the batch filings to the Commission either electronically (on-line batch) or by tape (tape or in-bulk batch). Contains the ATFI transaction sets for proper formatting of batch filings.

(c) *Filing; types of filing.* In all cases, interactive, on-line batch or bulk (tape) batch, the filing session is processed as soon as possible after submission/receipt of the filing session information. The ATFI system assigns the filing date, which is the date an electronically transmitted (interactive or on-line batch) filing session file transfer is initiated (successful file transfer assumed) or the tape (in-bulk batch) is delivered to a designated location and date-time stamped, in local time in the U.S. Eastern Time Zone. After the filing session is processed, a filing-results message is placed in the filers electronic mailbox on the central site system.

(1) *Interactive filing.* Interactive tariff filing uses a modem and VT-100-type terminal (or VT-100-type terminal emulation on a personal computer) for ATFI access to create tariff filings, verify previous filings, and perform sample freight calculations for verification of filed information, using ATFI system screens and pop-up windows. The modem must adhere to one of the following standards: Bell 212 (1200 baud); CCITT V.22 (2400 baud); or CCITT V.32 (9600 baud). The filing is submitted when the filer executes the command to "File all Authorized Changes" and ATFI's "sent" response indicates completion of that filing session submission.

(2) *On-line batch filing.* On-line batch filing is performed by transmission of prepared tariff material to the ATFI system over dial-up lines from the filer's own computer, using published ATFI transaction set formats and the KERMIT file transfer protocols. The conclusion of the file transfer sequence is a positive keyboard entry to initiate the transfer and a response that indicates completion of that submission. The modem requirements are the same as those in paragraph (c)(1) of this section. On-line batch filing requires a computer and software capable of producing tariff material according to the ATFI transaction sets, and transmitting via KERMIT protocol. KERMIT is public domain software and is available from: KERMIT Distribution, Columbia University Center for Computing Activities, 612 West 115th Street, New York, NY 10025.

(3) *In-bulk (tape) batch filing.* Tape batch filing is accomplished by physical delivery of prepared tariff material on magnetic tape, in the published ATFI transaction set formats, to designated location(s) and accepted/time-stamped by an ATFI attendant, or date/time stamped and deposited for processing. The tape is processed after receipt at the ATFI Computer Center. In order that in-bulk (tape) tariff data can be deemed to be "filed" on a particular date, the tape(s) must be appropriately delivered (deposited) by 5:00 p.m. on that date, if a normal Commission work day; or if the date desired is a non-work day, by 5:00 p.m. on the previous Commission work day. See § 514.10(a)(2)(iii). In-bulk batch filing requires a computer and software capable of producing tariff material according to the ATFI transaction sets, and recording this on 9-track 1600 bpi or 6250 bpi tape according to standards outlined in the "Batch Filing Guide." See paragraph (d)(3) of this section.

(d) *General format requirements*—(1) *Database format.* The ATFI database is structured from tariff data elements and the tariff objects (see paragraph (h) of this section) formed by logical grouping of those elements. For example, a TLI is a tariff object which contains data elements for origin, destination, rate, basis, service, etc. The tariff objects are relational, with the "master" record being the organization record for a firm. One or more tariff records would be "related" to that organization record. All required and optional Tariff Rules, any number of commodity descriptions, desired location groups and inland rate tables are related to a specific tariff record. TLIs are related to a specific commodity description and assessorial-charge algorithms are related to specific Tariff Rules, commodity descriptions or TLIs. This relational structure allows interactive ATFI users to quickly locate specific tariff objects regardless of the filing organization, tariff type or trade. Although the data formats are very precise and the CRT displays standard, the traditional page format is no longer in use. See paragraph (l)(1) of this section.

(2) *Batch transmission.* Batch transmission of tariff materials to the ATFI computer, either on-line or in-bulk, is governed by the transaction sets contained in the "Batch Filing Guide." Tariff filings not complying with the regulations in this part or the formats and valid codes contained in the "Batch Filing Guide" are subject to rejection.

(3) *"Batch Filing Guide."* The ATFI "Batch Filing Guide" is published and updated in Pike and Fischer, "Shipping Regulation," SR 322:421, and a copy of the Guide is available from BTCL. The "Batch Filing Guide" includes the following items:

(i) *Transaction sets.* The transaction set formats also include transaction set segments, data elements, and reference tables.

(ii) *Data Element Dictionary ("DED") and Valid Reference Table Entries* for certain data elements (e.g., service codes, container type codes, currency codes, etc.), calculation statement definitions, and condition and calculation statement data fields. For interactive filing, valid reference table entries can be accessed on help screens.

(4) *Adding new transaction data.* Requests for major changes or additions to the transaction set data dictionary or reference tables shall be submitted in writing to BTCL, with sufficient detail and reasons for each proposed change. A contact person and telephone number also should be provided in case of questions.

(i) A proposed major change (other than a correction), such as to a transaction set, will require formal configuration management procedures and a minimum of thirty days' advance notice of the change in the **Federal Register** and the ATFI system news, available at system logon, and by other established Commission communications procedures.

(ii) Minor changes will be entered into the system and published as soon as possible. Such minor changes include additions to any of the following term and reference lists: Cities; States and provinces; Countries; Ports; Container sizes; Container types; Container temperatures; Hazard codes; Inland modes; Packaging types; Rate Bases; Service types; Stuffing mode; Stripping mode; and Currencies. See Appendixes A and B to the ATFI Batch Filing Guide.

(e) *Hardware and software requirements.* The basic equipment suite necessary to access ATFI is a VT-100-type terminal (including CRT) and a modem. A more sophisticated suite for ATFI access would be composed of a personal computer (PC) (including CRT), a VT-100 emulation software package, and a modem. For batch filers, the transmitted filing session must be formatted to comply with the transaction sets. The transmission may be via the use of KERMIT file transfer protocols after establishing a link for on-line batch filing with the ATFI central site computer (see paragraph (c)(2) of this section).

(f) *Password and User ID.* (1) System identification ("ID") for logon and initial password assignments, for either filing or retrieval, are obtained by submitting to BTCL the ATFI User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part. The logon IDs and Passwords are issued to individual users. Logon IDs remain constant unless circumstances dictate a change (forgotten, lost, compromised, etc.); however, passwords should be changed during the first session and regularly after that. Each ATFI user is responsible for maintaining security and control over its individual password.

(2) Because ATFI will have sophisticated accounting and reporting functions to track utilization for user charges under § 514.21 and other purposes, users who disclose their logon ID or password assume the following risks:

(i) System use by another person using the "borrowed" logon ID will be included in the utilization statistics for the registered user;

(ii) The "borrowing" user may change the password, thus precluding use by the registered user; and

(iii) Substandard, inaccurate or rejected filings by the "borrowing" person will be traced to the registered user in an audit.

(g) *Connecting to ATFI; procedures.* If ATFI user equipment (hardware and software) is compatible with the configurations specified in paragraph (e) of this section, and the proper ID and password have been obtained under paragraph (f) of this section, on-line ATFI services (interactive retrieval, interactive filing, and on-line batch filing) are available to users registered under this section and § 514.21 for the respective services, over commercial telecommunications using standard asynchronous modems with data rates up to 9600 baud. The dial-up procedures are set forth in section 2.3 of the Batch Filing Guide and section 4.2 of the ATFI System Handbook, and the ATFI Hot Line number is available through BTCL.

(h) *Major menu selections.* Proper connection will lead the user to the "ATFI Logo Menu," which allows selections by any user for "Tariff Retrieval," "Retrieval Practice," "Retrieval CBI," "Mailbox," "ATFI System News," "Change Password," "Screen Setup," and "Logout." Additionally, a registered filer can access "Tariff Filing," "Filing CBI," and "Filing Practice." Upon the selection of either "Tariff Filing" or "Tariff Retrieval," the user will be led to the "Main Menu," which allows selection (with help screens and windows) of the following items and subitems (see also the anti-rebate policy notice in paragraph (j) of this section). The tariff *objects* (in addition to * "Commodity Descriptions" and * "TLIs") are marked with an asterisk (*).

(1) *Select Tariff.* This selection allows access to a particular tariff which can be selected by "Organization Number," "Origin" and "Destination," and/or "Organization Trade Name."

(2) *Rate Inquiry.* This selection is used for "Commodities" (§ 514.13(a)), "TLIs" (§ 514.13(b)), "Access Dates" (§ 514.10(a)(1)), and "Algorithms" for assessorial charges and calculations (§ 514.10(d)). For essential terms publications, "Rate Inquiry" provides access to the * "Essential Terms" of service contracts (§ 514.17).

(3) *Other Tariff Components.* This selection provides another menu for:

(i) * *Rules (Tariff Rules).* See § 514.15.

(ii) *Inland Rates.* (This provides access to * "Inland Rate Tables.") See § 514.15(b)(1).

(iii) *Commodity Index.* (This can also be accessed from the "Commodity Search" screen under "Rate Inquiry.") See § 514.13(a)(7).

(iv) * *Location Groups.* See § 514.10(b).

(v) *Tariff Definition.* This selection provides another menu for:

(A) * *Tariff Record.* See § 514.11(b).

(B) *Origin Scope.* See § 514.11(c).

(C) *Destination Scope.* See § 514.11(c).

(D) *Governing Tariffs.* See § 514.12.

(E) * *Organization Record.* (This item is more directly available by filers who have the authority to edit the "Organization Record.") See § 514.11(a).

(vi) *Select Tariff.*

(vii) *New Access Date.* See § 514.10(a)(1).

(4) *Utilities.*

(i) *Currency Conversion.*

(ii) *Display Options.*

(iii) *Version Information.*

(iv) *New Tariff Creation* (filers only).

(v) *General Rate Increases* (filers only).

(vi) *Authorize/Review Changes* (filers only).

(vii) *Filing Utilities* (filers only).

(5) *Exit Tariff System.*

(6) *V1.00 Information.*

(i) [Reserved]

(j) *Anti-rebate tariff notice.* To further implement the United States policy against untariffed rebates, as reflected in § 514.1(c)(1)(iii), the following notice will appear after logon to the ATFI system:

> The foreign commerce carriers whose tariffs are recorded within this system have a policy against the payment of any rebate, directly or indirectly by the company or by any officer, employee or agent, which payment would be unlawful under the Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984. The shipping statutes also prohibit rebates in the domestic offshore trade.

(k) *Publication; paper copies of tariff material*—(1) *Publication*—(i) *Availability for inspection.* During normal business hours, every carrier, conference and terminal operator shall promptly make available to the public, in paper or electronic form, all tariff material required by this part to be filed by the carrier, conference or marine terminal operator, as well as all Commission actions affecting such tariff material, such as rejections, suspensions, etc. A reasonable charge, such as for a regular subscription, may be made for this service, except that domestic offshore carriers shall provide this service free of charge to the governor (or governor's designee) of any state, commonwealth or territory for domestic offshore tariffs pertaining to trades affecting the particular state, commonwealth or territory.

(ii) *Carrier facilities in domestic offshore commerce.* Every domestic offshore carrier, in addition to the requirements of paragraph (k)(1)(i) of this section, shall make available to the public at each facility at which it receives freight or passengers for transportation, or at which it employs a general or sales agent, all tariff material governing transportation to and from the facility in question.

(iii) *Assistance to the public.* Persons requesting to inspect tariff materials shall, upon reasonable notice, be provided sufficient instruction or assistance to allow them to ascertain both the present and proposed rates, charges, classifications, Tariff Rules and practices of the tariff owner.

(iv) *Tariff Rule containing public access details.* Tariff filers shall set forth in detail in Tariff Rule 30 (§ 514.15(b)(30)) all costs, conditions and arrangements for public inspection of tariff material, including the official tariff when it is not available for access in the ATFI system due to a breakdown or similar disaster.

(v) *Official copies.* (A) Except as provided in paragraph (k)(1)(v)(B) of this section, the official version of a tariff will be the version of any and all tariff objects published and effective on a specific date in the ATFI central site computer or the ATFI archives. Individual tariffs are accessible by registered ATFI interactive retrievers and by the public at terminals in the Commission's Tariff Control Center.

(B) During a major emergency where the ATFI host processor is inaccessible due to an equipment breakdown in the ATFI system, the official tariff of a tariff owner shall be that maintained by the tariff owner for public access during just such an emergency. The access to the emergency tariff shall be described in the tariff owner's Tariff Rule 30 (§ 514.15(b)(30)). As soon as the ATFI host processor becomes accessible, the tariff owner shall ensure that there are no discrepancies between the emergency tariff and the ATFI tariff.

(2) *Certified paper copies of tariff material.* The Commission will publish paper pages containing filed tariff information only for special Commission requirements, e.g., for requested certification of tariff data by the Commission Secretary for official use in court and in other governmental proceedings under § 503.43(c) of this chapter and § 514.21(d). The pages produced for these purposes will not reflect the formats of traditional, page-based tariffs, but will present tariff objects in effect or filed to become effective on a specific date. The paper

format may reflect the printing of a computer screen display or the retrieval and printing of a specific portion of a tariff in the ATFI database or the ATFI database archives.

(l) *Certification of batch filing capability.* (1) The Commission will not make available to the public software packages for firms to use in formulating tariff filings. The Commission has released the "Batch Filing Guide" (with transaction sets) into the public domain so that qualified commercial firms can develop batch filing software for the general market.

(2) Certification. Firms which develop batch filing software, by appointment through BTCL and payment of the fee set forth in § 514.21, can be certified for the formatting of one or more of several types of tariff data (e.g., domestic, foreign, essential terms, etc.) in ATFI transaction set format and submission of that data to the FMC ATFI central site computer. The data may be submitted either via on-line batch transmission over dial-up telecommunications links using the required file transfer protocols, or in bulk batch via delivery to the ATFI computer center of magnetic tape containing the tariff data. Certification will require submission of tariff filing sessions to ATFI, with an evaluation of the actual results of the attempted filings to ensure that the transaction set formats are properly employed and that the filing results are consistent with the filer's expectations.

(m) *ATFI screens.* The sample screens used to illustrate tariff objects in this part simulate parts of, but are not the actual, completed ATFI screens used in the electronic filing and retrieval of tariff data, which may also change with technical or regulatory developments. Moreover, certain fields appearing on the actual ATFI screens may be blocked off from directly entering all or certain data in such fields, because of default procedures, developing and copying data from other, preliminary screens, etc. Accordingly, filers must carefully follow instructions in order to properly enter complete and accurate tariff data.

(n) *Validation of data.* Tariff data submitted to ATFI for filing are screened for compliance with ATFI conformity checks, and certain data not automatically rejected by the conformity checks are flagged for Commission examiner review.

(1) *Conformity checks.* The conformity checks are syntax checks, validity checks and associative checks. For interactive filing, the ATFI system will generally not accept tariff material which fails conformity checks and the on-line filer can immediately correct its proposed filing before final submission to the ATFI database. Commercially developed batch filing software can be designed to accomplish the same functionality. However, all proposed filings of tariff materials must undergo the routine system conformity checks before they can be received into the database. Filers will be notified of automatic rejections at this stage by electronic mail, with follow-up letter, if necessary. The conformity checks are:

(i) *Syntax Checks.* Tariff material will be checked for file integrity, proper data types, field lengths, and logical sequence according to the "Batch Filing Guide's" transaction sets. Data not conforming to the data element format or type in the "Batch Filing Guide's" Data Element Dictionary ("DED") and the sequence requirements of the transaction sets and segment definitions will result in rejections of submitted tariff data to include the possible rejection of an entire filing if form and format errors are extensive enough to preclude processing.

(ii) *Validity Checks.* Certain data elements of filed tariff material will also be checked for data validity by type against the DED's published reference tables, such as for container types and sizes, rate basis, and packaging. See § 514.13(b).

(iii) *Associative Checks.* ATFI uses associative checks to identify logical conformity with established tariff filing rules. The following are some representative types of associative checks performed by the ATFI system.

(A) Any *new or amended tariff matter* must have:

(*1*) A valid organization number and name (§ 514.11 (b)(1)(ii) and (b)(2)).

(*2*) No suspended carrier or object status (See §§ 514.1(c)(1) and 514.19).

(*3*) Appropriate publication authority (§ 514.11(a)(9)(iii)).

(*4*) Filing date same as or prior to effective date (§ 514.10(a)).

(*5*) Valid and appropriate filing/amendment codes (§ 514.9).

(*6*) Valid and appropriate filing, effective, thru and expiration dates (§§ 514.9 and 514.10(a)).

(*7*) When used, valid special case number and filing/amendment code *"S,"* with no other filing/amendment codes entered (§ 514.9(b)(19)).

(B) *Tariff records* (§ 514.11(b)) must have new (unique to carrier/conference/terminal) tariff number (§ 514.11(b)(1)(ii)).

(C) *Commodity description records* (§ 514.13(a)) must have:

(*1*) Complete textual description and unique number.

(*2*) At least one commodity index entry.

(D) *Tariff line item (TLI)* records (§ 514.13(b)) must have a valid:

(*1*) Commodity description and code (§ 514.13(b)(5)).

(*2*) TLI code (§ 514.13(b)(6)).

(*3*) Origin and destination (§ 514.13(b)(15)).

(*4*) Rate basis (§ 514.13(b)(17)).

(*5*) A specified rate (§ 514.13(b)(19)).

(E) Tariff Rules (§ 514.15(b)) must have:

(*1*) All mandatory rules.

(*2*) Number of new Tariff Rule not previously used in that tariff.

(F) *New or enlarged scope* (certain tariffs) must have effective date 30 days or more after filing date (§ 514.11(b)(10)).

(G) *Essential terms* (§ 514.17) must have:

(*1*) All mandatory terms (§ 514.17(d)).

(*2*) Availability date at least 30 days greater than the filing date (§ 514.17(d)(3)).

(*3*) All amendments filed with a special case number (§§ 514.7(k) and 514.9(b)(19)).

(2) *Flag for FMC examiner review.* In ATFI, electronic conformity checks cannot be designed to check and pass/fail every possible rejection situation, such as, for example, conflicting texts or ambiguous language. Other matters, such as filings of controlled carriers, require policy review under the 1984 Act. For these reasons, ATFI will automatically queue for review by a Commission examiner the items which survive the conformity checks described in paragraph (n)(1) of this section. The following are representative types of items flagged for examiner review:

(i) *Any new or amended tariff matter:*

(A) Of a controlled common carrier.

(B) With a filing/amendment code of *"G," "K," "M," "P," "T,"* or *"X"* (§ 514.9(b)).

(C) When a special case number is present (§ 514.9(b)(19)).

(ii) All *tariff record* filings and amendments (§ 514.11(b)).

(iii) All new *commodity descriptions* (§ 514.13(a)).

(iv) *Tariff line item (TLI) records* (§ 514.13(b)):

(A) With any increase and the filing/amendment code does not contain an *"A"* or *"G"* (§ 514.9 (b)(1) and (b)(7)).

(B) With any non-rate data changes (§ 514.13(b)(17)).

(v) *All Tariff Rules* (§ 514.15).

(vi) *Location groups* (§§ 514.9(b)(16) and 514.10(b)):

(A) Any new group or addition to group.

(B) Any deletion of a group member.

(vii) *All service contract essential terms filings.* (§ 514.17).

(3) *Status/rejection codes.* The command line at the bottom of most ATFI screens provides a "Status" option for retrievers to determine whether an ATFI object is accepted, rejected, suspended, etc., and the reasons therefor. The DED "FMC Status/Rejection Code" provides numeric, two-digit codes for this purposes, e.g., "01—Not rejected; item accepted."

§ 514.9 Filing/Amendment codes and required notice periods.

(a) *General.* (1) Under the shipping statutes, various types of tariff material require different notice periods (beginning with the filing date) before they may become effective. For example, a new tariff or a rate increase usually requires 30 days' notice before the effective date. See § 514.4(a). Paragraph (b) of this section describes the different notice periods for the various types of filed tariff items and their corresponding filing/amendment codes (symbols), which shall be carefully used by the filer for the purposes of guiding the user and triggering accurate associative checks to ensure the integrity of the filed tariff material. See § 514.8(n). The ATFI system makes available a *Help* screen which also lists the uniform symbols.

(2) *Multiple symbols.* Filed tariff material frequently can be coded with more than one symbol. Accordingly, the field, "Amendment Type," appearing on most ATFI screens, will usually allow up to three different, compatible symbols, but see paragraph (b)(19) of this section.

(3) *Symbol(s) resulting from deletion.* When amendments deleting existing tariff matter alter the amount paid by the shipper/consignee, the effect of this change shall be indicated by the proper code symbol(s), as required by paragraph (b) of this section.

(4) *Restricted use of symbols.* The codes or symbols prescribed in paragraph (b) of this section may not be used for any other purpose, nor shall any symbol be used other than the appropriate symbol(s) described in paragraph (b) of this section.

(5) *Essential terms and terminal tariffs.* Due to the absence of most of the notice requirements otherwise applicable to carrier or conference tariffs, the use of symbols under this section for terminal tariffs will be appropriate for the tariff objects employed and filing/maintenance. Symbols for essential terms of service contracts under § 514.17 will usually be limited to "I" for initial filings and "S" for amendments.

(b) *Filing/Amendment codes and notice periods.* For tariffs in foreign and domestic offshore commerce, the following are the notice periods for various types of filings and their corresponding symbols. To the extent applicable and permitted by the ATFI system, the symbols can also be used in other types of tariff material, such as terminal tariffs.

(1) *"A" Increase (Not a general rate increase in domestic offshore commerce under paragraph (b)(7) of this section ["G"]): 30 days' notice*—(i)(A) Except for a general rate increase in domestic offshore commerce, amendments which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in an increase in cost, shall use the symbol "A" and be filed to become effective not earlier than 30 days' after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.

(B) With the filing of tariff material under this subparagraph, domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo, n.o.s." or similar general cargo rate, is a rate increase requiring 30 days' notice under this subparagraph.

(2) [Reserved]

(3) *"C" Change resulting in neither increase nor decrease in rates or charges: effective upon "short notice," i.e., upon filing in foreign commerce, or on one day's notice in domestic offshore commerce.* (i) Amendments which result in no change in cost to the shipper, such as an amendment changing only the name or address of the filing party, may become effective upon short notice (i.e., upon filing in foreign commerce, or on one day's notice in domestic offshore commerce) and shall use the symbol "C;" except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(ii) An amendment containing a rate on a specific commodity not previously named in a tariff which results in no change in cost to the shipper may become effective on short notice under this subparagraph, if:

(A) The tariff contains a "cargo, n.o.s." or similar general cargo rate which would otherwise be applicable to the specific commodity;

(B) The specific commodity rate is equal to the previously applicable general cargo rate; and

(C) The common carrier is not a controlled common carrier which has not received special permission or an exemption authorizing the amendment.

(4) [Reserved]

(5) *"E" Expiration: effective upon filing unless it results in an increase under paragraph (b)(1) "A" or (b)(7) "G" of this section.* When amendments deleting or expiring existing tariff matter alter the amount to be paid by the shipper/consignee, the effect of this change shall be indicated by other symbol(s) under this paragraph (b). Otherwise, expired or deleted matter, such as an amendment completely canceling a tariff due to a cessation of all service by the carrier between the ports or points listed in the canceled tariff, may take effect upon filing and shall use the symbol "E."

(6) [Reserved]

(7) *"G" General rate increase or decrease (domestic offshore commerce): 60 days' notice.* Amendments of domestic offshore tariffs which change rates, fares, charges, Tariff Rules, or other tariff provisions and which constitute a general increase or decrease in rates, shall be filed together with any supporting material required by part 552 and § 502.67 of this chapter at least 60 days prior to their effective date and shall use the symbol "G."

(8) [Reserved]

(9) *"I" New or initial matter: 30 days' notice*—(i)(A) New tariffs and, except for a general increase or decrease in domestic offshore commerce, filings which provide for new or initial rates, fares, charges, Tariff Rules or other tariff provisions resulting in an increased cost to the shipper, shall use the symbol "I" and be filed to become effective not earlier than 30 days after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.

(B)With the filing of tariff material under this subparagraph, domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) Initial filings of essential terms of service contracts under § 514.17 of this part may not use any symbol other than "I." See paragraph (b)(19)(iii)(A) of this section for corrections to essential terms.

(10) [Reserved]

(11) *"K" Rate or charge filed by a controlled common carrier member of a conference under independent action*

(foreign commerce): effective upon filing if decrease.

(i) All changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part. Such changes shall use the most appropriate symbol(s) under this section.

(ii) Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, using the symbol "K," subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(12) [Reserved]

(13) *"M" Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command ("MSC"). (Foreign Commerce): Effective upon filing.* Under § 514.3(b)(4), the following services are subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the 1984 Act, if all the following conditions are met:

(i) All common carrier quotations or tenders, including amendments thereto, are filed with the Commission as soon as possible after they are accepted and approved by MSC, but no later than on the effective date;

(ii) MSC tenders are filed in the carrier's foreign commodity tariff(s) covering the trade route(s) applicable to the tender(s);

(iii) MSC tenders are filed for distinct commodities or as separate TLI's within a commodity, as applicable, using the symbol "M" under § 514.9(b)(13);

(iv) The use of the filing/amendment code "M" is understood by the filer to mean that the tariff material filed is submitted in accordance with the requirements of the Shipping Act of 1984 and this part; and

(v) The terms and conditions governing the military rates, as set forth in the applicable MSC rate agreement(s), are included in Tariff Rule 32, § 514.15(b)(32), and assessorials are properly formatted and linked to the commodity description and/or TLI.

(14)–(15) [Reserved]

(16) *"P" Extension of service to additional port(s) at rates already in effect for similar services at the port(s) being added; or the carrier's establishment of additional terminal facilities at the port(s) already served, at the same rates as those currently applicable to comparable facilities of the carrier at the same port.*

(i) *In domestic offshore commerce:*

(A) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect upon filing and shall use the symbol "P;" and

(B) Carriers may file to be effective upon filing, using the symbol "P," amendments establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor.

(ii) *In foreign commerce:*

(A) Amendments which provide for the addition of a port or point to a previously existing origin or destination field may become effective upon filing and shall use the symbol "P."

(B) A deletion of a port or point from a previously existing origin or destination field may not be coded with a "P," but shall be coded with other appropriate symbol(s) under this section.

(17) [Reserved]

(18) *"R" Reduction (Not a general rate decrease in domestic offshore commerce under paragraph (b)(7) "G" of this section)*—(i) *Domestic offshore commerce (one day's notice).* Except for a general rate decrease, amendments to domestic offshore tariffs which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in a decrease in cost, shall be filed to become effective not earlier than one day after the date of filing, using the symbol "R," unless an exemption or special permission to become effective on less than said one day's notice has been granted by the Commission.

(ii) *Foreign commerce.* Amendments which provide for changes in rates, charges, Tariff Rules, regulations or other tariff provisions resulting in a decrease in cost to the shipper may become effective upon filing and shall use the symbol "R;" except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(19) *"S" Special case matter: effective upon filing unless otherwise directed by the Commission.* Special case numbers will be developed and issued by the Commission and shall be entered by the filer, along with the symbol "S." Special case matter may not be filed with other types of amendments, including special case matter with other special case number(s). When filing special case matter, no filing/amendments codes other than "S" may be used. Special Case filings may arise from the following situations:

(i) Special permission under § 514.18.

(ii) Special Docket decision under § 502.92 of this chapter.

(iii) Correction or resubmission of essential terms.

(A) Correction under §§ 514.7(k) and 514.17.

(B) Resubmission after notice of intent to reject under § 514.7(j).

(iv) Filing to put tariff in order after rejection or overturning a rejection. (Except with the use of the *Thru-date* under § 514.10(a)(5), the ATFI system cannot by itself restore material that has been superseded or rejected, so the filer is required to make any filings to put its tariff in order, through the special case procedures, if necessary.)

(v) Filing of tariff data after suspension under § 514.19.

(vi) Other situations, as directed by the Commission.

(20) *"T" Terminal rates, charges or provisions or canal tolls over which the carrier has no control: effective upon filing.* Wherever a tariff includes charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carrier or conference which merely acts as a collection agent for the charges, and the agency making such changes does so without notice to the tariff owner, such provisions may be changed in the carrier's or conference's tariff upon filing and shall use the symbol "T."

(21)–(22) [Reserved]

(23) *"W" for same-day withdrawal of erroneous data.* A filer may withdraw an erroneous filing by the use of the symbol "W" with the corrected filing, but only if the corrected filing is made on the same date as the erroneous filing.

(24) *"X" Exemptions.* (i) Controlled carrier data in U.S. bilateral trades or in trades served exclusively by controlled carriers. (See § 514.3(a)(2).) A controlled common carrier shall use the symbol "X" for all tariff material filed under the following exempt situations:

(A) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph;

(B) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States (including its districts, territories and possessions); or

(C) The controlled common carrier operates in a trade served exclusively by controlled common carriers.

(ii) [Reserved]

(iii) The symbol "X" may be used for other situations involving an exemption or continuing special permission, as directed by the Commission.

(c) *Multiple amendments; same or different TLI.* All filings with adequate notice, but with *different, successive* effective dates (each filing effective after the effective date of the previous filing), will be entered into the ATFI system, whether or not they amend the same TLI. On the other hand, unless an appropriate thru date (§ 514.10(a)(5)) is employed to protect the *same or later* effective date of an *earlier* amendment of the same TLI, only the *later (or last)* filing, which has an effective date the *same as or earlier* than that of the previous filing(s), will be given effect, in which case, the previous filing(s) will be presumed to be erroneous and void.

(d) *Supplements.* "Supplements" to tariffs are prohibited. The ATFI system will electronically accommodate the necessary amendment of each TLI selected for general rate changes, through the GRI/GRD utility, assessorials and/or individual TLI changes. Other matters, previously handled by supplements in traditional, page-based tariffs, will be handled procedurally and/or through Tariff Rules, TLI notes, etc.

§ 514.10 Other items used throughout ATFI.

(a) *Control dates and history.* Various control dates are used for tariff material filed in and/or retrieved from the ATFI system. The following simulated screen illustrates these dates which are found on many ATFI screens and contains corresponding numbers keyed to explanatory and regulatory subparagraphs within this paragraph (in addition to "Today" which is the date of entry into the system and the screen). For special date provisions applicable to the essential terms of service contracts, see §§ 514.17 (d)(3) to (d)(5).

```
[§ 514.10(a)]      Today: 01Jan1992
    [Always Today's Date]

[(2)]          Filing date: 01Jan1992
[(3)]      Effective date: 31Jan1992
     [e.g., 30 days' notice]
[(5)]                thru: 01Mar1992
[(4)]     Expiration date: 01May1992
  [or TLI expires (etc).]
-----------------------------------
[(1)(i)]--   Access date: 01Jan1992
  [Today's date unless changed]
   [Could be changed to e.g.
    01Dec1991 or 01June1992]
[(1)(ii)   History   -Rev   +Rev
```

(1) (i) *Access date and history.* The default date for the Access date is "Today's date." Interactive ATFI, however, allows the user to set a different, desired access date for retrieving objects within the tariff. See § 514.8(h)(3)(vii). The system will select only tariff items that are in effect on the chosen access date. This allows the user to examine the tariff as it existed on a particular date in the past, or to examine rates and Tariff Rules which have a future effective date.

(ii) *History; −Rev; +Rev.* Similar to the functionality of the Access date, the following functions are also available on many ATFI screens:

(A) *History.* This function displays the entire list of modifications to a tariff item.

(B) *−Rev.* This function displays the previous revision (one revision at a time) of the tariff item just prior to the date displayed in the effective date field. See paragraph (a)(3) of this section.

(C) *+Rev.* This function displays the next (future) revision of the tariff item according to the date in the effective date field. See paragraph (a)(3) of this section.

(2) *Filing date.* The filing date, or the date any tariff or tariff element is processed by ATFI, is used to determine the beginning of the advance notice period required for various types of tariff material under § 514.9(b). The filing date is determined for each of the three basic types of filing, as follows:

(i) *Interactive.* The interactive filing system enters a filing date (current date) for every tariff object or tariff object update to be filed. Proposed objects with an outdated filing date will not be accepted by interactive ATFI. The day of filing is determined by the time of the "Commit Authorized Filings to ATFI" command at the completion of an interactive filing session and the "Sent" response from the system, indicating completion of that command at the ATFI central site, in local time in the U.S. Eastern Time Zone. The function "FileDate" (or "Default-Dates" or "Defaults") enables the user to update its proposed filing date to match the date of expected transmission of the proposed filing.

(ii) *On-line batch.* Filers will have a filing date automatically assigned to all tariff objects filed according to the start time of the file transfer, for file transfers that are successfully completed, U.S. Eastern Time Zone. On-line batch filers should plan the transmission of filing session files to allow for retransmission(s) starting during the same U.S. Eastern Time Zone date, in case the results of the initial transmission(s) are not successful.

(iii) *In-bulk (tape) batch.* Filers will have a filing date (in local time in the U.S. Eastern Time Zone) assigned to all tariff objects filed according to the date of delivery of a tape to a designated location. If the date of delivery is a normal Commission work day, the filing date can be that date if the tape is delivered by 5:00 p.m. If the delivery date is not a normal Commission work day, or the tape is delivered after 5:00 p.m. on a normal work day, the filing date may not be until the next Commission work day.

(3) *Effective date.* The Effective date is the date upon which a filed tariff or tariff element is scheduled to go into effect by the filer. It determines the end of the advance notice period required for various types of tariff material under § 514.9(b). Specifically, a tariff provision becomes effective at 12:01 a.m. on the beginning of the effective date. In interactive filing, the Effective date can be changed through "FileDate," etc., as described in paragraph (a)(2)(i) of this section.

(4) *Expiration date.* The Expiration date is the last day, after which the entire tariff or tariff element (e.g., TLI), which is designated to expire, is no longer in effect. After midnight at the end of this day, the current version of the tariff will not include the expired object. In the screen example, the entire item (e.g., TLI) expires on May 1, 1992, leaving no specific rate, which could

result in an increase to an NOS rate, for which advance notice from the filing date is required under § 514.9(b). The expired object becomes a part of the history objects for the tariff.

(5) *"Thru" date.* The thru date is the date after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. After midnight at the end of the Thru date, the previously effective tariff object will resume its effect. Thru-date tariff objects recognize and maintain the validity of the unexpired tariff objects they temporarily supersede during their time of effectiveness. In the screen example, the effective item reverts to the item prior to effectiveness on March 1, 1992, which goes out of existence when expired on May 1, 1992. Where an increase requires an advance notice (e.g., 30 days) under § 514.9(b), a Thru-date item which is:

(i) A decrease when initially effective requires 30 days' notice from the Filing date to the Thru date, irrespective of when it becomes effective (no earlier than Filing).

(ii) An increase when initially effective requires 30 days' notice from the Filing Date to the Effective date, but may revert (Thru date) to the previous item on or after the Effective date.

(b) *Locations and groups.* The names of places entered by filers, such as in origin and destination scopes and TLIs, shall conform in spelling to, and will be validated by, ATFI glossaries.

(1) *Names*—(i) *Point names.* ATFI recognizes approximately 250,000 world place names.

(ii) *Port names.* ATFI recognizes ocean port names, using spellings concordant with the Point Names list, where there is a corresponding point name.

(2) *Location groups.* In the primary tariff, or in a governing tariff under § 514.12(a)(1)(ii), the filer will have the option to define and create groups of cities, states, provinces and countries (e.g. location groups) or groups of ports (e.g. port groups), which may be used in the construction of TLIs and other tariff objects in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names. A partial screen illustrating the locations within an origin port group follows:

```
(§ 514.10(b)(2))
        ATFI LOCATION GROUPS

          Group:  US ATL. PORTS
     Port Group:  Y
Origin or Dest:  O

          Origin Ports

BALTIMORE (port), MD, USA
BOSTON (port), MA, USA
JACKSONVILLE (port), FL, USA
MIAMI (port), FL, USA
NEW YORK (port), NY, USA
```

(c) *Currency.* ATFI recognizes a large number of foreign currencies for rates and charges. The complete list of ATFI-recognized currencies is available on-line. Currency conversion rates are maintained and updated in ATFI on a periodic basis; except that these conversion rates are for comparison purposes only, not as official conversion rates for booking or billing. See § 514.8(h)(3)(vi).

(d) *Assessorials and algorithms*—(1) *Requirement.*—(i) *Charges.* Assessorial or accessorial charges, which are to be added to the basic ocean freight rate to calculate the total cost to the shipper, shall be clearly shown through mathematical formulas or algorithms, as further explained in the Batch Filing Guide (as well as in the rest of the User Manual), when the applicability of the additional charge to the basic ocean freight rate can be accurately determined prior to the carrier's receipt of cargo. Examples of the types of assessorial charges that would usually not be determinable prior to cargo shipment or preparation of the Bill of Lading are:

(A) Free Time and Demurrage under e.g., a rule for detention or demurrage on carrier equipment.

(B) Freight forwarder compensation collect charges, e.g., brokerage fees and commissions.

(C) Diversion of cargo.

(D) Blocking, bracing, staking, securing or protective-covering charges that cannot be predetermined.

(E) Cargo held by carrier or terminal storage.

(ii) *Precedence* There should be no conflict between the algorithm and the textual description of the assessorial (if any), but, if there is, the algorithm shall take precedence.

(iii) *Predeterminable charges.* Assessorial charges which can be determined prior to shipment shall be expressed in algorithm form and may be contained in Tariff Rules of tariffs and essential terms publications (See §§ 514.15 and 514.17(b)), as well as in commodity descriptions and TLIs of tariffs and essential terms documents (See §§ 514.13 and 514.17(d)). Algorithms are not accommodated in the mandatory or optional terms of essential terms under § 514.17 (d)(8) and (d)(9). See also §§ 514.12(a), 514.17(b)(2) and 514.17(d)(10).

(iv) *Non-predeterminable charges; null linkage.* Assessorial charges, which cannot be determined prior to shipment and which are not expressed in the normal algorithm form, shall be set forth in full-text format in the same locations as described in paragraph (d)(1)(iii) of this section. In order to apprise the retriever that such charges may be applicable, however, the filer shall link all of these charges to the appropriate item(s) using null linkage (dummy algorithms), i.e., the algorithm: WHEN—ALWAYS; THEN—NOTHING.

(2) *Overview.* Algorithms are expressed as one or more condition and calculation statement sets. Each set reflects a separate possible condition which may apply, and the means of calculating a tariff additional charge for that condition. A set is composed of a group of condition statements, followed by a group of calculation statements. The allowable condition statements accommodate historically common criteria for the assessment of ocean freight and charges (e.g., "When Destination is 'New York'," "When Container Size is '40Ft'," etc.). These statements, in turn, accommodate historically common factors used in the computation of freight and charges (e.g., weight, volume, origin, container size, etc.).

(3) *Calculation statements.* The calculation statements, listed in the Batch Filing Guide at Appendix B, section 2, include common arithmetic functions, including addition [<X> = <A> + <B>], subtraction [<X> = <A> − <B>], multiplication [<X> = <A> X <B>] and division [<X> = <A> / <B>], as well as other operations, such as minimum [<X> = MIN (<A> , <B>)] and maximum [<X> = MAX (<A> , <B>)] functions.

(4) *Screen illustration.* A partial screen (with pop-up help window), illustrating algorithms with multiple condition sets for a commodity description, follows:

```
[§ 514.10(d)(4)]
     ATFI COMMODITY DESCRIPTION

  Number     Commodity Description
 Assessorial Charge Calculation
  DESC: House to House Surcharge

 CYCLE: 2 (Define RATING values-
           wt, vol, etc.)

   SET: (1 of 2)
  WHEN: SERVICE-TYPE is HH
   AND: RATE-BASIS is W
  THEN: RESULT =
        RATED-WEIGHT x 3.75USD

   SET: (2 of 2)
  WHEN: SERVICE-TYPE is HH
   AND: RATE-BASIS is M
  THEN: RESULT =
        RATED-VOLUME x 5.00USD
```

Between the two (condition) sets, there is an implied *"OR"* operator (weight *"OR"* measure). This means that either one or the other of these condition sets must be TRUE in order for the assessorial to apply. After entering the rated weight and volume in these condition sets, the system will process them in the order in which they appear, evaluating whether each is TRUE or FALSE. If TRUE, the assessorial is applicable to the shipment and will be entered onto the main screen where other potentially applicable assessorials (e.g., in different Tariff Rules) will also be processed.

(5) *Application.* For filing, a toggling (on or off) function provides specific application ("linking") of an assessorial to a commodity or Tariff Rule. For retrieving, applicable assessorials are added to the applicable TLI to find the overall cost for the shipment. Before shipment, however, there will be some condition sets where the values are not known (e.g., a surcharge for a non-scheduled port where the ship calls in an emergency and unloads the shipment). In these cases, assessorials cannot be accurately applied prior to booking or sailing. Nonetheless, filers shall use the null linkage or dummy algorithm functionality to label and link assessorials in full text form to other ATFI objects, such as TLIs and commodities, for the purpose of enabling the retriever to identify all potentially applicable charges.

§ 514.11 Organization and tariff records; tariff scope.

(a) *Organization record.* The organization record is the master record for all tariff information in ATFI for a specific firm. Each firm wishing to file tariffs or essential terms must complete and submit an ATFI User Registration Form (exhibit 1 to this part) under §§ 514.4(d) and 514.8(f). Upon Commission approval of organization registration in ATFI, a "shell" organization record, specific to the requestor, is established and contains the organization number, organization name and organization type. The firm's authorized representative can then access the newly established organization record (see partial screen), using the special access Logon ID and password for organizational record maintenance, to file the address for the firm's home office, and complete the affiliations, d/b/a, and publisher lists as appropriate. To maximize security of the data, maintenance (editing) of the organization record will be permitted only through the interactive mode by the individual in the firm holding the special access LOGON ID and password for organization record maintenance. The following simulated screen is indexed to subsequent, explanatory subparagraph (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

```
[§ 514.11(a)]              ATFI ORGANIZATION RECORD
                                 XYZ, Inc.

 [(1)]              Org Number: 999999       Agreement #:
 [(2)]                Org Name: XYZ, Inc.
 [(3)]  Country of home office: USA

 [(4)]             Org type: NVOCC - NON-VESSEL-OPERATING COMMON CARRIER
 [(5)]           Controlled: N
 [(6)]            SCAC Code: XYZZ

 [(7)]                 Home Office Address Information

                    Street1: 201 Broadway
                    Street2: 72nd Floor
                       City: New York, NY, USA
                Postal Code: 10007

                    Contact: Julian Xavier or Rick Zarones

                      Phone: (212) 555-1236
                        Fax: (212) 555-5678
 [(8)] ------------------------------------------------------

 [(9)]       Affiliations          dba's            Publishers
```

(1) *Org number and agreement number.* The organization and agreement numbers are generated by the Commission for the particular tariff owners. The agreement number is filled in only if the organization is an

agreement (conference, etc.). The organization number is also used to verify whether a current anti-rebate certification has been filed under § 514.1(c)(1)(iii).

(2) *Org name.* The organization name (filled in by the FMC) is the official name of the firm (from the corporate charter, etc.), often a parent corporation, responsible for filing tariffs, often by several affiliates through d/b/a names. The Org Name on the Org Record screen is not changeable by the filer.

(3) *The Country of home office* is the country in which the firm's headquarters is located.

(4) *Org type* would be ocean carrier, conference, NVOCC, etc.,

(5) *Controlled.* This field is filled in by the Commission and indicates whether the firm is a controlled carrier ("Y" or "N").

(6) *SCAC Code.* The Standard Carrier Alpha Code (assigned by the Motor Freight Association) further identifies the registered organization.

(7) *Home office address information.* A second line for street address is provided, if necessary, and names of contact person(s) shall be entered. Otherwise, the field is self-explanatory.

(8) *Command line.* While not shown on most screen illustrations in this part, the items and functions in (below) the command line provide instructions for accessing help screens, tables and other information relevant to the screen. The data required in paragraph (a)(9) of this section are found on separate screens which are accessed by highlighting the item and pressing *"ENTER."*

(9) (i) *Affiliations.* The affiliations are: members of a filing conference; participating carriers; or conferences to which a filing carrier belongs. As with the organization, itself, both the name and Commission-assigned number shall be listed.

(ii) *dba's.* The d/b/a ("doing business as") names of affiliated firms are listed here. Filers shall ensure that the d/b/a's of all firms filing tariffs under the organization umbrella are accurately listed.

(iii) *Publishers.* Filers shall list all publishers used to file and maintain the organization's tariffs. Publishers will be assigned Org Numbers by the FMC which will be entered here.

(b) *Tariff Record.* The tariff record(s) for a specific organization registered under paragraph (a) of this section show the characteristics of each tariff. The ATFI system provides an index of all organization's tariffs from the data furnished in the Tariff Record. The following simulated screen is indexed to subsequent, explanatory subparagraphs (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

```
[§ 514.11(b)]                ATFI TARIFF DEFINITION

[(1)]        Org Number: 999999    Tariff #: 001    Tariff Code: XYZZ001
[(2)]          Org Name: XYZ, Inc.
[(3)]              d/b/a: XYZ Line
[(4)]             Title: XYZ Line Worldwide Commodity Tariff
[(5)]       Tariff type: FC
[(6)]        Tariff TON:   1 KT  or  1.000 CBM
[(7)]    Monetary Units: USD US Dollar (USD)

                            Address Information

[(8)]  (1 of 3)    Publishing Office
                        Name: XYZ Line
                     Street1: 201 Broadway
                     Street2: 65th Floor
                        City: New York, NY, USA
                 Postal Code: 10007

                     Contact: Maria Yates
                       Phone: (212) 555-1237
                         Fax: (212) 555-5678
[(9)] ------------------------------------------------------
[(10)]           Origin              Destination
[(8)]   Select Address
```

(1)(i) *Org number* is the same is in paragraph (a)(1) of this section. This number cannot be changed by the filer.

(ii) *Tariff #* is a 3-digit number assigned by the organization to distinguish it from its other tariffs.

(iii) *Tariff code* uniquely identifies a tariff within the ATFI system. It consists of either the organization number plus the user-assigned tariff number (e.g., 999999–001) or the SCAC code (see paragraph (a)(6) of this section) plus the user-assigned tariff number, as in the illustration. The SCAC code takes precedence when previously provided on the ATFI User Registration Form (Exhibit 1 to Part 514) for entering on the organization record during creation or amendment.

(2) *Org name* is the same as in paragraph (a)(2) of this section.

(3) The *d/b/a* name could be a name different from the organization name, but shall appear in the list of d/b/a's in the organization record under paragraph (a)(9)(ii) of this section.

(4) The *Title* of the tariff is assigned by the organization and could be as shown in the illustration.

(5) *Tariff Type* in the illustration is "FC" for "foreign commodity tariff" as set forth in the "Batch Filing Guide's" Data Element Dictionary.

(6) *Tariff TON* is the default (unless changed) measurement units throughout the tariff for both weight and volume, as

codified in two tables of the "Batch Filing Guide's" Data Element Dictionary.

(7) *Monetary units* is the default (unless changed) currency unit to be used throughout the tariff. See § 514.10(c).

(8) (i) *Address information* is the same as in paragraph (a)(7) of this section, except that more than one address and contact person can be provided (see "Select Address" in Command Line), such as for the tariff publisher, the organization's tariff filing, billing and/or claims office, and an agent for service of process under paragraph (b)(8)(ii) of this section.

(ii) *Foreign-domiciled NVOCCs.* Every NVOCC not domiciled in the United States shall enter in the first address field provided in the tariff record the name and address of a person in the United States designated under § 514.15(b)(24)(ii) and § 583.5 of this chapter as its legal agent for service of judicial and administrative process, including subpenas.

(9) *Command line.* See paragraph (a)(8) of this section.

(10) *Scope: origin and destination.* The scope of each individual tariff is defined in more detail, in Tariff Rule 1 of the tariff (514.15(b)(1)), but entered in two specific location groups (see § 514.10(b)(5)(ii)) in the auxiliary screen for the tariff record. All other origin and destination ports and points filed in the tariff shall be within the geographic scope of the regions and/or countries defined in the tariff record scope.

(i) *Origin.* The origin scope is a single location group or port group in a tariff encompassing the allowable origins for TLIs defined in that tariff.

(ii) *Destination.* The destination scope is a single location group or a port group in a tariff encompassing the allowable destinations for TLIs defined in that tariff.

(iii) *Between tariffs.* The filer may insert a statement in the scope fields that the rates and charges, etc. are between two location groups, but shall create separate origin and destination pairs, as well as TLIs, for each direction.

(iv) *Ports and/or points.* A tariff with origin and destination groups containing only ports will be a port tariff only; no onward through intermodal rates will be allowed. A tariff with non-port cities, states, or country names in either the origin or destination group will be eligible to contain intermodal rates under § 514.15(b)(1).

§ 514.12 Governing and general reference tariffs.

Where any matter directly affects a TLI, it must be filed in electronic form in the appropriate tariff in the appropriate place. Thus, a governing tariff may be a commodity tariff, but only locations, inland rate tables and Tariff Rule level assessorials (and not commodity descriptions or TLIs) within such a governing tariff may be linked to govern matter in another ("governed") tariff.

(a) *Governing tariffs (filed electronically).* A filer which files multiple tariffs with duplicative and/or commonly applicable items, such as Tariff Rules or inland rate tables, may file a governing tariff which contains, and is referred to in the governed tariff(s) as a source for, location groups, inland rates and rules-level assessorial charges, which are applied as if they were a part of the governed tariff.

(1) *Types.* Due to ATFI's "linkage" design feature, whereby tariff items at rules level (location groups, inland rate tables and algorithms in rules), can be electronically referenced and made applicable from one tariff (governing) to another (governed), a filer may create and use only the following types of governing tariffs, or combinations thereof, which shall accompany governed tariffs in the ATFI electronic format and will not constitute "separate" tariffs for the purpose of the remote retrieval limitation of "one tariff at a time" (see § 514.20(a)(1)(ii)):

(i) *Rules tariffs,* including Hazardous Cargo Tariff Rules and/or other Tariff Rules which contain assessorial charges (see § 514.15(b));

(ii) *Location group tariffs* (see § 514.10(b)(2));

(iii) *Inland rate table tariffs* (see § 514.15(b)(1));

(iv) *Bill of lading tariffs* (see § 514.15(b)(8));

(v) *Essential terms publications* under § 514.17(b) (solely for essential terms documents); and

(vi) *Tariffs of general applicability* under § 514.17(b)(2) (solely for essential terms publications).

(2) *Creation and link to governed tariff.* Governing tariffs shall be created by using ATFI's standard tariff creation function and referenced in each governed tariff, using the "Governing Tariff" function under § 514.8(h)(3)(v)(D), where the list of governing tariffs may be accessed.

(3) *Conflicts between governing and governed tariffs.* A Tariff Rule affecting a TLI or passenger fare may appear in only one governing tariff. See § 514.4(b)(3)(iii). Filers shall ensure the exclusive and accurate application of tariff matter contained in governing and governed tariffs to every TLI contained in the governed tariff, as illustrated by the following:

(i) *Application of Tariff Rules and associated assessorial charges.* Tariff Rules, and any assessorial charges within the Tariff Rules, from both the governed tariff and the governing tariff, will automatically apply to any shipment, unless the Tariff Rules in either or both tariffs are "turned off," using system-assessorial-charge-application flags to disable the charge application, which will indicate the "Yes" or "No" status to the users of the central site system. Unless "turned off," duplicative, redundant, or overlapping assessorial charges could apply to shipments, because the ATFI central site applications will not deconflict like-type assessorial charges. Where the non-rate-affecting Tariff Rules' texts conflict between governing and governed tariffs, the governed Tariff Rules will prevail.

(ii) *Location groups.* Location groups from both governed and governing tariffs will apply to any shipment, unless both tariffs include a group with the same name. In this case, if not corrected or accommodated by the filer, the location group from the governed tariff will take precedence and the governing tariff location group of the same name will be ignored.

(b) *General reference tariffs (in paper format).* Certain tariffs, other than governing tariffs described in paragraph (a) of this section, are general reference tariffs and, if they do not contain assessorial charges or other matters affecting the TLI, will continue to be "on-file" at, or accepted by, BTCL, in paper format. General reference tariffs are usually compiled by firms (with FMC-assigned Org Numbers) other than those required to file ocean freight tariffs, and are allowed to be cross-referenced in the electronically-filed tariffs. General reference tariffs include:

(1) *Hazardous Cargo Rules Tariffs,* not containing rates or charges (see § 514.15(b)(16) and paragraph (a)(1)(i) of this section).

(2) *Equipment Registers.*

(3) *Equipment Interchange Tariffs.* (i) Equipment interchange tariffs may be filed in electronic format under this part, or, in paper format, arranged in the following order:

(A) Title Page.

(B) Check Sheet (optional).

(C) Table of Contents.

(D) Explanation of Symbols, Abbreviations and Reference Marks.

(E) Tariff Rules.

(F) Free Time and Charges—List of Exceptions to Standard Free Days and/or Charges.

(ii) The Tariff Rules section of the equipment interchange tariff shall include Tariff Rules 1 (Scope, § 514.15(b)(1)) and 21 (Use of Carrier Equipment, § 514.15(b)(21)). Other

unused mandatory Tariff Rules in § 514.15(b) shall be noted as "Not Applicable." Equipment interchange tariffs need not reference carrier or conference rate tariffs.

(4) *Mileage guide publications.*

§ 514.13 Commodities and tariff line items ("TLIs").

In ATFI, commodities and rates (TLIs) are created separately for system reasons, but each TLI under paragraph (b) of this section shall be associated with, applicable to, and subsumed under, an already existing, specific commodity under paragraph (a) of this section. There may be many TLIs applicable to one commodity. A different four-digit code must be assigned for every TLI applicable to one particular commodity as a suffix to the one 10–digit commodity code, created by the tariff owner under paragraph (a) of this section.

(a) *Commodities*—(1) *Choice of methodology.* For each separate commodity in a tariff, a separate and distinct 10–digit numeric code shall be used. Within the system's transaction-set parameters, filers may use any commodity coding they wish but are urged to utilize the Harmonized System ("HS") for both the commodity coding and associated terminology (definitions), to the maximum extent possible.

(2) *Commodity description*—(i) *General requirements.* (A) Commodity rates shall be specific and may not apply by implication, or otherwise, to analogous articles.

(B) Commodity descriptions shall include dimensions and weights for cargo rated on an "Each" ("EA") basis, when the packaging is non-standard (e.g., machinery).

(C) Commodities subject to minimum quantity requirements for carriage or rating shall include a clear statement of such requirements in the commodity description and/or TLI to which they apply. See also Tariff Rule 11 (§ 514.15(b)(11)).

(ii) *Exclusions; special provisions.* In the commodity description record, filers shall list commodities excluded from the commodity description and provide notes to articulate any special provisions that may apply to the commodity description, e.g., where a commodity is subject to time/volume, open or independent-action rates, as described in paragraph (b)(19) of this section.

(iii) *Assessorial charges applicable to commodity.* Assessorial charges (see § 514.10(d)) that are specific to a described commodity shall be applied to the commodity by creating the appropriate algorithm condition sets in the commodity description record.

(3) *Use of the HS code (Optional).*—(i)*The Harmonized System ("HS").* In HS, the first two digits identify the chapter. The basic commodity chapters are numbered from "1" to "97." Each chapter is divided into several commodity headings. The second two HS digits identify the heading. Each heading is divided into several commodity subheadings. The third two HS digits identify the subheading. Finally, four more digits (digits 6–10) can be used to further classify commodities within the HS chapter, heading and subheading.

(ii) *Classification and description under the optional HS code.* When using HS, commodities should be classified as specifically as possible under the HS, in a manner which conforms the product under substantive, rather than simply textual, criteria. Each commodity description should be consistent with the corresponding HS description for the particular code or parts of the code used. When using HS, for the first six digits (of the 10-digit ATFI commodity code), filers should not use other codes not found in the HS, but should use the modified HS and special ATFI codes described in this paragraph. The remaining system four digits are to be user supplied, but different commodities may not have the same 10-digit number.

(iii) *Six-digit code applicable to commodity.* If the commodity description established by the filer coincides with an HS description at the (first) six-digit classification level, the six-digit code should be used, e.g., "9503.10—Electric trains."

(iv) *Six-digit code inapplicable to commodity.* When the commodity description established by the filer does not fully coincide with any (first) six-digit description in the HS, as provided in paragraph (a)(3)(iii) of this section, and it would be inaccurate to describe it using a six-digit classification, only that part of the HS classification that is applicable to the filer's commodity description should be used, as follows:

(A) *Four digits.* If a commodity can be classified only by HS chapter and heading, then the filer should use the correct chapter and heading digits (digits 1–4), and the subheading digits (digits 5–6) should be filled in with "00," e.g., "9501.00—Wheeled toys, n.o.s."

(B) *Two digits.* If a commodity can be classified only by the chapter (digits 1–2), then the heading and subheading digits (digits 3–6) should be "00.00," e.g., "9500.00—Toys, n.o.s."

(4) *Mixed commodities and mixed lots.* (i) Except for project rates under paragraph (a)(5) of this section, mixed commodities (to the extent not accommodated by the "00" HS approach described in paragraph (a)(3)(iv)(B) of this section) will require the ATFI code "99" for the first two digits, whether or not HS is used, with the next four digits (#'s 3–6) available at filers' option, and will include situations involving:

(A) *One specific commodity description which includes several commodities classified in more than one HS chapter (or filer's equivalent),* e.g., "Footwear" or "Footwear, n.o.s." (various types or parts of which are contained in HS chapters 44, 64, 83, 90 and 98); or

(B) *"Mixed commodities" (semble),* as a commodity description, which includes several commodities, all of which must be specifically listed in the description for the mixed commodities, whether or not HS is used.

(ii) Whether or not HS is used, where specified proportions of certain mixed commodities or other conditions are required to comply with the description or to be eligible for a particular TLI associated with the description, the specific proportions and/or conditions shall be set forth specifically for the commodity, and/or in a Tariff Rule under § 514.15, as applicable.

(5) *Projects (for "Project Rates").* A "Project" commodity description for project rates (TLIs) includes materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also includes disaster relief projects. None of the materials or equipment covered shall be transported for the purpose of resale or other commercial distribution.

(i) Any "Project" will require the ATFI code: "98" for the first two digits, with the next four digits (#'s 3–6) available at filer's option, and the commodity description record shall include:

(A) An exact description of the project which demonstrates that it is qualified for a "project rate" under paragraph (a)(5), introductory paragraph, of this section.

(B) A statement that only proprietary materials actually employed in the project are eligible for the project rate. The filer shall provide for the use of a bill of lading clause on all project rate cargo, which shall state that:

> All materials included in this bill of lading are of a wholly proprietary nature and shall not be resold or otherwise commercially distributed at destination.

(C) For domestic offshore carriers, a statement that the project rate will cover

the carrier's variable costs and contribute to its fixed expenses.

(ii) As an alternative to listing a "project" as a separate "commodity" under paragraph (a)(5)(i) of this section, project rates can be a stated discount for all commodities, a group of commodities, or particular TLIs thereunder, achieved by algorithms set forth in Tariff Rule 33 (§ 514.15(b)(33)), and properly applied or linked to each commodity and/or TLI, as further described in the ATFI User Guides.

(6) *Codes for non-commodity categories.* A TLI may be applicable to all commodities, or all commodities of a class, on which specific commodity descriptions are not stated, such as "cargo, n.o.s." (not otherwise specified), "general cargo," "freight—all kinds," or other identifying name. Because the ATFI system requires TLIs to be associated with and subsumed within a commodity, TLIs not directly involving specific commodities must still have a "commodity code." Therefore, TLI rates, such as for "FAK" and "NOS" (entire tariff) will require the first two digits of the "commodity code" to be "00," with the next four digits (#'s 3–6) available at filer's option.

(7) *Commodity index.* (i) Each commodity description created under this section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Filers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, "Sodium Chloride," "Salt, common," etc.

(ii) If a commodity description includes two or more commodities, each included commodity shall be shown in the index.

(iii) Items, such as "mixed commodities," "projects" or "project rates," "n.o.s" descriptions, and "FAK," shall be included in the commodity index.

(b) *Tariff Line Items ("TLIs")*—(1) *General requirements.* (i) All rates and charges shall be stated in a systematic and straightforward manner. Rates, charges, Tariff Rules, regulations or classifications may not be duplicative, conflicting or otherwise ambiguous when compared with items in the same tariff or in any other tariff to which the publishing filer is a party.

(ii) The minimum TLI requisites are a valid, accepted commodity description to which the TLI is applicable, valid filing and effective dates, origin and destination locations or location groups within the scope of the tariff, a rate, rate basis, and service designation.

(2) *Illustrative screen.* (i) As with all ATFI screens, filers shall enter complete and accurate data in all required fields. The information shown on the simulated screen is actually entered on the "ATFI NEW (Commodity) DESCRIPTION CREATION" and "ATFI NEW TLI CREATION" screens, but when completed, is displayed on the following simulated screen, which is indexed to explanatory subparagraphs (numbers) of this paragraph. An asterisk (*) before an item indicates that the particular field is *NOT* required to be completed, except when the situation requires it (e.g., special case number, or when an entry is required to distinguish the TLI from another TLI within the same commodity).

(ii) Where an optional TLI screen field (*) is filled in, the TLI will apply only to shipments that comply with the condition, e.g., where the packaging type is "Crate (CRT)," then only to the particular commodity as crated. Otherwise, if the packaging code is left blank, the TLI would apply to all shipments of the particular commodity, irrespective of the package type.

```
[§ 514.13(b)(2)]        ATFI TARIFF LINE ITEM DETAIL    Today: 01Jan1992
[3]          XYZ Line Worldwide Commodity Tariff [4] ( XYZZ001 )
[5]  9503-10-0010  Electric trains
[6]  TLI#: 9503-10-0010-0001  [8] Amendment Type: R [12] * Spcl.Case #:
[7]  Filed: 01Jan1992  [9] Eff: 01Jan1992  [10] * thru  [11]* Exp:

[13]      Tariff Line Item Detail:     [14]  Rates per Container Load

[15] From: US ATLANTIC PORTS           [16] * VIA
       To:   PARIS, FRANCE                  * VIA   ANTWERP, BELGIUM

[17]   Basis: PC (Per Container) 40/PC [18] Units:USD - US Dollars
[19] Rate(s): 2,310.00 USD                          Ton - 1 KT or 1.000 CBM

[20]     Service: PH - Pier/House
[21] *   (carrier):
[22] *   Packaging: CRT                 [23]     * Ctr size:  40
[24] *   Stow Code: BS                  [25]     * Ctr type:  PC
[30] *   Haz code: NHZ                  [27]     * Ctr temp:  NA
[26] *   (stat code): 030817

[28]     TLI Notes: Rate applies on direct vessel call to
                    Antwerp and oncarriage by truck to Paris

[29]  ======================== Assessorial Charges=========================
        Desc Local:      Paris surcharge.
             Rule: 6     Min B/L charge
             Rule: 7     CAF
```

(3) *Tariff title.* See § 514.11(b)(4).

(4) *Tariff code.* See § 514.11(b)(1)(iii).

(5) *(Commodity number and description.)* The screen's description corresponds with the optional HS description for the 6-digit HS code used, as described in paragraph (a)(3)(iii) of this section.

(6) *TLI #.* The 14-digit TLI number consists of the commodity code (first ten digits), as described in paragraph (a) of this section, plus four unique *suffix* TLI digits, controlled by the ATFI system to avoid duplications of, and to differentiate, TLIs within the same commodity. For example, the TLI *suffix* of "0001" in the screen is based on a 40-foot container; the *suffix* "0002" could be based on a different TLI for a 20-foot container.

(7) *Filing date ("Filed").* See § 514.10(a)(2).

(8) *Amendment type.* The symbol *"R"* stands for a reduction under § 514.9(b)(18).

(9) *Effective date ("Effective").* See § 514.10(a)(3). Since the screen amendment is a reduction in foreign commerce and the filer is not a controlled carrier, it can take effect upon filing. See § 514.9(b)(18).

(10) *Thru (date).* See § 514.10(a)(5). *Special* or *emergency rates* may be filed as thru-date TLIs, with explanation of the rates in the TLI notes, but only if the TLI notes are explanatory, without affecting the level of the rate.

(11) *Expiration date ("Expires").* See § 514.10(a)(4).

(12) *Special case (number).* The special case number (not applicable in the illustration) is assigned by the Commission. See § 514.9(b)(19).

(13) *Tariff Line Item Detail.* This section contains the routing, shipment, rate data, etc.

(14) *Rates per Container Load.* This field echoes the rate basis under paragraph (b)(17) of this section.

(15) *Origin/destination.* The origin and destination of the shipment can be a location point or group under § 514.10(b), but must be within the tariff scope under § 514.11(b)(10).

(i) *Between TLIs prohibited.* Every TLI shall have but one origin and destination and may not purport to show the same rate in both directions. See § 514.11(b)(10)(iii).

(ii) *U.S. to/from foreign country.* In foreign commerce, the origin may not include any port or point within the same country in the destination (including the United States).

(16) *"VIA."* "VIA" indicates the port or port group through which the cargo will be carried, outbound from its origin, and/or inbound to its destination, for through transportation. In the illustration, the TLI includes all rates and charges for the inland portion from Antwerp to Paris and is, therefore, a "through rate." See § 514.15(b)(1).

(17) *Rate basis.* In the illustration, the rate basis is "PC (Per Container)" under the "Batch Filing Guide's" Data Element Dictionary ("DED") code. Regulations for other rate bases include:

(i) *AV.* When an *Ad Valorem ("AV")* TLI is published, the filer shall include in the applicable assessorial charges (in commodity description, TLI or Tariff Rule) the algorithm(s) showing the exact method of computing the charge (e.g., shipper's declaration, invoice value, delivered value), and, in Tariff Rule 12 (§ 514.15(b)(12)), the additional liability, if any, assumed by the common carrier in consideration therefor.

(ii) *EA.* TLIs published on an "Each" basis shall include specific provisions in Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), for the applicable sizes and dimensions of general packaging units (e.g., barrels, crates, cartons under paragraph (b)(22) of this section) when the number of these packages is the basis for the calculation of freight. Commodity descriptions shall include dimensions and weights for cargo rated on an "Each" ("EA") basis, when the packaging is non-standard (e.g., machinery).

(iii) *W.* TLI's published on a weight only basis shall use the symbol "W." For green salted hides in foreign commerce rated on a weight ("W") Basis, see Tariff Rule 17 (§ 514.15(b)(17)).

(iv) *WM.* (A) *Whichever is greater.* TLIs published on a weight or measure ("WM") basis shall be presumed to mean that the basis generating the greater revenue to the carrier will apply. Filers wishing to publish rates based on the lesser revenue of the two alternate bases shall construct Tariff Rules and assessorials which reflect this method of rate computation. Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), shall set forth the carrier's intentions in detail.

(B) *Autos in domestic offshore commerce.* If not rated on an "EA" basis under paragraph (b)(17)(ii) of this section, automobiles in domestic offshore commerce may not be rated on either weight *or* measure, whichever is greater (lesser), but only on one of these bases, and, in addition to using the appropriate rate basis code ("M" or "W"), the TLI Notes shall reflect the appropriate controlling formula, as follows:

(*1*) *Automobiles rated by measure ("M").* For automobiles rated by measure, the cubic measurement for the five most recent model years shall be that prescribed by the manufacturer of the particular make and model as shown in Tariff Rule 22 (§ 514.15(b)(22));

(*i*) Automobiles whose measurements are not shown in Tariff Rule 22 shall be individually measured by the carrier. This fact shall be noted on the bill of lading; and

(*ii*) Automobiles which, because of additional accessories or equipment, vary in dimensions from the standard measurements shown in paragraphs (b)(17)(iv)(B)*(1)*, introductory paragraph, and (b)(17)(iv)(B)*(1)(i)* of this section, shall be individually measured by the carrier. This fact shall be noted on the bill of lading along with the actual variation (in cubic feet) from the standard measurements; or

(*2*) *Automobiles rated by weight ("W").* Each automobile tendered for shipment shall be individually weighed on the carrier's scale. Where the carrier does not possess weighing facilities, the shipper shall have the vehicle weighed by a certified weighmaster and furnish the weighmaster's signed statement to the carrier.

(18) *(Default) Units (of weight/measure.)* The application of all rates and charges shall be clear and definite and explicitly stated per cubic foot, cubic meter, kiloton, kilogram or pound, or specified numbers of such units. In the illustration, the filer has defaulted its tariff to U.S. dollars. See paragraph (b)(19) of this section. The example in the illustration also shows default units of "1 KT" or "1000 CBM," which were originally set by the filer in the Tariff Record under § 514.11(b)(6). (The default units are not applicable to the illustrated TLI, which is on a "Per Container" basis, but see paragraph (b)(17) of this section.)

(19) *Rate(s).* The rate is the base ocean freight rate to ship the commodity and, in the illustration, is defaulted to U.S. Dollars which can be changed by the filer. See paragraph (b)(18) of this section and § 514.10(c). The commodity description under paragraph (a) of this section, and the TLI, by symbol or TLI note, as appropriate, shall clearly identify and explain the following types of rates and the commodities to which they are applicable:

(i) *Time/Volume rates in foreign commerce.* A time/volume rate means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(A) Time/volume rates may be offered by common carriers or conferences and shall be published as TLIs for each commodity description where they apply. The commodity description shall

note the availability and terms of the time/volume rate(s). (See paragraph (a)(2)(ii) of this section.) The TLI(s) shall state in the TLI note(s) that the rate is a time/volume rate.

(B) All rates, charges, classifications, Tariff Rules and practices concerning time/volume rates must be set forth in the appropriate tariff items, e.g., commodity description, TLI, and/or Tariff Rule 26 (§ 514.15(b)(26)), which shall identify the shipment records that will be maintained to support the rate.

(C) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment.

(D) Any shipper utilizing a time/volume rate must give notice to the offering carrier or conference of its intention to use such a rate prior to tendering any shipments under such an arrangement. Notice may be accomplished by any effective method deemed appropriate by the offering carrier or conference and set forth in Tariff Rule 26, and cross-linked in the commodity record and/or TLI Notes.

(ii) *Open rates in foreign commerce.* An open rate in foreign commerce means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rates on such commodity or commodities. See § 514.15(b)(15).

(A) In the conference tariff, where all TLIs for a given commodity description are opened, the description and commodity index under paragraph (a) of this section shall include the appropriate notation, i.e., the word "OPEN." Where a conference opens a rate at the TLI level, the TLI shall show the rate as "0.00" and the TLI Note shall contain the appropriate "OPEN" notation. Both commodity description and TLI Note of "opened" rates (where applicable) shall refer to Tariff Rule 15 (§ 514.15(b)(15)) which shall clearly define the word "open," as used in the tariff, and indicate where the rates of the individual conference member lines on such items may be found.

(B) Where a conference opens rates pursuant to paragraph (b)(19)(ii)(A) of this section, an individual conference member may not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item, as required by this part. This may be accomplished by the individual common carrier member (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing in a separate tariff for open rates or in the regular conference tariff each member's rates on the opened items, indicating the rates which will be charged by each individual common carrier and the governing Tariff Rules and provisions of the conference tariff applicable to each common carrier. When conference members publish their open rates in a separate tariff, such tariffs shall identify the conference tariff in which the open-rated condition is reflected.

(C) Controlled common carriers filing open rates are subject to the 30-day controlled common carrier notice requirement of § 514.4(c)(1)(iii), except when special permission is granted by the Commission under § 514.18.

(D) Notwithstanding paragraph (b)(19)(ii)(C) of this section, a conference may, on less than 30 days' notice, file reduced rates on behalf of controlled common carrier members for open-rated commodities:

(*1*) At or above the minimum level set by the conference; or

(*2*) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(iii) *Independent-action rates in foreign commerce.* Each conference agreement must provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the 1984 Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective not later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item. For controlled common carriers, see §§ 514.4(d)(4)(iii) and 514.9(b)(11).

(20) *Service.* Under the DED codes, the example indicates that the service will be "PH—Pier/House."

(21) *(Carrier.)* In a conference tariff, the "Carrier" field is filled in with the SCAC code (under § 514.11(a)(6)) of the carrier, when the TLI is an independent action or open rate of a carrier member of a conference (not applicable in illustration). If not filled in, the field does not appear on the screen. See paragraph (b)(19) of this section.

(22) *Packaging code.* Under the DED, the illustration's packaging code is "CRT" (Crate). See paragraph (b)(2)(ii) of this section.

(23) *Ctr size.* The example container size is 40-foot, using the DED code.

(24) *Stow code.* Under the DED, the illustration's stow code is "BS" (Bottom Stowage.)

(25) *Ctr type.* Under the DED codes, the example indicates that the container type to be "PC" (Dry).

(26) *Stat code.* The statistic code is a numeric field which is provided for convenience to the tariff owner for statistical purposes. The field can handle up to 20 digits. If not filled in, the field does not appear on the screen.

(27) *Ctr temperature.* Under the DED code, the illustration's container temperature requirement is "NA" (Not Applicable.)

(28) *TLI notes.* The TLI notes contain facts or circumstances which pertain to the particular rate. Additional rates, conditions which directly affect the rate, or assessorial charges *may not* be contained in the TLI notes, but shall be entered in the appropriate place, such as in the "Applicable Assessorial Charges" under paragraph (b)(29) of this section, or in inland rate tables under § 514.15(b)(1).

(29) *Assessorial charges.* Any matter directly affecting the rate, such as assessorial charges, shall be entered in the Assessorial Charges field, as described in § 514.10(d). The illustration shows a (Paris) surcharge and two assessorials found in and linked to Tariff Rules.

(30) *Haz code.* The Hazard code in the example is "NHZ" for "non-hazardous."

(c) *TLI calculation.* ATFI's calculation feature adds potentially applicable assessorials in algorithm form and these and inland rate charges are added to the basic ocean freight to compute the bottom line (total) freight. For a TLI calculation, as with most other ATFI operator functions, the ATFI user manual (§ 514.8(b)) is almost indispensable. The basic steps for the calculation are:

(1) Retrieve a TLI, such as the example in paragraph (b) of this section.

(2) Exercise the *"Calc"* option and an "ATFI RATE CALCULATION" screen appears. It is very similar to the ATFI TARIFF LINE ITEM DETAIL screen in paragraph (b) of this section, except that the retrieving operator enters the actual shipment data in the appropriate fields. Once these data are entered and verified, the operator presses another *"Calc"* key and screens similar to the following simulated screens ("ATFI RATING RESULTS," (i) and (ii)) are used to show the "Total Freight" ("bottom-line freight"):

```
[§ 514.13(c)(2)(i)]
        ATFI RATING RESULTS
 XYZ Line Worldwide Commodity Tariff
            ( XYZZ001 )

Commodity:  Electric trains
     TLI:  9503-10-0010-0001

Actual weight: 0.000 KT
Actual volume: 0.000 CBM

        Rate Break Table
-----------------------------
2,310.00USD/  PC <--- Selected Rate

===  Establishing Rating Values
                        (Cycle 0) ===

===  Establishing Ocean Freight
                        (Cycle 1) ===

Basic Ocean Freight      2,310.00USD
```

```
[§ 514.13(c)(2)(ii)]

        ATFI RATING RESULTS

 XYZ Line Worldwide Commodity Tariff
            ( XYZZ001 )

Freight Basis is  PC
Shipment Rated at          2,310.00USD
Shipment Freighted as      1 CTR

===       Beginning Rating          ===

Basic Ocean Freight        2,310.00USD
Paris surcharge              100.00USD
                           ------------
Subtotal                   2,410.00USD

CAF                          163.26USD
                           ------------
          Total Freight    2,573.26USD

======= End of Rating Results ======
```

(3) The bottom-line rate calculation facilitates estimation of the total charges for the shipment. However, "Total Freight" may not always be the freight paid by the shipper because of operator error or the application of other assessorial charges which were not in algorithm form because they could not be determined prior to shipment, e.g., detention charges. Such non-predeterminable charges, however, would be flagged for the retriever as potential charges through the dummy algorithm feature under § 514.10(d)(1)(iv).

(4) For the basic ocean freight rate and each item that may be added to it to find the overall cost, a proof screen may be used for verification after the calculation.

§ 514.14 [Reserved]

§ 514.15 Tariff Rules.

(a) *General.* (1) This section requires the electronic filing of certain tariff matter other than the major ATFI objects (TLIs, etc.) addressed elsewhere in this part, which in any way affects the application of the tariff or is related to tariff objects, as prescribed in this part. Matter required to be filed by this section shall be contained in the ATFI tariff, either:

(i) In mandatorily numbered and titled Tariff Rules under paragraph (b) of this section; or

(ii) Where the listed mandatory subjects of Tariff Rules would not include a specific proposed rule or other tariff matter of the filer, in optional Tariff Rules under paragraph (c) of this section, with the filer selecting the number (beginning with number 100) and title.

(2) *Algorithms and text.* (i) Where the Tariff Rule directly affects a commodity or TLI, e.g., by the addition of a surcharge for certain conditions, the assessorial charge calculation/condition statement (and assessorial table, where applicable) shall be set forth in the Tariff Rule as an algorithm if determinable prior to shipment. This algorithm shall be electronically linked to each tariff item to which it applies, as described in § 514.10(d) and in the ATFI Batch Filing Guide and ATFI Tariff Filing Guide.

(ii) Contents of Tariff Rules other than algorithms shall be entered in full-text format, be clear, explicit and complete, and be linked to appropriate items through the dummy algorithm functionality described in § 514.10(d)(1)(iv).

(3) *Application of rule.* Where a Tariff Rule affects only particular items, each affected item, e.g., commodity description, TLI, etc., shall specifically refer and be linked to such rule, as described in the ATFI Batch Filing and ATFI Tariff Filing Guides.

(4) *Subrules.* Where the subject or title of a Tariff Rule permits, obviously-related subrules may be used.

(5) *Rules tariffs.* Tariff Rules may also be contained in separate tariffs, as described in § 514.12.

(6) *Rule Access Window.* ATFI's Rule Access Window lists by Tariff Rule number and title all of the Tariff Rules contained in a particular tariff.

(b) *Mandatory Tariff Rules.* Specific Tariff Rules affecting the tariff, and/or other materials required by this part to be included in Tariff Rules, shall be contained in the appropriate Tariff Rules, as designated by the numbers and titles specified in this paragraph. Where notes to commodity descriptions and/or TLIs contain matter that would otherwise be normally contained in Tariff Rules, the applicable Tariff Rule(s) need not duplicate such matter but may simply indicate that the tariff is structured in this manner. In the event that a particular title contained in this paragraph does not apply to any matter affecting the tariff, the rule number and title shall be entered with a statement that the rule is not applicable ("N/A"). See § 514.12(a)(i). Tariff matter obviously falling within a particular title may not be contained in another, less descriptive title and, where a mandatory subject under this paragraph is not applicable, the tariff matter shall be filed in an optional rule under paragraph (c) of this section, with the appropriate title. Mandatory Tariff Rule (and subparagraph) numbers, titles, content (as also may be required by other sections of this part, cross referenced in this paragraph) are as follows:

(1) *Scope.* As described in § 514.11(b)(10), the Tariff Record's scope is briefly set forth in location and/or location group pairs for origin and destination. Tariff Rule 1 shall be consistent with the Tariff Record scope.

but describe it in complete detail, especially for the following types of tariffs or tariff items:

(i) *Foreign and domestic (offshore) commodity tariffs.*

(ii) *Equipment interchange tariffs* under § 514.12(b)(3)(ii).

(iii) *Intermodal services.*

(A) Tariff Rule 1 shall describe the modes of intermodal service provided (e.g., rail, truck, etc.) and the carrier's liability to the shipper for each type of intermodal movement.

(B) Tariff Rule 1 shall indicate whether the tariff TLIs are "through rates," which include the rates for all services on the overall route, are combination rates to which rate(s) for other transportation must be added, or both.

(C) Common carriers and conferences which publish more than one intermodal rate tariff from, to or between the same points, ports or regions, based on mode of service, description of commodities, etc., shall provide in Tariff Rule 1 of each respective tariff a cross-reference to the FMC number and description of the application of such other tariff(s).

(D) Tariff Rule 1 shall include a description of any alternate port service, or other substituted service, intended to be offered. If this service falls within the definition of "transshipment," Tariff Rule 1 shall cross-reference Tariff Rule 13, where transshipment services are described.

(E) TLIs involving intermodal service shall include an appropriate statement to this effect in the applicable commodity description record(s) and/or TLI notes under § 514.13, but all rates and charges affecting the TLI shall be entered in the proper form in the Applicable Assessorial Charges section and/or inland rate tables.

(F) If a carrier or conference desires to provide intermodal transportation to or from named points at combination rates, it shall clearly and accurately set forth the applicable charges in the ATFI "Inland Rate Tables" file. Other tables, similar to inland rate tables in that they result in the addition of amounts to TLIs, such as surcharges (assessorials), may be constructed in algorithm format under § 514.10(d) and paragraph (a) of this section. The ATFI "Batch Filing Guide" and the ATFI Tariff Filing Guide provide details on the data creation and filing requirements for inland rate tables, as well as for Tariff Rules' tables.

(2) *Application of rates and charges.* Tariff Rule 2 shall contain a clear and definite statement of:

(i) All services provided to the shipper and covered by the TLIs, including the rate bases set forth in § 514.13 (b)(17)(ii) and (b)(17)(iv)(A) and inland rate tables under paragraph (b)(1) of this section; and

(ii) The extent of any limitation or restriction, if the application of any of the rates, charges, Tariff Rules or regulations stated in the tariff is restricted to any particular port, pier, etc.

(3) *Rate applicability rule.* Tariff Rule 3 shall contain a clear and definite statement of the time at which tariff changes become applicable to any particular shipment, including the following:

(i) *In foreign commerce,* the tariff rates, Tariff Rules and charges applicable to a given shipment must be those published and in effect on the date the cargo is received by the common carrier or its agent (including originating carriers in the case of rates for through transportation).

(ii) *In domestic offshore commerce,* for joint rates in intermodal transportation, the rate applicable to any particular cargo movement shall be that rate which is in effect on the day the initiating carrier takes possession of the shipment.

(4) *Heavy lift.* Tariff Rule 4 shall contain a clear and definite statement of all heavy lift practices and charges.

(5) *Extra length.* Tariff Rule 5 shall contain a clear and definite statement of all extra length practices and charges.

(6) *Minimum bill of lading charges.* Tariff Rule 6 shall contain a clear and definite statement of minimum bill of lading charges and applicability.

(7) *Payment of freight charges.* Tariff Rule 7 shall contain a clear and definite statement of:

(i) All requirements for the payment of freight charges;

(ii) Currency restrictions, if any, and the basis for determining the rates of currency exchange (see § 514.10(c)); and

(iii) If credit is extended to shippers, the credit terms available and the conditions upon which credit is extended. In foreign commerce, when credit applications or agreements are required, specimens of such applications or agreements shall be filed as part of this Tariff Rule.

(8) *Bill(s) of lading.* Unless a governing bill of lading tariff has been filed under § 514.12(a)(1)(iv), Tariff Rule 8 shall contain all clauses of every applicable specimen copy of any bill of lading, contract of affreightment, and other document (except for a service contract and its essential terms under §§ 514.7 and 514.17) evidencing the transportation agreement between carrier and shipper. Such shipping contracts shall indicate that they are subject to the terms and conditions of the carrier's Federal Maritime Commission tariffs and may not contain provisions inconsistent with the Tariff Rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* Tariff Rule 9 shall contain a clear and definite statement of:

(i) *In foreign commerce,* the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.23(b) of this chapter.

(ii) *In domestic offshore commerce,* the exact rate or rates, if any, to be paid ocean freight forwarders (see also § 510.23(d) of this chapter).

(10) *Surcharges and arbitraries.* Tariff Rule 10 shall contain algorithms and explanatory text of surcharges and arbitraries for items not elsewhere provided for in this section. Rates from or to designated ports may be established by applying an arbitrary or differential charge based upon the rate applicable to a specified "base port," provided that any such arbitrary or differential is clearly defined, set forth as an algorithm (with table, if necessary) and is referenced (linked) in the commodity description or TLI affected.

(11) *Minimum quantity rates.* See also § 514.13(a)(2)(i)(C). Tariff Rule 11 shall state:

(i) *For foreign commerce:*

When two or more TLIs are named for the same commodity over the same route and under similar conditions, and the application is dependent upon the quantity of the commodity shipped, the total freight charges assessed against the shipment may not exceed the total charges computed for a larger quantity, if the TLI specifying a required minimum quantity (either weight or measurement per container or in containers), will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower TLI if the weight or measurement declared for rating purposes is increased to the minimum level.

(ii) *For domestic offshore commerce:*

When two or more TLIs are named for the same commodity, and the application is dependent upon the quantity of the commodity shipped, the charges assessed against the smaller shipment may not exceed those for any larger quantity.

(12) *Ad Valorem Rates.* Tariff Rule 12 shall contain a clear and definite statement of:

(i) The method of computing an *ad valorem* TLI or charge, to the extent not included elsewhere in the tariff (e.g., in connection with a TLI under § 514.13(b)(17)(i)); and

(ii) The additional liability, if any, assumed by the tariff owner in consideration for the *ad valorem* rate or charge.

(13) *Transshipment.* When transshipment services are offered pursuant to an ongoing agreement, Tariff Rule 13 shall contain:

(i) The through rate;

(ii) The routings (origin, transshipment and destination ports); additional charges, if any (e.g., port arbitrary and/or additional transshipment charges); and participating carriers; and

(iii) A provision substantially as follows:

> The Tariff Rules, regulations and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Every participating connecting or feeder carrier, which is a party to transshipment arrangements, has agreed to observe the Tariff Rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) *Co-Loading in foreign commerce.* Tariff Rule 14 governs co-loading by NVOCCs in foreign commerce and shall contain the following provisions:

(i) *Filing requirements.* (A) If an NVOCC does not tender cargo for co-loading, Tariff Rule 14 shall so indicate.

(B) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in Tariff Rule 14.

(C) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe in Tariff Rule 14 its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(ii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(iii) *Co-loading rates.* No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

(15) *Open rates in foreign commerce.* Tariff Rule 15 of a conference tariff shall contain a clear and definite statement of:

(i) The meaning of the word "open" in "open rates," and the extent to which conference rates have been opened pursuant to § 514.13(b)(19)(ii);

(ii) Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable Tariff Rules and regulations of the conference tariff will continue to govern the rates filed by each individual line; and

(iii) Where the rates of the individual conference member lines on open-rated items may be found.

(16) *Hazardous cargo.* When TLIs for explosive, inflammable, corrosive, or other dangerous materials are published (or Tariff Rule 16 does not specifically prohibit carriage of such materials), Tariff Rule 16 shall contain either:

(i) Tariff Rules governing the carriage of all types of hazardous cargo; or

(ii) Reference to applicable governing and/or general reference tariffs, as described in § 514.12.

(17) *Green salted hides in foreign commerce.* For foreign commerce, Tariff Rule 17 shall require that:

(i) The shipping weight for purposes of assessing transportation charges on green salted hides shall be either a scale weight or a scale weight minus a deduction which amount and method of computation are specified in the commodity description record or TLI, as referenced by § 514.13(b)(17)(iii); and

(ii) The shipper furnish the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo in foreign commerce.* Where the tariff owner offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TLI assessed on the original movement, when such TLI is lower than the prevailing TLI, Tariff Rule 18 shall provide that:

(i) The return of shipment(s) be accomplished within a specific period not to exceed one year;

(ii) The return movement be made over the line of the same common carrier performing the original movement, except that in the case of a conference tariff, return may be made by any member line when the original shipment was carried by a conference member under the conference tariff; and

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests in foreign commerce.* Tariff Rule 19 shall contain clear and complete instructions in accordance with the effective agreement's provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the 1984 Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge claims.* Tariff Rule 20 shall contain provisions that conform to the following:

(i) No tariff may limit the filing of overcharge claims with a common carrier for private settlement to a period (beginning with the accrual of the cause of action) ending in less than:

(A) Three years in foreign commerce; or

(B) Two years in domestic offshore commerce.

(ii) The acceptance of any overcharge claim may not be conditioned upon the payment of a fee or charge.

(iii) No tariff may require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(iv) Tariff Rule 20 shall also:

(A) Provide that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application; and

(B) Clearly indicate where and by what method such claims are to be filed with the common carrier and that such claims may also be filed with the Federal Maritime Commission. At a minimum, Tariff Rule 20 shall contain the following provisions:

> (*1*) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within 20 days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the 1916 Act or 1984 Act.
>
> (*2*) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to either:
>
> (*i*) Section 11(g) of the Shipping Act of 1984 (46 U.S.C. app. 1710) for foreign commerce, and that such claims must be filed within *three years* of the date the cause of action accrued; or

(*ii*) Section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821) for domestic offshore commerce, and that such claims must be filed within *two years* of the date the cause of action accrues.

(21) *Use of carrier equipment.* Tariff Rule 21 shall contain provisions conforming to the following regulations:

(i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers, or other persons acting as the agent for the person paying the freight charges:

(A) A sample equipment interchange agreement, or the terms and conditions governing the use of said equipment, shall be published in the carrier's or conference's Tariff Rule 21. The sample agreement shall include: the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services, such as tracing and replenishing fuel or refrigerant for reefer containers), that govern the use of carrier-provided equipment, including cargo containers, trailers and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the agreement or Tariff Rule 21, as applicable, and shall clearly identify the location and type of equipment to which they apply.

(B) If a carrier or conference does not have a sample equipment interchange agreement, the carrier shall publish its terms and conditions and standard free time and charges in its Tariff Rule 21, as described in paragraph (b)(21)(i)(A) of this section. In foreign commerce, where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Tariff Rule 21 shall contain a statement to that effect.

(ii) If a carrier or conference has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be arranged in alphabetical order of the parties to which the exceptions apply and shall be included in either:

(A) Tariff Rule 21; or

(B) A separate equipment interchange tariff filed by the carrier or conference in accordance with § 514.12(b)(3), in which case Tariff Rule 21 shall identify the separate equipment interchange tariff containing the exceptions. A carrier or conference is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

(22) *Automobile Rates in domestic offshore commerce.* If TLIs for automobiles are published on a volume basis, as described in § 514.13(b)(17)(iv)(B)*(1)*, introductory paragraph, Tariff Rule 22 shall contain:

(i) The cubic measurement for the five most recent model years prescribed by the manufacturer of each applicable particular make or model, arranged in table form with reference to applicable TLIs; and

(ii) A clear and definite description of all other applicable regulations, if not contained in the commodity description record(s).

(23) *Carrier terminal rules and charges.* Tariff Rule 23 of carrier and conference tariffs:

(i) Shall state separately every terminal or other charge and discount and service (including privileges, facilities and services) under the control of the common carrier or conference which is granted or allowed to any shipper, consignee, or passenger, regardless of whether the service results in a charge or discount separately assessed as an addition to or subtraction from the carrier's basic TLI, in which case it shall be set forth as an algorithm, or is simply included within the basic TLI, without differentiation;

(ii) Shall contain a rule in compliance with part 525 of this chapter, if the tariff names rates on import traffic shipped through the port of New York, or to a range of ports which includes New York; and

(iii) May provide for an amendment, effective upon filing:

(A) Increasing a charge for terminal services, canal tolls or additional items, without the increase being separately stated on the bill of lading, but only if such charge is not under the control of the filing common carrier or conference, which merely acts as a collection agent for the charge, and the agency making such charge to the common carrier or conference increases the charge without notice to the common carrier or conference and is identified in Tariff Rule 23 by name and appropriate tariff number (see § 514.9(b)(20)); and

(B) For domestic offshore commerce, establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor (see § 514.9(b)(16)(i)(B)).

(24) *NVOCCs in foreign commerce: bonds and agents.* NVOCCs in foreign commerce are governed by the provisions of this subparagraph and Tariff Rule 24 of each of their tariffs shall contain provisions substantially as follows:

(i) Every non-vessel-operating common carrier ("NVOCC") in foreign commerce shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission a bond in the amount required by 46 CFR 583.4 to ensure the financial responsibility of the NVOCC for the payment of any judgment for damages arising from its transportation-related activities, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state its bond number and identify the name and address of the surety company issuing the bond.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall enter in the first address field provided in each of its Tariff Records under 46 CFR 514.11(b)(8)(ii) the name and address of a person in the United States designated under 46 CFR 583.5 as its legal agent for the service of judicial and administrative process, including subpenas. The NVOCC shall also state in Tariff Rule 24 that, in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the NVOCC's legal agent for service of process.

(iii) Service of administrative process, other than subpenas, may be effected upon the legal agent by mailing a copy of the documents to be served by certified or registered mail, return receipt requested.

(25) *Certification of shipper status in foreign commerce.* If a common carrier adopts a procedure other than those set forth in § 583.7 (b)(1) or (b)(2) of this chapter, for determining whether NVOCCs for whom it wishes to transport cargo have complied with the tariff and bonding requirements of sections 8 and 23 of the 1984 Act, that procedure shall be clearly set forth in Tariff Rule 25 of its tariff.

(26) *Time/volume rates in foreign commerce.* In connection with time/volume rates offered under § 514.13(b)(19)(i), Tariff Rule 26 of common carrier and conference tariffs in foreign commerce shall clearly and accurately:

(i) State all charges, classifications, rules and practices concerning time/volume rates;

(ii) Identify the shipment records which will be maintained to support the rates;

(iii) Describe the method to be used for shippers giving notice of their intention to use a time/volume rate prior to tendering any shipment under the time/volume-rate arrangements; and

(iv) State that:

(A) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment; and

(B) Shipper notices and shipment records supporting a time/volume rate will be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(27) *Loyalty contracts in foreign commerce.* Where the filer intends to use a loyalty contract in foreign commerce:

(i) Tariff Rule 27 shall contain a sample of every loyalty contract, as defined in 46 CFR 514.2, together with regulations which set forth the scope and application of the contract system.

(ii) The use of any sample loyalty contract and applicable regulations filed for inclusion in a tariff under paragraph (b)(27) of this section shall be presumed to be "in conformity with the antitrust laws," within the meaning of section 10(b)(9) of the 1984 Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR 50.6, indicating no objection to the use of that contract.

(28) *Definitions.* Tariff Rule 28 shall include any filer definitions of technical terms which, however, may not be inconsistent with the 1916 or 1984 Acts or this part.

(29) *Symbols.* Tariff Rule 29 shall include any filer symbols, service codes, etc. and explanations therefor which, however, may not be inconsistent with the those set forth in this part or the "Batch Filing Guide."

(30) *Access to tariff information.* Tariff Rule 30 shall contain a clear and complete description of all costs, conditions and arrangements for public inspection of tariff material, including reasonable provisions for access to emergency tariff(s) under §§ 514.8(k)(1)(iv) and (k)(1)(v).

(31) *Seasonal discontinuance.* (i) Tariff Rule 31 shall contain announcements of seasonal discontinuance or restoration of service, which shall be filed on not less than ten days' notice, except by special permission under § 514.18. Such announcements shall contain a brief statement announcing the date of discontinuance and/or restoration of service and may include no other tariff matter. The TLIs associated with service discontinuance or restoration shall be amended, expired or filed as applicable, and shall meet all criteria for TLI filings/amendments.

(ii) Tariff Rule 31 of tariffs naming rates, fares or Tariff Rules applicable to all water routes which are closed to navigation during part of a year shall:

(A) Contain provisions governing the handling of shipments which may arrive at the publishing carrier's facilities after the date service is discontinued; and

(B) Expressly provide for the seasonal discontinuance provision's own expiration at the close of the navigation season, or include a rule providing for the discontinuance/restoration of service based on the stated navigation season.

(32) *Military cargo terms.* Tariff Rule 32 shall contain all the terms and conditions pertaining to MSC tenders under §§ 514.3(b)(4) and 514.9(b)(13).

(33) *Project rates.* Tariff Rule 33 shall contain complete descriptions of all project rates which are stated discounts of other TLI's for given commodities under § 514.13(a)(5)(ii). For domestic offshore carriers, Tariff Rule 33 shall also include a statement that all project rates will cover the carrier's variable costs and contribute to its fixed expenses.

(34) *Terminal Tariffs.* Tariff Rule 34 shall contain the full-text portions of all terminal tariffs filed by marine terminal operators (excluding the Organization Record and Tariff Record, which must be established under § 514.11). Other, mandatory Tariff Rules under this section which are designed for carriers and conferences shall be designated "Not Applicable" or "NA." For logical divisions within the terminal tariff, filers should use subrules, as described in paragraph (a)(4) of this section.

(c) *Optional Tariff Rules.* Tariff Rules numbers 100 and up (to be numbered consecutively) are available for carrier/conference use.

§ 514.16 [Reserved]

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) *General.* (1) A concise statement of the essential terms (*ETs*) of service contacts (which are filed in paper form under § 514.7) shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format under this section. Filing and maintenance of ETs are accomplished through an electronic essential terms publication (ETP) for each carrier or conference filer, which contains ETs for each of the carrier's or conference's service contracts.

(2) *Cross-references*—(i) *Authority to file:* § 514.4(d)(5).

(ii) *Cancellation:* § 514.4(e)(2).

(iii) *Availability of essential terms:* § 514.7(f).

(iv) *Rejection of service contracts and/or essential terms:* § 514.7(j).

(v) *Modification, correction and cancellation:* § 514.7(k).

(vi) *Assessorials and algorithms:* § 514.10(d)(1).

(b) *Essential terms publication*—(1) *Creation and form.* The ETP is created and maintained by the filer as a separate *tariff type ("ET" for "ETP")* with a tariff record and number (see § 514.11(b)). A service-contract filer, either carrier or conference, may have only one ETP for all its ETs. The ETP may also contain matter of general applicability to all ETs contained therein, such as Tariff Rules. The ATFI system will coordinate development of ET search indexes by, for example: ET, service contract or FMC file number; by commodity name or number; by TLI number; and, by origin or destination of the commodity.

(2) *Reference to/in tariffs of general applicability.* The ETP shall:

(i) Contain reference to each carrier's or conference's tariff of general applicability; and

(ii) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under this part.

(c) *Statement(s) of essential terms; general requirements.* (1) Essential terms shall be promptly filed by the appropriate person, in the carrier's or conference's ETP and in the content and tariff format as provided by this part. (The service contract, in paper form, is required to be filed within ten (10) days of the electronic filing of the essential terms under § 514.7(g).)

(2) Essential terms may not:

(i) Be uncertain, vague or ambiguous; or

(ii) Contain any provision permitting modification by the parties other than in full compliance with this part.

(d) *Essential terms; specific requirements*—(1) *ATFI sample screen illustration.* The following ATFI simulated screen illustrates the elements required to be contained in essential terms filings (here for one commodity and one TLI) and how they appear in the ATFI system. (The references in brackets are to the paragraphs of this section which explain the requirements for the fields and the data contained therein.)

```
[§ 514.17(d)(1)]          ATFI ESSENTIAL TERMS SEARCH
              JKL Line Essential Terms Publication ( XYZ 004 )      [(b)(1)]
[(d)(2)] ET Num: 681     SC Num: 765     ET Filing date: 01Jan1992  [(d)(3)]
[(d)(3)] Available until: 31Jan1992 Contract Eff.Date: 01Dec1992    [(d)(4)]
                              Contract Expiration date: 15Jan1993   [(d)(4)]
                             Contract Termination date: 15Jan1993   [(d)(5)]
   Description: Alarm clocks                                        [(d)(6)]

              Full Service Contract Essential Terms Display

 Commodity: 9105-11-0023  Clocks                                    [(d)(6)]
      Full: Alarm clocks; battery or AC powered                     [(d)(6)]
  Excludes:                                                         [(d)(6)]
       TLI: 9105-11-0023-0002 PP LS 40  01Jan1992 3,100.00USD       [(d)(7)(ii)]
====================== End of Commodity 9205-90-0023 ======================

 REQ TERM 1:ORIGIN (location or group name)                      [(d)(8)(i)]
 REQ TERM 2:DESTINATION    ( " )                                      [ii)]
 REQ TERM 3:MINIMUM QUANTITY (text)                                 [(iii)]
 REQ TERM 4:SERVICE COMMITMENTS (text)                               [(iv)]
 REQ TERM 5:LIQUIDATED DAMAGES FOR NON-PERFORMANCE (if any)          [(v)]
 REQ TERM 6:LATER EVENTS CAUSING DEVIATION (if any)                  [(vi)]
 REQ TERM 7:DURATION (e.g.,"46 days from 01DEC1992 to 15JAN1993")   [(vii)]
 OPT TERM 1:(TITLE and text)                                       [(d)(9)]
 OPT TERM 2:(TITLE and text)----------------------------------------[(d)(9)]
```

(2) *ET (statement of essential terms) and SC (service contract) numbers.* The "ET Num" and "SC Num" are defined by the filer and shall be entered in the appropriate fields.

(3) *Period of availability.* The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the "Filing date" (automatically entered by ATFI under § 514.10(a)(2)) to the "Available until" date (automatically defaulted to 30 days from the filing date, but the filer can enter a later date, making the availability period longer).

(4) *Duration of contract.* In addition to the period of availability of essential terms to similarly situated shippers, the service contract itself must have an effective date and an expiration date (see §§ 514.10 (a)(3) and (a)(4)), governing the duration of the contract between the original signatory parties. The duration must also be set forth in required essential term # 7 under paragraph (d)(8)(vii) of this section.

(5) *Contract termination date.* A statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired under the terms of the contract, or have been terminated for reasons not specifically set forth in the contract. See §§ 514.4(e)(2) and 514.7(l)(1)(ii). The contract termination date would, therefore, be the same as the contract expiration date, unless terminated sooner, in which case the filer would enter the earlier date when the termination event occurred.

(6) *Commodity.* The commodities covered by a service contract shall be entered as described in § 514.13(a). See § 514.7(c) for exempt commodities.

(7) *Mandatory terms.* (i) Essential terms shall contain the contract rates or rate schedule(s), including any additional or other charges (i.e., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; except that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission. In ATFI, the mandatory terms shall be entered as described in paragraphs (d)(7)(ii) and (d)(8) of this section.

(ii) *TLI.* The tariff line items for essential terms are similar in format to those in a commodity tariff, as prescribed by § 514.13(b). In the screen example, the ATFI system adds four digits to the commodity code to obtain the TLI number. As set forth in the "Batch Filing Guide's" Data Element Dictionary, the basic conditions and terms of service include: "PP" (Shipment service code for "Pier to Pier"); "LS" (Rate basis for "Lump Sum"); and "40" (Container size for a 40-foot container). The date, "01Jan1992" is the TLI filing date and the basic rate is $3,100 (U.S. dollars).

(8) *Other required terms.* In addition to the data described in paragraphs (d)(2) through (d)(7) of this section, essential terms shall also contain the following terms, with the mandatory numbers and subjects as follows:

(i) *Origin.* The origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b).

(ii) *Destination.* The destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b).

(iii) The *minimum quantity of cargo or freight revenue* necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as

a fixed percentage of the shipper's cargo.

(iv) The *service commitments* of the carrier, conference or specific members of a conference, such as assured space, transit time, port rotation or similar service features.

(v) *Liquidated damages for non-performance, if any.* See 514.7(l).

(vi) *Later events causing deviation (if any).* Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. See § 514.7(l). This requirement applies to, *inter alia*, the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied;

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential terms of the contract.

(vii) The *duration of the contract*, stated as a specific, fixed time period, with a beginning date (effective date) and ending date (expiration date). See paragraph (d)(4) of this section.

(9) *Optional essential terms.* Any essential term of a service contract not specifically provided for in this section shall be entered after the required terms and in numerical order, beginning with # 1.

(10) *Assessorials and algorithms* Assessorial charges in full-text or algorithm form, as required and further explained in § 514.10(d), may be contained in Tariff Rules within essential terms publications under paragraph (b) of this section, and/or in the commodity descriptions and TLIs of particular essential terms documents under paragraphs (d)(6) and (d)(7) of this section, respectively. Algorithms are not accommodated in other mandatory terms or the optional terms of essential terms described in paragraphs (d)(8) and (d)(9) of this section.

§ 514.18 Special permission.

(a) *General.* Section 8(d) of the 1984 Act and section 2 of the 1933 Act authorize the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 514.9. Section 9(c) of the 1984 Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will grant such permission only in cases where merit is demonstrated.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be submitted with reasonable promptness after filing the defective tariff material. For correction of clerical errors in the essential terms of service contracts, see § 514.7(k)(1).

(c) *Application—(1) By authorized official; filing fee.* Application for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent that holds authorization under § 514.7(d) to file the tariff matter. Every such application shall be submitted to BTCL and be accompanied by the filing fee provided in § 514.21.

(2) *Transmittal.* Application for special permission shall be made only by cable, telegram or letter, except that in emergency situations, application may be made by telephone if the telephone communication is promptly followed by a cable, telex or letter and the filing fee.

(3) *Content.* Except as provided in § 514.7(k)(1) for correction of essential terms, applications for special permission shall contain the following information:

(i) The organization name, number and d/b/a of the conference or carrier under § 514.11(b);

(ii) The tariff number, title and tariff code under § 514.11(b); and

(iii) The rate, commodity, Tariff Rules, etc. (related to the application), and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(d) *Implementation.* (1) If all conditions are complied with and if the authority granted by special permission is used, it shall be used in its entirety and in the manner set forth by the Commission, including the prompt electronic filing of the material for which permission is requested, with the filer using the special case number assigned by the Commission for that filing and the special case symbol "*S*," as prescribed in § 514.9(b)(19)(i).

(2) If Commission-specified conditions are not complied with, or if the exact authority granted by the special permission is not used and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

§ 514.19 Suspension of tariff matter.

All use of suspended tariff matter shall be deferred for the period specified in the Commission's suspension order. In addition to other affected places in the tariff, as provided in this section, the fact that tariff matter is suspended is also displayed through the "Status" function in the command line, as described in § 514.8(n)(3).

(a) *Domestic offshore commerce—(1) Suspension; period.* The Commission may suspend from use any rate, fare, charge, classification, Tariff Rule, regulation, or practice of a domestic offshore carrier for a period of up to 180 days beyond the time it would otherwise have lawfully taken effect.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, BTCL shall immediately make the appropriate entry in the domestic offshore carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff matter suspended and sets forth any tariff provisions which may remain effective in lieu of the suspended provisions;

(ii) Bears an effective date coinciding with that in the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Amendment of suspended tariff matter.* (i) Neither suspended matter nor matter continued in effect as a result of a suspension, may be amended, deleted or withdrawn except through use of the special case number and symbol procedure under § 514.9(b)(19) referred to in the order or special permission issued by the Commission, except that a tariff affected by a suspension order may be amended during the suspension period if the amendment does not affect the suspended materials.

(ii) If, prior to receiving a suspension order, a carrier files an amendment reissuing, deleting, canceling or amending any tariff matter named in a subsequent suspension order, the amendment shall be rejected.

(4) *Vacating suspension of tariff matter.* Should the Commission vacate a suspension order earlier than the date to which the subject tariff matter was originally suspended, BTCL shall immediately change the thru date to the specified date in the Commission's order vacating the suspension order.

(5) *Cancellation of suspended matter.* (i) Should the Commission subsequently cancel all or any part of previously-suspended tariff matter, BTCL shall immediately change the expiration date to the date of cancellation set forth in the Commission's order. See § 514.4(e).

(ii) If suspended tariff matter is not canceled by the Commission prior to its thru date, it shall take effect automatically on the thru date and any tariff matter which was continued in effect during the suspension period shall be automatically superseded by the tariff matter that had been suspended but was not canceled.

(b) Controlled common carriers in foreign commerce.

(1) *Suspension; period.* Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon the Commission's issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, the Commission's BTCL shall immediately make the appropriate entry into the controlled common carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff material suspended;

(ii) Bears an effective date coinciding with that of the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Replacement rates.* (i) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter:

(A) May become effective immediately upon filing or upon the effective date of the suspension, whichever is later; and

(B) Shall be filed using the special case symbol and number issued by the Commission under § 514.9(b)(19).

(ii) In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(iii) At the same time it files replacement rates, the controlled common carrier shall submit to BTCL a letter (in paper format) identifying the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or Tariff Rules resulting in total charges which equal or are lower than its own.

(c) *Other suspension situations.* When the Commission, upon good cause shown, issues an order to suspend tariff matter not addressed in paragraphs (a) or (b) of this section, it will set forth in the order the procedures for effectuating the suspension.

(d) *Other filings in suspension situations.* In suspension situations, when filings, not provided for elsewhere in this section and not otherwise permitted by the rules of this part, may become necessary or desirable, such filings may be directed by the Commission and shall use the assigned special case symbol and number procedure under § 514.9(b)(19).

§ 514.20 Retrieval.

(a) *General.* The Commission will not provide to the public tariff data in paper format, except pursuant to requests for certification of copies for court or government agency use, as provided in § 514.8(k)(2).

(b) *User charges.* User charges for services under this section are provided in § 514.21.

(c) *Interactive retrieval.* Interactive retrieval means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal (see § 514.8(e)), and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter which has been filed in the ATFI database.

(1) *Registration.* Every public interactive retriever will be required to register in advance with BTCL under § 514.8(f) to obtain a USERID and password.

(2) *Retrieval restrictions.* Due to system design and Congressional policy to impose reasonable restrictions on retrieval, a registered public interactive retriever will be logged off (automatically) the ATFI system:

(i) After 10 minutes of inactivity; or

(ii) After a period of time, e.g., 30 minutes (shown at logon), which the Commission has determined is sufficient to allow access to several TLIs (and related tariff objects).

(3) *Remote retrieval by modem.* A public retriever may access and/or obtain (through screen prints) ATFI filed tariff data through modem and telecommunications links and procedures authorized by the Commission.

(4) *Tariff Control Center.* A public retriever may access and/or obtain ATFI filed tariff data through personal operation of one of several terminals provided in the Tariff Control Center at the FMC headquarters in Washington, D.C.

(d) *Batch retrieval through database tapes.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily, weekly, or monthly basis. The ATFI System Administrator will record on 1600 bpi or 6250 bpi, 9 track, magnetic tape all of the tariff updates received during the previous calendar day, or other applicable subscriber-designated period, as well as any tariff update created by the Commission (e.g., suspensions, rejections, etc). These subscriber tapes will be distributed to subscribers via first class mail or made available for pick-up at the FMC ATFI Computer Center.

(e) *Instructional materials*—(1) *ATFI "Batch Filing Guide" and user manual.* The ATFI user guides applicable to retrieval functions are the "ATFI Fundamentals Guide," "ATFI System Handbook," and "ATFI Tariff Retrieval Guide." See § 514.8(b). The user of subscriber tapes will also need the ATFI transaction set formats and specifications detailed in the "Batch Filing Guide." See § 514.8(d)(3). The transaction set formats published for

batch filers are used for the formatting of subscriber tapes.

(2) *Computer based instruction ("CBI").* Computer based instruction for ATFI retrieval is a menu option for registered interactive retrievers using the ATFI central site system. See § 514.8(h).

(f) *Filers.* Properly registered individuals who will have "write" privileges for editing tariff data may access those tariffs for which they have such filing privileges without restriction. Where filing firms or employees thereof also register as public retrievers for access to all tariff data, the restrictions in paragraph (c)(2) of this section shall apply when they enter ATFI as a retriever.

§ 514.21 User charges.

In accordance with 5 U.S.C. 552 and 31 U.S.C. 9701, the following user charges are established for services under this part:

(a) *Application for exemption* (See §§ 514.3 and 514.8(a)): As provided in § 502.69 of this chapter.

(b) *User manual* (of ATFI "Guides" -- § 514.8(b)).

(1) *In diskette form:* $15 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) *Printed, in paper form* (Batch Filing Guide is free of charge and is furnished separately):

(i) *Package A*: Fundamentals Guide and System Handbook (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii): $18.00.

(ii) *Package B*: Tariff Retrieval Guide: $15.00.

(iii) *Package C*: Tariff Filing Guide: $27.00.

(iv) *Package D*: All Guides listed in paragraphs (b)(2)(i) through (b)(2)(iii): $55.00.

(3) *Ordering manuals.* Requests for user manual package(s) should be in writing and addressed to "BTCL Manuals," Federal Maritime Commission, Washington, DC 20573. A check for the appropriate amount should be made to the "Federal Maritime Commission."

(4) *Updates.* Updates to the user manual in any format will not be furnished automatically and are not included in the user charge. The Commission will publicize notice of upgrades when they occur.

(c) *Registration for user (filer and/or retriever) ID and password* (See exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20): $100 for initial registration for firm and one individual; $25 for additions and minor changes.

(d) *Certification by Commission Secretary* of tariff data (§ 514.8(k)(2)): As provided in § 503.43(c) of this chapter.

(e) *Certification of batch filing capability (by appointment through BTCL)* (§ 514.8(l)).

(1) *User charge:* $200 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).

(2) *Certification submissions:*

(i) May be made in one or more scheduled certification periods;

(ii) May include transaction sets for one of each different tariff type listed in Appendix A (# 14) of the ATFI Batch Filing Guide; and

(iii) May be made to the ATFI central site computer via on-line batch or to the ATFI Computer Center via bulk batch (9-track tape), or both.

(f) *Application for special permission* (§ 514.18): $100.

(g) *Remote retrieval by modem* (§ 514.20(c)(3)): 50 cents per minute of connect time.

(h) *Printing* (screen prints) of downloaded tariff matter at Commission's Tariff Control Center (§ 514.20(c)(4)): as provided in part 503, subpart E.

(i) [Reserved]

(j) *Database tapes* (§ 514.20(d)): The fees for subscriber tapes are:

(1) *Initial set* of full database tapes: $300.

(2) *Daily* updates: $25 each.

(3) *Weekly* updates: $50 each.

(4) *Monthly* updates: $100 each.

(k) *Miscellaneous tapes.* The fee for tape data other than the ATFI database described in paragraph (j) of this section, shall be $25 per tape.

§ 514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (46 CFR part 514 and Exhibit 1 to part 514) have been approved by the Office of Management and Budget [OMB] in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0055.

BILLING CODE 6730-01-M

* OMB 3072-0055; Expires 9-30-94 *

Exhibit 1 to Part 514 ORG NO. _____

ATFI USER REGISTRATION FORM

PLEASE TYPE OR PRINT
(SEE INSTRUCTIONS)

FMC USE ONLY
ARC _____ BOND _____ CC _____

1. This Registration is: [ ] Initial [ ] Amendment (Specify change)_____

2. Registrant _____
Full Legal Name of firm (or individual, if not a firm)

_____
(Doing Business As)

3. Address of Home Office _____ ( ) _____
(Number and Street) Telephone

_____ ( ) _____
(Number and Street) Fax

_____
(City/State/Country)

4. Billing Address If Different _____ ( ) _____
(Number and Street) Telephone

_____ ( ) _____
(Number and Street) Fax

_____
(City/State/Country)

5. Organization Number (If known)_____ 6. SCAC/STAC CODE _____(If Applicable)

7. Registrant Type (Check one) [ ] VOCC [ ] NVOCC [ ] Terminal [ ] Conference/Joint Service [ ] Tariff Publisher/Agent/Other

[SEE INSTRUCTIONS BEFORE COMPLETING LINE 8]

8. Permissions Requested and Person granted these permissions (Check permissions that apply)

_____
Print Full Legal Name

[ ] Retrieval

[ ] Maintenance of organization record

[ ] Create/modify tariff data

[ ] Review/Authorize/Transmit data

9. Certified for Batch Filing (Y/N) _____ If Yes, show Certification date_____
If the person to perform the Batch filing already has an existing Login, list only the Login for that person.

Existing Login_____

_____ _____
Signature of Authorized Official Print or Type name of Authorized Official

_____
Date

FMC USE ONLY

Login _____ Initial Password _____ User ID _____ Directory _____
DateAsg ____/____/____ AsgBy _____

Form FMC-63 (5-92)

Instructions for Exhibit 1 to Part 514
ATFI User Registration Form

Line 1. **Registration**. Indicate whether this is the initial (first-time) ATFI registration or an amendment to an existing ATFI registration.

Line 2. **Registrant**. This must be the full legal name of the firm or individual registering for ATFI and any trade names. The registrant name should match the corporate charter or business license, anti-rebate certification, surety bond, conference memberships, etc. It should be noted that the registrant name cannot be changed by the user after registration without submission of an amended registration form. A separate form must be submitted for each person registering to use ATFI.

Line 3. **Address of Home Office**. The complete street address should be shown in addition to the Post Office Box.

Line 4. **Billing Address if Different**. This should be completed when the billing address differs from the home office address. Show the street address in addition to the post office box.

Line 5. **Organization Number**. Complete if known. (This is also known as the Regulated Person Index number or RPI number).

Line 6. **SCAC/STAC Code**. SCAC (Standard Carrier Alpha Code) and STAC (Standard Tariffs Agent Code) is not mandatory for tariff filing in ATFI. These codes are used for the convenience of tariff filers/retrievers. SCAC/STAC codes are available from the National Motor Freight Traffic Association, Alexandria, VA.

Line 7. **Registrant Type**. Indicate the type of organization. A company cannot be more than one type. This data cannot be changed by the user after registration without submission of an amended registration form.

Line 8. **Permissions Requested and Person Granted these Permissions**.

Retrieval - Granted to all ATFI user(s).

Maintenance of Organization Record - The user listed can access the organization maintenance functions, i.e., modify organization information, assign publishers, affiliations, and doing-business-as (DBAs).

Create/Modify Tariff Data - The user is permitted to use the interactive system to enter tariff data.

Review/Authorize/Transmit Data (Interactive filing only) - The user may review previously entered, but not yet filed, tariff data. They may place data on a hold status, remove from the hold status, and may transmit data to ATFI.

Line 9. **Certified for Batch Filing**. The user is permitted to submit batch filings. The registrant must first be certified for batch filing as outlined in 46 CFR 514.8(l)(1) & (2). After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing login, the login (not the password) should be listed on the requesting form. Also, the certification date received from the Federal Maritime Commission should be listed on the requesting form.

• Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, FMC, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. •

Send completed form with appropriate user charge under 46 CFR 514.21 to BTCL, FMC, Washington, DC 20573.

BILLING CODE 6730-01-C

PART 515—FILING OF TARIFFS BY MARINE TERMINAL OPERATORS—[AMENDED]

2. The authority citation for 46 CFR part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 833a, 841a, 1709, 1714, 1715 and 1716.

3. Section 515.0 is added to read as follows:

§ 515.0 ATFI Filings.

This part governs the filing of marine terminal operator tariffs in paper form. For filing in electronic form under the ATFI system, see part 514 of this chapter. If there is a question whether tariff material should be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE—[AMENDED]

6. The authority citation for 46 CFR part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

7. Section 550.0 is amended by adding paragraph (c) to read as follows:

§ 550.0 Scope.

* * * * *

(c) This part governs the publishing, filing and posting of tariffs in domestic offshore commerce in paper form, including certain electronically filed tariff pages under § 550.3(e). For filing, posting and publishing under the electronic ATFI system, see part 514 of this chapter. If there is a question whether tariff material should be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

PART 580—PUBLISHING AND FILING OF TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES—[AMENDED]

8. The authority citation for 46 CFR part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, AND 1722.

9. Section 580.0 is amended by adding paragraph (d) to read as follows:

§ 580.0 Scope.

* * * * *

(d) This part governs the publishing and filing of tariffs by common carriers in the foreign commerce of the United States in paper form, including certain electronically filed tariff pages under § 580.3(a). For publishing and filing under the electronic ATFI system, see part 514 of this chapter. If there is a question whether tariff material should be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

PART 581—SERVICE CONTRACTS—[AMENDED]

10. The authority citation for 46 CFR part 581 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, 1718 and 1722.

11. Section 581.0 is added to read as follows:

§ 581.0 ATFI Filings.

This part contains regulations that govern service contracts and their essential terms in foreign commerce, where essential terms are not required to be filed in electronic format in the ATFI system. For contracts with their essential terms required to be filed in the ATFI system, see part 514 of this chapter. If there is a question whether the essential terms of a service contract should be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–19091 Filed 8–11–92; 8:45 am]

BILLING CODE 6730–01–F

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federal register

Wednesday
August 12, 1992

Part V

Department of Transportation

Coast Guard

33 CFR Parts 135, 136, and 137
Claims Under the Oil Pollution Act of 1990; Interim Rule

DEPARTMENT OF TRANSPORTATION

33 CFR Parts 135, 136, and 137

[CGD 91-035]

RIN 2115-AD90

Claims Under the Oil Pollution Act of 1990

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements the provisions of the Oil Pollution Act of 1990 (OPA 90) concerning the filing of claims for uncompensated removal costs or damages resulting from the discharge of oil, designation of the source of the discharge, and advertisement of where claims are to be filed. This action is an interim measure needed primarily to explain how eligible claimants may file a claim against the Oil Spill Liability Trust Fund. In response to comments received regarding this rule, a more comprehensive rule may be developed and published for public comment. This rule will facilitate the presentation, filing, processing, settlement, and adjudication of claims against the Fund.

DATES: This rule is effective on August 12, 1992. Comments on this rule must be received December 10, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD91-035), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection of information requirements also must be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. L.E. Burgess (Project Manager), National Pollution Funds Center, (703) 235-4795.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should provide three copies of their comments and include their names and addresses, identify this rulemaking (CGD 91-035) and the specific section of the rule to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal person involved in drafting this document is CDR Tom Woodward (Project Counsel), National Pollution Funds Center.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication to make the claims process provided by the Oil Pollution Act of 1990 (OPA 90) for uncompensated claims immediately available to those eligible to file a claim against the Oil Spill Liability Trust Fund (the Fund). A delay in providing a claims procedure may delay the payment of compensation due claimants who have been damaged by oil pollution, or who have incurred cost as a result of oil removal, and who are eligible to file a claim against the Fund. The Coast Guard specifically requests comments on this interim rule. However, a separate, more comprehensive rule may be developed to supersede this interim rule. The more comprehensive rule would follow publication of a notice of proposed rulemaking. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553(b)(B) and (d)(3), that notice and public procedure thereon before the effective date of the interim rule are unnecessary and that the interim rule should be made effective in less than 30 days after publication.

Discussion of Amendments

This rule implements sections 1013, Claims Procedure, and 1014, Designation of Source and Advertisement, of the Oil Pollution Act of 1990 (Pub.L. 101-380; August 18, 1990) (OPA 90). OPA 90 repealed or superseded certain provisions of four Federal statutes which established liability and compensation regimes relating to oil pollution. It consolidated the requirements of the four regimes and expanded them. The money remaining in the funds under three of those regimes was transferred to the Oil Spill Liability Trust Fund (the Fund).

OPA 90 preserves the concept that those responsible for pollution incidents have the primary duty to respond to claims arising out of the pollution incidents they cause. In addition to requiring the responsible party to advertise the procedures by which claims can be presented to them, OPA 90 provides that, with certain exceptions, a claim cannot be presented to the Fund until it has been presented to the responsible party (or the guarantor) of the vessel, facility, or other source designated as the source of the pollution and has been denied or remains unpaid for 90 days. Like the incentives provided to ensure that polluters take proper cleanup actions, OPA 90 provides methods to ensure that it will not be profitable for polluters to default on the obligation to accept and pay valid damage claims. For example, section 1015 of OPA 90 provides that, if the Fund pays a claim, a cause of action exists to recover not only any compensation paid, but also all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees.

Because of the broader scope of damages and expanded applicability of the OPA regime, the Coast Guard recognized that the development of comprehensive claims regulations would be complex and time consuming. Therefore, in an effort to provide an interim means by which one could file a claim with the Fund, the Coast Guard decided to draw upon the regulations used under previous regimes and publish this interim rule. This rulemaking is effective on publication in the **Federal Register**. It may be replaced by a more comprehensive rule, which will be developed under a separate rulemaking docket number and published first as a notice of proposed rulemaking for public comment. The separate rule could deviate substantially from this interim rule after consideration of comments on the interim rule and after experience is gained in applying the interim rule.

This interim rule is based in part on the claims regulations in 33 CFR part 136 originally developed for claims arising from offshore oil production activities. It

also incorporates some traditional claims adjudication concepts from the Coast Guard's general claims regulations in 33 CFR part 25. The concepts and procedures from both of these sets of regulations have been expanded to encompass OPA 90's broader coverage. In addition, the rules in subpart D of 33 CFR part 135 concerning designation of the source of a discharge and concerning advertisements indicating where and how claims may be filed were used as a model in preparing Subpart D of the interim rule.

In developing this rule, the Coast Guard consulted with the Department of Justice, Department of Interior, Department of Agriculture, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration. Also, the Coast Guard consulted with industry experts on pollution claims adjustment, underwriting, and litigation.

Legal issues concerning whether, under section 1013, Federal, State or Indian tribe trustees can claim against the Fund for natural resources damages and whether Federal agencies can claim against the Fund for any costs or damages have been raised. These issues are presently under review. This interim rule does not resolve these issues and leaves the matters open for future decision.

This rule establishes requirements primarily concerning presentation of claims, designation of sources, and advertisement of designations. These procedures are summarized and explained as follows.

Under OPA 90, when an oil spill or "incident" occurs and the source of the discharge is known, a Federal official, usually the Federal On-Scene Coordinator, designates the vessel, facility, or pipeline discharging the oil as the "source" of the discharge. Once the source is designated, the official notifies the "responsible party" (i.e., the owner or operator of the source) of the designation by means of a written "Notice of Designation". The responsible party then advertises (in newspapers, on radio, etc.) that designation and the procedures by which claims may be presented to the responsible party or that party's guarantor. If the responsible party denies the designation, the source of the discharge is a public vessel, or the source of the discharge is unknown, the National Pollution Funds Center advertises the procedures by which claims may be presented to the Fund.

In addition to the procedures discussed above, this rulemaking also amends existing 33 CFR part 135 (Offshore Oil Pollution Compensation Fund). The offshore fund was terminated by OPA 90 and all amounts remaining in that fund were transferred to the Oil Spill Liability Trust Fund. These amendments are ministerial in nature and are intended to remove obvious conflicts between the old and the new regulations.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a separate Regulatory Evaluation is unnecessary.

This rule, for the most part, is procedural; it provides a process by which the responsible party is identified and required to advertise and by which persons damaged by oil pollution may submit claims against the Fund. The major impact of this rule arises from the procedures inherent in the process of documenting, preparing, and submitting a claim. For example, this rulemaking lists what information must be gathered, what proof is necessary to substantiate the claim, generally how the claim itself must be prepared, and where the claim must be submitted.

The impact of these procedures defies precise quantification. The paperwork burdens on a particular claimant will vary greatly with the nature of the claim. For example, a claim could be as basic as one for oil stains on a boat's hull or as complex as damage to a variety of natural resources over a wide geographic area. The information to be included with the claim may be readily at hand or may need to be obtained from outside sources such as appraisers. Apart from the burden of documenting a claim, which is inherent in any claims process (a burden which is not imposed by, but rather clarified in, these regulations), the burden imposed by these regulations should be minimal.

This rule also specifies the requirement for responsible parties, or their guarantors, to advertise how claims are to be presented to them, as required by section 1014 of OPA 90 (33 U.S.C. 2714). The costs involved here are the costs incurred by the responsible party or guarantor in preparing and publishing, or otherwise disseminating, the information. These costs will vary depending on the level of advertisement required considering such factors as the extent of the damage, the size of the geographic area affected, and the number and location of potential claimants.

This rule benefits parties incurring a loss due to oil pollution by providing a procedure for designation of source so responsible parties may advertise procedures for paying claims. It also facilitates presentation of uncompensated claims to the Fund. Generally, these procedures will reduce the likelihood of unnecessary litigation.

Though the Coast Guard expects the economic impact of this rule to be minimal, it specifically requests comments and data on this subject.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The burden of submitting a claim has a potential economic impact on all entities, large and small. This rule affects entities of all sizes, and thus could affect a substantial number of small entities. However, the economic impact is likely to be minimal on the vast majority of concerns. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Preemption

This rule does not preempt the authority of any State or political subdivision thereof from implementing their own compensation and liability regimes.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of

Management and Budget (OMB) reviews each rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. The collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This rule prescribes requirements for claims against the Fund, such as what a claim must contain, what proof must be included, and how and where it must be submitted. This rule also prescribes how responsible parties are to advertise the manner in which claims may be presented directly to them. Although the rule constitutes an "information collection requirement" under the Paperwork Reduction Act, it is a voluntary procedure which only applies to those who choose to file a claim with the Fund. The paperwork and reporting burdens are identified and discussed in the "Regulatory Evaluation" section of this preamble.

The Coast Guard has submitted the collection of information requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act and OMB has approved them for this interim rule. The part number is part 136 and the corresponding OMB approval number is OMB Control Number 2115-0596. Persons submitting comments on the collection of information requirements should submit their comments both to OMB and to the Coast Guard where indicated under "**ADDRESSES**".

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

This rule concerns procedures relating to submission and settlement of claims and has no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**".

List of Subjects

33 CFR Part 135

Advertising, Claims, Continental shelf, Oil pollution.

33 CFR Part 136

Administrative practice and procedure, Claims, Oil pollution.

33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 135, 136, and 137 as follows:

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

1. The authority citation for part 135 is revised to read as follows:

Authority: 33 U.S.C. 2701–2719; E.O. 12777, 56 FR 54757; 49 CFR 1.46.

2. The heading for subpart D is revised to read as follows:

Subpart D—Notification of Pollution Incidents

Subpart D [Amended]

3. In Subpart D, remove the undesignated section headings "Notification", "Designation", and "Advertisement".

§ 135.301 [Removed]

4. Section 135.301, Purpose, is removed.

§ 135.303 [Amended]

5. In § 135.303, redesignate paragraph (a) introductory text as an undesignated paragraph; remove paragraphs (a)(1) and (a)(2); and redesignate paragraph (a)(3) as an undesignated paragraph.

§§ 135.309 through 135.319 [Removed]

6. Sections 135.309 through 135.319 are removed.

7. Part 136 and its authority citation are revised to read as follows:

PART 136—OIL SPILL LIABILITY TRUST FUND; CLAIMS PROCEDURES; DESIGNATION OF SOURCE; AND ADVERTISEMENT

Subpart A—General

Sec.
136.1 Purpose and applicability.
136.3 Information.
136.5 Definitions.
136.7 Foreign claimants.
136.9 Falsification of claims.

Subpart B—General Procedure

136.101 Time limitations on claims.
136.103 Order of presentment.
136.105 General requirements for a claim.
136.107 Subrogated claims.
136.109 Removal costs and multiple items of damages.
136.111 Insurance.
136.113 Other compensation.
136.115 Settlement and notice to claimant.

Subpart C—Procedure for Particular Claims

Removal Costs

136.201 Authorized claimants.
136.203 Proof.
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Natural Resources

136.207 Authorized claimants.
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136.219 Authorized claimants.
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Government Revenues

136.225 Authorized claimants.
136.227 Proof.
136.229 Compensation allowable.

Profits and Earning Capacity

136.231 Authorized claimants.
136.233 Proof.
136.235 Compensation allowable.

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136.237 Authorized claimants.
136.239 Proof.
136.241 Compensation allowable.

Subpart D—Designation of Source and Advertisement

General

136.301 Purpose.
136.303 Definitions.

Designation of Source

136.305 Notice of designation.
136.307 Denial of designation.

Advertisement

136.309 Advertisement determinations.
136.311 Types of advertisement.
136.313 Content of advertisement.

Authority: 33 U.S.C. 2713, 2714; E.O. 12777, (56 FR 54757); 49 CFR 1.46.

Subpart A—General

§ 136.1 Purpose and applicability.

(a) This part prescribes regulations for—

(1) Presentation, filing, processing, settlement, and adjudication of claims authorized to be presented to the Oil Spill Liability Trust Fund (the Fund) under section 1013 of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2713) for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or the exclusive economic zone;

(2) Designation of the source of the incident, notification to the responsible party of the designation, and advertisement of the designation and claims procedures; and

(3) Other related matters.

(b) This part applies to claims resulting from incidents occurring after August 18, 1990.

(c) Nothing in this part—

(1) Preempts the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—

(i) The discharge of oil or other pollution by oil within such State; or

(ii) Any removal activities in connection with such a discharge; or

(2) Affects or modifies in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*) or State law, including common law; or

(3) Affects the authority of any State—

(i) To establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(ii) To require any person to contribute to such a fund; or

(4) Affects the authority of the United States or any State or political subdivision thereof to impose additional liability or additional requirements relating to a discharge, or substantial threat of a discharge, of oil.

§ 136.3 Information.

Anyone desiring to file a claim against the Fund may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804, (703) 235–4756.

§ 136.5 Definitions

(a) As used in this part, the following terms have the same meaning as set forth in sections 1001 and 1007(c) of the Act (33 U.S.C. 2701 and 2707(c)): *Claim, claimant, damages, discharge, exclusive economic zone, facility, foreign claimant, foreign offshore unit, Fund, guarantor, incident, National Contingency Plan, natural resources, navigable waters, offshore facility, oil, onshore facility, owner or operator, person, removal costs, responsible party, State, United States, and vessel.*

(b) As used in this part—

Act means title I of the Oil Pollution Act of 1990 (Pub. L. 101–380; 33 U.S.C. 2701 through 2719).

Director, NPFC, means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.

FOSC means the Federal On-Scene Coordinator designated under the National Contingency Plan or that person's authorized representative.

NPFC means the U.S. Coast Guard National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804.

§ 136.7 Foreign claimants.

In addition to other applicable limitations on presenting claims to the Fund, claims by foreign claimants to recover removal costs or damages may be presented only when the requirements of section 1007 of the Act (33 U.S.C. 2707) are met.

§ 136.9 Falsification of claims.

Persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty of up to $5,000 for each claim. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, as implemented in 49 CFR part 31.

Subpart B—General Procedure

§ 136.101 Time limitations on claims.

(a) Except as provided under section 1012(h)(3) of the Act (33 U.S.C. 2712(h)(3)) (minors and incompetents), the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits:

(1) For damages, within three years after—

(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.

(ii) In the case of natural resources damages under section 1002(b)(2)(A) of the Act (33 U.S.C. 2702(b)(2)(A)), the date under paragraph (a)(1)(i) of this section, or within three years from the date of completion of the natural resources damage assessment under section 1006(e) of the Act (33 U.S.C. 2706(e)), whichever is later.

(2) For removal costs, within six years after the date of completion of all removal actions for the incident. As used in this paragraph, "date of completion of all removal actions" is defined as the actual date of completion of all removal actions for the incident or the date the FOSC determines that the removal actions which form the basis for the costs being claimed are completed, whichever is earlier.

(b) Unless the Director, NPFC, directs in writing that the claim be submitted elsewhere, a claim is deemed presented on the date the claim is actually received at the National Pollution Funds Center, suite 1000, 4200 Wilson Boulevard, Arlington, Virginia 22203–1804. If the Director, NPFC, directs that the claim be presented elsewhere, the claim is deemed presented on the date the claim is actually received at the address in the Commander's directive.

§ 136.103 Order of presentment.

(a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under §136.305.

(b) Claims for removal costs or damages may be presented first to the Fund only—

(1) By any claimant, if the Director, NPFC, has advertised, or otherwise notified claimants in writing, in accordance with § 136.309(e);

(2) By a responsible party who may assert a claim under section 1008 of the Act (33 U.S.C. 2708);

(3) By the Governor of a State for removal costs incurred by that State; or

(4) By a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a) of the Act (33 U.S.C. 2712(a)).

(c) If a claim is presented in accordance with paragraph (a) of this section and—

(1) Each person to whom the claim is presented denies all liability for the claim; or

(2) The claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to § 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) No claim of a person against the Fund will be approved or certified for payment during the pendency of an action by the person in court to recover costs which are the subject of the claim.

§ 136.105 General requirements for a claim.

(a) The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

(b) Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the

claimed amounts, the claimant shall immediately amend the claim.

(c) Each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.

(d) In addition to the other requirements of this section, any claim presented by a legal representative of the claimant must also be signed by the legal representative and—

(1) Be presented in the name of the claimant;

(2) Show the title or legal capacity of the representative; and

(3) Provide proof of authority to act for the claimant.

(e) Each claim must include at least the following, as applicable:

(1) The full name, street and mailing addresses of residence and business, and telephone numbers of the claimant.

(2) The date, time, and place of the incident giving rise to the claim.

(3) The identity of the vessel, facility, or other entity causing or suspected to have caused the removal costs or damages claimed and the basis for such identity or belief.

(4) A general description of the nature and extent of the impact of the incident, the costs associated with removal actions, and damages claimed, by category as delineated in Subpart C of this part, including, for any property, equipment, or similar item damaged, the full name, street and mailing address, and telephone number of the actual owner, if other than the claimant.

(5) An explanation of how and when the removal costs or damages were caused by, or resulted from, an incident.

(6) Evidence to support the claim.

(7) A description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed.

(8) The reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

(9) To the extent known or reasonably identifiable by the claimant, the full name, street and mailing address, and telephone number of each witness to the incident, to the discharge, or to the removal costs or damages claimed, along with a brief description of that person's knowledge.

(10) A copy of written communications and the substance of verbal communications, if any, between the claimant and the responsible party or guarantor of the source designated under § 136.305 and a statement indicating that the claim was presented to the responsible party or guarantor, the date it was presented, that it was denied or remains not settled and, if known, the reason why it was denied or remains not settled.

(11) If the claimant has insurance which may cover the removal costs or damages claimed, the information required under § 136.111.

(12) A statement by the claimant that no action has been commenced in court against the responsibile party or guarantor of the source designated under § 136.305 or, if an action has been commenced, a statement identifying the claimant's attorney and the attorney's address and phone number, the civil action number, and the court in which the action is pending.

(13) In the discretion of the Director, NPFC, any other information deemed relevant and necessary to properly process the claim for payment.

§ 136.107 Subrogated claims.

(a) The claims of subrogor (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.

(b) A fully subrogated claim is payable only to the subrogee.

(c) A subrogee must support a claim in the same manner as any other claimant.

§ 136.109 Removal costs and multiple items of damages.

(a) A claimant must specify all of the claimant's known removal costs or damages arising out of a single incident when submitting a claim.

(b) Removal costs and each separate category of damages (as described in subpart C of this part) must be separately listed with a sum certain attributed to each type and category listed.

(c) At the sole discretion of the Director, NPFC, removal costs and each separate category of damages may be treated separately for settlement purposes.

§ 136.111 Insurance.

(a) A claimant shall provide the following information concerning any insurance which may cover the removal costs or damages for which compensation is claimed:

(1) The name and address of each insurer.

(2) The kind and amount of coverage.

(3) The policy number.

(4) Whether a claim has been or will be presented to an insurer and, if so, the amount of the claim and the name of the insurer.

(5) Whether any insurer has paid the claim in full or in part or has indicated whether or not payment will be made.

(b) If requested by the Director, NPFC, the claimant shall provide a copy of the following material:

(1) All insurance policies or indemnification agreements.

(2) All written communications, and a summary of all oral communications, with any insurer or indemnifier.

(c) A claimant shall advise the Director, NPFC, of any changes in the information provided under this section.

§ 136.113 Other compensation.

A claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

§ 136.115 Settlement and notice to claimant.

(a) Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person.

(b) Claimant's failure to accept an offer of settlement within 60 days after the date the offer was mailed to the claimant automatically voids the offer. The Director, NPFC, reserves the right to revoke an offer at any time.

(c) A claimant will be notified in writing sent by certified or registered mail whenever a claim against the Fund is denied. The failure of the Director, NPFC, to make final disposition of a

claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC will provide the claimant seeking reconsideration with written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

Subpart C—Procedures for Particular Claims

Removal Costs

§ 136.201 Authorized claimants.

A claim for removal costs may be presented by any claimant.

§ 136.203 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish—

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;

(b) That the removal costs were incurred as a result of these actions;

(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.

§ 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

Natural Resources

§ 136.207 Authorized claimants.

(a) Claims for uncompensated natural resource damages may be presented by an appropriate natural resources trustee. However, in order to facilitate the processing of these claims with respect to a single incident where multiple trustees are involved and to prevent double recovery, the affected trustees should select a lead administrative trustee who will present consolidated claims on behalf of the trustees.

(b) A trustee may present a claim for the reasonable cost of assessing natural resources damages separately from a claim for the cost of developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources damaged.

§ 136.209 Proof.

In addition to the requirements of subparts A and B of this part, a trustee must do the following:

(a) Submit the assessment and restoration plans which form the basis of the claim.

(b) Provide documented costs and cost estimates for the claim. Final cost estimates for conducting damage assessments or implementing a restoration plan may form the basis for a claim against the Fund for an uncompensated natural resources damage claim.

(c) Identify all trustees who may be potential claimants for the same natural resources damaged.

(d) Certify the accuracy and integrity of any claim submitted to the Fund, and certify that any actions taken or proposed were or will be conducted in accordance with the Act and consistent with all applicable laws and regulations.

(e) Certify whether the assessment was conducted in accordance with applicable provisions of the natural resources damage assessment regulations promulgated under section 1006(e)(1) of the Act (33 U.S.C. 2706(e)(1)). Identify any other or additional damage assessment regulations or methodology utilized.

(f) Certify that, to the best of the trustee's knowledge and belief, no other trustee has the right to present a claim for the same natural resources damages and that payment of any subpart of the claim presented would not constitute a double recovery for the same natural resources damages.

§ 136.211 Compensation allowable.

(a) The amount of compensation allowable is the reasonable cost of assessing damages, and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

(b) In addition to any other provision of law respecting the use of sums recovered for natural resources damages, trustees shall reimburse the Fund for any amounts received from the Fund in excess of that amount required to accomplish the activities for which the claim was paid.

Real or Personal Property

§ 136.213 Authorized claimants.

(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

(b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under § 136.233.

§ 136.215 Proof.

(a) In addition to the requirements of subparts A and B of this part, a claimant must establish—

(1) An ownership or leasehold interest in the property;

(2) That the property was injured or destroyed;

(3) The cost of repair or replacement; and

(4) The value of the property both before and after injury occurred.

(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—

(1) That the property was not available for use and, if it had been, the value of that use;

(2) Whether or not substitute property was available and, if used, the costs thereof; and

(3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

§ 136.217 Compensation allowable.

(a) The amount of compensation allowable for damaged property is the lesser of—

(1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;

(2) The difference between value of the property before and after the damage; or

(3) The replacement value.

(b) Compensation for economic loss resulting from the destruction of real or

personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under § 136.213(b) is limited to that allowable under § 136.235.

Subsistence Use

§ 136.219 Authorized claimants.

(a) A claim for loss of subsistence use of natural resources may be presented only by a claimant who actually uses, for subsistence, the natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(b) A claim for loss of profits or impairment of earning capacity due to loss of subsistence use of natural resources must be included as part of the claim under this section and must include the proof required under § 136.233.

§ 136.221 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must provide—

(a) The identification of each specific natural resource for which compensation for loss of subsistence use is claimed;

(b) A description of the actual subsistence use made of each specific natural resource by the claimant;

(c) A description of how and to what extent the claimant's subsistence use was affected by the injury to or loss of each specific natural resource;

(d) A description of each effort made by the claimant to mitigate the claimant's loss of subsistence use; and

(e) A description of each alternative source or means of subsistence available to the claimant during the period of time for which loss of subsistence is claimed, and any compensation available to the claimant for loss of subsistence.

§ 136.223 Compensation allowable.

(a) The amount of compensation allowable is the reasonable replacement cost of the subsistence loss suffered by the claimant if, during the period of time for which the loss of subsistence is claimed, there was no alternative source or means of subsistence available.

(b) The amount of compensation allowable under paragraph (a) of this section must be reduced by—

(1) All compensation made available to the claimant to compensate for subsistence loss;

(2) All income which was derived by utilizing the time which otherwise would have been used to obtain natural resources for subsistence use; and

(3) Overheads or other normal expenses of subsistence use not incurred as a result of the incident.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under § 136.219(b) is limited to that allowable under § 136.235.

Government Revenues

§ 136.225 Authorized claimants.

A claim for net loss of revenue due to the injury, destruction, or loss of real property, personal property, or natural resources may be presented only by an appropriate claimant sustaining the loss. As used in this section and § 136.277, "revenue" means taxes, royalties, rents, fees, and net profit shares.

§ 136.227 Proof.

In addition to the requirements of Subparts A and B, a claimant must establish—

(a) The identification and description of the economic loss for which compensation is claimed, including the applicable authority, property affected, method of assessment, rate, and method and dates of collection;

(b) That the loss of revenue was due to the injury to, destruction of, or loss of real or personal property or natural resources;

(c) The total assessment or revenue collected for comparable revenue periods; and

(d) The net loss of revenue.

§ 136.229 Compensation allowable.

The amount of compensation allowable is the total net revenue actually lost.

Profits and Earning Capacity

§ 136.231 Authorized claimants.

(a) A claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income.

(b) A claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under § 136.213.

(c) A claim for loss of profits or impairment of earning capacity that also involves a claim for loss of subsistence use of natural resources must be claimed under § 136.219.

§ 136.233 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish the following:

(a) That real or personal property or natural resources have been injured, destroyed, or lost.

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

§ 136.235 Compensation allowable.

The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

(a) All income resulting from the incident;

(b) All income from alternative employment or business undertaken;

(c) Potential income from alternative employment or business not undertaken, but reasonably available;

(d) Any saved overhead or normal expenses not incurred as a result of the incident; and

(e) State, local, and Federal taxes.

Government Public Services

§ 136.237 Authorized claimants.

A claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

§ 136.239 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish—

(a) The nature of the specific public services provided and the need for those services;

(b) That the services occurred during or after removal activities;

(c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and

(d) The net cost for the services and the methods used to compute those costs.

§ 136.241 Compensation allowable.

The amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision.

Subpart D—Designation of Source and Advertisement

General

§ 136.301 Purpose.

This subpart prescribes the requirements concerning designation of the source or sources of the discharge or threat of discharge and advertisement of these designations, including the procedures by which claims may be presented to the responsible party or guarantor.

§ 136.303 Definitions.

As used in this subpart—

Advertisement means the dissemination of information, including but not limited to paid advertisements, that are reasonably calculated to advise the public how to present a claim.

Designated source means a source designated under § 136.305.

Designation of Source

§ 136.305 Notice of designation.

(a) When information of an incident is received, the source or sources of the discharge or threat are designated, where possible and appropriate. If the designated source is a vessel or facility, the responsible party and the guarantor, if known, are notified by telephone, telefax, or other rapid means of that designation. The designation will be confirmed by a written Notice of Designation.

(b) A Notice of Designation normally contains, to the extent known—

(1) The name of the vessel or facility designated as the source;

(2) The location, date, and time of the incident;

(3) The type of quantity of oil involved;

(4) The date of the designation;

(5) The procedures for accepting or denying the designation; and

(6) The name, address, telephone number, and, if available, telefax number of the responsible Federal official to whom further communication regrading the incident, advertisement of the incident, or denial of designation should be directed.

§ 136.307 Denial of designation.

(a) Within five days after receiving a Notice of Designation under § 136.305, the responsible party or guarantor may deny the designation.

(b) A denial of designation must—

(1) Be in writing;

(2) Identify the Notice of Designation;

(3) Give the reasons for the denial and provide a copy of all supporting documents; and

(4) Be submitted to the official named in the Notice of Designation.

(c) A denial is deemed received on the date the denial is actually received by the official named in the Notice of Designation.

Advertisement

§ 136.309 Advertisement determinations.

(a) The Director, NPFC, determines for each incident the type, geographic scope, frequency, and duration of advertisement required.

(b) In making the determination specified in paragraph (a) of this section, the Director, NPFC, may consider—

(1) The nature and extent of economic losses that have occurred or are likely to occur;

(2) The potential claimants who are likely to incur economic losses;

(3) The geographical area that is or will likely be affected;

(4) The most effective method of reasonably notifying potential claimants of the designation and procedures of submitting claims; and

(5) Relevant information or recommendations, if any, submitted by, or on behalf of, the responsible party or guarantor of the designated source.

(c) The Director, NPFC, provides the specific requirements for advertisement for each incident to the responsible party or guarantor of the designated source.

(d) If a responsible party or guarantor has not denied designation in accordance with § 136.307, the party or guarantor shall advertise, in accordance with the requirements of this subpart, the designation and the procedures by which claims may be presented. The advertisement must begin not later than 15 days after the date of the designation made under § 136.305.

(e) If there is no designation under § 136.305, if the source of the discharge or threat is a public vessel, or if the responsible party and guarantor of the source designated have denied the designation or failed to meet the requirements for advertisement in this section, the Director, NPFC, may advertise procedures for presenting claims.

§ 136.311 Types of advertisement.

Advertisement required by the Director, NPFC, will normally include one or more of the following:

(a) Paid advertisements in a newspaper or newspapers having general circulation in the area designated by the Director, NPFC.

(b) Notice posted in marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the area designated by the Director, NPFC.

(c) News releases to newspapers, radio stations, television stations, and cable services having general circulation in the area designated by the Director, NPFC.

(d) Other means approved by the Director, NPFC, under the circumstances of each case.

§ 136.313 Content of advertisement.

Each advertisement required by this subpart may be required to contain the following information or to indicate where this information may be contained:

(a) Location, date, and time of the incident.

(b) Geographical area affected, as determined by the FOSC or Director, NPFC.

(c) Type and quantity of oil involved.

(d) Name or other description of the source designated by the FOSC or Director, NPFC.

(e) Name of the responsible party and guarantor of the designated source.

(f) Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.

(g) The procedures by which a claim may be presented.

(h) Other information required by the Director, NPFC, under the circumstances of each case.

PART 137—DEEPWATER PORT LIABILITY FUND

8. The authority citation for part 137 continues to read as follows:

Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1); 49 CFR 1.46.

Subpart F—[Removed]

9. In part 137, subpart F, Claims Procedures, is removed and reserved.

Dated: August 6, 1992.

Daniel F. Sheehan,

Director, National Pollution Funds Center.

[FR Doc. 92-19080 Filed 8-11-92; 8:45 am]

BILLING CODE 4910-14-M

federal register

Wednesday
August 12, 1992

Part VI

Department of Education

34 CFR Part 280
Magnet Schools Assistance Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN 1810-AA63

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Magnet Schools Assistance Program (MSAP). These amendments are needed to improve administration of the program and to enable the Secretary to select applications for funding that best demonstrate promise of achieving the purposes of the program.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Alicia Coro, Director, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue SW., room 2071, Washington, DC 20202-6140.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Sylvia Wright, Chief, Magnet Schools and Desegregation Branch, U.S. Department of Education, 400 Maryland Avenue SW., room 2059, Washington, DC 20202-6246. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These proposed regulations are based on the Department's experience in implementing the program over several years. These proposed regulations also complement the President's AMERICA 2000 strategy by requiring that, in order to receive MSAP assistance, local educational agencies (LEAs) demonstrate how well their proposed magnet schools will provide high-quality educational programs in desegregated learning environments that are designed to improve significantly the academic and vocational skills of America's students.

Summary of Major Provisions of the Proposed Regulations

Plan Eligibility

Section 280.2 would be revised to clarify how the Secretary determines the eligibility of a voluntary desegregation plan. A voluntary plan is a plan to reduce, eliminate, or prevent minority group isolation, either at a magnet school or at a feeder school—a school from which students are drawn to attend the magnet school. The establishment of the magnet school cannot result in an increase in the minority student percentage at a feeder school above the districtwide percentage of minority group students at the grade levels served by the magnet school. For example, District A has a districtwide percentage of 65.5 percent for its minority student population in elementary schools. District A has six elementary schools with the following minority student populations:

1. School A—67 percent.
2. School B—58 percent.
3. School C—64 percent.
4. School D—76 percent.
5. School E—47 percent.
6. School F—81 percent.

District A has five minority group isolated schools, i.e., five schools with minority student enrollments of over 50 percent. District A seeks funding to establish a magnet program at School F to reduce minority group isolation at that school. For District A to be eligible for a grant, the establishment of the magnet program at School F should not increase the minority student enrollment at feeder schools B, C, or E to more than 65.5 percent (the districtwide percentage). District A could not increase the minority student enrollment at feeder schools A or D because those schools are already above the districtwide percentage for minority students.

A plan intended to reduce minority group isolation in a school would include a plan where it is demonstrated that, but for the magnet school, minority group isolation would be greater at either the magnet school or a feeder school.

Section 280.20(f) would be revised to describe the information that an applicant must include in its application when submitting a voluntary desegregation plan for approval. Currently, the Department requests enrollment data or other information from applicants after their applications have been submitted. Submission of this information in the application would improve the efficiency of the plan review process and assist the Department in making grant awards in a timely manner.

Selection Criteria and Special Consideration Factors

Various sections of the selection criteria and the special consideration factors, and the points assigned to these criteria, would be revised to (1) ensure that applicants demonstrate how well they will address the purposes of the MSAP; (2) enable the Secretary to assess better the relative quality of the applications; (3) clearly explain the factors that the Secretary deems relevant to each criterion; and (4) reflect better the significance of each criterion relative to the overall merit of an application. Key changes include the following:

- *Plan of operation.* Section 280.31(a)(2)(ii) would be revised to enable the Secretary to assess the effectiveness of an applicant's plan to attain specific and measurable outcomes within the project period, through the use of magnet schools. The AMERICA 2000 strategy emphasizes the need for better and more accountable schools. The proposed change complements this strategy by ensuring that MSAP funding is awarded to applicants that best demonstrate how their magnet schools will achieve desired outcomes and advance the purposes of this program.
- *Quality of project design.* Under proposed § 280.31(c)(2)(i), the Secretary would evaluate how well the applicant's proposed magnet schools activities foster interaction among students of different social, economic, ethnic, and racial backgrounds. Magnet schools vary significantly in the way they create and maintain desegregated learning environments. A magnet school may encompass a school's entire student population or it may serve only a portion of the students that attend a school. A magnet school may operate throughout the regular school day or it may operate only after the regular school day and on weekends. The revision to this selection criterion is intended to ensure that magnet schools funded under this program are designed to achieve fully the desegregation purpose of the statute, regardless of the setting proposed for the magnet school. Under proposed § 280.31(c)(2)(iii), the Secretary would evaluate how well the educational program of a magnet school will strengthen students' knowledge of mathematics, science, history, English, foreign languages, art, music, or vocational skills. A purpose of the MSAP is to substantially strengthen students' skills in these areas. The proposed change emphasizes this purpose and also furthers the National Education Goals of improving students' competence in core subjects (Goal 3), including mathematics and science (Goal 4), and preparing students to be literate adults who are able to compete in the global marketplace (Goal 5).

• *Need for assistance.* The option under § 280.32(d) permitting an applicant to demonstrate need by submitting budget data reflecting the cost of the desegregation plan would be deleted as unnecessary.

• *Degree of achievement.* Section 280.32(e) would be revised to set out factors that would be considered in determining the degree to which a magnet school affords promise of achieving the purposes of the program, including—the needs assessment conducted by the applicant; the site selection for each magnet school; the special curriculum provided at each magnet school; and, if appropriate, the applicant's past performance in achieving desegregation through use of a magnet school.

• *Points Awarded Under the Criteria.* The points awarded for several of the selection criteria and special consideration factors would be changed so that greater weight is given to those criteria that directly address the likelihood that the applicant's magnet schools will accomplish the purposes of the MSAP.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 280.20, 280.31, and 280.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

LEAs are eligible to apply for grants under these proposed regulations. The Department needs and uses the information to determine the eligibility of an applicant and in selecting applications for funding. Annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 2059, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Education Department, Elementary and Secondary Education, Grant programs-education, Magnet schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.165A, Magnet Schools Assistance Program)

Dated: July 30, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend part 280 of title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for part 280 continues to read as follows:

Authority: 20 U.S.C. 3021–3032, unless otherwise noted.

2. Section 280.2 is amended by redesignating the undesignated introductory text as paragraph (a), redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively, and adding a new paragraph (b) to read as follows:

§ 280.2 Who is eligible to apply for a grant?

* * * * *

(b) The Secretary approves a voluntary plan under paragraph (a)(2), only if he determines that for each magnet school for which funding is sought—

(1) The magnet school will reduce, eliminate, or prevent minority group isolation within the period of the grant award, either in the magnet school or in a feeder school, as appropriate; and

(2) The establishment of the magnet school will not result in an increase of minority enrollment, at the magnet school or at any feeder school, above the districtwide percentage of minority group students in the LEA's schools at the grade levels served by that magnet school.

(Authority: 20 U.S.C. 3022)

.3. Section 280.4 is amended by revising paragraph (b) to designate "Minority group isolation" as a separate definition by italicizing the words "Minority group isolation" and adding a definition for "Feeder school" in alphabetical order to read as follows:

§ 280.4 What definitions apply to this program?

* * * * *

Feeder school means a school from which students are drawn to attend a magnet school.

* * * * *

4. Section 280.20 is amended by adding new paragraphs (f) (4) and (5), redesignating the current paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(f) * * *

(4) For an LEA that seeks assistance for existing magnet schools—

(i) Enrollment numbers and percentages, for minority and non-minority group students, for each magnet school for which funding is sought and each feeder school—

(A) For the school year prior to the creation of each magnet school;

(B) For the school year in which the application is submitted; and

(C) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(ii) Districtwide enrollment numbers and percentages for minority group students in the LEA's schools, for grade levels involved in the applicant's magnet schools (e.g., K–6, 7–9, 10–12)—

(A) For the school year prior to the creation of each magnet school; and

(B) For the school year in which the application is submitted;

(C) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(iii) Any other information that the Secretary determines is necessary (e.g., demographic data concerning the attendance areas in which the magnet schools are or will be located).

(5) For an LEA that seeks assistance for new magnet schools—

(i) Enrollment numbers and percentages, for minority and non-minority group students, for each magnet school for which funding is sought and for each feeder school—

(A) For the school year in which the application is submitted; and

(B) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(ii) Districtwide numbers and percentages of minority group students in the LEA's schools, for the grade levels involved in the applicant's magnet schools (e.g., K–6, 7–9, 10–12)—

(A) For the school year in which the application is submitted; and

(B) For each of the two school years of the proposed grant cycle (i.e., projected enrollment figures); and

(iii) Any other information that the Secretary determines is necessary (e.g., demographic data concerning the attendance areas in which the magnet schools will be located).

(g) An applicant that does not have an approved desegregation plan and demonstrates that it cannot provide some portion of the information requested under paragraphs (f) (4) and (5) of this section, may provide other information (in lieu of that portion of the information not provided in response to paragraphs (f) (4) and (5) of this section) to demonstrate that the creation or operation of its proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's schools and would not result in an increase of minority student isolation at one of the applicant's schools, above the districtwide percentage for minority students at the same grade levels as those served by that magnet school.

(Authority: 20 U.S.C. 3027)

5. Section 280.31 is revised to read as follows:

§ 280.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation.* (25 points) (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the applicant demonstrates—

(i) The effectiveness of its management plan to ensure proper and efficient administration of the project;

(ii) The effectiveness of its plan to attain specific outcomes that—

(A) Will accomplish the purposes of the program;

(B) Are attainable within the project period;

(C) Are measurable and quantifiable; and

(D) For multi-year projects, can be used to determine the project's progress in meeting its intended outcomes;

(iii) The effectiveness of its plan for utilizing its resources and personnel to achieve the objectives of the project, including how well it utilizes key personnel to complete tasks and achieve the objectives of the project;

(iv) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, e.g., women and girls in mathematics, science or technology courses; and disabled students; and

(v) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools.

(b) *Quality of personnel.* (10 points) (1) The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project.

(2) The Secretary determines the extent to which—

(i) The project director (if one is used) is qualified to manage the project;

(ii) Other key personnel are qualified to manage the project;

(iii) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools; and

(iv) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or disability.

(3) To determine personnel qualifications the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(c) *Quality of project design.* (35 points) (1) The Secretary reviews each application to determine the quality of the project design.

(2) The Secretary determines the extent to which each magnet school for which funding is sought will—

(i) Foster interaction among students of different social, economic, ethnic, and racial backgrounds in classroom activities, extracurricular activities, or other activities in the magnet schools (or, if appropriate, in the schools in which the magnet school programs operate);

(ii) Address the educational needs of the students who will be enrolled in the magnet schools;

(iii) Carry out a high quality educational program that will substantially strengthen students' knowledge of mathematics, science, history, English, foreign languages, art, music, or vocational skills;

(iv) Encourage greater parental decisionmaking and involvement; and

(v) Improve the racial balance of students in the applicant's schools by reducing, eliminating, or preventing minority group isolation in its schools.

(d) *Budget and resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources and the cost-effectiveness of the budget for the project, including—

(1) The adequacy of the facilities that the applicant plans to use;

(2) The adequacy of the equipment and supplies that the applicant plans to use; and

(3) The adequacy and reasonableness of the budget for the project in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points). The Secretary determines the extent to which the evaluation plan for the project—

(1) Includes methods that are appropriate for the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including its goals for desegregating its students and increasing student achievement; and

(3) Includes methods that are objective and that will produce data that are quantifiable.

(f) *Commitment and capacity.* (10 points) (1) The Secretary reviews each application to determine whether the applicant is likely to continue the magnet school activities after assistance under this part is no longer available.

(2) The Secretary determines the extent to which the applicant—

(i) Is committed to the magnet schools project; and

(ii) Has identified other resources to continue support for the magnet school activities when assistance under this program is no longer available.

(Authority: 20 U.S.C. 3021–3032)

6. Section 280.32 is revised to read as follows:

§ 280.32 How is special consideration given to applicants?

(a) *How special consideration is given.* In addition to the points awarded under § 280.31, the Secretary gives special consideration to the factors listed in paragraphs (b) through (f) of this section. The maximum number of points awarded for each factor is stated in parentheses.

(b) *Recentness of the implementation of the approved desegregation plan.* (5 points) (1) The Secretary reviews each application to determine the recentness of the implementation date of the approved desegregation plan or modification of the plan.

(2) The Secretary determines the recentness of the plan by assigning each application to one of the following categories:

(i) Applications based on plans or modifications of plans with implementation dates not more than five years before the July 1 that follows the deadline date for applications. (5 points)

(ii) Applications based on plans or modifications of plans with implementation dates more than 5 years but not more than 10 years before the July 1 that follows the deadline date for applications. (3 points)

(iii) Applications based on plans or modifications of plans with implementation dates more than 10 years but not more than 15 years before the July 1 that follows the deadline date for applications. (1 point)

(iv) Applications based on plans or modifications of plans with implementation dates more than 15 years before the July 1 that follows the deadline date for applications. (0 points)

(c) *Involvement of minority group children.* (5 points)

(1) The Secretary gives special consideration to the proportion of minority group children involved in the approved desegregation plan.

(2) The Secretary determines the percentage that represents a comparison of the number of minority group children involved in the applicant's approved desegregation plan to the number of minority group children enrolled in the applicant's schools.

(3) The Secretary awards one point for each 20 percentage points the applicant receives under paragraph (c)(2) of this section.

(d) *Need for assistance.* (15 points) (1) The Secretary evaluates the applicant's need for assistance under this part, based on—

(i) The costs of implementing the magnet schools project;

(ii) The applicant's ability to finance the project; and

(iii) The difficulty of effectively carrying out the project for which assistance is sought.

(2) The applicant receives up to 15 points, depending on the extent of its need for assistance.

(e) *Degree of achievement.* (15 points) (1) The Secretary determines the extent to which the project for which assistance is sought affords promise of achieving the purposes of this program as listed in § 280.1.

(2) In determining the degree to which the magnet school affords promise of achieving the purposes stated in § 280.1, the Secretary will evaluate the likelihood that the applicant's plan to achieve desegregation through the use of a magnet school program will be successful in reducing, eliminating, or preventing minority group isolation in light of its overall strategy. Factors the Secretary will consider include, but are not limited to—

(i) The needs assessment conducted by the applicant;

(ii) The site selection for each magnet school;

(iii) The special curriculum selected for each magnet school; and

(iv) If appropriate, the applicant's past performance in achieving desegregation through use of a magnet school.

(f) *Collaborative efforts.* (5 points) The Secretary determines the extent to which the project for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate State educational agency, or any other organization.

(Authority: 20 U.S.C. 3028)

[FR Doc. 92–19129 Filed 8–11–92; 8:45 am]
BILLING CODE 4000–01–M

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federal register

Wednesday
August 12, 1992

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

Supportive Housing for the Elderly (Development); Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

[Docket No. R-92-1604; FR-3230-I-01]

Supportive Housing for Persons With Disabilities (Development)

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides for the requirements (capital advances and project rental assistance contracts) of the new Supportive Housing for Persons with Disabilities Program which were not covered in the interim rule published on June 12, 1991 at 56 FR 27070. The June 12, 1991 interim rule enabled supportive housing for persons with disabilities to be funded for FY 1991, added new regulations to establish the new Supportive Housing for Persons with Disabilities Program and covered application procedures and program requirements, selection of applications and duration of fund reservation requirements. The Supportive Housing for Persons with Disabilities Program is authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) and is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons.

DATES:

Effective date: September 11, 1992.

Comments due date: October 13, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

Hearing or speech impaired individuals may call the Rules Docket Clerk's TDD number (202) 708–3259.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202) 708–2730. (This is not a toll-free number.)

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0470.

II. Background

A. Applicability of Part 885

Part 885 provided through Fiscal Year 1990 direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing projects serving the elderly or individuals or families with disabilities. Loans (with up to a 40 year term) were made under part 885 to finance the construction or substantial rehabilitation of projects for elderly or families with disabilities, or to acquire with or without moderate rehabilitation existing housing and related facilities for group homes for nonelderly individuals with disabilities. The housing projects provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services. Subpart B of part 885 applies to projects for the elderly or individuals or families with disabilities that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. Subpart C of part 885 applies to projects for nonelderly families with disabilities receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959.

Part 885 was amended by an interim rule published June 12, 1991 at 56 FR 27104, and corrected August 1, 1991 at 56 FR 36728, and applies to projects for which section 202 loan reservations were made in FY 1990 and prior years. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, provides that projects for which section 202 loan reservations were made in FY 1990 and prior years and for which loans are not executed and recorded, HUD (1) may not convert these loan reservations to capital advance reservations (under part 889 or part 890) before January 1, 1992, (2) may from January 1, 1992 until April 1, 1992 use its discretion to convert these loan reservations to capital advance reservations (under part 889 or part 890), and (3) must either convert or terminate these loan reservations as of April 1, 1992. HUD has issued conversion procedures in HUD Notice 92–1, dated January 6, 1991. Projects for elderly families selected for funding in FY 1991 and subsequent years will also be covered by new part 889.

B. New Part 890

Under part 890, assistance will be provided to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Such assistance will be provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the acquisition with rehabilitation, acquisition without rehabilitation (group homes only), construction or rehabilitation of a structure, and acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities) to be used as supportive housing for persons with disabilities. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities. Funding related aspects of projects for persons with disabilities selected for funding in FY 1991 and subsequent years were covered by part 890 added by an interim rule published in the June 12, 1991 at 56 FR 27070. An overview and section-by-section summary of part 890 (subparts A, B, C, D, and G) was provided in the preamble to the June 12, 1991 interim rule. This interim rule amends subpart D and adds subpart E which was previously reserved in part 890.

Subpart D provides requirements relating to capital advances. Specifically, it discusses the request for a capital advance, approval of requests for capital advance financing and repayment of a capital advance. Requirements are provided for initial

closing and awarding construction and rehabilitation contracts. Disbursement procedures and completion of cost certifications are also described.

Subpart E provides requirements regarding project rental assistance contracts. Requirements concerning project rental assistance contract term, maximum annual commitment and project account are included. Leasing to eligible families, project administration, default by the Owner, and notice upon project rental assistance contract expiration are also covered.

Subpart F will be issued at a later date and will provide the responsibilities of the Owner, requirements of the replacement reserve, selection and admission requirements for tenants, obligations of tenants, provisions regarding overcrowded and underoccupied units, lease requirements, and requirements regarding termination of tenancy, modifications of leases, security deposits, and vacancy payments.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order No. on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide capital advances to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Although small entities will participate in the program, the rule would not have a significant impact on them.

On February 26, 1990, the Department published an interim rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

Family Impact

The General Counsel, as the Designated Official for Executive Order No. 12606, the Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that this rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804) under Executive Order No. 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

List of Subjects in 24 CFR Part 890

Disabled, Mental health programs, Civil rights, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR part 890, as set forth below:

1. The authority citation for part 890 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 8013.

2. Subpart D of Part 890 is revised to read as follows:

Subpart D—Capital Advance

Sec.

890.400 Request for capital advance.
890.405 Approval of requests for capital advance financing.
890.410 Repayment of capital advances.
890.415 Requirements prior to initial closing.
890.420 Requirements for awarding construction or rehabilitation contracts.
890.425 Disbursement procedures.
890.430 Completion of cost certification.

Subpart D—Capital Advance

§ 890.400 Request for capital advance.

(a) Simultaneously with the notice of Section 811 Fund Reservation to the Sponsor, the field office will invite the submission of a request for conditional commitment (unless approval is granted to proceed with the request for firm commitment) by the Owner to be formed by the Sponsor. Such requests shall be on forms prescribed by HUD, shall include all such exhibits as HUD may require, and must be submitted, within the time limit specified in the notice of Section 811 Fund Reservation, to the field office serving the area in which the proposed project will be located.

(b) Processing of the request for conditional commitment shall include an evaluation of preliminary plans and Form HUD–5087, Outline Specifications, the Owner's evidence of site control (if site was only identified at the fund reservation stage), the Owner's Affirmative Fair Housing Marketing Plan, determination of eligibility of the Owner as a nonprofit corporation separate from the Sponsor, and the financial feasibility of the project. Where evidence of site control was not previously submitted, or a previous site was rejected, HUD will perform an environmental review and approve the site before issuing a conditional commitment.

(c) Processing of a request for firm commitment shall include review of the final plans and specifications, review of the Contractor/Owner's cost estimate, and a review of the conclusions reached during conditional commitment processing. In the case of Owners permitted by the Field Office Manager to submit requests for firm commitment without going through conditional commitment processing, the field office shall evaluate the Affirmative Fair Housing Marketing Plan and the financial feasibility of the project when carrying out firm commitment processing. Where evidence of site control was not previously submitted, or a previous site was rejected, HUD will

perform an environmental review and approve the site before issuing a final commitment.

§ 890.405 Approval of requests for capital advance financing.

(a) *HUD review.* HUD will review the request for capital advance financing and all required exhibits and will notify the Owner of its approval by issuance of a conditional or firm commitment, as appropriate, or of its disapproval of the request.

(b) *Issuance of conditional commitment.* A conditional commitment will include the following:

(1) The estimated cost of the project;

(2) The land value fully improved (with offsite improvements installed) and, if the proposal involves the rehabilitation of a project, the "as is" value of the property;

(3) The detailed estimates of operating expenses;

(4) The financial requirements;

(5) The capital advance amount;

(6) The approved per unit operating expenses amount and utility allowances;

(7) The Affirmative Fair Housing Marketing Plan (or that the conditional commitment is subject to compliance with the Affirmative Fair Housing Marketing Plan); and

(8) The deadline for the submission of the Owner's request for a firm commitment for capital advance financing.

(c) *Issuance of firm commitment.* (1) A firm commitment will include the following:

(i) Approval of the final plans and specifications;

(ii) The conclusions of HUD's reviews of the Contractor/Owner's cost estimates;

(iii) Reaffirmation of the conclusions reached during conditional commitment processing or description of the approved changes to earlier conclusions; and

(iv) Approval of the Affirmative Fair Housing Marketing Plan.

(2) If the Owner was permitted to apply for a firm commitment without going through conditional commitment processing, the items listed in paragraph (b)(1)–(7) of this section shall be included in the issuance of the firm commitment for capital advance financing. Issuance of a firm commitment evidences HUD's approval of the request for capital advance financing, and sets forth the terms and conditions upon which the advance shall be made and the proceeds disbursed.

(d) *Cancellation.* If a request for conditional or firm commitment for capital advance financing is not submitted within the time periods specified in the notice of section 811 fund reservation or in the conditional commitment (as appropriate), HUD may cancel the fund reservation under § 890.310.

§ 890.410 Repayment of capital advances.

(a) *Interest prohibition and repayment.* A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing project remains available for very-low-income persons with disabilities in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a note and mortgage, use agreement, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any section 811 project is prohibited, unless the Assistant Secretary gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation is part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of initial closing) in a manner that will provide rental housing for very-low-income persons with disabilities on terms at least as advantageous to existing and future tenants as the terms required by the original section 811 capital advance.

§ 890.415 Requirements prior to initial closing.

Before the initial closing, the Owner must furnish such executed documents in such form as HUD may require, including the following:

(a) Note and mortgage or deed of trust;

(b) Agreement to enter into a PRAC;

(c) Certificate of Incorporation of the Owner, Bylaws, and corporate resolution (authorizing transaction);

(d) Internal Revenue Service Section 501(c) (3) or (4) tax exemption ruling;

(e) Attorney's opinion (as to the legal status of the Owner, building permit, and compliance with zoning laws and requirements);

(f) Regulatory agreement;

(g) Agreement and certification (as to actual costs and as to any financial and family relationships between the Owner, the architect, general contractor, subcontractors and consultant);

(h) Assurance of compliance with nondiscrimination and equal opportunity requirements (see § 890.260(a));

(i) Capital advance agreement;

(j) Use agreement (see § 890.410(a));

(k) Agreement setting forth the conditions for capital advance disbursement;

(l) Construction or rehabilitation contract between the Owner and the general contractor (see § 890.420 for contract award requirements);

(m) Assurance of completion of construction or rehabilitation contract (in the form of corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or rehabilitation cost which may include a certificate of deposit under such conditions as HUD may prescribe. The corporate surety bond must be issued by a surety company that is satisfactory to HUD);

(n) Escrow agreement (in the amount of the cost of any off-site facilities funded by a cash deposit or letter of credit to assure completion of the facilities);

(o) Title policy; and

(p) Security Agreement and Financing Statement.

§ 890.420 Requirements for awarding construction or rehabilitation contracts.

(a) *Construction or rehabilitation contract award.* Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction or rehabilitation contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The Sponsor may decide to use competitive contracting procedures, *i.e.*, sealed bids or competitive negotiations, which result in fixed price contracts, or award negotiated noncompetitive contracts. Competitive contracting procedures are encouraged. Negotiated noncompetitive contracts must be awarded on a cost-reimbursement basis with a ceiling price and may provide for an incentive payment to the contractor for early completion. The Sponsor shall follow the applicable HUD procedures for the method of contracting selected.

(b) *Minority business enterprises and women-owned businesses.* The Owner shall take affirmative steps to ensure that minority business enterprises and women-owned businesses have an equal opportunity to compete for and obtain contracts. These steps may include, but

need not be limited to, any of the following:

(1) Placing qualified small, minority, and women-owned businesses on solicitation lists;

(2) Ensuring that small, minority, and women-owned businesses are solicited whenever they are potential sources, including by making special outreach efforts to inform such businesses of contract opportunities;

(3) Providing technical assistance designed to enhance opportunities for small, minority, and women-owned businesses;

(4) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority, and women-owned businesses;

(5) Establishing schedules, where feasible, which encourage participation by small, minority, and women-owned businesses;

(6) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(7) Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (6) of this section. The affirmative steps taken may *not* include awarding contracts solely or in part on the basis of race or gender.

§ 890.425 Disbursement procedures.

(a) *Timing and amount of disbursement.* Disbursements to the Owner will be made on a periodic basis, and in amounts not to exceed the HUD-approved cost of the portions of construction or rehabilitation work complete and in place (except as modified in paragraph (c) of this section), minus the appropriate holdback as determined by HUD.

(b) *Content of disbursement requisition.* Requisitions for disbursements must be submitted by the Owner on forms prescribed by HUD and must be accompanied by such additional information as HUD may require in order to approve disbursements under this part including, but not limited to, evidence of compliance with the labor standards described at § 890.260(d), Department of Labor regulations, all zoning, building and other governmental requirements, and such evidence as HUD may prescribe.

(c) *Disbursements for building components stored off-site.* In disbursements for building components stored off-site, the term building component will mean any manufactured or pre-assembled part of a structure as defined by HUD and which HUD has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impracticable, or because weather damage or other adverse conditions prevailing at the construction site would make storage at the site impracticable or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (c)(1)(ii) of this section.

(1) *Storage.* (i) A disbursement may be made for up to 90 percent of the invoice value (to exclude cost of transportation and storage) of the building components stored off-site if the comments are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which disbursements have been made and separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne by the general contractor.

(2) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the project shall have the responsibility for (i) insuring the components in the name of the Owner while in transit and storage; and (ii) delivering or contracting for the delivery of the components to the storage area and to the construction site, including the payments of freight.

(3) *Disbursements.* (i) Before a disbursement for a building component stored off-site is made, the Owner shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD; and

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each disbursement for building components stored off-site is made, the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plans and specifications.

(iii) Disbursements may be made only for components stored off-site in a quantity required to permit the uninterrupted installation on the site.

(iv) The outstanding amount of advances for building components stored off-site may not exceed 50 percent of the total estimated construction cost for the project as specified in the construction contract.

(v) Payments for building components stored off-site will not be approved unless the contractor has a corporate surety bond for payment and performance each in the amount of 100 percent of the amount of the construction contract.

(vi) No single disbursement shall be made in an amount less than $10,000.

§ 890.430 Completion of cost certification.

(a) *Requisition for final disbursement.* The Owner must satisfy the requirements for completion of construction or rehabilitation, or acquisition with or without rehabilitation and receive all required approvals from HUD before submitting a requisition for final disbursement of a capital advance.

(b) *Cost certification.* The Owner shall submit to the field office all documentation required for final disbursement of the capital advance including the cost certifications listed in this paragraph (b).

(1) If the construction contract was a cost-reimbursement contract with a ceiling price:

(i) The Owner must certify, on a form prescribed by HUD, as to the actual cost to the Owner of the construction contract, architectural, legal, organizational, off-site costs, and all other items of eligible expense; and

(ii) The general contractor (and such subcontractors, material suppliers, and equipment lessors as HUD may require) must certify, on a form prescribed by HUD, as to the actual cost paid for labor, materials, and subcontract work under the general contract. The certificate shall not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Owner or to any of its officers, directors, or members. For projects with a capital advance of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(2) If the construction contract required the contractor to furnish all labor, materials, equipment, and services required to construct and complete the project for a specified and firm price, the Owner will be required to submit a simplified short-form cost certification on a form prescribed by HUD. For projects with a capital advance of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(c) Calculation of savings incentive and reduction of capital advance. If the initial fund reservation has not been increased and certified costs provided under paragraph (b) of this section and approved by HUD are less than the capital advance amount established under § 890.405, HUD will calculate the Owner's share of the cost savings (see 24 CFR 890.245(k)) and reduce the capital advance by the remaining portion.

3. Subpart E of Part 890, consisting of §§ 890.500 through 890.530, is added to read as follows:

Subpart E—Project Rental Assistance Contract

Sec.

890.500 Project rental assistance contract.
890.505 Term of PRAC.
890.510 Maximum annual commitment and project account.
890.515 Leasing to eligible households.
890.520 PRAC administration.
890.525 Default by Owner.
890.530 Notice upon PRAC expiration.

Subpart E—Project Rental Assistance Contract

§ 890.500 Project rental assistance contract.

(a) *Project rental assistance contract (PRAC).* The PRAC sets forth rights and duties of the Owner and HUD with respect to the project and the project rental assistance payments.

(b) *PRAC execution.* (1) Upon satisfactory completion of the project, the Owner and HUD shall execute the PRAC on the form prescribed by HUD.

(2) The effective date of the PRAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of this paragraph (b) shall apply to each stage.

(c) *Project rental assistance payments to Owners under the PRAC.* The project rental assistance payments made under the PRAC are:

(1) *Payments to the Owner to assist eligible families leasing assisted units.* The amount of the project rental assistance payment made to the Owner for an assisted unit (or residential space in a group home) that is leased to a disabled household is equal to the difference between the HUD approved operating expense (or pro rata share of the contract rent in a group home) and the tenant payment. If the aggregate of tenant payments exceeds the operating expenses for all assisted units, such amount shall be remitted to HUD.

(2) *Payments to the Owner for vacant assisted units ("vacancy payment").* The amount of and conditions for vacancy payments are described in § 890.105 and the PRAC. The project rental assistance payments are made monthly by HUD upon proper requisition by the Owner.

(d) *Payment of utility reimbursement.* A project rental assistance payment will be made to a disabled household occupying an assisted unit in an independent living facility when the household is responsible for paying the cost of all utilities (except telephone) and such costs exceed the household's tenant payment. The PRAC will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making the additional payment. The Owner may make the payment jointly to the disabled household and the utility company, or, if the disabled household and utility company consent, directly to the utility company.

§ 890.505 Term of PRAC.

The term of the PRAC shall be 20 years. If the project is completed in stages, the term of the PRAC for each stage shall be 20 years. The Secretary shall, to the extent approved in appropriation acts, extend any expiring contract for a term of not less than 5 years. In order to facilitate the orderly extension of expiring contracts, the Secretary may make commitments to extend expiring contracts during the year prior to the date of expiration.

§ 890.510 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the PRAC is the total of the HUD-approved operating expenses for a group home or for all assisted units, and the amount needed to cover utility reimbursements, if any.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PRAC each year. HUD will make payments from this account for project rental assistance payments as needed to cover increases in HUD-approved operating expenses or decreases in tenant income and other payments for costs specifically approved by the Assistant Secretary.

(2) If the HUD-approved estimate of required annual payments under the PRAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps, as may be necessary, to assure that payments under the PRAC will be adequate to cover increases in operating expenses and decreases in tenant income.

§ 890.515 Leasing to eligible households.

During the term of the PRAC, and Owner shall make all units (or residential spaces in a group home) available for disabled households. For purposes of this section, making units or residential spaces available for occupancy by disabled households means that the Owner:

(a) Is conducting marketing in accordance with § 890.260(a)(6);

(b) Has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable households, including taking all feasible actions to fill vacancies by renting to such households; and

(c) Has not rejected any such applicant household except for reasons acceptable to HUD. If the Owner is temporarily unable to lease all units or residential spaces to eligible households, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible households that do not meet the income requirements of Part 813 as modified by Part 890. Failure on the part of the Owner to comply with these requirements is a violation of the PRAC and grounds for all available legal remedies, including an action for specific performance of the PRAC, and suspension or debarment from HUD programs.

§ 890.520 PRAC administration.

HUD is responsible for the administration of the PRAC.

§ 890.525 Default by Owner.

(a) *PRAC provisions.* The PRAC will provide:

(1) That if HUD determines that the Owner is in default under the PRAC, HUD will notify the Owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the PRAC, reduction or suspension of project assistance payments and recovery of overpayments, where appropriate; and

(2) That if the Owner fails to cure the default, HUD has the right to terminate the PRAC or to take other corrective action.

(b) *Capital advance provisions.* Additional provisions governing default under the capital advance are included in the regulatory agreement and other documents described in § 890.415.

§ 890.530 Notice upon PRAC expiration.

The PRAC will provide that the Owner will, at least 90 days before the end of the PRAC term, notify each disabled household occupying an assisted unit (or residential space in a group home) of any increase in the tenant payment as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

Dated: August 6, 1992.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 92-19139 Filed 8-11-92; 8:45 am]

BILLING CODE 4210-27-M

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Wednesday
August 12, 1992

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 889

Supportive Housing for Persons With Disabilities (Development); Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 889

[Docket No. R-92-1603; FR 3229-I-01]

Supportive Housing for the Elderly, (Development)

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides for the requirements (capital advances and project rental assistance contracts) of the new Supportive Housing for the Elderly Program which were not covered in the interim rule, published on June 12, 1991 at 56 FR 27104. The June 12, 1991 interim rule enabled supportive housing for the elderly to be funded for FY 1991, added new regulations to establish the new Supportive Housing for the Elderly Program and covered application procedures and program requirements, selection of applications and duration of fund reservation requirements. The Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) and is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that is designed to accommodate the special needs of elderly persons and provides a range of services that are tailored to the needs of elderly persons occupying such housing.

DATES: September 11, 1992.

Comments due date: October 13, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

Hearing or speech impaired individuals may call the Rules Docket Clerk's TDD number (202) 708–3259.

FOR FURTHER INFORMATION CONTACT: Robert Wilder, Director, Housing for the Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202) 708–2730. (This is not a toll-free number.)

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0470.

II. Background

A. Applicability of Part 885

Part 885 provided through Fiscal Year 1990 direct Federal loans under section 2020 of the Housing Act of 1959 (42 U.S.C. 1701q) to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing projects serving the elderly or individuals and families with disabilities. Loans (with up to a 40 year term) were made under part 885 to finance the construction or substantial rehabilitation of projects for elderly or families with disabilities, or to acquire with or without moderate rehabilitation existing housing and related facilities for group homes for nonelderly individuals with disabilities. The housing projects provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services. Subpart B of part 885 applies to projects for the elderly or individuals or families with disabilities that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Act of 1937. Subpart C of part 885 applies to projects for nonelderly families with disabilities receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959.

Part 885 was amended by an interim rule published June 12, 1991 at 56 FR 27104, and corrected August 1, 1991 at 56 36728, and applies to projects for which section 202 loan reservations were made in FY 1990 and prior years. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, provides that projects for which section 202 loan reservations were made in FY 1990 and prior years and for which loans are not executed and recorded, HUD (1) may not convert these loan reservations to capital advance reservations (under part 889 or part 890) before January 1, 1992, (2) may from January 1, 1992 until April 1, 1992 use its discretion to convert these loan reservations to capital advance reservations (under part 889 or part 890), and (3) must either convert or terminate these loan reservations as of April 1, 1992. HUD issued conversion procedures in HUD Notice 92–1, dated January 6, 1992. Projects for elderly families selected for funding in FY 1991 and subsequent years will also be covered by new part 889.

B. New Part 889

Part 889 is authorized by section 202 of the Housing Act of 1959, as amended by section 801 of NAHA. Under part 889, assistance is provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance will be provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

An overview and section by section summary of part 889 (subparts A, B, C, D, and G) were included in the preamble to the June 12, 1991 interim rule. This interim rule amends subpart D and adds subpart E which was previously reserved in part 889.

Subpart D provides requirements relating to capital advances. Specifically, it discusses the request for a capital advance, approval of a request for capital advance financing and repayment of a capital advance. Requirements are provided for initial closing and awarding construction and rehabilitation contracts. Disbursement procedures and completion of cost certifications are also described.

Subpart E provides requirements regarding project rental assistance contracts. Requirements concerning project rental assistance contract term,

maximum annual commitment and project account are included. Leasing to eligible families, project administration, default by the Owner and notice upon project rental assistance contract expiration are also covered.

Subpart F will be issued at a later date and will provide the responsibilities of the Owner, requirements of the replacement reserve, selection and admission requirements for tenants, obligations of tenants, provisions regarding overcrowded and underoccupied units, lease requirements, and requirements regarding termination of tenancy, modifications of leases, security deposits and vacancy payments.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order No. on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Although small entities will participate in the program, the rule would not have a significant impact on them.

On February 26, 1990, the Department published an interim rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

Family Impact

The General Counsel, as the Designated Official for Executive Order No. 12606, the Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804) under Executive Order No. 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects in 24 CFR Part 889

Aged, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR part 889, as set forth below:

1. The authority citation for part 889 is revised to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 3535(d).

2. Subpart D, consisting of §§ 889.400, 889.405, 889.410, 889.415, 889.420, 889.425, and 889.430, of Part 889, is revised to read as follows:

Subpart D—Capital Advance

Sec.

889.400 Request for capital advance.
889.405 Approval of requests for capital advance financing.
889.410 Repayment of capital advances.
889.415 Requirements prior to initial closing.
889.420 Requirements for awarding construction or rehabilitation contracts.
889.425 Disbursement procedures.
889.430 Completion of cost certification.

Subpart D—Capital Advance

§ 889.400 Request for capital advance.

(a) Simultaneously with the notice of Section 202 Fund Reservation to the Sponsor, the field office will invite the submission of a request for conditional commitment (unless approval is granted to proceed with the request for firm commitment) by the Owner to be formed by the Sponsor. Such requests shall be on forms prescribed by HUD, shall include all such exhibits as HUD may require, and must be submitted, within the limit specified in the notice of section 202 Fund Reservation, to the field office serving the area in which the proposed project will be located.

(b) Processing of the request for conditional commitment shall include an evaluation of preliminary plans and Form HUD–5087, Outline Specifications, the Owner's Affirmative Fair Housing Marketing Plan, determination of eligibility of the Owner as a nonprofit corporation separate from the Sponsor, and the financial feasibility of the project.

(c) Processing of a request for firm commitment shall include review of the final plans and specifications, review of the Contractor/Owner's cost estimate, and a review of the conclusions reached during conditional commitment processing. In the case of Owners permitted by the Field Office Manager to submit requests for firm commitment without going through conditional commitment processing, the field office shall evaluate the Affirmative Fair Housing Marketing Plan and the financial feasibility of the project when carrying out firm commitment processing.

§ 889.405 Approval of requests for capital advance financing.

(a) *HUD review.* HUD will review the request for capital advance financing and all required exhibits and will notify the Owner of its approval by issuing a conditional or firm commitment, as appropriate, or of its disapproval of the request.

(b) *Issuance of conditional commitment.* A conditional commitment will include the following:

(1) The estimated cost of the project;
(2) The land value fully improved (with offsite improvements installed) and, if the proposal involves the rehabilitation of a project, the "as is" value of the property;
(3) The detailed estimates of operating expenses;
(4) The financial requirements;
(5) The capital advance amount;
(6) The approved per unit operating expense amount and utility allowances;
(7) The Affirmative Fair Housing Marketing Plan (or that the conditional commitment is subject to compliance with the Affirmative Fair Housing Marketing Plan); and
(8) The deadline for the submission of the Owner's request for a firm commitment for capital advance financing.

(c) *Issuance of firm commitment.* (1) A firm commitment will include the following:
(i) Approval of the final plans and specifications;
(ii) The conclusions of HUD's reviews of the Contractor/Owner's cost estimates;
(iii) Reaffirmation of the conclusions reached during conditional commitment processing or description of the approved changes to earlier conclusions;
(iv) Approval of the Affirmative Fair Housing Marketing Plan; and
(v) Confirmation to the Owner that HUD has complied with the environmental review and procedures identified in 24 CFR 889.265(b).

(1) If the Owner was permitted to apply for a firm commitment without going through conditional commitment processing, the items listed in paragraph (b) (1) through (7) of this section shall be included in the issuance of the firm commitment for capital advance financing. Issuance of a firm commitment evidences HUD's approval of the request for capital advance financing, and sets forth the terms and conditions upon which the advance shall be made and the proceeds disbursed.

(d) *Cancellation.* If a request for conditional or firm commitment for capital advance financing is not submitted within the time periods specified in the notice of section 202 Fund Reservation or in the conditional commitment (as appropriate), HUD may cancel the fund reservation under § 889.310.

§ 889.410 Repayment of capital advances.

(a) *Interest prohibition and repayment.* A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing project remains available for very-low-income elderly families in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a note and mortgage, use agreement, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any section 202 project is prohibited, unless the Assistant Secretary gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation or consumer cooperative is part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very-low-income elderly persons on terms at least as advantageous to existing and future tenants as the terms required by the original section 202 capital advance.

§ 889.415 Requirements prior to initial closing.

Before the initial closing, the Owner must furnish such executed documents in such form as HUD may require, including the following:
(a) Note and mortgage or deed of trust;
(b) Agreement to enter into a PRAC;
(c) Certificate of Incorporation of the Owner, Bylaws, and corporate resolution (authorizing transaction);
(d) Internal Revenue Service section 510(c) (3) or (4) tax exemption ruling;
(e) Attorney's opinion (as to the legal status of the Owner, building permit, and compliance with zoning laws and requirements);
(f) Regulatory agreement;
(g) Agreement and certification (as to actual costs and as to any financial and family relationships between the Owner, the architect, general contractor, subcontractors and consultant);
(h) Assurance of compliance with nondiscrimination and equal opportunity requirements (see § 889.265(a));
(i) Capital advance agreement;
(j) Use agreement (see § 889.410(a));
(k) Agreement setting forth the conditions for capital advance disbursement;
(l) Construction or rehabilitation contract between the Owner and the general contractor (see § 889.420 for contract award requirements);
(m) Assurance of completion of construction or rehabilitation contract (in the form of corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or rehabilitation cost which may include a certificate of deposit under such conditions as HUD may prescribe. The corporate surety bond must be issued by a surety company that is satisfactory to HUD);
(n) Escrow agreement (in the amount of the cost of any off-site facilities funded by a cash deposit or letter of credit to assure completion of the facilities);
(o) Title policy; and
(p) Security Agreement and Financing Statement.

§ 889.420 Requirements for awarding construction or rehabilitation contracts.

(a) *Construction or rehabilitation contract award.* Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction or rehabilitation contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The Sponsor may decide to use competitive contracting procedures, *i.e.*, sealed bids or competitive negotiations, which result in fixed price contracts, or award negotiated noncompetitive contracts. Competitive contracting procedures are encouraged. Negotiated noncompetitive contracts must be awarded on a cost-reimbursement basis with a ceiling price and may provide for an incentive payment to the contractor for early completion. The Sponsor shall follow the applicable HUD procedures for the method of contracting selected.

(b) *Minority business enterprises and women-owned businesses.* The Owner shall take affirmative steps to ensure that minority business enterprises and women-owned businesses have an equal opportunity to compete for and obtain contracts. These steps may include, but need not be limited to, any of the following:
(1) Placing qualified small, minority, and women-owned businesses on solicitation lists;
(2) Ensuring that small, minority, and women-owned businesses are solicited whenever they are potential sources, including making special outreach efforts to inform such businesses of contract opportunities;
(3) Providing technical assistance designed to enhance opportunities for

small, minority, and women-owned businesses;

(4) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority, and women-owned businesses;

(5) Establishing schedules, where feasible, which encourage participation by small, minority, and women-owned businesses;

(6) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(7) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (6) of this section. The affirmative steps taken may not include awarding contracts solely or in part on the basis of race or gender.

§ 889.425 Disbursement procedures.

(a) *Timing and amount of disbursement.* Disbursements to the Owner will be made on a periodic basis, and in amounts not to exceed the HUD-approved cost of the portions of construction or rehabilitation work complete and in place (except as modified in paragraph (c) of this section), minus the appropriate holdback, as determined by HUD.

(b) *Content of disbursement requisition.* Requisitions for disbursements must be submitted by the Owner on forms prescribed by HUD and must be accompanied by such additional information as HUD may require in order to approve disbursements under this part, including, but not limited to, evidence of compliance with the labor standards described at § 889.265(d), Department of Labor regulations, all zoning, building and other governmental requirements, and such evidence as HUD may prescribe.

(c) *Disbursements for building components stored off-site.* In disbursements for building components stored off-site, the term "building component" will mean any manufactured or pre-assembled part of a structure as defined by HUD and which HUD has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impracticable, or because weather damage or other adverse conditions prevailing at the construction site would make storage at the site impracticable or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (c)(1)(ii) of this section.

(1) *Storage.* (i) A disbursement may be made for up to 90 percent of the invoice value (to exclude cost of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which disbursements have been made and separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne by the general contractor.

(2) *Responsibility for Transportation, storage and insurance of off-site building components.* The general contractor of the project shall have the responsibility for (i) insuring the components in the name of the Owner while in transit and storage; and (ii) delivering or contracting for the delivery of the components to the storage area and to the construction site, including the payment of freight.

(3) *Disbursements.* (i) Before a disbursement for a building component stored off-site is made, the Owner shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD; and

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each disbursement for building components stored off-site is made, the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plans and specifications.

(iii) Disbursements may be made only for components stored off-site in a quantity required to permit the uninterrupted installation on the site.

(iv) The outstanding amount of advances for building components stored off-site may not exceed 50 percent of the total estimated construction cost for the project as specified in the construction contract.

(v) Payments for building components stored off-site will not be approved unless the contractor has a corporate surety bond for payment and performance each in the amount of 100 percent of the amount of the construction contract.

(vi) No single disbursement shall be made in an amount less than $10,000.

§ 889.430 Completion of cost certification.

(a) *Requisition for final disbursement.* The Owner must satisfy the requirements for completion of construction or rehabilitation or acquisition with or without rehabilitation and receive all required approvals from HUD before submitting a requisition for final disbursement of a capital advance.

(b) *Cost certification.* The Owner shall submit to the field office all documentation required for final disbursement of the capital advance including the cost certifications listed in this paragraph (b).

(1) If the construction contract was a cost-reimbursement contract with a ceiling price:

(i) The Owner must certify, on a form prescribed by HUD, as to the actual cost to the Owner of the construction contract, architectural, legal, organizational, off-site costs, and all other items of eligible expense; and

(ii) The general contractor (and such subcontractors, material suppliers, and equipment lessors as HUD may require) must certify, on a form prescribed by HUD, as to the actual cost paid for labor, materials, and subcontract work under the general contract. The certificate shall not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Owner or to any of its officers, directors, or members. For projects with a capital advance of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(2) If the construction contract required the contractor to furnish all labor, materials, equipment, and services required to construct and complete the project for a specified and firm price, the Owner will be required to submit a simplified short-form cost certification on a form prescribed by HUD. For projects with a capital advance of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(c) *Calculation of savings incentive and reduction of capital advance.* If the initial fund reservation has not been increased and certified costs provided under paragraph (b) of this section and approved by HUD are less than the capital advance amount established under § 889.405, HUD will calculate the Owner's share of the cost savings (see 24 CFR 889.245(f)) and reduce the capital advance by the remaining portion.

3. Subpart E of part 889, consisting of §§ 889.500 through 889.530, is added to read as follows:

Subpart E—Project Rental Assistance Contract

Sec.
889.500 Project rental assistance contract.
889.505 Term of PRAC.
889.510 Maximum annual commitment and project account.
889.515 Leasing to eligible households.
889.520 PRAC administration.
889.525 Default by owner.
889.530 Notice upon PRAC expiration.

Subpart E—Project Rental Assistance Contract

§ 889.500 Project rental assistance contract.

(a) *Project rental assistance contract (PRAC).* The PRAC sets forth rights and duties of the Owner and HUD with respect to the project and the project rental assistance payments.

(b) *PRAC execution.* (1) Upon satisfactory completion of the project, the Owner and HUD shall execute the PRAC on the form prescribed by HUD.

(2) The effective date of the PRAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of this paragraph (b) shall apply to each stage.

(c) *Project rental assistance payments to Owners under the PRAC.* The project rental assistance payments made under the PRAC are:

(1) Payments to the Owner to assist eligible families leasing assisted units. The amount of the project rental assistance payment made to the Owner for an assisted unit that is leased to a household is equal to the difference between the HUD-approved operating expenses and the tenant payment. If the aggregate of tenant payments exceeds the operating expenses for all assisted units, such amount shall be remitted to HUD.

(2) Payments to the Owner for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in § 889.105 and the PRAC. The project rental assistance payments are made monthly by HUD upon proper requisition by the Owner.

(d) *Payment of utility reimbursement.* A project rental assistance payment will be made to a household occupying an assisted unit when the household is responsible for paying the cost of all utilities (except telephone) and such costs exceed the household's tenant payment. The PRAC will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making the additional payment. The Owner may make the payment jointly to the household and the utility company, or, if the household and utility company consent, directly to the utility company.

§ 889.505 Term of PRAC.

The term of the PRAC shall be 20 years. If the project is completed in stages, the term of the PRAC for each stage shall be 20 years. The Secretary shall, to the extent approved in appropriation acts, extend any expiring contract for a term of not less than 5 years. In order to facilitate the orderly extension of expiring contracts, the Secretary may make commitments to extend expiring contracts during the year prior to the date of expiration.

§ 889.510 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the PRAC is the total of the HUD-approved operating expenses for all assisted units in the project and the amount needed to cover utility reimbursements, if any.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PRAC each year. HUD will make payments from this account for project rental assistance payments as needed to cover increases in HUD-approved operating expenses or decreases in tenant income and other payments for costs specifically approved by the Assistant Secretary.

(2) If the HUD-approved estimate of required annual payments under the PRAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps, as may be necessary, to assure that payments under the PRAC will be adequate to cover increases in contract rents and decreases in tenant income.

§ 889.515 Leasing to eligible households.

During the term of the PRAC, an Owner shall make all units available for eligible households. For purposes of this section, making units available for occupancy by eligible households means that the Owner:

(a) Is conducting marketing in accordance with § 889.265(a)(6);

(b) Has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable eligible households, including taking all feasible actions to fill vacancies by renting to such households; and

(c) Has not rejected any such applicant household except for reasons acceptable to HUD. If the Owner is temporarily unable to lease all units to eligible households, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of Part 813 as modified by part 889. Failure on the part of the Owner to comply with these requirements is a violation of the PRAC and grounds for all available legal remedies, including an action for specific performance of the PRAC, and suspension or debarment from HUD programs.

§ 889.520 PRAC administration.

HUD is responsible for the administration of the PRAC.

§ 889.525 Default by owner.

(a) *PRAC provisions.* The PRAC will provide:

(1) That if HUD determines that the Owner is in default under the PRAC, HUD will notify the Owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the PRAC, reduction or suspension of project rental assistance payments and recovery of overpayments, where appropriate; and

(2) That if the Owner fails to cure the default, HUD has the right to terminate the PRAC or to take other corrective action.

(b) *Capital advance provisions.* Additional provisions governing default under the capital advance are included in the regulatory agreement and other documents described in § 889.415.

§ 889.530 Notice upon PRAC expiration.

The PRAC will provide that the Owner will, at least 90 days before the end of the PRAC contract term, notify each household occupying an assisted unit of any increase in the tenant payment as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

Dated: August 6, 1992.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 92-19138 Filed 8-11-92; 8:45 am]
BILLING CODE 4210-27-M

federal register

Wednesday
August 12, 1992

Part IX

Federal Election Commission

11 CFR Part 110

Transfers of Funds From State to Federal Campaigns; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1992-13]

Transfers of Funds From State to Federal Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 110.3(c) regarding the transfer of funds from state to federal campaigns. This revision comes in response to a Petition for Rulemaking filed by Congressman William Thomas. 56 FR 66866 (Dec. 26, 1991). Congressman Thomas' Petition alleges that the current regulations are ineffective, because they fail to prevent the indirect use of impermissible funds in federal elections. The new rule amends 11 CFR 110.3(c) to prohibit the transfer of funds from state to federal campaign committees. Further information is provided in the supplementary information which follows.

DATES: Further action, including announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 110.3 regarding the transfer of funds from state to federal campaigns.

The Commission published a Notice of Proposed Rulemaking ["NPRM"] on April 15, 1992, in which it sought comments on proposed revisions to these regulations. 57 FR 13054 (Apr. 15, 1992). The Commission received thirteen comments in response to the NPRM.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 7, 1992.

After the thirty legislative days have expired, the Commission will publish an effective date for this new regulation in the **Federal Register**. The Commission does not intend to make this rule effective until after the 1992 election cycle.

Explanation and Justification

The Federal Election Campaign Act, as amended, 2 U.S.C. 431 et seq. ["FECA" or "the Act"], places certain limitations and prohibitions on the sources and amounts of contributions to federal election campaigns. Section 441a limits the dollar amount of contributions by individuals and multicandidate political committees. Section 441b, in general, prohibits contributions by corporations and labor organizations. The FEC has promulgated regulations to implement these statutory provisions. See 11 CFR parts 110 and 114.

In contrast, many states impose fewer restrictions on contributions to campaigns for state elective offices. Many states allow individuals to make contributions to state candidates that would exceed FECA limits if they were directed to a federal candidate. Many states also allow corporations and labor organizations to make contributions to state candidates, in some cases without any dollar limit. Contributions to state candidates that would be impermissible if given to a federal candidate are often referred to as "soft money" contributions.

In many instances, candidates for federal office who were once candidates for state office have state campaign committees with funds leftover from a state campaign. These candidates often wish to transfer these funds to their federal campaign committees for use in the federal campaign. Until now, the Commission has allowed nonfederal campaign committees to transfer funds to an authorized federal committee of the same candidate, so long as the funds transferred do not contain impermissible or "soft money" contributions. 11 CFR 110.3(c)(6). This policy can be traced to a series of advisory opinions that date back to the Commission's inception. Advisory Opinions 1975–66, 1980–117, 1982–52, 1983–34, 1984–3, 1984–46, 1985–1, 1987–12, 1990–16. See Explanation and Justification of Final Rule, 54 FR 34098, 34104 (Aug. 17, 1989).

On December 5, 1991, Congressman William Thomas filed a Petition for Rulemaking urging the Commission to revise its regulations regarding the transfer of funds from nonfederal campaign committees to federal campaign committees. The Petition alleges that the current regulations are ineffective, because they allow nonfederal committees to use soft money to finance the solicitation of "hard money" contributions that would be permissible under the Act. These permissible contributions can then be transferred to a federal committee for use in the federal campaign. The petition argues that this amounts to an indirect use of impermissible contributions in federal elections.

The Commission published a Notice of Availability on December 26, 1991, which sought public comments on the petition. See 56 FR 66866 (Dec. 26, 1991). The Commission received three comments supporting the petition. An additional comment sought clarification.

On April 15, 1992, the Commission published a Notice of Proposed Rulemaking. 57 FR 13054 (Apr. 15, 1992). The Notice proposed amendments to 11 CFR 110.3(c)(6) that would prohibit the transfer of funds raised using contributions that would be impermissible under the Act. The Notice also contained an alternative proposal, which would reverse the Commission's existing policy and ban all transfers from state campaigns to federal campaigns. The Notice sought comments on whether such a prohibition would be preferable to the proposed rule.

The Commission anticipates that certain practical problems could occur should the proposed rule, rather than the alternative, be implemented. Under the proposed rule, committees must be able to demonstrate that the funds they wish to transfer were raised with funds that are permissible under the Act. Linking specific funds to be transferred to particular fundraising disbursements will be difficult for committees in the best of circumstances. This process would also be difficult for the Commission to monitor and enforce.

The difficulty of this process is often compounded in several ways. For example, most state campaigns are subject to less stringent recordkeeping and reporting requirements than those imposed by federal law. In addition, state campaigns often make fundraising disbursements from accounts containing a constantly varying mixture of permissible and impermissible funds. Finally, fundraising activities are often paid for with multiple disbursements over the course of several days.

If fundraising is paid for with multiple disbursements that come from accounts containing a mixture of funds, linking the contributions received to funds disbursed, and then limiting the transfer to those contributions that can be linked to permissible disbursements, presents significant practical difficulties. In addition, the NPRM noted that some campaign committees might choose to set up separate accounts for permissible

and impermissible funds in order to simplify the recordkeeping process for future transfers. This practice could raise questions about federal regulation of state campaign activity and about the possible onset of federal candidate status during a state campaign.

It was because of these anticipated difficulties that the Commission included the alternative proposal in the Notice of Proposed Rulemaking. The alternative proposal would prohibit all transfers from state to federal campaign committees. The Notice sought comments on whether this would be preferable to the proposed rule.

The Commission received 13 comments in response to the Notice of Proposed Rulemaking. Most of the commenters endorsed the alternative proposal in some form, and rejected the more limited ban on transfers of contributions raised with soft money. Seven commenters urged the Commission to prohibit all transfers from "commingled" state campaign accounts. Three commenters spoke more generally in support of a prohibition on all transfers from state to federal campaigns. All of the commenters who expressed support for the promulgation of new rules in this area preferred the total ban.

Although the Commission is reluctant to reverse long-standing policy, it is also concerned about the indirect use of impermissible funds in federal elections. This is an area in which the Commission has engaged in closer regulation in recent years. See, e.g., Methods of Allocation Between Federal and Non-Federal Accounts, 55 FR 26058 (June 26, 1990). Consequently, the Commission has decided to promulgate new rules that would more effectively prevent the indirect use of impermissible funds in federal elections.

However, in light of the comments received and the difficulties presented by the proposed rule, the Commission believes that the alternative proposal, a prohibition on all transfers from state to federal campaigns, is the best way to address the concerns raised in the Petition for Rulemaking. Choosing the alternative proposal will avoid the issues raised by a rule that leads to the segregation of funds in separate state campaign accounts, and will also obviate the need for additional complicated recordkeeping.

The final rule prohibits transfers of cash or other assets from state campaign committees to federal campaign committees. The rule also prohibits transfers from the bank account of a state campaign in order to address those situations where there is no recognized state campaign committee. However, the rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value. Committees may look to the valuation mechanism contained in 11 CFR 9034.5(c)(1) for guidance in determining fair market value.

Nor should this rule be read to limit the federal campaign committee's right to solicit contributions from those who made contributions to the state campaign. The federal campaign is permitted to solicit contributions from the same contributors. However, if the federal campaign committee intends to use a mailing list compiled by the state campaign, the federal campaign must purchase the list at fair market value. The mailing list is an asset of the state campaign, and any transfer for less than fair market value would violate the rule announced in this Notice.

The Commission will publish an effective date for this new regulation in the **Federal Register** after it has been before Congress for thirty legislative days. As indicated in the Notice of Proposed Rulemaking, the Commission does not intend to make this rule effective until after the 1992 election cycle.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the rule would bar transfers of funds from a state campaign to a federal campaign for use in federal election activity. This does not impose a significant economic burden, because any small entities affected are already required to comply with the Act's requirements, including those on permissible sources of funds, if they engage in activity designed to influence a federal election.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.3 is amended by revising the heading of paragraph (c), by removing and reserving paragraph (c)(6), and by adding paragraph (d), to read as follows:

§ 110.3 Contribution limitations for affiliated committees and political party committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4)).

* * * * *

(c) *Permissible transfers.* * * *

* * * * *

(d) *Transfers from nonfederal to federal campaigns.* Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited. However, at the option of the nonfederal committee, the nonfederal committee may refund contributions, and may coordinate arrangements with the candidate's principal campaign committee or other authorized committee for a solicitation by such committee(s) to the same contributors. The full cost of this solicitation shall be paid by the Federal committee.

Dated: August 7, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-19168 Filed 8-11-92; 8:45 am]

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federal register

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Part X

The President

Proclamation 6463—Women's Equality Day, 1992

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Title 3—

The President

Proclamation 6463 of August 10, 1992

Women's Equality Day, 1992

By the President of the United States of America

A Proclamation

"I believe in woman's suffrage, because I believe in democracy." With these words, Congressman M. Clyde Kelly of Pennsylvania summarized the convictions of countless Americans who supported the adoption of the 19th Amendment to our Constitution. This Amendment, which was passed by the Congress in June 1919, ratified by the Tennessee legislature on August 20, 1920, and officially declared part of our Constitution six days later, guaranteed for women the right to vote.

The adoption of the 19th Amendment marked a long-awaited triumph for members of the woman's suffrage movement and the beginning of ever greater participation by women in the day-to-day process of government. By the time the proposed Amendment was presented to the States for ratification—some 40 years after it had been introduced in the Congress—women had won equal suffrage in 15 States and in the Alaska Territory. Women could vote in Presidential elections in 12 other States and in primary elections in two States. Yet, after years of hard work at the grassroots level, suffragettes and their supporters knew that full, effective recognition of women's right to vote depended on action at the Federal level. To allow the question to be resolved arbitrarily, by the individual States, would refute the idea of women as coheirs to the God-given and unalienable rights enshrined in our Nation's Declaration of Independence and guaranteed by our Constitution.

Proponents of the 19th Amendment understood that, as long as women were disenfranchised in any State, our Nation deviated from the principles on which it was founded—including the belief that governments derive their just powers from the consent of the governed. Explaining the link between woman's suffrage and the preservation of democracy, Representative Kelly said:

> When officials are chosen without the consent of all, then those who had no voice in their selection are subjects, not citizens. Women are citizens, they are part of the people, and they have a right to help elect those who shall represent them and to help make the laws under which they shall live and to which they must render obedience.

By extending the franchise, the United States took an important step toward fulfilling its promise of liberty and justice for all—one that would be followed by other legal milestones such as the 1964 Civil Rights Act, the Voting Rights Act of 1965, and, more recently, the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991.

Although women have always made vital contributions to the social, cultural, and economic development of the United States, it was not until adoption of the 19th Amendment that they became full participants in our system of self-government. No longer excluded from the voting booth, women began to play increasingly influential roles in public life, overcoming legal and attitudinal barriers to their advancement and sharing their talents and ideas in virtually every field.

As we commemorate the ratification of the 19th Amendment nearly three-quarters of a century ago, we recall the many contributions and achievements of women, as well as our obligation to promote equal opportunities for all Americans. This year, let us also reflect on the importance of having the right to vote and of faithfully exercising that right.

NOW, THEREFORE, I, GEORGE BUSH, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1992, as Women's Equality Day. I invite all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of August, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

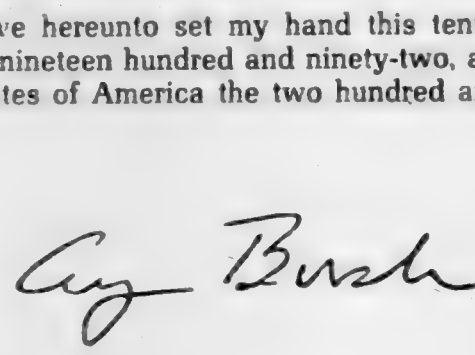

[FR Doc. 92-19409
Filed 8-11-92; 11:38 am]
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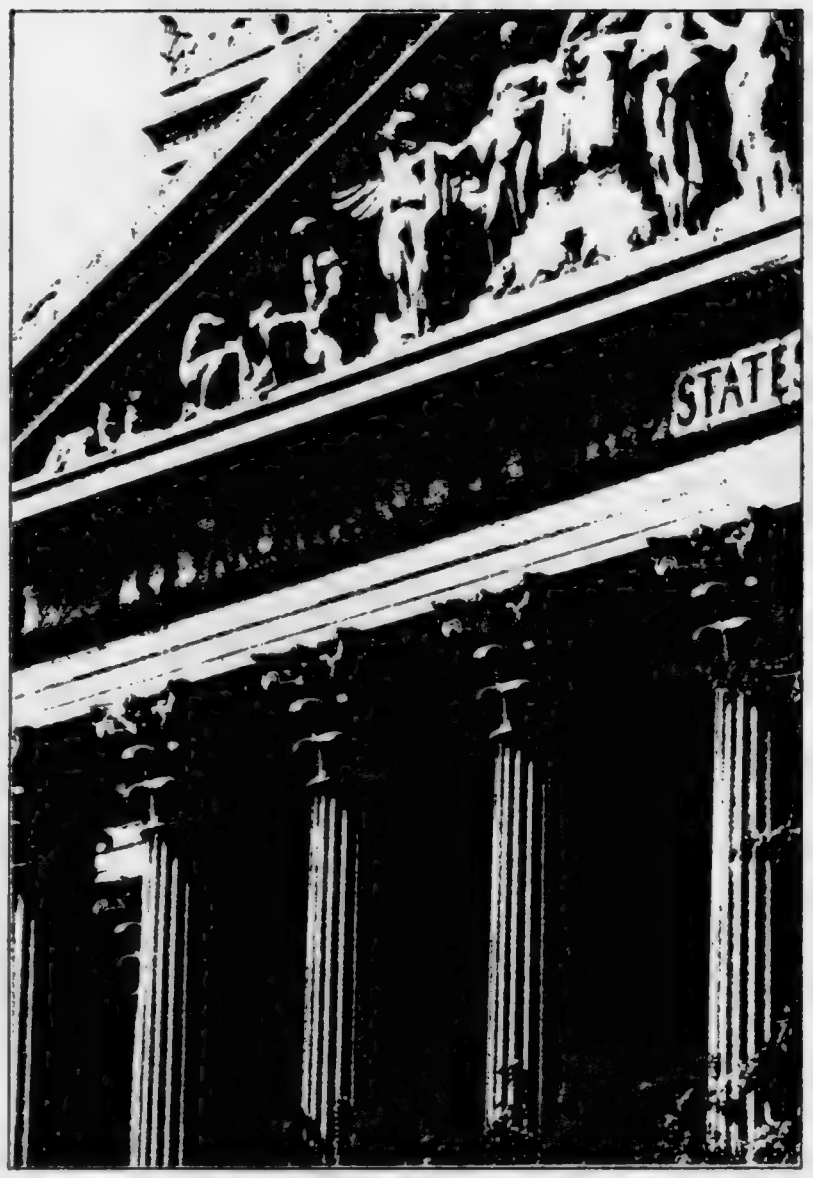

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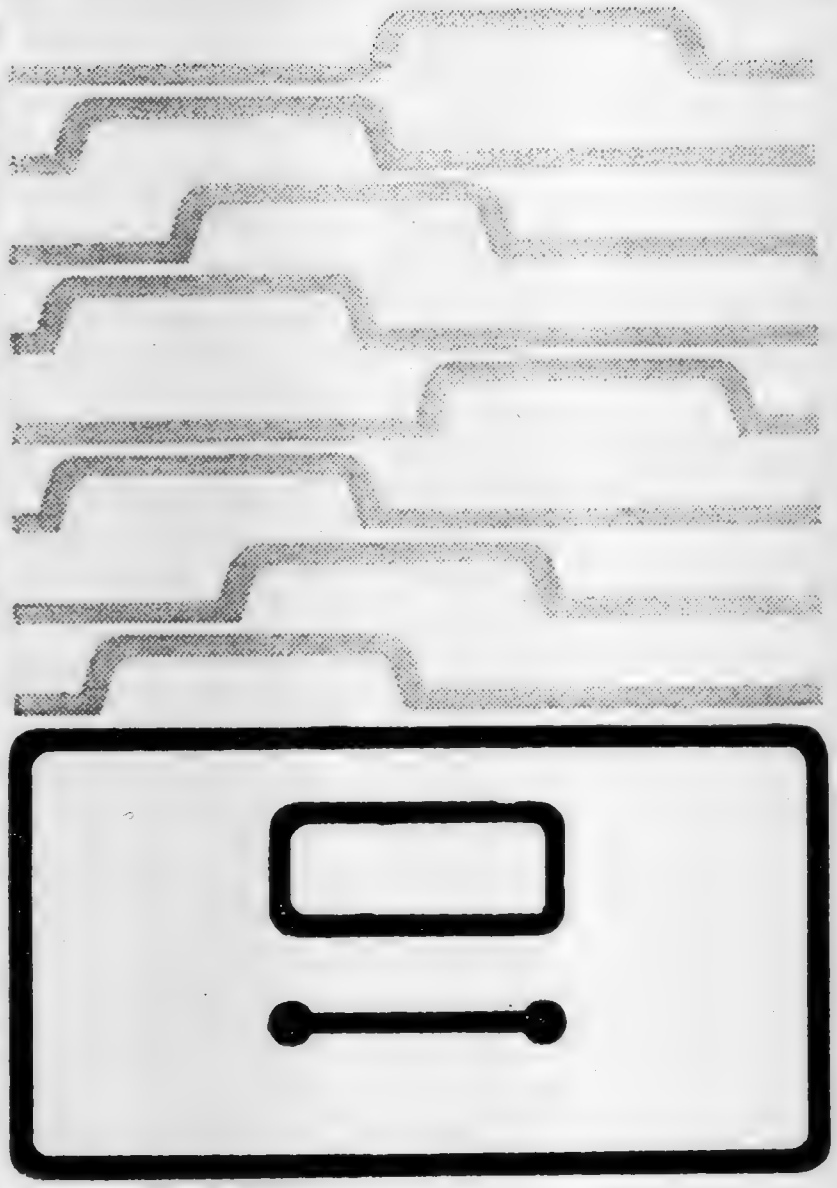

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

The GUIDE to record retention is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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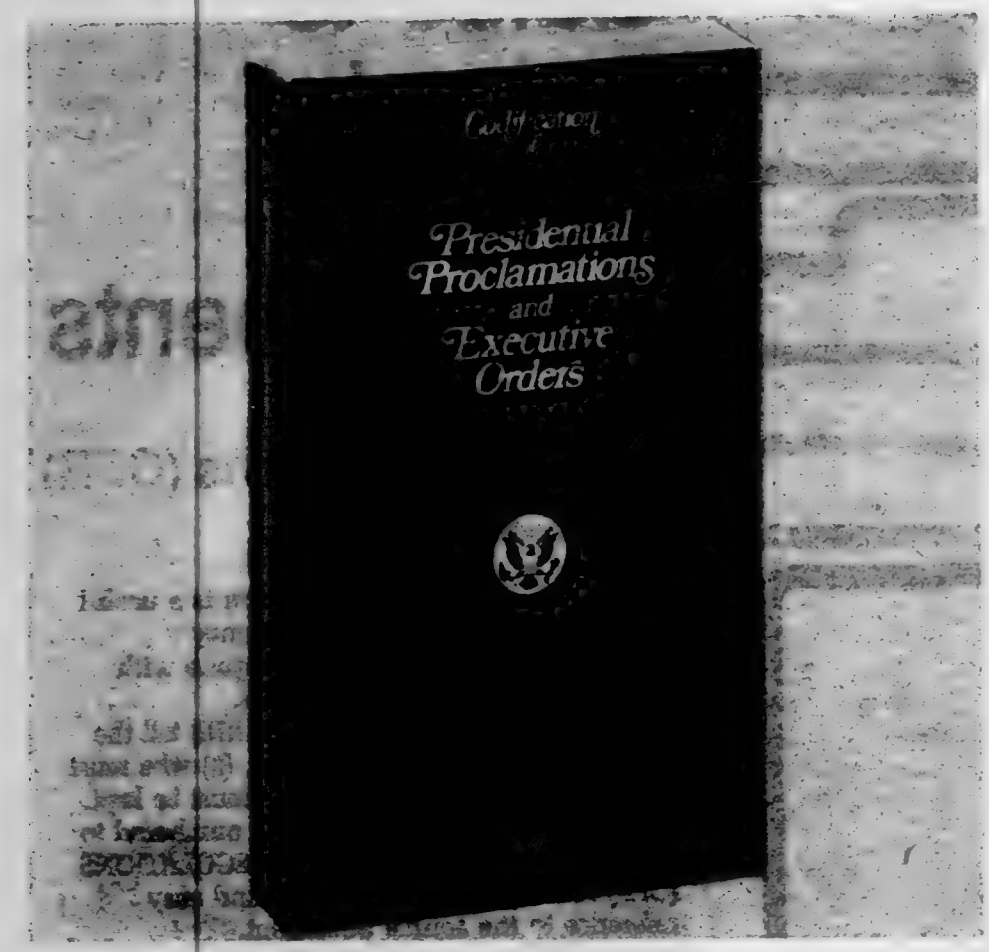

For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

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Vol. 57 No. 157

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Vol. 57
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Vol. 57 No. 157
Pages 36351-36586

federal register

Thursday
August 13, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-92-047]

Olives Grown in California; Revision of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule relaxes current size requirements established for California olives to allow "Large" size olives of the Ascolano, Barouni and St. Agostino varieties to be used in the production of canned ripe whole or whole pitted olives. This action also makes adjustments in the Medium, Jumbo, Colossal and Super Colossal size designations established for California olives, and revises the minimum size requirements in effect for California olives. This action is intended to help the California olive industry better meet current market requirements, and make smaller olives of certain varieties available for use in the production of canned olives. The changes were unanimously recommended by the California Olive Committee, which works with the Department of Agriculture in administering the marketing order program for olives grown in California.

DATES: This action becomes effective August 6, 1992. Comments that are received by September 14, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 6 handlers of California olives will be subject to regulation under the order during the current season, and there are approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include olive handlers, are defined as those whose annual receipts are less than $3,500,000. Most of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California, with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 146,500 tons during the 1982–83 crop year. The California Olive Committee (committee) indicated that 1990–91 production totalled about 126,872 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next.

Preliminary estimates of 1991-92 production total approximately 57,192 tons. It is too early to estimate 1992-93 production.

Section 932.152 of the rules and regulations in effect under the olive marketing order establishes outgoing regulations for packaged olives. Such regulations include the requirement that canned ripe whole and whole pitted olives must conform to seven established size designations, ranging from Small to Super Colossal. These size designations are defined in terms of average count ranges per pound for each of four variety groups. For example, the Small size is currently defined for Variety Group 2, except Obliza, to mean there are from 128 to 140 olives per pound, and the Colossal size for all variety groups is currently defined to mean that there are 41 to 50 olives per pound.

The size designations established in § 932.152 are related to the minimum size requirements for canned ripe whole and whole pitted olives that are established under § 932.52 of the order. These minimum size requirements include tolerances for undersized olives. For example, the minimum canning size for whole or whole pitted olives of the Obliza variety is established at 1/121 pound. Under § 932.152, the smallest size designation authorized for Obliza olives is Medium, with a count range of 106 to 121 olives per pound. Thus, the minimum weight requirement under § 932.52 equals the weight of the smallest Obliza olive authorized for canning uses.

Section 932.52 also provides an allowance for olives that weigh less than the specified minimum weights. For the Obliza variety, up to 35 percent of the olives in lots of Medium size category olives may weigh less than 1/121 pound, including up to 7 percent of the olives in such lots which may weigh less than 1/135 pound. The 1/135 pound represents the mid-point of the Small size designation, which is defined to mean that there are between 128 and 140 olives per pound. The Small size designation is one size smaller than the Medium size designation, which is the smallest size designation authorized for Obliza olives for canning use. For Obliza olives that fall within authorized size designations larger than Medium, not more than 5 percent of the olives may weigh less than 1/121 pound.

The order also provides that olives that are smaller than those authorized for use as whole and whole pitted olives may be authorized for use in the production of limited use styles of olives, such as halved, segmented, sliced or chopped olives. Limited use sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. Authorizing the smaller-sized olives to be used for limited use styles makes more olives available for canning.

At a meeting held March 5, 1992, the California Olive Committee (committee), the agency responsible for local administration of the marketing order, recommended changes in the existing size requirements to become effective on or about August 1, 1992, when the 1992-93 season for California olives begins. Section 932.52 of the order provides that the Secretary, on the basis of a recommendation of the committee or other available information, may change the sizes, tolerances or percentages specified in that section. Specifically, the committee recommended that the current size requirements be relaxed to allow "Large" size olives of the Ascolano, Barouni and St. Agostino varieties to be used in the production of canned ripe whole or whole pitted olives. The committee also recommended adjustments in the Medium, Jumbo, Colossal and Super Colossal size designations established for all variety groups of California olives, and revisions in the minimum size requirements established in § 932.52 so that they are consistent with the revised size designations. Finally, the committee recommended changes in the count ranges established for limited use size olives.

Currently, olives of the Ascolano, Barouni and St. Agostino varieties must be at least Extra Large in size to be used in the production of canned ripe whole or whole pitted olives. This action provides that smaller olives of such varieties (those falling in the Large size category) also be authorized for caning uses. This action is designed to increase the availability of Large sized canning olives, consistent with current market requirements.

This action also revises the average count ranges established in § 932.152(f). The Medium size, currently defined as having from 106 to 121 olives per pound, is redefined to mean that there are between 106 and 127 olives per pound. This change in the Medium size range will permit fruit which would otherwise be classified as Small sized fruit to be classified as Medium sized fruit.

Additionally, the Jumbo size designation is being redefined to mean 47 to 60 olives per pound, compared with the currently range of 51 to 60 olives per pound. Likewise, the Colossal size designation is being redefined to mean 33 to 46 olives per pound, compared with 41 to 50 olives per pound, and the Super Colossal size will mean there are 32 or fewer olives per pound rather than 40 or fewer olives per pound.

The committee reports that the industry has an excess of Super Colossal sized fruit which has a more limited demand and is harder to sell than fruit of the Jumbo and Colossal sizes. The committee therefore recommended that the minimum number of fruit per pound established for the Super Colossal size designation be increased so that a greater volume of fruit will be available to be marketed in the more popular size designations. Adjustment of the size ranges will decrease inventories of larger size fruit, by permitting some of this fruit into the size ranges which are more in demand. This will allow growers and handlers to better meet current market requirements.

This rule also adds a new paragraph (h) to § 932.152 to revise the current minimum size requirements, which are now specified in § 932.52 of the order. The current minimum size requirements that appear in § 932.52 of the order and that remain unchanged are also included in the new paragraph (h). These changes in the minimum size requirements are necessary so that they are consistent with the revised size designations discussed previously. For example, the minimum size requirement for olives of the Ascolano, Barouni and St. Agostino varieties is being changed from $\frac{1}{8}$s pound to $\frac{1}{10}$s pound to reflect the authority to use Large sized fruit of such varieties for canning purposes.

Section 932.152 also contains average count ranges for limited use size olives. This action revises the average count range established for the Ascolano, Barouni and St. Agostíno varieties of olives to reflect the previously discussed revision to allow Large sized olives of these varieties to be used in the production of whole and whole pitted styles. The current count range of 91 to 140 olives per pound is being changed to a count range of 106 to 180 olives per pound.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements as

those in effect for the domestically produced commodity. This action revises the minimum size requirements established under the marketing order. Thus, corresponding changes in the olive import regulation will be addressed in a separate rulemaking proceeding.

Based on the above information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of California olives.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relieves handling requirements; (2) the 1992–93 season begins August 1; (3) olive handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (4) there is no special preparation required by affected handlers; and (5) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 932.152 is amended by revising paragraph (f)(1), Table II of paragraph (g)(1) and Table III of paragraph (g)(2) and adding a new paragraph (h) to read as follows:

§ 932.152 Outgoing regulations.

* * * * *

(f) *Size designations.* (1) In lieu of the size designations specified in § 932.52(a)(2), except as provided in § 932.51(a) (1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the marketing order size designations listed in Table 1 contained herein, and shall be of a size not smaller than the applicable size requirements, tolerances, and percentages listed in paragraph (h) of this section.

TABLE I—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES

[Per Pound]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Small	N.A.	N.A.	N.A.	128–140
Medium	N.A.	N.A.	106–127	106–127
Large	N.A.	91–105	91–105	91–105
Extra Large	65–75	65–90	65–90	65–90
Jumbo	47–60	47–60	47–60	47–60
Colossal	33–46	33–46	33–46	33–46
Sup. Colossal	(1)	(1)	(1)	(1)

[1] 32 or fewer.
N.A.—Not Applicable.

* * * * *

(g) * * *
(1) * * *

TABLE II.—LIMITED USE SIZE OLIVES

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino	76–90, inclusive.
Group 1, Ascolano, Barouni, and St. Agostino	106–127, inclusive.
Group 2, except Obliza	141–180, inclusive.
Group 2, Obliza	128–140, inclusive.

(2) * * *

TABLE III—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES

[Per Pound]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Small	N.A.	N.A.	N.A.	128–140
Medium	N.A.	N.A.	106–127	106–127

TABLE III—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES—Continued

[Per Pound]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Large	N.A.	91–105	91–105	91–105
Ex. Large	65–75	65–90	65–90	65–90
Jumbo	47–60	47–60	47–60	47–60
Colossal	33–46	33–46	33–46	33–46
Sup. Colossal	(1)	(1)	(1)	(1)

[1] 32 or fewer.
N.A.—Not Applicable.

(h) Canned whole ripe olives, other than those of the "tree-ripened" type, shall be of a size not smaller than the following applicable size requirements, tolerances and percentages:

(1) With respect to variety group 1 olives, except Ascolano, Barouni, and St. Agostino varieties, the individual fruits shall each weigh no less than 1/75 pound, except that

(i) For olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than 1/75 pound each including not more than 10 percent, by count, of such olives that weigh less than 1/82 pound each; and

(ii) For olives of any designation except the extra large size, not more than 5 percent, by count, of such olives may weigh less than 1/75 pound each;

(2) With respect to variety group 1 olives of the Ascolano, Barouni, and St. Agostino varieties, the individual fruits shall each weigh not less than 1/105 pound, except that

(i) For olives of the large size designation, not more than 25 percent, by count, of such olives may weigh less than 1/105 pound each including not more than 10 percent, by count, of such olives that weigh less than 1/116 pound each; and

(ii) For olives of any designation except the large size, not more than 5 percent, by count, of such olives may weigh less than 1/105 pound each;

(3) With respect to variety group 2 olives, except the Obliza variety, the individual fruits shall each weigh not less than 1/140 pound, except that

(i) For olives of the small size designation, not more than 35 percent by count, of such olives may weigh less than 1/140 pound each including not more than 7 percent, by count, of such olives that weigh less than 1/160 pound each; and

(ii) For olives of any designation except the small size, not more than 5 percent, by count, of such olives may weigh less than 1/140 pound each;

(4) With respect to variety group 2 olives of the Obliza variety, the individual fruit shall each weigh not less than 1/127 pound, except that

(i) For olives of the medium size designation, not more than 35 percent, by count, of such olives may weigh less than >1/127 pound each including not more than 7 percent, by count, of such olives that weigh less than 1/135 pound each; and

(ii) For olives of any designation except the medium size, not more than 5 percent, by count, of such olives may weigh less than 1/127 pound each.

Dated: August 6, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–19170 Filed 8–12–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 944

[Docket No. FV–92–067]

Olives Imported Into the United States; Revision of Minimum Size Requirements for Certain Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes current minimum size requirements established for imported olives of the Ascalano, Barouni, St. Agostino, and Obliza varieties. This action is intended to make the import requirements comparable to those in effect for domestically produced olives, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: This interim final rule is effective on August 6, 1992; comments which are received by September 14, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must

be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import Regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are about 25 importers of olives. Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. The majority of olive importers may be classified as small entities.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in *Olive Regulation 1* (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This interim final rule modifies paragraphs (b)(3) and (b)(5) of the olive import regulation to relax the minimum size requirements established for imported canned whole ripe olives of the Ascolano, Barouni, St. Agostino and Obliza varieties.

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the California Olive Committee (committee) to change the minimum size requirements established for domestically grown olives. The committee works with the Department in administering the marketing order program for California olives.

This action is being initiated by the Department because the Act requires imported olives to meet the same or comparable requirements as those established under a domestic marketing order.

Under the California olive marketing order, minimum size requirements are established, by variety group, for olives to be used for canning. Such requirements are in terms of minimum weights, and include allowances for undersized olives. The committee recently recommended revising the minimum size requirements for olives of the Ascolano, Barouni, St. Agostino and Obliza varieties. For the Ascalano, Barouni and St. Agostino varieties, the minimum size requirement is to be reduced from 1/88 pound to 1/105 pound, and for the Obliza variety, from 1/121 to 1/127 pound.

The minimum size requirements for imported olives, including allowances for undersized olives, are based on those established under the order. For the Obliza variety, for example, up to 35 percent of the olives in a lot offered for importation may weigh less than 1/121 pound, including up to 7 percent of the olives in such lots which may weigh less than 1/135 pound.

This interim final rule revises paragraphs (b)(3) and (b)(5) of the olive import regulation to reduce the minimum size requirements for imported olives of the Ascolano, Barouni, St. Agostino, and Obliza varieties to make those requirements comparable to those in place under the marketing order.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This relaxation in minimum size requirements provides importers the opportunity to import additional supplies of olives to meet current market requirements; (2) no useful purpose would be served by providing preliminary notice before implementation; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this action.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, and Oranges.

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.401 is amended by removing the first paragraph (b)(3) and revising the second paragraph (b)(3) and (b)(5) to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(3) Canned whole ripe Variety Group 1 olives, of the Ascolano, Barouni, and St. Agostino varieties, shall be of such size that not more than 25 percent, by count, of the olives may weigh less than 1/105 pound (4.3 grams) each except that not more than 10 percent, by count, of the olives may weigh less than 1/116 pound (3.9 grams) each;

* * * * *

(5) Canned whole ripe Variety Group 2 olives, of the Obliza variety, shall be of such a size that not more than 35 percent, by count, of the olives may weigh less than 1/127 pound (3.5 grams) each except that not more than 7 percent, by count, of the olives may

weigh less than 1/135 pound (3.3 grams) each:

* * * * *

Dated: August 6, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-19166 Filed 8-12-92; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS92-3]

Appraisal Subcommittee; Appraisal Regulation; Privacy Act Implementation

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Final rule.

SUMMARY: The Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council ("FFIEC") adopts procedures pertaining to the privacy of individuals and systems of records maintained by the ASC. These procedures are intended to bring the ASC into full compliance with the Privacy Act of 1974.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634-6520, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On August 9, 1989, Congress adopted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [1] ("FIRREA"), including section 1102 [2] of Title XI, which established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of the Federal financial institutions regulatory agencies ("Regulatory Agencies")[3] and the Department of Housing and Urban Development. Congress intended title XI of FIRREA and the ASC, the Regulatory Agencies and the Resolution Trust Corporation ("RTC") to protect Federal financial and public policy interests [4] in real estate-related financial transactions [5] requiring the services of an appraiser.[6]

The ASC has several statutory duties under title XI. First, it must monitor the appraisal regulations adopted by the Regulatory Agencies and the RTC (collectively, "Agencies"). Those regulations set out appraisal standards for Federally related transactions [7] and define those Federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the ASC must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the ASC must monitor the certification and licensing programs for real estate appraisers in each State, territory, commonwealth, and the District of Columbia ("States") [8] and must review the State's compliance with the requirements of title XI. It also is authorized by title XI to take action against non-complying States.[9]

Under sections 1103(a)(3) and 1109(a) of title XI,[10] each State with an appraiser certifying and licensing agency is responsible for transmitting to the ASC a roster of State certified and licensed appraisers who are eligible to perform appraisals in Federally related transactions, along with an annual registry fee, and the ASC must maintain a national registry of these appraisers. The ASC has implemented this registry.[11] The information in the registry clearly is protected by the Privacy Act because some data elements pertain to individuals, and it can be accessed by individual identifiers.[12]

The ASC published 12 CFR part 1102, subpart C ("subpart C" or "subpart") for public comment at 57 FR 11017 (April 1, 1992). The ASC did not receive any written comments. The ASC, however, received and incorporated into the final version of the subpart oral comments from the Office of Management and Budget ("OMB").[13] Substantive changes resulting from OMB's comments are discussed below.[14]

The ASC has processed subpart C with as little delay as possible to ensure the prompt implementation of the protections provided by the Privacy Act. Subpart C's implementation of these protections is especially important because any State agency that is issuing appraiser certifications and licenses generally must submit its registry data to the ASC (together with the appropriate registry fees) as soon as possible.

II. Statutory Authority

The Privacy Act applies to records kept by a Federal agency on an individual person that are retrievable by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. It protects individuals from an agency's disclosure of information in such "systems of records" without the written permission of the individual in question. The Privacy Act also requires each agency to adopt regulations implementing the provisions of the Act, including those that enable individuals to access and amend agency records pertaining to them.[15]

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[1] Pub. L. 101-73, 103 Stat. 511 (1989), as amended by Pub. L. 102-233, 105 Stat. 1761 (1991) and Pub. L. 102-242, 105 Stat. 2336 (1991).

[2] 12 U.S.C. 3310.

[3] The Regulatory Agencies are the Board of Governors of the Federal Reserve System ("FRS"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA"). *See* section 1122(6) of title XI, 12 U.S.C. 3350(6).

[4] Title XI's general purpose is to provide that Federal financial and public policy interests will be protected by requiring that certain real estate appraisals are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. *See* section 1101 of title XI, 12 U.S.C. 3331.

[5] *See* section 1121(5) of title XI, 12 U.S.C. 3350(5), for the definition of "real estate-related financial transaction."

[6] The Regulatory Agencies and the RTC have adopted appraisal regulations that, among other things, clarify the phrase, requires the services of an appraiser. *See* 12 CFR part 34 (OCC); part 225, subpart G (FRS); part 323 (FDIC); part 564 (OTS); part 722 (NCUA); and part 1608 (RTC).

[7] *See* section 1121(4) of title XI, 12 U.S.C. 3350(4), which defines a "Federally related transaction."

[8] The ASC is required to monitor State appraiser certifying and licensing agencies ("State agencies") for the purpose of determining whether the agency's policies, practices, and procedures are consistent with title XI. *See* section 1118(a) of title XI, 12 U.S.C. 3347(a). *See also*, section 1103(a)(1) of title XI, 12 U.S.C. 3332(a)(1).

[9] *See* section 1118 of title XI, 12 U.S.C. 3347.

[10] 12 U.S.C. 3332(a)(1) and 3338(a), respectively.

[11] To obtain publicly available registry data, contact the National Technical Information Service, a part of the Department of Commerce, at: NTIS Mail List Service, Room 2000S, National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22162, or call (703) 487-4812.

[12] On April 1, 1992, the ASC published in the **Federal Register** a notice establishing the registry as a "system of records" under the Privacy Act of 1974, 57 FR 11084.

[13] Telephone conversations of May 4 and 8, 1992, between Maya Bernstein, OMB, and Marc L. Weinberg, General Counsel, ASC.

[14] All of OMB's comments were incorporated. Most of the comments, however, were not substantive. For example, throughout subpart C, "Federal holidays" was substituted for "legal public holidays," and the words, "or correct" were removed from the end of the phrase, "a request to amend or correct."

[15] 5 U.S.C. 552a(f)(1) and (2).

The ASC is subject to the Privacy Act. The definition of an "agency" in the Act incorporates the definition used in the Administrative Procedure Act.[16] In pertinent part, that definition includes "each authority of the Government of the United States, whether or not it is within or subject to review by another agency * * *, includ[ing] any * * * establishment in the executive branch of the Government * * *, or any independent regulatory agency."

III. Substantive Changes

On the advice of OMB, the ASC is deleting two sections of proposed subpart C. First, the ASC is deleting §§ 1102.107(a)(10) and (b)(4). Section 1102.107 enables a person to appeal to the ASC's Executive Director an initial adverse determination of the ASC's Privacy Act Officer regarding access to, or amendment of, a document under § 1102.106 of the subpart. As proposed, subsection (a)(10) would have allowed the Executive Director, in appropriate cases, to shift from him or herself to the ASC the responsibility to review an initial adverse determination. Likewise, subsection (b)(4) provided the Executive Director with the discretion to refer to the ASC for disposition matters concerning statements of disagreements pertaining to the Executive Director's denial of a request to amend a record. The OMB believed that the injection of ASC review of these matters at the discretion of the Executive Director would have been confusing for persons seeking relief under the Privacy Act. As adopted, subpart C clearly lays out a simplified, two-tier review process, with the ASC Privacy Act Officer making initial determinations and the Executive Director reviewing those determinations.

Second, OMB recommended the deletion of the "Exemptions" provision, § 1102.111. OMB noted that exemptions cannot be authorized generally as was proposed by this section. Instead, exemptions must be proposed and adopted relating to specific systems of records. While the ASC may determine that the proposal and adoption of such specific exemptions may become necessary at some future time, the ASC has determined that at this time such exemptions are not needed.

IV. Conclusion

The ASC is adopting subpart C to implement the Privacy Act of 1974. In particular, subpart C sets out the ASC's procedures for providing individuals with access to records pertaining to them and an ability to amend those records.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980,[17] forms, reporting and recordkeeping requirements included in 12 CFR part 1102, subpart C, were submitted to the OMB for review and approval on March 4, 1992.[18] OMB approved subpart C on July 7, 1992, through July 31, 1995, and assigned it OMB control number 3139–0004. Subpart C will fully implement the Privacy Act of 1974 at the ASC.[19] The estimated number of respondents is 325, each submitting one response per year, with an estimated average annual reporting burden of .33 hours per response.

VI. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the ASC certifies that subpart C is not expected to have a significant adverse economic impact on a substantial number of small entities. The subpart implements the Privacy Act, which is concerned with records of an agency containing information on individual persons only. The Privacy Act does not address business or corporate entities. Accordingly, a regulatory flexibility analysis is not required.

VII. Executive Order 12291 Statement

The ASC has determined that subpart C does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this subpart:

(1) Would not have an annual effect on the economy of $100 million or more;

(2) Would not result in a major increase in the cost of financial institution operations or governmental supervision; and

(3) Would not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity or innovation, within the meaning of the Executive Order.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, appraisers, Banks, banking, Mortgages, Privacy, Reporting and recordkeeping requirements.

Text of the Final Rule

Chapter XI, title 12, part 1102 of the Code of Federal Regulations is amended as set forth below:

[16] 5 U.S.C. 552a(a)(1), *incorp. by ref, id.* at sections 552(e) and 551(1).

[17] 44 U.S.C. 35.

[18] 57 FR 8330 (March 9, 1992).

[19] 12 U.S.C. 3347.

PART 1102–APPRAISAL REGULATION

1. By adding new subpart C, consisting of §§ 1102.100 through 1102.110, to part 1102, to read as follows:

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

Sec.

1102.100 Authority, purpose and scope.
1102.101 Definitions.
1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.
1102.103 Disclosure of requested records.
1102.104 Special procedure: Medical records.
1102.105 Requests for amendment of records.
1102.106 Review of requests for amendment.
1102.107 Appeal of initial adverse agency determination regarding access or amendment.
1102.108 General provisions.
1102.109 Fees.
1102.110 Penalties.

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

Authority: 12 U.S.C. 552a.

§ 1102.100 Authority, purpose and scope.

(a) This subpart is issued under the Privacy Act of 1974, Public Law 93–579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

(b) The Privacy Act of 1974 is based, in part, on the finding by Congress that "in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies." To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such records. The Act further provides that individuals may request amendments to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

(c) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC), pursuant to subsection (f) of the Privacy Act, adopts the following rules and procedures to

implement the provisions of the Act summarized above and other provisions of the Act. These rules and procedures are applicable to all requests for information and access or amendment to records pertaining to an individual that are contained in any system of records that is maintained by the ASC.

§ 1102.101 Definitions.

The following definitions shall apply for purposes of this subpart:

(a) The terms *individual, maintain, record, system of records,* and *routine use* are defined for purposes of these rules as they are defined in 5 U.S.C. 552a(a)(2), (a)(3), (a)(4), (a)(5) and (a)(7).

(b) *ASC* or *Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(c) *Privacy Act Officer* means the ASC's Associate Director for Administration or such other ASC staff officer, other than the Executive Director, duly designated by the ASC's Executive Director.

§ 1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.

(a) *Place to make request.* Any request by an individual to be advised whether any system of records maintained by the ASC and named by the individual contains a record pertaining to him or her, or any request by an individual for access to a record pertaining to him or her that is contained in a system of records maintained by the ASC, shall be submitted in person at the ASC between 9 a.m. and 4:30 p.m., Monday through Friday, which is located at 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC. 20037, or by mail addressed to: Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC. 20037. All requests will be required to be put in writing and signed by the individual making the request. In the case of requests for access that are made by mail, the envelope should be clearly marked "Privacy Act Request."

(1) *Information to be included in requests.* Each request by an individual concerning whether the ASC maintains in a system of records a record that pertains to the individual, or for access to any record pertaining to the individual that is maintained by the ASC in a system of records, shall include such information as will assist the ASC in identifying those records as to which the individual is seeking information or access. Where practicable, the individual should identify the system of records that is the subject of his or her request by reference to the ASC's notices of systems of records, which are published in the **Federal Register**, as required by section (e)(4) of the Privacy Act, 5 U.S.C. 552a(e)(4). Where a system of records is compiled on the basis of a specific identification scheme, the individual should include in his or her request the identification number or other identifier assigned to the individual. In the event the individual does not know that number or identifier, the individual shall provide other information, including his or her full name, address, date of birth and subject matter of the record, to aid in processing his or her request. If additional information is required before a request can be processed, the individual shall be so advised.

(2) *Verification of identity.* When the fact of the existence of a record is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, or when a record as to which access has been requested is not required to be disclosed under that Act, the individual seeking the information or requesting access to the record shall be required to verify his or her identity before access will be granted or information given. For this purpose, individuals shall appear at the ASC located at 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC., between 9 a.m. to 4:30 p.m., Monday through Friday. The ASC's Office is not open on Saturdays, Sundays or Federal holidays.

(3) *Methods for verifying identity—appearance in person.* For the purpose of verifying identity, an individual seeking information regarding pertinent records or access to those records shall furnish documentation that may reasonably be relied on to establish the individual's identity. Such documentation might include a valid birth certificate, driver's license, employee or military identification card, and medicare card.

(4) *Method for verifying identity—by mail.* Where an individual cannot appear at the ASC's Office for the purpose of verifying identity, the individual shall submit, along with the request for information or access, a signed and notarized statement attesting to his or her identity. Where access is being sought, the sworn statement shall include a representation that the records being sought pertain to the individual and a stipulation that the individual is aware that knowingly and willfully requesting or obtaining records pertaining to an individual from the ASC under false pretenses is a criminal offense.

(5) *Additional procedures for verifying identity.* When it appears appropriate to the Privacy Act Officer, other arrangements may be made for the verification of identity as are reasonable under the circumstances and appear to be effective to prevent unauthorized disclosure of, or access to, individual records.

(b) *Acknowledgement of requests for information pertaining to individual records in a record system or for access to individual records.* (1) Except where an immediate acknowledgement is given for requests made in person, the receipt of a request for information pertaining to individual records in a record system will be acknowledged within 10 days, excluding Saturdays, Sundays and Federal holidays. Requests will be processed as promptly as possible and a response to such requests will be given within 30 days (excluding Saturdays, Sundays, and Federal holidays) unless, within the 30 day period and for cause shown, the individual making the request is notified in writing that a longer period is necessary.

§ 1102.103 Disclosure of requested records.

(a) *Initial review.* Requests by individuals for access to records pertaining to them will be referred to the ASC's Privacy Act Officer, who initially will determine whether access will be granted.

(b) *Grant of request for access.* (1) If it is determined that a request for access to records pertaining to an individual will be granted, the individual will be advised by mail that access will be given at the ASC or a copy of the requested record will be provided by mail if the individual shall so indicate. Where the individual requests that copies of the record be mailed to or her or requests copies of a record upon reviewing it at the ASC, the individual shall pay the cost of making requested copies, as set forth in § 1102.109 of this subpart.

(2) In granting access to an individual to a record pertaining to him or her, the ASC staff shall take steps to prevent the unauthorized disclosure of information pertaining to other individuals.

(c) *Denial of request for access.* If it is determined that access will not be granted, the individual making the request will be notified of that fact and given the reasons why access is being denied. The individual also will be advised of his or her right to seek review by the Executive Director of the initial decision to deny access, in accordance

with the procedures set forth in § 1102.107 of this subpart.

(d) *Time for acting on requests for access.* Access to a record pertaining to an individual normally will be granted or denied within 30 days (excluding Saturdays, Sundays, and Federal holidays) after the receipt of the request for access, unless the individual making the request is notified in writing within the 30 day period that, for good cause shown, a longer time is required. In such cases, the individual making the request shall be informed in writing of the difficulties encountered and an indication shall be given as to when it is anticipated that access may be granted or denied.

(e) *Authorization to allow designated person to review and discuss records pertaining to another individual.* An individual, who is granted access to records pertaining to him or her and who appears at the ASC Office to review the records, may be accompanied by another person of his or her choosing. Where the records as to which access has been granted are not required to be disclosed under provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, the individual requesting the records, before being granted access, shall execute a written statement, signed by him or her, specifically authorizing the latter individual to review and discuss the records. If such authorization has not been given as described, the person who has accompanied the individual making the request will be excluded from any review or discussion of the records.

(f) *Exclusion for certain records.* Nothing contained in these rules shall allow an individual access to any information compiled in reasonable anticipation of an administrative judicial or civil action or proceeding.

§ 1102.104 Special procedure: Medical records.

(a) *Statement of physician or mental health professional.* When an individual requests access to records pertaining to the individual that include medical and/or psychological information, the ASC, if it deems it necessary under the particular circumstances, may require the individual to submit with the request a signed statement by the individual's physician or a mental health professional indicating that, in his or her opinion, disclosure of the requested records or information directly to the individual will not have an adverse effect on the individual.

(b) *Designation of physician or mental health professional to receive records.* If the ASC believes, in good faith, that disclosure of medical and/or psychological information, directly to an individual could have an adverse effect on that individual, the individual may be asked to designate in writing a physician or mental health professional to whom the individual would like the records to be disclosed, and disclosure that otherwise would be made to the individual will instead be made to the designated physician or mental health professional.

§ 1102.105 Requests for amendment of records.

(a) *Place to make requests.* A request by an individual to amend records pertaining to him or her may be made in person during normal business hours at the ASC located at 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(1) *Information to be included in requests.* Each request to amend an ASC record shall reasonably describe the record sought to be amended. Such description should include, for example, relevant names, dates and subject matter to permit the record to be located among the records maintained by the ASC. An individual who has requested that a record pertaining to the individual be amended will be advised promptly if the record cannot be located on the basis of the description given and that further identifying information is necessary before the request can be processed. An initial evaluation of a request presented in person will be made immediately to ensure that the request is complete and to indicate what, if any, additional information will be required. Verification of the individual's identity as set forth in § 1102.102(a) (2), (3), (4) and (5) may also be required.

(2) *Basis for amendment.* An individual requesting an amendment to a record pertaining to the individual shall specify the substance of the amendment and set forth facts and provide such materials that would support his or her contention that the record as maintained by the ASC is not accurate, timely or complete, or that the record is not necessary and relevant to accomplish a statutory purpose of the ASC as authorized by law or by Executive Order of the President.

(b) *Acknowledgement of requests for amendment.* Receipt of a request to amend a record pertaining to an individual normally will be acknowledged in writing within 10 days after such request has been received, excluding Saturdays, Sundays and Federal holidays. When a request to amend is made in person, the individual making the request will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request. No acknowledgement will be sent when the request for amendment will be reviewed, and an initial decision made, within the 10 day period after such request has been received.

§ 1102.106 Review of requests for amendment.

(a) *Initial review.* As in the case of requests for access, requests by individuals for amendment to records pertaining to them will be referred to the ASC's Privacy Act Officer for an initial determination.

(b) *Standards to be applied in reviewing requests.* In reviewing requests to amend records, the Privacy Act Officer will be guided by the criteria set forth in 5 U.S.C. 552(e) (1) and (5), *i.e.*, that records maintained by the ASC shall contain only such information as is necessary and relevant to accomplish a statutory purpose of the ASC as required by statute or Executive Order of the President and that such information also be accurate, timely, relevant and complete. These criteria will be applied whether the request is to add material to a record or to delete information from a record.

(c) *Time for acting on requests.* Initial review of a request by an individual to amend a record shall be completed as promptly as is reasonably possible and normally within 30 days (excluding Saturdays, Sundays, and Federal holidays) from the date the request was received, unless unusual circumstances preclude completion of review within that time. If the anticipated completion date indicated in the acknowledgement cannot be met, the individual requesting the amendment will be advised in writing of the delay and the reasons therefor, and also advised when action is expected to be completed.

(d) *Grant of requests to amend records.* If a request to amend a record is granted in whole or in part, the Privacy Act Officer will:

(1) Advise the individual making the request in writing of the extent to which it has been granted;

(2) Amend the record accordingly; and

(3) Where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended and the substance of the amendment.

(e) *Denial of requests to amend records.* If an individual's request to amend a record pertaining to him is denied in whole or in part, the Privacy Act Officer will:

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures established by the ASC to obtain further review within the ASC of the request to amend, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the individual that the Privacy Act Officer will provide information and assistance to the individual in perfecting an appeal of the initial decision.

§ 1102.107 Appeal of initial adverse agency determination regarding access or amendment.

(a) *Administrative review.* Any person who has been notified pursuant to § 1102.103(c) that a request for access to records pertaining to him or her has been denied in whole or in part, or pursuant to § 1102.106(e) of this subpart that a request for amendment has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and Federal holidays) after the request was received by the ASC's staff (or within such extended period as may be permitted in accordance with §§ 1102.103(d) and 1102.106(c) of this subpart), may appeal the adverse determination or failure to respond by applying for an order of the Executive Director determining and directing that access to the record be granted or that the record be amended in accordance with his or her request.

(1) The application shall be in writing and shall describe the record in issue and set forth the proposed amendment and the reasons therefor.

(2) The application shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(3) The applicant may state such facts and cite such legal or other authorities in support of the application.

(4) The Executive Director will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays, and Federal holidays), unless for good cause shown, the Executive Director shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend a record, the Executive Director shall apply the same standards as set forth in § 1102.106(b).

(6) If the Executive Director concludes that access should be granted, the Executive Director shall issue an order granting access and instructing the Privacy Act Officer to comply with § 1102.103(b).

(7) If the Executive Director concludes that the request to amend the record should be granted in whole or in part, the Executive Director shall issue an order granting the requested amendment in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 1102.106(d) of this subpart, to the extent applicable.

(8) If the Executive Director affirms the initial decision denying access, the Executive Director shall issue an order denying access and advising the individual seeking access of:

(i) The order;

(ii) The reasons for denying access; and

(iii) The individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the Executive Director determines that the decision of the Privacy Act Officer denying a request to amend a record should be upheld, the Executive Director shall issue an order denying the request and the individual shall be advised of:

(i) The order refusing to amend the record and the reasons therefor;

(ii) The individual's right to file a concise statement setting forth his or her disagreement with the Executive Director's decision not to amend the record;

(iii) The procedures for filing such a statement of disagreement with the Executive Director;

(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the Executive Director deems it appropriate, a brief statement setting forth the Executive Director's reasons for refusing to amend;

(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the Executive Director's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual's right to seek judicial review of the Executive Director's refusal to amend, pursuant to 5 U.S.C. 552a(g)(1)(A).

(b) *Statement of disagreement.* As noted in paragraph (a)(9)(ii) of this section, an individual may file with the Executive Director a statement setting forth his or her disagreement with the Executive Director's denial of his or her request to amend a record.

(1) Such statement of disagreement shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037, within 30 days after receipt by the individual of the Executive Director's order denying the amendment, excluding Saturdays, Sundays and Federal holidays. For good cause shown, this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's disagreement. Unduly lengthy or irrelevant materials will be returned to the individual by the Executive Director for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of the record is disputed and the Executive Director will provide copies of the statement of disagreement and, if the Executive Director deems it appropriate, provide a concise statement of his or her reasons for refusing to amend the record, to persons or other agencies to whom the record has been or will be disclosed.

§ 1102.108 General provisions.

(a) *Extensions of time.* Pursuant to §§ 1102.103(b), 1102.104(d), 1102.109(c) and 1102.109(a)(4) of this subpart, the time within which a request for information, access or amendment by an individual with respect to records maintained by the ASC that pertain to him or her normally would be processed may be extended for good cause shown or because of unusual circumstances. As used in these rules, *good cause* and *unusual circumstances* shall include, but only to the extent reasonably necessary to the proper processing of a particular request:

(1) The need to search for and collect the requested records from establishments that are separate from the ASC. Some records of the ASC may be stored in Federal Records Centers in accordance with law—including many of the documents that have been on file with the ASC for more than 2 years—and cannot be made available promptly.

Any person who has requested for personal examination a record stored at the Federal Records Center will be notified when the record will be made available.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which may be demanded in a single request. While every reasonable effort will be made to comply fully with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components within the ASC having substantial subject-matter interest herein.

(b) *Effective date of action.* Whenever it is provided in this subpart that an acknowledgement or response to a request will be given by specific times, deposit in the mails of such acknowledgement or response by that time, addressed to the person making the request, will be deemed full compliance.

(c) *Records in use by a member of the ASC or its staff.* Although every effort will be made to make a record in use by a member of the ASC or its staff available when requested, it may occasionally be necessary to delay making such a record available when doing so at the time the request is made would seriously interfere with the work of the ASC or its staff.

(d) *Missing or lost records.* Any person who has requested a record or a copy of a record pertaining to him or her will be notified if the record sought cannot be found. If the person so requests, he or she will be notified if the record subsequently is found.

(e) *Oral requests; misdirected written requests—(1) Telephone and other oral requests.* Before responding to any request by an individual for information concerning whether records maintained by the ASC in a system of records pertain to the individual or to any request for access to records by an individual, such request must be in writing and signed by the individual making the request. The Executive Director will not entertain any appeal from an alleged denial of failure to comply with an oral request. Any person who has made an oral request for information or access to records who believes that the request has been improperly denied should resubmit the request in appropriate written form to obtain proper consideration and, if need be, administrative review.

(2) *Misdirected written requests.* The ASC cannot assure that a timely or satisfactory response will be given to written requests for information, access or amendment by an individual with respect to records pertaining to him or her that are directed to the ASC other than in a manner prescribed in §§ 1102.103(a), 1102.106(a), 1102.108(a)(2), and 1102.110 of this subpart. Any staff member who receives a written request for information, access or amendment should promptly forward the request to the Privacy Act Officer. Misdirected requests for records will be considered to have been received by the ASC only when they have been actually received by the Privacy Act Officer in cases under § 1102.108(a)(2). The Executive Director will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that the request was in fact received by the Privacy Act Officer.

§ 1102.109 Fees.

(a) There will be no charge assessed to the individual for the ASC's expense involved in searching for or reviewing the record. Copies of the ASC's records will be provided by a commercial copier at rates established by a contract between the copier and the ASC or by the ASC at the rates in § 1101.4(b)(5)(ii) of 12 CFR part 1101.

(b) *Waiver or reduction of fees.* Whenever the Executive Director of the ASC determines that good cause exists to grant a request for reduction or waiver of fees for copying documents, he or she may reduce or waive any such fees.

§ 1102.110 Penalties.

Title 18 U.S.C. 1001 makes it a criminal offense, subject to a maximum fine of $10,000, or imprisonment for not more than 5 years or both, to knowingly and willingly make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. 5 U.S.C. 552a(i) makes it a misdemeanor punishable by a fine of not more than $5,000 for any person knowingly and willfully to request or obtain any record concerning an individual from the ASC under false pretenses. 5 U.S.C. 552a(i) (1) and (2) provide criminal penalties for certain violations of the Privacy Act by officers and employees of the ASC.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: August 7, 1992.

Fred D. Finke,

Chairman.

[FR Doc. 92-19233 Filed 8-12-92; 8:45 am]

BILLING CODE 6210-01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 26941; Amdt. No. 371]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 GMT, August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for

this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next schedule charting and publication date of the flight information to assure its timely availability of the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on July 30, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 GMT, August 20, 1992:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992

From	To	MEA
§ 95.6004 VOR Federal Airway 4 is Amended to Read in Part		
Lambs, IN FIX	*Apalo, IN FIX	**3000
*4500–MRA		
**2400–MOCA		
Apalo, IN FIX	Downs, KY FIX	*3000
*2400–MOCA		
§ 95.6013 VOR Federal Airway 13 is Amended to Read in Part		
McAllen, TX VOR/DME	Harlingen, TX VOR/DME.	2000
Raymo, TX FIX	Ascot, TX FIX	*4000
*1500–MOCA		
Humble, TX VORTAC	Cleep, TX FIX	2000
Cleep, TX FIX	Legge, TX FIX	*5000
*2000–MOCA		
Lufkin, TX VORTAC	Carth, TX FIX	*3800
*2000–MOCA		
§ 95.6017 VOR Federal Airway 17 is Amended to Read in Part		
Harlingen, TX VOR/DME.	McAllen, TX VOR/DME	2000
Laredo, TX VORTAC	*Kahan, TX FIX	2400
*5000–MRA		
Kahan, TX FIX	Cotulla, TX VORTAC	*2400
*1800–MOCA		
Cotulla, TX VORTAC	Millet, TX FIX	2500
§ 95.6020 VOR Federal Airway 20 is Amended to Read in Part		
Point, TX FIX	Palacios, TX VORTAC	1700
§ 95.6047 VOR Federal Airway 47 is Amended to Read in Part		
Pocket City, IN VORTAC.	*Holan, IN FIX	2500
*2600–MRA		
Sacko, IN FIX	Heals, IN FIX	*3500
*2200–MOCA		
§ 95.6052 VOR Federal Airway 52 is Amended to Read in Part		
Quincy, IL VORTAC	*Rivrs, IL FIX	2600
*6000–MRA		
§ 95.6056 VOR Federal Airway 56 is Amended to Read in Part		
Colliers, SC VORTAC	Columbia, SC VORTAC	*2100
*2100–MOCA		
§ 95.6062 VOR Federal Airway 62 is Amended to Read in Part		
Lubbock, TX VORTAC	*Rotan, TX FIX	**6000
*4500–MRA		
**5000–MOCA		
§ 95.6063 VOR Federal Airway 63 is Amended to Read in Part		
Springfield, MO VORTAC.	*Roach, MO FIX	4000
*4000–MRA		
§ 95.6070 VOR Federal Airway 70 is Amended to Read in Part		
U.S. Mexican Border	Brownsville, TX VORTAC.	*5000
*1500–MOCA		
Raymo, TX FIX	Jimie, TX FIX	*4000
*1500–MOCA		
Jimie, TX FIX	Jetty, TX FIX	*4000
*1300–MOCA		
Point, TX FIX	Palacios, TX VORTAC	1700
§ 95.6157 VOR Federal Airway 157 is Amended by Adding		
Florence, SC VORTAC	Fayetteville, NC VOR/DME.	2200

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
Fayetteville, NC VOR/DME.	Kinston, NC VORTAC	2000
§ 95.6161 VOR Federal Airway 161 is Amended to Read in Part		
Duffs, TX FIX	Polka, TX FIX	*3400
*2500–MOCA		
§ 95.6163 VOR Federal Airway 163 is Amended to Read in Part		
U.S. Mexican Border	Brownsville, TX VORTAC.	*2000
*1400–MOCA		
Manny, TX FIX	Ascot, TX FIX	*4000
*1500–MOCA		
San Antonio, TX VORTAC.	Lampasas, TX VORTAC.	*3500
*2900–MOCA		
Lampasas, TX VORTAC.	Acton, TX VORTAC	*3000
*2000–MOCA		
Acton, TX VORTAC	Bridgeport, TX VORTAC.	3000
§ 95.6171 VOR Federal Airway 171 is Amended to Read in Part		
Lexington, KY VORTAC	McFee, KY FIX	5000
§ 95.6186 VOR Federal Airway 186 is Amended by Adding		
Paradise, CA VORTAC	Tannr, CA FIX	5500
Tannr, CA FIX	Poggi, CA VORTAC	5000
is Amended to Read in Part		
Van Nuys, CA VOR/DME.	Tifni, CA FIX	5000
Tifni, CA FIX	Paradise, CA VORTAC	4000
§ 95.6222 VOR Federal Airway 222 is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	*4000
*3300–MOCA		
§ 95.6245 VOR Federal Airway 245 is Amended to Read in Part		
Jackson, MS VORTAC	*Haron, MS FIX	2400 MAA–7000
*2700–MRA		
§ 95.6267 VOR Federal Airway 267 is Amended to Read in Part		
Craig, FL VORTAC	*Baxly, GA FIX	**3000
*3000–MRA		
**2500–MOCA		
§ 95.6269 VOR Federal Airway 269 is Amended to Read in Part		
Cobur, OR FIX	*Eugene, OR VORTAC	
	NE BND	
	SW BND	
*3800–MCA Eugene VORTAC, NE BND		
§ 95.6292 VOR Federal Airway 29 is Amended to Read in Part		
Barnes, MA VORTAC	Glyde, MA FIX	*7000
*3000–MOCA		
Glyde, MA FIX	Boston, MA VORTAC	*4000
*3000–MOCA		
§ 95.6305 VOR Federal Airway 305 is Amended to Read in Part		
Pocket City, IN VORTAC.	*Augus, IN FIX	240000
*2600–MRA		

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
§ 95.6330 VOR Federal Airway 330 is Amended to Read in Part		
Osity, ID FIX	*Jackson, WY VOR/DME.	14000
*13100–MCA Jackson VOR/DME, W BND		
DuNoir, WY VOR/DME	*Rowoy, WY FIX	**14000
*11000–MCA Rowoy FIX, W BND		
**13500–MOCA		
§ 95.6352 VOR Federal Airway 352 is Amended to Read in Part		
Houlton, ME VOR/DME	U.S. Canadian Border	2000
§ 95.6358 VOR Federal Airway 358 is Amended to Read in Part		
San Antonio, TX VORTAC.	Guada, TX FIX	*4000
*2500–MOCA		
§ 95.6359 VOR Federal Airway 359 is Amended to Read in Part		
U.S. Mexican Border	Laredo, TX VORTAC	*3000
*2400–MOCA		
§ 95.6407 VOR Federal Airway 407 is Amended to Read in Part		
Jimie, TX FIX	Jerry, TX FIX	*4000
*1300–MOCA		
Palacios, TX VORTAC	Humble, TX VORTAC	2500
Linen, LA FIX	Shreveport, LA VORTAC.	3000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
§ 95.6431 VOR Federal Airway 431 is Amended by Adding		
Sisters Island, AK VORTAC.	*Lyric, AK FIX	**8000
*8000–MRA		
**5800–MOCA		
Lyric, AK FIX	Biorka Island, AK VORTAC.	5000
§ 95.6437 VOR Federal Airway 437 is Amended to Read in Part		
Jetso, FL FIX	*Stary, GA FIX	10000
*5000–MRA		
§ 95.6512 VOR Federal Airway 512 is Amended to Read in Part		
Pocket City, IN VORTAC.	*Holen, IN FIX	2500
*2600–MRA		
§ 95.6526 VOR Federal Airway 526 is Amended to Read in Part		
Dryer, OH VORTAC	Chardon, OH VORTAC	3000
Chardon, OH VORTAC	Youngstown, OH VORTAC.	3000
§ 95.6550 VOR Federal Airway 550 is Amended to Read in Part		
Cotulla, TX VORTAC	Millet, TX FIX	2500
Denta, TX FIX	*Cedil, TX FIX	**3400
*3500–MRA		
**2800–MOCA		

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
§ 95.6556 VOR Federal Airway 556 is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	*4000
*3300–MOCA		
§ 95.6568 VOR Federal Airway 568 is Amended to Read in Part		
San Antonio, TX VORTAC.	Guada, TX FIX	*4000
*2500–MOCA		
Guada, TX FIX	Stonewall, TX VORTAC	*4000
*3200–MOCA		
Stonewall, TX VORTAC	Llano, TX VORTAC	*4000
*3100–MOCA		

From	To	MEA	MAA
§ 95.7207 Jet Route No. 207 is Amended to Delete:			
MIAMI, FL VORTAC.	Wahaa, FL FIX	18000	45000
WAHAA, FL FIX.	Savannah, GA VORTAC.	24000	45000

§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

Airway Segment		Changeover points	
From	To	Distance	From
V–186 is Amended to Delete:			
Van Nuys, CA VOR/DME	Paradise, CA VORTAC	22	Van Nuys.

[FR Doc. 92–19105 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Publication of final guides.

SUMMARY: The Federal Trade Commission has adopted guides for the use of environmental claims in marketing and advertising. The guides address the applicability of section 5 of the FTC Act to environmental advertising and labeling claims. Public hearings on these issues were held on July 17–18, 1991, along with a 90–day public comment period. In addition to the guides themselves, the Commission is publishing in this notice a summary of an environmental assessment of the guides, including a finding of no significant impact, concluding that an environmental impact statement is not required under applicable law.

EFFECTIVE DATE: July 28, 1992.

ADDRESSES: Copies of the environmental assessment are available from the Public Reference Branch, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mary Koelbel Engle (Attorney), (202) 326–3161.

SUPPLEMENTARY INFORMATION: On Friday, May 31, 1991, the Federal Trade Commission published in the **Federal Register** a request for public comment on issues concerning environmental marketing and advertising claims, and a notice that it would hold public hearings. 56 FR 24968, May 31, 1991. Public hearings on these issues were held on July 17–18, 1991, along with a 90–day public comment period. On August 2, 1991, the Commission published in the **Federal Register** a notice extending the comment period. 56 FR 37026, Aug. 2, 1991. The Commission has now adopted guides for the use of environmental claims in marketing and advertising. The guides address the applicability of section 5 of the FTC Act to environmental advertising and labeling claims. In addition to the guides themselves, the Commission is publishing in this notice a summary of an environmental assessment of the guides, including a finding of no significant impact, concluding that an environmental impact statement is not required under applicable law.

List of Subjects in 16 CFR Part 260

Advertising, Environmental claims, Labeling, and Trade practices.

For the reasons set forth in the preamble, 16 CFR ch. I is amended by adding part 260 to read as follows:

PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

Sec.

260.1 Statement of purpose.
260.2 Scope of guides.
260.3 Structure of the guides.
260.4 Review procedure.
260.5 Interpretation and substantiation of environmental marketing claims.
260.6 General principles.

Sec.
260.7 Environmental marketing claims.
260.8 Environmental Assessment.

Authority: 15 U.S.C. §§ 41–58.

§ 260.1 Statement of purpose.

These guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These guides specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to environmental advertising and marketing practices. They provide the basis for voluntary compliance with such laws by members of industry. Conduct inconsistent with the positions articulated in these guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

§ 260.2 Scope of Guides.

These guides apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means. The guides apply to any claim about the environmental attributes of a product or package in connection with the sales, offering for sale, or marketing of such product or package for personal, family or household use, or for commercial, institutional or industrial use. Because the guides are not legislative rules under section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. The guides themselves do not preempt regulation of other federal agencies or of state and local bodies governing the use of environmental marketing claims. Compliance with federal, state or local law and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under section 5.

§ 260.3 Structure of the guides.

The guides are composed of general principles and specific guidance on the use of environmental claims. These general principles and specific guidance are followed by examples that generally address a single deception concern. A given claim may raise issues that are addressed under more than one example and in more than one section of the guides. In many of the examples, one or more options are presented for qualifying a claim. These options are intended to provide a "safe harbor" for marketers who want certainty about how to make environmental claims. They do not represent the only permissible approaches to qualifying a claim. The examples do not illustrate all possible acceptable claims or disclosures that would be permissible under section 5. In addition, some of the illustrative disclosures may be appropriate for use on labels but not in print or broadcast advertisements and vice versa. In some instances, the guides indicate within the example in what context or contexts a particular type of disclosure should be considered.

§ 260.4 Review procedure.

Three years after the date of adoption of these guides, the Commission will seek public comment on whether and how the guides need to be modified in light of ensuing developments. Parties may petition the Commission to alter or amend these guides in light of substantial new evidence regarding consumer interpretation of a claim or regarding substantiation of a claim. Following review of such a petition, the Commission will take such action as it deems appropriate.

§ 260.5 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. The Commission's criteria for determining whether an express or implied claim has been made are enunciated in the Commission's Policy Statement on Deception.[1] In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product or package must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence. For any test, analysis, research, study or other evidence to be "competent and reliable" for purposes of these guides, it must be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Further guidance on the reasonable basis standard is set forth in the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine. 49 FR 30,999 (1984); appended to Thompson Medical Co., 104 F.T.C. 648 (1984). These guides, therefore, attempt to preview Commission policy in a relatively new context—that of environmental claims.

§ 260.6 General principles.

The following general principles apply to all environmental marketing claims, including, but not limited to, those described in § 260.7. In addition, § 260.7 contains specific guidance applicable to certain environmental marketing claims. Claims should comport with all relevant provisions of these guides, not simply the provision that seems most directly applicable.

(a) *Qualifications and Disclosures.* The Commission traditionally has held that in order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear and prominent to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

(b) *Distinction Between Benefits of Product and Package.* An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging or to a portion or component of the product or packaging. In general, if the environmental attribute or benefit applies to all but minor, incidental components of a product or package, the claim need not be qualified to identify that fact. There may be exceptions to this general principle. For example, if an unqualified "recyclable" claim is made and the presence of the incidental component significantly limits the ability to recycle the product, then the claim would be deceptive.

Example 1: A box of aluminum foil is labeled with the claim "recyclable," without further elaboration. Unless the type of product, surrounding language, or other context of the phrase establishes whether the claim refers to the foil or the box, the claim is deceptive if any part of either the box or the foil, other than minor, incidental components, cannot be recycled.

Example 2: A soft drink bottle is labeled "recycled." The bottle is made entirely from recycled materials, but the bottle cap is not. Because reasonable consumers are likely to consider the bottle cap to be a minor, incidental component of the package, the

[1] *Cliffdale Associates, Inc.*, 103 F.T.C. 110, at 176, 176 n.7, n.8, appendix, reprinting letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) ("Deception Statement").

claim is not deceptive. Similarly, it would not be deceptive to label a shopping bag "recycled" where the bag is made entirely of recycled material but the easily detachable handle, an incidental component, is not.

(c) *Overstatement of Environmental Attribute.* An environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication. Marketers should avoid implications of significant environmental benefits if the benefit is in fact negligible.

Example 1: A package is labeled, "50% more recycled content than before." The manufacturer increased the recycled content of its package from 2 percent recycled material to 3 percent recycled material. Although the claim is technically true, it is likely to convey the false impression that the advertiser has increased significantly the use of recycled material.

Example 2: A trash bag is labeled "recyclable" without qualification. Because trash bags will ordinarily not be separated out from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no significant or meaningful benefit exists.

Example 3: A paper grocery sack is labeled "reusable." The sack can be brought back to the store and reused for carrying groceries but will fall apart after two or three reuses, on average. Because reasonable consumers are unlikely to assume that a paper grocery sack is durable, the unqualified claim does not overstate the environmental benefit conveyed to consumers. The claim is not deceptive and does not need to be qualified to indicate the limited reuse of the sack.

(d) *Comparative Claims.* Environmental marketing claims that include a comparative statement should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. In addition, the advertiser should be able to substantiate the comparison.

Example 1: An advertiser notes that its shampoo bottle contains "20% more recycled content." The claim in its context is ambiguous. Depending on contextual factors, it could be a comparison either to the advertiser's immediately preceding product or to a competitor's product. The advertiser should clarify the claim to make the basis for comparison clear, for example, by saying "20% more recycled content than our previous package." Otherwise, the advertiser should be prepared to substantiate whatever comparison is conveyed to reasonable consumers.

Example 2: An advertiser claims that "our plastic diaper liner has the most recycled content." The advertised diaper does have more recycled content, calculated as a percentage of weight, than any other on the market, although it is still well under 100% recycled. Provided the recycled content and the comparative difference between the product and those of competitors are significant and provided the specific comparison can be substantiated, the claim is not deceptive.

Example 3: An ad claims that the advertiser's packaging creates "less waste than the leading national brand." The advertiser's source reduction was implemented sometime ago and is supported by a calculation comparing the relative solid waste contributions of the two packages. The advertiser should be able to substantiate that the comparison remains accurate.

§ 260.7 Environmental marketing claims.

Guidance about the use of environmental marketing claims is set forth below. Each guide is followed by several examples that illustrate, but do not provide an exhaustive list of, claims that do and do not comport with the guides. In each case, the general principles set forth in § 260.6 should also be followed.[2]

(a) *General Environmental Benefit Claims.* It is deceptive to misrepresent, directly or by implication, that a product or package offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product or package has specific and far-reaching environmental benefits. As explained in the Commission's Ad Substantiation Statement, every express and material, implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

Example 1: A brand name like "Eco-Safe" would be deceptive if, in the context of the product so named, it leads consumers to believe that the product has environmental benefits which cannot be substantiated by the manufacturer. The claim would not be deceptive if "Eco-Safe" were followed by clear and prominent qualifying language limiting the safety representation to a particular product attribute for which it could be substantiated, and provided that no other deceptive implications were created by the context.

Example 2: A product wrapper is printed with the claim "Environmentally Friendly." Textual comments on the wrapper explain that the wrapper is "Environmentally Friendly because it was not chlorine bleached, a process that has been shown to create harmful substances." The wrapper was, in fact, not bleached with chlorine. However, the production of the wrapper now creates and releases to the environment significant quantities of other harmful substances. Since consumers are likely to interpret the "Environmentally Friendly" claim, in combination with the textual explanation, to mean that no significant harmful substances are currently released to the environment, the "Environmentally Friendly" claim would be deceptive.

Example 3: A pump spray product is labeled "environmentally safe." Most of the product's active ingredients consist of volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation. The claim is deceptive because, absent further qualification, it is likely to convey to consumers that use of the product will not result in air pollution or other harm to the environment.

(b) *Degradable/Biodegradable/Photodegradable.* It is deceptive to misrepresent, directly or by implication, that a product or package is degradable, biodegradable or photodegradable. An unqualified claim that a product or package is degradable, biodegradable or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature, *i.e.*, decompose into elements found in nature within reasonable short period of time after customary disposal. Claims of degradability, biodegradability or photodegradability should be qualified to the extent necessary to avoid consumer deception about:

(1) The product or package's ability to degrade in the environment where it is customarily disposed; and

(2) The rate and extent of degradation.

Example 1: A trash bag is marketed as "degradable," which no qualification or other disclosure. The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. The trash bags are customarily disposed of in incineration facilities or at sanitary landfills that are managed in a way that inhibits degradation by minimizing moisture and oxygen. Degradation will be irrelevant for those trash bags that are incinerated and, for those disposed of in landfills, the marketer does not possess adequate substantiation that the bags will degrade in a reasonably short period of time in a landfill. The claim is therefore deceptive.

Example 2: A commercial agricultural plastic mulch film is advertised as "Photodegradable" and qualified with the phrase, "Will break down into small pieces if left uncovered in sunlight." The claim is supported by competent and reliable scientific evidence that the product will break down in a reasonably short period of time after being exposed to sunlight and into

[2] These guides do not address claims based on a "lifecycle" theory of environmental benefit. Such analyses are still in their infancy and thus the Commission lacks sufficient information on which to base guidance at this time.

sufficiently small pieces to become part of the soil. The qualified claim is not deceptive. Because the claim is qualified to indicate the limited extent of breakdown, the advertiser need not meet the elements for an unqualified photodegradable claim, *i.e.*, that the product will not only break down, but also will decompose into elements found in nature.

Example 3: A soap or shampoo product is advertised as "biodegradeable," with no qualification or other disclosure. The manufacturer has competent and reliable scientific evidence demonstrating that the product, which is customarily disposed of in sewage systems, will break down and decompose into elements found in nature in a short period of time. The claim is not deceptive.

(c) *Compostable.* It is deceptive to misrepresent, directly or by implication, that a product or package is compostable. An unqualified claim that a product or package is compostable should be substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Claims of compostability should be qualified to the extent necessary to avoid consumer deception. An unqualified claim may be deceptive.

(1) If municipal composting facilities are not available to a substantial majority of consumers or communities where the package is sold;

(2) If the claim misleads consumers about the environmental benefit provided when the product is disposed of in a landfill; or

(3) If consumers misunderstand the claim to mean that the package can be safely composted in their home compost pile or device, when in fact it cannot.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive provided the manufacturer can substantiate that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device, as well as in an appropriate composting program or facility.

Example 2: A lawn and leaf bag is labeled as "Compostable in California Municipal Yard Waste Composting Facilities." The bag contains toxic ingredients that are released into the compost material as the bag breaks down. The claim is deceptive if the presence of these toxic ingredients prevents the compost from being usable.

Example 3: A manufacturer indicates that its paper plate is suitable for home composting. If the manufacturer possesses substantiation for claiming that the paper plate can be converted safely to usable compost in a home compost pile or device, this claim is not deceptive even if no municipal composting facilities exist.

Example 4: A manufacturer makes an unqualified claim that its package is compostable. Although municipal composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should disclose that the package is not suitable for home composting.

Example 5: A nationally marketed lawn and leaf bag is labeled "compostable." Also printed on the bag is a disclosure that the bag is not designed for use in home compost piles. The bags are in fact composted in municipal yard waste composting programs in many communities around the country, but such programs are not available to a substantial majority of consumers where the bag is sold. The claim is deceptive since reasonable consumers living in areas not served by municipal yard waste programs may understand the reference to mean that composting facilities accepting the bags are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of such programs, for example, by stating, "Appropriate facilities may not exist in your area." Other examples of adequate qualification of the claim include providing the approximate percentage of communities or the population for which such programs are available.

Example 6: A manufacturer sells a disposable diaper that bears the legend, "This diaper can be composted where municipal solid waste composting facilities exist. There are currently [X number of] municipal solid waste composting facilities across the country." The claim is not deceptive, assuming that composting facilities are available as claimed and the manufacturer can substantiate that the diaper can be converted safely to usable compost in municipal solid waste composting facilities.

Example 7: A manufacturer markets yard waste bags only to consumers residing in particular geographic areas served by county yard waste composting programs. The bags meet specifications for these programs and are labeled, "Compostable Yard Waste Bag for County Composting Programs." The claim is not deceptive. Because the bags are compostable where they are sold, no qualification is required to indicate the limited availability of composting facilities.

(d) *Recyclable.* It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for use in the form of raw materials, in the manufacture or assembly of a new package or product. Unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable. For products or packages that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components of the product or package are recyclable. Claims of recyclability should be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs and collection sites. If an incidental component significantly limits the ability to recycle the product, the claim would be deceptive. A product or package that is made from recyclable material, but, because of its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable.

Example 1: A packaged product is labeled with an unqualified claim, "recyclable." It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim is likely to convey to reasonable consumers that all of both the product and its packaging that remain after normal use of the product, exempt for minor, incidental components, can be recycled. Unless each such message can be substantiated, the claim should be qualified to indicate what portions are recyclable.

Example 2: A plastic package is labeled on the bottom with the Society of the Plastics Industry (SPI) code, consisting of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin. Without more, the use of the SPI symbol (or similar industry codes) on the bottom of the package, or in a similarly inconspicuous location, does not constitute a claim of recyclability.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into new products or packaging. Any claim that the container is recyclable would be deceptive.

Example 4: A nationally marketed bottle bears the unqualified statement that it is "recyclable." Collection sites for recycling the material in question are not available to a substantial majority of consumers or communities, although collection sites are established in a significant percentage of communities or available to a significant percentage of the population. The unqualified claim is deceptive since, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may conclude that recycling programs for the material are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of programs, for example, by stating, "Check to see if recycling facilities exist in your area." Other examples of adequate qualifications of the claim include providing the approximate percentage of communities or the population to whom programs are available.

Example 5: A soda bottle is marketed nationally and labeled, "Recyclable where facilities exist." Recycling programs for material of this type and size are available in a significant percentage of communities or to a significant percentage of the population, but are not available to a substantial majority of

consumers. The claim is deceptive since, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may understand this phrase to mean that programs are available in their area. To avoid deception, the claim should be further qualified to indicate the limited availability of programs, for example, by using any of the approaches set forth in Example 4 above.

Example 6: A plastic detergent bottle is marketed as follows: "Recyclable in the few communities with facilities for colored HDPE bottles." Collection sites for recycling the container have been established in a half-dozen major metropolitan areas. This disclosure illustrates one approach to qualifying a claim adequately to prevent deception about the limited availability of recycling programs where collection facilities are not established in a significant percentage of communities or available to a significant percentage of the population. Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 7: A label claims that the package "includes some recyclable material." The package is composed of four layers of different materials, bonded together. One of the layers is made from the recyclable material, but the others are not. While programs for recycling this type of material are available to a substantial majority of consumers, only a few of those programs have the capability to separate out the recyclable layer. Even though it is technologically possible to separate the layers, the claim is not adequately qualified to avoid consumer deception. An appropriately qualified claim would be, "includes material recyclable in the few communities that collect multi-layer products." Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 8: A product is marketed as having a "recyclable" container. The product is distributed and advertised only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents, but are not yet available nationally. Because programs are generally available where the product is marketed, the unqualified claim does not deceive consumers about the limited availability of recycling programs.

(e) *Recycled Content.* A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). To the extent the source of recycled content includes pre-consumer material, the manufacturer or advertiser must have substantiation for concluding that the pre-consumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials. Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or post-consumer content of a product or package must be substantiated. It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material. Unqualified claims of recycled content may be made only if the entire product or package, excluding minor, incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid consumer deception about the amount, by weight, of recycled content in the finished product or package.

Example 1: A manufacturer routinely collects spilled raw material and scraps from trimming finished products. After a minimal amount of reprocessing, the manufacturer combines the spills and scraps with virgin material for use in further production of the same product. A claim that the product contains recycled material is deceptive since the spills and scraps to which the claim refers are normally reused by industry within the original manufacturing process, and would not normally have entered the waste stream.

Example 2: A manufacturer purchases material from a firm that collects discarded material from other manufacturers and resells it. All of the material was diverted from the solid waste stream and is not normally reused by industry within the original manufacturing process. The manufacturer includes the weight of this material in its calculations of the recycled content of its products. A claim of recycled content based on this calculation is not deceptive because, absent the purchase and reuse of this material, it would have entered the waste stream.

Example 3: A greeting card is composed 30% by weight of paper collected from consumers after use of a paper product, and 20% by weight of paper that was generated after completion of the paper-making process, diverted from the solid waste stream, and otherwise would not normally have been reused in the original manufacturing process. The marketer of the card may claim either that the product "contains 50% recycled material," or may identify the specific pre-consumer and/or post-consumer content by stating, for example, that the product "contains 50% total recycled material, 30% of which is post-consumer material."

Example 4: A package with 20% recycled content by weight is labeled as containing "20% recycled paper." Some of the recycled content was composed of material collected from consumers after use of the original product. The rest was composed of overrun newspaper stock never sold to customers. The claim is not deceptive.

Example 5: A product in a multi-component package, such as a paperboard box in a shrink-wrapped plastic cover, indicates that it has recycled packaging. The paperboard box is made entirely of recycled material, but the plastic cover is not. The claim is deceptive since, without qualification, it suggests that both components are recycled. A claim limited to the paperboard box would not be deceptive.

Example 6: A package is made from layers of foil, plastic, and paper laminated together, although the layers are indistinguishable to consumers. The label claims that "one of the three layers of this package is made of recycled plastic." The plastic layer is made entirely of recycled plastic. The claim is not deceptive provided the recycled plastic layer constitutes a significant component of the entire package.

Example 7: A paper product is labeled as containing "100% recycled fiber." The claim is not deceptive if the advertiser can substantiate the conclusion that 100% by weight of the fiber in the finished product is recycled.

Example 8: A frozen dinner is marketed in a package composed of a cardboard box over a plastic tray. The package bears the legend, "package made from 30% recycled material." Each packaging component amounts to one-half the weight of the total package. The box is 20% recycled content by weight, while the plastic tray is 40% recycled content by weight. The claim is not deceptive, since the average amount of recycled material is 30%.

Example 9: A paper greeting card is labeled as containing 50% by weight recycled content. The seller purchases paper stock from several sources and the amount of recycled material in the stock provided by each source varies. Because the 50% figure is based on the annual weighted average of recycled material purchased from the sources after accounting for fiber loss during the production process, the claim is permissible.

(f) *Source Reduction.* It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume or toxicity. Source reduction claims should be qualified to the extent necessary to avoid consumer deception about the amount of the source reduction and about the basis for any comparison asserted.

Example 1: An ad claims that solid waste created by disposal of the advertiser's packaging is "now 10% less than our previous package." The claim is not deceptive if the advertiser has substantiation that shows that disposal of the current package contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the package.

Example 2: An advertiser notes that disposal of its product generates "10% less waste." The claim is ambiguous. Depending on contextual factors, it could be a comparison either to the immediately preceding product or to a competitor's product. The "10% less waste" reference is deceptive unless the seller clarifies which comparison is intended and substantiates that comparison, or substantiates both possible interpretations of the claim.

(g) *Refillable.* It is deceptive to misrepresent, directly or by implication, that a package is refillable. An unqualified refillable claim should not be asserted unless a system is provided for:

(1) The collection and return of the package for refill; or

(2) The later refill of the package by consumers with product subsequently sold in another package.

A package should not be marketed with an unqualified refillable claim, if it is up to the consumer to find new ways to refill the package.

Example 1: A container is labeled "refillable x times." The manufacturer has the capability to refill returned containers and can show that the container will withstand being refilled at least x times. The manufacturer, however, has established no collection program. The unqualified claim is deceptive because there is no means for collection and return of the container to the manufacturer for refill.

Example 2: A bottle of fabric softener states that it is in a "handy refillable container." The manufacturer also sells a large-sized container that indicates that the consumer is expected to use it to refill the smaller container. The manufacturer sells the large-sized container in the same market areas where it sells the small container. The claim is not deceptive because there is a means for consumers to refill the smaller container from larger containers of the same product.

(h) *Ozone Safe and Ozone Friendly.* It is deceptive to misrepresent, directly or by implication, that a product is safe for or "friendly" to the ozone layer. A claim that a product does not harm the ozone layer is deceptive if the product contains an ozone-depleting substance.

Example 1: A product is labeled "ozone friendly." The claim is deceptive if the product contains any ozone-depleting substance, including those substances listed as Class I or Class II chemicals in title VI of the Clean Air Act Amendments of 1990, Public Law No. 101–549, or others subsequently designated by EPA as ozone-depleting substances. Class I chemicals currently listed in title VI are chlorofluorocarbons (CFCs), halons, carbon tetrachloride and 1,1,1-trichloroethane. Class II chemicals currently listed in title VI are hydrochlorofluorocarbons (HCFCs).

Example 2: The seller of an aerosol product makes an unqualified claim that its product "Contains no CFCs." Although the product does not contain CFCs, it does contain HCFC–22, another ozone depleting ingredient. Because the claim "Contains no CFCs" may imply to reasonable consumers that the product does not harm the ozone layer, the claim is deceptive.

Example 3: A product is labeled "This product is 95% less damaging to the ozone layer than past formulations that contained CFCs." The manufacturer has substituted HCFCs for CFC–12, and can substantiate that this substitution will result in 95% less ozone depletion. The qualified comparative claim is not likely to be deceptive.

§ 260.8 Environmental assessment.

National Environmental Policy Act. In accordance with § 1.83 of the FTC's Procedures and Rules of Practice [3] and § 1501.3 of the Council on Environmental Quality's regulations for implementing the procedural provisions of National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (1969),[4] the Commission has prepared an environmental assessment for purposes of providing sufficient evidence and analysis to determine whether issuing the Guides for the Use of Environmental Marketing Claims requires preparation of an environmental impact statement or a finding of no significant impact. After careful study, the Commission concludes that issuance of the Guides will not have a significant impact on the environment and that any such impact "would be so uncertain that environmental analysis would be based on speculation." [5] An environmental impact statement is therefore not required. This conclusion is based on the findings in the environmental assessment that issuance of the guides would have no quantifiable environmental impact because the guides are voluntary in nature, do not preempt inconsistent state laws, are based on the FTC's deception policy, and, when used in conjunction with the Commission's policy of case-by-case enforcement, are intended to aid compliance with section 5(a) of the FTC Act as that Act applies to environmental marketing claims. Furthermore, the guides are neither motivated by nor intended to influence environmental policy decisions. The guides also do not impose standards on manufacturing or waste disposal methods. Consumer behavior as a result of the issuance of guides may change but any such change cannot be quantified, or even reasonably estimated, since those decisions would be influenced by many other variables, in addition to advertising claims. Industry response to the guides, beyond modification of environmental marketing claims, is also impossible to predict or quantify. The alternatives to Commission guides described in the environmental assessment, both within and without the Commission, would also have, at most, only an indirect and highly speculative impact on the environment.

[3] 16 CFR 1.83 (revised as of January 1, 1991).
[4] 40 CFR 1501.3 (1991).
[5] 16 CFR 1.83(a).

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA CONCERNING ISSUANCE OF COMMISSION GUIDES ON ENVIRONMENTAL MARKETING CLAIMS

Today, the Commission issues guides on environmental marketing claims. The guides should prove useful to the business and law enforcement communities and to consumers, that is, to all those who make, analyze or rely on environmental claims in the advertising and marketing of goods and services. In an area that seems always to prove more difficult than initial impressions suggest, the Commission should be commended for producing a clear, careful and balanced document.

It has been my pleasure to work with my colleagues and Commission staff in this important and difficult endeavor and with the government agencies and other concerned groups and individuals who have participated so generously and constructively in this process. With regret, I nevertheless find I must dissent.

Basic to the exercise of the responsibility of my office is the obligation to act within the authority conferred on that office and, as I understand that obligation, it is not satisfied by forecasting that a challenge is unlikely or by deferring to the courts to decide on review whether the exercise lies within the bounds of the authority, but rather is my obligation to decide in the first instance and without regard to the prevailing political climate in which that decision will be received. As I read the law, the Commission has no authority to issue these guides, as written, without first employing the rulemaking procedures of section 18(b)(1) of the FTC Act, which it has not done.

Section 18(a)(1) of the FTC Act, 15 U.S.C. 57a(a)(1), provides that the Commission may prescribe:

(A) interpretative rules and general statements of policy with respect to unfair or deceptive acts or practices * * *, and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices * * *.

Section 18(b)(1) directs that "[w]hen prescribing a rule under subsection (a)(1)(B)," the Commission is to proceed in accordance with the notice and comment requirements of section 553 of the Administrative Procedure Act and shall also follow the more extensive procedures set forth in section 18 that often are referred to as "Magnuson-Moss rulemaking."

As the guides expressly state, the majority of the Commission does not view its guides as having the force and effect of law but as explanations of existing statutory terms and obligations. Under the Administrative Procedure Act, 5 U.S.C 553, and under section 18 of the FTC Act, therefore, the Commission apparently would categorize its guides as "interpretive" (or "interpretative") rules or policy statements rather than "legislative" rules or "rules which define with specificity

* * * deceptive acts or practices." I cannot agree.

By stating definitively, for example, that a particular act "is deceptive" or that particular conduct "would be deceptive," or that under specified circumstances, firms "must" or "should" act in a particular way, language that appears throughout the document,[1] I believe that the document has "defined with specificity" a deceptive act or practice as set forth in section 18(a)(1)(B). Since the enactment of the Magnuson-Moss Act in 1975, the Commission has been empowered to take such an action only if it first adheres to Magnuson-Moss rulemaking procedures.

If the Commission in issuing its guides were relying on a body of past precedent, I might be persuaded that my colleagues were correct in their assessment, and that the decisive "guidance" in the document simply explicates existing Commission case law and policy. In issuing its Deception Statement in 1983, for example, the Commission reviewed decided cases to synthesize principles, but that is not the case here. The Commission's case law on environmental claims consists almost entirely of consent agreements and orders issued without adjudicative records or admissions of liability. These agreements and orders may convey to the public some sense of what the Commission is likely to do in other similar situations, but they are not binding precedent.

Were I entirely alone in my concern over the need to distinguish between interpretive and legislative rules in issuing some form of guidance on environmental claims, I might be inclined to accede to the position of the majority. Again, this is not the case. Although the courts, particularly in the District of Columbia Circuit, have not instructed agencies unambiguously on how they should distinguish interpretive and legislative rules, recent decisions suggest that my concern is not without validity. At the least, they reflect judicial concern that agencies attend to this question with care in reaching their regulatory decisions and judicial unwillingness blindly to acquiesce in agencies' characterizations of their actions. In short, saying that these are guides and not rules does not make it so.

Even in the presence of express language disavowing agency intent to bind either itself or the public, courts in this circuit have considered whether allegedly interpretive rules are sufficiently mandatory and definitive to render them legislative in nature. See *Community Nutrition Institute* v. *Young*, 818 F.2d 943, 946 (D.C. Cir. 1987) (noting that it is appropriate to "give some, 'albeit not overwhelming' deference to an agency's characterization of its statement" and refusing to sustain FDA rules because the agency failed to follow the appropriate rulemaking process); *Arrow Air, Inc.* v. *Dole*, 784 F.2d 1118, 1122 (D.C. Cir. 1986) (listing agency intent as only one among other factors differentiating interpretive and legislative rules); *General Motors Corp.* v. *Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984) (*en banc*), *cert. denied*, 471 U.S. 1074 (1985) (upholding agency's interpretation but finding agency's own label relevant but not dispositive).[2]

The likelihood, in whatever degree, that what the Commission calls guides are in fact rules under section 18(a)(1)(B) could easily have been avoided without diminishing the basic guidance the Commission seeks to offer. The Horizontal Merger Guidelines recently issued by the Commission and the Department of Justice, for example, refrain from definitive conclusions about what does or does not violate the law in various ways, one of which is by using the qualifier "likely." For example, in discussing the significance of post-merger market concentration measured by the Herfindahl-Hirschman Index ("HHI"), the Merger Guidelines say, "Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise." 1992 CCH Trade Cas. ¶ 13,104 at 20,573–6 (emphasis added).[3]

A similar approach could be used here. Instead of saying that a particular claim "is" or "is not" deceptive, the environmental guides could have said that a particular claim "is likely" or "is unlikely" to be deceptive. Although adding the qualifiers "likely" or "unlikely" sounds more tentative, if that language were used throughout the document, the basic message of the guides, which is to indicate the Commission's likely response in various hypothetical situations, would remain. If the Commission prefers the more definitive language because indeed it wants to be definitive about what is or is not deceptive, then it seems to me that the Commission runs squarely into the problem that it is in fact issuing rules rather than guides. I confess some puzzlement about whether the Commission intends to be definitive (and issue rules) or to indicate what it is likely to do (and issue guides), but, even more than that, I regret that the Commission has not seen fit to make this single change, which would have enabled me to joint in making this a unanimous document.

Second, I differ from the Commission in its decision not to place the guides on the public record for a short period of time to enable the public to comment on them. Although we have sought to obtain accurate information and to consider the issues thoroughly, it is conceivable, nevertheless, that someone outside the agency might offer useful observations and suggestions for improvement. The Commission has obtained comment on the merits of issuing guidance and on the issues that such guides should address, but it has not provided to those affected by the guides an opportunity to assess the economic benefits and costs of the actual provisions or to call to our attention provisions that may cause unintended effects. A short, appropriately focused comment period on the guides could have coincided with the public comment period on the Environmental Assessment that is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, as amended.

[FR Doc. 92–19359 Filed 8–12–92; 8:45 am]
BILLING CODE 6750–01–M

[1] Guides and trade practice rules issued before the enactment of section 18 and before the judicial decisions discussed below contain similarly didactic language.

[2] Although, as already noted, the law of the circuit is not settled, there is a serious possibility, and in my opinion likelihood, that the Court of Appeals for the District of Columbia Circuit, at least, would find that portions, if not all, of the guides just issued are legislative rules rather than interpretive rules or policy statements. Compare the Fertilizer Institute v. EPA, 935 F.2d 1303, 1307–08 (D.C. Cir. 1991), quoting General Motors Corp. v. Ruckelshaus, *supra*, and Citizens To Save Spencer County v. EPA, 600 F.2d 844, 876 and n. 153 (D.C. Cir. 1979) (distinction between interpretive and legislative rules depends on whether document "simply states what the administrative agency thinks the statute means, and only 'reminds' affected parties of existing duties" or demonstrates that "the agency intends to create new law, rights or duties"), with Alaska v. DOT, 868 F.2d 441, 446–47 (D.C. Cir. 1989), and Community Nutrition Institute v. Young, *supra* at 947–49, (distinction depends on several factors including use of mandatory language, inclusion of exception process, practical application and limitations placed on agency discretion).

[3] Magnuson-Moss rulemaking procedures do not apply to antitrust rules, but the notice and comment rulemaking requirements in the Administrative Procedure Act ("APA") apply and presumably would have precluded the Commission and the Department from issuing the merger guidelines had they purported to bind the government or the public by requiring or prescribing particular conduct without first providing for public notice and comment. When it recently issued revisions to the so-called Fred Meyer Guides (Guides for Advertising Allowances and Other Merchandising Payments and Services, 55 FR 33 661 (Aug. 17, 1990)), under the antitrust laws, the Commission employed the appropriate APA rulemaking procedures.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 30 and 32

Offer and Sale of Foreign Exchange-Traded Options, and Foreign Exchange-Traded Futures Contracts Based on Foreign Stock Indexes and Foreign Government Debt, to Persons Located Outside the United States

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: Pursuant to its authority under sections 2(a)(1)(B), 4(b) and 4c(b) [1] of the Commodity Exchange Act ("CEA" or "Act") and rules 32.11 and 30.3(a),[2] and its determination that granting relief would not be inconsistent with the Act or the public interest, the Commodity Futures Trading Commission ("Commission") is providing relief to permit:

(1) Futures commission merchants ("FCMs") to solicit and accept orders and funds for foreign exchange-traded

[1] Sections 2(a)(1)(B), 4(b) and 4c(b), 7 U.S.C. 2a, 6(b) and 6c(b).

[2] 17 CFR 32.11 and 30.3(a)(1992).

options as defined in Commission rule 30.1(b) [3] that have not been approved for trading in the United States from customers located outside the United States,[4] including (subject to conditions specified below) options based on foreign stock index futures and futures on foreign government debt (including government debt which has not been designated as an "exempted security" under Securities and Exchange Commission ("SEC") rule 3a12–8); [5]

(2) FCMs to solicit and accept orders and funds from customers located outside the United States for (subject to conditions specified below) foreign exchange-traded futures contracts based on a foreign stock index which has not been the subject of a staff "no-action" letter, and for foreign exchange-traded futures based on foreign government debt which has not been designated as an exempted security under SEC rule 3a12–8; and

(3) Commodity trading advisors ("CTAs") and introducing brokers ("IBs") to offer, subject to certain conditions, their services with respect to such foreign instruments on behalf of their customers who are located outside the United States.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Robert Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION: On February 7, 1992 the Commission published for comment in the **Federal Register** (57 FR 5239 (February 13, 1992)) a proposed order of relief that would permit FCMs to solicit and accept orders and funds for foreign exchange-traded options as defined in Commission rule 30.1(b) that have not been approved for trading in the United States on behalf of customers located outside the United States. In the absence of such an order, Commission rules 32.11 and 30.3(a) prohibit FCMs from acting as agents for customers located outside the United States in such foreign option transactions.[6]

The Commission proposed such relief because there appeared to be no U.S. customer protection interest advanced by prohibiting registered FCMs from engaging in non-approved foreign option transactions on behalf on customers located outside the U.S., which customers could purchase such products directly from an authorized foreign intermediary. Further, such transactions did not appear to have any unique impact on the financial and operational viability of a registered FCM to contemplated by the regulations or which would be altered by the approval of such transactions as to United States customers.[7] The proposal by its terms excluded from its scope options based on foreign stock index futures and foreign government debt futures, as these products are subject to the "jurisdictional accord" provisions of section 2(a)(1)(B) of the Act.

Comments. The Commission received four comment letters on the proposal: three from FCMs and one from a law firm, all of which strongly supported the Commission's proposal. The commenters strongly agreed that no U.S. customer protection concern exists in offering foreign exchange-traded options to persons located outside the United States otherwise eligible to purchase such options under applicable local law and agreed with the Commission's analysis that the effect on an FCM's capital of permitting such transactions would be the same as that of any option authorized for sale to persons in the United States.

All commenters urged the Commission to expand the scope of relief to permit transactions on foreign exchange-traded futures and options on such futures that are based on foreign stock indexes and on foreign government debt, products that are subject to section 2(a)(1)(B) of the Act. As one commenter noted, the proposal would provide little relief unless all foreign exchange-traded futures and options on such futures contracts were included. The commenters believed that the reasoning underlying the proposal should apply equally to those instruments. In this regard, commenters noted that the staff no-action procedure currently applicable to sales of foreign stock index futures contracts in the United States [8] is unnecessary with respect to foreign persons and suggested that section 2 (a)(1)(B)(v) of the Act should be construed to limit the activities of U.S. FCMs only with respect to customers located in the United States and not outside the United States. In this connection, one commenter noted that permitting such transactions would be consistent with the policy of SEC.

Regulation S, wherein the SEC adopted a territorial approach to the application of the registration requirements of section 5 of the Securities Act of 1933 and which permits a U.S. broker-dealer to carry the account of a foreign person in a foreign security as long as no offer is made to a U.S. person and either the buyer is outside the United States or the transaction is deemed to be an offshore transaction. The commenters believed that the Commission should construe section 2(a)(1)(B)(v) as not prohibiting the offer and sale of foreign exchange-traded futures or options thereon based on foreign government debt products. One

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[3] "Foreign option" is defined in Commission rule 30.1(b), 17 CFR 30.1(b)(1992), as:

Any transaction or agreement which is or held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," made or to be made on or subject to the rules of any foreign board of trade.

Thus, this Order does not address foreign option contracts that are not traded on or subject to the rules of a foreign board of trade. Commission rule 32.4(a), 17 CFR 32.4(a) (1992), (the trade option exemption) also is not affected by this Order.

[4] The term "customer located outside the U.S." most clearly applies to non-resident, non-U.S. customers. It may encompass non-resident U.S. nationals in many circumstances as well. This order, however, may not be used by resident U.S. customers to engage indirectly in transactions which they would be prohibited from participating in while in the U.S. Questions regarding this order's application to non-resident U.S. customers should be directed to the Commission's Division of Trading and Markets.

[5] See 17 CFR 240.3a12–8.

[6] Commission rule 32.11 prohibits any person from soliciting or accepting orders for, or from soliciting or accepting funds in connection with, the purchase or sale of any option until further rule, regulation or order of the Commission. Among other things, rule 30.3(a) of the Commission's Part 30 rules governing foreign futures and option transactions makes it unlawful for any person to engage in the domestic offer or sale of any foreign option contract until the Commission, by order, authorizes the foreign option to be offered or sold in the United States. As a result, until the Commission has issued an Order permitting the offer or sale in the United States of a particular foreign option, rules 32.11 and 30.3(a) operate to prohibit an FCM from engaging in such foreign option transaction even on behalf of a customer located outside the United States. However, notwithstanding rule 30.3, the trade option exemption of rule 32.4(a) continues to permit, among other things, the offer and sale of foreign exchange-traded options to permissible offerees under that exemption.

[7] See 57 FR at 5240. The Commission had noted that the effect on FCM capital under the Commission's capital rules of carrying a non-approved foreign option transaction on behalf of a customer located outside the U.S. would be no different from the effect on such firm's capital of carrying that option for a person located outside the U.S. even if it were authorized for sale in the United States.

[8] The Commission's staff has applied the criteria set forth in section 2(a)(1)(B)(ii) of the Act in determining whether to permit the offer and sale of a foreign stock index futures contract in the United States. See, *e.g.*, Interpretative Letter 90–1, Comm. Fut. L. Rep. (CCH) A 24,582 (January 16, 1990) (offer and sale of the Financial Times-Stock Exchange 100 Index futures contract traded on the London International Financial Futures Exchange Limited). In order to facilitate the process for filing requests for staff "no-action" letters regarding stock index contracts based on foreign securities by a foreign board of trade, the Commission has identified the types of information that would assist the staff's analysis of such requests. See 57 FR 3518, 3523 (January 30, 1992).

commenter urged the Commission to resolve these issues with the SEC.

Upon further consideration, and after Commission staff consultation with the staff of the SEC,[9] the Commission has determined to expand the scope of relief to include transactions in foreign exchange-traded futures contracts on foreign stock indexes and options on such contracts, and on foreign exchange-traded futures contracts on foreign government debt and options on such contracts, provided that the stock index product traded on a foreign exchange is not based on an index of which ten percent (10%) of the weighting of the index is derived from securities whose primary trading market is in the United States, and the debt instrument underlying the futures contract (or option thereon) is not delivered in the United States, its possessions or territories pursuant to the contract.[10]

One commenter similarly proposed that CTAs should be permitted to provide advice on the above-referenced instruments to customers located outside the United States and that IBs should be permitted to introduce a non-U.S. customer account trading in those products to an FCM or to an entity exempted from the FCM registration requirement under rule 30.10. Essentially, the commenter suggested that if the Commission determined that a transaction in a particular foreign futures or option product need not require Commission approval of the product where the contract is executed on behalf of a person located outside the United States, and the transaction would otherwise be permissible under local law, there should be no reason to prohibit a CTA or IB from providing services with respect to such foreign persons and products. The Commission agrees that extending relief to these market professionals is consistent with extending such relief to FCMs and, accordingly, this final order permits registered CTAs and IBs to offer their services to foreign customers with respect to such products.

Finally, one commenter contended that the proposal's condition that "the FCM must maintain transaction-specific records sufficient to document that the option transaction in fact was executed in a foreign market" imposes an obligation on FCMs that they may be unable to fulfill. The commenter noted that FCMs ordinarily would give their foreign customer's order to a foreign broker which is a member of the foreign exchange on which the order is to be executed and that, accordingly, only such foreign executing broker will know whether the order was executed. The commenter was concerned that this condition implied that FCMs must maintain some additional record other than the reports of execution and confirmation of transaction that the FCM would receive in the ordinary course of business from the foreign executing broker.

The Commission notes that the transaction-specific record was not intended to require anything more than the retention of the reports of execution and/or confirmation of transaction that the FCM would receive in the ordinary course of business or to retain anything more than that which would be retained if the FCM executed an approved foreign option or foreign futures transaction.

Accordingly, pursuant to its authority under sections 2(a)(1)(B), 4(b) and 4c(b) of the Act and rules 32.11 and 30.3(a), and its determination that granting relief would not be inconsistent with the Act or the public interest, the Commission hereby orders that:

(1) An FCM may solicit or accept orders and funds from customers located outside the United States for foreign exchange-traded options as defined in Commission rule 30.1(b) that have not been approved for trading in the United States under rule 30.3(a), including, subject to the provisos in paragraph 2 below, options based on foreign stock index futures and foreign government debt futures;

(2) An FCM may solicit or accept orders and funds from customers located outside the United States for foreign exchange-traded futures contracts based on a foreign stock index which has not been the subject of a Commission staff "no-action" letter, and for foreign exchange-traded futures based on foreign government debt which has not been designated as an "exempted security" under SEC rule 3a12-8, *provided* that the foreign stock index product is not based on an index of which ten percent (10%) of the weighting of the index is derived from securities whose primary trading market is in the United States, and the foreign government debt futures or option contract requires delivery of the underlying debt instrument outside the United States, its possessions or territories; and

(3) CTAs and IBs may provide their services with respect to the above-described products solely with respect to customers who are not located in the United States.

This Order assumes that the offer and sale of such products would also be legal under the laws where the customer and/or the market are located and does not relieve an FCM, CTA or IB from compliance with any otherwise applicable Commission rules and regulations. For example, if an FCM were to commingle the funds of such non-U.S. customers trading a product prohibited as to a U.S. customer with the secured amount funds of U.S. customers trading approved foreign futures and options, it must, among other things, comply with the provisions of rule 30.7(b).[11] In addition, rule 30.9 prohibiting fraud in connection with all foreign futures and option contracts will continue to apply to FCMs, IBs and CTAs engaging in transactions notwithstanding that such transactions are undertaken on behalf of customers located outside the U.S.

Issued in Washington, DC, on August 10, 1992.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 92-19295 Filed 8-12-92; 8:45 am]

BILLING CODE 6351-01-M

[9] Commission staff had discussions with staff of the SEC to discuss expanding the scope of relief to include futures (and options thereon) on foreign stock indexes and foreign government debt. Subject to the conditions discussed above, the SEC staff did not object to the expansion of the proposal to include these products.

[10] See SEC rule 240.3a12-8, which designates certain foreign government debt as exempt from the registration requirements of the Securities Act of 1933, in order to permit futures trading based on such debt. The rule conditions the availability of the exemption on the requirement that the futures contract require delivery outside the United States, any of its possessions or territories. (The rule also requires that the futures contract in question trade through a board of trade. The Commission's Order is consistent with both these conditions as the Order of relief extends only to foreign exchange-traded products which permit delivery only outside the U.S.)

[11] 17 CFR 30.7(b) (1992).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The interim rule (57 FR 5818, February 18, 1992) which identified certain products containing controlled substances as being exempt chemical preparations under the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) is adopted without change.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), published as an interim rule, a list of products containing controlled substances which he finds to qualify as exempt chemical preparations (57 FR 5818, February 18, 1992). A 30 day comment period was provided. No comments were received, therefore, the interim rule is adopted without change.

The listing of products as exempt chemical preparations in 21 CFR 1308.24 relieves persons who handle them from the registration, recordkeeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

PART 1308—[AMENDED]

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

Under the authority vested in the Attorney General by section 201(g)(3)(B) of the CSA (21 U.S.C. 811(g)(3)(B)), as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, and redelegated to the Deputy Assistant Administrator, Office of Diversion Control in 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule amending 21 CFR 1308.24 which was published at 57 FR 5818 on February 18, 1992.

Dated: August 5, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–19237 Filed 8–12–92; 8:45 am]

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21 CFR Part 1308

Schedules of Controlled Substances: Excluded Veterinary Anabolic Steroid Implant Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The interim rule (57 FR 19533, May 7, 1992) which identified certain veterinary anabolic steroid implant products as being excluded from the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) is adopted without change.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), published in the **Federal Register**, an interim rule which identified eight veterinary products as being excluded from the CSA (57 FR 19533, May 7, 1992). Comments were requested; none were received. The interim rule is adopted without change.

The listing of products as excluded veterinary anabolic steroid implant products in 21 CFR 1308.26 relieves persons who handle them from the registration, recordkeeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

Under authority vested in the Attorney General by title XIX of Public Law 101–647, as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, redelegated to the Deputy Assistant Administrator, Office of Diversion Control in 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule amending 21 CFR § 1308.26 which was published at 57 FR 19533 on May 7, 1992.

Dated: August 5, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–19238 Filed 8–12–92; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[Gen Docket No. 91–2; FCC 92–331]

Interactive Video Data Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules for the Interactive Video and Data Service by allowing interaction with all video delivery systems including wireless cable and direct broadcast satellite, and allowing cell transmitter station (CTS) antennas to be located on

high structures within a service area on a routine basis provided there is a corresponding reduction in power. It also permits IVDS system licensees to locate a CTS antenna within 200 feet of a residential dwelling when there is a corresponding reduction in power or the licensee can obtain the written agreement of the residences within that distance, deletes the requirement that the RTU antenna be an integral part of the unit, and allows the IVDS licensee the option of dispensing with notification to each household when the TV Channel 13 station licensee agrees. This action addresses six petitions for reconsideration seeking amendment of various sections of part 95, subpart F, of the Commission's Rules, 47 CFR part 95, subpart F. The effect of this action is to provide greater flexibility to system licensees in designing their systems.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: The Commission's Memorandum Opinion and Order, adopted July 16, 1992, and released August 4, 1992, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239) 1919 M Street, NW., Washington, DC. The complete text of this decision, including the rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary of Memorandum Opinion and Order

1. This action amends the rules for the Interactive Video and Data Service. The amended rules are set forth at the end of this document.

2. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), see 5 U.S.C. 604, our final analysis is as follows:

a. Need for, and Objectives of, Rules

Our objective is to establish a consumer oriented interactive video and data service. The rules adopted herein will allow flexibility in implementing this new service, while reducing the potential for this service to interfere with existing services.

b. Issues Raised by the Public in Response to the Initial Analysis

The commenters generally agree that revisions to some of the rules for this service are needed. These revisions may eliminate unnecessary and costly administrative burdens on small entities. We note that any impact of this action on entities, some of whom may be small entities, will be to reduce the cost of doing business.

c. Any Significant Alternatives Considered and Rejected

The Commission did not reject any alternative designed to minimize the economic impact of the amended rules on small entities.

4. This Memorandum Opinion and Order and rule amendments are issued under the authority of sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 405, and Section 1.429(i) of the Commission's Rules, 47 CFR 1.429(i).

5. A copy of this Memorandum Opinion and Order will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 95 of chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.805 is amended by revising paragraph (d) to read as follows:

§ 95.805 Permissible communications.

* * * * *

(d) The licensee may use the IVDS system to interact with its subscribers concerning products and services offered, polls conducted, educational classes taught, and other activities in conjunction with video and data delivery systems.

* * * * *

3. Section 95.811 is amended by revising paragraph (b) to read as follows:

§ 95.811 License requirements.

* * * * *

(b) Each CTS where the antenna does not exceed 6.1 meters (m) (20 feet) above ground or an existing man-made structure (other than an antenna structure) is authorized under the IVDS system license. All other CTSs must be individually licensed to the system licensee.

* * * * *

4. Section 95.815 is amended by revising paragraph (b) to read as follows:

§ 95.815 License application.

* * * * *

(b) Each application for an IVDS system license and each application for a CTS license where the CTS antenna exceeds 6.1m (20 feet) (see § 95.811(b)) must be made on a separate FCC Form 574. Each application for an IVDS system license must be submitted to the Federal Communications Commission, Interactive Video and Data Service, P.O. Box 358365, Pittsburgh, PA 15251–5365. Each application for the CTS must be submitted to the address set forth in § 1.1102 of the Commission's Rules.

* * * * *

5. Section 95.859 is revised to read as follows:

§ 95.859 Antennas.

(a) The CTS antenna includes the radiating element(s), tower, supports and all appurtenances. No CTS antenna shall be elevated higher than necessary to assure adequate service.

(1) A CTS antenna located within a boundary line 16 km (10 miles) outside the Grade B contour of a TV Channel 13 station may not exceed a maximum Height Above Average Terrain (HAAT), as defined in § 90.309, and maximum ERP as set forth below:

HAAT		Maximum ERP (watts)
(m)	(feet)	
0–36.6	0–120	20.0
36.6–73.2	121–240	5.0
73.3–152.4	241–500	1.2
152.5–304.8	501–1000	0.29
304.9–609.6	1001–2000	0.073

(2) A CTS antenna located beyond a boundary line 16 km (10 miles) outside the Grade B contour of a TV Channel 13 station may not exceed a maximum HAAT, as defined in § 90.309, and maximum ERP as set forth below:

HAAT		Maximum ERP (watts)
(m)	(feet)	
0–152.4	0–500	20.0
152.5–304.8	501–1000	5.0
304.9–609.6	1001–2000	1.2

(b) No CTS antenna shall be located within 61 m (200 feet) of a residential dwelling unless the IVDS system licensee has reduced power such that the field strength of the CTS antenna at the residential dwelling does not increase relative to the field strength of the CTS antenna at 61 m or obtained the written concurrence of the resident(s) within 61 m of the CTS antenna. The written concurrence must be kept as part of the IVDS system authorization.

(c) The RTU may be connected to an external antenna not more than 6.1 m (20 feet) above ground or above an existing man-made structure (other than an antenna structure). Connectors that are used to connect RTUs to an external antenna shall not be of the types generally known as "F-type" or "BNC type." Use of an external antenna is subject to § 95.861.

6. Section 95.861 is amended by revising paragraph (c) to read as follows:

§ 95.861 Interference.

* * * * *

(c) Unless the IVDS system licensee obtains written consent from the TV Channel 13 station licensee to dispense with this notification, each IVDS system licensee must notify all households located both within a TV Channel 13 station Grade B predicted contour and the IVDS system service area of the potential for interference from an IVDS system. The IVDS system licensee must also inform those potentially affected households that it will eliminate any objectionable interference to television reception caused by its IVDS system. This notification shall be made no earlier than two weeks before and no later than two weeks after initiation of IVDS in the TV Channel 13 station Grade B predicted contour. The written consent must be kept as part of the IVDS system authorization.

* * * * *

[FR Doc. 92–19279 Filed 8–12–92; 8:45 am]
BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-74; Notice No. SC-92-5-NM]

Special Conditions: SAAB 2000 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the SAAB Model 2000 airplane. This airplane will utilize electrical and electronic systems which perform critical and essential functions. These systems include electronic displays which present critical and essential flight and engine parameters to the flightcrew, and electronic propulsion and propeller controls. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-74, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-74. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-74." The postcard will be date stamped and returned to the commenter.

Background

On April 28, 1989, SAAB SCANIA AB of Sweden applied for an FAA Type Certificate through the Swedish LFV to the FAA, AEU-100, for the SAAB 2000. (The application for FAA Type Certificate was dated June 9, 1989.)

The SAAB 2000 is a twin-engined, low-wing, pressurized turboprop aircraft for approximately 50 passengers, intended for short to medium haul (100 nm to 1,000 nm). The airplane will have two new Allison GMA-2100 engines rated at 3650 shp. The propeller is a new 6 bladed Dowty Rotol swept shaped propeller. A single level controls each prop/engine combination. A new APU installation has been added in the tail. The fuselage cross-section will be the same as the SAAB 340. The fuselage skin will be thicker to handle greater pressures. The wing and empennage are new and larger in all dimensions and the fuselage is longer when compared to the SAAB SF-340B. The new cockpit will be a 5 or 6 screen CRT display with new Collins systems. There will be provisions for a Microwave Landing System, Global Positioning System, SELCAL, EICAS, and TCAS systems. The landing gear system will be new. The rudder system will be powered by two hydraulic systems (no manual reversion). The airplane will have provisions for two pilots, an observer, two flight attendants, overhead bins, a toilet, and provisions for the installation of a galley. There will be forwarded and aft stowage compartment and an aft cargo compartment. The airplane will have a maximum operating altitude of 31,000 feet.

Type Certification Basis

The applicable requirements for U.S. type certification must be established in accordance with §§ 21.16, 21.17, 21.19, 21.29, and 21.101 of the Federal Aviation Regulations (FAR).

The changes discussed above are so extensive that to comply with § 21.19, a new Type Certificate will be required for the SAAB 2000. Accordingly, based on the application date of June 9, 1989, the TC basis for this airplane is as follows:

Part 25, Amendments 25-1 through 25-66.

Section 25.963(e), Amendment 25-69, Design Standards for Fuel Tank Access Covers.

Section 25.1423, Amendment 25-70, Independent Power Sources for the Public Address System.

Part 25, Amendment 25-71.

Part 25, Amendment 25-72 for the following sections:

- § 25.361 Engine torque.
- § 25.365 Pressurized compartment loads.
- § 25.571 Damage tolerance and fatigue evaluation of structure.
- § 25.772 Pilot compartment doors.
- § 25.773 Pilot compartment view.
- § 25.783(g) Doors.
- § 25.905(d) Propellers.
- § 25.933 Reversing systems.

Part 25, Amendment 25-73 for the following sections:

- § 25.903(a) Engines.

§ 25.951(d) Fuel System—General.
Part 34 (As replacement for SFAR 27).
Part 36, Latest amendment at TC.
Lightning and HIRF Protection special conditions.
Any equivalent safety findings.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the SAAB 2000 which would require that new technology electrical and electronic systems, such as the electronic flight and engine information displays, electronic propulsion controls, and electronic propeller controls be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, a clarification on the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅓ magnitude of Component D (peak aptitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up to 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

Where:

$i(t) = I_o (e^{-\alpha t} - e^{-\beta t})$

t = time in seconds,

i = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple stroke (½ Component D)	Multiple burst (Component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$(amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	0.625×10^6	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—500 KHz	60	60
500 KHz—2 MHz	80	80
2 MHz—30 MHz	200	200
30 MHz—100 MHz	33	33
100 MHz—200 MHz	150	33
200 MHz—400 MHz	56	33
400 MHz—1 GHz	4,020	935
1 GHz—2 GHz	7,850	1,750
2 GHz—4 GHz	6,000	1,150
4 GHz—6 GHz	6,800	310
6 GHz—8 GHz	3,600	666
8 GHz—12 GHz	5,100	1,270
12 GHz—18 GHz	3,500	551
18 GHz—40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

According, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certificate basis for the SAAB 2000:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF) Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions

Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions

Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 6, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 92-19349 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ASO-8]

Proposed Establishment of Transition Area, Crystal River, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish a transition area at Crystal River, FL. A standard instrument approach procedure (SIAP) has been developed to serve the Crystal River-Homosassa Air Terminal Airport. This proposed action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport to provide additional controlled airspace for instrument flight rules (IFR) aeronautical operations. If approved, the operating status of the airport will change from visual flight rules (VFR) only to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: September 25, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-8, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Crystal River, FL Transition Area. A SIAP has been developed to serve the Crystal River—Homosassa Air Terminal Airport. This action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport in order to provide additional airspace for IFR aeronautical operations. If approved, the operating status of the airport will change from VFR only to include IFR operations concurrent with publication of the proposed SIAP. Transition Areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in this Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

* * * * *

Section 71.181 Designation

* * * * *

ASO FL TA Crystal River, FL

Crystal River, Crystal River-Homosassa Air Terminal Airport, FL

(lat. 28°52'03"N, long. 82°34'29"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Crystal River-Homosassa Air Terminal Airport.

* * * * *

Issued in East Point, Georgia, on August 4, 1992.

Don Cass,

Acting Manager, Southern Region, Air Traffic Division.

[FR Doc. 92-19110 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 92-168; FCC 92-345]

License Renewal Dates of FM and TV Translator Stations and LPTV Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Through this Notice of Proposed Rule Making, the Commission proposes to change license renewal dates of FM and TV translators stations and low power television ("LPTV") stations to that of full power stations operating in the same state. The Commission also proposes to revise FCC Form 303–S to permit the use of a single renewal application form by licensees of full power broadcast stations, which also seek to renew their commonly owned translator or LPTV stations that have the same renewal dates. The Commission believes these changes will streamline the license renewal process and eliminate unnecessary paperwork and administrative burdens on licensees and the Commission.

DATES: Comments are due on or before September 28, 1992, and reply comments are due on or before October 19, 1992.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz or Eugenia R. Hull, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 92–168, adopted July 24, 1992, and released August 4, 1992. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Synopsis of Notice of Proposed Rule Making

1. By this Notice of Proposed Rule Making ("Notice"), the Commission proposes to change the license renewal dates of FM and TV translator stations and low power television ("LPTV") stations to that of full power stations operating in the same state. The Commission also proposes to revise FCC Form 303–S to permit the use of a single renewal application form by licensees of full power broadcast stations, which also seek to renew their commonly owned translator or LPTV stations that have the same renewal dates. Unlike the license expiration schedule for most of the other services licensed, the schedule for FM and TV translators and LPTV stations is not the same as that for full power broadcast stations in the same state. Translator and LPTV stations are licensed for terms determined by a uniform renewal schedule for the state in which they are located, but this schedule is not concurrent with the similar renewal schedule for full power stations. Under current rules, a single licensee may be required to file, at different times, multiple applications with the Commission. The information called for by these separate application forms (FCC Forms 303–S and 348) is substantially similar in nature.

2. The difference in renewal dates places an unnecessary administrative burden on both licensees and the Commission. Currently, licensees of full power stations that own several translators or LPTV stations must file a separate renewal application for each station. This is true even where the full power station and the secondary station have the same renewal date or are located in the same state. By conforming the expiration dates of broadcast stations located in the same state, and allowing a broadcaster to file a single renewal application to cover all of its broadcast stations having the same renewal date, the Commission could decrease the administrative burden to full power station licensees that also own translators or LPTV stations. The proposed rule change should also ameliorate two other aspects of the current system. First, it has been the Commission's experience that translator licensees often mistakenly base the filing of their renewal applications on the expiration date of the primary station being rebroadcast, which increases the administrative burden on the Commission and may jeopardize the licenses in question. Second, the Commission believes that under the current system, it may be more difficult than necessary for the public to follow the licensing process because different stations in the same area may have different renewal dates. The Commission's proposal would result in fewer filing errors and should maximize public awareness of the renewal process.

3. The Commission is cognizant that the transition to a revised renewal schedule may implicate certain statutory considerations. Specifically, the Communications Act prohibits lengthening television and radio broadcast license terms beyond five and seven years, respectively. The Commission also believes shortening the terms of existing licenses in these circumstances could result in confusion or unfairness. In order to comply with the Communications Act, the Commission proposes to leave the terms of existing licenses unchanged and would continue to grant authorizations for new stations in accordance with the schedule set forth in § 74.15 of the Commission's Rules. This will enable the Commission to effectuate the proposed change in an efficient, comprehensive manner. For existing LPTV or translator stations, the Commission would renew licenses, when the occasion arises, for a shorter term to expire in accordance with the schedule for full power broadcast stations as set forth in § 73.1020 of the Commission's Rules.

4. The Commission tentatively concludes that such a transition would serve the public interest, convenience and necessity by establishing greater consistency in the licensing process. The process of changing to the new schedule may require the filing of two applications for some LPTV or translator stations within a short period of time, but the Commission believes this will ultimately result in greater efficiency. The Commission invites comment on this proposal. Would adoption of the Commission's proposal, including one-time short-term renewals for some licensees, on balance reduce this burden? Are there merits to the current licensing structure that would be lost if the proposed change in renewal dates were adopted?

Initial Regulatory Flexibility Analysis

5. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

I. Reason for Action

The purpose of this Notice is to consider changes to the Commission's Rules governing the timing for renewal of TV auxiliary broadcast, FM and TV translator and low power TV station licenses.

II. Objectives

This action is intended to reduce unnecessary administrative and paperwork burdens on the Commission and on licensees of stations licensed under Part 74 of the Commission's Rules by simplifying the renewal process. In addition, this action is intended to clarify the renewal process for interested members of the public.

III. Legal Basis

Authority for the actions proposed in this Notice may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping, and Other Compliance Requirements

None.

V. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

VI. Description, Potential Impact and Number of Small Entities Involved

Approximately 8,000 licensees of all sizes may be affected by the proposals contained in this Notice.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

If adopted, the proposals contained in this Notice would reduce administrative burdens on small entities.

Ex Parte Rules

6. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Information

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 28, 1992, and reply comments on or before October 19, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

8. Authority for this action is contained in 47 U.S.C. 154 and 303.

List of Subjects in 47 CFR Part 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-19280 Filed 8-12-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018-AB75

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Endangered Status for Four Fairy Shrimp and the Vernal Pool Tadpole Shrimp in California

AGENCY: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed endangered species status for the vernal pool fairy shrimp (*Branchinecta lynchi*), Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), California linderiella (*Linderiella occidentalis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*). The hearing will allow all interested parties to submit oral or written comments on the proposal. In addition, the Service reopens the public comment period from August 31, 1992, to September 18, 1992. A proposed rule to list these five species as endangered was published on May 8, 1992 (57 FR 19856).

DATES: The public hearing will be held from 6 p.m. to 8 p.m. on Monday, August 31, 1992, in Sacramento, California. Comments from all interested parties must be received by September 18, 1992. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Radisson Hotel, 500 Leisure Lane, Sacramento, California. Written comments and materials should be sent directly to the Field Supervisor, Sacramento Field Office, 2800 Cottage Way, room E-1823, Sacramento, California 95825. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Nagano, Sacramento Field Office (see **ADDRESSES** section) at 916/978-4866.

SUPPLEMENTARY INFORMATION:

Background

The four fairy shrimp and the vernal pool tadpole shrimp are restricted to vernal pools and swales in California. It has been estimated that 90 percent of these habitats have been destroyed by human activities and the rate of loss continues at a rate of 2 or 3 percent annually. The four fairy shrimp and the vernal pool tadpole shrimp are sporadic in their distribution and they also may only inhabit one or a few pools in vernal pool or swale complexes. The vernal pool tadpole shrimp is found in the Sacramento Valley. The Conservancy fairy shrimp is known from the Vina Plains north of Chico in Tehama County, the Jepson Prairie in Solano County, and the Haystack Mountain area northeast of Merced in Merced County. The longhorn fairy shrimp is known from the Kellogg Creek watershed in Contra Costa County, the Altamont Pass area in Alameda County, and the Soda Lake area in San luis Obispo County. The vernal pool fairy shrimp is found at scattered localities ranging from the Vina Plains in Tehama Country through most of the length of the Central Valley and the eastern margin of the Central Coast Range to the mountain grasslands of northern Santa Barbara County. There are disjunct populations located on the Santa Rosa Plateau and near Rancho Santa California in Riverside County. The California linderiella is found at scattered localities in the Central Valley from east Red Bluff in Tehama County to east of Madera in Madera County and across the valley in the Sacramento area to the San Francisco Bay area; disjunct populations are located in the Monterey Bay area and southern California.

The four fairy shrimp and the vernal pool tadpole shrimp proposed for listing are imperiled by commercial, residential, and agricultural development; changes in the

hydrological patterns of their vernal pool and swale habitat; off-road vehicle use; inadequate regulatory mechanisms that protect sites inhabited by these species; and perhaps stochastic (i.e. random) extinction by virtue of the small isolated nature of the remaining populations. A proposed rule to list the vernal pool fairy shrimp, Conservancy fairy shrimp, longhorn fairy shrimp, California linderiella, and the vernal pool tadpole shrimp as endangered species was published in the **Federal Register** on May 8, 1992 (57 FR 19856).

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On June 4, 1992, the Service received a written request for a public hearing from Mr. George Robson of the Tehama County Planning Department. Several other requests for a public hearing were received as well. As a result the Service has scheduled a public hearing for August 31, 1992, from 6 p.m. to 8 p.m. in the Radisson Hotel, 500 Leisure Lane, Sacramento, California.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation.There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on September 18, 1992. Written comments should be submitted to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Mr. Chris Nagano, Sacramento Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 State. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 31, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–19313 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Phero Tech Inc.; Notice of Intent to Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive patent license to Phero Tech Inc., British Columbia, Canada, on U.S. Patent Application Serial No. 07/662,601, "Green Leaf Volatiles as Inhibitors of Bark Beetle Aggregation Pheromones," filed March 1, 1991. Notice of Availability was given in the Federal Register on May 22, 1991.

DATES: Comments must be received within 60 calendar days of the date of publication of this Notice in the Federal Register.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/504–6786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant an exclusive license to practice the aforementioned invention. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive patent license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive patent license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,
Assistant Administrator.

[FR Doc. 92–19312 Filed 8–12–92; 8:45 am]
BILLING CODE 3410–03–M

Rural Electrification Administration

Cajun Electric Power Cooperative, Inc.; Intent to Prepare an Environmental Assessment and/or Environmental Impact Statement and Hold Scoping Meetings

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) intends to prepare an environmental assessment (EA) and/or environmental impact statement (EIS) for its action related to a proposal by Cajun Electric Power Cooperative, Inc., to construct a 230— transmission line. REA's environmental review of the transmission line will be conducted in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (40 CFR Parts 1550–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794).

Notice is also given of public scoping meetings to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the proposed project.

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: Cajun Electric Power Cooperative, Inc., proposes to construct a 230 kV transmission line from its Big Cajun II power plant in Pointe Coupee Parish east of New Roads, Louisiana, to the Coughlin Substation in St. Landry Parish south of St. Landry, Louisiana.

Alternatives to be considered by REA and Cajun Electric Power Cooperative, Inc., include no action, various transmission line corridors, alternative voltages, alternative design and materials, alternative interconnection points, load management, conservation, interruptible load, power purchases, construction of new generation facilities, and wheeling power via another utility system.

Public scoping meetings related to REA's environmental review of the project will be held at the following locations at the dates and times indicated:

American Legion Post 305
Highway 107
Morrow, Louisiana
6:30 p.m.
September 15, 1992

Morganza Fire Station
Sansonne Road and Highway 1
Morganza, Louisiana
6:30 p.m.
September 16, 1992

Issues to be discussed at the public scoping meeting may include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of environmental issues and the scope of those issues, and other reviews or studies that REA or other Federal, State of Louisiana, or local agencies may conduct. Government agencies, other organizations, and the public are invited to participate in these meetings.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meeting or in writing within 30 days after the September 16, 1992, meeting to REA at the address provided in this notice.

To be presented at the meeting will be an alternative evaluation and macro-corridor study submitted to REA by Cajun Electric Power Cooperative, Inc.

The alternative evaluation and macro-corridor study are available for public review at REA at the address provided in this notice or at Cajun Electric Power Cooperative, Inc., at 112 Telly Street, New Roads, Louisiana 70760. They can also be reviewed at the Pointe Coupee Parish Library, 201 Claiborne Street, New Roads, Louisiana, and the Avoyelles Parish Library, 107 West Oak Street, Bunkie, Louisiana.

Based on the alternative evaluation, the macro-corridor study, input from interested local, State of Louisiana, and Federal agencies and the public, Cajun Electric Power Cooperative, Inc., will prepare an environmental analysis to be submitted to REA for review. If significant effects are not evident based on a review of the environmental analysis and other relevant information, REA will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the Council on Environmental Quality and REA environmental policies and procedures.

Dated: August 7, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92-19311 Filed 8-12-92; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Procedures for Initiation of Downstream Product Monitoring.

Form Number: Agency – None.

OMB Approval Number: 0625-0200.

Type of Request: Extension of the expiration date.

Burden: 30 hours.

Number of Respondents: 2.

Avg Hours Per Response: 15 hours.

Needs and Uses: Under Section 1320 of the Omnibus Trade and Competitiveness Act of 1988, a domestic producer of an article that is like a component part or a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. Section 1320, and ITA's interim-final rule, requires that the petition identify the downstream product to be monitored, the relevant component part, and the reasons for suspecting the likely diversion of foreign exports of the component part, and the reasons for suspecting the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. ITA will evaluate the petition and will issue either an affirmative of negative monitoring determination.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340, Room 3208, New Executive Office Building, Washington, D.C. 20230.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Albacore Fishing Operation Information.

Form Number: Agency – 88-197.

OMB Approval Number: 0648-0223.

Type of Request: Revision.

Burden: 100 hours.

Number of Respondents: 50 (2 responses per respondent).

Avg Hours Per Response: 1 hour.

Needs and Uses: Vessel captains voluntarily supply information on catch, fishing effort, the size of fish caught, and other operational and environmental information. The logbook system supplies data for monitoring the status of Pacific albacore fished by the U.S. Summaries of the fleet's performance are supplied to the fishermen.

Affected Public: Small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ron Minsk, (202) 395-3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Agency: Patent and Trademark Office (PTO).

Title: Rules for Patent Maintenance Fees.

Form Number: Agency – PTO-1536.

OMB Approval Number: 0651-0016.

Type of Request: Extension of the expiration date.

Burden: 8,714 hours.

Number of Respondents: 104,569.

Avg Hours Per Response: .08 hours.

Needs and Uses: The patent number and serial number of the patent on which maintenance fees are paid are required in order to insure proper crediting of such payments. Such payments are required to maintain a patent in effect.

Affected Public: Individuals; businesses or other for-profit institutions; Federal agencies or employees.

Frequency: Once every four years.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395-3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D. C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: August 7, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR DOC. 92-19276 Filed 8-12-92; 8:45 am]

Billing Code 3510-CW-F

International Trade Administration

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers

data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Thursday, September 17, 1992 from 10 a.m. to 5 p.m. in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Kettz, Office of Automotive Industry Affairs, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 377–0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 24, 1991, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c) (4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: August 4, 1992.

Henry P. Misisco,

Director, Office of Automotive Industry Affairs.

[FR Doc. 92–19342 Filed 8–12–92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 920800–2200]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries.

SUMMARY: This notice announces that owners of commercial vessels, including party and charter vessels, entering the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries (fisheries) after August 13, 1992 (control date) will not be assured of future access to or an allocation of the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish resources if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of a potential eligibility criterion for access to the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish resources and to discourage new entries into these fisheries based on economic speculation while the Mid-Atlantic Fishery Management Council (Council) contemplates whether and how access to the fisheries should be controlled. This announcement does not prevent any other date for eligibility in the fisheries or another method of controlling fishing effort from being proposed and implemented.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302–674–2331; or Richard Seamans, National Marine Fisheries Service, 508–281–9244.

SUPPLEMENTARY INFORMATION: Since the inception of management of these species under the Magnuson Act, the catch by the U.S. fishery has increased substantially. The capacity of the domestic fleet to harvest the annual quotas of *Loligo* and *Illex* squid and butterfish has eliminated the foreign directed fishery for these species of fish. A combination of resource abundance and an expansion of current markets, as well as the existing capacity of the fleet, will result in constraints being imposed on these fisheries as levels of harvest, particularly for *Loligo* squid, are approaching allowable biological levels. Thus, there is a need to discourage additional entry into these fisheries.

While the domestic catch of mackerel has fallen far short of allowable levels of harvest, this is due to a number of factors that cannot be controlled by the Council, principally the lack of markets and the availability of mackerel in commercial quantities. The Council believes that there currently exists the capacity in the fleet of vessels permitted to fish for mackerel to harvest the allowable biological catch of mackerel if the market and availability factors align themselves beneficially.

Since many of the fisheries on both coasts are overfished and facing significant reductions in effort to rebuild the fish stocks affected, the Council intends for the control date to preclude speculative entry into the mackerel fishery should market conditions permit an increase in the harvest of mackerel. The control date will promote an orderly development of the fishery and allow those who have invested substantially in harvesting and processing capital equipment to realize a return on their investments.

The Council intends to address whether and how to limit entry of commercial vessels, including party and charter vessels, into these fisheries in Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. As noted above, the Council's intent in making this announcement is to discourage speculative entry into the fisheries while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish *bona fide* established fishermen from the speculative entrants to the fishery. Although fishermen are notified that entering the fishery after the control date will not assure them of future access to the fisheries on the grounds of previous participation, other qualifying criteria also may be applied.

This announcement hereby establishes a control date of August 13, 1992 for potential use in determining historical or traditional participation in the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries. This action does not commit the Council to develop any particular management regime or any specific criteria for determining entry to the Atlantic mackerel, *Loligo* and *Illex* squid, and/or butterfish fisheries. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in these fisheries before and after the control date. The Council may choose also to take no further action to control entry or access to the fisheries. Any action by the Council will be taken pursuant to the requirements for fishery management plans established under the Magnuson Act.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: August 7, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-19343 Filed 8-12-92; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public hearing on Tuesday, August 25, 1992, to discuss proposals for a Gulf-wide closed season on mutton snapper during May and June, and restriction on all fishing activities in the area of Riley's Hump during that period. The hearing will be held at the American Legion Hall, 5610 College Road, Key West, Florida (telephone: (305) 294-7117).

DATES: Written public comments on the proposed actions must be received in the Council office by September 8, 1992.

ADDRESSES: Send written comments to Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida 33609-2486.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida, (813) 228-2815.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19242 Filed 8-12-92; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's (Council) Queen Conch Committee (QCC), Scientific and Statistical Committee (SSC), and Advisory Panel (AP) will hold public meetings on August 27-28, 1992, at the Antibes Hotel, Road 102 Km 14.6, Barrio Joyuda, Cabo Rojo, Puerto Rico.

The QCC, the SSC, and the AP will meet jointly on August 27, 1992, from 10 a.m. to 12 noon, to hear presentations on the Regulatory Impact Review (RIR) and the Social Impact Assessment (SIA) for the queen conch fishery. On the same date (August 27), from 1 p.m. to approximately 5 p.m., the SSC and the AP will meet separately to discuss the issues brought up at the RIR and the SIA presentations. Both groups are expected to submit their respective suggested actions to the QCC. The QCC will meet on August 28, from 9 a.m. to 12 noon, to review the suggested actions and develop it's recommendations to the Council.

Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda issues. Simultaneous interpretation services (Spanish-English) will be offered at the joint meeting and at the QCC meeting.

For more information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19272 Filed 8-12-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Change in Public Meeting Date and Location

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and location of a public meeting of the North Pacific Fishery Management Council's Gulf of Alaska Rockfish Committee originally published in the **Federal Register** at 57 FR 33173, on July 27, 1992, has been rescheduled. The changes are noted below; all other information originally published on July 27, 1992, remains unchanged.

Change: August 20-21, 1992, meeting in Juneau, Alaska.

To: September 14-15, 1992, meeting in Juneau, Alaska, beginning at 1:00 p.m. on September 14.

Change Location of Meeting To: Bureau of Indian Affairs Conference Room (Suite 5), Federal Building Annex, 9109 Mendenhall Mall Road, Juneau, Alaska.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19274 Filed 8-12-92; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on August 24-28, 1992, at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC, telephone: (803) 571-1000. A detailed agenda with specific meeting times is available to the public. The agenda items are as follows.

The Council's Controlled Access Committee (CAC) will review information on the number of fishermen and dealers actively participating in the deep-water snapper-grouper complex and in the amberjack fishery to help determine if individual transferable quota (ITQ) limited entry programs are appropriate for the management of these fisheries.

An ITQ program could allow fishermen who qualify under a control date and minimum catch requirements to receive percentage shares for the fishery. These percentage shares translate into ITQs that are transferable among fishermen.

The Council is studying variations of existing ITQ programs for possible use in managing the following groupings: golden tilefish; blueline (gray) tilefish and snowy and yellowedge grouper; and possibly the speckled hind, red porgy and silk and vermilion snapper fisheries in deeper water.

The Committee also will review the North Pacific Council's halibut and sablefish ITQ tracking program and the status of the South Atlantic wreckfish ITQ program, which was implemented in April.

The Council's CAC and the Mackerel Committees from the Gulf of Mexico and the South Atlantic Councils will meet jointly to discuss possible limited entry systems, including individual transferable quotas, as management options for King and Spanish mackerel.

The Council has set a July 30, 1991, control date for the snapper-grouper and amberjack fisheries and a January 1, 1992, control date for the King and Spanish mackerel fisheries. There would be no guarantee of inclusion for individuals entering these fisheries after

these dates if the Council decides to implement ITQ programs or other controlled access systems.

Next, the National Marine Fisheries Service (NMFS) officials will update the Shrimp Committee on the status of the biological opinion being drafted by NMFS to comply with the requirements of the National Environmental Policy Act and the Endangered Species Act and for inclusion in the proposed shrimp fishery management plan developed by the Council. The NMFS had informed the Council in February that this opinion had to be included in the shrimp plan before it is submitted to the Secretary of Commerce for formal review. The Council deferred submitting the plan until it received the opinion which is to be available at the August Council meeting. According to NMFS officials, the biological opinion is necessary to evaluate the fishery's impact on endangered sea turtles.

The draft shrimp plan would allow states to request concurrent closures in adjacent Federal waters to shrimping following severe winter mortality of white shrimp.

The Committee will decide whether the closures would apply only to Federal waters adjacent to the states requesting the closure (Georgia and/or South Carolina) or whether some northeastern Florida counties should also be included in the closures. To aid enforcement, the Council will consider the possibility of defining a "buffer zone" inside of which trawling for rock shrimp would be prohibited during a closure. Details of permit requirements will be discussed also.

A meeting of the Law Enforcement Committee has also been scheduled during which a U.S. Coast Guard representative will give a presentation on vessel safety, and a representative from the National Oceanic and Atmospheric Administration will review the new penalty schedule for violations of fisheries regulations. Committee members will discuss the legal off-loading hours for wreckfish and the required display of vessel numbers on boats.

The Council will hold a closed (not open to the public) session of the Advisory Panel Selection Committee on August 28, from 1:30 p.m. until 2:30 p.m.

For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19273 Filed 8–12–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for modification of Permit No. 747 (P45H).

Notice is hereby given that the U.S. Fish and Wildlife Service, Fisheries and Federal Aid, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, requested a modification to Permit No. 747, issued on August 8, 1991, (56 FR 40312), under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1407) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222).

Permit No. 747 currently authorizes scientific research and captive propagation of Sacramento River winter-run chinook (*Onchorynchus tshawytscha),* including the capture of up to 20 adults per year for broodstock purposes, the incubation of up to 35,000 of their eggs and the rearing of the resulting juveniles for eventual release into the upper Sacramento River.

The applicant now requests authorization to transfer up to a total of 1000 of the above juveniles each year to Steinhart Aquarium (California Academy of Sciences) and Bodega Marine Laboratory (University of California at Davis) for extended captive rearing to near sexual maturity with subsequent transfer back to Coleman National Fish Hatchery for use as broodstock. It is also requested that an additional 65,000 eggs from this broodstock be authorized for incubation and rearing. The applicant proposes to PIT tag and eventually release these fish into the Sacramento River.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: August 7, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–19268 Filed 8–12–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

ACTION: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Amendment of Scientific Research Permit No. 707 (P77#40).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 707, issued to The Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, on May 31, 1990 (55 FR 23268), is amended to authorize the capture, treatment, and release of emaciated monk seals (*Monachus schauinslandi)* from French Frigate Shoals to Midway Atoll for the purpose of enhancement of the species. This amendment became effective July 31, 1992.

Documents pertaining to this Amendment and Permit are available for review in the following offices by appointment.

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, National Marine Fisheries Service, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

Dated: August 7, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–19267 Filed 8–12–92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Board of Trade (CBOT) has applied for designation as a contract market in CBOT Wilshire Small Cap Index futures and options on that futures contract. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 14, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBOT Wilshire Small Cap Index futures contract or the options on that futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBOT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBOT in support of the applications, should send such comments to Jean A.Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 7, 1992.

Gerald Gay,

Director.

[FR Doc. 92–19241 Filed 8–12–92; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on September 1, 1992, in Gaithersburg, Maryland. The purpose of the meeting is to discuss current research to develop a test method to measure cigarette ignition propensity and matters related to implementation of the Fire Safe Cigarette Act.

DATES: The meeting will be from 9 a.m. to 4 p.m. on September 1, 1992.

ADDRESSES: The meeting will be in Room B–119, Building 224, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 504–0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0470.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101–352, 104 Stat. 405) directs the Commission, with assistance from the National Institute of Standards and Technology (NIST) and the Department of Health and Human Services, to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on September 1, 1992, to discuss current research to develop a test method to measure cigarette ignition propensity; the status of a cigarette fire incident study; plans to evaluate the possible health effect of cigarettes with reduced ignition propensity; and other administrative and operational plans to implement the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: August 7, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–19260 Filed 8–12–92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Defense Science Board/Defense Policy Board Task Force on Chemical Weapons and Biological Defense Policy; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Defense Science Board/Defense Policy Board Task Force on Chemical Weapons and Biological Defense Policy will meet in closed

session on 22 September, 1992, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. The mission of the Defense Policy Board is to advise the Secretary of Defense and the Under Secretary of Defense for Policy on security policy matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will receive briefings on current capabilities and deficiencies of U.S. forces in the area of biological defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19303 Filed 8–12–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Policy Board Task Force on the Future of American Nuclear Forces

ACTION: Notice of Task Force Meeting.

SUMMARY: The Defense Policy Board Task Force on The Future of American Nuclear Forces will meet in closed session on 15–16 September 1992 from 0800 to 1700 at the RDA Logicon Facility located at Sequoia Plaza, 2100 Washington Boulevard, Arlington, VA. The mission of the Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning matters relating to U.S. nuclear force policy. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1982), it has been determined that this Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: August 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19304 Filed 8–12–92; 8:45 am]

BILLING CODE 3810–01–M

Meeting of the Advisory Council on Federal Participation in SEMATECH

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Advisory Council on Federal Participation in SEMATECH will meet on September 1, 1992 to establish a methodology to advise the Secretary of Defense and SEMATECH on appropriate technology goals for the research and development activities of SEMATECH and provide a plan to achieve these goals. The meeting will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of section 552b(c), title 5, U.S.C.

The address of the meeting will be at The Seismic Center, 1300 N. 17th Street, suite 1450, Arlington, VA.

For additional information contact Dr. Nicholas J. Maclerio, Program Manager, DARPA/ESTO, 3701 N. Fairfax Drive, Arlington, VA, 22203–1714, telephone: 703–696–2216.

Dated: August 6, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19302 Filed 8–12–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Personnel Property Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

Announcement is made of meeting of the Military Personnel Property Symposium. This meeting will be held on 17 September 1992 at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

PROPOSED AGENDA: The purpose of the symposium is to prove an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, (703) 756–1600 between 0800–1530 hours. Topics to be discussed should be received on or before 21 August 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–19246 Filed 8–12–92; 8:45 am]

BILLING CODE 3710–08–M

Performance Review Boards; Membership

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, room 2C670, Washington, DC 20310–0300.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Mr. Thomas E. Davidson, Technical Director for Armaments, U.S. Army Armament, Munitions and Chemical Command
2. Mr. Lester A. Griffin, Director of Product Assurance, U.S. Army Armament, Munitions and Chemical Command
3. Mr. Donald R. Lathrop, Deputy for Resources and Management, U.S. Army Armament, Munitions and Chemical Command
4. Mr. Jimmy C. Morgan, Deputy for Procurement and Production, U.S. Army Armament, Munitions and Chemical Command

. Mr. Perry C. Stewart, Deputy for

Logistics Readiness, U.S. Army Armament, Munitions and Chemical Command.

The members of the Performance Review Board for the U.S. Army Corps of Engineers (USACE) are: 1. MG Peter J. Offringa, Deputy Commander, USACE.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-19249 Filed 8-12-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Construction and Operation of an Optical Interferometer Facility in the Los Padres National Forest, California

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed construction and operation of an optical interferometer facility in the Los Padres National Forest, California.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

Public hearings to inform the public of the DEIS findings and to solicit comments will be held on September 22, 1992, beginning at 7 p.m., in the Sunset Center Scout House, 8th Avenue and Mission Street, Carmel, California; and September 23, 1992, beginning at 7 p.m., in the City of Flagstaff Council Chambers, 211 West Aspen Avenue, Flagstaff, Arizona.

The public hearing will be conducted by the Navy, the U.S. Forest Service is a cooperating agency in the preparation of the DEIS. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by October 13, 1992, to become part of the official record.

The DEIS discusses the impacts of constructing and operating the proposed facility at three alternative sites: Chews Peak, Los Padres National Forest, Monterey County, California; Anderson Peak, Los Padres National Forest, Monterey County, California; and the Naval Observatory Flagstaff, Arizona.

Additional information concerning this notice may be obtained by contacting Ms. Patricia Duff (Code 203), Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066, telephone (415) 244-3715.

Dated: August 7, 1992.

Patrick W. Kelley,

Captain, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-19265 Filed 8-12-92; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet September 15, 1992, from 9 a.m. to 5 p.m., in Alexandria, Virginia.

The purpose of this meeting is to review maritime environment issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of discussions of key issues related to international environmental implications for the Navy and acquisition requirements.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: August 4, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-19286 Filed 8-12-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; National Assessment of Educational Progress

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice.

SUMMARY: The National Assessment Governing Board (the Governing Board) is inviting comment on policy issues related to the National Assessment of Educational Progress (NAEP). Interested parties should review the discussion paper on NAEP policy issues described under Supplementary Information below. Copies of the discussion paper may be requested by contacting Ray Fields, Assistant Director, Policy and Research, National Assessment Governing Board, 800 North Capitol Street, NW., suite 825, Washington, DC 20002, 202-357-0395.

DATES: Comments must be received by October 9, 1992.

ADDRESSES: Comments should be sent to Assistant Director, Policy and Research, National Assessment Governing Board, 800 North Capitol Street, NW., suite 825, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Ray Fields, Assistant Director, Policy and Research, National Assessment Governing Board, 800 North Capitol Street, NW., suite 825, Washington, DC 20002, 202-357-0395.

SUPPLEMENTARY INFORMATION: The Governing Board and NAEP are authorized under the General Education Provisions Act. The purpose of NAEP is to assess the academic performance of students in grades 4, 8 and 12 in various subjects. First conducted in 1969, NAEP is the nation's only regular and continuing nationally representative measure of student performance. Beginning in 1990 on a trial basis, NAEP also collects and reports state-representative data on student performance. The Governing Board is responsible for formulating the policy guidelines for NAEP.

Many of the conditions that were present at NAEP's inception, and which influenced its design, may have changed. For example, today there are six national education goals, national conduct standards for important areas of the elementary and secondary school curriculum are being developed, and the possibility of a national system of education assessments is being discussed. Such developments as these, if implemented, raise a number of issues

that could have a significant impact on NAEP's design and use.

An Ad Hoc Committee of the Governing Board has prepared a discussion paper that describes these issues. The purpose of the discussion paper is to prompt consideration of these issues and to elicit comment from interested parties. Included among the issues addressed in the paper are: The role and purpose of NAEP, the alignment of NAEP with national education standards, the use of international data in designing NAEP and reporting results, and the use of NAEP for comparing different state and local assessment results, among others.

The Governing Board plans to consider initial positions on these issues at its November 19–21 Board meeting. The Governing Board will use the comments it receives in developing its positions on these issues. The Governing Board invites comment on these issues from all interested parties.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–19287 Filed 8–12–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Colorado State University; Notice of Grant Renewal Award

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Colorado State University (CSU) for continuing research efforts in support of the DOE Office for Building Technologies programs. The CSU project seeks to develop and improve solar heating and cooling systems.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contract Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Colorado State University (CSU) has been performing research in the area of solar heating and cooling for a number of years. The result of this research has been numerous reports documenting system design, methods of performance prediction, and actual performance testing of different experimental systems. The CSU solar program focuses on the design and evaluation of solar heating and cooling systems that are assembled from commercially available components. The principal objective of the instant research is to develop and improve practical solar heating and cooling systems that could be used in residential and small office buildings.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant renewal is estimated at $305,000 and the anticipated period of performance is twelve (12) months.

Issued in Chicago, Illinois on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–19334 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

State of Iowa, Division of Community Action Agencies, Noncompetitive Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetitive financial assistance award to the Division of Community Action Agencies, State of Iowa, for an evaluation of residential weatherization in Iowa. The evaluation is jointly funded by DOE, the state and seven participating utilities.

SUPPLEMENTARY INFORMATION: The Division of Community Action Agencies (DCAA) administers the weatherization assistance program for the State of Iowa. DCAA has entered into agreements with seven electric and gas utilities in Iowa that will result in about $1,500,000 in utility DSM funds flowing into the state low income weatherization program. The expenditure of these leveraged funds can only continue if the cost effectiveness of the measures installed can be documented for utility rate hearings.

In recognition of that need, DOE, the state and the participating utilities are planning a comprehensive evaluation of the cooperative weatherization program that is estimated to cost $278,400. The results of the evaluation will not only help perpetuate utility participation in the low-income programs of Iowa, but will yield results of value to other states and utilities considering such cooperative programs. Therefore, the grant application is being accepted because DOE knows of no other opportunity to conduct such an evaluation involving large percentages of outside funding.

The project period for the grant award is 36 months, expected to begin in August 1992. DOE plans to provide funding in the amount of $15,000 for this project.

FOR FURTHER INFORMATION CONTACT: John Stacy, Manager, Technology Assistance Section, U.S. Department of Energy, Kansas City Support Office, 911 Walnut St., Kansas City, MO 64106. (816) 426–5182.

Issued in Chicago, Illinois on July 31, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92–19336 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

Building Opportunities in the U.S. for Photovoltaics (PV:BONUS); Notice of Program Interest

AGENCY: . Department of Energy.

ACTION: Notice of Program Interest (NOPI) for cooperative agreement applications.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.15, announces the availability of a Notice of Program Interest (NOPI) No. DE–NP02–92CH10515 for Building Opportunities in the U.S. for Photovoltaics.

DATES: The NOPI will be issued on or about August 15, 1992 and will include complete information on funding, eligibility, application preparation, selection criteria and proposal evaluation. It is anticipated that the NOPI will expire on November 15, 1992. The expiration date is not a common cut-off date for applications submitted under the NOPI, but merely the last day that applications will be accepted. Applications should be submitted prior to the expiration date of the NOPI because applications will be considered unsolicited proposals and be evaluated upon receipt.

ADDRESSES: To obtain a copy of the NOPI write to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy's (DOE), Office of

Solar Energy Conversion (DOE–OSEC), is launching a new initiative called, "Building Opportunities in the U.S. for Photovoltaics" (PV:BONUS) to fund research and development directed at accelerating the development and adoption of new photovoltaics (PV) products and systems in the residential, commercial, and institutional building sectors. The use of PV systems in and on buildings is seen as a key intermediate market for the PV industry.

The objective of PV:BONUS is to support the development of cost-effective PV products and product-supply/product-user relationships that provide a sustainable market for PV in the building sector. The ultimate goal is commercially viable products and market niche demonstrations that lead to manufacturer commitments to pursue production and sales.

The development of this infrastructure requires the participation of many U.S. industry sectors, each of whom have the opportunity to benefit from the development. These include the PV industry, building equipment suppliers, utilities, states, builders/developers, construction firms, and building owners. The NOPI will ask for proposals from industry teams. The teams should include representatives from each major industry stakeholder, as appropriate. The development of business partnerships designed to commercialize the product is encouraged.

PV:BONUS is envisioned as a 5–year, $50 million government (DOE)/industry cost-shared initiative ($25 million DOE/ $25 million industry). Government support will be provided through a phased financial assistance program on a funds available basis.

The three phases of the initiative are (1) concept development, (2) product development and testing, and (3) field demonstration and performance verification. This program will be supported by technology validation (testing) activities at the National Renewable Energy Laboratory (NREL) and a cooperative government/industry education and training program.

The following are examples of areas of research and development which might serve as a basis for an application:

1. Architectural products, where the PV array does double duty as a roof, a wall, or a window.

2. Demand-side management (DSM) products, where the PV system is designed to provide power to partially offset a building's contribution to peak utility loads.

3. Building heating, ventilation and control products, where the PV system provides the primary energy for air movement (fans), fluid movement (pumps), or power for "active" windows and walls (as in PV-powered electrochromic windows or PV-powered variable insulation systems).

4. Hybrid products, where the PV system supplies all or a portion of the energy in conjunction with "conventional" equipment such as heat pumps, air conditioners, or lights.

Cost sharing of at least 50% is required for the overall program, however, only 30% participant cost sharing will be required for phase 1. DOE strongly desires that participants contribute more than 50% of the costs to the program. DOE desires its involvement to be as a minority partner supporting groups that have a serious interest in developing products and pursuing the projects through to commercialization. Participation and/or support by the affected product supply and end-use industries is required.

Subject to the availability of funds, it is anticipated that several Fiscal Year 1993 awards totaling approximately one million dollars of DOE funding will be made for initial activities. While it is possible for teams to apply directly for Phase 2 funding, teams so applying must be able to demonstrate, to DOE satisfaction, that the team has essentially performed the Phase 1 Statement of Work and deliver, as part of the application, the essence of a Phase 1 final report. It is expected that five (5) to ten (10) awards will be made from the NOPI.

Awards will be made to technically acceptable applicants as applications are evaluated, not as in a competitive solicitation where all applications are received, evaluated and awards are made. DOE reserves the right to fund as many of the applications as have technical merit or none. If sufficient acceptable applications are received, funding may determine the number of awards.

If you are interested in receiving a copy of the NOPI, write to Mr. John W. Meeker at the address listed above. All responsible sources may submit an application and all timely submitted applications will be considered.

Issued in Chicago, Illinois on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–19335 Filed 8–12–92; 8:45 am]

BILLING CODE 6450-01-M

Southern California Edison Co., Notice of Award of an Unsolicited Financial Assistance Application

AGENCY: Department of Energy.

ACTION: Notice of award of an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), National Renewable Energy Laboratory Area Office (NAO) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to award a Cooperative Agreement to The Southern California Edison Company as the representative of a consortium of utilities, governmental bodies, and other concerns to convert the Solar One facility, near Barstow, California, to a molten salt technology based facility (known as the "Solar Two Project").

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: DOE is planning to enter into a Cooperative Agreement to allow for the conversion of the Solar One Pilot Plant's water/ steam central receiver system to a second generation central receiver pilot plant using nitrite molten salt for the heat transfer fluid and thermal storage medium. Solar One is a 10 megawatt plant that is a unique facility not existing anywhere else in the world. Solar Two represents a unique opportunity to accomplish the critical development step required for commercialization of the molten nitrite salt technology by the late 1990s.

The Southern California Edison Company (SCE), as the representative of a consortium of utilities, companies and other interested parties, submitted the Solar Two work under an unsolicited proposal. Participants represented by SCE in the program include: Department of Water and Power of the City of Los Angeles, Sacramento Municipal Utility District, Pacific Gas and Electric Company, Idaho Power Company, Pacific Corporation, California Energy Commission, Arizona Public Service Company, and the Salt River Project. The program was reviewed in accordance with DOE Financial Assistance Rules, 10 CFR 600.14, and it was determined that the program was worthy of funding. The application was uniquely innovative in terms of both the proposed conversion and obtaining participant funding.

The unsolicited proposal was submitted as an application for 50/50 cost-sharing financial assistance. The proposal value is $39,000,000 for design.

construction, startup and checkup of the facility. Test and evaluation and operation of the facility are considered as second and third phases for the project and were proposed at $9,500,000. Total agreement value will be $48,500,000 with a 66 month period for performance.

Issued in Chicago, Illinois on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-19333 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-487-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 6, 1992.

Take notice that the following filings have been made with the Commission:

Tampa Electric Co.

[Docket No. ER92-487-000]

Take notice that on July 30, 1992, Tampa Electric Company (Tampa Electric) amended its filing in this docket by withdrawing from consideration the tendered transmission service rates as they apply under Tampa Electric's transmission service agreement with Seminole Fertilizer Corporation (Seminole Fertilizer). Tampa Electric states that the withdrawn rates will be resubmitted in another pending docket relating to its agreement with Seminole Fertilizer.

Tampa Electric continues to propose that the transmission service rates tendered in this docket, as they relate to service under Tampa Electric's transmission service agreement with Mulberry Phosphates, Inc. (Mulberry Phosphates), be made effective as of May 1, 1992. Tampa Electric therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole Fertilizer, Mulberry Phosphates, and the Florida Public Service Commission.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Old Dominion Electric Cooperative

[Docket No. ES92-49-000

Take notice that on July 27, 1992, Old Dominion Electric Cooperative (Old Dominion) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue not more than $11,930,334 of Debt Securities. Also, Old Dominion requests exemption from the Commission's competitive bidding regulations.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Interstate Power Co.

[Docket No. ER91-667-000]

Take notice that on July 30, 1992, Interstate Power Company Tendered for filing an amended Negotiated Capacity Agreement between Interstate and Wisconsin Power and Light Company. Under this Agreement Interstate will make capacity and energy available to Wisconsin Power and Light Company with negotiated degrees of firmness, variable capacity charges, and variable time duration. The Agreement shall continue until December 31, 1992, with subsequent one-year renewal terms.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Tampa Electric Co.

[Docket No. ER92-756-000]

Take notice that on July 30, 1992, Tampa Electric Company (Tampa Electric) filed a notice of cancellation of Tampa Electric's Rate Schedule FERC No. 34, which is a contract for the sale to the Florida Municipal Power Agency (FMPA) of capacity and energy from Tampa Electric's James H. Phillips generating plant.

Tampa Electric states that it has executed an agreement with FMPA providing for termination of the contract. In keeping with that agreement, Tampa Electric proposes that the cancellation become effective as of April 1, 1992.

Copies of the filing have been served on FMPA and the Florida Public Service Commission.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90-225-009]

Take notice that on July 27, 1992, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding, 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

Madison Gas and Electric Co.

[Docket No. ER92-244-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on July 30, 1992, tendered for filing a revised Service Schedule A to the Interchange Agreement between itself and Madison Gas and Electric Company (MGE). The revision provides for the unilateral provision of Limited Term Power and Energy from MGE to Wisconsin Electric.

Wisconsin Electric and MGE respectfully request an effective date of August 1, 1992.

Copies of the filing have been served on MGE and the Public Service Commission of Wisconsin.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Florida Power Corp.

[Docket No. ER92-183-002]

Take notice that on July 30, 1992 Florida Power Corporation tendered for filing its compliance filing in this docket pursuant to the commission's order issued on February 13, 1992.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Niagara Mohawk Power Corp.

[Docket No. ER92-759-000]

Take notice that on July 31, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 172, an agreement between Niagara Mohawk and Lockport Energy Associates, L.P. (Lockport).

Rate Schedule No. 172 provides for the wheeling of certain loads by Niagara Mohawk to New York State Electric and Gas Corporation generated by Lockport. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of October 1, 1992. In support thereof, Niagara Mohawk states that Lockport has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

and

CU Energy Lockport G.P. Inc., 5706 Upper Mountain Road, Lockport, NY 14094.

Comment date: August 20, 1992, in accordance with Standard Paragraph E end of this notice.

Alabama Power Co.

[Docket No. ER92-758-000]

Take notice that on July 31, 1992, Alabama Power Company (APCO) tendered for filing two (2) Delivery Point Specification Sheets which reflect the addition of a delivery point for the City of Lafayette and for the City of Piedmont. Both of these delivery points are served under the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated February 24, 1988, as amended (designated FERC Rate Schedule No. 165). The parties request an effective date for each of these Delivery Point Specification Sheets of September 19, 1991.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Florida Power & Light Co.

[Docket Nos. ER92-555-000, ER92-571-000, ER92-605-000, ER92-633-000 and ER92-648-000]

Take notice that on July 29, 1992 Florida Power & Light Company (FPL) submitted supplemental information regarding its filings in the above-captioned dockets. FPL submitted the information in response to a request from the Commission's staff.

Comment date: August 20, 1992, in accordance with Standard Paragraph E end of this notice.

Consumers Power Co.

[Docket No. ER92-753-000]

Take notice that on July 29, 1992, Consumers Power Company tendered for filing a Notice of Termination of FERC Rate Schedule Nos. 49 and 53.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

PacifiCorp

[Docket No. ER92-757-000]

Take notice that on July 31, 1992, PacifiCorp, tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations a request to extend the term of Service Agreement No. 50 between PacifiCorp and Bonneville Power Administration (Bonneville) dated February 14, 1992 under PacifiCorp's FERC Electric Tariff, Original Volume No. 3 Service Schedule PPL-3.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of August 1, 1992 be assigned. The waiver will have no effect upon purchasers under other rate schedules.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

National Electric Associates Limited Partnership

[Docket No. ER90-168-009]

Take notice that on July 27, 1992, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

Boston Edison Co.

[Docket No. ER91-679-000]

Take notice that on July 31, 1992, Boston Edison Company tendered for filing supplemental information in this docket in response to a request from Commission staff.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19251 Filed 8-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1739-001, et al.]

East Tennessee Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP89-1739-001]

August 4, 1992.

Take notice that on July 27, 1992, East Tennessee Natural Gas Company (East Tennessee), 8200 Kingston Pike, Knoxville, Tennessee 37919, filed in Docket No. CP89-1739-001 a petition to vacate that portion of the Commission order issued May 9, 1990, which authorized East Tennessee to construct and operate the Hiwassee River crossing loop pipeline, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

East Tennessee states that the order issued May 9, 1990, in CP89-1739-000 authorized it to, *inter alia*, construct and operate a loop pipeline on its Hiwassee River crossing in Bradly and McMinn Counties, Tennessee. East Tennessee further states that the purpose of the loop pipeline was to serve as a back up pipeline in case of damage to the existing pipeline. East Tennessee asserts that it deemed the construction advisable in light of the age and location of the existing pipeline. East Tennessee states that it has re-evaluated the existing line and had determined that it has adequate cover, shows no sign of deterioration and does not pose a safety threat at this time. Therefore, the proposed loop pipeline is no longer necessary and would be needlessly duplicative, it is stated.

Comment date: August 25, 1992, in accordance with Standard Paragraph F at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-619-000]

August 4, 1992.

Take notice that on July 29, 1992, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP92-619-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to construct and operate a new delivery point to Public Service Electric & Gas Company (PSE&G), under Transco's blanket certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to construct, own, and operate a new delivery point to PSE&G in Camden County, New Jersey. It is stated that up to 31,000 Mcf/d would be received on a firm and interruptible basis from Transco at this

point. PSE&G would thus be enabled to serve Cogen Technologies, an existing customer. The total transportation and sales volume to this customer would not be altered, it is asserted. It is further asserted that no peak and annual deliveries would be impacted.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

Kern River Gas Transmission Company

[Docket No. CP92-609-000]

August 4, 1992.

Take notice that on July 23, 1992, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, TX 77252, filed in Docket No. CP92-609-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to operate interconnecting facilities constructed under Kern River's blanket certificate issued in Docket No. CP89-2048-000 by relocating an interconnection as more fully set forth in the request that is on file with the Commission and open to public inspection.

It is stated that Kern River seeks authorization to operate the tap, metering and appurtenant facilities required to deliver gas for the accounts of Mobil Natural Gas, Inc., Nevada Cogeneration Associates #1, Southwest Gas Corporation and Chevron USA, Inc. to a point on the transmission facilities of Pacific Gas and Electric Company (PG&E) near Daggett, California in the Southwest 1/4 of Section 24, Township 9 North, Range 1 East in San Bernardino County. It is further stated that Kern River plans to build such facilities pursuant to section 311 of the Natural Gas Policy Act and § 284.11 of the Commission's Regulations, and seeks authority in the present filing under section 7 of the Natural Gas Act and Kern River's blanket certificate.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company

[Docket No. CP92-624-000]

August 4, 1992.

Take notice that on July 31, 1992, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-624-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Western Gas Utilities Company (Western Gas), under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade the Delano TBS #1 delivery point located in Section 12, T118N, R25W, Wright County, Minnesota to accommodate increased deliveries to Western Gas under Northern's Rate Schedule CD-1, SS-1, FT-1 and IT-1. It is stated that Western Gas has requested service at this delivery point starting with the 1992-93 heating season, due to the increased requirements within Western Gas' existing service area.

Northern states that the estimated volume of natural gas to be delivered to Western Gas at the Delano TBS is expected to result in an increase in Northern's peak day deliveries of 373 Mcf per day and 34,000 Mcf per year on an annual basis. Further, it is estimated that the cost to upgrade the delivery point is $35,000.

Northern advises that the total volumes to be delivered to Western Gas after the request do not exceed the total volumes authorized prior to the request. Northern further states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company

[Docket No. CP92-626-000]

August 6, 1992.

Take notice that on August 3, 1992, Northern Natural Gas Company (Northern), 1111 South 103d Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-626-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 4 new delivery points, to upgrade 3 existing delivery points, and to reassign certain volumes of natural gas, to accommodate increased deliveries to Wisconsin Gas Company (Wisconsin Gas), under Northern's blanket certificate issued in Docket No. CP82-401-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

It is stated that 7 delivery points would be constructed or upgraded for deliveries to Wisconsin Gas as detailed below.

Delivery point	Upgrade or new	Quantity (Mcf/day)			
		Present		Proposed	
		Peak day	Annual	Peak day	Annual
Arkansaw	Upgrade	130	11,000	420	46,400
Avoca	New	0	0	740	74,500
Dickeyville	New	0	0	570	76,000
Fennimore	Upgrade	315	128,000	1,860	192,000
Montfort	New	0	0	2,700	164,000
Spring Valley	New	0	0	350	115,000
Star Prairie	Upgrade	104	11,000	416	41,300
Total		549	150,000	7,056	711,200

Northern states that Wisconsin Gas has requested the changes as a result of the expansion of its distribution system to new areas. It is estimated that the cost of construction would be $229,000. It is asserted that the total volumes delivered after the reassignment would be within Wisconsin Gas' existing entitlement from Northern. It is explained that the end uses of the gas would be residential, commercial, and industrial.

Comment date: September 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

Questar Pipeline Company

[Docket No. CP92-627-000]

August 6, 1992.

Take notice that on August 3, 1992, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP92-627-000, an application pursuant to section 7(b) of the Natural Gas Act requesting authority to abandon certain minor metering facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar proposes to abandon its existing Gulf Energy M & R Station, comprising one three-inch orifice meter run, one 4-foot by 6-foot skid-mounted meter building, various valving and minor appurtenant facilities, located in Duchesne County, Utah. Questar explains that the facilities proposed to be abandoned were constructed and subsequently placed in service on March 1, 1983. The original cost of the subject facilities, it is stayed, was approximately $10,200.

Questar further states that the facilities proposed to be abandoned were operated to provide system supply requirements to Questar's predecessor, Mountain Fuel Supply Company, for the period March 1, 1983, through July 31, 1986, and utilized to provide open-access transportation service under section 311 of the Natural Gas Policy Act and 18 CFR 284.102 and 284.222 for the period August 1, 1986, through the present. It is explained that no service is proposed to be abandoned because adjacent metering facilities are being utilized to measure the volumes that previously flowed through the Gulf Energy M & R Station.

Comment date: August 27, 1992, in accordance with Standard Paragraph F at the end of the notice.

Dartmouth Power Associates Limited Partnership

[Docket No. CI92-68-000]

August 6, 1992.

Take notice that on July 31, 1992, Dartmouth Power Associates Limited Partnership filed an application under section 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction, without rate restrictions. Dartmouth's application is on file with the Commission and open for public inspection.

Comment date: August 21, 1992, in accordance with Standard Paragraph J at the end of this notice.

Questar Pipeline Company

[Docket No. CP92-628-000]

August 6, 1992.

Take notice that an August 3, 1992, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP92-628-000 a request pursuant to §§ 158.205(b) and 157.212 for authority to construct and operate delivery point facilities for Washington Energy Resource's (Washington Energy) Henry's Fork pressure maintenance project located in southwestern Wyoming. Such request was made under the blanket certificate authorization issued in Questar's Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Questar proposes to construct and operate delivery point facilities to accommodate the transportation of natural gas in support of a pressure maintenance program being initiated by Washington Energy to enhance the recovery of oil and natural-gas liquid. Specifically, Questar proposes to establish a new delivery point at the Henry's Fork field in Uinta County, Wyoming. In addition, Questar states it will (1) relocate its previously abandoned Northwest Exchange compressor to an existing Questar meter site immediately adjacent to the Emigrant Trail Gas Processing Plant (E.T. Plant) and (2) reclassify as jurisdictional laterals all or a portion of Gathering Lateral Nos. 703, 722 and 829, which extend from the E.T. Plant to the Henry's Fork field. Questar further states that the establishment of the delivery point will be performed pursuant to Section 157.212 and under Questar's blanket certificate and that the compressor relocation and the reclassification of all or a portion of the three gathering laterals will be performed pursuant to § 157.208(a) as eligible activities under Questar's blanket certificate.

Questar explains that the Henry's Fork delivery point will consist of a 4-inch meter run with associated valves and piping and will be installed at an estimated cost of $40,000. Questar estimates that average and peak-day deliveries through the proposed delivery point will approximate 6,000 Dth and 12,000 Dth, respectively.

It is stated that the Northwest Exchange compressor to be relocated consists of a 245 brake horsepower compressor and appurtenances. Questar further states that the estimated cost to relocate the Northwest Exchange compressor is $230,000 and that the relocated compressor will be installed as a jurisdictional compressor to compress up to 12 MMcf per day of natural gas and satisfy suction pressure requirements for four Washington Energy injection compressors located within the Henry's Fork field.

Questar further explains that even though Washington Energy's pressure maintenance project will be temporary and some gathering service will still be performed through the lateral systems extending from the Butherknife field to the Henry's Unit, Questar concluded that, because transportation service will also be performed through Gathering lateral Nos. 703 and 722 and a portion of Gathering Lateral No. 829, all or a portion of these three laterals should be converted to transmission facilities.

Pending Commission authorization, Questar anticipates deliveries will commence for pressure maintenance on October 1, 1992.

Comment date: September 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19263 Filed 8-12-92; 8:45 am]

BILLING CODE 6717-01-M

[FERC Form No. 542-PGA (Revised); (Docket No. RM86-14-000)]

Availability of PGA Edit-Check and Print Software

Issued August 6, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of availability of PGA edit-check and print software.

SUMMARY: New PC and mainframe versions of the software for edit-checking and printing of the structured PGA data files are now available. This software has been developed for Commission use and to assist pipelines in complying with the electronic submission requirement for filing the FERC Form No. 542-PGA (revised) in accordance with Order Nos. 483 (52 FR 43854 (Nov. 17, 1987)) and 483-A (53 FR 7495 (Mar. 9, 1988)). The PC executable code, the mainframe source code and related system documentation are available on diskettes. A paper copy of the documentation is provided with each version of the software.

DATES: The software and related system documentation are available on August 6, 1992.

ADDRESSES: Requests for the software and system documentation should be directed to the Commission's copy contractor: LaDorn Energy Information Services, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3106, Washington, DC 20426, (202) 898-1151 or (800) 676-FERC.

FOR FURTHER INFORMATION CONTACT: For general information contact: Beth Taylor, Federal Energy Regulatory Commission, 825 N. Capitol St. NE., room 5410, Washington, DC 20426, (202) 208-0382.

SUPPLEMENTARY INFORMATION:

PC (executable code) and mainframe (source code) versions of the software are now available for edit-checking and printing the structured data files of the FERC Form No. 542-PGA (Revised) when filed in accordance with the instructions and recorded formats issued on March 2, 1988. The PC and mainframe versions of the software are available as separate package on 3.5" (1.44MB) or 5.25" (1.2MB) double-sided, high density diskettes. A directory of files for each package is included in this notice as Appendix A. The system documentation for each version is also provided on diskette in WordPerfect 5.1 format.

The edit-check and print software were written in IBM COBOL. The mainframe version was installed on an IBM 3084XA mainframe which uses the Multiple Virtual Storage (MVS) operating system. The PC version can be run on an IBM compatible PC with DOS 3.3 (or later version) and 512K RAM.

The software has been tested by staff. However, if problems occur relating to the software, the Commission staff encourages users to submit written comments as to the exact nature of the problem to Beth Taylor, room 5410, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200, or 2400 baud dial (202) 208-1397. For access at 9600 baud, dial (202) 208-1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208-2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The software and supporting documentation are available from the Commission's copy contractor, LaDorn Energy Information Services ((202) 898-1151 or (800) 676-FERC), located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426. There is no charge for the software, however, the Commission's copy contractor has a copy fee of $7.00 per diskette plus a service charge. A paper copy of the system documentation is provided with each version of the software at no additional charge.

Lois D. Cashell,

Secretary.

APPENDIX A—DIRECTORY OF FILES

Diskette #1:	Edit Software Sources Code and System Documentation
	Package A: Mainframe Source Code
MANUAL.W51	154,877 bytes System documentation in WP5.1.
PGAEDIT.JCL	13,242 bytes JCL—Sample run stream.
PGAM1000.COB	34,605 bytes Copy data from tape to disk.
PGAM1001.COB	296,349 bytes Perform initial acceptance tests.
PGAM1002.COB	660,284 bytes Perform edit tests.
Diskette #2:	Print Software Source Code
PGAPRINT.JCL	22,917 bytes JCL—Sample run stream.
PGAA3002.COB	32,637 bytes Generate Schedule G1.
PGAA3003.COB	28,127 bytes Generate Schedule G2.
PGAA3004.COB	122,099 bytes Generate Schedule A1.
PGAA3005.COB	72,893 bytes Generate Schedule B1.
PGAA3006.COB	100,970 bytes Generate Schedule B2.
PGAA3007.COB	85,729 bytes Generate Schedule C1.
PGAA3008.COB	77,409 bytes Generate Schedule C2.
PGAA3009.COB	47,889 bytes Generate Schedule D1.
PGAA3010.COB	38,623 bytes Generate Schedule Q1—Projected cost record.
PGAA3011.COB	42,477 bytes Generate Schedule G1—Special supply record.
PGAM1000.COB	34,605 bytes Copy data from tape to disk.
PGAM1HC1.COB	136,850 bytes Perform initial acceptance tests.
PGAM1HC3.COB	89,864 bytes Construct file.
	Package B: PC Executable Code and System Documentation
Diskette #1:	Edit-Check and Print Software
PGAFERC.W51	126,257 bytes System documentation in WP5.1.
PGAEDIT.BAT	11,197 bytes Edit report driver.
PGA542.BAT	15,506 bytes Hardcopy report driver.
ENVUSED.BAT	68 bytes Determines environment in use.
SIZE.BAT	122 bytes Environment size display.
ACTION.COM	16 bytes Prompt action processor.
BROWSE.COM	1,113 bytes Displays report on monitor.
COBLIB.DLE	122,640 bytes Runtime library.
PGAA3P10.EXE	22,448 bytes Generates Schedule Q1.
PGAA3P11.EXE	22,976 bytes Generates Schedule Q1—Special supply report.
PGAA3PC2.EXE	12,880 bytes Generates Schedule G1.
PGAA3PC3.EXE	11,520 bytes Generates Schedule G2.
PGAA3PC4.EXE	48,784 bytes Generates Schedule A1.
PGAA3PC5.EXE	32,480 bytes Generates Schedule B1.
PGAA3PC6.EXE	45,232 bytes Generates Schedule B2.
PGAA3PC7.EXE	48,480 bytes Generates Schedule C1.
PGAA3PC8.EXE	38,064 bytes Generates Schedule C2.
PGAA3PC9.EXE	23,904 bytes Generates Schedule D1.
PGAM1LS1.EXE	41,296 bytes Reformats & sorts filing data.
PGAM1PC2.EXE	175,310 bytes Generates edit report.
PGAM1PC3.EXE	36,656 bytes Creates hardcopy working files.

[FR Doc. 92–19234 Filed 8–12–92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RS92–5–000, RS92–6–000 et al.]

Columbia Gas Transmission Corp., Columbia Gulf Transmission Co.; Prefiling Conference

August 6, 1992.

Take notice that a prefiling conference will be convened in these proceedings on August 19, 1992, at 10 a.m., in Washington, DC at a location to be announced. The conference will address proposals of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company to comply with Order Nos. 636 and 636–A. All parties and Commission staff are invited to attend.

For additional information contact Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19232 Filed 8–12–92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER92–723–000]

New England Power Service Co.; Filing

August 7, 1992.

Take notice that on July 14, 1992, New England Power Service company tendered for filing on behalf of Massachusetts Electric Company, (MECO) FERC Electric Service Tariff, Original Volume No. 1. According to MECO, the proposed rate schedule would govern MECO's borderline sales to other utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before August 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19284 Filed 8–12–92; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 11119-000 New Hampshire]

Rattlesnake Hill Development; Surrender of Preliminary Permit

August 6, 1992.

Take notice that the Rattlesnake Hill Development, permittee for the Rattlesnake Hill Pumped Storage Project No. 11119, located on an unnamed quarry and the Merrimack River, near Concord, Merrimack County, New Hampshire, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 28, 1991, and would have expired on May 31, 1994. The permittee states that analysis of the Rattlesnake Hill Pumped Storage Project did not indicate feasibility for development.

The permittee filed the request on June 29, 1992, and the preliminary permit for Project No. 11119 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19231 Filed 8-12-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Friday, September 11, 1992, 9 a.m.-5 p.m., Saturday, September 12, 1992, 9 a.m.-3 p.m.

Place: Superconducting Super Collider Laboratory, Central Facility, 2275 Highway 77 N., Waxahachie, Texas 75165.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585. Telephone: (301) 903-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Friday, September 11, 1992, and Saturday, September 12, 1992

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs
—Discussion of Department of Energy (DOE) High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities
—Presentation and Discussion of the Superconducting Super Collider Laboratory's Current Program
—Reports on the Discussions of Topics of General Interest in High Energy Physics
—Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 7, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-19345 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-84-NG]

Allegheny Energy Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 30, 1992, of an application filed by Allegheny Energy Marketing Company (Allegheny) for blanket authorization to import up to 183 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery. Allegheny intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 14, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Allegheny is a Delaware general partnership whose general partners are GEMCO Ventures Inc. and Endevco Taft Company, both Delaware corporations. Allegheny proposes to import Canadian natural gas, on its own behalf as well as on behalf of suppliers and purchasers, for sale on a spot or short-term basis to various customers in the United States, including, but not limited to, industrial customers, local distribution companies and municipalities.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that imports made under this arrangement would be competitive. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Allegheny's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19337 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–57–NG]

ARCO Products Co., Division of Atlantic Richfield Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ARCO Products Company, Division of Atlantic Richfield Company, blanket authorization to import up to 25 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import after September 19, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19338 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No 92–63–NG]

Goetz Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Goetz Energy Corporation (Goetz), authorization to import up to 140 Bcf of Canadian natural gas beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19339 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–63–NG]

Graham Energy Marketing Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 25, 1992, as amended July 31, 1992, of an application filed by Graham Energy Marketing Corporation (GEMC) requesting blanket authorization to import up to 183 Bcf of natural gas from Canada over a two-year period beginning with the date of first delivery. GEMC intends to use existing pipeline facilities, and would submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 14, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–9478.

FOR FURTHER INFORMATION:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–9590

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–6667.

SUPPLEMENTARY INFORMATION: GEMC, a Delaware corporation with its principal offices in Covington, Louisiana, is a wholly-owned subsidiary of Braeloch

Holding Inc. GEMC proposes to import gas for sale to a variety of U.S. customers for whom GEMC may act as agent. The gas will be purchased under short-term, market-responsive contracts, and will be imported at existing points along the international border.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in those guidelines. GEMC asserts its proposed import will be competitive. Parties opposing GEMC's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comments Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action taken on the application. All protests, motions to intervene, notices of intervention and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a trial-type hearing must show that they are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of GEMC's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19346 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-20-NG]

Hadson Power Partners of Rensselaer; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossel Energy of the Department of Energy gives notice that it has issued an order granting Hadson Power Partners of Rensselaer authorization to import up to 18,000 Mcf of Canadian natural gas per day over a 20-year period beginning on the date of commercial operation of its 79-megawatt cogeneration plant to be constructed at Rensselaer, New York. The facility is expect to be in service by February 1994.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19344 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-68-NG]

Northern Natural Gas Co., Application for Long-Term Authorization To Export and Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 8, 1992, of an application filed by Northern Natural Gas Company (Northern) for authorization to export and import up to 60,000 Mcf per day of natural gas to and from Canada beginning on the effective date of the requested authority through December 31, 1997. Northern intends to utilize existing pipeline facilities for the transportation of the volumes to be exported and imported and would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 14, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson, C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-9394

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-6667.

SUPPLEMENTARY INFORMATION:
Northern, a Delaware corporation with its principal place of business in Omaha, Nebraska, is engaged in the purchase, transmission, and sale of natural gas. Northern was authorized by the Federal Power Commission in 1972 (47 FPC 1202) to export to Canada at the Montana-Saskatchewan border near Willow Creek, Saskatchewan, up to 150,000 Mcf per day of natural gas produced in the Tiger Ridge area of Montana. The exported natural gas is transported across Canada to the Manitoba-Minnesota border near Emerson, Manitoba where it is imported by Northern to serve its U.S. markets. The Montana natural gas is neither consumed nor stored in Canada. This authority, according to Northern's application, expires October 31, 1992.

By its application in this docket, Northern seeks authority to export up to 60,000 Mcf per day of gas to Many Islands Pipe Lines (Canada) Limited (MIP), a natural gas pipeline in Saskatchewan. Northern would purchase the natural gas from U.S. producers in the Tiger Ridge and Sherard Montana areas and transport the natural gas to Willow Creek. From this point, MIP would transport the gas to an interconnection with TransCanada PipeLines Limited (TransCanada) at Herbert, Saskatchewan, where the gas would be delivered to TransCanada for the account of Many Island Natural Gas (Canada) Limited (MING). MING would ship Northern's Montana volumes on TransCanada from Herbert, Saskatchewan to an interconnection with Great Lakes Gas Transmission Limited Partnership (Great Lakes) at Emerson, Manitoba. At this point Northern proposes to reimport the 60,000 Mcf per day as system supply for resale to its U.S. customers. Northern states this transportation arrangement is the only economic and most operationally efficient way natural gas from the Montana producing areas can reach Northern's north-end market.

The decision on the application for export/import authority will be made consistent with the DOE's gas policy guidelines (49 FR 6684, February 22, 1984). According to the application, natural gas would be exported and imported solely as part of Northern's system supply, and would not be sold or stored in Canada. Consequently, DOE believes the only relevant issue in this case is the potential impact, if any, of Northern's transportation arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested export and import authority.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northern's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19341 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-53-NG]

Panda Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Panda Resources, Inc. blanket authorization to import up to 100 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19340 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4195-2]

Nonroad Engines and Vehicles; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: On August 26, 1992, the Environmental Protection Agency (EPA) will meet with representatives of the Outdoor Power Equipment Institute (OPEI) and the Engine Manufacturers Association (EMA) to discuss the technical characteristics, emissions, and general regulatory issues related to nonroad engines under 50 horsepower. EPA is planning to attend this meeting at the request of industry representatives.

DATES: The meeting will be held on August 26, 1992.

ADDRESSES: The meeting will be held at 9 a.m. at the Best Western Domino's Farm Hotel, 3600 Plymouth Rd., Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Ms. Betsy McCabe, Certification Division, U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2656 Plymouth Rd., Ann Arbor, MI 48105. Telephone: (313) 668-4344.

SUPPLEMENTARY INFORMATION: A public workshop was held on March 11, 1992 (57 FR 5448) to solicit information on technical characteristics, emissions, potential regulatory strategies, and general regulatory issues related to nonroad engines under 50 horsepower. As a result of that public workshop, OPEI and EMA have approached EPA and expressed an interest in working cooperatively with EPA as EPA explores the possibility of developing regulations for nonroad engines under 50 horsepower. EPA recognizes that continuing involvement by the manufacturing and environmental communities is essential as EPA explores the need for and feasibility of regulatory strategies for nonroad engines. EPA is publishing this notice in order to ensure that other interested parties have the opportunity to attend this and any subsequent meetings if they wish.

Dated: August 6, 1992.

Michael Shapiro,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 92-19327 Filed 8-12-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4194-6]

Superfund Program; Procedures for CERCLA Section 106(b) Reimbursement Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Agency is announcing today the availability of its "Guidance on Procedures for Submitting CERCLA section 106(b) Reimbursement Petitions and on EPA Review of Those Petitions," OSWER Directive #9833.5 (June 29, 1992), in order to inform the public on this important aspect of the Superfund Program. This document provides guidance to EPA's regional offices and respondents who received an Administrative Order. This guidance provides procedures for submitting petitions for reimbursement under CERCLA section 106(b) and EPA's review of those petitions. The Agency believes this guidance will clarify the reimbursement process.

ADDRESSES: To obtain a copy of this guidance contact the National Technical Information Service at (703) 487-4650 or 1-800-553-NTIS. The NTIS order number is PB 92-963610.

FOR FURTHER INFORMATION CONTACT: Fred Zimmerman, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, OS-510, 401 M Street SW., Washington, DC 20460, (202) 260-2034.

Dated: July 28, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92-19180 Filed 8-12-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Port Authority of New York and New Jersey/Maher Terminals, Inc., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200630-003.

Title: Port Authority of New York & New Jersey/ Maher Terminals, Inc. Terminal Agreement.

Parties: The Port Authority of New York and New Jersey Maher Terminals, Inc. ("Maher").

Synopsis: The subject modification permits Maher the continued use of the open area adjacent to its Tripoli Street Container Terminal through September 30, 1992.

Agreement No.: 203-010099-010.

Title: International Council of Containership Operators.

Parties: American President Lines, Ltd.,
A.P. Moller (Maersk Line),
Blue Star Line Ltd.,
Ben Line Containers Ltd.,
Compagnie Generale Maritime,
Compagnie Maritime Belge S.A.,
Crowley Maritime Corporation,
Hamburg-Sudamerikanische Dampfschiffahrt-Gesellschaft Eggert & Amsinck (Columbus Line),
Hapag-Lloyd AG, Kawasaki Kisen Kaisha, Ltd.,
Koninklijke Nedlloyd Group N.V.,
Lykes Bros. Steamship Co., Inc.,
Mitsui OSK Lines, Ltd.,
Neptune Orient Lines Ltd.,
Nippon Yusen Kaisha,
Orient Overseas Container Line Ltd.,
P & O Containers Ltd.,
Land Service, Inc.,
Societa Finaziari Marittima (Finmare),
South African Marine Corp. Ltd.,
The Australian National Line,
Transatlantic Shipping Co., Ltd.,
Transportacion Maritima Mexicana, S.A. de C.V.,
United Arab Shipping Company (S.A.G.),
Wilh. Wilhelmsen,
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment will delete Ben Line Containers Ltd. as a party to the Agreement.

Agreement No.: 203-011383.

Title: Venezuelan Discussion Agreement.

Parties: Compania Anonima Venezolana de Navegacion
King Ocean Services de Venezuela, S.A.
Venezuela Transport Line, Inc.

Synopsis: The proposed Agreement will authorize the parties to discuss, exchange information, and agree upon all aspects of transportation and service, including rates, service items, rules, service contracts, brokerage, and

policing and cargo inspection systems in the trade between United States ports (including Puerto Rico), and ports in Venezuela, and inland and coastal points via such ports. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: August 7, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19230 Filed 8-12-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9233]

Harold A. Honickman, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Amending order.

SUMMARY: This order reopens the proceeding and amends the consent order issued in 1991 by deleting the ninety-day reporting requirement in the first clause of paragraph V(A), and by correcting the syntax of paragraph II(A)(2).

DATES: Consent Order issued July 25, 1991. Amending Order issued July 20, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Constance Salemi, FTC/S-3302, Washington, DC 20580. (202) 326-2643.

SUPPLEMENTARY INFORMATION: In the Matter of Harold A. Honickman, et al. The prohibited trade practices and/or corrective actions as set forth at 56 FR 38446, are amended, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 92-19330 Filed 8-12-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3385]

Sandoz Pharmaceuticals Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

[1] Copies of the Amending Order are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave., NW., Washington, DC 20580.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based company from requiring any purchaser of clozapine, a schizophrenia drug, or a patient taking clozapine sold by Sandoz, to buy other goods or services from the respondent or anyone designated by the respondent. In addition, the consent order requires that, if any company needs information about patients who have had adverse reactions to clozapine, the respondent must provide that information on reasonable terms.

DATES: Complaint and Order issued July 28, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Karen Berg, FTC/S-3308, Washington, DC 20580. (202) 326-2960.

SUPPLEMENTARY INFORMATION: On Wednesday, July 3, 1991, there was published in the **Federal Register**, 56 FR 30577, a proposed consent agreement with analysis In the Matter of Sandoz Pharmaceuticals Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-19331 Filed 8-12-92; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, the Decision and Order, and the concurring statement of Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Seventh National Conference on Chronic Disease Prevention and Control

The Centers for Disease Control (CDC), the Association of State and Territorial Health Officials, and the Association of State and Territorial Chronic Disease Program Directors (ASTCDPD) will cosponsor the following meeting.

Name: Seventh National Conference on Chronic Disease Prevention and Control: *Prevention: Can It Be Marketed, Managed, and Make a Difference?*

Times and Dates: Registration—12 noon–6 p.m., October 20, 1992, and throughout the conference.

8:30 a.m.–5 p.m., October 21–22, 1992

8:30 a.m.–11 a.m., October 23, 1992.

The preregistration deadline is September 17, 1992.

Preregistration fee is $40; on-site registration fee is $45. Make checks payable to ASTCDPD and mail to Chronic Disease Conference, Pace Enterprises, Inc., 17 Executive Park Drive, suite 200, Atlanta, Georgia 30329.

Place: Salt Lake Hilton, 150 West 5th Street, Salt Lake City, Utah 84101, telephone 800/421-7602 or 801/532-3344. Conference attendees receive special room rates of $70 for single or double occupancy. Reservations should be made directly with the hotel.

Status: Open to the public, limited only by available space.

Purpose: Attendees from around the nation and the world will have both structured and informal opportunities to exchange information, skills, knowledge, and experiences related to chronic disease prevention and control.

Matters to be Discussed: Topics to be presented will include future implications for prevention and public health; behavioral research; chronic disease prevention and control in the work site; cancer prevention and control; reaching children, adolescents, and the underserved; smoking and health; and minority health in chronic disease prevention and control.

Contact Person For More Information: Mr. Jack Friel, Chief, Conference Management Operations, National Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE., Mailstop K-43, Atlanta, Georgia 30333, telephone 404/488-5390.

Dated: August 6, 1992.

Robert L. Foster,

Assistant Director for Special Programs, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-19332 Filed 8-12-92; 8:45 am]

BILLING CODE 4160-18-M

Agency for Health Care Policy and Research

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of August 1992:

Name: Feasibility Study: Overcoming Barriers to Integration and Implementation of Clinical Information Management Systems.

Dates and Times: August 11, 1992, 9 a.m.

Place: Executive Office Center, 2101 East Jefferson Street, Suite 502, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR) regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. AHCPR has a strong interest in understanding the sociological, organizational, technological, and financial barriers that impede progress toward implementation and utilization of integrated clinical information management systems to improve the delivery of health services. The purpose of this contract is to determine the feasibility of studying the implementation of integrated clinical information management systems (used for patient care, administrative management and financial control) in a representative variety of health care delivery settings.

Agenda: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Management Systems and Services Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 227–8441.

Dated: August 6, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–19229 Filed 8–12–92; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-025440-10-ZBBB]

Amended Notice of Availability of Final Environmental Impact statement and Report for the proposed Eagle Mountain Landfill, Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of availability.

SUMMARY: The original Notice of Availability as cited in the **Federal Register**/Vol. 57, No. 140, Page 32229, Tuesday, July 21, 1992 is hereby amended to announce a revision of the date the document will be available for public review. The Final Environmental Impact Statement and Report for the Proposed Eagle Mountain Landfill in Riverside County, California will be available on August 7, 1992.

Comments on the environmental documents of the project will be accepted by the BLM for a 30 day period ending September 7, 1992. Your comments will be considered in arriving at BLM's decision on the land exchange and right of way actions. Please send your comments to Bureau of Land Management, Palm Springs-South Coast Resources Area, Attn: Steve Nagle 63–500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258–2000.

Dated: August 6, 1992.

Thomas Gey,

Asst. Area Manager.

[FR Doc. 92–19297 Filed 8–12–92; 8:45 am]

BILLING CODE 4310-40-M

[MT-030-02-4350-01]

Dickinson District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dickinson District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dickinson District Advisory Council will be held Wednesday, September 16, 1992. The meeting will begin at 8 a.m. in the Dickinson District Conference Room, 2933 Third Avenue West, Dickinson, North Dakota. The agenda will include: (1) Land ownership adjustment program; (2) Wild horse and burro adoptions; (3) Oil and gas program update; and (4) Weed update.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the District Manager. Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Doug Burger, District Manager, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Dated: August 3, 1992.

Douglas J. Burger,

District Manager.

[FR Doc. 92–19298 Filed 8–12–92; 8:45 am]

BILLING CODE 4310-DN-M

[Co-070-4320-12-241A]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 10, 1992. The meeting will convene in the conference room at the Bureau of Land Management, Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introduction; (2) Election of Officers (3) Minutes of the previous meeting; (4)

Colorado Range Update; (5) AMP Status; (6) Inter-action with Advisory Council; (7) HRM Training; (8) Domestic Sheep/Bighorn Sheep Policy; (9) Resource Area Issue Briefing; (10) Status of Current Range Projects; (11) Advisory Board Project Proposals; (12) Public Presentations; (13) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506 by September 10, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board Meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 244–3076.

Tim Hartzell,

District Manager.

[FR Doc. 92–19289 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–JB–M

[MT–060–92–4320–02–ADVB]

Lewistown District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Lewistown District Office.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet September 15, 1992. The agenda will be:

10 a.m.—Fiscal Year 1992 Range Improvement Accomplishments.
10:30 a.m.—Fiscal Year 1993 Planned Range Improvement Projects.
11:30 a.m.—Weed Control.
12 Noon—Lunch
1 p.m.—Prairie Dog Surveys/Ferret Reintroduction.
1:30 p.m.—Allotment Management Plans.
2:30 p.m.—Grazing Administration.

Public comment will be sought at the end of each agenda item.

LOCATION: Public Library, Malta, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, P.O. Box 1160, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the Federal Advisory Committee Act, 5 U.S.C., Appendix 1. The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: July 31, 1992.

B. Gene Miller,

Associate District Manager.

[FR Doc. 92–18982 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–DN–M

[WY–040–02–4320–12]

Rock Springs District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Public Law 92–463.

DATES: September 10, 1992, 9 a.m. until 4 p.m. and September 11, 1992, 9 a.m. until 3 p.m.

ADDRESSES: The new Pinedale Resource Area Office, Bureau of Land Management, 432 Mill Street, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include a tour of South LaBarge Common Allotment on September 10, 1992. On September 11, 1992, the agenda will include:

1. Introductions and opening remarks
2. Election of a Chairman and Vice-Chairman
3. Slate Creek AMP development
4. Pine Mountain AMP operation/monitoring
5. Improvements proposed for completion in FY93 with range betterment (8100) funds
6. Riparian/wetland inventory
7. District wildlife program
8. Update on wild horse gathering
9. BLM 2015
10. Public comment period

The meeting is open to the public. Tour participants will meet at the Chevron Country Store in LaBarge, Wyoming, at 9 a.m. Transportation is required for the tour part of the meeting. Four wheel drive vehicles will be needed. Interested persons may make oral statements to the Board between 2:30 and 3 p.m., September 11, 1992, or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869, by September 9, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlowe E. Kinch,

District Manager.

[FR Doc. 92–19294 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–22–M

[ID–030–02–4332–10]

Motor Vehicle Use Restrictions; Idaho

AGENCY: Bureau of Land Management, DOI.

ACTION: Restricted vehicle use, closure order.

SUMMARY: Notice is hereby given in accordance with title 43 Group 8000–Recreation Programs, and in accordance with the principles established by the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, that certain lands located in the Sand Mountain Wilderness Study Area (WSA) which includes the area known as the St. Anthony Sand Dunes in Fremont and Jefferson County, Idaho are restricted to unlicensed off-road vehicles. This would include ATV's (3 & 4 wheelers), dual purpose and off-road motorcycles, and dune buggies or dune rails. All licensed vehicles (with the exception of dual purpose motorcycles), including passenger automobiles, trucks, pickup campers, camp trailers, self-contained campers and similar vehicles are prohibited. All permitted ORV use must occur on the open sand areas, or on roads and trails specifically signed open. ORV use is prohibited on roads

and trails not signed open. Glass containers for food and beverage are prohibited within the boundaries of the WSA. Safety equipment such as helmets, boots, protective clothing are strongly recommended. Each vehicle is required to have a "whip flag" not less than six (6) feet in length with brightly colored material on the end of the flag.

Studies, observations, and WSA surveillance have shown that vehicles specifically designed for sand dunes and all terrain use (such as dune buggies, ATV's, motor cycles) do not impair the wilderness values as long as the use occurs on open sand areas. However, any damage to surrounding vegetation and creation of new trails, ways, or roads violates the Interim Management Policy and impairs wilderness values.

Studies and observations have also shown that Four wheel drive vehicles, Four wheel drive vehicles with camper or pulling travel trailers, and self contained motorized campers contribute to litter problems, damage to wetland area, and damage to vegetated areas in the WSA. Motorized camping around the Dry Lakes area in the south central portion of the WSA in particular has or is very likely to impair the area's wilderness values. Overnight camping where tents are used has not been impairing nor has a significant potential for impairment of wilderness values.

Part of the Sand Mountain WSA is affected by a seasonal closure of all vehicles from December 1 to March 31 of each year. The Nine Mile Knoll Area of Critical Environmental Concern was established to protect wintering wildlife and this 35,028 acre area is closed to all motorized vehicles (**Federal Register** Vol. 52, No. 228, Friday, November 27, 1989).

This restricted vehicle use and closure order applies to about 21,100 acres of public land west of St. Anthony, Idaho and includes all of the Sand Mountain WSA. The Sand Mountain WSA begins about 7 miles west of the town of St. Anthony, Fremont County, Idaho. The area is bounded on the east by a paved county road ("Red Road"), farmland on the south and west, with native rangeland on the north. Maps showing the San Mountain WSA were published in the Medicine Lodge Wilderness Study and Final Environmental Impact Statement in 1988. An information handout has been developed for the public with a map showing the Sand Mountain WSA and open sand areas. Both of these maps are available at the Bureau of Land Management Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho. The official map of the Sand Mountain WSA is on file at the Idaho Falls District Office. Signs have been placed to identify boundaries of the WSA at access points to the area.

The official map of the above described area is on file at the Bureau of Land Management District Office, 940 Lincoln Rd., Idaho Falls, ID.

EFFECTIVE DATE: This restricted vehicle use and closure order becomes effective upon publication in the **Federal Register** and shall remain in effect until modified or canceled.

For further information contact: Lloyd H. Ferguson, District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524–7500.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 92–19245 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–GG–M

[OR–110–6334–11–G2–360]

Closures and Restrictions; Oregon

AGENCY: Bureau of Land Management (BLM), Interior, Medford District Office.

ACTION: Notice of closure and restrictions, in the Glendale Resource Area, Mule Creek Area.

SUMMARY: Pursuant to 43 CFR part 8364, the BLM will close designated areas of the Glendale Resource Area to motorized vehicles. Subject to valid existing rights use of 42.9 miles of the Mule Creek Area by motorized vehicles is prohibited. This restriction will apply year round. Any Bureau of Land Management employee, agent, contractor and cooperator, while in the performance of official duties is exempt from this closure. The Bureau of Land Management may authorize volunteers or other parties to enter the area for administrative, maintenance or other authorized purposes. With the exception of law enforcement officials, individuals who are authorized to use motor vehicles within the restricted area shall not carry firearms in vehicles while in the restricted area.

The Mule Creek area supports a herd of Roosevelt elk which has been reduced from historic levels due in part to a high open road density and poaching. Research has shown that high open road densities strongly reduce the habitat effectiveness of the forage and cover conditions found in an area. By restricting motor vehicle use on these roads the carrying capacity of the drainage is expected to increased. The purpose of this closure and restriction notice is to provide a means by which the Secretary of Interior through the Bureau of Land Management, may control and manage public use of the area to effectively carry out management objectives and provide wildlife habitat that is relatively free from disturbance and poaching from motor vehicles.

Maps of the closed area are available from the Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504. This closure and restriction order are effective immediately and shall remain in effect until revised, revoked or amended by the authorized officer pursuant to 43 CFR 8360.0–7.

Any person who violates this closure and restriction notice may be subject to a fine of $1,000 and/or imprisonment not to exceed 12 months under authority 43–CFR–8360.0–7.

Restricted Area

Mule Creek is located approximately 18 miles west of Glendale, Oregon and is further described as follows:

Township 32 South, Range 9 West, Willamette Meridian.
Secs. 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33;
Township 33 South, Range 9 West, Willamette Meridian.
Secs. 4, 5, 6.
Township 32 South, Range 10 West, Willamette Meridian.
Secs. 23, 24, 25, 26, 35, 36.

Within this area the following roads will be closed to public motor vehicle use: 32–9–14.1, 32–9–14.3, 32–9–15.2 (the unsurfaced portion in section 30), 32–9–16 (the portion in sections 23, 24 and 25 behind the gate), 32–9–18, 32–9–18.1, 32–9–19, 32–9–19.1, 32–9–20, 32–9–20.1, 32–9–20.2, 32–9–20.3, 32–9–20.4, 32–9–20.5, 32–9–21, 32–9–21.2, 32–9–27, 32–9–28 (the unsurfaced portion in section 36, 32–9–28.1, 32–9–28.2, 32–9–29, 32–9–32, 32–9–32.1, 32–9–32.2, 32–9–33, 33–9–5, 32–10–24, 32–10–26, 32–10–26.1, 32–10–26.

In addition, several jeep roads will be barricaded and closed to pubic motor vehicle use.

Roads which will remain open to all public motor vehicle use will include: 32–8–31, 32–9–14.2, 32–9–15.1, 32–9–15.2, 32–9–16, 32–9–30, 32–9–31, 32–9–28.

FOR FURTHER INFORMATION, CONTACT: Roger Schnoes, Wildlife Biologist, Glendale Resource Area, Medford District, Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504 (telephone 503770/2200).

Robert Korfhage,

Glendale Resource Area Manager.

[FR Doc. 92–19296 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–33–M

[CA–060–02–5440–10–ZBBB; CACA 30070]

Realty Action, Land Exchange; Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The following described public land in Riverside County is being considered for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Selected Public Lands

All remaining public lands or interest in lands located in:

San Bernardino Meridian, Riverside County, California

T. 3 S., R. 14 E.
Sec. 25: Lots 5 and 6, SW¼, W½SE¼
Sec. 26: SW¼, SW¼SE¼, E½SE¼
Sec. 27: Lots 1 and 2, SE¼, N½SW¼
Sec. 28: Lot 2
Sec. 33: Lots 1, 2, 4 and 5, S½NE¼, E½ NW¼, E½SW¼, SE¼
Sec. 34: Lots 1–7, SE¼SE¼, W½SE¼, SW¼
Sec. 35: Lots 1–4 and 9, NE¼NW¼, N½ NE¼
Sec. 36: Lot 12
T. 3 S., R. 15 E.
Sec. 31: Lots 5, 10–14, 17–19
T. 4 S., R. 14 E.,
Sec. 1: Lots 8–11, SW¼SE¼, E½SE¼ SW¼, E½NW¼SE¼
Sec. 2: Lots 7–9, S½SW¼, SW¼SE¼, W½ SE¼SE¼
Sec. 11: Lots 1–4
Sec. 12: Lots 1–4
T. 4 S., R. 15 E.,
Sec. 6: Lots 4, 5, 8–11
Sec. 7: Lots 4–10, 12 and 13

These selected lands total 3,550.50 acres, more or less.

In exchange for these lands, the United States will acquire from Kaiser Steel Resources, Inc. the following described non-Federal lands in Riverside County, California:

Offered Private Lands

San Bernardino Meridian, Riverside County, California

T. 5S., R. 14 E.
Sec. 27: N½, N½S½
T. 6 S., R. 14 E.
Sec. 16: W½W½
Sec. 21: W½
T. 7 S., R. 12 E.
Sec. 35: Descr. by metes and bounds (*)
Sec. 36: N½SW¼, SE¼NW¼, S½NE¼
T. 7 S., R. 13 E.
Sec. 31: Descr. by metes and bounds (*)
T. 7., R. 14 E.
Sec. 5: All
T. 6 S., R. 11 E.
Sec. 13: NE¼
Sec. 21: E½E½SE¼
Sec. 23: Descr. by metes and bounds

(*) Only those lands owned by Kaiser Steel Resources within these legal descriptions.

These offered private lands total 2,849.20 acres, more or less.

SUPPLEMENTARY INFORMATION: In the proposed exchange, the offered non-Federal lands are located within and adjacent to the Chuckwalla Bench and Dos Palmas Areas of Critical Environmental Concern designated in the California Desert Conservation Plan. Respectively, these areas contain habitat for the Desert Tortoise, a Federally listed threatened species, and riparian habitat supporting two Federally listed endangered species, the Yuma Clapper Rail and Desert Pupfish

Full equalization of values of the lands will be achieved through acreage adjustment or cash payment in an amount not to exceed 25% of the value of the lands being transferred out of Federal ownership.

Public lands to be transferred from the United States are subject to the following:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the act of August 30, 1890 (43 U.S.C. 945).

2. Reservations, if any, for authorized pipelines, powerlines, roads, highway, telephone lines, mineral leases and other authorized land uses identified as prior existing rights. A specific listing of these valid existing rights is available at the Palm Springs-South Coast Resource Area Office.

DATES: September 28, 1992. Interested parties may submit comments to the District Manager, California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action.

Effective August 13, 1992, the public lands shall be segregated from entry under the public land laws and the general mining laws. The segregative effect will end upon issuance of patent or two years from the date of first publication, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Verla Harle, Realty Specialist, (619) 251–0812. Information relating to this exchange is available for review at the Palm Springs-South Coast Resource Office, 63–500 Garnet Avenue, North Palm Springs, California 92258.

Dated: July 30, 1992.

Alan Stein,

Acting District Manager.

[FR Doc. 92–18983 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–40–M

[OR 48519; OR–060–02–4212–14; GP2–377]

Realty Action; Proposed Direct Sale; Oregon

August 5, 1992.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon.

T. 3 S., R. 3 E.,
Sec. 25, Lot 12.

The above-described parcel contains 3.34 acres in Clackamas County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the amount may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relative small size, its best use is to merge it with the adjoining ownership. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Eastside Management Framework Plan and the public interest will be served by offering this land for sale.

The parcel is being offered only to Port Blakley Tree Farms Limited Partnership (PBTF) (owner of Tax Lot 700, Map 3 3E 26) using direct sale procedures authorized under 43 CFR 2711.3–3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. PBTF will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be

submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. PBTF must include with its bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The deed will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

If the land identified in this notice is not sold, it will be offered competitively on a continuing basis until sold or until November 25, 1992. Sealed bids will be accepted at the Salem District Office during regular business hours. All bids received will be opened on Wednesday of each week, beginning on September 30, 1992. To be considered, bids must be received by 11 a.m. on the day of the bid opening.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Clackamas Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Elena C. Daly,

Clackamas Area Manager.

[FR Doc. 92-19293 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-33-M

[CA-050-02-4410-09]

Notice of Intent; Arcata Resource Management Plan Amendment Arcata, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 43 CFR 1601.0-3 and 40 CFR 1502.7, notice is hereby given that the Arcata Resource Area will prepare an amendment to the Arcata Resource Management Plan (RMP) and associated Environmental Impact Statement (RMP/EIS) for four of the seven management areas treated in the RMP. Management areas affected by the amendment include: Lacks Creek, Red Mountain, Covelo, and Scattered Tracts.

SUPPLEMENTARY INFORMATION: The Arcata Resource Area Management Plan is divided for planning purposes into seven management areas totalling approximately 125,000 acres of public land in northwestern California. The RMP does not include the King Range National Conservation Area. Six of these management areas contain forested tracts providing various amount of habitat for the federally threatened northern spotted owl (*Strix occidentalis caurina*). Two of these will retain land use allocations from the RMP which are consistent with habitat management for the owl. The record of Decision for the existing land-use plan for the Arcata Resource Area was completed in April, 1992 and included a decision to preserve management options on forested lands pending the U.S. Fish and Wildlife Service designation of critical habitat and recovery plan for the owl, and the California Board of Forestry Habitat Conservation Plan. Based on the information provided in these plans, the Arcata plan amendment will make land use allocations which are consistent with the intent of these plans to provide recovery for the northern spotted owl on the four identified management areas.

Anticipated issues are the effects of owl habitat management on timber supply and land tenure. The amendment will reevaluate 67,120 acres of public lands in the Red Mountain, Covelo Vicinity, and Scattered Tracts Management Areas initially identified for disposal in the final RMP/EIS. These lands include 13,000 acres of commercial forest land. Lands to be retained and managed for the northern spotted owl and old growth values, as well as lands to be made available for disposal will be identified.

In total, the amendment will identify management strategies for the northern spotted owl on 29,740 acres of commercial forest lands in the four management areas. The Record of Decision identified these lands as available for forest management with all timber harvest deferred pending completion of the HCP and critical habitat.

The amendment will address two alternatives (1) No Action or present management as described in the 1992 Record of Decision, and (2) Proposed Action which carries forward land use allocations consistent with the State of California Habitat Conservation Plan and the USFWS Recovery Plan for the Northern Spotted Owl.

The amendment will be incorporated into the California Board of Forestry HCP draft EIR/EIS cumulative assessment, with the relationship between the HCP and BLM plans described. Public land-use prescriptions will be incorporated into the statewide HCP alternatives.

DATES: A draft of the EIR/EIS is scheduled for March, 1993 and the final EIR/EIS for November, 1993.

PUBLIC PARTICIPATION: Opportunities for public input and comment will be announced through the media, a mailing list and personal contacts. Comments on this notice will be accepted for 30 days after date of publication.

FOR FURTHER INFORMATION CONTACT: Lynda Roush, Area Manager, Bureau of Land Management, Arcata Resource Area, 1125 16th Street, room 219, Arcata, California 95521. Telephone: (707) 822-7648.

Dated: July 29, 1992.

Lynda Roush,

Arcata Area Manager.

[FR Doc. 92-19288 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-40-M

[NM-940-02-4730-12]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico on September 7, 1992.

New Mexico Principal Meridian, New Mexico

T. 21 N., R. 11 W., Accepted July 7, 1992, for Group 872 NM.
T. 21 N., R. 10 W., Accepted July 6, 1992, for Group 872 NM.
T. 11 N., R. 5 E., Accepted July 2, 1992, for Group 903 NM.

Indian Meridian Oklahoma

T. 7 N., R. 12 W., Accepted July 1, 1992, for group 62 OK.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: August 4, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92-19291 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-FB-M

[OR-942-00-4730-12: GP2-358]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 22 S., R. 1 W., accepted June 5, 1992
T. 4 N., R. 2 W., accepted May 22, 1992
T. 14 S., R. 2 W., accepted June 23, 1992
T. 3 S., R. 8 W., accepted May 11, 1992
T. 19 S., R. 9 W., accepted June 3, 1992
T. 19 S., R. 10 W., accepted June 3, 1992
T. 7 S., R. 12 E., accepted July 20, 1992
T. 11 S., R. 21 E., accepted June 9, 1992
T. 12 S., R. 21 E., accepted June 9, 1992
T. 24 S., R. 32½ E., accepted July 14, 1992

Washington

T. 35 N., R. 3 W., accepted July 2, 1992

If protests against a survey, as shown on any of the about plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE., 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 3, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-19290 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-4214-10; N-56170; N-56171]

Proposed Withdrawals and Opportunity for Public Meeting; Nevada

Dated: August 3, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 464.93 acres of public land in White Pine County for the Sacramento Pass Recreation Area and 9.61 acres of public land in Lincoln County for the Pony Springs Fire Station. This notice closes the lands for up to 2 years from settlement, sale, location and entry under the general land laws, including the United States mineral laws. The lands will remain open to leasing under the mineral leasing laws.

DATES: Comments and requests for a public meting should be received on or before November 12, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-785-6528.

SUPPLEMENTARY INFORMATION: On July 20, 1992, petitions were approved allowing the Bureau of Land Management to file applications to withdraw the following described public lands from settlement, sale, location and entry under the public land laws, including the mining laws, subject to valid existing rights:

Sacramento Pass Recreation Area (N-56170)

Mount Diablo Meridian

T. 14 N., R. 68 E.,
Sec. 1, Lots 3 and 4;
Sec. 2, Lots 1 and 2.
T. 15 N., R. 68E.,
Sec. 35, SE¼;
Sec. 36, W½SW¼, SE¼SW¼,

The area contains 464.93 acres in White Pine County.

The purpose of the proposed withdrawal is to protect the Sacramento Pass Recreation Area. This particular location was selected based upon its attractive rock formations, vegetation, favorable construction terrain, accessibility to major travel routes, availability of water and attractive scenic vistas.

Pony Springs Fire Station (N-56171)

Mount Diablo Meridian

T. 5N., R. 66 E.,

A portion of section 6, more particularly described as follows: Beginning at the section corner common to the northwest corner of section 5 and the northeast corner of section 6, thence South 73°51'01", a distance of 369.24 feet, to the true point of beginning, which is corner No. 1. From corner No. 1, the true point of beginning: Thence North 78°40'13" East, 522.77 feet to Corner No. 2; Thence South 11°34'39" East, 800.00 feet, to Corner No. 3; Thence South 78°28'21" West, 522.48 feet to Corner No. 4; Thence North 11°32'52" West, 801.80 feet to Corner No. 1, the true point of beginning. The area contains 9.61 acres in Lincoln County.

The purpose of the proposed withdrawal is to protect the Pony Springs Station site. This location was selected based upon access for fire response to different locations, as well as for ease of fire reporting by the public.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawals must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the applications are denied or canceled or

the withdrawals are approved prior to that date. The temporary uses which may be permitted during this segregative period by the BLM authorized officer are any temporary uses which will not interfere with the purpose of the withdrawals.

The temporary segregation of the lands in connection with these withdrawal applications shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands.

Maria B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 92-19239 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Paul M. Beegel Auburn, ME. PRT-770683

The applicant requests a permit to the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. L. Tonks, "Sondagsrivierhoek", Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: James M. Greaves Santa Barbara, CA, PRT-769931

The applicant requests a permit to live-trap Least Bell's vireo (*Vireo bellii pusillus*) from the counties of Ventura, Santa Barbara, San Luis Obispo, Monterey, and San Benito, California, for banding and biological observations for the purpose of enhancement of survival of the species. All vireo's will be released at their capture sites after collection of data.

Applicant: James W. Hardin Stevens Point, WI, PRT-769288

The applicant requests a permit to import four pairs of captive-hatched red siskins (*Carduelis cucullata*) from Russell Kingston, Bonza Birdz Pty. Ltd., Australia, for enhancement of propagation and survival of the species through research, breeding and eventual reintroduction of the progeny into the wild.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: August 7, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-19270 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Northeastern Bulrush for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Northeastern bulrush. Small, isolated populations of this species are currently found in Maryland, Massachusetts, Pennsylvania, Vermont, Virginia, and West Virginia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before October 13, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801, telephone (814) 234-4090.

FOR FURTHER INFORMATION CONTACT: Carole K. Copeyon (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Northeastern Bulrush (*Scirpus ancistrochaetus*) Recovery Plan. Sixteen extant populations of this wetland plant are currently known from six eastern states; 11 historical populations are presumed extirpated. The Northeastern bulrush is found at the edge of ponds, wet depressions, or shallow sinkholes within small (generally less than one acre) wetland complexes. These wetlands are characterized by seasonally variable water levels. Several of the extant populations are small, and most are subject to threats such as habitat degradation or loss, succession, or herbivory. The Northeastern bulrush was listed as federally endangered in June of 1991.

The primary objectives of this draft Recovery Plan are to ensure the long-term viability of the species in the wild and to restore its rangewide distribution. Conditions that must be met to meet these objectives include permanent protection of 20 extant or established populations, evidence showing that 15 representative populations are stable or increasing, and sufficient knowledge of the species' life history and ecological requirements to provide for effective protection and management.

These conditions will be accomplished by (1) protecting existing populations and their habitat, (2) searching for and/or establishing additional populations, (3) monitoring population trends and habitat conditions, (4) investigating life history and ecological requirements, and (5) storing or propagating genetic material to ensure long-term genetic viability.

This draft Recovery Plan is being submitted for agency review. After

consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 5, 1992.

Nancy M. Kaufman,

Regional Director.

[FR Doc. 92-19284 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-337]

Designation of Additional Commission Investigative Attorney

In the matter of Certain Integrated Circuit Telecommunications Chips and Products Containing Same, Including Dialing Apparatus.

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq. and Sarah C. Middleton, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this notice in the **Federal Register**.

Dated: August 7, 1992.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 92-19282 Filed 8-12-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32104]

Burns Harbor Shortline Railroad Co.; Acquisition and Operation Exemption; Indiana Port Commission

Burns Harbor Shortline Railroad Company (BHSL), a noncarrier, has filed a notice of exemption to purchase and operate certain rail lines of the Indiana Port Commission (IPC). The lines total approximately 5.27 miles and extend between various coordinates in Burns International Harbor, Porter County, IN. The proposed transaction was expected to be consummated on or after August 1, 1992.

This proceeding is related to Finance Docket No. 32114, Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company, wherein Indiana Ports Railroad Holding Corporation (IPRHC) has concurrently filed a notice to exempt its continuance in control of BHSL upon the latter's becoming a carrier.[1]

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005-2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19316 Filed 8-12-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32112]

Clark Shortline Railroad Company; Acquisition and Operation Exemption; Indiana Port Commission

Clark Shortline Railroad Company (CLSL), a noncarrier, has filed a notice of exemption to purchase and operate a rail line of the Indiana Port Commission (IPC). The line is located in Clark Maritime Centre, Clark County, IN, and extends approximately 32,110 feet from a point 250 feet south of CSX Transportation's milepost 1.0. The proposed transaction was expected to be consummated on or after August 1, 1992.

This proceeding is related to Finance Docket No. 32114, Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company, wherein Indiana Ports Railroad Holding Corporation (IPRHC) has concurrently filed a notice to exempt its continuance in control of CLSL upon the latter's becoming a carrier.[1]

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005-2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19314 Filed 8-12-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32114]

Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company

Indiana Ports Railroad Holding Corporation (IPRHC) has filed a notice of exemption to continue to control Burns Harbor Shortline Railroad Company (BHSL), Clark Shortline Railroad Company (CLSL), and Southwind Shortline Railroad Company (SWSL), upon the last three named companies becoming carriers.

BHSL, CLSL, and SWSL, noncarriers, have concurrently filed notices of exemption in the following proceedings: Finance Docket No. 32104, Burns Harbor Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission, Finance Docket No. 32112, Clark Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission, and Finance Docket No. 32113, Southwind Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission, each involving acquisition and operation of different rail lines of the Indiana Port

[1] These notices also relate to acquisition and operation notices of exemption in Finance Dockets Nos. 32112 and 32113. These proceedings involve other subsidiaries of IPRHC and other lines of IPC.

[1] These notices also relate to acquisition and operation notices of exemption in Finance Docket Nos. 32104 and 32113. These proceedings involve other subsidiaries of IPRHC and other lines of IPC.

Commission. The transactions involved there were expected to be consummated on or after August 1, 1992.

IPRHC indicates that: (1) The rail lines to be acquired and operated by the affiliated railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005–2301.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19318 Filed 8–12–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32116]

Norfolk and Western Railway Company—Trackage Rights Exemption—Burlington Northern Railroad Company

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights over Burlington Northern Railway Company (BN) lines between: (1) BN Milepost 7.2 at St. Louis, MO, and NW Milepost SD–334.6 at Des Moines, IA, in St. Louis, St. Charles, Lincoln, Pike, Ralls, Marion, Lewis, and Clark Counties, MO, and Lee, Des Moines, Henry, Jefferson, Wapello, Monroe, Marion, Warren, and Polk counties, IA; (2) BN Milepost 116.6 at Illasco and BN Milepost 125.9, at Helton in Ralls County, MO; and (3) BN Milepost 263.4 at West Quincy in Marion County, MO, and BN Milepost 269.6 at Marblehead in Adams County, IL. The trackage rights will afford NW a more efficient means of routing its overhead traffic to and from the Des Moines-Runnells, IA, area and will replace its existing trackage rights over BN between Hannibal, MO, and Marblehead, IL. The exemption became effective on August 6, 1992, and the parties intend to consummate the transaction on August 24, 1992.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: August 6, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19317 Filed 8–12–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32113]

Southwind Shortline Railroad Co.; Acquisition and Operation Exemption; Indiana Port Commission

Southwind Shortline Railroad Company (SWSL), a noncarrier, has filed a notice of exemption to purchase and operate a rail line of the Indiana Port Commission (IPC). The line is located in Southwind Maritime Centre, Posey County, IN, and extends approximately 33,012 feet from a point 190 feet east of CSX Transportation's milepost 340.0. The proposed transaction was expected to be consummated on or after August 1, 1992.

This proceeding is related to Finance Docket No. 32114, Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company, wherein Indiana Ports Railroad Holding Corporation (IPRHC), has concurrently filed a notice to exempt its continuance in control of SWSL upon the latter's becoming a carrier.[1]

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street NW., Washington, DC 20005–2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be fled at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19315 Filed 8–12–92; 8:45 am]

BILLING CODE 7035–01–M

[1] These notices also relate to acquisition and operation notices of exemption in Finance Docket Nos. 32104 and 32112. These proceedings involve other subsidiaries of IPRHC and other lines of IPC.

DEPARTMENT OF JUSTICE

Chevron U.S.A., Inc.; Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Chevron U.S.A. Inc.*, Civil Action No. 88–6681, was lodged on August 5, 1992, with the United States District Court for the Eastern District of Pennsylvania. The action was brought pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The action sought civil penalties for the defendant's violation of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene, 40 CFR part 61, subparts A, J, and V, as well as injunctive relief against violation of the benzene NESHAP. In addition to providing for payment of civil penalties in the sum of $1,000,000, the consent decree requires the defendant to take steps to ensure future compliance with the benzene NESHAP, including undertaking a benzene NESHAP compliance audit.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Chevron U.S.A. Inc.* (E.D. Pa.), DOJ Ref. No. 90–5–2–1–1124.

The proposed consent decree may be examined at the office of the United States Attorney, Philadelphia Life Building, 13th Floor, Suite 1300, 615

Chestnut Street, Philadelphia, Pennsylvania 19106; or at the Consent Decree Library, 601 Pennsylvania Avenue Building NW., Washington, DC 20044, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $19.00 (25 cents per page reproduction costs) payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-19299 Filed 8-12-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 23, 1992, a proposed Consent Decree in *United States of America* v. *Outrigger Hotels Hawaii, et al.* was lodged with the United States District Court for the District of Hawaii.

The proposed Consent Decree resolves the United States' claims against Outrigger Hotels Hawaii, Hotel Operating Co. of Hawaii, Ltd., and Outrigger Services, Inc. under section 112(b) of the Clean Air Act, 42 U.S.C. 7412(b), as alleged in a complaint filed simultaneously with the Consent Decree. The Complaint alleged the defendants' violations of three different regulatory provisions of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, which is published at 40 CFR part 61 subpart M (1990). Under the proposed Consent Decree, defendants Outrigger Hotels Hawaii, Hotel Operating Co. of Hawaii, Ltd., and Outrigger Services, Inc. will pay a civil penalty to the United States of thirty thousand dollars ($30,000) and agree to comply with the NESHAP for asbestos in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Outrigger Hotels Hawaii, et al.*, DOJ Ref. No. 90-5-2-1-1604.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Hawaii, room C-242, U.S. Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii 96850 or at the Office of the Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94103. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (Tel.: (202) 347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097. Washington, DC 20004. In requesting a copy, please enclose a check in the amount of nine dollars and seventy-five cents ($9.75) (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-19300 Filed 8-12-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on July 8, 1992 filed a written notification on behalf of Bellcore and Royal PTT Nederland NV ("PTT Research") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general area of planned activities are given below.

Bellcore is a Delaware corporation with its principal place of business in Livingston, New Jersey.

PTT Research is a corporation of the Netherlands with its principle place of business in Leidschendam, The Netherlands.

Effective on May 18, 1992, Bellcore and PTT Research entered into an agreement to engage in cooperative research of future telecommunication network architectures and services, including experimental hardware and software technologies on which some networks and services may be created, to better understand fundamental technical issues and performance characteristics of these networks and services for exchange and exchange access services.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19244 Filed 8-12-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Anina, Inc.; Denial of Application

On May 18, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anina, Incorporated, (Anina) of 943 NE. 125th Street, North Miami, Florida 33161, proposing to deny its application, executed on July 25, 1990, for registration as a distributor under 21 U.S.C. 823(b) and 823(e). The Order to Show Cause alleged that Anina's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(b) and 823(e).

The Order to Show Cause was sent to Anina by registered mail. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Anina is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between October 1990 and March 1991, Anina ordered and received controlled substances using a DEA registration number issued to another person. Anina was not registered with the Drug Enforcement Administration to handle such substances.

On June 20, 1991, the Drug Enforcement Administration was informed by a pharmaceutical company that Anina was attempting to purchase 1000 dosage units of Tenuate Dospan, a Schedule IV controlled substance. Pursuant to this information, a controlled delivery of controlled substances was made to Anina on June 21, 1991. Following the controlled delivery, Anina's president Louis Banatty and another employee were arrested and charged with the unlawful use of a DEA registration number issued to another person, for the purpose of acquiring controlled substances, in violation of 21 U.S.C. 843(a)(2) and 21

U.S.C. 846. On January 8, 1992, in the United States District Court for the Southern District of Florida, and pursuant to an entry of a plea of guilty to one count of a two-count indictment, Louis Banatty, was convicted of conspiracy to unlawfully use a Drug Enforcement Administration number issued to another person, for the purpose of acquiring a controlled substance, in violation of 21 U.S.C. 846.

The Administrator also finds that Anina has failed to implement adequate security controls as required for distributors by 21 CFR 1301.72. Anina was informed by DEA personnel of the security requirements applicable to distributors, and on February 8, April 10, May 14, and May 24, 1991, Anina communicated to DEA that it would acquire and install the necessary security for controlled substances. However, the security requirements have not been met.

Based on the controlled substance related felony conviction of Anina's president, Louis Banatty, and its failure to implement adequate security controls as required for distributors, the Administrator concludes that Anina's registration with the Drug Enforcement Administration would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Anina. Therefore, the Administrator concludes that Anina's application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.1000(b), hereby orders that the application of Anina, Incorporated, executed on July 25, 1990, for registration under the Controlled Substances Act, be, and it hereby is, denied. This order is effective August 13, 1992.

Dated: August 5, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-19236 Filed 8-12-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 10, 1992; 10 a.m.–5 p.m.

Place: Conference Room #500-C, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, room 602, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357-7958.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR-PHASE I PANEL proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19308 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 16, 17, and 18, 1992; 8 a.m. to 6 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ian D. MacGregor, Section Head, Division of Earth Sciences, room 602, National Science Foundation, Washington, DC (202) 357-9591.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19310 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Microelectronic Information Processing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 3, 1992; 8 a.m. to 5 p.m.

Place: Room 500D, 1110 Vermont Avenue NW., Washington, DC

Type of Meeting: Closed.

Contact Person: Dr. Robert B. Grafton, Program Director, MIPS Division, rm. 414, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-7853.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19307 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Physics; Meeting

Name: Special Emphasis Panel in Physics.

Dates: September 10–11, 1992.

Times: 11 a.m.–6 p.m., September 10, 1992, 8:30 a.m.–3:00 p.m., September 11, 1992.

Place: Seminar Room, Nuclear Structure Research Laboratory, University of Rochester, Rochester, New York.

Type of Meeting: Closed

Contact: Dr. H.C. Britt, Program Director, Nuclear Physics Program, National Science Foundation, room 341, 1800 G Street, NW., Washington, DC 20550; Telephone (202) 357-7993.

Purpose of Meeting: To provide advice and recommendations concerning a proposal submitted to the National Science Foundation for financial support.

Agenda: Review and evaluate a research proposal by University of Rochester.

Reason for closing: The proposal being reviewed includes information of

a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19305 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Polar Programs; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: September 10-11, 1992; 8:30 a.m. to 5 p.m.

Place: Room 540-B, 1800 G Street, NW., Washington, DC

Contact Person: Dr. Julie Palais, Program Director, Division of Polar Programs, room 620, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-7894.

Agenda: To review and evaluate Polar Earth Sciences proposals as part of the selection process for awards.

Date and Time: September 17, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500-A, 1100 Vermont Avenue, NW., Washington, DC.

Contact Person: Dr. Julie Palais, Program Director, Division of Polar Programs, Room 620, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-7894.

Agenda: To review and evaluate Polar Glaciology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19306 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: September 9, 1992; 7:30 p.m. to 9 p.m.; September 10, 1992; 8 a.m. to 5 p.m.; September 11, 1992; 8 a.m. to 3 p.m.

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA.

Contact Person: Dr. Terry Woodin, Program Director, Division of Undergraduate Education, rm. 1210, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7051.

Agenda: To review and evaluate Teacher Preparation Collaboratives proposals as part of the selection process for awards.

Date and Time: September 9, 1992; 7:30 p.m. to 9 p.m.; September 10, 1992; 8 a.m. to 5 p.m.; September 11, 1992; 8 a.m. to 3 p.m.

Place: Holiday Inn Crowne Plaza, 300 Army/Navy Drive, Arlington, VA.

Contact Person: Dr. William Kelly, Program Director, Division of Undergraduate Education, Rm. 1210, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7051.

Agenda: To review and evaluate Undergraduate Course and Curriculum Development (Phase II) proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19309 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289; License No. DPR-50]

GPU Nuclear Corporation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated July 10, 1992, Mr. Robert Gary, on behalf of the Pennsylvania Institute for Clean Air (Petitioner), requested that the U.S. Nuclear Regulatory Commission (NRC) take action regarding the GPU Nuclear Corporation, licensee of the Three Mile Island Nuclear Station, Unit 1. Petitioner requests that as soon as possible (preferably within 5 working days) (1) the Federal Emergency Management Agency (FEMA) examine certain transportation-related discrepancies alleged by Mr. Gary in the Dauphin County Emergency Evacuation Plan and (2) the NRC order the licensee to "power down" the plant and not permit the plant to generate power until the discrepancies are corrected, and until a valid, workable, operational emergency evacuation plan is produced.

Petitioner asserts, as bases for these requests that, in the event of a radiological emergency, the Dauphin County Emergency Evacuation Plan could not operate because:

(1) Letters of intent from private transportation companies were not on file at Pennsylvania Emergency Management Agency (PEMA) headquarters or the Emergency Operations Center of Dauphin County, in Harrisburg, as represented by Chief Counsel, except for a single letter of 1985 from Capital Area Transit, which cited as the sole source of payment a statute since repealed and superseded;

(2) The Radiological Emergency Response Plan (RERP) maintained at the Dauphin County Emergency Operations Center accounted for 450 buses, 70 with Capital Area Transit, and 320 with Capital Trailways Penn Central Station and executives at Capital Area Transit and Trailways Penn Central listed by the RERP has left the companies in 1984 and 1987, respectively;

(3) No "after hours" telephone numbers were listed in the RERP for use in the event of a radiological emergency;

(4) The Dauphin County Emergency Operations Center staff states that they have no authority to request military vehicles from the National Guard, Mechanicsburg, or Indiantown Gap, although PEMA does;

(5) PEMA states that its responsibility lies only in communications and coordination and not in the use of military vehicles, and PEMA has no plan to call for the use of military vehicles;

(6) The Dauphin County Plan contains no reference to the use of military vehicles because the county believes that the State has exclusive jurisdiction in that area;

(7) Despite acres of trucks within 15 miles of Harrisburg, neither the State nor the County written plans refer to any use of such vehicles; and

(8) Permission to operate nuclear reactors at Three Mile Island is premised on the existence and continued maintenance of an operational radiological emergency evacuation plan for Dauphin County.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by § 2.206, appropriate action will be taken on the specific issues raised by the petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Three Mile Island facility located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 5th day of August 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19324 Filed 8-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant; Notice of Withdrawal of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Indiana Michigan Power Company (the licensee) to withdraw its June 29, 1989, application for amendments to Facility Operating License Nos. DPR-58 and DPR-74 issued to the licensee for operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on April 18, 1990 (55 FR 14507).

The purpose of the licensee's amendment requests was to revise the Technical Specifications (TS) related to the control room emergency ventilation system.

Subsequently, the licensee informed the staff that the amendments are no longer requested. Thus, the amendments application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendments dated June 29, 1989, and (2) the staff's letters dated July 7, 1992 and August 6, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, 6th day of August 1992.

For the Nuclear Regulatory Commission.

John Stang,

Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19325 Filed 8-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-00823; License No. 21-10725-03; EA 92-042]

Oakland University, Rochester, MI; Order Imposing Civil Monetary Penalty

I

Oakland University (Licensee) is the holder of Byproduct Material License No. 21-10725-03 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 22, 1968. The license was amended in its entirety on March 17, 1988, most recently amended on July 30, 1990, and is due to expire on May 31, 1993. The license authorizes the Licensee to possess and use a limited number of radioisotopes in millicurie quantities for in-vitro laboratory research studies, animal studies, and student instruction in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on February 18 through 25, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Licensee by letter dated April 7, 1992. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by two letters dated May 4, 1992. In its response, the Licensee admitted the violations that resulted in the proposed civil penalty, but requested mitigation of the penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff had determined, as set forth in the Appendix to this Order, that the violations, with the exception of Violation I.C., occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed. With respect to Violation I.C., the violation is amended as described in the Appendix to this Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of the Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violations set forth in the Notice of Violation and as modified in the appendix, which were admitted by the licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 6th day of August 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusions

On April 7, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for

violations identified during an NRC inspection on February 18 through 25, 1992. Oakland University (Licensee) responded to the Notice on May 4, 1992. The Licensee questioned the accuracy and denied Violation I.C., in part; and admitted the remaining violations, but requested mitigation of the penalty. The NRC's evaluation and conclusions regarding the licensee's partial denial and contention of an inaccurate violation, and request for mitigation of the civil penalty are as follows:

Restatement of Violations (Parts I and II of Notice)

I. License Condition 16 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in applications dated April 23, 1982, and February 19, 1988; and a letter dated October 22, 1982.

A. Item 11.a of the application dated April 23, 1982, and Item 10 of the application dated February 19, 1988, require annual calibration of the radiation detection instruments listed in the applications.

Contrary to the above, as of February 18, 1992, the licensee failed to calibrate a Victoreen 493 Geiger counter since September 21, 1984, an Eberline E–120 counter since March 17, 1988, and a Series 900 minimonitor since December 19, 1989, which are radiation detection instruments listed in the applications.

This is a repeat violation.

B. The letter dated October 22, 1982, states that the Radiation Safety Committee meets four times a year.

Contrary to the above, the Radiation Safety Committee had not met from December 7, 1989 until the February 18–25, 1992 inspection.

C. Item 15 of the application dated April 23, 1982, "Rules for Laboratory Personnel," states, do not eat or drink in any area where radioactive material is stored or used, and do not store food or drink with radioactive material.

Contrary to the above, on February 19, 1992, drinking and storage of food occurred in three labs where radioactive material is stored and used. Specifically, a box of crackers was found and a coffee maker was brewing in room 347 of Dodge Hall; a student was warming coffee and drinking coffee in room 332 of Dodge Hall; and beverages and food were stored in room 320 of Hannah Hall.

D. Item 15 of the application dated April 23, 1992, "Area Survey Procedures," requires that waste storage areas and all other laboratory areas will be surveyed weekly. Laboratory areas where only small quantities of radioactive material are used (less than 200 microcuries) will be surveyed monthly. The weekly and monthly surveys will consist of a measurement of radiation levels with a survey instrument and a series of wipe tests.

Contrary to the above, from November 1990 until the February 18–25, 1992 inspection, the licensee failed to perform wipe tests of rooms 348 and 418 of Dodge Hall, which are laboratory areas where radioisotopes are used or stored. Additionally, since November 1990, wipe tests of all other areas have only been performed on November 19, 1990, December 13, 1990, February 1, 1991, March 22, 1991, July 12, 1991, and February 14, 1992.

E. Item 7.c of the letter dated October 22, 1982 requires the use of finger type extremity monitors for procedures that involve one millicurie or more.

Contrary to the above, the licensee failed to use finger type extremity monitors including the following dates of November 21, 1989, January 16, 1990, January 10, 1991, February 4, 1991, May 5, 16, and 21, 1991, July 31, 1991, October 17, 1991, and January 27, 1992, when greater than one millicurie of radioactive material was received and used.

F. Item 15 of the application dated April 23, 1982, requires the RSO inspect each radiation area quarterly. Inspection will include a survey of all areas in which radioactive material is used, and determination of compliance with rules and regulations, and license conditions.

Contrary to the above, during the second and fourth quarters of 1991, the RSO failed to inspect any radiation area quarterly. Additionally, from November 1990 to February 18, 1992, the quarterly inspections which were performed only included a series of wipe tests and did not include a determination of compliance with rules and regulations, and license conditions.

G. Item 15 of the application dated April 23, 1982, "Procurement of Radiation Sources," requires that a copy of all purchase order requests for radiation sources be submitted to the RSO.

Contrary to the above, from June 1989 until the February 18–25, 1992 inspection, the authorized users of this license failed to submit a copy of purchase order requests for radioactive sources to the RSO.

H. Item 15 of the application dated April 23, 1982, requires the licensee to dispose of radioactive waste only in specially designated and properly shielded receptacles.

Contrary to the above, on February 19, 1992, the licensee failed to dispose of radioactive waste in specially designated and properly shielded receptacles in rooms 315 and 430 of Dodge Hall. Specifically, bags containing radioactive waste were stored under a sink in room 315, and the surface of the general trash can in room 430 had survey readings of three to four millirem per hour.

I. Item 15 of the application dated April 23, 1982, "Area Survey Procedures," requires that a permanent record be kept of all survey results, including negative results.

Contrary to the above, from December 10, 1986, which was the date of the last NRC inspection, until the February 18–25, 1992 inspection, the licensee failed to document results of daily surveys performed with a survey instrument.

II. License Condition 8.C limits the maximum amount of calcium-45 byproduct material that the licensee may possess at any one time to 5 millicuries.

Contrary to the above, from October 18, 1990 to approximately February 8, 1991, the licensee exceeded the 5 millicurie possession limit for calcium-45. Specifically, on October 18, 1990, the licensee received a 5 millicurie shipment of calcium-45 while a 3.1 millicurie inventory of calcium-45 was already in its possession. The maximum amount possessed decayed below the possession limit on approximately February 8, 1991.

Summary of Licensee's Response to Violation I.C.

The licensee admits that drinking and storage of food occurred in room 347 of Dodge Hall. However, the violation incorrectly referenced room 320 instead of room 325 in Hannah Hall.

Additionally, no radioactive material was used or stored in room 332 of Dodge Hall at the time of the NRC inspection.

NRC Evaluation of Licensee's Response

The NRC agrees that the incorrect room was cited in the violation and accepts that argument that no radioactive material was used or stored in room 332 of Dodge Hall. The violation is amended to reflect the correct room numbers and locations. However, this does not change the overall validity of Violation I.C. since two examples of the occurrence remain.

Therefore, the NRC concludes that the violation occurred and the violation is amended to reflect the correction.

Summary of Licensee's Request for Mitigation

The Licensee admitted the violations which resulted in the proposed civil penalty but requested mitigation of the penalty based on the following arguments:

1. The Licensee states that the NRC's stated purpose for imposing civil penalties is to "emphasize the need for lasting remedial action and deter future violations." (10 CFR part 2, appendix C, section V.B (1991)). The Licensee believes that its replay with accompanying appendices establishes that adequate remedial action has been taken. Furthermore, these documents establish that adequate audit and review processes are now in place to insure that no further violations occur; corrective actions taken thus far have demonstrated involvement and support from the highest levels of the administration, including the President; and the University administration has committed time and attention necessary to insure that the radiation safety program is in compliance with all NRC and license requirements.

The Licensee takes exception to the NRC's characterization of corrective action taken as being only minimally acceptable. Consideration should be given to "the timeliness of the corrective action, the degree of licensee initiative, and the comprehensiveness of the corrective action-such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern" (10 CFR part 2, appendix C, section V.B.2). It is the Licensee's position that the corrective action taken in this case meets all three criteria.

The Licensee states that corrective action was timely, in that within 24 hours of the NRC's inspection, the Radiation Safety Officer sent memoranda to the isotope users whose laboratories were cited. In addition the Radiation Safety Officer directed a memorandum on February 20, 1992, to all approved isotope users reminding the users of proper radiation safety procedures. On March 9, 1992, the Radiation Safety Committee met to review the apparent violations, to review the corrective actions taken and to plan for further compliance.

The Licensee states that the corrective action also shows a considerable degree of initiative and comprehensiveness. Rather than focusing exclusively on the specific violations, the Director of Research and Academic Development and the Radiation Safety Officer met and immediately began a process to revise the entire Radiation Safety Manual in an attempt to address the concern about management control of the radiation safety program. Additionally, the decision to appoint the Director of Research and Academic Development, rather than the Radiation Safety Officer, as Chair of the Radiation Safety Committee also reflects initiative and comprehensiveness of corrective actions.

The Licensee states that with respect to the violations regarding failure of the Radiation Safety Committee to meet on a quarterly basis, failure to comply with weekly and monthly survey requirements, failure of the Radiation Safety Officer to survey and inspect on a quarterly basis, failure to dispose of radioactive waste in special containers, and failure of users to document survey results, it was impossible for the University to be in complete compliance by the date of the Enforcement Conference. Other corrective actions took longer to complete because problems of waste storage were discovered subsequent to the Enforcement Conference. In addition, the University demonstrated further good faith compliance with the NRC's requirement for corrective action immediately after the March 19, 1992, Enforcement Conference. Additional corrective measures were taken on March 20, 1992, which addressed alleged violations concerning the failure to use extremity monitors, the failure of authorized users to submit copies of purchase order requests to the Radiation Safety Officer, failure to properly dispose of radioactive waste, and possession of an excessive quantity of calcium-45.

2. The Licensee also requests mitigation of the civil penalty based on the ability of the Licensee to pay and the Licensee's ability to conduct licensed activities safely. The State of Michigan has reduced financial support, and as a result, the University has instituted a series of cost-reduction efforts and tuition increases. In addition, the University will change its recognition of State appropriations from a modified accrual to a cash basis methodology. Compliance with license requirements for operation of the radiation safety program has resulted in a significant increase in costs. The University will be spending up to $15,000 to finance repairs and restorations to the University's licensed storage facility. The Licensee urges the NRC to consider the University's budgetary problems, including the significant cost required to maintain compliance with the radiation safety program. Funds paid as part of the civil penalty could be better spent in correcting radiation safety problems and preventing their recurrence.

3. Furthermore, the Licensee believes that the deterrent effect intended by the NRC has already been accomplished by the notice of violation and the adverse publicity as a result of the press release.

NRC Evaluation of Licensee's Request for Mitigation

1. Corrective Action

When considering the corrective action factor, the NRC considers those corrective actions which are completed or fully formulated by the Licensee from the time the violations are identified during the inspection through the Enforcement Conference. As stated in the NRC's letter dated April 7, 1992, full 50 percent escalation was warranted for the corrective action factor in that the Licensee's corrective actions presented at the Enforcement Conference were minimally acceptable. The Licensee's corrective actions did not satisfactorily outline a plan to ensure that the Radiation Safety Officer and his assistant would dedicate sufficient time to the Radiation Safety Program. At the Enforcement Conference, the Licensee had not given sufficient attention to resources it needed to implement a plan. In fact, the NRC Staff had to encourage the Licensee to address this issue. In addition, the Licensee had not fully evaluated the responsibilities and duties of the Radiation Safety Officer prior to the Enforcement Conference. Consequently, at the time of the Enforcement Conference, the Licensee had not determined the quantity of work and effort required of the Radiation Safety Officer to effectively ensure compliance with NRC requirements and the institution's license. Although the Licensee had spent a significant effort in revising the Radiation Safety Manual, at the time of the Enforcement Conference it was unclear how the Licensee would ensure that the Manual and NRC requirements would be fully complied with in the future. Finally, the Licensee's corrective actions regarding radioactive waste disposal were not timely, in that they were not implemented until after the Enforcement Conference.

The NRC's conclusion regarding the escalation for the corrective action factor is also supported by the Licensee's Reply to a Notice of Violation dated May 4, 1992. The reply indicates that the Licensee had not finalized its commitments regarding their plans to ensure that the Radiation Safety Officer and his assistant dedicated sufficient time to the Radiation Safety Program, until May 1, 1992, which was seven weeks after the March 19, 1992, Enforcement Conference. (These commitments included funds being made available to provide one-quarter time services for a Radiation Safety Officer; additional funds being made available for a one-quarter time doctoral-level graduate assistant to the

Radiation Safety Officer; and additional funds for staffing if warranted.)

The NRC stated in its April 7, 1992, letter that it was unclear at the Enforcement Conference how the Licensee would ensure that the Radiation Safety Manual and NRC requirements would be fully complied with in the future. In particular, no explanation was provided as to how the Licensee's revised Radiation Safety Program would be audited and enforced. Although the four steps that the Licensee provided on pages 10–11 of the Reply to a Notice of Violation, dated May 4, 1992, are acceptable methods for ensuring future compliance with license conditions and NRC requirements, these steps were not outlined at the Enforcement Conference. These steps include:

(a) The Radiation Safety Officer will meet with the Director, Office of Research and Academic Development, on at least a monthly basis to review the Radiation Safety Program and compliance with monitoring requirements. Written reporting of the results of compliance surveys will also be performed.

(b) The Director, Office of Research and Academic Development, will report the results of his oversight activities to the Vice Provost of the University during standing bi-weekly meetings.

(c) The Radiation Safety Officer currently has authority to suspend the use of radioisotopes in laboratories in violation of license conditions or NRC regulations. The Annual Permitting Process now in effect at Oakland University should reinforce safety requirements and procedures among all principal investigators and workers at the University. Furthermore, serious or repeat violations, as determined through the monitoring activities of the Radiation Safety Officer will not require review and re-authorization in a meeting of the Radiation Safety Committee before work can recommence.

(d) The University's Director of Internal Audit will conduct at least annual reviews of the Radiation Safety Program to provide for an independent review. A memorandum from the Provost to the Director, Internal Audit, requesting such services was attached to the Licensee's response. The NRC Staff notes that this memorandum is dated April 22, 1992, and only suggests that third-party audits of all records and regular monitoring procedures should be assigned to the Director, Internal Audit. The Licensee did not submit to the NRC any subsequent formal commitment to perform the suggested audits by the Director, Internal Audit.

In addition, the NRC Staff notes that the Licensee's corrective actions for waste disposal were not timely, in that the Radiation Safety Officer's March 20, 1992, memorandum was issued the day after the Enforcement Conference and stated that the removal of radioactive waste would commence beginning the week of March 23, 1992. The Radiation Safety Officer's April 7, 1992, memorandum to the Director, Risk Management & Contracting, indicated that the Radiation Safety Officer had obtained a key to the radioactive waste storage implement shed behind Hannah Hall and was preparing to transport the first 5 or 6 barrels during the week of April 7, 1992.

Based on the above, the NRC Staff does not find that the Licensee's arguments warrants mitigation of the civil penalty.

2. Ability to Pay and Conduct Licensed Activities Safely

NRC's Enforcement Policy, 10 CFR part 2, appendix C, provides that "it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities." The licensee has not provided any evidence to demonstrate that the $5,000 civil penalty will put it out of business or will adversely affect its ability to safely conduct licensed activities. The Licensee should also be aware that the NRC will accept payment of the civil penalty over time. Thus, the NRC Staff does not find that the Licensee's argument warrants mitigation of the civil penalty.

3. Deterrent Effect

The Licensee argues that the civil penalty should be mitigated since the deterrent effect intended by the NRC has already been accomplished. Civil penalties are assessed to deter future noncompliance by all licensees and to emphasize the need for timely, effective, and lasting corrective action. The deterrent effect is achieved when licensees, in order to avoid civil penalties, take prompt and effective action in advance of any potential violation so that the violation does not occur and the NRC does not have to become involved. Thus, the NRC Staff does not find that the Licensee's argument warrants mitigation of the civil penalty.

NRC Conclusion

The NRC Staff concludes that the Licensee did not provide an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $5,000 is imposed.

[FR Doc. 92-19326 Filed 8-12-92; 8:45 am]
BILLING CODE 7590-01-M

Docket No. 40-08681-MLA and ASLBP No. 92-666-01-MLA]

UMETCO Minerals Corp. (Source Materials License No. SUA-1358); Order and Memorandum, Request for Hearing and Stay of License Amendment

Before Administrative Judge James P. Gleason, Presiding Officer.
August 5, 1992.

I. Request for Hearing

On July 2, 1992, the State of Utah filed a request for hearing on the issuance by the Nuclear Regulatory Commission of Amendment 30 to License No. SUA-1358. The State also requests a stay of the amendment pending completion of the proposed adjudication.[1] Licensee, the Umetco Minerals Corporation (UMC), opposes the hearing request [2] and the Staff also filed a response in opposition to both the hearing request and the request for a stay.[3] The Staff indicates it intends to participate as a party if a hearing is granted.

The UMC application for Amendment 30, filed on January 18, 1989, is to perform plant processing tests on 600 wet tons of feed containing source material received from the Teledyne Wah Chang Company in Albany, Oregon. The material for the processing test is not natural ore mined for its uranium content but rather comes from the processing of ore to recover zirconium. It contains greater than 0.05% recoverable uranium and UMC intends to process the material for its uranium content at its White Mesa Mill, a licensed facility in Blanding, Utah. After processing, UMC intends to dispose of the resulting tailings at the mill's impoundment. The State asserts that the NRC is taking licensing action without first adequately determining whether UMC is actually engaged in waste disposal of material from the Wah

[1] Request for Hearing and Stay, Utah Department of Environmental Quality and Assistant Attorney General, July 2, 1992.

[2] Letter from R.A. Van Horn, Director of Operations, UMC, to NRC Executive Director of Operations James Taylor, July 16, 1992.

[3] NRC Staff's Response to Request for Hearing by State of Utah, July 30, 1992.

Chang Company instead of uranium reprocessing as alleged. As an Agreement State, Utah asserts that it, rather than the NRC, may have jurisdiction over the materials if they are either low level waste or source material. Further, the State asserts that the NRC's amendment action may hinder the Department of Energy's (DOE) responsibility to assume long-term custodial care of the processed materials. Finally, the State also expresses a concern over the lack of NRC oversight of UMC's tests and the characteristics of the materials to be processed. The State contends, *inter alia*, that a hearing is necessary in order to resolve the nature of the materials being processed, the licensee's intention in processing the material, and questions concerning title to the material.

In opposing the hearing, UMC cites NRC's regulations, 10 CFR 2.1205(c)(2) (i) and (ii), requiring that a hearing request must be filed within thirty (30) days after the requestor receives actual notice of a pending application or agency action granting the application, or one hundred and eighty (180) days after agency action granting the application, whichever is earlier. The Licensee contends that here the State had much more than thirty days knowledge of the license amendment application prior to filing its hearing request. In support of its position, UMC references specific meetings it had with State environmental officials to discuss the application.[4] In its response, the Staff alleges that the State had actual notice of the pending application as early as April 1989.[5] Because the Presiding Officer is required under the Commission's regulations to determine that requests for hearings are timely filed, we address that issue first.

The applicable regulation, 10 CFR 2.1205(c)(2), states in its pertinent part that:

> (c) A person other than an applicant shall file a request for a hearing * * *.
>
> (2) If a Federal Register notice is not published in accordance with paragraph (c)(i), the earlier of
>
> (i) Thirty (30) days after the requestor receives actual notice of a pending application or an agency action granting an application; or
>
> (ii) One hundred and eighty (180) days after agency action granting an application.

Both UMC and the Staff argue that since the State had actual notice of the then pending license application months before the NRC approved and issued the amendment, a request for hearing was required to be filed within thirty days of such notice. The state rejoins that it was entitled to file, as it did, within thirty days of the agency action granting the license amendment. As the State does not appear to be seriously objecting to the assertion that it had prior notice of the pending application, the question here is whether 10 CFR 2.1205(c)(2)(i) provides for two windows of opportunity rather than one for filing a request for hearing.[6] Nothing in either the plain language of the regulation or the underlying Statement of Consideration militates against an interpretation providing two such windows of opportunity. There is nothing in the plain language of the regulation to support an opposite conclusion. Indeed, to subscribe to the position advanced by UMC and the Staff, one must conclude, without more, that the word "earlier" modifies both a notice of a pending application and notice of an agency action granting the application as well as the 180-day period set forth in 10 CFR 2.1205(2)(ii). Neither party has suggested any basis for such an interpretation nor can it be supplied here. As physically structured and grammatically written, the words "earlier of" refer to and modify the whole of subsection (i) and the whole of subsection (ii). The modifier "earlier" can neither structurally nor grammatically properly modify both components of subsection (i) as well as subsection (ii). To obtain that result, the regulation would have to be written with three subsections so that the current first subsection would be split into two separately numbered subsections and the current second subsection would become a third subsection. Accordingly, the plain language of § 2.1205(c)(2)(i) provides two windows of opportunity for filing a hearing request. As the U.S. Court of Appeals has suggested, an agency's interpretation of its own rules cannot fly in the face of the language of the rules themselves. See *Union of Concerned Scientists* v. *NRC*, 711 F.2d 370, 381 (1983).

In support of this conclusion, the commentary in the Commission's Statement of Consideration refers to the fact that the proposed rule, in § 2.1205(c), provides that a hearing petition will be considered timely if filed within thirty days after the petitioner receives actual notice of a licensing action.[7] No rationale is apparent as to why the Commission would wish to require a person to file a hearing request at a time, such as is evident here, when ongoing communications may prevent the necessity for a hearing at all. That expectation would be extinguished only when the NRC approved the action being opposed by the State. It is a more reasonable procedure and, in any event, what the plain language of the regulation requires, that when an effort toward resolution fails, a thirty-day period would then ensue for requesting a hearing. Here, the State acted within this time frame. Thus the State's request for a hearing was timely filed.

Alternatively, even if the State's petition is found untimely, its lateness is excusable under the provisions of 10 CFR 2.1205(k). In the circumstances, the fact that the State was engaged in discussions with the Staff, as well as the Licensee, on the requested license amendment makes the delay in filing an earlier request for hearing excusable. Also, the current request by the Staff, agreed to by Licensee, to delay processing the material tends to buttress a finding that a grant of the hearing petition would not result in undue prejudice or injury to the other participants in the proceeding.[8] The fact that the proposed license amendment request was filed over three and a half years ago, and no action has ensued to the present time, also supports a finding that no undue prejudice would result from the grant of the hearing petition alone.

The applicable regulations also require that the Presiding Officer determine that the specified areas of concern are germane to the subject matter of the proceeding and that the requestor meets the judicial standards for standing.[9] Neither the Licensee nor the Staff addresses the standing or areas of concern submitted in the State's petition.[10] No serious question can be raised on the State's standing in this proceeding. Its petition cites issues of jurisdiction over the materials involved, the proper characteristics of such material, the purpose for which the materials have been received, the failure to place proper conditions on the license amendment, and questions concerning governmental responsibility for the ultimate custody of the materials. These

[4] Umetco Minerals Corporation, July 16, 1992 at 2.

[5] Staff response at 6–7.

[6] State of Utah's supplemental request for hearing at 1, August 31, 1992.

[7] See 54 FR 8271.

[8] Presiding Officer Telephone Conference, pp. 6–7, July 30, 1992.

[9] 10 CFR 2.1205(g).

[10] The Staff does allege, with supporting attachments, that substantially identical Utah State concerns have been addressed and resolved with notice and consent of the Commission prior to the issuance of the license amendment. NRC Staff Response at 8, n.14.

matters setting forth possible injuries in fact are within the zone of interest protected by statute and meet the standards for standing in Commission proceedings.[11] I find the State has standing to participate and has set forth areas of concern germane to this proceeding.

II. Request for Stay

In its petition, the State also requests a stay of the license amendment pending the completion of a hearing. In the subpart L proceedings, an application for a stay is governed by the provisions of 10 CFR 2.1263 which incorporates the traditional four-stay criteria of 10 CFR 2.788:

1. Whether the movant has made a strong showing that it is likely to prevail on the merits;
2. Whether the movant has shown that it will be irreparably injured unless a stay is granted;
3. Whether a stay would harm other parties; and
4. Where the public interest lies.

Under the Commission's regulations, 10 CFR 2.1237(b), the State has the burden of persuasion on these factors. Here, however, the State's petition fails even to address the criteria for a stay set forth in the regulation. Although arguably the third- and fourth-stay criteria might be satisfied by the State's recital of its concerns, the failure to address the first two criteria is fatal to its request. Obviously, the Public interest would be served in having the question of jurisdiction finally established. Similarly, the Licensee would not be harmed by a stay because it has agreed to the Staff's request to delay any materials' processing until an effort is made to resolve the State's concerns, *supra*. But since the State has made no showing that it is likely to prevail on the merits or that it will be irreparably injured, a stay cannot be granted. The request for a stay is therefore denied.

Order

For the reasons stated, it is, this 5th day of August 1992, *Ordered:*

1. The request for hearing by the State of Utah is granted and the request for a stay of Amendment 30 to License No. SUA–1358 is denied.
2. A hearing on the License Amendment will be held and the time and other details concerning the hearing will be published at a future date.
3. Petitions to intervene in this proceeding must be filed within thirty (30) days of this Order appearing in the **Federal Register**. The Licensee and Staff will have ten (10) days to respond after service of any petition.
4. An appeal from this Order, by parties other than the petitioner, may be filed with the Commission within ten (10) days of the service of the Order. 10 CFR 2.1205(n).

Bethesda, Maryland, August 5, 1992.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 92–19323 Filed 8–12–92; 8:45 am]

BILLING CODE 7590–01–M

[11] *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, 4 NRC 610, 612–13 (1976).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31003; File No. SR–NASD–92–12]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Short Sale Rule for Nasdaq National Market System Securities and Qualification Criteria for Primary Market Makers in the Nasdaq System

August 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 22, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change and amendments as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The proposed language of the rule change, as amended, is included below as exhibit A. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] The original proposed rule change providing a short sale rule for Nasdaq/NMS securities was filed with the Commission on April 9, 1992. The NASD filed Amendment No. 1 to the proposal on July 1, 1992. Amendment No. 1 proposes a 20 day registration requirement in order for market makers to qualify for "primary" market maker status for a one year period after Commission approval of the proposal. In addition, Amendment No. 1 adds two interpretations of the Board of Governors: the first regarding "bona fide" market making activity; the second regarding the prices at which "legal" short sales may be effected. On July 22, 1992, the NASD filed Amendment No. 2 to the original proposed rule change. Amendment No. 2 adds an additional Interpretation of the Board of Governors regarding activity that may be considered in violation of the short sale rule and amends the Interpretation proposed in Amendment No. 1 regarding the prices at which "legal" short sales may be effected. The Notice of Proposed Rule Change that follows incorporates Amendment Nos. 1 and 2 into the original proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a short sale rule or "bid test" for Nasdaq National Market System ("Nasdaq/NMS") Securities that would prohibit short sales at or below the current inside bid as shown on the Nasdaq screen when that bid is lower than the previous inside bid. The rule includes certain exemptions, including an exemption for qualified market makers that comply with criteria establishing them as primary market makers in the Nasdaq system. The NASD is amending he proposed sections and requesting that the date of effectiveness of the primary market maker qualifications be one year from the effective date of the short rule. In the interim-year, a standard of twenty days "time in grade" will be used to designate a qualified Nasdaq market maker. In addition, the NASD is proposing three Interpretations of the Board of Governors regarding "bona fide" market making activity, the prices at which "legal" short sales may be effected, and examples of conduct that may be considered in violation of the rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing a new Section 46 in Article III of the Rules of Fair Practice regarding a short-sale rule or "bid test" for Nasdaq/NMS securities. The proposed short sale rule will prohibit members from effecting short sales at or below the bid for themselves or their customers when the current inside or test bid is below the previous inside bid. The rule will be in effect during normal, domestic market hours (9:30 a.m. to 4 p.m. Eastern Time) and includes an exemption for transactions by qualified Nasdaq market makers. Qualified or "primary" Nasdaq

market makers will be designated as such if they comply with the criteria set forth in new Section 47 of Article III of the Rules of Fair Practice. The three primary criteria relate to dealer spread, time at the inside quotation, and quote changes in relation to trades. A supplemental criterion relates to the share of trading volume accounted for by the market maker.

1. Background

Since 1986, the NASD has adopted a number of regulatory initiatives regarding short selling. Prompted by recommendations for short sale regulation contained in the *Pollack* report,[3] the NASD now requires members to mark all sale transactions either "long" or "short;" [3] requires a member, prior to accepting a short sale from a customer, to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer;[4] requires a member to make an affirmative determination that it can borrow the security before effecting a short sale for its own account, (exempting transactions in corporate debt securities, in bona fide market making activities and in fully hedged or arbitraged positions);[5] imposes mandatory buy-in requirements for cash or guaranteed delivery for Nasdaq securities where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice;[6] and requires members to report, as of the 15th of each month, aggregate short positions in all customer and proprietary accounts in securities listed on Nasdaq.[7] The NASD also encouraged adoption of SEC Rule 10b–21 that prohibits a person who effects a short sale of an equity security between the filing of a registration statement and the time at which sales of such equity security may be commenced, from covering the short sale with offered securities purchased from an underwriter or other broker or dealer participating in the offering.[8]

In January 1991, the NASD solicited comments from the membership on the concept of a short sale rule for Nasdaq/NMS securities.[9] Approximately 60 comment letters supporting and opposing the concept from members and issuers were submitted, along with hundreds of short form responses from issuers in support of the rule. Following a year of comment and discussion among members, issuers, institutional participants, and positive recommendations from NASD committees,[10] the NASD Board of Governors approved adoption of the short sales rule in November 1991 and approved the primary market maker qualifications in January 1992. The NASD solicited membership approval and the short sale proposals were approved by a 4 to 1 membership vote.

2. Original Proposal—Operation of the NASD Short Sale Rule

The short sale rule for the Nasdaq market is generally comparable to the short sale rule for exchange-listed securities. The SEC short sale rule, Rule 10a–1, was adopted to prevent speculative short selling in exchange-listed securities from rapidly accelerating a decline in the price of a security and to prevent a form of manipulation known as "bear raiding" or "piling on."[11] Piling on occurs when short sellers exert substantial selling pressure on a stock with the intent to dominate and demoralize the market for that stock, forcing the price to drop precipitously, frequently within a single trading day. The SEC rule applies to exchange-listed securities but does not apply to Nasdaq securities.

The SEC short sale rule prohibits short sales of exchange-listed securities at prices below the previous reported last sale price (minus tick) or at the last sale price if that price is below the previous different last sale price (zero-minus tick). Since the substantial majority of trade reports in most exchange-listed securities occur on a single exchange floor, generally ensuring sequential trade reporting, broker/dealers are able to monitor and comply with the tick test readily.

Trade reporting in Nasdaq/NMS securities, on the other hand, may involve as many as 50 different market makers in a given stock, reporting trades from different locations to the NASD. Although trades are required to be reported within 90 seconds after execution, they do not necessarily appear on the Nasdaq tape in sequential order because members report at different speeds, via computer interface or through Nasdaq Workstation™ terminals. For that reason, imposition of an exchange "tick test" might restrict market participants from short selling based on an out of sequence trade report. Accordingly, the short sale rule for the Nasdaq market has been developed as a "bid test" rather than the exchange "tick test." The NASD short sale rule will operate to prohibit short sales at or below the bid when the current inside bid for a Nasdaq/NMS security is below the previous inside bid in the security. The Nasdaq system calculates the inside bid as the best bid from all market makers in the security, and the Nasdaq system will be configured to indicate on the Nasdaq Level 3 screen whether the current bid is an "up bid" or a "down bid" so that market makers will have information to facilitate execution of orders. In addition, the indicator regarding the "up bid" or "down bid" will be available to other market participants through Nasdaq services such as Level 1 (the inside calculation) and Level 2/National Quotation Data Service ("NQDS") so that subscribers to these services will have information to facilitate their receipt and placement of short sale orders in Nasdaq/NMS securities.

Under the rule proposal, a sale is considered "short" if the seller does not own the stock, or if the seller owns the stock but intends to deliver borrowed

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[3] Irving M. Pollack, Short-Sale Regulation of Nasdaq Securities (July 1986).

[3] Rules of Fair Practice, Article 3, Section 21; Release No. 34–23572, File No. SR–NASD–86–17 (August 1986).

[4] Prompt Receipt and Delivery Interpretation; Release No. 34–23572, File No. SR–NASD–86–17, (August 1986).

[5] Prompt Receipt and Delivery Interpretation; Release No. 34–28188, File No. SR–NASD–89–5 (July 1990).

[6] Uniform Practice Code, Section 59; Release No. 26894, File No. SR–NASD–87–19 (April 1989).

[7] Rules of Fair Practice, Article III, Section 41.

[8] SEC Rule 10b–21(T); 17 CFR 240.10b–21(T), Release No. 34–28028, (August 1988). In addition, the NASD has proposed other short sale regulations, currently pending SEC action: a mandatory buy-in rule that requires a short seller's broker to buy-in securities for cash or guaranteed delivery when delivery has not occurred within 10 business days after normal settlement date (Release No. 34–28192, File No. 90–30, July 1990); and a requirement for members to annotate affirmative determinations made prior to effecting short sales for customers and a requirement for members to ascertain the source of securities that are the subject of long sales made by customers immediately following the effectiveness of a registration to comply with SEC Rule 10b–21(T) (Release No. 34–28769, File No. SR–NASD–90–63, November 1990).

[9] *See* Notice to Members 91–2 (January 1991).

[10] The NASD's Corporate Advisory board and the Issuer Affairs, Institutional Investors, Corporate Financing, Marketing, and Trading Committees discussed and voted to approve the short sale rule proposal.

[11] *See* Securities Exchange Act Release No. 1548 (January 24, 1938). The objectives of Rule 10a–1 were discussed in the Special Study of Securities Markets, which stated that short sale regulation should:

(1) allow relatively unrestricted short selling in an advancing market;

(2) prevent short selling at successively lower prices, thus eliminating short selling as tool for driving the market down; and

(3) prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.

Report of the Special Study of Securities Markets of the Securities and Exchange Commission (1963), reprinted in H.R. Doc. No. 95, 88th Cong., 1st. Sess. 251.

stock to the buyer at settlement. To determine whether the seller is long or short overall, the seller must net all positions in the security just as is required in short sales for listed securities.[12]

The NASD short sale rule is applicable only during normal domestic market hours (9:30 a.m. to 4 p.m. Eastern Time), includes exemptions from the rule's provisions for qualified Nasdaq market makers, with clearly delineated standards or criteria establishing qualifications for exemption (discussed below), and prohibits market makers from using their exemption to by-pass the rule or to do indirectly what is prohibited directly by the rule.[13]

3. Comparison With SEC Short Sale Rule

In order to reduce compliance burdens for members, the NASD rule incorporates the exemptions in SEC Rule 10a–1 that are relevant to trading in the Nasdaq market. Specifically, the rule exempts:

(1) A broker/dealer from a sale that is for an account in which it has no interest and that is marked long;

(2) Any sale by a market maker to offset odd-lot orders of customers;

(3) Any sale by a market maker to liquidate a long position, which is less than a round lot, provided the sale does not change the dealer's position by more than one unit of trading (100 shares);

(4) Certain short sale arbitrage transactions, in special arbitrage accounts, by a person who owns another security or presently will be entitled to acquire an equivalent number of securities of the same class as the securities sold (provided the sale, or purchase which the sale offsets, is made for the bona fide purpose of profiting from a current price difference between the security sold and the security owned) and that the right of acquisition was originally attached to the security or was issued to all holders of any class of securities of the issuer;

(5) Transactions made as part of an international arbitrage opportunity, whereby the seller must have a bona fide purpose to profit from the price difference between a security on an international market outside the jurisdiction of the U.S. and a security listed as a Nasdaq/NMS security. For the purposes of this section, a depository receipt (e.g., ADR) for a security shall be deemed the same as the security represented by the receipt;

(6) Short sales by an underwriter or any member of the distribution syndicate in connection with the over-allotment of securities, or any lay-off sale by a person with a distribution of securities pursuant to a rights offering (SEC Rule 10b–8) or a standby underwriting commitment;

(7) Liquidations of blocks by a market maker acting in the capacity of a block positioner even if the block positioner does not have a net long position in the security if and to the extent that its net short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

The liquidation of index arbitrage positions was not covered by the language of Rule 10a–1, and to alleviate this problem, in 1986 the SEC staff took a "no action" position that allows broker/dealers and/or market participants to liquidate long index arbitrage positions without aggregating such positions with fully-hedged short positions in other accounts under certain conditions.[14] The no-action position applies when the firm has a net short position in any of the index arbitrage stocks that is attributable to unrelated arbitrage, risk arbitrage, or hedge activities. In 1990, the SEC clarified the application of the 1986 no-action position.[15] Relief is available only when unwinding index arbitrage positions that were established in compliance with Rule 3b–3 (the SEC rule defining short sales that requires netting) and Rule 10a–1, and where action is taken to reverse both sides of the position as nearly simultaneously as practicable.[16] The NASD would recognize this interpretation as applicable to the proposed rule. The proposed rule also contains a provision that allows the NASD to adopt SEC amendments to Rule 10a–1 that are applicable to the Nasdaq market without recourse to membership vote.

4. Exemption For Qualified Nasdaq Market Makers

The short sale proposal contains an exemption for qualified market makers so that dealer activities that provide liquidity and continuity to the Nasdaq market will continue uninterrupted. The NASD received substantial comment from its members that application of a short sale rule to market makers would dramatically reduce their ability to quickly adjust inventory positions thereby lessening liquidity throughout the marketplace. At the same time, the NASD believes that any market maker exemption must be strictly limited to firms regularly performing an effective market making function or the exemption might eviscerate the effectiveness of the rule. Accordingly, the proposed rule sets forth certain requirements that a market maker must satisfy in order to qualify for the exemption. Since the exemption is provided to protect market liquidity, the criteria are based on elements related to the liquidity that a market maker offers in each security in question.

The NASD developed objective, quantitative criteria that could be applied equitably to all market makers regardless of size and, most importantly, that would be within the market maker's ability and control to satisfy. The primary criteria include amount of time at the inside bid or offer quotation, comparison of an individual market maker's spread to the average dealer spread in each stock, and frequency of dealer quotation updates without a corresponding execution in the security.

Using these components, in order to be considered a primary market maker in the Nasdaq system, market makers must satisfy two out of these three specific threshold standards:

(1) A market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35 percent of the time;

(2) A market maker must maintain a spread no greater than 102 percent of the average dealer spread; or

(3) No more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

In addition, recognizing that overall volume is also indicative of quality market making, a supplemental test has been added, based on proportionate volume, which may be satisfied if a market maker account for 1⅓ times its proportionate share of volume in the stock. That is, if there are 10 market makers in a stock, each dealer's proportionate share would be 10 percent; therefore, 1⅓ times proportionate share would mean 15 percent of the overall volume.

Where a market maker meets the proportionate volume test, it may be

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[12] See SEC Rule 3b–3, adopted pursuant to the Securities Exchange Act of 1934.

[13] The NASD also intends to submit a petition to the SEC to amend its short sale rule, Rule 10a–1, to include Nasdaq/NMS securities so that short sale restrictions will apply to all market participants.

[14] See Letter to Andrew M. Klein, Es., Schiff Hardin & Waite from Larry E. Bergmann, Assistant Director, Securities and Exchange Commission re Merrill Lynch, Pierce, Fenner & Smith Inc., File No. TP 87–19 (December 17, 1986).

[15] See Release No. 34–27938 re: Liquidation of Index Arbitrage Positions (April 23, 1990).

[16] The Commission recently proposed an amendment to Rule 10a–1 to codify the no-action position, subject to certain modifications. See Release No. 34–30772 (June 3, 1992).

designated as a primary Nasdaq market maker if it also satisfies one of the three criteria set forth above. For example, if a market maker kept its bid or offer at the inside quote at least 35 percent of the time, but maintained a 1 point spread in the stock when the other dealers averaged a ¾ point spread and changed its quote three times on average for every trade, then the market maker would have to meet the proportionate volume test in order to qualify as a primary market maker. A market maker satisfying these criteria will be designated as a primary market maker in the Nasdaq system, and that "primary" or "P" designation will be displayed on the Nasdaq Workstation™ screen and also available through vendor services to assist market participants in complying with the proposed rule. Compliance with the criteria will be tracked through the Nasdaq system, which will enable market makers to review their status in each criterion in each stock, and will also provide members with notice of their compliance with the standards at set intervals. The NASD will monitor market makers for compliance with the primary market maker standards on a monthly review period.

Separate criteria have been developed for registration situations. When market makers wish to register in an existing security, these special criteria permit market makers with a proven track record (i.e., they have primary market maker status in 80 percent of the stocks in which they have registered) to be afforded the primary designation upon initiation of quotations in exiting securities. If a dealer cannot meet the 80 percent test, then it may register in the stock but not enter quotations for five days and enter quotations on the next day as a primary market maker, or it may register in the stock, begin quoting as a regular Nasdaq market maker, and be awarded primary status after satisfying the qualification criteria for one review period.

With regard to initial public offerings ("IPOs"), market makers may register as primary market makers if they meet the 80 percent test, but if at the end of the first review period a market maker has failed to satisfy the qualification criteria or has withdrawn on an unexcused basis from the security, that market maker is prohibited from becoming a primary market maker in any other IPO for the next 10 business days.

For secondary offerings, the NASD believes that the time period after the offerings have been announced is so sensitive to short selling pressure that special time frames and eligibility criteria for primary market makers are warranted. In these situations, the stock of the issuer is currently being traded and the "overhang" on the market of the new stock coming into the market from the offering makes the security particularly susceptible to manipulative and demoralizing short selling. The result of such short selling can adversely impact the capitalization of the issuer, particularly of smaller issuers, whose securities often have less liquid secondary markets. Accordingly, the NASD is concerned with dealers entering the market after deals have been announced in order to take advantage of the market maker exemption from the short sale rule. The criteria set forth by the NASD therefore requires registration in the security prior to announcement of the secondary offering, or the market maker must wait 40 calendar days to gain primary status.[17] These heightened requirements should substantially address the concerns about short selling by newly registered market makers in secondary offerings.

Finally, in merger and acquisition situations, if a market maker is a primary maker in one stock and wishes to register in the other security as a primary market maker, it may do so regardless of the 80 percent requirement.

If a Nasdaq market maker does not satisfy the qualification criteria, then it remains a market maker in the Nasdaq system, but it is not a primary market maker in the stock, and it cannot take advantage of the exemption from the short sale rule. The NASD will provide a forum for review if market makers wish to request reconsideration of their failure to satisfy the primary market maker standards. Because the standards are objective rather than subjective, however, requests for reconsideration will be limited to consideration of system failures, excused withdrawals, or related activity in derivative or convertible securities or derivative pricing mechanisms, as seen with foreign securities or ADRs, that may affect a market maker's compliance with the criteria.

The NASD has analyzed the effect of the proposed criteria and threshold standards on Nasdaq market makers and found that for a one-month period in 1991, over 70% of all market making positions in Nasdaq/NMS securities for the entire month would have earned the primary market maker designation. In addition, the NASD measured individual market maker performance against each of the threshold standards and made that information available to market makers at their request.[18] The NASD believes that becoming a primary market maker in Nasdaq/NMS securities is well within the capacity of large and small market makers, regardless of size.

Finally, the NASD is sensitive to the fact that there may be unforeseen consequences or unfavorable treatment to a class of members or investors that may necessitate modifications to the qualification proposals. To ensure that the NASD maintains the ability to make adjustments on a expeditious basis, the rule permits the NASD to modify the threshold levels of the criteria if necessary.

5. System Modifications

To implement the proposed rule change effectively, the NASD must perform numerous modifications to the Nasdaq system to enable market participants to comply with the rule and to have notice of their performance for the primary market maker qualifications. Additionally, members must modify their internal and proprietary execution systems to achieve compliance with the short sale rule. The modifications to the Nasdaq system include the following:

1. Calculate and display the bid as above or below the previous bid on Level 1, Level 2/3, and NQDS data services made available to vendors and subscribers;

2. Calculate and display primary market maker status on Level ⅔ and NQDS data services made available to vendors and subscribers;

3. Develop new Workstation™ query functions that permit members to ascertain their primary market maker qualification status;

4. Develop specialized tracking processes for market making activity for new registrations, secondary offerings, IPOs, and merger and acquisition situations;

5. Modify order routing and execution services (SelectNet and SOES) to recognize short sale orders as they are entered and to inhibit execution if that would cause a violation of the short sale rule;

6. Implement market surveillance systems using appropriate trade report data from the ACT service to monitor for member compliance with the rule; and

[17] In 1991, the average time between filing and effective dates for secondary offerings reviewed by the NASD's Corporate Financing department was 34 business (48 calendar) days.

[18] *See* Notice to Members 92–8 (January 29, 1992).

7. Develop off-line reports to capture detailed short sale data for historical and analytical purposes.

6. Discussion

Substantial comment and debate have been sparked by the NASD's short sale proposals. Commentators in favor of the proposed rules state that the steps already taken to eliminate short sale abuses in the Nasdaq market are at times ineffective in controlling predatory short selling by professionals that harms issuers and the market as a whole. Additionally, these commentators believe that the credibility and stature of the Nasdaq market will be enhanced if the NASD adopts an SEC-style short sale rule. Issuers report that, as a marketing point for listing, the exchanges place heavy emphasis on the existence of a short sale rule as an essential marketplace component missing from the Nasdaq market. Moreover, commentators believe that the rule proposal would also help reduce volatility and increase direct public participation in trading Nasdaq/NMS securities. Others comment that a short sale rule would add to the confidence of investors and prevent manipulation of the markets. Finally, broker/dealers commenting in support of the rule state that regulations governing the markets should be uniform and argue that enactment of the proposals will enhance fair competition among markets by removing a regulatory difference between exchange and Nasdaq markets.

Those commentators opposed to a short sale rule maintain that short sellers provide valuable liquidity to the markets both in their selling activities and in subsequent covering purchases. They argue that short sellers "police" the price of securities and preserve market integrity be weeding out over-valued companies, whereas a short sale rule leads to pricing inefficiencies in the market. Since these commentators believe that there has been no demonstrable proof that short selling abuses cannot be controlled with NASD regulations already in place, they believe that additional short sale regulation is unnecessary. Commentators also state that short selling is a legitimate trading strategy and "tick test" short sale regulation impedes trading decisions. Other commentators argue that if short selling is a perception problem, the appropriate response should be education of issuers and the public, not a new regulatory scheme. The NASD believes that short sale abuse is not merely a perceptual problem for issuers or investors. While research and studies may show no difference in long-term short interest positions between exchange listed or Nasdaq stocks, the NASD is concerned that instances of extreme intra-day volatility may inhibit existing shareholders' ability to sell their stock if professional short sellers are in the market before them, exacerbating downward pressure on stocks, reducing overall liquidity in the marketplace. While education regarding short sales is important, it is not a sufficient or meaningful response to the problems issuers face with their shareholders. The NASD believes that adoption of the short sale rule will curb abusive short selling, reducing the exposure of the Nasdaq market to manipulation and excessive intra-day volatility. For this and other reasons, the NASD's Corporate Advisory Board and Trading, Institutional Investor, Issuers Affairs, and Corporate Financing Committees all endorsed the rule proposal.

Issuers may also be disadvantaged in secondary offerings on Nasdaq because the increased potential for short selling may artificially affect the price at which offerings are conducted. In this regard, members report that their investment banking departments may recommend exchange listings because of the lack of adequate short sale regulation in the Nasdaq market at the time of registration. Accordingly, the NASD believes that adoption of the proposed short sale will assure both issuers and investors that they are subject to at least equivalent protection from predatory short selling in the Nasdaq market as they are on an exchange.

The NASD recognizes that a short sale rule must be formulated in a manner to promote member compliance with the rule and to avoid artificial restrictions on trading—hence the rule is structured as a bid test, with appropriate modifications to the Nasdaq screen to reflect the current state of the bid. The NASD also recognizes that the rule must operate in a manner designed to preserve market maker depth and liquidity in the competitive dealer environment of Nasdaq. The Nasdaq market provides an efficient and liquid trading environment through quote competition. Crucial to maintenance of that market structure is the requirement for market makers to display firm two-sided quotations. Moreover, the very nature of the competitive market maker system requires dealers to take substantial inventory positions. The application of a short sale rule without exemptions for qualified market makers would result in degradation of the accuracy and reliability of quotations and would increase the risks of those firms accommodating buying interest through short sales.

Qualified market makers must have the unimpeded ability to effect short sales to balance their positions or to anticipate customer buying interest at any time during the trading day, and therefore the proposed rule includes an exemption that does not frustrate a dealer's ability to buy and sell stock. The NASD is also committed to implementing a short sale rule that does not adversely affect a market maker's ability to manage risk. Dealers must be permitted the flexibility to sell short when necessary so that they will be able to adjust quickly to market movements and control the risks associated with market making while continuing to provide the maximum possible liquidity. The ability to manage risk with short positions is fundamental to market maker performance. Market makers need the constant ability to effect short sales to "reliquify" their positions throughout the trading day. If a short sale rule were to impact adversely their ability to manage risk, dealers may be forced to reduce their dealer support to the stocks in which they currently make markets.

The NASD, through its member committees, developed qualification standards that could be applied equitably to all market makers, regardless of size. Adoption of standards regarding time at the inside quotation, market maker spread, frequency of quotation updates in relation to executions, and overall volume is appropriate because these standards are indicative of quality market making and are not overly burdensome for market makers to satisfy.

Finally, the NASD believes that adoption of the proposed rule will enhance the Nasdaq Stock Market's ability to compete with exchange markets for listings. From a competitive standpoint, some exchanges regularly use the lack of a short sale rule as an argument to try to persuade companies to list. Adoption of a short sale rule will further emphasize to shareholders that Nasdaq provides equivalent short sale protection to the investing public through rules that are fair, equitable, and consistent with the operation of a quality marketplace.

7. Amended Proposal

The Association is amending its proposal for Article III of the Rules of Fair Practice regarding a short sale rule or "bid test" for Nasdaq/NMS securities. The proposed short sale rule includes an exemption for short sale

transactions by qualified Nasdaq market makers, and the original proposal defines qualified market makers or "primary Nasdaq market makers" as members that satisfy certain threshold standards of market making performance. In order to facilitate technical implementation of the short sale rule and in acknowledgement of the concerns certain market making members have raised regarding the primary market maker qualification standards, the NASD is delaying the effective date of the primary Nasdaq market qualifications for a twelve month period after the effective date of the short sale rule proposal. In addition, the NASD will continue to consider throughout this period any comments from members or interested parties regarding suggested revisions to the qualification criteria. The NASD believes that this one year deferral period will also afford market makers additional time to monitor their compliance with the standards and implement any necessary operational or personnel responses necessary to comply with the standards. Accordingly, the NASD is amending its proposal to define "qualified Nasdaq market maker" for a one year period as market makers that have been registered and entering quotations in individual securities in the Nasdaq system on an uninterrupted basis for the preceding twenty business days. The NASD is amending its original proposal and substituting the twenty day "time in grade" standard for the proposed "primary Nasdaq market maker" criteria for the one year period in order to expedite approval of the short sale rule proposal,[19] and as noted above, to afford members more time to give input to and consider compliance with the primary market maker performance standards.

The NASD is proposing a twenty day period because it is consistent with the underlying intent of allowing an exemption from the short sale rule only to market makers that qualify with bona fide market making activity in the security. Requiring a twenty day registration and quotation period to becoming qualified for the exemption from the short sale rule should ensure that market makers perform their traditional functions without immediate registration and exemption that is granted to a qualified market maker. A twenty day commitment in each security will demonstrate that the market maker is not entering the market merely to use the exemption to the rule to engage in aggressive short selling designed to drive down the price of a security. The NASD believes that twenty days is a reasonable time frame that will not discourage market makers from registering in new securities but that will preserve the intent of the qualification critiera.

Functionally, the short sale rule remains unchanged. In effect during normal, domestic market hours (9:30 a.m. to 4 p.m. Eastern Time), the rule prohibits members from effecting short sales at or below the bid for themselves or their customers when the current inside or best bid is below the previous inside bid. If a Nasdaq market maker does not satisfy the 20-day threshold for qualification for the short sale exemption, it remains a market maker in the Nasdaq system, but it cannot take advantage of the exemption from the short sale rule.

The amendments also include conforming changes within the short sale rule itself regarding specific requirements for qualified market makers to satisfy in registration situations. For example, for initial public offerings ("IPOs") market makers may be deemed qualified market makers immediately upon registration, however, if the market maker withdraws on an unexcused basis from the security prior to twenty business days, that market maker will not be considered a qualified market maker in any other IPO for the next ten business days.

8. Interpretations Accompanying the Proposal

In addition, the NASD is proposing to add three new Interpretations of the Board of Governors of the NASD related to the short sale rule. The first Interpretation clarifies that certain types of trading activity, such as risk arbitrage or index arbitrage, will not be deemed "bona fide" market making activity for purposes of exemption from the short sale rule because such activity is unrelated to traditional market making functions. Further, the Interpretation states that "bona fide" market making activity would exclude activity that is related to speculative strategies of the member or investment decisions of the firm and that is disproportionate to the normal market making patterns or practices of the member in that security. The Interpretation makes clear that a member would not be entitled under such circumstances to take advantage of its market making exemption to effectuate such speculative or investment short selling decisions.

The second Interpretation clarifies the price at which a "legal" short sale may be made when short sale restrictions apply. The rule specifies that short sales may not be made at or below the current best inside bid when that bid is lower than the preceding best inside bid. The interpretation addresses the concern that without the establishment of a minimum execution price increment above the bid, the policy underlying the proposed short sale rule could be averted by members effecting transactions only one or two cents above the bid. Therefore, the Interpretation states that "legal" short sales must be effected at least 1/16 point higher than the current bid. The third Interpretation clarifies some of the circumstances under which a member would be deemed to be in violation of the rule. The proposed short sale rule includes a prohibition against a member effecting short sales for the account of a customer, or for its own account, directly or through the offices of a third party for the purpose of avoiding the application of the rule. Additionally, the rule prohibits a member from knowingly or with reason to know effecting sales for the account of a customer or for its own account to avoid application of the rule. The proposed Interpretation sets out examples of what the NASD would consider conduct in violation of these prohibitions.

For example, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in the Nasdaq system in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of the rule. Similarly, a market maker would be deemed in violation of the rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with this section, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

The NASD believes that members' activities to circumvent the rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the rule. Accordingly, the

[19] The NASD is also willing to separate the two proposals to the extent that the Commission believes that this step would expedite consideration of the proposed short sale rule.

Association will consider any such activity as a violation of the short sale rule.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." Section 11A(c)(1)(F) assures "equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities." Approval of the proposed short sale rule would result in equivalent regulation in the exchange and Nasdaq markets. Moreover, the NASD believes that the primary market maker qualifications are critical to ensuring that the proposed rule operates effectively and should have the additional benefit of providing incentives for improved performance of market makers in Nasdaq/NMS securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act. Presently, the absence of a short sale rule for the Nasdaq market adversely impacts the NASD in its competition for listings with exchange markets. Further, the NASD believes the proposed primary market maker qualifications are designed in a manner to permit market makers of all sizes to meet the standards. Moreover, it is important to note that market makers that do not meet the standards will still be permitted to remain registered market makers in the Nasdaq system and the NASD is hopeful that the proposed criteria will raise the overall quality of market maker participation in Nasdaq/NMS securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has responded to comments made by members and others above. The NASD's Corporate Advisory Board and the Issuer Affairs, Institutional Investors, Corporate Financing, Marketing, and Trading Committees discussed and voted to approve the short sale rule proposals.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings, to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Text of Proposed Rules

Rules of Fair Practice

Article III, Section 46—Short Sales

(a) No member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market System security at or below the current best (inside) bid when the current best (inside) bid as displayed by the Nasdaq system is below the preceding best (inside) bid in the security.

(b) In determining the price at which a short sale may be effected after a security goes exdividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.

(c) The provisions of subsection (a) shall not apply to:

(1) Sales by a qualified market maker registered in the security in the Nasdaq system in connection with bona fide market making activity. For purposes of this subsection, risk arbitrage, index arbitrage, and other transactions unrelated to normal market making activity will not be considered bona fide market-making activity.

(2) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell which is marked "long" in which the member does not know, or have reason to know, that the beneficial owners of the account have a short position in the security.

(3) Sales by a member of offset odd-lot orders of customers.

(4) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(5) Sales by a member of a security for a special arbitrage account if the member then owns another security by virtue of which the member is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such a sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(6) Sales by a member of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the member at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the member to cover such sale is then available to the member in such foreign securities market and intends to accept such offer immediately.

(7) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights pursuant to SEC Rule 10b–8 or a standby underwriting commitment.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party for the purpose of avoiding the application of this section.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account for in order to avoid the application of this section.

(f) A member that is not currently registered as a Nasdaq marker maker in a

security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h) Upon application or on its own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this section.

(i) From time to time, the Securities and Exchange Commission may amend Rule 10a–1, Rule 3b–3, or Rule 3b–8 under the Securities Exchange Act of 1934. The Board of Governors reserves the authority to alter, amend, modify, or supplement this section in accordance with amendments to Rule 10a–1, Rule 3b–3, or Rule 3b–8 or as otherwise deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.

(j) Definitions:

(1) The term "short sale" shall have the same meaning as contained in SEC Rule 3b–3, adopted pursuant to the Securities Exchange Act of 1934, reprinted as follows: The term "short sale" means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if: (1) he or his agent has title to it; or (2) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it; or (3) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (4) he has an option to purchase or acquire it and has exercised such option; or (5) he has rights or warrants to subscribe to it and has exercised such rights or warrants; provided, however, that a person shall be deemed to own securities only to the extent that he has a net long position in such securities.

(2) The term "block positioner" shall have the same meaning as contained in SEC Rule 3b–8(c) for "Qualified Block Positioner" adopted pursuant to the Securities Exchange Act of 1934, reprinted as follows: The term "Qualified Block Positioner" means a dealer who: (1) is a broker or dealer registered pursuant to Section 15 of the Act, (2) is subject to and in compliance with Rule 15c3–1, (3) has and maintains minimum net capital, as defined in Rule 15c3–1 of $1,000,000 and (4) except when such activity is unlawful, meets all of the following conditions: (i) he engages in the activity of purchasing long or selling short, from time to time, from or to a customer (other than a partner or a joint venture or other entity in which a partner, the dealer, or a person associated with such a dealer, as defined in Section 3(a)(18) of the Act, participates) a block of stock with a current market value of $200,000 or more in a single transaction, or in several transactions at approximately the same time from a single source to facilitate a sale or purchase by such customer, (ii) he has determined in the exercise of reasonable diligence that the block could not be sold to or purchased from others on equivalent or better terms, and (iii) he sells the shares comprising the block as rapidly as possible commensurate with the circumstances.

(3) The term "qualified market maker," for a period of one year after the effective date of this section, shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subsection, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:

(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days.

(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;

(iii) After a merger or acquisition has been publicly announced, a qualified market maker in one of the two affected securities may immediately register as a qualified market maker in the other merger or acquisition security pursuant to the same-day registration procedures in Part VI, Schedule D to the By-Laws.

For purposes of this subsection, a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through the Nasdaq system on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Part VI, Schedule D to the By-Laws, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. One year after effectiveness of this section, the term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 47 of the Rules of Fair Practice.

Interpretation A

In developing a short sale rule for Nasdaq/NMS securities, the Association adopted an exemption to the rule for certain market making activity. This exemption was deemed an essential component of the rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq/NMS securities. Subsection (c)(1) of this section states that short selling prohibitions shall not apply to sales by qualified Nasdaq market makers in connection with bona fide market making activity and specifies that risk arbitrage, index arbitrage, and other transactions unrelated to normal market making activity will not be considered as bona fide market making. Thus two standards are to be applied: one must be a "qualified" Nasdaq market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this Interpretation, the Association wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the rule's application.

First, as the rule indicates, bona fide market making activity does not include activity such as risk arbitrage or index arbitrage that is unrelated to market making functions. While these types of arbitrage activity appear to be suitable for the firm's overall hedging or risk management concerns, they do not warrant an exemption from the rule.

Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. The NASD does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by the NASD as inappropriate activity that does not represent bona fide market making and would therefore be in violation of the rule.

Interpretation B

Section 46 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market System security at or below the current best (inside) bid when the current best (inside) bid as displayed by the Nasdaq System is below the preceding best (inside) bid in the security. The Association has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least 1/16th point above the current inside bid. Such a trade would, therefore, reflect a change from the bid on the last sale reporting tape.

Moreover, the Association believes that requiring short sales to be a minimum increment of 1/16th point above the bid ensures that transactions are not effected at prices inconsistent with the underlying purpose of the rule.

Interpretation C

Section 46 prohibits members from effecting a short sale for the account of a customer or for its own account directly or

through the offices of a third party for the purpose of avoiding the application of the short sale rule. Further, the section prohibits members from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the rule. With this Interpretation, the Association wishes to clarify some of the circumstances under which a member would be deemed to be in violation of this section.

For example, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in the Nasdaq system in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of this section. Similarly, a market maker would be deemed in violation of the rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with this section, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

The NASD believes that members' activities to circumvent the rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the rule. Accordingly, the Association will consider any such activity as a violation of this section.

Section 47—Primary Nasdaq Market Maker

(To be effective one year after the effective date of Section 46)

(a) A member registered as a Nasdaq market maker pursuant to Part VI, Schedule D of the NASD By-Laws may be deemed to be a Primary Nasdaq Market Maker in Nasdaq National Market System securities if the market maker complies with threshold standards (as established and published by the Association from time to time) in the following qualification criteria:

(1) amount of time a dealer maintains a quotation that represents the best bid or best offer as shown in the Nasdaq system:

(2) relation of individual dealer spread to average dealer spread; and

(3) frequency of dealer quotation updates without a corresponding execution in the security occurring within three minutes before or after a quotation update.[1]

(b) A market maker for a Nasdaq/NMS security must satisfy the threshold standards in at least two of the criteria in section (a) in order to be designated a Primary Nasdaq Market Maker in that security; provided however, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by the Association from time to time).[2]

(c) The review period for review of market maker performance in each of the qualification criteria in section (a) shall be one calendar month.

(d) If, after the review period, a market maker does not satisfy the threshold standards for the criteria in section (a), the Primary Nasdaq Market Maker designation shall be withheld commencing on the next business day following notice of failure to comply with the standards.

(e) Market makers may requalify for designation as a Primary Nasdaq Market Maker by satisfying the threshold standards for the next review period.

(f) A market maker may request reconsideration of the notice to withhold the Primary Nasdaq Market Maker designation.

(1) Grounds for requests for reconsideration shall be limited to:

(i) System failure;

(ii) Excused market maker withdrawal status; or

(iii) Where a market maker failed to qualify under the criteria set forth in subsection (a)(3) because of activity in a related derivative or convertible security, or activity in a security subject to derivative pricing mechanisms, such as currency differentials with foreign stocks.

(2) Requests for reconsideration must be sent in writing to Nasdaq Operations within 24 hours of the determination to withhold the Primary Nasdaq Market Maker designation.

(3) Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdag Market Maker in a Nasdaq/NMS security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may quality as a Primary Nasdaq Market Maker in that stock if:

(i) The market maker registers in the stock but does not enter quotes for five days; or

(ii) The market maker registers in the stock as a regular Nasdaq marker maker and satisfies the qualification criteria for the next review period.

(2) Notwithstanding subsection (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(a) For secondary offerings:

(i) The secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; or

(ii) The market maker has satisfied the qualification criteria for 40 calendar days.

(b) For initial public offerings:

(i) The market maker may register in the offering and immediately become a Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) The market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(3) Notwithstanding subsection (g)(1) or (g)(2) above, after a merger or acquisition has been publicly announced, a Primary Nasdaq Market Maker in one of the two affected securities may immediately register as a Primary Nasdaq Market Maker in the other merger or acquisition security pursuant to the same-day registration procedures in Part VI, Schedule D to the By-Laws.

(h) The Board of Governors reserves the authority to modify the threshold standards set forth in sections (a) and (b) above if it finds that maintenance of such standards would result in an adverse impact on a class of investors or on the Nasdaq marketplace.

(i) The Board of Governors reserves the authority to alter, amend, modify, or supplement this section as deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.

[FR Doc. 92-19243 Filed 8-12-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The threshold standards initially shall be established as:

(a) A market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35% of the time;

(b) A market maker must maintain a spread no greater than 102% of the average dealer spread;

(c) No more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

The NASD Board of Governors reserves the authority to rescind or modify one or more of the threshold standards immediately upon a finding that the standard is operating in a manner that is unfair to a class of investors or members, or that continued imposition of the standard results in a substantial adverse impact on the liquidity or market quality of the Nasdaq market.

[2] The threshold proportionate volume standard initially shall require a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the stock for the review period.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change #1 to FAA P-8110-2; Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Change #1 (dated July 24, 1992) to FAA P-8110-2, Airship Design Criteria (ADC) dated November 2, 1987.

This change updates design criteria for type certification of airships.

ADDRESSES: Copies of Change #1 can be obtained from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE–110), Telephone No. 816–426–6941.

Issued in Kansas City, Missouri, August 3, 1992.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19360 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Marysville, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Nevada County, California.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, Chief District Operations, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, District 3, will prepare an Environmental Impact Statement (EIS) on a proposal to improve Route 49 from 0.2 mile north of Lime Kiln Road (PM 7.3) to 0.2 mile north to the freeway in Grass Valley at McKnight Way (PM 13.8). The improvement is needed to increase the capacity of the transportation system in order to accommodate an approximate four-fold increase in vehicle use of the alignment over the last 20 years. Two approximately 6.5-mile corridors (A and C) and a No Project Alternative are being studied. Corridor A follows the existing alignment. Corridor A alternative include a four-lane divided expressway and a four-lane conventional highway with a continuous left-turn lane. Corridor C, beginning at the south end of the project, initially follows an alignment westerly of old Auburn Road. It crosses Old Auburn Road just north of the Wolf Creek Bridge, and gradually merges with the existing alignment just south of the South Grass Bridge, and gradually merges with the existing alignment just south of the South Grass Valley Interchange (McKnight Way). A four-lane divided expressway is being considered in this corridor.

The proposed scoping process includes the publication of the Notice of Intent in the **Federal Register**, distribution of the Notice of Preparation to each responsible agency, and public and agency scoping meetings. A public informational meeting and a public drop-in workshop were held in Grass Valley, California, on June 7, 1989 and July 19, 1990. The official public scoping meeting was held on February 20, 1992, from 2–8 pm at the Nevada County Fairground in Grass Valley, California.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Views of agencies which may have knowledge about historic resources potentially affected by the proposal or interested in the effects of the project on historic properties are hereby solicited.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 31, 1992.

Leonard E. Brown,

Chief District Operations Sacramento, California.

[FR Doc. 92–19292 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Virginia Beach, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project to be located in Virginia Beach, Virginia.

FOR FURTHER INFORMATION CONTACT: Allen Masuda, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone 804/771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to construct Ferrell Parkway in Virginia Beach. The proposed project would involve construction of a multi-lane, controlled access, urban arterial in the eastern portion of Virginia Beach, Virginia. The proposed western terminus is near the intersection of General Booth Boulevard and Princess Anne Road. The eastern terminus is the intersection of Sandfiddler and Sandbridge Roads at Sandbridge. The length for the proposed project ranges from 4.0 to 6.0 miles, depending on the alternative. Development of the proposed project is considered necessary to provide for efficient movement of existing and projected traffic and provide relief to safety problems experience along Sandbridge Road. The proposed project will also provide an adequate hurricane evacuation route from the Sandbridge resort area.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management (improvement to existing roadway network); (3) mass transit; (4) various build alternatives (new and existing location). The build alternatives will incorporate variations of vertical and horizontal grade alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, private organizations and citizens who have previously expressed or are known to have interest in this proposal. The scoping process is anticipated to begin in the late Summer or early Fall of 1992. A series of public information meetings and a public hearing will be held in the future. Public notice will be given indicating the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project)

Issued on : August 6, 1992.

Donald J. West,

Assistant Division Administrator, Richmond, Virginia.

[FR Doc. 92-19301 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Wood County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wood County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Jacki Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin, 53705-4905, Telephone: (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation and SEC Donohue Inc., will prepare an environmental impact statement (EIS) on proposed improvement alternatives to Wisconsin State Highway 13 (STH 13) through the City of Marshfield. The southern terminus of the project is U.S. Highway 10 East (USH 10 East) just south of the City. The northern terminus is the intersection of STH 13 and McMillan Street on the north side of the City.

Traffic congestion and a high accident rate have seriously hampered STH 13's ability to function as a local arterial or as a through route. The primary goals of the project are to alleviate the congestion and reduce the accident rate. Alternatives under consideration include (1) taking no action; (2) improving the existing alignment; (3) building a bypass east or west of the City; and (4) building a new route through the City.

FHWA will communicate and coordinate with the appropriate Federal, State, and local agencies, and with private organizations and citizens who have an interest in the project. A public hearing is expected to be held in early 1993. Public notice will be given of the time and place of the hearing. The draft EIS will be made available for public and agency review and comment before the public hearing.

Comments and suggestions on the proposed project and EIS are invited from all interested parties. They should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 4, 1992.

Robert W. Cooper,

District Engineer, Madison, WI.

[FR Doc. 92-19283 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of the federal safety laws and regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Boone and Scenic Valley Railroad

[Docket Number SA-91-7]

The Boone and Scenic Valley Railroad (BSV) requests a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards, (49 CFR part 231) for three locomotives, BSV 1103, 1858 and 702.

The BSV 1103 was built by the Electro Motive Division of the General Motors Corporation and purchased from the Chicago and Northwestern Transportation Company (CNW) in 1986. It is a 1,000 horsepower switcher locomotive which was modified by the CNW as an auxiliary power unit without a control cab or controls. The rear stairways were removed and the openings blanked off with heavy steel plates. The uncoupling levers were also removed. When used by the CNW, the 1103 was permanently connected to the 1003, a similar locomotive with a control cab, with a solid drawbar. The BSV has removed the drawbar and replaced it with a standard automatic coupler without coupling levers. The BSV states that the 1003 is normally used to operate a passenger train, but several times a year the 1103 is used in tandem when a long passenger train is operated or if mechanical problems were to arise in the 1003. The BSV seeks a waiver of compliance from § 231.29, Road locomotives with corner stairways, and § 231.30, Locomotives used in switching service for locomotive BSV 1103.

The BSV 1858 is a 45 ton industrial switcher type locomotive built by the General Electric Company in 1944. It does not have corner steps or stairways but is equipped with a sill step and an additional tread at each corner to allow individuals to get on and off the locomotive walkway.

The railroad states that due to the physical design of locomotives BSV 1103 and 1858, it is not possible to modify them by the installation of corner steps because it would adversely restrict truck swing and, at the same time, destroy the structural integrity of the locomotive frames. Further, crew safety would not adversely be affected because of the 10 mph slow operating speed of the locomotives. This speed is less than that found in typical passenger car switching service at passenger stations which are already exempt.

Electric locomotive 702 was purchased new by the Kennicott Copper Corporation from the General Electric Company in 1928 for ore haulage service. It was donated to the BSV in 1984. As this locomotive served on a railroad whose entire operation was wholly within an industrial facility, or a "plant railroad", it was never subject to FRA regulations. The BSV states that locomotive 702 is of interest to the Historical Society as an historical exhibit. It is typical of many small steeple cab electric locomotives used by most of the Iowa interurban and street railways during the first half of this century. The 702 has the ability to operate under electrical overhead wire or by means of self contained storage batteries. The railroad says the locomotive will be used for the construction and repair of the overhead electrical wire and for an occasional movement of passenger cars on the BSV. It will also occasionally be used to handle a coach on the six block shuttle service between the depot and town in the event of a failure of one of the MU electric interurban cars. In this service it is never operated at speeds exceeding 10 mph.

The BSV states that because of (1) the historical nature of this unit, (2) its original service as a plant railroad locomotive, (3) the limited speed at which it is operated and (4) the high cost of the changes required in order to effect total compliance with all FRA regulations, it is requesting a waiver of § 231.30.

[Docket Number LI-91-2]

The BSV requests a waiver of compliance with certain provisions of the Locomotive Safety standards (49 CFR part 229) for its electric locomotive number 702.

The railroad is seeking a waiver of § 229.115, Slip/slide alarms, and § 229.123, Pilots, snow plows and end plates. The BSV states that because of (1) the historical nature of this unit, (2) its original service as a plant railroad locomotive, (3) the limited speed at which it is operated and (4) the high cost of the changes required in order to effect total compliance with all FRA regulations, it is requesting waivers of §§ 229.115 and 123.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–91–7) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 25, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–19257 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–06–M

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Boone and Scenic Valley Railroad (BSV) a request for a waiver of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved and the nature of the relief being requested.

Boone and Scenic Valley Railroad

[Waiver Petition Docket Number LI–92–3]

The BSV seeks a waiver of compliance with certain provisions of the Steam Locomotive Rules (49 CFR part 230). BSV is requesting a waiver of compliance with § 230.108(b), (main reservoir hammer testing), for their steam locomotive number JS 8419. The locomotive was built in China in May 1989 and is used in excursion service on the seasonal tourist railroad.

BSV desires to have the main air reservoirs made subject to the provisions of the Locomotive Safety Standards: 49 CFR 229.31(c), (drilling of telltale holes in the exterior surface of all welded main reservoirs).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–92–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 25, 1992, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–19256 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–06–M

Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the following 11 railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with provisions of the Hours of Service Act, (45 U.S.C. 64(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Act contains a provision permitting a railroad which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

Crystal City Railroad, Incorporated (CYCY)

[FRA Waiver Petition Docket No. HS–91–6]

The CYCY seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CYCY states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CYCY provides service over 55 miles of trackage between Gardendale, Texas and Crystal City, Texas.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Fort Smith Railroad Company (FSR)

[FRA Waiver Petition Docket No. HS–91–7]

The FSR seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The FSR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The FSR provides service over 49 miles of trackage between Fort Smith, Arkansas and Paris, Arkansas.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

R. J. Corman Railroad Company/ Cleveland Line (RJCM)

[FRA Waiver Petition Docket No. HS–91–8]

The RJCM seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The RJCM states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its

operation if unusual operating conditions are encountered. The RJCM provides service over 49 miles of trackage between Warwick, Ohio and Uhrichsville, Ohio.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Central Montana Rail, Inc. (CM)

[FRA Waiver Petition Docket No. HS–92–01]

The CM seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CM states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CM provides service over 87 miles of trackage between Moccasin Jct. and Geraldine, Montana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Carolina Rail Services Co. (CRIJ)

[FRA Waiver Petition Docket No. HS–92–02]

The CRIJ seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The CRIJ states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CRIJ provides switching service within the North Carolina Sate Ports Authority terminal at Morehead City, North Carolina, a distance of one mile.

The petitioner indicates that granting the exemption is in the public interest and will not affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Natchez Trace Railroad (NTR)

[FRA Waiver Petition Docket No. HS–92–03]

The NTR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The NTR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The NTR provides service over 54 miles of trackage between Grand Junction, Tennessee and Oxford, Mississippi.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

The YS seeks a continuation of a previously issued exemption so it may permit certain employees to remain second duty not more than 16 hours in any 24–hour period. The YS states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The YS provides service over 34 miles of trackage between Youngstown, Ohio and Cannelton, Pennsylvania.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Maryland and Pennsylvania Railroad Company (MPA)

[FRA Waiver Petition Docket No. HS–92–05]

The MPA seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The MPA states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual oepratin conditions are encountered. The MPA provides service over 26 miles of trackage in York County, Pennsylvania.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Iowa Traction Railroad (IATR)

[FRA Waiver Petition Docket No. HS–92–06]

The IATR seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The IATR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The IATR provides service over 10 miles of trackage between Mason City and Clear Lake, Iowa.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Louisiana and delta Railroad (LDRR)

[FRA Waiver petition Docket No. HS–92–07]

The LDRR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The LDRR states that it is not its interition to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The LDRR provides service over 111 miles of trackage between Houma and Schriever, Louisiana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Manitou and Pike's Peak Railway Company (MPP)

[FRA Waiver Petition Docket No. HS–92–08]

The MPP seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The MPP states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The MPP provides service over 9 miles of trackage between Manitou Springs, Colorado and the summit of Pike's peak.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled a public hearing since facts do not appear to so warrant. If any interested party desires a public hearing, he or she should notify FRA, in

writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–90–XX) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before September 25, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–19258 Filed 8–12–92; 8:45 a.m.]

Billing Code 4910–06–M

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–91–36) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 25, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Maine Coast Railroad

[Waiver Petition Docket Number RSGM–91–36]

The Maine Coast Railroad (MC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The MC was previously granted a waiver of compliance for two locomotives. They have now requested a waiver for an additional locomotive to be operated on the same 58 miles of track between Brunswick and Rockland, Maine.

North Shore Scenic Railroad

[Waiver Petition Docket Number RSGM 92–9]

The North Shore Scenic Railroad (NSSX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for six passenger cars. The cars are used in excursion service and may be operated in northern Minnesota and the northern one-half of Wisconsin on the NSSX, Burlington Northern Railroad, Duluth, Missabe and Iron Range Railway and Duluth, Winnipeg and Pacific Railway. Maximum speed on the NSSX is 30 MPH. The railroad states that to their knowledge, all trackage is in the low incident category.

Quincy Railroad Company

[Waiver Petition Docket Number RSGM–92–10]

The Quincy Railroad Company (QRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The QRR operates 26 miles of track to switch lumber from a sawmill to a connection with the Southern Pacific Transportation Company (SP). The area is in a rural section of northeast California. Maximum train speed is 15–18 MPH. The railroad states there has been no incident involving glazing in the 28 years of their operation.

Red Bank Railroad

[Waiver Petition Docket Number RSGM–92–11]

Mountain Laurel Railroad

[Waiver Petition Docket Number RSGM–92–12]

The Pittsburgh and Shawmut Railroad Company (PS) was previously granted a waiver of compliance with certain provisions of the Safety Glazing Standards (48 CFR part 223) for twelve locomotives and eight cabooses on Docket Number RSGM–80–32. The PS recently began operation of the Red Bank Railroad (RBKR) and the Mountain Laurel Railroad (MNL) and has petitioned to extend their waiver to these two railroads. Separate docket numbers have been assigned to each railroad.

The RBKR operates ten miles of track between Sligo and Lawsonham, Pennsylvania.

The MNL operates 128 miles of track between Lawsonham and Driftwood and between Piney and Brookeville, all in Pennsylvania. The area is sparsely populated with DuBois being the largest city with a population of 10,000. The PS states there have been no accidents involving glazing on the locomotives in the over ten years they have operated with a waiver.

Ouachita Railroad Company

[Waiver Petition Docket Number RSGM–92–13]

The Ouachita Railroad Company (OUCH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. The OUCH operates 25 miles of track through a rural area between El Dorado, Arkansas and Lillie Louisiana. An average of eight cars are handled per day.

Chatooga and Chickamauga Railway Company

[Waiver Petition Docket Number RSGM 92–14]

The Chatooga and Chickamauga Railway Company (CCKY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one caboose. The CCKY operates two former Norfolk Southern lines between Chattanooga, Tennessee and Hedges, Georgia, a distance of 19.4 miles, and between Chattanooga and Lyerly, Georgia, a distance of 48.2 miles. The caboose, which was built in 1953, is owned by the city of Lafayette, Georgia and will be restored to its original

condition. It will only be used in special excursion service and not in regular freight service. The railroad states the cost of glazing would not be cost effective since it is already equipped with plexiglass.

Beaufort East Coast Railroad

[Waiver Petition Docket Number RSGM 92-7]

The Beaufort East Coast Railroad (BECX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive.

[Waiver Petition Docket Number LI-92-7]

The BECX seeks a permanent waiver of compliance with § 229.41, which requires an auxiliary generator cover, for one locomotive. The railroad does not believe the locomotive was designed with such a cover.

[Waiver Petition Docket Number SA-92-1]

The BECX seeks a permanent waiver of compliance with § 231.30(c), requiring switching steps, on one locomotive. The locomotive was built prior to this requirement.

Waccamaw Coast Line Railroad Company

[Waiver Petition Docket Number RSGM-91-8]

The Waccamaw Coast Line Railroad Company (WCLR) was granted a waiver of compliance with the Safety Glazing Standards (49 CFR part 223) for one locomotive under Docket Number RSGM-91-8. They recently acquired another locomotive and have petitioned for a waiver of compliance for it also. The locomotive will be used primarily on an excursion/dinner train between Myrtle Beach and Conway, South Carolina, a distance of 13 miles. The railroad states there has never been a problem with glazing due to vandalism.

Mohawk, Adirondack and Northern Railroad Corporation

[Waiver Petition Docket Number RSGM-91-20]

The Mohawk, Adirondack and Northern Railroad Corporation (MHWA) was granted a temporary waiver of compliance from certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives under Docket Number RSGM-91-20. The MHWA and the Lowville and Beaver River Railroad (LBR) are owned by Genesee Valley Transportation Company. The MHWA is requesting a waiver of compliance from the Safety Glazing Standards for two 44-ton GE locomotives owned by the LBR (operated under waiver RSGM-81-50) in order to operate the locomotives on MHWA tracks.

[Waiver Petition Docket Number SA-92-2]

The Mohawk, Adirondack and Northern Railroad Corporation requests a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR part 231) for two 44-ton GE locomotives. The locomotives are owned by the Lowville and Beaver River Railroad and operated under Waiver SA-78-5. The MHWA seeks relief from the provisions of § 231.30(c), which requires switching steps, since it would be nearly impossible to modify the steps due to the original design.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-19259 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-893]

Ocean Chemical Carriers, Inc. and Ocean Chemical Transport, Inc; Application for Permission Under Section 805(a) of the Merchant Marine Act 1936, as Amended, for Subsidized Tanker Companies To Affiliate With Ocean Duchess, Inc.

By letter dated July 31, 1992, Ocean Chemical Carriers, Inc. and Ocean Chemical Transport, Inc. (Applicants) requested written permission pursuant to section 805(a) of the Merchant Marine Act 1936, as amended (Act) to affiliate with Ocean Duchess, Inc. (Ocean Duchess).

The Applicants are currently receiving subsidy for the operation of the M/V JULIUS HAMMER and the M/V FRANCES HAMMER pursuant to Operating-Differential Subsidy Agreements (ODSA), Contracts MA/MSB-440 and MA/MSB-442, respectively. The Applicants are wholly owned by Joe Vaughan. Both companies are Delaware corporations. The Applicants have bareboat chartered the vessels from Suwannee River Lines, Inc. and Suwannee River Chartering, Inc. The vessels in turn are time chartered to Suwannee River Chartering, Inc.

Ocean Duchess, is a corporation organized under the laws of Delaware, and is wholly owned by Lawrence Rubenstein. The Connecticut National Bank is Shipowner Trustee of the Vessel. Ocean Duchess is acting solely as the vessel manager for the M/V DUCHESS (Vessel). Ocean Duchess is not the bareboat charterer of the Vessel, nor does it have an equity position in the Vessel itself. The Shipowner has retained the duty to arrange for the Vessel's charters. The Vessel is currently under time charter arranged by the Shipowner between itself and British Petroleum for operation in the domestic trade.

Mr. Vaughan desires to purchase controlling interest in Ocean Duchess. The Applicants state section 805 approval is necessary because of the affiliation between Mr. Vaughan and the Applicants. The Applicants contend that affiliation between the Applicants and Ocean Duchess through Mr. Vaughan would not result in unfair competition to coastwise or intercoastal operators, nor would it cause prejudice to the purposes and policies of the Act. Ocean Duchess would continue to act solely as the vessel manager, compensable under the existing ship management agreement entered into between itself and the Shipowner. The Shipowner would independently charter the Vessel in the domestic trade, an activity which would occur irrespective of this request for section 805 approval.

The Maritime Administrator has already granted a similar Section 805 waiver after the Applicant demonstrated that the corporate structures of the Applicant and its affiliated companies are established in a manner which prevents any subsidy diversion to the domestic trades (Docket S-850). Applicants state that as the beneficiaries of ODSA Nos. MA/MSB-440 and MA/MSB-442 are not related to the Shipowner Trustee of the Vessel or its the beneficial owners, the benefits of the Applicants' subsidy contracts cannot spill over into the domestic operation of the Vessel. Applicants aver that the distinct nature of the Applicants' operations, on the one hand, and Ocean Duchess' management agreement with the Shipowner to operate the vessel, on the other, guarantees no unfair competition with existing coastwise tanker operators through subsidy diversion.

The Applicant states that approval of this request would promote the purposes and policies of the Act. As an affiliated company, Ocean Duchess would have direct access to all the services and personnel employed by OSI and Ocean Ship Management, Inc., a specialized management company also owned by Joe Vaughan. The Applicants believe that the affiliation may serve to reduce Ocean Duchess' overhead and administrative expenses, and make it less dependent on outside resources during periods of unanticipated emergency or workload. The Applicants contend that the purposes and policies of the Act are served by the

strengthening of an existing U.S.-flag company which, in turn, stabilizes employment opportunities for the company's management staff and crew. The Applicants therefore request section 805(a) approval to affiliate with Ocean Duchess, Inc. on an expedited basis.

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business 5 p.m. on August 18, 1992. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief. If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate. In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or international service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

Dated: August 7, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92-19255 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 2555-EZ.
Type of Review: New collection.
Title: Foreign Earned Income Exclusion.
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion. This information is used by the Service to determine if a taxpayer qualifies for the exclusion. Form 2555-EZ is a less burdensome form that will be used where foreign earned income is $70,000 or less.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 35,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 minutes
Learning about the law or the form—17 minutes
Preparing the form—1 hour, 40 minutes
Copying, assembling, and sending the form to the IRS—35 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 68,950 hours.

OMB Number: 1545-0067.
Form Number: IRS Form 2555.
Type of Review: Extension.
Title: Foreign Earned Income.
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the Service to determine if a taxpayer qualifies for the exclusion(s) or deduction.
Respondents: Individuals or households.
Estimated Burden Hours Per Respondent/Recordkeepers: 165,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 10 minutes
Learning about the law or the form—26 minutes
Preparing the form—1 hour, 50 minutes
Copying, assembling, and sending the form to the IRS—49 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 867,900 hours.

OMB Number: 1545-0128.
Form Number: IRS Form 1120-L.
Type of Review: Revision.
Title: U.S. Life insurance Company Income Tax Return.
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 2,440.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—76 hours, 17 minutes
Learning about the law or the form—24 hours, 37 minutes
Preparing the form—39 hours, 59 minutes
Copying, assembling, and sending the form to the IRS—3 hours, 45 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 352,946 hours.

OMB Number: 1545-0137.
Form Number: IRS Form 2032.
Type of Review: Extension.
Title: Contract Coverage Under Title II of the Social Security Act.
Description: American employers can enter into an agreement to extend social security coverage to U.S. citizens and resident aliens employed by foreign affiliates.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 160.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 9 minutes
Learning about the law or the form—18 minutes
Preparing and sending the form to the IRS—20 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 448 hours.

OMB Number: 1545-0203.
Form Number: IRS Form 5329.
Type of Review: Revision.
Title: Return for Additional Taxes Attributable to Qualified Retirement Plans (including IRAs), Annuities, and Modified Endowment Contracts.
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes for

excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 24 minutes
Learning about the law or the form—43 minutes
Preparing the form—1 hour, 41 minutes
Copying, assembling, and sending the form to the IRS—35 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 5,380,000 hours.
OMB Number: 1545–0687.
Form Number: IRS Form 990–T.
Type of Review: Revision.
Title: Exempt Organization Business Income Tax Return.
Description: Form 990–T is needed to compute the section 511 tax unrelated business income of a charitable organization. IRS uses the information to enforce the tax.
Respondents: Non-profit institutions.
Estimated Number of Respondents/ Recordkeepers: 35,531.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—60 hours, 59 minutes
Learning about the law or the form—20 hours, 20 minutes
Preparing the form—32 hours, 28 minutes
Copying, assembling, and sending the form to the IRS—2 hours, 57 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 4,147,889 hours.
OMB Number: 1545–0715.
Form Number: IRS Form 1099–B.
Type of Review: Extension.
Title: Proceeds From Broker and Barter Exchange Transactions.
Description: Form 1099–B is used by brokers and barter exchanges to report proceeds from transactions to the Internal Revenue Service.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 12,925,000 hours.
OMB Number: 1545–0901.
Form Number: IRS Form 1098.
Type of Review: Revision.
Title: Mortgage Interest Statement.
Description: Form 1098 is used to report $600 or more of mortgage interest received from an individual in the course of the mortgager's trade or business.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 171,000.
Estimated Burden Hours Per Respondent: 7 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,840,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 92–19247 Filed 8–12–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0056.
Form Number: CF–19.
Type of Review: Extension.
Title: Protest.
Description: The CF–19 is filed by the importer, consignee, or the person paying any charge or exaction or seeking entry or delivery with respect to merchandise which is the subject of the decision protested.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 3,700.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 23,432 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–19248 Filed 8–12–92; 8:45 am]

BILLING CODE 4820–02–M

Office of the Secretary

[Supplement to Dep. Circular—Public Debt Series—No. 23–92]

Treasury Notes, Series AC–1994

Washington, July 29, 1992.

The Secretary announced on July 28, 1992, that the interest rate on the notes designated Series AC–1994, described in Department Circular—Public Debt Series—No. 23–92 dated July 22, 1992, will be 4¼ percent. Interest on the notes will be payable at the rate of 4¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–19253 Filed 8–12–92; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Dept. Circular—Public Debt Series—No. 24–92]

Treasury Notes, Series P–1997

Washington, July 30, 1992.

The Secretary announced on July 29, 1992, that the interest rate on the notes designated Series P–1997, described in Department Circular—Public Debt Series—No. 24–92 dated July 22, 1992, will be 5½ percent. Interest on the notes will by payable at the rate of 5½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–19252 Filed 8–12–92; 8:45 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 11–92

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., August 26, 1992 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 1000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, D.C. on August 11, 1992.

Judith H. Lock,

Administrative Officer.

[FR Doc. 92–19484 Filed 8–11–92; 3:31 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register

Vol. 57, No. 157

Thursday, August 13, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-02-4143-11]

Sodium; Wyoming

Correction

In notice document 92-16714 appearing on page 32024 in the issue of Monday, July 20, 1992, make the following correction in the second column, in the heading "Coal Leases; WY" should read "Sodium; Wyoming".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

Definition and Registration of Mid-Level Practitioners

Correction

In proposed rule document 92-17873 beginning on page 33465 in the issue of Wednesday, July 29, 1992, make the following correction:

On page 33466, in the first column, in the last line, the second "the" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act: Fiscal Year 1992 Competitive Discretionary Grant Programs Announcement and Notice of the Availability of Application Kit

Correction

In notice document 92-17851 beginning on page 33826 in the issue of Thursday, July 30, 1992, make the following correction:

On page 33832, in the third column, under *Due Date*, in the third line "August 28, 1992" should read "September 28, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-92-AD]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

Correction

In proposed rule document 92-16210 beginning on page 30697 in the issue of Friday, July 10, 1992, make the following correction:

§ 39.13 [Corrected]

On page 30698, in the second column, in § 39.13, in the first paragraph, in the second line, "ll-passenger" should read "all-passenger".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF46

Claims Based on Chronic Effects of Exposure to Mustard Gas

Correction

In rule document 92-18107 beginning on page 33875 in the issue of Friday, July 31, 1992, make the following correction:

On page 33877, in the first column, the **List of Subjects** should read "Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans."

BILLING CODE 1505-01-D

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Part II

Securities and Exchange Commission

17 CFR Parts 200 et al.

Small Business Initiatives; Capital Raising Facilitation and Compliance Burdens Reductions; Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 228, 229, 230, 239, 240, 249, and 260

[Release Nos. 33-6949, 34-30968, 39-2287; FR-39]

RIN 3235-AD88

Small Business Initiatives

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today adopted rules and forms under the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act") and the Trust Indenture Act of 1939 ("Trust Indenture Act") to facilitate capital raising by small businesses and reduce the costs of compliance with the federal securities laws. Specifically, the Commission has revised its general small issues exemption from the Securities Act registration requirements, Regulation A, as well as the rule 504 exemption, and has adopted simplified registration and reporting disclosure requirements for "small business issuers," as defined. The Commission also is soliciting further public comment on rule 504 with respect to excluding blank check companies from the exemption as adopted.

EFFECTIVE DATE: August 13, 1992. Although Form S-18 is hereby rescinded, filings on that form will be accepted for filing through December 31, 1992. Amendments to pending registration statements on Form S-18 or S-1 may be made on Form SB-2 by small business issuers eligible to use that Form.

FOR FURTHER INFORMATION CONTACT: The Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549: (1) Regulation A and rule 504, Richard K. Wulff (202-272-2644); (2) Regulation S-B, Securities Act Rules and Forms, Exchange Act Rules and Forms and Trust Indenture Act Rules, Amy S. Bowerman and Martin P. Dunn (202-272-2573); and (3) Financial statement requirements, Teresa E. Iannaconi (202-272-2553).

SUPPLEMENTARY INFORMATION: The Commission today adopted revisions to the Regulation A [1] exemption from the registration requirements of the Securities Act [2] and Forms 1-A [3] and 2-A [4] used for such offerings and repealed Forms 3-A,[5] 4-A,[6] 5-A,[7] 6-A [8] and 7-A.[9] Form F-X [10] has been amended to permit its use by Canadian issuers engaged in a Regulation A offering or a registered offering on Form SB-2. In connection with these revisions to Regulation A, Securities Act Rule 175 [11] and Exchange Act Rule 3b-6,[12] the Commission's "safe harbor" provisions for forward looking statements, have been revised to apply to statements made in a Regulation A offering statement and any written material submitted to the Commission pursuant to new Securities Act Rule 254. Proposed revisions to Rule 504 [13] of Regulation D have been adopted with an exclusion for offerings by "blank check" companies.

The Commission today also adopted an integrated disclosure system for "small business issuers." The simplified disclosure requirements for small business issuers are contained in Regulation S-B.[14] Amendments to Rules 405 [15] and 481 [16] under the Securities Act and Rule 12b-2 [17] under the Exchange Act [18] define the small business issuers that are eligible to use the simplified disclosure forms. Form S-18 [19] has been repealed and replaced with Form SB-2.[20] Forms S-2,[21] S-3,[22] S-8 [23] and S-4 [24] have been amended to reflect the new disclosure requirements of Regulation S-B. New Forms 10-SB [25], 10-KSB [26] and 10-QSB [27] have been created to satisfy registration, annual and quarterly reporting obligations under the Exchange Act. Further, Item 7 of Form 8-K [28] has been amended to provide consistent financial statement instructions regarding small business acquisitions. Parallel changes have been made to Schedule 14A,[29] Schedule 14C,[30] and Rule 14a-3 [31] under the Exchange Act.

Rule 4a-1 [32] under the Trust Indenture Act,[33] which provides an exemption from the requirement to issue securities pursuant to an indenture, has been revised to increase the dollar ceiling of that exemption. Trust Indenture Act Rule 4a-2 [34] has been redesignated Rule 4a-3 [35] and amended to increase the dollar ceiling included in the exemption from the requirement that the securities be issued pursuant to a qualified indenture. The Commission also adopted new Rule 4a-2 [36] which permits an exemption from the Trust Indenture Act for issuances of securities under Regulation A. Finally, the Commission amended Rule 4d-9 [37] and Rule 10a-5 [38] under the Trust Indenture Act to reflect the availability of Form SB-2 to Canadian issuers.

I. Executive Summary

Today, with the adoption of major revisions to Securities Act registration exemptions under Rule 504 and Regulation A and the inauguration of an integrated registration and reporting system for small business issuers, the Commission has completed the first of its Small Business Initiatives announced in March of this year.[39] The remaining regulatory initiatives have been proposed for public comment,[40] and the Commission's proposed Small Business Incentive Act of 1992 has been introduced in both the House of Representatives [41] and Senate of the U.S. Congress.[42]

The March proposals were enthusiastically received by the small business commenters as a significant step to facilitating access to the public market for start-up and developing companies, and reducing the costs for small businesses to undertake to have their securities traded in the public

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[1] 17 CFR 230.251-230.262.
[2] 15 U.S.C. § 77a *et seq.*
[3] 17 CFR 239.90.
[4] 17 CFR 239.91.
[5] 17 CFR 239.92.
[6] 17 CFR 239.93.
[7] 17 CFR 239.94.
[8] 17 CFR 239.95.
[9] 17 CFR 239.96.
[10] 17 CFR 239.42.
[11] 17 CFR 230.175.
[12] 17 CFR 240.3b-6.
[13] 17 CFR 230.504.
[14] 17 CFR 228.10-228.702.
[15] 17 CFR 230.405.
[16] 17 CFR 230.461.
[17] 17 CFR 240.12b-2.
[18] 15 U.S.C. § 78a *et seq.*
[19] 17 CFR 239.28.
[20] 17 CFR 239.10.
[21] 17 CFR 239.12.
[22] 17 CFR 239.13.
[23] 17 CFR 239.16b.
[24] 17 CFR 239.25.
[25] 17 CFR 249.210b.
[26] 17 CFR 249.310b.
[27] 17 CFR 249.308b.
[28] 17 CFR 249.308.
[29] 17 CFR 240.14a-101.
[30] 17 CFR 240.14c-101.
[31] 17 CFR 240.14a-3.
[32] 17 CFR 260.4a-1.
[33] 15 U.S.C. § 77aaa *et seq.*
[34] 17 CFR 260.4a-2.
[35] 17 CFR 260.4a-3.
[36] 17 CFR 260.4a-2.
[37] 17 CFR 260.4d-9.
[38] 17 CFR 260.10a-5.
[39] *See* Securities Act Release No. 6924 (March 11, 1992) ("March Release").
[40] *See* Securities Act Release No. 6943 (July 16, 1992) and Investment Company Act Release No. 18736 (June 5, 1992).
[41] H.R. 4938, 102d Cong., 2d Sess. (April 9, 1992).
[42] S. 2516, 102d Cong., 2d Sess. (April 2, 1992).

markets. The exemptions and small business integrated registration and reporting system adopted today are substantially in the form proposed in the March Release. Regulation A has been revised to exempt public offerings of non-reporting companies of up to $5 million in a 12-month period and to permit the use of a simplified question-and-answer disclosure document. Companies conducting a Regulation A offering will be able to "test the waters" for potential interest in the company before having to prepare the mandated offering circular. In response to comment, Regulation A will continue to be available to qualifying Canadian issuers.

The revisions to Rule 504 are adopted with one change—Rule 504 will not be available to "blank check" companies. Under New Rule 504, as adopted, non-reporting companies will be permitted to sell up to $1 million of securities in a 12-month period, subject to anti-fraud prohibitions. No specific disclosure document is prescribed, and there is no proscription on general solicitation. Investors purchasing Rule 504 securities will receive freely transferable securities.

The small business integrated registration and reporting system, modeled after Form S–18, is adopted with some refinements in response to public comment. The definition of small business issuer has been revised to include companies with annual revenues of less than $25 million whose voting stock does not have a public float of $25 million or more. As with Regulation A, Canadian issuers will be eligible to use the small business registration and reporting forms. Form numbers and other rules have been changed in anticipation of adoption of additional small business registration and reporting forms, as set forth in the accompanying release proposing further regulatory simplification for small business issuers.[43]

Finally, the proposed changes to the rules under the Trust Indenture Act to increase the levels of debt that may be offered without full compliance with that Act are adopted as proposed.

II. Small Business Initiatives

A. Regulation A

As adopted, the dollar ceiling for a Regulation A offering is now $5 million in any 12-month period,[44] including no more than $1.5 million in non-issuer resales.[45] In response to comment, the rule has been revised to make clear that the dollar amount is determined with reference to the dollar amount sold in the 12 months preceding the offering. Use of other "small issues" exemptions do not reduce the Regulation A dollar ceiling.[46]

1. Scope of the Exemption

The categories of companies eligible to use the Regulation A exemption has been expanded from that proposed to include qualifying Canadian issuers as well as those non-operating entities proposed to be excluded for the first time (other than blank check offerings). Although, as noted in the Proposing Release, in recent years Canadians have not relied on the exemption, the changes in Regulation A may make the exemption more attractive not only to domestic but also Canadian companies.[47] Partnerships or certain other entities organized primarily for the purpose of investing in properties, commodities or other investment vehicles have long been eligible to use Regulation A, and their proposed exclusion has not been adopted. After consideration of public comment, the Commission believes it appropriate to reduce the costs for these small non-reporting issuers, particularly in view of the direct oversight by the Commission of the disclosures made under Regulation A.

The current exclusions of issuers of fractional undivided interests in certain oil, gas or mineral rights [48], and investment companies [49] are continued and the exclusion for "blank check" companies [50] is adopted. As under current Regulation A, an issuer's securities may not be sold in reliance on the exemption if the company, or a controlling person or underwriter, is subject to one of a series of enumerated legal remedies and sanctions.[51]

Although several commenters suggested the inclusion of reporting small business issuers in the list of eligible companies, the Commission is of the view that particularly in view of the small business integrated registration and reporting system adopted today the availability of Regulation A for reporting companies is not necessary.

A number of commenters addressed the Commission inquiry as to whether offerings of "penny stocks" should be prohibited under the Regulation A exemption. Most were of the view that lower priced offerings by legitimate small business issuers would be the main beneficiaries of the revised exemption and that there are now adequate safeguards governing the penny stock market to counter marketing abuses which have arisen in this market in the past. The Commission is persuaded that exclusion of legitimate small business operating companies from the exemption because of the trading price of their securities is not necessary for investor protection and would foreclose significant financing options to small developing companies.

2. Disclosure and Procedural Requirements

Regulation A requires the qualification of a prescribed offering statement which has been filed with the Commission, and delivery of a required offering circular, the form and content of which has been adopted as proposed. Corporate issuers now have the option to use a question-and-answer format, in

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[43] *See* Securities Act Release No. 6950 (hereinafter referred to as the "Proposing Release".)

[44] Regulation A has been adopted pursuant to the authority granted to the Commission under section 3(b) of the Securities Act [15 U.S.C. § 77c(b)] to provide exemptions from the registration requirements for issues of securities which do not exceed $5 million under conditions which further the public interest and protection of investors.

[45] Secondary offerings by affiliates are ineligible for a Regulation A exemption where the issuer has had no net income for each of the two most recent fiscal years. The escrow rule, as well as the recommended format for escrow (Form 7–A), and the companion ceiling reduction provisions in old Rule 253 have been eliminated, just as proposed.

[46] *E.g.*, Securities Act Rules 236, 504, and 505 [17 CFR 230.236, 504 and 505] and Regulations B [17 CFR 230.300–230.346], E [17 CFR 230.601–230.610a] and F [17 CFR 230.651–230.656].

[47] Canadian persons had been required to consent to service of process on forms established by the Commission (Forms 3–A, 4–A, 5–A and 6–A), which are now rescinded. Form F–X has been amended to permit its use for this purpose by Canadian issuers engaged in a Regulation A offering.

[48] Regulation B provides exemptive relief for such issuers.

[49] These include companies registered or required to be registered under the Investment Company Act of 1940, 15 U.S.C. § 80a–1 *et seq.*

[50] A "blank check" company is one that has no specific business or plan except to locate and acquire a presently unknown business or opportunity. In response to public comment, the Commission has determined to use a definition which precludes the use of Regulation A by any blank check issuer regardless of whether or not it is issuing a penny stock. *See* Section 7(b) of the Securities Act, 15 U.S.C. § 77g(b).

[51] The disqualification provisions describe specific sanctions against the issuer, its controlling persons and any underwriter in its employ which preclude reliance upon Regulation A. The Commission may, in appropriate circumstances, waive such disqualifications upon a showing of good cause. Because of the renumbering of the rules in Regulation A, a technical revision to the reference in Rule 505 of Regulation D, 17 CFR 230.505 which picks up the same disqualification provisions has been made.

addition to the more traditional disclosure formats.[52]

The Commission's safe harbor provisions relating to forward looking information have been specifically made applicable to Regulation A. Therefore, good faith projections, with a reasonable basis, of revenues, income, earnings per share, capital expenditures, dividends, capital structure and other financial items may be made in Regulation A filings and the "test the water" submissions and fall within the protection of the Commission's safe harbor rules, under the same conditions as for other Commission filings.[53]

Procedural and timing requirements for commencement of a Regulation A offering have been revised as proposed to conform to those used for registered offerings. Requirements as to form, legibility and signatures for the required offering statement have been adopted as proposed. The Commission has delegated to the staff the authority to grant requests to qualify offering statements under Regulation A.[54] The Commission retains the authority to deny such requests. The authority to act with respect to requests for withdrawals and abandonments of offering statements continues to be delegated to the staff.[55]

As in the registration context, issuers may begin to offer the securities to be sold in a Regulation A offering as soon as the offering statement is filed. Once an offering statement is filed, a written offer can be made only through the use of a preliminary or final offering circular. As under the current Regulation, advertisements and radio and television broadcasts containing information specified by rule concerning the issuer and the securities being offered may be used, so long as they indicate from whom an offering circular may be obtained.[56]

Sales may not be made under Regulation A until the offering statement is qualified. The timing of qualification of the offering statement has been conformed to that in registered offerings. Absent the use of a delaying notation procedure, an offering statement would be deemed qualified 20 calendar days after being first filed with the Commission.[57]

Delivery of a preliminary or final offering circular at least 48 hours prior to the confirmation of sale is required.[58] Offering circulars must be updated annually during the term of a continuous offering, as well as revised whenever the information presented has become false and misleading, material developments have occurred, or there has been a fundamental change in the information initially presented.

Periodic information regarding the course of the distribution, as well as information about the application of the proceeds from the offering, must be filed with the Commission. Form 2–A has been amended to require data similar to that sought in connection with registered offerings.

In response to comment, the provisions governing the filing of the Form 2–A to report sales and the use of proceeds, have been amended to clarify that the failure to file the Form 2–A does not cause the exemption to be lost. The failure continues to be a ground for suspension of the exemption by the Commission. A similar change has been made to the provisions regarding the filing of additional sales material.

The bases for administratively suspending a Regulation A exemption have been adopted as proposed. Questions have been raised with respect to the impact of an administrative suspension upon prior offers and sales made in reliance upon Regulation A. The entry of a suspension in and of itself does not affect the exempt status of prior offers and sales under Regulation A. Of course, where the suspension is based on action or inaction that rendered the exemption unavailable, unregistered offers and sales would have to qualify for another exemption or would violate section 5 of the Securities Act.

3. Substantial and Good Faith Compliance

The Commission has adopted the rule governing substantial and good faith compliance with the terms, conditions and requirements of Regulation A. Under this provision, an issuer will not necessarily lose the exemption with respect to a particular investor if the issuer failed to comply with a requirement under Regulation A, provided that the failure did not pertain to a provision of the rule directly intended to protect that person. The failure would, however, violate a Commission rule. Thus, for example, failure to deliver the mandated offering circular to a single investor, would preclude reliance on the exemption for that particular sale as a violation of Rule 251(d)(2), but would not, in and of itself, preclude reliance on the exemption for other offers and sales made in compliance with the Regulation.

The exemption will not be lost if the issuer shows that the requirement was not intended to protect the particular investor, the violation was not material to the offering as a whole and the issuer had made a good faith attempt to comply with all of the requirements of Regulation A. The provisions regarding issuer qualification, as well as the requirements to file an offering statement and to stay within specified dollar limitations, are not subject to the substantial good faith compliance standard.

B. "Testing the Waters"

As discussed in the March Release, one of the major impediments to a Regulation A financing for a small start-up or developing company with no established market for its securities, is the cost of preparing the mandated offering statement. The full costs of compliance would be incurred without knowing whether there will be any investor interest in the company.

To remedy this situation, the Commission proposed for the first time to permit companies relying on the Regulation A exemption to "test the waters" for potential interest in the company prior to filing and delivery of the mandated offering statement. All test the water documents are required to be submitted to the Commission at the time of first use.[59] The proposal was

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[52] The reintroduction of Canadian issuers into the list of Regulation A eligible companies necessitates a change to the instructions in Part F/S of the Form 1–A Offering Statement to require that Canadian financial statements be reconciled to U.S. generally accepted accounting principles. This position is consistent with a long-standing requirement in Regulation A.

[53] In addition, the type of information called for by Items 4, 47, 48 and 49, relating to milestones and other forward looking information in the question-and-answer format would also be covered.

[54] The authority has been delegated to the Director of the Division of Corporation Finance and the Regional Administrators. 17 CFR 200.30–1(c)(2); 17 CFR 200.30–6(b).

[55] 17 CFR 200.30–1(c)(3); 17 CFR 200.30–6(b).

[56] A note has been added to Rule 256 [17 CFR 230.256] to make clear that additional advertisements and scripts do not have to be filed if they are substantially the same as that previously filed.

[57] Interim amendments to the offering statement would restart the 20 calendar day period.

The cover page of Form 1–A now contains the legend available under Rule 252(g)(2) which would have to be deliberately omitted by an issuer that wishes to be qualified 20 days after filing. Other Commission forms utilize this technique, which avoids unnecessary expense for issuers that inadvertently omit the legend.

[58] This process is the same as that available with registered offerings. The preliminary offering circular must be substantially complete in order to satisfy this 48 hour rule. Pricing information, as defined in Rule 430A, 17 CFR 230.430A, is not required to be included.

[59] The test the waters material submitted to the Commission will be a public document, placed in the Commission's files and subject to public inspection. The submission of subsequent soliciting

Continued

enthusiastically endorsed by private sector commenters as a necessary and appropriate solution to a significant regulatory impediment to small business financing, and, as drafted, is consistent with investor protection interests.

A number of refinements have been included in the test the water provisions in response to public comment. First, while the Regulation continues to require that the "testing of the waters" begin with a written solicitation of interest submitted to the Commission at the time of first use, the rules have been revised to make clear that submission of the document is not a condition to the exemption. Failure to comply with the requirement is a grounds for Commission suspension of the exemption.

As proposed, the written test the water document was a free writing subject to the inclusion of two mandated statements—first, that no funds were being solicited or would be accepted, and secondly that a detailed offering document would follow. Some commenters suggested that even these few items should be deleted, while others suggested additional requirements or specific prescription of the content.

The rule as adopted continues to provide for free writing with the inclusion of the following items:

1. A statement that no money is being solicited, or will be accepted; that no sales can be made until delivery and qualification of the offering circular, and that indications of interest involve no obligation or commitment of any kind; and

2. A brief, general identification of the company's business, products and chief executive officer.

The rule has been revised to make clear that inclusion of these statements in the soliciting document is not a condition to the exemption, but failure to include the statements is a basis for Commission suspension of the exemption.

An issuer may deliver the solicitation material to prospective investors, or publish it in a newspaper or other print media. In a change from the proposal and in response to public comments, the use of broadcast media for this purpose, whether on radio or television, is also permitted.

At the time of submission to the Commission, the issuer must provide the name and telephone number of a person who can respond to questions regarding the document. The submission should be made at the Commission office (whether a Regional Office or Headquarters) where the issuer intends to file its Regulation A offering statement. In the case of a broadcast, any script should be submitted. Oral communications between the issuer and prospective investors are permitted but only after a solicitation of interest document has been submitted to the Commission.

Once the offering statement required by Regulation A is filed with the Commission, the issuer may not continue to use its written "test the waters" solicitation materials. The rule requires that at least 20 calendar days elapse between the last use of the solicitation of interest document or broadcast and any sale of securities in the Regulation A offering. Compliance with the rules limiting the use of the test the water documents after filing of the offering statement is not a condition to the exemption, but is a violation of the rule and is a basis for Commission suspension of the exemption.

Questions have been raised as to the application of the Commission's integration doctrine to the situation where an issuer relies upon the test the water process, determines not to go forward with a Regulation A offering, but later decides to offer and sell securities either on some exempt basis or through registration under the Securities Act. The Commission does not believe it to be in either the investors' or the issuer's interest to deter resort to a registered offering because of a good faith change of plans. Thus, where an issuer decides to forego the Regulation A exempt offering and does not file a Regulation A offering statement with the Commission, but instead proceeds with a registered offering after testing the waters, the rules would treat the solicitations of interest made in reliance upon Rule 254 as exempt, provided that at least 30 days had elapsed between the issuer's last use of a written testing of the waters document and the filing of the registration statement, and that all written solicitation material had been submitted to the Commission. If the offering statement is filed, Rule 251(c) would apply. With respect to all other offerings, the provisions of Rule 251(c) would govern, whether or not test the water materials have been used pursuant to Rule 254.

C. Rule 504 Under Regulation D

A significant number of commenters, particularly small businesses, favored the Commission's proposal to eliminate all restrictions on the Rule 504 exemption, and the revisions to Rule 504 are adopted as proposed, with one exception. Based upon its own experience and the views of certain commenters, the Commission has excluded blank check companies from Rule 504. While former Rule 504 now Rule 504a is still available to blank check companies,[60] The Commission is issuing a proposal that would revoke entirely their eligibility to conduct such offerings.

Under new Rule 504, a public offering of up to $1 million in a 12-month period by a non-Exchange Act reporting company [61] is subject only to the anti-fraud and other civil liability provisions of the federal securities laws. While the filing of a Form D with the Commission continues to be required, the availability of the exemption is not contingent on that filing.[62]

In light of the revisions to Rule 504, the special $100,000 exemption under Regulation A,[63] which permits offerings of that size to be made without the use of an offering circular [64] is being eliminated. Commenters generally agreed that the changes to Rule 504 made Rule 257 unnecessary.

D. Integrated Disclosure System for Registration and Reporting for Small Business Issuers

1. Introduction

The Commission is adopting an integrated registration, reporting and qualification system for small business issuers under the Securities Act, Exchange Act and Trust Indenture Act. Issuers that meet the definition of a small business issuer, are eligible to use this new small business integrated disclosure system. The system consists of specialized forms under the Securities Act and the Exchange Act that reference disclosure requirements located in one central depository—Regulation S–B. In addition, rules have been adopted to permit offerings of debt securities up to $10 million without full compliance with the Trust Indenture Act.

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material which is substantially the same as that already submitted to the Commission is not required.

[60] Rule 504a [17 CFR 230.504a] is a redesignated Rule 504. New Rule 504 reflects the changes made hereby.

[61] Rule 504 is not available to investment companies.

[62] *See* Securities Act Rules 504(b)(1), 505(a)(1) and 506(a)(1) [17 CFR 230.504(b)(1), 17 CFR 230.505(a)(1), and 17 CFR 230.506(a)(1)].

[63] In the past three years, only 6 of the 177 Regulation A filings made with the Commission were pursuant to the terms of Rule 257.

[64] Current Rule 257 is not available for issues of assessable stock or by those within the descriptions of Rule 253(a), i.e., an entity incorporated or organized within one year prior to filing without a net income from operations, or if a longer existence but no net income from operations in at least one of the prior two fiscal years.

The disclosure system adopted today is part of a two tiered system for small business issuers. In the Proposing Release, the Commission is proposing entry level, transitional disclosure for small business issuers entering the disclosure system and undertaking small offerings of securities.

2. Definition of Small Business Issuer

As proposed, the Commission is adopting a revenue-based definition of small business issuer. This definition was favored by a majority of commenters. Generally, those that favored a revenue-based definition of small business issuer requested that the threshold be higher than the proposed $15 million. Others favored a market capitalization-based definition. Several commenters suggested that a combination of tests be used.

In response to these comments, a small business issuer is defined as a company with revenues of less than $25 million. However, if the aggregate market value of the issuer's voting stock held by non-affiliates (referred to as the "public float") equals or exceeds $25 million, the issuer does not qualify as a small business issuer. An estimated 3,000 reporting public companies fall within the definition of small business issuer.[66]

The definition of small business issuer has been revised to include Canadian issuers. This revision was made in response to comment that Canadian issuers are eligible to use Form S–18 and should therefore be eligible to use Form SB–2. Accordingly, the definition of small business issuer was revised to include Canadian registrants that otherwise meet the definition of small business issuer. A general instruction has been added to Regulation S–B directing Canadian small business issuers to the applicable foreign issuer disclosure requirements of Regulation S–K. Technical amendments have been made to rules under the Trust Indenture Act so as to permit the use of a Canadian trustee in connection with the offering of debt securities on Form SB–2.[66]

Accordingly, as adopted, a small business issuer is defined as a U.S. or Canadian entity with revenues of less than $25,000,000 unless the issuer's public float (the aggregate market value of voting stock held by non-affiliates) is $25 million or more. Investment companies are excluded from the definition. Further, if the small business issuer is a majority owned subsidiary of another company, its parent must also meet the definition of small business issuer.

3. Registration Requirements of the Securities Act

Form SB–2 [67] is the designated Securities Act registration form for small business issuers. As proposed, there is no dollar limit for offerings on Form SB–2 and the Form may be used for both initial and repeat offerings, and for both primary and secondary offerings. Small business issuers may file initial public offerings on Form SB–2 with the regional office closest to the issuer's principal place of business or at the Commission's headquarters.[68] All subsequent filings will be made at the Commission's headquarters.

4. Registration and Reporting Under the Exchange Act

The Commission has adopted a new series of forms and amendments to forms under the Exchange Act for small business issuers. Specifically, the Commission has adopted an Exchange Act registration statement form for small business issuers—Form 10–SB. Form 10–KSB and Form 10–QSB are the designated annual and quarterly reports for small business issuers. An instruction was added to Item 7 of Form 8–K relating to small business acquisitions and general instructions were added to Schedules 14A and 14C, and Rule 14a–3, relating to their use by small business issuers.

a. Financial Information Required by Regulation S–B. The financial information required by Regulation S–B is substantially the same as the financial statement requirements of Form S–18 but has a component to address interim financial statement requirements. Item 310 of Regulation S–B is being adopted with several modifications. First, additional requirements are added as necessary in order to accommodate the inclusion of Canadian issuers in the SB series. Second, at the suggestion of several commenters, the definition of a significant business found in Rule 405 of Regulation C is being incorporated into Item 310 of Regulation S–B in lieu of cross-referencing. Finally, the ability to use pro forma financial statements filed on Form 8–K as the basis for testing significance of acquired businesses is imported from Regulation S–X.

One commenter requested clarification of whether filings by a registrant which no longer qualifies as a small business issuer would be required to contain all information and schedules required by Regulation S–X for those periods during which the issuer qualified and reported as a small business. Consistent with the approach for annual reports following a Form S–18, if a registrant was permitted to and filed financial statements which did not comply with Regulation S–X and the issuer later elects or is required to provide financial statements on forms which require compliance with Regulation S–X, such compliance will not apply to periods in which the registrant was not required to and did not present such information.

A further clarification in response to a comment letter involves interim financial information of development stage companies. Consistent with staff administrative policy, if a development stage company is not readily able to provide financial information for comparative interim periods before filing its initial public offering, the requirement to provide such information is waived.

In a separate release, the Commission is proposing two revisions to these financial statement requirements for small business issuers. First, the Commission is proposing an automatic waiver of financial statement requirements relating to specified significant acquisitions when audited financial statements are not readily available. Second, the Commission is proposing to extend to initial public offerings of small business issuers the ability to conduct a registered offering within 90 days of year end without audited financial statements for the latest fiscal year.

b. Narrative Disclosure in SB Series of Forms. The narrative disclosure requirements in Regulation S–B are applicable to all registration and reporting obligations of small business issuers. The disclosure requirements in Regulation S–B generally parallel those of Regulation S–K. However, where such requirements were simplified or not required by Form S–18.

Regulation S–B generally tracks the substantive disclosure requirements of Form S–18. Regulation S–B is adopted in substantially the same form as proposed. The significant changes

[66] This figure is derived from publicly available data sources which do not include all reporting companies in their data bases. Accordingly, the actual number of publicly held companies that meet definitional tests may be higher.

[66] Revisions were made to Rules 4d–9 and 10a–5 under the Trust Indenture Act. 17 CFR 260.4d–9, 17 CFR 260.10a–5.

[67] As proposed, this registration statement form was designated Form SB–1. It has been redesignated Form SB–2 in light of the Commission's concurrent proposal of new Form SB–1, as a transitional Securities Act registration form for small business issuers registering small offerings.

[68] Post-effective amendments to initial public offerings on Form SB–2 would be filed with the Commission office in which the initial registration statement was filed.

between Regulation S–B as adopted and as proposed are outlined below.[69]

Item 10(b) was added to specify the circumstances under which issuers may enter and exit from the small business registration and reporting system.

Item 101(a) was revised in response to comment to reduce from five to three years the period for which disclosure of the small business issuer's business development is required. This marks a departure from Regulation S–K which requires disclosure of an issuer's business development over the course of the past five years.

Item 102 was revised to specifically include, rather than cross reference, the Items of Form S–11 to which issuers that are engaged in real estate activity are required to respond.

In response to comment, Item 201(a)(2) was revised to require disclosure of the amount of securities that may be resold pursuant to Rule 144. As adopted, Item 201(a)(2) conforms to the disclosure requirement of Form S–18. Item 201(b) was revised in response to comment and requires disclosure only of record holders.

Item 303 has been revised to require Management's Discussion and Analysis ("MD&A"), rather than business plan disclosure, where the issuer has had revenues in each of the last two years (or the last full year and latest interim period). In addition, amendments were made to MD&A in response to comments that proposed Item 303 of Regulation S–B could have been interpreted to require more disclosure than its Regulation S–K counterpart. Specifically, the proposed instruction to proposed Item 303, restating language from the Commission's interpretive release on MD&A, was deleted in response to the comment that incorporating the release into the text of the Item raised questions about the scope of the Item. As the interpretive guidance in the MD&A release applies equally to both small and large issuers, the SB Item was revised to avoid suggesting otherwise. In addition, language from Item 303 of Regulation S–K was added to clarify that the discussion and analysis shall focus specifically on material events, trends and uncertainties known to management that could cause reported financial information not to be necessarily indicative of future operating results or financial condition. The statement from Regulation S–K Item 303 that issuers are encouraged but not required to discuss forward looking information has also been included in response to comment.

As proposed, Item 402 of Regulation S–B, which calls for disclosure of executive compensation, was modeled after Form S–18, rather than Item 402 of Regulation S–K. After the small business initiatives were issued in the March Release, the Commission issued proposals to amend executive compensation disclosure requirements, to require a clear and concise tabular presentation of compensation paid or awarded to executive officers, and the directors' bases for making their compensation decisions.[70] The Commission proposed to exclude small business issuers from certain of the proposed executive compensation amendments—those requiring additional information concerning the relationships between compensation committee or board members and the registrant where the company either does not have a compensation committee composed entirely of outside directors or has cross-compensation committee memberships with another registrant.[71] Comment was requested as to whether the exclusion for small business issuers was appropriate [72] and whether small business issuers should also be excluded from the proposed table providing disclosure about option value under various rates of stock appreciation.[73]

The Commission will consider comment on, and reach a determination concerning, the scope of small business issuer executive compensation disclosure in connection with its compensation initiative.[74] In that connection, commenters may wish to address whether small business issuers should be excluded from additional aspects of the proposed executive compensation proposals, including the proposed performance chart [75] and compensation committee report.[76] Should small business compensation disclosure be limited to the proposed summary table? [77]

Item 501 was revised in response to comment that inclusion of a separate column in the offering proceeds table is more burdensome on small business issuers. Accordingly, footnote disclosure of offering expenses, now required under Item 501, has been continued.

As suggested by one commenter, the exhibits required by Items 601(b) (20) and (23) of Regulation S–K will also be required under Regulation S–B. These exhibits are required to be filed only if a small business issuer incorporates into its annual report on Form 10–KSB or quarterly report on Form 10–QSB a report submitted to shareholders.

The Commission also adopted the redesignation of Item 17A of Form S–18 as Guide 7 under the Securities Act and Exchange Act. Accordingly, all issuers engaged in mining operations, including small business issuers, should refer to Guide 7 for industry specific disclosure requirements.[78] Small business issuers engaged in real estate operations, banking activities and oil and gas should also refer to the applicable industry guide.

c. Operation of SB Reporting System. For a company entering the

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[69] In response to comments, the following revisions were also made to Regulation S–B:

- "Common stock" in Item 10(c)(2) was replaced with the term "common equity";
- "Market value" in Item 10(c)(3) was replaced with the term "public market" and the definition thereof has been expanded;
- "Small business issuer" was revised to state simply that the term refers to the issuer and its consolidated subsidiaries;
- The last sentence of Item 10(d)(1) requiring disclosure of only material information was deleted;
- Item 101(a)(4) (number of employees) was redesignated as Item 101(b)(12) so as not to require three years of employment disclosure;
- Item 101(b) was revised so as not to require disclosure of backlog data or disclosure of the names of material customers;
- Item 101(b)(11) was revised in order to distinguish between company sponsored and customer sponsored research and development expenses to parallel Regulation S–K;
- Item 103(a)(5) of Regulation S–B was revised so as to not mandate disclosure of the amount of damages;
- Instruction 2 to Item 103 was revised so as to require disclosure of bankruptcy and receivership proceedings only with respect to the registrant;
- "Disclose" was added to instruction 4 to Item 103;
- "Material" was added to Item 202(b);
- The parenthetical in Item 401(a)(1) was deleted;
- Item 401(a)(5) was revised so as to only require disclosure of directorships in other publicly held companies;
- Item 501(a)(8) was revised to not require red-ink;
- "More" replaced the word "less" in Item 506(a);
- Item 506(b) was revised to add the phrase "or since its inception, whichever period is shorter";
- An instruction was added to Item 507 to state that selling securityholder information may be combined with disclosure under Item 403;
- Item 510 was revised to delete the undertaking therein and to cross reference the identical undertaking in Item 512;
- Item 511 was revised to specifically reference listing fees; and
- Item 601(b)(13) was revised to reference the SB forms.

[70] *See* Securities Act Release No. 6940 (June 23, 1992).

[71] Proposed Item 402(j)(2)(i)(A), (B); *see* Securities Act Release No. 6940, 57 FR at 29596, 29606.

[72] *Id.* at 29597.

[73] *Id.* at 29588; *see* proposed Item 402(c), 57 FR at 29600.

[74] Comment letters should refer to File No. S7–16–92.

[75] Proposed Item 402(k), 57 FR at 29607.

[76] Proposed Item 402(j)(1), 57 FR at 29606.

[77] *See* proposed Item 402(b), 57 FR at 29599–600.

[78] See proposed Items 801(g) and 802(g) of Regulation S–K [17 CFR 229.801(g) and 802(g)].

Commission's disclosure system, either through a Securities Act or an Exchange Act registration statement, its eligibility to use the optional SB system will depend on the level of its revenues in its last full fiscal year, and its capitalization as of a date within 60 days prior to the offering in a Securities Act registration statement or the filing of the registration statement under the Exchange Act. Continued eligibility to use the system will be made at the commencement of each fiscal year.

Once reporting, a company may continue to report under the small business integrated disclosure system until it exceeds the $25 million revenues for two consecutive years or public float test for two consecutive years, based on its annual report on Form 10–KSB. The two-year test is adopted to avoid the possibility that temporary changes in the level of revenues or public float, may force a small business to exit prematurely the small business disclosure system. Accordingly, a small business issuer must exceed one of the two tests, for two consecutive years, in order to become eligible for the small business disclosure system.

In order for a reporting company to enter the small business disclosure system, it must meet the definition of small business issuer for two consecutive years. In entering the disclosure system, the issuer must meet both prongs of the test, revenues *and* public float, for two consecutive years.

d. Use of Forms S–2, S–3, S–4 and S–8 by Small Business Issuers. The Commission's proposal to add instructions to Forms S–2, S–3 and S–8 to enable small business issuers to use those forms while maintaining the SB level of disclosure has been adopted. Under these amendments, small business issuers are permitted to register securities on Forms S–2, S–3 and S–8 if they otherwise meet the eligibility requirements for use of those forms.[79] References in those forms to the disclosure requirements of Regulation S–K will be deemed to be references to Regulation S–B for small business issuers. With respect to the continuous reporting eligibility requirements of Forms S–2 and S–3, the SB series of periodic reports filed by small business issuers are deemed to satisfy those requirements.

Form S–4, the Securities Act registration form for business combinations, has been amended as proposed to permit its use by small business issuers through satisfaction of the Regulation S–B requirements.[80] Form S–4 is available to Form S–2 eligible small business issuers which are registering securities or are being acquired in the business combination transaction.

e. Form 8–K Revisions. As proposed, an instruction has been added to Item 7 of Form 8–K, which requires the filing of historical and pro forma financial statements for significant business acquisitions. Item 7 refers to Regulation S–X for the determination of the periods for which the financial statements are required. A parallel instruction is included in Form SB–2 but the criteria for significance and the periods for which financial statements are required differ from Regulation S–X. The amendments incorporate an instruction in Form 8–K cross referencing financial statement requirements in Regulation S–B, which track the standard of significance which is found in Form SB–2, and derived from Form S–18.

E. Amendments to Rules Under Trust Indenture Act

The Commission has adopted the proposed amendments to rules under the Trust Indenture Act that parallel the limited offering exemptions discussed above. Specifically, Rule 4a–1 has been amended to increase to $5 million the aggregate principal amount of securities that may be issued without an indenture.[81] The Commission also has adopted new Rule 4a–2 to exempt from compliance with the Trust Indenture Act any offering of debt securities that is exempt from registration under Regulation A. Former Rule 4a–2 has been redesignated as Rule 4a–3 and amended to increase to $10 million the aggregate principal amount of debt securities that may be issued under an indenture which need not be qualified under the Act.[82] Technical amendments also were made in order to permit Canadian issuers of debt securities to use a Canadian trustee in connection with a qualified indenture.[83] Small business issuers are reminded that an indenture, pursuant to which registered debt securities are offered, should be filed as an exhibit to the registration statement.[84]

F. Other Amendments

The Commission has adopted an amendment to Rule 481(b)(2) which requires a red-inked legend to be placed on a preliminary prospectus and a prospectus used in connection with Rule 430A to delete the reference to red ink. Thus the information required by Rule 481(b)(2) may be in any color ink.

G. Availability of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis, pursuant to the requirements of the Regulatory Flexibility Act,[85] regarding the rules adopted today. This analysis indicates that the revisions should aid small businesses in their efforts to raise capital while being consonant with the needs of and the protection of investors. The amendments are designed to minimize costs but do not sacrifice the important concerns of investors. A copy of the Final Regulatory Flexibility Analysis may be obtained from Twanna

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[79] The proposed inclusion of a small business issuer in Form S–3 is intended to recognize the potential use of that Form by small business issuers for offerings which do not require the non-affiliated public float specified in General Instruction B.1. to Form S–3; primary offerings of debt and non-convertible preferred securities, secondary offerings, rights offerings, dividend or interest reinvestment plans, and conversions or warrants.

[80] Form SB–2 will be available only in "for cash" offerings of securities. Accordingly, small business issuers wishing to enter business combination transactions which involve the offer and sale of securities will continue to be required to register those transactions on Form S–4 or Form S–1. Small business issuers using Form S–1 are subject to the disclosure requirements of Regulation S–K. Small business issuers engaged in roll-up transactions on Form S–4 are also required to furnish the disclosure required by Item 901 et seq. of Regulation S–K. See Securities Act Release No. 6922, n.15 (October 30, 1991).

[81] See Rule 4a–1 [17 CFR 260.4a–1] promulgated under section 304(a)(8) of the Trust Indenture Act. Section 304(a)(8) exempts from the provisions of the Trust Indenture Act any security issued otherwise than under an indenture. This exemption is limited within a 12-month period to the $5 million amount of securities specified in section 3(b) of the Securities Act, or such lesser amount as the Commission shall establish by rule. Rule 4a–1 currently limits the section 304(a)(8) exemption to $2,000,000.

[82] See Rule 4a–2 [17 CFR 260.4a–2] promulgated under section 304(a)(9) of the Trust Indenture Act. The rights of the holders of the securities issued would be evidenced by the instrument sold to the holder and contract (indenture) under which that instrument was issued. See Division of Corporation Finance interpretive letter to Allied-Carson Corporation (February 12, 1976) with respect to debt securities issued without qualification of an indenture in reliance upon Section 304(a)(9) of the Trust Indenture Act:

Among the provisions which we believe should be included in the indenture are the usual covenants, events of default, and the procedures by which the collective rights of security holders may be enforced. Although it is possible that a provision for the enforcement of collective rights might be effected without providing an indenture trustee, as a practical matter such collective rights are best enforced by a trustee who is accorded specific powers for this purpose. Such trustee need not meet the qualification and conflict requirements of section 310 of the 1939 Act.

[83] Specifically, Trust Indenture Act Rules 4d–9 and 10a–5 were amended to add Form SB–2 to the list of forms pursuant to which offerings of debt securities with a Canadian trustee may be made.

[84] The indenture, which is an "[i]nstrument affecting the rights of security holders," is required to be filed as an exhibit to the registration statement by Item 601(b)(4) of Regulation S–K [17 CFR 229.601(b)(4)].

[85] 5 U.S.C. 604.

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H. Cost-Benefit Analysis

No specific empirical data was submitted in response to the Commission's invitation to provide information on the costs and benefits of the proposed revisions. However, the vast majority of the public commenters were of the view that the proposals if adopted would work some cost savings to issuers that chose to use the new procedures; further that investors would have adequate safeguards in the new system.

I. Certain Other Findings

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission finds, in accordance with section 553(b) of the Administrative Procedure Act [66] that the action taken with respect to certain delegations of authority to the Director of the Division of Corporation Finance and the Regional Administrators relate solely to agency organization, procedure or practice, and that such section makes unnecessary the notice and prior publication ordinarily required by the Act.[67]

J. Effective Date

The rules and forms relating to the integrated registration and reporting system for small business issuers as well as the revisions to Rule 504 of Regulation D and Regulation A are effective August 13, 1992. Pursuant to 5 U.S.C 553(d)(1), immediate effectiveness is appropriate because the rules being adopted grant new exemptions and relieve restrictions for small business issuers and certain securities offerings. The benefits of this system to both persons subject to the federal securities laws as well as potential investors should be available at the earliest possible time.

III. Statutory Basis, Text of Proposals and Authority

The amendments to the Commission's rules and forms are being adopted pursuant to sections 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d) and 23(a) of the Exchange Act, and Sections 304(a)(8), 304(a)(9), 304(d) and 319 of the Trust Indenture Act.

[66] 5 U.S.C. 553(b).
[67] 5 U.S.C. 553.

List of Subjects

17 CFR Parts 200, 228, 229, 230, 239, 240 and 249

Organization and program management, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 260

Trusts and trustees.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. By revising paragraph (c) of § 200.30–1 to read as follows:

§ 200–30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(c) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) and Regulation A thereunder (§ 230.251, *et seq.* of this chapter):

(1) to authorize the granting of applications under Rule 262 (§ 230.262 of this chapter) upon a showing of good cause that it is not necessary under the circumstances that an exemption under Regulation A be denied;

(2) to authorize the issuance of orders qualifying offering statements pursuant to Rule 252(g) (§ 230.252(g) of this chapter); and

(3) to issue orders declaring offering statements withdrawn or abandoned pursuant to Rule 259 (§ 230.259 of this chapter).

* * * * *

3. By revising paragraph (b) of § 200.30–6 to read as follows:

§ 200.30–6 Delegation of authority to Regional Administrators.

* * * * *

(b) With respect to the Securities Act of 1933, 15 U.S.C. 77a *et seq.* and Regulation A thereunder, § 230.251 *et seq.* of this chapter, the same authority as that delegated to the Director of the Division of Corporation Finance in paragraphs (c)(2) and (c)(3) of § 200.30–1.

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4. Part 228 is added to read as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

Subpart A—Regulation S–B

§ 228.10 (Item 10) General.
§ 228.101 (Item 101) Description of Business.
§ 228.102 (Item 102) Description of Property.
§ 228.103 (Item 103) Legal Proceedings.
§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.
§ 228.202 (Item 202) Description of Securities.
§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.
§ 228.304 (Item 304) Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.
§ 228.310 (Item 310) Financial Statements.
§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.
§ 228.402 (Item 402) Executive Compensation.
§ 228.403 (Item 403) Security Ownership of Certain Beneficial Owners and Management.
§ 228.404 (Item 404) Certain Relationships and Related Transactions.
§ 228.405 (Item 405) Compliance With Section 16(a) of the Exchange Act.
§ 228.501 (Item 501) Front of Registration Statement and Outside Front Cover of Prospectus.
§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.
§ 228.503 (Item 503) Summary Information and Risk Factors.
§ 228.504 (Item 504) Use of Proceeds.
§ 228.505 (Item 505) Determination of Offering Price.
§ 228.506 (Item 506) Dilution.
§ 228.507 (Item 507) Selling Security Holders.
§ 228.508 (Item 508) Plan of Distribution.
§ 228.509 (Item 509) Interest of Named Experts and Counsel.
§ 228.510 (Item 510) Disclosure of Commission Position on Indemnification for Securities Act Liabilities.
§ 228.511 (Item 511) Other Expenses of Issuance and Distribution.
§ 228.512 (Item 512) Undertakings.
§ 228.601 (Item 601) Exhibits.
§ 228.701 (Item 701) Recent Sales of Unregistered Securities.
§ 228.702 (Item 702) Indemnification of Directors and Officers.

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa[25], 77aa[26], 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§§ 228.10 (Item 10) General.

(a) *Application of Regulation S–B.* Regulation S–B is the source of disclosure requirements for "small business issuer" filings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act").

(1) *Definition of small business issuer.* A small business issuer is defined as a

company that meets all of the following criteria:

(i) has revenues of less than $25,000,000;

(ii) is a U.S. or Canadian issuer;

(iii) is not an investment company; and

(iv) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of $25,000,000 or more.

Note: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

(2) *Entering and Exiting the Small Business Disclosure System.* (i) A company that meets the definition of small business issuer may use Form SB–2 for registration of its securities under the Securities Act; Form 10–SB for registration of its securities under the Exchange Act; and Forms 10–KSB and 10–QSB for its annual and quarterly reports.

(ii) For a non-reporting company entering the disclosure system for the first time either by filing a registration statement under the Securities Act on Form SB–2 or a registration statement under the Exchange Act on Form 10–SB, the determination as to whether a company is a small business issuer is made with reference to its revenues during its last fiscal year and public float as of a date within 60 days of the date the registration statement is filed. *See* Note to paragraph (a) of this Item.

(iii) Once a small business issuer becomes a reporting company it will remain a small business issuer until it exceeds the revenue limit or the public float limit at the end of two consecutive years. For example, if a company exceeds the revenue limit for two consecutive years, it will no longer be considered a small business. However, if it exceeds the revenue limit in one year and the next year exceeds the public float limit, but not the revenue limit, it will still be considered a small business. *See* Note to paragraph (a) of this Item.

(iv) A reporting company that is not a small business company must meet the definition of a small business issuer at the end of two consecutive fiscal years before it will be considered a small business issuer for purposes of using Form SB–2, Form 10–SB, Form 10–KSB and Form 10–QSB. *See* Note to paragraph (a) of this Item.

(v) The determination as to the reporting category (small business issuer or other issuer) made for a non-reporting company at the time it enters the disclosure system governs all reports relating to the remainder of the fiscal year. The determination made for a reporting company at the end of its fiscal year governs all reports relating to the next fiscal year. An issuer may not change from one category to another with respect to its reports under the Exchange Act for a single fiscal year. A company may, however, choose not to use a Form SB–2 for a registration under the Securities Act.

(b) *Definitions of terms.*

(1) *Common Equity*—means the small business issuer's common stock. If the small business issuer is a limited partnership, the term refers to the equity interests in the partnership.

(2) *Public market*—no public market shall be deemed to exist unless, within the past 60 business days, both bid and asked quotations at fixed prices (excluding "bid wanted" or "offer wanted" quotations) have appeared regularly in any established quotation system on at least half of such business days. Transactions arranged without the participation of a broker or dealer functioning as such are not indicative of a "public market."

(3) *Reporting company*—means a company that is obligated to file periodic reports with the Securities and Exchange Commission under section 15(d) or 13(a) of the Exchange Act.

(4) *Small business issuer*—refers to the issuer and all of its consolidated subsidiaries.

(c) *Preparing the disclosure document.*

(1) The purpose of a disclosure document is to inform investors. Hence, information should be presented in a clear, concise and understandable fashion. Avoid unnecessary details, repetition or the use of technical language. The responses to the items of this Regulation should be brief and to the point.

(2) Small business issuers should consult the General Rules and Regulations under the Securities Act and Exchange Act for requirements concerning the preparation and filing of documents. Small business issuers should be aware that there are special rules concerning such matters as the kind and size of paper that is allowed and how filings should be bound. These special rules are located in Regulation C of the Securities Act (17 CFR 230.400 *et seq.*) and in Regulation 12B of the Exchange Act (17 CFR 240.12b–1 *et seq.*).

(d) *Commission policy on projections.* The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines below set forth the Commission's views on important factors to be considered in preparing and disclosing such projections. (*See also* 17 CFR 230.175 and 240.3b–6).

(1) *Basis for projections.* Management has the option to present in Commission filings its good faith assessment of a small business issuer's future performance. Management, however, must have a reasonable basis for such an assessment. An outside review of management's projections may furnish additional support in this regard. If management decides to include a report of such a review in a Commission filing, it should also disclose the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

(2) *Format for projections.* Traditionally, projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible to misleading inferences through selective projection of only favorable items. It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year.

(3) *Investor understanding.* Disclosures accompanying the

projections should facilitate investor understanding of the basis for and limitations of projections. The Commission believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are the key factors upon which the financial results of the enterprise depend and encourages disclosure of assumptions in a manner that will provide a frame-work for analysis of the projection. Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections.

(e) *Commission policy on security ratings.* In view of the importance of security ratings ("ratings") to investors and the marketplace, the Commission permits small business issuers to disclose ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements and periodic reports. In addition, the Commission permits, disclosure of ratings assigned by any nationally recognized statistical rating organizations ("NRSROs") in certain communications deemed not to be a prospectus ("tombstone advertisements"). Below are the Commission's views on important matters to be considered in disclosing security ratings.

(1)(i) If a small business issuer includes in a filing any rating(s) assigned to a class of securities, it should consider including any other rating assigned by a different NRSRO that is materially different. A statement that a security rating is not a recommendation to buy, sell or hold securities and that it may be subject to revision or withdrawal at any time by the assigning rating organization should also be included.

(ii)(A) If the rating is included in a filing under the Securities Act, the written consent of any rating organization that is not a NRSRO whose rating is included should be filed. The consent of any NRSRO is not required. (See Rule 436(g) under the Securities Act (§ 230.436(g) of this chapter.)

(B) If a change in a rating already included is available before effectiveness of the registration statement, the small business issuer should consider including such rating change in the prospectus. If the rating change is material, consideration should be given to recirculating the preliminary prospectus.

(C) If a materially different additional NRSRO rating or a material change in a rating already included becomes available during any period in which offers or sales are being made, the small business issuer should consider disclosing this information in a sticker to the prospectus.

(iii) If there is a material change in the rating(s) assigned by any NRSRO(s) to any outstanding class(es) of securities of a reporting company, the registrant should consider filing a report on Form 8–K (§ 249.308 of this chapter) or other appropriate report under the Exchange Act disclosing such rating change.

§ 228.101 (Item 101) Description of Business.

(a) *Business Development.* Describe the development of the small business issuer during the last three years. If the small business issuer has not been in business for three years, give the same information for predecessor(s) of the small business issuer if there are any. This business development description should include:

(1) Form and year of organization;

(2) Any bankruptcy, receivership or similar proceeding; and

(3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(b) *Business of Issuer.* Briefly describe the business and include, to the extent material to an understanding of the issuer:

(1) Principal products or services and their markets;

(2) Distribution methods of the products or services;

(3) Status of any publicly announced new product or service;

(4) Competitive business conditions and the small business issuer's competitive position in the industry and methods of competition;

(5) Sources and availability of raw materials and the names of principal suppliers;

(6) Dependence on one or a few major customers;

(7) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;

(8) Need for any government approval of principal products or services. If government approval is necessary and the small business issuer has not yet received that approval, discuss the status of the approval within the government approval process;

(9) Effect of existing or probable governmental regulations on the business;

(10) Estimate of the amount spent during each of the last two fiscal years on research and development activities, and if applicable the extent to which the cost of such activities are borne directly by customers;

(11) Costs and effects of compliance with environmental laws (federal, state and local); and

(12) Number of total employees and number of full time employees.

§ 228.102 (Item 102) Description of Property.

(a) Give the location of the principal plants and other property of the small business issuer and describe the condition of the property. If the small business issuer does not have complete ownership of the property, for example, others also own the property or there is a mortgage or lien on the property, describe the limitations on the ownership.

Instructions to Item 102(a)

1. Small business issuers engaged in significant mining operations also should provide the information in Guide 7 (§ 229.801(g) and § 229.802(g) of this chapter).

2. Small business issuers engaged in oil and gas producing activities also should provide the information in Guide 2 (§ 229.801(b) and § 229.802(b) of this chapter).

3. Small business issuers engaged in real estate activities should, in addition to Guide 5 (§ 229.801(e) of this chapter) provide responses to the following Items:

(b) Investment Policies

Describe the policy of the small business issuer with respect to each of the following types of investments. State whether there are any limitations on the percentage of assets which may be invested in any one investment, or type of investment, and indicate whether such policy may be changed without a vote of security holders. State whether it is the small business issuer's policy to acquire assets primarily for possible capital gain or primarily for income.

(1) *Investments in real estate or interests in real estate.* Indicate the types of real estate in which the small business issuer may invest, for example, office or apartment buildings, shopping centers, industrial or commercial properties, special purpose buildings and undeveloped acreage, and the geographic area(s) of these properties. Briefly describe the method, or proposed method, of operating and financing these properties. Indicate any limitations on the number or amount of mortgages

which may be placed on any one piece of property.

(2) *Investments in real estate mortgages.* Indicate the types of mortgages, for example, first or second mortgages, and the types of properties subject to mortgages in which the small business issuer intends to invest, for example, single family dwellings, apartment buildings, office buildings, unimproved land, and the nature of any guarantees or insurance. Describe each type of mortgage activity in which the small business issuer intends to engage such as originating, servicing and warehousing, and the portfolio turnover policy.

(3) *Securities of or interests in persons primarily engaged in real estate activities.* Indicate the types of securities in which the small business issuer may invest, for example, common stock, interest in real estate investment trusts, partnership interests. Indicate the primary activities of persons in which the small business issuer will invest, such as mortgage sales, investments in developed or undeveloped properties and state the investment policies of such persons.

(c) Description of Real Estate and Operating Data

This information shall be furnished separately for each property the book value of which amounts to ten percent or more of the total assets of the small business issuer and its consolidated subsidiaries for the last fiscal year. With respect to other properties, the information shall be given by such classes or groups and in such detail as will reasonably convey the information required.

(1) Describe the general character and location of all materially important properties held or intended to be acquired by or leased to the small business issuer and describe the present or proposed use of such properties and their suitability and adequacy for such use. Properties not yet acquired shall be identified as such.

(2) State the nature of the small business issuer's title to, or other interest in such properties and the nature and amount of all material mortgages, liens or encumbrances against such properties. Disclose the current principal amount of each material encumbrance, interest and amortization provisions, prepayment provisions, maturity date and the balance due at maturity assuming no prepayments.

(3) Outline briefly the principal terms of any lease of any of such properties or any option or contract to purchase or sell any of such properties.

(4) Outline briefly any proposed program for the renovation, improvement or development of such properties, including the estimated cost thereof and the method of financing to be used. If there are no present plans for the improvement or development of any unimproved or undeveloped property, so state and indicate the purpose for which the property is to be held or acquired.

(5) Describe the general competitive conditions to which the properties are or may be subject.

(6) Include a statement as to whether, in the opinion of the management of the small business issuer, the properties are adequately covered by insurance.

(7) With respect to each improved property which is separately described, provide the following in addition to the above:

(i) Occupancy rate;

(ii) Number of tenants occupying ten percent or more of the rentable square footage and principal nature of business of each such tenant and the principal provisions of each of their leases;

(iii) Principal business, occupations and professions carried on in, or from the building;

(iv) The average effective annual rental per square foot or unit;

(v) Schedule of the lease expirations for each of the ten years starting with the year in which the registration statement is filed, stating:

(A) the number of tenants whose leases will expire,

(B) the total area in square feet covered by such leases,

(C) the annual rental represented by such leases, and

(D) the percentage of gross annual rental represented by such leases;

(vi) Each of the properties and components thereof upon which depreciation is taken, setting forth the:

(A) federal tax basis,

(B) rate,

(C) method, and

(D) life claimed with respect to such property or component thereof for purposes of depreciation;

(vii) The realty tax rate, annual realty taxes and estimated taxes on any proposed improvements.

Instruction

If the small business issuer has a number of properties, the information may be given in tabular form.

§ 228.103 (Item 103) Legal Proceedings.

(a) If a small business issuer is a party to any pending legal proceeding (or its property is the subject of a pending legal proceeding), give the following information (no information is necessary as to routine litigation that is incidental to the business):

(1) name of court or agency where proceeding is pending;

(2) date proceeding began;

(3) principal parties;

(4) description of facts underlying the proceedings; and

(5) relief sought.

(b) Include the information called for by paragraphs (a) (1) through (5) of this Item for any proceeding that a governmental authority is contemplating (if the small business issuer is aware of the proceeding).

Instructions to Item 103

1. A proceeding that primarily involves a claim for damages does not need to be described if the amount involved, exclusive of interest and costs, does not exceed 10% of the current assets of the small business issuer. If any proceeding presents the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

2. The following types of proceedings with respect to the registrant are not "routine litigation incidental to the business" and, notwithstanding instruction 1 of this Item, must be described: bankruptcy, receivership, or similar proceeding.

3. Any proceeding that involves federal, state or local environmental laws must be described if it is material; involves a damages claim for more than 10% of the current assets of the issuer; or potentially involves more than $100,000 in sanctions and a governmental authority is a party.

4. Disclose any material proceeding to which any director, officer or affiliate of the issuer, any owner of record or beneficially of more than 5% of any class of voting securities of the small business issuer, or security holder is a party adverse to the small business issuer or has a material interest adverse to the small business issuer.

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

(a) *Market information.* (1) Identify the principal market or markets where the small business issuer's common equity is traded. If there is no public trading market, so state.

(i) If the principal market for the small business issuer's common equity is an exchange, give the high and low sales prices for each quarter within the last two fiscal years and any subsequent

interim period for which financial statements are required by Item 310(b).

(ii) If the principal market is not an exchange, give the range of high and low bid information for the small business issuer's common equity for each quarter within the last two fiscal years and any subsequent interim period for which financial statements are required by Item 310(b). Show the source of the high and low bid information. If over-the-counter market quotations are provided, also state that the quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

(2) If the information called for by paragraph (a) of this Item is being presented in a registration statement relating to a class of common equity for which at the time of filing there is no established public trading market, indicate the amount(s) of common equity:

(i) that is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant;

(ii) that could be sold pursuant to Rule 144 under the Securities Act or that the registrant has agreed to register under the Securities Act for sale by security holders; or

(iii) that is being or has been proposed to be, publicly offered by the registrant unless such common equity is being offered pursuant to an employee benefit plan (or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

(b) *Holders.* Give the approximate number of holders of record of each class of common equity.

(c) *Dividends.* (1) Discuss any cash dividends declared on each class of common equity for the last two fiscal years and in any subsequent period for which financial information is required.

(2) Describe any restrictions that limit the ability to pay dividends on common equity or that are likely to do so in the future.

Instruction

Canadian issuers should, in addition to the information called for by this Item, provide the information in Item 201(a)(1)(iv) of Regulation S–K and Instruction 4 thereto.

§ 228.202 (Item 202) Description of Securities.

(a) *Common or Preferred Stock.*

(1) If the small business issuer is offering common equity, describe any dividend, voting and preemption rights.

(2) If the small business issuer is offering preferred stock, describe the dividend, voting, conversion and liquidation rights as well as redemption or sinking fund provisions.

(3) Describe any other material rights of common or preferred stockholders.

(4) Describe any provision in the charter or by-laws that would delay, defer or prevent a change in control of the small business issuer.

(b) *Debt Securities.*

(1) If the small business issuer is offering debt securities, describe the maturity date, interest rate, conversion or redemption features and sinking fund requirements.

(2) Describe all other material provisions giving or limiting the rights of debtholders. For example, describe subordination provisions, limitations on the declaration of dividends, restrictions on the issuance of additional debt, maintenance of asset ratios, etc.

(3) Give the name of any trustee(s) designated by the indenture and describe the circumstances under which the trustee must act on behalf of the debtholders.

(4) Discuss the tax effects of any securities offered at an "original issue discount."

(c) *Other Securities To Be Registered.* If the small business issuer is registering other securities, provide similar information concerning the material provisions of those securities.

§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.

Small business issuers that have not had revenues from operations in each of the last two fiscal years, or the last fiscal year and any interim period in the current fiscal year for which financial statements are furnished in the disclosure document, shall provide the information in paragraph (a) of this Item. All other issuers shall provide the information in paragraph (b) of this Item.

(a) *Plan of Operation.*

(1) Describe the small business issuer's plan of operation for the next twelve months. This description should include such matters as:

(i) a discussion of how long the small business issuer can satisfy its cash requirements and whether it will have to raise additional funds in the next twelve months;

(ii) a summary of any product research and development that the small business issuer will perform for the term of the plan;

(iii) any expected purchase or sale of plant and significant equipment; and

(iv) any expected significant changes in the number of employees.

(b) *Management's Discussion and Analysis of Financial Condition and Results of Operations.*

(1) *Full fiscal years.* Discuss the small business issuer's financial condition, changes in financial condition and results of operations for each of the last two fiscal years. This discussion should address the past and future financial condition and results of operation of the small business issuer, with particular emphasis on the prospects for the future. The discussion should also address those key variable and other qualitative and quantitative factors which are necessary to an understanding and evaluation of the small business issuer. If material, the small business issuer should disclose the following:

(i) Any known trends, events or uncertainties that have or are reasonably likely to have a material impact on the small business issuer's short-term or long-term liquidity;

(ii) Internal and external sources of liquidity;

(iii) Any material commitments for capital expenditures and the expected sources of funds for such expenditures;

(iv) Any known trends, events or uncertainties that have had or that are reasonably expected to have a material impact on the net sales or revenues or income from continuing operations;

(v) Any significant elements of income or loss that do not arise from the small business issuer's continuing operations;

(vi) The causes for any material changes from period to period in one or more line items of the small business issuer's financial statements; and

(vii) Any seasonal aspects that had a material effect on the financial condition or results of operation.

(2) *Interim Periods.* If the small business issuer must include interim financial statements in the registration statement or report, provide a comparable discussion that will enable the reader to assess material changes in financial condition and results of operations since the end of the last fiscal year and for the comparable interim period in the preceding year.

Instructions to Item 303

1. The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.

2. Small business issuers are encouraged, but not required, to supply forward looking information. This is distinguished from presently known data which will impact upon future

operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed.

§ 228.304 (Item 304) Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.

(a)(1) If, during the small business issuer's two most recent fiscal years or any later interim period, the principal independent accountant or a significant subsidiary's independent accountant on whom the principal accountant expressed reliance in its report, resigned (or declined to stand for re-election) or was dismissed, then the small business issuer shall state:

(i) Whether the former accountant resigned, declined to stand for re-election or was dismissed and the date;

(ii) Whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or disclaimer of opinion, or was modified as to uncertainty, audit scope, or accounting principles, and also describe the nature of each such adverse opinion, disclaimer of opinion or modification;

(iii) Whether the decision to change accountants was recommended or approved by the board of directors or an audit or similar committee of the board of directors; and

(iv)(A) Whether there were any disagreements with the former accountant, whether or not resolved, on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the former accountant's satisfaction, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report; or

(B) The following information only if applicable. Indicate whether the former accountant advised the small business issuer that:

(*1*) internal controls necessary to develop reliable financial statements did not exist; or

(*2*) information has come to the attention of the former accountant which made the accountant unwilling to rely on management's representations, or unwilling to be associated with the financial statements prepared by management; or

(*3*) the scope of the audit should be expanded significantly, or information has come to the accountant's attention that the accountant has concluded will, or if further investigated might, materially impact the fairness or reliability of a previously issued audit report or the underlying financial statements, or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent audited financial statements (including information that might preclude the issuance of an unqualified audit report), and the issue was not resolved to the accountant's satisfaction prior to its resignation or dismissal; and

(C) The subject matter of each such disagreement or event identified in response to paragraph (a)(1)(iv) of this Item;

(D) Whether any committee of the board of directors, or the board of directors, discussed the subject matter of the disagreement with the former accountant; and

(E) Whether the small business issuer has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements or events and, if not, describe the nature of and reason for any limitation.

(2) If during the period specified in paragraph (a)(1) of this Item, a new accountant has been engaged as either the principal accountant to audit the issuer's financial statements or as the auditor of a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, identify the new accountant and the engagement date. Additionally, if the issuer (or someone on its behalf) consulted the new accountant regarding:

(i) The application of accounting principles to a specific completed or contemplated transaction, or the type of audit opinion that might be rendered on the small business issuer's financial statements and either written or oral advice was provided that was an important factor considered by the small business issuer in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was the subject of a disagreement or event identified in response to paragraph (a)(1)(iv) of this Item, then the small business issuer shall:

(A) Identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the new accountant given to the small business issuer and, if written views were received by the small business issuer, file them as an exhibit to the report or registration statement;

(C) State whether the former accountant was consulted by the small business issuer regarding any such issues, and if so, describe the former accountant's views; and

(D) Request the new accountant to review the disclosure required by this Item before it is filed with the Commission and provide the new accountant the opportunity to furnish the small business issuer with a letter addressed to the Commission containing any new information, clarification of the small business issuer's expression of its views, or the respects in which it does not agree with the statements made in response to this Item. Any such letter shall be filed as an exhibit to the report or registration statement containing the disclosure required by this Item.

(3) The small business issuer shall provide the former accountant with a copy of the disclosures it is making in response to this Item no later than the day that the disclosures are filed with the Commission. The small business issuer shall request the former accountant to furnish a letter addressed to the Commission stating whether it agrees with the statements made by the issuer and, if not, stating the respects in which it does not agree. The small business issuer shall file the letter as an exhibit to the report or registration statement containing this disclosure. If the letter is unavailable at the time of filing, the small business issuer shall request the former accountant to provide the letter so that it can be filed with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the letter shall be filed within two business days of receipt. The former accountant may provide an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. The interim letter, if any, shall be filed with the report or registration statement or by amendment within two business days of receipt.

(b) If the conditions in paragraphs (b)(1) through (b)(3) of this Item exist, the small business issuer shall describe the nature of the disagreement or event and the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required (unless that method ceases to be generally accepted because of authoritative standards or interpretations issued after the disagreement or event):

(1) In connection with a change in accountants subject to paragraph (a) of this Item, there was any disagreement or event as described in paragraph (a)(1)(iv) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the later fiscal year, there have been any transactions or events similar

to those involved in such disagreement or event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required.

Instructions to Item 304

1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b–2 under the Exchange Act (§ 240.12b–2); the disclosure called for by paragraph (a) of this Item must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§ 249.14a–101 *et seq.*). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this Item in an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 (§ 240.14a–3 or 240.14c–3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A (§ 240.14a–101 *et seq.*) or 14C (§ 240.14c–101 *et seq.*), in lieu of a letter pursuant to paragraph (a)(2)(ii)(D) or (a)(3) of this Item, before filing such materials with or furnishing such materials to the Commission, the small business issuer shall furnish the disclosure required by paragraph (a) of this Item to each accountant who was engaged during the period set forth in paragraph (a) of this Item. If any such accountant believes that the statements made in response to paragraph (a) of this Item are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the small business issuer within ten business days of the date the accountant receives the small business issuer's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(ii)(D) of this Item have been previously filed with the Commission, the small business issuer shall file a Form 8–K (17 CFR 249.308 of this chapter) along with the annual report or proxy or information statement for the purpose of filing the written views as exhibits.

3. The information required by this Item need not be provided for a company being acquired by the small business issuer if such acquiree has not been subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 (§ 240.14a–3 or 240.14c–3 of this chapter) for its latest fiscal year.

4. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the small business issuer of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

§ 228.310 (Item 310) Financial Statements.

Notes—1. Financial statements of a small business issuer, its predecessors or any businesses to which the small business issuer is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

2. Regulation S–X [17 CFR 210.1–210.12] Form and Content of and Requirements for Financial Statements shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S–X [17 CFR 210.2]. Articles 3–19 and 3–20 shall apply to financial statements of foreign private issuers and small business issuers engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4–10 of Regulation S–X [17 CFR 210.4–10] with respect to such activities. To the extent that Article 11–01 [17 CFR 210.11–01] (Pro Forma Presentation Requirements) offers enhanced guidelines for the preparation, presentation and disclosure of pro forma financial information, small business issuers may wish to consider these items. Financial statements of foreign private issuers shall be prepared and presented in accordance with the requirements of Item 18 of Form 20–F except that Item 17 may be followed for financial statements included in filings other than registration statements for offerings of securities unless the only securities being offered are: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing securities holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferrable warrants issued by the issuer of the securities being offered, or by an affiliate of such issuer.

3. The Commission, where consistent with the protection of investors, may permit the omission of one or more of the financial statements or the substitution of appropriate statements of comparable character. The Commission by informal written notice may require the filing of other financial statements where necessary or appropriate.

(a) *Annual Financial Statements.* Small business issuers shall file an audited balance sheet as of the end of the most recent fiscal year, or as of a date within 135 days if the issuers existed for a period less than one fiscal year, and audited statements of income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of such audited balance sheet (or such shorter period as the registrant has been in business).

(b) *Interim Financial Statements.* Interim financial statements, which may be unaudited, shall include a balance sheet as of the end of the issuer's most recent fiscal quarter and income statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

Instructions to Item 310(b)

1. Where Item 310 is applicable to a Form 10–QSB (§ 249.308b) and the interim period is more than one quarter, income statements must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

2. Interim financial statements must include all adjustments which in the opinion of management are necessary in order to make the financial statements not misleading. An affirmative statement that the financial statements have been so adjusted must be included with the interim financial statements.

(1) *Condensed Format.* Interim financial statements may be condensed as follows:

(i) Balance sheets should include separate captions for each balance sheet component presented in the annual financial statements which represents 10% or more of total assets. Cash and retained earnings should be presented regardless of relative significance to total assets. Registrants which present a

classified balance sheet in their annual financial statements should present totals for current assets and current liabilities.

(ii) Income statements should include net sales or gross revenue, each cost and expense category presented in the annual financial statements which exceeds 20% of sales or gross revenues, provision for income taxes, discontinued operations, extraordinary items and cumulative effects of changes in accounting principles or practices. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.) Dividends per share should be presented.

(iii) Cash flow statements should include cash flows from operating, investing and financing activities as well as cash at the beginning and end of each period and the increase or decrease in such balance.

(iv) Additional line items may be presented to facilitate the usefulness of the interim financial statements including their comparability with annual financial statements.

(2) *Disclosure required and additional instructions as to Content.* (i) *Footnotes.* Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading.

(ii) *Material Subsequent Events and Contingencies.* Disclosure must be provided of material subsequent events and material contingencies notwithstanding disclosure in the annual financial statements.

(iii) *Significant Equity Investees.* Sales, gross profit, net income (loss) from continuing operations and net income must be disclosed for equity investees which constitute 20% or more of a registrant's consolidated assets, equity or income from continuing operations.

(iv) *Significant Dispositions and Purchase Business Combinations.* If a significant disposition or purchase business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8–K (§ 249.308 of this chapter), pro forma data must be presented which reflects revenue, income from continuing operations, net income and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

(v) *Material Accounting Changes.* Disclosure must be provided of the date and reasons for any material accounting change. The registrant's independent accountant must provide a letter in the first Form 10–QSB (§ 249.308b of this chapter) filed subsequent to the change indicating whether or not the change is to a preferable method. Disclosure must be provided of any retroactive change to prior period financial statements, including the effect of any such change on income and income per share.

(vi) *Development Stage Companies.* A registrant in the development stage must provide cumulative from inception financial information.

(c) *Financial Statements of Businesses Acquired or to be Acquired.* (1) Financial statements for the periods specified in paragraph (c)(3) of this Item should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(2) A business combination is considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the small business issuer's most recent annual financial statements filed at or prior to the date of acquisition indicates that the business acquired or to be acquired meets any of the following conditions:

(i) The small business issuer's and its other subsidiaries' investments in and advances to the acquiree exceeds 10 percent of the total assets of the small business issuer and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the small business issuer exceeds 10 percent of its total common shares outstanding at the date the combination is initiated) or

(ii) The small business issuer's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the acquiree exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year, or

(iii) The small business issuer's equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the acquiree exceeds 10 percent of such income of the small business issuer and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied: If income of the small business issuer and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

(3)(i) Financial statements shall be furnished for the periods prior to the date of acquisition, for those periods for which the small business issuer is required to furnish financial statements.

(ii) The financial statements covering fiscal years shall be audited.

(iii) The separate audited balance sheet of the acquired business is not required when the small business issuer's most recent audited balance sheet filed is for a date after the acquisition was consummated.

(iv) If none of the conditions in the definitions of significant subsidiary in paragraph (c)(2) of this Item exceeds 20%, income statements of the acquired business for only the most recent fiscal year and any interim period need be filed.

(4) If consummation of more than one transaction has occurred or is probable, the significance tests shall be made using the aggregate impact of the businesses and the financial statements may be presented on a combined basis, if appropriate.

(5) If the small business issuer made a significant business acquisition subsequent to the latest fiscal year end and filed a report on Form 8–K which included audited financial statements of such acquired business for the periods required by paragraph (c)(3) and the pro forma financial information required by paragraph (d) of this Item, the determination of significance may be made by using the pro forma amounts for the latest fiscal year in the report on Form 8–K rather than by using the historical amounts for the latest fiscal year of the registrant. The tests may not be made by "annualizing" data.

(d) *Pro Forma Financial Information.*

(1) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this Item, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by paragraph (b) of this Item, a significant business

combination accounted for as a purchase has occurred:

(ii) After the date of the most recent balance sheet filed pursuant to paragraph (a) or (b) of this Item, consummation of a significant business combination accounted for as a purchase or a pooling has occurred or is probable.

(2) The provisions of paragraphs (c)(2) and (4) of this Item apply to paragraph (d) of this Item.

(3) Pro forma statements should be condensed, in columnar form showing pro forma adjustments and results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or;

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by paragraph (a) or (b) of this Item, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet. For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the small business issuer are required.

(e) *Real Estate Operations Acquired or to be Acquired.* If, during the period for which income statements are required, the small business issuer has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required by paragraph (a) or (b) of this Item, has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements (not including earnings per unit) for the two most recent years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and federal and state income taxes; *Provided, however,* That such audited statements need be presented for only the most recent fiscal year if:

(i) the property is not acquired from a related party;

(ii) material factors considered by the small business issuer in assessing the property are described with specificity in the registration statement with regard to the property, including source of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expenses (including but not limited to, utilities, *ad valorem* tax rates, maintenance expenses, capital improvements anticipated); and

(iii) the small business issuer indicates that, after reasonable inquiry, it is not aware of any material factors relating to the specific property other than those discussed in response to paragraph (e)(1)(ii) of this Item that would cause the reported financial information not to be necessarily indicative of future operating results.

(2) If the property will be operated by the small business issuer, a statement shall be furnished showing the estimated taxable operating results of the small business issuer based on the most recent twelve-month period including such adjustments as can be factually supported. If the property will be acquired subject to a net lease, the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. Disclosure must be provided of the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, a table should be provided which shows, for a limited number of years, the estimated cash distribution per unit indicating the portion reportable as taxable income and the portion representing a return of capital with an explanation of annual variations, if any. If taxable net income per unit will be greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(f) *Limited Partnerships.* (1) Small business issuers which are limited partnerships must provide the balance sheets of the general partners as described in paragraphs (f)(2) through (f)(4) of this Item.

(2) Where a general partner is a corporation, the audited balance sheet of the corporation as of the end of its most recently completed fiscal year must be filed. Receivables, other than trade receivables, from affiliates of the general partner should be deducted from shareholders' equity of the general partner. Where an affiliate has committed itself to increase or maintain the general partner's capital, the audited balance sheet of such affiliate must also be presented.

(3) Where a general partner is a partnership, there shall be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(4) Where the general partner is a natural person, there shall be filed, as supplemental information, a balance sheet of such natural person as of a recent date. Such balance sheet need not be audited. The assets and liabilities should be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gains. The net worth of such general partner(s), based on such balance sheet(s), singly or in the aggregate, shall be disclosed in the registration statement.

(g) *Age of Financial Statements.* At the date of filing, financial statements included in filings other than filings on Form 10–KSB must be not less current than financial statements which would be required in Forms 10–KSB and 10–QSB if such reports were required to be filed. If required financial statements are as of a date 135 days or more prior to the date a registration statement becomes effective or proxy material is expected to be mailed, the financial statements shall be updated to include financial statements for an interim period ending within 135 days of the effective or expected mailing date. Interim financial statements should be prepared and presented in accordance with paragraph (b) of this Item:

(1) When the anticipated effective or mailing date falls within 45 days after the end of the fiscal year, the filing may include financial statements only as current as the end of the third fiscal quarter; *Provided, however,* That if the audited financial statements for the recently completed fiscal year are available or become available prior to effectiveness or mailing, they must be included in the filing;

(2) If the effective date or anticipated mailing date falls after 45 days but within 90 days of the end of the small business issuer's fiscal year, the small business issuer is not required to provide the audited financial statements for such year end provided that the following conditions are met:

(i) The small business issuer is a reporting company and all reports due have been filed;

(ii) For the most recent fiscal year for which audited financial statements are not yet available, the small business issuer reasonably and in good faith expects to report income from continuing operations before taxes; and

(iii) For at least one of the two fiscal years immediately preceding the most

recent fiscal year the small business issuer reported income from continuing operations before taxes.

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

(a) *Identify directors and executive officers.* (1) List the names and ages of all directors and executive officers and all persons nominated or chosen to become such;

(2) List the positions and offices that each such person held with the small business issuer;

(3) Give the person's term of office as a director and the period during which the person has served;

(4) Briefly describe the person's business experience during the past five years; and

(5) If a director, identify other directorships held in reporting companies naming each company.

(b) *Identify Significant Employees.* Give the information specified in paragraph (a) of this Item for each person who is not an executive officer but who is expected by the small business issuer to make a significant contribution to the business.

(c) *Family relationships.* Describe any family relationships among directors, executive officers, or persons nominated or chosen by the small business issuer to become directors or executive officers.

(d) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past five years that are material to an evaluation of the ability or integrity of any director, person nominated to become a director, executive officer, promoter or control person of the small business issuer:

(1) Any bankruptcy petition filed by or against any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time;

(2) Any conviction in a criminal proceeding or being subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Being subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities or banking activities; and

(4) Being found by a court of competent jurisdiction (in a civil action), the Commission or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated.

§ 228.402 (Item 402) Executive Compensation.

(a) *Cash compensation.* Complete the following table and include all cash compensation paid or to be paid to the following persons for services rendered in all capacities to the small business issuer during the last fiscal year:

(1) each of the small business issuer's five most highly paid executive officers whose cash compensation exceeds $60,000, giving their names; and

(2) All executive officers as a group, stating the number of persons in the group without naming them.

CASH COMPENSATION TABLE

A	B	C
Name of individual or number in group	Capacities in which served	Cash compensation

Instructions to Item 402(a)

1. This table shall include:

(a) all cash bonuses paid or to be paid for all services rendered during the last fiscal year unless the amounts have not been allocated at the time of filing the registration statement or report and

(b) all compensation that would have been paid in cash but was deferred.

2. Paragraph (a) of this Item applies to any person who was an executive officer at any time in the most recent fiscal year. However, information need not be given for any part of that year during which a person was not an executive officer of the small business issuer, if it so states.

(b)(1) *Compensation under plans.* Describe briefly all plans under which the small business issuer paid or distributed cash or non-cash compensation during the most recent fiscal year and all plans under which the small business issuer proposes to pay or distribute cash or non-cash compensation in the future to the individuals and group named in paragraph (a) of this Item. State the amounts provided. No information need be given for:

(i) Any plans that do not discriminate in favor of officers or directors and that are available to all salaried employees; or

(ii) Any pension or retirement benefits where amounts to be paid are computed on an actuarial basis under any plan that provides for fixed benefits for retirement at a specified age or after a specified number of years of service.

(2) *Stock option plans.* (i) For stock options granted during the last fiscal year, indicate:

(A) the title and amount of securities subject to options;

(B) the average per share exercise price; and

(C) if the exercise price was less than 100 percent of the market value of the security on the date of grant, so state and give the market price on such date.

(ii) For stock options exercised during the last fiscal year, regardless of the year that the small business issuer granted the options, give the net value realized upon the exercise, calculated by subtracting the exercise price from the market value.

(c) *Other compensation.* Give the amount and a description of any other compensation paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this Item. The compensation shall be valued on the basis of the issuers' aggregate incremental cost. No information need be provided if:

(1) For any individual, the total amount of such other compensation is less than $25,000 or 10% of the compensation reported in the Cash Compensation Table for that person; or

(2) For the group, the total amount of such other compensation is the lessor of $25,000 times the number of persons in the group or 10% of the compensation reported in the Cash Compensation Table for the group under paragraph (a) of this Item and a statement to that effect is made.

(d) *Compensation of directors.* Describe and give the amounts of all compensation received by directors of the small business issuer for all services as a director.

§ 228.403 (Item 403) Security Ownership of Certain Beneficial Owners and Management.

(a) *Security ownership of certain beneficial owners.* Complete the table below for any person (including any "group") who is known to the small business issuer to be the beneficial owner of more than five percent of any class of the small business issuer's voting securities.

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial owner	Percent of class

(b) *Security ownership of management.* Complete the following

table for each class of equity securities of the small business issuer or its parent beneficially owned by all directors and nominees, naming them, and directors and officers of the small business issuer as a group, without naming them.

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial owner	Percent of class

(c) *Changes in control.* Describe any arrangements which may result in a change in control of the small business issuer.

Instructions to Item 403

1. Of the number of shares shown in column (3) of paragraphs (a) and (b) of this Item, state in a footnote the amount which the listed beneficial owner has the right to acquire within sixty days, from options, warrants, rights, conversion privilege or similar obligations.

2. Where persons hold more than 5% of a class under a voting trust or similar agreement, provide the following:

(a) the title of such securities;
(b) the amount that they hold under the trust or agreement (if not clear from the table);
(c) the duration of the agreement;
(d) the names and addresses of the voting trustees; and
(e) a brief outline of the voting rights and other powers of the voting trustees under the trust or agreement.

3. Calculate the percentages on the basis of the amount of outstanding securities plus, for each person or group, any securities that person or group has the right to acquire within 60 days pursuant to options, warrants, conversion privileges or other rights.

4. In this Item, a *beneficial owner* of a security means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares:

(1) Voting power, which includes the power to vote, or to direct the voting of, such security; or
(2) Investment power, which includes the power to dispose, or to direct the disposition of, such security.

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership.

5. All securities of the same class beneficially owned by a person, regardless of the form that such beneficial ownership takes, shall be totaled in calculating the number of shares beneficially owned by such person.

6. The small business issuer is responsible for knowing the contents of any statements filed with the Commission under section 13(d) or 13(g) of the Exchange Act concerning the beneficial ownership of securities and may rely upon the information in such statements unless it knows or has reason to believe that the information is not complete or accurate.

7. The term "group" means two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding or disposing of securities of an issuer.

8. Where the small business issuer lists more than one beneficial owner for the same securities, adequate disclosure should be included to avoid confusion.

§ 228.404 (Item 404) Certain Relationships and Related Transactions.

(a) Describe any transaction during the last two years, or proposed transactions, to which the small business issuer was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest. Give the name of the person, the relationship to the issuer, nature of the person's interest in the transaction and, the amount of such interest:

(1) Any director or executive officer of the small business issuer;

(2) Any nominee for election as a director;

(3) Any security holder named in response to Item 403 (§ 228.403); and

(4) Any member of the immediate family (including spouse, parents, children, siblings, and in-laws) of any of the persons in paragraphs (a) (1), (2) or (3) of this Item.

(b) No information need be included for any transaction where:

(1) Competitive bids determine the rates or charges involved in the transaction;

(2) The transaction involves services at rates or charges fixed by law or governmental authority;

(3) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(4) The amount involved in the transaction or a series of similar transactions does not exceed $60,000; or

(5) The interest of the person arises solely from the ownership of securities of the small business issuer and the person receives no extra or special benefit that was not shared equally (pro rata) by all holders of securities of the class.

(c) List all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent if any.

(d) *Transactions with promoters.* Issuers organized within the past five years shall:

(1) State the names of the promoters the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the issuer and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(2) As to any assets acquired or to be acquired from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the issuer, also state the cost thereof to the promoter.

Instructions to Item 404

1. A person does not have a material indirect interest in a transaction within the meaning of this Item where:

(a) The interest arises only:

(1) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction and/or
(2) from the total ownership (direct or indirect) by all specified persons of less than a 10% equity interest in another person (other than a partnership) which is a party to the transaction;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other specified persons had an interest of less than 10 percent; or

(c) The interest of such person arises solely from holding an equity interest (but not a general partnership interest) or a creditor interest in another person that is a party to the transaction and the

transaction is not material to such other person.

2. Include information for any material underwriting discounts and commissions upon the sale of securities by the small business issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principle underwriter.

3. As to any transaction involving the purchase or sale of assets by or to the small business issuer otherwise than in the ordinary course of business, state the cost of the assets to the purchase and if acquired by the seller within two years before the transaction, the cost thereof to the seller.

§ 228.405 (Item 405) Compliance With Section 16(a) of the Exchange Act.

Every small business issuer that has a class of equity securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*) shall:

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104 of this chapter) and amendments thereto furnished to the registrant under Rule 16a–3(d) (17 CFR 240.16a–3(e) of this chapter) during its most recent fiscal year and Forms 5 and amendments thereto (§ 249.105 of this chapter) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(2)(i) of this Item:

(1) Identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to section 12 ("reporting person") that failed to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) during the most recent fiscal year or prior years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form.

Note: The disclosure requirement is based on a review of the forms submitted to the registrant during and with respect to its most recent fiscal year, as specified above. Accordingly, a failure to file timely need only be disclosed once. For example, if in the most recently concluded fiscal year a reporting person filed a Form 4 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the registrant should disclose that late filing and transaction pursuant to this Item for the most recent fiscal year, but not in material filed with respect to subsequent years.

(b) With respect to the disclosure required by paragraph (a) of this Item:

(1) A form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date.

(2) If the registrant:

(i) receives a written representation from the reporting person that no Form 5 is required; and

(ii) maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this Item as having failed to file a Form 5 with respect to that fiscal year.

§ 228.501 (Item 501) Front of Registration Statement and Outside Front Cover of Prospectus.

(a) On the outside front cover page of the prospectus, give the following information:

(1) Name of the small business issuer;

(2) Title, amount and description of securities offered;

(3) If there are selling security holders, a statement to that effect;

(4) Cross reference to the risk factors section of the prospectus;

(5) The following statement in capital letters:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(6) If the small business issuer is not a reporting company and a preliminary prospectus will be circulated, a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or a bona fide estimate of the principal amount of debt securities to be offered;

(7) The following table as to all securities to be registered (estimated, if necessary):

Per unit total, total minimum, total maximum	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons

The "total minimum" and "total maximum" items are required (in lieu of the "Total" item) only if the offering is made on a best efforts basis. If so, disclose in the summary section (or on the cover page if material): the date the offering will end; any minimum purchase requirement and any arrangements to place funds in an escrow, trust, or similar account. If there is an over-allotment option, the maximum-minimum information must be based on the purchase of all or none of the shares subject to that option in addition to any other minimum/maximum information;

(8) If a prospectus will be used before the effective date of the registration statement (or, prior to the determination of the initial public offering price in the case of a prospectus that omits information as permitted by Rule 430A under the Securities Act [§ 230.430A of this chapter]), include the caption "Subject to Completion," the date of its issuance, and the following statement printed in type as large as that generally used in the body of the prospectus:

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

(9) Any legend or information required by the law of any State in which the securities are to be offered;

(10) The date of the prospectus; and

(11) In a footnote to the table, disclose the other expenses of the offering specified in Item 511 of this Regulation S–B.

(b) [Reserved].

§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.

On the inside front cover page of the prospectus (or on the outside back cover page for paragraphs (e) and (f) of this Item) disclose the following:

(a)(1) *Available information.* State whether or not the small business issuer is a reporting company.

(2) If the small business issuer is a reporting company, state that the reports and other information filed by the small business issuer may be inspected and copied at the public reference facilities of the Commission in Washington, DC, and at some of its Regional Offices (include addresses), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, DC 20549 at prescribed rates; and

(3) Name any national securities exchange on which the small business issuer's securities are listed and state that reports and other information concerning the small business issuer can be inspected at such exchanges.

(b) *Reports to security holders.* Where a small business issuer is not required to deliver an annual report to security holders, indicate whether voluntary reports will be sent and, if so, the frequency of such reports and whether they will include audited financial statements.

(c) *Incorporation by reference.* State that small business issuer will provide without charge to each person who receives a prospectus, upon written or oral request of such person, a copy of any of the information that was incorporated by reference in the prospectus (not including exhibits to the information that is incorporated by reference unless the exhibits are themselves specifically incorporated by reference) and the address (including title or department) and telephone number to which such a request is to be directed.

(d) *Stabilization.* (1) Include the following statement, if true:

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF (IDENTIFY EACH CLASS OF SECURITIES IN WHICH SUCH TRANSACTIONS MAY BE EFFECTED) AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH TRANSACTIONS MAY BE EFFECTED ON (IDENTIFY EACH EXCHANGE ON WHICH STABILIZING TRANSACTIONS MAY BE EFFECTED; IF NONE, OMIT THIS SENTENCE.) SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

(2) If the stabilizing began before the effective date of the registration statement, state the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that Rule 430A under the Securities Act [§ 230.430A of this chapter] is used, the final prospectus must include information as to stabilizing transactions before the public offering price was set.

(3) If the securities are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after the expiration of the rights offering period, state in the prospectus used to reoffer the securities:

(i) the amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which such securities were bought;

(ii) the amount of the offered securities subscribed for during such period;

(iii) the amount of the offered securities subscribed for by the underwriters during such period;

(iv) the amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which such securities were sold; and

(v) the amount of the offered securities to be reoffered to the public and the public offering price.

(e) *Delivery of prospectuses by dealers.* The following legend shall be printed in bold-face or italic type:

Until (insert date) all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

The date to be inserted should be determined by reference to Section 4(3) of the Securities Act and Rule 174 (§ 230.174 of this chapter).

(f) *Table of contents.* Include a detailed table of contents showing the various sections or subdivisions of the prospectus and the page number on which each such section or subdivision begins.

Introduction

Canadian issuers should, in addition to the disclosure required by this Item, provide the information required by Item 502(f) of Regulation S–K.

§ 228.503 (Item 503) Summary Information and Risk Factors.

(a) *Summary.* A summary of the information contained in the prospectus where the length and complexity of the prospectus make a summary useful.

(b) *Address and telephone number.* In the beginning of the prospectus the complete mailing address and the telephone number of their principal executive offices.

(c) *Risk factors.* Immediately following the cover page of the prospectus or the summary section, discuss any factors that make the offering speculative or risky. These factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

§ 228.504 (Item 504) Use of Proceeds.

State how the net proceeds of the offering will be used, indicating the amount to be used for each purpose and the priority of each purpose, if all of the securities are not sold. If all or a substantial part of the proceeds are not allocated for a specific purpose, so state and discuss the principal reasons for the offering.

Instructions to Item 504

1. If a material amount of proceeds will discharge debt, state the interest rate and maturity. If that debt was incurred within one year, describe the use of the proceeds of that debt other than short-term borrowings used for working capital.

2. If any material amount of the proceeds is to be used to acquire assets or finance the acquisitions of other businesses, describe the assets or businesses and identify the persons from whom they will be bought. State the cost of the assets and, where such assets are to be acquired from affiliates of the small business issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the small business issuer.

§ 228.505 (Item 505) Determination of Offering Price.

(a) If there is no established public market for the common equity being registered or if there is a significant difference between the offering price and the market price of the stock, give the factors that were considered in determining the offering price.

(b) If warrants, rights and convertible securities are being registered and there is no public market for the underlying securities, describe the factors considered in determining the exercise or conversion price.

§ 228.506 (Item 506) Dilution.

(a) If the small business issuer is not a reporting company and is selling common equity at a price significantly more than the price paid by officers, directors, promoters and affiliated persons for common equity purchased by them during the past five years (or which they have rights to purchase), compare these prices.

(b) If paragraph (a) of this Item applies and the issuer had losses in each of its last three fiscal years, or since its inception, whichever period is shorter, and there is a material dilution of the purchasers' equity interest, disclose the following:

(1) The net tangible book value per share before and after the distribution;

(2) The amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and

(3) The amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

§ 228.507 (Item 507) Selling Security Holders.

If security holders of a small business issuer is offering securities, name each selling security holder, state any position, office, or other material relationship which the selling security holder has had within the past three years with the small business issuer or any of its predecessors or affiliates, and state the amount of securities of the class owned by such security holder before the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by such security holder after the offering is complete.

Instruction

Responses to this item may be combined with disclosure in response to Item 403.

§ 228.508 (Item 508) Plan of Distribution.

(a) *Underwriters and underwriting obligation.* If the securities are to be offered through underwriters, name the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship with the small business issuer and state the nature of the relationship. State the nature of the obligation of the underwriter(s) to take the securities, *i.e.*, firm commitment, best efforts.

(b) *New underwriters.* Describe the business experience of managing or principal underwriters that have been in business less than three years, state their principal business function and identify any material relationships between the promoters of the issuer and the underwriter(s). This information need not be given if:

(1) the issuer is a reporting company; and

(2) an offering has no material risks.

(c) *Other distributions.* Outline briefly the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters.

(d) *Underwriter's representative on the board of directors.* Describe any arrangement whereby the underwriter has the right to designate or nominate a member or members of the board of directors of the small business issuer. Identify any director so designated or nominated and indicate any relationship with the small business issuer.

(e) *Indemnification of underwriters.* If the underwriting agreement provides for indemnification by the small business issuer of the underwriters or their controlling persons against any liability arising under the Securities Act, furnish a brief description of such indemnification provisions.

(f) *Dealers' compensation.* State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other considerations to be received by any dealer in connection with the sale of the securities.

(g) *Finders.* Identify any finder and describe the nature of any material relationship between such finder and the small business issuer or associates or affiliates of the small business issuer.

(h) *Discretionary accounts.* If the small business issuer is not a reporting company, identify any principal underwriter that intends to sell to any discretionary accounts and include an estimate of the amount of securities so intended to be sold. The response to this paragraph shall be contained in a pre-effective amendment which shall be circulated if the information is not available when the registration statement is filed.

§ 228.509 (Item 509) Interest of Named Experts and Counsel.

If an "expert" or "counsel" was hired on a contingent basis, will receive a direct or indirect interest in the small business issuer or was a promoter, underwriter, voting trustee, director, officer, or employee, of the small business issuer, describe the contingent basis, interest, or connection.

(a) *Expert*—is a person who is named as preparing or certifying all or part of the small business issuer's registration statement or a report or valuation for use in connection with the registration statement.

(b) *Counsel*—is counsel named in the prospectus as having given an opinion on the validity of the securities being registered or upon other legal matters concerning the registration or offering of the securities.

Instruction to Item 509

1. The small business issuer does not need to disclose the interest of an expert (other than an accountant) or counsel if their interest (including the fair market value of all securities of the small business issuer received and to be received, or subject to options, warrants or rights received or to be received) does not exceed $50,000.

§ 228.510 (Item 510) Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Describe the indemnification provisions for directors, officers and controlling persons of the small business issuer against liability under the Securities Act. This includes any provision in the underwriting agreement which indemnifies the underwriter or its controlling persons against such liabilities where a director, officer or controlling person of the small business issuer is such an underwriter or controlling person or a member of any firm which is such an underwriter. In addition, provide the undertaking in the first sentence of Item 512(e).

§ 228.511 (Item 511) Other Expenses of Issuance and Distribution.

(a) Give an itemized statement of all expenses of the offering, other than underwriting discounts and commissions. If any of the securities are registered for sale by security holders, state how much of the expenses the security holders will pay.

(1) The itemized list should generally include registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, legal, accounting, and engineering fees and any listing fees.

(2) Include as a separate item any premium paid by the small business issuer or any selling security holder on any policy to insure or indemnify directors or officers against any liabilities they may incur in the registration, offering, or sale of these securities.

(b) [Reserved.]

Instruction to Item 511

1. If the amounts of any items are not known, give estimates but identify them as such.

§ 228.512 (Item 512) Undertakings.

Include each of the following undertakings that apply to the offering.

(a) *Rule 415 Offering.* If the small business issuer is registering securities under Rule 415 of the Securities Act (§ 230.415 of this chapter), that the small business issuer will:

(1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to:

(i) Include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) Reflect in the prospectus any facts or events which, individually or together, represent a fundamental change in the information in the registration statement; and

(iii) Include any additional or changed material information on the plan of distribution.

Note: Small business issuers do not need to give the statements in paragraphs (a)(1)(i) and (a)(1)(ii) of this Item if the registration statement is on Form S–3 or S–8 (§§ 239.13 or 239.16b of this chapter), and the information required in a post-effective amendment is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act.

(2) For determining liability under the Securities Act, treat each post-effective amendment as a new registration statement of the securities offered, and the offering of the securities at that time to be the initial bona fide offering.

(3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.

(b) *Warrants and rights offerings.* If the small business issuer will offer the securities to existing security holders under warrants or rights and the small business issuer will reoffer to the public any securities not taken by security holders, with any modifications that suit the particular case—The small business issuer will supplement the prospectus, after the end of the subscription period, to include the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities that the underwriters will purchase and the terms of any later reoffering. If the underwriters make any public offering of the securities on terms different from those on the cover page of the prospectus, the small business issuer will file a post-effective amendment to state the terms of such offering.

(c) *Competitive bids.* If the small business issuer is offering securities at competitive bidding, with modifications to suit the particular case, the small business issuer will:

(1) use its best efforts to distribute before the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus that meet the requirements of section 10(a) of the Securities Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements; and

(2) file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters where required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless the issuer proposes no further public offering of such securities by the issuer or by the purchasers.

(d) *Equity offerings of nonreporting small business issuers.* If a small business issuer that before the offering had no duty to file reports with the Commission under section 13(a) or 15(d) of the Exchange Act is registering equity securities for sale in an underwritten offering—The small business issuer will provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(e) *Request for acceleration of effective date.* If the small business issuer will request acceleration of the effective date of the registration statement under Rule 461 under the Securities Act, include the following:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 (the "Act") may be permitted to directors, officers and controlling persons of the small business issuer pursuant to the foregoing provisions, or otherwise, the small business issuer has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

In the event that a claim for indemnification against such liabilities (other than the payment by the small business issuer of expenses incurred or paid by a director, officer or controlling person of the small business issuer in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the small business issuer will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(f) If the issuer relies on Rule 430A under the Securities Act [§ 230.430A of this chapter], that the small business issuer will:

(1) For determining any liability under the Securities Act, treat the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the small business issuer under Rule 424(b)(1), or (4) or 497(h) under the Securities Act (§§ 230.424(b)(1), (4) or 230.497(h)) as part of this registration statement as of the time the Commission declared it effective.

(2) For determining any liability under the Securities Act, treat each post-effective amendment that contains a form of prospectus as a new registration statement for the securities offered in the registration statement, and that offering of the securities at that time as the initial bona fide offering of those securities.

§ 228.601 (Item 601) Exhibits.

(a) *Exhibits and index of exhibits.* (1) The exhibits required by the exhibit table must be filed or incorporated by reference.

(2) Each filing must have an index of exhibits. The exhibit index must list exhibits in the same order as the exhibit table. If the exhibits are incorporated by reference, this fact should be noted in the exhibit index. In the manually signed registration statement or report, the exhibit index should give the page number of each exhibit.

Instructions to Item 601(a)

1. If an exhibit (other than an opinion or consent) is filed in preliminary form and is later changed to include only interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters and the information appears elsewhere in the registration statement or a prospectus, no amendment need be filed.

2. Small business issuers may file copies of each exhibit, rather than originals, except as otherwise specifically noted.

EXHIBIT TABLE

	Securities Act forms					Exchange Act forms			
	SB–2	S–2	S–3	S–4***	S–8	10SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement	X	X	X	X			X		
(2) Plan of acquisition, reorg., arrgmnt, liquid, or succession.	X	X	X	X		X	X	X	
(3) Articles of incorporation and by-laws.	X			X		X			X
(4) Instruments defining the rights of holders, incl. indentures.	X	X	X	X	X	X	X	X	X
(5) Opinion re: legality	X	X	X	X	X				
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Opinion re: liquidation preference	X	X		X		X			
(8) Opinion re: tax matters	X	X	X	X					
(9) Voting trust agreement	X			X		X			X
(10) Material contracts	X	X		X		X			X
(11) Statement re: computation of per share earnings.	X	X		X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual or quarterly reports, Form 10–Q *.	X	X		X					X
(14) Material foreign patents	X			X		X			
(15) Letter on unaudited interim financial information.	X	X	X	X	X			X	
(16) Letter on change in certifying accountant ****.	X	X		X		X	X		X
(17) Letter on director resignation							X		
(18) Letter on change in accounting principles.								X	X
(19) Previously unfiled documents								X	X
(20) Reports furnished to securityholders.								X	
(21) Other documents or statements to securityholders.							X		
(22) Subsidiaries of the registrant	X			X		X			X
(23) Published report regarding matters submitted to vote.								X	X
(24) Consent of experts and counsel	X	X	X	X	X		X**	X**	X**
(25) Power of attorney	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X	X					
(27) Invitations for competitive bids	X	X	X	X					
(28) Additional exhibits	X	X	X	X	X	X	X	X	X
(29) Info. from reports furnished to State insurance authorities.	X	X	X	X	X	X			X

* Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10–KSB, where the annual report is incorporated by reference into the text of the Form 10–KSB.

** Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

*** An issuer need not provide an exhibit if: (1) an election was made under Form S–4 to provide S–2 or S–3 disclosure; and (2) the form selected (S–2 or S–3) would not require the company to provide the exhibit.

**** If required under item 304 of Regulation S–B.

(b) *Description of exhibits.* Below is a description of each document listed in the exhibit table.

(1) *Underwriting agreement.* Each agreement with a principal underwriter for the distribution of the securities. If the terms have been determined and the securities are to be registered on Form S–3 (§ 239.13), the agreement may be filed on Form 8–K (§ 249.308) after the effectiveness of the registration statement.

(2) *Plan of purchase, sale, reorganization, arrangement, liquidation or succession.* Any such plan described in the filing. Schedules or attachments may be omitted if they are listed in the index and provided to the Commission upon request.

(3) *Articles of incorporation and by-laws.* The complete copies of articles of incorporation and by-laws or comparable instruments, as amended.

(4) *Instruments defining the rights of security holders, including indentures.* (i) All instruments that define the rights of holders of the equity or debt securities that the issuer is registering, including the pages from the articles of incorporation or by-laws that define those rights.

(ii) All instruments defining the rights of holders of long term debt unless the total amount of debt covered by the instrument does not exceed 10% of the total assets of the small business issuer.

(iii) Copies of indentures to be qualified under the Trust Indenture Act of 1939 shall include an itemized table of contents and a cross reference sheet showing the location of the provisions inserted in accordance with Sections 310 through 318(a) of that Act.

(5) *Opinion on legality.* (i) An opinion of counsel on the legality of the securities being registered stating whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the small business issuer.

(ii) If the securities being registered are issued under a plan that is subject to the requirements of ERISA furnish either:

(A) An opinion of counsel which confirms compliance with ERISA; or

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code.

If the plan is later amended, the small business issuer must have the opinion of counsel and the IRS determination letter updated to confirm compliance and qualification.

(6) No Exhibit Required.

(7) *Opinion on liquidation preference.* If the liquidation preference of shares

exceeds their par or stated value, an opinion of counsel as to whether there are any resulting restrictions on surplus. The opinion should also state any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall cite to applicable constitutional and statutory provisions and controlling case law.

(8) *Opinion on tax matters.* If tax consequences of the transaction are material to an investor, an opinion of counsel, an independent public or certified public accountant or, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders. The exhibit is required for filings to which Securities Act Industry Guide 5 applies.

(9) *Voting trust agreement and amendments.*

(10) *Material contracts.* (i) Every material contract, not made in the ordinary course of business, that will be performed after the filing of the registration statement or report or was entered into not more than two years before such filing. Also include the following contracts:

(A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract upon which the small business issuer's business is substantially dependent, such as contracts with principal customers, principal suppliers, franchise agreements, etc.;

(C) Any contract for the purchase or sale of any property, plant or equipment for a consideration exceeding 15 percent of such assets of the small business issuer; or

(D) Any material lease under which a part of the property described in the registration statement or report is held by the small business issuer.

(ii)(A) Any management contract or any compensatory plan, contract or arrangement in which any director or any of the five most highly compensated executive officers of the small business issuer participates and any other management contract or any compensatory plan in which any other executive officer of the small business issuer participates shall be filed unless immaterial in amount or significance.

(B) The following management contracts or compensatory plans need not be filed:

(*1*) Ordinary purchase and sales agency agreements;

(*2*) Agreements with managers of stores in a chain organization or similar organization;

(*3*) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such;

(*4*) Any compensatory plan which is available to employees, officers or directors generally and provides for the same method of allocation of benefits between management and nonmanagement participants; and

(*5*) Any compensatory plan if the issuer is a wholly owned subsidiary of a reporting company and is filing a report on Form 10–KSB (§ 249.310b), or registering debt or non-voting preferred stock on Form S–2 (§ 239.12).

Instruction to Item 601(b)(10)

Only copies of the various remunerative plans need be filed. Each individual director's or executive officer's personal agreement under the plans need not be filed, unless they contain material provisions.

(11) *Statement re computation of per share earnings.* An explanation of the computation of per share earnings on both a primary and fully diluted basis unless the computation can be clearly determined from the registration statement or report.

(12) No exhibit required.

(13) Annual report to security holders for the last fiscal year, Form 10–Q or 10–QSB or quarterly report to security holders, if incorporated by reference in the filing. Such reports, except for the parts which are expressly incorporated by reference in the filing are not deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. See Rule 411(b) (§ 230.411(b) of this chapter).

(14) *Material foreign patents.* Each material foreign patent for an invention not covered by a United States patent.

(15) *Letter on unaudited interim financial information.* A letter, where applicable, from the independent accountant which acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information. The letter is not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Securities Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10–QSB (§ 249.308b) which is incorporated by reference into the registration statement.

(16) *Letter on change in certifying accountant.* File the letter required by Item 304(a)(3).

(17) *Letter on director resignation.* Any letter from a former director which describes a disagreement with the small business issuer that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(18) *Letter on change in accounting principles.* Unless previously filed, a letter from the issuer's accountant stating whether any change in accounting principles or practices followed by the issuer, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is expected to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board that creates a new accounting principle, that expresses a preference for an accounting principle, or that rejects a specific accounting principle.

(19) *Previously unfiled documents.* (i) Any unfiled document, which was executed or in effect during the reporting period, if such document would have been required to be filed as an exhibit to a registration statement on Form 10–SB (§ 249.210b).

(ii) Any amendment or change to a document which was previously filed.

(20) *Report furnished to security holders.* If the issuer makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of Form 10–Q or 10–QSB, the information called for may be incorporated by reference to such published document or statement provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10–Q or 10–QSB report.

(21) Other documents or statements to security holders or any document incorporated by reference.

(22) *Subsidiaries of the small business issuer.* A list of all subsidiaries, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business.

(23) *Published report regarding matters submitted to vote of security*

holders. Published reports containing all of the information called for by Item 4 of Part II of Form 10–Q (or 10–QSB) or Item 4 of Part I of Form 10–K or 10–KSB which is referred to therein in lieu of providing disclosure in Form 10–Q (10–QSB) or 10–K (10–KSB), which are required to be filed as exhibits by Rule 12b–23(a)(3) under the Exchange Act.

(24) *Consents of experts and counsel.* (i) Securities Act filings—Dated and manually signed written consents or a reference in the index to the location of the consent.

(ii) Exchange Act reports. If required to file a consent for material incorporated by reference in a previously filed registration statement under the Securities Act, the dated and manually signed consent to the material incorporated by reference. The consents shall be dated and manually signed.

(25) *Power of attorney.* If a person signs a registration statement or report under a power of attorney, a manually signed copy of such power of attorney or if located elsewhere in the registration statement, a reference in the index to where it is located. In addition, if an officer signs a registration statement for the small business issuer by a power of attorney, a certified copy of a resolution of the board of directors authorizing such signature.

(26) *Statement of eligibility of trustee.* Form T–1 (§ 269.1 of this chapter) if an indenture is being qualified under the Trust Indenture Act, bound separately from the other exhibits.

(27) *Invitations for competitive bids.* If the registration statement covers securities that the small business issuer is offering at competitive bidding, any invitation for competitive bid that the small business issuer will send or give to any person shall be filed.

(28) *Additional exhibits.* Any additional exhibits if listed and described in the exhibit index.

(29) *Information from reports furnished to state insurance regulatory authorities.* (i) If reserves for unpaid property-casualty ("P/C") claims and claim adjustment expenses of the small business issuer, its unconsolidated subsidiaries and the proportionate share of the small business issuer and the other subsidiaries in the unpaid P/C claims and claim adjustment expenses of its 50%-or-less-owned equity investees, taken in the aggregate after small business issuer eliminations, exceed one-half of the common stockholders' equity of the small business issuer as of the beginning of the latest fiscal year the following information should be supplied.

(ii) the information included in Schedules O and P of Annual Statements provided to state regulatory authorities by the small business issuer or its P/C insurance small business issuer affiliates for the latest year on a combined or consolidated basis as appropriate, separately for each of the following:

(A) the small business issuer;

(B) its unconsolidated subsidiaries; and

(C) fifty percent-or-less-owned equity investees of the small business issuer and its subsidiaries.

(iii) Small business issuers may omit the combined or consolidated Schedules O and P of fifty percent-or-less-owned equity investees, if they file the same information with the Commission as companies in their own right, and if they state that fact and the name and ownership percentage of such companies.

(iv) If ending reserves in paragraphs (b)(29)(ii)(A) and (b)(29)(ii)(B) of this Item or the proportionate share of the small business issuer and its other subsidiaries in paragraph (b)(29)(ii)(C) of this Item are less than 5% of the total ending reserves in paragraphs (b)(29)(ii)(A) and (b)(29)(ii)(B) of this Item, and the proportionate share of (b)(29)(ii)(C) of this Item, small business issuers may omit that category and note that fact. If the amount of the reserves attributable to fifty percent-or-less-owned equity investees that file this information as companies in their own right exceeds 95% of the total paragraph (b)(29)(ii)(C) of this Item small business issuers do not need to provide reserves, information for the other fifty percent-or-less-owned equity investees.

(v) Small business issuers do not need to include Schedules O and P information if they are not required to file Schedules O and P with insurance regulatory authorities. However, clearly note the nature and extent of any such exclusions in the Exhibit.

(vi) Companies whose fiscal year differs from the calendar year should present Schedules O and P as of the end of the calendar year that falls within their fiscal year.

(vii) The nature and amount of the difference between reserves for claims and claim adjustment expenses reflected on Schedules O and P and the total P/C statutory reserves for claims and disclose claim adjustment expenses as of the latest calendar year in a note to those Schedules.

§ 228.701 (Item 701) Recent Sales of Unregistered Securities.

Give the following information for all securities that the small business issuer sold within the past three years without registering the securities under the Securities Act.

(a) The date, title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. If the small business issuer did not publicly offer any securities, identify the persons or class of persons to whom the small business issuer sold the securities.

(c) For securities sold for cash, the total offering price and the total underwriting discounts or commissions. For securities sold other than for cash, describe the transaction and the type and amount of consideration received by the small business issuer.

(d) The section of the Securities Act or the rule of the Commission under which the small business issuer claimed exemption from registration and the facts relied upon to make the exemption available.

§ 228.702 (Item 702) Indemnification of Directors and Officers.

State whether any statute, charter provisions, by-laws, contract or other arrangements that insures or indemnifies a controlling person, director or officer of the small business issuer affects his or her liability in that capacity.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

5. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa[25], 77aa[26], 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

6. In Section 229.801, paragraph (g) is added to read as follows:

§ 229.801 Securities Act industry guides.

* * * * *

(g) *Guide 7.* Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.

Note: The text of Guide 7 will not appear in the CFR.

Guide 7

Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations

(a) *Definitions.* The following definitions apply to registrants engaged or to be engaged in significant mining operations:

(1) *Reserve.* That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination. Note. Reserves are customarily stated in terms of "ore" when dealing with metalliferous minerals; when other materials such as coal, oil, shale, tar, sands, limestone, etc. are involved, an appropriate term such as "recoverable coal" may be substituted.

(2) *Proven (Measured) Reserves.* Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth and mineral content of reserves are well-established.

(3) *Probable (Indicated) Reserves.* Reserves for which quantity and grade and/or quality are computed from information similar to that used for proven (measure) reserves, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assume continuity between points of observation.

(4)(i) *Exploration Stage*—includes all issuers engaged in the search for mineral deposits (reserves) which are not in either the development or production stage.

(ii) *Development Stage*—includes all issuers engaged in the preparation of an established commercially minable deposit (reserves) for its extraction which are not in the production stage.

(iii) *Production Stage*—includes all issuers engaged in the exploitation of a mineral deposit (reserve).

Instruction to Paragraph (a)

1. Mining companies in the exploration stage should not refer to themselves as development stage companies in the financial statements, even though such companies should comply with FASB Statement No. 7, if applicable.

(b) *Mining Operations Disclosure.* Furnish the following information as to each of the mines, plants and other significant properties owned or operated, or presently intended to be owned or operated, by the registrant:

(1) The location and means of access to the property;

(2) A brief description of the title, claim, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property, indicating any conditions which the registrant must meet in order to obtain or retain the property. If held by leases or options, the expiration dates of such leases or options should be stated. Appropriate maps may be used to portray the locations of significant properties;

(3) A brief history of previous operations, including the names of previous operators, insofar as known;

(4)(i) A brief description of the present condition of the property, the work completed by the registrant on the property, the registrant's proposed program of exploration and development, and the current state of exploration and/or development of the property. Mines should be identified as either open-pit or underground. If the property is without known reserves and the proposed program is exploratory in nature, a statement to that effect shall be made;

(ii) The age, details as to modernization and physical condition of the plant and equipment, including subsurface improvements and equipment. Further, the total cost for each property and its associated plant and equipment should be stated. The source of power utilized with respect to each property should also be disclosed.

(5) A brief description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known. If proven (measured) or probable (indicated) reserves have been established, state (i) the estimated tonnages and grades (or quality, where appropriate) of such classes of reserves, and (ii) the name of the person making the estimates and the nature of his relationship to the registrant.

Instructions to Paragraph (b)(5)

1. It should be stated whether the reserve estimate is of in-place material or of recoverable material. Any in-place estimate should be qualified to show the anticipated losses resulting from mining methods and beneficiation or preparation.

2. The summation of proven (measured) and probable (indicated) ore reserves is acceptable if the difference in degree of assurance between the two classes of reserves cannot be readily defined.

3. Estimates other than proved (measured) or probable (indicated) reserves, and any estimated values of such reserves shall not be disclosed unless such information is required to be disclosed by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with, the registrant or otherwise to acquire the registrant's securities, such estimates may be included.

(6) If technical terms relating to geology, mining or related matters whose definition cannot readily be found in conventional dictionaries (as opposed to technical dictionaries or glossaries) are used, an appropriate glossary should be included in this report.

(7) Detailed geographic maps and reports, feasibility studies and other highly technical data should not be included in the report but should be, to the degree appropriate and necessary for the Commission's understanding of the registrant's presentation of business and property matters, furnished as supplemental information.

(c) *Supplemental Information.*

(1) If an estimate of proven (measured) or probable (indicated) reserves is set forth in the report, furnish:

(i) maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon.

(ii) all pertinent drill data and related maps.

(iii) the calculations whereby the basic sample-assay or drill data were translated into the estimates made of the grade and tonnage of reserves in each block and in the complete reserve estimate.

Instructions to Paragraph (c)(1)

1. Maps and drawings submitted to the staff should include:

(a) A legend or explanation showing, by means of pattern or symbol, every pattern or symbol used on the map or drawing; the use of the symbols used by the U.S. Geological Survey is encouraged;

(b) A graphical bar scale should be included; additional representations of scale such as "one inch equals one mile" may be utilized provided the original scale of the map has not been altered;

(c) A north arrow on the maps;

(d) An index map showing where the property is situated in relationship to the state or province, etc., in which it was located;

(e) A title of the map or drawing and the date on which it was drawn;

(f) In the event interpretive data is submitted in conjunction with any map, the identity of the geologist or engineer that prepared such data; and

(g) Any drawing should be simple enough or of sufficiently large scale to clearly show all features on the drawing.

(2) Furnish a complete copy of every material engineering, geological or metallurgical report concerning the registrant's property, including governmental reports, which are known and available to the registrant. Every such report should include the name of its author and the date of its preparation, if known to the registrant.

Instructions to Paragraph (c)(2)

1. Any of the above-required reports as to which the staff has access need not be submitted. In this regard, issuers should consult with the staff prior to filing the report. Any reports not submitted should be identified in a list furnished to the staff. This list should also identify any known governmental reports concerning the registrant's property.

(3) Furnish copies of all documents such as title documents, operating permits and easements needed to support representations made in the report.

7. In Section 229.802, paragraphs (e) and (f) are reserved and paragraph (g) is added to read as follows:

§ 229.802 Exchange Act industry guides.

* * * * *

(e) [Reserved].

(f) [Reserved].

(g) *Guide 7.* Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations. Note: The text of Guide 7 will not appear in the CFR. The text of Guide 7 is identical to § 229.801(g) of this chapter and is not reprinted here.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

7. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

8. By amending paragraph (b)(1)(i) of § 230.175 after the words "filed under the Act" add the words ", offering statement or solicitation of interest written document or broadcast script under Regulation A" and in paragraph (b)(2)(i) after the parenthetical "(§ 229.303 of this chapter)" add the words "or Regulation S–B (§ 228.303 of this chapter)".

9. By revising Regulation A—Conditional Small Issues Exemption, §§ 230.251–230.263, to read as follows:

Sec.
230.251 Scope of Exemption.
230.252 Offering Statement.
230.253 Offering Circular.
230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.
230.255 Preliminary Offering Circulars.
230.256 Filing of Sales Material.
230.257 Reports of Sales and Use of Proceeds.
230.258 Suspension of the Exemption.
230.259 Withdrawal or Abandonment of Offering Statements.
230.260 Insignificant Deviations from a Term, Condition or Requirement of Regulation A.
230.261 Definitions.
230.262 Disqualification Provisions.
230.263 Consent to Service of Process.

Regulation A—Conditional Small Issues Exemption

Authority: Secs. 230.251 to 230.263 issued under 15 U.S.C. 77c, 77s.

§ 230.251 Scope of exemption.

A public offer or sale of securities that meets the following terms and conditions shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the "Securities Act"):

(a) *Issuer.* The issuer of the securities:

(1) is an entity organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia, with its principal place of business in the United States or Canada;

(2) is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) immediately before the offering;

(3) is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with an unidentified company or companies;

(4) is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

(5) is not issuing fractional undivided interests in oil or gas rights as defined in § 230.300, or a similar interest in other mineral rights; and

(6) is not disqualified because of § 230.262.

(b) *Aggregate Offering Price.* The sum of all cash and other consideration to be received for the securities ("aggregate offering price") shall not exceed $5,000,000, including no more than $1,500,000 offered by all selling security holders, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities in reliance upon Regulation A. No affiliate resales are permitted if the issuer has not had net income from continuing operations in at least one of its last two fiscal years.

Note: Where a mixture of cash and non-cash consideration is to be received, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at a currency exchange rate in effect on or at a reasonable time prior to the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Valuations of non-cash consideration must be reasonable at the time made.

(c) *Integration with Other Offerings.* Offers and sales made in reliance on this Regulation A will not be integrated with:

(1) prior offers or sales of securities; or

(2) subsequent offers or sales of securities that are:

(i) registered under the Securities Act, except as provided in § 230.254(d);

(ii) made in reliance on § 230.701;

(iii) made pursuant to an employee benefit plan;

(iv) made in reliance on Regulation S (§ 230.901–904); or

(v) made more than six months after the completion of the Regulation A offering.

Note: If the issuer offers or sells securities for which the safe harbor rules are unavailable, such offers and sales still may not be integrated with the Regulation A offering, depending on the particular facts and circumstances. See Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

(d) *Offering Conditions.*

(1) *Offers.*

(i) Except as allowed by § 230.254, no offer of securities shall be made unless a Form 1–A offering statement has been filed with the Commission.

(ii) After the Form 1–A offering statement has been filed:

(A) oral offers may be made;

(B) written offers under § 230.255 may be made;

(C) printed advertisements may be published or radio or television broadcasts made, if they state from whom a Preliminary Offering Circular or Final Offering Circular may be obtained, and contain no more than the following information:

(*1*) the name of the issuer of the security;

(*2*) the title of the security, the amount being offered and the per unit offering price to the public;

(3) the general type of the issuer's business; and

(4) a brief statement as to the general character and location of its property.

(iii) after the Form 1–A offering statement has been qualified, other written offers may be made, but only if accompanied with or preceded by a Final Offering Circular.

(2) *Sales.*

(i) No sale of securities shall be made until:

(A) the Form 1–A offering statement has been qualified;

(B) A Preliminary Offering Circular or Final Offering Circular is furnished to the prospective purchaser at least 48 hours prior to the mailing of the confirmation of sale to that person; and

(C) A Final Offering Circular is delivered to the purchaser with the confirmation of sale, unless it has been delivered to that person at an earlier time.

(ii) Sales by a dealer (including an underwriter no longer acting in that capacity for the security involved in such transaction) that take place within 90 days after the qualification of the Regulation A offering statement may be made only if the dealer delivers a copy of the current offering circular to the purchaser before or with the confirmation of sale. The issuer or underwriter of the offering shall provide requesting dealers with reasonable quantities of the offering circular for this purpose.

(3) *Continuous or delayed offerings.* Continuous or delayed offerings may be made under this Regulation A if permitted by § 230.415.

§ 230.252 Offering Statement.

(a) *Documents to be included.* The offering statement consists of the facing sheet of Form 1–A [§ 239.90 of this chapter], the contents required by the form and any other material information necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(b) *Paper, printing, language and pagination.* The requirements for offering statements are the same as those specified in § 230.403 for registration statements under the Act.

(c) *Confidential treatment.* A request for confidential treatment may be made under § 230.406 for information required to be filed, and § 200.83 of this chapter for information not required to be filed.

(d) *Signatures.* The issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing body, and each selling security holder shall sign the offering statement. If a signature is by a person on behalf of any other person, evidence of authority to sign shall be filed, except where an executive officer signs for the issuer. If the issuer is Canadian, its authorized representative in the United States shall sign. If the issuer is a limited partnership, a majority of the board of directors of any corporate general partner also shall sign.

(e) *Number of copies and where to file.* Seven copies of the offering statement, at least one of which is manually signed, shall be filed either with the Commission's Office for the region in which the issuer's principal business operations are conducted or are proposed to be conducted or with the Commission's main office in Washington, DC. An issuer which has or proposes to have its principal business operations in Canada shall file with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted or with the Commission's main office in Washington, DC., unless the offering is to be made through a principal underwriter located in the United States, in which case the appropriate Regional Office is the office for the region in which such underwriter has its principal office. Since no filing may be made with the Philadelphia Regional Office, filings within the jurisdiction of that office may be made either at the Atlanta or New York Regional Office or in Washington, DC.

(f) *Fee.* There is a filing fee of $500 which shall accompany the initial filing of the offering statement. There is no fee for amendments.

(g) *Qualification.* (1) If there is no delaying notation as permitted by paragraph (g)(2) of this section or suspension proceeding under § 230.258, an offering statement is qualified without Commission action on the 20th calendar day after its filing.

(2) An offering statement containing the following notation can be qualified only by order of the Commission, unless such notation is removed prior to Commission action as described in paragraph (g)(3) of this section:

> This offering statement shall only be qualified upon order of the Commission, unless a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

(3) The delaying notation specified in paragraph (g)(2) of this section can be removed only by an amendment to the offering statement that contains the following language:

> This offering statement shall become qualified on the 20th calendar day following the filing of this amendment.

(h) Amendments.

(1) If any information in the offering statement is amended, an amendment, signed in the same manner as the initial filing, shall be filed. Seven copies of every amendment shall be filed with the Commission's Office that accepted the initial filing. Subsequent amendments to an offering shall recommence the time period for qualification.

(2) An amendment to include a delaying notation pursuant to paragraph (g)(2) or to remove one pursuant to paragraph (g)(3) of this section after the initial filing of an offering statement may be made by telegram or letter. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by filing a signed copy. Such confirmation shall not be deemed an amendment.

§ 230.253 Offering Circular.

(a) *Contents.* An offering circular shall include the narrative and financial information required by Form 1–A.

(b) *Presentation of information.* Information in the offering circular shall be presented in a clear, concise and understandable manner and in a type size that is easily readable. Repetition of information should be avoided; cross-referencing of information within the document is permitted.

(c) *Date.* An offering circular shall be dated approximately as of the date of the qualification of the offering statement of which it is a part.

(d) *Cover page legend.* The cover page of every offering circular shall display the following statement in capital letters printed in boldfaced type at least as large as that used generally in the body of such offering circular:

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES OFFERED HEREUNDER ARE EXEMPT FROM REGISTRATION.

(e) *Revisions.* (1) An offering circular shall be revised during the course of an offering whenever the information it contains has become false or misleading in light of existing circumstances.

material developments have occurred, or there has been a fundamental change in the information initially presented.

(2) An offering circular for a continuous offering shall be updated to include, among other things, updated financial statements, 12 months after the date the offering statement was qualified.

(3) Every revised or updated offering circular shall be filed as an amendment to the offering statement and requalified in accordance with § 230.252.

§ 230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.

(a) An issuer may publish or deliver to prospective purchasers a written document or make scripted radio or television broadcasts to determine whether there is any interest in a contemplated securities offering. Following submission of the written document or script of the broadcast to the Commission, as required by paragraph (b) of this section, oral communications with prospective investors and other broadcasts are permitted. The written documents, broadcasts and oral communications are each subject to the antifraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any prospective investor is permitted. No sale may be made until qualification of the offering statement.

(b) While not a condition to any exemption pursuant to this section:

(1) On or before the date of its first use, the issuer shall submit a copy of any written document or the script of any broadcast with the Commission's Regional Office for the region in which the issuer's principal business operations are conducted or are proposed to be conducted (*Attention:* Small Issues Branch) or with the Commission's main office in Washington, D.C. (*Attention:* Office of Small Business Policy). The document or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast.

Note: Only solicitation of interest material that contains substantive changes from or additions to previously submitted material needs to be submitted.

(2) The written document or script of the broadcast shall:

(i) state that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(ii) state that no sales of the securities will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering;

(iii) state that an indication of interest made by a prospective investor involves no obligation or commitment of any kind; and

(iv) identify the chief executive officer of the issuer and briefly and in general its business and products.

(3) Solicitations of interest pursuant to this provision may not be made after the filing of an offering statement.

(4) Sales may not be made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast.

(c) Any written document under this section may include a coupon, returnable to the issuer indicating interest in a potential offering, revealing the name, address and telephone number of the prospective investor.

(d) Where an issuer has a bona fide change of intention and decides to register an offering after using the process permitted by this section without having filed the offering statement prescribed by § 230.252, the Regulation A exemption for offers made in reliance upon this section will not be subject to integration with the registered offering, if at least 30 calendar days have elapsed between the last solicitation of interest and the filing of the registration statement with the Commission, and all solicitation of interest documents have been submitted to the Commission. With respect to integration with other offerings, see § 230.251(c).

§ 230.255 Preliminary Offering Circulars.

(a) Prior to qualification of the required offering statement, but after its filing, a written offer of securities may be made if it meets the following requirements:

(1) The outside front cover page of the material bears the caption "Preliminary Offering Circular," the date of issuance, and the following statement, which shall run along the left hand margin of the page and be printed perpendicular to the text, in boldfaced type at least as large as that used generally in the body of such offering circular:

An offering statement pursuant to Regulation A relating to these securities has been filed with the _____ Office of the Securities and Exchange Commission.

Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered and the offering statement filed with the Commission becomes qualified. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the laws of any such state.

(2) The Preliminary Offering Circular contains substantially the information required in an offering circular by Form 1–A (§ 239.90 of this chapter), except that information with respect to offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price may be omitted. The outside front cover page of the Preliminary Offering Circular shall include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities to be offered.

(3) The material is filed as a part of the offering statement.

(b) If a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or a complete Offering Circular shall be furnished to all persons to whom securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to receipt of confirmation of the sale.

§ 230.256 Filing of Sales Material.

While not a condition to an exemption pursuant to this provision, seven copies of any advertisement or written communication, or the script of any radio or television broadcast, shall be filed with the Office of the Commission where the offering statement was qualified when the material is first published or delivered.

Note: Only sales material that contains substantive changes from or additions from previously filed material needs to be filed.

§ 230.257 Reports of Sales and Use of Proceeds.

While not a condition to an exemption pursuant to this provision, the issuer and/or each selling security holder shall file seven copies of a report concerning sales and use of proceeds on Form 2–A [§ 239.91 of this chapter], or other form prescribed by the Commission, with the Office of the Commission where the offering statement was qualified. This report shall be filed at the following times:

(a) Every six months after the qualification of the offering statement or any amendment until substantially all the proceeds have been applied; and

(b) within 30 calendar days after the termination, completion or final sale of securities in the offering, or the application of the proceeds from the offering, whichever is the latest event. This report should be labelled the final report. For purposes of this section, the temporary investment of proceeds pending final application shall not constitute application of the proceeds.

§ 230.258 Suspension of the Exemption.

(a) The Commission may at any time enter an order temporarily suspending a Regulation A exemption if it has reason to believe that:

(1) no exemption is available or any of the terms, conditions or requirements of the Regulation have not been complied with, including failures to provide the Commission a copy of the document or broadcast script under § 230.254, to file any sales material as required by § 230.256 or report as required by § 230.257;

(2) the offering statement, any sales or solicitation of interest material contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) the offering is being made or would be made in violation of section 17 of the Securities Act;

(4) an event has occurred after the filing of the offering statement which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;

(5) any person specified in paragraph (a) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (a)(3) of 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (a)(4) of § 230.262;

(6) any person specified in paragraph (b) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (b)(1) of § 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (b)(2) of § 230.262; or

(7) the issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made in reliance on Regulation A.

(b) Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the issuer, any underwriter and any selling security holder:

(1) that such order has been entered, together with a brief statement of the reasons for the entry of the order; and

(2) that the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will within 20 calendar days after receiving the request, order a hearing at a place to be designated by the Commission.

(c) If no hearing is requested and none is ordered by the Commission, an order entered under paragraph (a) of this section shall become permanent on the 30th calendar day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(d) The Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this section. Any such order shall remain in effect until vacated by the Commission.

(e) All notices required by this section shall be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling security holder in the offering statement.

§ 230.259 Withdrawal or Abandonment of Offering Statements.

(a) If none of the securities which are the subject of an offering statement have been sold and such offering statement is not the subject of a proceeding under § 230.258, the offering statement may be withdrawn with the Commission's consent. The application for withdrawal shall state the reason the offering statement is to be withdrawn, shall be signed by an authorized representative of the issuer and shall be directed to the Commission's Office where the offering statement was filed.

(b) When an offering statement has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, proceed in the following manner to determine whether such offering statement has been abandoned by the issuer. If the offering statement has been amended, the 9-month period shall be computed from the date of the latest amendment.

(1) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of Regulation A or be withdrawn within 30 calendar days after the notice.

(2) If the issuer or issuer's counsel fail to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within 30 calendar days, the Commission may declare the offering statement abandoned.

§ 230.260 Insignificant Deviations from a Term, Condition or Requirement of Regulation A.

(a) A failure to comply with a term, condition or requirement of Regulation A will not result in the loss of the exemption from the requirements of section 5 of the Securities Act for any offer or sale to a particular individual or entity, if the person relying on the exemption establishes:

(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

(2) the failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraphs (a), (b), (d) (1) and (3) of § 230.251 shall be deemed to be significant to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Regulation A.

(b) A transaction made in reliance upon Regulation A shall comply with all applicable terms, conditions and requirements of the regulation. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

(c) This provision provides no relief or protection from a proceeding under § 230.258.

§ 230.261 Definitions.

As used in this Regulation A, all terms have the same meanings as in § 230.405, except that all references to "registrant" in those definitions shall refer to the issuer of the securities to be offered and sold under Regulation A. In addition, these terms have the following meanings:

(a) *Final Offering Circular*—The current offering circular contained in a qualified offering statement;

(b) *Preliminary Offering Circular*—The offering circular described in § 230.255(a).

§ 230.262 Disqualification provisions.

Unless, upon a showing of good cause and without prejudice to any other action by the Commission, the Commission determines that it is not necessary under the circumstances that the exemption provided by this Regulation A be denied, the exemption shall not be available for the offer or sale of securities, if:

(a) the issuer, any of its predecessors or any affiliated issuer:

(1) has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by § 230.252;

(2) is subject to any pending proceeding under § 230.258 or any similar section adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement;

(3) has been convicted within 5 years prior to the filing of such offering statement of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission;

(4) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission; or

(5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to the filing of the offering statement, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005. The entry of an order, judgment or decree against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time of such entry does not come within the purview of this paragraph (a) of this section.

(b) any director, officer or general partner of the issuer, beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter:

(1) has been convicted within 10 years prior to the filing of the offering statement required by § 230.252 of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(2) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(3) is subject to an order of the Commission entered pursuant to section 15(b), 15B(a), or 15B(c) of the Exchange Act, or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*);

(4) is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under section 6 of the Exchange Act or a national securities association registered under section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or

(5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to the filing of the offering statement required by § 230.252, or is subject to a restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005.

(c) any underwriter of such securities was an underwriter or was named as an underwriter of any securities:

(1) covered by any registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the offering statement required by § 230.252; or

(2) covered by any filing which is subject to any pending proceeding under § 230.258 or any similar rule adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement.

§ 230.263 Consent to Service of Process.

(a) If the issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing the offering statement required by § 230.252, furnish to the Commission a written irrevocable consent and power of attorney on Form F–X [§ 239.42 of this chapter].

(b) Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the relevant offering statement.

10. § 230.405 is amended by adding the following definition of "small business issuer" in the appropriate alphabetical order to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) has revenues of less than $25,000,000;

(2) is a U.S. or Canadian issuer;

(3) is not an investment company; and

(4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the outstanding securities held by non-affiliates) of $25,000,000 or more.

Note: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the

end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed.

In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

* * * * *

§ 230.461 [Amended]

11. By removing the words "in red ink," from paragraph (b)(2) of § 230.461.

§ 230.502 [Amended]

12. In § 230.502 by amending paragraph (b)(1) by removing the words "§ 230.504" and adding "§ 230.504a" and in the note to paragraph (b) by removing the words "§ 230.504(b)(2)(ii)" and adding the word "§ 230.504a(b)(2)(ii)" and in paragraph (c) by removing the words "§ 230.504(b)(1)" and adding the words "§ 230.504a(b)(1)" and in paragraph (d) by removing the words "230.504(b)(1)" and adding the words "§ 230.504a(b)(1)" and in the flush-text of paragraph (d) by removing the words "§ 230.504(b)(2)(ii)" and adding the words "§ 230.504a(b)(2)(ii)".

§ 230.504a [Redesignated from § 230.504]

13. By redesignating § 230.504 as § 230.504a and in newly redesignated § 230.504a revise the section heading to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

14. By adding § 230.504 to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this § 230.504 by an issuer that is not:

(1) subject to the reporting requirements of section 13 or 15(d) of the Exchange Act,;

(2) an investment company; or

(3) a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person, shall be exempt from the provision of section 5 of the Act under section 3(b) of the Act.

(b) *Conditions to be met*—(1) To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502, except that the provisions of § 230.502(c) and (d) shall not apply to offers and sales made under this § 230.504.

(2) The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504, in reliance on any exemption under section 3(b), or in violation of section 5(a) of the Securities Act.

Note 1: The calculation of the aggregate offering price is illustrated as follows:

If an issuer sold $900,000 on June 1, 1987 under this § 230.504 and an additional $4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the $1,000,000 limit within the preceding twelve months.

Note 2: If a transaction under § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold $1,000,000 worth of its securities on January 1, 1988 under this § 230.504 and an additional $500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

15. By revising paragraph (b)(2)(iii) introductory text and (b)(2)(iii) (A) and (B) of § 230.505 to read as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) * * *

(2) * * *

(iii) *Disqualifications.* No exemption under this section shall be available for the securities of any issuer described in § 230.262 of Regulation A, except that for purposes of this section only:

(A) The term "filing of the offering statement required by § 230.252" as used in § 230.262(a), (b) and (c) shall mean the first sale of securities under this section;

(B) The term "underwriter" as used in § 230.262 (b) and (c) shall mean a person that has been or will be paid directly or indirectly remuneration for solicitation of purchasers in connection with sales of securities under this section; and

* * * * *

16. By revising paragraph (a)(2) of § 230.508 to read as follows:

§ 230.508. Insignificant deviations from a term, condition or requirement of Regulation D.

(a) * * *

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, et seq., unless otherwise noted.

18. By removing §§ 239.28, 239.92, 239.93, 239.94, 239.95, and 239.96.

19. § 239.10 is added to read as follows:

§ 239.10 Form SB–2, optional form for the registration of securities to be sold to the public by small business issuers.

Small business issuers defined in Rule 405 (17 CFR 230.405 of this chapter) may use this form to register securities to be sold for cash. For further information concerning eligibility toward this form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.)

Note: The Text and Instructions of Form SB–2 will not appear in the Code of Federal Regulations.

Form SB–2

U.S. Securities and Exchange Commission.
Washington, D.C. 20549

OMB Approval
OMB Number: xxxx–xxxx
Expires: Approval Pending Estimated average burden hours per response.—1.0

Registration Statement Under the Securities Act of 1933 (Amendment No._____)

_____

(Name of small business issuer in its charter)

_____

(State or jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

(I.R.S. Employer Identification No.)

_____

(Address and telephone number of principal executive offices)

_____

(Address of principal place of business or intended principal place of business)

_____

(Name, address and telephone number of agent for service)

Approximate date of proposed sale to the public

Calculation of Registration Fee

Title of each class of securities to be registered	Dollar Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

General Instructions

A. Use of Form and Place of Filing

1. A "small business issuer," defined in Rule 405 of the Securities Act of 1933 (the "Securities Act") may use this form to register securities to be sold for cash. See also Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.)

2. Initial public offerings on Form SB–2 should be filed in the regional office that is closest to its principal place of business or the Washington, D.C. office. However, no filing may be made in the Philadelphia regional office; small business issuers in that region should file in the Atlanta, New York or Washington, D.C. offices. The Commission may refer the filing to another office for processing.

3. If the small business issuer is a reporting company or a holding company of a bank (see the definition of "bank" in section 12(i) of the Exchange Act), it should file the registration statement in the Commission's Washington, D.C. headquarters.

4. Post-effective amendments should be filed with the office that declare the registration statement effective.

B. General Requirements

1. Issuers registering securities for the first time should be aware of Form SR and Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds. First time issuers also should be aware of Exchange Act Rule 15c2–8 (§ 240.15c2–8) which requires broker dealers to deliver a prospectus 48 hours before a sale of securities can be confirmed.

2. Issuers engaged in real estate, oil and gas or mining activities should consult the Industry Guides in Item 801 of Regulation S–K (17 CFR 229.801). Real estate companies also should refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S–11 (17 CFR 239.18).

3. If the issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing this registration statement, file with the Commission a written irrevocable consent and power of attorney on Form F–X [§ 239.42]. Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the registration statement.

Part I—Information Required in Prospectus

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S–B.

Item 3. Summary Information and Risk Factors

Furnish the information required by Item 503 of Regulation S–B.

Item 4. Use of Proceeds

Furnish the information required by Item 504 of Regulation S–B.

Item 5. Determination of Offering Price

Furnish the information required by Item 505 of Regulation S–B.

Item 6. Dilution

Furnish the information required by Item 506 of Regulation S–B.

Item 7. Selling Security Holders

Furnish the information required by Item 507 of Regulation S–B.

Item 8. Plan of Distribution

Furnish the information required by Item 508 of Regulation S–B.

Item 9. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B.

Item 10. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S–B.

Item 11. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 12. Description of Securities

Furnish the information required by Item 202 of Regulation S–B.

Item 13. Interest of Named Experts and Counsel

Furnish the information required by Item 509 of Regulation S–B.

Item 14. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S–B.

Item 15. Organization Within Last Five Years

Furnish the information required by Item 404 of Regulation S–B.

Item 16. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 17. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 18. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 19. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 20. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S–B.

Item 21. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 22. Financial Statements

Furnish the information required by Item 310 of Regulation S–B.

Item 23. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S–B.

Part II—Information Not Required in Prospectus

Item 24. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–B.

Item 25. Other Expenses of Issuance and Distribution

Furnish the information required by Item 511 of Regulation S–B.

Item 26. Recent Sales of Unregistered Securities

Furnish the information required by Item 701 of Regulation S–B.

Item 27. Exhibits

Furnish the exhibits required by Item 601 of Regulation S–B.

Item 28. Undertakings

Furnish the undertakings required by Item 512 of Regulation S–B.

Signatures

In accordance with the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form SB–2 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of _____ State of _____ on _____, 19_____

(Registrant) _____

By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration

statement was signed by the following persons in the capacities and on the dates stated.

(Signature) _____

(Title) _____

(Date) _____

Instructions for Signatures

(1) Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation.

(2) Beneath each signature, type or print the name of each signatory. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. *See* Rule 402 of Regulation C concerning manual signatures and Item 601 of Regulation S–B concerning signatures by powers of attorney.

20. Form S–2 (§ 239.12) is amended by adding paragraph C to General Instruction II to read as follows:

Note: The text of Form S–2 does not appear in the Code of Federal Regulations.

Form S–2

* * * * *

General Instruction

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A "small business issuer," defined in Rule 405 (17 CFR 230.405), that is eligible to use Form S–2, shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K. For example, while Item 1 of Form S–2 requires the information required by Item 501 of Regulation S–K, a small business issuer shall provide the information in Item 501 of Regulation S–B. Where Regulation S–B does not contain a comparable Item, for example there is no Item "301" in Regulation S–B, then a small business issuer may omit the Item. A small business issuer shall provide the financial information in Item 310 of Regulation S–B in lieu of the financial information called for by Item 11 of Form S–2.

* * * * *

21. Form S–3 (§ 239.13) is amended by adding paragraph C to General Instruction II to read as follows:

Note: The text of Form S–3 does not appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instruction

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A "small business issuer," defined in Rule 405 (17 CFR 230.405), that is eligible to use Form S–3 shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K. For example, while Item 1 of Form S–3 requires the information required by Item 501 of Regulation S–K, small business issuers shall provide the information in Item 501 of Regulation S–B. Where Regulation S–B does not contain a comparable Item, for example there is no Item "301" in Regulation S–B, then small business issuers may omit the Item. Small business issuers shall provide the financial information called for by Item 310 of Regulation S–B in lieu of the financial information called for by Item 11.

* * * * *

22. Form S–8 (§ 239.16b) is amended by adding instruction 3 to General Instruction B to read as follows:

Note: The text of Form S–8 does not appear in the Code of Federal Regulations.

Form S–8

* * * * *

General Instruction

* * * * *

B. Application of General Rules and Regulations

* * * * *

3. A "small business issuer," defined in § 230.405, shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K (17 CFR 229.10 *et seq.*).

* * * * *

23. Form S–4 (§ 239.25) is amended by adding paragraph 3 to General Instruction D to read as follows:

Note: The text of Form S–4 will not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

D. Application of General Rules and Regulations

* * * * *

3. A *small business issuer*, defined in § 230.405, shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K except with respect to disclosure called for by subpart 900 of Regulation S–K. Small business issuers shall provide or incorporate by reference the information called for by Item 310 of Regulation S–B.

* * * * *

24. By amending § 239.42 by revising the section heading and paragraph (a), removing the word "and" at the end of paragraph (d), removing the "period" at the end of paragraph (e) and adding to the end of paragraph (e) a "semi-colon" and the word "and" and adding a new paragraph (f) to read as follows: § 239.42. Form F–X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F–8, F–9, F–10, or F–80 (§§ 239.38, 239.39, 239.40, or 239.41 of this chapter) or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239.37 of this chapter), F–8, F–9, F–10, F–80 or SB–2 (§ 239.10 of this chapter), or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 et seq.) on Form 1–A (§ 239.90 of this chapter), or registering securities on Form SB–2.

* * * * *

(a) By any issuer registering securities on Form F–8, F–9, F–10, F–80 or SB–2 under the Securities Act of 1933;

* * * * *

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A, or registering securities on Form SB–2.

25. By amending Form F–X (§ 239.42) to revise the title of the form, to remove the word "and" at the end of General Instruction I(d), to revise General Instruction I(e), to add General Instruction I(f), to revise General Instructions IIE(b)(i) and F and add General Instruction G and to revise Instructions 2 to read as follows.

(**Note:** Form F–X does not appear in the Code of Federal Regulations).

U.S. Securities and Exchange Commission, Washington, DC 20549

Form F–X—Appointment of Agent for Service of Process and Undertaking, General Instructions

I. Form F–X shall be filed with the Commission:

* * * * *

(e) by any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10, F–80, or SB–2; and

(f) by a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A, or registering securities on Form SB–2.

* * * * *

II. * * *

E. * * *

(a) * * *

(b) any civil suit or action brought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, where the investigation, proceeding or cause of action arises out of or relates to or concerns (i) any offering made or purported to be made in connection with the securities registered or qualified by the Filer on Form (Name of form) _____ on (Date) _____ or any purchases or sales of any security in connection therewith; * * *

F. Each person filing this Form in connection with:

(a) the use of Form F–9, F–10, 40–F, or SB–2 or Schedule 13E–4F, 14D–1F or 14D–9F stipulates and agrees to appoint a successor agent for service of process and file an

amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act;

(b) the use of Form F-8 or Form F-80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed following the effective date of the latest amendment to such Form F-8 or Form F-80;

(c) its status as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10, F-80, or SB-2 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding; and

(d) the use of Form 1-A or other Commission form for an offering pursuant to Regulation A stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date of the last sale of securities in reliance upon the Regulation A exemption.

Each Filer further undertakes to advise the Commission promptly of any change to the Agent's name or address during the applicable period by amendment of this Form, referencing the file number of the relevant form in conjunction with which the amendment is being filed.

G. Each person filing this Form, other than a trustee filing in accordance with General Instruction I.(e) of this Form, undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the Forms, Schedules and offering statements described in General Instructions I.(a), I.(b), I.(c), I.(d) and I.(f) of this Form, as applicable; the securities to which such Forms, Schedules and offering statements relate; and the transactions in such securities.

* * * * *

Instructions

1. * * *

2. The name of each person who signs Form F-X shall be typed or printed beneath such person's signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which such person signs Form F-X. If any name is signed pursuant to a board resolution, a copy of the resolution shall be filed with each copy of Form F-X. A certified copy of such resolution shall be filed with the manually signed copy of Form F-X. If any name is signed pursuant to a power of attorney, a copy of the power of attorney shall be filed with each copy of Form F-X. A manually signed copy of such power of attorney shall be filed with the manually signed copy of Form F-X.

26. By revising §§ 239.90 and 239.91 to read as follows:

§ 239.90 Form 1-A, offering statement under Regulation A.

This form shall be used for filing under Regulation A (§§ 230.251-230.263 of this chapter).

§ 239.91. Form 2-A, report pursuant to Rule 257 of Regulation A.

This form shall be used for reports of sales and use of proceeds pursuant to Rule 257 of Regulation A (§ 230.257 of this chapter).

27. By revising Form 1-A (§ 239.90) and Form 2-A (§ 239.91) to read as follows:

(Note: Forms 1-A and 2-A do not appear in the Code of Federal Regulations).

Securities and Exchange Commission

Form 1-A—Regulation A Offering Statement Under the Securities Act of 1933

(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Address, including zip code, and telephone number, including area code of issuer's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification Number)

The following delaying notation is optional, but see Rule 252(g) before omitting it:

This offering statement shall only be qualified upon order of the Commission, unless a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

General Instructions

I. Eligibility Requirements for Use of Form 1-A

This form is to be used for securities offerings made pursuant to Regulation A, 17 CFR 230.251 *et seq.* Careful attention should be directed to the terms, conditions and requirements of the regulation, especially Rule 251, inasmuch as the exemption is not available to all issuers or to every type of securities transaction. Further, the aggregate offering amount of securities which may be sold in any 12 month period is strictly limited to $5 million.

II. Preparation and Filing of the Offering Statement

An offering statement shall be prepared by all persons seeking exemption pursuant to the provisions of Regulation A. Parts I, II and III shall be addressed by all issuers. Part II of the form which relates to the content of the required offering circular provides several alternate formats depending upon the nature and/or business of the issuer; only one format needs to be followed and provided in the offering statement. General information regarding the preparation, format, content of, and where to file the offering statement is contained in Rule 252. Requirements relating to the offering circular are contained in Rules 253 and 255. The offering statement may be printed, mimeographed, lithographed, or typewritten or prepared by any similar process which will result in clearly legible copies. The Commission will attempt to process the offering statement at the place of filing. However, the Commission may refer processing to a different office.

III. Supplemental Information

The following information shall be furnished to the Commission as supplemental information:

(1) A statement as to whether or not the amount of compensation to be allowed or paid to the underwriter has been cleared with the NASD.

(2) Any engineering, management or similar report referenced in the offering circular.

(3) Such other information as requested by the staff in support of statements, representations and other assertions contained in the offering statement.

Part I—Notification

The information requested shall be provided in the order which follows specifying each item number; the text of each item as presented in this form may be omitted. All items shall be addressed and negative responses should be included.

Item 1. Significant Parties

List the full names and business and residential addresses, as applicable, for the following persons:

(a) the issuer's directors;

(b) the issuer's officers;

(c) the issuer's general partners;

(d) record owners of 5 percent or more of any class of the issuer's equity securities;

(e) beneficial owners of 5 percent or more of any class of the issuer's equity securities;

(f) promoters of the issuer;

(g) affiliates of the issuer;

(h) counsel to the issuer with respect to the proposed offering;

(i) each underwriter with respect to the proposed offering;

(j) the underwriter's directors;

(k) the underwriter's officers;

(l) the underwriter's general partners; and

(m) counsel to the underwriter.

Item 2. Application of Rule 262

(a) State whether any of the persons identified in response to Item 1 are subject to any of the disqualification provisions set forth in Rule 262.

(b) If any such person is subject to these provisions, provide a full description including pertinent names, dates and other details, as well as whether or not an application has been made pursuant to Rule

262 for a waiver of such disqualification and whether or not such application has been granted or denied.

Item 3. Affiliate Sales

If any part of the proposed offering involves the resale of securities by affiliates of the issuer, confirm that the following description does not apply to the issuer.

The issuer has not had a net income from operations of the character in which the issuer intends to engage for at least one of its last two fiscal years.

Item 4. Jurisdictions in Which Securities Are to be Offered

(a) List the jurisdiction in which the securities are to be offered by underwriters, dealers or salespersons.

(b) List the jurisdictions in which the securities are to be offered other than by underwriters, dealers or salesmen and state the method by which such securities are to be offered.

Item 5. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this Form 1–A, state:

(1) the name of such issuer;

(2) the title and amount of securities issued;

(3) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(4) the names and identities of the persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this Form 1–A by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (1) through (4) of paragraph (a).

(c) Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption.

Item 6. Other Present or Proposed Offerings

State whether or not the issuer or any of its affiliates is currently offering or contemplating the offering of any securities in addition to those covered by this Form 1–A. If so, describe fully the present or proposed offering.

Item 7. Marketing Arrangements

(a) Briefly describe any arrangement known to the issuer or to any person named in response to Item 1 above or to any selling securityholder in the offering covered by this Form 1–A for any of the following purposes:

(1) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution;

(2) To stabilize the market for any of the securities to be offered;

(3) For withholding commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of its participation.

(b) Identify any underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

Item 8. Relationship with Issuer of Experts Named in Offering Statement

If any expert named in the offering statement as having prepared or certified any part HP LaserJet III/IIIDHPLAIIII.PRSuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 9. Use of a Solicitation of Interest Document

Indicate whether or not a written document or broadcast script authorized by Rule 254 was used prior to the filing of this notification. If so, indicate the date(s) of such use.

Part II—Offering Circular

Financial Statement requirements, regardless of the applicable disclosure model, are specified in Part F/S of this Form 1–A.

The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. See 17 CFR 228.10(e), 17 CFR 229.10. The Commission's safe harbor provision relative to projections is contained in Rule 175, 17 CFR 230.175.

The narrative disclosure contents of offering circulars are specified as follows:

A: For all corporate issuers—the information required by Model A of this Part II of Form 1–A.

B: For all other issuers and for any issuer that so chooses—the information required by either Part I of Form SB–2, 17 CFR 239.10, except for the financial statements called for there, or Model B of this Part II of Form 1–A. Offering circulars prepared pursuant to this instruction need not follow the order of the items or other requirements of the disclosure form. Such information shall not, however, be set forth in such a fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Information requested to be presented in a specified tabular format shall be given in substantially the tabular form specified in the item.

Offering Circular Model A.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. The selling agents should exercise appropriate diligence to determine that no such inaccuracy or incompleteness has occurred, or they may be liable.

Cover Page

(Exact name of Company as set forth in Charter)

Type of securities offered:_____

Maximum number of securities offered:_____

Minimum number of securities offered: _____

Price per security: $_____

Total proceeds: If maximum sold: $_____ If minimum sold: $_____

(See Questions 9 and 10)

Is a commissioned selling agent selling the securities in this offering?

[ ] Yes [ ] No

If yes, what percent is commission of price to public? _____%.

Is there other compensation to selling agent(s)? [ ] Yes [ ] No

Is there a finder's fee or similar payment to any person?

[ ] Yes [ ] No (See Question No. 22)

Is there an escrow of proceeds until minimum is obtained?

[ ] Yes [ ] No (See Question No. 26)

Is this offering limited to members of a special group, such as employees of the Company or individuals? [ ] Yes [ ] No (See Question No. 25)

Is transfer of the securities restricted? [ ] Yes [ ] No (See Question No. 25)

Investment in small businesses involves a high degree of risk, and investors should not invest any funds in this offering unless they can afford to lose their entire investment. See Question No. 2 for the risk factors that management believes present the most substantial risks to an investor in this offering.

In making an investment decision investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended or approved by any federal or state securities commission or regulatory authority. Furthermore, these authorities have not passed upon the accuracy or adequacy of this document. Any representation to the contrary is a criminal offense.

The U.S. Securities and Exchange Commission does not pass upon the merits of any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering circular or selling literature. These securities are offered under an exemption from registration; however, the commission has not made an

independent determination that these securities are exempt from registration.

This Company:

[ ] Has never conducted operations.
[ ] Is in the development stage.
[ ] Is currently conducting operations.
[ ] Has shown a profit in the last fiscal year.
[ ] Other (Specify):_____
(Check at least one, as appropriate)

This offering has been registered for offer and sale in the following states:

State	State file No.	Effective date

Instruction: The Cover Page of the Offering Circular is a summary of certain essential information and should be kept on one page if at all possible. For purposes of characterizing the Company on the cover page, the term "development stage" has the same meaning as that set forth in Statement of Financial Accounting Standards No. 7 (June 1, 1975).

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Financial Statements	
Management's Discussion and Analysis of Certain Relevant Factors	

This offering circular contains all of the representations by the company concerning this offering, and no person shall make different or broader statements than those contained herein. Investors are cautioned not to rely upon any information not expressly set forth in this offering circular.

This Offering Circular, together with Financial Statements and other Attachments, consists of a total of _____ pages.

The Company

1. Exact corporate name: _____
State and date of incorporation: _____

_____

Street address of principal office:

_____

_____

Company Telephone Number: ( ) _____
Fiscal year:
(month) _____
(day) _____

_____

Person(s) to contact at Company with respect to offering:

_____

Telephone Number (if different from above): (_____)_____

RISK FACTORS

2. List in the order of importance the factors which the Company considers to be the most substantial risks to an investor in this offering in view of all facts and circumstances or which otherwise make the offering one of high risk or speculative (i. e., those factors which constitute the greatest threat that the investment will be lost in whole or in part, or not provide an adequate return).

(1) _____
_____
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(15) _____
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(16) _____
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_____

Note: In addition to the above risks, businesses are often subject to risks not foreseen or fully appreciated by management. In reviewing this Offering Circular potential investors should keep in mind other possible risks that could be important.

Instruction: The Company should avoid generalized statements and include only those factors which are unique to the Company. No specific number of risk factors is required to be identified. If more than 16 significant risk factors exist, add additional lines and number as appropriate. Risk factors may be due to such matters as cash flow and liquidity problems, inexperience of management in managing a business in the particular industry, dependence of the Company on an unproven product, absence of an existing market for the product (even though management may believe a need exists), absence of an operating history of the Company, absence of profitable operations in recent periods, an erratic financial history, the financial position of the Company, the nature of the business in which the Company is engaged or proposes to engage, conflicts of interest with management, arbitrary establishment of offering price, reliance on the efforts of a single individual, or absence of a trading market if a trading market is not expected to develop. Cross references should be made to the Questions where details of the risks are described.

Business and Properties

3. With respect to the business of the Company and its properties:

(a) Describe in detail what business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

_____
_____
_____
_____

(b) Describe *how* these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

_____
_____
_____

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry.

Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

Note: Because this Offering Circular focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: _____/_____/_____
$_____
(a recent date)

As of: _____/_____/_____
$_____
(one year earlier)

Explain the reason for significant variations between the two figures, if any.

Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization in anticipation of this offering, describe (and adjust historical per share figures elsewhere in this Offering Circular accordingly).

4.(a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

	Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)			

	Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(2)			
(3)			
(4)			
(5)			

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question Nos. 11 and 12)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 4, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

Offering Price Factors

If the securities offered are common stock, or are exercisable for or convertible into common stock, the following factors may be relevant to the price at which the securities are being offered.

5. What were net, after-tax earnings for the last fiscal year? (If losses, show in parenthesis.)

Total $_____ ($_____ per share)

6. If the Company had profits, show offering price as a multiple of earnings. Adjust to reflect for any stock splits or recapitalizations, and use conversion or exercise price in lieu of offering price, if applicable.

$$\frac{\text{Offering Price Per Share}}{\text{Net After-Tax Earnings Last Year Per Share}} = \frac{\quad}{\text{(price/earnings multiple)}}$$

7.(a) What is the net tangible book value of the Company? (If deficit, show in parenthesis.) For this purpose, net tangible book value means total assets (exclusive of copyrights, patents, goodwill, research and development costs and similar intangible items) minus total liabilities.

$_____ ($_____ per share)

If the net tangible book value per share is substantially less than this offering (or exercise or conversion) price per share, explain the reasons for the variation.

(b) State the dates on which the Company sold or otherwise issued securities during the last 12 months, the amount of such securities sold, the number of persons to whom they were sold, any relationship of such persons to the Company at the time of sale, the price at which they were sold and, if not sold for cash, a concise description of the consideration. (Exclude bank debt.)

8.(a) What percentage of the outstanding shares of the Company will the investors in this offering have? Assume exercise of outstanding options, warrants or rights and conversion of convertible securities, if the respective exercise or conversion prices are at or less than the offering price. Also assume exercise of any options, warrants or rights and conversions of any convertible securities offered in this offering.

If the maximum is sold: _____%

If the minimum is sold: _____%

(b) What post-offering value is management implicitly attributing to the entire Company by establishing the price per security set forth on the cover page (or exercise or conversion price if common stock is not offered)? (Total outstanding shares after offering times offering price, or exercise or conversion price if common stock is not offered.)

If maximum is sold: $_____*

If minimum is sold: $_____*

(For above purposes, assume outstanding options are exercised in determining "shares" if the exercise prices are at or less than the offering price. All convertible securities, including outstanding convertible securities, shall be assumed converted and any options, warrants or rights in this offering shall be assumed exercised.)

*These values assume that the Company's capital structure would be changed to reflect any conversions of outstanding convertible securities and any use of outstanding securities as payment in the exercise of outstanding options, warrants or rights included in the calculation. The type and amount of convertible or other securities thus eliminated would be:_____. These values also assume an increase in cash in the Company by the amount of any cash payments that would be made upon cash exercise of options, warrants or rights included in the calculations. The amount of such cash would be: $_____.

Note: After reviewing the above, potential investors should consider whether or not the offering price (or exercise or conversion price, if applicable) for the securities is appropriate at the present stage of the Company's development.

Instruction: Financial information in response to Questions 5, 6 and 7 should be consistent with the Financial Statements. Earnings per share for purposes of Question 5 should be calculated by dividing earnings for the last fiscal year by the weighted average of outstanding shares during that year. No calculations should be shown for periods of less than one year or if earnings are negative or nominal. For purposes of Question 8, the "offering price" of any options, warrants or rights or convertible securities in the offering is the respective exercise or conversion price.

Use of Proceeds

9.(a) The following table sets forth the use of the proceeds from this offering:

	If minimum sold	If maximum sold
	Amount %	Amount %
Total Proceeds	$.....	$.....
Less: Offering Expenses, Commissions & Finders Fees	100%	100%
Legal & Accounting		
Copying & Advertising		
Other (Specify):		
Net Proceeds from Offering		
Use of Net Proceeds		
	$.....	$.....
	$.....	

	If minimum sold	If maximum sold
	Amount %	Amount %
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total Use of Net Proceeds.....	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	.....	.....
	$..... 100%	$..... 100%

(b) If there is no minimum amount of proceeds that must be raised before the Company may use the proceeds of the offering, describe the order of priority in which the proceeds set forth above in the column "If Maximum Sold" will be used.

Note: After reviewing the portion of the offering allocated to the payment of offering expenses, and to the immediate payment to management and promoters of any fees, reimbursements, past salaries or similar payments, a potential investor should consider whether the remaining portion of his investment, which would be that part available for future development of the Company's business and operations, would be adequate.

10.(a) If material amounts of funds from sources other than this offering are to be used in conjunction with the proceeds from this offering, state the amounts and sources of such other funds, and whether funds are firm or contingent. If contingent, explain.

(b) If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness, including interest rates. If the indebtedness to be discharged was incurred within the current or previous fiscal year, describe the use of proceeds of such indebtedness.

(c) If any material amount of proceeds is to be used to acquire assets, other than in the ordinary course of business, briefly describe and state the cost of the assets and other material terms of the acquisitions. If the assets are to be acquired from officers, directors, employees or principal stockholders of the Company or their associates, give the names of the persons from whom the assets are to be acquired and set forth the cost to the Company, the method followed in determining the cost, and any profit to such persons.

(d) If any amount of the proceeds is to be used to reimburse any officer, director, employee or stockholder for services already rendered, assets previously transferred, or monies loaned or advanced, or otherwise, explain:

11. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's tradepayables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

12. Indicate whether proceeds from this offering will satisfy the Company's cash requirements for the next 12 months, and whether it will be necessary to raise additional funds. State the source of additional funds, if known.

Instruction: Use of net proceeds should be stated with a high degree of specificity. Suggested (but not mandatory) categories are: leases, rent, utilities, payroll (by position or type), purchase or lease of specific items of equipment or inventory, payment of notes, accounts payable, etc., marketing or advertising costs, taxes, consulting fees, permits, professional fees, insurance and supplies. Categories will vary depending on the Company's plans. Use of footnotes or other explanation is recommended where appropriate. Footnotes should be used to indicate those items of offering expenses that are estimates. Set forth in separate categories all payments which will be made immediately to the Company's executive officers, directors and promoters, indicating by footnote that these payments will be so made to such persons. If a substantial amount is allocated to working capital, set forth separate sub-categories for use of the funds in the Company's business.

If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect as one of the Use of Net Proceeds categories should be included together with a statement of the amount of proceeds not so allocated and a footnote explaining how the Company expects to employ such funds not so allocated.

Capitalization

13. Indicate the capitalization of the Company as of the most recent balance sheet date (adjusted to reflect any subsequent stock splits, stock dividends, recapitalizations or refinancings) and as adjusted to reflect the sale of the minimum and maximum amount of securities in this offering and the use of the net proceeds therefrom:

	Amount outstanding		
	As of: / / (date)	As adjusted	
		Minimum	Maximum
Debt:			
Short-term debt (average interest rate %).	$	$	$
Long-term debt (average interest rate %).			
Total debt			
Stockholders equity (deficit):			
Preferred stock—par or stated value (by class of preferred in order of preferences).			
Common stock—par or stated value.			
Additional paid in capital.			
Retained earnings (deficit).			
Total stockholders equity (deficit).			
Total Capitalization.			

Number of class of preferred	Par Value shares authorized	Per share
	$	
	$	
	$	

Number of common shares authorized: _____ shares. Par or stated value per share, if any: $_____

Number of common shares reserved to meet conversion requirements or for the issuance upon exercise of options, warrants or rights:_____ shares.

Instruction: Capitalization should be shown as of a date no earlier than that of the most recent Financial Statements provided pursuant to Question 46. If the Company has mandatory redeemable preferred stock, include the amount thereof in "long term debt" and so indicate by footnote to that category in the capitalization table.

Description of Securities

14. The securities being offered hereby are:
[ ] Common Stock
[ ] Preferred or Preference Stock
[ ] Notes or Debentures
[ ] Units of two or more types of securities composed of: _____
[ ] Other: _____

15. These securities have:

Yes	No	
[ ]	[ ]	Cumulative voting rights
[ ]	[ ]	Other special voting rights
[ ]	[ ]	Preemptive rights to purchase in new issues of shares
[ ]	[ ]	Preference as to dividends or interest
[ ]	[ ]	Preference upon liquidation
[ ]	[ ]	Other special rights or preferences (specify):

Explain:

16. Are the securities convertible? [ ] Yes [ ] No
If so, state conversion price or formula.
_____
Date when conversion becomes effective: / /
Date when conversion expires: / /

17.(a) If securities are notes or other types of debt securities:
(1) What is the interest rate? _____%
If interest rate is variable or multiple rates, describe:

(2) What is the maturity date? / /

If serial maturity dates, describe:

(3) Is there a mandatory sinking fund? [ ] Yes [ ] No
Describe: _____

(4) Is there a trust indenture? [ ] Yes [ ] No Name, address and telephone number of Trustee

(5) Are the securities callable or subject to redemption? [ ] Yes [ ] No
Describe, including redemption prices:

(6) Are the securities collateralized by real or personal property?
[ ] Yes [ ] No Describe:

(7) If these securities are subordinated in right of payment of interest or principal, explain the terms of such subordination.

How much currently outstanding indebtedness of the Company is senior to the securities in right of payment of interest or principal? $_____

How much indebtedness shares in right of payment on an equivalent (pari passu) basis? $_____

How much indebtedness is junior (subordinated) to the securities? $_____

(b) If notes or other types of debt securities are being offered and the Company had earnings during its last fiscal year, show the ratio of earnings to fixed charges on an actual and pro forma basis for that fiscal year. "Earnings" means pretax income from continuing operations plus fixed charges and capitalized interest. "Fixed charges" means interest (including capitalized interest), amortization of debt discount, premium and expense, preferred stock dividend requirements of majority owned subsidiary, and such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case. The pro forma ratio of earnings to fixed charges should include incremental interest expense as a result of the offering of the notes or other debt securities.

	Last fiscal year		
	Actual	Pro forma	
		Minimum	Maximum
"Earnings" = "Fixed Charges"			
If no earnings show "Fixed Charges" only			

Note: Care should be exercised in interpreting the significance of the ratio of earnings to fixed charges as a measure of the "coverage" of debt service, as the existence of earnings does not necessarily mean that the Company's liquidity at any given time will permit payment of debt service requirements to be timely made. See Question Nos. 11 and 12. See also the Financial Statements and especially the Statement of Cash Flows.

18. If securities are Preference or Preferred stock: Are unpaid dividends cumulative?
[ ] Yes [ ] No Are securities callable?
[ ] Yes [ ] No
Explain:

_____

_____

_____

_____

Note: Attach to this Offering Circular copies or a summary of the charter, bylaw or contractual provision or document that gives rise to the rights of holders of Preferred or Preference Stock, notes or other securities being offered.

19. If securities are capital stock of any type, indicate restrictions on dividends under loan or other financing arrangements or otherwise:

_____

_____

_____

20. Current amount of assets available for payment of dividends if deficit must be first made up, show deficit in parenthesis):
$_____

PLAN OF DISTRIBUTION

21. The selling agents (that is, the persons selling the securities as agent for the Company for a commission or other compensation) in this offering are:
Name:
Address: _____

_____

Telephone No. ( ) _____
Name:
Address: _____

_____

Telephone No. ( ) _____

22. Describe any compensation to selling agents or finders, including cash, securities, contracts or other consideration, in addition to the cash commission set forth as a percent of the offering price on the cover page of this Offering Circular. Also indicate whether the Company will indemnify the selling agents or finders against liabilities under the securities laws. ("Finders" are persons who for compensation act as intermediaries in obtaining selling agents or other-wise making introductions in furtherance of this offering.)

_____

_____

_____

_____

23. Describe any material relationships between any of the selling agents or finders and the Company or its management.

_____

_____

_____

_____

Note: After reviewing the amount of compensation to the selling agents or finders for selling the securities, and the nature of any relationship between the selling agents or finders and the Company, a potential investor should assess the extent to which it may be inappropriate to rely upon any recommendation by the selling agents or finders to buy the securities.

24. If this offering is not being made through selling agents, the names of persons at the Company through which this offering is being made:
Name:
Address: _____

_____

Telephone No. ( ) _____
Name:
Address: _____

_____

Telephone No. ( ) _____

25. If this offering is limited to a special group, such as employees of the Company, or is limited to a certain number of individuals (as required to qualify under Subchapter S of the Internal Revenue Code) or is subject to any other limitations, describe the limitations and any restrictions on resale that apply:

_____

_____

_____

_____

Will the certificates bear a legend notifying holders of such restrictions?
[ ] Yes [ ] No

26. (a) Name, address and telephone number of independent bank or savings and loan association or other similar depository institution acting as escrow agent if proceeds are escrowed until minimum proceeds are raised:

_____

_____

_____

_____

(b) Date at which funds will be returned by escrow agent if minimum proceeds are not raised:

_____

Will interest on proceeds during escrow period be paid to investors? [ ] Yes [ ] No

27. Explain the nature of any resale restrictions on presently outstanding shares, and when those restrictions will terminate, if this can be determined:

_____

_____

_____

_____

Note: Equity investors should be aware that unless the Company is able to complete a further public offering or the Company is able to be sold for cash or merged with a public company that their investment in the Company may be illiquid indefinitely.

Dividends, Distributions and Redemptions

28. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

_____

_____

_____

_____

Officers and Key Personnel of the Company

29. Chief Executive Officer:
Title: _____
Name:
Age:
Office Street Address:

_____

_____

Telephone No.: ( ) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

_____

_____

_____

_____

Education (degrees, schools, and dates):

_____

_____

Also a Director of the Company [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

_____

_____

_____

_____

30. Chief Operating Officer:
Title: _____
Name:
Age:
Office Street Address:

Telephone No.: ( ) ———
Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No
Indicate amount of time to be spent on Company matters if less than full time:

31. Chief Financial Officer:
Title: ———
Name: ———
Age: ———
Office Street Address:

Telephone No: ( ) ———
Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No
Indicate amount of time to be spent on Company matters if less than full time:

32. Other Key Personnel:

(A) Name: ———
Age: ———
Title: ———
Office Street Address:

Telephone No.: ( ) ———
Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No
Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: ———
Age: ———
Title: ———
Office Street Address:

Telephone No.: ( ) ———
Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No
Indicate amount of time to be spent on Company matters if less than full time:

Instruction: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

Directors of the Company

33. Number of Directors: ——. If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

34. Information concerning outside or other Directors (i.e. those not described above):
(A) Name: ———
Age: ———
Office Street Address:

Telephone No.: ( ) ———
Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(B) Name: ———
Age: ———
Office Street Address:

Telephone No.: ( )

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(C) Name:

Age:

Office Street Address:

Telephone No.: ( )

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

35. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [ ] Yes [ ] No

Explain:

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any (including the obtaining of releases or consents from prior employers), have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

36. If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was a general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within the past five years, set forth below the name of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

37. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares	Average price per share	Number of shares now held	Percent of total	Number of shares held after offering if all securities sold	Percent of total

Name:

Office Street Address:

	Class of shares	Average price per share	Number of shares now held	Percent of total	Number of shares held after offering if all securities sold	Percent of total

Telephone No.
( ) _____
Principal occupation:
.....

Name:
.....

Office Street Address:
.....
.....
.....

Telephone No.
( ) _____
Principal occupation:
.....

Name:
.....

Office Street Address:
.....
.....
.....

Telephone No.
( ) _____
Principal occupation:
.....

Name:
.....

Office Street Address:
.....
.....
.....

Telephone No.
( ) _____
Principal occupation:
.....

38. Number of shares beneficially owned by Officers and Directors as a group:
Before offering: _____ shares (____ % of total outstanding)
After offering:
(a) Assuming minimum securities sold: _____ shares (____ % of total outstanding)
(b) Assuming maximum securities sold: _____ shares (____ % of total outstanding)
(Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

Management Relationships, Transactions and Remuneration

39.(a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

40.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer	$	$
Chief Operating Officer		
Chief Accounting Officer		
Key Personnel:		
Others:		
Total:		
Directors as a group (number of persons)		

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

41.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or option plans but not yet covered by outstanding purchase agreements, options or warrants: _____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

42. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

Instruction: For purposes of Question 39(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 40, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

43. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

Federal Tax Aspects

44. If the Company is an S corporation under the Internal Revenue Code of 1986, and it is anticipated that any significant tax benefits will be available to investors in this offering, indicate the nature and amount of such anticipated tax benefits and the material risks of their disallowance. Also, state the name, address and telephone number of any tax advisor that has passed upon these tax benefits. Attach any opinion or description of the tax consequences of an investment in the securities by the tax advisor.

Name of Tax Advisor: _____

Address: _____

Telephone No. (_____) _____-_____

Note: Potential investors are encouraged to have their own personal tax consultant contact the tax advisor to review details of the tax benefits and the extent that the benefits would be available and advantageous to the particular investor.

Miscellaneous Factors

45. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this Offering Circular not misleading or incomplete.

Financial Statements

46. Provide the financial statements required by Part F/S of this Offering Circular section of Form 1-A.

Management's Discussion and Analysis of Certain Relevant Factors

47. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

48. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

49. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: _____%. What is the anticipated gross margin for next year of operations? Approximately _____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

50. Foreign sales as a percent of total sales for last fiscal year: _____%. Domestic government sales as a percent of total domestic sales for last fiscal year: _____%. Explain the nature of these sales, including any anticipated changes:

Offering Circular Model B.

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

(a) Name of the issuer;

(b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;

(c) Date of the offering circular;

(d) Description and amount of securities offered (Note: this description should include, for example, appropriate disclosure of redemption and conversion features of debt securities);

(e) The statement required by Rule 253;

(f) The table(s) required by Item 2;

(g) The name of the underwriter or underwriters;

(h) Any materials required by the law of any state in which the securities are to be offered;

(i) If applicable, identify material risks in connection with the purchase of the securities; and

(j) Approximate date of commencement of proposed sale to the public.

Instruction: Where the name of the issuer is the same as the name of another well-known company or indicates a line of business in which the issuer is not engaged or is engaged to only a limited extent, a statement should be furnished to that effect. In some circumstances, however, disclosure may not be sufficient, and a change of name may be the only way to cure its misleading character.

Item 2. Distribution Spread

(a) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary).

Underwriting	Proceeds price to public	Discount and commissions	To issuer or other persons
Per unit			
Total			

If the securities are to be offered on a best efforts basis, the cover page should set forth the termination date, if any, of the offering, any minimum required sale and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above.

	Price to public	Underwriting discount and commissions	Proceeds to issuer or other persons
Total minimum			
Total maximum			

Instructions

1. The term "commissions" shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation shall be briefly identified in a note to the table with a cross-reference to a more complete description elsewhere in the offering circular.

3. Prior to the commencement of sales pursuant to Regulation A, the issuer shall inform the Commission whether or not the amount of compensation to be allowed or paid to the underwriters, as described in the offering statement, has been cleared with the National Association of Securities Dealers, Inc.

4. If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained.

(b) Any finder's fees or similar payments shall be disclosed on the cover page with a reference to a more complete discussion in the offering circular. Such disclosure should identify the finder, the nature of the services rendered and the nature of any relationship between the finder and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates thereof).

(c) The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, should be disclosed in a footnote to the table.

Item 3. Summary Information, Risk Factors and Dilution

(a) Where appropriate to a clear understanding by investors, there should be set forth in the forepart of the offering circular, under an appropriate caption, a carefully organized series of short, concise paragraphs, summarizing the principal factors which make the offering one of high risk or speculative. *Note:* These factors may be due to such matters as an absence of an operating history of the issuer, an absence of profitable operations in recent periods, an erratic financial history, the financial position of the issuer, the nature of the business in which the issuer is engaged or proposes to engage, conflicts of interest with management, reliance on the efforts of a single individual, or the method of determining the market price where no market currently exists. Issuers should avoid generalized statements and include only those factors which are unique to the issuer.

(b) Where there is a material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (1) the net tangible book value per share before and after the distribution; (2) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (3) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 4. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) Outline briefly the plan of distribution of any securities being issued which are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(d) If any of the securities are to be offered for the account of security holders, indicate on the cover page the total amount to be offered for their account and include a cross-reference to a fuller discussion elsewhere in the offering circular. Such discussion should identify each selling security holder, state the amount owned by him, the amount offered for

his account and the amount to be owned after the offering.

(e)(1) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

(2) If there will be a material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the salient provisions in this regard and the effects on the issuer should be stated.

Instruction

Attention is directed to the provisions of Rules 10b–9 [17 CFR § 240.10b–9] and 15c2–4 [17 CFR § 240.15c2–4] under the Securities Exchange Act of 1934. These rules outline, among other things, antifraud provisions concerning the return of funds to subscribers and the transmission of proceeds of an offering to a seller.

Item 5. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions

1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purpose set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 2.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the issuer.

6. The issuer may reserve the right to change the use of proceeds provided that such reservation is due to certain contingencies which are adequately disclosed.

Item 6. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(iii) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of factors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) The following requirement in subparagraph (i) applies only to issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the offering statement.

(i) Describe, if formulated, the issuer's plan of operation for the twelve months following the commencement of the proposed offering. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the proceeds from the offering will satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(ii) Any engineering, management or similar reports which have been prepared or provided for external use by the issuer or by a principal underwriter in connection with the proposed offering should be furnished to the Commission at the time of filing the offering statement or as soon as practicable thereafter. There should also be furnished at the same time a statement as to the actual or proposed use and distribution of such report or memorandum. Such statement should identify each class of persons who have received or will receive the report or memorandum, and state the number of copies distributed to each such class. If no such report or memorandum has been prepared, the Commission should be so informed in writing at the time the report or memorandum would otherwise have been submitted.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 7. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 8. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

(1) directors;

(2) persons nominated to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 9. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

Name of individual or identity of group

Capacities in remuneration was received

Aggregate remuneration

Instructions

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurements of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 10. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; *Note*—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of class ———

(2) Name and address of owner ———

(3) Amount owned before the offering ———

(4) Amount owned after the offering ———

(5) Percent of class ———

Instruction

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder ———

Title and amount securities called for by options, warrants or rights———

Exercise price ———

Date of exercise ———

Instruction

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the offering statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 11. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal securityholder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions

1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or

contract carrier fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item calls for disclosure of indirect as well as direct material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (5) above had an interest of less than 10 percent; or

(c) the interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

6. Information shall be furnished in answer to this Item with respect to transactions not excluded above which involve remuneration from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

Item 12. Securities Being Offered

(a) If capital stock is being offered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being offered, outline briefly the following:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction

In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) the amount of securities called for by such warrants, convertible securities or rights;

(2) the period during which and the price at which the warrants, convertible securities or rights are exercisable;

(3) the amounts of warrants, convertible securities or rights outstanding; and

(4) any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of the offering statement and included in the offering circular which is distributed to investors.

Such financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP) in the United States. If the issuer is a Canadian company, a reconciliation to GAAP in the United States shall be filed as part of the financial statements.

Issuers which have audited financial statements because they prepare them for other purposes, shall provide them.

The Commission's Regulation S–X, 17 CFR 210.1 et seq. relating to the form, content of and requirements for financial statements shall not apply to the financial statements required by this part, except that if audited financial statements are filed, the qualifications and reports of an independent auditor shall comply with the requirements of Article 2 of Regulation S–X.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the offering statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2

fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the offering statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Rule 405 of Regulation C, 17 CFR § 230.405.

(c) (i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) These financial statements need not be audited.

(iii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iv) If none of the conditions in the definitions of significant subsidiary in Rule 405 exceeds 20%, income statements of the acquired business for only the most recent fiscal year and any interim period need be filed.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3)(b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III—Exhibits

Item 1. Index to Exhibits

(a) An index to the exhibits filed should be presented immediately following the cover page to Part III.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 1–A.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any offering statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 411(d) of Regulation C shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the offering statement.

(1) Underwriting Agreement—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

(2) Charter and by-laws—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(3) Instruments defining the rights of security holders—(a)All instruments defining the rights of any holder of the issuer's securities, including but not limited to: (i) Holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) Instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if such debt is not being issued pursuant to this Regulation A offering and the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities which is to be retired or redeemed prior to the issuance or upon delivery of the securities being issued pursuant to this Regulation A offering and appropriate steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

(4) Subscription agreement—The form of any subscription agreement to be used in connection with the purchase of securities in this offering.

(5) Voting trust agreement—Any voting trust agreements and amendments thereto.

(6) Material contracts—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the offering statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the offering statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or

license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the offering statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(7) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(8) *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the offering statement. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the offering statement. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(9) *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the Regulation A offering.

(10) *Consents*—(a) Experts: The written consent of (i) any accountant, engineer, geologist, appraiser or any person whose profession gives authority to a statement made by them and who is named in the offering statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the offering statement; (ii) the expert that authored any portion of a report quoted or summarized as such in the offering statement, expressly stating their consent to the use of such quotation or summary; (iii) any persons who are referenced as having reviewed or passed upon any information in the offering statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) Underwriters: A written consent and certification in the form which follows signed by each underwriter of the securities proposed to be offered. All underwriters may, with appropriate modifications, sign the same consent and certification or separate consents and certifications may be signed by any underwriter or group of underwriters.

Consent and Certification by Underwriter

1. The undersigned hereby consents to being named as underwriter in an offering statement filed with the Securities and Exchange Commission by [insert name of issuer] pursuant to Regulation A in connection with a proposed offering of [insert title of securities] to the public.

2. The undersigned hereby certifies that it furnished the statements and information set forth in the offering statement with respect to the undersigned, its directors and officers or partners, that such statements and information are accurate, complete and fully responsive to the requirements of Parts I, II and III of the Offering Statement thereto, and do not omit any information required to be stated therein with respect of any such persons, or necessary to make the statements and information therein with respect to any of them not misleading.

3. If Preliminary Offering Circulars are distributed, the undersigned hereby undertakes to keep an accurate and complete record of the name and address of each person furnished a Preliminary Offering Circular and, if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or a Final Offering Circular to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

_____

(Underwriter)

By _____

Date / /

(c) All written consents shall be dated and manually signed.

(11) *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Offering Statement, indicating whether they will, when sold, be legally issued, fully paid and nonassessable, and if debt securities, whether they will be binding obligations of the issuer.

(12) *Sales Material*—Any material required to be filed by virtue of Rule 256.

(13) *"Test the Water" Material*—Any written document or broadcast script used under the authorization of Rule 254.

(14) *Appointment of Agent for Service of Process*—A Canadian issuer shall provide Form F–X.

(15) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

Signatures

The issuer has duly caused this offering statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of_____, State of_____, on _____ ____, 19____.

(Issuer) _____

By (Signature and Title)_____

This offering statement has been signed by the following persons in the capacities and on the dates, indicated.

(Signature) _____

(Title)_____

(Selling security holder)_____

(Date)_____

Instructions

1. The offering statement shall be signed by the issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing instrumentality, and each person, other than the issuer, for whose account any of the securities are to be offered. If a signature is by a person on behalf of any other person, evidence of authority to sign shall be filed with the offering statement, except where an executive officer signs on behalf of the issuer. If the issuer is Canadian, its authorized representative in the United States also shall sign. Where the issuer is a limited partnership, the offering statement shall also be signed by a majority of the board of directors of any corporate general partner.

2. The name of each person signing the offering statement shall be typed or printed beneath the signature.

Securities and Exchange Commission

FORM 2–A—Report of Sales and Uses of Proceeds Pursuant to Rule 257 of Regulation A File No. 24–_____

For period ending / /

Indicate whether the report is an:

initial report [ ]

amendment [ ]

or final report [ ]

If the report is an amendment, indicate the number of such amendment. / / /

If the offering has terminated, indicate the date of termination / /

General Instructions

The report shall be filed in accordance with the provisions of Rule 257 of Regulation A.

Answer each item in the box(es) or spaces provided. If additional space is required for any response, continue the response on an attached sheet.

If the issuer is required to file any report(s) on this form subsequent to its initial filing, each subsequent filing shall be deemed to be an amendment to the initial filing. Do not report in any amendment responses to Items 3–11 unless the information has changed.

No fee is required to accompany this filing.

Seven copies of the form shall be filed with the Commission Office where the Regulation A Offering Statement was qualified. At least one copy of the form shall be manually signed; other copies may bear typed or printed signatures.

1. _____
Exact name of issuer as specified in its charter.

2. Date of qualification of the offering statement: [ ][ ] [ ] [ ] [ ] [ ]

3. Has the offering commenced? [ ] Yes [ ] No.

If yes, date of commencement: [ ][ ] [ ] [ ] [ ] [ ]

If no, explain briefly:

_____

_____

_____

4. Did the offering terminate before any securities were sold? [ ] Yes [ ] No.

If yes, explain briefly:

_____

_____

_____

If "yes", do not answer Items 5–11.

5. Did the offering terminate prior to the sale of all the securities qualified under Regulation A? [ ] Yes [ ] No.

If yes, explain briefly:

_____

_____

_____

_____

6. Indicate the total number of shares or other units offered and sold to date: _____(issuer's account)_____(selling securityholders)

Indicate the number of shares or other units still being offered: _____(issuer's account)_____(selling securityholders)

7. Total amount of dollars received from the public to date. $_____

Total amount allocable to selling securityholders: $_____

Underwriting discount or commission allowed.	$_____
Underwriting expenses paid	$_____
Finders' Fees	$_____
Other expenses paid to date by or for issuer:	
Legal (including organization)	$_____
Accounting	$_____
Engineering	$_____
Printing and Advertising	$_____
Other (specify)	$_____
	$_____
	$_____
	$_____
Total costs and expenses	$_____
Total net proceeds remaining	$_____

8. Uses of net proceeds to date.

Instructions

1. Do not include any amount in "working capital" to which a more specific category is applicable.

2. Round all amounts to the nearest dollar.

3. Specify under "other purposes" any purpose for which at least 5% of the issuer's proceeds or $50,000, whichever is less, has been used.

Salaries and fees	$_____
Construction of plant, building and facilities.	$_____
Purchases and installation of machinery and equipment.	$_____
Purchase of real estate	$_____
Acquisition of other business(es)	$_____
Repayment of indebtedness	$_____
Working capital	$_____
Development expense (product development, research, patent costs, etc.).	$_____
Temporary investment (specify)	$_____
	$_____
	$_____
	$_____
Other purposes (specify):	
	$_____
	$_____
	$_____
	$_____
	$_____
	$_____
	$_____
	$_____

9. Do the use(s) of proceeds in Item 8 represent a material change in the use(s) of proceeds described in the offering circular? [ ] Yes [ ] No.

If yes, explain briefly:

_____

_____

_____

_____

10. State the number of shares held by each promoter, director, officer or controlling person of the issuer, if different from the amount stated in the offering circular.

_____

_____

_____

_____

11. List the names and addresses of all brokers and dealers who have, to the knowledge of the issuer or underwriters, participated in the distribution of the securities during the period covered by this report.

_____

_____

_____

_____

Signature

Pursuant to the requirements of Rule 257 and Regulation A, _____ (duly authorized) has caused this report to be signed on its behalf by the undersigned thereunto.

_____

Issuer

By _____

Signature

_____

Date

Instruction:

The report shall be signed by an executive officer, general partner or counsel of the issuer or by any other duly authorized person. The name and any title of the person who signs the report shall be typed or printed beneath the signature.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

28. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

§ 240.3b–6 [Amended]

29. By amending § 240.3b–6 paragraph (b)(1)(i) after the words "Securities Act of 1933" add the words ", offering statement or solicitation of interest written document or broadcast script under Regulation A" and in paragraph (b)(2)(i) after the parenthetical "(§ 229.303 of this chapter)" add the words "or Regulation S–B (§ 228.303 of this chapter)" and after the words "Rule 3–20(c)" add the words "of Regulation S–X (§ 210.3–20(c)".

30. Section 240.12b–2 is amended by adding the definition of "small business issuer" in the appropriate alphabetical order to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) has revenues of less than $25,000,000;

(2) is a U.S. or Canadian issuer;

(3) is not an investment company; and

(4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of $25,000,000 or more.

Note: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange

Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

* * * * *

31. By amending paragraph (b)(5)(ii) of § 240.14a–3 to add the words "or, if applicable, a plan of operation required by Item 303(a) of Regulation S–B (§ 228.303(a) of this chapter)" after the words "(§ 229.303 of this chapter)" and to add the following Note after the introductory text of paragraph (b) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

Note to Small Business Issuers—A "small business issuer," defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) rather than Regulation S–K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuers shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)).

* * * * *

32. By adding Note F to § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Notes

* * * * *

F. *Note to Small Business Issuers*—Registrants and acquirees that meet the definition of "small business issuer" under Rule 12b–2 of the Exchange Act (§ 240.12b–2) shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) and not Regulation S–K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S–B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S–B in lieu of the financial statements required in Schedule 14A.

* * * * *

33. By adding the following text to the end of the introductory Note to § 240.14c–101 to read as follows:

§ 240.14c–101 Schedule 14C. Information Required in Information Statement.

Note. * * * Registrants and acquirees that meet the definition of "small business issuer" under Rule 12b–2 of the Exchange Act (§ 240.12b–2) shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) and not Regulation S–K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S–B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S–B in lieu of any financial statements required by Item 1 of § 240.14c–101.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

34. The authority for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted. 35. By adding § 249.210b to read as follows:

§ 249.210b Form 10–SB, optional form for the registration of securities of a small business issuer.

A "small business issuer," defined in Rule 12b–2 (§ 240.12b–2 of this chapter) may use Form 10–SB to register a class of its securities under Section 12 (b) or (g) of the Exchange Act. For further information concerning eligibility to use this form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.).

Note: The text and instructions of Form 10–SB will not appear in the Code of Federal Regulations.

Form 10–SB

U.S. Securities and Exchange Commission
Washington, D.C. 20549

OMB Approval
OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burden hours per response: 1.0

General Form for Registration of Securities of Small Business Issuers Under Section 12 (b) or (g) of the Securities Exchange Act of 1934

_____

(Name of Small Business Issuer in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification No.)

_____

(Address of principal executive offices)

_____

(ZIP Code)

Issuer's telephone number, _____

Securities to be registered under Section 12(b) of the Act:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

Securities to be registered under Section 12(g) of the Act:

_____

(Title of class)

_____

(Title of class)

General Instructions

A. Use of Form 10–SB

1. This Form may be used by a "small business issuer," defined in Rule 12b–2 (§ 240.12b–2) of the Securities Exchange Act of 1934 (the "Exchange Act"), to register a class of securities under Section 12 (b) or (g) of the Exchange Act. For further information as to eligibility to use this form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.).

2. If the small business issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing this registration statement, file with the Commission a written irrevocable consent and power of attorney on Form F–X [§ 239.42]. Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the registration statement.

B. Signature and Filing of Registration Statement

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits.

2. Manually sign at least one copy of the report filed with the Commission and each exchange; other copies should have typed or printed signatures.

C. Information To Be Incorporated by Reference

Refer to Rule 12b–23 (§ 240.12b–23 of this chapter) if information will be incorporated by reference from other documents in answer or partial answer to any item of this Form.

Information Required in Registration Statement

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 3. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 4. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 5. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S–B.

Item 6. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 7. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 8. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B.

Item 9. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S–B.

Item 10. Recent Sales of Unregistered Securities

Furnish the information required by Item 701 of Regulation S–B.

Item 11. Description of Securities

Furnish the information required by Item 202 of Regulation S–B.

Item 12. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–B.

Item 13. Financial Statements

Furnish the information required by Item 310 of Regulation S–B.

Item 14. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S–B.

Item 15. Financial Statements and Exhibits

(a) List separately all financial statements filed as part of the registration statement.

(b) Furnish the exhibits required by Item 601 of Regulation S–B.

Signatures

In accordance with Section 12 of the Securities Exchange Act of 1934, the registrant caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

_____

(Registrant)

Date _____

By _____

(Signature) *

* Print the name and title of each signing officer under his or her signature.

36. By adding § 249.310b to read as follows:

§ 249.310b Form 10–KSB, Optional Form for Annual and Transition Reports of Small Business Issuers Under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

A *small business issuer* defined in Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter), may use this form for its annual and transitional reports under section 13 or 15(d) of the Exchange Act. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report and transition reports shall be filed after an issuer changes its fiscal year end in accordance with Rule 13a–10 or Rule 15d–10 (§§ 240.13a–10 or 240.15d–10 of this chapter).

Note: The text and instructions of Form 10–KSB will not appear in the Code of Federal Regulations.

Form 10–KSB

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval

OMB Number: xxxx–xxxx

Expires: Approval Pending Estimated average burden hours per response—1.0

(Mark One)

[ ] Annual Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934 [Fee Required]

For the fiscal year ended _____

[ ] Transition Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934 [No Fee Required]

For the transition period from _____ to _____

Commission file number _____

_____

(Name of small business issuer in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification No.)

_____

(Address of principal executive offices)

_____

(ZIP Code)

Issuer's telephone number ( ) _____

Securities registered under Section 12(b) of the Exchange Act:

Title of each class _____

_____

Name of each exchange on which registered

_____

Securities registered under Section 12(g) of the Exchange Act:

_____

(Title of class)

_____

(Title of class)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for past 90 days.

Yes _____ No _____

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S–B is not contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10–KSB or any amendment to this Form 10–KSB. [ ]

State issuer's revenues for its most recent fiscal year. _____

State the aggregate market value of the voting stock held by non-affiliates computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within the past 60 days. (See definition of affiliate in Rule 12b–2 of the Exchange Act).

Note: If determining whether a person is an affiliate will involve an unreasonable effort and expense, the issuer may calculate the aggregate market value of the common equity held by non-affiliates on the basis of reasonable assumptions, if the assumptions are stated.

(Issuers Involved in Bankruptcy Proceedings During the Past Five Years)

Check whether the issuer has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Exchange Act after the distribution of securities under a plan confirmed by a court. Yes _____ No _____

(Applicable Only to Corporate Registrants)

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date.

_____

Documents Incorporated by Reference

If the following documents are incorporated by reference, briefly describe them and identify the part of the Form 10–KSB (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) any annual report to security holders; (2) any proxy or information statement; and (3) any prospectus filed pursuant to Rule 424 (b) or (c) of the Securities Act of 1933 ("Securities Act"). The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1990).

General Instructions

A. Use of Form 10–KSB

This Form may be used by a "small business issuer," defined in Rule 12b–2 of the Exchange Act, for its annual and transitional reports under section 13 or 15(d) of that Act. For further information as to eligibility to use this Form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.). Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports shall be filed within the time period specified in Rules 13a–10 or 15d–

10 of the Exchange Act (§§ 240.13a–10 or 240.15d–10 of this chapter).

B. Application of General Rules and Regulations

The General Rules and Regulations under the Exchange Act (§ 240.0–1 *et seq.*), particularly Regulation 12B (§ 240.12b–1 *et seq.*) contain certain general requirements for reports on any form which should be carefully read and observed in the preparation and filing of reports on this Form.

C. Signature and Filing of Report

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits. One of the copies filed with the Commission and each exchange should be manually signed; all other copies should have typed or printed signatures.

2. Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report. See Rule 12b–11 concerning manual signatures under powers of attorney.

D. Information as to Employee Stock Purchase, Savings and Similar Plans

Separate annual and other reports need not be filed under Section 15(d) of the Exchange Act for any employee stock purchase, savings or similar plan if the issuer of the securities offered under the plan furnishes to the Commission the information and documents specified in the Rule 15d–21 of the Exchange Act.

E. Information to be Incorporated by Reference

1. Refer to Rule 12b–23 (§ 240.12b–23 of this chapter) if information will be incorporated by reference from other documents in answer or partial answer to any item of this Form.

2. The Information called for in Parts I and II of this Form, Items 1–6, may be incorporated by reference from:

(a) the registrant's annual report to security holders furnished to the Commission under Rule 14a–3(b) or Rule 14c–3(a) of the Exchange Act (§§ 240.14a–3(b), 240.14c–3(a) of this chapter); or

(b) the registrant's annual report to shareholders if it contains the information required by Rule 14a–3 (§ 240.14–3 of this chapter).

3. The information required by Part III may be incorporated by reference from the registrant's definitive proxy statement (filed or to be filed in accor iance with § 240.14a–101, Schedule 14A) or definitive information statement (filed or to be filed pursuant to § 240.14c–101, Schedule 14C) which involves the election of directors, if such definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by this Form. If the definitive proxy or information statement is not filed within the 120-day period, the information called for in Part III information must be filed as part of the Form 10–KSB, or as an amendment to the Form 10–KSB under cover of Form 8 (§ 249.480 of this chapter), not later than the end of the 120-day period.

4. No item numbers of captions or items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b–23(b) of the Exchange Act (§ 240.12b–23(b)) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this Form by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form by incorporating by reference from a definitive proxy statement or information statement involving the election of directors, then this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures and a cross-reference sheet setting forth the item numbers and captions in Parts I, II and III of this Form and page and/or pages in the referenced materials where the corresponding information appears.

F. Integrated Reports to Security Holders

Annual reports to security holders may be combined with the required information of this Form and will be suitable for filing with the Commission if the following conditions are satisfied:

1. The combined report contains complete answers to all items required by Form 10–KSB. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made. If the information required by Part III of Form 10–KSB is omitted by virtue of General Instruction E, a definitive proxy or information statement shall be filed.

2. The cover page and required signatures are included. A cross-reference sheet should be filed indicating the location of information required by items of the Form.

G. Omission of Information by Certain Wholly-Owned Subsidiaries

If, on the date of the filing of its report on Form 10–KSB, the registrant meets the conditions specified in paragraph (1) below, then it may furnish the abbreviated narrative disclosure specified in paragraph (2) below.

1. Conditions for availability of relief specified in paragraph (2) below.

(a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company and which has filed all the material required to be filed under sections 13, 14 or 15(d), as applicable, and which is named in conjunction with the registrant's description of its business;

(b) During the past thirty-six months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or II subsidiaries, and there has not been any material default in the payment of rental under material long-term leases; and

(c) There is prominently set forth on the cover page of the Form 10–KSB, a statement that the registrant meets the conditions set forth in General Instruction G(1) (a) and (b) of Form 10–KSB and therefore filing this Form with the reduced disclosure format.

2. Registrants meeting the conditions specified in paragraph 1 above are entitled to the following relief:

(a) Such registrants may omit the information called for by Item 303(b), Management's Discussion and Analysis, if required by the Instruction to that Item, provided that the registrant includes in the Form 10–KSB a narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels, such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

(b) Such registrants may omit the list of subsidiaries exhibit required by Item 601 of Regulation S–B.

(c) Such registrants may omit the information called for by the following Items: Item 4, Submission of Matters to a Vote of Security Holders; Item 10 Directors and Executive Officers, etc.; Item 11, Executive Compensation; Item 12, Security Ownership of Certain Beneficial Owners, etc.; Item 13, Certain Relationships and Related Transactions.

Part I

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 2. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 3. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a–11 of Regulation A under the Act) terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Part II

Item 5. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S–B.

Item 6. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 7. Financial Statements

Furnish the information required by Item 310(a) of Regulation S–B.

Item 8. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S–B.

Part III

Item 9. Directors, Executive Officers, Promoters and Control Persons; Compliance With Section 16(a) of the Exchange Act

Furnish the information required by Items 401 and 405 of Regulation S–B.

Instruction to Item 9

Checking the box provided on the cover page of this Form to indicate that Item 405 disclosure of delinquent Form 3, 4, or 5 filers is not contained herein is intended to facilitate Form processing and review. Failure to provide such indication will not create liability for violation of the federal securities laws. The space should be checked only if there is no disclosure in this Form of reporting person delinquencies in response to Item 405 of Regulation S–B (§ 228.405 of this chapter) and the registrant, at the time of filing of the Form 10–KSB, has reviewed the information necessary to ascertain, and has determined that, Item 405 disclosure is not expected to be contained in Part III of the Form 10–KSB or incorporated by reference.

Item 10. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 11. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 12. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 13. Exhibits and Reports on Form 8–K

(a) Furnish the exhibits required by Item 601 of Regulation S–B. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. See Exchange Act Rule 12b–23 (§ 240.12b–23 of this chapter).

(b) Reports on Form 8–K. State whether any reports on Form 8–K were filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of such reports.

Signatures

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his signature.

Supplemental information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference (in which case, see rule 12b–23(b)), every issuer which files an annual report on this Form under Section 15(d) of the Exchange Act shall furnish the Commission for its information, at the time of filing its report on this Form, four copies of the following:

(1) Any annual report to security holders covering the registrant's last fiscal year; and

(2) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders.

(b) The Commission will not consider the material to be "filed" or subject to the liabilities of Section 18 of the Exchange Act, except if the issuer specifically incorporates it in its annual report on this Form by reference.

(c) If no such annual report or proxy material has been sent to security holders, a statement to that effect shall be included under this caption. If such report or proxy material is to be furnished to security holders subsequent to the filing of the annual report on this Form, the registrant shall so state under this caption and shall furnish copies of such material to the Commission when it is sent to security holders.

37. Section 249.308b is added to read as follows:

§ 249.308b Form 10–QSB, Optional Form for Quarterly and Transition Reports of Small Business Issuers Under Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act").

A *small business issuer*, defined in Rule 12b–2, may use this Form for its transition and quarterly reports under section 13 or 15(d) of the Exchange Act and Rules 13a–13 and 15d–13 (§§ 240.13a–13 or 240.15d–13 of this chapter). For further information as to eligibility to use this Form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.). A small business issuer shall file a quarterly report on this form within 45 days after the end of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year. Transition reports shall be filed in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10.

Note: The text and instructions of Form 10–QSB will not appear in the Code of Federal Regulations.

Form 10–QSB

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB approval

OMB Number: XXXX–XXXX

Expires: Approval Pending Estimated average burden hours per response—1.0

(Mark One)

[ ] Quarterly Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934.

For the quarterly period ended———————

[ ] Transition Report Under Section 13 or 15(d) of the Exchange Act.

For the transition period from_____ to _____

Commission file number ———————

_____

(Exact name of small business issuer as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(IRS Employer Identification No.)

_____

(Address of principal executive offices)

( ) – _____

(Issuer's telephone number)

_____

(Former name, former address and former fiscal year, if changed since last report)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes _____ No _____

Applicable Only to Issuers Involved in Bankruptcy Proceedings During the Preceding Five Years

Check whether the registrant filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Exchange Act after the distribution of securities under a plan confirmed by a court. Yes _____ No _____

Applicable Only To Corporate Issuers

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date:

_____

General Instructions

A. Use of Form 10–QSB

1. A "small business issuer," defined in Rule 12b–2, may use this Form for its transition and quarterly reports under section 13 or 15(d) of the Exchange Act and Rules 13a–13 and 15d–13 (§§ 240.13a–13 and 240.15d–13 of this chapter). For further information as to eligibility to use of this Form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.). A small business issuer shall file a quarterly report on this form within 45 days after the end of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year. Transition reports shall be filed in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10.

B. Application of General Rules and Regulations

1. The General Rules and Regulations under the Exchange Act (§ 240.0–1 *et seq.*), particularly Regulation 12B (§ 240.12b–1 *et seq.*) contain certain general requirements for reports on any form which should be carefully read and observed in the preparation and filing of reports on this Form.

C. Incorporation by Reference

1. If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of this form, the information may be incorporated by reference from such published document or statement, in answer or partial answer to any item or items of Part I of this form provided copies of the document or statement are filed as an exhibit to Part I of the report on this form.

2. Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of Rule 12b–23 of the Exchange Act.

D. Integrated Reports to Security Holders

Quarterly reports to security holders may be combined with the required information of Form 10–QSB and will be suitable for filing with the Commission if the following conditions are satisfied:

1. The combined report contains full and complete answers to all items required by Part I of this form. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made.

2. If not included in the combined report, the cover page, appropriate responses to Part II and the required signatures shall be included in the Form 10–QSB. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by items of the form.

E. Filed Status of Information Presented

1. Under Rule 13a–13(d) and 15d–13(d) of the Exchange Act (§§ 240.13a–13(d), 240.15d–13(d) of this chapter), the information presented in satisfaction of the requirements of Items 1 and 2 of Part I of this form, whether included directly in a report on this form, incorporated therein by reference from a report, document or statement filed as an exhibit to Part I of this form pursuant to Instruction D(1) above, included in an integrated report pursuant to Instruction D above, or contained in a statement regarding computation of per share earnings or a letter regarding a change in accounting principles filed as an exhibit to Part I under Item 601 of Regulation S–B (§ 228.601 of this chapter) shall not be deemed filed for the purpose of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section of the Act but shall be subject to the other provisions of the Act.

2. Information presented in satisfaction of the requirements of this form other than those of Items 1 and 2 or Part I shall be deemed filed for the purpose of Section 18 of the Exchange Act; except that, where information presented in response to Item 1 or 2 of Part I (or an exhibit thereto) is also used to satisfy Part II requirements through incorporation by reference, only that portion of Part I (or exhibit thereto) consisting of the information required by Part II shall be deemed so filed.

F. Signature and Filing of Report

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits.

2. Manualiy sign at least one copy of the report filed with the Commission and each exchange; other copies should have typed or printed signatures. In the case where the principal financial or chief accounting officer is also authorized to sign on behalf of the registrant, one signature is acceptable provided that the registrant clearly indicates the dual responsibilities of the signatory.

G. Omission of Information by Certain Wholly-Owned Subsidiaries

If, on the date of the filing of its Form 10–QSB, the registrant meets the conditions in paragraph (1) below, then it may omit the information in paragraph (2) below.

1. Conditions for availability of relief specified in paragraph (2) below:

(a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company and which has filed all the material required to be filed pursuant to section 13, 14 or 15(d) of the Exchange Act.

(b) During the past thirty-six calendar months and any later period, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the small business issuer, and there has not been any material default in the payment of rentals under material long-term leases; and

(c) There is prominently set forth, on the cover page of the Form 10–QSB, a statement that the registrant meets the conditions set forth in this instruction and is therefore filing this form with the reduced disclosure format.

2. Registrants meeting the conditions in paragraph (1) above are entitled to:

(a) Omit the information called for by Item 303 of Regulation S–B (§ 228.303 of this chapter), Management's Discussion and Analysis provided that the issuer includes in the Form 10–QSB a management's narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year-to-date period presented and the corresponding year-to-date period in the preceding fiscal year. Explanations of material changes should include, but not be limited to, changes in the

various elements which determine revenue and expense levels such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

(b) Such registrants may omit the information called for by the following Items in Part II: Item 2, 3 and 4.

Part I—Financial Information

Item 1. Financial Statements

Furnish the information required by Item 310(b) of Regulation S–B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Part II—Other Information

Instruction to Part II

Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b–2 of the Exchange Act. A separate response need not be presented in Part II where information called for is already disclosed in the financial information in Part I and is incorporated by reference into Part II of the report by means of a statement to that effect in Part II which specifically identifies the incorporated information.

Item 1. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B. As to proceedings that terminated during the period covered by this report, furnish information similar to that required by Item 103 of Regulation S–B.

Instruction to Item 1

A legal proceeding need only be reported in the Form 10–QSB filed for the quarter in which it first became a reportable event and in subsequent quarters in which there have been material developments. Subsequent Form 10–QSB filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

Item 2. Changes in Securities

(a) If the instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction to Item 2

1. Working capital restrictions and other limitations upon the payment of dividends are to be reported.

Item 3. Defaults Upon Senior Securities

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the small business issuer exceeding 5 percent of the total assets of the issuer identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction to Item 3(a)

1. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of such a default in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction to Item 3

1. Item 3 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter was submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a–11 of Regulation A under the Exchange Act) terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Exchange Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant has published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Item 5. Other Information

(a) The registrant may, at its option, report under this item any information, not previously reported in a report on Form 8–K, with respect to which information is not otherwise called for by this form. If disclosure of such other information is made under this item, it need not be repeated in a Form 8–K which would otherwise be required to be filed with respect to such information or in a subsequent report on Form 10–QSB.

Item 6. Exhibits and Reports on Form 8–K

(a) Furnish the exhibits required by Item 601 of Regulation S–B.

(b) *Reports on Form 8–K.* State whether any reports on Form 8–K were filed during the quarter for which this report is filed, listing the items reported, any financial statements filed and the dates of such reports.

Signatures

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

_____

(Registrant)

Date _____

(Signature)[1] _____

Date _____

(Signature)[1] _____

§ 249.308 [Amended]

38. Form 8–K (§ 249.308) is amended by adding paragraph 3 to General Instruction C to read as follows:

Note: The text and instructions of Form 8–K does not appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

C. Application of General Rules and Regulations.

* * * * *

3. A *small business issuer*, defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter), shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K. If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information required by Item 310(a) of Regulation S–B in lieu of the financial information required by Item 7 of this Form.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

39. The authority citation for part 260 continues to read as follows:

[1] Print the name and title of each signing officer under his signature.

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*l*(d), 80b–3, 80b–4, and 80b–11.

40. By revising § 260.4a–1 to read as follows:

§ 260.4a–1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been or will be issued otherwise than under an indenture. The same issuer may not claim this exemption within a period of twelve consecutive months for more than $5,000,000 aggregate principal amount of any securities.

§ 260.4a–3 [Redesignated from § 260.4a–2 and Amended]

41. § 260.4a–2 is redesignated as § 260.4a–3, in newly redesignated § 260.4a–3 remove both cites to "$5,000,000" and add in their place the words "$10,000,000", and add new § 260.4a–2 to read as follows:

§ 260.4a–2 Exempted securities under section 304(d).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been issued or will be issued in accordance with the provisions of Regulation A (17 CFR 230.251 *et seq.*) under the Securities Act of 1933.

§ 260.4d–9 [Amended]

42. Amend the introductory text of paragraph (a) of § 260.4d–9 by replacing "on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]" with "on Form SB–2, [§ 239.10 of this chapter] F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]".

§ 260.10a–5 [Amended]

43. Amend paragraph (a) of § 260.10a–5 by replacing "on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]" with "on Form SB–2, [§ 239.10 of this chapter] F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]".

PARTS 210, 229, 230, 239, 240, 249, AND 260—[AMENDED]

44. In addition to the amendments set forth above, in 17 CFR parts 210, 229, 230, 239, 240, 249, and 260 all references to: a. "Form 10–Q" are revised to read "Form 10–Q and Form 10–QSB"; b. "Form 10–K" are revised to read "Form 10–K and Form 10–KSB"; c. "Form 10" are revised to read "Form 10 and Form 10–SB";

45. In addition to the amendments set forth above, in 17 CFR parts 210, 229, 230, 239, 240, 249, and 260 all references to: "Form S–18" are revised to read "Form SB–2."

46. In addition to the amendment set forth above, in 17 CFR parts 210, 229, 230, 240, 249, and 260 all references to "Rule 504" are revised to read "Rule 504 and 504a";

By the Commission.

Dated: July 30, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18543 Filed 8–12–92; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240, 249, and 260

[Release No. 33-6950, 34-30969, 39-2288; File No. S7-28-92]

RIN: 3235-AF63

Additional Small Business Initiatives

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is publishing for comment additional revisions to its rules to facilitate financings by small business issuers under the Securities Act of 1933 and their compliance with the reporting requirements under the Securities Exchange Act of 1934. These proposals, which would ease the entry of small businesses into the reporting system for public companies, include a transitional registration and reporting system for small business issuers that have not registered more than $5 million of securities in any fiscal year, amendments to small business issuer financial statement requirements and revisions to the information and financial statement requirements contained in Rule 502 of Regulation D.

Newly adopted Rule 254 would be supplemented to provide that a "test the waters" solicitation document complying with Regulation A will not constitute a "prospectus." The deletion of Rule 504a is also proposed.

DATES: Comments must be submitted on or before September 29, 1992.

Comments regarding the proposed repeal of Rule 504a (§ 230.504a) must be submitted on or before September 14, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-28-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. With respect to Regulation A and Regulation D, Richard Wulff (202-272-2644); with respect to the SB registration and reporting system, Amy S. Bowerman, Darrell N Braman, Jr., or Martin P. Dunn (202-272-2573); and with respect to Item 310 of Regulation S-B, Teresa Iannaconi (202-272-2553).

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment new registration statement Form SB-1,[1] as well as amendments to Forms S-2,[2] S-4,[3] 10-SB,[4] 10-KSB [5] and 10-QSB,[6] Schedule 14A [7] and the annual report requirements of Rules 14a-3 [8] and 14c-3.[9] These proposals would provide transitional disclosure requirements for qualifying small business issuers under the Securities Act of 1933 ("Securities Act") [10] and the Securities Exchange Act of 1934 ("Exchange Act").[11]

The Commission also is proposing to revise the financial statement requirements for small business issuers, found in Item 310 [12] of Regulation S-B.[13] Amendments to Rule 502 [14] of Regulation D [15] and Rule 254 [16] of Regulation A [17] under the Securities Act are also published for comment. Further, the Commission is proposing that Rule 504a [18] under Regulation D be rescinded.

Finally, the Commission proposes to revise the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act to incorporate the definition of small business issuer used for the small business integrated disclosure system.[19]

I. Executive Summary and Background

In a companion release published today, the Commission adopted its Small Business Initiatives to facilitate the access of small business issuers to the public markets. That action effects significant revisions to the structure and operation of Regulation A and Rule 504 [20] of Regulation D, as well as the creation of an integrated registration and reporting system for small business issuers.[21] Based on the comments and suggestions received in response to its Small Business Initiatives, the Commission is proposing additional measures to ease a small business issuer's transition from non-reporting to reporting status and to simplify the disclosure requirements for small business issuers that engage in exempt offerings.

Under these proposals, a small business issuer may enter the reporting system using Regulation A disclosure with audited financial statements, either through an Exchange Act registration statement or a public offering of not more than $5 million registered under the Securities Act. These small business issuers would be permitted to meet their reporting requirements using the Regulation A model of disclosure until such time as they either (1) register more than $5 million in a single fiscal year, (2) elect to graduate to the standard small business disclosure system, or (3) are no longer small business issuers.

In order to implement this transitional system, amendments to Forms S-2, S-4, 10-SB, 10-KSB, and 10-QSB are proposed, in addition to amendments to Schedule 14A under the proxy rules and the annual report to security holders requirements in the proxy and information statement rules. Further, a new Securities Act registration statement, Form SB-1, is proposed to permit qualifying small business issuers to make small registered offerings up to $5 million annually using the Regulation A format with audited financial statements.

Two refinements to the financial statement requirements for small business issuers are also proposed. The first proposal would provide an automatic waiver of the requirements for audited financial statements of specified significant acquired businesses where such financial statements are not readily available. The other proposal would open the initial public offering ("IPO") financing window for small business issuers by permitting them to proceed in the first quarter of their fiscal years, without having to wait for

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[1] 17 CFR 239.9.
[2] 17 CFR 239.12.
[3] 17 CFR 239.25.
[4] 17 CFR 249.210b.
[5] 17 CFR 249.310b.
[6] 17 CFR 249.308b.
[7] 17 CFR 240.14a-101.
[8] 17 CFR 240.14a-3.
[9] 17 CFR 240.14c-3.
[10] 15 U.S.C. § 77a *et seq.*
[11] 15 U.S.C. § 78a *et seq.*
[12] 17 CFR 228.310.
[13] 17 CFR 228.10-702.
[14] 17 CFR 230.502.
[15] 17 CFR 230.501-508.
[16] 17 CFR 230.254.
[17] 17 CFR 230.251-262.
[18] 17 CFR 230.504a.
[19] 5 U.S.C. § 600 *et seq.* Revisions are proposed to Securities Act Rule 157(a) [17 CFR 230.157], Exchange Act Rule 0-10(a) [17 CFR 240.0-10], and Rule 0-7 [17 CFR 260.0-7] under the Trust Indenture Act of 1939 ("Trust Indenture Act"), 15 U.S.C. § 77aaa *et seq.*
[20] 17 CFR 230.504.
[21] A "small business issuer" is defined as an entity: (1) with revenues of less than $25,000,000 for its most recent fiscal year; (2) which is a U.S. or Canadian issuer; (3) which is not an investment company; and (4) which is not a majority-owned subsidiary of a non- "small business issuer," provided that an issuer does not qualify if its public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) is $25,000,000 or more. *See* Securities Act Rule 405 [17 CFR 230.405]; Exchange Act Rule 12b-2 [17 CFR 240.12b-2].

completion of the audit for the preceding fiscal year.

In light of the amendments to Regulation A adopted today, the Commission is proposing to amend the financial statement and informational requirements of Regulation D. Rule 502 would no longer require audited financial statements in Regulation D offerings involving non-reporting issuers, where audited statements are not otherwise available. Further, that Rule's information requirements with respect to non-reporting companies would reference Regulation A. In light of public comment received regarding revisions to Rule 504 adopted today, the Commission is proposing that Rule 504a be deleted.

With respect to the Regulation A "test the waters" procedure adopted today,[22] the Commission is publishing for comment revisions to Rule 254, which would provide that a written "test the waters" document complying with Regulation A is not a prospectus.

Finally, the Commission is proposing to incorporate into the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act, the definition of small business used in the small business integrated disclosure system.

II. Proposed Transitional Disclosure Requirements for Small Business Issuers

A. Transitional Exchange Act Registration and Reporting

In the course of the adoption of the small business integrated registration and reporting disclosure system, the Commission received favorable comment on the use of the Regulation A question-and-answer disclosure format. To ease a small business issuer's transition from a non-reporting to an Exchange Act reporting company, the Commission proposes to allow small business issuers to transition from non-reporting to reporting status using the disclosures permitted under Regulation A, with the addition of audited financial statements. Small business issuers required to file Exchange Act reports [23] could make use of this transitional disclosure so long as they (1) do not register more than $5 million under the Securities Act in a single fiscal year, (2) did not elect to file on a standard small business disclosure form (other than the proxy statement disclosure required by Schedule 14A), and (3) continue to satisfy the definition of small business issuer. Once a small business had filed a non-transitional disclosure document, it will be deemed to have graduated to the standard small business integrated disclosure system. A reporting company could not return to the transitional disclosure forms.

Newly adopted Forms 10–SB, 10–KSB and 10–QSB are proposed to be amended by adding instructions setting forth the transitional disclosure that small business issuers could elect. In addition, Forms 10–KSB and 10–QSB would contain a space on the cover page for the small business issuer to indicate its use of the transitional reporting requirements. The proposed transitional filers would not require a quarterly updating of Management's Discussion and Analysis ("MD&A").

The transitional disclosure requirements mirror the two disclosure models currently included in Form 1–A [24] under Regulation A—the question-and-answer and the line-item disclosure models. These disclosure requirements have been modified only to the extent necessary to reflect their continuous reporting, rather than transactional, purposes. Just as for other small business issuers, those eligible to use the transitional requirements could use their simplified Exchange Act reports for incorporation by reference into Forms S–3,[25] S–4 and S–8.[26] Small business issuers could also use Form S–2, but in light of the changes proposed to Rules 14a–3 and 14c–3, would be required to deliver their Form 10–KSB annual report.

As proposed to be amended, Form 10–SB would be available for any non-reporting small business issuer. This would provide small business issuers registering under the Exchange Act an option with respect to the disclosure format in that registration statement. The proposed transitional disclosure within Form 10–KSB would be available to any small business issuer that has not registered more than $5 million in securities offerings in any one fiscal year since it entered the Exchange Act reporting system (excluding registered offerings under employee benefit plans or dividend reinvestment programs).

Comment is requested as to the usefulness of, and the mechanics of operation for, the proposed small business transitional reporting system. Comment is also requested as to whether the yearly $5 million limit in registered securities offerings should be raised for use of the transitional small business disclosure system. Should transitional small business issuers be required to include MD&A in their quarterly reports on Form 10–QSB?

B. Proposed Form SB–1

As a complement to the transitional Exchange Act reporting system, the Commission today is proposing a new Securities Act registration statement, Form SB–1, which generally will be available to the same small business issuers eligible to use the transitional reporting system described above to sell up to $5 million annually in registered offerings. Again, the disclosure requirements and format would be based on Regulation A, with the addition of audited financial statements.

Form SB–1 would be available to (1) any non-reporting small business issuer and (2) any reporting small business issuer eligible to use the transitional format in Form 10–KSB, provided—in both instances—that the aggregate amount registered during the fiscal year did not exceed $5 million. In determining whether a small business issuer had registered more than $5 million during the year, the amount being registered on the Form SB–1 would be added to previous registered offerings in that fiscal year. The $5 million limit would exclude amounts, if any, registered for offerings under employee benefit plans on Form S–8 and dividend reinvestment plans on Form S–3.

Comment is requested as to whether other types of registered transactions, such as secondary offerings, should be excluded in calculating the ceiling for Securities Act and Exchange Act purposes. Comment is requested as to whether the $5 million ceiling, which is based upon the Regulation A offering annual limit contained in section 3(b) of the Securities Act,[27] should be increased to, for example, $10 million or $15 million. Comment also is requested as to the utility of the Form SB–1 for small business issuers.

C. Narrative Disclosure Requirements for Transitional Small Business Issuers

The basic disclosure required of transitional small business issuers would be the same as that currently required by Form 1–A under Regulation A. Accordingly, small business issuers eligible to use the transitional reporting scheme would have the choice of three alternative narrative disclosure formats: (1) A question-and-answer format contained in Offering Circular Model A of Form 1–A; (2) the line-item disclosure model contained in Offering Circular Model B of Form 1–A; or (3) the disclosure required by Form SB–2.

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[22] *See* Securities Act Rule 254 [17 CFR 230.254].

[23] The requirement may arise either pursuant to section 13 [15 U.S.C. § 78m] or 15(d) [15 U.S.C. 78o(d)] of the Exchange Act.

[24] 17 CFR 239.90.

[25] 17 CFR 239.13.

[26] 17 CFR 239.16b.

[27] 15 U.S.C. § 77c(b).

With respect to Form SB–1, several disclosure items—the undertakings contained in Item 512 of Regulation S–B,[28] the front and back cover page of prospectus requirements of Items 501 and 502 of Regulation S–B,[29] the additional offering expenses requirement of Item 511 of Regulation S–B,[30] selling security holder information of Item 507 of Regulation S–B,[31] and the disclosure requirements (Items 510 and 702 of Regulation S–B) concerning the Commission's position on indemnification [32]—have been added to the Regulation A disclosure formats. These additional disclosure items are necessary to make the two Form 1–A disclosure options appropriate for use in a registration statement under the Securities Act.

Comment is requested as to whether these additional disclosure requirements are necessary for inclusion in Form SB–1 and whether other disclosure items should be required of transitional small business issuers.

D. Financial Statement Requirements for Transitional Small Business Issuers

Small business issuers using the transitional disclosure requirements of Exchange Act Forms 10–SB and 10–KSB would be required to include the same financial information required by part F/S of Form 1–A, except that audited financial statements would be required. An initial registration statement on Form 10–SB would be required to contain audited financial statements for the issuer's most recent fiscal year, while subsequent Form 10–KSB filings, as well as offerings registered on Form SB–1, would be required to include audited financial statements for the two most recent fiscal years. Comment is requested as to the appropriateness of the proposed treatment of financial statements. Should the Form 10–SB require two years of audited financial statements? Should IPOs on Form SB–1 be permitted to include only one year of audited financial statements?

E. Annual Report to Security Holders and Proxy Requirements

To streamline and coordinate the disclosure requirements for small business issuers eligible to use the transitional disclosure requirements, the proxy and information statement rules regarding the annual report to security holders would also be revised. As proposed, Rules 14a–3 and 14c–3 would require small business issuers using the transitional reporting requirements for their most recent annual report on Form 10–KSB to provide to security holders only the financial statements contained in that Form 10–KSB. Small business issuers eligible for this disclosure alternative would not, therefore, be required to provide security holders with the narrative disclosure otherwise required.

Modified disclosure formats with respect to the proxy statement disclosure requirements are also proposed for small business issuers eligible to use the transitional disclosure system. These modifications include instructions to Schedule 14A which reference the alternative disclosure formats presented in the transitional disclosure system. Eligible small business issuers which elect not to respond to these modified disclosure requirements may continue to use the transitional reporting system.

Comment is requested as to the appropriateness of the proposed modifications to the annual report requirements and the modifications to the proxy statement requirements.

F. Other Securities Act Forms

Under the proposed Rules and Forms, a transitional small business issuer would be permitted to use the transitional disclosure requirements applicable to its Exchange Act reports for purposes of Forms S–2, S–3, S–4 and S–8. Due to the $5 million ceiling on registered offerings by transitional small business issuers in any one fiscal year, registered offerings on Forms S–2, S–3 and S–4 by transitional small business issuers would similarly be limited to that amount. As registered offerings under employee benefit plans are not included in the computation of the $5 million ceiling, the use of Form S–8 by transitional small business issuers would not be subject to the $5 million limit.

In light of the proposed streamlining of annual reports to security holders with respect to companies eligible to file on the proposed transitional small business issuer reporting system, a modified Form S–2 disclosure format is proposed. A new instruction to Form S–2 would specify that transitional small business issuers using the registration form furnish the Form 10–KSB in place of delivery of the annual report to security holders, and the financial statements required by Part F/S of Form SB–1 in place of the Regulation S–X requirements of that Form. Those small business issuers that do not elect to deliver the Form 10–KSB to their security holders would be required to respond to the disclosure requirements of Form S–2 in the same manner as small business issuers that are not eligible for use of the transitional disclosure system.

In light of the proposed Exchange Act transitional disclosures, issuers eligible to use Form SB–1 and Form S–3 for an offering could use the forward and backward incorporation by reference permitted in Form S–3, using their Exchange Act reports. Similarly, the Commission is proposing to permit transitional small business issuers to use their Exchange Act filings to satisfy the informational requirements of Form S–4.

The Commission adopted substantial revisions to Form S–8 in 1990.[33] These revisions, as well as the modified disclosure required in Regulation S–B, have streamlined the disclosure requirements in Form S–8. As such, revisions to the disclosure provisions in Form S–8 appear unnecessary.

Comment is requested as to whether the treatment of offerings by transitional small business issuers on Forms S–2, S–3, S–4 and S–8 is appropriate. In particular, commenters should address whether the proposed Form S–4 structure is appropriate for these transitional small business issuers.

III. Small Business Integrated Disclosure System—Financial Statements

A. Proposed Amendment of Rule Applicable to Financial Statements of Significant Acquired Businesses

The proposals include an amendment to the financial statement requirement in Regulation S–B with regard to audited historical financial statements of significant acquired businesses.[34] Registration statements, certain proxy material and periodic reports on Form 8–K that are filed with the Commission are required to include financial statements of acquired businesses for periods of one or two years based on the significance of the acquisition. An acquisition is defined as significant if the investment in, assets of or income of the acquired business exceeds 10% of the assets or income of the acquiror. If none of the three significance tests exceeds 20%, one year of an acquiree's financial statements are required. Where significance exceeds 20%, two years of financial statements are required.

For small businesses, an acquisition at any percentage level will be smaller in

[28] 17 CFR 228.512.
[29] 17 CFR 228.501 and 502.
[30] 17 CFR 228.511.
[31] 17 CFR 228.507.
[32] 17 CFR 228.510 and 702.
[33] Securities Act Release No. 6867 (June 6, 1990).
[34] *See* Item 310(c)(3)(iv) of Regulation S–B [17 CFR 228.310(c)(3)(iv)].

absolute terms than an acquisition at the same percentage levels for a larger company. For example, under the current rule a small business with total assets of $25 million would be required to obtain audited historical financial statements of an acquiree with total assets of anything over $2.5 million. There is greater likelihood that audited historical financial statements of a very small acquired business would not be available and the cost of obtaining audits of such small business acquisitions would be disproportionately higher for small businesses. Accordingly, under the proposed amendment, where audited financial statements are not readily available, financial statements would be automatically waived where the acquired business' significance does not exceed 20%, and the earlier of the two years of financial statements would be waived where significance does not exceed 40%. In either case, where unaudited financial statements are available, they should be used. Where a small business issuer relies on such an automatic waiver, the pro forma financial information included in a Form 8-K to report the acquisition may not be used as the basis for measuring the significance of later acquisitions as otherwise permitted by Item 310(c)(5) of Regulation S-B.[35]

Comments are requested concerning whether the proposed significance thresholds for waivers for acquisitions by small business issuers are too low, too high or whether some other criteria for requiring audited financial statements of significant acquired businesses should be considered. For example, should acquisitions below a certain dollar size always be exempt from audited financial statement requirements?

B. Proposed Amendment to Rule Applicable to Age of Small Business IPO Audited Financial Statements

The proposal would change the manner in which small business issuer IPOs are affected by Item 310(g) of Regulation S-B.[36] The current rule permits registration statements becoming effective and proxy material mailed during the period from 45 to 90 days after the end of a fiscal year to include financial statements as of the end of the third quarter provided the issuer meets four conditions. Those conditions are: (1) The issuer is a reporting company; (2) all reports due have been filed; (3) the issuer must reasonably expect to report income in the most recently completed fiscal year; and (4) the issuer must have reported income in at least one of the other two prior fiscal years.

The practical effect of the first requirement is limited to IPOs. The proposed rule amendment would simply delete the reporting status requirement for small business issuers. Comments are requested concerning the appropriateness of the proposed change and whether a parallel change should be made to Regulation S-K.

IV. Proposed Revisions to Regulation D Information Requirements

The general conditions that must be met in an offering under Regulation D are set forth in Rule 502. Among these conditions is the requirement that specified information be delivered to non-accredited investors in connection with offerings under Rules 505 [37] or 506.[38] The Commission proposes to revise the informational requirements of Regulation D to parallel the Small Business Initiatives adopted today. Specifically, a company would no longer be required to prepare audited financial statements solely for use in the Regulation D-exempt transaction.[39] In addition, the structure of the information requirements would be revised to conform to the changes in Regulation A and the replacement of Form S-18 with new Forms SB-1 and SB-2.

A. Proposed Revision of Financial Statement Requirements for Regulation D Offerings

As proposed, Regulation D offerings would no longer require that the financial statements included in the information provided to prospective investors by non-reporting issuers be certified by an independent certified public accountant.[40] Financial statements prepared in accordance with U.S. generally accepted accounting principles would continue to be required. Issuers that have audited financial statements would be required to provide them to purchasers in the Regulation D offering.[41]

The financial statement requirements in Regulation D would be premised upon the issuer's status as a small business issuer. Non-reporting small business issuers would provide only one year of financial statements; non-reporting companies which do not satisfy the definition of small business issuer would provide three years of financial statements. As noted above, however, none of the financial statements would be required to be certified.

Comment is requested as to the appropriateness of paralleling the Regulation D requirements to those of revised Regulation A. Should a different standard apply for Rule 500 offerings in excess of $5 million? Comment is also requested as to the appropriateness of differentiating between small business issuers and non-small business issuers with respect to the financial statement requirements for non-reporting companies under Regulation D. Should offerings in excess of $5 million include audited financial statements? Should non-reporting companies which are not small business issuers include audited financial statements?

B. Proposed Revision to Other Informational Requirements

The information required to be delivered by non-reporting issuers to non-accredited investors in offerings under Rules 505 and 506 of Regulation D currently depends upon the dollar amount offered.[42] As proposed, the different informational requirements would depend upon the issuer's eligibility to use a particular registration statement form or Regulation A. The dollar amount of the particular offering would no longer be determinative. Thus, non-reporting issuers conducting Regulation D offerings would be required to provide the same kind of information as is required in Part I of a Securities Act registration statement form that the issuer would be entitled to use. Non-reporting issuers eligible to use Regulation A would have the option of providing the same kind of information as required in Part II of Form 1-A. No substantive changes are proposed with respect to the informational requirements for reporting issuers.

Comment is requested as to the appropriateness of keying the information requirements to eligibility for other Commission disclosure formats, in lieu of staging disclosure thresholds to the dollar amount of an offering. Comment is also requested as

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[35] 17 CFR 228.310(c)(5).

[36] 17 CFR 228.310(g).

[37] 17 CFR 230.505.

[38] 17 CFR 230.506.

[39] See Rule 502(b)(2)(i) [17 CFR 230.502(b)(2)(i)].

[40] Due to this revision in the requirements regarding financial statements, the discussion in the rule of corporate and limited partnership issuers that cannot obtain audited financial statements without unreasonable expense is proposed to be deleted.

[41] Rule 502(b)(2)(ii) [17 CFR 230.502(b)(2)(ii)], which requires that reporting issuers provide information specified in their Exchange Act reports, would not be revised under today's proposals. Such revision is not necessary, as Exchange Act reporting issuers will already have prepared audited financial statements in connection with their reporting requirements.

[42] *See* Rule 502(b)(2)(i)(A)-(C).

to whether one of the three alternative disclosure formats found in Form 1–A should be specified for use in Regulation D.

V. Repeal of Rule 504a

Revised Rule 504 adopted today by the Commission as part of its Small Business Initiatives is not available to blank check companies—development stage companies with no specific business plan or purpose or a business plan to engage in mergers or acquisitions with unidentified companies, or other entities.[43] Old rule 504, now designated Rule 504a, continues to be available to these offerings. The exclusion of blank check companies from revised Rule 504 is premised upon the Commission's own experience, as well as concerns raised in the public comment process following the proposal of the Small Business Initiatives. Blank check offerings have been found to be a common vehicle for fraud and manipulation. Focusing on demonstrated abuses in connection with blank check offerings, Congress in the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 [44] found that such offerings cause harm to investors and directed the Commission to adopt rules governing registration statements filed in connection with blank check offerings.[45] The Commission responded with the adoption of a special regulatory scheme for registered blank check offerings.[46] The Commission today is proposing that Rule 504a be rescinded, thereby excluding blank check companies from Rule 504-type offerings. Comment is requested as to the appropriateness of this proposal and the definition of blank check company in Rule 504. Commenters are also reminded of the 30-day comment period regarding the proposed exclusion.

VI. Regulation A—"Test the Waters" Document

In connection with the newly adopted rule permitting solicitation of indications of interest by issuers wishing to use Regulation A, public commenters expressed uncertainty with respect to the status of the written "test the waters" material under the Securities Act and the relationship of the disclosures in the test the waters document and those in the offering statement. To address these questions, the Commission is proposing to amend Rule 254 to specify that this material is not a "prospectus" as defined in Section 2(10) [47] of the Securities Act. In order to fall within the non-prospectus exclusion, the written test the waters material must be submitted to the Commission and otherwise fully comply with the requirements of Rule 254. This proposed treatment of the written test the waters document is analogous to that provided for advertising of registered offerings pursuant to Rule 134 of the Securities Act.[48] The anti-fraud provisions of the federal securities laws, however, would continue to apply to any written "test the waters" material. Also, any test the waters activity would be an "offer" as defined in Section 2(3) [49] under the Securities Act.[50]

Comment is requested as to the appropriateness of the proposed rule. Should the coverage of proposed Rule 254(e)—which is limited to written materials that are submitted to the Commission and otherwise fully comply with Rule 254—be broader or narrower?

VII. Definitions of "Small Business" and "Small Organization" Under the Regulatory Flexibility Act

In recognition of the definition of small business issuer adopted in the companion release, the Commission also proposes to revise certain Securities Act, Exchange Act and Trust Indenture Act [51] definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act ("RFA") to incorporate the definition used for the small business integrated disclosure system.[52]

VIII. General Request for Comment

Any interested person wishing to submit written comments on the proposed rule amendments or suggest additional changes or comments on other matters that might have an impact on the proposals set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment is requested as to the impact of the proposals from the point of view of the public, as well as the entities or persons making filings with the Commission. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act.[53] The Commission further requests comment on any competitive burdens that may result from adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[54] Comment letters should refer to File No. S7–28–92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. § 603 regarding the proposed revisions.

The analysis notes that small businesses seeking to register their securities and become reporting issuers will benefit from the transitional disclosure alternatives proposed in Form SB–1 and the Exchange Act reporting forms.

The analysis also notes that the new provision specifying that written test the waters materials complying with Regulation A are not prospectuses under Section 2(10) of the Securities Act would benefit small businesses by specifying the application of the statute.

The analysis notes that Regulation D is proposed to be amended in connection with the Commission's ongoing efforts to aid small businesses in connection with the raising of capital. The analysis also notes that small businesses seeking to offer exempt securities under Regulation D will benefit from the proposed revisions, due to the coordination of the informational

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[43] In connection with the revision of Rule 504, the Commission redesignated previously existing Rule 504 as 504a, which, pending action on this proposal, remains in effect.

[44] S.647, Pub. L. 101–429.

[45] *See* H.R. Rep No. 101–617; 101 Cong., 2d Sess. 10–11, 15 (1990).

[46] *See* Securities Act Release No. 6932 (April 28, 1992).

[47] 15 U.S.C. § 77(b)(10).

[48] 17 CFR 230.134.

[49] 15 U.S.C. § 77b(3).

[50] Thus, the proposed revision to Rule 254 would not affect the status of oral test the waters activity as "oral communications" for purposes of Section 12(2).

[51] Securities Act Rule 157(a) [17 CFR 230.157(a)]. Exchange Act Rule 0–10(a) [17 CFR 240.0–10] and Trust Indenture Act Rule 0–7 [17 CFR 260.07] would be revised.

[52] This action is taken only with respect to those entities which would fall within the definition of "small business issuer." As such, it does not affect the RFA definitions of "small business" and "small organization" as those terms apply to investment companies.

Certain of the Commission's definitions under the RFA specifically address the operation of a regulated entity. These definitions are not to be revised. As such, the Commission action discussed above would not affect the RFA definitions regarding public utility holding companies, brokers, dealers, clearing agencies, exchanges, bank municipal securities dealers, securities information processors and transfer agents.

[53] 15 U.S.C. § 77s(a).

[54] 15 U.S.C. § 78w(a).

requirements with other exemptions and registration statement forms and the elimination of the requirement that audited financial statements be developed solely for use in the exempt offering.

Finally, the analysis notes that the proposed changes to the Regulatory Flexibility Act definitions of small business and small organization would expand the category of covered entities, consistent with the benefits accorded to small businesses by the other proposals.

A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Twanna M. Young, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

X. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views and other supporting information of the public. It appears to the Commission that the proposals, if adopted, would work significant cost savings for issuers without compromising investor protection.

XI. Statutory Basis, Text of Proposals and Authority

The amendments to the Commission's rules and forms are being proposed pursuant to Sections 2, 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a) and 23(a) of the Exchange Act and Section 319 of the Trust Indenture Act.

List of Subjects

17 CFR Parts 228, 230, 239, 240, 249 and 260

Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Proposals

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—SMALL BUSINESS DISCLOSURE REQUIREMENTS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa[25], 77aa[26], 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.310 by revising paragraphs (c)(3)(i) and (c)(3)(ii); by removing paragraph (c)(3)(iv); by adding one sentence to the end of paragraph (c)(5); and by revising paragraph (g)(2)((i) to read as follows:

§ 228.310 (Item 310) Financial Statements.

* * * * *

(c) * * *

(3)(i) Financial statements shall be furnished for the periods prior to the date of acquisition, for the same periods for which the small business issuer is required to furnish financial statements. The financial statements covering fiscal years shall be audited.

(ii) If none of the conditions in the definitions of significant subsidiary in paragraph (c)(2) of this Item exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

* * * * *

(c)(5) * * *

If a Form 8–K was filed to report a significant acquisition but audited financial statements were not furnished pursuant to the automatic waiver provisions of paragraph (c)(3), upon written request from the issuer, the staff will consider permitting the use of previously filed pro forma financial information which was based on unaudited financial statements as the basis for measurement for the significance tests.

* * * * *

(g)(2) * * *

(i) If the small business issuer is a reporting company, all reports due must have been filed;

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 7sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

4. Amend paragraph (a) of § 230.157 by replacing "whose total assets on the last day of its most recent fiscal year were $5 million or less" with "whose annual revenues for its most recent fiscal year were less than $25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than $25,000,000".

5. By adding paragraph (e) to § 230.254 to read as follows:

§ 230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.

* * * * *

(e) Written solicitation of interest materials submitted to the Commission and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in Section 2(10) of the Securities Act [15 U.S.C. 77b(10)].

6. By revising paragraph (b)(2)(i) and adding a note thereafter § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) * * *

(2) * * *

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and is eligible to use Regulation A, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business and the securities being offered, the same kind of information as would be required in Part II of Form 1–A [17 CFR 239.90]. If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and is not eligible to use Regulation A, it shall furnish the same kind of information as would be required in Part I of a Securities Act registration form that the issuer would be entitled to use. Small business issuers, as defined in Rule 405, shall provide financial information for the most recent fiscal year only. All other issuers shall provide financial information for the three most recent fiscal years. Financial statements need not be certified by an independent public or certified accountant, but issuers that have audited financial statements available shall provide them. Financial statements shall be prepared in accordance with U.S. generally accepted accounting principles.

Note: The Commission's Regulation S–X, 17 CFR 210.1 et seq. relating to the form, content of and requirements for financial statements shall not apply to the financial statements required to be provided, except that if audited financial statements are provided, the qualifications and reports of an

independent auditor shall comply with the requirements of Article 2 of Regulation S–X.

* * * * *

7. Amend § 230.502 by removing the last sentence in the note to paragraph (b)(1) and in the flush text of paragraph (d) by removing the words "and § 230.504a(b)(2)(ii) require" and adding the word "requires".

8. By removing § 230.504a.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

10. § 239.9 is added to read as follows:

§ 239.9 Form SB–1, optional form for the registration of securities to be sold to the public by certain small business issuers.

Small business issuers defined in Rule 405 (17 CFR 230.405 of this chapter) may use this form to register up to $5,000,000 of securities to be sold for cash, if they have not registered more than $5,000,000 in securities offerings in any one fiscal year, including the transaction being registered, and excluding any amounts sold pursuant to employee benefits plans on Form S–8 (§ 239.16b of this chapter) and registered dividend reinvestment plans.

Note: The Text and Instructions of Form SB–1 will not appear in the Code of Federal Regulations.

Form SB–1

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB Approval
OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burden hours per response..1.0

Registration Statement Under the Securities Act of 1933

(Amendment No. _____)

_____

(Name of small business issuer in its charter)

_____

(State or jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

(I.R.S. Employer Identification No.)

_____

(Address and telephone number of principal executive offices)

_____

(Address of principal place of business or intended principal place of business)

_____

(Name, address and telephone number of agent for service)

Approximate date of proposed sale to the public _____.

Calculation of Registration Fee

Title of each class of securities to be registered	Dollar Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The following delaying amendment is optional, but see Rule 473 before omitting it: The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Disclosure alternative used (check one): Alternative 1 _____; Alternative 2 _____; Alternative 3 _____

General Instructions

A. Use of Form and Place of Filing

1. A "small business issuer," defined in Rule 405 of the Securities Act of 1933 (the "Securities Act") may use this form to register securities to be sold for cash, so long as that issuer has not registered more than $5,000,000 of securities offerings in any one fiscal year, including the securities offered in the transaction being registered. Registered offerings of securities under employee benefit and/or dividend reinvestment plans may be excluded for purposes of computing this $5,000,000 ceiling.

2. If the small business issuer is not a reporting company, it should file the registration statement in the regional office that is closest to its principal place of business or the Washington, DC office. However, no filing may be made in the Philadelphia regional office; small business issuers in that region should file in the Atlanta, New York or Washington, DC offices.

3. If the small business issuer is a reporting company or a holding company of a bank (see the definition of "bank" in section 12(i) of the Securities Exchange Act of 1934), it should file the registration statement in the Commission's Washington, DC headquarters.

4. Post-effective amendments should be filed with the office that declared the registration statement effective.

5. The Commission may refer processing to an office other than that where filing was made.

B. General Requirements

1. Regulation S–B (17 CFR 228.10 *et seq.*) contains the disclosure requirements for the Form SB–2 disclosure alternative in Part I of this form. In preparing a registration statement on this Form, reference also should be made to the General Rules and Regulations under the Securities Act, particularly Regulation C which sets forth requirements for the preparation and filing of a registration statement such as paper type and size.

2. Issuers registering securities for the first time should be aware of Form SR and Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds. First-time issuers also should be aware of Exchange Act Rule 15c2–8 (§ 240.15c2–8), which requires broker-dealers to deliver a prospectus 48 hours before a sale of securities can be confirmed.

3. Issuers engaged in real estate, oil and gas or mining activities should consult the Industry Guides in Item 801 of Regulation S–K (17 CFR 229.801). Real estate companies also should refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S–11 (17 CFR 239.18).

C. Preparation and Filing of the Registration Statement

Part I of this form, which relates to the content of certain information about the issuer, provides several alternative disclosure formats. The registrant may elect any of these alternative formats.

D. Financial Statement Requirements

Regardless of the disclosure model used, all registrants shall provide the financial statements required by Part F/S of this Form SB–1.

E. Composition of Prospectus

The information required by Part I and Part F/S of this registration statement shall comprise the prospectus.

F. Registration of Securities to be Offered for the Account of Security Holders

If any of the securities registered on this Form SB–1 are to be offered for the account of security holders, Part I of this registration statement should include the information required by Item 507 of Regulation S–B.

G. Canadian Issuer—Consent of Service

Canadian issuers eligible to use this Form should file as an exhibit to this registration statement a written irrevocable consent and power of attorney on Form F–X (§ 239.42 of this title).

Part I—Narrative Information Required in Prospectus

Alternative 1

Any issuer may elect to provide the information required by Part I of Form SB–2, except for the financial statements called for there.

Alternative 2

Corporate issuers may elect to provide the information required by Model A of Form 1–A, as well as the following information.

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S–B.

Item 3. Significant Parties

(a) List the full names and business and residential addresses, as applicable, for the following persons:

(1) the issuer's directors;
(2) the issuer's officers;
(3) the issuer's general partners;
(4) record owners of 5 percent or more of any class of the issuer's equity securities;
(5) beneficial owners of 5 percent or more of any class of the issuer's equity securities;
(6) promoters of the issuer;
(7) affiliates of the issuer;
(8) counsel to the issuer with respect to the proposed offering;
(9) each underwriter with respect to the proposed offering;
(10) the underwriter's directors;
(11) the underwriter's officers;
(12) the underwriter's general partners; and
(13) counsel to the underwriter.

Item 4. Relationship with Issuer of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the issuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 5. Selling Security Holders

Furnish the information required by Item 507 of Regulation S–B.

Item 6. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S–B.

Alternative 3

Any issuer may elect to provide the information required by Model B of Part II of Form 1–A, as well as the following information.

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S–B.

Item 3. Significant Parties

(a) List the full names and business and residential addresses, as applicable, for the following persons:

(1) The issuer's directors;
(2) The issuer's officers;
(3) The issuer's general partners;
(4) Record owners of 5 percent or more of any class of the issuer's equity securities;
(5) Beneficial owners of 5 percent or more of any class of the issuer's equity securities;
(6) Promoters of the issuer;
(7) Affiliates of the issuer;
(8) Counsel to the issuer with respect to the proposed offering;
(9) Each underwriter with respect to the proposed offering;
(10) The underwriter's directors;
(11) The underwriter's officers;
(12) The underwriter's general partners; and
(13) Counsel to the underwriter.

Item 4. Relationship With Issuer of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the issuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 5. Selling Security Holders

Furnish the information required by Item 507 of Regulation S–B.

Item 6. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S–B.

Part F/S—Financial Information Required in Prospectus

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor, shall be filed as part of the registration statement and included in the prospectus which is distributed to investors. Such financial statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) If such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S–B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S–B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial

statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3) (b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b)(1). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part II—Information Not Required in Prospectus

Item 1. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–B.

Item 2. Other Expenses of Issuance and Distribution

Furnish the information required by Item 511 of Regulation S–B.

Item 3. Undertakings

Furnish the undertakings required by Item 512 of Regulation S–B.

Item 4. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this Form SB–1, state:

(1) The name of such issuer;

(2) The title and amount of securities issued;

(3) The aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(4) The names and identities of the persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this Form SB–1 by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (1) through (4) of paragraph (a).

(c) Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption.

Item 5. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form SB–1.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 411(d) of Regulation C shall be followed.

Item 6. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Underwriting Agreement*—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

(2) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(3) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if such debt is not being issued pursuant to this offering and the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities which is to be retired or redeemed prior to the issuance or upon delivery of the securities being issued pursuant to this offering and appropriate steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

(4) *Subscription agreement*—The form of any subscription agreement to be used in connection with the purchase of securities in this offering.

(5) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(6) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant

or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(7) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(8) *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the registration statement. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the registration statement. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(9) *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the offering.

(10) *Consents*—(a) Experts: The written consent of (i) any accountant, engineer, geologist, appraiser or any person whose profession gives authority to a statement made by them and who is named in the registration statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the registration statement; (ii) the expert that authored any portion of a report quoted or summarized as such in the registration statement, expressly stating their consent to the use of such quotation or summary; (iii) any persons who are referenced as having reviewed or passed upon any information in the registration statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) All written consents shall be dated and manually signed.

(11) *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Registration Statement, indicating whether they will, when sold, be legally issued, fully paid and nonassessable, and if debt securities, whether they will be binding obligations of the issuer.

(12) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

(13) *Form F–X*—Canadian issuers eligible to use this Form SB–1 shall file a written irrevocable consent and power of attorney on Form F–X.

Signatures

In accordance with the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form SB–1 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of _____, State of _____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration statement was signed by the following persons in the capacities and on the dates stated.

(Signature) _____

(Title) _____

(Date) _____

Instructions for Signatures

(1) Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation.

(2) Beneath each signature, type or print the name of each signatory. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. *See* Rule 402 of Regulation C concerning manual signatures and Item 601 of Regulation S–B concerning signatures by powers of attorney.

11. Form S–2 (§ 239.12) is amended by adding Paragraph D to General Instruction II to read as follows:

Note: The text of Form S–2 will not appear in the Code of Federal Regulations.

Form S–2

* * * * *

General Instruction

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. A "small business issuer," defined in Rule 405 (17 CFR 230.405) that is eligible to use Form SB–1 *and* Form S–2, shall deliver its most recent Form 10–KSB in lieu of the annual report to security holders required by Rule 14a–3 [17 CFR 240.14a–3] or Rule 14c–3 [17 CFR 240.14c–3] in response to Item 11(a). Issuers relying upon this General Instruction II.D. may respond to Item 11(a)(3) by providing the financial information required in Part F/S of Form SB–1 with respect to acquired businesses and pro forma financial statements. Transitional small business issuers which do not elect to deliver their most recent Form 10–KSB, and instead set forth the disclosure required by Item 11(b), shall refer to General Instruction II.C.

12. Form S–4 (§ 239.25) is amended by adding Paragraph 4 to General Instruction D to read as follows:

Note: The text of Form S–4 will not appear in the Code of Federal Regulations.

Form S–4

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General Instructions

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D. Application of General Rules and Regulations

* * * * *

4. A "small business issuer," defined in Rule 405 (17 CFR 230.405) that is eligible to use Form SB–1 shall respond to Part I.B. and I.C. in the following manner: (1) Registrants and Companies to be Acquired which are eligible to use Form SB–1 *and* Form S–2 may provide all information required pursuant to General Instruction II.D. of Form S–2; and (2) Registrants and Companies to be Acquired which are eligible to use Form SB–1 shall provide the information required by that form.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

14. Amend paragraph (a) of § 240.0–10 by replacing "that, on the last day of its most recent fiscal year, had assets of $5 million or less" with "whose annual

revenues for its most recent fiscal year were less than $25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than $25,000,000".

15. By revising the Note following the introductory text of paragraph (b) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

Note to Small Business Issuers—A "small business issuer," defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) rather than Regulation S–K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10–KSB need not provide the information specified below. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10–KSB.

* * * * *

16. Amend § 240.14a–101 by adding Note G, an Instruction 3 after Item 6, an Instruction after paragraph (a) of Item 7, an Instruction after paragraph (b) of Item 7, a Special Instruction after the Instruction to Item 8, an Instruction 6 to Item 10, an Instruction to paragraph (b) of Item 11, an Instruction to paragraph (b) of Item 12, an Instruction to paragraph (a)(1) of Item 13, an Instruction to paragraph (a)(3) of Item 13, and an Instruction to paragraph (b)(3)(i) of Item 14 to read as follows:

§ 249.14a–101 Schedule 14A. Information required in proxy statement.

Notes: * * *

G. Special Note to Small Business Issuers

Registrants and acquirees which meet the definition of "small business issuer" in Rule 12b–2 of the Exchange Act and filed their latest annual report in accordance with Alternative 2 or Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in Form 10–KSB shall refer to the "Special Instructions for Certain Small Business Issuers" which follow specific items in this Schedule. If there is no such special instruction, small business issuers should comply with the disclosure item in this schedule, as modified by Instruction F.

* * * * *

Item 6 * * *

Instruction

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3. Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 14 and 15 of that disclosure format instead of paragraph (d) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 5 of that disclosure format instead of paragraph (d) of this Item.

* * * * *

Item 7

* * * * *

(a) * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 20 of that disclosure format instead of paragraph (a) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 3(d) of that disclosure format instead of paragraph (a) of this Item.

* * * * *

(b) * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 6–13 and 16 of that disclosure format instead of paragraph (b) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 3(a)–(c) and Item 6 of that disclosure format instead of paragraph (b) of this Item.

* * * * *

Item 8

* * * * *

Instruction

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Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 16–18 of that disclosure format instead of this Item. (b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 4 of that disclosure format instead of this Item.

* * * * *

Item 10

* * * * *

Instructions

* * * * *

6. Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Reports of Transitional Small Business Issuers" in that Form, shall respond to Questions 17(c), 18 and 19 of that disclosure format instead of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 4 of that disclosure format instead of this Item.

* * * * *

Item 11

* * * * *

(b)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with "Information Required

in Annual Report of Transitional Small Business Issuers" need not respond to this paragraph (b).

* * * * *

Item 12

* * * * *

(b)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with "Information Required in Annual Report of Transitional Small Business Issuers" need not respond to this paragraph (b).

* * * * *

Item 13

* * * * *

(a)

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(1)

* * * * *

Special Instruction for Certain Small Business Issuers. Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with "Information Required in Annual Report of Transitional Small Business Issuers" shall provide the information required by part F/S of that Form, instead of this paragraph.

* * * * *

(3)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Questions 4 and 22–25 of that disclosure format instead of this paragraph.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Item 1(a)(3) of that disclosure format instead of this paragraph.

* * * * *

Item 14

* * * * *

(b)

* * * * *

(3)(i)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Questions 2 and 3 of that disclosure format instead of paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this Item. These issuers may also respond to questions 4 and 22–25 of that disclosure format instead of paragraph (b)(3)(i)(H) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Items 1 and 2 of that disclosure format instead of paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this Item. These issuers may also respond to Item 1(a)(3) of that disclosure format instead of paragraph (b)(3)(i)(H) of this Item.

17. By adding the following Note after paragraph (a)(2) of § 240.14c–3 to read as follows:

§ 240.14c–3 Annual Report to be Furnished Security Holders.

(a) * * *

(2) * * *

Note to Small Business Issuers—In responding to the disclosure items under paragraph (b) of Rule 14a–3, (§ 240.14a–3 of this chapter) a "small business issuer," defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) rather than Regulation S–K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10–KSB need not provide the information required by paragraph (b) of Rule 14a–3. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10–KSB.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

17a. The authority for Part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Note: The following forms will not appear in the Code of Federal Regulations.

18. By adding General Instruction E to Form 10–SB [§ 249.210b] to read as follows:

Form 10–SB

* * * * *

General Instructions

* * * * *

E. Alternative Disclosure Formats

Small business issuers which were not previously subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may elect any one of the three alternative disclosure models of part I. Regardless of the disclosure model used, all registrants shall also complete parts II and III, and provide the financial statements required by part F/S.

19. By removing Items 1 through 15 under "Information Required in Registration Statement" of Form 10–SB [17 CFR 249.210b].

20. By adding part I; part II; part F/S and Part III after "Information Required in Registration Statement" of Form 10–SB [17 CFR 249.210b]:

Form 10–SB

* * * * *

Information Required in Registration Statement

Part I

Alternative 1

Any issuer may elect to provide the following information.

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 3. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 4. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 5. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S–B.

Item 6. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 7. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 8. Description of Securities

Furnish the information required by Item 202 of Regulation S–B.

Alternative 2

Corporate issuers may elect to provide the following information.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. Appropriate diligence should be exercised to determine that no such inaccuracy or incompleteness has occurred.

The Company

1. Exact corporate name: _____
State and date of incorporation: _____

_____

Street address of principal office:

_____

_____

Company Telephone Number: (_____)
Fiscal year: _____
(month) (day)

Person(s) to contact at Company with respect to offering:

_____

Telephone Number (if different from above): (_____)_____

Business and Properties

2. With respect to the business of the Company and its properties:

(a) Describe in detail what business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

_____

_____

_____

(b) Describe *how* these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

_____

_____

_____

_____

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry. Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

_____

_____

_____

_____

_____

_____

_____

_____

Note: Because this registration statement focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

_____

_____

_____

_____

_____

_____

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: ___/___/___
$ _____
(a recent date)
As of: ___/___/___
$ _____
(one year earlier)

Explain the reason for significant variations between the two figures, if any. Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

_____

_____

_____

_____

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

_____

_____

_____

_____

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

_____

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization in anticipation of this offering, describe (and adjust historical per share figures elsewhere in this registration statement accordingly).

3. (a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)		
(2)		
(3)		
(4)		
(5)		

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question No. 4)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 3, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

4. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

Description of Securities

5. The securities being registered on this Form 10–SB are:

[ ] Common Stock
[ ] Preferred or Preference Stock
[ ] Notes or Debentures
[ ] Units of two or more types of securities composed of:_____
[ ] Other:_____

6. These securities have:

Yes	No	
[ ]	[ ]	Cumulative voting rights
[ ]	[ ]	Other special voting rights
[ ]	[ ]	Preemptive rights to purchase in new issues of shares
[ ]	[ ]	Preference as to dividends or interest
[ ]	[ ]	Preference upon liquidation
[ ]	[ ]	Other special rights or preferences (specify): _____

Explain: _____

7. Are the securities convertible? [ ] Yes [ ] No

If so, state conversion price or formula: _____

Date when conversion becomes effective: _____/_____/_____

Date when conversion expires: ____/____/____

8. (a) If securities are notes or other types of debt securities:

(1) What is the interest rate? ____%

If interest rate is variable or multiple rates, describe: ____

(2) What is the maturity date?

____/____/____

If serial maturity dates, describe: ____

(3) Is there a mandatory sinking fund?

[ ] Yes [ ] No

Describe: ____

(4) Is there a trust indenture? [ ] Yes [ ] No

Name, address and telephone number of Trustee: ____

(5) Are the securities callable or subject to redemption? [ ] Yes [ ] No

Describe, including redemption prices: ____

(6) Are the securities collateralized by real or personal property?

[ ] Yes [ ] No Describe: ____

(7) If these securities are subordinated in right of payment of interest or principal, explain the terms of such subordination.

How much currently outstanding indebtedness of the Company is senior to the securities in right of payment of interest or principal? $____

How much indebtedness shares in right of payment on an equivalent (pari passu) basis? $____

How much indebtedness is junior (subordinated) to the securities? $____

9. If securities are Preference or Preferred stock:

Are unpaid dividends cumulative?

[ ] Yes [ ] No

Are securities callable? [ ] Yes [ ] No

Explain: ____

Note: Include as an exhibit to this registration statement copies or a summary of the charter, bylaw or contractual provision or document that gives rise to the rights of holders of Preferred or Preference Stock, notes or other securities being offered.

10. If securities are capital stock of any type, indicate restrictions on dividends under loan or other financing arrangements or otherwise:

11. Current amount of assets available for payment of dividends if deficit must be first made up, show deficit in parenthesis): $____.

Dividends, Distributions and Redemptions

12. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

Officers and Key Personnel of the Company

13. Chief Executive Officer:

Title: ____

Name: ____

Age: ____

Office Street Address: ____

Telephone No.: ( ) ____-____

Name of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): ____

Also a Director of the Company [ ] Yes [ ] No.

Indicate amount of time to be spent on Company matters if less than full time:

14. Chief Operating Officer:

Title: ____

Name: ____

Age: ____

Office Street Address: ____

Telephone No.: ( ) ____-____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): ____

Also a Director of the Company? [ ] Yes [ ] No.

Indicate amount of time to be spent on Company matters if less than full time:

15. Chief Financial Officer: Title: ____

Name: ____ Age: ____

Office Street Address: ____

Telephone No.: ( ) ____-____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): ____

Also a Director of the Company? [ ] Yes [ ] No.

Indicate amount of time to be spent on Company matters if less than full time:

16. Other Key Personnel:

(A) Name: ____

Age: ____

Title: ____

Office Street Address: ____

Telephone No.: ( ) ____-____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes–[ ] No

Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: _____ Age: _____

Title: _____

Office Street Address: _____

Telephone No.: ( ) _____–_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

Instruction: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

Directors of the Company

17. Number of Directors: _____ If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

18. Information concerning outside or other Directors (i.e. those not described above):

(A) Name: _____

Age: _____

Office Street Address:

Telephone No.: ___ _____–_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

(B) name : _____

Age: _____

Office Street Address:

Telephone No.: (_____) _____–_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

(C) Name: _____

Age: _____

Office Street Address:

Telephone No.: (_____) _____–_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

19. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [ ] Yes [ ] No

Explain:

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any, (including the obtaining of releases or consents from prior employers) have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

20. If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was a general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within the past five years, set forth below the names of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

21. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares	Average price per share	No. of shares now held	Percent of total
Name:			

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

22. Number of shares beneficially owned by Officers and Directors as a group: _____ shares (____% of total outstanding) (Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

Management Relationships, Transactions and Remuneration

23.(a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

24.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer	$	$
Chief Operating Officer		
Chief Accounting Officer		
Key Personnel:		
Others:		

	Cash	Other
Total:	$	$
Directors as a group (number of persons ____)	$	$

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

25.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: ____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or option plans but not yet covered by outstanding purchase agreements, options or warrants: ____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

26. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

Instruction: For purposes of Question 23(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 24, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

27. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

Miscellaneous Factors

28. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this registration statement not misleading or incomplete.

Management's Discussion and Analysis of Certain Relevant Factors

29. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

30. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

31. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: ____%. What is the anticipated gross margin for next year of operations? Approximately ____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

32. Foreign sales as a percent of total sales for last fiscal year: ____%. Domestic government sales as a percent of total domestic sales for last fiscal year: ____%. Explain the nature of these sales, including any anticipated changes:

Alternative 3

Any issuer may elect to provide the following information.

Item 1. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets

for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(iii) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of actors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) Issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the registration statement shall describe, if formulated, the issuer's plan of operation for the twelve months following the date of this registration statement. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the issuer will be able to satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 2. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction:

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

(1) directors;

(2) persons nominated to chosen to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions:

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction:

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 4. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

Name of individual or identity of group
Capacities in remuneration was received
Aggregate remuneration

Instructions:

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurements of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 5. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; *Note*—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of class
(2) Name and address of owner
(3) Amount owned before the offering
(4) Amount owned after the offering
(5) Percent of class

Instruction:

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder
Title and amount securities called for by options, warrants or rights
Exercise price
Date of exercise

Instruction:

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the registration statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 6. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal securityholder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions:

1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item calls for disclosure of indirect as well as direct material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (5) above had an interest of less than 10 percent; or

(c) the interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

6. Information shall be furnished in answer to this Item with respect to transactions not excluded above which involve remuneration from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

Item 7. Securities Being Registered

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being registered, outline briefly the following:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction:

In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) The amount of securities called for by such warrants, convertible securities or rights;

(2) The period during which and the price at which the warrants, convertible securities or rights are exercisable;

(3) The amounts of warrants, convertible securities or rights outstanding; and

(4) Any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Part II

Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters

Provide the information required by Item 201 of Regulation S–B.

Item 2. Legal Proceedings

Provide the information required by Item 103 of Regulation S–B.

Item 3. Changes in and Disagreements with Accountants

Provide the information required by Item 304 of Regulation S–B.

Item 4. Recent Sales of Unregistered Securities

Provide the information required by Item 701 of Regulation S–B.

Item 5. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–B.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of this form. Such financial statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited for the most recent fiscal year, except that if audited financial statements for the preceding fiscal year are otherwise available, those financial statements shall also be provided.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S–B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S–B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method);

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3) (b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III

Item 1. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10–SB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions:

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 12b–23 shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(2) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; and (ii) copies of instruments evidencing scrip certificates or fractions of shares.

(3) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(4) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(5) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(6) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

* * * * *

21. Form 10–QSB (§ 249.308b) is amended by adding General Instruction H to read as follows:

* * * * *

General Instructions

* * * * *

H. (1) A small business issuer that has not registered more than $5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may omit the information required by Item 2 of Part I of this Form 10–QSB. In determining the $5,000,000 limit, small business issuers should exclude registered offerings under employee benefit plans or dividend reinvestment programs.

(2) In response to Item 6(a) of this Form 10–QSB, a small business issuer that has not registered more than $5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may include only those exhibits required by Part III of "Information Required in Annual Report of Transitional Small Business Issuers" of Form 10–KSB. See General Instruction H(1) of this Form 10–QSB with respect to determination of the $5,000,000 limit.

* * * * *

22. By adding the following at the end of the cover page of Form 10–KSB § 249.310b:

Form 10–KSB

* * * * *

Transitional Small Business Disclosure Format (Check one): Yes _____; No _____.

* * * * *

23. By adding General Instruction H to Form 10–KSB [§ 249.310b] to read as follows:

Form 10–KSB

* * * * *

General Instructions

* * * * *

H. Transitional Small Business Issuers.

In lieu of the disclosure requirements set forth under Parts I, II and III, a small business issuer that has not registered more than $5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may include the information required under "Information Required in Annual Report of Transitional Small Business Issuers." In determining the $5,000,000 limit, small business issuers should exclude registered offerings under employee benefit plans or dividend reinvestment programs.

* * * * *

24. By adding Part I, Part II, Part F/S and Part III after Item 13 of Form 10-KSB [§ 249.310b] to read as follows:

Form 10-KSB

* * * * *

Item 13

* * * * *

Information Required in Annual Report of Transitional Small Business Issuers

PART I

Note: Regardless of the disclosure model used, all registrants shall provide the financial statements required by Part F/S.

Alternative 1

Any issuer may elect to provide the information required under Parts I, II and III, above, except for the financial statements called for there.

Alternative 2

Corporate issuers may elect to provide the following information, as well as the information in Parts II and III, below.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. Appropriate diligence should be exercised to determine that no such inaccuracy or incompleteness has occurred.

The Company

1. Exact corporate name: _____
State and date of incorporation: _____

Street address of principal office:

Company Telephone Number: (_____) _____

Fiscal year: _____
(month)

(day)

Person(s) to contact at Company with respect to offering:

Telephone Number (if different from above): (_____) _____

Business and Properties

2. With respect to the business of the Company and its properties:

(a) Describe in detail *what* business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

(b) Describe *how* these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry. Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

Note: Because this annual report focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: ___/___/___
(a recent date)
$ _____

As of: ___/___/___
(one year earlier)
$ _____

Explain the reason for significant variations between the two figures, if any. Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

_____

_____

_____

_____

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

_____

_____

_____

_____

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

_____

_____

_____

_____

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, cc venants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

_____

_____

_____

_____

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

_____

_____

_____

_____

_____

_____

_____

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

_____

_____

_____

_____

_____

_____

_____

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization, describe (and adjust historical per share figures elsewhere in this annual report accordingly).

_____

_____

_____

_____

_____

_____

_____

3. (a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)		
(2)		
(3)		
(4)		
(5)		

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question No. 4)

_____

_____

_____

_____

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 3, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

4. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

_____

_____

_____

_____

_____

Dividends, Distributions and Redemptions

5. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

_____

_____

_____

_____

Officers and Key Personnel of the Company

6. Chief Executive Officer:
Name:
Office Street Address:

_____

Title: _____

Age: _____

Telephone No.: (_____) _____-_____

Name of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

_____

_____

_____

_____

Education (degrees, schools, and dates):

_____

_____

Also a Director of the Company [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

_____

_____

_____

_____

7. Chief Operating Officer:

Name: _____

Office Street Address:

_____

_____

_____

Title: _____

Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

_____

_____

_____

_____

Education (degrees, schools, and dates):

_____

_____

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

_____

_____

_____

_____

8.Chief Financial Officer:

Name: _____

Office Street Address:

_____

_____

_____

Title: _____

Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

_____

_____

_____

_____

Education (degrees, schools, and dates):

_____

_____

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

_____

_____

_____

_____

9. Other Key Personnel:

(A) Name: _____

Office Street Address:

_____

_____

_____

Title: _____

Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

_____

_____

_____

_____

Education (degrees, schools, and dates):

_____

_____

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

_____

_____

_____

_____

(B) Name: _____

Office Street Address:

_____

_____

_____

Title:

_____

Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

_____

_____

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

INSTRUCTION: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

Directors of the Company

10. Number of Directors: _____ If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

11. Information concerning outside or other Directors (i.e. those not described above):

(A) Name:

Office Street Address:

Age:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(B) Name:

Office Street Address:

Age:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(C) Name:

Age:

Office Street Address:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

12. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [ ] Yes [ ] No

Explain:

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any, (including the obtaining of releases or consents from prior employers) have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

13. If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was a general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within

the past five years, set forth below the name of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

14. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares	Average price per share	No. of shares now held	Percent of total
Name:			
.....			
.....			

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No.
(_____) _____
Principal occupation:

Name:

Office Street Address:

Telephone No.
(_____) _____
Principal occupation:

15. Number of shares beneficially owned by Officers and Directors as a group: _____shares (% of total outstanding) (Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

Management Relationships, Transactions and Remuneration

16. (a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

17.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer	$	$
Chief Operating Officer		
Chief Accounting Officer		
Key Personnel:		
.....		
.....		
.....		
Others:		
.....		
.....		
.....		
Total:		
Directors as a group (number of persons—).		

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

18.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or

option plans but not yet covered by outstanding purchase agreements, options or warrants: _____shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

_____

_____

_____

_____

19. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

INSTRUCTION: For purposes of Question 16(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 40, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

20. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

_____

_____

_____

_____

Miscellaneous Factors

21. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this annual report not misleading or incomplete.

_____

_____

_____

_____

Management's Discussion and Analysis of Certain Relevant Factors

22. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

_____

_____

_____

_____

23. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

_____

_____

_____

_____

24. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: _____%. What is the anticipated gross margin for next year of operations? Approximately _____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

_____

_____

_____

_____

25. Foreign sales as a percent of total sales for last fiscal year: _____%. Domestic government sales as a percent of total domestic sales for last fiscal year: _____%. Explain the nature of these sales, including any anticipated changes:

_____

_____

_____

_____

Alternative 3

Any issuer may elect to provide the following information, as well as the information required by Parts II and III, below.

Item 1. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(iii) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of actors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) Issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the annual report shall describe, if formulated, the issuer's plan of operation for the twelve months following the period covered by this annual report. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the issuer will be able to satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 2. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

(1) directors;

(2) persons nominated to chosen to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 4. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

Name of individual or identity of group
Capacities in which remuneration was received
Aggregate remuneration

Instructions

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurements of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 5. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; Note—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of Class
(2) Name and address of owner
(3) Amount owned before the offering
(4) Amount owned after the offering
(5) Percent of Class

Instruction

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder

Title and amount securities called for by options, warrants or rights
Exercise price
Date of Exercise

Instruction

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 6. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal securityholder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions

1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item calls for disclosure of indirect as well as direct material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (5) above had an interest of less than 10 percent; or

(c) the interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

6. Information shall be furnished in answer to this Item with respect to transactions not excluded above which involve remuneration from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

Part II

Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters

Provide the information required by Item 201 of Regulation S–B.

Item 2. Legal Proceedings

Provide the information required by Item 103 of Regulation S–B.

Item 3. Changes in and Disagreements with Accountants

Provide the information required by Item 304 of Regulation S–B.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a–11 of Regulation A under the Act)

terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Item 5. Compliance with Section 16(a) of the Exchange Act

Provide the information required by Item 405 of Regulation S–B.

Item 6. Reports on Form 8–K

State whether any reports on Form 8–K were filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of such reports.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of this form. Such financial statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S–B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S–B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by

the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method);

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3)(b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III

Item 1. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10–KSB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions:

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 12b–23 shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(2) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; and (ii) copies of instruments evidencing scrip certificates or fractions of shares.

(3) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(4) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(5) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights,

furnish a list showing the number and a brief identification of each such patent or patent right.

(6) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

25. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*l*(d), 80b–3, 80b–4 and 80b–11.

26. Amend § 260.0–7 by replacing "whose total assets on the last day of its most recent fiscal year were $5 million or less" with "whose annual revenues for its most recent fiscal year were less than $25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than $25,000,000".

By the Commission.

Dated: July 30, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18544 Filed 8–12–92; 8:45 am]

BILLING CODE 8010–01–M

federal register

Thursday
August 13, 1992

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1033, 1036, and 1049

Milk in the Ohio Valley Marketing Area, et al.; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033, 1036, and 1049

[Docket Nos. AO–166–A61; AO–179–A56; and AO–319–A39; DA 90–015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Federal milk orders based on industry proposals considered at a public hearing held August 14–17, 1990, in Columbus, Ohio, and August 28–29, 1990, in Indianapolis, Indiana. For all three orders, the decision recommends adopting a plan for pricing milk on the basis of its protein, as well as butterfat, components. For the first time in the Federal milk order system, the proposed pricing plan includes adjustments to the protein price based on the somatic cell count of producer milk.

The decision also recommends pooling standards for producer milk and pool distributing and supply plants that will be more uniform between the three markets. Proposed amendments to the Ohio Valley and Indiana orders would price some diverted milk at the location of the plant from which it is diverted. The decision would reduce the level of the Indiana Class I price differential and amend the location adjustment provisions of the Indiana order. Also recommended are increases in the rate of maximum allowable marketing service assessments for all three orders, and an increase in the maximum allowable administrative assessment under the Eastern Ohio-Western Pennsylvania order to the level allowable under the other two orders.

DATES: Comments are due on or before September 14, 1992.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

This action has been reviewed under Executive Order 12278, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued July 25, 1990; published July 31, 1990 (55 FR 31056).

Notice of Reconvened Hearing: Issued August 21, 1990; published August 23, 1990 (55 FR 34569).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Columbus, Ohio, on August 14–17, 1990, and at Indianapolis, Indiana, on August 28–29, 1990, pursuant to a notice of hearing issued July 25, 1990 (55 FR 31056) and a notice of reconvened hearing issued August 21, 1990 (55 FR 34569).

The material issues on the record of hearing relate to:

1. Definitions.
   a. Route Disposition (Order 49).
   b. Supply plant (Order 49).
   c. Pool distributing plant (Orders 33 and 49).
   d. Pool supply plant (all three orders).
   e. Co-op pool plant (Orders 33 and 49).
   f. Pool plant disaster clause (Order 49).
   g. Producer milk.
   i. Diversion limits (all three orders).
   ii. Pricing diverted milk (Orders 33 and 49).
2. Reporting (Order 49).
3. Classification (Order 49).
4. Multiple component pricing (all three orders).
   a. Protein pricing.
   b. Somatic cell adjustment.
5. Class prices and location adjustments (Order 49).
6. Accountability for 9(c) milk (Order 49).
7. Payments to producers.
   a. Due dates and late-payment charges (Order 49).
   b. Seasonal incentive payment plan (all three orders).
8. Administrative assessment (Order 36).
9. Marketing service assessments (all three orders).
10. Conforming changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Definitions. A number of proposals were made by several parties to amend some of the definitions under the three orders. The definitions proposed to be amended range from what were described as clarifying amendments to the route disposition and supply plant definitions under the Indiana order through the pool plant and producer milk definitions of all three orders. Most of the proposals dealing with pool plant and producer milk definitions address the issue of which plants and producers will be eligible to participate in the marketwide pools and, consequently, generated extensive testimony.

The clarifying amendments proposed by the Hoosier Milk Marketing Agency to the "Route disposition" and "Supply plant" definitions of the Indiana order should be adopted. Neither amendment is expected to change the pool status of any entity, but will assure that the order's provisions will be more easily understood and administered.

In general, the pooling provisions of the three orders should be made more uniform. Merger of the three orders was not an issue considered at the hearing and cannot be adopted on the basis of the record of this proceeding. However, the record does show that many of the marketing conditions that normally are considered as reasons for merging Federal order marketing areas are present in these three regulated markets.

Testimony and exhibits in the record show clearly that there is a great deal of overlapping of milksheds between the Indiana and Ohio Valley markets, and between the Ohio Valley and Eastern Ohio-Western Pennsylvania markets. In addition, the record demonstrates that handlers regulated under the three orders have substantial volumes of overlapping sales, and that the order under which some handlers are regulated changes with the proportion of sales the handlers have in each order. The existence of a number of plants that operate as common reserve supplies or common surplus outlets for more than one of the markets also contributes to a picture of three very interrelated markets. In such a situation, differing levels of performance standards for pool plants and producers clearly can create inequities between handlers and producers who are competing within the same areas. Therefore, it is important that the pool plant and producer milk provisions of the orders be similar enough to assure that order provisions do not constitute artificial barriers to the participation of handlers and producers in any of the three marketwide pools.

The two major cooperative associations operating in the three marketing areas proposed amendments to the pool plant definitions that primarily would have the effect of reducing handler access to the three marketwide pools. One of the dominant cooperative associations is Milk Marketing, Inc. (MMI), which markets approximately two-thirds of the milk pooled under the Ohio Valley order (Order 33) and about two-fifths of the milk pooled under the Eastern Ohio-Western Pennsylvania order (Order 36). The other principal cooperative association is Associated Milk Producers, Inc., which pools milk through the Hoosier Milk Marketing Agency (Hoosier) in concert with MMI.

Hoosier markets approximately two-thirds of the milk pooled under the Indiana order (Order 49).

Most of the amendments proposed by the two cooperatives would make participation in the three marketwide pools more difficult for handlers and producers who are not assured of a stable and significant share of the markets' fluid use. National Farmers Organization (NFO) proposed amendments to all three orders that generally would allow slightly greater participation by producers in the three pools, on a more uniform basis than currently exists. Proprietary cheese plant operators and fluid milk handlers proposed amendments to Order 36 that would have opposing effects on the ability of pool supply plants to maintain their pool status.

For Order 49, in addition to the Hoosier proposals to tighten pooling provisions, NFO, the Milk Foundation of Indiana (MFI), an organization of milk plant operators, and New Paris Creamery, a proprietary handler, made and supported proposals that primarily would allow handlers and producers to participate in the marketwide pool more easily.

A set of proposals made by Hoosier (Nos. 20, 22 and 24), to exclude from the marketwide pool producers who are paid under the "Louisville" plan of another order during that order's "payback" months, was abandoned by proponent at the hearing, and not supported by any of the hearing participants. Since the record contains no support for these proposals, they are not considered in this decision.

a. *Route Disposition (Order 49).* A witness for Hoosier testified that the organization had proposed two changes to the route disposition definition. The first proposed change is to include other distributing plants, as well as other persons, in the description of milk movements that comprise "route dispositions." The witness stated that Hoosier's intention is that fluid milk products packaged for another distributing plant be included as part of the packaging plant's route sales and thus part of the computation of the packaging plant's qualification for pooling. The second proposed change would describe Class I fluid milk moved to any milk or filled milk processing plant in other than bulk form as "packaged." The Hoosier witness explained that at the present time bulk milk transferred from one distributing plant to another is not included in the route disposition calculation. He went on to say that at one time omission of bulk fluid sales from pooling qualification was justified by the pattern of milk movement in Order 49, but that such sales are used now only to manipulate the route disposition computation for determining qualification. There was no testimony opposing the proposal, and NFO's brief supported its adoption.

Although neither change to the current order language can be considered substantive, the proposed amendments do contribute some clarification to the route disposition definition. Therefore, the proposed changes should be adopted.

b. *Supply plant (Order 49).* An amendment to the Order 49 supply plant definition proposed by Hoosier that can be considered a clarification of current order language should be adopted. The witness for Hoosier stated that the addition of the words "and is physically unloaded and received into a distributing plant" to the supply plant definition would clarify what constitutes a delivery by a supply plant to a distributing plant. The present definition of a delivery may be considered open to interpretation by those unfamiliar with the order although, in fact, a court has ruled that the present language results in the same meaning that proponents wish to spell out. For purposes of clarity, the proposed language should be adopted, but its adoption in no way implies that the meaning which is to be spelled out more fully is deficient in conveying the requirement that milk that is "shipped to" must also be "physically unloaded and received into".

c. *Pool distributing plant.*

Order 33. Two changes to the pool distributing plant definition of the Ohio Valley order proposed by MMI should be denied. MMI proposed that the pool distributing plant in-area sales requirement for Order 33 be reduced from 15 percent to 10 percent of a handler's route disposition. In addition, MMI proposed increases in the total percentage of a distributing plant's receipts that must be disposed of on routes, from 40 percent to 50 percent for

the months of September through February (except December), from 35 percent to 40 percent for the months of March through July, and from 35 percent to 50 percent for the month of August.

Proponent's witness stated that a decrease in the in-area sales requirement, which would increase the likelihood of a partially regulated plant becoming fully regulated, is necessary to eliminate a partially regulated handler's competitive advantage over pooled handlers on raw milk costs. The witness stated that this competitive advantage is due to partially regulated handlers paying the equivalent of the Federal order blend price for their entire milk supply while regulated handlers must pay the Federal order Class I price for their Class I milk. The witness explained that his estimate of the cost difference between partially and fully regulated plants was between 60 cents per hundredweight and $2.19 per hundredweight, depending on which plants were compared. The proponent witness went on to explain that due to this competitive advantage in raw milk costs, partially regulated handlers are increasing sales in the Order 33 marketing area and thus taking sales from regulated handlers. The MMI witness characterized this situation as a disorderly marketing condition that would be remedied by their proposal.

Some concern was expressed by the proponent witness that because Order 36 would continue to have a 15-percent in-area sales requirement, certain plants would become regulated under Order 33 rather than under Order 36, causing proponents difficulty in economically supplying milk to these plants. In fact, the witness stated, a handler who had initially supported the proposal was now opposed to it because a proposed amendment to Order 36 was not also included in the hearing notice, as initially intended by the proponents.

In testimony and in a post-hearing brief the MMI witness explained that the second proposed change in the Order 33 pool distributing plant definition, to increase the total route disposition percentage, was needed to increase the amount of milk available to distributing plants. He said that when the requirements were lowered, in 1984, there was a surplus of milk in the marketing area. According to the witness, however, the situation has changed dramatically to the extent that substantial volumes of milk have had to be imported to satisfy the needs of the pool distributing plants in the Order 33 marketing area. The witness also explained that the increase was needed to prevent manufacturing plants from riding the pool by paying distributing plants for the opportunity to qualify for pooling.

Proponent witness explained that August should be added to the higher total route disposition standard because August has become a relatively high Class I demand month at a time when milk production is declining. The witness explained that this higher Class I demand is primarily due to the need to begin filling school inventories.

A witness for United Dairy, Inc. (United), testified in support of the MMI proposal, stating that United had lost an account because a partially regulated Virginia dairy had been able to offer a customer a 15- to 20-cent per gallon lower price. According to the United witness, a price difference of this size can be attributed only to a substantial difference in raw milk costs.

A witness representing Sani-Dairy, a partially regulated handler under Orders 33, 36 and 2 (New York-New Jersey), opposed adoption of the MMI proposal, and stated that no disorderly marketing conditions had been demonstrated. The witness explained that Sani-Dairy relies on uniform order provisions across the area in which it markets its products. The witness testified that at past hearings considerable effort has been made to make the provisions of Orders 33 and 36 the same. He stated that reducing the percentage of in-area route sales needed to qualify as a pool distributing plant in Order 33 without a corresponding change in Order 36 would likely cause his plant to become fully regulated under Order 33 while allowing Sani-Dairy's primary competitor in Johnstown, Pennsylvania, to avoid regulation.

The Sani-Dairy witness characterized the proposed change to Order 33 as an arbitrary change that would be disruptive and impede the free flow of goods, a result which the witness characterized as defeating the stabilizing purpose of the Federal order system. The witness also stated that Sani-Dairy needs to maintain its partially regulated status under the Federal order so it can continue to pay competitive prices to its producers.

A producer representing 133 producers shipping milk to Sani-Dairy also testified in opposition to the MMI proposal. The witness testified that if Sani-Dairy's pay price was reduced by Federal order regulation below Pennsylvania State pricing levels, he and other producers would have to consider shipping to another plant. If the price difference was significant, the producer stated, they would probably switch to another plant.

In a brief filed on behalf of Hoosier it was argued that information entered into the record for Toft Dairy, a partially regulated handler under both Orders 33 and 36, should be disregarded since it was not subject to cross-examination. Hoosier argued that Toft is able to distribute up to 15 percent of its receipts in each order without being fully regulated. The Toft information indicated that Toft pays the average of Order 33 and Order 36 Class I prices for raw milk, and argued that MMI had failed to meet the evidentiary burden necessary to justify adoption of its proposed amendment.

The portion of the MMI proposal that would reduce the in-area sales percentage requirement is the only amendment proposed by either MMI or Hoosier that would have the effect of loosening pooling standards to include more handlers in any of the three marketwide pools. Speculation by proponent witness that partially regulated handlers are able to increase sales in the regulated marketing areas because of an unfair advantage based on lower prices paid for raw milk is not a sufficient basis for reducing the in-area sales percentage at which a handler becomes fully regulated. The source of proponent's estimates of the size of two partially regulated plants about which he testified, and the magnitude of their disposition in the marketing areas (that of Order 36, as well as Order 33) was unclear, and the accuracy of the estimates was questionable. At any rate, Toft Dairy apparently represents less than .6 percent of the route disposition in the Order 33 marketing area, and approximately one-half of one percent of the Class I use in the marketing areas of Orders 33 and 36 combined. Reduction of the in-area sales percentage would, if Toft reduced its sales in order to avoid full regulation, remove from the Order 33 market fluid sales representing about .2 percent of the market's total Class I use.

Information contained in the record about Richfood Dairy in Virginia, which apparently distributes milk in both the Order 33 and Order 36 marketing areas, indicates that the value paid by Richfood for raw milk is at least as much as the dairy's obligation would be under full Federal order regulation, because it does not incur any obligation to the Federal order pool as a partially regulated distributing plant.

Given the very small share of Order 33 Class I use that the dairies in question represent, there is no basis for trying to have the small volume of sales represented by the handlers in question become part of the marketwide pool.

The second part of the MMI proposal represents an inappropriate method of attempting to assure that an adequate supply of milk is made available for fluid use. Pool distributing plant standards exist for the purpose of determining which plants are substantially involved in distributing fluid milk products in the marketing area, and therefore should be included in the marketwide pool. There is no evidence in the record of this proceeding that would support a conclusion that a plant distributing 40 percent of its total receipts on routes during the market's months of relatively high Class I utilization is not a significant enough source of fluid milk products for the marketing area to justify its pool status. The average Class I use percentage of milk pooled under Order 33 is barely over 55 percent, and exceeds 60 percent only about one month per year. Further, Class I use percentages do not support any argument that the pooling standard for the month of August should be increased. The record contains no basis upon which it can be determined that the current total pool distributing plant standards are not high enough. Attempts to assure that milk included in the marketwide pool is adequately associated with the fluid market are more appropriately directed at supply plant provisions.

Order 49. The pool distributing plant standards of the Indiana order should be reduced to more closely resemble those of the adjacent Ohio Valley order so that the order under which a given plant with route sales in both marketing areas is regulated is dependent upon the marketing order with which the plant has more association. The computation of the qualifying percentage should be amended to include as receipts diversions from distributing plants, but not transferred receipts from other distributing plants or diverted receipts from other order plants. Provisions allowing continued pool status for plants which have met pooling percentages for the previous month or during summer months for plants which have qualified during the preceding September through May should be retained.

Three proposals were made to amend the pool distributing plant standards for the Indiana order. Hoosier's proposal would reduce the minimum route disposition percentage from 50 percent to 40 percent of total receipts for the months of May through July, include diversions from distributing plants as receipts in computing qualification percentages, and remove the ability of distributing plants to qualify for pooling on the basis of their previous pool status. Generally, the proposal advanced by Hoosier would make it more difficult for handlers to qualify their plants for participation in the marketwide pool.

Proposals by the National Farmers Organization (NFO), a producer cooperative association, and Milk Foundation of Indiana (MFI), a group of six handlers regulated under Order 49, would loosen Order 49 pooling qualifications for distributing plants. NFO proposed that the required route disposition percentage be reduced from 50 percent to 35 percent year-round, but modified its proposal at the hearing to conform to the percentages included in the MFI proposal, and the current route disposition standards of Order 33. NFO's proposal would exclude diverted receipts from other order plants from the receipts used to determine qualifying percentages. The MFI proposal would reduce the percentage of a handler's receipts that must be disposed of as route dispositions if the handler's plant is to qualify for pooling from 50 percent year-round to 40 percent during the months of September through February and 35 percent for the months of March through August.

According to testimony presented by a Hoosier witness at the hearing and arguments included in a brief filed on behalf of Hoosier after the hearing, the current pool distributing plant provisions of the Indiana order allow handlers to attract and maintain receipts of milk without making them available for Class I use. The Hoosier witness stated that many distributing plant operators want a pooled milk supply for the purpose of making Class II products or diverting milk to nonpool plants for use in cheese or Class II products. Hoosier claimed that under the current provisions a distributing plant may be pooled all year on the basis of meeting the order's pooling standards in only 5 months.

The Hoosier witness stated that the Indiana market historically is deficit in milk production, and needs a supplemental supply for fluid use. He testified that during 1989 and 1990, Hoosier imported 3 to 8 million pounds of milk per month at a cost of $2.51 per hundredweight. The witness claimed that exclusion of milk diverted by handlers to nonpool plants from the computation of pool qualification percentages leaves a loophole for handlers to attract and maintain supplies of milk that are not made available for Class I.

According to the Hoosier witness, there is no evidence that the Hoosier proposal would result in depooling any distributing plants currently meeting pooling requirements, or impair the ability of any pool plants to remain pooled. The witness stated that the order should not allow the pooling of milk used in Class II while milk must be imported for Class I use at increased costs to handlers and consumers, and added that the Indiana market has one of the highest percentages of Class II use of the 3-class markets.

A witness for NFO testified that the cooperative markets approximately 16 million pounds of milk monthly on Order 49, and opposed Hoosier's proposals to tighten the pool distributing plant qualification requirements. NFO attributed changes in regulation of Wayne Dairy from Order 49 to Order 33, and back again to Order 49, to differences in the pooling standards for distributing plants under the two orders. As a result of the differing standards, according to NFO, Wayne Dairy was pooled on Order 33 even when the majority of the handler's sales were in the Order 49 marketing area. The cooperative asserted that changes in the order under which handlers are regulated create problems for other handlers and for producers because of the instability in the handler's regulatory status.

The NFO witness attributed Hoosier's proposals to tighten pool distributing plant requirements to former Hoosier customers changing their source of milk supply to other suppliers or to nonmembers, to an increase in the manufacture of Class II products in several of the Order 49 distributing plants, and to the competition of these distributing plants with Hoosier plants in the Class II finished product market. The NFO witness suggested that because Class II is a substantial portion of some distributing plants' product lines, the Order 49 distributing plant Class I disposition requirement should be loosened, not tightened. The NFO witness went on to say that any perceived problem generated by increased Class II use in the market was not caused by a few distributing plants, but by the increase in Class II use by nonpool plants, particularly by Hoosier members' plants.

According to NFO, the one-month lock-in provision for Order 49 distributing plants has been a stabilizing provision that has prevented pool plants from changing regulation under different orders, and should be retained. NFO criticized the Hoosier proposal as being anti-competitive, characterizing it as designed either to cause difficulty for Hoosier competitors in participating in

the Indiana pool, or discourage competitors from competing with Hoosier by producing Class II products such as condensed milk. The NFO witness favored retaining the present pooling framework and changing the qualifying percentages for pool distributing plants to agree with those effective under Orders 33 and 36.

The witness for MFI stated that a number of small distributing plants increased their Class II production as a means of utilizing their surplus butterfat, and that when they were supplied by Hoosier these distributing plants helped balance the market by using seasonal and weekend surplus milk. Since they no longer receive their supply of milk from Hoosier, they must balance their own supply. The MFI witness went on to state that since Order 49 can be characterized as a two-part market, those that are Hoosier customers and those who are not, order provisions should not contribute to the restrictive practices of Hoosier. He added that the Hoosier proposals would make retention of pool status more difficult for certain distributing plants that use significant amounts of milk in Class II, which would benefit Hoosier plants and customers who compete for the same sales.

The MFI witness pointed out that when the distributing plant provisions were written, fluid cream was considered a Class I product. Since fluid cream is now a Class II product, a plant would have had to increase its Class I route sales to maintain the same percentage for qualification. He also stated that during the last year, Class II had made a positive contribution to the producers' blend price and that Class II should not be considered a detriment to the pool.

The MFI witness argued that Class II use in pool plants had been stable over the previous 5 years, and that the increased Class II use in the market is due to milk used by nonpool plants who have received milk diverted to them by the market's cooperative associations. The witness stated that Class II use of pool milk in nonpool plants had increased by a factor of 10 during 1989.

The post-hearing brief filed on behalf of MFI stated that while there is no evidence plants have taken advantage of the one-month lock-in provision, that provision serves the purpose of assuring that a distributing plant will not lose its pool status as a result of the loss of one large customer, but will have a month to try to increase its fluid sales to the extent necessary to meet pooling qualifications. The brief argued that ice cream operations are an integral part of pool plant operations and use seasonal surpluses caused by seasonally-reduced Class I demand and increased production. According to the brief, Hoosier would not denigrate the importance of Class II use if they thought it would be lost to the market instead of gravitating to Hoosier plants.

A witness for New Paris Creamery Company, a pool distributing plant under Order 49 and member of MFI, stated that when New Paris was a full supply customer of Hoosier, Hoosier would move milk in such a way that New Paris would remain qualified under the order. Now that Hoosier is not supplying New Paris, he testified, Hoosier characterizes the same type of milk movements in which it once participated as "sham pooling transactions."

A representative of Miller Corporation, a distributing plant operator pooled under Order 49 and a member of MFI, testified in opposition to Hoosier's proposal to tighten the pool distributing plant requirements. The Miller witness stated that he had been a full supply customer of Hoosier for many years until Miller developed a sizable market for its Class II condensed milk. He testified that Hoosier expressed unhappiness with the amount of Class II use at his plant and started assessing an extra charge for Class II products moving to other orders. The witness for Miller stated that Miller changed suppliers because Hoosier had pulled a considerable amount of milk from the Miller plant and was unhappy with Miller, and another supply became available. He continued by saying that to a small distributing plant the loss of one account could mean the difference between being a pool plant and being a partially regulated plant. The witness indicated that in Miller's case, they would probably try very hard to maintain their pool status. He also stated that in many cases Miller's condensed product is in competition with condensed skim milk marketed by MMI, a member of Hoosier.

The record contains no justification for a higher pool distributing plant qualification percentage for Order 49 than for Order 33. These two adjoining orders share much of the same milkshed, and many of the handlers regulated under either of the orders have route disposition within the other order's marketing area. Approximately 10 percent of Indiana handlers' total route sales are within the Order 33 marketing area, and amount to over 6 percent of the total sales within the Ohio Valley marketing area.

The existence of significantly higher pooling standards in the Indiana order than in Ohio Valley can serve only as an artificial barrier that may have the effect of keeping plants pooled under Order 33 when they actually have more sales in the Indiana marketing area. As in Order 33, pool distributing plant standards should not be used as a means of restricting producer access to the pool, but solely as a means of determining which plants are significantly engaged in distributing fluid milk products in the marketing area, and which distributing plants have a close enough association with the market to justify their inclusion in the marketwide pool. Therefore, the pool distributing plant standards under the Indiana order should be relaxed to the level currently effective under the neighboring Ohio Valley order.

The receipts to be considered in calculating pool plant qualification should correspond with those included in the Ohio Valley order. The receipts to be considered, therefore, are fluid milk products received at and diverted from the distributing plant, but not bulk fluid milk products received as Class II or Class III by transfer or diversion from other plants. All producer milk for which the handler is responsible to the pool should be considered as receipts of the distributing plant, along with other fluid milk receipts for which Class II or Class III classification is not requested. Such receipts represent the supply of milk available to the handler for fluid use. Receipts of milk for which Class II or Class III classification is requested by both the selling and buying handler, however, represent a supply of milk for which fluid use has already been precluded.

The current provisions of the Indiana pool distributing plant definition that allow a plant to retain pool status for one month after meeting the pool plant percentage requirement and allow plants which have met pooling requirements for the previous months of September through May to retain pool status for the months of June, July and August should remain in the order, as long as the plant has some in-area route disposition during the month. Plants regulated by the Indiana order clearly have greater than average proportions of their milk used in Class II. Indiana handlers apparently use milk for Class II products consumed in other marketing areas with lower percentages of Class II use.

Although Hoosier argued that Class II use does not enhance the pool, such use clearly had added significantly to the uniform price during the year preceding the hearing, and may do so again. This increased value should be recognized by accommodating the pool status of

handlers using milk in cream products and soft manufactured products.

The provision that allows a pool plant to retain its pool status for one month after meeting pool qualifications for a month is unusual, but does exist in modified form in the Ohio Valley and Middle Atlantic orders. In a marketing area such as Indiana, where handlers have a greater than normal share of Class II use, it is entirely possible that a distributing plant losing a fluid milk customer could fail to meet pooling qualifications for a month. Disorderly marketing conditions, such as producers losing their pooling base because of a sudden loss of a handler's route dispositions, are more likely to result in the absence of the provision than to be caused by the provision. However, the current provision should be amended to require that a handler meet at least the in-area route disposition requirement to retain pool status.

Similarly, the "free ride" provision for summer months is not contained in most orders, but has some utility in an order regulating the handling of milk in an area such as Indiana, which produces more than its per capita share of Class II products. Class I sales generally are at their lowest level while milk production usually increases during summer months, leaving handlers to deal with more surplus milk than during the rest of the year. Summer is also a time when demand is higher for Class II products such as ice cream and cottage cheese, and production of these products is at its highest level. Handlers who have met the distributing plant qualification percentages during the months of greatest demand for fluid products should not have to be concerned about meeting those percentages when fluid demand is low.

d. *Pool supply plant.*

Order 33. A proposal by Milk Marketing, Inc. (MMI), to increase the percentage of a supply plant's receipts that must be shipped to pool distributing plants from 35 percent to 50 percent if the supply plant is to meet pooling requirements should be denied, as should the portion of the proposal that would add August to the months in which shipping percentages must be met. The proposed requirement that qualifying shipments be met on a net basis should be adopted. The portion of the proposed net shipments provision that contains an allowance for transfers or diversions from distributing plants to supply plants during holidays because of reduced Class I consumption at such times should not be adopted, although the significant reduction in fluid milk consumption during the Christmas holiday season should be recognized by reducing the required shipping percentage for the month of December to 30 percent.

A witness for MMI explained that although there were no proprietary supply plants pooled under Order 33 at the time of the hearing, one was expected to qualify for pooling in the following month. The witness asserted that higher shipping standards are necessary because the market was experiencing a shortage of milk supplies at the time of the hearing. He observed that a pool supply plant should supply the fluid market and not ride the pool, reducing blend prices to producers. The MMI witness explained that as a result of increasing the percentage, only those supply plants actually supplying the market would be pooled. He stressed the need for a net shipment provision as a means of preventing a supply plant from shipping milk to a distributing plant and then having the distributing plant return milk to the supply plant, thus defeating the purpose of allowing the supply plant to participate in the pool. The witness stated that August should be added to the qualifying months to assure a supply of milk for the market when it is needed.

A representative of the Kroger Company, a handler operating a pool distributing plant under Order 33, testified in support of the proposal to increase Order 33 pool supply plant shipping percentages. The witness stated that Kroger has spent a great deal of money procuring a supply of milk for its Order 33 distributing plant, and expressed the belief that the adoption of the MMI proposal would result in more local milk being more readily available to the Class I market, reducing costs to handlers and therefore to consumers.

Briefs filed on behalf of MMI and Hoosier supported adoption of the proposal for the purpose of increasing milk supplies available to bottling plants and reducing the need for costly importation of supplemental supplies.

Evidence in the record fails to support any need for increased poo1 supply plant shipping percentages for the Ohio Valley market. In addition to the absence of any recent experience of such plants under the order or, consequently, any pooling difficulties associated with the order's present shipping percentages, the Class I use percentages for prior years do not support any increase in supply plant shipping requirements.

If supply plants were to become part of the Ohio Valley market, however, they should ship the required percentages without exchanging milk shipments with distributing plants for the purpose of evading the order's pooling standards. Therefore, the proposed net shipment provision should be adopted, without, however, including the allowances for holidays. The proposed percentage allowances for shipments of milk from distributing plants back to supply plants are needlessly complicated. For the purpose of allowing for reduced fluid milk consumption during late December, however, the shipping percentage for the month of December should be reduced to 30 percent.

The record of Class I use in the market also fails to support any need to remove August from the months during which supply plant operators who have met the order's requirements for the preceding period of relatively high Class I use may be pooled without meeting the order's shipping percentages. Increased shipments of milk for fluid use may be needed at the very end of August in order to satisfy school contracts, but such needs do not constitute a basis for requiring shipments at the full fall level for the entire month of August.

Order 36. Shipping requirements for Eastern Ohio-Western Pennsylvania pool supply plants should be increased from 30 to 35 percent for the months of January and February with provision added to require net shipments for all months, but the increases proposed by MMI and United Dairy should not be adopted. An MMI proposal that supply plants be required to transfer at least one tankerload of milk (45,000 pounds) during the fall months to maintain pool status should be adopted. A proposal by Brewster Dairy, a proprietary cheese manufacturer and supply plant operato·, to allow supply plants to meet some of their qualifications for pooling on the basis of shipments to nonpool distributing plants should be denied.

Proposals by MMI and United Dairy, a proprietary pool distributing plant, would increase the amount of milk required to be moved from pool supply plants to pool distributing plants from 40 percent to 50 percent for September, October, and November, and from 30 percent to 40 percent for the remaining months of the year. The proposals also included a net shipment provision to eliminate sales back to the supply plants from pool distributing plants. The MMI proposal included a requirement that supply plants must ship at least 45,000 pounds of milk to a pool distributing plant during the months of September, October and November.

The witness for MMI explained that in recent years more and more supply plants are being pooled on Order 36. The witness went on to explain that the increase in supply plants has not

increased the amount of milk available to pool distributing plants because some of these supply plants have accumulated a supply of Grade A milk and then have not performed the function of supplying the market. According to the witness, the intended function of a supply plant is to carry a reserve supply of milk for the market and provide milk for Class I use when the market needs it. The witness stated that these supply plants have not joined the market to serve the Class I needs of the market, but to help affiliated cheese plants obtain additional supplies of milk. The witness noted that for a supply plant to provide for the fluid needs of the market, it must be able to segregate, cool, store, load, and unload Grade A milk. According to the witness, the provision in the MMI proposal that would require supply plants to transfer at least one tankerload of milk during September, October, and November would demonstrate that a supply plant has the necessary facilities to supply the market.

The MMI witness continued by noting that the supply of producer milk had declined slightly over the last eight years in Order 36, while the combined Class I and Class II needs of Order 36 had increased by 17 percent during the same period. The witness went on to explain that supply plant shipping requirements had not changed during this time and that the requirements should be changed to reflect the change in the market, particularly since supply plants are joining the market to ride the pool.

A witness for United Dairy, who also represented Hillside Dairy and R. Bruce Fike Dairy, two other Order 36 pool distributing plants, testified in support of the United Dairy proposal, which he characterized as similar or identical to the MMI proposal. According to the witness, the net shipments provision is necessary to eliminate sales back to supply plants from pool distributing plants, a practice which he said does not increase the amount of milk available to the fluid market, and therefore does not benefit the market.

The United Dairy witness stated that in Order 36, supply plants do not fulfill their function as a reserve and balancing supply for the Class I market. The witness explained that the supply plants draw millions of dollars from the Order 36 pool and yet do not supply the market when the milk is needed. The witness testified that the supply plants use the pool money to pay their producers, which, combined with premiums derived from profitable cheese operations, allows the supply plants to outpay the distributing plants and thus attract a significant portion of a diminishing Grade A milk supply. The United Dairy witness concluded that the order must contain minimum supply plant shipping percentages that reflect the needs of the market, not only in the quantity needed but also at the times needed.

A witness for Hillside Dairy testified in support of United's proposal. The witness stated that supply plants are not releasing sufficient supplies of milk in the fall. He explained that distributing plants cannot compete with the supply plants for a supply of milk due not only to the draw the supply plants receive from the pool to pay their producers, but also the premiums they can afford to offer. The witness indicated that the supply plants can pay premiums because they can derive additional benefits from milk that distributing plants can not derive, such as higher cheese yields from higher protein milk. The Hillside witness testified that when the shipping percentages were reduced to their present levels in 1978, milk was plentiful. Since that time, he stated, the supply situation had changed, and therefore the proposed increase in the shipping percentage would enhance the marketing conditions in Order 36.

A witness representing Brewster Dairy, a pool supply plant under Order 36, testified in opposition to the MMI and United Dairy proposals, and in support of Brewster's proposal to include shipments by Order 36 supply plants to nonpool distributing plants in determining supply plant pool qualifications. The witness explained that supply plants such as Brewster serve an important function in the market by balancing the market when the demand for Class I milk does not meet the available Grade A supply. The witness noted that the supply plants not only balance the market seasonally but also on a daily, weekly, and monthly basis. The witness indicated that United Dairy's problems in acquiring milk at certain times of the year are not due to a shortage in the market, but to United Dairy's unwillingness to pay a reasonable price for the milk. The witness characterized United Dairy's problem as one of its own making, a problem that should not be remedied by regulation but by the marketplace.

The Brewster Dairy witness claimed that increasing the supply plant shipping percentage would not increase Class I use in the market but would require one sector of the market to supply milk for fluid use, thus leaving more milk for another sector of the market to use for manufacturing. Opposition to the MMI and United Dairy proposals by the Brewster Dairy witness also concerned a perceived inequity in the difference between the proposed shipping percentages for supply plants and the shipping percentages for cooperative pool plants. The witness pointed out that in some neighboring Federal orders the shipping percentages for proprietary supply plants are the same as for cooperative supply plants and in at least one Federal order the requirements for a cooperative plant are greater than for a proprietary plant.

The Brewster witness explained that allowing proprietary pool supply plants to ship milk to other order distributing plants for qualification in Class I would enhance the Order 36 blend price and help to achieve greater equity between the two types of supply plants (proprietary and cooperative). The Brewster witness continued by stating that proprietary pool supply plants should be allowed qualifying shipments of milk to other order distributing plants for the same reasons that such shipments are allowed for cooperative supply plants. The Brewster Dairy witness' testimony in favor of the Brewster proposal was supported by two other Order 36 proprietary pool supply plants, Hans Rothenbuhler & Sons (Rothenbuhler) and Miceli Dairy Products Company.

A brief filed on behalf of the Dairy Industry Association of Pennsylvania expressed support of the MMI and United Dairy proposals to increase supply plant shipping percentages because of the difficulty of obtaining supplies of milk for Class I and Class II use, as demonstrated by temporary revisions of the shipping percentages during fall months in two recent years. The brief argued that the increased number of supply plants on the Eastern Ohio-Western Pennsylvania market has not had the effect of serving Class I needs. The supply plants were described as riding the pool during the flush production months, drawing payments from Class I handlers to pay producers the order's blend price plus premiums that enable the supply plant operators to capture a milk supply to fill their own manufacturing needs, and shipping milk out of the market during the fall months rather than supplying Order 36 distributing plants. The Association brief stressed the need for adopting a net shipments provision to make milk available for fluid use and fulfill the intent of the supply plant provision.

A brief filed on behalf of National Farmers Organization (NFO) took no position on the appropriate levels of shipment for proprietary supply plants, but suggested that higher shipping

percentages could be justified for fall months because the proprietary supply plants are not required to meet qualifying percentages year-round, as cooperative plants are required to do.

The MMI and United Dairy proposals were opposed in briefs filed by Brewster Dairy and Rothenbuhler. Both briefs stated that United Dairy doesn't plan for and negotiate supplies of milk, and is unwilling to pay the prevailing rate for milk. They argued that the proposals are based on a temporary downward trend in production which, at the time of the hearing, was in the process of reversing itself. Brewster stated that no abuses were detailed in the record that warranted adoption of a net shipping standard, and asserted that there are valid reasons for distributing plants to return shipments. The brief charged that MMI wants supply plants making Class II products to have to release their supplies of milk to competing distributing plants.

The Brewster Dairy proposal to allow shipments to nonpool distributing plants to be included in determining whether supply plants meet the order's qualifying percentages was supported in briefs filed by Brewster Dairy and Rothenbuhler. The Brewster brief stated that although Brewster sells Class I milk to nonpool plants in the south and southeastern United States, the handler has also had to depool Order 36 milk because of deliveries to Order 33 pool plants because no local customer required the supplies.

Briefs filed on behalf of the Dairy Industry Association of Western Pennsylvania, United Dairy, Pike Dairy and Hillside Dairy, and MMI opposed adoption of the Brewster proposal. According to the briefs, if the proposal were adopted a supply plant could ride the pool during the flush production months while shipping only 20 percent of its receipts to pool distributing plants during the fall. The Association brief argued that Order 36 pool distributing plants should not have to pay prices consistent with both Order 36 and other markets for seasonal and spot supplies of milk.

Although the percentage of Class I use under Order 36 is generally slightly less than the same percentage under Order 33, the percentage of a supply plant's receipts that must be shipped to pool distributing plants to qualify the supply plant for pooling is 5 percentage points higher in Order 36 than in Order 33 for the months of September through November. This seeming discrepancy is explainable by differing marketing conditions and structure in the two markets. The record of this proceeding contains testimony about fluid milk handlers' difficulties in obtaining adequate supplies of milk under Order 36, while no such problems were described in relation to Order 33. In addition, only about half of the 26 Eastern Ohio-Western Pennsylvania pool distributing plants listed at the time of the hearing were described as having contracts with MMI for all or some of their milk supply, while more than three-quarters of the 16 Ohio Valley pool distributing plants were locked into a cooperative supply of milk. Clearly, a greater need exists for reliable supplies of milk at Order 36 distributing plants than for Order 33 plants, both in the proportion and number of plants that need to procure milk from sources other than the principal cooperative association.

Based on the apparent need for continued supplies of milk for Order 36 distributing plants from supply plants, there appears to be no reason to reduce the current shipping percentages to the level of Order 33. At the same time, the need to increase the shipping percentages to the levels proposed by MMI and United Dairy is not evident either. Even though the percentage of producer milk used in Class I had increased slightly in 1989 above 1987 and 1988 levels, it still represented a 10-percent decrease from the 1969–1975 period, when supply plant shipping standards were 10 percentage points higher.

It is reasonable to require that supply plants actually ship to distributing plants the percentage of their receipts specified by the order. Pooling standards that can be negated by offsetting shipments from distributing plants are meaningless. Therefore, the standards adopted should represent net shipments from supply plants to distributing plants.

The data in the record support a higher shipping standard for the months of December through February than for the "free ride" months of March through August. Class I use percentages for the market are noticeably higher during this period while schools are still in session, requiring a relatively high level of fluid milk products, and before milk production starts to increase seasonally. However, because of the customary decline in Class I use late in December, the percentage for only January and February should be increased. Therefore, the 30-percent shipping standard for all months except September through November should be increased to 35 percent for January and February and remain unchanged for the months of March through August, and December.

The MMI proposal that each supply plant be required to ship at least one tankerload of milk (at least 45,000 pounds) during the months of September, October and November to demonstrate that the plant has the facilities to segregate, cool, store, load and unload Grade A milk is a reasonable criterion for a supply plant, and should be adopted. Proponent's testimony is unclear as to whether the intent of the proposal is to require the minimum volume of shipment in each of the three months, or in just one of the months. Establishing that a plant has the ability to handle the milk, however, should be necessary for only one of the three months, and the recommended language reflects such a requirement.

The Brewster Dairy proposal that proprietary supply plants be allowed to fulfill up to half of their required deliveries to pool distributing plants with shipments to nonpool distributing plants would not assure that Order 36 supply plants are contributing sufficiently to the supply of milk for fluid use in the Order 36 marketing area, and should be denied. Proprietary supply plants meet the order's shipping requirements for the purpose of being able to pay their producers the market's blend price, which is generated by the Class I use of pool distributing plant operators in the market under which they are pooled. It is the market's distributing plant operators who contribute the portion of the marketwide pool that exceeds the Class III price and that enables supply plant operators to pay their producers a higher price than manufacturing uses normally would generate.

Brewster Dairy apparently sells milk for fluid uses to more southerly markets during the fall months when those markets are experiencing even tighter milk supply conditions than exist in the Order 36 market. If Brewster's proposal were adopted, the handler (and other supply plant operators) would be able to use such sales as part of their qualifying shipping percentage under the Order 36 market, reap the advantages of collecting large premium payments from the southern handlers, and still maintain pool status under Order 36. Brewster would then be able to ride the Order 36 pool during the flush production months, shipping nothing to distributing plants during the months of March through August, while collecting equalization payments from the Order 36 pool to enhance its payments to its own producers.

Order 49. The portion of a Hoosier proposal to amend the Indiana order pool supply plant provision that would

reduce the shipping percentage for the "free ride" period from 50 percent to 35 percent should be adopted. The percentage of milk that must be moved by supply plants to distributing plants during the months of September through February should be reduced from 50 percent to 40 percent, to bring the order more closely into agreement with the other orders involved in this proceeding. Also, pooling qualification percentages should be subject to temporary adjustment by the market administrator when marketing conditions warrant.

Proposals by New Paris Creamery and the Milk Foundation of Indiana to allow diversions of milk, as well as transfers, from supply plants to distributing plants as qualifying shipments should be adopted, up to the limit of the volume of milk transferred. An aspect of the Hoosier proposal that would shorten the "free ride" period to May through July instead of April through August should be denied. The Hoosier proposal that shipments of condensed milk re-used in fluid milk products be included in supply plant qualifying shipments has been rendered moot in light of the recommended decision [Issued November 6, 1991; published November 22, 1991 (56 FR 58972)] on the record of the national hearing held in the Fall of 1990. [Docket No. AO–14–A64, etc. DA–90–017; RIN 0581–AA37].

The Hoosier witness characterized the Indiana market as a deficit market in which outside sources of milk have been needed for many years. He explained that since Hoosier supplies the majority of the supplemental milk for the market at a cost substantially above order prices, Hoosier's producers bear the brunt of the cost while other producers on the market share in the blend price, but not in the cost of supplying the market's Class I needs. The witness stated that present order provisions contribute to the problem by allowing supply plants to ride the pool.

The Hoosier representative testified that pool supply plant qualifying percentages should be computed on the basis of all producer receipts at the supply plant, including milk diverted to other plants and commercial food establishments. Other changes to the pool supply plant definition proposed by Hoosier included shortening the "free ride" period to May through July instead of April through August, allowing condensed skim milk to be used for qualification, and providing for the shipping percentages to be changed at the discretion of the market administrator.

The witness for Hoosier explained that the shipment of milk by supply plants to pool distributing plants should be on a net basis. He stated that adoption of a net shipment provision would prevent supply plants from establishing schemes to ship fluid milk to pool distributing plants for qualification and then have the distributing plants ship the fluid milk back to the supply plant or to a nonpool plant. The witness went on to say that the Hoosier proposal would allow condensed skim milk to be used by the supply plant as part of its qualification shipments. He stated that even though this type of movement does not occur presently under the order, the use of condensed skim milk or specialty condensed mixes for fortification is a coming trend, and provision should be made for this type of movement. The witness testified that Hoosier did not intend that condensed skim milk be considered a fluid milk product.

NFO opposition to Hoosier's proposal centered around the proposed reduction in the "free-ride" period. The NFO witness stated that tightening the shipping requirements by reducing the "free-ride" period has no sound basis, and would place Order 49 supply plants at a competitive disadvantage to supply plants regulated under Order 33. The NFO witness spoke in favor of the proposed net shipments provision provided that reasonable shipping requirements are used (presumably 35 percent in March through July and December, with no change for other months). The NFO witness also supported the portion of the Hoosier proposal that would give the Market Administrator authority to adjust shipping percentages as needed.

MFI presented testimony opposing the proposal to tighten the supply plant shipping requirements. The MFI witness stated that the only change in marketing conditions in the Indiana market had been that neither of the two supply plants operating under the order at the time of the hearing marketed their milk through Hoosier, and therefore at least one of them had had to make uneconomic movements of milk to remain a supply plant under Order 49. The witness explained that even though milk is moved to qualify a plant, the movement does not result in any more milk being available for the distributing plants, and in fact some milk moves when the distributing plants do not need it. The MFI witness stated that in view of Indiana market conditions, loosening the supply plant standards would be more appropriate than tightening the standards as proposed by Hoosier.

The MFI witness explained that the MFI proposal to amend the supply plant qualification provisions, in contrast to Hoosier's proposal, would improve the efficiency of the market by allowing supply plants to divert milk to distributing plants to meet the supply plant qualification percentage. The witness testified that many other orders allow supply plants to qualify on the basis of milk movements to distributing plants direct from farms, and that such movements are recognized as the most efficient and least cost method of supplying milk to distributing plants.

In the 20 years between the merger of the Indianapolis, Fort Wayne and Northwestern Indiana orders to form the present Indiana marketing area and the hearing in this proceeding, the percentage of Indiana producer milk used in Class I declined approximately 10 percentage points. Over the same time period, the percentages of producer milk used in Class I in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas declined about 15 percentage points and 10 percentage points, respectively. (Official Notice has been taken of the Annual Federal Milk order Market Statistics for the years 1969–1990). Over the same twenty-year time period, Order 33 supply plant pooling requirements have been reduced by 15 percentage points, while the same requirements for Order 36 pool supply plants have been reduced by 10 percentage points.

It is apparent from these trends that a failure to loosen pooling provisions does not cause Class I use percentages to remain at a higher level. Also, with Class I utilization of about 60 percent annually, the Indiana market is clearly not seriously deficit in terms of milk supply for fluid uses. Although Hoosier obviously has imported large quantities of milk, sometimes at substantial cost, the market's need for such imported milk for fluid use is not clearly shown. The record indicates that some handlers have found it difficult to find fluid outlets for supplies of milk they wish to pool. Testimony by an NFO witness indicates that NFO would have been willing and able to supply some or all of the milk required by Hoosier to fulfill its supply contracts, in order to meet qualification requirements for its own milk supply. According to Hoosier testimony, 9 of the 10 fluid milk plants on the Indiana market at the time of the hearing were full or partial supply customers of Hoosier's, leaving 1 customer to be supplied by other sources.

In keeping with amendments to pool qualification provisions in Order 33 and Order 36, the Indiana pool supply plant shipping percentages should be reduced to 40 percent for the months of September through February, and to 35

percent for the months of March through August. The record provides no basis for changing the order's current "free ride" period, during which supply plants meeting the order's pooling requirements during the months of September through February retain their pool status for the following months of April through August, to May through July as proposed by Hoosier. The Class I use statistics for the previous 5 years show that the percentage of milk needed for fluid use drops sharply between the months of March and April in the Indiana market and rises most markedly between the months of August and September. In this respect the Indiana market differs slightly from the 2 Ohio markets, where the seasonal drop in Class I use is more marked between the months of February and March.

The percentage of a pool supply plant's milk supply that must be delivered to pool distributing plants should be a net requirement. As in the 2 Ohio markets, failure to adopt a net shipment requirement would result in meaningless shipping standards, and would not help to assure an adequate supply of milk for fluid use.

For the purpose of facilitating efficiencies in milk marketing, diversions of producer milk should be considered in determining supply plant qualifications, up to the amount of milk moved by transfer to distributing plants. Moving milk directly from farms to distributing plants is a more efficient way of getting milk to where it is needed than having to unload and reload the milk at supply plants. In addition, extra unloading and reloading increases the cost to handlers of handling milk and causes the milk to deteriorate in quality. Direct delivery by supply plants from producers' farms to distributing plants supplies the market just as transfers do, but at a lower cost.

Milk diverted by a supply plant operator should be considered a receipt at the plant for the purpose of determining pool qualification, as should .9(c) milk received from a cooperative association. Such milk constitutes the supply of producer milk available to the handler for shipment to distributing plants. In addition, allowing diversions of producer milk to be included as qualifying shipments necessitates that such movements be considered as receipts. Receipts of other source milk or transfers and diversions for which Class II or III classification is requested by both the shipping handler and receiving supply plant handler do not need to be considered as receipts for qualification purposes.

Provision should be made in the pool plant definition for the market administrator to temporarily adjust the percentage shipping requirement by up to 10 percentage points if such action is needed to assure an adequate supply of milk for fluid use, or to prevent uneconomic shipments of milk. Such a provision will allow more efficiency in adjusting regulations to marketing conditions.

e. *Co-op pool plant.*

Order 33. A proposal by National Farmers Organization (NFO) to reduce the shipping percentages required of a cooperative association plant from 50 to 35 percent should be adopted. The modification to the proposal made by proponent at the hearing, to eliminate the requirement that qualifying shipments be to pool plants instead of to pool distributing plants, should not be adopted. The NFO witness testified that NFO's proposal to change the cooperative pool plant shipping percentage in Order 33 to equal the Order 36 cooperative pool plant shipping percentage would further NFO's goal of making the provisions of the 2 Ohio orders more uniform. The witness explained that the Class I utilization of the two orders was almost equal in 1989, and that no other parties at the hearing had proposed increasing the cooperative pool plant shipping percentages effective under Order 36. The NFO witness further stated that a long-time fluid milk customer had ceased bottling activity, causing NFO difficulty in meeting the order's pooling requirements.

The proposal was opposed by MMI and Hoosier on the basis that shipping requirements under Order 33 should be tightened, not loosened. The MMI brief argued that there is no reason to reduce shipping requirements in a market with 80 percent Class I and Class II use. The brief filed on behalf of Hoosier stated that the NFO plant at McCartyville is only 15 miles from the MMI New Bremen plant to which some of the NFO milk is delivered. The Hoosier brief stated that the NFO facility is a reload point, not an actual plant with the ability to cool or hold milk, and that its operation makes no economic sense and serves no balancing function for the market. The Hoosier brief also argued that NFO moves milk to its own plant first to multiply the pounds of milk it can qualify for pooling on the basis of sales to New Bremen and other handlers.

The current language of the order makes very clear that a cooperative pool plant can qualify for pooling only if 50 percent of the association's member producer milk is actually delivered to pool distributing plants, and leaves no room at all for pyramiding additional volumes of pooled milk on top of the milk which is qualified at the cooperative pool plant. In view of the Class I use percentage of the Ohio Valley market and the portion of the market dominated by MMI, it is unreasonable to require a cooperative association to deliver 50 percent of its milk supply to pool distributing plants on a year-round basis. Reduction of the required percentage to 35 percent will still require that cooperatives operating cooperative pool plants demonstrate a higher level of commitment to supplying the fluid market than regular supply plants must meet because supply plants that meet the 35-percent shipping percentage requirement for the months of September through February do not have to do so during the months of March through August. There is no reason to require cooperative pool plants to meet a significantly higher shipping percentage than regular supply plants, as well as meeting such a percentage on an average annual basis.

The proposal to allow any shipments to pool plants as qualifying, however, or to include shipments to nonpool distributing plants in cooperative pool plant qualification, would have the effect of ignoring the responsibility of such plants to supply the market for fluid use within the Ohio Valley Federal milk order marketing area. Therefore, these modifications to the proposal should not be adopted.

Order 49. A proposal by NFO that a cooperative pool plant provision be added to the Indiana order should not be adopted. The NFO witness stated that NFO's proposal was patterned after similar provisions in Order 33 and Order 36 where, he said, the cooperative supply plant provision has been a positive method of efficiently pooling the milk of cooperative members. The witness explained that this provision would allow the most efficient pooling of NFO's supply plant and the cooperative's total milk supply. The provision would allow a cooperative to qualify a cooperative supply plant if the cooperative shipped 35 percent of its total producer milk on the market year-round to pool distributing plants.

The proposal was opposed in a brief filed on behalf of Hoosier on the basis that the Indiana marketing area does not need supply plants, and has never needed a balancing plant. According to Hoosier, the NFO Madison plant doesn't serve the purpose of a balancing plant because it provides no processing of the market's reserve supplies.

The record provides no indication that a cooperative pool plant provision is needed in the Indiana order. There was no testimony that milk must be

transferred from farm pick-up routes to over-the-road tankers to assure Indiana fluid milk handlers of a milk supply. The producer milk diversion allowances, relaxed under this decision, should allow NFO to continue to qualify its member producer milk associated with the Indiana market to retain pool status without adding an unnecessary provision to the order.

f. *Pool plant disaster clause (Order 49).* A "disaster clause" proposed by Hoosier for inclusion in the Indiana order should be adopted. The proposal would assure continued pool status for pool distributing and pool supply plants if a plant was unable to meet the order's pooling standards because of disastrous circumstances. Proponent witness defined such disasters as unavoidable circumstances such as natural weather-related events, fires, breakdowns and work stoppages, and proposed that relief be limited to two consecutive months to prevent abuse.

No opposition to the proposal was expressed at the hearing, and the NFO brief filed on the basis of the hearing record supported the proposal as preserving orderly marketing in the event of natural disasters or other events that could interfere with pool plant status. An order provision assuring continued pool status in the event of an unforeseen and unavoidable circumstance that is not a result of a handler's business decisions should enhance the orderly marketing of milk in the Indiana marketing area. Such provisions have worked well in other orders over a number of years. Therefore, the proposal should be adopted.

g. *Producer milk.*

(i) *Diversion limits (all three orders).* A proposal by NFO to make the diversion limits uniform between the three orders should be adopted. The amended orders would allow 50 percent of a handler's producer milk to be diverted during the months of September through February, except for the month of December when the allowable percentage of diversions would be 60 percent. Diversions during the months of March through August would continue to be unlimited. During the months of September through November at least one day's production of each producer's milk would have to be received at a pool plant. Proposals to eliminate requirements in Orders 36 and 49 that producer milk be received at pool plants before being eligible for diversion are adopted.

The NFO witness testified that the NFO proposal to amend the producer milk definitions of the three orders to achieve a higher degree of uniformity is based on the high degree of interrelation between the three marketing areas. The witness stated that NFO's proposal would achieve uniformity by (a) requiring each producer to "touch base" at a pool plant during each month of September through November, as is currently the case under Orders 33 and 36, (b) allowing a producer's milk to be diverted to a nonpool plant prior to being received at a pool plant, and (c) establishing a uniform 50-percent diversion limit for the months of September through February, excluding December.

NFO's proposal was opposed in briefs filed on behalf of MMI and Hoosier, wherein it was argued that the proposed diversion limits would liberalize and reduce shipping standards that are needed to protect the integrity of the pools and insure an adequate supply of milk for fluid use. In addition, Hoosier's brief stated that the pooling provisions of each order are established on the basis of production and marketing data unique to each. The brief argued that if the uniformity argument is not specious, the pooling provisions of Order 49 should also conform with those of Orders 30, 40, 32, 50 and 46.

NFO's proposed amendment to Order 36 would enable producers to maintain their producer status after a break in deliveries (such as in the case of a degrade) without having to touch base at a pool plant, as long as their milk has not been pooled under another order since being pooled under Order 36. The witness explained that under the present provisions of Order 36 a producer must maintain continuous association with the market to be diverted, even during those months when there is no touch-base requirement. According to the witness, uneconomical movements of milk result when a producer temporarily loses Grade A status. In such a case, the producer's first day's production upon returning to the market must be received at a pool plant, requiring that the entire load with which the producer's milk is picked up be received at a pool plant, and resulting in uneconomical and unnecessary movements of milk. The witness explained that NFO's proposal would allow a producer's milk to be diverted before being received at a pool plant if the producer has not been associated with another Federal order during the time the milk was not pooled. No testimony or briefs were received opposing the NFO proposal to amend the Order 36 producer milk provisions.

A proposal by Milk Marketing, Inc., to amend Order 36 would limit March through August diversions of producers with less than one-third of their milk pooled during the preceding months of September through November. The MMI witness stated that producers who share in proceeds from the fluid market during the flush production months should be expected to deliver some milk to market when it is most needed for Class I. The MMI brief referred to testimony in the record that some producers ship milk south in the fall and ride the Order 36 pool in the spring. The proposal was characterized by MMI as similar to provisions in other markets.

NFO opposed adoption of the proposal on the basis that it would be difficult if not impossible to administer. The NFO brief described the MMI proposal as an attempt to penalize or restrict movement of producers off of Order 36 and back on again. According to NFO, no problem necessitating adoption of the proposal was demonstrated at the hearing. The Dairy Industry Association of Pennsylvania filed a brief stating that the Association had no objection to the proposal if producers' milk may be diverted without limit in December and March through August when one-third of the producers' milk is pooled during the months of September through November.

The MMI proposal should not be adopted. The amended producer milk provisions should provide sufficient assurance that producers whose milk is qualified for pooling are adequately associated with the fluid market to share in the proceeds of the marketwide pool. The record contains little or no basis to support adoption of the proposal.

A proposal by Hoosier for Order 49 would amend the producer milk definition to allow producers to "touch base" at pool plants any time during a month, allow producer milk to be diverted to commercial food processors as well as to nonpool plants, and remove April and August from the months in which unlimited diversions are allowed. A brief filed on behalf of NFO supported the portions of the proposal that would allow diversions of producer milk to commercial food processors and allow a new producer's milk to be diverted before it is received at a pool plant. NFO opposed tightening Order 49 delivery standards, arguing that if Order 49 standards are significantly higher than those under Order 33, the result will be more milk pooled under Order 33 rather than more milk available to Order 49 pool distributing plants.

As adopted herein, the Indiana producer milk definition will allow producers to "touch base" at pool plants at any time during each of the months of

September through November, for the same reasons of efficient hauling and handling that such provisions were adopted for Order 36. In addition, the November 1991 decision on the 1990 national hearing adopts provisions that allow producer milk to be diverted to commercial food processing establishments. Therefore, that issue is not addressed in this decision. Finally, the record provides no basis for tightening Indiana diversion provisions.

All of the ways in which the milk marketing activities of these three markets overlap support the argument that producer milk diversion limits should be more uniform between the three orders. The milkshed of the Ohio Valley marketing area overlaps significantly with those of the Eastern Ohio-Western Pennsylvania and Indiana marketing areas, to the extent that in December 1989 nearly 80 percent of the milk pooled under Order 33 was produced in counties which also supplied milk to Orders 36 and 49. Over 60 percent of the producer milk pooled under the Ohio Valley order was produced in the common milkshed with Order 49, while over 20 percent of the producer milk pooled under the Indiana order was produced in the common Order 33-Order 49 milkshed. Further, milk was pooled under Order 33 in 1990 from 12 counties in Indiana and Michigan that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply Order 49 handlers, and from 6 Michigan, Pennsylvania and Ohio counties that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply order 36 handlers, indicating significant levels of changes in market by producers among the three markets.

The outlets for surplus milk supplies used by the three markets also demonstrate a high degree of interrelationship. During 1989 and 1990, 21 nonpool plants were listed as recipients of Class II and Class III milk from both Order 33 and Order 36, while thirteen nonpool plants were listed as receiving surplus milk from handlers regulated under Orders 33 and 49. Ten nonpool plants received Class II and Class III milk from handlers regulated under Orders 36 and 49 in 1990, and 11 nonpool plants received Class II and Class III milk from handlers regulated under all three orders during the period 1985–90.

Two pool distributing plants, Smith Dairy and Wayne Dairy, shifted between orders in both 1989 and 1990; Smith Dairy becoming pooled under Order 33 instead of Order 36 during some fall months of both years, and Wayne Dairy shifting regulation from Order 49 to Order 33 during the summer of 1989 and fall of 1990. In addition, at the time of the hearing, the Shipshewanna supply plant was expected to shift regulation from Order 49 to Order 33. The effect of a shift in the order under which a plant is regulated will be disorderly for producers if they fail to meet the delivery requirements of the order under which they find their handler regulated, instead of the requirements of the order under which their handler had been regulated.

As noted earlier, the pooling provisions of the Indiana order have failed to be adjusted in accordance with marketing conditions as milk production pooled under the order has increased faster than Class I sales by regulated handlers. For this reason, and because of the need for uniformity between provisions of the three orders as outlined above, the producer shipping percentages of the three orders should be amended as proposed by NFO.

ii. *Pricing diverted milk (Orders 33 and 49).*

Order 33. A proposal by MMI to amend the Ohio Valley order to price milk diverted to plants located outside the marketing area and outside the State of Ohio from farms located inside Ohio or in five Michigan counties at the location of the plant from which diverted should be adopted, with some modification. At the time of the hearing, proponent modified the proposal to require that producers whose milk is priced at the location of the plant from which it is diverted deliver at least 66 percent, or 20 days' production, of their milk to pool plants during each of the months of September, October and November. The proposal as adopted would be further modified by limiting the location adjustment applicable to the uniform price paid to such producer to that effective at the location of the producer's farm for the months of March through August, but only when 65 percent of a producer's milk is delivered to a pool plant or plants at which an equivalent or higher price is applicable during the months of September through February.

The MMI witness stated that every fluid milk market needs facilities or access to facilities to handle reserve supplies of milk that are not needed for fluid use on weekends and holidays. He testified that the number of manufacturing plants in the Order 33 marketing area has decreased to such an extent that on many occasions milk not needed for the Class I market must be moved long distances to be processed into storable products. According to the witness, milk produced outside the marketing area near the reserve processing plants creates no difficulty, but that milk produced within the marketing area that must be transported outside the area to manufacturing plants does create financial problems.

The witness testified that producers whose milk is moved to distant plants (located at Goshen and Auburn, Indiana) expect to be subject to prices and hauling rates competitive with their neighbors whose milk goes to nearby fluid outlets. He explained that disruptive and disorderly marketing conditions would occur if individual dairy farmers began competing for the local market and trying to avoid the cost of sending their milk to distant plants and receiving a lower blend price as well. The MMI witness argued that producers who have diverted their milk from local markets have already suffered financial loss due to increased hauling, and should not be subject to the additional loss of receiving a lower blend price as well. However, the witness also testified that producers pay a fixed rate for hauling under their contracts with haulers, regardless of the destination of their milk. Proponent cited what he described as similar provisions to those proposed for the Ohio Valley order in the current Southern Michigan order and former Lake Mead order.

It appears that adoption of the proposal may have the effect of causing milk to be moved to Goshen rather than to fluid plants in the southern part of the marketing area, where much less milk is produced and where more milk is needed for fluid use. The distance from New Bremen, Ohio, where much of the milk in question is normally received, to the surplus outlet at Goshen, Indiana, (about 120 miles) is about the same as the distance from New Bremen to Cincinnati, Ohio, in the southern part of the Ohio Valley marketing area. The ability of producers to easily receive the same price for deliveries to a surplus outlet as they would if their milk had gone to a nearby plant would remove the incentive intended by the order's location adjustment provisions to move milk to the more southerly part of the marketing area where it is needed.

Three-quarters of the distributing plants, at which milk is needed for fluid use, that are pooled under the Ohio Valley order are located south of Zone 2 and south of the area of heavy milk production in which the MMI witness indicated producers experience problems with additional negative location adjustments. In fact, in December 1989 over 50 percent of the

Ohio milk pooled under Order 33 was produced in the Ohio counties of the Ohio Valley marketing area north of Zone 3, while less than 40 percent of the Ohio milk pooled under Order 33 was produced south of Zone 2. With less than 40 percent of Ohio milk available from nearby sources to supply approximately 75 percent of the Class I needs of the market, it is apparent that the need for price incentives to move milk from the heavy production area of northern Ohio to the southern Ohio area of greater Class I demand still exists in the market. Therefore, the incentives contained in the current location adjustment structure of the market should not be curtailed as abruptly as proposed by MMI.

The provisions of the Southern Michigan order and the former Lake Mead order differ significantly from those proposed by MMI. Under the Southern Michigan order, only the milk of producers who each month deliver 65 percent of their production to plants at which the same location adjustment rate is applicable are eligible to have all of their milk deliveries subject to that same rate, rather than a lower rate for milk diverted to distant manufacturing outlets. The Lake Mead order provided that only those producers located in two counties for which the only nearby outlet was a fluid milk plant in Las Vegas, Nevada, would have their milk priced at the plant from which diverted. The location adjustment on prices paid to producers located in the vicinity of a distant manufacturing plant was capped at the rate applicable at that plant. Similar provisions for the Ohio Valley order would allow pricing at the location from which diverted only for the milk of producers located in the Cincinnati area, and require the assumption that the nearest surplus outlet is in Goshen, Indiana.

According to the record of this proceeding, there are at least six nonpool plants located in Zones 1 and 2 of the Ohio Valley marketing area and the three northwestern Ohio counties that lie between the Order 33 and Order 49 marketing areas that receive Class II and Class III milk from pool plants for use in the manufacture of ice cream, yogurt, and evaporated milk. A number of surplus outlets also exist in Zones 3 and 4 for milk usually delivered to pool plants in that area that must be diverted from fluid use at times when the fluid plants do not need it. These plants certainly represent closer surplus outlets for the milk of producers in northern Ohio and southern Michigan than the Goshen facility, as does a Kraft ice cream plant in Huntington, Indiana.

Although proponent witness referred specifically to problems encountered in the diversion of producer milk to manufacturing outlets on weekends and holidays, it is apparent from seasonal production and fluid use statistics that a greater problem exists in connection with moving surplus milk to manufacturing outlets in the spring and summer months when production increases and fluid milk needs decline.

For the period March 1987 through February 1988, which apparently was unaffected by any shift in plant regulation under Order 33, the average daily volume of producer milk used in Class III during the months of March through August exceeded the average daily Class III use for the following September through February period by more than 130 percent, or over 1,600,000 pounds per day. In view of the availability of some nearby manufacturing plants and the wide seasonal variation in the amount of surplus milk that must be disposed of, changes in the pricing of diverted producer milk should be confined to the season in which significant volumes of surplus milk are produced. Further, those producers who benefit from the amended provision should not benefit to the extent of having milk that is diverted to a lower-priced area priced at the same rate as if it were received at a plant in a higher-priced zone. In order to avoid such a situation, the location adjustment provisions should limit the price paid for diverted milk to the price effective for the zone in which the farm is located.

The provisions adopted in this decision will assure that the order retains a price incentive to move milk from the northern area of heavy production for the Ohio Valley market to southern Ohio, where consumption is greater relative to production. Only producers whose milk is regularly received at pool plants during the months when supply plants are required to ship milk to distributing plants should be eligible to have their diverted milk priced at the plants where it is regularly received rather than at reserve processing plants. Adoption of a provision pricing most milk at the location from which it is diverted, even if applicable only to producers in a particular vicinity, would provide a disincentive to move milk from farm locations to the cities where it is needed for fluid use.

Order 49. A proposal by the Milk Foundation of Indiana (MFI) to price all diverted milk at the location at which it is received instead of the location from which it is diverted should be adopted, with modifications. MFI, a group of proprietary distributing plant operators, proposed the deletion of a provision of the Indiana order that allows milk diverted to a plant located in the marketing area, the State of Ohio, or south of the marketing area to be priced at the plant from which diverted. The witness for MFI stated that the provision allows Hoosier to take as much as $60,000 a month out of the pool by moving milk to nonpool manufacturing plants for surplus use instead of to fluid milk plants for Class I use, as normally intended by location adjustment provisions.

A portion of Hoosier's proposal to amend the producer milk definition would have provided for diverted milk to be priced at the location of the last pool plant from which it was diverted, and, in the case of a dairy farmer who was not pooled under the order in the prior month, for such milk to be priced at the location at which it is first received.

MFI's proposal was opposed by Hoosier and Milk Marketing, Inc., on the basis that producers who normally deliver milk to a particular plant expect to receive the price paid at that location, not a lower price when their milk must be diverted to a distant plant for which they incur higher hauling costs. According to the brief filed by Hoosier, the Indiana market is unlike most Midwest areas, in that diverted milk pooled under the Indiana order primarily moves from inside the marketing area to the periphery, instead of from the periphery to the center. Further, the brief stated, Indiana differs from many Midwest areas where the milk supply is located to the north of the fluid handlers and location adjustments are needed to avoid paying "phantom freight" for diversions of milk to nearby manufacturing plants. The Hoosier brief stated that there is no "phantom freight" in Order 49, and that the present provision is justified on the same basis as the Lake Mead provision referred to in relation to the Ohio Valley location pricing proposal.

Hoosier explained that many of its producers are located near handlers to which milk is delivered when needed. When not needed by fluid handlers, the brief stated, the milk is diverted to a balancing outlet some miles distant. Hoosier argued that such producers should not be penalized by receiving lower prices for their milk that must be diverted, as well as incurring higher hauling costs.

Hoosier's argument that diverted Indiana pool milk moves from the center of the market to the periphery, and not

from a northern production area, is contradicted by record evidence. According to data in the record, milk production in the northern part of the Indiana market is much heavier in relation to fluid needs than is the case in the southern part of the market. Sixty percent of the milk produced for the Indiana market is produced in the northern part of the marketing area, where the primary surplus outlets are also located and where negative location adjustments are effective. A number of other surplus outlets are located in Illinois, where minus location adjustments apply, and in Ohio Valley zones with lower Class I differentials under Order 33 than under the Indiana base zone, but subject to no location adjustments under the Indiana order.

Only one-half to two-thirds of the volume of milk used in Class I in the Indiana zero adjustment zone is produced there. Similarly, seventy to ninety percent of the milk needed for Class I use in the minus 20-cent zone, just north of the zero zone, is produced within the minus 20-cent zone. Eighty-five to ninety percent of the Indiana Class I milk is distributed from plants located in the zero and minus 20-cent zones, but less than 40 percent of the milk in the pool is produced in the Indiana portion of the zero and minus 20-cent zones where the distributing plants are located.

The need for supplemental milk supplies in the two southern zones of the Indiana order makes it clear that the order should provide some incentive for milk to be moved from northern Indiana, Ohio and southern Michigan, where it is produced, to southern and central Indiana distributing plants. The present order provisions, allowing milk to be priced at the plant from which diverted, contain no economic incentive to move milk to where it is needed for fluid use. Provisions similar to those adopted for the Ohio Valley order, as explained above, should provide the needed economic incentive to move milk for fluid use without unduly penalizing handlers who must move milk to distant manufacturing plants when their milk supplies are not needed for fluid use.

Because of the dearth of outlets for surplus milk in the southern portion of the Indiana marketing area, the diverted milk of producers who meet the 65-percent shipping requirement to pool plants in the southern zones during any month should not be subject to any additional minus location adjustments. However, milk delivered primarily to locations in the northern part of the marketing area, in which most of the primary surplus outlets are located, should be priced at the plant at which it is physically received. Such provisions will assure that producers whose milk is usually received in the lower-priced northern portion of the market will have a price incentive to allow their milk to be moved south, where it is more likely to be needed for fluid use. In addition, the provisions adopted in this decision will more closely resemble the Southern Michigan and Lake Mead provisions cited by Hoosier and MMI than do the current Indiana order provisions regulating the pricing of diverted milk.

For the reasons stated above, the Indiana order should require that 65 percent of a producer's milk be delivered to a pool plant or plants in the current zero and minus 20-cent pricing zones of the marketing area during any month in order to have the producer's diverted milk priced at the location from which diverted. Milk customarily delivered elsewhere should be priced at the location at which it is physically received.

2. *Reporting* (Order 49). A Hoosier proposal to eliminate from Order 49 a reporting requirement that handlers notify the market administrator of their intention to divert milk prior to doing so should be adopted. According to proponent witness, the notification requirement has not been enforced for many years. He also stated that such a reporting requirement would be cumbersome, if not impossible, to fulfill, and that the market administrator has no use for such data even if it were reported. No opposition to the proposal was received at the hearing, and its adoption was supported in the brief filed on behalf of NFO.

The provision proposed to be deleted appears to be not only unnecessary, but, if it were enforced, a positive hindrance to the efficient and economical marketing of producer milk. Diversions of milk to nonpool plants apparently have become much more common and voluminous since the provision was adopted. Many diversions also would not be planned for with enough time to give prior notice to the market administrator. Other Federal milk orders operate well without such provisions, as the Indiana order apparently has for some time without it being enforced. Therefore, the requirement should be removed.

3. *Classification.* The portion of the multiple component pricing proposal that would have changed the classification of packaged fluid milk products in inventory at the end of a month from Class III to Class I does not need to be considered in this proceeding because the proposed change was included in the November 1991 recommended decision on issues considered at the national hearing held in the fall of 1990.

A proposal by New Paris Creamery to amend Order 49 to change the classification of milk used in infant formulas from Class II to Class III because of a difference in classification of the product between the Indiana and Southern Michigan orders also is not addressed in this decision. The November 1991 recommended decision on national hearing issues included uniform classification provisions for all Federal milk orders. Adoption of uniform classification should eliminate the problem addressed by the New Paris Creamery proposal.

4. *Multiple Component Pricing (all three orders).*

a. *Protein pricing.* A proposal to incorporate a multiple component pricing plan in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Federal milk orders should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan that has operated under the Great Basin milk order for several years. Producers would be paid on the basis of the pounds of milkfat and protein contained in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total milkfat, the protein used in Classes II and III, the skim milk used in Class I, and the hundredweight of total product used in Classes I and II.

The pricing plan recommended in this decision would vary from that in the Great Basin order by using the percentage of protein contained in the milk included in the Minnesota-Wisconsin price survey rather than the marketwide average protein percentage, and by adjusting protein prices paid to producers and charged to handlers by the somatic cell count of the milk.

The proposal to incorporate multiple component pricing in Orders 33, 36 and 49 was proposed by Milk Marketing Incorporated (MMI), and Hoosier Milk Marketing Agency (Hoosier). The proponents' witness explained that in May of 1990 MMI marketed approximately 67 percent of the milk pooled on Order 33 with 1,988 producers and approximately 40 percent of the milk pooled on Order 36 with 2,020 producers. The witness explained that Hoosier consists of Associated Milk Producers, Inc. (AMPI) and MMI. These two cooperatives, through Hoosier, represent 1,475 producers whose milk is

pooled on Order 49, and 65 percent of the producer milk pooled under that order.

Proponent witness explained that milk has been priced on the basis of butterfat and volume for many years. He stated that in recent years, however, demand for lowfat dairy products has changed the emphasis as to which fraction of the milk has the most value. For many years, he testified, the butterfat fraction had the most value and therefore was a major pricing factor in milk. However, with the popularity of lowfat products, the skim fraction has become the major factor of value in milk. Data introduced by the witness showed that butterfat has gone from 77 percent of the value of milk down to 32 percent of the value, with the skim showing a corresponding increase in the percentage of value in the milk. The witness went on to state that by pricing milk on the basis of its protein, as well as butterfat content the producers would receive the pricing signal necessary to adjust to changes in the marketplace.

The proponents' representative presented several reasons for the implementation of multiple component pricing under Orders 33, 36, and 49. The first reason given by the witness was that these three orders should have mandatory multiple component pricing regulated by the Federal order system. The witness stated that although 77 percent of the Order 33 producers, 65 percent of the Order 36 producers, and 99 percent of the Order 49 producers were eligible for some form of multiple component pricing in May of 1989, the multiple component pricing plans currently in effect vary in their payment criteria, resulting in disorderly marketing conditions in these three markets.

The witness explained that since proponents' plan would incorporate the pooling of the protein value, producers with above average protein would benefit. According to the witness, some milk is bypassing certain plants to receive multiple component pricing, thus increasing transportation costs and helping create a disorderly marketing condition. He stated that producers would benefit from having their milk shipped to the nearest plant rather than bypassing bottling plants and going to manufacturing plants.

The second reason given by the proponents' witness for implementing multiple component pricing was that the current pricing system does not properly reflect the value of the milk.

The witness pointed out that the skim fraction of milk has gone from representing 25 percent of the value of milk to representing 65 percent of the value of milk. The witness stated that as a result the most valuable portion of the milk is not priced. Therefore, he concluded, the market does not send economic signals to the producer about the composition of the milk produced.

The third reason given by the proponents' witness for implementing multiple component pricing under the Federal orders is the growing interest by consumers in the nutritive value of their diets. The witness explained that consumers are becoming increasingly interested in the nutritive content of their dairy foods, while the present pricing system does not recognize the relative value of these components in milk. The witness pointed out that while the present system does not reward dairy farmers who produce milk containing more than average protein, which is valued by consumers, it does pay for additional butterfat, which is rejected by consumers. The witness continued by explaining that the proposed multiple component pricing plan would encourage producers to increase the content of milk components that are worth more, such as protein, in relation to the components of milk that are not worth as much, thus improving the milk to meet the demands of the marketplace.

The representative for the proponents explained that the proposed multiple component pricing plan is modeled from the Great Basin order, and would include protein as a component to be priced, in addition to the butterfat and product pounds that are now used in determining producers, pay prices.

Proponent witness stated that the proposed multiple component pricing plan is modeled on the Great Basin order because the provisions of that order incorporate the current structure of the three orders for which the plan is proposed, and have been used successfully for several years. He stated further that the Great Basin order excludes adjustments to the Class I price, an important feature for maintaining uniformity in Class I handler costs. The witness also argued that the Great Basin order provides for multiple component pricing on Class II and Class III milk, where there is a demonstrable relationship between the components of milk and the yield of finished products.

The witness then explained the modifications of the Great Basin order's multiple component pricing plan proposed by proponents. The first modification addressed the computation of the protein price. Under the Great Basin order, the handler protein price is computed by dividing the Class III skim price by the previous month's marketwide average protein percentage.

According to the witness, use of a different marketwide protein test for each market would result in each market having a different protein price and, therefore, differing Class III prices between markets, leading to disorderly marketing conditions.

Proponent witness described five alternatives for determining the protein price, and said that the most preferred method would use formulas to compute a butterfat price and a protein price, probably based on the Chicago butter market and the Green Bay cheese exchange. However, the witness indicated, this type of change in pricing would not be practical now. All of the remaining alternatives for computing the protein prices would use the Class III skim price divided by one of several protein percentages. The witness stated that proponents prefer the method which would use the protein percentage of the milk received by plants included in the Minnesota-Wisconsin survey. According to the witness, use of this protein percentage under all three orders would result in the same handler protein price under the three orders, thus avoiding a potential source of market disorder. The protein price would then reflect more closely the value of protein contained in milk included in the M–W survey.

The witness also pointed out that by using the M–W protein percentage, producers will be able to increase the protein content of their milk without reducing the protein price, a result which would occur when market average protein content is used. Another alternative suggested by the witness would be to have the Market Administrators of Orders 30 and 68 (for the Chicago and Upper Midwest marketing areas) test and report a protein percentage for the plants that are in Minnesota and Wisconsin and are pooled on those orders. A third alternative that the witness listed for determining the protein percentage was to have the department conduct a survey of plants in Minnesota and Wisconsin to determine the average protein content of their milk. This average would then be used to determine the handler protein price. The witness added that if the protein percentage from one of the above alternatives cannot be obtained, use of the current month's market average protein percentage would be acceptable.

Another modification of the Great Basin order advocated by proponents' witness was to include the Class II price differential in computing the producer

protein price. The Great Basin order uses both the Class I price differential and the Class II price differential in computing the producers' weighted average differential price. In proposing this change, the witness stated there would be a Class II protein price as well as a Class III protein price. The witness said that this change would show the producer that the protein fraction of the producer's milk is worth something and would thus encourage producers to increase the protein content of their milk.

Another change from the Great Basin order proposed by proponents is the separate pricing of Class II and Class III milk used-to-produce manufactured products, and the other milk uses in these two classes. The proponents' proposal would price milk used to produce manufactured items on the basis of protein and butterfat, while the other Class II and Class III uses, such as inventory, shrinkage, and fluid cream products, would be priced as they are now; i.e., on the basis of skim and butterfat. The witness stated that this change is favored because non-used-to-produce items do not rely on the protein content of the milk for their value. Therefore, he said, handlers should not have to pay for protein that has no relationship to yield. The witness also advocated the inclusion of transfers and diversions to nonpool plants under the multiple component pricing plan.

Proponents' representative explained that the final modification proponents desired to make in the Great Basin order to adapt its use to the three orders under consideration is the inclusion of somatic cells in the computation of handler protein prices and producer protein prices. The witness characterized this difference as pricing protein on its' "true value". The witness said that the industry recognizes somatic cells as a factor in the "availability" of protein for use by handlers, and therefore as affecting the value of protein to handlers. The witness continued by saying that producers would receive the proper return for their milk by including somatic cells in the computation of each producer's pay price. The pricing of milk according to its somatic cell content will be discussed in detail later in this decision.

A witness for National All-Jersey, Inc., testifying in support of proponents' multiple component pricing plan, stated that including multiple component pricing in these three orders will provide an important mechanism for enhancing the efficiency of milk production and marketing. The witness pointed out that not only will handlers and producers benefit from multiple component pricing, but consumers also will benefit.

The witness explained that handlers would benefit because they would be required to account for the milk components that give milk value. With multiple component pricing, handlers would know the protein content of the milk they are receiving and would consequently be able to do a better job of using the protein to yield the best return. The witness compared accounting for protein to the present accounting for butterfat. The witness went on to explain that handlers do not want to pay for something that they don't receive, and that with the proposed multiple component pricing plan, they would pay only for what they get.

Producers would benefit, explained the witness, because they would be rewarded if they produce the higher-protein milk that is demanded by the marketplace, in contrast to the present system in which there is no reward for higher-protein milk. Also, he said, since under the proposed multiple component pricing plan the producer would be paid for pounds of protein, pounds of butterfat, and total product pounds, the producer could clearly determine what component of his milk is giving the greatest return and therefore what component to improve in his herd. The witness also pointed out that since the product pounds will be valued at the weighted average differential the producer can see what value participation in the pool contributes to his return.

A representative of National Farmers Organization, a dairy farmer cooperative, testified in support of the proposed multiple component pricing plan. The witness explained that NFO supports multiple component pricing because producers will be rewarded for supplying the market with the milk components that the marketplace demands. The witness went on to explain that NFO supports the proposed pricing plan because, unlike the Great Basin multiple component pricing plan, the producer protein price would not be reduced as the marketwide percentage of protein increases.

The NFO witness also expressed support for the use of protein rather than nonfat solids in the proposed multiple component pricing plan. He supported the use of protein rather than nonfat solids because protein is the component most demanded by handlers in the marketplace, and because producers are familiar with protein levels in their herds due to protein testing by the Dairy Herd Improvement Association (DHIA) and by USDA sire summaries. The NFO witness did, however, express concern over the use of a producer protein price that may cause a decline in income for 50 percent of the producers. The witness suggested that a neutral protein range be adopted with a plus adjustment for protein percentages above the neutral range and negative adjustments for protein percentages below the neutral range.

A representative of Dairylea Cooperative, Inc., testified that Dairylea has approximately 2,300 members, with the milk of one hundred and twenty of these producers pooled on Order 36. The Dairylea representative stated that at Dairylea's last annual meeting a resolution was passed favoring Federal order amendments that encourage the use of protein or nonfat solids as part of the pricing system. The witness continued by saying that the time has come for protein pricing, particularly since the value of butterfat has declined substantially relative to the value of the protein or nonfat fraction of milk solids.

A witness for Kraft USA testified in favor of the multiple component pricing proposal. The witness expressed particular support for the use of the M–W protein average in computing the handler protein price. The Kraft witness explained that by using the M–W protein average rather than a market average, handlers' cost of protein from market to market would be equal, as it is for butterfat. This would allow handlers from areas with varying protein levels to compete on an equal price basis. According to the witness, this would not be the case when the market average protein percentages are used to compute the handler protein price.

The multiple component pricing proposal was also supported by a representative of National All-Jersey Inc., and the American Jersey Cattle Club (NALJ–AJCC). The witness explained that National All-Jersey is a national dairy farmer organization affiliated with the American Jersey Cattle Club, a breed registry organization for owners of Jersey cattle that provides marketing services to its members. The witness stated that the two organizations have 796 members in Indiana, Ohio, and Pennsylvania. He explained that a milk pricing system should give producers the incentive to produce the components demanded by consumers, be of value to processors, and be fair to producers. The witness testified that the present pricing system does not accomplish this function, while the proposed multiple component pricing plan would. The witness said that the present pricing system, because

it does not account for the protein or solids in milk, encourages a producer to produce water for which he receives the same return as he does for the solids. By accounting for and pricing protein, the witness stated, the multiple component pricing plan would encourage producers to manage their herds to obtain the greatest return by increasing their protein levels. The witness continued by saying that the production tools are in place to increase protein levels, even to the extent of increasing protein while decreasing butterfat. All that is lacking, he said, is the marketing incentive to do so, and incentives will be provided with the implementation of multiple component pricing.

The multiple component pricing proposal was supported in a post-hearing brief filed on behalf of Brewster Dairy, a proprietary supply plant operator regulated under Order 36. The Brewster brief favored adoption of the proposal on the basis that the proposed provisions providing a uniform price per pound for protein and an economic adjustment for somatic cells are needed.

A brief filed on behalf of the Dairy Industry Association of Western Pennsylvania opposed adoption of the multiple component pricing plan on the basis that the record of the hearing supports a national multiple component pricing plan with consistency between orders. The Association's brief states that over-order premiums already are substantial and significant enough to provide incentives and send signals for producers to increase the protein content of their milk production until uniform multiple component pricing provisions can be adopted nationally. The brief acknowledged the benefits from and demand for higher protein content and lower somatic cell counts demonstrated in the hearing record.

Multiple component pricing should be included in the amended orders, with pricing on the basis of butterfat and protein. The record shows that a large percentage of producers whose milk is pooled under the three orders already are eligible for or receive some form of multiple component pricing, and that nearly all of these component pricing plans use protein as a pricing component. The record also indicates, however, that different handlers have differing protein premium payment programs, resulting in nonuniform bases of payments to producers. Such differing bases for payment may cause, and according to proponents has caused, disorderly conditions in the procurement of milk supplies by competing handlers. In addition, adoption of multiple component pricing will allow the order to recognize the additional value in milk with a higher-than-average protein content by incorporating such pricing within the order.

The hearing evidence leaves no question that payment for milk on the basis of its protein content can be justified on the criterion of economic value. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Handlers receiving milk that will result in greater volumes of finished products such as cheese or cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished product deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield.

Pricing milk on the basis of its protein content also meets the criteria of measurability, intrinsic value, and variability. The evidence in the record shows that protein can be easily measured and, in fact, that the variability in measurement may be less than the variability in butterfat testing because protein does not separate as butterfat does. Second, the record evidence shows that protein has value to the manufacturing sector in the form of improved product yield and product structure. The value to the fluid sector was not quantified in the hearing record; however, testimony indicated some benefit to the fluid sector from higher-protein milk, resulting in a more nutritional product. The criterion of variability is necessary to justify pricing a component separately from the product in which it is contained. In the case of protein in milk the record shows that the level of protein varies from season to season, region to region, and farm to farm. In view of its economic value in dairy products, its widespread use as a pricing component in the three markets, and its qualification under the three criteria above, protein appears to be the appropriate component for pricing milk in these orders.

The price for protein should be based on the Minnesota-Wisconsin price and the protein content of the milk included in the Minnesota-Wisconsin price series. The handler protein price should be computed by subtracting from the Minnesota-Wisconsin price for the month the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk included in the determination of the Minnesota-Wisconsin price.

Proponents presented several alternatives for computing the handler protein price because it was not known at the time of the hearing whether or not the protein content of the Minnesota-Wisconsin milk would be available to compute the handler protein price. Since the hearing, however, the protein content of the milk used for the Minnesota-Wisconsin price has begun to be collected and reported for the month preceding the month for which the M–W price is announced. This data can be adjusted for the current month using historical data collected by the market administrators of the Upper Midwest and Chicago Regional milk orders. With the availability of this information, the other alternatives are no longer relevant. Not only did the testimony strongly favor using the protein content of the Minnesota-Wisconsin milk to determine the handler protein price, but as multiple component pricing becomes a more common feature of Federal milk orders, it will be necessary that a standard price for protein be used.

The proponents' proposal to price Class II and Class III used-to-produce items separately from Class II and Class III other uses should not be included in the amended orders. This proposal would result in the three orders included in this proceeding having five classes of utilization as well as different protein prices for Class II and Class III. At the present time, almost every Federal order has a three-class market, with the industry moving to more uniform classification rather than away from it. The November 1991 recommended decision on the national Federal milk order hearing includes provisions for uniform classification in all of the federal orders. Adoption of proponents' modification would compound problems of interorder differences in regulation. At the same time, there is some question about whether only used-to produce items are favorably affected by higher protein content. Testimony at the hearing indicated that fluid cream products benefit from higher protein levels, and therefore should be included in the protein pricing of Class II items. The remaining products that make up the proposed "other uses" portion of Class II and III are a very small percentage of the milk pooled and would therefore not affect the producer protein price. In fact, on the basis of pool data from the hearing record, this particular portion of the multiple component pricing proposal would have no effect on the weighted average differential and producer protein price or handlers' cost of milk.

The argument that protein used in Class II should have a higher price than protein used in Class III was not supported by the evidence at the hearing. The testimony at the hearing clearly showed that protein has value in used-to-produce products in both Class II and Class III, but the testimony did not establish any additional value or additional contribution of the protein used in Class II products versus protein used in Class III products. Therefore, the added value of Class II products should be represented entirely by the weighted average differential rather than by a Class II protein price.

b. *Somatic cell adjustment.* A producer's value of milk should reflect the level of somatic cells contained in that milk. The adjustment to the producer's value should be made by adjusting the producer protein price paid to each producer rather than including such adjustments in handlers' pool obligations.

An expert witness for proponents of the multiple component pricing proposal testified that a somatic cell count is a measure of the concentration of white blood cells in milk. According to the witness, these cells are present in the milk as an immune response to a bacterial infection of a cow's udder. The white blood cells attack and destroy the bacteria and, in the process, contribute to the damage the bacteria has done in the secretory system. They also release enzymes that not only attack the bacteria, but also affect the milk. Besides causing loss of quality of the milk, the somatic cells also may cause a decrease in production in the affected animal and, in very severe cases, death of the animal.

The witness continued by saying that the effect of somatic cells on milk occurs primarily in the udder of the cow where conditions are favorable for the development of bacteria and the activity of the somatic cells. Once the milk has been removed from the cow and placed under correct handling conditions, stored at or below 40 degrees Fahrenheit, the activity of the cells is reduced and further deterioration of the milk is minimal. Some of the enzymes, however, are not destroyed during pasteurization and therefore may continue to affect milk quality. The expert witness testified that somatic cells cause a breakdown of fat with a resultant release of free fatty acids. These fatty acids cause a rancidity and an off-flavor in dairy products.

Proponents' expert witness testified that the effect of somatic cells on manufactured products is attributed to the enzymes released by the somatic cells. These enzymes attack the casein in the milk and break the casein down into shorter chain proteins that are then lost in the whey during the cheese-making process. The general result is that under identical conditions with milk of equal protein tests, milk with a higher somatic cell count will yield less cheese due to lower casein levels than will milk with a lower somatic cell count. The witness also explained that somatic cell levels affect the final moisture content of the cheese and the activity of the cheese starter. According to the witness this reduction in the functional ability of protein to result in a high-quality manufactured product is not limited to cheese. He stated that any manufactured product that relies on protein to give it structure or form is also affected by degradation of the protein by somatic cells.

Several proponent witnesses testifying on the issue of somatic cells stated that as the number of somatic cells increases, the quality of milk, even that used in fluid products, decreases. A witness for Brewster Dairy testified that Brewster's fluid customers are willing to pay a premium for low somatic cell count milk because of its extended shelf life. Another witness, representing Dean Foods, stated that lowering the somatic cell counts helps bottlers by increasing the quality of the milk, consequently increasing the shelf life of the fluid products.

The quantitative effect of various somatic cell levels on the yield of cheese was discussed at great length at the hearing because this measurement is the basis for the somatic cell differential levels included in the protein payment proposal. Proponents' witness indicated that commingled milk shows a more linear relationship between somatic cell counts and cheese yield than does milk from individual cows, and that milk from individual udder quarters will show more variability from a linear relationship of the two factors than milk from individual cows. However, he stated, the relationship between changes in somatic cell counts and cheese yields is not linear, even with commingled milk. Proponents' witness explained that there is a sudden decrease in cheese yield of about one percent as the somatic cell count increases to approximately 100,000. As the somatic cell count increases from 100,000 to 1,300,000, he testified, the decline in cheese yield may be an additional one to two percent depending on milk handling conditions. The witness testified that there is a three- to four-percent decline in cheese yield as the somatic cell count goes from 100,000 to 1,000,000. Although there is an apparent discrepancy between one of the studies introduced and the testimony of the proponent witness, both show a relationship between somatic cell levels and cheese yields.

The witness went on to discuss research that showed cheese yield decreasing by approximately five percent as somatic cell counts increased from 100,100 to 500,000. The study showed that as somatic cell counts increased from 500,000 to 1,000,000, cheese yields decreased an additional 3.7 percent for a total decrease in yield of 8.7 percent. The witness pointed out that the researcher identified a loss in cheese yield of .045 kg per 45.36 kg of milk for every 100,000 increase in somatic cell counts. This translates to 1/10th of the one percent decrease in cheese yield per every 100,000 increase in somatic cells.

A witness for Kraft USA summarized the results of the three studies received into evidence by concluding that the studies showed an average .07 pound decrease in cheese yield for every 100,000 increase in somatic cell count. A representative of Brewster Dairy stated that Brewster uses as a rule of thumb a 1/10th of one pound change in cheese yield for each 100,000 change in the somatic cell count.

A witness for MMI explained that the five percent figure used in the multiple component pricing proposal to compute the somatic cell differential was derived from the conclusion that as somatic cell counts increase from 100,000 to 1,000,000, cheese yields decline by one pound. The witness stated that this one pound decline represented a ten percent factor of the cheese price and that the proposal was intended to represent one-half of the reduction in cheese yield attributable to somatic cells. The proposed ten percent factor represents the incremental change of one tenth of one pound of cheese and not the percentage change in the cheese yield if the yield changed from 10 pounds of cheese per 100 pounds of milk to 9.9 pounds of cheese per 100 pounds of milk.

A witness for MMI stated that the neutral range in the somatic cell differential was chosen because that is the range into which MMI's weighted average somatic cell count falls. Proponents proposed that producers' pay prices increase with somatic cell counts below the neutral range and decrease with somatic cell counts above the neutral range. Proponent witness explained the use of 200,000 cells as the lowest category by stating that there is no significant effect on cheese yields as somatic cell counts decline below 200,000. A witness for Kraft USA stated

that the 200,000 somatic cell level was used as the minimum category because McDonald College of McGill University considers somatic cell counts below 200,000 to be from a healthy cow.

A witness for Kraft USA, testifying as a proponent, explained that somatic cell testing consists of counting the number of cells in a specified size sample of milk, and described two procedures used for counting somatic cells: The direct microscopic somatic cell count (DMSCC) and the optical somatic cell count (OSCC). The DMSCC is a manual microscope counting method while the OSCC is an electronic method.

The Kraft witness explained that there are two different machines that use different techniques for determining somatic cell levels. The Fossomatic machine uses a dye to stain somatic cell nuclei and then counts the stained cells. The Coulter counter counts particles of a certain size. A witness for proponents observed that the Fossomatic was the more commonly used machine in the dairy industry. It was also pointed out that both machines must be calibrated against a known standard, and that in the case of somatic cell testing, the standard is the DMSCC method.

A witness for MMI testified that both MMI and the Ohio DHIA use the Fossomatic machine for their somatic cell testing. The witness stated that a Fossomatic machine costs around $65,000, while another proponent witness put the cost of OSCC machines between $38,000 and $195,000, depending on the options included, as compared to the $2,000 to $4,000 for the DMSCC.

The proponent witness noted that, as with any laboratory procedure, employee training and skill are critical to the results of the procedure. The record states that the coefficient of variation for somatic cell testing should be below 5 to 7.5 percent while the coefficient of variation for butterfat and protein testing is approximately one half of one percent. However, according to proponents' expert witness, the variability in testing is randomly distributed and therefore would not consistently bias a producer's pay price one way or another. The witness also testified that since there are many industry payment plans using somatic cells as part of their payment criteria there is an industry standard for somatic cell testing that the industry trusts and uses.

For somatic cell counts to be used for determining payments to producers, the level of somatic cells must affect the value of the milk to the user. The hearing record contains substantial testimony to the effect that as somatic cell counts increase the functional value of the milk decreases. The record shows that this change in functional value affects all dairy products, from fluid milk to hard products. In fact, several witnesses testified that high somatic cell counts reduce the quality and shelf life of fluid milk products. The record also shows that somatic cell levels have an effect on the molecular structure of soft manufactured products, including the ability of cream to whip properly. In the manufacture of hard products, record evidence shows that the yield of cheese is directly related to the level of somatic cells in milk.

Since the value of the milk has been shown to be affected by the level of somatic cells, appropriate adjustments must be determined to apply to the various levels of somatic cells that will then be used to adjust individual producers' protein prices. As contained in this decision, the somatic cell differential adjustment to the producer protein price will be computed by multiplying the appropriate constant for each producer's average somatic cell count by the monthly average 40-pound block cheese price at the National Cheese Exchange as published monthly by the Dairy Division. The resulting somatic cell differential value will be added or subtracted from each producer's protein price.

The somatic cell differential value to be used for adjusting producers' protein prices is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein. The evidence contained in the hearing record shows that as somatic cells increase from 100,000 to 1,000,000 cheese yield declines anywhere from three percent to nine percent, with a substantial amount of this decline occurring below 200,000 somatic cells and above 900,000 somatic cells. Since the record clearly shows that the relationship between cheese yield and somatic cell count is not linear, the relationship adopted in this decision between the somatic cell differential value and the somatic cell count is not linear, but reflects the proportional change in cheese yields as the somatic cell level changes.

The constant to be used was computed by dividing the change in the cheese yields attributable to changes in somatic cell counts by the average protein test of producer milk. As proposed, the adjustment to the producer protein price for somatic cell content would be computed by dividing the product of the cheese price and a factor, which varied with the somatic cell level, by the average protein percent used in calculating the handler protein price. The proposed factors varied from .15 for a somatic cell count below 200,000 to −.30 for a somatic cell count above 1,000,000. The proposed factors changed by .05 for every 100,000 change in somatic cells, with a neutral range of 400,000 to 500,000 somatic cells. The factors contained in the proposal were based on the reduction in cheese yield associated with varying somatic cell counts, assuming a linear relationship between cheese yields and somatic cell counts.

Because the reduction in cheese yield with increasing somatic cells is not linear, the factors to be used in adjusting producers' payments for protein are revised from the proposal, as shown in Table 1. Dividing these factors by the average protein of the three markets involved in this decision yields the constants shown in Table 1 to be used for computing the somatic cell differential. Use of a constant substantially simplifies the computation of the somatic cell differential without changing the corresponding value. This result occurs because the protein percentage must change by a considerable amount before the differential will change. Therefore, the somatic cell differential will be calculated by multiplying the constant corresponding to each somatic cell count interval by the average price of 40-pound block cheese at the National Cheese Exchange as reported monthly by the Dairy Division.

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL DIFFERENTIAL

Somatic cell counts	Factors	Constants for computing the somatic cell differential
0 to 99,999	2.30	.09375
100,000 to 199,999	.20	.06250
200,000 to 299,999	.10	.03125
300,000 to 399,999	.05	.01562
400,000 to 499,999	.00	.00000
500,000 to 599,999	−.05	−.01562
600,000 to 699,999	−.10	−.03125
700,000 to 799,999	−.15	−.04688
800,000 to 899,999	−.20	−.06250
900,000 and above	−.30	−.09375

According to the record, one of the goals of the multiple component pricing proposal is to send a signal to producers by rewarding them for milk that is worth more in the marketplace than milk of average protein and somatic cell content, and penalizing them for milk that is worth less. Therefore, the somatic cell differential as contained herein

includes a neutral range based on an estimate of the average somatic cell count of the market as described by the MMI witness, of 400,000 to 500,000. Producers with an average somatic cell count of less than 400,000 somatic cells will be rewarded by higher protein prices at an increasing rate as the somatic cell count decreases to a level below 100,000, while those producers with average somatic cell counts above 500,000 will receive a lower protein price, also adjusted at a graduated rate, as their somatic cell counts increase to levels above 900,000.

The proposal to include a somatic cell adjustment in the protein pool was based on the hypothesis that the Class I handlers should not pay for lower somatic cell levels because such handlers cannot recover the added cost of additional protein from the market. However, the record of this hearing contains significant testimony that Class I handlers benefit from lower somatic cell counts through higher-quality (better-tasting) milk and longer shelf life. Although no quantitative value was placed on these benefits to the Class I handler as was attributed to the Class III handler (particularly cheese manufacturers), there is adequate basis in the record for including somatic cell adjustments in the payment provisions for all producer milk. Therefore, the value adjustment attributed to somatic cells should not be included in the pool, but should be used to adjust the producer protein price paid to each producer, based on each producer's average somatic cell count.

In an ex parte communication received after the hearing, a veterinarian from Ohio expressed opposition to the inclusion of somatic cell adjustments in the multiple component pricing plan. His opposition stemmed from the variability in somatic cell testing that he had seen in his practice. His major complaint was with the accuracy of testing when the Coulter Counter is used for somatic cell testing.

As specified in the Agricultural Marketing Agreement Act of 1937, one of the functions of the market administrator is "Providing * * * for the verification of weights, sampling, and testing of milk purchased from producers." Since the market administrator will now be verifying the sampling and testing of milk for somatic cells, the variation in somatic cell levels due to testing should be minimized much as differences in butterfat tests due to testing variations were minimized when the Federal milk order program was first instituted. The concern expressed in the ex parte communication over the accuracy of the Coulter Counter is, perhaps, relevant in the current situation in which producer payments are affected by somatic cell counts only outside the Federal order. However, the Coulter Counter testing method is not one of the methods approved by the American Association of Analytical Chemists (AOAC) for determining somatic cell content, and is not likely to be deemed acceptable for determining producer payments under the Federal order. (Official Notice is taken of the publication "Standard Methods for the Examination of Dairy Products"; 15th Edition; Gary H. Richardson, Ph.D., Editor; American Public Health Association; 1985).

In the brief filed on behalf of NFO, the cooperative objected to the inclusion of somatic cells in the multiple component pricing plan. The brief contained four arguments against the inclusion of somatic cell adjustments to producer payments: (1) Somatic cells are not part of the milk, and therefore are not subject to price differentials under the Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. section 608c(5), (2) somatic cells are a product of disease and subject to wide fluctuations that could lead to inaccurate pricing unless every load is tested, (3) under the proposal, Class I handlers would not have to pay for somatic cells even though the hearing record showed that somatic cell levels are important to such handlers, and (4) the somatic cell adjustment contained in the multiple component pricing proposal uses a linear price reduction while the evidence in the hearing record indicated that the relationship between somatic cell levels and the value of milk to handlers is non-linear.

The Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. section 608c(5) specifically authorizes adjustments to prices paid to producers for "the grade or quality of the milk delivered." Because the record of this hearing shows that the presence of somatic cells directly affects the quality of milk and that the level of somatic cells in producer milk affects the grade of the milk in that somatic cell counts above a certain level will result in loss of a producer's Grade A permit, the argument that somatic cells can not be used as a criteria for adjusting a producer's pay price is not valid.

The contention that somatic cell counts have wider fluctuations than butterfat or protein tests is apparently valid. However, the hearing record does not contain enough evidence that the variability in testing outweighs the benefits of including somatic cell counts in the multiple component pricing plan.

Point numbers three and four of NFO's objections to including somatic cells in the multiple component pricing plan are objections to the plan as proposed. As adopted in this decision, all payments for all producer milk will be subject to adjustments for somatic cell content instead of only producer milk used in Class II and Class III, as proposed. The somatic cell adjustment as contained in this decision reflects the nonlinear relationship between somatic cell content and cheese yield described in the record, rather than the linear relationship that was proposed.

With the inclusion of multiple component pricing in the three orders affected by this decision, certain conforming changes need to be made in these orders to implement this decision. Since protein will now be priced under the three orders included in this decision, each handler will need to include the amount of milk protein contained in total producer receipts, including protein contained in producer milk diverted to other plants, with its report of receipts and utilization. As in the Great Basin order, the assumption will be made that the protein is uniformly contained in the skim portion of the milk and may not be separated easily. Therefore, the protein will follow the skim milk through the allocation process and be allocated proportionately with the skim milk. This allocation procedure means that handlers will not have to report the protein content of milk transferred to other handlers. For handlers filing payroll reports with the market administrator, the milk protein content and the average somatic cell count of each producer's milk will be included on the payroll report in addition to the information currently reported to the market administrator on such reports.

To properly price the components under the amended orders, several price computations must be defined. These are the skim milk price, the butterfat price, and the protein price. The skim milk price per hundredweight will be determined by subtracting the butterfat differential multiplied by 3.5 from the Class III price. The butterfat price per pound will be determined by adding the skim milk price divided by 100 to the butterfat differential. The handler protein price per pound will be determined by subtracting the butterfat price per pound, multiplied by 3.5, from the Class III price and dividing the result by the average protein content of milk used in obtaining the basic formula price (the Minnesota-Wisconsin price). Since

the proposed skim milk prices, butterfat prices, and protein prices for Class I and Class II are not specifically needed to determine the weighted average differential or the producer protein price, these prices are not defined in this decision.

Two separate marketwide pools will be used to determine the amount that producers will be paid for the milk, and the protein contained in the milk, that they deliver. The first marketwide pool will determine the weighted average differential, while the second marketwide pool will determine the producer protein price. The weighted average differential is the additional value of the Class I and Class II milk in the pool and will be paid on all producer milk. The producer protein price is determined by the amount of protein used in Class II and Class III and the amount of skim milk used in Class I. In determining payments to producers, the producer protein price will be adjusted for each producer's somatic cell count, and be paid on a per pound of protein basis.

The weighted average differential is determined by computing, for each handler, the differential value of the product pounds used in Class I and Class II, and then adding or subtracting, as is appropriate, the value of such items as inventory reclassification, shrinkage or overage, receipts of other source milk allocated to Class I, receipts from unregulated supply plants, and location adjustments. The above values are then combined for all handlers and the value of producer location adjustments and one-half the unobligated balance in the producer settlement fund are added. The resulting value is then divided by the total pounds of producer milk in the pool and an amount not less than four cents or more than five cents will be subtracted to arrive at the weighted average differential for the zero zone.

The producer protein price is determined by combining the value of the pounds of skim milk allocated to Class I at the skim milk price with the value of protein contained in the skim milk allocated to Class II and Class III at the handler protein price. The resulting total is divided by the total pounds of protein contained in pooled producer milk. Each producer's protein price will then be adjusted for the average somatic cell count of the individual's producer milk. The adjustment, or somatic cell differential, will be determined by multiplying the cheese price by the appropriate constant for each producer's average somatic cell count.

Each producer will be paid based on total product pounds at the weighted average differential at the applicable zone, the pounds of protein contained in the producer milk at the protein price adjusted for the producer's average somatic cell count, and the pounds of butterfat contained in the producer milk at the butterfat price.

The value of producer milk to each handler will consist of the sum of the value of pounds of producer milk in Class I times the difference between the Class I and Class III prices, the pounds of producer milk in Class II times the difference between the Class II price and the Class III price, the value of overage, inventory reclassification, other source milk, receipts from unregulated supply plants, handler location adjustments, the value obtained by multiplying the pounds of skim milk in Class I by the skim milk price, and the value obtained by multiplying the pounds of protein contained in the skim milk in Class II and Class III by the protein price. The pounds of protein shall be computed by multiplying the pounds of skim milk in Class II and Class III by the percentage of protein contained in the skim milk of the handler's producer milk.

A handler's obligation to the producer settlement fund will be the difference between the value of producer milk to the handler and the sum of: (a) The value of the handler's receipts of producer milk at the weighted average differential price after adjusting for the producer's location, (b) the value of the protein contained in the handler's receipts of producer milk at the producer protein price, and (c) the value of other source milk at the weighted average differential adjusted for the location of the plant from which the milk was shipped.

Somatic cell adjustments to protein prices will be made when handlers pay producers for their milk. As in the case of payments to producers for butterfat, these adjustments do not have to be included in pool obligations or credits for payments to producers. The handlers receiving producer milk will pay for the protein in the milk based on its somatic cell count because they are the parties directly affected by the quality of milk they receive.

5. *Class I price and location adjustments* (Order 49). The Class I price differential and location adjustment provisions of the Indiana order should be amended to bring pricing within the Indiana marketing area into closer alignment with surrounding marketing order areas. The MFI proposal to amend the Indiana Class I price and location adjustment provisions should be adopted in a modified form to minimize intermarket price misalignment and enhance price alignment within the marketing area. A proposal by Hoosier to amend the order's location adjustment provisions should be denied, but changes that would address some of Hoosier's concerns should be made.

Hoosier proposed that the order's location adjustment provisions be changed to provide for adjusting prices downward at locations in the State of Ohio and in parts of Indiana not specifically zoned by the distance of such locations from the Indiana basing points. Proponents argued that the proposed amendment would result in pricing all receipts of producer milk at locations outside the marketing area on an equal basis, and would remove incentives for handlers to associate milk with the Indiana order and then divert it to Ohio locations at no reduction in the blend price. They also stated that the language "south of the marketing area," in the current location adjustment provision, describing locations at which no location adjustment is applicable, is inexact and confusing. An NFO witness opposed the Hoosier proposal as arbitrary and without economic justification, and stated that it would apply negative location adjustments in areas subject to higher milk prices.

Hoosier's proposal would, indeed, result in the application of negative location adjustments in locations at which higher prices apply, and such a misalignment of prices between orders would be very unlikely to result in more orderly marketing conditions. If the proposal were adopted, the Indiana Class I price adjusted for location at Louisville would be 35 cents less than the price at Louisville under the Louisville-Lexington-Evansville order. Producer prices for milk pooled under the Indiana order but delivered to the Louisville area would fall short of Louisville producer prices by 24 cents more than the current amount by which the Louisville blend price exceeds the Indiana blend price. Similarly, a negative location adjustment under the Indiana order at, for instance, Dayton, Ohio, would result in an Indiana Class I price at Dayton 26 cents lower than the Ohio Valley price for the same location. The difference in producer prices under the two orders at Dayton, Ohio, (or at any Ohio location) would be at least 10–15 cents, with Indiana producer milk receiving the lower price.

A provision such as that proposed by Hoosier would give handlers located outside the Indiana marketing area an incentive to acquire pool status under the Indiana order or to procure supplies of milk pooled under the Indiana order.

Price alignment between the Indiana marketing area and locations to its south and east would be most equitable to both handlers and producers who receive and price milk pooled under the adjoining order areas if the Indiana price were adjusted to a level equivalent to that effective at the other order locations where Indiana-pooled milk is received. Accordingly, such language should be included in the order.

A witness for the Milk Foundation of Indiana (MFI), which proposed changes in the order's Class I differential and location adjustments, stated that the Foundation is composed of six proprietary handlers, five of which are pool plant handlers under the Indiana order. The witness testified that the Food and Security Act of 1985 had resulted in the Indiana Class I price differential being increased significantly more than the Class I price differentials for the surrounding markets were increased. He stated that, based on the location of Indianapolis relative to other population centers in the region, the Indianapolis Class I price is too high and results in an intermarket misalignment of prices. The MFI witness argued that there would be no shortage of milk for Class I use if the Indiana Class I price differential were reduced to correspond more closely with the price levels in surrounding marketing areas. According to the witness, the interorder misalignment of prices has caused Indiana handlers to lose sales to handlers regulated under other orders because they are unable to compete on the basis of price.

The MFI witness also testified in support of the MFI proposal to reduce the rate of location adjustments within the Indiana marketing area. The proposal, as modified at the hearing, would combine the present minus 20- and 30-cent zones into one minus 10-cent zone, and change the location adjustment of the present minus 40-cent zone to minus 30 cents. The witness stated that the location adjustments in the Indiana order do not serve the purpose of attracting milk to the market's principal consumption centers because the price differences are not reflected in differences in payments to cooperative member producers. At the same time, he said, the order's location adjustments create a disparity in price among competing handlers regulated under the Indiana order.

The MFI proposal was opposed by both Hoosier and NFO. Both parties argued that Class I price levels and location adjustments were considered in the national hearing proceeding held in late 1990, and should not be determined for just one market. Hoosier's brief stated that the present Class I differentials were based on the cost of transporting milk to consumption centers from areas of alternate milk supplies available at lower prices, and that the best alternate supply area for Indiana is northeast Iowa, central and western Wisconsin and southeastern Minnesota. Hoosier cited testimony by a representative of Dean Foods Company that Dean experiences no Class I price misalignment between the Indiana and surrounding order areas, and stated that price alignment between Indiana plants and Order 30 (Chicago) bottling plants located 80–100 miles from Chicago needs to be considered. The Hoosier brief concluded that adoption of the MFI proposal would create disorder and disarray in surrounding marketing areas.

A comparison of Class I price differentials effective at different locations within the Indiana and surrounding marketing areas both before and after 1985 shows that Class I differentials were increased significantly more for the Indiana Federal order area than for neighboring marketing areas. The 1985 Class I price increases were 14 cents at Chicago, 21 cents at Louisville, 19 cents in the southern part of the Southern Michigan marketing area, 29 cents in the northern portion of the Southern Illinois market adjoining Indiana, and a maximum of 41 cents under the Ohio Valley order, at Cincinnati. The price increase at Dayton, Ohio, a location closer to the population centers of the Indiana market, was 34 cents. In comparison, the Class I price increase at Indianapolis, the major population area of the Indiana marketing area, was 47 cents.

The price misalignment between markets resulting from the 1985 price increases is particularly noticeable between Chicago and Indianapolis, and between Indianapolis and Louisville, or in a north-south direction. According to the 1985 Household Goods Carriers' Bureau Mileage Guide, of which official notice is taken, the mileage between Chicago and Louisville is 286 miles, with 175 miles from Chicago to Indianapolis, and 111 miles from Indianapolis to Louisville. If the $.024483 location adjustment rate per 10 miles of distance reflected in the current Chicago-Louisville price difference of 71 cents is applied to the Chicago-Indianapolis distance and the Indianapolis-Louisville distance, the appropriate Class I price differential at Indianapolis would be $1.83, very close to the $1.82 level proposed by MFI.

The north-south price alignment in the Indiana order is significant because most of the milk supply for the Indiana market comes from northern Indiana, southern Michigan and the two northern pricing zones of Ohio, and a disproportionate amount of Class I milk is used in the southern part of the Indiana marketing area. Hoosier characterized Wisconsin and Minnesota as the primary alternative sources of supply for the Indiana market. These locations apparently serve as sources of milk for handlers importing supplies of milk that are pooled elsewhere, rather than being sources of producer milk pooled under the Indiana order. Statistics in the record indicate that during only one of the months for which milk production by state and county was published was Wisconsin milk pooled under the Indiana order, with none from Minnesota. The one month in which Wisconsin milk was shown to be pooled under the Indiana order was May 1988, when only 54 percent of the producer milk pooled under the Indiana order was used in Class I. According to the Hoosier witness' testimony, some of the milk Hoosier arranges to buy in Wisconsin for the Indiana market never moves to Indiana plants.

Another factor that must be considered is price alignment between markets from west to east. In spite of the fact that pricing between Chicago and Louisville would justify a $1.83 Class I price differential at Indianapolis, an appropriate price alignment between west central Illinois, Indianapolis, and Dayton, Ohio, establishes a minimum Class I price differential at Indianapolis of $1.90. The current price difference between Champaign, Illinois, and Dayton, Ohio is 29 cents, while the distance between these two points is 223 miles. The resulting rate per hundredweight is $.0126 per 10 miles of distance. When this rate is applied to the distance between each of these two points and Indianapolis (124 miles to Champaign and 105 miles to Dayton) and the corresponding price level at Indianapolis is computed, an Indianapolis Class I price differential of $1.90 results. In addition, an Indiana pool distributing plant located at Richmond, Indiana, is located only about 40 miles from an Ohio Valley pool distributing plant at Dayton, Ohio, where the Class I differential is $2.04. It would be difficult to justify a 20-cent price difference between these two locations (at a rate of $.0525 per 10 miles), just as it is difficult to defend the current 20-cent price difference between Chicago and Gary, Indiana, located only 28 miles apart (at a rate of $.067 per ten miles).

For the foregoing reasons, the Class I price differential at Indianapolis should be reduced to $1.90. At the same time, location adjustments within the marketing area should be reduced to maintain alignment with adjoining Federal order pricing, especially in the northern portion of the Ohio Valley marketing area. The current $2.00 price differential should be maintained for a strip of counties on the southern edge of the Indiana marketing area, including Jackson, Jefferson, Jennings, Lawrence, Ripley and Switzerland counties. These counties, located about halfway between Louisville and Indianapolis, can comprise an intermediate pricing zone between the Indiana and Louisville-Lexington-Evansville marketing areas. The current minus 40-cent location adjustment zone in the northwest corner of the marketing area should become a minus 35-cent pricing zone, to moderate the large price difference between Chicago and Gary, Indiana.

Although the MFI witness was correct in stating that intramarket location adjustments have had little effect in the Indiana market because of the provision allowing milk to be priced at the location from which diverted, this decision adopts amendments to the order that will result in more milk being priced at the location at which it is actually received. Consequently, it is important for reasons of both intermarket and intramarket price alignment to assure that the price differences between various points in the marketing area will accommodate movements of milk from where it is produced to where it is needed for fluid use. The location adjustments in the current minus 20- and minus 30-cent zones therefore should be changed to minus 10- and minus 20-cents, respectively, while the current minus 40-cent adjustment should become a minus 35-cent adjustment. These changes will assure that the current price differences between northeastern Indiana and northwestern Ohio are unchanged.

6. *Accountability for .9(c) milk (Order 49).* A proposal by Hoosier to change the accountability to the pool for milk moved directly from producers' farms to pool plants by cooperative associations pursuant to section .9(c) of the Indiana order from the receiving pool plant operator to the cooperative association handler should be adopted. The proposal, as adopted, would require .9(c) handlers to sell such milk to receiving handlers at classified prices, including component values, and equalize with the pool on the value of the milk so moved. The .9(c) handler would be responsible for the testing of individual producers' milk, and for paying its member producers on the basis of those test results. The Hoosier proposal encountered no opposition, and was supported by NFO. Adoption of the proposal will simplify reporting and accounting for milk and its components under the multiple component pricing plan adopted in this decision.

7. *Payments to Producers.*

a. *Due dates and late-payment charges (Order 49).* A proposal by NFO, joined in by Hoosier, to require timely payment by handlers for producer milk by imposing a one-percent per month late charge on payments not made by the due date required in the order should be adopted. According to the NFO witness, handler payments made under Orders 33 and 36, which require payments to be made to the market administrator, are made on a much more timely basis than payments for milk under Order 49. The witness stated that the current delay in Order 49 is 6½ days, and attributed the delay to the use of the postal service in making payments rather than using wire transfers. The witness testified that the late payment fee should be assessed by the market administrator, even on monies due to cooperatives from handlers, and paid into the administrative fund. Hoosier supported the proposal on the basis that current technology allows a requirement that payments be required to be received when due, not just mailed by the due date.

The proposal should be adopted to assure that monies due to producers is available to be paid to them when it is due. Handlers currently are able to rely on a delay in the delivery of mailed checks to enhance their own cash flow positions at the expense of the dairy farmers from whom they obtain milk. The widespread availability of bank transfers of funds makes possible faster payment, which should be passed along to producers as soon as possible. The one-percent late-payment charge will provide an incentive for handlers to make their payments for milk in a timely manner. Payment of any late-payment charges collected into the administrative fund should cover the market administrator's cost of implementing and enforcing timely payment.

b. *Seasonal incentive payment plan (all three orders).* The Brewster Dairy proposal to provide a seasonal plan to pay dairy farmers, designed to even out monthly milk production under Orders 33, 36 and 49, should be denied. At the present time, producers supplying these three markets receive the uniform price for their monthly milk deliveries. None of the three orders provides any type of seasonal payment program.

Brewster Dairy, Inc., proposed that a unique type of "Louisville" plan be incorporated into each of the three orders. The Order 36 proprietary supply plant operator testified that seasonal pricing programs are needed in these three markets to encourage dairy farmers to level out their milk production during the year so that the amount of milk they produce each month is in better alignment with the amount of milk that fluid processors and manufacturers demand. Traditionally, more milk is produced in the spring than the fall and fluid bottling plants need more milk for processing in the fall than in the spring. To demonstrate this problem, proponent pointed out that the average daily receipts from producers in November represent only about 85 percent of the amount produced in May while daily Class I use in November is normally about 10 percent greater than in May.

In support of its proposal, Brewster's witness argued that the marketing problems associated with seasonal milk production are complicated by distributing plant operators who contract to buy only enough milk to meet their Class I needs in the spring and rely on others to furnish them with additional supplies in the fall. The Brewster witness stated that these purchasing arrangements, coupled with the seasonality of milk production, result in raising the overall marketing cost to the region's dairy industry. In the spring, he testified, the milk in excess of bottling needs that also exceeds the manufacturing capacity at local plants must be hauled to distant plants for disposal. Conversely, he stated, in the fall supplemental milk from sources beyond the normal procurement area must be transported to distributing plants to furnish the fluid requirements of such plants. According to the witness these extra transportation costs are borne primarily by cooperatives and their member producers. In addition, he said, handlers maintain plant capacity to manufacture reserve milk supplies in the spring and much of that capacity is inefficiently idled in the fall when more of the lower seasonal milk supply is needed for Class I purposes at distributing plants.

Proponent characterized its proposal as a "modest" plan that is designed to reward producers who make the extra effort to increase their milk production in the fall relative to the amount they produced in the prior spring. Brewster proposed that monetary incentives be

used to encourage dairy farmers whose milk is pooled under these three orders to gear their milk production toward greater output in the fall. In this regard, the handler proposed that 5 cents per hundredweight be deducted from the pool funds due producers in computing the uniform prices for the months of February through July.

The "Louisville" plan proposed by Brewster is unique in terms of how the money deducted in the prior months of February through July would be returned to dairy farmers. As proposed, the funds would be distributed in the months of September through November, but only to dairy farmers who qualified for incentive payments. Producers whose average daily milk deliveries in the months of September through November equal 90 percent or more of their daily deliveries in the prior months of February through July would qualify to receive incentive payments. Producers whose average daily deliveries fall below the 90-percent level would not qualify for incentive money.

NFO was supportive of the concept of tailoring milk production to more nearly coincide with the demands of the marketplace. The cooperative's witness insisted, however, that the program must be designed so that the program's costs and benefits are more appropriately aligned. In that regard, he testified that dairy farmers have to spend money to alter their seasonal production patterns, while the benefits of level milk production accrue to handlers because they are able to achieve greater plant operating efficiencies. In recognition of these cost and benefit factors, NFO suggested that Brewster's proposal be modified so that handlers, rather than all of the market's producers, would fund the program. As modified by NFO, handlers would pay a surcharge of 5 cents per hundredweight on their producer milk deliveries assigned to each class during the months of February through July. Such funds would be returned to qualified dairy farmers in the following months of September through November on the same basis proposed by Brewster.

MMI also endorsed the concept of seasonal incentive plans. A spokesman for the cooperative testified that Brewster's proposal has merit, but that MMI would prefer a handler-financed seasonal payment program, as suggested by NFO, to the one proposed by Brewster which would be funded by dairy farmers. He further testified that the dairy industry has made many attempts over the years to encourage dairy farmers to alter their production patterns and thereby increase the efficiency of the entire milk marketing system. The witness asserted that any program designed to address this issue would be welcomed by his association.

A representative of the Hoosier Milk Marketing Agency also supported the concept of seasonal pricing and NFO's modification whereby the incentive money would be derived by increasing the handler Class I prices by 5 cents per hundredweight rather than deducting that rate per hundredweight from the pool funds due producers. In addition, Hoosier testified that this issue should more appropriately be addressed at the national hearing and took the position that a seasonal payment plan should not be adopted for these three markets unless it is provided under all neighboring Federal orders. The Agency's spokesman stated that adoption of a seasonal payment plan for Orders 33, 36 and 49 and not in surrounding orders would create competitive problems similar to those now experienced by Indiana handlers who are competing with handlers regulated by the Louisville-Lexington-Evansville order, which provides a seasonal base-excess plan to pay dairy farmers.

Hoosier also asked that any seasonal payment program adopted for these markets not be mandatory each year. In that regard, the producer spokesman suggested that the amended orders include provisions that would establish procedures whereby the operation of the seasonal plan could be made inoperative for any year if a review of marketing conditions indicates that it would be unnecessary to encourage additional fall milk production in that particular year.

If Brewster's payment plan had been in effect during 1989, record data show that producers under Orders 33 and 36 would have received about $2.00 per hundredweight on their eligible milk deliveries during the months of September through November and about 40 percent of the markets' dairy farmers would have qualified for incentive payments. They also indicate that Order 49 producers would have received about $1.30 per hundredweight for their eligible milk deliveries in such months and about half of the market's dairy farmers would have qualified for incentive payments.

In addition, the record evidence indicates that an Order 36 dairy farmer producing the market's average daily delivery per farm would have had about $180 deducted from pool funds on his or her behalf through the computation of the uniform prices for February through July of 1989. If such producer marketed the same daily quantity of milk during the following months of September through November as he or she marketed in the spring, the dairy farmer would have received an additional $370 on 10 percent of his or her deliveries during the ensuing 3-month period. Proponent testified that this may not seem like a lot of money, but if producers know they will be rewarded for extra effort it will motivate them to work hard to qualify for incentive payments.

It is evident from the foregoing that the financial impact of Brewster's proposal on individual dairy farmers would not be substantial. Thus, it is questionable whether the monetary rewards would be sufficient under the proposed seasonal plans to encourage dairy farmers to make the necessary herd management decisions to gear their production patterns toward greater milk production in the fall. Also, as more producers qualify additional milk for incentive payments, the per hundredweight incentive rate of return for the participating dairy farmers would decrease.

Furthermore, the hearing testimony indicates that there are many differences of opinion among interested parties regarding the adoption of any seasonal payment program for these three markets. These programs affect dairy farmers and, with the exception of the evidence presented by Brewster, no other interested party supported adoption of the proposal as it appeared in the hearing notice.

The hearing participants who represented dairy farmers generally supported the concept of seasonal pricing but stated that Brewster's proposal should be modified in certain respects. For instance, three producer groups (MMI, Hoosier and NFO), which represent a considerable portion of the milk pooled under each of these three orders, endorsed the modification advanced by NFO whereby the incentive money would be generated through higher class prices paid by handlers rather than deducted from money due dairy farmers, as Brewster proposed. Without the support of Hoosier, MMI and NFO, the Brewster proposal lacks widespread support among dairy farmers who supply milk for these three markets.

The funding modification, which shifts the program's cost from producers to handlers, represents a major change in the proposal's impact. It would be inappropriate to adopt such a revision on the basis of this record, since the hearing notice did not alert interested parties that such a proposal would be

considered at this hearing and thus provided no opportunity for hearing participants to comment on such a proposition. In view of this consideration and the aforementioned shortcomings, Brewster's proposal must be denied.

Several seasonal incentive plan proposals, including one advanced by MMI, were considered at the national hearing. Such proposals involved many of the same issues that are addressed herein regarding Brewster's three-market proposal. On the basis of the national hearing record, all of the seasonal payment plan proposals were denied.

8. *Administrative expense* (Order 36). The maximum allowable rate of assessment to be paid by handlers to cover the cost of administering the Eastern Ohio-Western Pennsylvania order (Order 36) should be increased to 4 cents per hundredweight. The assessment would continue to be applied to the same milk to which the present assessment applies.

The Act specifies that persons who are regulated shall pay the cost of operating the program through an assessment on the milk handled by regulated persons who are defined as handlers under the order. The present 3-cent per hundredweight maximum allowable rate of assessment has been provided for the administration of Order 36 since the Eastern Ohio-Western Pennsylvania order became effective on July 1, 1968.

A one-cent increase in the maximum allowable rate was proposed by MMI, a cooperative that supplies a considerable portion of the market's total milk needs. A spokesman for the producer group testified that the current maximum funding level of 3 cents per hundredweight is no longer adequate to administer Order 36 effectively.

There was no other testimony on this proposal at the hearing. In briefs, NFO supported the proposed increase and MMI reiterated its hearing position on this issue.

The one-cent increase in the Order 36 maximum rate of administrative assessment was opposed in a brief filed by the Dairy Industry Association of Western Pennsylvania. The handlers' counsel contended that there is no evidence in the record to justify a 33-percent rate increase. He argued that the record fails to adequately demonstrate how much of an increase, if any, is needed and stated that an increase of this magnitude certainly is not warranted.

The Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) are administered under the supervision of a single market administrator who, at the time of the hearing, was headquartered in Columbus, Ohio. Since 1987, consolidated Balance Sheets and Income and Expense Statements for the Administrative Fund, which combine the income and expense activities for the two markets, have been compiled by the market administrator and reported annually to regulated handlers as well as other interested parties. Also, since the market administrator conducts essentially the same verification program in connection with the administration of both orders, the handler assessment rate has been maintained at the same level in both markets.

Record data for the years 1985–89 show that the administrative expenses associated with the operation of Orders 33 and 36 exceeded the income the market administrator received from assessments by more than $900,000. They also indicate that an assessment rate of 2.4 cents per hundredweight of milk handled was effective for 1986, 1987 and 1988. It was raised to 2.8 cents for 1989 and further increased to 3 cents per hundredweight for 1990. (Official notice is taken of the market administrator's annual report to all handlers of the Income and Expense Statement for the calendar year ending December 31, 1990.) Since the Order 36 assessment for administration is at the maximum level currently allowed under the order, there is no opportunity for the market administrator to increase the rate to cover any further cost increases. Without the opportunity to increase the assessment rate, additional operating funds can be generated only if substantially greater quantities of milk are pooled under the order or if the expenses of administering the program decline significantly.

Handlers and producers serving the market have jointly asked that a new pricing program be provided to establish handlers' value of Class II and III milk and to pay dairy farmers. A program similar to that requested by the dairy farmers and processors is adopted herein. The implementation and administration of that pricing plan for Order 36 may require the purchase of some new laboratory equipment and the performance of additional administrative duties. Many of the testing expenses associated with the multiple component pricing program will be paid for with money from the marketing service fund. However, since the value of milk used by handlers in Class II and Class III will be established on the basis of the milk's butterfat, protein and somatic cell content, some of the expenses related to establishing the level of these factors in producer milk likely will be paid for with money from the administrative fund. Thus, there is no reason to expect the expenses of administering the order to decline.

The pounds of pooled milk to which the assessment rate applies under Orders 33 and 36 has declined considerably during the past few years. For example, receipts of milk from dairy farmers supplying these two markets in 1989 was 14 percent less than the amount pooled in 1985. Also, producer receipts in 1990 were unchanged from 1989. (Official notice is taken of the publication Federal Milk Order Statistics for December 1990). Current milk price and production trends provide no basis to expect receipts from the market's producers to increase dramatically anytime soon.

It is evident from the foregoing that sufficient funds to cover administrative expenses in the future cannot be guaranteed by either increased milk production or reduced administrative expenses. Accordingly, the proposed one-cent increase in the maximum allowable assessment rate is adopted as the best way of assuring continued adequate funding for the effective administration of the Eastern Ohio-Western Pennsylvania order.

This one-cent increase for Order 36 will establish the same 4-cent per hundredweight maximum allowable administrative assessment rate that exists under Orders 33 and 49, as well as most other Federal milk orders. Increasing the Order 36 maximum permissible administrative assessment rate to 4 cents per hundredweight will give the market administrator the necessary flexibility to generate the financial resources needed to properly administer the order, as amended. It also should enable him to establish and maintain an appropriate financial reserve that is within the Department's guidelines.

Providing a higher maximum rate of assessment in the order does not mean that the higher rate will apply automatically when the amended order becomes effective. The amendment gives the market administrator the discretionary authority to set the rate at any level up to the maximum specified in the order. Because of that discretion, when the amended order becomes effective the market administrator may decide that no change in the effective assessment rate is necessary, or he may find that some increase is warranted, but not up to the maximum allowed.

9. *Marketing service assessments (all three orders).* The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat, protein and somatic cell testing and market information for nonmember producers should be increased to 7 cents per hundredweight under the three orders (Orders 33, 36 and 49) involved in this proceeding. The increase is needed to assure sufficient funding to cover the expenses incurred by the market administrators in providing such services to producers for whom the services are not provided by a cooperative association.

Currently, 6 cents per hundredweight is the maximum allowable deduction for such services under Order 33, and 5 cents is the maximum under Orders 36 and 49. These maximum rates have been effective under the individual orders for many years. For example, the 6-cent maximum has been provided in the Ohio Valley order since August 1, 1970. The 5-cent rate has been provided in the Eastern Ohio-Western Pennsylvania order since July 1, 1968, and in the Indiana order since January 1, 1969.

Milk Marketing, Inc. and the Hoosier Milk Marketing Agency proposed that the limits on the rates of deduction be raised to 7 cents per hundredweight under the three orders. These producer organizations represent a substantial portion of the milk supply pooled under each of the 3 orders. The producer spokesman testified that the cost of performing marketing services for dairy farmers has increased considerably over the years. He also testified that the market administrators have streamlined their operations to the extent possible and adopted the latest office and laboratory technology available in an attempt to provide the maximum services to dairy farmers for the lowest possible cost. He contended that the extent to which costs can be reduced before affecting the program's effectiveness is limited.

In support of their proposal, proponents argued that the maximum rates of deduction for marketing services provided under the three orders represent much smaller percentages of the markets' blend prices now than when the rates originally were provided. Proponent witness stated that over the years the market administrators have expanded their marketing services for dairy farmers and that the cost of performing these functions has increased. The witness testified that the marketing service assessment proposal is designed to complement the cooperatives' proposal to provide multiple component pricing plans for these three markets. Since the new pricing plan will require accurate measurement of the butterfat, protein and somatic cell content of producer milk, additional milk testing duties will be imposed on the market administrators.

No other interested party testified on this issue at the hearing. In briefs, NFO agreed that an increase in the maximum rates of deduction for marketing services would be needed with the implementation of component pricing plans under these three orders.

Opposition to the proposed increase in the maximum allowable marketing service assessment was expressed in a brief filed on behalf of the Dairy Industry Association of Western Pennsylvania. The brief argued that the record fails to justify rate increases of up to 40 percent for marketing services. Counsel for the handlers stated that proponents offered only vague and nonspecific reasons to support their proposal and relied primarily on the fact that the maximum rates had not been changed for several years and that inflationary pressures have resulted in increased operating costs. The brief argued that these generalities do not provide an adequate basis for increasing the rates and insisted that if higher maximum rates are justified, they certainly would not have to be raised to the 7-cent level proposed by MMI and Hoosier.

The marketing service programs for these three orders are provided under the supervision of two market administrators. The program for the Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) was, at the time of the hearing, conducted under the auspices of the market administrator who was headquartered in Columbus, Ohio. The orders are still administered by a single market administrator. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund for these two markets have been published annually on a combined basis for nonmember producers and other interested parties. Since the market administrator provides essentially the same marketing service program for producers under both orders, the rate of deduction to cover such services under Orders 33 and 36 has been maintained at the 5-cent maximum level provided in Order 36.

Similarly, the marketing service program for the Chicago Regional and Indiana orders (Orders 30 and 49) is operated under the jurisdiction of the market administrator who is located in Glen Ellyn, Illinois. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund showing combined activities for these two markets have been reported annually to nonmember producers and other interested parties. Similar services are provided by the market administrator for nonmember dairy farmers supplying both markets and 5 cents per hundredweight, which is the maximum provided under both orders, has been deducted from payments to dairy farmers to cover the expenses associated with providing these services.

Record data for Orders 33 and 36 show that for the years of 1985–1989 the marketing service program expenses exceeded the amount deducted from producer payments for such services by a net amount of almost $127,000. They also indicate that expenses exceeded deductions in 4 of the 5 years and that most of the income shortfall, $62,000, was accounted for in 1989. Marketing service expenses in these two markets for the 5-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For 1985–89, expenses represented 5.0, 4.9, 5.1, 5.1 and 5.4 cents per hundredweight respectively of such producer milk.

Record data for Orders 30 and 49 show that the expenses incurred by the market administrator in providing marketing services for nonmember dairy farmers in these two markets for the 3-year period of 1987–89 exceeded the amount deducted from producer payments to cover such expenses by almost $10,000. The 3-year net figure, however, does not demonstrate the seriousness of the income shortfall because in 1989 expenses exceeded the amount deducted by more than $38,000. The data also show that the marketing service program expenses in these two markets for the 3-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For the years of 1987–89, expenses represented 4.6, 4.8 and 5.7 cents per hundredweight, respectively, of such producer milk.

It is evident from the foregoing that the 5-cent deductions from producer payments for marketing services in these 3 markets have been inadequate to cover the expenses incurred in the performance of such duties by the market administrators. It also shows that the financial situations are becoming progressively worse each year. In addition, the multiple component pricing plan adopted in this decision is going to require additional testing activities. Since not all handlers are equipped to make all of the

determinations that will be required under the amended order, many of these extra duties will have to be performed by the market administrators responsible for the administration of these three orders.

The 7-cent maximum rate of deduction for marketing services proposed by MMI and Hoosier should be provided in the three orders involved in this proceeding. These higher rates should give the market administrators the necessary flexibility to conduct effective marketing service programs, including any additional duties relating to the implementation and administration of the new pricing program that will be incorporated in the three orders.

Provision of a 7-cent maximum rate does not mean that the 7-cent rate will become effective automatically. Maximum rather than fixed rates of deduction are specified in the orders because the relationship between income and expenses for these funds is subject to many variables. Changes in the pounds of nonmember milk marketed and the rate assessed on these marketings increase or decrease the income of the marketing services funds while changes in order requirements and the expenses of providing marketing services result in changes in total outlays. Because of such variations, an increase in maximum allowable assessments will give the market administrators the discretionary authority to set the rates of deduction for marketing services at levels necessary to cover the expense of providing marketing services. If the market administrators decide that rates below the upper limits adopted in the amended orders will provide sufficient funding to conduct an adequate program for nonmember producers they may use their discretionary authority to do so.

10. *Conforming changes.* The provisions specifying reporting requirements and the computation of handlers' obligations to the pool and to producers have been changed as needed to assure that the multiple component pricing plan adopted herein will be practicable. In addition, the current requirement under both the Ohio Valley and Eastern Ohio-Western Pennsylvania milk orders that handlers report each producer's days of production is removed in the accompanying order language changes.

Neither of these orders contains a base plan or any other provisions that would necessitate such a reporting requirement.

The proposed amendments to order language included with this recommended decision are based on the proposed amended order language published for these three orders with the recommended decision for the 1990 national hearing for all orders, issued in late 1991. If some or all of the proposed amendments resulting from the national proceeding are not adopted, the proposed amendments included with this decision will be modified accordingly.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator of the Eastern Ohio-Western Pennsylvania order for the maintenance and functioning of that agency will require the payment by each handler, as his prorata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85 of the aforesaid tentative marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania Federal milk order as proposed to be amended.

Recommended Marketing Agreement and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

1. The authority citation for 7 CFR Parts 1033, 1036 and 1049 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

Part 1033 as proposed to be amended at 56 FR 59031, Nov. 22, 1991, would be further amended as follows:

1. Section 1033.7 is amended by revising the introductory language of paragraph (b), redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), adding a new paragraph (b)(2); and changing the words "50 percent" in the introductory text of paragraph (c) and in paragraph (c)(2) to "35 percent"; to read as follows:

§ 1033.7 Pool plant.

* * * * *

(b) A supply plant from which 35 percent or more during the months of January through November, and 30 percent in December, of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such

plant) and from handlers described in § 1033.9(c) is delivered by transfer or diversion as fluid milk products except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

* * * * *

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants;

* * * * *

2. In § 1033.13, paragraphs (e)(2), (e)(3), and (f) are revised to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) * * *

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

* * * * *

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that for the months of March through August the uniform price applicable to milk of producers located within the State of Ohio or the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson and Washtenaw that is diverted to a plant located outside the marketing area and outside the State of Ohio shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided, That* 65 percent or more of such producer's milk is delivered to a plant or plants at which the same or a higher uniform price is applicable during the preceding months of September through February.

3. Section 1033.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4), and (b) to read as follows:

§ 1033.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, and the butterfat and milk protein contained in the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein contained in milk from producers for which it is the handler pursuant to § 1033.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, the somatic cell count, and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1033.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein as the market administrator may prescribe; and

* * * * *

4. Section 1033.31 is amended by revising paragraph (a)(2), the second sentence of paragraph (b), and paragraph (c), to read as follows:

§ 1033.31 Payroll reports.

(a) * * *

(2) The total pounds of milk and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

(b) * * * Such payroll shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat and milk protein content thereof, the somatic cell count of the milk, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

5. Section 1033.32 is amended by revising paragraphs (e)(2), (e)(4) and (e)(5), and paragraph (f) to read as follows:

§ 1033.32 Other reports.

* * * * *

(e) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein content, and its somatic cell content;

* * * * *

(4) The total pounds of skim milk, butterfat and milk protein received from a handler described in § 1033.9(c); and

(5) The total pounds of skim milk, butterfat and protein in bulk fluid milk products received from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool plant within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds, butterfat and milk protein included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1033.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1033.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1033.43 is amended by revising paragraph (d) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.42(a) and the value thereof shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60 (a), (b), (h), (i), and (j).

8. Section 1033.50 is amended by changing the section heading, revising the introductory language, and adding new paragraphs (d), (e), and (f), to read as follows:

§ 1033.50 Class and component prices.

Subject to the provisions of § 1033.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1033.73 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1033.73 times 35, and rounding the result to the nearest whole cent.

9. Section 1033.53 is revised to read as follows:

§ 1033.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month;

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1033.50(d), (e) and (f) for the preceding month; and

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.50(b).

10. The heading before § 1033.60 is revised to read: "Differential Pool and Handler Obligations."

11. Section 1033.60 is revised to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1033.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1033.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class I, both multiplied by the difference between the Class I price (adjusted pursuant to § 1033.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class II, both multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1033.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1033.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1033.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1033.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1033.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1033.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1033.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) applicable at the location of the pool plant at the current month's Class I–Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) at the current month's Class II–Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (i) through (iv), and the corresponding step of § 1033.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I–Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (v) and (vi) and the corresponding step of § 1033.44(b) applicable at the location of

the transferor-plant at the current month's Class I–Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(11) and the corresponding step of § 1033.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I–Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1033.44, and the pounds of skim milk in Class I bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the skim milk price for the month computed pursuant to § 1033.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, and the pounds of protein in Class II and Class III skim milk in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the protein price for the month computed pursuant to § 1033.50(e).

(j) The pounds of butterfat in all three classes as determined pursuant to § 1033.44, and the pounds of butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the butterfat price for the month computed pursuant to § 1033.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1033.76(c).

12. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1033.74(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1033.74(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

13.–17. New §§ 1033.62 through 1033.66 are added under the revised heading "Differential Pool and Handler Obligations" to read as follows:

§ 1033.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

§ 1033.63 Uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1033.61 to the basic formula price for the month.

§ 1033.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1033.61, the producer protein price computed pursuant to § 1033.62, and the uniform price computed pursuant to § 1033.63(a).

§ 1033.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1033.61 and adjusted pursuant to § 1033.74, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1033.62 and adjusted pursuant to § 1033.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1033.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1033.66 Computation of somatic cell adjustment.

(a) For milk having a monthly average somatic cell count of 500,000 or above or a monthly average somatic cell count of less than 400,000, the producer protein price shall be adjusted as follows:

(1) For a monthly average somatic cell count less than 100,000, the result of the cheese price times .09375;

(2) For a monthly average somatic cell count greater than 100,000 but less than 200,000, the result of the cheese price times .06250;

(3) For a monthly average somatic cell count greater than 200,000 but less than 300,000, the result of the cheese price times .03125;

(4) For a monthly average somatic cell count greater than 300,000 but less than 400,000, the result of the cheese price times .01562;

(5) For a monthly average somatic cell count greater than 500,000 but less than 600,000, the result of the cheese price times −.01562;

(6) For a monthly average somatic cell count greater than 600,000 but less than

700,000, the result of the cheese price times −.03125;

(7) For a monthly average somatic cell count greater than 700,000 but less than 800,000, the result of the cheese price times −.04688;

(8) For a monthly average somatic cell count greater than 800,000 but less than 900,000, the result of the cheese price times −.06250;

(9) For a monthly average somatic cell count greater than 900,000, the result of the cheese price times −.09375;

(10) If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) For purposes of this section, the cheese price shall be the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service.

18. In § 1033.70, paragraph (b) is revised to read as follows:

§ 1033.70 Producer-settlement fund.

* * * * *

(b) The difference between the amount added pursuant to § 1033.61(d) and the amount resulting from the subtraction pursuant to § 1033.61(f) shall be deposited in, or withdrawn from, this fund, as the case may be.

19. Section 1033.71 is amended by revising the introductory language of paragraph (b) and paragraph (b)(1) to read as follows:

§ 1033.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60(a) through (l), plus or minus the adjustments made pursuant to § 1033.66 to the value of protein in producer milk, and the value of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) as determined pursuant to § 1033.60 (a), (b), (h), (i) and (j), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

* * * * *

20. Section 1033.72 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 1033.72 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) the amount determined pursuant to § 1033.65, less:

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

21. Section 1033.86 is amended by revising paragraph (a) to read as follows:

§ 1033.86 Deduction for marketing services.

(a) The market administrator, in making payments to each producer pursuant to § 1033.72, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.7 is amended by revising paragraph (b) to read as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October and November, not less than 35 percent during the months of January and February, and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area, subject to the following conditions:

(1) At least one tank load of Grade A fluid milk products (not less than 45,000 pounds) must be shipped from the supply plant to a pool distributing plant during one of the months of September, October and November; and

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

2. Section 1036.13 is amended by changing the reference "(e), (f) and (g)" in paragraphs (a)(3) and (b) to "(e) and (f)", revising paragraphs (e), (f) and (h) to read as follows, and removing and reserving paragraph (g):

§ 1036.13 Producer milk.

* * * * *

(e) During March through August, subject to the conditions of paragraph (f) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) Diverted to a nonpool plant for the account of a handler operating a pool plant or for the account of a handler described in § 1036.9(c), subject to the following conditions:

(1) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(2) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(3) During each of the months of September through November not less than one day's production of a producer

must be physically received at a pool plant;

(4) Milk of a producer shall not be eligible for diversion unless the milk of such producer has been physically received at least once as producer milk at a pool plant and the dairy farmer has not been pooled on another federal order since that time;

(5) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(6) Any milk diverted in excess of the limit set forth in paragraph (f)(1) and (f)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to do so, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(7) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of the other order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(g) [Reserved]

(h) Milk diverted pursuant to paragraphs (a)(3), (a)(4) and (b) of this section shall be deemed to have been received by the diverting handler at the location of the plant to which diverted.

3. Section 1036.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1036.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, and the butterfat and milk protein contained in the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein contained in milk from producers for which it is the handler pursuant to § 1036.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, the somatic cell count, and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1036.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein as the market administrator may prescribe; and

* * * * *

4. Section 1036.31 is amended by revising paragraph (a)(2) and paragraph (b)(3) to read as follows:

§ 1036.31 Payroll reports.

(a) * * *

(2) The total pounds of milk, and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

(b) * * *

(3) The average butterfat and milk protein content, and the somatic cell count, of such milk;

* * * * *

5. Section 1036.32 is amended by revising paragraph (c)(2) and paragraph (d) to read as follows:

§ 1036.32 Other reports.

* * * * *

(c) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein contents, and its average somatic count;

* * * * *

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds, with butterfat and protein content, of the bulk fluid milk products transferred or diverted from the plant.

* * * * *

6. Section 1036.41as proposed to be amended at 56 FR 59040, Nov. 22, 1991, would be further amended by revising the second sentence of paragraph (c) to read as follows:

§ 1036.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1036.50 is amended by changing the section heading, revising the introductory language, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1036.50 Class and component prices.

Subject to the provisions of § 1036.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1036.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1036.74 times 35, and rounding the result to the nearest whole cent.

8. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1036.50 (d), (e), and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1036.50(b).

9. The heading before § 1036.60 is revised to read:

"Differential Pool and Handler Obligations"

10. Section 1036.60 is revised to read as follows:

§ 1036.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1036.9 (a), (b), and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1036.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1036.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1036.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1036.44(a)(16) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1036.44(a)(16), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1036.44(a)(16) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1036.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1036.44 (a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1036.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1036.44(a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1036.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1036.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7) (i) through (iii), and the corresponding step of § 1036.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7) (iv) and (v) and the corresponding step of § 1036.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(12) and the corresponding step of § 1036.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1036.44 multiplied by the skim milk price for the month computed pursuant to § 1036.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1036.50(e).

(j) The pounds of butterfat in all three classes as determined pursuant to § 1036.44 multiplied by the butterfat price for the month computed pursuant to § 1036.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1036.76(c).

11. Section 1036.61 is revised to read as follows:

§ 1036.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports

pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1036.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1036.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

12. Section 1036.62 is revised to read as follows:

§ 1036.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

13.–16. New §§ 1036.63 through 1036.66 are added under the revised heading "Differential Pool and Handler Obligations" to read as follows:

§ 1036.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1036.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1036.65 and 1036.73.

§ 1036.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 13th day after the end of the month the weighted average differential price computed pursuant to § 1036.61, the producer protein price computed pursuant to § 1036.62, and the uniform price computed pursuant to § 1036.63(a).

§ 1036.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1036.61 and adjusted pursuant to § 1036.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1036.62 and adjusted pursuant to § 1036.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1036.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1036.66 Computation of somatic cell adjustment.

(a) For milk having a monthly average somatic cell count of 500,000 or above or a monthly average somatic cell count of less than 400,000, the producer protein price shall be adjusted as follows:

(1) For a monthly average somatic cell count less than 100,000, the result of the cheese price times .09375;

(2) For a monthly average somatic cell count greater than 100,000 but less than 200,000, the result of the cheese price times .06250;

(3) For a monthly average somatic cell count greater than 200,000 but less than 300,000, the result of the cheese price times .03125;

(4) For a monthly average somatic cell count greater than 300,000 but less than 400,000, the result of the cheese price times .01562;

(5) For a monthly average somatic cell count greater than 500,000 but less than 600,000, the result of the cheese price times −.01562;

(6) For a monthly average somatic cell count greater than 600,000 but less than 700,000, the result of the cheese price times −.03125;

(7) For a monthly average somatic cell count greater than 700,000 but less than 800,000, the result of the cheese price times −.04688;

(8) For a monthly average somatic cell count greater than 800,000 but less than 900,000, the result of the cheese price times −.06250;

(9) For a monthly average somatic cell count greater than 900,000, the result of the cheese price times −.09375;

(10) If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) For purposes of this section, the cheese price shall be the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service.

17. Section 1036.71 is amended by revising the introductory language of paragraph (b), paragraph (b)(1), and paragraph (c) to read as follows:

§ 1036.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month the value of such handler's milk pursuant to § 1036.60 (a) through (l), plus or minus the adjustments made pursuant to § 1036.66 to the value of protein in producer milk, less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1036.60(g);

* * * * *

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by the sum of the following:

(1) The quantity of such receipts classified as Class I pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price (adjusted pursuant to § 1036.44(a)(15)) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price at the receiving plant (adjusted pursuant to § 1036.52) and the Class III price;

(2) The quantity of such receipts classified as Class II pursuant to

§ 1036(a)(15) and the corresponding step of § 1035.44(b) multiplied by the difference between the Class II price and the Class III price;

(3) The quantity of skim milk in such receipts classified as Class I pursuant to § 1036.44(a)(15) multiplied by the skim milk price for the month computed pursuant to § 1036.50(f);

(4) The pounds of protein in the skim milk in such receipts classified in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of skim milk from a pool plant operated by a cooperative association, or from a cooperative association in its capacity as a handler pursuant to § 1036.9(c);

(5) The pounds of butterfat in all three classes as determined pursuant to § 1036.44(b)(15) multiplied by the butterfat price for the month computed pursuant to § 1036.50(d); less

(6) Any payments made by the handler pursuant to paragraphs (a)(2) and (a)(3) of this section for such month.

* * * * *

18. Section 1036.72 is revised to read as follows:

§ 1036.72 Payments from the producer-settlement fund.

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant for location pursuant to § 1036.75, the protein price before adjustments are made for somatic cell count, and the butterfat price.

19. Section 1036.73 is amended by revising paragraphs (a)(2), (b)(2), (d)(2), and (d)(3) to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month, to each producer not less than the value determined pursuant to § 1036.65, less the following amounts:

* * * * *

(b) * * *

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be in the amount determined for such milk pursuant to § 1036.65, less the payments made pursuant to paragraph (b)(1) of this section.

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content and somatic cell count of the milk for which payment is being made;

(3) The minimum rates of payment required by the order and the rates of payment used if such rates are other than the applicable minimum rates;

* * * * *

§ 1036.85 [Amended]

20. Section 1036.85 is amended by changing the words "3 cents" in the introductory language to "4 cents."

§ 1036.86 [Amended]

21. Section 1036.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.3 is revised to read as follows:

§ 1049.3 Route disposition.

Route disposition means a delivery (including that packaged for another person, another distributing plant, disposition from a plant store or from a distribution point, and distribution by a vendor or vending machine) of any packaged fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

2. Section 1049.6 is revised to read as follows:

§ 1049.6 Supply plant.

Supply plant means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as a fluid milk product and is physically unloaded and received into a distributing plant during the month.

3. Section 1049.7 is amended by revising paragraphs (a) and (b), redesignating present paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 1049.7 Pool plant.

* * * * *

(a) A distributing plant with:

(1) Total route disposition of not less than 40 percent during each of the months of September through February, and 35 percent during each of the months of March through August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a)(1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products received from other pool or other Federal order plants;

(ii) A plant meeting such percentage requirement for the preceding month and the requirement of paragraph (a)(2) of this section for the current month may remain qualified under this paragraph in the current month; and

(iii) A plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if the plant meets the requirements of paragraph (a)(2) of this section;

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk.

(b) A supply plant from which not less than 40 percent during the months of September through February and not less than 35 percent during the months of March through August, of the Grade A milk received from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1049.9(c) at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph. Pool supply plant qualification shall be subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions

of bulk fluid milk products from such distributing pool plants; and

(3) The shipping percentage requirements of this paragraph may be increased or decreased temporarily by up to 10 percentage points by the market administrator if such person finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision on either such person's own initiative or at the request of interested persons. If the investigation shows that a temporary revision might be appropriate, the market administrator shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed temporary revision.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or by meeting the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood) fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

* * * * *

4. Section 1049.13 is revised to read as follows:

§ 1049.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1049.9(c) under the conditions set forth therein;

(c) Received by a handler described in § 1049.9(c) from producers in excess of the quantity delivered to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1049.9(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(4) Any milk diverted in excess of the limit set forth in paragraph (e) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(5) To the extent that milk diverted by a cooperative association as a handler described in § 1049.9(b) during any month would result in a plant failing to qualify as a pool plant under § 1049.7, such diverted milk shall not be producer milk; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that the uniform price applicable to milk that is diverted to a plant located outside the areas specified in § 1049.52(a) (1) through (3) shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided,* that 65 percent or more of such producer's milk is delivered to a plant or plants at which the same or a higher uniform price is applicable.

5. Section 1049.30 is amended by revising paragraphs (a)(1), (a)(6), and (c), to read as follows:

§ 1049.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants, showing the pounds of milk, butterfat and milk protein contained in the milk;

* * * * *

(6) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route dispositions and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

* * * * *

(c) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein contained in milk from producers for which it is the handler pursuant to § 1049.9 (b) or (c), showing:

(i) The quantities of such receipts delivered to each pool plant of other handlers; and

(ii) The classification of such receipts diverted pursuant to § 1049.13.

* * * * *

6. Section 1049.31 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1049.31 Payroll reports.

(a) * * *

(3) The average butterfat content, average milk protein content, and average somatic cell count of such milk; and

(4) The price per hundredweight, butterfat and milk protein prices and somatic cell adjustment to the producer protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

§ 1049.32 [Amended]

7. Section 1049.32 is amended by removing paragraph (a) and the paragraph designation from paragraph (b).

8. Section 1049.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1049.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests

and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

9. Section 1049.50 is amended by revising the section heading, revising the introductory language and paragraph (a), and adding new paragraphs (d), (e), and (f), to read as follows:

§ 1049.50 Class and component prices.

Subject to the provisions of § 1049.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.90.

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1049.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1049.74 times 35, and rounding the result to the nearest whole cent.

10. Paragraph (a) of § 1049.52 is revised to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk received at pool plants located in the following zones, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be adjusted as set forth in paragraphs (a)(1)–(a)(7), as follows, except that in no event shall the adjustment result in a price less than the Class III price for the month:

(1) *Zero adjustment zone.* Any Indiana county not specifically named in paragraphs (a)(2) through (a)(5) of this section, and not part of the Louisville-Lexington-Evansville marketing area.

(2) *Plus 10-cent adjustment zone.* The Indiana counties of Jackson, Jefferson, Jennings, Lawrence, Ripley, Scott and Switzerland.

(3) *Minus 10-cent adjustment zone.* The Indiana counties of Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White.

(4) *Minus 20-cent adjustment zone.* The Indiana counties of Dekalb, Elkhart, Jasper, Kosciusko, Lagrange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St. Joseph, and Whitley; and the Michigan counties of Berrien, Branch, Cass and St. Joseph.

(5) *Minus 35-cent adjustment zone.* The Indiana counties of Lake and Porter.

(6) At locations in other Federal order marketing areas, the appropriate price adjustment shall be the difference between the applicable Class I price effective at such plant location under the order for the area in which the plant is located and the Class I price specified in § 1049.50(a). For purposes of this paragraph, the locations in the Ohio counties of Defiance, Paulding, Van Wert and Williams, and the Michigan counties of Hillsdale, Lenawee and Monroe that are not part of any Federal milk order marketing area, will be considered to be in pricing zone 1 of the Eastern Ohio-Western Pennsylvania milk marketing area.

(7) At locations outside any Federal order marketing area and north of 38 degrees latitude, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be minus 2.0 cents for each 10 miles or fraction thereof from such point in addition to the amount of the location adjustment pursuant to paragraphs (a)(1)–(5) of this section applicable at the respective point.

* * * * *

11. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1049.50 (d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1049.50(b).

12. The heading before § 1049.60 is revised to read **"DIFFERENTIAL POOL AND HANDLER OBLIGATIONS"**

13. Section 1049.60 is revised to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each pool plant of each handler, and for each handler pursuant to § 1049.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1049.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1049.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1049.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1049.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1049.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1049.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1049.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to

§ 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1049.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1049.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1049.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) applicable at the location of the pool plant at the current month's Class I–Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) at the current month's Class II–Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7)(i) through (iv), and the corresponding step of § 1049.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I–Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7)(v) and (vi) and the corresponding step of § 1049.44(b) applicable at the location of the transferor-plant at the current month's Class I–Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(11) and the corresponding step of § 1049.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I–Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1049.44 multiplied by the skim milk price for the month computed pursuant to § 1049.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1049.50(e).

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1049.76(c).

14. Section 1049.61 is revised to read as follows:

§ 1049.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1049.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1049.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included-in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

15. Section 1049.62 is revised to read as follows:

§ 1049.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

16.–19. New §§ 1049.63 through 1049.66 are added under the revised heading "Differential Pool and Handler Obligations" to read as follows:

§ 1049.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1049.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1049.65 and 1049.73.

§ 1049.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 14th day after the end of the month the weighted average differential price computed pursuant to § 1049.61, the producer protein price computed pursuant to § 1049.62, and the uniform price computed pursuant to § 1049.63(a).

§ 1049.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1049.61 and adjusted pursuant to § 1049.75; multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1049.62 and adjusted pursuant to § 1049.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1049.50(d) multiplied by the total butterfat contained in the producer milkreceived from the producer.

§ 1049.66 Computation of somatic cell adjustment.

(a) For milk having a monthly average somatic cell count of 500,000 or above or a monthly average somatic cell count of less than 400,000, the producer protein price shall be adjusted as follows:

(1) For a monthly average somatic cell count less than 100,000, the result of the cheese price times .09375;

(2) For a monthly average somatic cell count greater than 100,000 but less than 200,000, the result of the cheese price times .06250;

(3) For a monthly average somatic cell count greater than 200,000 but less than 300,000, the result of the cheese price times .03125;

(4) For a monthly average somatic cell count greater than 300,000 but less than 400,000, the result of the cheese price times .01562;

(5) For a monthly average somatic cell count greater than 500,000 but less than 600,000, the result of the cheese price times −.01562;

(6) For a monthly average somatic cell count greater than 600,000 but less than 700,000, the result of the cheese price times −.03125;

(7) For a monthly average somatic cell count greater than 700,000 but less than 800,000, the result of the cheese price times −.04688;

(8) For a monthly average somatic cell count greater than 800,000 but less than 900,000, the result of the cheese price times −.06250;

(9) For a monthly average somatic cell count greater than 900,000, the result of the cheese price times −.09375;

(10) If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) For purposes of this section, the cheese price shall be the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service.

20. Section 1049.71 is amended by revising paragraphs (a)(1) and (a) (2) to read as follows:

§ 1049.71 Payments to the producer settlement fund.

(a) * * *

(1) The total obligation of the handler for such month as determined pursuant to § 1049.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant to § 1049.75;

(ii) The value of the protein in such handler's receipts of producer milk at the producer protein price computed pursuant to § 1049.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1049.60(g).

* * * * *

21. Section 1049.73 is amended by revising the first sentence of paragraph (a)(2), paragraph (c)(2)(ii), and paragraph (d)(2) to read as follows:

§ 1049.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month to each producer, not less than the value determined pursuant to § 1049.65, less any payment made pursuant to paragraph (a)(1) of this section, and less the deduction for advertising and promotion made pursuant to § 1049.107. * * *

* * * * *

(c) * * *

(2) * * *

(ii) On or before the 16th day of the following month for milk received during the month, not less than the value of milk determined pursuant to § 1049.65, less any payments made pursuant to paragraph (c)(2)(i) of this section.

(d) * * *

(2) The daily and total pounds of producer milk, its butterfat and milk protein content, and the somatic cell count of the milk;

* * * * *

22. Section 1049.75 is revised to read as follows:

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The weighted average differential price for producer milk received at pool plants or diverted to nonpool plants shall be adjusted according to the location of the plants at which it was received or was deemed to have been received at the rates set forth in § 1049.52(a), except that the adjusted weighted average differential price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), shall be not less than zero for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average differential price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

23. Section 1049.78 is revised to read as follows:

§ 1049.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to § 1049.71, § 1049.76, § 1049.77(a), § 1049.78, § 1049.85, or § 1049.86(a) shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

§ 1049.86 [Amended]

24. Section 1049.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

Signed at Washington, DC, on: July 30, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–18553 Filed 8–12–92; 8:45 am]

BILLING CODE 3410-02-M

federal register

Thursday
August 13, 1992

Part IV

Department of Transportation

Federal Transit Administration

Announcement of the Initiation of a Turnkey Demonstration Program; Solicitation of Letters of Intent To Propose; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of the Initiation of a Turnkey Demonstration Program; Solicitation of Letters of Intent To Propose

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration announces a competition for the selection of not less than 2 turnkey system demonstration projects. The Turnkey Demonstration Program is in response to section 3019 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). This program will determine the degree to which turnkey system procurement can reduce the time and lower the cost of transit capital project development.

DATES: A pre-proposal conference on this announcement is scheduled for August 31, 1992 in Washington, DC. "Letters of Intent to Propose" are due on or before September 25, 1992.

ADDRESSES: Parties interested in attending the pre-proposal conference should notify, by August 18, Edward L. Thomas, Chief, Capital Development Division (TTS–11), Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590, Phone Number: (202) 366–0264. Letters of Intent to Propose shall be sent to Walter Kulyk, Director, Office of Mobility Enhancement (TTS–10), Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590 and shall reference Turnkey Demonstration Program.

FOR FURTHER INFORMATION CONTACT: Edward L. Thomas, Capital Development Division (TTS–11), at (202) 366–0264.

SUPPLEMENTARY INFORMATION:

1. Background

Section 3019 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240) amended the Federal Transit Act to add new Special Procurement Initiatives at section 12(l)(1). Among those initiatives are provisions for demonstrations of not less than two turnkey system projects. The Federal Transit Administration (FTA) is soliciting proposals for turnkey system project demonstrations. As stated in the new section 12(l)(1) of the Federal Transit Act, as amended, a turnkey system project is defined as a project under which a recipient contracts with a consortium of firms, individual firms, or a vendor to build a transit system that meets specific performance criteria and which is operated by the vendor for a period of time. Section 12(l)(1)(A) provides that turnkey project contracts may be conditionally awarded before Federal requirements have been met on the project so long as the award is made without prejudice to the implementation of those Federal requirements. Federal financial assistance under this Act may be made available for such a project when the recipient has complied with relevant Federal requirements. To be eligible for Federal funding, a commitment for construction, under a turnkey contract, is conditional upon completion of the environmental requirements of the National Environmental Policy Act, (NEPA), as implemented by joint FTA and Federal Highway Administration (FHWA) regulations, "Environmental Impact and Related Procedures," 49 CFR part 622 and 23 CFR part 771.

Recipients selected to participate in the demonstration program will benefit from expedited grant processing for those projects for which the recipients may seek Federal capital assistance. The FTA will provide intensive staff support to help satisfy administrative requirements. This includes, but is not limited to, project development, third party procurements, right-of-way acquisition, Buy America goals, performance bond level, and project management. Selection as a turnkey demonstration site may therefore help reduce the time of project completion. The FTA will also work diligently with FHWA to explore all opportunities for flexible funding as provided in the ISTEA.

2. Description of Turnkey Demonstration Program

a. Objectives

The purpose of this notice is to announce the initiation of the FTA Turnkey Demonstration Program; and to solicit "Letters of Intent to Participate" in this program from interested applicants.

As stated in the ISTEA, the goal of the demonstration initiative is to advance new technology and lower the cost of constructing new transit systems. In achieving this goal, the FTA wants to determine the degree to which turnkey system projects may enhance the effectiveness of construction and acquisition scheduling; increase private sector financial participation; improve the flow of funds; diversify all aspects of project risks; enhance contract management; and reduce the cost of transit system development, operation and maintenance. The FTA will use the results of the demonstrations in developing regulations or in modifying existing third party contracting guidelines.

b. Selection Process

Selection of turnkey demonstration projects will follow a two-step process. After a pre-proposal conference to describe the details of the program, the FTA will request "Letters of Intent to Participate." The FTA will subsequently evaluate the letters and seek a "Formal Request for Participation" from those applicants that have proposed projects which the FTA believes are most likely to be of greatest value in demonstrating the potential benefits of turnkey procurement on a nationwide basis.

c. Categories of Projects

Ultimate demonstration selection will be made for projects in three categories:

(1) Fixed guideway projects about to commence preliminary engineering,

(2) Fixed guideway projects nearing the end of the preliminary engineering phase, and

(3) Other eligible projects.

A variety of projects are eligible for assistance under this program. Some examples of eligible transit projects include, but are not limited to, new and extensions to existing light rail transit systems, heavy rail transit systems, automated guideway transit systems, commuter rail systems, busways and high occupancy vehicle corridor systems, and advanced public transit systems.

For projects in Category (1), the FTA will consider supporting preliminary engineering by multiple turnkey bidding teams before a final team is selected, and a turnkey contract awarded. Such an effort will stimulate competition in the design process and in ultimate bid prices. It will also permit a comparison of this approach to turnkey methods in Category (2) and Category (3) projects and to projects implemented through conventional procurement methods.

d. Pre-proposal Conference

The FTA will sponsor a one-day conference with transit agency officials, turnkey contractors and agency consultants from areas in which turnkey demonstration proposals are anticipated. The conference will discuss the structure and requirements of the demonstration program, and entertain questions on the solicitation. Persons who are interested in attending the pre-proposal conference should follow the guidance in the "Addresses" section of this notice.

e. Letters of Intent to Participate

The FTA requests that potential applicants wait to submit Letters of Intent to Participate in this program until after they have had the benefit of attending the pre-proposal conference.

Letters of Intent to Participate should be sent to the name and address in the "Addresses" section of this notice. A copy of the letter also should be sent to the appropriate FTA Regional Offices whose addresses are listed at the end of this Notice.

Letters of Intent to Participate must include preliminary information on: (1) Physical and operating characteristics of the capital project; (2) estimated total project cost and operating cost; (3) proposed design and construction schedule; (4) proposed construction management plan; (5) proposed operating plan; (6) proposed financial plan, including local and state shares, anticipated involvement of the FTA, potential use of highway funding, and opportunities for private sector participation; (7) proposed management plan describing the competitive procurement procedures to be used in selecting a turnkey contractor; (8) degree of local and state commitment to project; (9) consultant support; and (10) the turnkey contractor team or stage in the procurement of a turnkey contractor team.

f. Submission of Formal Request for Participation

The FTA is not soliciting formal requests at this time. Formal requests will be solicited by the FTA from those eligible applicants which have submitted a Letter of Intent to Participate and which, in the opinion of the FTA, are proposing projects of the most benefit to the objectives of this Turnkey Demonstration Program. Information provided in this section also will benefit potential applicants when preparing Formal Requests for Participation.

g. Project Description

The requesting agency should describe the stage of the project's development, and its physical, operational, and cost characteristics. Typical stages of transportation project development are planning, design and construction. Facilities, equipment and their location are the essential physical characteristics of the project. Operational characteristics should include service provided, labor arrangements, and forecasts of the demand for the service provided. Capital, operating, and maintenance costs estimates should be provided as well.

h. Financial Strategy

The request for participation should contain a description of the financial strategy. The financial strategy should identify the local consensus and include a description of annual cost estimates, sources of funds for capital expenditures and any operating deficits, and financing strategy. It also should clearly identify private sector participation and proposals for use of the flexible funding provisions contained in the ISTEA.

i. Management Plan

The request for participation should contain a description of the organization that will implement the project, what entities will be involved, how the project will be implemented, and the technical resources available to the requesting agency. This would consist of a description of the disciplines and backgrounds of the requesting agency internal team and consultants, and if and when selected, members of the turnkey contracting team. The plan should describe the competitive procurement procedures the recipient has applied or plans to apply in selecting the turnkey contractor. A recipient that has awarded the turnkey contract for its project will not be considered for participation in this demonstration program unless the procurement was conducted in a manner providing full and open competition. The management plan should also delineate the work schedule; budget; products; and roles and responsibilities of the requesting agency, its agents, and the turnkey contractor organizations.

Included among the products is a risk management plan. This risk management plan should contain the organizational structure and management system necessary to provide an operational framework for risk management.

3. Selection for Participation in Program

In evaluating the formal requests for participation in this turnkey demonstration program, the FTA will consider the relevance of the proposed projects to the goals set forth in Section 12(l)(1) of the Federal Transit Act, as amended, evidence of local consensus, proposals for creative financing, management capability including risk management, and technical resources. Each of these areas of consideration is described as follows:

a. *Relevance to the Section 12(l)(1) goals and the* **Federal Register** *Notice:* This is the requesting agency's responsiveness to this notice and in particular, the goals and objectives of this demonstration initiative.

b. *Local Consensus for the Project:* For those projects that are completing the planning phase, the FTA expects designation of a locally preferred alternative or other demonstrations of a consensus to advance a project into preliminary engineering or its equivalent. For those projects nearing the completion of preliminary engineering, the FTA expects a local consensus to advance the project into final design and construction, and a level of design appropriate for minimizing the uncertainty associated with the project. Documentation of local consensus should also include evidence from an authorized body that funding to operate both the proposed project and the existing transit system will be available.

c. *Creative Financing:* The FTA is particularly interested in proposals in which private sector financial resources are used to leverage public funds, and proposals to employ the funding flexibility contained in the ISTEA. Some examples include use of highway funding for transit projects; turnkey contractor participation through vendor financing, advance construction financing, lease financing, and joint development; and other private sector participation through air rights development, tax increment financing, special assessment districts, and cost sharing.

d. *Management Capability:* This focuses on the organizations to be involved. Management capability will be reviewed on the basis of the requesting agency's and, if a turnkey contractor is already selected, the contractor's experience in the areas of planning, engineering, procurement, financial management, construction management, and construction involving transit construction and acquisition projects similar to the one being proposed. The FTA will determine if project cost, scheduling, and financial risk are adequately described, and if an implementation plan has been developed to manage this risk. The FTA will also consider the ability of the requesting agency or turnkey contractor to operate the proposed project.

e. *Technical Expertise:* This focuses on the expertise of the personnel of the requesting agency, consultants to the requesting agency, and the turnkey contractor in the critical areas of the project. The critical areas include transportation systems analysis, design engineering, architectural design, finance, management systems, systems engineering, procurement, construction

management, construction, and transit operations.

f. *Selection Schedule*

—Pre-proposal Conference—August 31, 1992
—Deadline for Receipt of Letters of Intent to Propose—September 25, 1992
—FTA Request for Formal Requests for Participation—October 23, 1992
—Deadline For Receipt of Formal Requests for Participation—October 23, 1992
—Deadline For Receipt of Formal Requests for Participation—December 31, 1992
—Completion of Evaluations of Requests for Participation—January, 1993
—FTA Announcements of Turnkey System Demonstration Projects—February, 1993

4. Funding for Demonstration Projects

Federal capital assistance for turnkey demonstration projects is available through the section 3 discretionary and section 9 formula assistance programs of the Federal Transit Act, as amended, and based on flexible funding in the ISTEA from the Surface Transportation Program (STP), National Highway System (NHS), Congestion Mitigation Air Quality (CMAQ), and other highway funds. Projects seeking funding under the new starts category of section 3 are subject to the provisions of section 3(i) of the Federal Transit Act, as amended. Funds for rail modernization projects are apportioned according to the formula in section 3(h) of the Federal Transit Act, as amended. The replacement, rehabilitation and construction of bus-related facilities are eligible for funding under section 3(k) of the Federal Transit Act, as amended.

Funding to develop and implement selected demonstration projects under this initiative will be processed through the normal grant programs. Typical development efforts include development of turnkey procurement request for proposal, contractor selection, advance planning, preliminary engineering, environmental document preparation, and financial plan development and implementation. Final design, project management, acquisition and construction are the normal project implementation efforts. Any questions on the FTA grant programs should be directed to the appropriate FTA Regional Offices. Addresses and telephone numbers for the Regional Offices are listed at the end of this announcement.

5. Documentation of Demonstration Projects

The FTA will want to work with the selected demonstration sites to ensure that all phases of the turnkey project are documented. This will include, but will not be limited to, all aspects of the turnkey selection process; documentation of turnkey contracts, and subcontracts; project management plan; roles and responsibilities of the parties; measurement, allocation and management of risk; engineering products; transportation systems analysis results; construction and acquisition schedules; project management systems and procedures; financial plans and implementation strategies; right-of-way acquisition program; utility relocation plans; cost sharing plans; power source agreements; operating plans; construction management; construction; and operations.

6. Evaluation of On-Going Demonstration Projects

The FTA will conduct evaluations of projects selected for the Turnkey Demonstration Initiative and other projects involving turnkey procurements as they proceed to completion. These evaluations will assist the FTA in comparing the costs and benefits of different types of turnkey procurements and of turnkey procurements compared to conventional procurements.

7. References

In developing proposals, agencies may want to refer to an FTA study, "Turnkey Procurement: Opportunities and Issues", which reviewed turnkey experiences and applications in the United States (U.S.) and abroad. This study provides information on turnkey development of domestic energy recovery plants, waste water treatment facilities, highway projects, flood control projects, Federal government office buildings, and transit systems. Several foreign transit systems, which have been implemented through turnkey procurements, are also reviewed.

The report documents potential benefits of turnkey development and issues associated with turnkey development of transit systems. Examples of typical benefits are capital and operating cost savings, flexible financing through private sector leveraging of public funds, diversification of risk, and augmentation of public sector project management capabilities. Some of the outstanding issues to be addressed by the demonstrations are necessary level of project specification, role of taxable versus tax-exempt financing, equitable allocation of risk, and public agency oversight role in a turnkey procurement.

Copies of the report "Turnkey Procurement: Opportunities and Issues" may be obtained from Edward L. Thomas, Chief, Capital Development Division, Office of Technical Assistance and Safety, Federal Transit Administration, 400 7th Street SW., Room 6107, Washington, DC 20590.

8. FTA Regional Offices

Area/region	Name/address	Telephone No.
Eastern Area		
● Region 1	Richard Doyle, Regional Administrator, Transportation Systems Center, 55 Broadway, Suite 920, Cambridge, MA 02142.	(617) 494-2055
● Region 2	Leonard Braun, Eastern Area Director, and Regional Administrator, 26 Federal Plaza, Suite 2940, New York, NY 10278.	(212) 8162
Southeastern Area		
● Region 3	Sheldon A. Kinbar, Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103	(215) 656-6900
● Region 4	Peter N. Stowell, Southeastern Area Director, and Regional Administrator, 1720 Peachtree Road, NW., Suite 400, Atlanta, GA 30309.	(404) 347-3948
Central Area		
● Region 5	Joel P. Ettinger, Central Area Director, and Regional Administrator, 55 E. Monroe Street, Suite 1415, Chicago, IL 60603.	(312) 353-2789
Midwestern Area		
● Region 6	Wilbur E. Hare, Jr., Regional Administrator, 819 Taylor Street, Suite 9A32, Fort Worth, TX 76102	(817) 334-3787
● Region 7	Lee O. Waddleton, Midwestern Area Director, and Regional Administrator, 6301 Rockhill Road, Suite 303, Kansas, City, MO 64131.	(816) 926-5053
Western Area		
● Region 8	Louis F. Mraz, Jr., Western Area Director, and Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202.	(303) 844-3242
● Region 9	Stewart F. Taylor, Regional Administrator, 211 Main Street, Suite 1160, San Francisco, CA 94105	(415) 744-3133

Area/region	Name/address	Telephone No.
● Region 10.....	Terry L. Ebersole, Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174.	(206) 553-4210

9. Evaluation

An Evaluation Panel will review all Formal Proposals to Participate, and forward the results of the evaluations to the FTA Administrator. The final selection of the demonstration projects will be made by the FTA Administrator.

Issued On: August 7, 1992.

Brain W. Clymer,

Administrator.

[FR Doc. 92-19234 Filed 8-12-92; 8:45 am]

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federal register

Thursday
August 13, 1992

Part V

Department of Education

Office of Special Education and Rehabilitative Services; Private Schools Serving Publicly Placed Children With Disabilities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Invitation To Comment on the Personnel Standards Requirements That Must Be Met by Private Schools in Order for a Public Agency to Place a Child With a Disability in the School for the Purpose of Receiving Free Appropriate Public Education (FAPE)

AGENCY: Department of Education.

ACTION: Notice inviting comments.

SUMMARY: The Secretary of Education invites comments from all interested parties concerning the personnel standards requirements of part B of the Individuals with Disabilities Education Act (IDEA) (formerly known as the Education of the Handicapped Act) that apply to private schools serving publicly placed children with disabilities. Section 613(a)(4)(B)(ii) of the IDEA requires that if a public agency places a child with a disability in a private program or facility for the purpose of providing a free appropriate public education (FAPE), the State educational agency (SEA) must ensure that the program meets the standards that apply to publicly operated programs.

DATES: All comments must be received on or before September 28, 1992.

ADDRESSES: Written comments should be addressed to Ms. Lucille Sleger, U.S. Department of Education, 400 Maryland Avenue SW., room 3615, Switzer Building, Washington, DC 20202–2720.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Irvin, U.S. Department of Education, 400 Maryland Avenue SW., room 3092, Switzer Building, Washington, DC 20202–2720. Telephone: (202) 205–8825. Individuals who are deaf or hearing impaired may call (202) 205–9090 for TDD services.

SUPPLEMENTARY INFORMATION: In 1975, when Congress amended Part B of the Education of the Handicapped Act, it included private schools as a necessary component in the continuum of programs for serving children with disabilities. Congress required, in section 613(a)(4)(B)(i) of the Act, that if a child with a disability is placed in a private school program by a public agency for the purpose of receiving FAPE the placement must be provided at no cost to parents. Congress also included, in section 613(a)(4)(B)(ii), the requirement that in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies * * *

The provision related to State standards helped to ensure that children with disabilities would not be placed in substandard programs. This provision is implemented in 34 CFR 300.401(a)(3), which requires State educational agencies to insure that the private school or facility into which children with disabilities are placed by public agencies "* * * meets the standards that apply to State and local educational agencies (including the requirements in * * * [Part 300]) * * *." One of the effects of these provisions has been to require that all special education personnel serving publicly placed children must meet State standards that are identical to the standards that apply to local school districts.

The Secretary believes that this statutory provision, and the regulatory provision that implements it, have played an important part in protecting the rights of children with disabilities placed by public agencies in private schools. However, he also believes that an unintended effect has been to limit access to quality private school programs in situations where the public agency and parent agree that a particular private school program is needed to provide FAPE to the child, but the private school special education personnel who will provide services to that child do not meet the identical standards that apply to public school personnel. With regard to these personnel standards requirements, the Secretary is interested in whether there are ways to give public agencies greater flexibility and access to using placements in private school programs while ensuring that children with disabilities are placed in quality programs where they will be able to receive FAPE and continue to be afforded all rights and protections under the IDEA.

INVITATION FOR PUBLIC COMMENT: The Secretary invites public comment on whether the IDEA should be amended to permit public agencies to place children in private school programs if, under State law or policy, it is determined that the private school special education personnel meet standards that are comparable or equivalent (according to State law or policy)—although different—from the personnel standards that apply to publicly operated programs. Comments and recommendations on how States would formulate State policy regarding equivalent or comparable personnel standards are specifically requested.

Dated: July 31, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19348 Filed 8–12–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
August 13, 1992

Part VI

Department of Education

Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program; Notice of Final Priority for Fiscal Year 1992

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1992.

SUMMARY: The Eisenhower Regional Mathematics and Science Education Consortiums Program supports the establishment and operation of regional consortiums to disseminate exemplary mathematics and science education materials and to provide technical assistance for the implementation of teaching methods and assessment tools for use by elementary and secondary school students, teachers, and administrators. The Secretary establishes a priority for fiscal year 1992 to establish and operate regional mathematics and science education consortiums that support systemic school improvement activities.

The Secretary takes this action to focus Federal financial assistance on activities to help students meet emerging national standards in mathematics and science, by implementing State and local curriculum frameworks and assessment processes based on these standards, and by ensuring that teachers are prepared to deliver instruction that will enable students to attain the desired standards of achievement.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Allen Schmieder, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

One of the six National Education Goals calls for U.S. students to be first in the world in mathematics and science achievement by the year 2000. The President's AMERICA 2000 strategy for helping the Nation achieve the goals calls for the establishment of world-class standards for what students should know and be able to do and a system of improved assessments tied to those standards. The National Council on Education Standards and Testing (NCEST) was a congressionally chartered group charged with investigating the desirability and feasibility of national standards and improved assessment. The report NCEST issued in January, 1992, called for the development of those standards and a system of voluntary assessments as an urgently needed first step in reforming American education.

Standards for mathematics education have already been developed by the National Council of Teachers of Mathematics. Substantial progress in developing world-class standards in science has also been made under the leadership of such organizations as the National Science Teachers Association and the American Association for the Advancement of Science. Standards provide the foundation for systemic reform. As the bridge from the standards to the classroom, curriculum frameworks provide guidelines for the particular content of the curriculum and how knowledge should be organized and presented in order to help students reach the standards. Those frameworks set out themes, topics, and objectives for learning outcomes at different levels of schooling, such as at the end of 4th, 8th, and 12th grades, and allow for local flexibility while setting clear directions for schools in general.

New methods of assessing student knowledge need to be developed to accompany the standards. A variety of organizations are doing work in this area and are drawing upon recommendations such as those contained in the Mathematical Sciences Education Board's For Good Measure: Principles and Goals for Mathematics Assessment and the report of the National Council on Education Standards and Testing, Raising Standards for American Education.

The Secretary believes, however, that standards, curriculum frameworks, and assessments alone cannot achieve systemic reform. It is the teacher who must provide the kind of classroom instruction that will enable students to achieve world-class standards. Thus, teacher education (both preservice and inservice) and teacher certification also need to be reformed in ways that reflect world-class standards so that teachers are prepared for the classrooms of the future.

The Secretary believes that regional mathematics and science consortiums can help strengthen, support, and promote systemic reform in mathematics and science education by disseminating exemplary instructional materials, providing professional development services for teachers, and providing technical assistance to help States develop and implement world-class standards and curriculum frameworks and assessment instruments based on those standards. The statute authorizing the regional consortiums defines "region" as a region of the United States served by a regional educational laboratory that is supported by the Secretary pursuant to section 405(d)(4)(A)(i) of the General Education Provisions Act.

The Secretary will provide technical assistance, information, and support services so that the regional consortiums may keep in contact with national standards-setting groups and curricular and assessment projects in other parts of the country.

On May 7, 1992 the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 19788).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition was published in the **Federal Register** on June 23, 1992 (57 FR 28026).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, five parties, each representing sizeable constituencies, submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: One commenter advocated funding consortium programs that focused on major urban centers, including the direct funding of a consortium serving a single urban center.

Discussion: The legislation requires that any consortium funded serve one of ten multi-state regions, with the regions defined as those regions currently served by a regional educational laboratory. The Secretary emphasizes, however, that although an individual consortium must provide services throughout its service region, providing assistance to major urban centers should be a high priority for the consortium. Major urban centers may also seek to participate in the development and submission of an eligible application in the consortium competition.

Changes: None.

Comments: One commenter recommended that extensive evaluation of all materials not be a required

consortium activity. A second commenter proposed that evaluation be periodic and not continual.

Discussion: The Secretary believes that the consortium materials must be evaluated to ensure that the consortium is selective about the types of materials that are disseminated. The Secretary believes that projects should not be burdened financially with continuous evaluation.

Changes: Section (b) of the priority has been changed to eliminate the word "continually."

Comments: One commenter referred to the required activity that consortiums ensure continued access to information and materials available from the Eisenhower National Clearinghouse. The commenter recommended clarification of the nature of the relationship between the consortiums and the Clearinghouse and the budget implications of that relationship. The commenter also recommended that access be ensured specifically to materials that consortiums and their clients have determined to be most appropriate to local, State, or regional needs.

Discussion: The intent of the priority is that the Eisenhower National Clearinghouse will serve as one of the major sources of information and materials to be disseminated by the consortiums. A notice inviting applications for regional consortiums awards was published in the **Federal Register** on June 23, 1992 (57 FR 28026). The notice provides applicants with an estimate of the funds available for consortium awards. It is expected that applicants will describe the details of the relationship they propose to establish with the Clearinghouse and the related budget requirements. Further, the Secretary expects that in carrying out their activities, the consortiums will help their clients determine which materials are most appropriate to meet local, State, and regional needs and to help students meet emerging world-class standards in mathematics and science.

Changes: None.

Comments: One commenter recommended that the term "governing" be stricken from Section (g) of the priority notice and that requirements for the regional board be stated in such a manner as to avoid duplication or conflict with the responsibilities of existing independent governing boards such as those of the regional educational laboratories.

Discussion: The Secretary agrees that the proposed "regional governing board" may cause confusion with existing governing boards with similar responsibilities and that the functions of the consortium board should be clarified.

Changes: The priority has been changed to clarify the responsibilities of the regional board and to distinguish the regional board from a governing board.

Comments: One commenter suggested a clarification of the list of eligible entities, specifically the reference to a regional laboratory in consortium with a research and development center specified under section 405(d)(4)(A) of the General Education Provisions Act.

Discussion: A regional laboratory in consortium with a research and development center is one of several eligible applicants. A regional laboratory in a region in which there is no research and development center may apply as a non-profit organization.

Changes: None.

Comments: One commenter agreed that the consortiums should identify and disseminate materials and methods, but questioned the consortiums' proposed role in developing instructional materials, assessments, content standards, and curriculum frameworks.

Discussion: The Secretary agrees that the intent of the legislation is to support activities that identify, adapt, disseminate, and implement mathematics and science instruction materials, teaching methods, and assessment tools. However, the Secretary believes that any technical assistance provided by the consortiums should be consistent with State efforts to adopt world-class standards and to develop curriculum frameworks, assessments, and professional development for teachers consistent with those standards.

Changes: The priority has been revised to clarify that the function of the regional consortiums is to disseminate information and provide technical assistance rather than develop frameworks, materials, standards, and assessments.

Comment: One commenter expressed strong support for the technical assistance activity in paragraph (a) of the priority while providing a number of suggested revisions including requiring the consortium to provide, at cost, materials that are otherwise unavailable, focus professional development on educational leaders, include teacher educators in most proposed activities, and include the State agency for higher education in each State on the regional board.

Discussion: The Secretary believes that each regional consortium should propose its own plan for disseminating materials and does not want to direct specifically how it is to be done. Further, the statute authorizing the regional consortiums identifies classroom teachers, rather than educational leaders, as key recipients of professional development. Finally, the Secretary believes that the existing references in the priority to "university scholars" includes teacher educators and that the reference to "State educational agencies" in paragraph (g) is sufficient for the purposes of the priority.

Changes: None.

Comments: One commenter expressed concern that the priority did not clarify the terminology "world-class standards" in mathematics and science achievement.

Discussion: The Supplemental Information section discusses the fourth National Education Goal, which states that by the year 2000, U.S. students should be first in the world in science and mathematics achievement. The priority reflects the AMERICA 2000 strategy for achieving this goal. World-class standards, as used in the AMERICA 2000 strategy, represent what young Americans need to know and be able to do if they are to live and work in today's world. These standards will incorporate both knowledge and skills to ensure that, when young Americans leave school, they are prepared for further study and the work force. The fourth National Education Goal is discussed thoroughly in a number of publications concerning the AMERICA 2000 Education Strategy.

Changes: None.

Comments: One commenter recommended that the priority give attention to the needs of groups that are underrepresented in, and underserved by, mathematics and science education.

Discussion: The Secretary expects that in carrying out the required activities, the consortiums will give attention to the needs of the underrepresented. For example, providing technical assistance to help States adopt world-class standards for all children requires recognition that every child can learn, regardless of background or disability.

Changes: None.

Comments: One commenter recommended that the priority be revised to state that consortiums sponsor as well as provide leadership training.

Discussion: The Secretary has decided to clarify Section (c) regarding the responsibility of the consortiums to conduct inservice professional development programs and to coordinate these programs with other inservice programs.

Changes: Section (c) now clarifies that the consortiums must either conduct or

sponsor inservice professional development programs. Section (c) further provides that the design and implementation of these programs must be coordinated with other inservice professional development programs sponsored with Federal and State funds.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Development and Operation of Regional Consortiums to Support Systemic Reform

Projects that propose to establish and operate regional consortiums that will promote systemic reform by disseminating exemplary materials, teaching methods, and assessment tools and by providing technical assistance in the implementation and adaptation of these materials, teaching methods, and assessment tools.

The consortiums must carry out all of the following activities:

(a) Provide technical assistance to help States adopt worldclass standards in mathematics and science, develop curriculum frameworks that embody these standards, and develop new forms of assessment matched to the curriculum frameworks. The consortiums must also provide technical assistance to help States develop and implement new approaches to teacher inservice and preservice education and teacher certification appropriate to the standards and frameworks.

(b) Identify and disseminate exemplary mathematics and science education instructional materials, teaching methods, and assessment tools for use by elementary and secondary school students. All materials and methods disseminated by the consortiums must reflect emerging world-class standards for mathematics and science and be evaluated for their positive impact on student learning. In order to identify the exemplary materials, teaching methods, and assessment tools and appropriate teacher education and certification programs, the consortiums must consult with classroom teachers (both public and private) and university scholars, together with State science and mathematics supervisors, Eisenhower State coordinators, National Diffusion Network State Facilitators, and representatives from the regional educational laboratory, the National Science Foundation's State Systemic Initiative projects, and other organizations and activities promoting science and mathematics reform in the region. Consortiums must also consult with directors of exemplary mathematics and science projects in the region, whether funded by the Department of Education, the National Science Foundation, the Department of Energy, other federal agencies, or private foundations.

(c) Train and provide technical assistance to classroom teachers, administrators, and other educators to adapt and use the instructional materials, teaching methods, curricula, and assessment tools described above. The consortiums must conduct or sponsor intensive inservice professional development programs, including local workshops during summer months, for science and mathematics teachers, including elementary teachers, and for student teachers engaged in pre-service clinical programs. Design and implementation of these programs must be coordinated with other inservice professional development programs in mathematics and science sponsored with other Federal or State funds in order to ensure maximum coverage and minimize duplication of services. The professional development programs must prepare teachers to teach to world-class standards and new curriculum frameworks developed to implement those standards. The work of designing these professional development programs must involve teachers, scholars, administrators in the States and school districts, and other knowledgeable parties within the region.

The consortiums must also provide necessary follow-up support for teachers and student teachers who receive intensive training under this program to ensure continued access to information and materials—especially those made available by the Eisenhower National Clearinghouse—that will help them integrate world-class standards into their local curricula.

(d) Provide financial assistance, if necessary, to enable teachers, administrators, and other educators to help design, organize, attend, and participate in the activities of the regional consortium.

(e) Maintain on-line computer communications with all regional consortiums and the Eisenhower National Clearinghouse for Science and Mathematics Education.

(f) Document and report to the Secretary on the consortium's development and implementation process, and collect data that allow for evaluation of each major project objective, especially in terms of the impact of participation in consortium activities on the performance of teachers and their students. Each consortium must participate in any evaluation the Secretary may conduct.

(g) Establish a broadly based regional board to oversee the administration and establishment of program priorities for the regional consortium. The board shall include classroom teachers (public and private), university scholars, and representatives of major regional groups, organizations, or programs active in mathematics and science systemic reform efforts, such as State educational agencies, the National Diffusion Network, mathematics and science professional organizations, the National Science Foundation's State Systemic Initiatives, State legislatures, Governor's offices, local schools, boards of education, parent organizations, and business, labor, and industry organizations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: The Education Department's General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 2994–2994f.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program)

Dated: July 31, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19379 Filed 8–12–92; 8:45 am]

BILLING CODE 4000-01-M

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